SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 545.

THE UNITED STATES, APPELLANT,

vs.

UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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a District Court of the United States, District of Massachusetts.

UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET AL.	In Equity, No. 301.

ABSTRACT OF THE EVIDENCE BEFORE THE COURT.

Before Putnam, Dodge, and Brown, JJ.

1 Evidence for the United States before the Court May 21, 1913, June 27, 1913.

Appearances.

For the United States: James A. Fowler, assistant to the Attorney General; William S. Gregg, special assistant to the Attorney General; Allen Webster, special assistant to the Attorney General; Asa P. French, United States attorney for the District of Massachusetts; Edwin H. Abbott, jr., special assistant to the United States attorney.

(After the decision in the District Court): Constantine J. Smyth, H. La Rue Brown, special assistants to the Attorney General.

For the defendants: Frederick P. Fish; Charles F. Choate, jr.; Walter Bates Farr; H. G. Donham; Malcolm Donald; L. R. Chamberlin.

MAY 21, 1913.

HAROLD GREGORY DONHAM, witness for the United States.

2 My name is Harold Gregory Donham. I reside in Medford, Mass. I have been connected with the law department of the United Shoe Machinery Company since 1900, and have been secretary of the company about two years. I am familiar with the operations of the company and with its business.

The United Shoe Machinery Company was organized in February, 1899.

(Certified copy of the articles of incorporation of the United Shoe Machinery Company is marked "Plaintiff's Exhibit 1.")

The United Shoe Machinery Corporation was organized in 1905.

(Certified copy of the articles of incorporation of the United Shoe Machinery Corporation is marked "Plaintiff's Exhibit 2.")

Three principal companies were brought together to form the United Company. They were the McKay Shoe Machinery Com-

pany, the Goodyear Shoe Machinery Company, and the Consolidated & McKay Lasting Machine Company.

Several other companies were acquired within a year after the formation of the United Company. Without a list before me I can not recall what those companies were, but among them were the Davey Pegging Machine Company and the Gem Insole Company. Shortly after the formation of the United Company that company acquired the stock or the assets of the Eppler Welt Machine Company.

The Goodyear Company was engaged in the business of manufacturing and leasing to shoe manufacturers machines for making the kind of shoes known as "Goodyear" shoes. It manufactured two principal machines, one known as the "Goodyear welt and turn shoe machine," and the other known as the "Goodyear outsole rapid lock stitch machine," the two machines used for uniting the sole of a Goodyear welt shoe. It also had sixteen or seventeen auxiliary machines for preparing footwear for the operation of those principal machines.

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It also had a specially designed lasting machine, which it had originated for the purpose of enabling women's Goodyear welt shoes to be lasted by machine, there being at that time no other lasting machine adapted for lasting that class of work.

I believe the International Goodyear Shoe Machinery Company was the foreign branch of the Goodyear Company and did business abroad. I am not familiar with that. The Goodyear Shoe Machinery Company of Canada did business in Canada on the same lines that the Goodyear Company did in the United States. The capital stock of the Goodyear Company was three million dollars.

The Goodyear Company did not sell its machines, but put them out on lease. It leased them only. I produce three forms of lease used by the Goodyear Company just prior to the organization of the United Company. The first is a form which was used where machines were leased for manufacturing turn shoes. It covered the "turn set," consisting of one sewing machine and certain auxiliaries for turn work. Prior to the organization of the United Company the Goodyear Company made machines used for the manufacture of turn shoes as well as welt shoes.

(This form of lease used by the Goodyear Company, covering the Goodyear "turn set," is marked "Plaintiff's Exhibit 3.")

The second form of lease was used by the Goodyear Company when its machines were put out for manufacturing welt shoes. This is the "full set" lease, and covers the welt sewing machine for making the inner seam, the outsole stitching machine for attaching the outsole, and some sixteen or seventeen auxiliary

machines used for preparing the work for or finishing the work after the operations of the welting and stitching machines.

(Form of "full set" lease used by the Goodyear Shoe Machinery Company is marked "Plaintiff's Exhibit 4.")

The third form of lease of the Goodyear Company was used when it put out its lasting machine, known as the Ideal lasting machine. This lease limits the use of the machine to the manufacture of welt shoes, for which alone it was designed and adapted.

(Form of lease of Goodyear Shoe Machinery Company for lasting machines is marked "Plaintiff's Exhibit 5.")

These were the only forms of lease used by the Goodyear Company at the time of the formation of the United Company and for some little time prior to that.

The Consolidated & McKay Lasting Machine Company was engaged in business throughout the United States. Its capital was $2,888,600. Its factory was at Beverly, Massachusetts. It manufactured three types of lasting machines, each adapted for a special kind of work.

The first type was the McKay & Copeland lasting machine, adapted for lasting heavy weight brogans and metallic fastened and pegged goods. I produce a copy of a form of lease used by Consolidated & McKay Company to cover that machine. This particular copy is dated subsequently to the formation of the United Company, and the name of the United Company is substituted on the lease; but it is exactly the same form which was used before the United Company was formed.

(This form of lease is marked "Plaintiff's Exhibit 6.")

The Consolidated & McKay Company also manufactured and leased the Chase lasting machine, used for lasting light metallic fastened and pegged goods and also for lasting men's welt shoes. I produce the form of lease which was used by the Consolidated & McKay Company, prior to the formation of the United Company, for the Chase lasting machine.

(Form of lease used by the Consolidated & McKay Company covering the Chase lasting machine is marked "Plaintiff's Exhibit 7.")

The Consolidated & McKay Company also manufactured and leased the "Consolidated hand method lasting machine." It was offered on two forms of lease, one of which required an initial license payment, and a royalty of a half cent per pair. The alternative form required no initial payment; in this case the royalty was five-eighths cent per pair. The lease, without initial payment, includes provisions for the

protection of the lessor, which are not included in the lease with initial payment. I produce copies of these two forms.

(Initial payment form of lease used by the Consolidated & McKay Company for Consolidated hand method lasting machine is marked "Plaintiff's Exhibit 8.")

(Alternative form of lease used by the Consolidated & McKay Company for the Consolidated hand method lasting machine is marked "Plaintiff's Exhibit 9.")

In 1898 and 1899 the Consolidated & McKay Company was developing a new type of its hand method lasting machine. It was put out on a lease without initial payment, but at a royalty of one per cent per pair of shoes operated upon. I produce a copy of this form of lease, of which a very few were actually used.

(Form of lease used by the Consolidated & McKay Company for new type of hand method machine is marked "Plaintiff's Exhibit 10.")

These were all the forms of lease used by the Consolidated & McKay Company at the time of the formation of the United Company, or for some time prior to that. The Consolidated & McKay Company manufactured no other machines except these lasting machines. It never sold any of its machines, but put them out only on leases.

The business of the McKay Shoe Machinery Company related to metallic fastening machines, used to insert metallic fastenings, consisting of either wire nails or slugs, and heeling machines, which are machines having to do with the preparation and attaching of heels. It manufactured no other kinds of machines. The McKay Company did not sell nor offer for sale any of its machines, but put them out on leases only.

The McKay Company did not lease its machines in its own name. The leasing of the heeling department machines was done in the name of the McKay-Bigelow Heeling Machine Association, and the leasing of the metallic department machines was done in the name of the McKay Metallic Fastening Association. The McKay Company owned the entire stock of both associations. Its capital stock was $5,000,000.

6 I produce a form of lease used by the McKay Company prior to the formation of the United Company for heeling machines.

(Form of lease used by the McKay Shoe Machinery Company for heeling machines is marked "Plaintiff's Exhibit 11.")

The McKay Company had for years been in the practice of putting out its metallic machines upon lease, but about a year or two before the formation of the United Company ceased to use the leases and loaned its machines, subject to an agreement

relative to the subsequent signing of leases. No form of lease was current as a metallic machine lease at the time of the formation of the United Company. I produce a copy of a form of lease which was used as late as 1897.

The metallic machines had originally been put out entirely on the initial payment basis, and the only printed form of lease which the McKay Company had for its metallic machines was the initial payment form of lease. Some time prior to 1897, in its effort to do away with initial payments, the company attached to its initial payment form of lease what was referred to as a "memorandum of modification," which eliminated the initial payment and inserted certain provisions which the lessors felt they must have if they were not to obtain the initial payment. The form of lease which I produce is the old initial payment form of lease with the "memorandum of modification" attached, changing it over into the loan form.

(Form of lease used by the McKay Shoe Machinery Company covering metallic machines is marked "Plaintiff's Exhibit 12.")

I have had nothing to do with the Eppler Welt Machine Company, and have never seen any of its leases.

The entire business of the Davey Pegging Machine Company
7 was the manufacture of pegging machines. Its capital was two hundred thousand dollars. I produce a form of lease used by that company prior to the formation of the United Company.

(Form of lease used by the Davey Pegging Machine Company is marked "Plaintiff's Exhibit 13.")

I have brought with me copies of the first form of lease adopted by the United Company for each kind of machine, and copies which show any changes made in its leases up to the present time.

I produce first a form of lease adopted in December, 1900, for Consolidated hand method lasting machine.

(This form of lease of the United Shoe Machinery Company is marked "Plaintiff's Exhibit 14.")

I produce a form of lease for the Consolidated hand method lasting machine when put out for lasting welt or turn shoes. It also was adopted in December, 1900.

(This form of lease is marked "Plaintiff's Exhibit 15.")

I also produce a form of lease for the same machine used when it was put out for McKay work, printed in September, 1900.

(This form of lease is marked "Plaintiff's Exhibit 16.")

These three leases were prepared simultaneously, and the dates which I have given were the dates when they were printed. They were all adopted at the end of 1900.

These three forms were the three forms first adopted by the United Company to cover lasting machines. The first was an initial payment form of lease, under which the lessee paid on initial payment of three hundred dollars for each machine and a royalty of a half cent per pair. The second is a form of lease for the machine when it was leased for lasting Goodyear shoes, under which the lessee paid no initial premium, and the machine was restricted to use with the United Company's welting and stitching machines. In the first form there was no such restriction. The third form was the form of lease used by the company for the machine when it was leased without initial payment for lasting McKay shoes. In that case it was limited (without the initial payment) to shoes operated on by the metallic fastening machine.

8 The only additional form adopted to cover the hand method lasting machine was that used where the machine was leased upon an initial payment for use in the manufacture of welt shoes.

That form of lease, which I produce, was first printed in December, 1906.

(This form is marked "Plaintiff's Exhibit 17.")

The United Company adopted no new form of lease for the Ideal lasting machine until August, 1901. I produce a form of lease printed at that time which substantially embodies the provisions of the Goodyear Company lease previously produced. The United Company continued the practice of the Goodyear Company as to use of the machine with the welter and stitcher. This is the only form of lease that the company has ever printed for the Ideal machine.

(This form of lease covering the Ideal lasting machine is marked "Plaintiff's Exhibit 18.")

The United Company continued to put out the Chase lasting machine on the form of lease used by the Consolidated & McKay Company until June, 1901, when it adopted its first form of lease for that machine, which I produce.

(This form of lease used for Chase lasting machines is marked "Plaintiff's Exhibit 19.")

The United Company adopted no new form of lease for the McKay & Copeland lasting machine until August, 1903. I produce an executed copy of that lease dated in June, 1903. That lease undoubtedly covers a machine which had been installed prior to August, and when the lease was signed it was dated back. Prior to that time the United Company had used the same form of lease that had been used by the Consolidated & McKay Company.

(Form of lease covering the McKay & Copeland lasting machine is marked "Plaintiff's Exhibit 20.")

9 Since the organization of the United Company it has developed a new type of lasting machine called the Number Five, which was first put out about five or six years ago. [The witness was testifying in 1913.] The first form of lease adopted by the United Company for that machine was adopted about five or six years ago. Two forms of lease were adopted, one involving an initial payment and without any restrictions as to use with other machines; the other, a limited license form, without initial payment, restricting the machine to use with some of our other machines. I produce copies of each of these forms. The customer determined which form of lease should be taken. Both forms were submitted to the manufacturer.

(Copy of form of lease for Number Five lasting machine without initial payment is marked "Plaintiff's Exhibit 21.")

(Copy of form of lease for Number Five lasting machine with initial payment is marked "Plaintiff's Exhibit 22.")

The United Company continued for some time to put out welt sewing and outsole stitching machines on the forms which had been used by the Goodyear Company. The first lease in the name of the United Company was printed in the month of December, 1900. The Goodyear Company had separate leases for the "turn set" and the "welt set." The United Company combined the welt and turn provisions in the same lease, and produced its "full set" lease in December, 1900. I produce copy of that form of lease, covering the "full set" of Goodyear machines. The Goodyear Company had continued up to the time when the United Company was formed to require initial payments on all of its machines. The United Company continued that practice up to 1905, so that this form was an initial payment form of lease for both principal and auxiliary machines.

(This form of lease is marked "Plaintiff's Exhibit 23.")

The "full set" form, with the initial payment for each machine, continued to be the only form of putting out these

10 machines until January 1, 1905. At that time the United Company had decided that it would endeavor to put out the Goodyear machines without requiring an initial payment when the machines were installed. Accordingly, there was issued for the first time in January, 1905, a lease for the Goodyear welting and stitching machines without initial payment.

(Form of noninitial payment leases covering Goodyear welt sewing and outsole stitching machines is marked "Plaintiff's Exhibit 24.")

Since the lease of plaintiff's Exhibit 24 was adopted in 1905 we have continued at all times to offer the machines at the lessee's option upon either the initial payment lease or upon the lease without initial payment. At the same time that the option to take the welting and stitching machines without initial payment was offered, the company offered a like option with reference to the auxiliary machines, which previously had always carried an initial payment. I produce a form of lease for the auxiliary machines on the noninitial payment basis. That, or a lease in substantially that form, was adopted January 1, 1905.

(Form of lease for auxiliary machines in the Goodyear department on noninitial payment basis is marked "Plaintiff's Exbit 25.")

The three forms of leases which I have produced have been continued at all times since their adoption, and are in use to-day. They are, as I have said, the initial payment form, called the "full set" lease, and two forms without initial payments, one covering welting and stitching machines, and the other covering the auxiliary machines. The only substantial modification which has been made in these leases is that a provision has been inserted in one of the reprints of the original "full set" lease—that is, the initial payment lease—requiring the principal machines to be used to their full capacity so far as the lessee has work. That provision was introduced about 1905. I produce a copy

11 of the current form of full set lease, which is substantially the same lease that was adopted in 1900, with the addition of the full capacity clause. With the exception of that change the full set lease has been in substantially the same form ever since its adoption in 1900.

12 (This form of lease is introduced and marked "Plaintiff's Exhibit 26.")

The "full set" lease of Exhibit 23, the first form adopted by the United Company in 1900, did not itself provide for the payment of the initial premium. The provision for the initial payment was made by the preliminary order and the payment was made when the lease was signed.

Plaintiff's Exhibit 26, the current form of "full set" lease, provides in the lease itself for the payment of the initial premium.

There is no lease of the Goodyear machines, either with or without initial payment, which requires a lessee to use all of the machines in that department. The alternative is between the "full set" lease, under which the lessee makes payment of initial premiums upon such machines as he chooses to take, and the two leases without initial payment, one of which covers the

principal and the other the auxiliary machines. The lessee is under no obligation to take auxiliary machines.

We haven't any lease of the Goodyear machines, either with initial payment or without initial payment, which limits any of the Goodyear machines to use either in conjunction with any of the Goodyear auxiliary machines or in conjunction with any of the machines of the other departments; in other words, we have never put out a lease of Goodyear machines on any basis which limits them to use in connection with any of our other machines.

The auxiliary machines of the Goodyear department are limited to use with the welting and stitching machines of the Goodyear department, but the welter and stitcher are not limited to use with the auxiliaries, and neither the welters or stitchers or the auxiliaries are limited to use with any machines for any other operations.

13 (In the course of a discussion of the admissibility of the leases the following statement was made by Mr. Gregg:

Mr. GREGG. Everything is charged as a part of the plan to monopolize, and while some of them standing alone would be perfectly lawful, when they become part of the plan, the plan makes them unlawful.)

The WITNESS. The United Company first adopted a form of lease for heeling machines in January, 1900. I produce a copy of that form. This lease was without initial payment, but did not introduce any limitation to use with other machines.

(This form of lease covering heeling machines is marked "Plaintiff's Exhibit 27.")

That form of lease, without initial payment and without limitation to use with any other of the United Company's machines, continued substantially in the same form until May, 1904. Then for the first time the United Company issued a noninitial payment form of lease limiting the machines to be used with certain other machines of the United Company. That form of lease has continued in effect until the present time. I produce a copy of the current print.

(Copy of this form of lease is marked "Plaintiff's Exhibit 28.")

Prior to the filing of the petition in this suit, when there was occasion for the leasing of heeling machines without the limitation—in other words, where a lessee was not qualified to take heeling machines without the initial payment and with the limitation—we were prepared to lease the machines with an initial payment and without the limitation to use with other machines, by attaching a rider to the lease of plaintiff's Exhibit

28, inserting the initial payment and striking out the limitation. I have a copy of the corresponding rider which we adopted for the metallic department, but I don't find that I have a copy of the form adopted by the heeling department. In January, 1912, we printed a lease which embodied the terms of the rider in the lease itself. I have no knowledge whether a lease with this
14 rider attached was ever executed or not. I know that similar leases for the metallic department were executed. As to when that lease was first used—the practice has been in vogue at all times. We did not use a lease of that particular print prior to January 1, 1912, but we had a previous agreement which in terms was exactly like that, that is, the lease with the rider.

Exhibit 27, or a lease substantially in that form, was the only form in use up to the year 1904, containing no limitations to use with other of our machines. Exhibit 28 is the current form of lease for those machines where no initial payment is made and where there is this limitation of the machines to use with other of our machines. In addition to these two forms we have adopted the form that I have been speaking about, by means of the rider. I have had personal knowledge of the lease with that rider on it being offered, but I don't know about the execution of any of the leases. That is not my function.

The United Company's first lease for metallic machines was adopted in March, 1900, and I produce a copy of the form then adopted. That was a form of lease without in'tial payment and without limitation of machines to use in connection with any other of our machines.

(Copy of this form of lease for metallic machines is introduced as "Plaintiff's Exhibit 29.")

In June, 1900, the United Company adopted another form of lease for the metallic machines in which for the first time it introduced a limitation that the metallic machines taken on that form of lease should be used in connection with the United Company's welting and stitching machines and lasting machines.

(Copy of this form of lease for metallic machines is marked "Plaintiff's Exhibit 30.")

When Exhibit 30 was adopted, the use of Exhibit 29 was discontinued.

15 In March, 1901, an alternative form of lease for metallic machines was adopted, in which the limitation to use with certain other machines of the United Company was eliminated, and in place thereof the lessee agreed to pay ten per cent extra for fastening materials used in the machines taken under

this form of lease. Thereafter, this form and that of Exhibit 30 were continued as alternatives.

(Form of lease adopted in 1901 for metallic machines is marked "Plaintiff's Exhibit 31.")

A rider was adopted for attachment to leases in the form of Exhibit 30, eliminating the restriction and substituting an initial payment. I produce a copy of such a lease in the form of Exhibit 30 with this rider attached. This lease is dated September 10, 1910. As to whether this rider was adopted in 1910—it has been available at all times. I haven't the remotest idea when the first lease was issued with this rider attached. At any time when there was a call for it it would have been issued. I know that some have been issued. I do not know how many. I think the call for them has been slight.

(Copy of restricted form of metallic machine lease with rider eliminating the tying clause and substituting an initial payment is marked "Plaintiff's Exhibit 32.")

Subsequently the rider was incorporated into the lease. I have produced a form of lease with the rider incorporated. It was printed in July, 1911.

(This form of lease is marked "Plaintiff's Exhibit 33.")

No other substantial changes in metallic department leases have been made. There have been slight changes in the verbiage. I produce the current form of lease for metallic machines when taken without the in'tial payment and without the provision for ten per cent excess in royalty charge. This was printed in May, 1911.

(This form of lease is marked "Plaintiff's Exhibit 34.")

I produce also a similar form of lease supplying a Standard screw machine alone, one of the metallic department
16 machines. Its provisions correspond to those of the last form introduced. That is used where the machine is taken without initial payment, and is the limited form.

(Form of lease for Standard screw machine is marked "Plaintiff's Exhibit 35.")

Those are all the forms of the metallic department.

17 There was no pulling-over machine until after the formation of the United Company. The machine was developed by the United Company, and the first lease which was adopted for the machine was printed in March, 1902. I produce a copy of that lease, which is a lease for the pulling-over machine by itself.

(Copy of lease for pulling-over machine adopted March, 1902, is marked "Plaintiff's Exhibit 36.")

After the adoption of the pulling-over machine the company developed a series of auxiliary machines for use in connection with the pulling-over machine, preparing the work for the pulling over and doing operations relating to it. When we first put out the pulling-over machine neither the United Company nor anybody else had any such auxiliary machines. They were all developed by the United Company itself, the reason for their existence following the development of the pulling-over machine. By January, 1905, the United Company had developed some six auxiliary machines for use in connection with its pulling-over machine, and it then produced a lease for the so-called "pulling-over set" consisting of the pulling-over machine and the auxiliaries. That lease limited the auxiliary machines to use with the pulling-over machine of the set on which the royalty was paid. All of the machines of the pulling-over set were patented. I produce copy of the lease for the "pulling-over set."

(Copy of lease for the pulling-over system is marked "Plaintiff's Exhibit 37.")

It was later found that some manufacturers desired to use the auxiliary machines upon shoes which were not pulled over on our machine. We accordingly adopted a new form of lease which would permit such use of the auxiliary machines. I produce a copy of that form of lease. It was printed in February, 1909, and is practically the only form of pulling-over machine lease which has been used since that time.

(Copy of lease for pulling-over machine printed February, 1909, is marked "Plaintiff's Exhibit 38.")

18 The only other form of lease for the pulling-over machine is the form which provides for the payment of an initial license fee, without limitation as to use. That lease was adopted some time prior to August, 1911. That lease has been in effect at all times since it was adopted. I do not know how many have been used. It was printed in August, 1911.

(Copy of lease for pulling-over machine, adopted in August, 1911, is marked "Plaintiff's Exhibit 39.")

There were no other forms of lease for pulling-over machines.

The general department of the United Company is a department which handles between 150 and 200 different kinds of machines, which are normally sold outright. The United Company sells all of these machines, but until the filing of the petition in this suit the company allowed a manufacturer who had machines of its other departments, from which it was receiving a royalty, to have the general department machines upon a form of lease under which he paid an initial license fee, and the machines were limited to use in conjunction with our machines

of other departments. No further payment was required for the machines in the way of rental or royalty.

In other words, a manufacturer could buy the machines, in which case he paid us the purchase price and owned the machines; or if he had our royalty machines he had the option of taking the general department machines on lease, in which case he paid an initial payment substantially less than the price at which he could buy the machines, and used them in connection with our other machines which he held under lease. I produce a copy of that form of general department lease which was adopted about 1902, and was used until the petition in this suit was filed, when the practice of leasing general department machines was discontinued.

(Copy of this form of lease used for machines in the general department of the United Company is marked "Plaintiff's Exhibit 40.")

19 About 1908 the United Company introduced another form of lease for general department machines which was also offered only to those manufacturers who had our machines in other departments. Under this form of lease, instead of the lessee paying an initial payment once for all when he took the machines, he paid a small annual rental.

(Copy of this form of lease for general department machines is marked "Plaintiff's Exhibit 41.")

Under both general department leases, plaintiff's Exhibits 40 and 41, there was no royalty payment based upon the extent to which the machines were used. Both forms were used up to the time of the filing of the petition in this suit, but since that time we have discontinued leasing general department machines and sell them only.

As to the importance of the machines in the general department, they perform operations which are just as essential in the manufacture of shoes as any of the other machines

Machines of the United Company's eyeletting department have always been offered on two alternative forms of leases. One involves the payment of an initial premium and is without any limitation regarding the use of the other machines of any department. The other does not require any initial payment and the machines are limited to use with machines of other departments of the United Company. The leases in both cases carry no rental or royalty, but require the lessee to purchase the eyelets used in them from the United Company.

There is no lease for any machine of any department which the United Company ever put out which requires the lessee of any or all of those machines to use any of our eyeletting ma-

chines, so that, no matter what other machines of whatever department the lessee might have from the United Company, he is under no obligation to take any of our eyeletting machines. If he does so, he does so because he wishes our machines. And if the manufacturer wants our eyeletting machines, he can obtain them either upon the noninitial payment form of lease, in case he has our other machines; or if he hasn't our other machines, he must pay the initial payment.

20 I produce a form of lease of eyeletting machines requiring an initial payment of one hundred dollars and not limiting the machine to use with any other United Company machines.

(This form of lease for eyeletting machines is marked "Plaintiff's Exhibit 42.")

I produce a form of lease used for eyeletting machines in the case of lessees having other machines of the United Company, which requires no initial payment, but the machines are restricted to use with certain specified machines of the United Company.

(This form of lease is marked "Plaintiff's Exhibit 43.")

Both these forms of leases, plaintiff's Exhibits 42 and 43, have been in effect since 1902 and are alternative. The other forms of eyeletting agreements are precisely the same.

The United Company does not handle and does not deal in the Xpedite finishing machine. It controls the United-Xpedite Finishing Company through ownership of 55 per cent of its stock.

The Ideal clicking machine was developed entirely by the United Company and is used for cutting out the several parts of the uppers of shoes. Prior to the development of that machine by the United Company that operation was always performed by hand. I produce the form of lease used for that machine, which was adopted as soon as the machine became commercial, about 1908 or 1909, and has continued in use since.

(Form of lease used by the United Company covering Ideal clicking machines is marked "Plaintiff's Exhibit 44.")

The United Company printed no lease for the pegging machines until June, 1901. It uses two forms of leases, which are alternative at the option of the lessee. One of these does not provide for initial payment and limits the machine to use in connection with footwear lasted by a United Company machine and, in metallic fastened footwear, to shoes on which the metallic operations are performed by the United machines. The

21 other form of lease involves the payment of an initial premium, and is not limited to use with any of the United Company's other machines.

(These two forms of leases are marked "Plaintiff's Exhibit 45" and "Plaintiff's Exhibit 46.")

As requested by counsel for petitioner, I produce three forms of orders for machines, one used when machines are to be sold outright, one used when machines are to be leased with initial payment, and one used when machines are to be leased without initial payment.

(These forms of orders are marked, respectively, "Plaintiff's Exhibits 47, 48, and 49.")

These forms, or forms of the same tenor and effect, have been in use ever since the United Company was formed. In the early days there was a separate order form for each department, of substantially the same tenor, but now there is a uniform order for all departments.

I was also requested to produce leases relating to the Gem insole machines. Before the United Company was formed the Gem Flexible Insole Company was engaged in the business of manufacturing and leasing a set of machines for making the patented Gem insole. After the United Company was formed the patent on the insole and the machines for producing it were acquired by the United Company.

I produce a form of lease used by the Gem Flexible Insole Company prior to the formation of the United Company. Attached to that lease is the form of order which was used by the Gem Company which provided for the initial payment.

(The form that was used by the Gem Insole Company is marked "Plaintiff's Exhibit 50.")

The United Company continued the use of that form of lease for a time. In December, 1900, the United Company adopted a corresponding form of lease for the Gem insole machines, and I produce a copy of that form.

22 (Copy of form of lease adopted by the United Company for Gem Insole machinery is marked "Plaintiff's Exhibit 51.")

Some years later, according to my recollection about 1907, the company acquired a patent for another form of insole for welt shoes and machinery for making it. That is known as the "Economy" insole set for producing the patented "Economy insole" for welt shoes. The United Company adopted a form of lease for that machinery which was first printed in December, 1907. I produce a copy of that lease.

(Copy of lease for Economy insole machines is marked "Plaintiff's Exhibit 52.")

Also, in accordance with request of counsel for petitioner, I produce several forms of leases used for minor machines

and some leases used by companies other than the United Company.

I produce a copy of a lease issued by the O. A. Miller Treeing Machine Company to cover its power ironing machine, and a copy of a lease of that company covering its shoe breaking in and forming machine, a new machine used by retail shoe dealers for flexing the soles of shoes when they are sold.

(Copies of these leases used by the Miller Treeing Machine Company are marked "Plaintiff's Exhibits 53 and 55," respectively.)

The O. A. Miller Treeing Machine Company is an independent corporation, the majority of the stock of which is owned by the United Company. Its business is manufacturing shoe trees and incidentally some lines of machines to be used in that connection.

The United Shoe Repairing Machine Company was organized by the United Shoe Machinery Company, as a matter of internal organization, to handle the business of supplying some of its machines to cobblers, and that company simply took over the United Company's business in that particular field, and now carries it on. I produce a form of lease used by that company for its shoe repairing outfit.

(Copy of lease used by the United Shoe Repairing Machine Company is marked "Plaintiff's Exhibit 54.")

I produce a form of lease used by the United Company for its patent leather repairing machine, which is a minor machine. In the manufacture of patent leather shoes they are likely to be scarred and defaced, and this is a machine for repairing those defects. The machine has been developed in the last three or four years, and this form of lease is the one first adopted and now in use.

(Copy of lease used by the United Company covering patent leather repairing machine is marked "Plaintiff's Exhibit 56.")

I produce a form of lease used by the United Company for leasing treeing machines made by the O. A. Miller Treeing Machine Company. The Miller Company sells these machines outright. The United Company purchases machines from the Miller Company and leases them to its customers.

(Copy of lease used by the United Company for the Miller shoe treeing machine is marked "Plaintiff's Exhibit 57.")

Finally, I produce a form of lease used by the United Xpedite Finishing Company, which puts out a machine for polishing the edges of heels. The Xpedite Company is a separate corporation, but the United Company owns a majority of its stock.

(Form of lease used by the United-Xpedite Finishing Company is marked "Plaintiff's Exhibit 58.")

I have produced forms of leases now current for all the more important machines and all of the minor machines that have occurred to me.

The United Company has not sold either the Goodyear welt sewing machine or the Goodyear outsole stitching machine. The machines which were sold by the United Company prior to the beginning of this suit all belonged to the general department.

There are in the general department some 150 or 160 different kinds of machines which the United Company sells.

I testified yesterday that I was not familiar with the Eppler welt situation. I have looked that up over night and I find from the files that the United Company acquired the property of the Eppler Welt Machine Company in March, 1899, and I find that among the assets so acquired were various machines on lease and the leases covering them. I found in the files and I produce an Eppler Welt Machine Company lease dated May 24th, 1897, an original lease. That same form of lease was apparently in use right along, because I have another copy of it in identical form dated July, 1898.

(Form of lease used by the Eppler Welt Machine Company is marked "Plaintiff's Exhibit 59.")

Cross-examination:

I never heard of a patent leather repairing machine until our machine, which was developed by the experts of our company, was put on the market.

The treeing machine which I referred to was developed by the experts of the Miller Company.

The Miller machine for flexing the soles of shoes is used by retail dealers when a shoe feels stiff on the customer's foot or a particular spot needs to be stretched, and it manipulates the shoe so as to make it more flexible. This machine is a recent development.

The Gem flexible insole is used in welt shoes only, and it comprises a thin piece of leather reinforced with canvas. A welt shoe has two soles—an inner sole, which is next to the foot and to which the welt is attached, and an outsole, which is sewed to the welt. The insole must have some means for holding the seam which attaches the upper and welt to it. If the insole is made of leather it is necessary, to produce means for holding that seam, to cut into the leather and turn up a portion of it, and that requires a certain thickness of leather and a good quality of leather. As leather is so expensive, that was an item of considerable importance in the manufacture of a welt shoe, and tended to retard the development of that shoe.

The Gem patent consisted in taking a much thinner piece of leather and forming a shoulder on it and then covering it with a cement coated canvas, which is much cheaper than the leather. The Gem insole is only adaptable to use with welt shoes. The Economy insole was another attempt, of later development, to provide a substitute for a leather insole and that also is adapted for use with welt shoes only.

The business of the United Company is divided into different departments. The general department includes the machines which are sold, numbering something in excess of 150.

The Goodyear department includes the machines which are peculiarly adapted for making Goodyear welt shoes, and are never used on any other shoes. These comprise the Goodyear welter and stitcher and the Goodyear auxiliary machines.

The heeling department comprises the machines which make and attach heels and nothing else. Some of those machines are adapted for making and attaching the heels of welt shoes, and some are adapted for making and attaching the heels of other kinds of shoes.

The metallic department comprises machines for inserting metallic fastenings of various kinds, including machines adapted for use upon the different kinds of shoes. The lasting department includes machines for lasting all the various kinds of shoes.

The departments which I have named are all the departments excepting the eyeletting department. The pulling-over machines are preliminary to the lasting operation, and are handled by the lasting department as a subdivision. The Davey pegging machine is handled by the metallic department. It is not
26 a metallic department machine, but is handled in that department as a matter of convenience.

We don't handle the ordinary sewing machines.

Mr. CHOATE. The Singer sewing machine does almost all the work upon the uppers of shoes.

The WITNESS. The only sewing machines which we have are the Goodyear welt and turn sewing machines, the Goodyear outsole stitching machine and the McKay sewing machine, which is in our general department.

The lasting machine put out by the Goodyear Company was called the Ideal lasting machine. That machine was developed for the purpose of lasting women's welt shoes, and practically its entire use was lasting women's welt shoes.

The three machines developed by the Consolidated & McKay Company were the McKay & Copeland, the Chase, and the hand method lasting machines. The McKay & Copeland lasting machine was of the so-called bed type. It held the shoe in position

for lasting and molded it into shape, holding it in place for the lasting tacks to be inserted by hand. The Chase and the Ideal lasting machines were also of the bed type.

The Consolidated hand method lasting machine drew the upper over the last step by step, from one side of the shank around to the other side, and inserted the lasting tacks automatically. The operator held the shoe up to the machine and turned it around as the machine operated on it. That machine was developed in the neighborhood of 1890. It was used almost entirely upon McKay sewed shoes.

The McKay & Copeland lasting machine was a heavy type of machine, designed and adapted for lasting heavy brogans and metallic fastened shoes. The Chase lasting machine was peculiarly adapted for lasting men's welt shoes and light metallic fastened and pegged shoes.

Mr. CHOATE. I ask your honor's attention to the difference in manufacture between the McKay shoe and the welt shoe, which to some extent requires a difference in the lasting operation. The McKay shoe has the sole sewed right straight
27 through, leaving the seam on the bottom of the shoe inside. That seam running round there is the thing that gave the name to the McKay shoe, that style of fastening the sole to the upper and sewing the seam right through. Now, the welt shoe is distinguished from the McKay shoe by this strip of leather, which is called the welt. The upper is sewed to that welt, sewing it sidewise. You see the stitch goes right into that channel and lays there. Then the sole is sewed to the welt, the thread lying in this channel, the purpose being to prevent the seam from coming against the sole of the foot. The inside of that shoe is perfectly smooth, and there is no seam on the bottom of it.

(Defendants' Exhibit 1 is a welt shoe, showing the Gem insole with welt attached. Defendants' Exhibit 2 is a McKay sewed shoe cut in halves, showing the sewing. Defendants' Exhibit 3 is a welt shoe with a leather insole, having a welt partly attached. Defendants' Exhibit 4 is a welt shoe with the outsole attached, and cut to show the stitches attaching the outersole. Defendants' Exhibit 5 is a McKay sewed shoe lasted by the hand method machine, and showing the pleats at the toe.)

28 The WITNESS. After the formation of the United Company that company did nothing whatever with reference to the outstanding leases under which machinery had been obtained by manufacturers from the constituent companies. The manufacturers continued to hold their machines under the old leases so long as those leases continued to run. When the United

Company adopted a new form of lease, it was offered to any lessees to take, if they desired. Old lessees had the privilege of changing to the new form if they wished to do so. But if the old lessees did not want the new leases they could remain undisturbed and enjoy their machines under the old forms of leases. A good many old leases issued by the constituent companies before the organization of the United Company are still outstanding. For example, there are leases still outstanding of the kind which had no fixed term but ran during the life of the patents on inventions embodied in the machines leased, or any additions or improvements thereto. Leases of that kind were issued by all of the constituent companies.

The constituent company which issued leases for a definite term of seventeen years was the McKay Shoe Machinery Company, as to its heeling machines. About 1897 or 1898 that company adopted for its heeling machines a form of lease which named the term of 17 years, but the lease did not continue for 17 years and stop there, as our leases do. It provided that the lease should continue for the term of 17 years, and thereafter as long as there should be any patented invention in the machine. There are outstanding leases of that kind which have not expired. The United Company has machines out in the hands of different customers under a great variety of forms of lease.

After the United Company was formed it continued to manufacture and supply to customers all of the lasting machines—the Ideal, the McKay & Copeland, the Chase, and the Consolidated hand method—to the full extent that customers desired them.

No machines were suppressed.

29 The No. 5 lasting machine was developed by the United Company about 1906. That is a bed laster of an improved type, and very many manufacturers having bed machines of the old types have come in and changed over to the new machine, and to a considerable extent the old types have become obsolete and have been supplanted by the No. 5 laster.

The hand method lasting machine is still very extensively used. Its operation on a shoe is indicated particularly by the pleating about the toe.

Before the organization of the United Company all of the constituent companies originally offered their machines upon leases involving the payment of an initial premium for each machine, and also with a royalty. The Goodyear Company did that and their practice was continued until after the United Company was formed. Metallic, heeling, and lasting machines were also put out on the initial payment form only. It was not

until a time subsequent to 1890 that leases without initial payments began to be offered at all. The McKay Company was putting out metallic and heeling machines upon the noninitial payment basis when the United Company was formed. The Chase and the Consolidated hand method lasting machines were offered upon optional forms, including a form without the payment of an initial premium; but the McKay & Copeland lasting machine and all other machines were put out on initial payment leases only.

Before the formation of the United Company the Goodyear Company charged an initial payment of $300 each on the welter and the stitcher. That sum has never been increased by the United Company. Wherever an initial payment has been charged by the United Company on the welter and the stitcher it has remained the same; but in 1905 the United Company offered those machines without that initial payment. The royalty charged by the Goodyear Company, before the United Company was formed, was the same as to-day. It has never been increased, but in the meantime both the welter and the stitcher have been very much improved, the auxiliary machines which the Goodyear Company had have been improved, and the United Company has introduced many additional auxiliary machines, all for the same royalty.

In plaintiff's Exhibit 25, the form of lease for Goodyear auxiliary machines, the figures in column 2 of the schedule are the small annual rentals paid for the machines against which they are set, when the machines are taken without initial payment. Otherwise there is no charge whatsoever for the use of those machines, but they are limited to use with the welting and stitching machines, in respect to which there is a royalty charge. That royalty charge for the principal machines is the same whether the lessee has the auxiliary machines or not.

When the United Company was formed there were 16 or 17 auxiliary machines. The number has been increased, and now there are about 30 auxiliary machines. Those are all furnished to lessees of the welter and stitcher in the same way that the original 16 or 17 machines were furnished, without increase in the royalty and for a similar nominal charge.

The United Company has reduced the royalty charged by the Goodyear Company for the use of its machines in making turn shoes, so that it is now only fifty per cent of the royalty which was charged by the Goodyear Company.

The heeling machine royalties and initial premiums have not in any way been increased by the United Company, and the company has continued to sell material for use in the metallic

fastening machines at the same scale of prices which was in effect when the company was formed.

The United Company licenses its lessees to use the trade-marks "Goodyear Welt" or "Goodyear Turn," as the case may be.

The Goodyear welter and stitcher have attached to them a locked indicator which measures the revolutions of the
31 main shaft of the machine, and there is one stitch for each revolution. It is the only way in which we can keep track of the extent to which the machines are used. None of the auxiliary machines has any indicator so that the amount of work done by them is recorded by the principal machines. To keep track of the use of the auxiliary machines we have to depend upon the indicators on the principal machines.

As to the order of the operations of pulling-over, lasting, welting, stitching, heeling, and metallic fastening, the pulling-over operation would be the first of these. That places the upper of the shoe over the last preparatory to the operations which have to do with the attaching of the sole. Defendants' Exhibit 6 represents a shoe ready for the pulling-over operation, and defendants' Exhibit 7 shows a shoe as it comes from the pulling-over machine. No perfect pair of shoes could be made if the upper were not placed in exactly the right position on the last. The pulling-over machine locates the upper with absolute accuracy in the position which it should assume on the last. Then, with just the proper amount of force, it stretches the upper into place, and then, without disturbing the upper, simultaneously drives seven tacks, which secure the upper at seven points. The tack at the heel of this exhibit was driven in a preliminary operation by one of the pulling-over auxiliary machines.

Following the pulling-over operation the shoe goes to the laster. The lasting operation consists in securing the upper all the way around the bottom of the shoe in the same position in which it has been placed by the pulling-over machine. As shown in defendants' Exhibit 8 (a welt shoe, partially made), in lasting a welt shoe the tacks are driven only part way in, and are subsequently withdrawn. In a McKay shoe the tacks are driven all the way home.

After the lasting operation the upper is fitted to be operated upon by the Goodyear machines. It goes first to certain auxiliary machines of the Goodyear department, such as
32 the trimmer and the tack-pulling machine, which prepare the shoe for the welting operation. The tack-pulling machine pulls out the lasting tacks.

After the sole has been attached by the Goodyear operations, and before the shoe goes to the heeling machine, the heel portion

of the sole, which has not been attached in any way to the upper, as shown by defendants' Exhibit 9 (a shoe which has been operated upon by machines of the Goodyear department), must be attached by the loose nailing machine of the metallic department. That machine secures the heel portion of the sole to the upper in proper position to be operated upon by our heeling machine, which in turn attaches the heel over the heel seat of the sole, previously operated upon by the loose nailing machine. The channel in this exhibit was formed to receive the stitch, the lip was turned up, then put back, and cemented in place, by some of the auxiliary machines in the Goodyear department.

The middle and front portions of the sole are attached to the upper by the Goodyear machines, while the heel end of the sole is attached by the metallic fastening machine.

The machines of all these departments use material such as thread, leather, wire, etc., and the fact that such material passes through a machine requires the finest sort of adjustment and timing. All these machines which handle material are peculiarly machines which require the constant attention of expert mechanics to keep them in condition for efficient operation.

At the time of the formation of the United Company the Goodyear machines were put out upon initial premium leases only. The United Company continued the same method of leasing Goodyear machines, which had been used by the Goodyear Company, until January, 1905.

On January 1, 1905, the initial payments were eliminated from the Goodyear system of machines, but the United Company did not at that time, or at any time, limit the Goodyear machines,

upon either form of lease, to use with the United Com-
33 pany's machines of any other department, but it did then
limit the machines of some other departments to use with

the United Company's Goodyear machines. The leases with those restrictions were alternative forms, and the company still preserved the alternative initial premium leases for each department.

At this time the company had found that the necessity of requiring a substantial initial payment for each machine was retarding the development of the manufacture of Goodyear welt shoes, because of the large amount of capital required to equip a factory to make Goodyear shoes. The company was seeking for its own account, as well as for the benefit of the manufacturers, to find a method by which it could eliminate that large initial payment upon each machine, without increasing the royalty, but it was confronted by this condition: Those machines were expensive and there were very many of them, and the initial payments had been a very considerable source of income.

In that connection the idea of restricting the heeling machines to use with the welting and stitching machines, the same idea which the Goodyear Company had followed with reference to its lasting machine, was adopted. Accordingly, there was then adopted for the first time a lease for the heeling machines which restricted them to use in connection with footwear which was welted and stitched upon the United Company's welter and stitcher, but that was an alternative form. At no time prior to 1904 was there any restricted lease for the heeling machines, and at any time after 1904 any lessee who desired the machines without the restriction could have them by paying an initial premium. If the lessee desired to take the Goodyear machines without making the intitial payments, the provision was made that the heeling machines or metallic fastening machines or lasting machines should be used only on shoes which were welted and stitched on our welter and stitcher.

34 About 1899, approximately 17,000,000 pairs of Goodyear welt shoes were made out of a total production of something less than 200,000,000, and last year some 60,000,000 or 70,000,000 of Goodyear welt shoes were produced out of a total of about 250,000,000.

Prior to the introduction of the noninitial payment leases, each time a lessee took a machine he had to pay down a certain amount of money, and he was not likely to do that unless he wanted the machine, but when machines were put out without initial payments the situation changed. The lessee then had no money in the machines and it was entirely the money of the lessor that was in them, and unless the lessor protected itself in some other way there was nothing to prevent a manufacturer from taking machines with no intention of using them—for example, simply to have them stand in his factory as a threat to his hand labor, to use as a means of trading for some other machine, or to use in case of an emergency.

So, when the constituent companies took off the initial payments before 1899, they simultaneously sought to protect themselves in several different ways against nonuse or misuse of the machines. Usually two or three different methods were adopted in the same lease. Provisions were inserted that the lessor might cancel the lease if the machines remained unused for a certain length of time; that he might cancel if they were not used to the extent of earning a certain amount of royalty within a certain time; that the lessee should pay a minimum guaranty in case the machines were not used enough to earn the amount of the guaranty; that the machines should be used for doing all of a certain kind of work which a lessee might have; that the

machines should be used for a certain kind of work only. The full capacity clause was inserted; and provisions were
35 inserted that, in case the lessee had more work than could be done by the machines under lease, he should take additional machines; and that if he did not do so, the lessor could cancel his lease and take out his machines. There were also agreements in some cases that the lessee would not introduce any machinery not obtained from the lessor for doing the same work as done by the lessor's machines, and there were various limitations as to the manner and method of using the machines; for instance, a provision that the lessee should not retain the machines for the purpose of controlling his hand operatives or negotiating trades with other companies.

In my study of the lease situation prior to 1899, I find that in all cases when the companies began to offer machines without initial payments they sought in some or all of these ways to protect themselves against the nonuse or misuse of the machines.

In a properly organized factory a certain number of shoes should be started every day and the same number of shoes taken out every day. There is a certain flow of the work through the factory, which must not be interrupted if the factory is to be operated efficiently. If an inefficient machine is introduced which is not adapted to be used with our machines, or which breaks down and is not repaired, or which is not given service, it has about the same effect as there would be upon the flow of water through a hose if a hole were cut in the middle of it. It dams the work behind it, while the work in front of it continues until that work is all done; and then the operations in front of it, which succeed the broken down machine, must suspend until work is prepared for them.

For instance, if an inefficient welting machine were introduced into a system so that the welting process had to stop, the machines which were preparing the work for the welter would have to stop, for otherwise they would accumulate a mass of work behind the welter which there would be no means of getting away. The machines which follow the welter—the stitcher, the metallic machines, the heeling machines—would have some work to do for a day or two, and then their supply of work would run out and they would have to suspend.

36 We protect ourselves against an inefficient machine being used in the series by the restrictive clauses in our leases.

The general department machines ordinarily do not handle material, such as thread, leather, or metal; and in general there

is not the same necessity for expert attendants on those machines as there is on the machines that handle material. Some of the general department machines have been developed by the United Company, and some it has acquired since its organization. It is a general line of machinery.

The company maintains a large corps of inventors who devote their entire time to experimentation. As an illustration of the machines the company has developed, the pulling-over machine was some six or seven years in development, and something in excess of a million dollars was spent in developing it before we got our first commercial machine. The royalty charged for the use of the pulling-over machine, with the auxiliary machines which we have developed with it, is one-half a cent a pair.

My recollection is that the aggregate of the royalties which the company gets for machines used for making McKay sewed shoes is slightly less than a cent per pair. The total royalty which the company receives for the use of all its machines used in making a welt shoe is about six cents per pair for the high-priced men's shoes, and substantially less for women's and children's shoes. Those royalties include not only the Goodyear machines, but the heeling, metallic, lasting, pulling-over machines, and so on, through our entire line.

I have here a copy of the heeling department lease printed in January, 1912. While this lease was not printed until that time, it embodies a practice which the company had pursued prior to that time, and at all times since 1904. Prior to 1912 we used a form of rider which was attached to an earlier lease.

(Form of lease used by the United Company for the heeling department, printed in January, 1912, is marked for identification "Defendants' Exhibit 10."

37 JUNE 25, 1913.

HAROLD G. DONHAM, witness for the United States (recalled).

Direct examination resumed:

In 1912 the United Company had machines in 3,326 factories representing something over 3,000 lessees, all in the United States. These are not all shoe manufacturers.

According to our royalty records, during the calendar year 1911 we received royalty from 1,033 lessees who were shoe manufacturers.

As to how many shoe manufacturers there were in the United States at that time, I don't find that any two calculations agree or that any of them agree with the census. From what data I have I should say there were somewhere between 1,300 and 1,500.

I haven't the figures of the census of 1910 with me. It was somewhere in the neighborhood of 1,300, as I recall it.

I was requested to produce a statement of the machines on lease by the United Company. I produce a list of machines out on lease from the United Company March 1, 1911, on leases executed before and since February 7, 1899.

(This list is marked "Plaintiff's Exhibit 163.")

This list includes the machines of all departments of the United Company, and also includes what was formerly the Goodyear Shoe Machinery Company of Maine, which is now used as a department of the business, leasing machines in a large section of the country in the West, in more than half the States, I think. The list does not include subsidiary companies like the O. A. Miller Treeing Machine Company and the United Xpedite Company; and it does not include machines we have sold outright.

I produce copies of the annual reports of the United Shoe Machinery Corporation for the years 1908 to 1913, inclusive, covering all that has been issued in printed form.

(Copies of these reports for 1908, 1909, 1910, and 1911 are introduced as plaintiff's Exhibits 164 to 167, inclusive.)

Prior to the formation of the United Shoe Machinery Corporation, no printed reports were made to stockholders of the United Shoe Machinery Company. The records of the directors show that a treasurer's report was made each year and
38 filed. I do not have copies of these reports in my files, but without doubt there are such reports in the treasurer's files and I will produce them.

The form of lease which you have handed me is a form of lease for the Consolidated hand method lasting machine when put out for welt and turn work, without the initial payment. I have no doubt that it is a form that we printed, and that, unless we found some error in it, the lease was used and is outstanding.

(This lease form is marked "Plaintiff's Exhibit 168.")

I produce the current form of lease for the Boston lasting machine, so called, which is merely a tacking device. The blank in article six of that lease, when it goes out, is filled in showing that the rental is $25.00 per year for the machine for tacking purposes; there is no royalty.

(This lease is marked "Plaintiff's Exhibit 169.")

I produce the form of lease used for the McKay sewing machine when the machine is leased. That machine is either leased or sold.

(Form of lease for the McKay sewing machine is marked "Plaintiff's Exhibit 170.")

I produce a copy of the current lease for the Ensign lacing machine.

(This is marked "Plaintiff's Exhibit 171.")

As to leases for the Duplex eyeletting machine, I have previously produced eyeletting machine leases in both the initial payment and no initial payment form. Various kinds of eyeletting machines went out on similar forms of lease. If you want specific forms with the name "Duplex" printed in, I have those forms here. As requested, I produce the form of lease for the Duplex eyeletting machine when it is installed without initial payment and limited to use with others of our machines.

(Form of lease for Duplex eyeletting machine is marked "Plaintiff's Exhibit 172.")

39 As you request, I also produce the form of lease used for the Duplex eyeletting machine when it goes out with initial payment and not limited to use with other machines. We put out very many Duplex eyeletting machines on leases with initial payments and without the tying clause.

(This form of lease is marked "Plaintiff's Exhibit 173.")

I produce the form of lease for the Vulcan foot power eyeletting machine. That is a very small machine and is always put out on an initial payment of $15.00, and is not limited to use with our other machines. That machine never goes out on the restricted basis.

(Lease covering Vulcan foot power eyeletting machine is marked "Plaintiff's Exhibit 174.")

The lease which is printed as Exhibit 5 in the petition was a lease in which an error was made in printing. Section 8 was not limited, as it should have been, to the right to terminate the Goodyear leases only. When the mistake was discovered the lease was reprinted to correct that error. Some leases had gone out before we discovered the error. The error did not occur in the corresponding lease for auxiliary machines.

Plaintiff's Exhibit 24 is the current form corresponding to Exhibit 5 of the petition. It is used for the same machines, and is the lease which was printed to correct the error in Exhibit 5. It was some little time before the error in the lease of Exhibit 5 of the petition was discovered, as we never had occasion to rely upon that clause in any way. It was corrected when it was discovered.

Cross-examination:

During the time that misprinted lease was in use absolutely no action was taken by the company under the eighth clause. If there had been, the mistake would have been discovered earlier.

As soon as it was discovered it was corrected, and no more of that form were used.

40 Plaintiff's Exhibit 168 was one of two alternative forms of lease which the company offered for the Consolidated hand method lasting machine, one being with an initial payment and no tie, and the other omitting the initial payment and limited to use with our welter and stitcher.

The Boston lasting machine is not a lasting machine at all, but merely a tacking device, a little contrivance which we put out for purposes other than lasting—chiefly for tacking on insoles. The rental is $25.00 per year, with no royalty. Lasting is pulling the upper into shape over the last and holding it while tacks are being driven. This machine did not pull the upper at all; simply drove a tack when the shoe was presented to it in form to be secured. If it were to be used at all in connection with any lasting operation the lasting would have to be done by hand or by some other means. All this machine did was to drive tacks.

This machine was put out on a nominal rental of $25.00 per year, payable in monthly instalments, and was limited to use with some of our other machines. There were other tackers manufacturers could have on the other basis. I don't know whether any of these machines went out on the other basis or not. This machine is absolutely obsolete as a lasting device, and now it is used merely for incidental tacking on other parts of the shoe.

Referring to plaintiff's Exhibit 170, this lease of the McKay sewing machine limited the machine to use with the lasting machine, but the company has always sold those machines and still sells them without any tie. The lease requires an initial payment of $100.00 and a rental of $5.00 per month, but with no royalty based upon the amount of use. The machine was sold all the way from $250.00 to $600.00, according to the type of the machine and the manner in which it was fitted. The manufacturer had his choice between these various alternatives, to buy such type as he saw fit, costing from $250.00 to $600.00, or leasing upon those terms.

41 I do not know of any request having been made for a lease of the Ensign lacing machine not restricted to use with other machines. If it had been made the company would have installed it upon the initial payment basis without the restriction, by attaching a rider to the lease. Attaching such a rider was the practice we had as to all our machines when occasion arose to put them out in that way.

The Duplex eyeletting machine leases are substantially the same as the other eyeletting machine leases. Eyeletting machines were put out on two alternative forms. One form re-

quires the payment of no initial license fee and restricts the machine to use on footwear operated upon by some of our other machines. Under the other form the lessee pays an initial premium of $100.00 when the machine is installed and it is not limited to use with any of our machines. Under both forms of lease there is no royalty, and our compensation for the use of the machine is derived from the sale of the eyelets used in the machine, which the lessee is required to purchase from us. We sell the eyelets at the same price on both forms of lease. The only difference is, if the lessee wants to use the machine with anybody else's machine he pays an initial premium of $100.00. There are hundreds of eyeletting machines out on the initial payment basis.

These eyeletting machines are capable of inserting eyelets of various kinds besides shoe eyelets. Very many of them are used by corset makers, sailmakers, belt makers, tobacco pouch makers, and box board manufacturers. They have a very wide field outside of the shoe field.

We carry eyelets of all kinds and sizes and sell them all at the same price to everybody, irrespective of the machine on which they are to be used, whether our machine or somebody else's machine. Many of the eyelets which we sell are used in other machines.

Under the lease of the Vulcan foot power eyeletting machine the lessee made an initial payment of $15.00, with no re-
42 striction whatever, and he bought his eyelets from us. That has now been withdrawn and the machine is sold only, at a small price, $25.00 or $50.00. That change was made within a year or two.

Direct examination resumed:

I have no knowledge as to whether or not, at the time I made up the list of machines I produced, there were any shoe manufacturers in the United States making welt shoes, except the Buffalo Shoe Company and the R. H. Long Company, or the Framingham Shoe Company, who were not using the United Company's machines. We have records of our own machines, but we have no means of knowing factories operated by other people's machines.

(At this point counsel for the United States offered copy of a circular letter dated February 11, 1899, by the president and treasurer of the Consolidated & McKay Lasting Machine Company to stockholders of that company relating to the taking over of the Consolidated & McKay Lasting Machine Company, Goodyear Shoe Machinery Company, McKay Shoe Machinery Company, International Goodyear Shoe Machinery Company,

Goodyear Shoe Machinery Company of Canada, Eppler Welt Machine Company, International Eppler Welt Machine Company, and Davey Pegging Machine Company, by the United Shoe Machinery Company of New Jersey. This letter was marked "Plaintiff's Exhibit 175.")

43 JUNE 26, 1913.

HAROLD G. DONHAM, witness for the United States (recalled). Direct examination resumed:

The authorized capital of the Goodyear Shoe Machinery Company was three million dollars. It was not all outstanding at the time of the acquisition of that company by the United Company. I do not know exactly what amount was outstanding, but $4,631,560 in stock of the United Shoe Machinery Company was given in exchange for the entire outstanding capital stock of the Goodyear Company, which was some shares less than its entire authorized capital stock.

The amount of the capital stock of the International Goodyear Company outstanding was substantially less than the million dollars stated in the petition. The greater portion of the stock of that company was owned by the Goodyear Company. I do not know whether the stock was all issued. When we acquired the International Company we had to acquire only the outstanding shares which were not owned by the Goodyear Company, as the balance came in as part of the assets of that company. Instead of $680,000 being paid as stated in the petition, the actual amount was $287,105, which was paid to shareholders other than the Goodyear Company.

The outstanding capital stock of the Consolidated & McKay Company was from $100,000 to $150,000 less than $3,000,000, the amount stated in the petition. The amount of United Company stock issued in payment for that stock was $4,432,900, which is less than the amount, $4,599,840, stated in the petition.

When the United Company acquired the Consolidated & McKay Company, that company had a substantial amount of cash in its treasury and had not paid its regular dividends. The payment to the stockholders of the Consolidated & McKay Company, in addition to stock in the new company, of $1.00 in cash on each share of preferred stock and $4.50 in cash on each share of the common stock, was an adjustment of the dividends

44 which in the ordinary course would have been received by the stockholders of that company.

The issued capital stock of the McKay Shoe Machinery Company was $5,000,000, and it was all outstanding; $5,500,000 in stock of the United Company was issued in exchange for that stock, which was taken in on the basis of 110.

At the time of the organization of the United Company a syndicate was formed which subscribed for $1,124,067.50 in its common stock at par and for $1,271,367.50 in its preferred stock at par, paying $2,395,435 therefor. This amount was used to pay the expenses of organization, the floating debts of all the old companies, and for the purchase of the capital stock of the Eppler Welt Machine Company, the International Eppler Welt Machine Company, and the Goodyear Shoe Machinery Company of Canada, leaving a balance of five hundred thousand dollars in cash as working capital for the new company. It is quite true that some of the money so subscribed was used to make the cash payments on the stock of the Consolidated & McKay Lasting Machine Company.

I do not know what the capital stock of the Eppler Welt Machine Company was, and I have never seen any records of that company except a rather badly kept record of directors' and stockholders' meetings, minutes of the meetings.

I do not know what the capital stock of the International Eppler Welt Machine Company was. It is stated in the petition that the issued capital stock was $500,000; I really have no knowledge one way or the other about it. I don't think I have any record that would show; I am not even sure that there is a minute book.

The issued capital stock of the Goodyear Shoe Machinery Company of Canada was $225,000.

I do not know what the issued capital stock of the Davey Pegging Machine Company was. I think there is among the old papers a stockholders' and directors' record book, but I have never examined that to see whether it would show the amount of the capital stock. It was all owned by the Consolidated & McKay Lasting Machine Company and came to us as part of the assets of that company.

I do not know how much was paid by the United Company for the property of the Eppler Welt Machine Company, or how much was paid for the International Eppler Welt Machine Company. I have made a search for records that would show how much was paid for the Eppler Welt Machine Company, but I find none. I have made inquiries as requested, and have been unable to get that information.

I do not know, and do not think the records would show, what the expenses of the organization of the new company were, or what the floating debts of the old companies were. I have never seen any such record. I assume that the Eppler Welt Company controlled the International Eppler Welt Machine Company, though I have no definite knowledge about it. I do

not know whether the Eppler Welt and International Eppler Welt came as one concern into the United. It was simply included in a miscellaneous lot of property that came in for a lump sum and I have been unable to divide up that lump sum among the several items.

Our records show that we issued $2,395,435 of stock for those several purposes. They do not show in what proportion it was divided, and I do not know. The $500,000 in cash which was provided as working capital came out of this $2,395,435. It is substantially correct that the difference between $500,000 and $2,395,435 was used for paying the expenses of the organization of the new company, the floating debts of the old companies, and the purchase of the property of the Eppler Welt Machine Company, the International Eppler Welt, and the Goodyear Company of Canada. There may have been some additional items. No other companies were included, so far as I know.

I produce statements showing the financial condition
46 of the United Shoe Machinery Company on March 1st of each year from 1901 to 1907, inclusive.

(These statements for March 1, 1901, to March 1, 1907, inclusive, are marked "Plaintiff's Exhibits 180 to 186, inclusive.")

I produce a statement with respect to the companies in which the United Company holds stock. On this statement the year following the name of each concern is the year in which it was organized.

(This statement is marked "Plaintiff's Exhibit 187.")

47 With respect to Booth Brothers Company, the United Company purchased the business of Booth Brothers, a partnership, and formed a corporation under the laws of New York to conduct the business. It is engaged in business in Rochester, New York. I have no doubt they sell in other States.

The Boston Blacking Company, which was eliminated from the bill, is engaged in putting out cements, blacking, and stains.

The British United Shoe Machinery Company, Limited, has an issued capital stock of £400,000 and the United Company owns a majority of the stock. The British Company is engaged in business at Leicester, England, and I think its business is almost entirely confined to Great Britain. It does a general shoe machinery business in England.

The United Company owns one-half of the issued capital stock of the Campbell-Bosworth Machinery Company, which is engaged in manufacturing and dealing in harness machinery exclusively. Its offices are in Boston and are separate from those of the United Company. It has no manufacturing plant,

but has its machines built for it by outside machinists under contract.

A majority of the issued capital stock of W. W. Cross & Company, Incorporated, is owned by the United Company. It is engaged in the business of manufacturing tacks. I think it does not do an interstate business.

The Deutsche Vereinigte Schuhmaschinen Gesellschaft has a factory at Frankfurt-on-Main, Germany, and is engaged in general shoe machinery business in Germany. Fagus G. m. b. H. is a corporation recently formed to engage in the last business. Whether it has actually begun business, I don't know.

S. A. Felton & Sons Company is engaged in the manufacture of brushes of various kinds used in making shoes, at Manchester, New Hampshire.

48 J. K. Krieg Company is engaged in business at New York. Its business is chiefly local.

The Ross-Moyer Manufacturing Company has its place of business in Cincinnati, Ohio.

J. C. Rhodes & Company operate a factory at New Bedford, Massachusetts.

Schweiz Vereinigte Schuhmaschinen A.-G. is engaged in business in Switzerland. I understand that it does a general shoe machinery business.

The Security Eyelet Company is engaged in business in England. I don't know where it has its headquarters.

S. O. & C. Corporation is engaged in business at Ansonia, Connecticut. It manufactures and sells eyelets.

T. G. Plant Company is a shoe manufacturing concern having its place of business in Boston.

The United Awl & Needle Company has its factory at West Medway, Massachusetts.

The United Fast Color Eyelet Company is engaged in business in Massachusetts and has its offices in Boston.

The United Shoe Machinery Company of Canada is engaged in business in the Dominion of Canada and has its factory and chief offices in Montreal.

The United Shoe Machinery Company de France is engaged in a general shoe machinery business in France, having its factory and chief offices in Ivry.

The United Shoe Machinery Company of Maine is a department of the New Jersey Company, and leases shoe machines which it obtains from the New Jersey Company. That constitutes its entire business. It is a matter of internal organization.

The United Shoe Machinery Company of Mexico conducts a

general shoe machinery business in Mexico, and its headquarters are in Mexico City.

49 The United States Shoe Machinery Company of South America is engaged in a general shoe machinery business in South America. Its headquarters are at Buenos Aires, in the Argentine Republic, and it has an office at Santiago.

The United Shoe Repairing Machine Company was formed by the United Shoe Machinery Company to take over the cobbling part of its business. It is engaged in business in Massachusetts, and its principal office is in Boston.

The United-Xpedite Finishing Company is engaged in the business of putting out a finishing machine, and its principal office is in Boston.

Aktieselskabet United Shoe Machinery Company, of Copenhagen, is engaged in business in Norway, Sweden, and Denmark, and, I believe, does a general shoe machinery business.

The Ellis Lacer Company has been dissolved and is out of business.

The Rimmon Eyelet Company is a branch of the J. C. Rhodes business.

The United Shoe Machinery Company, of Connecticut, is a Connecticut corporation formed to do business in Spain and Portugal. Its stock is owned by the United Shoe Machinery Company de France.

I produce a list of the officers and directors of the companies referred to in Exhibit 187.

(This list is marked "Plaintiff's Exhibit 188.")

The principal factory of the United Shoe Machinery Company, of New Jersey, is at Beverly, Massachusetts. There are approximately 4,000 employees at that factory. All the principal machines manufactured by the United Company for use in this country are manufactured at Beverly, and are shipped to shoe manufacturers in various States of the United States.

Cross-examination resumed:

The machines are also shipped from Beverly to a great many others than shoe manufacturers.

50 As to the foreign companies about which I have testified, the laws of most countries other than the United States at the present time require that in order that the patents of those companies may be kept alive machines must be manufactured under those patents in those countries. That is true of Canada, Great Britain, and France, and it was true in Germany until a few years ago. It is true of most of the continental countries.

Accordingly, the Canadian Company manufactures machines which are used in Canada, and it must do so in order to maintain

its Canadian patents; and that is true of each of the other foreign countries of which I have spoken, except Germany; and it was true in Germany up to the treaty that was negotiated within a few years.

Direct examination resumed:

The paper which you present to me purporting to be an agreement with the United Shoe Machinery Company and certain individuals, dated September 11, 1899, bears the seal of the United Shoe Machinery Company.

(Counsel for the United States then offered this agreement between the United Company and certain parties mentioned in it, relating to the sale of machinery in Australasia, although it is not mentioned in the petition. Counsel stated that the part regarded as material was a recital that "whereas the United Company has acquired control of the boot and shoe and leather working machinery made by the following named corporations doing business in said Boston, viz" (here follow names of the constituent companies of the United Company and of certain acquired companies) "and contemplates acquiring the control of other lines of boot and shoe and leather working machinery and boot and shoe findings except leather, linings, lasts, and finished boots and shoes," and further stated that it was offered only as an admission, as evidence of the intent of these parties in
51 forming the United Company. Counsel for defendants objected, on the ground it is not within the bill, is not mentioned in the bill, and ought not to be regarded as an admission. This preamble was admitted as an admission, with defendants' exception saved, and was marked "Plaintiff's Exhibit 189.")

(Counsel for the United States then offered an agreement between the United Company and the Keighley Company, a New Jersey corporation. That agreement was entered into on September 28, 1912, after the petition in this case was filed. It is the subject of a separate petition filed in January, 1913. By this agreement the Keighley Company granted to the United Company the exclusive right to lease, but not to sell, the Keighley Company's patented inseam trimming machine. The Keighley Company reserved the right to sell the machine, and the United Company granted to the Keighley Company the right to sell the machine under two patents owned by the United Company, and agreed to discontinue three pending suits brought by it for infringement of its patents by that machine. The agreement provided that the Keighley Company should not sell machines for less than a price stipulated. Individuals connected with the

Keighley Company agreed not to manufacture or deal, etc., in inseam trimming machines, except in accordance with the agreement. Counsel for defendants objected to the agreement as being after the date of the petition. It was excluded.)

The WITNESS. On March 1, 1911, we had 90,000 machines under lease. In the great majority of cases there is only one machine on a lease. We do not have any record by which we could find out how many lasting machines, for example, we have out on a certain form of lease.

We have put out the initial payment form of lease ever since the company was formed.

MAY 22, 1913.

Mr. GREGG. We will now take up the acquisition of the various businesses of individuals, partnerships, and corporations, referred to in the Government's petition. We have a large number of contracts and agreements entered into between the
52 United Company and individuals and corporations that they have acquired. The originals of these contracts and agreements have been in the possession of counsel for the United States and copies which have been compared will be introduced.

Mr. CHOATE. I waive all formality of proof, but I still want to have the court's attention fixed upon the proposition that these are only alleged to be the things done in carrying out a conspiracy of which there has not been any proof whatsoever.

Mr. GREGG. I first offer copy of an agreement dated March 1, 1899, between the United Company and Louis Goddu and others, transferring to the United Company about seventy-five per cent of the capital stock of the Goddu Sons Metal Fastening Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 60.")

I offer copy of an agreement dated June 8, 1899, between the United Company and Marshall Henry Pearson and Charles Bennion, of Leicester, England, providing for the formation of the British United Shoe Machinery Company, Limited, and for the transfer of the business of Pearson and Bennion, Limited, to the new corporation. The agreement also provides for the assignment to the new corporation of any subsequent inventions relating to shoe machinery made by Pearson and Bennion. Pearson and Bennion were to receive stock in the new corporation. The issued capital stock of the new corporation was £353,494, of which the United Company acquired £206,800.

53 (Copy of this agreement is marked "Plaintiff's Exhibit 61.")

Mr. GREGG. I offer copy of an agreement dated June 30, 1899, between the United Company and Silas Pierce and John M. Kingsbury providing for the transfer to the United Company of

a majority of the capital stock of the Corrugated Wire Fastening Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 62.")

Mr. GREGG. I offer copy of an agreement dated July 31, 1899, between the United Company and the Breach Manufacturing Company, granting to the United Company an exclusive license to manufacture certain machines for rounding or cutting soles or patterns for boots and shoes. The consideration is stated as $10,000 plus ten per cent of the gross proceeds of the sales of the said machines.

(Copy of this agreement is marked "Plaintiff's Exhibit 63.")

Mr. GREGG. I offer three copies of agreements between the United Company and Peter A. Coupal and William Gordon whereby the latter conveyed to the United Company certain machinery and appliances, for a consideration of $10,799.25, and agreed to enter the employ of the United Company. The vendors agreed that, so long as they should remain in the employ of the United Company, all inventions that they should make or acquire should be disclosed and explained to it.

(Copies of these agreements are marked "Plaintiff's Exhibits 64, 65, 66.")

Mr. GREGG. I offer copy of an agreement dated August 16, 1899, between the United Company and Timothy A. Bresnahan, transferring to the United Company the entire capital stock of $50,000, of the Boston Shoe Tool Company, and providing that said Bresnahan should not thereafter engage in the kind of business which had been carried on by the Boston Shoe Tool Company, or enter into or encourage any competition with the business formerly carried on by the Boston Shoe Tool Company, and would use his best efforts to purchase for the United Company the business of any persons, firms, or corporations engaged in carrying on business like that carried on by the Boston Shoe Tool Company. The United Company paid $72,000 in cash and preferred stock.

(Copy of this agreement is marked "Plaintiff's Exhibit 67.")

Mr. GREGG. I offer copy of an agreement dated October 9, 1899, between the United Company and Edwin T. Freeman, whereby the United Company acquired the

54

business, machinery, and letters patent of said Freeman relating to nailing machines for $11,000, and $4,000 to be paid in royalties, and said Freeman entered into an agreement not thereafter to engage in or to assist competition in shoe machinery with the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 68.")

PUTNAM, J. Do you claim, gentlemen, that this transaction of buying an interest in a nailing machine tends to show that this corporation was doing anything in restraint of trade?

Mr. GREGG. Our position, if the court please, is that all of these acts of acquiring the business of other concerns were all part of a plan to monopolize the shoe machinery business.

PUTNAM, J. All; big and little?

Mr. GREGG. Big and little.

I offer copy of an agreement dated October 10, 1899, between the United Company and George W. Freeman, providing for the transfer to the United Company of any interests which said George W. Freeman might have in shoe machinery and for the employment of said George W. Freeman by the United Company. The agreement provides that George W. Freeman will not thereafter engage in or assist others to engage in the manufacture or sale of boot or shoe working machines in competition with the United Company and that he will convey to the United Company any inventions relating to shoe machinery which he has made, but has not patented, or shall make in the future.

(Copy of this agreement is marked "Plaintiff's Exhibit 69.")

Mr. GREGG. I offer copy of an agreement dated October 11, 1899, between the United Company and Albert G. Brewer, whereby the United Company acquired said Brewer's inventions and improvements in heel breasting machines, for $250 and $5 royalty on machines put out by the United Company, and providing for the assignment of any future inventions relating to machines for breasting heels on the last made by said Brewer.

(Copy of this agreement is marked "Plaintiff's Exhibit 70.")

Mr. GREGG. I offer copy of an agreement dated October 24, 1899, providing for the acquisition by the United Company from certain named individuals of the business of the Globe Shoe Tool Company for $30,000 in cash and preferred stock.

(Copy of this agreement is marked "Plaintiff's Exhibit 71.")

55 Mr. GREGG. I offer copy of an agreement dated October 24, 1899, between the United Company, and Henry M. Loomer, of Boston, supplemental to plaintiff's Exhibit 71, providing for the employment by the United Company of said Loomer and containing a covenant by said Loomer that he should not thereafter engage in or assist competition with the United Company and would assign any subsequent inventions or improvements in shoe machinery made by him.

(Copy of this agreement is marked "Plaintiff's Exhibit 72.")

Mr. GREGG. I offer copy of a further agreement supplemental to Exhibit 71, dated October 24, 1899, with Ward Perkins, substantially similar in its terms to Exhibit 72.

(Copy of this agreement is marked "Plaintiff's Exhibit 73.")

Mr. GREGG. I offer copy of an agreement dated November 2, 1899, between the United Company and John Ritchie Company and John Ritchie, with their principal place of business at Quebec, Canada, engaged in the manufacture of standard screw machines, slugging machines, tacking machines, and others used in the manufacture of boots and shoes, whereby the United Company acquired their business for $15,000. The vendors agreed that they would not engage directly or indirectly at any time thereafter in any business in competition with the United Company or any of its controlled companies.

(Copy of this agreement is marked "Plaintiff's Exhibit 74.")

Mr. GREGG. I offer copy of agreement dated January 30, 1900, between the United Company and Edward B. Seaver, whereby the United Company acquired for $38,000 his business in manufacturing lasting machines.

(Copy of this agreement is marked "Plaintiff's Exhibit 75.")

Mr. GREGG. I offer copy of an agreement dated March 6, 1900, between the United Company and Erastus E. Winkley and Benjamin Phillips, whereby the United Company acquired their inventions in sole leveling machines, agreeing to pay to the vendors a royalty of $20 for each machine put out, and the vendors agreed to convey to the United Company all inventions or
56 improvements in sole leveling machines which they should thereafter make or acquire.

(Copy of this agreement is marked "Plaintiff's Exhibit 77.)

Mr. GREGG. I offer copy of an agreement dated March 19, 1900, between the United Company and the Stanley Manufacturing Company, engaged in the manufacture of machines known as McKay sewing machines, used in the manufacture of boots and shoes, whereby the United Company acquired the business of the Stanley Company for $86,500 in preferred stock of the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 78.")

Mr. CHOATE. I don't think it should be assumed by the court that the paper means what the Government's petition says it means. I think it should be correctly stated to the court what the paper really is.

Mr. GREGG. This agreement provides—

"That the said United Company shall purchase from the said Stanley Company the stock of machines, parts and supplies which it now has on hand at Frankfurt, Germany, and in transit to

Frankfurt, and all accounts and bills owing to the said Stanley Manufacturing Company in Germany."

PUTNAM, J. What department of the business did this relate to?

Mr. GREGG. To the McKay sewing machines.

Mr. CHOATE. Where do you find any agreement about McKay sewing machines there, Mr. Gregg?

Mr. GREGG. It must be here somewhere.

Mr. CHOATE. The McKay Shoe Machinery Company did not make McKay sewing machines.

Mr. GREGG. I don't find anything in the agreement with regard to the McKay sewing machine. If it is not there and is so stated in the bill, it is an error.

Mr. FOWLER. I would call your honor's attention to this paragraph in the agreement:

"That the said Stanley Company will at once give up its branch office in Germany, so far as relates to the sale or disposal of shoe machinery or shoe manufacturers' supplies, and that the Stanley Company will not in the future establish an office, or maintain an agency or representative of any kind to solicit orders for the sale of such machinery and supplies outside of the United States of America, and will not export, or sell or dispose of to others for export, any boot or shoe machinery or supplies therefor outside of the United States except through the United Shoe Machinery Company, and except further as hereinafter provided."

57 MAY 22, 1913.

NELSON W. HOWARD, witness for the United States.

I am a lawyer, and I am in charge of the patent department of the United Company. I am familiar with the acquisition by the United Company of stock of the Goddu Sons Metal Fastening Company on March 1, 1899. The United Company did not acquire anything from the Goddu Sons Metal Fastening Company, but did acquire from Louis Goddu and his sons stock in the Goddu Company and some patents and patent applications. No machines or other property were acquired from either the corporation or the individuals. The Goddu Company was not and had not been engaged in any business in the sense of selling or leasing anything. They had constructed a loose nailing machine, a slugging machine, a tacking machine, and a standard screw machine, but they had not sold or leased any of them, so far as I know.

These machines were of the metallic type. The standard screw machine was intended for securing outsoles by a type of fastening known as standard screw wire. The loose nailing machine was intended primarily for nailing heel seats; the tack-

ing machine for laying outsoles. At that time the United Company was putting out commercial machines for doing the work for which the Goddu Company machines were intended. The Goddu Company was never acquired by the United Company. It has been in the hands of a receiver for some years.

I am not familiar with the agreement made in June, 1899, between the United Company and Marshall Henry Pearson and Charles Bennion, of Leicester, England, with respect to Pearson & Bennion (Ltd.), of Great Britain, as that transaction took place on the other side; but I think they were not engaged in business in this country.

The Corrugated Wire Fastening Company, a Connecticut corporation, had one machine, a tacking machine, and was doing a very small business in supplying wire for that machine. I believe they had not put out any of the machines for some years because it was completely out of date. It was a very
58 old machine. In June, 1899, the United Company had a machine for doing very much better work of the same character.

The United Company acquired the capital stock of the Corrugated Company. The consideration, which is stated in the agreement as $6,769.40, I think was paid in cash. That company was dissolved in 1906 under a general act of the Legislature of Connecticut, under which companies were automatically put to death if they did not make returns by a given date.

Q. Did it continue to do business up to 1906, when it was dissolved?

A. The only business that was left when the Corrugated Company was acquired was the supplying of wire and spare parts for the machine. They had not done any business in the way of supplying machines for some time, and there was no longer any demand for the machines, so that no business was done and no business could be done with that machine. The United Company continued to supply wire and parts for those machines. They have parts in stock to-day. There may be one or two, or possibly more, of those machines in use in the factories where they have stayed since this acquisition, but the business that was carried on in connection with that machine after the acquisition of the Corrugated Company consisted only in the supply of wire and parts for the machines that were still out.

At the time of the agreement in July, 1899, between the United Company and the Breach Manufacturing Company the Breach Company had a machine which was intended for cutting soles out of a side or strip of leather by a reciprocating knife

which moved up and down through the stock as it went around. All that the United Company acquired was a license to manufacture, sell, and lease those machines.

I think the Breach Company is not engaged in business now. I can not imagine their doing any business with that machine, and I do not believe the Breach Company has done any
59 business since the failure of the United Company to make anything out of its machine. That was some years ago. The United Company offered to turn back the patents to the Breach Company, and I believe it did so. The foreign patents, I think, had been allowed to lapse through lack of desire of the Breach Company to spend the money to keep them alive.

At the date of the agreement with the Breach Company, July, 1899, the United Company had no machines for doing the work for which the Breach machine was intended—no machine of that kind at all for that class of work. The United Company took Breach into its employ and for several years made strenuous efforts to develop something practical out of that machine. Breach worked on the machine during that period and spent a great deal of money, but finally came to a point where he could apparently do nothing more, and at that stage the machine was an entire failure as a commercial machine. Prior to the date of this license the United Company had no machine used for cutting out soles.

Referring to the machinery, tools, and appliances that were conveyed to the United Company in August, 1899, by Peter A. Coupal and William Gordan, of Boston, Coupal and Gordan were running a machine shop and doing a general machine shop business. They had one or two machines such as later were put out by the general department of the United Company, of which one was a machine for cementing parts of shoes together, such as channels of outsoles. A channel cementing machine applies cement to the channel lip, so that the lip will stick when it has been turned back to cover the stitch after the outsole has been sewed to the insole or to the welt. Prior to the conveyance from Coupal and Gordan the United Company was not engaged in putting out or manufacturing such machines as Coupal and Gordon were making and putting out, or machines for performing the same or similar work.

In August, 1899, the Boston Shoe Tool Company, the capital stock of which was acquired by the United Company from Timothy A. Bresnahan, was manufacturing and selling a patented edge trimming machine and a rotary edge setter, and
60 was also making and selling forepart and shank cutters for use on the edge trimming machine, and edge setting

irons for use on the rotary edge setter. The rotary edge setter was adapted only for the cheapest kind of work and never used on any other work. It could not be used with profit on any other kind of work.

A shank cutter is the tool on an edge trimming machine which trims the edge of the sole between the ball and the heel, known as the shank. Every edge trimming machine has a forepart cutter for trimming the sole around the forepart and a shank cutter for trimming the sole in the shank. The cutter which trims the forepart is not properly shaped to trim the shank.

An edge setting iron is a tool used on an edge setting machine, which is employed to finish the edge of the sole after it has been trimmed and after the blacking has been applied. The finish or shine that the edge has when the shoe is new is given to it by the edge setting operation, and the tool which operates upon the shoe in this operation is known as an edge setting iron. The contour of the edge setting tool must fit that of the cutter, and as in the case of cutters there are two tools, a forepart iron and a shank iron.

At the time of this acquisition the United Company had no machines for doing the work of either of the two machines acquired from the Boston Shoe Tool Company and it was not manufacturing any edge cutters or any edge setting irons.

Referring to plaintiff's Exhibit 68, the nailing machine which had been constructed by Edwin T. Freeman, of Boston, prior to October, 1899, and which I examined in his shop, was intended to insert the slugs or ornamental fastenings which are driven around the edge of a top lift of a heel for ornamental and wear-resisting purposes. The top lift of a heel is the layer of leather in the heel which is on top when the shoe is turned upside down, the position that the shoe occupies during the various bottoming operations. The ornamental fastenings close to the edge of the top lift are known as slugs. They are driven through
61 the top lift and one or more lifts next to it. The heel attaching nails, which hold the heel to the shoe, are inside of those slugs.

At the time of this acquisition the United Company was manufacturing machines for doing similar work. This mailing machine was the only machine that we obtained from Freeman, and no other tools or devices used in the manufacture of shoes were acquired from him.

Nothing was acquired by the United Company from George W. Freeman, of Boston, by the agreement made in October, 1899. He was the son of Edwin T. Freeman, about whom I have just testified, and the agreement was made with him at that time

simply because he was his father's son and had been engaged with his father in work upon his father's machine. It not infrequently happens that a son may be responsible for some of the inventing in a case like that. It was a matter of precaution. George W. Freeman entered the employ of the United Company at that time.

Prior to October, 1899, Albert G. Brewer, of Hopkinton, Massachusetts, had built one experimental heel breasting machine. Prior to that time the United Company was not putting out any machine for breasting heels of shoes or machines for doing similar work. We were experimenting with a machine at that time which was not commercial. Machines had been built and tried out, but the machine was not on the market as a commercial machine. That machine eventually proved to be an effective machine, after the invention which we acquired from Brewer had been embodied in our machine.

A heel breasting machine is used to trim the front end of a heel, which is rough after the heel attaching operation and has to be trimmed on all sides. The trimming at the front side, known as the breast, is performed by a heel breasting machine. In the heel breasting operation a knife cuts from the outer face of the heel down to the shank of the sole. In machines previously used the knife was carried down through the lifts of the heel by foot power, through connections with a treadle.

62 Prior to this purchase we were experimenting on a machine in which the knife was driven through the heel by power, and we owned the broad Heys patent on mechanism for automatically stopping the knife. Of course the stopping of the power-driven knife was a very delicate operation. The Brewer invention related to a machine of this type—that is, the automatic type—and his improvement was a device which stopped the knife when it came to the shank of the sole, so that it breasted the heel without cutting the shank.

The Brewer patent covered a better, a more sensitive, mechanism than we had for stopping the knife properly when it reached the shank, to prevent cutting into and possibly cutting through the shank.

In regard to the acquisition by the United Company (plaintiff's Exhibit 71) in October, 1899, of the business of James H. Reed, Alfred L. Barrett, Henry M. Loomer, Ward Perkins, and Ralph W. Burnham, copartners doing business under the name of Globe Shoe Tool Company at Boston, an edge cutter is another name for an edge trimmer, and I have previously explained the edge trimming process. Irons used in the manufacture of shoes are edge-setting irons, such as I have explained before. The

business of the Globe Shoe Tool Company was on the same line as the business of the Boston Shoe Tool Company, which had been previously acquired.

Mr. GREGG. In November, 1899, the United Company acquired the business of John Ritchie and John Ritchie Company, a corporation with its place of business at Quebec, Canada, relating to the manufacture of standard screw machines, slugging machines, tacking machines, and others designed and used for the manufacture of shoes, paying therefor $15,000. What is the standard screw machine? Just describe it briefly.

The WITNESS. A standard screw machine is a machine which secures the outsole to the insole of heavy, rough shoes by screwing a wire rotated at high speed through the outsole and
63 insole and then cutting it off.

The United Company did not acquire any slugging machines from John Ritchie or the John Ritchie Company. No slugging machines or tacking machines were being manufactured by them.

The John Ritchie Company was a concern manufacturing shoes. They had manufactured, prior to the date in question, one old standard screw machine, so called, that being the type of machine which preceded the rapid standard screw machine, the greatly improved machine then in use for that kind of work. I think that machine was not being used by the John Ritchie Company, but had been sold by them. They had not built, and so far as I know did not contemplate building, any more machines, but they were making wire for use on standard screw machines. They were selling that wire to lessees of the United Company, who were obligated by their leases to buy wire from the United Company.

It has sometimes happened that the United Company will find that a dishonest lessee, who has agreed to buy wire from the United Company, in payment of royalty for the use of a metallic machine, or, to be more specific, a standard screw machine, will buy wire from another concern at a lower price and use it on the United Company's standard screw machine. That was exactly what was happening in Canada. The John Ritchie Company were making and selling standard screw wire to lessees of the United Company, which, of course, was not getting any return whatever for the use of its machines during the period that the Ritchie wire was being used in them. The purpose of this transaction was to eliminate that dishonest situation in Canada.

At that time, and prior to this transaction, the United Company had been manufacturing standard screw machines for performing the same work as the one old standard screw machine

which had been made by the Ritchie Company, and had been furnishing wire for those machines.

Referring to plaintiff's Exhibit 75, from the Seaver Process Lasting Company, of Boston, a Maine corporation, the United Company acquired in January, 1900, a lasting machine
64 and a so-called pulling-over machine. At that time the United Company had lasting machines; and it had an experimental pulling-over machine but none had been put out. The Seaver machine, which was called a pulling-over machine, could be used for pulling over uppers, but it was slower than hand work.

After this acquisition I think none of the Seaver machines were put out by the United Company. I ought to qualify that—it is possible that machines of both types were put out. If manufacturers wished either of those machines they were undoubtedly supplied. I cannot tell what became of the Seaver Company, but it is not engaged in business now. What business the Seaver Company had was merged into that of the United Company at the time of the acquisition. I think the Seaver Company did not have any plant.

Mr. GREGG. With respect to the copy of the agreement which was introduced yesterday, entered into in February, 1900, between the United Shoe Machinery Company and certain persons connected with the Boston Blacking Company, I will withdraw the copy of the agreement which was introduced, for the reason that, after conferring with Mr. Fowler, we are of the opinion that there is no use in encumbering the record with that agreement, because it relates to blacking, a preparation for finishing shoes, rather than to machinery.

BROWN, J. Then the paragraph on page 37 is practically withdrawn?

Mr. GREGG. Yes, your honor.

DODGE, J. And do I understand you withdraw Exhibit 76?

Mr. GREGG. Yes, Exhibit 76, your honor.

BROWN, J. Do I understand that you also withdraw or abandon the allegation in the bill on page 37, beginning "in February, 1900", and concluding, on page 38, "are on its board of directors", just preceding the paragraph concerning the relations of the United Shoe Machinery Company with Winkley and others.

65 Mr. GREGG. Yes, sir.

BROWN, J. So that is out of the bill?

Mr. GREGG. Yes, your honor.

The WITNESS. In March, 1900, the United Company acquired from Erastus E. Winkley and Benjamin Phillips, of Lynn, Massa-

chusetts, patents on a leveling machine of the direct pressure type, which was developed by the United Company into the Atlas leveler, as it is known, a very important machine. The United Company did not acquire any machinery from Winkley and Phillips. They did not have any going machine. Winkley and Phillips were associated with the United Company, and this was a friendly arrangement by which the United Company acquired the right to use the inventions of their patents in its machine. Prior to the acquisition of these patents from Winkley and Phillips the United Company was not engaged in putting out sole leveling machines for McKay work. It was putting out leveling machines for Goodyear shoes, known among the trade as the Goodyear automatic sole leveling machine.

Referring to plaintiff's Exhibit 78, the machines, parts, and supplies at Frankfurt, Germany, which were acquired by the United Company in March, 1900, from the Stanley Manufacturing Company, a Maine corporation, were, I assume, of the same type that the Stanley Company was putting out in this country. The machines that it was putting out here were miscellaneous "general department" machines, of which the most important was a McKay sewing machine. The Stanley Company had a number of less important machines—a McKay channeling machine, Centennial splitter, impression stitch machine, an imitation stitch machine, a type of union edge setter, and a feather edging machine.

The United Company was then putting out no machine for doing the work of any one of those machines. It was not putting
66 out any McKay sewing machine. It was not putting out any channeling machine for McKay work. It was putting out channeling machines of various types for use on welt shoes. Those channeling machines were not used, and could not be used, were not in any way adapted to be used, on McKay shoes. The Stanley channeling machine was a McKay channeling machine, used only on McKay work, and not usable in any way on Goodyear work. The United Company was at that time putting out machines adapted for use in the manufacture of Goodyear shoes, and some of its machines were used both on Goodyear and McKay shoes, but with different organizations.

As to the Stanley edge setting machine, the only edge setting machine which the United Company then had was the rotary edge setter, which it had acquired from the Boston Shoe Tool Company and which was adapted only for the cheapest kind of work and was never used on other work. It was not capable of being used on other work with commercial profit, and only as an interesting experiment. The Stanley machine was of the

Union type, so-called, characterized by an oscillating edge iron instead of a rotating edge iron, as was used in the Boston Company machine. This oscillating edge setter is used on the better grades of work, for which the rotary machine is not adapted and is never used.

Mr. GREGG. I offer copy of an agreement dated November 1, 1897, between the Lincoln Sewing Machine Company and the Goodyear Shoe Machinery Company, whereby the Lincoln Company agreed to sell to the Goodyear Company certain of its property, including machinery, tools, jigs, patterns, drawings, etc.

(Copy of this agreement is marked "Plaintiff's Exhibit 79."

Mr. GREGG. I offer copy of an agreement dated April 6, 1900, between the United Company and the Lincoln Sewing Machine Company, whereby the Lincoln Company sold and assigned all rights and interests to which it was entitled from the
67 Goodyear Company under the agreement of plaintiff's Exhibit 79, for which the United Company paid $33,075, of which $2,450 was paid in cash and $30,625 in common stock of the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 80.")

The WITNESS. By the agreement of plaintiff's Exhibit 80, the United Company acquired no machines. They had already been acquired by the Goodyear Company prior to the organization of the United Company. The agreement dated November 1, 1897, plaintiff's Exhibit 79, between the Goodyear Company and the Lincoln Sewing Machine Company provided, roughly stated, for payments by the Goodyear Company to the Lincoln Company proportionate to the amounts of the dividends declared by the Goodyear Company on its own stock. That agreement ran for forty-nine years. This transaction between the Lincoln Company and the United Company (plaintiff's Exhibit 80) was simply a liquidation of the obligation to make those payments which the United Company had inherited from the Goodyear Company. That was the only subject matter of this transaction. The United Company acquired absolutely nothing new.

Mr. GREGG. I offer copy of an agreement dated June 30, 1900, between the United Company and Theophilus King, Henry Tolman, and Eleazer Kempshall, owners of the majority of the stock of the Boston Fast Color Eyelet Company. This agreement provided for the formation of a new company, the United Fast Color Eyelet Company, with a capital of $1,500,000, and for the transfer of the business and assets of the Boston Fast Color Eyelet Company to the new company. King, Tol-

man, and Kempshall were to receive $155,000 of preferred stock of the new company, and the United Company $1,000,000 of the common and $145,000 of the preferred stock, and the United Company also agreed to pay King $35,000 in cash. The agreement further provided that the vendors agree to transfer inventions relating to covered eyelets or the manufacture or insertion thereof which they might make or acquire within a period of fifteen years after the date of the agreement.

(Copy of this agreement is marked "Plaintiff's Exhibit 81.")

The WITNESS. At the date of the agreement of plaintiff's Exhibit 81, neither the United Company nor any of its associated companies was engaged in the manufacture of eyelets or of machinery for manufacturing eyelets. The United Fast Color Eyelet Company is now engaged in business and always has been since that date. The name of the Boston Fast Color Eyelet Company was preserved in the United Fast Color Eyelet Company. That name was a very valuable asset; it had designated this type of eyelet since it was invented.

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Mr. GREGG. I offer copy of an agreement dated June 30, 1900, between Theophilus King, Henry Tolman, and Eleazer Kempshall and the United Company, whereby the United Company acquired from King, Tolman, and Kempshall 60,000 shares, a majority of the capital stock of the Enamel Eyelet Company, for which the vendors were to receive $75,000 in preferred stock of the United Fast Color Company. King, Tolman, and Kempshall agreed not to enter into any business in competition with said enamel eyelet business for the period of fifteen years, and to assign any inventions relating especially to enamel eyelets which they should make or acquire within said period of fifteen years.

(Copy of this agreement is marked "Plaintiff's Exhibit 83.")

(Copies of other agreements connected with the foregoing acquisition are marked "Plaintiff's Exhibits 82, 84 and 85.")

The WITNESS. Both the Boston Fast Color Eyelet Company and the Enamel Eyelet Company were engaged in business at that time in the manufacture and sale of eyelets; that is, the Enamel Company was endeavoring to engage in the manufacture and sale of patented enamel eyelets. Their enamel eyelets were of an entirely different type from the fast-color eyelet. The Boston Fast Color Eyelet Company was selling an eyelet, covered by a patent granted in 1896, which was much more expensive than the enamel eyelet and was used only on the highest grade of shoes, never at any time on more than ten per cent of the shoes made. The distinctive characteristic of the eyelet made by the Boston Company is the thick celluloid

covering which is molded over the flange of the metal barrel—that never wears down to the metal and always retains its color. To use an apt advertising expression, it "never wears brassy." The celluloid makes it expensive, so that it has never been used except in the better grades of shoes.

69 The enamel eyelet is of an entirely different type and is used in the cheaper grades of shoes. It is formed by coating the metal flange with enamel, that flange being formed with the desired contour. This enamel wears off after a time, leaving a brassy appearance. That, of course, is entirely out of the question in the higher grade of shoes, just as the fast color eyelet is out of the question in the lower grade, on account of its much greater cost.

As to whether an eyelet can be used on any kind of a shoe—yes, if one wishes to pay for an expensive eyelet in a cheap shoe. The eyelet manufactured by the Boston Fast Color Eyelet Company was much more expensive than the one manufactured by the Enamel Eyelet Company. I can't tell you at this time what would be the difference in cost between the eyelet put out by the Boston Fast Color Eyelet Company and the eyelet put out by the Enamel Eyelet Company; I should suppose two or three times as much. I can't tell you how much the Boston fast color eyelet costs; I would be glad to get the figures. I don't know how much the eyelets cost for a shoe; I have no occasion to know. If desired, I would be glad to find out. As to whether they would cost as much as a cent, I can't even guess; I have never had any occasion to investigate that.

There was no competition whatever between the Boston Company and the Enamel Company. The same people owned the two companies and the two acquisitions were one transaction.

Mr. GREGG. I offer copy of an agreement dated June 19, 1901, between John C. Rhodes and John B. Rhodes, doing business under the name of J. C. Rhodes & Company, and the United Company, whereby the business, all the assets and property, all the patents and inventions, all secret processes and other trade secrets of that concern were acquired by the United Company for $575,000 in its capital stock.

70 (Copy of this agreement is marked "Plaintiff's Exhibit 91.")

The WITNESS. In June, 1901, J. C. Rhodes & Company were engaged in the manufacture of a patented enamel eyelet, which was the one in general use at that time. All the eyelets about which I have testified were patented. Both the Rhodes eyelet and the Enamel eyelet were patented, and as a matter of fact

each company was infringing the other's patent. The Enamel Company's eyelet was never a commercial success.

PUTNAM, J. You would not deny that they were entitled legitimately to gather in a certain amount of eyelet business?

Mr. GREGG. I suppose they were entitled, the same as any other concern would be, to buy another branch of the business, but we have alleged in the petition that each and every one of these acts, all taken together, was a part of a plan to monopolize.

I offer copy of an agreement dated January 30, 1901, between Willard B. Hosmer, Sidney W. Winslow and the United Company, whereby the United Company acquired for its French and German subsidiary companies the property and good will for the Continent of Europe of the Bay State International Shoe Machinery Company, paying therefor approximately $25,000 in preferred stock of the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 86.")

The WITNESS. The Bay State International Shoe Machinery Company was not doing any business in this country. The only business that it had done was in England. That company had a welter and a stitcher and, I think, a rough rounder. Possibly it had one or two others; I can't state that from memory. At that time the United Company had welters and stitchers. I don't know whether or not the Bay State Company was shipping machinery from the United States to foreign companies.

Mr. GREGG. I offer copy of an agreement dated September 20, 1900, between Simon Ross and the United Company.

71 Said Ross and one W. F. Harmon owned all the capital stock of the Ross-Moyer Manufacturing Company, of Cincinnati, Ohio. After reciting that the United Company had agreed to purchase all the shares of the Ross-Moyer Manufacturing Company, the agreement provided for the employment of Ross by the United Company, and for the conveyance by Ross to the United Company of inventions relating to shoe machinery which he had made but had not patented, and such inventions which he should thereafter invent within ten years. It also contained a covenant by Ross not to engage in or assist in competition with the United Company for a period of ten years.

(Copy of this agreement is marked "Plaintiff's Exhibit 87.")

The WITNESS. The Ross-Moyer Manufacturing Company had been engaged in business for many years and was putting out about twenty machines of what are now known as the general department type, including edge trimmers, edge setters, heel scourers, and a beading machine. At that time the United Company was putting out the rotary edge setter of which I have

spoken, and edge trimmers; but I think it did not have a heel scourer at that time. I can not enumerate all of the machines from memory but will be glad to produce a list. The acquisition of these machines was the first step toward the creation of the United Company's general department. The Ross-Moyer Company had quite a large business and had been agents for all the constituent companies of the United Company except the Goodyear Company. The Ross-Moyer Company is still engaged in business. I do not know whether Mr. Winslow is its president.

Mr. GREGG. I offer copy of a bill of sale dated February 2, 1901, given by the Swain-Fuller Manufacturing Company to the United Company.

(Copy of this bill of sale is marked "Plaintiff's Exhibit 88.")

The WITNESS. The principal business of the Swain-Fuller Manufacturing Company was manufacturing and putting out a machine known as the Star leveling machine for turn shoes. It had some miscellaneous machines of the general department type, of which I have not a list. It was a very small business. At this time the United Company was not putting out turn leveling machines, and it would be impossible to use any machine that the United Company then had on turn shoes. The Star machine could not be used with success or with commercial profit on other work. It was too light and exerted too light a pressure for Goodyear work. The Swain-Fuller Company is not now engaged in business. Its principal machine, that Star machine, and such other of the general department type machines as the United Company needed in its business, were taken over by the United Company.

72

Mr. GREGG. I offer copy of an agreement dated February 15, 1901, between Mellen Bray and the United Company, whereby the United Company acquired control of the capital stock of the Globe Sewing Machine Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 89.")

Mr. CHOATE. We will agree that there was paid for that stock United Company stock of the value of $20,000.

The WITNESS. In February, 1901, the Globe Sewing Machine Company had a welting machine, a stitching machine, and an experimental rough rounding machine. At that date the United Company had machines for performing similar work. I think the Globe Company is not now in business. I have no doubt that it went out of business when it sold the patents on its machines to the United Company.

Mr. GREGG. I offer a copy of a bill of sale dated March 25, 1901, given by the Boot & Shoe Sole Laying Company to the United Company, of all the property, business, and good will of

the Sole Laying Company, including all its machinery, tools, special tools, patterns, patents, applications for patents and inventions.

(Copy of this bill of sale is marked "Plaintiff's Exhibit 90.")

The WITNESS. The Boot & Shoe Sole Laying Company was manufacturing and putting out a patented sole laying machine known as the Boston sole layer. That machine was used, after the welting operation, for temporarily attaching the outer soles of Goodyear welt shoes, preparatory to the rough rounding and channeling operation and the outsole stitching. It is
73 extremely undesirable and is not permitted to drive any fastening through the outer soles of Goodyear welt shoes so that it has always been the practice to attach the soles temporarily for the purpose of holding them in place during those succeeding operations, by means of cement. This operation is known as sole laying. The sole is first coated with cement and then the machine presses the sole upon the bottom of the shoe by a properly shaped mold or pad, with sufficient pressure to conform the sole to the bottom of the last, which is then in the shoe. At the time of this acquisition the United Company had an inferior machine of a different type for doing this work.

The Boot & Shoe Laying Company is not now engaged in business; its business was taken over and developed by the United Company.

Mr. GREGG. I offer copy of an agreement dated December 14, 1901, between the United Company and Morley Button Manufacturing Company, a corporation engaged in manufacturing eyelets used in the manufacture of shoes.

(Copy of this agreement is marked "Plaintiff's Exhibit 92.")

The WITNESS. The Morley Button Manufacturing Company was primarily a button manufacturing company, manufacturing and selling buttons. In addition to this button business it was engaged in the business of manufacturing and selling a patented enamel eyelet. At that time one of the United Company's subsidiary companies was engaged in manufacturing and selling a patented enamel eyelet of a different type. The United Company acquired only the eyelet business of the Morley Company, and that company is now engaged in the business of manufacturing and selling buttons and similar articles as before. It is not now engaged in the eyelet business.

Mr. GREGG. I offer copy of an agreement dated February 15, 1902, between the United Company and Oliver A. Miller, engaged in the manufacture of treeing machines, whereby the
74 United Company acquired his treeing machine business for $160,000. The agreement provided that the vendor

should not at any time within fifteen years engage directly or indirectly in the business of manufacturing or dealing in treeing machines or parts thereof. However, the vendor reserved to himself the right to manufacture and sell domestic or retail boot or shoe trees, polishers or holders, and lasts, followers or foot forms.

(Copy of this agreement is marked "Plaintiff's Exhibit 93.")

(Assignment of Letters Patent, dated February 11, 1902, from Miller to United Company, and another supplementary agreement dated February 11, 1902, are marked "Plaintiff's Exhibits 94 and 95.")

The WITNESS. At the time of the acquisition of the business of Oliver A. Miller the United Company was not engaged in the manufacture of treeing machines. That business has been continued by the O. A. Miller Treeing Machine Company, of which Mr. Hannigan, a minority stockholder, is manager. The majority of the stock of the O. A. Miller Company is owned by the United Company.

Mr. GREGG. I offer copy of an agreement dated June 30, 1902, between the United Company and George H. Daniels, Silas E. Simonds, and Winslow M. Warren, owners of the capital stock of the Marlboro Awl & Needle Company, whereby the United Company acquired the business and assets of the Marlboro Awl & Needle Company, which was engaged in the manufacture of awls and needles used in the manufacture of shoes, the vendors agreeing to take stock in payment therefor in a new corporation to be formed to take over the going business.

(A copy of this agreement is marked "Plaintiff's Exhibit 96.")

Mr. GREGG. I offer copy of an agreement dated June 30, 1902, whereby the United Company agreed to employ George H. Daniels, mentioned in Exhibit 96.

(Copy of this agreement is marked "Plaintiff's Exhibit 97.")

75 The WITNESS. In June, 1902, the Marlboro Awl & Needle Company was making and selling needles for the McLay sewing machine, hand awls, and rawhide mallets. At that time neither the United Company nor any of its subsidiary companies was manufacturing needles of any kind or any hand awls or any rawhide mallets. To a very limited extent we were making some awls to be put into our own machines when they were shipped out. The business of the Marlboro Awl & Needle Company has been continued by the United Awl & Needle Company at West Medway, Massachusetts. I do not know who is president of the United Awl & Needle Company. I have no

reason to question the statement in the petition that Mr. Winslow is its president.

Mr. GREGG. I offer copy of an agreement dated September 25, 1902, between the United Company and Arthur Fuller, owner of the majority of the capital stock of the American Sole Laying Machine Company, engaged in the manufacture and sale of machines for laying or leveling the soles of shoes, whereby the United Company acquired the property of the American Company for $5,200.

The agreement further provided that Fuller should not at any time within ten years, directly or indirectly, engage in any business relating to the manufacture or sale of machines for laying or leveling soles.

(Copy of this agreement is marked "Plaintiff's Exhibit 98.")

The WITNESS. The American Sole Laying Machine Company were putting out a two-form sole laying machine which they were manufacturing under a license from the Tripp Giant Leveler Company under the Cutcheon patent. At this time the United Company was putting out an inferior sole-laying machine known as the Rotary Sole Layer, and was putting out the single sole layer which had been obtained from the Boot & Shoe Sole Laying Company, but the United Company was unable to make a double or two-form machine of that, because such a machine would infringe the Cutcheon patent, which had been litigated and sustained. We desired to turn this single machine into a double machine and we were able to do that after this transaction, in which we acquired the license which the American Company had under the Cutcheon patent. Counsel advised us that
76 this license was assignable. After this transaction the business of the American Company was carried on by the United Company in its Goodyear Department.

Q. And the American Sole Laying Machine Company was discontinued as a going concern? That corporation is not now engaged in business itself?

A. The mere corporate existence of that concern may have been discontinued.

Mr. GREGG. I offer copy of an agreement dated October 1, 1902, between the United Company and William J. Young, whereby the United Company acquired all his letters patent in all countries, other than the United States and the Dominion of Canada, relating to machines for use in the manufacture or preparation of heels. The agreement further provided in substance that the vendor should not engage, directly or indirectly, in competition with the United Company for a period of fifteen years in any country other than the United States and the Dominion of Canada, and

that he would convey to the United Company all inventions and improvements that he should make or acquire within the period of fifteen years in any country other than the United States or the Dominion of Canada relating to machinery for the manufacture or preparation of heels.

(Copy of this agreement is marked "Plaintiff's Exhibit 99.")

The WITNESS. The subject matter of this agreement with Young was a heel compressor, which compresses the heel before it is applied to the shoe, forcing the lifts together so that there will not be cracks between them. Young had preceded the United Company by several years in the development of a satisfactory heel-compressing machine.

The only thing acquired by the United Company in this transaction was Young's English and German patents, under which our foreign companies had agencies. At this time our foreign companies had been putting out Young's machines for a number of years. They had been agents for his machine. The United Company had not shipped a heel-compressing machine to England or Germany, the countries where Young's patents were taken, for a period of over ten years.

Under the requirements of the German patent law it was necessary, in order to maintain Young's German patent, to
77 manufacture his machine in Germany right after this time, and Young had no facilities for manufacturing machines in Germany, while the United Company had a factory.

We obtained nothing from Young except these foreign patents. At this time the United Company was just developing a heel compressing machine known as the No. 4 heel compressing machine and had put out some in this country, but had sent none of them abroad.

Mr. GREGG. I offer copy of an agreement dated November 20, 1902, between the United Company and George A. Smith, of Philadelphia, Pennsylvania, owner of the majority of the capital stock of the George A. Smith Machinery Company, whereby the United Company acquired the property, assets, and business of the Smith Company and agreed to pay therefor the inventory value of the property, the amount so fixed and paid being $38,790.79. The agreement further provided that the vendor would not within ten years engage in the business of making or selling shoe machinery or assist any other person in so doing.

(Copy of this agreement is marked "Plaintiff's Exhibit 100.")

The WITNESS. The George A. Smith Machinery Company was agent for the United Company machines, except the Goodyear machines, as it had previously, before the formation of the

United Company, been agent for all the predecessors of the United Company except the Goodyear Company. That business was taken over by the United Company. It was also putting out one machine known as the Boss spring heel scarfing machine, which was the only machine that it had. The United Company was not putting out any machine for doing similar work.

After the acquisition Mr. Smith continued his business in selling cut soles and findings, the part of the business which the United Company did not acquire. The rest of the business was continued by the United Company in its various departments.

Mr. GREGG. I offer copy of an agreement dated December, 1902, between the United Company and George A. Emerson and William R. Sampson, doing business under the name of George W. Emerson & Company, whereby the United Company acquired their business for $41,500, and the vendors agreed not to enter into competition with the United Company for a period of fifteen years, and to disclose to the United Company future inventions made within that period.

78

(Copy of this agreement is marked "Plaintiff's Exhibit 101.")

The WITNESS. The principal business of the firm of George W. Emerson & Company was manufacturing and supplying lasts and forms for sole leveling machines of the "Giant" type. The United Company was developing a machine of that type at that time. That firm was also manufacturing a tip scourer for use in repairing the tips of patent leather shoes, a power spring heel scarfer and a heel burnishing machine used for putting the bright finish on a heel, the last step in its manufacture.

In lasting patent leather shoes the patent leather is frequently broken around the toe and the tip scourer is used to remove the damaged enamel, as shown by defendant's' Exhibit 13, a shoe on which that machine has operated; the next step will be the application of another coat of enamel over the portion on which the machine has operated. A spring heel scarfer is used in the manufacture of the type of child's shoe known as a spring heel shoe, such as defendants' Exhibit 14. The machine bevels off the front end of the "spring heel lift," which is inserted between the heel end of the sole and the upper, so that the sole can be bent over the front end of the lift without too abrupt a bend.

The United Company or one of the companies controlled by it was putting out a patented heel burnishing machine comprising a metal wax applying tool provided with yielding metal fingers. Defendants' Exhibit 11 is one of the United tools. That was the only type of heel burnishing machine which the United Company was putting out. The Emerson machine, also patented, was of a different type, and had a soft-surfaced tool cov-

ered by canvas, a tool of very different character from the metal tool. Defendants' Exhibit 12 is one of the Emerson tools.

79 The United Company was putting out no machine for doing work similar to that of the Emerson tip scourer. The United Company had a machine for doing work similar to that of the Emerson spring-heel scarfing machine; it was the hand-operated machine which had been acquired from the Smith Company. The Emerson machine was a power-operated machine and the United Company did not have any power-operated spring-heel scarfing machine.

The Emerson Company has been discontinued as a going concern, but its business has been continued and is now carried on by the United Company in several departments.

Mr. GREGG. I offer copy of bill of sale dated July 1, 1902, of the T. A. Norris Machine Company, whereby the United Company acquired all machines, machinery, tools, jigs, etc., belonging to the Norris Company for $11,536.78.

(Copy of this bill of sale is marked "Plaintiff's Exhibit 102.")

The WITNESS. The business of T. A. Norris Machine Company was chiefly in second-hand machines. They manufactured or had manufactured for them a tip punch, a welt-cutting machine, a McKay sewing machine, a McKay channeling machine, a heel-gouging machine, and a fairstitch loop-cutting machine.

PUTNAM, J. Did this company have any typical or leading machines, or simply dealing in whatever it could find?

Mr. GREGG. I think this company was more of a dealer than anything else, was it not, Mr. Howard?

A. Yes; the tip punch was their most prominent machine and one that the United Company was glad to have, as it had no tip punch at that time, and had no machine for doing similar work. This machine was for the purpose of forming ornamental perforations in the tips of the uppers. The United Company had no machine for doing work similar to that of the Norris welt-cutting machine, which is a machine for cutting leather into strips of the width of welting. Excepting the machines

80 and parts at Frankfurt, Germany, which the United Company had acquired from the Stanley Manufacturing Company, it was doing nothing with the McKay sewing machine.

Mr. GREGG. I offer copy of an agreement dated February 18, 1903, between the United Company and William B. Cross, owner of the majority of the capital stock of W. W. Cross & Company, Incorporated, whereby the United Company acquired its business of making and selling nails and tacks, for $50,000.

(Copy of this agreement is marked "Plaintiff's Exhibit 103.")

The WITNESS. At that time W. W. Cross & Company was making nails and tacks and was not making shoe machinery. So far as I know, neither the United Company nor any of its subsidiaries was at that time engaged in manufacturing nails and tacks that were used in connection with its machines.

Mr. GREGG. I offer copy of an agreement dated May 6, 1903, between the United Company and the estate of John K. Krieg and others, under which the United Company acquired the business of J. K. Krieg & Company, of New York, engaged in the manufacture and sale of shoe machinery and shoe manufacturers' goods, findings, etc. The agreement provided that the vendors should not for a period of fifteen years engage in the shoe machinery business, except as employees of the United Company, or except in selling supplies to retail shoe stores or cobblers.

(Copy of this agreement is marked "Plaintiff's Exhibit 104.")

(A letter dated January 23, 1903, from the estate of J. K. Krieg to the United Company, submitting a proposition for sale of the business of J. K. Krieg & Company to the United Company is marked "Plaintiff's Exhibit 105.")

The WITNESS. J. K. Krieg & Company were local agents for parts and supplies for United Company machines, except the Goodyear machines, and had been for years, having been local agents of the Consolidated & McKay Company and the
81 McKay Shoe Machinery Company before the United Company was formed. The United Company took over what they had as agents, and two or three machines which they were putting out in a small way, which were manufactured for them by other parties. These were a patented heel seat rounding machine, a Louis heel scarfing machine, and I think two or three types of embossing machines. The United Company was putting out a heel seat rounder of an entirely different type, which was simply an edge trimmer with a larger cutter. The Krieg machine was built especially for the work, and later we built that type of machine.

The Louis heel scarfing machine was used to cut from the grain side of the outsole a strip of leather to be bent up over the undercut breast surface of a Louis heel. That work required a specially constructed machine. The scarfer which the United Company had previously acquired did not perform that operation, being merely a very simple machine for beveling off the front edge of a spring heel lift. Defendants' Exhibit 15 is a sample of the product of the Louis heel scarfing machine. I think the United Company had embossing machines at that time. The Krieg Company was a little concern employing only five men.

Mr. GREGG. I offer copy of an agreement dated October 20, 1903, between the United Company and Joseph P. Curtis, whereby the United Company acquired his business and inventions in cementing machines, agreeing to pay $500 in cash, and royalties of $10 on each machine put out embodying his inventions, until the aggregate royalties amounted to $5,000. The agreement provided for the conveyance of future inventions made by Curtis relating to cementing machines.

(Copy of this agreement is marked "Plaintiff's Exhibit 106.")

The WITNESS. The Curtis machine was for the purpose of cementing a lining to a part of an upper. The United Company then had a machine known as a cementing machine, but it was for the purpose of cementing a tap sole to the outsole before the sole was attached to the shoe, and the Curtis machine could not possibly be used for that purpose. The United Company's machine could, under no circumstances, be used for the work for which the Curtis machine was intended. It was entirely unadapted for that work.

82

Mr. GREGG. I offer copy of an agreement dated January 1, 1904, between the United Company and Fred H. Perry, whereby the United Company agreed to employ Perry as an inventor for a period of not less than a year. Perry agreed to convey to the United Company any inventions and improvements which he should make relating to shoe machinery for a period of five years from the termination of his employment by the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 107.")

The WITNESS. Mr. Perry is now employed by the United Company.

Mr. GREGG. I offer copy of an agreement dated January 1, 1904, between the United Company and Joseph W. Leary, of Lynn, Massachusetts, whereby the United Company acquired from Leary his business of dealing in shoe machinery, devices and supplies, cement, blacking and stains, for a consideration of $3,052.72.

The agreement further provided that the United Company should employ Leary for five years, and that he should convey to the United Company and its successors all inventions and improvements which he should make or acquire within ten years from the date of the termination of his employment by the United Company, and that for the same period he would not engage in any business which competed or interfered with the business of the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 108.")

The WITNESS. Leary was not manufacturing any machines. He was dealing in a very small way with second-hand stitching room machinery; that is, sewing machines for sewing together the parts of an upper before the bottoming room operations.

83 Leary also had a very small business in supplying cements and blackings to shoe manufacturers, and he was agent for the United Company's Amazeen skiving machine. He handled nothing but second-hand machines. So far as I know he never had in his possession any machines other than second-hand stitching room machinery and the Amazeen machine, which he was selling for the United Company.

Mr. GREGG. I offer copy of an agreement dated January 23, 1904, between the United Company and the F. G. Farnham Brush Manufacturing Company, of Honesdale, Pennsylvania, and Frank G. Farnham, whereby the United Company acquired the business and Letters Patent of the Farnham Company, engaged in the manufacture and sale of brushes, sleeves, collars, hubs, fillers, bristles, etc., used for finishing boots and shoes, paying therefor $25,915.

The agreement further provided that the vendors would not engage, directly or indirectly, or in any way assist in any competition, in any country, or financially assist any other person or corporation to compete with the United Company or its successors for a period of fifteen years, and that the vendors would convey to the United Company any inventions which they should make or acquire within fifteen years relating to brushes, fillers, hubs, sleeves, collars, bristles, and fibre used in the finishing of boots and shoes.

(Copy of this agreement is marked "Plaintiff's Exhibit 109.")

The WITNESS. At that time the Farnham Company were putting out Tampico brushes for the cut-glass trade. That was their principal business. They were also doing a very small business in shoe brushes.

The United Company was doing nothing in the cut-glass trade, but was putting out brushes obtained from the S. A. Felton Sons Company, and was also putting out sleeves, collars, and hubs. Those go with the brushes, as part of the brushes, to hold them together. The similar articles which the United Company was supplying were very inferior. Defendants' Exhibit 16 is

84 a sample of the Farnham brush with the sleeve and collar. Such brushes are used for cleaning and polishing on almost all parts of the shoe at one time and another, being constructed of different sizes and shapes and with different sorts of bristles for the various operations.

Mr. GREGG. I offer copy of an agreement dated May 2, 1904, between the United Company and the American Glue Company, whereby the United Company acquired the exclusive agency for the United States and Canada for the sale of all sandpaper made for or by the American Glue Company for use in the manufacture of boots and shoes. The agreement recited that the United Company had previously acquired a similar agency for Europe.

(Copy of this agreement is marked "Plaintiff's Exhibit 110.")

The WITNESS. I never heard of any agreement between the United Company and the Union Sandpaper Company, and never heard of Herman Behr. I do not have anything to do with the sandpaper business of the United Company and know nothing about it except as I learn about many of these things in the course of my business in the patent department. I do not know of any patents on sandpaper.

Mr. GREGG. I offer copy of an agreement dated January 1, 1904, between the United Company and Zachary Taylor French, of Boston, engaged in the development of machines designed and used for the manufacture of boots and shoes, whereby the United Company agreed to pay for the property transferred by the agreement the sum of $15,000 in annual instalments of $1,500 each. The agreement further provided that French should assign any inventions relating to shoe machinery made or acquired by him within ten years, and that he would not, during that period, engage in competition with the United Company.

Mr. CHOATE. There wasn't any property transferred. It was a settlement of an old royalty agreement.

(Copy of this agreement is marked "Plaintiff's Exhibit 111.")

The WITNESS. Mr. French had for a great many years been in the employ of the United Company and its predecessor, the Goodyear Company, as an inventor, and later as superintendent of the Goodyear factory on Albany Street in Boston. His inventions were covered by a number of royalty agreements.

85 He did not wish to move to Beverly when the plant there was opened about this time, and therefore desired to leave the employ of the company. A settlement was made of the royalties which would become due under his various contracts; and the agreement of plaintiff's Exhibit 111 incorporates the settlement which was made at that time.

I think that it was about this time that French left the employ of the United Company. He is now a consulting engineer in Boston.

Mr. GREGG. I offer copy of an agreement dated June 11, 1904, between the United Company and Herbert L. Kimball and

Irving A. Hadley, of Lynn, Mass., copartners under the name of Kimball & Hadley, engaged in the manufacture of needles, awls, and drivers, whereby the United Company acquired the business of Kimball & Hadley, paying therefor $4,750. The agreement provided that the vendors should not for a period of ten years become interested in or assist any business consisting in whole or in part of the manufacture or dealing in needles, awls, or drivers.

(Copy of this agreement is marked "Plaintiff's Exhibit 112.")

The WITNESS. The principal business of Kimball & Hadley was making Goodyear needles—that is, the curved needles used on the Goodyear welter and stitcher. They were also making curved awls for welters and stitchers. The awl on those machines makes a curved hole for the needle.

At this time the United Company was not making Goodyear needles or awls. It was putting them out, but it was buying them from others, including Kimball & Hadley. The United Company was making for its metallic machines straight awls, which make a straight hole for a nail, and bear no resemblance to the curved awl used in a welter or stitcher.

The Kimball & Hadley business has been continued by the United Company. The concern known as Kimball & Hadley was discontinued for a while. It started up again, after a time.

Mr. GREGG. I offer copy of an agreement dated June 28, 1904, between the United Company and William B. Arnold,
86 owner of the capital stock of the Arnold Machine & Supply Company, whereby the United Company acquired the business of the Arnold Company relating to cementing machines and devices for $500 cash and a certain royalty to be paid on machines thereafter manufactured during the life of the patents transferred. The agreement further provided that Arnold should not within fifteen years directly or indirectly engage in any business consisting in the manufacture or dealing in cementing machines or devices, and that Arnold should convey to the United Company any inventions or improvements which he should make or acquire within fifteen years relating to such machinery or devices.

(Copy of this agreement is marked "Plaintiff's Exhibit 113.")

The WITNESS. The Arnold Machine & Supply Company was engaged in manufacturing a patented machine for use in connection with a reinforced insole, known as the Gem insole. Defendants' Exhibit 17 is a Gem insole, showing the completed work. The Arnold machine was used for applying cement to the flesh side of the leather insole blank for the purpose of securing the reinforcing canvas. The machine was useful in connection with the Goodyear system. We had no machine of that kind.

It had never been the practice before this machine was invented to apply cement to the insole rather than to the canvas. What had been used before was not a cementing machine; it was merely a cement pot through which the canvas was drawn on its way to the table, where it was cut off and applied to a piece of leather.

We had a machine known to the trade as a cementing machine, but, as I have previously explained, that machine was for the purpose of putting cement on a tap sole to secure it to the outsole, that being done before the outsole is attached to the shoe. It was absolutely impossible to use that machine for cementing canvas to an insole. A machine had to be specially constructed for that purpose, and the Arnold machine was useful only for that operation on Gem insoles.

87 Mr. GREGG. I offer copy of an agreement dated October 25, 1904, between the United Company and Irving E. Booth and Quentin W. Booth, doing business under the name of Booth Brothers, at Rochester, New York, whereby the United Company acquired their business relating to perforating machines, for which it paid $2,400 in cash and agreed to pay royalties which were to continue until they should aggregate $7,600. The agreement provided that the Booths should not engage in the manufacture or sale of perforating machines during the term of the patents assigned.

(Copy of this agreement is marked "Plaintiff's Exhibit 114.")

The WITNESS. At that time the United Company had a gang perforating machine; that is, one that makes all the perforations with one operation. That gang machine was intended for and used only on tip work. The tools required for that machine are very expensive.

The Booth perforating machine was a single tool machine, which operated step by step, and was intended for perforating the edges of vamps or any portion of the upper which varied so much in contour that the expense of the gang tools would be absolutely prohibitive. The Booth machine could be used for tip work, but the gang machine could not be used for vamp work except at very great expense, which would make it absolutely impracticable, involving the loss of money on every pair of shoes. Furthermore, the United Company's machine could not be used for perforating vamps because it was not big enough. It would have to be made very much larger to accommodate dies which could perforate all around the edge of a vamp.

(A vamp perforated by the Booth machine and a tip perforated by the gang machine are marked "Defendants' Exhibit 18.")

Mr. GREGG. I offer copy of an agreement dated October 1, 1904, between the United Company and Leopold J. Courteau, of Brockton, Mass., whereby the United Company acquired an assignment of his inventions and patents relating to machines for holding the linings of shoes during the process of
88 pasting the outer leather to the lining. The consideration was ten per cent of the net selling price of each machine or the payment of $1,000 in cash.

(Copy of this assignment is marked "Plaintiff's Exhibit 115.")

The WITNESS. At that time neither the United Company nor any of its associated companies had machines capable of being used for that purpose. Nothing ever came of this agreement. We were unable after the most strenuous efforts to make a practicable machine. During our experiments Courteau was often consulted and finally confessed himself that he saw no way to make the machine practicable.

Mr. GREGG. I offer copy of an assignment dated November 1, 1905, from Oscar A. Campbell and Samuel H. Nichols, doing business under the name of the Brockton Supply Company, at Brockton, Mass., covering inventions relating to machines for pulling lasting tacks, for which the United Company paid $21,724.

(Copy of this assignment is marked "Plaintiff's Exhibit 116.")

The WITNESS. The United Company was not at that time a putting out machines for pulling tacks. It was developing a machine, but had put none out. The machine it was developing infringed the patent acquired at this time. This instrument refers to tack pulling-machines only. At that time Mr. Campbell was anxious to go out of business. Nichols entered the employ of the company.

Mr. GREGG. I offer copy of an agreement dated January 31, 1906, between the United Company and the Smith Lacing Machine Company, of Boston, engaged in the manufacture of machines for lacing uppers, known as Smith lacing machines, whereby the United Company acquired the property and assets of the Smith Company for $117,500, of which $50,000 was paid in cash and the balance was to be paid in royalties on machines thereafter manufactured. The agreement further provided that the vendor should transact no further business and should liquidate.

Mr. CHOATE. That is not the gist of the agreement. The United Company agrees to do everything it can to extend the sale of the Smith Company machines.

89 (Copy of this agreement is marked "Plaintiff's Exhibit 117.")

(A bill of sale relating to this transaction is marked "Plaintiff's Exhibit 118.")

The WITNESS. The lacing machine is a wonderful machine, embodying a large number of patented inventions for automatically lacing and tying the opposed eyelets of a shoe upper, preparatory to the lasting operation, for the purpose of maintaining the edges at just the right distance apart during the lasting and subsequent operations. In the lasting operation the tendency of the strain exerted upon the upper is to pull apart the opposed edges of the upper and spoil the appearance of the shoe. Defendants' Exhibit 19 shows the work done by the Smith lacing machine.

Prior to this the practice had been for girls to insert strings through the eyelets and tie the ends of the string. This was handwork. In the time I have been telling about the operation of the machine it would have laced thirty or forty uppers. The lacing and tying is done by the machine in one operation as quick as a flash. The United Company had no machine for performing this operation or for the purpose of holding together the tops of the uppers of shoes.

Mr. GREGG. I offer copy of an agreement dated January 31, 1906, between the United Company and the Metallic Heel and Counter Company, of Boston, engaged in the manufacture of metallic heels and counters and machines, whereby the United Company acquired that property for $119,820, of which $52,320 was paid in cash and the balance was to be paid in royalties on Smith lacing machines. The vendor agreed to transact no further business and to liquidate.

(Copy of this agreement is marked "Plaintiff's Exhibit 119.")

The WITNESS. The United Company acquired from the Metallic Heel and Counter Company patented machines used in the manufacture of a patented metallic heel and counter.
90 This was used on very heavy shoes worn by miners, quarrymen, and others engaged in work of that character. Defendants' Exhibit 20 is a shoe to which this metallic heel and counter has been attached. At that time the United Company was not manufacturing similar heels and counters, and had no machinery that could be used for that purpose; nothing at all like it.

Mr. GREGG. I offer copy of an agreement dated September 4, 1906, between the United-Xpedite Finishing Company and Zotique Beaudry, of Lynn, Mass., whereby the United-Xpedite Finishing Company acquired his inventions and improvements relating to heel burnishing and finishing machines, paying therefor $12,500 in cash. The agreement further provided that the

vendor should disclose to the United-Xpedite Company all inventions, improvements, and Letters Patent relating to heel burnishing machinery which he should thereafter make or acquire and that he would not within a period of fifteen years engage in manufacturing or dealing in heel burnishing machines.

(Copy of this agreement is marked "Plaintiff's Exhibit 120.")

The WITNESS. Fifty-five per cent of the stock of the United-Xpedite Company is owned by the United Shoe Machinery Company. At this time the United-Xpedite Company had a heel burnishing machine, but the Beaudry inventions covered appliances which could be added to the Xpedite machines corresponding to which the Xpedite Company had nothing at all. The Beaudry inventions, covered by several patent applications, embodied an entirely new idea. We also acquired from Beaudry some allied inventions which went into the same machine. We did not acquire any inventions relating to edge-setting machines, although he is now trying to sell some to us.

Mr. FOWLER. I offer copy of a bill of sale dated November 1, 1907, from Irving E. Booth and Quentin W. Booth, doing business as Booth Brothers, at Rochester, New York, to the United Company, whereby the United Company acquired the business, machines, and patents of said Booth Brothers for a consideration of $71,284.20. The agreement further provided that the vendors should not within fifteen years engage in or assist in the manufacture or sale of machinery relating to the manufacture of shoes.

91

(Copy of this bill of sale is marked "Plaintiff's Exhibit 121.")

(Copies of supplementary agreements relating to this transaction, including an assignment of patents, an assignment of a license under an application for United States patent, and an assignment to the United Company of the rights acquired by Booth Brothers under an agreement with Thomas G. Plant dated May 11, 1907, are marked "Plaintiff's Exhibits 122, 123, and 124.")

The WITNESS. One of the machines acquired from Booth Brothers was a fudge edge making machine, a new patented machine for simultaneously making imitation stitches on the upper surface of the welt and setting the edge; that is, burnishing or polishing the edge. Defendants' Exhibit 30 is a shoe which has been operated upon by that machine.

Booth Brothers had a wheeling machine for making imitation stitch impressions. The Booth stitch burnishing machine burnished the impression made by the wheeling machine by means of a tool that was reciprocated longitudinally of the tool, crosswise of the welt. Those were used on welt shoes. De-

fendants' Exhibit 22 is a shoe which has been operated on by the stitch burnishing machine.

The Booth upper shaping machine was an ingenious patented device for holding the upper portion of a cloth topped shoe to facilitate the cleaning of the cloth tops, which get dirty in the process of manufacture Booth Brothers also had several machines for turning and beading uppers of shoes, of which the best was the Columbia.

92 The United Company had a wheeling machine, also an upper-beading machine which was particularly adapted for heavy work, although it could be used for light work. The Columbia machine made by Booth Brothers was a much better machine for light work. The United Company had none of the other machines which I have mentioned. The Rochester lacer was not acquired from Booth Brothers, but is put out by the Boston Machine Works.

The Booth business was continued by the Booth Brothers Company in Rochester in the same plant. It is controlled by the United Company.

93 Mr. FOWLER. I offer copy of an agreement dated December 1, 1908, between the United Company and William B. Rice, Harry L. Rice, John H. Richardson, and the Richardson Shoe Machinery Company, whereby the United Company acquired for $80,000 all of the capital stock of the Richardson Company, a concern engaged in developing and dealing in shoe machinery, especially McKay sewing machines and machines for dieing out leather, including clicking machines. The agreement provided that the vendors would not for a period of ten years engage directly or indirectly in the manufacture of or dealing in any machinery which should interfere or compete with the business of the United Company.

Mr. CHOATE. "With the business of the said Richardson Company or of the said United Company in such machinery?"

Mr. FOWLER. That of course is what the instrument shows and is correct. It further provided that the vendors should convey to the United Company inventions or patents relating to such machinery which they might make or acquire within a period of ten years.

(Copy of this agreement is marked "Plaintiff's Exhibit 125.")

Mr. FOWLER. I offer copy of an agreement dated December 1, 1908, between the United Company and John H. Richardson, a party to Exhibit 125, whereby the United Company agreed to employ Richardson at a salary of $2,500 per annum. The agreement further provided that Richardson should not within a period of ten years after the expiration of such employment

engage in competition with the United Company in the business of dealing in any shoe or leather working machinery or devices; and that he would convey any inventions which he might make or acquire during that period to the United Company.

(Copy of this agreement is marked "Plaintiff s Exhibit 126.")

The WITNESS. The Richardson Shoe Machinery Company had a greatly improved McKay sewing machine; that is, a McKay sewing machine which had been adapted to do better work with greater speed by their inventions.

94 At that time the United Company was putting out the old McKay machine and also a new one called the model B for doing the same work. The work of the Richardson machine was a great deal better. Both types were being used by shoe manufacturers. At that time the United Company was putting out the Richardson machine abroad, and not its own machines. Both companies were leasing their machines in this country.

The Richardsons did not manufacture any other machine. The petition refers to clicking machines, but that was only an experimental machine in which the Richardson Company had a half interest through a contract with the Essex Machine Company. The machine has never become commercial. The United Company cannot manufacture it because it is controlled by an outside concern.

Mr. FOWLER. I offer copy of a bill of sale dated April 30, 1908, from the Carver Cotton Gin Company conveying to the United Company that part of its business which related to shoe machinery. $16,883.79 was paid in accordance with an inventory of the stock. The agreement provided that the vendors should not within fifteen years compete with the United Company in manufacturing or dealing in shoe machinery.

(Copy of this bill of sale is marked "Plaintiff's Exhibit 127.")

The WITNESS. The particular machine acquired by this purchase was the Acme leveling machine, together with the patterns and tools for making it. This machine was especially adapted for leveling sample or freak shoes, as the movements of the machine were controlled entirely by hand.

The United Company's Goodyear automatic leveler was entirely automatic and had to be adjusted for all sizes and all shapes of lasts. That machine is useful on the general run of shoes going through a shoe factory, while the Acme machine is used on freak shoes and samples where the size and shape

95 change with almost every shoe. Such shoes could be leveled on the Goodyear machine, but probably with the expenditure of five or six times as much time on the part of the operator.

The Carver Company also had a vamp skiving machine particularly adapted for forming a bevel on heavy upper stock. The United Company had no machine corresponding to that machine. The United Company's Amazeen skiving machine was adapted for handling lighter leather, but was not adapted for heavy upper leather, such as the Carver vamp skiver was particularly equipped to handle. The Amazeen would not handle heavier leather successfully.

The Carver Company's Davis leatherboard skiver was for skiving leatherboard counters, the counter being the stiffening piece that goes in above the heel to keep the shape of the shoe. Their counter dividing machine cut up a piece of leatherboard into strips of the right width for counters. The United Company had no machines for doing the work of either of these two machines.

The United Company had a heel breaster and an edge setter, but I don't think it got such machines from the Carver Company.

Mr. FOWLER. I offer copy of an agreement dated January 20, 1909, between the United Company and Harry L. Rice and Fred LaChapelle, whereby the United Company acquired the properly described in the agreement for $10,000 in cash. The agreement provided that the vendors should convey to the United Company all inventions which they should make at any time within ten years relating to any methods, machinery, mechanisms, tools, or devices intended for use in the manufacture of boots and shoes, and that neither of them would, directly or indirectly, engage in any business which would interfere or compete with the business of the United Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 128.")

The WITNESS. Under this agreement the United Company acquired an experimental welting machine embodying a patented invention radically new. This machine put an
96 extra thread on the single thread side of the chain stitch formed by the machine, as shown in defendants' Exhibit 23, which comprises two illustrations of the improvement. That was entirely new. The purpose was to strengthen the "between substance," that is, the rib which projects from the insole and holds the upper to the shoe. In one sample of the exhibit the stitch is made loose and the extra thread is black. The other sample illustrates the stitch as it would be made in the manufacture of a shoe.

One experimental machine was being put together by these people; it had never been used in a shoe factory. The machine had not been put on the market at all. The United Company

has not yet put it on the market; it is still experimenting with this machine and has had it out to try in shoe factories two or three times. It takes a long time to develop one of these machines. No other machine was acquired by this purchase. The United Company was manufacturing and leasing two or three varieties of welting machines at this time, but without this improvement.

Mr. FOWLER. I offer copy of an agreement dated February 1, 1910, between the United Company and W. Eugene Ellis and Everett D. Chadwick, whereby the United Company acquired all the capital stock of the Ellis Lacer Company, a corporation engaged in developing and dealing in devices for temporarily securing together the tops of laced shoes while the same were being lasted, for a consideration of $125,000 in cash. The agreement further provided that the vendors would not, directly or indirectly, engage in any business in competition with the United Company, and that they would convey to the United Company all inventions which they might make or acquire within five years, adapted for the purpose for which Ellis lacers were designed.

(Copy of this agreement is marked "Plaintiff's Exhibit 129.")

97 The WITNESS. By this agreement the United Company acquired a wire lacing device, shown in defendants' Exhibit 24, a temporary fastening device for holding at a proper distance apart the opposed eyeletted edges of a shoe during the lasting and subsequent operations. This was not a machine, and the only machinery acquired was a machine for making the wire lacer in our own factory. We did not sell or lease this machine, but furnished the product of the machine to the shoe manufacturers.

The United Company was not then producing any wire lacing device. It is now putting out this Ellis lacer in large quantities. This was all the United Company acquired by this purchase, except the very valuable patents which control the Ellis lacer.

Mr. FOWLER. I offer copy of an agreement dated February 3, 1910, between the United Company and Alexander H. Lewis and Alfred J. Becht and others, whereby the United Company acquired for $60,000 cash the capital stock and business of the Wentworth Company, of Cincinnati, Ohio, a corporation engaged in the manufacture and sale of machines used in the manufacture of shoes. The agreement provided that the vendors would not within ten years engage in the business of manufacturing or deal-

ing in any machinery of the kind previously handled by the Wentworth Company.

(Copy of this agreement is marked "Plaintiff's Exhibit 130.")

The WITNESS. By this purchase the United Company acquired a machine for beating heel seats and a shank sticking machine.

After the lasting operation the edge of the upper and counter around the heel portion of the shoe stick out from the insole too far to allow the outsole to be placed on it smoothly. The heel seat beating operation is to prepare the heel end of the shoe for the outsole.

A shank sticking machine is used for attaching the shank piece to the insole by cement, the purpose of the shank being to stiffen the shank portion of the shoe. In Goodyear shoes all
98 metal fastenings are avoided so far as possible and this machine avoided the use of tacks to secure the shank to the insole. We did not get any other machines in this transaction.

At that time the United Company was manufacturing a heel beating machine which flattened the heel by hammer blows. That machine was discarded some time ago. The Wentworth machine had a rotary tool much like the Xpedite heel burnishing tool of defendants' Exhibit 11. That tool was in constant engagement with the work and it just flattened the heel down but did not beat the heel. The Wentworth tool had yielding fingers like the Xpedite tool, and really amounted to two Xpedite tools put together, so that it rubbed inwardly on each side of the heel. The Wentworth machine was successfully used on the Xpedite patents.

The United Company had no commercial shank sticking machine. It was experimenting on one with difficulty, because the Wentworth Company had a patent on theirs. The United Company eventually combined the best features of its experimental machine and the best features of the Wentworth machine in the machine which it is now putting out.

The business formerly carried on by the Wentworth Company was transferred to and carried on by the United Company.

Mr. FOWLER. I offer copy of a bill of sale dated February 23, 1910, from the B. F. Sturtevant Company to the United Company, whereby the Sturtevant Company conveyed to the United Company its business of manufacturing and dealing in peg wood and wooden shanks. The consideration was $52,185.

(Copy of this bill of sale is marked "Plaintiff's Exhibit 131.")

The WITNESS. By this purchase the United Company acquired a source of supply for the peg wood which it supplied for its

Davey pegging machine, and for the wooden shanks which it supplied in its findings department. The Sturtevant Company had a machine for making this peg wood and making shanks, but no machines that are used in the manufacture of shoes were obtained in this transaction.

Mr. FOWLER. I offer copy of an agreement dated September 30, 1910, between the United Company and Thomas G. Plant, whereby the United Company acquired all the inventions and patents, machinery, mechanisms, tools, and devices owned and controlled by Plant, and designed and adapted for use in the manufacture of shoes; and also a majority of the capital stock of the Thomas G. Plant Company, a shoe manufacturing corporation. The agreement further provided that Plant should assign to the United Company any inventions relating to shoe machinery which he should make or acquire within fifteen years, and especially that he would transfer the Letters Patent and applications for Letters Patent referred to in schedules attached to the agreement.

The agreement further recited that Plant was unwilling to sell his inventions and patents except upon the condition that the purchaser would also purchase all said shares of corporate stock, machinery, and other personal property above referred to, and would also enter into certain undertakings and agreements in reference to specified contracts and agreements of said Plant, and would compromise and settle all controversies and claims existing between the purchaser and said Plant by the dismissal of pending suits and the execution of mutual releases.

(Copy of this agreement is marked "Plaintiff's Exhibit 132.")

(Copy of a bill of sale dated September 30, 1910, from Thomas G. Plant to the United Company, transferring stock in the Thomas G. Plant Company, with certain memoranda attached thereto, is marked "Plaintiff's Exhibit 133.")

99

100 (Copy of a bill of sale dated September 30, 1910, transferring patents and inventions referred to in plaintiff's Exhibit 132, is marked "Plaintiff's Exhibit 134.")

(Copy of an agreement dated September 30, 1910, whereby the United Company agreed to indemnify said Plant in respect to any claims against him which might arise out of an agreement dated January 26, 1910, between said Plant and the Keighley Company, together with a copy of said agreement, is marked "Plaintiff's Exhibit 135.")

(Copy of a bill of sale dated September 27, 1910, transferring to the United Company all the right, title, and interest of Thomas G. Plant in certain letters patent and inventions enu-

merated in a list contained therein, is marked "Plaintiff's Exhibit 136.")

(Copy of a general release dated September 30, 1910, from Thomas G. Plant to the United Company, is marked "Plaintiff's Exhibit 137.")

(Copy of an agreement dated September 30, 1910, whereby Thomas G. Plant assigned to the United Company his contract to buy the business of Charles P. Stanbon, is marked "Plaintiff's Exhibit 138.")

(Copy of a general release dated September 30, 1910, from the United Company to Thomas G. Plant is marked "Plaintiff's Exhibit 139.")

(Copy of an agreement dated September 30, 1910, whereby the United Company assumed an agreement between Thomas G. Plant and the Stanley Manufacturing Company, is marked "Plaintiff's Exhibit 140.")

(Copy of an agreement dated September 30, 1910, qualifying a general release given by the United Company to Thomas G. Plant under date of September 23, 1910, is marked "Plaintiff's Exhibit 141.")

101 (Copy of an agreement dated September 30, 1910, whereby Thomas G. Plant assigned to the United Company two contracts, one with the Stanley Company and the other with the Stanley Manufacturing Company, is marked "Plaintiff's Exhibit 142.")

Mr. FOWLER. Your honors, in regard to the Plant transaction, we desire to examine our own witness; that is, we will have a witness of our own on the stand with reference to that, upon whom we desire to rely, and we do not wish to examine this gentleman in regard to that transaction.

I offer copy of an agreement dated November 22, 1910, between the United Company and Adam H. Prenzel, whereby the United Company acquired from Prenzel all of his inventions and patents relating to certain machines used in the manufacture of turn shoes for $8,000 cash and certain royalties on machines manufactured under said letters patent until they should have aggregated $75,000.

The agreement further provided that the vendor should convey to the United Company all inventions, improvements, and letters patent which he should thereafter make or acquire relating to the class of machines covered by the agreement.

(Copy of this agreement is marked "Plaintiff's Exhibit 143.")

The WITNESS. By that agreement the United Company acquired several machines which Prenzel had invented for use in producing a novel patented spring heel shoe, entirely different

from any spring heel shoe ever before known. It also acquired a machine for use in producing an infant's shoe, known as a "cack"; defendants' Exhibit 25 is a cack shoe. That machine was used, after the shoe had been finished, to press down the heel end of the sole so as to form a little heel, and at the same time it pressed in a heel seat piece to fill the space made by pressing down the heel end of the sole.

102 The numerous Prenzel inventions related to turn shoes and for the first time made it possible to sew the sole to the upper all the way around and produce a satisfactory product. Defendants' Exhibit 26 is a turn shoe made according to Prenzel's novel method. According to prior processes the heel end of the sole had not been sewed to the upper, and after the shoe was turned the heel end of the sole was nailed to the upper and to a heel seat piece put in to receive the ends of the nails. Defendants' Exhibit 27 is an old style spring heel shoe such as was made before the Prenzel improvements. Spring heel shoes are turn shoes.

The machines I have mentioned were the only machines acquired from Prenzel. The United Company had no machines for performing the special operations which were performed by the machines secured from Prenzel. It puts those machines out now and they are used by manufacturers.

Mr. FOWLER. I offer copy of an agreement dated December 19, 1910, between the United Company and Maurice V. Bresnahan, William H. Bresnahan, and John J. Donlan, doing business under the name of M. V. Bresnahan & Company, engaged in the sale of shoe machinery, whereby the United Company acquired the business of said concern for $25,000 in cash. The agreement provided that the vendors should enter the employ of the United Company and that none of them should engage, within ten years after the termination of their employment, in any business relating to the manufacture or sale of shoe machinery or devices, or any business which would in any way compete with the business of the United Company. The agreement further provided for the assignment to the United Company of any inventions or patents relating to shoe machinery which any of them should make or acquire within ten years after the termination of said employment agreement.

Mr. CHOATE. All of the parties entered the employment of the company—Maurice and William Bresnahan and Donlan.

103 Mr. FOWLER. Yes; it appears that they all entered the employment of the company.

(Copy of this agreement is marked "Plaintiff's Exhibit 144.")

The WITNESS. By this purchase the United Company acquired an experimental lasting machine embodying some inventions which the United Company itself was using in an experimental machine that it had out. It also acquired a heel burnishing machine embodying a novel patented device for spraying the wax on the heel burnishing tool.

The transaction further involved the settlement of a large number of suits which had been pending for many years between the United Company and Bresnahan's concern in the earlier days before he sold out his interests to Plant.

No machines were acquired from that concern other than the two I have named. The United Company did not then acquire, and never acquired from that concern, any leveling machine, sole layer, molders, or welting machine, or anything of that kind.

At this time the United Company was not making the machines acquired from the Bresnahan concern; they were patented machines. The United Company was making lasting machines and heel burnishing machines, but they did not accomplish the same results as the Bresnahan machines, because they did not have the patented inventions that were in the Bresnahan machines. The Bresnahan lasting machine was only experimental.

The United Company is experimenting with machines constructed under both patents acquired from Bresnahan, but has not yet put out any machines. There has not been time yet to make the machines commercial. The United Company has an experimental lasting machine running, embodying the inventions acquired from Bresnahan.

Mr. FOWLER. I offer copy of a bill of sale dated April 2, 1911, from Charles P. Stanbon to the United Company, whereby the United Company acquired for $122,735.82 the business of said Stanbon, who had been engaged, under the name of Charles

104 P. Stanbon & Company, in the manufacture and sale of machines used in the manufacture of shoes. The vendor agreed to enter the employ of the United Company.

(Copy of this bill of sale is marked "Plaintiff's Exhibit 145.")

The WITNESS. The most valuable thing acquired by the United Company in this transaction was a channel cementing machine, constructed particularly for cementing the channels of the soles of McKay sewed shoes. The machine was characterized by a device which lifted the channel lip off the body of the sole into the path of a cement-applying brush. The United Company had been in interference with Stanbon in the Patent Office and had lost before the Court of Appeals, the tribunal of

last resort, and had been unable to get out a satisfactory machine for cementing the channels of McKay shoes.

The United Company also acquired a very valuable folding machine, on which applications for patents were pending. This machine was of the step-by-step type—that is, after the upper had been skived, the machine was used to turn it over and press it down step by step. It was a very valuable machine which we are getting ready for the market.

We also got a perforating machine of the step-by-step type. This machine was similar to the one that we got from Booth, but it was capable of doing different work and it was faster than the Booth machine. It was not so good as the Booth machine on curved work, but was much faster on substantially straight work.

At this time the United Company was putting out an inferior channel cementer, and the Booth perforating machine, which was different from the Stanbon machine in the particulars I have mentioned. We were not putting out any folding machine.

(The following statements were made by counsel in the course of a discussion of the question:

Q. Mr. Howard, hasn't your company purchased a great many patents that have not been mentioned in this examination as yet? I am not calling your attention to any specific patent.

Mr. CHOATE. Mr. Gregg spent some months examining our books and papers, all that he wanted.

105 Mr. GREGG. These purchases that are recited in the Government's petition were taken from the agreements that we have here and the minutes of the board of directors and of the executive committee. What we are attempting to ascertain now is whether they bought out any other concern of which no record was made in the minutes. These original agreements that we have here resulted from an examination of those two records.)

Cross-examination:

The channel cementing machine acquired of Stanbon was particularly adapted for use on McKay shoes, and was not adapted for use on other kinds of shoes. It was a commercially successful device. We had been using the Stanbon device ourselves prior to the declaration of the interference, but after the declaration of the interference and the opening of the statements setting forth the respective dates of invention, the Patent Department immediately instructed that this device must be removed from all of our machines, and it stayed off all of our machines until the Stanbon applications were acquired. Prior to this transaction we had been trying all sorts of devices which

we thought would be free from infringement, but did not have anything that was satisfactory. We were very glad to be able to adopt this Stanbon device, and after its acquisition it was immediately furnished to customers and has been supplied in large numbers.

The Stanbon perforator was really adapted for doing embossing work. Embossing is going part way through the stock, ornamenting rather than perforating, the tool being heated. The United Company's Booth perforator was not adapted for doing embossing work. Some manufacturers liked one machine and some liked the other, depending upon the kind of shoes that they were producing. The perforating and embossing operations are solely for the purpose of making the shoe look better and have no useful purposes.

The United Company had no folding machine of any description. The Stanbon machine was only experimental, had
106 not been put out, and was a long way from a commercial machine when we took it. We have not got the machine quite commercial yet. Since we acquired it we have constantly been at work on it to perfect and get it into commercial condition. We have built several machines and have put out one machine after another, and we think we have got it pretty nearly right now. We have seldom worked more vigorously upon a machine than we have upon that one.

All the machines acquired from Stanbon are covered by patents.

This Stanbon transaction was carrying out the contract which Plant had made with Stanbon and which the United Company had assumed, as shown by plaintiff's Exhibit 132.

In connection with the M. V. Bresnahan & Company transaction there had been a large number of suits, as many as eight or ten, between Bresnahan and the United Company which had been pending for a number of years, nearly all suits for infringements of patents. That litigation was all pending at the time of this acquisition.

The Bresnahan experimental lasting machine was not being marketed at the time by Bresnahan and he was only trying it out. It has not yet reached the commercial stage.

The Bresnahan improvement on the heel burnishing machine related to the application of the wax. The United Company went to work to make that improvement commercial and give it to its customers. There was a patent application pending on this invention, and the United Company had nothing that would do what the mechanism embodying this invention would do.

The Prenzel method of sewing the spring heel seat in on a turn shoe was obsolutely new and a very great improvement over the old method. It had not existed before Prenzel made his invention. It was a shoe invention rather than a machine invention. It was patented, and immediately after the acquisition the United Company developed it and offered it to its customers.

107 Answering your general question as to the dealings of the United Company with its customers, in all cases the United Company furnishes all its machines and devices and improvements to all customers on exactly the same terms. They are all treated exactly alike, whether great or small, and all are offered the same opportunities and the same terms.

Before the acquisition of the Sturtevant Company the United Company had been buying from others, including the Sturtevant Company, the peg wood which it required for its pegging machines and the shank wood; that is, wooden shanks ready for use in shoes, which it supplied to its customers. By peg wood I mean peg wood in the form of a strip rolled up into coils, ready for use in our pegging machines.

By the acquisition of the Sturtevant plant we acquired a permanent source of supply from which we could get all the peg wood and shank wood that we needed, for which we were before entirely dependent upon others. That business has been continued and customers furnished with the product just as before.

The shank sticking machine and the heel seat beating machine of the Wentworth Company were both patented machines, and we obtained the patents at the same time. Before the invention of the shank sticking machine, the shank sticking operation had been done by hand. This machine was a new labor-saving device. We combined the best features of the Wentworth machine and of ours and made a better machine than either, and furnished that machine to customers.

Patent No. 929,178, named in schedule B of the Wentworth agreement, plaintiff's Exhibit 130, is the patent on the shank sticking machine. On that schedule are also enumerated two patents numbered 844,293 and 854,320, and possibly more, which cover the Wentworth shoe beating machine.

The Ellis lacer is being put on the market to our customers, and everybody who wants it, in large quantities. This was the first metal lacer that was of any commercial value, the first that ever got into use. It replaced the hand method.

108 Nearly all of the patents enumerated on schedule C of Exhibit 129, which is a list of patents owned by the Ellis Lacer Company, read upon all forms of the lacer. Some

read upon the form known as the Blucher lacer, and some read only upon the adjustable lacer, but most of them read upon all forms and cover the device of defendants' Exhibit 24 in all its features. We have several other patents, antedating these Ellis patents, which cover the Ellis lacer more broadly.

Of the applications listed on schedule A of the Rice and LaChapelle agreement, plaintiff's Exhibit 128, the first three applications cover the machine. The fourth application covers the seam made by the machine and the method of making that seam. These inventions involved the addition of an extra thread on that side of the chain stitch where there was but a single thread.

When we acquired the LaChapelle device he had made only one machine, which was experimental and far from being commercial. We have been working on it since we acquired it and have tried it out several times in a shoe factory, but it is not yet commercial. We are still at work with the purpose of developing it into a commercial machine.

As to the utility of this invention, in addition to strengthening the stitch it was believed that by this invention an economy could be effected by using a thinner and less expensive insole than could be used with the present commercial type of welting machine, which puts only one thread inside the channel.

The Carver Cotton Gin Company was engaged in the business of making cotton gins. Their business in the two or three shoe machines which I have described was a side business and not their principal business. They had got into it accidentally through having manufactured at one time or another machines on contract for parties who did not have shops of their own.

109 As to the Acme leveling machine, adapted for use on freak or sample shoes, every manufacturer has to manufacture samples to show to his jobbers. That is the way he sells his shoes. Its utility on sample shoes and on freak shoes is the peculiar advantage of the Acme leveler, which did not require any adjustment. After leveling a shoe of one kind, it could take a shoe of an absolutely different size and shape and operate upon it without any adjustment at all. The automatic leveler which the United Company then had was entirely automatic and consequently had to be adjusted for every size and shape. It was by far the best machine in existence for the regular work of a factory, but where every shoe that came to the machine was of a different size and shape it would take a great deal of time to effect the necessary adjustments between each shoe. Accordingly these two machines occupied quite different fields.

The United Company's Amazeen skiving machine was not adapted to do commercially the same kind of work as the Carver vamp skiver. The Amazeen machine is a light machine, adapted for doing light work. Defendants' Exhibit 28 is a sample of the kind of work that the Amazeen is designed to operate on. That is the vamp of vici kid, very light leather, for a lady's shoe, and the skiving operation is the beveling of the edge of that light, delicate leather. The Carver vamp skiver was a very much heavier machine, adapted and used for heavy leather. Defendants' Exhibit 29 is a sample of its work. It had to be very heavy in order to deal with this heavier stock, and it could not be used on light stock. The Amazeen machine could not be successfully used on heavy stock. It was too light to stand that work.

At that time the patents on the vamp skiver and the Acme leveler had expired. They were comparatively simple machines. The vamp skiver from the nature of its work did not require the delicate mechanisms which the Amazeen machines did.

110 The Carver Cotton Gin Company assigned to the United Company patent No. 619,921, February 21, 1899, covering a machine known as the "Adams top piece sanding machine," which was used to a very limited extent on the highest priced shoes for putting a finish on the top lift of the heel.

The principal property obtained from the Richardson Shoe Machinery Company was the inventions embodied in their improved McKay sewing machine and the patents on those inventions. That machine sewed the sole to the insole and upper of a McKay shoe. At that time the United Company was manufacturing a McKay sewing machine known as "Model B." We were marketing the Richardson machines in foreign countries exclusively, under an agency arrangement. All the machines that we put out abroad were purchased from the Richardson Company. We were not their agents in this country. Their machine was regarded, even by many of our experts, as a better machine than ours. European manufacturers demanded the Richardson machine and would not have our machine. In this country some were using our machine and some were using the Richardson machine.

After the Richardson machine was obtained the United Company immediately put several inventors to work with instructions to combine, each in his own way, the best features of the two machines. The experimenting was carried on very aggressively and an experimental machine was produced, which has been running for about a year in a shoe factory under constant supervision and now, after its weak parts have been strengthened

and the various changes have been made that have to be made during such a trial, this machine is about to be adopted. It is far superior to either the Richardson machine or our model B machine, and will be a commercial machine within a short time.

Referring to schedule D of plaintiff's Exhibit 125, comprising a list of the patents that were transferred to the United Company,

patents No. 710,612, No. 710,613, and No. 885,378 read

111 upon the Richardson sewing machine as it was put out.

A claim of one of these patents was believed to be infringed by our model B machine. That claim clearly covered a very important feature of the model B machine. We could not develop our machine without combining it with the Richardson machine, and the result of combining the patented inventions of both machines was to produce a better machine than either company alone could develop.

This McKay sewing machine was designed peculiarly for sewing the soles of McKay shoes, and there was absolutely no field for it on welt shoes. The stitching of a welt shoe is done while the shoe is on the last, while the last has to be removed from the shoe before the stitching of a McKay shoe. It is an indispensable feature of the McKay sewing machine that the horn must be inserted in the shoe, because the horn carries the thread, which comes from below up through the horn. A whirl in the tip of the horn carries the thread around the hook of the needle. It is accordingly impossible to attach a sole by a McKay sewing machine without removing the last, because part of the mechanism of the machine has to be inside the shoe during the sewing operation. That machine could not operate on a Goodyear shoe.

This is merely one illustration of the great variety of machines necessary for making the many different kinds of shoes. This distinction extends all the way through the bottoming room. For example, the wooden last stays in the Goodyear welt shoe throughout its manufacture and in all operations upon the bottom of a shoe where great pressure is exerted an entirely different mechanism is required, in view of the fact that the last is in the shoe and is easily breakable; whereas the McKay shoe goes through the factory without any last in it, and in such operations as leveling the sole and heel nailing an iron form is inserted inside the shoe which can receive any kind of pressure without any damage.

112 This explains in part the reason for the differentiation of the machines which are intended and adapted to operate on McKay shoes from those which operate upon Goodyear or other kinds, and vice versa. There are a great many machines which are adapted to operate and can operate only on a

particular type of shoe; and yet shoes of that type are manufactured in large quantities, so that manufacturers demand such machines and they are necessary to make a complete line of machinery for the trade.

John H. Richardson, a party to the agreement of plaintiff's Exhibit 126, was manager of the Richardson Shoe Machinery Company, and he came over to the employ of the United Company.

I have made an investigation to ascertain whether the Rochester lacer was acquired from Booth Brothers, and I find that the United Company never acquired that from any source.

The United Company had no machine for performing the operation performed by the Booth fudge-edge machine, which was used on light McKay shoes. Defendants' Exhibit 30, a light McKay shoe, illustrates the operation of that machine, which makes the ornamental imitation stitches on the upper surface of the sole edge, which look like milling, and simultaneously sets or burnishes the edge of the sole. This operation is done after all the bottoming operations have been performed. It is a finishing room operation and purely ornamental. These ornamental operations on shoes have increased very fast from year to year. They make the shoes very different looking articles and add to their selling qualities.

The Booth wheeling machine was used to define roughly the imitation stitch, preparatory to the stitch burnishing operation, and this machine, like the stitch burnishing machine, was used on Goodyear work. The only wheeling machine that the United Company had was adapted for use only on imitation welts; that is, McKay sewed shoes with a mock welt. There is a
113 type of shoe made which is McKay sewed with an imitation welt stitch around the edge to make people believe that they are welt shoes. Our wheeling machine was for use upon the McKay shoe and the Booth for use upon the Goodyear shoe.

An upper beading machine is used on uppers, the parts of which are sewed together wrong side out. The parts then have to be turned right side out and the seams beaten down. The machine comprises two appliances—one, tools for turning the parts right side out, and the other a hammer for beating down the seam, which is rounded when the parts are turned.

The Booth beading machines, the Columbia particularly, were better machines than ours. The machine which we had, the Ross-Moyer machine, was satisfactory on heavy work, but not for light or medium work, and for that work it has been displaced by the Booth machine.

The Booth stitch burnishing machine was used, after the operation of the wheeling machine, for the purpose of burnishing or giving a bright appearance to the imitation stitch on the upper face of the sole edge. It was used on welt shoes—never on McKays. The United Company had a machine by which it was trying to accomplish the same purpose by striking a blow upon the stitch through a wheel. We were putting this machine out but it was not successful. It was distinctly inferior to the Booth machine. After we got the Booth machine we used our machine for making the indentations first. Our machine was better for that work than the Booth wheeling machine, but it was very much inferior to the Booth stitch burnishing machine for putting the polish and final finish on the indentations.

The Booth upper shaping machine, for holding the uppers of cloth topped shoes while the cloth tops were cleaned, had been successful in its limited field and was sold through the United Company's general department after it was acquired. It was a simple contrivance, really a support for the shoe, and there is small demand for it. I think the patent had expired before the acquisition.

114 Referring to the patents enumerated in plaintiff's Exhibit 121, the Columbia beading machine was covered by patents No. 623,872 and No. 624,426; the wheeling machine by No. 826,352; the stitch burnishing machine by No. 845,939; the fudge edge machine by No. 852,703 and by application Serial No. 303,882.

The business carried on by the Booth copartnership was after this transaction carried on by a corporation in which the United Company acquired an interest. The trade was served better than before with the same machines, because there was added the selling facilities of the United Company and its service.

All the machines obtained from the Booths have been developed and furnished to its customers in large numbers by the United Company.

In the heel burnishing machine acquired from Zotique Beaudry there were three heel burnishing tools arranged in vertical alinement, one above the other, with space enough between each two adjacent tools to receive the heel of the shoe. The tools were of different characters to impart the different treatments successively required in burnishing a heel. The theory of the operation was that the workman would start with the shoe above the uppermost tool and would carry the shoe around each tool and between each adjacent pair of tools successively. The advantage was that during much of the operation two tools would be operating upon the heel at the same time.

85

At the time we acquired the invention we thought very highly of it, as evidenced by the price that we paid for it. We constructed several experimental machines, but we found quite soon that we were confronted by the serious difficulty that the operator would have to present the shoe at a number of different levels, and that the highest level was too high for his convenience and the lowest level too low. Operators are accustomed to
115 using a machine having but one tool, which is located at just the right height for the operator to handle the shoe and see what he is doing. There was only one tool properly located for the convenience of the operator in the Beaudry machine, or in any modification of it that we could devise. We tried in all sorts of ways to make it practicable, but the extreme inconvenience to which the operator would be put by a machine so organized finally condemned it as entirely impracticable.

The three applications for United States patents enumerated in plaintiff's Exhibit 120 all cover the heel burnishing machine acquired from Beaudry. Serial No. 191,247 covered the machine which I have described, and Serial Nos. 196,813 and 304,880 covered tools which Beaudry had on his machine. Those tools were new to us, as well as the machine.

The Smith lacing machine was an absolutely novel invention, nothing like it had been developed before, and its work had previously been done by hand.

Th four United States patents, Nos. 740,938, 767,844, 779,008, 795,073, the three applications, and the British patent, referred in plaintiff's Exhibits 117 and 118, covered many inventions, all of which were embodied in the experimental machine acquired from the Smith Company, and are now embodied in the commercial machine.

The Smith lacing machine was not really on a commercial basis when we acquired it. We have supplied the machine in very large numbers. We put out a tremendous number of them in a short time.

The parties interested in the Smith Lacing Machine Company and the Metallic Heel & Counter Company were the same. We had to buy them both in order to get either.

Of the patents and applications enumerated on the schedule of patents in plaintiff's Exhibit 119, patents No. 638,879 and No. 706,551 cover inventions embodied in the commercial form of the heel protector and counter, defendants' Exhibit 15. The other patent represented stages in the development of the same
116 invention, and the applications covered improvements not then adopted. We have a separate department at Beverly for manufacturing the metallic heel and counter, which is busy all

the time, and it is supplied to manufacturers in very considerable quantities.

From the Brockton Supply Company we acquired a patented machine for pulling lasting tacks. It was covered by the two patents recited in plaintiff's Exhibit 116—No. 777,795 and No. 795,631. That machine was commercial at the time we acquired it and to some extent in the hands of the trade. The United Company put it out to a considerable extent, but the most important use which we made of the inventions was to incorporate them in our experimental tack pulling and resetting machine, particularly the feature covered by claims of those patents which that machine had infringed. That machine was for use on Goodyear shoes and not only pulled the lasting tacks but drove the lighter tacks, called slivers, which hold the upper in place until after the welt has been sewed on. When the lasting tacks are pulled the upper has become pretty well shaped to the last, but it still needs some means to hold it in place, and the slivers which serve that purpose are made as light as possible to avoid breakage of the needle on the welter. Previously it had always been the practice to drive those slivers by hand. This new tack pulling and resetting machine of ours, in which we incorporated the inventions claimed in the patents acquired from the Brockton Supply Company, was the first machine in the art for performing the two operations at once.

We had been developing our machine before this acquisition, but it infringed claims of the patents owned by the Brockton Supply Company, and no machines had been put out. After the acquisition we combined their inventions and ours in our machine and furnished it to customers in large numbers.

The Leopold J. Courteau machine (mentioned in plaintiff's Exhibit 115) was intended for cementing linings to uppers. That is done to a very limited extent in some kinds of shoes. We had no machine for doing it and it had been done by hand. It was a simple operation.

117 Courteau's machine was only experimental and was covered by application Serial No. 320,611, filed June 7, 1906.

We were unable to make a practicable machine embodying the Courteau invention. We made a very determined effort to make it practicable. Our inventors who were working upon it had frequent conferences with Courteau, and finally, when they were convinced that it was utterly impracticable, they made a final appeal to Courteau to see whether he could make any suggestions which would remedy the situation, and he was unable to do so. The concern with which Courteau was connected,

which under the agreement was entitled to have machines at cost, considered the machines worthless and refused to take any machines. We did the best we could with it but could not develop anything out of it, and it was given up.

The Booth Brothers perforating machine was covered by patent No. 701,107, referred to in plaintiff's Exhibit 114. The United Company had at that time a machine known as a tip punch. That was a gang machine which punched the little holes in the tip of a shoe for ornamental purposes, making all the perforations at one operation. It was not, however, adapted to perforate a vamp, where the perforations covered a considerable piece of leather, were not on a straight line, and differed in contour with every size and shape. The Booth perforating machine was adapted for perforating a vamp, as shown in defendant's Exhibit 18, by a single tool which operated step by step.

These machines are sold by the United Company through its general department. The business in the Booth perforating machine was developed greatly after the United Company acquired it and it was supplied to customers in large numbers. The William B. Arnold cementing machine (referred to in plaintiff's Exhibit 113) was designed for the purpose of applying cement to the flesh side of a Gem insole, which comprises a leather
118 blank reinforced by a canvas strip. That canvas has to be cemented to the flesh side of the insole, and the Arnold machine was adapted for putting cement on the insole to which the canvas was then attached. This Arnold machine was covered by patent No. 728,793, which was assigned to the United Company. Arnold had built seven machines, which had been supplied to manufacturers.

This was a satisfactory machine, but it was displaced by a new type of reinforcing canvas which was introduced about this time by concerns other than the United Company. That canvas was sold to manufacturers with the cement already on it, and it was steamed and heated and then stuck right on the sole. There were three concerns engaged in preparing and selling this new type of reinforcing canvas and it entirely revolutionized the prior processes of making Gem insoles. This new process was subsequently used instead of the cementing machine and entirely superseded it, so that there was absolutely no demand for the Arnold machine immediately after we acquired it and ever since. Defendant's Exhibit 31 is a sample of the coated canvas for the Gem insole.

From Kimball & Hadley the United Company acquired (under plaintiff's Exhibit 112) awls and needles for use on

Goodyear machines. The Goodyear needle is curved and the awl for making the hole for the needle must also be curved. Both the awl and needle move in the arc of a circle and accordingly must be curved alike in that arc.

Prior to this purchase the United Company did not manufacture Goodyear needles or awls, but had to obtain them from outside sources in order to furnish them for use with its own Goodyear machines. The United Company had an awl for use with its metallic fastening machines, but that awl was long and straight, much larger and of an entirely different description. It had to form an opening to receive a nail, while the Goodyear awl forms an opening to receive thread and is much smaller than the metallic awl.

119 The awls and needles which the United Company acquired from Kimball & Hadley were furnished in quantities to customers of the United Company, users of Goodyear machines.

Zachary Taylor French had for many years been in the employ of the United Company and its predecessor, the Goodyear Company, before the agreement of plaintiff's Exhibit 111 was made. He was an inventor and had made alone or jointly with others a large number of inventions, and for some time prior to this agreement he had been superintendent of the Goodyear factory. That was before the Beverly plant was built.

It had been the practice of the Goodyear Company to make royalty agreements with him from time to time which provided for payments for his inventions by way of royalties. The agreement of plaintiff's Exhibit 111 was simply a settlement of those royalty agreements once and for all.

Referring to the agreement with the American Glue Company, plaintiff's Exhibit 110, sandpaper is used in the manufacture of shoes for the operations known as scouring and buffing. The general object of each operation is the same—to smooth up the particular part of the shoe on which the operation takes place.

Prior to this agreement the United Company was agent for the American Glue Company abroad, and it had bought from the American Glue Company the sandpaper which it furnished to customers in this country. This agreement did not change the trade relations of the parties in the least. After making the agreement the United Company continued to furnish the same sandpaper to customers as liberally as before.

As to the agreement with the F. G. Farnham Brush Manufacturing Company, plaintiff's Exhibit 109, the hubs, sleeves, and collars mentioned in that agreement are parts of the brush when

ready for operation on the machine; they hold it together. They
are necessary parts for any brush that is revolved by
120 machinery. Fillers are the material, canvas and card-
board, which more immediately holds the bristles in place.

Making brushes for use on cut-glass work was almost the entire business of the Farnham Company. They were doing a little business in making brushes adapted for use on shoes, but they were poorly located geographically for shoe business. They were in Honesdale, Pennsylvania.

After this transaction the cut-glass business was continued and is still being carried on by the S. A. Felton Company, to which the United Company turned it over. The shoe brushes manufactured by the Farnham Company were manufactured and furnished to the trade by the United Company in considerable quantities for a time. The Farnham brush was very superior to our old brush, the Felton brush, with which we had been having great difficulty because the bristles were constantly coming out. For several years we had been having complaints all the time that the bristles would not stay in the brush. In this respect the Farnham brush was much superior to our old brush, but it was more expensive, so that the demand for it has not been as great as it otherwise would have been.

After we acquired the Farnham brush we made use of the general idea of the Farnham brush and produced an improved brush of this same general type, with the addition of valuable improvements which completely overcame the difficulties which we had had before. Our invention was making the brush with retaining cords zigzagged between successive layers of bristles and cardboard in such a way as to lock the bristles in place. That construction afforded a complete solution of the difficulty which had been troubling us for several years. We were working on this brush at the time that we got the Farnham brush, but it
was not then commercial and we had, at that time, no
121 assurance that we should be able to develop it into any
practicable form.

Of the patents enumerated in schedule B of plaintiff's Exhibit 109, No 645,523 and No. 648,166 covered the Farnham brush. No. 673,119 covered the brush section and No. 677,502 covered the combined brush and hub. The patent on the improved brush which we developed is Graham patent No. 912,303, granted February 16, 1909.

The Graham brush, which is very satisfactory, is the one we are now principally putting out. That is shown defendants' Exhibit 32, which has been partly torn apart to show the construction.

Joseph W. Leary, a party to the agreement of plaintiff's Exhibit 108, never manufactured any machinery. He never made anything. He picked up second-hand machines and resold them in a very small way. He had no factory, but simply a small office. He dealt principally in cement, blackings, and stains which are used in the manufacture of shoes and are dealt in by hundreds of dealers. He was not making any, he was simply retailing. His whole business was insignificant.

Leary had also been one of the agents of the United Company for the Amazeen skiving machine. He was an extremely capable salesman and mechanic, thoroughly familiar with the Amazeen machine, and unusually successful in selling it. But being located in Lynn with his little business his activities with reference to the Amazeen machine were centered there, while after his employment by the company his field with that machine was greatly enlarged. He is still with the United Company and doing the same work, for which he is very well qualified by his expert knowledge.

Referring to the employment agreement with Fred H. Perry, plaintiff's Exhibit 107, Perry was given the opportunity at his own urgent request to enter the company's inventive department, and he succeeded very well in that work. At first his inventions were of comparatively little importance, but after a time
122 he made some very important inventions, including the present commercial rough rounding and channeling machine, which is a great advance over the machine which it superseded. He also invented the jointing machine, which performs an operation which was previously performed exclusively by hand, and was a remarkable instance of displacement of hand work by a machine operation because the hand work itself was inexpensive. But despite this fact the machine has been so extremely successful that it has effected a substantial saving in the cost of making the shoe.

Perry first entered the company's employ as a machinist in February, 1900, and was then paid thirty-four cents an hour. His salary has been raised five or six times and is now a substantial salary, many times what it was when he first began. I can state it if desired.

The benefits of Perry's inventions have been given to the trade, and many commercial machines embodying his inventions have been put out in very large numbers.

With regard to the cementing machine acquired from Joseph P. Curtis, in some classes of work it is desired to strengthen and stiffen the upper by cementing a thin piece of fabric to it in addition to the lining. This operation is sometimes called doubling. The Curtis machine was intended for applying a very thin coating of cement to the fabric to make it stick to the leather.

The Curtis machine was covered by a patent application Serial No. 174,913, filed September 8, 1903, on which a patent was granted on May 16, 1905, No. 789,718.

At the time of this transaction the United Company had nothing for doing this work, which required a machine of an entirely different type and entirely different organization from any we had. For example, the Arnold machine for cementing the Gem insole, which has to be particularly constructed for that
123 purpose, could not be used for the operation for which the Curtis machine was intended; nor could the Curtis machine be used to perform the operation of the Arnold machine. The two machines occupied entirely separate fields.

The Curtis machine did not prove commercially acceptable and was not a success. We did what we could to make it a commercial success. We put out some forty-five of them, but they were constantly giving trouble. The machine did not apply cement uniformly or at any place as it should. Also the lining, instead of going out of the machine as it should, frequently went up around the pressure roll and had to be pulled off. Most of the machines which we put out have come back.

At the time of this transaction Curtis had only one machine, an experimental machine.

J. K. Krieg & Company were located in New York, and for a great many years they had been agents for the Consolidated & McKay Company and the McKay Shoe Machinery Company. They had continued up to this time as agents for the United Company for all of its departments except the Goodyear. At the time we purchased the parts and supplies at their depot we also got a patented heel seat rounding machine and a heel scarfing machine.

The Krieg heel seat rounding machine was used for trimming around the heel ends of Goodyear soles, which are made with nearly square corners. It was particularly constructed for that work and was an excellen machine, much superior to the one we were putting out. Our machine was merely an edge trimming machine provided with a larger rotary cutter than was used for edge trimming, and in the use of our machine the stock trimmed off was all chewed up into dust.

The Krieg machine operated in an entirely different way and cut off the surplus stock by a reciprocating chopping knife, in such manner that the scrap of sole leather which was
124 removed could be utilized later. The pieces of sole leather removed by the Krieg machine could be used in pieced heels. In many kinds of shoes the lifts between the heel seat and the top lift are made up of pieces of scrap leather, and any

joints around the edges are covered by the wax used in the heel burnishing operation.

This Krieg machine enabled the shoe manufacturer to save the corners of the Goodyear sole and use them for such purposes as I have described. It is his aim to save every available scrap of leather, and if it has no other use it can always be sold by the pound as scrap leather. We had no machine of that kind before.

The Krieg heel seat rounding machine was covered by patent No. 560,829, dated May 26, 1896.

The Louis heel scarfing machine was designed for skiving off a thin layer of the stock on the grain side of a sole for the purpose of affording a cover for the curved breast of a Louis heel, used in women's shoes. Such heels are made of wood, covered on the sides and back with a thin piece of leather, and it is essential that there also be a leather covering for the curved breast. In the sole of defendants' Exhibit 15 the piece that is skived off comes down over the breast of the heel. This machine was adapted only for this particular kind of heel. The United Company had no machine of that kind, but put this machine on the market after it was acquired.

The embossing machines which came from Krieg were simple machines. I don't recall that they differed substantially from machines which we had. They were used for impressing ornamental configurations in the surface of upper stock or for stamping the facing on the upper edge of the inside of a shoe. When so used the name of the manufacturer or retailer is frequently impressed. This is a common practice.

125 These Krieg machines were continued by the United Company and furnished to customers.

W. B. Cross, prior to the acquisition of his business, was furnishing all the tacks for the lasting machines, which were being put out by the Consolidated & McKay Company and which the United Company continued to put out. Those tacks were made particularly for those machines. We were buying many tons every week, nearly his entire output. We simply acquired that business to be able to supply our lasting-machine customers with tacks.

The T. A. Norris Machine Company (plaintiff's Exhibit 102) dealt in second-hand machines just as Leary did, picking up from time to time various second-hand machines and selling them. Norris did not manufacture anything and was not in the business of supplying general lines of shoe machinery. Norris had a few simple machines made for him, but his main business was second-hand machines.

The tip punch which Norris had was improved upon by the United Company, developed into the present commercial machine, and has been supplied to customers.

The Norris welt-cutting machine simply cut leather into strips of the proper width for welting. We had no such machine, and we furnished the Norris machine to our customers.

At this time the United Company was not doing anything with McKay sewing machines in this country, but simply had some rights to sell McKay sewing machines abroad. After the Norris acquisition we furnished the Norris-McKay sewing machine to our customers.

As to the Norris fair stitch loop-cutting machine, in the manufacture of McKay sewed shoes it is customary, in order to make the shoe look as nearly as possible like Goodyear welt shoes, to sew a stitch through the tap and sole or through the mock welt and sole. In that day the fair stitch was a chain stitch, with the chain in a channel on the outside of the
126 sole. The bunch formed by the chain would show through the thin channel lip of the sole unless it was removed, and this Norris machine was intended for cutting the chain out of the channel. That, of course, spoiled the stitch, as far as holding power was concerned, but the holding power was not desired or needed. This operation was performed on that particular kind of shoe, and the United Company furnished this Norris machine to customers until that method of fair stitching went out of use. That was one of the styles of shoes that come in and go out and which require particular kinds of machines. When the style of shoe goes out the machine becomes obsolete.

The power spring heel scarfer acquired from George W. Emerson & Company (plaintiff's Exhibit 101) was a power machine, and the machine which we had before was a hand machine. The machine was used in the manufacture of spring heel shoes to bevel the front edge of the lift which went in above the sole, so that the sole could be bent over it without too sharp a break. That is the type of heel peculiar to children's shoes. That machine was covered by patent No. 653,016, dated July 3, 1900. This scarfer went into the general department and was furnished by the United Company to its customers.

The Emerson tip scourer was used to scour damaged portions on the tips of patent leather shoes. The enamel is often broken or destroyed during the lasting operation. It has to be scoured before the enamel is replaced, and this tip scouring machine performed that operation. It also had a special tool which could be put into the crease.

Before this the United Company had no tip scourer. The Emerson machine went into the general department and was furnished to customers in large numbers.

The Emerson heel burnishing machine and the Xpedite heel burnishing machine of the United Company performed
127 their operations in entirely different ways. Some manufacturers preferred one and some the other, and accordingly some would insist upon one type of machine and others upon the other type. We furnished both types, according to the manufacturer's preference. They were both handled by the United-Xpedite Company.

William R. Sampson was one of the partners in this firm. He entered the employ of the United Company and is still with it in a very important position. He entered the general department, was several years ago made the head of the general department, and recently, while nominally retaining that position, he has been promoted to the executive offices.

George A. Smith (plaintiff's Exhibit 100) was another agent for the United Company, whose headquarters were in Philadelphia.

The acquisition of the business of parties who had been agents was in connection with the extension of the United Company's service to shoe manufacturers. Since these acquisitions the United Company has maintained branch offices where a large number of skilled men are constantly awaiting call from shoe manufacturers to repair immediately any breakage or to adjust a machine in case it is not right. In these offices we keep supplies and a complete line of all parts whichever break. These offices had previously been conducted in a way by people like Smith and Krieg and Ross-Moyer, as agents. We bought their businesses and still kept them. We used their places of business as depots where we kept supplies and parts, and also used them as the headquarters of our repair force. We continued to furnish the same parts and additional parts to our customers, and very much better service.

The spring heel scarfing machine which we got from Smith was a simple machine, in which the knife was operated by hand, for beveling the lift in a spring heel shoe. It was covered by patent No. 458,535, dated August 25, 1891. There is less demand for this machine than for the power machine, owing to the fact that it is hand operated, but there is still a field
128 for it and it is being sold to customers through the general department.

The W. J. Young heel compressing machine was being put out by the United Company abroad. We were agents for him and

had been for several years, and we had not shipped a heel compressing machine of our own to either England or Germany for over ten years. Young's machine was manufactured in Lynn and he had no facilities for putting out his machine abroad.

If Young's machine had not been manufactured in Germany very soon after the date of the Young agreement, his German patent would have been open to attack under the German law as it then stood. To preserve his rights it was necessary immediately to begin to manufacture there commercially. We therefore acquired the German patent and began to manufacture in Germany and marketed the machines there.

The United Company had nothing to do with the marketing of the Young machine in this country. His company, the W. J. Young Machinery Company, continued to put the machine out in this country, has put it out ever since, and is still putting it out. He has been in competition with us before and since the agreement. We acquired nothing except the German rights. We had not been putting out any heel compressor of our own abroad.

The German patent on the Young machine was No. 133,038, July 5, 1899, and the British patent was No. 12,918, June 21, 1899.

The machine which we had before this was an old machine, very much inferior to Young's, which was of comparatively recent invention. He preceded us by two or three years in inventing a modern, satisfactory, high-speed heel compressing machine.

The American sole laying machine company (plaintiff's Exhibit 98) had a double sole laying machine. That machine had right and left forms and operated on a pair of shoes, rights and
129 and lefts, at one time, one being under pressure while the operator was putting the other in position to go into the machine. That made the machine infringe the famous Cutcheon patent. That patent had been sustained by the Court of Appeals and many manufacturers had been forced to pay heavy damages for infringing it. The American Company had a license under the Cutcheon patent.

Before this acquisition the United Company had no double sole laying machine; we could not make one on account of the Cutcheon patent. We were putting out a single sole layer, the machine which we got from the Boot & Shoe Sole Laying Company. That company had no license and could not make a double machine. The American Company also had patents relating to the pad used on their machine which stood in the way of our adopting a satisfactory pad.

The most important thing that we got from the American Company was the license under the Cutcheon patent. That is what enabled us to make a two-form machine after we acquired that license. Without that we would not have been able to adopt this double form.

After this acquisition we incorporated in the machine which we got from the Boot & Shoe Sole Laying Company, the inventions acquired from the American Company, particularly the two-form construction and the pad invention. In other words, we got the method of sole laying from the Boot & Shoe Sole Laying Company, and we got the double application of that method from the American Company.

By combining the inventions embodied in two machines we made a better machine than either. The new machine has right and left forms and operates twice as fast as the single machine which we had previously been putting out. The commercial name of the new machine is Goodyear improved twin-sole laying machine, and it has been placed with our customers in very large numbers.

130 The American machine embodied inventions covered by patents No. 376,408, January 10, 1888; No. 393,216, November 20, 1888; No. 436,034, September 9, 1890, under which the American Company had a license; No. 536,532, March 26, 1895; and the Cutcheon patent No. 384,893, June 19, 1888, under which the American Company had a license from the Tripp Giant Leveler Company.

The Marlboro Awl & Needle Company needles (plaintiff's Exhibit 96) differed from those which we acquired from Kimball & Hadley; The Marlboro Company needles were straight McKay needles adapted for use in the McKay sewing machine, which requires a straight needle. Goodyear needles are curved. Prior to this acquisition we purchased from others, including the Marlboro Awl & Needle Company, the needles which we supplied for our McKay machines.

The chief awl business of the Marlboro Company was in hand awls, such as cobblers use for shoe repairing.

The mallet which we got from the Marlboro Company had a head made of rawhide. These mallets were used by shoemakers and cobblers. These awls, needles, and mallets acquired from the Marlboro Company have been furnished by the United Company to its customers through the general department.

The treeing machines acquired from O. A. Miller (plaintiff's Exhibit 93–95) are used in all factories in cleaning up and blacking the shoes and making them presentable prior to packing them in cartons for shipment. A tree foot is the part of a treeing

machine that enters the shoe to spread it and hold it with the upper taut during the polishing and rubbing operations.

This was absolutely a new branch for the United Company. It had nothing of the sort before.

There were six patents covering the Miller treeing machine and its parts: No. 442,034, December 2, 1890; No. 319,354, June 2, 1885; No. 319,355, June 2, 1885; No. 319,356, June 2, 1885; No. 441,115, November 18, 1890; No. 441,116, November 18, 1890.

131 The United Company acquired different kinds of eyelets from the Morley Button Manufacturing Company, J. C. Rhodes & Company, the Boston Fast Color Eyelet Company, and the Enamel Eyelet Company. The last two came from Theophilus King and his associates.

All these eyelets were patented. The Morley patent was No. 691,850, dated January 28, 1902; the Rhodes patent was No. 565,091, dated August 4, 1896; the Enamel Company eyelet was covered by patent No. 639,997, dated December 26, 1899, and design No. 24,867, dated November 12, 1895. The Fast Color eyelet was covered by patent No. 557,992, dated April 7, 1896; the dies for making fast-color eyelets were covered by application Serial No. 120,856, filed August 23, 1902, a renewal of an application filed February 9, 1895; and the method of covering the eyelets was covered by an application filed April 17, 1905, Serial No. 255,900, a renewal of an application filed February 9, 1895. The Boston Company also had a registered trademark "Fast Color."

The essential differences in the character and uses of the different eyelets acquired were as follows:

The flange of the metal barrel of the Fast Color eyelet served the sole purpose of anchoring a thick covering of celluloid which took the wear so that the metal never became exposed in the wear of the shoe.

The Rhodes enamel eyelet had a metal flange formed with the shape desired for the flange of the finished eyelet instead of merely serving as an anchor for celluloid, as in the Fast Color eyelet. The entire eyelet was coated with enamel, which frequently wore off in the wear of the shoe so that the metal became exposed. For that reason it was used on cheaper shoes than the Fast Color eyelet. The patented feature of the Rhodes eyelet was the inturned portion of the flange which supported it against the thrust of the eyelet-setting tool. Otherwise the flange would bend in the setting operation and the enamel would crack. That feature has never been dispensed with in any enamel eyelet which was commercially satisfactory.

132 The Enamel Company eyelet likewise had the supporting inturned edge for the flange, embodying the Rhodes invention.

The Morley eyelet also had the inturned supporting flange. In this eyelet the enamel did not go down inside the barrel; that was the feature covered by the Morley patent. This was different from both the Rhodes and Enamel Company eyelets. It was claimed that it was objectionable to have the enamel inside the barrel. They made the eyelet by a secret process and by a secret formula.

All the companies making enamel eyelets were in litigation with each other.

The Boston Fast Color eyelet and the Enamel eyelet came from the same people, and although they knew well how to make Fast Color eyelets they did not know how to make enamel eyelets and were not producing a satisfactory enamel eyelet. We had had to junk a large supply we had on hand which we couldn't get rid of.

The Fast Color eyelets were used entirely by manufacturers making the more expensive grades of shoes. The various enamel eyelets were used on cheaper shoes. The Enamel Company's eyelet and the Morley Company's eyelet were not as good as the Rhodes, and were adapted only to the cheapest grades of shoes. The Rhodes eyelet could be used on better grades.

The United Company has continued to manufacture and supply the Fast Color eyelets and the Rhodes eyelets, and also the Enamel Company and Morley eyelets so far as there was demand. The demand for the Enamel Company and Morley eyelets has been so slight that it has been supplied from stock on hand; if manufacturers would buy them, we should be glad to sell them.

Since the time of these transactions the Fast Color eyelet has been improved in ways that made it possible to reduce its price, and the enamel eyelet has been much improved since then, so that as a result of development since that time the fields overlap somewhat.

133 In the case of both the Fast Color and the Rhodes eyelets many new sizes have been made which were not made in 1901. Both kinds have been very much improved from time to time.

The Boot & Shoe Sole Laying Company (plaintiff's Exhibit 90) had no factory, were doing a very small business. They had only the sole-laying machine which I have previously described. Two of their patents were No. 362,447, dated May 3, 1887, and No. 375,549, dated December 27, 1887. There were other patents which I will supply later.

The machines of the Globe Sewing Machine Company were for sewing the welt on a welt shoe and attaching the outsole to the welt. That company was being sued under the Briggs method patent, a Goodyear patent.

The patent on the Globe experimental rounder and channeler was No. 602,211, dated April 12, 1898. As to their welter and stitcher, they were attempting to use the same machine for sewing the welt to the upper and insole and for stitching the outsole to the welt. They had a lockstitch machine for both operations, and used some attachments for one operation and other attachments for the other. The patents on the machine used for the two purposes were No. 409,161, dated Aug. 20, 1889; No. 421,541, dated Feb. 18, 1890; No. 421,808, dated Feb. 18, 1890; No. 432,010, dated July 15, 1890; No. 432,011, dated July 15, 1890; No. 432,012, dated July 15, 1890; No. 444,419, dated Jan. 13, 1891; No. 445,655, dated Feb. 3, 1891; No. 445,656, dated Feb. 3, 1891; No. 445,657, date Feb. 3, 1891; No. 452,159, dated May 12, 1891; No. 502,873, dated Aug. 8, 1893; No. 502,874, dated Aug. 8, 1893; No. 502,875, dated Aug. 8, 1893; No. 530,297, dated Dec. 4, 1894; No. 545,669, dated Sept. 3, 1895.

The Star leveling machine of the Swain Fuller Manufacturing Company was protected by patents No. 435,882, dated September 2, 1890, and No. 435,883, dated September 2, 1890. I think that company had a small machine shop.

134 The inventions covered by the patents of the Boot & Shoe Sole Laying Company, the Globe Sewing Machine Company, and the Swain Fuller Manufacturing Company, were used by the United Company so far as they were commercially feasible.

I was asked by counsel for petitioner to produce a list of machines acquired from the Ross-Moyer Manufacturing Company (plaintiff's Exhibit 87). There were nineteen of these machines as follows: Rolling machine, buffing machine, heel-scouring machine, bottom-stamping machine, embossing machine, edge-setting machine, button-fly scalloping machine, Ross cement pot, shank-burnishing machine, heel-breasting machine, heel-seat beading machine, leather-scrap splitting machine, stamping machine, insole flexing machine, beading and turning machine, heel-building machine, two speed upper-cleaning machine, sole-gauging machine, and vamp-polishing machine.

These machines were the foundation for our General Department and were all put into that department and furnished to our customers. All are now available to customers. The shank

burnishing machine and the leather scrap splitting machine are now obsolete, but can be had if a manufacturer wants them.

The Ross-Moyer Company had been agents in Cincinnati and Chicago for all the constituant companies of the United Company, except the Goodyear, acting as agents in that territory in the furnishing of machines, supplying parts for the machines and furnishing metallic material for the metallic machines.

When the United Company extended the plan of furnishing service the Ross-Moyer Company plant was made one of the company's depots, where parts, metallic material, and skilled workmen could be obtained at any time.

Before this acquisition the United Company had no machines for doing the kind of work done by eighteen of the nineteen Ross-Moyer machines. It had a machine for doing the same work as the heel seat beading machine.

135 The patents on the Ross-Moyer machines were as follows: Buffing machine, No. 426,862, April 29, 1890; No. 431,997, July 8, 1890; heel-scouring machine, No. 613,079, October 25, 1898; bottom-stamping machine, No. 437,664, September 30, 1890; embossing machine, No. 441,980, December 2, 1890; edge-setting machine, No. 368,853, August 23, 1887; Ross cement pot, No. 616,016, December 13, 1898; shank-burnishing machine, No. 368,853, August 23, 1887; heel-breasting machine, No. 437,665, September 30, 1890; heel-seat beading machine, No. 408,537, August 6, 1889; beading and turning machines No. 432,902, July 22, 1890; No. 606,301, June 28, 1898; No. 680,624, August 13, 1901; heel-building machine, No. 569,938, October 20, 1896; hub for polishing wheel No. 680,418, August 13, 1901. The hub for polishing wheel was used on two or three machines, particularly the buffing machine.

The welter, stitcher, and rough rounder of the Bay State International Shoe Machinery Company (plaintiff's Exhibit 86) were very different in construction from the machines of the United Company. That company had put out no machines in this country.

The channeling machine put out by the Stanley Manufacturing Company was used for and adapted for use only in channeling the soles of McKay shoes. The United Company had two channeling machines, one for channeling Goodyear insoles and the other a combined rough rounder and channeler for trimming the edge of the outsole of a Goodyear shoe and at the same time forming a channel to receive the stitch. Neither was at all of the same type as the Stanley channeling machine. Neither could be used commercially on the McKay shoe; nor could the Stanley channeler be used commercially on the Goodyear shoe

Each machine had an appropriate field in which it was essential and the work which the machines had to do was utterly different.

From Winkley and Phillips (by plaintiff's Exhibit 77) we acquired patented inventions relating to a leveling
136 machine, which were afterwards developed into the Atlas leveler. A leveling machine is used to impart the desired shape to the sole of a shoe. I have spoken of the Star and Acme levelers, each of which had its particular use. The Atlas machine was used for leveling McKay shoes. It was a direct pressure machine and had an iron form over which the shoe was placed for the leveling operation. Great pressure was exerted upon the shoe through a mold which had the shape desired for the sole of the finished shoe.

The Atlas machine was peculiarly adapted for use on McKay shoes. At the time that the McKay shoe comes to this operation there is no last in it, because the last had to be taken out to permit the operation of the McKay sewing machine, as I have previously explained, and the Atlas machine had an iron form to go into the shoe.

The Goodyear shoe when it comes to this operation has the last still in it, so that there must be an entirely different mechanism for supporting the shoe. In all operations on Goodyear shoes requiring the application of pressure there must be a support for the last, which usually comprises a support for the toe and a device having a pin to enter the hole in the cone of the last. Also the pressure applied must in all cases be so determined that there will be no danger of breaking the wooden last. These requirements extend through many operations, including the heeling operation. The last is still in a Goodyear shoe when it is heeled. It would be utterly impossible to use the McKay heeling machine for Goodyear work, as it would break the last. We have for many years, up to within a year and a half or so, supplied entirely different heeling machines for McKay and Goodyear shoes.

The patent on the Winkley and Phillips machine, which was the subject of the agreement, was No. 627,034, June 13, 1899, and I think there were others.

Mr. Winkley was an inventor and had made many valuable inventions, and Mr. Phillips, who is a patent lawyer and a patent solicitor, had done the patent soliciting for Mr. Winkley, and had occasionally been a joint inventor with him. Winkley and Phillips had previously been joint inventors of the
137 Goodyear automatic leveling machine. They were in close relation with the United Company.

The Lincoln Sewing Machine Company agreement (plaintiff's Exhibit 80) was simply an agreement adjusting a royalty ar-

rangement which had been made by the old Goodyear Company. There were patents involved there, but I haven't a list of them here.

I understand that the Seaver Process Lasting Machine Company (plaintiff's Exhibit 75) had no factory. The patents on their lasting machine were No. 570,220, October 27, 1896; No. 590,639, September 28, 1897; No. 635,129, October 17, 1899.

The patents on their experimental pulling-over machine were No. 596,308 and No. 596,325, both dated December 28, 1897; and No. 635,124, October 17, 1899.

The Globe Shoe Tool Company had no patents.

The patent on Albert G. Brewer's improvement on the heel-breasting machine (plaintiff's Exhibit 70) was No. 645,994, March 27, 1900.

The patents on the slugging machine acquired from Edwin T. Freeman (plaintiff's Exhibit 68) were No. 615,481, December 6, 1898; No. 618,082, January 24, 1899, reissued as No. 11,962, January 2, 1902; No. 714,572, November 25, 1902.

The Boston Shoe Tool Company (plaintiff's Exhibit 67) had a patent on a cutter, No. 452,540, and on an expansible shaft for holding the cutters, No. 528,467, October 30, 1894.

Both Coupal and Gordon (plaintiff's Exhibits 64–66) had worked for the Goodyear Company before the United Company was formed and were both very skilled mechanics, particularly with reference to Goodyear machines. Their shop was a general machine shop, not particularly relating to shoe machinery.

Both Coupal and Gordon were employed by the United Company, and Gordon remained with the company until his death, about a year ago.

The patents of the Breach Manufacturing Company (plaintiff's Exhibit 63), under which the United Company acquired an exclusive license for a machine for cutting out soles, were No. 318,539, May 26, 1885; No. 318,540, May 26, 1885; No. 589,409, September 7, 1897.

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The patents owned by the Goddu Sons Metal Fastening Company (plaintiff's Exhibit 60) were No. 583,044, covering their loose nailer; No. 583,045, on their rapid screw machine; No. 583,046, on their slugger; No. 592,729, on the machine for making string nail wire for their string nail tacker; No. 599,933, on the string nail wire, and No. 616,918, on the machine for making that nail. They also had some patents on inventions not embodied in their machines.

Ten patents were acquired by the United Company from the Goddus individually, of which those that were infringed by the machines of the Goddu Sons Metal Fastening Company were as

follows: No. 584,735, June 15, 1897, covered its tacking machine; No. 614,130, Nov. 22, 1898, covered its loose nailer and also its slugger; No. 641,099, Jan. 9, 1900, was a broad patent on the string nail wire intended for use in the tacking machine; No. 655,223, Aug. 7, 1900, covered the machine for making the screw threaded wire intended for that company's rapid screw machine.

The Goddus, both father and sons, had been employed by the McKay Shoe Machinery Company before the United Company was formed, and the father had invented many of the metallic fastening and heeling machines which that company manufactured. Before the United Company was formed all the sons had left the employ of the McKay Company.

There was pending litigation between the McKay Company and the Goddus, father and sons, and the Goddu Sons Company before the United Company was formed. The McKay Company claimed that all the Goddu Company machines infringed its patents. It also claimed that the inventions in the Goddu machines were really the inventions of the elder Goddu and belonged to the McKay Company, and did not belong to the persons in whose names they had been taken out. Those claims had been evidenced by a suit brought in the Circuit
139 Court which had been very vigorously contested and was pending at the time of the purchase. By this acquisition all that litigation was eliminated.

None of the machines which I have just referred to, which were covered by the patents which I have named, has developed into a commercial machine. So far as I know none of them was ever put into a shoe factory.

Direct examination resumed:

The capital stock of the Seaver Process Lasting Company was $600,000.

The Globe Sewing Machine Company were putting out the same machine for both welting and stitching, which was equipped with certain appliances and attachments when used for welting and certain other appliances and attachments when used for stitching. They also had an experimental rough rounder.

The capital stock of the T. A. Norris Machine Company was $20,000.

The Rochester lacer was put out to some extent prior to 1899 by Booth Brothers. The patentee, Stillman A. West, had a misunderstanding with Booth Brothers early in 1899 and gave an exclusive license to the Boston Machine Works, which has been putting the machine out under that license since April,

1899. The Booths had nothing to do with it after that time. The United Company never acquired that machine.

Cross-examination resumed:

Approximately $38,000 was paid for the Seaver Process Lasting Company. Its $600,000 of capital stock was merely its nominal capital stock and I do not know whether it had been issued or not.

140 Direct examination resumed:

Eighty-five cents per share in cash was paid for the Corrugated Wire Fastening Company. The nominal capital stock was $375,000. My memorandum does not show how many shares the United Company acquired.

141 MAY 29, 1913.

CHARLES H. JONES, witness for the United States.

My name is Charles H. Jones. I live in Weston. I am president of the Commonwealth Shoe and Leather Company, shoe manufacturers. The company has been engaged in business since 1884. It has factories at Whitman, Massachusetts, and Gardner and Skowhegan, Maine. The total daily capacity of our several factories is between six and seven thousand pairs. We make high-grade men's welt shoes. We make also a very few pegged boots and standard screw shoes. We formerly made McKay sewed shoes, but they have been gradually discontinued, because the grade of goods we make is too high to admit of the exclusive manufacture of McKay sewed, which are cheaper goods and require the employment of cheaper labor.

I am familiar with the machinery used in the manufacture of shoes. I remember that the United Company was formed in February, 1899. From 1880 to 1900 I was constantly handling and dealing with shoe machinery as used in our business. I was entirely familiar with the operations and uses of the machines which were used during that period. During that time I selected and installed the first shoe machinery that was used on our class of goods.

Q. What has been your experience in connection with lasting machines used in the manufacture of shoes?

A. We have used various forms since about 1881; I believe we put in the first lasting machines. We have used various forms of lasting machines in our factory since that time.

Q. Are you familiar with the operations of those machines?

A. To some extent.

Q. You have used them in your factory continuously?

A. Yes, sir.

Cross-examination as to qualifications:

We had originally a McKay and Copeland lasting machine, and subsequently put in the machines called the Chase. During that time we made trials of other machines. I negotiated with the company producing the McKay and Copeland machine personally, and have full knowledge of the matter of leas-
142 ing lasting machines. The obtaining of the McKay-Copeland was the only instance in which I personally negotiated the transaction. I don't think I negotiated for the Chase machine personally. All the other lasting machines that we acquired subsequently to the McKay and Copeland were obtained under my direction either by Mr. Reed or the superintendent in charge of that department. The superintendent reported to me that such a machine was desired. We then consulted with regard to the application for the machine, and after the consultation decided what machine we would take. The application was then made by him. Those two instances are the only personal experience I can recall.

Direct examination resumed:

The first lasting machine company that I remember was the McKay-Thompson. That was later consolidated, about 1880, as I recall it, with the McKay-Copeland. Later the two in combination after some litigation acquired the Chase. The following companies were engaged in putting out lasting machines prior to 1899: The McKay-Thompson, McKay-Copeland, the Chase Lasting Machine Company, the Copeland Rapid Lasting Machine Company, the Consolidated Hand Method Lasting Machine Company, the Boston Lasting Machine Company, the Continental Lasting Machine Company, the Seaver Process Company, the Sinning Company, and some other small ones. I am testifying from my personal knowledge, and that which I acquired during the course of trade. In the course of my trade I knew of the existence of every one of these companies. I did not have dealings with all of these companies, except in the way of offer of sale and consideration of their product and declining it.

Q. Prior to February, 1899, so far as you know, had the Copeland Rapid Lasting Machine Company gone out of business?

A. No, sir; it had not. I might qualify that. It was in the control——

PUTNAM, J. You have answered the question.

Q. Prior to February, 1899——

PUTNAM, J. When you ask him whether he knows, you must find out whether he does know before you put a further question.

Mr. GREGG. I thought he had answered that.

PUTNAM, J. Well, he did. He didn't the first time. You should be careful about that, so that it brings out his personal knowledge. Proceed, Mr. Gregg.

Q. Now, prior to February, 1899, do you know whether or not the Continental Lasting Machine Company was engaged in business?

A. I couldn't answer that of my personal knowledge.

Q. Prior to February, 1899, do you know whether or not the Seaver Process Lasting Machine Company was engaged in business?

A. Prior to 1899?

Mr. CHOATE. You mean just prior, or when do you mean?

Mr. GREGG. Just prior to February, 1899.

143 MR. CHOATE. Why don't you say in January, 1899?

A. I couldn't answer that of my own knowledge.

Q. Prior to February, 1899, do you know whether or not the Sinning Lasting Machine Company was engaged in business?

A. Out of my own knowledge, no, sir.

Q. Now, immediately prior to February, 1899, what companies were engaged in putting out lasting machines used in the manufacture of shoes?

A. The Copeland Rapid.

Mr. CHOATE. Is that the name of the company or the name of the machine?

The WITNESS. No; that is the name of the machine. It was handled by the Goodyear Shoe Machinery Company.

Q. Give the name of the company.

A. The Goodyear Shoe Machinery Company and the McKay & Consolidated Lasting Machine Company. I don't pretend to get the names with perfect exactness, but that is as near as——

Mr. CHOATE. If I may correct you, it is the Consolidated & McKay Hand Method Lasting Machine Company.

The WITNESS. Yes, sir; that is the one.

Q. Now, what are the different names of lasting machines produced by the Goodyear Company just prior to February, 1899?

A. The names of the different machines?

Q. Yes.

A. They were called the Copeland Rapid and the Ideal, as I recall them. Those are the two names that I remember.

Q. Two machines?

A. Yes, sir; two modifications of the same machine, I believe, or slight changes in the basic machines.

Q. But were they two separate machines?

A. I think the Ideal was slightly different from the——

Mr. CHOATE. Just a moment. "I think" and "I believe" I submit isn't competent testimony on this subject. If he knows, he knows. If he doesn't, he oughtn't to think.

PUTNAM, J. What is that?

Mr. CHOATE. I say the witness is answering "I think" and "I believe" with reference to questions of fact. I submit those answers ought not to be accepted. If he knows, I say he knows. If he doesn't, he ought not to express his belief or his opinion.

Mr. GREGG. I submit that he can testify as to his best recollection about it.

PUTNAM, J. If you have no objection to the question as put, proceed, Mr. Gregg. Bear in mind that he must answer of his personal knowledge.

Q. What is your best recollection as to those two machines, the Ideal and the Copeland Rapid lasting machines?

A. There were slight differences between them, but in general respects identical.

Q. Were they to be used for the same grade of work, or substantially so?

A. I think——

Mr. CHOATE. Now, one moment. Don't think, please.

PUTNAM, J. Your own knowledge.

A. They were adaptations for slightly different classes of work; adaptations of the same machine for slightly different classes of work.

Q. What were those classes of work?

A. My best recollection in regard to that is that the Copeland Rapid was used for men's and the Ideal for women's.

Q. Well, could either machine do the work of the other; that is, could one machine be used for both men's and women's shoes?

144 A. I wouldn't answer that at this moment from my knowledge. My recollection isn't clear enough.

Q. Now, prior to February, 1899, what concerns were engaged in manufacturing and putting out, either on sale or lease, machines known to the trade as welt sewing and out-sole stitching machines?

Mr. CHOATE. I would like my same objection noted, if the court please.

PUTNAM, J. Ask him whether he knows of his personal knowledge.

A. The Goodyear Shoe Machinery Company and the Eppler Welt Company, a combination of the Campbell and Lincoln machines.

Q. What do you mean by a combination of the Campbell and Lincoln machines?

A. The Lincoln machine was a machine for sewing welts and the Campbell machine was a machine for stitching the outer sole. In combination they were putting out a complete set, a welting and stitching machine.

Q. That is, two different companies, or one company putting out the two machines?

A. I think the one company was putting out the two machines, but the machines were called by the names I referred to.

Q. And what company was it?

A. The Campbell.

Q. The Campbell Machine Company?

A. The Campbell Machine Company.

Q. Then there were three companies, the Goodyear and the Eppler and the Campbell?

A. Yes, sir. And there was another one; that is, there was a Globe machine that was sewing welts at that time, sewing turned shoes especially.

Mr. CHOATE. I ask that that answer be stricken out as not responsive to the question.

PUTNAM, J. What do you object to, Mr. Choate?

Mr. CHOATE. I object to the last answer.

BROWN, J. Do you object to the whole answer, or only that part that relates to another machine?

Mr. CHOATE. The last thing that he said about the Globe sewing machine.

BROWN, J. It seems to me that is objectionable.

PUTNAM, J. Wasn't that responsive to that?

Q. You just mentioned the Globe sewing machine?

A. Yes.

Q. What concern was manufacturing the Globe sewing machine?

A. I can't tell you from my own knowledge. I don't remember.

Mr. CHOATE. Then I ask that that statement about the Globe sewing machine to be stricken out.

PUTNAM, J. Yes. What he said about the Globe is stricken out.

Mr. GREGG. He just stated he knew the machine was in use, but he didn't know who manufactured it.

BROWN, J. The question called for companies, existing companies.

Q. Do you know whether or not the Globe sewing machine at that time was being used in shoe factories?

A. It was; yes, sir.

Q. Now, the welt sewing machine and the out-sole stitching machine are two different machines, are they not?

A. Yes, sir; distinct machines.

Q. Now, you stated that the Goodyear Company manufactured a welt sewing machine?

145 A. Yes, sir.

Q. And that the Eppler manufactured a welt sewing machine?

A. Yes, sir.

Q. And that the Campbell put out a welt sewing machine?

A. Yes, sir; the Lincoln.

Q. Now, could any one of those welt sewing machines put out by those three companies be used on the same grade of work?

A. Yes, sir.

Mr. CHOATE. One moment. I pray your honor's judgment. The witness hasn't shown any experience with any of them.

PUTNAM, J. The objection is overruled. Your exception is saved.

Q. Now, answer the question.

A. Yes, sir.

Q. All three of them were used for the same grade of work?

A. Yes.

Mr. CHOATE. How does the court leave that question, that it may be answered?

PUTNAM, J. The answer is all right.

Q. Now, the Goodyear Company put out an out-sole stitching machine, you say?

A. Yes, sir.

PUTNAM, J. You can use a hoe and a spade on the same grade of work that the finest and best machinery of the Harvester Company is used on, but it isn't doing the same grade of work.

Q. Were those three machines doing the same grade of work?

Mr. CHOATE. I pray your honor's judgment.

BROWN, J. Put it what they were doing. Wouldn't that be the better way?

PUTNAM, J. That is too leading a question. That would cover the whole case, perhaps.

Q. For what purpose was the welt sewing machine put out by the Goodyear Company used? What work did it accomplish?

A. It was used for the sewing together of the welt, the upper and the insole of a welted shoe.

Mr. CHOATE. You used Goodyear machines?

The WITNESS. Yes, sir.

Q. For what purpose was the welt sewing machine put out by the Eppler Company used?

A. The same purpose.

Mr. CHOATE. Just a moment, please. I supposed, your honor, he was to ask him whether he knew that of his personal knowledge.

PUTNAM, J. Well, Mr. Jones understands that he is testifying on this branch of the testimony only what he knows of his own personal knowledge.

The WITNESS. Yes, sir; I understand that.

Q. For what purpose was the welt sewing machine put out by the Campbell Company used?

A. I couldn't testify as to that of my personal knowledge. I never saw it work.

Q. Now, for what purpose was the out-sole stitching machine put out by the Goodyear Company used?

A. For attaching the outer sole to the welt.

146 Q. You know that of your own knowledge?

A. Yes, sir.

Q. For what purpose was the stitching machine put out by the Eppler Welt Machine Company used?

A. For the same purpose.

Q. Do you know that of your knowledge?

A. Yes, sir.

Q. For what purpose was the stitching machine put out by the Campbell Company used?

A. For the same purpose.

Q. Do you know that of your own knowledge?

A. I do.

Q. And did you have any Globe sewing machines in use in your factory?

A. No, sir.

Q. Now, prior to February, 1899, what concerns were engaged in manufacturing and putting out heeling machines; what was known to the trade as heeling machines?

Mr. CHOATE. Is that prior to February, or any time prior?

Mr. GREGG. I mean for a few years prior to February, 1899.

A. McKay & Bigelow Heeling Machine Association, the American heeling machine and the National heeling machine.

Q. The McKay & Bigelow?

A. The American and the National.

Q. Were those three concerns engaged in putting out heeling machines immediately prior to February, 1899?

A. I don't think immediately prior, sir. I think it was some years previous.

Q. How far back; how many years previous to February, 1899?

A. I an quite unable to give the date, sir. I have no recollection, and I have no means of fixing just the dates when the different companies disappeared.

The only company which was putting out a heeling machine just before February, 1899, was the McKay and Bigelow Heeling Machine Association.

Mr. CHOATE. We admit that the McKay Shoe Machinery Company was putting out shoe machines. Let us not waste any time about the name. That is the only one.

The WITNESS. The American and the National companies had not been in business for two or three years prior to that time, as I recall it. I am unable to give the date. I have no recollection and no means of fixing just the date when the different companies disappeared. For several years immediately
147 before 1899, metallic fastening machines had been put out by the American Metallic Fastening Company, the Wire Grip Fastening Association, the Simplex Slugging Machine Company, the Corrugated Wire Fastening Machine Company, and the Staple Fastening Machine Company. Just prior to February 7, 1899, I do not remember that any company was putting out metallic fastening machines except the McKay Shoe Machinery Company.

Mr. GREGG. At the time the combination was formed we admit that the patents were in existence—some of the patents.

The WITNESS. For the next few months after the formation of the United Company, and its taking over the companies admitted in the answer to have been taken over by it, I remember no company that was putting out lasting machinery, heeling or metallic machinery, pegging machinery or welt sewing and outsole stitching machinery, except the United Company. In May, 1906, I discussed for the first time the leases of the United Company with Sidney W. Winslow, the president of that company, at his office.

Q. Please state the substance of the conversation you had with Mr. Winslow at that time; that is, what he told you and what you told him—the substance of the conversation you had with him in 1906.

Mr. CHOATE. I pray your honor's judgment.

Mr. GREGG. I think it shows intent to monopolize.

Mr. FOWLER. If your honors please, I would like to state our position in regard to this matter, because we are going to present quite a number of witnesses whom we want to testify, and will ask to testify, in regard to different conversations with Mr. Winslow. Now, our position is that these leases and these agreements do not tell the story by any means of the United Shoe Machinery Company. Our position is that what Mr. Winslow and the officers of this company stated tends to indicate the purpose and the intention, not only of the original organization of this company,

but its ultimate object of monopolizing and maintaining a monopoly of this entire business; and indicates the methods of its operation and the purposes for which it was being operated; and that we have got to reach the final conclusion not only from the leases themselves but from the manner in which the leases were enforced, and the purpose of the leases as manifested by various conversations with various people.

BROWN, J. What is there more than insistence upon the tying clauses, which you have already put into this case, in all these leases? What do you propose to add to that?

Mr. GREGG. May the court please, in addition to the tying clauses and the provisions in the leases themselves, it shows the intent.

148 BROWN, J. The intent is apparent on the face of the document, isn't it?

Mr. GREGG. It is, in a way, but I suppose their defence will be: "We didn't intend to get all the business." I don't know what their defence is going to be, but I assume that is what it will be: "We didn't intend to monopolize the shoe machinery business, we were not making any attempt to get it all." And I think this conversation with the president of the company is certainly competent to show that it was their intent at that time to monopolize the shoe machinery business, that they wanted to have it all, and that that was the very purpose of the tying clauses of the leases.

BROWN, J. Is it admitted that those were not merely accidental clauses in the leases, but that they were really relied upon and enforced?

Mr. CHOATE. You mean the restrictive clauses?

BROWN, J. Yes.

Mr. CHOATE. Oh, certainly, they were not accidental; they were framed to accomplish exactly what they seemed to be intended to accomplish.

BROWN, J. And were applied in practice?

Mr. CHOATE. In some instances; yes, sir.

Mr. FOWLER. As stated by Mr. Gregg, and as the Supreme Court especially emphasized in the Standard Oil case and in the tobacco case, this is largely a question of intent. The court had intimated before that where there was a restraint that the restraint was unlawful regardless of the question of intent; but the court went back to the common law rule and said it is a question of whether it is a restraint under the common law. And the court especially emphasized the idea that it depends upon the intent to monopolize; and we want to show here that not only do these leases have the effect of monopolizing but from the

conduct of these parties and the various conversations of Mr. Winslow and the other parties, it was their deliberate intent to monopolize from the very beginning.

The WITNESS. In May, 1907, Mr. Winslow sent for me, and I went to his office with Mr. W. H. McElwain, another shoe manufacturer who is now dead. We urged Mr. Winslow to abandon the tying clauses and promised in case he felt willing to do that, to do our utmost to assist him in defeating certain legislation which was then pending, and bringing about a better feeling among our associates in the trade. After the conversations, extending over about 3 days, Mr. Winslow said, "It is quite impossible," or "It is out of the question for me to consider abandoning those clauses. You know that tying these machines together is absolutely essential to the success of our business. Without these tying clauses any of the machines from everybody would creep in, and you know what sort of people the manufacturers are, what use they would make of that competition. They would destroy our profits and destroy this method of doing our business, and that I can't concede under any circumstances.

If this business has got to be done under that class of
149 conditions, this company has got to get another president."

At the present time we use lasting, welting, stitching, metallic fastening, and heeling and heel-compressing machines supplied to us by the United Company, and some of the auxiliaries that go with the welters and stitchers. We do not use any such machines put out by other concerns. I know that Thomas G. Plant developed and manufactured a line of machinery for performing the operations of attaching the bottoms to the uppers of shoes, and I examined his machines at different times during one entire day in the early part of June, 1910, hoping to be able to use them. Mr. Plant offered me a complete line of machinery for my factory. He offered to replace every machine that was then in my factory belonging to the United Company for an amount between one hundred and twenty-five and one hundred and fifty thousand dollars. That is, he offered to equip my factory generally as well as it was equipped. I did not accept Mr. Plant's offer, principally because of the covenants in our leases from the United Company. This offer of Mr. Plant was made in conversation—not in writing. At one time I entered into negotiations with Mr. Plant with a view to acquiring an interest in his machinery and inventions. Mr. Jackson Johnson, of St. Louis, representing the Roberts, Johnson & Rand Shoe Company, Mr. A. B. Brown, of St. Louis, representing the Hamilton-Brown Shoe Company, Mr. George Brown, of St. Louis, representing the Brown Shoe Company, Mr. Henry N. Peters, of

St. Louis, representing the Peters Shoe Company, Mr. Milton S. Florsheim, representing the Florsheim Shoe Company, and Mr. Selz, of Chicago, representing the Selz, Schwab Shoe Company, were associated with me. These gentlemen came to Boston for the purpose of negotiating with Mr. Plant. We met him on September 22nd at the Hotel Touraine, and he made us an offer to sell us an undivided one-half in his shoe machinery business for one million six hundred thousand dollars. He was unable to specify exactly what property, patents, and machines he proposed to sell, insisting that it was not necessary; that we had seen his machinery in operation; that he would get certain machines completed; that he had the jigs, the
150 tools to manufacture them in large quantities, and that we must accept his statement that he would sell us a full, undivided one-half, subject to our verification of the facts from his books after the transaction. That happened between eight and nine o'clock on the evening of the 22nd of September. We were unable to bring the negotiations to completion that night, although Mr. Plant insisted that he must have an answer before he left the room. We were unable to agree with him on all the details, and we left, hoping to see him in the morning, although he said the transaction was closed as far as he was concerned when he left the room. I talked to him within twenty-four hours after that time in my office. He told me that he had left our meeting that evening, gone directly to the office of Mr. Herrick, on State Street, who was counsel for the United Company, and that he had there closed up a transaction with the United Company, selling not only his shoe machinery, but also his shoe business to them. He said that he had signed the papers before he left Mr. Herrick's office that night.

Q. Mr. Jones, from your knowledge of the shoe machinery business, do you know of any concern, any single concern, in this country to-day, who on December 12, 1911, could furnish machines for the purpose of fitting out a shoe factory for the manufacture of welt and turn shoes?

Mr. CHOATE. I pray your honors' judgment. He isn't an expert on shoe machinery.

A. There was no other that I know of besides the United Shoe Machinery Company.

At one time I had a top-piece compressing machine, for compressing top pieces of heels, built by a man named Young in Lynn. I had a conversation with Mr. Wilson, of the United Company, with regard to it six years ago.

(The United States offered to prove that Mr. Wilson said to Mr. Jones that he ought to put out the machine and use the

machine of the United Company; that he did not think Mr. Jones ought to encourage little fellows like Young by using their machines.

Mr. CHOATE. My understanding is that he (Mr. Wilson) was assistant to the general manager.

PUTNAM, J. What misrepresentation of threat was there there?

Mr. GREGG. There was no misrepresentation, and I should say there was no threat, but it does seem to me that those circumstances tend to show that the purpose was to discourage the use of independent machines and to induce shoe manufacturers to use exclusively the machines of the United.

151 BROWN, J. Do you go so far as to say that it is a violation of the Sherman Act when a man asks a manufacturer to take out his machine and put another machine in?

Mr. GREGG. Not standing alone, your honor. There may be a great many acts standing alone which are perfectly lawful, just as the court said in the Swift case; but if all those several acts become part of a plan to monopolize, then the plan may make the parts unlawful.)

Mr. FOWLER. Your honor, just one moment in regard to that matter. It seems to me what this man Wilson said should be taken in connection with the circumstances that actually existed. Here was Mr. Jones, who had a great number of leases from Mr. Wilson's company, being absolutely bound hand and foot, as it were, under those various tying clauses, except with reference to one or two machines. Now, here was a machine that Mr. Jones had in his factory belonging to another small manufacturer of machines by the name of Young. Now, I submit that Wilson didn't have to go under those circumstances nearly so far in his suggestions to make them have the effect of a threat.

BROWN, J. But Mr. Gregg disclaimed a threat.

Mr. FOWLER. Well, I submit, may it please the court, that in view of all the circumstances the effect was just exactly the same as though it were a threat.

BROWN, J. Then it is a different allegation—a different proposition. The proposition that he threatened this man and the proposition that he induced him or tried to induce him to take out his machine and put in one of the United Company machines are absolutely distinct propositions.

Mr. FOWLER. I submit the evidence is competent.

PUTNAM, J. It didn't result in anything, did it?

Mr. FOWLER. I am not sure that it did, but the very fact that he was there endeavoring to get him to take out one machine

that belonged to a little competitor is enough to make it competent to show what the animus was behind the act.

PUTNAM, J. Do you know a good many drummers?

Mr. FOWLER. Fortunately, probably not a great many.

PUTNAM, J. I don't know whether you are fortunate or unfortunate. They are pretty good fellows. If you knew a lot of drummers, I don't think you would find any fault with this.

Mr. FOWLER. This man was not a drummer. He did not occupy the same relation to this company as a drummer would. If he had been simply a drummer, a salesman, I would see nothing especially vicious about it—and I am not saying it was especially vicious anyway. But here was a man who was one of the active superintendents of the company, and he was endeavoring to crush out, as it were, what little trade a small competitor had in this factory in that way, and it does seem to me it is admissible. It may not be entitled to very great weight, but I think it is entitled to be looked into for what little there is in it.

152 PUTNAM, J. We do not look at it in quite that way.

Mr. FOWLER. We would like, then, that the record should show the substance of it.

PUTNAM, J. It is all in the record.

On December 12, ~~1191~~, I had between fifty and sixty welters and stitchers in my several factories. During the year previous to December 12, 1911, we had paid to the United Shoe Machinery Company royalties amounting to very nearly fifty-nine thousand dollars upon them. During that year we paid total royalties to the United Company on all its machines amounting to very close to seventy-nine thousand dollars.

I received a copy of the circular letter issued June 10, 1910, by the United Company (Exhibit 146) stating that it would create a fund of its common stock out of moneys received from royalties on Goodyear machines for the benefit of shoe manufacturers. I think I received five hundred and twenty-seven shares of the common stock of the United Company. I disposed of the stock, but have retained the money. I received the stock in the early part of the present May.

Mr. GREGG. I may state at this time the purpose for which I offer this exhibit and the testimony of the witness. It is for the purpose of sustaining the allegation in the petition on page 26.

PUTNAM, J. Isn't the exhibit in already?

Mr. GREGG. Yes, it is in. It went in this morning.

"They have offered and granted, and now are offering and granting, rebates to boot and shoe manufacturers who use exclusively one or more of the machines owned or controlled by them."

Mr. FOWLER. I would suggest right there, in order to save calling other witnesses on the same subject—Mr. Choate, won't you admit that these rebates were paid to all your lessees?

Mr. CHOATE. We don't regard them as rebates. We put out this plan in June, 1910, and carried out its terms.

Mr. FOWLER. That is, you did the same thing with the others?

Mr. CHOATE. Everybody that complied with these leases—we did exactly as we promised to do in that letter of June, 1910, and notified the Attorney General before we did it that we were going to do it. Perhaps you will produce the notice.

BROWN, J. Was this before the filing of the bill?

Mr. FOWLER. No; but just before he was going to send out this stock. Just before he was going to distribute the stock Mr. Choate came and told us he was going to do so.

Mr. GREGG. The stock was distributed the 1st of January of this year, wasn't it?

Mr. CHOATE. No, in May; this month; and you were notified. What time was it, Mr. Fowler?

Mr. FOWLER. I don't remember. I will look it up.

Mr. GREGG. The date of the circular is June 10th, 1910.

Mr. CHOATE. Will you produce that letter, please, at your convenience?

Mr. FOWLER. I haven't such a vivid recollection about the letter as about the fact that you came in and told us. I don't think you wrote me what you wanted to see me about.

Mr. CHOATE. I handed you a letter addressed to the Attorney General, which you took to give to him.

Mr. FOWLER. If I can find it in my office, I will bring it.

153 The WITNESS. I have used in my factory the Acme leveler and also I use the automatic leveler; both of them can be used for performing the same operation on any kind of shoes that we make. The Acme will perform just as good work as the automatic on any kind of shoes that the automatic will level.

Mr. CHOATE. I understand you have asked him to produce a list of his machinery, and you mean to recall him again when he puts that list in?

Mr. GREGG. Yes; I should like to do that.

The WITNESS. May I understand that request? I would like to know just what you want, a list of all the machinery?

Mr. GREGG. A list of all the machines that you had on December 12th, 1911, from the United Shoe Machinery Company.

The WITNESS. I don't know that I can get that. We keep no record showing when machines were transferred. I can show

what we have at the present time. I don't know whether I can ascertain exactly the number we had on December 12th.

Mr. GREGG. Well, see if you can ascertain.

Cross-examination:

We have both the Acme and automatic leveler in our factory. I know nothing exceptional about our particular demand for machinery.

Q. So that there may well be a need for having both machines in the same factory at the same time?

A. There may be, but there isn't.

Mr. CHOATE. I ask that the last part of the answer be stricken out.

PUTNAM, J. Strike it out.

Mr. CHOATE. Just notice my question, Mr. Jones.

The WITNESS. My office is in Boston. Mr. Reed is in direct charge of the manufacturing end of our business. One of our factories is in Whitman. I have not been there probably for a year, and have not been in our factories at Skowhegan and Gardner for two or three or four years. Mr. Reed makes the arrangements for obtaining the machines in the factories under his control, after consultation, and during the last two years, approximately, has signed the leases. Previous to that I signed them.

The circular letter of June 10, 1910, to which I have referred, came to my hands in the regular course of business. Subsequently a blank application for stock was sent me, with a request to sign and return it. I filled it out and sent it, thereby applying for the stock, and it was sent to me in accordance with the terms of the circular, as far as I could judge.

154 I met Mr. Thomas G. Plant on September 22nd, 1910, in company with certain other gentlemen whom I have named, Messrs. Jackson Johnson, A. D. Brown, George Brown, Henry Peters, Milton Florsheim, and Selz. A Mr. Campbell was also present. He is not a shoe manufacturer. There is no such organization as the Shoe Manufacturers' Alliance that I know of. There has been, and all of the gentlemen whom I have named, including myself, belonged to it, except Mr. Campbell. I joined it about six months after it started.

Q. Well, while you belonged to that alliance you spent a good deal of your time in attacking the United Company, didn't you?

A. Not very much; no, sir.

Q. Well, more or less of your time, didn't you?

A. Why, I made two visits to Washington, and I appeared before the Massachusetts Legislature; perhaps three visits to Washington.

Q. Well, the principal object of the Shoe Manufacturers' Alliance was to attack the United Shoe Machinery Company, wasn't it?

A. No, sir.

Q. Well, that was one of its objects?

A. No, sir.

Q. Well, it engaged in that pursuit?

A. I beg your pardon. I don't think it ever did.

Q. Let's see. You say you made two visits to Washington. Did you visit the Attorney General while you were there?

A. I called on him once.

Q. And Mr. Fowler?

A. Yes, sir.

Q. To make complaints against the United Company?

A. I don't think we did. I think we discussed features of the case that he inquired of.

Q. Did you make complaints against the United Company while you were there?

A. I don't think we did. I don't recall it.

Q. Did you offer to give him the names of persons who would make complaints?

A. I don't think so. I think he already had them.

Q. At any time have you done so?

A. I don't think—I have had such a conversation with Mr. Gregg or some of his assistants. I think not with Mr. Fowler.

Q. You have with Mr. Gregg—offered to give to him names of people who would make complaints against the United Company?

A. No. That is not the way to put it. That is not the fact. I have offered to give him the names of persons who had knowledge concerning the dealings of the company. I didn't know whether they would make complaints or not.

Q. Did you expect those persons would be called as witnesses?

A. I had no thought of such a thing.

Q. Did he ask you to give him those names, or did you volunteer?

A. He asked me, or his assistant.

155 Q. To give you the names of what?

A. Of people who had dealings with the United Shoe Machinery Company and could give him information in regard to their business methods.

Q. That was all that he asked you for?

A. In substance. I do not think that I furnished him with the name of Mr. Jackson Johnson and have no recollection of furnishing him with the name of Mr. Peters. As to whether

some of the gentlemen whom I have named were with me at any time when I was in Washington, I think some of them were. On one occasion I went to the Attorney General's office with them. Mr. Rand was present, and a few others who were members of the Shoe Manufacturers' Alliance. I can not tell you which ones.

Q. Well, now, did you also appear before one or two committees of Congress to make complaints against the United Company?

A. I appeared before two committees——

Q. Just answer my question, please; did you or did you not?

A. I don't see how I can answer the question. You don't ask it correctly.

Q. You can answer yes or no. Did you or did you not appear before one or two committees of Congress and make complaints against the United Shoe Machinery Company?

A. Well, I will say yes; as near as I can judge what you mean.

Q. That was the winter before this very last one?

A. That was in February and March of 1912.

Q. And you spent a number of days there detached from your shoe business in Massachusetts, sitting around committee rooms and making complaints, didn't you?

A. Yes, sir.

Q. And you brought people there, didn't you—other people with you?

A. No; I didn't bring anybody.

Q. Well, you notified people asking them to come, didn't you?

A. I have no recollection of it. I may have done so.

Q. You might have done so?

A. But I don't recall it. I do not deny informing some of my friends in the alliance, including those in St. Louis, to come with me and make complaints. I may have done so. I have no recollection of any such thing. But I don't deny it. I have an indistinct recollection that Mr. Jackson Johnson was there on other business. I don't think he came for that pur-
155a pose. Mr. Rand was present at one of the committee hearings at which I was present, but not in consequence of my sending for him, that is so far as I can remember. I couldn't tell you if the alliance was represented by counsel there. Our counsel was present. Mr. Louis D. Brandeis was counsel for the Shoe Manufacturers' Alliance. I don't think he addressed the committee in behalf of the alliance. My recollection is that he addressed the committee in favor of some amendments to the Sherman law which he had assisted in draw-

ing up. I was present on two days at hearings before the congressional Committee on the Judiciary. I believe Mr. Brandeis was also present. He may have said that he was representing the Shoe Manufacturers' Alliance. I don't deny it. He has not been paid by the alliance for anything which he has done for us. He doesn't take any pay from us, though he is our counsel and was there at that time. He was advocating amendments of the Sherman law before the Committee on Judiciary. I think he incidentally brought in some complaints against the United Company but it was in his argument in favor of the amendment.

Q. You also appeared before a Committee on Interstate Commerce?

A. In the United States Senate.

Q. And made some complaints against the United Shoe Machinery Company?

A. I made a statement referring to pending legislation.

I also have appeared before one committee in Massachusetts, and have complained against the United Company's leases. I did not go to Canada to agitate against the United Company. I was in Canada with Mr. McClennen, who is Mr. Brandeis' partner. I did not go to see any of the Government authorities, and I did not see any of them. I have published articles in the newspapers attacking the methods of leasing machinery employed by the United Company.

156 Q. Are you conscious of having any bias against the United Shoe Machinery Company?

A. I am conscious—no, none at all. I haven't the slightest bias. I am a stockholder and director in the Boylston Manufacturing Company. I have a stockholding interest in it that is large for me. Messrs. Jackson Johnson, Florsheim, Selz, and Rand, most of the people whom I named as members of the alliance, are also stockholders or directors of the Boylston Company. The Boylston Manufacturing Company advertises, manufactures, and has for sale shoe machinery. Its capital stock is something like five or six hundred thousand dollars. I have been interested in it about six months. Its place of business is in Boston and it is engaged in manufacturing shoe machinery to some extent.

Q. How long have you been trying to become interested in the manufacture and sale of shoe machinery yourself?

A. Never.

Q. I understood you to say that you tried to obtain an interest in Mr. Plant's inventions and machinery in 1910. Is that or is that not true?

A. That is true. I misunderstood your question.
Q. Had you before that time tried to get into a business manufacturing shoe machinery—before you tried to get into Plant's business?
A. Let me see. About 1894 or 1895 I bought an interest in the Simplex slugger, which we used in our factory.
Q. I am not talking about the use of it. Did you then, to any extent, engage in manufacturing and marketing shoe machinery?
A. To a very slight extent.
Q. Since then, and between that time and when you tried to get into Plant's business, have you attempted otherwise?
A. I have no recollection of any attempts. The gentlemen who tried, with me, to get an interest in Plant's business were shoe manufacturers and the same I have mentioned as former members of the Shoe Manufacturers' Alliance.
Q. When did that depart this life?
A. When the experimental factory, which was built to try machinery, which we had equipped was burned out and destroyed, we dissolved.
Q. When was that?
A. I can't tell you exactly; I should think it might have been six months ago or eight months ago.
Q. Then the men who wanted, with you, to go into Mr. Plant's business were Mr. Jackson Johnson, Mr. Florsheim, Mr. Peters, Mr. Rand, and Mr. Selz?
A. Yes, sir.
Q. You spoke of September 22d as the time you made that effort?
A. Yes, sir.
Q. Had you tried before that time?
157 A. Yes, sir.
Q. Had you tried as early as the spring of 1910?
A. No—wait a minute. Had I ever——
Q. In May or June, 1910?
A. Had I tried to get an interest in it?
Q. Yes.
A. I had said to Mr. Plant——
Q. Just answer my question.
A. I can hardly answer you, for I don't know what you would call "tried." I told Mr. Plant our feeling——
Q. You have already answered that question to Mr. Gregg and myself.
A. I have no need to answer it again, then.

Q. I mean you have answered as to the word "tried"—that you tried to get in. You understand what it means?

A. Not exactly, Mr. Choate. I am sincere; I don't quite understand what you mean.

Q. You said you examined Mr. Plant's machines?

A. Yes, sir.

Q. Where?

A. At his factory.

Q. Anywhere else?

A. In the basement of his factory where he had some stored.

Q. Mr. Plant was engaged in the manufacture of ladies' shoes?

A. Yes, sir.

Q. Exclusively?

A. Yes, sir.

Q. The machines that you saw were built to manufacture ladies' shoes?

A. Men's also.

Q. They were built peculiarly adapted to manufacture ladies' shoes which he was making?

A. No, sir; they were not.

Q. Did you ever see anything but a lady's shoe made on them?

A. No, sir.

Q. To your knowledge, did he make anything except ladies' shoes on them?

A. I don't think he did.

Q. That is the only kind of shoes he dealt in?

A. Yes, sir. He didn't make them for his own use, however, exclusively; he made them for the trade.

Mr. CHOATE. I ask that that be stricken out as not in answer to any question I have asked.

PUTNAM, J. It is not responsive. It may be stricken out.

Q. You were making altogether men's shoes?

A. Yes, sir. We made a few women's shoes at that time, but only a few.

Q. You said that Mr. Plant made an offer to put certain machines in your factories?

A. Yes, sir.

Q. In connection with that offer did he suggest to you that you become interested with him in the shoe machinery business?

A. No, sir.

158 Q. Was the offer made to any person beside yourself at the same time?

A. What do you mean; about putting in the machinery?

Q. Yes.
A. Not in my hearing.
Q. Do you know Mr. Henry Endicott?
A. I do.
Q. Do you not know of the same offer being made to him at the same time?
A. I know it in the same way that I knew a lot of things you excluded this morning. I know it; I am convinced of it, but I didn't hear it, and so I haven't personal knowledge of it.
Q. Isn't this a fact, Mr. Jones: Mr. Plant suggested to you that you become interested in his machinery business?
A. Not at that time.
Q. And that his machines be placed in your factory?
A. Not at that time.
Q. Well, at some time?
A. Later on; in September.
Q. Long prior to September?
A. No, sir; he never suggested to me to become interested in his shoe machinery prior to September.
Q. Did he not suggest that you invest some money in his shoe machinery business?
A. No, sir.
Q. Or that you advance money to him?
A. No, sir.
Q. And in that way become interested?
A. Never did anything of the kind.
Q. And that you then equip your factory with his machines?
A. No, sir.
Q. That you and Mr. Endicott should equip your factories with his machines?
A. The only part of that that is correct is that he asked me to equip my factory with his machines, and named a price for his machines which I was to pay for them in cash.
Q. You have knowledge of the fact of his making a similar offer to Mr. Endicott?
A. I heard it; yes, sir.
Q. And did he not then suggest to you that after you had done that you three gentlemen sell out the entire shoe machinery business to the United Shoe Machinery Company?
A. I never heard of that until this moment.
Q. And that you three could go on and manufacture without paying royalties?
A. Nothing of the kind ever occurred.
Q. You never heard of that before?

A. Never heard of it until this moment.
Q. You haven't been asked this same question before?
A. Never.
Q. And haven't heard Mr. Plant testify to that fact?
A. Never have; it isn't a fact anyway, whether he testified to it or not.
Q. Were you present at the trial of the case of one Smith v. Thomas G. Plant, in Worcester?
A. I was there a day and half.
Q. Did you hear Mr. Plant testify?
A. Part of the time.
Q. Did you not hear him make that statement under oath?
A. No, sir; I never did.

159 In September, what Plant offered me and my associates was a half interest in his shoe machinery, and inventions only. When he left us at that time we had given the matter sufficient consideration but we had not got the money with us. He made a suggestion to us and we wanted time to discuss it, but before we had had time to discuss it he left us and went away. At the beginning he had told us that if his proposition was not accepted then and there that was the end of it. He did not leave the offer open.

There was never any suggestion on his part or ours that we become interested in the Thomas G. Plant Company which manufactured shoes. He didn t offer us any interest in that property, and we didn't ask to buy any. He never offered us anything more than an undivided half interest in the inventions and the machines embodying them.

When I was in Canada with Mr. McClennen I didn't go there to investigate an attack on the United Company. I met Mr. Caron. I think I did not know until I got there that he was one of those who petitioned for an investigation of the United Company there. I found it out while I was there. I talked with Mr. Caron endeavoring to buy some machinery from him. We met him at his works, and then he went with us to the hotel. We had some meal with him at the Hotel Frontenac. We talked about the United Company, but I do not remember making any complaints in his hearing about that company. I should say it was possible that I may have complained about their leasing methods. I do not remember giving him any information regarding the United Company. I don't deny it. I don't know anything about it. I don't recall it. I met him by appointment, and was with him part of two days. He told me that he was one of the petitioners for an investigation of the United Company, and I probably knew that fact while I was talking to him about

matters connected with the United Company. That was about two years ago.

160 Referring to my talk with Mr. Winslow, I am asked to point out in plaintiff's Exhibit 15, the lease for the Consolidated hand-method lasting machine, the provisions which I complained of.

We do not use the Consolidated hand-method lasting machine at present. We may possible have one or two. We do not use the Number Five. We have tried them and thrown them out. I haven't visited the factory for three years. I have marked the provisions in the consolidated lease that I complained of.

To the best of my recollection, the second conversation which I had with Mr. Winslow regarding the leases of the United Company took place in May, 1907. Mr. Winslow, Mr. McElwain, and I were there. Mr. Howe was present from time to time. In the conversation, Mr. McElwain and I did not indicate the particular provisions I have marked but spoke of the tying clauses. By "tying clauses" we referred to the clauses which restricted the use of some machines to use with others and to the full capacity clause. I think that what I have said indicates the clauses that are marked there. I do not know how to describe them. We spoke of the tying clauses, meaning all that class of clauses. I couldn't say whether we had others in mind besides the two I have mentioned.

He [Mr. Winslow] said he could not consider cancelling the tying clauses; that those clauses gave him complete control and that that control was necessary for the successful carrying on of the business; without that complete control other machines of other manufacturers would creep in. The manufacturers, whom he characterized as a bad lot, would take advantage of that competition and would not make prompt payment to him or to the other men either; they would use one to play against the other, and a condition would result that would be unprofitable to his company. He wouldn't have anything to do with the business run on that basis; that if they had got to run it that way, if the shoe machinery business had got to return—what was in his mind was the condition existing before, what he referred to when he said, talking to me: "You know what would happen, that the intense competition that existed before would return." And he wouldn't have any part in a business of that kind. He said: "This company has got to have another president if the business has got to go back to that condition."

Q. This is the same conversation, the conversation you are now giving, as that which you undertook to testify about on direct?

A. The same substance, same conversation.
Q. Did you say anything on direct about control or complete control?
A. I can't tell you what I said. It was the same idea.
Q. I am not talking about ideas; I am talking about words. You are repeating somebody else's words?
A. Oh, no.
161 Q. Or the substance?
A. The substance; that is all. I am not trying to give the words.
Q. Did you say anything on direct about Mr. Winslow having complete control?
A. I can't tell you whether I did or not. That was the idea.
Q. I am not asking you about the idea at all.
A. That was the substance.
Q. Pardon me, now. I am asking you about what you said.
A. Well, I have given you as near as I can the substance of it.
Q. Well, did you say anything about complete control; will you swear to it?
A. I will swear that I——
Q. Answer me yes or no.
A. Not perhaps in this case.
Q. I want you to answer yes or no.
A. Yes, he did.
Q. Did he use the words that he wanted to have complete control?
A. I wouldn't say about the words. That is the substance.
Q. I am not asking about the substance.
A. I can't tell you, Mr. Choate.
Q. I am calling your attention to this fact. As I have understood your direct statement and your statement on cross, they don't agree. For that purpose I am asking you to tell me, yes or no, whether it is a fact that Mr. Winslow said anything about complete control—on your oath, sir?
A. On my oath, the impression——
Q. I am not asking you about impressions.
A. I can't tell you the words, sir. It is impossible for me to tell you his——
Q. Then you can't tell whether he said anything about complete control or not?
A. I can tell whether he carried that idea or not.
Q. I am not asking you about the idea.
A. It is impossible for me to remember at this time the exact words he used.
Q. Then you don't remember them?

A. Not the exact words. I remember some of them, but not in relation to that control.

Q. Is it not a fact, Mr. Jones, that he said that continuity of operation of their machines was essential for the successful operation?

A. No, he didn't say that to me.

Q. You used the words, both on your direct and cross-examination, "continuity of operation"?

A. Yes. I have heard it so often that I used it inadvertently.

Q. If you will confine yourself to your examination, you used the words "continuity of operation"?

A. Yes, sir.

Q. As words that Mr. Winslow used?

A. Yes.

Q. And he used them with reference to the operation of some of the United Company's machines?

A. He didn't use them at that time. Those were not his words; no, sir.

162 Q. Then, both on direct and cross you put words into his mouth on the witness stand which he didn't use?

A. No, sir. I never pretend ——

Q. Now, one moment. Did he or did he not use in that conversation the words "continuity of operation"?

A. No, sir; I don't think he did. My best recollection is that he did not.

Q. Then, both on direct and cross you stated that he said something that he did not say?

A. I don't think so. I tried to give the substance only of what he said.

Q. Am I wrong in having understood you to say, both on direct and cross, that he used the words "continuity of operation"?

A. I may have used ——

Q. Pardon me. Answer yes or no.

A. I never intended to say that those were his exact words.

Q. I am asking you if you did say so.

A. I don't know; I might have; I don't think so. I was trying to express the idea that was in my mind.

Q. You now say he didn't use that expression?

A. I don't think he did at that time.

Q. Can you remember a single phrase or word exactly as he used it on that day?

A. Yes.

Q. Have you stated it?
A. No.
Q. The one thing that you remember, then, that he did say you haven't stated?
A. Yes.
Mr. GREGG. Ask him what it was?
The WITNESS. I have told about this conversation with Mr. Winslow two or three times. I have stated it about a year ago to Mr. Gregg, I am not sure whether in Mr. Fowler's presence or not, and have mentioned it to other manufacturers. I have put the substance of it in writing. Mr. Gregg has the writing. I did that about six months ago. That is the first time I remember to have put it in writing. I have not looked at the writing very lately.
Q. Have you ever stated on any one of the public occasions when you have been before public bodies making complaints against the United Shoe Machinery Company this conversation with Mr. Winslow?
A. I can't tell you, sir, I am sure; I don't recall.
Q. Can you remember a single instance when you said it?
A. Publicly?
Q. Yes, sir.
A. I don't recall any.
Q. And yet you have been complaining against him and his company before the Massachusetts legislative committee in 1911, before two congressional committees a year ago, and last winter in the Attorney General's office, and you have spoken before public assemblies, haven't you?
A. In relation to the Shoe Machinery?
163 Q. Yes.
A. On one occasion.
Q. You have delivered addresses?
A. No.
Q. In fact, with the exception of the iniquities of the New York, New Haven & Hartford Railroad, you have been more obsessed with the United Shoe Machinery Company than anything else?
A. I don't consider that a fair statement of the case, Mr. Choate.
PUTNAM, J. You are going a little too far, Mr. Choate.
The WITNESS. I did not write the pamphlet which I have before me. I referred to it before I marked the lease at your request. I have bought some copies of it. There was a time when I was friendly to the United Company, and when, instead

of making complaints against it and appearing before public bodies against it, I thought well of it and so expressed myself.

Q. You gave an interview, didn't you, as to your knowledge of the United Shoe Machinery business?

A. I did.

Q. And your views about it?

A. Yes, sir.

Q. Did you state at that time: "It has actually reduced the prices on many of its machines"?

A. I did.

Q. "It has placed others in our hands on a rental system that has saved us a very large investment of capital"?

A. I did.

Q. "It has certainly given more faithful care and attention to the running of the machines and keeping them in order"?

A. Yes, sir.

Q. "And in our country factories, where we employ a large proportion of inexperienced help, they have given us more constant and faithful attention in instructing new operators, and in the supervision of the machinery under trying conditions, than we ever obtained from any of the constituent companies"?

A. That is correct, sir.

Q. Did you also say: "As far as I recall them, the royalties demanded by the company are the same, exactly in amount, that we have always paid"?

A. Yes, sir.

Q. "It is only fair to add that they have supplied us with many additional machines to do the minor parts of the work, without any charge at all"?

A. I think that was a mistake.

Q. Did you say that?

A. I may have. I think likely I did.

Q. "These machines have been of considerable value to us, both in the saving of labor and increasing the uniformity of the goods, and are such machines as would undoubtedly have cost us a round sum if the United Shoe Machinery Company had not been in a position to furnish them to us gratis"?

A. Yes, sir.

164 Q. Did you not also say, when you were friendly: "If you wish to know whether the company is charging us an unfair price for tacks and nails, will say that this is entirely untrue?

A. Yes, sir.

Q. "The royalty on some of their machines is derived from the price of the tacks and nails used on them; consequently,

the price which they charge for the tacks and nails is certainly greater than the same thing could be brought in the market, for use by hand." Did you say that?

A. I think so.

Q. "But, as a matter of fact, the Shoe Machinery Company charges us no more for tacks to-day than they did many years ago, when tacks in the open market were much cheaper than to-day; in fact, my impression is that they have actually reduced the price of tacks between 25 and 30 per cent, while everyone knows that the cost of tacks and nails in the open market has advanced." Is that true?

A. I think it was true at that time; yes, sir.

Q. And you so stated?

A. I think so.

Q. Did you also say: "I do not believe any manufacturer who has been honest and straightforward in his dealings with the company can show any clear grievance against the company, or can make out the slightest case of crowding or coercion?"

A. Yes, sir.

Q. "On the contrary, I can say for ourselves, that the question of royalties and machinery, which was formerly one of the most vexatious and exacting departments of our business, has ceased to give us any concern at all." Did you say that?

A. Yes, sir.

Q. "We were formerly obliged to examine new inventions, and were forced to make experiments with machines for months at a time, with the result that we obtained more or less bad work and were put to much useless expense, and the thought and attention of our best men was given to deciding between the merits of the old and the new." Did you say that?

A. Yes, sir.

Q. "We were obliged to dicker and trade with every different manufacturer of machinery all the time with the moral certainty that somebody who had more time and attention to give to it would get a better bargain than we were able to obtain; and with it all there was an enormous and perpetual shrinkage on account of the changes made necessary by the introduction and adoption of machinery that was not thoroughly and satisfactorily developed before being placed on the market." Did you say that?

A. Yes, sir.

Q. "To-day this is all changed. If we want a machine, we simply notify the company. Their agent confers with our foreman. The best machine known for doing the work is in-

stalled with little or no expense to us. We are obliged to pay a rental in some cases, which would amount to about the same as the yearly shrinkage in value of the machine if we had to buy it, but the capital which we would formerly have been called upon to invest is still in our possession for use in our regular business." Did you say that?

A. Yes, sir.

Q. "We are confident that we are getting the machine on as favorable terms as any competitor, and we are enabled to employ our time and ability in the legitimate branches of our business, and we have not, up to this time, been obliged to pay as much for this privilege as we formerly paid for the very much less satisfactory condition." Have you so stated?

A. I did in that case; yes.

Q. And you gave that interview May 24th, 1906, didn't you?

A. About that date.

(A printed pamphlet containing a statement by Charles H. Jones, appearing in the Shoe and Leather Reporter of May 24, 1906, and read in part by Mr. Choate, is marked "Plaintiff's Exhibit 147.")

JUNE 3, 1913.

Direct examination resumed:

During my examination by Mr. Choate I was asked by him whether I had ever been asked before a certain question with reference to Mr. Plant's proposition, and I replied that I had not. I now recall that Mr. Choate asked me some question during the Smith-Plant trial at Worcester, and it may be that that was the question to which he referred. I desire to change my answer so that it may read, "I may have heard the question before, but the occurrence referred to never took place." I also desire to correct my testimony with respect to the dates of certain interviews with Mr. Winslow. The interview in 1907 was earlier than May. That discussion took place in January or February, 1907. I further desire to correct my testimony with respect to my answer that I did not remember whether in any public addresses I had described that interview with Mr. Winslow in the same way in which I described it in my testimony. Upon examining the reports of the occasions upon which I addressed committees of Congress I find that I told the story to both of them in substantially the same manner in which I had stated it here.

166 The interview which I gave out in 1906 was given out at Mr. Winslow's solicitation. He asked me if I would give an interview to a reporter of the Transcript, and I said I would, and he said he would send him to my office. Later in the

day a man appeared in my office with an interview already prepared. It did not exactly meet my ideas of what I wished to say, and so I rewrote it, and substituted the one which Mr. Choate read. I changed my opinion with respect to the United's methods of doing business at the time of the interview with Mr. Winslow, in 1907, when he refused to abandon the tying clauses.

Q. From that time on?

A. From that time on, in a growing degree, as different circumstances showed me the disadvantage under which I, as a shoe manufacturer, was laboring in consequence of those clauses. For instance, I will make it plain, if I may——

Q. Why did you change your opinion?

A. I learned from time to time of occurrences which made the views expressed by Mr. Winslow——

Q. I asked you when you changed your opinion, and you said in 1907. I ask you now why you changed your opinion?

A. Because of the occurrences which took place following that interview with Mr. Winslow.

I said on cross-examination that I had not stated the substance of all Mr. Winslow said at the time of the interview in 1907. Mr. Winslow said at that time, "I now have the shoe manufacturers under my control," and demonstrated it by closing his fist and using other language. That and the words that accompanied it is what I had reference to when I said I had not told all that took place.

167 I went to Canada in 1911. At that time I had agreed to act with members of the alliance, and we were looking about for shoe machinery independent of the control of the United Company. I had heard that there was a man in Canada who had shoe machinery, and also that some kind of a prosecution was going on in Canada to nullify the tying clauses in leases. I thought I had better go up there to see the machinery and to learn all I could about the action which was proceeding there. I went for those two purposes. I saw Mr. Caron, who was manufacturing the machinery, and I also saw his counsel in relation to the litigation.

Q. You were also asked on cross-examination whether or not you had ever belonged to the Shoe Manufacturers' Alliance, and you stated yes.

A. Yes, sir.

Q. When did you join the alliance?

A. In May, at the time I speak of.

Q. May, 1911?

A. I think that was the year; yes, sir. Yes, sir; that was the year—May, 1911.

Q. Do you know how long the alliance had been in existence when you joined it?

A. It was organized the previous September.

Q. Why did you join the alliance?

A. At the earnest request of the members who wished to have some eastern manufacturer belonging to the organization, and because I sympathized with their views also, of course.

Q. So far as you know, what was the purpose of this alliance?

A. The purpose of the alliance is——

PUTNAM, J. Is it necessary to go into that, Mr. Gregg?

Mr. GREGG. On cross-examination of both this witness and Mr. Selz Mr. Choate has made a great deal of this western alliance, and the fact that these gentlemen were interested in the Boylston Manufacturing Company. I merely wanted to show why the gentlemen had gone into the western alliance and why it was acquiring an interest in the Boylston Manufacturing Company; that is all.

Mr. CHOATE. The subject of that agreement is in writing and is signed by them, and we don't object to its being put in.

PUTNAM, J. He may state in a brief way.

Q. State in a brief way what was the purpose of the Shoe Manufacturers' Alliance.

A. To secure to manufacturers the right to use such machinery in their business as they might from time to time find to be best fitted for their use and to do away as far as possible with the conditions which existed at that time and which prevented the use of independent machinery.

168 I acquired an interest in the Boylston Manufacturing Company about six months ago because we could see no other way in which to establish competition in shoe machinery. My interest amounts to between twenty and twenty-five thousand dollars.

Cross-examination resumed:

The statement of my 1906 interview which was read to me by Mr. Choate was the statement I gave to the reporter. It is in my own words, and expressed my views at that time.

Q. Before the Committee on Judiciary in the winter of 1912 at Washington were you not asked this question by Mr. Higgins of the committee: Referring to the statement which I have just called your attention to, your interview of 1906, Mr. Higgins said:

"I would like to ask some further questions in connection with your interview of 1906——

"Mr. JONES. All right, go ahead.

"Mr. HIGGINS. In which it appears you made this statement:

"'The terms which the Machinery Company have recently offered their patrons on certain lines of machinery are so liberal that the outsiders can not compete.'

"Mr. JONES. That was right.

"Mr. HIGGINS. Was that changed in 1907?

"Mr. JONES. No, sir. It has not been changed up to date.

"Mr. LITTLEFIELD. Hasn't been changed?

"Mr. JONES. It has not been changed up to date."

Did you so testify?

A. I think so.

Q. And that is true, what you then said?

A. As far as I know; yes, sir.

It was not one of the purposes of the Shoe Manufacturers' Alliance to foment and foster the prosecution of the United Company. I attended a meeting of the Shoe Manufacturers' Alliance in St. Louis in November, 1912.

Q. Did you at that meeting make any statement of the purposes which you had in joining the alliance?

A. I recall none; no, sir.

Q. Did you make any statement with reference to its being one of your purposes to follow the litigation in which the United Shoe Machinery Company was involved?

A. I don't think so.

Q. Do you deny it, sir.

A. I have no recollection. I should have to know more——

Q. Did you not as a part of the statement of that purpose make a report to the alliance of the progress of the litigation here?

A. I have no recollection on the subject at all, Mr. Choate; I couldn't answer you.

Q. Did you not make a report to the alliance of the
169 argument and the court's decision on the demurrer to the indictments against the United Shoe Machinery Company?

A. I may have told them what appeared in the newspapers. I don't recall that matter at all. I had no other information than what I read in the papers. I may have given them that.

I did not state that the general verdict was that Judge Putnam's decision on the demurrers was scandalous. I believe Mr. Rand, whom I know very well, was secretary of the alliance at that time.

Direct examination resumed:

I produce a list of machines of the United Company in the three factories of the Commonwealth Shoe and Leather Company, dated November 1, 1911.

(This list is marked "Plaintiff's Exhibit 150.")

Cross-examination resumed:

I understand that the list states only machines which we have obtained from the United Company. I did not personally make up the list. Some of the Goodyear welt and turn machines were leased from the Goodyear Company before the United Company came into existence, but I have no idea how many.

Mr. CHOATE. It will develop that a great many of those machines were leased of companies before the United came into existence. It will take some time to do it, but I think he ought to check that up.

I think that was what he was asked to produce the other day, because we were then on the extent to which the United Shoe Machinery Company supplied the trade. Now, my point is this: I am very sure that with a little analysis it will appear from this list that a great many of those machines were leased of companies before the United Company came into existence.

Q. Have you prepared any list showing all the machines that you use in all your factories?

A. No, sir.

Mr. CHOATE. Will you do so? Will you bring in a list of the machines that you obtained of other persons in use in your factories on the same date, please?

Mr. GREGG. We have no objection to that. Will you do that as far as you can?

The WITNESS. Yes, sir.

(Later the witness produced a list of all the machines in the factories of the Commonwealth Shoe and Leather Company, divided as requested of him, which was introduced as plaintiff's Exhibit 279. Plaintiff's Exhibit 150 was withdrawn.)

170 Mr. GREGG. I desire to offer as Government's exhibits three circular letters to stockholders—one to the stockholders of the McKay Shoe Machinery Company; another to the stockholders of the Goodyear Shoe Machinery Company, and another to the stockholders of the International Goodyear Shoe Machinery Company—sent out in February, 1899. I understand that counsel for the defendants admit the authenticity of these.

Mr. CHOATE. We admit them and do not require any further proof.

PLAINTIFF'S EXHIBIT 151.

BOSTON, MASSACHUSETTS,
February 15, 1899.

To the stockholders of the McKay Shoe Machinery Company:

The undersigned, directors of the McKay Shoe Machinery Company, have entered into an agreement with the United Shoe Machinery Company for the exchange of the stock of the McKay Shoe Machinery Company for shares of the United Shoe Machinery Company, upon the basis of $5.50 of the preferred stock and $5.50 of the common stock of the United Shoe Machinery Company for each share of the McKay Shoe Machinery Company, so that the stockholders of the McKay Company will receive $11 of the stock of the United Company (half common and half preferred) for each share of the capital stock of the McKay Company held by them. The United Shoe Machinery Company has been organized under the laws of New Jersey with an authorized capital of 1,000,000 shares, one-half 6 per cent preferred stock, and one-half common stock. The par value of both common and preferred shares is $25, and the common and preferred shares have equal voting power.

The United Company has contracted for the purchase of a majority of the stock or the purchase outright of the following companies:

McKay Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Goodyear Shoe Machinery Company of Canada, Eppler Welt Machine Company, International Eppler Welt Machinery Company, Davey Pegging Machine Company.

The entire floating debts of the above companies will be paid, and there will remain in the treasury of the new company, after acquiring the above-named companies, at least $500,000 in cash and 150,000 shares of the preferred stock and 150,000 shares of the common stock.

Stockholders of the McKay Shoe Machinery Company who desire to exchange their stocks in the McKay Company for stock in the United Company must assign at once to the United Shoe Machinery Company their certificate or certificates of shares in the McKay Shoe Machinery Company, and deliver said certificates to James W. Brooks, 76 Lincoln Street, Boston, Mass., and the proper amount of stock in the United Company will be returned in exchange for the shares thus assigned and delivered.

No certificates and no receipts will be issued for fractions of shares, but fractions of the stock in the United Company will be

paid for in cash at par, and checks for such fractions of shares will be sent to shareholders with the new certificates.

The officers of the United Shoe Machinery Company are as follows:

Sidney W. Winslow, president; John H. Hanan, vice president; Wallace F. Robinson, vice president; Orlando E. Lewis, vice president; George W. Brown, treasurer and general manager; Lewis H. Baker, secretary.

Directors: Louis D. Brandeis, Josiah H. Clark, George E. Keith, Orlando E. Lewis, Rudolph Matz, Gordon McKay, James J. Storrow, Wallace F. Robinson, George W. Brown, Sidney W. Winslow, William H. Coolidge, William S. Eaton, Edward P. Hurd, Samuel Weil, Frederick G. King, Charles H. Cole, 171 John H. Hanan, William Barbour, Edwin H. Mathewson, Elmer P. Howe, Alfred R. Turner, jr.

Executive committee: William Barbour, George W. Brown, Elmer P. Howe, Edward P. Hurd, James J. Storrow, Sidney W. Winslow.

As the United Shoe Machinery Company expects to begin at once the payment of dividends at the rate of 6 per cent per annum on the preferred stock, and 8 per cent per annum on the common stock, it will be seen that the annual return upon the $11 of the new stock received for each share in the McKay Company will be 77 cents, instead of the 60 cents per share which is the present annual dividend paid upon each share of the McKay stock.

The undersigned have agreed to exchange all the stock in the McKay Company which they hold personally, and recommend the other stockholders in the McKay Shoe Machinery Company to also exchange their shares for shares in the United Shoe Machinery Company, because they believe that not only will shareholders receive an increase in dividends, but that the dividends will be rendered more permanent and more secure in the future.

JAMES W. BROOKS.
LOUIS D. BRANDEIS.
JOSIAH H. CLARK.
GEORGE E. KEITH.
ORLANDO E. LEWIS.
RUDOLPH MATZ.
GORDON MCKAY.
F. F. RAYMOND, 2D.
JAMES J. STORROW.

PLAINTIFF'S EXHIBIT 152.

BOSTON, MASSACHUSETTS,
February 8th, 1899.

To the stockholders of Goodyear Shoe Machinery Company:

The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the efficient types of shoe machinery, have been for several years recognized by the officers of the principal shoe-machinery companies. For more than a year your directors and large shareholders have been in negotiation to accomplish this end.

After a thorough investigation of the financial condition and the business of the shoe-machinery companies named below, the organization of a corporation has been effected under the laws of the State of New Jersey, to be known as United Shoe Machinery Company.

The United Shoe Machinery Company has already contracted for more than a majority of the capital stock of Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Goodyear Shoe Machinery Company of Canada, International Goodyear Shoe Machinery Company, Eppler Welt Machine Company, International Welt Machine Company, Davey Pegging Machine Company, besides stocks in other shoe-machinery companies, letters patent, and other property.

The United Company will also from time to time acquire other shoe-machinery properties, either by direct ownership or by purchase of shares of their stock.

JOHN H. HANAN.
WILLIAM BARBOUR.
EDWIN H. MATHEWSON.
ELMER P. HOWE.
ALFRED R. TURNER, Jr.

172 PLAINTIFF'S EXHIBIT 153.

BOSTON, MASS., *February 18th, 1899.*

To the stockholders of the International Goodyear Shoe Machinery Company:

The United Shoe Machinery Company has already contracted for more than a majority of the capital stock of Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Goodyear Shoe Machinery Company of Canada, International Goodyear Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company, Davey Pegging Machine

Company, besides stocks in other shoe-machinery companies, letters patent, and other property.

The United Company will also from time to time acquire other shoe-machinery properties, either by direct ownership or by purchase of shares of their stock. . . . .

WILLIAM BARBOUR, *President.*

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JUNE 3, 1913.

EMANUEL F. SELZ, witness for the United States.

My name is Emanuel F. Selz. I am connected with the firm of Selz, Schwab and Company, shoe manufacturers. Our company manufactures men's and women's shoes. Our main office is in Chicago, and our factories are in various points in Illinois and Wisconsin. I am general manager of the manufacturing department of the company and have held that position for about twenty years. The capacity of our factories exceeds fifteen thousand pairs a day.

Q. Were you familiar with the trade in shoe machinery prior to the establishment of the United Shoe Machinery Company?

A. Yes, sir.

Q. I wish you would state in what manner you became familiar with the trade in shoe machinery.

A. Through trading for machinery, advertisements and general trade knowledge and the use of machines.

Q. Was your company in existence all that time?

A. We were a partnership up to 1890—incorporated in 1890.

Q. Were you holding the same position with the company that you are now?

A. Yes.

Q. Now, Mr. Selz, I wish you would state what kind of lasting machines were in use by shoe manufacturers at the time and just immediately before, or before, the establishment of the United Shoe Machinery Company.

Mr. CHOATE. Pardon me.

PUTNAM, J. Fix a date.

Mr. FOWLER. In February, 1899.

Mr. CHOATE. I assume the witness is limited to his personal knowledge, as was the previous witness?

PUTNAM, J. It is the same question as we had before—not in a matter of this sort. It would be his trade knowledge.

Mr. CHOATE. If it is other than personal knowledge, I should like to have our exception saved.

PUTNAM, J. Very well, it may be saved.

A. The Copeland rapid laster, the Chase lasting machine, the Consolidated hand method lasting machine, the Boston lasting machine were all in use.

Q. Do you know who was selling the Chase machine?
A. The Stanley Manufacturing Company.
Q. And who was selling the Consolidated hand method machine?
A. The Consolidated Hand Method Lasting Machine Company.
Q. And who the Boston?
A. The Boston Lasting Machine Company.
Q. And who the Ideal?
A. The Goodyear Shoe Machinery Company.
The McKay-Copeland machine was used on heavy work and was sold by the McKay-Copeland Lasting Machine Company. I once investigated the Seaver process and learned how it operated, but never used that machine. That was in 1890 or 1892.
Q. Now, Mr. Selz, was there any difference as to the uses to which these various lasting machines were put?
A. Practically none.
Q. Could they or not all be used in lasting ladies' shoes?
A. Yes.
Q. Could they or not all be used in lasting men's shoes?
A. Yes.
Q. How about children's shoes?
A. I am not familiar with them; never manufactured them.
Q. You never manufactured children's shoes?
A. No.
I never did any business with the Consolidated & McKay Lasting Machine Company.

174 The Goodyear Company at that time was selling the Ideal machine. At the present time no lasting machines are on the market that I know of except those put out by the United Company. Besides the Consolidated hand method laster the United Company has developed what it calls its Number Five machine, and also has brought out the Rex pulling over machine which does another part of the lasting operation.

At the time when the United Company was organized there was on the market a sole laying machine made by the Sole Laying Machine Company, and another made by the American Sole Laying Machine Company. The two machines I mentioned were capable of doing exactly the same work. The only sole laying machine that I know of now obtainable in the United States by either purchase or lease is that made by the United Company. At the time when the United Company was formed there were four slugging machines on the United States market. They were the wire grip slugging machine made by the Wire Grip Slugging Machine Company, the Simplex, which also was marketed by that company, the Champion, which was sold by

the Champion Nailing Machine Company, and the Universal, which was then put out by the McKay Metallic Fastening Machine Association. To-day the only slugging machine on the market so far as I know is the Universal machine manufactured by the United Company.

At the time of the formation of the United Company there were on the market three pegging machines, namely, the New Era, the Varney, and the Davey, each made by a different company. The only pegging machine which is being offered in the United States to-day so far as I know is that put out by the United Company.

At the time of the organization of the United Company there were on the market the Goodyear, Eppler, and the Bertrand welting and stitching machines. I have heard of the Globe machine, but I never examined it and have no personal knowledge of it except what I have received through advertisements and hearsay knowledge in the trade.

175 Q. State whether or not, Mr. Selz, these machines that you have mentioned were doing the same work, or accomplishing the same results.

A. Exactly the same work.

Q. Was there any difference between the Goodyear and Eppler machines? If so, please state what it was.

A. The Eppler machine had the chain in the formation of the stitch on the inside of the channel; the Goodyear has it on the outside. That is the only difference that I know of.

Q. Was there any material difference in the quality of the work done by the two machines?

A. None whatever.

Q. Was there any material difference in the rapidity with which the machines would do the work?

A. None that I know of.

I have used the Eppler and the Goodyear and the Bertrand machines. The Bertrand machine was a lock-stitch machine, was slower, and in my opinion did not do as good work as the two others.

I have in my factory Goodyear welting, stitching, and rounding machines which I leased before the organization of the United Company. I have used all three of the welting and stitching machines to which I have referred and am personally familiar with their operation.

We now have under lease forty or fifty welters and stitchers. Seventeen of them were in our factory when the United Company was formed. Some of them have been there for 6 years, some for 5 and some for 2. We do not notice any difference

between the kind or the character of the work done by these machines and that done by the new machines which we have. The oldest machine which we have in our factory has been there nineteen years. Others have been there seventeen years. We have no machines of the latest models.

A good operator can do 300 pairs a day on the welter and about 200 pairs a day on the outsole stitcher. We make McKay as well as welt shoes. The only welter which is to-day manufactured and put on the market so far as I know is that manufactured by the United Company.

Welting machines could be purchased from the Haverhill Shoe Machinery Company, but I never installed one of that company's machines. That is the only company that I know of except the United Company from which welting machines can be purchased. All of the welting, stitching, lasting, heeling, and
176 metallic fastening machines which are now in our factory were obtained by us from the United Company or from its predecessors under lease.

Prior to the organization of the United Company there were on the market four makes of sole rounding machines. There were the Ross machine made by the Ross-Moyer Manufacturing Company, the Smith machine, made by the Smith Rounding Machine Company, the Hartford, made by the Hartford Rounding Machine Company, and the Loewer, made by the Loewer Rounding Machine Company. All did pretty much the same work. The Ross machine is still on the market, and there is a Julian machine, made by the Boylston Manufacturing Company, as well as the Apex machine, made, I believe, by the United Company. There are no others, as far I know. At the time of the organization of the United Company there were on the market three types of heeling machines. There were the McKay machine, made by the McKay Heeling Machine Association, the American machine, made by the American Heeling Machine Company, and the National machine, made by the National Heeling Machine Company. All of these machines did the same work on all kinds of shoes. There are to-day only the American and the Mayo heeling machines, which are put out by the United Company.

At the time of the formation of the United Company there were five types of tacking machines on the market. These were the wire grip machine, made by the Wire Grip Fastening Machine Company, the string nail, and cable screw machines, made by the McKay Metallic Fastening Association; the staple, made by the Staple Tacking Machine Company, and the corrugated wire machine. The wire grip machine and the

staple machine are now put out by the United Company; so far as I know there are no others on the market. I have not studied the machinery in our factory enough to know the value of the several parts.

I was present at a conference held with Mr. Winslow
177 in St. Louis, in February, 1911. The subject of the conference was shoe machinery. Mr. Jackson Johnson, Mr. Milton Florsheim, Mr. Peters, Mr. George Brown, and I think Mr. George Selby, were present. The object of the conference was to discuss the general relations of lessees to the United Company with a view to securing better and freer conditions. There had been a meeting between Mr. Winslow and Messers. Johnson and Florsheim in Boston the previous September, at which an appointment was made for the conference in St. Louis.

Q. Now, was there any proposition submitted to Mr. Winslow with reference to a modification of the leases?

A. Yes, sir.

Q. Do you remember what the substance of those proposed modifications was?

A. Yes. There were three items in the memorandum we handed Mr. Winslow. The first one asked that each lease be confined to the machine that was the subject of the lease and not tied to any other.

Mr. CHOATE. Pardon me a minute. Wasn't this in writing?

PUTNAM, J. What do you propose to prove, Mr. Fowler?

Mr. FOWLER. I am proposing to prove that they submitted to Mr. Winslow a certain proposition looking to a very material modification of those leases.

BROWN, J. Was it in writing, he asks?

Q. Was the proposition in writing or not?

A. Yes, sir.

Q. Have you a copy of the writing?

A. No, I have not.

Mr. Winslow spoke of the good work that the United Company was doing, but did not reach any proposition about the modification of the leases. He was going to consider that later. He did not consider the matter of modifying the leases in St. Louis at all.

The previous September I had been associated with certain other gentlemen in negotiations looking to the purchase of the Plant machinery. We examined the machinery that was being operated by Mr. Plant in his shoe factory. Mr. Plant was making women's welt and McKay shoes. He had a complete

line of machinery for manufacturing shoes of those kinds. We spent half a day examining it.

178 Q. State what kind of work they were doing; that is, as compared with the machines you had in your factory.

(Admitted subject to defendants' objection and exception.)

A. It was equally as good as far as I could see.

Q. Were they doing it with as much rapidity?

(Admitted subject to defendants' objection and exception.)

A. As far as I could see.

Q. State, Mr. Selz, whether or not in your business in your factory you are brought in contact with welting machines and various shoe machines daily.

A. Yes, sir.

Q. What are your duties with reference to the machines in their operation in your factory?

A. With reference to the operation I engage the foremen; I have occasion to study the output of the machine—the cost of maintenance.

Q. Well, do you personally observe the operations of machines?

A. Yes, sir.

Q. State whether or not you know when a machine can be used on different kinds of shoes—that is, say, a welting machine.

A. Yes, sir.

Q. And how have you acquired that knowledge?

A. Through twenty-seven years of experience in and around machinery.

Q. State whether or not the machines in the Plant factory could have been used in the manufacture of men's shoes.

A. Yes.

Q. That is, you mean men's welt shoes?

A. Yes, sir.

Q. Were they used in the manufacture of welt shoes there in the factory?

A. Yes, sir.

Q. Was he manufacturing anything but welt shoes?

A. McKays also.

Q. And the McKay shoes?

A. Yes, sir.

Q. Could they have been used in the manufacture of the McKay men's shoes?

A. Yes, sir.

Q Did you observe those machines long enough to know about what their efficiency was with reference to the output or the amount of work done by the machines?

A. Not personally. I got that information from Mr. Plant.
Q. Did you examine them with sufficient care to know the quality of the work they were doing?
A. Yes, sir.
Q. What was the quality?
A. Good.

179 Mr. Plant offered to sell us a half interest in his Wonder Worker machinery for one million six hundred thousand dollars. His proposition was not accepted because we were informed that the machinery was sold before we had a chance to raise the money. My impression is that Mr. Plant's offer to us was made in the evening of September 22, 1910. We were with Mr. Plant until about eight or nine o'clock. The following morning we learned, I think from Mr. Plant himself, that the machines had been sold to somebody else. In the meantime we were attempting to raise the money.

Q. Now, after that, Mr. Selz, did you have a conversation with Mr. Winslow in regard to those leases?
A. We had a conference in St. Louis in February, 1911.
Q. That is the one you have detailed?
A. Yes, sir.
Q. Now, did you have another one after that time?
A. In May, 1911; here in Boston.
Q. For what purpose was that conference had?
A. That was pursuant to the one in St. Louis. We made an engagement there with Mr. Winslow to meet him in Boston and to get a proposition from him modifying the leases.
Q. Did you receive any proposition from him?
A. No, sir.
Q. Did he make a statement to you in which he explained why he submitted none?
A. He said that any change such as we suggested in the leases would ruin the system, and couldn't be made.

Cross-examination:

Before I began my business as a shoe manufacturer, I served an apprenticeship of four years in shoe making, cutting, and operating machines. I never had any training in the manufacture of machinery. I am a shoemaker, not a machinery maker. I have operated fair stitch and Chase lasting machines only. My office is in one of my factory buildings in Chicago. I do not operate any machines now, but I superintended their operation in a general way. My principal work is office work, and I study especially the product of machines and not the mechanical operation of the machine itself. In answering all

those questions as to what machines were in the market at the time of the formation of the United Company, I had in mind the whole period from 1890 to 1899. I meant to say that from the information that I had gathered sometimes from the people I dealt with, and sometimes from advertisements, but particularly from agents or people who claimed to be agents, and from obtaining machines for my own use, the machines which I mentioned were on the market sometime during the period to which I have referred. I didn't mean to fix any specific
180 date when those machines were being marketed. I simply meant that somewhere between 1890–1899 machines of the kind named by me were being marketed. That is all I meant and is as definite as I meant to be. About 1892 I negotiated with respect to the use of the Boston lasting machine, and about the year previous I had certain negotiations with respect to taking a Copeland rapid laster. In 1893 I negotiated for the Consolidated hand-method laster. We never had but two different machines in the factory at the same time. We tried the Copeland, but did not use it. We finally settled upon the Chase, instead of the Copeland. We used the Boston from 1892 to 1894. We got our Chase machines about 1891. We kept our Chase machines up to a few years ago. We still have the Boston machine. We continued, after the formation of the United, to use that machine, the Chase machine, and the hand-method machine, which we got first about 1893. I do not know anything about the history of the Copeland rapid machine after the time when we ceased to use it. About five years ago we voluntarily changed over from the old Chase machines to the new Number Five machines of the United Company. As to whether the leases on the Chase machines had expired, some of them had, I believe. I believe those leases run until the last patent has expired. We still use some of the hand-method machines. Some of them we hold on leases, which we obtained prior to the organization of the United Company.

We have had all the lasting machines that we have wanted and those which we desired to use have been continued to be put out by the United Company just as they had been by the other companies which were in the existence before the United Company was formed.

At different times we lasted both men's and women's shoes on the Chase machine. We also have lasted at different times both kinds of shoes on the Consolidated machine. We did our pulling over by hand. We never adopted the practice of lasting one part of a shoe on one of the machines and finishing it on another.

The Chase laster was best adapted for shoes of medium weight. Toward the end, we used it principally on welt
181 shoes. At one time we used it also on cheap McKay shoes. We use the Consolidated machine principally for lasting women's shoes and men's McKay shoes. At the present time we use it for McKay work in men's shoes and both McKay and welt work in women's shoes.

Q. Because you think the machines, as you have got them arranged, are best adapted for the work that you are sending to them?

A. Not as far as quality is concerned; no.

Q. Well, as far as results go?

A. As far as the cost is concerned; yes.

Q. As far as the cost is concerned?

A. Yes.

Q. Well, that of course is a material matter. You mean one kind of shoe you can last more economically on one machine, and another kind you can last more economically on another kind of machine?

A. Yes.

Q. And while it is perfectly true that you can last, I suppose, as a matter of physical possibility a great many different kinds of shoes on a Chase machine, there are some kinds of shoes that you can last much more economically than others on a Chase machine?

A. Yes.

Q. And while it is true that you could possibly physically last almost any kind of a shoe on the hand-method machine, there are some kinds of shoes which it does very much more economical work upon than others?

A. Yes, that is true.

We find it advantageous to have both kinds of machines and to make that subdivision of our work which gives each machine the kind of work which it is best adapted to do. We have been able to get both kinds from the United Company at any time we have desired them, and we have been supplied with the Number Five machines whenever we have wanted them. We took the Number Five in place of all our Chase machines which were pretty well worn out at the time. We hold them on the form of lease which involves no initial payment, I am reasonably sure. I never bought a lasting machine outright from the Goodyear Company, but I understood that the Florsheim Shoe Company and the J. E. Turner Shoe Company have done so.

It was my general knowledge that prior to the formation of the United Company the business method of marketing Goodyear

welting and stitching machines was leasing, not selling. I understood they sold lasting machines. I have no personal knowledge of their selling lasting machines; I never bought one. So far as I know the hand-method and Chase machines were all put in on lease. I never knew that the Copeland rapid machine was sold outright. We have bought a number of Boston lasting machines. I never dealt with the McKay and Copeland Company.

182 Q. Then when you said that these machines were sold in the market before the United was formed, you must limit it, mustn't you, so far as you know, to the Boston and possibly one or two machines of the Goodyear; that is, as far as you know anything about it?

A. As far as outright sales are concerned.

Q. All the other parties whom you named marketed their machines by leases?

A. Yes, sir.

I was a member of the Shoe Manufacturers' Alliance which equipped a factory in St. Louis with machines for manufacturing shoes. I never saw the machinery, but I believe the factory had lasting machines which were not hired from the United Company. I do not know what machines they were. I have heard of the Krentler lasting machine, but so far as I know it is not on the market now. The Krentler last factory is in Detroit, and I have some hearsay knowledge that he has a lasting machine, but I don't know that he is manufacturing them or putting them on the market. He advertises that he has a laster. I am one of the directors of the Boylston Manufacturing Company. It has one lasting machine which, so far as I know, has not been given any name. I do not think they have ever made more than one machine. They have certainly never marketed any. So far as I know, the Boston Lasting Company does not put out a machine now. I am not familiar with lasting machines made by the Atlas works or by the Standard Engineering Company. I believe R. H. Long uses a lasting machine of his own manufacture. I have no knowledge of the shoe machinery market outside of what we use in our factory except hearsay knowledge. I do not undertake to say that there are not lasting machines on the market of which I do not know. There may be many that I don't know of.

As to there being two sole laying machines on the market before 1899, all I meant was that somewhere between 1890 and 1899 there were two different kinds of machines on the market. Those were the Sole Laying Machine Company's machine and

the American. The American sole laying machine had a different method of operation from the ~~latter~~ other. We used both of them in our factory. We first put in a Sole Laying Machine Company's machine. Later the American Company's machine came on the market, and we bought it. Several years later
183 we discarded the Sole Laying Machine Company's machine and did all of our sole laying on the American machine. We now do some of it on the American and some of it on a new machine put out by the United Company. We lay the soles of welt shoes on the sole laying machines, but use tacking machines on the McKays. We use both of the sole laying machines that we now have on welt shoes indiscriminately. We had no difficulty in getting the United Company's sole layer because of the fact of having the American. The United Company has never endeavored to prevent our using the American machine. So far as I know the American machine is not now made. We have tried to get parts for it and have not succeeded. I do not know of my own knowledge whether any other sole laying machine except that put out by the United Company is now on the market. I do not know just how many of the slugging machines which I have named were on the market just before February, 1899. Some of them may have gone out of use before that time. The McKay Metallic Fastening Association was putting out slugging machines before 1899, which have ever since been offered to customers by the United Company. I would not say that we got the same slugging machines at the same rates of payment for our material. We had always had a discount prior to 1899. I mean we had a 25 per cent discount at that time. Before 1899 we bought from the McKay Metallic Fastening Association the material for use on the Universal machine, which was the machine they put out. We had been buying it from them for a number of years. The machine was put out on loan lease, but the only payment we made for the use of the machines was the payment we made for the material we used on them. That is the same way to-day and always has been for those slugging machines. The price paid for material used on the McKay machines is the same to-day as it was back before 1899; on the wire grip it is not. On the McKay metallic fastening machines, so far as I can remember, the price is just the same as it was back of 1899.

Our slugging machines are all held on leases obtained since 1899. They were taken on the form of lease without initial payment. I never knew that there was any other form of lease. I did not make any inquiry and never have.

We have no pegging machines in use at present. We formerly used the Varney and New Era machines in the factory, which we discontinued in 1896, not because of any action of the United Company, but because it was a prison factory and the law
184 was changed. We owned both of those machines outright. We also used the Davey machine, which we transferred to a corporation in which we are interested. We have continued to use the Davey machine in that factory because that is all pegged shoes. We use the Davey machine from preference. We could have used the Varney if we wanted to. We preferred to use the Davey. It is a better machine. That is a reason that appeals to every shoe manufacturer. It is true that a better machine will drive out an inferior machine, and the Davey has driven out the others because it is a better machine. That reason, because it is a better machine, along with the exclusive use clause in the lease, is the reason why the Davey machine is the only machine on the market. Whether we would have used an inferior machine when we could get the best one, whether we had the exclusive use clause in the lease or not, is a difficult question to answer. It would depend upon the condition and circumstances. We gave up the Varney and New Era machines before the exclusive use clause was put into the lease and adopted the Davey machine because it was the best one, and have kept it for that very reason. The exclusive use provision in the lease has occurred to me as a reason for using the Davey machine before this minute. I could not say on what date. In answer to the question "Do you know of a better machine than the Davey on the market?" I could not use a better machine than the Davey. I do not know of any better machine. I am using the Davey machine because it is the better machine and because we can't use any other. We are using it because it is the best machine as between the Varney and the New Era. I know of no better machine on the market now than the Davey. None that I care to use.

185 We used the Goodyear, Eppler, and Bertrand welters and stitchers. We tried the Bertrand for less than a year, along about 1894 or 1895. We gave it up because the inseamer was an inferior machine. We tried the Eppler about the same length of time at about the same time, and gave it up also before 1896. We had the Goodyear at the time, and retained it. We gave up the Epplers because we were sewing razor toes at that time and the Eppler would not sew the razor toes as well as the Goodyear. We never reinstated the Eppler between 1896 and 1899, and have never applied for one since 1896. We have

seventeen Goodyear machines that we obtained before 1899 on the Goodyear Company leases. The rest of our 40 machines we have taken since 1899. The Eppler machine would not sew the razor toe as tightly as the Goodyear machine would sew it. When I said that I had noticed no difference between the old stitchers and welters and the modern stitchers and welters, I was comparing the old ones with those put out earlier than 1907. We have none of the latest models. There was a difference in the machines mechanically, but I noticed no difference in the output or the quality of the work. Ours is an open shop, and the output of our machines is not limited by the union. The possible output of the machine in 1896 was in excess of
186 three hundred pairs a day. The machines with which I was comparing the work done by the machines which we were using in 1896 are five or six years old or possibly older.

Shoes are now higher than they were in 1896, although we sell a shoe of better style for the same price. Our machines are now doing as good work on the higher grade of shoe as they were doing on the grade we made in 1896.

I did not seriously consider taking the Haverhill welter because of the provisions in the leases that I had of the Goodyear Company requiring us to use Goodyear machines exclusively. I first considered the matter in 1911, and looked at their machines, though I didn't negotiate with any of their people nor make any offer to take one. I am familiar with my leases. I have examined them a number of times. I may have looked at them frequently during the last two years. I don't remember whether I looked at them at the time of my visit to Haverhill. I did not negotiate for the Haverhill machine because of the provisions in the Goodyear leases requiring me to use their machines exclusively. That is the only reason. I wanted to install the Haverhill welters in one of our Chicago factories. When I speak of the Goodyear leases I mean the leases of Goodyear machinery made by the United Company. I have studied the Goodyear department "full set" leases issued by that company. I have not referred to the old leases made by the Goodyear Shoe Machinery Company before the formation of the United Company and can not now say how the provisions of those leases affect the installation of other machinery. I have brought with me an old lease which I had before 1899. I have not brought with me any lease of the welter and stitcher dated subsequent to 1899. Mr. Gregg telegraphed me to come here. He didn't ask for any papers. I brought those that I considered important.

We used the Hartford, Smith, and the Ross sole rounders in our factory. When the Ross came out, somewhere in the '90s, we discontinued the Hartford, which we had used since
187 about 1882, and took up the Ross machine instead. We used the Smith in the late '80s or early '90s for four or five years. Then we gave it up for the Ross. We never used the Loewer. From 1895 to 1899 we used the Ross machine exclusively, as the most economical machine for our kind of work. I do not know whether the Smith machine was on the market just prior to February 7, 1899. I think the Hartford was, though I have no personal knowledge. We own our Ross machine outright and have continued to use it since 1899. We bought another one from the United Company—the Ross-Moyer Manufacturing Company. We used all three of the heeling machines which I mentioned and are using them to-day. We have obtained McKay and American machines since, and are using them side by side. We bought one National in the '80s and are still using it. We have tried to obtain National machines at second hand, but have been unsuccessful. We have not tried to get any from the company. We use the American machine for welt shoes and the Mayo and National machines on McKay shoes. We use the National machines because we own them, the Mayo because the company puts it out as the machine for McKay work, and the American because the company puts it out as the machine adapted for welt work. The Mayo is a later machine than the others. I think we began using it about 1893 or 1894. We can still get the American. It does good work on welt shoes. I do not know what ones of the various tacking machines which I mentioned were still going in 1899. We have used all of them at different places, but decided that the staple tacker and the taper nail machine which we got from the United Company were the best machines. They are supplied by the United Company in any quantity we want.

I did not make the suggestion, either personally or through others, during the negotiations with Mr. Winslow, that large users of machinery ought to get better rates of royalty than small ones. The first discussion of which I knew anything was in September, 1910. On or about September 22nd, Mr.
188 Johnson, Mr. Florsheim, and the other gentlemen who later formed the Shoe Manufacturers' Alliance went and looked at Mr. Plant's machines. Mr. Jones was not present. The inspection of Mr. Plant's factory took place before the Alliance was formed. The same group of men have also interested themselves in the Boylston Company. I was present in

Washington at a tariff hearing within the last two years. I visited the Attorney General's office on shoe machinery business, about a year ago last winter with Mr. Johnson, Mr. Florsheim, Mr. Jones, and some other gentlemen. We did not see the Attorney General, Mr. Fowler, or Mr. Gregg. The Attorney General wasn't in. I was not present at any conference with Mr. Winslow in Boston in Spetember, 1910. I took part in the conference with Mr. Winslow in St. Louis, in February, 1911. It lasted all day. Mr. Johnson and the same other gentlemen were there. I did not make any statement that large users of shoe machinery should in some way obtain better terms than small users. I made no statement myself at the meeting in May, 1911. The same group of gentlemen were present. The alliance was then organized, and Mr. Johnson was its president. I believe some written statement was given to some one of those present by Mr. Winslow. We studied the paper, and tried to find out what it meant. It was not left with us, and I have not seen it since that day. It was at the meeting in May that Mr. Winslow said that the removal of the tying clauses would spoil the system of doing business which the United Company now employs and could not be made. Mr. Winslow made certain statements besides the written memorandum. There was some talking back and forth. I can not say whether the paper which you hand me is a copy of the memorandum which Mr. Winslow presented on that day or not. I remember one of those present told Mr. Winslow that we desired to show his memorandum to our counsel, Mr. Brandeis, and that a penciled memorandum was handed to some one. I left before the others did.

189 I do not believe I ever saw the paper that you hand me.

I saw one rack of men's shoes in Mr. Plant's factory when we visited it, but the product was almost entirely women's shoes. I never saw the machinery used on men's shoes.

Q. In the half day that you examined it did you give any attention to the size or the strength of the machinery as to whether it was suitable for making men's shoes or not?

A. We raised that question with Mr. Plant; yes.

Q. You raised the question?

A. Yes.

Q. As to whether it was strong enough?

A. Yes.

Q. I suppose he told you it was?

A. Yes.

Q. Did you question it?

A. Well, we naturally did, because it was used on women's shoes.

Q. You had never seen that machinery used for making men's shoes at all before or since, have you?

A. No, sir.

Q. How much money had you raised before you learned Mr. Plant had sold his——

A. I think the amount of the subscription was a million and one hundred thousand dollars.

Q. No. I say, how much money had you raised?

A. By raised you mean subscribed, or actual——

Q. How much had you raised—any?

A. Hadn't raised any.

Q. Hadn't raised a copper?

A. It had been subscribed.

Q. You mean in writing?

A. I don't know.

Q. Subscribe means to write your name under some proposition. You mean anybody had put down in writing his agreement to put up any money?

A. The different members had agreed to put up——

Q. Had you subscribed in the sense of agreeing in writing to put up any money?

A. I didn't sign; no; but I had agreed verbally.

Q. How much had you put up?

A. My recollection is that our share was——

Q. Just a moment, please. I say, how much had you put up; had you put up a copper?

A. Hadn't put up anything.

Q. Nor nobody else had?

A. No, sir.

190 I bought my Boston lasting machines prior to 1899 under leases which provided for a royalty of a quarter of a cent per pair but further provided that if a royalty of a half a cent a pair was paid the additional quarter of a cent might go toward the purchase of the machines. We had five or six of those machines under such leases. We were still paying royalty when we ceased to use the machine twelve or fifteen years ago. We put them in storage when we ceased to use them. The leases are still outstanding but we stopped paying royalty when we ceased to use the machines. I have one of the leases here. It does not contain the provision relative to the purchase of the machines of which I speak.

(A lease between the Boston Lasting Machine Company and the Selz, Schwab & Company, dated April 15, 1889, is marked "Plaintiff's Exhibit 148.")

Q. Other than that method, supported or not as it may be by the paper you produce, was there any other system of selling the Boston lasting machine that you know of?

A. No, sir.

Direct examination resumed:

I have brought with me leases covering machines obtained by me before the creation of the United Company. They
191 include eight leases from the Goodyear Shoe Machinery Company. When I said that I had leases from the United Company that prevented my leasing a Haverhill welting machine, I referred to the form of lease which we executed in April, 1905, containing the so-called tying clause. The lease which I present covers the Goodyear rounding and channeling machine.

(Lease between the United Company and Selz, Schwab & Company, dated April 4, 1905, is marked "Plaintiff's Exhibit 149.")

I did not sign an agreement to contribute to the plant purchase, but I stated verbally that I would put up three hundred and fifty or four hundred thousand dollars. I made that agreement the evening of the meeting of which I have spoken. The Chase machine is better on welt work than the Consolidated, but we have used the Consolidated machine on welt work in our Chicago factory in connection with the Rex pulling-over machine; in fact, that was the only machine that could be used in connection with the Rex puller over. The Consolidated machine is cheaper on McKay work than the Chase, although the Chase will do that work as well as the Consolidated. Our company acquired its interest in the Boylston Manufacturing Company within the last six months.

Q. And why was that, Mr. Selz, that you acquired an interest in the Bolyston Company?

A. If these leases are declared invalid we want to have a competitive shoe machinery in the market.

Q. Is that the purpose of the organization?

A. Yes, sir.

All the gentlemen who were associated in the Shoe Manufacturers' Alliance are interested, as shareholders, in the Boylston Machinery Company.

Cross-examination resumed:

Q. Mr. Selz, how large an interest have you in the Boylston Manufacturing Company?

A. I think up to date we have paid in somewhere between twenty-five and thirty thousand dollars.

Q. So you have that amount at stake upon these machinery leases being declared invalid?

192 A. If you choose to look at it that way.

Q. If they are not, you stand to lose that money?

A. Yes, sir.

Q. If they are, you stand to make it?

A. Yes.

193 JUNE 3, 1913.

MILTON S. FLORSHEIM, witness for the United States.

My name is Milton S. Florsheim. I live in Chicago, Ill. I am a shoe manufacturer. I have been in business since the fall of 1892. I manufacture the better quality of men's shoes. My factory has a capacity of about four thousand pairs of shoes a day. We use about nine Goodyear welters and about forty lasting machines. I am president of the company. I was president of our company in 1899, when the United Company was formed, and had supervision at that time of the shoe manufacturing. We had a small business then. I didn't help install the machines personally but I bought or contracted for the machinery—most of it—and was always consulted about whether any should be installed.

In 1899 we were using three Copeland rapid lasters which we owned outright. We paid five hundred dollars apiece for them. We got them from the Goodyear Shoe Machinery Company several years prior to the formation of the United Company. The Goodyear Company was still putting out lasting machines at the time of the formation of the United Company. We also had a number of Chase lasting machines which I obtained from the Chase Lasting Machine Company on a royalty.

Q. What was the difference between the Copeland machine and the Chase machine?

A. Well, they were somewhat different, but they did the same class of work. When the shoe was done you couldn't tell on what machine it was lasted.

Q. Were you manufacturing at that time, in 1899, the same kind of shoes that you are now manufacturing?

A. Practically so; yes.

Q. Did you last those shoes on both the Chase and the Copeland?

A. Yes, sir; we did it then and we did it for some ten years afterwards.

Q. Was there any difference in the machines so far as the quality of the work was concerned?

A. Not that we ever could see.

Q. Was there any difference so far as the rapidity of the work was concerned?

A. Well, I don't think there was any material difference. There may have been a slight advantage for the Copeland. It may have been a little faster than the Chase.

We have never made anything but welt shoes.

In 1899 I was using Goodyear inseamers and stitchers, and I had just commenced to install and had one line of Eppler machines—an inseamer, a stitcher, and a rounder. As to whether I used both of those machines in welting the shoes I was manufacturing—yes; I used the Eppler only to a very slight extent. I was merely trying them out. About a year after the formation of the United Company I traded them with Mr. Wil-
194 son, general manager or assistant general manager of the United Company.

Some time after the United Company was formed and when they were still charging an initial payment for their Goodyear machines, I think within one or two years, I talked with Mr. Wilson in Boston. I came to an understanding with him regarding the Eppler machines which afterwards was carried out by the United Company. I went there for the purpose of getting more Eppler machines, and Mr. Wilson refused to give them to me; said they were not going to put out any more Eppler machines. At that time I desired to trade in my Goodyear machines, on which I was paying four cents a pair royalty, for Eppler machines, for which, under my understanding with the Eppler Company, I would have had to pay only three cents a pair. Mr. Wilson wouldn't make the trade. I traded in the Eppler machines for Goodyear machines, receiving an equivalent in trade of from eighteen hundred to twenty-one hundred dollars. I know that I got a Goodyear inseamer and a Goodyear stitcher and rounder, and I think there were some other machines included in the trade. That included all the Eppler machines I had. I was trying out one set. I had used them very little. I think I executed leases under their new form for the machines which I received in trade. I ran my Chase lasting machines for about ten years after the United Company was formed. In 1911 I traded them in for the Number Five machine. I traded them in because the Number Five, I believe, does better work than the old Chase did. It does it a little more rapidly. A Number Five will last about ten per cent more shoes a day. I still have the Copeland machines in my factory. I pay no royalty on them. I paid $500 apiece for them, I believe.

I have no welting or stitching machines in my factory which have not been obtained from the United Company or its prede-

cessor, the Goodyear Shoe Machinery Company. All my lasting machines have been obtained from the predecessor of the United Company as far as the Copeland lasters are concerned or from the United Company as far as the Chase or Number Five lasting machines are concerned. My heeling machines are now all on United Company leases, I think. One or two of them
195 may be on old leases of a company called the American Heeling Company, or something like that, but we pay the royalties to the United Company. I own some machinery outright.

In regard to companies other than the United Shoe Machinery Company offering welting machines now I understand that the Haverhill Shoe Machinery Company offers an inseaming machine. A Mr. Kibbey, representing the Union Lock Stitch Company, has offered me an outsole stitching machine. The Krentler lasting machine is the only one of which I have heard outside of those made by the United Company. They are making one and I know of none others except Mr. Copeland has a machine there, but I have never seen any of them offered because he has only one or two. I know of no companies other than the United Company which are making and putting upon the market either for sale or lease heeling machines. Certain members of the alliance about which there has been testimony offered here undertook to equip a factory with independent machinery. I was a subscriber to that company, an officer and a director. Some of the machinery was obtained in this country—not all of it. Mr. McElroy had general supervision of that factory. I don't think I ever had a talk with Mr. Winslow in regard to shoe machinery business prior to the time of the Plant acquisition.

I was interested in the negotiations by the members of the Shoe Manufacturers' Alliance for the Plant purchase and was one of the persons present when they undertook to raise money to consummate that purchase. I agreed to take an interest to the extent of two hundred and fifty thousand dollars. The negotiations lasted several days. We went through the plant and observed the working of the machinery. I thought his machinery was doing a good class of work. He showed us a line of machinery which would make Goodyear welt and McKay sewed shoes. I understood that it was all embraced in the offer. Mr. Plant offered to sell us a half interest for one million six hundred thousand dollars. That offer was made
196 between seven and nine at night. It wasn't much later than that anyway. An effort was made among us then and there to raise that amount of money. We didn't raise the entire amount among ourselves. We raised one million one hun-

dred thousand dollars. The gentlemen present stated that the remainder of the money would be raised by the following day, or they thought it would be. They wanted to think it over and some of them wanted to submit it to their directors at home. That was said to Mr. Plant. He was present during this general discussion when the money was being raised. Before we learned that Mr. Plant had sold his factory and machines and rights to manufacture the machines to the United Company, Messrs. Campbell and Wade of St. Louis had agreed to finance the matter. They said, "If you think it is a good thing, go ahead and buy it and we will finance it." That was said between nine and ten o'clock on the morning after our conversation with Mr. Plant. About ten thirty or eleven o'clock in the morning we heard that the trade had been made with Mr. Plant.

I had a conversation with Mr. Winslow when I was in Boston on that trip. Mr. Winslow, Mr. Wilson, Mr. Jackson Johnson, and I were present. There was a general conversation.

Q. State what was said to him, and his reply.

A. Well, I can give you the substance of the statement. Mr. Jackson Johnson did the talking with Mr. Winslow and Mr. Wilson, and I said very little, if anything.

Q. State what it was.

A. Mr. Johnson told him that we were dissatisfied with the tying clauses and exclusive use clauses of the leases, and discussed with him the reasons for his buying the Plant machinery, and Mr. Johnson stated that it showed either that somebody was able to make a superior line of shoe machinery to what the United had, or else they wanted to retain an absolute monopoly of the shoe machinery business, and the conversation drifted along those lines, and Mr. Winslow stated that he understood that there was some dissatisfaction, but he had not realized what magnitude it was; that he had not been West for a great many years, and he volunteered and said we should let the matter rest and in the near future he would come out West and discuss the matter with us.

Q. Well, did he come out West?

A. He came out West.

Following that conversation, he did come out to St. Louis. I was present when there was a conference with him there. Mr. Johnson there submitted to him a proposition in writing.

197 Q. Please just state what Mr. Winslow said, leaving out what was in the written paper that was given to him by Mr. Jackson Johnson.

A. Well, he said that he didn't think the shoe manufacturers had any grievance. This is the substance of it: That he was

charging us all alike; that we added to the price of our shoes, and the consumer paid it.

Mr. CHOATE. What is the last, please?

The WITNESS. He treated us all alike, and we all paid the same price, and we added to the cost of our shoes, and the consumer paid it; and, if the royalty was lower, why, we would sell our shoes for that much less, and there wouldn't be anything gained by the shoe manufacturer.

Q. Did he say anything in that conversation about going into the shoe manufacturing business himself?

A. No, sir; he intimated that he could go——

Mr. CHOATE. Wait a moment. What he said, please.

A. (continued). No, sir; he didn't say he was going into the shoe manufacturing business.

He suggested that there be a subsequent meeting in Boston. There was such a meeting in May, 1911. At the meeting he made us no proposition that I know of. I afterwards heard that he handed us one on the following day. He said in the course of that discussion that he had given the matter a great deal of consideration, but he did not see how he could make any changes in the leases, and give us as favorable a price, a consideration, as we were receiving.

Cross-examination:

There were present at this conference in May, Mr. Selz, of Selz, Schwab & Company; Mr. Jackson Johnson, of St. Louis; Mr. Rand, Mr. Jackson Johnson's partner; Mr. Peters (the Peters Company and Roberts, Johnson & Rand are now combined under the name of the International Shoe Company); Mr. Reed, of Rochester, of E. P. Reed Shoe Company; Mr. Selby, of the Selby Shoe Company, Portsmouth; Mr. A. D. Brown, of the Hamilton-Brown Shoe Company of St. Louis; and Mr. George Brown, of the Brown Shoe Company of St. Louis. There was some one from Cincinnati. They were all of them members of the Shoe Manufacturers' Alliance at that time. Mr. Rand was the secretary of the alliance. I understood that the communication which was given out by Mr. Winslow the next day was given to Mr. Rand. I have never seen it. Mr. Rand has told me about it, but did not show me the paper. It was never discussed at any meeting of the alliance that I know of. It may have been discussed at some meeting. So far as I know, no reply to it has ever been made to Mr. Winslow. We have not met Mr. Winslow as a body since that last meeting in May. The substance

198 of Mr. Winslow's talk was that he had given considerable thought to the matter and he did not see how he could make any changes in the leases and at the same time give us as

favorable prices for the machines as he was then giving. We were then getting our machines on the royalty basis without paying any initial premium for them. There had been a time before the United Company was formed, and after, too, when we had to pay an initial premium for most of the royalty machines which we took. The requirement of an initial premium was a general trade policy of machinery companies; before the formation of the United Company and for a time after the United Company was formed that general policy was continued. Then the United Company gave us an alternative of taking machines under an initial payment or without an initial payment.

Q. And you elected to take them without an initial premium payment, most of your machines?

A. Because there wasn't any difference.

Q. That we will deal with later; I am only dealing with this part of it now. You elected to take them without an initial premium?

A. Most of them; yes.

I was not required to pay any larger royalty than I had paid before the United Company was formed. Mr. Winslow did not specify to what particular situation he was referring when he made the statement that he could not change his leases and give us as favorable terms as he was then giving. We have some machines in our factory which have not been acquired from the United Company, and we own outright some machines bought from that company, some of their nonessential machines, their general department machines. I can not say how many.

Q. You say you were present at the Touraine with Mr. Winslow, Mr. Wilson and Mr. Jackson Johnson the day after or the day you heard that Plant had sold his machinery?

A. I think it was the day after, about 2.30 in the afternoon.

Q. Did Mr. Johnson state to Mr. Winslow that he would like, or he and his associates would like, to furnish the money to pay for the Plant purchase, or something in substance to that effect?

A. I don't remember it.

Q. Now just search your memory a little.

A. I have. I tried to search it before I answered because I wanted to be quite sure of it.

Q. Was anything to that effect suggested during the conversation?

A. If it was, I don't remember it.

Q. Did anybody at that conversation suggest that Mr. Johnson and yourself and your associates be permitted to furnish the money to Purchase the Plant machinery?

A. I don't think so.

199 Q. Will you deny it?
A. I can't deny a thing I don't know about. I can't affirm it or deny it.
Q. Then you don't know for sure that it wasn't said?
A. Of course I don't. If I don't know it was said, I don't know that it wasn't said.
Q. Was anything said at that time about Mr. Jackson Johnson and yourself or any of your associates taking some stock of the United Shoe Machinery Company?
A. I don't think there was.
Q. Will you swear that it was not?
A. No; I won't swear it was or it was not.
Q. Was anything said about Mr. Jackson Johnson and yourself and your asosciates taking stock of the United Shoe Machinery Company at par to an amount sufficient to pay for the purchase of the Plant machines?
A. I don't think there was. I don't believe we ever knew what they paid for the Plant machinery, and we couldn't have made any such proposition.
Q. I am not asking you to argue it. Was anything said at that time about Mr. Johnson and yourself and your associates taking stock of the United Shoe Machinery Company at par in any amount or for any purpose?
A. If there was, I have forgotten; I don't remember it.
Q. Do you say that nothing of that sort happened, that nothing of that sort was said?
A. I didn't say that; no.
Q. You don't deny it, then?
A. I can't deny a thing I don't remember.
Q. All right. Isn't it a fact that Mr. Jackson Johnson for himself and you and your associates asked Mr. Winslow if he would not permit you gentlemen to furnish the money necessary to buy the Plant machines and to take stock of the United Shoe Machinery Company at par for it?
A. I don't remember.
Q. Do you deny it?
A. I can't deny a thing I don't remember, Mr. Choate.
Q. Didn't you make the proposition yourself, sir?
A. I don't think I did.
Q. Do you deny it?
A. I can't deny a thing I don't remember anything about.
Q. Do you mean to say you can't state positively one way or the other whether you made that statement, that proposition?
A. Yes, sir, I can. I don't remember of ever having made it.

Q. Or anything of the kind?
A. Or anything about it.
Q. Were not you or Mr. Johnson asking at that time that you gentlemen, shoe manufacturers from St. Louis, should be given some special consideration in the terms charged for your machinery, because of the large amount you took?
A. Absolutely not; no.
Q. Nothing of that kind discussed?
200 A. [illegible]hing that I remember of; no.
Q. Do you deny that you did ask for lower terms?
A. How can I deny a thing, Mr. Choate, that I don't remember ever having been mentioned.
Q. That isn't what I am asking you. When I ask you if anything of the kind was said you say you don't remember.
A. I don't remember; no, sir.
Q. And then I ask you if you deny it was said and you say you don't know.
A. No, I don't. I mean to say I can't deny it because I don't remember anything of the kind being said.
I have never suggested that it would be proper for the United Company to give us better terms because of the large amounts of shoe machinery we used. I have never heard such a suggestion mentioned. Mr. Johnson and I stated to Mr. Winslow that we were a committee representing the group of manufacturers who were then in Boston. I remember no conversation whatever with reference to stock of the United Company. On the evening of our meeting to consider raising money in reply to Mr. Plant's proposition, one million one hundred thousand had been subscribed before Mr. Plant left us. I think Mr. Plant told us that his offer had to be accepted right away; that he needed the money. We had not raised all the money when he left. We hadn't raised money enough to meet his proposition and he knew it. Mr. Campbell was present at the meeting that evening, but Mr. Wade was not present. I did not hear Mr. Campbell say anything about financing the proposition. On the next morning Mr. Wade said that he and Mr. Campbell would see that the money was furnished to finance the purchase, if we thought it was a good proposition.
Cross-examination resumed:
In the early part of my direct examination I spoke of three
Copeland rapid lasting machines. I did not say that I
201 purchased them. I know I own them. I said I paid $500
apiece for them and I paid no royalties. There were only three. The lease for three lasting machines which you produce bears my signature. This is the lease which was signed, as far as

I can remember, for those machines. I presume the machines are the three to which I referred.

(This lease No. L 149, dated Jan. 7, 1897, together with request for termination bearing the same date, is marked "Defendants' Exhibit 33.")

The second paper which you hand me bears my signature. In the paper I first looked at and identified as covering those three machines, the machines were numbered 51, 55, and 56. The second paper which you hand me relates to three rapid power machines numbered 51, 55, and 56. It is dated June 2, 1894, and apparently refers to the same machines. The first two of the three papers attached to the second paper seem to have been signed by me. I do not know who signed the third. I did not. The first of these papers attached is an application to take a lease of Copeland rapid laster No. 55; the second, an application to take a lease of Copeland rapid laster No. 56, and the third an application to take a lease of machine No. 51; and I received those three machines.

(This lease No. 124, dated June 2, 1894, together with acceptance, dated July 2, 1894, is marked "Defendants' Exhibit 34."

The lease last mentioned provides for the return of the machines on the expiration of the lease. Technically I was in error in saying I owned the Copeland rapid laster machines.

Q. I don't care about technical or practical. The rights that you got in those machines are the rights indicated by those two papers?

A. Mr. Choate, in deference to myself, I have not seen these papers since 1894, and, of course, I had no copy of them. I tried to find a copy of them; and, for all purposes, these machines belong to me, but it is true that there is a condition in the lease which I had not thought of.

Q. You mean a condition in the lease that when the lease expired they should be returned to the owner?

A. No; I don't think the second one. When I bought the——

Q. Please answer my questions.

BROWN, J. I think he should be allowed to explain.

202 Q. Go ahead, then.

A. In the first instance, we signed a certain lease with the Goodyear Machine Company, judging from these papers, in 1894. Then, subsequently, we negotiated with Mr. Hunter and obtained the right by paying a certain sum more than what we paid before, I believe, to use these machines in any way we pleased—and I was under the impression that we owned them, and for all practical purposes we did own them; but it is true there was a condition.

Mr. CHOATE. Does your honor think that this is competent?

BROWN, J. You refer to something later than those documents?

The WITNESS. No, sir. I am referring to these two documents.

BROWN, J. If that is all you referred to, of course the explanation is immaterial.

Q. As to that latter statement—for all practical purposes you owned them—the second paper you have just spoken of, dated the seventh day of January, 1897, in substance provided for an additional payment of $100 per machine as a final payment of rental on those machines until the expiration of the lease?

A. And the ownership if I complied with the conditions of the lease. I had a perfect right to do what I pleased with them, except that I didn't get the title.

Q. Suppose you show me in the lease any such provision as that.

A. I don't know as I can. These leases are very technical, and I am a shoe manufacturer and not a lawyer, and I can't say positively that there are not some conditions that will control it. I don't pretend to be able to dissect a lease intelligently or correctly.

Q. I am not intending to debate with you about that, sir. I am only calling to your attention the fact that I think you were in error about a statement you made yesterday.

A. I am perfectly frank to tell you that technically I am in error, but for all practical purposes I don't think I have made any mistake or misstatement.

Q. At all events, all your rights as to those machines are embodied in those two papers?

A. That is what they usually are. Anything we do—they are embodied in the papers.

Two or three weeks ago I signed the paper which you produce
dated April 23, 1910. I read it before I signed it; was
203 familiar with its contents and assume I thoroughly understood it then. It appars from the schedule of machines leased to me that the rapid lasting machines in question are included.

(Agreement between United Shoe Machinery Company and Florsheim Shoe Company, dated April 23, 1910, is introduced and marked "Defendants' Exhibit 35.")

I wrote the letter which you produce—

(Letter from Milton S. Florsheim to the United Company, dated April 30, 1913, is marked "Defendants' Exhibit 36")—and I think the paper which you produce is a copy of the paper which I sent to the United Company.

(Copy of agreement between the United Company and Florsheim Shoe Company, dated April 23, 1908, is marked "Defendants' Exhibit 37")—

It refers to lease and license L 149. ("Defendants' Exhibit 33.")

I know of no heeling machine on the market except that put out by the United Company. I was a stockholder and director of the Non-Royalty Shoe Company. I know nothing about its machinery equipment except what I have heard talked about. I heard the other day that there was to be a sale of its machinery. I have not seen the circular issued by Mr. McElroy, the president. I know nothing at all about the Non-Royalty factory personally.

I have never seen the circular you show me or the letter paper of the company.

I have heard of the Haverhill heeler. I don't know whether the Non-Royalty shoe factory was equipped with a Haverhill heeler. I don't know a thing about it. I never was in the factory. I never went to a directors' meeting nor saw a report of the Non-Royalty Company. I never heard the Haverhill heeler discussed, that there was one.

I have heard the name of the Universal Loose Nailer mentioned. I do not know that it is a metallic machine. It is not on the market to my knowledge. My statement that there was no metallic fastening machine on the market except the United Company's was made on the best knowledge I have. I am not

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positive whether there is a machine known as the Universal Loose Nailer or whether the company making it makes other metallic machines. I don't know that it is not on the market. I can't say. I am pretty sure. I don't know absolutely that there are not other metallic machines besides those of the United Company. To my personal knowledge there are no leveling machines on the market except the United Company's. There may be experimental machines out. I do not know about the Standard rotary leveler. I don't know whether it was in our Non-Royalty factory at St. Louis. I can't deny that there is a Standard rotary leveler in the market and has been for years. I can't deny a thing I don't know. I have never heard of the Standard rotary lasting machine. It may have existed without my hearing it. I don't know that we had three of those machines in our Non-Royalty shoe factory at St. Louis. I understood that the Haverhill Shoe Machinery Company was offering a welter. I have heard the machine discussed by shoe manufacturers who apparently knew. That is practically all the information I have about it. Some say it is a good machine. Others that it is not. I have

talked with Mr. Fox but not about that machine. I met R. H. Long the other day. I had heard of him before. I have heard of the R. H. Long Machinery Company. Some people say he manufactures shoe machinery. Some say he don't. I do not know. I have not heard that he manufactures a welter. He was using a welter which was a free welter but whether he manufactured it or not I don't know. I said there was a stitcher put out by the Union Lock Stitch Company. I learned from the agent of the Union Lock Stitch Company that they have a stitcher. They have an agent in Chicago where my factory is.

I had some of my Chase lasting machines on the old form of lease before the United Company was formed. I substituted for all my Chase lasting machines the new number five, which I think is a better machine.

205 Before the United Company was formed we were making some welt shoes with the Goodyear welter and stitcher and had one Eppler welter and one stitcher on trial. I don't remember how long we kept them on trial. We may have signed a lease for them. I can't remember. I probably did whatever negotiating was done for the Eppler machines. I can't remember just how long we kept the Epplers. We wanted to find out whether for three cents a pair we could get as good a shoe as we could for four. They were being used by others and we wanted to try them. I can't say whether we executed any lease about the Eppler machines. I talked about the royalties with a man who is now in the employ of the United Company. The paper which you produce is an application to the Goodyear Shoe Machinery Company for welters, stitchers, and auxiliary machines. It was signed by my brother for Florsheim & Company. I think. It represents the transaction described by me in which I said I traded in our Eppler machines and took Goodyear machines.

(Lease between Goodyear Shoe Machinery Company and Florsheim & Company dated April 6, 1900, is marked "Defendants' Exhibit 38.")

We got the principal machines and with them ten or eleven auxiliary machines, on the latter of which we paid no royalty. I don't remember whether initial payments were then charged or not on the auxiliary machines. I signed the letter which you produce.

(Letter from Florsheim & Company to the Goodyear Company, dated June 27, 1899, is marked "Defendant's Exhibit 39." Defendants' Exhibits 38 and 39 were read by counsel to the court. Exhibit 39 as follows:

"GENTLEMEN: We have had more or less correspondence with you regarding the royalty on your company's machines. We have also had considerable difficulty in finding operators for these machines. If you will refer to previous correspondence, you will note that we have special arrangements with the Eppler Machinery Company, which entitle us to certain privileges. Now, we make this proposition in order to adjust the matter; if you will agree to trade us Goodyear machines for the Eppler that we now have, we will agree to sign all contracts and also to pay you four cents per pair royalty. When your Mr. Lewis was here, we spoke about the matter to him and he said he would advise us when he returned here.

We shall await your reply.

Yours, truly,

FLORSHEIM & COMPANY.")

206 Direct examination resumed:

The letter last read was written after I had talked with Mr. C. H. Wilson and he told me just what I have stated. I realized I had no alternative and I made the trade. The paper introduced with reference to the transfer of the machines was sent me in 1910 and I didn't sign it. About six or seven weeks ago, before the United distributed its bonus to those of us who had conformed to their conditions and leases, I got a letter from the United, I believe, or I may have written them asking them for the stock, I don't know which, and in response they called my attention that I had not executed this paper, and said that if I wished that stock I should execute that paper. After talking with my lawyer, to whom I took the paper, I signed it and got my stock from the company.

207 JUNE 4, 1913.

JACKSON JOHNSON, witness for the United States.

I live in St. Louis. I am president of the International Shoe Company. It has an output of about fifty thousand pairs a day.

I have no technical knowledge of machinery.

I was chairman or president of Shoe Manufacturers' Alliance and was in Boston when negotiations were had with Mr. Plant. I know Mr. Campbell and Mr. Wade, who were present on that occasion. They reside in St. Louis. They expressed a willingness to finance the deal if it was carried through. Mr. Campbell is president of the North American Company. He is reputed to be a rich man. Mr. Wade is president of the Mercantile Trust Company, a large trust company in St. Louis.

I presided at a meeting at which the shoe manufacturers presented to Mr. Winslow a written proposition of what they wanted him to do.

(The witness identifies a paper produced by Mr. Choate as, except for certain interlineations, a copy of the written proposition referred to. The paper is as follows:

"Lease premium leases are (should) to be written so as to (that each lease will) cover only the individual machine which is the subject of the lease and are (should) not to apply in any way to other machines or machinery which may be held by the lessee. Lessee are to (should) have the right to exchange existing leases for the type above referred to. Lessees shall (should not) be obligated in any way to use exclusively machines or machinery made, leased, or sold by the U. S. (United) Shoe Machinery Company. We recognize fully the great economic advantages possessed by you in the fact that you now enjoy practically a monopoly of the shoe machinery business, but we submit that your patrons should be permitted to share in those advantages by you so modifying your charges for the services rendered as to return only a fair amount on your capital invested."

It was marked "Plaintiff's Exhibit 154.")

208 Our company has an interest in the Boylston Manufacturing Company. It amounts to about $80,000. We went into it to protect our business by insuring the permanency of the supply of shoe machinery. The Boylston Company contemplates making a full line of shoe machines.

Cross-examination:

I have been in the shoe manufacturing business about twelve or thirteen years. I think I began after the United Company was formed. Before that we were jobbers selling shoes for other people. Our business first was conducted under the name of Roberts, Johnson & Rand Shoe Company. That company and the Peters Shoe Company sold out to the International Shoe Company. It has an authorized capital of $25,000,000. I am its president.

Mr. Peters, Mr. Rand, and I of our company were in the alliance. Our attempt to become interested in the Plant machines was my first effort to become interested in the business of manufacturing machinery. We put our money into the Boylston Manufacturing Company about six months ago. We haven't put it all in yet. We are just beginning. $80,000 is just a beginning. It is our hope to manufacture a complete line of shoe machinery. We hope to compete with the United Shoe Machinery Company. I haven't been after the United Shoe Machinery Company at all. I have never made complaint about them. I have never been to Washington with reference to the shoe machinery business. I have never been to the Attorney

General's office. I have been before several congressional committees, but nothing specially about United Shoe Machinery Company business. Have been there to talk about shoe machinery business incidentally, possibly. I have talked with members of Congress. I have very likely talked about the United Company to them with the ultimate object of trying to get legislation aimed at the United Shoe Machinery Company's method of doing business. I have discussed its method of doing business with the chairman of the committee on
209 patents. That was probably a year, probably two years, ago. I have been a member of the alliance since its organization.

The Shoe Manufacturers' Alliance has ceased. I was not a stockholder or director of the Non-Royalty Shoe Company. I may have invested a few thousands of dollars in it. I talked with Mr. Winslow at the Touraine subsequent to our failure to get an interest in Plant's machinery.

Q. Well, now, was there anything said by you, Mr. Johnson, or in your presence, with reference to you and your associates furnishing the money to pay for the Plant purchase?

A. I don't remember definitely.

Q. What is your best recollection about it?

A. I couldn't say that I have any definite recollection at all, Mr. Choate.

Q. Don't you recall that anything of that kind was discussed?

A. Well, I know we discussed it in general terms, but to say whether I told him that we had the money or what we were going to do, I couldn't——

Q. I don't mean that. Did you discuss with him the furnishing by you and your associates of the money to purchase Mr. Plant's properties?

A. I couldn't answer that.

Q. In substance, was it that?

A. I couldn't say that was mentioned at all.

Q. What was the general discussion?

A. Our general discussion was in reference to the leases and conditions imposed on the shoe manufacturers by the United Shoe Machinery Company.

Q. My question was with reference to the Plant properties. Those were discussed, weren't they?

A. I remember having brought the matter to Mr. Winslow's attention, as to the effect produced upon the minds of the shoe manufacturers through the purchase by the United Shoe Machinery Company of Plant's——

Q. Didn't you also bring up the question of you and your associates having some part in that purchase?

A. Just what was said about that I couldn't——

Q. I don't ask you in detail. I just want the substance or effect of it. Wasn't something of that sort discussed?

A. I should have to answer that I don't recollect.

Q. See if I can help you to remember about that. You inquired, didn't you, of Mr. Winslow how much money he had to pay to buy the Plant properties?

A. I don't know whether I did that or not.

Q. May have?

A. I possibly did; yes. I should rather imagine he didn't tell me.

Q. Coupled with that inquiry didn't you make the suggestion that you and your associates would like to furnish money and take stock in the United Company?

A. No.

Q. Do you say definitely that you didn't say that?

A. I didn't say that.

210 Q. How did you put it?

A. Will you allow me to explain as near as I can what occurred?

Q. Yes; if you will confine yourself to this subject.

A. I will try to confine myself to the subject discussed—the points that bear on my mind. I can't remember definitely.

Q. It is with reference to the Plant purchase that I want to direct your attention.

A. Yes. As I say, my connection with the conference was brought about through some of my associates among the shoe manufacturers that were here at that time.

Q. You went as a committee, I take it?

A. Yes. I was asked if I wouldn't meet Mr. Winslow in connection with some other member and discuss with him the situation. An arrangement was made—I don't know through whom—an arrangement was made and on the afternoon of the day following our conference with Mr. Plant we met at the Hotel Touraine and we discussed—in particular, I was trying to find out from Mr. Winslow what would be his attitude in the future, and especially in reference to the conditions of the leases—more especially as to the tying clauses and to the exclusive use clauses that the leases imposed. After discussing that matter quite at length and finding that, comparatively, I made no impression on Mr. Winslow—he didn't take any part in my views—that is, he differed wholly from my views—I suggested to Mr. Winslow—I said: "Mr. Winslow, the policy of our company has always been

to interest people in our stock. Why don't you let the shoe manufacturers buy enough of this stock to identify them with it—offer it to them in proportion to their"——

Q. Did you mean enough of the United Shoe Machinery Company's stock?

A. I was assuming that he was going to issue stock to pay for the plant——

Q. His own stock?

A. Yes. I asked him why he didn't offer it to the shoe manufacturers and interest them in it and thereby obviate the necessity of those clauses in the leases. I told him they were repugnant to every shoe manufacturer when he had to look at and sign them.

Q. You say you were assuming that he would issue stock to pay for the Plant purchase?

A. I was assuming that he would.

Q. And it was that stock that he was going to issue, in the United Shoe Machinery Company, that you suggested be offered to the shoe manufacturers?

A. Yes.

Q. What shoe manufacturers?

A. All of them.

Q. You among the number?

A. Sure.

211 Q. Have you stated all, sir?

A. Well, it is hard to state all in five minutes that occurred in three hours.

Q. Surely; but I mean on this particular topic have you stated it all?

A. That is about all I have any definite recollection of.

Q. See if I can help you about some of the details. Was the amount that would have to be issued for that purpose suggested or talked of at all?

A. Well, I suggested to him, I think, that when we were interesting our employees in our stock we usually did it at a less price than the market value.

Q. On what terms did you suggest he should issue United Shoe stock to you?

A. I don't remember.

Q. It was par, was it?

A. I don't remember.

Q. Did you tell him you usually issued your stock to your employees at par?

A. No; we never did that.

Q. At some price less than the market?

A. We always sold it less than the market.
Q. And you suggested that he do the same?
A. Sure.
Q. You won't say that you did not suggest par?
A. No.
Q. Although the stock was then selling at 50 on a par of 25?
A. I didn't know the market.
Q. You didn't?
A. I never owned any at that time.
Q. Didn't he tell you that the stock was then selling in the market at 50 or thereabouts?
A. Well, he turned it down so cold that we didn't discuss it very long.
Q. Didn't he tell you that the stock was then selling at about twice par?
A. I don't remember that.
Q. You won't say he didn't?
A. I won't say he didn't.
Q. How did this offer of stock to you at less than the market price have any connection with relaxation of the clauses in the leases?
A. My idea was that if he had all the shoe manufacturers in there it would not be necessary for them to put a clause of that kind in there.
Q. You mean if they were given some advantageous opportunity to get stock in the United Company they wouldn't object to the clauses in the leases?
A. No. I meant this, that he could afford to take them out because if they were stockholders and patronizing their own company they would do it as a matter of preference and not as being forced to.
Q. That is, if they were given a chance to take stock at better than the market price they would be perfectly willing to take the company's machines?
A. No; I didn't mean that.
212 Q. That was the argument you were using with him?
A. No.
Q. Just state it in your own way. How was that acquisition of stock by them at less than market price to operate?
A. Let me say here that I was just speaking my own mind. I was representing no one in that negotiation. I was not representing any other manufacturer.
Mr. CHOATE. I appreciate that, sir.
The WITNESS. I had failed so signally in my discussion with Mr. Winslow that I was rather trying to get something out of

him so that I could go back to the other manufacturers and tell them: "Here is something Mr. Winslow is willing to do."

Q. How was it going to work, this getting of stock at less than par, in connection with the leases, as you regarded it?

A. I regarded that if the manufacturers owned that he wouldn't have to tie them up so tight and fast and could eliminate those clauses that were repugnant to the manufacturers. It wouldn't be necessary.

Q. Why wouldn't it be necessary?

A. Because they would be partners in the institution.

Q. So that their strong inducement would be to use his machines?

A. He would patronize himself in preference to anyone else.

Q. That is, there would be a strong motive to use no machines except the United's if they were partners, all being stockholders?

A. It would be a strong motive for them to give preference to the company they were interested in.

Q. Is this the thing you wanted to get out of Mr. Winslow to carry back to the people you represented?

A. Not especially.

Q. One of the things?

A. I wanted to go back to the manufacturers and tell them Mr. Winslow was willing to do something.

Q. Are you quite sure that you wanted that privilege extended to all the shoe manufacturers?

A. Yes. I asked him especially ——

Q. Did you not suggest that it be offered upon such terms that only the large manufacturers could take it?

A. No, I didn't.

Q. Something to that effect?

A. Nothing to that effect whatever.

Q. All these people you represented were large manufacturers, weren't they?

A. No. Some of them were very small.

Mr. CHOATE. I haven't heard of anybody who manufactured less than 4,000 pairs a day.

PUTNAM, J. Get through this as soon as you can, Mr. Choate, please.

Mr. CHOATE. I will come directly to it.

213 Q. Isn't it a fact that you asked Mr. Winslow to make this proposition upon such terms that only you large manufacturers could get the benefit of it?

A. No, I didn't.

Q. You were perfectly willing if you got that accommodation on the stock to have all your machines of the United Company?

A. No, I wasn't. I didn't call it a contract at all. That was not a part of the suggestion.

Q. But you gave him to understand that that influence would operate with you just as it would with anybody else?

A. As I say, this discussion of the whole thing with reference to that was a matter of very short——

Q. Just answer my question. You have tried, haven't you, for quite a number of years, to impress upon him the idea that large manufacturers ought to get better terms than small ones?

A. No.

Q. You do think so, don't you?

A. No; I shouldn't say that——

Q. That is, a man whose output is 50,000 pairs a day, and who is paying a large sum in royalty and taking machines by wholesale, you think, don't you, ought to get better terms than a small manufacturer who only takes one or two machines?

PUTNAM, J. You have got aside from the conversations, haven't you?

Mr. CHOATE. Yes.

Q. That is your opinion, isn't it?

A. That I think that the large manufacturers should have a lower price on machinery than others?

Q. That he ought to get better terms than a man who takes a small amount.

A. I should say it would be destructive to his company if he entered into an arrangement of that sort.

Q. To the United Company?

A. Yes.

Q. But you think so from your point of view, don't you?

A. I could not say that I did.

Q. Haven't you so said, and didn't you so say on that very day?

A. I don't think I did.

Q. You won't deny it, will you, Mr. Johnson?

A. Why, no, I couldn't deny——

Q. You won't deny that you told him that you thought a large manufacturer ought to get better terms?

A. I should say this: I don't believe I said that; I don't think I said that.

Q. In substance or effect that that was the idea that you wanted to carry away to take back to your representatives?

A. No, I couldn't have done that, because I would have had to carry it to some very small manufacturers.

Q. You sought this interview, didn't you?
A. No, sir.
Q. And the person who was with you was Mr. Milton S. Florsheim?
A. Yes, sir.
Q. And he was present at all the time that this interview was taking place?
A. Yes, sir.

Direct examination resumed:

Q. Just one question. Do you remember whether or not Mr. Florsheim was immediately present when this conversation was had with Mr. Winslow in regard to the purchase of the Shoe Machinery stock?
A. I don't think he was; that is, I don't think he was in that part of the room.

214 JUNE 4, 1913.

FRANK C. RAND, witness for the United States.

I live in St. Louis and have been engaged in the shoe manufacturing business since 1903 or 1904. I am vice president of the International Shoe Company of which Mr. Jackson Johnson is president. I have been with that company since its organization two years ago. Previous to that I was vice president of the Roberts, Johnson & Rand Shoe Company, which had an output of 30,000 to 35,000 pairs of shoes per day, making all kinds of shoes. From 1904–8 I was superintendent of our factory making men's shoes. Among shoe manufacturers the expression "essential machines" has a special meaning; the term in a commercial way has a limitation as to the kind of machines. I understand that welting, stitching, rough rounding, heeling, and metallic fastening machines are embraced within the class of essential machines in the commercial sense. (This testimony in last two sentences subject to defendants' exception.) I do not know how many welting machines we have in our factory. Their average output is between three and four hundred pairs per day, if operated steadily and properly. Approximately half the shoes we make are welt shoes. We lease our welting, lasting, heeling, rough rounding, and metallic fastening machines from the United Shoe Machinery Company. The Roberts, Johnson & Rand Company did likewise.

I am familiar in a general trade sense with the Krentler lasting machine. I saw one in operation in the factory of the Non-Royalty Shoe Company at St. Louis. It does the same work as the lasting machine put out by the United Company. It did good work. The Krentler Company is located at Detroit, Mich.,

but has only put out two machines up to the present time, as I understand it.

The Naumkeag machine is used with a sandpaper pad to sand off the surface of the breast of the heel. We purchase emery pads for the Naumkeag machines from the United Company at three dollars per hundred. The machine cannot be used without them. Those pads wear out constantly. We cut some for ourselves at one time when we were out of pads at forty cents a hundred. We have been paying the United Company twenty-five dollars for leveling machine legs, but made a set of
215 legs for one of our machines at a cost of approximately six dollars for labor and material.

The figure does not include overhead charges. Ten per cent is sufficient for them. I have made a comparison of the machinery parts and repairs in our city factories as compared with our country factories. The machinists of the United Shoe Machinery Company do an extremely small percentage of the repairing in our country factories, as they are sometimes one hundred and fifty miles from the factory, and it would take too long. We do our own repairs there. They do practically all the repairing in the city factories, because they are easy to be called on. The parts about which I am testifying are not articles which can be obtained in the market generally, but must be bought from the United Shoe Machinery Company or made.

The cost per annum in all my factories for parts is approximately between $100,000 and $200,000. It is a very broad guess. In country factories we have our own machinists and machine shops to make repairs. They make parts in cases of necessity. Except in isolated cases, we buy the new parts used in country factories from the United Shoe Machinery Company. In our city factories we also have machinists, but the United Company has agents in the factory, and we call on them pretty freely. We only call on them in the country when we get into more trouble than we can get out of because of some breakdown. We also buy our repair parts that are used in our city factories from the United Company.

There is a difference of about fifty per cent in the cost of installing repair parts in country factories. The keeping up charges of our country factories are about one-half what they are in the city where agents of the United are constantly used. The price of the parts is the same, but greater care and economy are practiced by our own machinists and parts are successfully used a longer time.

I was in Boston at the time negotiations were had with regard to the Plant purchase.

216 I was present at a conference with Mr Winslow in Boston in May, 1911. Mr. Florsheim, Mr Selby, Mr Selz, Mr. Krippendorf, Mr. Johnson, Mr. Robley, of the Brown Shoe Company, and Mr. A. D. Brown were present at that time.

We met in Mr. Winslow's office the morning after the day on which we had gone with him to Beverly to look over the United Company's plant. After a talk on the development of the United Company by Mr. Winslow, the manufacturers present asked him what proposition he had worked out. This meeting was following one that had been held in St. Louis in February of the same year. He had worked out none. We asked for the notes from which he had spoken, but he said he would dislike to give them to us unless we would promise to return them by two o'clock that afternoon and not take any copies. We did not take them. We requested him to meet with most of those same gentlemen in the afternoon. He did come, with some of his associates, to the Hotel Touraine. We had a lengthy discussion of two or three hours, freer and more informal than in the morning. In the afternoon there was general discussion regarding objections as to the various leases. Mr. Winslow said that the matter had been under discussion among the officers of the United Company for quite a while, and that a plan might be worked out by which the entire group of machines, which were then considered as a single unit, should be separated into several units, thus giving the manufacturers the privilege to use any one or all or any part of the several units, the different units being separated one from the other. If this were done, he said, the manufacturers could not expect to get the separated units on as favorable basis as they now had their shoe machinery. I produce a copy of a letter from Mr. Winslow, dated June 19, 1911, stating what was to be a unit under the proposed new plan.

Two or three days after the others left I had two private conversations with Mr. Winslow, probably three or four hours each time, and he outlined the application of the plan, which
217 he said might possibly be worked out, to the machines belonging to the United Company operated by Roberts, Johnson & Rand Shoe Company, in which I was interested, as of February, 1911. We were operating over sixteen hundred machines of the United Company at that time, the initial cost of installation of which, under the regular form of lease on which they had been put out, would have been between ten and twelve thousand dollars. Under the suggested plan the aggregated initial cost of installation for those same machines would have been over two hundred and fifty thousand dollars. The royalty in both instances was to be the same. The difference in cost was

to pay for the privilege that was given us under those seven units. We could throw out any one of the units that we cared to. But the statement was made that if we didn't use all of the units we couldn't expect six of the units on the same basis that we used seven—some increased cost would have to be made in order to compensate in a measure for the idle unit.

After this conference the letters which I identified were written.

(Letter from Mr. Rand to United Shoe Machinery Company, dated June 14, 1911, is marked "Plaintiff's Exhibit 155." Letter from Mr. Winslow to Mr. Rand, dated June 29, 1911, in answer thereto, is marked "Plaintiff's Exhibit 156." These letters were read into the record.)

PLAINTIFF'S EXHIBIT 155.

ST. LOUIS, *June 14, 1911.*

UNITED SHOE MACHINERY CO., *Boston, Mass.*

Attention Mr. S. W. Winslow.

GENTLEMEN: In the personal conversation between you and the writer when I was last in Boston, I stated there was nothing more that we could do in Boston, but in a short while we would write you about any conclusion that might be reached.

The shoe manufacturers are contemplating another meeting very soon. To take up the matter intelligently, some additional information is necessary. The result of our meeting at Boston was that you submitted to us—

1st, a memorandum separating the entire system into seven independent units.

2nd, you submitted figures relating to the machines now in use by the Roberts, Johnson & Rand Shoe Company, which figures would apply if the machines were installed under your proposed plan.

Are we to consider that the memorandum (in connection with the figures tabulated under the terms of the memorandum) was a definite proposition from the United Shoe Machinery Company; if so, what change, if any, in present royalty was contemplated?

Kindly advise me regarding the above, and oblige,

Yours, truly,

F. C. RAND, *Secretary.*

218 PLAINTIFF'S EXHIBIT 156.

BOSTON, MASS., *June 19, 1911.*

Mr. F. C. RAND, *Sec'y Shoe Mfrs. Alliance, St. Louis, Mo.*

DEAR SIR: Replying to yours of the 14th inst. I note your reference to the fact that when in Boston you stated that in a

short while you would write me any conclusion which might have been reached, but that another meeting is contemplated very soon and that you desire further information.

You state that:

"The result of our meeting in Boston was that you submitted to us—1st, a memorandum separating the entire system into seven independent units."

In order that there may be no misunderstanding, I understand those to mean: 1st, Goodyear machines, including auxiliaries; 2nd, Rex pulling over system, including auxiliary machines; 3rd, lasting machines; 4th, metallic machines; 5th, heeling machines; 6th, clicking machines; general department machines.

In your letter you also state:

"2nd, you submitted figures relating to the machines now in use by the Roberts, Johnson & Rand Shoe Company, which figures would apply if the machines were installed under your proposed plan."

And you ask:

"Are we to consider that the memorandum (in connection with the figures tabulated under the terms of the memorandum) was a definite proposition from the United Shoe Machinery Company; if so, what change, if any, in present royalty was contemplated?"

In reply to your question I would say that no change in the present royalty was or is contemplated (excepting as explained to you in the substitute form of memorandum in reference to the Rex pulling over system and as stated therein). This was stated very fully to your committee while in Boston.

No definite proposal was made to Roberts, Johnson & Rand.

Should, however, the manufacturers who were present at the conference express their approval of the plan which was submitted, I think there should be no difficulty in our making equitable arrangements by which Roberts, Johnson & Rand, and such other manufacturers as may desire to have the company adopt the plan referred to, may rearrange their leases in accordance with the basis of the memorandum.

Yours, sincerely,

S. W. WINSLOW, *Pres.*

At a subsequent meeting of the Shoe Manufacturers' Alliance, I stated how this plan worked out as applied to our machines and they took no further interest in it.

Our company purchased an interest in the Boylston Manufacturing Company in order to safeguard our shoe business by developing another source of supply of shoe machinery and competition in that commodity. At present it is putting out some finishing machines and an ironing machine to smooth the upper

after the shoe is practically made which is profitable to them. I think a good many of them are being put out. It irons out the upper and prepares the shoe for being dressed and
219 put into its final condition. That machine has nothing to do with fastening the sole on the shoe at all.

Cross-examination:

The Boylston Shoe Machinery Company has been in existence for quite a number of years.

Our company and our associates bought the large interest in the Boylston Company formerly owned by Mr. Henry H. Rogers. He and his associates, particularly Mr. Copeland, had been in business manufacturing shoe machinery for about twelve years. Mr. Copeland is still connected with the business. Since we came into the business it has gone on without interruption except that the shoe machinery part has practically been defunct. I have no interest in it except our company's interest. The $80,000 invested in it by Mr. Johnson and me comes from the International Shoe Company. I am a director in the Boylston Company. It was our purpose in going into it to safeguard our business and to develop competition in shoe machinery—incidentally if the company should be successful and there is profit in it we should not object to that.

Q. You mean not only to put your money into it, but your ability and your intelligence to develop it?

A. Personally, I think not.

Q. Or to have it done, to have it developed?

A. Yes.

I have at home the memorandum which was submitted by Mr. Winslow and which is referred to in my letter to Mr. Winslow, plaintiff's Exhibit 155.

(Copy of memorandum given to Mr. Rand by Mr. Winslow and referred to in plaintiff's Exhibit 155 is identified by the witness and is marked "Defts' Exbt. 40." Copy of memorandum of initial payments given by Mr. Winslow to Mr. Rand and referred to in plft's. Exbt. 155 is identified by the witness and is marked "Defts' Exbt. 41.")

I think our company then had 1,635 machines from the United Company. I do not think over fifty per cent of our machines of all kinds, including the fitting room machinery, and measuring machines are from the United Company. Not over fifty per cent of all the machines used for making shoes in
220 our factory are obtained from the United Company.

I do not know what initial payments were demanded before the organization of the United Company. I have never compared the figures in defendants' Exhibit 41 with the initial

payment charged for similar machines before the formation of the United Company. I think we had machines from the general department; I don't know whether we bought them outright or leased them. Mr. Winslow's memorandum covered all the machines with which the United Company had supplied us and necessarily included general department machines. It included an initial payment on every single one of those machines in every one of the several departments into which our correspondence had suggested a division of the units. We never considered adopting the proposed form of lease for any one department. I had very little interest in the memorandum after seeing the immense cost. I don't recall whether I replied in any form to the memorandum. The figure of two hundred and fifty thousand dollars covered the installation of machinery in our twenty factories in two different States, Missouri and Illinois. That cost of installation was for a corporation with $25,000,000 capital and turning out 50,000 prs. shoes a day; and selling goods under open competition and desiring to buy under open competition. It involved the shipping of the machinery from Massachusetts and setting it up ready for operation.

The Naumkeag machine parts are not sold as an article of merchandise in the market. These discs are a part of the machine—they are a special article furnished only by the Naumkeag Company. I can't say whether they are patented. The leveling machine for which we made legs was a Giant leveler at our St. Charles factory. I don't know whether that is a general department machine that can be bought outright. I am not really very familiar with the terms upon which we can get machinery, although I sign all of our leases—practically all of them. I do not know whether the leg is a casting. I don't know from personal knowledge exactly what broke on that machine. Somebody told me that a leg had broken. I don't know how big a piece the leg of a Giant leveler is. The
221 machine stands about as high as the witness stand and the legs are about the same length as the posts of the witness stand. I don't know whether our mechanics made a wrought leg or whether it was cast. I recognize that there is a difference. I don't know whether he made one leg or four. I said set—I don't know how many in a set. I think those legs are not separated. Shoe machinery is complicated and composed of many different parts in many instances. Breaking a part may cripple the whole machine. We keep on hand a liberal supply of parts.

Q. They have got to keep all those parts ready without knowing whether they will ever be called for or not?

A. Yes.

Q. And just as many parts as there are parts in all the machines; isn't that true?

A. Yes; I should think so.

Those metallic fastening machines that attach the bottoms to the uppers are the ones which I include among "essential machines," viz, the loose nailer and the standard screw machine.

Q. It isn't quite whether you regard it as so, but it is whether the trade speaks of it so.

A. It is so regarded in the trade.

Q. It is whether the trade is in the habit of calling that machine an essential machine.

A. They are.

Q. Which one or ones?

A. Well, the loose nailer and standard screw—the loose nailer and standard screw machines come under that head.

Q. But not the other metallic machines?

A. I am not attempting to include them, because my specific knowledge of those machines is very limited.

Q. You mean as to the metallic machines?

A. Yes. My personal experience has been more largely with welts.

Q. Can you tell me how many machine operations there are on welt shoes in a well-organized factory like yours, for instance?

A. You mean after you begin to attach the upper to the bottom?

Q. How many machine operations there are in making a welt shoe from beginning to end?

A. I can't tell you.

Q. There are at least 150, aren't there?

A. I don't know. I could probably figure that out.

Q. I am not far out of the way in stating about 150, am I?

222 A. I think that would be excessive.

Q. When you have equipped your factory with machines for the making of a welt shoe, and adapted your business to making it by machinery, is there any machine that is more or less essential than another in making that shoe?

A. That question—I don't know how to answer that question.

Q. The fact is that after you have become accustomed to doing your business that way, they are all essential, commercially?

A. Yes; everything—leather and everything else which goes into a shoe, tacks and all, is an essential proposition in making a shoe.

Q. When you have got into the habit of making shoes by machinery, all the machines which go to make them are essential?

A. Not under the definition and by the limitation by which I have attempted to define the essential machines.

Q. I am not speaking of that subject now.

A. Oh, in the broader sense of the meaning of the word "essential," every component part is an essential part to a shoe.

The United Company furnishes parts for our country factories at the same price as for city factories. The United Company agents make a reasonable response to calls from country factories.

Q. And they charge you nothing for their services?

A. No.

Q. You are given free the services of their mechanics in both your country and city factories?

A. Yes.

Q. In keeping your machines in repair whenever you ask for them?

A. Well, there is a mental issue raised about the "free services." They don't charge us for the time they put in, but there is just the point.

Q. They don't charge you for their labor?

A. For their labor they don't charge.

Q. And they don't charge you for their car fares when they go one hundred miles into the country to your factory?

A. Those two specific things are not shown on the invoices.

Q. They are not charged for, are they?

A. No; they are not charged there or shown.

They teach our operatives without charge, and furnish them in times of strikes without charge, at our request. It was a mutual proposition—if we didn't run the machines we didn't get any shoes and they didn't get any royalty.

223 Direct examination resumed:

We have about as many machines for attaching bottoms to shoes as we have for fitting the uppers. I think I am not qualified to describe the difference in the machines leased from the United from those bought outright. We paid the United Company probably more than fifty thousand dollars per month for royalty, machinery parts, machinery rentals, and return charges.

224 JUNE 5, 1913.

WARREN F. MCELROY, witness for the United States.

I live in St. Louis and am engaged in the shoe manufacturing business, being connected with Burrough, Jones & Dyer Shoe

Company. They have two factories in St. Louis and one in Milwaukee. Before the first of this year I was president of the Non-Royalty Shoe Company, the stock of which was owned by members of the Shoe Manufacturers' Alliance. Its factory was in St. Louis. I was with that company for a little over a year. Previous to that I was vice president of the Hamilton-Brown Shoe Company. I was with that company almost twenty-eight years. From 1890 to 1911 I was superintendent of their manufacturing department, and as such supervised and directed the installation of their machines, for which I signed the leases. About 1890 they made about three thousand pairs of shoes, but when I left they were making about thirty-five thousand to forty thousand pairs daily, having gradually increased their capacity. They made a general line of shoes.

In February, 1899, we had two varieties of lasting machines in our factory, the Copeland-Rapid and the Sinning, of which we had eight. The Copeland machines were installed in the early nineties. We were making men's shoes on the Copeland and women's on the Sinning. From any knowledge I had the Copeland machine could not be used in making women's shoes. We never used the Copeland for women's shoes. We used the Sinning for making some men's McKay shoes. Never tried it on men's welts. The pegging device on the Sinning machine was not arranged to make welt shoes. It was a type of "nigger-head" machine, and with an adjustment probably could be used for that purpose. So far as I have any recollection those are the only two varieties of lasting machines I knew anything about along at that time. I think the Copeland machine was put out by the Goodyear Company. The Consolidated and McKay Company was not putting out a lasting machine to my knowledge.

225 There were the Goodyear and Eppler welt systems on the market at that time. I used only the Goodyear; I never used the Eppler. I examined the Eppler machine in 1897 or 1898 at Mr. Geo. E. Keith's factory at the solicitation of an agent of the Eppler Company. I went with Mr. Myron F. Keith and looked at the machine and the class of work it was doing. It seemed to be doing good work on men's medium and fine grade welt shoes. The work looked equally as good as the work done by the Goodyear machines in my factory.

Q. Do you know whether or not the Eppler welt could have been used on women's shoes?

A. I imagine it could.

Mr. CHOATE. Just a moment, please. Is that answer quite adequate as a response to your question?

Mr. FOWLER. Strike out the answer.

Q. Do you know whether or not it could be used on women's shoes?

A. I do not.

Q. Did you examine the machine carefully enough to determine whether or not it could be adjusted to women's shoes?

A. I would say that it could very easily.

Mr. CHOATE. That is not an answer to the question. I ask that that be stricken out.

Mr. FOWLER. I think, may it please the court, that he has shown himself a sufficient expert to tell.

Mr. CHOATE. That is not what I am objecting to. Your question was if he examined the machine carefully enough to know whether it could be adjusted.

Mr. FOWLER. Strike out that answer.

Q. Answer my question yes or no.

A. Yes.

Q. Could it be adjusted so as to be used on women's shoes?

A. I don't see that it would need an adjustment. The process is exactly the same.

Q. Then could it have been used on women's shoes?

A. It could.

Q. As to the amount of work performed by the two machines, which could do the greater, the Goodyear or the Eppler?

A. Mr. Keith told me ——

Q. No; don't tell what Mr. Keith told you.

A. I couldn't answer the question.

Q. Did you notice the rapidity of the operation of the machine there enough to determine?

A. Yes, sir.

Q. Well, what did you observe with reference to the rapidity of the machine?

A. That they were about the same.

Agents for shoe machinery talked with me when they came to our factory. Prior to 1899 agents for various manufacturers used to call on me.

I had the Hartford rounding machine, and the Loewer people got out their machine and put it in under a claim it was more efficient. I have already mentioned welt machines. We had the Tripp Giant leveler, and put in the Bresnahan direct pressure leveler in 1897. We had the American sole-laying machine and took it out at the instance of the United and put in the Goodyear machine, as the United put their machine in without charge for installation or royalty. We left the American machine standing in the factory, and think perhaps we used

it after that as a supplementary machine. I think we were paying royalty on it. After the formation of the United Company in February, 1899, agents for different machines ceased to come to my factory.

In May, 1910, I went through the factory in which Mr. Plant's machines were being operated in Boston, at the request of Mr. Brown, president of the Hamilton-Brown Shoe Company, to make an inspection of the machinery. The object of that inspection was looking to buying or acquiring the Plant patents.

226 There was some western manufacturers that contemplated this, and I was sent as an expert to look over the machinery and make a report. The manufacturers were, among others, Mr. Jackson Johnson, of the International Shoe Company; Mr. Henry Peters, of the Peters Shoe Company; and Mr. J. H. Robley, of the Brown Shoe Company. The machines were doing women's McKay and welt work, of good workmanship and high grade. I spent practically two days going over the machinery. I can not state the number of machines in operation, but it was a full line, consisting of lasting, welting, stitching, and leveling machines. The essential bottoming room machinery was the machinery I examined. The work done was equally as good as that done by our United Shoe Manufacturing Company machines, and I felt they were doing about the same number of pairs. They were actually at work on women's shoes. I saw men's shoes there which were made upon them.

We exchanged a Copeland Rapid lasting machine in 1904 with the United Company. We had those machines on the original lease, and just before the United Company took over the Goodyear Company we were notified that upon our paying $100 cash they would surrender their claim for royalty on the machines. I had a number of the machines, and the Goodyear agent, Mr. Kenney, told me where he could secure five more, and I took them. There was controversy about the surrender, as they claimed their proposal applied only to the machines we already had, but they finally yielded and I paid $500 and worked those machines continuously until 1904. Mr. Kenney several times asked me to take them out and put in "nigger-head" machines made by the United Company. Finally they made me an offer, and as I was unable to get the parts—Kenney had told me he could not furnish me any more parts, and we had been making our parts for these machines for about four or five years—they finally supplanted them with "nigger-head" machines and gave us a cash bonus of something like $3,300, I think. It seems to me that was for fifteen machines, but I am not positive on that point.

The factory of the Non-Royalty Company at St. Louis was equipped with machines by me. It had a capacity of six
227 hundred to a thousand pairs per day and made men's welt shoes. It had two welting and three stitching machines. One welter was from the Haverhill Shoe Machinery Company and one from the Champion Shoe Machinery Company of St. Louis. I got one from each company to demonstrate which was the better machine. The two were made along the same lines. In comparison with the machines in the Hamilton-Brown factory the welting machine had about the same capacity but could use a lighter inner sole, so to my notion it was a desirable machine. They were speeded to about the same rapidity. To my notion the work was as good. We used those machines from July 1, 1912, to February 2, 1913, when our factory burned. I used in this factory a lasting machine imported from the Standard Rotary Company of Rushden, England. I could not get a laster in this country other than those of the United Company. I looked over all the available markets. The Copeland, or Boylston Manufacturing Company, had a trial machine but would not put it out. After I returned from England I learned that the Krentler Company, of Detroit, had a laster they were willing to install for a trial. It was not a commercial proposition. This was about the first of May, 1912. I took it and used it. It was a crude machine, but I figure it will produce more and better shoes than the Number Five bed laster. It had no milled parts, and the mechanism was roughly constructed. It had been made by hand, as all experimental machines are. The Krentler's also had another machine which they had installed in our factory the day it was burned. That was their entire output. I had the Standard Rotary's leveling machine which we got from Rushden, England. That was the only one I know of on the market outside of the United Company's. I tried to ascertain if there were any other machines. The one we got does excellent work. We had a full equipment for producing men's welt shoes, except a pulling machine. The custom is to buy machines ready-made, but we had to order the one we got in England, as they had exhausted their supply. They had shipped one complete equipment to Australia and one to Italy just as I came into the market, so they had no machinery on the floor. They are producing machines regularly. The same condition applied
228 to the lasting machine we got abroad. I got a sole moulder, stitching machine, indenting machine, and two rough rounders abroad because we could only get them from the United Company in this country. At the time we were equipping that factory in 1912 we could not obtain a full line of welt-

ing or lasting machines in this country other than from the United Company. We didn't obtain a full line of metallic fastening machines in this country independent of the United Company, but we did obtain a full line of heeling machines independent of the United Company from the Haverhill Shoe Machinery Company—but it took two months to get the first one. In respect to the general line of machines such as are marketed in the United Company's general department, we picked up from different people an equipment, buying a machine here and there, some of it second-hand, rebuilt machines. We obtained enough machines of this character to operate with two welters and three stitchers. A factory with a capacity of ten thousand shoes per day could not have equipped itself with this class of machinery in 1912 outside of the United Shoe Machinery Company. Prior to 1899 there were two heeling machines on the market, the American and the Mayo, I think.

Cross-examination:

Standard screw wire is a special form of wire, produced only by the United Company, with a double thread to make the fastening more secure, adapted to use in a particular machine—the Standard screw machine—and made for a particular form of shoe. We paid fifty-four cents a pound for the wire and got the use of the machine for nothing. There are other kinds of machines that insert other kinds of wire fastening in other kinds of shoes.

I started with the Hamilton-Brown Shoe Company as an office boy and was with them twenty-eight years. I rose to be vice president. Mr. A. D. Brown was president. He was a member of the Shoe Manufacturers' Alliance. I do not know that
229 Mr. Brown or the company is or was interested in the Boylston Manufacturing Company. My present firm is Burrough, Jones & Dyer. They are not in the group of St. Louis manufacturers referred to. They are in St. Louis, where Mr. Jackson Johnson, Mr. Rand, and Mr. Brown are. The Hamilton-Brown Company was a subscriber to the Non-Royalty Shoe Company. I was selected to equip and operate the factory. It was operated for eight or nine months making shoes. It made reasonably satisfactory shoes, some of which were marketed in the Central West. They were exclusively men's welts. We confined ourselves to welts, and didn't try to make McKay shoes or standard screw shoes or peg shoes. Almost every operation connected with the making and assembling of the upper is done by machinery. The operations of the machines in the ordinary shoe factory are divided into at least eight different departments,

which go by the names of rooms—as, for instance, the cutting room.

Mr. CHOATE. I only want to bring out the fact of how very much larger the field of shoe machinery is than that portion occupied by the machines of the United Company, and that the machines of the United Company relate principally to the bottoming operation; that is, only connecting the upper and the sole.

BROWN, J. I thought that was all conceded on the opening.

Mr. CHOATE. Well, perhaps it is.

BROWN, J. I thought that was conceded—that the bill concedes that it relates only to the bottoming.

Mr. GREGG. Precisely. We make no contention that the United Shoe Machinery Company controls machines for stitching the uppers of shoes.

BROWN, J. Do you make the contention that it controls anything except bottoming machines?

Mr. GREGG. Eyeletting machines.

Mr. FOWLER. Yes; and clicking machines.

Mr. GREGG. And clicking machines used to die out the uppers, to cut the uppers of shoes. That is, as to the machines used for stitching the uppers of shoes, we make no contention that the United has a monopoly of that business.

BROWN, J. Well, it may be desirable, as Judge Putnam suggests, to show that the United Company occupied only a portion of the field.

Mr. CHOATE. Well, I will take your honor's suggestion on that.

PUTNAM, J. Very well, Mr. Choate. Show it in your own case.

230 The WITNESS. The Copeland Rapid Lasters which I exchanged were old machines. The "nigger-head" machine is otherwise called the Consolidated & McKay hand-method lasting machine. It was developed later than the Copeland Rapid. It was used more on McKay shoes, and the Copeland Rapid more on welt shoes. We did not get as many "nigger-heads" as we had Copelands. They were gradually dropped, and the Number Five Lasters put in their place. It is better adapted for men's welts. This Non-Royalty factory was designed to be equipped for making welt shoes. The Goodyear welt shoe is known to the trade as a welt shoe made on the Goodyear machine, the word "Goodyear" being recognized as a trade-mark. It is the name of a machine which is manufactured only by the United Company. The shoes made at the Non-Royalty factory were called "Non-Royalty welts." That was stamped on the shoes. There was

only one United Company machine in that factory. It was a ~~Non Royalty~~ non royalty machine. I am not a trained mechanic. Have never invented any machinery and never received any technical training as a mechanic or mechanical engineer. My knowledge of machinery is such knowledge as a man gets who is a

231 manufacturer of shoes. I examined the Eppler machines at Mr. Keith's in 1897 or 1898 at the solicitation of the agent of the Eppler Company. We did not install any of them in our factory. I did not consider the Eppler machines superior to the Goodyear, and we made no effort to put them in our factory. The shoes which Mr. Plant was making for the market on his new machines were women's shoes. There were a half dozen cases of men's shoes that had been stitched but not heeled. Men's cases run twenty-four pairs to the case. I couldn't say whether they had been done some time before our examination. To the best of my information those machines had never made any men's shoes for the market. I questioned the strength of those machines for making men's shoes. The frames of the machines of the United Company were heavier and stronger than those in the Plant factory. The making of men's welts involves dealing with heavier material and requires more strength in the machine than the making of women's welts. If his machines had been used commercially on men's shoes the frames should have been stronger. As a commercial proposition they would have to be built heavier to make them available for that purpose.

We superseded the sole laying machine we had before 1899 with a United Company machine because we thought the terms were better. No pressure was brought to bear on us. We did it because we wanted to and thought it was a better proposition for us. We also changed the Bresnahan leveler, which we had put in in 1897 for a United Company direct-pressure leveler, as I thought it stronger. The United Company offered us a new machine to displace the Bresnahan, and I thought the new machine better.

The Goodyear welt machine can be used on both men's and women's shoes, so the Eppler had no advantage in that respect. I am familiar with the way the Eppler welt machine laid the seam only from the impression that it made on me at that time. I don't recall—I remember there was a difference, but I could hardly describe it.

232 I did not look into the question whether a factory could be equipped for making McKay shoes without taking machines from the United Company.

More McKay shoes are made than any other one kind. A very large number of McKay's are made—more McKay's than welts. I did not consider whether McKay shoes or pegged shoes could be made without using United Shoe Machinery Company machines. I found that a factory could be equipped without using United Shoe Machinery Company machines for making metallic fastened shoes with heavy outsoles. Such shoes could not be made if light outsoles were used. A very large number of those shoes were being made for outing shoes. I did not consider whether a factory could be equipped for making turn shoes without the United Company's machines. All the United Company's Goodyear welters and stitchers are peculiarly adapted for making welt shoes. It was in that welt shoe field that I was trying to equip a factory. I made a welt shoe which to the layman's eye would present no difference.

The Non-Royalty welt shoe we made I considered a better shoe than the Goodyear welt. We closed down simply because of the fire. Our two welters were enough for a factory with a capacity of from six hundred to one thousand pairs a day. Our three stitchers were enough for six hundred to seven hundred and fifty capacity. We were aiming for an output of from six hundred to a thousand pairs a day. For a factory of that output we would need one heeler. We could do our lasting with the Krentler and three other lasting machines. We had one slugger and could have done our work with that. We have advertised the sale of our machinery. I produce a list which is a complete list of all the machines in the Non-Royalty factory which we were offering for sale on June 2, but postponed the sale of. It represents a list of the machines ordinarily needed in making a welt shoe from start to finish.

(A list of machinery of the Non-Royalty Shoe factory printed in connection with the proposed sale is marked "Defendants' Exhibit 42.)

233 Prior to the Non-Royalty the Goodyear welt was the only welt shoe properly so called in this country as far as I know. The welt shoe gets its name solely from the fact that a strip of leather called the welt is instrumental in uniting the sole with the upper. That is what distinguishes it from other kinds of shoes, like the turn, the McKay, the pegged, and the standard screw shoes. When I was with the Hamilton-Brown Shoe Company I made a shoe that I gave an individual name to. I called it the "security welt." We made a McKay shoe first and then stitched an outsole into it.

Direct examination resumed:

The "security welt" was not, strictly speaking, a welt shoe. The one machine we got from the United Company for our Non-Royalty factory was a creasing machine. It belongs to the general department. We bought that outright. The frames of the Plant machines could have been made heavier.

234 JUNE 5, 1913.

GEORGE R. HARSH, witness for the United States:

I reside in Milwaukee. I am engaged in the shoe manufacturing business. I have been for seven years president and general manager of the Harsh-Edmands Shoe Company. Before that I was superintendent of the factory of Roberts, Johnson & Rand Shoe Company. We make welt, nail, and standard screw men's and boy's shoes. We have used, I think, no machines in the bottoming department other than those obtained from the United Company. We have used a machine obtained from the Union Lock Stitch Company for making a stitch which ornaments the outer edge of a nailed or standard screw shoe, giving it the appearance of a welt shoe from the upper side but not from below. I do not believe the United Company makes a machine for that specific purpose. Their Goodyear stitching machine can be used for that purpose. We used it for that purpose previously. The Union lock-stitch machine is better and more rapid for that purpose. The thread of this machine goes through the soles only and does not attach soles to the uppers. The majority of our shoes have two soles and the stitch goes through both soles. We paid seven hundred and fifty dollars less five per cent for that machine. The United Company's machine that could be used for the same purpose could also be used for out-sole stitching on a welt shoe. The lock-stitch machine could not do this because it does not have a curved needle enabling it to get into the shank of the shoe. In a nailed shoe the two soles are usually stitched together and then they are nailed on to the shoe. We formerly used the Goodyear out-sole stitcher to stitch the two soles of a nailed shoe together before nailing them to the upper. We substituted the Union lock-stitch machine for that operation.

235 I have seen advertisements of a different type of Union lock-stitch machine but have no personal knowledge of their existence and do not know their price. A lock stitch is a stitch made with two threads, one going from the upper side of the work and one from the under and the two coming together and forming a lock, whereas a chain stitch is a single thread and will pull out.

We pay twenty-one cents per pound for iron nails for the loose nailer. I have investigated and they were priced to me for seven cents a pound at a place elsewhere than from the United. We use clicking machines which we lease from the United Company. I made an effort to obtain them from Richardson Shoe Machinery Company of Lynn, and bought one machine. I have endeavored to buy others and to get them made in Milwaukee but did not succeed. I had a conversation with Mr. C. H. Wilson, assistant to the general manager of the United Company, regarding clicking machines. I had been trying to procure clicking machines from other sources than the United Company and Mr. Wilson had heard of it and on my next visit to Boston he left word in the lower office that he would like to see me in his office, which was upstairs. I went up and Mr. Wilson said he had understood that I had been quite active against the United Company. I explained to him my activity. Mr. Wilson told me that it would be better for me if I ceased my activity against the United Company and took things as they were. I objected to the clause in the lease of the clicking machine that said I should pay royalty on shoes welted, stitched, or heeled on other machines than the United Company's, if I used the other machines, or words to that effect. He called my attention to the fact that there was a condition of a similar nature to the feature of the clicking machine lease I was objecting to in another lease of another machine, the metallic department
236 lease as I remember it. After buying the one Richardson machine we equipped our factory with United clicking machines. I made no further efforts to get clicking machines elsewhere than from the United Company. We are not using the Richardson machine. I do not know what became of it.

I have an interest also in the Boylston Shoe Machinery Company. My sole and only reason for taking that interest was to supply my own business with shoe machinery.

My factory has a capacity of three thousand pairs of shoes per day.

Cross-examination:

I was with Roberts, Johnson & Rand from its formation until 1906, about eight years. I was with them before that when they were shoe jobbers for about five years. I was assistant to the general manager of the factories when I left. I severed my connection with them and decided to go into manufacturing shoes. When I went into business for myself I applied to the United Company for machinery. I took my bottoming room

machinery from the United Company on the noninitial premium lease and the other machinery for other rooms I got from other machinery manufacturers.

(Referrring to the nails mentioned on direct examination)—I had a loose nailer of the United Company and agreed to buy my nails for that machine from that company at twenty-one cents per pound. I pay that for the material and get the use of the machine for nothing. I conversed with Mr. Otto H. Falk, president of the Allis-Chalmers Company, which makes a general line of power machinery, showed him the nails and asked him what he could supply such nails for. My inquiry and his response related simply to what he could supply the nails for without any reference to the machine. He was not in the nail making business to my knowledge.

At the time I talked with Mr. Wilson, the United Company had the only practicable commercial clicking machine
237 on the market, of which I had knowledge. The clicking machine is a machine for cutting out the uppers with dies. At that time I already had some other kinds of machines, general machines, that I had obtained on the noninitial premium form of lease. I had inquired of the Richardson Shoe Machinery Company, the Seeley Manufacturing Company, and Logemann Brothers, of Milwaukee. I am not clear whether I had obtained the Richardson machine before I talked with Wilson. It might have been after. I was in Boston when I heard Mr. Wilson wanted to see me. He was a quiet man and greeted me courteously. He was always a man of exceedingly courteous and kindly personality. He met me in his usual courteous way. Our conversation turned upon clicking machines and the fact that I was in the market for one. He told me the United Company manufactured one. I don't recall whether he referred to the fact that I was obtaining other machinery of the company. Something brought the situation around to our discussing the kind of leases which I had of the company which of course presented the situation of my being a customer of the company. In that conversation I objected to the company's lease on the clicking machines. He pointed out to me that in another lease I had was the same provision, or restriction, to which I objected, so that there was no additional restriction by taking the company's clicking machine. I had not appreciated that before. He presented that by way of argument to meet my objection, fairly and quietly.

238 Q. And I say when he had done that, did he then urge you to take the United Company's clicking machine?

A. Yes.

Q. Well, now, was it in that connection that he said that you would be better off if you did take the United Company's clicking machine?

A. No. As I recall it, the very first part——

Q. Now, pardon me a minute.

Mr. FOWLER. May it please the court, I would like him to explain.

Q. You say it was not in that connection that he urged you to take the company's clicking machine?

A. It was not in the connection you are trying to show; no.

Q. It was not when you were discussing the form of the lease?

A. No.

My impression is that Mr. Wilson's advice to take the United Company's clicking machine was at the beginning of the conversation before any talk about the terms of the lease. I do not remember discussing royalties on clicking machines. We both understood all about that. When he told me it would be better for me to take the United Company's machine it was in rather a severe tone of voice for Mr. Wilson.

Q. Now, as I understand you these are the facts: You were mistaken with reference to the objection which had been your principal reason for not taking it. It was the only commercial clicking machine in the market?

A. I object to your first condition.

Q. Well, I thought I started it right. You had not appreciated before that the restriction in the clicking machine lease was the same as the restriction to which you were already subject?

A. Similar, not the same.

Q. Well, similar. And the United Company's clicking machine was the only commercial machine in the market?

A. That I believe to be true.

Q. You wanted to use it for commercial purposes?

A. Yes, sir.

Q. You were a general customer of the United Company?

A. Yes, sir.

Q. The company was giving service with its machines, or to lessees with its machines?

A. I never cared much for that.

Q. I say, it was giving service?

A. It was offering it.

Q. There was no other company that you know of that was doing that with reference to clicking machines?

A. No.

239 I know of no reason why his advice was not sound as a practical business matter. I followed it. It certainly has proved to be sound. We used the Richardson machine only a short time. It was not commercially practicable and that was why we gave it up.

240 JUNE 5, 1913.

FRANK W. MERRICK, witness for the United States.

My full name is Frank W. Merrick. I live in Boston and am president of the Union Lockstitch Company. That company is located in East Boston and manufactures shoe machinery. We manufacture a straight needle lock-stitch machine for saddlery and shoe work and a curved-needle stitching machine for shoe work. We make a lock-stitch welt machine, a sole-fitting machine, lasting machines, and two metallic fastening machines, used in connection with lasting operations. I have been building shoe machinery for thirty-two years, mostly stitching machinery. I have built the Merrick stitching machine, used almost exclusively on upper fitting; the Puritan machine, used both on upper fitting and sole stitching and also harness and saddlery work; and a small chain-stitch machine, called the Rapid machine, for a similar class of work. After that I followed with the lock-stitch harness machine, which is a straight needle, waxed-thread stitching machine that can be used for certain kinds of sole stitching, and then with the curved-needle machine, designed expressly for stitching outsoles, both welted and McKay welt and McKay fair stitch shoes. It will do fair stitching on any type of shoe. At present we are putting the straight-needle lock-stitch machine on the market. We have between three hundred and fifty and four hundred lock-stitch machines out. We first engaged in the manufacture of the lock-stitch machine in 1904. We sell those machines outright at seven hundred and fifty dollars, five off in thirty days. The machines are all over the United States. About seventy-five of the straight-needle machines are in shoe factories and the balance were placed among harness and saddlery people. We are attempting to market the curved-needle machines, of which three have been sold to shoe factories. Two are in the factory of Utz and Dunn, in Rochester, and one in the factory of the Cosey Slipper Company in Lynn. We have sold one other machine, making a total of four curved-needle machines that have been sold.

241 We have put out two curved-needle machines which we have not sold. One is with the Excelsior Shoe Company, of Portsmouth, Ohio, and the other is with the Selby Shoe Company, Portsmouth, Ohio.

The difference between our straight-needle and curved-needle machines lies in the design and construction. One machine uses a needle which is straight, as straight as a needle in a family sewing machine, and reciprocates in a right line, the needle and awl both working in the same line. In the curved-needle machine the needle and awl work around a common center; the needles are curved in the arc of a circle so that a path which the needle and awl make through the cloth or leather is through the segment of a circle. The diameter or radius of that circle runs from perhaps an inch to two inches, according to the type of machine and class of work—a small segment of a circle. The curved-needle machine is designed in a way so that the needle and awl will reach in to the curved shank of the shoe when it is stitched with the last in the shoe, so that the needle and awl will clear the overhanging bulge of the last in the shank of the shoe and so that one edge of the sole and welt can be stitched together without interference with the upper.

We have been putting out the curved-needle machine about two years. Have been putting out the straight-needle machine since 1906 or 1907.

I talked with Mr. Sampson, an officer of the United Company, about a purchase of my business and afterwards with Mr. Winslow at the Touraine Hotel. Both conferences were in the summer of 1905. I was at that time developing the straight-needle lock-stitch machine. The conference with Mr. Winslow was arranged by Mr. Sampson and was held at Mr. Winslow's solicitation. Mr. Winslow, Mr. Luitwieler, treasurer of our company, and myself were present. Upon being shown to Mr. Winslow's room, he greeted us with, "Well, boys, what is your proposition?" I told him we had no proposition to make and he expressed surprise, saying he understood we had a proposition we wished to make. I told him we understood he wanted to make a proposition and with that he began to attempt to persuade us to sell out our business to the United Company. We told him we preferred to keep our business, as it was not far enough developed to talk of selling. Mr. Winslow asked, "How much money have you got?" I told him I did not think that made any difference. He said, "We will see that you never make a dollar." I told him if that was the object for which they were in business they might succeed, but that it might prove expensive. He said, "Why, Merrick, you can see that we could not allow you to make any money." I asked him how he was going to stop us, and he said, "We will build your machine." He said, "You know what we did to Parsons, in Marlboro? We wanted to buy him out and he would not sell, and we built his

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machine, and you know what became of him." "Well," I said, "Mr. Winslow, unless you change your methods or change your men not in a thousand years will you build a machine that would interest me." So finally we agreed to disagree. Mr. Winslow said he sat there at the head of a table like a banker and eventually the wheel in its rotation would stop in front of him with our business and he would take it. We did not sell out. It was the straight-needle machine that we were working on at that time. We were not then putting out any machines. I presume it was the straight-needle machines—our general business—that we were talking about. I don't recollect that we went into the mechanical construction of the machine at all. I couldn't say whether it was mentioned at all. Our straight-needle machine was ready for the market about 1907, the curved-needle machine about 1909. The first one went to Healey Brothers, of Stoneham.

243 The United Company has a curved-needle machine for doing similar work to ours. The Campbell-Bosworth Company has a machine for doing work similar to our straight-needle machine.

We have had difficulty in installing our curved-needle machines with the Excelsior Shoe Company, of Portsmouth, Ohio. Negotiations began with them in April, 1912.

(At this point the United States made the following offer of proof:

With respect to the attempt of the Union Lock Stitch Company to install a curved needle lockstitch machine in the shoe factory of the Excelsior Shoe Company, Portsmouth, Ohio, early in April, 1912, the United States offered to prove that the Union Lock Stitch Company was unable to install such machine for the reasion that the officers of the Excelsior Shoe Company were not permitted by the United Shoe Machinery Company to install the machine and use it in the same factory with its machines at the same rates of royalty as had previously been paid by the Excelsior Shoe Company. The United States offered to prove further that the additional royalties or installation charges which were to be exacted by the United Shoe Machinery Company for the privilege of installing the Union Lock Stitch Machine amounted to about $7,000. This attempt to install the machine in the Excelsior Shoe Company factory occurred in April, 1912, after the petition was filed.

This evidence was excluded because it related to a matter occurring after the filing of the petition.

Mr. FOWLER. Here is our position: This bill attacks this concern as being a monopoly, and it is alleged that they formed this combination back in 1899, and from 1899 up to the present time they have been doing various things for the purpose and with the intent of monopolizing. Now, of course, we are attempting to prove now a mere evidential fact. This particular fact does not constitute the monopoly, but it tends to show that there is a monopoly, and it tends to show the purpose of the original organization.

244 The WITNESS. We had difficulty in installing the curved-needle machine in the factory of the Selby Shoe Company, of Portsmouth, Ohio, about practically the same date.

Mr. GREGG. At this point we make the same offer of proof with respect to the Selby Shoe Company as in the case of the Excelsior Shoe Company.

BROWN, J. I understand your point to be that you desire to show by what happened after the bill a condition which existed prior to the filing of the bill.

Mr. FOWLER. That is our proposition.

BROWN, J. Because of proof of something subsequently appearing connected with something which happened before the date of the filing of the bill?

Mr. CHOATE. Of course that would involve, if it were to be considered at all, knowing what the leases were which the Selby Company had and when they got them.

Mr. FOWLER. We have present, your honors, and we expect to offer, Mr. Williams and Mr. Selby, who know these facts. Of course, probably by this witness we could not connect the United Shoe Machinery Company with it except by hearsay and correspondence, but we have the gentlemen present who did deal with the United Shoe Machinery Company.

BROWN, J. The proposition is that these tying clauses closed the market and the market remains closed.

Mr. FOWLER. That is it.

PUTNAM, J. The effect of these tying clauses, then, is shown, as a matter of law, and has been shown and illustrated by these witnesses that we have had here. My objection to this is the matter of convenience. It is a matter that is not necessary and we ought not to be burdened with it. It illustrates nothing we want. We don't need the evidence, and we want to protect ourselves by the rule with reference to the time of filing the bill. My objection is a practical one. I haven't any theory about it whatever.

This evidence was excluded because it related to a matter occurring after the filing of the petition.)

The WITNESS. Prior to December 12, 1911, we had installed only one curved-needle machine; that was with Healey Brothers, in Stoneham. We made efforts to install the machine in other factories. We tried to sell our machines to Mr. Jones, to Roberts, Johnson & Rand, Harsh and Edmands, and Peters Shoe Company, and could not sell them. Not all these transactions were by letter. Mr. Jones said the conditions in his leases of his other machines would not admit of his use of the machine and that he couldn't afford to touch it because his leases forbade him. Roberts, Johnson & Rand gave the same answer. Their reply was in writing. I think Mr. Jones replied in writing.

245 Our curved-needle machine had a capacity of from thirty to fifty dozen—three hundred and sixty to six hundred pairs per day. We have had no difficulty in installing the straight-needle machine. The straight-needle machine attaches the sole of a shoe to a slip sole or welt, and in some cases the outsole to the upper direct. The seam runs on the outside of the shoe. It is efficient in making a McKay fair-stitched shoe, and also in certain types of shoes in which the slip sole or welt is McKayed on and the outsole fastened to the slip or welt. It is not efficient for a shoe in which the shank overhangs the sole. In the case of a shoe in which the entire sole is McKayed on or fastened directly to the upper we have no difficulty in fair stitching. But where the slip sole is McKayed on and the outsole fair stitched to it, we can not do business unless the shoe has a straight shank, because otherwise that work, while identical in character, requires the curved-needle machine.

We have never had trouble in using our straight-needle machine for any purpose anywhere and we have had trouble in using our curved-needle machine everywhere. I never could tell where the distinction rested.

The applicability of the straight needle to welt sewing depends upon the shape of the last. If the shank is fairly straight the straight needle will do; when the shank is curved to a certain degree it is necessary to use a curved needle. The operations are identical, but we are permitted to do it on a straight-needle machine and not on a curved-needle machine.

Fair stitching is more than mere ornament. In the McKay fair-stitched shoe it holds together the edges of a double sole, and in a McKay welt where a slip sole is first McKayed on and then the outer sole fair stitched to it, the fair stitching is necessary for the fastening of the sole. About forty shoe

manufacturers have about seventy-five of our straight-needle machines.

246 Cross-examination:

Regarding my talk with Mr. Winslow in 1905 or 1906 I met Mr. Sampson first. I met him aboard my boat where he was my guest. We went down to Hull Yacht Club. I took him to lunch there as my guest. Mr. Buck, connected with the Shawmut Machinery Company, first introduced Mr. Sampson to me. He did not do so at our suggestion, but at his own suggestion. Mr. Buck knew about my straight-needle machine and was familiar with what we were doing. I did not ask him if he knew anybody connected with the United Company. He introduced the subject and asked permission to introduce Mr. Sampson. I don't think he mentioned his name at that time but said he knew someone in the United Company. Mr. Buck didn't invite himself to lunch with me and didn't invite himself on my yacht. I told Mr. Buck to bring Mr. Sampson over if he had anything to say. I did the inviting after the introduction. After lunch Mr. Sampson asked me if we had any proposition and we asked him if he had one. When we had Mr. Sampson out with us that day we talked about our company and the enterprise in which we were engaged. The company had then been formed. It did not have anything it was at work upon except the straight-needle machine, which was still in the experimental stage, partially developed. None of them had been put to any commercial use. We had applied for the patents. We didn't get anywhere with Sampson. He didn't have anything to say. I don't know whether Buck took Mr. Sampson a sample of work done on our machine when he went to interview him before this yachting trip. I do not recall giving him a sample. I do not deny having done so. I did not tell Mr. Sampson we would like to sell our machines and accept a position with the United Company or anything of the kind. We met Mr. Winslow a few days later. At the time we met Mr. Winslow we still had the experimental machines. None were out in factories. I don't know whether we had any patents or not.

247 Mr. Winslow asked what our proposition was. I told him I understood he wanted to see me and that he had a proposition. We were mutually surprised. He then asked how much money we had. I didn't tell him. It might have been how much "capital" we had. I told him we had enough to get along. I said "What difference does it make how much we have got? What has that got to do with it?" I think that is all he said on that subject. Then he said he would see that we didn't make a dollar. I am sure those were his exact words.

Then he said, "Merrick, you can see that we couldn't allow you to make any money." I remember that distinctly.

Q. In other words, you had some feeling about it?

A. Possibly.

Q. Well, you have stated, haven't you, that you were looking for a chance to get at Mr. Winslow?

A. I don't remember that.

Q. You won't deny it, will you, sir?

A. Yes, I deny that.

Q. You have stated that pretty recently, that you were looking for a chance to get at Mr. Winslow, haven't you?

A. I don't remember that.

Q. Will you deny it?

A. Yes, sir.

Q. That you have never said that in substance or effect?

A. Oh, I won't say that.

Q. You have said it in substance or effect within six months?

A. I won't say that either.

Mr. FOWLER. I don't like to interpose objections, but I will object unless he fixes the time and place and the person to whom it was said. He can't contradict in that way.

Mr. CHOATE. I presume I can attempt to show animus in any way.

248 PUTNAM, J. We will allow it.

Q. You have made use of some expression to the effect that you were going to try and get square with Mr. Winslow or get at Mr. Winslow?

A. Not that I recall.

Q. Or something to that effect?

A. Not that I recall.

Q. Now, what was it?

A. I don't remember anything of that kind.

Q. Well, in substance what is it that you have said that indicated your feeling toward Mr. Winslow?

A. Whenever I have mentioned Mr. Winslow I have always said personally my feelings were friendly, and personally Mr. Winslow has always treated me in a way I couldn't object to.

Q. Even at the Touraine?

A. I don't know as I could object to that particularly; but it was a business bluff.

Q. A business bluff?

A. Apparently.

Q. Well, that doesn't seem to me quite to come up to your suggestion that it was as if you were going to try to throttle

me, unless you were making a bluff; are you making a bluff now?

A. No, sir.

Q. About this testimony?

A. No.

Q. Did you regard Mr. Winslow's talk as a bluff?

A. I regarded it as a threat.

He treated me perfectly courteously. I regarded what he said as a threat made to influence my decision in the matter of selling out.

I was not bluffed by what he said. It didn't influence my conduct. It might have frightened me a little. Up to that time the straight needle machine was the only thing we had developed. We have not been interfered with in marketing it except by ordinary methods of competition.

249 A fair stitch is a stitch around the edge of a sole, through the sole. McKay sewed, McKay welts, standard screw, and some pegged shoes may carry that stitch. I think it applies to Goodyear welts. It goes through both soles in the space of the sole outside the upper. It may be inserted either before or after the sole is attached to the upper. It may be done with a straight or curved needle. A McKay welt is a shoe in which a welt is sewed to the upper and insole with a 250 McKay machine which fastens through and through. The stitches show on the inside. In that kind of a shoe a fair stitch appears on the outsole next to the upper. Sometimes it shows also on the bottom and sometimes it is in a channel. Our curved-needle machine will do fair stitching on any part of a shoe.

The Goodyear rapid lock-stitch machine of the United Company was adapted to doing fair stitching with a curved needle. That is the machine whose principal function is to sew the outsoles to the welt in a Goodyear welt shoe and which in connection with the welting machine makes the Goodyear welt shoe. Sometimes it is desired to put in a fair stitch to make a shoe look like a welt shoe. Some people have used the Goodyear lock-stitch machine for putting that fair stitch on a shoe which is not a Goodyear welt. Our curved-needle machine may do the same work. In addition to fair stitching our curved-needle machine will stitch the outsole to the slip sole of a McKay shoe. Our machine has been practically used also for making stitch downs. These are shoes in which the upper is drawn over the last and instead of being lasted under, the edges are turned out and the welt laid on that outturned edge and the welt and the out-

turned edge and the sole are stitched through and through, the outturned edges being sewed to the top sides of the sole. It can also be used to sew the outsole of a Goodyear shoe to the welt.

We have seven completed curved-needle machines and a dozen nearly assembled. Our factory is about 80 x 200 feet, two floors.

I have not, within the last two years, tried to sell out our machines to Mr. Connor, of the United Company. I have talked with him about selling out and offered to sell them all we have, but have sought no interviews. I met Mr. Connor first at the Boston Yacht Club. I have met him more than once in company with Mr. Luitwieler, who is associated with me. We discussed the matter of sale of our machines and Mr. Connor said
251 under prevailing conditions it would be wise to let the matter drop, but later on he would be interested. This conversation was in the summer of 1911. I showed him our machines and took samples to him of their work. I told him I wanted seven hundred and fifty thousand dollars for our property. I think I would have been willing to take that at that time.

Direct examination resumed:

At that time Mr. Connor said they did not dare buy a competitor, that if they did they might be liable to go to jail. Mr. Bresnahan sought this second conference after he had sold out to the United Company. He asked us to have the conference. We were sought and we listened. We were asked to set a price and we set one. Nothing came of it and we didn't expect it would.

JUNE 6, 1913.

Recalled:

The first sale of our curved-needle machine was May 15, 1910, to Healey Brothers, of Stoneham.

JUNE 26, 1913.

Recalled:

(The Government offered the following letters to Merrick, purporting to state reasons why the writers could not install machines of the Union Lockstitch Company:

Letter from Commonwealth Shoe & Leather Company dated April 5, 1911, marked "Plaintiff's Exhibit 177." Letter from Peters Shoe Company, dated April 24, 1911, marked "Plaintiff's Exhibit 178." Letter from Roberts, Johnson & Rand Shoe Company, dated May 9, 1911, marked "Plaintiff's Exhibit 179.")

Cross-examination resumed:

Roberts, Johnson & Rand, and Peters Shoe Company now have Union lockstitch machines. The Commonwealth Shoe and Leather Company have none. Those letters are in answer to a circular we sent out on May 5th or thereabouts. The letters produced were received sometime before I went before the grand jury. I think those are all the responses we had to our circular. They are not responses from all persons to
252 whom we sent our circular. I don't remember to how many we sent circulars—only a few. I couldn't say whether we sent circulars to anybody except members of the Shoe Manufacturers' Alliance. We didn't know who the members were. We didn't send them to shoe manufacturers in general—just to the larger representative manufacturers.

253 JUNE 5, 1913.

CLARENCE S. LUITWIELER, witness for the United States.

My name is Clarence S. Luitweiler. I live in Newton. I am treasurer of the Union Lockstitch Company. I have been connected with it ever since its formation in 1905. I attended a conference at the Touraine Hotel in 1905 with Mr. Merrick and Mr. Winslow. When we first went into his room there was talk about chess and other matters and finally Mr. Winslow said to Mr. Merrick, "Well, boys, what is your proposition?" Mr. Merrick said, "We have no proposition. We understood from Mr. Sampson you had a proposition to make to us and we came here to listen." We talked about various matter and finally Mr. Winslow said to us, "How much money have you got?" I don't know whether he referred to capital or how much we had accumulated. We said that had no bearing on the case. Finally he said, "I will see that you never make a dollar." We told him that did not interest us very much. "Well," he said, "I can tell you just how we did it." I said, "How was that?" He said, "Take the case of Mr. Parsons of Marlboro. We tried to buy his business and he would not sell us. We went out and built his machines and we sold them at a price which was less than he could build them for." And then, turning to the window, he said, "You see what you have before you, nothing but blue sky, that is what you are dealing with." A little further along he said, "This is very much like a game of roulette. The wheel is swinging around and your proposition will sweep in front of me some day and I will take it." I think he asked us a price and we told him that our price was a million dollars, which he said was ridiculous, and we said we thought it was but that we might as well say that as anything as we did not think he came here to buy. Finally we started to go

and Mr. Winslow said, "Hold on, boys, don't be in a hurry, I want to talk with you. Come and have dinner with me."

We told him we could not for the same reason we
254 could not go to his office, as we were putting out stock
and we did not want our people to think we intended to dispose of the business.

Q. At that conference did Mr. Winslow say anything about acquiring the business of competitors? Did he use the word "competitor" in any way?

A. Yes; he said: "We don't believe in acquiring competitors. It is cheaper to kill them"—or something to that effect. I wouldn't say those were the exact words he used, but that is the impression it left on my mind.

The second conversation that Mr. Merrick testified about followed an occasion on which Maurice Bresnahan called at our office in February or March, 1911, and said Mr. Charles H. Wilson wanted to have an interview with Mr. Merrick. We said we could not see Mr. Wilson as Mr. Merrick was sailing for Panama the next day, and he said to let him know when he returned. While Mr. Merrick was away Mr. Wilson died, and after Mr. Merrick had been back two or three weeks I let Mr. Bresnahan know he was home. He said, "I would like to have you meet Mr. Connor and Mr. Brown." We said we did not want to go to their office, but if they would come to the Boston Yacht Club late we would be all alone there in the afternoon. They came there and took lunch with us. We carried with us some shoes of a new design Mr. Merrick had made for a party and talked it all over, but we came to no results. Mr. Connor wanted another interview and we went to his office in the summer of 1911 about five-thirty in the afternoon. Mr. Connor, Mr. Fraher, I think Mr. Bresnahan, Mr. Merrick, and myself were present. We talked in a general way there and arrived at no result. The substance of the conversation was about buying our business. We never made any proposition but were willing to listen. We met Mr. Connor again at our office and he said he wanted to see what we had. He came out to our factory after it had closed on Saturday afternoon and spent about two hours. We talked in a general way, no proposition being made on either side. Then we dined with Mr. Brown and Mr. Connor at the Algonquin Club. We then discussed the question of price and different matters. We refused to give a definite

statement of our financial condition but finally named
255 a price. It was divided into three sections—first, as a
going business; second, the value of our patents; third, so much for a competitive business. Then Mr. Connor made the

remark that they did not buy competitors and couldn't afford to buy this business on a competitive basis. Mr. Connor said, "We couldn't buy this business on a competitive basis, because at the present time if we should we probably might be liable to go to jail."

Cross-examination:

I am also treasurer of the American Stay Company. I divide my time with the shoe-machinery business. I have some investment in this shoe-machinery business. I met Mr. Connor in London at a shoe and leather fair two or three years ago. I had known Mr. Winslow before meeting him at the Touraine. On that day our parting was perfectly friendly. We first met Mr. Bresnahan casually going across the ferry. We got to talking about shoe machinery. He said, "It is a great mistake for you fellows to be out of the fold." His suggestion led to the meetings with Mr. Connor. They were entirely friendly, and no reference was made to our earlier meeting with Mr. Winslow. The talk consisted of explanation and discussion of our machinery and the shoes made by them, and finally resulted in our naming a price of seven hundred and fifty thousand dollars. All our talks came to nothing and we never made a sale.

JUNE 6, 1913.

Recalled.

I stated that at the first meeting at the Boston Yacht Club Mr. Connor was present with Mr. Brown, but it was Mr. Fraher. It was a subsequent meeting a few weeks later that Mr. Connor was present, and the new shoes were then shown to him.

256 JUNE 5, 1913.

PEARL E. SELBY, witness for the United States.

My name is Pearl E. Selby. I reside in Portsmouth, Ohio. I manufacture ladies' welt, turn, and McKay shoes. I have been in that business since 1888. I was originally with Drew & Selby, now the Selby Shoe Company. Its daily capacity is six thousand pairs of shoes. My experience with shoe machinery, especially bottoming machinery, has been such as I would get from being a general superintendent in a factory. I have looked after the installation of machines more or less in past years and at present sign the leases. We use the United Company welters and stitchers on welt shoes. On the McKay shoes we use the Puritan for fair stitch work and are now trying the Union lock stitch. We have had the Puritan and used them practically ever since we have made a McKay fair stitched shoe, about fifteen years. We bought it outright.

Q. What did you pay for the machine?

Mr. GREGG. I merely ask for the price that he paid for the machine in order to compare, before we finish this case, the price paid when the machines are bought outright and the amounts of royalties paid the United Shoe Machinery Company.

Mr. CHOATE. Now, see: He says he bought this machine fifteen years ago. Of what earthly use can it be to compare that with any royalty paid to-day or at any time since the United Company was formed?

PUTNAM, J. We all agree that it is too remote.

The WITNESS. We have not machines from the United Company for performing work similar to that performed by the Puritan machine. We also have had Bay State turn sewing machines but are not using them now. I believe we had them in 1898 or 1897—somewhere along there. We had them at the time when the agreement which you show me was signed. We had discontinued the use of those machines a short time previous to the date of that agreement.

(Agreement between Drew, Selby & Company and the United Shoe Machinery Company, dated March 13, 1900, is marked "Plaintiff's Exhibit 157." This agreement reads as follows:

"AGREEMENT BETWEEN DREW, SELBY & COMPANY AND THE UNITED SHOE MACHINERY COMPANY.

"In consideration of the sum of two thousand (2,000) dollars, to be placed to the credit of Drew, Selby & Company, on the books of the United Shoe Machinery Company, the two Bay State Turn Sewing Machines, now in the factory of Drew, Selby & Company, become the property of the United Shoe Machinery Company.

"If at any time Drew, Selby & Company desire to use the Bay State inseamers or machines for the same purpose other than ours they are to refund to the United Shoe Machinery Company the two thousand (2,000) dollars allowed them in consideration of this agreement, upon payment of which the title in the two Bay State machines reverts to Drew, Selby & Company.

"The rate of royalty to be paid by Drew, Selby & Company on Goodyear Turn inseamers not to exceed three-quarters (¾) of a cent per pair and the rate of royalty to be paid by Drew, Selby & Company on Hand Method Welt Lasting Machines to be five-eighths (⅝) of a cent per pair (except on misses' and children's, which will be one-half (½) of a cent per pair.

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"If Drew, Selby & Company use the United Shoe Machinery Company's machines exclusively, the United Shoe Machinery Company agrees to refund to Drew, Selby & Company at the end of every quarter, the amount paid in royalty by Drew, Selby & Company on the Gem Insole Machinery during the preceding quarter of each three months.

"MARCH 13, 1900.

"(Signed) "UNITED SHOE MACHINERY COMPANY.
"GEORGE W. BROWN, *Treas.*
"DREW, SELBY & CO.")

We entered into this agreement because the United Company desired to replace the Bay State machines with their own. The Bay State machines were doing good work. The capacity was about the same. In the use of the Bay State machines, we had discovered a method by which we could make the Goodyear machine work a little bit better than the Bay State. We put this improvement on the Goodyear machine and they purchased the improvement and put it on their machines. They gave us credit of $2,000 for the two Bay State machines. We thought that offer would be better than the use of the Bay State.

We retained possession of the Bay State machines. The Bay State Machinery Company was then in business to the best of my knowledge. If we had not received this two thousand dollars consideration and the refund provided for in the agreement, we would not have discontinued the use of the Bay State machines. We had bought them outright, paying a thousand dollars apiece for them.

We are not using the Gem insole machine now. We discontinued using it several years ago. We use a leather insole altogether. We have had the Union lock-stitch machine since some time last winter. We are using it more or less. We have not paid for it. It is the curved-needle machine.

We have no lasting, heeling or metallic fastening machines other than those of the United Company. We have two Puritan stitching machines with which we do fair stitching, the
258 use of which does not affect the royalties paid to the United Company. We have no machines from the United Company for performing work similar to the work performed by the Puritan machines.

I was not at the St. Louis conference with Mr. Winslow, but did attend the conference with him in Boston in May, 1911. I have an interest in the Boylston Manufacturing Company, which I acquired in January or February of this year to protect the business of the Selby Shoe Company, to get independence.

Cross-examination:

Our investment is sixteen thousand dollars in the Boylston Company, made in January, 1913. I am a member of the Shoe Manufacturers' Alliance, and have been practically since its beginning, and subscribed to three thousand dollars worth of stock in the Non-Royalty Shoe Company. We make ladies' welts, turns, and McKays—not men's. Sixty-five per cent of our output is welts, ten per cent turns, and the balance McKays. Our welts are Goodyear welts, our turns Goodyear turns. I do not believe there is any genuine welt shoe on the market to-day except the kind or type that we make. We make it with the United Company's welters and stitchers. We use most of the auxiliary machines that go with those welters and stitchers. For doing McKay work we have the Puritan stitcher and a number of other machines not obtained from the United Company, which we use in the same factory with the United Company machines, without objection from that company, and have been doing so for ten or twelve years. We use those other machines all through the process of making McKay shoes, including the bottoming room.

The Bay State machines inseamed a turn shoe. We had had them about a year when we made the trade with the United. We had two Goodyear turn machines before we got the Bay State machines, but we stopped using them when we secured the Bay State machines and got them properly installed. The Goodyear machines remained in our factory. We invented a ten-
259 sion release for the Goodyear machine, without which it was impossible to use cotton thread successfully on turn work on that machine. This tension release allowed us to use cotton thread instead of linen. The Bay State machines did not have that. The cotton made a better seam. With that attachment, we thought the Goodyear machine, as it had been developed by the United Company, a better machine. I do not remember that the United Company withdrew any of its machines from us while we were operating the Bay State machines. We probably transferred the Goodyear machines to welt work. They withdrew no welt machinery or auxiliaries from us. I do not remember that we had any turn auxiliaries. The Bay State had no auxiliaries to their turn stitching machine that I know of. The Goodyear Company did not, so far as I know, furnish, in addition to the turn inseam machine, auxiliaries for turn work. As to whether there were not three or four, there may have been some of them bought outright. Our change from Bay State to Goodyear machines was in part because we thought we were getting a better machine. During the solicitation of us by the

United Company to take one of their Goodyear machines it came out that the Goodyear turn machine with this addition would do better work for us than the Bay State machine. They practically took our investment in the Bay State machines off our hands. They did not interfere then or afterwards with our using the Puritan stitcher or other machinery which did not belong to them on McKay work.

We discontinued the use of the Gem insole machine because for business reasons we began to use a different form of insole. We have been using the curved needle lockstitch machine trying it out on what is known as mock welt—for putting mock welts on McKay shoes. This was experimentally. We have found no other use for it. No auxiliary machines are supplied with it. We have a Goodyear machine which can be used for the same purpose. We have kept our Goodyear machines for stitching welt shoes.

260 JUNE 6, 1913.

CHARLES H. KRIPPENDORF, a witness for the United States.

My name is Charles H. Krippendorf. I am a shoe manufacturer, residing in Cincinnati. I have been in that business since 1871. In 1900 I was a director of the National Boot & Shoe Manufacturers' Association. In that year it had a conference with Mr. Winslow, at which Mr. James, Mr. Pingree, Mr. Schober, Mr. Reed, Mr. Rich, Mr. Drew, and myself were present. It was held at Philadelphia. A request was made of Mr. Winslow to eliminate the restrictive clauses from the new leases of metallic machines. Mr. Winslow replied that the prices which they charged for metallic material did not yield a satisfactory return for the investment and they could only sell metallic material at this price if the manufacturer used their welting and lasting machines, on which they received larger returns. Then the manufacturers told Mr. Winslow to make the price on material whatever he felt the circumstances justified and to give them the option to either use his machines or those of other parties. After discussion, he said, in substance, "We, in order to prevent competition, have to buy out competing machines, and we have endeavored to create a condition under which we don't have to pay more money for those machines than they are worth."

The statements of Mr. Winslow were taken down by a stenographer employed by the meeting. I have recently read over the minutes of the meeting to refresh my recollection. The meeting was held November 8, 1900.

Cross-examination:

I produce the notes of Mr. Winslow's statement. That is a stenographic report of what was said. It was taken down word for word as each person spoke.

261 Q. Can you turn to the part of the minutes which contains the statement which you have just given—namely, his reason for requiring the metallic fastening machines to be used with the lasting machines? That is, the reason that the price of the material was going up. Can you turn to that, sir?

A. It was a very long discussion. The minutes are contained in 108 pages—spread all over. I don't know what page that is on. I know Mr. Winslow stated——

Q. Have you been able to turn to the place where he gave his reason for requiring the metallic machines to be used with the lasting machines?

A. I looked it up and I refreshed my mind, but I don't remember now the account, except this 51.

Q. Have you been able to find the page or the part of the minutes which contained his answer to the manufacturers' suggestion that the machines be left independent and the price of the material fixed as circumstances requried?

A. Well, I think that branched off there. There was the whole meeting of 108 pages, and on page 51 he got down to making this statement.

Q. Page 51 is the page you find containing which statement?

A. The statement of Mr. Winslow that he endeavored to create a condition under which they didn't have to pay more money——

Counsel for the defendants then read page 51 from the notes, as follows:

262 "We want to work in harmony with you, but we have endeavored, perhaps egotistically or unwisely or in some other way, to furnish a condition by which we would not be obliged to pay $500,000 for some man's investment of $25,000. Now, if we had spent $500,000 for some man's investment, you gentlemen of the trade have to foot the bills, don't you? That is, a man comes along and said, 'I have a slugging machine. If you don't buy my slugging machine, I will put it out and make the terms so-and-so.' The machine is not a particle better, perhaps not so good as ours, but some man—perhaps our friend Reed—says, 'Well, that is good enough for my work, and I will put that in.' What are we faced with? He says 'I will sell you that machine for $50,000.' Do you want us to put you in the position of paying that man $50,000, or do you want to have your money spent where it will produce the most good and where we can make you the most reasonable terms, or don't

you? This is a great big question that we have here. As a matter of fact, we are endeavoring to run on certain lines and give you the largest service, the best service, the best machines in the world.

"Mr. DREW. Why do you have to purchase that machine?

"Mr. WINSLOW. Why? Well, let me ask you if we haven't got either to purchase that machine or compete with the man who is simply doing that to force us to buy? This John Smith don't care a continental. He says, 'Here is a fellow doing a decent business. Now, I will cut into that business if he don't buy it.'"

Q. Is there anything else in those minutes which forms a basis for your direct testimony, Mr. Krippendorf?

A. I don't know what you mean by that question.

Q. Well, your direct testimony is the testimony you gave in answer to Mr. Fowler. Is there anything else in the minutes that is a basis or a justification for your testimony in answer to Mr. Fowler's question?

A. I really don't remember now if there is.

263 JUNE 6, 1913.

JOHN E. WILLIAMS, a witness for the United States.

My name is John E. Williams. I reside in Portsmouth, Ohio. I am a shoe manufacturer, making boys' and men's welts and McKays. We have four factories located at Portsmouth and Ironton, two in each place. In Ironton we make boys' Goodyear welts and boys' mock welts. We make men's Goodyear welts in Portsmouth.

A mock welt is a shoe in which the welts or the full tuck are McKay sewed and then the outer sole is fastened on the stitching machine, preferably a lock-stitch machine. It is practically the same as the McKay fair stitched shoe except that in the mock welt the lockstitch machine is used, in the fair stitch invariably a chain-stitch machine. You can make the McKay mock welt with the same machine, except as to the outsole stitching machine that fastens the outer sole to the welt, that you use to make McKay fair stitch shoes.

At the present time we use the United Shoe Machinery Company's bottoming-room machinery in our factories, exclusively. Last fall we installed a Union lock-stitch machine in one of the Ironton factories.

(The following testimony regarding the Union lockstitch machines in witness' factories, etc., was introduced subject to defendants' objections and exceptions.)

The first machine we obtained from the Union Lockstitch Company was a curved-needle machine. We got it along in

August, 1912, and it was installed at the Boy Scout plant in Ironton. At that time we had a machine from the United Company for doing similar work. I first talked with Mr. King in Boston in November, 1912. I had one Union lockstitch machine at that time, and contemplated installing additional machines in the new factory. I asked him what objections he would have to our installing the Union lockstitch machines in our factories. I asked him, as we paid royalty on the other machines, why I couldn't use, as in my judgment I thought I had a right to use, some other stitching machine. After two or three days' conversation regarding the matter, he finally said,

264 "Mr. Williams, under the leases we feel that you have broken your obligation and would ask you to discontinue it." I did so. I asked Colonel King if there was any way in which their company would allow us to choose our machinery and finally he said there was a plan by which we could install or have the choice of their machines or others in certain places. He said he would send us a plan on which we could do this. Thereafter Mr. Ross, western manager for the United Company, came to Portsmouth and told us the plan on which we could do it. He made us a proposition that we could use the Union lockstitch machines by paying certain prices and royalties for their machines that we would use.

I produce a memorandum which Mr. Ross made out for me at that time, showing what the amounts of installation charges and royalties would be. I read from the memorandum. This is the initial cost for the pulling machines, etc.:

"Pulling Department:	
"Rex assembling machine	300
"Rex pulling machine, model A	750
"Rex rotary pounding machine	300
"Lasting Department:	
"Boston tacker	150
"C. H. M. Laster	300
"Metallic Department:	
"Wire grip tacker, including knife grinder	75
"Loose Nailing machine	250
"Loose Nailing machine No. 2	500
"Universal Slugger, including knife grinder	250
"Heeling Department:	
"No. 4 compressor	500
"Lightning heeler	250
"McKay heel trimmer, including knife grinder	150
	3,675

"Pulling royalty one-half cent per pair net.
"Compressor royalty one-eighth of a cent.
"Clicker lease probably one-half to three-quarters of a cent."

I understood this to call for extra royalties of one-quarter of a cent on the pulling-over machine, and one-eighth of a cent on the heel compressor. The clicker royalty was also extra. We pay no direct royalty on that machine, but buy all our dies for that machine from the company.

265 The installment prices and extra royalties were only for one factory with a daily capacity of six or eight hundred pairs. The extra royalty was about one and one-eighth cents per pair in all for a factory in which six hundred pairs per day was the average output. We had been paying a cent and a half per pair royalty on machines leased from the United for performing work similar to that performed by the Union lockstitch machine, which would be nine dollars per day on 600 pairs, and, for the year of three hundred working days, twenty seven hundred dollars. That would be on one machine if that machine had that full output.

On the Union lockstitch machine we were to pay no royalties. We were to pay seven hundred and fifty dollars—or $1,000 for that machine at that time, then it was to be ours. The United machines were leased for seventeen years. I couldn't say we would average 600 pairs for 300 days in the year on one machine. The average output of this shoe is possibly about 400. That would be a royalty of $6 per day and 300 days would be $1,800 per machine. We returned the Union machine which we had. We had contemplated ordering two more. At the present time we have no bottoming machines except those of the United Company.

Cross-examination:

At the time I talked with Mr. King we had a factory in Ironton where we were using United machines and we were thinking of opening a new factory at Portsmouth, and I wanted to know for how much the United Company would equip it on the assumption that we would use Union lockstitch machines there. The memorandum of initial charges referred to in my direct examination refers to equipment to be furnished by the United Company for this new factory on that assumption.

I also talked with Colonel King about the lockstitch machine already in our factory and he told me he thought our use of it was in violation of our leases, and asked me why I thought I

266 had a right to install it. I already had the Goodyear rapid lockstitch machine on a lease which required no initial premiums and on which the company received income only according as I used it. I told him that as I thought I paid royalty on all his machines, had none of the auxiliaries whatever

in the construction of this shoe—that every machine, practically, directly or indirectly brought a royalty—if a new condition or new shoe arose it seemed to me I had a right to use the machine. There was here a new kind of shoe in which the channeling machines and the other auxiliaries were not used. I would use lasting, clicking, pulling-over, heeling, and the lockstitch machine. It was my suggestion that on a shoe like that I should be allowed to put into this series somebody else's machine and not use the Goodyear lockstitch machine.

There is an indicator on the Goodyear lockstitch machine to keep a tabulation of the number of pairs of shoes operated upon it. Putting in the Union machine would leave the Goodyear lockstitch machine idle. Colonel King's final reply was that it would be in contravention of our leases. He said that with the initial premium form of lease we could use our lockstitch machine as much as we wanted to.

The memorandum of the new charges as proposed by Mr. Ross says, "Pulling-over royalty one-half cent per pair." That embraced three machines, the Rex assembler, the Rex pulling-over and the Rex rotary pounding. The regular royalty on our leases without initial premium was one-quarter of a cent a pair on the assembling machine and one-quarter of a cent a pair on the pulling-over and rotary together, making one-half a cent on the three machines. This is the same as was to be paid for the three machines under the initial payment form, if I use an assembler, otherwise it is one-quarter. There is a royalty of one-eighth of a cent on the heel-compressing machine, but it is now absorbed in the royalty paid on the heeling machines, and therefore I do not pay it under my present form of lease. There is no royalty on the clicker for use on an
267 ordinary welt shoe when used with the Goodyear welter and stitcher—either nothing or it is absorbed in the royalty paid upon the machine which kept count of the operation. So far as I know the company had never had occasion to fix any royalty on its clicking machine for use in making mock welts. I wrote the letter which you hand me.

(Letter dated Portsmouth, Ohio, February 25, 1913, from the Excelsior Shoe Company, by John E. Williams, to Colonel King, United Shoe Machinery Company, is marked "Dfts. Exht. 43," and reads as follows:

"PORTSMOUTH, OHIO, *Feb. 25, 1913.*

"COLONEL KING, United Shoe Machinery Company,

Boston, Mass.

"DEAR SIR: Your Mr. Ross, jr., of Cincinnati, was here and we spent the most of a day in going over our proposition for the

new factory, and he stated the conditions on which the company would allow us to equip our new factory with any machinery that we desired in same.

"We find upon taking the cost of your machines and what royalty we would pay and the rate of interest and depreciation, that even if we could save on the royalty it would be a question whether there was any profit, and as far as we can figure there would possibly be about $1,000.00 to our advantage in a year, or perhaps a little over. We do not feel that this is interesting enough as a business proposition, and told your Mr. Ross that we would go ahead equipping the factory with your machinery, but the writer thinks that this would be an ideal plant, as we believe we are really organizing economically in any line that would show a saving, as we believe in the next year or two all American shoes will come in severe competition with English and German made shoes, as the tendency at Washington is to take off the tariff.

"As this plant is to make only two or three shoes in a mock welt, and is particularly adapted to boys' shoes and nothing but this one style shoe will be made there, and as we expect to equip fully with your machinery, why would it not be in line to take this plant and your company use it as an experiment towards a new relation of royalty? For instance, if the Excelsior Shoe Company makes just a certain shoe in style and grade under certain conditions, and does not branch out into all styles and different constructions in this factory, why should we not be entitled to a plan something like the following—that we should be given a flat rate for the making of shoes under this head and conditions, probably showing a saving of, say, half a cent a pair over the old basis?

"We feel that with some encouragement on this line that the general income of your machinery in that plant will average more than the general plant in running this plain simple line,

and everything being done to produce quantity easily so

268 that what machinery was there would even yield more income than machines in the plant, where all styles and the general line of work is done.

"We feel that in doing this you would show an interest, as you have always professed, in the manufacturer, and would also encourage a line of goods that would always keep the American shoes, even with free trade competition, possibly on the fighting line.

"There is no fear of a precedent in considering this question, as we do not think there is another plant like it at present in the

country, and we could almost assure you that the aggregate of the machinery in this plant even with a reduced flat rate would yield more than the average equipment that you have in another plant running a regular line.

"We presented this matter to Mr. Ross, and he thought it was interesting, as I showed him in a way what we expected to do there, and as you have always stated that the company wished to do something to show that they were interested in the manufacturer in keeping costs down when they could feel they were safe in doing so, we felt that in presenting this proposition we have really opened up a way for the company to cooperate.

"Trusting to hear from you at an early date, as we will soon be ready to start, we remain,

"Yours, very truly,

"THE EXCELSIOR SHOE COMPANY.

"JNO. E. WILLIAMS.

G M".)

We kept the Union machine about sixty days. We never tried it on a real welt shoe.

In none of my letters to Colonel King did I make any complaint about any restriction upon the use of the Union lockstitch machine, but I really wanted to use it if I was right in my judgment that I had a right to do so under the leases. I am not a member of the Shoe Manufacturers' Alliance. I am interested in the Boylston Manufacturing Company to the extent of about five or six thousand dollars. Mr. Louis D. Brandeis asked me to come here, by telegram, week before last. Telegram said "Imperative you should be here to testify."

Mr. GREGG. In that connection I wish to state, if the court please, as the court well knows, in these civil proceedings we can not bring witnesses more than a hundred miles, and we wanted to save time by bringing the witnesses here if they were willing to come. I knew that Mr. Brandeis had represented the western alliance in a way, and I asked him myself if he would communicate with these men to see if they would be willing to come here and testify and thus save the time and labor of going out over the country and taking their testimony by deposition.

Direct examination resumed:

When talking with Colonel King in Boston I had the Union lockstitch machine running in my factory. I had United Company machines at that time. Col. King did not say anything at that time about changing my system of leases.

(Objected to by defendants on the ground that no such subject was opened up on cross-examination.)

269 JUNE 6, 1913.

WILLIAM A. HOGAN, witness for the United States.

My name is William A. Hogan, and I live in Brockton, Mass. I am a shoe manufacturer. I am part owner and treasurer of the T. D. Barry Company. I have been with that company about twenty-five years and treasurer four years. I was an office man and had nothing to do with installing machinery, but I had charge of the factory in the absence of Mr. Barry, who was formerly president of the company. We have two factories in Brockton with a capacity of from three thousand to thirty-five hundred pairs. We had machines from the Standard Shoe Machinery Company about thirteen or fourteen years ago. I am not sure whether it was before or after the United was formed. We had trouble with the United Company with relation to the use of these machines about that time. The trouble was with the United Shoe Machinery Company. At that time we were using United machines and also Standard Shoe Machine Company machines. We had a laster, welter, stitcher and welt beater, and I think a sole-layer from the Standard Company, and machines for similar work from the United Company. One afternoon while Mr. Barry was in Europe the deputy sheriff in Brockton served papers on us that they were going to take out some United Shoe Machinery Company machines. I asked the sheriff for time to see my attorneys, which he granted, and we got an injunction in the Superior Court on those machines. A few days after that—while I was away from the factory—another sheriff attempted to take out some other machines. When I came back I found him in the making room and I stopped him from taking them out by threatening to shoot him. After that I saw my attorney and went to Boston and saw Judge Mason and got an injunction on the company on the second lot of machines, and later I was ordered to appear in the Superior Court in Boston for threatening the sheriff I suppose; the injunction was dissolved.

270 Then I went to see Mr. Storrow and agreed to stop the machines from the Standard Company until Mr. Barry got back. When he came back he handled the matter. The Standard machines were removed from the factory and put in a storehouse of ours, if I remember rightly. I do not know where they are now or whether the Standard Company is still in business. Prior to the time the sheriff came I don't think I had any conversation with any representative of the United Company; I wouldn't say yes or no because I don't remember. About that time we had about ten United machines to one Standard. I wouldn't say whether the United Company's machines were removed at that time or not. I don't remember. The

factory was busy at the time of the occurrence. I can't remember the substance of the conversation with Storrow. I went to see him because I assumed that the machines were going to be taken out and I did not want them taken out. I wouldn't say that I had any conversation with him about the Standard machines. The Standard machines were not replaced by United machines or by any other machines. We got along without the use of them.

Cross-examination:

I was an office man at the time of that occurrence. Mr. Barry was at the head of the factory and it took place in his absence. The T. D. Barry Company had some machines which it had leased from the old Goodyear Company before the United Company was formed, including welting and stitching machines and also some auxiliary machines that were used with the welting and stitching machines. Some Standard welting, stitching, and lasting machines were introduced into the factory. We did our welting and stitching on the Standard machines and used the Goodyear machines we had for the auxiliary work for those machines.

Q. So that you were getting the Goodyear auxiliary machines for nothing and using them on shoes that were welted and stitched on the Standard machines; isn't that a fact?

A. That is the fact; yes, sir.

Q. Which really was not very fair under your leases, was it?

A. Well, we were not making many shoes on them.

Q. But you were getting the use of your auxiliary machines and not paying anything on them?

A. There was practically only one auxiliary machine under those conditions.

Q. I am not debating how much you were doing, but that is what you were doing?

A. Yes; that is correct.

Q. And in that situation you were notified that if you did not care to use the Goodyear machines for that purpose the company would like to take them back?

A. I won't say about the notification, because I don't remember it.

The United Company brought a replevin writ to get their machines back and that was the time when the officer came.

When Mr. Barry came home, the matter was straightened out.

271 Q. And you went on using your Goodyear machines in accordance with the terms of the leases in entire peace and harmony?

A. Yes, sir.

Q. And you have had no trouble with the United Shoe Machinery Company since?

A. Absolutely none.

We have taken machines of them and we have had good service. We have found their machines satisfactory. We make men's welt shoes and a few ladies'. We have about five hundred machines, more or less, in our factory. All the machines used in making the uppers were obtained from manufacturers other than the United Company. A good many machines used in the finishing room can be obtained from other sources. In our particular case they are.

Direct examination resumed:

We use exclusively welters, stitchers, lasting, heeling, and metallic fastening machines obtained from the United Company.

272 JUNE 6, 1913.

RICHARD H. LONG, witness for the United States.

Q. What is your full name?

A. Richard H. Long.

Q. Where do you reside?

A. Framingham.

Q. In what business are you engaged?

A. Shoe manufacturing. Machinery.

Q. Shoe machinery?

A. And retail shoes.

Q. How long have you been engaged in business as a shoe manufacturer?

A. I went to work in a shoe factory in 1880 and was engaged in 1886 as an employer.

Q. And when did you engage in business for yourself?

A. 1886.

Q. What is the name of your shoe manufacturing company?

A. Framingham Shoe Company.

Q. What is the name of your shoe machinery company?

A. R. H. Long Machinery Company.

Q. Do you have more than one shoe factory?

A. No, sir.

Q. What is your daily capacity?

A. Five or six thousand pairs.

Q. What kind of shoes do you manufacture?

A. Welt shoes.

Q. Welt shoes exclusively?

A. Almost exclusively.

Q. What kinds of shoes do you manufacture outside of welts?
A. Make a few McKay shoes—McKay sewed shoes.
Q. Where were you engaged in business at the time of the formation of the United Shoe Machinery Company?
A. In Springfield, Massachusetts.
Q. What machines were you using at that time?
A. Using machines from——
Q. Take the welt sewing and out-sole stitching machines—whose machines were you using?
A. From the Eppler Welt Machinery Company principally. I think we may have had some Goodyear machines—I am not sure of that.
Q. Those are the only two?
A. On welt-sewing machines. We made a few welt shoes in which the welts were sewed with a McKay machine.

273 Q. Where did you obtain the McKay machine?
A. That was bought in the open market of machinery dealers, not machinery manufacturers.
Q. And whose lasting machines were you using at that time?
A. We used the Chase lasting machines at that time.
Q. Exclusively?
A. I think we had one or two Consolidated.
Q. Now, going back to the welt-sewing machines, what royalty were you paying for the Eppler machines?
A. Three cents per pair on men's shoes.
Q. Did you use that machine on women's shoes?
A. We did not make women's shoes. We made some boys' shoes, and it was two and one-fourth cents per pair on boys' shoes.
Q. What royalties were you paying on the Goodyear machines for similar work?
A. Four cents on the men's shoes and three cents on boys'.
Q. At the time of the formation of the United had you bought these lasting machines, or did you lease them?
A. Those lasting machines were installed on a lease.
Q. Whose heeling machines did you have at that time?
A. We had heeling machines from either the McKay & Bigelow Company or the McKay Machinery Company, and we had, I believe, one or two National heeling machines.
Q. And did you have any American heelers?
A. No, sir.
Q. From whom did you obtain your metallic machines at that time?
A. We obtained the metallic machines from a man named Locke who lived in Hudson, and we had some metallic machines

from the McKay Shoe Machinery Company or the Metallic Fastening Association.

Q. Now, after the formation of the United Shoe Machinery Company did you continue to use your Eppler machines?

A. We did as long as we could get parts for them.

Q. After the United was formed where did you have to go for your parts for the Eppler machines?

A. To the United Shoe Machinery Company.

Q. What difficulties did you have, if any, in obtaining parts for the Eppler machines?

A. Parts weren't supplied promptly when we ordered them from the United Company and the machines were idle.

Q. What difficulty, if any, did you have in obtaining parts for Goodyear machines?

A. We didn't use the Goodyear machine at that time.

Q. You didn't have any Goodyear machines?

A. We weren't using any Goodyear machines.

Q. Did you have them?

A. We did have some Goodyear machines under lease, and at that time we had just moved from the factory at Belchertown and in that factory we had Goodyear machines, and whether or not those machines had been transferred to somewhere else I don't know, but I think the machines were still in our possession.

Q. Now, did you have any interview shortly after the United was formed, with any representative of the United Shoe
274 Machinery Company, with respect to the continued use of the Eppler machines?

A. I did.

Q. With whom?

A. With Mr. Frederick G. King, the manager of the Goodyear department.

Q. Will you please state the substance of the conversations you had with Mr. King in regard to the Eppler machines?

A. I had a number of interviews with Mr. King. When the machines were idle in the factory and I couldn't get parts promptly I requested him to send us parts; called at his office in Boston, and among other things was told by Mr. King that they had decided not to put out any more Eppler machines, and the service on Eppler parts wouldn't be as good as it would be on parts of Goodyear machines. I told Mr. King that when I ordered the Eppler machines from Mr. Payne, the agent of the Eppler Company, that they agreed to furnish us parts and such additional machines as we would want to use in our factory, and I thought his company ought to carry out the agreement of the Eppler Company; also those machines were furnished with-

out any initial payment, while the Goodyear charged $300 each for the principal machines for that system. Then the Eppler machines were furnished with a royalty of twenty-five per cent less, and I demanded that he furnish parts that we needed to keep our factory in operation. He said that they wouldn't furnish any more Eppler machines for us, and they would give us whatever service they could conveniently. He said to me if I wanted to stay in the shoe business, it would be well for me to fall in line with their plans for supplying machines to shoe manufacturers; that they knew better than the shoe manufacturers the different kinds of machines required in shoe factories, and it would be well for me, if I wanted to stay in the business, to follow along their lines, ——

Mr. CHOATE. Pardon me a minute. Now, this is another instance of a case, I think, where in all fairness we ought to have been given these particulars.

PUTNAM, J. This is not an instance of a threat, Mr. Choate.

Mr. CHOATE. Well, it seemed to me that was the very purpose for which it was offered. Isn't that your idea about it, Mr. Gregg, that you offer it as a threat?

Mr. GREGG. No, I don't offer it as a threat.

Mr. CHOATE. What do you call it?

Mr. GREGG. I offer it as a statement of Mr. King to Mr. Long of the policy that the company proposed to pursue.

Q. Had you finished your answer?

A. That I had been too independent and kicking too much. I told Mr. King that I wanted to use those Eppler machines and intended to use them. I had a number of conversations, interviews, with him.

275 Q. Why did you give up the Eppler machines?

A. The United Company failed to supply parts for them.

Q. And in their place what did you take?

A. I had another interview with him in my office, Boston office, and I arranged to return the Eppler machines that I had, taking Goodyear machines in exchange for them. They allowed a credit of the amount that they charged on the different Goodyear machines of the same type, the amount of the initial payment, and we took the Goodyear machines under their Goodyear leases that were in existence at that time, with initial payment.

Q. Now, the Goodyear machines that you obtained in place of the Eppler machines were used for performing the same work that you had performed with the Eppler machines?

A. Same work; yes, sir.

Q. Now, about the time that you had these conferences with Col. King in regard to Eppler machines, did you have any conversation with Assistant General Manager Wilson of the United?

A. About that time or before.

Q. And what was the substance of the conversation that you had with Mr. Wilson?

A. My conversation with Mr. Wilson first related to lasting machines.

Q. Well, what conversation did you have with him about the lasting machines?

Mr. CHOATE. Will you fix the time?

Q. About when was that, Mr. Long?

A. That was about 1899 or 1900.

Q. Shortly after the United was formed?

A. Shortly after the United was formed.

Q. Now, you may proceed with your answer.

A. I wanted some additional lasting machines of the type that we were using.

Q. What type were you using at that time?

A. The Chase lasting machines—and they refused to supply them.

Mr. CHOATE. Pardon me a minute. Is that what Mr. Wilson said?

Q. Well, what did Mr. Wilson say about furnishing you with Chase lasting machines, additional lasting machines?

A. Mr. Wilson refused.

PUTNAM, J. Now, Mr. Gregg, I am coming back at you again. You have alleged that this defendant corporation acquired all those machines.

Mr. GREGG. Precisely.

PUTNAM, J. They admit that they acquired them. What do you want to prove by this witness?

Mr. GREGG. I am attempting to show by this witness that one of the machines they acquired through this combination was later on withdrawn from the market, just the same as the Eppler's.

276 PUTNAM, J. They had a right to withdraw it, didn't they? Don't the bill allege it and the answer admit it?

Mr. GREGG. We are also attempting to show by this testimony that these machines that went into the combination at the time the United was formed were competing machines.

PUTNAM, J. But your bill alleges that combination was legal.

Mr. GREGG. I beg pardon, your honor. I don't think our bill alleges that the combination was legal. It is just to the

contrary. Our bill alleges on page 17 that the defendants, naming them, or naming a number of them: "not being satisfied with the benefit of the lawful monopolies and rights belonging to them under letters patent of the United States and of other countries, which they had enjoyed for many years."

PUTNAM, J. That is the precise combination the Supreme Court of the United States passed on and held to be a legal combination. But, at any rate, legal or illegal, you are not showing anything now except that the defendants performed an allegation of your bill, and upon the answer had a perfect right to do it.

Mr. GREGG. No doubt they had a perfect right to withdraw them from the market. I am merely attempting to show by this witness that one of the competing machines that they took over at that time was later withdrawn from the market.

The WITNESS. Mr. Wilson refused to supply any more Chase lasting machines and said that the machine they were to put out was the Consolidated.

Q. From whom had you obtained Chase lasting machines?

A. Obtained them from the Chase Company originally, and I believe later some of them were from the company that absorbed the Chase.

Q. Now, was anything further said by Mr. Wilson at that time?

A. I had other conversations with Mr. Wilson. I couldn't say whether it was all at that time or not.

Q. Was that in regard to lasting machines, too?

A. Yes. I had been requested to sign a new form of lease of the United Company relating to machinery, and I refused to sign it, saying that I wanted to continue under the old form of lease.

Mr. CHOATE. A lease for what?

Q. A lease for what?

A. Whatever they were to lease—a lease of the Eppler Company or the Chase Lasting Machine Company or the McKay & Bigelow Heeling Machine Company.

Q. Well, which one was the subject of this conversation, if you recall, with Mr. Wilson?

A. Well, Wilson and I talked in relation to the lasting machines and also in relation to the welting machines.

Q. You may proceed and state what he said.

A. He said they wouldn't furnish me any more Chase lasting machines; that we would have to use the Consolidated. I told him I wanted a Chase and wouldn't use a Consolidated.

unless I was forced to use it. He said I would be obliged to in order to get any more machines, and later I signed the lease of the Consolidated machine.

Q. Did Mr. Wilson say anything to you at that time about the control of shoe machinery?

A. Mr. Wilson said at the first interview I had with him that his company intended to manufacture all the machinery that was used in the United States for bottoming shoes.

277 Mr. CHOATE. Of course I have been protesting against this testimony from the very time it began to be offered from all these witnesses, but the court has constantly overruled me, and I didn't want to be on my feet all the time. I have objected particularly where the statement did not come from Mr. Winslow, or a person of equal authority, or of approximately equal authority. Here was a talk with Wilson, who was one of the assistants to the general manager, away back in 1899 or 1900. This witness is purporting to state Wilson's declaration of the company's policy. I submit that Wilson had not any right to speak for the company with respect to its policy at that time. We are not bound by what Mr. Wilson's views were about the company's policy. We are not to be punished for what his views may have been.

Unless he was speaking for the corporation, with the right to state what the corporation meant to do, I don't see why it should be admitted.

PUTNAM, J. We will let it in under the ordinary rule, Mr. Choate, subject to your exception.

Q. Was that all he said at that time?

A. No. We had an interview of perhaps fifteen or twenty minutes.

Q. Tell the substance of what was said.

A. That they had their plans for the machinery for shoe manufacturers and expected the manufacturers to use the kind of machines that they advised them to use. We talked of the lasting machines. At that time we were using the Chase machine, and he explained how the Consolidated machine, in his opinion, was very much better than the Chase, and they didn't intend to furnish the Chase machine to shoe manufacturers. I told Mr. Wilson that I preferred to use the Chase machine and thought it was better for our work than the other. He said that we couldn't have any more Chase machines; we would have to use the Consolidated or go without.

Q. Prior to the time you had this interview with Mr. Wilson, had these new leases been presented to you?

A. Leases had been submitted by an agent of the United Shoe Machinery Company.

Q. Who was the agent, do you know?

A. I think his name was Shaw. He was a lame man; I am not sure of his name.

Q. Were the new forms of leases submitted to you by an agent at your factory?

A. Yes, sir.

Q. Before you came to Boston?

A. Yes.

Q. Then you came into Boston and interviewed Mr. Wilson and Mr. King before the signing of these new forms of leases?

A. Yes.

Q. When did you first engage in the shoe machinery business, Mr. Long?

A. About the first of the year 1907.

278 Q. Could you procure shoe machinery, that is, a line of shoe machinery, from any concern except the United, without making it yourself?

A. No, sir; not a complete line.

Q. When did you perfect your line of machinery?

A. It isn't perfected at the present time.

Q. When did you get sufficient machinery together to install in your factory to manufacture shoes?

A. February, 1907.

Q. Was that your own machinery?

A. No, sir.

Q. Whose machinery was that?

A. Machinery bought from different machinery dealers and machinery manufacturers.

Q. Did you install that machinery in your factory at that time?

A. I did.

Q. What did you do with the United machinery?

A. The United machinery was set aside.

Q. Do you know where it is now?

A. It is on storage in a factory building in Framingham.

Q. Is that machinery which you installed in February, 1907, in operation in your factory now?

A. It is in part.

Q. And a part of the machinery now in operation has been developed by you since that time?

A. Since that time; yes, sir.

Q. Are you engaged in placing machinery among other shoe manufacturers; that is, shoe machinery?

A. Trying to; I am to a small extent.
Q. Will you please state briefly the machines that you manufacture?
A. We manufacture machines for lasting and welting and stitching—sole stitching—leveling, heeling, some metallic fastening machines, and a number of others.
Q. Are you using any of the United Shoe Machinery Company's machines at the present time?
A. Not that have been procured from them. There may be some machines in use in the factory that have been bought from machinery dealers or others, that have been made by them.
Q. None that you have obtained directly from the United Shoe Machinery Company?
A. No.
Q. Have you made any efforts to place your machinery among shoe manufacturers?
A. I have.
Q. To whom have you offered machinery, Mr. Long?
A. I have advertised the machines for sale in trade papers, sent agents to different shoe manufacturers, written letters to them, and called on them personally trying to sell machines.
Q. Whom did you call on personally?
279 A. I called on Mr. Taylor, of the Taylor Shoe Company, of Lynn.
Q. Did you sell Mr. Taylor any machines, or lease him any?
A. I sold him some machines.
Q. What machines did you sell Mr. Taylor?
A. Sole welting, stitching, some metallic machines.
Q. Do you know whether or not Mr. Taylor is using the machinery of the United Shoe Machinery Company?
A. He is not.
Q. Whom else did you call on?
A. I called on Mr. A. E. Little, of Lynn.
Q. Did you sell Mr. Little any machinery or lease him any?
A. No, sir.
Q. Did you have any negotiations with Mr. Little in reference to the sale or lease of any machines?
A. No negotiations, except to say I would like to sell him machines.
Q. Did Mr. Little make any reply?
A. He said he couldn't use the machines because of his leases. That was the substance, not the exact words.
(Admitted subject to defendants' objection and exception.)
Q. Did you call on any other shoe manufacturers?

A. I called to see a number of them that were at our machinery factory at Framingham, a large number, perhaps seven or eight or a dozen, from Haverhill.

Q. Who were they?

A. Mr. Dobbins, Mr. Hilliard of Hilliard & Taber—I don't recall the names of the others, but there were quite a large number of them.

Q. To whom have you actually sold machines?

A. The machines we have sold have been largely to cobblers—shoe repairers.

Q. How many machines have you sold to shoe manufacturers?

A. Fifty to one hundred.

Q. What were they, welters or stitchers?

A. Some of each and some other machines.

Q. Do you know whether or not any of those machines are in factories where the United Shoe Machinery Company's machines are being used?

A. There are some of them.

Q. Whose factories, if you can name them?

A. There is one factory in western Massachusetts.

Q. Can you give the name of it?

A. I can not; I don't recall.

Q. Where is it located?

A. I don't know the name; it is a small town near Holyoke.

Q. Any others?

A. That is the only one I recall now—yes, I sold some to J. L. Walker & Company, of Lynn.

Q. Did they pay you for the machines?

A. Those were sold through Maurice Bresnahan, of Lynn. He paid us for the machines.

280 Q. Do you know whether or not Walker & Company are using those machines now?

A. I have been informed that they are not. Walker told me that they are not.

Q. Mr. Walker told you they were not?

A. Yes.

Q. Do you know what was done with the machines?

A. He said he had set them aside.

Q. Mr. Long, have you ever been refused credit at any banking institution on account of the fact that you are engaged in the shoe machinery business?

Mr. CHOATE. I pray your honor's judgment.

PUTNAM, J. You will have to give notice of that in the bill of particulars before you go into it.

Mr. GREGG. Then I would like to reserve the right to recall this witness to examine him on that point, because I expect to connect that with other witnesses.

PUTNAM, J. That is all right enough. You will have to give them notice in season.

Mr. GREGG. We will do that.

Q. Mr. Long, what is the market price of your machines, your welters—welt machines?

Mr. CHOATE. I pray your honor's judgment on that question.

PUTNAM, J. I can't see the propriety of that myself.

Mr. GREGG. If your honor please, it does seem to me that it is very important, where these machines are sold outright and sold for a given price, and where they are held on lease——

PUTNAM, J. What do you want to prove, Mr. Gregg, by that line of testimony?

Mr. GREGG. I want to prove this, that the difference in cost to the shoe manufacturers between the machines that are sold outright by these independent shoe machinery manufacturers and the royalties exacted by the United Shoe Machinery Company, from the shoe manufacturers for machines for performing similar work, is so vast in amount that it does become material for the Government to show that if the independents have an opportunity to place their machinery in shoe factories the shoe manufacturers will get the benefit of the cheaper machinery.

PUTNAM, J. How are you going to make a comparison? Let us find out what you are driving at.

Mr. GREGG. We expect before we get through, if your honor please, to prove, if possible, what it costs the United Shoe Machinery Company to manufacture their machines for doing similar work.

PUTNAM, J. You expect to prove what?

Mr. GREGG. What it costs the United Shoe Machinery Company to manufacture their machines for doing similar work; and then to make the comparison between the prices charged
281 by the independents and the royalties and the installation charges exacted by the United Shoe Machinery Company. It seems to me that that does become very important.

PUTNAM, J. I don't quite understand you now. You are going to show what these independent manufacturers ask for their machines, and then show what the United Shoe Machinery Company's machines cost?

Mr. GREGG. And what they exact in royalties from the shoe manufacturers.

PUTNAM, J. How are you going to make the comparison then?

Mr. GREGG. Why, as to the cost—I understand you sell your machine outright for $600, Mr. Long?

The WITNESS. Yes, sir.

PUTNAM, J. Let us have a full and fair statement of what you want to prove and see whether you can do it or not.

Mr. GREGG. My offer of proof is this:

PUTNAM, J. Not your offer of proof. Just give us your theory of what you are driving at generally.

Mr. GREGG. Here is an independent shoe machinery manufacturer who is putting out a welting machine for which he charges $600, and the shoe manufacturer, acquires title to it immediately. It belongs to the shoe manufacturer, and there is no additional royalty or anything of the kind. On the other hand, there is a machine for performing similar work put out by the United Shoe Machinery Company on a royalty basis for seventeen years, where the royalty for one year in many cases amounts to more than twice the cost of the machine put out by the independent, so that in seventeen years the amount of money that the shoe manufacturer pays will be appreciated.

PUTNAM, J. Have you any case of that kind so you can tell us exactly what it is?

Mr. GREGG. You mean to take any machine?

PUTNAM, J. No, no. Tell us what you are going to prove—describe the particular case as if you were opening to a jury.

Mr. GREGG. Take a welting machine or a stitching machine.

PUTNAM, J. No, no. Take just one machine.

Mr. GREGG. I was going to take a welter or a stitching machine; I will take the stitching machine.

DODGE, J. What particular stitching machine?

Mr. GREGG. An out-sole stitching machine.

PUTNAM, J. Take a particular machine and follow it through.

Mr. GREGG. An out-sole stitching machine.

DODGE, J. Any out-sole stitching machine, or some particular out-sole stitching machine?

Mr. GREGG. A machine that performs the operation of out-sole stitching. The machines that have been described here as we have been going along, in the Goodyear department, the two main machines are the welt-sewing and the out-sole stitching machine.

PUTNAM, J. You have got to take some definite and precise machine. We can't compare any machine with another machine generally.

Mr. GREGG. Machines for performing a similar operation.

PUTNAM, J. What sort of machine is this gentleman making?

Mr. GREGG. Out-sole stitching machines and sewing machines.

282 PUTNAM, J. Take one. What kind of a machine is it?

Mr. GREGG. Take the welt-sewing machine. He has just testified that the market price——

PUTNAM, J. No; what kind of a machine is it? Let us understand that, and see what he is making.

Q. What machines are you making, Mr. Long?

PUTNAM, J. No. Tell us. We don't want the witness to tell us. We want to know what you propose to prove. Take one specific machine. What sort of machine do you propose to take up, a welt-sewing machine?

Mr. GREGG. I will take up the welt-sewing machine.

DODGE, J. His welt-sewing machine?

Mr. GREGG. The welt-sewing machine he sells on the market for $600.

PUTNAM, J. What kind of a welt-sewing machine is it? Does it sew the Goodyear welt?

Mr. GREGG. I don't know whether you would call it Goodyear welt or not. It is a machine for sewing welts.

DODGE, J. How do you identify it? How are we to know the particular, exact kind of a machine it is? An exact description of the machine you are talking about is what I would like to get.

Mr. GREGG. If your honor please, I don't know that I can make it any more definite. We have had here since the case started numerous witnesses who have described welt-sewing machines and out-sole stitching machines and lasting machines.

PUTNAM, J. They have done it in a general way in another aspect. Now, you come to make a comparison of prices, and we have got to compare one machine with another identical machine.

Mr. GREGG. A machine which performs the same operation.

PUTNAM, J. That won't do at all.

Mr. GREGG. It may not lay the stitch in the same way.

PUTNAM, J. Whether it does the same operation or not, we can't consider generally. You have got to be precise now in making these comparisons.

Mr. GREGG. That is as precise as I can be at this time.

PUTNAM, J. For all we know, it may be a machine which may be enjoined the moment it is put on the market. For all we know, it may be a machine which will only perform one of two operations——

Mr. GREGG. I will ask the witness about that.

Q. What operation does your welt-sewing machine perform?

A. The same operation as is performed by the Goodyear welt-sewing machine.

Mr. CHOATE. I suppose he means by that that it sews the welts to the uppers.

Mr. GREGG. Precisely.

BROWN, J. The same output, the same rate of production?

The WITNESS. Yes, sir.

Q. You have used the Goodyear welt-sewing machine, have you?

A. Yes, sir.

Q. And your welt-sewing machine performs the same work?

283 A. The same work; yes, sir.

PUTNAM, J. Have the patents on welt-sewing machines run out yet; have they expired?

Mr. GREGG. We claim that all the basic patents on welt-sewing machines have expired.

PUTNAM, J. Have they expired, I ask you.

Mr. GREGG. I haven't made a personal investigation myself of that matter.

PUTNAM, J. How is he going to put his machine against a machine that is covered by a patent?

Mr. GREGG. It may be covered by patents, or it may not be covered by patents.

PUTNAM, J. We have got to know before we can compare them. Here is the Eppler machine covered by thirty-nine patents; or, rather, by a patent with thirty-nine claims in it.

Mr. GREGG. I don't want to get into the patent question.

PUTNAM, J. I know; but you are going to compare his machine with the machine in controversy here, and you have got to identify the two machines in some way so we can see that they are the same thing.

Mr. GREGG. The witness has just stated that the two machines perform the same operation.

DODGE, J. It does not follow that the machines are identical.

Mr. GREGG. Not that the machines are identical, if your honor please, but that they perform the same operation.

DODGE, J. That is too general, to my mind, altogether.

Mr. GREGG. A farmer might have two plows——

BROWN, J. If one can be substituted for the other, it seems to me to be enough.

Mr. GREGG. It would seem so, if one machine will perform the same operation as another machine.

PUTNAM, J. Not at all, in any sense of the word. These machines are covered by patents. They may perform the same operation, but the detail is different, and the detail is where the

profit is. A half a cent or a cent or two cents on the product of the machines destroys one machine and builds up the other.

Mr. GREGG. If your honor please, I should like to make a notation on the record that we have offered this.

PUTNAM, J. You may make a notation.

BROWN, J. I would like to ask Mr. Gregg if the bill contains an allegation of exorbitant prices on leased machinery?

Mr. GREGG. The bill alleges that the defendants have made enormous profits. It does not specify the machines; it alleges in a general way.

BROWN, J. I asked early in the case—I saw there was an allegation that exorbitant prices were charged for duplicate parts—and I think the response was that there was no allegation in the bill that the charges for leased machinery were exorbitant.

Mr. GREGG. There is a section in the bill charging excessive profits by this company.

BROWN, J. Excessive profits?

Mr. GREGG. By the defendants; yes, sir. I don't recall the section just now, but it is near the center or last part of the bill.

284 Mr. CHOATE. It seems to me that because they performed the same operation there is no more similitude than there would be between an Ingersoll watch and the best Geneva because they both keep time.

BROWN, J. Well, they have the same efficiency.

Mr. CHOATE. I don't think it follows at all from that. In the first place, there is no reason why the comparison should be made. There is absolutely no relation between the cost of building a machine and what is a fair price to charge for leasing it when it has got a patented idea. You are leasing the idea and not so much metal.

BROWN, J. That is on the supposition that the difference is between patented and unpatented machines.

Mr. CHOATE. That is a very decided distinction.

BROWN, J. You are quite right on that, but Mr. Gregg claims that these machines are not patented.

Mr. GREGG. Precisely. We claim that the basic patents have expired. We do not make the contention that there may not be a little appliance on that machine that has a patent on it. We claim the basic patents have expired.

DODGE, J. In order to deal with that question mustn't we know with definiteness and precision exactly what the machine is that is covered? Is it enough to say: "It does the same work"?

Mr. GREGG. I think so, if your honor please, if it does the work as effectively as another machine.

BROWN, J. If one is a practical substitute for the other and there is no question of patents——

Mr. GREGG. Of course, you might have a machine that would do the work in a way, but not effectively, and certainly in that case you could not make a comparison with a machine that was doing excellent work. That is certainly true enough; but, as I understand the witness to testify, the two machines perform the same identical operation and with equal effectiveness.

Mr. CHOATE. I suppose one might take two horses. Each could draw a carriage with equal effectiveness. One is an ordinary draft horse and the other is a very valuable race horse. But the fixing of the price of one does not determine the value of the other.

BROWN, J. It is only a question of what is sufficiency of proof. You have only got to establish the identity of the things.

Mr. CHOATE. But there is nothing yet to show that the two things are identical or that the charges are for the identical thing. Of course the question is, comparing the price at which Mr. Long sells the machine with the royalty that a machine earns which is leased by the United Company, embodying a great variety of ideas which are covered in whole or in part by patents, together with service, efficient repairs, replacements, and all that sort of thing.

BROWN, J. That is on your construction of the facts. Mr. Gregg contends it is a comparison between unpatented machines performing the same work with equal efficiency, so that one may be substituted for the other. It is a question on the state of his offer of evidence on this record rather than upon the state of the case as it will develop after you have put in your testimony.

Mr. CHOATE. Is it useful to make an assumption that is so contrary to the evidence the Government has already put in?

285 PUTNAM, J. My mind doesn't rest there at all. I take the ordinary case, proving to a jury that two things are alike. You must describe one thing in detail and describe the other thing in detail, and let the jury decide whether they are alike or not. You must describe them, either by this man or by an expert, in detail, and then we have got to decide when we have got the details. You can't prove the similarity of one thing and another in that way, simply asking the general question whether two things are the same in effect or anything else. You must describe each machine and then the jury will determine whether they are alike or not, not the witness. That is my trouble.

BROWN, J. That might call for almost impossible details, so as to make it impracticable.

PUTNAM, J. It may be impracticable, but that is the law. It is for the jury or the court to decide, not for the witness. They can call an expert to testify about these machines and then find out whether they are covered by patents or not, and all such things as that.

Mr. GREGG. I don't know whether this witness is an expert on shoe machinery or not. I should prefer to take that matter up with some other witness, and I will withdraw that question for the time being.

Q. Mr. Long, have you ever been approached by any representative of the United Shoe Machinery Company to purchase your shoe machinery company?

Mr. CHOATE. Wait. I object to the form of that question. It seems hardly necessary to put it in any such form as that or to leave it in the record in that way. If this man has ever had a talk with anybody that is competent, that can be testified to.

BROWN, J. Do you accept this amendment in form proposed by Mr. Choate?

Mr. GREGG. I will withdraw the question in order to move along a little.

Q. Has any representative of the United Shoe Machinery Company ever approached you with a view to purchasing your shoe machinery business?

Mr. CHOATE. I pray your honors' judgment. That is exactly the same question.

BROWN, J. What is there opprobrious in the word "approach"?

Mr. CHOATE. To everybody's mind it has a sort of sinister sound—improperly approached that is the meaning it imports.

BROWN, J. Say "called upon."

Mr. GREGG. Well, we will put it that way.

Q. Has any representative of the United Shoe Machinery Company ever called upon you with a view to purchasing your shoe machinery?

Mr. CHOATE. I object to the last part of it. Why can't he state any conversation he had with any proper person, and then let us see if that is the purpose of it. It is putting into the question what ought to be in the answer.

Mr. GREGG. He has had numerous conversations with representatives of the United Shoe Machinery Company. I am coming now to the point whether he has had conversations with——

Mr. CHOATE. You doubtless know the name of the person you have in mind with whom he has talked.

Mr. GREGG. No; I haven't.

BROWN, J. I think the objection is hypercritical. I think it is a fair enough question.

286 Mr. CHOATE. I should like to have our exception saved to it, sir.

Q. Answer the question, Mr. Long.

A. I think I have. I was invited——

Q. Who talked with you about it?

A. Mr. Bresnahan—Maurice Bresnahan, of Lynn.

Q. When?

A. Several times. The first conversation was an invitation by telephone to visit the factory of the United Shoe Machinery Company at Beverly.

Mr. CHOATE. Will you pardon me a minute? Now, does your honor see how that leaves the record?

PUTNAM, J. I can't see that that has anything whatever to do with the case. If any one of the judges thinks it has, I am perfectly willing to listen to it.

Mr. CHOATE. I don't think it has, either, sir, but I was appealing to Judge Brown's suggestion that my objection was hypercritical. Doesn't the question and answer leave it this way—that on this witness's testimony Bresnahan was the representative of the United Company; that he called upon him as that representative, and that he called upon him with a view to purchasing this property? If those questions and answers are written out, that is what it amounts to. Now, I say it is hardly fair to prove any fact, if there is such an existing fact against us, in that way, and to suggest that it can be met by cross-examination.

PUTNAM, J. Why, Mr. Gregg, did he buy any property of Mr. Bresnahan—this witness?

Mr. GREGG. No, sir. I am not trying to show that.

PUTNAM, J. What are you trying to do?

Mr. GREGG. I am trying to show that Mr. Bresnahan, a representative of the United Shoe Machinery Company, called upon Mr. Long and discussed with him the question of purchasing his shoe machinery business.

PUTNAM, J. It didn't come to anything, did it?

Mr. GREGG. No, sir; it didn't.

PUTNAM, J. What is the effect of it, then?

Mr. GREGG. I am merely attempting to show that an effort was made to purchase the business.

PUTNAM, J. What of that?

Mr. GREGG. By the United Shoe Machinery Company.

PUTNAM, J. What of that?

Mr. GREGG. I think it is evidence tending to show an attempt to monopolize in acquiring a competitor.

PUTNAM, J. Well, we will take it. In the first place, you have got to prove that Mr. Bresnahan was authorized to represent the defendant corporation.

Mr. GREGG. As far as I can go with this witness, of course, I can only show whether or not Mr. Bresnahan represented to the witness that he was representing the corporation.

PUTNAM, J. That is all. Begin now and suppose it were a case that you would take to a jury. Are you proposing to prove
287 that Mr. Bresnahan had any authority from the corporation to call upon this man?

Mr. GREGG. Any authority? I don't know; I have got to work back; I have got to lay the foundation for it.

PUTNAM, J. You are beginning at the wrong end.

Mr. GREGG. I am merely attempting to show that he was a representative of the United Shoe Machinery Company. Whether he had gone to the president of the United Shoe Machinery Company and the president had told him to go out to see Mr. Long, or not, I don't know.

PUTNAM, J. How are you going to prove that he was a representative of the United Shoe Machinery Company?

Mr. GREGG. There are contracts in evidence here showing that Mr. Bresnahan's business was purchased by the United Shoe Machinery Company, that Mr. Bresnahan entered——

PUTNAM, J. That doesn't make him a representative. How are you going to show that he is a representative of the United Shoe Machinery Company?

Mr. GREGG. Well, I suppose the only way we could show that would be to call some of the officials of the United Shoe Machinery Company.

PUTNAM, J. Haven't you got to begin there?

Mr. GREGG. To show whether or not he was in their employ?

PUTNAM, J. Haven't you got to begin there first?

Mr. GREGG. Well, that would necessitate recalling the witness for the purpose of showing this particular transaction.

PUTNAM, J. You have a right to do it after you have shown Mr. Bresnahan had some authority.

Mr. GREGG. Well, I can't show that at this time.

PUTNAM, J. I am prepared to concede, as far as I am concerned, that upon the theory of the United States, and perhaps under the law, you are justified in showing that the United Shoe Machinery Company was trying to buy up this property

the same as you show that they were trying to buy up this property out here as to which the treasurer testified. But you have got to show that whoever did it was authorized to do it.

Mr. GREGG. Authorized by whom, if your Honor please?

PUTNAM, J. In the ordinary way in which such things are proved. There is nothing new in this case as far as that is concerned.

Q. Was this Maurice Bresnahan that approached you?

A. Yes, sir.

Mr. GREGG. I will withdraw the question for the time being. You may cross-examine.

Mr. CHOATE. You are going to recall him, I understand.

Mr. GREGG. Yes; I am going to recall him.

Mr. CHOATE. I would rather wait till he comes back and finishes his testimony, both because he is to be recalled and because he has opened up some other matters, in regard to which I am not yet prepared to cross-examine.

PUTNAM, J. Call the next witness, Mr. Gregg.

Mr. GREGG. I had expected, if your Honors please, that the time this afternoon would be taken up with the examination of this witness.

BROWN, J. Does the defendant dispute the authority of Mr. Bresnahan as agent of the company?

Mr. CHOATE. Of Mr. Bresnahan? Absolutely.

288 Mr. GREGG. Was he employed by the company at that time?

Mr. CHOATE. He was employed by the company at some time, but that doesn't authorize a man to go out and buy a lot of property. He never was employed as an executive officer. He had something to do with some tool department.

Mr. GREGG. If the court please, with respect to the matter that I intended to recall Mr. Long about, I will waive that matter and ask that he be cross-examined now.

Mr. CHOATE. Well, I ask that——

PUTNAM, J. Mr. Gregg, do you mean this witness here?

Mr. GREGG. This witness; yes.

Mr. CHOATE. I ask that I be given time to prepare for cross-examining the witness on the ground that he has testified very largely to matters that we should have been advised of by a bill of particulars. Take, for instance, if your honors please, this matter of refusing to supply him with parts for the Eppler machines.

BROWN, J. Will you state that you are unprepared to go on with that matter?

Mr. CHOATE. I am unprepared on that, because I want to have looked up his orders for parts. We have got to go to Beverly to look that up. I don't want your honors to feel that I am not prepared in any respect, but in a great many respects I am not prepared.

PUTNAM, J. That is all right.

Mr. GREGG. Well, if he is not to be cross-examined, then I reserve my right to ask him additional questions when he comes in.

PUTNAM, J. Anything further this afternoon, Mr. Gregg?

Mr. GREGG. I will try to get another witness.

BROWN, J. I understand that you reserve your right to go into both matters, the matter of comparative costs and this later matter.

Mr. GREGG. The matter of costs.

BROWN, J. Yes. You reserve your rights on that?

Mr. GREGG. Yes; I reserve my rights on that.

BROWN, J. As well as on the Bresnahan transaction?

Mr. GREGG. Yes, sir.

JUNE 10, 1913.

RICHARD H. LONG, witness for the United States (resumed)

Q. Have you at any time applied for a line of credit with the Chapin National Bank at Springfield, Massachusetts?

A. Yes, sir.

Q. When?

A. I believe it was in 1908.

Q. With what result?

A. The credit man of the Chapin National Bank——

PUTNAM, J. Merely the result; that is all.

The WITNESS. It was denied.

Q. Do you know why it was denied?

289 Mr. CHOATE. I suppose all he can state is what they told him, and that, I submit, is not competent.

PUTNAM, J. You have got to fill in the gap.

Q. Was the credit at first denied when you applied for it?

A. No, sir. I was given to understand that I could have it.

Q. Now, state what took place subsequently.

Mr. CHOATE. Whom is he talking with, Mr. Gregg?

Q. With whom did you confer at the Chapin National Bank?

A. I conferred with Mr. Miller, the credit man of the Chapin National Bank.

Q. What did Mr. Miller say to you?

Mr. CHOATE. I would like to interpose an objection to his conversation with Mr. Miller until it is shown that the United Company was in some way connected with it or knew about it.

PUTNAM, J. It goes in de bene; that is all.
BROWN, J. It must be connected.
Mr. GREGG. Go ahead, Mr. Long.
Mr. CHOATE. Might I inquire whether the United States proposes to connect it or knows anything about it?
Mr. GREGG. We expect to connect it back as far as we can, Mr. Choate.
Mr. CHOATE. Do you state to the court that you propose to show that the United Company had anything to do with Mr. Miller, of the Chapin National Bank?
Mr. GREGG. If the court please, as I understand the situation, it is this: The credit man of the Chapin National Bank solicited Mr. Long's business——
PUTNAM, J. Answer Mr. Choate's question first, Mr. Gregg.
Mr. GREGG. That is what I am coming to.
PUTNAM, J. You can answer it by yes or no. Do you propose to show?
Mr. GREGG. I said yes; that we proposed to show as far as we could what the United Shoe Machinery Company had to do with the refusal of this line of credit. Mr. Long was assured by the Chapin National Bank that a certain line of credit would be extended to him.
PUTNAM, J. How are you going to show that the Shoe Machinery Company had anything to do with it?
Mr. GREGG. Then Mr. Miller, I believe it was—is that correct, Mr. Long?
The WITNESS. Yes.
Mr. GREGG. Mr. Miller, of the Chapin National Bank——
PUTNAM, J. How are you going to connect it with the Shoe Machinery Company?
290 Mr. GREGG. I am coming to that now, if the court please.
Mr. Miller, of the Chapin National Bank, came to Boston with Mr. Long and introduced him to Mr. Dwinnell, the vice president of the First National Bank; that Mr. Long submitted to Mr. Dwinnell a statement of his financial condition, and that after considering the matter for a few moments—Mr. Long had applied to the First National Bank, and said he would like to have a line of credit with them, it appearing that the Chapin National Bank was the correspondent for the First National of Boston; that Mr. Dwinnell before Mr. Long left said: "Well, I can submit this matter, I suppose, to the board of directors, but it would be useless, for the reason that Mr. Winslow and two or three other officials of the United Shoe Machinery Company are heavily interested in this bank, and are on the board of directors, and it would be useless." Mr. Long them remarked: "Well,

I should like to have a line of credit." He left there and, as I understand it, that was all he heard from Dwinnell after that. That is the situation.

Mr. CHOATE. It seems to me that rests entirely with Dwinnell.

PUTNAM, J. That is all you know about it?

Mr. GREGG. Yes; that is the situation, so far as I understand it.

PUTNAM, J. We all agree it is not admissible, unless you can bring it home.

Mr. GREGG. May we be allowed an exception on that?

PUTNAM, J. You can put that in the record. You are entitled to have all that statement in the record, under the rule, and your exception can be noted.

BROWN, J. We understand that is the whole extent of the proof you propose to offer on that point?

Mr. GREGG. From Mr. Long; yes, sir.

BROWN, J. So far as your entire proposed proof is concerned?

Mr. GREGG. So far as this witness can testify. Then I have another witness following who will testify that he was informed by a representative of the United Shoe Machinery Company that Mr. Long could not continue to do business, do any great amount of business in shoe machinery, for the reason that the United Shoe Machinery Company and its representatives controlled the banking interests both of Boston and of New York City. When that representative of the United said, "We control the banking interests here," the man to whom he was talking said, "I suppose he can go to New York?" "Well," he said, "we control it there just the same as we do here."

PUTNAM, J. When you offer that testimony we will see whether that is admissible or not.

Mr. GREGG. You may cross-examine, Mr. Choate.

PUTNAM, J. If you claim that this Shoe Machinery Company controls the City National Bank of New York, it would be like the tail wagging the dog, wouldn't it? When you offer that perhaps you can come back to this, Mr. Gregg.

291 Cross-examination:

Q. (by Mr. CHOATE). Mr. Long, how long have you been in the shoe manufacturing business?

A. Since 1886 as an employer.

Q. Where did you have your factory at first?

A. South Weymouth, Massachusetts.

Q. When did you move from South Weymouth?

A. I think it was in 1887.

Q. Where did you move to?

A. Braintree.

Q. How long did you stay in Braintree?
A. Until 1896.
Q. Where did you move from Braintree?
A. Belchertown, Massachusetts.
Q. How long did you stay in Belchertown?
A. Until 1898.
Q. Then moved where?
A. To Springfield.
Q. How long were you there?
A. Till 1901.
Q. Then you went to Framingham, or to South Framingham?
A. South Framingham.
Q. Did you manufacture shoes in each of those places?
A. Yes, sir.
Q. Did you in Belchertown?
A. Yes, sir.
Q. You ran a factory there?
A. Yes, sir.
Q. How much of the two years you were there did you operate?
A. All the time.
Q. When you were at South Weymouth the name of the concern was John Long & Company, wasn't it?
A. John Long & Son.
Q. What did you call the concern when you moved to South Weymouth?
A. That is where we started.
Q. When you moved to Braintree, I mean.
A. The same.
Q. What did you call it when you moved to Belchertown?
A. The concern then was the R. H. Long Shoe Manufacturing Company.
Q. And the same name at Springfield?
A. Yes, sir.
Q. And the same name when you first went to Framingham?
A. Yes, sir.
Q. Then, about 1906, you changed the name or transferred the business to some other concern?
292 A. No, sir.
Q. Are you doing business now in the name of the Framingham Shoe Company?
Yes, sir.
Q. When did you organize the Framingham Shoe Company?
A. I didn't organize the Framingham Shoe Company.

Q. When was it organized?
A. In 1906.
Q. Was the business of the R. H. Long Company transferred to the Framingham Shoe Company?
A. No, sir.
Q. Well, just describe what has taken place with reference to your business and the Framingham Shoe Company.
A. The R. H. Long Shoe Manufacturing Company discontinued business in February, 1907, and the Framingham Shoe Company at that time began manufacturing shoes.
Q. You were the principal stockholder in each?
A. Yes, sir; at that time.
Q. That is, you or your wife was?
A. Yes, sir.
Q. It was really doing the same business under another name?
A. No, sir.
Q. Didn't you operate in the same factory?
A. Partly.
Q. And with the same employees?
A. Partly.
Q. The same management?
A. Partly.
Q. And the same capital?
A. No, sir.
Q. The same president?
A. No, sir.
Q. You were still the active man in each?
A. I was the active man to a certain extent.
Q. Did you organize another corporation in Framingham?
A. Yes, sir.
Q. What was that called?
A. The Middlesex Building Company.
Q. Did you organize another one with reference to the shoe business or shoe machinery business?
A. Yes, sir.
Q. What is the name of that?
A. R. H. Long Machinery Company.
Q. That is in Framingham?
A. Yes, sir.
Q. And in that you are the active man?
A. One of the active men.
Q. It is your capital principally?
A. Principally; yes, sir.

Q. And your interests?

A. Principally.

293 Q. Now, in South Weymouth and in Braintree you were manufacturing your welt shoes by means of the Goodyear machines, weren't you?

A. To some extent.

Q. Well, you hadn't any other machinery for making Goodyear shoes—Goodyear welt shoes—other than that you got from the Goodyear Company, had you?

A. Not Goodyear welt. We made some welt shoes.

Q. With what kind of welt machines?

A. We sewed the welts with McKay machines and stitched the soles with a Campbell machine.

Q. At what period was that?

A. That was along about 1890–1891.

Q. After 1891 did you use it?

A. Yes, sir.

Q. Were you doing your welt work principally between 1891 and 1896 with the Goodyear machines?

A. Yes, sir.

Q. Do you know how many you had or what output you were putting out with them?

A. I think we had two welters and two or three stitchers.

Q. You first began to do something or experiment with the Eppler machines in about what year?

A. Began manufacturing shoes with the Eppler machines in 1898.

Q. Up to that time, from 1891, you had been using the Goodyear equipment?

A. Yes, sir.

Q. Did you get some special inducement from the Eppler Company to try the Eppler machines?

A. Well, got a lower price than the Goodyear charged.

Q. Just answer my question, please. Did you get some special inducement from them?

A. I don't know what you mean by "special inducement."

Q. You know, don't you, that the regular rate of royalty for the Eppler machines was four cents a pair if paid by the 15th of the following month?

A. I don't know that anybody ever paid four cents a pair.

Q. I am not asking you that. I am asking you if you do not know that that was the regular rate?

A. The regular rate, as far as I know, was three cents a pair for men's shoes.

Q. Is that your signature [showing a document to witness]?
A. Yes, sir.
Q. "R. H. Long Shoe Manufacturing Company, R. H. Long, president"?
A. Yes, sir.
Q. That is the lease of your Eppler machines, isn't it?
A. Yes, sir.
Q. It covers all the Eppler machines that you had, doesn't it?
A. I couldn't say about that. I presume it does.
294 Q. Now, I call your attention to the second page of that lease, to the schedule of rents and royalties.
A. Yes, sir.
Q. Aren't those exactly the same as the Goodyear as shown by the schedule?
A. But they are qualified——
Q. Pardon me. Answer my question—as shown by the schedule?
A. That is the gross price, but not the net price.
Q. Wait a moment. As shown by the schedule the rents and royalties are the same as the Goodyear?
A. The gross rents and royalties.
Q. And there was the same discount of fifty per cent provided by the lease as was provided by the Goodyear?
A. With an addition of twenty-five.
Q. Just answer my question, please. The same rate of discount provided by the lease as was provided with the Goodyear machines?
A. No, sir. The Goodyear provides fifty per cent, and the Eppler provides fifty and twenty-five.
Q. Let me ask your attention to the print of the leases:
"If the rents and royalties due on the first day of any month shall be paid on or before the 15th day of that month it will in consideration thereof grant a discount of 50 per cent."
That is right as the print reads, isn't it?
A. Yes.
Q. In your lease is written in in red ink the words "and twenty-five"?
A. Yes, sir.
Mr. CHOATE. I will ask your Honor's attention to that. This is his lease of his Eppler machines [showing the lease to the court.]
Q. Now, you notice that that lease provides for a discount of fifty and twenty-five?
A. Yes, sir.

Q. Provided you pay on or before the fifteenth day of the following month?
A. Yes, sir.
Q. Were you in the habit of paying your royalties so they were paid on or before the 15th of the following month?
[Lease No. 227, dated September 30, 1898, between Eppler Welt Machine Company and R. H. Long Shoe Manufacturing Company is marked "Defendants' Exhibit 44."]
Q. What do you say, Mr. Long?
A. I paid the royalties in time to get the discount of fifty and twenty-five per cent.
Q. That is what I asked you—if you were in the habit of paying your royalties in time to get the discount?
A. Yes, sir.
Q. Is that your handwriting [showing a letter to witness]?
A. Yes, sir.
Q. That is a letter of January 31, 1899?
295 A. Yes, sir.
Q. Addressed to the Eppler Machine Company:
"Gentlemen: Enclosed check royalty December $194.76."
That was not on time, was it?
A. It was time enough to get the discount.
Q. Wait a minute. You heard my question?
A. Yes, sir.
Q. I say it was not within the time named in the lease, was it?
A. No, sir.
Mr. CHOATE. I offer that letter.
[Letter dated January 31, 1899, from R. H. Long to Eppler Welt Machine Company is marked "Defendants' Exhibit 45."]
Q. Is that your signature [showing a letter to witness]?
A. Yes, sir.
Mr. CHOATE. [Reading.]

"MAY 17th, 1899.

"EPPLER WELT MACHINE COMPANY, Boston.
"GENTLEMEN: Enclosed find check, royalty to May 1st less fifty per cent, $305.66."
Q. That was late, wasn't it?
A. I don't know whether it was late or not. I don't think it was.
Q. Well, it was after the 15th of the following month?
A. The Eppler Company didn't——
Q. Just a minute. It was after the 15th of the following month, wasn't it?
A. Yes, sir.
Q. You say at the bottom:

"We pay this royalty without deducting the 25 per cent, although we took the machine with royalty at 3 cents net. If other lessees only pay 3 cents we shall expect refund of the extra one cent."

What knowledge had you as to what other lessees paid when you wrote that letter?

A. I don't know.

[Letter dated May 17, 1899, from R. H. Long to Eppler Welt Machine Company is marked "Defendants' Exhibit 46."]

Q. Is that your signature [showing letter to witness]?

A. Yes, sir.

Mr. CHOATE. This is dated December 19, 1899:

"EPPLER WELT MACHINE COMPANY.

"GENTLEMEN: Your letter at hand. We will pay you October royalty this week and November royalty next week. Hoping this will be satisfactory, I am,

"Yours, truly,

"R. H. LONG."

Q. You were behind on your royalty then, weren't you?

A. It would seem so.

[Letter dated December 19, 1899, from R. H. Long to Eppler Welt Machine Company is marked "Defendants' Exhibit 47."]

296 Q. Now, after the 1st of March, 1899, did you claim that you were entitled to the additional twenty-five per cent?

A. I presume I did.

Q. What do you say as a fact? I want to know what you claim.

A. That being after the——

Q. Just answer me yes or no, sir. Did you claim that you were entitled to it?

A. I should say I did.

Q. Did you get it?

A. I don't know whether I got it or not.

Q. You said in your examination on Friday that you gave up the Eppler welt machines because you couldn't get the parts.

A. Yes, sir.

Q. You were in the habit of sending in orders for parts, weren't you?

A. Yes, sir.

Q. Now, have you any specific instance that you remember, or any record of any instance that you remember, when you did not get parts with reasonable promptness?

A. I don't remember any.

Q. Was it a matter that you attended to yourself?
A. Sometimes.
Q. So that the orders would probably be in your handwriting?
A. The orders would probably be by telephone.
Q. Did you order by writing?
A. Sometimes.
Q. I call your attention to a letter on the letter paper of the R. H. Long Shoe Manufacturing Company, dated February 13th, 1899, addressed to the Eppler Welt Machine Company. Does that come from your office [showing letter to witness]?
A. Yes, sir.
Q. Whose writing is that?
A. It is not mine.
Q. Well, it is that of somebody who was authorized to make the request?
A. I presume it was.
Q. Who is "T"—R. H. Long Shoe Manufacturing Company, "T"?
A. I don't know.
Q. Who was "T" in your employ at that time?
A. I don't recall anyone by that name.
Mr. CHOATE. "Please send us six awls for Eppler welter for use with No. 41 needle; also four needle guards for No. 41 needles."
Q. Is that a request for parts such as you had in mind?
A. It is.
Q. Of course you haven't any recollection as to when that was filed?
A. No, sir.
[Letter dated February 13, 1899, from R. H. Long Shoe Manufacturing Company, "T," to Eppler Welt Machine Company is marked "Defendants' Exhibit 48."]
297 Q. I would just like you to identify some of these letters. I show you a letter of February 17th, 1899, signed "R. H. Long & Company."
A. Yes, sir.
Q. Is that from your office?
A. Yes, sir.
Q. With a request for parts?
A. Yes, sir.
[Letter dated February 17, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 49."]
Q. February 21st. Is that a later one [showing a letter to witness]?

A. Yes, sir.

[Letter dated February 21, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 50."]

Q. February 22d, the same [showing letter to witness]?

A. Yes.

[Letter dated February 22, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 51."]

Q. February 28th, the same?

A. Yes.

[Letter dated February 26, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 52."]

Q. March 1st, the same?

A. Yes, sir.

[Letter dated March 1, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 53."

Q. March 13th, March 18th, the same?

A. Yes.

[Letter dated March 13, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 54."

Letter dated March 18, 1899, from R. H. Long Shoe Manufacturing Company to Goodyear Shoe Machinery Company is marked "Defendants' Exhibit 55."]

Q. A letter not dated, but probably April 7th, 1899. [Handing the witness a letter.] Is that another one?

A. Yes, sir.

[An undated letter bearing at the bottom the words "Telephoned factory April 7th, 1899," from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 56."]

Q. How much of a period would you say we ought to cover to get a fair sample of the service or lack of service which you were getting or not getting in parts?

A. Why, I should think parts ought to be sent the same day they were received.

298 Q. That is not what I am asking you at all. I say how much of a period do you think it would be fair for us to go into these details to see whether you got service or not? Pick your own time.

A. I wouldn't be able to pick a time.

Q. I have taken the month of March, 1899. Now, is there any reason why that seems to you an unfair time to take to find out whether your statement is correct or not?

A. Yes. Not on the time.

Q. That is a fair time to take, is it?

A. I should say yes.

Q. Is it long enough?

A. As far as those parts are concerned, it is long enough.

Q. Is there any other period you would prefer to take, or any longer period you think we should take? Fix your own time.

A. I wouldn't be able to fix a time.

Q. I want to see if your complaint that you didn't get service is credible. Now, I ask you to select any time you like and any period you like and we will produce your orders and see if they were filled.

A. It isn't only the orders.

Q. I am confining you to the orders and asking you to fix a time.

A. I wouldn't be able to fix a time on what happened so long ago.

Q. Is there any other time that you would like to take?

A. I haven't any records showing the time.

Q. Well, have you any preference about the time for which we should look?

A. No.

Q. Is that as satisfactory to you as any time?

A. As far as the time is concerned.

Q. You will not stand or fall by the month of March?

A. I won't stand or fall by that method of showing whether the parts were supplied or not.

Q. You will stand or fall by that?

A. No; I will not stand or fall by that method. There is something more than sending the parts.

Q. We will come to that by and by. I am dealing with parts now, which is your complaint.

A. That refers to needles and awls. There is no question about needles and awls.

Q. Didn't I ask you if those were orders for parts, and didn't you say so?

A. Yes.

Q. Let us see if you ordered anything else than needles and awls. Take April 2d. Is that an order? There you ordered two gib rings for Eppler stitching machine at once. Is that an order?

A. That is an order.

Q. For parts?
A. Yes, sir.
[Letter dated April 2, 1899, from R. H. Long to Goodyear Shoe Machinery Company is marked "Defendants' Exhibit 57."]
299 Q. Take April 14th. There you ordered a belt for rough rounder and six knives for rough rounder. Is that satisfactory to you? Is that an order?
A. That is an order.
Q. Is that a fair sample?
A. That is nothing but what we could get anywhere.
Q. But you ordered that of the Goodyear Machinery Company?
A. Yes, sir.
[Letter dated April 14, 1899, from R. H. Long, president, to Goodyear Shoe Machinery Company is marked "Defendants' Exhibit 58."]
Q. You were complaining about the orders being for needles and awls. I will show you something else. Here is one of April 15th:
"Enclosed find channel knives. The knives wanted are for rough rounder."
The knives related to the last order. I will put that in.
"APRIL 22ND.
Please send us by return mail twelve Gem channel knives."
Those are the parts, are they?
A. Yes; they are parts.
[Letter dated April 15, 1899, from R. H. Long Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 59."
Letter dated April 22, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 60."]
Q. Now, have we got a fair sample?
A. No, sir.
Q. Then I will take some more. April 26th, 1899, you ordered 100 No. 47 stitching needles; May 2d, 1899, you ordered 200 No. 41 welt needles and part No. 466 for stitcher. Is that a fair sample order?
A. I can explain if you will——
Q. I am just asking you this question. I want to see if I get a fair sample lot of orders.
A. That is not a fair sample of what we complained of.
[Letter undated but stamped "Eppler Welt Machine Company, April 26, 1899," from R. H. Long Shoe Manufacturing Company

to Eppler Welt Machine Company is marked "Defendants' Exhibit 61."

Letter dated May 2, 1895, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 62."]

Mr. CHOATE. Then I will go on with some more.

Q. I will begin with another period—October 28th:

"Please send three screws—don't know the number—the screw that holds shield and welt spring to welt guide."

Is that an order?

300 A. Yes, sir.

Q. For parts?

A. That is an order for parts.

[Letter dated October 28, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 63."]

Q. November 3, 1899:

"Kindly send us six each No. 0 and No. 7 channel knives for inner sole machines."

November 22d, 1899:

"Kindly send us six awls for Eppler welt to run with No. 41 needles."

November 23, 1899:

"Kindly send us six K channeling knives like sample enclosed."

Now, is that a fair sample lot of the orders for parts?

A. Not what we complained of; those are needles.

[Letter dated November 3, 1899, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 64."

Letter dated November 22, 1899, from R. H. Long Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 65."

Letter dated November 23, 1899, from R. H. Long Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 66."]

Q. I ask you if that is a fair sample lot?

A. It is a fair sample of needles and knives; it is not a fair sample of what we complained of.

Q. What is it you complained of?

A. That when we wanted some special part to keep the machine going that part was delayed, so that we didn't get it.

Q. Can you name a single instance, so that we can find it?

A. I couldn't name it at this time.

Q. Among those orders there are orders for special parts?

A. Yes, sir.

Q. But apparently you didn't order special parts very often.
A. I presume the orders were usually by telephone.
Mr. CHOATE. I would like to have that answer stricken out as not responsive to the question.
PUTNAM, J. It may be stricken out.
Q. Just notice my question. I say the orders for special parts are not very frequent among those orders?
A. They are not.
PUTNAM, J. Make it a little more clear. You mean among these written orders?
Mr. CHOATE. Among these written orders; yes, sir.
Q. Now, if I am doing you any injustice, Mr. Long, we will take all the written orders we have for this period—if you don't think that is a fair sample lot.
A. I don't think the written orders will show.
Q. Why not?
A. Well, if you wish me to explain I will.
301 Q. Well, I have asked you, why not?
A. An order might be given for a part in a machine—something that required the agent to come to the factory and put it in the machine—while orders for trifling parts which were not specially material might have been filled promptly, the parts that were really necessary to keep the machines running were not filled and were not taken care of promptly.
Q. Do you think that you could produce the record of a single instance that would support your statement?
A. I can produce people that worked in the factory that would support it.
Q. I am not asking you that. Can you produce a single record of a single instance that would support your statement?
A. I haven't any record.
Q. Now, it would be extraordinary, wouldn't it, if in these orders we could not find some orders for such parts as we are speaking of?
A. Even if you admit the orders——
Q. No. I say it would be extraordinary if we didn't find some instances of that kind?
A. No; I don't think it would.
Q. It would be extraordinary if you didn't make your orders for parts by letter when you were constantly writing almost every day?
A. We wouldn't write from Springfield if we were in a hurry.
Q. But you were writing almost daily from Springfield?
A. Ordering parts we didn't need immediately.

Q. Ordering parts you didn't need immediately?
A. Yes. Anything we were in a hurry for we would telephone.
Q. Take your letter of November 22d, where you ordered six awls for Eppler welts, you said: "Your promptness will greatly oblige." Was that something you didn't need?
A. In a day or two we needed them. If we had needed them quick we would have telephoned.
Q. You think probably we can't find in all these written orders a trace anywhere of the things you wanted quick?
A. I should say anything we wanted quick we would telephone.
Q. So we can't find any record of it?
A. It would be doubtful if you could find any.
Q. Well, this is called to my attention as an illustration of the thing you have just spoken of. I call your attention to a letter of June 4th, 1900:
"EPPLER WELT MACHINE CO., *Lincoln St., Boston.*
"Please send agent to fix stitcher. This is machine we have had so much trouble with. It has broken four gears, No. 418, in a week. If you send agent from Brockton would prefer Mr. Torrey unless you think somebody else is better. Send two gears No. 418 by return mail. Would like this machine fixed as soon as possible as we are very busy."
302 Is that an instance of a case where you wanted something quickly?
A. I should say that was.
[Letter dated June 4, 1900, from R. H. Long Shoe Manufacturing Company to Eppler Welt Machine Company is marked "Defendants' Exhibit 67."]
Q. Now, you have on a number of occasions spoken of this grievance that you had about the Eppler welt machines, haven't you?
A. Yes.
Q. Once or twice here before the Massachusetts Legislature and once or more at Washington?
A. Yes, sir.
Q. But you have never, before this occasion, have you, ever testified to your talk with Mr. Wilson about the Chase lasting machines?
A. I don't recall that I have.
Q. Although you had the freest opportunity to tell all that you wanted to tell before the Massachusetts Legislature, you never told about your talk with Wilson on the Chase lasting machines, and although you had the fullest opportunity to talk at Washington you never told it there, did you?

A. I don't remember.
Q. Now, you testified on Friday that in 1899 or 1900 Mr. Wilson told you that you couldn't have any more Chase machines—that you had got to use the Consolidated if you wanted to get a machine?
A. Yes, sir.
Q. That is right, is it? Do you know how many Chase machines you had at that time?
A. I think we had four or five.
Q. Were they then at Framingham or at Springfield?
A. Springfield.
Q. When did you move from Springfield down to Framingham?
A. It was the latter part of 1901 or the early part of 1902.
Q. Did you transfer those Chase machines from Springfield to Framingham?
A. I think so.
Q. And you say you had about four?
A. I couldn't say just how many. We had a number.
Q. Well, you said four, didn't you?
A. Four or five; might have been six.
Q. Did you give me the date when you transferred from Springfield to Framingham?
A. The latter part of 1901 or the early part of 1902.
Q. At any rate, up to that time you had not returned those four Chase machines?
A. I don't think they were returned.
Q. Well, have you ever returned them?
A. I don't think so.
Q. You don't think so?
A. Tried to.
Q. Have you ever returned them?
A. I don't think any of the Chase machines were ever returned.
303 Q. How many Chase machines have you got now of the United Company which you have not returned?
A. Oh, I think there were a dozen or more in storage out in Framingham.
Q. Then after you moved from Springfield to Framingham you received at least seven more Chase machines?
A. No; that wouldn't follow.
Q. What?
A. That wouldn't follow.
Q. Well, you had four when you moved from Springfield to Framingham?

A. No; I didn't say that. I said I had four in Springfield.
Q. Well, how many did you have at the time of this talk with Wilson?
A. Four or five; six.
Q. You have got twelve now, at least?
A. Yes.
Q. When did you get the additional six, seven, or eight?
A. After I told him that I would go lasting by hand if they didn't give me some more Chase machines.
Q. And when was that?
A. That was after trying the Consolidated about two years.
Q. That is something you haven't told us about heretofore?
A. Yes, sir.
Q. Did you forget it?
A. No, sir.
Q. Just omitted it?
A. Well, I don't think I was asked.
Q. You didn't tell it because you weren't asked? I understood you were asked to tell all your conversations with Wilson.
A. Oh, no.
Q. Now, you say that in 1902 you had some talk with him and you got more Chase machines?
A. Well, I didn't talk with Wilson at that time. I talked with Mr. Hutchinson.
Q. I understood you to say that that was a talk with Wilson?
A. No, sir.
Q. It wasn't?
A. No, sir.
Q. Who did you say it was with?
A. Mr. Hutchinson.
Q. What is his first name?
A. I don't know.
Q. Do you know whether he is with the United now?
A. I have been informed that he has been retired.
Q. He is dead; you knew that, I suppose?
A. No, sir.
Q. You knew Wilson was dead?
A. Yes, sir.

304 Q. And while he was alive you never told this story of your talk with him, did you?
A. I think I did.
Q. I have understood you to say you never testified to it before?
A. I don't recall whether I ever testified to it or not.
Q. You knew that he died about two years ago?

A. I knew that he died somewhere recently; yes, sir.
Q. Now, I understand you to say this talk with Mr. Hutchinson was in 1902?
A. I couldn't say. It was some time about 1901 or 1902.
Q. Is that your signature [showing witness lease]?
A. Yes, sir.
Q. That is a lease you signed, isn't it?
A. Yes, sir.
Q. How many Chase lasting machines did you get under that lease?
A. Five.
Q. One, two, three, four, five, six, didn't you?
A. Six; yes.
Mr. CHOATE. I offer this paper, if your honor please; it is dated the sixteenth day of January, 1904, by which the witness received six Chase lasting machines from the United Company.
[Lease between the United Shoe Machinery Company and the R. H. Long Shoe Manufacturing Company dated the sixteenth day of January, 1904, is marked "Defendants' Exhibit 68."]
Q. Now, were you intending to be perfectly frank with the court on Friday when you told them that Mr. Wilson wouldn't let you have any more Chase lasting machines back in 1899 or 1900?
A. Yes, sir; that was a fact.
Q. And that you were obliged to use Consolidated lasting machines because you couldn't get Chase lasters?
A. Yes, sir.
Q. Is that your letter [showing witness letter]?
A. Yes. That was in 1903, but conditions were different in 1903 than they were in 1899.
Mr. CHOATE. I offer this letter, if your honor please. It is dated August 7th, 1903.
[Letter from R. H. Long to the United Shoe Machinery Company dated August 7, 1903, is marked "Defendants' Exhibit 69" and is read by Mr. Choate as follows:]
"SOUTH FRAMINGHAM, MASS., *August 7, 1903.*
"UNITED SHOE MACHINERY CO., *Boston, Mass.*
"GENTLEMEN: Your favors of 1st and 6th at hand. Mr. John E. Long has charge of all the work in the factory, and he has no desire to use the Chase machines on work that can be done well on the Consolidated. The price for lasting is less on the Consolidated than on the Chase, and Mr. John E. Long and the writer are trying at all times to keep down the cost of labor and will use the Consolidated machines so far as possible."

305 Q. By the way, you were the writer, weren't you?
A. Yes, sir.
[The remainder of the letter is read by Mr. Choate as follows:]
"I believe we have six machines (Consolidated) four of them set up and have been running until yesterday. One operator left and we have a man to take his place to-morrow or Monday. I think the operators are satisfied and have been earning good pay. I think we will be able to run all the Consolidated machines we have to their full capacity as well as some of our Chase machines, and reports that have come to you saying we did not wish to use the Consolidated machines are not true. We are now advertising for cutters and stitchers, and when we get underway on the fall trade we expect to start the other two machines which would have been running now if we had enough help in cutting and stitching room.
"Yours, truly,
"R. H. LONG."
Q. Now, you say the conditions weren't the same in 1903 that they were when you had this talk in 1899 or 1900?
A. Yes, sir.
Q. Do you mean by that to say that while you could get the Chase machines in 1903, you couldn't get them in 1899 or 1900?
A. That is one of the things I meant to infer.
Q. All right. Let us see whether any statement of that kind you make is correct. Is that your signature [showing witness paper]?
A. Yes, sir.
Q. Is that your signature [showing witness another paper]?
A. Yes, sir.
Q. You have identified two leases, haven't you, one dated January 12th, 1900, for one Chase lasting machine No. 1140?
A. Yes, sir.
Q. And you have identified another lease dated July 23d, 1900, for four Chase lasting machines numbered 158, 323, 437, and 774, haven't you?
A. Yes, sir.
Q. So that about the time or immediately after you had this talk with Wilson you got five more Chase machines than you had before?
A. No, sir.
Q. Didn't you take those five?
A. I don't know whether those five were old leases changed over.
Q. Pardon me. Didn't you take those five machines?

A. I took those five machines. The lease is signed for those five machines at that time. I don't know when we got them.

Q. How are you going to explain that? You say you don't know whether those were overs or not?

A. I can explain it, if you wish me to.

Q. Well, is it that those were machines that you had before and were put on a new lease?

A. That may be.

Q. Well, is it the fact?

A. I don't know.

Q. We can tell by the numbers, can't we?

A. I think we can.

Q. Have you any other explanation to make except the one you have just offered?

306 A. Yes, sir.

Q. Well, let us have that.

A. When we went to Springfield from Belchertown, we were using Chase lasting machines, and after the United Company sent their agents around to request that we sign their new leases they also asked us if we wouldn't use the Consolidated machine instead of the Chase. They intended——

Q. Now, Mr. Long, what I gave you an opportunity to explain was why these were not additional machines, and I think you should confine yourself to that explanation. That is what you asked an opportunity to explain.

A. I don't know anything about whether those were additional machines or not.

Q. Let us see about that. You said you couldn't get any Chase machines; you said so Friday, after you had this talk with Wilson. I have now shown you a lease for five additional machines in the year 1900.

A. That might have been after——

Q. And you said that possibly those were machines transferred from some other place. Now, I ask you if you have any other explanation of the discrepancy between your statement Friday and your admission about these leases?

A. I don't find any discrepancy in my statement.

Q. Well, perhaps others do; but I say, have you any other explanation to make of that?

A. Yes.

Q. All right; what is it?

A. That those lasting machines, if they were furnished at that time, may have been furnished after we had used the Consolidated machines and become so disgusted with the work that they did that we told the United Company we would go back to hand lasting unless they would give us Chase machines.

Q. Now, have you any other explanation to make? I want to get all of them now, if you have got any others to make.

A. I don't think of any just now.

Q. And if none of those explanations are found to fit your statement of last Friday about not being able to get Chase machines, it is not true, is it?

A. No, I wouldn't say that. I haven't all the facts in regard to dates of these machines in mind.

Q. You said that we could easily trace these machines by the numbers, didn't you, to see whether they were transferred machines or new machines?

A. I presume you could.

Q. I show you a sheet which purports to give a list of the Chase lasting machines leased to the R. H. Long Manufacturing Company, beginning with the year 1893.

A. Yes, sir.

[List of Chase machines leased to R. H. Long Shoe Manufacturing Company is marked "Defendants' Exhibit 70."

Lease between the Consolidated & McKay Lasting Machine Company and R. H. Long Shoe Manufacturing Company dated January 12, 1900, is marked "Defendants' Exhibit 70 A."]

Q. I call your attention to the numbers of the machines in the two leases which you last identified, namely, 1140, 158, 323, 437, and 774. Will you examine the list of machines leased you that I show you, and tell me whether you find that you had those numbers, lasting machines of those numbers, prior to December 29th, 1899?

307 A. What is this supposed to be?

Q. A list of the numbers of Chase machines which you had.

A. I don't see how I can tell whether I got them before.

Q. Well, I ask you to look at the numbers.

A. I don't see any dates.

Q. I ask you to look at the numbers.

A. I see the number 1140 is there.

Q. And against that appears the date December 29th, 1899, doesn't it?

A. Yes, sir.

Q. And all the other numbers of machines in the two leases I show you are later than that date, 158, 323, 437, and 774?

A. Yes, sir.

Q. So that shows they were machines which you had not had before, doesn't it?

A. Yes.

Q. Now, it was about 1905 or 1906 that you started the Framingham Shoe Company?

A. It was about 1906 that the Framingham Shoe Company was started.

Q. Now, up to that time the R. H. Long Shoe Manufacturing Company had been taking some machines on lease from the United Shoe Machinery Company, hadn't they?

A. Yes, sir.

Q. And you wanted to escape the obligations of your leases, didn't you?

A. No, sir.

Q. Did the Framingham Shoe Company take leases of any machines from the United Shoe Machinery Company?

A. No, sir; not as far as I know.

Q. About that time you obtained control, did you not, of the Duplessis Shoe Machinery Company?

A. No, sir.

Q. I show you a copy of the "Evening News," a paper published in South Framingham, Massachusetts, of November 5, 1906, and call your attention to an advertisement published over the name of Richard H. Long. Did you publish that advertisement?

[A pause.]

Q. Did you publish the advertisement, Mr. Long?

A. My name is signed to it.

Q. Well, you caused it to be published, didn't you?

A. I think likely I did.

Q. Now, let me call your attention—

308 "VOTE FOR THE INTEREST OF YOUR TOWN—VOTE FOR VAHEY.

"The election of senator in this district is most important to the business interests of the towns of Framingham, Natick, Ashland, Holliston, Hopkinton, and Sherborn.

"The Framingham Shoe Company that is controlled by me has begun manufacturing shoe machinery. I have also become a director of the Duplessis Independent Shoe Machinery Co., a Canadian company, with a capital of $2,500,000, and I will finance and control that company. I am assured of all the money necessary to carry on the business of both companies named above in addition to the shoe factory now running and the new factory now being built."

Q. When you made that statement, was it true?

A. The statement is true.

Q. Wait a minute. When you made that statement, was it true?

A. Yes, it was a true statement, as far as my intentions——

Q. Wait a minute. I am not asking about intentions. It was true that you had become a director of the Duplessis Independent Shoe Machinery Company?

A. Yes, sir.

Q. And that that company had a capital of $2,500,000?

A. I believe so.

Q. And that you were assured of all the money necessary to carry on the business of both companies?

A. I was assured of it; but I didn't get it.

Q. "The Framingham Shoe Company is controlled by me and has begun manufacturing shoe machinery." That is true, is it?

A. That is true; yes, sir.

Q. That is, this simply wasn't a political advertisement, but it was true, was it?

A. It was, so far as I understood the matter at that time.

[Copy of "Evening News" dated South Framingham, Mass., November 5, 1906, containing above extract, is marked "Defendants' Exhibit 71."]

Q. And at just about that same time you removed the machinery of the United Shoe Machinery Company to your basement, or some other part of your factory?

A. Some time after that.

Q. And you did not return it to the Shoe Machinery Company?

A. Tried to.

Q. Well, you didn't return it?

A. No, sir.

Q. You simply have kept it stored there ever since?

A. They wouldn't allow it to be returned.

Q. I say you have kept it stored there ever since?

A. No, sir.

Q. Well, it is stored there to-day, isn't it?

A. No, sir.

Q. Where is it now?

A. It is moved to another factory.

Q. Well, under your control?

A. Yes, sir.

Q. Along with them, these twelve Chase lasting machines?

A. I don't know how many there are. I presume——

309 Q. Approximately twelve?

A. Whatever number was in the factory.

Q. Did you begin to install machinery from the Duplessis Company, which you said you controlled?

A. Yes, sir.

Q. Now, did you, about that time, cause a Goodyear welting machine to be shipped over to New York and there taken to pieces and copied?

A. No, sir.

Q. Was it done with your knowledge?

A. Not with my knowledge.

Q. Was any kind of a machine that you obtained from the United Shoe Machinery Company to your knowledge——

PUTNAM, J. What do you want to show by this, Mr. Choate?

Mr. CHOATE. There is a good deal of litigation between this gentleman and the United Company, and I want to show the cause of it. As bearing upon his feeling toward the company and the reasons why litigation followed, it is important. Our claim is that he took one of our machines over to New York and in a dark room had it taken down and copied, and that then there was suit brought against him.

PUTNAM, J. He denied it. You don't want the details, do you?

Mr. CHOATE. Not if he persistently denies it.

PUTNAM, J. You don't need to go into the details.

Q. Did you have a stitcher taken down and copies of it made?

A. I didn't have it.

Q. Well, was it done with your knowledge?

A. No, sir.

Q. Was it done in your factory?

A. I don't know. I have heard it was.

Q. It was a machine that had been leased to you by the United Company?

A. I don't know about that. I am not familiar with it.

Q. Now, just a minute, Mr. Long. You have heard that a stitching machine of the Goodyear Company while in Framingham, in and about your factory, was taken to pieces and copied, haven't you?

A. Yes, sir.

Q. And it was done by men in your employ, wasn't it?

A. I don't know. I have heard that it was.

Q. Well, you know the men who did it?

A. No; I don't know the men who did it.

Q. Well, you know the names of the men whom it is said did it?

PUTNAM, J. Come right to the point: Did any litigation arise over it or not?

Q. You subsequently had a machine which was copied from that machine, didn't you?

310 PUTNAM, J. That wasn't opened in direct examination.

Q. Give me the question again.

Q. You subsequently had a machine in your factory which was copied from that machine which you heard was taken down, didn't you?

A. There was a machine built in the factory of the machinery company that your company said was a copy of theirs.

Q. It found its way into your shoe factory, didn't it?

A. Yes, sir.

Q. And was being used there?

A. I don't know about the use of it.

Q. And the result of that was litigation between you and the United Company?

A. I don't know that that was the result. There has been litigation.

Q. How many suits are pending between you and the United Company?

A. I couldn't tell you.

Q. Well, five or six which are in the process of trial?

A. There are quite a number.

Q. In which it is claimed you have infringed the patented machines of the United Company?

A. I believe they claim that.

Q. How many machines besides this one have you had taken to pieces and copied?

PUTNAM, J. Mr. Choate, I think you are going too far.

Mr. CHOATE. Very well, sir. I won't press that question.

Q. Now, you told this story about your credit being attacked at Washington, didn't you, a year ago?

A. Yes, sir.

Q. And you were given the fullest opportunity to tell everything that you wanted to, weren't you?

A. I was asked questions.

Q. Well, you told your story as you wanted to; isn't that right?

A. I told some of the story.

Q. Did you mention to the Committee on the Judiciary, to whom you told your story, anything about the Chapin National Bank of Springfield?

A. I told them ——

Q. Did you mention ——

PUTNAM, J. It is out of the case, Mr. Choate.

Mr. CHOATE. Well, the talk with Mr. Dwinnell is out of the case.

PUTNAM, J. It is all out of the case.

Mr. CHOATE. Very well, sir. I think you are right. I won't press that.

Q. Have you got a catalogue of the shoe machinery that you purport to manufacture?

A. Yes, sir.

Q. Let us see it, please.

(A catalogue is produced by the witness.)

Q. Is this a current catalogue?

A. Yes, sir.

Q. I mean as of the present time?

A. Yes, sir.

Q. And how long ago was this in print?

A. One month.

Q. Is it the first catalogue that you have ever put out?

A. No, sir.

311 Q. Have you got the previous one?

A. Yes, sir.

Q. Let me see that, please.

[Another catalogue is produced by the witness.]

Q. The yellow-covered catalogue that you show me—when was this in print?

A. About two years.

Q. These catalogues are reasonably truthful, are they?

A. I didn't have them printed. I think they are reasonably truthful; yes, sir.

Q. Well, do you stand for them? Is it true that your company has for sale and is in the market to supply the machines that those catalogues purport to——

PUTNAM, J. How does that come in?

Mr. CHOATE. He was asked with reference to his manufacture of machinery, and what he had done with it, and where he had been able to market it.

PUTNAM, J. He wasn't asked about it at the present time.

Mr. CHOATE. On his direct examination he was, sir.

PUTNAM, J. About the present?

Mr. CHOATE. I think so.

Q. What I mean is, you stand behind these catalogues?

A. That first catalogue I have sold a good many machines from. In that one we are not yet ready to put the machines out.

PUTNAM, J. Where was that brought out on direct examination?

Mr. CHOATE. He testified he had been in the shoe machinery manufacturing business since 1907, and he testified about marketing some of his machines and not marketing others.

PUTNAM, J. Well, about marketing at the present time?

Mr. CHOATE. I think he was speaking of the period all the time from 1907 to the present.

Q. The machines in the blue-covered catalogue are machines that you have either manufactured or are ready to manufacture for customers?

A. Some of these we are ready to supply customers and some we are building.

Q. There seems to be a list of fifty machines on page 3. Are those machines there described on page 3 machines for the manufacture of welt shoes?

A. Yes, sir.

Mr. CHOATE. I should like to put these two catalogues in the case, if the court please. The green-covered one should be numbered first. It is the later one, but the one first produced.

[Green-covered catalogue of The R. H. Long Machinery Com-
Company of machinery and needles is marked "Defendants' Exhibit 72."]

312 Yellow-covered catalogue of The R. H. Long Machinery Company of Waldorf rapid lockstitch and repair machines is marked "Defendants' Exhibit 73."]

Q. I call your attention to page 367 of the yellow catalogue, Exhibit 73, to plate 5. What does that purport to show?

A. Parts of a machine, wrenches, screwdrivers——

Q. Parts of what machine?

A. Parts of a rapid lockstitch machine.

Q. The Waldorf rapid lockstitch machine?

A. Yes, sir.

Q. I call your attention to the catalogue of the Goodyear outsole rapid lockstitch machine, plate 7, and ask——

PUTNAM, J. What is this for, Mr. Choate?

Mr. CHOATE. In the first place, to show the animus and state of mind of the witness; and, in the second place, to show the extent to which he is supplying or is able to supply customers with shoe machinery.

PUTNAM, J. After you have got these things in you have got to ask him to explain them. Why not ask him to explain them without any further interrogation about them?

Mr. CHOATE. I assumed that your honors would when convenient examine the catalogues.

PUTNAM, J. No, sir.

Mr. CHOATE. Or that counsel would call the catalogues to your attention.

PUTNAM, J. The time to call them to our attention is now, so we can see what they are good for.

Mr. CHOATE. I will do that, sir.

PUTNAM, J. What is your purpose, to show the competition or to show the extent of his dealings?

Mr. CHOATE. To show the extent of his dealings, and his ability to deal, and also to show his attitude toward the United Shoe Machinery Company.

PUTNAM, J. The extent of his dealing—what do you claim about that?

Mr. CHOATE. Let me show your honors this catalogue.

PUTNAM, J. I don't care about the catalogue. What do you claim have been his dealings?

Mr. CHOATE. We claim he represents he is prepared to supply not less than fifty machines for the manufacturing of welt shoes, most of which relate to the bottoming room—the rapid out-sole stitcher, welt-sewing machine, buffer, scourer, lasting machines, channelers, turners, and so on. There are cuts in this catalogue of machines for performing a great many of the operations in the bottoming room, of which it is said that the United Company has control.

PUTNAM, J. What do you say about this, gentlemen?

BROWN, J. On pages 1134 and 1135 he was interrogated as to his efforts as a manufacturer and seller of shoe machinery.

Mr. FOWLER. We are not objecting if Mr. Long is allowed to state fully the number of machines he has out and the number he has on hand that he can put out.

PUTNAM, J. We don't want anything except what relates to machines or parts that the Shoe Machinery Company controls.

Mr. FOWLER. As I understand it, it wholly relates to that character of machines.

313 PUTNAM, J. What character?

Mr. FOWLER. That we allege that the Shoe Machinery Company does control. That is my impression; I am not sure.

PUTNAM, J. Get through it as quickly as you can, Mr. Choate.

Mr. CHOATE. For instance, he does market an out-sole rapid lock-stitch machine.

PUTNAM, J. That is not one of the Shoe Machinery Company's machines.

Mr. CHOATE. Our machine which makes the welt is the Goodyear out-sole rapid lockstitch machine; that is the name of it.

PUTNAM, J. He doesn't advertise the Goodyear lock-stitch machine?

Mr. CHOATE. He doesn't call it the Goodyear.

PUTNAM, J. There has been a good deal of testimony about out-sole machines which have nothing to do with this case.

Mr. CHOATE. He doesn't call it a Goodyear; he calls it an out-sole rapid lockstitch machine. Then he advertises a welt and turn machine. We also have a Goodyear welt and turn machine; then the insole channeling machine——

PUTNAM, J. Get at it as fast as you can.

Q. I call your attention to the Goodyear out-sole rapid lockstitch machine in this catalogue, plate 7. Is your plate 5 an exact reproduction of that?

A. It looks like it.

Mr. CHOATE. I ask your honors' attention to that. That is his catalogue; this is ours. It is obvious that his plate 5 is a reproduction of our plate 7.

Q. You even went so far as to copy the numbers of the parts, didn't you?

A. What do you mean by that?

Q. I mean just exactly what I say. You have got the same numbers for each of the parts. This is 1269 in yours and it is 1269 in ours?

A. Yes.

PUTNAM, J. The question is whether he has put out the same machines which the United States says the defendant company controls.

Mr. CHOATE. This goes a little bit more into detail than that. However, I won't spend time on it.

PUTNAM, J. It is only a matter of detail.

Q. You said something about what you had done with reference to getting your welter or your stitcher on the market?

A. Yes, sir.

Q. You are familiar with the names of some of the parts of the welter and stitcher, aren't you?

A. I presume I am with some of them.

Q. You know what the Baltimore attachment is?

A. Yes, sir.

Q. Did you offer your stitcher with the Baltimore attachment on it?

314 A. I did not.

Q. Or the Holmes attachment?

A. No, sir.

Q. Isn't it a fact that practically every up-to-date shoe manufacturer of welt shoes wants the Baltimore and the Holmes attachment on the stitcher?

A. No, sir.

Q. Did you offer on your welter the device called the thread release?

A. I don't think so.

Q. Or the take-up, the device known as the take-up, on the welter?

A. I didn't offer it.

Q. You didn't offer it in connection with the welter and stitcher you put out?

A. I am not familiar with the details of those machines.

Q. You are familiar enough to know those particular attachments of which I have just spoken?

A. The Baltimore edge and the Holmes; yes. I will explain that if I have an opportunity.

PUTNAM, J. You will have an opportunity, Mr. Long.

Mr. CHOATE. That is all, Mr. Long.

Direct examination resumed:

Q. Mr. Long, how many rapid outsole stitching machines have you on hand now that you could place upon the market if you had orders for them?

Mr. CHOATE. Isn't that a matter which should have been gone into on direct examination?

Mr. GREGG. You have been going into it on cross-examination.

PUTNAM, J. That is the reason I checked the cross-examination.

Mr. CHOATE. If your honor please, the question of Mr. Long as a manufacturer of shoe machinery was gone into by the United States in its direct; he was asked as to what kind of machines he manufactured, and he was asked about what he had done in the way of marketing them.

PUTNAM, J. Yes, but you developed some entirely new matter.

Mr. GREGG. I didn't ask him how many he had on hand, and the catalogues have gone in here showing he has a complete line of shoe machinery. Now, I want to show how many machines he has on hand and could put out if he had orders for them.

PUTNAM, J. Go on, Mr. Gregg.

A. I have on hand three or four hundred.

Q. What kind of machines?

A. Rapid outsole lock-stitch machines.

Q. How many welting machines do you have on hand?

A. Thirty or forty.

Q. And lasting machines?

A. Twenty to twenty-five or more.

Q. And heeling machines?

A. Three or four.

Q. And metallic fastening machines?

A. I don't think we have any fastening machines; we are building them.

Q. Do those machines you have enumerated include the machines you are using yourself in your factory?

A. No, sir.

315 Q. You were asked on cross-examination whether or not you had any interest in the Duplessis Shoe Machinery Company?

A. Yes, sir.

Q. What was the amount of the interest you had in that company, or have now?

A. I was given one share of stock so I could qualify.

Q. Is that all you have been given?

A. Yes, sir.

Q. Do you own that share of stock now?

A. I don't know whether I do or not.

Q. What has become of the Duplessis Company, if you know?

A. I understand that they have been removed to Canada.

Q. Do you know whether or not they are doing business in this country?

A. I am informed they are not.

Q. A number of letters have been introduced, written by you to the United Shoe Machinery Company and the Eppler Welt Machine Company and the United Shoe and Eppler Welt. Those letters were practically all of them written shortly after the United was formed, were they not?

A. I believe they were.

Q. They all show dates, with the exception of two or three, in 1899?

A. Yes, sir.

Mr. CHOATE. We will put in all we have got, if you want, Mr. Gregg. I didn't want to make too much of a mess of that stuff. We will show every order——

Mr. GREGG. Will you show that these requests for parts were filled?

Mr. CHOATE. Yes.

Mr. GREGG. I think that ought to go in with the letters.

Mr. CHOATE. We will put them in now, if you want them—the letters.

Q. You were asked what you had done with the United machines you took out of your factory when you installed your machines. Why didn't you return those machines to the United Shoe Machinery Company?

A. I called at the office of the United Shoe Machinery Company to get permission to return them.

Q. Whom did you see there?
A. I saw Mr. Donham.
Q. What did he tell you?
A. He said they wouldn't do anything about it. I don't remember just his words.
Mr. GREGG. That is all.
Mr. CHOATE. Just one question, please.

Cross-examination resumed:

Q. Were you the possessor of this one share of stock in the Duplessis Company when you published that advertisement?
A. I think so.
Q. Is that a fair illustration of the extent to which your words exceed the facts, do you think?
A. If I am allowed to explain, I can.
Q. Just answer that question.
Mr. GREGG. If the Court please, I don't think that is material at all.
PUTNAM, J. That is rather too broad a field.

316 JUNE 6, 1913.

FRANK L. HARMAN, witness for the United States.

My name is Frank Leslie Harmon. I live at Beverly. Since I have been there I have been employed by the United Shoe Machinery Company in inventing and developing machines and collecting material for a history of the United Shoe Machinery Company. I am now in the employ of that company. I have invented buttonhole machines, buttonhole finishing machines, tacking and nailing machines, sewing machines, finishing machines, etc. I developed to a certain stage of perfection a skiving machine, skiving and folding machine, buttonhole machine, and buttonhole-finishing machine. I have most of these machines. I conferred with Mr. Winslow in 1905 about a skiving machine. I was then engaged in experimental work for myself on Rantoul Street, Beverly. I had no practical business ability, that is, experience in business, and I came to him with the idea of getting information. He gave me some very good advice. Mr. Winslow said I was foolish to try to go into the machinery business with the little capital I had, that all the companies were coming together to build machinery on a large scale and that he thought I would lose time and money if I did. The substance of his conversation was that I could not compete with millions of dollars with a few hundreds or a few thousands in manufacturing shoe machinery.

I have that skiving machine yet. Later I sold a skiving machine that I invented afterward to the United Company. That was two years ago; also the Eureka die block.

(Here the United States offered to prove that witness sold to the United Company a skiving machine and Eureka die block for one hundred dollars because he could not market his machinery in opposition to the United Company. The evidence was excluded on the ground that the matter was not alleged in the bill.)

317 Cross-examination:

By the large companies which were coming together, I meant those which made up the United Company.

My conversation with Mr. Winslow was prior to the coming into existence of the United Company.

318 JUNE 6, 1913.

S. BURTON MCNAMARA, witness for the United States.

My name is S. Burton McNamara. I reside in Haverhill and am in the S. B. McNamara Company which manufactures turn shoes and is interested in numerous shoe companies for boys' shoes. It also manufactures McKay sewed shoes. Our daily capacity at present is about one hundred and fifty dozen in turn and seventy-five dozen in McKay

The greater part of our machinery is nonroyalty machinery. We use two nailing machines, two slugging machines, and a burnishing machine from the United Company in the turned factory. The nonroyalty machines we use are the Lincoln, the Duplessis, and the Fox machines on sewing, and nonroyalty heel burnishers, nonroyalty shaving machines, and practically all the rest nonroyalty machines.

We do not make any welt shoes. We use the Duplessis stitcher. Five or six years ago, after we had installed it, the United Company made some objection in writing. We got a notification. I think it was from one of their attorneys. Later it was an infringement suit. We now have the United Company's heel nailing machine. At that time we had two but later we had to have another and got a nonroyalty machine and paid nine hundred and sixty dollars for it but it did not do the work so later we got one from the United Company which did the work.

Cross-examination:

The notice I received was an infringement notice relating to the Duplessis machine. It was a notice that the Duplessis machine I was using was an infringement. The machine I paid nine hundred and sixty dollars for was a Fox machine, and it was not satisfactory on high heels. We were running

319 nonroyalty machines on stitching and, of course, as I understood it we could have the United Company's heel nailing machine for $500 outright and continue to use our

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machines, or if we saw fit we could put in their turned sewing machines and have it on a royalty basis alone. We decided we would take it on the $500 basis. The two slugging machines, two nailing machines, and the burnishing machine that we have from the United Company we had had on leases since before the United Company was formed. They were machines that came from the old McKay Metallic Association. We have continued to hold them on the old leases ever since. We have not been disturbed in their use. We have used them in connection with all kinds of other machines, as we agreed to.

320 JUNE 6, 1913.

HARRY E. CILLEY, witness for the United States.

My name is Harry E. Cilley. I reside at Rindge, New Hampshire. I have been in the shoe machinery business, but have no place of business at present. I started in that business in 1893 at 118 South Street when I had a small manufacturing plant, manufacturing weighing machines and scales, known as the American Scale Manufacturing Company. In April, 1893, we started a draughtsman at work on the designing of a leveling machine. I was associated in the shoe machinery business with Mr. Edward C. Judd under an agreement. For two years there was a patent interference suit and the machine was only used experimentally. On account of something lacking in the design of the machine and its operation, in 1895 the machine was redesigned. That machine was put in the factory of D. B. Clausen and Company at South Braintree and was operated successfully until a different form of shoe going through the factory made necessary changes in the mechanism and it was brought to Boston and the changes made.

321 After the formation of the United Company I had a conversation, in the fall of 1901, with Mr. E. P. Hurd at Mr. Hurd's office.

Q. What was the occasion of your visit to Mr. Hurd?

A. It was because——

Q. For what purpose did you go to see him?

A. Well, there is a little explanation attached to that.

Q. Well, go ahead.

A. After the formation of the United Shoe Machinery Company it changed conditions.

Mr. CHOATE. I will have to object to this.

BROWN, J. Give the conversation.

Q. What was the conversation you had with Mr. Hurd at that time, the substance of it?

A. I went to Mr. Hurd's office with Mr. Judd, and after, as I remember it, the introduction, Mr. Hurd said: "Why is it you

didn't place this matter before Mr. Winslow? You knew Mr Winslow"——

Q. What matter was that—place what matter before Mr. Winslow?

A. Mr. Judd had seen Mr. Hurd before, and I replied that I didn't know Mr. Winslow, and that as I understood it a mutual friend of Mr. Judd's and Mr. Winslow's had mentioned the matter to Mr. Judd.

Q. Well, mentioned what matter?

A. The matter that we were—that was before Mr. Hurd.

Q. Well, what was it, what was the matter?

A. You mean in effect, or——

Q. No; what was the subject of your conversation with Mr. Hurd; what did you discuss with Mr. Hurd?

BROWN, J. What were you talking about?

The WITNESS. We discussed almost everything that was connected with the shoe machinery situation.

PUTNAM, J. That is what we are doing now.

Mr. GREGG. I agree with your honor.

Q. Did you discuss with Mr. Hurd the sale of your shoe machinery business?

A. Yes.

Q. Was that the subject of the conversation that you had with Mr. Hurd?

A. That was part of it; yes.

Mr. Hurd said: "I have to report that all the reports of those who have investigated the machine at the M. N. Arnold factory are most of them satisfactory." That was our machine, known as the Universal leveling machine. He said their patent department gave us a clean bill of health and asked if we had a proposition to make. I said that I had none, but wanted to place

322 the matter before Mr. Hurd, as I was satisfied the United Company controlled the welt manufacture and to a considerable extent the McKay manufacture. Mr. Hurd said that the McKay situation was perhaps affected more than I thought. I gave Mr. Hurd, who was assistant treasurer of the United Company a statement of costs incurred in promotion of our business. I made no proposition to Mr. Hurd. Mr. Hurd made no proposition to me except that he said at the last meeting with him, "Cilley, you are thick. If you were offered fifteen or twenty thousand dollars I think under the circumstances you ought to be very well satisfied." I said, "Mr. Hurd, that would be outrageous." He said, "Well, I think we will offer you thirty thousand dollars. You will hear from us again." That was the way the matter was left. I have never talked with or heard from

him again. Mr. Hurd said at the meeting, "This is not an eleemosynary institution"; and he said, "You can't do any business except on our sufferance, and you can't get a new dollar for an old one." Mr. Hurd spoke of the situation which existed in the shoe machinery business. And, of course, there was competition between these three companies—and that the competition would have increased greatly, resulting eventually in a fight or war between these various companies.

(It was admitted by counsel for the defendants that Mr. Hurd at that time was a director and member of the executive committee as well as assistant treasurer of the United Company.)

JUNE 10, 1913.

Cross-examination:

I have been engaged in litigation with the United Company for a long time.

Q. And you have been, I suppose, preparing yourself to testify in that case, haven't you?

A. I prepared myself, I believe, some months ago.

Q. And you have been getting your story ready to tell in that case?

A. I have been over all the matters; yes, sir.

My case has been pending since 1903 in this court—the District Court of the United States. I had several talks with Mr. Hurd. Naturally, I have talked a good deal about my case.

323 JUNE 10, 1913.

JOSHUA S. HOLT, witness for the United States.

My name is Joshua S. Holt. I live in Boston. I am a dealer in shoe machinery. I talked with Mr. Bailey, of the United Shoe Machinery Company, in reference to Mr. Long's business about two or three years ago, at the office of the United Company. I do not know what position Mr. Bailey had with the United Shoe Machinery Company. I saw Mr. Bailey at the office of the United Company on Lincoln Street, in Boston. As to what purpose I had in going there, I do not know that I had any special business there that day, but I often went there on matters concerning that kind of business, buying and selling their goods. I buy from them and sell their goods. It was during one of those visits to the United offices that I had this conversation with Mr. Bailey.

(After it was said by Mr. Choate that Mr. Bailey was not an officer but a salesman of the United Company, the United States offered to prove that on the occasion mentioned Mr. Bailey said to the witness in substance that it was useless for Mr. R. H. Long to continue in the shoe machinery business for the reason that he

would not be able to get money to carry on the business, due to the fact that the United Company and its interests controlled the banks of Boston and to the suggestion that he might get it in New York, replied, "We control the banking interests in New York as well as in Boston." The evidence was excluded, on the ground that Bailey was not shown to be an officer of the United Company, merely an employee, and that the conversation was not directly connected with any business of the United Company.

324 JUNE 10, 1913.

PETER TESSIER, witness for the United States.

My name is Peter Tessier. I reside in Haverhill, Mass. I was engaged in shoemaking, but am not working at present. I was engaged in shoe manufacturing in Haverhill until five or six years ago, when I became blind. I had the Goodyear and Duplessis sewing machines. I had the Goodyear first. Octave Paquette, the United agent at Haverhill, after I installed the Duplessis sewing machine, came and gave me a letter signed by the United Shoe Machinery Company.

PUTNAM, J. What is the object of the testimony? What is the reason for objecting to it?

Mr. GREGG. I propose to show that they objected to his use of the Duplessis machine.

PUTNAM, J. You have shown beyond all doubt, so far as the case now stands, that the Shoe Machinery Company insisted upon those conditions, enforced them, and the construction they gave to them. What is the object of piling these up? Why should you object to it, Mr. Choate? It is simply carrying out the terms of the lease.

Mr. CHOATE. I do admit that they carry out the terms of the leases.

Mr. GREGG. If the defendants will admit that in all cases they have insisted that the provisions of those leases have been strictly complied with, we can eliminate all this testimony.

PUTNAM, J. They would not admit that and it would not amount to anything if they did. You have shown that in the case of these large manufacturers it was insisted upon. The question is not whether it was always insisted upon, but whether it restrained trade in any instance.

Mr. CHOATE. I will make an admission if it will help Mr. Gregg and he will accept it: Mr. Tessier had some welt sewing and turn machines with our auxiliaries. We got our royalty from the use of the principal machines. He discontinued the use of the principal machines and put in a Duplessis machine, but con-

tinued to use our auxiliaries, for which he paid nothing. After advising him that that was contrary to both the letter and the spirit of the leases, he continuing the practice, Mr. Brandeis' office brought a replevin writ and our machines were replevied, he consenting to judgment. That is the whole story, shown by court records. Now, if you will accept that I will give you that as an admission, Mr. Gregg.

PUTNAM, J. What do you say about that, Mr. Gregg?

Mr. GREGG. If the court please, as I understand it this man was using more than the Goodyear auxiliary machines at that time. He was not only using the machines in the Goodyear department, but also was using other machines. I have a copy of the letter here that was copied from an affidavit that was filed. I don't know whether Mr. Choate will admit that it is a correct copy or not.

Mr. CHOATE. You may put this in as an exhibit if you wish.

(Copy of letter dated March 3, 1904, from United Shoe Machinery Company, S. W. Winslow, president, to Peter Tessier and Company is marked "Plaintiff's Exhibit 158.")

The WITNESS. The United Company removed all its machines from our factory at that time. I had machines that took the place of them.

BROWN, J. Could you get machines to take the place of them?

The WITNESS. From Duplessis.

Q. Machines for performing similar work?

A. Similar work.

Q. Could you get all of those machines from the Duplessis Company that you had from the United for performing similar work?

A. Yes, sir.

325 Cross-examination:

When the United Company took its machines out we already had the Duplessis machines in our factory.

(It was agreed by the United States that Mr. Brandeis' office brought a replevin writ in behalf of the United Company and the machines were taken.)

326 JUNE 10, 1916.

FRANK R. HILLIARD, a witness for the United States.

My name is Frank R. Hilliard. I reside in Haverhill, Mass. I am a manufacturer of boots and shoes. I make women's welts, turns, and McKays. My factory has a capacity of about four thousand pairs per day. I engaged in the turned business, using machinery, about 1891. I was making turns, welts, and McKays in 1899, when the United was formed. I had

Goodyear welt sewing and out-sole stitching machines only at that time. We were not using lasting machines. We had the National nailer—no metallic machines. At present we are using exclusively the United machines. About a year and a half ago we attempted to install the Haverhill Shoe Machinery Company's turn sewing machine. At that time we had machines from the United Company for performing work similar to the work performed by the Haverhill machine. I had a conversation with Mr. Winslow after we had been running it four or five months. I was in his office and he brought the matter up. Mr. Winslow stated that we were using that machine contrary to our lease and that we would either have to change the lease and the contract with them, or stop using the machine. The Haverhill machine was put in on trial and it did satisfactory work. As to whether we had bought the Haverhill machine, at the time this matter came up we had made no arrangement whatever with the Haverhill Company. We could have it on royalty or by purchase.

Q. Was it this objection of Mr. Winslow's that caused you to return the Haverhill machine?

A. Why, partially; perhaps wholly.

Q. Sir?

A. It certainly was partially.

Q. Well, what were the other reasons?

A. Well, as I said before, the machine was in on trial, and we hadn't come to any absolute conclusion in regard to the matter.

Cross-examination:

I had this sewing machine for turned shoes for four to six months before I had this talk with Winslow without anything in the way of formal protest or objection. The occasion of my talk was an occasion when I had gone to the United Company's office on business and happened to meet Mr. Winslow. I had the Goodyear turn machine on a noninitial premium lease 327 where I simply got the machine and paid for it according to the extent I used it. I had United Company auxiliaries with it. I took the Haverhill machine on trial and used those auxiliaries with the Haverhill machine. I was not paying a copper to the United Company for those auxiliaries. Mr. Winslow called my attention to the fact that I was not observing the obligations of my lease, which was to use the Goodyear auxiliaries only with the Goodyear principal machine. I said, "That is true." I was told that if I wanted to use the Haverhill machine I could change my lease and take another form of lease which would make it all right. He offered to give me that form

of lease. I took it under consideration and decided to retain the old form. There was no threat or coercion and the election was my own choice and was satisfactory to me. It was left to me to decide which I preferred. Everything was perfectly courteous and businesslike.

Direct examination resumed:

Mr. Winslow submitted a proposition to me for a change of these leases. The change which was to be made, provided we retained the Haverhill machine, was that we were to pay for the machines which we had. He did not say anything about paying an installation charge for the machine. The regular price for the machine, as I understood it. As to whether I mean by that, to buy the machine outright, I think so. We had all kinds of their machinery in. It would have been all kinds of machinery that we had. I can't state positively whether Mr. Winslow offered to sell me Goodyear turn sewing machines at that time. The way he stated it to me, it wasn't a proposition that I cared to consider at all. He did not fix the price for the machines; just said that he would have to change the leases. That was all that was said in a definite way in regard to the machines or the price to be charged for them that I remember.

328 JUNE 10, 1913.

ERNEST BOTTOMLEY, a witness for the United States.

My name is Ernest Bottomley. I live in Haverhill. I am a shoe manufacturer. I make McKay shoes. I first engaged in the shoe manufacturing business in 1888. I was making turn shoes in 1903. I had part United Machines, part Duplessis at that time. I had the turn machine, the loose nailer, the slugger and staple tacker from the Duplessis, also nailing and stitching machinery. I had a sole rounder from the United Company and several others. Prior to getting the Duplessis stitching machine I had a Goodyear stitching machine which I ceased to use when I got the Duplessis. Colonel King, of the United Company, came to the factory and talked about the use of the Duplessis and said I would have to use one or the other. The United machines were taken out in 1903 or 1904 and I continued to use the Duplessis. Later I changed to the manufacture of McKay shoes, about 1906. I went to the United Company then to obtain machinery for the manufacture of McKay shoes. I saw Mr. Wilson. Mr. Wilson said in substance that I should have to take out the Duplessis machines before I could get the machinery for McKay shoes. I would have to pay royalties for the shoes that were sewed on the Duplessis machines after the United Machines were withdrawn. I couldn't say that he said that. I was given to understand that.

I paid the royalties. I disposed of the Duplessis machines. I use United Company machines exclusively now except some machines we buy outside such as a buffer, rounder, or something of that kind. The sewing machines we use are not United machines. We use McKay machines, the old McKay.

Cross-examination:

We are making only McKays now. Gave up making turn shoes in 1903 or 1904. The turn shoe business was not steady and we thought we could get business in McKays practically ten or eleven months. It was a change in business policy owing to lack of demand for turn shoes. I thought McKays would
329 be better business for us. The Duplessis stitcher is not used in making McKay shoes. We used it for turn shoes only, and when we stopped making turn shoes we hadn't any further use for the Duplessis stitcher. We have machines in the stitching room where uppers are made which we did not get from the United Company. Outside of the eyeletter, everything else comes from some other source. There are a great many machines in the stitching room and very important ones. That is where the upper is cut out and the linings inserted and the parts sewed together. The tips are attached there, and whatever decorations are put on the upper are put on there. A number of finishing machines we get from sources other than the United Company. Our output is about seven hundred pairs. Including the stitching room machinery, less than fifty per cent of all our machines were obtained from the United Company. When I had this talk with Colonel King I had first installed Goodyear machines for doing turn work and had taken one or more turn sewing machines and some of the auxiliaries that went with them. The royalty paid for the use of the turn sewing machine and the auxiliaries is kept track of by the indicator upon the sewing machine, the principal machine. After I had used those for a while I took one or more Duplessis turn sewing machines and stopped using the turn sewing machines obtained from the Goodyear Company. I do not think we used any of the Goodyear auxiliaries with the Duplessis turn-sewing machine. I can't say definitely now.

Q. You won't be certain of that, will you, sir?

A. No, sir.

Q. You either used them or stopped using them; that is true?

A. Surely.

Q. In the first alternative, of course, you weren't paying any royalty to the Goodyear Company for the use of its Goodyear machines?

A. If we used them, we were.

Q. But there wasn't any way of keeping track of their use?
A. The loose nailer and the staple machine.
Q. I am speaking of the auxiliary machines that go with the turn set.
A. We shouldn't be using those, as near as I could recall, after putting in the other.
Q. Let us take it that you weren't using them. That is, when you put in the Duplessis machines you simply stopped using the Goodyear machines?
A. Yes.
Q. Why did you stop using them? Because you didn't want to use them any more?
A. We had no choice in the matter.
Q. You preferred to use the Duplessis machines?
A. Yes, sir.
When we stopped using the Goodyear turn machine and auxiliaries they remained idle about two months, and were then removed by the Goodyear Company. Before they were taken out I wrote the letter which is produced. [Letter reads:]

"HAVERHILL, *Jan. 25, 1904.*

"UNITED MACHINERY CO.

"GENTLEMEN: We have carefully considered the matter about which your Mr. King was in to see us about the 21st inst., and have concluded to continue using the Duplessis sewing machine. We also give notice that we shall not pay any royalty for shoes sewn on machines leased to Eldredge & Demeritt hereafter, as we have discontinued using same.

"Respectfully, yours,

"(Sgd.) E. BOTTOMLEY & Co.,
"By E. B."

This letter, dated January 25, 1904, from E. Bottomley and Company, to the United Shoe Machinery Company, was introduced and is marked "Defendants' Exhibit 74."

330 Our turn stitcher and auxiliaries had originally been leased to Eldredge and Demeritt. We held them under an assignment. This letter was a notice that we proposed to use the Duplessis machine and wouldn't pay any more royalty on the Goodyear machines, and the Goodyear machines were taken out. I had two talks with Colonel King about the matter, one at his office and one at ours. I do not remember whether the Eldredge and Demeritt lease was the noninitial payment form or not. I couldn't say whether I had any talk with Colonel King as to whether I would take Goodyear machines on initial premium lease. I can't say one way or the other. I did not understand Colonel King to suggest that I could keep the Good-

year machines together with the Duplesses if I took the Goodyears on the initial premium leases. I don't say that suggestion was not made to me; I say I didn't so understand it. I understood I should choose between the Goodyear and the Duplessis machines, that I was free to choose whichever of those I liked. I considered it and made a free choice. As a business probability if I was running shoes through the Duplessis machines I wouldn't use the Goodyear machines.

Suit had been brought against me for infringement of the United Company's patents, with respect to devices used on the slugging machine and the loose nailer. There were two suits, and the sum paid when I took the McKay machines may have been partly in settlement of them. The infringement suits were then discontinued.

Direct examination resumed:

I entered into a written contract with the United Company when I took the machines for McKay shoes. About sixty to seventy per cent of our bottoming-room machines are from the United Company. All our lasting, heeling, and metallic fastening machines were supplied by the United Company. We have none of the United Company's sewing machines. We have two old McKay sewing machines not obtained from that company.

331 Cross-examination resumed.

Q. How many lasting machines have you got?

A. Two.

Q. How many heeling machines have you?

A. One.

Q. That makes three you have from the United. How many metal-fastening machines have you got?

A. One.

Q. That makes four. What else have you got from the United?

A. Two tackers.

Q. That is six. What else?

A. Well, some stock-fitting machinery.

Q. Is that machinery that you bought?

A. Part of it. The rounders we use are not the United. But the channeling machines and some of those machines——

Q. Can you think of any machines except those six upon which you pay royalty?

A. No, sir.

Q. Haven't you got more than twelve machines in your factory where you turn out over a thousand pairs of shoes?

A. I didn't say a thousand.

Q. How many did you say?

A. Seven hundred.
Q. Well, 700, then. You have more than twelve machines in your factory?
A. I presume so.
Q. You have over a hundred, haven't you?
A. Including stitching room machinery, we probably have.
Q. One hundred and fifty?
A. No.
Q. Now, you have named six machines you get from the United out of 100. Can you name any more?
A. Well, there are several more small machines in the stock room that come from the United.
Q. Ones you buy, or ones you pay a royalty on?
A. Some we buy; some we make initial payment; some we pay rental.
Q. Can you name any others you pay rental or royalty for?
A. I can't recall now.
Q. When you say "several" you mean two or three?
A. May be two or three; may be four or five.
Q. Very well. Take the larger number. That would be not over ten machines out of a hundred?
A. I can't state exactly—only approximately.
Q. So am I. That is ten out of a hundred?
A. Possibly.

Direct examination resumed.

Q. What is the daily capacity of your factory?
A. About 700.

332 JUNE 10, 1913.

JAMES H. CUNNINGHAM, a witness for the United States.

My name is James H. Cunningham. I reside in Brockton, Mass. I am a shoe manufacturer, connected with the Stacy-Adams Company. I have been general superintendent of that company for about thirty years. Its daily capacity is about twelve hundred pairs per day. We manufacture welt shoes exclusively.

Prior to the formation of the United Company we had used the McKay sewing machine, the Campbell machine. We also used the Goodyear and Eppler machines. We used the McKay heeling and metallic fastening machines. We didn't use the Eppler until after the United Company was formed. We got the Eppler two or three years after the United Company was formed.

(The witness was later recalled, and testified:

Q. Mr. Cunningham, do you wish to correct any part of your testimony that you gave the other day?

A. I do.

Q. Please state what it is.

A. As to the putting in of the Eppler machines, I was wrong about the date the other day. We put them in in 1892, and we discontinued the use of them about 1900.)

We have no Eppler machines now.

Q. Was the Eppler machine used for performing the same operation in the manufacture of a shoe that the Goodyear shoe machines performed?

A. Yes, sir.

Q. And did the Eppler machine do its work as effectively as the Goodyear machine?

A. Why, some things about it was, and some things wasn't.

Q. And was that true of the Goodyear, too, as well as the Eppler—some things about the Goodyear were as good as the Eppler and some things were not?

A. No. I think everything about the Goodyear was better.

We used the Eppler machines two or three years. After the United Company was formed they took the Eppler machines out and we put in the United system because it was more complete, and did the work better. I think we had bought the Eppler machines.

We had been operating in our factory a Seaver process lasting machine. We gave it up to the United Company. Toward the latter part of our using the Seaver machine it would take some time to get parts from the United Company for it. We are now using the United Company's welting, stitching, lasting, heeling, metallic fastening, and eyeletting machines exclusively.

Cross-examination:

We have about two hundred and fifty machines of different kinds in our factory. We have a great many machines other than those we get of the United Company. We have stitching machines from other people. In saying that we use
333 United Company machinery exclusively I refer to the bottoming machinery and not to fitting room machinery. When speaking of machines we had prior to 1899 I was speaking of experience over quite a number of years. We discontinued the use of the Campbell machine before 1899. When we stopped using the Seaver process lasting machine we took the No. 5 lasting machine. We now have some fifteen No. 5s. It is a better machine. As a practical shoemaker, I should say, generally speaking, that it is the best lasting machine of the bed

type. We didn't have but one Seaver anyway at that time. The Seaver machine had practically worn out. The Eppler welt machine was satisfactory, but the outsole stitcher was not. Both the Goodyear welter and stitcher were satisfactory, and the Goodyear machines as a group worked together better as a whole system. We preferred the Goodyear system because all the machines were designed to work together and did work together.

334 JUNE 10, 1913.

HERVEY E. GUPTILL, witness for the United States.

My name is Hervey E. Guptill. I manufacture women's turn shoes. My daily capacity is twenty-five hundred to three thousand pairs. We use the loop lock Duplessis and Haverhill machinery for bottoming. We don't have and have never had United Company machines in our factory. I was engaged in shoe manufacturing at the time of the formation of the United Company. I have never used the Eppler welt machine.

Cross-examination:

I am making only turn shoes. We have two factories, one at Seabrook, New Hampshire, and the other at Haverhill, Mass. We have been making turn shoes for about twelve years without using machines made by the United Company. Our business has been growing and is fairly successful. I have never been interfered with in any way by the United Company and had no difficulty in equipping my factory with machines.

335 JUNE 10, 1913.

EDWIN A. WEBSTER, witness for the United States.

My name is Edwin A. Webster. I reside in Haverhill, Mass. I have charge of the machinery in the various factories of Charles K. Fox (Inc.), of Haverhill, and am a director of the Haverhill Shoe Machinery Company. I have been connected with that company since its formation in 1907. Previous to that I was machinist for Charles K. Fox and operator on shoe machinery. I commenced to work on his machines in 1902. I invented the Haverhill channeling machine for channeling turn shoes. We use it in the Fox factory and are putting it on the market. I invented about 1905 a heel-nailing machine for attaching heels to shoes which I sold about 1907 to the United Company. In 1899 I was engaged in operating machines and instructing for Spaulding and Swett, shoe manufacturers. We installed the McKay system about that time. The lasting machines used by us were called "nigger-head" machines. At that time I had not come into contact with other lasting machines.

The Haverhill Shoe Machinery Company manufactures turn channel machines for turn soles, welt innersole lip turner, welt groover and beveler, welt beaters, turn sewers and welters, heel-nailing machines, heel-attaching machines, heel-trimming machines, heel-seat keying machines, keyer or beader, and turned sole-molding machines. We manufactured no lasting or metallic fastening machines. In heeling machinery we make heel-nailing machines and heel-trimming machines. We have made the heel nailer about two or three years. It is a large machine weighing about thirty hundred. We have put about twenty-five on the market, through our advertising and agents soliciting orders. We put them out on royalty. We also sell them outright at nine hundred dollars.

The heel-shaving machine is a machine that follows the heel nailer—it is the next operation. It is a large ma-
336 chine on a pedestal. We have three out at present. Two are operated at present and one was burned in a fire in St. Louis. All those heeling machines I have mentioned are operated by shoe manufacturers. We have been putting out the heel-shaving machines a little over a year. The first heel-shaving machine went in the Non-Royalty Factory in St. Louis. It takes several days to make a heel-nailing machine. As we divide the work between it and other machines, we put them out in about three weeks. It takes about a week to make a heel-shaving machine. Our other machines belong to the bottoming room and stock fitting, sole leather machinery class. We have some machinery for fitting the sole; then we go into the bottoming room.

The turn channeling machine is a large machine weighing about three hundred and some odd pounds, a different type, in design, mechanically, from anything that was ever built. It cuts the channel in the sole of a turn shoe or the insole of a welt shoe. It cuts the channel, forms the edge or the margin. It has a rotary cutter on the edge and a stationary channel knife to cut the channel. We have made it since 1908. We have about sixty or sixty-five installed in shoe factories. Most of them are on royalty—some sold outright. Ninety-five per cent of them are on royalty—very few sold outright. We put them out both ways. The machine does the same work as a machine now put out by the United Company. We turn out about two channeling machines a week.

We have been placing our turn sewing machine or welter on the market about two or three years. The difference between our turn sewing machine and a welter is that in place of the welt

guide I used a small piece, a back gauge, we call it, to fit the shoe and left off the welt guide. That is all the change. For turn work we put on a back gage and for welt work we put on a welt guide. For the welt guide attachment we get about three dollars and fifty cents. When that attachment is on the machine then the machine does the work of an ordinary welting machine. We have about sixty-five of these machines marketed, including thirteen in our own factories. We have about fifty-two machines in other factories. They are used by shoe manufacturers. We can make about two of these machines a day. We have from twelve to fifteen channeling machines in stock. The heel-seat beading machine is a small machine with two shafts. It has a vibrating edge tool to breast the heel of the shoe. We call it a small auxiliary machine. We have been making that machine four or five years. They are sold 337 outright at twenty-five dollars apiece. We have sold several. We have about five or six on hand. We can make three or four a day. The turn molding machine is a small bench machine for molding the edge of the sole of a turned shoe. It is a copy of the Goodyear machine. There are about forty or fifty out; we put one of these out with each stitching machine. We sell them outright. We have been putting them out for about three years. We can make two or three a day. The welt innersole lip turner is a small machine which we have been making for about a year. It turns up the channel flap on a welt inner sole, opening the channel. Four or five of them are on the market. We have two on hand. We can make two or three a day. The United Company has a machine for performing the same kind of work. We sell them, allowing the machines to pay for themselves in royalties. We have only been manufacturing the welt beater a few weeks. It is for hammering the welt out, after the welting machine, to straighten out the welt. We have none on the market yet but have two in stock. We can make one or two a day. The United Company has a machine for accomplishing the same work. The heel-nailing machine is a large machine weighing about 3,000 pounds, which attaches heels. It pricks the heel, drives the nails, and spanks the top lifts in two operations. We have been making it for three years and have twenty-five out on rental.

We have five agents who solicit for orders and who keep the machines in repair, and we advertise somewhat in the papers. I also go out some myself. In my efforts to put these machines on the market I have visited a good many factories; I don't know how many. I couldn't tell; perhaps a hundred of them. It would be impossible to tell the number.

We met with difficulty in placing our machines on the market. Mr. Herrick, a shoe manufacturer in Lynn, took our channel machines and sewing machine, turn sewer and heel-nailing machine and heel breasting machine. They were operating successfully in his factory, but he had a tying clause in his 338 clicking machine lease by which he would have had to pay royalty to the United Company on work done on our sewing machine. We had to take that machine out, although he liked it very much. He kept the heel-nailing machine until he found he would lose his rebate on his Gem insole machine if he kept it longer, as we took that out, too.

(The United States then made an offer of proof as follows:

Mr. FOWLER. With reference to the Pettengill heeler, which is the heeler manufactured by the Haverhill Shoe Machinery Company, I offer to prove that this company offers to install this machine on a fee of three hundred and fifty dollars, with a rental of fifteen dollars per month, or a royalty at ten cents per sixty pair case—the minimum royalty to be one hundred and fifty dollars per year. That is, after the installation fee of three hundred and fifty dollars is paid, it is optional with the shoe manufacturer to pay a fixed rental of fifteen dollars per month, or a royalty of ten cents per sixty pair case, which is about one-sixth of a cent per pair, the minimum royalty to be one hundred and fifty dollars a year.

Now, as an alternative proposition with reference to this machine, they offer to install it for five hundred dollars, this five hundred dollars to be paid fifteen dollars per month. While this fifteen dollars per month installation charge is being paid, the shoe manufacturer is also to pay fifteen dollars per month royalty. He then has the right, if he so elects, to pay fifteen dollars per month additional on the installation charge, and also fifteen dollars per month royalty, until the installation charge amounts to nine hundred dollars, and then the machine is to become his absolutely. That is, it is in effect this: He can pay thirty dollars a month until he pays eighteen hundred dollars, and then the machine is the shoe manufacturer's machine.

With reference to the turn sewing machine, and the channeling machine, they offer to sell this at eight hundred dollars. The first machine, the sewing machine, they offered to sell at eight hundred dollars, and the channeling machine at five hundred dollars, or both together at twelve hundred dollars. These machines they will also lease together, or the sewing machine alone, on a royalty basis, for an installation fee of two hundred and fifty dollars, and a royalty of one-fourth cent per pair net,

a minimum of $100 per year. Without installation fee they charge a royalty of one-third of a cent per pair net, a minimum of one hundred and eighty dollars per year, with return charge sufficient to pay the expense of placing the machines in condition, and rental not exceeding one hundred and fifty dollars, if machines are in good working order.

339 As an alternative, they offer to accept an installation charge of two hundred and fifty dollars, and the purchase price will be paid in installments of one-half of a cent a pair, and royalty of one-fourth of a cent per pair. That is, they will accept one-half a cent per pair with a royalty of one-fourth cent until the income from the one-half cent a pair will pay for the machine, and when that is done the machine is to become the property of the shoe manufacturer. They offer to sell the Pettengill machine outright for nine hundred dollars. That is one of the offers for the heeler.

PUTNAM, J. You will file that paper, please. We are unable to see the bearing of this proof; but as part of the Government's case we may see it by and by. We have been pretty liberal, and we will allow you to prove actual transactions showing either sales or leases and the terms, either one or the other, but nothing beyond that, no attempt at comparison, but the mere fact that such-and-such sales have been made and the prices, or that such-and-such leases have been made and the terms of the leases.

PUTNAM, J. We have got to let you put in your case. We don't at present see the bearing of this evidence; but we probably may before we get through. At any rate, we will give you an opportunity of making out your case. That is fair, isn't it?

Mr. FOWLER. Perfectly fair, your Honor. I am well satisfied with that.

Direct examination resumed:

The WITNESS. I produce a list of shoe manufacturers with whom we have installed machines. I have indicated those who are using our stitching machines. They are also using our channeling machines. Some also use our nailing machines. It also shows which of our customers also use machines leased from the United Company. Witherell & Dobbins have a machine on the $900 proposition. Chesley & Rugg have one. They have that privilege of continuing at $30 a month.

C. E. Aborn, of Lynn, and Ira W. Webster bought our heel-nailing machine outright for nine hundred dollars cash. The others took machines on a basis of paying thirty dollars per month, of which fifteen dollars goes toward paying for the machine and fifteen dollars is royalty. When the fifteen

dollars per month amounts to nine hundred dollars, the customer owns the machine. I am speaking now of the nailer. Twenty or twenty-five persons have installed our heel-nailing machine.

George A. Learned, of Newburyport, bought our stitching machine outright. There are very few bought outright.

339a About 1905 or 1906 I invented a heel-nailing machine for attaching heels to shoes, which I sold to the United Company. I have at home a copy of the contract which I made with the United Company, which I will produce. I think the date of that contract was about 1907.

Q. Since that time have you attempted to make any further improvements on heeling machines?

A. No, sir.

Q. Why?

Mr. CHOATE. Wait a moment.

Mr. FOWLER. I will withdraw it if you object. No; I believe I will ask it.

Q. Why?

Mr. CHOATE. I object.

Mr. FOWLER. I want to show that it was in consequence of a provision in the contract that Mr. Webster made with the United Shoe Machinery Company.

Mr. CHOATE. In the first place, I understand the court in its ruling on the particulars limited the United States to those acquisitions which were named in the bill. That is the theory upon which we have been trying the case.

Mr. FOWLER. I did not so understand. That particular question has never been presented to the court, and we have never undertaken to argue to the court why we should not be limited.

PUTNAM, J. In ruling upon the motion for the bill of particulars we said that as to further matters no further particulars were required.

Mr. FOWLER. Independent of the bill of particulars, this bill alleges monopoly. Suppose it should be necessary that we present a number of other contracts that are not particularly mentioned in the bill. The bill alleges a monopoly as plainly and specifically as a bill can allege anything. In addition to that it specifies these several contracts that were entered into. Then it says that there were a number of other contracts, and that having acquired all those properties mentioned in these contracts the defendant established a monopoly.

PUTNAM, J. What contract are you asking to prove here?

Mr. FOWLER. Mr. Webster has already testified that he entered into a contract for an invention. There was no effort to particularize as to those in the bill.

PUTNAM, J. What kind of an invention?

Mr. FOWLER. On a heeling machine. And he conveyed the patent on the heeling machine to the Shoe Machinery Company.

PUTNAM, J. Not a business?

Mr. FOWLER. Not a business, no. And, as we understand, the contract will show that along with it he obligated himself to convey to the Shoe Machinery Company all additional inventions. And I was simply asking the question why he didn't do any further work in attempting to invent heeling machines in order to show that this contract is void as against public policy. That was the purpose of it. If your honors think it is objectionable, I will state what I expect to prove and reserve my exception and go on.

PUTNAM, J. This is not in the bill of particulars. It is nothing that the bill sets up, nor is it in the bill of particulars filed by you.

339b Mr. FOWLER. Of course, your honor, it is absolutely impossible for us to hunt all over the country and find every single individual case——

PUTNAM, J. You can't expect the defendants are going to hunt all over the country——

Mr. FOWLER. The defendants have in their office every single contract of this character.

DODGE, J. I don't understand that the contract is objected to here. He didn't have the contract with him and you asked him to bring it, and he is going to bring it. I don't understand that that is objected to.

Mr. FOWLER. The only thing objected to here was the response of the witness to the question "Why?"—that is the question I really asked when the objection was made.

PUTNAM, J. The question was what?

Mr. FOWLER. Why he did not do any work toward attempting to invent a heeling machine.

BROWN, J. Is there a general allegation somewhere in the bill that they took from various inventors covenants not to invent?

Mr. FOWLER. I think there is, your honor.

BROWN, J. There are specific allegations. I had in mind that there was a general allegation.

Mr. FISH. Did your honor say covenants not to invent?

BROWN, J. Yes.

Mr. FISH. I haven't heard of any such allegation.

Mr. CHOATE. The only allegation is on page 27.

BROWN, J. That is what I meant, Mr. Fish.

Mr. FOWLER. Now, on page 28 it says:

"Among the individuals, partnerships, and corporations who were competitors of defendants, and whose businesses have been so acquired and absorbed by them are the following:"

Then follows this long list here.

BROWN, J. You have some eighty instances—or fifty?

Mr. FOWLER. Sixty or seventy—along there somewhere.

BROWN, J. Isn't that enough?

Mr. FOWLER. It doesn't seem to satisfy the gentleman.

BROWN, J. Ought you to go into other instances after you have named sixty?

Mr. FOWLER. If your honor thinks it is enough——

BROWN, J. Is it a new case? Is it anything different from the numberless cases?

Mr. FOWLER. No, your honor. I was just attempting to prove by him the thing that we are going to insist is a fact as to all of them, that it stopped his inventive genius along this line by getting him to enter into this contract.

Mr. CHOATE. Perhaps he didn't have any. Your explanations of things that never happened are, I should think, a little bit remote.

Mr. FOWLER. You don't deny that such a contract was entered into?

Mr. CHOATE. I don't know a thing about it. I never heard of it before, at any rate.

Mr. FOWLER. I believe, your honors, I will withdraw the question rather than to waste time.

340 JUNE 11, 1913.

The WITNESS. I produce a copy of a contract made by me with the United Shoe Machinery Company, whereby I transferred certain patents to that company.

(This copy was offered by the United States and was marked "A," for identification.)

Mr. CHOATE. We object to it as not included within the bill.

BROWN, J. I understand this is of the same class as various transactions which are set up in the bill.

Mr. FOWLER. Yes; there are some set up in the bill.

BROWN, J. But this is not set up in the bill, nor in the bill of particulars.

Mr. FOWLER. No; it is not in the bill of particulars.

BROWN, J. And the objection is on the ground that there is no basis for it.

(It was excluded.)

The WITNESS. We could not fill an order for a full set of lasting machines for a factory with a capacity of six thousand pairs per day without going abroad. I couldn't rely on that order. We could furnish a full set of welters for a factory of that capacity in about two months. We do not build rapid outsole stitchers, but have the agency for them. We couldn't rely on any date of shipment for those stitchers. We could furnish a factory of that capacity heeling machines in about three months. With reference to metallic fastening machines, we don't build either the loose nailer or the slugger, but are agents.

Cross-examination:

We have been in business since 1907. We began by putting out the turn channeling machine. We now furnish a complete line of machines for making turn shoes and advertise that we do so.

(Advertisement headed "Complete line for turns," was identified by the witness and is marked "Defendant's Exhibit 75.")

We say in that advertisement, "We have complete line of bottoming machinery for turn shoes which we can install at short notice." That is correct. "Short notice" is a matter of opinion. We regard two months is short notice for supplying any machinery. I should say it would be so generally regarded by the trade. I would allow seven or eight heeling machines to equip a factory of 6,000 pairs. Three months would be fairly short notice for that number of machines.

341 In equipping six factories of a thousand pairs each I should put one machine in each factory. A large percentage of shoe factories run a thousand pair per day and under. There are probably not in the United States a dozen factories with an output of 6,000 pairs a day. Our practice has been to keep one or two machines of each type on hand for immediate shipment, and when we get an order exhausting this number we make them to order.

I understand Curtis & Jones, Reading, Pennsylvania, make more than six thousand pairs of children's turn shoes per day. We have had business dealings with them. I know of no other factory whose daily output is as much as six thousand pairs.

Our full line of turn machines consists of turn channeling machine, molding machine, turn sewing machine, heel-nailing machine, heel-shaving machine, heel-breasting machine, and heel-beading machine. The heel-nailing, heel-shaving, and heel-breasting machines may be used also on McKay or welt shoes. Those are not all the heeling machines that are required to make a turn shoe. We handle the Hamel machine for slugging heels and one turn machine. The Hamel machine is built

in Haverhill, and we solicit orders for it. We offer welt inner sole lip turners, welt beaters, welt groovers, and beveler. We handle but do not build the Webster leveler.

The memorandum I used in direct examination showing where our machines are placed shows that we have machines with fifty-eight manufacturers, of whom thirty-eight also use United machines.

In one factory our turn sewing and heel-nailing machines are used and also the like machines of the United Company; in another, our sewing machines and the United Company's slugger and loose nailer are used together; in another, our sewing machines and channeling machines and the United Company's sewing machines and auxiliary machines and nailing machine; in another, our sewing machines, the United's McKay machinery and heeling machines; in another, our sewing machines with the United's nailing machines—heel-nailing machines; in another, our sewing machines and the United's sewing machines; in another, our nailing machines and the United's sewing machines, on the same product; in another, our nailing machines used with the United's turn and welt machinery; in another, our breasting machine used with the United's McKay machinery; in another, our breasting machine with the United's McKay and welt machinery and turns; in another, our sewing machines and nailing machines with the United's auxiliary machines; in another, our sewing machines with the United's nailing machines; in another, our channeling machines with the United turn and welt machinery; in another, our turn sewing machines and nailing machines and breasting machines and channeling machines with the United's McKay system except the heeling; in another, our breasting machines with the United's turn machinery.

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Our machinery is being used side by side with the United machinery in thirty-eight factories, producing the same product. Sometimes a manufacturer will use our turn sewing machine and the United Company's heeling apparatus and sometimes he will use our heeling apparatus and the United Company's turn sewing machines, or will mix them up on some other plan.

Q. And those thirty-eight instances show a very great variety of choice in the manufacturer in the selection of his machines for those processes as between your two companies?

A. Give me that question again, please.

Q. I say those thirty-eight cases show a great variety of choice on the part of the manufacturers in their selection of their machines from your two companies?

A. Yes, sir.

My impression is that the occurrence at Mr. Herrick's in Lynn, regarding which I testified yesterday, was since December, 1911.

At the time Mr. Herrick took machines, he was making turns and welt shoes and was using machinery obtained from the United Company, including the clicking machine. I solicited him to obtain from us one turn channeler, a turn sewer, heel-nailing machine, breasting machine, molding machine—that is, the set for making turn shoes, also for nailing his welts. He was already equipped with those. We could offer no
343 clicking machine. He said that he liked the workings of the machine but that he would have to discontinue using them on account of the rebate on the Gem innersole that he would lose if he continued using our machines; also his rebate on the fifteen per cent of stock that he would receive—the stock in the United Company which he would receive for not violating his leases, same as I understand all manufacturers received. Our nailing machine had been in his factory about a year and the sewing machine and channeler about three or four weeks. He had paid $350 on the nailing machine; accepted a lease on that. He had signed no lease and made no payment on the sewing machine and channeler—just in on trial. He said he wanted to use the clicking machine and I suppose he said he found it of advantage to use in making the shoe. His reasons for not keeping our machines were his leases and the money he would lose.

A six thousand pair factory for making welt shoes would require six or eight innersole lip turners. We could furnish those in two days. We could furnish the necessary welt-beating machines, eight or ten in number, in about a week. In a factory of that size making turn shoes we could put in molding machines in a day or two.

There are very few factories making six thousand pairs of welt shoes a day. I don't think there are 6,000 pairs a day made under one roof, in one factory, in the country, that I know of, to my knowledge.

Direct examination resumed:

The Hamel Shoe Machinery Company, of Haverhill, used to be the Duplessis Company.

Cross-examination resumed:

Our company handles the lasting machines of Gimson & Company of England, and the Standard Rotary Com-
344 pany of England. We have not a supply of those lasters here at the present time. We intend to have one or more of them here, as a usual thing. If we want to supply one to a customer we intend to cable for it. It takes about twenty

to twenty-five days to get them from England. I am in hopes to improve on that. We are also agents for the slugging machines of the Gimson and Standard Rotary Companies. We undertake to fill the requirements of a manufacturer whatever they are. We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs or anything else. We are prepared to make good if our people that manufacture machines don't go back on us.

345 JUNE 11, 1913.

GEORGE W. MALOY, witness for the United States.

My name is George W. Maloy. I live at Jamaica Plain, Boston, Mass. I am in charge of the sales department of the Boylston Manufacturing Company and have been for five or six years. I have been in the shoe machinery business for about thirty years as foreman in a machine shop, superintendent and assistant manager, in charge of sales. I have been with the Flagg Manufacturing Company, Globe Buffer Company, and Boylston Manufacturing Company, which absorbed the Flagg Company when it went into bankruptcy about six or seven years ago. I understand that various shoe manufacturers have been buying stock in the Boylston Company.

The Boylston Company makes treeing machines and edge setters, scourers, buffers, rounders, heel finishers, heel blackers. That is all we offer. All of them are finishing-room machines. None are used for bottoming shoes. We have never made any effort to market any bottoming machines. We are experimenting with such machines and have been since we organized—six or seven years. We have placed bottoming machines in the factories on trial but never tried to sell or lease any. We placed them in our own factory at Fair Haven and in a factory at Pepperill run by the Buffalo Shoe Company. I am familiar with the parties making shoe machinery in the United States. I know of no companies marketing lasting machines but the United. Welting machines are put out by the Hamel Shoe Machinery Company, of Haverhill, the Haverhill Shoe Machinery Company, R. H. Long Company, of South Framingham, Champion Shoe Machinery Company, of St. Louis, and Victor Shoe Machinery Company, of Boston. I believe the two last confine their business to repairers and do not furnish machines to shoe makers. Outsole stitchers are made by R. H. Long
346 & Company and Union Lockstitch Company of East Boston. The latter is the company Mr. Merrick is connected with. No other company that I know of but the United

puts out a McKay stitcher. The Haverhill Shoe Machinery Company puts out the Pettingill heeler. No other company except the United markets one that I know of. Long has a loose nailer; it is the only metallic fastening machine I know of outside of the United machines.

Cross-examination:

The Boylston Manufacturing Company for a number of years was controlled by H. H. Rogers, who had an empty factory at Fair Haven which was available for our experiments. The machines which were manufactured or developed by the Boylston Company were taken down to that factory and tried out there. The present owners acquired Rogers' interest from his estate. I understand the Boylston Company's capital is $400,000. I am not interested in it financially. Its plant is in Boston. It acquired the inventions and interests of Mr. Copeland, who is at present general manager and president. We make power treeing machines, hand treeing stand, Julian rounder, Union edge setter, Webster buffer, Webster cleaner, Globe heel scourer, heel-finishing machine of hot wax type, and heel-blacking machine. That is all. The heel-blacking machine and the heel-finishing machine have been put out recently. They are adapted to all kinds of shoes. They are sold outright, except the power treers which are put out on royalty. Many are sold to customers of the United Company all over the country, I suppose. I know of nothing which prevents our disposing of those machines to manufacturers who use United machines. We are constantly doing so and have been ever since starting business. I do not know of any persons making bottoming machinery other than those I have named. I do not know whether there are any others.

347 Direct examination resumed:

The machines made by the Boylston Mfg. Company are of the type of those put out by the general department of the United Shoe Machinery Company, which they sell outright.

Cross-examination resumed:

The catalogue which you present me is a catalogue of machinery offered by the Boylston Mfg. Co. (This catalogue is marked "Defendants' Exhibit 76.") We are offering all of the machinery named in this catalogue.

Direct examination resumed:

The catalogue has been got out within six months. It mentions all the machines the company makes. We make none that I did not mention in my examination in chief.

348 JUNE 11, 1913.

LORENZE WUTHER, witness for the United States.

My name is Lorenze Muther. I live in Newton. I work with the Peerless Machinery Company which manufactures shoe machinery, principally what is called stitching-room machinery; i. e., eyelet-setting machines, skiving machines, hook-setting machines, perforating machines, sanding machines, pasting machines, cementing machines, folding machines, button-sewing machines, and a tip press belonging to the finishing-room department of the factory. We have both tip press and tip perforating machines. Similar machines are put out and sold outright by the general department of the United Company. We make no stitching machines of any kind. We sell our eyeletting machines outright or loan them without charge to people who buy eyelets from us. The companies that I remember that make eyelets are—the Atlas Tack, Hughes Eyelet Company, Rimmon Eyelet Company, Ansonia, Waterbury Brass Company. I don't know them all.

I do not know of any concern making japanned eyelets except the Atlas Tack Company. The United Shoe Machinery Company makes nearly all the other eyelets under different names. There are others making eyelets, e. g., the Waterbury Brass Company, but they all make eyelets that are not japanned.

Our machines relate to work on uppers of shoes, except the sanding machine which finishes or roughs the sole before it is put on the shoe.

Cross-examination:

We publish a catalogue. Stitching machines are used in the stitching room to sew uppers together. But we do not manufacture any of them. The McKay and the welt stitcher are different machines and are not used in that room. We sell all the machines which we produce except a hook-setting machine, which is marketed for us exclusively by another party.

349 Our eye machine is the Peerless rapid eyelet machine. It will insert any kind of eyelets in shoes. They are put out on loan leases and we ask customers to buy all their eyelets from us—but they don't.

Q. I say they will cheat you if they can?

A. Oh, yes.

Q. Unless you do tie them up tight?

A. I don't know as you would call it cheating. I won't call it that.

We supply six or eight different kinds of eyelets, mostly japanned, which we buy and resell. We buy our japanned eyelets from the United Company and the Atlas Tack Company. We

have difficulty in getting the celluloid eyelets. All other kinds we can get. The Atlas Company make various kinds of eyelets for shoes, including japanned eyelets. We can buy and sell all we want—all our customers require. We try to push the Atlas Tack eyelets, as we make more money on them. We sell more Atlas than United eyelets, and our customers are altogether shoe manufacturers. We make, but don't handle, a hook-setter. We handle an imitation enamel eyelet with our own machines, in large quantities, and only to shoe manufacturers. Our machines are sold to shoe manufacturers who use other machines obtained from the United Company. That company has machines for performing similar operations. Our machines and theirs are sometimes used side by side in the same factory. Manufacturers use either they want—or both. Our cementing machine cements the edge of the upper before it is turned over ready for stitching. I am not sure that the United has a cementing machine that does exactly that same thing.

Direct examination resumed:

We can't get celluloid eyelets. The United Company manufactures them. I don't remember whether I have attempted to get them from the United Company. I wouldn't attempt, because I think it would be useless to try, except at retail price—so that we couldn't sell at any profit. No one else that I know of in this country manufactures them except the United Company.

Cross-examination resumed:

These eyelets are what is called fast-color eyelets.

350 JUNE 11, 1913.

CHARLES S. JOHNSON. witness for the United States.

My name is Charles S. Johnson. I live in Lynn, Mass. I am now connected with the Boylston Manufacturing Company. From 1890 or 1891 to 1905 I was connected with the Tripp Giant Leveler Company which made several types of levelers for leveling the bottoms of shoes of all kinds.

In 1902 or the spring of 1903 I had a conference with Mr. Winslow, Mr. Wilson, and Mr. Bresnahan who was then part owner of the Tripp Company, and interested in his own concern, the Bresnahan Shoe Machinery Company, with reference to selling out to the United Company. At the first interview we came to a verbal agreement as to the acquisition of the business by the United Company and at a later interview between the same parties a contract was presented which we declined as not being the same proposition to which we had verbally agreed. Bresnahan and the Tripp Company had been having litigation

for nine years, till 1899 or 1900. As I was leaving Mr. Winslow suggested I had better sign it as he would have our business anyway, or words to that effect. I wouldn't say those were the absolute words, but that was the gist of the remark he made to me. We were selling our machines outright to shoe manufacturers in the United States and abroad. We had several machines; direct pressure leveler; rolling pressure leveler, called Giant leveler; and an improvement on it, the new Giant leveler. Our new Giant leveler sold for $350. Shortly after our conference with Mr. Winslow his company put a new leveler on the market which was substantially the same as ours. The Tripp Giant Leveler Company has been out of business since 1905.

Cross-examination:

I have been with the Boylston Company since 1905 as secretary and treasurer until the shoe manufacturers became interested in it and after that in the patent department. The
351 Tripp Giant Leveler Company did business in Lynn. It was one of the constituent companies in the Boylston Company. I went with it. They were putting out Tripp Giant levelers when they went into the Boylston Company.

A previous effort had been made on the part of those in control of the Tripp Company to have the United Company buy it before the litigation with Bresnahan was finished. I was not at that time in control of the Tripp Company. That came to nothing. When I came into control of it I talked with Mr. Winslow for the purpose of selling it, as I have testified. But I never sold it to him or his company. Mr. Bresnahan was present at this meeting when I said some verbal understanding was arrived at. At the second meeting a paper had been prepared which I thought did not embody all the terms of our oral agreement. Our meeting was friendly. Mr. Winslow's conduct was courteous but businesslike at our meeting. That was substantially eleven years ago.

As to who has been around to see me recently to get my recollection of that conversation, why, I think I have discussed it with Mr. Copeland of the Boylston Company. Mr. Kelleher representing the United States came to see me to ask me about my talk with Mr. Winslow, about six or eight months ago.

Q. He told you he was trying to find all the people who had any complaint against the United Company?

A. I can't give his language; I understand that was his occupation.

Q. That was his job?

A. Yes, sir; that is it.

Q. He was employed by the United States to go around to see whom he could find who had complaint to make against the United Shoe Machinery Company?

A. He didn't use that language.

352 Q. That is the substance of it?

A. Substantially; yes.

Q. He came to you?

A. Yes, sir.

Q. And he wanted to know if you had any kick?

A. I don't think that was his language either.

Q. That was the substance of it, wasn't it?

A. Substantially.

Q. Did you say you had a kick?

A. I didn't use that language. I related this circumstance to him.

Q. You had a grievance?

A. I related this circumstance.

Q. Did you say you had a grievance?

A. I don't think I used that language.

Q. Something to that effect?

A. Something substantially that.

If it is having a grievance against the United Company to feel that my rights have been imposed on for years by that company, I have a grievance. I made no memorandum of Mr. Winslow's words but have discussed them lots of times. As I was leaving Mr. Winslow tapped me on the shoulder and said "Johnson, you had better sign our offer because we are going to have your business anyway." I replied, "Mr. Winslow, I think you are right. I think it is rather a brutal way of putting it, but I think you are right without question." I can't remember whether those were the exact words or not. The idea I conveyed was that I thought he would have our business some time. I think nothing else was said. I have written lots of articles hostile to the methods of the United Company which were published in the Weekly Bulletin, a trade paper, and they have been published in booklet form.

353 JUNE 11, 1913.

GEORGE H. CLARK, witness for the United States.

My name is George H. Clark. I reside at 36 Sturgis Street, Winthrop. I have invented treeing machines, stitching machines, and attachments for other shoe machinery, also a cork-cutting machine; and a method for molding or lasting shoes, by which the upper is fitted on the last, drawn over the last, forced into the mold, and the edges turned outward, and then the inner sole is cemented thereto. Then it passes into—what I use is a

Puritan machine for convenience. I have invented an attachment which goes on a Puritan machine which enables me to stitch a shoe around and trim it at the same time. The machine has been placed in a factory at Pepperell, Mass., and is now in operation in Lynn. I am experimenting with another idea. About three years ago or so I had a machine in the Richardson factory in Reading. About that time I had a conversation with Mr. Edward P. Hurd with reference to getting a Goodyear rapid lock-stitch machine put into the Richardson plant, either on lease or sale. I said, "Mr. Hurd, will you put a lock-stitch machine into Mr. Richardson's factory at Reading?" He thought it over, and laughed and said, "You mean well, but it is against our policy to put a machine in whereby it is going to interfere with our welt system, and we have to put the knife and protect our interests. Now, I will tell you. I won't put any one of our rapid-stitching machines into any factory where you are to experiment with."

Cross-examination:

354 The machine which we had at the Richardson factory was the molding or lasting machine and the Puritan machine. It was the molding machine that I spoke of. Our machine had been in Richardson's shoe factory for experimental purposes about four months when I had my talk with Mr. Hurd.

Q. Then you went to Mr. Hurd and asked him if he would send a stitching machine out there, did you?

A. Yes, sir.

Q. To use with your experimental molding machine?

A. Yes.

Q. Was that your own suggestion?

A. I was asked to see Mr. Hurd by Mr. Richardson, to see if he would sell him or lease him a rapid-stitching machine or a lock stitcher.

Q. And Mr. Hurd told you that he wouldn't put one of their rapid-stitching machines in a factory where you had an experimental machine for you to experiment with?

A. Yes, sir; he did.

Q. For you to experiment with?

A. He did.

Q. Is that substantially all that he said to you?

A. No.

Q. Not substantially all?

A. No, sir.

Q. What else did he say to you?

A. He said: "Clark, I will tell you what we must do; we have got to protect our own interests. We must protect ourselves on this method that you have of this flexible welt shoe

of yours which jeopardizes our welt system." He says: "I don't think it is wise for us to help you out and put a machine in where you are to experiment with." I said: "Very well."

Q. And you understood him to be speaking of this molding machine you were experimenting with?

A. He understood it thoroughly.

Q. That is the machine he was speaking of?

A. That is the machine.

We have made several of the molding machines. One is in operation at the Molded Shoe Company in Pepperell, Mass., and we have a triple machine, a new one, at the factory of Sullivan & Wardwell, in Lynn, where I am experimenting now. We have passed the experimental stage now, I hope and am quite sure, and are getting ready to make some shoes and market them. Up to the present time it has been purely experimental.

355 JUNE 11, 1913.

IRVING A. HADLEY, witness for the United States.

My full name is Irving A. Hadley. I am an attorney at law and reside in Lynn, Mass. I was in the needle business in Lynn from 1898 to 1904, first in the employ of Benjamin R. Jones, then in partnership with Mr. Kimball, under the name of Kimball & Hadley, and then as officer of the Kimball, Hadley Company. We manufactured machine needles, known as the Goodyear rapid lockstitch needle, Universal slugging awl, loose nail awl, and some special needles. The United Shoe Machinery Company were putting out needles and awls for similar work. I had difficulty in selling our needles and awls to shoe manufacturers. Beginning about January, 1904, I could sell no awls and few needles to the factories of E. E. Taylor, G. D. Barry & Co., Churchill & Alden, Rice & Hutchins, at Rockland and South Braintree. They stated orally that the using of our needles and awls was in violation of the terms or conditions of the lease and if the manufacturers continued to use our awls and needles the United Company would take their machines out of the factories.

Later I talked with Mr. Charles Bailey, manager of the United needle and skiving department, relative to the purchase of our plant. All negotiations for the sale were made through Mr. Bailey. The negotiations occurred about January of 1904. I saw him twice at his office in Boston and then twice in Lynn. We submitted a proposition to him in Lynn and the contract was signed in the office of an attorney of the United Company in the Boston office of the United Company. Mr. Donham was the attorney. Mr. Donham and Mr. Bailey were present. Mr. Bailey passed me some checks, Mr. Donham did not dictate the contract while I was there.

In the first conversation with Mr. Bailey I said I had come to see him at the instance of Mr. Charles Martin, an assistant of Mr. Bailey's. I asked what needle manufacturers they had bought out, and he said the Lily Company, the New England Awl & Needle Co., and the Marlboro Awl & Needle Co.
356 He said they had in no case paid a bonus above the actual value of the plant, and they had not bought any of those firms until the firms had first come to them and requested them to do so. I told Mr. Bailey we were not interested in a proposition to sell out at that time. He asked me the prices of our awls and needles, and when I gave them he said we could not make any money at those prices. Either at that or the next interview when I said—and I did say to him: "We can manufacture needles and sell them as cheap as the United Shoe Machinery Company," Mr. Bailey said: "Oh, no, you can't; we can give them away if necessary." He said: "You know Mr. Winslow is a man that once having made up his mind to get something he will get it." He told me that some time prior to my being in there a number of manufacturers manufacturing McKay needles had started lowering the price—that the United Company had then sold McKay needles for less than they could be made for, and by doing that they had, to use his almost exact words, got a McKay combination. And he says: "We hold that to-day." I told him that neither Mr. Kimball nor myself desired to sell. And in reply to that Mr. Bailey said: "You boys must realize that the time to sell a horse is when you don't want to sell." I think it was at that interview that I told him that Mr. Kimball and I had not talked prices at all, but at the very most I would not consider less than $5,000, if we considered anything. He then told me that he wanted to meet Mr. Kimball and that he would come to Lynn to the factory and see him. He also told me regarding some patent litigation that they had; as I now recall it, they wanted to make some arrangement regarding the purchase of this patent, but they could not bring that about, and in consequence of patent litigation the other fellow lost all he had.

(Objected to by defendants on the ground that there was no mention of this evidence in the bill of particulars. Defendant's objection saved.)

Mr. CHOATE. Mr. Bailey is in a sanitarium and can't appear here as a witness.

PUTNAM, J. All we can do is to hold the witness so that you can have an opportunity to prepare to cross-examine him. We don't want to embarrass you or anything of that sort, of course. We will hold the witness to such time as you desire in order to give you an opportunity to cross-examine.

Mr. CHOATE. Well, I should like until Friday to cross-examine him, if I may have it.

PUTNAM, J. That is all right. You may have longer if you desire. We will give you full opportunity. We will hold him for Friday. If you want any more time we will give it to you. We don't want you surprised.

357 The WITNESS. We were selling awls and needles throughout Brockton and what is termed the South Shore territory, which includes South Weymouth, Rockland, East Weymouth, some in Bridgewater, and a very few in Rochester, N. Y., and Haverhill, Mass. Two orders went to a concern in England amounting to about $200. After we sold out to the United, I entered their employ.

(The United States then offered to prove that Mr. Bailey instructed the witness to get certain information regarding the competitors of the United Company. The evidence was excluded.)

Cross-examination:

We made needles for the Goodyear stitcher, no awls for it.

Q. Now, do you know whether the United Company before it obtained your needles manufactured any needles for its Goodyear machines?

A. It did not to my knowledge.

Q. Did it buy Goodyear needles of you?

A. Never.

Q. Did you supply Goodyear needles for its machines?

A. Not to the United Shoe Machinery Company.

Q. You don't know, do you, where it did obtain its Goodyear needles before it bought yours?

A. I know from what Mr. Bailey told me.

Q. I mean as any matter of trade knowledge, had you any information about it?

A. They obtained their Goodyear needles from the Smith Company in New Haven, Connecticut, and from the Excelsior Needle Company, of Torrington, Connecticut.

Q. But so far as you know they didn't make any of their own?

A. No.

Q. And you sold out in about 1904?

A. Yes, sir.

Q. Now, do you say that at this interview when you were discussing the sale of your needles to Mr. Bailey you said: "We manufacture needles and sell them as cheap as the United Shoe Machinery Company"?

A. I made such a statement.

Q. And Bailey said: "Oh, no; you can't"?
A. Yes.
Q. Although you knew they were not manufacturing any?
A. I don't think I quite understand what you mean.
Q. You just told me they didn't manufacture any Goodyear needles.
A. They didn't.
Q. And yet you say this conversation took place—that you said you could manufacture needles as cheap as the United Company, and Mr. Bailey said: "Oh, no; you can't"?
A. Yes; Mr. Kimball was in the needle business before I joined him in 1898. I had been bookkeeper and then manager for Mr. Jones, a needle manufacturer. The price I gave Mr. Bailey was $5,000. I accepted $4,750. We sold out in 1904. The United Company afterwards brought suit in equity for violating the terms of our agreement and entering into business again, which we had agreed not to do for a number of years, but had done in breach of our agreement. The Supreme Court of Massachusetts found that we had violated our agreement and granted an injunction against us. As to whether I have felt a little sore about that, I felt it was a wrong decision. I began studying law about 1900, with the idea of practicing. I was admitted to the bar in 1908.

357½ UNITED STATES OF AMERICA,
District of Massachusetts, ss:
This volume is one of the volumes of testimony and exhibits referred to in the order of the court, entered June 19, 1916.
Attest:
WILLIAM NELSON, *Clerk.*

358 JUNE 11, 1913.
IDA B. V. W. CONVERSE, witness for the United States.
My name is Ida Burnside Van Waggenen Converse. I live in Auburndale. I am a daughter of Albert Van Waggenen. He is dead. He became treasurer of the Goddu Sons Metal Fastening Company when it was organized on August 1, 1897, and owned seven thousand three hundred and twenty-five shares of stock in the company, of which part has reverted to me. The United Company bought stock of the Goddu Sons Company about February 25, 1899. On Saturday, February 3, 1900, I talked with Mr. Winslow about that stock purchase.
Q. Now, please state the substance of the conversation that you had with Mr. Winslow about the Goddu machines.

A. We had discussed a long while. I said to Mr. Winslow: "If you say what is true, that they had no business and no machines and no money in the treasury, and no money—they couldn't raise money to go on with the business, and no manufacturers to take them—they couldn't put them on the market, then," I said, "Mr. Winslow, why did you buy them out—because they would have gone to the wall—they would have had to if you say what is true—they could never have competed with you, a rich, powerful trust; why didn't you leave them alone and let them die a natural death, which they would have done? Why did you buy them out?" And he said: "Miss Van Waggenen, I bought them out to get rid of them, to have no more trouble or competition with them."

Cross-examination:

By "them" he and I meant the Goddus, or the majority control of the company. I am not related to the Goddus in any way. I had never met any of them. I knew of the troubles that had existed between the Goddus, father and sons, and the McKay Shoe Machinery Company—they were more than troubles, and I knew about the lawsuit brought by Mr. Brooks and Mr. Stanley, as trustees of the McKay Metallic Fastening Association, against the Goddus and my father, and that they claimed that they had been unfairly treated by the Goddus. That suit had gone on for about a year. My father took Mr. Goddu's part in the controversy. When the Goddus sold out they left my father and others in. In my talk with Mr. Winslow there was very little said about the troubles between the
359 Goddus and the McKay Association. I knew something about it, and I know he must have known all about it. I made memoranda of my conversation with Mr. Winslow while he was out of the room, which I afterwards destroyed. I have substantial copies of it, but no exact ones made from it. I have made three or four at different times. I have been suing the United Company for more than ten years in every court I could find in the State.

Q. And so far no court has given you any decision, has it?

A. They have given me different decisions on hearings on technical points. The suits are still pending. I am sure Mr. Winslow used the word "competition" and spoke of getting rid of them, and having no more trouble with them. He said to me that they hadn't anything, they weren't doing any business, they weren't a factor at all.

Q. And then you repeated what he said, by way of argument, and you said: "Then why do you want to ~~ret~~ rid of them?"

A. Yes.

Q. And buy them out?
A. Yes.
Q. And he said: "To get rid of them and have no more trouble with them?"
A. Yes.
Q. Are you quite sure that in that connection he said anything about competition?
A. Yes; I know it.
Q. Your memorandum will show it if he did say that?
A. Yes.
Q. And you will bring that in to-morrow?
A. Yes.

I produce a copy of a memorandum made about 1900 or 1901, I think, of my conversation with Mr. Winslow. I have made no memorandum since, except to copy this 2 or 3 times to give to different parties. It reads, referring to Mr. Winslow's statement: "He then made a most significant reply, 'I bought them out to get rid of them, to have no more trouble or competition with them.'" I have seen Mr. Goddu twice since my father's death. My father was not treasurer of the Goddu Company at the time of his death. When the United Company acquired it, they immediately put in their own officers.

360 JUNE 11, 1913.

GEORGE A. LEARNED, witness for the United States.

My name is George A. Learned. I reside in Newburyport, Mass. I have been a shoe manufacturer and have been in business for myself for seven years. About June, 1911, I had a Haverhill turn sole stitching machine installed by the Haverhill Shoe Machinery Company which fastened the uppers to the soles. I had been using machines leased from the United Company for the same purpose. Matthew Gray, representing the United Shoe Machinery Company, came to me about installing additional welt machinery. He did not install them. He said the United Company would install a line of Goodyear welt machinery for me at an initial charge of three thousand dollars, and no rebate on the Gem insole machine, but if I wanted their welt machinery on the same bais as other manufacturers, who didn't use competing machinery, I would have to discontinue the use of the Haverhill sewing machine. We could not accept that proposition. I saw Mr. Winslow with reference to the matter in August, 1911, at his office. I had taken the matter up with him as to why we could not get the machines on the same basis as our competitors, and he said there was no reason if we lived up to our

Goodyear leases. I asked him how we were violating them, and he said we were not living up to clause 6 which provided we should pay three-quarters of a cent per pair royalty on every pair of shoes stitched, whether on the United or Haverhill machines. I told him I did not see why we should pay royalty for shoes stitched on a competing machine. He said that was the terms of the lease, and we were not men of honor or we would pay, and that they intended to collect the royalty with six per cent interest for the time it hung due. I can't recall all that happened, but that was the substance of it. He said
361 we would either pay or he would drive us out of business. I asked him how, and he said, "Mr. Plant is out of business." I said, "Well, we haven't borrowed any money, Mr. Winslow," and he said, "The least we will do will be to take out all the United Shoe Machinery Company machines you have in your plant." I replied, "That is a privilege you have, sir."

Cross-examination:

I was manufacturing turn shoes altogether before my conversation with the man from the United Company. We had been for some years using the United Company's turn sewing machine and auxiliaries. The Haverhill stitcher was put in on trial about the spring of 1911, about two months before I talked with Mr. Gray. We had one set of turn machines from the United Company, perhaps two stitchers, on a noninitial premium lease. We also had a Planet sole rounder. We had a Haverhill channeling machine to use with the Haverhill stitcher. We paid one hundred and twenty-five dollars for the Planet sole rounder and a yearly rental for the Goodyear channeling machines. The hand-power machines were a dollar a year and the power machines fifteen dollars a year. There was also a breaking-down machine, on rental of a dollar a year. As to whether my lease provided that those auxiliary machines should be used only on shoes that were stitched on the Goodyear turn sewing machine, I can't tell you. I had never looked through one of my United Company leases until my talk with Mr. Winslow. I presumed the auxiliary machines were tied up with the Goodyear stitcher, but I don't know even now. We paid three-quarters of a cent royalty on the stitcher only. The auxiliaries were on a yearly rental. We put in a Haverhill stitcher and channeling machine, but used no Goodyear auxiliaries with it. If we were going to use the Haverhill
362 machines commercially, not experimentally, we would have to use the Planet rounder. I don't think that is an auxiliary. The breaking down machine is a simple machine which you can easily rig up by hand.

When Mr. Gray called, we had bought the Haverhill machine. He said there were 2 alternatives—to use United machines and not the others, or to pay an initial premium on the United machines and use them with other machines, without the Gem insole rebate. The Gem insole is not used in turn shoes, but it is used in welt shoes, which we were considering making, though we had not yet made any. After seeing Mr. Gray, I took it up with Mr. Winslow. Mr. Edwin P. Brown was present at my first interview with Mr. Winslow and he and Mr. Henry B. Endicott at the second. The conversation I have testified to occurred at the first interview. I had originally opened up the question with Mr. Winslow by letter.

(The witness produces certain letters, which are identified, introduced, read by counsel, and marked as follows:

Letter dated July 29, 1911, from George A. Learned Company to Sidney W. Winslow, is marked "Defendants' Exhibit 77." Letter dated August 3, 1911, from Mr. Winslow to George A. Learned Company is marked "Defendants' Exhibit 78." Letter dated August 3, 1911, from George A. Learned Company to Mr. Winslow is marked "Defendants' Exhibit 79."

The WITNESS. That letter was apparently dictated by me without being signed; 80, not 79, was my reply to 78. I wrote 79 before receiving 78.

Letter dated August 4, 1911, from George A. Learned Company to Mr. Winslow is marked "Defendants' Exhibit 80." Letter dated Boston, Mass., August 4, 1911, from S. W. Winslow to George A. Learned Company is marked "Defendants' Exhibit 81."

The WITNESS. I think he wrote 81 before receiving 79.

Letter dated Boston, Mass., August 8, 1911, from S. W. Winslow to George A. Learned is marked "Defendants' Exhibit
363 82." Letter dated August 14, 1911, from George A. Learned Company to Mr. Sidney W. Winslow is marked "Defendants' Exhibit 83." Letter dated August 15, 1911, from S. W. Winslow to George A. Learned Company is marked "Defendants' Exhibit 84." Letter dated August 21, 1911, from George A. Learned to S. W. Winslow is marked "Defendants' Exhibit 85.")

I called on Mr. Winslow a second time in December. Mr. Endicott wrote and asked me to come and see him and he asked me to see Mr. Winslow. I had been telling people what Mr. Winslow had said to me, and it had come to his knowledge. Mr. Winslow denied making the statement that he would drive me out of business if we did not throw out the other machines. I told him Mr. Brown was there and would remember the statement. That was the substance of the conversation. When I

left I said I was glad that condition did not exist, and that it was altogether a wrong impression he had given me in August. I did not express any desire or intention of correcting any statements I had made to others about Mr. Winslow's remarks. I did not desire to correct any statements I had made because I hadn't made any false statements about it. I had made a statement to Mr. Harriman and perhaps to some other people. It was not understood when I left Mr. Winslow's office on the second occasion that I would correct those statements. When I came in the second time I did not state during the conversation that there was no foundation for the statements that were made to Mr. Harriman.

(Letter dated August 28, 1911, from E. P. Brown to George A. Learned having attached list headed, "List of machines showing initial payment on the departmental independent lease, and sale prices on general department machines in the factory of George A. Learned, Newburyport, Mass." is marked "Defendants' Exhibit 86.")

This letter shows the initial payments for independent leases on machines which the Learned Company then had. My figure of three thousand dollars for initial payments was what it would cost me to put in the line of welt machinery which I contemplated. I did not accept the proposition.

(Letter dated December 6, 1911, from George A. Learned to Sidney W. Winslow is marked "Defendants' Exhibit 87.")

Defendants' Exhibit 87 was a letter which was written in consequence of what was said at the interview, on December 5th.

364 (Letter dated December 18, 1911, from S. W. Winslow to George A. Learned is marked "Defendants' Exhibit 88." Letter dated December 20, 1911, from George A. Learned to Sidney W. Winslow is marked "Defendants' Exhibit 89.")

Defendant's Exhibit 88 is a letter which was written to me by Mr. Winslow under date of December 18th, and Exhibit 89 is my reply. That ended the correspondence, and I have no recollection of having received any letter dated December 27th. As to the copy of a letter dated December 27th, which you have shown me, I have no recollection of having received that letter.

I am still manufacturing shoes at Newburyport, and Mr. Winslow has not disturbed me at all. I am still using the Haverhill machine and also the United Company's machines. The alleged threat has not been carried out, or attempted to be carried out, except that I have not been able to get any other machines from the United Company that I might want. I have applied for other machines, clicking machines. I did not

make a written application. I spoke to two men who were down there at one time. I presume they were agents. I have made no application to anybody in authority at headquarters for a clicking machine. I have for heeling machines. I met Mr. Connor about a year ago or so with reference to another heeling machine. I did not specify what form of lease I wanted it on. Nothing has ever been done about the offer made to me by Mr. Brown in the letter in which he offered us other forms of leases (dated August 28, 1911, and marked "Exhibit 86"). The offer has never been withdrawn, so far as I know, and we have never taken any notice of it.

Direct examination resumed:

They refused to give me a heeling machine. "In view of our existing relations," was all I got from Mr. Connor. I did not specify any form of lease. I didn't know anything about different forms. I supposed it cost one hundred dollars initial payment and a quarter cent per pair royalty. I had no
365 correspondence about it. I wasn't much concerned about it. They also refused clicking machines.

Cross-examination resumed:

I asked for the McKay heel-loading and attaching machines. That was not one of those offered to us in Mr. Brown's letter of August 28. We had one which was played out and its use discontinued a little while ago, 2 or 3 months. We have written them we wanted to return it. We don't see that we haven't lived up to our contracts. When we made those requests we did not signify any intention or desire to make any change about living up to the contracts. We have two Pettingill nailing machines. That is a Haverhill machine. We use no clicking machine.

Direct examination resumed:

The heeling machine I have mentioned is made by the Haverhill Machine Company.

Cross-examination resumed:

We are using the United slugging and edge-setting machines. The others are set aside because we feared it might be a violation of our contracts to use them. We set them aside as soon as we fitted up with Haverhill machines, which we are using right along now.

Direct examination resumed:

We make about 2,000 pairs of shoes per day. All are turn shoes, no welts.

366 JUNE 11, 1913.

LOUIS H. HARRIMAN, witness for the United States.

My name is Louis H. Harriman. I live in Haverhill, Mass. I am a patent attorney, and have been treasurer of the Haverhill

Shoe Machinery Company. I have been a director since its organization, early in 1907. I have general oversight of its business. I know personally of difficulties we had in placing machines. I have acquired it through personal solicitation of manufacturers and reports of agents of the company.

The dealings in the matter of the Herrick Shoe Company were between me and Mr. Fred Herrick, of that company. He asked for a guaranty to refund him for the royalty charged on the clicking machine lease on all shoes cut on clickers and sewed on independent machines, 1¾ cents a pair, with 50% off for prompt payment, and also the royalty for turn sewing, 1½ cents a pair, with 50% off, so that, if Herrick operated our machines, we would have been liable to have paid three and one-quarter cents a pair for all shoes sewed on our machines. We said we were willing to defend any suit brought to collect the royalty, but dared not assume the risk of having to pay it if judgment was rendered for the United Company. We removed our machine, as Mr. Herrick would not operate it without this guaranty. We also had to remove the heeling machine so Mr. Herrick could get the stock which was a rebate on his Goodyear sewing royalties, which he said amounted to something like three thousand or four thousand dollars.

Our machines were operated for a time and then removed from Hilliard & Tabor's factory, and were removed for the reason given by Mr. Hilliard.

We had a turn sewer in the Lynch & Sherman factory which had been operated but a short time when they telephoned
367 us to take it out, as an agent of the United Company had informed them it violated their lease with that company.

Mr. CHOATE. That testimony I object to. That does not connect us in any way with it except as it is a hearsay statement as to what somebody claiming to represent the United Company had said. May that answer be stricken out?

PUTNAM, J. It will not be stricken out; is is subject to your exception.

Mr. CHOATE. It seems to us a clear violation of the hearsay rule.

PUTNAM, J. It is all hearsay.

BROWN, J. I think it is arguable, Mr. Choate, whether or not it may be evidence of a substantive fact if it be proved that a large number of persons, agents of the company, made substantial statements in this way. A man goes to a manufacturer, he gets from him an answer stating that he has been instructed by the agent; that occurs fifty times, we will say; may that not be

evidence of the fact that such instructions were given under the orders of the Shoe Machinery Company?

Mr. CHOATE. Yes, your honor, I think so; very likely; very cogent evidence.

BROWN, J. So there are three aspects.

Mr. CHOATE. But my difficulty is that we have not got the proof that that statement was made by the agents of the Shoe Machinery Company.

PUTNAM, J. I agree with you about all that.

Mr. CHOATE. It seems to me there is the defect in the chain of evidence. We haven't got that link at all.

BROWN, J. May it not be inferred from the fact that a large number of persons make that statement in the course of business?

Mr. CHOATE. No; your honor. I submit that it can not be inferred.

368 BROWN, J. I think that is arguable. I don't rule that it is, but I think that is an aspect that will have to be considered.

Mr. CHOATE. Take any rumor. Fifty people whom you meet on the street report that a former chief executive of this nation had a certain habit and a newspaper prints it as a fact. That rumor does not establish the fact, no matter how many people say it.

BROWN, J. This is a different thing from a rumor. This is a case of statements made in the course of trade, supported by the improbability that persons would agree in making such statements if there were not a common origin for them. So it might be unsafe to rule it out. All your rights are reserved as to its effect.

BROWN, J. It may be that on a failure to connect it more definitely we shall hold it of no consequence.

Mr. CHOATE. Very well. That is a fair way to deal with it.

The WITNESS. Therefore, we took it out within a month after its installation.

We installed some channelers with W. S. Chase & Company and then a turn sewer in 1910, but about a year ago we were told to remove our machines by Mr. Herbert Chase because he had been sued for patent infringement on a heel-burnishing machine by the Xpedite Company, and he told me that one of the conditions of settling the suit was his discontinuing our machines. He also gave the reason that he was violating his leases. We had to remove every machine we had in his factory, two channeling machines which he had been operating a number of years, a turn sewing and heeling machine.

We installed a channeling machine in 1908 with Carleton & Hunt, of Haverhill, and a turn sewing machine in 1910. During the latter part of 1911 Mr. Hunt said he had tried to get a set of machines for making welt shoes from the United Company, but could not get them unless he discontinued the use of our turn sewing machine, so he took it out and returned it to us.

We installed a turn sewer and channeling machine with George E. Leavitt & Company, of Haverhill, about May, 1901.

We had two turn sewers and two channelers in the factory of N. D. Dodge & Son in 1911. Their use was discontinued because we could not supply a line of welt machinery which they wanted and the United Company would not do so as long as they used our machines.

We had a sewing machine with F. M. Hodgdon, but it
369 was ordered out without any reason being assigned.

We began marketing a channeling machine in the latter part of 1907. The United Company furnished without charge a channeler—an auxiliary with no royalty charge—with their sewing machine. It was inferior to our machine as it had a spike feed wheel which lacerated the substance of the sole through which the stitches went which attached the uppers to the sole. Our machine avoided that difficulty. The effect upon the trade of the method used by the United Company in putting out its channeling machine as an auxiliary machine, at a nominal price, and without royalty other than the royalties upon the principal machines, is to prevent a competitor marketing a new machine unless it is so far superior to the machine which the United Company puts out that the manufacturer is willing to pay for it, although he can get the United Company's machine for nothing.

We do an interstate business and are endeavoring to extend our trade into other States. We do business in at least six States besides Massachusetts and abroad. We come into contact with the United Shoe Machinery Company in other States of the Union.

We make principally machinery for making turn shoes. The catalogue shown Mr. Webster purports to contain machines or advertisements of machines to complete a factory for making turn shoes.

Turn factories use a turn sewer, turn channeler, sole splitters, sole-edge molders, edge trimming and setting machines, buffers and heel-attaching, heel-trimming and heel-breasting machines; some factories require loose nailers and sluggers, but not all. Additional machines needed for welt shoes include the laster, outsole stitcher, and others. McKay shoes require other impor-

tant machines, a McKay sewing machine, which we do not make, and lasting machines for McKay work. Our stitching machine can very easily be turned into a welter by putting a welt guide on it at a cost of about five dollars or less. It can not be used in the manufacture of McKay shoes. I heard Mr. Webster testify as to the capacity of our factory. I think his statementt were correct.

370 Cross-examination:

Even if we put a guide on our welt sewing machine, we have no outsole stitching machine to furnish with it unless we get it from others. The machinery we manufacture cannot make welt shoes because of that omission and several others. Our channeler was brought out in 1907. It was the first machine we brought out. The turn sewing machine followed in the spring of 1910. The channeler can be used on welts, but is especially adapted to turns. It was first put out on a royalty basis. We had no turn sewer for it to go with. The United Company had for years been supplying its turn sewing machine with a channeler to go with it. So far as I know that was not a new plan devised by the United Company to prevent our getting into the market, and so far as I know the Goodyear Company, which furnished a channeler with its turn sewing machine, never charged any royalty for the channeler.

371 Q. Have you ever adopted the practice in marketing your turn sewing machine with your channeler or furnishing your channeler without charge, or on a nominal charge, in connection with the turn sewing machine with which it is peculiarly adapted to operate?

A. We——

Q. Can you answer that yes or no, sir?

A. I don't think I can.

Q. If it needs explanation, make it, please.

A. We put out the channeling machine alone on a royalty, as I have previously answered. We also put out the sewer and the channeler together at a certain amount because on account of the lease conditions the manufacturer cannot use the channeler of the United Company——

Q. I am not asking you anything about the channeler of the United Company. I am asking you if you ever put out your channeler with your turn sewing machine, and you say yes.

A. Yes.

Q. What is the royalty which you ask for your turn sewing machine alone?

A. We never have put that out alone.

Q. You ask, at any rate, one rate for your sewing machine without the channeler, and you ask a less rate for your turn sewing machine with the channeler?

A. We have never been asked for a price on the turn sewing machine alone.

Q. Then do you always put it out with the channeler?

A. We always have to.

Q. With the channeler?

A. We always have to.

Q. You always have to?

A. Yes.

Q. You mean as a matter of business it is necessary for the two things to be put out together?

A. On account of the leases of the United Company.

372 Mr. CHOATE. That is a very good argument, Mr. Harriman, and I notice you have been anxious to make it, but you know as a lawyer that it is not an answer to my question, don't you?

The WITNESS. I was simply stating the actual trade conditions.

Mr. CHOATE. I ask that that be stricken out.

Mr. FOWLER. I think that is responsive, if the court please. He asks if it is on account of trade conditions. He answers that it was on account of the leases. That answers the question.

(The question and answer are read.)

PUTNAM, J. Strike it out.

Mr. FOWLER. I want to reserve an exception, your honors. I want it still to remain in the record.

PUTNAM, J. It is not responsive.

BROWN, J. Leave it in and reserve your right to argue.

PUNAM, J. Read that question and answer again

(The question and answer previously read are again read.)

PUTNAM, J. Are you satisfied with the answer?

Mr. CHOATE. I objected to it and asked that it be stricken out.

BROWN, J. It is a question whether it shall be stricken from the record or remain on the record, the question of its admissibility to be subsequently argued.

PUTNAM, J. Why do you want it stricken out, Mr. Choate?

Mr. CHOATE. Because it is not responsive to my question.

Mr. FOWLER. I suppose your honors would rule that on redirect examination I would have a right to ask him that question.

PUTNAM, J. Oh, yes.

Mr. FOWLER. What would be the difference?

Mr. CHOATE. I will withdraw the question and try to get at what I want in another way.

Q. Do you mean, Mr. Harriman, that you have never in any instance put out any turn sewing machines without the channeling machine going with them?

A. Not to my knowledge.

Mr. FOWLER. I submit, may it please the court, whether or not he has the right to withdraw that question, after he has just propounded the question and has found out what the answer was, and has concluded that it is running into an examination that he probably doesn't want. I submit he hasn't got the right to withdraw it and cut off reexamination on that question.

PUTNAM, J. The fact is that this matter is of so little consequence that I haven't recalled what the questions and answers were.

Mr. FOWLER. I don't think one ought to be allowed to fish, and and then draw out when his finger is caught.

BROWN, J. We have passed on the point; Mr. Choate may go on.

373 The WITNESS. We put out no other machine on a royalty basis with the turn sewing machine. But we put out a sole molder, at $25, habitually with the turn sewer. When there are more soles channeled than sewed we charge a royalty on the channeler for the excess soles that are channeled. If the same number are sewed and channeled we charge one royalty for the two. We have a royalty fixed for the sewer alone. The sum of the royalty for the turn sewing machine used separately and the royalty for the channeling machine used separately would be more than the single royalty on the two used together. Herrick was using United turn machines and clicking machines. I saw his leases. I wanted to install one or more of our turn sewers. We put them in May, 1911, and they were there for a month. There was no completed transaction with Herrick. Our machines were put in his factory and tried. He found our machines satisfactory. No money had passed and no leases had been signed. The additional royalties which
374 he might have had to pay if he kept our machines were three and a half cents per pair, with a discount of fifty per cent if paid the next month, which would leave only a cent and three-quarters per pair net. We could not furnish a clicking machine which he wanted. We simply suggested that we would furnish him a turn machine, and he had that alternative. He said he would take the alternative if we would stand the difference. We would not guarantee the additional royalties, as we were to get only a third of a cent a pair. I don't know how many United Company turn machines he had when ours was installed—proba-

bly two. Our turn machine would have displaced one of the United Company's machines had it been used. I don't say for sure that it would have. I don't know whether it would or not. I simply say it probably would. I don't know anything about it.

Hilliard & Tabor had a turn sewer and a channeler from the United Company, but owned their own heelers, when we installed our turn sewer, channeler, and heeler. Our agents, or I, solicited him to take our machines. They were installed in December, 1910, and removed in August, 1911. No lease passed, but they paid us a royalty. A definite oral understanding was arrived at, but none in writing. They had formerly used one of our channelers—never our turn sewer and channeler together. They took our machines on trial for thirty days. They had one or two United Company turn sewing machines. Taking our machine might have displaced one of them. I do not know whether their business was increasing or not. Possibly what I was doing was to offer my machine to a man already using the United's and suggest that he displace one of their machines with ours. That may be true in each of these instances.

In most of the above instances I knew I was asking the manufacturers to displace the United Company machines and use ours. I pointed out to many of them that taking our machines would be in violation of their leases from the United Company, but that I did not think the leases valid and we would contest any suit. I stated we would back them in any suit for infringement by the United Company.

375 Q. Your company has been sued for infringement by the United Company on its heeling machine, hasn't it?

A. There have been several suits brought; yes.

Q. And a number of these instances where people asked you to remove your machines arose out of the fact that they had machines upon which they or you were being sued for infringement?

A. There was no instance of that sort when that reason was assigned. We agreed to stand back of any damage.

Q. Just a minute. You were sued for infringement on both your heeling and your channeling machines, weren't you?

A. There was a suit brought on the channeling machine, on which we agreed to a judgment, as it was a matter of no consequence to us.

Q. In the suit on the channeling machine you consented to a decree?

A. We did.

PUTNAM, J. I don't think we want that, Mr. Choate. We don't want to try a patent suit here, if we can help it. That isn't the

proper way to prove it. If you want to prove it, prove it by the record. Of course it is all right to ask him if there was litigation.

Q. Well, your company consented to a decree against it on the channeling suit, didn't it?

A. We did.

Mr. FOWLER. I object to that, unless I am permitted to prove the number of suits that have been brought against Mr. Harriman and his company, and that have failed.

PUTNAM, J. What do you say, Mr. Fowler?

Mr. FOWLER. I say I object to proving that matter in that particular way—as a matter of fact, it is unimportant anyway—unless I am permitted to show the number of patent suits that have been brought against the company, in which the United Company have failed.

PUTNAM, J. That is just the trouble. I don't think it ought to be gone into. I think it ought to be stricken out.

Mr. CHOATE. I offer it, if your honor please, in connection with his testimony as to the removal of those channeling machines from certain factories, which the United States offers——

PUTNAM, J. Bring the record here.

Mr. CHOATE. Which the United States offers as some attempt on our part to get a monopoly.

PUTNAM, J. The evidence you put in was all right up to the consummation. When you come down to what was done in court, this court will protect itself. You must produce the record.

Mr. CHOATE. I might only suggest that the fact that their company consented to a decree might have some bearing upon the question.

PUTNAM, J. Bring the record in and find out what they consented to.

BROWN, J. Consent to a decree does not show willingness by any means. A large part of consents to decrees in patent cases is not because of willingness to submit on the part of the person who signs his name. He has had enough.

Mr. CHOATE. Perhaps it might show recognition of the fact on the part of that person that he is in the wrong.

Mr. FOWLER. I think we can show that there wasn't a consent to it at all.

376 The WITNESS. There are no suits pending relating to the turn-sewing machine. There are infringement suits pending on the heeling machine.

Direct examination resumed:

(Statement showing number of each kind of machines sold or installed by the Haverhill Shoe Machinery Company, the date

of installation or sale, to whom sold or with whom installed, and on what terms, is marked "Plaintiff's Exhibit 161.")

377 JUNE 12, 1913.

CHARLES A. HAMEL, witness for the United States.

My name is Charles A. Hamel. I live in Haverhill. I have been engaged in the shoe-machinery business for ten years in the United States, and previously to that in Canada. I was first connected in the United States with the Duplessis Shoe Machinery Company, which began business in the United States in Haverhill in 1903 and made the following machines: Loose nailer, slugger, loose tacker, bottom leveler, heel compressor, sole layer, rapid stitcher, turn stitcher, rough rounder, insole channeler, outsole channeler, molder, lip turner, welt skiver, bobbin winder, welt beater, welt groover, channel opener, shank skiver or shanking-out machine, inseam trimmer, pegging machine, standard screw, stitch separator, wire tacker.

I succeeded the Duplessis Company, which went out of business in 1909, and continued to make all the machines named except the heel compressor.

(From the separate answers of the witness as to the number of his machines sold in the United States and abroad the following table is compiled. It does not appear to have been made an exhibit.)

Table showing number of machines made by the Duplessis Company and its successors and sales in the United States and abroad.

Name of machine.	Number sold in United States.	Number sold abroad.	Total number put out.
Loose nailers	24	31	55
Sluggers	22	13	35
Loose tackers	6		6
Levelers	5	55	60
Heel compressors	00	7	7
Sole layers	13	6	19
Rapid-outsole stitchers	41	20	61
Turn and welt stitchers	86	63	148
Rough rounders		19	19
Insole channelers	70	20	90
Molders	35	43	78
378 Lip turners	127	257	37
Welt skivers	20	13	33
Bobbin winders	20	22	42
Welt beaters	25	13	38
Welt groovers	25	10	35
Channel openers	15	14	29
Shank skivers	1		1
Inseam trimmers	3		3
Pegging machines	0	28	28
Standard screw	1	3	4
Wire tackers	1		1
Outsole channelers	4	10	14
Stitch separators			

My company does an interstate business, and we are still trying to market our output.

I produce a statement showing companies and persons to whom the Duplessis Company and its successors have sold, or with whom they have installed machines, and the location of such companies and the year when each machine was sold.

(This statement is marked "Plaintiff's Exhibit 159l.")

Our machines are sold outright.

Cross-examination:

The loose nailer and slugger, named in the summary on the last page of plaintiff's Exhibit 159, are all the metallic fastening machines needed in making a welt shoe. All the machines on our list are used for bottoming operations, but do not comprise a complete list of all the machines used for bottoming. We have a complete set of machines for making turn shoes and a complete set of machines for making welt shoes. Our turn machine has a welt attachment. Our loose nailer and slugger make a complete set of metallic fastening machines for either a welt or McKay shoe. On a good many shoes we don't use a slugger at all where wooden heels are used. There
379 has been no interruption in the business of making the machines on our list since it was started by the Duplessis Company in the United States in 1903. I have been ready at any time to furnish machines of these different kinds to anyone who wanted them.

380 JUNE 12, 1913.

NELSON H. SEELYE, witness for the United States.

My name is Nelson H. Seelye. I live in Winchester, Mass. I am engaged in machinery and millwright business. I manufacture machines which, used in connection with dies, cut out material such as leather, cloth, rubber, etc. I have been in that business since 1889. The company was first called the Hawkins Machinery Company and made beam die presses or dinking machines for dieing out the soles of shoes, among other things. The machine for cutting the upper is the clicking machine. We were engaged in that business when the United Company was formed. We sold from fifty to one hundred per year to shoe manufacturers up to that time. We continued to place on the market our machines after the formation of the United Company. After the formation of the United Company we made the same efforts to sell the machine as we had always made. We did not have agents traveling, but we advertised. After the United Company put a similar machine on the market it was more difficult to sell our machines because of the apparently more favorable price it could make. The two machines

were about the same in quality and capacity for work. The United Company leased its machines for an installation charge of about one hundred and fifty dollars for the longest machines, or about one-half their and our selling price of three hundred and fifty dollars, and made no other charge except for parts. The machines remained their property. Their selling price and ours have always been about the same.

(Counsel for the United States offers to prove that the machine of the United Company costs that company more than one hundred and fifty dollars to build. The evidence was excluded.)

After the formation of the United Company our sales to shoe manufacturers fell to about one-quarter of what they were, although we used the same efforts we had previously used.

381 Cross-examination:

Our machines are used for quite a variety of other purposes than cutting leather. They are used for cutting rubber, cloth, paper, leatherboard, strawboard, etc.—anything that can be cut with a die. The United Company offered its machines for sale at the same price as ours, and it also offered them on an annual rental of fifteen dollars. We never tried to rent any of our machines, but adhered to our old plan of one basis, sale only.

Before I went on the stand I had not made any classification of the number of machines that I sold to shoe manufacturers, either before or after the United Company was formed. It is not my practice to do so in my business and to keep statistics of the sales to shoe manufacturers. I have not made any study at all to ascertain to what extent my sales to shoe manufacturers are different from what they used to be. I thought no study was necessary. I am not guessing; I can tell from experience. By experience I mean observation of the business—the shoe manufacturers' purchases of me. I have not made any investigation of my books. I have not kept track of the purchases they made of me. I don't need to. I have that in my head. I carry my sales ledger in my head to that extent. I would not say that I could carry it in my head so that I could figure out percentages. I have quoted approximate figures in each case. It would not be quite right to say that I had given no attention to this particular question before I went on the stand.

382 JUNE 12, 1913.

ZOTIQUE BEAUDRY, witness for the United States.

My name is Zotique Beaudry. I am in the shoe machinery business, inventing and manufacturing. I have invented several—5 or 6—heel burnishers—some of them 35 or 36 years ago.

I invented the heel burnishing machine that is manufactured by the Xpedite Company. I sold the patent on that machine to Mr. Tuttle and subsequently it passed to the Xpedite Company. Later I invented another which I sold to the United Company.

(Counsel called the attention of the court to the covenant with respect to future inventions and competition in witness' contract with the United Company as stated in the bill.)

Since then I have made no attempt to invent any improvement on the heel burnishing machine. I don't know whether the United Company has developed that patent and manufactured a machine in accordance with it. I don't see any out and I have never heard of any.

(No cross-examination.)

383 JUNE 12, 1913.

NED PIKE, witness for the United States.

My name is Ned Pike. I install and handle machinery for the Haverhill Shoe Machinery Company; also solicit business. I have been employed by them since August, 1908. I have traveled in New York, Ohio, Missouri, Pennsylvania, New Jersey, Massachusetts, New Hampshire, and Maine, trying to install machines in these States. I have done so except in Maine and New Jersey. I met with serious difficulty in installing our machines. In the factory of Ashe, Noyes and Small, Auburn, Maine, I attempted to install machinery, and they told me that under the leases of the United Company it would be impossible for them to install our machinery, unless they laid themselves open to a great deal of trouble—conflict with the United Company. In the case of Dunn & McCarthy of Auburn, New York, they told me they would like to consider the proposition of putting in my machines, particularly the turn sewer, but, under the United Company leases, their toe-laster and heel-seat machines would cost them more than any saving that they could make on our machines. Krippendorf & Dittman, of Cincinnati, ordered our machines from another solicitor, and countermanded the order and stated to me when I solicited them later that they did not dare put them in on account of the leases of the United Company they were operating under. The Syracuse Shoe Company said it meant altogether too much to them to install machines competing with the United Company, as it would make lots of trouble for them with the United Company. The Irving Drew Shoe Company, of Portsmouth, Ohio, said they were owned body and soul by the United Company as far as shoe machinery was concerned. These are all the instances which stand out prominently in my mind. I do not say that those are the only troubles I had.

384 Cross-examination.

I talked with Mr. William Gates, superintendent of Drew & Company, about installing a turn sewing machine. They were making turns and welts and I think McKays. They were already equipped with turn sewing machines of the United Company. I was asking him to try some of our machines. I just stopped in as a part of my general practice of calling on anyone who might possibly be interested. He had not sent for me. He made the reply which I testified to when I solicited him to take some of our machines. I kept no memorandum of these conversations, but state them from memory. I was recently asked to recall and testify about them. I am giving you his exact words as nearly as I could quote them after this lapse of time. I should say they were very nearly his exact words.

Q. Your general statement about your practice and your occasion for calling on these other gentlemen is the same in all cases as it was in the Drew case?

A. Practically the same. I will say that we had auxiliary machines installed in that place as in some of the others, and it was calling upon those and soliciting——

Q. Suggesting, I suppose, that they substitute your machines for the machines that they had?

A. Well, not always in that case. There naturally would be a natural increase in business, which would always necessitate the——

Q. Very possibly, but in each case that you have told of you went soliciting?

A. I did.

Q. Without having been sent for?

A. I did.

Q. And your suggestion as such solicitor was that they take some of your machines to do the work which other machines were already doing?

A. To do the work similar to the work that these machines were doing; yes.

Q. And do you know what or how many machines of the United Company any of the other people had?

A. I couldn't state positively.

Q. In your experience with the Haverhill Company have you equipped any new factories, new manufacturers—I mean manufacturers who are beginning in business?

A. We have equipped some small manufacturers.

Q. And so far as you are able to furnish good machines, or a line of machines, you stand with new manufacturers as well as the United Company?

A. Why, you mean that our machines stand well in the estimation of these people?

385 Q. No. So far as your machines are as good as the United Company's you would have as good a chance to equip a new manufacturer as they would?

A. Provided they had not—you mean a manufacturer who is embarking in the enterprise for the first time?

Q. Yes; who hadn't signed any leases at all.

A. Why, I don't know why not.

Q. So in such cases the machines which succeeded would succeed on their merits?

A. In all such instances we would naturally believe that that would be the case, unless there was some ulterior motive.

Q. From your knowledge of the trade since 1908 have the new manufacturers taken your machines to so large an extent that they have taken the United Company's machines?

A. Nothing like it.

Q. Then, if your earlier answer is true, the United Company's machines have won out on their merits?

A. I said if there wasn't other things to be considered.

We have five men all the time on our repair staff located at the Haverhill office. At the present time manufacturers out of the reach of those five, for instance in Missouri, would be at a disadvantage as to service. We have no one who could give service in Missouri. Very many manufacturers maintain machine shops proportionate to the size of their business; but where the services of expert mechanics who are familiar with the machines can be obtained, that is usually desired. The question of service in taking care of machines is an important factor in selling machinery, and usually comes up when we are trying to place our machines. We have no depots for supplies and parts in Missouri, Ohio—distant States. Our machines are somewhat

386 complicated and have a good many different parts, which break from time to time. Delay in obtaining new parts and repairs would be a serious handicap—as, for instance, if an Ohio manufacturer had to send to Massachusetts. Usually there is a steady flow of the product from one machine to another in shoe factories, though most always they have additional machines. Also the volume of products varies with the season; some parts of the year there is a very large run, and the factory is at the height of its capacity.

Direct examination resumed:

I was asked to think up the particular instances of difficulty to which I have testified, only this morning.

387 JUNE 12, 1913.

SOLOMON M. CUTTER, witness for the United States.

My name is Solomon M. Cutter. I live in Hartford, Connecticut. I now manufacture horse nails, but have been in the shoe-machinery business, beginning twenty-five years or thirty years ago with the Wire Grip Fastening Company in Boston, in which I had a very small interest. I became general manager of the Standard Shoe Machinery Company. That was after the formation of the United Company.

(After the witness had stated that about the time he entered the employ of the Standard Shoe Machinery Company he had conferences with Mr. Winslow or Mr. Brown or Mr. Wilson, of the United Company, he was asked what was said at those conferences. The defendants objected. The United States offered to prove that the witness, who, inselling out his interest in the Wire Grip Fastening Company, had agreed with the McKay Shoe Machinery Company not to reenter the shoe-machinery business, consulted the president and other officers of the United Company with reference to his being allowed to enter the employment of the Standard Shoe Machinery Company; that he was advised that he might do so, but upon refusing to reveal its secrets to the United Company was sued for breach of contract, and that nothing further came of the matter. The evidence of the witness's conversations relating to this subject matter with Messrs. Winslow, Brown, and Wilson was excluded, and the United States reserved an exception.)

I was manager of the Standard Company for about a year and a half, but had nothing to do with installing machines in factories. I talked with Krippendorf & Dittman, Mr. Reed, and Crooks, Root & Company about the use of the Standard machines.

(There was no cross-examination.)

388 JUNE 12, 1913.

JAMES N. DARRAH, witness for the United States.

My name is James N. Darrah. I live in New York City, and am in the real-estate business. I was in the shoe-machinery business in 1899–1900. I was connected with the Standard Shoe Machinery Company. Its capital stock was $5,000,000—$4,000,000 issued, of which one million and a half was preferred and two millions and a half was common. Mr. Ebenezer B. Beecher, of New Haven, was president; F. C. Pingree, of Pingree & Smith, of Detroit, shoe manufacturers, was a vice president. The other vice presidents were T. D. Barry, of Brockton, of the firm of T. D. Barry & Co., shoe manufacturers; E. P. Reed, of Rochester, of the firm of E. P. Reed & Co., shoe manufacturers; and W. W. Spalding, a shoe manufacturer of Haverhill. I was a director

and chairman of the executive committee, and took an active part in the management.

The Standard Shoe Machinery Co. was a combination of the Bay State Shoe Machinery Co., the Woodward Mfg. Co., the Sinning Lasting Machine Co., and the Buzzell Edge Trimming Machine Co. It manufactured a full line of bottoming shoe machinery in all its branches. Its principal offices were 165 Essex Street, Boston, Mass.; its factories were in South Boston.

In April, 1900, I met Mr. Barbour, a director of the United Shoe Machinery Company, at the office of Mr. John R. dos Passos, my personal attorney and counsel for the Standard Co., 20 Broad St., New York.

Q. Please state what was said at that conference as nearly as you can.

A. I had never met Mr. Barbour until that morning. Mr. des Passos sent a messenger——

Mr. CHOATE. You are simply asked to state what was said.

The WITNESS. Well, Mr. Barbour was talking about the Standard Shoe Machinery Company, and Mr. des Passos—shall I state what Mr. des Passos said, or just Mr. Barbour?

Q. State what was said by all three of you.

A. Mr. des Passos said: "I want you to meet Colonel Barbour, who is a director in the United Shoe Machinery Company, and he seems to be very much upset because he has a large investment in the stock of the United Shoe Machinery Company, and he thinks that perhaps it would be better if he could make some deal with you." I said: "What kind of deal do you want?" "Well," he said——

389 Mr. CHOATE. Do you mean Mr. Barbour was present at this time?

The WITNESS. Yes; Mr. William R. Barbour and Mr. John R. desPassos. This occurred in Mr. desPassos' private office, 20 Broad Street. And Mr. Barbour said: "I have a very large investment in the stock of the United Shoe Machinery Company and I don't propose to have that investment jeopardized." "Well," I said, "how is it going to be jeopardized?" "Jeopardized by competition. You are a competing company; but," he says, "you haven't got anything anyway." "Well," I says, "why do you come in here if I haven't got anything? I haven't come in here to get your opinion about our machines. If that is all you have got to say I will go." "No," he says, "sit down. I want to talk to you." I said: "What about the Woodward machine? You seem to think we haven't anything. There are a good many manufacturers who are using our Woodward heel-loader—there is Thomas G. Plant; he is

using the Woodward heel-loader in preference to the McKay heel-loaders. He displaced the McKay heel-loaders"——

I said to Mr. Barbour: "I don't believe our stock is for sale; I don't think you can buy it." He said: "I think you are making a big mistake if you don't sell it. If you don't sell it, if you and Mr. Beecher don't sell, you are making a big mistake. We always try to buy out competitors and if we can't buy them out we force them out." I said: "Do you mean to say you are going to use tactics like that?" He said: "Yes, if you don't do what we want you to." "Well," I said, "then you can go ahead and crush."

Q. Was anything said at that time about the control of banks?

A. That was later in the day. Mr. desPassos and he went out for lunch. Then they returned again and Mr. desPassos then told the proposition that was made by Mr. Barbour.

Q. No; but was anything said by Mr. Barbour about the control of banks during that conference?

A. He didn't put it that way, about controlling banks. He said: "Where are you going to get your money? You can't get any money to compete against the United Shoe Machinery Company. You can't get any banks to back you up. Our influence both in Boston and in New York is so great that you can't do anything."

I had conferences with representatives of various shoe manufacturers regarding the installation of machines. Mr. Krippendorf came to see me in New York, as a result of some correspondence we had with them about installing Standard machines and said while he would like to install them he was afraid; he wouldn't dare arouse the opposition of the United. I also had conversations with Mr. F. C. Pingree and Mr. E. P. Reed. Mr. Reed was using our Turn machines, a machine manufactured by the Bay State Shoe Machinery Co. and we wanted him to introduce more of our machines in his factory and he said he wouldn't like to do so—he was afraid. He
390 said the United Company was such a gigantic corporation that no shoe manufacturer could afford to be a martyr.

The Standard machines were removed from the factory of T. D. Barry & Company, at Brockton, subsequently to my conference with Col. Barbour. I did remember the names of others who were obliged to remove our machines, but I have forgotten at the present time. We had machines in Mr. Caunt's factory at Lynn at one time. Mr. Mark Worthley, of Lynn, was using our Woodward machine and came to see us and said

he was afraid he mould have to return it to us—that the United Company's agents were after him all the time and were making threats to him. I had a number of interviews with Mr. Thomas G. Plant about our Woodward heel loading machines in his factory. He sent for me and told me in the spring of 1901 that the agents of the United Company were getting after him so persistently and it was getting so annoying and offensive that he was afraid he would have to surrender the Woodward machines and take the McKay machines of the United Company.

Mr. Barry, of the T. D. Barry Company, told me he could not come to my office but would meet me at the Essex Hotel. He said he had made a mistake in going to Europe in 1900 when during his absence the machines of the Standard Company had been removed from his factory. We had obtained an order from him to equip his factory with a full line of shoe machinery but lacked some auxiliary machines. Our machines had already been removed from his factory.

(At this point the United States offers to prove that Mr. Barry stated he was compelled by the United Shoe Machinery Company to resign as a director of the Standard Shoe Machinery Company.

Mr. GREGG. A great many of these things taken together form part of the plan of this concern to monopolize the shoe machinery business. In some cases they have held such evidence to be competent under the Sherman Act; that acts standing alone might be perfectly lawful, but a number of them became part of a plan.

The evidence was excluded. The United States reserved an exception.)

The Standard Company was incorporated in October, 1899, and went into the hands of a receiver in December, 1901. It was not succeeded by any other concern as far as I know. I don't know whether machines formerly manufactured by the Standard Company are now being placed upon the market.

Subsequently I saw Mr. Barbour in his office in 1904 or 1905 in regard to patents of the Suffolk Nailing Machine Co.

391 I suggested I might go in the shoe machinery business again and he laughed and said I would make a big mistake.

Cross-examination:

Q. Mr. Darrah, how long have you been in the real estate business?

A. In April, two years ago.

Q. And are you with anybody, connected with anybody, or by yourself?

A. I was with Wood, Harmon & Company up to two years ago—261 Broadway, New York.
Q. Whereabouts were you selling real estate?
A. I was selling in Hartford.
Q. In Hartford?
A. Hartford.
Q. With an office in New York?
A. Why, Wood, Harmon & Company has an office in New York, 261 Broadway.
Q. That is where you were in New York?
A. No, sir. I was selling in Hartford part of the time, and also I sold some of their property in New York to investors.
Q. Where was your office, in New York or Hartford?
A. My office?
Q. Yes.
A. I hadn't any office.
Q. Have you any now?
A. No, sir.
Q. You are in the process of going through bankruptcy now, aren't you?
A. Yes, sir. Your representatives found that out; came to see me.
Q. Well, you weren't concealing the fact, were you?
A. Why, no; certainly not.
Q. What was your business before you went into the real estate business?
A. I was interested in several things—several matters.
Q. Well, we all of us are, I suppose. I say, what was your business before you went into the real estate business?
A. I was a stock broker.
Q. Did you have an office in New York?
A. Yes, sir.
Q. Where was it?
A. I had an office at 52 Broadway.
Q. In your own name?
A. No. I was associated with Mr. Brown—Mr. W. T. Brown.
Q. Well, did your name appear?
A. I think it appeared on the door; yes, sir.
Q. You did business under the name of W. T. Brown?
A. No, sir; I didn't.
Q. What kind of a stock broking business did you do?
A. Why, miscellaneous.
392 Q. Yes; but could you be a little more definite than that?

A. Why, I wasn't a member of the stock exchange. I dealt in what you call unlisted securities. If you came in and had any unlisted securities, I would try to find a customer for you.

Q. How long were you there?

A. I was there two or three years.

Q. What did you do before you did that?

A. What year was that?

Q. Well, you have stated that you have been a real estate broker for two years and a half.

A. Yes, sir.

Q. A stock broker for three years, perhaps.

A. Yes.

Q. Before that; that takes us back to perhaps 1908.

A. 1908. There were two years that I was out of business entirely on account of operations. I had five operations for appendicitis. Two of those years I was unable to do anything.

Q. You didn't have five appendixes, did you?

A. Well, I don't know about the five appendixes.

Q. Those two years you weren't in business?

A. No, sir. I wasn't able to do anything.

Q. Where do you live when you are at home?

A. 200 Wentworth Avenue, New York City.

Q. How long have you lived there?

A. About a month.

Q. Have you any permanent home?

A. New York City.

Q. Whereabouts?

A. 200 Wentworth Avenue.

Q. Where you have been about a month?

A. Yes, sir.

Q. Have you any family?

A. Yes, sir.

Q. Are you married?

A. Yes, sir.

I talked with Mr. Krippendorf about the Standard Company's machines generally. I talked with Mr. Reed about the Bay State machine, and with Messrs. Plant, Caunt, and Worthley about the Woodward heel-loading machine. There were patent suits brought against the T. G. Plant Company, and T. G. Plant, and, I think, Mr. Worthley on the Woodward machine. They did not refer to it in our conversation, or give the infringement

393 suits as a reason for removing the machine. I first heard of this litigation prior to 1899 when I took an option on the Woodward Company's stock. They had a number of machines before that. There was a decision against the

Woodward machine in 1901–2, holding it to be an infringement of the United Company's machine. The Bay State Company was sued by the Goodyear Company for infringement by its sewing machine. That was before the Standard was organized. There was a decision in 1900 in favor of the Bay State Company. The Bay State Company had a sewing machine and had started to develop a stitcher which the Standard Company did develop. There was no litigation about the stitcher, that I remember.

Direct examination resumed:

I produce a list of shoe manufacturers who used machines of the Standard Shoe Machinery Company. (The list is marked "Plaintiff's Exhibit 160.") I know of my own knowledge that these concerns had machines of the Standard Shoe Machinery Company.

394 JUNE 11, 1913.

CHARLES H. MORSE, witness for the United States.

My name is Charles H. Morse. I live in Brookline, Massachusetts. I was engaged in the shoe-machinery business from about thirty years ago. I ceased to be engaged in it in 1906. My company was the Fifield Shoe Machinery Company, manufacturing fifty machines, more or less, consisting of sole cutters, sole splitters, seam rubbers, bottom stampers, welt cutters. Its former name was C. S. Fifield & Company. The Fifield Company was in business when the United Company was formed. Its business amounted to $150,000 to $175,000 a year. About 1901 we had negotiations with the United Company through Mr. Winslow with a view to selling out to them. I think it was about 1901 or 1902—I can't tell exactly. Mr. Winslow telephoned me to call and see him. At that time we were making the machines enumerated and also were putting out the Frechette pegging machine.

I called at Mr. Winslow's office and he said he understood I was putting out a pegging and metallic slugging machine. I told him I was and he said "You don't suppose we are going to allow you to put them on the market." I said I did not know why, and he said it would interfere with their business. He asked me if I would sell my business for $50,000, and I said I would not. We continued in business until 1906, when we sold out to Samuel H. Nichols, of Brockton, Mass.

I had difficulty in installing our pegging machines in shoe factories. I had two machines with W. D. Brackett & Co., of Nashua. They were running successfully and I anticipated putting in more when he wrote me a letter stating they had made a deal with the United, and my machines were returned. The Fifield Machine Co. is now out of business. I can't remem-

ber whether I had trouble with anyone except Brackett. We made all the machines named in our catalog except a few that we only dealt in. We were doing business in this country and in Europe.

395 Cross-examination:

At the time I had the talk with Mr. Winslow referred to my office was at 53 High Street and his office was 205 Lincoln Street. The conversation was at his office. I have no kind of memoranda by which I fix the date in any way. I remember the circumstances, but I don't remember exactly when it was; I think it was in 1901. As to whether I tell by some incident that I remember—I remember the incident of being down there; that is all. I don't think I remember any other incident by which I fix the time of this talk. The talk related to the Frechette pegging and metallic slugging machine. It was about a year after we obtained the Frechette pegging machine which we had got from Carron. We had put out some of them. I can not fix the time, except that it was about a year after the licenses which we had obtained for the Frechette machine. When I met Mr. Winslow in the courthouse the other day I said I hadn't seen him for twelve or fifteen years.

I don't know that my talk with Mr. Winslow was back in the time when he was interested in the Consolidated & McKay lasting machine. I don't know about that.

Q. If it turns out that you got that license about 1895, then this talk with Mr. Winslow was back in 1896 or so?

A. It was previous to that.

Q. It was previous to that?

A. Yes.

Q. Time slips away faster than we realize?

A. Yes.

Q. And this conversation may have been many years further back than you at first thought?

A. I think it was about 1901.

Direct examination resumed:

I went to see Mr. Winslow about the matter in his office at 205 Lincoln Street. I am positive that the United Company was engaged in business at that time.

396 JUNE 13, 1913.

ALEX STONE, witness for the United States.

My name is Alex Stone. I live at 970 Prospect Avenue, New York. I am attempting to manufacture shoes. I have been in the shoe-machinery business in this country and in Europe. I have been export manager for the Atlas Works, at Leipsic,

Germany, and with the Consolidated Hand Method Lasting Machine Company, as expert operator in this country, and as agent in installing machines in continental Europe. I first attempted to install machinery for the Atlas Works in this country in December, 1910. I made an attempt in St. Louis with the Roberts, Johnson & Rand Shoe Company, the Peters Shoe Company, and the Hamilton-Brown Shoe Company, and perhaps the Brown Shoe Co. I attempted to sell—not lease—them machines. My concern makes a complete line of shoe machinery, including welters and stitchers, heeling machines and lasting machines. A few minor machines are made for it in Germany. Mr. Jackson Johnson, of Roberts, Johnson & Rand, told me, "My boy, I know all about it, about the machines you are producing in Germany, and what kind of machines can be made in Germany or in Europe; but, as it is, you know, if you bring over a machine which is constructed in such a way that we drive a cow into it, and on one side ready-made shoes come out, and on the other side ready-made sausages, and you want to sell it to us for ten cents, then we are not allowed to install it or make use of it." He said it was on account of the United Shoe Machinery Company—their leases.

Q. Did you install any machinery with the Peters Shoe Company?

A. No, sir.

Q. With whom did you talk at the Peters Shoe Company?

A. With Mr. Peters, himself.

Q. Did Mr. Peters assign any reason why he couldn't take your machinery?

A. Exactly the same reason. He was the first one I saw in St. Louis. They were awaiting my coming from Europe, and I had a long conversation with him. It was running in the same way, that it was impossible to install any machinery which wasn't from the United, which would compete against the United machinery; but, anyhow, that I should go and see the other manufacturers still individually, and then they would have together a conference with me—all of them.

Q. Did you attempt to install any machinery in the East?

A. Yes; in Lynn, Massachusetts, and Haverhill.

Q. You mentioned the Roberts, Johnson & Rand Company and the Peters Shoe Company, and did you also mention Hamilton-Brown?

397

A. Hamilton-Brown; yes, sir.

Q. Whom did you talk with at the Hamilton-Brown Shoe Company?

A. At the Hamilton-Brown Shoe Company there were from Roberts, Johnson & Rand, I think, Mr. Rand and Mr. Johnson, and from the Peters Shoe Company, and from another concern—there was quite a representation.

Q. Who represented the Hamilton-Brown Company at this conference?

A. I think Mr. Roberts—Mr. Roberts or Mr. McElroy. There were several gentlemen from the Hamilton-Brown Shoe Company there at the conference.

Q. What reason, if any, was assigned by the Hamilton-Brown Shoe Company why they couldn't take your machines?

A. That they cannot, unless the United Shoe Machinery Company will give in to their demand that they should have the liberty to install any kind of machinery they want to; and, as they explained to me, they have given the ultimatum to the United.

In January or February, 1911, the superintendent of Brophy Brothers, of Lynn, said, "Mr. Stone, we can't even talk aloud about it, about talking with you at all about competition machines." The reason they assigned was on account of the contents of the United lease.

I sold machines to nail wooden heels on shoes of the turn variety to Evans in Wakefield, and Guptil in Haverhill. Those were the only two machines I sold in the six weeks I was here.

Cross-examination:

Q. Mr. Stone, how long have you been in this country?

A. At present? I have been here several times; more than a dozen times.

Q. How long have you been here representing the Atlas Works?

A. I have been here representing—once I was here six weeks, and then I was here a year, and now I am here again since eight or nine months.

Q. When did you first come over here to represent the Atlas Works?

A. In 1910, in the summer.

Q. Did you open an office anywhere?

A. Why, yes—not directly an office. I wanted to see first if there was any business.

Q. Did you open an office at any time?

A. Not directly an office; but my address was in the United States Hotel, Boston, where I lived.

398 Q. In the United States Hotel?

A. Yes.

Q. Was that the only address you had?

A. Well, and 535 Massachusetts Avenue, as it was always in the advertisements.

Q. The only place where you could be found would be the United States Hotel or 535 Massachusetts Avenue?

A. Yes.

The Atlas Works did not have an agency or any machine parts or any workmen in this country. Their works are in Leipsic. They are prepared to furnish a complete line of shoe machinery for welt, McKay, and turn shoes. I published the advertisement which you produce.

(This advertisement is marked "Defendants' Exhibit 90.")

I did not attempt to equip any manufacturers who were just beginning business and who had not installed any machinery at all. All the people whom I visited had running factories, and their machinery was already installed. We had received letters from this country from manufacturers. I offered to equip the Roberts, Johnson & Rand factory with a complete equipment for McKay, welt, and turn shoes, except a few minor machines. I offered to equip the Hamilton-Brown Company with our full line. I offered to sell the machines outright.

Q. So that they could give up every bit of their United Shoe Machinery Company's machinery and take yours?

A. No; they couldn't do that—not every bit of it.

Q. You could furnish them with welters and stitchers?

A. Yes, sir.

Q. And lasters?

A. Yes, sir.

Q. And levelers?

A. Yes, sir.

Q. And rounders and channelers?

A. Yes, sir.

Q. In fact, with all the principal machines?

A. The principal machines.

Q. The machines that you could not furnish them were the little machines?

A. No, not so very little.

Q. I don't mean in size, but I mean of minor importance.

A. Oh, not minor, but essential machines.

Q. What did you mean when you said you made all the machines except the minor machines?

A. Well, we make everything, but the way it is here in this country we couldn't bring them over here all we make.

Q. The machines you do not make yourselves you supply by buying of other people?

A. We get them made for us according to our instructions.

399 I offered to equip Brophy Brothers, who made ladies' welts and McKays, with a full line. At Brophy Brothers I talked for about two hours with the superintendent.

I gave in each instance the total price for which I would equip the factories; and they didn't even discuss the question of how soon I could do it, not even the price.

Q. You have been anxious to get employment with the United Shoe Machinery Company, haven't you?

A. Well, after I have seen that I can't—either have to give up my trade altogether here or——

Q. Just answer my question. You have been anxious to get employment with the United Shoe Machinery Company?

A. I have been anxious to earn my living.

Q. Just answer my question, please.

A. Yes.

Q. You have applied to them for work, haven't you?

A. Mr.——

Q. Yes or no?

A. Not directly in the first place.

I did not say I would publish things in the newspapers about them unless they gave me work. I tried to get work from the United Company in February, 1911, after I attempted to sell machines, about two weeks after my visit to Brophy Brothers. I have been back to Leipsic twice since then. I have been sent over here twice since then, still representing the same company. I am not employed by them now. I have given it up automatically. I can't do anything for them.

400 (Letter dated February 24, 1912, from Alex Stone to John H. Connor is identified by the witness and is marked "Defendant's Exhibit 91." Letter dated May 19, 1912, from Alex Stone to John H. Connor is also identified and marked "Defendant's Exhibit 92." Letter dated September 7, 1912, from Alex Stone to John H. Connor is identified and is marked "Defendant's Exhibit 93." Letter from Stone to Connor, dated Sept. 17, 1912, is marked "Defendant's Exhibit 94." These letters, which refer to efforts of witness to obtain employment from the United Company, were read to the court by counsel.)

Direct examination resumed:

The Atlas factory employs three hundred men in Leipsic. It has a capacity of three of each of the principal machines a week, so that each week they could furnish three equipments.

I made a proposition to Brophy that for what they would pay for one and one-half years in royalities I would furnish the

machinery and it would be their property, on the installment plan, paid in eight quarterly installments. I told Jackson Johnson that if he would put at our disposal capital that they would pay in one year in royalties, we might be able to enlarge our plant and furnish them machinery, but as it was we were equipped only for European business. When I said our factory could turn out three equipments of each kind a week, I meant by an equipment a set of machines for daily production of two hundred to two hundred and fifty pairs.

401 JUNE 13, 1913.

JOHN J. DOIDGE, witness for the United States.

My name is John J. Doidge. My residence is South Framingham, Mass. I am general manager of the R. H. Long Machinery Company. I have had that position about two years. I look after the shoe machinery business and am familiar with the sales of shoe machinery that have been made to shoe manufacturers. They have sold three welters. One was sold to the Taylor's Shoe Company, Lynn, which began business about two years ago, for five hundred dollars, on time. One was placed with Taylor's Shoe Company, shoe manufacturers at Brockton, a different concern from the one at Lynn, for five hundred dollars, on time. The third was sold to Dolan, Park Street, Charlestown, a cobbler, who makes some new work. It was sold for five hundred dollars, on time.

We have sold two hundred and eighty-five outsole stitching machines, of which three went to shoe manufacturers and the others to cobblers throughout the country. Of the three which we sold to shoe manufacturers one was sold to A. D. Fisher, Lynn, for four hundred and fifty dollars cash, one to H. M. Hanson Company, Quincy, for five hundred dollars, on time, and the third to Arawanna Moccasin Company for five hundred dollars. They make welt shoes. The two companies last mentioned have been engaged in business about two years.

We have put out four lasting machines, three to the Buffalo Shoe Company, East Pepperell, Massachusetts, for four hundred dollars cash apiece, and the fourth in Salt Lake City, Utah. The Buffalo Shoe Company makes welt shoes and some McKays. They do not use any United Company machines, not that I know of. They have been in business about four years. The machines were sold to them when they first went into business. The one in Utah was sold to the Zion Co-operative Mercantile Association, who make McKay and welt shoes. We got four hundred and fifty dollars for it. They do not use United Company's machines to my knowledge. We have put out five

heelers, mostly to the Framingham Shoe Company, Mr. Long's company. We sell heeling machines for four hundred and
402 fifty dollars. I do not remember any being sold to other manufacturers. We sell the parts for our machines.

Cross-examination:

We produced our stitching machine by copying a Goodyear rapid outsole stitcher, the United Company's stitcher, which we took to pieces in the R. H. Long Machinery Company building. That was done under my direction at the instruction of Mr. Allen Webster, Mr. Long's attorney—one of the attorneys for the United States in this case. That was done around August, 1909. We copied the machine in most all details and our machine is identical with the Goodyear, with the exception of the patented parts. It is put out as the Waldorf stitcher. The welters we put out were bought of the Duplessis Company and sold again. The lasting machine was developed under my instructions. It was not copied in any respect. Our heeling machine is the National heeler.

Some suits were brought for infringement against our company by the United Company a couple of years, I believe, before we put out our stitcher. I don't see how shoe manufacturers could help knowing about those suits more or less. Anybody who looked at it could see that it was a reproduction; built according to the expired patents. Our machine did not have the Baltimore edge attachment. We could not furnish that. Nor did it have the Holmes attachment.

Q. Don't the up-to-date manufacturers almost invariably demand the Baltimore edge attachment and the Holmes attachment?

A. We haven't had any call for it.

Q. No; because you couldn't furnish it.

A. We haven't any call for it.

PUTNAM, J. You have answered the question.

Q. As you observe the up-to-date shoe manufacturers, they do want those two attachments, don't they?

A. I don't know whether they do or not. I think there are a great many shoes made——

PUTNAM, J. You have answered the question.

403 The WITNESS. We have practically completed four hundred and fifty out-sole stitching machines. We are ready to supply to the trade about thirty welters, twenty-five lasting machines, and four or five heeling machines. We make a heel-seat leveler also. We are ready to supply a full line of machinery for welt and turn shoes and we so advertise. We

can supply metallic fastening machines; we have a few of them. We can supply heeling machines.

Direct examination resumed:

Our welter and stitcher are known as the Goodyear (sic) welter and stitcher. We make the following machines: Outsole stitcher, parts for welt and turn machine—getting ready to manufacture that machine—innersole lip turner (a lot of those), welt groovers and bevelers (a lot), welt beaters (a lot), outersole channel openers, Arnold channeler, lasting machines, parts for edge trimming machines, repair machinery, buffing and cleaning machines, twin sole layer, sole leveling machines, National heelers, channel laying machines, studding machines, parts for heel trimmers, heel breaster, heel scourer, twin edge setter, bottom stamping machine. We are getting ready to build welt and turn machines, rough rounders and stitch separating machines. We do not make all the machines shown in our catalogue. We are getting ready to make about all. Some auxiliary machines we buy from others. We have had as many as seventy-five employees, at present about eighteen. There are three buildings to our factory—125 by 40 feet, 65 by 40, 135 by 40—all two floors.

404 JUNE 13, 1913.

FRANK MORRISON, witness for the United States.

My name is Frank Morrison. I live in East Weymouth. I work in the shoe factory of George E. Keith. In April, 1899, I worked in the factory of the T. G. Plant Company. In June, 1910, Eddie Johnson, an agent of the United Company, sent me to see Mr. Wilson, of the United Company.

(The following evidence was admitted subject to defendants' exception.)

First I saw Mr. Wilson alone. We had had some trouble, and he said, "Why don't you strike? We will back you." I said, "It can't be done because we are going to give Mr. Plant a month's time to fix the matter up with us." He said, "Come in and see me when you are through." The month was up and we had a meeting. The day before someone told Mr. Plant what was going on, and they refused us to go in. Then we went down to see Mr. Wilson. Mr. Ross and Mr. Sochat were with me. Mr. Wilson wanted us to start an organization. His offer was if we would organize the place and get him all the information we could for so-and-so machine (sic) he would pay us two thousand dollars cash and our expenses, and he would see that we got a job. We tried to organize the Plant factory and got something like three hundred members. Mr. Wilson

also wanted us to furnish him all the information we could about the Plant factory. We made reports two or three times a week about the conditions in the Plant factory. We used to tell him we got so many members. We had to report about so many pairs of shoes coming out from certain machines. We had to report that most of the times, too. He says: "Go ahead, keep up," he always told us to keep up organizing; do our best to get an organization in there. He says: "It will be better for you by and by." He said he wanted to find out something about the toe-operating Wonder working machine. We got a man who used to work on the machine in Plant's factory to come down and explain it. There was no attempt to strike, only to form an organization. We saw Mr. Wilson two or three times a week for two months. We got a man named Jack Tobin to go down and explain the toe-operating machine. I used to ask the boys working on the machines for the information Mr. Wilson wanted. As to whether Mr. Wilson said anything to us about infringement of patents, anything like that—well, he used to ask me lots of things I didn't know anything about, machines I didn't know anything about, so I used to ask the boys that was working on them to get information for him.

405 Cross-examination:

I first saw Mr. Wilson in May, 1910. Before I saw him at all I and some of the other employees of Mr. Plant had made some demand on Mr. Plant. We had a little trouble between us, but I was sure that would be fixed up. Mr. Plant promised us—when I say "we" I mean all his employees. I was one on the committee that represented them in making it. I was on a committee of the men with Harris, Murphy, and Epstein, to ask for more money. I was in Plant's office once before seeing Mr. Wilson. I saw Mr. McGaffee. I saw Mr. Wilson a day or two before the time we had given Plant was up. I told Mr. Wilson what the trouble was, that I was on the committee, and we were asking for more money and expected to hear from Plant. Mr. Plant gave us more money, on the last day. That was all that happened.

I heard there were about five thousand employed in the Plant factory—not all men. There were three or four hundred in the lasting department where I worked. I was acting only for them. We had several meetings of 15 or 20 or 50 men. As to what organization we formed, first we were for joining the United Shoe Workers, but after we thought we would be employees of Plant. We did not join the United Shoe Workers. We did not join any order at all nor did any of the men that I know of.

Q. Have you got the books or the papers in which the names were signed?
A. Mr. Wilson got all our papers.
Q. I say, have you got them?
A. We had some copies. Our lawyer had them, I suppose.
Q. Had that organization any name?
A. No; Plant's employees.
Q. Did you receive any money from Mr. Wilson?
A. I was there so many times——
Q. Did you receive any money from Mr. Wilson?
A. No; we didn't.
Q. Not one copper?
A. Not one copper.
Q. Have you got a scrap of paper from Mr. Wilson of writing of any kind?

406 A. No.
Q. To substantiate the truth of a word you say?
A. No.

407 JUNE 13, 1913.

CHARLES G. ROSS, witness for the United States.

My name is Charles G. Ross. I live at 43 Dana Street, Revere. I am a shoe worker at Lynn. I had a conference in June, 1910, with Mr. Charles H. Wilson; Mr. Morrison asked me to go. We discussed organization of the workers in the Plant factory. Mr. Morrison and Mr. Sochat were present. Mr. Wilson said through organization we could get better pay and he wanted us to organize the place and he would pay us well. He said he would pay expenses and two thousand dollars, and he wanted daily reports of shoes put out, their quality, and who was coming in to see the machines. We saw him about twice a week for two months. He wanted information about the toe-lasting machine. We got a man who worked on that machine at Plant's and took him down to Lynn and he compared Plant's machine to the United machine. He used a No. 5 machine belonging to the United Company in explaining the difference. There were present Richards, who is, as I understand it, assistant manager of the Lynn branch of the United Company, Raymond, a gentleman by the name of Mose, his first name, Sochat, myself, and Tobin. Mr. Wilson told us to see Mr. Richards at Lynn. Mr. Richards made out a check in my name for three dollars, and we cashed it and I gave the money to Tobin. We held meetings to organize and gave the boys a good time, which cost us about fifteen hundred dollars, all told. Mr. Wilson said we were not doing as good as he expected. He promised us jobs at welting, and said he would teach us how to welt at Lynn. As a result, I went to the Arnold school for a few weeks. I did not pay any-

thing for my instruction. In July, 1910, Mr. Richards got me a position in the Field, Holmes Company, in Chelsea. I asked Mr. Wilson for the expenses and money he had promised us for organizing at the Plant factory, and he said he would pay us in time.

408 Cross-examination:

We have never been paid anything, and Morrison, Sochat, and I brought suit against Mr. Wilson's estate for two thousand dollars apiece, or twenty-seven hundred dollars, including expenses. Morrison and Sochat are married. I am not. We average $15 a week at Plant's. We spent this $1,500 in June and July of 1910. We had meetings and took the boys to Revere. We spent about fifteen hundred dollars. I contributed about six hundred dollars of it. I had been saving it, and my father kept it for me. Morrison claims he spent $500 and Sochat supplied $400.

Q. You took $600 out of your own savings, did you?

A. Yes.

Q. And spent it for this purpose?

A. Yes, sir.

Q. When you did that, how many times had you seen Mr. Wilson?

A. About two times a week.

Q. Before you began to draw on your own savings?

A. Before?

Q. Yes. You had seen him once, had you?

A. I saw him once.

Q. Did you get anything in writing from him?

A. No.

Q. Did you ever see the man before?

A. No, sir.

Q. Didn't have a scrap of paper to show you would ever get this money paid back, did you?

A. We asked for it.

Q. No. You didn't have a scrap of paper, did you?

A. No.

Q. And was this $600 the savings of your lifetime, all that you had ever saved up?

A. I had a little more.

Q. How many years' work did it represent?

A. About eleven or twelve.

Q. And you undertake to say that on the statement of a man you had never seen but once, and without a scrap of paper, you took the savings of almost eleven years and spent them, expecting him to pay it back?

A. It wasn't done the first time; I took part of it the first time and the second time I took it again.

Q. You took your savings and spent them for this purpose?

A. During those two months; yes.

Q. And you never did get, and you haven't to this day got, anything in the way of a letter or receipt or any paper of any kind showing that you are ever going to get that money back?

A. No.

409 I have made a claim on Mr. Farr for the money. I had left Plant's when I made the arrangement with Wilson. Wilson wanted some one who had worked for Plant whom he could trust. The subject of organization was discussed by us with Wilson all through July. He said, "Go ahead and get the boys to join your union." We intended to get a bigger body before we made our organization. We had an unnamed union comprising Plant's whole shop. I got some of the names but have destroyed them. When we gave Mr. Wilson our bill he asked us to destroy all names relative to the trouble. We trusted Mr. Wilson, and we did so; destroyed the proof of all we had done.

Direct examination resumed:

We have made frequent demands on the United Company for payment and have brought suit against them.

410 JUNE 13, 1913.

ABRAM SOCHAT, witness for the United States.

My name is Abram Sochat. I live at 646 Harrison Avenue, Boston. I worked for the Thomas G. Plant Company in 1910. In June, 1910, I went with Mr. Morrison and Mr. Ross to see Mr. Wilson. He asked us how things were going on in the Plant Company, if the people were satisfied with the machinery and the pay they were getting, and said he wanted us to organize a union at Plant's after we had told him we weren't getting enough money. He told us to go on and organize and he would pay expenses and $1,000.00. He said he wanted information about the number of shoes put out and the quality, and as to who were coming to see the machines. We talked to Mr. Wilson about the toe-lasting machine. I tried to explain to him and he couldn't very well understand me, and he told me I should go down and see Mr. Richards—me and Mr. Ross should go down and see Mr. Richards in Lynn. I went with Mr. Tobin when he explained the difference between the Number Five and Plant's toe-lasting machine. Tobin got three dollars for it, which Mr. Richards paid him. We had meetings to organize a union. We went around and asked the boys to join.

I saw Mr. Wilson two or three times a week for the two months of June and July, 1910. Mr. Wilson sent us to a school in West Lynn to learn welting. I have demanded our money from Mr. Wilson many times, and have now brought suit.

Cross-examination:

I brought suit against Wilson's estate and against the United Company, on the same claim—$2,000.00 for services and $400.00 for expenses. I am a laster and make eighteen or less, or twenty dollars a week. I was married and had one child at that time. The four hundred dollars I spent represented my savings, but I didn't draw it from my bank account. My brother owed me two hundred dollars and I had two hundred dollars of my wife's in the house. She had kept it there quite a long time. She saved it up from her own money—what I used to give her in the house. It was all her savings and I took all of it. We spent the money for organization halls and to give the boys a good time, and some for our own expenses. We got receipts at the time. They are not in existence now. When we gave Mr. Wilson the bill, he told us to destroy the things we
411 had left. The only receipts we had were for halls. There was nothing about the receipts that would incriminate us. We hired a house from an Armenian. It was on Parker Street. I do not know the owner's name or the number. It was right near Center Street. We gave the boys a good time. We took them ' Revere. We had meetings with supper and and refreshments. I went with Ross to see Wilson at Morrison's suggestion. He just told us to go up and see Wilson and that he would explain. Mr. Wilson never paid me anything, nor did anyone else. We kept an itemized statement of what we spent. When we gave Mr. Wilson a bill for the whole thing, we destroyed it. It was the only evidence we had to support our claim. I saw Mr. Wilson at his office on Lincoln Street. I don't remember the number. His office was on the second floor. I was there fifteen or twenty times, perhaps more, sometimes with Ross and sometimes alone. Sometimes we would have to wait for him. J. Tobin is in Canada now, I have heard. I I don't remember his address in Boston or when he went away.

412 Counsel for the United States read the following note from the minutes of the executive committee of the board of directors of the United Shoe Machinery Company for January 29, 1900:

"That a rebate be granted to exclusive users of the machines leased or controlled by this company and its subsidiary com-

panies, and to such other manufacturers upon such special terms as the general manager may consider expedient; said rebate to be made by quarterly payments to the manufacturers of the amounts equal to the sums paid by them respectively as royalty on the Gem flexible insole machines during the quarter for which the rebate is made."

Counsel also offered the record in the case of the United Shoe Machinery Company v. Thomas G. Plant Company in the Supreme Judicial Court of Massachusetts. It is marked "Plaintiff's Exhibit 162."

413 JUNE 25, 1913.

CHARLES S. SMITH, witness for the United States.

My name is Charles S. Smith. I am in the butter business in Chicago. I was agent of the Goodyear Shoe Machinery Company from 1884 to 1898; on the road selling machines, with headquarters at Brockton. I placed welt-sewing, stitching, and lasting machines. The Eppler Welt Machine Company started in 1893 with the Eppler welt machine. They had no outsole stitcher at that time. Later—I should say in 1895; 1894 or 1895—they had an outsole stitching machine. I am familiar with the Eppler machine. They could be used for the same purpose as the Goodyear welt-sewing machines, and were so used.

I was putting out the Copeland and Ideal lasting machines for the Goodyear Company. They were put out on two forms—one on an initial price and royalty basis and the other on a sale form. In 1897 there were on the market the different Copeland machines put out by the Goodyear Company, the Chase, the Consolidated, the Boston, and the McKay-Copeland. I left the Goodyear Company before the formation of the United Company. Later in 1901 I entered the employ of the United Company at Brockton as a salesman on the road. I did not place any lasting machines for the United Company, nor any Eppler welt or outsole stitching machines. I had no instructions from the United Company with respect to placing any of those machines among manufacturers. Goodyear welt-sewing and outsole stitching machines were put out on an initial premium, and a royalty of four cents per pair of shoes made on them. I left the United Company in 1903, and re-entered their employ in 1904, and finally resigned in 1907.

414 Cross-examination:

I live at LaGrange, forty miles west of Chicago. I sewed shoes on the Eppler machine as an expert operator. I had worked in a shoe factory and had learned the trade; and as

a part of my work as agent for the Goodyear Company I had to be able to demonstrate a machine. I am familiar with the difference in the operation of the Eppler and Goodyear welters. The stitch was reversed in the Eppler. The Eppler laid the chain stitch in the channel of the insole, which comes next to the foot. The chain stitch, being larger and more bulky than the single stitch, occupied more room and was likely to leave a ridge around the inside of the shoe, which would come against the foot.

Q. And cause discomfort to the wearer; isn't that true?

A. That was the theory that we used in argument.

Q. You were constantly urging upon customers, before the United Company was formed, that the Goodyear welter was a superior machine to the Eppler, for that very reason, weren't you?

A. We were.

Q. And you believed it?

A. Yes, sir.

Q. And you believe it now?

A. I surely do.

Q. And you satisfied a great many customers of the truth of your belief, didn't you?

A. They didn't appear to be at that time.

Q. You satisfied a good many, at any rate?

A. Yes.

Q. Before the United was formed, as you watched the business, the Goodyear machine, because of this very difference, was gradually showing its superiority to the Eppler in the trade, wasn't it?

A. It rather looked to us as if we were in trouble.

Q. Just notice my question; it looked as if the Goodyear was gradually showing its superiority in the trade?

A. I can't say that it was.

Q. You can't say one way or the other?

A. No, sir.

415 The Goodyear machines were put out on lease only. They were never sold. There were two leases for the Ideal; one was on an initial premium of $500.00 where a payment was made when it was installed, and no further payment was made, but the machine remained the property of the Goodyear Company. That is the form I spoke of as a sale. Then there was the other form, where it was put out on a royalty basis and also remained the property of the company. Those were the only two forms I had when I was in office by which the Ideal was placed with customers. The second time I was with

the United Company I was in the general department and the third time in the eyelet department. Consequently there wasn't any occasion for me to receive any instructions as to any except general department machines.

416 JUNE 25, 1913.

HERBERT E. CHASE, witness for the United States.

My name is Herbert E. Chase. I am a shoe manufacturer and live in Haverhill, Mass. I make turns, stitchdowns, and McKay shoes. I had two channeling machines and a turn stitcher from the Haverhill Shoe Machinery Company. They were all on royalty. I got the stitcher in 1911 and the channelers a year before that. I had, in 1911, machinery leased from the United Company. I discontinued the use of the Haverhill machines about 1912.

(The United States here offers to prove by this witness that in 1911, prior to the filing of the Government's petition, he had obtained from the Haverhill Shoe Machinery Company one turn sewing machine and two channeling machines; that in March or April, 1912, an infringement suit was brought against Chase by the United Xpedite Company, a subsidiary of the United Company, on account of the use of the Apex heel-burnishing machine; that subsequently to the filing of the infringement suit the witness had conferences with Mr. E. P. Brown, Mr. Donham, and Mr. Sampson, of the United Company, at which objections were made to his use of the Haverhill machines in connection with the machinery of the United Company, and that, as a result, an agreement was entered into between the witness and the representatives of the United Company whereby the Haverhill machines which were then in his factory on lease were returned to the lessor. The evidence was excluded.

PUTNAM, J. As far as the court understands, the whole transaction was subsequent to the filing of this bill.)

I make a stitched down shoe now. I have only the United Company's stitching machines now. We last by hand. We use the United Company's slugger and we are still using the Apex burnishing machine.

No cross-examination.

417 JUNE 25, 1913.

WILLIAM G. DODGE, witness for the United States.

My name is William G. Dodge. I live in Newburyport. I am a shoe manufacturer. I have used the Haverhill Shoe Machinery Company machines. I am now using the United machines. I got the Haverhill machines in October or November, 1911, but I have not got them now. I had them on a

royalty basis. I also had on lease a full line of turn machines from the United Company at that time. I discontinued the use of the Haverhill machines after three or four months because the United Company installed some machines that we felt were more efficient. Mr. John H. Connor of the United Company came to our factory and asked us why we were using the Haverhill machines, and we told him we were using them until we could get the new model G, which we had ordered from the United Company. I don't remember that he made any objection to our using the Haverhill machines.

Cross-examination:

We had been making turn shoes for about four years and always had used United Company machines. It was while we were waiting for the new model G machine of the United Company that we tried some Haverhill machines. There was some delay about getting it because the United Company was not able to furnish those machines. We did not get any leases of the Haverhill machines, nor did we purchase them. We made no permanent arrangement regarding them, but simply took them on a verbal agreement for royalties while using them, with no agreement as to how long we would use them and intending to use them merely until we could get the model G As soon as the model G was ready we installed it and discontinued the use of the Haverhill machines.

418 JUNE 25, 1913.

FREDERICK W. HERRICK, witness for the United States.

My name is Frederick W. Herrick. I am engaged in the manufacturing of welt and turn shoes at Lynn under the name of G. W. Herrick Shoe Company. I use the machinery of the United Company. In April, 1911, I bought a heeling machine of the Haverhill Shoe Machinery Company and used it for about a year. We then ceased using it. I was using the Gem insole machine in connection with the United welter at that time. We had had the Gem royalty allowed, rebated to us all along. Every few months when everything was square on the books they sent us a check back. We paid it once and then it was sent back.

Q. Now, after you took on the Haverhill nailing machine, did the United Company discontinue sending you these so-called rebates for the Gem sewing machine?

A. Not for that reason.

Q. Now, I asked you whether or not they discontinued the payment of the rebate for the use of the Gem insole machine. Just answer that yes or no.

A. I was trying to think of the date; I couldn't say for certain.

Q. Did you have any conversation with any representative of the United Company about that rebate?

Mr. GREGG. That is, the rebate in connection with the Gem insole machine.

The WITNESS. Not that I remember of.

Q. Did you have any conversation with Mr. Brown about it?

A. I have had conversation with—I don't whether it was Mr. Brown, I wouldn't be sure. But when I have been settling bills the question has been brought up whether or not they would allow rebate when the account was not fully settled up to date—something of that kind—never in connection with anything else.

Q. Did you have any conversations with any representative of the United Company with respect to the use of the Haverhill machine?

A. I think I have; yes.

Q. With whom?

A. Well, the particular conversation I have had was with Mr. Richards, of Lynn.

419 Q. Did you have any talk with any other representative of the United Company?

A. Not that I can remember—no special talk.

Q. Here in Boston, I mean.

A. I don't remember; no.

Q. Will you say that you did not?

A. I think I had in connection with money affairs—had some talk with Mr. Brown, the head of the company.

Q. That is, about the Haverhill machine?

A. Well, matters in general—all kinds——

Q. No. Answer my question, won't you, please? Did you have any conversation with Mr. Brown about the Haverhill machine?

A. I don't think I ever did. I had a talk with him about putting back his machine. I don't think about the Haverhill machine.

Q. Putting back what machine?

A. Putting back the machine that he had, to do the same work—model G.

Q. In place of the Haverhill machine?

A. I think so; yes.

Q. Now, when you had that conversation with him did you also talk about the Haverhill machine at that time?

A. I don't think there was much said about the Haverhill machine.

Q. No. I am asking you whether anything was said about the Haverhill machine?

A. I should say no. I can't remember about it.
Q. Was anything said at that time about your paying a royalty to the United Company on account of the use of the Haverhill machine?
A. Yes; we had to—when we——
Mr. CHOATE. What was said, please?
Q. Yes; what was said about it?
A. In this general talk we had was that when you put this—if we put the United Shoe machine back we would have to pay their royalty, because they had demanded it of everybody else.
Q. Pay their royalty for what time and on what machine?
A. The royalty on the same number of pair of shoes that we had paid on the Haverhill machine.
Q. On the Haverhill machine?
A. Yes.
Q. Did you pay that royalty?
A. We did; yes.
Q. Now, was this rebate discussed at that time—this Gem insole rebate?
A. I don't think so; no, sir.
Q. Will you say it was not?
A. I should say no.
Q. Were you putting in this additional machine of the United Company, this machine of the United Company, to replace the Haverhill machine? Was that to go in with the understanding that the Haverhill machine was to be put out?
A. We was to put it in and, if it was more satisfactory, we should keep it in and put the Haverhill machine out.
Q. And did you put the Haverhill machine out?
A. Well, we would take the choice, whether we would put it out or not, you know.
Q. I am asking you now whether you did put it out.
A. We did; yes.
Q. How much had you paid for the Haverhill machine?
A. We paid $350, the initial price, and royalty for the time being.

420 Cross-examination:

These machines were for doing welt work. Before we had the Haverhill machines we were doing our welt work on the United Company's machines. We were using the Goodyear welter and stitcher, and we were offered the use of the Gem insole machine without additional charge if we used it with the Goodyear machines. Later we bought the Haverhill heeler and took the Haverhill turn-stitching machine on trial. We got it in May or June and ran it a little less than a month.

We made no lease or initial payment on it. We never purchased it. We used it for the work which had previously been done by the United Company's machine. We kept the United Company's machine, also, idle or partly so, while trying the Haverhill. When we had an opportunity to get the new model G (heeling machine) from the United we tried that machine and decided to use it in place of the Haverhill machine. That is, we learned of the new model heeling machine, which was the latest thing out, and we put it in and tried it. We had the opportunity to choose between the two machines. Under the circumstances we took the United Company's heeling machine. We tried the Haverhill Company's stitching machine and then went back to our old Goodyear machines. We sent back the Haverhill heeling machine; they kept the three hundred and fifty dollars we had paid. The new model heeling machine was developed by the United Company to handle women's shoes with high heels, and it proved to be a good one. We were making high-heeled shoes. Up to within a year and a half ago there was no machine on the market to make high-heeled shoes right. The model G was developed to do that work right. We got it because we wanted a machine to do that work right.

421 JUNE 25, 1913.

RICHARD N. MORTON, witness for the United States.

My name is Richard N. Morton. I am auditor of the United Shoe Machinery Company and of the United Shoe Machinery Corporation. The capital of the United Shoe Machinery Corporation is fifty million dollars. It was organized in 1905, and acquired substantially all of the capital stock of the United Shoe Machinery Company of New Jersey. The common stock was taken over at thirty-seven dollars and fifty cents, and the preferred share for share, or one and one-half shares of common given for a share of common of the company, and one share of preferred for one share of preferred. Thirty-seven and one-half cents in cash additional was paid for the preferred and seventy-five cents additional for the common. At the time of the organization of the United Shoe Machinery Corporation the issued capital of the United Shoe Machinery Company was $9,937,084.50 preferred and $10,720,809.50 common. The statement in the petition that after the stock of the company had been taken over the issued capital stock of the corporation was $26,018,298.75 is substantially correct. But that wasn't all issued at once. Dividends of eight per cent on the common stock and six per cent on the preferred stock were paid by the United Shoe Machinery Company between 1899 and 1905. All

were cash dividends. Cash dividends of eight per cent on the common stock and six per cent on the preferred were paid by the United Shoe Machinery Corporation from 1905 to 1911, amounting to $14,535,390.96, during the period. Stock was distributed to the stockholders to the amount of $9,166,846.25. The surplus of the United Shoe Machinery Company in 1905 was approximately $6,710,914.00 and on March 1, 1911, $20,669,800.00, and at the same time, March 1, 1911, the surplus of the United Shoe Machinery Corporation was $5,787,596.00.

422 Cross-examination:

I have a memorandum of the details of the figures I have just testified to, and the stock issued in 1907, 1909, and 1910:

(Detailed figures of the totals testified to by the witness are marked "Defendants' Exhibit 95.")

The thirty-seven and a half cents and the seventy-five cents mentioned as having been paid in connection with the acquisition of the company's stock by the corporation were adjustments to pay the stockholders of the United Shoe Machinery Company dividends that had accrued and had not been paid. The actual transaction was an exchange of preferred stock, share for share, and of common stock, one and one-half shares of corporation stock for each company share. The common stock of the company was carried on the books of the corporation at thirty-seven dollars and fifty cents a share to make the assets balance the capital liability. The par value of the shares of each company and each kind of stock was twenty-five dollars. The first issue of new corporation stock after 1905 was July 1, 1907, when $4,464,468.75 common stock was issued and added to our capital liability. To balance that issue, the value of the common stock of the company held in the treasury of the corporation was marked up on the asset side of the trial balance. That was the whole of that transaction. $2,239,245 of common stock was the next issue. It was made in April, 1909. It also was added to the capital liability and the value of the company's common stock in our treasury was marked upon the asset side to at least that amount. $2,463,132.50 stock was issued in July, 1910, and the same bookkeeping process followed. The surpluses are a property surplus, of all kinds, a trial balance surplus, not a cash surplus. The surplus of the corporation is due to the fact that we have marked up the value of the company's stock which it has in its treasury, which is due in whole or in part to the surplus funds in the company's treasury. In the computation as to the earnings and surplus of the company on

pages 78 and 79 of the petition, the United States inadvertently has calculated twice the surplus of the companies, so that the total earnings for those 6 years have been about twenty-
423 eight millions instead of $45,314,261—$28,679,452, to be exact.

At the end of the company's fiscal year in 1905, the net assets of the company and corporation were $27,368,808, and the earnings on same in 1906 were 12.91 per cent thereof, and the cash dividend 4.91 per cent; in 1906, the assets were $29,716,596.38. the total earnings in 1907 were 14.02 per cent and dividends 6.49 per cent; in 1907 the assets were $33,103,684.44, earnings in 1908, 14.08 per cent, cash dividends 6.67 per cent; in 1908 the assets were $35,632,484.37 and the earnings in 1909 were 13.55 per cent and the rate per cent, cash dividends to net assets, was 6.70 per cent. March 1, 1909, net assets were $38,070,392, rate per cent of the total earnings to assets for 1910, 14.90, dividends as compared to net assets, 7.80 per cent; on March 1, 1910, net assets were $40,771,821, rate per cent of total earnings to net assets for 1911 was 14.25 per cent, rate per cent cash dividends to net assets paid that year, 9.04 per cent, which included in that year one extra cash dividend. The average rate for six years of earnings to net assets was 14.01 per cent and cash dividends 7.10 per cent.

Direct examination resumed:

After the corporation was formed it held substantially all of the stock of the United Shoe Machinery Company. A total of $14,535,390—not $16,700,000, as alleged in the petition—has been paid in cash dividends by the corporation and by the United Company to stockholders, of course not including the dividends paid by the United Company to the corporation. Between 1905 and 1911, $9,166,846 worth of stock of the United Shoe Machinery Corporation was distributed among shareholders of that company, pro rata, according to their holdings, without any payments by the distributees. The surplus of the corporation was in each case at least equal to the amount of stock issued. The company of course pays to the corporation dividends on its stock held by the latter. The corporation in turn pays it to the shareholders. Subsidiary companies whose stock is held by the company of course pay the company dividends like any other stockholder. The surplus of the United Shoe Machinery Com-
424 pany increased between 1905 and March 1, 1911, from $6,710,914 to $20,669,800, an increase of $13,958,886. The earnings in excess of the dividends paid during that period increased that much, so the surplus as shown shows that way. The dividends of the subsidiary companies paid on stocks held

by the United Company go into the general income account of that company and form part of its earnings from which its dividends to the corporation are paid. They are not in addition to the dividends already spoken of as paid on the company's stock.

When the corporation was organized the company had issued $9,937,084.50 of preferred stock and $10,720,809.50 of common. Since the formation of the corporation up to August 2, 1905, the corporation issued $16,006,387.50 of common stock and $8,971,175 of preferred stock in exchange for the common and preferred stock of that company. The corporation took over the company's stock from time to time. Practically all the common has gone over, but some of the preferred is still out. On March 1, 1901, $18,292,218 of the stock of the United Shoe Machinery Company had been issued. Between 1899 and May, 1905, stock of the company was sold for cash to the amount of $1,854,829.09. There has always been a surplus sufficient to take care of any additional stock distributed.

(At this point counsel for the United States read into the record an extract from the records of a meeting of the board of directors of the United Machinery Corporation, June 14, 1907, relative to a vote that new stock to the amount of $4,464,581.25, representing 178,583¼ shares of the authorized unissued common stock of the corporation, should be distributed as dividend pro rata among the holders of the common stock. Counsel also read into the record a similar resolution under date of March 10, 1909, referring to the issue of $2,239,580 of common stock, and a third resolution of June 10, 1910, relative to the issuing of $2,463,-618.87 of common stock.)

425 JUNE 25, 1913.

ERIC O. HALLBERG, witness for the United States.

My name is Eric O. Hallberg. I am with the Boot & Shoe Recorder Publishing Company, which publishes a magazine known as the "Boot & Shoe Recorder." I have been with them for two years. The volume before me contains the issues of that publication for October, November, December, 1898.

(At this point counsel for the United States offered an advertisement of the Eppler Welt Machine Company for the purpose of showing that in 1898 it was in existence and was advertising. It was agreed by counsel for defendants that the Eppler Company, the Consolidated & McKay Lasting Company, the Chase Lasting Machine Company, and the Goodyear Company were advertising in the Boot & Shoe Recorder in October, November, and December, 1898. The United States then offered the reports that

the Eppler Welt Machine Company made to the commissioner of corporations for the State of Massachusetts for the years 1896, 1897, and 1898, for the purpose of showing the financial strength of the company and the value of its assets. These reports were excluded and marked for identification "Plaintiff's Exhibits B, C, and D.")

426 JUNE 25, 1913.

CHARLES L. CLIFFORD, witness for the United States.

My name is Charles L. Clifford. I make turn shoes for manufacturers on contract. In 1910 I had a full line of machinery from the United Company for turn shoes. I put in a stitcher from the Haverhill Shoe Machinery Company.

(Offer by the United States to show that Clifford was required to pay royalty to the United Company on the shoes stitched on the Haverhill machine ruled out as cumulative.)

427 JUNE 25, 1913.

IRA J. WEBSTER, witness for the United States.

My name is Ira J. Webster. I live in Haverhill, Mass. I manufacture shoes. They are McKay sewed shoes. I have used the United Company's machinery exclusively about a year and have used their machines for about eighteen years. I had National nailers and had Pettingill heads put on them. About three or four years ago I bought outright a second Pettingill machine. I applied to the United Company for a pulling-over machine and a toe-capping machine. I was not making welt shoes then, and am not now. Just before adopting the United's machines I talked with Mr. Smith, of the Haverhill office of the United Company, and with Mr. Sampson, head of the general department of the United Company, relative to obtaining them. No objection was made to furnishing me with the machines. At that time the only royalty machines I had from the United Company were lasting machines. I asked Mr. Sampson and Mr. Smith if the United Company would let me have their toe-capping and pulling-over machines while I was using the Pettingill nailer, and they said they would not. And they said that the reason why they wouldn't was because they would sell me what they would call a wholesale lot at a cheaper price than they would a small lot or a portion of their machinery. They offered to install the machines and let me use the Pettingill nailer if I would pay an installation price in addition, I think, to the royalties. I don't remember what the installation price was, but I know it was to cost me more than it was if I used their entire machinery. I traded in the two Pettingill machines which I owned to the United Shoe Machinery Company for about a

thousand dollars, and I am now using their machinery exclusively.

Cross-examination:

Before I had my talk with Mr. Smith and Mr. Sampson I was using some United Company machines. I used the Pettingill nailer. I think I was not using any Haverhill machines except the Pettingill nailer. They offered me two alternatives;
428 they said they would furnish me with the toe capper and puller-over if I would pay an installation charge and a royalty on them, or they would furnish me a full line of machinery at wholesale rates, cheap. That is all there is about that transaction. I don't remember what the installation charge was.

429 JUNE 25, 1913.

FREDERICK J. STARK, witness for the United States.

My name is Frederick J. Stark. I was connected with the Eppler-Adams Sewing Machine Company about 1890. It made sewing machines which were shoe machinery, but I don't know what they were used for. I think that was all it made. Andrew Eppler, who established the Eppler Welt Company, was president. That company operated up to the time the United Company bought a majority of its stock from Eppler and his associates.

(The United States offered to prove that the United Company filed a bill in court asking for a receivership; a receiver was appointed, the property sold, and it was wound up, and what little property they had was bought in by the United Company. The evidence was excluded on the ground that the company in question was not named in the bill or the bill of particulars.)

430 JUNE 26, 1913.

THOMAS H. SHINN, witness for the United States.

My name is Thomas H. Shinn. I live in Reading, Pennsylvania. I am superintendent of the shoe factory of Curtis & Jones Company and have been superintendent for about twenty-seven or twenty-eight years.

At the present time Curtis & Jones have only one factory. It is in Reading. Up to eleven years ago they also had a factory in Hamburg, sixteen miles from Reading. They had that factory for a period of four or five years.

In the Hamburg factory we used a miscellaneous lot of machinery—a sewing machine called the Lincoln machine made by the Campbell Sewing Machine Company, Pawtucket, Rhode Island. We used there loose nailing machines of the United Company—possibly some of their eyeletting machines, the

leased machines. We did not use any sewing machinery supplied by the United Company at that plant. We did not use any Duplessis machines at either factory at that time.

In July, 1902, we combined the Hamburg and Reading plants, moving the machinery from the Hamburg factory to the Reading plant. We had been making in Hamburg a line of shoes similar to those which we made at Reading but a cheaper line of goods.

At the time of the consolidation we were using in the Reading plant a full line of turn machinery from the United Company. Up to that time we had used the Goodyear machine for doing all the sewing in the Reading factory.

About that time we bought three Duplessis turn sewing machines. And we also had, at that time, the five Lincoln machines. That was the machine made by the Campbell Company.

Q. When you moved into the new plant at Reading was this machinery mixed up in a way, or did you divide your factory and attempt to separate the factory?

A. For our own convenience in running the work we installed the factory that we moved from Hamburg as factory No. 2 in the Reading factory, and tried to run that work separately.

Q. Under the same roof?

A. Under the same roof and under same conditions in
431 which we formerly made it at Hamburg.

Q. Just describe briefly how you separated the Reading factory and what machines you used on each side of the factory, as it were?

A. The factory is built in a hollow square. On one side we run what we call the No. 2 factory, which was the Hamburg plant that we had moved from Hamburg. On the other side of the factory we ran our Reading factory, which we called No. 1. In the No. 2 factory we ran all of the Lincoln machines. In the Reading factory we started three Duplessis machines and some two or three Goodyear machines. My memory doesn't tell me exactly just the number, but two or three.

Q. Now, on the side of the factory where you manufactured the shoes that you formerly manufactured at the Hamburg plant did you have any Goodyear machines?

A. No more than what we had had formerly at Hamburg. We installed the Hamburg plant complete on the No. 2 side of the new factory.

Q. And at the Hamburg plant you had had from the United Company their metallic fastening machines?

A. Loose nailing machines—metallic machines; yes, sir.

Q. Was any objection made by any representative of the United Shoe Machinery Company to the use of the Lincoln

machines with the other machines that you had from the United Company during the time that you were operating at the Hamburg factory?

A. No, sir.

Q. Now, what, if any——

The WITNESS. Nothing more than persuasive powers, the calling to our attention of the merits of their own system, the Goodyear system, and trying to persuade us to dispose of the Campbell or Lincoln machines and trying to put in the Goodyear.

432 As to what objection was made after we bought that machinery to the Reading factory—after we had started the Reading factory and the Hamburg factory in Reading, we had been running, I should say, four or five weeks, and Mr. Clark, the Philadelphia district manager, called.

Q. Now, what did he say?

A. He said that we had broken our leases by starting the Duplessis machines in connection with the Goodyear machines; that if we would refer to our leases we would find that fact for ourselves. He further stated that they would withdraw——

PUTNAM, J. Get to the point as rapidly as you can, Mr. Gregg.

Q. Did he say anything about the continued use of the Lincoln machines?

A. Yes, sir. He said it was all one plant now. So long as we had run those machines in Hamburg it was a separate factory, but by moving to Reading and combining the two factories in one it was practically one factory, and what would hold good in the Reading factory would hold good as applied to our No. 2 factory.

Q. That is, you had the Reading factory divided into what you called No. 1 and No. 2?

A. In some departments; yes, sir.

Q. Now, did Colonel King say anything about the continued use of their machines provided you continued to use the independent machinery?

A. I couldn't tell you that. I don't think so. I think that the matter was settled when Colonel King appeared in the case.

Q. Well, let me understand you. Was anything said by Mr. Clark about removal of the United's machinery?

A. Yes, sir.

Q. What did he say about that?

A. He said that they would remove all of their leased machines unless we would discontinue the use of the independent machines.

Q. That included the Lincoln machines and Duplessis machines?

A. Yes, sir.

We did not make any arrangement with Mr. Clark. Then Col. King came to Reading and we made the final arrangements with him. The arrangements were that we would turn over to the United Company the independent machines, for which they would pay us cost price, whatever we had paid for the machinery, and replace them with the Goodyear machines. They did that.

At the time we gave up the use of the Lincoln and Duplessis machines, they were not doing as good work as the Goodyear machines. They answered our purpose for cheap work, and we desired to retain them.

If the United Company had withdrawn all its machines from our factory, we probably could have duplicated all of them except the loose nailers. Those we could not have duplicated.

433 Q. Now, did the fact that you gave up the use of the independent machinery and took on United machinery in place of it increase the cost of the manufacture of shoes in your factory?

(Objected to by defendants.)

A. I should say apparently it did.

Q. Did it, or did it not?

Mr. CHOATE. Does he know?

The WITNESS. It opens a pretty broad question. With the independent machines——

PUTNAM, J. One moment. Read the question.

(A previous question is read, as follows:)

"Q. Now, did the fact that you gave up the use of the independent machinery and took on United machinery in place of it increase the cost of the manufacture of shoes in your factory?"

PUTNAM, J. Now, say you can't answer, or don't know, or answer it.

Q. Do you know?

A. It increased the cost one-half cent per pair.

We are now using the United Company's machinery exclusively and have been since that time.

We are now making about 10,000 pairs a day, both welt and turn shoes. At that time the output was about five or six thousand. We were then making turn shoes only and were not using any welting machines.

434 Cross-examination:

I couldn't say that I personally conducted these negotiations of which I have testified. Possibly some part of the negotiations I conducted. Other parts were probably conducted by Mr. Jones. As to whether I mean that I am testifying both

as to what I did and to what he told me he did—I am testifying now from the facts as I know them. As to whether some of the facts I know at first hand and some of them I got from his telling them to me—I probably was present at all the negotiations. I can't remember back eleven years and tell you the exact details. I couldn't say that I don't know how much of my story is of my own knowledge and how much he told me. I am positive—I am willing to swear my story as I told it is absolutely correct. If I get it from anybody else I get it from being present at the negotiations. As to whether I have personal knowledge of such correspondence as was conducted, such papers as were signed—a great many of them; yes, sir.

When we changed over our Hamburg factory to Reading we already had a factory in Reading. We did not add to it; we built an entirely new building and abandoned our old one, and we moved out of both old factories into one new one, with the idea of centralizing our business in one factory, with one office, one manager, one executive head, running it as one factory for the purpose of economy in administration.

That factory happened to be built on four sides of a square, with the idea of getting all the light we could. There was no separation of one side from any other side, except by an imaginary line. It was all open right around the square.

As far as I can remember, we were using at Hamburg only one of the United Company's machines, the loose nailer. We might possibly have had some eyeleting machines. We were using any sewing machines we wanted to without any interference from the United Company. We were using them on the same shoes and had been doing so for some years.

I don't think we paid any initial premium when we
435 got the loose nailer. Our Goodyear machines were then located in the Reading factory.

When we consolidated in the new factory we arranged our machinery for the convenient and economical manufacture of shoes. The sewing and stitching machines were all on one floor, in the making room. The Goodyear and Duplessis machines were practically side by side. The Lincoln machines were on the same floor but on the reverse side of the building—on the other side of the hollow square building.

Q. But it was still the making room, wasn't it?

A. Yes, sir.

Q. The same room?

A. Yes, sir; same room.

When Mr. Clark came to us and said that using those machines together under those circumstances was in violation of our leases, I did not look at our leases.

I think the signatures to our leases which you show me are Mr. Jones's. They are the firm's duly authorized signatures Up to that time, I think, whatever turn machinery we had we had from the old Goodyear Company and whatever agreements we had were agreements made with that company. Whether we had any additional machines or not, I couldn't say. The leases numbered 1808 and 4152, dated June 3, 1892, and October 16, 1897, from the Goodyear Company, both leases of turn machines, were the leases of the Goodyear turn machines which we had when this question arose.

(Lease No. 1808, turn set, dated June 3, 1892, between the Goodyear Shoe Machinery Company and Curtis, Jones & Company, is identified by the witness and is marked "Defendants' Exhibit 96."

Lease No. 4152, between the Goodyear Shoe Machinery Company, and Curtis, Jones & Company, is also identified and is marked "Defendants' Exhibit 97.")

436 Q. I call your attention to this signature on this rider attached to the first page, and ask you if that is Mr. Jones' signature.

A. Yes, sir, it is.

Q. Under date of October 7, 1897?

A. That is right.

Q. At which time Curtis, Jones & Company made this agreement, didn't it?

"Lease No. 4152 (1808), turn set, made between the Goodyear Shoe Machinery Company as lessor, and Curtis, Jones & Co., of Reading, Pa., as lessee, dated October 16, 1897 (June 3, 1892), is hereby amended as follows:

"The lessor hereby agrees that the rent and royalty to be paid by the lessee for children's turned shoes made after January 1, 1897, shall be 1 cent per pair instead of two cents per pair, as provided in the schedule of section third of said lease, on condition, however, that the lessee while he retains possession of any machine leased to him by the lessor shall not without the consent in writing of the lessor use or allow to be used in his factory any sewing machine for uniting the soles of turned shoes to their uppers which is not leased to him by the lessor.

"Executed in duplicate October 7, 1897.

"GOODYEAR SHOE MACHINERY COMPANY,

"By GEO. W. RANDALL, *Treasurer.*

"CURTIS, JONES & CO."

A. That is right.

Q. You had broken that, hadn't you, Mr. Shinn, when you had your talk with Mr. Clark?

A. When we consolidated?
Q. Yes.
A. Yes; we probably didn't take the leases into account at all.
Q. That is, had you been getting from the old Goodyear Company some arrangement which was advantageous to you?
A. Beg pardon.
Q. I say, had you been getting from the Goodyear Company in accordance with those leases some arrangement advantageous to you?
A. The same advantages as given to every other manufacturer.
Q. There had been some special rider attached to this lease in which you had agreed to use exclusively their machines in consideration for their doing something, hadn't you?
A. I suppose so, judging from that lease.
Q. And when you did introduce your Duplessis machines, that was in violation of your agreement, wasn't it?
A. That is right.
Q. Do you know of any reason why you shouldn't live up to your agreement?
A. I did live up to it finally.
Q. I know you did, but can you suggest any reason why you shouldn't live up to your agreement made back in 1897?
A. No, sir.
Q. Or whether it was any hardship for them to ask you to?
Mr. GREGG. If the court please, I don't see the purpose of this examination.
PUTNAM, J. It is cross-examination, Mr. Gregg.
Q. Can you suggest any reason why it was any hardship to ask you to live up to the agreement you had made in 1897?
A. That opens up a pretty broad field, does it not?
437 Q. You had made an agreement; I suppose you made it with your eyes open, and it was advantageous to you to get what you wanted then. Now, I say, is there any reason why you shouldn't live up to your agreement?
A. No, sir; I don't know of any.
Q. Now, then, was it those leases, as you understand it, that Mr. Clark had reference to when he said that you were violating your agreement, or the loose nailing lease?
A. I think Mr. Clark at that time referred to all the leases with the United Shoe Machinery Company.
Q. Did you make a change in the form of lease under which you held the loose nailer?
A. We endeavored to; yes, sir.
Q. Now, isn't this the fact, Mr. Shinn, that prior to 1902 you have held the loose nailer on the same terms under which

you were using it with any machinery of anybody else that you wanted to have out in your Hamburg factory?

A. We were under that impression; Reading, too.

Q. You learned, didn't you, in 1901, that the United Company was offering its metallic machines on a different form of lease, the terms of which had been agreed upon between it and the Shoe Manufacturers' Association?

A. That is right.

Q. And you wanted to change over to that new form of lease, didn't you?

A. That is right.

Q. And you wrote yourself, January 17th, 1902, asking to have your leases changed over to that new form, didn't you?

A. Modified lease; yes, sir.

Q. That is your letter [showing witness letter]?

A. That is right.

Q. And that was done of your own volition, wasn't it?

A. Yes, sir.

Q. Your own choice?

A. Yes, sir.

Q. Between the independent form of lease where you used the metallic machinery with anybody else's, and the other form of lease which you subsequently took, the modified form, as you call it?

A. I must enter into some little explanation to answer that question.

Q. Just answer my question. I say, it was a matter of your own volition, changing over?

A. Yes, sir; it was.

Q. You had considered the advantages of the two situations?

A. We supposed we had.

Q. Of your own accord you wrote that letter and asked to have your leases changed?

A. Yes, sir; that is right.

Mr. CHOATE. I offer this letter, if the court please, dated——

"READING, PA., *January 17, 1902.*

"*United Shoe Machinery Company, Albany Building, Boston, Mass.*

"GENTLEMEN: Please change all our leases to the modified lease as per arrangement made with manufacturers' committee some months ago, and oblige,

"Yours, truly,

"C. J. & Co.,

"Per SHINN."

The WITNESS. That is right.

(The above letter is marked "Defendants' Exhibit 98.")

438 THE WITNESS. We received in reply the letter, a copy of which you now produce.

(This letter is defendants' Exhibit 99.)

DEFENDANTS' EXHIBIT 99.

JAN. 23, 1902.

Messers. CURTIS, JONES & Co.

GENTLEMEN: Replying to your letter of Jan. 17, in which you ask us to change your leases of the metallic department to the independent lease, I will quote as follows from the rider which we agreed, upon request, to attach to the United form of lease which you now hold:

"The lessee, if not in default in any respect with any of the conditions, agreements, stipulations, and provisions in the lease No. — granted by the undersigned for certain metallic department machinery, upon giving at least thirty days' notice in writing of his intention so to do, shall have the privilege of surrendering this United lease and license at any time before February 1st, 1902, by executing the independent form of lease and license agreement in respect to the leased machinery."

You will see from this that the time for changing from the United to the independent form of lease has really passed, but we are willing that you should make the change now, if you desire to, and we enclose you herewith a copy of the independent form of lease for your signature.

Yours, truly,

UNITED SHOE MACHINERY COMPANY,

Asst. Gen. Mgr.

439 We adopted the form of lease which was enclosed with that letter. As to whether we have changed again to some other form of lease I couldn't say, but I don't think we are working under the same form that we changed to at that time. I am under the impression that we are not paying ten per cent more for our material that we use on the metallic machines at the present time. As to whether we must have changed over again at our request—I can't say about that. I don't know that we have changed.

Up to the time of consolidating the factories we did turn work entirely. Our capacity was about 5,000 pairs. We did not contemplate going into welt work when we enlarged our factory. We decided to do that about eight years later.

The Goodyear or United people had, by perfectly legitimate persuasion, urged upon us the advantages of their machines. We always listened to their arguments and always tried to keep up

with the improvements—keep informed. We had Goodyear machines working. We knew that they were doing good work.

We received no service with the Lincoln machines, but had to take care of them ourselves. We had very little trouble in getting parts. We had to send to Haverhill, Mass., for parts. The United Company had its depot for parts in our vicinity at Philadelphia, fifty-eight miles from Reading; reached easily by telephone or telegraph. We could get a part back the next day; possibly order in the morning and get it at night. That was pretty convenient and was a consideration with us. They also had skilled mechanics there at Philadelphia whom they would send out to us when we wanted them, on telephone request. We couldn't get anything of that sort for the Lincoln machines. We used to have United Company men come out to look at our machines whenever it was necessary. At times they instructed the operatives. I think that was a great convenience and I think I gave that consideration, yes, sir.

We only kept these Duplessis machines about six weeks—two months. We had tried one out formerly. We had
440 bought these two outright.

Q. Well, they didn't give you any service, did they?

A. Yes, sir; they did.

Q. You mean they had men there?

A. Oh, you mean——

Q. I mean service in the sense of having expert service.

A. No; they hadn't had any opportunity; we hadn't run them long enough to call——

Q. There wasn't any agency from which you could get anybody?

A. Not nearer than the east here—Boston.

Q. Where did you have to send to get parts?

A. At that time I think we would have to send to Canada. I am not sure whether they carried parts here in Boston or not.

Q. I presume you gave that consideration, too?

A. Later on.

Q. Now, you made comparisons, didn't you, between the products, the quality of the work which your factories were producing on the Goodyear machines and on the other machines?

A. We certainly did.

Q. And you became pretty well satisfied that the Goodyear machines were doing better work, didn't you?

A. I know they were.

And in addition the general arrangements with reference to the care, the supply of parts, the promptness of service, and all

that, were very much on the side of the Goodyear, in my personal opinion. I did not want to make the change but we felt we must for business reasons. Mr. Jones made the final decision for the change. I don't think Mr. Curtis had anything to do with it. As to where Mr. Jones is now, the last I heard of him I think he was in Nova Scotia.

I wanted the change in the lease of the loose nailers. I did not know that we could get Goodyear machines on an independent form of lease so that we could use the Duplessis machines side by side with them. I made no inquiry.

Q. As to whether there was any arrangement by which you could work them side by side, just as you were doing?

A. We were under the impression——

Q. No. I say, did you make any inquiry?

A. No, sir; I did not.

441 Q. To see whether you could work out the situation so that you could retain the independent machines and the Goodyear machines side by side?

A. No; we didn't make any inquiry.

Q. When you said, on your direct examination, that the change of machinery increased the cost of making shoes half a cent per pair, do you mean that that is an actual computation, or that that was the difference in royalty?

A. That was the difference in royalty.

Q. And in making that answer you haven't given any consideration, then, to the economies that might result?

A. No, sir.

Q. Have you computed those?

A. No, sir; but I know they amount to considerable.

Q. Or the improvement in the quality of work done—you haven't given any consideration to that?

A. No, sir.

Q. Well, economies that amount to considerable might easily amount to a half a cent a pair?

A. Well——

Q. And a considerable improvement in quality might equal half a cent a pair very easily, mightn't it?

A. On the class of shoes we were making, we felt the work was satisfactory we were getting from the independent machine.

Q. And at the same time you wanted to make your work more than satisfactory—you wanted to have it just as good as you could get it?

A. No; we didn't consider that at all. We thought it was good enough for the money we were getting for the shoes.

Q. Are you able to say candidly, balancing between the half a cent increase in royalty on the one side and the improvement in the work and the economies on the other, which way the scales tip?

A. My own personal opinion——

Q. I say, are you able to say candidly?

A. No; I couldn't say to a certainty. I can give you an opinion.

Q. You can't say one way or the other?

A. No, sir.

Q. Well, I will ask you for your opinion.

A. My opinion is that the United Shoe Machinery Company would be the cheapest.

Q. And why so?

A. Considering service, the trouble and worry that you would have with the other machines, the United Shoe Machinery Company would be the cheapest.

Q. Now, what do you mean by the trouble and worry that you would have with the other machines?

A. We had some trouble in keeping the machines in repair, because we had no experts to repair them; had trouble at times getting parts, and had some difference in the quality of the work.

442 Q. Anything else that occurs to you?

A. No; I think that would cover the ground.

Q. Well, you got no benefit of any improvements which might be made from time to time?

A. By using independent machines?

Q. Yes.

A. No, sir.

Q. Which you do get on the United Shoe Machinery Company's machines?

A. Yes, sir.

Q. And you get the benefit of any improvements as fast as they are made?

A. Yes, sir.

Q. One matter more I want to ask you about, Mr. Shinn. Do you remember, about the time you put in the metallic sewing machines, having some talk with the representative of the Goodyear Company?

A. Well, I can't think of any particular talk. We had a good many talks at that time.

Q. Let me see if I can call it to your mind. Those Lincoln machines were put in your Hamburg factory about 1895?

A. I can't remember the year.

Q. Somewhere about there?
A. Probably.
Q. At first you proposed to put one or more of those in the same factory with the Goodyear machines, didn't you?
A. Yes, sir.
Q. And the Goodyear representative objected to their being in the same factory?
A. That is right.
Q. On the ground that his machines might get blamed for any bad work that resulted?
A. Well——
Q. Just see if that isn't correct?
A. No. We started the first Lincoln machine we ever started in the Reading factory.
PUTNAM, J. You have answered the question, Mr. Shinn.
Q. Do you not recall that objection?
A. No, sir; not in that way.
Q. Didn't he ask you, for some reason which I will come to in a minute, to put the machines in separate factories, so that the results of the work of the two kinds of machines would be demonstrated?
A. I can't say. He might possibly have said it.
Q. And didn't he claim that if you put the Lincoln machines and the Goodyear machines side by side in the same factory that his machines, which he believed did the better work, might be blamed for the bad work of the Lincoln machines?
A. I never remember anything like that.
Q. Don't recall that?
A. No, sir.
Q. And didn't he at that time insist upon having the whole of your factory for his machines, or none?
A. Oh, yes. They always done everything they could to persuade us to discard the——
Q. Well, wasn't that their reason for it?
A. Well, they offered so many reasons I guess they covered that ground.

443 I am speaking all the time of the period before 1899, before we had our consolidated factory, and when we still had the two factories, one at Hamburg and one at Reading. I know that Mr. Clark, with whom I testified that I talked, is dead.

I am not positive whether when this trade was made by which we took the United Company's machines in place of the Duplessis we had notice that the Duplessis machines were infringing the Goodyear machines and that there was patent litigation

We knew of it later on, but I don't think we were aware of it at that time, although we may have been notified. Referring to the copy of the letter to which you called my attention, dated August 15, 1902, that was about the time we made the change. I can't remember whether it was pointed out to us in that letter that the Duplessis machine infringed the Goodyear patent. As to whether that wasn't one of the reasons that we made the change, it might have had some effect, if we received such a notice. Together with these advantages that I pointed out it certainly would have had some effect on us just at that time.

Direct examination resumed:

The arrangement to which we referred in our letter of January 17, 1902, was that which we understood to have been made with

444 the United Shoe Machinery Company by a committee of the Shoe Manufacturers' Association. I was not present at the conference, but I knew two members of the committee. We understood that the committee secured from the United Shoe Machinery Company a modified lease by which manufacturers using the metallic machines and paying an additional percentage for the material would be permitted to use any machine independently. On the strength of that we sent the notice referred to because we wanted to get into a position to use independent machines, and we told Mr. Clark when he raised his question in reference to our violating our leases that we were working under the modified lease which gave us the privilege of putting in any machine that we wanted. Mr. Clark said the modified leases didn't apply in this instance. The letter referred to all of the machines in both plants, and we were under the impression that all of our metallic machines were under the modified lease. I think that we got machines subject to the rider referred to in the letter written us by the United Shoe Machinery Company on January 23, 1902.

Cross-examination resumed:

The rider was put on the lease we then had. We did not get any new metallic machines. I have learned since—but we understood at that time—that the result of taking the modified form of lease was to permit us to use any independent machine, and that the arrangement related to the whole field, instead of to the machines in the metallic department. That is where we were found to have misunderstood it.

445 Q. I call you attention again to defendants' Exhibit 99, the reply of January 23d to your letter of January 17th, which says:

"Replying to your letter of January 17th, in which you ask us to change your leases of the metallic department to the Independent lease."

That made it very plain to you that the changes were in the metallic department lease, didn't it?

A. Exactly.

Q. And not generally?

A. But we understood——

Q. Now, just a minute. You couldn't have understood from that that it made any change in the contracts or leases you had with reference to your Goodyear machinery?

A. We certainly did understand that. Our understanding was that on changing this metallic lease——

Q. Then you didn't read the letter?

A. We probably didn't understand it, if we read it.

Q. The letter was plain, wasn't it, in which you asked us to change your leases of the metallic department?

A. That is right.

Direct examination resumed:

Q. Was it your understanding that that statement in the letter to change the leases of the metallic department was such a change as would permit you to use in connection with their metallic fastening machines other machines than metallic fastening machines, with the United machines?

A. To be perfectly frank with you, we possibly didn't pay much attention to that letter at all. We felt that that letter covered the ground that we had asked for.

446 JUNE 26, 1913.

FREDERICK W. CURTIS, witness for the United States.

My name is Frederick W. Curtis. I live in Reading, Pennsylvania. For about twenty-eight years I have manufactured boots and shoes. Formerly we had two factories, one at Reading and one at Hamburg, sixteen miles apart. We manufactured turn shoes. In the Reading factory we made our better goods and in the Hamburg factory we made a cheaper grade of the same kind of shoes. In the Hamburg factory we used the turn sewing machines called "Lincolns" made by the Campbell Machine Company. We used the United Company's metallic machines. We used independent machines that we bought and had for years. We combined the two factories in 1902. The two were then placed under one roof. We built a large factory and we moved to it the machinery that we had in the Hamburg factory and also placed in it the machinery that we formerly used at Reading. In the Reading factory we had been using the United Company's machines exclusively.

We moved the Hamburg plant down and we installed it in one side of this building, the same as we had at Hamburg. We moved

our factory at Reading into the new building at the same time and installed the same machinery we formerly used from the United Company, and also put in three different Duplessis machines, on the side where we had the Goodyear machines. None of the shoes manufactured on the side where we had the machinery moved from Hamburg were finished on the side where we used the Goodyear machinery. That was a cheaper grade of shoe. They were all made in one place.

Q. Now, during the time that you were using the United's machinery at the Hamburg plant, did you have from the United Company at that time what was known as a modified form of lease?

A. We never used any United Shoe Machinery Company's machinery at the Hamburg plant.

Q. Didn't you use some of their machines there?

A. No, sir. We possibly might have used a nailing machine or something of that sort. We had all the machines we owned long before.

Q. You say you may have had a nailing machine up there?

A. Yes, sir.

Q. Now, do you know whether or not your company did take from the United Shoe Machinery Company what was known as a modified form of lease?

A. Yes, sir.

Q. For what machines?

A. Well, I think it was for the nailing machine; loose nailing or nailing machine.

447 I do not think I ever saw the letter dated January 23, 1902, defendants' Exhibit 99. As to whether I ever saw this so-called modified form of lease, I never saw any leases; that is, to read them.

After we went to Reading we also took on three Duplessis turn sewing machines which I bought myself.

Q. Do you know of your own knowledge whether or not the United Shoe Machinery Company made any objection to the continued use of the Campbell or Lincoln machines?

A. Yes, sir.

Q. And the Duplessis machine?

A. Yes, sir.

Q. What information did you have about that?

A. They told us——

Q. No. Did they tell you in person?

A. No, sir.

Q. Now, did your partner, Mr. Jones, communicate with you about that matter in any way?

A. He certainly did.
Q. Where were you at that time?
A. I was here in Boston.
Q. What did you do in response to this communication from Mr. Jones?
A. I advised him——
Mr. CHOATE. No; I suppose you are going to say you talked with the United Company.
The WITNESS. I hadn't talked with anyone. I decided the question right here.
Q. Here in Boston?
A. Yes, sir. I am president of the company, and he left it to me.
Q. What matter did you decide here in Boston?
A. I decided whether we would keep on using our machines that we had, or whether we would put in the United Company's machines.
Q. That is, you mean the independent machinery?
A. Whether we would keep on using the machines.
Q. Whether you would keep on using the independent machines or put in the United's machines exclusively?
A. What?
Q. Or whether you would put in the United's machines exclusively?
A. Certainly.
Q. And what decision did you come to?
A. I came to the decision that we would put in all United.
Q. Did you act on the communication from Mr. Jones?
A. Yes, sir.
Mr. GREGG. Now, it seems to me he ought to be permitted to say what Mr. Jones advised him. It seems to me he ought to state what communication he received from his partner that he says he acted on in deciding upon the removal of these machines.
Mr. CHOATE. If that is competent, why not produce it?
Mr. GREGG. I don't suppose he has it.
448 Q. Do you have the communication you received from Mr. Jones?
A. We have it, but I haven't it here. We have a copy of it—a copy of all letters. I haven't it here.
Mr. CHOATE. I don't object to your using a copy if it is competent.
Q. You don't have a copy here?
A. No, sir.
Q. What was it—a telegram or a letter?

A. A letter; in fact I am not sure we have the letter. I am sure I got the letter, but I am not sure whether it was a typewritten letter or not.

Mr. GREGG. If the court please, I will put it in this way, then, and let him explain his reasons for coming to the decision to use the United's machines exclusively.

PUTNAM, J. That he may do.

Q. Explain your reason why you came to the decision to use the United's machines and discontinue the use of the independent machinery.

PUTNAM, J. That refers to facts.

The WITNESS. My partner said——

PUTNAM, J. No matter what your partner said—the facts, the conditions of your business or anything of that sort—the actual facts.

The WITNESS. I wouldn't know just what he wanted me to say or how he wanted me to put it. Just give me the question again.

Q. I am asking you why you came to the conclusion to use the United's machines exclusively and discontinue the use of the Duplessis machines?

A. We didn't want to fight the United Shoe Machinery Company.

Mr. CHOATE. That I submit is not an answer to your honor's suggestion. It is an argument. It is not any statement of facts at all. May that be stricken out?

PUTNAM, J. Well, it is not within the line of what I had in mind. I don't know how my brothers feel about it. I think he is entitled to state the facts and conditions.

Q. What were the conditions that induced you to come to that conclusion?

A. Well, the company told us that we could not under our lease use any machinery in the same building under our leases, and that they would take their machinery away if we kept on operating this way. When we bought those Duplessis machines in Canada—I bought them myself here in Boston—they claimed that they could give us a full line of machinery, and after we bought these machines at $1,500 apiece they couldn't furnish the machines such as the United——

PUTNAM, J. Whom do you mean by "they"—the Duplessis?

The WITNESS. Yes, sir. They claimed they had a full line of machinery made in Canada and could furnish a duplicate of every machine we were using. But when the time came and when we moved they couldn't furnish the machines. If we had thrown the United out, they could not furnish them.

Q. Did you know of any other concern from whom you could have obtained the machines that you then had from the United Company?

A. No other.

449 We sold back the Lincoln machines and the Duplessis machines to the United Company and got for them the original price. We got for the Duplessis $1,500 apiece, the same as we paid for them. The discontinuance of the use of the Duplessis and Lincoln machines increased the cost of manufacturing our shoes to the extent of the royalties that we were then paying, that is one-half a cent on each pair. We owned those machines and had them paid for and when we replaced the Duplessis and Lincoln machines with the United Company's machines we then paid one-half cent royalty on each pair of shoes.

The Duplessis and Lincoln machines were doing satisfactory work at that time and we certainly desired to continue their use. We have machine shops in connection with our shoe factory and it is possible for us to look after the machines we use in our factory and in case of necessity to make parts for them; but we wouldn't make parts if we could buy them. At the time we made the change we might have had ten machinists in our employ and they could have taken care of the machines in our factory. We are now using the United Company's machines exclusively—every machine we need we use from the company. Since we discontinued the use of the Duplessis and the Lincoln machines, we have not used any other independent machines to amount to anything; none of any account. I mean, we don't consider any others. There might be some minor machines that we use. We do not use any independent sewing or stitching, heeling, lasting, or metallic fastening machines.

450 Cross-examination:

Mr. Shinn is in charge of the manufacturing end of our business. I have charge of the selling end. I am in Boston quite a bit of my time; never traveled a day. I keep pretty well posted as to the manufacturing end, but Mr. Shinn has charge of all the details of the factory. When I said in my direct examination that we used the United Company machinery exclusively I was speaking only of the bottoming department. In the other departments we use other people's machinery.

Before we made our change and when we had our Hamburg factory we made the better grade of shoes in Reading. Both factories were turning out turn shoes, but the better grade of shoes were made at Reading and had been for years, on the Goodyear machines. As far back as my experience goes, we were

all the time making our better grade of shoes on the Goodyear machines. It was my business judgment to make my better grade of shoes on Goodyear machines.

When I said that the change increased the cost of making shoes, I meant aside from other considerations it added the royalty of half a cent a pair, but I did not take into consideration the benefit of the economies which might have resulted. I heard Mr. Shinn testify; I would not say that my conclusion is derived from his judgment about it. We paid $1,500 apiece for the Duplessis machines; bought three of them outright. We had $4,500 tied up in machinery that we could not use in the shoe business. We turn over our capital invested in making shoes about three times a year; whereas if we tie it up in machinery we do not turn it over at all; it is dead, and stays there always.

451 We have to keep the repair shops whether we retain machines which we bought or machines of the United Company or any other company. The Duplessis Company agreed to furnish parts for its machines. We could get them in Haverhill; they had an office there; that was the nearest place to us. We were the only people out of Massachusetts that had a Duplessis machine. It would take us longer to get those parts than to get Goodyear parts. I do not think the Duplessis Company furnished any mechanics to teach the operation of their machines or keep them efficient. They might possibly when they first installed them. When we first had one on trial I think they did send a man, though I am not sure. The question of repairing and furnishing parts is an important consideration to the shoe manufacturer. We want to keep the volume of product moving steadily through our factory without any interruption. If an important machine, like a stitcher or welt-sewing machine, breaks down it stops the flow of the product, keeps the machines behind it idle, dams up the product right there at that point, to the general disarrangement of our factory, as well as throwing men who are on machines behind the disabled one out of work.

The margin of profit in making shoes is such that it is very essential that our machinery should work smoothly, regularly, and with continuity, and economies in the manufacture of shoes often make the difference between a successful manufacturer and one who is not successful. One of the most important economies is to have our machinery working with continuity and with the highest efficiency and turning out our product with the utmost regularity day after day, just as we want to get it, so that there won't be any hitch anywhere in the flow of product through our factory.

452 Taking all things on both sides, I think I agree with Mr. Shinn that the operation of the Goodyear machines was on the whole more economical than the operation of the Duplessis, and on the whole the Goodyear machines did better work than the Duplessis machines.

I am pretty sure that our Hamburg factory was entirely equipped with machines not obtained of the United Company and that we did not have any machines but what we had had for years and paid for before the United Company started. We had machines on leases that the United Company took over. We thought possibly that all the machines we had there we owned; we thought we owned them. I do not know where we got our metallic machines before 1899, but my impression is that we had a factory completely equipped with machinery obtained from some other source than the United Company. We had machinery at Hamburg that we had owned for years and paid for. Our output there was about 200 dozen a day of turn shoes—2,400 pair a day. We make more turn shoes than any factory in the United States. It was one of the big factories of the day at that time.

Direct examination resumed:

The reason we put in the independent machines in the Hamburg plan was to save the royalty, at that time a cent a pair. The lease which you produce is one which I signed.

(Lease form 301 called "Independent form of lease," signed by Witness Curtis and referred to in defendants' Exhibit 99, is marked "Plaintiff's Exhibit 176.")

453 Cross-examination resumed:

We equipped our Hamburg factory with machinery from people other than the predecessors of the United Company because we did not want to pay royalty.

You called my attention to defendants' Exhibit 96, which is the lease from the old Goodyear Company, dated the third day of June, 1892. This lease might not ever have applied to Hamburg. I did not sign it. That is Mr. Jones' signature. I do not know whether we got our Lincoln machines after we made this lease. I think we did, but I am not sure. Mr. Shinn, I think, explained that to you. If we got them about 1895, that is so. We very rarely look at our leases. Perhaps I have got some mistaken impressions about it. I do not think there is anything about this lease that ties us in any way to use other Goodyear machines or take other Goodyear machines. In 1892 we were free to take any machines we wanted to. I do not know anything about defendants' Exhibit 97. Mr. Jones signed that.

Q. He was the bad partner apparently; he signed an agreement by which you did agree to use Goodyear machinery exclusively.

A. In what year?

Q. 1897 [showing agreement to the witness]. At a time when you were perfectly free to use anybody's machinery that you wanted to.

A. That only applied probably on the Reading factory.

Mr. Jones and I certainly agreed on our policy about machinery. We ran one factory in Hamburg that we owned before the United Company ever started. We ran one factory on one policy and the other on the other. That is what I meant by saying we wanted to have in the Hamburg factory machines on which we didn't pay royalty. In the Reading factory we were willing to pay royalty.

454 JUNE 26, 1913.

ISAAC W. GILES, witness for the United States.

My name is Isaac W. Giles. I live in New Bedford. I am a machinist and automobile man. I engaged in the eyelet business in 1868 with William H. Dunbar Company in South Abington, now Whitman. I was also with Dunbar & Rhodes, J. C. Rhodes Company. Prior to 1899, the Union, American, and Star concerns in Providence were manufacturing eyelets and there were the Waterbury Brass, Hartford and S. O. C., the latter located in Ansonia, Connecticut. I think the Rimmon Company was then in business, but I don't think the Springfield Fast Color Eyelet Company made eyelets, they only put a celluloid top on them. I think the Hughes Eyelet Company started in 1901. The Fast Color Eyelet Company was at Springfield. I was superintendent with J. C. Rhodes & Company until the company was taken over by the United Company. After that I was eight years with the Atlas Tack Company. In 1901, when I left Rhodes, the Hartford and Waterbury Brass, Plume, Booth, and Hayden, in Connecticut, were manufacturing eyelets, I think. When I left the Atlas in 1909 only the United and Atlas companies were in the field.

Cross-examination:

The Southington Eyelet Company, of Waterbury, Connecticut, was also engaged in the eyelet business in 1899. I can't say whether they were later. So was the Precision Eyelet Company, of Bridgewater, Massachusetts, but they were very small. I can't say whether they were in the field later or not. I do not know anything about the Excelsior Needle Company, of Tor-

rington, Connecticut, making eyelets. The Scoville Manufacturing Company was in business about a year. I don't know
455 whether they were in business in 1901. I have made no attempt to tabulate my knowledge or get it very accurate, either as to time or as to companies engaged in the business. There are doubtless many other companies which I do not call to mind. When I left the Atlas its output was four millions per day, about 100,000,000 a month. I know that it is not now as much as two billion a month. It has increased. The Hughes Eyelet Company, of Taunton, is putting out eyelets today. I don't know what its capacity is. I think it is not 20,000,000 a month. I do not know whether the Scoville Manufacturing Company is now engaged in business. I do not know whether the Waterbury Brass Company is still engaged in the eyelet business, or the American Ring Company (they made eyelets three years ago), or Rome Brass Works, or R. N. Bassett & Company, of Derby, Connecticut. I have not kept very familiar with the eyelet business outside of my immediate locality.

456 JUNE 26, 1913.

GEORGE E. KEITH, witness for the United States.

My name is George E. Keith. I have been a director of the United Shoe Machinery Company since its formation. I was president of the Eppler Welt Machine Company when it consolidated with the United Company and had been for several years.

Q. Mr. Keith, I wish you would state what consideration was paid the stockholders of the Eppler Welt Machine Company when it became united with or was taken over by the United Shoe Machinery Company.

A. I couldn't tell you exactly, because I was out of the State at the time the sale was made. I could tell you what I received myself.

Q. What amount of stock did you hold in the company?

A. I couldn't tell you the proportion. I have no records of that that I could turn to.

Q. Can't you give your best estimate of the proportion of stock that you held, Mr. Keith?

A. I couldn't at this time.

Q. What was the capital stock of the company?

A. I couldn't tell you that.

Q. Aren't there any records of the Eppler Welt Machine Company in existence?

A. I don't know of any. It may be they were turned over to the company that bought the company; I don't know, but I have no records myself.

Q. And haven't you any recollection as to the amount——
A. No, sir.
Q. That was paid for the properties of the Eppler Welt Machine Company?
A. No, sir; I have not. I have tried to think of it, but I could not.
Q. What did you receive yourself, Mr. Keith?
A. I received about $20,000.
Q. In cash?
A. Yes, sir.
Q. How many stockholders were there of your company?
A. I couldn't remember.
Q. And haven't you any knowledge as to the relative amount of stock that you held?
A. No, sir; I haven't.
Q. Were not the stockholders of that company made up principally of shoe manufacturers?
A. Perhaps the majority were; I should judge so.
Q. And you were president of the company for a number of years?
A. Yes.
Q. Mr. Keith, I show you what purports to be a certified copy of the report of the Eppler Welt Machine Company made to the commissioner of corporations of the State of Massachusetts for 1898, and which purports to have been sworn to by you. I wish you would look at that document and refresh your recollection, and state whether or not that states the fact with reference to the properties owned by that company at that time.

457 Mr. CHOATE. I have no objection to his stating whether it refreshes his recollection. As to the next question, I should like to be heard before it is asked.

A. I suppose I must have had knowledge of that. It is typewritten. My own signature does not appear.
Q. This is a certified copy. At that time you were president of the company?
A. Yes, sir.
Q. And on the board of directors?
A. Yes, sir.
Q. State whether or not it is your best recollection, Mr. Keith, that that is a correct copy of the assets owned by that company at that time.
A. I suppose it must have been. It must have been reported that way.
Mr. CHOATE. The question is as to your recollection.

Q. State whether or not, to the best of your knowledge and recollection, the capital stock of the company at that time was $579,990?

A. I have no recollection of it.

PUTNAM, J. Was he the president at that time?

Mr. FOWLER. He was president at that time.

PUTNAM, J. Did he purport to sign that paper?

FOWLER. Yes.

BROWN, J. What is the signature on it?

Mr. FOWLER. This is sworn to. The signature purports to be the signature—

PUTNAM, J. What is the date, Mr. Fowler?

Mr. FOWLER. It is March 30th, 1898.

PUTNAM, J. There are so many ways of verifying the correctness of that paper, that I should say it is fair for him to refresh his recollection about it, if he can.

BROWN, J. What is the signature?

Mr. FOWLER. The signature purports to be: "George E. Keith, president, Eppler Welt Machine Company; Walter S. Batchelder, acting treasurer; W. H. Stacy; Andrew Eppler; W. F. Halsall; George Strong and Charles Curtis."

PUTNAM, J. Did you ask him to refresh his recollection from that, Mr. Fowler?

Mr. FOWLER. I did, your honor, and Mr. Keith apparently has no independent recollection.

Mr. PUTNAM, J. That is not required. You can ask him if that refreshes his recollection.

Q. It is a fact, Mr. Keith, that you and the other directors of the company made a report to the commissioner of corporations?

A. Yes, sir.

PUTNAM, J. He said that. Pass the paper to him and ask him if it refreshes his recollection.

Q. Please examine the paper and state whether or not to the best of your recollection that is a copy of the paper that you actually prepared.

Mr. CHOATE. The court suggests that you ask if that refreshes his recollection.

PUTNAM, J. That is all. Let him look at it and see if it refreshes his recollection—if he can't testify without the aid of it.

A. I don't recollect anything on it.

458 Q. Does or not that refresh your recollection to the extent that you can testify that you made a report which purported to contain in substance the assets and liabilities of the concern at that time—whether you did that or not?

A. The company certainly did this. The company certainly made this report.

Q. And you were president of the company?

A. Yes.

Mr. FOWLER. Your honors, I will offer this as a Government's exhibit.

PUTNAM, J. I don't suppose it is admissible. We ought not to be detained here with it. He says he don't know anything about it.

Mr. FOWLER. May it please the Court, the statutes of Massachusetts, as I understood, require this report to be made, and Mr. Keith was president and director of the company, and under the statute was required to make this report.

PUTNAM, J. If he was dead or out of the State—lived out of the State—it might be admissible, but we ought not to be troubled with it.

Mr. FOWLER. We are placed in this peculiar attitude about the Eppler Company: We can't find anyone that professes to know anything about the amount of capital stock and how much was paid. The bill doesn't allege.

PUTNAM, J. He testified he got $20,000.

Mr. FOWLER. Mr. Keith says he doesn't know how much stock he owned. What I want to do, your Honor, and what I am specially concerned in, is to show the amount of the holdings and the value of the properties owned by that company, to show the importance of it at that time.

PUTNAM, J. I don't think you can show it this way.

BROWN, J. You have got the material for presenting the matter in a different light from what it was presented yesterday, but you haven't yet done so.

PUTNAM, J. Let me see that paper.

Mr. FOWLER. I will ask him some more questions along that line.

PUTNAM, J. Mr. Fowler, perhaps you will find some decision in Massachusetts that will make that paper admissible. Are these directors all dead? There are six or seven men here. Are they all dead?

The WITNESS. Mr. Stacy lives in Braintree; Mr. Strong lives in Newton. Two or three of them are dead; some of them have gone outside.

Mr. FOWLER. Your honors, I wish to offer that paper.

PUTNAM, J. Have you any decision that makes it admissible?

Mr. FOWLER. I haven't examined, your honor, and I don't know.

PUTNAM, J. The offer is ruled out, exception saved.

Mr. FOWLER. It has already been marked for identification.

PUTNAM, J. Let the stenographer note the marking, so that it may be identified.

[This document referred is plaintiff's Exhibit D for identification.]

459 The WITNESS. The Eppler Company made welters and stitchers as its principal machines and was receiving royalty on between thirty and forty welters, of which one-third were in my factory. There were not as many stitchers out as welters. They had been on the market for several years, and we were making efforts to install them in factories. The welter was first put out in 1892 and the stitcher in 1894 or 1895. At the time we joined the United Company we were also trying to make a rough rounder and stitch separator.

Q. Did you, or not, manufacture and place upon the market a full set of machinery for making welt shoes?

A. No, sir; we never did.

Q. What machine did you lack?

A. We never perfected the rough rounder; that is, it was not a satisfactory machine.

Q. But you were making a rough rounder?

A. We were trying to.

Q. You hadn't yet perfected it?

A. No, sir.

Q. But were trying to perfect it?

A. Yes. We had four or five agents out. Other companies besides ours and the Goodyear Company were making stitchers. No others that I know of were making welters.

Q. Do you think you owned as much as one-tenth of the stock?

A. That would be a guess on my part.

Q. You don't think you owned a fifth, but you won't say as to a tenth?

A. No. I am not clear in my own mind, so I wouldn't want to make a positive statement.

Q. Mr. Keith, you said that you received $20,000 in cash. Did you get any stock in the United Shoe Machinery Company?

A. No, sir.

Q. Nothing in addition to the $20,000?

A. Nothing.

Q. Mr. Keith, I call your attention especially to one item in this document, which purports to be a copy of the report which you made, and ask you whether or not it will refresh your recollection, and that is an item of machines in factories, $287,010.90.

State whether or not to the best of your recollection that is a correct statement of the value of the machines in your factory.

460 A. I couldn't state that fact.

Q. You won't say whether it is correct or is not correct?

A. No, sir.

Q. Can you state whether or not that refers to the machinery in the factory that was used in the manufacture of shoe machinery, or does it refer to shoe machinery in the factory that had already been made?

A. I can't swear to anything only that it says here: "Machines in factories"—that is all.

Q. And you don't know whether it was machines used in the manufacture of shoe machinery or referred to shoe machinery——

A. No, sir.

Q. That had already been made? Who negotiated the sale of the Eppler Welt Machine Company to the United Shoe Machinery Company or to these people that were——

A. I couldn't tell. I was in Florida.

Q. Didn't you have anything to do with it at all?

A. No, sir. I was in Florida at the time. It was all completed when I returned.

Q. When did you go to Florida?

A. I was in Florida for two or three months—had no knowledge of any deal going on.

Q. Until you got back?

A. Until I got back or was notified.

Q. You went there about November or December?

A. I went in January.

Q. And this was in February?

A. Yes, sir.

Cross-examination:

Q. Mr. Keith, you spoke of the Eppler Company having at first a welt-sewing machine, then afterwards a stitching machine.

A. Yes, sir.

Q. And you named two auxiliary machines?

A. Yes, sir.

Q. Will you give the names of those again?

A. What was named as the stitch separator or pricker—pricking-up machine—and rough rounder.

Q. That was the extent to which there were auxiliaries?

A. As far as my knowledge goes; yes, sir.

Q. In that system. Are you familiar with the operation of the welt-sewing machine?

A. I think I am.
Q. That welt-sewing machine?
A. Yes, sir.
Q. You said about a third of all the machines the company had were in your factory?
A. I think they were at that time.
Q. It is true, isn't it, that the welt-sewing machine laid the chain stitch, which is a double stitch, on the inside of the sole?
A. Yes, sir.
461 Q. And it is true, isn't it, that that had a tendency to raise a ridge or lump around the inside of the sole?
A. Yes, sir.
Q. Against the foot?
A. Yes, sir.
Q. Which had the effect both of lessening the durability of the shoe and of making it uncomfortable?
A. Yes, sir; that is right.
Q. Now, you said you were trying to develop a stitch separator?
A. Yes, sir.
Q. The function of that is to make the stitches on the edge look regular and finish them?
A. Finish them—lift them up.
Q. Without the operation of that machine the stitches are not left by the stitcher in regular order; I mean they are not regularly spaced?
A. That is right.
Q. Will you state from the shoe manufacturer's point of view how important that stitch separator is in the stitching?
A. It simply gives a finish to the edge that can't be produced in any other way.
Q. Were you as a manufacturer attempting to produce it by hand?
A. I have for many years before the machine was made.
Q. I mean as a thing necessary to make the shoe salable did it have to be done?
A. To make it complete in appearance.
Q. It had to be done?
A. Yes.
Q. Did the Eppler Company have a satisfactory stitch separator?
A. No, sir.
Q. How about the Goodyear stitch separator?
A. That was perfected and a good machine.
Q. Now, you say you think you had from thirty to forty machines out?

A. Something of that sort.
Q. Did you have both Goodyear machines and Eppler machines in your factory?
A. I had one Goodyear machine.
Q. Which did the better work?
A. The Goodyear.
Q. Decidedly better?
A. Certainly.
Q. Up to the time of the sale of the Eppler Company to the United Company was the Eppler machine or set of machines commercially successful?
A. Not as a profit maker.
Q. By the way, was there litigation, too?
A. Yes, sir; from the time it first started, too.
Q. With reference to all your machines?
A. All of them.
Q. Claims or infringement?
A. Yes, sir.
Q. Suits brought long before the United Company came into existence?
A. Years before.
Q. In fact, you had been having litigation ever since you began?
A. Yes.

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JUNE 26, 1913.

DISCUSSION IN RE EVIDENCE ON PATENTS.

In the course of a discussion as to the evidence to be offered by the respective parties relating to patents and the manner in which that evidence should be presented, the following statements were made by court and counsel:

Mr. FOWLER. We desire to reexamine Mr. Howard as to those particular matters brought out by Mr. Choate. But, as I understand, it will relate solely, or practically so, to the patent question, and so I take it that that might be taken up in connection with the remainder of the patent matters.

Mr. CHOATE. Well, it will relate to the subjects on which he testified?

Mr. FOWLER. Those particular matters, yes; just to those matters about which you cross-examined. That does relate to patents.

Mr. CHOATE. Well, do you want him now?

Mr. FOWLER. I was going to suggest, your Honor, that if the patent matter is going to be postponed, that might be postponed and taken up with the remainder of it.

It is your honor's idea, then, to have at this time the whole of the patent matter?

BROWN, J. Why, it is a primary question in this case. It is not a mere subordinate matter.

Mr. FOWLER. I will concede that. There is no question about that, but the thing in my mind was this: I had supposed that these gentlemen would want us to put in our entire case, including patents, and then they would want to take up, when your honors should reconvene, their whole defence, including their patent matters.

PUTNAM, J. No, we don't want to take up these patents ourselves. We will send it all to an examiner.

463 Counsel were unable to agree as to the form of the order for the taking of testimony before the examiner with regard to the allegations of the petition set forth in the paragraph beginning at the bottom of page 15. In the discussion of the forms for the order submitted by counsel, the following statements were made by court and counsel:

Mr. FISH. The case is full of matters where we must refer to patents. For instance, our witnesses will go on the stand and will necessarily state in talking about the Plant purchase that the patent situation was an element. Now, I don't expect those witnesses to say that Plant infringed such and such a patent which had such and such a claim. That we will exhaust before the examiner. But we don't want them precluded from showing that the patent situation was an element.

BROWN, J. Ordinarily what the defendant would have the right to put in is predetermined by the paragraph beginning on page 15 rather than by any evidence presented by the United States in support of that paragraph. That is, if you are to put in testimony in support of paragraph 15, the defendant would have a right to put in testimony which would be pertinent under 15.

Mr. GREGG. Oh, precisely.

BROWN, J. Now, do you wish to go any further than that?

Mr. FISH. Do we, your honors? Oh, yes. Our affirmative defence depends upon an understanding of this patent situation to a very large extent. Your honors can't touch the underlying merits of the lease question, for instance, without an understanding of the patent situation; and that is true not only of the lease question, but it is true of such things as the Plant purchase.

Mr. FISH. I would like to ask what objection there is to the order I presented, which means that when we come to deal with

the Plant question before your honors, instead of having to go into patent questions—that is, the validity and scope of
464 patents—it is already done before the master, and is already shown that Plant infringed 100 of our patents that we put in, and so on the fifty or sixty other purchases, almost every one of which we took either because we wanted to use the invention or because there was some patent question. That requires the putting in of a patent.

PUTNAM, J. That doesn't raise a patent question. It raises a patent controversy. All you have got to say is that in good faith you wished to avoid the controversy over the patent. That has nothing to do with the hearing before the examiner.

Mr. FISH. Your honors will hear that in open court?

PUTNAM, J. Why, certainly. That is part of your principal defence.

Mr. FISH. And in open court we are to go into the hundred patents that are infringed by Plant?

PUTNAM, J. Put them in before the examiner as far as you can.

Mr. FISH. But I want to know how far we are to put them in before the examiner.

PUTNAM, J. When you come to the fundamental question, whether you didn't have a controversy that you were justified in getting rid of, that is not a patent question—that doesn't go to the examiner at all.

Mr. GREGG. Suppose they should come in and say "Here was a machine of Plant that infringed ours. We hadn't got to the point where we brought a suit, but we claim that that infringed." We then would have to say it didn't infringe.

PUTNAM, J. It makes no difference—if they make an honest claim and show their claim was an honest one, that is the end of the matter.

Mr. FISH. That is all we propose to do. If there is any patent litigation of the regular kind that takes years, it will be the Government that institutes it. We shall simply say, "Plant infringed patent No. 297,963," and stop there. We thought the best place to do that was before the master.

465 PUTNAM, J. If the Government contests the bona fides of that claim, that opens up the patent question.

Mr. GREGG. If we don't contest it then the case rests—that the action of the United Shoe Machinery Company, or their contemplated action, against defendants was well founded, and that there was an infringement by Plant.

BROWN, J. In the case of an accord and satisfaction the parties have a claim. They don't go into the merits of the claim.

They show, perhaps, whether it was a fraudulent or pretended claim or not.

Mr. FISH. And we, your Honor, shall say Plant infringed patent 297,963, and there we will stop. Now, the Government can do as it pleases after that. We may say, as a matter of information, that that patent is on a laster or a channeler, but we shall stop there.

BROWN, J. It isn't unreasonable that the defence should have that opportunity.

Mr. FISH. We must do that.

PUTNAM, J. That is part of the reply of the defendant in making a prima facie case.

Mr. FISH. We shall stand on the facts. If the Government has anything to say, let them say it.

Mr. FISH. It seems to us we have got to show that we were influenced in buying Plant by the fact that we wanted to use many of his inventions, that we infringed some of his patents, and that he was infringing a hunded of our claims. And we must put in the patents to show that situation as our affirmative defence.

Mr. GREGG. Why can't we proceed before the examiner and take the proof with respect to the allegations on page 15? Let the Government put in its proof and let Mr. Fish put in his defence to our proof. And then when we reach that point, when that has been completed, come before the court with respect to the continuation either before the present examiner or before another examiner.

466 Mr. GREGG. May I make one further statement if the court please? Mr. Howard's examination on the patent question I have discussed with Mr. Fish and Mr. Choate this morning, and we agreed that what examination we would make of Mr. Howard we could make before the examiner.

PUTNAM, J. That is all right as far as we are concerned.

The following order was entered:

"ORDER DIRECTING THE TAKING OF TESTIMONY, WITH RESPECT TO PATENTS, BEFORE AN EXAMINER.

"It is ordered that the taking of testimony, both for the petitioner and defendants, with respect to the allegations of the petition set forth in the paragraph beginning at the bottom of page 15 and ending at the beginning of Section IV on page 16 of the printed petition in the above-entitled cause be, and is hereby, referred to Charles K. Darling as special examiner; and that for the purpose of taking such testimony the petitioner is allowed until August 12th, inclusive, to present its evidence in chief, and

the defendants are allowed from that date until September 27th, inclusive, to present testimony in defence of the proofs presented by the petitioner before the examiner, and the petitioner is allowed from the last-named date to October 11th, inclusive, 1913, to present evidence in rebuttal. The court reserves control of the proceedings before the examiner, so far as either party finds it necessary to protect their rights; and on any question as to the admission of proofs, either party may apply to the court."

PUTNAM, J. Mr. Clerk, you may enter the order.

On December 9, 1913, petitioner filed "List of parts of exhibits to be specifically relied upon by petitioner, etc." (supra Vol. I, p. —).

466A EVIDENCE FOR THE DEFENDANTS BEFORE THE COURT, DECEMBER 2, 1913–JANUARY 14, 1914; FEBRUARY 3, 1914.

APPEARANCES.

For the United States: James A. Fowler, assistant to the Attorney General; William S. Gregg, special assistant to the Attorney General; Allen Webster, special assistant to the Attorney General.

(After the decision in the District Court): Constantine J. Smyth, H. LaRue Brown, special assistants to the Attorney General.

For the defendants: Frederick P. Fish; Charles F. Choate, Jr.; William A. Sargent; Malcolm Donald; Harold G. Donham; Walter B. Farr; Lafayette R. Chamberlin.

DECEMBER 2, 1913.

SIDNEY W. WINSLOW, witness for defendants.

467 I have been president of the United Company since its formation in 1899; prior to that time, from 1886 up to 1899 I was interested in shoe machinery, especially in the Lasting Machine Company. From 1872 to 1886 I was engaged in shoe manufacturing, in the factory of my father in Salem, Massachusetts.

My experience with reference to the actual manufacture of shoes was as follows: I left the high school when I was eighteen years old and went into my father's factory. I began in the cutting room and passed through all the different departments of shoe manufacture, having charge of the various rooms. When I left the shoe factory in 1886 and gave my entire time to shoe machinery, I had become thoroughly familiar with the manufacture of shoes, more particularly with the manufacture of McKay sewed shoes, the kind which we made, although I am familiar to a very great degree with the methods of manufactur-

ing other kinds of shoes. The McKay sewed shoe is the one that is sewed through and through the sole.

Prior to leaving the shoe business I had become interested in shoe machinery. Beginning in 1878 I had had charge of the "Naumkeag buffing machine" business. That was the trade name of a machine invented by my father. After giving up the shoe business I become interested in a buttonhole finishing machine about 1888 or 1889 and soon after that I became interested in the Hand Method Lasting Machine Company, which made the machine afterwards called the "consolidated hand method."

About 1890 substantially all shoes were lasted by hand except the few which were lasted by the McKay & Copeland machine. That machine was adapted to last the very heavy coarse shoes, those shoes in which the necessity for fine drafting of the upper to the last was not present, and was of the bed type. A bed lasting machine is a machine which wipes over the upper at the heel and at the toe at one operation, using forms or clamps at the toe and at the heel. There were also embodied in 468 machines of that type various appliances for drawing the upper over at the shank and at the ball of the last.

Up to the early 90's almost all of the endeavors of lasting machine inventors had been to produce machines of the bed type. About 1890, one Matzeliger, in Lynn, had developed a very crude model of a machine to last shoes by the step by step process. That machine was afterwards developed into the hand method machine and its operation is an imitation of the process used by the hand workman with his pincers. He took hold of the upper with his pincers and drew it over the last piece by piece, while in the operation of the hand method machine the operator holds the shoe in his hands and presents it to the machine and the pincers which are embodied in the machine take hold of the upper, draw it over and plait it whenever desired, as the hand operator did.

The McKay & Copeland machine was the first successful machine of the bed type and was adapted for doing heavy work. The Chase and Ideal machines and the latest development, the United Company's No. 5 machine, are all of the bed type.

The Chase lasting machine was especially adapted to and was developed for the lasting of men's welt shoes. The Ideal lasting machine was developed for the express purpose of lasting women's welt shoes, there being at that time no machine in the market which was adapted to that purpose.

As to whether the Chase and the Ideal machines were developments or adaptations of the McKay & Copeland machine and,

if so, how far, or whether they were different machines, I think it may be broadly stated something this way: The McKay & Copeland was the first commercially successful bed lasting machine. It was not adapted to lasting the lighter grades of leather around the toe and heel, nor to handle the lighter grades of leather in the shank and around the ball, and at the time when it was invented very few, if any, machine welt shoes were being made. The Chase machine was developed somewhat simultaneously with the development of the manufacture of men's welt shoes. Indeed for a long time the only machine-made welt shoes were men's, substantially all. The
469 Chase machine embodied inventions that were owned by the McKay interests, and naturally the successful inventions embodied in the McKay were more or less embodied in the Chase machine, with certain improvements for handling lighter work, lighter leathers. The Ideal, which was a still further development of the principle of the bed lasting machine, departed somewhat from either of the other machines by having a method of wiping the leather up over the toe of the last prior to its moving in over the last. That was necessary in order to get a smooth toe, as is always necessary, at least in a woman's shoe. The leather is very much lighter. It could not be handled practically by either of the other machines. I understand that women's welt shoes were very slow—machine worked shoes—very slow in development, until the Ideal laster had been developed by the Goodyear Company.

At the time of the formation of the United Company the Consolidated Hand Method—the Consolidated & McKay Company—were endeavoring to develop the welt-lasting machine by the step-by-step process, using the same principles that had been up to that time used for lasting McKay shoes.

The Ideal lasting machine was hardly adapted to lasting men's heavy welt shoes commercially. As to many machines it is impossible to say that a machine will not do certain work. In speaking of what a machine will do, it is always spoken of as what it is adapted to do commercially successfully. I shouldn't say that the Ideal would last men's welt shoes commercially successfully. I might modify that by saying that there are always very light leathers in every kind of shoe, and it might be used for that, but as a practical commercial proposition, no.

The Chase machine was not adapted for lasting women's welt shoes. The reason why it was not is that it is a practical impossibility up to the present time to last the leather that is used in the manufacture of women's shoes over the toe by any bed

machine which does not previously wipe it up over the toe before coming in over the last. Neither the Chase
470 machine nor the McKay & Copeland had that function.

By "wiping up over the toe" I mean the movement of the wiper up in a vertical plane. A smooth finish must be obtained around the toe of the last and there is no way in which that can be accomplished on light stock without wiping it up by a vertical movement of the same wiper that moves in over the bottom of the last. (The witness here illustrated the operation with two samples of shoes.) In the movement of the wiper in over the last the wiper comes up to the shoulder on the inner sole.

The McKay & Copeland machine was commercially adapted only for lasting heavy brogans. The Chase was adapted for lasting men's welts and would not last women's welts, and the Ideal was particularly adapted for lasting women's welts, and although it could last men's welts it was not commercially adapted for that use. Prior to 1899 the Consolidated & McKay Lasting Machine Company owned the McKay & Copeland, the Chase, and the hand-method lasting machines. The Goodyear Company owned the Ideal lasting machine.

471 Before 1899 the hand-method machine was adapted for lasting McKay sewed shoes. The last has to be removed before the sole of a McKay shoe is attached because in sewing the outer sole to the inner sole the needle has to pass through both the outer sole and the inner sole into the inside of the shoe. The last is always left in the welt shoe during the attaching of the welt and the outer sole. This difference in method of manufacture has resulted in a different kind of machine for lasting the McKay shoe from the machine developed for lasting the welt shoe. In welt shoes the attaching of the outer sole comprises, first, the attaching of the welt to the inner sole and upper and then the outer sole to the welt, which is all performed outside of the shoe. The inner sole is channeled, as shown in defendants' Exhibit 145, and in lasting the upper has to be forced against the shoulder of the channel. In order to do this some form of wiper must be used and in the hand-method machine there was no wiper which would push the upper in up to the shoulder of the inner sole. The years of experimentation which we carried on were for the purpose of producing a wiper which would do that.

The differences between the requirements of a machine for lasting McKay sewed shoes and those of a machine for lasting welt shoes may be shown by comparing defendants' Exhibit 144, a McKay sewed shoe lasted on the McKay hand method

lasting machine, and defendants' Exhibit 146, a lasted welt shoe. In the McKay sewed shoe of Exhibit 144 the leather all around the shoe is laid down flat and fastened permanently by tacks which are driven to their heads. There is no channel and there is no shoulder in a McKay shoe. In the welt shoe of Exhibit 146 all the tacks except at the heel are left with their heads projecting, to be pulled out afterwards. There are no tacks at the toe, but a wire that runs from the tack on one side of the toe around to another tack on the other side of the toe. That is to enable the needle to pass through the upper and the shoulder of the inner sole in attaching the welt.

472 In the McKay sewed shoe the lasting tacks stay in the shoe all the time and after the lasting operation the last is removed before the shoe is presented to the McKay sewing machine. In the welt shoe, in which the last always remains, the curved needle passing through the welt, upper, and the shoulder of the insole never goes to the inside of the shoe and will never touch the last. [The witness here illustrated with samples of shoes and said:]

The stitch (in the welt shoe) passes first through the welt, then the upper, then through the shoulder to the inner sole, coming out in the channel. The welt forms an attachment to which the sole can be fastened without having to sew through the outer sole and inner sole directly on the inside. It enables you to get the seam by which the outer sole and upper and inner sole are fastened together outside the bearing of the foot.

Referring to my statement that just before 1899, the Consolidated & McKay Company was endeavoring to develop a hand-method welt-lasting machine, in 1899, when the United Company was organized, the Consolidated & McKay Company had developed that machine to a point where it could last the heel, shank and ball, but could not last the toes satisfactorily. In pleating the leather around the toe by the step by step process such a large number of tacks had to be inserted that it was not satisfactory, and no way of wiring the shoe had been developed for that machine.

Prior to 1899, the Consolidated & McKay Lasting Machine Company put out its machines by leasing altogether; it did not sell any machines.

Auxiliary machines supplied with the McKay & Copeland lasting machine were a hand tacking tool, a hand pegging tool,

4. and a pinking machine. The latter was a machine for

473 scalloping; that is, removing pieces of the upper at the toes of shoes which were so very heavy that even on the McKay & Copeland machine it was difficult to last the shoes with-

out taking out pieces of the leather so as to fold the upper in around the toe.

The hand tacking device was used by the operator to drive tacks into the upper and insole after the upper had been drawn over the last. Bed machines did not tack the upper down at all but held it while the operator drove the tacks with his hand device. Hand tackers accompanied each one of the bed 474 machines. The hand-method machine, on the other hand, drew a piece of the upper over the last, presented the tack to a driver and drove it through the upper and then it let go of that piece and was ready to take hold of another piece.

The development in the use of lasting machines between 1890 and 1899 was generally as follows:

In 1890 very few shoes were lasted by machinery excepting those that were lasted on the McKay & Copeland machines, heavy work. The hand-method machine at that time was in very crude condition. Just prior to 1890 the development of the hand-method machine had been placed in the hands of some mechanical experts in Boston. At about that date I became interested in the development of that machine. There were seventeen machines, I think, of that make that were in experimental use in factories. No contracts had been made with any manufacturers regarding their use and the machine was not successful. The manufacturers and the operatives, and I think the general public, were all very skeptical as to the possibility of developing a machine which would last shoes—so much so that my friends thought I was rather out of my head when I invested in that machine at that time. Two or three years after that that machine became successful—at least to the extent that it could be used to last shoes.

In connection with the development of lasting machinery it should be understood that the lasting operation was perhaps a real handicraft operation. There was more personal skill required to draft the upper over the last and place it in position than any other operation required in making shoes. And very few men in proportion to the total number of men were employed in lasting shoes. There were constant strikes. The lasters would leave the shop and that would close the whole factory down. The lasters themselves were in large part a class of men who drifted from one town to another. As a consequence and because of that unbelief of the manufacturer—the skill that was required in lasting a shoe and the opposition of the lasters—the introduction of machines to do that work was a long, slow, and tedious process. Machines would be placed in the factory and operatives taught and then the oper-

atives in that factory would go to the manufacturer and say that they preferred to last by hand and would do it for a quarter of a cent or a half a cent a pair less than they had previously been getting. Then the machine would be stopped. Perhaps after that would succeed the strike on the part of the operatives and the manufacturer would come around and want machines put in again and some new operatives taught.

That went on continually from 1890 up to the time of the formation of the United Company in 1899, always with an increase in the development of the machines for doing the work and introduction of those machines into factories where the work was of a different character, so that by 1899 machines were being used upon almost all the different classes of shoes that were being made. At that time, in 1899, I should suppose—from the best of my information and study of the data—that about fifty per cent, not more than that certainly, of the shoes that were being made in the United States were being lasted by machinery.

The experience that our company had in the introduction of machines would frequently run to educating operators two, three, and sometimes four times in a given factory, have the machine stop and then start up again perhaps three months, perhaps six months, perhaps a year afterwards. The reason for that was not entirely because the machine could not do better work or save the cost of operation, but the prejudices of the superintendents of the factory, together with the prejudices of the operators, made continual trouble and difficulty in keeping the machines going. It was easily within the power of the operative to produce poorer work upon the machines, and it was only the economic saving that gradually wore down the opposition of the operatives and the superintendents of the factories, and made possible their adoption.

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Q. What effect upon the earning capacity of machines placed in factories did these conditions which you have just described have?

A. It frequently happened that by the time that a machine was permanently installed so that it would continue to be operated by the manufacturer the cost of installation would have amounted to all the returns of that machine to the company for two or three years.

Q. The cost of installation, cost of instruction, I suppose?

A. The cost of instruction was the great expense in the introduction of lasting machines. Every operative had to be taught to run the machine. His previous knowledge of lasting was, if anything, a detriment to his learning to use the machine.

His prejudices, his knowledge of how the leather should be drawn over, combined with his actual inability to operate the machine until after he had been taught, made it really very much easier to instruct men who knew nothing about lasting to operate the machine than it did to take the hand lasters, while the company desired to teach the hand workmen, because they were removing just so much of the prejudice every time that they succeeded in getting a hand operator to operate the machine.

Q. I distracted you a little bit from the question that I first asked you. That was the effect upon the earning capacity of the machines of the condition that you have stated a few moments ago. You said that frequently it was two or three years before they would earn enough to pay the installation charges. I meant to direct your attention particularly to the effect of interruption by disputes between the employers and their lasters, or strikes, or disinclination to use the machines, the effect of interrupted work upon the earning capacity of the machines.

A. Early in the '90's none of the machines except the McKay-Copeland had gotten to the point where the continuous operation of the machine was accepted by the company as a permanent condition. The whole development of the use of lasting machines was in a state of flux. The machine would be operating one day in the factory and would be stopped the next day. They would run two or three months, five months, and then stop. Perhaps every year would see a constant development of the permanent use of the machines, but the interruptions in the use of lasting machines really never ceased until after the formation of the United Company, and until so many men had been educated to operate lasting machines that it was possible for the manufacturers to obtain some men who had been educated to take the place of those who had struck.

Lasting machines were always put out on royalty, and it was always the practice to charge an initial premium in additon to the royalty up to, I think, early in 1898, when the Consolidated & McKay Company commenced to place a few hand
476 method machines without initial premium. Previously the machine was always on the initial payment basis.

The initial premium for the hand method machine was $300; for the McKay & Copeland, with which the placing of the pinking machine and tacking machine and pegging machine as auxiliaries was required, I believe the initial premium for all three was $695.

The condition existing and the reason for eliminating the initial premium payment in 1898 or in 1899 in the marketing of the hand method machine was this: The manufacturers were

always very loath to invest money in machinery and many of them could not afford perhaps to take the money from the business, even although they could see a saving. It was also difficult to introduce the machine on account of the scepticism of the manufacturers and they would more readily adopt the machine and try it out if they could put it into their factories without making a payment when it was put in. Also the company had got to a position where it felt that it could use its money to advantage by furnishing the machines without initial charge, thereby hastening the introduction of the machine. It was an effort to broaden and extend our market.

The lasting done by machinery was much superior in some respects to hand lasting. A very much smoother toe and much better heel seat was regularly obtained by machines of the bed type than was possible in the hand operation, while by using hand method machines the forepart and shanks of the shoes were drawn to the lasts better than it was possible for the hand operator to draw them in regular work. He might do as good work if he took a large amount of time excepting on the welt shoe. On welt shoes it was impossible for the hand laster to place the leather around the toe up against the shoulder of the channel of the insole. It was for that reason that the Chase machine made its progress. The result of placing the leather up against the shoulder was to facilitate very much the succeeding operation of the welt sewing machine.

PUTNAM, J. I would like to ask the question whether from his standpoint as an expert in the manufacture of this machinery there was any duplicating in these various classes of lasting machines?

The WITNESS. Not in the true sense. It was possible to use the McKay & Copeland machine on shoes made of leather not quite as heavy as that for which the machine was adapted, but it would be like using a heavy wagon as a pleasure carriage—you could ride in it. There was a claim on the part of each of the manufacturers of the particular machine that his
477 machine could be used upon work which it was not adapted to do. Very soon after a given machine had been introduced they settled into their natural positions. The McKay-Copeland has always remained for the heavy work, and, while it can last the next grade of work, as to doing the work commercially it is not practical or available and would not be used.

The same may be said of the Chase machine and of the hand method. We adopted various devices on the hand method machine to try to adapt the machine for doing heavier work than

it was fitted to do. The use of the machine on such work was something more than experimental because it would sometimes be used for months on that work, but it was abandoned. These machines have the fields which I have described and they naturally belong to them. No manufacturer today would think of using them outside of those fields.

Commercially and practically these lasting machines do not duplicate each other in their proper fields.

The full capacity and additional machinery clauses were used by the Consolidated & McKay Company prior to 1898.

The business conditions that caused the use of the full capacity clause and the additional machinery clause in the leases of the Consolidated & McKay Company were as follows:

The machines might be standing entirely idle in a factory because the operatives had given the manufacturer a lower price for handwork and they were frequently used as a club on hand operators to keep them from striking and to maintain the established prices for handwork. But the machine had been leased for the life of all the patents then embodied in the machine so that our company had no right to take out the machine although it might be entirely idle and although our company might have spent several hundred dollars in teaching operators to run it. It soon became evident that our company must have some security if it was to place a machine in the hands of a manufacturer for a long period and its only return was to be based upon the use of the machine. These were the reasons for the full-capacity clause.

478 As to how we kept track in those days of the use that was made of the machine when it was in the hands of the manufacturer, the operatives keep their day's work upon slips which are sent in to the company at the end of each month. A book is given with each machine, upon which the days of the month are carried on slips, the duplicate to be retained by the manufacturer and a duplicate to be sent in by the manufacturer to the company. The operative enters his day's work, the number of pairs he does, on the slip.

We had to depend entirely on what they told us as to what the use was.

As to the reasons for the additional machinery clause: That goes into the history of the introduction of machinery for any purpose in a shoe factory. In those days the lasters were perhaps in a given factory, we will assume, twenty-five. The manufacturer would put in one machine, or two machines, or three machines, to last shoes. That is, he would try lasting machines—perhaps would adopt three or four—but very seldom

in those days enough machines to do all of his work. His work, in almost every case, varied in grades, not alone the leather but the quality of his shoes. Perhaps he would adopt the machines first upon the cheaper or middle grade shoes. The result of the introduction of a few machines into a factory—in other words, the lasting of part of the shoes by machinery and part of them by hand—brought about the conditions that I have previously described. The manufacturer was constantly dropping back to doing his work by hand, and our machine would stand idle. It was not practicable, many times, to require the manufacturer, as a condition of his taking the machines, to do all of his work upon the machines when they were put in, because that frequently meant that the men would walk out of the factory—and neither our company nor any lasting machine company in those days could equip a factory with not only the machines but the men to operate the machines. That was impossible. So it became, as the conditions were studied, necessary to require that the manufacturer should take additional machines, so far as he did his work by machinery, and that those machines should not be held idle—that they should be used to their full capacity. Otherwise the period of the replacement by machines of hand labor would have been very much delayed and the expense to the company been very much increased.

I was a member of the executive committee of the Consolidated Hand Method Lasting Machine Company and the business advisor of George W. Brown, the general manager. Mr. Brown was associated with me from the time I entered the company. He had previously been for twenty-one years general manager of the Wheeler & Wilson Sewing Machine Company in New England, and was the ablest business man that I knew at that time in the development of the business.

Mr. Elmer P. Howe was not connected with our company prior to 1899. I knew him for a year or a year and a half prior to 1899. When the United Company was organized I conferred principally with Mr. Howe. That was in regard to the Goodyear and Consolidated & McKay Companies. I think we had no conferences with the McKay Company people until the United Company had been organized or was in the process of organization.

479 Mr. James W. Brooks was in charge of the affairs of the McKay Company at that time. He was well along in years and was living in Petersham, Mass., and came to Boston only two days or possibly three days in the week. He was the only man I knew of in executive charge of the business, but my

final negotiations were with Mr. James J. Storrow and Mr. Rudolph Matz, a lawyer of Chicago.

Q. Now, at the time of your negotiations, Mr. Winslow, with Mr. Howe at the time of the formation of the United Company, or subsequent thereto, was there any intent upon your part to acquire complete control of the business of manufacturing and selling or leasing shoe machinery in the United States or with foreign countries?

A. No, sir; there was never any thought or talk of that.

Q. Was any such project ever discussed or considered by any persons interested?

A. No, sir.

Q. What was the purpose or reason for your unification with the Goodyear Company?

A. There were three or four fundamental reasons for the formation of the United Company by the proposed union of the Goodyear Company and the Consolidated McKay Lasting Machine Company. The first was to increase the productive efficiency of the machines that were in the hands of shoe manufacturers. Second, to economize in the manufacture of the machinery itself by bringing that manufacture into one modern factory and standardizing the manufacture. Third, to encourage and increase the manufacture of Goodyear welt shoes by the development of new machines to assist in that manufacture and new methods to lower the cost, to aid and assist those manufacturers who were making those shoes, and induce other manufacturers who were not making welt shoes to enter into their manufacture. It was contemplated in this connection to lower the cost of installation of the Goodyear machines and instruct manufacturers in the manufacture of welt shoes. And fourth, to develop a better service for the instruction of operatives in the use of machines and service for maintenance of the machines in condition to operate regularly, and at the same time decrease the proportionate expense of that service by avoiding the duplication of the depots and men who were employed in that work.

Q. Had you any intent to exclude all other machinery of manufacturers from the business of manufacturing and selling or leasing shoe machinery among the States or in foreign countries?

A. No, sir; never any thought of that.

Q. Was there any discussion among any of the gentlemen interested in the organization of the United Company at any time directed towards such a purpose?

A. None at which I was ever present.

Q. Or that you ever knew of?
A. Or that I ever knew of.
(Mr. Fowler interposed an objection to the foregoing interrogatories relating to the intent of the defendants and especially as to any defendants except Mr. Winslow personally, and to all interrogations of that class.)
Prior to 1899 the situation of the Consolidated & McKay Lasting Machine Company with respect to the service it was able to give its customers was this: The company was furnishing men to instruct operatives how to use its machines wherever they were introduced and men to keep the machines in adjustment so far as it could within its financial resources. It had
480 no offices of its own anywhere in the United States except in Boston and in Brockton. In Philadelphia a stock of parts was carried at the store of The George A. Smith Machinery Co., who were dealers in shoe findings and leather. Our men called at their store and received notice if a manufacturer sent in word that he wanted a man to go to his factory. Such parts as our men took out to place in machines were charged by the Smith concern to our company and we gave them credit for the parts. They acted as our agent in the selling of parts.
The same system was followed with the Ross-Moyer Manufacturing Company in Cincinnati and Chicago. There was a similar arrangement in Haverhill with C. P. Bullen, and with H. W. Coldbath, in Lynn. All of these parties were men doing business, and carried our parts. This was the extent to which we had any depots.
The Goodyear Company had its own offices throughout the country, in Auburn, Maine, Lynn, Haverhill, Brockton, Worcester, New York, Philadelphia, Burlington, New Jersey, Cincinnati, Chicago, St. Louis, New Orleans, and Rochester, New York. It carried its own parts and had its own men located in each of these offices. The Goodyear Company also had a system of traveling men to instruct operatives in the use of its machines and to keep the machines in adjustment at the call of the manufacturer.
The Consolidated & McKay Company and the Goodyear Company were supplying a good many of the same customers and there were duplicate equipments for giving service, one by the Goodyear and one by our company, in Lynn, Haverhill, Brockton, Philadelphia, Cincinnati, and Chicago.
The McKay Shoe Machinery Company was giving the same service that the other two companies did, but the extent of

that service was about the same as that furnished by the Lasting Machine Company. The Ross-Moyer Company carried a stock of spare parts in Chicago and Cincinnati for heeling and metallic machines, as well as for lasting machines, and also carried a stock of the wire used in the metallic machines. That
481 was also true of The George A. Smith Company in Philadelphia, where we had our parts. In Brockton they had a depot with the Brockton Stay Company, not the same place as ours, but in Haverhill and Lynn their headquarters were at the same places as ours. In New York their headquarters were with J. K. Krieg and Company. All of those parties carried a stock of wire and spare parts for the McKay Company's heeling and metallic machines.

Each of these three companies was employing its own traveling mechanics and instructors who in many instances were traveling to the same places, visiting the same factories and carrying parts to the same places, but each set working on their own particular machines.

As to what the disadvantages or difficulties with the then condition of things were, and what we proposed to do in the way of systematizing and organizing:

In 1899 very few shoe factories were equipped throughout all departments with the complete system of machinery. Many of them, as I have stated, did not have lasting machines. Where they did have such an entire equipment there was an entire lack of harmony in the operation of the machines. The metallic machines or heeling machines in Brockton, for illustration, upon welt work, where there are very few metallic machines used the service might be very poor as furnished by the McKay Company; the service would be good always of the Goodyear Company because they had a regular staff. But so far as the Lasting Machine Company and the McKay Company were concerned there was no constant service. It depended entirely upon the extent to which those particular machines were used in that locality. There might be a lot of lasting machines and very few heeling machines, a lot of heeling machines and very few lasting machines. Neither one of the companies gave a good service. In other words, the entire continuity of operation, the regularity of operation of the factory, was dependent upon that service that was rendered by that one of three companies that gave the least efficient service. Both Mr. Howe and myself recognized that condition, and it seemed that by bringing our two companies together we could get a uniform service that would produce a

great deal higher percentage of efficiency of the machines than if a given factory was dependent upon an independent call to us and an independent call to their office. If the service was brought into one office, if the entire service was unified, a call coming in there would be attended to at once, no matter upon what machine it was needed. The regularity and continuous operation of the machines is dependent upon what may be termed instantaneous service. In the welting and stitching machines of the Goodyear Company it is not the breaking of parts necessarily, it is the machine getting out of adjustment so that the stitch is not a proper one. The integrity of the shoe that you wear is entirely dependent upon the way in which the stitch is set. And many of the operatives are not proficient at all in the knowledge of how to keep their machines in adjustment. They can operate it and do the work, but they are not mechanics in the sense that a machinist is a mechanic.

Such a machine as that is adjusted by cams and shafts and other mechanical devices so that various machines must be timed with reference to each other. The cams may be fastened on the shaft, but there are many more adjustments which are delicate adjustments in the sense that they are adjusted by screws. To take the tension adjustment for one illustration, that has received, I suppose, as much attention as any other particular part of the sewing machine.

482 That is the tension of the thread, to be sure that the stitch will be set with the lock below the surface of the leather—and that ability to set that stitch in the proper place is fixed by the way in which the machine parts are adjusted relative to themselves, to each other. And the tightness and laying of that stitch is absolutely vital to the goodness of the shoe.

All of these machines, you see, handle material. Take the hand-method machine. It handles tacks, and the tacks have got to feed down a raceway and at each operation the tack has got to come into position where the driver will take it and drive it; not only that, but it has got to drive it home so that if it is a McKay shoe it will head on the iron surface of the last. And if the tacks do not feed, and feed regularly, the machine is out of operation, no matter how skilful the man may be. It is the same with the welter and the same with the stitcher.

This factor of service is at the very base of the successful operation of a shoe factory. The work is planned to travel from one room to another in fixed quantities. So many pair go in in the morning—so many pair come out at night. The operatives are dependent upon that work traveling along regu-

larly to them. The breaking down of some of these machines will in many of the factories block the entire flow of the work. Of course, in any factory it will throw out of regularity the production of the factory and throw out of work many times the operator that follows the particular operator on the machine that has broken down or got out of adjustment. Of course, the operators in shoe factories are paid by the piece almost entirely. From the standpoint of the shoe machinery manufacturer and the shoe manufacturer and the operative, the ability of the factory as a whole to turn out its work right along regularly as if it were going through one machine is vital. Factory space is economized; the earning capacity of the investment in the machinery is vitally affected; the operatives' pay has as its foundation, of course, the regularity of the work. Indeed, the
483 result, if I may speak of it in that way, of this unification of the service has been in some cases to reduce the piece price to-day of the operatives below what it was in 1899, and at the same time enable them to make more pay.

Q. Was the service which was being given the shoe manufacturers by the three companies that went into the United prior to 1899 in any measure satisfactory?

A. No; I should say that the Goodyear service was perhaps the best service that was being rendered.

PUTNAM, J. I didn't get that.

Mr. CHOATE. I say—Was the service being given before 1899 by these three companies that went into the United in any measure satisfactory?

Mr. FOWLER. We object to that question, because it must be a mere conclusion. Satisfactory to whom—to the operatives, to the shoe manufacturers, to shoe machinery manufacturers? I object to it.

PUTNAM, J. If you will put the question a little more narrowly, Mr. Choate, please.

Q. Well, was it satisfactory to you, Mr. Winslow, as connected with the Lasting Company?

A. It was not.

Q. Was it giving satisfaction to the shoe manufacturers?

PUTNAM, J. Now, I didn't get the question. I got Brother Fowler's objection.

Mr. CHOATE. Whether the service that was being given by the three companies prior to 1899 was satisfactory?

PUTNAM, J. To whom?

Mr. CHOATE. I asked him first if it was satisfactory to him as connected with the Lasting Company. He said no. Then

I asked him if it was giving satisfaction to the shoe manufacturers.

The WITNESS. It was not. I don't think it was satisfactory to anybody.

PUTNAM, J. No; you have answered the question.

484 The operations of the lasting, welting, stitching, heeling, and metallic fastening machines were consecutive in a very large degree, and consecutive in the sense of being important consecutive operations. The order of their operations in the making of a shoe was as follows: The first operation was the lasting of the shoe. From the lasting machine it went to the welter and was welted. Then the loose-nailing machine, which is a metallic fastening machine, fastened the heel seats. The stitching machine followed the loose-nailing machine. Then the shoe went to the heeling machine, and that operation was followed by the slugging of the heels on another metallic machine.

Another reason which I gave for the consolidation was our purpose to increase the productive efficiency of the ma-

485 chines in shoe factories. In speaking of the productive efficiency of the machines I had in mind the amount of shoes upon which the machine would operate in a given day or week or year; in other words, the productiveness of the machine in the work that could be done upon it. A machine might have a capacity to do a thousand pairs a day, but for some reason other than the ability of the machine to do the work it would not produce its work. The operative himself might not be efficient. The way in which the work came to that particular machine might not be right. The machine itself might be broken down. The manufacturer might have only one machine, and that operative might be out, in which case we frequently found him a man. The many ways in which this service has been used had led to the conclusion on the part of some of the men who were familiar with the practical side of the business that a service could be furnished which would very materially increase the productivity of the machines daily, so that less machines would be needed, less floor space, a given investment in the machines would earn more money, the operatives themselves could earn better wages, and the result of that is productive efficiency; in other words, we did produce an ability on the part of the machines to increase the number of shoes that would go through them.

Another reason which I stated for the formation of the United Company was to economize in the manufacture of machinery by bringing that manufacture into one modern factory and standardizing the methods of manufacture.

Prior to 1899 the Goodyear Company was manufacturing in a factory on Albany Street, in Boston; the Lasting Machine Company at Beverly, Mass., and the McKay Company at Winchester, Mass. The Goodyear Company was employing less than 200 men; about 300 were employed at Beverly, and about 500 at Winchester; in all about 1,000 men in 1899.

In the manufacture of the machines of these three companies there were many parts in common, but they could not be interchanged. Screws, for example, might be used on ten different machines where the same strength was required, but the screw made for one machine would not fit any of the others. This is only an illustration of what was true of a great many parts which could be standardized and made interchangeable, and have been. This resulted in a very large saving in the number of parts to be carried in different places. The bringing together of these factories also enabled us to establish our own foundry. Since the United Company was formed, for the first time in the history of shoe machinery iron patterns for casting have been developed and are almost universally used now, reducing the cost of manufacture.

486 It was intended and expected that the consolidation would effect a very large saving in the management expenses and it so resulted. There were three superintendents at that time in the factories. The time of two of those superintendents is available to-day for the development of the art of making machinery. They are not used as superintendents of manufacturing. While, broadly speaking, we made no saving by discharging men, their time became available in other directions, so that their productivity was availed of to economize and develope the business.

When I met Mr. Elmer P. Howe to negotiate for the unification of our companies, he was engaged in the practice of law and he did not want to have the burden of the management of the Goodyear Company. Prior to the formation of the United Company I was asked if I would take the presidency of the company if a consolidation was effected.

My remembrance is that it was after the United Company was organized and I know that it was before we had transferred any of the properties, that Mr. Storrow, representing the McKay Company, approached me. I don't remember meeting Mr. Brooks. After the formation of the United Company he was not active in any way in the machinery business and did not even remain as a director of the United Company. He retired to his country home and I don't know that he engaged in any active business after that.

Q. (by Mr. Choate). Mr. Winslow, the United States charges that in organizing the United Company you designed and intended to enhance the value of the shoe machinery which you had at the expense of the boot and shoe manufacturers and of the public generally; did you so design and intend?

A. No, sir.

Q. And that you intended to use the same as a means for unlawfully controlling interstate and foreign commerce to a greater extent than was warranted by your letters patent; did you so design and intend?

A. No, sir.

Q. They say that you determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery; did you so determine?

A. No, sir.

Q. And to destroy existing competition among manufacturers and dealers in such machinery; did you so intend?

A. No, sir.

487 Mr. GREGG. If the court please, taking the whole bill together, the only charge that we make there and the only thing that we contend for is that they have monopolized machinery designed and adapted for use in the manufacture and attaching, preparation and attaching, bottoms to the uppers of shoes, the clicking machine and the eyeletting machine.

PUTNAM, J. I so understood from the case. I don't know that it appears in the record. I think that better go in the record just as you state it.

Mr. GREGG. Well, I have stated it two or three times. There is no objection to it going in the record.

PUTNAM, J. I am not sure it is in the record. I so understood it.

Mr. GREGG. We make no contention that they designed or intended to monopolize machinery used for sewing the uppers to the shoe at all.

PUTNAM. J. That has been my understanding, but I think it should go in the record.

The WITNESS. In 1898 about 17,000,000 pairs of Goodyear welt shoes were manufactured and the total production of shoes in the United States at that time was about 175,000,000 pairs, so that a little less than 10 per cent of the total production was Goodyear welts. In 1898 about 85,000,000 pairs of McKay sewed shoes were made.

In 1899 about 18,000,000 pairs of turn shoes were made; about 22,000,000 pairs of welt shoes; about 200,000 pairs of hand welt shoes; about 100,000 pairs of McKay welt shoes; about 7,500,000 pairs of pegged shoes; 26,000,000 pairs of standard

screw shoes; 2,500,000 pairs of loose nailed shoes; about 83,000,000 pairs of McKay sewed shoes, and about 12,400,000 pairs of miscellaneous shoes. These are round numbers.

The 83,000,000 pairs of McKay sewed shoes made in 1899, constituting about half of all the shoes made in that year, had their soles attached by the McKay sewing machine. This is the machine that fastened the outer sole, inner sole, and upper together. That machine was not owned or controlled by either the Goodyear Company, the Consolidated & McKay Company, or the McKay Shoe Machinery Company. It was owned and controlled by the Stanley Manufacturing Com-
488 pany. Probably ninety per cent of the machines which united the parts of the upper of the shoe were supplied by the Wheeler & Wilson Sewing Machine Company.

The Reece Buttonhole Machine Company furnished probably every machine that was used by shoe manufacturers for making buttonholes in button shoes and for finishing the buttonholes.

The Consolidated & McKay Lasting Machine Company held the stock of the Davey Pegging Machine Company and the Consolidated Company was marketing that machine.

Before 1899 the Davey pegging machine was leased only and never sold. Prior to 1899 an initial premium had been charged. That had been the practice for a number of years. Whether it had been entirely removed or an optional form adopted in 1898, I can't remember.

A shoe made on the Eppler welter differed from that made on the Goodyear welter in that the Eppler machine placed the chain of the stitch in the channel of the innersole, within the surface upon which the foot rested in the wear of the shoe, whereas the Goodyear machine placed the chain of the stitch on the welt so that the chain was outside of the surface upon which the foot bore. In the manufacture of an Eppler welt shoe it was impossible to use an inner sole of as light weight as could be used in the manufacture of a Goodyear welt shoe, because the chain of the Eppler machine would cause a ridge in any light inner sole which would be uncomfortable for the foot. This necessity for using a thicker inner sole added to the expense of making the Eppler welt shoe. In making the Eppler welt shoe they had to use an unnecessarily expensive inner sole which did not add to the wear or value of the shoe and was used merely to avoid the uncomfortable result of the heavy stitch, and also the Eppler machine could not make satisfactory shoes with light substitutes for, or canvas reinforced, insoles.

The location of the chain by the Eppler machine made it absolutely valueless for making turn shoes, in which the sole is

always light and has to be for that character of shoe and the method of its manufacture. The chain stitch of the Eppler machine could not be satisfactorily concealed in the sole of a
489 turn shoe. I know of no Eppler machines ever being used in the manufacture of turn shoes.

The Goodyear welter was then and always has been the machine for making turn shoes and was perfectly adapted for making turn shoes. The fact that it locates the chain outside of the part of the shoe on which the foot bears makes it adaptable for either welt or turn shoes and it was being used for both welt and turn shoes before 1899 and the number of turn shoes I have given as made prior to 1899 was made on the Goodyear machines.

In 1899 the best shoe from the manufacturers' standpoint and the best shoe for the comfort of the wearer and the health of his foot was the welt shoe, and the best type of that shoe was the Goodyear welt. The Goodyear came on the market before the Eppler.

In the survival of the fittest the Eppler shoe gradually disappeared. There was a sharp drop in the number of Eppler shoes made a year or two after the United Company was formed. As soon as manufacturers of Eppler shoes could obtain the Goodyear auxiliary machines and the litigation between the Eppler and Goodyear companies had let up, they adopted the machines which they preferred to use and very few manufacturers continued to use Epplers for any length of time.

There was a lot of litigation existing at that time between the Goodyear Company and the Eppler Company. Our reason for acquiring the Eppler Company was to get rid of that litigation between the Goodyear and Eppler Companies in the starting out of the new company, to get it all out of the way.

Of the two systems the Goodyear had the more complete and satisfactory line of auxiliary machines. The Goodyear Company had what was known in the trade as the Hadaway stitch separator, the rough rounder and channeling machine, and the automatic leveling machine, all three of which were very important auxiliary machines. The Eppler Company had a rounder which did not channel and was not anywhere near as satisfactory from the shoe manufacturer's standpoint as the Goodyear machine. It had no leveling machine of its own. The machine that it was trying to use as an auxiliary to perform the operation that was performed by the Hadaway stitch separator was not as
490 good as the Hadaway machine, and there was very serious litigation over that. In the trade—I speak purely from trade knowledge—it was understood and believed that the Eppler Company would not be able to continue the use of that machine.

There were cases, many cases, where we would find customers for one kind of our machines that would be in difficulty because of this litigation between the Goodyear and the Eppler—for instance, people who had our heeling machines or lasting machines might have an Eppler machine. To have allowed that litigation to continue would have brought the United Company into a position where they would have been obliged to carry on litigation against their own customers.

Personally I had no doubt as to which was the better system and which would survive. I thought the Goodyear was the better system and would survive.

A welt shoe with the chain of the chain stitch laid in the channel in the bottom of the insole was known in the trade as an Eppler shoe.

It was the practice of the Eppler Company to limit its machines to the manufacture of Eppler welt shoes, the welter with the stitcher and the auxiliary machines with the welter and stitcher. The auxiliary machines were all limited to be used with the principal machines and in the manufacture of Eppler welt shoes. The Goodyear machines could not make an Eppler welt and the Eppler machines could not make a Goodyear welt.

After 1899 the United Company furnished to any manufacturer who wanted Eppler machines all he wanted of them and took care of them just the same as we took care of our other machines. We continued to do that as long as anybody wanted Eppler machines. We did not disturb anybody who was using Eppler machines or who had a lease of Eppler machines existing prior to 1899.

The regular rate of royalties charged by the Eppler Company prior to 1899 was four cents net for men's shoes and
491 three cents net for women's shoes. I don't remember the others but they were the same as the Goodyear net royalties. There were sporadic instances of special rebates given by the Eppler Company, but their regular rate was the same as the Goodyear.

Q. What did you do with reference to the royalty on the Eppler? Did you increase it any?

A. Where the contract with the lessee was a special rate like that, we endeavored to have him adopt the full rate where we felt that it could be done without violating any absolute agreement of the Eppler Company. Notably Mr. Keith himself, who was a large manufacturer, voluntarily agreed to that. In fact, he changed over his machines very soon after that. That was to make the rate uniform among all users and gives no special advantages to anybody.

In exchanging stock of the McKay Company for stock of the United Company my remembrance is that they got $11.00 per share for their stock, $5.50 in common stock and $5.50 in preferred stock of the United Company for each share. The par value of their stock was $10.00. $11.00 was substantially the market price of the McKay Company stock at the time the trade was made.

The price allowed for Goodyear stock by the United Company was substantially the same as the price at which Goodyear Company stock was being bought and sold at that time. That was also true of the Consolidated & McKay Company. I think the properties of all the companies were put in at their fair market prices, but I think the stock of the Goodyear Company and that of the Lasting Machine Company was selling for less than it was actually worth. We based our exchange upon the market prices.

After the organization of the United Company no changes whatever were made at first in the methods of supplying machines to manufacturers. The same machines were supplied by the United Company that had been supplied by each and all of the companies and on exactly the same terms.

492 Our plans with reference to the systematization of the service commenced to be put in effect almost immediately after the formation of the company, within from two to four months. Neither Mr. Brown nor I was personally acquainted with the men in the road service of the Goodyear Company or the McKay Company, and we started at once to study those men to see who were the best men to be put in charge in the different districts. Each territory was studied, and the best man from whichever company it might be was put in charge of that district.

In Cincinnati, Chicago, and Philadelphia the question arose almost immediately as to how we should complete our arrangements there for rendering the service from one office instead of from two or three maintained by the respective companies.

Mr. Ross, of the Ross-Moyer Company, and Mr. Smith, of Philadelphia, both old shoe men, at once took up the question with us as to where they would fit into the new company. At that time they were carrying stock and parts for the McKay Company and the Lasting Machine Company, and taking that business from them and putting it into our own offices would have so reduced their businesses that they were very much concerned.

We took over the Ross-Moyer business at the solicitation of Mr. Ross. The Goodyear Company had its own offices at Cin-

cinnati and Chicago. The Ross-Moyer Company was carrying stock and parts at Cincinnati and Chicago for the McKay Company and the Lasting Machine Company, and consolidating the two agencies in those two cities led to the purchase of the Ross-Moyer Company and the employment of Mr. Ross as the western agent of the company, in charge of all the western offices.

There was absolutely nothing more in our doing that than our purpose of doing the square thing by Mr. Ross. They had been connected with the McKay Company and the Lasting Company for years; part of our own family, so to speak. Mr. Ross was our general agent in the West until two or three weeks ago, when he died.

493 In Philadelphia George A. Smith & Company was the agent carrying stock and parts for the Lasting Machine Company and the McKay Company. It was really a findings store more than anything else. It carried also the wire for the McKay Company. When Mr. Smith found that we were going to unify this service and bring it all under one head, he wanted we should buy him out, and we did acquire his business. He was doing no manufacturing. I can't give you the exact figures, but the greater part of his business, excepting as to the handling of leather, selling leather, was the business of the McKay Company. We did not acquire his leather business. I have forgotten whether he disposed of that to someone else or not.

Mr Smith practically retired from business. He wanted to get out. He was not young—he had been in business a great many years; and as we were going to consolidate the businesses and the service he thought it would be a good time to urge us to take over his other business, and we did.

J. K. Krieg of New York had been the representative of the McKay Company, carrying the McKay parts and the metallic material. He had also carried some parts for the Lasting Company, but not to such an extent as the others. Manufacturers left messages for our men at the Krieg place, which was the headquarters for our men. J. K. Krieg had died and his business was being carried on by his estate.

The Goodyear Company also had its own office in New York.

We dealt with that situation in this way: We acquired that part of the J. K. Krieg business, which related directly to the business that was done with shoe manufacturers. The younger Krieg retained the business that had to do with retailers. In all of these cases the moving motive in making these arrangements was from Mr. Ross in the Ross-Moyer and Smith, and

representatives of the Krieg estate, who wanted in the rearrangement to make the best arrangements for themselves.

Another similar case was the purchase of the Stanley store in Frankfort, Germany. They had acted for the McKay interests there and carried machines and parts and their manager had either just left them or died—I have forgotten now just how it was—but Mr Stanley, because we were going to establish our own depots over there, solicited our acquiring the stock, 494 machines and parts that he had in Frankfort. A good many of these were McKay parts of our own, so that in that transaction the conditions were really reversed We became agents for such machines as he built for himself and took over the stock that he had there in the store but no manufacturing.

Smith in Philadelphia did no manufacturing but he had one small machine made for him outside. It was a scarfing machine and unimportant.

Krieg in New York had a small repair shop in which he employed one or two men and boys for repairing, and when he was not repairing he built some small machines.

Our agent in England for the Lasting Machine Company was Pearson & Bennion. They made or manufactured no machines that were made or manufactured by either of the companies which came together to form the United Shoe Machinery Company. They did make a few general department machines in England. Their principal business, probably eighty per cent of it, was the business they did as the agent for our lasting machine. We took their business, put our business with it and formed the British United Company. They entered our employ, and Mr. Bennion was made the general manager of that business. That was the reason; it was just putting in corporate form what had previously existed, only he was made the manager of all the business of these three companies. That completes the list of agencies.

As to the development of the service for shoe manufacturers since 1899, the service is now so far ahead of what existed in 1899 that there is really no comparison. At each depot is a general manager and a body of men who are experts in the adjustment and repair of all the machines. These men are at the call of the manufacturers by telephone at any moment of the day and are at their service nights, if necessary, to rearrange their factories or readjust their machines. There are men to teach new operatives how to run the machines and how to take care of them. That service is complete in each shoe manufacturing district in the country.

In addition we have men who are treated by the manufacturers as their engineers and who act in an advisory capacity as
495 to the rearrangement of factories and the improved processes of manufacture. We send these men around to the factories to call the attention of manufacturers to opportunities to improve their methods of manufacture. This service always includes the instruction of operatives. There is also a service in continually supervising and watching the operation of the machines by our experts, and in order for the manufacturer to keep a given set of machines in constant operation these men have to be acquainted with the manufacture of the particular kind of shoes made in each factory because the requirements as to the work of the same machines may be very different in one factory from the requirements in another factory.

These men have to know how to run the machines themselves, how to adjust them, repair them, take them apart and put in parts.

No charge whatever is made by our company for any services rendered by any of these men or for their expenses. The manufacturer knows nothing as to the cost of the service rendered. All he pays is the prices of the parts just as if he ordered them from us to put them in himself. He has no expense for the man's time or expenses.

As to how much territory we have to cover with the service—the Chicago office until very lately has served the northwest. And our men have to travel quite long distances, to Milwaukee, for illustration, some 200 odd miles. From the Lynn office they serve the Lynn territory, Salem, Marblehead and Beverly; from Brockton—Campello, and Marlboro and that section. From the Haverhill office thay serve Newburyport and Portsmouth and travel up to Manchester, New Hampshire. All the expenses of this service, including the salaries of the men and their traveling expenses, are a part of our expense and none of it is charged to the manufacturer.

There are over 600 traveling men alone, without including the managers or the staff that handles the stock of parts. There is a stock of parts in each of these depots for practically
496 every machine which we produce, so that they are in a position to repair any machine immediately.

Without accounting for the cost of carrying parts or the expense involved in the parts becoming obsolete, which occurs many times, the expense to the company of providing this service for manufacturers is about $1,200,000 per year.

As to the increases in the number of men in the service department since the organization of the company, I have a memoran-

dum which gives for each year the number of branch-office managers, roadmen and other traveling men, including salesmen, attached to the offices. This is defendants' Exhibit 211 (Rec., p. —).

To show the extent of this service and the number of calls answered, I have prepared a statement showing the service rendered during the year 1911 in the factory of E. W. Burt & Company, a small factory in Lynn. This shows the machines which they have, the number of shoes manufactured, the total calls made and the times when the calls were received, answered, and finished. It is a fair sample. This statement is defendants' Exhibit 212 (Rec., p. —).

I have prepared a similar statement of the service rendered to L. A. Crossett (Inc.), of Brockton, a large manufacturer. This statement covers only the last six months of 1911 because the computation for the entire year was so large. This statement is defendants' Exhibit 213 (Rec., p. —).

497 Crossett has twenty-two welt and turn sewing machines and made about a million pairs of shoes in 1911. The number of calls at his factory was 1,150, and 5,620 hours were spent in answering those calls.

I have also had prepared a statement showing the number of calls made on the service department, the number of hours spent in answering those calls, and the number of operators taught during the year 1911. This is subdivided to show the service in each district. There are eighteen different offices, located at Auburn, Maine; Haverhill, Massachusetts; Manchester, New Hampshire; Lynn, Massachusetts; Brockton, Massachusetts; Marlboro, Massachusetts; New York City, New York; Philadelphia, Pennsylvania; Harrisburg, Pennsylvania; Rochester, New York; Lestershire, New York; Cincinnati, Ohio; Chicago, Illinois; Milwaukee, Wisconsin; St. Paul, Minnesota; New Orleans, Louisiana; St. Louis, Missouri; and San Francisco, California.

Mr. CHOATE. I should like to put in this tabulation of what Mr. Winslow would testify as to the total calls, which, in the year 1911, were 192,524. The time consumed in answering them was 1,110,593 hours; there were 2,209 Goodyear operators taught, 956 metallic operators taught, 1,006 heeling operators taught, 1,359 lasting operators taught, 956 pulling-over operators taught, and 2,403 eyelet and general operators taught. And then this is subdivided as to the service at each station.

(List showing total calls on service department, number of operators taught, and time expended in 1911, is defendants' Exhibit 214, Record, p. —.)

The WITNESS. I know of no shoe machinery concern which has given any service with its machines between 1899 and 1911 except the Reece Buttonhole Machine Company, which does furnish a certain service in connection with its machines.

In carrying out our purpose of consolidating the manufacturing of the machines in one modern factory and standardizing the methods of manufacturing, about January, 1900, a committee of our manufacturing men was appointed to visit the various manufacturing plants throughout the United States and

498 gather data as to the best methods of manufacture, the most efficient machines, the most efficient arrangement for carrying on the manufacture from one department to another, and the best character of factory for the operatives. After that committee had worked about a year we began to build a large factory at Beverly, Massachusetts.

To avoid any possibility of the tools for duplicating parts of machines being subject to destruction by fire we built the factory of concrete, and I think at the time that was the largest concrete building in the world. A great deal of care and thought was put into the arrangement of the floors and rooms to eliminate waste in carrying machines from one part of the factory to another for different operations. In factories that had been built up to that time for the manufacture of shoe machinery nothing of that sort had been gone into; while the buildings were modern in construction, they were not modern in their arrangements of the parts of the factory with reference to the economy of production. The Beverly factory has been added to from time to time.

The facilities for manufacturing the different kinds of machines were transferred to that plant successively from the old factory at Beverly, from the Winchester factory, and from the Goodyear factory. None of the three factories of the constituent companies prior to 1899 was adequate for the occupation of all of them, and there was no land connected with any of them, except possibly Winchester. The Beverly factory was not owned by the Lasting Machine Company, there wasn't room to develop the Goodyear plant, and Winchester was a poor place to manufacture on account of the lack of labor. It was not a manufacturing community. Labor had to be developed there. Beverly has about 75,000 people within a five-cent fare.

At the new plant in Beverly we continued to manufacture all of the machines which we had been marketing before and we employed more labor from time to time. About 1,000 men were employed in 1899, and at the beginning of this suit there were over 4,000 men employed at the Beverly factory. There has been a gradual increase right along.

499 At the time the United Company was organized neither Mr. Howe, nor Mr. Barbour, nor Mr. Hurd, nor Mr. Brown, nor I, nor any of our associates, made any agreements whatever to restrain our activities in the manufacture of shoe machinery, or to restrain the activities of anybody else. The subject was not given any consideration.

Since 1899 there has been an increase in the number of Goodyear welt and turn shoes manufactured.

In 1904, five years after the company was organized, 26,000,000 pairs of turn shoes were made as compared with 18,000,000 pairs in 1899, and 48,000,000 pairs of welt shoes were made as compared with 22,000,000 pairs in 1899.

In the calendar year ending December 31, 1910, 34,000,000 pairs of turn shoes and 86,000,000 pairs of welt shoes were made, that is, the number of welts had been increased nearly four hundred per cent, from 22,000,000 in 1899 to 86,000,000 in 1910, and the increase from the 17,000,000 pairs of welts made in 1898 to the 86,000,000 pairs made in 1910 was five hundred per cent.

These figures and also the figures for other kinds of shoes are shown in the memorandum of Defendant's Exhibit 215.

DEFENDANTS' EXHIBIT 215.

	Number of shoes made in—		
	1899	1904	1910
Turns	18,272,000	25,900,000	33,966,000
Welts	22,700,000	47,950,000	86,231,000
Hand welts	197,000	669,000	1,188,000
Stitch downs			1,510,000
McKay welts	111,000	58,000	582,000
Fair stitched	805,000	478,000	1,066,000
Pegged	7,475,000	9,157,000	3,202,000
Standard screw	25,802,000	21,627,000	19,004,000
Loose nailed	2,567,000	3,123,000	6,469,000
McKay sewed	82,457,000	94,608,000	105,698,000
Misc. shoes & slippers	12,400,000	15,733,000	20,000,000
	172,786,000	219,363,000	278,916,000

500 The WITNESS. The efforts of our company toward aiding in and perfecting the manufacture of Goodyear shoes, in the way of experimentation and invention, have been as follows:

Soon after the formation of the company the development of inventions and improvements of machines was placed in the hands of a committee comprising three or four of the inventors experienced in shoe machinery inventing. Every new idea or suggestion was submitted to that committee, who made an investigation and reported their findings to the heads of the respec-

tive departments; and a decision was made according to which a man was put at work to develop the idea, or it was filed as not being practicable or not of commercial value.

That work has been carried on consistently and continuously, until now there is a very large organization that gives its entire time and attention to the development of ideas of our own men, or ideas that are suggested to us, or to consideration of inventions which are submitted to us.

From almost the beginning of the company to the present time we have done everything we know how to do to advance the art of making shoes by machinery.

As soon as we had developed a new machine which performed an operation then being done by machines in the shoe factories, that machine was built in a wholesale way and was placed in the hands of the manufacturers without any charge whatever for the improvements or for the new machines, and the old machines were taken back and scrapped. No charge was made for substituting the new machine and taking out the old one. If the improvement was an attachment, that was added to the manufacturer's machines without any charge to him.

The most striking illustration of the new machines which the company has invented and given to the trade is the Rex pulling-over machine and the auxiliary machines used with it. Broadly speaking, the pulling-over machine does the work formerly done by the hand operator in preparing the shoe for the lasting machine. The pulling-over machine draws the upper over the last at the center and at each side of the toe and attaches it
501 temporarily to the inner sole, all at one operation, and while the shoe is in the machine the operator can adjust the upper to bring the seam of the tip in a right line across the toe and to locate the heel seam directly in the center of the heel in a straight line. Unless those two lines are made correct the shoes would not be salable. Formerly this operation was always done by hand.

Auxiliary machines of the pulling-over system were devised to co-operate with that machine. The assembling machine temporarily fastens together the upper, innersole, counter, and last prior to the operation of the pulling-over machine. They are fastened by a tack near the heel seam, and a tack on the bottom fastens the counter, innersole, and upper together. Defendants' Exhibit 7 illustrates the operation of both the assembling and pulling-over machines.

The clicking machine was another machine which was developed by the experimental department of our company and per-

haps saves more money for the manufacturer than any other machine which has been produced. That machine enables the manufacturer to cut his uppers accurately and with the least loss of stock. Before this machine was invented the method was to have a pattern made of zinc or leatherboard which the cutter placed upon the stock and then cut around it with a hand knife. The knife always cut by the corners of the pattern, resutling in a waste of leather. Of course the stock where the leather had been cut by the knife passing the corners could not be used.

With the clicking machine a very light die is used and that machine saves every bit of the waste that was caused by the hand knife cutting beyond the corners of the pattern. The clicking machine not only saves the very valuable stock but it increased the product of the workman by at least two-fold, and the quality of its work was infinitely better. Every piece was perfect. Also at the same time the part of the upper was cut out certain marks were made to facilitate assembling the parts.

502 Since my knowledge of the shoe art no machine has accomplished so much for the art as the clicking machine. Another advantage of the machine was that every hand cutter was able to take the machine and use it. Almost every other machine in the art that I have known would require an education to enable the hand workman to use the machine.

In the five years before the beginning of this suit, 1907 to 1911, inclusive, the United Company expended in its experimental department $2,267,954.70. The details by years are stated in defendants' Exhibit 216.

DEFENDANTS' EXHIBIT 216.

Amounts expended for experimental account.

During the years—	
1907	$364,326.41
1908	380,477.45
1909	383,605.75
1910	537,183.78
1911	602,359.31
Total	2,267,954.70
Average per year	453,590.94

The WITNESS. I have here a report (defendants' Exhibit 217, Record, p. —) showing how the expenditures for experimental work were distributed among various machines during a sample month, October, 1911. On this report is listed each experiment being carried on in the factory during that month, the amount

of money expended during that month, the amount previously expended, and the total expenditure, on each experiment. That is a fair sample of each month's work and the report was made to me in the ordinary course of business. A similar report has been rendered to me for each month during the preceding years.

Each order number shows the work being done by a particular inventor upon a particular development. For example, order K 35791 had $539.10 expended on it in October; $31,640.55 had been previously expended, so that at the end of October a total amount of $32,179.65 had been expended upon that particular order.

503 In the fifteen years we have brought out at least an average of seven or eight new machines a year. The value of these machines is the value to the shoe manufacturers, not necessarily the value to our company. We might expend a large sum of money upon a machine which might not in itself be of large value to us but it might improve the product that would go to some other one of our machines, so that that machine would do better or more work. Such a machine was the assembling machine and another was the stapling machine, which saves the manufacturer the cost of a great many needles and it saves a lot of cost for damage caused to the machines when needles break, and so on. There are specific values for a given machine in the art of making shoes that may be entirely out of proportion to its commercial value.

The machines produced by the experimental department have reduced the cost of manufacturing the welt shoe more than the total royalty that we received from our machines, or now receive from our machines, used in the manufacture of welt shoes.

I know of no other practical way to advance the art except to work and study and spend money on these experiments. Every idea is submitted to a committee who are thoroughly familiar with modern methods of making shoes. If any idea appeals to that committee as of value to the manufacturer, either in improving the quality or reducing the cost of manufacturing shoes, they authorize an order and start work upon it by the man who they think is best fitted to work out that idea.

504 The increased efficiency of the machines in the shoe factories is the result of the development of invention and the improvement in the service which has been rendered to the shoe manufacturers. I have the figures which show that improvement and efficiency.

DEFENDANTS' EXHIBIT 218.

Comparison of efficiency of lasting department machines.

	Lasting machines.	Auxiliaries.
Machines under lease:		
March 1, 1900	4,512	4,503
March 1, 1911	7,276	5,499
Increased percentage of machines, 1911 over 1900	61.2	35.6
Average number of pairs operated upon per machine in calendar year of—		
1899	24,741	.....
1910	30,703	.....
Percentage of increased efficiency per machine in calendar year of 1910 over 1900	24	.....

Comparison of efficiency of heeling department machines.

	Attaching machines.	Auxiliaries.
Machines under lease:		
March 1, 1900	1,382	1,180
March 1, 1911	2,019	3,180
Increased percentage of machines, 1911 over 1900	46	167.8
Average number of pairs operated upon per machine in calendar year of—		
1899	67,214	.....
1910	109,142	.....
Percentage of increased efficiency per machine in calendar year of 1910 over 1900	62.3	.....

Comparison of efficiency of Goodyear department machines of welt system.

	Welt sewing.	Outsole stitching.	Auxiliaries.
Machines under lease:			
March 1, 1900	853	1,193	5,561
March 1, 1911	1,943	2,676	13,001
Increased percentage of machines, 1911 over 1900	127.7	124.3	133.7
Average number of pairs operated upon per machine in calendar year of—			
1899	26,612	19,960	.....
1910	44,380	33,847	.....
Percentage of increased efficiency per machine in calendar year of 1910 over 1900	66.7	69.5	.....

Comparison of efficiency of Goodyear department machines of turn system.

	Sewing.	Auxiliaries.
Machines under lease:		
March 1, 1900	485	1,050
March 1, 1911	564	2,530
Increased percentage of machines, 1911 over 1900	20.4	141.8
Average number of pairs operated upon per machine in calendar year of—		
1899	37,674	.....
1910	58,161	.....
Percentage of increased efficiency per machine in calendar year of 1910 over 1900	54.3	.....

The WITNESS. Taking first the lasting machines, these figures show that on March 1, 1900, which was the earliest date for which

I could get exact data, there were 4,512 lasting machines out on lease, while on March 1, 1911, there were 7,276, an increase of 61.2 per cent in the number of machines. Comparison of the average number of pairs of shoes operated upon per machine in 1899 with the average per machine in 1910 shows an increased efficiency per machine of 24 per cent.

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An even greater increase in efficiency has been prevented by the high-toed lasts like defendants' Exhibit 135. High-toed lasts slow down the operation of the lasting machine at least 50 per cent as compared with shoes made of the same leather upon a last of the ordinary construction. To conform the upper such as shown in defendants' Exhibit 19 to the shape of a high-toed last requires enormous drafting power and it would have been almost impossible to last shoes on such lasts by hand. It required the combined power and mechanical characteristics of the pulling-over machine and the No. 5 lasting machine to place the upper properly upon high-toed lasts. Before the introduction of these high-toed shoes our lasting machines showed a higher percentage of efficiency compared with the 1899 machines than they do now.

Referring again to defendants' Exhibit 218, that shows an increase of 46 per cent in the number of heel-attaching machines, we had out on March 1, 1911, compared with March 1, 1900, while the increased efficiency per machine in the year 1910 compared with 1900 was 62.3 per cent.

In the Goodyear department the increase in efficiency per machine in 1910 as compared with 1900 was 66.7 per cent for the welt sewing machine and 69.5 per cent for the outsole stitching machine. For the turn machines the increased efficiency in 1910 over 1900 was 54.3 per cent for each machine.

PUTNAM, J. Do you mean to say, Mr. Choate, that by practical operation of practical men at an expense to the Shoe Machinery Company this increased efficiency has been given to the manufacturers and the cost merely charged off?

Mr. CHOATE. Yes, your honor. We have not increased the royalties. I am coming to that in a moment and will show you how the royalties have been decreased—and we think the cost of producing a pair of shoes has been decreased by these methods.

PUTNAM, J. In other words, you claim that this amount of money has been expended for improving machinery, intelligently expended by intelligent men and expert men, and the cost charged off?

Mr. CHOATE. Yes, sir.

PUTNAM, J. That is your proposition?

Mr. CHOATE. Yes, sir.

507 The WITNESS. In the year 1911 I made a study and prepared some data upon the savings effected, as between 1899 and 1911, in the cost of manufacture of the Goodyear welt shoe by increased efficiency of the machines and by decrease in royalties. The results that I obtained showed a total saving amounting to eight and one-quarter cents per pair. Of this saving the decrease in royalties amounted to three-quarters of a cent, comprising a quarter of a cent that had been paid to the company making the sole laying machine and one-half a cent which had been paid to the Gem insole company for the use of its machines; that was before we acquired those companies. After we acquired those machines we credited the royalty to the manufacturers, so that there was a direct reduction of three-quarters of a cent per pair on the welt shoes made by the use of those machines.

On turn shoes there has also been a direct reduction of three-quarters of a cent on women's shoes and one-half a cent on children's shoes, amounting to 50 per cent of the royalty. That reduction was in 1900.

In figuring the savings on Goodyear welt shoes I averaged men's, women's, and children's shoes. On other kinds of shoes the manufacturers had the benefit of these savings so far as the machines were applicable to the reduction of the cost of those shoes.

On Goodyear welt shoes the saving in cost of manufacture, resulting from the introduction of new machines and improvements in other machines that existed in 1899 and which we improved after the formation of the company, amounts to about seven and a half cents.

Nearly all the machines that were being made by the Goodyear Company in February, 1899, have been replaced by new and inproved machines. With hardly an exception, none of the old machines, including the auxiliaries, are now being built. The improved machines have resulted in savings in the cost of operation, or in the material used, or in the cost of maintenance and the reduction of equipment required, or in the improved quality of the work.

508 Of the saving, a cent and three-quarters per pair in the cost of manufacture is effected by the group of machines comprising the new welter, new stitcher, new rough rounder, new power grooving and beveling machine, the new Universal channeling machine, tack puller and resetter, new welt beating

and slashing machine, the welt indenting and burnishing machine, the impression stitch burnishing machine No. 2, and the Goodyear jointing machine. The savings by these machines result from the increased speed of operation of the new welter, the new stitcher, and the new rough rounder, and from the pulling of tacks and resetting of tacks on the tack pulling and resetting machine, always before done by hand. These savings include the savings accomplished by the Plant improvements on the welter. Without the Plant improvements the savings would be somewhere between three-eighths of a cent and a half a cent less than that.

It is entirely untrue that the modern welter and stitcher do not operate any faster than the old machines. They are at least 50 per cent faster in average speed than the old machines; that is, they will sew 50 per cent more stitches in a minute than the old ones would.

The next group of machines which effected a saving in the manufacture of welt shoes are the Ideal clicking machine, the Duplex eyeletting machine, the Ensign lacing machine, the lining cementing machine, and the improved skiving machine. I have credited three cents per pair saving as effected by those machines, but that is less than the manufacturers of welt shoes have said their saving was in leather by the use of the Ideal clicking machine alone. Three cents is well within the actual saving effected by those machines.

A saving of two cents is effected by the group of machines comprising the insole heel seat rounder, the insole tacking machine, the Rex pulling over machine, the Rex assembling machine, the Rex pounding machine, the upper trimming machine, and the No. 5 lasting machine.

It is almost impossible to calculate the amount of savings effected by these machines on high-toed shoes. On those shoes probably the saving in lasting alone by the No. 5 lasting machine was two cents a pair, without reckoning the savings for the other machines.

509 To encourage and develop the manufacture of welt shoes very low terms were put upon the machines of this group to work with the rest of our system of machines, but while these machines are especially valuable on Goodyear welt shoes they may also be used in the manufacture of other kinds of shoes; for example, McKay shoes.

A quarter of a cent saving has been effected by the hand method lasting machine which we have furnished for lasting the sides of shoes the toes and heels of which are lasted on the

No. 5 lasting machine. Formerly the sides of shoes lasted on bed lasting machines were lasted by hand. We now furnish the hand method machine to users of the No. 5 lasting machine, so that they have two machines for lasting a single shoe and pay but one royalty. This furnishing of a double equipment is not altogether at our loss because the product is increased.

I have allotted a quarter of a cent saving to the Crest heel blacking machine, the channel cementing machine, and the tip scouring machine.

All of the machines in these groups are new machines which the company has invented and brought out and the savings effected by them amount to a total of seven and one-half cents. Adding our reduction in royalties, the sum is eight and one-quarter cents.

The total royalty which the United Company receives for the use of all its machines to make a man's Goodyear welt shoe is five and a fraction cents, I think. This is subject to correction.

I have prepared figures showing the difference in cost, as between 1899 and 1911, of equipping a shoe factory producing 300 pairs a day with machines for making welt shoes. More than half of all the factories in the country produce on the average less than 200 pairs per day.

510 Assuming that a manufacturer making 300 pairs of welt shoes a day obtained from us in 1899 such general department machines as we furnisded in 1911 and the machines of the Goodyear department, the lasting machines, heeling machines, and metallic machines, he would have paid in initial premiums and in purchase prices for the general department machines $6,930.50. Those were the best terms on which a manufacturer could have obtained those machines in 1899, from whomever he obtained them.

Assuming that this manufacturer took from us in 1911 the same machines, taking the general department machines under lease—the same line of machines, with the addition of 18 auxiliary or general department machines, which were not in existence in 1899, would have cost him $1,430, a difference in his favor of $5,500.50.

The cost of the machines in 1911 would include the purchase for $293.59 of certain machines which were not leased either in 1899 or 1911; such initial payments as had still not been removed in 1911 and were in existence in 1899, $543; $50 for some small equipment; and $543.50 as rentals for the first year of auxiliary machines and general department machines.

There are quite a number of factories making a thousand pairs of shoes a day, and I have made a similar tabulation of the cost to

the manufacturer of equipping a factory making a thousand pairs of Goodyear welt shoes with such machines as he could have obtained from us in 1911. I have compared the cost of those same machines in 1899, whether they were produced by us or by whomever they were produced. This comparison, however, covers only a part of the cost of the entire equipment of the factory because it does not include machines used in the fitting room or stitching room, or any machines other than such machines as we produce. These figures show that the cost in 1899 would have been $11,300.50 and in 1911 would have been $2,467.50, a difference of $8,833 in favor of the manufacturer.

511 Defendants' Exhibit 219 (Record p. —), entitled "A List of the Various Styles of Men's, Women's, Misses', Boys', Youths', Children's, Little Gents' and Infants' Shoes," shows the great variety of the different types and the methods of manufacturing shoes.

Defendants' Exhibit 220 (Record p. —) shows the many different ways of fastening the sole to the upper. These different methods sometimes require adaptations or modifications of machines and sometimes additional machines or additional attachments. It requires a great many different kinds of machines and a great many different changes in the machines to enable them to make all the shoes that any one manufacturer may desire to make. The United Company has endeavored to meet the requirements of manufacturers in this respect.

The United Company has suppressed absolutely no machines, no inventions and no improvements.

In no instance when an initial premium is charged has that been increased over what was charged prior to 1899 and in no instance has the royalty charged on any machine been increased over that charged in 1899.

Less than one per cent of the shoes that were lasted by machinery in 1899 were lasted on the Ideal lasting machine. The Ideal machine was an improved machine of the same type as the Copeland rapid laster.

I have prepared a list of machinery, findings and supply dealers who advertised in the trade papers in 1899, 1900 and 1901 and whose businesses the United Company did not buy. This is Defendants' Exhibit 221 (Record p. —) and the total number of concerns is about 80.

BROWN, J. Well, competitive concerns that you did not buy out?

PUTNAM, J. The question of Judge Brown was how far they were competitors.

BROWN, J. How far would you have been expected to buy them out?

Mr. CHOATE. If we were attempting to obtain a complete monopoly of all the shoe machinery business, we should
512 have had to get those. And even the admission of the counsel for the United States does not entirely cover the situation. We want to prove the contrary of the allegation in their bill and the allegation which they still cling to.

Mr. FOWLER. Just glancing here, I see a number of them were manufacturing lasts. I did not know that lasts had anything to do with this lawsuit.

BROWN, J. The last is shoe machinery in the sense used in this case.

513 The WITNESS. I have compiled a list of the ideas, suggestions, and inventions submitted to the experimental department of the United Company from June 23, 1904, to December 12, 1911, by persons other than those employed by t heUnited Company as inventors, which ideas, suggestions, and inventions have not been purchased or acquired by the United Company. These were submitted to us without solicitation upon our part and each was thoroughly and carefully investigated by the experimental department, the patent department, and commercial department. They aggregate 493.

Nothing has ever been done by the United Company to prevent the exploitation or development or manufacture of the ideas, suggestions, or inventions which we have declined to take. This list is defendants' Exhibit 222 (Record p. —).

PUTNAM, J. Now, the question Judge Dodge suggests, and which occurred to me, but I didn't think I needed to call to your attention, is what we were talking about this morning. The bill alleges that:

"For the accomplishment of this purpose they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery."

You both say that that is not the purpose, that you don't quite mean that, and the record taken down this morning will show that you don't mean it entirely; but the question is whether, for the sake of clearness and certainty, you shouldn't amend that allegation in that bill, which is evidently broader than you intend.

Mr. FOWLER. I will take that up with Mr. Gregg, and we will consider that matter in the morning.

PUTNAM, J. We have no power to make an order on it, but I am simply calling it to your attention for the sake of clearness.

Mr. CHOATE. I think they intended to say that, but they found they couldn't prove it.

Mr. FOWLER. I didn't understand so myself.

PUTNAM, J. We won't talk about what they couldn't prove.

DODGE, J. We don't seem to get anything yet which will form a proper basis for those particular allegations.

Mr. FOWLER. Well, I never have understood that the purpose of this litigation was to go further than was stated by Mr. Gregg this morning.

513A DODGE, J. I understand that the allegations are now disclaimed and abandoned.

Mr. FOWLER. As broadly as stated in that particular one; yes.

BROWN, J. There is a very substantial difference between the allegation that they intended to monopolize the shoe machinery business and the charge that they intended to monopolize machinery related to a particular part of the manufacture, to wit, the bottoming of shoes. It is about as different a case as can be imagined.

Mr. FOWLER. Well, there is some relationship between them.

PUTNAM, J. It is a good deal safer to allege a good deal more than you intend to prove than it is to allege less.

Mr. FOWLER. Well, I think when the bill is taken as a whole, and the particular businesses of these concerns that are alleged to have gone into the combination are taken into consideration, it is pretty clearly shown in the bill what the purpose was.

PUTNAM, J. It is hardly worth while to discuss it. It is really for your determination and Mr. Gregg whether you will let that stand as it is or modify it.

BROWN, J. It is the difference between a monopolist and a specialist.

PUTNAM, J. A specialist might be a monopolist.

The WITNESS. In regard to the Goddu Sons Metal Fastening Company, an arrangement was made with Goddu, senior, and his sons to purchase the stock that they owned in the Goddu Sons Metal Fastening Company and their patents which had not been transferred to that Company and still belonged to

514 them, and a contract was made with them for their services for a period of years, including such inventions as they might make. That arrangement was entered into on my part because of the fact that I very much desired to start the United Company free from all serious litigation. I was aware of the fact that there was serious litigation existing between the McKay Company and the Goddus. I knew Mr. Goddu, senior, quite well and believed personally that the patents then standing in his and his sons' names, and those that had been transferred

to the Goddu Company, belonged in reality to the McKay Company. The Goddu inventions related to metallic fastening machines.

Mr. Goddu, senior, came to me and wanted the transfer, or arranged to have the United Company take this property, saying to me that Mr. Van Wagenen, who had been associated with him, had induced him to embark in this enterprise—the Goddu Sons Metal Fastening and the work which had brought about this situation—and that he was sorry that he was in that place and wanted to relieve himself of the position that he was in. I was very glad to get rid of the situation which meant I didn't know how much litigation and how much time it would require from me, and to get that whole matter cleaned up and clear the litigation.

Louis Goddu, senior, had been for a long time employed by the McKay Company, until his break with them, and had done considerable inventing in metallic fastening machines. His work had been very meritorious and was the base of the McKay metallic machinery business.

I was aware of the breach and litigation between him and the McKay Company before the United Company was organized. Both he and Mr. Van Wagenen had seen me within a year before that and had talked with me about the matter.

I do not remember and have not acquainted myself with the suits which were in existence at that time, but I knew that there was extensive litigation.

The Goddu Sons Metal Fastening Company had no machines whatever in the hands of customers. Their machines were in a state of development and none of them, to the best of my judgment, was in condition to be placed in the hands of manufacturers for continuous operation. As I knew the situation, they were in a state of development where some of them could have been, without extensive changes, made operative.

515 They had no factory, but Louis Goddu had a small machine shop, with a few tools in it, adjoining his house, and that was where their experimental work was done. That shop was not a manufacturing establishment.

The patents which were the subject of litigation between the McKay Company and the Goddus were some of them in the names of the Goddus and some stood in the name of the Goddu Sons Metal Fastening Company.

The claim that the McKay Company made was that Mr. Goddu, senior, was the real inventor of the inventions that were embodied in the patents, and that they were taken out in the names

of his sons. Mr. Goddu claimed that the patents that had not been transferred either to the McKay Company or the Goddu Sons Metallic Fastening Company belonged to him. I myself believed that in fact they belonged to the McKay Company. I appreciated the length of time and the difficulty of establishing that by a decree of the court. I had had considerable experience in that sort of litigation

Q. Did you acquire the Goddu Sons Company for the sake of getting rid of any competition?

A. I did not.

I never stated to Mrs. Converse that we acquired the Goddu Sons Company for the sake of getting rid of competition. I remember my conversation with her when she was Miss Van Wagenen. She came to see me early in 1900. She was an entire stranger to me before I met her on that occasion, and the conversation was, as I remember it, in the neighborhood of half an hour. During that time I do not remember any talk about competition. I do not remember that word being used.

She asked me regarding the company and my purchase of the stock of the Goddus; and the substance of the conversation that I had with her, in reply to a question as to why I acquired the stock and patents, was on my part that I wanted to get rid of any further trouble with the Goddus. I made no statement to her regarding her father's connection with the affair, as it had been reported to me by Mr. Goddu, nor my own opinion regarding that connection. I did not believe that Mr. Van Wagenen's connection with the Goddu enterprise had been a proper one.

516 My remembrance is that, while in 1899 we had acquired a controlling interest in the stocks of the constituent companies, none of the property of either of the companies was transferred to the United Company until some time in 1900 and until the transfer of the properties the business of the several companies was continued by them, respectively, exactly as it had been. The same methods of marketing machines and the same forms of leases were used as before the formation of the United Company. Leases of the original companies were used and the name of the United Company was stamped upon them.

In connection with the organization of the United Company neither I nor my associates had any thought of acquiring ownership and control of all concerns engaged in manufacturing and dealing in shoe machinery and then refusing to sell or lease any of the essential machines except on condition that the manufacturer buy or lease of us practically all other machinery that was necessary or useful to him.

During the period for a year or two on either side of 1899 the art with respect to invention and development of shoe machinery was not stationary and new inventions and improvements were being made all the time.

The first change made by the United Company in the method of marketing any of the machines which had been put out by the constituent companies prior to the organization of the United Company was the adoption of the new metallic lease of the United Company, about the middle of the year 1900.

For a year or two before 1899 the McKay Company had been putting out its machines without any lease, and that practice was continued by the United Company up to the middle of the year 1900.

At that time Mr. Charles H. Willson, who had been assistant to Mr. Brooks in the management of the metallic end of the McKay business, reported to me that the price of copper had been constantly advancing so that there was not a proper margin of profit in the sale of wire material used in the metallic machines, that he had called Mr. Brooks' attention to that fact just before our coming together, and that before 1899 he had prepared
517 a list of advanced prices at which the material should be sold. He suggested to me that something should be done and that I should take the matter up.

Great amounts of brass wire and nails are used in the metallic fastening machines, and the price of copper is the important factor in the cost of that material. We use spelter, composed of two parts of copper and one of zinc.

In January, 1898, copper was eleven cents a pound; in January, 1899, 12.8 cents per pound; in January, 1900, and in January, 1901, 17 cents per pound. During 1900 the lowest price was 16 cents in four months, 17 cents in three months, and from 16¼ to 16¾ in four months. It averaged about 16½ cents a month.

The old leases provided that the minimum amount of material for each metallic machine should be 400 pounds a year and a very substantial amount of that would be copper.

This very considerable increase in the price of copper was a very serious factor, because the prices of the material used in the metallic machines constituted the entire royalty received for the use and care of those machines, and the margin between the cost of the material to the company and the price at which it was sold to represent that royalty had been fixed years prior to 1899, when copper was very much below these prices. The increase from 11 cents to 16 cents, of course, all came out of the royalty, so that it was a very serious question. All the royalty we got

was the profit on the material, and when the material increased in cost the royalty disappeared.

In view of this situation we adopted a policy of limiting the use of those metallic machines to work that had been done on machines of some other department that paid us a royalty. We restricted the use of the machines to footwear which had been lasted and welted and stitched upon machines leased of the United Company. That policy was adopted about August, 1900.

That is, we got our royalty indirectly. We did not increase the price of material furnished for the metallic machines nor did we increase the royalty on the machines to use with which we restricted the metallic machines.

518 We also adopted, in February, 1901, an alternative independent form of lease by which the use of the metallic machines was not limited to use with the machines of any other department and under which the manufacturer paid ten per cent more for his material than he did under the limited license form. This form of lease was the result of negotiation and agreement with the manufacturers.

Both forms of leases were offered to every lessee of the United Company simultaneously and he made his choice. Manufacturers had the right to take the independent form and to change from that to the limited form at any time while they held the machines. If they elected to take the limited form they had either one or two years within which they could change from that form to the independent form of lease. A manufacturer who was in doubt could of course take the independent form and take all the time he wanted to change to the limited form

Manufacturers expressed a decided preference for the limited license and a very great body of the lessees took that form.

Since that time manufacturers have had a chance to take the metallic machines upon either of these forms, or more lately on a lease with an initial payment which is not limited to use with machines of any other department. Accordingly manufacturers have more recently had three alternatives, although it has been the intention of the company to withdraw the ten per cent form and substitute the initial payment lease in order that the price of material might be uniform to all lessees.

Throughout our business dealings our prices, service, and forms of lease have been the same to every one; we have made no price for any royalty or for any material or in any way that was not open to every lessee the day it was made.

We have never granted concessions of any sort. Rebates, as I understand the United States to charge in connection with the Gem machines, have been offered and have been open to all our

lessees under the same circumstances; there was nothing secret about it in any way. Our royalties have been the same
519 to all, whether they used a thousand machines or one; they are charged by the pair and the service is exactly the same. No lease or modification of lease is adopted at any time that is not open to all lessees at the date of its adoption.

In connection with the new forms of metallic leases there was no change made in the terms upon which Goodyear department machines were offered to customers and no restrictions were made with reference to the facilities with which they might obtain or use Goodyear department machines or with reference to the machines that were leased prior to 1899. The lessee of the Goodyear machines was not required to use our metallic machines or our lasting machines. The requirement operated the other way because of the low return on the metallic machines.

There was no change in the method of marketing the heeling machines until the year 1904. As to the occasion for the change which was made in that year, in the early spring of 1904, as a result of long consideration of the subject, we had started to get out a lease for the Goodyear machines and their auxiliaries, without requiring the payment of an initial price, as had always been the case up to that time. As there were a great many machines in that department, and the amount involved was very large, that matter received a great deal of consideration, and it was not until late in that year that such a lease was finally prepared, not in fact until months after we expected to have it ready. Having that in contemplation, we had decided that if we were to remove that source of income, give up that source of income for the company, that we should be entitled to receive from that factory a surety of a further income, so the heeling machines were limited by that lease to use with the Goodyear department machines and some other departments.

That was in effect simultaneous with the taking off of the initial payment on the Goodyear machines, because during the year 1904, while we had under contemplation this lease and were working on it, we furnished to a large number of manufacturers the loan of Goodyear department machines, and my remembrance is that in the case of every machine that was placed out after July 1st in that year, 1904, the manufacturer was allowed to exercise his choice of taking them upon the noninitial form of lease when it was gotten out, or the initial payment.

With reference to preserving an alternative form of heeling department lease, it has always been the policy of the company to maintain the right of the lessee to take a machine upon the preceding form of lease, if he cared to have it that way. There

never has been a time when a lessee could not obtain the machines of any department upon an independent form of lease.

520 The business reasons which led us to the adoption of the form of Goodyear lease without the payment of initial premium but accompanied by restrictive leases in the heeling department and the lasting department were as follows:

The manufacture of Goodyear welt shoes required up to that time the investment of a very much larger amount of money for machinery and equipment than was required for any of the other types of shoes. This had resulted in the manufacture of welt shoes being limited to quite a large degree to those manufacturers who had a substantial amount of capital, but some of those manufacturers had seen their businesses grow so fast that they were embarrassed to find the money to add to their equipment. That was especially true as regards the auxiliary machines. Our company had spent a great many thousands of dollars to develop the auxiliary machines and believed that the use of all the auxiliary machines would produce a better shoe and that every manufacturer ought to have the benefit of them. They would facilitate the manufacture of a shoe, but it was a grave question with many of the manufacturers whether the improvements in quality or the little savings that could be made by the use of the auxiliary machines would warrant their investing their money in those machines in a fixed form rather than using it in their business, where they turned it over two or three times a year.

Furthermore, the removal of initial payments would allow those who were entering into shoemaking, and all the other small manufacturers who were making other kinds of shoes, to equip their factories with a complete system for making Goodyear welt shoes so that they would be as well equipped as the largest and richest manufacturer in the country. The United Company believed that if those opportunities were offered its revenue and the manufacture of the Goodyear welt shoe would be very much increased. This of course required an investment by the United Company of a very large sum of money without any immediate return.

521 I believed in the Goodyear shoe. I think there is no question in the minds of manufacturers, or of wearers who know the differences between shoes, that it is the best kind of footwear for any person to wear, and our endeavor was to bring that shoe within the reach of every one.

This policy really took effect about July, 1904. Nothing was said to manufacturers and the lease was not presented to them

until November or December of 1904; but if I remember correctly manufacturers were given the right to take these leases for any machines received by them after July 1, 1904.

Both forms of Goodyear department leases, the old initial premium form and the non-initial premium form, have been continued as alternatives up to the present day at the choice of the manufacturer.

The difference between these leases, other than the initial premium, is that under the non-initial form the lessee paid royalty on all shoes welted or stitched in his factory, while on the initial form he paid royalty on all shoes welted or stitched on the leased machines.

There was no restriction whatever placed upon the use of the welter and stitcher in connection with any other machines.

The auxiliary machines of the Goodyear department were restricted to Goodyear welt shoes that had been or were to be operated upon by either the welter or stitcher leased from the company. We got no royalty whatever on the auxiliary machines and got our return only through the royalty paid on the principal machines which are treated by us as measuring machines for the payment for the use of the entire system.

Mr. CHOATE. There was no alternative form of lease for the Goodyear auxiliary machines. Those were leased only; restricted to use with the welter and stitcher. There was no royalty. There was a rental of from one to perhaps thirty-five dollars.

The WITNESS. A lessee did not have to take the auxiliary machines, but if he did take them they were restricted to use with the welter and stitcher.

After 1904 the heeling machines were either put out on independent leases or on leases restricting their use on shoes that were welted or stitched, lasted, metallic fastened or pegged on our machines.

522 The hand method lasting machine was leased either on an initial premium independent lease, not restricted, or on a lease without an initial premium restricting the machine to use with the Goodyear welt sewing and stitching machines and to the metallic machines. The No. 5 lasting machine was leased either on an independent, unrestricted lease with an initial premium or on a lease without an initial premium limiting the machine to use with the pulling-over, metallic, heeling, and Goodyear welting and stitching machines.

When lessees believed they wanted to put in machines other than those held from our company, or when it seemed to them that the necessities of their business required that they do this, the policy of the company has been to reorganize the leases

which they then had so as to leave them in a position to use those other machines. For example, if a manufacturer wished to use Pettengill heelers, which are not built by our company, in the place of our heeling machine, we asked him to respect his leases up to the time when he made that decision. Then he could return our heeling machines, place his machines in the other departments upon the independent forms of leases, and continue to use the heeling machines of others. When a manufacturer made such a change we did not ask any different or larger initial premiums than the regular premiums or anything different.

I have had prepared a list of the new concerns which have entered the business of manufacturing shoes since March 1, 1900. If the new concern succeeded an old one, that fact is indicated on the list, which is defendant's Exhibit 223 (Record p. —). 746 entirely new concerns entered the business of manufacturing shoes between March 1, 1900, and December 31, 1911. 270 succeeded old concerns, making a total of ~~1,046~~. 1016

1,033 shoe manufacturers were lessees of the company in December, 1911. The reasons and the conditions existing in the shoe machinery business as it is done by leasing which have brought about the use of the full capacity clause are as follows:

523 The leases as existing in 1899, and as issued practically up to the present time, gave the possession of the machinery and the right to use the patents embodied in that machinery to the lessee, either for the life of all the patents that were then embodied in the machines, or for seventeen years upon his keeping certain conditions. The payment to the owner of the patents in these leases was dependent entirely upon the use that was made of the machines. Experience of the companies who were leasing machines prior to 1899 had shown them that frequently their machines would be in the hands of the manufacturers and would not be used for one reason or another. The machinery companies had gone to the expense of teaching operatives, educating the manufacturer in the use of the machines, and were by the custom of the trade called upon to teach the operator at any time in the use of those machines. My own experience with the Lasting Machine Company had shown me that we might start and educate operatives on the machines two or three times, and then the machine would be stopped. Some method had to be adopted to properly protect the interests of the machinery company if it were to continue to lease machines.

Q. Either the lessee had to be required to use it, or you have the chance to get it back and let somebody else use it; that is about the size of it?

A. Some means had to be adopted, and the full capacity clause was introduced as being a proper notice to the lessee of what was expected of him.

Q. Now, the additional machinery clause which you have already noted was found in the leases prior to 1899. Will you state briefly when that came into the leases of the company, and, if it ever went out, when it went out?

A. The additional machinery clause went into the leases of the United Company when the first new leases covering those particular machines were printed for the United Company.

Q. You mean the particular machines which the leases had covered before?

A. Which had been in the prior companies.

All of those additional machinery clauses were removed from all of the leases of the United Company not later than 1907, and they were not in use and did not represent the policy of the company at the time of the bringing of this suit.

The United Company has never adopted the policy of requiring the exclusive use clause as an agreement upon the part of the lessee. That clause has always been in the form of a right reserved to the company in case the lessee does not use exclusively and the conditions are unbearable. The business reason for the adoption of that policy is as follows:

The manufacturing of shoes is one that is divided into substantially two seasons. The manufacturer with an average production of a thousand pairs per day, in other words, who makes 300,000 pairs of shoes in the year, will ordinarily have to have a capacity to produce 600,000 pairs. His production in certain months will run at the rate of 2,000 pairs per day, and in other months as low as 500 pairs per day, so that if he 524 has the machines of our company—our entire income is dependent upon their use—we have to furnish him the equipment to make the 2,000 pairs per day, although his total product only averages a thousand pairs per day. We furnish him that equipment for his maximum output, which is only used, the maximum, I am quite safe I think in saying, not over three months out of the twelve, and from that it runs down, varying according to the man's particular business, to from twenty-five per cent to fifty per cent.

As to whether it would be practicable as a business matter to furnish a man with machinery sufficient for his maximum

output, and only get a return based upon his average output or his minimum output, the basis upon which the investment was made is not based upon their minimum use.

Defendants' Exhibits 212 and 213 (Record pp. ——) which I prepared to show the service, give figures showing the production month by month and the total for the year in the factories of E. W. Burt and the Crossett Shoe Company. One is a small factory and one is a large factory.

In addition, I have prepared a statement of the classified production in 1911 at the factory of John Strootman Shoe Company, in Buffalo, New York. The capacity at that factory is 800 pairs per day, about 400 pairs McKays and 400 pairs divided between welts and turns. This statement is Defendants' Exhibit 224 (Record p. –). The variation in the production at that factory is best illustrated by the first column under the heading "Women's stitched (2 mchs.)". The maximum product was in September, 5,492 pairs. The minimum product was in May, 749 pairs. I don't assume that that is a fair comparison, but the month of April is 2,234 pairs. It shows what the extremes may be.

This statement also gives the product per month of each kind of machine. Under the heading "Heeling (2 machs.)" the high month was August, 17,235 pairs; the minimum was in May, with 252 pairs and the number in April was 7,023 pairs. The comparison with April would be a fair one as showing the extremes. I presume that the factory practically shuts down in the month of May.

This is a fair sample of the condition with which we are confronted throughout the trade. It is not a selected case. I would be quite ready to take any factory and prepare the same figures.

525 The general average of the capacity of the machines which is paid for in the way of royalties is about thirty-three per cent of the productive capacity of the machines in all departments. The difference between this general average of thirty-three per cent and a possible one hundred per cent of use is accounted for in part by the loss in productivity caused by fluctuations in the seasons and in part by the necessary margin of productivity of the equipment of a factory which must be maintained above the actual demand. My theoretical 100 per cent of productivity is the capacity of the machines in actual use under actual conditions in various parts of the country and under varying time conditions, for three hundred days. I did not take twenty-four hours a day or ten hours a day. I can't give the exact number of hours that it does cover. It is the working day, the average working portion of the day.

Q. The United States claims that the policy of the company with reference to the use of this exclusive use clause is that, unless the lessee uses all the machinery of the company exclusively, the lessor has the right to exercise its option of cancelling the lease; is that the policy of the company?

Mr. FOWLER. I wish, your honors, to make an objection to the use of the word "policy."

PUTNAM, J. I don't remember any such language in the bill. I think he ought to hold himself to the bill. What is the language of the bill, Mr. Fowler?

Mr. FOWLER. Well, it doesn't use the word "policy" at all, but just states as a matter of fact they did so.

BROWN, J. It says they conceived the idea, doesn't it?

PUTNAM, J. It seems to me, Mr. Fowler, to put it on a broader basis—in this case, what the court wants to know is, not only what the company did, but what its policy was, and not only what its policy was, but what it did. We want to know both things to understand this case properly.

BROWN, J. What the scheme was.

Mr. FOWLER. I submit it is not competent for him to testify generally as to a policy.

BROWN, J. But as to a project—you have charged in your bill that various contracts, combinations, conspiracies, and acts were steps in carrying out the above-mentioned unlawful projects. You first say they conceived an idea and then say what it was, and then you call it a project, and now Mr. Choate calls it a policy.

Mr. FOWLER. Now, may it please the court, a bill necessarily has to allege several evidential facts. Then from those evidential facts it alleges a certain policy, you might say, or proposition.

BROWN, J. The existence of a project is a fundamental, substantial fact in this case.

526 DODGE, J. When Mr. Choate asked the witness what was the policy of the company in respect to this or that, I have been understanding not only what was intended but what was done.

Mr. CHOATE. Exactly.

DODGE, J. That has been my understanding all along.

Q. Mr. Winslow, the United States charges your company with the project or purpose of requiring lessees to use your machinery exclusively at the peril of having all your machinery taken away from them, and that that is the purpose of the exclusive use clause in the leases.

PUTNAM, J. Do you find that in the bill?

Mr. CHOATE. Yes.

PUTNAM, J. Repeat the language in the bill.

Mr. CHOATE. It appears in two or three places, first, I think, on page 22:

"With the intent to acquire complete control of the business of manufacturing and selling or leasing shoe machinery among the States and with foreign countries, to exclude all others therefrom."

Then, on page 23:

"Defendants, in pursuance of their general purpose, inserted in and made a part of, each lease and license agreement, provisions reserving to themselves a right to forthwith terminate and cancel all existing lease and license agreements between them and the boot and shoe manufacturers if the latter should fail or cease to use exclusively and to their full capacity machines leased or controlled by defendants."

A. That is not true and never has been the purpose of the company.

The purpose of the company has been nothing more than to reserve to the company the right to cancel leases of machines of a type which the lessee had ceased to use exclusively if conditions became too onerous to continue.

The right to cancel clause, for breach of a condition expressed to be obligatory upon the lessee, was adopted by the company with respect t conditions which would be such as to make the continuance c the business relations between the lessee and ourselves impossible, as where the lessee did not make proper returns
of the royalties or did not pay his royalty or refused to pay
527 the taxes—those conditions which in the ordinary business
relations between men would make the continuance of the relations impossible.

In the twelve to thirteen years prior to the beginning of this suit the United Company availed itself of the right to cancel leases and remove machinery for reasons other than bankruptcy or receivership in only five instances. These were the cases of T. D. Barry & Company, Peter Tessier & Company, E. Bottomley & Company, E. F. Bell & Company, and C. E. Ramlose. In the Ramlose case they made improper and incorrect returns of the extent of use of the machinery. Upon investigation we found that he was only reporting about half the shoes that he was making upon our machines. Also when our agent called in the middle of the month of January, 1903, there were already prepared the entire returns for the use of the machines for that month of January. After we took the matter up with Ramlose he secreted some of our machines behind a brick wall that he erected in his cellar. We replevied the machines from Ramlose.

In the Bell case the firm had obtained wire and loose nails from other parties and were using them in our machines, thereby depriving us of all royalty for the use of those machines. He had boxes containing our loose nails beside the machine, and when our agent went in there he substituted the nails of our make for those he had purchased outside. The matter was taken up with them, and the machines were not removed until after they continued to persist in this practice; then only those machines upon which they were doing that were taken out of the factory. Other metallic machines were left there.

In the Tessier case I sent the notice to Tessier myself.

528 Tessier had our machines in two departments. He had abandoned the use of our welt and turn sewing machines, and had put in their place the Duplessis turn sewing machines, and we sent him a notice cancelling our leases. As a matter of actual fact, it did not interfere with his going on with his business in the slightest degree. He simply was not using our machines, and we took them out.

The T. D. Barry & Co. case is the one Mr. Hogan testified about. The other one was the Bottomley case. Bottomley had served notice on us that he would not use our machines and would not pay any further royalty. He was using machines which he had also declined to sign the leases on. They had been leased previously to other parties. In none of these cases were any of the machines removed until after several interviews with the parties themselves and an endeavor to arrange any differences.

I have had an examination made to ascertain how many of the welting and stitching, lasting, heeling, and metallic machines, including the auxiliary machines, were out on the independent leases on January 1, 1905. There were 18,702.

On March 1, 1905, there were 1,851 welt and turn machines out, and of these, 1,798, nearly all of them, were on the independent form of lease. On March 1, 1905, we had out 1,871 stitchers, and of these 1,817 were on the independent form of lease.

The figures which I am giving for the total number of machines out are as of March 1, 1905. The figures for the machines on the untied leases are as of Jan. 1, 1905. Those are the nearest dates that we are able to get, but with that qualification these are the comparisons.

In 1905 we had out 8,129 metallic machines and 603 of these were on the independent lease.

We had 1,652 heel-attaching machines out in 1905, and of these 1,500 were on the independent lease. I am now speaking of

heel-attaching machines alone, not including the heeling department auxiliaries.

In 1905 there were 5,289 lasting machines out, and of these 1,956 were on the independent form of lease.

This makes a total of 7,674 principal machines out on untied leases on January 1, 1905.

I have also made a similar compilation as of March 1, 1911.

529 On that date there were out 5,203 of the welt and turn machines and the stitching machines. These were all on the unrestricted form of lease.

On that date there were out 15,540 auxiliary machines of the Goodyear department. None of these auxiliary machines was on a form of lease by which they were restricted to use with machines of any other department or any machines except the principal Goodyear machines.

In 1911, 7,587 principal metallic machines were out, less than in 1905. Of these 225 were on the unrestricted form of lease.

In 1911 there were 2,019 heel-attaching machines out and 415 of these were on the unrestricted form of lease. Also 514 auxiliary heeling machines were out on leases which did not restrict them to use with the machines of any other department.

There were 7,819 lasting machines out in 1911 and 1,506 of these were on unrestricted forms of lease.

The total number of machines in the Goodyear, metallic, heeling, and lasting departments, which were out on unrestricted leases in 1911, including auxiliaries, which are limited to use with the principal machines of their respective departments but are not restricted to the machines of any other department, was 23,404 out of a total number of machines in those departments of 47,985; that is, about half of the total number of machines in those departments.

Defendants' Exhibit 225 is a tabulation of the numbers of machines out on unrestricted leases on January 1, 1905, and March 1, 1911.

DEFENDANTS' EXHIBIT 225.

List of principal and auxiliary machines of the Goodyear, metallic, heeling, and lasting departments out January 1, 1905, on untied leases.

	Principal machines.	Auxiliary machines.	Total.
Welt and turn sewing machines	1,798	9,078	12,663
Outsole stitching machines	1,817		
Metallic fastening machines	603		603
Heel attaching machines	1,500	1,950	3,450
Lasting machines	1,956		1,956
	7,674	11,028	18,702

Machines of the Goodyear, metallic, heeling and lasting departments out March 1, 1911, on untied leases.

Goodyear—Principal machines	5,203
" —Auxiliary machines	15,540
Metallic—Principal machines	225
Heeling—Attaching machines	415
" —Auxiliary machines	514
Lasting	1,506
	23,403

The WITNESS. I have prepared a list of some of the concerns to whom the choice between the independent form of lease and the restricted form of lease has been offered from time to time. This list does not comprise all such concerns, but only those which readily came to mind. These concerns were as follows:

F. E. Leavitt, Haverhill, was using three Duplessis turn sewing machines and had our sewing machines. We offered him the right to return our turn machines, to cancel the leases of those machines and to take the initial-payment form of lease for his lasting, metallic, and heeling machines. He did take independent metallic leases on the initial-payment form in 1910 and retained the Duplessis machines.

F. M. Hodgdon, Haverhill, was using a Fox turn machine. We offered him the initial payment lease for such machines of our other departments as he had, but he decided not to take it, and returned the Fox machine.

W. S. Chase & Son, Haverhill, were using the Fox turn machine and the Pettengill heeler. We offered to let them return our turn machines and our heeling machines and to keep
531 the lasting and metallic machines on the independent leases, but they decided to keep our machines and gave up the use of the Fox and Pettengill machines.

Carleton & Hunt, Haverhill, were using the Fox turn machine and were offered the initial payment.

George W. Herrick Shoe Company, of Lynn, was using the Pettengill heeler and was offered the rest of the department on the initial payment plan.

Hilliard & Tabor, of Haverhill, were using the Fox turn
532 machine and the Pettengill heeler and were offered the right to keep any of our machines on the initial-payment plan.

C. H. Aborn & Company, of Lynn, using the Pettengill heeler, were offered initial-payment leases for the other departments with the right to return our heeling department machines.

L. Jacob & Company, Lynn, who were using the Rowen & Hamel turn machine were offered the initial-payment lease.

We offered the initial-payment lease to Griffin & White, of Brooklyn, who were using the Fox turn machine and the Pettengill heeler.

In 1910 we offered the independent lease for the pulling-over machine to the following concerns, who took it: N. D. Dodge & Company, Newburyport; George A. Learned, of Newburyport; Excelsior Shoe Company, of Portsmouth, Ohio; Joseph A. Schreier, Rochester, New York; Newton Shoe Company, of Newton, New Hampshire; Martin Slipper Company, Haverhill; E. E. Sullivan & Company, of Haverhill; A. Garside & Sons, New York City.

Independent leases were also offered to Ira J. Webster, Haverhill; Worcester Slipper Company, Worcester; and Charles L. Clifford, Newton, New Hampshire. The Worcester Slipper Company were offered the machines of the metallic and heeling departments on independent leases and they accepted the terms.

Referring to Plaintiff's Exhibit 163 (Record, p.—) which shows the total number of machines leased on March 1, 1911, and referring to Plaintiff's Exhibits of reports to stockholders for a series of years in which the number of machines out under lease is stated for each year, those totals in each case included all machines under lease whether leased to shoe manufacturers or not.

The total, 90,276, stated in Plaintiff's Exhibit 163, also included 28,622 general department machines, all of which could have been bought or leased, as the manufacturer preferred. It also included the following new machines, introduced since 1899: Ensign lacing machines, 633; Ideal clicking machines, 3,655. pulling-over machines and their auxiliaries, 3,627. There were also machines in the general department and in the lasting department which were entirely new and had been developed by the United Company since 1899.

533 I have prepared a table which shows the total number of machines, principal and auxiliary, of the kinds put out by the constituent companies prior to 1899 which have been put out by the United Company in each year from 1900 down to 1911. This table also includes, under separate headings, the pulling over department machines and various other machines that have been devised and brought out by the company. In this table are included all machines out on lease, whether to shoe manufacturers or others. We lease machines to harness makers, trunk makers, and in all the various trades in which eyeletting machines could be used, as in corset manufacture.

Mr. CHOATE. I want to offer that to demonstrate that the principal increase in the numbers of machines leased by the company has been due to the addition of machines which were

not in existence in 1899, and to the general department machines which had been added to the list of leased machines. The increase in the number of the original machines owned by the original constituent companies your honors will notice is not very striking.

(This table is defendants' Exhibit 226, Rec. p. —.)

534 The WITNESS. I have made a calculation to determine whether the number of machines of the kinds made by the constituent companies and now put out by the United Company has increased in proportion to the number of all shoe machines between 1899 and 1911. The ratio of the machines of the constituent companies to all shoe machines in 1899 was 26 to 138; that is, in round numbers there were 26,000 of United Company machines and 112,000 of machines of other companies, a total of 138,000 in 1899.

On the nearest date to the beginning of this suit for which I was able to make a compilation there were 41,602 machines of the Goodyear, heeling, lasting, and metallic departments, compared with 181,000 of all kinds of machines, a ratio of 41 to 181 In this comparison I did not include lasting or metallic auxiliaries, because they are more devices than machines.

In round numbers the United Company's machines in 1899 were about one in every five and a quarter, and in 1910 about one in every four and a half.

In enumerating the total number of machines I used typical factories as a basis and took all kinds of machines used in shoe factories, including general department machines and those that work on the uppers. It includes everything.

The restricted-use clause was adopted in our leases for the purpose of giving the company a proper return for the use of the machines when they were leased without initial premiums, and for that reason alone. With the terms of royalty fixed the company would not, without the initial premiums, receive a fair return for the machines unless they were used together as restricted in the leases. As a business proposition, after the initial premiums were removed, there would be no security whatever for a proper and fair return for the use of the machines without the restricted-use clause.

Defendant's Exhibit 227 (Record, p. —) is a list, as of December, 1911, of the machines which the United Company has

535 added to the general department, since 1899. There are about 170 machines on this list, which includes machines used in practically every room in the shoe factory, as the fitting room, bottoming room and finishing room.

The United Company offers these machines for sale or lease, at the option of the customer. My remembrance is that no lease was adopted until some time after we started to make general department machines but the alternative right has always existed from the beginning of making those machines down to January, 1912. Since that date we have only sold them.

The same business reasons existed after 1899, while the United Company was doing business, which I testified were the occasion for the full capacity, additional machinery and right to cancel clauses in the leases before 1899.

In regard to the "maintenance or repair" clause in the leases which purports to require the lessee to maintain the machines leased in good and efficient condition, the universal policy of the United Company has been to do through its service department all the work of maintaining the machines in proper working efficiency without charge to the lessee for the service.

Defendants' Exhibit 228 (Record, p. —) is a summary of the leased machines as of March 1, 1911, grouping the machines under the headings of the different departments. This shows the number of machines of each type comprised in a total of 90,276.

Referring to defendants' Exhibit 226 (Rec., p. —), and particularly to the figures under the heading "Lasting Department," from the date of the introduction of the No. 5 536 lasting machine it displaced the Chase, McKay & Copeland and Ideal lasting machines so rapidly that less than three years after the introduction of the machine there were 2,080 of those machines out, while the total number of the Chase, McKay & Copeland and Ideal machines was reduced about 500 in that time. That condition has continued until the present time, when there are 3,700 of the No. 5 machines out and only 744 of the Chase, McKay & Copeland and Ideal as compared with 2,100 of those machines out in 1899.

Comparing the terms on which the Chase and McKay & Copeland machines were put out before and after 1899, when the United Company was formed the rate of royalty for the Chase machine was according to the schedule on the lease of that machine, and the lease gave the lessor company the right to collect that rate, although notices had been given to the lessees temporarily reducing the royalty from the schedule rate to one-half cent. When the Chase leases were prepared, limiting their use to work done upon certain other machines, the right on the part of the company to demand the schedule rates was abandoned and the rate was permanently reduced to one-half cent. There was,

however, reserved for the benefit of lessees an alternative between the two forms of lease.

No change at all was made in the McKay & Copeland lease as used by the Consolidated & McKay Company in 1898 until 1903, when that machine was limited to use with machines of certain other departments; at that time the initial payment which has always been retained on that machine was reduced from $695 to $500 or less. The use of that machine was decreasing all the time and it was gradually becoming obsolete.

The fundamental difference between the operation of the McKay & Copeland and the No. 5 machines was the improvement of the No. 5 machine, which allowed either the right or left shoe to be operated upon without readjusting the machine, which had always been necessary in the use of the McKay & Copeland.

Of course, there were other differences.

537 I have prepared statistics showing the average daily production of lessees of the constituent companies of the United Company in 1898 and the average daily production of lessees of the United Company in 1911 and also several intervening years. This is defendants' Exhibit 229 (Record, p. ~~454~~).

In the year 1898 there were 1,060 firms manufacturing shoes which were lessees of the constituent companies of the United Company; 1,079 factories were used by those firms. Their production, based upon the average daily production during the year, was as follows:

Those averaging less than 100 pair per day	383
Those averaging between 100 and not over 200	173
Between 200 and 300	111
" 300 " 400	79
" 400 " 500	53
" 500 " 600	22
" 600 " 700	29
" 700 " 800	33
" 800 " 900	19
" 900 " 1,000	15
" 1,000 " 1,500	40
" 1,500 " 2,000	32
" 2,000 " 2,500	21
" 2,500 " 3,500	18
" 3,500 " 5,000	7
" 5,000 " 7,500	2
" 7,500 " 10,000	2

With forty idle and unknown capacity factories.

There were not any above 10,000 at that time.

In 1911 there were 1,033 firms with 1,150 factories. Their average daily production was divided as follows:

Less than 100		274
Between 100	and 200	123
" 200	" 300	98
" 300	" 400	72
" 400	" 500	69
" 500	" 600	52
" 600	" 700	40
" 700	" 800	38
" 800	" 900	44
" 900	" 1,000	34
" 1,000	" 1,500	97
" 1,500	" 2,000	52
" 2,000	" 2,500	43
" 2,500	" 3,500	37
" 3,500	" 5,000	21
" 5,000	" 7,500	14
" 7,500	" 10,000	1
" 10,000	" 15,000	1

With forty idle and unknown.

The figures in the last column show the number of factories. Defendants' Exhibit 229 shows both the number of factories and the number of firms using those factories. In all cases the smaller firms would have single factories.

Of the 1,033 lessees in 1911, it would take the output of eighty per cent of the total number of factories to amount to one-half of the output of the total number of factories; that is, beginning with the manufacturers who make 100 pairs and less, and going up to the larger factories, it would be necessary to take eighty per cent of all the factories to produce 130,000,000 pairs. The average of those factories would be 450 pairs per day; 567 out of the 1,033 firms averaged less than 170 pairs of shoes a day.

538 I am familiar with the respective capacities of the principal machines put out by our company. I have prepared a memorandum of the principal machines, including the Goodyear auxiliary machines, but not including any auxiliaries in the other departments required by factories having daily productions of 100, 150, 250, 350, and 450 pairs. This is defendants' Exhibit 230.

Mr. CHOATE. I should like to offer this computation, if the court please, bearing upon the subject of the required capacity of other shoe machinery makers of like machines to equip the great majority of the shoe factories in the country.

DEFENDANTS' EXHIBIT 230.

Memorandum of the pulling over, lasting, heeling, metallic, and Goodyear departments, and Goodyear auxiliary machines required by factories having a—

Daily production in pairs.	Pulling over.	# 5 lasters.	Welters.	Stitchers.	Heelers.	Sluggers.	Loose nailers.	Auxiliaries.	Total number such machines per factory.
100	1	1	1	1	1	1	1	16	23
150	1	2	1	1	1	1	1	16	24
250	1	2	1	1	1	1	1	16	24
350	1	3	1	1	1	1	1	16	25
450	1	4	2	2	1	1	1	16	28

The WITNESS. So far as this exhibit deals with heeling machines, metallic fastening machines, or lasting machines no more of those machines would be required in a McKay factory than in a welt factory.

I have classified under various headings the acquisitions of properties by the United Company, arranging them in eight classes.

Class 1 comprises "Purchases made after the formation of the United Company in February, 1899, and during the years 1899, 1900, and 1901 for the purpose of settling existing litigation; one in February, 1910, for the same reason; and one to avoid infringement of patents." This class comprised Goddu Sons Metal Fastening Company; Seaver Process Lasting Company; Globe Sewing Machine Company; Bay State International Shoe Machinery Company: The Wentworth Company, and Boot & Shoe Sole Laying Company.

539 I have already testified regarding the Goddu Sons Metal Fastening Company.

The Seaver Process Lasting Company was purchased in 1900 at the earnest solicitation of Mr. Seaver. At the time they were not making any money, and the company was heavily in debt to Mr. Seaver, personally.

There was litigation that existed at the time between the Consolidated & McKay Lasting Machine Company and the Seaver Company. And also the Seaver Company had patents, or applications for patents, which it was believed stood in the way of the development of the pulling-over machines which we were at work on at that time. The patents on which litigation was being conducted had been issued to the Consolidated Lasting Company in 1895 and 1898. The Seaver Company owned no real estate and they leased a room in South Street—had about six employees.

The Globe Sewing Machine Company suits for infringement of the patents of the Goodyear Company were being conducted at the time of the formation of the United Company and at the date that the United Company acquired the property of the Globe Sewing Machine Company. The purchase was not one that the United Company sought, but was made at the earnest solicitation of Mr. Mellen Bray, to whom the Globe Company owed a very large sum of money. He wanted to get rid of having anything to do with the company, and came to me personally and besought me to acquire his interest. They owned no real estate and did no manufacturing. Such as they had done they had contracted outside.

We acquired $599,210 in the nominal capital stock of the Globe Company and paid $20,000 in our preferred stock at par. That company was in debt to a very large extent to Mr. Mellen Bray, and the price paid also included that debt. I do not mean that we paid the debt beside the $20,000; that payment covered everything.

The Bay State International Shoe Machinery Company was acquired in 1901 for the account of the United Company's British and French companies. That was believed to be the cheapest way to settle and dispose of the litigation. This purchase also was made at the earnest solicitation of the people who were interested, who were also customers, shoe manufacturers, and customers of the United Company.

We got foreign patents in that purchase. The litigation was between our British company and the owners of those patents.

These acquisitions for these three years amounted to $233,000; $150,000 in 1899, $38,000 in 1900, and $45,000 in 1901.

540 The purchase of the Boot & Shoe Sole Laying Company in 1899 was made to enable the United Company to put out a sole laying machine, used in the manufacture of welt shoes that would be free from infringement of the patents of the Boot & Shoe Company, and also for the purpose of obtaining a type of machine fitted for small factories as distinguished from the large capacity machine then being built by the Goodyear Company. $45,000 was paid for that company. This amount is not included in the figure of $233,000 which I stated.

In 1910 the Wentworth Company was purchased for $60,000. That purchase was made after long litigation in the Patent Office between the United Company and the Wentworth Company and in the courts between the United-Xpedite Company, one of the United Company's subsidiaries, and the Wentworth

Company, in which a judgment had been rendered in favor of the United-Xpedite Company.

Prior to the decision of the litigation the Wentworth Company had approached the United Company many times to dispose of their business. A great many of the Wentworth machines that had been put out were in the hands of our lessees, and as the easiest way of disposing of that whole question it seemed to be better to make a trade with the Wentworth Company and settle the litigation, then to allow our lessees to use those machines.

The principal machine of the Wentworth Company was the heel seat forming machine, a machine for beating the heel seat after the shoe had been lasted. The suit brought by the United-Xpedite Company was in this district, and the decision was prior to this acquisition.

The United-Xpedite Company manufactured a heel finishing machine, used in finishing the edge of the heel after it has been attached to the shoe. As to how we acquired control of that company, the principal owner of the Xpedite Company was a lawyer in Lynn by the name of Tuttle, an old personal friend of mine. He had become paralyzed from the waist down and was unable to carry on the development of the Xpedite Company. He had advanced that company quite a large sum of money. He came to me and asked me to take control of that company and handle it, giving him, if the business was successful, the amount that he had advanced to the company. I agreed to such an arrangement, took 55 per cent of the stock for our
541 company, gave Mr. Tuttle and his people 45 per cent, and advanced the necessary money to make the business successful. The company has been made successful, as a separate organization, and Mr. Tuttle and his associates were paid back the money that they had advanced to the company.

My second class of acquisitions includes the purchases of the whole or portions of the businesses conducted by four corporations and one firm that had acted as agents for one or more of the separate companies that went into the original organization of the United Company. These were Pearson & Bennion, the Frankfurt, Germany, purchase of the Stanley Manufacturing Company, Ross-Moyer Manufacturing Company, George A. Smith Machinery Company, J. K. Krieg & Company. I have testified as to all of these.

My third class includes purchases and contracts which extended the scope of the business to include the manufacture and sale of machines of the class that have been termed general department machines. None of the machines acquired was in com-

petition with the business of the original organization of the United Company.

One of these concerns is the Ross-Moyer Manufacturing Company, which is also included under class 2. This concern manufactured edge setters, edge trimmers, heel scourers, buffing machines, and rolling machines. It owned no real estate, but leased floor space in Cincinnati, where it employed 35 men and manufactured its machines. The business had been carried on for a number of years.

This acquisition did not, in connection with what we already had, give us any power over the trade in the slightest degree. There were other manufacturers putting out machines of the same type, and at that time the United Company had no machines of that sort at all and that concern had been our agents.

The machines acquired were offered for sale to every one, through the general department. If they were taken under lease, it was really a favor to the lessee. We did not in
542 the slightest way raise any of the prices or limit the sale, suspend the manufacture of the machines, or do anything that in any way would interfere with the trade of either the shoe manufacturer or other people who manufactured the same machines. The only thing that happened regarding those machines was that we made them better than the Ross-Moyer. The trade was benefited in that respect.

The next one is the Swain-Fuller Company. They owned no real estate; they leased a small amount of floor space in Boston, employed less than ten men; by this purchase the United Company secured the single sole-molding machine and the Star leveling machine. The Star leveling machine was covered by patents and was a hand-controlled machine adapted for leveling welt or turn work and was especially adapted for use in small factories where the Goodyear automatic leveler was too large and expensive.

We did not seek the Swain-Fuller Company; they sought us.

As to the G. W. Emerson & Company; this property was acquired at the earnest solicitation of George W. Emerson, who was interested in a trout farm on Cape Cod and desired to retire from the shoe-machinery business. Purchased in December, 1902. The amount paid was based upon the inventory of the Emerson Company. The controlling reasons on our side were two: First, we desired to obtain the services of William R. Sampson, who was the active man with Emerson and who to-day occupies with our company a very prominent position, and has been with us ever since, in our employ. The second was to

compose certain litigation then pending between the Xpedite Company and the Emerson Company for infringement of the Xpedite patents. They owned no real estate; they leased two floors in a factory building in Lynn, and employed about thirty-five men. The greater part of their business was in manufacturing lasts and forms.

The T. A. Norris Machine Company had no real estate, but had a small machine shop, employing about ten men, in which they did general machine-shop work, repairing shoe machinery, and also building a few minor machines. It was really a repair shop. It was located in a building owned by T. A. Norris, in which the United Company had its Brockton headquarters and repair shop, which it leased from Norris.

543 This purchase was made upon the basis of the inventory, $11,526.78, and at the solicitation of Mr. Norris, who was heavily interested in real estate and wanted to retire from any machinery business. We wanted to increase our space in his building, and this business arrangement was made. As a matter of fact, the whole purchase only amounted to buying out some second-hand machines and machine tools.

Booth Brothers Company was a partnership composed of Quentin W. Booth and Irving E. Booth. They owned no real estate but leased floor space in Rochester, New York, and employed about twenty-two men. The purchase was made in 1907 for $71,284.20. Their principal machines were beading machines, a fudge edge machine, an impression stitch burnishing machine. Quentin W. Booth wanted to retire from business, and the company felt that it could add these particular machines to its line of machines to advantage to its customers and to itself, as an ordinary business transaction; and also utilize the services of Irving E. Booth, who was a very capable man in that line of endeavor.

The United Company formed a corporation out there. It did employ Irving E. Booth and continued the business. The Booth Company employed about twenty-two men. It varied in its number of employees. We now have employed there about twenty men.

As to the Carver Cotton Gin Company, we really got from them some jigs and tools, a small stock of parts, a few machines, all of which were in what is known as the general department. This purchase was made at the solicitation of Mr. Hobart, the treasurer of the Carver Cotton-Gin Company. The manufacture of any shoe machinery with them was entirely a side line. We didn't get the company; simply got part—a very small part. Their regular business had increased so that they had either got

to add on to their factory or else dispose of some part of their business, and this portion of their business had been decreasing, and the price paid did not really cover the value of the tools plus the parts of machines.

The machines that we got from these six concerns were added to our General Department. I have prepared a list of other manufacturers who manufacture machines which compete with those general department machines, which manufacturers are doing business and competing with them now.

Parsons Machine Company, Seelye Manufacturing Company, Tower Brothers, Quarmby & Hilliker make sole-cutting machines; Boylston Manufacturing Company, Rotary Rounder Company and the Wellman Machine Company make sole-rounding machines; Quarmby & Hilliker, Boylston Manufacturing Company, Seelye Manufacturing Company make sole-molding machines; Quarmby & Hilliker, James Busfield and Seelye Manufacturing Company make rolling machines; the American Worsted Machine Company, W. J. Young Machinery Company, James Busfield, Turner Tanning Machine Company,
American Tool & Machinery Company make splitting
544 machines; the Boylston Manufacturing Company and the
C. K. Fox interests in Haverhill, R. H. Long and the Duplessis Machine Company make leveling machines; C. K. Fox, or Haverhill Machine Company, T. F. Rowan make heel-breasting machines; Donnelly Machine Company, T. F. Rowan, Briggs-Belmer Company and Tower Brothers make edge-trimming machines; T. F. Rowan, J. G. Buzzell, Boylston Manufacturing Company and Tower Brothers make heel-scouring machines; L. G. Freeman, Boyslton Manufacturing Company Beaudry Machine Company, Quarmby & Hilliker make edge-setting machines; Donnelly Machinery Company, Tower Brothers, J. C. Buzzell, T. F. Rowan, Boyslton Manufacturing Company, Seelye Manufacturing Company make buffing machines.

The United Company has done nothing with the machines acquired from those six concerns which in any way interfered with the trade of any other people who make like machines or limited the trade of shoe manufacturers who wanted to get those machines of us or of anybody else. Up to 1911 we sold or leased those machines to anybody who wanted them. Since then we only sell them. When sold those machines might be used with the machines of anybody with which the purchaser wanted to use them. We have done nothing in the way of increasing prices, restricting the output, or stopping the manufacture of these machines.

The fourth class of acquisitions comprises purchases which extended the scope of the United Company's business to the manufacture of findings and supplies used by its customers. The names of these and the findings and supplies which were added by each acquisition are as follows:

Timothy A. Bresnahan, which is the Boston Shoe Tool Company, manufactured forepart cutters and edge irons.

The Boston Blacking Company manufactured blacking stains and cement.

BROWN, J. That is out—the Boston Blacking Company is out of the case.

Mr. GREGG. That is out.

The WITNESS. The Boston Fast Color Eyelet Company and the Enamel Eyelet Company, owned by the same people, manufactured celluloid eyelets and enamel eyelets. J. C. Rhodes & Company were eyelet manufacturers. We sell these eyelets not only to shoe manufacturers but to many other kinds of manufacturers—to anybody who want to buy them.

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We acquired from the Morley Button Manufacturing Company their eyelet business, a small part of their business, and that was to settle existing litigation. We did not acquire their button manufacturing business, which was very largely their business.

The Marlboro Awl & Needle Company manufactured awls, McKay needles, and rawhide mallets. We acquired a half interest in S. A. Felton & Sons Company, manufacturers of brushes.

As to W. W. Cross & Company, Mr. Cross had really been associated with us for years, manufacturing the tacks that we sold. That business was increasing and, as we were the only big customer that Mr. Cross had, he did not want to put in the necessary additional capital, so we became interested with him. That business then employed about 40 men and now employs 317 men.

The F. G. Farnham Brush Manufacturing Company was really purchased for the benefit of the Felton Company, because of certain patents that the Farnham Company had in connection with the art of making brushes.

The American Glue Company transaction was merely a contract, terminable on three months' notice, relating to sandpaper in the shoe trade—not in other trades.

Kimball & Hadley employed two men and two boys and made, principally, Goodyear needles and awls.

The Metallic Heel & Counter Company manufactured patented metallic heels and counters to go outside of shoes for miners'

work or heavy outdoor work of that sort. That company was acquired in connection with the purchase of the Smith Lacing Machine Company. The men who were interested in that company—particularly two of them—were men whom we used in our own business and consulted as experts. One of them was Mr. Warren. They had produced the Smith lacing machine, the
546 first machine for lacing shoes preparatory to the lasting operation, which had always been done previously by hand. When we acquired that machine they wanted us to take over their whole enterprise, including the Heel & Counter Company, which was really the machine shop. They owned no real estate but they had a machine shop on Purchase Street, in Boston. From that purchase we developed the lacing machine, until today it is used in nearly every factory where they manufacture lace shoes.

The Ellis Lacer Company manufactured wire lacers for temporarily securing the eyeleted edges of shoes. They were at that time infringing patents controlled by the United Company. As a result of discussion between the owners of the Ellis Company and our company we agreed to buy it rather than start any litigation. The sale was agreeable to both parties and was for no other reason except to avoid litigation.

The B. F. Sturtevant Company was manufacturing peg wood and wood shanks. Peg wood was used in our pegging machines and was sold to shoe manufacturers, and we were handling shanks and wanted a factory to make the peg wood and shanks.

These are a dozen or more instances of concerns bought to enable us to supply findings or supplies to our customers. We did not suppress the manufacture of any of these and continued to furnish all of them to customers, to anybody who wanted them. We did nothing to restrict the use or to raise the prices. When any changes in prices were made they were always lowered. These things were all added to our general department and sold and we did not interfere in any way with the trade of others in like things.

Some of these concerns were large, like J. C. Rhodes & Company, but most of them were small. For illustration, we continued to sell eyelets at the same prices at which they had been sold by the Rhodes Company and in addition furnished the eyeleting machines in which the eyelets were used without charge to our customers, with no increase whatever in the prices; but the eyelets were sold to anyone, whether they used our machines or not.

547 My fifth class includes the purchase of patents and royalty contracts to manufacture under patents. These include Breach Manufacturing Company, E. T. Freeman, A. G. Brewer, Winkley & Phillips, W. J. Young, Joseph P. Curtis, Arnold Machine & Supply Company, Leopold J. Courteau, Booth Brothers' 1904 contract, relating to a patent on a perforating machine, Beaudry patents, relating to heel-finishing machine, Harry L. Rice and Fred La Chapelle.

Class 6, comprising payments made to commute obligations existing prior to 1899 under royalty contracts for the right to manufacture under patents, and to cancel the obligation between the Goodyear Company and the Lincoln Sewing Machine Company, includes the Lincoln Sewing Machine Company and Zachary T. French.

Class 7 comprises employment contracts and includes Peter A. Coupal and William Gordon, George W. Freeman, Fred H. Perry, Joseph W. Leary, and John H. Richardson.

Class 8 comprises miscellaneous contracts which do not come strictly under any of the other classes.

The Corrugated Wire Fastening Company was purchased in 1899 for $12,750 at the earnest solicitation of the owners, their business having become unprofitable. At the price we paid we thought we could get out of it with a small profit.

This class also included the American Sole Laying Machine Company, John Ritchie, Oliver A. Miller, Brockton Supply Company, Smith Lacing Machine Company, already referred to, Richardson Shoe Machinery Company.

An example of these acquisitions is the Oliver A. Miller business. Mr. Miller was carrying on business in Brockton manufacturing treeing machines known as the Miller treeing machine, and the tree feet and tree legs used on that machine. They are used in the finishing room of the shoe factory in finally dressing shoes before they are packed. Most every manufacturer making good shoes has them.

548 Mr. Miller, I think, had gotten into financial difficulties; at any rate, he came to us and wanted to dispose of the business. We had no such machines. We were not in competition, not in the slightest degree. The reputation of the Miller machines and the Miller business was high, and we found that we could secure the manager of that business, who had been with Mr. Miller for a great many years, to continue as manager for us, and we finally accepted the company and continued that business.

We have not restricted or suppressed this business in the slightest way. We have done nothing since acquiring the busi-

ness to interfere with the trade of other people and we did not raise the prices. We offer the machines for sale or lease to our customers, as they wish, and the business has increased. At the time of the purchase Miller employed about sixty-five men. The Miller Company employed about one hundred and twenty-five men, nearly twice as many, when this suit was begun. We supply the machines to anybody that wants them.

Mr. CHOATE. I would like to put this memorandum in as a summary of what Mr. Winslow has said on these things.

("Acquisitions by United Shoe Machinery Company, 1899–1910" is Defendants' Exhibit 231, Record, p. —.)

The WITNESS. We carry a large stock of machines and parts and everything else at our Beverly factory, and also a stock of most of these things in each of our eighteen branch offices throughout the country. We have no general shop where we exhibit them but we have a large office force occupying a large amount of room in the Albany Building on Lincoln and Kneeland Streets, and we have there a large corps of men whose entire duty is to meet the trade and discuss their orders with them.

BROWN, J. I understand in each of these purchases you left outstanding competitors?

The WITNESS. Yes, sir; I recall none to which that statement does not apply. I would like to say that we have been asked repeatedly to manufacture lasts—go into the last manufacture—and it is now contemplated by the company to do that, because our customers have acquired a very great confidence in our ability to serve them with anything that they use in their factories, and much better in many cases than those who have been conducting the business.

549 I have had prepared a list entitled "Machine operations performed in the manufacture of all kinds of boots and shoes and machines offered by machinery manufacturers for performing those operations."

Mr. CHOATE. I should like to put this paper in.

Mr. FOWLER. Then, your honors, I will object to all portions of it except those portions which show the manufacturers of the machines that are in controversy in the case.

BROWN, J. You get back now to the scope of your original bill.

Mr. FOWLER. Well, we have been there all the time, your honor, as we understand it.

BROWN, J. You opened up the case; Mr. Choate has put in a lot of evidence which meets the general allegations of the bill, or directed to the general allegations of the bill. This is the same sort of thing.

Mr. FOWLER. My recollection is that in the development of our evidence we only introduce evidence going to these particular machines that are really in controversy.

BROWN, J. Well, Judge Dodge made the suggestion yesterday as to the propriety of amending the bill.

Mr. FOWLER. Mr. Gregg and myself have considered to some extent that question, and we are going to consider it a little further. I think we will make the amendment suggested. It hasn't been done yet, however.

BROWN, J. So long as the bill stands on the entire shoe machinery business, so long may the defendant put in evidence on that, unless the case is in some way reduced by your authority and consent of the other side.

Mr. FOWLER. I think that when the bill is read as a whole it does not embrace all classes of shoe machinery, and in addition to that Mr. Gregg expressly stated yesterday the classes that it did embrace, and also stated in his opening statement, at the beginning of the taking of testimony, what it embraced.

BROWN, J. Shall it be in subject to your objection on final argument?

Mr. FOWLER. That is all right.

(This list is defendants' Exhibit 232, Record, p. —.)

(Examination of Mr. Winslow suspended at request of counsel for defendants.)

550

DECEMBER 4, 1913.

ELMER P. HOWE, witness for defendants:

I am a member of the bar of the State Supreme Court, of this court, and of the Supreme Court of the United States. I have been practising since early in 1878. My practice has comprised patent law principally and corporation law to some extent.

I became counsel for the Goodyear Shoe Machinery Company in 1878 or early in 1879. I became a director and vice president of the company about 1890.

The management of the Goodyear Company fell very largely upon me because the directors of the company all lived in New York or its vicinity and we held our directors' meetings in New York. Consequently I had to do a large portion of the work that would have been performed by the president if he had been in Boston. At the same time I was conducting my law practice independently of the Goodyear Company's affairs.

A very few months before the formation of the United Company the manager of the Goodyear Company had resigned and left the company and a new manager, Frederick G. King, who was formerly in the thread business, was put in as treasurer and

general manager. He was familiar with the shoe machinery business only as he was familiar with selling thread for shoe machines.

The resignation of the former manager and putting in of Mr. King had thrown slightly more responsibility upon me than I had had before in connection with the company. I was not desirous of carrying that responsibility.

In regard to the McKay Company, I knew Mr. Brooks, the nominal head of that business, and saw him very frequently socially, so that I knew that he was anxious to retire from the business and spend all his time at his country home at Petersham. He must have been seventy then and came down from Petersham only one or two days a week.

551 I had three shares in the Goodyear Company out of 120,000 and that was the extent of my holdings in the Goodyear Company.

The Goodyear Company of Canada was a New Jersey corporation but did business only in Canada. It was entirely independent of the Goodyear Shoe Machinery Company, which owned none of its stock.

The Goodyear Company of Canada did business under Canadian patents. Early in the history of the Goodyear Company the principal patents were controlled by Charles Goodyear and the corresponding Canadian and European patents were his personal property.

With the Canadian patents as a basis he organized a company which subsequently became the Goodyear Shoe Machinery Company of Canada, and that company was doing a business in Canada under Canadian patents entirely independent of that of the Goodyear Company proper. It had no United States patents.

The Goodyear International Shoe Machinery Company was formed as a compromise of claims of the Goodyear Company and Charles Goodyear as to the title to the European patents. Charles Goodyear and his friends took half the stock and the Goodyear Company took the other half. In the development of the business of the International Company it needed much more money and treasury stock was acquired by the Goodyear Company. The business of the International Goodyear Company was in Europe and it had no patents in this country and could do no business here. At the time of the organization of the United Company the Goodyear Company owned a majority of the stock and Charles Goodyear and his associates the minority of the stock of the International Company. The Good-

year Company and the International Company were in no way in competition.

Prior to 1899 the machines of the Goodyear Company were leased in all cases and never sold. Just prior to 1899 it was making and leasing the welt and turn sewing machine with two or three auxiliary machines which constituted what is called its turn set. It was also making an outsole stitcher and
552 a long line of auxiliary machines, ten or twelve, which were leased as its full set for making a welt shoe. When I became connected with the company it had a welt and turn sewing machine for making turn shoes, a welt sewing machine and outsole stitcher, and an insole channeler and an outsole channeler to prepare the work for those sewing machines, a bobbin winder and a welt beveler, as auxiliary machines.

About 1894 or 1895 the Goodyear Company took from Mr. Winkley and Mr. Benjamin Phillips, under contract to pay royalty on each machine, what they called an automatic leveling machine, which pressed the outsole to conform it to the bottom of the last by a roller which exactly imitated the method of a hand workman. All the motions were performed automatically by the machine, so that it was only necessary for the attendant to put a shoe into the machine and to take it out after the machine had leveled it. A good deal of experimentation was necessary and the machine had to be rebuilt three or four times before it was adapted to do work on all classes of men's and women's Goodyear welts.

The company found that to sell that machine at a price that would in any way reimburse it for its expenditure and enable it to make a profit, it would be necessary to make the price so large that no shoe manufacturer, or at any rate none but the very largest manufacturers, would buy it. After discussion of the question as to how to market the machine, it was decided to add it to our full set lease with an initial premium of $500 and no royalty. Our line of important large auxiliary machines began with that.

The Hadaway stitch separator came along at about the same time. That was also put upon the full set lease at an initial premium but with no additional royalty. Other improved auxiliary machines came along afterwards.

The Goodyear Company restricted these auxiliary machines for use on shoes which were to be or had been sewed and
553 stitched on its welt and turn machine and its outsole stitcher. That was the company's invariable practice and it never leased or sold auxiliary machines on other terms.

The royalty received by the Goodyear Company was all measured by the welter and stitcher. We had indicators on them which showed how many stitches were made by those machines. We could never tell how much an auxiliary machine was used. Therefore we really charged a royalty on the welter and stitcher, although if anybody had used auxiliary machines in contravention of the terms of the lease and we found it out, we should have charged the full royalty, a right given us by the lease.

A person who had the welter or stitcher was not required to take any of the auxiliaries and he could use other auxiliaries instead of the Goodyear with our welter and stitcher if he wanted to; or he could use some and also some of ours. If he took our auxiliaries he was restricted to using them on shoes welted and stitched on our principal machines.

Before 1899 the Goodyear Company charged an initial premium of $300 for each of the principal machines and additional amounts for the auxiliaries. The automatic leveler was a big machine and the $500 initial premium on that machine did not reimburse us for the iron and the work in the machine and for installing it and for teaching operators. It simply went a part way toward that.

The Goodyear Company charged a royalty for its welter and stitcher on men's shoes of eight cents a pair, subject to a discount of fifty per cent—four cents net if it was paid promptly. I think the royalty on women's shoes was three cents net. On children's shoes it was originally two cents, but we reduced the royalty on children's shoes to one cent net and provided in our lease that the lessee should not lease turn shoe machinery of anybody but us.

The royalty on the turn set must have been two cents net on men's, a cent and a half on women's and a cent on children's.

I was familiar with the Eppler machines. They did not and could not make a Goodyear welt shoe because of the con-
554 struction of the machines, which was different from the Goodyear machines. The inseam of the Eppler welt shoe was sewed with a chain stitch, the chain of which was located in the channel of the insole, which in the wear of the shoe comes next to the foot. In the Goodyear welt shoe the chain is on the welt, outside of the shoe. That distinction involves a different machine.

The Eppler machine could not make turn shoes successfully or commercially because of this very method of operation. In a turn shoe that bulky chain would show on the sole, which is

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necessarily thin because the shoe has to be turned the other side out after sewing. That seam would also make a ridge on the bottom of a turn shoe so that it would be unsalable and unwearable.

The Goodyear welt and turn machine could be used to make either welts or turns. It was only necessary to take off the welt guide to adapt it for turn shoes.

The Eppler machine was never designed to sew turn shoes and never did; they had no need of any such adjustments and I am not aware that there were any on the machine.

There was extensive litigation because the Goodyear Company and the Eppler Company prior to 1899. I conducted it for the Goodyear Company. Broadly speaking the outsole stitcher and such auxiliary machines as the Eppler Company made and tried to lease infringed patents owned by the Goodyear Company. The testimony was taken in the cases but they were never argued because they were pending when the United Company acquired the Eppler Company.

That litigation was conducted for the Eppler Company by James J. Storrow, jr.

As to the prospects of the ultimate result, on my side I thought we should succeed in all our cases. I think Mr. Storrow was not at all confident of winning for the defendant.

The royalties charged by the Eppler Company were exactly the same as those of the Goodyear Company; but I learned that a rebate or discount was given to Mr. Keith, a very large shoe manufacturer who was president of that company, and in
555 one or two other cases. Such a discount was the exception, and it was written in their leases.

Q. Was that the exception, or was it the rule?

A. It was the exception, and it was written in their leases. I was told by Mr. Keith that the reason for granting that rebate was their failure to produce satisfactory auxiliary machines, particularly a machine doing the work of the Goodyear stitch pricker.

Mr. FOWLER. I didn't get that.

The WITNESS. I said one reason that the Eppler Company gave this rebate to certain of its lessees was because they had not succeeded in producing satisfactory auxiliary machines, notably the stitch pricker.

Mr. FOWLER. I believe Mr. Howe was testifying as to what he was told by Mr. Keith.

The WITNESS. I said Mr. Keith also told me that.

Mr. FOWLER. I wanted to object to that, because I think that is secondary testimony.

Mr. CHOATE. Well, so far as you object to anything that Mr. Keith told him, I agree it may go out.

The WITNESS. I examined the Eppler stitch separator carefully for the purpose of the infringement suit. It was very much inferior to the Goodyear's Company machine, and all the virtue it had was in so far as it involved inventions owned by the Goodyear Company.

Referring to the docket, suit No. 806, Hadaway et al. v. Charles A. Eaton, was a suit in which the et al. was the Goodyear Company, Hadaway being joined as coplaintiff because the Goodyear Company had a license from him. The defendant Eaton, a shoe manufacturer, used a machine made by the Eppler Company.

556 The bill was filed on November 20, 1896, but the docket does not say what patent the suit was on. The suit continued along until October, 1898, and on December 13 a motion to assign time for taking evidence was filed. Then the suit was dismissed by consent, at the October term of 1905.

The next case, docket 807, was another suit by the Goodyear Company against Eaton for using an Eppler machine. The bill was filed November 20, 1896. That suit was on account of infringement by use of the rounding and channeling machine made and leased to the defendant by the Eppler Company and the Eppler Company undertook defense of that suit.

Docket 1007 was a suit by the Goodyear Company against the Eppler Welt Machine Company, bill filed March 26, 1897, answer and replication filed and no further proceedings taken.

On April 11, 1892, the Goodyear Company brought suit in this district against the Eppler Company charging infringement by manufacture of the welt sewing machine of that company.

On January 2, 1897, the Goodyear Company and Hadaway brought suit against Stacey, Adams & Company for the use of the Eppler stitch separator and that suit was defended by the Eppler Company.

557 March 26, 1898, the Goodyear Company brought another suit against the Eppler Welt Machine Company for infringement by manufacture and leasing the Eppler welt beater.

January 28, 1897, the Goodyear Company brought suit against George E. Keith, of Brockton, for infringement of a patent for an improvement in shuttles, embodied in a stitcher made and leased to the defendant by the Eppler Company. On the same date the Goodyear Company brought suit against Moses Arnold & Company in this district charging infringement of the same patent. Both these suits were defended by the Eppler Company. These are all the suits that I find in the docket.

The taking of testimony had been abandoned when the United Company acquired the Eppler Company, and these suits were all dismissed in November, 1905, on a general call of the docket under the order of the Court of October 5, 1905, dismissing all cases in which nothing had been done.

(Examination of Mr. Howe suspended by agreement of counsel.)

DECEMBER 5, 1913.

SIDNEY W. WINSLOW, witness for defendants, (resumed):

I have had prepared a partial list of the concerns engaged in shoe machinery or related lines of business which have been offered either directly or indirectly for sale to the United Company but none of which has been acquired by the United Company. There are between seventy-five and eighty concerns ~~on~~ on the list, which is defendants' Exhibit 233 (Record, p. —).

Broadly speaking, this list includes manufacturers who, taken together, were making, or are now making, I should say, a complete line of shoe machinery, including the sewing machines for the fitting room. There may be certain machines for performing certain operations which are not included here, but I think that the list would probably cover all the machines that we make and probably some that we do not, besides the fitting room machines.

558 The list includes the Wheeler & Wilson Company, whose machines were used to the extent of about ninety per cent in the fitting-room department.

Of these concerns the Acme Heel Protector and Manufacturing Company made a heel-protecting machine; the Alliance Shoe Machinery Company made metallic machines, a welt machine, and a sole-laying machine; the American Glue Company wanted us to take over their molded sandpaper business, which is a part that especially applies to shoemaking and does not include their entire business; the American Shoe Machinery & Tool Company is doing business in shoe findings, just what I don't remember at the moment, but I think it included shoe shanks, which is the reinforcement under the instep; the Automatic Wetter-up Company made machines for wetting the soles—that is, putting the soles in temper, which has to be done before the sole is attached to the upper; the Atlas Tack Company, which was controlled by H. H. Rogers, is the largest manufacturer of tacks in this country, and also has a very large production of eyelets—the tacks made by this company include shoe tacks, and other tacks as well, and eyelets of all kinds; the American Shoe Findings Company have quite an extensive business in a limited line of

specialties made in the manufacture of shoes, including shanks; I don't recall for the moment the nature of R. S. Beach's business; Zotique Beaudry was, and is today, a manufacturer of edge setters; the Boston Last Company manufactured an electrical heating appliance for use in connection with drying the toes of shoes; H. E. Britton made handles for shoe knives; the Brockton Mallet Company made mallets and a line of goods similar to the United Awl & Needle Company; the Bresnahan Levelling Machine Company made leveling machines, lasts, and forms; the Boylston Manufacturing Company was the same company described by witnesses for petitioner; Callahan had machinery for making stitchdown shoes; the Campbello Shank Company made shanks; the Canadian Shoe Machinery
559 Company made a general line of machines, including welters and stitchers, in fact, a full line of what is termed here the important machines; they were established in the Dominion of Canada and were doing business here through the Duplessis Company; the Champion shoe Machinery Company is located in St. Louis and makes harness machinery and some metallic machinery, including machines like our stitcher for harness work and like our metallic machines; George H. Clark was attempting to develop a machine for lasting stitchdown shoes; F. W. Colburn was a manufacturer of handles for cutting knives and that sort of thing; Henry Coldbath, of Lynn, was a dealer in secondhand machinery and in shoe findings and in the general line of goods used by shoe manufacturers; David Cummings and W. D. Brackett had a heel-trimming machine; Denslinger & Company had edge-trimming, buffing, and finishing machines; E. L. Dunbar manufactured wood heels, which are used very extensively on turn shoes; the Duplessis Shoe Machinery Company is the one testified about by witnesses for petitioner; the Eaton & Holbrook Heel Burnishing Machine Company made heel-burnishing machines similar to the Xpedite; the Empire Sole Laying Company was the company that afterwards became a part of the Alliance Shoe Company, but was offered to us as a separate concern at the time; the Essex Machine Company manufactures shoe machinery and was developing a clicking machine, I don't remember what else at the moment; the Excelsior Slugger & Tacker Company, which had machines such as their name implies, was offered to us as a separate concern, but afterwards became a part of the Alliance Shoe Company; the Flagg Manufacturing Company, the Globe Buffer Company, and the Union Edge Setting Company were all enterprises conducted by Dr. Flagg in Boston, and made buffing machines, edge set-

ters, and scouring machines—a general line of machines; W. R. Forsyth & Company manufactured blocks and boards used in dying out or dinking machines or clicking machines; Charles K. Fox, whose business has now been transferred to the Haverhill Machinery Company, manufactured turn machines, 560 leveling machines, and the line of machines now made by the Haverhill Company; William E. Frame manufactured hand impression wheels that are used in finishing the outer edge of the sole; William E. Frechette and the Frechette Pegging Machine Company had a pegging machine, for the same work that the Davey pegging machine does, manufactured in this country and in Canada; I have already mentioned the Globe Buffer Company; Hargraves Hook Machinery & Eyelet Company manufactured a machine for setting the lacing hooks for men's shoes; the machine of the Harlow Heel Finishing Machine Company is similar to the Xpedite machine; T. F. Hart manufactured machinery for the fitting room, the room that makes the uppers; J. S. Holt & Company had a general line of general department machines similar to the machines of our general department; I have already mentioned the Haverhill Shoe Machinery Company; the Haverhill Channeling Machine Company was part of the Haverhill Machine Company, started as a separate concern; the Improved Welt Machine Company started as a company to manufacture the welt sewing machine and later went into the Alliance Company; Irving L. Keith manufactured shoe tacks, nails, and a line of findings; the Krentler-Pym Lasting Machine Company manufactured a lasting machine and some other machines which I don't recall at the moment; Keighley Company, Incorporated, have an inseam trimmer and quite a line of other machines that it advertises, the names of which I don't recall; Lacene Manufacturing Company manufacture an evening and grading machine for reducing the outersole to the proper thickness with the least removal of the leather, a machine which they get a royalty on, and they are the only concern that manufactures it in the country; the Larsen Machine Company manufacture a sewing machine for soles and sewing shoes together; R. H. Long Machinery Company has been described; the machines of the McDowell Shoe Machinery Company are heel shaving, slugging, loose nailing, and burnishing, heel 561 breasting, and blacking machines; the Morley Button Sewing Machine Company manufactured a machine for sewing buttons to shoes and finally sold out to the Singer Manufacturing Company; McNalley & Dougherty manufacture a heel breast scouring machine; the Union lock stitch machine of the

Merrick Company we have already had testimony about; the North American Chemical Company makes material which is placed between the innersole and outersole in Goodyear welt shoes; Henry Parsons manufactures a line of dying out machines—sole-cutting machines, etc.—the business was conducted by the clerk of this court; Peck Lacing Hook Company, machines for making and setting lacing hooks and for making shoe shanks; Peckham Manufacturing Company was a shank manufacturing company—there are several different kinds of shanks, steel, wood, and a combination of steel, wood, and leatherboard; Peterboro Shank Company manufactured shanks and the leatherboard out of which shanks are made; Pettengill Heeling Machine Company, when it was separate, made its heeling machine, which is now the heeling machine of the Haverhill Machine Company; Potter Shank Company, a machine for making shoe shanks of all kinds; Shawmut Machinery Company manufacture a strap covering and stamping machine for covering the straps used in men's shoes; George Shipman, eyeleting machinery; I don't remember and haven't any memoranda as to just what was made by the Specialty Shoe Machinery & Tool Company; Standard Button Works manufactured shoe buttons and machinery for making them; the George H. Stevens Shank Company were shank manufacturers; Edward B. Stimpson, eyeleting and lacing hook machines, perforating, vamp skiving, leather stripping, counter skiving, embossing, sole stamping, and stapling machines; the Stanley Manufacturing Company, the successor of the McKay Sewing Machine Company, manufactured the McKay sewing machine and a general line of what is termed the general department shoe machinery; the McKay sewing machine was a machine for uniting the soles of McKay shoes to the
562 uppers, and the Stanley Company carried on the business originally established by Gordon McKay; Tenney manufactured shoe mallets; the Tyler Shank Company manufactured shanks; Tripp Giant Levelling Company made the Tripp Giant leveling machine, and also a line of general department machines; the Union Shank Company made shanks; Vose Machinery Company made heel and edge trimming machines; H. A. Webster made leveling machines; the Wheeler & Wilson Company *Company* manufactured a full line of sewing machines used in the fitting room, where the uppers are put together, and their machines were almost universally used when the United Company was formed and for several years afterwards; this company was finally acquired by the Singer Sewing Machine Company and the machines are now sold by that company; H. A. Wheeler, upper cementing and tape cementing machinery; I can't give

information about Wolfe heel-building machine other than the description in its name, as I don't remember it.

I should state offhand that in the ordinary shoe factory there are in the fitting room as many machines in number as there are in all the rest of the factory together; that is, about half of all the machines in the ordinary factory would be machines for making the uppers. I should be glad to verify this.

I have had prepared a list of eyelet manufacturers in 1901 and 1913. This is defendants' Exhibit 234, in which the figures at the right indicate the outputs of the concerns in millions per month.

563 DEFENDANTS' EXHIBIT 234.

Eyelet manufacturers in 1913.	Shoe eyelets.	Other eyelets.
Hughes Eyelet Co., Taunton	20	....
Caseley-Nelmes, Taunton	....	60
Scoville Manufacturing Co., Taunton	2	80
Atlas Tack Co., Fairhaven	200	....
R. N. Bassett & Co., Derby, Conn	....	60
Waterbury Brass Co., Waterbury	5	75
Waterbury Manufacturing Co., Waterbury	....	10
American Ring Co., Waterbury	....	10
Rome Brass Works, Rome, N. Y	....	25
Schwarze & Hahne, Haan, Germany, importers	....	....
	227	320
S. O. & C., Ansonia	200	125
J. C. Rhodes Co., New Bedford	200	20
Rimmon Eyelet Co., Seymour, Conn	5	60
United Fast Color Eyelet Co	30	2
	435	207

NOTE.—Output is given in millions per month.

Eyelet manufacturers in 1901.	Shoe eyelets.	Other eyelets.
Excelsior Needle Co., Torrington	20	....
Scoville Manufacturing Co., Waterbury	10	40
Waterbury Brass Co., Waterbury	10	40
American Ring Co., Waterbury	10	5
Rome Brass Works, Rome, N. Y	....	5
Marley Button Co., Portsmouth, N. H	20	....
Rimmon Eyelet Co., Seymour, Conn	30	30
Southington Eyelet Co., Waterbury	....	....
Brook Co., Waterbury	20	50
Precision Eyelet Co., Bridgewater	5	....
	125	170
564 S. O. & C. Co., Ansonia	125	150
J. C. Rhodes	175	15
United Fast Color Eyelet Co	40	....
	340	165

The WITNESS. Of these concerns the United Company ~~owners~~ has an interest in the S. O. & C. Co., J. C. Rhodes Company, Rimmon Eyelet Company, and United Fast Color Eyelet Company. The Hughes Eyelet Company is owned by me individually.

If there was any difference between 1913 and 1911, when this suit was begun, as regards either the companies or their outputs, I will have the exhibit corrected.

I have had compiled a list of all the operations that are performed in a typical factory in the manufacture of standard screwed, loose nailed, men's McKays, women's McKays, men's welts, women's welts, and women's turns, including the operations performed by machines other than those made by the United Company as well as those made by the United Company, enumerating the machines for performing the operations and stating the names of the concerns, including the United Company, which furnish the machines for each operation. This list gives the machine for each operation. It includes the fitting room machinery which we don't furnish.

It gives the name of each operation in the manufacture of that particular kind of shoe which is referred to and the names of those companies from whom the machines can be obtained for performing that operation. It shows the work being done in parallel lines; in other words, from that list you would know where to go to obtain the complete equipment for a factory to manufacture any particular type of shoe named there.

This list is defendants' Exhibit 235 (Record, p. —).

To illustrate the proportion in which the United Company equips the ordinary factory, I had counted all the machines in the factory of Jonathan Brown & Sons, of Salem, Massachusetts,

565 and defendants' exhibit 236 (Record, p. —) is a list of all the machines in that factory. They make women's, misses', and children's McKay sewed shoes, and that factory is fairly typical of those factories which make the kind of shoe made in the largest number in the United States. My only reason for going to that factory was that I knew Mr. Brown very well and felt at liberty to ask him to make an inventory of all the machines in his factory. In this exhibit the machines obtained from the United Company are indicated by "United" opposite the name. The total of all the machines in that factory is 424 and the total of all the machines obtained from the United Company, including both sold and leased machines, is 128. Of those 128 machines, 64 are machines which are leased only, and the rest are general department machines, which the company

sells. Assuming that the general department machines are like wheelbarrows, i. e., can be obtained of somebody else, it makes 64 United machines to 360 of others. There is no special reason why he should have obtained from us the other machines of the 128, except the matter of convenience.

I have had prepared a statement showing the shipments of Goodyear welt and turn machines from our factory and the returns of those machines to our factory between March 1, 1905, and March 1, 1911, which illustrates the constant flowing in and out of the machines. This is defendants' Exhibit 237 (Record, p. —).

These shipments and returns may result from the substitution of new model machines for old machines, or from returns of machines from men who have gone out of business, or from shipments of machines to new factories. There is nothing in the exhibit to indicate whether the shipments and returns are the ordinary inflow and outflow of the machines in the ordinary course of business or whether they represent the substitution of new machines for old, but, in fact, they are based to a large extent upon the introduction of new and improved machines.

From Mar. 1, 1905, to Mar. 1, 1911, there were shipped out 2,194 Goodyear welt and turn sewing machines and during the same time 1,387 were returned. From Mar. 1, 1910, to Mar. 1, 1911, there were 530 machines shipped out and 436 returned. (This implies making a new lease nearly every time a machine goes out.)

566 To illustrate the extent to which, in this movement of machines in and out, customers take independent leases or leases in the restricted form, I have had prepared statistics showing the number of hand-method McKay lasting machines taken by customers on independent leases and the number taken on the restricted form of lease during each year since 1899. This is defendants' Exhibit 238 (Record, p. —) which shows that lessees elected to take those machines between March 1, 1899, and December 31, 1911, as follows:

March 1, 1899, to December 31, 1899, independent lease 185, restricted lease 250; in 1900, independent lease 65, restricted lease 283; in 1901, independent lease 143, restricted lease 415; in 1902, independent lease 115, restricted lease 425; in 1903, independent lease 72, restricted lease 385; in 1904, independent lease 54, restricted lease 233; in 1906, independent lease 59 restricted lease 293; in 1907, independent lease 36, restricted lease 247; in 1908, independent lease 47, restricted lease 159; in 1909, independent lease 54, restricted lease 169; in 1910,

independent lease 21, restricted lease 200; in 1911, independent lease 18, restricted lease 214.

As an illustration of the reductions made in prices of articles furnished by the United Company, I have had compiled the reductions made in the prices of the forepart and edge cutters acquired from the Boston Shoe Tool Company and the Globe Shoe Tool Company (defendants' Exhibit 239, Record, p. —). The prices sharged by those companies compared with prices subsequently charged by us are as follows:

The price of the heel cutter with blades in January, 1899, was $3.25; we reduced the price on March 1, 1900, to $2.25. In January, 1899, the price of the blades alone was $2; on March 1, 1900, we reduced the price for the blades alone to $1. The price of forepart and shank cutters in January, 1899, was thirty-five cents each, in small quantities, and twenty-five cents each in quantities of 100; on March 1, 1900, we reduced the price to twenty-five cents each in any quantity. The price of edge
567 irons in January, 1899, was fifty cents; on March 1, 1900, we reduced the price to twenty-five cents.

The company that manufactured shoes, in which Mr. Plant was interested, was the Thomas G. Plant Company and it was located in Jamaica Plain. That company manufactured approximately 12,000 pairs a day about 1910, comprising women's Goodyear welt, McKay sewed and turn shoes.

Prior to 1910 we had supplied machines to the Thomas G. Plant Company. Just prior to May, 1910, we received notice with respect to a discontinuance of the use of those machines. Shortly after that I received a communication from Mr. Plant through Mr. Henry B. Endicott, who is the head of the Endicott, Johnson Shoe Company, which I believe is the largest manufacturer of shoes in the world. The company's factories are in Endicott, New York, and Mr. Endicott's office is in Boston.

I met Mr. Endicott in the South Station as I was starting for New York to attend the annual meeting of our company. He then suggested that I communicate with him when I got back, which I did. He came over to my office and invited me to a conference at his house in Dedham to meet Mr. Plant to discuss the sale of the Plant machinery to our company.

I went to Mr. Endicott's house with him and met Mr. Plant there. This was in June, 1910.

568 Mr. Plant started in to talk about the merits of the whole line of machines that he claimed to have, and described it as a proposition that he would like to dispose of. The substance of the conversation was that he had spent a great deal of time and money, and that his machines were wonderful

machines, much better than ours, and of course very valuable. I told Mr. Plant that I should be very glad to acquire his patents if he had the valuable improvements and inventions that he claimed to have; but, of course, I could have no opinion regarding the value of his machines unless I had my experts examine them. I left with the understanding that I was to hear from Mr. Plant whether he would allow my experts to examine the machines, and I was to decide upon those experts and furnish their names.

I did not hear from Mr. Plant, and on June 23d I called up Mr. Endicott, having previously, on June 18th, given him the names of the experts that I wanted to see the machines. I did not hear from Mr. Endicott, and I called him up to see if Plant had decided what he wanted to do.

I understood at the previous interview that he was to consult his attorneys in New York about our experts examining the machines. He did not agree to the examination by our experts, and suggested that I ought to give him some paper securing him against patent suits. There were no patent suits pending at that time; but at the previous conversation there was a question as to whether we ought to see his machines in view of the fact that we might bring patent suits.

Mr. Endicott, in answer to my call, did not call me up from his office, but apparently called me from a place where Mr. Plant was present. I say that because I could hear him turn and speak to Mr. Plant. I assume he repeated what I said, and then gave me the answer as being Mr. Plant's. At that conversation Mr. Endicott said: "What about the price?"

569 At the first interview Mr. Plant had said that his price was six million dollars, and then there was some talk about its going up if we didn't trade right away. I believe it was to go up five hundred thousand dollars a week. I had told Mr. Plant that the price had nothing to do with it; I didn't care whether he had spent six million dollars or six dollars; it was the value of the patents to our customers and the trade, the art of making shoes, that I was interested in, and when I could know what he had, why, then I could know what I thought they were worth to me.

In answer to Endicott's suggestion, "What about the price?" I told him I didn't see what that had to do with it. This was over the phone. I suggested that Mr. Whipple, who was acting at that time for Mr. Plant, and Mr. Fish should act together and agree upon any paper regarding the suits, if it seemed to be proper. The substance of what we were discussing was that any knowledge that was obtained by our men should not be used to

either annoy or arrest Mr. Plant by patent suits. That suggestion of mine did not seem to be satisfactory, and Plant, in reply to my suggestion that the price had nothing to do with it, said it had everything to do with it. As the result of that, and because I didn't so understand the matter, I suggested that we meet, and we did meet on the 23d of June at the Parker House, Mr. Endicott being present, and Mr. Plant at that interview stated that the time he had given me to consider the matter would expire that Saturday night following. I haven't the date. The time he spoke of was, I suppose, in connection with the price which he had asked.

During these negotiations nothing except Plant's inventions and patents was the subject of discussion at all. The Shoe Company stock was not included at that time.

Mr. Plant also informed me at the interview on June
570 23d that he would not consent to Mr. Warren and Mr. Mayo, the two experts that I had named, examining his machines, and that anyone inspecting his machines would have to be satisfactory to him and to go under stipulations which would be satisfactory to him. Mr. Plant is very arbitrary and peculiar in his methods, and at that same interview he talked with me about the proposed attack on our company in the newspapers. He also read me an extract from a letter that he had received from one H. W. Smith, in Worcester, which he said had affected him a good deal and made him feel that he did not want to start this attack in the newspapers. He said he wanted to be recognized in the community as a builder up, not as a tearer down.

He then showed me a letter that he had prepared to publish in the newspapers but which he had decided to withhold for the present. This letter was an attack upon our company and its methods of doing business. He said if we would not trade he was going to publish it in the New York and Boston papers. He was also showed me extracts from opinions from various attorneys, including one from Brandeis, Dunbar & Nutter and Mr. Brandeis personally. I do not remember the others but that one impressed itself upon my mind. Mr. Brandeis had been one of our directors and one of our counsel.

Mr. Plant said he was going to publish these letters if I did not trade with him then, without seeing his machines.

I said that of course I could not consider trading with him without seeing his machines and I was not interested in what he had unless he had improvements that would be of value to our customers. I was very sorry, but I could not do any business. He said that he could not consent to our men seeing his machines; that his New York attorneys did not agree to it.

Mr. Endicott, Mr. Plant and I met again on June 27. At this interview, arranged by Mr. Endicott, he suggested that a good way to arrange the matter would be to pay something as an option, upon which Mr. Plant would give us the right
571 to examine the machines. As I understood the situation, Mr. Plant desired very much to sell us his patents and inventions, but he was very much disturbed about our seeing what he had, and of course that made a deadlock.

At that interview Mr. Plant said that his price was now $6,500,000, and that it would be $7,000,000 the next week. He also said that we could pay him $500,000 for an option and have Mr. Alley, one of our men, examine his machines, or we could give him $1,000,000 and Mr. Alley could have associated with him Mr. J. H. Connor, who is now vice president of our company, but who was then our representative in Europe and who was in Europe at that time.

If we did not buy, the million dollars was to be forfeited to Mr. Plant, so that a look at his machines would have cost us a million dollars.

I did not accept that proposition. I always declined to have anything to do not only with buying but considering his propositions without a full and complete right to examine his machinery, determine the value of the inventions—the patents that he had—and Mr. Plant knew that my position all the time, at every interview was that I was not interested in what it cost him to get them up, whether much or little. My entire and only interest was whether those patents could be made of benefit to our customers and the trade. If they could be of benefit, if they were of large benefit, and the trade ought to have them, I should be very glad to buy them and embody them in our machines for what I thought they were worth, irrespective of what they had cost him—but I would not pay a cent more for them

To get by this deadlock where Plant would not allow us to look at the machines and we would not consider purchasing without looking at them, there were suggestions that Mr. George Keith, of Brockton, and Mr. John H. Hanan, of New York, both shoe manufacturers and directors of the United Company, should go to see his machinery and advise me, from a shoe manufacturer's standpoint rather than from the standpoint of the machinery expert or the machine operator, whether it would be right for me to pay this million dollars for the option, on
572 the theory that if the two shoe manufacturers thought the machinery promising enough I would be warranted in paying a million dollars and then having our experts see the machines.

Mr. Keith and Mr. Hanan declined to accept that responsibility and I declined to have them. And that seemed to bring the matter to a conclusion at that time so far as any possibility of meeting any of Mr. Plant's desires was concerned, and I so notified Mr. Endicott, and so far as we were concerned all negotiations were off between us. I have a memorandum that that was June 29th.

I telephoned to Mr. Endicott that evening stating that Mr. Hanan and Mr. Keith refused to assume the responsibility in respect to the machines and advising one way or the other, and in view of the fact that Mr. Plant would not allow us to have our experts examine his machines we should drop all negotiations. Mr. Endicott said he did not see how we could do otherwise. That is the memorandum I made.

Mr. Endicott called on me the next day and suggested that it was the first large transaction in which he had been interested which had not gone through and that we ought to have these patents for the benefit of the whole trade, and suggested that he become interested in the United Company, if it met with the approval of my associates and myself, and that if he and Mr. Keith and Mr. Hanan, three very large manufacturers, saw the machinery together and recommended the purchase I might then feel warranted in doing it. Mr. Endicott was unequivocal in stating his belief that we ought to acquire Mr. Plant's inventions. He had seen them himself.

This suggestion of Mr. Endicott's appealed to me. I knew him very well. I had assumed that he had been employed by Mr. Plant to negotiate the sale, although that had not yet appeared. At this interview Mr. Endicott told me that that was the fact, but that if he came with the company that incident would of course be closed and his entire interests would be with the company, but that nevertheless he believed so strongly that we ought to have the Plant inventions for the benefit of our customers that he wanted to do everything that he could to to bring that about.

I conferred with Mr. Howe and as a result of that interview I met Colonel Barbour in New York, one of our vice presidents, and Mr. Woodward, of the Hanover National Bank, one of our directors, with Mr. Endicott.

573 As a result of these conferences Mr. Endicott was elected a director, and I understood that he notified Mr. Plant he was to become a director and that his interest in acting for Plant was closed, but that he wanted to bring the trade about.

It was then arranged that Messrs. Endicott, Keith, and Hanan should visit the Plant factory and inspect the machines, and

they did this on July 5, 1910. On the evening of that day we had a meeting at which Mr. Fish and Mr. Herrick were present, and Messrs. Connor, Hurd, Willson and Howe, of the United Company. Messrs. Hanan, Endicott, and Keith and Mr. Endicott's practical men, his superintendents, made reports regarding what they had seen at the factory, the value of the machines as they saw them in operation, what improvements or changes in the operations of the machines they could see as compared with ours. As a result of their inspection there was not a unanimous report that we should buy the machines at the price that was asked.

The theory which Messrs. Keith, Hanan, and Endicott had in making their visit was that if all three of them recommended it, it would be all right for me to purchase without seeing the machines. Mr. Endicott reported in favor of the purchase and the other two did not.

What was decided then was to decline to purchase, without seeing the machines, having them fully examined by our experts, and a full report made to me by them as to the advantages that there might be in those machines.

That decision was reached in the evening of July 5, 1910, and was communicated to Mr. Plant, and I did not see Mr. Plant again until September, although between July 5 and September I heard from Mr. Smith, of Worcester, either directly over the telephone or through Mr. Herrick, his purpose being to endeavor to bring about a sale of the Plant inventions to our company.

At the request of Mr. Plant, through Mr. Endicott, I met Mr. Endicott and Mr. Plant on September 13 at the Touraine. At that interview I told Mr. Plant that I must absolutely decline to consider any propositions from him or carry on any negotiations whatever except upon the basis of seeing his machinery, having our experts examine it and ascertaining the value of his inventions to the art of shoemaking. That was all I was interested in. I would not consider it without that.

574

At this interview Mr. Herrick was called in at Mr. Endicott's suggestion. A verbal understanding was arrived at that for two weeks after the proposed inspection of Plant's machines we would file no additional suits for infringement against Mr. Plant. A number of infringement suits had already been filed and we had prepared a number of others ready to file, a list of which was furnished to Mr. Plant, and there was also a suit pending in the State court against the Thomas G. Plant Company, the shoe manufacturing company, which related to that company's obligations to pay royalties on our machines.

575

At the meeting on September 13 an understanding was arrived at that we should be allowed to inspect Mr. Plant's machines.

This followed a definite statement by me that I would not have any further negotiations with him except upon that basis. I had made that statement many times to Mr. Plant and apparently he had arrived at the point where he was ready to accede to it. At that time there was no change in the propositions that Plant made to me. It did not include anything different.

On September 14 Mr. Elmer P. Howe and I, together with a committee of machinery experts and patent experts, visited the Thomas G. Plant shoe factory where Mr. Plant had installed the machines embodying the inventions the sale of which he was discussing with me. He showed us the machines in operation upon women's shoes. A thorough investigation was made on the 14th and 15th and I think our experts continued on the 16th. The experts reported to Mr. Howe and me each night.

I studied these machines personally as an expert. I have devoted my entire life since 1886 to shoe machinery, and up to two years ago I believed I had a broader knowledge in shoe machinery than anyone else. I considered his machines from the standpoint of their capacity, the value of the inventions, and improvements embodied in his machines, comparison of the work of his machines and the work of ours, and the mechanical construction of his machines.

I saw many machines there that were especially adapted to Mr. Plant's own conditions. I saw that certain of the machines were adapted to his women's work and that certain of the machines were adapted to the peculiar way in which he made certain
576 of his shoes. I also saw some things, especially in connection with the welding and stitching machines, which I believed to have very great value. Plant had used the Goodyear machines as a basis for his machines and had made important improvements and developments.

The two striking changes or improvements which one would notice in the welt-sewing machine were means for cutting off and holding the welt and the thread, cutting it off at the end of the sewing operation and holding the welt and thread ready to start the sewing on of a welt in a new operation, and the stop motion which was embodied in that machine, which stopped the machine at the end of the sewing operation and partially reversed the position of the machine so as to release the thread. Those were automatic.

I regarded those as of the very greatest practical importance and of very great value.

The principal examination of the Plant machines was concluded in two days and Mr. Howe and I spent one day there ourselves.

I met Mr. Plant on the 16th at the Algonquin Club again, with Mr. Endicott present, and at that meeting Mr. Plant said that he had made up his mind that he wanted to get out of business altogether; that if he sold to us his patents he wanted to sell also the stock that he owned in the T. G. Plant Shoe Manufacturing Company. I asked him how much that was, and he said it was sixty per cent of the total.

The capitalization of the Plant Company was $3,750,000; divided into $2,500,000 preferred and $1,250,000 common. Mr. Plant said he wanted to sell us sixty per cent of each class of stock, which was all he had.

Among the reasons which Mr. Plant suggested for our acquiring the shoe factory were that it was a model factory and could be utilized to the advantage of the entire shoe trade in showing them improved methods of organization, operation, and assembly of machinery, and methods of sending shoes through the factory; also that we could install new machines in that factory as we got them out and invite the trade to see them in operation there. Some things that Mr. Plant said in that connection were sound reasoning.

577 I required Mr. Plant to put in writing a statement of the earnings of the Thomas G. Plant Company, the shoe manufacturing concern, for a series of years and to guarantee the correctness of those figures and the amount of the assets when the final arrangements were made. That statement is attached to one of the contracts in the exhibit of the Plant papers.

In round figures the earnings for the year previous were $700,000, and broadly they showed ten per cent net earnings upon the company's business. That was a very good business and the earnings were to that effect for a series of years.

I asked Mr. Plant, as I always had, what his price was, and he said that he would have to get for that, the sixty per cent of the stock of the shoe company and his patents, either $8,000,000 or $8,500,000; I am not positive which of those figures it was. It wasn't less than eight and it wasn't more than eight million and a half, one or the other. I told him that that was an impossible figure; that I couldn't consider it; that if he wanted to make such a trade to get out of the shoe business, sell his patents, and he came to the conclsion that he wanted to make a better price than that, that I would be very glad to hear from him, but that price didn't interest me. I made him no proposition either at that time or at any time. That ended that interview.

The next interview was on September 20, again at Mr. Plant's request made through Mr. Endicott. I arranged for such a meeting with Mr. Herrick to meet Mr. Plant and, as I found out afterwards, Mr. Carr, one of Mr. Plant's attorneys. That meeting took place at the Puritan Club on September 20, in the evening. I am not a member of that club; I don't know how the meeting happened to be there, or anything other than the fact that the meeting was at Mr. Plant's request and in the evening, and I had Mr. Herrick with me, but Mr. Endicott was not present.

578 At that interview Mr. Plant stated, as he had before, that he wanted to get out of business entirely; he wanted to get out of the shoe business; that he had been working day and night, got involved in this trying to invent machinery; that he didn't want to embark in the shoe ~~manufacturing~~ business, and that he would like to have us buy what he had. He wanted me to make him a proposition. I said, "No, Mr. Plant, I can't make you any proposition; I shan't make you any proposition. As I have told you repeatedly I am only interested in these patents to the extent of their value to the art of making shoes. Your business I don't want. If it is necessary for you to sell that to clean up this whole situation, if you want to do it, I will consider a proposition."

I think Mr. Plant was reluctant to make me a proposition for fear that I might quote him. He said that he would like to submit a proposition if he could make it to Mr. Herrick and not to me. I acceded to that and left the room.

579 A little while later Mr. Herrick reported to me that Plant had said that he would sell his stock in the shoe manufacturing company and his patents and inventions for $3,000,000 in cash and $1,500,000 in United Company stock on the basis of $50 a share, the par value being $25. There was no division in price between the machinery and the stock of the shoe company.

I told Mr. Herrick to reply to Mr. Plant that I would advise our people to accept that proposition, but that while I could speak for myself and the other members of the committee in Boston, I wanted the approval of all my executive committee before I acted and would have to report to Colonel Barbour, who was in New York.

We left the Puritan Club and went up to the Algoquin, where I met some of my executive committee.

I heard from Colonel Barbour the next evening, September 21, and he approved accepting Mr. Plant's proposition. On the

morning of September 22 I delivered to Mr. Herrick our company's check for $500,000. It was a part of the arrangement with Mr. Plant that if we accepted his proposition he was to be paid $500,000 and then the papers would be drawn. (Witness produces and identifies the check.)

Mr. CHOATE. I only wanted to call attention to the fact that this check was deposited in the bank during business hours of the 22d of September. It is stamped on the back "September 22d."

Mr. FOWLER. There is nothing showing when it was cashed, when Plant actually got the money on it. There is nothing indicating when that was?

Mr. CHOATE. No.

The WITNESS. They commenced the preparation of the papers about noon on that day. That is, I had paid down $500,000 and the preparation of the papers had been commenced before Mr. Plant met the Western people at all, on the evening of the 22d.

Mr. Plant had told me, I think on the evening of the 20th, that he was expecting the Western people in Boston and that if he traded with me he would have to put up a proposition to them that they could not accept, or something to that effect. That is the way I understood it. I did not pay much attention to it because it did not affect me one way or the other.

Since this transaction Mr. Plant has carried out the desire which he expressed to retire from business and he is developing a very large country estate up near Lake Winnepesaukee. I believe he has bought a mountain up there.

580 The value of the improvements that were embodied in Mr. Plant's welt-sewing machine, especially when combined with the new high-speed machine which we at that time had just developed and were placing in the factories of our lessees, in a broad way is almost incalculable, I think. In order properly to understand that, I should say a few words. This welt-holding device that was embodied in Mr. Plant's machine involved the use of a welt-holding device which belonged to the United Company and controlled unquestionably, I think—that was the opinion of Mr. Fish, one of our patent attorneys—the use by Plant of his welt-holding device. At the same time Mr. Plant had so improved upon that as to have a very much more practical embodiment of that invention than we had.

In a broad way it was a perfect deadlock. He had controlling patents for a practical way of doing it while we had the controlling patents of the invention itself. In addition Mr. Plant's holding device cut off the welt at the end of the sewing operation without waste of welting material. To understand this

situation the best way, perhaps, is to state somewhat the amount of the saving involved. It saves in material over the best and most efficient hand manipulation at least a quarter of a cent a pair.

In prior machines the welting was held by the finger of the operator who drew the welting out from the welt holder and held it on the shoe while he presented the shoe to the machine and while the first stitch was being made. This resulted in a great waste of welting because the operator looked out for his fingers and drew off enough welting to avoid injuring them. I have seen the amount of welting wasted by operators on machines and it is very much in excess of the amount of waste which formed the basis for my estimate of the saving by the Plant improvements. Plant's cutting device, which was combined with the holding device, cut the welt with a similar saving at the end of the sewing operation, but the saving on that side would not be as much as on the other because the operator would not waste as much welting on that side. When I have spoken of the saving I have meant the combined saving.

Combined with these improvements was the welt measuring device that prevented the operator from drawing out more welting than he should from the welting reel. While Mr. Plant's mechanical embodiment of this invention was not as perfect as it might have been, there was purely mechanical improvement to be done.

581 The saving in welting effected by Plant's improvements is shown by defendants' Exhibit 106, a shoe sewed on a machine without the Plant improvements, which may be compared with defendants' Exhibit 107, a shoe sewed on a machine equipped with the holding and cutting off device. Defendants' Exhibit 106 shows the minimum saving and does not represent the average amount that is actually saved.

In addition to the advantages in the saving of material, the Plant stop motion automatically stopped the machine and reversed its movement so that the thread would be freed and the shoe could be released from the machine. In our machines, prior to the Plant purchase, while the machine is running at quite a speed, the operator grasps the handwheel, practically before the seam is finished, to stop the movement of the machine. He begins to slow it down before he finishes the seam. After stopping it he has to reverse it part way in order to release the thread from the barb of the needle before the shoe can be withdrawn from the machine. Then he cuts the thread with his knife. In an ordinary day's work the operator had to stop

the machine from 600 to 1,000 times, and he had to stop it by putting up his hand and grasping the hand wheel. This is the old method.

When the Plant machine stopped, the thread and welt were cut by the welt holder and thread cutter, and the machine was ready for the next shoe without any adjustment. These improvements necessarily increased the capacity of the machine.

If it were not for the limit that is placed upon the operation of some of the machines in centers like Brockton, the saving in labor cost would be very large. I mean by the union rules which limit the number of pairs a day a man can operate upon—where each man has to wait his turn to get a case of shoes—"passing the buck," as they call it. I could give you some figures from outside factories. There can be no question about the fact that the machine has increased efficiency. There can be no question about the fact that the machine's efficiency or productivity, so far as its capacity is concerned, has been increased very largely.

582 (Statements by witness as to savings effected by manufacturers being objected to by counsel for petitioner, the witness' memorandum of savings made by manufacturers when using United Shoe Machinery Company's model K welting machine is marked "Defendant's Exhibit 240" for identification, Rec., p.—.)

Q. In your opinion, Mr. Winslow, is there any question but what these improvements obtained from Plant were worth all that the company paid for them?

A. Not the slightest. If my judgment hadn't been that they were worth more than what we paid for them, we never should have bought them.

Q. Was the price paid for them exorbitant?

A. No, sir.

Q. In view of the addition to the art that they constituted?

A. I should be very glad to buy the same value next week.

I value the Shoe Manufacturing Company's stock at the time of purchase at three million and a half, which would have left a value of $2,500,000 that I paid for the patents, assuming that our stock was worth the $50 per share value which Mr. Plant placed upon it.

Since the United Company acquired the Plant patents and improvements it has developed many of them. I may perhaps illustrate by referring to those same inventions that I have already spoken of. The stop motion that Mr. Plant had embodied in his welt-sewing machine would not allow of the ma-

chine being slowed down, as is ordinarily the fact when you are sewing around the toe of the shoe. We took that embodiment of Mr. Plant's invention and put our inventors to
583 work upon it and improved upon it so that our welt-sewing machine now embodies a stop motion which the operator can slow down at any time, any place, anywhere in the operation of sewing around the shoe, and then bring the machine to a stop and reverse it to the proper position within any one cycle of operation of the machine. That is an illustration of what we have done in improving those improvements that Mr. Plant had.

We have offered every one of them to our customers as fast as we have perfected them, or where we have been able to take them without the necessity for perfection.

The welter improvements are embodied in our model K welters and the stitcher improvements in our model M stitcher and a great many of both machines put out.

We have been working upon the other improvements acquired from Plant in the experimental department of our factory.

We found hardly a machine in the Plant factory, which was in any way complicated, which was properly constructed mechanically. Many of them were too light in construction even for use in the Plant factory, although all of them were in operation and doing the work there. During our inspection we saw many machines that were broken down, not in condition to operate.

As to the condition of the Plant inventions, the art of constructing shoe machinery had developed apparently beyond the knowledge of those men who had constructed or embodied Mr. Plant's ideas in his machines. In other words, they had apparently constructed those machines with a view to the kind of work done in Mr. Plant's factory. Back in the early '90's that was about the way every shoe machine was got up. A machine was gotten up with reference to the manufacturing in some particular factory, and then was adopted to go out in the trade, with the manifest result that it was not anywhere near universal for doing that same operation in other factories. That is, that adaptation of a machine to use in factories making varying grades of shoes is one of the very large items of expense in our experimental department. In other words, a machine may be constructed that will work perfectly in A's factory, but is entirely imperfect when you try to use it in B's factory in work that varies to the ordinary eye but very little. In the list that I presented to the Court the other day we have one machine on there which we have been at work on for seven or eight years to

accomplish just that very thing. Now, Mr. Plant's machinery as embodying his inventions was really in just that state. I don't know that I can describe it any more intelligently than that.

Q. What did his machinery really consist of, other than this line of machines in the Plant factory?

A. He had a few machines downstairs that were not set up. He had quite a stock of spare parts and extra parts, and I think a very few machines that were finished, that is, constructed, beyond those that he had set up in his own factory.

Q. Well, was he in any sense equipped to supply the trade with machines?

584 A. I don't think he could have equipped a small factory with machines.

Q. Had he any selling plan adopted, or leasing plan adopted?

A. No, sir. On the evening of September 20th his position I think is best described by the statement that he made to me, that he didn't want to embark in the shoe machinery business. That represented the exact status of it. He had embodied these inventions in some machines and set them up in the shoe factory in which he was interested to test them out and prove that he could make shoes by the use of those machines that were constructed.

Plant had not installed a single machine in the factory of anybody else. He did not have any machine shop of his own where he made his machines; they were made for him by other people; although he was interested in a machine shop in Lynn and controlled the Stanley factory at Lawrence by contract with Mr. Stanley. He was making some use of those to get these machine parts ready.

We have continued the Plant shoe factory under the management of the men who had been associated with Mr. Plant up to the date of the acquisition, with the understanding with them that when they had demonstrated their ability to continue that business we would sell it to them. That is the situation to-day and if we had been sure that they could continue the business successfully we should have turned it over long ago. They have not the money with which to pay for it and will have to be allowed to earn it; that is the general understanding. The business is continuing and is very successful. It has not been suppressed. It has been increased to the largest business this last year that the Plant Company ever did. Their shoes are known as the "Queen Quality" and "Dorothy Dodd" shoes.

After consummating the transaction with Mr. Plant word was brought to me, while I was in Mr. Fish's office, that the shoe

manufacturers had come here from the West to see Mr. Plant and would like to have an interview with me. Some one came to me personally and asked me if I would meet them. I said that I would and a meeting was arranged for September 24 at Hotel Touraine. Mr. Charles H. Willson, then our general manager, accompanied me, and he and I met Mr. Milton
585 Florsheim, of Chicago, and Mr. Jackson Johnson, of the Roberts, Johnson & Rand Shoe Company. Mr. Florsheim said that they were a committee representing six or seven of the shoe manufacturers who were here from the West and that they had a proposition to make to me. He said that while of course they did not know how much we had paid Mr. Plant, the manufacturers would like to furnish the amount of money that we had paid, in return for which we should give them common stock in our company, on the basis of $25 a share. That stock was then selling for $50 in the market so that, assuming that they had known how much money we paid Plant, their proposition was to furnish three million dollars in cash and we would issue three million dollars in our stock at par, and that of course meant giving them the difference between the par value and the market price of that stock, which was three million dollars.

I told Mr. Florsheim that I would not consider such a proposition as that. He urged me to consider the value to our company of these particular manufacturers being interested; said that they weren't speaking for the rest of the trade. That statement was made in reply to mine that we couldn't do anything for them that we didn't do for every manufacturer, and he suggested that I devise some means by which they, meaning the manufacturers whom this committee represented, should be able to acquire a large interest in our company, offering to agree on their part that that stock would be held by them over a period of years, which, for illustration, he said might be ten years, so that we could be assured of the benefit of their being interested in our company and not opposed to us.

I then called his attention to the fact that we had in operation at that time a plan by which all the shoe trade were being made interested. That was our plan of June, 1910. He said that did not interest him.

The substance of what he said to me was that some means should be found for giving the manufacturers whom that committee represented an interest, and a large interest, in our company, and it was said in such a way that made me understand that if we didn't there would be trouble for us. There has been. That covers that conference. As a courteous way of closing

the conversation I agreed to take the suggestions under consideration. No response has been made to them.

Mr. CHOATE. May it please your honors, I want to ask permission to do a thing that is, perhaps, a little unusual, but which I think would be exceedingly helpful to the court and counsel in this case, and that is to ask the court in effect to take a view of the operation of these principal machines by allowing us to show here in the court room by vitagraph pictorially on the screen the operations of those principal machines which show their relation to each other and their consecutive operation. It will take about twenty minutes to do it.

PUTNAM, J. Any objection, Mr. Fowler?

Mr. FOWLER. We do not object.

586 Mr. CHOATE. If your honors please, the method of presenting these pictures is by throwing on the wall first a picture of the machine still, and I shall attempt to state the name of the machine and briefly its function as that picture is thrown on the wall. Then next a picture of that machine in operation. And that will be repeated as to each of these machines. I think there are twenty-six pictures. In the pictures showing the machines in operation, the operator has succeeded in showing in a part of the picture the machine operating very slowly so that you can see exactly what it is that the machine does, and then again the machine operating at its normal speed in the hands of the operator. And I might say that these pictures were taken not for the purpose of this case at all, but in the factory of John Hanan in New York under ordinary manufacturing conditions. And in each picture the operator is attempting to point out to the observer what it is that the machine is doing. You will see his finger or his hand or his pencil pointing to the part of the material upon which the machine is operating.

Mr. FOWLER. May it please the court, I would like to have Mr. Choate state to the court for what purposes these pictures are to be exhibited.

Mr. CHOATE. Two; first, to show the court the complicated character of those machines which use material or which handle material; and, second, to show the relation of the several machines which are exhibited each to the other, namely, that each machine is shown to be preparing the material for the operation of the next machine that succeeds and preparing it in a way that is peculiar—peculiarly adapted for the operation of the next machine. The observation of the operation I think will demonstrate that to you.

Mr. FOWLER. When a moving picture is exhibited of a matter of this kind I take it is necessary for some one to make an

explanation as it goes along. Now, I think that that explanation should be made by some one under oath. That is, I think that is the proper manner, so that he might be cross-examined in regard to that matter.

Mr. CHOATE. I am not objecting at all to the course Mr. Fowler suggests. I would be glad to have him have the witness sworn, or have the witness under oath.

(Roll of films showing operation of machines of United Shoe Machinery Company is marked "Defendants' Exhibit 241.")

(At this point the lights in the court room were turned out and the films were exhibited, the following explanatory statement being made by Mr. Winslow:)

587 Mr. WINSLOW. This picture shows the welt partly on the shoe. That is the welt that the operator draws up, and that shows where it is placed on. The pencil shows exactly the position of the welt in the finished shoe to which the sole has been attached.

(Another view.) This is the Goodyear insole Universal channeling machine, which channels the inner sole, prepares it for the operation of attaching the welt and upper to it. In this machine the operator runs it slowly now. It is cutting the channel. Now, he shows the channel which has been cut on the inside and on the outside, the two channels that are really necessary. That is a close view of the same machine, running slowly.

(Another view.) This machine is the Goodyear lip turner and slashing machine, turning up the lip of the innersole that you have just seen channeled, after being channeled, and slashing that lip so that it may lay over smoothly. That is a near view of the machine and the part moving down to press back, and at certain places slashes the channel or lip that is turned over there, getting this channel or lip ready for the welt-sewing operation. That lip has been turned partly back; now the machine is working at speed. You see the two cuts on the side there where it has been slashed. That is the insole ready to be placed upon the last.

(Another view.) That is the United Shoe Machinery Company insole tacking machine No. 1 which attaches the insole to the wooden bottom of the last upon which welt shoes are lasted, fastening it at several places so as to hold it in position for the lasting machine to press the upper up against the shoulder of the channel of the insole which you have just seen the machine get into position. Four nails are inserted, one on each side, one at the heel and one at the center.

(Another view.) This is the Rex assembling machine in which the last, upper and counter are assembled and one tack placed in the back seam to hold the upper and last in proper position
588 for its introduction into the Rex pulling-over machine. That is the counter which is inserted in the back part of the shoe. The last with the insole attached, as you have seen in the previous operation. That is the placing of the shoe upon the last, that being in the box. That is the condition in which the shoe is left after it leaves the assembling machine. In this picture you see the operator placing the upper and last together and inserting them into the machine for the machine to perform its operation of placing the tack in the heel of the shoe. At present the operator is showing the box.

(Another view.) This is the Rex pulling-over machine. When the shoe has been prepared as you have seen in the previous picture the shoe in that condition is inserted into the machine, where it is taken hold of by the pinchers and drawn into its proper position upon the last. Five tacks are driven, two forward of the seam in the tip and one at the rear of the tip on each side. The upper is drawn down to the wood and the whole shoe is then in position to go to the lasting machine. The operator is just inserting the shoe into the machine. His thumb there is taking hold of the tip—the pinchers on each side of the ball. By that one operation the shoe has been drawn over and five tacks inserted. That is the second shoe under the same operation. Certain levers are moved at the sides, as you see now, to properly adjust the leather prior to the pulling. We now see him measuring the length of the tip so as to see that the tip has been drawn over a certain distance. He is now pointing out where the tacks have been driven, three on each side, and he points out how the leather has been drawn down to the wood.

(Another view.) Consolidated hand-method lasting machine. This machine operates to draw over the leather between the heel and the toe portion and insert a tack at each draught; it draws over the leather piece by piece, or step by step as it
589 has been termed. At each movement of the pinchers a tack is inserted. The parts you see moving there are the pair of pinchers which take hold of the upper piece by piece. Each time they move a tack is driven. The tacks are left standing up so that they may be withdrawn for the operation of welt sewing. In the next operation he is pointing out the tacks he has driven. You will observe that neither the heel portion nor the toe has yet been lasted.

(Another view.) This is the No. 5 lasting machine which lasts the heel portion and the toe portion, crimping them in and draw-

ing them into their proper position, pressing the leather in the toe portion up against the shoulder of the inner sole, that portion which you saw turned up in one of the previous operations. You will notice the operator using a hand-tacking device to drive the tacks around the heel portion and at the toe portion inserting the wire. There are no tacks driven around the toe. In the very center of the picture you see the tack hopper and the tacker itself which he removes from that position. He places the shoe on a spindle now and lasts the heel portion. That is what he is doing now. He drives the tacks around with the hand tacker. Now he proceeds to last the toe portion. That is the hold-down there, to hold the shoe firmly against the movement of the wipers in drawing the toe over. The toe having been lasted, he now proceeds to place the wire around the toe to hold the upper against the shoulder of the insole. He is now pounding the heel-seat by the ordinary hammer. There you see the wire around the toe portion—no tacks there. The side tacks still remain. That shows the heel-seat as it has been lasted by the machine.

(Another view.) This is the Goodyear upper stapling machine, which inserts the small wires to hold the upper up against the shoulder of the inner sole and allows all of the tacks which have been left standing up to be removed, thereby avoiding in the operation of the welting machine the danger of the breaking of any needles, which has always been the great trouble. This machine, of course, saves a great deal, not only in the cost of the needles, but in trouble to the operator, and is one of the new machines which we have developed. Each movement inserts the staple—a very fine wire that you see coming from that reel of wire, so very fine that you can hardly see it. You will notice that all tacks have been removed from that shoe and it is now ready to go to the welt-sewing machine.

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(Another view.) This is the Goodyear tack-pulling and resetting machine for taking out those tacks which are put in by the lasting machine after the stapling machine has inserted the staples. It may be also used for inserting tacks to hold it temporarily before the welting operation when used as a machine for just that purpose. You observe that each tack is removed. The tacks have all been removed excepting those that have been inserted to hold the shoe when the stapling machine is not used.

(Another view.) This is the Rex upper-trimming machine, model H. It trims the upper to get the shoe further ready for the welt-sewing machine. It is the surplus upper that has been drawn over in the lasting operation. You will notice the rotary knife at the left of the shoe there, trimming off the upper. The

operation is very rapid. On the right is the shoe with the surplus upper trimmed, on the left as it went into the machine.

(Another view.) This is the Goodyear welt and turn sewing machine, model K, which embodies the stop motion, the welt and thread holder and cut-off device, and, as you will see, is a very complicated machine. At the top of the picture you will notice the sewing mechanism. This machine attaches the welt to the upper, for which all the previous operations have been preparing the shoe. The white strip which you see underneath the operator's hands is the welting; the welt has been attached in that shoe. The second shoe going into the operation.

591 The movement now just coming—there, that was the cuting off of the welt which the operator is pointing out. He now shows where the stitches have been placed to attach the welt, and the short piece that is left of the welting.

(Another view.) This machine is the Goodyear Universal inseam trimming machine for trimming the upper, which has been still further drawn over the last by the welt-sewing operation, and trims it down close to the seam so that the least amount of filling, as it is called, which is placed upon the inner sole, is needed. That was the entire operation of trimming. The second shoe going through the same operation. You will observe that all the surplus stock has been trimmed now and the shoe made ready for the filling.

(Another view.) The Goodyear welt beating and slashing machine. This machine operates upon the welt, which, as you will see in the previous picture, was somewhat curved down over the shoe to straighten it out and level it, slashing it around the toe so as to allow it to stand out straight for the placing of the outer sole upon it. As you will notice, as it goes around the toe—there you see that part moving. That does the cutting or slashing around the toe. That shows the welt standing out at right angles to the shoe.

(Another view.) The Goodyear improved sole-laying machine, model C. This is the machine which is used to temporarily attach the outer sole to the shoe on the bottom and press it against the inner sole and the welt, which has been straightened out for that purpose. The operator has placed the sole in block shape upon the shoe and it has now been temporarily attached. This picture shows the result after it has come from the improved sole-laying machine.

(Another view.) Goodyear Universal rounding and channeling machine, model E. This machine takes the shoe as you have just seen it come from the sole-laying machine and rounds the

outer sole, which was in block form, to conform to the shape of the last, channeling it on the outside of the out-sole at the same time that it rounds or brings it into shape. This is one of the very important auxiliary machines. You will observe that the outer sole in its blocked position, that part of the machine trims off now. That outer sole has now been brought into shape to conform exactly to the shape of the last and at the same time has been channeled, as the operator shows with his pencil.

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(Another view.) Loose-nailing machine No. 2. This machine now takes the shoe and fastens the outer sole to the inner sole at the heel portion of the last to hold it in that position for the operation of the stitcher. Those nails have been driven right around the heel seat there and permanently fastened.

(Another view.) The Goodyear channel-opening machine. This machine opens the channel upon the outer sole which has been channeled by the Universal rounding and channeling machine when the outer sole was trimmed to a shape to conform to the last. This machine gets the shoe ready for the stitches so far as the channeling is concerned. Observe that the channel has been turned out so that the needle in going through will not touch the lip. It is in that place pointed to by the pencil where the lip has been turned up that the stitches of the out-sole are placed.

(Another view.) Goodyear out-sole rapid lockstitch machine, model M. This machine has the stop motion similar to that in the welt machine except that it does not reverse. This machine attaches the outer sole to the welt and places the stitches in the channel which you have just seen raised by the channeling-opening machine.

(Another view.) Placing the shoe in to stitch it. He turns it slowly to show how the machine operates in taking each stitch. Now the machine is operating at speed. A curved needle is used in this machine. He points out where the stitches have been placed in the channel. He now shows the white marks where the stitches are on the welt side of the machine.

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(Another view.) Star channel-cementing machine, model C. This machine places the cement in that channel that you have just seen the stitches placed in in order that the channel may be laid down and not show, the channel in the finished shoe covering the stitches.

(Another view.) Goodyear channel-laying machine. The shoe gets to this machine and the channel is laid down smoothly, being held in position by the cement so as to conceal the fact that a channel has been cut in the leather when the shoe is finished.

The operator is operating the machine very slowly now to show just what it does. Now at speed. He repeats the slow operation. Now, this is the normal speed at which the operator does the work. You will notice the channel has been laid down so that no stitches are to be seen.

(Another view.) Hadaway stitch-separating machine. This machine separates on the welt side each stitch from the other, making a straight mark, which undoubtedly you have observed between the stitches on the outside of your shoe. It gives the shoe and the stitching a definite and regular appearance. The machine acts automatically to find the places between the stitches. You will notice the straight marks, rather indistinct, but it shows between each stitch.

(Another view.) Goodyear automatic sole-leveling machine. In this machine a pair of shoes are placed and the concave rollers, two of which you see in the front part of the machine, roll or level the sole down to conform to the bottom shape of the last. The work of the machine is entirely automatic. The shoes are placed upon those two jacks and then inserted in the machine for the operation of the rolls. You will notice they turn from one side to the other to bring the leather into close contact with the shape of the last.

594 (Another view.) The Goodyear heel-seat rounding machine. In this machine the block of square leather you have seen up to the present time on the heel portion of the outer sole is removed and this portion of the outer sole is brought into the shape of the heel of the last, and properly shapes it for the heel portion to receive the heel. It turns down that lip in shape, the proper shape to conform to the heel portion of the last. You will notice the left-hand shoe. The square portion on the right has been removed and brought into proper relation with the heel.

(Another view.) No. 4 heel-compressing machine. In this machine the heels, which up to the present time you haven't seen, but have been prepared, nailed together, are compressed and brought to the proper height and ready for the operation of the heel-attaching machine. You will notice that the inside of the heel has been concaved to fit the heel portion of the shoe. A very large amount of pressure is used in this machine to properly bring the layers of the leather together. That is the heel as it goes into the machine. You will notice the lifts are separate. The operation of the machine; you will notice the concaved shape and the compressed condition of the leather.

This is a rear view of the same machine, showing the heels dropping down to the spout as they come out from the machine.

(Another view.) McKay automatic heel loading and attaching machine, model B. In this machine a shoe is inserted; the

nails which come from the big round drum up at the right are separated and come down through those small tubes which you see about the center of the picture into a die, which contains the holes, the number of holes, and their relation to the heel, that fasten or attach the heel to the inner sole and upper. The top lift is inserted in the same machine, and is attached by a second operation. The loading die that you see mentioned there is the die, and this is the sorting of the nails. They come down 595 sorted so that the right end drops into the tubes that I have mentioned, and fall from that down to the die. Now, the die is swung over, dropping the nails into the attaching die. Placing the heel; now placing the shoe upon the jack; that is, attaching the heels and driving the nails, which are all done by one operation. That shows the shoe after the heel has been attached, but with the nails protruding through the bottom before the top lift, which is the second movement you saw in the machine, has been spanked on.

(Another view.) Universal slugging machine. This machine is used to drive or insert a series of nails cut off from a reel of wire around the outer edge of the top-lift to attach the top-lift to the heel, and also to protect it against wear. This is the machine; you see the operator places a shoe upon a jack. It is now driving this series of slugs around the outer surface. Second shoe with the same operation. These are three X-ray pictures. The one on the right represents the freedom from nails that exist in a Goodyear welt shoe. At the heel of course you see the nails that have been used to attach the heel. The two left shoes are the McKay sewed shoes, and show the series of tacks which are left in the shoe as the result of that method of attaching the outer sole to the inner sole, and you will observe that there are no fastenings in the tread surface of the Goodyear welt shoe, as shown on the right, while in those on the left there are contained all the nails that have been necessary to introduce and leave permanently in the shoe, when the shoe is manufactured by the McKay process. These are side views of the same shoes. The two on the right in this case are the McKay sewed shoes, while the one on the left shows the Goodyear welt shoe. The black strip which you see in the shoe on the left is the steel shank which happens to be in that shoe, as it is made, while it does not happen to be in the two McKay sewed shoes. If the steel shank was in there, it would show just the same. This is the same proposition with the shoe reversed. You see on the left the Goodyear welt shoe with the steel shank and no nails or tacks in the surface of the shoe for the foot to rest upon, while

in the two right shoes you will see the condition of the sole of the McKay shoes upon which the foot is to bear.

(The exhibition was closed and the lights were turned on.)

596 DECEMBER 9, 1913.

SIDNEY W. WINSLOW, witness for defendants, resumed.

Direct examination resumed:

I know Mr. J. F. McElwain whose office is in Boston and whose company manufactures about 30,000 pairs of shoes a day, principally Goodyear welt and McKay sewed shoes.

Prior to the Plant acquisition Mr. McElwain's company was a user of the United Company's machines.

Mr. McElwain called upon me one day and asked me if I would allow him to cancel his leases in case he decided he would like to use the Plant machines. I told him I should be very glad to make fair arrangements with him to cancel any or all of his leases that he desired to cancel, so that he might use another line of machines if he desired. He never exercised that option.

With reference to the covenants in agreements of purchase of properties by the United Company, I have had nothing to do with the covenants of the vendors, with respect to their future activities, in the agreements relating to acquisitions by the United Company. The drafting of those papers was left entirely to the United Company's legal department; I did not direct anything to be inserted and no action was taken by me, or by the board of directors, or by any officer of the company that I knew of, directing or requiring the insertion of any such restrictive covenants in any agreement. These matters were left to counsel like the drawing of a deed, and I paid no attention to whether they put in covenants or what covenants they put in. These counsel were Mr. James J. Storrow, Mr. Elmer P. Howe, and Mr. Harold G. Donham. Early in the history of the company Mr. Storrow was one of its counsel.

In 1899 there were 13 Goodyear welt auxiliary machines, which are enumerated in defendants' Exhibit 242 (Record, p. —); and there were three auxiliaries in the turn set, enumerated in defendants' Exhibit 244 (Record, p. —).

In 1911 there were 36 auxiliaries in the welt set and these are enumerated in defendants' Exhibit 243 (Record, p. —); and there were nine auxiliaries in the turn set in 1911, which are enumerated in defendants' Exhibit 245 (Record, p. —).

In 1911 the company furnished all or any of the Goodyear auxiliary machines in the welt set to the users of the

597 welter and stitcher without any additional royalty, and it furnished all the auxiliary machines for turn work to

the users of its welt and turn machines without the addition of any royalty. It should also be noted that the royalty on turn shoes had been reduced 50 per cent from that charged by the Goodyear Company in 1898; for women's shoes, from one and one-half cents to three-quarters of a cent, for children's, from one cent to half a cent.

I have prepared a list of the new machines which the United Company has invented and put out to its customers since 1899 and this is defendants' Exhibit 246 (Record p. —). The date of the adoption of each machine is noted opposite that machine. In some instances I note that this runs up to 1913. The machine might have been developed many years before.

Mr. CHOATE (to Mr. Fowler). There are two or three in this list which appear to have been adopted subsequent to the bringing of the bill, but as to those, if you don't like them, it may be agreed that those should be eliminated from the list.

The WITNESS. I believe there are 150 of these machines which comprise 5 machines in the eyeletting department, 41 in the Goodyear department, 11 in the heeling department, 4 in the lasting department, 7 in the metallic department, 15 in the pulling-over department, 64 in the general department, and 3 in the fitting-room department. These machines have all been offered to the public by the United Company for sale or lease. On this list the model K and model M stitchers and the model G and model K welters are listed separately, as I thought that they should be distinguished as different machines rather than as different models.

As stated in the report made to the stockholders for the year 1911, which is an exhibit, the amounts paid per pair of shoes for the use of all the principal royalty machines furnished by the United Company, when accounts are paid within 30 days, are for Goodyear welts, men's work, 5.694 cents; for Goodyear welts, women's work, 4.694 cents; for Goodyear turn shoes, women's and misses', 1.972 cents; for children's Goodyear turn shoes, half a cent; for men's and women's McKay shoes, 1.746 cents; for children's McKay sewed shoes, 1.391 cents.

598 I have had prepared a list of machines which have been put out by the United Company to do work that before 1899 was either done by hand or was not done at all. This list is defendants' Exhibit 247 (Record p. —) and comprises 39 machines.

The machines, the operation of which were illustrated by moving pictures, defendant's Exhibit 241, operate in a factory in the manufacture of Goodyear welt shoes in the order shown to the court. Those machines, in the order in which they were shown in the moving pictures and in the order in which they are

used in the shoe factory, and the departments in which the machines belong, are as follows:

Goodyear Universal channeling machine, Goodyear dept.; lip turning and slashing machine, Goodyear dept.; insole tacking machine, lasting dept.; Rex assembling machine, pulling-over dept.; Consolidated hand method lasting machine, lasting dept.; No. 5 lasting machine, lasting dept.; upper stapling machine, Goodyear dept.; tack pulling and resetting machine, Goodyear dept.; Rex upper trimming machine, pulling over dept.; Goodyear welt and turn shoe machine, model K, Goodyear dept.; Goodyear Universal inseam trimming machine, Goodyear dept.; Goodyear welt beating and slashing machine, Goodyear dept.; improved sole laying machine, Goodyear dept.; Goodyear Universal rounding and channeling machine, model E, Goodyear dept.; loose nailing machine, No. 2, metallic dept.; Goodyear channel opening machine, Goodyear dept.; outsole rapid lockstitch machine, Goodyear dept.; channel cementing machine, general dept.; channel laying machine, Goodyear dept.; stitch separating machine, Goodyear dept.; automatic sole leveling machine, Goodyear dept.; heel seat rounding machine, Goodyear dept.; heel compressing machine, heeling dept.; automatic heel loading and attaching machine, heeling dept.; slugging machine, metallic dept.

In these successive operations machines of the kinds obtained from the Goodyear Company, the Consolidated & McKay Lasting Machine Company, and the McKay Shoe Machinery Company 599 are interspersed among each other through those consecutive operations, and they are all required in the production of a Goodyear welt shoe and perform these necessary consecutive operations.

Referring to the testimony of petitioner's witness, Frank C. Rand, as to disks for the Naumkeag buffing machine in support of the allegation that the United Company charged exorbitant prices for its repair parts, the United Company does not own or control the Naumkeag buffing machine and does nothing except act as agent for it. That machine was invented by my father, and it is marketed by the Naumkeag Buffing Machine Company, which I have always controlled personally by leasing the machine to manufacturers, and the lease requires that the manufacturer purchase from the Naumkeag Company the disks that are used upon the machines. That is the only way in which the user pays for the use of the machine, in addition to a small initial premium when the machine is placed in the factory, which I think is about $50.

In 1911 there were 63 machines in the Goodyear department, 14 in the lasting department, 13 in the heeling department, and

6 in the metallic department, a total of 106. There were 170 machines in the general department.

Defendants' Exhibit 248 (Record, p. —) is a list which I have had prepared showing how many machines were out on January 1, 1905, on leases executed both before and after February 9, 1899, and indicating how many machines were out on independent forms of leases and how many were out on restricted forms of leases.

The machines of the Goodyear department out on January 1, 1905, were 1,798 welt and turn machines, 1,817 stitching machines, and 9,078 auxiliary machines, a total of 12,693. They were all on the independent form of lease, but the auxiliaries were restricted to use with the principal machines in that department.

600 From the lasting department there were out on January 1, 1905, 3,258 machines on the restricted form of lease and 1,956 on the independent form of lease. This does not take into account the auxiliary machines which are not separated as regards the two forms of leases in the records of the lasting department.

In the heeling department on January 1, 1905, out of a total of 1,642 attaching machines and 2,168 auxiliary machines, 142 of the attaching machines and 218 of the auxiliaries were on restricted lease; 1,500 attaching machines and 1,950 auxiliaries were on the independent leases.

In the metallic department on January 1, 1905, there were 572 standard screw machines on the restricted lease and 60 on the independent lease; 1,700 slugging machines on the restricted lease and 117 on the independent lease; 1,153 loose-nailing machines on the restricted lease and 80 on the independent lease; 3,079 tacking machines on the restricted lease and 293 on the independent lease; 630 miscellaneous machines on the restricted lease and 53 on the independent lease. The auxiliaries are not counted in either case.

In the pulling-over department on January 1, 1905, 243 pulling-over machines were out, all on the restricted lease. We had then just begun to introduce that machine.

The total number of machines out on restricted leases Jan. 1, 1905, omitting auxiliaries of the lasting and metallic departments was 10,995. The total number of machines out on independent leases on that date, including auxiliaries in the Goodyear and heeling departments, but also omitting auxiliaries in the lasting and metallic departments, was 18,702.

For the purpose of showing the extent of the equipment required for factories of various sizes I have prepared a list of the

number of the United Company's principal machines which are required for making Goodyear turn shoes in factories of various outputs between 100 pairs a day and 4,800 pairs a day. This is defendants' Exhibit 249.

601 DEFENDANTS' EXHIBIT 249.

Principal machines necessary for making 100, 200, 300, 600, 1,200, 2,400, and 4,800 pairs Goodyear turn shoes per day.

Machines.	No. of machines for daily production.						
	100 pairs.	200 pairs.	300 pairs.	600 pairs.	1,200 pairs.	2,400 pairs.	4,800 pairs.
Goodyear welt & turn machine—K	1	1	1	2	3	5	9
Loose nailer #2	1	1	1	1	1	2	3
Universal slugger	1	1	1	1	1	2	4
McKay auto. heeling machine—B	1	1	1	1	2	3	6
Premier heel-pricking machine	1	1	1	1	1	1	1

The WITNESS. For a hundred-pair factory, one Goodyear welt and turn machine, one loose-nailing machine, one Universal slugging machine, one automatic heeling machine, McKay model B, and one Premier heel-pricking machine, necessary to go with the attaching machine, are required.

Those machines are all the equipment necessary until you get above 300 pair. The next size factory I have is 600 pair. There two Goodyear welt and turn machines are required, but only one each of the loose-nailing machine, slugging machine, heeling machine, and pricking machine.

The next size factory I have is 1,200 pair, where three Goodyear welt and turn machines are required, one loose-nailing machine, one slugging machine, two heeling machines, model B, and one Premier heel-pricking machine.

The next size is a 2,400 pair factory, where five Goodyear welt and turn machines are required, two loose-nailing machines, two Universal slugging machines, three McKay automatic heeling machines, model B, and one Premier heel-pricking machine.

The next size is a 4,800 pair factory, where nine Goodyear welt and turn machines are required, three loose-nailing machines, four slugging machines, six automatic heeling machines, model B, and one Premier heel-pricking machine.

602 I have prepared a summary of the general department machines which were out on lease from the United Company on March 1, 1911, showing how they are subdivided into different models and different kinds, and the number out of each kind. This is defendant's Exhibit 250 (Record, p. —). This exhibit shows that there were 30 different kinds of machines,

comprising 45 models, of which less than 100 of each kind were out, the total number of machines of that class being 759.

There were 9 different kinds of machines, comprising 11 models, of which more than 100 and less than 200 of each kind were out, the total being 1,294.

The next class, of which more than 200 and less than 300 were out of each kind, comprised 7 different kinds of machines, with 23 models; the total number in this class was 1,765.

Of 4 kinds of machines, comprising 15 models, there were out more than 300 and less than 400 of each kind, with a total of 1,482 machines.

There was only one machine, comprising 2 models, between 400 and 500, with a total of 419 machines out.

The next class comprised 17 different kinds of machines, with 86 different models; there were more than 500 of each kind of these machines out, with a total of 22,751.

The next class comprised 4 miscellaneous machines, with 7 models, and there were 161 machines of this class out.

The totals were 72 different kinds of machines, with 189 models and 28,631 machines out.

PUTNAM, J. Why do you speak of March, 1911, Mr. Choate?

Mr. CHOATE. It is the nearest date we have to the date of bringing the bill. It marks the company's fiscal year, and a good many figures are made up at that time.

PUTNAM, J. Why do you use 1905?

Mr. CHOATE. Well, it is halfway between 1899 and 1911, and it marks an intermediate point. The work of preparing these statistics for every year would be beyond the possibility of accomplishment.

603 The WITNESS. In reference to the testimony of Petitioner's witnesses, Morrison, Sochat and Ross, in support of a claim that the United Company sought to foment a strike in Mr. Plant's shoe factory, Mr. Willson came to my office, which was on the floor above his, in May or June of 1910 as I recall it, and said there were three Armenians downstairs who wanted to get the company to assist them in fomenting a strike, or in forming a union at the Thomas G. Plant factory in Jamaica Plain. I told Mr. Willson to have nothing whatever to do with them. He left my office with those instructions. Mr. Elmer P. Howe was in my office at that time. To my knowledge the United Company never did anything to foment a strike at the Plant factory, Mr. Willson never did anything beyond the instructions I gave him; and no money that I am aware of was paid to those people or anybody in their behalf.

As to my negotiations with the committee of the New England Boot and Shoe Association with regard to independent leases for

the metallic department, the chairman of that committee was Mr. William B. Rice.

In reply to my statement that we could give them an independent lease by making an additional charge for the material he said: "Well, do that. You may add on twenty-five per cent." I told him "All right,"I would consider that, and at the next conference my rememberance is that a day or two afterwards I told him that ten per cent would be quite satisfactory to us, and that was the way the ten per cent was adopted.

The conferences with the New England Boot and Shoe Association and the National Association and with their committees commenced about November 8, 1900, and continued until late in January, 1901.

It was at the first meeting in Philadelphia that the conversation with Mr. Krippendorf, which has been referred to, occurred. I retained no minutes or copies of minutes of what was said by anybody at that time, but the conference covered a great deal more ground and many other subjects than that specific point. Taking my attitude and statements all together at those conferences, there was no statement on my part that was meant or intended to mean that I was proposing to control all the shoe machinery.

604 I had nothing to do with preparing the interview that Charles H. Jones, a witness for the petitioner, gave to the "Boston Transcript" in 1906, except to call Mr. Jones on the telephone and tell him that a reporter from the "Transcript" would like to see him. I did not in the slightest degree make any suggestions to Mr. Jones as to what he would say or how he should say it.

With reference to Mr. Jones' testimony as to my statements to him some time in the year 1907, when he was asking me to make some changes in the restrictive clauses in our leases, I did not tell Mr. Jones that I had the manufacturers in my grip, or use any language of that sort, or any language that Mr. Jones had a right to so construe. I did not demonstrate with my fist to indicate that I had the manufacturers in my control and proposed to keep them there. I never have felt that way and I never have said anything of the sort.

I did go fully with Mr. Jones into the difficulties of doing business under the independent leases, tried to make him understand the entire situation from the standpoint of the shoe machinery manufacturer. Mr. Jones was entirely mistaken when he said that I told him the company would have to get a new president, and, in fact, he makes that apply to the company doing business under such conditions, as we were actually doing

lots of business at the time; that is, on independent leases. Mr. Jones is entirely mistaken in his interpretation or his remembrance of the interview.

605 My conferences with the witnesses for petitioner who came from St. Louis were first in February, 1911, when I went to St. Louis, and again in Boston in May, 1911. Those conferences were with certain manufacturers, most of whom were represented by the committee which talked with me at the Touraine and wanted me to let them have stock in our company, as I have already testified. These manufacturers as I recall them were: Jackson Johnson, of Roberts, Johnson & Rand; Milton Florsheim, of the Florsheim Shoe Company, of Chicago; Mr. Selz, of Selz, Schwab & Company, of Chicago; A. C. Brown, of the Hamilton-Brown Shoe Company; George Brown, of the Brown Shoe Company; Mr. Peters, of the Peters Shoe Company; Mr. Selby, of the Selby Shoe Company; Mr. Krippendorf, of the Krippendorf Company.

These were the same people who afterwards became interested in the Boylston Company, and at that time they were members of the Shoe Manufacturers' Alliance. The first communication which I had from these people after our Touraine conference in September, 1910, was by letter under date of December 29. I have the letter here and it is headed "Shoe Manufacturers' Alliance," with the names of those who purport to be members of the Alliance on the letterhead. This is the defendants' Exhibit 251.

DEFENDANTS' EXHIBIT 251.

SHOE MANUFACTURERS' ALLIANCE,
1507 WASHINGTON AVENUE,
St. Louis, Mo., Dec. 29, 1910.

Officers and executive committee:
J. Johnson, Pres't.
C. H. Krippendorf, V.-Pres't.
A. D. Brown, V.-Pres't.
M. S. Florsheim, Treas.
F. C. Rand, Sec.
G. W. Brown.
J. B. Howarth.
H. W. Peters.
E. P. Reed.
Geo. D. Selby.
E. F. Selz.

606 Mr. S. W. WINSLOW, *President United Shoe Machinery Co., Albany Bldg., Boston, Mass.*

MY DEAR SIR: At a recent meeting of the Shoe Manufacturers' Alliance I was requested to extend to you and to Mr. Geo. W.

Brown, together with such other officials of your company as you desire, an invitation to meet with the executive committee of the Shoe Manufacturers' Alliance at St. Louis, Chicago, or Cincinnati at any date convenient to you between Jan. 5th and 20th.

The object of this conference is to discuss with you matters of mutual interest to your company and the shoe manufacturers associated together. Upon indication of the date and place agreeable to you, I will notify the executive committee of your pleasure in the matter.

Very truly, yours,

F. C. RAND, *Secretary.*

The WITNESS. The G. W. Brown named in this letter is our vice president, a different man from the G. W. Brown named in the letterhead.

The first knowledge that I had of the Shoe Manufacturers' Alliance I obtained from this letter.

Defendants' Exhibit 252 is a copy of my reply to this letter.

DEFENDANTS' EXHIBIT 252.

JANUARY 2, 1911.

Mr. F. C. RAND, *Sec'y Shoe Manufacturers' Alliance, 1507 Washington Ave., St. Louis, Mo.*

DEAR SIR: Yours of the 29th of December at hand, inviting Mr. George W. Brown and myself, together with such other officials of the company as I may desire, to meet your executive committee at St. Louis, Chicago, or Cincinnati at a date convenient to us between January 5th and 20th. It is impossible for me at this time to name a date within the dates that you have mentioned when it will be convenient for me to accept your invitation. I will endeavor, however, to name a date as soon as possible.

You state that the object of this conference is to discuss with you "matters of mutual interest to your company and the shoe manufacturers associated together."

I should be very glad to discuss any matters of mutual importance, but in order that the interview may be of practical benefit I would suggest that you inform me specifically as to the matters of mutual interest which your committee has in mind to discuss.

Awaiting your reply, I remain,

Very truly, yours,

S. W. WINSLOW.

SWW-NW

The WITNESS. Mr. Rand's reply to my letter is defendants' Exhibit 253.

607 DEFENDANTS' EXHIBIT 253.

SHOE MANUFACTURERS' ALLIANCE,
St. Louis, Mo., Jan. 4th, 1911.

Mr. S. W. WINSLOW, *Pres. United Shoe Machinery Co., Lincoln & Kneeland Sts., Boston.*

DEAR SIR: I wish to acknowledge receipt of your favor of Jan. 2d, stating that you cannot meet us between Jan. 5th and 20th, but will advise as soon as possible just when it will be convenient for you to meet with the executive committee of the Shoe Manufacturers' Alliance.

In answer to your request that we state specifically what we wish to discuss, will state that the shoe manufacturers are looking for improved conditions under which to make shoes. The only specific points of mutual interest between you and the shoe manufacturers are the sale, rental, and royalty of machines by you, together with the charges made thereon, and a general discussion of this subject, which is of great significance to all parties concerned, is desired.

Upon receipt of information from you fixing the date of meeting I will advise the executive committee.

Yours, truly,

F. C. RAND, *Secretary.*

Ans. by personal interview Feb. 14, 1910, with the Ex. Com.
S. W. W.

608 The WITNESS. The date of the meeting was fixed by telegraph for the week beginning February 14, 1911, at St. Louis and I arranged that date so that I could devote a week to the conference.

I had arranged for Mr. Charles H. Willson, our general manager, to go with me and we planned to leave Boston on Sunday preceding the 14th. Mr. Willson was taken sick and I went alone but arranged to have Mr. Samuel Ross, who has since died, and Mr. Fraher of our company at the conference. I reached St. Louis late on Monday and met two of the manufacturers on Monday evening.

A meeting was arranged for the next morning at ten o'clock and there were present at that meeting Mr. Jackson Johnson, Mr. Howarth, Mr. Roblee, Mr. Krippendorf, Mr. A. D. Brown, Mr. Florsheim, Mr. Selz, Mr. Henry Peters, Mr. Fred Peters, Mr. John Bush, Mr. Selby, Mr. George W. Brown, and Mr. Oscar Johnson. These gentlemen represented the Roberts, Johnson & Rand Shoe Company, the Krippendorf-Ditman Shoe Company, the Hamilton-Brown Shoe Company, the Selz-

Schwab Shoe Company, the Peters Shoe Company, the Brown Shoe Company and the Selby Shoe Company.

At this meeting Mr. Johnson acted as chairman and handed me a memorandum, the original of which is Plaintiff's Exhibit 154. The paper put in evidence is just as it was when it was presented to me with certain words crossed out and certain words inserted.

I read the paper through and took up as the subject first to be discussed its last clause, which is as follows:

"We recognize fully the great economic advantages possessed by you in the fact that you now enjoy practically a monopoly of the shoe machinery business—but we submit that your patrons should be permitted to share in these advantages, by you so modifying your charges for the service rendered, as to return only a fair amount on your invested capital."

I told the manufacturers that they had a very mistaken idea as to the amount of profit that we derived from the amount of capital we had invested in the business; that we should be very glad to do our business based upon the return per dollar invested in the business equal to the return that they obtained on the dollar that they had invested in the shoe business as
609 successful shoe manufacturers, and I called their attention to the success which had attended the growth of the Hamilton-Brown Shoe Company, the Roberts, Johnson & Rand Shoe Company, the Peters Shoe Company and the Brown Shoe Company, all St. Louis manufacturers. I then went on to explain to them what a large amount of capital we had to have invested, how much we had to spend in developing our machines, what a large stock of parts we had to carry, both at the factory in Beverly and around at all of our shops, explaining what we had to carry at St. Louis in order to give them proper service to keep the machines in operation, the large amount of service that we furnished to maintain those machines in condition to turn out their product—in a broad sense endeavored to educate them from the machinery manufacturer's standpoint as to the amount of capital that was absolutely necessary to have invested in the business.

The discussion of this one clause proceeded until we adjourned for luncheon. After we came together again I found that the manufacturers who did not reside at St. Louis were intending to stay only that day and that the St. Louis manufacturers had planned to devote only that day to the discussion of the matter that they had asked me to come to St. Louis to see them about. I told them that it was impossible to make any substantial progress in the short time they had allowed.

Finding that only one man of the whole party had ever been to our Beverly factory I told them that if they would visit our factory at Beverly I would take up the matter of this paper, Plaintiff's Exhibit 154, and would have a conference with them and go very fully into every matter. The manufacturers finally agreed to do that.

In May, 1911, substantially all of the gentlemen whom I met in St. Louis came to Boston and visited the Beverly factory.

The next day, on May 23, we had a conference at my office and I then handed the manufacturers the memorandum of Defendants' Exhibit 40 (Record, p. —), as to which Mr. Rand testified, which had been prepared by me to set forth the conditions under which they could obtain machines on the independent lease plan, in order that they might understand exactly under what conditions they could have machines from all departments of the company without any of the principal ma-
610 chines in any department being limited to use with any one of the principal machines of any other department. I read this memorandum to the manufacturers myself. At their request I gave them a copy of that memorandum to submit to their counsel, who they stated was Mr. Brandeis.

In the afternoon of that day we met again at the Touraine, where the whole subject was very fully discussed. At that meeting I was asked if I would prepare a statement showing the initial payments that would be required under the independent leases. I prepared such a statement, which is defendants' Exhibit 41 (Record, p. —), and which sets forth the initial payments to be made when manufacturers took machines on the independent leases under the conditions set forth in the memorandum of Exhibit 40.

I took this statement to the hotel on the next day to give to Mr. Jackson Johnson. I found that he and all the other manufacturers, except one or two, had left Boston, but Mr. Rand remained and I handed him the statement as the secretary of the so-called alliance.

That finished my conferences with those gentlemen except that Mr. Rand asked to have prepared a statement showing what it would have cost the Roberts, Johnson & Rand Company in initial payments if they had fitted up their factories under the independent form of lease. I prepared that and handed it to Mr. Rand, and he told me that he would report the figures and statements that I had given him, and that I should hear from him within a few days. I had complained to him that the manufacturers had parted from me without an understanding as to

whether the methods under which I had shown them they could do business with us were satisfactory to them.

The next I heard from Mr. Rand was his letter to me of June 14, which is plaintiff's Exhibit 155. My reply to that letter on June 19 is plaintiff's Exhibit 156. That closed the incident. Excepting as I have testified, I never had any response from

611 Roberts, Johnson & Rand or the Shoe Manufacturers' Alliance to my memorandum of defendants' Exhibit 40 and my accompanying suggestions about initial payments for independent leases.

Referring to defendants' Exhibit 40, the statement under the heading "Goodyear welt and turn shoe machine and Goodyear outsole rapid lockstitch machine" represents the practice of the United Company at that time and prior thereto, from the date of the formation of the company and since that time, at least up to the time when this suit was brought. The statements in the three paragraphs under the heading "Goodyear auxiliary machines" in defendants' Exhibit 40 are true of the company's practice with reference to the marketing of the Goodyear auxiliary machines at that time and prior thereto and up to the time of the bringing of this suit.

The statement (in defendants' Exhibit 40) under the heading "Rex pulling-over machine" was true of the practice of the company at that time and prior thereto from the time when we first put out the pulling-over machine, and it has continued to be true of the company's practice up to the time this suit was brought. We had been prepared to furnish machines in that way at any time and had issued leases in that form.

The statement in the first paragraph under the heading "Rex pulling-over system—Auxiliary machines," in defendants' Exhibit 40, has reference to the pulling-over department alone, and the statements in the three following paragraphs under that heading were true of the practice of the company regarding the pulling-over auxiliaries up to the time the suit was brought.

The statement under the heading "Consolidated hand method lasting machine—U. S. M. Co. lasting machine, No. 5," in defendants' Exhibit 40, [is] true of the company's practice with reference to those machines. The statements in that exhibit under the headings "Metallic machines," "Heeling machines," "Clicking machines," and "General department machinery" are true of the company's practice and readiness to perform at that time and prior thereto and up to the time the suit was brought.

612 As regards the machines named in defendants' Exhibit 41, corresponding to machines which had been put out

by the constituent companies prior to 1899, the amounts of the initial premiums set opposite the names of those machines were exactly the same, respectively, as were habitually charged by the constituent companies prior to 1899. As regards machines which were not in existence in 1899 or which had not been marketed by any of the constituent companies, the initial premiums named in Exhibit 41 were exactly the same, respectively, as the initial premiums that the United Company had been charging right along whenever those machines were put out on the independent form of lease. Those same initial premiums have continued since then and are the premiums which are charged to everybody alike. Our offices all have lists.

Referring to the testimony of Mr. George A. Learned, a witness for the petitioner, regarding a conference which he had with me in the summer of 1911, Mr. E. P. Brown, our general manager, was present at that conference.

Mr. Learned had under lease from the United Company either two or three turn shoe-sewing machines, auxiliary machines to go with the turn shoe machines, heeling machines, and several machines from the general department; also, I believe, m'tallic machines—this is entirely from memory. He had introduced into his factory either one or two turn shoe-sewing machines obtained from the Haverhill Shoe Machinery Company, and had given up or stopped using our turn machines. He was using the turn shoe auxiliary machines and our other machines in finishing shoes made on those machines, although he had such machines as he had from us under the restricted form of lease.

So he was using our auxiliaries and paying us no royalty for their use, and the general department machines which we were taking care of and getting no return for. I pointed out to Mr. Learned the injustice of that situation as courteously and as nicely as I knew how to do. I used no threatening language of any sort, name, or description. I suggested to him that if he wanted to use the Haverhill machines I would be very glad to arrange his leases so he could and on equitable terms to him and to ourselves. The interview ended with, I supposed, perfectly good feeling on the part of both of us.

After that interview Mr. Learned wrote a letter to the company asking us to send him the terms upon which machines might be furnished him on the independent form of lease, and I did that.

613 At that interview I did not tell Mr. Learned that I would put him out of business; I never said anything which could be construed as amounting to that. I did not say: "You see what happened to Mr. Plant; he is out of business,"

or anything of the sort. I did not say that the least I would do would be to take all the United machines from him, or that he would have to pay royalty and that we would charge him six per cent interest on it. I did say to him that if he was going to use the Haverhill machines he ought to pay us what was due us up to the time when he came to that conclusion.

I next saw Mr. Learned about the first of December, 1911. He came to my office with Mr. Henry B. Endicott. I think Mr. E. P. Brown was present also, but I am not sure. Between the interview in the summer and this time in December I had heard that Mr. Learned was saying things about me.

At this interview in December I asked Mr. Learned if he had stated publicly that I had said to him that I would put him out of business. He admitted that he had been making such statements. I told him that such statements were, of course, entirely untrue and unwarranted by anything that had been said by me, and I thought it was due to me and to our company that he should say to the people to whom he had made such statements that he was wrong.

Mr. Learned admitted that he had undoubtedly been mistaken in his understanding of what I said, and he said to me that he would do as I asked and correct the misstatements that he had been making. Our parting was perfectly friendly.

We have never at any time taken Mr. Learned's machines out of his factory, and we have never done anything to interfere with his business in any way, shape, or manner. Up to this time he has substantially all the machines of the United Company that he had when these conversations took place, and has been using them on the shoes that he is making on the Haverhill machines. That is, he is using our turn auxiliaries and
614 our general department machines with turn machines of others and is not paying any royalty on them.

Referring to the letter which was shown to Mr. Learned while he was on the stand and which Mr. Learned did not agree that he had received, defendants' Exhibit 254 is a copy of a letter which I wrote and mailed to Mr. Learned, addressing and mailing it to Newburyport, Massachusetts, where his factory was located and which is his present address.

DEFENDANTS' EXHIBIT 254.

DEC. 27, 1911.

Mr. GEORGE A. LEARNED, George A. Learned Company, Newburyport, Mass.

DEAR SIR: While I have no desire to continue a correspondence with you in which, as shown by your letter of December 20th,

you so incorrectly record your spoken words to me in the presence of others, I cannot permit your letter of that date to close it.

Our conversation was as I stated it in my letter to you of December 18th, and if you now disavow that retraction of the untrue statements you have been spreading, I shall, both for myself and my company, hold you strictly responsible for all the consequences that may follow.

I never made to you any statement that "I would drive you out of business if you did not throw out the machines competing with ours"—either in words or substance—or any statement like it. On the contrary, at our first interview—August 24th—I told you we would give you independent department leases of all machines except Goodyear department machines (which you did not care to use) and sell you all general department machines, and this you acknowledged at our interview of December 5th, and if you allow this untrue report to remain uncontradicted, or seek to further spread it, you will do so at your peril.

Very truly, yours,

S. W. WINSLOW.

The WITNESS:

I recall meeting Frank W. Merrick and Charles Luitweiler at the Hotel Touraine in the summer of 1905. I met them at their request, conveyed to me through Mr. Sampson, and at the Touraine because they had expressed a reluctance to visit me at my office. I had known Mr. Merrick for a great many years, first as an inventor connected with eyeleting machines, although I do not that I had met him for several years prior to this interview.

615 Mr. Merrick claimed to have invented a wax thread sewing machine which they stated was in an experimental stage and did not claim that it was in condition to build. They wanted to dispose of that machine and of the inventions they had developed, and our conversation, at least on my part, was entirely devoted to a discussion of that particular machine.

The subject was opened up by my asking what they wanted to see me for and the substance of their conversation was that they wanted to dispose of their enterprise. I asked them what they wanted for their inventions and the interview really came to nothing.

As to Mr. Luitweiler's testimony that there was no talk about machines and that it was all with regard to their company; and that I asked: "How much money have you got?"; and that I said: "I will see that you never make a dollar"; and as to his testimony that I made statements about the business of Mr. Parsons, of Marlboro, and that I made comparison with a

roulette wheel; no conversation of that character took place. For one thing I never saw a roulette wheel in my life, and I am not familiar with the game. I did not use any such illustration and I did not tell them that I would never let them make a dollar.

The substance of their statements to me was in effect that they wanted I should pay a large price for these inventions which they claimed to have made, upon the basis that it would be cheaper for me to buy them than to let them continue to develop their machines. I told them that that sort of thing did not interest me. And in answer to some statement of that sort as to the amount of business they could do and how much money they could make and how valuable this whole thing was, I told them that I didn't think they knew what they were talking about. That is the substance of the situation.

I have done nothing to interfere with their business and we have not built any machines like theirs. We kept on building our own machines.

My reason for going to meet Mr. Merrick and Mr. Luitweiler was because I knew Mr. Merrick as an inventor in sewing machines and I should have been very glad to have employed him,
616 or if he had had a valuable invention I would have discussed that with him. I didn't seek the interview, and I had no desire to put him out of business or to prevent him from continuing his business.

As to the testimony of Charles S. Johnson, witness for petitioner, that he had some talk with me about a sale of the Tripp Giant leveler which resulted in the drafting of a contract which he refused to sign, and that I said to him that he had better sign it because we were going to have his business anyway; such a contract was drawn, but I did not tell Mr. Johnson that we were going to get his business anyway. Such language as I used was only such as I would use with anyone who was doing the same business that we were but was not producing to my mind as good machines as we were producing; it was not offensive or intended to be offensive in any way or to intimate to him that we would drive him out of business. We have competed with him right along; we have not interfered with his business.

As to the testimony of Charles H. Morse, a witness for petitioner, that in 1901 or 1902 I telephoned for him to come to see me at my office and said that I understood that he was putting out a tacking machine and a metallic slugging machine, and that I said: "You don't suppose that we are going to allow you to put them on the market," and that it would interfere with our business, I have no remembrance whatever of having telephoned to Mr. Morse or of having had any such meeting with him or of making any such statement to him.

At about the time Mr. Morse testified for the United States I met him here in the corridor of the courthouse. I greeted him and shook hands with him and remarked that it had been a great many years since we had met, to which he agreed. I asked him how long it had been and he placed a date back of 1899; I forget just how long ago it was, but he didn't remember having met me since the formation of the United Company. Accordingly
617 if I ever had any such conversation with him as he testified to it must have been prior to the organization of the United Company, but I don't recollect ever having had such a conversation.

Referring again to my interview with Charles S. Johnson about the Tripp Giant leveler, Mr. Johnson was not correct in his statement that this was in the winter of 1902 or the spring of 1903. The date of that talk was a considerable time after that. The interview in 1902 or 1903 was prior to the contract and he then wanted me to acquire their business, but I did not.

Defendants' Exhibit 255 is a photograph of our Beverly plant showing it as it is to-day. Building "A," at the front of the photograph, is 1,120 feet long. The building that we started with in 1903 was 520 feet long. At the same time we built building "B," which was also 520 feet long, and the third building "C" was somewhat less than that in length. There are wings connecting the three buildings which go to the full height of the buildings and contain the lavatories, washrooms, and tool rooms. The fourth building, which is separate from these buildings, is the foundry, and that was less than half its present size in 1903.

When we built these buildings we prepared for a capacity about twenty-five per cent more than the capacity of the three factories of the old constituent companies. We supposed that that would take care of our wants for a great many years, but we have made additions from time to time until we now have a factory twice as large as we contemplated in 1903. This is all concrete construction from the roof to the bottom floor.

Defendants' Exhibit 256 is a photograph showing the same building with the employees included. Practically all of the 4,000 employees are there.

Defendants' Exhibit 257, a circular which is entitled on the outside "An Industrial City, Edition of 1911," contains some views of the interior of the factory at that time.

618 Mr. CHOATE. I should like to put this in, not for the reading matter, which may be disregarded, but for the views of the interior of the factory building, including a hospital and operating room, an industrial training school for the operatives' children, a clubhouse, playgrounds, and a boat club.

The WITNESS. A statement in my previous testimony as to the order of the operations of certain principal machines was incorrect. The correct order of the operations of that group of machines is lasting machine, welt-sewing machine, loose nailing machine, outsole stitching machine, heeling machine, and slugging machine.

In 1899 the Consolidated & McKay Lasting Machine Company had in its employ 89 roadmen and instructors. About half of those were what we term road force to-day.

I have previously testified that in connection with the organization of the United Company neither I nor my associates conceived the idea of acquiring the ownership and control of all concerns engaged in manufacturing and dealing in all kinds of shoe machinery. I have never conceived that idea from the time the company was organized up to the present.

619 In my previous testimony with respect to the cost of equipping a factory with machines in 1899 under the then form of marketing and the cost of equipping a factory with similar machines in 1911 on the wholesale plan, in making my computation I took all the machines that a manufacturer could obtain from us in 1911, including those of the kinds put out by the original constituent companies, and such other machines as we had developed; and the prices which I assigned to the 1899 machines, corresponding to machines sold by us in 1911, were our sales prices in 1911, but I set no figures against machines which were nonexistent in 1899.

In regard to my testimony that before the beginning of this suit manufacturers were allowed either to purchase general department machines or to take them upon lease, since we discontinued leasing the machines there have been a great many requests from shoe manufacturers that they be allowed to take the general department machines upon leases, as they were allowed to do before the bringing of this suit. We have been importuned time and again.

Q. What instructions have you given, or caused to be given, to your agents, the road men, regarding advice to customers respecting the machines of other shoe-machinery manufacturers?

Mr. CHOATE. I only offer to show what the policy of the company, as represented by the instructions of the president to his subordinates, has been with reference to any attempt to restrain the trade of other people in shoe machinery.

Mr. FOWLER. I wish to make the objection and reserve an exception on the record.

PUTNAM, J. It is ruled out.

Mr. CHOATE. Will your honors save us our exception on the question?

PUTNAM, J. If you will state the grounds of your exception. Put them in the record, too.

Mr. CHOATE. We offer to show that Mr. Winslow has caused directions to be given to his agents and road men to advise customers of the United Company's machinery whenever a
620 competing machine was better adapted for the work that they had to do to use it in preference to the United Company's machines, and also to show that on many occasions that has been done—that advice has been given.

PUTNAM, J. We rule it out upon the ground that, after requiring a bill of particulars from the United States upon that topic, in view of that bill of particulars we can't allow the door to be opened in that broad way.

Cross-examination:

Until 1850 or 1860 shoes were made almost entirely by hand. The development of shoe machinery began about 1863 and the first important machine was the McKay sewing machine. That same character of machine is used to-day in making the McKay shoe and there have been very few improvements up to within five years.

At that time the machine-made welt shoe was unknown. Some welt shoes were made by hand. The welt machine was first invented quite a number of years prior to 1890. I can't give you the exact date.

I can't give the date of the commencement of the development of either lasting machines or welt sewing machines. The early patents will show that development. I can not tell who invented the first welt sewing machine or how many had been invented and patented before 1899.

A number of lasting machines had been developed before 1899. One of these was the McKay & Copeland. The Continental was not a lasting machine; it was used to drive the tacks when the hand operator had pulled the leather over on the last, and the operation of pulling the leather over was done entirely by hand. The Boston lasting machine was a similar device. I can't tell offhand what was the difference between the Boston and the Continental machines.

There were also the Chase, Consolidated hand method, and Ideal lasting machines. The Copeland rapid laster preceded the Ideal, the Ideal being an improvement on it. All these various machines were made before 1899, and at least two welting machines had been invented before that and were on the
621 market. There were also a vast number of metallic machines and a number of heeling machines that were

being manufactured by the McKay Company on the market at that time. The layers that make up the heel were attached together by hand and nailed or secured together by glue, and then the heel was attached to the shoe by the heel-attaching machine.

It is not correct to state that all the developments of the principal machines were made before 1899; they have all been developed since 1899.

The pulling-over machine is a principal machine which has first been manufactured since 1899. I don't recall any other machine that does what has been termed a principal operation which has been developed since then.

Many auxiliary machines have been devised since 1899, and the principal machines have been improved in just the same sense that they had been improved for many years prior to 1899. It is, perhaps, proper to state that the invention and development of the principal machines and bringing them up to the state of the art in 1899 was all done under the old system, while the other has been done under our system.

I was connected for a number of years with the lasting-machine business. I was not president of the Consolidated & McKay Company, but was adviser to the manager, Mr. George W. Brown. I was one of the directors, but was not principal owner of the company. When the United Company was formed, I had been connected with the company about nine or ten years. The company was then making the McKay & Copeland, Chase, and Consolidated hand-method lasting machines, the Copeland pinking machine, and three types of hand tackers.

The manufacture of the Boston lasting machine, which was really not a lasting machine, had ceased because it had become obsolete in the development of the art. That company also owned or had the right to manufacture the Continental machine.

622 The McKay & Copeland machine was a bed laster and operated upon heavy work, such as brogans and miners' boots especially. I never knew of its being used on any kind of a welt shoe. Welt shoes were not manufactured in those heavy grades, and the swinging of the toe head of the machine made it impracticable for use on lightweight shoes. Moreover, it was not intended to handle the character of upper leather used in the manufacture of welt shoes. It was, perhaps, both because the machine was too heavy, and because there was something wrong with its construction for lightweight shoes. It wasn't used for that purpose.

I don't see how I can state whether its construction could have been modified so that it could have been used for light shoes. It had not been, and never has been since. I know of no reason why we should try to modify the construction of that machine. Other machines have been developed since that time to last welt shoes.

The McKay & Copeland machine was possibly used on a few McKay shoes, but not very many. The shoes lasted on that machine were standard screw, pegged, and loose nailed.

That machine was not devised by Gordon McKay and Copeland. Mr. McKay was a large owner of the company and had advanced a great many thousands of dollars for the development of lasting machines. Copeland was an inventor who had invented some things used in that machine.

The Boston lasting machine was a power tacker placed upon a stand, and it inserted a tack when a shoe was pressed up against the nozzle of the tack driver. In the use of that machine the operator placed the shoe and the upper upon a jack, just as for hand lasting, pulled over the leather on to the inner sole, exactly as by hand, and each time raised the shoe against the nozzle of the machine, and that automatically set off the mechanism which drove the tack.

623 That machine was used principally on women's light McKay sewed shoes. It was not used on welt shoes and could not be used on a welt shoe. That was partly because it wouldn't bring the upper up against the shoulder of the insole and partly because it didn't leave the tacks standing up as they have to be in the manufacture of a welt shoe. In 1898 I don't think a quarter of one per cent of the shoes lasted were operated upon by the Boston laster. Previous to 1898 it had been used more extensively.

The Consolidated & McKay Company ceased manufacturing the Continental machine some years before 1899 because there was a lot of machines that had gone out of use. We had a stock of them that had been abandoned. That machine was very similar to the Boston and operated in the same general way.

The Consolidated hand method lasting machine was invented by Matzeliger about 1885; that is, he then commenced work on the development of the machine. That was a step-by-step machine, which was intended to duplicate the hand operation except that the machine drove the tack as the upper was drawn over by the pincers of the machine.

That machine was used very largely by shoe manufacturers, and a great many had been put out prior to 1899.

Q. Wasn't that machine used to some extent in lasting welt shoes?

A. It was not, except I would like to modify that answer in this way: At the date of the formation of the United Company in 1899 the Consolidated & McKay Company were at work endeavoring to adapt or improve that machine so that it could last welt shoes. It did have out experimentally in the factories of manufacturers a very few machines. I don't think there were twenty of them, but at the date of the formation of the United Company it was not a successful welt lasting machine. It would not last the toes of the welt shoes properly.

The machine required no development to last the heel of a welt shoe, because the heel of a welt shoe is lasted exactly the same as the heel of a McKay sewed shoe. Lasting the side of the shoe is broadly the same as the McKay, except the necessity for shoving the leather up against the shoulder of the inner-
624 sole and leaving the tacks standing up so that they may be pulled. In 1899 the machine would leave the tacks standing up and it would last against the shoulder of the insole in the shank fairly well, but not as it really should. We were still working on that machine; we were still endeavoring to perfect it and make it a good welt lasting machine.

That machine was known as the nigger-head machine. I don't think a lease had been prepared for that machine, but if it had been it was used for a few months in the year 1898 to cover those machines which were placed experimentally in factories.

It was our intention to perfect that machine so as to make it an efficient welt lasting machine, and we did that. My recollection is that sometime in 1900 we had succeeded in making the machine satisfactory for lasting some kinds of welt shoes. It was commercially successful for some kinds of work, but not for all. It was successful for light work, ladies' shoes, and men's light-weight shoes. It was not used on men's shoes to a very large extent, although it was used on men's shoes.

Q. And could have been used more if you had not had a better machine for that purpose?

A. Well, I can't quite answer that question that way, and if you would like to have me I will explain it.

Q. Now, Mr. Winslow, with reference to this Chase machine, that was the principal machine that the Consolidated & McKay Company owned before the formation of the United Company, so far as welt work is concerned?

A. Yes, sir.

The work that the Chase machine was doing was almost entirely welt work.

The sixteen or seventeen million welt shoes made in 1898 were not all lasted by machine. I can't tell what per cent of them was lasted by machine, but shall be glad to look it up. I can't say offhand whether my statement on direct examination that about half the shoes being made in 1898 were being lasted by machinery applies to welt shoes as well as to other shoes. I will look this up.

625 Q. Upon what machines was this welt lasting being done at that time?

A. Almost entirely by the Chase lasting machine.

Q. That is, the Chase lasting machine was used on men's welts?

A. On men's welts.

Q. And women's welts?

A. No; it wasn't used on women's welts.

Q. Was it used at all on women's welts?

A. I don't know of a single factory or a single machine that was being used to last women's welt shoes.

Q. Well, what was the trouble with the Chase machine that it couldn't be used on women's welts if it was used on men's welts?

A. Well, the upper leather that is used in the manufacturing of women's welt shoes is of course very much lighter than that which is used in the manufacturing of men's shoes, and especially in those days the leather, a great deal of it, was what was called glazed kid, which was a hard finished but light kid leather. The toe head of the Chase lasting machine moves in a horizontal plane across the surface of the sole of the shoe. It had no vertical motion to smooth out the wrinkles that will always appear, and would always appear, in the drafting in of the leather, and that could not be taken out very well by the wipers of the Chase machine.

Q. Then, as I understand, the Chase machine did bring the upper up to the shoulder of the seam; there was no trouble about that?

A. The Chase machine would wipe the leather up to the shoulder at the toe of the shoe.

Q. But it wouldn't quite wipe the wrinkles out of the toe?

A. That is the fact; yes, sir. It wouldn't last the toe properly for a woman's shoe.

The Ideal machine was not developed until about 1895 or 1896. There were very few women's welt shoes that

626 were being lasted by machine, and a comparatively small number of women's welt shoes that were made by machine in 1899.

The trouble with the Chase machine to last women's shoes was that it wouldn't do the work properly. Perhaps I can best explain it by describing the operation of the Ideal machine. In that machine the toe head which carries the wipers has a vertical movement and in lasting a woman's welt shoe that head was moved up and down several times to continually stretch the leather a little at the junction of the edge of the last where the leather is turned over; that construction enabled the Ideal machine to iron out the wrinkles that would appear at that edge. The Chase machine could not do that.

Women's welt shoes are now lasted very largely upon the hand-method machine. I can't state whether they are
627 lasted at all on the No. 5. I should think that they could be lasted on the No. 5 machine, but it is quite a heavy machine for that purpose; and in order that you may understand the situation, wherever they can last a welt shoe satisfactorily by the hand-method machine they use that in preference, because it is a speedier machine for lasting than any of the other machines, but the quality of work which can be done by that machine, especially around the toe, is not considered by the manufacturers so high grade as when you can use the bed machine.

The forward movement of the wipers over the last is substantially the same on the Chase machine and on the No. 5, and on all bed machines. The toes of all shoes lasted almost exactly alike.

This vertical movement of the wipers at the toe which was in the Ideal machine is also in the No. 5 machine, which, in respect to that particular feature, is manufactured on the principle of the Ideal. I think that there is not a model of the No. 5 that shows that. I saw a model yesterday that shows other improvements of the No. 5.

It is not true that at the time the United Company was formed the Consolidated & McKay Company and the Goodyear Company were the only companies putting out lasting machines. My remembrance is that the Seaver Company was putting out lasting machines. That company was one of the acquisitions made by the United Company.

In 1899 the Consolidated & McKay Company was developing the hand method machine for the lasting of any welts, not for the lasting of women's welts particularly. The Chase machine was doing practically all the lasting of welt shoes which were being lasted by machinery, but it was not lasting women's welt shoes.

The Copeland rapid laster, from which the Ideal was developed, belonged to the Goodyear Company. In 1899 the Good-

year Company was putting out the Ideal machine in connection with its other Goodyear machines and, as I stated, it was used practically altogether on women's welt shoes; it was used on other shoes to a very slight extent. The explanation of that is that in some factories several different kinds of
628 shoes are made, that is, a man may make men's and women's shoes in the same factory and he would of course endeavor to do both kinds of work on the same machine if he could. I think there were very few men's shoes that they were trying to last on the Ideal machine.

I can't state the reasons why the Ideal machine could not last men's shoes as well as women's shoes. I was not very familiar with the machine and, in fact, I really knew very little about it at that time, except the kind of shoes it was used upon. I am not quite qualified to state whether it was capable of being used successfully on other shoes, and cannot give the real shoemaking reason why it was not so used. That machine was put out by the United Company for some time, up to the time when the No. 5 machine superseded both the Chase and the Ideal machines. As regards the use of the No. 5 machine on women's shoes, as I stated before, manufacturers prefer to use the hand method welt lasting machine on women's welt shoes or any welt shoes where quality is not the first consideration, because it is a faster and more economical machine. As to whether the Ideal machine could have been easily developed into a machine that would have lasted men's welts successfully, as a matter of fact, I don't know anything about that.

I think that after the formation of the United Company it was manufacturing every single lasting machine that was being put out in the United States except the Seaver machine; and in 1900 we acquired the Seaver Company. At that time there was litigation existing between the Consolidated & McKay Company and the Seaver Company on patents granted to the Consolidated Company in 1895 and 1896, and the Seaver Company was not a doing a successful business.

In 1899 the principal machines that were being manufactured by the Goodyear Company were the welting machine and the outsole stitcher. An inseam sewing machine is a welt sewing machine. Both expressions are used in our leases.

At that time the Goodyear and Eppler welt machines were being made in the United States; there was also the
629 Globe machine. I don't know whether you could truly describe that as being put out at that time. No others occur to me at the moment.

The Globe machine was acquired by the United Company in 1901. I don't understand that the Globe machine was being used in the manufacture of any welt shoes at that time. I think it was being used to manufacture a few turn shoes. As to whether it would do welt work, really I was not very familiar with that machine. It was only acquired at the urgent solicitation of Mr. Bray, as I testified. It was not what might be termed a successful machine. The two welting machines that were being specially pressed on the market at that time were the Goodyear machine and the Eppler machine.

The Richardson machine was a development of the McKay machine, some years afterward.

The development of the Goodyear welt sewing machine was a great many years before the Eppler was brought on the market, although I would not say that the type of Goodyear machine then being placed upon the market was considerably older than the Eppler. My best remembrance is that the Eppler machine was invented about 1892. The Goodyear machines had been in course of development for a great many years. I have stated how many Goodyear machines were out, but I do not know how many Epplers were out. I shall be glad to see if I can give a list.

After the formation of the United Company none of the Eppler machines were called in. Many of the manufacturers changed within two or three years from the use of the Eppler machines to the use of the Goodyear machines. When they changed the Eppler machines were returned to the factory. I can't say whether we kept a record of all the machines that were returned; in the early days the factories were separated, and our data are not as complete as later. I will endeavor to ascertain whether I can furnish a list of the Eppler machines that were returned to the factory. I don't know how many are still outstanding, but I can find that out, if there are any.

630 I was not familiar with the officers of the Eppler Company, but knew Mr. Keith, the president, very slightly at that time. I think I had no interest either direct or indirect in the Eppler Company on February 7, 1899, the date of the issuance of the charter to the United Company; and I think no officer or stockholder of the Consolidated & McKay Company had acquired any stock of the Eppler Company previous to that time.

As I remember the transaction, after or about the time the United Company was formed the entire capital stock of the Eppler Company was acquired by a number of gentlemen interested in the formation of the company. I can not tell you who

they were. They either furnished the money necessary to acquire the Eppler Company or they advanced the money to the United Company. Those gentlemen were not interested in the Consolidated & McKay Company. I do not know of any particular shoe manufacturer who acquired a large part of the stock of the Eppler Company.

Q. Now, in your negotiations for the formation of the United Company with the Goodyear people, wasn't the fact that the Eppler Company was under the control of your company used as an inducement to the Goodyear Company to prevail upon them to enter into that combination?

A. Not in the slightest degree. In fact, the acquisition of the Eppler Company or any movement to acquire that was not entered into until after our arrangements to come together had all been settled.

To the best of my remembrance it was settled that the companies would be consolidated two or three weeks before the obtaining of the charter; the work leading to the obtaining of the charter was started immediately after the decision to put the companies together was arrived at.

Our negotiations were in progress from about the middle of 1898, and the first meeting was at Mr. Elmer P. Howe's office on State Street. The Eppler Company was not considered at the beginning of those negotiations, nor was the McKay Company; just the Consolidated & McKay and the Goodyear Companies.

631 The McKay people were approached because I advised it, and I advised it because I believed that with the metallic and heeling machines and the Goodyear machines and the lasting machines we could give better service, get a better product from the machines, and give better results both to the manufacturers and to ourselves.

It is true that there would be a broader field to operate in. But the real reason was, first, to give the service of all of these machines and get a better result from the co-operative action of the machines together. That is to say, the unification of the service would allow those machines to be kept in continuous operation, giving a larger productive capacity to them and at less expense than in any other way.

The McKay people were approached by me personally and I first mentioned the matter to Mr. James J. Storrow; but I did not approach him before the decision to form the United Company had been completed and we had started to obtain the charter. I do not know whether we had really obtained it then.

I cannot say whether I spoke to Mr. Storrow before the Eppler matter was taken up, or whether the Eppler matter was suggested by Mr. Storrow or by myself. I did not approach any of the Eppler people myself but had an outside party, Mr. Henry B. Endicott, go to them. I cannot say with whom he conferred and I gave him no directions about that. I knew he was acquainted with the parties managing the Eppler Company, of whom Mr. Keith, so far as I knew, was one of the prominent men. I did not even know who the president of the company was.

I think Mr. Endicott reported to me but do not remember what his report was. I think the negotiations with the Eppler people continued only a few days. I never conferred personally with them. I do not recall with whom he was conferring and I do not know that I ever knew. I think Mr. Keith was in this country at that time.

Q. But it was fully understood with the Eppler people that they were to come in, before the charter was ever obtained?

A. No, sir. To the best of my remembrance the charter was obtained and no word had been spoken to either the McKay people or the Eppler people.

632 The best of my recollection is that the charter had been obtained for the United Company, or was in process of being obtained, before any steps were taken with the McKay people or the Eppler people. I had nothing to do with obtaining the charter.

Just before the consolidation in 1899 the Eppler Company was manufacturing a welt machine, an outsole stitching machine, and two auxiliary machines. The Goodyear machines were making Goodyear welt shoes and the Eppler machines were making Eppler welt shoes. The Goodyear Company was making a welting machine, an outsole stitching machine, and auxiliary machines that performed the same functions that the auxiliary machines of the Eppler Company did, and a number in addition.

I have already described the difference in the character of the welt sewing machines; they were both making welt shoes. My best remembrance is that the Eppler machines were not being used to manufacture any women's shoes, for the reason that the Eppler machine laid the chain stitch in the channel while the Goodyear machine laid it on the outside. Both machines were being used in the manufacture of men's welt shoes.

The distinction by which Goodyear welt shoes and Eppler welt shoes were principally known was that in the Eppler welt

the chain stitch was in the channel while in the Goodyear welt it was on the outside of the welt.

The Goodyear machine was being used to manufacture women's welt shoes as well as men's, but I do not know of any women's welt shoes being made by the Eppler machines.

The Goodyear Company had an outsole stitcher that was being used on Goodyear welt shoes, and the Eppler Company had an outsole stitcher which was being used in the manufacture of Eppler welt shoes.

633 It is not proper to say that the Goodyear Company was making auxiliary machines which were doing exactly the same service with reference to the Goodyear shoe that the auxiliary Eppler machines were doing with reference to the Eppler shoe. The respective machines were intended to perform the same operation, but they did it in distinct and different ways.

Those auxiliary Eppler machines were the rough rounder and the stitch separator. The Goodyear rough rounder was intended to perform the same operation in the manufacture of the shoe but did not do it in the same way; and that is true as to the other auxiliary machines made by the Eppler Company, so far as they made them.

It is true that in obtaining the Eppler Company we did not broaden our field, because it was embraced in the Goodyear Company machines.

Q. I believe you claim the Eppler machine was not hardly as good as the Goodyear welting machine?

A. It wouldn't make as good a shoe; no.

Q. But it was being put upon the market?

A. It was in use.

Q. At that time, in the same territory in which the Goodyear machine was being put upon the market?

A. It was in use at that time, and they were manufacturing Eppler welt shoes with it.

As I have testified, we took the Eppler Company to get rid of the litigation which then existed, and for no other purpose. We didn't want the machine; it was just to get rid of that existing litigation. I have no recollection as to how much the Eppler stockholders were paid. I have endeavored to find out and I can not. I have not any doubt that they were paid as much as $100,000 but I can not state whether it was as much as $200,000. I do not remember how much the capital stock of the Eppler Company was but I would be glad to ascertain. The stockholders of the Eppler Company were paid cash and no stock of the United Company was issued to them. Stock was issued in exchange for the stock of the other companies.

The McKay Shoe Machinery Company at that time was engaged in manufacturing metallic fastening machines and heeling machines. It owned the McKay Metallic Fastening Association and the McKay & Bigelow Heeling Association, I think. I can not tell how long it had been in existence. It was doing a very large business. I think the Metallic Association and the Heeling Association, the stock of which was owned by the McKay Company, were putting out nearly all the metallic fastening machines and nearly all the heeling machines that were being made in the United States.

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It is not quite true that in the formation of the United Company there was concentrated into the hands of that one company the manufacture and sale or lease of practically all the welt sewing machines, lasting machines, and auxiliaries with those machines, metallic fastening machines and heeling machines, that were being made in the United States. It is true that the best machines for heel attaching and for metallic fastening, welt sewing, stitching, and lasting were brought into one company. But there were in use in the United States a great many heeling machines, for instance, that were not being made by the McKay Company. There were some welt sewing machines, or machines that could be used for welt sewing, that I think at that time were used principally for turn sewing, that were not being made by either of the constituent companies. I think all the lasting machines except the Seaver were being made and put out by the Consolidated & McKay Company. Of course, machines which did the same work that was done by the auxiliary machines of those companies were being made by several other parties. To the best of my knowledge and belief the metallic, heeling, lasting, welt sewing, or outsole stitching machines that were being made by other parties were inferior to those owned by the constituent companies.

The concerns that were making heeling machines and metallic fastening machines at that time, so far as they advertised in the trade papers here in New England, are all found in the list which I filed (defendants' Exhibit 221) of manufacturers who were making shoe machinery and findings at that time and who advertised in the trade papers in New England.

I can't from memory specify some of the concerns in the United States that were making heeling or metallic fastening machines at that time. But they are all found on that list, so far as they advertised in the papers. I can't say how many others there were. I haven't attempted to look those up. As to whether I know of any other concerns, I have said I don't

remember any others. There might have been others, you know.

635 That list indicates the machines that those concerns were making only as it is shown by the advertisements. I will endeavor to furnish a list that will show what heeling and metallic machines were being made at that time, besides those made by the McKay Shoe Machinery Company.

Q. Mr. Winslow, was there as much as one per cent of the business of manufacturing heeling machinery and metallic machinery in the United States done in 1899 by other concerns than the McKay Shoe Machinery Company?

A. I can't answer that question, Mr. Fowler, because in the first place I was not at all familiar with that end of the business. And in the second place I haven't looked up any data since then, and I really don't know how one could get at those facts. Many shoes, you know, are heeled and many are not heeled, and there is no way of telling how many were heeled, so that it would be almost impossible to get that data. I would be glad to do the best I can, but I haven't done any work along those lines. If you would like to have me, I will see if I can find out.

Q. Unless you want to I will not especially ask for that.

A. All I mean to say is—I haven't tried to get that data, so I am unable to answer you.

I think that no inventory was taken of the Eppler Company's assets and that no inventory of any of the companies was taken at the formation of the United Company. The entire stock of the McKay, Lasting, and Goodyear Companies was obtained, and as I remember the properties were not transferred to the United Company until some time in 1900 or 1901, and I think no inventory was taken until then.

The stock of the United Company was issued at about its worth; that is, there was no water in the stock. It is my remembrance that during the last month or so before the formation of the United Company there was practically no change in the market price of the Goodyear or Lasting Machine Com-

636 pany stock, but that the McKay Company stock did increase in price shortly before the company was taken in. The market price of the Lasting Company stock had been above par for a long time and the Goodyear Company stock had been away above par for a long time. My remembrance is that the McKay stock of which par was $10 was selling at $8 or $9 previous to the beginning of the negotiations.

In forming the United Company we issued five million and a half of the United Company stock for five million of the par value of the McKay Company stock, as I remember it. I do not

recall the ratio as to the Lasting Company stock, but I think the figures stated in the bill are correct.

We did not pay the McKay people any more than their stock was worth; it was worth more than the market price.

I should not say that the Goddus were engaged in the business of manufacturing metallic mechinery; I have explained that fully in my direct examination. They did not have a line of machines; my remembrance is that they had three or four separate, distinct types of machines.

637 There was litigation between the McKay Company and Goddu, senior, his sons and the Goddu Company. That was based in the idea that those inventions belonged to the McKay people because they had employed Goddu. I can not state whether suits had been brought for infringement of patents but, so far as I know the facts, infringement of patents was claimed by the McKay Company.

I do not know whether the development and manufacture of those machines would have been stopped by the litigation. The machines as machines were stopped, but not because of the purchase by our company. They were stopped by the action of the minority stockholders of the Goddu Company. The minority stockholders took such a position regarding the Goddu Company that the United Company couldn't have developed those machines if they wanted to. The stock that I have particularly in mind is that stock that was represented by Mr. Van Wagenen and his daughter.

The United Company purchased a majority of the stock of the Goddu Company. I do not think it followed as a fact that that stopped the further development of their machines. They were not developed afterwards. The properties of the Goddu Company were not subsequently conveyed to the United Company. We did not buy all the stock of the Goddu Company but got enough to get control of it.

The Davey Pegging Machine Company was manufacturing pegging machines. I do not know of any other company engaged in making pegging machines at that time, but there were thousands of pegging machines in the country then. There were two other types of machine, the Varney and the New Era, which were out in 1899.

All the stock of the Davey Company was owned by the Lasting Machine Company and it came into the United Company as a part of that company. The Lasting Machine Company had acquired it two or three years before that. I would be glad to state if desired what that pegging machine had to do with our

638 lasting machine business. The Davey pegging machine was used for fastening the outer sole by wooden pegs.

Such talk as there was regarding who should be president of the company and the formation of the company was between representatives of the Goodyear Company and representatives of the Lasting Machine Company. The McKay Company did not have anything to do with it. In those discussions the future policy of the company was considered only as I talked with Mr. Howe personally, as representing the Goodyear Company. I discussed with him the advantages to be gained by a consolidation of this kind; and also the policy to be pursued by the company in the ways I have already testified to—the advantages to the manufacturers and to ourselves of bringing the companies together, in the economy of manufacture of the machines, and in the quality of the services to be rendered to the manufacturers. There was not the slightest difference in our views with regard to that matter. As to whether or not I agreed with the sentiment expressed by the Goodyear Company in its address to its stockholders, I never saw that until after it was issued. After these various negotiations and consultations I believe the officers and directors of each company issued an address to the stockholders of that company, and I believe those circulars are in evidence.

Referring to the statement in the first paragraph of the Goodyear Company's circular (plaintiff's Exhibit 152) in regard to the advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most efficient types of shoe machinery, I had nothing to do with that circular and did not see it until it was issued. I do not know what Mr. Howe meant by that but I can state what I think he meant, if desired.

As to whether the original purpose of the United Company was set forth in the following statement in that circular:

"The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock."

639 We should not have hesitated to buy machines that we thought would advance the art of making shoes. I can not state it any better than that.

I was present at practically all the negotiations that were had leading up to the formation of the United Company, and I immediately became its president. I have been largely instrumental in directing the affairs and policy of the company from that date to the persent; so that if anybody knew its purposes and objects, I did. It was not one of the objects of the company to purchase from time to time other shoe machinery companies, and it was not our intent in the sense in which I am being interrogated.

George W. Brown was treasurer of the United Company and I suppose he had authority to execute certain kinds of contracts. I was in constant communication with him about various matters affecting the company and its policy.

I do not know what Mr. Brown referred to by the recitations in the agreement dated September 11, 1899, between the United Company and Henry W. Peabody & Company, as follows:

Whereas the United Company has acquired control of the boot and shoe and leather working machinery made by the following named corporations, doing business in said Boston, namely" * * * "and contemplates the acquiring of control of other lines of boot and shoe and leather working machinery and boot and shoe findings, except leather linings, lasts, and finished boots and shoes."

I never saw that contract until long afterwards. I think we were negotiating then for one of the eyelet making companies. I could not say whether eyelets were the only line of shoe machinery or findings that the company contemplated acquiring at that time. I was abroad at the time that contract was made and had been abroad for two or three months. I have no doubt that there was some other concern that they were negotiating with then as to which that language perhaps applied, but I knew nothing about the language or the contract until long after it was made.

640 As to the auxiliary machines, the function of the channeling machine is to cut a channel around the edge of the sole in the manufacture of welt shoes, preparing it for the welting machine.

Q. Now when that channeling machine is doing that work, it is not working in conjunction with the welting machine, is it?

A. No, sir; not if I understand your statement correctly.

Mr. CHOATE. What do you mean?

Mr. FOWLER. I mean just exactly what I say.

The WITNESS. Preparing the work for the welt sewing machine.

Q. But it is not doing it in connection with the welting machine. That is, the welting machine is not operating upon that piece of sole leather at that time at all?

A. Not the insole channeling machine.

Q. Well, is there any channeling machine that is operating in conjunction with the welting machine—that is, when the welting process is going on?

A. No, sir.

Mr. CHOATE. By the words "in conjunction with" you mean at the same time, I suppose?

Mr. FOWLER. Of course I mean at the same time.

The WITNESS. Well, of course, it is not connected up with the welt sewing machine, if that is what you mean.

The operation of the lip turner is a separate process from cutting the channel. After the channel is cut the lip of the channel is pulled up through an independent operation on a different machine. That is true with reference to everyone of the auxiliary machines. There are no two that operate on the same shoe at the same time. Those operations are as separate and distinct as the lasting operation and the welting operation, only they are not so far removed from each other.

We call those auxiliary machines because they prepare the work for the operation of the machine which sews the upper and the inner sole and the welt together. We call the welting, lasting, heeling and metallic fastening machines principal machines because they perform operations which are treated as measuring operations for the entire set of machines and because their operations preceded in most cases the development of the auxiliary machines. The auxiliary machines in many instances did work that had been done by hand and their development succeeded the development of what have been termed the principal machines. Quite a number of the auxiliary machines have been developed by the United Company.

I testified that when our factory was originally constructed we contemplated that there would be an increase in our business of 25 per cent within a decade, but that it turned out that we had miscalculated and we had to extend the factory much earlier than we had expected. This increase was partly because of the additional auxiliary machines that we had developed in
641 the meantime and partly because of the increase in the manufacture of shoes.

Immediately after the organization of the company our welting, outsole stitching and lasting machines were doing about all the welting, outsole stitching and lasting that was being done in the United States.

Q. And so with your heeling and metallic fastening machines?

A. Not so much the heeling.

As to whether the increase in our business did not result from the increase in the number of shoes made, and particularly of Goodyear shoes, rather than from any increase in the proportion of our business to all business done, there were several reasons which led to the increase in our business. I have testified that when the United Company was formed about 50 per cent of the shoes being made were being lasted by hand, so that one source

of the growth of the business was the increasing of lasting by machinery. Another source of the growth was the increase in the manufacture of Goodyear welt shoes and the consequent adoption by many manufacturers of auxiliary machines that were in existence in 1899. Further reasons were the development of new machines, and the increased use by manufacturers of the heeling machines and heel attaching machines.

Substantially all our machinery is made in that one factory at Beverly.

We regard the Rex pulling over machine as a principal machine. There are several auxiliary machines that go along with it. We charge a royalty on that system, one on the Goodyear system, and one on the lasting system.

It is true that the auxiliary machines are put out in connection with the other machines and that we charge no separate royalty on any one of the machines that we call auxiliary machines. We do not charge a rental on the auxiliary machines when they are taken on the initial premium basis.

Prior to the formation of the company the initial premium on the automatic leveling machine was $500, with no royalty, except that it was to be used in the manufacture of shoes that had been welted and stitched on the Goodyear machines. That
642 amount did not represent the cost of building the machine and allowed nothing for the money invested in tools or spent in producing the machine. The same amount has been charged up to the present time when the machine is
643 taken on the initial premium basis. In 1905 the manufacturer was given the option to take that machine at an annual rental of $35 a year, without initial premium. When he takes it on the initial premium basis he pays $500 and it is still our machine and it comes back to us when the lease expires. All that we realize out of it is $500 and what repair parts go into the machine.

Of course in all cases we furnish the service to take care of the machines. The manufacturer pays for the repair parts, but our men put them into the machines and keep the machines in working condition.

My remembrance of the lease is that when the manufacturer takes the machine on the rental basis there is a return charge if the manufacturer returns the machine before the expiration of the lease, and he has to keep it in good and efficient working condition.

Correcting my statement that none of the auxiliary machines had any royalty, after the introduction of the pulling over machine and the development of some of the auxiliary machines

in the pulling over department, we did establish a royalty on some of the auxiliary machines and reduced the royalty on the pulling over machine if the manufacturer did not take the auxiliaries. That is, we have a form of lease by which a manufacturer can take the pulling over department auxiliaries on a royalty. My remembrance is that the royalty was one-eighth of a cent for each of the auxiliaries, or half a cent for the pulling over machine with no royalty for the auxiliaries. That applies to the principal auxiliary machines of the pulling over department, some of which are not used in the manufacture of certain kinds of shoes, which was the reason for this change.

644 Q. Referring to the leases, did not the Consolidated & McKay Company before the formation of the United Company have a form of lease for its Consolidated hand method lasting machine that required an initial payment of $300, but the use of the machines was unrestricted, entirely unrestricted, as to other machines?

A. That was prior to the formation of the United Company?

Q. Yes.

A. Yes, sir.

Q. That is, it was tied in no respect to any other machine, either a lasting machine or a machine of any other kind?

A. I should have to see the lease in order to testify to that fact.

Another form of lease (plaintiff's Exhibit 9), used by the Consolidated & McKay Company for the hand method machine before 1899, required that the machine be used to its full capacity and that if additional machinery was needed for performance of work of this character such additional machinery should be obtained from the Consolidated & McKay Company.

That company had a third lease (plaintiff's Exhibit 10) which was prepared for the Consolidated hand method welt lasting machine, a different machine which we were attempting to develop for welt work. That lease contained the same provisions as the lease of Exhibit 9, except that the royalty of Exhibit 10 was one cent a pair and the royalty of Exhibit 9 was five-eighths of a cent. The royalty of Exhibit 8 was one-half a cent with an initial premium of $300.

The lease of Exhibit 10 was made in April, 1898. We had a few of the welt lasting machines out in the factories.

645 The lease of plaintiff's Exhibit 16 was adopted in September 1900, and was the first lease for the Consolidated hand method lasting machine adopted after the formation of the United Company.

Q. That lease provides for a return charge of $150 and a minimum royalty of $15 per month, less one-twelfth per month when

the machine is wholly idle, and it contains the full capacity clause, the prohibitive clause——

A. I don't know what you mean by that.

Q. I mean the clause which prohibits its use on shoes operated upon other than welters, stitchers, turn sewers, or metallic fastening machines which belonged to the United Company.

A. It limits the use of the machine to certain shoes which have been operated upon by other machines.

Q. By those particular machines I have mentioned?

A. Yes.

Mr. FOWLER. It also contains the exclusive use clause, and contains finally the clause which gives the company the right to cancel the lease, provided the condition of any other lease existing between the lessor and lessee is violated.

The WITNESS. It contains the option on the part of the lessor to cancel lasting machine leases if the lessee does not use lasting machines obtained from the lessors exclusively.

In December, 1900, we adopted the lease of plaintiff's Exhibit 15, which was gotten up for the Consolidated hand method machine for lasting welt and turn shoes.

Q. And this lease contains the same provisions as Exhibit 16, except the prohibition clause does not extend to metallic fastening machines?

A. In Exhibit 16 the reference to welt and turn shoes, of course, had no bearing. It was only inserted in there so that if the machine, after it was in the manufacturer's factory, was remodeled without coming back to our factory, so as to do welt work, or welt and turn, then it would become Exhibit 15 646 and would have that same standing. It had no bearing as it was to welt and turn work, and was, in fact, limited to the lasting and metallic departments as used. Of course that machine wouldn't last welt and turn work. That is, it was not adapted to the manufacture of welt shoes. It was got up for use by manufacturers manufacturing McKay and other shoes.

None of these leases prohibited the use of these lasting machines in connection with McKay sewing machines. As to whether this clause in section 4 of Exhibit 16 applied, so far as sewing machines were concerned, to welting, it didn't really apply, for that machine could not be used for that purpose. At this time we did not own the McKay machine and were not putting out any McKay machines at all. It is not true that these sections were arranged with that in view. That has no bearing upon the question whatever. There was no limitation in connection with heeling machines either. So far as welt sewing or turn stitching is concerned, that clause in section 4 should be out

of the lease. I don't know why it was ever in there. That particular lease limited the use of that lasting machine to footwear that was operated upon by metallic machinery, so far as they had those machines.

The second lease, Exhibit 15, was gotten up especially
647 for welt work, and that limited the use of the machine, as stated in paragraph 4, to shoes welted or stitched on our machines or turn shoes made on our turn sewing machines. As a matter of fact, that machine was not used in the manufacture of turn shoes.

The lease of Exhibit 14 is the unrestricted lease for the consolidated hand-method lasting machine, and the right is reserved to the lessor if the machine shall not earn $75.00 per year to take back the machine, returning to the lessee one-third of the amount that he has paid. This lease contains the full-capacity clause and an option reserved to the lessor relating to exclusive use, to be exercised under certain conditions.

As regards the premium stated in section 5 as $50.00, this lease happens to be a lease for a rebuilt machine. The regular initial premium was $300.

Clause 7 reserved a right to the company, in case the manufacturer did not use our machines to their full capacity, or for lasting the shoes that he could last on our machines, to take out our machines. This was not obligatory, but gave us that right. As to whether it gave us the right to cancel this lease and all other lasting-machine leases, it gave us the right, if the manufacturer did not last on our machines all his shoes that he lasted by machinery, to take out our lasting machines.

As to whether this lease also contained a clause which authorized the cancellation of all the company's leases in case there should be a breach or default of any condition in that or any other lease, for not paying his royalty or in the conditions recited down to and including the sixth clause, I believe.

Q. Taking the leases of the Consolidated & McKay Company, you did put out a lease which required an initial payment and which did not tie this machine to any other machine of your company at all?

A. I think not in 1898. Will you give me the particular exhibit that you refer to?

Q. That was Exhibit 14.

648 BROWN, J. Is that what you mean, Mr. Fowler, 14?

Mr. FOWLER. I think that is it, your honor. That is my recollection. I think that is the one which had no tying clauses in it at all.

The WITNESS. Of course, I don't know what you mean by tying clauses.

Q. I don't mean 14. I mean 9 and 10.

A. 10?

Q. It is No. 8.

A. No. 8? Yes.

As to whether it is true that clause 8 of plaintiff's Exhibit 14, which you say is the clause giving the company the right to cancel all leases in case of breach or default in connection with the condition of any lease did not appear in any lease of any company prior to the formation of the United Company, I understand that the language of that clause 8 of that lease is in effect in previous leases and I also understand that this lease only assumes that the manufacturer has lasting machines from the company. It does not assume that he has machines in any other department.

Q. Well, it refers to leases of all machines.

A. Well, he is not limited in the use of that machine, is he, to work done with any other machine?

649 Referring to Exhibit 20, it is not true that the United Company never had any unrestricted form of lease for the McKay & Copeland machines. Such a lease was in use by the Consolidated & McKay Company, and was continued in use by the United Company up to 1903. Then we adopted a lease, four years after the company was formed.

Q. Which required the payment of an initial premium, a minimum royalty of $125 for each consecutive twelve months, and contained the full-capacity clause, the prohibition clause applying to welting, stitching, metallic, and heeling machinery—the exclusive use clause applying to both lasting and tacking devices—and the clause giving you the right to cancel all leases in case of breach or default of conditions?

A. I think all of those conditions were contained in the prior lease of the Consolidated Company, except in the limited license, and the price had been reduced in 1903, or before then. This is the only lease that the United Company ever got up for the McKay & Copeland lasting machine, because there were very few of those machines ever in use, I think only 200 or 300, and I think a great many less now.

I stated that nearly all welt work was done on the Chase machine. It is not true that we never had any unrestricted form of lease for the Chase machines.

Comparing the lease of plaintiff's Exhibit 19, which was the United Company's form of lease for that machine, adopted in June, 1901, with plaintiff's Exhibit 7, the lease used prior to the

formation of the United Company, which was continued in use up to 1901, the lease of Exhibit 7 contained a requirement to take additional machines from the company. The royalties were as stated in the schedule at the end of the lease, and I think particular attention should be called to paragraph 12. With the exception of the limitation in the use of the machine as to welt work in paragraph 4 of Exhibit 19, with the turn sewing machine, metallic machine, and so on, and except that in that lease the royalty had been reduced permanently to half a cent, I think there is no difference, in effect, between the two leases as I understand them. In the lease of Exhibit 7 the manufacturer
650 was definitely required to take additional machines and not to have them in his factory for certain purposes, such as reducing the price of hand lasting or controlling his hand lasting, or influencing a trade with any other lasting-machine company.

Any manufacturer could have had the previous lease, Exhibit 7, if he preferred it. That was always open to any manufacturer. Of course, the royalty requirements were very much in excess of what they were under the United lease, as shown by the schedule.

I think no figures have been put in that show how many lasting machines have gone out or are out under the unrestricted system, except as to the hand-method machine. The Chase machines did not increase in number after 1899, but all that were out were out under the old leases up to 1901.

The lease for the Ideal lasting machine that was used by the Goodyear Company tied the Ideal to the Goodyear system. As to whether there has ever been any unrestricted form of lease for the Ideal machine, I don't recall any different lease ever used by the United Company for the Ideal machine from that of plaintiff's Exhibit 18. It contained the full-capacity clause, the restrictive clause applicable to the welt stitching and turn sewing machines, and the exclusive-use clause. It has been the company's policy to give the manufacturer an unrestricted lease for the Ideal machine if he wanted it.

In the statement which I gave to the St. Louis manufacturers in May, 1910, there were given the conditions under which they could have those machines which they would really want, and the only lasting machines included in that statement were the Consolidated hand method and the No. 5, because those were the machines in which they were interested.

I do not understand that the independent and the restricted leases are more sharply drawn as to the No. 5 lasting machine than as to any other machine. I understand that the two forms

are distinctly and sharply drawn as to all of the principal machines.

By the Goodyear leases the welt sewing machine is limited to use upon work that is to be stitched upon the stitching machine, and the stitching machine is limited to work that has been welted on the welt-sewing machine. They are limited to the manufacture of Goodyear welt shoes, which can only be made by the use of the two machines together. All the other machines in that department are regarded as auxiliary machines, and each of those is limited to use upon shoes that have been operated upon or are to be operated upon by the Goodyear welting and stitching machines. Auxiliary machines doing any of the operations that are performed by any of our auxiliary machines

651 may be obtained from anyone and used in connection with the welter and stitcher. One reason for this is that our royalty is measured by the principal machines. As a matter of fact, we wouldn't lose anything if work was done upon the same shoe by some other auxiliary machine.

Some auxiliary machines for welt work are being manufactured by others, but a great many of them are not manufactured by any other companies. For illustration, we have developed machines that do work always done by hand before.

I will state one reason why the United Company has not adopted a form of lease for the Goodyear auxiliary machines which would permit them to be used in connection with welters and stitchers manufactured by other companies, upon payment of a royalty. Of course our machines are all taken care of in the factories, and the expense of taking care of individual machines would be very large and no prices have been established for that. It was not the policy of the Goodyear Company, and we have developed along the same lines trying to furnish to manufacturers the greatest amount of help that we could in manufacturing Goodyear welt shoes, and it was only on these lines that we could see how to give the manufacturer the greatest value for the money. We spent large sums in developing these auxiliary machines, perhaps much in excess of their value as machines, or what we could charge for, but there was every incentive to do it to develop the manufacture of the shoes made by the principal machines.

652 Q. Suppose a manufacturer owns a welting or outsole stitching machine which he has purchased outright from someone else, a machine which will do as good work as your machine, wouldn't it be profitable to the manufacturer to obtain the use of your auxiliary machines in connection with it? Now, I ask you that because you stated you wanted to do the best thing for the manufacturer.

A. Of course, such machines have got to appear before there is any practical answer to that, haven't they, Mr. Fowler? There never have appeared yet machines which have brought that question forward. I think I am fair in saying that the company would be quite prepared to meet that condition when that condition developed. Up to the present time we have spent enormous sums of money, spent it intelligently, done all we knew how, to advance the art of making the Goodyear welt shoe cleanly and following the lines that were adopted years prior to the formation of the United Company. I am unable to think of any way in which the public or the manufacturers could be better served, by which we could give them as much for their money, as the method that we are now pursuing. It is perfectly manifest that it would be impossible to equip a small manufacturer's factory with the number of auxiliary machines that we have, or that he would need, to keep in the race with the big manufacturers under any other system than that that is now employed.

It is not fair to state that we will not permit one of these important auxiliary machines that we have developed and are developing to be used in connection with a welter or outsole stitcher made by any one else. We have followed the line which in our judgment would give to the manufacturers of shoes the greatest amount of value for the money that we received, and there has been no other reason for it.

Q. Regardless of reason, Mr. Winslow, isn't it a fact that you won't permit of one of these important auxiliary machines that you have developed to be used in connection with a welter or out-sole stitcher made by anybody else?

A. Well, that question hasn't arisen, Mr. Fowler. I therefore don't think that your question is a fair one. Should a welter or a stitching machine that was the equal of our machine be developed and offered to the manufacturers, and the developer of that machine or that concern were not attempting to use it as a blackmailing proposition, or attempting to make shoes and call them Goodyear welts when they were not, I can quite understand our company to be perfectly willing to establish prices for its auxiliary machines.

653 As to whether with that provision in these leases there is no inducement for anybody to develop any machine, that is not true. It is not fair to assume that our development along a certain line, which was adopted prior to the formation of the United Company and which has developed the manufacture of Goodyear welt shoes 500 per cent, was because we wanted to keep anybody out.

Mr. FOWLER. I am not assuming anything.

The WITNESS. That is what your questions lead to.

We have never had occasion to formulate any lease which would permit these auxiliary machines to be used with anybody else's principal machines.

Let me state this: We have, as a matter of fact, established or put riders on leases to allow some of these auxiliaries to be used in the manufacture of McKay sewed shoes as a separate proposition where manifestly our own interests so far as the development of Goodyear welt shoes have not been advanced.

654 We have always done that sort of thing. I can give you instances of it six or seven or eight years ago. The assumption that these leases that you have put in, or have been putting in, represent the policy of the company is entirely unfair. We have riders continually, when a condition arises, by which we let manufacturers use machines. They only represent just exactly certain notices as to how those machines should be used for the money that is paid for them, nothing more.

My recollection is that the heeling-machine lease of the McKay Company required the manufacturer to pay royalty on all the shoes that he made, and if he did not do all of his work on heeling machines held from the McKay Company they had a right to cancel all of his leases.

As to our reason for tying the heeling machines to the welting machines in 1904, we felt that we were entitled, if we took off all the initial payments that we received for the Goodyear system of machines, to have the manufacturer use our heeling machines, or entitled to limit it to use with the welter and stitcher.

Q. In what way did you expect to obtain any compensation for ceasing to charge the initial premium?

A. Well, it was just so much more volume of business in a given factory. Take a factory that was making a small number of shoes; they would want a heeling machine, they would want a complete outfit. The consecutive operations of the machines would be much better; the cost to the company would be much less of keeping those machines in condition to operate.

Q. That is, you expected to get your compensation by requiring the operators to put in more heeling machines; isn't that true?

A. No; that isn't.

Q. Well, would there have been any additional compensation if it had not brought about the use of your machines?

A. Well, the productive capacity of a series of machines of course depends entirely on the way the work travels through the machines—the regularity of operation. One machine broken down—take a heeling machine obtained from someone else and suppose it is broken down, the operation of the rest of the machines preceding that is very likely to stop. The manufacturer of the heeling machine may not be one who furnishes any service with the heeling machine; in fact, I don't know of anyone that does. I think you should always remember that our company is the only one who furnishes service to keep the machines in condition to operate.

Of course this helped to develop the manufacture of Goodyear welt shoes by making it easier for the manufacturer to increase his line of those machines or to enter into the manufacture of Goodyear welt shoes, and in that way it would call for
655 more heeling machines. The heeling machines that a manufacturer takes from us on those terms are limited to work that has been welted and stitched on Goodyear machines, but the Goodyear leases do not require him to heel those shoes on our machines or to take heeling machines or any other machines from us. Our object in inserting that clause in our heeling-machine leases was not to increase the number of machines of ours they were using, but to increase the productivity of the machines. If we could increase our business I suppose there would be more machines, but what we wanted to bring about was the productivity of the machines that were in use.

A manufacturer starting in business who wanted our heeling machines would not have to take our welting machines; he could take them under the independent lease.

As to my previous testimony that the additional machinery clause was omitted from all our leases before 1907, I should have added, in connection with the independent metallic lease of Exhibit 33, that I have not felt quite at liberty to bring this lease into harmony with the other leases because this lease was prepared in accordance with my agreement with the manufacturers, and I felt that I might be accused of doing something different from the understanding. That is the only reason that the lease of Exhibit 33 has been allowed to continue in that form. That provision, however, is not what I have called the additional machinery clause, but it amounts to an option clause. The manufacturer does not agree to take additional machines. The condition in the lease, that if he does not all metallic machinery can be taken out, is equivalent to the option clause I have referred to in the seventh clause.

As to the lease of plaintiff's Exhibit 34, printed in 1911, that form of metallic lease continued down from 1901 substantially the same, but I do not understand that the manufacturer breaches that lease if he puts in any other metallic machinery.

It was in consequence of the increased price of copper that we limited the use of the metallic machinery on the restricted lease to work that had been done on certain other ma-
656 chines. That was in 1900. In February, 1901, all of the manufacturers had presented to them the option of taking the restricted form of lease or the independent form of lease. Every manufacturer in the country had the option to take either form of lease. He could take one and change over within a year or two or he could take the other one and change over at any time during the life of the lease.

Q. Well, what was the price of copper when you made that change—tied those machines together?

A. My remembrance is that it was sixteen and one-half or seventeen cents.

Q. Didn't the price of copper go down the very next year to twelve cents?

A. I don't think so.

Q. Where it was the year before the formation of the company?

A. It may have gone down the next year.

Q. If it went down to twelve cents, why didn't you untie the machines then?

A. And tie them up again when it went to twenty-six?

Q. If that was what was troubling you, why, yes. Why didn't you tie them and untie them as copper went up and down?

A. That is not a practical proposition. We did not increase the price of material existing at the time when the new company was formed. At that time or at any time since the manufacturers who took their machines and paid ten per cent more paid it just the same when the copper went to twenty-six cents as they did when it was sixteen or when it was twelve. It is practically impossible to change the prices in material. And it has been the desire of the company to maintain as low a price as possible.

Q. So when you tied those machines together you meant for them to stay tied regardless of the price of copper?

A. That is not a fair statement, Mr. Fowler. Every manufacturer knew what the price of material was that he was paying. He had a perfect right to take those machines and pay ten per cent more than that—if it was fifteen cents, it would be a cent and a half a pound—and retain those machines just as long as he wanted them. He knew it was the policy of the company not to raise prices or change them if they could help it.

Q. Isn't that placing it on a different basis from what you did?

A. It has been the desire of the company to maintain as low prices for the material or as low royalty, if you please to put it that way, as was possible, and they adopted a method which was approved by the manufacturers, as shown by the
657 leases they took; was approved by the committee representing the manufacturers. We could, of course, have raised the price of material, which would automatically have raised this ten per cent afterwards. There was no agreement on our part to maintain the price of material at that price.

Q. You say it is approved by the manufacturers as shown by the leases they took?

A. Yes, sir.

Q. Did they have any option about it?

A. Certainly they did. Every manufacturer in the country had his option to take either form of lease he pleased. He could take one and change over for a year or two; the other one he could take any time during the life of the lease.

Q. I mean he had to do one of the two things, pay ten per cent more for his material or take the restricted form of lease. That was the option you say they had so far as these metallic machines were concerned?

A. Why, surely. That was the option that the manufacturer had.

Q. How was it, Mr. Winslow, you expected to get more revenue by tying these two classes of machines together?

A. Well, that seems to be kindergarten, but I will try to answer it. The limitation of the use of metallic machines to shoes that had been lasted on our machines would seem to give us, if the manufacturer adopted that form, an increased business in his factory, or a surety of increased business at a lower cost, or the same amount of business at a lower cost, because we could take care of those two sets of machines in the same factory at a lower cost than we could one, couldn't we? I mean proportionately to the income.

Q. Then you were expecting to make your revenue by not increasing your business, but increasing the efficiency of the service; is that it?

A. Decreasing the cost of the service and treating the metallic machines in the broad sense like auxiliary machines. Supposing that we did not get any revenue from the metallic machines, and yet the manufacturer used some other machine from which we did get a revenue, and the use of the machine from which we get our revenue was not delayed, because we were looking after

the other machines, it is manifest that our income or profit resulting from that business would be better than it would under other conditions.

658 When we adopted this lease we had two alternatives, of which one was to raise the price of the material and leave the leases as they were. The committee of manufacturers suggested raising the prices 25 per cent. I suggested to them an initial payment form of lease. They preferred this type of lease and I gave them just exactly what they asked for. That only raised the price of the material 10 per cent, an infinitesimal amount, nowhere near what the increase in price to us had been. And any manufacturer that wanted the machines could have them.

While the restricted form of lease could not increase the number of our machines in use the two sets of machines were used in unison. The cost of the care of those machines was less per unit, and increased efficiency resulted because the same concern would from its branch office attend to the metallic machine so that it would not be delayed, or attend to the laster so that that would not be delayed.

It is true that at that time our company was about the only one that had any metallic machines or any welting or stitching machines in the factories in this country. To the question why our service in repairing and keeping up these machines could not have been just as efficient then as it was afterwards, the best way I can answer is to ask, Why didn't we raise the price; or, in other words, Why didn't all the manufacturers take the machines on the independent leases?

As to whether, as a matter of fact, the price of copper has been fluctuating all the time, up and down, yes; but the price of the material for the metallic machines was really established many years before 1899, and we were confronted by the condition that Mr. Willson brought to my attention. I could not see any guaranty that the price would go down or that it would not go higher, and in fact since then it has gone up a great deal higher. I am sure the price of copper has averaged a great deal above twelve cents ever since 1899.

659 As to what advantages a manufacturer has who takes the unrestricted leases over a manufacturer who takes the restricted leases altogether, I believe a manufacturer is better off if he uses all our machines in series. Under the unrestricted lease he has to pay a very considerable sum of money in order to equip his factory, which he didn't have to pay under the restricted lease, and after that the only practical difference was that he had the option of taking out all of one class of machinery. As to whether under the restricted system he had to

take out all the machinery, no; there never has been any time when we would not have arranged on equitable terms with a manufacturer to take out any of the machines in any one department. I think you state it backward.

The manufacturers believe that we have the best machines, and they take them, first, for that reason. They take them on the limited lease system because it costs them less to equip their factories and they have the money that they would otherwise have in machinery to use to buy leather and other articles that they use, and they turn that money over two or three times a year. They know by experience that the life of a machine, while sometimes a long period, is many times a short period, and since the United Company was formed they have seen many improved machines. They know that if we improve a machine which they have without the license payment we will put the improved machine in their factory and take out the old one without any cost to them.

Q. Well, substantially what you say is that at any time a manufacturer should come to you and want to change from one form of lease to the other, why, you would say: "We will change."

A. We will change upon an equitable basis; yes, sir.

Q. By his paying those initial premiums he could put the machine in on the unrestricted lease?

A. On equitable terms; that is all.

I do not think it is any advantage for a manufacturer to take metallic machines on the independent lease; I never have thought so.

Clause 7 of Goodyear lease of plaintiff's Exhibit 23, which was used until 1905, contains the option clause, and plaintiff's Exhibit 24 contains the same clause. I think it is a fact that

660 every Goodyear lease that we have gotten up contains that clause. Clause 6 of Exhibit 24 requires that the lessee shall pay royalty on all shoes that are welted and stitched by machinery, that is, welt shoes, and does not confine it to shoes welted and stitched on our machinery.

I have testified that the pulling-over system was developed by the United Company. There were no pulling-over machines at all until they were invented and developed by the United Company. We first developed the pulling-over machine, and then a number of auxiliary machines which accompany that machine and prepare the work for it and finish the work after that machine has done its work.

Q. Now, the sixth clause of Exhibit 37, as I understand it, limits the use of this machine upon shoes which are operated

upon by welters, stitchers and turn sewers, lasting machines, pegging machines, metallic fastening machines, and heeling machines manufactured by your company; that is, it is tied to all of them, as I understand it.

A. It limits the right of the lessee to use the machine upon shoes which have been operated upon by some of those machines; that is to say, he can't use it on shoes which have been operated upon—upon which those operations have been done not on machines leased from us.

The use of the machine is limited to shoes that are lasted on the Consolidated hand-method lasting machine; that is, the lessee did not have the right to use this machine on shoes lasted on the Chase machine or on the No. 5. That was because the machine was developed in the first place especially to work with the Consolidated hand-method lasting machine.

In no other lease was the lessee under obligation to take the pulling-over machine. The exclusive-use clause in the lease of Exhibit 37 was an error and was taken out as soon as it was discovered, as shown by plaintiff's Exhibit 38. No action of the company was ever predicated upon that clause.

In the alternative lease of plaintiff's Exhibit 39, printed in August, 1911, we charge the same royalty on the pulling-over machines when they are used in connection with lasting machines belonging to other companies that we do when used in connection with our own; no more, no less. The royalty is the same whether the pulling-over machine is on the independent lease or on the limited-license lease. The only difference is initial payment in one case and none in the other. I would like to

661 state that I think August, 1911, the date which Mr. Donham gave for the lease of Exhibit 39, was the date when that particular lease was printed. As a matter of fact, the other lease, changed so that it amounted to this lease, was adopted before that.

We adopted the full-capacity clause in our leases to protect our interests under the conditions that I have described in the manufacture of shoes, where the seasons are changeable, and where our entire return is dependent upon the use made of the machine. The same reason applies to the adoption of the exclusive-use clause, but it is not the only reason for the adoption of either clause. There must be something in the lease requiring use of the machines or there is no security that they will be used. Because there are two seasons and because we have to furnish machines to take care of the peak of the manufacturer's load, there must be something to secure us properly for the use of the machines throughout the season. Otherwise,

the manufacturer might use one of our machines just for taking care of the peak of his load and use somebody else's machine all the year round.

The clause requiring payment of a minimum royalty, like many of the other clauses, is not enforced and never has been, excepting in cases of very great necessity to properly protect the company's interests, and then only in the way of asking the manufacturer to give up surplus machines. The original leases contained no means for recovering surplus machines. If a manufacturer's business decreased 50 per cent, he could retain a machine till the lease expired, and keep it idle. Such a condition showed us that we must have such control as would allow us to take back idle machines.

The practice has been, when a manufacturer had surplus machines arising from these or other conditions, to call his attention to the minimum clause and to tell him that if he wanted to return the surplus machine, the lease of that machine would be canceled. That clause is not enforced except to require adequate arrangements between our lessees and ourselves.

The minimum-lease clause originated a great many years ago. It is not entirely a logical developmemt, but, broadly speaking,

662 the minimum clause is based upon half the capacity or 33 per cent of the capacity of the machine, or something of that sort. The minimum has no bearing upon the amount of a reasonable return on our machines. In the Goodyear system, for example, the minimum is $15 per machine, if I remember correctly, but we are continually adding to the number of machines that we give to the manufacturer.

(At this point the United States offered to prove by Mr. Winslow the cost of manufacturing welting, stitching, No. 5 lasting, the principal heeling, the principal metallic fastening, and the Rex pulling-over machines. That was excluded on the ground that it was not a proper subject of cross-examination.)

I have testified that we have 18 stations throughout the country, covering all the principal shoe manufacturing centers and some that are not principal. In almost all of those places, certainly in all the large ones, the men have a room where they wait for calls from the manufacturer. Under this system the manufacturer usually telephones to the office and says that a certain machine is broken down and that he wants a man for that machine. A man is immediately sent out, unless all the men are out, in which case a man goes as soon as he returns. These men are all in our employ and we pay them.

We issue prices for repair parts which to the best of my knowledge and belief are the same prices that would be charged

by typewriter companies or by automobile companies or by any other company, like the Singer Manufacturing Company; with the regular profit that is entirely differentiated from the matter of service.

As to who determines whether a repair part should be put in a machine, we accommodate ourselves to the desires of the manufacturers. Sometimes the superintendent or operator settles it, and sometimes our man advises that a part be put in, while in some factories the practice is to ask our man to put the machine into working condition.

In fixing the prices of the repair parts we do not take into the slightest consideration the fact that we are maintaining a force to make the repairs. That never has had any bearing whatever upon those prices. I think the prices are the same, broadly speaking, as would be charged by any concern.

663 Our expenses in connection with keeping up our machines include the men's salaries and their expenses, the proper proportion of the rents and that sort of thing at the stations, and general items such as would go into making up the cost of this service.

As to the profit on our repair parts, I know that the prices at which we sell them are more in most cases than the factory costs of making the parts, but I also know, or at least believe, that the prices for the parts used on all the royalty machines, principal and auxiliary, are not on any different basis from the parts for the general department machines that we sell; in other words, the prices for parts have no reference whatever to the service. They have never been based upon that; they never have had and never will have any relation to it.

If it were not for the possibility that our competitors might obtain those parts at cost through manufacturers, we should have put those prices where the parts would not have cost the shoe manufacturer anything except the mere cost of manufacture. That is impracticable, but it would have only been furnishing the machines at less than their depreciation value, as we have done many things.

664 Referring to the allegations in the twenty-sixth paragraph of the bill filed by the United Company against Thomas G. Plant in the Supreme Judicial Court, as follows:

"In all of said leases and license agreements hereinbefore set forth under which the defendant leased machinery from the plaintiff, it is provided that the defendant shall obtain from the plaintiff, and shall pay therefor at the regular prices from time to time established by the plaintiff all the duplicate parts, extras, mechanisms and devices of every kind needed or used in oper-

ating, repairing or renewing the leased machinery. And the plaintiff says that it has always been ready and willing to furnish said corporation defendant such duplicate parts, extras, mechanisms and devices, and that they are frequently needed by the users of shoe machinery such as that leased as aforesaid by the corporation defendant; that the obligation of the corporation defendant to purchase the same from the plaintiff exclusively was of great value to it, and formed a material and valuable part of the consideration for each of said leases and agreements, and that it has each year during the continuance, and up to the first day of May, 1910, received very large sums of money each year and made considerable profits from the purchase by the corporation defendant of such duplicate parts, extras, mechanisms and devices, having received from the corporation defendant in the year 1909 on account of such duplicate parts, extras, mechanisms and devices purchased by it in said year alone the sum of $12,334.15."

I assume that those allegations were correct, and I assume that our dealings with the Plant factory are illustrative of the same character of dealings with all other factories in the United States; but I do not see what that has to do with the matter. I am willing to see whether it will be possible for me to make up a statement showing the amount that our company has realized from the sale of repair parts and the per cent of profit; but I want to make this statement at the same time: that the prices which are charged for parts are the same that would be charged if the machines were typewriters or any other machines, and have no reference whatever to the service end of the business.

665 Those parts remain our parts after they are inserted in the machine. Of course the manufacturer has that machine with those parts in it for the balance of his lease. When the lease is ended and the parts are returned to us, nine times out of ten the machine becomes scrap because of improved machines substituted for it. We necessarily own the scrap; we own the patents. It is a patent license we are discussing here and not really a machine.

Under our system a small manufacturer has practically the same advantages as a large one as far as machine equipment is concerned. A man who goes into the business with a capital of $1,000 pays exactly the same royalty and receives exactly the same service as a man who goes into the business with a capital of $250,000. I don't see that it necessarily follows that the small man and the middle man and the wealthy man produce a shoe, so far as the cost of doing these particular operations that are

done by our machinery, for exactly the same price. As to why it doesn't follow, well, what a manufacturer may pay the operative for his work may vary from one factory to another. That has nothing to do with what we furnish the manufacturer. We instruct the operatives; that is part of our service. Sometimes a manufacturer inquires if we know where there is an operative. Frequently the operatives register at some of our offices when they are looking for positions, but as a matter of fact we don't agree to furnish our machines with operatives.

I should say that it is true that manufacturers have an opportunity to exercise their skill and judgment in the purchase of materials with which the shoes are made. We don't control that, of course. It is true that the manufacturer has the opportunity to exercise his skill in disposing of his product. And of course we don't control the price of labor.

666 Q. But, as a matter of fact, under your system as you have testified, there is no opportunity for the manufacturer to obtain any benefits from his capital or from his skill, so far as the cost of the operation of machinery is concerned; isn't that true?

A. I should like to understand that question. I would like to consider it for a moment.

(The last question is read.)

A. I should think there would be every opportunity.

Q. Will you please explain, Mr. Winslow, the extent of those opportunities, and just what they are?

A. I don't think that is a proper question, Mr. Fowler. I would be very glad to take it up in detail, if you will ask me the questions so I can answer them properly. I mean I want to understand the question and I want to answer you, but I don't think that question is capable of a really intelligent answer.

Q. Well, you have said, Mr. Winslow, as I understand, that he had the opportunity to employ cheap labor, if he can?

A. Broadly, in the same way that you ask the question; yes, sir.

Q. But he hasn't the opportunity under your system, while using your machines, to go into the market and buy whatever machines he wants to use, has he?

A. Well, why not?

Q. Well, I am not going to argue with you.

A. Well, I don't want to argue with you, but you make a statement and then ask me to agree to it, and I don't agree to it.

Q. But you have said that you charge, for the use of your machines, the small capitalists exactly the same as the large capitalist?

A. Yes, sir.

Q. That is, in the operation of the machines which make shoes, each one is bound to pay exactly the same sum of money?

A. Well, you don't state that correctly, Mr. Fowler.

667 Q. Then will you please state it correctly, Mr. Winslow?

A. Yes, I will endeavor to. The price charged by the company per operation is the same to each manufacturer; that is, the charge of the royalty for the lasting operation is the same whether the manufacturer is a large one or a small one, and so on through. That is my answer to your statement.

Q. Then wherein, Mr. Winslow, has he an opportunity to derive any benefit from superior skill?

A. Just what do you mean, Mr. Fowler.

Q. I mean exactly what I say.

A. Well, then, I don't understand you.

Q. Now, Mr. Winslow, I think we distinctly understand what the point is, at least.

PUTNAM, J. Does any question remain unanswered?

Mr. FOWLER. I think not. I believe Mr. Winslow said he didn't understand the question, and I don't care to press it.

668 I can state only approximately how long Mr. Plant had been manufacturing shoes in Boston before the negotiations for the purchase of his properties were begun. My remembrance is nine or ten years. He had a lot of our machines in his factory. Of course, he had a lot of others also. I think his factory was entirely equipped with our machines so far as principal machines were concerned.

At the time of the purchase Plant had set our machines aside and put into the factory machines which he had built.

I had general knowledge for several years that Mr. Plant was engaged in trying to invent shoe machinery. I should think I first heard of his being engaged in that, or that he was going to, some time in 1904.

My remembrance is that Plant took out our machines on the first day of May, 1910. He began negotiations with me on the 16th day of June. I don't remember any communication from Mr. Plant previous to that time in the way of opening up negotiations. I had not sent any one to him previous to that time.

It was through Mr. Henry B. Endicott, a shoe manufacturer, that Plant first communicated with me. This is the same Mr. Endicott that was referred to in my testimony regarding the Eppler Company. He had no interest whatever that I know of in the United Company. I don't think he was even a

stockholder. Neither I nor the United Company paid him for his services in connection with the Plant purchase. He has never received a penny of compensation in any way, directly or indirectly, nor was he promised any. In fact he expressly stated that he would not accept any.

I first met Mr. Plant in June at Mr. Endicott's house in Dedham, Massachusetts, just outside of Boston. I didn't discuss the purchase of Mr. Plant's shoe machinery.

669 I discussed with Mr. Plant the purchase of his inventions and patents. I didn't know whether Plant had any real shoe machinery, but I knew he had inventions; quite a lot of patents had been issued. I knew what some of the inventions were, but some of them I did not know. I was not in a position to judge as to the value of his inventions. At that time I had not seen the embodiment of his inventions in any machinery. I understood that Plant was not making his shoes on our machinery at that time.

I did not know that Mr. Plant had at that time an option on or had purchased the Stanley property. I think I first learned of that when Mr. Plant stated in September what his proposition included.

I knew in a general way that Mr. Plant had control of the Stanbon property. Mr. Stanbon was a manufacturer of machinery in Lynn and made quite a number of small machines. My remembrance is that most of them were used in the sole-leather room or fitting room. I think our company made quite a number of the same machines performing the same operations that the Stanbon machines did. I did not know what kind of an arrangement Mr. Plant had with Mr. Stanbon. The fact is that the Stanbon matter was so unimportant that I didn't pay any attention to it. It had no bearing whatever in my mind upon the Plant proposition.

As to whether we paid $122,000 for the Stanbon property, we gave only the inventory value of the properties, and only because Mr. Stanbon was under option to Mr. Plant. Mr. Plant made it, as I remember it, a requisite of the arrangement that we should take Stanbon's property and then left it with Mr. Stanbon to agree whether he would turn in his property or not.

670 The Plant transaction extended over some time, beginning on June 16 and continuing to September 20. I should think there were some seven, eight, or nine interviews. None of these was at my place of business; two of them were at Mr. Plant's place of business, the two days that I went up there to look over the machinery. Mr. Endicott was not present at

all of my interviews with Mr. Plant, and I don't remember that Mr. Keith was present at any of them.

In my interviews with Plant I did not specify what particular patents I wanted, nor did I say to Mr. Plant at any time that I wanted his patents. I never made Mr. Plant a proposition for his patents or for his business in any way, shape, or manner.

At the first interview Mr. Plant made a proposition to me to take what he called his proposition, which I understood to cover what he had done in shoe machinery. That proposition was $6,000,000.

I have stated that the invention that enabled the operator to save about an inch of welt in each operation was one of the important inventions that I obtained.

Q. Did you propose to Mr. Plant at any time that you would buy that invention?

A. I didn't make any proposition at any time, from the time I first met him until the time that we parted, of any sort, name, or description.

There was no discussion about eliminating other things and getting that particular invention.

Other inventions that we acquired that were of special service in the development of our machinery were other inventions relating to the welt-sewing machine, inventions which related to the stitching machine, the lasting machines, rough rounding machine and heel attaching machines. As to whether I remember any other, no; but there were quite a number. I am just giving the important machines.

As to whether anything was said in our negotiations with reference to the purchase of those particular improvements, I didn't know what his improvements consisted of, as I have already stated. I didn't know what he had or the value of his inventions until I went up and examined them in September and had my experts examine them.

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My experts reported to me on the same nights that they made their examination. If I remember, it was September 14 and 15. The contract was not then closed. After they had pointed out to me what was valuable and what was not, and after I had seen it myself I did not talk with Mr. Plant at all about taking those particular things that were of value and leaving him with his body of machinery.

It is not true that the whole negotiations were with reference to purchasing the whole Plant business. The proposition that Mr. Plant made to me on June 16 was to sell all the interest he had in shoe machinery; that is, his inventions and patents.

I saw all of Plant's machines in operation that were at the T. G. Plant Company factory. He had a stop-motion applicable to the welting machine, which stopped the machine and reversed it, so that the shoe could be removed from the machine automatically.

Q. Were you not manufacturing at the same time the stitcher that had that motion?

A. No, sir.

Q. Wasn't there a stitcher being manufactured that had that motion?

A. No, sir. That was fundamental; it was a very important invention.

It is not a fact that our company was about the only concern in the United States beside Plant that was manufacturing a welting machine at that time. The Haverhill Company, R. H. Long, and, I think, the Boylston Company and the Duplessis Company, or its successor, were making welting machines, leaving out of account the large concerns in Europe who were advertising here.

Plant's machine was sewing the welt to the insole and upper and to that extent was doing the same work that our machine did. As a sewing mechanism it was not as good as ours. My understanding is that that mechanism, as distinguished from the

stop motion, the welt cutting and holding device, and the

672 welt-measuring device, was largely our old model of welter, and I understand that the machine infringed some of our patents. The Plant machine was not more liable than our machine to be chosen by the manufacturer who wanted to purchase or lease a welting machine, if he knew his business.

Q. Then you contend, as I understand, that your machine was a better machine for the manufacturer to take ~~than~~ *than* Plant's machine was?

A. I contend that the model G machine that we were putting out at that time was the highest development of sewing mechanism for attaching the welt, inner sole, and upper together that had been developed in the world up to that time. It did not embody the stop motion, the welt and thread-cutting and holding device, nor the welt-measuring device, which Mr. Plant had upon his machine.

Q. Now, I believe your position is that by obtaining those particular devices you could still further improve your machine?

A. I think it would have been a crime to the art of shoe manufacturing if they could not have been combined, those improvements that Plant had—combined with the best welt

and stitching machine that was in existence at that time, which was one that we had.

My contention is that by buying those Plant improvements we could make a better machine than either ours or Plant's.

After that transaction I think Plant did not make any more welting machines. I don't know of any. I have never heard of his engaging in that business since. He was not in business then putting out machines.

At that time the United Company had outsole stitching machines. It is not quite true that there were no special improvements in Plant's outsole stitching machine. He had developed a stop motion, and from the stop motion which he had in use we afterwards developed a very much better one; and the stitching machine that we are putting out, the model M, embodies two patented inventions that we acquired from Plant. Savings were effected by the Plant stitcher improvements.

Since the purchase we have put out outsole stitching machines embodying the improvements I mentioned. Neither Mr. Plant nor any other person could put them out, because the improvements were patented. We are putting them out.

Mr. Plant didn't manufacture welt shoes by the same system of machines that we did. He made a welt shoe, but welt shoes had been made by hand for years before the Goodyear Company got up any machinery. They were afterwards made by other machines, and they are to-day.

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Q. Regardless of the system by which it was made, what was the difference between the welt shoe made by Mr. Plant and the welt shoe made on your machines?

A. Understanding your question to mean—was the seam placed in the same way and were they made by substantially the same machines so far as the seams are concerned, they were made just the same as the Goodyear welt. His process of manufacture differed, in the preparation of the outsole and insole before they were attached to the shoe and afterwards in the completion of it, from the Goodyear process.

His process of manufacture differed in the preparation of the outsole and insole before they were attached to the shoe and afterwards in the completion of the shoe. I think Plant had to use a wider strip of welting than we did. The resulting product was a welt shoe.

The factory of the T. G. Plant Company had been operating, using those machines, since some time in May. I did not say that it had been successfully operating. I testified that Mr. Plant guaranteed the profits of the T. G. Plant Company to be as per the figures that he submitted, but those figures only came

up to the fiscal year ending, I think, in October, 1909. It could not have included the year 1910, because that year had not been completed. After our purchase the plant continued to operate, and it was operated with the same machines up to the fall of 1912, I think. I think it has paid dividends all the time, but I should have to look that up.

I testified that we had an understanding to sell the stock to some of the gentlemen who were operating the factory, provided they operated it successfully; and I testified that it was operating successfully; yes, sir. I testified that they had shown their ability to carry on that business. The sixty per cent of the stock of the T. G. Plant Company was not purchased because we wanted it. It was because Mr. Plant made it a part of his proposition. At the time of the Plant purchase I hadn't even thought of turning that property over to these other gentlemen provided they showed themselves able to operate it. I did not give that phase of the matter any consideration. I just knew that it was a valuable property. We could dispose of it. And I recognized the reasons why Mr. Plant wanted to dispose of it, and I thought it was worth all that I was figuring it in my mind.

674 It is true that by the Plant purchase the further manufacture of the system of machines that was in use in the T. G. Plant factory by a manufacturer independent of the United Company was absolutely stopped, if Mr. Plant's patents are very good. No one can manufacture those inventions if we own the patents. Otherwise than that anyone can make them.

I understand that the line of machines that Plant had installed in the Plant factory infringed about one hundred of our patents. I can not say whether every machine infringed.

Q. Isn't it a fact that Mr. Plant had quite a lot of machines manufactured and on hand in addition to those that were in operation in the T. G. Plant factory?

A. I think he had very, very few machines that were constructed to the point where they were capable of being operated.

Q. But isn't it a fact that he had the parts made for a great number of machines, but those parts had not yet been assembled?

A. Not completely; no. I don't think you could have assembled of those—just from memory—I don't think you could have assembled half a dozen machines, at any particular time.

Q. Isn't it a fact that he had enough repair parts on hand to supply quite a lot of machines for one or two years, and didn't you and he discuss that question?

A. No. Just what do you mean by that? We didn't discuss the question. He didn't have the parts on hand. I don't know.

Q. Didn't he send for you one time and show you a large row of boxes which contained repair parts, to convince you of the fact that he could furnish repair parts to machines?

A. I have no recollection of any such thing.

Q. No recollection of that?

A. Not the slightest.

To the best of my recollection Plant did not have machines of all the varieties on hand.

So far as I know, Plant had not obtained control over two or three factories for the purpose of manufacturing those machines. I have testified that I understood he had an option, and it so proved, on the Stanbon factory; he had an interest in the Bresnahan company at Lynn, and the papers in the case show what his connection was with Stanley.

I do not understand that Bresnahan was engaged in the manufacture of shoe machinery. I understand that Plant used
675 that as an experimental shop in developing inventions, like our experimental department at Beverly. I don't understand that he was using the Stanbon shop. My remembrance is that he had an option on the Stanbon business and that Stanbon himself was running it.

There was a contract with the Keighley Company, which I think gave him a selling agency for an inseam trimming machine. We did not take over the contract but assumed the responsibility of it. I think that he equipped the T. G. Plant shoe factory with inseam trimmers obtained from Keighley. The Keighley Company was located in New Jersey.

Plant also had a contract with the Stanley Company, which had a large machine shop and made a number of machines which are of the class [that] we have termed general department machines, and also McKay sewing machines. To determine whether the United Company was making a number of machines which accomplished the same results as machines made by the Stanley Company I should have to look through the list of all the machines the Stanley Company were making and compare them with those that we were making. My remembrance is that we had marketed machines for them, and if that were so, I can't quite see how we would be making machines for the same purpose; but we might have been.

I can't say whether the Stanley Company had one of the biggest shoe machinery factories in the United States outside of the United Company's factory. A lot of the business being done by Stanley was manufacturing gas engines or oil engines, or something of that sort, and I understand that he was doing in his factory a large business that was entirely independent of the

shoe machinery end. I think his principal business was the manufacture of McKay sewing machines, but I can not testify to that. As to whether his factory could have been quickly turned into a large shoe machinery factory, there are in existence to-day factories that are better fitted to turn into a large shoe machinery factory than Stanley's factory was.

676 . I did not know before a day or two preceding the Plant purchase that he had an option on the Stanley factory. I think I knew at the date of the meeting at the Puritan Club on the 20th of September that we would be required to take the Stanley Company, but I am not positive about it. I think that by some agreement between Plant and Stanley Mr. Plant was obliged to sell the Stanley property at the same time that he sold his inventions to us, if he made a sale. I didn't see the contract.

The amount that we paid Stanbon under the contract between Plant and Stanbon and the amount that we paid Stanley were in addition to the $6,000,000 that we paid Plant. I should suppose that we took over the Stanley properties almost immediately, or as soon as we had to.

At that time we were manufacturing a McKay sewing machine, used to sew McKay shoes. The Stanley Company also manufactured the original McKay sewing machine which had been developed by Gordon McKay.

It is entirely untrue that no concern in the United States was at that time manufacturing a McKay sewing machine, other than the United Company and the Stanley Company. As to whether I can name the concerns that were manufacturing McKay machines at that time, I can not remember them offhand. I am sure you will find them in the list which has already been filed. I would be very glad to look it up and give it to you. It has been filed in the case already.

Broadly speaking I was at that time and am now thoroughly familiar with the conditions of the shoe-machinery trade throughout the United States, but it would not follow that I knew those companies that were putting out McKay machines in anything like large quantities. With the development and growth of our business I don't really try to keep in touch with the manufacturers who are making other shoe machines.

I cannot say how many machines other manufacturers were making, but several thousand McKay sewing machines had

677 been sold and were in almost all factories in the United States at that time, they could be obtained by anybody who wanted them, and we were rebuilding those same machines and selling them and have continued to do so. There isn't the slightest

difficulty in going out and finding McKay sewing machines enough to equip a half a dozen of the largest factories in this country inside of ten days' time. I can't tell where you would go, I simply state the fact. To equip a factory with McKay sewing machines at that time I should probably have gone to the shoe machinery dealers in Lynn and Boston and various other places. I have no doubt that I could have got them.

Up to that time and up to the time of the filing of this petition the McKay sewing machine was sold outright, and there is not the slightest doubt that there were quantities of McKay sewing machines at that time that were owned outright by the manufacturers. I should like to state, in that connection, that we had been importuned numberless times by Mr. Stanley to purchase that business, but had always declined to do so. We didn't want it.

It is true that there were more McKay shoes being made at that time than any other class of shoes. It is not true that we did not make the McKay sewing machine until we bought the Richardson concern. We were making the McKay "Model B" sewing machine. The Richardsons were making a McKay sewing machine and we acquired that, and we continued to put that out before and since we acquired the Stanley factory.

In the exhibit to which I referred manufacturers of the McKay sewing machine are listed under the heading "McKay sewing machine." They are Walter Pearson, A. Johnson & Sons, the American Worsted Machine Company and the Nolle Works in Germany. I know there are others besides that, but I can't recall their names.

I can't tell you who Walter Pearson is. I only know the name. A. Johnson & Sons may be Johnson of France, but I am not sure.

I don't know how many machines either one of those concerns makes, neither do I know how many McKay sewing
678 machines the Stanley were manufacturing. I suppose the demand for new McKay sewing machines of the class Mr. Stanley was making was very small.

We lease model B McKay sewing machines now, and we also sell the type of machine that was made hy Stanley, and those that we built and remodeled were also leased to the manufacturer if he desired them.

Q. Now, in that purchase, Mr. Winslow, isn't it a fact that you obtained 206 Letters Patent issued by the United States, twenty-eight applications to the United States Patent Office for the issuance of patents, seventy-four patents issued by the British Government, twenty-one applications to the British Government

for patents, seventy-three patents issued by the Republic of France, fourteen applications to the Republic of France, forty-two German patents, forty-seven applications to the German Government for patents, twenty-six Austrian patents, fifty-eight applications to the Austrian Government for patents, fifty-three Australian patents, eleven New Zealand patents? Is that true?

A. Of course I don't know the number of the patents, Mr. Fowler. I never counted them up.

In addition to the Stanbon and Stanley properties we got the Bresnahan machine shop and tools in that purchase.

We had not filed any patent suits prior to June 16, 1910, when the negotiations with Plant began. Four suits were filed against Thomas G. Plant on July 28; two on August 11; two on August 13; and two on September 3. There were filed against the Thomas G. Plant Shoe Manufacturing Company three suits on July 28, one on August 11, and two on August 13. It is not proper to state that those suits were all filed while our negotiations were going on. They were all filed when the negotiations were not going on. As far as we were concerned the negotiations ceased two or three times before the purchase was consummated.

Our first interview was on June 16, the next interviews of which I have memoranda were June 23 and June 27. On June 29 I notified Mr. Endicott that so far as we were concerned we dropped all negotiations.

As to when negotiations began again, I never began negotiations. The next time I met Mr. Plant, according to my memorandum, was on September 13. In the meantime I think I had been asked over the telephone for an interview by Mr. Harry Smith, and as I remember it, Mr. Plant had tried to approach me through Mr. Herrick I had had no interview with him whatever.

During the time between June 29, when I broke off the negotiations and the date of my next interview with Mr. Plant,

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we had brought the suits I have mentioned against Mr. Plant and the Thomas G. Plant Company. During that time we had in contemplation additional suits for infringement. It was our intention to bring suits to protect our rights, and undoubtedly we should have done so.

There were rumors around the street that Plant owed large sums of money, and I heard that he owed quite a lot of money, how much I really don't know. I didn't know the parties to whom he owed as much as a million dollars. It was reported to me that he owed money at several different banks in Boston, but I didn't know the amount and don't know now. I did not at-

tempt to exert any influence upon any of those banks or any of Plant's creditors to prevent them from renewing their loans. As to whether I sent an attorney to New York City to prevent Plant from negotiating loans there, I didn't know that he owed any money in New York. I didn't send an attorney to New York to prevent his borrowing money or raising money, and any statements of that kind are absolutely malicious and always have been. I just want you to know that.

Mr. FOWLER. I was asking the question; that was all, Mr. Winslow.

The WITNESS. Yes. I know it has been stated in public print a good many times.

I can not say when Mr. Plant issued a catalog and I do not know whether the catalog represented the machines that he made or did not make. I couldn't say whether I saw a catalog before the purchase was made. I remember seeing a catalog, but whether we had it before or after the purchase I can't tell. I don't think that while the purchase was under consideration I examined the catalog to see just what machines he was putting out or if they would be of any value or service to us. I don't know now that the catalog was sent to manufacturers all over the United States and in Europe. I don't want to say that I didn't know that the catalog was sent out; I simply don't remember about that fact.

680 Q. I show you what purports to be a catalogue of the Wonder Worker Shoe Machinery Company. State whether or not you had not seen that heretofore and if you don't know, as a matter of fact, that that was a catalogue sent out by Mr. Plant to illustrate the kind of machines he was ready to put upon the market and at that time was actually offering to the trade.

A. Well, I don't understand, Mr. Fowler, that Mr. Plant ever offered these machines to the trade. I never knew of his doing it. And this catalogue, or what pretends to be a catalogue here—I have seen a catalogue which is, I suppose, substantially like this. It may have been the same thing. I don't think I ever saw one of these—what I have heard of being an edition de luxe.

I have seen a catalog which is of the same kind with the exception of the binding, but don't know when I first saw it. I think it was my understanding before the purchase that that catalog had been issued.

I don't think I can testify as to whether the machines that are in this catalog are the machines that I saw in his factory. I saw machines, I think, for doing all the operations that these

pictures here are supposed to cover. Whether the machines corresponded to the pictures, I can't say. I think he has got some machines in the catalog that he didn't have, as a matter of fact.

(The United States offered in evidence catalog of the Wonder Worker Shoe Machinery Company above referred to. It was offered and admitted to show one of the influences being brought to bear upon Mr. Winslow's mind at the time that the purchase of Plant's interests was made, and for that purpose only. Defendants objected, exceptions saved.)

(Catalog of the Wonder Worker Shoe Machinery Company is plaintiff's Exhibit 266.)

My claim is that I just simply wanted the patented improvements from Mr. Plant. I did not want the shoe manufacturing stock, but at the price it was offered I thought it was a good bargain.

681 Q. For these patent improvements and these other properties that you did not want, you paid more for them than was given to the stockholders of the Consolidated & McKay Shoe Machinery Company when it was first organized; isn't that true? There were paid originally to the stockholders of the Consolidated & McKay Lasting Machine Company as consideration for its properties stock of the United in the amount of $4,599,840; isn't that so?

A. That was the amount of stock. Then there was some cash, wasn't there?

Q. $432,000 was the amount of cash, was it not?

A. $432,000. I will assume that it was. Now, we paid Mr. Plant less than that in stock and cash.

Q. But your stock that you delivered to Plant was worth twice its face value, was it not?

A. The same stock that we gave——

Q. Yes; but there was a large surplus on hand at the time this Plant purchase was made that was not originally on hand.

A. But it does not follow that the stock was not worth more in 1899 than it was then. I mean to say we gave the same stock exactly, a million and a half of that and three million in cash, and the Consolidated stockholders got pretty nearly five million.

Q. But when that purchase was made that stock was backed up by about as much surplus as there was face value of the stock; isn't that true?

A. The figures of the annual report, Mr. Fowler, will show. I don't remember the figures.

Q. Anyway, you testify, do you not, that when you purchased from Plant you estimated your stock worth fifty dollars on the share?

A. I said Mr. Plant took it on the basis of fifty dollars a share and that it was selling in the market for fifty dollars a share.

Q. There was originally issued to the Goodyear Shoe Machinery Company or to its stockholders in exchange for its properties $4,800,000 of the capital stock of the United Company, was there not?

A. If those are the figures, I will assume that they are correct.

Q. And you also issued to the stockholders of the McKay Shoe Machinery Company five and a half million dollars?

A. Yes, sir.

Q. Now, why was it, Mr. Winslow, that you were willing to give for these patent improvements that you have mentioned and this other property that you did not want more than you gave to the original stockholders of either one of those companies?

A. In the first place, I don't agree with your conclusion that I did; but if I did, I valued the sixty per cent of the T. G. Plant Shoe Manufacturing Company at not less than three million and a half dollars. It was making and earning a very large return upon those figures. That left me issuing, as a matter of fact, $1,250,000 worth of our common stock in payment for the patents, and that price and much in excess of that price I considered it a very cheap purchase. The basis of my computation of the value of the T. G. Plant Shoe Manufacturing
682 Company was a knowledge of the earnings of that company for a long series of years, and the fact that in the year ending 1899, October—I think I am correct in stating that the earnings of that company were $700,000. Sixty per cent of those earnings would have been over $400,000. Of course it is apparent on the face that that is more than ten per cent upon the value that I placed upon the T. G. Plant Shoe Manufacturing Company; nearly twelve.

The little that I looked at the diagram that was exhibited with the original petition it did not strike me as correct, and I have been informed that it wasn't; I don't think it is, but I haven't examined it to check it up.

It is substantially true that the increase in the number of turn and welt shoes made in the United States, shown by the exhibit that I have filed, is substantially all in the production of our machines. Of course, we are unable to know many times the manufacture of shoes that are done upon other people's machines where any one of our principal machines is used. We have some line upon that manufacture, but I assume that there are a great many shoes that we don't know of that they are making. I

don't know and should not like to give a judgment as to what per cent of the welt shoes made by machinery in this country are made on our machines. As to whether fully ninety per cent are made on our machines, I have stated I shouldn't like to give a judgment, and I don't know. With reference to turn shoes, I should have to make you exactly the same answer. I don't know and I should hesitate to give a complete guess.

Referring to the statement which I have filed with reference to the cost of experimenting in our factory, I do not know how much experimenting has been made in the United States outside of our factory. Of course, I have no means of testifying as to the expense of that experimenting outside of our factory, but from my personal knowledge in a broad way and from the issuing of patents relating to the shoe art I should say there is a lot of money spent outside of our factory in inventing shoe machinery.

We have employed quite a number of experts to make these experiments, but it is not a part of our plan at all, when we hear of an expert in the shoe-machinery business, to endeavor to employ him.

683 The increase in the number of lasting machines from 1900 to 1911, stated on the list which I have filed, consists entirely of our own machines; it was so stated. I haven't attempted to give a list of lasting machines of other people. As to whether I know that there were any others up to 1911, Mr. Krentler tried to sell me the Krentler-Pym lasting machine two or three years ago. I am informed that that machine is out in the factories. I don't know how many, but I don't think a great many. As to whether the output of the Krentler-Pym machine up to 1911 was two machines which were put in the factory at St. Louis that was burned up, I think that is not correct. I think there are other Krentler-Pym machines out at work in other factories. I think the testimony referred to related to that particular factory.

There are also lasting machines in use in R. H. Long's factory. All his shoes are lasted by machinery. My remembrance is that the Boylston Manufacturing Company make a lasting machine. I don't think anybody has as good a lasting machine as we have.

I think all of these lasting machines were made before December, 1911, but I can't testify as to the number that were out.

As to whether in our trade with Plant we obligated him to turn over all inventions that he might thereafter become interested in within fifteen years, if that is a fact the papers filed in this case will show it and I can't state.

Q. And if you were simply wanting the improvements that were then existing on the machines, why did you obligate him to do that?

A. Well, you know, according to the patent laws, as I understand them, a man can apply for a patent five years from now on an invention that he has made last year, if he hasn't made it public in that time, and you wouldn't buy a man's patent and then leave him free to make an application later for something that he already had in his mind, that he ought to have transferred to you, which he didn't.

The changes in the styles of shoes originate in the minds of designers of shoes and the designers of lasts employed by shoe manufacturers or by last manufacturers; sometimes they are pattern makers whose business is getting out patterns
684 for manufacturers. The United Company has nothing whatever to do with them.

I can't tell you how many patents relating to shoe machinery are owned by the United Company. We are constantly taking out patents to cover the inventions that we develop. I have testified that we have not suppressed any invention. I might go further and state that we try to embody in our machines every invention we can develop that will improve the art of making shoes either in quality or in the reduction of the cost.

As to the Gem insole machine, after we purchased that machine we credited back to the manufacturers the amount of the royalty, on both the machines which were out at the time of the purchase and the machines which we put out subsequently, where the product of those machines was used in shoes that were made by our machines.

I know of no other company which was putting out a machine for the same purpose at that time. There has been such a company as the Sleeper Insole Company, but they never put out such a machine; they did not have any machine for doing that work. Their inner sole was made in an entirely different way.

685 Q. Why was it you offered that favor—I will not call it a rebate—to the manufacturers?

A. So as to reduce the cost to the manufacturer of the Goodyear welt shoe, as we have all of these things that you have treated in that way. The reason we took off the initial payment and put it out on rental was because we were hoping to increase the total manufacture of those shoes and thereby benefit the public.

Q. 2504. Of course, if you increased the number that were manufactured you would help yourself?

A. Certainly. We were not doing it as a purely philanthropic proposition.

As to the list of concerns, which I have filed, which were advertising as dealers in some form of shoe machinery in 1900, a great many of them are in business now, I think. The Wheeler & Wilson Company for instance; that was purchased by the Singer Manufacturing Company. The Wheeler & Wilson Company was making machines that were in the room where more machinery was used than in any other room by a great deal, and the machines were very important in the manufacture of shoes; it is true that they related wholly to the upper. Those machines had nothing to do with attaching the soles, but they were shoe machinery.

As to other concerns on that list which are now in existence, the Boylston Company has the Union edge setter and the Flagg Manufacturing Company and the Globe Buffer Company; so I assume that those businesses are going on. There has been evidence about that. I think J. G. Buzzell is in business now, making buffing machines, heel scouring machines, and various general department machines in that class. He was in business away back in 1880. Those are machines which we are making in our general department and were selling outright at the time this bill was brought. The Haverhill Shoe Machinery Company is another one. The business of Fox and Webster has been brought into the Haverhill Company.

686 Q. Mr. Winslow, isn't it a fact that a great many on this list—for illustration, Arnold, were, you say, manufacturing lasts; Behrens, who manufactures lasts; and Belcher, who manufactures lasts—quite a lot of names mentioned in this list here, who were not manufacturing any machinery, or anything that has any relation to this case?

A. Well, if you can tell me what does relate to this case, Mr. Fowler, in view of your accusing us of having bought a whole lot of companies for the sake of getting a monopoly, and I can know what this case is, I might answer your question definitely.

Q. 2523. You don't call lasts shoe machinery, do you?

A. Just as much as a lot of the things that you have in your bill as our having bought for the purpose of getting a monopoly.

Q. 2524. Then you have wax here.

A. That is just as much shoe machinery as sandpaper, isn't it?

687 On referring to the list, the important concerns which are now doing business outside of those which I have already mentioned, are first the Carborundum Company, a very large

concern making abrasives that are used to buff shoes. The Atlas Tack Company is the largest manufacturer of tacks in the world; those are tacks used during lasting. Baeder Adamson is one of the largest manufacturers of abrasives, sandpaper, and emery cloth, etc., used in shoe factories. J. G. Buzzell, whom I have named, is one of the manufacturers of shoe machinery. He makes machines which we have called general department machines which are used in the bottoming room, such as buffing machines. J. G. Buzzell is dead, but the business is going on just the same. He was alive in 1899 and for quite a number of years afterwards.

I have stated that the Flagg Manufacturing Company and the Globe Buffer Company went into the Boylston Company. The Globe Company made buffing machines, scouring machines, and edge setters, I think, the same sort of machines that we got from Ross-Moyer. There is Hauthaway & Sons, cement. George Knight & Company, Brockton, make a varied line of eyeletting machines and perforating machines. The Lockett Crimping Machine Company make a crimping machine and a machine for molding uppers, used in a great many factories. We market their machines for them sometimes, but we don't do their work.

There is the Merrick sewing machine. I think Mr. Merrick testified he has sold a great many hundreds of machines. The Morley Button Sewing Machine Company, which was absorbed by the Singer Manufacturing Company, made a royalty machine for fastening buttons to shoes. They wanted us to buy them, but we didn't. There is the Peerless Machine Company and the Peerless Lasting Company, which I suppose went into the Peerless Machine Company. It was in existence at that time. They made several kinds of machines, including eyeletting machines.

I don't know whether they make the Peerless lasters now.

688 The Puritan Manufacturing Company manufacture machines similar to Merrick's, that were used in the fair-stitching of McKay sewed shoes; and the Sewing Machine Supplies Company makes any number of machines; I don't know their exact names. The Puritan Company is entirely different from the Union Lockstitch Company. Merrick used to work for that company and left their employ at the time he came and wanted me to buy him out. I suppose the present name of the company is Puritan Sewing Machine Company. The people who run it are the Sewing Machine Supplies Company. Those people are the big needle manufacturers of the company. I think the name is Torrington Manufacturing Company; they made eyelets also, I think. We are sole agents for the needles which they

make for McKay sewing machines and Goodyear welting and outsole stitching machines. We have nothing to do with them other than that. That name is not on the list; there are quite a lot that are not on the list that occur to me as I look at it. This list was prepared from advertisements in the trade papers.

The Reece Buttonhole Machine Company manufactures, or did manufacture up to within a year, all the buttonhole sewing machines and all the buttonhole finishing machines that are used in shoe factories in the country, I think, without exception.

Stewart Brothers make shoe machinery and counter making machinery. The Tripp Giant Leveler Company and the Union edge setter are in the Boylston Company now.

W. J. Young, at Lynn, makes quite a lot of shoe machinery, including heel compressing machines, heel making machinery, welting, special sewing machine, and a large line of machines ued for special purposes in shoe factories. A heel compressing machine prepares the heel for application to the shoe. It is one of our auxiliary machines. I don't know to what extent Young has been able to introduce his heel compressor among manufacturers. I think we are in constant competition with him all the time in this country. We purchased his
689 European patents way back, but we did not buy his American rights.

As to the statement of ideas and inventions which were offered to the company and not taken by it, I should hope I could not mention a single one of those which has been developed into a machine of any value, but I have not looked through it to see. It is our constant desire to improve our machines, and if we believed a thing to be good and to the advantage of the manufacturers we should have endeavored to have obtained it. I have no doubt that some of those were developed.

As to whether we ever rejected a single idea or invention which we regarded as valuable, the inventor's ideas might be entirely different from ours as to the value of the invention, and that might lead to our not taking it. We were not trying to buy inventions for the sake of preventing other people from inventing machines, but if we could buy an invention which would improve our machine or aid us to develop a new machine to help the art of making shoes, of course we would buy it and embody it in our machines, if we could buy it at a reasonable price. As to whether we had already embodied many of them in our own machines at the time they were offered to us, I don't think so. Of course it does not make any difference to us whether we spend our money in our own factory for something that will improve the machines or whether someone brings it to us.

I could not tell whether every one of the 746 new concerns who have entered the shoe manufacturing business since 1900, named on the list which I filed, is a lessee of the United Company. I had that list compiled by our office force, and whether those manufacturers are just those that we had business with or whether there were any more that we didn't have business
690 with, I can not tell, but I will look that up. I never tried to ascertain, and must decline to guess, how many manufacturers in the United States are not our lessees.

Referring to the list which purported to be a partial list of concerns which have been offered to the United Shoe Machinery Company, which I filed, that was not intended to be a complete list. I think I could probably recall others, and that I did when I went over the list. I should have to make a study of that list before I could state which of those concerns were in existence on December 12, 1911, which were doing any substantial business in competition with the United Company.

It is true that the list which I filed, showing machine operations performed in the manufacture of all kinds of shoes and also operations performed in typical factories, includes operations relating to work upon the upper of the shoe as well as upon the soles and attaching the soles to the uppers.

(Examination of Mr. Winslow suspended by agreement of counsel.)

691 DECEMBER 12, 1913.

HENRY B. ENDICOTT, witness for defendants:

I reside in Dedham, and I am a shoe manufacturer and tanner. The name of my concern is Endicott, Johnson & Company, and the business is located at Endicott, New York, with offices in Boston and New York City. We have more than one factory, and make about 40,000 pairs a day. I have been in that line of business twenty or twenty-five years, but in leather and shoes both I have been in business forty years. I was at one time the largest owner of the Commonwealth Shoe and Leather Company, Mr. Charles H. Jones's company.

I knew Thomas G. Plant in 1910 and prior to that time. Prior to June, 1910, I was not a director of the United Company, nor interested in it in any way. Prior to June, 1910, Mr. Thomas G. Plant made a proposition to me with reference to the placing of machinery in our factory.

He wanted a list of our machinery, and stated that his plan was to fit up three factories—the Thomas G. Plant factory, Commonwealth Shoe & Leather Company factory, and Endicott, Johnson Company's factories—with his machinery, and then sell out to the United Company.

He had previously asked me to become interested with him in his shoe machinery venture. That was in 1909. He asked me if I would consider going into the machinery—investing in the manufacture of shoe machinery, stating that it would be an investment of seven or eight hundred thousand dollars, would require some nerve, but would be a pretty quick turn-over.

He did not at that time state to me anything more definite as to what his plans were, and he did not then describe what he meant by his quick turn-over. That was later when he spoke of the United Company, as I have just testified.

I gave serious consideration to Mr. Plant's proposition to equip our factory with his machinery, and I made an
692 investigation of his inventions myself and had them examined by my experts.

As a result of my own examination and the reports of my experts the conclusion which I came to, as a practical shoe manufacturer, in regard to the equipment of my factory with Plant's inventions, was not to put in his machines. The reason for that conclusion was that, from the reports of my experts, my own judgment was that the machines were not strong enough or practical to do our work. Our work was men's shoes, both welts and heavy shoes, nailed and McKays—all kinds of men's shoes.

I came to this conclusion within, I should say, ten days after the examination. That examination was probably in May of 1910. I advised Mr. Plant of my decision.

I think his proposition to equip our factory and the Commonwealth factory and the T. G. Plant factory was made to me in the presence of my partner and my expert, I think, and in the presence of Mr. Charles H. Jones and Mr. Clarence D. Reed. Mr. Reed is Mr. Jones's associate and is the practical man in the Commonwealth Shoe Company.

At the time I declined to put in his machinery Mr. Plant had a conference with me. He stated to me, as I testified, that he wanted to fit us up, use us as a club to sell out to the Machinery people. I told him at that meeting that I did not think he needed that—that I thought he could sell out to them if he had good value. And he said he didn't think so. I didn't agree with him. I told him I thought he could. He asked me if I would be willing to help him, and told me he would give me $250,000 if I would complete the sale, or help to complete it. He wanted to sell his proposition, as he put it, consisting of his machinery or his patents on his machinery. At that time there was no talk of selling his stock in the T. G. Plant Company.

693 In consequence I got into communication with Mr. Winslow and arranged for a meeting. That took place at my house. After some sparring and little bitter talk on Mr. Plant's part, accusing Mr. Winslow of meeting him in an electric car and not recognizing him, we got down to business and after a while Mr. Winslow inquired the price, etc., and $6,000,000 was mentioned. That price was to hold good until the next Saturday night and then it was to advance $500,000, Plant giving the reason that he had some arrangement pending with financial men that depended upon a prompt decision. Mr. Winslow answered that Mr. Plant could make it as easy or as difficult for him to trade as he saw fit, but that he could not consider the proposition at all until he knew the value, and he stated then that he meant the value to the advancing of the art of shoemaking.

That meeting was adjourned and we met within a few days at the Parker House. The subject then discussed was how Mr. Winslow could arrive at a conclusion as to the value. At that meeting Mr. Plant showed him a number of advertisements which he proposed to publish. Mr. Winslow said the only way he could satisfy himself was to have his experts examine what Plant had. Up to that time Mr. Winslow had not made any proposition or any offer to Mr. Plant. As to Mr. Winslow's stipulation that he must have an examination, Mr. Plant asked him at that meeting who he wanted to examine and Mr. Winslow mentioned some names of experts. Mr. Plant thought that one of them at least would be satisfactory to him and he was going to find out whether the others would be. I think that is the substance of that meeting.

The next meeting was at the Touraine, I think. Mr. Plant then said that his lawyers advised him against having the experts examine the machinery. I think he stated that there were likely to be infringement suits and that they would simply get the knowledge and perhaps turn him down.

694 Mr. Plant suggested that if the United Company would put up a million dollars or sign a paper, their experts might go ahead and examine the machines. I think the paper was submitted by Plant's lawyer to the United lawyer. It proved to be an impossible paper to sign, and therefore the only question was about putting up the million dollars.

A meeting was then held at Mr. Whipple's office. He was at that time counsel for Plant. Mr. Winslow, Mr. Fish, and I were present. At that meeting Mr. Winslow refused to sign the paper, if he hadn't before, and said it was impossible to put up a million dollars to buy a pig in a bag, or some such remark as that, meaning without knowing anything about the value.

I called Mr. Plant out and suggested to him that he allow Mr. Winslow to examine the machines. He refused to do it. I then suggested that as two of the United Company directors, George E. Keith and John Hanan, were good sized shoe manufacturers he allow them to examine the machines. Plant thought that might be arranged, and finally agreed that they should examine the machines and report whether in their judgment it was advisable for the United Company to put up the million dollars and go on with the investigation.

Within a day or two after that meeting I was at the Touraine Hotel and was called up by Mr. Winslow early in the evening. He said that he had called me up to say that Hanan and Keith had refused to take the responsibility of the examination and the recommendation, and therefore, since Plant would not allow him to put his experts on, the deal was off so far as he could see. I attempted to get Mr. Plant on the telephone right away, but I was not able to get hold of him, so I didn't report to him that night that the deal was off.

695 I felt disappointed at not having made a success of my attempt, and went down to Mr. Winslow's office the next morning, not having communicated with Plant. My words to Mr. Winslow were about like this: "I am going to make a proposition to you, Mr. Winslow, and you may laugh at it, but you shall be the only man that will laugh at it, because you must promise me if you don't accept it never to reveal it," which of course he did promise. I said: "Hanan and Keith refuse to take the responsibility of this recommendation. I have been thinking that if I had been a director in your company I would have been willing to take that responsibility; if you care to elect me as a director in your company, I will do my share toward taking that responsibility." Mr. Winslow said he wouldn't laugh at that, that he liked the idea of it; and he asked me if I would go and see Mr. Howe, which we did—took a motor and went to Mr. Howe's residence, I think to Marblehead.

Q. Mr. Winslow spoke of you as the largest shoe manufacturer in the world. Without being too modest, is that a correct statement, Mr. Endicott?

A. I am not quite certain, Mr. Choate. I have never worried myself much about that.

Q. Well, your output is 40,000, and growing?

A. Oh, yes. Inside of six months it will be 57,000 a day.

Mr. Howe and Mr. Winslow conferred, and Mr. Howe evidently agreed with Mr. Winslow that it would be a good plan to accept my proposition. Mr. Winslow asked me to go to New York that

night and meet some of the directors or large stockholders, Colonel Barbour, I think, and Mr. Woodward.

We returned from Marblehead in the afternoon, and I got into communication with Mr. Plant and met him that night and told him that I expected to go on the board of directors of the United Company, and that accordingly any contract or agreement between us was absolutely void; that is, that I couldn't be in a position of accepting pay from him to put through a deal when I was a director of the United Company. He said he understood my position exactly.

I then went to New York with Mr. Winslow on the midnight train and met Colonel Barbour and Mr. Woodward, and was elected a director. I then sent for my experts, and with Hanan and Keith we examined the machines at the Thomas G. Plant factory. We reported that night at the Algonquin Club to some of the United Company people. Messrs. Winslow, Howe, Herrick, Fish, Connor, and Hurd were present and Mr. Hanan,
696 Mr. Keith, and my two experts. Mr. Hanan and Mr. Keith reported against putting up a million dollars, and I was the only one that favored it. I stated that I felt that Plant had a good many things that, combined with the United Company machinery, would help the United Company and help the shoe business. I have in mind only in a general way the things of which I spoke. There were improvements that my experts reported on very favorably. I remember some device on the Goodyear machines which was automatic and cut off and saved quite a little stock as well as labor.

My report favoring the putting up of a million dollars received no response whatever from Mr. Winslow or his associates. They simply decided not to do it. I think Mr. Winslow didn't talk a great deal, except simply saying at the end: "Well, then, this is decided, that we don't go any further with it."

I did not make any report of that to Mr. Plant. The arrangement made at the meeting, as I remember, was that the United lawyers, Mr. Fish and Mr. Herrick or Mr. Howe, communicate the result to Mr. Whipple. That was on July 5, 1910.

Mr. Plant telephoned me within a day or two and said he would like to see me. I met him at Whipple's office. He seemed quite excited and said: "Mr. Endicott, you are on the wrong ship. You are on the 'Merrimac' when you ought to be on the 'Monitor.'" I stated that he had a right to that opinion. He said: "I will make their stock look like thirty cents inside of four or five weeks." I said that was his privilege, but that I had been elected a director of the United Company and was not

interested in any other change, which I suppose was what he meant.

I did not see him again until early in September, and I saw him then on the train coming from Dedham to Boston. He came and sat beside me and naturally we talked about this matter. Plant said that the United Company never meant to buy him out; never were in earnest. I told him I was sure that they were. I said: "Mr. Winslow took the position that he would buy out if you had the value, and I think he would
697 take the same position to-day." He said he didn't believe it, and I told him that I felt quite sure of it. He said: "If you think so, I will make one more throw of the dice, if you are willing to arrange for a meeting between Mr. Winslow and myself." I told him I was, and I arranged for a meeting. Right after that, before the meeting took place, Plant rode out to my house. At that time he told me his price was $6,500,000 for his machinery proposition, but that he would give me all over $6,000,000 that he got for it. I told him I was in the same position, of course, that I was when I threw up the $250,000.

We then had the meeting at the Touraine Hotel in September, 1910, according to my memorandum on September 13. The same question came up in regard to the examination of the machines. Plant was then a little more pliable in regard to having experts examine them, but he seemed to be quite fearful that the experts would be of great assistance in the patent suits that were being brought and that were likely to be brought. Mr. Herrick was finally called into that meeting, and the result of the meeting was that Plant did agree that the experts should examine, and I think that Mr. Winslow should be allowed to examine also.

At no time during these negotiations did Plant say anything to me about selling his stock in his shoe company. He didn't discuss that with me at any time.

After the experts had examined, Plant and Winslow and myself had a meeting at the Algonquin Club. That I have down September 16, 1910, and at that time Mr. Plant stated that he would like to get out of business, and that he would like to include his holdings in his shoe company as well as the machinery proposition. The reasons which he gave for that were that he didn't care to be a slave all his life, and wanted to enjoy life, and so forth; he had worked overtime; something to that effect. Mr. Winslow told him that the United Company had uniformly refused to go into the shoe business, but he had no objection, if it was a bargain, to include that, if it made it easier for Plant and easier for himself.

Plant submitted figures of the earnings of his shoe company, which I think showed four or five hundred thousand
698 dollars a year. My impression is that the largest year was seven or eight hundred thousand dollars, and the smallest four. These were net earnings of the company. Mr. Winslow asked him his price and as I remember it was $8,500,000, including his interest in the shoe company and his entire interest in the patents and machinery and whatever he wanted to sell. Mr. Winslow told him that was out of the question, and Mr. Plant said that that was all there was to it. So that meeting was ended, Mr. Winslow stating to him that if he had anything to take up with him at any time he would be glad to see him.

I went to the Touraine Hotel and Mr. Plant called me on the telephone the next morning, and came to the hotel to see me. He said he wished that I would find out what Mr. Winslow would give for the entire proposition. I told him I was quite sure Mr. Winslow wouldn't make him any offer, but if he had anything to say I would report it. He asked what I thought Mr. Winslow would give, and I told him that I purposely had not tried to find out what Mr. Winslow would give, and didn't know whether Mr. Winslow knew himself. I told him that while he asked $8,500,000 I thought he would take $7,000,000, and although I didn't know, I thought that Mr. Winslow would be willing to give $4,000,000, possibly $5,000,000; so that if my ideas were right there was $2,000,000 difference between them, and that sometimes when I bought leather I divided the difference. I said that possibly this might be done, but that this was simply a suggestion and that I had no authority or knowledge. He asked me to see whether Mr. Winslow was willing to see him again.

I reported that conversation and Mr. Winslow said he was willing to see Mr. Plant. I suggested that we vary the monotony and that he have Mr. Herrick at that meeting instead of me. I called up Plant and told him Mr. Winslow and Mr. Herrick would meet him at the Puritan Club. Mr. Plant said that if Mr. Winslow were going to have an attorney he would have his attorney, Mr. Carr, I think. I think that meeting was on September 20.

699 The next morning, the 21st, Plant called me up and told me the deal had been practically consummated. He told me he was going out of town that day with the St. Louis manufacturers to show the machinery, etc.

When I came in town, I went to Mr. Winslow's office and they told me the same thing—that the deal had been virtually con-

summated. I think they then and there made out a check, which was for $500,000, as I remember it, and Mr. Herrick or I—I think it was Mr. Herrick—took it down to Mr. Carr. I called up Mr. Plant and told him the check was made out, and he asked to have it delivered to Mr. Carr. That ends the story up to the final signing of the papers.

In the spring, and before I became a director of the United Company, I advised Mr. Winslow to buy Mr. Plant's patents and inventions, because I thought there were combinations there which, with his own machinery, would be of assistance to the United Company and the trade. I said that to him, and I told him my experts believed in that too. His reply was that he didn't know anything about whether he could purchase it or not and would only purchase it if it was of value—if it was a good, fair offer at the price and was of value to the shoe trade and to the United Company.

Before I became a director I argued with Mr. Winslow that it would be a benefit to the shoe trade to have those different features combined in one set of machines. I thought it would make the United Company's position stronger and would help their business.

I know George Learned, of Newburyport, and I have known him some time. At one time I accompanied him when he went to see Mr. Winslow at his office. I think it was in the fall of 1910. I don't remember the date. Before that I had asked Learned to call upon me. My nephew had told me of certain statements that Learned was reported to be making, and that was the occasion of my asking him to come and see me.

700 When he came I had a talk with him, and as a result he and I went to see Mr. Winslow. At that talk with Mr. Winslow at first only Mr. Learned, Mr. Winslow, and myself were present. During the conversation Mr. Edwin P. Brown, the general manager of the United Company, came in.

As I remember the conversation, Mr. Winslow told him he understood he had made statements that Mr. Winslow had threatened to put him out of business and asked him if that was true, and Mr. Learned said it was. Mr. Winslow told him that he was stating something that was not true. Mr. Learned said that he so understood it. Mr. Winslow said that it was entirely untrue, and that Mr. Brown was present at the meeting when Mr. Learned claimed this took place. I asked that Mr. Brown might be called into the office. He came in, and I asked him if Mr. Winslow made any statement that could be construed into meaning that he would put Mr. Learned out of business. Mr. Brown said emphatically, no. Mr. Learned said that he was

very much excited at the time and that he must have been mistaken. Mr. Winslow suggested that if he was willing to say he was mistaken he ought to see the people that he had made the statements to and tell them that he was mistaken. Mr. Learned agreed to do that. I suggested that he ought to write Mr. Winslow a letter stating that he had been mistaken. I think he did write him a letter—I am not quite clear about that. That is the whole of that incident so far as I have any knowledge of it.

I am not particularly familiar personally with shoe machinery or with the details of the making of a shoe. I do not handle that end of our business.

Cross-examination:

Our factories are located at Endicott, New York, and at Lestershire, New York. The largest factory is at Lestershire and the largest tannery at Endicott. Probably the welt shoes made in our plants are a larger proportion than the McKay shoes.

701 I was at the Exchange Club when Mr. Plant made the first proposition to me to take his machinery. He said that he would like to show me the machinery and would like to fit up both of my factories with his machines. That was in the fall of 1909—probably in October, 1909. I told Mr. Plant that I would look at his machinery when he was ready to show it, and I left him at that meeting with that understanding. I next heard from Mr. Plant in 1910, probably about May. I had in the meantime not gone to examine his machinery. Mr. Plant then came to my office here in Boston and said he was ready to show me his machinery. I told him I was ready to look at it, and I did look at it. I went to the factory with my two experts, Mr. Johnson, my partner, and Mr. Tobin, one of our superintendents, and we examined the machinery. We spent a day in the factory. Mr. Plant's machines were in operation at that time, but not all the machines that he wanted me to take were in operation. I saw his machines making his women's shoes in operation. There were some other machines that he had pictures of, I think.

I saw in operation the welting machine, the outsole stitching machine, the lasting machines, the heeling machines, the metallic fastening machines, and all the machines he had there to show. My experts did not make a written report to me.

It was ten days or a fortnight after this that I concluded not to put in Mr. Plant's machines. They were doing satisfactory work when I saw them, and I had no objection to make to the work that the machines were doing.

Before I declined to put in Mr. Plant's machines I had another conversation with Mr. Plant. He asked me if I would give him

an opinion in regard to his machines, and I did give him a good opinion—that he had a first-class set of machinery, doing good work, etc. He did not ask for the opinion of my experts. I was the only one that I know of that gave him an opinion as to the satisfactory operation of the machines.

702 Q. Now, then, why did you decline to put in Mr. Plant's machines?

A. From the report my experts gave me, I felt they were not practical for our business.

Q. Why not?

A. They were not heavy enough. They didn't believe they would stand up with the day's work, day in and day out.

Q. How about the women's work?

A. I don't know anything about women's work. I don't make any women's shoes.

Q. Well, what caused you to come to the conclusion that they would not stand up under the work, in view of the fact that you had made this report to Mr. Plant that the machines were satisfactory and doing satisfactory work?

A. They were doing satisfactory work in Mr. Plant's factory.

Q. If they would do satisfactory work in Mr. Plant's factory, why they shouldn't do satisfactory work in your factory?

A. From the report of my experts, they were not heavy enough to do our work—were not able to stand up and do our work every day.

Q. Was that the report you made to Mr. Plant?

A. Yes.

The welt sewing and outsole stitching machines in our factory at that time were undoubtedly the United Company's exclusively. I don't know whose heeling machines we had, although they were undoubtedly the United Company's. I don't know about the metallic fastening machines. I know we pay the United royalty, though I don't know what it is for. I don't have anything to do with that part of it. We don't pay anybody else a royalty that I know of, but I don't know that either. That is all attended to from Endicott, New York, and that work is handled by Mr. Eliot Spaulding.

I made this report to Mr. Plant verbally at my office. He replied that he wanted to fit up our factory with his machinery. He made no proposition except that he would do it, and he figured that it would cost us two or three hundred thousand dollars. No definite sum was ever mentioned. We were to buy the machinery outright.

703 That was not all Mr. Plant said at that meeting—that he would like to fit up our factory. He said he would like to fit up our factory to help him to sell out to the United Shoe Machinery Company.

I replied that I thought he could sell out to them without that. I thought there was a value there and I thought they would be willing to buy anything that would help their business, same as anybody else. Seeing the machines and my experts' report made me think there was value there. I thought all the machines showed some value. I couldn't name any special machines, except that I remember my experts spoke especially of some devices on the welting machines. I don't think that was the only thing reported to me by my experts; I think there were a great many others, but I don't know what they were.

Between the time when I saw Mr. Plant in the fall of 1909 and June, 1910, I did not have any conversation with any representative of the United Company with regard to that matter. After I examined Mr. Plant's machines and before I concluded that I would not install them in my factory, I did not have any conversation or any communication with any representative of the United Company. My reason for thinking that the United Company would buy Plant's machines was on the general principle that anybody would buy a thing that would help their business. My knowledge that it would help the business of the United Company was based on the report of my experts that there were a good many things in Plant's machinery which, combined with the United machinery, would make their machinery more valuable to themselves and to the shoe trade.

By the statement on my direct examination that I thought it would make the United Company stronger, I meant the same as any concern would be stronger by having better machinery,

704 better shoes, better leather, better dry goods, better merchandise, or any kind of better stuff to sell or make.

I suggested to Mr. Plant that I thought the United would buy his machinery without driving them to the point of buying it. When Mr. Plant said that he wanted to put his machinery in our factories to compel a sale to the United Company, I suppose he hoped to make a success in our factories, and that, as we were fairly large manufacturers, the United Company would be afraid that he would put them into all the factories. As to whether it would bring him into competition with the United Company, I suppose that is what he had in his mind.

When I told him I thought the United Company would buy him out without his installing machines or driving them to the

point of buying him out, I think he doubted it at first, but after that he asked me if I was willing to help him make the sale. I saw Mr. Winslow, I think within a few days after I had concluded not to take the Plant machines. I happened to meet Mr. Winslow at the South Station. I shook hands with him. He spoke about the weather, and so forth, and said: "What are our friends doing?" I said: "What do you mean?" He said: "Our friends in the machinery business." I said: "Who are your friends?" He said: "That is what I would like to find out." I said: "Why don't you?" He said: "I am going to New York and I have got to hurry." I said: "All right; I will see you when you come back. You can call me up if you want to see me, or I will call you up."

Mr. Plant's name was not mentioned at that time and nothing said about him. Mr. Winslow did not know what I would see him about when he returned. I think he referred to the St. Louis manufacturers. I knew they were in session. I couldn't think of anything else.

I called Mr. Winslow up within two or three days and went to his office. We talked about his fishing trips in Florida, and so forth, and then he got on to the subject of machinery. He asked me if I had seen the Plant machinery, and I told him I
705 had. He asked me what I thought of it and I told him I thought well of it. I asked him why he had not posted himself about it and why he hadn't bought it. He stated he had no opportunity to buy it, didn't know the value of it, and had no means of trying to buy it. I told him that I should think he would look into it, and he said that he would be very glad to. I stated that I would be very glad, if he was willing, to arrange for him to meet Mr. Plant. He said he was willing to meet Mr. Plant, and I arranged it.

Previous to that time Mr. Plant had offered me $250,000 if I made a sale; he did that when I turned down his machinery.

After this conversation with Mr. Winslow there was a meeting at my house, arranged by me, and Mr. Plant, Mr. Winslow, and I were there. Mr. Plant made the proposition to sell out for $6,000,000, and that price was to hold good until the following Saturday night, then it was to be $6,500,000. That was for the proposition in the shoe machinery line, including everything that he had, patents and machinery and everything else. I so understood it. Nothing was said at that meeting about the shoe-manufacturing business.

There was another meeting at the Parker House. Mr. Winslow and Mr. Plant and I were there. The talk then was altogether about an examination of the stuff to find out the value. There

was no change in the price at that time. I think there was no talk about price. I think nothing was said at that meeting about putting up a million dollars for an examination of the machinery.

I arranged for both these meetings. The next one was at the Touraine, and the same question of the experts' examination came up there. Nothing was consummated at that meeting except the proposition from Plant that the United put up a million dollars or sign a paper. I think that was at that meeting. Mr. Winslow declined to do that.

As to whether I was disappointed after that meeting, I think not. It was after the deal was declared off absolutely by
706 Mr. Winslow that I became disappointed. That was June 29, or about then.

In the meantime I had discussed the matter of having Mr. Hanan and Mr. Keith examine the machines and they had declined to assume that responsibility. Then I went to see Mr. Winslow and made a proposition to him that if he would elect me director in his company I would take the responsibility of going with Hanan and Keith and advising the company whether to put up the million dollars or not.

Q. Now, I want to get that clearly. What did you say when you went in to see Mr. Winslow about being elected a director?

A. I said: "Mr. Winslow, I am going to make a proposition to you and you may laugh at it, but you are the only man that shall laugh at me, because you must promise me, before I make it to you, that you shall never divulge it in case you don't accept it."

Q. Why not?

A. I am not in the habit of offering myself as a director.

Q. Why did you offer yourself as a director in this case?

A. Because I wanted to make a success of what I had started in on.

Q. In other words, you wanted to be elected a director of the United Shoe Machinery Company to carry through this deal to acquire the Plant machinery; is that right?

A. As far as I was concerned; yes, sir; and because I believed, of course, as I have stated here, that there was value there.

Mr. Winslow, of course, promised that he would keep anything confidential that I asked him. Then I said: "Then you may elect me as director of your company, and I will with Mr. Keith and Mr. Hanan take the responsibility of advising this company whether to put the million dollars up or not."

Up to that time I had not owned any stock in the United Company. I did not acquire any before I was elected, but after I was elected I acquired, I think, thirty or forty thousand

dollars' worth at the market price. I think the market price was 50 odd. I think I had to have some stock to be elected, and before I was elected I might have had one share; something to go through the form. I think I bought the stock as soon as I got around to it, in a few days. I bought the stock in
707 the market. Lee, Higginson & Company bought it for me. I don't know whether I went to their office and got the stock. I may have sent a boy up or telephoned for it, as I would buy any stock.

I had absolutely no conversation with Mr. Winslow or any representative of the United Company about getting this stock before I bought it, none whatever. No one said anything about my having stock before I could be elected a director; they didn't have to. As to how I knew I could get the stock, I had a reasonable right to think I could get it. It is sold every day on the market. I had not inquired to ascertain whether or not it could be had. I sent an order down to buy it, probably within ten days after I was elected a director. I have that stock now and have not acquired any more since.

I paid for that stock in cash. I would like to have you ask me all the questions about that you like. That was an absolutely straight transaction as could possibly be.

The reason why I was willing to give up Plant's proposition to pay me $250,000 for the sale of the Plant machinery, and put it through without getting anything, was that there was absolutely no chance of putting it through the other way, because Mr. Winslow turned the deal down. As to whether I could have induced him to change his mind without becoming a director of the United Company, I couldn't have been in a position to advise it in conjunction with Keith and Hanan without being a director. As to whether Mr. Winslow had confidence in me, he might have had some confidence at that time. I think his confidence in my trading ability has been shocked somewhat since.

I had not made an examination of the Plant factory in conjunction with Mr. Hanan and Mr. Keith before I made that suggestion that I be elected a director to Mr. Winslow. As to whether I knew whether Mr. Winslow would take the recommendation unless I was elected a director, I didn't know that he would take it if I was elected, and he didn't. That was the only way to try to put the deal through. I firmly believed it was of value, and I believe so today.

708 Q. No; but you stated a moment ago that you didn't know even after you were elected a director whether you could put it through. What I am trying to get at is, how your influence was so much greater with Mr. Winslow or the repre-

sentatives of the United Shoe Machinery Company after you became a director in the company than when you were on the outside as a shoe manufacturer.

A. I think it would be pretty good proof to Mr. Winslow or anybody else that I believed in what I was recommending if I was willing to become a director.

I should think it was in the early part of July that I became a director of the United Company. I have it down here that I again took up the matter with Mr. Plant, the matter of examining the property, on July 5. I got the data from which I am refreshing my recollection from memoranda that I made at the time and afterwards from my recollection.

After I became a director Mr. Hanan and Mr. Keith were perfectly willing to assume the responsibility and examine the property with me, and we went out to Plant's factory. As to whether before I became a director I had discussed with Mr. Hanan and Mr. Keith whether or not after I became a director they would be willing to assume the responsibility in conjunction with me, absolutely no. I hadn't mentioned it to them at all.

I had a meeting with Winslow and Plant in September, 1910, my memorandum says about the 13th of September. As to whether I had heard at that time that certain shoe manufacturers from the West were coming here to examine Plant's machines, I think I knew of it earlier, about the time I examined the machines. I had heard the western shoe manufacturers discuss the matter once at the Touraine Hotel, in June, 1910. I met there with them. I did not know then they were coming east in September. I think I first ascertained that they would be here in September when they were here. I don't think that I knew it until Plant told me he was going to take them around and show them his machinery the morning he called me up on the telephone.

709 I was present when the final papers were signed closing the deal with Mr. Plant. They were signed at Mr. Herrick's office. I should think it was somewhere from midnight until three o'clock in the morning. I remember staying quite a while.

It was the morning before this that Plant telephoned me, the morning after the meeting at the Puritan Club. The papers were signed on the night of the day when Mr. Plant had telephoned me in the morning that the deal was consummated and that he was going out with the St. Louis people that day. The papers were signed that night.

As to whether I know why the papers were not signed before four or five o'clock the next morning, I suppose they were drawing the papers. I know why they weren't signed during the day; because Mr. Plant was away with the western men, or so he stated to me. I didn't see Plant until that night at half-past eight or nine o'clock.

I didn't say that Plant had been given a check for $500,000 that morning. It was taken to Mr. Carr, his lawyer.

As to why I was so anxious to become a director of the United Company when I was not at the time interested in the company and felt that I could not put Plant's machinery in my factory, it was simply because I believed there was value to the shoe trade and to the United Company and thought the shoe trade would be advanced. As to why I was so anxious that the United Company should buy it and why I didn't go to some other shoe manufacturer, that was the only concern I had ever considered, and that was all Mr. Plant had ever suggested. I should have been glad to have got the $250,000 for selling it to anybody. I felt sure that I couldn't accept $250,000 after I was elected a director in the company. When Mr. Winslow finally declined the proposition, before I was elected a director, I didn't see how, with the trade entirely off, there was $250,000 coming to me. I then took up the matter of the director-
710 ship. I have nothing to do with installing machines in our factory. I do not know when changes are made in machines. We have different men in direct charge of that in different factories, but my partner, Mr. George S. Johnson, would have general charge of that policy.

Nothing has been said to me about changing the welters that we now have in our factory for other welters. As to whether I know whether any welters have been changed in our factories within the past three years, they undoubtedly have. I should think our people would be very much behind if they hadn't the latest; but I don't know. I have never advised any changes.

By accident I ascertained that the automatic cutting off of the welt has been put on the United Company's machines in our factories. They happened to tell me how good it was. I think we have it, because otherwise they wouldn't tell me how good it was, how well it worked. I never took the matter up with any representative of the United Company or with our own company with a view to having the change made.

Direct examination resumed:

Matters of detail management in our different factories are left to the superintendents of the different factories under Mr.

Johnson's supervision. I absolutely do not concern myself with the kinds of machines we have in our factory.

711 DECEMBER 12, 1913.

SIDNEY W. WINSLOW, witness for defendants, resumed.

Cross-examination resumed:

As to the list which I gave of a number of concerns that were manufacturing eyelets, I can't say whether the Caseley Nelmes Company makes only corset eyelets and doesn't make shoe eyelets at all. Any eyelet manufacturer can make eyelets for the shoe trade. The machinery that any of them has in his factory is perfectly adapted for that manufacture. I think all eyelet manufacturers make eyelets that would be used in shoes. It is purely a question of whether they attempt at all to cater to that trade.

I know that the Scoville Manufacturing Company makes shoe eyelets. I can't state whether R. N. Bassett & Company do. I have no doubt that the Waterbury Brass Company and the Waterbury Manufacturing Company make shoe eyelets. Eyelets are not distinguished by being shoe eyelets. They are called a number or size, and the use to which they are put is purely arbitrary. From very small sizes up to the very large they are used for shoe eyelets. Large hunting boots have large eyelets, and the so-called invisible eyelets, the eyelets inside of the upper of the shoe which you don't see on the outside, are very small eyelets.

It is not true that the only concerns that deal to any extent with shoe eyelets are the Rimmon Company, the S. O. & C. Company, the Rhodes Company, the Fast Color Eyelet Company, and the Atlas Tack Company.

I notice that the Fast Color Eyelet Company is really a duplication in this computation (defendants' Exhibit 234). The Rhodes Company makes the brass blanks upon which the fast-color material is placed to make the fast-color eyelets.

In the list of machines used by J. Brown & Sons in their factory in Salem, Massachusetts, I have designated by the word "United" all the machines which have been obtained by J. Brown & Sons from the United Company. As to the

712 McKay sewing machines on that list, the three model S machines were obtained from the United Company and the ten other McKay sewing machines are the regular McKay sewing machines obtained from anyone. I assume that model S means the three, and I really think that model S is a misprint for model B.

This list was made up by Mr. Sampson. I communicated with Mr. Brown personally and asked him if he would allow our people to make a complete inventory of the machines in his factory. He agreed to that, and I asked Mr. Sampson to have it done. I have been through Mr. Brown's factory, but I didn't go through to make this computation. I am relying upon information obtained by my representatives. Of course I don't know personally whether or not the Brown Company got all these machines that are not designated from somebody else. I have not the slightest reason to doubt it, but I will check it up if it is desired that I do it personally.

As to whether the list embraces all general department machinery that is in use by Brown & Co. as well as other machinery, to the best of my knowledge and belief this list embraces every machine that Mr. Brown had in his factory. He was manufacturing McKay shoes and, I think, was making no welt shoes at all.

All the machines under the heading "Lasting room" were obtained from our company. He has 18 metallic fastening machines obtained from our company—three loose nailers, 5 universal sluggers, one grip slugger, 1 heel protector driving machine, and eight staple tacking machines.

As to whether or not it is a fact that some of these machines were obtained from concerns that since the purchases were made have been absorbed by the United Company, as the Bresnahans, I don't know from whom Brown obtained the machines. For instance, he might have obtained a Bresnahan machine from Holt or from any other dealer, not from Bresnahan directly.

I know that not all the machinery in his factory that is under lease was obtained from our company; for instance, we don't handle the Reece buttonhole machine. Those machines do operate upon the upper, but they are just as important as any other machines in the factory.

713 We developed the clicking machine. As to whether that is the only clicking machine in existence, clicking is a trade name for cutting uppers. Any dinking machine or dieing-out machine can be used for the clicking operation and are so used in several different grades of work. I know of no clicking machine that is being used in this country in the manufacture of light grades of shoes except ours.

Dinking machines were used very largely for cutting outsoles, but I knew some factories where they were used almost exclusively for dieing-out uppers. They are used especially in heavy work and where the leather to be cut was cut in large patterns. They were not used to a large extent in cutting

small shoes like ladies' shoes and the small parts of men's shoes. That work had always been done by hand. Frank Anderson, in New Hampshire, used those machines to a very great degree in cutting out his uppers. Machines for doing that work could be obtained from the Seelye Manufacturing Company and various others.

The Miller Treeing Machine Company manufactured the tree feet that are used to finish the shoes on in the factory, and it may have made the shoe trees that are put inside shoes when they are taken off. Our company acquired the business of O. A. Miller and formed the O. A. Miller Treeing Machine Company.

As to whether that company has any competitor, I think the Boylston Company are competitors, if I am correct in my understanding that they own the Copeland treeing machine. Mr. Copeland has been putting out for years a machine for treeing shoes.

In regard to the purchase of the Ross-Moyer Company, of Cincinnati. We made that purchase because Mr. Sam. Ross wanted us to take over the business of which he was the head if we were going to establish our own office or our own store to take care of our business in that section.

The Ross-Moyer Company had not been acting as agent for the Goodyear Company before the consolidation. It had carried at its stores a stock of spare parts for the Consolidated & McKay Lasting Machine Company, and it also carried a stock of spare parts for the McKay Shoe Machinery Company. The Ross-Moyer store was used as headquarters for the men of both of those companies when they were in that territory. They called there to receive word if a manufacturer wanted to see them.

714 I could not say whether the Ross-Moyer Company handled quite a lot of shoe machinery that was manufactured by other people. It is not true that after its purchase that company was stopped entirely from handling shoe machinery of any kind that was put out by other concerns. They have handled almost anybody's machinery. The United Company handles machines of a number of other people. That does not mean that we carry them in our general department and sell them outright. If we have a demand for a machine, or if a manufacturer is fitting up a factory and we know that somebody else's machine is better fitted for particular work, we advise him to adopt that and frequently handle it for the other concern. An illustration is the machine for evening and grading the soles of shoes, made by the Lacene Manufacturing Company. They

are the only people that make a machine of that sort. If we believe that it is for a manufacturer's advantage to use that machine in making shoes, we advise it. Another illustration is the Lockett crimping machine. If a man's work is such that he ought to use one of those machines, we advise him to. Manufacturers really treat the United Company as an engineering corps, and we make it a part of our practice and policy to advise a manufacturer fitting up a factory to put in that equipment that will produce his shoes the best and cheapest.

As to whether we ever advise a manufacturer to put in somebody else's lasting machines, we know of no lasting machines, or welting, or stitching, or metallic, or heeling machines that are as good as those we make ourselves. When others produce something better we shall advise the manufacturer to put in that machine under proper conditions. As to whether we will buy them out if they produce something better so that we can put it on the market, it does not follow because something better is gotten up that we can buy it, and we should not buy it
715 and pay more for it than it is worth to our customers for us to have it.

In regard to the Plant purchase, it is true that I had some gentlemen examine the Plant factory and make a report to me. Among them were Mr. George Warren, Mr. B. F. Mayo, and Mr. Howard. They didn't at that time make a report in writing. Later they made a report to me in writing regarding the various improvements that they thought we could make to our machines by adopting certain improvements they saw in Plant's.

Q. When was that report made? Was it some time after the purchase was actually made and there was a question as to its validity, or was it before?

A. No; it was made, as I remember it, to show what machines or improvements could be adopted to benefit our machines and in what respects. Where there was any duplication certain machines were not as good as ours. Also to show if an invention in Plant's machines was in commercial shape or condition, or if it required and was advisable to try to develop it—that is to say, whether it gave promise of being of value to our customers in the trade.

This report was rendered after the purchase was made and entirely in the line of business, advising the adoption in our machines of such improvements as we could adopt for the benefit of the trade. This was not in connection with the earlier verbal report that they made to me.

Messrs. Endicott, Keith, and Hanan examined Mr. Plant's machines at his request and with my approval. They didn't make a written report.

716 Q. There was one other matter in connection with that I would like to call your attention to. You knew before that purchase was consummated about Mr. Plant's negotiations with the western shoe manufacturers, did you not?

A. Of course I heard, as I suppose a great many people did, about his talk with western manufacturers, but it had no bearing with me at all, Mr. Fowler, didn't enter into the case at all as far as I was concerned.

Q. You observe I did not ask you that. I asked you if you had heard of the negotiations.

A. I had heard that western manufacturers were in town, or coming to town or had been here, but whether he was negotiating with them or they were negotiating with him to buy the machines, or have anything to do with it, I did not know. And I don't know now—except——

Q. As a matter of fact, that very thing was discussed between you and Mr. Plant, wasn't it, at one of your meetings, as to whether or not those fellows were negotiating with Plant?

A. I couldn't tell what Mr. Plant said.

Q. Didn't you tell Mr. Plant that it was not true—it was a bluff—and that they were not negotiating?

A. No; I didn't tell him anything. I don't think I made any remarks to Mr. Plant whatever except similar to what I have made to you, that I was not interested in any talk regarding that.

Q. Didn't he present to you a check already drawn for $50,000 as a wager that they were negotiating and were going to come here to Boston?

A. Mr. Fowler, I can't help thinking that that is born in your mind. I never heard that statement before or anything resembling it until this moment.

Mr. FOWLER. It was not born in my mind. I don't know whether it is true or not.

The WITNESS. I never heard of anything of that sort or anything like it.

717 Mr. FOWLER. I don't know Mr. Plant and couldn't have imagined it unless I had heard about it.

Q. Then you deny that anything of that sort occurred?

A. Absolutely. I never heard of any such suggestion before.

With reference to the covenants in the several contracts of purchase which obligate the vendors not to engage in business for certain terms of years, etc., and the covenants relating to

patents, that was entirely left to our attorneys who drafted the contracts. I always looked upon those things just the same as what I found in a deed or lease. Those attorneys were Mr. Storrow, Mr. Howe, and Mr. Donham. Mr. Donham was secretary of our company, and Mr. Howe and Mr. Storrow were directors; but they were counsel for our company, too. They were employed by the company to do their work.

I personally own the control of the Naumkeag Buffing Company. As to whether the repair parts for that machine are manufactured and furnished by the United Company, they are furnished by the Naumkeag, and the United Company acts as agent in the sale, as they do for other people. We handle lots of other people's goods. The repair parts for that machine are not handled or put in by representatives of the United Company.

718 No service at all goes with the Naumkeag machine. The manufacturer buys his own parts or buys the disks that were testified about. He buys them from the United Company or from the Naumkeag Company. In case he buys them from the United Company, that company gets a commission for handling them, as they do lots of other goods.

I do not know what percentage of welt shoes produced in the United States are made upon the United Company's welting machines. As to whether as much as 90 per cent are made upon them, I don't know, and I testified yesterday that it would be a guess.

As to whether the United Company filed a bill against Fred J. Thompson in 1904 on the Briggs patent, and as to whether I swore to that bill, I presume that I must have sworn to it, if there was such a bill filed. As to whether I am in the habit of swearing to everything that my attorneys prepare, of course I believe what was in that bill.

Mr. FOWLER. I will read you this paragraph from that bill:

"And your orator further shows, upon information and belief, that in the year 1888 its predecessor, the said The Goodyear Shoe Machinery Company, of Hartford, Connecticut, commenced to manufacture and to lease to shoe manufacturers shoe sewing machines operating to form chain stitches in accordance with the method patented in said Letters Patent No. 461,793, and from that time its predecessors, the said The Goodyear Shoe Machinery Company, of Hartford, Connecticut, and Goodyear Shoe Machinery Company, a corporation of the State of Maine, and your orator have continued so to do, and your orator is now engaged in manufacturing and leasing such machines, and it is now and it and its said predecessors continuously have been since the year 1888, able and ready to meet

and fill all demands for such machines on the part of shoe manufacturers or other persons desiring to use the same; that such machines have become widely known to the trade as the 'Goodyear welt and turn machine,' and not only have practically supplanted all prior machines for sewing welt and turn shoes, but have largely increased the number of welt and turn shoes sewed by machinery, almost entirely superseding hand work in the sewing of welt and turn shoes; that your orator and its said predecessors have leased to shoe manufacturers between twenty-one and twenty-two hundred of such machines, and that a large proportion, to wit, more than ninety per centum, of all the welt and turn shoes made in this country are sewed upon such machines."

Q. Were the allegations of that bill true at that time?

A. I have no doubt they were.

719 As to the bill filed on March 11, 1908, against the Duplessis Shoe Machinery Company and R. H. Long, upon the same patent, which was signed by me, and which contained the following allegation:

"Your orator and its said predecessors have leased to shoe manufacturers between twenty-five and twenty-six hundred of said machines, and that a large proportion, to wit, more than ninety per centum, of all the welt and turn shoes made in this country are sewed upon such machines."

I undoubtedly believed that that allegation was correct at the time I signed the bill.

720 At the request of counsel for petitioner, I produce a report of B. F. Mayo and George E. Warren to C. H. Willson, general manager of the United Company, dated November 26, 1910, relating to patents previously owned by Thomas G. Plant. This is plaintiff's Exhibit 267.

PUTNAM, J. How near the date of the Plant purchase was this report made?

Mr. CHOATE. About two months later. If I may ask your honor's attention to a sample of the work they did—I open anywhere, and I open first to the clicking press. That is supposed to be a photograph of the Plant machine, and there is a photograph of the United Company's machine. And the reading is as follows:

(Mr. Choate then read the matter under the heading "Clicking press" on pages 1 and 2 of the report, which matter is reproduced in the record, Vol. —, on pages — and —.)

Each machine is taken up in that way with photographs of the two, and the details of the advantages or disadvantages of each are pointed out. Some machines, it is suggested, are not so-

good as the United Company's; some machines or parts are suggested as better, and they advise the adoption of those they regard as improvements on the United Company's machines.

The WITNESS. The night the Plant purchase was consummated there were present Mr. Howe, Mr. Fish, Mr. Herrick, Mr. Henry B. Endicott, Mr. George E. Keith, Mr. Plant and his lawyer, Mr. Carr, as I remember. There may have been others. Our experts, Messrs. Mayo and Warren, were not there. I believe the papers were completed that night. They had been preparing them, as I remember, from some time in the forenoon of that day.

Regarding the partial list of concerns engaged in shoe machinery and related lines of business which have been offered either directly or indirectly for sale to the United Company, but none of which have been acquired by the United Company (defendants' Exhibit 233), I have not gone over that list since my previous examination in respect to it. I do not know the address of the Acme Heel Protector Manufacturing Company, but my remembrance is that it was St. Louis.

The Alliance Shoe Machinery Company, Empire Sole Laying Machine Company, Excelsior Slugger & Tacker Company, and the Imperial Welt Machine Company were not, as I understand it, all one concern at the time they were offered to us, but I think they afterwards became one concern. I can not say whether the other concerns were acquired by the Alliance Shoe Ma-
721 chinery Company and go under that name now. I do not know where it is located. I did not attempt to go into detail as to whether the concerns on that list were in business to-day and as to where they were located, and I am only familiar with some of them whom I happen to know personally. I do not remember who it was that offered to us the properties on that list. You remember this covers fifteen years.

I do not know the address of R. S. Beach and what he does, and do not know whether he is engaged in business now. I do not know that the Flagg Manufacturing Company became insolvent years ago, but after the death of Dr. Flagg, who controlled that concern, there was considerable trouble, and I think that that company and the Globe Buffer Company and the Union Edge Setting Company were all taken over by the Boylston Manufacturing Company, and I understand that they are now identified with that company.

By the Canadian Shoe Machinery Company I mean the Canadian General & Shoe Machinery Company, Limited, as I remember the name. That concern was doing business in Canada, and as I remember it was doing business here, too. I couldn't say whether it is doing business here now. It has not been acquired

by the United Company, although they endeavored to force us to buy it. I believe those people were at the bottom of the trouble in Canada against us. There has been absolutely no understanding or contract between that company and our company. For years they have repeatedly tried to blackmail us into buying them, and we have had nothing to do with them.

The name of F. W. Colburn is not familiar to me, and I don't know what he does or what he was doing then. David Cummings and W. D. Brackett were doing business in shoe machinery, manufacturing heel-trimming machinery. That was to trim the heel after it had been fastened to the shoe. As to whether 722 they quit that kind of business some time ago, I couldn't say. Nor could I say whether Brackett was a shoe manufacturer in New Hampshire or whether he is now here in Boston in control of the Boston office of the Hamilton-Brown Shoe Company. I know that David Cummings was a shoe manufacturer and has died within a year or two.

~~(Mr. Choate then read the matter under the heading "Clicking press," on pages 1 and 2 of the report, which matter is reproduced in the record, vol. —, on pages — and —.)~~

A. Denslinger & Company, according to my memorandum, were in Philadelphia, and their business was edge trimming, buffing, and finishing machines. I do not know the address of E. L. Dunbar. He was engaged in manufacturing wood heels. Wood heels are usually covered with fine upper leather and are used on women's and misses' turn shoes. Our company never engaged in that business.

As to whether Mr. Hamel, who was on the witness stand, is the successor to the Duplessis Company, I believe so, but am not qualified to testify as to the actual condition of that concern. William E. Frame was manufacturing hand impression wheels at Brockton. Those wheels are used for finishing the outer edges of soles or for finishing around the outer edges of heels. The Frechette Pegging Machine Company was, as I understand, located in Canada, and had some arrangement with Fifield for manufacturing pegging machines. That machine was for driving wooden pegs like the Davey pegging machine and the other two pegging machines that I have mentioned. I can not say whether the Frechette Company is still in existence. We did not buy them.

I have not the address of the Hargraves Hook Machinery & Eyelet Company, but think they are located in or near Providence. As I remember, their business, it was the manufacture of hooks that are set in the upper parts of shoes, and of machines

for setting those hooks. Irving L. Keith was located in Haverhill, and his business was in shoe tacks and nails and shoe findings. I can't tell you whether he is still engaged in business, but assume he is. I have made no effort to ascertain whether any of these concerns is doing business now. I know many of them are in business to-day, but others I do not know about.

723 I believe the Lacene Manufacturing Company is located at Manchester, New Hampshire. Their business is the manufacture of lacing machinery and the Nichols evening and grading machine. That is a machine for automatically reducing the thickness of outer soles the least amount that will bring a level surface. There is no other machine for doing that work, and we never put out a machine for it.

I can not state where the Larsen Machine Company is located. It manufactured sewing machines for attaching outer soles. I can't state whether they are still in business. I never personally came in contact with them and I think the last I heard of them was two or three years ago. I do not know how many machines they actually put on the market, and I am not certain that they are not doing business to-day. They might be without my knowing it.

The McDowell Shoe Machinery Company was located in Lynn, and they were trying to develop a line of heel shaving, slugging, loose nailing, and burnishing machines. My memorandum shows me that this was back in 1899 or 1900. I think they did not succeed and they may have transferred their business to some one else—I don't know. I only know they tried to sell to us.

The North American Chemical Company was engaged in the business of furnishing material for filling in between the outer sole and the inner sole in the manufacture of welt shoes. I can't state whether our company ever produced any material of that kind.

Henry Parsons tried to sell his whole business to us, including dying-out machines and a sole-cutting machine. I don't know how much their business included or how extensive it was. General Darling (clerk of the District Court) can tell about that business, as he is managing it now. As to whether the United Company duplicated the Parsons machines, we manufactured machines for doing that kind of work, but I don't think we duplicated his machines. I am quite sure they are in business now. I do not understand that they went into the hands of a receiver.

724 My remembrance is that the Peck Lacing Hook Company was located in Providence, Rhode Island, and made machines for setting lacing hooks, and also made the hooks and shoe shanks. I can't state whether they are still in business. The Peckham Manufacturing Company were manufacturing shoe shanks. I do not know whether they are still in business. The Potter Shank Company manufactured shanks, pegwood, and various findings, and became a part of the American Findings Company or the Union Findings Company.

The Shawmut Machinery Company was located on Lincoln Street in Boston. It manufactured several machines, including strap covering and stamping machines. It is still in business. George Shipman was manufacturing a number of different kinds of eyelet machines. I have no information as to whether he is still in business.

I have no memorandum as to where the Specialty Shoe Machinery & Tool Company was located. Personally I don't remember anything about that concern. Many of these concerns would be brought to me and I would say that we were not interested. I do not recall anything about the Standard Button Works, except that they made shoe buttons and machinery for making buttons.

I do not know where the George H. Stevens Shank Company was located. Tenney was manufacturing shoe mallets at Worcester, Mass. I don't know whether he is in business. I made no investigation to find out who were or who were not in business at the present time. I can not state where the Tyler Shank Company was situated, and don't know whether they are still in business. My recollection is that the Vose Machinery Company was at Lynn and manufactured trimming machines. I do not know whether that concern is still in business.

725 My remembrance is that H. A. Webster testified in this case, and that his machines went into the Haverhill Machinery Company. I can not say whether H. A. Wheeler is still engaged in business, and my memorandum does not state where he was located. Under Wolfe heel building machines my memorandum gives the name "American Heeling Machine Company." I assume from that that the Wolfe heel building machines were offered to us by the American Heeling Machine Company. I do not know who they are.

(By agreement of counsel examination of Mr. Winslow is suspended until he has completed investigations being made at request of counsel for petitioner.)

726 DECEMBER 16, 1913.

ROBERT F. HERRICK, witness for defendants.

I live in Milton, Massachusetts, and am a member of the bar. I have been practising since 1888 and am associated with Mr. Fish in the firm of Fish, Richardson, Herrick & Neave.

In the year 1910 I attended meetings with Mr. Plant and Mr. Winslow. The first meeting that I attended with both Mr. Winslow and Mr. Plant was in August, at the Touraine. We met later at the Puritan Club.

The first conference I attended with Mr. Winslow and his associates was one night at the Algonquin Club. It may have been the latter part of June or the early part of July. Mr. Endicott, Mr. Johnson, I think, some of Mr. Endicott's men, Mr. Keith, Mr. Connor, and Mr. Winslow, and one or two others were present. I heard the three gentlemen I named make oral reports in regard to the Plant machinery.

As to when and by whom Mr. Plant's desire to dispose of his property was again called to my attention, I remember that Mr. Harry Smith, of Worcester, came to my house at Wareham and asked me to meet Mr. Plant. That was along in the middle of the summer. I am not sure just when. Mr. Smith also came to my office in Boston and asked me to meet Mr. Plant. Those are the two times at which Plant's desire to sell was brought to my attention, if Mr. Smith was correctly representing Mr. Plant's desire.

I told Mr. Smith I would meet Mr. Plant if Mr. Whipple, who was acting as Mr. Plant's counsel, approved of it. Mr. Whipple did approve, and I met Mr. Plant at the Touraine some time in the latter part of July. That meeting was arranged by Mr. Smith. Mr. Plant and myself were present.

I am very sure that this was the first time I had ever spoken to Mr. Plant. There was a long discussion with reference to his wishing to sell what he had to the United Company. The discussion turned largely on the point of insisting that the United Company make stipulations as to what they would do in respect to suits if they saw in his machines, upon examination of them, what they considered to be infringements of their rights. He also discussed the possibility of an arrangement by which he could make a trade entirely independent of any examination of the machinery. There had undoubtedly been some discussion of a possible sale before this, because his argument with me was largely on the point that there ought to be an agreement that no suits should be brought as a result of an examination of his machines. That meeting was not sought by me.

727 Very shortly after this meeting Mr. Plant asked me to go out to his factory, and I went out and talked with him again. He talked again about wishing to negotiate with the United Company, but said he was unwilling that they should make any examination of the machinery, or that if they made any examination it should not be by technical men. I told him that there could be no negotiations excepting on the most careful examination and that there could be no agreements whatever as to bringing any suits. He said: "Never mind that, come through, and I will show you what I have got," and he showed me all his machinery, which I had never seen before, all his systems and the new conveniences he had for his help; he made a complete showing of the whole factory and the business.

I had acted as one of the counsel for the United Company off and on for some years; and my firm had been counsel for the company for a great many years. My firm had had charge of its patent litigation and were acting as solicitors in the patent litigation and in other litigation then being conducted against Mr. Plant.

At that time—the first time—the sale of the shoe manufacturing business was spoken of by Mr. Plant to me and he showed me a long memorandum in regard to the advantages to the United Company of buying the business.

728 As to how he presented that matter to me in connection with his proposed sale of his inventions and patents on machinery, it was simply a general statement why he was anxious to get out of business, and that he would like to not only sell the interest he had in machinery, in his patents, inventions, but that he also would like to sell his interest in the shoe business; that he would like to get the money and retire; and he said that he had developed a great system there; that he kept himself free from any alliances with anyone else; that he had always planned to so arrange himself that he would be free to sell out to the United Shoe Machinery Company. By "system" I mean the development of his shoe business, in the manufacture of shoes, and also when I said "system" I meant particularly his system of handling his people in the factory, which he was very proud of, of handling his help, and he showed me practically everything in the factory, I think.

As to the kind of shoes Plant was making, I only know of my general knowledge that he made "Queen Quality," and I suppose mostly women's shoes; that is a well-known shoe and anybody that has been in Boston has seen it in the newspapers for years. I think I saw a few men's shoes out there. The Plant factory

was a very large brick building, upward into the hundreds of feet, whether 250 or 300 I have no idea. I think it was five stories high and perhaps 80 or 90 feet wide, and it had a brick ell with an office on top, and it was practically a brand new factory.

Q. Did you report at all these overtures of Mr. Plant's to Mr. Winslow?

A. Each time that I heard anything at all about this I would tell Mr. Winslow about it.

My recollection is that Mr. Plant, Mr. Winslow, and I first met in the latter part of August. I remember it was in August, but I have no idea as to the date. We had a long discussion, in the course of which Mr. Plant urged the value of his inventions, and which was mainly on the question as to how there should be any examination and the extent of that examination. That went on for an hour or two.

With respect to this Mr. Winslow took the same position; that is, that there would be no consideration of that machinery without a careful examination by men who were competent to value what Mr. Plant had, and that there would have to be time enough for that, and that there would have to be a thor-
729 ough examination. At this meeting there was a long discussion as to whether the United Company should be free to bring patent suits as the result of anything that was seen during the examination, and there was some discussion about the fact that patent suits were already pending. Mr. Plant said it would be fair enough to bring suits that had already been planned, but that no other suits should be brought until a reasonable time after an examination, if one was made. That discussion went on for quite a little while. There was a list of patent suits that had been prepared by the United Company, but had not yet been filed, which I was to give to Mr. Emery, Mr. Plant's attorney, and there was to be an understanding that no new suits should be brought until a time, I think thirty days, after the examination.

The only time I heard Mr. Winslow and Mr. Plant talking together was this time in the Touraine, but the talk was just the same talk between Mr. Plant and myself and between Mr. Winslow and Mr. Plant, and that was that Mr. Plant would urge the very great value of all this to the United Shoe Machinery Company, and the answer was that: "If it is worth that, why it won't do any harm to see it. If we see it has got value, we are perfectly ready to negotiate on the basis of whatever actual value it has got, and there will be no hurry about it, and we will not deal at all without seeing it, and then we will only deal after

the examination, and if we can't have the examination we won't deal at all."

At these meetings in August I think Mr. Plant's stipulation that the company should put up a million dollars before it could look at his machines had just died away. I don't remember any more about it. He was then stipulating with reference to agreements not to bring patent suits and things of that sort. The only understanding about that which I remember is the one I have just spoken of, and that is there should be no patent suits brought, new patent suits brought, as the result of this examination for a period, say of thirty days after the men were through examining the machinery out at Plant's factory; that the suits that already were prepared should be filed at any time we saw fit, and a list of those prepared and handed to Mr. Emery.

It is rather hard for me to remember whether during these days or weeks of which I have spoken I had any calls or communications with Mr. Smith in Mr. Plant's behalf. Mr. Smith saw me at least four or five times in all, with the purpose of

730 bringing about a meeting with Mr. Plant and myself, and urging by long talks importance to the United Company of acquiring the Plant machinery.

I think the first time I heard of the matter of Mr. Plant's disposing of his stock in the shoe factory was when Mr. Plant brought it up himself in his own office in the Plant factory. I think I never heard of it through Mr. Smith at all. Nothing whatever of that sort was brought to my attention during the negotiations in June. I never heard of it until Mr. Plant spoke to me about it. He had a long memorandum, which he let me read, about the value of that business to the United Company, partly as an opportunity to exploit new machinery and to illustrate new methods to shoe manufacturers. He told me definitely how much money they had made. I have forgotten how much it was; but it was a very profitable business.

I know that an examination of the machines was made later, and after the examination I met Mr. Plant, Mr. Carr, and Mr. Winslow at the Puritan Club in the afternoon. That was on the 20th day of September, 1910.

731 We met in the afternoon and were there until about ten o'clock at night. It was just a long talk about the matter of the sale of Mr. Plant's interest in the shoe business, the sale of his interest in the patents and machinery, the earnings of the Thomas G. Plant Company and the value of its stock, the importance of Plant's patents and a long detailed discussion as to particular features of his machinery like the welt holder, the

automatic stop, his flexing machine, his special insole, and his method of dieing outsoles instead of cutting them. Mixed in with this talk were arguments that it ought to be bought because it would be of such great value to the United. Up to seven or eight o'clock there had been very little discussion as to figures, and Mr. Winslow and Mr. Carr were both out of the room when Mr. Plant turned to me and said: "I am sick of all this waiting. Everybody advises me to sell. I have talked with Mr. Whipple; he advises me to sell. I have talked with Mr. Brandeis; he advises me to sell. And everybody advises me to sell. I could keep on and make a lot of money, but I prefer to get out of the business and pay my debts and retire on my cash." Then he said something to the effect that he could talk to me, and perhaps could not talk to Mr. Winslow without getting mad, and then he said: "I will be willing to take $3,000,000 of money and a million and a half par of the stock of the United Shoe Machinery Company, and give up all my stock in the Thomas G. Plant Company, and also everything I have got in connection with the shoe-machinery business, just stepping completely out of it, and turning everything over to you." I told him that there was some sense in that proposition, because if his machinery was of the value he said it was then the stock would be so much more valuable. Then I went out and brought in Mr. Winslow and Mr. Carr and repeated this to them, and Mr. Winslow and I went out of the room together and talked it over. Then we came back and told Mr. Plant that as far as we were concerned we would accept the proposition, but that it was necessary for Mr.
732 Winslow to communicate with Mr. Barbour and other members of the executive committee. Mr. Winslow said that he would get Mr. Barbour on the telephone as soon as he could and then would let Mr. Plant know, and the matter could be ended. We expected to see other members of the executive committee that night.

Q. Up to that evening had Mr. Winslow made any offer or proposition to Mr. Plant, to your knowledge?

A. There never was any offer made to Mr. Plant at any time during all the negotiations. Even that evening Mr. Plant made that offer definitely to me and I repeated it to Mr. Winslow.

There had been a number of offers by Mr. Plant of different amounts, some of which I knew nothing about then, but have heard about here, but there had been offers of $7,000,000 in cash and $6,000,000 in cash, and they were both in relation to the machinery patents alone and did not include the shoe business, and that night there was more or less talk on Plant's part of

seven or seven and a half million dollars in money before he and I were alone that time.

It was either the night of the 21st or the morning of the 22d that we got word from Colonel Barbour. I think it was the night of the 21st. On the morning of the 22d a check for $500,000 payable to my order was given to me, and a couple of hours later I handed my check for $500,000 to Mr. Carr, Mr. Plant's
733 attorney. This payment was made because Mr. Plant insisted that there ought to be something paid on account, and Mr. Carr, as I remember it, named the figure. As a matter of fact, later, when this contract was signed, there was $500,000 paid to Mr. Plant, so that there was a million dollars paid, but the $500,000 check was given to me on the morning of the 22nd. I gave it to Mr. Carr and simply said: "This is the $500,000 on account." I gave him my own check, I should say—not this one.

I saw Mr. Carr on the morning of the 21st while I was waiting to hear from Colonel Barbour. We began to block the papers out in conversation that day, although I don't think we drew any. I did not see Mr. Plant on the 21st.

It was on the 22d that we started drawing the papers, and Mr. Donald, of our office, Mr. Donham, Mr. Howard, Mr. Carr, and Mr. Whipple worked on the papers. They dealt with a good many matters. I think Mr. Plant actually came into the office that night, the night of the 22d, about seven or eight o'clock. The papers were finished that night. We were there until three or four o'clock in the morning.

There were long discussions about many things; about everything came up which can be conceived of in connection with a going business which was being turned over for a definite sum of money in the middle of the week. There were discussions about merchandise which Plant had on board cars, about pay rolls, and about bills which Mr. Plant owed, some of which were for merchandise already shipped, and all these things had to be discussed. We did not think of them until they came along, one after another. There was no discussion or argument on the main point of the contract. We could have done that in an hour or two. It was the coming up of these details which had not been foreseen that protracted the session into the morning.

734 As to the matter of the obligations to Stanbon and the obligations with Stanley, I do not remember now how it was dealt with, because it was so intricate and there was so much of it that I could not state it without looking at all the papers again. There were fifty points of one kind and another.

I did not know at the Puritan Club anything about Plant's relations with or obligations to Stanley or Stanbon. As to Mr. Plant's attitude about those two matters, he was a pretty stiff trader. He would think of one thing after another, and say that it ought to be taken care of, and then there would be a long discussion.

As to patent suits against Mr. Plant which were brought in the summer of 1910, some were brought on the advice of our office, as I remember it, while other suits relating to machinery with which other people were more familiar were brought on the advice of Mr. Phillips. There was also a suit pending against Mr. Plant on his lease contract with the United Company, and that was being conducted by our office. These were suits against the Thomas G. Plant Company which had certain leases of the United Company. Plant had notified the United Company to take the machinery away, and he had thrown it out of his factory. The United Company brought suit in the Massachusetts Superior Court on those contracts for the royalties due under the terms of the leases. These suits were pending at the time this matter came up.

When Mr. Smith first came to me he told me he had had a talk with Mr. Barbour, and he also told me about a meeting between Mr. Barbour and Mr. Plant in New York, where Mr. Barbour's place of business is. Smith told me he thought I was the man they wanted to see, with quite a little complimentary language. That is all he said; he did not give any really good reason. I mean that he referred to the important position which he said I occupied.

735 Cross-examination:

The first time I met Mr. Smith in connection with the Plant matter was at my home at Wareham. I had not arranged for a meeting, excepting that he telephoned me and asked if he could see me if he came down. I do not think I talked to him ten minutes, because I didn't even know him. He started in to tell me that he would like to bring about a sale of the Plant machinery. Of course I had heard a great deal about it before that and I had known what was going on. I had very little to say to him except that I didn't see any reason why I should talk with him, and I was sorry he had had that long trip for nothing. I don't think I asked him why he was representing Plant.

I did not at that meeting arrange for another meeting with Mr. Smith. I practically told him that I did not care to talk with him. I must have told Mr. Winslow about this as soon as I got a chance, because Mr. Smith was a new feature in the

situation. I should say that this first meeting with Mr. Smith was either the last part of July or early in August, 1910. After this trip to Wareham Mr. Smith came to the office and it was then that he suggested that I meet Mr. Plant. I did not inquire why he was interested in the Plant machinery and I did not suggest that I have a meeting with Mr. Plant. He asked me if I would meet Mr. Plant. I told him that if Mr. Whipple would approve of it, I would meet him. Mr. Smith arranged for a meeting with Mr. Plant and me at the Hotel Touraine. Mr. Smith came into the room with us and then went out. Mr. Plant and I were alone.

Mr. Plant took the principal part in the discussion. What he said at that meeting was the same as at the other meetings; that is, he went over his machinery in very great detail and pointed out what in his opinion were its very great advantages. He commented particularly upon his insole machine, his flexing machine, and with a great deal of detail on certain devices
736 which he had added to the welter and stitcher. He talked about certain things that I didn't understand. He made no proposition at that meeting, but said that he had already talked about selling to the United Company, trying to, and that there was great difficulty in regard to this matter of examination. I knew of this as early as the first meeting at the Algonquin Club, which I testified about, which was prior to my meeting Mr. Plant at the Touraine.

The meeting at the Algonquin Club, according to my best recollection, was the end of June or the first of July. I can get those dates. Mr. Plant was not at the Algonquin Club. Mr. Winslow, Mr. Endicott, Mr. Johnson, I think, one of the foremen for Mr. Endicott's company; Mr. Keith, Mr. Hanan, Mr. John Connor, Mr. Fish, and I were there. I had been told that Plant had made a proposition to sell out before that. I never met Mr. Plant before I met him at the Touraine. I didn't even know him.

The meeting at the Touraine was some weeks after the meeting at the Algonquin Club. Mr. Plant did not make any proposition at the Touraine, but he said that his great difficulty was how to get at the matter of selling, that Mr. Winslow had refused to go ahead without the examination of the machines, and that he wished to see if there was not some way he could go forward without having all these examinations and the possibility of patent suits. Mr. Plant did not say anything about being heavily in debt. He did not mention that at all.

Mr. Plant and I did not come to any conclusion at this meeting. He left it that if no negotiations could go on without

examinations, and if we would not agree to have our hands tied in regard to any possible litigation, he didn't care to go forward.

I did not arrange to meet him again, but I think Mr. Smith arranged the second meeting, when I went to Mr. Plant's factory. I didn't examine the machines at the Plant factory. He showed them to me. I didn't know enough to examine them. . I went out there alone.

737 I am sure I told Mr. Winslow at the first possible opportunity of my whole conversation with Plant. I did not suggest that anything further be done, nor did Mr. Winslow make such a suggestion to me.

I have spoken of meeting Mr. Plant twice. I think I met him a third time within two or three days of the trip to the factory. I think he took me to drive and discussed again the question whether or not it was impossible to go ahead without these examinations and without the question as to lawsuits. Nothing came of that meeting.

I don't remember ever seeing Plant again until I met him at the Touraine with Mr. Winslow on a date that Mr. Winslow fixed as August 16th. I don't know who arranged that meeting. I don't even remember where I got my information to go there, but I must have got it from Mr. Winslow. Mr. Winslow and Mr. Plant were present at that meeting and I think it was a perfectly cordial meeting. I think there was no anger displayed on either side. Mr. Plant either felt or assumed to feel great anger at not having the value of his inventions appreciated, and he talked pretty loud but I don't think he was very angry. No one else was angry.

He said something to me at one time about making the United Shoe Machinery Company look like thirty cents. I think that was the day he took me to drive. Those were not his words but they were something like that. He said that within thirty days he would have the United Company so that it would never pay any dividends on its stock; that he was going to get the Government to help, and that there were other people he was going to get interested to make all the trouble he could, and that he thought I would be very sorry that I had not dealt with him. As to the kind of trouble which he said he was going to make, he said he was going to get the Government started. I think that was all. I think that was a day or so before he filed his plea in the State court. He told me that he was going to file a plea that I probably never had heard of before.

738 During this drive he did not say anything about placing his machines in shoe factories; but he did during one of these conversations say that he would never place his machinery

excepting as a line; that is, he would only place it with a complete line in a factory; that he had talked about placing it, but he didn't intend to do it; he had always held himself in a position where he could trade with the United Shoe Machinery Company, and that was his plan.

Plant did not tell me whether or not he was negotiating with any shoe manufacturers to place his machinery. He didn't say anything about that but he said that he had talked with shoe manufacturers about furnishing shoe machinery to them and I think he mentioned Mr. Endicott.

Plant said that he would get mad every time he talked with Mr. Winslow because Mr. Winslow did not seem to respond very freely.

Q. Now, just about this time, along in June, July, and August, there were a number of advertisements appeared in the newspapers, were there not, of the Plant machinery in Boston?

A. There were advertisements of the opinions of lawyers in regard to the shoe machinery leases; I don't remember advertisements of the Plant machinery. The advertisements attacked the United Company's leases; but they were not advertisements of machinery in the sense of advertisements of anything for sale. In other words, it was more of an attack on the United Company.

Plant showed me a catalogue and said he had either hundreds or thousands of them right in his office that he could put out. I never knew that he did put one out. He told me that he had them to put out.

At the meeting at the Touraine, when Mr. Winslow and Mr. Plant and I were there, the whole of the talk was on the question of the fairness of the proposition that the United should insist upon an examination of the machinery by experts, and in regard to the patent suits. Mr. Plant argued that the examination
739 that had been made by the manufacturers was sufficient, and that Mr. Winslow ought to be willing to make him an offer based upon that examination. That was the examination by Mr. Keith and Mr. Hanan and one of Mr. Endicott's men, who reported at the Algonquin Club meeting—I don't know whether Mr. Endicott was there or not.

Mr. Plant argued that we ought not to bring any patent suits as a result of anything that was found out in the examinations. Then we spoke about the facts that certain patent suits had been prepared, and discussed how he could be safeguarded in case we went forward; about not having any new suits brought that had not already been considered until after a certain time. Then we agreed to prepare a list of the patent suits that we had ready to bring and hand it to his counsel.

I don't remember how many suits had already been brought and I don't think I knew at the time. I don't know anything about the patent side of my office. I think there were about 13 or 14 suits on the list which I made out myself and sent to Mr. Emery.

No understanding was arrived at at the Touraine. I don't remember seeing Mr. Plant again or hearing anything about him or about any meeting that he was in, until I met him at the Puritan Club on September 20th.

I think I had talked with Mr. Winslow in the meantime, and that he had told me that Mr. Endicott had said to him that Plant was willing to sell for a certain figure.

Before that time an examination of the machinery had been made. I don't know how it came about—it may have been arranged at this very meeting at the Touraine, but I don't remember that it was—I should have thought it was arranged at some later time. The examination had been made by some experts of the United Company, who had gone into the machinery with some care. I saw the report which, when I saw it, was in writing, but I am not certain when I saw it. I talked with the men before the Plant purchase and saw some form of report that they had made up. I do not know who made the report.

740 The meeting at the Puritan club was attended by Mr. Carr, Mr. Winslow, and myself. I arranged the place of meeting myself. It must have been Mr. Winslow who suggested it to me. That was the meeting at which Mr. Plant made his proposition to me, which I repeated to Mr. Winslow and Mr. Carr after they came into the room, and which was accepted.

As to whether Mr. Plant was angry at that meeting, he was a little bit angry once or twice during the first part of the meeting. I don't know what he was angry about. As to what he said that caused me to come to the conclusion that he was angry, it was not so much what he said as the way he said it. He said there had been too much delay in examining his machines; that it ought not to have taken so long. He didn't say anything about shoe manufacturers from the West, or that he was considering the proposition with them. He did not mention them. He said nothing about having notes that were coming due in the near future. I think I had known for six months that Mr. Plant was heavily in debt. I never made any inquiry to find out how much he was in debt. The day I went to drive with him he told me that he was in a position to handle all his finances, that he was perfectly well off financially, and could look after his own notes.

I never made any trip to New York for the purpose of ascertaining Plant's indebtedness. As to whether I ever called on

any representative of any trust company or banking concern in New York, a few hours after Mr. Plant had been there trying to negotiate a loan, and said anything to the effect that they better be careful, that Mr. Plant was heavily indebted, I recall a talk with those men, but I never said that. I got a message from Mr. Wiggin, of New York, president of the Chase Bank. I think it came through my brother in New York, who asked me over the telephone when I was going to be there, because Mr. Evans of the North American Insurance Company wished to see me. I have no idea what position Mr. Evans has with the North American. My impression is that he was president, but I never met him. I answered that I was going to be in New York in a few days and would be glad to see Mr. Evans. I had no idea what he wanted to see me for. I rang up Mr. Wiggin and asked him what Mr. Evans wished to see me about, and he said that on that matter he wished I would go to the Central Trust Company and talk with the president, Mr. Wallace.

741

I had worked on several matters that Mr. Wallace had been in, and went down to the Central Trust Company and asked him what he wanted to see me for. I told him that I heard from Mr. Wiggin that Mr. Evans wanted to see me, and then when I got to New York I heard that Mr. Wallace wanted to see me. I had quite a long talk with Mr. Wallace about Plant. From my papers I find that the date was September 1, 1910.

Mr. Wallace started in talking about the other matters on which I had worked with him, and did not mention Plant for a few minutes. Then he said that a large concern which had international banking connections was considering buying into the Plant situation, that he was planning to have an expert and a patent lawyer go to Boston and look into Plant's affairs and see what Plant had, and that if those people put in their money they would be very strong, and of course would do a great deal with this business.

After he had talked that way for about three-quarters of an hour he said that of course he only wished to make so much out of it—he didn't say how much—and if he could make as much by selling to the United Company, he would be as contented to do that as to turn it over to this banking house.

Mr. Wallace did not tell me that he had an interest in Plant's machines, and he did not name the concern. I guess they wanted to sell it before they acquired it, I think. As to how they could sell it before they acquired it unless it was merely as an agent for Plant—well, I think that was their plan. They had no idea of putting any money out.

742 Mr. Wallace said that this was a great opportunity for the United Company to buy the Plant machinery; that Mr. Plant had been to him and that he had made a certain proposition to Plant which Plant had refused to assume, and that he told Plant that if he came back it would cost him more, and so each time he came back. I told Mr. Wallace I was very glad to hear what he had to say and that if he ever wanted to see me again I would talk with him.

There was not a word said at that meeting about Plant's indebtedness. I am very sure that I did not see any other person about that matter during that trip to New York.

743 I made another trip to New York, when I saw Mr. Woodward of the Hanover Bank on some business, and he then told me that he had heard that Mr. Plant owed the City Bank some money and that the City Bank and a hide man, whose name he wouldn't tell me, had some plans for buying Plant's business. Mr. Woodward is a director of the United Company, and he simply spoke to me about this without my speaking to him at all, while I was in the Hanover Bank about other business. These were the only talks I ever remember having in New York about Mr. Plant. I think I did not speak to anyone else in New York about the Plant matter other than Mr. Wallace and Mr. Woodward. Mr. Wiggin simply told me over the telephone that he wished me to see Mr. Wallace instead of Mr. Evans, but he didn't tell me what it was about.

As to whether, when I saw Mr. Wallace, he told me that Mr. Plant had been in there only a few hours before that, he did not. I had only that one conversation with Mr. Wallace about the matter. Neither of us communicated with the other about it afterwards.

Mr. Wallace said that he and this large international banking concern, which had an immense amount of influence, were seriously considering acquiring an interest in the Plant factory. I did not believe him. My reasons for thinking that Mr. Wallace did not mean what he said were, first, I knew Mr. Wallace; then he spoke in a perfectly easy, comfortable way about how he was going to do these things. I was convinced he did not know what he was talking about and that all he had in mind was to see if he couldn't make a turn by getting a bid from the United Company and then dealing with Plant. He almost said so. I left him saying that they were going to send some one over to look at the Plant machines. I think he is president of that bank at the present time.

I did not say that Mr. Plant told me how much he was in debt. I said that he said that he was so fixed that he could look after

himself perfectly well. That was on the day he took me to drive.
I never knew how much he owed and don't know now.

744 The end of the meeting on September 20 was that Mr. Plant made that proposition, and Mr. Winslow said that if his executive committee confirmed him in it, it was done, and that he would get at two of them that night and reach Mr. Barbour as soon as he could over the telephone. That was about ten o'clock at night on the 20th.

At that time I did not know that some western shoe manufacturers were then in Boston, but I did know it within a couple of days afterwards.

On the 21st Mr. Carr and I were discussing a plan of how to work out some of the papers, and Mr. Carr went to Mr. Whipple's office in the afternoon to work on some of the papers. We were waiting to hear from Mr. Barbour. That was all that happened on the 21st.

On the 22d I got word that Mr. Barbour approved and that I was to deliver the five hundred thousand dollars over to Mr. Carr, and I did it.

During my conversation with Mr. Plant he frequently made the statement that if the United Company would not buy him out, they would be sorry for it. He gave me hundreds of reasons for those statements. Sometimes he would say that it was because of the enormous value of his patents and sometimes he would say it was because he was going to attack the United Company. He never said anything to the effect that he was going to put competition into the field. He always said that he had got it up to sell to the United Company.

The suit in the State court which was brought against the Thomas G. Plant Company was to recover back royalties. I could not state without seeing the papers whether it also prayed for an injunction to restrain him from using his own machines.

(Defendants' Exhibit 258 is check No. 73,767, dated September 22, 1910, for $500,000, in favor of Robert F. Herrick.)

745 DECEMBER 16, 1913.

WILLIAM R. SAMPSON, witness for defendants.

I live in Swampscott, Massachusetts, and am employed by the United Company. I am manager of the general department.

I know Frank Merrick and Charles Luitweiler. I remember meeting them some time in 1905 or 1906. That meeting came about in this way:

Mr. B. P. Buck, of the Shawmut Machinery Company, called at my office and showed me a sample of stitching, comprising

several pieces of leather which had been stitched together, and said it was done on a new machine that Merrick had just brought out. Buck was enthusiastic about the quality of the work and said the United Company ought to have the machine. I suggested that he go upstairs and see Mr. C. H. Willson. Buck said he didn't want to see Mr. Willson himself and asked me if I would not make an appointment for Mr. Willson to see Mr. Merrick. Then he said that Merrick had several machines which he wanted to sell, and would like to get employment with the United Company, and would like to meet Mr. Willson and talk it over. I told him that if he would leave the sample I would be glad to show it to Mr. Willson.

Within a few days after that, Buck came into the office and invited me to take a sail down the harbor and lunch at the Hull Yacht Club. I declined, as I am a poor sailor, but he came again within a day or two and urged me to go. I explained that I could not talk with Merrick and Luitweiler with any authority and could not see what would be gained. He said that Merrick wanted to explain the machine to me so that I could explain it better to Mr. Willson. I finally accepted, and following his directions I went to South Boston, where Merrick and Luitweiler met me.

While we were sailing down the harbor Merrick talked about different machines which he had brought out and mentioned particularly the Puritan fairstitch machine. He said he ought to be of value to the United Company.

After lunch we talked for some time on the veranda. 746 They told how much money could be made by selling the machines to the harness trade for $750 each and how much their machine would damage the Campbell machine if they put it out. The Campbell machine was one in which the United Company was interested.

When I was about to leave Mr. Luitweiler asked when he could meet Mr. Willson, saying they were very anxious to meet him and had to make plans, because they were going to make money in other directions if they could not sell to the United Company. I told him I could only report the matter to Mr. Willson, and if there was anything further I would let him know.

I did report this to Mr. Willson, and several days later he told me I could make an appointment for Mr. Merrick and Mr. Luitweiler to meet Mr. Winslow at the Hotel Touraine on a certain day. I was not present at that interview.

I have met Mr. Merrick only once since, and that was at a fair in Mechanics Building where he had a new stitching machine.

The machine which I was discussing with him in 1905 or 1906 was the straight needle machine for harness work.

I did not solicit the meeting with them in any way, nor solicit a meeting for Mr. Winslow with them.

(No cross-examination.)

747

DECEMBER 16, 1913.

ALANSON C. BROWN, witness for defendants.

I live in St. Louis and am engaged in the shoe business. I am president of the Hamilton-Brown Shoe Company. We have seven factories, and we are now making about 25,000 pairs a day. I imagine our company stands fourth among the large manufacturers of the country.

We make all kinds of shoes—men's and women's, children's and boys', and welts, turns, and McKays. We also make standard screw shoes, but no pegged shoes.

Mr. McElroy, who testified for the United States, was in our employ three years ago. Our concern formerly belonged to the Shoe Manufacturers' Alliance, but withdrew from it some time in the winter of 1911. Our reason for withdrawing was that we didn't believe the management of it would make a success and we didn't want to put any more money into it. We understood that Mr. Ballard was going to run it, and he had been a foreman with us, and we didn't consider that he had made a success. He was associated with the other manufacturers that were in the alliance, and I think Mr. McElroy probably was over him.

Practically all the machines in our factories are United Company machines. As to our experience in respect to the supply of improved machines, we think that we have gotten the improved machines without any extra cost to us and that they have benefited us in the saving that we make with the machines; we get out the shoes more rapidly.

The service furnished by the United Company has helped us to educate our workmen and teach them how to run the machines. If a machine breaks down they send a man at any time to repair it or fix it up and keep us running, and they have furnished parts so that we didn't have to keep any supply of parts.

The United Company has instructed a good many operators for us. They instruct operators for us right along without any charge to us. As to the importance of that to us, the operatives struck in five of our factories a little over a year ago and we had to get practically all new operatives in all of those factories. Those operatives were instructed by the United Company's men without charge.

The company also keeps our machines running. If one of the machines should be out of order it would clog up and congest that department until we got the machine running again.

748 As fast as the United Company gets up a new machine which we think is an improvement over the old machine, we try to get them to install it in our factory and take out the old one. They have done this in every case without charge to us, except the freight.

That has resulted in savings to us in the manufacture of our shoes. As to the extent of our savings I know only what Mr. C. E. Ross, our superintendent of the "American Gentleman's" factory, has told me. I had him ascertain what our savings were. We prepared a circular with respect to these facts and sent it out to our salesmen on the road—about 120 men.

The opportunity to lease our machines instead of investing our own capital in them by way of purchase has given us more money to put into other departments of our business. The capital which we invest in the materials which go into shoes we turn over about three times in the course of a year and in the usual course of business we make a profit every time. Our capital is four million and our gross business is around thirteen million a year.

On some machinery that we own we charge off twenty per cent a year for depreciation.

Cross-examination:

I am 31 years old and have been connected with the shoe business since I was fifteen years old. The first thing I did in the factory was to sweep the floor.

I never ran a machine myself and never have repaired a machine. I think I know a welter from a stitcher. I have seen them taken apart and put together. I see machinery operating every day, but I never studied it. I make no pretense at being an expert machinist.

I am the son of the Mr. Brown who has an interest in the business, and Mr. McElroy is my brother-in-law. There are no hard feelings between us. Our seven factories are all in St. Louis, except one that is about 125 miles from St. Louis. Three of the factories are adjoining, on different blocks.

Personally, I have never had anything to do with keeping up the repairs of the machines. When a machine breaks down our superintendent gives notice to the United Company. We pay for the repair parts. I never made an estimate to see what the repair parts cost us and know nothin about that at all.

749 We never undertook to operate one factory or any number of factories upon the system of ~~keeping~~ making our own repairs and keeping our own machines in order. I have no idea whether that could be done more cheaply than the United Company's method.

I think practically all of our machines are obtained from the United Company. Every one of our leased machines and a good part of our general department machines are from the United Company. During my time we have never used anybody else's machines at all. We have had a stapling machine of some kind for fastening soles. I don't remember that we ever used a principal machine that was bought outright. I have no idea what would be the cost of operating a machine for which we had paid in the beginning.

As to whether it is better to buy the machines outright and keep them up ourselves, or to lease them from the United Company, I have an idea but I don't know. We never tried the other system.

The United Company is helping us instruct operators almost daily. We have green help in our factories right along and they send an instructor who helps instruct these operators. During our labor trouble we tried the system of having some teachers ourselves. We didn't have enough instructors from the United Company and had one or two of our foremen try it. As to whether they could instruct all right, it would be a big expense to us if we had to do that. We never adopted a system of keeping our own instructors on hand and instructing new operators as they came in. This United Company system of instructing operators is a good thing all the time. We employ it practically all the time.

I have no idea of the total annual royalty that we pay to the United Company. I know that last month we paid them in the neighborhood of twenty thousand dollars. I should think we paid them something like two hundred thousand dollars a year. I couldn't say positively.

I don't know what it would cost to install our machines under the United Company's unrestricted lease system.

I am in Boston buying shoes for the jobbing house. We both sell and buy shoes. We run a jobbing establishment in connection with the factory. I have a man with me who has charge of that end of the business.

When I am at home in St. Louis I am connected with the running of the factories. Just now, while I am in Boston, I am on the jobbing business.

750 It was in the winter of 1911 that we got out of the Manufacturers' Alliance. We had no trouble with them in any way.

Our company was connected with the gentlemen who undertook to purchase Plant's machinery. My father was representing us in that matter. He was here in Boston, but I don't know whether it was at that time.

Redirect examination:

The reason why we have not attempted to have a repair shop and have our machines kept in repair by our own mechanics is that we have always looked upon the United Company as if they were our machinists, and we did not spend any more money than we had to. We have felt that that arrangement was advantageous for our business.

When I am in St. Louis I am all around in different factories and the store. I am the executive head of the business.

751 DECEMBER 16, 1913.

JOHN H. CONNOR, witness for defendants.

I live in the West Roxbury district, Boston, and I am a vice president of the United Company.

I had several meetings with Charles Luitweiler and Frank Merrick some time in the spring of 1911, as I remember it, at which there was some conversation with reference to some of their properties.

As I remember it, Mr. E. P. Brown told me that he had had some negotiations with Mr. Merrick and Mr. Luitweiler and asked me if I would see them and look into the matter for him.

At the first meeting in my office Mr. Merrick and Mr. Luitweiler told me that they were ready to dispose of all of their machinery business, including a curved needle stitching machine and a straight needle harness sewing machine, which were patented, also a marking machine. I told them that if they had anything covered by patents that was in advance of what we had and would make our machinery more efficient or would be a benefit to our lessees, we were prepared to negotiate. Mr. Merrick also told me that he had a patent on a method of making a shoe which he wanted investigated.

We didn't have much time that day and later on Mr. Luitweiler telephoned me to arrange for further conversation in relation to the matter. He stated that he didn't want to come to our office and invited me to meet them at the Boston Yacht Club, which I did. They then discussed the advantages of their curved needle machine and spoke of the shoe. I told them that at an interview I could not come to any definite con-

clusion as to the value of the machines, that I would have to have the patents on them looked into and would be obliged to see the machines to see how much their patents were embodied in the machines. They invited me over to East Boston, and I examined those machines and, in fact, the whole factory, with them.

During one of these interviews Mr. Merrick said that his price was $750,000. I asked him how he divided it and he said that the straight needle harness machine alone would be $350,000. At that interview I told him I did not see anything that would warrant our purchasing the machines, but arranged for him to send over copies of the patents that had been issued,
752 about a dozen, and they also sent over a shoe made by their patented method. Messrs. Warren and Bresnahan, who had seen their curved needle machine in operation, reported unfavorably on the quality of its work.

Accordingly, I concluded that there was nothing for the company to purchase, and I invited Mr. Merrick and Mr. Luitweiler to the Algonquin Club to meet me and Mr. Brown. There I told Mr. Merrick that I could see nothing of value to our company in his patents.

He told me that he thought that the price $750,000 was very reasonable, as his company would stop more than a million dollars in royalty to our company in the harness trade and in the welting trade. I told him that it never had been and was not then the policy of the United Company to purchase competition pure and simple—that we were only interested in patented machinery that would make our line more efficient. I told him that further than that—or asked him further than that if he knew that the purchase of such competition, or the negotiation for and the purchase of such competition was contrary to law, and jokingly asked him if he wanted to go to jail—said that I didn't want to.

I made an examination of the curved needle machine. One of the principal practical objections to the machine was that the needle was run on the radius of a circle two and a quarter inches in diameter as compared with two inches on our machine. Mr. Merrick told me that as the machine only ran on one side of the diameter, it only made a difference of one-eighth of an inch, but I told him that the difference of one-eighth of an inch was a great deal. In operating on the shank of a shoe the needle strikes the upper and cuts and scrapes it, if it is of a larger diameter. The samples of work that our experts had stitched on the machine showed that they couldn't get into the shank.

For this and other reasons I thought the machine was not practicable.

These meetings which I had with them were very friendly. I don't remember that at any time they said that Mr. Winslow had threatened to drive them out of business. They referred to the company as stopping their business, preventing them from introducing their machinery, but they spoke of nothing of an unpleasant nature that I know of; on the contrary.

I supposed that our negotiations were ended after that meeting, but Mr. Luitweiler later asked me if I would consider taking the agency of the straight needle harness machine for Europe. I told him that we had a eye-needle harness machine over there; but that if his machine, which is a hook-needle machine, was capable of accomplishing work that our machines could not do, we might consider taking the agency.

He said that he would like to talk that matter over and invited me to lunch with him again at the Yacht Club. I then told him that if we could do justice to both our machine and his, I might consider taking the agency. Mr. Merrick then said that if they gave the agency for the harness machine, they would want to give the agency for the curved needle machine for stitching and for welting. I told Mr. Merrick that that would be out of the question, because we didn't consider his welting machine in the same class as ours and we couldn't do
753 justice to both machines. He replied: "That being the case, there is no reason for continuing the negotiations further."

Within a week or ten days after that Mr. Luitweiler telephoned me that a Russian gentlemen was in his office who wished to buy a harness machine. I asked him why he didn't sell a machine to him. He said he didn't want to put one machine out there where they didn't have the parts for the machine and had no one to take care of it, as he thought it might do more harm than good and he asked whether I would like to see the man, thinking that we might sell him some goods. I told him I should be pleased to see this gentleman and he sent a young man with him from East Boston to my office. Accordingly, I considered that my relations with Mr. Merrick and Mr. Luitweiler were at least pleasant.

I believe they have one curved needle machine out, but have never put their machines on the market that I know of.

Cross-examination:

It was in the spring of 1911 that Mr. E. P. Brown asked me to see Merrick and Luitweiler. As I remember it, Mr. Brown told me that they had solicited an interview. I then arranged to

interview them myself—I should say within three or four days. I met them at the Boston Yacht Club at their solicitation, and then I met them again at the Algonquin Club. At both meetings we discussed the harness machine and the curved needle machine. At this time the United Company had a machine for performing identically the same operation as the curved needle machine of the Union Lock Stitch Company, although the United Company's machine was very much better. I saw the Union Lock Stitch machine operate at their factory.

I did not come to a definite conclusion that the United machine was better than their machine until I talked with Mr. Warren, who had seen the machine in operation, and referred to their patents. Mr. Warren told me that our machine was better.

The only other interview after that was that at the Algonquin Club, where I invited them for the purpose of breaking off negotiations. I told them then that I didn't think their machines were as efficient as ours and I saw no reason for the company's purchasing their patents. That was the meeting when we had the conversation about competition. I said that we considered it bad business policy to buy out competitors solely for the purpose of purchasing competitors, and that it had not been and was not the policy of the company to do that. I said that it was not policy to buy them up on the ground that they were a competitor.

754 DECEMBER 16, 1913.

ELMER P. HOWE, witness for defendants, resumed.

Direct examination resumed:

As to the result with respect to the Eppler Company and its business if the Goodyear Company had succeeded in the pending litigation, it is my opinion that the infringing devices were very material in the construction of the Eppler Company's machines, except the welt-sewing machine, and that the litigation would have compelled alterations, especially in their stitcher and auxiliary machines, and would have temporarily put the company out of business. It is of course a matter of speculation whether they could have succeeded in making those alterations and in getting around such decrees as we were likely to obtain.

At the time I was active in the Goodyear Company's affairs I had had practical training and experience with shoe machinery. I began very early in the shoe-machinery business. My father was a manufacturer of cutting dies for cutting soles and different parts of the shoe, and very early I had the run of his factory and and then some duties which took me into the shoe factories in Worcester and the outlying towns. I then acquired a working

knowledge of pegging machines, and later I examined and operated the McKay sewing machine, and subsequently repaired it. A little later, while I was in the Worcester Polytechnic School, during one of my vacations I made the working drawings for the Bigelow heeling machines—heel building, heel compressing and attaching machines, which subsequently went into the McKay Shoe Machinery Company. That was about 1868 or 1869.

In 1873 I was at the Vienna Exposition for five months, and examined particularly the shoe machinery which was exhibited. While I was in college, during one vacation, I testified in an interference suit between the McKay Heeling Machine Association and the Bigelow Heeling Machine Association. While I was studying law I acquired a fair knowledge of B. F. Sturtevant's inventions in the manufacture of pegwood and in pegging machines. Ever since I was admitted to the bar in 1879 I have been actively interested as counsel in shoe machinery, and I think I should have fairly practical knowledge of the sewing machines, stitching machines, and the auxiliary machines of the Goodyear Company.

My connection with the Goodyear Company began about 1879 and continued without a break until it became a part of the United Company. I was familiar with the machines which that company produced and put upon the market, except the very earliest machines made when their headquarters were in New York.

The functions of the auxiliary machines which were marketed by the Goodyear Company in the late 90's just prior to the formation of the United Company were, stated in a general way, as follows:

755 Referring to plaintiffs' Exhibit No. 4 the so-called "full set" lease of the Goodyear Company, a form first got out in July, 1897, the principal machines were the Goodyear welt and turn machine and the Goodyear outsole stitcher; one attachment called a welt bevelling attachment sometimes went with the latter, sometimes not. The insole channeler and the outsole channeler were improvements on the corresponding auxiliary machines which had been in use ever since I had been connected with the company. The company had a rounding and channeling machine, and also a channel lip turner which turned over the lip of the outsole preparatory to stitching. The channel opener opened the channel. The welt beater pounded out the welt after it was stitched on. The shank skiver thinned the shank of the shoe, and the Universal shank skiver was an improved machine for that purpose. The bobbin winder was

merely an accessory of the outsole stitcher. The welt groover and welt splitter were used in preparing the welt before it was attached to the sole, by the welt and turn shoe machine. The Universal inseam trimmer trimmed the surplus upper leather and other stock from the shoe before the outsole was aid. The Goodyear sole layer cemented on the sole before the operation of the outsole stitching machine. The Goodyear automatic sole leveler, which I described in my previous testimony, made the outsole conform to the insole and the bottom of the last, after the operation of the outsole stitcher. The Hadaway stitch separator, which was a very important auxiliary machine, pricked up or separated the stitches on the welt which had been laid there by the outsole stitcher.

All of these auxiliary machines were peculiar in their operations to welt shoes only, except that the stitch separator could be used for pricking up imitation stitches on mock welts or McKay welts. Otherwise these auxiliary machines were every one adapted to making a welt shoe and were of no use on any other kind of shoe.

The Goodyear system ran back to 1870 or 1868. The Eppler Company did not come into the field until late in the 80's. At one time the Goodyear Company had used the Eppler method of laying the chain stitch in a machine for sewing turn shoes, and had abandoned it because of the ridge that it made on the outside of the sole after the shoe was turned. Eppler knew of that abandonment. He had worked for the Goodyear Company for a time. He applied that method to a man's welt shoe with a thick sole, where it could be utilized.

At first Eppler had only the welt machine, which attached the welt to the innersole, and didn't have any machine for attaching the outersole to the welt. At that time when they had only the welt machine the outsoles of shoes operated upon by that machine were attached by a straight needle stitching machine, such as is used in harness work, or were sewed by hand.

756 Of the Goodyear auxiliary machines, the insole channeler and welt groover and welt beveler preceded the operation of the welt and turn shoe machine; before the operation of the outsole stitcher came the Universal rounding and channeling machine, the lip turner, the channel opener, the inseam trimmer, and the sole layer; the automatic sole leveler and the Hadaway stitch separator operated after the outsole stitcher. These machines performed consecutive operations in manufacturing the shoe. One or two of them were alternates.

The Goodyear Company had a registered trade-mark, the name "Goodyear Welt." We gave our lessees the privilege of

using that trade-mark, and tried to have them stamp it on a conspicuous part of the shoe.

Prior to the development of the Goodyear system there was no system for making welt shoes by machinery. Welt shoes were made by hand in the very early days, and down to 1899. The Goodyear system was the first for making welted shoes by machines, which imitated the exact process by which a hand workman made a welted shoe.

The Goodyear auxiliary machines were put out by the Goodyear Company on a lease substantially like plaintiff's Exhibit 4, and the lessee expressly agreed that he would not use or permit the use of the machines or any of them upon boots or shoes in the manufacture of which any sole or welt sewing machine not leased to him by the lessor was employed, or for any other purpose than the making of Goodyear welts, unless the consent in writing of the lessor should have first been obtained. In addition to the initial premium charge for the principal machines, an initial premium was required for the auxiliary machines, depending upon the size of the respective machines.

As to the business reason for the provisions of the sixth clause of the lease of plaintiffs' Exhibit No. 4, the machines were designed in succession especially for the manufacture of shoes that had been or were to be sewed and stitched by our principal machines, and as they were especially designed for use in connection with those machines we wanted to keep them there for that purpose, and therefore we restricted it.

We did not receive any royalty for the use of the auxiliary machines, independent of the royalty received for the
757 principal machines. The royalty was measured on the two principal machines, and there was no way of telling to what extent the auxiliary machines were used. If the auxiliary machines were used in violation of the sixth clause, and we found it out, we got the same royalty for the use of one of the auxiliary machines that we would for two principal machines; but we probably did not find it out in a good many cases.

The Ideal lasting machine was developed from the Copeland rapid laster. The Goodyear Company acquired a substantial interest in the Copeland Rapid Laster Manufacturing Company, which I think started about 1892 or 1893. When the Ideal laster was developed, particularly for use on women's welts, the Goodyear Company acquired the entire interest in the Copeland Company and subsequently leased the Ideal laster as an auxiliary to its welt and turn machine and its outsole stitcher.

The Ideal laster was adapted to work on women's welts, light leather, which no machine in the market at that time would do

successfully. It might as a feat be used on men's welts, particularly if they were made of thin leather. But the machine was designed and almost wholly used for lasting women's welts.

I was familiar with the fields of the different types of lasting machines used in 1899. The McKay & Copeland machine was the first successful lasting machine that I knew of. That was adapted only to heavy work like brogans.

The Consolidated hand method machine was adapted principally for lasting McKay sewed, and standard screwed or pegged shoes that were lighter than those on which the McKay & Copeland machine was used.

The Chase machine was designed for and used almost exclusively on men's welts.

Q. Now, did those four types of lasting machines practically and commercially overlap or duplicate each other, or did each have its appropriate and proper field?

A. Each had its separate field for which it was designed, but in the cases of all machines of a genus the specific varieties will overlap. It is the same in the case of automobiles. There is a line between a runabout and a seven-seated touring car, and on each side of that line you could use either machine, but the runabout is not adapted for a truck and a truck is not adapted for a runabout strictly.

Q. You mean that commercially each had a fairly defined field?

A. A fairly well defined field. It would happen sometimes in a shoe factory whose principal work was the manufacture of women's welts that the concern might be making a few McKay sewed shoes, but not enough to have an appropriate lasting machine for them. In that case frequently they would strain a point and last their McKay shoes on an Ideal laster, for which it really was not adapted.

I was familiar only in a general way with the business
758 of the McKay Shoe Machinery Company prior to 1899. I
knew what class of machines they were putting out and that they were leasing them, first with an initial premium and royalty charge. I knew that subsequently they had abandoned the practice of asking an initial premium in the metallic department, and later I knew that they had been putting out no leases at all for metallic machines, waiting to determine what policy they could afford to take with their machines.

The universal practice of all three constituent companies prior to 1899 was to lease their machines.

The preliminary discussions in connection with the formation of the United Company were wholly conducted by Mr. Winslow

and myself. Mr. Brooks and his company had no part whatever in those conferences.

The directors of the Goodyear Company, excepting myself, were in New York and its vicinity, and the directors' meetings were held there. There were no officers of the company in Boston except the treasurer and general manager and myself, and I had accepted for administrative reasons the position of vice president. I was still practising law, and I did not desire to continue as an administrative officer of the company. I wanted to get out.

The McKay Company desired to sell its Winchester factory, and before the Goodyear factory was built on Albany Street Mr. Brooks had several talks with me about acquiring the Winchester factory, which for some reasons was thought to be unsuitable for their purposes. They wanted to go back to Lawrence, where they had previously manufactured their machines.

Q. Will you state the substance and result of these conferences that you had with Mr. Winslow which ended in the formation of the United Company?

A. Well, we had many conferences, all of them, I think, in my office, and they related entirely—of course, I can't pretend to give the language—they related entirely to the economies which we could get if the two complementary machines were handled by the same company—the economies, first, in the administration of the two companies; the economies due to manufacturing the machines themselves and the parts and the auxiliary machines in one factory where we could get a modern up-to-date factory; the economies that could be attained by consolidating our service. The Goodyear at that time had the best branch offices where stocks of parts were kept, where expert operators were on hand every day to answer telephone calls and go out to repair the machines. The Lasting Machine Company had similar agencies connected with shoe finding concerns in Brockton, in Cincinnati, in Philadelphia, and in Chicago, but their service was nothing like as good as the Goodyears. On the other hand, the Goodyear for the volume of business it did was furnishing service at too great expense, and I thought, particularly—and I think Mr. Winslow concurred with me—that if we could in some way bring about a harmonious arrangement between the Lasting Machine Company and the Goodyear Company we could make a great saving and
759 give the service with greater efficiency in all the branch offices and also, as I have said, in the manufacture of machines and the running of a factory. Proportionately to the

amount of business done there would be less overhead charges. Furthermore, as I said, I wanted to get out of the shoe machinery business, and I knew from my acquaintance with Mr. Winslow and Mr. Brown, who could give their whole time to it, that a far better and more efficient management could be secured than with a lawyer running the company, and with his directors in New York City.

Mr. Winslow and Mr. Brown were well known as efficient managers for the Lasting Machine Company, and Mr. Brown had been known as district manager for the Wheeler & Wilson Company.

Q. Was there any competition between your Ideal machine and your Chase machine, or any other lasting machines?

A. Whatever competition there was was due to their respective fields lapping over.

Q. They really occupied separate fields?

A. They really occupied separate fields. It was competition which might be described as incidental or as negligible.

My conferences with Mr. Winslow began about July, 1898, and continued as we both had time for them. I was opposed to the plan of having a harmonious arrangement, a sort of working agreement between the Lasting Machine Company and the Goodyear Company, because I had a sort of indefinite idea that it might be deemed to be a combination in restraint of trade.

About December Mr. Barbour and Mr. Hanan, Goodyear directors, and I met Mr. Winslow and Mr. Brown, and got started on the way to form the United Company. Some time in January, 1899, the same parties met in New York and agreed verbally what to do.

A large element throughout the discussions was to determine the value of the two companies—what they were really worth. That required an exhaustive examination of the books, the business, and the patents of each company.

At the meeting in January it was agreed that a company should be formed and should take over such stock of the Goodyear and the Lasting Machine Companies as we could get, and that certain stock of the new company should be allotted to each share of the two constituent companies, respectively. The name, the amount of the capital stock, its division into preferred and common stock, and the terms of the preference were then decided upon.

There was no established market value for the shares of the two companies at that time, as but few shares were being sold, but the book values, so far as could be judged, were far in

excess of the prices which the United Company paid for the stocks.

760 By my previous reference to something being in restraint of trade I meant that I had an indefinite fear that if the two companies remained separate but, for instance, had a joint factory and joint branch offices, there might be something in the way of restraint of trade. I insisted for that reason that there should be a complete merger and consolidation.

No agreements whatever were entered into either between the Goodyear and the Consolidated Companies, or between any of the individuals connected with them, with reference to limiting or restraining their action or activities.

None of the Goodyear directors controlled or had anything like the majority of the Goodyear stock. I had three shares. All we agreed to do was to put in our own stock, and then use our influence with the other stockholders to come in. Mr. Winslow and his associates adopted the same policy.

I drew the circular letter to the stockholders of the Goodyear Company, which is plaintiff's Exhibit 152. As to what I had in mind in making the statement in the first sentence in that circular, when this circular was issued we had acquired the Eppler Welt Machine Company, and we had acquired the directors' stock of the McKay Shoe Machinery Company and expected to acquire a large majority of their stock. Therefore we then had the most efficient types of shoe machinery—perhaps I should have said protected by patents—in that we had the Goodyear welt and turn sewing machines and a long line of auxiliaries, which were the only system or set of machines which would make the Goodyear welts, the best and most suitable shoe for any gentleman or lady to wear that was then known; we had the best heeling machines, best metallic fastening machines, all protected by patents; we had the best lasting machines. If any manufacturer wanted to make Eppler welts, we had the only system that would make them. Therefore that seemed to my mind at that time—the United Shoe Machinery Company did—to represent the control in one corporation of the most efficient types of shoe machinery.

By Eppler welts I mean welts made by the Eppler welt machine, which laid the chain of the stitch in the channel of the shoe, thereby differing from the Goodyear welt. Those two types of shoes were well known in the trade. There was the Goodyear welt, made by the Goodyear welt machines; the Eppler welt, which was a recognized class of shoe. We didn't know whether the manufacturers would prefer, if there were no litiga-

tion at all between the two companies—whether the trade would prefer Eppler welts or whether they would prefer Goodyear welts.

Then we left out the McKay sewing machines—we had no manufacturer of those at all—which made McKay sewed shoes, and couldn't get the control in one corporation of McKay sewing machines because the patents had expired on them and they were for sale in every findings store and machinery store.

The Eppler Company had a few auxiliary machines. They necessarily had a channeling machine; they had a rough rounder and channeler which the Goodyear Company considered an infringement. They were also endeavoring to perfect a stitch separator. That infringed the patents on the Goodyear
761 stitch separator, and in my opinion was not as good as that machine.

As to what I had in mind by the statement in that circular, plaintiff's Exhibit 152, "The United Company will also from time to time acquire other shoe machinery properties," I foresaw that this United Shoe Machinery Company was either going to be a success or a failure. It could not stand still. It would soon find out, as I foresaw, that it could take on new businesses which would supplement the business of the three original concerns. I knew no better ones, no more efficient machines, than were manufactured by the three constituent companies, including the Eppler as a fourth, of their kinds. Now, I said, "There is no reason why we should not in all probability go into some other fields that will enable us to do our business more economically and to largely increase our volume of business."

Q. Did you or your associates, so far as you knew, at that time intend to acquire complete control of the business of manufacturing or selling or leasing shoe machinery and to exclude all others therefrom?

A. We did not. The only intention we had was to continue the business we were then conducting in connection with the business of the Lasting Machine Company and the McKay Shoe Machinery Company. We had no plans looking ahead other than that I had in my mind, as I have said, that this company, if it was a success, could not help developing into other lines.

Q. And was there any discussion, when you and he were talking about the United Company, of obtaining control of the entire field of shoe machinery?

A. No; none whatever.

In the last part of the circular of plaintiff's Exhibit 152 I set out the only things that, so far as I know, were considered by

the promoters of the United Company, or by the directors of the Goodyear Company:

"The undersigned, being all the directors of the Goodyear Shoe Machinery Company, believe that the United Shoe Machinery Company will show much larger net earnings than the aggregate net earnings of the several companies whose stock is to be acquired, by reason of the increase in business, economies in administration, and decrease in expenses, and cessation of the litigation between the companies, which has been expensive to them and annoying to shoe manufacturers. They believe that these results can be attained without increase of cost to users of machinery made by the company, and that better attention to the care of machines and assistance to the users can be afforded."

There had been a great deal of litigation between the Goodyear Company and the Lasting Machine Company, particularly between the McKay & Copeland Company as plaintiffs and the Copeland Rapid Laster and Goodyear Companies and various shoe manufacturers who were sued for infringement by reason of using our lasting machines, the Ideal and the Copeland rapid laster, as defendants. Many suits were brought by the McKay & Copeland Company on one patent on a very material part of our machine. One of those suits was tried, the others abiding the result, and the Circuit Court of Appeals held that we infringed. The Copeland Company tried to avoid the patent, and in a new suit, which was really in the nature of contempt, it was held that we were infringing, but we were given six weeks
762 to alter our machines, and by that time the patent had expired. That was patent No. 197,607, dated November 27, 1877. That suit was pending on an accounting at the time the United Company was formed.

There were other suits brought by the McKay & Copeland Company, which were pending in 1899 and which never went to trial, and still another set of suits, brought by plaintiffs representing interests held by the Lasting Machine Company against users of Ideal lasting machines, were pending when the United Company was formed. There were other suits of which I will not give details, but in general there was a lot of litigation between the two companies, in which one company at times was the plaintiff and at other times the defendant, and those suits were in almost all cases against customers of one company or the other.

I found that a corporation as large as the United Company could not be incorporated under the laws of Maine or of Massachusetts, as those laws then stood, without a special act of the

legislature of either State. At that time of year it was not practicable to get such an act passed, and it was decided to organize under the general laws of the State of New Jersey.

The charter was granted for the United Company on February 7th. Within a few days before or after that Mr. Barbour, Mr. Hanan, and Mr. Winslow found that the entire stock of the Eppler Company could be purchased for cash. They raised the money and created the so-called syndicate that furnished the funds for the formation of the United Company. They bought the entire stock of the Eppler Company and turned it over to the United Company at exactly what they paid for it, taking their pay in equal proportions of preferred and of common stock. The Eppler Company was acquired because it operated another machine for making a different class of shoes; also, and principally, because there was a great amount of litigation between the Goodyear Company and the Eppler Company and users of Eppler machines, as I have testified.

We wanted to start free from litigation because, for instance, in suing one defendant, the George E. Keith Company, of Brockton, if the Eppler Company had not been bought the United Shoe Machinery Company would have felt obliged to prosecute those infringement suits against George E. Keith, who were the users of the metallic machines and the users of lasting machines, and it would have been collecting rentals and royalties for one set of machines and suing them on another. It made very unpleasant relations.

The idea of acquiring the McKay Shoe Machinery Company was because it seemed to us that it would be a very important factor in the United Company, and because if their agencies could be consolidated with the branch offices of the Goodyear Company there would be a saving of expense and to some extent an avoidance of duplication of administrative men and of experts. The three principal companies did business in every shoe factory of importance in the country.

763 When we determined on that Mr. Winslow and I went to see Mr. James J. Storrow, who was counsel and one of the directors of the McKay Company, and told him the facts about the United Company, and asked him whether the McKay Company directors would be interested to come in. Mr. Storrow consulted with Mr. Brooks and some of his other directors, and we had several interviews with them. We offered nine dollars a share, and they succeeded in showing that their business and prospects were worth eleven dollars a share, and accordingly the United Company offered them that amount.

The United Company then held a formal meeting of organization and directors were chosen from the representatives of the three companies, and directly after that the circular of plaintiff's Exhibit 152 was sent out to the Goodyear stockholders.

Mr. Brooks declined to be a director in the new company, and ceased all active connection with shoe machinery business from that day. I became a director and a member of the executive committee, and served in those two positions until this suit was brought.

Instead of any of the businesses which came into the United Company being suppressed, on the contrary they were increased. All the machines which were being made by the respective companies prior to 1899 were continued and were manufactured, or were manufactured with improvements added to them, and were offered to lessees on the same terms as they had been offered by the constituent companies, and that has been true to the present time.

Q. The United States charges you with having conceived the idea of acquiring a complete monopoly of the manufacture, sale, and lease of machinery to destroy existing competition, and to exclude all others from the trade, and that you conceived the idea of accomplishing that by obtaining control of all the concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then refusing to sell or lease any of the essential machines except upon condition that a man who took one of your machines should take all the others. Was there any such agreement, purpose, conception, or intent?

A. We did not determine to acquire a complete monopoly in the manufacture, sale, and lease of shoe machinery, but so far as I know had no intention other than to continue the business which the three or four constituent companies had. It so happened that those were complete monopolies because their machines were all patented. I don't see how, as is charged here, we intended any suppression of competition, because there was no lawful competition in the business of those four companies, couldn't have been. We didn't need any unlawful combination to exclude all other from trade and commerce in Goodyear machines and lasting machines and McKay shoe machines and Eppler machines, because, as I say, they were each and all of them monopolies.

Q. You mean in the sense of their being patent monolies?

764 A. They were complete patent monopolies. No one could lawfully compete with them. There was no idea or no conception, to my knowledge, certainly I hadn't any, and it

was never discussed, to acquire the ownership or control of all concerns engaged in the manufacture and dealing in any and all kinds of shoe machinery, and certainly there was no discussion, no intent, that was apparent on the part of anyone with regard to changing the methods of selling and leasing machines which the constituent companies were then pursuing.

There was no intent and no discussion relating in any way to changing existing leases, changing from one form of marketing to another. The United Company pursued identically the same methods of putting out machines that the constituent companies had pursued and were pursuing in January, 1899.

In the earlier years I had a good deal to do with the developments of the leases and I am familiar with the metallic situation in 1900 and 1901. I knew that copper had been increasing in cost and that consequently wire and nails, which are largely made out of copper, had gone up in price during the fall of 1898 and in 1899 and 1900.

I took part in the negotiations between the United Company and the New England Manufacturers' Association with reference to the metallic lease. The New England association, which first took up the metallic leases with our executive committee, had for counsel Mr. Goddard, Mr. Moorfield Storey, and Mr. Richard Olney. Subsequently, while those negotiations were continuing, the committee from the National Association of Manufacturers joined the New England committee and did not take any additional counsel. Our negotiations were almost wholly with one or two of the manufacturers on the committees and with Mr. Storey and Mr. Goddard.

In July, 1900, the United Company brought out a new lease, plaintiff's Exhibit 30, for the metallic department with which the manufacturers expressed much dissatisfaction because the majority of them had been without leases for a year or more and they objected to the terms of that lease. As a result these committees were appointed and these negotiations were had. The conferences extended over two months and finally the form of lease of plaintiff's Exhibit 31, known as the independent lease of the metallic department, was agreed upon as satisfactory in every respect to the manufacturers. That left them free to use any machines they wanted to in connection with the metallic machines, and they were only required to pay ten per cent more for the metallic material which they used in the machines than the lessees under the restricted leases paid.

765 Mr. CHOATE. I offer the letter from Mr. Howe to Mr. Moorfield Storey, dated January 16, 1901:

DEFENDANTS' EXHIBIT 259.

BOSTON, *January 16, 1901.*

MOORFIELD STOREY, Esq.

DEAR SIR: I have reported to the executive committee of the United Shoe Machinery Company that, as a result of the conferences between the committee representing the shoe manufacturers on the one side and the president of the United Shoe Machinery Company on the other side, and as the outcome of our meeting to-day as counsel for the respective interests, a form of lease of the United Company's metallic department machinery, for those lessees who wish a lease to use such machinery independently of the lasting machinery and sole sewing machinery leased by the United Company, has been agreed to. This form of lease may be called for convenience of reference the "Independent" lease.

In order that the present and prospective lessees of the United Company may clearly understand the differences between this Independent lease and the lease of metallic department machinery at present in use by the United Company (which I will call the "United" lease) a reasonable time should be afforded for each lessee to judge which form is best for his interest. The "Independent" lease by its terms can be exchanged for a "United" lease at any time, when the lessee is not in default, on written notice to the lessor, and the United Company now proposes, if the committee whom you represent so approve and recommend to its constituents, to allow any lessee who has signed, or who shall forthwith on request sign, a "United" lease, the right, at any time before February 1st, 1902, if he is not in default, to surrender such "United" lease by accepting and executing an "Independent" lease of the same metallic department machinery. At our interview to-day you suggested that a period of two years should be allowed for lessees who sign the "United" leases to exchange them for "Independent" leases. It has been assumed by the executive committee of the United Company, until I reported your suggestion to them, that three months would give sufficient time for a lessee to make up his mind which form of lease he wished to take, but in view of your suggestion, and with the desire to meet the wishes of the shoe manufacturers as nearly as is practicable, it has been decided, if recommended by your committee, that such exchange may be made at any time within one year, that is, on or before February 1, 1902, which would

seem to afford the most doubtful lessee ample opportunity to acquire information and decide whether it is for his interest to retain the "United" lease.

The proposed "Independent" lease and the privilege, until February 1, 1902, to those lessees, who have signed or shall sign "United" leases to exchange them for "Independent" leases, are submitted upon the understanding that the committee whom you represent are satisfied with and will recommend the same, and that they appreciate and will report that the officers of the United Company have given careful consideration to all the requests and suggestions of the committee, and have manifested a sincere desire to accede to the same, so far as consistent with the policy of the company toward those lessees who wish to use its machinery in all departments of their respective factories.

Very truly, yours,

ELMER P. HOWE.

The original of the above letter was delivered to Mr. Storey this day upon his assurance that he would recommend the Independent lease and the foregoing offer of the United Company for approval and acceptance by his clients, and that if his clients—the committee—do not endorse and recommend the same to the N. E. Ass'n the proposition and this letter shall be withdrawn.

E. P. H. Jan. 16/01.

766 The WITNESS. I received from Mr. Storey in reply the letter of defendants' Exhibit 260.

DEFENDANTS' EXHIBIT 260.

BOSTON, *21st January, 1901.*

ELMER P. HOWE, Esq., *53 State Street, Boston, Mass.*

DEAR SIR: I hand you herewith the draft of the Independent lease which you enclosed in your letter of the 16th. The provisions of the 7th article as it seems to me are not in entire accord with our understanding and the point escaped my notice at our previous conferences. According to the structure of the Independent lease the agreements which are contained in ss. 1, 2, 3, 4, and 5 are styled conditions, those in 6 are called agreements. Article 7 provides that "if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor or the lessee, whether as a result of the assignment to the lessor or otherwise and expressed to be ob-

ligatory on the lessee, etc." You will observe that this makes the rights of the lessee depend not merely on the provisions of this lease but on the provisions of every other lease that he holds. I have had before me leases in a great variety of forms and in some of them things which you call agreements in the Independent lease may be called conditions, and a violation therefore of something that neither of us have in mind may give your company the right to terminate every lease which the lessee holds. I do not think this was contemplated. I said that my committee was content if the lessee did not keep the conditions of this lease, that he should lose this lease and all his other leases, but I think you will see that your clause 7 goes further. I would suggest the elimination of the words which I have enclosed in pencil brackets in clause 7, being the words which begin "or contained in any other lease" and end with "upon the lessee." To this I fancy there can be no objection.

The committee have carefully considered the lease and desire only a slight variation. They would like the privilege of changing from the iron-clad lease to this lease for two years, that is to say until the 1st of February, 1903, and they would like also some guaranty or assurance that the modified lease will continue to be offered to the trade for say five years. If these concessions are made they will recommend the lease to the trade.

I think that there is no very substantial difference between these requests and what you have been willing to concede. It was the purpose of your company as you told me to continue to offer the modified lease for an indefinite time and if this is so five years is not very long time to fix. And as I told you at our discussion, I think the difference between giving the right to change for one year and for two years for you cannot be very material while I think it will make your relations with the trade cordial and enable you to begin business with the feeling that the difficulties between you have been ended. I trust that your committee will adopt this view and thus bring these discussions to a mutually satisfactory end.

A single further suggestion. Mr. Goddard has suggested, and I think very properly, that clause 6 would be improved if the words in the last line but one "covering the term of five years" are inserted after the word agreement as has been done in the copy which I send. This is merely a description and makes a little more certain what we are referring to.

Yours, very truly,

MOORFIELD STOREY.

767 The WITNESS. I replied to that letter under date of January 22d and defendants' Exhibit 261 is a copy of my letter.

DEFENDANTS' EXHIBIT 261.

JANUARY 22, 1901.

MOORFIELD STOREY, Esq.

DEAR SIR: I have your letter of this date with which you return the "Independent" lease I submitted to you on the 16th instant. The terms of this lease were settled, as you will remember, after an extended conference on the 14th instant, between your committee and Mr. Winslow, at which both you and Mr. Goddard were present, when, as Mr. Winslow and I supposed, all the clauses in the lease which were in dispute, and the letter, dated January 2nd, 1901, from the committee to the company, referring to such clauses, were discussed, and an agreement reached as to what changes in the lease should be made, except that no definite right was accorded to a lessee under the present United lease of metallic department machinery to change it for an Independent lease of the same. At our interview on the 15th instant we settled upon the phraseology to express the conclusions reached at the conference on the 14th, and we then agreed that the only question left open for discussion was what length of time should reasonably be given by the company to its present and prospective lessees of metallic department machinery to decide whether to take and retain the United leases, and that was the only question to be considered when Mr. Storrow was called in. Consequently, immediately after our interview on the 15th, I reported to the executive committee of the United Shoe Machinery Company that the Independent lease met your approval, but that you suggested that a period of two years should be allowed for lessees who sign the United lease to exchange them for Independent leases, and I assured our executive committee that, if your suggestion could be adopted, the Independent lease would be recommended by your committee. I therefore urged our executive committee to concede a longer period for such exchange of leases than they had intended to offer, and longer than they deemed necessary for any lessee to judge of the relative advantages or disadvantages of the two leases. On my assurance that the Independent lease met your approval, and would be undoubtedly approved by your clients, inasmuch as substantially all the changes suggested by them in their letter of the 2nd instant had been incorporated in it, our executive committee finally authorized me to propose that one year from February 1st next should be allowed for such change of leases.

I am therefore disappointed that, in your letter of to-day, the discussion is not confined to the length of time to be afforded for such exchange of leases; and that other points, which have been debated at length and disposed of, are revived. The company is unwilling to reopen these questions, and declines to accede to the changes suggested in your letter, except that the insertion of the words "covering the term of five years" in article six, is unobjectionable.

The executive committee have reconsidered the request of your committee that the period for exchange from the United to the Independent lease be extended to February 1, 1903; but for the reasons given in my letter to you of the 16th instant, they adhere to their decision that one year will afford ample time to the trade for the purpose, especially as it should be kept in mind that a lessee by taking an Independent lease can have the entire term of seventeen years to decide whether he wishes to avail of the lower royalty afforded by the United lease.

The company has been, and will be at all times desirous of continuing the cordial relations with its lessees which have hitherto been maintained, and to that end its executive officers have carefully considered and have endeavored to accede to all the requests and suggestions made by your committee during the past three months, so far as is consistent with carrying on the business of the company on a basis which shall insure not only a safe investment for its stockholders, with fair returns thereon, but also, what is equally important to it, the welfare and prosperity of the shoe manufacturers.

Yours, very truly,

ELMER P. HOWE.

768 (Examination of Mr. Howe suspended at request of counsel for defendants.)

DECEMBER 17, 1913.

ROBERT P. HAZZARD, witness for defendants.

I live at Gardiner, Maine, and my business is the manufacture of shoes. I have been engaged in that business for 27 years. I began in the employ of my father and uncle, Parks & Hazzard, at Jamestown, New York. In 1895 I went to Brockton, Massachusetts, and was a member of the Field-Hazzard Company for about seven years. I then became superintendent of the Maine factories of the Commonwealth Shoe & Leather Company, of which Mr. Charles H. Jones is president, which are located at Gardiner and Skowhegan, Maine. I was with them from September, 1902, to the spring of 1906.

I was interested in the Parks & Hazzard Company and in the Field-Hazzard Company, but I was only in the employ of the Commonwealth Company.

I next became interested in the Snow-Hazzard Company of Gardiner, which was formed in the spring of 1906. They manufactured men's Goodyear welts. December 23, 1909, I bought out Mr. Snow's interest, and I am now the majority stockholder of the R. P. Hazzard Company, which took control of that business on March 1, 1910. We have one factory, and in 1913 our output is about 5,000 pairs a day, all men's Goodyear welts. Our business has increased from approximately a thousand pairs in 1910.

I have been familiar with the manufacture of welt shoes by machinery for approximately twenty years. I have operated shoe machinery and have worked as foreman, superintendent, owner and manager, and general utility man.

Before the United Company was organized I was familiar with the Chase, the Consolidated hand method, and the McKay & Copeland lasting machines. The McKay & Copeland was used for lasting miners' brogans. The Chase machine was used on welt shoes and the Consolidated hand method machine was used in making McKay shoes. Each machine had its appropriate field and they were not used interchangeably on different kinds of shoes. The Consolidated machine of later years we have used some for side lasting welt work.

When the Snow-Hazzard Company started we got from the United Company all the machinery that they could supply us with. The total number of machines now in our factory is 746, and 327 of those were obtained from the United Company either by lease or purchase, something less than 50 per cent. About 31 of those machines came from the General Department and may be purchased if desired, so that 296 machines are held by us on lease. I have watched the development of the machines which we lease from the United Company.

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When I started in for myself I adopted the plan of obtaining machines on the restricted leases because I considered it to our advantage to do so.

Because in my judgment it was a necessity for the United Shoe Machinery Company to restrict in some way the use of those machines in connection with the machines paying a royalty, in order to make it practical for them to supply us with the agents' service which they give us, and that the saving in the machinery investment in our plant and the chances of new models coming up made the purchase of the machines in this manner better for

us in a financial way as regards the investment of the machine, besides the advantage of the agents' services.

The capital of the Snow-Hazzard Company was $50,000. We now turn over our capital about eight times. Our investment as shown by our last audit is a little over $300,000 and during the past year we have done a business of approximately two millions and a half. We have gone on the plan of making as small a permanent investment in machinery as was possible and putting all our money into the active running of the business.

I might add right there that when the Snow-Hazzard Company was started as a $50,000 corporation, had we been obliged to have bought by outright purchase the machinery necessary to have equipped that plant, that it would have taken such a large part of our capital that our credit would not have been such as to enable us to have purchased our merchandise and conduct our business and allow us to grow as it has. The unfortunate part of the shoe business is that whenever you take a statement into the man that is giving you financial assistance the first thing he does is to take a lead pencil and draw it through the machinery, so whenever you put a dollar into machinery, why, you might as well kiss it goodby. To get credit you have absolutely got to have liquid assets.

The machines from the different departments of the United Company are interspersed in their operations. The first thing in making the shoe is to prepare the bottom stock. In that we have to use auxiliary machines of the Goodyear department and also some of the general department machines. We next use the assembling machine and pulling over machine, from the pulling over department, and the No. 5 lasting machine from the lasting department, etc. At the same point we use the machine for tacking inner soles from the metallic department. We next employ machines for trimming the uppers, pulling the tacks, and welting the shoe from the Goodyear depart-
770 ment, and then the auxiliary Goodyear machines for sole laying, etc. The heel seat nailing is done by a metallic department machine, and then we come to the Goodyear stitchers and more Goodyear auxiliary machines. Then the heeling machines of the metallic department are used, and then we swing back to the slugging machines of the metallic department. From there out we go back to the general department machines, edge trimmers, edge setters, etc. The operations of the machines from the different departments are all interwoven and the machines of one department are interspersed among the operations of the machines of the other departments.

The United Company has so perfected the machines of its different departments that hand work of itself has almost become obsolete. Practically every machine takes up the shoe where the preceding machine left it, and there are very few places to-day in the bottoming room where any labor is necessary between the operations of the United Company machines. Practically speaking, each machine prepares the shoe for the operation of the next; for example, when a shoe leaves the No. 5 lasting machine there are tacks in it to hold the upper in lasted position, and those tacks must be removed before the inseam can be trimmed. Then they come in with their tack-pulling machine which pulls out the tacks, leaving the shoe in condition so that the inseam trimmer can trim the upper, which it could not do if the tacks were there. So you go on indefinitely; it is just a continuous process.

The United Company's service is one of the greatest necessities for the economical running of a modern shoe factory. That service consists of men who specialize on certain classes of machines and who are located conveniently to the manufacturing centers. We are served to a certain extent from the Auburn, Maine, office, but there are several resident United Company shoe men in Gardiner who are under the jurisdiction of the Auburn office, but who are located in Gardiner so as to be more available when we need them. If those men are busy at one of the other factories or if there is anything that they can not handle, we telephone Auburn and inside of an hour and a half we have a man from Auburn. Those men do anything that seems desirable in putting the machines in shape to do the maximum amount of work of good quality.

771 The Reece Buttonhole Machine Company supplies what they call service but it is not the same kind of service that the United Company furnishes. The failure of a company to give efficient service is detrimental both to one's nervous system and to the smooth running of the factory.

As to the importance of efficient service, the shoe business is peculiar because it is dependent on succeeding operations, because the lasts are in the shoes while they are being made and because an even production in all operations all the time is absolutely necessary for efficiency. That efficiency wants intelligent action and it wants it quick, and may be compared to the fire department in case of fire.

When manufacturers get that service it not only means bigger wages for the employees, but it means better results for the manufacturer and cheaper shoes for the consumer. In my

judgment, with the United States Company's service the consumer is buying shoes cheaper than he could if the royalty were done away with and efficient service were not furnished.

The time that a shoe is on the last varies according to the grade of work. We figure five days. Our investment in lasts is probably between fifty and sixty thousand dollars. The money invested in lasts is very important to the shoe manufacturers and it is an absolute necessity to get the lasts free for the next lot of shoes. If the lasts are tied up longer than they should be it means just that much loss of production.

If for any reason certain machines in any department are broken down and can not be used, that department is handicapped to the extent of the production of that machine. That stops us from earning money, and it not only stops the operator of that individual machine but it has more or less bearing upon hundreds of other operators that are dependent upon his work. We don't allow operators to have a large accumulation of shoes on any operation because that would tie up too much money in lasts and stock, and we would not have room to make the shoes; so that every man is working right from rack to rack to the man ahead of him. These shoes are moved in racks of 24 pairs, and when one machine shuts down it is like breaking a link in a chain. The men behind are constantly sending ~~their~~ their racks along and they are getting stalled at the broken machine.

772 In any manufacturing business it is always desirable to keep the equipment as nearly up to date as possible, and it is desirable to accomplish that with the least exertion and the least expense.

We depreciate the machinery which we own 20 per cent per year. There is no question as to machinery getting out of date. Probably there is very little machinery in an established industry which has been developed faster in the past decade than the machines of the United Company.

Formerly we had the worst kind of competition in shoe manufacturing from the man that ignored the expense of machinery maintenance in figuring, and the tendency of everybody was to meet that competition by not keeping their machinery up to date. The result was disastrous to the operator, the manufacturer, and the consumer. At present all the machinery can be kept up to date at comparatively nominal expense in dealing with the United Company.

When we have an old machine and desire to get a new model, a stitcher for example, we turn in the old machine and we pay

the United Company's special price, together with the cost of the missing parts. On the stitcher that amounts to about $30, about 20 per cent of the return charge that we are under obligation to pay under the lease. In that way we get a brand new machine of the latest design to replace an old one, and that is only equivalent to what we would charge to depreciation the first year if we owned the machine. We also consider that in replacing an old machine with a new one we are more money ahead than we would be to keep the old one and replace the worn parts.

The illustration which I gave for the stitcher as to the practice of exchanging an old machine for a new one is typical of the machines of all the royalty departments. The terms for any other royalty machine would be at least as favorable, if not more so.

When we can get United Company's machine without initial payment on the restricted lease we take them that way, and generally our machines are on the restricted leases.

As to introducing the machines of other people, the United Company has absolutely never, either directly or indirectly, or by intimation, questioned our putting into use any machine that we wanted to. We have had a number of machines in our factory that would be considered contrary to the
773 terms of the lease, such as three machines made by Freeman, which performed different operations in the bottoming room for which the United Company furnishes Goodyear auxiliary machines.

And when we put those machines in the agent was over there, and we told him we were going to put them in. He said: "That is all right, Hazzard; put them in. We will put ours alongside of them, and if we can't beat them we will take our hat off." They put them in and beat them out. Two of them went back. The third we paid our good money for, and it broke down, and we couldn't get an agent or parts, and we telegraphed to the agent in Cincinnati and couldn't get anything, and we put it in the attic, and if anyone wants it for ten cents it is for sale.

If anybody came along with a machine and it appealed to us we considered it. In my mind there has never been any idea but what if we could get something that would make our shoes better we would get it. Well, we took a chance on interference or prohibition from the United Company, and we never got in wrong. The United Company never bothered me any.

We formerly used the old welter and replaced that with a model G, and then replaced those machines with model K ma-

chines, the latest model, which we are now using. That machine embodies devices for holding and cutting the thread automatically.

From the standpoint of the earning capacity of the men, the amount the machine can produce, there is no question that the model K is away ahead of the other machines. I have some actual figures here from my own factory.

In 1906, when we were running the old welter, the price paid our welting operators was a third more than our present price on model K, but the operator on the model K earns more than he did on the old machine. Taking all the operators of the old welter I found that in November, 1906, their average wage was $16.38, while in November, 1913, the average wage on the model K welter was $22.30. That is, on the model K machine there was a 36 per cent increase in wages as compared with the old machine, although the price paid on the old machine was a third higher; that is, the higher wage was earned on the lower piece price. The best man on the old machine earned $20.95 in 1906, and the best man on the model G machine made an average wage of $32.64 during eight straight weeks. That shows a 50 per cent increase in earning capacity and a saving of one-third in piece price for the manufacturer. This was all under ordinary manufacturing conditions.

The figures on the high man were from the model G machine, which did not show as much increase as the model K.
774 We considered the model G and the model K machines practically the same in speed, but the model K machine has big advantages in the cutting device, which allows a man to do more work, and do it easier.

I had an opportunity to go further in this figuring. One of our good operators, whose rate I have quoted, had a little trouble with the foreman and left us. He went to work in another factory near us, where the old style welter is still used. I was able to get his wages during the last two weeks, and he is getting $24.12 a week, a little more than their average, where he was getting $32.64 a week with us; and they are paying a third more per piece than we are.

It is true that with the introduction of the improved welter the cost of that operation to the manufacturer has been reduced from 25 to 30 per cent; and at the same time the wages of the operative have been increased from 36 to 56 per cent. As to the increase in the output, we used to consider 25 dozen a pretty fair day's work on the old welter. That was for a day of ten hours. And if we have got an operator on the new machine that can't

maintain 40 dozen, why, we replace him, because we can't tie up the machine.

We expect 40 dozen or more a day from an operator. I have had two operators together sew on model K welters 140 dozen pairs of men's welts in one day of ten working hours, or 70 dozen pairs apiece; but, of course, that is an extraordinary day's work, and only shows the possibilities.

I also have some figures in regard to the stitcher. Arriving at the figures in the same way as on the welter, the average wage on the old model stitcher was $12.98 in 1906. In November, 1913, the average wage on the model M stitcher was $16.09; that is, an increase in the average wage of about 24 per cent, while the piece price on the old model was 40 per cent more than we are paying on the model M. But that does not really illustrate the possibilities, because our business has increased so fast of late that we have had to educate nearly all of our help. We are teaching a good many boys on the stitchers.

775 To give the machine full credit I will compare the high operators, as I did on the welter. During the four weeks of November, 1906, the high operator on the old stitcher earned $15.64 per week. The high man on the model M machine in November, 1913, earned $22.63 per week, an increase in wages of 45 per cent with a piece price 40 per cent less. These week wages are based on a 58-hour week.

There is absolutely no question that there is a saving in welting since the adoption of the new welt-holding and cutting device. The only question is as to the amount of the saving, and probably it will never be possible to determine that because with the old machine the waste of welting varied. When a man started to welt a shoe on the old machine he pulled the welt out through the welt guide and put his finger on it to hold it, and when he was working fast he was not always careful to pull just enough to get hold of, and I have seen a man pull out three or four inches. It averaged one to three inches.

In the new machine, that automatically cuts off and holds the welt in place, the welt is always in the same position when the machine starts and the operator does not have to leave any of it to hold with his finger.

There are four ends to each pair of shoes, and if a man wasted an inch at each point it would be 48 inches of welting on 12 pairs of shoes. Assuming that this was only 36 inches, that waste at six cents a yard, a conservative price, means six cents per dozen. We make over 400 dozen a day, which would make the saving amount to $24 a day, or $7,200 in 300 working days.

It is not always fair to use those figures, because the style of shoes varies in a longer or a shorter draft last, or you may get poor welting which they rip off and destroy. But any man can go into a factory using the old model and then see one on model K and he will. I think, admit that my allowance is conservative.

The saving on our 13 welters amounts to five or six hundred dollars per machine in a year. Five hundred would be $6,000. I said $7,200, so cut it down again. Call it five hundred. We consider that the quality of the work done on the new machine is much better; it sews a tighter seam than the old machine did, and the stop device makes it possible for the operator to stop the welt nearer the joint. The welt is supposed just to overlap the breast of the heel. It makes a very bad shoe if the welt either goes too far toward the heel or not far enough. It was pretty hard to stop the old machine at just the right place, but with this stop device a man can stop the machine just where he wants to.

776 In stopping the old machine the operator had to raise his hand above his head and take hold of the drive wheel, which was about twelve inches in diameter, and that necessarily racked him considerably. I should say that wheel was revolving about 350 times a minute. After he had grasped the wheel and stopped the machine he had to move it until it pulled the needle back into just the right position, so that the thread and welt would come free. Then he had to take a knife and cut the welt and thread. On the new machine that was done automatically. A man sewing 25 dozen pairs a day, the ordinary day's work, would do that 600 times, once a minute.

In the new model K welter all the operator has to do is to work his treadle and put the shoe in, and the machine does the rest of it. Our welter operatives are all getting more wages on the model K machine than they did on the model G machine.

Before we got the model K machines we had the model G, which was a comparatively new machine. We heard of the improvements on the model K and wanted to change. We returned the old machines and the new ones were installed, and it is my impression that they were exchanged without charge; if there was any charge it was nominal. Our change in stitchers was later, and we have been doing that gradually.

We get our repair parts for the United machines from the United Company, and for our fitting room we get our repair parts from the Singer Sewing Machine Company and from other companies. We have always felt that the parts that we got from the United Company were fully as well constructed and

fully as reasonable in charge as compared with the parts that we buy from other companies.

(Defendants' Exhibit 262 (Record, p. —), is a list of machines used by R. P. Hazzard Company in the manufacture of men's Goodyear welt shoes.)

Cross-examination:

When the United Company was formed I was a member of the Field-Hazzard Company, at Brockton. They were making men's Goodyear welts. Before that time we had obtained welters from the Goodyear Company, and we were using the Chase lasting machine. I don't know just which company it was put out the Chase laster. We always called it the "Chase Lasting Machine Company." I had used the Consolidated hand method lasting machine in Jamestown, New York, on McKay work, but did not use it in Brockton. I am not
777 sure whether we ever tried it in Brockton, but if we did, we didn't use it to advantage; that is, it was discarded if it was ever tried. As to why, I don't know whether we ever tried it; machines are continually being put into our place to demonstrate their practicability, which are turned down and forgotten.

I know that we never used, and that we never attempted to use, the hand method lasting machine on welt shoes in the Jamestown factory.

If you want an answer whether the Consolidated lasting machine will last welt shoes, it will. We have lasted them on it. Don't confuse that. We lasted those in Gardiner on the Consolidated. We lasted men's welt shoes on the Consolidated hand method machine to a very limited extent at the Snow-Hazzard factory in Gardiner, Maine. We had either two or three of those machines operating on welt work at one time, and the balance of the work was done on the Chase. That was considerably later than the time when the United Company was formed. I never made women's welt shoes. That was the machine called the "nigger-head" machine. When the United Company was formed the hand method machine was being used on McKay shoes. That machine, along during that period, was developed for welt work. Whether it was just before or just after the United Company was formed, I don't know. Before the United Company was formed we lasted welt work on the Chase machine and by hand. I never used an Ideal machine. I don't know what kind of work the Ideal did. I always assumed it was used more for women's work. That is,

it was always considered that the Ideal machine was for women's work. I never tried, and never saw an effort made, to use it on men's work.

I never bought a welting machine outright and never operated one which had been purchased outright, and I have no idea from personal experience how much it would cost to operate such a machine. That is also true of a stitching machine.

In Jamestown we used altogether the American heeling machine, which was bought outright. That was twenty-odd years ago, and I don't know what was paid for it. I have no 778 idea. We always used it while I was at Jamestown, and it did what was considered good work at that time, but we would not keep it ten minutes to-day. Machines have been improved since that time, but the manner of doing the work was entirely different.

For the machine which is now doing the same work which that heeler was then doing we pay a royalty of one-quarter cent a pair, but with that we get a lot of other machines that we did not have in those days. The accessory machines are worth pretty near the full amount of the royalty. We didn't have those machines twenty years ago, and we had to do the work by hand or not at all.

As to whether I knew anything about the system whereby a manufacturer would buy machines outright, Plant established a factory and the alliance established one in St. Louis, and I understand Mr. Long makes them. I wasn't in on the non-royalty factory in St. Louis. They wouldn't let me in.

The rather amusing part of that was that Mr. Plant sent me one of his statements and wrote me a very nice letter about the wonderful things he had in machinery at the time he started his newspaper campaign. I told him I was very much interested and should like to bring my superintendent to Boston and look the plant over, but he wrote me that the plant was not open for inspection. Afterwards he sent a nice illustrated pamphlet and I told him I could not see any use in sending it out if he didn't have anything to sell; and that if he did, I would like to see it. My letter was never answered. I never had anything to do with the operation of Plant's machines; he would not let me see them. I have never had any experience whatever with a factory in which all the machinery was bought outright.

It is not true that every one of the principal machines that we have in our factory are obtained from the United Company. I call the Reece buttonhole rather a principal machine if you are going to make a button shoe. You didn't say that you are not

talking about machines that work on the uppers, as distinguished from attaching the soles to the uppers. Now, understanding that you confine your question to the bottoming department, and also the eyeletting machines and clicking machines—as to eyeletting machines, we don't use the United Company's eyeletting machines. That is in the stitching department, too. We get our machines from the Atlas Tack Company, but the machines are made by the Peerless Machine Company. We use the United Company's clicking machines exclusively. As to whether the principal machines that we use in the bottoming department belong to the United Company, we use every machine of the United Company that it produces and we can get.

779

When the United Company gave that rebate of stock to all the Goodyear manufacturers we were fortunate in having nine thousand. We are sorry we didn't get more. That is the only stock of the United Company I own.

The reason why we don't take the United Company's eyeletting machines is because I don't consider that its eyeletting machine is as practicable, as good a machine, as the one we are using, which was developed outside of the United Company. I voluntarily took the United Company's machines under the restricted leases in preference to the unrestricted leases. The unrestricted leases were presented to us. I studied the unrestricted leases to get familiar with them. As to whether I looked over the unrestricted lease of metallic machines, I wouldn't answer. As to whether I looked over the unrestricted lease for heeling machines, I wouldn't say which particular machines we looked over. I know we looked over particularly in the general department. I don't presume that we looked over the individual machines in the other ones, that there was no question but what we wanted them. I never made an estimate to see what it would cost to equip our factory under the unrestricted lease.

I would like to make one statement here that might clear the field a little bit. I started in business in 1906, seven years after the United Company was formed, in the open market for my machines, with absolutely no string on me at all, and I took the United Company machines because I thought it was to my advantage, but it was not on account of any leases I was under at that time.

780

Q. Did you try to get machines anywhere else?

A. No.

Q. You didn't try to get a welter anywhere else?

A. No, sir.

Q. Or stitcher?

A. No, sir; because I had already been in the business and I considered that the United Company's service was above question.

Q. Did you try to get lasters anywhere else?

A. No, sir.

Q. Not a single machine?

A. Not that I got of the United Company.

Q. As a matter of fact you couldn't have gotten a machine anywhere else, could you?

A. Why, yes.

Q. Just name a person or concern from whom you could have obtained a principal machine at that time?

A. I understand the welters and stitchers have been used in England and abroad considerably, if we wanted to pay duty on them.

Q. But here in this country name a single person that was manufacturing either one of these machines at that time from whom you could have obtained them.

A. It don't make any difference; the steamers run every day.

Q. Do you know of a single person in this country from whom you could have obtained one of these machines at the time you went into business in 1906?

A. What do you mean by one of these machines?

Q. I mean the principal machines of the bottoming department that I have mentioned.

A. Sure.

781 Q. Name a factory.

A. Leveler.

Q. Who from?

A. That is rather a hard question to ask, to go back six years and tell just what machinery houses were in existence at that time. A man could go out and buy an Acme leveler, all he wanted of them, but the Goodyear leveler was so far ahead of it there was no question.

Q. But you couldn't have bought, so far as you know, a welting machine or a stitcher or a lasting machine or a heeling machine or a metallic fastening machine from anybody else?

A. I think I could have got a heeling machine.

Q. Who from?

A. I couldn't answer that.

Q. As a matter of fact, you didn't try?

A. Yes. I say that I didn't try because I wasn't interested. You might go into Young's and buy a hat, and you might not look anywhere else because you wanted a Young hat.

Q. And you didn't look anywhere else to see the kind of machines they were putting out?

A. I knew what machines were on the market, and I picked out what ones I thought were best.

Q. You didn't make any investigation to see on what terms other machines could be obtained?

A. I was constantly in the machinery market, and any machines that were brought out I probably knew as much about them as anybody.

782 My reason for taking the restricted lease was primarily a question of finances, to save my money for working capital instead of tying it up in dead capital. Another reason was that I considered that the liability of loss in the replacement of a machine by a more up-to-date model would be less under the restricted lease than under the other lease.

Q. Have you examined the leases to see if that is true?

A. I have never taken as much interest in the legal wording of the United Company's leases as I have in the personality of its people, and I have always had fair treatment from the United Company.

I pay from five to six thousand dollars a month in royalty, from fifty to sixty thousand dollars a year. I always pay my royalties promptly. As to whether I know of any advantage that a shoe manufacturer has derived from taking the unrestricted leases in preference to the restricted leases, every man is influenced to a certain extent by his past experience, and it is sometimes hard to rightly judge a man's motive unless you know what prompts it. And I was in the shoe business before the United Company was formed. The Goodyear Company let out their machines on leases and royalty similar to the way the United Company is doing. I never yet have been able to find anyone that was ever able to get any rebates or concessions of the United Company that the other fellow didn't get. The big man was never discriminated against a small man. It cropped out after the Goodyear Company went in that the Goodyear Company did that. I know that the Goodyear Company gave rebates to whom ever got next. I was the little man, and I was next and some of the big ones weren't next. That developed in later conferences. That developed in the Goodyear Company. I was on the inside. Where does that put the manufacturer? While I was getting it I never knew whether I was getting as much as or less than the other fellow. Consequently we were at sea.

Now we can do business with the United Company, because I know every man that is in competition with me is getting the

same deal that I am. With the old companies it was every one out to see who could bring the most pressure to bear and get on the inside. The thing which pleases me especially in this system is that I stand on an exact footing, so far as machinery and repairs are concerned, and everything of that kind, with every other shoe manufacturer that leases from the United Company, because I am conceited enough to think that if given an even start I can hold my own. I question whether if they succeed in making the United Company so change their leases that people can buy their machines in the open market—and the United Company can hold enough of its business so they can continue to give to the manufacturer the same service that they did before you commenced to prosecute them—I think that the man that buys the United Company machines and sticks to them and pays his royalty will make better shoes and make them cheaper than the man that goes outside and buys competing machines.

It is none of my hunt if a man buys outright machines and operates them in competition with me. If he shows he can beat me, it is up to me to follow him. As it is, we all stand exactly on the same plane, provided we are willing to take the same advantage. Unfortunately some of them are not taking advantage of what the United Company is willing to offer them, and their plants are not up-to-date; but they have nobody to blame but themselves. They know it is there, and they don't take it. As to whether I mean they don't take the improved machines, but go on with the old machines, although it is no expense to have them changed, sure; out of spite. Bite off their nose to spite their face. Some of the manufacturers, in my judgment, are in that class.

The model G welting machine was about as rapid as the model K in its operation of sewing a shoe, but not in the ability of the operator to handle the shoes. I should say that it was a fact that the welter was not improved up to 1908. There was no radical change, as I recall it, until the model G machine was brought out, about 1909.

783 It was some little time before the Plant purchase by the United Company that all the manufacturers understood that Plant was trying to develop a line of machinery in competition with the United Company.

As I recall it, Plant had been advertising for a limited period before the United Company acquired it. It had been a matter of gossip in the trade.

As to whether there had been no improvement in welting machines up to the time this gossip got into the trade, in the development of any machine it is a question of a considerable

time, and I do not know whether the United Company had been working on the development of the model G machine one year or ten years. I couldn't say how long there had been this talk in the trade before the machine got on the market.

The increase in the amount of work accomplished on the welter which we have now would be in the neighborhood of 60 or 70 per cent. We always make our capacity, which today is 5,000 pairs a day, because we keep running all the time through the service we get from the United Company. As to whether that depends more on the trade; no, sir. As to whether if somebody does not buy our shoes we wouldn't make them, we have never been in that condition. We have always made our capacity, whatever it was.

We have 13 welting machines. Whether we run them all the time depends on whether our help is all experienced or whether we are teaching help. Over 40 dozen pairs a day are done on most of the machines. Our good welters will do that, but learners will not. About 40 dozen are actually made. It may go a dozen or two over or under, depending upon the average of the experienced help. On the machine we used before we got the model G our operators produced about 20 to 25 dozen pairs.

The model K machine has the stop device and the cutting device, but the model G did not have them. A man can produce more shoes on the model K machine. It does not run any faster than the model G, but there is enough time saved between shoes so that a man can sew more shoes in ten hours. The model G sewed the seam as tight as the model K and made just as good a shoe, with perhaps the exception of the ability to stop the welt at the right point. I tell you frankly the only thing we ever considered in the model K was that it was easier for the operator.

The operator could sew more shoes, and we could make a saving on our welting and get the shoes welted fully as good or a little better.

I don't know what the difference in capacity between model G and model K is. I have given the difference in capacity between the old model and model K.

784 The operator of a welting machine works practically all day, ten hours except Saturday and eight on Saturday. As to whether I mean to say that a man works all the time without any relief whatever for 10 hours a day, why practically. He never leaves his machine unless he goes to get a drink of water or something of that sort, if he has work. He

might have to wait for a rack of shoes. He never kills time with the object of resting.

As regards the saving of the welt, as a matter of fact a man could, by exercising proper caution, cut the welt about an inch long, but you have about as much chance of winning on that as the proverbial snowball. I have talked with operators by the hour about that.

I was in error in calling the heeling machine that we used at Jamestown the American. It was the National heeling machine. That machine can not to my knowledge be obtained at the present time.

We have changed all our welting machines and they are now all model K. I am not sure whether we have yet changed the last one of our stitchers. The capacity of our factory is 5,000 pairs a day, and we have thirteen welters on which the experienced operators make forty dozen a day. Our capacity would be 6,240 pairs per day if we had experienced operators on all the machines, but we have not. As a matter of fact, our welters, taken all together, do not run to their full capacity, and this is because we are in a country factory and we teach all of our help. Fifty per cent of our help has been taught in the last six months, and we have to have some extra machines to allow for the falling off in production when we teach new operators. It is not true that this is one of the conditions which has to be met in all factories. It depends on whether one has got to teach green help or whether he is in a shoe district where he can get experienced help. We operate the factory to the capacity of the factory, but we do not operate each individual machine to its capacity.

Our shoe is what is called a medium grade Goodyear welt shoe, and the retail price is from $2.50 to $3.50.

I do not know how long either a welting machine or a stitching machine or a lasting machine will last. Much depends upon the use or abuse by different operators. I have never followed the life of a machine.

The machines which I testified the United Company did not object to my putting in were manufactured by L. G. Freeman, of Cincinnati. The machine we bought and kept was an insole tacking machine. We bought it in 1910 or 1911. That machine did not abate the United Company's royalty any, and we had that much more investment in machinery. The more capital we put into our business the more it costs to make the shoe, and we got that machine because we thought it was probably better than the United Company's machine.

785 Those were not the only machines that the United Company permitted us to put in. We put in other machines, for instance, a fudging machine, which I believe is in competition. That is used for indenting the upper face of the welt after stitching. That machine did not affect the amount of royalty we paid, and we have never undertaken to put in any machine that had effect on the United royalty.

Our ten skiving machines have come from different places. Some of our nine perforating machines came from Stanb[illegible] & Company and some from the Peerless Machinery Company. I believe the United Company classifies them under general department machines, and they are bought outright. The bobbin-winding machines in the stitching room came from the Singer Company.

We have our own repair men to repair machines that do not belong to the United Company. The number varies. We keep from one to two men in the stitching department, and then we have our head machinist, who sometimes has one or two men under him. It is not customary for them to repair the United Company machines, but if for any reason we could not happen to get hold of an agent for minor repairs, we would not tie up the machine to wait for an agent. As to whether if we want the work done immediately, we don't wait to get a United man there, but do the work ourselves, no; sometimes we wait; sometimes we don't. As a rule we do not have to wait, because the man is there. Auburn is about sixteen miles away, but there are three or four resident agents who cover the factories in Augusta, Hallowell, and Gardiner, which are only six miles apart.

The total cost of all the repairs on our Goodyear machines, including the cost of needles and awls, which is a considerable part of it, is approximately $300.00 per month. We buy the bulk of those parts from the United Company. We don't have to buy our needles and awls, and we don't buy from the United Company all of the repair parts for their machines. We buy quite a number of new parts from Chisholm, of Brockton, Massachusetts, and send parts that have been worn down there and they repair them, which is contrary to the leases. We thought it was cheaper to send those parts down to Chisholm and have them fixed up than to buy new ones. There has been some argument in the factory whether it was cheaper or not.

The Acme leveler is still in use. I know it was on the market when I got the automatic leveler in 1906. I don't know anything about it now. It is not practical for use to use it as compared with the Goodyear.

Direct examination resumed:

When I said on cross-examination that we had nine
786 thousand in the stock of the United Company I meant in
dollars on the basis of forty-five. It is approximately two hundred shares. That is what we got under the 1910 plan when the stock was distributed.

We use the United Company's clicking machines. Our outside cutters in Gardiner are getting about one hundred per cent more than they did in 1902, and the rest of the help through the room have got also an increase, but our cost per pair is about the same. That was altogether due to the adoption of the clicking machine, and it does better work than the hand cutter.

787 DECEMBER 17, 1913.

WILLIAM A. T. BLAGDEN, witness for defendants.

I live in Gardiner, Maine, and am assistant foreman in Mr. Hazzard's shop. I have been assistant foreman for about six months, and prior to that I had operated a welter since 1903. I worked in Auburn, Maine, in 1903, and then at the Plant factory in Jamaica Plain. I was at Plant's several times; about twenty months altogether. I also worked in several other factories, and I ran a welter in each of these places.

I operated the old-style welter until I went to Gardiner, and I have also operated the model G and model K welters, and I am familiar with the operation of each one.

There has been an increase in the capacity of the machines from the old style of welter that I operated before the model G down to the model K, and an increase in the capacity of the operator in getting out the product. The old machine sewed approximately 375 stitches per minute and the model K machine sews 500 stitches per minute. We figure 62 stitches on a man's shoe.

With reference to the difference in the capacity of the operator in getting out work on the old type of machine and on the present type of machine, we considered 300 pairs, 25 dozen, a good day's work on the old type of Goodyear machine. On the model K machine 40 dozen is an average day's work. I have sewed more.

A day's work is ten hours with us. I have exceeded that amount very considerably, and have done 65 dozen in a day on the model K machine; 25 dozen would be a day's work of the average experienced operator on the old machine, and 40 dozen a day's work for the same type of man on the model K machine. Extra good men can do more than that on the model K machine. At the time I did the 65 dozen the man who was working with

me did 75 dozen. Together we did 140 dozen in one day. As to how long I could keep up that pace, I never tried it.

In operating the old type of welting machine the operator had to place the welt in position and hold the welt and thread. He held the end of the welt with the finger on the left side of the shoe with the shoe bottom up and the thread between the thumb and forefinger. The needle comes through from the outside. You start the stitching on the left side and sew around to the opposite side. At the end of the operation the operator removed the shoe, welt, and thread from the machine, picked up his knife, cut off the welt and thread, laid his knife down, and put the shoe on the rack.

On the new model K machine the welt and thread are held automatically by the machine. The operator simply puts the shoe into the machine, puts his foot on the treadle, and goes around the shoe; he doesn't have to hold the welt or the
788 thread at all. When he gets through he removes his foot from the treadle, the stop motion brings the machine to its former position, and as the operator removes the shoe from the machine the pulling of the welt trips mechanism which makes the pincers and cutters come down and sever the welt. The operator removes the shoe still more, swings it up over the knife guard on the loopers, and the operation is done.

In stopping the old Goodyear machine the operator took his foot off the treadle and grasped the flywheel which had been turning 375 revolutions, and it was the same with model G. The operator can't stop it instantly because if he did it would throw him up over the machine, so he must use his hand as a friction in stopping the machine; 25 dozen pairs is 600 shoes, and the operator naturally feels some effect from doing that 600 times a day. As to how much that would tire the operator, well, that is rather a difficult question to answer. Possibly I could tell you better by the way a man's hand looks with which he stops the machine. A welter who is welting shoes with the old Goodyear can easily be distinguished. The palm of his hand is burned from friction, and calloused; and also his finger where he has held the welting thread is calloused. That can not be avoided.

Besides bringing that flywheel to a standstill, you had to turn it back towards you in order to remove the needle from the work, and that had to be done every time. That has now been entirely eliminated.

Doing away with three operations and having the machine perform them is a relief for the operator. It saves his time and saves his strength and quickens him in his work. Also the

machine is more accurate in its operation and in its place of stopping than a man could be. It stops exactly.

On the model K machine the speed can be slowed up in going around the toe, which is desirable because the work is harder there, and it can be speeded up again in going down the other side. There is a saving in welting and a saving in thread on the model K machine. Where the welt had to be held with the finger as in the old machines, the natural waste of welt, in the ordinary operation of the machine, would be the amount that was required to hold with the finger. You have to get a fairly good hold of the welt or it will be pushed out of your fingers. The amount you would have under your finger would be about three-quarters of an inch. With the model K, if a man has a butt of the welt more than half an inch long, he is wasting leather.

From a memorandum which I made from a book which I had while I was employed at the Plant factory, where it was necessary to take each day's work, I find that my average wage for ten consecutive weeks on the old-style Goodyear welter was $23.52. That was in 1902, I think. For ten consecutive weeks on the model K machine my average wage was $30.69, a gain of
789 about twenty per cent, and I was working practically the same hours. I didn't consider I had to work so hard. The piece price at the Plant factory was about one-third more than at the Hazzard factory ~~an~~ the model K. That is, I was paid one-third more per dozen and earned less money. I have worked on the old-style Goodyear since I have been with the R. P. Hazzard Company, but I have no figures that will show what I used to earn with them on the old-style Goodyear as compared with the model K.

The United Company always teaches a new operator. When a green man comes in whom we want to put on a welter we call for an agent who comes and stays with the man from two days to a week, and spends his time in instructing that man until he is competent to run the machine alone. A week's training will not make a man competent to run a welter, as it is a matter of practice, but it will teach him the rudimentary parts of the work. As to how soon we let him operate on our product, we generally give him a day or two days' work upon an inner sole tacked to a last to give him the shape of the shoe; then the man is allowed to take the work.

In addition to the saving in the length of the welting, there is a saving in the width on the model K machine, because that machine lays the welt flatter on the shoe, so that welting one-half inch wide can be used, where on the old machine it would

be necessary to use a width of nine-sixteenths. That is, there would be some saving of welt in the width of the welt as well as in the length, and you get as good a result.

Cross-examination:

PUTNAM, J. Mr. Gregg, do you make any question about the claims made by Mr. Choate with reference to the Shoe Company training new hands and furnishing parts and materials?

Mr. GREGG. Training new hands? No, sir; not in the least. And furthermore, there has been some testimony introduced along the line that would tend to indicate that the Government contends that they should not lease their machinery—that they ought to sell their machinery. We have never made that contention at any time. My position is that we don't object to the leasing at all, but we do object to the defendant's system of leasing.

The WITNESS. I should say I went to the Plant factory in 1904 and I left there in 1909. I worked on the old Goodyear welter at that time. None of Mr. Plant's machines were used while I was there. I should say the model K machine first came out two and a half or three years ago. There was no appliance on the old Goodyear welter or on the model G machine for stopping the machine.

790 DECEMBER 17, 1913.

ELMER P. HOWE, witness for defendants, resumed.

After the correspondence between Mr. Storey and me Mr. Winslow received a letter dated January 29, 1901, from George C. Houghton, secretary of New England Shoe and Leather Association, to which was attached a report which the committee prepared to give the press. This letter and the report constitute defendants' Exhibit 263.

DEFENDANTS' EXHIBIT 263.

New England Shoe and Leather Association. President, Andrew G. Webster; 1st vice president, Elisha W. Cobb; 2d vice president, Robert Batcheller; secretary, Geo. C. Houghton; treasurer, Geo. McConnell.

BOSTON, MASS., *Jan. 29th, 1901.*

S. W. WINSLOW, *President United Shoe Machinery Co.,*
Albany Building, Boston.

DEAR SIR: I am directed to inform you that the committee have voted to accept the draft of lease as submitted by Mr. Howe to Mr. Storey and I herewith enclose a copy of a report which they have prepared to give to the press. I am,

Respectfully, yours,

GEO. C. HOUGHTON, *Secretary.*

Dic. G. C. H. Enclosure.

661

Shirley, Reporter, City Editor 1–15.

A settlement of the lease controversy has been reached between the United Shoe Machinery Company and a committee of the New England Shoe & Leather Association, together with a committee of the National Association of Boot & Shoe Manufacturers, by which the Shoe Machinery Company offer to shoe manufacturers a choice between the lease as originally drawn, or a modified lease which contains among the several important concessions the right to use metallic fastening machines in connection with lasting, welt sewing or other machines other than those owned and leased by the United Shoe Machinery Company. To such users the company may charge not exceeding 10% more for metallic fastening than to those who use the entire system of the United Shoe Machinery Company.

The option of selection of either of above leases will not expire until Feb. 1st, 1902, after which there can be no change from the original to the modified lease, except by agreement; but the holder of the modified lease may change to the original at any time, by giving six months notice in writing.

The committee will at an early date prepare and issue to the trade a detailed report.

Sent to the press at same time it was sent to us.

H.

791 On the same day I received from Mr. Storey the letter of defendants' Exhibit 264.

DEFENDANTS' EXHIBIT 264.

E. P. H. File.

BOSTON, *29th January, 1901.*

E. P. HOWE, Esq., *Exchange Building.*

DEAR SIR: The committee of the New England Shoe Manufacturers' Association instructs me to notify you that they will accept the last draft of the independent lease which you have submitted to them, upon the understanding, at which I think we have arrived, that the persons who have taken your ironclad lease pending these negotiations may, if they see fit, take the independent lease, and that there shall be attached to the ironclad lease a rider authorizing the holder to surrender it and take the independent lease at any time up to the first day of February, 1902. I understand, moreover, that it is your purpose to offer both leases for an indefinite time thereafter unless something in the business situation leads your company to change its policy.

Please let me hear from you that I have correctly stated our understanding, and oblige,

Yours, very truly,

Del'd C 30. MOORFIELD STOREY.

In reply to Mr. Storey's letter I wrote a letter on the same date, a copy of which, together with the rider referred to therein, constitutes defendants' Exhibit 265.

DEFENDANTS' EXHIBIT 265.

Copy to Mr. Winslow. E. P. H. File.

BOSTON, MASS., *January 29, 1901.*

MOORFIELD STOREY, Esq.

MY DEAR SIR: I beg to acknowledge your favor of this date informing me of the action of the committee of the New England Shoe Manufacturers' Association concerning the Independent lease offered by the United Shoe Machinery Company. I confirm what I have heretofore stated to you, namely:

1. That any lessee who, pending the negotiations with your committee, has signed the United lease of metallic department machinery (which you refer to as the ironclad lease) or any lessee who shall hereafter sign such United lease may, at any time up to February 1st, 1902, upon giving thirty days' written notice to the company, surrender it, if he is not in default thereunder, by executing an independent lease of the same machinery, and that the United Company upon the request of any such lessee under the United lease will attach a rider to his United lease expressly granting to him the right to exchange it for an independent lease. A form of such rider is sent herewith.

2. That the United Company intends to offer both the United and the independent lease for an indefinite time after February 1, 1902.

The independent lease has been sent to the printer, and as soon as I have a corrected proof, I would like to submit it to you.

Very truly, yours,

Enclosure.

792 RIDER FOR "UNITED" METALLIC LEASE.

The lessee, if not in default in respect to any of the conditions, agreements, stipulations, and provisions in Lease No. , granted by the undersigned for certain metallic department machinery, upon giving at least thirty days' notice in writing of his intention so to do, shall have the privilege of surrendering this "United" lease and license at any time before February 1 1902, by executing the "independent" form of lease and license agreement in respect to the leased machinery.

Dated, Boston Mass.,

190.

By UNITED SHOE MACHINERY COMPANY.

The policy outlined in this correspondence was carried out by the United Company. The two leases were offered to manufacturers at their own choice for an indefinite period after February 1, 1902. The majority of the manufacturers having leases at that time elected to take the restricted lease. Certain other manufacturers who had in their factories machines of other departments, not made by the United Company, which they wished to retain, took independent leases.

Until these conferences occurred the United Company had continued to put out all the machines of the constituent companies in exactly the same way that those companies had put them out, except that they had put out practically no leases on the metallic machinery, nor had the McKay Company for a time previous to the consolidation.

The United Company continued the method of leasing practiced by the Goodyear Company until 1905, in the main. It was the practice of the Goodyear Company to charge initial premiums for all its machines. I don't recall what the initial premiums would aggregate, but later, after the United Company had added a lot more auxiliary machines to the Goodyear system, the initial premiums for all of them, about 32 machines, would aggregate $3,605. I have no figures for the total initial premiums on the 16 machines put out by the Goodyear Company before 1899, although I can easily get the figures.

The United Company did not increase any initial premiums formerly charged by the Goodyear Company but decreased some of the initial premiums on the auxiliary machines. For example, the initial premium of $500 charged by the Goodyear Company on the automatic sole leveler was reduced by the United Company to either $400 or $350.

After the United Company was formed it acquired the Gem insole machines, which previously had been put out on a royalty, and after that paid back the royalty to all manufacturers who used the Goodyear principal machines entirely. So that in effect Gem insole machines were made auxiliary machines to build up the Goodyear welt system.

793 After we acquired the sole laying machine of the Boot & Shoe Sole Laying Company, which had charged a royalty for the machine, we took off the royalty and put the machine in with the Goodyear set without increasing the royalty for the set. In 1891 that company charged a royalty of 1½ cents a pair on all soles laid. Whether that royalty was in existence at the time the United Company purchased it, I don't remember; but at least some royalty was in existence. We acquired from the Boot & Shoe Laying Company several patents,

one of which had prevented the Goodyear Company from making certain improvements that it wished to make on its sole-laying machine.

As a member of the executive committee I gave a great deal of attention to the new factory of the United Company at Beverly.

About 1901 or 1902, when the need of a single factory to accommodate all the business of the company was apparent, two committees were appointed, one to consider available factory sites in different parts of New England, and the other to examine the best factories in the United States to determine upon the type of construction and the arrangement of the different departments. The Beverly site was finally decided to be the most advantageous we had learned of, and after certain necessary arrangements were made with the city of Beverly, such as laying out new streets, providing sewerage, and deepening the channel in the harbor up to the factory, an architect was employed and a building was devised in conjunction with the committee on factories, and with the individual attention of the executive committee.

There were no other reasons than economy and business reasons for putting all the manufacturing into one building. It was found to be disadvantageous to have three factoris located at such distances apart, and the Winchester factory could not be operated efficiently because Winchester was a residential town and it was difficult to obtain good help.

Up to the time the new factory was ready the manufacturing was continued in the old factories. Business increased in each of them, and before the Beverly factory was ready each of them was crowded. All the business done in the old factories was gradually transferred to the new factory, as fast as it could be done without disturbing the operation of the old factories.

Q. Had you anything, Mr. Howe, to do with the drafting or the direction of the drafting of the papers which were executed in connection with properties acquired which have been referred to in the bill of complaint?

A. Yes; I had the direction of it in the main, associated, perhaps, in some instances, with Mr. Storrow; and the precedents which I established have been mainly followed by my associates since the early days.

Q. Will you state the reasons for the use of any covenant in thosea greements, so far as there were any, and their application to the different kinds of contracts to which they are connected?

A. Well, following the precedents of purchases of business with which I was familiar, there were in almost every instance inserted, not only covenants as to title and further security, but an agreement in the case of a business not to enter into competition with the business sold for a greater or less time, and I understood that if they made a mistake in getting the time too long, or if the territory which the restraint was made to cover was
794 too large, they were not restrained in any way by the common law, were not forbidden, were not criminal. It might be a question of their enforcement by the courts, either for damages at law or for specific performance or an injunction. Therefore we were not always particularly careful about drawing them. Some of them forbade the vendee, I notice, for an indefinite time, from competing. Such contracts always have been construed by the courts in respect to the peculiar circumstances of each contract, and the need of protection to the vendee. And the courts have been known to construe those contracts where the word "hereafter" is used to what they deemed a reasonable time. Most of these covenants are intended solely for the protection of the vendee and what it paid for extends for periods of ten years or fifteen years. The only one of the acquisitions of business mentioned in the petition which has been in litigation, and the only one which the United Shoe Machinery Company sought to enforce, was the contract for the purchase of the needle business of Kimball & Hadley, where the vendor covenanted to keep out of competition for fifteen years, and the Supreme Court of Massachusetts said that that was reasonable and proper and granted an injunction against Hadley from doing it. That was the only one of these contracts that it has ever been sought to enforce.

Q. And, so far as you know, is it the only one about which any question has arisen?

A. It is the only one.

Q. Some of these contracts which contained covenants were contracts for employment under which the vendor entered the service of the company and was in its factory and about its machines?

A. All of the contracts of that class were, I think, with inventors, by which they were to devote their entire time to studying up improvements in our various machines, and those agreements contained covenants not to disclose those inventions, and to render all possible assistance in developing them and in getting patents for them. In those contracts there is invariably a covenant to convey all future inventions in or relating to shoe machinery during the period of the inventor's employment by the

company, and in some of them for three to five years after he should leave our employment. That covenant was inserted because it was thought reasonable that the inventor, having been educated in the factory and about the machines of the United Company, necessarily came into possession of what might be called trade secrets, and other inventions which we had in process of development, and therefore required that he, being supposed to have these inventions in his head at the time he left our employment—required as a reasonable matter that for a certain period, say three or five years, after he left our employ he should give us any improvements he made in the art of shoe machinery which we might desire.

Q. Was the form of these agreements, or the form or kind of covenant inserted in the agreements, a matter upon which the directors of the corporation acted in any respect?

A. They were not. Neither the directors nor officers of the company as far as I know ever had anything to do with them. In fact, except in special instances, where they may have read that part of the contract, I doubt if they knew what they were.

Q. Or did you receive directions from President Winslow as to the covenants you should use?

A. Neither from the president nor from any officer.

Q. You then exercised your own judgment as a lawyer?

A. That matter was all left to the legal department.

Q. Was there any intent upon your part to bring about a monopoly or an unlawful restraint of trade by the use of those covenants?

A. No intention whatever. It was merely intended for the protection of the company in what it had paid for, or what it had contracted to pay for.

I think I was familiar with every instance in which covenants of the leases have been enforced by the United Company, except cases of bankruptcy, and perhaps some cases in which lessees failed to pay royalty.

795 Q. I would like to call your attention to those provisions in the leases which reserve to the lessor the right to cancel either because its machinery for a certain purpose is not used exclusively by the lessee, or because the lessee has broken his agreement with respect to the restricted use made of the machines leased, and ask you what instances, if any, there have been where the company has taken any action with reference to the machines under either of those clauses, that you know of?

A. The only instances that I remember are the cases of T. D. Barry & Company, of Brockton, where they were using Goodyear

auxiliary machines with regard to which we had no opportunity to determine the extent of use, and therefore had no means of collecting royalty in connection with the machines of the Standard Shoe Machinery Company; that is, they were using Goodyear auxiliary machines to prepare and finish the work which was sewed and stitched on Standard welt and turn sewing machines and Standard stitching machines. There was also the case of E. Bottomley & Company, at Haverhill, who had a set of Goodyear machines, and who purchased some Duplessis machines and set them up and laid the Goodyear machines, except the auxiliary machines, to one side, and we were deprived of our royalty, and we therefore replevined the machines, as we did in the case of T. D. Barry & Company—replevined the machines.

Q. And Tessier?

A. Yes; Peter Tessier also put in some Duplessis machines, and it was really violating our lease in the most flagrant way by using our machines to prepare or to finish the work that was done on the Duplessis machines. Furthermore, when his attention was called to the violation of the lease, I think he gave up his Goodyear machines without the necessity of actually prosecuting a replevin suit against him.

Q. He had already provided himself with others?

A. Yes, sir.

There was also the Bell concern, at Beverly, who used wire which they acquired from outsiders on the metallic machines. I didn't have personal knowledge of that. There were only these five cases where any right under those clauses was exercised in the twelve years before the bringing of the suit, with something like 1,000 or 1,100 lessees.

The matter of the United Company's action under those clauses has been a matter of discussion for some six or seven years either at legislative hearings here in Massachusetts or elsewhere, but nobody has produced any cases other than those five; they can't because they didn't exist.

I made an examination of the machinery in the Thomas G. Plant Company factory. I was there with Mr. Winslow when he examined it. During most of the time that we were there Mr. Plant went around the factory with us and showed us all the machines that he had in operation. I saw the lasting machines, the leveling machines, the welt sewing machines, the stitchers, and various lines of finishing machines.

They were nearly all of them old machines in design of the United Shoe Machinery Company, the Goodyear machines, or in the metallic department, with certain improvements which had been added to them by Mr. Plant, but they had a family

resemblance to the United Company's machines. The machines to which I gave most attention, naturally, were the welt and turn sewing machines and the outsole stitching machines, the heads of which—I don't remember the bases—but the heads of which bore a very close resemblance to the Goodyear machines for the same purposes, but he had added to those machines his different improvements.

796 During that examination I gave special attention to the extent to which Mr. Plant was infringing our patents, because we had already brought certain patent suits against him and the T. G. Plant Company, and I was very anxious to see how far we were confirmed in bringing those suits. I found a great many infringements that to my mind were clear if our patents were valid. I noted infringements particularly in the lasting machine, the heeling machine, and the leveling machines.

In the main, Mr. Plant's improvements were improvements on old machines. He had taken our machines, whether he had a right to or not, and had made certain improvements on them. As an illustration, referring to Mr. Plant's welting machine, I concluded from my examination, as I have stated, that Mr. Plant had taken some of the inventions in our machines and had added the stop-and-start motion, which has been very fully described, and also the machine for cutting off the welt and the thread, and making a great saving in thread and in welting used in the machine. I felt very sure from such study as I could make in the time I was up there that that feature was a very valuable feature of the machine. He had taken an improvement owned by the United Shoe Machinery Company and one Winkley, which we had never introduced into commercial—into Goodyear machines.

Q. What result did that produce with reference to the practicability of making use of the good features both of your machines and his improvements, if you insisted upon your patent rights and he insisted upon his patent rights?

A. Well, it would have been a stop in the development of shoe machinery in these lines. We should hardly have dared to go ahead with the improvements in our machines for fear of not succeeding in our patent litigation, or of conflicting with such improvements as Plant had patented. On the other hand, Plant, or any company which he might form, would have hardly dared to go ahead with the possibility of these infringement suits. These infringement suits, or a good many of them, were then pending, and certainly he would have found very few customers, I think, for his machines.

Q. Let me for the moment let out of the discussion the doubt about the result of the litigation and the uncertainty. If you established your claims, would he have any machine to which to add his——

A. He wouldn't until the expiration of our patents.

Q. And if he established his rights, or what he claimed were his rights under his improvements, could you have produced the machines?

A. That would have stopped the improvement of our machines.

I was at all the conferences, at which Plant was not present, when the question of acquiring the Plant inventions was discussed. The first time I met Mr. Plant in the negotiations was at Mr. Whipple's office in the latter part of June, 1910, where the question whether some method could be devised for allowing our experts to examine Plant's machinery was brought up again. It was discussed whether we should give a bond for one million dollars, to be forfeited to Mr. Plant if we did not purchase.

At these conferences and all along Mr. Winslow always took the position of declining to discuss prices or a price for the machinery and inventions until he had convinced himself by experts, in whom he had confidence, as to the value of these inventions to the United Shoe Machinery Company and to its lessees.

Q. And did his view prevail in the councils of the company?

A. Entirely.

Q. Now, when you and he made the examination did you form an opinion as to the value, I don't mean in dollars, but as to whether they were valuable or not, all these improvements and inventions of Mr. Plant?

A. After we examined it, Mr. Winslow and I rode back to the Algonquin Club, and for the first time compared notes, and we both agreed that Plant had some very valuable improvements that if we could get the ownership of at the right price could be introduced into our machinery in conjunction with our own experiments in the way of improvements that had then been under way for several years, and that by utilizing them
797 in that way Plant's inventions could be made very valuable.

Q. What has been the course which the company has pursued in reference to giving the trade the benefit of those inventions acquired from Plant?

A. Ever since the time of the purchase of this machinery and inventions from Plant the experimental department of the United Shoe has been at work to attach them to our machines and build new machines, as the case may be.

Q. Embodying——

A. Embodying Plant's inventions, and they have been leased to our lessees just as soon as each machine was developed commercially enough to do it. You understand we never attempt to put out a machine on lease until it has been demonstrated by a successful practicable machine.

Q. And that takes time, I suppose?

A. It does, and you can't anticipate how much time it will take, either.

Q. And is that practice still being pursued?

A. The resources of our experimental department are crowded to the full, and have been since the Plant purchase, doing just that work.

Q. Well, the United States charges the company with having suppressed inventions. Now, what has been your observation, Mr. Howe, with reference to the management of that department of the United Company?

A. The United Shoe Machinery Company has never suppressed an invention that it thought could be worked out to make a commercial machine which would benefit the lessees. There have been patents bought which under our experiments never came to anything, never were worth anything, and therefore the patents were laid on the shelf, but I have never known of a single patent which had prospective value when embodied in machinery being laid on the shelf or suppressed.

Q. Mr. Howe, in the organization of the United Company, or in the different acquisitions which have been charged in the bill brought by the United States, has there been, so far as you know, a purpose to kill, to restrain competition, or to achieve a monopoly in shoe machinery?

A. There has not been any purpose to do that or any of those things. The business when organized, and in its development, has been a gradual expansion, not only along the lines of the constituent companies, improving, developing, and leasing those machines, but also from time to time, as circumstances warranted, an extension of its business into other fields, like eyelets and nails, for instance. When the Goodyear Company was in operation, in connection with its lasting business, it required the purchase of tacks for use in its Ideal lasting machines. The United Company after it got possession of the Goodyear took that requirement out of the leases, but still, at the same time, it seemed to be necessary to exercise supervision over the tacks or nails lest the machines themselves would get out of order, owing to the fault of the tacks.

The tacks and nails which we have to use on our machines have to be of a particular size and hardness, and particularly right in shape to go through the chutes in which they run in the machines. The metallic fastenings also have to be of a particular composition.

We had a contract with W. W. Cross for making tacks, which are used mainly in connection with the lasting machines. The demand for them became so great that it was a problem as to how we would get them. There were not tack makers enough to make them, so we organized the W. W. Cross Company, took in Mr. Cross as manager with a large interest, and supplied the capital for him so that he could enlarge his factory. Now almost the only business he does is to make nails and tacks for the United Company. That plant is an entirely distinct 798 factory under distinct management. We sell those tacks to anybody who wants them, and we don't require our lessees of lasting machines to take our tacks. It is simply a convenience.

In a similar way we gradually extended into other fields like eyelets and brushes.

I drew the Peabody contract for an agency in Australia, plaintiff's Exhibit 189. (Record p. 2.)

Q. May I ask your attention to the recital upon which the United States relies:

"Whereas the United Company has acquired control of the boot and shoe and leather working machinery made by the following named corporations—

"And then it names the constituent companies—

"and contemplates acquiring the control of the other lines of boot and shoe and leather working machinery and boot and shoe findings except leather linings, lasts, and finished boots and shoes."

What was the occasion of putting that statement into that agreement, Mr. Howe?

A. It should be understood that Peabody & Company were commission merchants in shoe machinery and in shoe findings in Australia, and they wanted an assurance that we should give them enough business to warrant their entering into a contract. It was therefore recited herein, what was true, that we had acquired control of the business of the corporations therein named. Peabody & Company recognized these corporations, or the manufactures in which they were engaged, by their names. We had then in mind the purchase of some other lines of shoe machinery and findings, and this would tend to increase the business of Peabody & Company in Australia.

Q. What other lines had you in mind?

A. I had in mind especially blackings, cements, and stains which Peabody & Company had previously had difficulty in supplying themselves with.

Q. That recital is understood by the United States to mean that you had in mind the acquiring of all shoe machinery and findings and supplies, or substantially all?

A. There was no such intention.

That paper was not drafted in accordance with directions of the directors or president of the United Company, and that recital was simply my own draft in connection with Mr. Peabody and one or two of our experts or department managers, whom I don't remember.

Cross-examination:

I testified that there was considerable litigation between the Goodyear Company and the Eppler Company prior to the formation of the United Company. In suit No. 1007, Goodyear Shoe Machinery Company *v.* Eppler Welt Machine Company, I find on referring to the bill of complaint that it charged infringement by a welt beating machine. That suit was filed March 26, 1898. I do not recall whether any testimony was taken, and I don't know that either the papers in the case, which have been handed to me, or the docket would show that, because the
799 testimony might have been taken before an examiner and not returned into court. There might not be any record of the appointment of an examiner because the practice in those days, which was rather loose, was to agree upon an examiner without any appointment by the court. I can not tell from these papers whether any testimony was taken or not, but I can easily get the files from my office. I think very likely no testimony was taken and that is my best recollection. That suit was pending at the time the United Company acquired the Eppler Company.

In suit No. 248, Goodyear Shoe Machinery Company *v.* Eppler Welt Machine Company, filed on April 11, 1892, the Eppler welt machine was charged as utilizing in its operation the method of forming chain stitches of Briggs patent No. 461,793. I think testimony was taken in that suit but that the case was never brought to final hearing on account of the formation of the United Company. At that time the suit had been pending seven years. I don't know that the Briggs patent was ever sustained except in consent decrees. In one case after we had argued a motion for a preliminary injunction the judge held the case for fourteen or fifteen months, and in the meantime the defendants

had lost so much money that they sold out to the United Company, and I was obliged to tell the judge that it was a moot case and that he need not decide the motion.

I think testimony was being taken in the suit on the Briggs patent against the Eppler machine. We had half a dozen suits in nearly all of which testimony was being taken with the exception of the last suit, on the welt beater, in which I think we had not got around to take testimony.

Suit No. 847, Goodyear Shoe Machinery Company *v.* M. N. Arnold et al., was brought on a French and Meyer patent for an improvement in shuttles, which was embodied in the Eppler outsole stitcher. That had nothing to do with the welt sewing machine. That bill was filed January 28, 1897, and I think testimony had been taken in that suit. I am not sure.

800 Two other suits, No. 846, against William H. Stacey et al., and No. 845, against George E. Keith, were brought on the same patent on January 28, 1897. Both suits were pending when the Eppler Company was acquired. I don't remember whether testimony was taken in all these suits. Testimony was undoubtedly taken in one of the suits on that patent, and by agreement of counsel the other suits were to abide the decision in that one.

In suit No. 807, Goodyear Shoe Machinery Company v. Charles A. Eaton, the Eppler rounding and channeling machine was charged to be an infringement of the patent sued upon. That bill was filed November 20, 1896, and testimony was taken and is on file. That suit was pending when the Eppler Company was acquired.

Suit No. 806, John B. Hadaway and Goodyear Shoe Machinery Company v. Charles A. Eaton, was brought upon the Hadaway patent for a stitch separating and indenting machine. Testimony was taken in that case and is filed with the papers.

Excepting the suit under the Briggs patent on the welting machine and three suits on the outsole stitcher under the patent on the improvement in shuttles, all of these suits related to auxiliary machines. The three suits on the outsole stitcher were based on the same patent.

It is true that Mr. Winslow and I first got together with respect to the Goodyear Company and the Consolidated & McKay Lasting Machine Company, and that at that time we did not consider taking in the McKay Shoe Machinery Company or the Eppler Welt Machine Company. The final agreement was reached at a meeting in New York in the middle or latter part of January, 1899, which was attended by Messrs. William Barbour, John H.

Hanan, S. W. Winslow, George W. Brown, and their attorney, William H. Coolidge, and myself. At that meeting we determined to combine only the Goodyear and Consolidated & McKay Companies; that is, we determined to organize the United Company and to acquire as much of the stock of those two companies as we could, agreeing to exchange our own stock for stock of the United Company.

801 As to my testimony on direct examination that there was some question in my mind whether we could operate our factories and agencies by agreement unless we brought the two companies together into one company, that was merely an impression which I had early in my discussions with Mr. Winslow. I think that it was that impression which led to the formation of the United Company instead of carrying out the matter in the other way. I think it was under my advice.

Prior to the formation of the United Company the Goodyear Company was putting out the Ideal laster, but was not selling it; it never sold its machines.

At that time Mr. Barbour was a stockholder and director of the Goodyear Company. Neither Mr. O. E. Lewis nor Mr. Walter Shaw was present at the meeting in New York. As to whether I attended any meetings where Mr. Lewis and Mr. Shaw were present: After the company was organized Mr. Lewis, who was a vice president, was frequently present, but I don't remember that Walter Shaw was present at any meeting.

At the meeting in New York it was decided to take out a charter for the United Company and we determined upon the name, the amount of the capital stock, as to its division into preferred stock and common stock, and as to what the preferences should be for the preferred stock. We also settled the exact amount of the United Company stock which should be allotted for each share of Goodyear stock and each share of the stock of the Lasting Machine Company.

At that meeting nothing was said about acquiring the Eppler Company; nothing at all. It was agreed that the Goodyear Shoe Machinery Company of Canada, which was almost entirely owned by Mr. Barbour, should be taken in for $225,000 in stock of the United Company at par.

It was on the seventh day of February, 1899, on which the charter for the United Company was taken out. As to whether any arrangement had then been made with a view to taking over the Eppler Company, I am not sure whether the purchase of the Eppler Company was considered just before or just after that.

Referring to plaintiff's Exhibit 152, that refreshes my recollection and the purchase of the Eppler Company must have been made before the actual grant of the charter.

802 The Eppler Company was purchased for the United Company, I don't know by whom.. I know that Mr. Barbour, Mr. Hanan, Mr. Winslow, and others, who are referred to as a syndicate in that exhibit, put up the money. They bought it of one man, I don't know who it was and paid cash for it; and for that cash they got stock in the United Company at par.

As to a statement that I made before the State legislature a couple of years ago, as follows:

"The stockholders of the Eppler Machine Company sold out to another shoe manufacturer, from whom subsequently the promoters of the United Shoe Machinery Company bought the stock of that company."

I don't remember who that shoe manufacturer was and I think I didn't know at the time when I made the statement. I don't remember who told me that a shoe manufacturer had bought the stock.

I think Mr. George W. Brown was also in the syndicate, but I don't know. I was not a member of the syndicate. I do not know what was paid for the Eppler Company. I have made some inquiry since this case began, without success. I don't remember whether I ever had any information as to what was paid for it.

As to what is my best judgment as to what was paid for the Eppler Company, I haven't any. As to whether or not as much as $100,000 was paid for that company, I had known the company for eight or nine years and had a general idea of their business, and I should have said that they would not have sold it for $100,000. As to whether they got so much as $500,000 I don't know at all and I have had no success in trying to find out.

I don't know what has become of the records of the Eppler Company. I saw them at the time the directors of the Eppler Company resigned and we elected United Company directors in their place, and I have not seen them since.

There was issued to the syndicate 50,854 shares of preferred stock and 44,962 shares of common stock of the United Company in payment for working capital, to pay floating debts of the constituent companies, to pay for the Goodyear Company of Canada, for the Eppler Company, and for other property, to make cash payments to stockholders, and to cover the expenses of organization of the United Company. After those things

were done a little in excess of $500,000 was left as working capital.

I stated a moment ago that from what I knew of the Eppler Company I did not think they would have accepted $100,000. I don't know how extensive the Eppler Company's business was and my knowledge of it outside of the litigation was nothing but hearsay, their advertisements in the papers. I had seen all of their machines and had examined them carefully. They had a welt-sewing machine and an outsole stitching machine,
803 and for auxiliaries they had a rough rounding and channeling machine, a stitch separator, a welt beater, and welt splitter, a groover and beveler and a bobbin winder, which would be a necessity for the outsole stitcher. Those machines were being used in a number of shoe factories.

After my examination of their machines I considered that their welt-sewing machine was a good machine for making Eppler welts. Their outsole stitcher was inferior in construction to the Goodyear outsole stitcher, and also infringed the Goodyear Company's patent. The welt beater, stitch separator, and the rounder and channeler were not only inferior in construction but they also infringed the Goodyear patents.

I was quite familiar with the shoe machinery trade in 1899. After the United Company was formed and took over the Goodyear and Eppler Companies, it certainly had the greater part of the business in welt-sewing and outsole stitching machines in this country at that time. As to whether I know of any other companies which were putting out welt-sewing and outsole-stitching machines in this country at that time, I remember the Bertrand & Bray Sewing Machine Company which put out a lock-stitch welt-sewing machine and an outsole stitcher. That company was located in Boston, and it was not subsequently acquired by the United Company. I think they are not in business now.

Goodyear had in his early system a chain stitch outsole stitcher which I think he invented, but about 1887 or 1888 that was superseded by the lock-stitch stitcher which had been developed by the Goodyear Company. The Goodyear Company originally covered the entire field of making welt shoes by machinery. The original conception was the making of a welt shoe by machinery imitating the methods of hand workmen. That patent had expired long before the United Company was formed, and before my time, some time in the 80's. The Goodyear Company did not cover the whole field when the United Company was formed. There was nothing to prevent anyone getting up a good welt-sewing machine and a good outsole

stitcher, which would be superior to the Goodyear machines, if they could do it. The patent on the original Goodyear machine had run out long ago. Others were free to use that if they wanted to.

The Eppler welter infringed the Briggs method patent on an invention which accomplished the sewing of a tight seam. That method patent and a machine patent revolutionized the Goodyear Company's business about 1890, and rendered the old Goodyear machines out of date. Everybody wanted the new machine embodying the invention of the Briggs patent. We also brought out at that time the lock stitch rapid outsole stitcher, which was so great an improvement on the 804 chain-stitch outsole stitcher that all those machines went out of use. That machine sewed a good seam and a tight seam but the seam was very objectionable to the eye.

Q. But the Goodyear and the Eppler Companies were both operating in the same field, that is, the machines put out by each company were used for the purpose of making a welt shoe; the Eppler people called theirs the Eppler welt and the Goodyear the Goodyear welt?

A. Well, they were welt shoes, but made different; they were different shoes.

Q. I understand the chain stitch on the Eppler shoe was on the inside of the channel?

A. The Goodyear shoe, as Judge Putnam has pointed out, was the hand-sewed shoe, sewed by machinery. The Eppler welt shoe was a shoe made in a different way, different from what a hand workman would make it.

Q. But they were all known among the trade as the welt machine for making welt shoes?

A. Known in the trade as welt and turn machines—Eppler welt and turn machines. There were also shoes in the trade known as hand welts and mock welts.

As to why the Eppler Company laid their channel under the foot, I presume the reason was that Eppler who invented the machine was an old designer of the Goodyear Company and knew that originally the Goodyear machine laid its chain stitch in the channel of the sole so that it came under the foot. It was a matter of choice. They were not limited to that. The Goodyear and the Eppler were the only two machines manufactured and on the market in this country except this third one that I spoke of.

At that time it was open to anybody to make the earlier types of Goodyear machines. They were out of date, although for

their time they were good machines. Their product was a wearable welt shoe and it was made in large quantities. A shoe of that character had been on the market for a long time and had been accepted; but it had been outgrown by the improved machines, which produced a shoe of very much improved quality.

I think the Eppler welt machine came out from 1890 to 1893 and the Eppler Company was formed shortly after and did business until 1899.

PUTNAM, J. The litigation, then, between the Eppler Company and the Goodyear Company was upon the secondary patents, wasn't it, not upon the fundamental patents?

The WITNESS. Well, it was upon the later patents, of course, which were in existence.

PUTNAM, J. But it didn't relate to the fundamental principle of the art?

The WITNESS. No.

805 When the United Company was formed I don't remember that any outside concerns were manufacturing and putting out lasting machines. There was a thread lasting machine, and there were two or three machines of doubtful value. There was a Preston lasting machine, but they cut no figure in the business. At that time the Consolidated had the McKay & Copeland, the hand method, and the Chase lasting machines. The Continental and Boston lasting machines were really nothing but machines that drove a single tack to hold the upper after the workman had done all the lasting work by hand. I do not know how extensively the Boston machine was used. It was in shops making the cheapest kind of work, and I had no occasion to go into those factories.

The Ideal lasting machine was put out by the Goodyear Company and was developed for and used on women's shoes.

As to whether it could be used on men's shoes, I explained yesterday that the purpose of these different machines slightly overlapped, but as a feat you could use the Ideal laster, which was designed for women's welts, on men's shoes, but that no one would think of doing so unless they were forced to.

As to whether the Ideal laster was actually used on men's work, why I think it may have been in a few instances.

806 Referring to the statement in plaintiff's Exhibit 152 that the United Company had already contracted for more than a majority of the capital stock of eight concerns, "besides stocks in other shoe machinery companies, letters patent and other property," the "other shoe machinery companies" consisted in a company manufacturing an experimental

heeling machine in Newark, New Jersey, and two or three other companies on about the same status. The Newark company had one experimental machine out in the factory of John Hanan in Brooklyn, and all of these other companies were small in capital and were taken into the United Company because they were controlled by some of the promoters of the United Company, and we thought at the time that there was a nucleus for improving and developing a better machine. None of them, except possibly the heeling machine, was competitive with the United Company, and that machine was designed to heel on the last. At that time there was no particularly good machine for doing that which would avoid breaking lasts.

After the United Company was formed the National heeler was on the market. I don't know whether anybody was making them as new machines, but there were large numbers of repaired National heelers that could be purchased by any manufacturer who desired them.

As to metallic machines which were on the market at that time, I remember only the Suffolk Nailing Machine Company, which had a pretty good line of metallic machines.

As to what companies were manufacturing the McKay sewing machine at that time, the Steam Heated Horn Company manufactured them and the Stanley Manufacturing Company at Lawrence made a few, but very few new McKay machines were being manufactured because there were plenty of them around through the country that could be bought in the stores, and manufacturers were shifting to some extent, even then, from McKay sewed work to Goodyear work. Consequently they hadn't the use for their McKay sewing machines and would sell them.

The United Company did not, shortly after it was formed, manufacture McKay sewing machines; and it put them out only as it bought them for some customer that wanted them. The patents on those machines had expired long ago—in 1879 or 1880, I think. Any body could manufacture them.

807 Prior to the formation of the United Company the leases of the Goodyear turn set required the machines to be used exclusively. That provision was not inserted in the full set welt lease. As to whether in the old leases of the Goodyear Company there was a reservation to the lessor to cancel all other leases provided the lessee should not live up to the requirements of a particular lease, the practice of the Goodyear Company did not necessitate any such requirement. All the machines in a large factory would probably be on one lease. Whenever the manufacturer took an additional Goodyear machine it would

be put on the same lease. It was never the practice of the Goodyear Company to put out independent leases as additional machines were added.

Mr. CHOATE. Mr. Gregg, if you will look at clause 10 of Exhibit 3, you will see how they handled that.

Mr. GREGG. Exhibit 4 also refers to it, Mr. Choate.

The WITNESS. I can't tell without looking up when the first change was made in the Goodyear lease after the United Company was formed. Speaking generally, I should say that it was a year and a half, and until that time we used the old Goodyear forms, and leases were made in the name of the Goodyear Company. The first change as I remember it was to substitute the name of the United Company as lessor. As to whether the form of the lease was then changed in any way, I think it may have been by inserting the clause giving the company the right if the lessee defaulted in paying his royalties or committed other serious breach, to cancel all its leases in the different departments and cease doing business with him.

The metallic fastening lease was the occasion for the New England Shoe Manufacturers' Association taking up the lease question with the United Company. That was a restricted lease, which prevented the use of metallic machines with lasting welt sewing, outsole stitching, or heeling machines other than the United Company's. The question of putting out the independent lease was then taken up with the committee.

As to whether that lease contained the provision that for any violation of that lease the lessor might cancel all other leases subsisting between the lessor and lessee, that division between conditions obligatory upon the lessee and the agreements was first put in that lease, as I remember, as a result of a conference between Mr. Storey and myself. For the violation of these obligatory conditions, like, for instance, going into bankruptcy or not paying his rent or doing other acts which amounted to cheating, we could cease doing business with that lessee; that is, the clause gave us the power to cancel all his leases. If, however, it was an agreement not obligatory upon him, not to put in other machines, and he did put in other machines, we had the option to take out our metallic machines.

808 The reason for increasing the price of the metallic material 10 per cent above the price to manufacturers who had restricted leases was due partly to the increase in the price of material and partly to a feeling that we ought to have more money in case factories under the independent lease had no other machinery of ours than one or two metallic machines.

In other words, where we had brought out the restricted lease we thought by distributing the business over the three or four departments we could stand the rise in copper, but if the machines were to go out independent we ought to have some more compensation if we had to render service to isolated machines.

Q. Then the manufacturer who took the restricted lease with respect to the machines named therein, or referred to, agreed to deal with your company exclusively?

A. As to those machines, subject to the penalty of having his machines taken out if he did not deal with us—subject to having some of his machines taken out if he did not deal with us.

I stated on direct examination that the initial premium of the Goodyear automatic leveler was reduced, after the United Company was formed, from $500 to $350 or $300. The only competitive sole leveler had come in years before—before the United Company was formed. At the time of that reduction there was no other company putting out levelling machines The so-called Judd leveler, manufactured by Mr. Cilley, was in existence, but I think it was doing no business at the time that reduction was made.

It was almost immediately after the United Company was formed and after we acquired possession of the Gem Insole Company that we decided to turn back to the manufacturer the royalty on the Gem insole machine. As to why the Gem insole machine was not put in as an auxiliary machine rather than putting it out on a separate lease, I don't know unless it was because a lot of Gem insole machinery was out on leases of the Gem Insole Company and it was simpler to keep up those old leases and return the royalty to the lessees.

The rebate of the royalty was given to all lessees who complied with the conditions of the resolution of January 31, 1900. Under the terms of that resolution any concerns not using our machines exclusively did not get the rebate and were not entitled to it.

At the time we decided to grant this rebate there was no other insole machinery on the market. I have heard of the Sleeper inner sole. There may have been one or two factories trying it at that time. Before that it had been tried out and abandoned. The machine did not in any way do the work of the Gem insole machine. The machine was not then being manufactured at all. I think there were two or three of them out which had been made by Sleeper.

Neither the Suffolk Nailing Machine Company nor the Steam Heated Horn Company, about which I have previously testified, was acquired by the United Company.

I happen to know that there is one Eppler machine in the factory of the Studebaker Company, being used for sewing automobile tops. It is possible that some Eppler machines
809 are now in use in Brockton. There were some in use at the time of the filing of the petition in this suit, but the only company that I knew was using them was the F. F. Field Company. I do not know whether they used both the welters and stitchers.

The only conference regarding the Plant matter at which Mr. Plant was present which I attended was the one at Mr. Whipple's office in the latter part of June, 1910. I was informed of all the conferences that Mr. Winslow and Mr. Endicott had, but was not personally present. I attended the meetings of our experts, counsel, and directors at the Algonquin Club. Mr. Winslow reported to me the next day about his first conference with Mr. Plant at Mr. Endicott's house. There was no action possible on that report.

According to my memorandum, it was on September 14, 1910, that Mr. Winslow and I went to the Thomas G. Plant shoe factory with a number of our experts, who examined the machines. Those who went with us, so far as I recall, were Mr. John H. Connor, Mr. Alley, Mr. Cox, Mr. Mayo, Mr. Benjamin Phillips, Mr. N. W. Howard. We all met at the Algonquin that evening and discussed what we saw there.

This examination of the machines at the Plant factory was arranged by Mr. Winslow, Mr. Endicott, Mr. Plant, and Mr. Herrick. It was agreed by Mr. Winslow that he would bring no infringement suits against Plant or the Plant Company for three weeks, except suits in which bills of complaint had been executed. A list of those suits was to be given to Mr. Emery, Mr. Plant's counsel. I have not a list of those suits, but purely from recollection I think there were about ten or twelve for which bills had been executed but had not been filed.

Up to that time we had not put up any money. Mr. Plant required that we should put up a million dollars if we could make an examination within a short time, and a million and a half if we were to take any longer. We declined to do that.

On the night of September 14th we all stayed at the Algonquin Club until one o'clock the next morning, discussing the various machines. Neither Mr. Plant nor any representative of his was present at that meeting. The experts spent the whole of the next day at the Plant shoe factory in further examination of the machines.

810 Q. Now, at that time did you know that some of the shoe manufacturers were here from the West?

A. I did not.

Q. You had not heard of that?

A. I had not heard of it. I didn't hear of that until after we had paid Plant $500,000. I think it was the 22d of September that I heard of it. I was told of their being here and told that Plant took them to Lynn and Lawrence to examine what he was doing with reference to his machines.

The Winkley patent No. 700,279 dated May 20 1902, plaintiff's Exhibit 268 (a physical exhibit), which the Plant welt machine infringed, covered an attachment for holding the welt at the beginning of the sewing operation and was for the purpose of saving the welt and thread so that there would not be the loss of the welt which resulted when the operator held it by hand. Plant had improved upon it and made a much more efficient operative device, but he nevertheless embodied the invention of Winkley's patent. We had not put out the attachment covered by the Winkley patent. We had only used it experimentally. It was not on any machines that were leased. Winkley was in the employ of the United Company at the time he made that invention. At the time of the Plant purchase we had put out no device whatever for holding the welt; it was simply in an experimental stage.

I examined the report made by Mr. Mayo and Mr. Warren on November 26, 1910, with respect to the Plant machines, about the time the report was made. The cuts on page 51 of plaintiff's Exhibit 267, which purport to show the model G welter and the Plant welter, appear to show those machines.

811 (Mr. Gregg then read the statement beginning on page 51 of plaintiff's Exhibit 267:

"PLANT WELTER.

"This machine is similar to the Goodyear welt and turn machine in regard to the stitch-handling devices.

"It differs from the old machine in a feeding welt guide and the addition of a back gauge which is necessitated by the feeding welt guide.

"The machine, so far as the quality of work goes, should do as good work as the old Goodyear welt and turn machine, but we think it is inferior to either our model G or model K welters.

"The mechanisms of this machine are light, and not as well designed and constructed as the mechanisms of our two new welters; but there are several important additions to this

machine which make it very valuable to the manufacturer, and, while we are of the opinion that the Plant welter as it stands should not be adopted in place of our new welters, we believe that these important devices referred to should be incorporated in our latest machine.

"The new devices are as follows:

"A welt and thread holding and cutting device.

"By this device the operator, after he has finished welting the shoe, pulls the shoe toward his left hand and presses the foot treadle, thereby cutting off the thread and welt, and holding the welt and thread in position to take the first stitch in the next shoe. This operation makes a considerable saving in time to the operator, and is much neater, owing to the fact the the operator does not handle the waxed thread. It also saves welting as the operator always starts with the same amount of welting through the welt guide. In our old type of machine the operator has a varying amount of welting through the welt guide and more than is necessary for the shoe in order to hold the end with the fingers while taking first stitch. Our later machines have a welt-holding device that obviates this difficulty, if the operator will use it.")

The WITNESS. I suppose the statement "Our later machines have a welt-holding device that obviates this difficulty, if the operator will use it," refers to this Winkley device, but I am not aware that machines with that device on had ever been leased to shoe manufacturers; that may mean the machines that they were then experimenting with in the factory.

BROWN, J. What do you call a fundamental patent, Mr. Gregg?

Mr. GREGG. A fundamental patent, as I understand it, is a patent that relates to the basic parts of the machine.

BROWN, J. Well, you take the Goodyear. That went out of existence by virtue of improvements. The improvements made the new machine drive the old one entirely out of the field.

Mr. GREGG. Yes.

BROWN, J. Well, now, do you call that improvement a fundamental patent, or do you call the Goodyear the fundamental patent?

812 Mr. GREGG. I should say the old Goodyear would be the fundamental patent.

BROWN, J. The improvement which may have driven all the old machines out of the field you would not designate as the fundamental patent although it was fundamental in the business situation?

Mr. GREGG. No; I should not designate that as a fundamental patent.

BROWN, J. It is a pretty indefinite term to use. I don't think it assists us very much.

Mr. GREGG. I believe Mr. Howe testified yesterday at the time the Eppler Company was acquired the litigation did not then relate to fundamental patents, and I didn't know whether he had in mind——

BROWN, J. Well, you can inquire as to his meaning of fundamental patents.

Q. Can you give us any light on that, Mr. Howe?

A. I would like to have you read my testimony of yesterday. I don't remember saying that. Perhaps I did.

Mr. CHOATE. Page Judge Putnam used the language.

Mr. GREGG. On page , Mr. Howe, his Honor Judge Putnam said:

"The litigation, then, between the Eppler Company and the Goodyear Company was upon the secondary patents, wasn't it, not upon the fundamental patents?

"The WITNESS. Well, it was upon the later patents—patents, of course, which were in existence.

"PUTNAM, J. But it didn't relate to the fundamental principle of the art?

"The WITNESS. No."

The WITNESS. Well, I meant by that indirect use of the word "fundamental" that they were not the first patents that were taken out on that class of machines. I think I explained that the old Goodyear patents had expired long ago. And then we obtained fresh patents on very valuable improvements. And, answering your last question, some of the suits that were brought against Plant were upon these later patents which involved fully as valuable improvements to the machines as the earlier patents which had expired.

813 We had two meetings at the Algonquin Club, on September 14th and 15th. On September 16th Messrs. Winslow, Endicott, and Plant were at the Algonquin in a private room. On September 20th we had a conference at the United Company's offices at which Messrs. Winslow, Brown, Endicott, Connor, Willson, Keith, Herrick, and I were present. After that meeting Mr. Winslow and Mr. Herrick went to the Puritan Club with Mr. Plant and his counsel, Mr. Carr. It was at that meeting that Mr. Plant made the first proposition to Mr. Winslow which he said he would accept if he could get the approval of his executive committee.

I know about the election of Mr. Endicott as a director. Referring to a memorandum which I prepared myself at the time, on June 30th Mr. Endicott made the proposition that he would buy some stock in the United Company and become a director. He made that proposition to me at my house in Marblehead, in Mr. Winslow's presence. Mr. Endicott said that after being assured of an election he would serve with Mr. Keith and Mr. Hanan on a committee to inspect and report on Plant's property, with the assistance of his men Tobin and Johnson, who were superintendents of his factories at Endicott, New York; that if Plant would not consent the negotiations were off and that he, Endicott, would play with us thereafter; but that he believed Plant would consent.

I understood that Mr. Endicott had been offered a substantial commission if he succeeded in getting the United Company to buy Plant's inventions. He was extremely displeased that Plant would not allow his machines to be examined by experts. At the time that Mr. Endicott made his proposition to become a director the negotiations were all broken off by Mr. Winslow, who declined to have anything to do with any proposition unless he could have the machines examined by our experts and demonstrate that they would be of value to the United Company and its lessees. Then this plan occurred to Mr. Endicott. He submitted it to Mr. Winslow, and then they came down to Marblehead and submitted it to me.

814 Mr. Endicott stated that his being elected a director would show Mr. Plant that he had broken off any proposition to act as broker for him, and that he was then with the United Company; and that he felt Mr. Plant would give him an opportunity in connection ~~with~~ Messrs. Keith and Hanan as shoe manufacturers, to examine Plant's machines.

That was done later. On July 5th Messrs. Keith, Hanan, Endicott, Johnson, and Tobin spent the day in Mr. Plant's factory, and dined at the Algonquin that evening with Mr. Winslow and other gentlemen.

Along in the spring and summer of 1910 a number of advertisements appeared in the Boston newspapers with respect to the Plant machines.

Q. Advertisements of the machines, or what were they, if you recall?

A. As I remember, they were principally advertisements containing the opinions of counsel to the effect that the United Shoe Machinery Company was a trust, that its leases constituted restraint of trade. They were advertisements calculated to "bear" the stock of the United Shoe.

In the latter part of July a suit was brought against the Thomas G. Plant Company, and Thomas G. Plant individually, in the Supreme Judicial Court of Massachusetts, to recover royalties for the period during which our machines had been set aside and Plant had been using his own machines. I was in consultation in connection with that suit. I think we also asked for an injunction against the Thomas G. Plant Company, restraining it from further use of Plant's machines. The record will show.

I attended the meeting when the agreement was finally signed with Plant. That was held nearly all day and until late in the morning of the next day, at the offices of Fish, Richardson, Herrick & Neave. Mr. Plant came in about three o'clock in the morning. The draft agreement was discussed, paragraph by paragraph, with Mr. Plant and his counsel. He and Mr. Winslow signed the agreement about 4.30 a. m.

I heard on the morning of that day that the western manufacturers were here and that they were in conference with Plant at the Touraine, and that he took them to ride to Lynn and Lawrence. But the United Company had paid $500,000 before that. That payment was early on the morning of the 22d, and the papers were signed at half-past four on the morning of the 23d.

When Mr. Plant met us on the evening of the 22d I think he came from the office of his counsel, Mr. F. L. Emery. My
815 recollection is that Mr. Carr, his counsel, got very uneasy during the early part of the evening at Mr. Plant's not coming around and said he was going to Mr. Emery's office, and when he came back Mr. Plant was with him. I don't know whether Mr. Plant had just come from a meeting with the shoe manufacturers.

Most of Plants machines followed the old models very closely, with the addition of such improvements as he had made. I don't know to what extent, if any, Plant's machines are being used in the Plant factory now. The Plant machines had never been put out to shoe manufacturers; they were altogether too light and had to be redesigned. Whether we have got all of the Plant machines out of the Plant factory as yet, I don't know. I do know that we have put in new machines embodying Plant's improvements as fast as we could get them out.

Direct examination resumed:

The Plant machines were designed for doing Plant's work, the making of women's fine shoes. Not only the old parts which were found in former Goodyear machines, but also the additional parts which he had put on to embody his improvements, were made too light to stand commercial use for making men's work. This defect existed in nearly all his machines.

To redesign and strengthen the machines would require first the making of working drawings and then changes in the patterns and tools for making the machines and making dies for parts that were to be drop-forged, or else make the first machines by hand work in order to test them; it would require going back to first principles.

Mr. Plant's machines, as set up in the Plant Company factory, were not strong enough for continuous use, in my judgment, on his own manufacture, women's welts. If our company, the United Company, were to use them they would want to be standardized and developed for use on both men's work and women's work.

In regard to page 51 of plaintiff's Exhibit 267, to which my attention was called on cross-examination, the cuts on that page illustrate the lightness of Mr. Plant's construction as compared with the United machine. My criticism was of the heads of the machines, the operating parts, not the standards, although I think the standards were also too light. He attempted to adopt a uniform style of standards for all his machines.

816 As to Plant's improvements on the welter, he had a device which both held and cut the welt, and in connection with it there was a welt-measuring device; and to make that improvement successfully operative on the machines he had to have a starting and stopping motion.

The United Company development had only progressed as far as a welt-holding device. We had no cutting-off device and no stop motion, and we had no measuring device except as incidental to the holding device, and that holding device was in the experimental stage.

I had nothing to do with the preparation of the circular which was sent to the stockholders of the McKay Company. The three circulars were sent out independently. The Goodyear circular, dated February 8, 1899, went out first, the Consolidated & McKay circular, dated February 11, 1899, went out two or three days later, and the McKay circular, dated February 15, 1899, was prepared still later. Mr. Brooks and Mr. Winslow had copies of the Goodyear circular which I drew, but I had nothing to do with the other circulars. Those circulars were intended as private communications by the directors of the several companies to their respective stockholders. The dates of those circulars were approximately the dates when they were prepared.

The Boston lasting machine had nothing to do with pulling the upper up over the last. It only drove a tack to hold the leather which the hand laster had pulled up over the last. The machine

relieved the hand operator of carrying the tacks in his mouth, which was the practice, and of driving them with a hammer.

The same syndicate purchased the Eppler stock and underwrote some of the shares of the United Company to supply money for the working capital, floating debts, expenses of organization of the United Company, and several other things. It was all covered in one underwriting.

Referring to clause 10 of plaintiff's Exhibit 3, that clause allowed the Goodyear Company to require of the lessee that the covenants in that lease should apply to any additional machines leased and to the inventions which should be embodied in them, and prior to 1899 when a man, who had Goodyear machines, desired to obtain additional machines it was the practice to insert the numbers of those machines against the name of the machine in the lease which he then had, as indicated in the schedule of machines near the beginning of that lease,
817 Exhibit 3. The company inserted the number in the lease and the lessee was notified to insert the number in his duplicate copy. That was the universal practice of the Goodyear Company. The effect was that if the lessee failed in the performance of his obligations as to any one machine it would terminate the leases which covered all the machines. This practice applied to all the Goodyear Company's leases.

After 1899 the United Company gradually adopted the practice of issuing a separate lease for each machine that was taken. If a man having a dozen Goodyear machines took them at different times he would have a dozen different leases. If he took them all at once the numbers would be inserted in the same lease.

Referring to Mr. Plant, my memorandum made the next morning says that about eight o'clock on the evening of the closing of the Plant transaction, Mr. Carr was apparently very nervous at not hearing from Mr. Plant, who had promised to call him at 5.00 p. m. Mr. Carr went to Mr. Emery's office, and came back about 2.00 a. m. with Emery, Plant, and Hains and occupied Mr. Herrick's office, where they studied the agreement as far as it was drawn. I was there all the evening. The first I saw of Mr. Plant was when he came over with Mr. Emery and Mr. Carr. Two or three of us were in Mr. Fish's private office. Mr. Winslow, Mr. Connor, Mr. Endicott, and some others were in Mr. Salinger's office. Mr. Plant might have been in some other office before he came back with Mr. Carr without my knowing he was there, but I do not think he was.

Referring to my previous testimony as to the early state of the art relating to the Goodyear welt and turn machine, and then the invention of the Briggs method, I am asked to state a little more

in detail how that machine developed into what it was in 1899. About 1888 the patents which the Goodyear Company, then a Connecticut corporation, had on its welt-sewing machine were about to expire. At that time it had no outsole stitcher, except a machine which sewed a chain stitch and which was objectionable to shoe manufacturers, retailers, and to wearers of shoes, because the bulky chain would show on the outsole when the shoe was finished, or if the seam were laid in the channel, the channel would soon wear off and show the chain of the stitch. For that reason the Goodyear Company had never succeeded in getting its welt machines and outsole stitchers used in making welted shoes to any great extent. That applied to the making of welt shoes by machinery.

BROWN, J. As a commercal proposition, couldn't they put out the welter alone?

The WITNESS. They did, but not to a great extent. If they did, the welter sewed the inseam, and the outsole stitch was laid by hand, or by a straight-needle machine, which necessitated taking the shoe off the last, which is an undesirable step in the Goodyear shoe.

Their principal business was derived from their turn sewing machine, of which they had a great many out. In 1888 the Briggs method of stitching the chain stitch began to be developed, and French and Meyer brought out a machine embodying that method. That revolutionized the business of the Goodyear Company, for the reason that it not only sewed a tight seam in all classes of insoles, but it made use of thinner, less expensive insoles than had been possible to use with their old welt machine.

818 The Briggs patent was on a method which could be performed by an awl and by hand, and the French and Meyer patent was on a machine carrying out that method. That revolutionized the art with respect to the Goodyear machine because it would sew a tight seam, which the old method did not.

As to the importance of a tight seam, it is very important to have the upper sewed to the insole and welt by a seam which will not permit the shoe to "grin," as they say in the trade; that is, so that the water won't reach in the outsole, and so that it won't leak by; furthermore, so that it won't rip. The old machine was always defective in that respect, particularly in sewing around the toe of the shoe, and it was not infrequently the case that the shoe "grinned" and would have to be patched by a cobbler.

At an early date, prior to my connection with the Goodyear Company, its welt machines laid the chain stitch in the channel of the insole, following the practice which Andrew Eppler, who

was then an employee of the company, subsequently used in the Eppler welt machine. The Goodyear Company abandoned that method for the reason that the chain was in the channel of the insole. Then the Goodyear method of laying the chain on the welt was adopted, and subsequently the Briggs method was invented, and the French and Meyer machine which practiced that method was invented.

At about the same time the Goodyear Company developed the lock-stitch sewing machine for sewing the outsoles. That machine utilized the curved needle and awl, and could sew a lock-stitch seam on the outsole while the shoe was on the last. That made welt shoes commercially successful.

After the French and Meyer welt-sewing machine, practising the Briggs method, and the lock-stitch stitcher came out the Goodyear Company's welt-shoe business developed very rapidly. As an illustration, Hanan & Sons, in New York, who were then the largest manufacturers of men's fine shoes, about 1890, made 90 per cent hand-sewed shoes and 10 per cent machine sewed. After these machines were brought out Hanan & Sons reversed those figures. Other manufacturers, following their lead, rushed in to get our machines as rapidly as they could.

Up to that time the system of making welt shoes by machinery had hardly got going. The Goodyear Company derived almost its entire income from turn shoes. The reason why the straight-needle machine, which was sometimes used to sew the outsole, could not be used when the shoe was on the last was that the machine could not get into the shank of the shoe. That required a curved-needle machine. Until that was developed and the the two machines put together the Goodyear system was not commercially a success as regards welt shoes.

819 In 1899 the Briggs method patent and the patents on the welt-sewing machine and on the lock-stitch stitcher had several years to run.

I drew the contract with Bresnahan for the transfer of the property of the Boston Shoe Tool Company. As to the covenant in article 6 of that agreement, the reason of that covenant was that Mr. Bresnahan was expected to retire from the Boston Shoe Tool Company. The United Company had been buying tools both of the Boston Shoe Tool Company, which was Mr. Bresnahan's company, and also of another company situated here in Boston. It was desirable for the United Company to have a manufacture of these various edge trimmers, forepart and shank cutters, and so forth, in order to supply its customers, and also, if Bresnahan was going to retire from the Boston Shoe Tool Com-

pany, they wanted a capable manager or a superintendent. It was expected when this covenant was put in here that Mr. Bresnahan could be of service in buying out this other company, which was engaged in a smaller business, and securing for the United Company the service of a Mr. Loomer and a Mr. Perkins as men to manage the business.

820 DECEMBER 18, 1913.

ALICE THATCHER HEWITT, witness for defendants.

I live in Brockton and my husband's name is Joseph. In 1899, prior to my marriage, I was employed by the United Company as a clerk in the office at Brockton, and I stayed with the company until January, 1901.

My work at Brockton was keeping records having to do with the service given to the machines. I kept all the records of all the calls that came in and all the calls that the men answered and the work that they did, all the parts of machinery that were sent out from the Brockton office, and everything of that sort. As to whether I had anything to do with keeping track of the service given on the Eppler machines, I did.

With reference to the letter of defendants' Exhibit 45 (Record, p.), dated Springfield, Massachusetts, July 31, 1899, and signed by R. H. Long, which says:

"Please send us man at once to teach operator on welter. We also need agent to fix up stitcher at once. We don't expect to do anything in Belchertown at present, owing to certain circumstances. Will call on you when next in Boston,"

refreshing my recollection by reference to my records, I find that a man named Damon was sent to Mr. Long's factory on August 1st in response to that call.

PUTNAM, J. What is the object of this, Mr. Choate?

Mr. CHOATE. R. H. Long, a witness for the United States, testified that after the United Company was organized and owned the Eppler Company they would not give service with reference to Eppler machines, and a number of his requests were put in, which we want to supplement by showing when the service was given.

The WITNESS. Referring to a letter from Mr. Long, dated April 13, 1899, Springfield, Massachusetts:

"GOODYEAR SHOE MACHINERY COMPANY, *Boston, Mass.*

"GENTLEMEN: Please send us an agent to be here Monday and teach operator on the Eppler welter. Would like to have him stay three or four days.

"Please send us two gib rings for Eppler stitcher machine at once,"

the records show that a man was sent on the 17th, and that he was there on the 17th, 18th, 20th, 21st, 25th, 26th, 27th, 28th, and 29th. The records do not give his name.

Cross-examination:

I am testifying wholly from the records which I have here, and which I made contemporaneously with the acts themselves.

821 DECEMBER 18, 1913.

WALTER S. BATCHELDER, witness for defendants.

I live in Melrose Highlands, and I work as a bookkeeper for N. Ward Company. I was at one time employed by the United Company and had something to do with the billing of parts which were sent out for the Eppler welt machine.

The books before me are the sales record of parts, which were kept by me. When parts were sent to customers the return was made to the office and the bills were made out in these books, the carbon copy being retained in this book.

Referring to defendants' Exhibit 48, a letter from the R. H. Long Company, dated Springfield, Mass., February 13, 1899, reading:

"EPPLER WELT MACHINE COMPANY, *Boston.*

"GENTLEMEN: Please send us six awls for Eppler welter for use with No. 41 needles; also four needle guards for No. 41 needles,"

the memorandum on the bottom of the letter reading "Telephoned factory Feb. 15, 1899, W. S. B.," is in my handwriting. The order in that letter was filled and the goods were billed on February 16. The memorandum shows that the order was received on February 15 and was telephoned by me to the factory on that date. It was billed the next day.

The letter of defendants' Exhibit 49, dated February 17, 1899, was received on February 17, according to the memorandum which I made. The order was billed on February 20.

The letter of defendants' Exhibit 50, dated Springfield, February 21, 1899, was received on February 23, and was filled on the same day.

The letter of defendants' Exhibit 51, dated Springfield, February 22, 1899, was received on February 23, and it was billed on February 25.

As to the significance of my expression "billed," I can't recollect now whether we used the shipping date for our billing date or the day that we made out the bill. The goods were shipped either on the date mentioned or prior to that date; not later, at any rate, than the date I have mentioned.

822 Referring to the letter of defendants' Exhibit 52, dated Springfield, February 28, reading:

"Please send by return mail twenty-five No. 47 awls, fifty No. 41 welt needles, fifty No. 41 stitching needles,"

those goods were billed on March 4, four days later. They went by mail. I can't tell whether it was by return mail.

The letter of defendants' Exhibit 53, dated March 1, 1899, reading:

"Please send by return mail six gib ring screws No. 413 N. S.,"

was received on March 2, and was billed on March 4.

The letter of defendants' Exhibit 54, dated March 13, reading:

"Please send by return mail fifty No. 47 stitching needles, fifty No. 41 welt needles,"

was received on March 14, and the goods were billed on March 20.

The letter of Exhibit 55, dated March 18, 1899, reading:

"Please send us by return mail six Gem channeling knives, No. 7, for Eppler channeler,"

was received on March 20, and it was billed on March 21. The goods were sent by mail. I can tell that because when we shipped by mail we charged postage, and that was always indicated on the bill.

The letter of Exhibit 56 reading:

"Please send by return mail one hundred No. 41 welt needles,"

is not dated at all. It was received on April 7 and the goods were billed on April 8. They went by mail.

The letter of Exhibit 57 was received on April 13. I telephoned the order to the factory, and it was billed on April 15.

The letter of Exhibit 58, dated April 14, 1899, reads as follows:

"Please send to us one belt for rough rounder, six knives for rough rounder for Eppler machine. We need this at once. Please rush."

That was received April 14. I telephoned to our factory at South Boston and they were shipped from South Boston by express, and were billed on April 15.

It was my practice when I received one of these orders to telephone the factory at South Boston. The goods would be shipped from South Boston, direct from the factory, and I would get some notice that they were shipped and would send the bill.

823 The order of the letter of Exhibit 59, dated April 15, 1899, reads:

"Enclosed find channel knives. The knives wanted are for rough rounder."

We shipped the rough rounding knives by mail, and they were billed on April 18.

824 The order of Exhibit 60, dated April 22, was received on April 24, and was billed on April 25. The goods went by mail.

These orders all related to parts for the Eppler machines.

The order of Exhibit 61 was received April 26 and I telephoned the order to the factory. The goods went by mail, being billed on April 28. The order of Exhibit 62, dated May 2, 1899, was received on May 3, and the goods were shipped by American Express. They were billed on May 4.

I don't find Exhibit 63.

The order dated November 3, 1899, Exhibit 64, was billed on November 6.

The order of November 22, 1899, Exhibit 65, was received November 23, and the goods were billed on November 25.

The order of November 23, 1899, Exhibit 66, was received on November 24, and was billed on November 25.

The order of Exhibit 67, dated June 4, 1900, was received June 5. The gears ordered were shipped by mail, and they were billed on June 6. I didn't have anything to do with the sending of the men asked for in that letter.

Cross-examination:

Practically all of these orders relate to awls, needles, and knives, but there were some other parts there—such as gears and rings. As to the request in the last letter that a man be sent to fix a machine, that was not within my jurisdiction.

825 DECEMBER 18, 1913.

FREDERICK G. KING, witness for defendants.

I live in Boston, and I am manager of the Goodyear department of the United Company. I have been with the United Company since its organization, and was with the Goodyear Company a little while before the United was formed.

I have made a search for records about the response to calls from R. H. Long since June, 1900. The calls were all kept in what is known as a call book, but I can not find the books for the dates since that time.

As to Eppler machines of all kinds, whenever a call has been made for a machine we have supplied it, and we have supplied all calls and demands for machine parts and service with reasonable promptness; at once, or as soon as we could do it. Mrs. Hewitt who has testified was in charge of all the calls after the Eppler office had amalgamated with the Goodyear office. We

did not discriminate in any way against Eppler users who wanted service for their machines or repair parts, needles or awls. Anything required for the proper maintenance of the machine was supplied at once or as soon as it was possible to do so.

Eppler machines were furnished by the United Company from 1899 to 1904, inclusive, as frequently as they were asked for, and to everyone who asked for them. We did not discriminate in any way against the use or the users of Eppler machines.

I know John E. Williams, who has testified for the petitioner. I had conversation with him with reference to machines in his factory. The Excelsior Shoe Company, of which Mr. Williams was the president and general manager, were making a show with a McKay sewed slip sole to which an outer sole was attached by a Goodyear stitcher which had been leased to them for the manufacture of Goodyear welt shoes. They had been granted permission to use this machine for making that special shoe, and in connection with it they were using machines of the pulling-over lasting, metallic and heeling departments, and other ma-
826 chines under the restricted form of lease. He placed in his factory a Union lock-stitch stitching machine which he said was for experimental trial.

Mr. Williams came to Boston and told me he was in doubt whether he had the right to use the machines; that he was operating under the restricted form of leases with this outside stitching machine, and he asked me the question if he was violating the leases in doing that. I told him that in the manner in which he was making the shoe and using our machines, operating under the leases that he was, it was a violation of the leases. He then asked if we would furnish him with machines such as he would need to use with his outside stitching machines, and I told him we would, and when he was ready to discuss that question we would take it up with him. Mr. Williams was in Boston at this time for two or three days. He called on me the following day, and he called on me again on the 13th of November, as I recollect it, 1912, and stated that he thought that our position was legally and morally right, considering the advantages he obtained from the use of our machines, and that he proposed to use them exclusively.

He asked me to give him a letter which he could show to his partners, defining our interpretation of the leases; and I wrote and handed to Mr. Williams the letter of defendants' Exhibit 266.

DEFENDANTS' EXHIBIT 266.

NOVEMBER 13, 1912.

J. E. WILLIAMS, Esq.,
Vice President and General Manager,
Excelsior Shoe Company, Portsmouth, Ohio.

DEAR SIR: In reply to your inquiry we beg to say that the use of our machines in the manner which you have indicated to us in the manufacture of McKay welts, is not in accordance with the conditions under which the machines have been supplied to you. Should you desire to make a change in the conditions on which you hold our machines so as to warrant their use in the manner indicated, we will be glad to take the matter up with you further.

Very truly yours,

UNITED SHOE MACHINERY COMPANY,

By

Mr. Williams's letter in reply is defendants' Exhibit 267.

827 DEFENDANTS' EXHIBIT 267.

PORTSMOUTH, OHIO, *Nov. 18, 1912.*

FRED G. KING,
Boston, Mass., United Shoe Machinery Co., Goodyear Dept.

DEAR SIR: For the benefit of your files, since the question has been raised as to the use of a certain machine in our Ironton Scout plant, would say that immediately upon returning the writer had the machine withdrawn from operation, and all the work is being done on your machine. If we should decide at any time in the future to change the plan of making these shoes we will take the question up with you, but at present we are working on a line as per your interpretation of the lease.

Yours, very truly,

THE EXCELSIOR SHOE CO.,
JNO. E. WILLIAMS.

Dict.—JEW—C.

The WITNESS. I submitted to Mr. Williams a schedule of initial premium prices on machines that he wanted on the independent form of lease, which is the schedule that he testified about. The pulling-over royalty, which Mr. Williams interpreted as one-half a cent a pair net, was the royalty given to him for the use of the complete pulling-over system. As to the royalty for the use of the compressor, there would be no extra royalty if he was compressing the heels in the factory in which he was making the shoes. He wanted to compress them somewhere else and sell them to this factory.

For the machines of the pulling-over system which Mr. Williams desired to use one-half cent net was the regular rate, and the initial premiums suggested in the memorandum were the same as always charged to other people.

The quotations were submitted to Mr. Williams through Mr. Simon Ross of our Cincinnati office. Mr. Ross died about three months ago.

As to the testimony of Richard H. Long that I told him that the United Company had decided not to put out any more Eppler machines, I did not so tell him. As to his statement that I told him it would be well for him to fall in line with our plans if he wanted to stay in the shoe machinery business, I never made a statement of that kind to Mr. Long or to
828 any other gentleman in the trade. My relations with Mr. Long have always been pleasant.

As to my conferences with Mr. Long about furnishing machines for his factory, Mr. Long used Eppler machines for nearly a year and a half after the Eppler Company was taken into the United Company. He was promptly supplied with parts and with service whenever he called for it; at once, if we could furnish it, and as soon as possible.

Some time in the latter part of the summer of 1900 Mr. Long came in to talk about the relative merits of the two systems of machines, and he asked me with reference to the improvements that would probably be placed upon the machines. I told him that the Goodyear system was considered to be of the most advantage to the trade, that they were better machines, that there was a larger number of auxiliary machines, that since there were a great many more operators familiar with Goodyear machines they were much easier to obtain than operators for the Eppler machines, and that whatever improvements were placed upon the machines would undoubtedly be placed upon the Goodyear machines, as they were considered the best.

Mr. Long finally concluded to change his system and put in the Goodyear machines. I never said or did a thing to Mr. Long that he could construe in the slightest degree to be a threat to intimidate or coerce him to make the change. He did it entirely voluntarily, of his own accord.

After my talk with Long we continued supplying Eppler machines to others, and furnished parts as long as customers had machines in their possession. We carried Eppler parts at our Brockton office up to the beginning of 1913, but I do not know now of anyone using the Eppler machines.

I had another conference with Mr. Long early in 1905. It was just after we had modified the conditions on which we were

supplying Goodyear machines so that manufacturers could take them on leases with the initial premium or on leases without the initial premium. I remember my interview with Mr. Long very distinctly. He came in and said he wanted to equip a factory in Boston to manufacture women's welt shoes, and he asked me which way I would advise him to lease the machines. I told him it was entirely optional with him and that we were perfectly willing to supply the machines in either way he considered to be to his advantage. We figured out the amount of the initial premiums, which was something like $2,460; and then we figured up the rentals on the auxiliary machines, which I think were about $106 or $110 per year. He remarked that that was less than five per cent of the amount of the investment if he put them in on the initial premium form of lease, and said: "Well, my money is worth to me more in my business than five per cent, so of course I want them on the loan lease." So he ordered the machines, and they were installed in his factory in Boston, and later on were transferred to South Framingham.

My relations with Mr. Long were very pleasant. I frequently called at his factory, and he personally went over the factory with me. I went there to see whether the service was prompt and as we wished to have it, and whether he was receiving his parts as he should.

Mr. Long has never made any claims to me personally that I have threatened him or coerced him or treated him unfairly. He has given evidence to that effect at various hearings. He first made that claim at the hearing before the Massachusetts State legislative committee in 1906 or 1907, when he was beginning some kind of warfare against the United Company, and about the time he was beginning to manufacture machinery himself. I appeared there and denied his statements.

I heard it again in Washington, and denied it there. This is the third time I have denied it, and I deny it most emphatically.

I know Ernest Bottomley, and with reference to his testimony that he had a Duplessis machine and also had a Goodyear machine, and that I called on him and said he would have to use either one or the other, I did not state it in that way. That may have been Mr. Bottomley's inference.

When I first took the matter up with him he had been using United Company machines on the restricted form of lease, including a Goodyear turn shoe sewing machine, with auxiliary machines. He had installed and was using a Duplessis turn shoe sewing machine, which had displaced the Goodyear turn sewing machine, which is the royalty earning machine, and was using

in connection with the Duplessis machine the Goodyear auxiliary machines, on which there is nothing but a nominal rental. I called his attention to the violation of the lease, and he told me he would consider the matter and advise us what he intended to do. A few days later he notified our company that he intended to continue using the Duplessis machine, and would not pay any royalty on the Goodyear machines. As to whether our machine was being used, I don't know positively. I think it was entirely displaced. That is my recollection.

In reference to the testimony of Thomas H. Shinn, that I called on him in Reading, Pennsylvania, and said to him that we should remove all our leased machines unless they discontinued the use of independent machines, that is not so; I did not make any statement of that kind. Mr. James H. Clark, to whom Mr. Shinn referred, and who was then in charge of our Philadelphia office, has died.

Mr. Shinn was operating two factories, one at Reading and one at Hamburg, Pennsylvania. At the Reading factory he was using Goodyear turn shoe sewing machines under leases which provided for their full use, or that if there was additional work additional machines should be installed. At the Hamburg plant he was using Lincoln turn shoe sewing machines, which his concern owned. They consolidated their two factories, and after removing their Lincoln machines to Reading they attempted to use them in the same factory, and I think in the same room, with the Goodyear machines. I called his attention to the conditions of the lease, which was practically restrictive, and after conferring they concluded that they would use our machines. The principal thing that seemed to bother them was getting something out of the investment they had in their Lincoln machines, and we purchased those machines.

831 I did not make any threat to Mr. Shinn, not at all, or any suggestion that we would interfere with his business in any way, and I don't believe that Mr. Clark did, either.

Cross-examination:

In the memorandum that I submitted to Mr. Williams, of the Excelsior Shoe Company, showing how he could take machines on the independent leases, the amounts that I set opposite each machine as initial premiums were in addition to the royalty charges, which were the same under the independent as under the restricted lease. Under the restricted form of lease there was no initial payment on any of the machines on that memorandum. There are some cases in the Goodyear department where there is an initial charge and still a royalty under the restricted form of lease. The charges set out in the mem-

orandum against machines in the pulling over, lasting, metallic and heeling departments were not made under the restricted forms of leases.

As to whether the United Company has built any Eppler machines, they have probably assembled some from parts. I can not state positively whether we have assembled new machines or have rebuilt machines that were taken over from the Eppler Company or had been returned.

Since the United Company was formed it has put out more than forty Eppler welters and more than twenty Eppler stitchers. I don't recollect that we put out any auxiliary machines. These machines were placed principally in Brockton.

There is no one using Eppler machines now. We received back the last Eppler machines quite recently, in December, 1912, and in January, 1913.

The more than forty Eppler welters and the more than twenty Eppler stitchers which the United Company has put out were put out through a period of five or six years after the United Company was formed.

I never made the statement to Mr. Long that the United Company had decided not to put out any more Eppler machines. We furnished the machines to anyone who asked for them, and had supplied them through the years 1899 and 1900 and prior to the time that Mr. Long made his exchange.

I think Mr. Long is not using United Company machines now, but I could not state without looking it up when he discontinued the use of them. I did not personally receive any notification from Mr. Long to take back the United machines. I do not, of my own knowledge, know whether our company did. As to whether or not our company is now rendering bills to Mr. Long for royalty charges for the use of the machines
831 that are still in his possession I don't know. I don't know whether there are any infringement suits brought by the United Company against Mr. Long now pending. I wouldn't have anything to do with that.

Mr. Bottomley had from the United Company a Goodyear welt and turn machine, some auxiliary machines that went with it, and four or five metallic department machines. I am uncertain whether he had any heeling or lasting machines. He manufactured turn shoes. It was not because he used Duplessis machines that the United Company took out its machines. It was because he used the United machines with the Duplessis machines. It would be immaterial to us if he used Duplessis machines, but he held United machines under a restricted form of lease which provided for the use of the United

machines in their entirety, and when he discontinued the use of the principal royalty earning machine, and used the auxiliaries and other machines which he held under restricted leases in connection with the Duplessis machine his attention was called to the fact that he was violating his agreement.

The Goodyear lease provided that he would use the Goodyear machine to its maximum and if any other machines were required he would use Goodyears, and the restricted form of lease of the metallic machinery which he had called for the use of that machinery only in connection with the turn shoe sewing machine supplied by the United Company.

Q. Did you take out only your metallic fastening machines, or did you take them all out?

A. He communicated with us and said that he would not pay any more royalty on the Goodyear machines, so they were all taken out.

Q. You took them all out?

A. Yes, sir.

The Curtis & Jones Company had been running two plants. They did not have any Goodyear machines at the Hamburg plant. I don't know whether they had at that plant metallic fastening machines under the independent form of lease; probably they did. They did at their Reading factory.

I think it was some time in the summer of 1902 that they brought the two factories together. I don't know who put out the Lincoln sewing machines at that time, or whether they were put out by the Campbell Sewing Machine Company. As to whether the United Company later on took over the Campbell Company, I don't know of any transaction of that kind. That was before I had anything to do with it.

833 They had been using Goodyear machines at the Reading factory on turn work. They did not make welt shoes at that time. After the two factories were combined they had some Duplessis sewing machines in addition to the Lincoln machines and the Goodyear machines. I went down to Reading in August, 1902, and saw Mr. Shinn, and I think Mr. Jones, in regard to this matter.

As to whether they had the Reading factory divided, with what was formerly the Hamburg plant on one side of the factory and what was formerly the Reading plant on the other side, so that they had them separated just as they had them before. I don't know whether they did or not. I couldn't say as to that. The real trouble about the use of the Duplessis and Lincoln machines at Reading was that they had Goodyear machinery on leases which required that they would not use any turn

sewing machines not leased from the United Company. That was a lease of the old Goodyear Company, not of the United Company.

They had our metallic machines, but I don't know whether they had any other of our machines. I don't recollect now. They held the metallic machines under an independent form of lease.

I did not say that unless the Duplessis and Lincoln machines were discontinued we would take out our machines. I simply called their attention to the fact that they were violating their contracts in the use of those machines. I did not state what we would do if they continued to violate the contracts. They asked under what conditions they could continue to use the machines, and, of course, I told them that they could not use them under the form of lease under which they had them. Some of these matters had been handled by Mr. Clark, our representative in Philadelphia, before I went down there.

The result was that Mr. Shinn and his partners concluded that it was to their advantage to use the United Company machines instead of the other machines. His principal concern was to get something out of his investment in those other machines which he owned. He negotiated a trade on those machines which was apparently satisfactory.

834 Our objection was that he was using the other sewing machines, in addition to our sewing machines, under the form of lease that he had. He had the old Goodyear Company form of lease, in which it was especially required, and he had agreed, not to use or permit the use in his factory of any turn shoe sewing machines not obtained from the Goodyear Company.

I did not offer them any other form of lease whereby they might use the Goodyear machines in connection with the Duplessis and Lincoln machines. They turned in their Lincoln machines to the United Company. I do not remember what we allowed them, but I don't believe it was as much as $500 apiece.

Direct examination resumed:

The leases to which I have referred and which I attempted to describe were the ordinary forms of leases. I have simply been trying to recall from memory what the usual leases state. The lease which I particularly referred to was the old Goodyear Shoe Machinery Company lease.

834½ UNITED STATES OF AMERICA,
District of Massachusetts, ss:

This volume is one of the volumes of testimony and exhibits referred to in the order of court entered June 19, 1916.

Attest:

[SEAL.] WILLIAM NELSON, *Clerk.*

835 DECEMBER 18, 1913.

JOHN A. RYAN, witness for defendants.

I live at Hyde Park and I am an operator on the Goodyear rapid stitcher. I work for George E. Keith, South Boston. I have operated a stitcher about seven or eight years and am running one now. That is my regular work.

I am now operating the model M stitcher and have been running that for a year. Prior to that I operated the model K stitcher for almost a year, and before that I operated Mr. Plant's Wonder Worker machine, and previously to that I operated the old Goodyear machine.

I worked for Mr. Plant about 15 years—not at rapid stitching all the time—and that was where I operated the old style Goodyear stitcher.

We used to have to stop the old Goodyear stitcher by putting a hand on the balance wheel, stopping the machine and turning it back, then lifting the presser foot. We had to lift the presser foot in order to put the shoe in or take it out.

In operating the model M stitcher, the moment the operator takes his foot off the treadle the machine stops automatically in place for an operator to start immediately on the next shoe and the needle and awl are withdrawn from the shoe. That saves the operation of turning back on the balance wheel and also saves the operation of lifting the presser foot in order to release the shoe.

In using the old machine, whenever you wished to stop the machine, at the end of the shoe or any time the thread broke or any little thing happened, you had to reach up on the balance wheel with your left hand and hold it back with that hand in order to stop the machine. When you took your foot off the treadle it would slow up. It wouldn't come to a complete stop for two or three revolutions; but you had to stop the machine. The least little thing will cause the thread to break at different times—not enough wax or several little things—and when that happened you must stop the machine in the same way, with your hand, and turn it in place. With the new model M machine the moment you take your foot off the treadle the machine stops in perfect place.

836 On the older style of stitcher we always looked at 250 pairs as an average day's work. If we did 300 we should think we did a pretty good day's work. We were paid by the piece then. As to what is the ordinary day's work on the model M stitcher, over where I am now I figure on an average of 300 pairs, according to working conditions, if we have work enough.

Some days we may run it and sometimes we may not. If the work is there, I figure on 300 pairs a day. That is 50 pairs more than the average day's work on the old machine. I have done 375 pairs on the model M stitcher. The work on the model M stitcher is a great deal easier. I earn more money. I will average fifty to seventy-five cents a day more on the model M stitcher than on the old stitcher; and that is in less hours than I worked on the old stitcher, nine hours at the most. Lots of times I don't work nine hours.

The Plant Wonder Worker machine had a stop motion. In that way it was different, altogether different, from model M in regard to the device. It had the same principle. It automatically stopped the machine in place and turned it back so that the needle was withdrawn from the seam and ready for the next operation, which is the improvement in the model M. I had never seen that automatic stop motion on any other machine until I saw the Plant machine when they put it in in 1910.

In the Wonder Worker there was no way in which you could slow the operation of the machine as you stitched around the toe. In the model M I find any time I care to slow down, just release the treadle a little and it will slow up according as I want it. As to whether in sewing around the toe, particularly of a shoe with a sharp-pointed toe, it is necessary to run slower around the toe than down the sides; that all depends on the operator, just as he may happen to want to or not want to. Some of them may slow down the machine in going around the toe; some of them may not. Most everybody will at times, I should say. Some of the very pointed toes it is necessary to slow up on them in order to make a perfect turn.

All six of the stitching machines in Mr. Keith's factory where I am working, are model M machines and have these improvements. The model K's were taken out and the model M's all put in. The latest welter, too, model G, I believe.

837 Cross-examination:

I first worked on a stitcher about 1905. That was one of the old-fashioned Goodyear stitchers. That was in the Plant factory. After I got used to running the machine I did 250 pairs a day. The shoes were stitched as well as any shoes I have made, but there are some conveniences about the present machine that did not exist with that machine.

The next machine I ran was Mr. Plant's Wonder Worker. I never had a great deal of luck with that machine. I still calculated on doing 250 pairs.

Q. Of course, the Plant machine did just as good work as the old machine—nothing wrong with the work, was there, of the Plant machine?

A. It did in one way. It had no Baltimore device—no attachment for it.

Q. What device is that?

A. It is the edge gauge, to keep the distance from the edge of the sole to the upper. It had none of that—a great deal of trouble running into seams and one thing and another.

I did 250 pairs with it. As to whether I heard any complaint about the shoes, of course if it did poor work I should expect it to come back to me. Some work that I did on the Wonder Worker machine came back to me and some also with the old machine. At times it comes back on the model M. The model K machine did not have the Plant stop motion. As to how many shoes I did on the model K, it would figure about the same thing. I figured between 250 and 275 pairs on that machine. I could do more work on the model K than on the Wonder Worker or on the old machine. The model K did away with two operations in lifting the presser foot to place the shoe in and take it out.

The model M machine does more rapid work than the model K. It has a stop motion, but entirely different from the Plant stop motion. I do not know whether the model M had these Plant improvements embodied in it or not. But it did have a stop motion. I can make from 30 to 50 pairs more a day on the model M machine than on the model K. The model M machine has devices which enable the operator to work with more convenience and which save his time. I have worked on the model M for a year.

838 Q. Now, as a matter of fact, all those machines accomplished exactly the same thing; they all made welt shoes, didn't they?

A. Yes.

Q. And all made good welt shoes; on one kind of machine you can make a few more shoes than you can on another in a day?

A. You can make a great many more. I can.

Q. How many more can you make on the model M than on the model K?

A. Well, I don't know; probably thirty or fifty pair.

Q. And one of those machines have devices that enable the operator to do it with a little more convenience?

A. Yes, sir; time-saving devices.

Q. Now, so far as that slowing-down motion is concerned, all the machines had that, did they not?

A. No, sir.

Q. Wasn't there a kind of a friction brake to these machines, and didn't they all slow down when you would release that brake?

A. They all worked on a friction, but you needed to hold your foot on for full power.

Q. Then, as you release your foot it puts the brake on, doesn't it, and slows it down?

A. It releases the friction.

Q. Doesn't it apply the friction when you remove your foot?

A. Yes, sir.

Q. And didn't all the machines have that kind of appliance?

A. All of them had the same appliance, but they didn't hold on the same or release the same.

Q. The appliances were put there for the same purpose upon all of them, were they not?

A. Yes.

Direct examination resumed:

The Wonder Worker machine used to break down quite often, and that was the reason I could not get so much output. All parts of it broke pretty easily and the levers and cams wore out rapidly. It did not stand the work as well as the United machines.

The Plant Wonder Worker machine had to run at full speed around the toe. You couldn't slow up on it.

839 The Baltimore edge attachment is an attachment for stitching extension edges at the right distance from the edge. That was on the older type of Goodyear, but not on the Wonder Worker. It was on the model K and model M machines.

Whatever difference there was between the means for stopping the model M machine and the Wonder Worker machine, it accomplished the same result of having the machine stop with the needle withdrawn ready for the next operation.

I could do more shoes on the model M than on the model K machine.

Cross-examination resumed:

I have known personally of the Baltimore edge attachment being in use for eight years. I don't know whether the patent on it has expired.

DECEMBER 18, 1913.

MARTIN E. WELCH, witness for defendants.

I live in Lynn, and I am a shoe manufacturer. I have been engaged in the shoe manufacturing business for 25 years and began as a boy 47 years ago in a shoe shop. Afterwards I drove a cart collecting work for the shoe manufacturers. In those days the shoes were made in parts in different places. Then I got work in the factory, and as I grew older learned the different

parts of the work. I worked at hand lasting a good many years. I started with my own factory 25 years ago with Mr. Landregan as my partner. At the time Mr. Landregan was shot by some bandits three years ago we had developed a business of seven or eight thousand pairs a day in McKay shoes.

Up to 1906 or 1907 we did not have any United Company machines, except some metallic machines which we had before the United Company was formed, which were transferred to the United Company. About that time we started a line of welts.

840 When we were making McKay shoes we pursued the policy of buying our machinery and owning it. When Mr. Landregan was killed, our investment in machinery was about $129,000. We liquidated the business then, and that investment in our shoe machinery showed a depreciation of about 90 per cent.

Mr. FOWLER. Your honor, I believe we will object to that testimony, and that particular line of testimony, on the ground that it is wholly immaterial.

PUTNAM, J. It is immaterial, I have no doubt myself. I don't think we can go around to the various mills and find out how much depreciation there was in each mill. There would be no end to the testimony.

Mr. FOWLER. We might want to hunt up a lot of mills and show that it didn't depreciate.

The WITNESS. The depreciation in shoe machinery is very rapid, and we figured it at 20 per cent, but I have found, on trying to sell a machine at the end, that it was more than that, and that the machine was absolutely worthless. The changes in shoe machines are very rapid, and you hardly get a machine installed before some one comes around with an improvement on it.

At the time we made up our minds to add a welt line of shoes I thought the United Company had the best machines and put them out on the best terms. I thought the restricted lease the best terms. First, because it allowed us the use of the money which would have to be put in machinery that at some time would be absolutely worthless; secondly, because we could tell almost to a dollar what the depreciation would be at the end, and thirdly, because I made a partner of the United Company. They owned the machines, and it was just as much to their interest to make the machines work to their fullest capacity as it was to my interest to have them work to their fullest capacity. Again, when a man owns his own machine if a part brakes he must put it in, but if there are any poor parts in the United

machines they paid for the parts. They have used me fair in that respect.

At the time we equipped our factory with machines for making welt shoes a man named Desautels, representing the Duplessis Company, drummed us very hard. He said that they had a machine which was not completed which he would like to have tried in the factory when it was completed. I told him the factory was open at any time when he had anything better than we had. He told me that there were machines of other people besides the United Company with which we could have equipped our factory for making welt shoes. He did not offer to equip our factory with welt machines. His statement always was that he had a machine that wasn't completed, and when it was he would like to have it tried in the factory.

841 When we first started on welts we used the National nailer and used it for some time. That was not a United Company machine at that time. We are not now using it because we found we could get a nailer from the United Company that would do the work more rapidly and save some money. We were never coerced into making any change.

All our McKay shoes were finished on machines not furnished by the United Company.

After Mr. Landregan was killed and the business was liquidated we started on a new deal, making welt shoes, and all the machines that I am using in the bottoming room, excepting two or three, are United Company machines. It is my judgment that the United Company's machines which we are using in the bottoming room are better than other machines of those types on the market.

I owned outright two eyeletting machines made by the Peerless Company, but I shifted over and eyelet my shoes on the United Company machines because I can save some money on the work and the quality is just as good.

As regards the model K welter and the model M stitcher, the factory gets no saving from the piece price because the labor union fixes that, but we make a greater number of shoes with a less number of machines. We also make a saving in both the length and width of the welting. We figure that our saving of welt is about one-quarter of a cent a pair; that is, on the welting alone, and we have found that we can use a narrower welt and still get about the same extension as we did with a little wider welt, which amounts to a saving from one-quarter of a cent to three-quarters of a cent, and all according to the quality of welting that you buy. Another advantage of the model K welter is that the man does not have to handle the thread, so

that the shoe leaves the welter cleaner than it did after any welting machine that I have ever seen—that we have used, rather.

When we started three years ago last January we had five model G welters. After we had used them a little over a year I returned them and got model K welters. The return charge was $25. We also had seven model K stitchers. I turned those back and got model M stitchers and I think the return charge on those was $25. We had used those a little over a year.

842 We also changed our sole-laying machines for improved machines. It cost us $14 apiece to return those machines. I have not heard that they have got any improvements on the other machines that we have.

In my opinion the restricted lease of the United Company is the cheapest way to do business, for at least a manufacturer of my size.

I turn over my capital about five times in a year.

Cross-examination:

We were first manufacturing McKay shoes and made them for twenty-one years. We bought all our McKay machinery long before the United Company was formed and we used it until 1906 or 1907.

We bought McKay sewing machines at all prices. We could buy a good rebuilt machine for $125 which would do our work. I think the first new one that I bought was $250.

At first we lasted by hand. That was before there were any lasting machines of any kind used on women's, misses', and children's work. Then we used the Boston tacker, which was simply a tacking machine. The man pulled the upper with his pincers and held the shoe up to the machine and got a tack After that we used the Consolidated hand method lasting machine. We did not use the Chase lasting machine; we don't use it on women's work.

It was along in 1906 that we began to manufacture welt shoes. We took eight welters from the United Company. The man who talked with me about the Duplessis machines said that they were going to have a better machine, but that it was not completed, and when it was he would like to have me give him a chance. I don't know whether it was ever completed. He didn't try to put it in. We put in 12 outsole stitchers. The Duplessis Company had stitchers. Their man said he had machines out. I did not examine them.

843 We used the Consolidated hand method lasting machine on the welt shoes. We had originally had Boston tackers on the McKay work, and at one time we fitted up our factory

with Consolidated machines, but we didn't think they were doing the work very well and we sent them all back. When we started the welts we began with the Consolidated hand method machines, and we are still lasting all our welt shoes on that machine.

We make women's shoes altogether, and have never made any men's welt shoes.

I never had any occasion to try to obtain metallic fastening machines or finishing machines from other concerns in 1906. I didn't make any enquiry about them. They were never mentioned to me by the Duplessis concern.

I should think there would be material differences in the methods of manufacturing women's welt shoes and men's light welt shoes. I should think it would require a heavier lasting machine to last a man's shoe, and of course heavier thread to sew it and so on; but I haven't had any experience on men's shoes.

When we equipped our factory to make welt shoes, I considered both forms of leases that are used by the United Company. We first had our machines on the independent leases and changed over to the new lease.

When we installed our machines we paid the regular prices. I am satisfied I was not used any better than anybody else, and I guess I had to pay the same. I cannot state what we paid when we equipped our factory under the independent leases, but it was probably somewhere about $20,000. When we changed to the restricted leases, that money was refunded to me. I think it was some time in 1908 that we changed to the restricted leases.

At that time I think there were other concerns in the United States from which we could get welters, outsole stitchers, lasters, metallic machines, and heeling machines. I didn't have any occasion to try it, and I cannot give the names, but they were being made without any doubt. There is one in New
844 York, but I can't give the names, because I don't keep them in mind. I believe I could make my welt shoes without the aid of the United Company at any time. I have seen advertisements of second-hand and rebuilt welt machines in the trade papers, and there is not any doubt that machines could be picked up and shoes made outside of the United Company. I can't give the names of those from whom I could have obtained those machines. I have seen those advertisements all right. I had no occasion to go and look at any of those machines and never looked up any of the advertisements. As to whether

I know from my own personal knowledge whether there was another machine in the United States being put out except the one that was being put out by the United Company, I had no occasion to look it up, and I didn't look it up.

As between the unrestricted lease and the restricted lease, in my judgment the restricted lease is preferable because, first, I can put into my business the money that I save instead of investing it in the machinery, so that I have more money; second, I can tell almost to a cent just what the depreciation is on that machinery—I call the return charges the depreciation; and, thirdly, I make a partner of the United Company. I have not a dollar invested in the machines, and their interest in the machines is fully as great as mine, and it is to their advantage to keep the machines working to their fullest capacity. That means less machinery for me to run in the factory, and it means a less investment for the United Company. It is true that under the unrestricted lease the United Company owns the machine, and the company draws the same royalty from that machine as it obtains from the other machine.

Under both forms of lease the company requires us to buy all the repair parts. I do not see any advantage to the manufacturer in taking the unrestricted instead of the restricted lease, the advantage is with the restricted lease. That rests in part on the fact that you have to make a large investment at the beginning. As to whether, as a matter of fact, there is nobody else from whom a manufacturer can obtain machines so that he has to take the machines from the United Company under either form of lease, I don't know. I couldn't say that. I have never had any occasion to look that up.

Direct examination resumed:

Before I changed to the restricted leases I had had the initial premium leases for about two years. I had practically all my machines on the initial payment basis and changed over from my own choice. I got back everything that was owed me.

Referring to my testimony about sending back my Consolidated hand method lasting machines to the United Company, they did not make a particle of trouble because I did not keep them for the full term of 17 years. When we wanted to send them back we sent them back.

DECEMBER 18, 1913.

845

CARL H. GLEASON, witness for defendants.

I live at Watertown, Massachusetts, and I am employed by the United Company at their Haverhill office. I have been employed by them between four and five years.

I was in the employ of the W. H. McElwain Company from July 15, 1912, until June, 1913. I started at their Bridgewater factory first as a machinist, and then started in operating machinery. At one time I was in the cost department.

The McElwain Company is considered one of the big companies of the country. While I was working for them, and entirely independent of the United Company, I made a study of the cost of repair parts on the machines that they obtained from the United Company. I have prepared a chart showing the cost per pair of shoes for the repair parts on the different kinds of machines. This is defendants' Exhibit 268 (a physical exhibit). The red line on the chart shows the point indicating the cost per pair and along this line at different points are the names of machines. My study extended over a period averaging six months and it was made under ordinary operating conditions. I took about all of the royalty machines.

The cost per pair of shoes for the repair parts on these machines was as follows:

Universal channeler, .001 of one cent; insole tacker, .005 of one cent; Rex assembling machine, .009 of one cent; Rex pulling over machine, .07 of one cent; Consolidated hand method lasting machine, .005 of one cent; No. 5 laster, .06 of one cent; tack puller and resetter, .008 of one cent; sole layer, model B, .007 of one cent; loose nailer, No. 2, .01 of one cent; Universal rounder and channeler, .01 of one cent; rounder and channeler, model E, .01 of one cent; Goodyear automatic leveler, .002 of one cent; lightning heeler, .004 of one cent; Mayo heeler, .008 of one cent; Universal slugger, .01 of one cent; edge setter, .02 of one cent.

846 On the welter and stitcher my computation includes, in addition to mere parts, the cost of awls and needles which the machines are using all the time and which are ordinarily classed as supplies. The cost per pair of shoes for the model G welter, including awls and needles, was .15 of one cent per pair; for the model K stitcher, including awls and needles, .2 of one cent per pair; for the model M stitcher, including awls and needles, .08 of one cent per pair.

I also computed the cost of repair parts on the model K stitcher, not including the needles and awls, and that is .1 of one cent per pair.

I made up this chart while I was in the employ of the United Company from material which I got while in the employ of the McElwain Company. The computation runs from January, 1910, until July, 1913; each individual test extends for six

months. I took some tests from January, 1910. I was not there at that time.

Cross-examination:

While in the employ of the McElwain Company in their efficiency department I came in contact with a man in their supply department who had some figures. His duties were to keep the actual cost of upkeep of certain machines for the executives of the McElwain Company. They have a card in the supply room of each factory that gives the data. I came across those data and made the chart for my own amusement. No one instructed me to make the chart. Some of the data had already been gotten by other members of the McElwain concern and I took it from them. The remainder I got myself by visiting their factories. Some of the items include awls and needles as well as the parts. In the other instances only the parts are included. Nothing else is included.

847 Direct examination resumed:

The McElwain Company has maintained this cost department for four years. How much more, I cannot say. My results were obtained from tests running for six months at different times between January, 1, 1910, and August 1, 1913. I have memoranda from which I could tell what tests were before December, 1911, but I haven't the information with me. The prices of parts were taken from the catalogue prices issued by the United Company. It is my judgment that these figures represent a fair average result in the McElwain factory.

(Examination of witness suspended.)

848 DECEMBER 18, 1913.

EDWIN P. BROWN, witness for defendants.

I live at Newton and I am general manager of the United Company, and have held that position since March, 1911. My office is in the same building where Mr. Winslow's office is.

I know George Learned, of Newburyport. I was present at an interview between him and Mr. Winslow at Mr. Winslow's office relating to some machines that Mr. Learned had.

At that interview there was no such conversation as Mr. Learned has testified to. I was present all the time that Mr. Learned was with Mr. Winslow.

I was called to Mr. Winslow's office in the latter part of August, 1911. I entered the office of Mr. Winslow and was introduced to Mr. Learned by Mr. Winslow. Mr. Winslow explained to Mr. Learned that I was the new general manager and he was very anxious to have me present at the interview. Mr. Winslow then

referred to the condition existing in Learned's factory in Newburyport, namely, that Mr. Learned had set aside our turn machines and was using our Goodyear auxiliary and general department machines and other machines with the Fox turn machine. Mr. Learned said: "That is true, I am; but I intend to continue using yours as soon as business picks up." Mr. Winslow smiled and said: "Mr. Learned, where do we come in? You are setting aside our revenue producer and using machinery of ours for which you pay nominal rent, or have paid small initial payments, and it hardly looks to me like a business proposition. Furthermore, I have no objection to your using the Fox turn machine, Mr. Learned, but I think up to the time you do that you should familiarize yourself with the conditions of your leases and live up to them; and I shall expect you either to live up to your present forms of leases, or, if you have definitely decided to use the Fox turn machine, we shall have to change over our leases to forms conforming to the new conditions."

Mr. Winslow spent some little time in going over all the leases on all the machines that Mr. Learned had from our company, and Mr. Learned seemed to be perfectly satisfied with Mr. Winslow's explanation of the lease situation. He said: "I will take this matter back with me and give it careful consideration, and you will hear from me. In the meantime I wish you would let me know by letter what this changed condition will mean, providing I elect to use permanently the Fox turn machine on my turn shoes." The meeting was perfectly friendly in every way throughout.

Mr. Winslow did not threaten to drive Mr. Learned out of business. There was nothing said in that way. He used absolutely no threatening or coercive talk or methods and the parting between the two men was most friendly.

849 As a result of that talk I sent Mr. Learned a list showing the initial payments required by independent leases for the machines which he had.

(Examination of this witness suspended.)

850 DECEMBER 19, 1913.

CARL H. GLEASON, witness for Defendants (resumed).

Direct examination resumed:

As regards none of the machines which I mentioned yesterday was my examination of the figures prior to December, 1911. I made an examination to ascertain whether the periods that I took were fair average periods, showing the costs on those machines running back to a period considerably prior to December, 1911. By comparing the production of shoes at the

period of these tests and at other periods when these tests were not taken running back to a period considerably prior to December, 1911, I consider these figures to be fair average samples of of the cost of parts for those machines for a considerable period.

Cross-examination:

The data that I have prior to December, 1911, I got at McElwain's East Side factory, Manchester, New Hampshire. Some of it I took from documents in the possession of E. E. Griffin, who was employed by the McElwain Company at that time and was managing the supply department. Some of the data I got myself. I should judge that I got about 75 per cent of the data from him as to the machines which I mentioned yesterday. He had simply made up sheets showing the cost of the parts supplied to the Cohaz factory, East Side factory, and Derryfield factory, and I made the computations myself. I took the total production of the three factories and the cost of the parts for the three factories.

851 DECEMBER 19, 1913.

EDWIN P. BROWN, witness for defendants, resumed.

Direct examination resumed:

The list of initial premiums on machines which Mr. Learned asked for at the interview in Mr. Winslow's office and which I sent to him at Newburyport is contained in defendants' Exhibit 86. (Record, p. .) That list shows the United Company machines which Mr. Learned was using which might be affected with respect to their leases by the use of the other machines which he desired to use.

I never received any reply from Mr. Learned about this matter. I next saw him early in December, 1911. I was then called to Mr. Winslow's office, and Mr. Endicott, Mr. Learned, and Mr. Winslow were there. I was present during the conversation.

Mr. Endicott asked me if I was present at a conversation between Mr. Winslow and Mr. Learned in the latter part of August, 1911, to which I replied that I was. Then Mr. Endicott asked me if I recalled Mr. Winslow stating to Mr. Learned that if he did not throw out the competing machine he would put him out of business. I replied: "No, sir; there was nothing said at the interview that would warrant any such statment." Mr. Learned, in the course of conversation, admitted that he was mistaken. Mr. Endicott then said to Mr. Learned: "I think you should write a letter of apology to Mr. Winslow." Mr. Winslow added: "I think you should correct any statement made to Mr. Harriman," I believe, "your partner, and others.' And, as I remember it, he agreed to do this.

This was the end of the conversation and the parting was pleasant. I have not seen Mr. Learned since; I have not had any correspondence with him, and have heard nothing more from him.

I have met Frank Merrick and Charles Luitweiler. I met them at Mr. Connor's office, at 205 Lincoln Street, and at the Algonquin Club. I was present at only two meetings with them. I brought about the meeting at Mr. Connor's office. Mr. Bresnahan, who was with us, called my attention, early in May, 1911, to his meeting Mr. Luitweiler and Mr. Merrick on the ferry coming to Boston, and said they had called his attention to a new shoe that they were at work upon and a new curved-needle stitching machine, Accordingly I made the appointment
852 with Mr. Connor. At that meeting there were present Mr. Connor, Mr. Luitweiler, Mr. Merrick, Mr. Fraher, and I. It was late one afternoon in the middle of May, I should say.

Mr. Connor, in conversation with either Mr. Merrick or Mr. Luitweiler, said that his attention had been called by me to their new shoe, or a new shoe that they had been at work upon, and a new curved-needle machine, and asked: "Do I understand that you wish to dispose of this, and have you a proposition to make?" Without attempting to give the verbatim report—there was considerable talk back and forth in a very pleasant way—Mr. Merrick and Mr. Luitweiler finally named a price of several hundred thousand dollars—$750,000, I should say, in round numbers—and Mr. Connor said: "Well, I should have to investigate very carefully. I can't tell from the information I have at hand whether or not we would even be interested. If you care to have me look into it, I should be glad to do so, but I want you to understand that we wouldn't consider it for a minute, otherwise than on its merits, only in so far as it is an improvement over anything that we have or is something that we can use advantageously for our lessees." An appointment was made for him to inspect the machines and patents.

The other meeting at which I was present was at the Algonquin Club. Mr. Connor said that he had carefully inspected the machines and the shoe, and that he was not interested in the proposition and had no counter proposition to make. There was considerable talk back and forth, but that is the substance of the interview.

Cross-examination:

As to the list of machines in defendants' Exhibit 86, which was sent to Mr. Learned, we do not have those initial payments under the restricted form of lease. Those are extra.

I brought about the meeting between Mr. Merrick, Mr. Luitweiler, Mr. Connor, and myself at Mr. Bresnahan's suggestion, and he arranged for the meeting. As to whether anything was said at the last meeting at the Algonquin Club about buying up a competitor, as I recall it, Mr. Connor asked how they made up the figures for the price of $750,000. Mr. Merrick or Mr. Luitweiler said there was three hundred and some odd thousand dollars for his harness business. Mr. Connor was very anxious to know how he arrived at the balance, some $400,000. The new machines and good will were mentioned. Mr. Connor said: "Why, I have told you at our various interviews that I wouldn't consider buying up a competitor," and jokingly he said: "Do you want to go to jail? I don't."

853 Direct examination resumed:

Referring to the list of defendants' Exhibit 86, from the beginning of the list down to and including the Universal slugging machine the prices were all initial premiums. Those were in addition to the royalties. The remaining machines are general department machines and the prices are outright sale prices, with no royalty. There is an initial premium on seven of the machines and an outright sale price on fourteen.

854 DECEMBER 19, 1913.

CLARENCE D. REED, witness for defendants.

I live at Whitman, Massachusetts. I am a shoe manufacturer and am treasurer of the Commonwealth Shoe & Leather Company, of which Mr. Charles H. Jones is president. I have been engaged in the business 25 years or more, and have been connected with the Commonwealth Shoe & Leather Company ever since it was organized 25 years ago.

I have charge of the manufacturing end of the business. That includes the making of the shoes. We call the selling end the financial end, and Mr. Jones has that. My office is at the factory at Whitman. Our factories are located in Whitman, Massachusetts, and Gardiner and Skowhegan, Maine. I have charge of all the factories, and have had charge of the selecting of the machinery for the factories for over ten years. Mr. Jones comes to the factory very seldom.

I made an examination of the Plant machines in 1910 at Mr. Plant's factory. I looked over the machines, saw them operating, and went through them.

We make welt shoes altogether and our output is about 6,000 pairs a day.

Q. Was the question of equipping your factories with the Plant machines presented to you for consideration?

A. Yes, sir.
Q. And did you give it consideration?
A. Yes, sir.
Q. What did you decide?
A. Decided we better not have them.
Q. And will you give your reasons?
A. Well, we thought we were—of course the machines looked light to us, and our work is men's work, which is heavier, and we thought there would be danger of breakage and trouble, and we thought that we would probably be bothered on getting parts; and then the methods were somewhat different from ours. We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking.
Q. What do you mean by "lower your standard of shoemaking"?
A. Well, we should get poorer work.
Q. From the Plant machines than what you then had?
A. That is the way we felt.
855 Q. Now, did you communicate your decision and your reasons for it to Mr. Jones?
A. Yes, sir.
Q. In reaching that decision did you give any consideration or weight to the covenants or provisions in the leases between your company and the United Company?
A. Well, we always think them over; that is, I thought we ought to have the United machinery, regardless of any lease.
Q. You mean regardless of the provisions in the United Company's leases?
A. Yes, sir.
Q. In preference to the Plant machinery?
A. Yes, sir.
Q. And were the considerations which you have stated as to your judgment of the Plant machines those which decided you?
A. Yes; that is about the heft of it.

Cross-examination:

As to whether Mr. Plant made me any proposition to install his machines, he talked it over in his office after we had been through the factory, but he did not make any definite proposition. He did not say anything to me about putting in his line of machinery for a period of two years and that he would take them back at the end of that time if we didn't want to keep them.
Q. Well, in coming to the conclusion that you came to that you didn't want to install the Plant machines, I understand you to say that you took into consideration the United's leases?

A. Why, we always think of what the obligation is.
Q. Now, did the leases that you had at that time with the United Shoe Machinery Company in any way enter into your consideration of the Plant machines?
A. Well, we always——
Mr. GREGG. No, no. Just answer the question.
(The last question is read.)
The WITNESS. I should say not.
Q. Now, isn't it a fact, Mr. Reed, that one of the principal reasons that you did not take on the Plant machines was due to the fact that you had leases from the United Shoe Machinery Company which prohibited the use of certain of their machines with other machines?
A. No, sir; that was not my reason.
Q. Not your reason?
A. No, sir.
Q. You did not consider that matter at all?
A. Well, we always think it over in connection with machinery.
Q. What do you mean by "thinking it over"?
A. Well, I mean to say that we preferred the United machines regardless of the lease—notwithstanding the lease.
Q. You say "we." Whom do you mean by "we"?
A. I say "we." I would say "myself."
I do not know whether that was Mr. Jones' conclusion also. He is the principal owner of the Commonwealth Shoe & Leather Company.

Direct examination resumed:

I own some over one-third of the company. Mr. Jones owns more than 51 per cent.

856 DECEMBER 19, 1913.

FREDERICK ALLEN, witness for defendants.

I live at Lynn and I am a shoe manufacturer. My firm is Allen, Foster, Willett Company, and I have been connected with that firm about five years. Prior to that I was president and superintendent of the Joseph Caunt Company, at Lynn. I was with them about twelve years. Altogether I have been in the business about seventeen years. I began cutting shoes in the cutting room and worked up to the presidency of the company. I am now the president of the Allen, Foster, Willett Company.

We make medium priced welts, turns, and McKays. We get machinery from the United Company. Our present factory was equipped with the welt machinery about two years ago.

The Joseph Caunt Company made medium priced McKays and did not make any welt shoes. They had machinery of the United Company.

In our stitching room we have machinery which we bought outright and own. It stands us about $20,000. We own very little machinery outside of that. From my experience I have found that the annual depreciation on shoe machinery is 33⅓ per cent.

When we equipped our new factory with machinery for making welt shoes we took the restricted form of lease. Of the three forms of obtaining machinery for making welt shoes—by purchase, by the independent lease, or by the restricted lease—in my judgment the restricted lease is the more advantageous for the manufacturer. I prefer that to purchase because I don't have to tie up our money in machinery, which as an asset is worthless as soon as it is installed. An investment in machinery has not any value for the purpose of obtaining credit; no one considers it an asset. Also the money is tied up so that a manufacturer is prevented from doing that much more business.

857 Our capital is $100,000, our surplus is $62,000, and the reserve is $42,000. Our gross business last year was about $1,400,000. We turn over our capital eight times a year.

As to the importance in the successful operation of our machinery of the service which the United Company gives, it is a tremendous advantage.

I can remember ten years ago, twelve years ago, when we did have some machines from the independent companies—some of the Bresnahan machinery, I believe—it would sometimes take us three or four days, if a machine broke down, before we could get it fixed up and repaired. At the present time there is a corps of experts in Lynn there who are efficient on each and every machine that we have, and if it is necessary within half an hour I can have a man over there and the machine fixed up right away, and with one machine being dependent upon the running of another—that is, one machine breaking down will throw out the entire line—that is a very big advantage.

If I had had to buy my machinery I don't think I should have been able to start in business, because it would have taken all my capital to buy machinery. Under the arrangement by which I can obtain the machinery by lease, I can put all my capital into the business.

We have the improved welter and stitcher, the model K welter and the model M stitcher. On the model K welter there is a saving in the welt on account of the automatic cut-off attachment that the old machine did not have. On the old machine the operator, after he had got his shoe welted, pulled it out and cut off the welt with a knife. The new mcahine cuts it off auto-

matically and exactly and saves about two inches on each shoe, four inches on a pair. The welt costs between four and three-quarters and five cents a yard and 32 inches is ordinarily required for a pair of shoes.

858 Our saving in welt alone is about one-fifth of a cent a pair. I have not been able to find that we make any saving in the width of the welt. The machine is speedier and the operators like that. We can make more shoes on fewer machines.

On the old welters the operators earned from $30.00 up to $40.00 a week. On the new machine operators earned over $50.00 this last fall when we were very busy; that is, we have some men who are earning $10.00 a day running the welter.

There has also been a gain in the efficiency of the stitcher. It is speedier and the stop attachment makes it a very advantageous machine as compared with the others.

The piece prices which we pay in Lynn are regulated by the unions. But notwithstanding that the output of these machines is increased by these new devices.

Our men are not now operating the machines to their capacity. When they do a full day's work on the welter they get over forty dozen, 550 pairs, a day.

Cross-examination:

When we equipped our factory with welt machinery we went to the United Company. We did not make any effort to get machinery from any one else. We did not inquire.

The machinery which we bought outright is our stitching-room machinery. In the bottoming room we have Puritan stitchers that we bought outright. One came from the Puritan Manufacturing Company and I believe the other one was bought second hand; that is a machine for fairstitching. I don't know whether the United Company has a machine for that work.

I preferred the restricted form of lease because I am not obliged to tie up my money. There was a less investment of money if I took the machines under the restricted form of lease than if I took them under the unrestricted form.

Outside of the Puritan machines we use United machines exclusively in the bottoming room. We use their eyeleting machines, but we don't use any clicking machines.

859 I understood one of Mr. Choate's questions to be, with the amount of money that I had to start in business, if I had the privilege of either buying or leasing machinery, which I would have taken. By my answer I meant that I would have taken the leased machinery.

The daily capacity of our factory is 6,000 pairs, of which 2,000 pairs are welts. Only three of our five welt machines are running. Of the other two, one is in the turn department and the other runs spasmodically, just according to our work.

I should think it was about a year ago when we got this new improvement on the welter, cutting off the welt. I do not know the names of the operators who earned as much as $10.00 a day. I will get them if desired.

The new stitchers have been in about a year. I have never operated either a welter or a stitcher myself. I have seen the improved stop attachment on the stitcher and have watched them operate. I think that was on the machines when we first got them.

Conservatively, I think machinery depreciates 33⅓% a year. When I stated that machines depreciated thirty-three and one-third per cent a year I meant that at the end of three years the machinery would be worn out. We bought the Puritan machines about three years ago. One of them has been built over several times. The other machine was new when we bought it and that one has been built over; whether entirely, I couldn't say. They are constantly putting in new parts and repairing them all the time.

Some of the McKay machinery has been in five years. It is not worn out. I don't know how much it costs to keep up the McKay sewing machine or the welter or any other machine. We have lasting machines that we have used for more than three years. A few have been in five years. We keep supplying new parts. I do not know how much it costs us to keep them up; the repair charge is all thrown into one sum.

When I said that machines depreciated thirty-three and one-third per cent a year I meant that the life of a machine is practically gone at the end of that time, that in ninety per cent of the cases there will be new machines of those types on the market that would make it advantageous almost to throw the old machines out and take the new machine. I did not mean that the machine would be worn out at the end of three years, but improvements would relegate it.

860 Direct examination resumed:

We are using Puritan fairstitch machines in the same factory with the machinery that I got from the United Company. They have not in any way objected to our use of those machines. We use them on the McKay products, and the same shoes are operated upon by the lasting machines and several other machines which we got from the United Company on the restricted form of lease.

Cross-examination resumed:

We pay between eighteen and twenty thousand dollars a year in royalties to the United Company.

861 DECEMBER 19, 1913.

KARL KILBURN, witness for defendants.

I am employed by the United Company as royalty clerk, and I have charge of keeping track of royalties paid by different companies.

I have made a study of the use of machines obtained from the United Company by the various people who were mentioned by Mr. Harriman, a witness for the petitioner, for the purpose of ascertaining how long those people whom he named had had our machines and what use they made of them when his machines were introduced.

On July 28, 1910, when Mr. Harriman said that his company, the Haverhill Company, put a turn sewer into the factory of Lynch & Sherman at Lynn, they had two turn sewing machines from the United Company for doing the same kind of work and had had the machines for three years or more. As shown by their royalty returns they had been sewing their turn shoes on those machines prior to July 28, 1910. When Mr. Harriman's machine was put in they discontinued the use of one of our machines and used the other one. The machine which was discontinued was allowed to remain idle between August 2 and August 14, inclusive.

The lease under which Lynch & Sherman had elected to take that machine contained the clause under which they agreed to use the United Company's machines to their full capacity.

Lynch & Sherman also had a channeler from the United Company. I have no way of knowing what use they had been making of that machine prior to the installation of Harriman's machine, because the use of it is recorded by the principal machine. They had had that machine for three or four years.

In June, 1910, when Mr. Harriman testified that the Haverhill Company installed a turn sewer in the factory of W. S. Chase & Son, Incorporated, of Haverhill, they had three welt

862 and turn sewing machines for doing the same work from the United Company, and they had been there for several years prior to 1908. They also had auxiliary machines from the United Company.

When the Haverhill sewer was put in they discontinued the use of one of the United machines, in addition to one already idle, so that two of the three were left doing nothing. The

machine which was discontinued was idle for only about a month; the other machine continued idle for several months.

They began to use our machines again to sew all their shoes in April, 1912. Between June, 1910, and April, 1912, these machines were not being used to anything like their full capacity, but they were not surrendered, and Chase & Son kept the machines without using them.

When the Haverhill Company installed a turn sewer in the factory of Carleton & Hunt, of Haverhill, in May, 1910, Carleton & Hunt had two turn sewers from the United Company. They had had one since 1899 and one since 1903. When they put in the Haverhill machines they discontinued using one of the United turn machines, and that was idle continuously for nearly two years, but they still kept the machine. Materially less work was done on the other machine, but they kept that also.

When a Haverhill turn sewer was installed in the factory of George B. Leavitt & Company, of Haverhill, in May, 1911, they had three United Company turn sewers in that factory, which had been there since 1907.

When the Haverhill machine was installed, in addition to one United machine which was already idle, a second machine was discontinued for at least four months, so that two out of the three machines were idle for four months at least, but they retained the machines.

863 In May, 1911, when a Haverhill turn sewer was installed in the George W. Herrick Shoe Company factory at Lynn, the Herrick Company had five Goodyear welt and turn sewing machines. My records show that two machines were used for making welt shoes. One was entirely idle and two were used on turns. When the Haverhill machine was introduced the Herrick Company discontinued using one of the machines that was in use, and that remained idle for approximately ten days. The Herrick Company also had three heeling machines of the United Company, one of which they had had for twelve years, one since 1907 and one since 1908. After the Haverhill heeler was installed in June, 1911, the output of the United heelers, as compared with the total output of the factory, decreased nineteen per cent.

In March and September of 1911, when Mr. Harriman testified the Haverhill Company installed turn sewers in the factory of N. D. Dodge Shoe Company, of Newburyport, that company had two turn sewers of the United Company, one of which had been in use since February, 1910, and one since February, 1908. After the Haverhill machine was installed one of the United Company's machines stood wholly idle until September, 1911,

when they returned the machine. The other machine continued to be used regularly.

In May, 1910, when Mr. Harriman testified a Haverhill turn sewer was installed in the factory of F. M. Hodgdon, of Haverhill, that company had eight turn sewers of the United Company, of which four had been shipped in 1896 and one each in 1897, 1898, 1899, and 1908. When the Haverhill machine was installed one of the United Company's turn sewing machines was discontinued, and stood idle until October 25. The other seven machines were not used to their capacity during this period. There were days when they were idle, but none of those seven was idle continuously more than two months at a time.

In December, 1910, when Mr. Harriman testified that
864 Hilliard & Tabor installed a Haverhill turn sewer, they had four turn sewing machines of the United Company which they had had since July, 1902, and they had been using them since that time. When the Haverhill turn sewer was put in one machine was discontinued and stood idle for more than six months.

All of the concerns to which I have been referring had the auxiliary machines as well as the principal machines.

Hilliard & Tabor also had one heeling machine from the United Company, which they had used since 1906. Up to November, 1910, when Mr. Harriman testified that the Haverhill Company installed a heeler, the United Company's heeler was being used. After that time the United Company's machine was used to not over fifteen per cent of its capacity.

In March, 1911, when Mr. Harriman testified that C. H. Aborn & Company, of Lynn, installed a Haverhill heeler, they had in their factory two United Company heelers, of which one was shipped in 1900 and one in 1905, and both of which had been used up to that time.

After the Haverhill machine was installed one of the United Company's heeling machines stood practically idle for over a year and a half.

Cross-examination:

I work in the office of the United Company, and I am a clerk. I know nothing about the agents who are in the field and look after the machines, or what they said in these various instances to men who were using the machines. I do not know why it was that the Haverhill machines were finally taken out. What I have been testifying here to is matter that I have learned from inspecting the accounts of the company. I do not know anything that passed between the men that I have mentioned and

the agents of the United Company, so that I am not in the attitude to contradict Mr. Harriman or any other witnesses.

865 Direct examination resumed:

I have examined the slips returned by each of the companies which I have mentioned, showing the use of each machine of which I have been speaking.

In February, 1910, when Mr. Dodge, of the R. H. Long Company, testified that that company installed two outsole stitching machines in the factory of J. L. Walker & Company, of Lynn, that concern had four outsole stitching machines of the United Company. Three of those machines were furnished in 1905 and one in 1908. After the Long machines were installed the use of one of the United Company's machines was substantially discontinued. In February it was idle seven days, in March nineteen days, in April it did but 408 pairs, and in the two following months one machine was idle.

The leases of J. L. Walker, Lynch & Sherman, Chase & Son, Leavitt & Company, Herrick Shoe Company, Dodge Shoe Company, and Aborn & Company carried the full-capacity clause. The leases of Carleton & Hunt, Hodgedon, and Hilliard & Tabor did not.

Cross-examination resumed:

With respect to these later matters about which I have been testifying, I obtained my information from the records of the company. I do not know whether or not the auxiliary machines were used by these various manufacturers in violation of their leases.

866 DECEMBER 19, 1913.

ALBERT HARRISON, witness for defendants.

I live on Worcester Street, in Boston, and am foreman of the lasting department of Rice & Hutchins, South Braintree. I have worked for them for six years.

In 1910 I was working in the lasting department at the T. G. Plant factory, in Jamaica Plain. I was a hand side laster. I know Frank Morrison, Charles Ross, and Abram Sochat.

In the spring of 1910 I was a member of a committee from the lasting room to interview Mr. Plant. The other members were Frank Morrison, Bennie Epstein, and Joe Murphy. That committee went to see Mr. Plant and I was the one of the committee to speak first.

The occasion for the committee seeing Mr. Plant was that he had recently installed a new toe lasting machine and had voluntarily given the machine operators an increase in wages, while

the benchmen were left at the same price as before. The new machine was new to the operators and more complicated than the machine they had had before, so that they did not get out quite so much work, and we understood Mr. Plant gave the increase in wages so that they would try to run the machine as fast as they did the old one. Mr. Plant had a rule that each operator should keep only just so many pairs ahead of the next so that the shoes would not be hardened up when they got to the machine. A shoe has to be kept in temper while it is being lasted. Because the lasting machine operators were a little slower they didn't make so many shoes and that reduced the wages of the benchmen considerably. So there was dissatisfaction among them and the committee was formed to see Mr. Plant about getting more wages to equalize it.

There were sixty-five lasting machines and for each machine there was a machine operator and three men at the bench, making about 260 working at lasting. The committee represented those men. No other department, except the lasting room, was interested, so far as I know.

867 The rules there require that in case of dissatisfaction the men go first to the foreman, and if he doesn't give satisfaction he reports it to the superintendent, and if the superintendent can not settle it the committee is entitled to see Mr. Plant. We did not get satisfaction from the foreman or the superintendent and asked for the interview with Mr. Plant.

At the meeting with Mr. Plant Mr. McGaffee, Mr. Morrison, Mr. Epstein, and I were present. We spent over four hours with him and stated our grievance as I have explained it.

The next morning he asked us to state the matter again before our superintendent, Mr. Slosberg, which we did. He told us that our argument was all right, that we would get an increase as soon as he could figure it out, and we did get it inside of a month. That is the whole story of the trouble.

In any of the conferences among the men I did not hear Morrison or Ross or Sochat make any claim that the United Company was doing anything about this lasting trouble. I didn't see that they had any money which they were using among the man. I didn't get any of it or hear of anybody who got any money. As to their testimony that they used over $2,000 in entertaining the men, I did not see anything of that sort done and I did not see a cent spent by those people among the men. I did not hear talk of agitation by those men to stir up a strike or anything of that sort and no union was formed that I know of. As to their

testimony that they had a list of 300 men whose names were on a roll for forming a union in that factory, I never heard of anything of that sort and no such thing occurred to my knowledge.

Cross-examination:

I do not know whether there was any attempt to form a union.

868 JANUARY 6, 1914.

JONATHAN BROWN, Jr., witness for defendants.

I live in Hamilton, Massachusetts, and am engaged in the business of manufacturing shoes in Salem, Massachusetts. I have been in that business since 1879. I make women's, misses', and children's McKay sewed shoes and standard screwed shoes. I have been making McKay and standard screwed shoes in gradually increasing numbers ever since we began business. I make 7,500 pairs a day.

We have obtained a good deal of our machinery from the United Company. We use the McKay sewing machine for stitching the sole to the upper of our McKay shoes. We have obtained those machines everywhere, from Gordon McKay's organization up to the United Company. Some we bought outright and own. There is no difficulty in buying all of those machines anybody wants at any time.

We use thirteen McKay sewing machines in our factory, of which we own ten and obtained three from the United Company on lease. We have had those three for several years. The United Company has never caused us any difficulty or interfered with us in connection with our buying McKay sewing machines while we have their leased McKay sewing machines in our factory. We have done as we wanted to absolutely without any interference.

We have from the United Company the "niggerhead" lasting machine, pulling-over machine, pounders, Ensign lacers, heeling and nailing machines.

Q. Have you at times used either nailing or metallic fastening machines other than those obtained from the United Company?

A. Yes, sir.

Q. What ones, do you remember?

A. Well, we used to use the National heeler.

We used to buy those some from the Hawkins Machine Company. We changed to the United Company machines because we got better work on them. There was absolutely no interference with our use of the other machines and the change was made of our own free choice.

As to the comparative excellence of the machines of the United Company which we use and the machines supplied by others, the

United machines are so far superior that there is hardly a comparison to be drawn.

869 In fact, I think I stated either in Washington or up here to the statehouse that, if we had our choice in the matter, we wished that every machine we had in our establishment was under the control of the United Shoe Machinery Company. That is because we get such excellent service; we get it promptly; we get it cheap, and it allows us to go ahead with our production and figure down to a minimum cost for our shoes and go ahead and manufacture them without having the delays that we are subjected to whenever we have other machines.

We have had experience with that situation, and it is a matter of record that everyone knows who has been connected with manufacturing shoes for a number of years that before the United Shoe Machinery Company was formed, where we would have machines from these different individual companies, a machine, the capacity of which may have been five, six, or seven hundred pair a day, would break down and we would send for some one to have the machine repaired, and it might be three days, four days, a week, or ten days before we would get anyone to put that machine in order. The consequence was that all the operations beyond that machine which were waiting for that 500, 600, or 700 pair of shoes were simply lying idle. To-day, if any of our machines break down—that is, any of the United Shoe Machinery Company's machines—we telephone over there, and inside of three minutes we have some one to put it in order. The consequence is we can figure on our production at the lowest minimum cost, and I might also add that this is not the case with our stitching-room machinery.

We get our stitching-room machinery from the Singer Sewing Machine Company, Wilcox & Gibbs, Reece Button Machine Company, and the Union Special Machine Company. They don't furnish good service, and it is simply a case of my hearing all the time when they have promised to send a man, and when he is scheduled to come over, and that their man is in some other part of the State.

This matter of service is just as important as the buying of leather, for if the manufacturer does not get the service he can not get his shoes out after he has bought the leather. He certainly can not figure on what payments he can make for his leather, because in order to get his money he has to ship out his shoes. Delay in getting out his shoes is of vast importance, as most manufacturers are men of ordinary means.

I turn over my capital about five times each year, but I carry more leather than most manufacturers, and therefore do not turn over my money as often as a man who bought his
870 leather as he wanted it. The average manufacturer turns his money oftener than I do.

With reference to the machinery that I have bought, my idea as to depreciation in that machinery, either from wear or becoming obsolete or from new machines being invented which are better and which we have to have, is that the minute a belt is put upon a shoe machine the manufacturer should deduct fifty per cent. That may seem pretty drastic, but from my experience the manufacturer will come out a loser after that. We had three twin Tapley burnishers for which we paid $1,000 each, and which we did not get of the United Company. Those machines went out in a night because a new method of finishing heels was discovered. We did not get six months' work from the Tapley burnishers, and they are still in our cellar. We have never been able to realize a cent from them. They became worthless when the new machines were introduced. The new invention was so much cheaper that we had to take it to keep abreast of our competitors.

This was a frequent occurrence and was the condition that continuously existed prior to the formation of the United Company. Now they furnish us with up-to-date machinery, and if anything new comes out they give us the advantage of it.

Depreciation is so rapid that from my experience, including adjusting two losses by fire when I got the views of different people on the value of shoe machinery, I don't dare to carry shoe machinery on our books as an asset at all. We don't include it in our trial balance as an asset in any way. If we buy a machine it is charged off as an expense.

As to my experience in being furnished with new machines or improvements on old machines by the United Company, it has been most satisfactory. They give us the best improvements and every advantage we can get. As to whether I can give any specific instances that I now have in mind—well, there is no specific instance; it is general.

It is generally known among shoe manufacturers that the United Company furnishes prompt and efficient service to its customers. To my knowledge no other company which
871 supplies machinery to shoe manufacturers furnishes any service in any way comparable to that of the United Company. Assuming that machines were of equal merit, this factor of service would be an important element in deciding

which company to trade with. There would be no question. You would simply go to the United Company because of the service. It certainly is as vital as that.

As to the machines which we have from other companies, it has been my experience that none of the other companies furnishes any service of the character of the United Company's service. We use a little over one hundred machines that are bought from others and are similar to machines which we could buy or lease from the United Company, including the Puritan fairstitch machine, the Julian rounding machine, and the cementing machine.

The Puritan fair-stitch machine stitches the edge of the shoe, so as to make a McKay shoe look like a welt shoe. The United Company has not interfered in any way with our using that machine together with machines we obtained from the United Company. It is working side by side with a machine furnished by the United Company for doing the same work, the Goodyear stitcher.

The Julian rounding machine rounds the soles to a pattern. The United Company furnishes their Planet rounder for doing the same work. We do not use the United Company cementers.

I know Mr. Charles H. Jones. As to Mr. Jones's testimony that he had never stated that he was anxious that the larger shoe manufacturers should be able to get a smaller rate of royalty than small manufacturers were able to get, I had a conversation with him at the statehouse in Boston in the summer of 1911 at a hearing with reference to the United Company.

The conversation occurred just as I came in from lunch. Mr. Jones was sitting off at the right as I entered, and I walked up and shook hands. He said: "Jack, I am glad to see you." He said: "It is time we big manufacturers should pay less royalty than the smaller ones." "Well," I said, "Charley, if that is your opinion, this is a good place for you to get up and state it." And then he argued out—he said: "We were small once." I said: "Certainly, but the United Shoe Machinery Company will never give anyone one per cent of advantage, one way or the other."

872 The phrase that he used to describe the people, or the class of people, who he thought ought to get the smaller rate was, "We large manufacturers should get a smaller rate than the small ones." I remember it because I was gratified that he included me as one of the larger ones.

Mr. James W. Hitchings was present when Mr. Jones made that statement.

Cross-examination:

Besides McKay shoes we also make standard screw shoes.

We discontinued the manufacture of turn shoes about two years ago, and we do not take any welt shoes. We have been accumulating our thirteen McKay sewing machines ever since we were burned out in 1888. We are still using some of the machines that we purchased twenty-three years ago. We have charged those machines off only once. I have no idea how much it costs us a year to keep up one of those machines. I can not state whether it costs us $5.00.

Of the ten McKay machines which we purchased we bought eight before the United Company was formed. We purchased some of them from the Stanley Manufacturing Company, and some from the Rowan concern, which finally merged into the Hamel Company. The Hamel Company is in existence now. I do not know who controls the Stanley Company. They are running a big machine shop now, and I suppose Mr. Stanley controls it. I see him and his son there.

The Hamel Company manufactures McKay sewing machines and there are several concerns that rebuild the machines. I can not now give the names of any of those concerns, as my brother buys those machines, but I can make a list of the concerns from which we can get McKay machines. As requested, I will do so.

When I speak about charging off fifty per cent of the cost of a machine as soon as the belt is put on, I have reference to any shoe machinery.

We have twenty-four hand method lasting machines, which I called the "niggers," which we obtained from the Consolidated & McKay Company. They now all belong to the United
873 Company. Some of those machines we have been using from fifteen to twenty years. Before that we used the Boston tacking machine, Boston lasting machine.

I have no idea what it costs us to keep up those lasting machines, and I do not know at what price we keep the machines insured. My brother gets the insurance.

We put in three pulling-over machines about two years ago and we have been using the six rotary pounding machines a year or a year and a half. They are new machines.

There is no royalty on the Puritan machine, and if I use the United Company's rapid stitcher instead of the Puritan I pay a royalty on that. I have had those two Puritan machines seven or eight years. They do the same work as the Goodyear stitcher.

The Singer Machine Company undertakes to furnish service for the repairs of the machines that we obtain from them. We pur-

chase those machines and we pay for repairs. They charge the labor from the time the man leaves their establishment.

As to whether my principal reason for favoring the United Company is because it is giving us good service, the United Company gives us excellent service. We are located eight or nine miles from the nearest office in Lynn. We notify that office when we desire repairs to be made. They charge us for parts when they are necessary.

I have never had any experience with reference to keeping up their machines with any competitors of the United Company as to the lasting machine, metallic fastening, heeling and stitching machines. We had the experience prior to the formation of the United Company, with all the machinery concerns there were.

Direct examination resumed:

The United Company charges for repair parts when necessary, and we determine the necessity. The United Company's men go to my brother, who is superintendent of the factory, for his sanction before they put a part in. If he isn't there and the part is put in and we then object, it is always adjusted satisfactorily. We have never found that any of their men wanted to put in

874 parts in excess of what they should. When repair parts have been put in as the result of a defect or anything for which the United Company was responsible, they charge the parts and give us credit for them.

(Examination of witness is suspended.)

875 JANUARY 6, 1914.

JAMES W. HITCHINGS, witness for defendants.

I am a member of the firm of Luther S. Johnson & Company, manufacturer of slippers, at Lynn. I grew up in the business from 1875. I am in charge of the manufacturing end of the business.

I know Charles H. Jones, of the Commonwealth Shoe & Leather Company. I was present at a meeting between Mr. Jones and Mr. Jonathan Brown at the statehouse in the spring or summer of 1911. I remember the conversation. Mr. Jones said to Mr. Brown: "We big manufacturers should have a lower royalty than the small manufacturers." I made no note of it at the time, but I did afterwards, because as a small manufacturer I was indignant that a man I had looked up to for so many years had plainly changed his attitude towards us. His point of view had changed since he had joined the Western Alliance.

We make slippers only, McKay and turn. I have had experience with the different kinds of sewing machines for making turn shoes, including the Lincoln, the Bay State, the Fowler, the

Looplock, and the Goodyear, which we are now using. We use the Goodyear on account of the seam it sews and the way it sets the stitch and in general the way it makes the shoes, and we now use a lighter sole with it. It is a better machine than those which I named, and the royalty has been reduced to one-half of what it was before the United Company was formed.

I had the other machines which I mentioned in my factory at the same time with the Goodyear machines, and the Goodyear beat them. In selecting the Goodyear as the machine to keep I was not coerced in any way by the United Company. I never yet was coerced by the United Company. It was the quality of the work and the fact that we could use a lighter sole which led me to choose the Goodyear. That saving amounts to two cents and a half a pair in the cost of the sole alone. We make that saving on the new Goodyear machine. That is built for running light soles. Turn shoes are made inside
876 out, are turned, and are then relasted and dried on the last.

I have had experience with nearly all of the heel-attaching machines other than those furnished by the United Company. We used the National for over ten years, then we took the United Company's Lightning machine. I told the United Company I would adopt their machines any time they could beat the other machines out. They did it, and I kept my agreement. The change was not the result of any coercion on the part of the United Company. It was due to the fact that the United Company beat the National machine one-quarter of a cent per pair in the operation. I can't tell now more definitely how I made that saving by using the United Company's machines, because the figures have gone from my mind, but I did it. I retained the figures for several years, and then naturally threw them away. They simply did it. I made a study of it at the time. I had to satisfy my partner and myself that the United Company's machines were better.

As to machines of any other class, where we have used United machines and machines of other manufacturers, the rounding machine, for instance, is a good machine to say a word on. We used the old Hartford rounding machine for rounding soles. They were built by the Hartford Company, and every season we turned in the old machine, paid $125.00, and got a new machine, because it wore out so fast and had so many parts. They were finally merged into the United Company, which immediately rebuilt all the machines and standardized them, and our repair bill today is about thirty cents a season. We have had two of the machines for a good while.

877 Cross-examination:

I have been in the business since 1872.

I did not have the Lincoln, Bay State, Fowler, and Looplock turn sewing machines all at the same time. I bought Lincoln machines at auction or any other way. I bought them at first from the Lincoln Sewing Machine Company. They cost eight hundred or eight hundred and—no, they were $1,000 with a discount, new. We bought the Bay State machines from the Bay State Sewing Machine Company, I think it was called. We paid about $850 for that machine. I don't remember what I paid for the Fowler machine. I was so sick of that I don't want to remember. It was all repair work, that was. We junked the machine. I don't know who put it out, but I know I had more trouble with repairs. The Looplock machine was made by a Haverhill manufacturer, Mr. Knight.

I took one of the Goodyear machines before the United Company was formed. I took it on there when they first put it out. I finally discontinued the use of the other machines and decided

878 to use Goodyear after they wore out. About five or six years ago, when I proved that we could do better work at less cost by running all Goodyear machines, we discontinued the use of the other machines and put in all Goodyears. I think we turned in most of the other machines to the United Company. I made a good trade, but I don't recall exactly how much was allowed. As to my best judgment as to how much I got, I haven't any. I don't remember whether I got an allowance of as much as $400 for the Lincoln machines.

I have bought some general department machines from the United Company, because I was obliged to buy them since this suit has been under way. Otherwise I would have leased them all.

Offhand I can not state when the royalty was reduced on turn work. I should say it might be a little longer than five years ago. As to whether at that time there was any other concern putting out turn sewing machines, there always has been. There was a company in Haverhill of which I don't remember the name.

We changed from the National heeling machine to the United Company's heeling machines, the Mayo on McKay work and the Lightning on turn work. I think we sold the National heelers to second-hand dealers. I had them on the floor idle for a year. I don't think I did turn those into the United Company. I saved a quarter of a cent per pair by changing heeling machines. This saving was on the operation. We could not nail shoes on the last successfully by the National machine without smashing

lasts. I can nail on the lasts by the Lightning machine so that I can run my shoes all the way through on the lasts, while before I had to pull out the lasts and relast the shoes again. The turn shoe is a light shoe.

We are using the United improvement on the Hartford rounding machine. All the machines in our bottoming room are United machines, except little minor machines that don't amount to much. The sewing machines, upper fitting machines, are not United machines.

879 JANUARY 6, 1914.

ELDEN EVERETT GRIFFIN, witness for defendants.

I live in Dorchester and am employed by the W. H. McElwain Company. I am now superintendent of the box and carton factory.

Formerly I was doing efficiency work on shoe supplies. That did not include a study of the cost of repair parts. Just before I left off working on supply efficiency I took a few figures at three McElwain factories covering a period of six months, to show the breakage of machine parts at each factory. I furnished those figures to Mr. Gleason, who has testified. Those figures were taken from the actual operation of the McElwain factories under everyday working conditions.

Cross-examination:

This information covered a period of six months in 1912 and 1913, and included all new parts installed. It covered the machines in the bottoming room and sole leather room, chiefly the bottoming room. It included channeling, tacking, assembling, pulling-over, and lasting machines and the welters and stitchers. I don't recall whether it included the leveling machines.

880 JANUARY 6, 1914.

EDWARD WILLETT BURT, witness for defendants.

I reside in Boston and am a shoe manufacturer and shoe retailer. My factory is at East Lynn, and I retail shoes in Boston and other cities. I manufacture welt shoes only, and make men's, women's, misses', boys', and children's shoes.

I have been manufacturing shoes in Lynn since 1900. When I left school I went into my father's factory, and learned the shoe business as an ordinary workman.

I got an idea of manufacturing women's shoes under a trademark name, and I went to Lynn and had lasts designed, patterns made, and got up some samples. The United Company made a few pairs of shoes for me, at their expense, in their office in Lynn.

My trade-mark was "Knickerbocker," and I now make a patented shoe under the trade name "Groundgripper."

When I started making shoes I made about twenty-five pairs a day. Now we average about 500 pairs a day. I am using United Company machines, and I use the form of lease which permits us to exchange the machines, if we desire, for new machines. I chose that method of obtaining machines because I want to get the very best machines I can secure. I believe the United Company's machines are very much perfected and are as good as can be made.

As to how large a factor the service which they give is in the successful manufacture of shoes, personally I believe that one of the chief things that a manufacturer should consider in the making of shoes is the service given in keeping the machines in continuous operation. It is very essential to have the machines always in running order at the least possible expense.

When I started making shoes I had an Eppler welter and an Eppler stitcher. I found them inefficient for making high-grade shoes. They were not anywhere near as satisfactory as the United Company machines.

881 With reference to the wear of the shoes made by the Eppler machines, we had trouble with the shoes made on the Eppler welt and stitching machines. The soles ripped off continuously, and the lock was not tight on those machines. We gave them a thorough trial; that is all we had in the factory. We tried them out for about a year, I believe.

My reason for making any change was because I could not afford to have the shoes wear out on account of imperfect construction. The United Company machines were shown to me to be better, and I exchanged and put in United Company machines. Not the slightest coercion was brought to bear upon me by the United Company to make the change. It was absolutely my own idea. I wanted the best machines I could get.

I have had experience with machines of manufacturers other than the United Company, including the National heeler, a heel breasting machine, a Tapley heel burnishing machine, a machine for branding soles, a Julian rounder and a hand perforating machine. I did not find those machines satisfactory, and as fast as possible I got rid of them and put in United Company machines to replace them.

For example, the National heeler was too slow and the large sizes could not be heeled on it. The parts were breaking continuously. The machine was stopped a good deal of the time. There was a repair man in Lynn who came over to repair the machine.

As another illustration, the Julian rounder was one of the most unsatisfactory machines I ever had in my factory. It would not round two pairs of soles at the same time. It would not round a size larger than eleven and my men's shoes run to size fourteen, and the largest ones had to be rounded by hand. The arm that adjusts the motion was continually breaking, and so were the knives. The steel did not seem to be of good quality.

We put in the United Company rounder in place of that machine, and I haven't heard one complaint from that room since it has been there.

We now have machines in different departments furnished by other manufacturers than the United Company, including a stud-setting machine, a branding machine, and, in the stitching room, a Fortuna skiving machine and a seam-rubbing machine. The branding machine, which we got from the Boston Last Company, heats an iron by electricity and prints the name on a piece of leather in the heel.

882 We formerly used the Peerless eyeleting machine, but about two years ago we changed to the United machine, because the Peerless machine was unsatisfactory. It did not run eyelets properly, and we had to have several raceways to fit different kinds of eyelets. We find the United machine more satisfactory and I think it is a better machine.

As to whether any pressure was brought to bear by the United Company to cause me to change from the Peerless to the United, never. I don't always tell the United Company when I change, and they would have no objections if I did.

According to my experience a shoe machine wears out very fast. The wear and tear is very hard. We figure about twenty-five per cent depreciation on machines which we have to take care of ourselves. It is very expensive.

Our business was incorporated in 1903, and the concern is E. W. Burt & Company, Incorporated. We are incorporated in Massachusetts with a capital of $50,000. Our gross sales in the factory in 1913 were about $300,000, six times our capital.

We have always taken our machines on royalty leases, not paying initial charges. I have done that because I prefer not to tie up capital in machinery. It is a very great expense and, in securing credit, bankers never consider machinery worth a dollar.

The United Company has furnished prompt and excellent service. That is absolutely important to the successful manufacture of shoes. We must have it. If our machine breaks down, every hour means so many shoes piled up behind that

machine. It simply stops orders and delays delivery of goods to the retailers. That is one of the chief troubles manufacturers have—canceled orders on account of delays. We must get out the shoes on time.

I am a small manufacturer. As to the effect upon my ability successfully to do business which a compulsory change in the method of leasing machines, making it necessary for the United Company to charge an initial premium when it put out its machines, would have, I am very glad you asked me that question, because I think it is a very important one. If manufacturers must buy their machines, they have got to get money from their capital, or borrow money, or get it somewhere, to buy machinery, and that takes away your working capital. Now, you must have machinery at the least expense possible in the manufacturing of shoes. And if we were obliged to buy our machines I should be very sorry. In fact, if the privilege of buying or leasing were given me, I should say lease every single time. I never would want to buy a machine.

883 As to the effect which it would have had with reference to my ability to go into business at all, I never could have started. I started without any money in shoe manufacturing. I was able to do that because I could obtain my machines by this method.

That is one of the greatest reasons why I could start in the shoe business—because I could get machinery with practically no expense.

I know that there are other men who from small beginnings have been enabled to start and grow. I have had experience along that line. I have had two superintendents leave me, both starting in the shoe business. They had practically no money. I guess that all they made was what they drew from me as superintendents of the factory. And they started in manufacturing shoes in Lynn, both of them. I will make it three. One of them to-day is one of the biggest manufacturers in the country. That is Mr. Hebert, of Cushman & Hebert, in Haverhill. They now have a very large output in McKay shoes.

Cross-examination:

I think the Eppler welter and stitcher that I used came from the Eppler Welt Machine Company. I got them in 1900. After using them about a year I believe we sold them back to the company at the best price we could get. I think that they were bought outright. As to how much we paid for them, I could not state offhand—probably about $300 or $350 apiece. I think they were sold back to the Eppler Company. Those were the only welters and stitchers I had.

When I first engaged in manufacturing in 1900 I had a Chase lasting machine for lasting men's shoes. I think I got that from the Consolidated & McKay Company.

Our heeling machine was the National heeler, and that came from my father's factory in Brookfield. My metallic fastening machines also came from his factory.

When I gave up the use of the Eppler welter and stitcher I took on the Goodyear welter and stitcher. I sold the National heeling machine for junk; I couldn't get a dollar for it as a machine. I also sold the Tapley heel-burnishing machine, which cost $1,000, as waste scrap iron to a second-hand machinery dealer.

884 I had used that a very short time. It was a very old machine—had been in existence a long time. Before that it had probably been used for ten years in my father's factory.

I sold back the Julian rounder to the Boylston Manufacturing Company, who made it. As I remember it, they allowed me from $75 to $100 for the old machine which I had paid my cash for. The Peerless eyeleting machine is in the stitching room now, under the bench somewhere. We are not using it.

The cost of repair parts and repairs on machines is very small. I have some figures here, $148,500—the manufacturing expense was .052. By manufacturing expense, I mean our machinery expense. That does not include royalty—just parts and repairs. That is the percentage of the sales.

Direct examination resumed:

I think I bought the machines from the Eppler Company in 1899 or 1900. I will look up the leases and ascertain whether we bought them or not.

We now have the latest designs of the United Company's welter and stitcher. We have an operator on the welter who can do thirty dozen pairs of men's shoes a day. The most that the same operator could get out of the old machine was twenty-five dozen pairs a day. The production on the new stitcher is about three or four dozen pairs a day more than on the old machine.

Cross-examination resumed:

We got the new machines within the last two years. I will ascertain the date exactly.

885 JANUARY 6, 1914.

JOHN STROOTMAN, witness for defendants.

I reside in Buffalo, New York, and am engaged in manufacturing ladies' shoes. We manufacture from eight to twelve hundred pairs a day. About half our shoes are McKays and half are turns and welts. We take perhaps fifty per cent of our machinery from the United Company. I have been in business

since 1873 and have had all kinds of experience with owning machinery.

We take our machinery from the United Company on the restricted form of lease because we like it better.

We have the new welters and stitchers. We obtained them within a year or two, and we find that they are about one-third more efficient. They are doing more work and better work. The model K welter saves from an inch to perhaps an inch and a quarter of welting on one shoe. We pay from four and a half to five cents a yard for welting, and the saving is about a quarter of a cent a pair.

PUTNAM, J. Do you make any contest about these savings, Mr. Gregg?

Mr. GREGG. Well, there is no contest on this point, that the welt-cutting device, perhaps, saves more of the welt. However, the report made by their experts on the Plant machines showed that they had at that time a welt-saving device.

Mr. FOWLER. I may say that we do not intend to offer any evidence tending to show that this machine, which automatically cuts off the welt, probably saves some welt. We may want to ask some questions showing that if operators are properly instructed they might by hand save more of the welt than is saved—something of that kind.

The WITNESS. I have had experience in using machines of other manufacturers with machines we obtained from the United Company. We use the Haverhill machine for channeling turn shoes which are sewed on the United Company's welt and turn machine. We are also using United Company channeling machines right next to the Haverhill machine. The United Company has never made any objection to our using the Haverhill machine, and has never attempted to use any coercion to get that machine out of our factory.

886 We also have another stitcher there for stitching McKay edges. I can't just get the name now at this moment.

We also have a McKay sewing machine which we did not obtain from the United Company. We bought it, but I don't recall where. There is no difficulty that I know of about buying McKay sewing machines. As to whether I can get them wherever I want to, I haven't tried to get them. As to whether, so far as I have had any experience, there is any difficulty—well, I could get them any time, I suppose, from anybody.

Our heeling and metallic fastening machines came from the United Company. I think I have had no experience with machines in either of those departments obtained from other people.

As to the period when we owned machines, the depreciation varied on different kinds of machines. On some I wouldn't count over ten per cent depreciation, but I bought a triple Tapley burnishing machine for $1,500, I think, and used it
887 only about fifteen days when the rotary brush system came in and superseded it. We sold it for junk, and that was a very large depreciation. That was an uncommon experience, but it frequently occurred that a machine that we had bought had become out of date in a short time. Then we sometimes traded off the machine for a better one and sometimes sold it for whatever we could get for it as old iron.

The service which the United Company gives us is excellent, and it is an all-important factor in the manufacture of shoes. We could not run a factory without the company's skilled men to keep the machines in order and keep them running. So far as I know, no other company furnishing shoe machines gives service of that kind.

Cross-examination:

I have no recollection whether any other form of lease than the restricted lease was presented to me when I took machines from the United Company. I examined the unrestricted form of lease about two or three years ago—went over them very carefully.

I have been running continuously since 1873, and have been making ladies' shoes all the time. At first my shoes were hand sewed, and the first welting machine I had was the Goodyear. I never used any other kind.

We lasted by hand until we got the Consolidated hand-method machine, and we are still using improved machines of that type. Formerly we lasted our shoes entirely on that machine, but now we last the toes on the No. 5 machine and the sides on the Consolidated hand method. We do not make any men's shoes.

We have two improved welters, one on welts and one on turns; we make about three hundred pairs of welts a day.

Q. There has never been a time when any of the machines that you have used, any of the welting machines you have used, could not have turned out as many as 300 pairs; isn't that true?

A. Well, yes. You see our shoes we manufacture for the stores, and consequently the lots come through in small lots, a variety of different kinds. A man can't quite do so many.

Q. Didn't your old Goodyear machine do as many as 300 pairs a day?

A. That depended on the man. A good man could possibly do that.

Q. If you welted just as many pairs of shoes on the old machine as you do on the new machine, then you get no more efficiency out of the new machine than you did out of the old, is that true?

A. Why, we get more efficiency in the welting saved, and also in the more perfect work. We get a better stitch and each side of the welt near the heel, where the old machine used to leave a little imperfection, this machine does more perfect work.

888 So far as I know there was practically no improvement in the welting machine from 1899 up to 1908. We used the model G machine, and that is what I call the old Goodyear machine.

We have had the Haverhill channeling machine for perhaps six or eight years. We leased it on a royalty. The use of that channeling machine does not affect the royalty we pay the United Company; that is, if we used instead of it the United Company's channeling machine, it would be an auxiliary machine and there would be no royalty paid on it. If we were to install the United Company's machine instead of the Haverhill machine and quit using the Haverhill machine, I think we would not pay the United Company any more royalty than we do now. We are using that Haverhill channeling machine notwithstanding the fact that it requires us to pay royalty on it which we would not have to pay if we substituted the United Company's channeling machine for it. We also have a United channeling machine, and we are using both machines.

We have two McKay sewing machines, but are using only one. We have had that a good many years—twenty years. We bought it outright, and have used it ever since. I have no idea what it costs to keep it in repair. Some machines cost more to keep in repair than others, and some machines become obsolete more quickly than others on account of superior machines taking their places. The improvements on the principal machines, the large heavy machines, have not been so rapid as on some of the less important machines. They are used for a great many years.

Q. You spoke of the service of the United Company. You haven't had any experience with the service of any other company, have you?

A. There isn't any that I know of.

Q. As a matter of fact, there is no other concern putting out sufficient machines to justify them to have a service; isn't that true?

A. I guess so.

We never tried to organize and keep up a repair service of our own. I don't see how we could do it. We have an expert machinist to keep the Singer sewing machines in the stitching room in repair, and we sometimes call in the Singer people. We get the repair parts for our stitching room machines from the manufacturers. We never tried keeping a skilled mechanic to keep up the machines we leased from the United Company.

Direct examination resumed:

The machines we bought of the Singer people are simply sewing machines. I did not mean to state that the welt machine had not been improved between 1899 and 1908. I think it has been improved from time to time. I may have had the model E welter at some time. I did not know it by that name. These letters confuse me. I don't remember them by the letters.

889 Cross-examination resumed:

I do not know how much royalty we pay per annum to the United Company.

890 JANUARY 6, 1914.

JOHN F. BELCHER, witness for defendants.

I live in Brocton, and I am superintendent of the Churchill & Alden shoe factory at Campbello, in Brocton. In January, 1904, I had charge of the purchase of supplies for that factory. I know Irving A. Hadley, formerly of the firm of Kimball & Hadley which manufactured awls and needles. As to Mr. Hadley's testimony that in January, 1904, he was told by the person in charge of purchasing in our concern that using his awls and needles was in violation of our leases with the United Company, and that if we took his awls and needles the United Company would take its machines out of the factory, I did not make any such statement. The fact is that the reason why I stopped taking needles from him was because he told me he was going out of business. I never told him that my reason for stopping taking needles from him was that if I did the United Company would take its machines out of our factory.

Cross-examination:

During my conversation with Mr. Hadley nothing at all was said about the leases which we had with the United Company. I am positive that the United Company was not mentioned.

891 JANUARY 6, 1914.

ARLON S. ROBERTS, witness for defendants.

I live in Brockton, and I am assistant superintendent in the factory of E. E. Taylor Company. In January, 1904, I bought all of the making room supplies for that concern, including

needles and awls. No one else had charge of buying needles and awls at that time except myself.

I used to know Irving A. Hadley, of Kimball & Hadley, and I used to do business with him. As to his testimony that in January, 1904, our factory refused to take any awls or needles of him, stating that using them was in violation of our leases from the United Company and that if we took them the United Company would take all of their machines out of our factory, I did not make any such statement to him.

I recall buying slugging awls from Mr. Hadley, but I did not buy many needles because I did not like his needles. I stopped buying from him because he went out of business. That was the only reason. It was not because of anything that the United Company did or said, or because of any lease that we had from them.

The United Company has never required us to buy needles and awls from any particular source. We have bought them wherever we saw fit. We have bought some from the United Company. We have also bought them from the Sewing Machine Supply Company and from the Boylston Manufacturing Company, without any interference from the United Company.

Cross-examination:

I didn't say that I bought all the supplies in 1904, but I either placed the orders or they were brought to me to place. I had an assistant by the name of J. J. Tierney, who bought some of the supplies for the Taylor Company. I do not remember having any conversation with Mr. Hadley in 1904 in regard to the purchase of needles.

892 JANUARY 6, 1914.

WILLIAM A. HOGAN, witness for defendants.

I am in business in Brockton with the T. D. Barry Company. I was connected with that concern in January, 1904, and was in the office. I confirmed all orders for supplies, such as needles and awls.

I know Irving A. Hadley, of Kimball & Hadley. Our concern bought needles and awls of him. As to his testimony that about January, 1904, we refused to buy needles and awls of him, giving as a reason that it would be a violation of the conditions of our leases with the United Company, and that if we bought his needles and awls the United Company would take all its machines out of our factory, no such statement to my knowledge was made to Mr. Hadley. We did not stop buying of him for any such reason. We did stop about that time because he went out of business.

Cross-examination:

I confirmed the orders for the purchase of supplies. The foremen, John J. Brown and John Murphy, bought them.

I was present when Mr. Hadley told our foremen that he could not sell us any more awls. He gave the reason that he had sold out to the United Company. Prior to that time I was probably present when the orders were placed. I will not say that I was always present.

Direct examination resumed:

It was my practice usually to be present.

893 JANUARY 6, 1914.

HERBERT L. CANN, witness for defendants.

I live in St. Louis, Missouri. I am local manager for the United Company in the St. Louis district. I have been in charge there since the latter part of 1910.

The factories of the International Shoe Company, of which Mr. Jackson Johnson is president and Mr. Frank Rand is secretary, are in my district. I know Mr. Rand. Their factories are served with men and repair parts from our headquarters. I have forty-six roadmen or repair men under my charge.

In connection with Mr. Rand's testimony that the cost of repair parts in their country factories where they supervised the inserting of repair parts was very much lower than the cost of repair parts in their city factories where we supervised them, I made an examination of our records to find out what the cost of the repair parts to the International Company was in its city and country factories. My investigation covered the period from December, 1912, to May, 1913, the six months preceding the time when Mr. Rand made his statement. I took their country factory at Cape Girado, where they make men's Goodyear welts, and their Glasgow factory, in St. Louis, where they make a like quality of men's Goodyear welts. Repair parts are supplied and repairs are made by my men in both factories. The Cape Girado factory is about 125 miles from St. Louis. The Glasgow factory is within the city limits of St. Louis.

During the six months covered by my investigation the average cost of repair parts per leased machine was about $16.48 at the Cape Girado factory and about $12.50 at the Glasgow factory, about twenty-five per cent more in the country factory than in the city factory. I regard those figures as a fair average rate. Those factories both make men's welt shoes and I selected them because they are so nearly alike in their product. The

894 country factory manufactures about 3,300 pairs a day, and the Glasgow factory about 2,700 pairs. They are typical factories of that company.

I know about the Hercules leveler which Mr. Rand testified about and I have seen the machine. The part which was broken was not a thing that supports the machine, but it was one of the two legs—we call them spindles—which support the last with the shoe on it and are operating parts of the machine. This spindle is about sixteen inches long and the bottom is made of the best grade of wrought iron and the top is made of machinery steel. The top piece is V-shaped and it fits in a corresponding recess in the bottom part and is welded to it. In the operation of leveling the sole the top part sometimes breaks, and it was that part that was broken in Mr. Rand's machine. All he did was to put a new top on, consisting of about four inches, out of a total length of sixteen. At first they did not fasten the top to the bottom part, but afterwards it began to work around and it was then brazed. That is all the work that was done at that time.

They continued to use those repaired spindles for a year or more, and then replaced them with new spindles obtained from us.

I know Warren F. McElroy, who was connected with the Hamilton-Brown Shoe Company, which is in my district. As to Mr. McElroy's testimony that Mr. Kenney told him in 1904 that he could not get any more repair parts for the Copeland rapid lasting machine, Mr. Kenney was then the manager of the St. Louis office and I worked as a roadman under him. Mr. Kenney died in September, 1910.

I examined the inventory of our office taken on February 28, 1905, and that shows that there were 1,100 Copeland parts in the St. Louis office at that time. That stock probably covered all parts that would be needed to repair the machine in case of breakage.

I have no personal knowledge as to the Hamilton-Brown Company's changing from Copeland rapid lasters to the Consolidated hand-method machines. I was visiting the Hamilton-
895 Brown factory in 1904 as a roadman. It was never brought to my attention that they were not getting all the repair parts that they wanted for the Copeland rapid lasters, or that that was given as a reason for changing from the Copeland machines to the hand-method machines. No complaint whatever was brought to my attention. I was probably visiting their factory three times a week. My duties were concerned with the metallic department machines, and I had nothing to do with the lasting machines.

It was our practice, and all our roadmen are instructed to put no new parts on a machine unless they are absolutely necessary. We do not put on repair parts when they are not needed. The

St. Louis office is not doing business that way. If they are, I don't know it. I don't mean to have them.

Cross-examination:

Mr. Kenney was looking after the repair parts for the Copeland rapid lasting machines, and I had nothing to do with it. Our records show that there were 1,100 parts for the Copeland rapid lasting machine in the St. Louis office at the time the inventory was taken. Whether Mr. Kenney actually furnished repair parts to Mr. McElroy is something I know nothing about.

The company's price for one of the spindles or legs for the Hercules leveling machine was not $25.00. It was $10.00. That would be $20.00 for the pair, but they never break two at one time.

I do not know what particular occasion Mr. Rand referred to in his testimony, unless it was a period of perhaps two years when they tried out the method of repairing machines themselves. My attention was first called to it by seeing the spindle in their machine shop. I then saw only one broken spindle, but I saw probably half a dozen of the tops they had made themselves. That was in the machine shop of the International Shoe Company at St. Charles, Mo., and I inspected that machine shop about three years ago.

896 The difference between $16.48, the cost of repair parts for the country factory, and $12.50, the cost of repair parts for the city factory, was due largely to the men operating the machines. When we send a man to their country factory we don't make any charge for his labor or for his railroad fare, or for his expenses. We only charge for the parts necessary to put the machine in order. My figures are for the six months immediately preceding Mr. Rand's testimony. I do not know to what period of six months Mr. Rand's testimony related.

During the six months for which I investigated our books the International Company was not, to my knowledge, attempting to keep their machines in repair in their country factory. We were sending our men to those factories just as we always did and we were making all the repairs which we were called upon to make, and all that we thought was necessary. If they made repairs with their own machinists, I was not aware of it.

Direct examination resumed:

The difference between the cost of the repair parts at the country factory and the cost at the city factory was due to the difference in the operatives of the machines. The city factories have a better grade of operatives, and the men are more expert. The country factories use more or less inexperienced labor, and

there is more breakage of machinery. The six months which I took for this comparison was an ordinary, average period.

Cross-examination resumed:

In testifying about the cost of repairs I included welting, lasting, pulling-over, heeling, standard screw and loose nailing machines, practically all the machines used under their contract. Some machines cost more to keep up than others. We had to strike an average in figuring the costs because a great many of our parts are standardized and can be used on perhaps a dozen machines, so that there is no way for us to know on what machine such a part was used.

The charge for repair parts in St. Louis is the same as here in Massachusetts. The price is the same to all, regardless of location. The parts are all manufactured in Massachusetts, but the United Company pays the freight rates to St. Louis.

897 JANUARY 6, 1914.

CHARLES A. EATON, witness for defendants.

I live in Brockton and my firm is the Charles A. Eaton Company. We make men's welt shoes almost exclusively, a few ladies' and boy's shoes. Our output is at present 2,400 pairs. I have been manufacturing shoes since 1879. From 1882 to 1892 we made a very large proportion of McKays and a very small proportion of welts. Commencing in 1892, when the present company was organized, we changed largely from McKays to welts; so since 1892 we have been very largely employed in making men's welted shoes.

We take a very large proportion of our machinery from the United Company. We chose the restricted lease because we felt that it was for our interest. That was because we were relieved from a large investment of capital, and because we believed that the development of shoe machinery was along that line and and that we should get better and improved service by so doing.

I have read the leases. The restrictions do not affect our activities at all. We have full confidence in the management of the company as indicated by their dealings with us since it was formed. They have not taken advantage of the technicalities of their leases to the extent that they could. They have been lenient in all their dealings and in the exchange of machines. Their policy has been very liberal, and they have kept the machines up to date. As new machines were brought out they have exchanged the old ones without any return payment or any charge to us, except for missing or worn parts and freight charges. Those are all the charges that have been made to us

on account of the replacement of machines during these years of development since we have done business with the company.

The welters, rounders, stitchers, and lasting machine outfits have been most radically developed of late years. As to the development of lasting machines previous to the formation of the United Company, we used the Consolidated hand-method and the Chase machines.

898 A year or two before the United Company was formed we had trouble with the Chase people, because they refused to furnish agents in accordance with the terms of their lease unless we threw out the hand-method machines we were using. Accordingly, we boxed up and returned all the Chase machines and put in Seaver machines, so that when the United Company was formed we were using Seaver and hand-method lasting machines. We used the Seaver machines on men's welt shoes, and the hand-method machines on the cheapest grade of welted work.

After the formation of the United Company we changed to the Chase machines. We wished to make that change and the United Company furnished us with Chase machines as long as we wanted them. Later we changed from the Chase machine to the No. 5 machine. That was certainly an improvement on the Chase machine. The main points of superiority of the No. 5 machine over the Chase were in the volume and the quality of the work that the No. 5 would do, particularly the better work at the toe. I don't know as the capacity of the machine was much increased.

Two years ago we put in the Rex system of machines for assembling and pulling the upper, preparing it for the No. 5 machine to operate on. That process has been a great saving, and there has been a decided improvement in the work. The saving on the prices for running the machines established by the State board of arbitration, at the instance of the Boot and Shoe Workers' Union and the Boston Shoe Manufacturers' Association, amounts to six cents per hundred pairs on dull leathers, $1.62 per hundred pairs on tan leathers, and $2.25 per hundred pairs on patent leathers. That is a saving resulting from the Rex system of lasting—the latest development of the United Company. We get the benefit of that saving and, in addition, the operators are benefited. Their earnings are invariably larger.

Another saving which we make by the Rex system is thirty cents per hundred pairs on the cost of restoring tips and vamps which are damaged in lasting. During the past eighteen months, since we operated the Rex system, that expense has been reduced

from seventy-five cents per hundred pairs to forty-five cents per hundred pairs. That saving is all due to the Rex system.

899 We have a factory at Brockton and one at Augusta, Maine. At Augusta we formerly used the model G welter, and now use the model K.

We have found that the saving in welting by the model K welter, as compared with the model G welter, was five per cent, under exactly similar conditions. That saving would vary from a minimum of three per cent, in comparison with the old style machine run by a careful operator, to a maximum of five per cent. The minimum of three per cent saving would amount to seventeen cents per hundred pairs. The work on either machine was satisfactory. We have not yet succeeded in reducing the piece price which we pay operators for running the welter, but we are negotiating now with the operators.

Our stitcher will show an advance by comparison with the same operator under the same conditions a fifteen to twenty per cent increased capacity over the old, because it is a higher speed machine and its takes less operations to work it. And if we fail to get the reduced price that we are entitled to and that the operator can reasonably submit to, it is our own fault and no fault of the machine at all.

The service which we have received from the United Company has been very satisfactory indeed. All manufacturers depend very largely upon it, and in our own case we have considered it of vital importance.

There are continually little annoying problems and difficulties that are arising in the development of the industry that by appealing to them we could get in touch with some method that they have seen in operation in some other factory where that same factor has arisen, and it has been satisfactorily solved, and they give us that information. So it is an interchange of ideas, continuously between the factories, which relieves many difficulties and makes it much more easy to do business.

I don't recall that we have had occasion to use machines of other makers of kinds which are supplied by the United Company.

900 As to the comparative advantages, from the shoe manufacturer's point of view, of buying machinery or leasing it, I think it was in April, 1908, that the question came up with the board of assessors in Brockton in regard to what constituted a fair valuation of shoe machinery that should be operative throughout the city. I was on a committee of Brockton shoe manufacturers which took up with the board of assessors

the matter of developing some method of assessing shoe machinery that would be fair both to the city and to the manufacturers. It was agreed that the United Company's replacement valuation of all their leased machinery as it appears upon their books and directly charged to each factory, should be accepted by the assessors as representing sixty-five per cent of the total valuation of all shoe machinery, including machinery leased and owned outright, with which that plant might be equipped. The replacement valuation on the United Company's records was considered as sixty-five per cent of the entire shoe machinery investment.

As to my experience with reference to depreciation of shoe machinery, on our common line of machinery we have charged a depreciation of ten per cent per anuum plus the cost of additions or improvements over a fixed amount. We have tried to keep our machinery item at a fixed figure, and all our improvements or additions we have charged off directly. Besides that we have stood a shrinkage of twenty per cent per annum.

As to our experience prior to 1899 with reference to finding that machines had become out of date or superseded by others, our experience was that there was continual change, which was rapid in the line of all shoe machinery, and I think it was viewed more by manufacturers, it was by myself—in considering the shoe machinery question, the valuation of it, we treated it more from the standpoint of the individual machine—each machine by itself. Now, of recent years, since the change in the methods has come about, we have considered the general shoe machinery line more of a unit. Instead of regarding each individual machine as an individual, it is part of the whole, and we have
901 handled our shoe machinery question on that basis, as if each machine were a part of a general machine for the purpose of making shoes.

Since 1899 the developement in shoe machinery has been fully as rapid as before 1899, and it has been more cautious. The changes have been less radical, but they seemed to be tested out so that they were logical and practical. It has been a gradual and intelligent development right straight along. Before 1899 we would get the best available machines and would run them a short time, and then new machines would come along and the machines which we had would be junked. As to whether that system resulted in necessary repeated loss to the manufacturer who bought his machinery, yes, I should think it would be heavy, because our investment was sixty-five per cent—heavier than it is now.

Cross-examination:

Before 1899 we used the Consolidated hand method, Chase and Seaver lasting machines. We were making welt shoes chiefly between 1892 and 1899. We replaced the Chase machines with the Seaver on the better grade of work, and were doing the cheaper work on the hand-method machine. The welted shoes which we were making at that time were men's exclusively. We used the Seaver machine for a year or a year and a half, and exchanged with the United Company for the Chase machines right after the formation of the company. The Seaver machine was put out by the Seaver Lasting Machine Company. I think the United Company bought their patents.

We continued to use the Chase machine until we took the No. 5 machine, and, I think, we also used the hand-method machine for a while. As to how long it was that we used the Consolidated hand method machine on welt work after the formation of the company, if my memory serves me, it might have been three or four years, possibly. We took the No. 5 machine very soon after it was first put out.

The company has been very prompt in giving us improved machines. I have examined their leases, and it has always been my feeling that they haven't been so stringent as they could in enforcing the terms of the leases.

902 We have six welting machines in Augusta, and four or five in Brockton. I have never tried to obtain a welting, a lasting, a metallic fastening or a heeling machine from any other concern since the United Company was formed. We have not violated the leases, except that we have not always paid our royalty on the day when it was due. We have tried to work together because I feel as though it was a mutual game, and we are both benefited. I believe their method is founded on the principle of progress.

I have not examined machines manufactured by any other concern, but if I knew of any process that I thought would bring better results I should be only too glad to examine it. In answer to your question whether as a matter of fact any other concerns, except two or three small ones, are putting out machines, that may or may not be true. I haven't been looking about for other sources to go to to obtain my machines. I don't know of any other system of shoe machinery. This the only system that is strong enough to commend itself at all. This system is the only one I ever had in mind; it is good enough for me. I want to stick to it untill I can get something better.

The pulling-over system is a new system of machines supplementing the lasting machines. We pay an additional royalty

of a quarter of a cent per pair for the pulling-over machine, and an eighth of a cent per pair for the assembling machine, but the savings are in excess of the royalty. The pulling-over machine is almost human and its work is wonderful. It betters the operator's condition too; he earns more money.

I have no idea how rapidly the shoe machinery business would have developed under another system. I am not familiar with any other system.

On the model K welter we make a saving in welt alone of from a mimimum of three per cent to a maximum of five per cent. We haven't as yet reduced the price paid the operators. I don't know why the same machine wouldn't save just as much if it were manufactured and put out by Mr. Plant. In respect to the saving qualities it makes no difference where the machine comes from.

903 We never tried to keep an expert mechanic of our own to keep our machines in repair, except in the stitching room. We have an expert machinist who looks after the machines in the stitching room. Those machines are very simple in their construction, and there are not the intricate difficulties that there are with a general line of machinery. As to the Reece buttonhole machine, we have to depend quite largely upon their agents.

We never undertook to keep up the United machines in any other way except through the United Company. They have specialists who are especially fitted for different groups of machines. For example, they have a set of men who specialize on metallic machines and another set who specialize on welt stitchers. I don't think we could find one general mechanic who would be equally competent and skillful over the whole line; and also he would be out of touch with the experiences of other factories, which is an important factor.

We probably pay the United Company $50,000 to $75,000 a year as royalty. As to whether I could keep a great many machines with that amount of money, it isn't only that I figure this way: That every competitor is under those same conditions, and every man connected with the industry and the same consumer is getting an equivalent in the return for that payment. I am figuring it in this way: That I know that no other man in the manufacture of shoes can get any advantage over me on the shoe machinery question. As to whether that is a thing that is especially pleasing, that is one element; but beyond that I witness a value in equivalent in return for that money that I pay, and it isn't a tax on me; it isn't a tax on the public. There is a benefit; there is the labor that is returned

as an equivalent for that money, and that amounts to five cents a pair, perhaps.

Q. That is, regardless of the skill of another manufacturer, or the amount of capital that he may possess, you know that he can get no advantages over you so far as the——

A. I should hate to believe that that is so.

Q. And that is the reason you are so pleased with it?

A. I believe the small manufacturers, who make the least number of shoes, can get equally the same terms that I can.

Q. He stands on the same footing as Mr. McElwain or the International Shoe Company, or any of the other companies?

A. Yes, sir.

904 JANUARY 6, 1914.

JONATHAN BROWN, JR., witness for defendants (recalled).

Cross-examination resumed:

At the request of counsel for petitioner I have prepared a list of the concerns from whom we can buy McKay sewing machines. It is as follows:

Boylston Manufacturing Company, of Boston; J. S. Holt & Company, of Boston; Hamel Shoe Machinery Company, of Lynn; Haverhill Supply Company, of Haverhill; Lynn Supply Company, of Lynn; Shawmut Machinery Company, of Boston.

Those are the concerns to whom we always go to obtain McKay machines. I do not know of any other concerns than those, excepting the United Company, that manufacture or put out McKay machines. We have always obtained all we wanted through those concerns. All the second-hand dealers have them.

905 JANUARY 6, 1914.

C. WILLIS BENNETT, witness for defendants.

I live at Fitchburg, Massachusetts, and my business is shoe manufacturing. I make women's, misses', and children's McKay sewed shoes. I have been manufacturing on my own account for nine years. Before that I was with E. N. Dickinson & Company, a shoe manufacturing concern in Fitchburg, for twenty-five years. During my last few years with them I was in full charge of the factory end of the business. I went in there as a boy.

When I started out for myself I got my machinery from the United Company and from the Singer, the Union Special, and the Wheeler & Wilson Companies. I make from 800 to 1,400 pairs a day, depending upon the season.

I took my machines from the United Company on the restricted form of lease without initial premiums. I chose that form

because I had a very small capital when I started and I didn't care to lock up so much money in machinery. I had been a superintendent and had saved some money. That is all I had to start with. Well, I formed a stock company.

As to what the United Company did in the way of setting up my factory, there was a vacant factory there in Fitchburg, and when I got through with my old concern I had no idea what I should do, and some of my friends suggested that I form a little stock company and take this vacant factory and go into business on my own account, which I finally decided to do, and I went to the United Shoe Machinery Company to see if they would give me a line of machines, and they stated they would, and I had a few samples made down in Lynn and went on the road and sold some shoes. During my absence the United Shoe Machinery had their expert mechanics there laying out my factory and setting up the machines, and when I returned on the first day of April, 1905, with orders for shoes, they had my factory all equipped ready for me to start; and all those who visit my factory say that I have one of the best equipped and up-to-date factories in the State, and I want to say also that they did this without any expense to me.

As to how detailed the work of their experts was in laying out my factory, in the first place they had an expert come there who thoroughly understood laying out a factory, and told me what size shafting I would require, what size pulleys I would require for running different machines. They chalked out on the floor the location of the different machines that would make my work go along in the best manner from one operation to another, and, as I say, when the whole factory was completed I had a thoroughly equipped factory.

906 I was free to exercise my own judgment in the selection of machines, as to taking their machines or the machines of others, and I did so. Whatever machines I took I found had been arranged for and set up by the United Company, and they had my factory ready to run.

As to my experience with them with reference to service, why, their service has been, I might say, indispensable. I don't know what I should do without their service. Whenever I have a machine break down, I immediately telephone to their branch office at Marlboro, and they have a man come up there from Marlboro, who is an expert on that particular machine, to put the machine in order, and they do all this without any expense to me, aside of course from the cost of the broken part of the machine, if there are any parts broken.

When I started in Fitchburg there was only one shoe factory there, and there were no shoe makers in Fitchburg outside of that factory. Consequently I had to teach a good many operators. The United Company furnished their agents and expert instructors to instruct the help, and made no charge for it. I have also received assistance from them as to improved methods of manufacture. Their agents are all the time telling us of improved methods which they have seen in other factories.

As between purchasing machinery, or obtaining it upon an independent lease with an initial premium, or obtaining it on the restricted form of lease which I have, the restricted lease was the most advantageous because I had no money to tie up in machinery.

Had I not been able to obtain my machines in that way, I would not have been able to start in business at all; never could have started if it hadn't been for the United Company.

As to whether I know of others who were situated as I was, why, I have heard of others that started in similar. I don't know that I could name them, but I know I have from time to time heard of them.

I do not find anything irksome or difficult about the clauses in the leases limiting the use of our machines. I have read the leases.

I own all my stitching room machinery and I have made a practice of depreciating the machinery which I own about twenty per cent every year. I include in the term "machinery which I own" not only my machines, but my lasts and patterns. I use McKay sewing machines and lease those from the United Company.

907 Cross-examination:

I was engaged in business in 1905. I did not make any effort to get machines from any other concern except the United Company. I don't remember that I made any inquiry as to whether I could get machines elsewhere. I know that there were other machines that I could have bought. I could have obtained bottoming room machines from the Bresnahan concern in Lynn. I think I could have got them in 1905.

My understanding of the restricted form of lease is that there is no initial payment. Some machines—we pay so much a month for the use of the machines. I suppose that is what you mean by the restricted form.

Before the United Company installed their machines there was nothing in the factory except the engine and boiler. I did not sign the leases until after the machines had been put in.

All the machines in my bottoming room, except the fairstitch machines, are United Company machines. I do not know what the cost of parts amounts to per annum in my factory. I never figured it up. I do not know what my total royalties amount to per year. They are a little less than a cent and a half a pair on the average.

908 JANUARY 7, 1914.

JAMES J. TIERNEY, witness for defendants.

I live at Holbrook, Massachusetts, and I am with Cass & Daley, shoe manufacturers at Salem. In 1904 I was with the firm of E. E. Taylor & Company, of Montello, in Brockton. I was working under Mr. Roberts and my duties included the purchase of all the supplies from the levelers to the edge setters, inclusive, including slugging awls.

I knew Mr. Hadley, of the firm of Hadley & Kimball, who dealt in awls and needles. As to his tastimony that the people having to do with purchases in the E. E. Taylor & Company factory declined to buy awls and needles of his concern in 1904, saying that if they did so the United Company would take away all its machinery in the Taylor factory, I positively did not make any such statement to him. To my knowledge no such statement was made by anybody in the purchasing department. We had been buying awls and needles of Mr. Hadley, and we continued to buy as long as he was in business and had awls to sell. He gave us notice that he was going out of business and asked us if we wanted some more of his goods, and I stocked up on slugging awls.

Mr. Bryant purchased for the end of the room over which he had charge, called the Goodyear end, and he, Mr. Roberts, and I were the only men who would buy awls and needles for the making room.

Cross-examination:

I had no more conversation with Mr. Hadley than what I have just stated in respect to purchasing awls and needles. On one of his visits he advised me to stock up on slugging awls, and I did so.

909 JANUARY 7, 1914.

WILLIAM O. BRYANT, witness for defendants.

I live in Brockton and I am the Mr. Bryant referred to by the last witness. I worked for E. E. Taylor in January, 1904, and had to do with the purchasing of awls and needles for the Goodyear welter and stitcher. I knew Irving Hadley, of Hadley & Kimball. As to his testimony that in January, 1904, the Taylor Company through its purchasing department declined to buy

any more awls or needles of him on the ground that if they did the United Company threatened to take away all its machines, I did not make any such statement to him, and I do not know of its being made by anybody else. I bought awls and needles of him every time he came into the factory to see me until he went out of business. At that time he said something to me about stocking up.

Cross-examination:

I had personal conversation with Mr. Hadley. I do not recall any such conversation about the purchase of awls and needles when the United Company was mentioned.

910 JANUARY 7, 1914.

CROSS JOHNSON, witness for defendants.

I live in the Roxbury district in Boston and I work in the Thomas G. Plant factory. I do side lasting, which is a hand operation. I have worked in the Plant factory for about fourteen years, lasting and pulling over.

I know Frank Morrison and have known him since I came to this country, fourteen years ago. I worked with him for six years at the same bench. In June, 1910, we were both doing pulling over in the same room. We were good friends. I knew about the trouble in the lasting room ~~on~~ May or June, 1910. We tried to make a strike and the morning when we were going to start it they caught us outside. Mr. McGaffee, Mr. Tom Plant, and Mr. William Plant took us into their rooms and talked it over and they gave us satisfaction. They raised the prices.

They had put lasting machines in and they were slower, so that the pullers did not earn so much. Before we went to see Mr. Plant the toe lasters had received a raise in wages.

Q. Now, who were the men that you say wanted to strike? The side lasters or the pullers over, or who?

A. All over the lasting room.

Q. And not men who had already got the raise?

A. No.

Q. Were you on any committee?

A. Yes. I was a committee that time when they caught me outside.

Q. Who else was on the committee besides yourself that you remember?

A. Well, a few fellows.

Q. Can you remember any of them?

A. Yes; I know every one of them, but I can't tell the names.

Q. Do you remember whether Morrison was one?
A. Yes. No; Morrison was not in the office that morning.
911 Q. He was not in the office that morning.
A. No.
Q. Now, did you know of Morrison trying to form a union at all?
A. Well, I don't know anything about it.
Q. Did you know of his spending any money among the men?
A. I don't know.
Q. Did he spend any with you?
A. No.
Q. Or, to your knowledge, did he spend any with anybody else?
A. I don't know; but not with me.
He never took me or any other men out, that I know of, ~~of~~ give us dinners or lunches, or to take us to the theater, or to meetings or things of that sort. After the day we saw Mr. Plant and went to work in the afternoon there was no more trouble and that was the end of it.

Cross-examination:

No one ever asked me to become a member of a union of the employees in the Plant factory.

912 JANUARY 7, 1914.

BENJAMIN EPSTEIN, witness for defendants.

I live in the Roxbury district in Boston and I am now working as a side laster in the Williams & Clark factory in Lynn. I worked for ten years and a half at the Thomas G. Plant factory in Jamaica Plain until 1912. I was lasting sides by hand.

I knew Frank Morrison and Abram Sochat and Charles Ross. They worked in the same room, right close to me. I was friendly with them and used to go out with them once in a while after work, and sometimes at the noon hour we would stop and talk together.

I was in the Plant factory at the time of the dissatisfaction, in May or June, 1910. I was on a committee to see Mr. Plant. Mr. Frank Morrison, Mr. Murphy, Mr. Harrison, and I were on the committee, two puller overs and two side lasters. We told Mr. Plant that the new machines kept us back in our work and we didn't do as much as we did before. Afterwards he fixed us up.

Previous to our going to Mr. Plant the operators of the toe-lasting machines had had a committee to see Mr. Plant and their wages had been raised, so we were appointed from the other lasters to see Mr. Plant and get a raise of prices also. There was

no strike and no union was formed, to my knowledge, and nobody tried to form a union, so far as I know.

I believe satisfaction was given to us immediately after we saw Mr. Plant. I went to his office with the others to talk with him.

I have no knowledge of Morrison or Sochat or Ross spending any money among the men to entertain them or to take them out or to give them dinners. If there was such a thing, I wasn't in it. No money was given to me.

Cross-examination:

At the time we applied for the increase in prices we did not threaten to strike if we did not get the increase in prices. I believe this matter with respect to the increase in prices was in June, 1910.

913 JANUARY 7, 1914.

ARTHUR F. CROUCH, witness for defendants.

I live in Medford and am a side laster in the Thomas G. Plant factory. I have been there nearly fourteen years and was one of the men who won prizes for good work there. I was there in June, 1910, and was pulling at that time. I know Epstein, Johnson, Frank Morrison, Ross, and Sochat. I worked in the same room with them.

I know there was trouble in May or June, 1910, because the work did not come fast enough through the toe lasters. A raise had been given for the toe-lasting work and the other men wanted it, too. A committee called at the office. I was named on the committee, but through some accident I was not there and did not go in with the committee.

I did not know of any agitation or any effort to form a union. I never heard of any money being spent among the men by Morrison or Sochat or Ross and I did not see any signs of it, and, so far as I know, they did not take the men out or entertain them or give them dinners or take them to meetings.

The trouble may have lasted two or three days. It did not last a week. The toe lasters, who ran the machines, first asked for a raise and after they got it the side lasters asked for a raise and the whole trouble did not cover over a week. There was no strike, but there was some talk of a strike if we did not get any satisfaction.

Cross-examination:

I think Morrison left the Plant factory immediately after the dissatisfaction that there was. There was talk about a strike if they didn't get the increase in wages. If this Ross is Charlie Gordon, I know him, but I don't know him as Ross. I do not

know when Sochat left the factory. I don't know whether he remained there through the year 1910.

914 JANUARY 7, 1914.

CHARLES FRANCIS CONNOR, witness for defendants.

I live in South Boston and I now work for Fred T. Ley, corporation, who are contractors. In 1910 I was working for the Thomas G. Plant Company as a toe laster. I had been there nearly two years.

I know Frank Morrison fairly well and I know Charles Ross and Abram Sochat by sight. They were working in the same room with me in the Plant factory.

I was one of the committee of toe lasters who presented their demands. We saw Mr. McGaffee, who represented Mr. Plant. I knew that the side lasters went to see Mr. Plant after the raise had been granted to the toe lasters. I was working in the lasting room right along, seeing the men there every day and talking with them when I was out at noon. As to whether I was around with them at all after working hours—well, maybe waiting outside for a car. There used to be a store across the street where we used to stay a little while after work. I did not hear any talk about forming any union among the men in the lasting room or about Morrison or Ross or Sochat spending money among the men to promote a union or entertaining them, taking them out to dinners or lunches or meetings in the evening. I never heard of anything of that kind and I never heard of a book or paper on which 300 men had written their names, agreeing to form a union.

Cross-examination:

I left the Plant factory in June, 1913. No one asked me at any time during the year 1910 to become a member of any union in the Plant factory. At the time we were trying to get the increase in wages there was no talk of any strike if we didn't get it. I would have heard if there had been because I was on the committee.

915 JANUARY 7, 1914.

SAMUEL PEARLMAN, witness for defendants.

I live in the Roxbury district, Boston, and am now running a livery stable in Roxbury. I have been running the stable about five months and it is my own enterprise.

I was a shoemaker for over twelve years. I worked at the Thomas G. Plant factory as a toe laster. I know Frank Morrison, Charlie Ross, and Abram Sochat. I was one of the committee of toe lasters that went up to try to get a raise. Our reason for wanting a raise was that the work was very hard on the new ma-

chines and we couldn't do the amount of work we used to do on the old machines. I felt that we ought to get a little more money for the work. We were paid by the piece. Mr. Plant satisfied the toe lasters. I understood that after that the side lasters went up to try to get a raise. I continued to work at the Plant factory until about eight months ago.

At the time that the men made these demands of Mr. Plant I never heard any talk made by Morrison or anybody else about forming a union of the men in the lasting room. So far as I know Morrison or Sochat or Ross did not spend any money among the men and I never heard of their entertaining them or taking them out in the evening. I would have been likely to know of it if such things had been going on. I was one of those that was well known.

Cross-examination:

I was friendly with Morrison, Ross, and Sochat. The committee of toe lasters was appointed by Mr. Slosberg, our superintendent, on the floor where we were working, and he sent us up to see Mr. McGaffee at his office. So far as I know, we did not intend to strike if we did not get the increase in wages, and nothing was said about a strike or about discontinuing work if we did not get it.

916 JANUARY 7, 1914.

JOSEPH BEAUDREAU, witness for defendants.

I live in the Roxbory district in Boston, and I am a toe laster in the Thomas G. Plant factory. I have worked there nearly six years, doing toe lasting all the time.

I know Frank Morrison and Charles Ross, but I do not know Abram Sochat. I think Mr. Ross went under the name of Gordon at that time. I was working in the lasting room in May or June, 1910, running a toe lasting machine. I was a member of the committee who presenting the claims of the toe lasters to Mr. McGaffee. The work on the new machines was hard and there were lots of high toes which made it harder, so the boys got together and thought they wanted a little more money. Four of us were appointed and we had a talk with Mr. Slosberg and Mr. McGaffee and finally they told us that our wages had been raised. I did not hear afterwards of any attempt by the side lasters to get a raise.

Q. Well, to your knowledge was there any attempt to form a union in the lasting room at that time?

A. Not during all the time I was there.

Q. Or did Morrison have anything to do with starting this agitation to go and see Mr. Plant?

A. Never heard of it.

I don't know anything about Morrison and Ross and Sochat spending money among the men and taking them out and giving them good times and getting them things to eat and entertaining them in order to get a union started. If there had been anything of that sort I think I would have got some of it, because I am pretty well known around there, and I know what is going on among the boys. I didn't get a penny and did not know of any such thing going on or their spending any money.

Cross-examination:

I do not recall when Morrison or Ross left the Plant factory.

I do not know Mr. Sochat.

917 JANUARY 7, 1914.

CHARLES WEIDMAN, witness for defendants.

I live in the Roxbury district, Boston, and I have worked for six years in the Thomas G. Plant factory as a toe laster. I know Frank Morrison and I know Charles Ross, but I understood his name was Gordon at that time. I know Abram Sochat. I worked in the same room with them. I was not on the committee that went to Mr. McGaffee. He arranged for us to get more money.

I was with the boys all the time at noon time and used to meet them quite a lot. I did not know anything about Frank Morrison trying to start a union. I knew he got dissatisfied and got around somewhere. I heard some talk about it, but I never heard anything positive about what he was doing. Nothing was ever said to me about it. I know nothing about his spending money among the men in taking them out and giving them good times.

Q. Were you among the men, so that you would have known about it if it had been going on?

A. I feel as if I should have got mine out of it if there was anything coming.

Q. Were you with the men enough so that you would know that that sort of thing was going on or not?

A. Yes, sir; I feel I was among them enough when I was asked to be one of the committee to represent the toe lasters.

Q. And you never knew there was any such thing going on?

A. I never knew there was any money given.

Cross-examination:

I never heard of any talk of a union. I heard the boys talk of being dissatisfied. We got the increase in wages practically the same day that the trouble started. We were satisfied that day and there was no further talk about it.

Morrison left the Plant factory several days after the side lasters and pullers over got their increase. Ross left about the same time and I think Sochat also.

918 JANUARY 7, 1914.

HARRY JOHNSON, witness for defendants.

I live in Lynn and am a roadman for the United Company in Lynn. I repair machines, set up machines, and instruct operators. I have been with the company at Lynn in that capacity over sixteen years. I work under Mr. Richards. He is now ill with pneumonia and has been ill for about four weeks. I wanted to see him last night, but I was not allowed to see him.

I know Frank Morrison, but I do not know Alexander Ross or Abram Sochat and never saw them. I did not tell Morrison to go to Charles H. Willson about June, 1910, and talk with him about starting a strike in the Plant factory.

Cross-examination:

I have known Morrison about 14 years. I first saw him in one of the Armenian halls in Boston. I am one of his countrymen. I saw him once in a while after that, but never had any talk with him.

I saw him early in August, I think, in 1910. He came down and talked to me about this matter and said he wanted to have a little money. I said: "I don't want to mix in that business at all. You had better take my name away from it."

919 Q. Did you ask him why he wanted the money—for what purpose?

A. He told me he was working for the United Company—to have a strike out there.

Q. What was your reply?

A. I told him the best thing he can do is to keep away from me—I don't want to put myself in trouble.

Q. Did he say anything about that matter, about having had a previous conversation with you about the same matter?

A. No, sir.

Q. Had you ever had a previous conversation with him about that matter?

A. No, sir. I used to get away all the time, the best way I could.

Q. Answer the question, please. Did you have a previous conversation with him about his employment with the United Shoe prior to the time when he came there and asked you for the money?

A. He didn't ask me for the money. He wants me to go and talk to the United Shoe to give him money.

I did not talk with any representative of the United Company about this conversation with Morrison, so far as I know. About the second or third time when he came down to the office, at the door, and he caught me again, I said: "The best thing you can do is to let me alone. I don't want to get mixed in that business." And I was afraid of my job. That is the whole size of it. I didn't want to get mixed in business like that. I was afraid of my job because I know as soon as I got mixed up in business like that there would be some kicking, the same as there is now, coming into court and talk about it. I didn't want to get into that business at all.

During the period from the summer of 1910 until last year he came to see me about ten times. I told Mr. Richards: "There is a case like this going on now, and I want to tell you now so I won't be blamed." I did not tell any other representative of the United Company. During all that period from the summer of 1910 until last year Morrison came down there and wanted me to use my influence with the United Company to have him paid money. He told me he had been employed by the United Company to strike over at Plant's.

920

Direct examination resumed:

On each of these occasions, when he has been to see me, he has tried to get money.

921

JANUARY 7, 1914.

HARRY W. SMITH, witness for defendants.

I live at Worcester and am an inventor and sportsman. I have been a manufacturer. I have invented automatic weaving machines for the Crompton & Knowles and Draper Companies, and those machines are in use in the Amoskeag, the York & Everett, and the leading gingham mills in the country.

I have been engaged in manufacturing fancy cotton, and at one time was proprietor of the Wachusett mills in Worcester. I thought of and brought about the consolidation of the Reed-Prentiss Company in Worcester; I sold the Queen Dyeing Company, of Providence, to the United States Finishing Company, and I arranged the consolidation of the Crompton & Knowles and the Crompton & Thayer Company at Worcester.

I have known Thomas G. Plant for eight or ten years, socially at first, and in a business way for the last three or four years. I first came in contact with him at the Brookline Country Club and horse show. He was a lover of horses and exhibited there and in many other places. I got to know him very well. I was judging at all the principal shows where he was exhibiting. He visited at my house.

In 1910 Mr. Plant was living at the Somerset Hotel in Boston. Our first talk about his shoe machinery inventions was at the Brockton show in 1909 or 1910. I knew through my patent attorney, Mr. Hains, who took out my gingham patents, that Mr. Plant was working out a line of shoe machinery patents, and in the course of our conversation I said: "Plant, I know what you are working at. Now, when you get ready let me know. I will put it over for you," and he said: "I have got my own plan, Mr. Smith."

I visited him at his factory the next summer, believe it was in July. He did not at that time speak to me about any negotiations he had had with anybody representing the United Company. All that he said about his machinery was that it was the best that could be made, and that he had his own plans for handling it.

922 Prior to that time I had endeavored to interest him in sports that I cared about, and had talked with him and with his wife at the shows. I knew that he had these valuable patents and also knew that he controlled the shoe factory. I wrote him from Leesburg, Virginia, and put the whole matter before him, and told him to get out of business and enjoy life.

He replied that he was interested to see me on his patents. Then I went up to his factory and saw him. He did not show me the machinery, but told me how successful it was and what it was going to be when it was done.

During the summer of 1910, I think on July 21, he telephoned me at my house in Grafton from Hotel Belmont in New York. He said to me over the telephone: "Is that you, Smith?" I said: "Yes." He said: "This is Tom Plant. I am at Hotel Belmont. Do you want to make some money?" I said: "Naturally." He said: "When can you be here?" I said: "Half past six to-morrow morning." He said: "Come on."

I went and over and found him at the Belmont early in the morning and talked with him from seven o'clock until nine fifteen. He told me the position he was in. He said he had had the western manufacturers on for two days, that they wanted to get the control of his patents, and that he did not propose to give up the control; that he wanted to play the game as he had figured to play it. He said: "I can do nothing on the eastern end. I have broken with Winslow, and Endicott has gone back on me." And he said: "Now, if you can get Barbour to send for me, as you told me you could, then I can get an opening with Barbour, and if you can get Herrick, so Herrick will come to my side of the case, I believe something can be done, because those two men dominate the situation."

He told me that he had been negotiating with Mr. Winslow, that Mr. Endicott had arranged meetings for him with Mr. Winslow, and that he had put up a proposition of a million dollars to look at his patents and that if they looked satisfactory they were to pay five millions more—six millions in all—at the end of three weeks. He told me of a meeting at the Algonquin Club at which they had voted not to put up a million dollars, and he said Mr. Herrick and Mr. Barbour were the strongest
923 against him. He did not know either Mr. Barbour or Mr. Herrick. I think Mr. Barbour was the president of the Linen Thread Company, of New York, and vice president and the largest stockholder of the United Company. I had met Mr. Barbour twice and I knew his son.

Before this meeting in New York I had argued with Mr. Plant each time I had met him about the necessity of matching up his patents with the United Company patents, so that the trade could get their value. I told him that if he matched his patents with theirs, they could go on and make better shoes and be more successful than they could be fighting. I argued that from start to finish.

I told Mr. Plant that Mr. Barbour was the big man at the New York end, and I thought he would look at things different from Mr. Winslow, whom Plant had been fighting with. As a result of the meeting with Mr. Plant at the Belmont, I made an appointment for him with Mr. Barbour. Mr. Plant and I went down to Mr. Barbour's office on that day, and we were there from 1.15 until 7.30 that night.

Q. What was Plant talking about at that time?

A. The value of his patents—the great gain that it would be to the Shoe Machinery to have his factory here, because it would be shown as a model factory to all the different companies of the world; that he had methods there that no one else knew about, and economical methods.

Q. Did you learn at any time during those conversations whether the idea of including his factory was a new suggestion or an old one?

A. That was a new suggestion that morning to me at the Hotel Belmont, when I insisted that if he still stood for the million I would not start at all, and he said he would withdraw the million.

Q. You mean demanding a million before they looked at the patents?

A. Before they could look; yes. I said I would not start at all.

The next morning we went to Mr. Barbour's office again, and Mr. Barbour decided to come to Boston and get the directors of the United Company together to see if they would reconsider their idea of Mr. Plant's patents.

I brought Mr. Plant in contact with Mr. Herrick at the Hote Touraine, and on his behalf I saw or communicated with
924 Mr. Winslow. Mr. Plant met me several times, and wrote me about the progress he was making; and finally, for accomplishing what he wanted me to do, he paid me five per cent on the six million—$300,000.

Cross-examination:

I first spoke to Mr. Plant about getting rid of his shoe machinery. The reason which I gave him was that his patents matched up with the United Company patents would give a greater value than if they were fighting. I had not examined Mr. Plant's patents, but I knew about them through Mr. Hains. I did not at any time examine his patents. Plant had six hundred odd patents covering the art from start to finish, and of course the United Company had basic patents, some of which had run out and some of which were still in force, and if Plant started to manufacture his machines there would naturally be a fight if the patents interlocked. When I first spoke to Mr. Plant about selling out he had not then discontinued the use of the United Company's machines, and there was no fight at that time.

When I advised Mr. Plant to let me know if he wanted to sell out and I would put it over, I meant that I would find the value of his patents and see the United Company and see what could be done. My reason for not seeing some other concern was because the United Company were the only people in that line that amounted to anything. Prior to the time that I advised Mr. Plant to sell out his machinery I did not have any conversation with any representative of the United Company.

Mr. Plant's reply to me when I first spoke to him about selling out his machinery was that he had his own plan. That was his reply for two years and a half. He did not tell me what those plans were until later.

The substance of the letter which I wrote him from Leesburg, Virginia, was repeating my advice that he should sell out, and saying that I would like to see him about his patents, and go into the matter carefully with him, and that he knew what I meant.

925 Between the time that I first spoke to Mr. Plant at the Brockton fair and the time of his telephoning from New York, I think I saw him four times about this matter, and

each time I advised him to sell out. Before the meeting in New York on July 21 he had taken out all the United Company machinery and had installed his own machinery.

When I saw Mr. Plant at his factory before he sent for me to go to New York, he said that he could not get a reduction in the royalties such as he ought to have for the tremendous amount of machines that he was running, and he proposed to show the United Company how to do business. He told me that he had a Wonder Worker Company, and that he intended to get out a line of shoe machinery and put it upon the market. He said that he was working to that end, and that he had tried to interest Mr. Endicott and Mr. Jones.

At the meeting in New York he told me that the western manufacturers had been in the East looking at his machines, and that he had been asked to make some arrangement with him to take an interest in his machines. He said that he would not allow them to have the amount of stock in his company that they wanted.

When Mr. Plant and I went to see Mr. Barbour in New York Mr. Barbour said that in his judgment the United Company ought to have Plant's machines. That was on July 21, and we met again in Mr. Barbour's office in New York the next morning, July 22.

I next met Mr. Barbour in Boston the following Monday evening and found that he had arranged a meeting of the directors of the United Company to see if they would reopen negotiations with Mr. Plant. That was in July, 1910. I did not have any further conversation with Mr. Barbour.

I had a conversation with Mr. Winslow about this matter at his office. I think it was on the sixth or eighth of 926 August. The substance of the conversation was: Mr. Winslow said that he was there to buy patents, whether they were five dollars or five millions; that if Plant's had value he would look at them for his company, but he wouldn't ever buy them till he looked at them.

I did not then arrange that Mr. Winslow could examine the machines in Mr. Plant's factory. My first conversation with Mr. Herrick was on the day I went to New York, July 20 or 21. That was at his office in Boston. In substance Mr. Herrick said that Mr. Plant was impossible; that they wanted to know what he had before they made a step, and Plant wouldn't show them.

927 JANUARY 7, 1914.

WILLIAM J. McGAFFEE, witness for defendants.

I am vice president and a director of the Thomas G. Plant Company, and general manager of the factory. I have been connected with Mr. Plant or the Plant Company in the manufacture of shoes for 23 years. For 17 years I have had charge of all the manufacturing part of the business, including the producing of the product and the looking after the machine end of the business. I have continued in charge as general manager and vice president since Mr. Plant sold out. I have entire control of the manufacturing end of the business. Nobody else interferes with it in any way. The other directors have other lines to take care of.

Since Mr. Plant, in September, 1910, sold 60 per cent of the stock in the Plant Company to the United Company, the United Company has not in the slightest way interfered with my management of the business, or in any way attempted to exercise any influence or control over my judgment in the management of the business. I remained vice president. Mr. Ratcliffe is president.

In September, 1910, we had in the Plant factory the machines called the Wonder Workers, which were the machines that Mr. Plant had built. We were making women's shoes at that time, and did not make any men's shoes.

We had all kinds of troubles with the Wonder Worker machinery. The parts were built in about every city where there was a machine shop, because Plant did not have any factory big enough to build his own parts, and when those parts were assembled together they did not fit. If one part was strong, another was weak, and when that part broke it would be apt to break four or five other parts that might otherwise be strong enough to stand up. We had a great deal of trouble and great deal of expense on account of breakage of the machines. There

928 was a force of machinists taking care of the machinery all the time, trying to keep the output up; there was so much breakage it bothered me in getting out the shoes.

All the machines caused trouble by breakage about the same way. Probably the stitching machine was the one that caused the greatest trouble. I also had a great deal of trouble with breakage on the welting machine.

We broke a great many lasts on the Wonder Worker machines. Comparing six months of our use of those machines with six months of the use of the United Company machines after we removed the Plant machines, I broke 210 pairs of lasts a week more on the Wonder Worker than on the United machines. I broke

25 pairs of lasts a week on the United machines, but I think it is safe for me to say that there were 20 pairs of those that had been cracked or started to break on the Wonder Worker machines. I made this comparison after I had removed the Wonder Worker machines and had put in the United machines. Lasts cost from $1 to $1.10 per pair.

Prior to 1910 the Plant factory had been run with the United Company machines, although we probably had five different makes of machines there besides the United. We took out the United machines and put in the Wonder Workers in 1910, and used those machines until in December, 1912, we started to change back again to the United Company machines.

I changed back again because I wanted to see if I could get a line of machinery that would stand up and manufacture shoes, without manufacturing machines all the time. I was absolutely satisfied that the Wonder Workers wouldn't stand up. It was my judgment that determined the policy of the company with respect to the changing over from the Wonder Workers. Mr. McLeod was associated with me as practical man in dealing with that problem. He agreed with me.

The trouble that was developing with the Wonder Workers which led me to this conclusion was their continual breaking down. I was not able to get out the work in the factory, because the longer they ran the weaker they got. I was giving them just the same work that they had been given first; I 929 was still making women's shoes, just the same.

As to what those machines would have done, or how they would have stood up, had they been put to the test of making men's shoes,—oh, they were altogether too light. I don't think you could have manufactured men's shoes on that line of machinery that Mr. Plant had got out and do it anywhere near satisfactory at all.

The Wonder Worker machines belonged to the Plant Company; they had been sold outright by Mr. Plant to the Thomas G. Plant Company in 1910.

In December, 1912, I put in one line of United Company machines and tried them out for speed and quality; that is, a welter, sole layer, stitcher and all the machines for one line of shoes.

I put those machines in for the simple reason that I couldn't make the shoes with the Wonder Worker, and after trying one line of those machines I then put in another line, ~~and then I put in another line,~~ and then I put in twelve or fourteen lines afterwards.

My action in putting in the United Company machines was governed absolutely by my own wishes and my own independent judgment. I did it because I felt that it was for the interests of the business of the Thomas G. Plant Company, of which I am a stockholder. The United Company never approached me in any way.

After I put in this line of United machines for making welt shoes I watched their work and followed it very close and compared it with the work of the Wonder Workers. I observed that the machines would stand up and my expenses would be so much less in making shoes with them, compared with the Wonder Worker machines, that I felt that it was of great interest to us; and in addition my operators could do a good deal more work on the United machines than they could on the Wonder Workers, on account of the breaking down of the Wonder Workers.

930 As far as the quality of the work goes it could not help but be better; what good points the Wonder Worker machines had the United Company put into their machines, and they had the advantage of them. We had the useful ideas from Mr. Plant's machines combined with the greater efficiency of the United machines.

For example, the Wonder Worker welting machine was a very speedy machine, but it had no control of the seam going around the toe same as the United machine has with its governor, like the governor on an engine. You can welt a shoe on that machine and get just as good a seam around the toe as you can down the side, because the governor regulates the tension.

The sole laying machine had a motion that would throw the sole, while the United machine is direct pressure, and I got better sole laying on the United machine.

As far as the stitching machine goes, why, Mr. Plant was never able to put the Baltimore attachment on his machine because the United had it covered in their patents. That was a great hindrance to the quality made on that machine, because if I wanted to stitch close on the inside or around the toe, I would have to also do the same on the outside, where I would like to throw my extension, and I had a great deal of trouble with that, so much so that I had to do it from a dinked sole, and in doing it from a dinked sole, or an inner and outer, the inner would stretch, and when it stretched I only had as much sole to cover that inseam as I would have had if it hadn't stretched, and the out-sole wouldn't cover it. The result was, in stitching on the rapid stitcher I would not get the seam on my welter, and then my shoes would rip.

I had 30 repairers at one time repairing shoes after the Wonder Worker machines, and that was on 10,000 pairs of shoes a day. I never figure over five repairers on the United machines, as against thirty with the others.

The new line of United machines, which we put in since December, 1912, embodied the improvements which Mr. Plant had made in the Wonder Worker machines and also such improvements as the United Company had made over their old line. The United Company's machines are much stronger and are better machines all the way through than their old line. I believe I can get a great deal better work and more work out of them than I could out of the old line that I discarded in 1910. There is more speed in them. As to whether I get it done cheaper, you might put it this way, of course the price of labor is so much now that you would pay the money for it anyhow, but I think an operator can do more shoes a day. So far as the work of the machines is concerned, it is a great deal less expensive than it used to be.

931 Our saving on the new machines over the Wonder Workers is three and a quarter cents a pair. That includes the different methods the United has got of making shoes over the Wonder Worker method. Mr. Plant had in some respects a method of making shoes absolutely peculiar to himself. This consisted in dinking out or cutting out the sole to the shape of the last before it was put on the shoe, while the United Company method is to attach a blocked sole to the upper, and then to shape it on the rounding and channeling machines. Mr. Plant's method required more hand work and was more expensive. Mr. Plant had not developed any efficient rough rounder.

Including that change, together with the improvements and greater efficiency of the machines, I could make a pair of shoes for three and a quarter cents less than I could with the Wonder Worker. Aside from this change in method, other economies result from the fact that in the same space I can make a thousand more pairs of shoes. That is because the method is quicker, because I do not have so much hand work to do with this new method of the United as I did on the Wonder Workers, and shoes don't have to wait; they keep traveling more regularly. Our rental there is twenty-five cents a foot, and when you have gained the room for a thousand pairs a day more that means something to you. That is a great saving of space.

My comparison as to breakage of lasts was between the Plant machines during the last six months that we ran them and the United Company machines equipped with the Plant improvements during the first six months that we ran those, and the

breakage was 235 pairs of lasts a week on the Wonder Worker machines and 25 pairs a week on the United machines. The Wonder Worker machines which were doing most of the breakage were the sole layer, the leveling machine, and the heel-nailing machine. We also got a good deal of breakage of lasts on the toe and heel laster, which broke the last across the waist. Comparing the breakage of lasts on the Wonder Worker machines with that on the United Company machines that we had before we changed from the United to the Wonder Worker, the number of pairs broken with the United machines would be so small that we would hardly take any notice of it. I would wonder if I got 10 pairs a week; 10 pairs a week would be an awful lot of lasts to break on the United machines. A welt last costs from $1 to $1.10 a pair. As to whether they are done for if they break, it is pretty hard to fix them. If they crack anywhere you might put a little bolt through and fix them, but usually they would break because the pressure came so hard on them.

932 The reason we changed in 1910 from the old line of United Company's machines to the Wonder Workers was because Mr. Plant owned the Wonder Worker machines and he owned the shoe business, and we had to come pretty near doing as he wanted. He wanted them shifted, and we had to shift. We had but very little to say about it.

Comparing the wages that can be earned by operators on the United Company's improved line of machines and the wages which could be earned by operators on the Wonder Worker machines, they can make more money on the United Company machines. The greatest difference would be on the rapid stitcher, because that was the weakest machine we had. The operator could make a great deal more money on the United stitcher than he could on the Wonder Worker, and it was the same on the welter, because the machine will stand up. The Wonder Worker welter was speedy enough, but would not stand up so that a man could do a day's work. The operators of the United machines can also make more money on the United sole-laying machine and heel-nailing machine than they can on the Wonder Worker machines.

Cross-examination:

I have been with the Thomas G. Plant Company for 23 years. I do not know how much longer they have been in business. From the time the United Company was formed in 1899 up to the time we installed the Wonder Worker machinery we might have had in the bottoming room a few machines from five or six

other companies, but we used mostly the United Company machines.

I do not know of any reason why the change was made from United Company machines to Wonder Worker machines other than that Mr. Plant desired to change.

Taking the first year we installed the Wonder Worker machinery and comparing the profits of that year with the profits of the preceding year, when we used the United Company's machines, it was a great deal less. I should say one-half less. That was not due to the purchase of the Plant machines; it was due to the great amount of bother and trouble we had with the Wonder Worker machines.

933 The Plant Company paid in the neighborhood of $400,000 for the Plant machines. It might be a little more than that, but that is as near as I can remember it. As to whether we declared a dividend covering the first year that we had the Wonder Worker machinery installed, we did, as we always did, declare a certain per cent dividend, and whatever the earnings on the common were we left in the business. That was the custom of the business. The company actually paid the money to Plant for the machines. This was paid at the time of the purchase. We did not have a surplus that took care of that.

Some of the Plant machines were more rapid than the old United Company machines if they would stand up and do the work; but they would not stand up. A man would not do as many pairs of shoes on them in a week. So long as they were running some of them would do more work—the welter, for instance; the stitcher would not.

The machines as a whole were too light. The machines could be made heavier if they got out new jigs for them. I should say the breaking of the machines was the only difficulty with them.

We started to remove the Wonder Worker machines and to put in the United in December, 1912. Some of the Wonder Workers are stored in the factory, and some in a storage building.

The cost of making the shoes during the first year after we installed the United machines in 1912 was a great deal less than the cost of manufacturing the shoes during the previous year on our own machinery. The United method of manufacturing shoes is so different from the Wonder Worker that you do not have to carry the same floor expense, and there is not so much repairing to be done. In the rough rounding system it used to

cost me $39 a week to take care of my extra help under the Wonder Worker system, and it is down to $7 a week now under the United system. The Wonder Worker would do the work so poorly that I would have to have somebody fixing the work up by hand before it could go to the next department. That is in one department, but I think it is a fair estimate of the rest of them. We have about 14 departments from the time the shoe is lasted.

We will have to pay the United Company the royalty
934 of four cents or four and one-quarter, whatever it may be.

We have not yet paid them any royalty, because the matter of changing the Wonder Worker machines for the United machines has not been fixed up. We figure our royalty into our shoes when we sell the shoes.

When I took out the Wonder Worker machines and put in the United machines I did not make any arrangement with the United Company with respect to royalties. I just simply put the United machines in, ordered them as I could take them and not interfere with the output of the factory. I know we have got to pay royalty, but I have not got the change all made. There was no understanding that we should not pay royalties until we had installed all the United machines. The reason we haven't paid royalties on the United machines now in the factory is simply because we haven't paid it. The reason for that is that the Thomas G. Plant Company business is to be turned over to the directors. There are nine directors, besides four directors representing the United Company. I don't remember the names of the representatives of the United Company. When we have a directors' meeting we call up the United Company headquarters, and they send out four people to represent them. I think the name of one is McLeod. I can't name the other three. Our secretary calls them up.

When I decided to change from the Wonder Worker machines to the United machines I went down to see Mr. Ed. Brown and told him I would like to try out one line of his machines. He said: "All right." That was the welt line, complete, for making a welt shoe.

If the Wonder Worker welter and stitcher would stand up they would do more work in a day than the old machines of the United Company that we had before. I think if we did twenty-five pair it would be a pretty good average.

On the new United welter with the Wonder Worker attachments we do 50 pairs of shoes a day more than we would do on the old Wonder Worker machine.

935 Mr. Plant never used the Baltimore edge attachment on the stitcher because the United Company had a patent on that. I do not know what patent or patents there were on that machine, but I know Mr. Plant told me he could not use the Baltimore edge attachment on account of its being one of the United patents. That is all I know about it. I never went into the patent end.

On the old United machines my breakage of lasts was about 10 pairs a week, and on the Wonder Worker machines about 235 pairs a week for six months. On the new United machines the breakage was 25 pairs per week for six months. I think the reason why the breakage is heavier on the new United machines than on the old United machines is because there are so many lasts that started to break on the Wonder Worker machines and I am feeling the effects of it now.

As to why the Wonder Worker machines broke so many lasts it was on account of the levelling machines, the springs being so heavy on them that when the form would come to the sole the pressure was so great that it broke the last. I might say the same of my heel nailing machine. Lasts were also broken on the toe and heel lasting machine and on the sole laying machine.

Some of the parts of the Wonder Worker machines were made in Worcester and some in Providence. I do not know by whom. I did not follow that part of it. I can not give the names of any concerns that manufactured Wonder Worker machines or parts of them.

I can not make any estimate of the amount of royalties that we now owe the United Company on the new machines. There was no arrangement made with them at the time nor any understanding that we should not pay royalties for a period. I did not take up the matter with the United Company to find out whether we should pay royalties when they fell due. Mr. Ratcliffe, our president, might have. He and Mr. Mitchell, our secretary, took care of that part of it. I did not have anything to do with it.

936 In comparing the expense of operating the old Wonder Worker machines and the new United machines I did not take into consideration the amount of royalties in the three and one-quarter cents saving per pair that I estimated; neither did I take any account of the investment in or the upkeep of the Wonder Worker machines. I took into consideration the floor space.

When I said three and a quarter cents a pair I said that was the difference in the method of manufacturing welt shoes with the old Wonder Worker and the United method.

The United have a rough-rounding system that Mr. Plant couldn't install in his place, because he told me he didn't have any rough-rounding machine to do it, and so we had to use a died sole and there was three and a quarter cents difference.

I have not taken into consideration at all the amount of royalty we would have paid on United Company machines. Our average capacity is 12,000 pairs a day. It was about 12,000 pairs this year. We manufacture women's shoes altogether.

Direct examination resumed:

I have machines from eight different companies besides the United machines and the Wonder Worker machines that I am still using. I have machines of the Parsons Machine Company which I use for dieing out soles. I have machines of the Boston Machine Works and the Tubular Rivet & Stud Company. I have the Knight perforating machines, the W. J. Young Company's skiving machines, and a machine of the Fortuna Skiving Machine Company. I also use the North American Chemical Company's machines and the Puritan fair-stitch machines.

Cross-examination resumed:

I have had some of those machines from other companies for quite a while. Most of them I have bought within two years, some within a year. I have bought the Parsons machines and the Boston Machine Works machines within a year. The Parsons machines are dinking machines and the Boston machines are folding machines which fold the vamp so that you won't
937 have a rough edge on the vamp. I have those machines because I find they are better than the United. I do not have any lasting, welt sewing, outsole stitching, heeling, or metallic fastening machines except the United. I have two of the United Company's eyeletting machines and also have my old line of eyeletting machines that I had previously. I have forgotten whose machines they are but I have run them for years.

Direct examination resumed:

Mr. Winslow has agreed to sell the Thomas G. Plant Company business to five of us that have been associated with Mr. Plant from 16 to 23 years, as soon as we can prove to Mr. Winslow that we are capable of running the business without the assistance of the Thomas G. Plant Company. Those five directors have not any connection at all with the United Company.

Cross-examination resumed:

All of the Plant machines that I am not using are stored. I am using now about 480 Plant machines and about 450 United machines.

JANUARY 7, 1914.

GEORGE T. MCLEOD, witness for defendants.

I am a "practical man"—shoemaker—at the Plant factory. My duties are to see that the shoe is made correctly, and that requires me to keep in close touch with the machinery all the time. I have been with the Plant Company about 22 years, and I am a stockholder and a director of the company. I have been a director for about three years.

I share the responsibility for the selection of machinery. When a machine is needed I look it over, and sometimes I go to see the machine running in other factories, and I decide whether it is better than the one we have.

938 In connection with the change from a Wonder Worker machine to a United machine I have had to decide which would be the best for our business, after seeing both machines run. I decided on the best machine. When we have changed a machine I decided that the new machine was better for the business than the machine that we were running at the time. The changes from Plant machines to United machines were made with my approval. The policy of making the change was settled by Mr. McGaffee and myself and the rest of the directors if they were called in.

My reasons for changing from Plant machines to United machines were that I found that the United machines were, in general, easier to run, more quiet, and do not tire an operator so much, so that the operator can do better work and feel fresher at night. The United machines are also put together better mechanically and the parts fit better. If a part does break the new part fits better, and the operator running the machine does not have to wait so long for his machine; and he can turn out a bigger day's work with the United machine than he could with the Wonder Worker machine.

As to the difficulties we had about breaking down on the Wonder Worker machines, the Wonder Worker machinery was installed very quickly in the factory. It was, I might say, all installed in a lump. In starting the Wonder Worker machines we found that a great many of the parts did not go together; that is, one piece would not fit in with the other pieces. There would be a cam or some other part that would not fit and would have to be taken to a mchine shop and fitted, or would have to be fitted by the machinist in charge of the machines, so that the operator would be delayed sometimes from half a day to a whole day. We had to have more machines to do our work than we would have if the machines ran regularly.

This trouble with breakage and difficulty in making prompt repairs was more on the start than when we finished with the Wonder Worker machines, because we strengthened the machines in some places. But it was a great deal more than we have on the United machines now. We had to have
939 probably three or four times as many machinists watching the Wonder Worker machines and tending them all the time; yes, more than that.

Among the United machines which I thought were better than the Wonder Workers were the Goodyear innersole channeler, the Goodyear lip turner, the lasting machines, the welter, the welt beater the sole layer, the rapid stitcher, the heal nailing machine.

I am familiar with the improvements which Mr. Plant had embodied in the Wonder Worker machines, and illustrations of those improvements which had been embodied in the new United machines which we put into our factory are the right and left wipers in the bed lasters; in the welt machine the mechanism for holding the welt and cutting off the welt, thereby relieving the operator from holding a knife in his hand all the time; and the stop motion on the Goodyear stitcher. Those strike me as important.

I heard Mr. McGaffee's testimony about the reasons why the changes from Wonder Worker to United machines were made, and about the benefits that have accrued from the changes. Those changes were made with my approval and in the exercise of my best business judgment, and I am in accord with Mr. McGaffee in what he said about the results of the changes in economies and advantages. I have been all over that with him and we decided it months ago.

In reaching my decisions about changing these machines I have not had anything to do with the United Company or any of its officers. I do not come in contact with them very often. I never met Mr. Winslow but once. I am acquainted with some of the officers, but I never had any suggestion made to me that it would be to my advantage to change machines. The
940 United Company has not brought any pressure or influence to bear upon me at all. I would not take it if they did. These changes were made in the exercise of my honest and independent judgment.

Cross-examination:

I am a stockholder and a director of the Plant Company. I attend the directors' meetings, and as the representatives of the United Company came in to the directors' meeting I have been introduced to them, but do not know the names of any of them. I remember that two years ago Mr. Bradbury was one of them.

We are still using in the Plant factory about 480 Wonder Worker machines. These machines are mostly on McKay shoes. We make both McKays and welts. We have left a few bed lasters on the McKay work, one or two rapid stitchers, and our nailing machines. We have Wonder Worker machines in our finishing room on both McKays and welts.

We have one or two lip turning machines in the stock room in the manufacture of welt shoes. We have no Wonder Worker machines on welt work in the lasting room, in the welt sewing or outsole stitching room, or in the heeling room. The only Wonder Worker metallic fastening machine that we are using on welt work is a machine that puts three nails into the heel.

As to repairs for the Wonder Worker machines, we repaired a great many in our own machine shop. We had quite a stock of parts on hand that were left with the machines, and we got some from the United Company.

At the time we first installed the Wonder Worker machines there was not a large number of parts. I do not know exactly how many there were. As to whether we made new parts from time to time as we needed them—we did not. We had most every part on hand, I think. We did not have enough parts on hand to supply us from June, 1910, up to December, 1912, without making any new parts. I could not tell how we got those parts.

We got some from the United Company.

941 The Wonder Worker machinery was installed in about five weeks, and we stored the United machines when we removed them. I do not know what has been done with those United machines.

The Plant reversible wiper was embodied in the United Company's bed laster, and the mechanism for cutting off the welt and the stop motion were embodied in the United Company's welter, and the stop motion in the Goodyear stitcher.

I have not noticed any other machines that we now have from the United Company in which Plant improvements have been embodied.

JANUARY 7, 1914.

EDWARD W. BURT, witness for defendants (recalled).

In reference to my statement yesterday on cross-examination that I thought I bought my Eppler machines, I have looked this up, and I find that those Eppler machines were leased to George H. Burt & Company in Brookfield. That was my father's factory. The lease, which is defendants' Exhibit 269, is dated March 18, 1897.

Those Eppler machines were shipped to my factory in lieu of some of the machines that I mentioned yesterday. I want to

correct my statement that I bought them. I was mistaken about that and had forgotten the fact.

These Eppler machines were first used as soon as we started in, about 1898 or 1899.

JANUARY 7, 1914.

GEORGE E. WARREN, witness for defendants.

I am a mechanical engineer and have been in the employ of the United Company since its organization, with the exception of two years. My work for that company has been designing and overseeing the manufacture of shoe machinery. I have devoted my time more particularly to machinery used in sewing shoes. Practically my entire time while I have been with the United Company has been devoted to the study and invention of and work on shoe machinery, particularly sewing machines, Goodyear machinery. My headquarters are in Beverly and Boston.

942 Since I have been with the United Company I have followed the development and improvements of the Goodyear machines, and I am familiar with the machines which were the standard types at various times. I know what improvements have been added from time to time.

In September, 1910, I was requested by Mr. Winslow to go to the Plant factory with several others. Mr. Winslow, Mr. Mayo, who is connected with the United Company as an engineer, Mr. Nelson W. Howard, who has testified, Mr. Benjamin Phillips, and one or two others went at that time. The report which we made at that time was not in writing.

When I was called to Mr. Winslow's office I was told to go with the rest of the gentlemen that were there to the Plant factory and look at any or all of the machines in that factory and examine them to see what features there might be, if any, about the machines that would be valuable if added to our machines, or if they would be any addition in any way to the manufacture of shoes, and I think I spent two or three days there examining practically all of the machines. I reported to Mr. Winslow every night.

As to whether later, after the purchase, I made a more extended examination: Soon after the purchase I was detailed by Mr. C. H. Willson to go to the Plant factory with Mr. Mayo and examine each machine and recommend what should be done with it, and we spent the entire time for a period of about eight weeks examining all the Plant machines, and we reported to Mr. Willson in writing the result of our investigations.

That was the report signed by Mr. Mayo and me that went in as plaintiff's Exhibit 267.

During my investigation of the Plant machines in September the Plant welter and stitcher both impressed me very much, and

I so reported to Mr. Winslow, stating that the advance made in the welter was very great and that the arrangements on the stitcher suggested things to me that would greatly improve our own stitcher.

At that time our model G welter was our standard welter and had been since about 1908. That was run at a speed of a little over 500 revolutions—that is, 500 stitches per minute—as compared with a speed of about 375, at which the prior machine had been run. That model G machine was of entirely different design from prior machines and differed very much from them in many substantial respects. It embodied the principles of sewing in some of the earlier types.

943 This machine did not embody any welt holding or cutting device. We had tried for a number of years to hold the welt, and we had used one or two experimental devices, but their success depended entirely on the operator, and we had never made them commercially successful. We had never attempted to cut the welt.

The model G machine had no device for stopping or turning back the machine at the end of the machine's operations. That had always been done by hand.

The model G machine embodied means which enabled it to sew slower around the toe than on the sides of the shoe. It could be run at any speed.

When I examined the Plant welter in September the things which I thought showed an advance beyond our model G machine and which I thought would improve that machine were as follows:

In the first place, the Plant machine was the first machine that I had ever seen that would stop in the proper position so that the shoe could be removed.

Our model G machine might stop with the needle still in the seam, and the operator had to turn the machine to the proper position so that the shoe could be removed. The Plant welter stopped with the needle free from the seam, so that the machine was ready to begin on another shoe. The mechanism for accomplishing this was absolutely automatic.

Then, it was provided with a welt holder and cutter, which had never been done before, and by such an arrangement the operator always had the same amount of welt when he began the sewing and the same amount when he had finished. This had never been done before, and the lack of this had always been expensive in the manufacture of shoes, on account of the waste of welting.

In connection with that was what we would call a separate device, a welt measurer, which was used in connection with this

cutter and holder, which insured this saving of the welt. Those were the particular features that were an advance over what we had done.

The design of Mr. Plant's welter was new; the method of sewing was exactly what had been used on the older types of machines. There was nothing new about that. Plant added these improved devices to the old type of machine.

944 When we first saw the Plant welter it was running as fast as the model G, and in one or two instances was running faster; but while we were in the factory we saw a great many breakages in the stop motion due to this speed, and the machines which were actually running for a greater part of the time had been reduced somewhat in speed.

The improvements which I noticed in the stitcher, in my September examination, were as follows:

The stitcher was provided with a stop motion similar to that one on the welter, so arranged that the machine would always stop in a proper position to remove a shoe, and so that another could be inserted, and in this stopping it raised the presser-foot which helps hold the shoe in position. Before this it always had been necessary for the operator to stop the machine by hand—remove one hand from the shoe, stop the machine, and then raise the presser-foot so he could remove the work. The presser-foot is one of the work members that holds the shoe in position in the machine.

Also, under the old method, it was necessary for the operator to lift the presser-foot so he could introduce a shoe. Now, in this machine, after the shoe had been finished and removed it was all ready to start again. This was a great saving in time and a great saving in the exertion of the operator.

The Plant stitcher ran at exactly the same speed as our old type of stitcher—375 revolutions per minute. Our later types ran at a speed of over 500.

As to the value of these welter and stitcher improvements, I reported to Mr. Winslow that they were very valuable indeed, and explained to him that while we had a fast machine, well constructed, as we had been a great many years producing this commercial machine, we had not advanced in respect to saving of material and the labor of the operator as Mr. Plant had; that while we had made some attempts to hold the welt we had never attempted in any way to hold it and cut it off as Mr. Plant had; neither had we attempted to stop the machine in the proper place, and that if we could have those things added to what we had already produced in the way of a machine, the art would have advanced very materially. That is, a welter could then be

put upon the market that would be far ahead of anything ever produced; and that the stitcher suggested the stopping and lifting of the presser-foot, which had never been done; and although both in the Plant stitcher and welter the ideas had not been carried out in a mechanical way, and I felt satisfied that they would not stand up and do the work, the ideas were good and valuable. I told Mr. Winslow that we should have them.

945 I later told Mr. Winslow that the improvements on the welter and stitcher were worth all he gave for the entire property, and that was my opinion.

During this preliminary examination in September, I looked at every type of machine Plant had, but did not give such particular attention to lasters and heeling machines as I did to the stitchers, until Mr. Mayo and I went there finally to see what disposition should be made of the machines, and then I examined all of them very carefully.

In my report as a result of that later examination I divided the machines in the Plant factory into groups, and that seems to be the most convenient way to discuss them.

First, some machines were improvements as machines over types which we had, and some were machines which we did not have at all. We recommended that 17 of these machines be adopted by the United Company. The United Company had machines for doing the work of some of these machines, but the Plant machines were of better design and could do the work either faster or better than types which we had.

There were 69 machines and devices in Plant's catalogue. I say devices because I recall that a shoe rack was included and there may have been one or two other things of that nature.

Our second group comprised machines that had never been finished or had only been used experimentally in the Plant factory. They were all in the catalogue, but were not what I would call commercial because even Mr. Plant had not used them, except experimentally. There were 10 of these machines.

The third group comprised machines that were particularly adapted for making shoes by methods peculiar to the Plant factory. For example, Plant had machines for making a special type of innersole, and that was the only factory where that kind of innersole had ever been made, so that those machines were not of generally useful application. In this group were

946 also machines for preparing the shoe for the stitching operation without using a rough rounder, and machines for treeing a shoe on the original last. There were nine machines in this group.

In the next group were 11 machines which we did not consider commercial because, while they did work similar to that done in other factories and while they could be run and were being run in the Plant factory, they were continually giving trouble or would not have been adapted for men's work. We classed those as machines which could not have been marketed as commercial machines.

The next group comprised seven machines that were faulty in construction, although they could have been used. They were so organized that they might cause the operator some trouble, or so that he could not produce quite as much work as he could on other types of machines.

The sixth group comprised 15 machines that were almost identical with machines put out by the United Company. Many of them were exact copies, although the workmanship on them we did not think was quite up to the machines we made.

As to my last group, in looking over the Plant machines we found many devices which would either assist the operator to do more work or better work, which we thought if they were embodied in our machines would be a great improvement, and we recommended that quite a number of those be adopted. And out of that number there were finally thirteen embodied in our machines. A great many more were tried, but were found to be inoperative or not practical.

I think your summary is correct—that there were fifteen machines which were exact copies of ours; there were seven machines of faulty construction; there were eleven machines which we did not consider commercial; and there were nine machines which were adapted only to a particular method which was in use only in the Plant factory. That is forty-two machines out of the sixty-nine.

As to what we have done with the twenty-seven remaining, seventeen were adopted, but we found after adopting them that

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a number of them were not as good as we thought they would be, and especially when they were put on another kind of work. And the result is that several have been wholly reconstructed. Others we had to make some changes in to suit conditions that were different from the conditions in the Plant factory. That comprised all of the adopted machines. That is, we recommended the adoption of seventeen. We adopted all of those, and we have been at work on them since, to make them better if we could. Some of them we are still working on and have not yet been able to make them what we would call commercial. These have all been offered to customers.

As to the devices, of which I said thirteen had been made use of, those have all been added to our machines; made a part of our machines. The experimental department is still working on these things that were obtained from Plant. We recommended more than this thirteen, but we finally adopted the thirteen, and many more are still being experimented with.

The reason why it takes so long to find out whether these machines can be used is because conditions vary so in the different factories that it sometimes takes a year or two to determine whether we shall adopt a machine. We will try out a machine with improved devices in one factory for several months, and then we give the machine a similar trial in some other factory on another kind of work, and we try it out in that way in six or eight different factories.

These machines of Mr. Plant's, built as they were, in my opinion would not have been commercially successful to do work under the varying conditions under which machines have to be supplied to shoe manufacturers. Broadly speaking, they would not have been commercial, for the reason that they had all been made and tried on women's work, and they had no opportunity to try them on any other kind of work, and it has always been the experience of anybody that has designed or made any shoe machinery that you can't tell by trial on one kind of work whether a machine will become commercial or not. It requires these long trials to determine just exactly how a machine will perform on the different kinds of work. The United Company are obliged to make their machines so that they can be used on any work that is presented to them. And in looking over all these Plant machines we found by a careful examination that they were faulty in construction, light in weight in places, and badly designed, so that I feel very sure myself that his machinery as it was being used would not have been commercial in the sense that it could be used on all classes of work.

948 During our long examination of the Plant machines, extending over a period of perhaps two months, we had a good opportunity to observe the breakages in the machines. It was quite frequent in the stop motion of the welter, and in the stitcher, and it was particularly noticeable in the heel attaching machine.

We also noted the breakage of lasts caused by the faulty design or construction of several machines, including particularly the sole layer, leveler, and heel attaching machine. The sole layer and leveler had to apply so much pressure and in such a way to the shoe, which was on the last, that the wood of the last would not stand the strain. The heeling machine was so

arranged and designed that there was great danger that its pressure would overstrain the wood and break the last. It was of course, sometimes impossible to tell what machine broke the last, because the breakage would not always be known until the last had been removed, but these three machines were particularly harsh on the lasts. The breakage of lasts was a very noticeable feature in the Plant factory. We saw a great many lasts that had been broken on one or more of these three machines.

The first group of machines which we recommended for adoption comprised the inner-sole lip wetter, inner-sole flexor, fair-stitch welt attacher, lip turner, outsole wetter, reversible roll channel layer, stitch indenter and burnisher, shoe drier, hard finisher and brush cleaner, shank and forepart burnisher, heel edge and bottom polishing machine, heel scourer, iron lasting bench, cloth cementing and drying creel, outsole flexor, welt slasher and groover, welt seat beader.

This list differs slightly from the list in our written report of plaintiff's Exhibit 267. The heel scourer is in this list, but was not recommended. On further study we adopted that machine. Also there were three devices, a shoe rack and two minor attachments, which we recommended adopting that have not been adopted. The shoe rack was the best rack which I ever saw, but it was too expensive, and we could not find any manufacturer who was willing to pay for so good a rack, so that it was unsalable.

949 Some of these seventeen machines were general department machines but five would be classed as Goodyear auxiliary machines, the innersole lip welter, the innersole flexer, the lip turner, the stitch indenter and burnisher, and the welt slasher and groover. We thought they were good machines and they embodied good ideas, but several of the machines had to be entirely reconstructed to do work in a factory different from Plant's.

The second group, consisting of machines that were either unfinished or had only been used experimentally, comprised the puller over and tip measurer and rapid side laster, tack puller and baster, rough rounder, heel-seat dinker, stitch separator, inner-sole lip cutter and marker, out-sole marker, sole rounder, speed hand laster.

One or two of these machines, particularly the speed hand laster, were used for a short time in the Plant factory, but were abandoned very soon after the acquisition. The speed hand laster was really a tacker for driving tacks when doing side lasting. When we began our long examination of the Plant

machines they were using this speed hand laster, but, before we finished, the work was being done by hand and the speed hand lasters had been removed. It was found that it was very uncertain in its action, that sometimes they would get more than one tack when they wanted only one, and sometimes would not get any at all, and the operator using this machine could not last the upper properly, as his hands were occupied in holding this tacker.

As to the other machines which were either unfinished or experimental, the puller over and tip measurer was never finished and had never been used, although it was in the Plant catalogue. The rapid side laster was similar to our Consolidated hand-method machine, but not in good operative condition, and it had never been used in that factory. The tack puller and baster was never completed, and we were unable to see it in operation. The rough rounder was never completed. As Mr. Plant was making shoes under another method, he said he had no occasion to finish that machine, and it was not in any condition to be shown. The heel-seat dinker was in a similar condition. It never was finished because, under the system of making shoes, it would have no value to him. That is a machine for cutting out the heel seat of the outer sole after it has been attached to the shoe. The stitch separator was only adapted for working on very coarse stitching, and never was operative in that factory, only on such work. The insole lip cutter and marker was used very little, but was found to be very impracticable and was soon removed. The out-sole marker was similar. The sole rounder could not be used on strip stock, and also it did not follow the pattern.

950

Strip stock is a long piece of sole leather from which soles are died or shaped. The sole rounder was continually out of order and, while we saw it run there at one time, it was soon abandoned.

As to the nine machines of group three, which were particularly adapted to work only in the Plant factory, the first five machines were made particularly to make what is called the Plant inner sole. This sole had some features about it that appeared to be good, but on a very careful examination it was found that such a sole as he was using not only had defects, but cost much more than either the Gem or the Economy inner sole, and while those machines that I have mentioned, the five, were good machines and worked properly to make that sole, we don't know of anybody that would care to make it. We have tried it ourselves in one or two factories, and since those trials even

the Plant factory have abandoned some features of that sole and do not now use some of the machinery designed for it.

These five machines were the innersole cloth placer, lip cutter, single lip channel opener and edge compresser, double lip channel opener, innersole cloth tucker and lip trimmer. These machines were not adapted for use on any kind of innersole other than the Plant innersole.

The other four machines of this group were the welt-marking snippers and the shoe channeler, which were used for making shoes without a rough rounder, and the treeing machine and the cleaning and treeing leg, which were used for treeing shoes on the original last.

The Plant method of making shoes without a rough rounder was an old method long in use before the rough rounder was produced, and had been done by hand until he made two machines for helping the operation. By that old process the outer sole is died out to the shape of the finished shoe, or practically that, before it is attached to the shoe. The sole is then laid on the welted shoe and any inaccuracies are trimmed out by a hand operator. Then the sole is channeled. Plant had invented two machines which helped this operation, both the channeling and the placing of the sole.

951 The invention of the rounding and channeling machine revolutionized the methods of attaching the outer sole. In using this machine, after the shoe has been welted a blocked sole, like defendants' Exhibit 102, is placed on the shoe and the desired shape for the sole is produced by the rounding and channeling machine, which at the same time cuts a channel in the bottom of the sole, so that the shoe is all ready to be stitched.

Every manufacturer that I know of is using the blocked sole and the rounding and channeling machine. The cost of making the shoe by the dying-out process has always been more than by the rounding and channeling process.

Plant's method of cleaning and treeing on the last was like the first way of doing it. After all the making operations have been performed upon a shoe it is necessary to iron out the wrinkles in the upper and to clean them, since they get soiled in going about the factory. The original method was to do that while the shoe was on the last upon which it was made, but it was almost impossible to remove the last without breaking or destroying the upper of the shoe, or the shape of the shoe. Then the Miller treeing machine was devised. In using that the last was removed after finishing the making operations, and the shoe

was mounted on a collapsible tree foot which could be expanded to the shape of the original last, and the shoe then cleaned, finished, and ironed. To remove the shoe the form was collapsed and made much smaller, so that the shoe could be removed without spoiling the shape in anyway.

The Plant machines merely handled and held the shoe on the original last, so that all the treeing operations were done without removing the last. The result was that the shape of the shoe was spoiled when it was attempted to remove the last. He made the machines this way to keep clear of our treeing machine.

952 Group No. 4 comprises puller over and tip measurer, heel attacher on wood lasts, stitcher, welt beater, leveler, custom sole layer, toe and heel laster, heel slugger, heel loader, heel breaster, welter. We did not consider these machines commercial for various reasons.

Generally speaking they were of such construction that they would break and get out of order. That was the general criticism on the heel attacher and the heeler. They are practically the same machine, only one is used for Goodyear work and the other for McKay work. The machinery was of such light construction that it was continually broken down at the Plant factory, and we felt sure that if such a machine were tried for men's work it would be even worse, because the pressure in closing the heel down onto the shoe is much greater on a man's shoe than on a woman's shoe. We found parts that would break on a woman's shoe on account of this pressure, and we knew that when we attempted to apply any more pressure the breakage would be more frequent; and, also, there are more nails to drive in a man's shoe than in a woman's shoe, and that would have put additonal strain on the machine, so that there would have been continual trouble in that respect, as there was in doing the woman's shoes. There were many other features about the machine which looked light in construction to us, and which we felt sure would give trouble when attempting to do any heavier work than was then being done upon the machine.

"The stitcher could not be used commercially, because it had never been organized to sew shoes with extension edges. This was a very serious defect, because almost every manufacturer wished to make shoes with extension edges.

As to the importance of this, it is natural, in wearing a shoe, to tread over on the outside, so manufacturers always leave or try to leave more extension of sole on the outside than on the inside, so that in the wear of the shoe the foot will not project

over the sole. In order to get a good, serviceable shoe in making it this way, the stitching must be in relation to this extension edge; that is, it must be a certain distance from the upper on one part of the shoe, and a different distance on another part of the shoe.

The Baltimore edge attachment accomplishes this. It is not exactly automatic, and the different distances of the stitching from the upper are controlled partly by the operator and partly by the shape of the shoe. It is under the operator's control whether he shall sew near the edge of the sole or away from it.

953 Mr. Plant's machine had no Baltimore edge attachment, and it was necessary for the operator to so handle the shoe that he would approximate the position desired. He could not place the stitches accurately at all on a shoe without a channel, and a great many shoes are made without channels. Shoes with extension edges were sewed on the Plant stitcher, but the work was entirely according to the judgment and eye of the operator. It produced very irregular work. The work done on the Plant machine was not anywhere near as good as that produced with the machine with the Baltimore edge device, and would not be accepted in a great many factories. He was trying to do with his stitcher the kind of work which had passed muster before the Baltimore edge attachment was invented. But nearly all manufacturers had adopted and insisted on the Baltimore edge attachment. It produced a good deal better work.

There have always been some shoes made with what they call close edges, which are always the same distance from the upper all the way around. Such a shoe as that, of course, could be done without the Baltimore edge device. But nearly every manufacturer has insisted upon having a machine so organized that they could sew extension edges.

The welt beater was not provided with any means for what is called slashing the welt. That is to say, a welt around the toe of a shoe has to be stretched somewhat on the outside when beating, and to help this it was customary a number of years ago to slash the welt by hand before it was beaten. But the machine produced by the United Shoe Machinery Company would beat and slash this welt at the same time, and all men's work had to be slashed in order to beat it out properly. Hand slashing was not satisfactory, because the operator would be very careless and sometimes cut into the welt too far and spoil it.

We did not consider the leveling machine commercial for several reasons. One was that owing to the pressure required

to level the shoe properly there was very great danger of breaking the last; we saw many lasts which were broken on this machine. Another reason was that the machine required very accurate forms.

These forms are iron or brass molds of the shape desired for the finished sole, and it was necessary to change forms for every different shape of shoe. The forms cost about $22 or $23 a pair. You had to have as many kinds of forms as you had styles of lasts, and when the styles of lasts changed you had to provide new forms.

954 Plant had 194 pairs of these forms and his forms cost something over $4,000. On the United Company's automatic leveling machine there is only one roll required to level any kind of shoe.

We found that the work produced in the Plant factory on the Plant leveling machine was very good, and we recommended that this machine be tried in some other factory, and I did this. But after a trial, when the manufacturer found how many forms the machine would require and how many kinds of lasts he had, he immediately said that the cost of the forms would be prohibitive; so this trial did not amount to anything, and the machine was soon taken out. This alone was so serious a difficulty that the machine would not go.

The same criticism applies to the custom sole layer, which was practically the same machine and required different forms for every shape of last, the same as the leveler. Also this machine was about 50 per cent slower than the machines put out by the United Company.

The toe and heel laster was particularly designed for women's work, and we did not believe it would be suitable for men's work, because the construction was so light that we felt sure that the parts would spring and not properly shape the shoe around the toe or heel of a man's shoe. Of course, we had no opportunity to try this on men's work, but we knew that it did not compare with our No. 5 machine for strength, and that trouble would come if it was attempted to be used on any heavy grade of work.

The heel slugger we found couldn't handle the zinc wire or soft brass wire. This slugger is to put a row of nails or slugs in the bottom of a finished heel—perhaps half a row or two rows—and it is quite common to use zinc and sometimes brass wire for this purpose. The reason they like to use soft brass or zinc is beacuse they finish so much easier, the tops of the slugs finish off so much easier, when they scour the bottom of the heel. The

Plant machine was so designed that you could only use hard wire, hard iron, or hard brass. It wouldn't handle any other kind. We know that because the design was similar to one of our machines we found we could not use soft wire in. And hard wire would have been so much more difficult to finish by the sandpaper process that nobody would have been willing to accept such a machine for that purpose. Also, that same machine was not provided with any means for slugging the heel while it is on the last. Under the Plant system he did not use that machine for slugging a heel in that way. Plant slugged his top lifts before he put them onto the shoe itself.

955 The heel loader was poorly designed in several respects; in general, the design was such that the parts would wear very rapidly. The machines in use at the Plant factory were continually giving trouble, and they only had to handle a small number of nails. Now, the wear and strain on the machine when used for men's work would have been a great deal worse.

The heel breaster was particularly adapted for women's work. There are several types of heels used in men's factories that could not be done on this machine, because either the knife or some of the mechanism was in the way.

The welter was defective in the stop motion and in the mechanisms for holding and cutting the welt. That is to say, the mechanical features in this were not good. The ideas were excellent, but they hadn't been carried out in such a manner that they could have been used in other factories.

The fifth group, consisting of machines very like machines that the United Company manufactured, but faulty in construction, comprised the sole clincher, heel shaver, upper clicking machine, McKay toe cutter-off, bottom buffing machine, loose nailer, top lift compressor.

The clicking machine was more dangerous to operate than the United machine. The very heavy arm on that machine that strikes a heavy blow was brought down on the die by means of a foot treadle. This was continually under the operator's feet and in moving around, unless he used great care, he might have his hand placing the die and at the same time trip the machine, which might take his arm off. The United machine is tripped by hand.

The loose nailer had the disadvantage that it was so constructed that you could not handle a nail longer than seven-eighths of an inch. In some classes of work, heavy double outer soles and spring heels, it is necessary quite often to drive nails longer than that.

Group six consisted of machines which were practically copies of United Company machines. Those were grinder, turn sole molder, tacker, turn heel laster, staple tacker, McKay stitcher, heel-seat nailer, turn shoe trimmer, heel and breast knife grinder, edge trimmer, edge setter, twin bottom cleaner, heel waxer and burnisher, shoe rack, top lift scalloper.

As to the devices on the Plant machines which were adopted and applied to our commercial machines, they were all additions, practically, and when added to our machines made the machine operate either more conveniently or more accurately.

They were all tried out on our type of machine and adopted.

956 Among these were—

From the heel breaster, a guard for the knife, lock for the jack, spreading heel piece, means for taking care of chips, extra pressure device on heels; from the toe and heel laster we adopted a toe head and a pad for McKay work, which allowed the shoe to be held in proper position much more easily then on our machine; this was put into our No. 5 machine and is furnished to customers.

We put on our stitcher a stop motion and presser foot lifting device which performed the same operations as on the Plant stitcher, but they were improved and made much better in every way.

We had never stopped a stitcher with the mechanisms in such a position that a shoe could be removed. Under the system used on all of our stitchers it was necessary for the operator to stop the machine by hand, then lift the presser-foot and remove the shoe; also, to put a shoe in it was necessary to lift it. Seeing the Plant machine suggested that the same thing might be applied to our machine to a great advantage, although we did not do it in the same way. He reversed his machine and then lifted it. We simply stop our machine and lift it at the same time, which is an improvement over the Plant method. But we got all the advantages that were suggested by seeing that machine.

From the Plant welter we adopted the welt holder and cutter, the welt ~~measurer, the stopping mechanism, and some features in the welt~~ measurer, the stopping mechanism, and some features in the welt guide or back gage motion. We improved the stop mechanism very much, and also the cutting mechanism and the welt holder. We also made over the back gage and welt guide motion so as to put it on our machine in better shape than on the Plant machine.

The result of these combinations in both the welter and the stitcher has been a very much better machine than either we or Plant had before.

Assuming that each party had its patents on its respective inventions and devices, neither party could have accomplished the development of the machine which we have now developed, either as a stitcher or a welter, without the aid of the others; nor could either party have developed so satisfactory a machine.

957 From the heeling machine we adopted the device for applying glue to the heels and top lifts, and a device for locking the mechanism which measured the height of the heel.

Summing it up, we adopted 17 machines, most of which went into the general department, and 13 devices and improvements; and we are still at work upon others which have not yet been satisfactorily worked out. Out of the 69 machines and devices shown in the Plant catalogue we have so far made use of 30.

(Cross-examination postponed at request of counsel for petitioner.)

958 JANUARY 7, 1914.

NELSON W. HOWARD, witness for defendants (recalled).

I have been a member of the bar since 1895, and am at the head of the patent department of the United Company. In my previous testimony I have stated my expert qualifications.

Since I have been with the United Company I have devoted myself particularly to a study of the patent aspects of shoe machinery. I have made myself familiar with the inventions and patents of Mr. Plant and with his machines, and also with the patents embodied in the United Company machines adapted for doing work of the same or similar character,

In my opinion 35 Plant machines infringed patents and pending applications owned or controlled by the United Company. Including the Bresnahan sole molder and the Keighley inseam trimmer, both of which Plant had adopted as his machines, one through his ownership of two-thirds of the stock of the Bresnahan Company, and the other by his contract with the Keighley Company, plaintiff's Exhibit 132, the total number of Plant machines which infringed would be 37.

Omitting the Bresnahan and Keighley machines, 96 patents and three applications contained claims which, in my opinion, were infringed by the Plant machines, an aggregate of 99. The total number of claims infringed was 535, counting each infringed claim only once, without regard to the number of machines which infringed it.

In many instances the same patent was infringed by
959 different machines. Including the Bresnahan and Keighley machines, if the patents be counted once for each machine which infringed them, and if each claim be counted once for each instance of infringement, the number of patents would be 132 and the number of claims would be 708.

PUTNAM, J. What is the purpose of the testimony?

Mr. CHOATE. It is further in support of the claim of the United Company that the Plant patents were obtained in good faith, not to acquire a monopoly—to improve the art of shoe manufacturing in a way which could not be accomplished by either party if they stayed as they were; that is, this will immediately develop a situation which will show you that Mr. Plant's machines were infringing the United patents, and some of the United machines were infringing Mr. Plant's patents, which would have resulted in almost endless patent litigation, which was a feature of the situation that the parties were perfectly aware of when the Plant properties were bought.

BROWN, J. As I understand it, pending litigation both ways, or threatened litigation both ways, was one of the inducements to the Plant purchase.

Mr. CHOATE. Yes, sir.

Mr. GREGG. Now, as I understand it, it is Mr. Howard's opinion that certain patents and certain claims of Mr. Plant infringed the United. Now, to rebut that we will be obliged to put in testimony in that connection.

BROWN, J. Then the United States would undoubtedly, on the present aspect of the case, call witnesses to dispute Mr. Howard's opinion as to infringement.

Mr. GREGG. We should certainly do so.

Mr. FOWLER. We want to interpose an objection to their testimony upon the ground that it is not relevant to all the facts that have been heretofore introduced with reference to that Plant purchase, and we want to reserve an exception if it is permitted to go in.

Before the Plant purchase in September, 1910, I had been at work on the Plant patent situation for several years, after the first group of patents was issued to Mr. Plant. But after he took out nearly 100 patents on May 17, 1910, I spent practically all my time on the matter of infringement of our patents by the Plant machines.

In addition to the suits already begun by the United Company against Mr. Plant, bills of complaint had been signed and were ready for filing in a number of additional suits. I was in con-

stant touch with counsel, discussing infringements and submitting proofs of infringements, and as early as July 1, 1910, I was aware of more than 50 patents which I believed were infringed, and before the acquisition in September I was certainly aware of as many as 80 or 90 patents which were infringed. I had already discussed most of these with counsel, and we were ready to go ahead on most of them.

960 Mr. Frederick P. Fish had general charge of all this patent litigation, and Mr. Benjamin Phillips, who had immediate charge of a certain group of the infringements, was acting in cooperation with him and under his instructions.

Seven or eight gentlemen spent several days at the Plant factory examining the machines before the acquisition. Before we went to the Plant factory the bills of complaint which had already been prepared and signed were sent to Mr. Plant's counsel for identification, at the request of Mr. Plant and his counsel; and it was agreed, as I recall it, that no more suits should be brought by the United Company in any event for a specified time, which, as I recall it, was 30 days.

There was also, in my opinion, a considerable number of infringements of patents owned by Plant by United Company machines, quite a number of these infringements being by commercial machines and a large number by experimental machines.

(The testimony set forth in the foregoing paragraph was objected to by counsel for the United States.)

The Plant machines which, in my opinion, infringed United Company's patents were, upper clicking machine, double-lip channel opener, single-lip channel opener and edge compressor, inner-sole flexor, inner-sole cloth tucker and lip trimmer, sole rounder, grinder, top-lift compressor, puller over and tip measurer, rapid side laster, toe and heel laster, turn heel laster, staple tacker, heel-seat nailer, welt slasher and groover, tack puller and baster, welter, custom sole layer, rough rounder, heel-seat dinker, shoe channeler, stitcher, loose nailer, leveler, heel loader, heeler, heel attacher on wood lasts, heel slugger, heel breaster, stitch indenter and burnisher, stitch separator, top-lift scalloper, heel waxer and burnisher, seat beader, treeing machine, Bresnahan automatic sole molding machine, and Keighley inseam trimmer.

Prior to the Plant purchase I was aware that each of the machines which I have named, except the Bresnshan automatic sole molding machine, infringed patents owned or controlled by the United Company.

961 The Plant machines which were involved in the suits for infringement which had already been begun were the toe and heel laster, heel attacher on wood lasts, welter, clicking machine, loose nailer, and stitcher. The product of the welt slasher and groover, and the heel produced by the heel attacher, were the subjects-matter of two suits which had been brought against the Thomas G. Plant Company. The total number of suits were eight suits against Plant and ten suits against the company.

Bills of complaint had been prepared and signed in suits on six more patents for alleged infringement by the loose nailer, stitcher, slugging machine, staple-tacking machine, insole-slashing machine, and the welt grooving and slashing machine,

Q. Please name the patents owned and controlled by the United Company which were infringed, or in your opinion were infringed, by the machines which were the subjects of those suits.

Mr. FOWLER. As I understand it, you are not offering just to show patent protection, but to show a right to purchase the Plant machines.

Mr. CHOATE. Well, there are a number of things I have in my mind, if the court will let me do it, by and by. I am only asking now for the numbers of some patents.

PUTNAM, J. The serial numbers?

Mr. CHOATE. Yes, sir; but I will wait till morning.

BROWN, J. It can be done by list, can't it?

Mr. CHOATE. Yes; if it will save the court's time, Mr. Howard has got this all in the shape of a memorandum, which can go right into the record.

PUTNAM, J. He has a memorandum of the numbers?

Mr. CHOATE. Yes.

PUTNAM, J. It may go in to-morrow morning.

(In the course of a discussion of the admissibility of the foregoing testimony the following statements were made:)

Mr. FISH. There is certainly an allegation that as part of our conspiracy, our unlawful attitude in this whole situation,

962 we bought Plant to aid in building up a monopoly. That is certainly all through the bill. And of course one of our affirmative answers to that position is that when this Plant enterprise had developed to the point of his taking out a lot of patents and building experimental machines and advancing them as of a type that he was going to offer some time or other, when he got ready, to the public, we looked into them and found that there was prospect of the most excruciating patent litigation; that not only did he have many machines that were clearly within our patents, as we looked at them, but that in some cases

in the development of the art he had struck upon the same ideas that we had, that were in course of development; and our definite contention is that at least part of the reason for buying the Plant property, Plant's patents, was to avoid the condition, that would have arisen, of an infinite amount of patent litigation. And to show that one of our motives—others have been suggested already—was to clean up a very complicated and nasty patent situation that would have been most demoralizing to our business, it seems to me, is a legitimate part of our defence. That is exactly the fact.

This is where we put it as affirmative defence. Your honors will bear in mind that it isn't merely Plant. We want to put in the same class of testimony as to some other acquisitions, and our answer says:

"The greater part of said acquisitions are entirely new fields, having no connection with the machines originally acquired, owned and manufactured by said United Shoe Machinery Company, of New Jersey. Some of said acquisitions have more or less relation to the original lines of shoe machinery owned by said United Shoe Machinery Company, of New Jersey, and were acquired by it for the purpose of compromising, settling, and avoiding expensive patent litigation, and for the purpose of protecting its lessees from suits for infringement of letters patent."

963 Mr. FOWLER. Your honor will see what it leads to. We will have to introduce experts to show that Mr. Howard was mistaken as to each one of these particular claims, and he must have been mistaken if he had any reasonable knowledge of the patent law, so you will have 700 and odd patent suits here to try, because Mr. Howard says there were 700 and odd claims that had been infringed.

PUTNAM, J. Haven't you a right to maintain that this matter of patent litigation did not enter into the negotiations at the time the negotiations were made?

Mr. FOWLER. That is our contention.

PUTNAM, J. Can't you maintain that proposition? And if you submit evidence under this proposition, aren't you all right?

Mr. FOWLER. Your honors can see this: If they are permitted to go into that question, we will want to go into that question. Your honors will see that the United States will insist that if they are to be permitted to go into that question at all the United States should not be restricted.

Mr. CHOATE. Will the court permit me to suspend this witness in order to put on some other witnesses?

JANUARY 8, 1914.

NATHANIEL C. SMALL, witness for defendants.

I am engaged in the manufacture of shoes in Auburn, Maine. The name of my firm is Ashe, Noyes & Small Company. I am treasurer of the corporation and have a certain part of the management of the manufacture of the shoes.

I have met and talked with Ned Pike, a representative of the Haverhill Shoe Machinery Company. He came and solicited us to put in his machines. With reference to his statement in his testimony:

"The statement that they made to me was that under the existing leases of the United Shoe Machinery Company it would be impossible for them to install machinery unless they laid themselves open to a great of deal of trouble—conflict with the United Company."

I never made such a statement to him.

In our conversation he did most of the talking; I did most of the listening. He told how many machines he had in Haverhill, something like 50, and I think about a dozen outside of Haverhill. I told him we had been all through this nonroyalty
964 business and we had found that it was such a troublesome matter and such a loss to us that we could not consider any outside machines; that we could get a man to repair United machines at a moment's notice from the United Company's office in Auburn; and that we had all kinds of trouble with a Campbell machine that we used which bothered us so much that we were very glad to sell it to the United Company for junk, which was what we considered it. We bought that machine outright to sew turn shoes with, without any royalty. We had all kinds of trouble with it and we could not get an operator that would stay on the machine. They did not furnish anybody to teach operators or to keep the machine in repair. Whenever we broke a part or the machine got so the operator could not fix it, we would have to send to the main office, in Boston I think it was, to get a man to come down.

From its Auburn office the United Company furnishes mechanics or agents to put our machines into condition again so that the operator could use them. This service that the United Company gives with its machines means a great deal in our case. When the Campbell machine broke down we had to wait for parts or get a man from Massachusetts to fix it. We had to send and get a man a good many times.

I did not make any statement to Mr. Pike which was at all to the effect that I would not put in his machines because of the existing leases with the United Company.

Cross-examination:

Our daily capacity is about 1,000 pairs. We manufacture turn shoes, mostly. We began three or four years ago to make a few welt shoes. We have one complete system of United machines for making welt shoes.

The Campbell machine about which I testified we obtained from the Campbell Machine Company something like a dozen or 15 years ago, and we turned it back to the United Company about six years ago. We got $200 for it. We had not used it for some time and had given it up.

965 The machines which we have in the bottoming department, excepting United Company machines, are a buffing machine made by the Boylston Manufacturing Company, and an edge setting machine that the United Company now has, but which was not bought of them.

JANUARY 8, 1914.

WILLARD A. NOYES, witness for defendants.

I am a dirctor of the Ashe, Noyes & Small Company, of Auburn, Maine. I attend to the buying of the uppper stock and anything pertaining to the uppers of the shoes. Mr. Ashe is not active in the management of the concern, and Mr. Small and I are the active men.

With reference to the testimony of Mr. Ned Pike, a representative of the Haverhill Shoe Machinery Company, that he came to our factory and attempted to install some of their machines there and that the statement was made to him that under the existing leases of the United Company it would be impossible for our concern to install their machinery unless we laid ourselves open to conflict with the United Company, I know that there was a gentleman there representing the Haverhill Company, but no such statement as that was made to him with my knowledge.

While the gentleman was talking with Mr. Small I passed through the office and was asked to look at a picture of a machine that would sew turn shoes. I glanced at the picture and asked what advantage the machine had. One of the replies was that it was a nonroyalty machine. I said that it did not interest me in the least; that the saving of royalty on our turn machine would not offset the value of the United Company to us. So far as I know that was all the conversation I had with him in any business way.

Cross-examination:

In my conversation with Mr. Pike nothing was said about the leases which we had with the United Company. They were not

mentioned. Neither I nor my company owns any stock in the United Company.

966

JANUARY 8, 1914.

FREDERICK J. GROSS, witness for defendants.

I am a shoe manufacturer in Auburn, Maine. My concern is Field Brothers & Gross Company. I have been connected with that concern ever since we were incorporated in 1902, and have been in the shoe manufacturing business for 30 years. I came pretty near working up from the bottom; started with a dollar a day.

I first had to do with installing machinery in a factory which I had charge of in Brockton, about 24 years ago. At the Brockton factory I was in the same capacity as now—superintendent and treasurer. I have full control of the purchasing and manufacturing end. I decide what machines we will have and how we will get them.

We moved to Auburn, Maine, in November, 1903, and I had to do with equipping the factory with machinery. We have been adding to it every year since.

We make men's cheap Goodyear welts, retailing at $2.50 and $3. Our maximum output is 7,200 pairs a day.

We get our welting and stitching, heeling and fastening machines from the United Company. Most of the machines are on the restricted form of lease. The welters, the stitchers, the heelers, and all those are on restricted leases. I took that form of lease because it was to my advantege. The advantage is that I have no capital tied up in machinery and I got the improvements made in machines from time to time.

I have had experience in former years with buying and owning some of our machines. In the old way our business was restricted because we had to consider each time whether we could afford to buy a particular machine to increase our product. Under present methods we forget that, and it is the last thing we think of. We never figure the expense of machinery on our production, because we know that is all right anyway.

967 I consider the success of our business in Auburn to-day is the service that the United Company has given us. We saw fit to move from Brockton, Massachusetts, to Auburn, Maine, into a territory where they never made men's welt shoes, and it was necessary for those people down there to be instructed to operate those machines. And I asked the United what they could do for us, and they told us that they would set the machines up, instruct the operators, and they sent me six to eight men from their different territory in addition to what they had

in their Auburn office, what they could spare. They set up our machines and equipped our factory with machines and instructed the operators; and it must have been an expense for them, because we were not making shoes enough to offset what they were paying for the agents, and we must have been, the first year or two, an expense to them. They did not charge us a cent for that work.

When there was a new or improved machine we would take it and our only expense was for missing or broken parts on the old machine when we returned it. We have a full equipment of the new welters and new stitchers. We began to put them in about 15 months ago and have been running them exclusively for six or eight months.

Our reason for changing from the old to the new machines was that we saved on welting, on labor and on floor space; it did not take so much floor space because the capacity of the machines was increased about 25 per cent, from about 30 to 40 dozen pairs a day, and we needed fewer machines to do the same work. I am now speaking of the welter. Last year our operators earned from 10 to 25 per cent more than on the old machines but it costs us less. We saved last year from $7,000 to $9,000 as a result of the improvements on the welter and stitcher. The million and a half pairs which we produced last year were worth approximately from two million and three-quarters to three million dollars.

As to just what the improvements were which have brought about that saving, by the old method of welting the operator would have to take his knife and cut off the end of the welting,

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and the majority of them were careless and expensive; they were not paying for the welting and we were. The stitcher was more rapid and would sew many more stitches. On the old machine the operator had to put his hand up on the wheel to stop the machine. On the present machine he does not. It makes him stitch more shoes and it is more rapid.

Cross-examination:

At the time we took our machines we considered both forms of leases, the restricted form and the other. We had an option for taking either one. In answer to the question, for what machine, I won't say for what individual machine, because I do not recall that; but the only form we wanted was this one, because we didn't want to make an investment of our capital in machinery. I could not tell you whether there is any difference, beside the initial payment, between the restricted and unrestricted form of leases. That does not interest me and never did.

At present we have no machines in our factory in the bottoming room except the United Company's. About a year ago we had one of the Keighley inseam trimming machines. We tried it out to see whether it was a better or more economical machine than the United Company's machine that we were already running. We gave it a thorough trial and discovered that it was not to our advantage to use it. We had not bought it but had it on trial.

Our operators on the old welter did about 30 dozen pairs a day, and on the new welter they average about 40. Some will do 45. The increased capacity was about 25 per cent.

The saving of from $7,000 to $9,000 is in welt and labor. The new machine cuts it off close right after it gets through stitching it, and the old way was cutting it off by hand.

We get new parts for the machines from the United Company, and we pay for the parts which replace broken and worn our parts.

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GEORGE E. WARREN, witness for defendants, resumed.

Cross-examination:

I have been in the employ of the United Company since its organization, except for two years. As to whether I am a patent expert, well, a mechanical patent expert. I am not a patent lawyer. During the two years when I did not work for the United Company, from 1904 to 1906, I was with the Metallic Heel and Counter Company, in Boston. That company is not now in existence. Most of its assets were sold to the United Company, and then I went back to the United Company.

The first time I heard of the Plant purchase being contemplated was when I was asked to go up to the factory to examine the machines. That was early in September, 1910. Mr. Winslow, Mr. Mayo, Mr. Howard, Mr. Phillips, and I think, two or three others of our own men, went with me to the Plant factory. I do not remember their names. They were all representatives or employees of the United Company.

Two men, representing Mr. Plant or the Plant factory, were detailed to go with Mr. Phillips and me wherever we wished to go. One was Mr. Bohr. I think the other was Mr. McLeod. The United Company representatives did not go through the factory together. Mr. Phillips, who is a patent lawyer, and I went together.

We left Mr. Winslow's office a little before 2 o'clock, and I think we began the investigation about two in the afternoon. We spent the balance of the first day up to five or six o'clock in

the Plant factory; the next day from perhaps nine in the morning until five, and I do not remember whether or not we were there all day on the third day. I do not know the total number of machines in Plant's factory. I examined all the types of machines. There may have been 30 to 40 machines of one type. There was a representative in the Plant factory of each type of the 69 machines in the Plant catalogue, and we saw them all, but not all in operation.

It was a very large factory and had a capacity of 10,000 pairs a day or more, and was in full operation at that time.

970 I did not see the machines in any particular order. Both Mr. Phillips and I desired first to see the welter and stitcher. From there on we did not take the machines in regular order, but before the three days were finished I had seen all of the machines.

The welter and stitcher were the machines I asked to see, and those were the machines with reference to which I had made particular study and had special knowledge. At that time I probably did not look at the welter and stitcher together for more than a hour.

I found a welter which was welting shoes and doing the work rapidly. They were running it at different speeds, some of them as fast as we run ours. The work on the shoe looked very well. The product was a medium grade shoe.

About as many shoes were being done on that welter, while I saw it running, as were ordinarily done on the United Company welter.

I could hardly compare the United Company model G machine with the Plant machine because the model G machine was a better machine mechanically, but Plant had improvements that the model G did not have. If I had been going into the manufacturing business I should have selected the model G machine, because, before finishing my examination, I was very sure that the Plant machine as organized would not stand up and do the work, although I was much impressed with the improvements. I regarded the United Company welter as mechanically superior, and, taken as a whole, to some extent a superior machine to the Plant machine.

Q. Now, in regard to the mechanical construction of that welter, Mr. Warren, that was something that could have been easily remedied, was it not?

A. Well, it would have taken him years to remedy those things.

I can't tell exactly how long it took for us to change the construction of our model G machine so as to put out the model K, but as soon as we had purchased the Plant machines we immediately had five engineers or mechanics trying to improve the G so that it would include all the improvements purchased from Plant, and we made five different models and tried them in factories before we adopted one.

971 I can not tell you exactly how much time that took, but we worked night and day to get a model that would suit the manufacturer. I should judge that it took more than a year.

I haven't the slightest idea how many mechanics Mr. Plant could have put to work to perfect his welter.

As to the defects in the mechanical construction of the Plant welter, it would be rather difficult to state the detailed construction of the machine, but we know that in a machine as intricate as a welting machine all the parts must cooperate perfectly in their action in order to ensure good work all the time, and in my experience in designing welting machines I could see places in the Plant machine where I felt very sure that it would in time give trouble. A particular weakness was the construction of the welt-guide and back-gage movement. With the particular mechanism used and the lightness of its construction this would not have lasted any time at all.

Q. Couldn't it have been made a little heavier?

A. When we say that, that leads to a change in some other part of the machine. It might finally mean a total reorganization of a machine to make it better.

Q. But you don't mean to say, Mr. Warren, that that machine could not have been taken up by a mechanical expert or five mechanical experts, and those various defects taken out of it within a few months' time or a year's time, say?

A. I think when they had done that they would probably have had a machine like ours.

Our machine was a good one and was working all right.

One improvement which Mr. Plant had made on the welter was the stop motion. We did not have any machine on which there was an attachment of exactly that character. It had been customary for a great many years to make shoe machines that would stop in some part of the cycle, such as tackers and sluggers and machines of that sort, and one type of McKay sewing machine; but there had never been a welter that would do that. This was the only welt machine that had ever been stopped in position so that the work could be removed with-

out some effort on the part of the operator and in position so that a new shoe could be presented. Even in McKay
972 sewing machines and in welt machines, on which I had worked myself, we were never able to stop the machine without such damage to the machine that it was impossible to make the machine stand up at the speed at which they were run. Also we were never able to remove the loop of thread from the needle so that the shoe could be taken out.

The broad distinction between the Plant device and the devices which had been attached to other machines was that previously a machine had always been stopped by cutting off the power and interposing some device which it would run up against. In the Plant machine it came up against a device which reversed it and stopped it, and that was what stopped the machine in position so that the shoe could be removed. In the devices which we have adopted the machine is slowed down to a predetermined speed and then stopped from that. The principle of this construction was a slip clutch. Many machines had previously been stopped by using a clutch or brake but our machine slows down to a predetermined speed. Our machine always stops the same way whether the machine was running 300 or 500. It always comes up against the final stop at the same predetermined speed. Under the old methods a machine run at 100 would not break when it came up against a stop, but when it was speeded up to 500 and it was stopped, it would break the machine all to pieces. Our machine would be reduced to 100 before it was stopped, and that was done by what we call a slipping clutch.

That attachment was not placed on our model K machine just as we found it on the Plant machine. It is entirely different in construction. The principle of the Plant machine is in the model K, but the mechanical part is entirely different. You would hardly recognize the mechanical features. The broad feature of the Plant machine, its principle, was embodied in our machine, but by an entirely different mechanical construction.

973 We had no welt cutter prior to the Plant acquisition, and so far as I know we had no application for a patent on a welt cutter. This mechanism was not transferred to the model K machine just as Plant was using it. We retained the principle of holding and cutting by one device, but the mechanical construction had to be entirely changed in order to apply it to our machine, which was of different design. There were parts which were similar but not the same. It operates in the same

way, except that the man had to operate the Plant device and we saw that we could improve it by having the machine actuate it. In our machine the machine itself operates it when the man gets ready to remove the shoe.

The principle of the model K device is the same as the Plant device, but the mechanical construction is entirely different. All that one not acquainted with the principle would notice is that the two machines cut the welt and hold it, and that is all.

Q. Then these great improvements and savings which have been spoken about in the testimony here are the results of the device that has been placed on your model K machine, and not of the Plant device at all, isn't that true?

A. These Plant devices were placed on the model K.

Q. What you mean to say is that it is the principle which has been worked out through a new mechanical device?

A. Exactly.

Q. And those devices placed on your machines?

A. That is it exactly.

Q. And the devices which have been constructed by the United Company and not by Plant are the devices which have made the savings?

A. The particular devices have been constructed by us.

Another improvement on the Plant machine was the welt measurer, which always determined how much welt would be left on the shoe when the man cut it off. Even with the welt holder and cutter the man could pull the welt through and not cut it until he had six inches of welt standing out from the shoe. The advantage of this device was that he could not have more than a fixed amount of welt left on the shoe when he cut it.

There was especial advantage in using the welt measurer and welt cutter together. They had to be used together to make the saving in the welt.

974 The mechanical construction of that device placed on our model K machine was not the same as the Plant device, but it was not changed as much as the welt cutter and holder and the stop motion. It looked more like the Plant device than they did.

The five mechanical engineers who made the changes in adapting the Plant improvements to the model K machine were Messrs. Topham, Latham, Winkley, Stewart, and Simmons, all connected with the United Company. I had supervision of their work. A great many applications for new patents have been made by these gentlemen on principles embodied in these devices which were not in the Plant devices. I do not know that all the

applications are based on improvements embodied in the model K machine; we are working on these devices all the time; but many of the principles of these applications are in the model K machine.

These Plant improvements on the welter were the things which especially impressed me. It was with reference to the welter and the stitcher improvements that I told Mr. Winslow that those improvements were worth all that he paid to Plant. It was soon after the purchase that I made this statement, when we were actively engaged in producing a machine for the market. I do not know whether it was while Mr. Mayo and I were making our report.

As to my division of the Plant machines into six groups, the first group comprised the machines which we advised the United Company to adopt. In that group were some Goodyear auxiliaries. I am not quite sure whether some of them should go into the Goodyear department or general department, because I am not acquainted with the method of classification, but my recollection is that the inner-sole lip wetter, insole flexor, lip turner, stitch indenter and burnisher, cloth cementing and drying creel, welt slasher and groover would be in the Goodyear department.

The Plant insole flexor flexed the sole in an improved manner, entirely different from anything which had been done before.

975 The United Company machine did not flex the sole in the same way, and it did not get the same result. The Plant machine obtained a better result. Flexing a sole is making it easier to bend, so that the shoe will be easier on the foot of the wearer.

As to the other machines, the United Company had machines that would accomplish exactly the same result, but the Plant machines were better than any that we had. In studying those machines we concluded that they were some better than the machines which we had. We thought they would be better to use in any factory, and wished to be ready to offer them to manufacturers. I would not have based a recommendation to pay $6,000,000 on those machines.

The second class of machines was composed of experimental or unfinished machines. At that time we did not attach any especial value to them, but after a very careful study of them we simply recommended in some cases that they be experimented with further to see if we could find anything of value in them. That recommendation was made after the purchase. We are experimenting with them now. We made no recommendation based on those machines with reference to the purchase.

One or two of these machines were running part of the time in Plant's factory; some of them had never been belted up at all. He was making shoes without these machines. The sole rounder, for instance, did not work satisfactorily, and Plant was dieing soles out on another machine. Most of these machines were not used because they did not work properly, and he was doing the work in some other way.

As to the third group, consisting of nine machines peculiarly adapted to Plant's work, we only advised that some of these machines be tried to see if the manufacturer desired to use those methods, and they were tried. I did not recommend any purchase, but I would not have recommended that he make any purchase so far as these machines were concerned.

The fourth group comprised 11 machines which I did not consider commercial at all.

976 The fifth group were a number of machines which were faulty in construction. One of these machines belonged to the general department: I think the rest were either metallic or heeling. At this time the United Company was putting our machines of the same character and machines which we believed were doing better work than the Plant machines.

The sixth group were practically duplicates of United Company machines.

We recommended the adoption of more than 13 devices, but we tried a good many of them and found we could not use them. We finally took 13. These 13 devices all applied to the heel breaster, a general department machine, the toe and heel laster, stitcher, welter, and heel attacher, five machines.

All that the United Company bought from Plant which I regard as of any value at all were those 13 appliances, which are now embodied in five machines, and the 17 machines that I recommended should be adopted instead of the United Company's machines.

I was in the Plant factory two days and a part of another day examining the Plant machines. I reported to Mr. Winslow. I did not advise him to purchase the Plant properties and did not know whether he was going there to purchase them or not. My orders were to look at the machines and tell Mr. Winslow, or report, what I could see in the machines that would be of value or that would improve our machines, to improve the art of making shoes.

My report to Mr. Winslow was not so minute, not so detailed, as my testimony here. The first night I saw Mr. Winslow I had only been there one afternoon. I reported that I was satisfied

with what I had seen on the welter and stitcher. Of course I did not feel so sure at that time about these other machines and devices, and only suggested that some of them would likely be valuable.

977 As to whether the only things I did recommend particularly to Mr. Winslow were the devices on the welter and stitcher, those were the things I was sure of. The other things I stated to Mr. Winslow I was uncertain about. I made those statements to Mr. Winslow before the purchase was made. I think the purchase was made immediately; soon afterwards, within a day or two. Mr. Winslow didn't ask me the value of Plant's patents.

I told Mr. Winslow that the welter and stitcher were very valuable devices; that the machines themselves were defective, but that the Plant devices combined with ours would make the welter and stitcher art further advanced than it had ever been before.

I did not undertake to fix any value, and he did not ask me to.

I talked with Mr. Winslow about the machines during two or three evenings before the purchase was made. All who went to the Plant factory when I did were present.

I stated to Mr. Winslow at that time that the principle involved in the Plant machines would have to be worked over and new mechanical devices made to carry them into operation. I was very emphatic about that, that the Plant machines as they were would not be commercial; we could not use them as they were, but that we would have to work them over entirely, and that we would have to work over those particular mechanisms or devices. I also stated that our machines, the welter and stitcher, were the best foundation on which to make an improved machine.

I have had no experience in manufacturing shoes. They were making complete shoes in the Plant factory, and had a complete installation of welting machines.

After the Plant purchase had been made I was detailed with others to make a special study of all these machines. These various groups into which I have divided the machines are practically a result of that study. The report of plaintiff's Exhibit 267 may differ somewhat from my method of presenting the matter here, but it is practically the same. That report embraced the conclusions that were reached by me and my associate, and my testimony here is somewhat of an elaboration of that report, incorporating some changes since. In connection with that report I spent the entire time for eight

weeks in studying the Plant machines, and did nothing else during those eight weeks.

978 In that report we stated that the United Company had a welt holder. We had been working for a number of years on the problem of holding the welt, and had had several devices out experimentally, but they were defective because it was entirely in the control of the operator whether he used the holder with one inch or six inches of welt through the welt guide.

In the use of the Plant stopping device the machine would go by the stopping point and reverse and come back to it. Our machine goes to a predetermined point and then reverses, the same as the Plant device. In both machines the machine is stopped in a certain part of the cycle of the operations, then it reverses and comes back to a predetermined point. In both cases there is a backward motion of the machine.

Direct examination resumed:

The welt holder with which the United Company's people had been experimenting was in no sense commercially successful. It was not at all satisfactory even to the men who were working on it. We had several designs out, but they had all been returned. We had never hit upon the thing which Mr. Plant had developed. That was new and a distinct advance over any lines along which we had been working, because he had combined the holder with the cutter, and it was the two together that gave the advantage of saving the welt— our idea combined with his idea.

The stopping and reversing of the welter was a new thing—something I had never seen before.

Q. And Mr. Fowler called your attention to the fact that devices had been in use on other machines for stopping them, but was this principle that Mr. Plant evolved something new and different from anything that had been in use before?

A. This was entirely new. As I stated before, the machine had never been stopped so that you could remove the work.

Whatever devices for stopping other machines had been invented before, they never had been of successful application to the welter and stitcher.

979 As to the occasion or necessity for altering Plant's mechanical construction, the problem which we had presented to us in connection with the Plant improvements on the welter was this: Knowing the good features of the United Company machine and the good features of the Plant machine, shall we take the Plant machine with the stop motion and welt cutters, improve those, and add the good features of our machine,

or shall we take the United machine and rearrange that with the Plant improvements on it. After considering the matter we decided that the United machine was better as a foundation.

The sewing mechanisms and the machine in construction was much better, but, owing to the different design, the particular mechanism that Mr. Plant had in use could not be applied to our machines; also there were features, even in the good ideas of Plant, that were bad mechanically, and the result was we took our model G machine, which we were satisfied at that time was the best thing as a sewing device, and redesigned all the Plant features so that they could be adapted to this machine which we had, thereby producing the improved model which we now use—in a word, we took Plant's idea and adapted it to use on our machine.

The suggestion in Mr. Fowler's questions that there wasn't anything in Mr. Plant's idea after all, that it was really the idea of the inventors of the United Company, is not correct at all. It was their skill in applying the broad features of the Plant inventions to our machines which resulted in these improvements.

As to the stop motion, consisting in turning back the machine so that it would be ready for the next operation, nothing of that kind had ever been worked out before or had ever been applied to any machine. The reason why this was so fundamentally important was that even if the welting machine had been stopped before with the needle in proper position out of the work, there would have been the difficulty that there was still a loop of thread through the shoe and around the needle, and you could not get the loop of thread off the barb of the needle without either reversing the machine by hand so as to loosen the loop or cutting the loop. In hand-operated machines it was necessary for the
980 operator to free the needle from the loop before he could remove the work.

When the plant machine stopped the shoe could be removed without any labor or thought on the part of the operator. That was entirely new. The operator simply had to draw the shoe with his left hand to the left, and that cut the welt and released the shoe from the machine and left the machine all ready to insert the next shoe.

Cross-examination resumed:

Before the Plant improvement, when the machine stopped the thread was still through the material and around the needle. The condition at the present time is, when the operator decides that he wants to stop the machine and takes his foot from the treadle, the machine is in position to remove the shoe and there

is no thread on the needle. The thread has come out of the needle. That was a very important part of the Plant invention.

I do not know what the patent was on this invention or whether it was one patent or two; that is what the machine did.

The freeing of the loop of the thread is the particular thing to which I attach importance. It would have been of no use just to stop the machine and not take the thread from it, because after stopping the machine the operator would have had to handle the flywheel in order to remove the thread. This machine was so arranged that stopping it removed the thread from the needle, and that was the particular thing that saved time.

I do not believe any patents have issued on the several applitions on the improvements in the Plant devices which the United Company made to carry Plant's ideas into effect. I am not sure.

The design of the Plant stitcher was the same as that of the old French & Meyer stitcher—that is the stitcher of 1899—with the exception that it was not arranged so that you could stitch extension edges, and it had the Plant stopping mechanism which the old machine did not have.

981 There are four patents covering the extension edge mechanism. These are 675,783, June 4, 1901, Meloon; 563,471, July 7, 1896, French and Meyer; 563,472, July 7, 1896, French and Meyer; 582,510, May 11, 1897, Shriner and Adams.

The method of thread handling in the Plant welter was the same as in the 1899 welter. The stitch-forming mechanism was substantially the same. The Plant welter did not have any method of slowing the machine down before it reached the reversing point. It would run at a fixed speed. If it were attempted to run it any slower, the chances were that the stop motion would be thrown into action and stop the machine. Consequently the machine had to run practically at one speed all the time, so that they could not get the varying speeds that the operator might want in sewing the shoe.

We can run the model K machine at any speed we wish without throwing in the stop motion. The Plant machine would have to run at practically one speed—there was a little variation—or else it would stop.

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NELSON W. HOWARD, resumed:

Q. Mr. Howard, since you were on the stand yesterday, have you had prepared a list of the patents that were involved in the suits brought by the United Company against Mr. Plant and the Plant Company?

A. Yes, sir; I have.

Q. The name, number, and the date of issue?

A. Yes, sir. The patents on which infringement suits had already been begun by the United Company before the date of the Plant acquisition were the following:

Mr. CHOATE. I think if the other side consent we can put these right in and save the court's time. I have given Mr. Fowler a copy.

(List entitled "Infringement suits which had been begun against Thomas G. Plant and Thomas G. Plant Company" is marked "Defendants' Exhibit 270," Rec., p. —.)

The WITNESS. Defendants' Exhibit 271 (Rec., p. —) is a list of patents of the United Company which in my opinion were infringed by the Plant machines, the infringed patents being enumerated under the name of each Plant machine. Under the heading in that exhibit "Date of application" I have stated the filing date of the application for the patent, where it was granted after the date of the Plant acquisition. In every case where the patent was granted after that date, the date of the application was prior to the Plant purchase.

Copies of the patents of the United Company enumerated in defendants' Exhibit 271, which, in my opinion, were infringed by the Plant machines, constitute defendants' Exhibit 276, a physical exhibit.

Twenty-three interferences which had been declared in the Patent Office, before the Plant acquisition, between pending applications owned by Plant and applications owned by the United Company, are enumerated in defendants' Exhibit 272 (Rec., p. —).

983 Nearly all of the interferences in that exhibit related to different machines. In a few instances several of the interferences related to the same machine. The interferences had all been declared before the date of the Plant acquisition.

Q. Are you prepared, Mr. Howard, if the court desires it, to point out the respect in which, in your opinion, the Plant machines infringed the various patents of the United Company which are included in the list which you have just filed?

A. Yes, sir; I am prepared so state whether, in my opinion, the general organization of the Plant machines, or a portion of the machine, infringed claims of the United Company's patents, and I am prepared to give the numbers of the claims which, in my opinion, were infringed, and specifically to give the numbers of the claims which, in my opinion, were infringed by either the organization as a whole or the specific parts respectively.

Q. And you have got that all in a typewritten memorandum prepared?

A. Yes, sir.

Mr. CHOATE. If that would help you any in your cross-examination or your answer, we will put that in by simply filing the memorandum.

(Nelson W. Howard's memorandum of the details of the infringement by the Plant machines of patents and applications of the United Shoe Machinery Company is marked "Defendants' Exhibit 273," Rec., p. —.)

Q. Does that show anything, Mr. Howard, as to the infringements of the Plant patents by the United Company?

A. No, sir.

Q. You have a separate memorandum of the details of that?

A. Yes, sir. (Producing a memorandum.)

(Nelson W. Howard's memorandum of the details of the infringement of Plant patents by machines of the United Shoe Machinery Company is marked "Defendants' Exhibit 274," Rec., p. —.)

984 Copies of the Plant patents named in defendants' Exhibit 274, which, in my opinion, were infringed by the United Company's machines, constitute defendants' Exhibit 277, a physical exhibit.

As regards the other acquisitions by the United Company which are set out in the petition, in some cases there were interferences pending in the Patent Office; in others, actual litigation, or, in my opinion, such a conflict of patents as to threaten litigation; or a field which we desired to enter was absolutely dominated, in our opinion, by patents owned by the acquired company; or the acquired company had inventions which we believed we ought to have and must have to make our machines commercially satisfactory. One or the other of these five reasons applied to each of the acquired companies named below, at the time of its acquisition. Sometimes more than one applied to a given company.

One or more of these reasons applied to each of the following acquisitions: Goddu Sons Metal Fastening Company, Peter A. Coupal and William Gordon, Edwin T. Freeman, Albert G. Brewer, Globe Shoe Tool Company, Seaver Process Lasting Company, Boston Fast Color Eyelet Company, Enamel Eyelet Company, Bay State International Shoe Machinery Company, Swain-Fuller Manufacturing Company, Globe Sewing Machine Company, Boot & Shoe Sole Laying Company, J. C. Rhodes & Company, Morley Button Manufacturing Company, American Sole Laying Machine Company, G. W. Emerson & Company, Booth Brothers, Brockton Supply Company, Smith Lacing Machine Company, Zotique Beaudry, Richardson Shoe Machinery Com-

pany, Ellis Lacer Company, The Wentworth Company, Adam H. Prenzel, M. V. Bresnahan & Company, C. P. Stanbon & Company.

I have prepared a statement of the patent problems and difficulties which, in my opinion, existed in respect to the acquisitions named above. This statement, which is defendants' Exhibit 275 (Rec., p. —), sets forth the details of the situations which I have indicated and which, in my opinion, existed in respect to each of these concerns.

A list of the patents named in defendants' Exhibit 275 and copies of those patents constitute defendants' Exhibits 322 and and 323, which are physical exhibits.

985 The problems and difficulties presented by these patent complications which attended acquisitions between 1899 and 1911, and which are described in detail in defendants' Exhibit 275, were always communicated by me or by persons working under me to the executive officers of the company, and in every instance they were the subject of study before the several acquisitions were made.

All of the patent difficulties and complications attending the Plant situation of which I was aware before the Plant purchase were communicated by me to the executive officers of the company and to the counsel, Mr. Fish and his associates, who were preparing the bills of complaint. These patent difficulties were the subject of extended discussion with the officers of the company. I used to report to Mr. Winslow very frequently, submitting to him a list of the patents which in my opinion were infringed and of the machines which I believed infringed them, and practically every time that I had a new group to tell him about I submitted a new list. My consultations with counsel were had under his instructions after my reports to him. He also attended a number of the conferences between counsel and myself at which infringements and the policy to be followed in bringing suits were discussed.

I knew about nearly all of these patent conflicts and difficulties which I believe existed between Plant and the United Company before the Plant purchase. Of course, our work on infringements stopped with the acquisition, and such additional infringements as I am now aware of are those which I have stumbled on since. Nearly all of the questions which had existed in my mind as to the construction of the Plant machines I answered satisfactorily to myself during the two days and one-half that I spent in the Plant factory with the group of gentlemen, including Mr. Winslow, who went there about the middle of September.

986 I had been working on this Plant patent situation more or less since the first group of Plant patents had issued two or three years before the acquisition. On May 17, 1910, nearly 100 patents were granted to Plant, and from that date until the date of the acquisition nearly all of my time and a large part of the time of my associates was spent upon the matter of infringement of our patents by the Plant machines.

(Cross-examination postponed at request of counsel for petitioner.

987 JANUARY 8, 1914.

HAROLD G. DONHAM, witness for defendants.

I am thoroughly familiar with the riders which have been in use by the United Company and have been attached to its leases, as customers desired them, to cover various conditions which have arisen. In most instances I drew them myself. I have with me thirty-two different forms of riders which have been used.

As to the company's practice, where a rider in one instance was adopted and attached to a lease, with respect to offering the opportunities afforded by that rider to any other customer, we never adopted a rider for any particular case which was not at the time of its adoption made available for all similar cases.

In some instances the riders are typewritten and in some they are printed. Our practice was to have the rider typewritten when occasion arose to draw a rider to cover some particular condition, unless we foresaw that there would be a considerable demand for it. If we found there was an increasing demand for a typewritten rider we had it printed.

I think I have here types of all the different forms which we have used. These riders which I have are attached to original leases, but in discussing them I will refer the exhibits of leases for which they were respectively adopted.

Rider No. 1 (defendants' Exhibit 278, Record, p. —) is the form referred to in Mr. Winslow's testimony by which auxiliary machines of the Goodyear department were permitted to be used upon classes of footwear other than Goodyear. This was adapted to be attached to a lease similar to plaintiff's Exhibit 23 (Record, p. —) which is a lease of the Goodyear department covering auxiliary machines and upon its face restricting those auxiliary machines to use in connection with the Goodyear welter and the Goodyear stitcher in the manufacture of Goodyear shoes. This rider states that such auxiliary machines as are covered by that lease may be used in the manufacture of McKay sewed shoes at a special royalty.

When the rider is attached to a lease the blanks are filled in with the name of the auxiliary machine, the use to which
988 it is to be put in the particular case, etc.

Mr. CHOATE. This is a lease made to the Johnson-Bailey Shoe Company, of Millersburg, Pennsylvania, dated December 30, 1904, and the rider is dated February 8th, 1905.

The WITNESS. In respect to any rider adopted by the company it was absolutely the practice of the company that if anybody wanted a like accommodation he should have it. We never adopted a form of rider which was not made generally available. As soon as it was adopted it became a matter of routine. It was generally understood in the trade that such riders were available. There was no standing vote of the company and no provision in the printed lease which entitled another customer to that right, but it depended upon the regular practice of the company to make these things general, and in fact no distinction was made.

Rider No. 2 (defendants' Exhibit 279, Record, p. —) is a form of rider for Goodyear auxiliary machines providing that they may be used with the Goodyear welt and turn machine or upon welted footwear the outsoles of which are attached by hand, so-called handstitched welts. That rider was adapted for use with a lease similar to plaintiff's Exhibit 25 (Record, p. —). (Mr. Choate reads the rider attached to the original lease produced by the witness, a lease of Goodyear auxiliary machines to L. A. Stiles & Company, of Brooklyn, New York, dated October 4, 1911.)

Rider No. 3 (defendants' Exhibit 280, Record, p. —) is a similar form providing for the use of the Goodyear welt and turn shoe machine upon a similar class of shoes. That was adapted for use with a lease similar to plaintiff's Exhibit 24 (Record, p. —).

Rider No. 4 (defendants' Exhibit 281, Record, p. —) is another rider providing for the use of a principal Goodyear machine, in this case the Goodyear outsole rapid lockstitch machine, and also an auxiliary machine, in the manufacture of a special kind of shoe, neither a Goodyear welt nor a Goodyear turn. That was also for a form of lease similar to plaintiff's Exhibit 24.

989 Rider No. 5 (defendants' Exhibit 282, Record, p. —) is a form by which we consent to removal of machines from one factory to another. It is adapted to any lease and is given at the request of the lessee.

Rider No. 6 (defendants' Exhibit 283, Record, p. —) is a form permitting use of the Goodyear outsole stitching machine for repair work in resoling Goodyear shoes. That is adapted to be attached to the lease of plaintiff's Exhibit 23 (Record, p. —).

Rider No. 7 (defendants' Exhibit 284, Record, p. —) is a form permitting use of the Goodyear outsole stitching machine

upon hand sewed welts. This rider was used so frequently that we had it printed. It is applicable to the lease of plaintiff's Exhibit 24 (Record, p. —) and it is in effect the reverse of rider No. 3.

Rider No. 8 (defendants' Exhibit 285, Record, p. —) permits the use of the Goodyear outsole stitching machine in the manufacture of stitchdown shoes and it was adopted for use in connection with the lease of plaintiff's Exhibit 24. In a stitchdown shoe the upper, instead of being turned in for attachment to the sole, is turned outward and the stitching which attaches the sole goes through the outturned portion of the upper and the sole.

Rider No. 9 (defendants' Exhibit 286, Record, p. —) permits the use of the Goodyear outsole stitching machine for fairstitching metallic fastened and McKay sewed shoes, and that was also adapted to be attached to the lease of plaintiff's Exhibit 24. Such shoes are fairstitched to make them resemble a welt shoe. This rider prohibits the lessee from representing the shoe as a Goodyear welt, in accordance with our policy, in all cases where our Goodyear machines are permitted to be used upon shoes other than Goodyear welts or Goodyear turns, to protect our trade-mark rights and also to protect the public against shoes being misrepresented by providing that they shall not be marked or sold as Goodyear welt or Goodyear turns.

990 Rider No. 10 (defendants' Exhibit 287, Record, p. —) is a printed form for fairstitching similar to the typewritten form No. 9. There was found to be sufficient use for it so that it was printed.

Rider No. 11 (defendants' Exhibit 288, Record, p. —) is a form permitting use of the Goodyear outsole stitching machine in the manufacture of so-called "mock" welts which are described in the rider.

Rider No. 12 (defendants' Exhibit 289, Record, p. —) permits the use of a Goodyear auxiliary machine in connection with a Goodyear outsole stitching machine which has already been leased for use in making special kinds of shoes, such as the preceding riders apply to.

Riders Nos. 13, 14, 15, 16, 17 (respectively defendants' Exhibits 290, 291, 292, 293, 294, Record, p. —) were prepared after the United Company began January 1, 1905, putting out its Goodyear department machines without the requirement of an initial payment, to permit manufacturers having Goodyear welters and stitchers upon the forms of leases previously used, under which they had made initial payments, to change over to the new form of lease and thereby get back a portion of their in-

vestment in machines. The five forms differ in respect to the amount of the allowance, which varied according to the length of time that the lessee had had the machine, the condition in which it was returned and whether he returned his old machine and took a new one or simply retained the old machine and substituted the new form of lease. These forms were used in connection with the lease of plaintiff's Exhibit 24 (Record, p. —).

Rider No. 18 (defendants' Exhibit 295, Record, p. —) was prepared for the Goodyear department auxiliary lease of plaintiff's Exhibit 25 (Record, p. —), after the United Company on January 1, 1905, adopted the practice of offering the Goodyear department machines without initial payments, to permit lessees who had Goodyear department auxiliary machines on the 991 initial payment basis to have the benefit of the new leases. This rider made allowance in repect to the initial payment which such lessees had previously made.

After this change of policy in respect to leasing Goodyear machines was adopted, in January, 1905, the company allowed any lessee of the Goodyear department machines to change from the old initial payment forms of lease to the new form of lease.

It was recognized that it would be somewhat unfair to those lessees who had already invested their money in the initial payment form of lease to have their new competitors get their machines without involving that payment, so this was thought to be an equitable arrangement by which the older lessees could get the benefit of the noninitial payment method of putting out the machines.

Rider No. 19 (defendants' Exhibit 296, Record, p. —) is a printed form for use with the lease of plaintiff's Exhibit 15 (Record, p. —), providing for the use of the Consolidated hand method lasting machine for side lasting shoes which had been manufactured by the machines of the Goodyear system, and which were otherwise lasted by the No. 5 lasting machine, and without any additional royalty; that is, the lessee paid no royalty for the use of the hand method machine. This rider was attached to leases of the hand method machines already in the hands of the lessees.

Rider No. 20 (defendants' Exhibit 297, Record, p. —) is similar to No. 19, but was used when the lessee took the hand method machine from us at that time—that is, a lessee having the No. 5 lasting machine might apply to us for a hand method machine for side lasting, and rider No. 20 applies to that situ-

ation. That form was also used with the lease of plaintiff's Exhibit 15.

Rider No. 21 (defendants' Exhibit 298, Record, p. —) is a form also used with the lease of plaintiff's Exhibit 15, providing for the use of the hand method machine for lasting the heel portions of turn shoes at a royalty less than the regular royalty for lasting the entire shoe.

Rider No. 22 (defendants's Exhibit 299, Record, p. —) is a similar form for the same lease, providing for the lasting of the toe portions of turn shoes by the hand method machine. Both No. 21 and No. 22 were adapted to cases where the lessee wished to last only the toes or the heels of the shoes by machine, as the case might be.

Rider No. 23 (defendants' Exhibit 300, Record, p. —) is a form used in connection with the metallic department lease of plaintiff's Exhibit 30 (Rec., p. —).

992 From the very first we offered the metallic machines on optional forms of lease, one the restricted form without initial payment, and one the unrestricted form without initial payment, but involving the payment of ten per cent more for the fastening material used. Subsequently, instead of charging the extra ten per cent for the fastening material used, we offered an optional form for the metallic machines involving the payment of an initial payment, but with the elimination of any restriction as to use with other machines, and no excess charge for the fastening material.

Rider No. 24 (defendants' Exhibit 301, Rec., p. —) is a printed form comprising the substance of rider No. 23 and adapted to be attached to the same lease, plaintiff's Exhibit 30.

We later printed a form of lease with the substance of this rider incorporated in the lease, a copy of which is plaintiff's Exhibit 32 (Record, p. —). When that lease was adopted the use of this rider was discontinued.

Rider No. 25 (defendants' Exhibit 302, Rec., p. —) is a form which was attached to the metallic department lease of plaintiff's Exhibit 30, striking out the provision by which the lessee guaranteed that he would use a certain amount of fastening material each year and substituting a fixed monthly rental. This rider was adopted in order that metallic machines might be available to small manufacturers who desired them, but who realized that their use of the machine would not involve the buying of the guaranteed amount of fastening material.

Rider No. 26 (defendants' Exhibit 303, Rec., p. —) is a form adapted for use with the metallic department lease of plaintiff's Exhibit 30, permitting the use of the metallic machines upon hand-

sewed welts. That was adopted in view of the fact that the restricted form of metallic department lease limited the use of metallic machines, so far as used upon welt shoes, to shoes which had been welted and stitched by the United Company's machines.

Rider No. 27 (defendants' Exhibit 304, Record, p. —) was adapted to be attached to the heeling department lease of plaintiff's Exhibit 28 (Rec., p. —) and applies to the heel compressing machine, one of the auxiliary machines in our heeling department. The rider strikes out the so-called tying clause, and also strikes out the provision for royalty and the guarantee, substituting a flat yearly rental, and the term of the lease is one year. This rider was designed for use in the case of persons who wished to manufacture heels for sale to others. The amount of the rental depended upon the volume of the lessee's business. The lease authorized the lessee to use the machines for his requirements during one year, and if it was found that that was not an equitable arrangement, a new lease with a different rental was made for the ensuing year.

993 Rider No. 28 (defendants' Exhibit 305, Rec., p. —) is simply a form adapted for use in connection with any lease, acknowledging receipt by the United Company of leased machines; although the term of each lease is seventeen years, lessees are constantly returning machines either because they wish to substitute new machines or because they find they have machines in excess of their requirements. When lessees return some but not all of the machines covered by any particular lease, this rider is attached to that lease indicating that certain machines have been returned.

Rider No. 29 (defendants' Exhibit 306, Record, p. —) is adapted for use upon the pulling-over system lease of plaintiff's Exhibit 38 (Rec., p. —), and strikes out the limitation to use with machines of other departments. This rider was used when a lessee preferred to take his machines upon the initial payment basis. When this rider was adopted we had no printed initial payment lease, but in such cases we used the restricted lease and attached this rider striking out the restrictive clause. The rider does not on its face provide for initial payment, but that was taken care of by the order and was received by us when the lease was signed.

Rider No. 30 (defendants' Exhibit 307, Rec., p. —), also used on the pulling-over system lease of plaintiff's Exhibit 38, is a form of letter construing one of the provisions of that lease. Some lessee desired to have the matter perfectly clear that there

was nothing in that lease which precluded his doing some of his pulling-over by hand.

Rider No. 31 (defendants' Exhibit 308, Rec., p. —), adapted to the heeling department lease of plaintiff's Exhibit 28 (Rec., p. —), is similar to the pulling-over department rider of defendant's Exhibit 306, and was designed for use where the lessee preferred to make an initial payment and take heeling department machines on the unrestricted basis. That form was originally typewritten and rider No. 32 (defendants' Exhibit 309, Rec., p. —) is a printed form identical in substance with No. 31, except that No. 32 provides on its face for the initial payment. That form, like No. 31, was adapted for use with the heeling department lease of plaintiff's Exhibit 28.

A set of copies of original leases to which the riders were attached is defendant's Exhibit 310, a physical exhibit.

994 I would like to state that there are three instances there where the leases are not included. In the case of the lease for the metallic machines, substituting the initial payment for the restricted clause, there is already in the case a copy of the lease with the typewritten rider attached, but I was unable to locate any case where the printed rider had been attached, and it was shortly after superseded by the printed lease itself. In the case of the heeling machines, the typewritten rider and printed rider, there are no copies of the lease included. I was not able to locate any such lease.

995 Referring to plaintiff's Exhibit 161 (Record, p. —), I have made a study of this list presented by Mr. Harriman of the machines of the Haverhill Shoe Machinery Company which were being used by manufacturers who were also using some machines of the United Company, and it appears to me to be very inaccurate and misleading.

As to the respects in which it appears to be inaccurate and misleading, in the first place, Mr. Harriman has inserted under the heading of "Group 1" the names of ten manufacturers who are described as past users of machines of the Haverhill Shoe Machinery Company, and purports to show as to each the machines of the United Company which those shoe manufacturers were using in connection with the Haverhill machines. There is no one of the ten cases in which he correctly states the machines of the United Company which the manufacturer had and was using with the Haverhill machines, and especially he omits in every instance to point out that those lessees not only had the turn sewing machines of the United Company but other machines also.

In every instance in which the list purports to show the machines of the United Company used with the Haverhill machines the facts are incorrectly set forth. In every instance not only were the machines which Mr. Harriman indicates belonging to the United Company used, but additional machines as well, which Mr. Harriman has omitted. The list shows eight instances, I find on my memorandum, in which Haverhill turn sewing machines were installed, which are stated to have been used in connection with turn machines of the United Company. In only four instances are any other machines of the United Company besides the turn sewer mentioned. In no instance does the list show the fact that the lessee had the United Company's Goodyear auxiliary machines, or does it show the fact that the lessee had the United Company's general department machines which the lessee had elected to take upon the lease plan instead of buying outright.

The fact, in those respects, was that in each instance where the lessee had our turn machine he had also our auxiliary machines for use with it. If he discontinued our turn sewing machine and substituted the Haverhill machine for it and continued to use our auxiliaries with the Haverhill machine he was, of course, using our machinery without making any payment to us for it. In each of these instances the lessee also had more or less of our general department machines—in some cases a great deal, in some cases a small amount—which he had elected to take upon the lease form, restricted to use with our welt and turn sewing machines—instead of purchasing outright (in which case, of course, he would have had a right to use it in any way he wanted). And if he were using those general department machines with the Haverhill turn machines he was not only violating the conditions under which we had supplied the machines to him, but he was using our machines without proper compensa- to us. In every instance, also, the lessee had machines of other departments from the United Company which Mr. Harriman does not mention—machines of the lasting department in some cases, heeling machines, metallic machines, and in one case pulling-over machines.

996 As to the importance of my stating which manufacturers had which machines—perhaps I might give an illustration. The first case mentioned is that of Hilliard & Tabor, in which he sets forth that they installed one Haverhill turn sewer, one channeler, and one heeler. He then states that these machines were used in connection with "welt and turn" machines of the United Shoe Machinery Company. As a matter

of fact, Hilliard & Tabor, at the dates in question, had under lease from the United Company not only the company's "welt and turn" shoe machines, but had also the United Company's Goodyear auxiliary machines, Gem machines, pulling-over department machines, eyeletting machines—which they had elected to take upon the restricted form of lease instead of paying $100 and having them without restrictions—metallic machines, heel-attaching machines, heeling department auxiliary machines, lasting department machines, and general department machines on lease, and so on through all the other cases mentioned in group 1.

Group 2 Mr. Harriman has headed: "Present users of certain designated machines of Haverhill Shoe Machinery Company," and he has purported to show nine cases of concerns using turn sewing machines and (in some cases) heeling machines of the Haverhill Company. He has also purported to show what machines of the United Company each one of those manufacturers had. There again, although I haven't the detail in full here, the statement of the machines of the United Company is incomplete and misleading. Excepting in so far as lessees upon this list have their machines upon the independent form of lease, as to which I have not investigated, the situation would seem to be practically the same under group 2 as under group 1, with the exception that in the case of group 1 Mr. Harriman states that the Haverhill machines have been discontinued; in group 2 he does not so state.

As to the facts about group 3 in Mr. Harriman's list, Mr. Harriman has headed this group: "Present users of Haverhill Shoe Machinery Company's principal machines who use no principal machines of the United Shoe Machinery Company except instances especially mentioned." And he mentions two instances only of use of United Company's machines. One is the case of C. K. Fox, Incorporated, where Mr. Harriman states that in addition to the Haverhill Company's machines Mr. Fox used a slugger and a loose nailer of the United Shoe Machinery Company. It is a fact that Mr. Fox had our slugging and other machines of the metallic department upon the independent unrestricted form of lease. The other instance is the instance numbered 15, S. B. McNamara, where it is stated that in connection with the Haverhill Shoe Machinery Company's machines Mr. McNamara had heelers of the United Company. It is a fact Mr. McNamara had heeling machines under lease from the United Company under the unrestricted independent form of lease. I have not examined to determine the accuracy of the statements

in other respects for this reason, that if the lessee has none of the principal machines of the United Company upon the restricted form of lease, there is nothing to prevent him from doing just what Mr. Harriman says he is doing. He can not be hampered in putting in outside machines by restricted clauses in leases which he does not have.

Group 4 Mr. Harriman heads as "Users of auxiliary machines furnished by the Haverhill Shoe Machinery Company in connection with principal machines of the United Shoe Machinery Company." All I can say as to that is that I have not investigated to determine the accuracy of his statements, but, taking his statement as he has made it, I can say that there is nothing in

997 any of our leases of so-called principal machines which prevents either these lessees or any others from doing just what Mr. Harriman says these people here are doing—that is, continuing in these instances to use the Haverhill machines, or in other instances putting in the Haverhill auxiliary machines and using them with the United Company's other machines.

In group 5 Mr. Harriman purports to set forth instances under the heading of "Users of principal machines of Haverhill Shoe Machinery Company in connection with the principal machines of the United Shoes Machinery Company." This list purports to set forth three instances in which heeling machines of the Haverhill Shoe Machinery Company are installed for use in connection with turn machines of the United Company. Or it is so stated in two of the three instances. In the third instance I find that to be the fact, although it is not so stated by Mr. Harriman. The only thing I have to say about that is that the United Company has never put out a lease for its Goodyear turn machine either on the restricted or the unrestricted basis which would preclude the lessee of the United Company's machine from taking his heeling machines from the Haverhill Shoe Machinery Company or from any other manufacturer of heeling machines and using them in connection with the United Company's Goodyear machines.

Cross-examination:

The rider of defendants' Exhibit 278 (Record, p. —) was used by the Goodyear Company before the United Company was formed, and has been used by the United Company when there was occasion ever since up to the present time. I have no means of knowing how many of those riders were used by the United Company up to the time the bill was filed.

Defendants' Exhibits 279, 280, and 281 (Record, p. —) are riders permitting the use of Goodyear machines on special kinds

of footwear. They are all three in substantially the same form, simply adapted to a kind of footwear. In the regular printed Goodyear lease the auxiliary machines and the principal machines are limited to use upon Goodyear welts and Goodyear turns, but from time to time, from the very first, some manufacturer would want to use United Company's welting machine or stitching machine, with or without auxiliaries, or some of the auxiliaries without either the welter or the stitcher, in making a special kind of shoe.

In those cases a rider has been prepared applying to the kind of shoe which the manufacturer wished to make, and a special royalty was fixed for the machines which he took. Those riders might differ in different cases, because a man might desire to use the machines in different ways in different cases, but ever since I have been connected with the company we have always had the practice of making riders to meet such conditions.

998 The rider of defendants' Exhibit 282 (Record, p. —) simply permits the removal of a machine from one factory to another and we have always done that.

Defendants' Exhibit 283 (Record, p. —) was in use as early as August, 1907. I found a lease of that date carrying such a rider, and whether it was in use before or after that I do not know. If there was occasion for it it was available up to the time the bill was filed. That rider related to the use of the outsole stitching machine and an auxiliary machine for attaching new soles after the original sole had been worn out, that is, for repairing.

I have no information as to how many of these riders were put out and I do not know of any way to get it without going through the leases.

The rider of defendants' Exhibit 284 (Record, p. —) has been used in substantially that form from the first, and the Goodyear Company had a similar form.

The rider of defendants' Exhibit 285 (Record, p. —) has been used at all times when stitchdowns were made. That kind of shoe is made periodically.

The rider of defendants' Exhibit 286 (Record, p. —) permits the use of the machine for fairstitching, and that has been permitted ever since I recall. I find instances as early as 1900.

Defendants' Exhibit 287 (Record, p. —) is a printed duplicate of defendants' Exhibit 286, which was used in typewritten form until it was called for so frequently that we had it printed. I think it was printed about 1902 or 1903.

The mock welt rider of defendants' Exhibit 288 (Record, p. —) has been in use at least since 1902, and I have no doubt it was used before that time.

999 The rider of defendants' Exhibit 289 (Record, p. —) was adopted in 1905. Prior to that time the auxiliary machines had been on the same lease with the principal machines, but in 1905, when the lease without initial payment was adopted, the auxiliaries were put upon a separate lease, and this rider for auxiliary machines was adopted at that time.

The riders of defendants' Exhibits 290 to 295 (Record, pp. ——), inclusive, were adopted in January, 1905, and were adapted to the Goodyear lease without initial payment, which was adopted at that time.

The riders of defendants' Exhibits 296 and 297 (Record, p. —) were prepared in 1908 and used originally in typewritten form. They were printed in 1910.

The riders of defendants' Exhibits 298 and 299 were adopted in typewritten form in 1905 and were printed in 1906.

The rider of defendants' Exhibit 300, which is the one striking out the restrictive clauses in the metallic lease and providing for an initial payment, was adopted in September, 1910. Prior to that time we had always offered metallic machines upon two forms of lease, one with the restriction and one without. The restricted lease called for a smaller return to us in the way of royalty than the one without restriction. When this rider was attached to a lease the lessee paid us an initial payment when the machine was installed, and this rider was attached to the regular restrictive form of lease and struck out the restriction in that lease which limited the metallic machines to use with our Goodyear welting and stitching and our lasting machines.

The initial payment varied on different machines. A letter which I have, dated September 2, 1910, written to a manufacturer inquiring for such terms, quotes initial payments upon machines of various departments, including metallic machines. The terms named for the metallic machines were as follows: Staple fastening machine, initial payment $100; slugging machine, initial payment $250; loose nailing machine, initial

1000 payment $250; string nail tacking machine, initial payment $75; taper nail tacking machine, initial payment $75.

As to whether those amounts were the consideration for striking out the tying clauses, I would not put it that way. The lessee could have the metallic machines upon the restricted form of lease without any initial payment; he could have the machines upon the unrestricted form of lease, provided he cared

to pay us ten per cent more for the fastening material; he could have them upon the unrestricted form of lease, provided he paid us this initial payment in respect to each machine at the time they were installed. If he elected to take the last alternative, the rider which you have in your hand was attached to the restricted form of lease, and the lease was modified by that rider striking out the restrictive clauses. And in that case the ten per cent increase in the price of material did not apply. He bought his material at the same price as the man who had the restricted form of lease.

BROWN, J. He had his choice of three ways?

The WITNESS. He had his choice of three ways.

The rider of defendants' Exhibit 302 (Record, p. —) was a form making the leases available to small manufacturers, waiving the guaranty and substituting a small annual rental. I found such riders in use as early as 1902 and it has been used as occasion arose ever since.

Defendants' Exhibit 303 (Record, p. —) was simply a letter to some enquiring lessee who wished to have his lease interpreted in some respect. I don't imagine it was used in any case but one. The one which I brought in was a copy of an original lease with the rider attached to it I didn't look up to see whether it was used in other instances, but that letter was adopted as a form and if any one else made the same inquiry he got the same form of letter.

The rider of defendants' Exhibit 304 (Record, p. —) was used in a good many cases. I have found instances as early as 1903 and whether there were others before that I do not know.

Defendants' Exhibit 305 (Record, p. —) was a letter which really amounts to a rider and has always been used. When lessees desire to return part but not all of the machines under a particular lease, before the expiration of the lease, this rider is attached to the lease, indicating that those returned machines are eliminated from the lease.

1001 The rider of defendants' Exhibit 306 (Record, p. —) was adapted to the pulling over system lease and was similar to the rider for the metallic lease; that is, it struck out the restrictive clause and substituted initial payment. My recollection is that the initial payment was $750 for the pulling over machine, which is a very large heavy machine, and that the initial payments for the auxiliary machines were smaller amounts. $750 was not the consideration for striking out the restrictive clause; it was the initial payment if the lessee desired to take the machine upon the unrestricted form of lease.

Defendants' Exhibit 307 (Record, p. —) was simply a letter interpreting the lease for some lessee who had inquired.

The rider of defendants' Exhibit 308 (Record, p. —) was a form to be attached to the heeling department lease, changing it from a restricted lease to an unrestricted lease, involving initial payment and elimination of the so-called tying clauses. The initial payments were—for the McKay automatic heel loading and attaching machine, $400; trimming and randing machine, $150; heel trimming machine, $150. Those prices were quoted in September, 1910, to an enquiring lessee.

Defendants' Exhibit 309 (Record, p. —) is a printed form of rider corresponding to the typewritten form of defendants' Exhibit 308.

It was generally known among the trade that lease conditions would be given to permit these various things, although I don't suppose the trade knew how the terms would be given, whether by a form of lease or by a lease with modifications, and I don't suppose they concerned themselves as to that. We used riders simply as a matter of convenience and then if we found there was frequent use for it we printed a new lease, incorporating the rider in the lease.

1002 One illustration of the manner in which information that these lease conditions would be given was conveyed to the trade is that the form of royalty report which we have used ever since the United Company was formed contains blanks providing for fair-stitch work, mock-welt work, McKay-welt work, and so on, so that the return which every lessee of the Goodyear machines makes, who has a stitching machine, has such blanks on it. They make that sort of a return. That is one illustration. Of course, there are many others.

I think I have produced types of all the forms of rider which have been used.

With respect to the list put in by Mr. Harriman, I do not find in groups 1 or 2 any instance where Mr. Harriman stated that the manufacturer had our machines when he did not.

As to group 3, Mr. Harriman stated that the manufacturers enumerated were users of Haverhill Company machines, having no principal machines of the United Company excepting in the instances enumerated. Without looking it up I knew that in the two cases which he named in which United Company machines were used, the manufacturers did have our machines. I didn't investigate to see whether any others had our machines.

As to group 4, Mr. Harriman does not indicate anything with reference to the United Company's machines, and I did not look that up.

As to group 5, without having looked it up I am certain that both Witherell & Dobbin, J. J. Grover & Sons, and the Wingate Shoe Company have other machines of the United Company beside the turn machines mentioned, but as Mr. Harriman said that they were using turn machines, I did not consider it necessary to go further.

Mr. FOWLER. Mr. Brown has returned with this list that I called for the other day. Your Honors will remember that Mr. Winslow had filed a list showing the various machines that were in use at Mr. Brown's factory. Mr. Brown has returned and has designated the various sources from which he obtained those machines, and I don't care to ask him any further questions about it.

(Amplified list of machines used by J. Brown & Sons, Salem, Massachusetts, showing sources from which the machines were obtained is plaintiff's Exhibit 269, Record, p. —.)

1003 JANUARY 9, 1914.

WILLIAM R. SAMPSON, witness for defendants (recalled).

I am sales manager of the general department of the United Company, and have occupied that position for seven or eight years.

In connection with my work I have always made it a practice as far as possible to keep myself informed as to the state of the art as to the supply of shoe machinery on the market by others than the United Company. I inform myself as to what other persons are in the business and as to what they are offering in the way of machinery. That is a part of my trade knowledge and I always keep a file of catalogues that are issued, the different advertisements that appear, and general information that I obtain through reports, etc.

I have brought together my information with reference to the people who were advertising as producing shoe machinery and offering it to shoe manufacturers prior to December, 1911. This information has been compiled in two portfolios, of which the first comprises letters, catalogues, and advertisements of different machines that are offered for sale and advertised in this country by manufacturers of shoe machinery. There are 116 manufacturers represented in that portfolio, which is defendants' Exhibit 321 (a physical exhibit). That portfolio contains an index both according to the names of the manufacturers and according to the operations of the machines. All of these concerns are still engaged in business.

The second portfolio comprises catalogues of machines which I have not seen specifically advertised within a few years, but

which were generally known to be those of manufacturers who have these machines for sale, as a matter of general trade knowledge. I have collected there their catalogues which they give out to the trade. This portfolio is defendants' Exhibit 311 (a physical exhibit).

To inform myself further as to whether these people who were advertising were, in fact, ready to supply the machines which they advertised for sale or lease, I obtained letters from them saying that they were in a position to supply the machines. I personally applied, or had people apply personally, to them for the information. I have their own letters in response, quoting prices and giving their circulars and catalogues showing the machines upon which they quote. Their answers and some of their advertisements and catalogues are in the first portfolio. The letters are not all dated before December 11, 1911, but it is general knowledge that the machines were offered for sale before that time.

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I also produce a number of loose catalogues which I was not able to get into this portfolio. Defendants' Exhibit 312 (a physical exhibit) is a catalogue of Edward D. Spencer & Company. Defendants' Exhibit 313 (a physical exhibit) is a catalogue of J. D. Randall Company. Defendants' Exhibit 314 (a physical exhibit) is a catalogue of Edwin B. Stimpson & Son. Defendants' Exhibit 315 (a physical exhibit) is a catalogue of Metropolitan Sewing Machine Company. Defendants' Exhibit 316 (a physical exhibit) is a catalogue of C. V. Engstrom Company. Defendants' Exhibit 317 (a physical exhibit) is a catalogue of A. Johnson & Sons. Defendants' Exhibit 318 (a physical exhibit) is a catalogue of Moenus Shoe Machine Company. Defendants' Exhibit 319 (a physical exhibit) is a catalogue of Atlas-Worke Pohler & Co. Defendants' Exhibit 320 (a physical exhibit) is a catalogue of Standard Rotary Machine Company.

Mr. FOWLER. Of course, we want to interpose an objection, your honors, to all concerns mentioned in this list who are not engaged in producing or putting upon the market machines connected with fastening the sole to the shoe. This relates purely to the question of the monopoly. We are not insisting that there is a monopoly of any other line of machinery except that.

Mr. CHOATE. Do you waive any other claim?

Mr. FOWLER. So far as the actual monopoly is concerned, it is limited to the machines fastening the soles and the uppers together, and to the clicking machines and the eyeletting machines. Mr. Gregg says he wants to state it.

Mr. GREGG. Machines for preparing and attaching the bottoms to the uppers of shoes, and eyeletting machines and dieing-

out machines, otherwise known as clicking machines. Machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines.

1005 BROWN, J. On what ground do you object to the introduction by the defendants of matters responsive to the allegations of the bill as it now stands?

Mr. FOWLER. We submit, may it please the court, that it is not responsive to the allegations of the bill as it now stands. It is true the bill alleges that it was their object to monopolize other lines of machinery than those, but the bill further restricts the actual monopoly to those particular lines that Mr. Gregg has mentioned, and we submit the fact that there are other concerns existing that put out machines of another character is not related to the allegations of the bill, as now set forth in the bill.

Mr. CHOATE. I don't think the bill does limit it in any way to the machines of which you have now spoken.

Mr. FOWLER. If the bill does not limit the actual monopoly to those machines as mentioned, why, we will agree to limit it at the present time.

DODGE, J. Page 73 certainly doesn't limit it that way.

Mr. GREGG. Seventy-nine, if your honor please.

Mr. FOWLER. I want to draw a distinction between the two matters alleged in the bill. The bill alleges that it was their original intention on the formation of the company to monopolize other lines of machinery, but when the bill comes to allege, make an allegation, with reference to the actual monopoly, it is limited to these particular machines. Your honors, I am sure, will find that that is the case, if you will examine the bill closely.

DODGE, J. Paragraph 8, on page 73, doesn't seem to look like that.

Mr. GREGG. Well, on page 79, section XI, of the bill reads:

"By virtue of the unlawful contracts and combinations above described defendants control all the large and important establishments in the United States which were formerly engaged in the manufacture, sale, and lease of machines designed and used for attaching the bottoms to the uppers of boots and shoes, and kindred and auxiliary machines; they have obligated scores of successful shoe machinery men to refrain from trade and commerce therein and have acquired a monopoly of interstate and foreign trade and commerce in shoe machinery, and have become so powerful that successful competition therein with them by any concern is practically impossible. The extent of their monopoly is indicated by the fact that they now control more than 98 per cent of the manufacture, sale, and lease of all the

essential and kindred and auxiliary machines and devices manufactured and used in the United States for attaching the bottoms to the uppers of boots and shoes; and they have it within their power," etc.

The paragraph on page 73, to which his honor, Judge Dodge, refers, is under the section of the bill relating to domination by defendants of foreign trade and commerce in shoe machinery, that is, between this country and foreign countries.

PUTNAM, J. Do you admit that you don't claim a monopoly in trade and commerce, either in the United States or foreign countries, of anything except the bottoming machinery and the eyeletting machinery?

Mr. GREGG. Machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines and the clicking machines, and, as I stated, when I opened the case for the Government——

PUTNAM, J. One moment. Do you admit that that is all you claim?

1006 Mr. GREGG. Yes, sir. We make no contention——

PUTNAM, J. Can that go in the record?

Mr. GREGG. Yes, sir; I am perfectly willing for that to go in the record.

Mr. FOWLER. It has gone in the record, your honors, several times.

PUTNAM, J. Well, I don't know. In my opinion I said it was a very frank bill. So it was a very frank bill. At the same time they needed to determine the lines on which it is marked, but if you admit that and have it go in the record, why isn't that just as good as though you alleged distinctly in the bill that you claim that and nothing more? What would be the necessity of going into it?

Mr. GREGG. As Mr. Fowler has stated, perhaps the bill may be open to the construction that we allege an intent to monopolize more than those machines, and I think the proof all the way through will show that, taking into consideration the agreements that they entered into at the time they acquired competing concerns.

PUTNAM, J. Then that is a part of your case. If you allege in the bill that they intended to monopolize the whole thing, that gives color to the bill all through, doesn't it?

Mr. GREGG. Only to that extent; but when we charge the actual monopoly of what they have actually monopolized we charge that they have monopolized the machines that are designed and used for preparing and attaching the bottoms to the uppers of shoes.

PUTNAM, J. If I remember correctly, in the Swift case the intention was made the turning point of the case. If they had done these things, if you will still allege that they had done these things with the original intention to create a monopoly in other things, isn't that a case under the statute?

BROWN, J. Irrespective of the question of what had in fact been monopolized, that would give the Government a ground for decree on these general allegations.

Mr. FOWLER. Now, the bill sets out these facts, as I construe the bill, that, first, they intended to monopolize the whole business; in the second place, that they didn't monopolize the whole business, but in carrying out that intent they mopolized certain branches of the business.

BROWN, J. That is the trouble.

Mr. FOWLER. Yes.

DODGE, J. Haven't you alleged in your bill that everything they did hereinafter set forth was a step in carrying out the unlawful intent?

Mr. FOWLER. That is correct. Of course, your honor, we do that, but the bill expressly—that is, by necessary implication—admits that in these other lines of business there are a number of people at least engaging. That is what he is attempting to prove here; that is, he is introducing a list of a great many concerns engaged in those particular lines of business which the bill admits haven't been monopolized at all. Now, what additional bearing can that have, or how can that add anything to what is actually admitted and alleged in the bill itself?

BROWN, J. Mr. Gregg stands with Mr. Fowler on the original charges of the bill, a conspiracy to monopolize the entire shoe machinery business.

Mr. FOWLER. That is, when the organization was first made.

BROWN, J. Now, is it not open to the defendants to show what that was?

Mr. FOWLER. Certainly, your honor. As I understand, this particular evidence does not relate to what actually occurred.

BROWN, J. It certainly must be open to the defendants to show what was the field that they have made no attempts, and haven't tried to, in other lines at all. So long as you insist upon the original position, I don't think that the allegation that you charge success in any particular line is of any consequence.

1007 Mr. FOWLER. Of course, your honors, it can't have any material bearing upon the question of the actual monopoly, because we can see the actual monopoly only extends to a certain limited field.

Mr. CHOATE. State those fields, won't you?

BROWN, J. Even if it could be found that there is no actual monopoly as to bottoming machines, there is yet a case for decision.

Mr. FOWLER. That is correct, may it please the court, and the only questions for your honors to consider, it seems to me, is whether or not the simple fact that here were a number of other concerns engaged in other lines of business in 1911, or some time previous before 1911, can add anything to what is admitted in the bill with reference to those particular facts. That is, while the bill alleges that there was the original intent to monopolize when the organization was formed, yet it concedes there were a number of concerns in other lines of business than those particular lines, and those lines were not actually monopolized. Now, if these facts can add anything to what is alleged that are admitted in the bill on that feature, then it is admissible; but of course it could go only to the question of original intent; that would be the only thing.

PUTNAM, J. We haven't got foresight enough to go through all this. We have generally let counsel put in everything they wanted to, and I guess we had better let them go on the same way now.

Mr. FOWLER. I suppose, your honors, our exception may be noted?

PUTNAM, J. Certainly. Do you desire to state it any more fully?

Mr. FOWLER. No; I don't care to, your honor. Of course, there is a lot of testimony of the same kind put in by Mr. Winslow. I believe I raised some objection at that time that wasn't pressed.

(At request of counsel for petitioner the witness agrees to prepare a list of the manufacturers whose catalogs, letters, advertisements, and circulars relating to shoe machinery comprise defendants' Exhibits 311 to 321, inclusive, and of the machines which they manufacture.)

1008 JANUARY 9, 1914.

SIDNEY W. WINSLOW, witness for defendants (recalled).

Cross-examination resumed:

I was requested to ascertain if I could what per cent of welt shoes was lasted by machinery in 1898. I have ascertained that in 1899, 19,000,000 pairs of shoes were lasted on the Chase and Ideal machines, and I assume that those were all welt shoes. That is the nearest that it is possible for me to get. There is

nothing in our records to indicate whether the shoes are of one kind or another, except the kinds of machines that are used on them.

As to the number of welt shoes that were being manufactured at that time, I think it was 23,000,000. I have testified to that, and haven't the exact figure here. As to whether there is anything to indicate whether or not the Consolidated hand method lasting machine was being used in lasting welt shoes at that time, I haven't attempted to get the work done by each particular machine. It would be quite a task, although I might do it as regards the hand method machines.

I was asked to ascertain the style of the infringement cases which were pending against the Seaver Company and which had been brought by the Consolidated & McKay Company. Those suits were equity No. 1158, Consolidated & McKay Lasting Machine Company *v.* the Seaver Process Lasting Machine Company, and equity No. 1167, Same *v.* Same. They were both pending in the Circuit Court in the District of Massachusetts, and Fish, Richardson & Storrow were our counsel.

As to the request that I ascertain the number of Eppler machines which had been returned to our factory, the records of the factory do not show and I have not yet been able to get the information. I don't know whether I can get it. There 1009 have been so many things and so much work that I have followed along the lines of least resistance to get such facts as you asked for.

I have not yet ascertained the capital stock of the Eppler Welt Machine Company. I have tried to find records which would give that information, but have not yet found them. I do not know what has become of the records of the Eppler Company. I never saw them, and do not know whether they ever came into the possession of the United Company. I think the main office of the Eppler Company was in Boston or Brockton, but I do not know. Let me say that of course I was connected with the Lasting Machine Company and the McKay Company was located across the street, and the Goodyear Company's office was near ours. As soon as the companies were brought together of course my mind was entirely upon other matters than such things as the records of the Eppler Company, and then I went abroad in May or June, two or three months after the formation of our company, and did not return until late in the fall, and was out of touch with many of the details of the business until my return. I assume that the records of the Consolidated & McKay Company and the records of the Good-

year Company were turned over to the United Company, but I have never seen them. My work has not brought me in touch with them.

As to who prepared the papers and looked after the details of the purchase of the Eppler Company, beyond the fact that Mr. Endicott negotiated the sale, I can't give any information. It should be remembered that this transaction took place about fifteen years ago, and my mind has been occupied with the business of the three main companies and such companies as continued their existence, like the Canadian Company.

Fish, Richardson & Storrow were attorneys for the Eppler Company. I do not know whether they or whether Mr. Storrow had anything to do with the Eppler transaction. I think I had nothing whatever to do with the details of the transaction beyond what I have already stated in my previous testimony.

I have not yet undertaken to file a list showing what heeling and metallic machines were being made at the time of the consolidation of the several companies into the United Company other than those made by the McKay Shoe Machinery Company. I did not understand any such request was made of me. I will try to have that for you next week.

1010 I have prepared a statement giving the initial payments received on Goodyear department auxiliary machines in the calendar years 1903, 1904, 1905, and the amounts of the annual rentals for machines that were placed on the rental basis in the calendar year 1905, that being the first year that we started to put out auxiliary machines on the rental basis. Initial premiums received upon Goodyear department auxiliary machines in those years were as follows: 1903, $78,390; 1904, $92,510; 1905, $13,988.

In 1905 part of those machines were put out on the initial premium basis and part on the rental basis, the manufacturer exercising his choice. We adopted the rental basis late in 1904. In the year 1905 the annual rental upon the Goodyear department auxiliary machines which were put out upon that basis amounted to $15,371. If those machines had been put on an initial payment basis, we would have received $274,582 in initial payments. As requested, I will obtain the figures for 1911.

As requested, I have obtained information showing the amount received from repair parts and the profits on those parts. For the calendar year ending December 31, 1911, the total gross sales of parts for the Goodyear, heeling, lasting, pulling-over, and metallic department machines amounted to $690,367.34. The gross profit on those sales, without deduction for interest on capital invested or loss resulting from parts becoming obsolete, was

$276,146.94. The cost of the road service for that year, ending December 31, 1911, was $1,198,111.51. That road service expense includes generally the salaries and traveling expenses of roadmen, the proportion of the rents and expenses of the stations throughout the country, and telephone charges and expenses attributable in our accounts to road service alone. I can not give the details from memory. I think I went into those more in detail on direct examination, but I haven't the data with me. As requested, I have designated the sixteen auxiliary machines referred to in defendant's Exhibit 230 (supra, p. —). (The list supplied by Mr. Winslow is filed as plaintiff's Exhibit 270, Record, p. —.)

1011 I have ascertained that the list of 746 new concerns which have entered the shoe manufacturing business since 1900 was confined to manufacturers with whom our company did business. We did not attempt to ascertain how many concerns had entered business with whom we had not done business.

As requested, I have prepared the following lists:

(1) A list of the total number of lessees holding machines of the Goodyear, lasting, heeling, or metallic departments of the United Company on January 1, 1905, on independent, unrestricted leases. (This is plaintiff's Exhibit 271, Record, p. —.)

(2) A list of the total number of shoe manufacturers holding machines of the Goodyear, lasting, heeling, or metallic departments of the United Company on January 1, 1905, on independent, unrestricted leases. (This is plaintiff's Exhibit 272, Record, p. —.)

(3) A list of shoe manufacturers holding machines of the lasting, heeling, or metallic departments of the United Company on January 1, 1905, on independent, unrestricted leases. (This is plaintiff's Exhibit 273, Record, p. —.)

The total number of lessees on the first list holding Goodyear, lasting, heeling, and metallic department machines on independent, unrestricted leases is 1,085. The total number of shoe manufacturers on the second list holding machines of the Goodyear, lasting, heeling, and metallic departments on January 1, 1905, on independent, unrestricted leases is 943. The shoe manufacturers on the third list holding machines of the lasting, heeling, or metallic departments, on independent, unrestricted leases is 706. On January 1, 1905, the United Company was doing business with 1,026 shoe manufacturers, so that 943 of the 1,026 manufacturers had one or the other independent lease.

These lists give the names of the several individual concerns who held one or more machines under the independent leases on that particular date. These lists do not show the particular

machine or machines that were held by a lessee under this lease. That would be an almost interminable task. As to whether more or fewer manufacturers held machines under independent
1012 leases in December, 1911, I don't know, but I should assume that there would be fewer, because shoe manufacturers have appreciated the advantages of taking machines on restricted leases and have gradually adopted that plan. If it is a fact that more manufacturers are now holding restricted leases, that may be due to various conditions. For example, one manufacturer may go out of business and another manufacturer might enter business who would decide to take machines on the restricted leases. Again, a manufacturer would give up the use of machines, like the Chase machine, as in the case of C. H. Jones, of the Commonwealth Shoe and Leather Company, who had a great many Chase machines on unrestricted leases. He returned those machines and took the No. 5 lasting machine on restricted leases rather than take them on the unrestricted, independent leases.

In regard to the list of machines in the Brown factory, the United Company manufactures the Amazeen skiving machine and the Pluma skiving machine. I think the Pluma machine is a new machine that we have got out, but of that I can't be certain. If Jonathan Brown has those machines in his factory he did not necessarily get them from us, as we sell those machines and never lease them.

Our company now controls the Booth Manufacturing Company and we purchased the assets of George W. Emerson & Company. The Bresnahan Machine Company was a part of the property of Thomas G. Plant, and when we acquired its property it was not doing any commercial business.

(Examination of Mr. Winslow suspended, at request of counsel for defendants, to accommodate the next witness.)

1013 JANUARY 9, 1914.

ARTHUR AUGUSTUS SOUTH, witness for defendants.

I reside in Beverly, and I am superintendent of the Brophy Brothers Shoe Company, of Lynn. I have been in that position for eight years.

Every machine that enters our factory has to be approved by me; that is a part of my duties.

As to the testimony of Aleck Stone that he represents the Atlas Works, of Leipsic, Germany, and that in January or February, 1911, he called at the factory of Brophy Brothers in Lynn and interviewed the superintendent, and endeavored to place some of his machinery in our factory, and that he was told by the superintendent that they could not take any of his

machines, and that the superintendent said: "Mr. Stone, we can't even talk aloud about it, about talking with you at all about competition machines"—I did not make the statement. In the first place I don't know Mr. Stone and I never met the gentleman. I made no such statement.

There is no other person in our factory who has anything to do with meeting men who want to place machinery.

Cross-examination:

I never remember of meeting Mr. Stone in any way, shape, or manner.

1014 JANUARY 13, 1914.

NELSON W. HOWARD, witness for defendants, resumed.

Cross-examination:

There has been final judgment in each of the interferences between patent applications owned by the United Company and applications owned by Mr. Plant enumerated by me in defendants' Exhibit 272. These judgments were as follows, the ownership of the applications being indicated by "(United)" or "(Plant)":

Interference, No. 28,127, was decided in favor of Heys (Plant); No. 31,306 was decided in favor of Eppler (United); No. 31,422 was decided in favor of Heys (Plant); No. 31,657 was decided in favor of Phelan (Plant); No. 31,005 was decided in favor of Winkley (United); No. 29,382 was decided in favor of Ladd and Stiggins (United); No. 32,078 was decided in favor of Busell (United); No. 31,965 was decided in favor of Keats (United); No. 31,966 was decided in favor of Ashworth (United); No. 30,644 was decided in favor of Heys (Plant); Nos. 26,952 and 27,259 were decided in favor of Krewson (That application was owned by neither Plant nor the United when the interference was declared, but Plant had a license under the issues of the interference); No. 26,016 was decided in favor of Flynt (United); No. 26,018 was decided in favor of Hadaway (United); No. 31,802 was decided in favor of Brock (United); No. 31,347 was decided in favor of Phelan (Plant); No. 29,751 was decided in favor of Cook (whose application was owned by neither Plant nor the United); No. 31,525 was decided in favor of Hadaway (United); No. 31,854 was decided in favor of Hadaway (United); No. 28,636 was decided in favor of Perry (United); No. 32,056 was decided in favor of Stewart (Plant); No. 32,021 was decided in favor of Towle (United); No. 32,201 was decided in favor of Buckminster (United).

The only interference that I recall that was disposed of by stipulation was No. 32,056, McFeely v. Stewart. Stewart had

previously won another interference and was several years ahead of McFeely.

1015 I do not think that all of the interferences were decided before the Plant acquisition; those that were declared within two or three months before the acquisition very likely did not get to a final hearing before the date of the acquisition. It did not follow that after the acquisition we did not carry any further the interferences that had not been decided. It is sometimes necessary to carry through an interference in order to have the Patent Office settle the question of priority.

My recollection is that in the majority of those interferences which had not been decided before the Plant acquisition we carried the interference through. We certainly did in those cases where there were other parties, and there were quite a number of applications not owned by Plant or the United. I think enough progress had been made in the other cases so that it was advisable to carry them to final adjudication by the Patent Office.

Referring to defendants' Exhibit 274 (Rec., p. —) which sets forth my opinions as to infringements of Plant patents by machines of the United Company, the statement at the end of the discussion of Lockstitch Machine—model K, that it was necessary to change the construction of the machine to avoid infringement, applies only to the last patent mentioned in that discussion, No. 940,055.

1016 Referring to the discussion of lasting machine: No. 5, in defendants' Exhibit 274, and particularly to the paragraph regarding the British patent, some of the claims of which our machine infringed—at that time the United States patent had not been issued, but we felt sure that there was a United States application pending, and we made our changes in the light of what we found in that British patent. We expected to find the same claims in the United States patent when it issued later on as it did a year or two after that.

Referring to the last paragraph of the discussion of lasting machine: No. 5 in defendatns' Exhibit 274, we changed the construction of our experimental hold-down to avoid the infringement of claim 24 of patent No. 957,949, May 17, 1910, Glass, and claim 51 of patent No. 958,280, May 17, 1910, Plant; but it is not correct at all to state that at the time the Plant patents were acquired there was no infringement with respect to patents No. 957,949, Glass, and No. 958,280, Plant, because that last paragraph has to do with claim 24 only of patent No. 957,949 and of claim 51 only of patent No. 958,280. As ex-

plained in the earlier part of that discussion, the commercial machine infringed five other claims—13, 14, 15, 16, and 18—of patent No. 957,949, and it infringed five other claims—46, 47, 48, 50, and 52—of patent No. 958,280.

In the same discussion, in defendants' Exhibit 274, by my statement, in connection with the infringement of claims 46, 47, 48, and 50 of patent No. 958,280, that "the validity of those claims is questionable." I meant that I hoped it would be found that those claims were invalid if they were sued upon.

1017 As to our opportunities for determining whether or not Plant machines infringed our patents, prior to the time that we went through the Plant factory we got great assistance from the Plant patents and from the manner in which they were issued. The patents on the machines he was using issued to him and the patents on the inventions he was not using issued to the Manufacturers' Machine Company.

Q. Then all the suits you brought prior to the Plant acquisition were based on an examination of the patents only?

A. Oh, no. We learned from one source and another, operators who had been employed in the Plant factory who had drifted into our branch offices, and in that way we were able to learn which of the patents—we got enough information as to the general character of the machines so that we could tell which of the patents——

Q. In other words, the operatives of the Plant machines reported to your office on the operation of those machines?

A. Well, we got in touch with them. Our branch office would report to us that somebody would come in and give them this information about a certain machine, and by piecing together the information we got, that we got from all sources, we were able to satisfy ourselves as to the actual construction of the Plant machines.

None of the 18 infringement suits brought against Plant or the Thomas G. Plant Company had been litigated to a final conclusion. The first suits were brought in July, 1910.

I was aware before the Plant acquisition of the infringements by the Plant machines of practically all the United Company's patents which I have mentioned, except the Bresnahan sole molder infringement. I did not happen to see that machine in the Plant factory. I have stumbled on a few infringements since the acquisition.

I am not aware that Plant had notified the United Company that he intended to bring suits for infringement.

1018 Referring to defendants' Exhibit 275 (Rec., p. —), it is not claimed that United Company's machines were infringing any patents owned by the Goddu Company. The infringements there discussed were infringements by the Goddu Company machines of the United Company's patents. The proposed suits for infringements referred to in that exhibit had been prepared just before the formation of the United Company, and at that time the patents were owned by the McKay Metallic Fastening Association.

There was no infringement by the United Company of patents owned by Coupal and Gordon.

No suits had been brought by the United Company against Edwin T. Freeman for infringement of its patents by his machines. We claimed that there were such infringements. As a matter of fact, Freeman had not put out any machines at all.

As to all the concerns named in defandants' Exhibit 275, it is a fact that, except where infringement suits had been litigated to a final conclusion, my statements as to infringement are merely statements of my opinions.

There are also cases in which no infringements were claimed. Those are comprised in two groups; first, cases where a new field which we desired to enter—for example, the fast color eyelet field—was in our opinion completely dominated by patents owned by the acquired company; second, where the acquired company had patent rights which stood in the way of the development of machines which we had under way or which we were actually putting on the market. One of the companies in this group was the Seaver Lasting Machine Company, which, however, was also infringing our patents.

The suits under the discussion of M. V. Bresnahan & Co. in defendants' Exhibit 275, were not patent suits, and were cited simply to show that there was litigation pending. The first group were actions of replevin, and it is my impression that the suits were brought to recover certain machinery that had been in a fire and had been sold after they had been taken over by an insurance company. The facts are all of record in the report of the suits in 197 Massachusetts, 206.

1019 While I can not state the details of the four suits brought by the Bresnahan Company against the United Company, my impression is that they were for alleged malicious prosecution. These suits were pending at the time of the acquisition, and were disposed of by stipulation or by oral agreement after the acquisition.

Direct examination resumed:

As to the peculiarities of leather which must be provided for in the machinery which operates upon it, as distinguished from the machinery used on manufactured fabrics, leather is unique in that different portions of every skin or hide, frequently portions that are closely adjacent, differ in hardness, elasticity, and thickness, and these differences all have to be reckoned with throughout the successive steps in the manufacture of the shoe. For example, in cutting the different parts of the upper from a skin the cutter must be constantly examining the skin, selecting the best parts for the portion of the upper which will receive the most wear, and cutting from the other parts of the skin the portions of the upper which receive less wear or are not so prominent in the finished shoe. The necessity for that constant examination and the exercise of his best judgment all the time by the workman probably explains why the operation of cutting out uppers was always performed by hand until as late as 1908.

Again, in manipulating hide of sole leather, the operator must cut out soles from the best portion, carefully avoiding soft spots and brand marks, while insoles come from a different portion, not satisfactory for outsoles, and counters and top lifts and the other heel lifts are cut from the poorer portions.

Further, a shoe is unique in that it comprises so many different parts of leather. The upper of light skin, comprising a number of different parts, has within it a cloth lining. Between the lining and the upper is inserted a sole leather counter at the heel, and at the toe of most shoes a stiffening piece, known as the box toe, which prevents the toe from breaking down in wear.

1020 Then there are the insole and outsole, both of sole leather; in a welt shoe, the welt and also a filler of cork and cement between the sole and the outsole. The heel, if all leather, is composed either of whole pieces of leather, or if it is a pieced heel, many of its lifts will be composed of pieces of scrap leather pieced together to form complete lifts.

In my study of the development of machines for operating on leather to make shoes I have observed that only those machines have survived in connection with which the peculiarities of leather, of which I have just given illustrations, have been kept in mind.

1021 JANUARY 13, 1914.

SIDNEY W. WINSLOW, witness for defendants (resumed).

Direct examination resumed:

On cross-examination I was asked what, if any, new principal machines had been developed since 1899. Understanding the question to be limited to a machine which had been developed

to do work which had previously been done by hand, I referred only to the pulling-over machine. As I now think the question was intended, my answer should have included the clicking machine, the No. 5 lasting machine, the model M stitcher, and the model K welter. I include the last three machines because they are entirely new machines from the ground up; while they perform operations that were previously done by machines, they all embody new principles. There are also the new model B heeling machine and the new loose nailing machine, which have all been built upon new models. I mean by that that, although they accomplish in a general way the same result, it is an entirely new machine for accomplishing that result.

On cross-examination I was asked about the Continental laster. I have investigated that machine, and the best information I can get is that not over 20 of them were ever put out, and that those went out of use before the United Company was formed. As I stated, it was nothing but a tacking machine; the lasting was done by hand and the machine drove the tack.

When I stated on cross-examination that there were a vast number of metallic machines on the market before 1899, I understood the question to refer to the fact that a large number of metallic machines were in use, rather than many types of machines. As regards different kinds or makes of machines, there were not a great many in 1899 and practically all were being made by the McKay Company, which was putting out a large number of those machines.

My best information is that the McKay Company was putting out all the heel-attaching machines that were being put out in 1899, and that no other company had put out any heel-attaching machines for quite a number of years prior to 1899. When I speak of a heeling machine I mean a heel-attaching
1022 machine always. In speaking on my cross-examination of the Goddu Company having three or four types of machines I did not mean that they were in a position where they were marketing any machines. They were not in a position where they were marketing any machines, and were not in a position to market any machines. My information is that there never had been but one of their machines put out, and that that was only in use for some two or three weeks and had been returned to the company. On the question of their commercial condition, there were two of their machines that were not, and would not have become, commercial because of the feed that was used in them. They were all imitations of or along the same line as the machines that Goddu, senior, had invented for

the McKay Company. The machine which had gone out and been sent back was not as fast, and therefore not as commercially valuable as the machine which Goddu, senior, had invented for the McKay Company for doing that work.

As to the demand among shoe manufacturers for the McKay & Copeland laster and the Chase laster, about 1899 and just before and following 1899, the field for the McKay & Copeland has always been limited. I think there never have been over 300 of those machines in use at any time, and at present there are less than 200 in use. The Chase machine was substantially stationary in 1899; that is, for two or three years as many machines were returned as were put out. It would be fair to say that the use of that machine did not increase. Of course, at present there are very few of them in use.

In regard to the company's policy in offering or allowing manufacturers to take forms of leases alternative to those put in by the United States on those two kinds of machines, and particularly as to its policy in respect to the use of the old type of lease that had been used by the Consolidated & McKay Company before 1899, any manufacturer could have obtained those machines on the old types of leases. I think a careful examination of the development of the leases will show that some reduction, either in royalty or some beneficial change had been made in the new lease when any limitation was put into it.

A great many of those machines of these two types that were out remained out on the old form of lease. Of course the policy of the company in dealing with the manufacturers and talking with them was always to say to them, if one of these leases was discussed, that if they found any bother there, that we would be very glad to take up the matter with them and issue to them new leases under either the old terms or conditions that would make it equitable for them to use the machines.

1023 In regard to the vote passed by the company in reference to rebates of royalties on certain machines, that vote when passed was intended to apply to the Gem insole situation and nothing else, and was in practice applied to nothing except the Gem insole machines. Many machines had been put out by the Gem Insole Company before we acquired the machines, and it was necessary to have a general vote to apply to the machines already out on lease as well as those that might be put out. That was the purpose of the general vote, and no discrimination whatever was practiced between our customers in pursuance of that vote.

With reference to my testimony on cross-examination that in the calendar year 1911 our road service cost us $1,196,000 and our gross profits on parts were $276,000, without deducting anything for interest on capital and loss on obsolete parts, the capital tied up in the parts that are spread around through the agencies and at the home factory is a very large sum. I can not give the figures offhand. I should suppose that it would be in millions, but I would prefer to investigate it.

The loss from repair parts that are manufactured and are never used because they become obsolete runs into the thousands each year, and is a serious factor.

With respect to the $276,000 of gross profits, we are under annual expense which is not charged to our customers for putting the returned machines into condition for use. In 1911 the net cost of repairing the Goodyear, heeling, lasting, pulling over and and metallic machines at our factory, in excess of the charges to the customers, was $277,763.49; that is, $1,600 more than the entire profits on the parts.

I have not here a memorandum of the amount charged against customers that year for the repair of the returned machines, but that was about $70,000, and has been credited to this amount. That is, the total cost of repairing those machines was about $350,000, out of which we charged them about $70,000.

1024 I believe that all of our leases have a provision which, in terms, calls upon the customer to pay the expense of putting the machine in repair when it is returned on the termination of the lease. Accordingly, the company is entitled to recover from lessees the entire amount of that expense, but in fact the practice of the company is indicated by the comparative figures which I have just stated for the year 1911; that is, the expense to the company for putting such machines in repair was $350,000 and we charged up only $70,000 of it to our customers.

All of the company's lessees profit alike by this practice, which was arrived at in this way. The company establishes a figure for each machine which covers the cost of taking the machine down and setting it up again, and that figure is arrived at by doing the work in lots of 100. To that amount is added the price for broken parts and the parts which are missing when the machine comes back. Assuming that this fixed charge is $15, every manufacturer is charged that amount, plus the prices of the parts which have been taken from the machine or are actually broken when we receive the machine.

In applying this policy we don't discriminate between the customers, but treat them all alike, absolutely. Our customers

know that in this relaxation of the provisions of the leases about repairs they are all getting the same treatment, because the managers of our branch offices are all advised of the terms and conditions applying to each one of the machines, and the fact that base charges have been established is generally communicated by the agencies to all users of machines. When a machine is to be returned the agencies take up the question of cost with the manufacturer, so that the shoe manufacturer can in his own factory tell to a penny what the cost of repair would be before the machine is shipped from his factory. He knows the base charge and he knows what parts have been broken or have been taken from the machine, perhaps for use in another machine.

1025 This practice was adopted some six or eight years ago because both we and the manufacturers were unable to tell, prior to taking the machine down in our own factory, what the cost would be for putting a machine into condition to lease again; and many times a manufacturer who had returned a machine would complain of the cost of putting the machine in repair, because we had to put in new parts to replace partially worn parts, as the new lessee is entitled to have the machine in good condition. The loss to us represents the cost of putting in new parts to replace partially worn parts. The company has to put the machine in as good condition as a new one for the next lessee.

This practice has done away with all those complaints, and it was adopted for exactly that purpose, and under this method more equitable treatment to each lessee is unquestionably obtained than under the previous practice.

I have prepared a memorandum giving the names of the principal machines which are required in making different kinds of shoes, and showing the extent to which those machines are affected by any tying clauses in the restricted leases. The principal machines are in the Goodyear, lasting, heeling, and metallic departments, and I have here samples of the different kinds of shoes.

The principal machines used in manufacturing a Goodyear welt shoe, which if they are all obtained from the United Company may be under the restrictive form of lease limited to work done on the Goodyear welt sewing and outsole stitching machines, and more or less with each other, are the lasting machine, heel attaching machine, loose nailing machine and slugging machine. In the Goodyear welt shoe two seams are needed to attach the outersole, innersole, welt and upper together, and in

this respect it differs from all other shoes. In defendants' Exhibit 324, which is a Goodyear welt shoe, I have attached tags to the chainstitch seam, which unites the upper,
1026 welt and insole, and to the lockstitch seam, which fastens the welt and outsole together. The chainstitch is made by the welt sewing machine, and the lockstitch is made by the outsole lockstitch machine.

The wearing qualities of the welt shoe and its integrity are dependent upon the combined result of the welt sewing machine and the outsole stitching machine. In that respect the welt shoe differs from all other kinds of shoes, which require only one fastening machine.

Accordingly in making the welt shoe the only principal machines affected by the tying clauses in the restricted leases are the lasting machines, the heel attaching machines, and the two metallic department machines—the loose nailing machine and the slugging machine.

Defendants' Exhibit 325 is a turn shoe after it has been sewed and before it has been turned, and defendants' Exhibit 326 is a turn shoe after it has been sewed and turned. No innersole is used in this shoe, and the chainstitch around the outside of the upper is the fastening which attaches the upper to the sole. After the upper is sewed the last is pulled out and the operator turns the shoe right side out on the turning machine, a Goodyear auxiliary.

The principal machines affected by the tying clauses which are required for making the turn shoe are the heel attaching machine in the heeling department, and sometimes the slugging machine in the metallic department, although that machine is not used on the majority of turn shoes. A very few turn shoes are lasted, or even partially lasted, by machinery.

The principal machines used in manufacturing a McKay shoe, which, if all obtained from the United Company, may be under the restrictive form of lease, limited more or less to work done by each other, are lasting machine of the lasting department sole tacking machine, slugging machine and sometimes the loose nailing machine of the metallic department, and heel attaching machine of the heeling department. The loose
1027 nailing machine is not necessary. The McKay shoe is shown in defendants' Exhibit 327 and I have attached a tag to the seam. The loose nailing machine was not used in the manufacture of this shoe. The sole is attached to the innersole and upper by the McKay sewing machine, which became public long before the formation of the United Company, and which is made by a number of manufacturers.

The principal machines used in manufacturing a standard screwed shoe, which, if all obtained from the United Company, may be under the restricted form of lease, limited more or less to work done by each other, are lasting machine from the lasting department, sole tacking machine, rapid standard screw machine and slugging machine from the metallic department, and heel attaching machine from the heeling department. Defendants' Exhibit 328 is a standard screwed shoe showing the operation of these machines. In making a standard screwed shoe the machine screws a continuous wire through the outersole and innersole and after that wire has gone through it is severed by the machine, which then feeds the work along for another screw to be inserted.

Defendants' Exhibit 329 is a loose nailed shoe in which the sole is fastened to the innersole and upper by separate nails. It differs from the standard screwed shoe in that the nail is headed and its point is clinched on the inside of the shoe.

The principal machines used in manufacturing a loose nailed shoe, which if all obtained from the United Company may be under the restrictive form of lease, limited more or less to work done by each other, are lasting machine from the lasting department, sole tacking machine, loose nailing machine and slugging machine from the matallic department, and heel attaching machine from the heeling department.

A pegged shoe is illustrated in defendants' Exhibit 330. All the principal machines used in manufacturing a pegged shoe, which if all obtained from the United Company may be under the restrictive form of lease, limited more or less to work done by each other, are lasting machine from the lasting department, sole tacking machine, pegging machine and slugging machine from the metallic department, and heel attaching machine from the heeling department.

1028 The McKay, the Goodyear, and the turn shoes are made by distinct methods of construction, and there is distinct machinery for each one. In the loose nailed, standard screwed and pegged shoes the location of the fastening which attaches the outersole, innersole and upper together is the same, but there is distinct machinery for making each of those shoes.

When I testified on cross-examination that the reason for the use of the tying clauses was not to cause more of our machines to be used and to make more people use them, but that the real reason was to increase the productivity of our machines, I meant that the clauses were introduced to increase the productivity of the principal machines and by increasing that productivity

to reduce the number of machines required to do the work, and thereby reduce the cost to the company of the upkeep and service in connection with the machines, and at the same time increase the earnings of each machine.

By limiting the use of one principal machine of the company to work which has been operated upon by other principal machines of the company, its use is confined to work done by machines with which we know that prompt and efficient service is furnished to keep that machine in proper condition to operate, and with operators who have been properly instructed in the operation of the machine at the expense of our company, and also with machines where new operators will be taught whenever they are needed. Now, of course, under those conditions we have a definite assurance as to the maintenance of the productivity of the machines and the quality of work that will be produced by those principal machines with which another principal machine is used.

This tendency in the operation of the tying clauses is clearly shown by the comparison in the exhibits showing the efficiency of the machines in 1911 over the machines in the year 1900. A relatively smaller number of machines are producing a larger number of shoes, resulting in less necessary investment in machines to produce a given product and less relative expense to maintain those machines in condition to operate continuously, in the upkeep of those machines, and in the number of operators which must be instructed. The productive efficiency and quality of work done by any line of machines is only equal to that of the least efficient machine in the line.

1029 It is the fact that each of the principal machines of the United Company have been developed and improved with special reference to its operation upon work which has been or is to be done by other principal machines of the company; and also new and improved machines have been developed to cooperate with them and increase the efficiency of the previously existing principal machines.

With reference to this question of productivity, it would not be a business possibility for the company, without the requirement of initial premiums, to lease its machines on the terms of the restricted leases without the restrictions in those leases.

I was asked on cross-examination to investigate and state what the company obtained from rentals of auxiliary machines in the year 1911. On January 1, 1911, we charged to lessees of the Goodyear department auxiliary machines $83,420.22 for

rental on those machines for the full calendar year. That was not all received in cash, because during the calendar year 1911 we made allowances for the return of Goodyear department machines to the extent of $31,173, which was applied in the payment of annual rentals; that is, when a man had a machine on an initial premium lease and returned it and took a similar machine on the rental form of lease, we credited him with part of the initial premium he had paid before against the rentals. This was in order to place all of our lessees who had machines on that form of lease on exactly the same terms.

That rental was produced by about 9,000 machines, and if those machines had been put out on the same initial premium that was charged before we changed and offered these wholesale terms, the initial premiums received on them would have been $1,489,923. If the $83,000 charged for rentals had all been received in cash the amount would have been about five and a half per cent of the $1,489,923, which would have been received if initial premiums had been charged. (The initial premiums paid were for the whole life of the machine.)

With reference to my testimony on cross-examination in regard to the purchase of the Stanley plant, there was nothing about the Stanley machine shop which was peculiarly adapted

1030 for manufacturing shoe machinery. In fact, that shop was largely used in manufacturing gasoline engines and bottling machinery, and such things. The manufacture of shoe machinery does not require any particular kind of machine tools. The standard machine tools used in manufacturing all ordinary machines are the tools that are used in every factory making shoe machinery. The only other things needed are the special tools and jigs which are made by any manufacturer of a particular machine. In other words, by buying a particular machine shop, such as Stanley's, we did not acquire any particular control of existing facilities for making shoe machinery.

The McKay sewing machines which Stanley manufactured for us under the agreement annexed to Exhibit G of plaintiff's Exhibit 132 were sold or leased by us as the manufacturer desired, and we continued to sell McKay sewing machines up to the time of the bringing of this suit, and do now. At the beginning of this suit McKay sewing machines could be obtained from the following concerns, some of whom were manufacturing and supplying McKay sewing machines, and some of whom were dealers in shoe machinery.

American Worsted Machinery Company, of Abington, Massachusetts; Boylston Manufacturing Company, Boston, Massa-

chusetts; Donnolley Machine Company, Brockton, Massachusetts; J. S. Holt & Company, Boston, Massachusetts; Hamel Shoe Machinery Company, Lynn, Massachusetts; Haverhill Supply Company, Haverhill, Massachusetts; Haverhill Shoe Machinery Company, Haverhill, Massachusetts; Louis G. Freeman, Cincinnati, Ohio; Lynn Supply Company, Lynn, Massachusetts; Manufacturers' Supplies Company, St. Louis, Missouri; J. H. Nangle, Lynn, Massachusetts; R. H. Long Shoe Machinery Company, South Framingham, Massachusetts; Walter Pearson, Whitman, Massachusetts; J. H. White, Haverhill, Massachusetts; E. E. Spencer & Company, New York, New York; Rebuilt Shoe Machinery Company, Rochester, New York; Shawmut Machinery Company, Boston, Massachusetts; Atlas-Werke-Kohler & Company, Leipsic, Germany; Gimson & Company, Leicester, England; A. Johnson & Sons, Paris, France; Moenus Machine Works, Frankfurt, Germany; Timson-Bullock & Barker, Kettering, England; Standard Engineering Company, Leicester, England; Standard Rotary Machine Company, Rushton and Northampton, England; Nollesche Works, Weinsenfels, Germany; Ward & Gent, Northampton, England.

1031 Some of the companies which I have named, like the Hamel Company, Haverhill Shoe Machinery Company, and the R. H. Long Company, are larger than any shoe machinery companies doing business in the United States or anywhere else in 1898, except the three companies which came into the United Company; and they are better fitted to build machines and do build to-day a larger number of different kinds of machines than any concern in existence in 1899, including the three companies that went into the United Company. It is generally true of shoe machinery manufacturers doing business just prior to the bringing of this suit, as compared with the outside manufacturers doing business in 1899, that they are larger and are capable of furnishing a more complete equipment to factories.

The floor area of the shoe factory of the Thomas G. Plant Company in Jamaica Plain was 502,491 square feet.

With reference to certain questions asked me on cross-examination with reference to the so-called sole-leather room and the so-called fitting room, according to general usage certain names are given by shoe manufacturers to parts of their factories in which certain work is done. These are the cutting room, where the uppers and the linings are cut out; the stitching or fitting room, where the uppers, linings, and trimmings are assembled and stitched together; the making room, sometimes called the

bottoming room; and the sole-leather room. The lasting room, the finishing room, and the bottoming room referred to in some of defendants' exhibits and in some of defendants' testimony are substantially all one room. I do not know of any factories where the lasting room would be by itself. The principal machines which the United Company puts out for welting, stitching, lasting, pulling over, heeling, and metallic fastening are as a matter of practice all used in the same room of the factory, the making or bottoming room; they are grouped close together and the shoes pass through successive operations from one machine to another.

(Testimony of Mr. Winslow is suspended, at request of defendants' counsel, to accommodate the next witness.)

1032 JANUARY 13, 1914.

WILLIAM BARBOUR, witness for defendants.

I live in New Jersey and New York and I am engaged in linen thread manufacture in New York. I am president of the Linen Thread Company and a director of the United Company.

Q. A man by the name of James N. Darrah testified in behalf of the United States and said that in April, 1900, he was introduced to you by John R. dosPassos and that a conversation took place in Mr. dosPassos' private office at 20 Broad Street, in which you said as follows:

"I have a very large investment in the stock of the United Shoe Machinery Company and I don't propose to have that investment jeopardized—jeopardized by competition." And turning to Darrah you said:

"You are a competing company. You haven't got anything, anyway."

You asked him if his stock was for sale and he said he didn't think it was. You said that you thought he was making a big mistake if he didn't sell out. Then you said:

"We always try to buy out competitors, and if we can't buy them out we force them out. If you don't do what we want you to, we will crush you."

Now what do you say about that? Did you have any such conversation or make any such statements?

A. Never. I met the man, but I never made such a statement at all.

There was no threat or intimidation at all by language used by me in my conversation with him. There was no suggestion that I regarded him as a competitor who would jeopardize our interests, or that if he did not sell out we would force him out.

Cross-examination:

My recollection is that I first saw Mr. Darrah at the Lawyers' Club and Mr. dosPassos introduced me to him. I don't remember ever having been at dosPassos' office.

It was 13 or 14 years ago that I saw Mr. Darrah, since the United Company was formed. I may have seen him three or four times. He came to my office once several years afterwards. I think then he had some patent that he wanted to sell, and I suggested that he come over and see Mr. Howe.

I had some conversation with Darrah about the Standard Shoe Machinery Company, but it was more with dosPassos. I knew they were forming such a company. Darrah was present,

1033

and my memory is that it was at the Lawyers' Club, but it may have been at dosPassos' office. It is possible that I saw Darrah there. I think I saw him with dosPassos, and once or twice he came to my office.

In his first conversation with me the impression that Darrah conveyed was that he wanted to sell his company, but just what he said I don't remember. I recall that I suggested that he come over and see Mr. Howe and Mr. Winslow.

I didn't make any statement to Darrah that his concern was in competition with the United Company, and they certainly were not. I may possibly have said that I was largely interested in the United Company. I did not say anything to him about driving out competitors if they did not sell out. I never mentioned anything of the kind.

As to my purpose in telling him to come over and see Mr. Winslow or Mr. Howe, I would not have attempted to make any bargain with him if he had anything that we wanted to buy. It was natural to refer him to our president and to Mr. Howe, who was our patent attorney at that time.

I did not make Darrah any offer at all for his company. It is not a fact that I offered him $600,000 for the company. I never made him any offer at all of any kind.

Darrah came to me later on, several years afterwards, in regard to some patent, and I have those two meetings in my mind, but I may have seen him twice at that time. I don't know that I would know the man if I saw him now.

We must have discussed the Standard Shoe Machinery Company each time I had a conversation with him, because that was the reason for the call. I could not state when I saw Mr. Darrah last. It was a great many years ago.

I read Mr. Darrah's testimony after he testified in this suit, and I made a publication denying that testimony. He has sued me for $25,000 for libel.

Direct examination resumed:

I saw some report of Darrah's testimony in the newspapers i New York, and I promptly published a denial. He sued n for libel.

1034 JANUARY 13, 1914.

SIDNEY W. WINSLOW, witness for defendants, r sumed.

Direct examination resumed:

I was made aware before the Plant purchase of the extent t which there was confusion or conflict in the patent situations our company and of Thomas G. Plant. Mr. Howard notified m from time to time as interferences were declared by the Pater Office between applications of Mr. Plant and applications of the United Company, and as his investigations led him t decide that there were patent complications between Mr. Plan and the United Company.

As the result of those communications and my conferenc with Mr. Howard I discussed many of the questions with M Fish, especially regarding the patents, and conferred with M Salinger, of his firm, regarding the interferences. I also discusse these matters with Mr. Howe.

I authorized bringing the suits that were brought upon th advice and with the approval of Mr. Fish.

The confusion and conflict in the patent situation of my ow company and of Mr. Plant, the chaos which might result fro conflicting claims and constant litigation, was a substantial co sideration in my mind, affecting my negotiations or willingne to negotiate with Mr. Plant, and when Mr. Plant offered to me th patents at a price which to my mind was less than their value t the art of shoe manufacturing when combined with our machine it might be said to be a controlling factor.

Q. Now, have you looked up to ascertain how many of welte and stitchers with the Plant improvements have been out pu to the trade?

A. I have.

Mr. FOWLER. Your honors, I want to interpose the sam objection there. That is testimony after the filing of the bill.

BROWN, J. I suppose on the question of the value of th Plant acquisition.

Mr. CHOATE. And on the question of the good faith wit which we bought them and the good faith with which we a using them.

PUTNAM, J. It may be admitted for that purpose, Mr. Choat Keep it down as close as you can.

Mr. FOWLER. Your honors, of course I want to reserve an exception.

The WITNESS. On January 1st, 1914, there were in the hands of our lessees under lease 1,024 welt and turn machines, model K, embodying the Plant inventions. There were on the same date 1,158 rapid stitcher machines, model M, embodying the Plant inventions.

1035 In regard to defendants' Exhibit 221 (Rec., p. —), a list of machinery, findings, and supply dealers advertising in the trade papers in New England about the time of the organization of the United Company which were not acquired by the United Company, I was asked on cross-examination if I could state how many of those were still in business. I have looked this up and I am now able to state which of those are now engaged in business. On a copy of that list I have written "in business" or "not in business" after the name of each concern, excepting those which I testified I knew were in business. The list which I have so marked is defendants' Exhibit 221A (Rec., p. —).

On cross-examination I was requested to supply a list of the 16 Goodyear auxiliary machines referred to in defendants' Exhibit 230 (Rec., p. —) and to state the rental on each machine. This information is contained in defendants' Exhibit 230A (Rec., p. —), and I have also indicated the initial premium which was required on each auxiliary machine before the change was made from initial payments to the annual rental and the restrictive clause.

I have had prepared a list of the concerns, other than the United Company, who were in business at various times from 1899 down to the beginning of this suit and who supplied or offered to supply welt and turn machines and outsole-stitching machines. That list shows the periods during which the various concerns were engaged in business. I don't mean to say that these were in business all the time from 1899, but at some time from 1899 each of them was doing that business.

1036 Q. This memorandum purports to show the period during which those various concerns were in the market supplying, as I have said. Can you, Mr. Winslow, run off just the names of those without stopping now to give how much of the time the various concerns were engaged in the business?

A. Yes, sir.

Mr. FOWLER. I wish you would also state where they were located, if you can.

A. Puritan Machine Company, I think that is the technical name; at any rate, that is in Boston.

Q. And name the machine.

A. Puritan stitching machine for fair stitching, and Nat
stitching machine for the same work, and McKay Sewing ma
Mills turn-shoe machine, Mills Turn Sewing Machine Com
I think that company was located in Philadelphia. The mac
were manufactured for the Mills Sewing Machine Compan
Stanley at that time. Loop-lock turn machine, Loop-Lock Ma
Company, 100 Purchase Street, Boston, Massachusetts. C
pion outsole-stitching machine, Champion Shoe Machinery
pany, St. Louis, Missouri.

Q. Let me interrupt you just a moment. Sometimes a
chine is spoken of as the lock-stitch machine, sometimes as
out sole stitcher.

A. Wherever the word "lock-stitch" is used in connection
that class of machines which we are discussing it means a mac
which will make the lock-stitch used in the manufacture
welt shoe.

Q. May we regard for the purposes of this case a lock-st
machine and an outsole stitcher as machines which are inter
for doing the same work?

A. They are. May I just make one statement, that I bel
that to be absolutely true, although there may have been in
duced somewhere in the evidence some few words regardi
welt-sewing machine which did employ a lock-stitch, bu
think not.

1037 Q. Now, continue with your list, please.

A. The name of this list is "Welt and turn set of
chines, including auxiliary machines of the Duplessis Shoe
chinery Company, Haverhill, Mass." Heys turn shoe mach
manufactured by the Bresnahan Shoe Machinery Company
Lynn, Massachusetts.

Out-sole stitching machine, Union Lockstitch Machine C
pany, Boston, Massachusetts.

Welt-sewing machines and out-sole stitching machines, La
Machines Company, 100 Covert Street, Brooklyn, New Y
afterwards at 291 Broadway.

Fox turn shoe-sewing machine, Haverhill Channeling Mac
Company, 601 Kimball Building, Boston, Massachusetts.

Welt-sewing and turn sets, by the Hamel Shoe Machinery C
pany, Haverhill, Massachusetts. I understand that they offe
full lines of machines.

Welt-sewing machines and out-sole stitching machines
certain auxiliary machines, by R. H. Long Shoe Machinery C
pany, South Framingham, Massachusetts.

Welt set of machinery, Universal Shoe Machinery Company, St. Louis, Missouri.

Nollesche Works, Weisenfels, Germany; A. H. Johnson, Leicester, England, and Gimson Company, Leicester, England, welt and turn machinery, including auxiliaries.

John Callahan, Lynn, Massachusetts, advertised a welt machine.

A. H. Johnson, Leicester, England, complete welting plant.

Standard Engineering Company, Leicester, England, high-speed welt sewers with all auxiliary machines.

Standard Rotary Machine Company, of England, complete set of machines.

Nollesche Works, of Weisenfels, Germany, shoe machinery for all departments of manufacture.

Moenus Machine Works, complete outfits.

Gimson Company, Leicester, England, machines for every operation.

1038 Universal Shoe Machinery Company (Limited), for high-grade welting.

Boylston Manufacturing Company, of Boston, Massachusetts, welt set of machines.

(List showing persons or concerns in the market supplying or offering to supply welt and turn machines and out-sole stitching machines, other than the United Company, from 1899 down to the time of the filing of the bill is marked "Defendants' Exhibit 331," Rec., p. —.)

1039 I was asked on cross-examination regarding other parties manufacturing auxiliary machines but could not remember them. I have prepared a list of the persons or concerns, other than the United Company, which have been making or offering to the trade auxiliary machines for the manufacture of welt shoes. This is defendants' Exhibit 332 (Record, p. —).

As to the testimony of Mr. Jackson Johnson, Mr. Emanuel Selz, Mr. Frank Rand, and possibly other manufacturers from St. Louis, that they were not at that time aware of the fact that there was any alternative form of lease which they could take other than the lease with the restrictive clause, about six months prior to the time for their testifying I had written, or had caused to be written, letters to all those concerns advising them or notifying them of the existence of the alternative form of lease. Defendants' Exhibit 333 is a copy of that letter.

DEFENDANTS' EXHIBIT 333.

JANUARY 3, 1912.

GENTLEMEN. We are in receipt of orders from you for one or more machines of our Goodyear, pulling-over, lasting, metallic, or heeling departments.

In ordering these machines you have requested the company to lease them to you under the form of lease "where the lessee does not pay in advance a 'lease premium.' "

We assume that you are fully acquainted with the fact that machines in any of these departments may be had from this company under "initial payment" department form of leases, which leases do not contain those clauses which restrict the use of machines of one department to work that has been done on machines of one, or more, of the other departments. We shall be very glad to furnish you the machines which you have ordered under the "initial payment" form of lease if you prefer. We call this matter to your attention at the present time in order to avoid the possibility of any question of fact regarding this subject in the future.

Kindly notify us promptly of your decision, and with kindest regards, I remain,

Very truly, yours,

GENERAL MANAGER.

The WITNESS. That letter was sent in the ordinary course of business. Those concerns had quite a number of machines on order. This was the January following the conference in May, 1911, at my office, and we were again calling the facts to their attention.

1040 The average royalty paid by a shoe manufacturer for the use of all machines furnished by the United Company for the manufacture of all types and grades of shoes is less than two and two-third cents per pair.

I should like to make a statement, if I might, as to the fact that the reputation for efficiency, both in quantity and quality of work done by our machines, is always in jeopardy and affected by the introduction of a machine of some other manufacturer into the series of operations done by our machines. The reputation of our Goodyear welt shoe, the standing of that shoe, is dependent upon the two different kinds of seams that are made by the two different machines used in the manufacture of that shoe. And the quality of work done is affected, and would be necessarily affected, by the way in which the work comes from, or is prepared by, one machine to go to the next machine.

Prior to the formation of the United Company there was a constant dispute between the different companies which made up the United Company as to who was responsible for a poor piece of work. As an illustration, which could be easily understood even by one not familiar with the manufacture of shoes, the very next operation from the lasting is the welt sewing. The welt-sewing machine operator would constantly lay the blame for poor work upon the lasting operator—the operator upon the lasting machine. The lasting machine operator would constantly blame the operator upon the welt-sewing machine.

Both those reasons have to do with the use of our tying clauses for the greatest and most successful production of our machines.

As to the alleged conversation which Mr. R. H. Long testified he had had with a Mr. Hutchinson, a man in our employ, Mr. Hutchinson is not living and has not been for some time.

Cross-examination resumed:

As to whether I offer the fact that machines belonging to different companies in a measure interfere with each other in the work as a justification for putting the restrictive clauses in the leases, I offer it as a business reason for the limitation that is put upon the use of the machines when the restrictive clause is contained in the lease—as one of the reasons which emphasizes the productive efficiency of the machines working together. As to whether, if another manufacturer had just as good a machine as ours to perform one of those operations, the work
1041 would be interfered with materially—I am quite sure that it would. I think that same condition does not exist in every industry where different machines are required to do successive pieces of work. I should be very glad to give you the reason if you like. It is not true that it necessarily applies in the making of cloth or anything of that kind as much as in the case of the shoe industry. The fact is that there is no concern making these machines in the world that I know of which furnishes the service to keep the machines in proper adjustment and to attend to them as soon as they break down. Our company is unique in that particular. More than that, our machines through a series of years have been developed with particular reference to the product of our own machines. I think that there is no question that that product is of the highest type.

As to whether I advance that as a reason why our company should have the entire business, we do not claim anything of that sort. My personal belief is that the best kind of competition for the public, for the manufacturers, and for the shoe machinery dealers, is to have various concerns manufacturing

the few necessary principal machines and have the manufacturer equip his factory by either one set of machines or another. I believe that will give the best service, the best conditions for low cost of production and the best development of the art of shoe making.

It is not a fact that no other concern engaged in the manufacture of shoe machinery owns a sufficient number of machines and a sufficient number of different kinds of machines to justify keeping up a repair service. The Duplessis Company, the Hamel Company, or R. H. Long, in this country, are perfectly capable of furnishing a set of machines to make each of the different types of shoes, and, if they choose, of furnishing a service with them; and also I understand the Haverhill Company, with the exception of an outsole stitcher, but it would be very easy for them to obtain and put out a complete line.

1042 I know about the businesses of these concerns in a general way, but my opinion as to the amount of their business is based upon the evidence introduced in this suit.

As to my testimony regarding the principal machines which have been developed since 1899, there were welt-sewing machines prior to 1899 and they made a chainstitch, but the model K welter sets the stitch tighter around the toe of the shoe than any welt-sewing machine prior to its development.

It is true, as I testified, that the model K welter and the model M stitcher and the No. 5 laster perform operations that had previously been done by machinery. That is also true with reference to the loose nailing and the heel attaching machines except that the loose nailer drives two lengths of nails, which had never been done before. The pulling-over machine performs work which previously was done by hand, and as to the clicking machine, the uppers of light leathers had never been cut by machinery before to my knowledge.

As to the repair part of our business, when a machine gets out of order notice is given to us and a man is sent from the local branch office. If it is a case where a part is to be removed and a new one substituted, our man makes the substitution. That may involve taking the machine down, taking it apart, to insert the new part. The manufacturer pays the catalogue price for the new part. The old part is usually turned over to the superintendent or foreman of the factory, because the manufacturer may think that it could be used again. We have never considered that the old part belonged to us.

The new part does belong to us as a part of the leased machine. It may have to be replaced quite a number of times during the life of the machine.

As to whether our restrictive form of lease requires the payment of a return charge at the expiration of the lease when the machine is returned, that depends on the particular lease which you have in mind. My remembrance is that the Goodyear welt-sewing machine lease and outsole stitching machine lease require a payment providing the machine is returned before the expiration of the term of the lease. It is so with the auxiliary machines, as I remember it, of the Goodyear. I think some of our leases do not call, even under the limited license form, or restricted lease, for a return payment, but I can not be sure.

1043 That return charge is not collected where the manufacturer takes a new and improved machine to replace one which he has returned. In the practice of the company that return charge may be treated as applicable where a man is going out of business. For instance, we get up a new model K to take the place of the previous welt-sewing machine that is in his factory. We go to the man's factory, to our customer, and say: "Here is an improved machine, hadn't you better adopt it?" Assuming that he does, he returns the old machine to us, pays no return charge, but does pay for the broken and missing parts; that is, he is supposed to put the machine back into condition to be again leased, if that machine has not become obsolete. If it has become obsolete, all he pays for are the broken parts and the parts that may be missing in that particular machine. Missing parts result from the practice of operators of taking parts from one machine to put into another machine to replace broken parts. When we work over one of those machines that is called in to be re-leased, we sometimes put into it the new improvements when that can be done. We do not charge the old lessee for the cost of putting in those new improvements. Every lessee is supposed to be entitled to all our improvements at the same charge or on the same terms as every other lessee.

As to the different kinds of shoes which I have shown to the court, it is not quite accurate to state that those different kinds of shoes have been made for a great many years, but that the making of them by machinery is something that is modern. For instance, the McKay sewed shoe never was made by hand and could not be made by hand. The standard screw shoe was never made by hand and probably could not be. Accordingly, those two shoes are developments of machines. The pegged shoe was made by hand, and the turn shoe and welt shoe were made by hand for many years before the invention of the turn-sewing machine, the welt sewing machine and the outsole stitching machine.

The United Company never engaged in the business of manufacturing shoes. We have, of course, made shoes in small lots for experimentation and development, and we have developed new kinds of shoes.

Referring to the statement which I filed, showing the initial payments on Goodyear department auxiliary machines, we put out those machines either on an initial payment basis or on a rental. When we charge a rental we don't charge any initial payment; and when an initial payment is made there is no rental.

As to my testimony in regard to receipts from Goodyear department auxiliary machines during the year 1911, I stated that we charged lessees of Goodyear department auxiliary machines $83,420.22 for rental on those machines for that calendar year. That did not include machines put out during that year on initial payment.

As to how a portion of that amount was paid back, from the date of the adoption of the no initial payment lease for welt sewing and outsole stitching machines and the rental terms for the auxiliary machines, we allowed any manufacturer who
1044 had made initial payments on the machines, when he changed to the other leases, to a credit of a proportion, say 50 per cent, of the amounts which he had paid, so that such a manufacturer was placed on a parity with those who then took their machines on the no-initial basis. Those credits were applied in the cancellation of the payments due as rentals on the Goodyear auxiliary machines and they amounted in 1911 to $31,173. That is, we would permit a lessee who had his auxiliary machines on the initial payment basis to change to a rental basis and give him a credit based on the amount he had paid when he took them. Similarly he could change back from the other to the initial basis. That sum, $31,173, was included in the total of $83,000, so that the actual money received by us was about $52,000. If there had been no such credits we would have received the $83,000 in actual money.

We both sell and lease the McKay sewing machine. There is no royalty on that machine. On our improved McKay sewing machine, model B, the rental is $5 a month, but I think there is no rental on the old style of machine. The sale price of the model B machine is $600. The sale price of the old type of McKay sewing machine was $225 for a new machine and $125 for a rebuilt machine.

As to my testimony about being informed of the infringements of Plant's patents by our company, my understanding

in all cases where we infringed the patents owned by Mr. Plant was that we had been developing machines for some time in our experimental department at the Beverly factory; that we had machines in all stages of development; some of them, I think, we were even putting on the market at the time when Mr. Plant's patents were issued, and then we found for the first time that we infringed claims contained in the patents issued to Mr. Plant. We infringed none of his patents intentionally, if that is what you mean.

We have no knowledge whatever of applications pending in the Patent Office, except when we are brought into interference with an application before the patent is issued.

With reference to the list of concerns which have been putting out welt and turn shoe machines and outsole-stitching machines, I do not know what has become of the Mills turn-shoe machine.

1045 We haven't it. I think I have seen one of them. My remembrance is that from about 1900 to 1902 there were quite a number of them in the field. I wouldn't say that I have not heard of them since then. It has been quite a number of years since I have heard of the machine being on the market. I understand that the Mills machines were being manufactured in the Stanley Company's machine shop.

I could not tell what became of the Loop-Lock Turn Shoe Machine Company. I only know that up to a year or two ago Mr. Guptill, who testified as a witness for petitioner, made practically all his shoes on those machines. As far as I know the company is doing business now. I have heard of the machine since 1903. I don't think I ever saw one of the Champion outsole-stitching machines, and I wish to say that there are many of these machines which I have never seen. I simply know, as anyone in this business trying to collect information would know, that those companies had been doing business, but I don't go into a shoe factory once in five years. I understand that the Champion Company is doing business now, but have no idea of the extent of the business.

The Duplessis Company was succeeded by the Hamel Shoe Machinery Company, I think.

I remember knowing about the Heys turn-shoe machine at the time. We didn't acquire it with the Bresnahan Company. I know that company is not doing business, because Mr. Heys is now at work for us. I think they ceased doing business when Mr. Plant became interested with them and made their factory an experimental shop.

The Union Lockstitch Machine Company is the concern with which Mr. Merrick and Mr. Luitweiler are connected.

I know nothing about the extent of the business done by the Larsen Machine Company. My remembrance is that it tried to sell out to us and that we did not acquire it.

The Fox turn-shoe sewing machine is still on the market, and I understand it is being put out by the Haverhill Shoe Machinery Company. I also understand that the Webster
1046 turn-shoe sewing machine is being put out by the Haverhill Company. It may be that the two machines are the same.

I know about the Universal Shoe Machinery Company only in a very general way. My remembrance is that it is located in St. Louis. It may be that the Champion Shoe Machinery Company was the predecessor of the Universal Company.

I remember having heard of welting, turn-sewing, and outsole stitching machines being brought into this country from abroad, but I have no personal knowledge as to that. I can not state what company I heard had imported machines into this country and sold or leased them, but I know that they were offered in this country.

1047 JANUARY 13, 1914.

HAROLD G. DONHAM, witness for defendants, recalled.

Cross-examination:

At the request of counsel for petitioner I made an investigation to ascertain how many concerns hold machines under the lease of plaintiff's Exhibit 32 (Rec., p. —), which was the new form of metallic lease with initial payment and without restriction. This was the lease with the typewritten rider attached to it. I found that there were only eight machines put out under that particular form of lease with that particular form of rider, and those machines were all leased to F. E. Leavitt & Company, of Haverhill.

Subsequently we printed a regular initial payment form of lease without the restriction. That, however, was printed only a short time before the bill was filed, and I find that there was no instance of its use before December 12, 1911, when the bill was filed; it has been used since.

At the request of counsel for petitioner I have had prepared a list of the officers and directors of the United Shoe Machinery Company, of New Jersey, from the date of its organization up to 1908. This is plaintiff's Exhibit 274.

Beginning with 1908 the annual reports were printed and the officers and directors are shown in those annual reports which have been put in as exhibits.

Direct examination resumed:

I produce a copy of a letter sent by the company to F. E. Leavitt, of Haverhill:

The situation in that case was this: In 1910 Mr. Leavitt was manufacturing turn shoes, using the Duplessis turn shoe sewing machine. He desired to use some of our machines in connection with it, and asked us to quote him terms upon lasting machines, metallic department machines, heeling department machines, McKay sewing machines, and various general department machines. We did so by a letter dated September 2d, 1910, addressed to Mr. F. E. Leavitt, and following our quotation of the terms named he leased from us upon the initial payment lease without restriction lasting machines and metallic machines, and he purchased from us outright quite a large number of general department machines which he installed in the factory with his Duplessis turn sewing machine, and has been using since.

Defendants' Exhibit 334 is a copy of that letter dated September 2, 1910.

1048 DEFENDANTS' EXHIBIT 334.

SEPTEMBER 2, 1910.

F. E. LEAVITT, Esq., *Haverhill, Mass.*

DEAR SIR: We have been requested by you through our Mr. Smith to quote terms for the installation in your factory of the machines hereinafter mentioned upon conditions which will not preclude the use of the same by you in conjunction with certain machinery now in your possession. Complying therewith we beg to say that we will install the following machines under lease at the lease premium indicated—rents and royalties to be at usual rates:

	Lease premium.
LASTING MACHINE DEPARTMENT.	
1 Consolidated hand method McKay lasting machine	$300.00
METALLIC DEPARTMENT.	
1 staple fastening machine	100.00
1 Universal slugging machine	250.00
1 loose nailing machine	250.00
1 string nail tacking machine	75.00
1 taper nail tacking machine	75.00
HEELING DEPARTMENT.	
1 McKay automatic heel loading and attaching machine	400.00
1 McKay heel trimming and randing machine	150.00
1 spring heel trimming machine	100.00

GENERAL DEPARTMENT.

1 McKay sewing machine..... 100.00

And that we will sell to you outright the following machines at the prices indicated:

	Price.
1 Atlas leveling machine, model A	$500.00
1 heel scouring machine	65.00
1 twin edge setting machine	150.00
1 heel breast scouring machine	50.00
2 finishing shafts, 72", at $12.00 each	24.00
1 Victor rolling machine, model E	250.00
1 improved gearless sole-cutting machine, model C	225.00
1 improved veneer press (6 sections)	18.00
1 American twin sole moulding machine	450.00
1 Apex channeling machine	65.00
1 Apex feather-edge and shank-reducing machine, model A	35.00
1 Apex channel opening machine, model C	45.00
1 Apex tap skiving or rand-splitting machine, model C	50.00
1 Apex tap & sole rounding machine, Model A	35.00
1 Crescent toe-gouging machine, model C	125.00

Yours, very truly,

UNITED SHOE MACHINERY COMPANY.

By

1049 At an earlier time in your examination I asked you if you had looked at the chart purporting to show the tying clauses which is attached to the Government's bill, and at that time you were not ready to point out——

BROWN, J. I thought that had been ruled out.

Mr. GREGG. It was never offered in evidence, your honor.

BROWN, J. It is not in evidence?

Mr. GREGG. Never offered in evidence.

BROWN, J. Do you desire to put it in yourself?

Mr. CHOATE. No; I do not. I had an idea it was in.

Mr. GREGG. No; it was never offered.

BROWN, J. It was discussed slightly and then, I think, withdrawn.

Mr. FOWLER. I think, on cross-examination I asked Mr. Winslow something about it and then withdrew it.

Mr. GREGG. It was discussed here in open court and I have no recollection of ever offering it.

Mr. CHOATE. It isn't claimed that it is in?

Mr. GREGG. No.

Mr. FOWLER. Your honors, I asked Mr. Winslow something about it in a general way, and he said he understood it wasn't right, and I made the remark: "Well, I will not undertake to prove by you its correctness." That is all there is in the record.

In connection with the riders which I previously testified about I was asked how the trade in general knew that such riders were available. As an illustration as to how the trade knew about them, I stated that from the earliest times there have been furnished to lessees of Goodyear machines blank forms upon which they report the number of shoes operated upon as the basis of royalty charges. Those blanks have always had upon them columns for inserting the numbers of the special kinds of shoes to which the riders that have been used to any considerable extent relate.

For example, on these forms there is a column headed "McKay welts, stitchdowns, and sandals," another column "Hand welts, repair work," and another column "Fairstitch for ornamentation only." Below each of these headings are blanks for filling in the number of pairs of that kind of shoes on which the machines should be used. It was generally known in the trade that anybody who wished could obtain the machines for doing such work.

The operator on the machine fills in the blanks and half the sheet is torn off and sent to the company, the other half is the stub which the lessees retain. I have here forms of such blanks dated 1902, 1905, and 1910, and also a book of blanks for the current year. These constitute defendants, Exhibit 335 (a physical exhibit).

Cross-examination resumed:

Mr. Leavitt took several Consolidated hand-method lasting machines on the initial payment form of lease, and he paid $300 initial payment for each.

When that machine is taken on the restricted form of lease, there is no initial payment and the royalty is five-eighths of a cent per pair; on the unrestricted form of lease there is an initial payment of $300.00, but the royalty is only a half a cent per
1050 pair. In other words, the royalty on that particular machine is less when the machine is taken upon the initial-payment lease than when it is taken upon the restricted lease.

Mr. Leavitt also took quite a number of metallic machines. There is no direct royalty charge on metallic machines. The return received is derived from selling the fastening material which is used in the machines, and both the restricted and the unrestricted lease provide that the lessee shall purchase that material from the United Company. If the lessee takes the restricted lease there is no initial payment.

In the heeling department the royalty is the same whether the machine is taken upon the restricted or unrestricted form of lease, and the unrestricted form involves the payment of an initial premium.

Had Mr. Leavitt wished to take the automatic heel loading and attaching machine upon the restricted form, he would have been required to make no initial payment and the machines would have been restricted to use with our turn sewing machine. As he wished to use them with another turn sewing machine, in respect to which, of course, we received no return, our quotation to him was an initial payment of $400.00 for that particular heeling machine, not restricted to use with our machines. On other machines of the heeling department the quotation was $150.00 for one and $100.00 for the other.

The initial payment for the McKay sewing machine in the general department was $100.00. That machine carried no royalty.

(With reference to the exhibits attached to the petition, the following discussion took place:)

PUTNAM, J. The matter of those exhibits we ought to dispose of this morning, whether they would be considered in the case or not. I think we are practically agreed that they would not be considered in the case as proved, but we couldn't quite agree on the form of the entry to be made.

Mr. FOWLER. We all agree as to what should be done about those exhibits that are attached to the original bill; that is, so far as we are concerned, they may be omitted from the record, because such of those exhibits as have been proven, have been proven by the introduction of other leases and documents which are identical in character, but are simply a separate paper.

PUTNAM, J. Are you satisfied with that statement, Mr. Choate?

Mr. CHOATE. Yes, your honor.

PUTNAM, J. Let that go in the record, and it will cover that.

1051 Mr. FOWLER. If the case goes to the Supreme Court, I see no need of encumbering the record there with the exhibits.

BROWN, J. I understand that this statement that you have just made, Mr. Fowler, applies to the exhibits in volume 1, which purports on its cover to contain the answer and bill of particulars, and includes Exhibits 1 to 23, inclusive.

Mr. GREGG. Yes; that is right.

Mr. FOWLER. Yes; that embraces all the leases and the diagram, as I understand it.

BROWN, J. That is, from page 90 to page 225, the matter beginning on page 90 and ending on unnumbered page 224, the page which would be 224.

Mr. GREGG. Beginning on page 90; yes, sir.

BROWN, J. And ending on the unnumbered page preceding 225, which would be page 224.

Mr. GREGG. Which would be page 224; yes, sir, that is correct.
Mr. FOWLER. Page 223, and then including the diagram.

1052

JANUARY 13, 1914.

ELMER P. HOWE, witness for defendants, recalled.

Prior to the Plant purchase I gave very careful consideration to the conflict between the patents of Mr. Plant and the patents of the United Company. As fast as Mr. Plant's patents issued so that we had knowledge of what they were, in addition to such knowledge as we had derived from interference proceedings, I examined the patents and discussed the bearing of those patents with some of our men who were particularly engaged in the development of machines at the Beverly factory. I discovered that if we pursued the construction of some of our experimental machines as we had intended to, we should become liable to infringement suits by Plant. I also found that our No. 5 lasting machine, which we had been putting out in large numbers, probably infringed several of the Plant patents.

That was not done intentionally. We had no knowledge of the Plant patents until they issued from the Patent Office. All our work was done in ignorance of what he was doing. I may say that it is almost always the case that where there is a demand for a particular machine, rival inventors are at work on it. They don't either of them know of the work of the other unless they happen to get into an interference suit in the Patent Office, or one or the other of them gets a patent granted. The number of simultaneous inventions is enormous.

In the case of the Plant patents; if we had not got together, if we had not purchased him, there would have been a large amount of litigation both by the owners of the Plant patents against the United Company, and by the United Company against Plant machines. I discussed those considerations with our counsel, Mr. Fish and Mr. Phillips. I discussed them also with Mr. Winslow and Mr. Howard.

I advised the purchase of the Plant patents and inventions after I had examined the machines at his factory, and especially after he made his proposal to sell. This chaotic condition which might result from the patent situation had considerable weight in my mind. Of course, the controlling consideration for the purchase of the Plant patents was the value, the great value, it seemed to me, of his inventions, especially when combined with and merged in our machines. Then another consideration for the purchase was this avoidance of litigation, either by ourselves against him, which would have cost a great deal of money and would have annoyed the trade very much, the shoe manufac-

turers, and also the cost and annoyance of having to be sued by Plant.

Cross-examination.

I think there were fewer of our machines that infringed Plant's patents than there were of Plant machines which infringed our patents. As to whether the infringement by Plant's machines of our patents was far greater than the infringement by our machines of Plant's patents, it was greater; I cannot say whether it was far greater.

1053

We had determined that Plant's machines infringed our patents some time prior to the purchase, and had brought several suits. As to how we determined that, in some instances we were influenced by an examination of Mr. Plant's patents and we also heard rumors of the way some of his machines were constructed. As to how we got those rumors, I don't remember now and I don't think I knew at the time. I have no information about it now. The question submitted to me was: "Plant's machine is constructed so and so. Does that infringe one of our patents?" I had nothing to do with getting the evidence. I had seen diagrams of Plant's machines, but they were made by our own people.

PUTNAM, J. How much did you say, Mr. Choate, was paid?

Mr. CHOATE. $3,000,000 in cash and a million and a half in stock at par, which was worth fifty, making the total $6,000,000.

PUTNAM, J. How was it divided? How did your people divide it?

The WITNESS. They thought the stock in the T. G. Plant Company——

PUTNAM, J. What did they call that?

Mr. CHOATE. Three million and a half. And the patents two million and a half.

The WITNESS. The purchase involved an interest charge and a dividend charge on the corporation of $300,000 a year.

Mr. FOWLER. I believe the capital stock of the T. G. Plant Company was——

The WITNESS. $3,750,000.

Mr. CHOATE. And sixty per cent of the earnings of the Plant Company were sufficient to pay the entire carrying charge of the purchase.

The WITNESS. Yes, in a lean year for the Plant Shoe Company, because they had introduced Plant's machines at great expense.

1054 JANUARY 13, 1914.

WILLIAM R. SAMPSON, witness for defendants, resumed.

Direct examination resumed:

I have prepared the index list of machines offered by shoe machinery manufacturers and dealers other than the United Company, and I produce the list, which is defendants' Exhibit (Record, p. —).

Q. Now, Mr. Sampson, last Thursday, I think it was, counsel for the United States said, as we understood it, that they did not claim that the United Shoe Machinery Company had a monopoly of machines other than those for preparing and attaching the soles of shoes to the uppers, of clicking machines, and of eyeletting machines. Since that statement was made, have you prepared a list of machines offered by shoe machinery manufacturers and dealers other than the Shoe Machinery Company for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and dieing-out or clicking machines?

A. I have.

Q. Is that the list [showing list to witness]?

A. It is.

Mr. CHOATE. We offer this, if the Court please.

(List of machines offered by shoe machinery manufacturers and dealers other than the United Company for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and dieing-out or clicking machines is defendants' Exhibit 337, Record, p. —).

Cross-examination:

As to what per cent of the business is done by our company in the Star channeling and cementing machine I have no way of knowing, and I have no idea. To the best of my knowledge the work is largely done by hand. As to whether our company puts out more than eighty per cent of that kind of machine, I have no way of knowing.

As to whether our company puts out more than eighty per cent of the channel-laying machines, I would have no way of knowing that. That is another operation that is done a great deal by hand. I think we sell very few machines at the present time.

As to the Hadaway stitch separator and as to whether we sell about all of the machines of that kind, that is outside of my department and I have no intimate knowledge on that.

As to the sole-leveling machine, I could not state whether we put out more than eighty per cent of the machines of that kind. There are sole-leveling machines in both the Goodyear and general departments.

As to the heel seat rounding machine, we have a ~~machine~~ machines
1055 in the general department of which we sell a few. There is also a machine in the Goodyear department.

As to whether we put out nearly all the heel compressing machines and nearly all the automatic heel loading and attaching machines, those are both in the heeling department, outside my department.

I haven't knowledge as to whether we put out nearly all the slugging machines that are used in this country. That is a metallic department machine.

Mr. FOWLER. Your honors, I am just using the record of that moving picture show that your honors saw.

The WITNESS. As to whether I really know anything as to the relative amount of business that is done by these several companies that I call competing companies, my work is all on the general department machines, and I am not closely in touch with what the other departments are doing. As to whether, with reference to the general department, I have much idea of the relative amount of business done by the outside companies, I have no way of knowing what the outside companies are doing. I do the best I can myself with our machines. In answer to your question whether the only thing I do know is that I have had some correspondence with the different concerns and have examined some catalogs, and have ascertained that there are concerns which have been offering these various kinds of machines in the market—of course, the general department machines have always been in competition. Nearly every shoe machinery dealer comes into competition with some of the general department machines.

Direct examination resumed:

I know that these men whose catalogs I have produced are holding themselves out as being ready to furnish the machines that those catalogs refer to. They have agents, they are advertising, and they are here in the market presenting what they have to the trade if the trade wants it.

As to the machines in the general department, of which I have particular charge, all, with the exception of a very few, are in competition with machines furnished by other manufacturers.

Cross-examination resumed:

I do not know the extent of the business done by those competing machines. I know they do some, but I have no way of knowing how much they do.

As to how I know that these various concerns that have catalogs are holding themselves out to the trade as furnishing these various machines, I know it from the advertisements and

catalogs which they issue and from general trade knowledge. I have not undertaken to buy anything from them. I make friendly calls on them occasionally, several of them, and see the machines which they tell me they have for sale. I don't know how many they are selling.

1056 Direct examination resumed.

All these general department machines which are in competition with other machines on the market are sold outright by the United Company.

(At this point, on January 14, 1914, petitioner filed its "Request for leave to amend petition" (supra, Vol. I, p. —).

An adjournment was had until February 3, 1914. On that date defendants filed "Objections of defendants to motion of United States to amend its bill made January 14, 1914" (supra, Vol. I, p. —).

After an argument by counsel the court ruled as follows:

"As the request of the United States filed January 14, 1914, for leave to make sundry amendments to the petition with reference to sections IV, VIII, and XI, with the substitutions, is not urged as though the United States deemed the same necessary, and as it is objected to by the defendants, we do not feel justified at this late stage in allowing it, and the same is disallowed. This, however, is with the express statement on the part of the court that it reserves all questions with reference to the construction of the pleadings as urged by the defendants, whether as original or as modified by the progress of the case, if so modified.

"The request of the United States to be allowed to amend section XII is denied.

"It is ordered that the amendments offered by the United States and this ruling with reference thereto be made a part of the record of the proceedings.")

1057 Evidence for the United States in reply before the court February 3, 1914–February 6, 1914.

Appearances.

For the United States: James A. Fowler, assistant to the Attorney General; William S. Gregg, special assistant to the Attorney General; Allen Webster, special assistant to the Attorney General.

(After the decision in the District Court): Constantine J. Smyth, H. LaRue Brown, special assistants to the Attorney General.

For the defendants: Frederick P. Fish, Charles F. Choate, jr., William A. Sargeant, Malcolm Donald, Harold G. Donham, Walter B. Farr, Lafayette R. Chamberlin.

FEBRUARY 3, 1914.

EDWIN B. STIMPSON, witness for the United States.

1058 My name is Edwin B. Stimpson. I reside in Brooklyn, New York. I am a manufacturer of eyeletting, perforating and punching machines for bookbinders and have been engaged in that business for forty years. The catalogue of Edwin B. Stimpson & Son, which is defendants' Exhibit 314, is a catalogue of our company. It was printed back in 1890. During the year 1911 we put out about twenty-five eyeletting machines, which went to box manufacturers. None of them went to shoe manufacturers. In 1911 we put out not more than two or three pinking machines, which went probably to the hat trade. We have not sold any machines of any kind to shoe manufacturers for eight or nine years. The letter signed by me on May 24, 1913, defendants' Exhibit 321, was dictated by Mr. Nichols, of the United Shoe Machinery Company. He came to our office, and asked for literature on our machines, and for price lists. I gave him those and a catalogue. He then asked me to dictate a letter to his company, and as I did not know what he wanted, I asked him to dictate it himself. In dictating he added more than I could sign, so I told the stenographer to cross it out. The letter which I signed contained a statement that I built an insole flexing machine. That is not true. We don't build one. He told me that our strip cutter which was used for stripping up leather for belts and has always been sold for that purpose, was an insole flexing machine, and I therefore signed the letter stating that we could supply such a machine. At that time, and right along, I have been trying to have the United Shoe Machinery Company sell me goods and appoint me an agent in Brooklyn for some of their machinery, and I supposed

1059 that Mr. Nichols was there to size me up and see what kind of a place I had and what kind of a representative I would make. I did not ask him the purpose for which he wanted the letter, and he did not tell me. As to whether we can supply insole flexing machines, we can supply strip cutters. They are used on belts for stripping up leather. They were used years ago in the shoe trade for cutting welts and for that purpose only, so far as I know. We have no business at the present time, and have not had for several years with shoe manufacturers in shoe machinery.

Cross-examination:

The catalogue which is produced is the catalogue which I gave Mr. Nichols, and is the only one which we have. We have not used it for some years, and we have nothing more recent. He came in and asked for literature on what we had to sell. I gave him the circulars referring to the strip cutters, which was what he first asked for. He asked me for a catalogue, and I gave him that one. We make some of the machines shown in the catalogue. At one time we made all the pinking machines [indicating]. For the pinking machines we are now only agents. I did not intend to misprecsent what we were doing to Mr. Nichols. We do build the hand rivetting machine and the foot-power hand rivetting machine, and the attachments which go with them, but are agents only for the No. 2 J. L. T. rivetting machines. We supply them to the trade. We can supply either as makers or agents the machines shown in the catalogue. The letter referred to by Mr. Gregg was signed by me "Edwin B. Stimpson, president."

(Mr. Choate reads the letter as follows:

UNITED SHOE MACHINERY COMPANY,
205 Lincoln Street, Boston.

GENTLEMEN: We are sending you to-day our illustrated catalogue showing machines of our manufacture. In addition to the illustrations in the catalogue we build an insole flexing machine. Any of these machines that you do not manufacture yourselves and desire to purchase, we will be pleased to supply you.

Yours, truly,

EDWIN B. STIMPSON COMPANY,
By EDWIN B. STIMPSON, *President.*)

1060 The statement in that letter that we built an insole flexing machine is true if strip cutters are insole flexing machines. I made my statement in good faith. I meant it to be the truth and did not mean to misrepresent anything. I also made the last statement of the letter in good faith.

A Mr. Tucker, connected with the Department of Justice, came to see me, and asked me to come over here and testify that the catalogue which had been produced was our catalogue, and had been published years ago. It is our catalogue, but we are not using it. It is our only catalogue. We have published a number of catalogues since then, if you call that a catalogue. I gave Mr. Nichols what he asked for, and I did not show Mr. Nichols any of our more recent catalogues because he didn't ask

for them. He asked for strip cutters, and I gave him the literature which shows strip cutters.

Q. Have you got a cut of this thing you call a strip cutter?

A. Yes. [Produces cut.]

Q. And its function is to do what?

A. To strip leather up.

Q. By "to strip leather up" you mean to make strips of it?

A. To make strips of it.

Q. To cut strips of welt?

A. Yes.

Q. Which can be used for that purpose?

A. Which can be used for that purpose.

Direct examination resumed:

The hand and foot power riveting machines which I mentioned in cross-examination do not go to shoe manufacturers. The only machines shown in the catalogue which I have placed with shoe manufacturers within the last five years are the pinking and perforating machines, which are used for ornamental perforations.

1061 FEBRUARY 3, 1914.

EARL T. RUSSELL, witness for the United States.

My name is Earl T. Russell. I live in New York. I am a stenographer for the E. B. Stimpson Co. I took the dictation of the letter dated May 24, 1913, addressed to the United Shoe Machinery Company and signed by Edwin B. Stimpson, from Mr. Nichols of the United Shoe Machinery Company. Mr. Nichols dictated the letter, and as he went along Mr. Stimpson told me to cross out part of it, and then Mr. Nichols went along and dictated more of the letter. The only conversation which I heard regarding the insole flexing machine was that Mr. Stimpson said, "We do not make it," and Mr. Nichols said, "That is all right—put it in."

(No cross-examination.)

1062 FEBRUARY 3, 1914.

EDWARD E. SPENCER, Jr., witness for the United States.

My name is Edward E. Spencer, jr. I live in New York. My business is shoe manufacturers' supplies, machinery, and general machinist. I was formerly connected with Edward E. Spencer & Company and was in charge of their general mechanical department. Edward E. Spencer is my father. That company went into bankruptcy in August, 1912, and is not now engaged in business. The catalogue of Edward E. Spencer and Company which has been produced (defendants' Exhibit 312) was printed in 1897.

Edward E. Spencer & Company built channeling, rolling, splitting, impression stitch, buffing, and eyeletting machines, finishing shafts, strip cutters, punchers, and special dies and various small tools.

The company for five years prior to 1911 did a business in shoe machinery and accessories of twenty-five to thirty thousand dollars a year. The amount of business done in shoe machinery with the shoe trade in 1911 was very small.

Shoe machinery was not the principal business of the company, which dealt chiefly in general findings, entering into the accessories of which the shoe is constructed, exclusive of leather. They sold nails, tacks, wax, thread, ink, and linings.

I know of the machine business of John O'Flaherty of Rouses Point, New York, and have handled their lockstitch machine for harness work. It could be used in the heavier upper work on shoes, but not in the bottoming of the shoe.

John D. Randall & Company of Cincinnati put out machines for harness trade. The only machines put out by them which could be used in the shoe trade were strip cutters.

Spencer & Company were agents for the Ross-Moyer Manufacturing Company of Cincinnati. That company put out edge

1063

setting, buffing, randing, heel scouring and heel breasting machines, brush shafts, and cement pots. Our agency was discontinued when the United Company acquired the Ross-Moyer Company.

Cross-examination:

Edward E. Spencer & Company were in business up to August, 1912. There is a later catalogue than that which is Exhibit 312. The other catalogue—the later one—did not deal with machinery particularly. There were a few items of machinery, but it was devoted more especially to supplies. So far as machinery was concerned, Exhibit 312 was in use up to the time the company went out of business. Spencer and Company could not furnish some of the machines later than a year or two after the issue of the catalogue. We both manufactured machines and dealt with them as agents. At the time when the companies for which they were agents were taken over by the United Company, the Edward E. Spencer Company ceased to be agents for them. The Ross-Moyer Company was one example. There were others.

A strip cutter can be used for making welting, and formerly was used extensively for that purpose. It is not much used at present for making welting. By an adjustment of the knives it could be converted into a machine for flexing, and it has been

so used. It is sometimes known as an insole flexer. My father is living. He was the principal proprietor and manager of the Edward E. Spencer Company. I was in charge of their general mechanical department for about twenty or twenty-five years before 1912. The catalogue which is Exhibit 312 was never withdrawn.

Direct examination resumed:

A few copies of the catalog of Exhibit 312 were sent out during the time of the old concern. I may have sent out a few copies recently, but very few to shoe manufacturers, principally outside the shoe line.

1064 Cross-examination resumed:

Some copies of the catalogue were sent out during the last year in which Edward E. Spencer and Company was in business. I do not describe myself as successor of that company.

1065 FEBRUARY 3, 1914.

JOHN F. MORRIS, witness for the United States.

My name is John F. Morris. I am New England manager of the Singer Sewing Machine Company, and am located in Boston. The Singer Sewing Machine Company does not manufacture or put out any machines used for preparing, attaching, or finishing the bottoms of shoes. It does not manufacture eyeletting or clicking machines. We do not handle those classes of machinery as agents for any other concern.

Cross-examination:

I do not know whether my company or anybody connected with it has anything to do with the Hamel Shoe Machinery Company. Mr. John Sullivan has been connected with my company, and may be now connected with it. I have never known his title or what his office was. If he is a director or general sales manager, it is not to my knowledge. He may have an interest in different machines that are coming through—buttonhole machines—something of that kind. He is reported to be President of the Hamel Shoe Machinery Company. If the Singer Sewing Machine Company is backing the Hamel Shoe Machinery Company or supplying it with money, I do not know of the fact.

I wouldn't know it if it were.

1066 FEBRUARY 3, 1914.

EDWARD J. EICHLER, witness for the United States.

My full name is Edward J. Eichler. I reside in Needham, Massachusetts. I am a salesman for the American Tool and Machine Company. We manufacture a belt knife splitting machine, transmission machinery, sugar machinery, lathes, and

extractors for the woolen mills. The company does not manufacture any machines which are used for preparing or attaching the bottoms to the uppers of shoes, nor does it make any eyeletting or clicking machines.

(No cross-examination.)

1067 FEBRUARY 3, 1914.

WILLIAM L. BARBER, witness for the United States.

My name is William L. Barber. I am not now in business—since 1911. I formerly was associated with my father. We dealt in general light machinery and special machines of our own make and invention for making the uppers of shoes, and conducted our business under the name of L. L. Barber and Company. The Company is not now engaged in business. We did not make any machines used for preparing or attaching the bottoms to the uppers of shoes. We did not make any eyeletting or clicking machines.

Cross-examination:

The machines which we made which could be used in the manufacture of shoes were presses, dies for perforating toe caps, and perforating machines for perforating uppers, and some smaller attachments which were used upon Singer sewing machines for stitching uppers.

Our place of business was 40 Lincoln Street. Our market in the shoe industry was largely in New England, to some extent outside. My father had been engaged in business continuously since 1859. He retired in 1911

1068 FEBRUARY 3, 1914.

CHARLES H. LAWRENCE, a witness for the United States.

My name is Charles H. Lawrence. I live in Cambridge. My business is manufacturing and dealing in shoe machinery and shoe patterns. The name of my concern is Coburn & Lawrence Company, and is located in Boston, 154 Lincoln St. We manufacture or put out the Champion seam-rubbing machine, a size marking machine, a blacking machine, and, as agents, the Rogers vamp-marking machine.

We do not manufacture or put out any machines used for preparing and attaching the bottoms to the uppers of shoes, nor any eyeletting or clicking machines.

(No cross-examination.)

1069 FEBRUARY 3, 1914.

LESLIE L. HARTWELL, a witness for the United States.

My name is Leslie L. Hartwell. I live in Revere and am superintendent for A. G. Walton & Company, who are shoe man-

ufacturers. I have put out a few machines which can be used in manufacturing shoes. They were a grooving machine, a sanding machine, a heel-building machine, and a counter-dividing machine. The last machine was put out about two years ago. None of the machines which I have developed is used in connection with the preparing or attaching the bottoms to the uppers of shoes. I made some of the heel-building machines for our own concern and then sold the rights to manufacture them to the Young Machinery Company. That is the power heel-building machine which Young has on the market now.

Cross-examination:

My heel-building machine builds heels. My grooving machine grooves soles ~~preparatory~~ to putting them on the upper. The sanding machine sands the grain from off the tap of a Goodyear shoe so that it will stick to the upper. The tap is a part of the sole. The counter-dividing machine permits counters to be made double, and afterwards divided. The counter is the part of the shoe which reinforces the heel seat. In fact each of my machines had something to do with the bottom before it was attached to the upper.

Direct-examination resumed:

I built one heel-building machine for our concern, and sold to the Young Heel Building Machine Company the right to reproduce the machine in other factories. The machine
1070 is used by heel manufacturers, and by shoe manufacturers who make their heels. It is the universal heel-building machine to-day.

Cross-examination resumed:

A great many shoe manufacturers make their own heels. Each of the machines which I have mentioned is used in the Walton factory.

1071 FEBRUARY 3, 1914.

ARTHUR F. BROWN, witness for the United States.

My name is Arthur F. Brown. I live in Newton. I am a manufacturer's agent, and represent the Davis Sewing Machine Company, of Dayton, Ohio. The machines which they put out are sewing machines for family and manufacturing use, but as far as I know are not used in the manufacture of shoes. We have sold none to shoe manufacturers. I do not see how our manufacturing sewing machines could be used for attaching the bottoms to the uppers of shoes. I am not an expert in shoemaking.

Cross-examination:

We have a catalogue of our machinery. As to whether our sewing machine was ever used for sewing the uppers to shoes, or any parts of them, I haven't seen it used in any stitching rooms that I have visited. I have not urged its use for that purpose. Our type "A" manufacturing sewing machine is adapted for harness and saddlery work, and therefore to work on leather. The machine which we have been trying to sell to the United Company is a machine which we have recently produced, a taping machine, which fastens an adhesive tape to any material, which is particularly adapted to fasten adhesive tape to that part of the upper where the buttons or hooks are attached, in order to reinforce the leather. It was exhibited first to the shoe trade in July, 1912. We are endeavoring to introduce it to shoe manufacturers. It is going pretty far to say that we have been offering to sell it to the United Company. We brought it to their attention. We have no organization for selling to shoe manufacturers.

1072 FEBRUARY 3, 1914.

BENJAMIN F. CHAMBERLAIN, witness for the United States.

My name is Benjamin F. Chamberlain. I am manager of the Walpole Shoe Supply Company, which manufactures and sells shoe supplies and incidental machinery for their use. We make a rib tightener which does the finishing operation on the Gem inner sole. It has been in the market for about two years. We also put out heating machines for heating coated Gem cloth and the adhesive material on it. We have put out possibly fifty rib-tightening machines to shoe manufacturers within the last two years.

Cross-examination:

My place of business is in Boston, 60 South St. We coat canvas (defendants' Exhibit 31), which is used by the United Shoe Machinery Company for its Gem inner sole. We supply a great deal of it, and we also make one machine for performing an operation on the Gem inner sole.

Direct examination resumed:

That machine is the one of which I have testified that we have sold approximately fifty. I have seen in factories machines put out by the United Company which do the same work.

1073 FEBRUARY 3, 1914.

JOSHUA S. WHEELER, witness for the United States.

My name is Joshua S. Wheeler. I live in Winthrop. I am principal owner of the business of J. S. Wheeler & Company,

who make welt cutting machines, cloth cutting machines, and lace cutting machines. We also rebuild shoe machinery. Our factory force consists of from two to six men. We put out a rebuilt machine which we call the Baby splitting machine. The new machines which we put out are the welt cutting, cloth cutting, and lace cutting machines, and a counter divider. All our machines are sold outright. They are not leased. Some of our machines go to shoe manufacturers. Most of our welt cutting machines go to welt manufacturers, although we have sold a few to shoe manufacturers. I buy and rebuild shoe machinery and sell it to shoe manufacturers. That is part of our business. I rebuild almost anything I can buy and get an order for. I have never rebuilt any welt sewing or outsole stitching or heeling machines. I deal with the small machines—vamp machines and sole cutters. It takes in a regular line of machinery outside of the sole stitchers. I have rebuilt National stitchers and Puritan stitchers, and things of that kind. The last stitching machine which I put out was over a year ago. I do not know to whom it went.

Cross-examination:

I do not handle an insole flexing machine, unless they call a welt cutter a flexer. I handle the Baby splitting machine, but I have not built any new machine. The welt cutting machine could be changed over so that it would be a flexing machine and not a welt cutter. I have not been in business long enough to put out any catalogue or advertisements.

1074 Mr. CHOATE. I want to call attention to the fact that all we offered was that this man put out a splitting machine and an insole flexing machine.

Direct examination resumed:

I have been engaged in business since two years ago last July.

1075 FEBRUARY 3, 1914.

FRANK P. SPAULDING, witness for the United States.

My name is Frank P. Spaulding. I live in West Somerville. I am manager of Willcox and Gibbs' Sewing Machine Company's Boston office. That concern puts out sewing machines. It does not put out, so far as I know, any machines used for preparing or attaching the bottoms to the uppers of shoes, nor any eyeletting or clicking machines.

Cross-examination:

We put out a good many machines for stitching the uppers of shoes, and we also put out what we call a Number 5 stitch adjustable tension machine, to which the United Shoe machinery

Company adds an attachment which enables it to perform some operation in connection with the insole. It stitches some channels together, some leather that is raised up on the inner sole. As we put it out it would be used for sewing cloth. You can sew leather with it. It will sew an ordinary chain stitch inseam in leather as we put it out if the leather is not too thick. We put out some sewing machines for operating on uppers—not a very large number. My company, the Singer, and the Union Special Company put out most of the machines used for sewing together the uppers of shoes. We sell or lease our machines all over the United States and our headquarters are in New York. The sewing machines which we put out to shoe manufacturers are all used for sewing uppers, as far as I know. We have been making them for over fifty years.

1076 FEBRUARY 3, 1914.

JOHN H. LINGLEY, witness for the United States.

My name is John H. Lingley. I live in Brockton and am manager of the business of the Puritan Manufacturing Company. It manufactures sewing machines used for fair stitching, counter work, vamping, barring, and strapping.

I can not say how many machines we put out in 1911, or how many to shoe manufacturers. The majority of our machines go to shoe manufacturers. Our fair-stitch machine sews the upper onto the welt. Other than that we do not make any sewing machines which are used for attaching the bottoms of shoes. We sell some of our machines to the United Shoe Machinery Company. I don't know what percentage.

Q. The fair-stitch machine—is that used for attaching the sole to the upper, or is it an ornamental stitch?

A. It is more ornamental, and in the stitch-down shoe they attach the sole to the upper.

Cross-examination:

We sell our machines to anyone that wants them. Among our other customers the United Company is one. We put a good many machines on the market besides our fair-stitching machine. We sell a good many Puritan fair-stitch machines, and have probably sold around a thousand since we first went into business in 1892 or 1894. Practically all of them have been sold to shoe manufacturers, and they are used all over the United States. We sell a few staying machines, which operate on the back seam of a shoe, and a boot counter-stitching machine, which operates on the counter. I can not say whether we sell a button-fly seaming machine, or button-fly staying machine. We do sell a counter-stitching machine and a foxing stitching machine, but do not sell a lining-stitching machine. We also

sell a foxing staying machine, and pocket-strap stitching, quarter-seaming, side staying, vamp-seaming, welt-seaming, and vamp-welt sewing machines. I think we sell a side-staying machine, but am not sure. Our welt-seaming machine attaches a McKay welt to the sole before it is laid. Our Puritan fair-stitching machine and our vamp-welt-seaming machine are used in the operation of attaching the sole to the upper. All the machines mentioned are sold to shoe manufacturers. The Puritan fair-stitch machine is also used largely in making the stitch-down shoe. We have just commenced that. It stitches the upper to the sole of the stitch-down. The stitch-down is the one where the upper is turned outward on the sole and stitched directly through.

1077

Direct examination resumed:

Q. All those machines that have been named, are they separate machines or one machine with a different attachment for a different operation?

A. They are built different. The frame is practically the same; we make one, two, three, and four needle machines.

Q. What do you mean by that?

A. For instance, we make a three-row machine, which stitches three rows at one time. The fair-stitch machine stitches only one row.

Q. (By Mr. CHOATE.) You say the standard is the same; you mean the upright column?

A. Yes; they are about the same, the frame.

Q. But the machine itself is different in each case?

A. Oh, yes; the working parts of the machine are different. We have been making a machine used on the stitch-down shoe only within the last two years.

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FEBRUARY 3, 1914.

CHARLES S. PRESCOTT, witness for the United States.

My name is Charles S. Prescott. I am treasurer of the Lockett Crimping Machine Company, which is located in Brockton. They are manufacturers of crimping machines, which are used for crimping the vamps of shoes. The vamp is part of the upper. We do not make machines which are used in connection with attaching the bottoms to the uppers of shoes. We sell some of our machines to the United Shoe Machinery Company. Most of them we sell ourselves to shoe manufacturers. We have been in business about fifteen years. In 1911 we put out perhaps fifty machines.

Cross-examination:

The Lockett crimping machine forms the vamp so it fits on the last. The vamp is the part from the tip to the point where

the tongue is sewed on, the part which fits down on the last. It gets the upper ready for the operation of lasting—for all the operations that are performed while the upper stays on the last. It has no particular reference to the use of the stitching machine. The crimping operation adjusts the upper to the shape of the last and holds it on the last firmly. We control the marketing of these machines, and we market them ourselves. We have been marketing them all over the United States for fifteen years. Among our customers is the United Company.

Direct examination resumed:

The crimping operation precedes the pulling-over operation. The United Company has no machine for performing the crimping operation, so far as I know.

1079 Cross-examination resumed:

The crimping machine is also used where shoes are pulled over by hand and on shoes which are lasted by hand.

1080 FEBRUARY 3, 1914.

L. E. JOHNSON, witness for the United States.

My name is L. E. Johnson. I am connected with the Victor Shoe Machinery Company, which manufactures rough rounding and channeling machines and an outsole stitching machine. The last named is used for attaching the outsole to the welt after the welt is attached to the upper. We have put out about thirty-two lock-stitch machines to small shoe manufacturers who are not using the standard line of shoe machinery. By the "standard line of shoe machinery" I mean the United line. We sell our machines outright. So far as I know, the persons who have bought them were not using United Company machines. The other machine which we put out is a rough rounding and channeling machine. We have put three of them out. They have gone to repair men, to the rapid shoe repair trade, and not to shoe manufacturers. We have put out certain finishing machines used for finishing shoes, which include burnishing and edge-setting and everything of that kind, in the repair trade; nothing to manufacturers.

I know something about the business of the Universal Shoe Machinery Company and the Champion Shoe Machinery Company of St. Louis. They supply the rapid shoe repairing trade and I have handled their machines. I am not interested in the companies. They put out a lock-stitch machine, a welt machine, that is, an inseamer, a finishing machine, and a nailing machine. We have placed some machinery with the repair trade for the Champion Shoe Machinery Company.

Cross-examination:

A lock-stitch machine is a machine which sews the outer sole to the welt, as distinguished from the stitching machine
1081 which sews the inner sole. We make such a machine.

We were organized three years ago, but only began to put out our machines last September. We didn't get through the experimental stage and ready to make deliveries until then. Since then we have delivered thirty-two of our lock-stitch machines. We have been putting out a rough rounder and channeler longer than that. It is a machine intended to perform an operation on the sole of a shoe, for completing the work of attaching the sole to the upper. Our finishing shaft sands the bottoms and edges and heels of shoes that have been repaired or made over, and finishes and sets and trims the edges after it is complete. It performs that operation in finishing up the bottoming operation. It could be used upon a new shoe. It is adaptable for either purpose. Our indenting machine indents the stitches, but it could hardly be used on a new shoe, because the wheel can not get into the shank.

Q. Your skiving machine—what is that for?

A. That is for skiving the base of any kind of sole leather before the taps are put on for half-soling.

Q. It could be used for skiving any kind of soles?

A. It could be; yes; I judge so.

Q. Whether old or new?

A. Yes, sir.

Our tacking machine is a foot-power loose nailer, adapted only to repair work. It is used for nailing outer soles on to the insoles.

Q. Except for the fact that that is a foot-power machine, is there any reason why it should not used on new shoes?

A. The only reason would be the lack of speed.

An attempt has been made to adapt it to power, but it was not successful. I have known the gentleman at the head of the Universal Shoe Machinery Company for the last eleven years. They have been in business all that time as the Champion Shoe Machinery Company, not as the Universal. For about a year and a half they have been putting out the welt and turn sewing machine. It is adapted to making either welt or turn shoes. The loose nailing machine nails on soles. They have had that on the market for eighteen months at least. Their lock-stitch and straight needle machine has been on the market for ten or eleven years.

It is used for sewing on half soles, but it would not sew on
1082 full soles, because the straight needle is not applicable for getting into the shank. It could not do fair stitching, it

would not be classed as a fair-stitch machine because it used heavier thread and was a lock stitch. It is an out sole stitcher. Their finishing shaft is substantially the same thing that we are selling. It is for finishing soles on either old or new shoes. They have been getting them out for some years. Every one of their machines and every one of our machines is used in connection with the operation of attaching the bottom of the shoe to the upper.

Direct examination resumed:

The business of the Champion Shoe Machinery Company is almost exclusively with the repair trade. The Universal Shoe Machinery Company is intended to do business with the shoe factory trade, but I do not know anything about the amount of business they do.

I am a stockholder in the Specialty Shoe Machinery Company of St. Joseph, Missouri, which makes foot-power loose nailing machines. They have been engaged in business eight years. The business is exclusively with the repair trade.

Cross-examination resumed:

That company formerly, for about 5 years, made a finishing shaft intended to finish soles after they had been attached to the upper, but discontinued three or four years ago. Now they make a machine for nailing on soles. Both the loose-nailing machine and the finishing shaft are used in operations connected with the attaching of the bottom of the shoe to the upper.

Direct examination resumed:

They are used exclusively in the repair trade.

1083 Cross-examination resumed:

The loose nailing machine is not adapted to use on new shoes, because the last would have to be taken out of the upper, and because it is a foot-power machine. The finishing machine is a power machine, and would be adapted for new shoes, if the man could get along with a small space.

1084 FEBRUARY 4, 1914.

STEPHEN SNOW, witness for the United States.

My name is Stephen Snow. I was formerly employed in the shoe factories of George E. Keith and W. L. Douglas. I worked for Mr. Douglas for two years. He was then making men's welt and McKay shoes. His daily capacity was then about ten thousand pairs a day. He used the Consolidated hand-method lasting machine and the Ideal lasting machine. He had more Ideal machines than Consolidated. He used the Ideal machines on both the McKay and welt shoes. I can not state what percentage of the welt shoes were lasted on the Ideal machines. I

had charge of the Ideal lasting machines. I did not have anything to do with the Consolidated. Mr. Douglas used more than a dozen Ideal lasting machines. I won't go any farther than a dozen. I do not remember that he had any Chase lasting machines.

I worked for Mr. George E. Keith for the year immediately preceding my going with Mr. Douglas. He was making men's McKay and welt shoes, and his capacity was about ten thousand pairs a day. I do not remember that he had any kind of lasting machines except the Ideal machines of which I had charge. He had about a dozen of them. I do not remember that he had any Chase machines. The Ideal machine could not be used successfully in lasting men's heavy shoes, because in wiping over the toe, the shoe lifted from the toe piece. That was not on account of the strength of the machine—it was on account of what it lacked. Mr. Douglas and Mr. Keith made about a four-dollar shoe which was as heavy as they generally make in those factories.

1085 Cross-examination:

I left Mr. Douglas in April, 1904, and since that time, I have been a watchman in the Statehouse. I was at Douglas factory from the spring of 1902 to the spring of 1904, and at the Keith factory from the spring of 1901 to the spring of 1902. My particular work was with the Ideal machines. My attention was upon them, and I did not know what else they had. I was a mechanic. I was an operator, too. I was not a shoemaker.

Q. Did you make an invention which was attached to the Ideal machine when it was installed in the Keith factory?

A. I did.

Q. What was it?

A. What I called a hold-down.

Q. And its purpose was what?

A. To hold the shoe—keeping it from raising when you lasted heavy work.

Q. Why was it necessary to hold it down?

A. Because when we wiped up over the toe of the shoe the toe would lift off the toe-rest.

Q. Was that the difficulty with the Ideal machine?

A. Yes, sir.

Q. Wasn't it a fact that before you invented that hold-down and improved it the Ideal machine could not commercially successfully last men's shoes?

A. No, sir; it could not. As I understand your question, you mean all kinds of men's shoes?

Q. Yes. The operation of pressing over the leather lifted the last right up?

A. Yes, sir.

Q. That was the defect with the Ideal when it worked on anything except very light leather?

A. Yes.

Q. You invented something that held the last down in place?

A. Yes.

Q. Did you ever take out a patent on it?

A. No, sir; I wanted to.

Q. Where were you working when you invented that?

A. In Mr. Keith's. I put them on all of Mr. Keith's machines, and then put them on Douglas' when I went there.

Q. Did you also invent something else that held or that brought the wipers in around the counter?

A. Yes, sir.

Q. Did you get a patent on that?

A. Yes, sir.

Q. When did you get that out?

A. I don't think I got the patent out until 1905—something about then.

Q. When did you invent the improvement and attach it to any machines, either in Keith's or Douglas'?

A. I should say it was—I shall have to guess at it—I should say about 1901 or 1902.

Q. What was the necessity of this device which brought the wipers in around the counter?

A. I can explain it better by showing you. They used a very heavy counter at that time (the witness illustrating by reference to the heel of his own shoe), and the heel band would not bring the corners of the counters in.

Q. The heel band of the Ideal machine?

A. Yes; would not bring the end of the counters in. I made a something that would bring them in. I don't know what they called it after it was patented.

1086 Q. Have you got your patent with you?

A. Yes, sir; I think so. I had it this morning.

Q. I show you what purports to be United States patent No. 946,708, and call your attention to the drawing attached to it headed "Snow Lasting machine—application filed September 5, 1905"; is that a drawing showing the device which you invented for pressing in the counters?

A. Yes, sir.

Q. To attach to the Ideal machine?

A. Yes.

Q. And it consisted of these two arms which operated to press the counter in. When was that device attached to the Keith and Douglas machines?

A. I don't know; if I remember right, I think I put one on Mr. George E. Keith's, on one of his machines, to try it, before I left there.

Q. It was while you were there that you thought the thing out?

A. Yes.

Q. Now, did anybody else get out a patent on an improvement of your hold-down device?

A. Yes, sir.

Q. I show you what purports to be United States patent No. 947,818, and call your attention to the drawing attached to it, which is entitled "E. F. Heffernan, hold-down attachment for lasting machine." Does that drawing show the hold-down device that you got up?

A. Yes, sir; the same thing, only of course there was more to it; but it is the same principle.

Q. It was your principle?

A. Yes, sir.

Q. And it was the device that you attached to the machine?

A. It was.

Q. You say, Mr. Snow, that there was more to it than the drawing shows; you mean more to it in the drawing than there was in the device?

A. Yes, sir. This (indicating on drawing) presses down a little different way from mine; mine went with a lever. That is all the difference there is—the same thing exactly.

1087 Q. The same principle?

A. Yes, sir.

Q. Occasioned by the necessity of finding something that would hold the last down for the operation of the Ideal laster?

A. Yes, sir.

Q. Now, it was with these two devices and improvements attached that Mr. Douglas used the Ideal laster on men's shoes?

A. Successfully; yes.

Q. And without those the Ideal would not last men's shoes successfully, would it?

A. No, sir.

The United Shoe Machinery Company's Number Five laster embodies these two improvements, which we were using from 1902 to 1905.

(The illustration of the device for pressing the counter is marked "Defendants' Exhibit 338." The illustration of the

hold-down device originally got up by the witness and perfected by Heffernan is marked "Defendants' Exhibit 339.")

The patent on the attachment which presses in the counter was assigned by me to the United Shoe Machinery Company and is embodied in their Number Five lasting machines.

Direct examination resumed:

I do not remember that Mr. Keith added any Ideal machines to his factory while I was there. He was using the Ideal machines on men's welt shoes when I first went there. I added my hold-down attachment at different times during my stay. I put on the first one a very short time after I went there.

1088 Q. During that whole time before that attachment was put upon the Keith machines he was lasting men's welt shoes on them, was he, or not?

A. I suppose so. I wasn't there.

Q. And how long had he been lasting men's welt shoes on those Ideal machines before you went there?

A. I couldn't tell you anything about that.

Q. Had you, or not, been around his factory?

A. Not for some time.

I put the heel attachment of which I spoke on one of his machines, but I do not remember whether I put it on any others. He used all of his Ideal machines in lasting men's shoes during the entire year which I spent there, although, as far as I remember, only one had attached to it my device for pressing in the counters.

Q. Now, when you speak about not lasting men's shoes successfully, state what you mean.

A. I mean that if you have got to go over a shoe two or three times, when it isn't necessary to go over it but once, that it is not a successful machine—not a successful operation.

Q. That is, it doesn't do it as rapidly as the machine with the attachment?

A. No, sir; and my experience has been that manufacturers don't look at anything as very successful unless it is pretty swift.

Q. So that that is what you mean by successfully done?

A. Yes, sir.

Q. By going over it two or three times, it was done all right?

A. No; it wasn't done all right then. The more you wipe up a toe the worse it is. * * * You take it on patent leather, you couldn't wipe it only about once or twice. If you do, you take the enamel off.

Q. So the work of the laster was improved by these attachments?

A. Yes, sir.

At the time when I went to Mr. Douglas' factory he had been making shoes for many years. When I went there none of those attachments were on his lasters. I put them on as quickly as I could get them on. I don't suppose it was 6 months before I put them on. During the time I was there and before I put them on the Ideal machines were being used constantly in lasting men's welt shoes.

Cross-examination resumed:

So far as I know, Mr. Douglas and Mr. Keith were the only people in the country who used the Ideal machines with this hold-down in connection with lasting men's shoe. I think it was these two improvements that changed the machine from an unsuccessful machine into a successful one.

1089 Direct examination resumed:

When I said the Ideal laster could not last men's heavy shoes, I meant long-legged boots, brogans, miners' shoes, and shoes of that character. Nothing could handle those shoes except the McKay-Copeland machines.

1090 FEBRUARY 4, 1914.

HAMPARS HARPOOTLIAN, witness for the United States.

My full name is Hampars Harpootlian. I live in East Weymouth. I work in the shoe factory of George E. Keith. From 1900 to 1910 I worked in the factory of the T. G. Plant Company. I was a side laster. I was there at the time they had the trouble about wages. I know Frank Morrison, Abram Sochat, and Charles Ross, who sometimes goes under the name of Charlie Gordon. I don't know him as Ross; I know him as Charlie Gordon. Morrison was working at the Plant factory in 1910. He left shortly after we had the matter up about the increase in wages.

(At this point the United States offered to prove by the testimony of Hampars Harpootlian, Peter Gostanian, and Asardu Astoorian that Frank Morrison, Abraham Sochat, and Charlie Ross paid to the above-named persons certain money during the year 1910 for the purpose of unionizing the employees of the T. G. Plant factory. The evidence was offered for the purpose of rebutting the testimony of the defendant that Morrison, Sochat, and Ross did not pay out money to employees in the Plant factory. The evidence was excluded on the ground that it was cumulative and a part of the United States' direct case and is not properly offered in rebuttal.)

(No cross-examination.)

1091 FEBRUARY 4, 1914.

FRANK MORRISON, witness for the United States, recalled.

I know Cross Johnson. He was working with me at the Plant factory in 1910. I talked with him about forming a union among the employees, and he attended meetings held for that purpose. I told him by whom I was employed to unionize the Plant factory, and what we wanted to do. He signed his name. We paid him fifteen dollars, upon his promise to help us out by getting names for us. He did not get any names, but even denied what he had signed. I never went near him—never told him to help me out. I didn't want anybody to help me out; so he said he was afraid of his job.

(No cross-examination.)

1092 FEBRUARY 4, 1914.

PETER GOSTANIAN, witness for the United States.

I live in East Weymouth. I am a shoemaker. I was working in the T. G. Plant factory in 1910. I was a puller over. I know Cross Johnson very well. I saw Cross Johnson at a meeting held for the purpose of trying to unionize the lasting room of the Plant factory.

(No cross-examination.)

1093 FEBRUARY 4, 1914.

ASARDU ASTOORIAN, witness for the United States.

My name is Asardu Astoorian. In 1910 I was employed in Plant's shoe factory. I was a toe laster. I know Cross Johnson. He was working in the factory at that time. I attended a meeting at 988 Parker Street, at which Cross Johnson was present. The meeting was held for the purpose of forming a union of Plant's employees.

(No cross-examination.)

1094 FEBRUARY 4, 1914.

OSCAR HEATH, witness for the United States.

My name is Oscar Heath. I live in Brockton. I am connected with the Boston Last Company, which manufactures lasts. We make an electric embossing machine used for embossing names on shoes, a backing press, which is used for putting backing cloth on leather, and a treeing machine, used for treeing shoes, and a post ironing machine. We do not make any machines used in connection with attaching the bottoms to the uppers of shoes, nor any eyeletting or clicking machines.

Cross-examination:

Mr. CHOATE. I want to call the court's attention to the fact that we did not claim that he made any bottoming machinery.

We claim that he made a backing machine, an embossing machine, a post ironing, and two treeing machines.

Q. You do make all those, don't you?

A. Yes, sir.

That is my catalogue which you produce. The single-handled iron which we describe as having been developed "for crowners and lasters in the bottoming rooms of shoe factories" is a tool which is used for taking the wrinkles out of the toes of shoes after they are lasted. That is not really bottoming work. We should call it a tool to perfect the work of the lasters. The machine described in our catalogue as "post" or "bench heater" is used for taking wrinkles out of turn shoes, and that class of work. That is an ironing operation.

1095 FEBRUARY 4, 1914.

ELMER W. WALKER, witness for the United States.

My name is Elmer W. Walker. I live in Brockton. I am connected with the Brockton Stay Company. We manufacture boot and shoe findings. We make some machinery for own use, and what we don't want we sell. We make a pasting machine which is used for pasting the tape onto the vamp in shoe factories. It is not used in connection with the bottoms at all.

Cross-examination:

Mr. CHOATE. The only thing that we claimed the Brockton Stay Company made was a pasting machine—Wheeler tape-pasting machine.

We make that machine—the Wheeler tape-pasting machine, occasionally; not very often, but whenever it is wanted.

1096 FEBRUARY 4, 1914.

GEORGE KNIGHT, witness for the United States.

My name is George Knight. I live in Brockton. I am a machinist connected with George Knight & Company, which manufactures machinery. We do not manufacture a heel-building machine, but fifteen or twenty years ago we did make a little foot machine for building up pieced heels. I can not say how many we have put out. We have not made any within the last fifteen years, and we do make a vamp-creasing machine which is used for creasing the vamp after the shoe is made. We used to make a McKay channeling machine, but have not handled any of them within the past fifteen years to any extent. Up to about eight years ago we made and put out a power gang eyeletting machine. We have not put out any within the last eight years. Twenty or twenty-five years ago we made a channel-laying machine. We formerly made a channel opening

machine, but I think we have not made any within the past eight or ten years. I now make the punch-tip machines named in defendants' Exhibit 321, in several models; models E, F, and G, and a punch, power tip; punch, hand tip, punch, foot power. They are principally used for perforating toe caps. I also make a feather-edge and shank-reducing machine, which is used for reducing the shank of the sole. I sell them to shoe manufacturers. I also make a lip-turning machine, which is used for turning the lip of the inner sole. We sell some of our machines to the United Shoe Machinery Company, any that they have call for—sell them through them; and the tip-punching machines that we market in foreign countries we sell through them.

Cross-examination:

1097 We sell to anyone who wants to buy, and the United Company among others. The Peerless Company now makes eyeletting machines which we used to make. We run a general machine shop.

Q. You are ready to make any kind of shoe machine that anybody asks you to make?

A. Any machinery that I find sale for.

Q. And are able to?

A. Yes.

Herbert J. Sinclair is a gentleman connected with the United Company. I know him. I wrote the letter which has been produced (letter No. 9 in defendants' Exhibit 321, addressed to the United Company, and marked "Mr. Herbert J. Sinclair"), offering to furnish tip-perforating presses (models E, F, & G), hand, foot, and power tip-punching machines, vamp creasers, feather edgers, lip turners, and K and K cementing machines. We do make all of these. We have made heel shaving, lining sticking, and heel building machines in the years I have been in business. I have been in business there 29 years, about. There was more sale for some of those machines years ago than there has been recently; we know how to make them, and are ready to make them if anyone asks us to.

The Peerless Company is making and supplying the eyeletting machines, which we formerly made, in quite large quantities. They are used by shoe manufacturers.

Direct examination resumed:

I dictated the letter which Mr. Choate showed me. We have made within a dozen cementing machines in the last five years. We employ from twelve to eighteen men, including clerks, and all the help.

1098 FEBRUARY 4, 1914.

FRED S. SPRAGUE, witness for the United States.

My name is Fred S. Sprague. I live in Brockton. My business is machine building. I am connected with Kimball Brothers & Sprague. We make a welt laying machine which is used only for laying the Arnold flex welt, which was invented by Mr. William B. Arnold. We sell it to shoe manufacturers. The United Company has no machine for performing a similar operation, so far as I know. We employ about eighteen men, but none of them are just now engaged in making this welting machine. We have put out not more than twenty-five or thirty in the past five years. Our principal business is making last turning machinery.

Cross-examination:

The letter dated May 17, 1913, to the United Company offering to sell them the Arnold flex welt layer, which is part of Exhibit 321, and is signed Kimball Brothers & Sprague, was written by me. The letter and the circular which follows on the next page of the exhibit are all right. We make the Arnold flex welt layer, of which I have spoken.

1099 FEBRUARY 4, 1914.

THOMAS BOSTOCK, witness for the United States.

My name is Thomas Bostock. I live in Brockton. I am a machinist. I manufacture a machine which builds the heel before it is attached. We have sold quite a number to the United Shoe Machinery Company and to other companies—anybody that wants them. The United Company makes a heel building machine, but it is not like ours. We make a rand-cutting machine, which trims off the end of the rand which is left projecting from the heel seat, in connection with the heeling operation; a tap-cutting machine, which can be used for most anything, a heel lift gouging machine, which gouges out the heel before it is put on the shoe, so that it fits the heel seat, and which also can be used by changing the knives for slashing McKay welts, making it a McKay welt slashing machine; a toe softening machine, which is used upon the upper, and a rand turning machine which turns up the rand, giving shape to the heel. We do not make a spring heel scarfing machine. We have handled them. We have bought them secondhand once in a while and resold them.

We have been engaged in business about seventeen years. In the past we have put out as many as one hundred heel building machines a year. We have not put out so many lately. The heel building machine business is not the principal part of our business. We build all kinds of machines. Any machine that

anyone wants, we build—embossing machines and sandpaper machines—any machines anyone wants. We build all kinds of machines to order. We do not build a welt sewing machine, an outsole stitching machine, a heeling machine, or a lasting machine. We employ about fifteen men.

1100 Cross-examination:

We have a general machine shop and facilities for building from patterns and drawings any kind of a machine anybody wants. We have a number of machines that we make right along. Our letter of May 12th, 1913, which I signed, and the two sheets which comprise our catalogue, relate to the machines which we are making right along. They are the toe softener, which we sell at four dollars and a half; heel lift gougers, at fifty-five dollars; cap cutters, fifty dollars; spring heel scarfers, sixty dollars; and turners, without bearing, twenty dollars, with bearing, twenty-two dollars; heel builders, straight mold and military mold, 10 % off; heel builder, six or more, 15 % off; rand choppers, with straight or gouge knife, fifty dollars; welt slasher, male and female, sixty dollars; rand cutter, thirty dollars; box toe press, two hundred and twenty-five dollars.

We have built these machines for outside parties and are ready to build them for anybody who orders them. The toe softener prepares the toe for lasting. The heel lift gouger gouges the heel after it is built, preparing it for attachment to the bottom of the shoe. Our tap cutter cuts taps which are part of the sole, the spring-heel scarfer scarfs spring heels—you do that on that same machine—and the rand turner operates on the rand, which is part of the heel seat.

Each of our machines performs an operation which is either preparing or finishing the bottom of the shoe before or after it is attached to the upper, or getting the upper ready for attachment to the sole.

Direct examination resumed:

The box toe molding machine is used for molding box
1101 toes. We have put out about twenty altogether.

Our heel building machines go both to shoe manufacturers and to heel manufacturers. I think the shoe manufacturers get the most of them. We have built a good many for the shoe manufacturers. We have built 30 for the Douglas Company.

1102 FEBRUARY 4, 1914.

CARL A. CARLSON, witness for the United States.

My name is Carl A. Carlson. I live in Brockton. I am connected with Carlson Brothers, who are sheet metal workers.

We make a toe softening machine used for softening the box of the shoe before it is lasted. We sell them outright to the manufacturers of shoes.

Cross-examination:

The purpose of the machine is to prepare the toe of the shoe for the operation of lasting. They are used altogether by shoe manufacturers, and are sold for six or eight dollars apiece. We have been in business a long time, and have supplied them in considerable quantities to anyone who wants them.

1103 FEBRUARY 4, 1914.

GEORGE D. HAZEN, witness for the United States.

My name is George D. Hazen. I live in Brockton. I am connected with the Hazen-Brown Company, cement manufacturers. We have cementing machines made for us, used for the purpose of applying a certain kind of a cement to the bottom of the sole in order to stick a tap. We sell the machine to the Cochituate Oilproof Company, which loans them to shoe manufacturers for the purpose of putting on their cement.

Cross-examination:

The Cochituate Company makes a cement, and the machine is devised for the operation of applying that cement. They rent that machine to shoe manufacturers, and make their profit out of what they get for cement. The machines are made for us, and we are supplying them to the Cochituate Company. A patent was applied for but I do not know whether it was allowed. I am a stockholder in the Cochituate Oilproof Company for which the machines are made.

1104 FEBRUARY 4, 1914.

FLOYD H. OGDEN, witness for the United States.

My name is Floyd H. Ogden. I am the New England manager of the Standard Sewing Machine Company, of Cleveland, Ohio. The machines made by our company which are mentioned in defendants' Exhibit 321 are not used in connection with the preparing or attaching of the bottoms to the uppers of shoes—not that I know of. They are all used in connection with the upper, so far as I know.

Cross-examination:

Formerly we made all of the machines shown on the list, but we do not now. I wrote the letter bearing my signature which has been introduced, and sent the attached circulars. I have been manager since the first of last March. I haven't had anything to do with the manufacturing end of the business in Ohio. The only machines which we now make are those

shown on the circulars. We have a stitching machine which has five different attachments for different operations—bellows tongue, button fly lining, button stay, eyelet row, eyelet stay and fancy. Each is a different kind of operation and there has to be a different fitting for each one. We have a seaming foxing machine. The list of machines in defendants' Exhibit 321 comprises descriptions of operations which the several machines can do by various attachments and modifications. I am not very familiar with the machines themselves. I have never worked in a shoe factory. I was not with this company before I came to Boston.

1105 FEBRUARY 4, 1914.

ALBERT G. BREWER, witness for the United States.

My name is Albert G. Brewer. I live in Natick. I am a machinist and inventor. I make a McKay welt-slashing machine, which I sell to shoe manufacturers. I have not put out more than ten altogether, of which the last was sold a year and a half, or two years ago. I employ one man. I also make other machines.

Cross-examination:

The letter dated May 23, 1913, bearing my signature, is my letter. That letter shows an illustration of the double rapid welt slitter, and says: "Which we can sell you for $100. Prompt delivery can be made on receipt of order." I attached the printed circular which was introduced in evidence. The machine mentioned, the double rapid welt slitter, is the machine about which Mr. Gregg just asked me. We have not made any for a year and a half.

1106 FEBRUARY 4, 1914.

JOHN M. TOWER, witness for the United States.

My name is John M. Tower. I am connected with Tower Brothers, of Hudson, Mass., machinists. We make a buffing machine which is used for sandpapering the bottoms of shoes. We have been at it a great many years. We put out perhaps ten of them last year. They go to shoe manufacturers. We also make and put out perhaps ten or a dozen sole-cutting machines in a year. We make a heel-scouring machine. We used to make and put out a good many heel-scouring machines, but we have not done a great deal with that for the last few years. We put out perhaps two or three last year. We formerly made a stamping machine for stamping the name on the bottom of the shoe, but we do not now. We make stripping machines for anybody who wants them, but they have gone out of fashion. We make a rotary edge-setting machine. I formerly made a good many, but, as they make better work, they

don't use them. We make a heel-trimming machine and an edge-trimming machine, but have not put out a great many. They have most all gone to cobblers.

We employ from twelve to eighteen men, and do a machine, millwright, and piping business, principally machines.

Cross-examination:

We have a country machine shop in which we do most anything that comes along. The letter dated May 17, 1913, bearing my signature and describing the machines which we make was written by me. The machines which we make are comprised in the list read by Mr. Gregg. The high-speed buffer, bevel-
1107 ing machine, edge trimmer, edge scourer, stamping machine, heel trimmer, rotary edge setter and power stripping machine all have to do with finishing the sole or the heel after it is attached to the upper, or getting it ready to attach to the upper. The vamp cutter and the dieing-out machines are for dieing out the sole.

1108 FEBRUARY 4, 1914.

JOHN BULMER, witness for the United States.

My name is John Bulmer. I live in Boston. I am superintendent of the J. S. Holt Co. (Inc.). That company is engaged in the business of secondhand shoe machinery. We have built no machinery since I came with them, on January 1, 1912. I couldn't say what machines the company built before January 1, 1912. We do not now build a stamping machine or a welt-indenting machine. We have handled a few secondhand machines of these types since January 1, 1912; not over two or three welt-indenting machines. We do not make a McKay sewing machine—that is, since January 1, 1912—but have handled not over a dozen of them at second hand since then. We get them generally from shoe manufacturers; secondhand shops.

Cross-examination:

When I went with Holt I was working in Boston in a machine shop. The letter which was produced, dated May 2, 1913, and signed J. S. Holt & Company (Inc.), was written by Mr. J. S. Holt, who is now dead. I recognize the signature. I do not know anything about the letter.

McKay sewing machines are to be had from about all the shoe manufacturers. They pass through our hands more or less frequently, and we rebuild or repair them and furnish them to others. We have no difficulty in getting them at any time.

Direct examination resumed:

I do not know whether there is any difficulty in selling them or not. I am not the salesman; I don't know anything about the selling.

1109 FEBRUARY 4, 1914.

VALENTINE H. McDOWELL, witness for the United States.

My name is Valentine H. McDowell. I live in Saugus, Massachusetts. I worked for two months for the McDowell Shoe Machinery Company. That company was in existence from March 26, 1912, to March 26, 1913, at which time it went out of business complete. The McDowell Shoe Machinery Company did not put out or handle a heel-beading machine while I was with it, or a heel-trimming machine. I was with it only two months, in the early part of its existence.

Cross-examination:

My father is living, and is in the shoe-machinery business. He has been in the shoe-machinery business for a great many years, longer than I can remember. His name is Alexander. His business was conducted under his own name until the corporation was formed, then for a year that same business was run as the McDowell Company, and after the corporation was wound up by some court proceedings he carried it on again in his own name. I am as familiar as anyone except my father with the business and the machines which he put out. I cannot say one way or the other as to whether he or the McDowell Company put out a heel-beading or a heel-trimming machine.

1110 FEBRUARY 4, 1914.

ALONZO H. HATCH, witness for the United States.

My name is Alonzo H. Hatch. I live in Malden. I am New England manager for the Union Special Machine Company. The overedge machine and the butting machine which are mentioned in the list under our company's name which appears in Dfts. Exhbt. 321, are used for preparing an imitation Gem insole. They are not used for fastening the bottoms of shoes. A foxing machine is used for staying the seam on a fox shoe. That is a certain style of fittings of the upper. Except in the cases I have mentioned, the machines made by our company are used in connection with the uppers only, with the further exception that we have fitted up one machine especially for making a corded welt. We did that for the Walpole Supply Company and W. B. Arnold.

I know that there is a Metropolitan Sewing Machine Company. I think its business is confined chiefly to the fabric trade, although there are some of their machines, I understand, being used in the shoe factories; in fact, I have seen one only in a shoe factory. That is used for closing the heel lining.

Cross-examination:

The imitation Gem insole to which I referred is patented by a man named Ham. I am not familiar enough with it to know whether it is used in connection with a welt shoe or not. The different machines named in the list which our company makes perform operations in fastening together the different parts of the upper and the lining. They assemble it in preparation for the lasting operation. They are practically all machines for performing operations for preparing the upper for the lasting operation.

1111 Direct examination resumed:

Our machines have nothing to do with adjusting the upper over the last.

1112 FEBRUARY 4, 1914.

FRANK P. EMERSON, witness for the United States.

My name is Frank P. Emerson. I am treasurer of the Shawmut Machinery Company, of Boston. Our company manufactures a hand cementing machine, which is used on the vamp; the cementing machine, hand lining, is the same machine; and a power hammer for hammering down the folds of the uppers, any folded work on the uppers. We also make a tip-scouring machine, which is used on patent leather tips, and a rubbing machine, a power machine for seams—a seam rubber. The company began a year ago last July to manufacture McKay sewing machines, and put the first one out last June. Three of them are now out on trial with shoe manufacturers.

The tip-scouring and pasting machines are sold to shoe manufacturers, and are used in connection with the uppers. We make no machine except the McKay sewing machine, which is used in connection with bottoming, and until a year ago we did not make any McKay machines.

Cross-examination:

The McKay machine which we are making is an improved machine of recent design. We call it the most up-to-date McKay machine on the market. Formerly Walter Pearson was making it for us. But our Mr. Buck framed the ideas. We never handled the old type of machine or dealt in second-hand machines. The old type was the basis for our machine.

The tip-scouring machine fixes up cracks or scratches in patent leather which come in some part of the operation of connecting the bottom with the upper, I suppose, and reenamels it if it is necessary.

1113 FEBRUARY 4, 1914.

GEORGE H. DIEHL, Jr., a witness for the United States.

My name is George H. Diehl, jr. I live in New York City. I have been connected with the Fortuna Machine Company since

its organization in 1903. We do not build a heel-building machine. We do manufacture skiving machines for skiving the uppers, vamps, and all parts of shoes. It is not and can not be used in connection with the bottoms of shoes.

Cross-examination:

I am president of the Fortuna Company, and have been since 1903. The picture shown in Dfts. Exht. 321, on page 63, is a picture of one of our skiving machines. We began making that model about three years ago. We have been making our model C skiving machine, a regular model, since 1903. Referring to the advertisement appearing in the "American Shoemaking" of July 6, 1912, reading "We will exhibit a full line of our machinery at the Sixth National Shoe and Leather Market Fair to be held at Boston, July 10–17. We shall also show a new heel-building machine," that is signed "Fortuna Machine Company," which is my company. We exhibited that heel-building machine, which was owned by a man named Geiger, and which we proposed to handle if it was a success. It has not been successful, and we have done nothing with it.

1114 FEBRUARY 4, 1914.

WENDELL P. BOSWORTH, witness for the United States.

My name is Wendell P. Bosworth. I live in Brockton. I am connected with the Brockton Heel Company, manufacturers of heels and toplifts. We do not make a heel-building machine, but we make a sanding machine, and we have been making for the last two months a heel-log measuring device, which we lease to shoe manufacturers and heel manufacturers, more to the former. The United Shoe Machinery Company builds no machine for performing a similar operation, to my knowledge. We manufacture no other machines except the two named, but we have other machines made for us.

Cross-examination:

We supply shoe manufacturers with a heel-log building machine, which is made for us. It has a long tube, in which lifts are forced and compressed by a plunger, making a long log of leather. The log is sliced off into blanks by an automatic machine. The blanks so sliced off are used in building heels, which are sold to shoe manufacturers. It is one way of building heels. The letter which you produce bearing my name, dated May 29, 1913, giving prices on the Bosworth heel-log building and slicing machine was signed by me. The log builder and the log slicer are illustrated in defendants' Exhibit 321 (No. 43). The sanding machine is used for evening the butt in the end of

the log after it has been severed by the automatic slicer—that is, preparing the heel before it is put on the shoe.

1115 Direct examination resumed:

There is a great deal of difference between a heel-log building machine and a heel-building machine. The heel-building machine nails the heels individually in a form.

1116 FEBRUARY 4, 1914.

J. HAMMOND STEWART, witness for the United States.

My name is J. Hammond Stewart. I live in Lynn. I am connected with Stewart Brothers, who have been manufacturing counter machinery for approximately twenty years. We manufacture finishing machines, counter end; a molding machine; a skiving machine; a waxing and rolling machine, and a wetting machine. The United Shoe Machinery Company makes machines to perform only one of the operations for which the machines which I have named are designed, that is, the counter-skiving machine. The finishing machine which I have named is used for finishing the end of a counter, the waxing and rolling machine for putting the counter into shape before the molding operation, and the molding machine for molding the counter. The wetting machine is used for getting the counters in temper. The United Shoe Machinery Company's counter-skiving machine is different from ours. Ours skives by two knives; the United skives with one knife and a form.

I am the owner of our concern. I have never offered to sell my business to the United Company, nor has anyone at the present time connected with my concern had authority to enter into such negotiations.

Cross-examination:

I purchased the business two years ago in February. Previous to that time perhaps it was offered to the United Company by my brother. The machinery which we manufacture is used for making and adjusting molded counters to the last. The operations of the counter wetting and molding machines are necessary to prepare a molded counter for the lasting operation.

1117 FEBRUARY 4, 1914.

LEOPOLD C. TAPPEY, witness for the United States.

My name is Leopold C. Tappey. I am a salesman. At one time I handled machinery for the Keighley Company, of Vineland, New Jersey. I was with them during the year 1911, placing their inseam trimmer with shoe manufacturers in New England. At that time they made a cleaning machine, a finish-

ing machine, and an inseam trimmer. I did not have anything to do with the finishing and polishing machines. The cleaning machines are used for cleaning the uppers and edges of the soles. I put out about twenty of the trimming machines during 1911, on trial, with the understamding that if they were satisfactory the manufacturer bought them. I have had no connection with the company since 1911.

(The United States here introduced in evidence in connection with the Keighley Company, whose catalog was introduced by the defendants as part of their Exhibit No. 321, an agreement entered into September 21, 1912, between the United Company and the Keighley Company with respect to the marketing of the Keighley Company's inseam trimming machine for the purpose of showing that the Keighley Company, as to the machine covered by the agreement, was not in competition with the United Company. The agreement was admitted for that purpose and was marked "Exhibit No. 275" by the clerk.)

1118 BROWN, J. Of course it must be limited in its use to that purpose.

Mr. GREGG. I am only offering it for that purpose, your honor, to show their control.

Three of the rotary cleaning machines manufactured by the Keighley Company were put out by that company during 1911.

(No cross-examination.)

1119 FEBRUARY 4, 1914.

EBEN W. THOMAS, witness for the United States.

My name is Eben W. Thomas. I am treasurer of the C. S. Pierce Company, a corporation engaged in the manufacture of shoe specialties. We make certain machines for our own use. (4650) The C. S. Pierce Skiving Machine Company markets a skiving machine which is made for it. It is used for skiving upper leather, but it is not used in connection with the bottoms.

Cross-examination:

The Pierce skiving machine which we market is shown on the page cut from the "Superintendent and Foreman" of April 24, 1912, which is a part of defendants' Exhibit 321.

1120 FEBRUARY 4, 1914.

THOMAS WORSENCROFT, witness for the United States.

My name is Thomas Worsencroft. I am a welter, and am now in the employ of Howard & Foster, of Brockton. In the latter part of 1890 I was working for the Rapid Lasting Company, and was employed by Mr. George W. Copeland. I worked for him about a year and a half. My duties were to instruct men to operate the Rapid laster. That was the machine which

was succeeded by the Ideal lasting machine. I never was agent for the Ideal laster. I never installed the Ideal in any factory. The only difference between the Rapid machine and the Ideal was that the Rapid machine worked by foot power, and the Ideal by steam power. I worked with an Ideal machine for three or four years in the factory of the Duquesne Shoe Company, of Pittsburgh, Pennsylvania. They were making men's Goodyear welts. I was with them from 1897 to 1901, and they used no lasting machines except the Ideal. Before that I worked in the factory of Whitman & Keith, of Campello, Mass. They had been using the Copeland Rapid machine, and while I was there they installed one Ideal machine when it first came out. The first machine made was put in there for experimentation. There was not much difference between the machines. If a man could run one, he could run the other. It was in that factory that I learned what the difference was. Whitman & Keith were making a $3.50 to $5.00 men's welt shoe. I worked there a little over a year, and went from there to Pittsburgh. I did not know anything about the Chase machine at that time, but afterwards saw its operation in factories.

I am familiar with the work of the Ideal machine on men's welt shoes. I have not worked on the Chase machine. The Ideal did better work on men's welt shoes than the Chase machine. As to rapidity, you could do as much on one machine as on the other, according to the operator. The Chase
1121 machines were in George Snow's factory at the time I was working there, in 1893. I worked for six months for S. A. Crooks Company, of Hopkinton. They used the Rapid laster on men's McKay shoes. In 1891 and 1892 I worked at the factory of John Hanan & Sons, of New York City. They were making high-priced shoes, all welts and hand sewed. They used several Rapid lasters on their welt work. I was at George Snow's factory in Brockton in 1893. He made men's welt shoes. He used both the Rapid and Chase lasters. I worked there nearly a year. I do not remember when the two attachments that the witness Snow described were incorporated in the construction of the Ideal laster. I don't remember anything about it.

Cross-examination:

I am now welting shoes at Howard & Foster's, in Brockton. I have been running a welter off and on since 1894. That has been my principal work. As to whether I have been doing any lasting since I began to run a welter, I have instructed others in my capacity when I was in Pittsburgh. I ran lasters—the

Ideal machine. I was a foreman in the factory at Pittsburgh from February, 1897, to February, 1901. They had one Ideal laster and no other kinds when I went there in 1897, and did all of their lasting upon it. They were not then turning out more than fifty pairs a day. They made men's fine welt shoes. Their product was a light shoe of the better grade, and was not a heavy or work shoe. They gradually increased their number of lasting machines until about two years after I went there they had five in all. Then they were making an even better and more expensive shoe. They are now out of business. That is the only factory where I have had actual experience with the Ideal laster since 1894. I never ran a Chase lasting machine, and I never saw both Chase and Ideal used in the same factory, but I have
1122 sewed shoes that have been lasted on Chase machines.

When I went with Howard & Foster they had Chase machines, but they did not and do not now have Ideal machines. In my direct testimony I compared the work which I had seen done on the Ideal with work which I saw done in 1912 on the Chase. For eight years—until the last year and a half—I have sewed shoes after they had been lasted on the Chase machines. I was comparing what I saw a few years ago at Howard & Foster's with what I saw ten or twelve years ago at Whitman & Keith's. The Ideal machine did better work than the Chase, because it left the toe smoother. It was made with a wiper, and not with a pad. It did not push the inner sole back onto the last.

On later Ideal machines which I saw, there was a device for holding down the last. Those were the ones which I saw the last time I was at Whitman & Keith's. I can not say how many years it is since I have seen an Ideal machine. It is quite a while. The last time I worked on one, other than as an instructor, was when I was in Pittsburgh between 1897 and 1901. I never worked on a Chase machine or instructed workmen upon it.

Q. All you saw was the result of work that you thought came from a Chase machine?

A. Yes; worked after it.

1123 FEBRUARY 4, 1914.

WILLIAM P. WHITMAN, witness for the United States.

My name is William P. Whitman. I am a shoe manufacturer. My factory is at Campello. My product consists entirely of men's medium and fine welt shoes. I have been in business since 1883. The capacity of my factory is about twelve hundred pairs. We obtained one of the first Ideal machines put out, and machines of that kind have been in our factory ever

since. We are still operating six or seven of them and are using them in lasting men's welt shoes. We have also been using the Number Five lasting machines for 3 or 4 years. I think we obtained our Ideal machines, all but two, before the formation of the United Shoe Machinery Company. We leased them at first and then bought them from the Goodyear Company.

I am president and treasurer of the company. I spend most of my time at the factory. I see very little difference between the quality or the speed of the work done by the Ideal and the Number Five lasting machine.

I used the Eppler welt machines. We operated one of them for several years. We obtained it before the formation of the United Company. We never had more than one. We continued to operate it until after the United Company bought them out. I consider the Goodyear welt system the best system; it did better work on the shoe. We used the Eppler machine for three or four years along with the Goodyear and then exchanged it for a Goodyear machine.

Cross-examination:

Mr. Snow, who has been a witness, was in our factory and did work for the Lasting Machine Company. I do not think he attached any hold-down to our lasting machine. The hold-down which we have is known as the Heffernan. I 1124 think we have had it since the spring of 1909. I think that was the first time we had any hold-down on our machines at all. I do not think we had any device for pressing the counter into the shank devised by Mr. Snow. I am not really a machinery man, and attachments might be put on the machines by the superintendent without my knowing it. With the hold-down device the Ideal machine is very similar to the Number Five.

Q. Now, those improvements were rather essential to making the Ideal machinery satisfactory, weren't they?

A. Since the high toe came in; yes, sir.

Q. Now, the high toe came in some twelve or fourteen years ago, didn't it?

A. Not the extreme high toe, I don't think.

Q. No; not the extreme high toe which you are making now and have made within a year or two, but the higher-toed lasts were coming in ten or twelve years ago?

A. Yes, sir; I should say so.

Q. Mr. Howard showed me one which is marked "1899 to 1901." Does your recollection agree with that, that toes were of that shape as far back as that?

A. I should think that was rather high for that time, in my opinion.

Q. Well, they were beginning?

A. Yes, sir.

Q. And have become more and more exaggerated ever since?

A. Yes, sir.

Q. And it is a problem with the old-fashioned Ideal laster to last those high-toed shoes without the last slipping up?

A. Yes, sir.

Q. Unless you have this hold-down?

A. Yes, sir.

Q. And without the hold-down you can't last those high-toed shoes as a good shoemaker wants to have it?

A. Not satisfactorily; no, sir.

The shoe which we make is a medium fine grade, gentlemans, walking shoe, and is not a heavy work shoe. It is of medium weight leather.

Our output was larger in 1899 than it is now. We were making some McKay shoes. We were then making from nine hundred to a thousand pairs of welt shoes and a total production of fifteen hundred pairs. Twelve hundred is our largest capacity. The Ideal machines which I now have are the same machines which I obtained by lease, and what I had in my mind as an arrangement by which I got them was some provision in the lease with reference to the relations between me and the owner of the machines. I don't know what that was. I have always supposed that we owned the machines. I understand there is a contention there. I have never looked the lease up. For many years I paid a royalty. As to whether there has been any transaction between us and the lessor of the machine since the lease was executed by us, whatever the transaction was my father made it. I am not familiar with it. My information on this point as to whether I hold it under lease or otherwise is not very definite, except that I always understood that we owned the machines.

1125 FEBRUARY 4, 1914.

EDWARD F. HEFFERNAN, witness for the United States.

My name is Edward F. Heffernan. I am employed by Whitman & Keith. The Whitman is the Mr. Whitman who has just testified. I have been employed by Whitman & Keith for seventeen or eighteen years. At first I operated a lasting machine and for about six years I have had charge of the lasting department. I operated an Ideal lasting machine for twelve or fourteen years, but have never operated any other kind of lasting

machine. When I first went with Whitman & Keith they were running the Copeland Rapid, as well as the Ideal lasting machine. The difference in the work between the two is not great. The carriage slides back on the Ideal, where the other drops down. The Ideal is steam power and the Copeland is foot power. I began to run an Ideal laster for Whitman & Keith around 1898 or 1899. At that time there was no attachment on the machine to hold down the toe, nor was there anything to press in the leather around the counter except what we called a heel pad.

I am the Edward F. Heffernan who is the patentee of U. S. Patent No. 947,818, dated February 1, 1910, for what is called an appliance for holding the toe down. I never saw the appliance which has been described by Mr. Snow. Our machines had no such appliance until that which I invented was attached to them. That was first used in 1909 or 1910. I had myself lasted shoes for twelve years without any appliance of that kind. Seven Ideal machines and four or five Copeland machines were used in the factory at that time.

We have had an attachment which we called a heel pad on our machines for over twelve years. It is a little piece of brass used for squeezing in the counter. We have the attachments designated by the figures 34, 33, 32 and 30 in Patent No. 946,708 issued January 18, 1910, to S. Snow.

1126 We installed three Number Five machines three years ago, and are using them and seven Ideal machines. The same operator can get as much, if not a little more, from the Ideal machine as from the Number Five. The quality of the work depends upon the operator. I claim the Ideal is a little faster. I can run both machines myself, and I claim the Ideal is a faster machine. Anything that is lasted on a Number Five can be lasted on an Ideal machine. The Number Five is heavier and stronger, but I think the Ideal by a stronger construction could be made to last any kind of shoes.

Cross-examination:

I was observing particularly what was going on in our own factory with reference to the use of Ideal machines, and paid no attention to the difficulties other people might be having with them, or what improvements or attachments they added to them, even though it was in the same town.

Q. Now, why did you put on this hold-down?

A. Because of the bowing of the tips and flattening of the heels.

Q. What does "bowing of the tips" mean?

A. Pulling up the tip of the shoe, pulling that cap line out of true, because there is nothing to hold the shoe down on the toe rest.

Q. What happens to the heel?

A. It flattens the back of the heel—flattens it in, because the heel pad had to take all the pressure of lasting the toe.

Q. Why were you bowing the tips?

A. Because it was up off the toe rest.

Q. Was that a new condition which had just developed?

A. Mostly since the high toes came in.

Q. Are both those things imperfect workmanship?

A. Yes; considered so.

Q. When you say "we," you mean even good operators using the Ideal machine were doing that?

A. Yes.

Q. Then it is a condition of the operation of the Ideal machine upon high-toed shoes?

A. Not the Ideal altogether, but the No. 5 would do the same thing.

Q. The No. 5 has a hold-down, hasn't it?

A. Yes, after I got mine. I had heard of Mr. Snow's device before I invented my own. An operator told me about it, but said that it was not working very successfully. I do not know of any factory where Snow's device was used. Snow was working at Whitman & Kieth's when I went there, and taught me to use lasting machines.

1127 We now have three number 5 machines and seven Ideals which are working. We have two Ideals which are not in use at all. We gave up using them about a year ago. We were then running more shoes through our factory than we are now. We did not put on any machines to take the place of the two Ideals that are now idle. We did not get the number 5's to take the place of some Ideals. We increased the business from about 700 to 1,200 pairs. I wanted more machines so I took two Ideal machines first. They gave me my choice. At one time we had nothing but Ideals. Then I got three number 5's and then I stopped using two of the Ideals.

Direct examination resumed:

About four years ago when we started in doing more business, I was given my choice between the Number Five and the Ideal, and I took two Ideals. Before the hold-down appliance was added, it required much more trouble and attention to last a shoe properly. I had to keep after the operators all the time, regulate the machine myself, put pressure on the heel pads to see that I

could hold them down there and make them press on the shoe while they were trying to last the toe.

Q. Could they last as many shoes on the machine without the appliance as with it?

A. I don't think so; no, sir; couldn't do it.

Q. Then that helps some in the speed of the machine?

A. Helps the speed and helps the bother. I don't have any bother. I don't have one tip bowed in a month now, whereas before I would get a dozen shoes in a case.

The appliance on the No. 5 is substantially the same as my appliance.

1128 FEBRUARY 4, 1914.

WARREN F. MCELROY, witness for the United States, recalled:

My full name is W. F. McElroy. I live in St. Louis and am a shoe manufacturer. I was engaged in that business for fourteen years prior to 1899 with the Hamilton-Brown Shoe Company and was general superintendent for the last nine years. Prior to the formation of the United Company our machines were repaired very largely by our own machinists. A representative of the old companies would call about once every thirty to ninety days—rather more of a social call than anything else. As to whether the service with respect to keeping machines in repair has improved any since the formation of the United Company, since the United was formed they have practically kept men in the factory. Prior to that time we kept our own machines in repair. As to the difference between the service when we furnished our own machinists and the service since the United Company was formed, we kept the machines running before; they have kept them running since. They furnish very much more service than we ever put on to our machines—than we ever used before. They have a corps of men to come into your factory at any time of the day and all times of day to look over the machines.

As to comparing the expense of keeping the machines in repair prior to the time the United Company was formed and after it was formed, I couldn't give anything authentic on that at all, because I have made no comparison of figures.

We used three Ideal lasters on women's welt work in 1896–7.

I have been engaged in the shoe manufacturing business since 1884, and was connected with the Hamilton-Brown Company about twenty-seven years. I am now general superintendent with Burrow, Jones & Dyer. As to whether I have anything to do with the machinery, just a general overlooking of the factory. That also was true during the fifteen or sixteen years I had a

similar position with the Hamilton-Brown Company. I do not think it necessary for a factory to have all its machines from one manufacturer in order to get efficient service.

1129 We had no trouble in the Non-Royalty factory which I operated from May to February, in keeping our machines going, without the service of the United Company. The machines were new and our experience in there was not sufficient, perhaps, to test out the machines as they might have been later. We got those machines from various companies other than the United Company—no two from the same company. In 1905 I was with the Hamilton-Brown Company. That company had lasting machines on which the leases had been canceled and the machines turned over to it. That is, we bought the machines. It had other lasting machines on leases from the United Company. I can not say whether that company had any lasting or heeling machines on unrestricted leases of the United Company.

I understand that the Universal Machine Company and the Champion Machine Company are one and the same concern. I have been in their factory. Both companies are located in the same building. We used in our Non-Royalty factory some Universal machines obtained from the factory where the Champion machines are made.

Cross-examination:

The Hamilton-Brown Company used the Ideal machine for lasting women's shoes. It used the Copeland Rapid for lasting men's shoes until 1904.

Direct examination resumed:

I know nothing of the American Shoe Machinery and Tool Company. The James Clark Leather Company are engaged in the business of shoe findings; they make no shoe machinery.

The Hamilton-Brown Company from 1900 up to 1910 were the largest shoe manufacturers in the world.

Cross-examination:

I am the son-in-law of Mr. Brown, senior, who was a member of that firm. Mr. Brown, who testified here for the defence, was my brother-in-law. I was connected with that company

1130 before my marriage—as general manager of the manufacturing in St. Louis—4 factories. I was general manager from 1892 till 1911. Then came the Non-Royalty Co. and then I went with another concern. The output of the Hamilton-Brown Company was about 200,000 pairs of shoes weekly, or about 25,000 to 30,000 pairs per day at our highest point. Since then several other manufacturers have passed them. I had

charge of their four St. Louis factories. When I first went with them they were making about three hundred pairs per day.

Q. Now, as general manager, were you in sole charge of the supplying of the factory with machinery?

A. All, except finally they built other factories—they built another factory, and, while I helped to equip it—while I did equip it, after the superintendent of that factory, which was the Sunlight——

Q. Was there a St. Louis factory that you had charge of?

A. I had charge of four St. Louis factories.

Q. You had to do with the getting of machinery for that purpose?

A. Yes, sir.

At that time the United Shoe Machinery Company was practically the only source of supply of machinery with which I was familiar. Until I started out to equip this Non-Royalty factory I had not made any particular inquiry through the United States to acquaint myself with the persons who were engaged in manufacturing shoes. Before that I had dealt practically altogether with the United Company. When we started to equip a non-royalty factory the object was to get machines on which there was no royalty, no matter of whom it was obtained. Our intention was to keep as far away from royalty machines as possible, and that was the distinction we were then making. That was the occasion for our making inquiries with reference to who supplied shoe machinery. My investigations to get machines for the Non-Royalty Company began about the first of December, 1911, about the time this suit began, and I was engaged in getting machinery until probably June of 1912.

Direct examination resumed:

I know nothing of the Consolidated Rotary Rounder Company, of Cincinnati, or of the Elliott Manufacturing Company, of Boston. The Louis G. Freeman Company, of Cincinnati, are engaged in handling shoe findings and machinery. They have several machines. They are angaged in the shoe machinery business, but I do not know to what extent. They have a St. Louis branch, and the machines I obtained I got through that branch. I had from them a heel tacking machine used in conjunction with the laster.

I have never heard of the C. E. Hardenbrook Company, of Philadelphia; the Progressive Shoe Machinery Company, 1131 of Minneapolis; J. D. Randall Company, of Cincinnati; Theodore Ringenbach, of Cincinnati; the Shoe Manufacturers Supply Company, of Newark, New Jersey; the Supply

Machinery and Tool Company, of New Haven, Connecticut; or the Specialty Shoe Machinery and Tool Company, of St. Joseph, Missouri.

The Landis Machine Company, of St. Louis, makes harness machinery. I do not know whether it is engaged in making shoe machinery.

I have heard of the Atlas-Werke-Pohler and Company of Leipzig, Germany. I don't know whether they do any business in the United States. I have never heard of the Adrian and Busch concern of Frankfort am Main, Germany, of Dilley & Sons, Northampton, England, Heaton's (Ltd.), of Leicester, England. I don't identify A. H. Johnson, of Leicester. I have heard of Gimson & Company, of Leicester, but I do not know whether they do any business in the United States. I have visited the works of A. Johnson, of Paris, France. I do not know whether he does any business in the United States. I have never heard of Keats & Bexen (Ltd.), of Stafford, England, of Keats Machinery Company, of Germany, H. Keeper, London, England, of the Job Lee Premier Works, of Kettering, England, of Lintz & Eckhardt, of Berlin, Germany, of Livingston & Doughty, of Leicester, England, of Stephen Lucking, of Chester, England, of Mills & Company, Ltd., of Kettering, England, or Mobbs & Lewis, of Kettering, England. The Moenus Machine Works of Frankfort, Germany, manufacture shoe machinery and tanning machinery; I do not know whether they do business in the United States. I have heard of the Nollesche Works, Germany, but do not know what business they are engaged in. The Northampton Machinery Company (Ltd.), of Northampton, England, are engaged in the shoe machinery business; I do not know whether they do any business in this country. I never heard of A. T. Ralphs, of Leeds, England. The Standard Engineering Company, of Leicester, England, make some types of shoe machinery; I do not know whether they do any 1132 business in the United States. The Standard Rotary Machine Company, of Rushden and Northampton, England, manufacture stitching, lasting, and leveling machinery. It did a small nonroyalty business in this country. We bought lasters, stitchers, rough rounder, and leveler from them. They had no agent in this country at that time. I never heard of Summers & Sons, of Wellinborough, England, of John Thacker, of Leicester, England, of Timson, Bullock & Barker, of Kettering, England, of the Universal Shoe Machinery Company, of Northampton, England, of the Velocity Machines Company, Ltd., of London, England, of Ward & Gent, of Northampton, England, or of Whitehead & Company, of Dunkinfield, England.

Cross-examination resumed:

As to whether, if I know anything about these people, I ought to know about the people in my own city, I should say so; yes sir. I have lived in St. Louis a good while. I said that the Landis Manufacturing Company, of St. Louis, made harness machinery. As to whether I know that, I know it from their advertisements. I have never seen their catalogue or been in their place of business, which is on North 25th Street, St. Louis, Missouri. I have seen their harness machine. I know they make harness machinery. I don't know whether they make anything else. I don't mean to say that they don't make shoe machinery.

1133 FEBRUARY 5, 1914.

PEARL E. SELBY, witness for the United States, recalled.

My name is Pearl E. Selby. I am connected with the Selby Shoe Company, of Portsmouth, Ohio. I was engaged in the shoe manufacturing business before the formation of the United Company and have been engaged in that business down to the present time. With respect to keeping our machines in repair, I would prefer to furnish my own service.

The operation of the lasting machine has nothing to do with the operation of the welt sewing machine. The operation of the welt sewing machine has nothing to do with the operation of the outsole stitching machine. The operations are performed by separate operators on different machines. The same is true of heeling machines. I do not know whether in 1905 I had any lasting, heeling, or metallic fastening machines from the United Company on what are designated as unrestricted leases.

(No cross-examination).

1134 FEBRUARY 5, 1914.

WILLIAM F. FOWLER, witness for the United States.

My name is William F. Fowler. I live in Cincinnati, Ohio. I am connected with the Krippendorf-Dittman Company, shoe manufacturers. I am a stockholder in the company and am superintendent. I have been with the company substantially all of the time since January 26, 1873.

Prior to the formation of the United Shoe Machinery Company agents of some of the constituent companies would visit the factories in a given city perhaps once a month. The old Goodyear Company had offices in Cincinnati part of the time where their agent was stationed. The service given by the United Company is now better than that which was rendered prior to the formation of the United Company. We formerly had 4 or 5 Ideal lasting machines, which we got before the formation of the United

Company. We used them on women's welt shoes, which are the only kind we make.

(The United States then offered to prove that the witness had obtained two Ideal lasting machines from the Goodyear Shoe Machinery Company on a lease under which he paid five hundred dollars for each machine at the time of getting the machines and was not obligated to pay any further royalties; that a few years after the United Company was formed he turned those machines back to the United Company, receiving an allowance of two hundred and fifty dollars on each of them and took Consolidated hand method machines in their place; that thereafter applying for an Ideal lasting machine, he received one from the United Company but was compelled to pay a half cent per pair for its use; that as a result the witness now pays approximately three hundred dollars per year royalty, and he takes the machine for a period of seventeen years, for the use of the machine which has an output of from two hundred to two hundred and fifty pairs per day, instead of having it for five hundred dollars for a full term. The evidence was excluded on the ground that the lease should be produced. The witness stated that he did not have the lease with him, but that it was in his office.)

1135 Cross-examination:

We never used our Ideal lasting machine on anything but women's shoes.

1136 FEBRUARY 5, 1914.

A LE ROY HAMMOND, witness for the United States.

My name is A. Le Roy Hammond. I live in Haverhill. I am connected with the Becket & Hammond Machine Company. We make a wood heel top lift trimming machine, used for trimming the top lifts of wood heels. We sell it to wood heel manufacturers—to anyone that makes wood heels. We employ about ten men.

Cross-examination:

The catalogue which you show me on the reverse side of page 175 of defendants' Exhibit 321 is our catalogue. Some shoe manufacturers use wood heels in making some kinds of shoes. We sell our machines to any shoe manufacturers who want them. We have been in business eight years.

1137 FEBRUARY 5, 1914.

AARON BECKMAN, witness for the United States.

My name is Aaron Beckman. I live in Lynn. I am in the machine business. My company is the Beckman Machine Company, which makes heel-finishing machine. We have put out about nine machines since we have been in business, that is

to say, since the first of May, 1913. I made heel-finishing machines before that, but didn't have a shop of my own before. We do not make a heel-seat beading machine, and have never handled them. I employ about two men.

Cross-examination:

The advertisement which you show me from defendants' Exhibit 321 is my advertisement and the cut on the reverse side of page 111 illustrates our heel burnishing machine. That machine also had a heel beading wheel, and the same with another device was a heel beader as well as a heel burnisher; I did furnish to the market a heel beading machine. I was putting this machine out as long as two years ago. At that time I was not working for myself.

Four of these machines have been put into Creighton's factory in Lynn, displacing those of the Xpedite Company. That is, it does the same kind of work as the United Company's Xpedite machine.

Direct examination resumed:

I don't know whether that company has given up the use of the United's machines. As far as I know that company may still be using all of the United Company's machines which it had. I don't know. I have put out nine of these heel-seat beading machines of this later type. I employ two men.

1138 , FEBRUARY 5, 1914.

HARRY H. BECKWITH, witness for the United States.

My name is Harry H. Beckwith. I live in Boston and am connected with the Beckwith Box Toe Company. We make a toe softening machine, which is used to soften the box toes in the lasting operation. We have been engaged in business about ten years, and we have put out about two hundred of these machines. They have all been put out in the past two years, and about one hundred of them in the last year. The United has a machine for performing a similar operation.

Cross-examination:

We got up this machine only two or three years ago. Since then we have placed two hundred machines. It prepares the box toe for the lasting operation.

1139 FEBRUARY 5, 1914.

HARRY I. ILLINGWORTH, witness for the United States.

My name is Harry I. Illingworth. I live in Swampscott. I have been in business since 1895. I am manager of the Boston Machine Works Company. We manufacture shoe machinery, special machinery, and tools. We make the Monarch and the Boston beading machinery for beading the tops of shoes, the

Julian cementing machine, used for cementing the soles of shoes, and the New York fold cementing machine, used for cementing the edges of skived leather before folding. We have put out during the last ten years seven or eight hundred Julian cementing machines. They have gone to shoe manufacturers. We make folding machines, the Booth folding machine, used for folding the edges of the upper; the Boston machine, for similar work of a heavier character; a foot-power machine for small pieces, such as backstays; and a vamp machine, which is a special machine for folding the vamp. We make the Rochester lacing machine for lacing the upper to give the proper opening before being lasted, and marking machines for marking leather; a lining pricking machine; a snipping machine, used for snipping the edges of curves of the upper leather before folding; a tip scouring machine, and a flap-slashing machine, used for slashing the curves in the shank of the insole. We have put out perhaps fifty flap-slashing machines. They were principally sold in this country. The Julian cementing machines were nearly all—about 90%—sold in this country. We formerly made a hook-hole punching machine, but do very little on it now. It was used to prepare the upper for setting of the hooks. We handle the Union Seam rubbing machine, but do not make it. We have the exclusive sale of it. It is used for pressing the seams of the uppers. The British United Shoe Machinery Company handles certain of our machines in England and the German United Shoe Machinery Company handles them in Germany.

1140 Cross-examination:

We market all our own machines in this country. Our place of business is in Lynn. We occupy about 25,000 feet of floor space. We have a treasurer's office in Boston, and branch offices in St. Louis, Cincinnati, Rochester, and Auburn, Maine, where we sell our goods. We employ about a hundred people at our Lynn factory.

We make an insole pinking machine which pinks the inner sole of a pointed shoe preparatory to attaching the sole to the upper.

The catalogue which has been produced, which is part of defendants' Exhibit 321, is our catalogue, and we put it out. We hold ourselves ready to supply all of the machines named in it.

Direct examination resumed:

We employ 100 men, more or less, altogether. It is difficult to state how many men we employ in connection with our cementing machine, because sometimes we make up a lot of them, and we might not make any more for several months.

1141 FEBRUARY 5, 1914.

CHARLES G. WIRTHS, witness for the United States.

My name is Charles G. Wirths. I live in New York. I am secretary and treasurer of the Larsen Machine Company. We make a welt and out-sole lockstitch machine. It is used principally by shoe repairers. We have never sold any to shoe manufacturers. It could be used by shoe manufacturers but it can not be speeded up as high as the United Company's machines.

Cross-examination:

The advertisement which was produced to the court was an advertisement of our Larsen Ever-Ready stitcher. The statements which we make in that advertisement regarding it we believe to be justified. There is no reason why it could not be used for making new shoes except that it is not as fast as a Goodyear stitcher. That is considered by manufacturers a serious difficulty.

Direct examination resumed:

The advertisement which was produced was inserted by the Engstrom Company. As to whether or not it was our advertisement—well, practically, no. We have never known of one of these machines being used in a shoe factory.

Cross-examination resumed:

The advertisement does advertise our machines.

Q. And in so far as we are concerned, who didn't know who paid for it, we were perfectly justified in understanding that that was your advertisement?

A. Exactly, sir.

1142 FEBRUARY 5, 1914.

CARL A. MATSON, witness for the United States.

My name is Carl A. Matson. I live in Lynn. I am connected with the Matson-Hoyt Machine Company. We make a heel-finishing machine. We have put out about a dozen, all within the last three years. They go to shoe manufacturers.

Cross-examination:

We advertise the Matson heel burnisher as shown on the reverse of page 8 of defendants' Exhibit 321. We furnished one of these to the Non-Royalty Company in St. Louis. We sell directly to shoe manufacturers.

Direct examination resumed:

We employ two men.

1143 FEBRUARY 5, 1914.

CHARLES T. HILLIKER, witness for the United States.

My name is Charles T. Hilliker. I live in Lynn and am connected with Quarmby & Hilliker, machinists. We make a Knox power blocking machine which is used in blocking out or cutting

the leather for soles. The machine shown in our catalogue, which is a part of defendant's Exhibit 321, is what we call our sole cutter. We have put out approximately thirty of these machines since we have been in business. They go to sole manufacturers. We have put out perhaps ten or twelve lighter machines which have gone to shoe manufacturers. We now handle them only when we can pick them up as second-hand machinery. We formerly made a Knox heel-compressing machine but have not manufactured any for the past seven years. The machine in the corner of our letterhead, which is in defendant's Exhibit 321, is a sole cutter and a blocker. Then there is another machine very much like this which we call a dieing-out machine and a blocking machine besides. We have made a sole-molding machine, but have discontinued its manufacture. We make a Knox rolling machine used for rolling out all kinds of sole leather. We have put out about fifty of them since we went into the business in 1904. About one-third of them have gone to shoe manufacturers, the rest to people who furnish stock for shoe manufacturers. We make and have put out at least seventy-five stripping machines for stripping side leather, to be used in the blocker. About one-third of them have gone to shoe manufacturers. The others have gone to outsole makers. We do not make a Knox splitting machine. We buy them of the Knox Splitting and we also handle them as second-hand machinery. We have put out about thirty; about half go to shoe manufacturers. We employ from seven to ten men. The United Shoe Machinery Company makes a stripping machine, a blocking machine, a molding machine, and a rolling machine.

1144 Cross-examination:

The letter on page 10 of defendant's Exhibit 321 giving prices on the machines about which I have been asked is our letter, and our catalogue is that which was produced and is attached on the reverse of page 11. We have the patterns and could make any of the machines named if we were asked to. We do not advertise.

Outsole makers make soles for shoemakers. Quite a number of our machines go to outsole makers.

We have made between one hundred and fifty and two hundred dinking machines. We sell them everywhere.

Direct examination resumed:

About one-third of them went to shoe manufacturers.

Cross-examination resumed:

The others go to persons making parts for shoe manufacturers, such as soles or linings or uppers.

1145 FEBRUARY 5, 1914.

RICHARD H. LUFKIN, witness for the United States.

My name is Richard H. Lufkin. I live in Boston. My business is the manufacture of vamp folding machines. I have been in business for thirty-five years. The machinery has nothing to do with the bottom of shoes. I have talked with Mr. Bayley, who is connected with the United Shoe Machinery Company, with respect to selling my business to that company. He asked what our price was, and he afterwards said it was too high; he could not do anything with it.

Cross-examination:

The letter and advertisements which you show me (defendants' Exhibit 321, page 84) are mine.

1146 FEBRUARY 5, 1914.

FRED F. FIELD, witness for the United States.

My name is Fred F. Field. I am a shoe manufacturer connected with the Fred F. Field Company, of Brockton, of which I am president, and Field Brothers & Gross, of Auburn, Maine, of which I am vice-president. The Fred F. Field Company manufactures men's welt shoes. They have been in business for fifteen or sixteen years, beginning with a capacity of four hundred and eighty pairs a day, which has gradually been increased until within the last four or five years we have been making twenty-five hundred pairs. I formerly used the Eppler welt machine, and at one time had as many as eight of them. At the same time we had Goodyear machines. We never had any Eppler outsole stitchers. We kept the Eppler machines in our factory from 1902 or 1903 until a year ago. We got them after the organization of the United Company. We had 5 or 6 Epplers when I ceased using the Eppler machines, because I felt the model K welter was a better machine. While we were using those Eppler machines, we were, during all the time, using some Goodyear welters. I have been general manager, and have had oversight of everything. I thought the Eppler machines sewed a flatter seam than the Goodyear, and required less filling. There was not much difference in speed between the old Goodyear and the old Eppler machine. As to which of the machines our factory preferred—the old Goodyear machine or the Eppler machine—we put in the Eppler because we thought it was better. As to our reason for ceasing to use the Eppler and taking the Goodyear machines before the model K machine came out, the seam sewed by the Eppler was a little weak as compared with the Goodyear, but it was a flatter seam, and we were wanting to try the new machine as soon as it was out. We

had tried another model in the Maine factory first. In our Brockton factory we make men's high-grade shoes.

Cross-examination:

We were in business making welt shoes before 1902 and at that time used Goodyear machines and had used them
1147 for some time. The United Company supplied us with Eppler machines in 1902. The United Company furnished us whichever we chose and furnished us with service. They treated us just as well when we had the Epplers as when we had the Goodyear, and took just as good care of the other machines. We did not make any turn shoes nor any women's shoes. I do not know anything about whether an Eppler machine can't make a turn shoe satisfactorily. We never had an Eppler stitcher, but did that work with a Goodyear machine. We used the Eppler for one seam and the Goodyear for the other. The Eppler machine sewed a somewhat looser and weaker seam than the Goodyear. If the United Company hadn't furnished us with a Goodyear machine for doing outsole stitching, we couldn't have made a shoe with our Eppler machine. We could only have sewed the inseam by machine and would have had to stitch the outsole by hand. We did not ask for a set of the Eppler machines for doing the entire operation of welt sewing. We just asked for the welter. I don't think we had any Eppler auxiliaries. That is, we had five Eppler welting machines which were assisted and helped out by the Goodyear machines that completed the operation of uniting the sole of a welt shoe to the upper. At that time we felt we liked the Eppler welter better. I determined to change the Epplers for Goodyears some little time before I actually made the change, but was advised by Mr. Willson to wait until they got the model K ready, although he was ready to change.

Direct examination resumed:

We wanted to make the change because the newer machine was faster, and we thought it did a better job than the Eppler. That was our only reason for making the exchange. I made the exchange about four or five years ago. At that time they had a new model out, but Mr. Willson advised me not to put that in, as they had been working on another one, for which he thought I had better wait. I never have used any of the Eppler machines except the welter.

1148 FEBRUARY 5, 1914.

GEORGE STRONG, witness for the United States.

My name is George Strong. I am a shoe manufacturer. My factory is located in Weymouth. I have been making men's

high-grade welt shoes for about thirty years. We make about fifty cases a day. About 1892 I began using the Eppler machines. At first we used the out-sole stitchers, sewing our welts by hand, our grade of shoes. Afterwards we used the Eppler welter also. We are using the Goodyear outsole stitcher to-day. The Eppler stitching machine did satisfactory work on our grade of shoes. I think we got along better with it than if we had used the welter at that time. We welted by hand. We began using the Goodyear welting machine about 1900. The old firm dissolved and we had a new corporation, and I think we put in—in 1895 I think we put in Eppler stitchers and welters then. We used Eppler welters and stitchers from about 1895 to about 1900. Then we made a trade with the United Company and let them have our Eppler system, welters, stitchers, and some other machines, and took Goodyear machines. It is pretty hard for me to go into the practical part, because that was not my part of the business. I was not a factory man at all. I just looked after the correspondence and accounts and the sales. The machine had been used a long time, and were practically gone by, and we had a chance to turn them in to the United Company for the new rapid stitcher and welter, and we did so. I think the Goodyear machines do better work than the Eppler machines. Of course, I think the Goodyear welter is better than the Eppler welter was. You can do more work on the rapid stitcher, of course. You get a flatter seam on the Goodyear welter. In the Eppler the lock was on a different plan. I think our Eppler machines were leased. I do not know the amount of royalty, whether it was three or four cents.

1149 FEBRUARY 5, 1914.

JOHN JORDAN, witness for the United States.

I am a laster, and am now employed by the W. L. Douglas Company, for whom I have been working for seven or eight years. I formerly worked on the Chase laster at the George E. Keith factory. I do not remember in what years—a couple of years off and on. I also worked for three or four years on the Copeland rapid laster, and afterward with the Ideal lasting machine, which I ran for about ten years, when they put in the Number Five; that was about three or four years ago. I am working on the Number Five machine now.

I lasted men's high-grade welt shoes on the Chase, the Copeland rapid laster, and the Ideal lasting machines. I think the Ideal did better work than the Chase on men's shoes. It got a better shoulder and smoother toe, and one thing and another. I worked on the Ideal machine when it first came out 10 or 12 years ago,

in the factory of Whitman & Keith. It was installed therefor experimentation. That particular machine did high-grade work on men's welt shoes. As to whether the most work could be done in a day by the Ideal or by the Chase—well, I don't know. That is left with the operator, but I would say that the Ideal was a little speedier.

Cross-examination:

The speed with which an operator can last shoes depends a good deal upon the shape of the last. The introduction in recent years of the crooked last and of the high-toed shoe has
1150 slowed down the work of the laster a good deal. I do not know that a comparison of the present machine with the older machine is fair. They were using easier lasts when I worked on the Chase machine. There were no crooked lasts then. Now there is a right and left last, which requires a different kind of machine. The high box toe requires a differently adjusted machine.

When I worked on the Ideal machines at George Keith's they did not have the hold-down on the machine. My recollection is that I left Keith's about eight years ago, in 1906. I operated the Ideal and not the Chase laster at Keith's. I used the Ideal machine for five or six years. I know Stephen Snow. I do not remember any device such as he described on George Keith's Ideal machines. I have run machines at Douglas's with that attachment eight or nine years ago. They didn't use it but a short time. It did not hold the shoe. I do not remember that the hold-down attachment was ever used at George Keith's.

Direct examination resumed:

I never saw Mr. Keith lasting any shoes.

The Snow attachment was used for only a short while at Douglas's. They were then taken off, and the machines then used without the attachments.

1151 FEBRUARY 5, 1914.

JOHN N. MURPHY, witness for the United States.

My name is John N. Murphy. I am an operator on lasting machines. I first was employed about twenty-three years ago in the factory of Perkins & Joyce, at Brockton. In that factory I operated the old Copeland. That was not the Rapid machine nor was it the old McKay & Copeland. It was a strap machine. We were making a fair grade of men's welt shoes. I next worked at Taylor's factory at Campello, operating the same machine. That was in 1893. They were making a medium grade of men's welt shoes. From there I went to the factory of Whitman & Keith where they were making the same kind of shoes—welt

shoes; I guess some of them were a higher grade. I operated there the strap machine and the power machine, or the Ideal. The power machine was the Ideal machine. When it came out with power first they called it the power machine. I afterwards worked at Douglas's where I operated the Ideal machine. I never operated a Chase machine at all to amount to anything; I may have tried a shoe on it. They had some in Douglas's factory while I was there. I tried to operate it once at Cross', but could not make it go. I can not say whether the Chase machine was used on welt work at Douglas's. I didn't see much difference between the work of the Chase and the Ideal machines. The operator on the Chase was away down the other line, lasting McKay work. I have used the Number Five lasting machine. In regard to a job, I guess the two machines were about the same. I thought the Ideal was a quicker machine. I have not operated a lasting machine for nearly two years. I am making shoe forms now.

(No cross-examination.)

1152 FEBRUARY 5, 1914.

FRANCIS O'KEEFE, witness for the United States.

My name is Francis O'Keefe. I am foreman of the lasting room for Stacy, Adams & Company. I have been working in that capacity for two years. I have been engaged in lasting shoes for about eighteen years. I first worked with L. Boyden & Company, Newark, New Jersey, in 1896. They were making high-grade men's welt shoes. I used a Chase machine there for about six years. From there I went to James A. Banister & Company, of Newark, New Jersey, who made men's fine welt shoes. They also used the Chase lasting machine. From there I went to Syracuse, New York, where I worked for Nettleton. He also made men's fine welt shoes, and used the Chase machine. From there I entered the employ of Stacy, Adams & Company, in Brockton, and worked there for five years operating Chase lasting machines. I have worked a short time on the Number Five, but have never operated the Ideal. Stacy, Adams & Company never owned any Ideal machines to my knowledge. I have used the Chase lasting machine in lasting women's shoes at the factory of L. Boyden & Company. They made a line of women's shoes for a short time—then discontinued making them. Chase lasting machines were successfully used in lasting those shoes. The Chase could not be used on a high-toed shoe like those which have been out in the last three or four years. It was just as good as any other kind of machine I know of for regular work. Banister had six Ideal machines, on which

men's fine welt shoes were lasted. He used them during all the three months I was working there. He also had six Chases, on which I worked. A workman on the Ideal turned out about the same amount of work as that which was done on the Chase. As to whether I examined the work to see whether it was as good; well, it all had to be good; it wouldn't go if it wasn't.

1153 Cross-examination:

Each of the five factories at which I worked used Chase machines for lasting men's shoes. In the Banister factory men's shoes were lasted on Ideal machines in the same room where I was at work, although not done by me. I have picked the work up and looked at it, but gave it no particular attention—had no responsibility for it. All the factories where I worked make the very highest grade of machine-made shoes. I don't know whether they are the best grade of machine-made shoes which are in the market. It is true that Newark is famous for its fine shoes, and this is one of the factories that made fine shoes.

At none of the places at which I worked, except L. Boyden & Company, were women's shoes made. L. Boyden & Company used Chase machines for lasting women's shoes. They discontinued making women's shoes. I have lasted shoes made on crooked lasts on Chase machines and on the Number Five. On the Number Five the part which holds the heels is movable, so that it can be adjusted to a crooked last. The similar part on the Chase machine is stationary. That would not make any difference.

1154 FEBRUARY 5, 1914.

MILTON S. FLORSHEIM, witness for the United States, recalled.

My name is Milton S. Florsheim. I testified last spring. I reside in Chicago. I am connected with the Florsheim Shoe Company, manufacturers of men's shoes. I have already testified that at the time the United Company was formed I was manufacturing shoes and was using both the Eppler and the Goodyear machines. We used both the Eppler and the Goodyear welt-sewing and outsole stitching machines, and I think we used the Eppler auxiliary machines, at least their rounder. In our opinion the work performed by the Eppler welt-sewing machine was as well done as the work performed by the Goodyear machine. The same thing was true of the outsole stitching machine. The best shoes made at that time or as good as any made at that time were made on the Eppler machines. We made a high-grade shoe at that time, though not so high priced as the one we are making to-day. As to whether the character of the work, in

my judgment, was the same—practically so. Prior to 1899 we had not made any large quantity of shoes; we had only made a limited quantity, but had experimented with the machines and had satisfied ourselves that as far as their work was concerned we could get along with them as well as with the Goodyear. That is about all the progress that we had made up to the time the United Company was formed. Right after the United Company was formed we stopped using the Eppler machines. We got satisfactory service both from the Goodyear Company and from the Eppler Company. We also got satisfactory service from the companies furnishing the lasting machines. We had Chase and Copeland Rapid machines at that time, and both companies furnished us satisfactory service. There was no substantial difference between the service which was furnished before the consolidation into the United Company and that rendered by the United Company afterward. We have never made any effort to take care of our own machines.

1155 Cross-examination:

I can not say when I got my first Eppler machine. My memory is that we got them between a year and six months before the United Company was formed. As to whether the fact is that the first Eppler machine we ever had was shipped to us November 21, 1898, I don't know. I do not deny it. All the opportunity we had to know about the service of the Eppler Company was between the date of that first machine, whenever it was, and February, 1899. Prior to February, 1899, we had a wire grip slugging machine. I do not know the name of the company from whom we got it or our other slugging machines. It may have been one of the machines of the McKay Shoe Machinery Company. I don't know. I can not say how long we had it before the United Company was formed. As to what I had to do with the machinery at that time that gave me an opportunity to know about the service those companies gave us, I had practically charge of our little business at that time.

Q. Where was the McKay depot or agency out there that furnished service to your factory?

A. I don't know. I think Mr. Forsyth at that time, the present manager of the United Company's office in Chicago, represented one of the slugging machine companies that we did business with.

Q. Just wait a moment. I say, where did the McKay Company have its office or agency which furnished you that service?

A. I don't know; somewhere in Chicago.

Q. Well, do you know that?

A. Well, they had a representative there.
Q. Do you know that?
A. No; I can't say that I know that.
Q. I want to be sure that you do know what you say and not have you merely guess at it.
A. I am not guessing.
The Eppler Company also had a representative in Chicago; kept parts there; and someone was present who could repair machines. The Goodyear Company also had an agency in Chicago. The United Company's services improved as time went on and became very much more efficient, and after they had gotten started and organized and got their service systematized it was very much better than what was given before, and it has been improving right along; their service has been good.

1156 Q. Of course this is the fact, that where one agency, one corps of men furnish the service for all your machines, it is obvious that it is easier and simpler and quicker for you as a manufacturer to call upon that one central depot than it is to call upon six or eight or a dozen different people.
A. That necessarily must follow by itself; but, on the other hand, let me say this, Mr. Choate: That the way the United Company run their business, if a man that repairs heeling machines, for instance, is in the factory, and we need a man to repair the Goodyear, he won't repair the Goodyear machines. We have got to send again and get another man. They divide their service up to such an extent that it takes a great many more men.
Q. But you send to the same place for them all?
A. Yes, sir.
Q. And they have a good many more men?
A. Oh, yes; they give us good service, if that is what you are trying to get at; there is no question about it.

1157 FEBRUARY 5, 1914.

IRA E. FLETCHER, witness for the United States.

My name is Ira E. Fletcher. I am superintendent of the F. M. Hoyt Shoe Company, of Manchester, New Hampshire. I have been with them four years. I worked for W. L. Douglas from 1902 to 1910. In 1902 Mr. Douglas was using both the Eppler and the Goodyear welt machines. I think he had about twelve Eppler machines and eight Goodyear machines. I am not sure how long he retained the Epplers, but I think for about three years after I went there. I do not know how

long he had been using them before I went there. They ran side by side in the same factory. The Goodyear welter was the best. Douglas was using the stitcher as well as the welter. The Goodyear stitcher we considered the best. As to what I had to do with the stitchers, I had full charge of the making room. The Eppler welter put the loop on the inside and the Goodyear welter put the loop on the outside. Both the shoes made on Eppler machines and those made on the Goodyear were put on the market and were all sold as welt shoes. They were not kept separate.

Douglas was using Ideal lasting machines, and I think he had fifty-four of them in 1902. He was then making men's welt shoes only. He afterwards got Consolidated hand method or "nigger-head" machines. We used both machines on men's welt shoes. He used the "nigger-head" on the cheapest grade of shoes. He got no other kind of lasting machine while I was there, except within the last few years they put in some of the Number Fives, the latest and most improved machine.

1158 Q. I want to draw a comparison between the work done by the No. 5 and the Ideal.

A. The No. 5 is superior to the Ideal.

Q. In what respect?

A. You have a hold down and also a finger that holds the shoe to the extreme point of your inner sole, which is a benefit.

The hold down had been put on Mr. Douglas's Ideal machines by Mr. Snow, I think in 1905. Before that the Ideal had been used for a number of years without the attachment. Mr. Snow's appliance was successful in a way. I worked for Cushman & Company, of Auburn, Maine, from 1894 to 1901. The first year I was there I was a welt operator, and the remainder of the time I was a foreman. We used the Goodyear welting machines and Ideal lasting machines. Toward the end of my time there they had twelve Ideal machines. They had no other kind of lasting machines in the room in which I was working. In that room, men's Goodyear welt shoes were being made. They tried the Chase lasting machine in that factory for six weeks or two months, but took it out because they could not get as good results on the Chase as on the Ideal.

Cross-examination:

A man familiar with the Ideal laster might find it difficult at first until he was thoroughly trained to do as good work with the Chase laster, and vice versa. The high-toed last began to be used about 1904, I should say. It was started by George Keith in Brockton. I do not pretend to be accurate as to the date, but I know that was where it originated.

I know Stephen Snow, and I know he put hold-downs on the Ideal machines in Douglas's factory. The hold down held the shoe firm. The purpose was to hold down the toes on especially hard stock—heavy stock. Without the hold down
1159 the Ideal machine continually allowed the toe to rise, which caused the tip to pull ahead and to bow. That frequently required repeating the operation and was likely to cause injury, especially in lasting patent-leather shoes. The operator wouldn't get as good results. I wouldn't say that the hold downs were put on more than half of the Ideal machines in the Douglas factory. Douglas did not do any lasting by hand at the time I was with him.

The Number Five machine was a development from this idea of the Ideal with these attachments on it.

Douglas gradually changed from the Eppler to the Goodyear machines, because with the Eppler machine there was trouble with the loose seam. When you beat out the shoe there would be more or less looseness, which caused a weak seam. It would make a bad shoe. That was the particular reason for changing over from the Eppler to the Goodyear. That change was the result of the business judgment of the men who were responsible, because we thought the Goodyears were the better machines.

The shoes made on the Eppler machines and those made on the Goodyear machines were not kept separate. Shoes that were welted and stitched on the Eppler machines were put into a case with shoes welted and stitched on the Goodyear machines with no distinguishing mark whatever.

Direct examination resumed:

Mr. Douglas made some patent-leather shoes at that time. They were lasted on the Ideal machines. I never heard any particular complaint about the way in which they were lasted.

Cross-examination resumed:

Cushman might have had a good many Chase machines in the McKay room, with which I had nothing to do. He did not have any in the Goodyear room.

1160 FEBRUARY 5, 1914.

HARRY G. McMURRAY, witness for the United States.

My name is Harry G. McMurray. I am superintendent of H. B. Reed & Company, of Manchester, New Hampshire. I have been with that company for three years. I worked for Ara Cushman & Company from 1891 to 1893. I do not remember whether they used an Ideal lasting machine. They were then using the Goodyear welt machines. In 1906 and 1907 I was in the factory of Field Brothers & Gross at Auburn, Maine; they were using eight Eppler welt machines. At that time they were

not using any Goodyear welt machines. They made men's Goodyear welt shoes. They used the "nigger-head" lasting machine, but the last of my being there they put in Chase machines. I do not know of their using any Ideal machines and think they changed the Epplers for the United's new machine shortly after I left.

(No cross-examination.)

1161 FEBRUARY 5, 1914.

JAMES H. CUNNINGHAM, witness for the United States, recalled.

My name is James H. Cunningham. I am connected with the Stacy, Adams & Company, in which I am interested. I have been connected with that company in various capacities for thirty-nine years. I was formerly superintendent. We make the highest grade of men's welt shoes. We first made welt shoes by hand. About thirty years ago we began making welt shoes by machinery. At first we used Goodyear machines. The Eppler was not out then. As to whether we ever used any Eppler machines in our factory, we did; yes, sir. In 1899 we were using Chase lasting machines. We never used the Ideal machines.

(No cross-examination.)

1162 FEBRUARY 5, 1914.

HARRY G. MCMURRAY, as a witness for the United States (recalled).

I wish to correct my testimony with respect to the welt sewing machines used by Field Brothers & Gross in 1906 and 1907. The machines used by that company were not Eppler machines, but were Briggs welting machines. That is all I know about them.

Cross-examination:

I know the machines were called the Briggs welting machines and that is all I do know. As to how that name happened to be given to those machines, I understood at that time that Briggs was the inventor.

Redirect examination:

I do not know whether they got them from the Goodyear Company.

(At the suggestion of Mr. Fowler, it was then stated by Mr. Choate that it was his understanding that the machine referred to as the Briggs machine was in fact the Goodyear model E.)

1163 FEBRUARY 5, 1914.

IRVING A. HADLEY, as a witness for the United States (recalled).

My name is Irving A. Hadley. I was formerly connected with the firm of Kimball & Hadley, which I have testified sold

out to the United Shoe Machinery Company. I have formerly testified with reference to an endeavor to sell awls and needles to the firm of Churchill & Alden's. Mr. Belcher, who has testified here, was the person with whom I talked. I saw Mr. Roberts of the E. E. Taylor Company, and he is the man I talked with regarding slugging awls. Regarding the needles, it was another party; I don't recall just who it was. I do not recall the names of either Mr. Tierney or Mr. Bryant. The conversation in which as Mr. Belcher testified I told him I was going out of business was not in connection with Kimball & Hadley, the co-partnership which was sold out to the United Company, but was with respect to the Kimball Hadley Corporation. It was after the copartnership had been disposed of to the United Company and the corporation had been formed, and between the time of the decision of the single justice of the State Supreme Court and the time that the injunction was made permanent, that I went and told them that there was a possibility of our going out of business and advised them to stock up.

(No cross-examination.)

1164 FEBRUARY 5, 1914.

WILLIAM P. BARTEL, witness for the United States.

My name is William P. Bartel. I reside in Waltham, Mass. I am connected with the American Lacing Hook Company, which manufactures lacing hooks for shoes. The only machine which we make is a hooking machine for placing the lacing hooks in the uppers of shoes.

(No cross-examination.)

1165 FEBRUARY 5, 1914.

FRANK A. BRADFORD, witness for the United States.

My name is Frank A. Bradford. I am manager of the Holmes Leather Working Machinery Company, of Cambridgeport. We make a sole-leather roller, used for finishing sole leather. It is sometimes sold to shoe manufacturers. Most of them are sold to tanneries. The machine has been on the market for eight or ten years. We have sold them to the tanning department of shoe manufacturers. We sold to the W. H. McElwain Company, tanning department; sold some to George E. Keith several years ago.

Cross-examination:

The letter which you produce as part of defendants' Exhibit 321, dated May 20, 1913, and signed by me, quoting prices on machines for smoothing heavy stock, is our letter. That letter appears on page 34 and cuts of the machines appear on page 35 of that exhibit. A good many of the large shoe manufac-

turers have tanning departments, where these machines are used for dealing with leather that is mostly used for sole leather, like the heavy grades of leather which have to be rolled out before the soles are made.

1166 FEBRUARY 5, 1914.

EDWIN E. BARTLETT, witness for the United States.

My name is Edwin E. Bartlett. I reside in Hyde Park. I am connected with the Harlow Shoe Finishing Machinery Company, which makes a heel-finishing machine. I have put out about one hundred and thirty-seven, of which all have gone to shoe manufacturers. Mr. Harlow, who was president of the company, is in the employ of the United Company. I put out personally a heel-seat beading machine. The Harlow Company has nothing to do with it. I build that personally.

Cross-examination:

The advertisement which you produce as part of defendants' Exhibit 321 is our advertisement. It is on page 143.

I do not know what Mr. Harlow does for the United Company. He is connected with the Marlboro office. He has no active part in running the Harlow machine business. The United Company owns no stock or other interest in the Harlow Company and has nothing to do with it. We have been putting out machines for about six years.

1167 FEBRUARY 5, 1914.

WILLIAM J. YOUNG, witness for the United States.

My name is William J. Young. I live in Peabody. I am treasurer of the W. J. Young Machinery Company. I have been manufacturing a heel-building machine for seven or eight years and we are putting it out now. We have put out between two and three thousand heel-building machines. They were practically all sold in this country. At the present time, the larger part of them go to shoe manufacturers. We make the Grover heel building machine. That goes to shoe manufacturers. We make three styles of heel building machines. We put out a buffing machine for buffing counters and box toes; a wedge-strip beveling machine, which makes wedge lifts for use in heels, and which goes to shoe manufacturers and heel manufacturers, probably more to the latter; a heel compressing machine, which is sold almost altogether to heel manufacturers at the present time; a wedge lift-cutting machine for dieing out the wedge lifts from the wedge strips in connection with the heel, which goes to both heel makers and shoe manufacturers; a counter end finishing machine which is used in connection with the counter; a heel-lift gouging machine, which goes to both heel makers and shoe manufacturers about equally; a counter molding machine; a box-toe skiving

machine; a counter-skiving machine; a shank-piece skiving machine; and a spring-heel scarfing machine. We do not build a rand-splitting machine, though we may possibly have handled one or two secondhand, and have not as yet put out a treeing machine. We do put out a waxing and rolling machine for counters. We employ between forty and fifty men.

1168 Cross-examination:

We have been in business for twenty-four or twenty-five years. Our business has been growing. The shoe manufacturing business is sometimes divided up so that one man makes heels and another makes soles, and they sell the heels and soles to the man who makes the shoe; but it is all part of manufacturing the shoe. We lease on a royalty rental our automatic lift-die machine, which has not yet been mentioned, and our counter-buffing machine, and one or two machines for molding the heel seat. The others we sell. We have put out two or three thousand heel-building machines, three or four hundred counter-molding machines, over three hundred heel-compressing machines, and one hundred and fifty to two hundred lift-gouging machines. All except the heel-builder have a pretty large capacity. The advertisements which you produce (pages 61, 152, and 185 of defendants' Exhibit 321) are our advertisements. We advertise ourselves as manufacturers of the most complete line of counter and heel making machines, and we consider that to be true. Referring to a newspaper clipping to the effect that W. J. Young Company are issuing a pneumatic treeing machine to the shoe trade, we are preparing to build a pneumatic treeing machine of German design. Nearly a year ago we imported two of them and we intend to build others like them. We make a rand trimming machine. That is a different thing from a rand splitting machine, which you have in your list.

Mr. CHOATE. I would like to ask the court for permission to change that name in our list and call it a rand-trimming machine instead of a rand-splitting machine, if I may do so.

1169 FEBRUARY 5, 1914.

JOHN F. DONNELLY, witness for the United States.

My name is John F. Donnelly. I live in Brockton. My company is the Donnelly Machine Company, which designs, manufactures, and rebuilds shoe machinery. I have been engaged in that business for fourteen years. We make a buffing machine which is used for scouring the bottoms of shoes before finishing. We have put out eighteen or twenty a year. They are sold to shoe manufacturers. We also make a beading machine which is used for beading around the heel seat of a shoe. We have

not put out more than eight or ten of them in a year. They go principally to cobblers. We make a machine that can be used for a breasting or brush or heel brush scouring or heel-finishing machine, and have put out perhaps fifteen or twenty a year to shoe manufacturers and repair men. The finishing shaft is the same machine we spoke of. We formerly made a handwheel welt indenter, but we have not sold one for six or seven years. We also formerly made a power tip-punching machine, but we have not made any for the last four or five years. I make a rotary edge setter, of which we have sold only two. We have just finished the wood patterns for it. I rebuild Carver heel-scouring machines, and probably buy and sell ten or twelve in a year. We also make and put out about the same number of the old Amazeen skiving machines. They go to shoe manufacturers, repair, and custom men.

We make an edge-trimming machine, 15 or 20 a year, which goes to shoe manufacturers, repair men, and cobblers. Our heel breast scouring machine and our heel breasting machine are two different machines. The heel breasting machine is a machine for cutting down the heels with a knife; the heel
1170 breast scouring machine scours the heel breast after it is cut. We do not make McKay sewing machines, although I have bought and sold perhaps five of them second hand since I have been in business.

We make for the Plymouth Rubber Company a rib tightening or hardening machine for stretching cloth on inner soles. It is called the rib machine.

I have heard of the concern of Gardner & Beardsell. I do not know anything about them. I have also heard of the Lacene Manufacturing Company, but I do not know what their business consists of. I have never heard of the Universal Supply Company.

Cross-examination:

All of the machines which I have been asked about except the tip-punching machine and the Amazeen skiver operate on the bottom of the heel of the shoe. My letter dated May 19, 1913, to the United Shoe Machinery Company and my advertisement appearing on page 60 of defendants' Exhibit 321 were correct with the exception that the statement that we manufacture the Carver heel scourer was a mistake.

1171 FEBRUARY 5, 1914.

CHARLES A. HAMEL, witness for the United States, (recalled).

My name is Charles A. Hamel. I reside in Haverhill. My Company, the Hamel Shoe Machinery Company, is the successor

of the C. A. Hamel Company. I bought out the Duplessis Shoe Machinery Company, and afterwards organized the C. A. Hamel Company, which has now become the Hamel Shoe Machinery Company. I became connected with the Duplessis Shoe Machinery Company in the United States in 1903. I was associated with it in Canada about 1898. I don't know when that company first began business. I was not with them when they first started.

Of the catalogue in defendants' Exhibit 321, following page 159, the first one, with a red cover, was probably issued in 1902, when H. H. Duchesne was manager. The second catalog, with the gray cover, saying on the outside "Duplessis outsole stitcher," was issued in 1905 or 1906. Of the machines stated in defendants' Exhibit 321, to be manufactured by the Hamel Shoe Machinery Company at Lynn and at Haverhill, we manufacture at Haverhill welt beating machines, grooving and beveling machines, welt and turn sewing machines, out-sole lockstitch machines, molding machines, turn-sole molders, loose-nailing machines, slugging machines, leveling machines, and tacking machines. I do not know whether the other machines mentioned in defendants' Exhibit 321 are made at Lynn or not. The machines built in Lynn I can't tell—I can't specify. I am not familiar with some of those.

Cross-examination:

We have recently fitted up a factory at Newburyport, under the name of Williamson & Porrell. We sold the machines 1172 there. We have recently taken over the business of the Beaudry Machine Company, of Lynn. It made an edge setter. We also have taken over the business of the Hart Machine Company, which made stitching-room machinery, and that of T. C. Rowen, who made buffers and edge setters and machines in that line. I do not know that we have taken over the business of the Briggs-Belmer Company, of Haverhill, or of any manufacturers of edge-trimming machines, cutters, and shields. Mr. John Sullivan is associated with my company as treasurer and stockholder. He came into the company about a year ago. I do not know that the Singer Sewing Machine Company through Mr. Sullivan is furnishing money to my company. All I know is that Mr. Sullivan, of that company, has become the treasurer of our company. I am vice-president of the company, and I manufacture down at Haverhill. T. C. Rowen is the president. We employ from sixty to sixty-five men at both our shops.

1173 FEBRUARY 5, 1914.

THOMAS C. ROWEN, witness for the United States.

My name is Thomas C. Rowen. I live at Swampscott. I am president of the Hamel Shoe Machinery Company of Lynn and Haverhill, Massachusetts. Of the list of machines mentioned and described in defendants' Exhibit 321 as having been made by the Hamel Shoe Machinery Company, we manufacture at Lynn the following machines, the beading machine, buffing machine, breasting machine, channeling machine, Hart power hammer, perforating machine No. 6 Hart, perforating machine model A Hart, perforating punch feed machine, scouring machine, scouring machine for tips, snipping machine Hart, and trimming machine for edges. We manufacture at Lynn all the machines that have not already been checked on the list of machines in defendants' Exhibit 321. The list had previously been checked by Charles A. Hamel, the preceding witness, to show the machines made by the Hamel Shoe Machinery Company, at Haverhill. We employ at Lynn thirty-five or forty men. Our principal business is with shoe manufacturers. We do not do any business with shoe repair men.

(At this point, it was stated by Mr. Gregg, in answer to Mr. Choate, that either Mr. Hamel or Mr. Rowen had testified to manufacturing each of the machines on the defendants' Exhibit 321 list of machines manufactured by the Hamel Shoe Machinery Company and that the entire list is confirmed by those two witnesses.

(No cross-examination.)

1174 FEBRUARY 5, 1914.

JOSEPH A. PINE, witness for the United States.

My name is Joseph A. Pine. I live at Marlboro, Mass. I am now an overseer in the shoe factory of Widder Brothers, of Portsmouth, New Hampshire. As to whether I am engaged in manufacturing machinery, I have manufactured a couple of machines; yes. I have manufactured a Naumkeag buffing machine, of which I put out a round thirty-five. They were all sold to shoe manufacturers. I still manufacture a few. They are made for me by Tower Brothers, of Hudson. The machine is used to buff the shanks of the shoe.

Cross-examination:

On May 23rd I wrote to the United Shoe Machinery Company that I could supply a Pine buffing machine, making prompt delivery, for a price of sixty-five dollars. The cut which appears on the reverse side of page 103 of defendants' Exhibit 321 is a cut of my machine. It operates on the bottoms of shoes, in finishing them after the sewing operation.

1175 FEBRUARY 5, 1914.

GEORGE T. LYONS, witness for the United States.

My name is George T. Lyons. I have been for two years manager of the Boston branch of the Elliott Machine Company. Our company puts out a button-attaching machine for attaching buttons to the uppers. It does not put out the Heaton Peninsular button-attaching machine, or the Universal button-attaching machine. The Heaton Peninsular and the Elliott are different concerns.

Cross-examination:

The advertisement which you show me from defendants' Exhibit 321 is our advertisement. The machine shown on the reverse of page 153 of that exhibit may have been in our factory in Grand Rapids. We have stations pretty much all over the United States for these machines. As to whether our company has anything to do with the Heaton Peninsular button fastener, well, they have something, but I don't just know what it is. The main office of the Heaton and the Elliott is in Grand Rapids, but it has all come in since I left Grand Rapids. As to whether they now handle those machines I couldn't say, one way or the other.

1176 FEBRUARY 5, 1914.

J. JOSHUA LEMAY, witness for the United States.

My name is J. Joshua Lemay. I am foreman of the lasting department of Rice and Hutchins. I have worked with lasting machines at that factory and at the factory of Boyd & Corey. Boyd & Corey had Chase machines only. I started with them in 1881—not on the machine at that time, but later on the Chase. They made men's, boys', and youths' McKays and welts. The Chase machine was used on both McKay and welt work. I went with Rice & Hutchins in 1897. They now make Goodyear welt shoes. At that time they were making McKay shoes only. They were then using the Chase and the Consolidated machines. The Chase machine was successful on McKay work, and subsequently was used on welt work. They also made women's McKay shoes, which they lasted on the Consolidated machine. That was after I started to work there, in 1897 or 1898. I know of no reason why the Chase machine could not be used successfully in lasting women's shoes. I have used it on boys' shoes in sizes from one to five. They were both McKay and welt shoes.

(No cross-examination.)

1177 FEBRUARY 5, 1914.

WALTER C. SPRINGER, witness for the United States.

My name is Walter C. Springer. I am assistant superintendent of one of the factories of Rice & Hutchins, Incorporated.

I have had partial charge at times of the lasting room, giving out work, supervisory duties only. At the present time we are making welt shoes on the Number Five and Consolidated lasting machines. Before the Number Five came out we had the McKay and Copeland machines and the Chase machine. The former was used on the heavier, coarser grades of men's shoes.

Q. On what kinds of shoes did you use the Chase machines?

A. McKays and welts—men's, boys' and youths'.

Q. Did you use it at all on women's shoes?

A. Yes, sir.

Q. Now, state whether or not that Chase machine can be used and was used in the lasting of women's shoes as well as men's shoes, and all grades of shoes.

A. Yes, sir; it was used on all the grades you mention.

Q. Was it used successfully?

A. Yes, sir.

Q. Do you know of any reason why it cannot be used on women's welt shoes the same as on men's?

A. No, sir.

Cross-examination:

I am not a machinery man, nor an expert on lasting machines, but I have had the responsibility of deciding what kinds of lasting machines to use. I have been assistant superintendent of what is called the Curtis Factory since it was built, twelve years ago, and before that I was assistant superintendent of the Cotting Avenue factory. Mr. Charles Curtis is at the head of the business, and most things go as he says in Rice & Hutchins' Marlboro factory, but he gives me very little instruction. 1178 The Chase machines were in the factory when I went there. I tried to do the work that came in with the machines which we had. We have made nothing but welt shoes in the Curtis factory, men's, almost wholly. None of them are now lasted on the Chase machine. We use the Number Five and the so-called "nigger-head" or Consolidated welt laster. Before the Number Five we used the Chase and the "nigger." We have never made women's shoes in the Curtis factory, but we did make them in the Cotting Avenue factory. I can not say how long I was employed in the Cotting Avenue factory, but I have been employed by Rice & Hutchins for nearly twenty years. The Curtis factory, so-called, is the Cotting Avenue factory continued. I went into the Cotting Avenue factory in 1893, and we moved out of it somewhere around 1902. In that factory mostly men's McKay shoes were made, and women's shoes were made only for a limited time. At first the bulk of the lasting was done by hand, with the Chase machine as an auxiliary, and

afterwards we installed the McKay and Copeland and the Consolidated McKay lasting machine, which is different from the Consolidated welt lasting machines. Most of our shoes were lasted with the Consolidated machine, but ten or a dozen Chase machines were kept in constant use. Making women's shoes was to some extent experimental with us, and was confined to a year.

Q. Why was it given up?

A. Why, we had some complaints and the people overreached themselves and were very much disappointed when we discontinued. I think they were looking for more value than we were willing to give.

Q. You mean they complained of the shoes?

A. Yes.

Q. What about that?

A. They said they were not selling. When Mr. Rice, of Rice & Hutchins, looked into the matter he couldn't find that they had any on hand. They cleaned them up—deceived them.

Q. At any rate you only did it for a year and then stopped?

A. Yes.

Q. How many of them did you make?

A. A matter of a few thousand pairs.

Our factory was set up in all respects to make men's McKays. We took on this small line of women's shoes as an experiment and used the same machines we had. I am not undertaking to give any very well-studied opinion as to the various uses that the Chase machines may be commercially put to successfully.

I am here to answer your questions.

1179 Direct examination resumed:

I never heard that there was anything wrong with the lasting of those women's shoes.

Cross-examination resumed:

Those women's shoes were McKays and were lasted on the Chase machines.

1180 FEBRUARY 5, 1914.

WILLARD G. BRACKETT, witness for the United States.

My name is Willard G. Brackett. I am connected with Joseph Breck & Sons' Corporation, who sell gardening machinery and seeds. I formerly owned six hundred shares of stock of the Eppler Welt Machine Company, which I sold on February 15, 1899. I do not remember to whom I sold them. I got six dollars and fifty cents a share for it. The capital stock was sixty thousand shares at ten dollars a share, six hundred thousand dollars in all.

(No cross-examination.)

1181 FEBRUARY 6, 1914.

LOUIS K. MCNALLY, witness for the United States.

I am a clerk in the office of the secretary of the Commonwealth. I have produced the original report of the United Shoe Machinery Company to the commissioner of corporations of the Commonwealth of Massachusetts in the year 1913, and certified copies of similar reports of that corporation for the years 1910, 1911, and 1912.

(These certified copies were introduced in evidence as plaintiff's Exhibits 276, 277, and 278, respectively.)

(No cross-examination.)

1182 FEBRUARY 6, 1914.

SIDNEY W. WINSLOW, witness for the United States.

Q. Mr. Winslow, you furnished at the request of the United States a list of shoe manufacturers holding machines of the lasting, heeling, or metallic departments of the United Shoe Machinery Company on January 1st, 1905, on independent unrestricted leases, giving therein the total number of lessees on such leases as 706. At random I will pick out the firm of Boyd & Corey, boot and shoe manufacturers. Have you any idea, Mr. Winslow, what particular machine is covered by that lease?

A. No, I have not.

Q. Do you have any idea what kind of machines is covered by these unrestricted leases of any of these manufacturers?

A. Well, I haven't at the present time. It might be, of course, in any one of the different departments. Take, for illustration, the McElwain Company. I had prepared a memoranda of the lasting machines which it took from our company from the date, I think, of the formation of the company, up to 1911, on independent unrestricted leases.

Q. Now, where any kind of a machine, regardless of the importance or character, is held by a lessee under any of those forms of lease which you call unrestricted, that company holding such a lease has been placed on this list; that is true, isn't it?

A. I don't understand what you mean by unimportant machines.

Q. Well, Mr. Winslow, we will leave the word "unimportant" out and say, doesn't it include unrestricted leases on every character of machine that is held under lease?

A. In those departments.

Q. In the departments that are mentioned here?

A. Yes, sir.

Q. Some of the leases may cover one machine and some of them may cover a number of machines?

A. I understood that to be your question. I understood that to be what you asked for.

Q. And this includes lessees who are engaged in the repair business, as well as those who are engaged in manufacture?

A. No, sir; entirely confined to shoe manufacturers. I think it is so stated on the list.

(No cross-examination.)

1183 FEBRUARY 6, 1914.

FRANK ALBERT BRACKETT, witness for the United States.

My name is Frank Albert Brackett. I am now employed by W. H. McElwain. I formerly worked in the shoe factory of the Boylston Manufacturing Company, at Fairhaven. They made men's shoes. That was in 1908 and 1909, if I remember correctly. I was familiar in a general way with the machines that were being operated in that factory. They had two welting machines which were manufactured by the Boylston Manufacturing Company. The company did not put any of them out but was just operating them in its own factory. One of the welt machines, but not the other machine, had a stop motion attachment, and it had a little finger where the welt went through so that it wouldn't pull back; that was called a welt holder, and it was a very simple arrangement. They were on the machines in 1909. I do not know when they were developed. I had nothing to do with that development. That was done in Boston. I am superintendent of the factory.

Cross-examination:

That was Mr. Henry H. Rogers's factory. During the last year it was equipped to make men's welt shoes. We had no machines obtained from the United Company. We got them all elsewhere, and we made welt shoes without any machines from the United Company. The most we ever made was twelve hundred pairs a day.

1184 FEBRUARY 6, 1914.

CHARLES H. JONES, witness for the United States, recalled.

My name is Charles H. Jones. I am president of the Commonwealth Shoe and Leather Company.

Mr. GREGG. Now, if the court please, last spring when I had Mr. Jones on the stand I had him produce a list of the machines that he had in his several factories at Whitman, Gardiner, and Skowhegan, and the list that he produced related only to the bottoming machinery and the eyeletting and clicking machines. Mr. Choate asked that the list be made complete and include all the machines in his factory, and for that reason, to accommodate him, I withdrew that exhibit, and I now have the second list.

I have prepared a list of all the machines that I have in my factory, including not only bottoming room but also upper stitching room machines. It shows under the column headed "U. S. M." the machines obtained from the United Shoe Machinery Company and under the column marked "Outside" those obtained from other manufacturers.

Mr. GREGG. Now, I would like to have that exhibit marked as a Government exhibit. However, I wish to make the statement that in connection with this list that is now produced the Government does not rely upon any part of it except machines used for adjusting and attaching the upper to the last, and machines for preparing and attaching the bottoms to the uppers, and machines for finishing the bottoms, and clicking machines and eyeletting machines.

(This list of machines in use in all the factories of the Commonwealth Shoe and Leather Company is marked "Plaintiff's Exhibit 279.")

(No cross-examination.)

1185 FEBRUARY 6, 1914.

WILLIAM B. ARNOLD, witness for the United States.

My name is William B. Arnold. I formerly owned one hundred shares of the stock of the Eppler Welt Machine Company. I sold it about the time of the organization of the United Company, receiving six hundred dollars for my hundred shares. My impression is that I sold it to Mr. George W. Brown, vice president of the United Company.

Cross-examination:

I can not fix very accurately the date when I sold my stock. I can't tell within a year as to when it was. I am quite sure that I sold it either to Mr. Brown or to Mr. E. P. Hurd. But I would not be positive.

1186 FEBRUARY 6, 1914.

WILLIAM G. JOPSON, witness for the United States.

My name is William G. Jopson. I live in Abington. I am general manager of the American Worsted Machinery Company. The company does not now manufacture any McKay channeling machines. I have been with the company only since January 1st of this year. Prior to that time Mr. Bicknell Hall had the position that I now occupy. I only have knowledge of the business since the first of this year.

(Replying to a question by Mr. Choate, Mr. Gregg stated that he did not claim that this witness's testimony is of any consequence with reference to the defendants' representation about the American Worsted Company.)

(No cross-examination.)

1187 FEBRUARY 6, 1914.

BICKNELL HALL, witness for the United States.

My name is Bicknell Hall. I live in Abington. I was formerly connected with the American Worsted Machinery Company as president and agent. I was with that company from 1907 until last January. During the period that I was connected with the American Worsted Machinery Company we manufactured the McKay channeling machine. We put out twenty-five or thirty altogether. They went to shoe manufacturers. We put out also four types of eyeletting machines—model A, model B, Monitor, and Eureka. During that period we put out between one hundred and twenty-five and one hundred and fifty eyeletting machines. They were sold a good deal through dealers, who were practically our agents. We did not make or handle a finishing shaft, a straight-edge folding machine, a hooking machine, or a channel-laying machine. We made a pinking machine, but we did not make a perforating machine unless it is the same machine. These machines are used on the tips of shoes. We did not make or handle a rounding or a channel opening or a feather-edge and shank-reducing machine. We did not make a McKay sewing machine, but we handled and made parts for that machine. We did not make or handle a lip-turning machine or a rand-turning machine.

Cross-examination:

The American Worsted Machinery Company began business when I went with them in the fall of 1907 or in January, 1908. They continued to run their shop in Abington until recently, when they sold out to certain English capitalists. I think it was last October. I understand that they are now preparing

1188 to manufacture English textile machinery in this country.

I wrote the letter dated May 19, 1913, on page 1 of defendants' Exhibit 321. We had a machine shop and machine tools and were prepared to manufacture any machinery desired in the shoe line—any kind of shoe machinery that any one ordered. We had facilities for making all of the machines named in that letter and we were ready to make them for anybody; we quoted prices in that letter on a Severance tap rounder, $12; straight-edge folder, $15; bottom polishing shaft, $8 (that is the same as a finishing shaft); channel layer, $18; Little Giant hammer, $15; feather reducer, $25 (that is the same thing as a feather-edge reducing machine); perforator, $65 (that is the same as a perforating machine); rand turner, $18; lip turner, $35; Fischer channel opener, $35; McKay sewer, $250. A McKay sewer is a

McKay sewing machine, and we were ready to make that for anybody. Our catalogue shows that we were ready to furnish to customers the following machines: McKay channeler, Fischer channel flap turner, power punch and eyelet machine, power eyelet machine, B eyelet machine, O. K. self-feeding eyelet machine, Eureka self-feeding eyelet machine, Monitor self-feeding eyelet machine, foot hook set machine, foot punch, Tripp improved skiver, new old-style skiver, pinking machines, pinking-roll turner, Amazeen knife.

We wrote to the United Company on May 17th, page 2 of defendants' Exhibit 321, quoting prices on certain machines which are named in our letter. The machines and the prices quoted are a McKay channeler, $18.00; "A" machine (that is an eyeletting machine), $40.00; raceways, $14.00; "B" machine, $22.00; raceways, $10.00; O. K. machine, $18.00; raceway, $9.00; Eureka machine, $12.00; raceways, $5.50; Monitor machine, $16.00; foot hook set machine, $4.00; foot punch, $2.25; calendar punch, $9.00; Tripp improved skiver, $18.00; new old-style Tripp skiver, $8.50; geared pinking machine, $7.50; hand pinking machine, $4.00; pinking roll turner, $4.50. We were ready to furnish those machines to anyone who ordered them.

1189 Direct examination resumed:

We had all the machines, mentioned in the last letter, ready to put out—ready to supply to anybody.

1190 FEBRUARY 6, 1914.

JOHN F. CAVANAUGH, witness for the United States.

My name is John F. Cavanaugh. I live at Ashland, Mass. I am a salesman of shoe machinery connected with the Boylston Manufacturing Company. I have been with that company since 1898, and in my capacity of salesman have traveled over this country, visiting shoe factories, and have been abroad. I have heard of the Atlas-Werke Pohler Company, of Leipzig, Germany. They are in the shoe-machinery business. To the best of my knowledge, they are not engaged in business in this country. I have heard of Adrian & Busch, of Frankfurt, Germany. They are in the shoe-machinery business, but they do no business in this country, so far as I know. Dilley & Sons, of Northampton, England, are to my knowledge engaged mostly in supplying shoe findings. I don't know whether they do any business in this country. Gimson & Company (Ltd.), of Leicester, England, are in the shoe-machinery business. They are preparing to put machines out in this country. Heaton's (Ltd.), of Leicester England, make a slugging machine. They do not do business in

this country to my knowledge. A. H. Johnson, of Leicester, England, is the same concern as A. Johnson, who is in Paris, France. He is engaged in the shoe-machinery business, but does not do any business in the United States. I never have heard of Keats & Boxon (Ltd.), of Stafford, England. I have heard of the Keats Machinery Company, of Frankfurt, Germany, but I do not know much about them. I have never heard of the Job Lee Premier Works, of Kettering, England, or of Lintz & Eckhardt, of Berlin, Germany. Livingston & Doughty, of
1191 Leicester, England, are mostly a supply house. They do no business in this country so far as I know. I never heard of Stephen Lucking, of Chester, England. I have heard of Mills & Company, of Kettering, England. They had supplies and a kind of lasting machine; I don't know whether they do business in this country. Mobbs & Lewis (Ltd.), of Kettering, England, have a treeing machine. They do no business in this country. The Moenus Machine Works, of Frankfurt, Germany, have a complete line of shoe machinery, as do Nolle's Works, also in Germany. Neither of them do any business in this country, as far as I know. The Northampton Machinery Company (Ltd.), of Northampton, England, was a branch connected with the Standard Rotary Company. It is engaged in the shoe-machinery business. I believe they do no business in this country. I have never heard of A. T. Ralphs, of Norwich, England. The Standard Engineering Company, of Leicester, England, have a lasting machine, and buy and rebuild other machines. They are quite successful in the machinery line. They do no business in this country. The Standard Rotary Machine Company, of Rushden, England, have a complete line of machines. They do not do any business in this country. I do not know Summers & Sons, of Wellinborough, England. To my knowledge John Thacker, of Leicester, England, handles supplies and findings. So far as I know, he does not do business in this country. Timson, Bullock & Barber, of Kettering, England, sell shoe machinery; I believe they do no business in this country. I do not know the Universal Shoe Machinery Company (Ltd.), of Northampton, England, nor the Velocity Machine Company, of London. Ward & Gent, of Northampton, England, do a good business in shoe machinery, stitchers, but are doing no business in this country. I do not know Whitehead & Company, of Dunkinfield, England.

1192 The Boylston Manufacturing Company took over the Tripp Leveler Company in 1904. We disposed of the machines which the Tripp Company had on hand and sometimes rebuilt a machine, but we have never manufactured any.

The Union cementing machine was formerly manufactured by the Flagg Manufacturing Company. It is obsolete, and we have never manufactured any. The Boylston Company took over the Flagg Company in 1904.

Cross-examination:

My work for the Boylston Company keeps me traveling all over the country, offering and attempting to place the machines. We have a lasting machine, but can not sell it.

Q. You recently put one in in the S. H. Howe factory at Marlboro?

A. That is recently, within a month or two.

Q. Well, don't be ashamed of it.

A. I am not ashamed of it.

Q. Don't be discouraged about it. You have recently put one or two pulling-over machines there, too, haven't you?

A. At the same time.

Mr. CHOATE. Well, cheer up.

The WITNESS. I am. I feel all right.

Q. You have recently put a slugging machine there, too, haven't you?

A. Yes, sir.

1193 Q. You have sold quite a number of heel-blacking machines, haven't you?

A. I have.

Q. Copeland heel-finishing machines—haven't you?

A. Yes.

Q. You have put sixteen of those Copeland heel-finishing machines down in Auburn and in Binghampton?

A. In Auburn.

Q. Auburn and Binghampton. Auburn, Maine, and Binghampton, New York?

A. Yes.

Q. You put four of those Boylston machines in Florsheim's factory, haven't you?

A. Yes.

Q. And you put thirteen of them in the Selby Shoe Company, Portsmouth, Ohio?

A. Yes; put thirteen there.

Q. And you put five of them with F. M. Hoyt Shoe Company, Manchester, New Hampshire?

A. That is right.

Q. You have also put your heel-blacking machine with Cushman, Hollis & Company, Auburn, Maine?

A. Yes, sir.

1194 Q. You have been spending a good deal of time lately in getting witnesses for the United States; that might have interfered with your shoe machinery selling?

A. I don't think so.

Q. Haven't you been quite busy lately getting witnesses for them?

A. I wouldn't consider so.

Q. I don't know what you consider quite busy, but you have been out working on it, haven't you?

PUTNAM, J. You don't question the facts he states, do you?

Mr. CHOATE. I think his testimony is very much tinged with bias.

PUTNAM, J. All right.

Q. You have been busy getting witnesses for the United States lately?

A. I can't say as I have been busy.

Q. Have you been at work on it?

A. At work on it?

Q. Yes.

A. That would depend on what you consider work.

Q. Have you been around seeing people that have been here as witnesses?

A. I might have seen some.

Q. And have you been in consultation with the attorneys for the United States about witnesses for them?

A. About witnesses?

Q. Yes.

A. I couldn't say I have been in consultation about witnesses.

Q. About the trial of their case?

A. I don't know as I can just interpret how you mean that.

The Standard Rotary Machine Company, Gimson & Co., Johnson, of Paris, the Moenus works, the Nolle works, and the Atlas works are all good sized concerns. The Standard Rotary Machine Company and Johnson manufacture complete lines of shoe machinery. When I said that as far as I know they were not doing business in the United States, I mean that I have not seen them doing business in my travels. The Standard Engineering Company is ready to do business in the United States if the opportunity appears, and I should say that the other companies would do so, although I do not know that they would.

1195 FEBRUARY 6, 1914.

HARRIE A. BALLARD, witness for the United States.

In 1894, I was employed by the Copeland Boot & Shoe Treeing Company, at South Framingham, Mass. While I was working there I devised a welt support or holder which held the welt

against the shoe while the needle was going out of the welt and which obviated the necessity of holding the welt with the fingers while the needle was being removed from it. That was used at Fairhaven in 1907 and 1908. We also had on our welt machines at South Framingham a stop-motion which afterwards was used in Fairhaven. The device was not used anywhere else.

The welter which we had at South Framingham was also equipped with a welt-cutting and a thread-cutting attachment which I invented. These devices were afterwards used at Fairhaven in 1907. A certain Mr. Emery came to South Framingham and made an examination of our machinery in 1905.

Cross-examination:

I was at South Framingham when Mr. Emery came there in 1904, acting as superintendent of the machine shop. I was then connected with the Copeland Boot & Shoe Treeing Company, who made shoe-treeing machinery. Mr. Emery was introduced to me by Mr. Copeland, and I went through the different rooms of the shop with him. We employed at that time about thirty men. Mr. Emery spent about an hour in the factory, and walked through its different rooms.

Q. Were any machines in operation?

A. You mean treeing machines? Our treeing machines was all in operation; yes, sir.

Q. They were all in operation?

A. Yes, sir.

Q. Was there any welt machine there that was in operation?

A. Yes, sir; that is, we had a shoe and we run it through the machines.

Q. And was there any stitching machine there?

A. Yes, sir.

Q. Whose stitching machine was it?

A. My machine.

Q. You mean a Copeland?

A. A Copeland machine; yes, sir.

Q. Had you gotten out a stitching machine?

A. One I was making; yes, sir.

Q. And did you get out a welter, also?

A. Yes, sir.

Those were the machines which were used at Fairhaven. They never have been put on the market elsewhere.

1196 FEBRUARY 6, 1914.

WILLIAM F. DONOVAN, witness for the United States.

My name is William F. Donovan. I am president of the Atlas Tack Company, and take an active part in the manage-

ment of the company. I have some general trade knowledge of the eyelet business in the United States. We sell eyelets. The Rimmon Company, the S. O. & C. Company, the Rhodes, the Hughes, and the Atlas Tack Company, and the Fast Color Eyelet Company, are, so far as I know, the only companies selling shoe eyelets to shoe manufacturers in the United States. Our output during the last year has been from forty to sixty million eyelets per month. Three or four years ago, before my advent into the business, it was nearly twice as high. Practically all of the eyelets we make go into the shoe trade. I do not know of the Caseley-Nelmes Company. The Scovill Manufacturing Company make eyelets for general purposes. It is possible that they make shoe eyelets, but I never heard of it. The R. N. Bassett Company make corset eyelets, I think. The Waterbury Brass Company and the Waterbury Manufacturing Company, are not, so far as I know, in the shoe eyelet business. I do not know anything about the American Ring Company, or, in connection with shoe eyelets, about the Rome Brass Works. In making shoe eyelets we come in competion with no concerns except the five I have mentioned, that I can recall.

Cross-examination:

I have been with the Atlas Company for three years. I was not in the eyelet business before that. My knowledge is confined entirely to my experience during those three years. We have recently begun to make corset eyelets. I think
1197 most eyelet makers make eyelets for different kinds of businesses, and their eyelets are used for a great many other things besides shoes. Very possibly some of the other five concerns of which I spoke that make shoe eyelets also make other kinds of eyelets and possibly some of those other concerns make shoe eyelets. Eyelets are used for a great variety of purposes. The market for shoe eyelets has been cut down within the last few years, on account of the great increase in the number of button shoes that are being manufactured and used. We attribute our decreased production to that.

1198 FEBRUARY 6, 1914.

RICHARD H. LONG, witness for the United States, recalled.

My name is Richard H. Long. I testified last spring in this case. I have never tried to sell the R. H. Long Machinery Company to the United Company or offered it to them.

Cross-examination:

I know Mr. Maurice Bresnahan. At one time he asked me if I would sell my shoe machinery business to the United Com-

pany. That was in 1911 or 1912, after Mr. Plant had sold out. We talked about it three or four times in Boston; he invited me to lunch at the Essex once, and once at a restaurant near the market, and on one occasion he invited me to come down to Beverly, and I went down there, but nothing was said about selling out at Beverly. I don't remember where the third place was that we talked about selling. I did not solicit Mr. Bresnahan to sell my business to the United Company. I told him I was not interested at all, to sell the business, and did not intend to sell it out. I know Junius Beebe who is engaged in the leather business. He is a friend of mine. I have known him a long time and buy leather of him. I have talked with him about selling out my business to the United Company.

Direct examination resumed:

The substance of my conversation with Mr. Beebe was that he thought it would be a good thing for me to dispose of my machinery business. The conversation took place two or three years ago. I never intended to sell.

1199 Cross-examination resumed:

I never suggested to Mr. Beebe that he see the United Company to find out what he could do for me. Not to my knowledge did he ever say anything to the United Company, and he didn't tell me that he had talked with them.

(At this point counsel for the United States read into the record certain advertisements of the Consolidated & McKay Lasting Machine Company in the Hide and Leather Reporter of December 3, 17, and 31, 1898, advertising the Consolidated hand-method lasting machine for lasting welt shoes. Counsel also read an advertisement of the Chase Lasting Machine Company under date of December 22, 1907, advertising that machine for the purpose of lasting women's shoes. Counsel also read an advertisement of the Eppler Welt Machine Company published in the Boot & Shoe Reporter, issued on November 9, 1898, stating that the royalty rates for the Eppler machines when used on men's shoes was three cents per pair. At this point the Government rested.)

1200 Additional evidence for the defendants before the court February 10, 1914.

Appearances.

For the United States: James A. Fowler, assistant to the Attorney General; William S. Gregg, special assistant to the Attorney General; Allen Webster, special assistant to the Attorney General.

(After the decision in the District Court): Constantine J. Smyth, H. LaRue Brown, special assistants to the Attorney General.

For the defendants: Frederick P. Fish; Charles F. Choate, Jr., William A. Sargent, Malcolm Donald, Harold G. Donham, Walter B. Farr, Lafayette R. Chamberlain.

FEBRUARY 10, 1914.

EDWARD P. HURD, witness for defendants.

1201 I live in Newton and I know William B. Arnold, of Abington.

Q. Mr. Arnold testified that he thought some time in 1899 he sold you one hundred shares of the Eppler Welt Machine Company. Did you ever buy of Mr. Arnold any shares of the Eppler Welt Machine Company for yourself, or anybody else?

A. No, sir; to the best of my recollection, nor any other Eppler shares from anyone else.

Mr. CHOATE. That is all.

Mr. GREGG. No cross-examination.

FEBRUARY 10, 1914.

GEORGE W. BROWN, witness for defendants.

I live in Newton. I know William B. Arnold, of Abington.

Q. Mr. William B. Arnold testified that he thought he sold either to you or to Mr. Hurd some shares of the Eppler Welt Machine Company in 1899. What do you say, Mr. Brown? Did you ever buy any shares of him?

A. No, sir.

Q. Either for yourself or for the United Shoe Machinery Company or anybody else?

A. No, sir.

FEBRUARY 10, 1914.

FREDERICK L. EMERY, witness for defendants.

I live in Lexington and am a member of the bar and of the bar of this court. I have been practising twenty odd years.

In 1910 and for quite a number of years prior to that year I was one of the patent counsel and patent solicitors for Mr. Thomas G. Plant.

Q. Harrie A. Ballard, of the Copeland Machinery Company, says that in 1904 or thereabouts, you visited the Copeland Company's machine works in South Framingham, and that you were there shown a welter and a stitcher on which there was a stop-motion device like that which Mr. Plant subsequently developed, and a welt-holding and cutting device like that which Mr. Plant subsequently developed. What do you say about that?

A. I have no recollection whatever of being shown either of those devices.

Q. Were you familiar with the development of those devices by Mr. Plant?

A. Yes, sir.

Q. You were with him all the time that that was being done?

A. A large part of the time.

Q. It has been suggested by one of the attorneys for the United States that Mr. Plant obtained his ideas with respect to those devices from Mr. Ballard or Mr. Ballard's devices or inventions. What do you say about it?

A. It is absolutely not so.

1202 Q. Had Mr. Plant any connection with Mr. Ballard, or, to your knowledge, did he or anybody employed by him know anything about any work that Mr. Ballard had done in that direction?

A. So far as I know, none whatever.

Q. And you were familiar with the development of those devices from the beginning?

A. Very familiar—worked with him all the time on it.

Cross-examination:

As to whether I went through the Boylston factory, I was shown through a shop. Whether it was the entire shop, I do not know. That was located in South Framingham. My purpose in going through the shop was to see what machinery Mr. Copeland had at that time, constructed or in process of construction. I went through at the invitation of Mr. Copeland.

I did not have any conversation with Mr. Plant relative to that particular visit. He merely knew that I was to go there.

As to what machines I saw in the Copeland factory, my recollection is that I was shown the automatic treeing machine and a hand treeing machine and a wire tacker.

Q. Did you see a welt-sewing machine there?

A. I have no recollection of seeing such.

Q. You won't say whether you did or not?

A. I feel very certain that I did not.

Q. Did you see an out-sole stitching machine there?

A. I did not.

Q. You are positive of that, are you?

A. So far as my recollection serves me, I saw neither of those machines.

As I have stated, my purpose in going through the Boylston factory was to see the line of machinery that Mr. Copeland had, so far as developed. At that time I was working on the Plant patents and machines.

Direct examination resumed:

It is my recollection that I went at Mr. Copeland's invitation.

He went with me.

1203 FEBRUARY 10, 1914.

MAURICE V. BRESNAHAN, witness for defendants.

I live in Lynn and know Richard H. Long, of Framingham.

I did not on any occasion have any conversation with Mr. Long with reference to the sale of his machinery business to the United Company. He did say something to me with reference to the sale of his machinery or shoe machinery business to the United Company.

There was a personal matter between Mr. Long and myself which had not been settled up before I went with the United Company. We lunched at the Hotel Essex and settled up that matter. After that the conversation naturally drifted to the United Company. He wanted to know how I liked being with the company, and I told him very well indeed, and I also told him about the improved machines that the company had, and he expressed a wish to go to the factory and take his man, Mr. Doidge, with him to see those machines.

I told him that I would arrange with Mr. Brown, our general manager, to allow him to go through the factory. I did this, and I took them through the factory. Mr. Long was surprised to see so many improvements and seemed rather pleased.

I took him all through every place there was there, and while we were discussing matters there he said to me: "I don't know but what I would be better off if I would give the whole of my time and attention to the manufacturing of shoes and let the shoe machinery alone. If I could get rid of what I have, I would be better off to do so. What do you think? Do you suppose I could get them to take it?" I said: "I don't know; I will speak to Mr. Brown about it and let you know." So I left him; he didn't stop to lunch at the factory; he and Mr. Doidge went home before lunch, and I remained at the factory. Three or four days after that I met Mr. Brown and told him the conversation. He wanted to know what Mr. Long had, and I told him simply copies of machines that had been discarded by the company and nothing, so far as I could see, that was an improvement or new. He said: "We wouldn't have any use for that; I don't see that there is any use in discussing the matter any further." So I telephoned Mr. Long and made another date with him, and we had lunch at the Essex again, and I informed him the conclusion the general manager had come to. That ended it, and I haven't seen Mr. Long since.

Q. He says you approached him and tried to buy his shoe machinery business; is that so?

A. It isn't so. I had no authority to do anything of the kind, and I haven't exceeded my authority yet.

1204 Cross-examination:

I did not ask Mr. Long if he would sell his machinery. I did not make any statement of that character to him. I saw him about my own personal matter at the Essex Hotel at Boston. Mr. Long's statement that he did not know but what he would be better off if he adhered strictly to shoe manufacturing was made at the United Company factory in Beverly, after he had seen the new machines. The matter of purchasing his machinery was not mentioned at our first meeting at the Essex Hotel. At that meeting he expressed a wish, when I told him of the machines that he knew nothing about, to see the machines, and to have his superintendent or general manager, Mr. Doidge, also see them. I arranged for them to do this, and we went down to Beverly.

At Beverly Mr. Long expressed a wish to have me discuss the matter of selling his business with Mr. Brown, and see if the United Company had a desire to take it over. Nothing was said about the price. Mr. Long never made any statement to me that he did not desire to sell his shoe machinery.

1205 FEBRUARY 10, 1914.

GEORGE E. KEITH, witness for defendants.

I have been called before by the United States, and I was also under summons by the United States all last week and was not called.

I am a shoe manufacturer in Brockton, and have been for a good many years.

I did not have an Ideal lasting machine in my factory before the organization of the United Company in February, 1899. I put in the first Ideal machines in my factory in November, 1899.

The occasion for my taking any Ideal machines at that time was that that was about the time of a radical change in the style of shoes; it was the era of what they call the bulldog toe. The bulldog toe originated in Brockton, and so far as I know there was no manufacturer in Brockton ahead of me in the introduction of the high-toed last.

The idea of getting the Ideal machine to try on the high-toed last was because it wiped up on the side of a last better than the Chase and then with the adjustable head helped us to overcome the height and width of the toe. That was the reason that led me to take and try the Ideal. I got them first in November, 1899.

When we first used the Ideal laster on men's shoes we couldn't get the result that we expected or wanted. The difficulty was that the machine being so light the last would lift as you came up on the sides of the toe, and the result was that you couldn't push over the—I don't know just the word you would apply—push over the vamp at the top of the last. It would rise, so that it was impossible to do the work.

A device was developed in my factory to be attached to the Ideal machine to help it in lasting men's shoes. This was an attachment that could be swung around to hold the last down in its place so that the work could be performed better and so that the last could not rise. Very soon after we began to use the Ideal machine my people got to work trying to find something like that. We were up against this difficulty, and we had to invent some way to overcome it. The superintendent or foreman of Lasting Department No. 3 was one of the first who conceived the idea, and then it was perfected afterwards, but I do not know by whom.

Until that was done, in my opinion, the Ideal machine would not be commercially a success, under the conditions that were on the market at that time. Before we put on the hold down the trouble was with bringing the upper smoothly on a last that had a wide edge—to bring that up smooth before it was wiped over. As it came up over the sides of the last the last would spring up. As a result, we could not complete the job.

1206 This required the operator to keep repeating the operation a number of times and that slowed him down, and it creased fine leather or patent leather so that the shoe would be almost ruined.

After this hold-down adjustment was put on we increased the number of Ideal machines. So far as I know, there was no other place in the country where the Ideal machine was used for lasting men's shoes except in Brockton, where the high-toed last originated.

Cross-examination:

I never operated a lasting machine myself, but I think I know something about the operation of lasting machines. Just from observation; yes, sir. I never had any Copeland rapid lasters.

Before we took up the high toes we used the Chase machine. We got the Ideal machine to last the high-toed shoes, because we thought it could perhaps do better work. I remember very well the difficulties we met in lasting them.

The Chase machine was all right when we had the ordinary lasts, but it had a head that was permanent—it could not be

adjusted. And you can see the point—when jumped from a low toe in a last to a very thick high toe that it didn't adjust itself so well as the Ideal machine. But the Ideal machine of itself was not strong enough to do the work after we put it in, and we soon saw that some improvement had got to be made on the machine.

We used the Ideal machine a very short time before we put on this improvement. I couldn't state any definite time.

Direct examination resumed:

The output of my factory is twenty thousand pair a day.

1207 FEBRUARY 10, 1914.

NELSON W. HOWARD, witness for Defendants (recalled).

Direct examination:

Prior to the organization of the United Company the Goodyear Company had put out 248 Ideal lasting machines. Nearly 200 of those machines were in factories where only women's shoes were made.

Q. Now, have you ascertained whether any of those were in factories where women's shoes were made exclusively?

A. Practically all women's welt shoes that were being lasted by machine in 1899—January 1st, 1899—were being lasted on the Ideal lasting machine. That machine practically had the women's welt shoe field to itself.

Mr. GREGG. I submit, if the Court please, that that answer is not responsive to the question at all.

Q. My particular question was whether you had been able to ascertain how many of those Ideal machines were located in factories where they did not——

PUTNAM, J. Was it an answer to that question?

Mr. CHOATE. Yes, sir.

PUTNAM, J. Well, of course it is not responsive, Mr Choate.

Mr. CHOATE. I will put another question. I want to get this one answered first.

At that time some 40 or 50 Ideal machines were in factories where both men's and women's shoes were made, and about 40 were located in factories where only men's shoes were made. The factories where Ideal machines were used in making men's shoes were chiefly in Brockton, which was the centre of that use. The high-toed last was introduced in 1899. The last of defendant's Exhibit 135 is the last which was supplied by the Boston Last Company from 1899 to 1901.

Mr. Keith's factory got its first Ideal machines in November, 1899. Keith had no Ideal machines prior to the organization of the United Company. There were 17 in the Douglas factory then, and Whitman & Keith had 7 Ideals.

In reference to the testimony of Mr. Heffernan, superintendent of the Whitman & Keith factory, that in his opinion the Ideal did better work on the whole than the No. 5 lasting machine, I have examined the records of royalty returns from the Whitman & Keith factory. I found that the largest day's work done on the Ideal machine in that factory since January 1, 1899, was 164 pairs in March, 1911. The largest day's work done on the No. 5 lasting machines, since the first one was installed in that factory, was 193 pairs in November, 1911. That is 29 pairs more than the highest number done on the Ideal, and represents approximately the increased capacity of 1208 the No. 5 machine over the Ideal. I also found that of the two Ideal lasting machines leased by Whitman & Keith in 1907, one has been entirely idle since April, 1911, and the other has been entirely idle since March, 1912, and after April, 1911, very few shoes were lasted on that machine. Of the other seven Ideal machines which Whitman & Keith had obtained before 1907, two have been idle for a considerable period—I can't state for how long, because those are non-royalty machines—so that the situation is that four Ideals are idle in Whitman & Keith's factory, of which two are nonroyalty machines, while the three No. 5 lasting machines, which were shipped, respectively, in September, 1907, and January and February, 1911, have been in constant use ever since they were installed.

The royalty which Whitman & Keith pay on the No. 5 machine is five-eighths of a cent a pair and they pay one-half a cent a pair on the Ideal machines, so that they are using to their full capacity all three of the No. 5 machines on which they pay a higher royalty, and are not using at all some of the Ideal machines on which they would have to pay a lower royalty.

The characteristic and unique feature of the Ideal machine was the upward wipe which it imparted to the upper over the end of the toe. In the Chase machine the wipers had only a substantially horizontal movement to work the upper in over the feather edge of the insole and against the rib. The Ideal had this upward wipe over the toe, and at the conclusion of that upward movement the wipers were moved in to force the upper materials against the rib of the insole.

As to the stability of the toe lasting head in the Ideal machine, the wipers were supported at a substantial distance away from their acting edges on a head which was secured to the machine by a couple of levers pivoted under the wipers, which constituted the only support for the toe lasting head. This is well shown in the drawings of Grandy patent No. 552,834, January 7, 1896,

(a copy of which is in defendants' Exhibit 152) which shows the construction of the toe lasting head of the Ideal machine. The wipers 10 were carried on a rod 14, and the pivot to which I referred is marked 3. The toe lasting head was supported only by that proof and two levers, 2. The screw 4 served to tip the head to change the inclination of the wipers lengthwise of the machine, and it had no other utility. The support afforded by it was almost negligible.

The holddown was attached to one side of the machine and was operated to hold the last down on the toe rest, which is shown in other figures of this patent.

1209 The part 2 was frequently breaking in the operation of the machine on men's shoes. It was this characteristic of the organization of the machine which constituted its weakness in its use on men's shoes. Owing to the fact that the wipers were supported so far from their acting edges, and that there was lack of support for the toe-lasting head directly under the wipers, the wipers sprung so that they would not seat the upper materials properly against the lip of the insole, and owing to the strain there was frequent breakage.

That weakness in the organization of the machine which I have described didn't affect its successful operation in operating on women's shoes. The strain is so much less than that which the machine encounters in lasting men's shoes that the machine was strong enough for its operation upon women's shoes. But when it came to deal with the heavier leather of men's shoes, then the difficulty disclosed itself. The Chase machine didn't have this upward wipe across the face of the toe, which I have explained in discussing the Ideal machine, and had only a substantially horizontal movement. It therefore was provided with what was known as a retarder, which bore down on the upper materials, spread back over the wipers, and prevented frictionally the slipping of the upper stock as the wipers were moved forward, in that way the necessary strain being obtained to get an upward pull on the stock over the toe as the wipers moved in. That worked satisfactorily on the heavier leathers of men's shoes, but on the lighter leathers of women's shoes it would pull the stock along the centre of the shoe and would result in bowing or bending the tip seam forwardly, which of course was bad shoemaking and spoiled the shoe.

PUTNAM, J. Your petition alleges that the Goodyear lasted ten per cent.

Mr. GREGG. Yes.

PUTNAM, J. That I suppose was the Ideal.

Mr. GREGG. That was the Ideal machine.

The WITNESS. Thirty-four hand method lasting machines were under lease prior to the organization of the company. Other machines were out, but the manufacturers wouldn't take them; the machines were being knocked around from pillar to post. They didn't stick. They would be sent out on trial and they wouldn't stay.

1210 At that time this machine did not have mechanism for putting the wire around the toe, but it had to drive tacks around the toe, just as they are driven on the sides in the exhibits of lasted shoes; but they had to be driven closer together around the toe on account of the crimping of the upper at the toe, and the greater thickness of the upper materials, including the box toe. In order to last a toe properly it was frequently desirable to give several pulls upon the same portion of the stock at the toe by the pinchers, and that could not be done, because since the machine drove a tack at every operation of the pinchers, the tacks would be driven one upon another. If they attempted to take hold of a portion of the stock near that or closely adjacent to that just acted upon, the tacks would be driven so close to gether that they would cut the stock and spoil the leather. Then, of course, the presence of some of those lasting tacks or of stay tacks, if they were driven to take their places, interfered seriously with the operation of the welting machine. The needles would break.

And more than that, until this wiring attachment was placed upon the machine the machine would not force the upper properly against the rib of the inner sole, and it was necessary to perform a subsequent hand operation upon the shoe by means of what was known as a "banging iron," one of which is defendant's Exhibit 340. Some factories had such irons shaped to fit the toe of every last which they were using, while in other factories a "banging iron" of curved contour was used step by step about the shoe. In using the "banging iron" the operator held it against the toe and struck it with a hammer at various places until he had succeeded in driving the upper stock inwardly against the rib of the insole. That was a subsequent additional hand operation for which operators were paid two and one-half cents per dozen.

These difficulties with the hand method welt machine affected its acceptable introduction among manufacturers.

The attachment for placing wire instead of tacks around the toe was first adopted and applied to the hand method welt lasting machine in January, 1900, in its original form. The wire attachment was improved a year later, but the machine really

reached a point of commercial success with the adoption of the first wire attachment.

As to the testimony of one witness for the United States that the Ideal machine lasts shoes better and is a better lasting machine than the No. 5, what I have to say to that is that for several years, and since some time prior to the beginning of this suit, it has been an accepted fact in the industry that the No. 5 machine did better work and more of it than the Ideal. That fact is capable of very easy and simple demonstration.

The difficulty in the successful use of both the Chase and the Ideal machines was due to the development of the industry
1211 towards the so-called crooked lasts. On lasts such as are used now and have been used for the past ten years the Ideal machine would not get the upper materials properly against the rib of the insole on the inside of the shoe, and it could not, for the reason that the wipers moved in a line which was the median line of the machine. They also could not get the upper stock, including the counter, properly against the side of the last, on the inside of the shoe, for a similar reason.

The essence of the No. 5 machine is that it incorporates the idea of moving the wipers at both toe and heel upon lines which bisect the toe and the heel. The heel-lasting mechanism is pivoted at a point which is the point of intersection of those two bisecting lines. It is swung to such a point that when the wipers at the toe move in they move upon that bisecting line at the toe; and when the wipers at the heel and the heel band move in, they move upon a line which bisects the heel end of the shoe.

The operations of the wipers of the Ideal and Chase machines at the heel and toe may be illustrated by the model of defendants' Exhibit 138 and the last pattern of defendants' Exhibit 139, the rib on which represents the rib of an insole.

The operation of the wipers of the No. 5 machine at the heel and toe are illustrated in the model of defendants' Exhibit 141, which may be demonstrated with the aid of the metal pattern of defendants' Exhibit 139. It will be observed that when the wipers of this model are moved in, they move alike on both sides of the toe, and when they come to rest in their final position they engage in the same way on both sides the metal rib on the pattern, which represents the rib of an insole. The wipers at the heel operate in the same way.

Also with this machine it was possible for the first time to force the counter into close engagement with the last on the inside of a shoe made on a crooked last. In the Ideal and Chase machines the heel band would engage the last at the end of the counter on

the outside of the shoe before the heel band on the inside of the shoe had got really near to the last. Consequently it was practically impossible to last properly the heel ends of shoes made on crooked lasts by either the Ideal or Chase machines.

After the No. 5 lasting machine was developed the demand from shoe manufacturers for Ideal machines ceased altogether, and most of them have been returned and exchanged for No. 5 machines. It was just the same in the case of the Chase machine.

As to the use of the Chase lasting machine on women's shoes, so far as I can learn the Chase lasting machine was never
1212 used, either before or after 1899, in lasting women's welt shoes. There was not one Chase lasting machine in Lynn, the great women's shoe center, in January, 1899. So far as I know, there has never been one there.

I obtained this information from records of the United Company. Lynn is the greatest center for making women's shoes. More shoes are made there than in any other city and they are all women's, or practically all.

Defendants' Exhibit 341 (Rec., p. —) is a list of the Plant patents claiming inventions embodied in the Plant machines.

Defendants' Exhibits 357 and 358, which are physical exhibits, comprise copies of the patents named in defendants' Exhibit 341.

Defendants' Exhibit 342 (Rec., p. —) is a list of the patents acquired from Plant, the inventions of which have been incorporated in the machines of the United Company.

1213 Defendants' Exhibit 359, a physical exhibit, comprises copies of the patents named in defendants' Exhibit 342.

Cross-examination:

I do not believe I have ever completely lasted a pair of shoes on a lasting machine, and my testimony about these several lasting machines is to be understood as technical information. It is not based upon experience that I have had in lasting shoes personally.

The McKay Shoe Machinery Company, with which I was connected prior to the formation of the United Company, did not have anything to do with lasting machines. While I was with that company I observed lasting machines when I was in shoe factories.

As to whether I said that shoe manufacturers would not take the hand method machines for welt work prior to the formation of the United Company—I did not intend to express it quite that way; thirty-four of them had been leased for use on welt shoes. Douglas had 17 Ideal machines but he was not using

them much. At that time he was manufacturing men's shoes exclusively. He had a large number of other machines. I think they were Chase machines. As to how I know that he was not using the Ideals—well, I don't know that my testimony on that point would be competent; I don't know it personally, from observation in his factory at that time. I have learned it from others. I suppose it is all hearsay; I don't doubt it is a fact, but perhaps I can't testify to it.

Prior to the formation of the United Company there were approximately 40 Ideal machines in factories where men's shoes were made exclusively. Douglas had 17; Whitman & Keith had 7; Ara Cushman, of Auburn, Maine, had 6; and Banister, of Newark, New Jersey, had 6. There were a few more in other factories. I don't know that there was one in Florsheim's factory then. I can ascertain. They were manufacturing men's shoes and women's also, I think, at that time. I don't know whether the Ideals were used there on men's shoes or not. I don't think they were.

In speaking of the Ideal machine I did not intend to include the Copeland rapid machine. That was practically obsolete in 1899.

Q. Was there any difference between the Copeland rapid and the Ideal?

A. There was a great deal of difference.

Q. What was it?

A. Practically the only similarity was the fact that both machines were organized for the upward wipe at the toe, and the constructions by which that effect was obtained were substantially different, radically different in the two machines. In all other respects the machines were substantially different; in most respects radically different.

Q. Then the Ideal machine was the better machine than the Copeland rapid?

A. Oh, yes, indeed.

Q. At the time the United was formed?

A. Yes, sir. The Copeland had practically been killed by the new high speed Chase lasting machine, which was introduced in 1895.

1214 Q. Now, taking the same grade of leather, the same weight of leather, Mr. Howard, in a man's shoe as is used in a woman's shoe, then there was nothing to prevent the Ideal machine from being used on both shoes, was there?

A. Yes, sir; because the dimensions of a man's shoe and a woman's shoe are substantially different. The power required

for lasting a man's shoe is much greater than that required for lasting a woman's shoe.

Q. I thought you said the principal difference was the weight of the leather—that the Ideal machine was too light for the men's shoes.

A. That was one difference. Your question excluded that, as I understood it. Now I am explaining that there is a more substantial reason in the size of the shoe, in the sizes of the shoes, in the way that they are put together. You assume, I understand, that the upper leather for the man's shoe and the woman's shoe that you are considering is the same, which is quite an assumption.

Q. To such an extent that it would not make any difference as far as the weight of the leather is concerned, the grade of the leather?

A. But the box toe is never the same. The box toe in a man's shoe is heavier and stiffer and must be because it has so much more to do——

Q. All men's shoes don't have box toes, do they?

A. Practically all. If they didn't have a box toe they would fall in at the toe.

Answering the question whether a good many men's shoes are not made without the box toe, perfectly smooth to the toe of the shoe—you are talking about a toe tip. That is not the box toe that you see there. The box is inside. The box is made of a stiff piece of sole leather or other material, and it is inserted between the upper leather and the lining at the toe. That is done regardless of the presence or absence of the toe tip. It is not a fact that anything more than a negligible proportion of the number of men's shoes made are made without box toes. Practically all men's shoes have box toes.

I said there were between 100 and 200 Ideal machines in factories where nothing but women's shoes were made, and fifty in factories where both men's and women's shoes were made. I know some of those factories. It is pretty hard to identify the Ideal machines used before 1899, because the records of the Goodyear Company were not nearly as complete as those of the Lasting Machine Company. I satisfied myself as to the kind of work done on nearly all of the machines by an extended investigation as to the kinds of shoes which were being made in 1899 by manufacturers using the machines.

1215 FEBRUARY 10, 1914.

SIDNEY W. WINSLOW, witness for defendants, recalled.

At the request of Judge Putnam I have prepared a statement with reference to the service rendered by the United Company,

showing the number of stations, the number of men employed, the expense or rendering the service, the investment in parts and any other useful details. This statement is as follows:

Memoranda requested by Judge Putnam regarding repair service, year 1911.

Men to repair machines and instruct operators were stationed in the following places:

Auburn, Me.; Haverhill, Mass.; Lynn, Mass.; Manchester, N. H.; Marlboro, Mass.; Brockton, Mass.; New York City, N. Y.; Rochester, N. Y.; Lestershire, N. Y.; Philadelphia, Pa.; Harrisburg, Pa.; Cincinnati, Ohio.; Chicago, Ill.; Milwaukee, Wis.; St. Paul, Minn.; St. Louis, Mo.; New Orleans, La.; San Francisco, Cal.

Also at the following substations:

Augusta, Me.; Gardiner, Me.; Rochester, N. H.; Nashua, N. H.; Derry, N. H.; Newburyport, Mass.; Auburn, N. Y.; Baltimore, Md.; Lancaster, Ohio.

Number of principal stations	18	
Number of substations	9	
		27
Number of men at stations		608
Salary and expense for service		$1,196,494.86
Investment in parts		$1,415,474.49
Number of new operators taught in shoe factories		8,889
Number of calls made		201,413
Average cost of each call		$5.95

In addition to the above there were thirty-four (34) men who traveled from the Boston office and gave special service to shoe manufacturers, such as economy and quality of manufacturing, rearrangement of factories, improved methods of manufacturing, etc.

Data relative to road service, year 1911, at branch office, Auburn, Maine.

Repair men and instructors located at Auburn	29
Number of new operators taught for manufacturers at Auburn during year	504
Total number of calls made	10,520

The WITNESS. A call means not only a request of us but also a compliance with the request by our sending a man.

1216 As to the percentage of the business of the United Company which is done within the State of Massachusetts, in 1912 thirty-nine and one-half per cent of the total number of shoes made in the United States by our machines were manufactured in Massachusetts.

As to papers filed by the petitioner to show that the United Company did not increase the item of patents in its trial balance after the acquisition of the Plant patents in 1910 and to show that it carried the patents at $400,000 in its trial balance sheet since that date, the United Company has carried its patents at that figure since 1903, although we spend several hundred thousand dollars every year in developing or taking out patents.

As to our accounts in connection with the cost of the Plant purchase, the United Shoe Machinery Corporation loaned to the company $3,000,000 in cash at the time of the purchase. On February 28, 1911, the stock of the Thomas G. Plant Shoe Company, the shoe manufacturing company, was transferred to the corporation and the company received credit for this $3,000,000 which it had borrowed. That stock has appeared among the assets of the corporation from that date until now.

The other $3,000,000 was carried in the account of leased machinery and stock of other corporations and it so appears in our balance sheet.

For a time after we made the purchase this was carried as a special item, until we had had opportunity to distribute it. We have now partially distributed it by adding $3,000,000 to the item, leased machinery and stock of other companies; and $3,000,000 has been transferred to and added to the assets of the corporation.

BROWN, J. I would like to inquire what the purpose of this return is.

Mr. CHOATE. It is the return required by the State laws of Massachusetts.

1217 BROWN, J. For the purpose of taxation, or simply in order that persons dealing with the corporation may know its credit?

Mr. CHOATE. I think it is partly both.

BROWN, J. For the latter purpose the more you omit the better you are conforming to the intent of the statute.

I have information with respect to the operations on lasting machines for the year 1899 and, as indicated by the returns made for the computation of royalties, a little over three-fourths of one per cent, or, to be exact, 0.77 of one per cent of all shoes reported lasted in the year 1899 were lasted on the Copeland rapid and Ideal machines. I obtained that information from the royalty returns.

Between forty-two and forty-three hundred lasting machines of all kinds were out on January 1, 1899, so that the 248 Ideal machines were about five per cent of the machines which were out.

I have been over the list of machines which Mr. Jones submitted the other day, and which purports to show the number of machines in the Commonwealth Shoe and Leather factory which were obtained from the United Company, and the number of machines obtained from others. In the list of machines which he says were obtained from the United Company I find 114 which are not machines, out of the total of 584 listed as obtained from the United Company. Of those 114, 73 are hand tackers. The hand tacker is a tool which is carried in the hand to drive the tacks used in lasting shoes with a bed lasting machine. It has no power and no power is used with it, and the operator drives the tacks as he would with a hammer. Hand tackers are not treated by shoe machinery men or shoe manufacturers as machines.

I also found, on Mr. Jones's list of what he calls machines obtained from the United Company, 36 extension edge attachments. That is the thing which is sometimes called the Baltimore edge attachment and is embodied in the outsole rapid stitcher for placing the stitches in right position on the outer sole. Mr. Jones called that a machine, as well as the machine to which it was attached.

(Examination of Mr. Winslow suspended, at request of counsel for defendants, to accommodate the next witness.)

1218 FEBRUARY 10, 1914.

BICKNELL HALL, witness for defendants, recalled.

In explanation of my previous testimony, the American Worsted Machinery Company makes eyeleting machines and they are sold for us by dealers, who are practically our agents.

FEBRUARY 10, 1914.

SIDNEY W. WINSLOW, witness for defendants, resumed.

Direct examination resumed:

Referring again to the 114 devices and attachments which Mr. Jones called machines on his list, five of those were old style beveling attachments. Those are attachments that go on the machine for beveling the welt. They are not machines at all.

Of the remaining 470 machines on his list which he calls machines obtained from the United Company, 119 machines are sold both by the United Company and by other people, so that he could have gotten them from others. Those machines are listed in defendants' Exhibit 343 (Record, p. —).

I was asked on cross-examination whether I could say how many of the 706 manufacturers who held machines on unre-

stricted leases in 1905 had principal machines on unrestricted leases. I have since had that looked up, and I have ascertained that there were 186 unrestricted leases of principal metallic machines, 536 unrestricted leases of heel attaching machines, and 322 unrestricted leases of lasting machines. Of the 706 manufacturers, only one had an unimportant machine on the unrestricted lease, a Busell heel trimmer, and eleven had machines of the heeling department upon which they paid royalty, other than the heel attaching machine which is a principal machine.

We began to put out the newly designed model B McKay sewing machine early in 1908. Just before or about that time we began to put out the Richardson design McKay sewing machine, which had been put out by the Richardson Company prior to that time.

I have made an investigation to determine what kinds of McKay sewing machines were in use in 1909 and by whom they were furnished. In the districts of Auburn, Brockton, 1219 Chicago, Cincinnati, Haverhill, Lynn, Marlboro, New Orleans, New York, Philadelphia, Rochester, San Francisco, and St. Louis, which comprise substantially the districts in which shoes are made, there were 155 model B McKay sewing machines, 153 Richardson machines, and 1,180 of the old style McKay sewing machines which were furnished by everybody, that is, there were 308 model B and Richardson machines out of a total of 1,488 machines. We had not begun to put those machines out until the year before, and prior to that time the market was supplied by the old style machines.

The situation is well illustrated in Lynn, where in 1909 there were 367 old style McKay sewing machines in the factories and 59 of the model B and Richardson combined.

Referring to the advertisements about the hand method welt lasting machine, which were offered by the United States, the situation with reference to the hand method welt lasting machine prior to the organization of the United Company was as follows:

The first introduction of the hand-method welt lasting machine was some time in 1897, and we were endeavoring to introduce that machine, and at the same time to perfect it. It has always been the custom of the company to perfect their machines by getting them into factories. Early in 1898, in the lasting of welt shoes by the bed machine principle, they had adopted the taping of the toes, thereby doing away entirely with the necessity for any tacks being used to hold the toe, which is a great advantage to the welt-sewing operation. As soon as that was adopted in the bed machine, really in the Chase, the manufacturers com-

menced to stop the use of the hand-method welt lasting machine. And while it is true that we had machines out it is true that they were not being accepted by the manufacturers and they were being sent out and coming back. We were trying all the time to keep them going.

We did not adopt the taping device on the hand method machine, but in 1900 we adopted the wiring device which performed the same function.

I do not know how many hand method welt machines we had out just prior to the organization of the United Company. There were only thirty-four of them leased. We were trying to hold them in the field, but we knew that they were not commercially successful. I did not have any personal knowledge of the advertising which the petitioner has put in evidence. I assume that it was entirely the work of our advertising men.

1220 Cross-examination:

Referring to my statement as to the number of shoes being manufactured on the Ideal lasting machine, based on the royalty, during the first year after the United Company was formed; there was a royalty on the Ideal machine prior to the time the United Company was formed. Prior to 1898 the custom of the Goodyear Company had been to put Ideal machines out on a large initial payment and no royalty, limited to use with Goodyear welt sewing and outsole stitching machines. The best of my recollection is that early in 1898 the Goodyear Company abandoned that policy, and adopted the policy of putting them out on an initial premium of $300 with a royalty of half a cent a pair.

In respect to the $400,000 that we carry in our financial statement as patent rights, I can not state what the amount was prior to 1903, but we carried them at $408,000 in 1903, and at $400,000 in 1904, and they have remained at that figure ever since.

In respect to the 119 machines which Mr. Jones claimed he had from the United Company, and which I testified might have been obtained from some one else, I do not know as a matter of fact whether or not any of those machines were obtained from others, and it is possible that they were all obtained from our company. I assume that Mr. Jones was correct in stating that they were obtained from our company.

The auxiliary devices and attachments on Mr. Jones's list, about which I testified, were obtained from our company, but they are not machines nor are they listed by us as machines. In making up his total number of machines he has counted attach-

ments as machines, in his comparison with machines obtained from other people.

On my memorandum regarding repair service for 1911, the item "Investment in parts, $1,415,474.49" does not include the parts that are carried for the manufacture of machines. It is not the entire amount that we have invested in parts, but 1221 is the investment in the stock of parts which we carried during the year 1911 in order to furnish the service of putting machines in repair. It is not the entire amount that we have invested in parts. It does not include any parts for new machines.

The item on that memorandum "Salary expense for service, $1,196,494.86" is the expense of keeping up the branch offices throughout the country so far as allotted to the expense of the service, but not in connection with the selling organization. Those figures on that memorandum are confined strictly to the service.

The 201,413 calls made were all cases where a manufacturer made a request for a man to come to his factory. It may have been a request for repairs, or a request for a man to come to their factory to adjust machines, or service of that sort.

Mr. CHOATE. While the United States was putting in its case attention was called to the fact that the United Shoe Machinery Company carried out its plan for the distribution of stock to people who observed the conditions of their leases, and we asked Mr. Fowler to produce a letter which we sent to the Attorney General, advising him of the fact that we were going to carry out the plan, and he produced it. And I desire to put it in. It is dated February 7th, 1913.

PUTNAM, J. Have you any objection, Mr. Gregg?

Mr. GREGG. No objection. I don't see what effect it has, but I have no objection.

Mr. CHOATE. It was addressed to Mr. Wickersham. It is as follows:

DEFENDANTS' EXHIBIT 344.

CHOATE, HALL, & STEWART,
Boston, Mass., Feb. 7, 1913.

Hon. GEORGE W. WICKERSHAM,
Attorney General, Department of Justice, Washington, D. C.

MY DEAR MR. WICKERSHAM: In 1910 the United Shoe Machinery Company advised its lessees that it proposed to put in effect a plan by which a certain proportion of the royalties should be invested in stock of the corporation, and at the end of a fixed term be distributed to lessees of the Goodyear welt-

ing and stitching and turn-sewing machines, who had in all respects observed the obligations of their leases. The period covered by this plan expired December 31, 1912, and the company proposes to make a distribution on or about March 1st, as it is bound to do by its agreement with the customers.

1222 This plan was, I think, fully called to the attention of Mr. Gregg while he was here examining the affairs of the company and as I read the bill in equity filed by the United States against the company, it does not seem that any complaint is made upon this ground. Under these circumstances, the Company proposes to make the distribution provided for in that plan on the first day of March, or as soon as possible thereafter; and has desired me to call the matter to your attention that the plan may not be carried out without the knowledge of your department.

I send you herewith a copy of the circular of June 10th, 1910, which describes the plan.

Very truly, yours,

CHAS. F. CHOATE, jr.

(Here follows a copy of the circular of June 10, 1910, which is plaintiff's Exhibit 146, Record, p. —.)

Mr. GREGG. Was that acknowledged, Mr. Choate?

Mr. CHOATE. That was never acknowledged or answered, but it was produced and it appears that it has been received.

PUTNAM, J. Who was it signed by?

Mr. CHOATE. I signed it.

PUTNAM, J. In behalf of the corporation?

Mr. CHOATE. Yes, sir.

PUTNAM, J. You signed it as counsel for the corporation?

Mr. CHOATE. No, sir; I just signed my name, but he knew I was counsel for the corporation.

His Honor Judge Putnam asked about the price at which the United Company carried its patents prior to 1903. Plaintiff's Exhibits 180, 181, and 182 give those figures. In 180 the financial condition March 1st, 1901, shows patent rights $745,269.27. The statement of financial condition March 1st, 1902, shows they were marked down to $571,332.23, and March 1st, 1903, marked down still further to $408,021.75; and from that date on each annual exhibit shows they carried them at just $400,000.

1223 FEBRUARY 10, 1914.

HAROLD G. DONHAM, witness for defendants, recalled.

The pulling-over lease of plaintiff's Exhibit 37 was reprinted several times before the adoption of the lease of plaintiff's Ex-

hibit 38 in 1909, and in the reprinted leases the additional machinery clause had been stricken out long prior to 1909. Defendants' Exhibit 345 is a redraft of the lease of Exhibit 37, containing substanially, the same terms, but with the additional machinery clause omitted. That lease was ready for use at least as early as 1907, and it may have been earlier than that; I found copies in use dated as early as 1907.

Cross-examination:

Leases of the form of defendants' Exhibit 345 were executed and put out to shoe manufacturers. Whenever that lease was printed it superseded the lease of plaintiff's Exhibit 37, which was the first one we got up for the pulling-over system, and which was reprinted several times before we got to the lease of plaintiff's Exhibit 38. There were some substantial changes in the lease of Exhibit 38.

After the lease form of defendants' Exhibit 345 was adopted, if there were machines outstanding on leases of plaintiff's Exhibit 37 they would not be called in, except as they came in in the ordinary course of trade, were exchanged for other machines, and the later forms of lease were taken.

1224 JANUARY 14, 1914.

Discussion of petitioner's motions to strike out certain testimony taken before the examiner.

Mr. FOWLER. The first motion is to strike out all the evidence with reference to patents, introduced before the examiner with reference to patents and machines which was not responsive to the evidence introduced by the United States.

The second one is to strike out all patents and all evidence with reference to patents which were issued after the filing of the petition.

Let me make a statement, your honors, which I think my associates will agree with. Of course, we are not here to discuss the general patent question or to insist that the defendants in this case have not got a perfect right to put this testimony into the record—that is, the testimony that was taken before the examiner. But our position is that they did not have any right under that order to introduce it before the examiner. Now, as I understand Mr. Fish and Mr. Choate, they insist that if it is stricken out, which I think your honors would probably have to do under the terms of the order, they would have to introduce it before your honors in open court.

Mr. FISH. Exactly.

Mr. FOWLER. Now, of course we don't want to go through that again. But you can see the position which we are in here. Mr. Webster had to do just as he did do, and the consequence is that he did not cross-examine the witnesses as to those matters, nor did he introduce testimony in rebuttal to it. Now, I think that I can state this—that we are willing to treat that testimony as in if your honors will give the opportunity for that matter to be taken up before the examiner—unless your honors want it to be done in open court—and let Mr. Webster have an opportunity to cross-examine the witnesses on those matters and to introduce what evidence he wants to in rebuttal of that testimony relating to those various machines.

1225 BROWN, J. Well, you allege in substance that here was a clear unpatented field in which people would be dealing as free agents.

Mr. FOWLER. As to the basic patents on the essential machines.

BROWN, J. As to the principal machines in the art. The defendants meet that by showing a very large number of patents in that field, which meets your allegations as to a free field. They show a legally monopolized field as distinguished from what you say would have been the field of free, unrestricted competition.

Mr. FISH. They say there is a fundamental patent expiring in 1910, or a patent which we assume they are going to call a fundamental one, or a basic patent, because they put it in. We want the right to say that at that time that patent had been supplanted by another invention—the invention of that patent had been supplanted by another invention which was enormously better and which the public demanded. That invention was the subject of an application which came out the day after the bill was filed, and we think we have a right to say that. We also think we have a right to say that at the time of the expiration of this patent in 1910 we had procured or made another invention germane to that machine, embodied in the machines we were putting out, and which our customers insisted upon having under their leases, which was vastly more important than this one that expired, more truly basic, more nearly bringing that machine into the status of a principal machine because it was such a step in advance. That invention had been made, had been worked out, had been put into the machine. The application was filed in 1908. That particular patent happened to come out the day after the bill was filed by the Government. What difference does it make, may it please the court, whether

it came out the day after or the day before? Those particular inventions are the things that are of importance, and their effect upon giving character and standing and position to our machines. We want to show that fact.

1226 Mr. WEBSTER. It seems to me it is important to learn at an early date, however, whether patents issued after the filing of the bill and machines made under those patents are to be considered by the court.

DODGE, J. Applications that were pending, before the filing of the bill?

Mr. WEBSTER. Yes. In one or two instances I think there are patents introduced where applications were filed after the filing of the bill. If they were introduced, it was accidental.

PUTNAM, J. They were only very limited.

Mr. GREGG. We take the position that the testimony went in before the examiner without any authority under the order, and Mr. Fish and Mr. Choate take the other view of it. So far as having that question passed upon, I don't care anything about it at all. All I am interested in now is an opportunity to cross-examine Mr. Howard with respect to that testimony, and put in such testimony as we may deem proper in reply to the testimony introduced by the defendant.

Mr. FISH. Why wouldn't it settle the whole thing if the objection were withdrawn and we submit Mr. Howard to further cross-examination and consent to their taking the testimony in rebuttal to Mr. Howard's testimony before the master? Isn't that all right? I mean assuming that you come to that conclusion.

Mr. CHOATE. I agree to that.

Mr. FISH. Then there will be no order, no stipulation or anything, except an understanding that we shall all live up to, which the court will enforce if necessary.

BROWN, J. It will be an understanding in open court taken by the stenographer.

Mr. FISH. Certainly.

Stipulation.

1227 (January 14, 1914—Filed January 19, 1914.)

"With reference to the motions of the United States relating to the admission of testimony before the special examiner, which motions are shown by and printed in the record on pages 2841 ( ) and 2846 ( ), the United States withdraws its motions and waives its objections founded on the claim that the evidence was improperly taken before the special examiner,

reserving all other objections for irrelevancy and incompetency heretofore or hereafter made, with the understanding, to which the court assents and agrees, that the United States may make further cross-examination or introduce evidence in rebuttal with reference to the matters to which the objections and motions relate, the further examination and cross-examination to proceed before the special examiner or proceed at the resumption of the hearings on the 3rd of February in open court, as the parties may hereafter agree or the court may order."

FEBRUARY 10, 1914.

1228 *Order of February 10, 1914.*

In the course of the discussion of the form of the order entered February 10, 1914 (infra, p. —), the following statements were made by counsel and the court.

Mr. GREGG. Mr. Webster suggests that in order that there may be no doubt about our expert testifying in connection with the machines obtained from Mr. Plant, that is, the application of the patents to the machines, that in the last part of the first paragraph of the order it should read:

"with respect to patents and machines obtained by the defendants from Thomas G. Plant."

Mr. CHOATE. Well, we didn't obtain any machines from him. We obtained patents and inventions.

Mr. GREGG. As I understand it, what Mr. Webster wishes is to compare the patents with the machines for the purpose of ascertaining whether or not the machines are constructed in accordance with the patents.

Mr. CHOATE. Well, that he has been doing as he wanted to. We have been giving him every opportunity to do it.

Mr. WEBSTER. Why, I think in order to avoid any disagreement we ought to have it understood that the order is sufficiently broad to allow our expert to examine the machines and compare the structure of the machines with the patents in order to determine the question as to whether the machines are constructed as set out in the patents.

Mr. CHOATE. Well, I don't understand that that is a proper subject for the order. They have requested an opportunity to see the machines and we have put them at their disposal. They have had every opportunity they desire; but if you mean simply that the witness may testify as to whether he finds the patents in the machines, why, I should think that was a matter of course. Of course he would.

1229 Mr. WEBSTER. This goes to the question of the scope of the testimony in interpreting the patents and comparing the machines with them.

BROWN, J. You mean the Plant machines in the Plant factory?

Mr. GREGG. The Plant machines, as I understand it.

Mr. WEBSTER. The Plant machines, and also the machines of the United Company which it is alleged have incorporated in them the inventions of the Plant patents.

Order.

(February 10, 1914.)

PUTNAM, DODGE, and BROWN, JJ. With the consent of the parties, it is ordered that the United States shall have from February 24 to March 10, 1914, inclusive, for further cross-examination of Nelson W. Howard and the introduction of evidence in rebuttal before the special examiner, Charles K. Darling, with reference to the matters provided for in the order entered in this cause on January 14, 1914; and also to introduce evidence before the special examiner in rebuttal to evidence submitted by the defendants in open court with respect to patents and machines obtained by the defendants from Thomas G. Plant.

And the defendants shall have from March 11 to March 24, 1914, inclusive, to introduce evidence in surrebuttal with respect to the evidence of the United States relating to matters provided for in the order of January 14, 1914, and evidence introduced by the United States before the special examiner with respect to patents and machines obtained by the defendants from Thomas G. Plant.

The court reserves control of the proceedings before the special examiner.

By the court:

CHARLES K. DARLING, *Clerk*,
By JOHN E. GILMAN, Jr.,
Deputy Clerk.

C. F. C., Jr.
Wm. S. G.

1230 UNITED STATES OF AMERICA,
District of Massachusetts, ss:

This volume is one of the volumes of testimony and exhibits referred to in the order of court, entered June 19, 1916.

Attest:

[SEAL.] WILLIAM NELSON, *Clerk.*

1232 District Court of the United States, District of Massachusetts.

UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY, of New Jersey, et al.	In Equity. No. 301 (C. C. 911).

Petition.

[Filed December 12, 1911.]

To the honorable the Judges of the Circuit Court of the United States for the District of Massachusetts, sitting in equity:

The United States of America by Asa P. French, its attorney for the district of Massachusetts, acting under the direction of its Attorney General, brings this proceeding in equity against United Shoe Machinery Company, of New Jersey; United Shoe Machinery Corporation; United Shoe Machinery Company, of Maine; United Shoe Repairing Machine Company; United-Xpedite Finishing Company; United Awl & Needle Company; United Fast Color Eyelet Company; O. A. Miller Treeing Machine Company; W. W. Cross & Company, Inc.; S. A. Felton & Son Company; Campbell-Bosworth Machinery Company; Boston Blacking Company; J. C. Rhodes & Com-
1233 pany (Inc.); The Rimmon Eyelet Company; Ross-Moyer Manufacturing Company; J. K. Krieg Company; Booth Brothers Company; S. O. & C. Corporation; Ellis Lacer Company; Thomas G. Plant Company; Sidney W. Winslow; William Barbour; Wallace F. Robinson; George W. Brown; Edward P. Hurd; John H. Connor; Louis A. Coolidge; Edwin P. Brown; Frank L. Babbott; Henry B. Endicott; Edmund LeB. Gardner; John H. Hanan; Elmer P. Howe; Joseph C. Kilham; George E. Keith; Rudolph Matz; Charles G. Rice; Alfred R. Turner; Samuel Weil; Frank Wood; William Woodward; Edward N. Chase, and Harold G. Donham.

On information and belief, your petitioner alleges and shows:

I.

DESCRIPTION OF DEFENDANTS.

United Shoe Machinery Company, of New Jersey, is a corporation organized under the laws of New Jersey, carrying on business in the district of Massachusetts, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

Its issued capital stock is		$20,850,519.00
Preferred	$9,971,584.50	
Common	10,878,934.50	

United Shoe Machinery Corporation is a corporation organized under the laws of New Jersey, with its offices and place of
1234 business at Boston, Mass., where its president, Sidney W. Winslow, may be found.

Its issued capital stock is ---------- $38,114,833.75
Preferred ---------- $9,515,400.00
Common ---------- 28,599,433.75

United Shoe Repairing Machine Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

Its issued capital stock is ---------- $50,000

United Shoe Machinery Company, of Maine, is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

Its issued capital stock is ---------- $3,000,000

United-Xpedite Finishing Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

Its issued capital stock is ---------- $1,000,000

United Awl & Needle Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

1235 Its issued capital stock is ---------- $56,100
Preferred ---------- $13,700
Common ---------- 42,000

United Fast Color Eyelet Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

Its issued capital stock is ---------- $1,478,600
Preferred ---------- $478,600
Common ---------- 1,000,000

O. A. Miller Treeing Machine Company is a corporation organized under the laws of Maine, with its offices and place of business at Brockton, Mass. Its president is defendant Sidney W. Winslow.

Its issued capital stock is ---------- $200,000

W. W. Cross & Company (Inc.), is a corporation organized under the laws of Maine, with its offices and place of business at Brockton, Mass. Its president is defendant Sidney W. Winslow.

Its issued capital stock is ---------- $200,000
Preferred ---------- $100,000
Common ---------- 100,000

S. A. Felton & Son Company is a corporation organized under the laws of Maine, with its offices and place of business at Manchester, N. H. Its president is defendant Sidney W. Winslow.

Its issued capital stock is---------- $40,000

1236 Campbell-Bosworth Machinery Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass., where its president, defendant Sidney W. Winslow, may be found.

Its issued capital stock is---------- $500,000

Boston Blacking Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass.

Its authorized capital stock is---------- $600,000

J. C. Rhodes & Company, Inc., is a corporation organized under the laws of Maine, with its offices and place of business at New Bedford, Mass. Its president is defendant Sidney W. Winslow.

Its issued capital stock is---------- $600,000

The Rimmon Eyelet Company is a corporation organized under the laws of Connecticut, with its offices and place of business at Seymour, Conn. Its president is defendant Harold G. Donham.

Its issued capital stock is---------- $200,000

Ross-Moyer Manufacturing Company is a corporation organized under the laws of Ohio, with its offices and place of business at Cincinnati, Ohio. Its president is defendant Sidney W. Winslow.

Its issued capital stock is---------- $197,400

J. K. Krieg Company is a corporation organized under the laws of New York, with its offices and place of business at New York City. Its president is defendant Sidney W. Winslow.

1237 Its issued capital stock is---------- $50,000

Booth Brothers Company is a corporation organized under the laws of New York, with its offices and place of business at Rochester, N. Y. Its president is defendant Sidney W. Winslow.

Its issued capital stock is---------- $25,000

S. O. & C. Corporation is a corporation organized under the laws of Maine, with its offices and place of business at Ansonia, Conn. Its president is defendant Sidney W. Winslow.

Its issued capital stock is---------- $740,000

Ellis Lacer Company is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass. Its president is defendant Edward N. Chase.

Its issued capital stock is---------- $50,000

Thomas G. Plant Company is a corporation organized under the laws of New Jersey, with its offices and place of business at Boston, Mass.

Its issued capital stock is---------- $3,750,000

Preferred---------- $2,500,000

Common---------- 1,250,000

Individual defendants Frank L. Babbott, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, John H. Connor, Alfred R. Turner, Wallace F. Robinson, Samuel Weil,
Frank Wood, and William Woodward are directors of United
1238 Shoe Machinery Company, of New Jersey, and United Shoe
Machinery Corporation, attend the meetings of the boards, participate in the direction and management of the business of said companies, and are responsible therefor.

Defendant Sidney W. Winslow is president and director of United Shoe Machinery Company, of New Jersey; United Shoe Machinery Corporation; United Shoe Repairing Machine Company; United Shoe Machinery Company, of Maine; United-Xpedite Finishing Company; United Awl & Needle Company; United Fast Color Eyelet Company; O. A. Miller Treeing Machine Company; W. W. Cross & Company (Inc.); S. A. Felton & Son Company; Campbell-Bosworth Machinery Company; J. C. Rhodes & Company (Inc.); Ross-Moyer Manufacturing Company; J. K. Krieg Company; Boston Blacking Company; Booth Brothers Company; and S. O. & C. Corporation. Defendant Winslow attends the meetings of the boards, participates in the direction and management of the business of said companies, and is responsible therefor.

Defendant William Barbour is vice president and director of United Shoe Machinery Company, of New Jersey, and United Shoe Machinery Corporation; a director of United Shoe Repairing Machine Company, and United Shoe Machinery Company, of Maine, attends the meetings of the boards, participates in the direction and management of the business of said companies, and is responsible
therefor.

1239 Defendant George W. Brown is vice president and director of United Shoe Machinery Company, of New Jersey; United Shoe Machinery Corporation; and Campbell-Bosworth Machinery Company; a director of Booth Brothers Company, Boston Blacking Company, and W. W. Cross & Company (Inc.), attends the meetings of the boards, participates in the direction and management of the business of said companies, and is responsible therefor.

Defendant Edward P. Hurd is vice president and director of United Shoe Machinery Company, of New Jersey, and United Shoe Machinery Corporation; J. C. Rhodes & Company (Inc.); J. K. Krieg Company; Booth Brothers Company; S. O. & C. Corporation; United Shoe Repairing Machine Company; United Fast Color Eyelet Company; United Shoe Machinery Company, of Maine; a director of O. A. Miller Treeing Machine Company; W. W. Cross & Company (Inc.); S. A. Felton & Son Company; United-Xpedite Finishing Company; United Awl & Needle Company, and Boston

Blacking Company, attends the meetings of the boards, participates in the direction and management of the business of said companies, and is responsible therefor.

Defendant Louis A. Coolidge is a director of United Shoe Machinery Company, of New Jersey; United Shoe Machinery Corporation; O. A. Miller Treeing Machine Company; United Awl
1240 & Needle Company; J. K. Krieg Company; Ellis Lacer Company; United Shoe Machinery Company, of Maine; United-Xpedite Finishing Company; J. C. Rhodes & Company (Inc.); United Shoe Repairing Machine Company, and United Fast Color Eyelet Company; attends the meetings of the boards, participates in the direction and management of the business of said companies, and is responsible therefor.

Defendant Edwin P. Brown is a director of United Awl & Needle Company and J. C. Rhodes & Company (Inc.), attends the meetings of the boards, participates in the direction and management of the business of said companies, and is responsible therefor.

Defendant Edward N. Chase is president and director of Ellis Lacer Company.

Defendant Harold G. Donham is a director of The Rimmon Eyelet Company, attends the meetings of the board, participates in the direction and management of the business of said company, and is responsible therefor.

Defendants George W. Brown, John H. Connor, Louis A. Coolidge, Edwin P. Brown, Henry B. Endicott, Elmer P. Howe, Edward P. Hurd, Joseph C. Kilham, George E. Keith, Charles G. Rice, Wallace F. Robinson, Harold G. Donham, Sidney W. Winslow, and Frank Wood are residents of the State of Massachusetts and may be found therein.

1241 Defendants Frank L. Babbott, William Barbour, John H. Hanan, Samuel Weil, and William Woodward are residents of the State of New York and may be found therein.

Defendant Rudolph Matz is a resident of the State of Illinois and may be found therein.

Defendants Edmund LeB. Gardner and Alfred R. Turner are residents of the State of New Jersey and may be found therein.

The defendants are engaged in trade and commerce in the manufacture, shipment, sale, and lease of machines, machinery, mechanisms, tools, and devices used in the manufacture of boots and shoes, among the several States of the United States and with foreign nations, and have combined, contracted, and conspired to restrain interstate and foreign trade and commerce and have monopolized and attempted to monopolize the same, all as hereinafter set forth, in violation of the act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful

restraints and monopolies," and subsequent acts. This proceeding is instituted by the United States of America, under the direction of its Attorney General, to prevent and restrain defendants and each of them from maintaining and engaging in the unlawful combinations, contracts, and conspiracies aforesaid, and from monopolizing and attempting to monopolize the interstate and foreign trade and commerce aforesaid.

1242

II.

DEVELOPMENT AND USE OF SHOE MACHINERY.

Among the important industries of the United States is that of the manufacture, sale, and lease of machines, mechanisms, tools, and devices (hereinafter referred to as shoe machinery) used in the manufacture of boots and shoes. For twenty-five years last past practically all of the boots and shoes worn by the people of the United States have been manufactured by the aid and use of several different kinds of machines which have been and now are indispensable to the manufacture of boots and shoes in quantities sufficient to meet the demands of the public. Consequently, manufacturing plants where boots and shoes are produced by the aid and use of machinery have come into existence at divers places in the United States, there now being about thirteen hundred of such concerns, which are hereinafter referred to collectively as boot and shoe manufacturers.

The principal essential machines used in the manufacture of boots and shoes may be grouped as follows:

Lasting machines: Those designed and used for the purpose of lasting the uppers of boots and shoes.

Welt-sewing machines and outsole-stitching machines: Those designed and used for the purpose of sewing the seam which attaches the upper to the outsole of a turn shoe, and the seam which
1243 attaches the upper and welt to the insole of a welt shoe, and for sewing the welt of a welt shoe to its outsole.

Heeling machines: Those designed and used for preparing and attaching the heels of boots and shoes.

Metallic-fastening machines: Those designed and used for the purpose of preparing and inserting metallic fastenings in boots and shoes.

Some of the shoe machinery and parts thereof mentioned and described in the above groups have been and are manufactured under letters patent of the United States and of other countries. The variety of such shoe machinery and the letters patent covering the same are so great in number as to make it impracticable to set forth in this petition a detailed description of each machine and the parts thereof or of the letters patent covering the same.

III.

CONDITION OF THE TRADE IN SHOE MACHINERY PRIOR TO 1899.

For many years prior and down to February, 1899, a large number of individuals, partnerships, and corporations were engaged in the United States in the manufacture of shoe machinery and in competition with each other in its sale and lease among the several States of the United States and in foreign countries, each con-
1244 cern striving to improve its machines already on the market and to design and install new ones. The principal concerns so engaged in said shoe machinery industry were the following:

Goodyear Shoe Machinery Company, a corporation of Maine, issued capital stock $3,000,000 (120,000 shares, par value $25 each), International Goodyear Shoe Machinery Company, a corporation of Maine, issued capital stock $1,000,000 (40,000 shares, par value $25 each), and Goodyear Shoe Machinery Company of Canada, a corporation of Maine, each having its principal factory at Boston, Massachusetts, were engaged in the manufacture of machines used for sewing the seam which attaches the upper to the outsole of a turn shoe, and the seam which attaches the upper and welt to the insole of a welt shoe, and for sewing the welt of a welt shoe to its outsole, and machines used for lasting the uppers of boots and shoes. These companies manufactured 80 per cent of all such sewing machines, and 10 per cent of all such lasting machines manufactured in the United States. The said International Goodyear Shoe Machinery Company and Goodyear Shoe Machinery Company of Canada were controlled, through stock ownership or otherwise, by said Goodyear Shoe Machinery Company. All were engaged in trade and commerce among the several States of the United States and in Great Britain, France, Belgium, Germany, Austria, and the Dominion of Canada.

1245 Consolidated & Mcay Lasting Machine Company, a corporation of Maine, issued capital stock $2,888,600 (91,544 shares common and 24,000 preferred, par value $25 each), with its principal factory at Beverly, Massachusetts, was engaged in the manufacture of machines, and parts thereof, designed and used for lasting the uppers of boots and shoes, and in interstate and foreign trade and commerce in such machines, and parts thereof. This company manufactured 60 per cent of all such lasting machines manufactured in the United States.

McKay Shoe Machinery Company, a corporation of Maine, issued capital stock $5,000,000 (500,000 shares, par value $10 each), with its principal factory at Winchester, Massachusetts, was engaged in the manufacture of machines, and parts thereof, designed and used

for preparing heels and for attaching them to boots and shoes, and machines, and parts thereof, designed and used for metallic fastenings, and also in interstate and foreign trade and commerce in such machines, and parts thereof. This company manufactured at least 70 per cent of all such heeling machines, and at least 80 per cent of all such metallic fastening machines made in the United States.

Eppler Welt Machine Company, a corporation of Maine, issued capital stock $600,000, and International Eppler Welt Machine Company, a corporation of Maine, issued capital stock $500,000, each with its principal factory at Boston, Massachusetts, were
1246 engaged in the manufacture of machines, and parts thereof, used for sewing the seam which attaches the upper to the outsole of a turn shoe, and the seam which attaches the upper and welt to the insole of a welt shoe, and for sewing the welt of a welt shoe to its outsole, and also in interstate and foreign trade and commerce in such machines, and parts thereof. These companies manufactured at least 10 per cent of all such sewing machines manufactured in the United States. The said International Eppler Welt Machine was owned and controlled by said Eppler Welt Machine Company and its stockholders.

Davey Pegging Machine Company, a corporation of Maine, issued capital stock $200,000, with its principal factory at Boston, Massachusetts, was engaged in the manufacture of machines, and parts thereof, used for attaching the outsole to the insole of boots and shoes by means of wooden pegs or other fastenings, and in interstate and foreign trade and commerce in such machines, and parts thereof. This company manufactured 75 per cent of all such pegging machines manufactured in the United States; and it was owned and controlled by the Consolidated & McKay Lasting Machine Company, hereinbefore mentioned.

Early in 1899 the companies above mentioned and described were manufacturing their machines, and parts thereof, under letters patent of the United States and of other countries. Many of the
1247 basic patents on the principal machines owned and controlled by them were about to expire, and, in the ordinary course of events, the general public would have acquired in the near future the right to the free manufacture and use of such machines, the lawful monopoly of such machines theretofore enjoyed by virtue of the patents would have come to an end, and the system of demanding large royalties for their use would have been replaced by their general manufacture and outright sale under competitive conditions. Furthermore, under the conditions then existing, new patents were being constantly taken out by others, and new and improved machines for performing the principal operations in the manufacture of boots and shoes by the aid and use of machinery were being placed

upon the market, either upon a smaller royalty than had theretofore been charged for machines doing similar work or for sale outright to boot and shoe manufacturers.

IV.

ORGANIZATION OF UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ITS PURPOSES AND OPERATIONS.

Defendants Sidney W. Winslow, William Barbour, Elmer P. Howe, John H. Hanan, George E. Keith, Edward P. Hurd, George W. Brown, Wallace F. Robinson, Rudolph Matz, and others, owners, officers, directors, and agents of said Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Goodyear Shoe Machinery Company, of Canada, Consolidated & McKay
1248 Lasting Machine Company, McKay Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company, and Davey Pegging Machine Company, not being satisfied with the benefit of the lawful monopolies and rights belonging to them under letters patent of the United States and of other countries, which they had enjoyed for many years, pertaining to shoe machinery, and parts thereof, and designing and intending unduly, unreasonably, and unlawfully to extend, expand, and perpetuate said monopolies and rights and to enhance the value thereof at the expense of the boot and shoe manufacturers and of the public generally, and to use the same as a means for unlawfully controlling interstate and foreign trade and commerce in shoe machinery to a greater extent than was warranted by said letters patent, determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery, destroy existing competition among the manufacturers and dealers in such machinery, and through unlawful combinations and agreements to exclude all others from said trade and commerce. For the accomplishment of this purpose they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery
of whatever kind necessary or useful to such manufacturer
1249 of shoes, and thereby to exclude all competition by other manufacturers of such shoe machinery and to monopolize the trade and commerce therein among the States and with foreign countries. The various contracts, combinations, conspiracies, and acts, hereinafter described, were steps in carrying out the above-mentioned unlawful project. A preliminary agreement was made, and

in February, 1899, they incorporated United Shoe Machinery Company, under the laws of New Jersey, with an authorized capital of $25,000,000 ($12,500,000 preferred, $12,500,000 common), with broad powers under its charter to manufacture, buy, sell, lease, operate, and deal in and with all kinds of machinery, tools, and implements, and especially in everything in any way connected with or used in the manufacture of boots and shoes. For the stock allotted to each, and for cash, at values far in excess of real worth, four of the old concerns, to wit, Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, and McKay Shoe Machinery Company, conveyed to the new corporation, as going concerns, their business of manufacturing, selling, leasing, and dealing in shoe machinery, including their letters patent of the United States and of other countries, and all property and rights used in connection therewith, wherever situated; and their principal owners, managers, di-
1250 rectors, and officers became managers, directors, and officers of the new company. Stock of the new company was allotted and received as follows:

Goodyear Shoe Machinery Company (issued capital, $3,000,000)		$4,800,000
Preferred	$2,400,000	
Common	2,400,000	
International Goodyear Shoe Machinery Company (issued capital, $1,000,000)		$680,000
Preferred	$340,000	
Common	340,000	
Consolidated & McKay Lasting Machine Company (issued capital, $3,000,000)		$4,599,840
Preferred	$2,199,840	
Common	2,400,000	

In addition to the stock acquired from the new company, the holders of preferred stock of said Consolidated & McKay Lasting Machine Company received $1 in cash for each share thereof (total, $24,000), and its holders of common stock received for each share thereof, in addition to stock in the new company, $4.50 in cash (total, $432,000).

McKay Shoe Machinery Company (issued capital, $5,000,000)		$5,500,000
Preferred	$2,750,000	
Common	2,750,000	

1250½ At the time of the organization of the new company a syndicate was formed by the owners, officers, and directors of the

old companies, which subscribed and paid for a certain amount of its common and preferred stock at par, as follows:

50,854.70 shares preferred	$1,271,367.50
44,962.70 shares common	1,124,067.50
	$2,395,435.00

That amount was used to pay the expenses of the organization of the new company, the floating debts of all of the old companies, and for the purchase of the capital stock, property, business, and letters patent of each said Eppler Welt Machine Company, International Eppler Welt Machine Company, and Goodyear Shoe Machinery Company of Canada, and there was left a balance of $500,000 in cash as working capital for the new company.

V.

LEASE AND LICENSE AGREEMENTS, CONTAINING EXCLUSIVE-USE AND TYING PROVISIONS, WHICH DEFENDANTS HAVE DEVISED, ADOPTED, AND USED, AND ARE NOW USING, FOR THE PURPOSE OF DESTROYING COMPETITION.

By the organization of United Shoe Machinery Company, of New Jersey, and the taking over by that company of substantially all of the capital stock and the businesses and assets of each of the old concerns hereinbefore mentioned, defendants acquired control of
1251 the greater portion of the manufacture of, and trade and commerce in, the machines included in each and all of the groups of machines hereinbefore mentioned and described, manufactured, sold, and leased to boot and shoe manufacturers in the United States.

Prior to the organization of United Shoe Machinery Company, of New Jersey, boot and shoe manufacturers, purchasing or leasing machines from one of the aforesaid companies, were not compelled to use exclusively machines mentioned in the aforesaid groups manufactured by either of the other companies. For example, the shoe manufacturer who held lasting machines under lease from the Consolidated & McKay Lasting Machine Company was not required to use, in connection with that company's lasting machines, welt-sewing machines or outsole-stitching machines of the Goodyear Shoe Machinery Company, or those of any other company, and he was free to obtain such machines wherever he could procure them to the best advantage. The same was true of the trade in welt-sewing machines and outsole-stitching machines, heeling machines, and metallic fastening machines. Defendants, however, not being satisfied or contented with said portion of the trade and commerce in shoe machinery which they acquired through the organization of United

Shoe Machinery Company, of New Jersey, and with the intent to acquire complete control of the business of manufacturing and selling or leasing shoe machinery among the States and with foreign
1251½ countries, to exclude all others therefrom, to enhance the cost of said machines to users thereof, and to wrong and to oppress the public, discontinued the sale to boot and shoe manufacturers of each and all of the machines included in said groups of machines, and unlawfully devised, adopted, and put into effect arbitrary, oppressive, and unreasonable lease and license agreements, which boot and shoe manufacturers have been and are required to agree and conform to in order to obtain from said defendants any of the machines included in said groups. These agreements contain provisions, not found in their former lease and license agreements, which compel boot and shoe manufacturers leasing any of such machines from defendants to agree to use exclusively one or more of the classes of machines included in said groups of machines owned and controlled by them, upon penalty of having all the machines included in said groups so leased to them by defendants immediately reclaimed and taken away and the lease and license agreements canceled. These contracts further require boot and shoe manufacturers to take each of said machines for a period of not less than 17 years, regardless of the terms of the patents relating thereto. Lessees thereunder are compelled to obtain all duplicate parts, extras, mechanisms, and devices of every kind needed or used in operating, repairing, or renewing the leased machinery from defendants, at exorbitant prices fixed by them from time to time. Many of
1252 these agreements further provide that the lessee shall, at the expiration of 17 years, and after he has paid large royalties throughout that period, if he shall then have no further use for the machines, return the same to defendants at their factory at Beverly, Mass., and shall pay to them a return charge, which in some cases amounts approximately to the original cost of building the machines. Defendants have continually, persistently, and arbitrarily enforced the provisions of said lease and license agreements by all the means in their power as against the boot and shoe manufacturers, and have made it their general policy and practice to refuse to furnish such machines to any and all boot and shoe manufacturers who fail to comply with the terms or spirit of the provisions of said lease and license agreements, and to otherwise injure them.

Defendants, in pursuance of their general purpose, inserted in, and made a part of, each lease and license agreement, provisions reserving to themselves the right to forthwith terminate and cancel all existing lease and license agreements between them and the boot and shoe manufacturers if the latter should fail or cease to use

exclusively and to their full capacity machines leased or controlled by defendants, thereby prohibiting said manufacturers not only from using competing shoe machinery manufactured in the United States, but also from using any such machinery manufactured in foreign countries and imported here for sale or lease.

1253 Copies of specimen forms of lease and license agreements, containing provisions, as aforesaid, which have been and are now in general use (or others substantially similar thereto) as lease contracts between defendants and boot and shoe manufacturers throughout the United States, are hereto appended, and made a part hereof, in the order following:

Copy of lease and license agreement for "U. S. M. Co. lasting machine No. 5" is "Exhibit 1."

Copy of lease and license agreement for "Consolidated hand-method lasting machines" is "Exhibit 2."

Copy of lease and license agreement for "Chase lasting machines" is "Exhibit 3."

Copy of lease and license agreement for "Boston lasting machine" is "Exhibit 4."

Copy of lease and license agreement for "welt-sewing machines and outsole-stitching machines" is "Exhibit 5."

Copy of lease and license agreement for "Full Set," "Goodyear department machines," is "Exhibit 6."

Copy of lease and license agreement for "Economy insole reinforcing set" is "Exhibit 7."

Copy of lease and license agreement for "Gem insole machinery" is "Exhibit 8."

Copy of lease and license agreement for "heeling machines" is "Exhibit 9."

Copy of lease and license agreement for "metallic fastening machines" is "Exhibit 10."

1254 Copy of lease and license agreement for "Goodyear department," "auxiliary machines" is "Exhibit 11."

Copy of lease and license agreement for "Rex pulling over system" is "Exhibit 12."

Copies of lease and license agreements for "general department" machines are "Exhibits 13, 14, and 15."

Copy of lease and license agreement for "Ensign lacing machines" is "Exhibit 16."

Copy of lease and license agreement for "Duplex eyeletting machine" is "Exhibit 17."

Copy of lease and license agreement for "Power eyeletting machine" is "Exhibit 18."

Copy of lease and license agreement for "Vulcan foot power eyeletting machines" is "Exhibit 19."

Copy of lease and license agreement for "Xpedite finishing machines" and "Xpedite finishing tools" is "Exhibit 20."

Copy of lease and license agreement for "Ideal clicking machines" is "Exhibit 21."

Copy of lease and license agreement for "Davey pegging machines" is "Exhibit 22."

A chart illustrative of the practical effect of the exclusive use and tying provisions, which are too numerous to be here described in full, of the lease and license agreements above referred to, is hereto appended, made a part hereof, and marked "Exhibit 23."

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VI.

OTHER UNFAIR AND MONOPOLISTIC ACTS OF DEFENDANTS.

Defendants have not hesitated to use, whenever opportunity offered, the advantages possessed by them in consequence of their acquisition of the properties herein described and the resulting concentration in their hands of the almost entire shoe machinery business. They have by misrepresentation and threats sought to and have induced customers of their competitors to abandon them; they have threatened competitors that they would use their enormous financial resources and the power of their combination to secure to themselves the patronage of such competitors, and by threats have prevented others from entering business in competition with them; they have acquired many letters patent for valuable inventions, and have held the same for long periods of time without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom; they have offered and granted, and now are offering and granting, rebates to boot and shoe manufacturers who use exclusively one or more of the machines owned or controlled by them; they have bought the business of many competitors, though compelled to pay exorbitant prices therefor; and they have done many other unlawful acts, too numerous to here set forth in detail; and in all these unfair, oppressive acts, defendants continue to engage at the present time.

1256

VII.

ACQUISITION AND CONTROL OF THE BUSINESSES OF INDIVIDUALS, PARTNERSHIPS, AND CORPORATIONS FORMERLY IN COMPETITION WITH DEFENDANTS.

In pursuance of their purpose to monopolize the shoe machinery industry, defendants have, through United Shoe Machinery Company, of New Jersey, by the methods herein described, absorbed

many competitors and driven others out of business, and have deterred and prevented and are now deterring and preventing others from entering the business, and have thus made competition with themselves practically impossible.

Defendants have taken from all or substantially all of those whose business they have absorbed or purchased covenants in writing (which covenants are too numerous and voluminous to be set forth in full in this petition) not to engage for long terms of years in trade and commerce in shoe machinery in competition with defendants; and have further required the vendors to agree in substance that if they shall invent or cause to be invented or shall patent or cause to be patented, either in the United States or in any foreign country, any machines adapted for use in the manufacture of boots or shoes, or shall acquire interests and rights in, to, or under any invention, improvement, or letters patent which they shall make, own, or acquire, during the period of time stipulated in said covenants, relating to machinery, mechanisms, tools and devices, processes,
1257 methods, or things intended or adapted for use in the manufacture of boots and shoes, they shall assign and transfer to said defendants all such inventions and letters patent and interests and rights therein.

Among the individuals, partnerships, and corporations who were competitors of defendants and whose businesses have been so acquired and absorbed by them are the following:

In March, 1899, defendants, through United Shoe Machinery Company, of New Jersey, for the purpose of destroying competition, acquired control of the business of Goddu Sons Metal Fastening Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate and foreign commerce, of machines designed and adapted for use in the manufacture of boots and shoes. The authorized capital stock of this company was $500,000; and defendants, by agreement with Louis Goddu, Louis H. Goddu, George Goddu, William Goddu, Napoleon Goddu, and Eloie Goddu, who held a majority thereof, to wit, 75 per cent, acquired the same for approximately $150,000, by issuing therefor 2,492 shares of the preferred stock, at an agreed value of $30, and 2,130 shares of the common stock, at an agreed value of $35, of United Shoe Machinery Company, of New Jersey, one-half of said stock being held in trust for a period of 10 years by defendant Sidney W. Winslow for the faithful performance of the agreement entered into by the vendors. Having thereby acquired the majority
1258 of stock, and control of the company, defendants have arbitrarily refused to purchase the holdings of some of the largest minority stockholders. The plant has long been closed and the business of the company discontinued.

The vendors, for the same consideration, conveyed to United Shoe Machinery Company, of New Jersey, its successors and assigns, all right, title, and interest in and to any and all inventions which they should thereafter jointly or severally make, own, or acquire within a period of 10 years, and which should in any way relate to shoe machinery or to mechanisms or appliances or devices useful in the manufacture of boots or shoes or to the production or preparation of such machinery, mechanisms, appliances, devices, fastenings, materials, or other things; and the vendors, and each of them, further agreed that they would not thereafter, within 10 years, engage, directly or indirectly, in the business of making or selling any inventions or improvements relating in any way to machinery and mechanisms useful in the manufacture of boots and shoes.

In June, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, agreed with Marshall Henry Pearson and Charles Bennion, of Leicester, England, who owned and controlled all of the capital stock of Pearson & Bennion (Ltd.), a corporation organized under the laws of Great Britain and Ireland, engaged in the business of
1259 manufacturing machines useful in the manufacture of boots and shoes, and in the importation and interstate commerce in the sale, lease, and shipment of the same, with its principal place of business at Leicester, England, and with offices at Boston, Mass., to form a new corporation to be organized under the laws of Great Britain and Ireland for the purpose of taking over and carrying on the shoe-machinery business theretofore carried on by Pearson & Bennion (Ltd.), and the business in England, Ireland, and Scotland of said United Shoe Machinery Company. Accordingly British United Shoe Machinery Company (Ltd.) was formed with a capital of £450,000 ($2,189,925)—£250,000 ($1,216,625) preferred and £200,000 ($973,300) common. For the business conveyed by them to the new company Pearson and Bennion received in stock £40,000 ($194,660) preferred and £40,000 ($194,660) common and £4,300 ($20,925) cash. Pearson and Bennion agreed to assign, transfer, and convey, for the same consideration to the new corporation all letters patent of Great Britain and of other countries and all inventions and all pending applications for letters patent of Great Britain and of other countries, and to assign, transfer, and convey to the new corporation any and all inventions which they should thereafter make in any way relating to shoe machinery or to the manufacture of boots or shoes, or to materials used in their manufacture. The issued capital stock of said British United Shoe
1260 Machinery Company (Ltd.) is £353,494 ($1,720,278), of which United Shoe Machinery Company, of New Jersey,

owns £206,800 ($1,006,392). Defendants Sidney W. Winslow, William Barbour, George W. Brown, John H. Connor, and Elmer P. Howe are on its board of managers and dictate its policies, and its competition with defendants in the markets of the United States was thus destroyed.

In June, 1899, defendants, in pursuance of their general purpose, acquired for $6,769.40, from Silas Pierce and John M. Kingsbury, a majority of the capital stock of Corrugated Wire Fastening Company, Boston, Mass., a corporation of Connecticut, engaged in the manufacture and sale of corrugated wire for use in the manufacture of boots and shoes. This plant has long been closed.

In July, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Breach Manufacturing Company, Boston, Mass., a corporation of Maine, an exclusive license, under certain letters patent of the United States of America, to manufacture, sell, and lease certain machines for rounding or cutting soles or patterns for boots and shoes, for $10,000 cash, plus 10 per cent of the gross proceeds of sales of said machines in the United States and foreign countries.

In August, 1899, Peter A. Coupal and William Gordon, of Boston, Mass., conveyed to United Shoe Machinery Company, of New
1261 Jersey, certain boot and shoe machinery, tools, and appliances, for a consideration of $10,799.25, receiving in payment therefor common stock of said United Shoe Machinery Company. The vendors thereupon entered the employ of United Shoe Machinery Company, of New Jersey, and each of them agreed that so long as he should remain in the employ of said company all inventions that he should make or acquire should be disclosed and explained to it.

In August, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the business of Timothy A. Bresnahan, of Boston, Mass., engaged in the manufacture, sale, lease, and shipment in interstate commerce, of machines, tools, and appliances designed and used in the manufacture of shoes, together with the entire capital stock of Boston Shoe Tool Company, a corporation of Maine, with a capital of $50,000, for approximately $72,000, paid in cash and preferred stock of said United Company. Bresnahan agreed to enter the employ of the Boston Shoe Tool Company as manager for a period of two years. Defendants required and took from the vendor covenants that he would not thereafter engage in, nor directly or indirectly aid, assist, or encourage any other person to engage in, the manufacture of heel-trimming, edge-trimming, or edge-cutting machines and tools, cutters, or irons for heel or edge trimming,
1262 for edge setting, or of any of the machines, tools, and products formerly made by said Boston Shoe Tool Company.

Defendants also required and took from said Bresnahan covenants in part as follows:

"Said Bresnahan, as an officer of said Boston Shoe Tool Company, agrees to use his best efforts to purchase, on terms and at prices approved by said United Company, the business of any persons, firms, or corporations engaged in a like or similar business to that now carried on by said Boston Shoe Tool Company, and the pattern, special tools, parts of machines used by them in the manufacture of cutters, trimmers, and edge-trimming and edge-setting and heel-trimming machines or tools, and the stock of such machines, cutters, trimmers, or tools on hand or in process of construction, together with the good will of such businesses and letters patent, trade-marks, and trade names employed by them in carrying on such businesses."

The plant of Boston Shoe Tool Company has long been closed and its business discontinued.

In October, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Edwin Theophilus Freeman, of Boston, Mass., engaged in interstate trade and commerce, all of his business, including machinery and letters patent of the United States, relating to
1263 nailing machines used in the manufacture of boots and shoes, for the sum of $11,000, $500 in cash and $10,500 in preferred stock of said United Company, and, in addition thereto, $500 per year as royalties for a period of eight years. Defendants required and took from the vendor, for the same consideration, covenants that he would not thereafter engage, directly or indirectly, in the manufacture of shoe machinery, and that he would convey to said United Shoe Machinery Company all improvements or inventions which he should thereafter make, relating to boot or shoe or leather-working machinery, tools, and appliances.

In October, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from George W. Freeman, of Boston, Mass., formerly engaged in business with Edwin Theophilus Freeman, whose principal place of business was at Boston, Mass., all of his interests relating to shoe machinery, for a consideration of employment for one year by said United Shoe Machinery Company, of New Jersey, at a compensation of $800 per annum; and, for the same consideration, defendants required and took from said Freeman covenants that he would not thereafter engage, directly or indirectly, in the manufacture of shoe machinery in competition with said United Shoe Machinery Company, or assist or encourage any other person to engage in such competition, and that he would convey to said com-
1264 pany all improvements or inventions relating to boot and

shoe or leather-working machinery which he should thereafter make.

In October, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Albert G. Brewer, of Hopkinton, Mass., all of his inventions and improvements in machines used in the manufacture of boots and shoes and known to the trade as "heel-breasting machines," for $250 in cash, and $5 royalty on each machine thereafter marketed by said United Company. For the same consideration, defendants required and took from said Brewer conveyance of all inventions which he should thereafter make relating to "heel-breasting machines."

In October, 1899, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the business of James H. Reed, Alfred L. Barrett, Henry M. Loomer, Ward Perkins, and Ralph W. Burnham, copartners, trading under the name of Globe Shoe Tool Company, at Boston, Mass., engaged in the manufacture of edge cutters and irons used in the manufacture of boots and shoes, and in the sale and shipment of the same in interstate trade and commerce. The purchase price was $30,000, which was paid in cash and preferred stock of said United Company. The said Henry M. Loomer and Ward Per-
1265 kins agreed to enter the employ of the vendee at a compensation of $25 per week for a period of one year, and further agreed that they would not thereafter engage, either directly or indirectly, or assist or encourage any other person so to do, in the manufacture of boot and shoe or leather-working machinery in competition with the vendee. For the same consideration, defendants required and took from said Loomer and Perkins covenants that they would convey to vendee all improvements or inventions relating to boot and shoe or leather-working machinery, machines, tools, and appliances which they should thereafter make.

In November, 1899, defendants, through United Shoe Machinery Company, of New Jersey, acquired all of the business of John Ritchie and John Ritchie Company, a corporation, with its principal place of business at Quebec, Dominion of Canada, relating to the manufacture of standard screw machines, slugging machines, tacking machines, and others, designed and used in the manufacture of boots and shoes, paying therefor $15,000. The vendors agreed that they would not engage, directly or indirectly, at any time thereafter in any business in competition with said United Shoe Machinery Company or any of its controlled companies.

In January, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $38,000, the business and assets, including letters
1266 patent of the United States and of other countries, of the

Seaver Process Lasting Company, Boston, Mass., a corporation of Maine, engaged in the manufacture of machines designed and used for the purpose of lasting the uppers of boots and shoes, and in interstate and foreign trade and commerce in the sale and lease of such machines.

In February, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Frank N. Stackpole, George D. Pike, Joseph H. Ordway, and John R. Stuart, jr., copartnership doing business under the name of Boston Blacking Company, at Boston, Mass., substantially a one-half interest in the business of said concern, which was engaged in manufacturing blacking, cement, stains, and other products for dressing or preparing the leather of boots and shoes and other articles, and in selling and shipping the same to various States of the United States and to foreign countries. The purchase price was $280,000, which was paid in preferred stock of said United Shoe Machinery Company. By agreement between the vendors and the vendee, a corporation, Boston Blacking Company, was formed under the laws of Maine, with an issued capital stock of $600,000 (6,000 shares, par value $100 each), which took over the partnership business. The vendors received 3,004 shares of the capital stock of the new corporation, and each of them entered its employ at a
1267 salary of $6,000 per annum. The vendors, and each of them, agreed not to engage or become interested in any way in any competing concern within a period of 15 years in that portion of the United States east of the Mississippi or Missouri Rivers, or any portion of Missouri, Louisiana, Nebraska, Kansas, or California, or any portion of Canada to the eastward of the Albany River, Lake Nipigon, and Lake Superior, or any portion of Europe except in Spain, Portugal, Turkey, Greece, Servia, and Bulgaria. Defendant, United Shoe Machinery Company, of New Jersey, now owns 2,996 shares ($299,600) of the capital stock of said Boston Blacking Company, and by agreement the holders of the majority stock are required to vote that stock in favor of four of the directors who shall be representatives of United Shoe Machinery Company, of New Jersey; defendants Edward P. Hurd, Sidney W. Winslow, and George W. Brown are on its board of directors.

In March, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Erastus E. Winkley and Benjamin Phillips, Lynn, Mass., their inventions and improvements relating to machines known to the trade as "sole-leveling machines," the said United Shoe Machinery Company to pay to the vendors a royalty of $20 for each machine made and sold, leased, or otherwise disposed of. The vendors, for

the same consideration, agreed to convey to defendants all in-
1268 ventions or improvements in sole-leveling machines which they should thereafter make or acquire.

In March, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the foreign trade and business of Stanley Manufacturing Company, a corporation of Maine, with its principal place of business at Lawrence, Mass., engaged in the manufacture of machines known to the trade as "McKay sewing machines," used in the manufacture of boots and shoes, and in interstate and foreign trade and commerce in the shipment, sale, and lease of the same, paying therefor $86,500 in preferred stock of said United Shoe Machinery Company. The vendors agreed to withdraw from Germany and not thereafter to engage in that country in the shoe-machinery business, and that they would not thereafter export or sell or dispose of to others for export any boot or shoe machinery, or supplies therefor, outside of the United States, except through said United Shoe Machinery Company.

In April, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the business of Lincoln Sewing Machine Company, Boston, Mass., a corporation of New Hampshire, engaged in the manufacture, sale, lease, and shipment in interstate commerce of sewing machines de-
signed and used for the manufacture of boots and shoes. The
1269 consideration was $33,075, of which $2,450 was paid in cash and $30,625 in common stock of said United Shoe Machinery Company.

In June, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, by agreement with Theophilus King, Henry Tolman, and Eleazer Kempshall, owners of the majority stock of Boston Fast Color Eyelet Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate commerce of eyelets covered with celluloid, formed a new company, United Fast Color Eyelet Company, under the laws of Maine, with a capital of $1,500,000; and the entire business and assets of Boston Fast Color Eyelet Company were transferred to this company, and the said King, Tolman, and Kempshall received $155,000 of preferred stock of the new company, and said United Shoe Machinery Company $1,000,000 of common and $145,000 of preferred stock of the new company; and the vendee also agreed to pay the said King $35,000 in cash. The vendors and each of them agreed for the same consideration that all inventions and letters patent of the United States and of foreign countries which they should acquire within 15 years thereafter relating to covered eyelets, or to any machinery, plant, processes, or products

used or intended to be used in the manufacture thereof, should be assigned and conveyed to the new corporation, and that neither
1270 of them would jointly or severally enter the employ or become interested in the business of any person, firm, partnership, or corporation the business of which would be hostile to the development and prosperity of the business of the new company. $1,478,600 of the capital stock of the new company has been issued, of which said United Shoe Machinery Company owns $1,020,600. Defendant Sidney W. Winslow always has been its president, and its business and affairs are conducted without competition with any of the defendants. The company is engaged in interstate and foreign trade and commerce.

In June, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Theophilus King, Henry Tolman, and Eleazer Kempshall 60,000 shares, being a majority thereof, of the capital stock of Enamel Eyelet Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate commerce of eyelets for boots and shoes, for $75,000 in preferred stock of United Fast Color Eyelet Company. Defendants also required and took from the vendors an assignment of all inventions, letters patent, and applications for letters patent of the United States and of foreign countries in any way relating to enamel eyelets or the manufacture thereof which they then owned or controlled or
1271 which they should make or acquire or control or obtain any interest in within 15 years from the date of said agreement. The vendors and each of them also agreed that they would not, for a period of 15 years, engage in any business in competition with defendants.

In September, 1900, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Simon Ross and W. F. Harmon all of the issued capital stock and business of Ross-Moyer Manufacturing Company, Cincinnati, Ohio, a corporation of Ohio, with an issued capital of $197,400, engaged in the manufacture, sale, and shipment in interstate commerce of edge setters, edge trimmers, heel scourers, and other machines used in the manufacture of boots and shoes, paying therefor one and eight-tenths shares of preferred stock of United Shoe Machinery Company, of New Jersey, for each share of the capital stock of Ross-Moyer Manufacturing Company, aggregating $88,830. The business has been continued, but under the direction and control of and without competition with defendants. Defendant Sidney W. Winslow has been its president since the company was acquired. All of the issued capital stock is owned by said United Shoe Machinery Company.

About January, 1901, defendants, in pursuance of their general purpose, acquired for United Shoe Machinery Company de
1272 France and for Deutsche Vereinigte Schuhmaschinen Gesellschaft G. m. b. H., the property and good will for the Continent of Europe of the Bay State International Shoe Machinery Company, Boston, Mass., paying therefor approximately $25,000 in preferred stock of United Shoe Machinery Company, of New Jersey.

In February, 1901, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the business and assets, including letters patent, of Swain Fuller Manufacturing Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, lease, and shipment in interstate commerce of machines used in the manufacture of boots and shoes, paying therefor $13,201.92, of which $2,576.92 was paid in cash and the balance, $10,625, in preferred stock of said United Shoe Machinery Company. The plant has long been closed.

In February, 1901, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired control of $599,210 of the issued capital stock, $1,000,000, of Globe Sewing Machine Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, lease, and shipment in interstate commerce of sewing machines designed and used for the manufacture of boots and shoes, paying therefor $20,000 in preferred stock of said United Shoe Machinery Company. The plant has long been closed.

1273 About May, 1901, defendants, in pursuance of their general purpose, acquired for approximately $45,000 the property and business (not theretofore acquired) of Boot & Shoe Sole Laying Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate and foreign commerce of machines designed and used for laying the soles of boots and shoes. The business of the company, as a going concern, has been discontinued.

In June, 1901, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired all the business, assets, property, real estate, machinery, and devices, including all letters patent of the United States and of foreign countries, of John C. Rhodes and John B. Rhodes, trading under the name of J. C. Rhodes & Company, New Bedford, Mass., engaged in the manufacture, sale, and shipment, in interstate and foreign commerce of eyelets used in the manufacture of boots and shoes, paying therefor $775,000, $200,000 in cash and $575,000 in preferred stock of said United Shoe Machinery Company. The vendors agreed that they would not, for a period of 15 years, engage in, except as employees of defendants, either as proprietor, manager, manufac-

turer, partner, employee, or stockholder of any corporation, or be connected with, directly or indirectly, the business of manufacturing or selling eyelets of any description, or any substitute therefor, or any machinery for making eyelets. Defendants required
1274 and took from the vendors covenants to convey to the vendee all inventions and improvements relating to the manufacture of eyelets which they should make, own, or acquire within 15 years. Defendants then caused to be organized J. C. Rhodes & Company (Inc.), under the laws of Maine, with a capital of $600,000, which took over the partnership business and which has since been conducted without competition with any of defendants. All of the capital stock is owned or controlled by said United Shoe Machinery Company. Defendant Sidney W. Winslow is its president.

In December, 1901, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $31,000 the eyelet business of Morley Button Manufacturing Company, Portsmouth, N. H., a Maine corporation, engaged in the manufacture, sale, and shipment in interstate commerce of eyelets used in the manufacture of shoes. For the same consideration, defendants required and took from the vendors covenants not to engage thereafter, directly or indirectly, during the terms of the patents conveyed, in the manufacture or sale of eyelets in competition with them, nor to encourage, aid, or assist others to engage in such competition, either in the United States or in any foreign country.

In February, 1902, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jer-
1275 sey, acquired from Oliver A. Miller, Brockton, Mass., engaged in the manufacture of "treeing machines," and in interstate and foreign trade and commerce in the sale and shipment of the same, all of his business and assets, including letters patent of the United States and of foreign countries, for $160,000 in cash. Defendants required and took from the vendor covenants that he would not, at any time within 15 years, engage, directly or indirectly, in the business of manufacturing or dealing in boot or shoe treeing machines, or tree legs, tree feet, or any parts thereof, in competition with defendants. Thereupon defendants caused to be organized, under the laws of Maine, O. A. Miller Treeing Machine Company, with an authorized capital of $500,000, of which $200,000 has been issued, which took over the business formerly conducted by O. A. Miller. United Shoe Machinery Company, of New Jersey, owns and controls all of the issued capital stock except $20,000. It is engaged in interstate and foreign trade and commerce, but is not competing with any of defendants. Defendant Sidney W. Winslow is its president.

In June, 1902, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the business and assets of Marlboro Awl & Needle Company, Marlboro, Mass., engaged in the manufacture, sale, and shipment in interstate and foreign commerce, of awls and needles used in the
1276 manufacture of boots and shoes, the vendors agreeing to take stock, in payment therefor, in a new corporation to be formed by defendants. Defendants thereupon caused United Awl & Needle Company, with an authorized capital of $200,000, to be organized under the laws of Maine, which took over the business of the old concern. $56,100 of the capital stock has been issued, of which said United Shoe Machinery Company owns $34,900. It operates a factory at West Medway, Mass., and is engaged in interstate and foreign trade and commerce, but is not competing with any of the defendants in the sale and shipment of its products. Defendant Sidney W. Winslow is its president.

In September, 1902, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $5,200 from Arthur Fuller all the property and assets, including letters patent of the United States and of other countries, of American Sole-Laying Machine Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, lease, and shipment in interstate commerce of machines designed and used for laying or leveling the soles of boots and shoes. Defendants required and took from the vendor covenants that he would not become interested, directly or indirectly, for a period of 10 years in the business of manufacturing machines adapted for use in the operation of laying or leveling the soles of boots and shoes. The plant has long been closed.

1277 In October, 1902, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $14,000 the foreign business (except Canada) of William J. Young, Lynn, Mass., engaged in the manufacture, sale, lease, and shipment in interstate commerce of machines designed and used for preparing the heels for boots and shoes. Defendants required and took from the vendor covenants that he would not engage, directly or indirectly, in competition with said United Company for a period of 15 years in any country other than the United States and the Dominion of Canada; that he would convey, for the same consideration, to said United Company all inventions and improvements that he should make or acquire within a period of 15 years relating or pertaining in any way to machinery or devices intended or adapted for use in the manufacture or preparation of heels.

In November, 1902, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from George A. Smith, of Philadelphia, Pa., all of the capital stock, property, assets, and business of the George A. Smith Machinery Company, Philadelphia, Pa., a corporation of New Jersey, engaged in the manufacture, sale, lease, and shipment in interstate commerce of machinery, appliances, and supplies used by manufacturers of boots and shoes. The purchase price was to be
1278 determined upon an inventory of the property of the Smith Company. Defendants required and took from the vendor covenants that he would not at any time within 10 years, within the United States or in any other country, directly or indirectly, enter into or be engaged in, or financially or otherwise assist any other person, firm or corporation in entering into or developing or carrying on any business relating to the manufacture, sale, or lease of any machinery, devices, or appliances intended or adapted for use in the manufacture of boots and shoes, or compete or interfere with any business carried on by said United Company or by any company in which it is the owner of the majority of the capital stock.

In December, 1902, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $41,500 the business of George A. Emerson and William R. Sampson, copartners, trading under the name of George W. Emerson & Company, at Lynn, Mass., engaged in the manufacture, sale, and shipment in interstate commerce, of machinery, appliances, devices, and supplies designed and used in the manufacture of boots and shoes. For the same consideration, defendants required and took from the vendors, and each of them, covenants that they would not engage, directly or indirectly, in competition with the vendee for a period of 15 years, and that all inventions or improvements which said vendors, or either of them, should make, own or
1279 acquire relating to machinery, appliances, devices, or supplies adapted for use in the manufacture of boots and shoes, at any time within said period of time, should be forthwith disclosed to said United Company, its officers and patent solicitors. The business has been discontinued.

In March, 1903, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired control of the business of the T. A. Norris Machine Company, Brockton, Mass., a corporation of Massachusetts, with an issued capital stock of $20,000, engaged in the manufacture, sale, and shipment in interstate commerce, of machines used in the manufacture of boots and shoes. The plant has been closed.

In February, 1903, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey,

acquired from William B. Cross, for $50,000, the majority of the capital stock of W. W. Cross & Company (Inc.), Brockton, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate commerce, of nails, tacks, and other supplies used in the manufacture of boots and shoes.

In May, 1903, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for approximately $100,000, the property and assets of
1280 the John K. Krieg estate, Hermine L. Krieg, Lewis G. Metzger, Charles O. Kuhnert, Lemuel R. Mears, and Carl H. Krieg, copartners doing business under the firm name of J. K. Krieg & Company, New York, N. Y., engaged in the manufacture, sale, and shipment in interstate commerce, of machines designed and used in the manufacture of boots and shoes; and also in the manufacture of goods, supplies, and equipment for retail shoe stores and for cobblers. Defendants required and took from the vendors covenants that they would not engage, directly or indirectly, for a period of 15 years, except as employees of said United Shoe Machinery Company, or some one of its controlled corporations, in any business relating or pertaining in any way to the manufacture of or dealing in shoe machinery or shoe manufacturers' goods, findings, supplies, or equipment, or in any business which would in any way interfere with or compete with defendants, except in selling supplies to retail shoe stores and cobblers, all such supplies to be purchased from defendants.

In October, 1903, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Joseph P. Curtis, Everett, Mass., all of his business, including letters patent and applications for letters patent, relating to cementing machines used in the manufacture of boots and shoes;
consideration, $5,000, to be paid in royalties on machines there-
1281 after manufactured by said United Company. Defendants required and took from the vendor, for the same consideration, conveyances of all inventions and improvements which he should at any time thereafter make relating to cementing machines, either as sole inventor or as joint inventor with others, and all right, title, and interest in, to, and under all inventions and improvements in cementing machines which he may in any way own or control or which he may have any right, by agreement or otherwise, to acquire or take over, and all letters patent and interests therein.

In January, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, employed one Fred H. Perry, of West Medford, Mass., as inventor for a period of one year at $30 per week. For the same consideration, defendants required and took from said Perry covenants that

he would convey to said United Shoe Machinery Company all inventions and improvements which he should make, own, or acquire, relating to machinery useful in the manufacture of boots and shoes, at any time within five years after the termination of his employment by said United Company.

In January, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $3,052 from Joseph W. Leary, of Lynn, Mass., his
1282 interstate business of manufacturing and dealing in shoe machinery, devices, and supplies, cements, blackings, and stains. The vendor agreed to enter the employ of said United Company for a period of five years with compensation at $40 per week, and for the same consideration agreed to convey to the vendee and its successors all inventions and improvements which the vendor should make or acquire within 10 years from the date of the termination of such employment by said United Company, and that within the same period he would not engage, directly or indirectly, in any business which competed or interfered with said United Shoe Machinery Company or any of its affiliated companies.

In January, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $25,915 the business, together with all letters patent of the United States and of foreign countries, of F. G. Farnham Brush Manufacturing Company, Honesdale, Pa., a corporation of New Jersey, engaged in the manufacture and in interstate and foreign trade and commerce in the sale of brushes, sleeves, collars, hubs, fillers, bristles, fiber, and other parts used for finishing boots and shoes. The vendors agreed that they would not engage, directly or indirectly, or in any way assist in any competition, in any country, or financially assist any other person or corporation to compete with said United Shoe Machinery Company or its successors for a
1283 period of 15 years, and for the same consideration defendants required and took from the vendors covenants that they would convey to defendants all inventions and improvements and all letters patent and applications therefor of the United States and of foreign countries which they should make or acquire at any time within said period of time relating or pertaining in any way to brushes, fillers, hubs, sleeves, collars, bristles, and fiber used in the manufacture or finishing of boots and shoes.

In May, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from American Glue Company, Boston, Mass., a corporation of New Jersey, the exclusive agency for the United States and Canada for the sale of all sandpaper made for or by said American Glue Com-

pany for use in the manufacture of boots and shoes. Defendants in February, 1901, had acquired a similar agency for Europe.

In June, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, and United Shoe Machinery Company, of Maine, acquired the business of Zachary Taylor French, of Boston, Mass., engaged in the development of machines designed and used for the manufacture of boots and shoes, paying therefor $15,000 in annual installments of $1,500 each. Defendants required and took from the vendor cov-
1284 enants that he would assign to said United Shoe Machinery Company, for the same consideration, all inventions and improvements which he should, directly or indirectly, make or acquire within 10 years relating to machinery useful in the manufacture of boots and shoes, and that he would not engage in competition with defendants, for the same period, in the United States or any foreign country.

In June, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired for $4,750 cash, the business of Herbert L. Kimball and Irving A. Hadley, copartners, doing business under the firm name of Kimball & Hadley, at Lynn, Mass., engaged in the manufacture, sale, and shipment in interstate commerce, of needles, awls, drivers, supplies, etc., used in the manufacture of boots and shoes. Defendants, for the same consideration, required and took from the vendors covenants that neither of them would, directly or indirectly, within a period of 15 years, enter into or become interested in, or financially or otherwise assist any person, firm, or corporation in entering into, developing, or carrying on any business which should consist in whole or in part of or relate to manufacturing or dealing in needles, awls, or drivers. The business has been discontinued.

In June, 1904, defendants in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey,
1285 acquired the business and assets of William B. Arnold and of Arnold Machine & Supply Company, North Abington, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate commerce, of cementing machines and devices used in the manufacture of boots and shoes, for $500 cash and royalties on each machine thereafter manufactured by said United Company during the life of the patents transferred. For the same consideration defendants required and took from the said Arnold covenants that he would not, at any time within 15 years, directly or indirectly, enter into or be engaged in, or financially or otherwise assist any person, firm, or corporation in entering into, developing, or carrying on any business consisting in whole or in part of or relating to the manufacture or dealing in cementing machines or devices, or de-

veloping or exploiting any invention relating to such machinery or devices; and, for the same consideration defendants required and took from said Arnold covenants to convey to said United Shoe Machinery Company and its successors all inventions and improvements which he should make, acquire, or take over thereafter, within 15 years, relating to any such machinery or devices.

In October, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Irving E. Booth and Quentin W. Booth, copartners,
doing business under the firm name of Booth Brothers, at
1286 Rochester, N. Y., an assignment of their business in the United
States and Canada relating to perforating machines, for $2,400 in cash and a royalty of $15 to be paid for each machine sold by defendants in the United States and $10 for each machine sold by them in Canada, the said royalties to continue until they should aggregate $7,600, whereupon all interest of the vendors in the said inventions should cease. The vendors agreed that neither of them would engage in the manufacture or sale of any perforating machines or become interested in any manner whatsoever in any such machines during the terms of the patents assigned to defendants.

In October, 1904, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired from Leopold J. Courteau, of Brockton, Mass., an assignment of all his inventions and devices, including all letters patent relating to machines and mechanisms for holding the linings of shoes during the process of pasting the outer leather to the lining. The consideration therefor was 10 per cent of the net selling price of each machine or the payment of $1,000 in cash. For the same consideration, defendants required and took from the vendor covenants that he would convey to defendants all inventions, improvements, or letters patent of the United States and of any and all foreign countries, and any and all right, title, or interest in such inventions,
1287 improvements, and letters patent which he should at any
time thereafter within 15 years own or possess, or in which he should have any interest whatsoever relating to mechanisms or devices for handling or holding the linings of shoes.

In November, 1905, defendants, in pursuance of their general purpose, acquired for $21,724 the business of Oscar A. Campbell and Samuel H. Nichols, copartners trading under the name of Brockton Supply Company, at Brockton, Mass., engaged in the manufacture, sale, and shipment in interstate commerce, of machines for pulling lasting tacks.

In January, 1906, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired control of the Business of The Smith Lacing Machine

Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate commerce of machines designed and used for lacing the uppers of boots and shoes prior to lasting, paying therefor $117,500, of which $50,000 was paid in cash and the balance was to be paid in royalties on machines thereafter manufactured and sold by defendants in the United States and in foreign countries. The vendors agreed to transact no further business and to liquidate the affairs of the corporation.

In January, 1906, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired control of the business of Metallic Heel & Counter
1288 Company, Boston, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate and foreign commerce, of metallic heels and counters. The purchase price was $119,820, of which $52,320 was paid in cash and the balance was to be paid in royalties on machines thereafter manufactured and sold in this and in foreign countries. The vendors agreed to transact no further business and to liquidate the affairs of the corporation.

In September, 1906, defendants, in pursuance of their general purpose, through United-Xpedite Finishing Company, a corporation of Maine, acquired, for $12,500 cash, from Zotique Beaudry, Lynn, Mass., his inventions and improvements relating to machines and parts thereof for burnishing and finishing the heels of boots and shoes. For the same consideration, defendants required and took from the vendor covenants that all inventions, improvements, and letters patent and interests or rights therein, relating to heel-burnishing machinery, methods, and devices which he should thereafter make, own, or acquire or obtain any interest in should be disclosed to defendants, and that the vendor would not within a period of 15 years engage, directly or indirectly, in making, developing, or exploiting any improvements in heel-burnishing machinery, methods, or devices, or entering into, developing or carrying on any business which should consist in whole or in part of manufacturing, or in any way
1289 dealing in machinery or mechanisms for finishing or burnishing the heels of boots and shoes.

In November, 1907, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $71,284, the entire business of Irving E. Booth and Quentin W. Booth, operating under the trade name of "Booth Brothers," Rochester, N. Y., engaged in the manufacture, sale, and shipment in interstate and foreign commerce, of machinery, tools, mechanisms, devices, findings, materials, and supplies used in the manufacture of boots and shoes. Defendants required and took from the vendors covenants that neither of them would directly or in-

directly engage or become interested in the manufacture or sale of machinery relating to the manufacture of boots or shoes, within 15 years, and that they would not, directly or indirectly, financially or otherwise, encourage or assist, or in any way influence or advise any other person, firm, or corporation to engage in any such business in competition with defendants. By agreement, a corporation, Booth Brothers Company, was formed under the laws of New York, with an authorized capital of $25,000 (all of which is owned by United Shoe Machinery Company, of New Jersey), which took over the business of the old concern. Defendants control the election of its officers and directors, and its business is carried on without competition with any of them. Defendant Sidney W. Winslow is its
1290 president. It operates a manufacturing plant at Rochester, N. Y., and is engaged in interstate and foreign trade and commerce in shoe machinery.

In December, 1908, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $80,000, from William B. Rice, Harry L. Rice, and John H. Richardson all the property and business of Richardson Shoe Machinery Company, Lynn, Mass., a corporation of Maine, engaged in the manufacture, sale, and shipment in interstate commerce, of machines known to the trade as "McKay sewing machines," and machines designed and used for cutting or dieing out leather and other materials used in the manufacture of boots and shoes, including machines known to the trade as "clicking machines." The vendors and each of them agreed that they would not, for a period of 10 years, either directly or indirectly, enter into or become interested in, or financially or otherwise assist any other person, firm or corporation in entering into, engaging in, developing, or carrying on the manufacturing of or dealing in any machinery which shall, directly or indirectly, interfere or compete with the business carried on by defendants; and they further agreed that they would convey, for the same consideration, to said United Shoe Machinery Company all inventions, improvements, letters patent, and interests and rights therein which they should make,
1291 acquire, own, or have any right to acquire or take over relating to any such machinery within said period of time. The plant has been closed.

In December, 1908, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, entered into an agreement with John H. Richardson, referred to above in connection with the acquisition of the business of Richardson Shoe Machinery Company, for his employment by said United Shoe Machinery Company, for a period of one year, at an annual

salary of $2,500. For the same consideration, defendants required and took from said Richardson covenants that he would not, within a period of 10 years after the expiration of such employment, engage, directly or indirectly, in competition with defendants in the business of dealing in any machinery, mechanisms, tools, or devices designed or adapted for use in the manufacture of boots or shoes or in the manipulation or working of leather; and that he would convey to defendants all inventions and improvements which he should make or acquire, relating in any way to machinery used in the manufacture of boots and shoes, and all letters patent, both of the United States and of any and all other countries, covering the same, within 10 years after the termination of his employment by said United Shoe Machinery Company.

In April, 1908, defendants, in pursuance of their general
1292 purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $16,883 cash, from Edward Hobart, control of the shoe-machinery business of Carver Cotton Gin Company, East Bridgewater, Mass., a corporation of Massachusetts, engaged in the manufacture and in interstate and foreign trade and commerce in the sale and shipment, of machines, mechanisms, tools, and devices used in the manufacture of boots and shoes. For the same consideration, defendants required and took from the vendors covenants that neither of them would at any time within 15 years, directly or indirectly, engage in or financially or otherwise assist any other person, firm, or corporation in entering into, developing, or carrying on any business relating in whole or in part to manufacturing, selling, or otherwise dealing in any machinery, tools, mechanisms, or devices used in the manufacture of boots and shoes, or in any other business which would in any way interfere or compete with defendants.

In January, 1909, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $11,500 cash, from Harry L. Rice and Fred La Chappelle, Lynn, Mass., their inventions and improvements relating to machinery, mechanisms, and devices for forming chain stitches and chain-stitch seams, and machines, mechanisms, and devices
1293 used for attaching the welts of boots and shoes. Defendants required and took from the vendors covenants that they would convey for the same consideration to said United Shoe Machinery Company all inventions, improvements, letters patent, and interests and rights therein which they, or either of them, should at any time within 10 years make, acquire, own, or have any right, by agreement or otherwise, to acquire or take over, relating to any methods, machinery, mechanisms, tools, or devices intended for use in the manu-

facture of boots and shoes, and that neither of them would, directly or indirectly, engage in any business which would interfere or compete with the business of defendants.

In February, 1910, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $125,000 cash, from W. Eugene Ellis and Everett D. Chadwick all of the capital stock and business of Ellis Lacer Company, Haverhill, Mass., a corporation of Maine, engaged in the manufacture and in interstate trade and commerce in the sale and shipment of machinery and mechanisms designed and used for temporarily securing the tops of lace shoes while the same are being lasted, the said device being known to the trade as the "Ellis Lacer." Defendants required and took from the vendors covenants that they would not, directly or indirectly, engage in any business in competition with defendants, and that they would convey to defend-
1294 ants, without additional consideration, all inventions and letters patent of the United States and of all other countries which they or either of them might make or acquire at any time within five years.

In February, 1910, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $60,000 cash, from Alexander H. Lewis, Alfred J. Becht, Morris McGrew, Samuel J. Wentworth, Pearl J. Wentworth, Jesse S. Wentworth, and Bayard L. Kilgour all of the capital stock and business of The Wentworth Company, Cincinnati, Ohio, a corporation of Ohio, engaged in the manufacture and in interstate and foreign trade and commerce in the sale and shipment of machines used in the manufacture of boots and shoes. Defendants required and took from the vendors covenants, in substance, that neither of them would, directly or indirectly, at any time within 10 years, engage in the business of manufacturing, developing, or exploiting any machinery or devices that would in any way compete or interfere with the business of said United Shoe Machinery Company.

In February, 1910, defendants, in pursuance of their general purpose, acquired, for $52,185, from B. F. Sturtevant Company, Boston, Mass., a corporation of Massachusetts, its business of manufacturing and dealing in peg wood and wood shanks used in the manufacture of boots and shoes.

1295 In September, 1910, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired the business of Thomas G. Plant, who was engaged in the manufacture of machines designed and adapted for use in performing all the principal operations in the manufacture of boots and shoes which can be performed by the aid and use of machinery.

For at least two years immediately preceding September, 1910, said Plant had invented, and had taken out letters patent of the United States and of foreign countries covering the same, machines designed and adapted for performing all the principal operations in the manufacture of boots and shoes. Among such machines, which are too numerous to be referred to specifically in this petition, were lasting machines, welt-sewing machines, and outsole-stitching machines, heeling machines, metallic-fastening machines, and many others. On or about May 1, 1910, the said Plant installed in the shoe factory of Thomas G. Plant Company, a corporation of New Jersey, issued capital $3,750,000, with its factory and principal offices at Boston, Mass., with a daily capacity of 17,000 pairs of shoes, a complete set of the machines so owned and controlled by him, the said Plant being the owner or in control of a majority of the capital stock of the Plant Company. For several years prior to the installation and use in the factory of the Plant Company of the machines
owned and controlled by Thomas G. Plant, defendants,
1296 through United Shoe Machinery Company, of New Jersey,
or some one or more of the corporations owned and controlled by them, had furnished and supplied all of the principal machines used in the factory of the Plant Company in the manufacture of boots and shoes. Upon the installation in said factory of the machines owned and controlled by Plant, the officials of that company caused the machines owned and controlled by defendants to be dismantled and removed and discontinued the payment of royalties on the same.

Thereupon defendants instituted proceedings against Thomas G. Plant Company in the Supreme Judicial Court of Massachusetts, in which United Shoe Machinery Company, of New Jersey, was the party plaintiff, to enjoin the Plant Company from using the machines which had been supplied to it by Thomas G. Plant; to enjoin said Plant from supplying or furnishing to the Plant Company other machines to be used in the place of machines owned and controlled by defendants, and to recover rents and royalties on defendants' machines during the period that Plant's machines had been used in the factory of the Plant Company. This proceeding was never prosecuted to a final determination for the reasons hereinafter stated.

Thomas G. Plant had advertised extensively, through the public press and otherwise, for several months prior to September, 1910, the
machines which he had invented for use in the manufacture of
1297 boots and shoes, and had solicited among shoe manufacturers,
in various parts of the United States orders for the sale and lease of such machines. Plant, however, experienced difficulty in obtaining orders for his machines on account of the arbitrary, op-

pressive, unreasonable, and unlawful lease and license agreements, containing exclusive use and tying provisions, hereinbefore mentioned and described, which defendants had theretofore required boot and shoe manufacturers to sign, in order to obtain machines from defendants, and under which such manufacturers then held all of the essential machines necessary in the manufacture of boots and shoes. However, a concerted effort was made by a number of prominent boot and shoe manufacturers engaged in business in various States of the United States to acquire the inventions and machines owned and controlled by Plant, or an interest therein. Among such boot and shoe manufacturers who were so interested were Roberts, Johnson & Rand Shoe Company, St. Louis, Mo.; Hamilton-Brown Shoe Company, St. Louis, Mo.; Peters Shoe Company, St. Louis, Mo.; Brown Shoe Company, St. Louis, Mo.; Florsheim Shoe Company, Chicago, Ill.; Selz, Schwab & Company, Chicago, Ill., and Commonwealth Shoe & Leather Company, Boston, Mass.

Representatives of the above companies on September 22, 1910, were in Boston, Mass., in conference with Thomas G. Plant with a view to either purchasing an interest in his inventions and
1298 machines or to make some arrangement which would enable them to obtain machines for use in their factories, and thereby be relieved from the domination and control of defendants. Defendants, being advised of the purpose and intent of said boot and shoe manufacturers, and well knowing that if any arrangement were made between them and Thomas G. Plant whereby they could obtain for use in their factories machines not owned and controlled by defendants, such action would result in defendants' machines being dismantled and removed, as had been done in the factory of the Plant Company, and that competition would be created in the sale, lease, and use of such machines, defendants, for the purpose of preventing such competition and to monopolize trade and commerce in shoe machinery, on or about September 23, 1910, entered into agreements with said Plant whereby they acquired all the inventions, letters patent of the United States and of all foreign countries, relating thereto, together with all machinery, mechanisms, tools, and devices owned and controlled by said Plant, designed and adapted for use in the manufacture of boots and shoes; and defendants acquired also the holdings of the capital stock, which constituted a majority thereof, which the said Plant owned and controlled in said Thomas G. Plant Company. The issued capital stock of said Thomas G. Plant Company is $3,750,000, of which defendants acquired $2,250,000. For the inventions, improvements, letters patent of the United
1299 States and foreign countries, machines, machinery, mechanisms, and devices designed and used in the manufacture of boots an dshoes, including the $2,250,000 of capital stock of said

Thomas G. Plant Company, defendants paid Thomas G. Plant $6,000,000, part in cash and part in stock of defendant corporations.

For the purpose of maintaining their monopoly, defendants required and took from said Plant covenants, in substance, that he should assign, transfer, set over, and deliver to defendants all inventions, improvements, letters patent of the United States and of foreign countries, applications for letters patent, and interest and rights therein, which he might make, own, or acquire, within 15 years thereafter, relating to the manufacture of boots and shoes, or to machinery, mechanisms, tools, or devices, processes, methods, or things intended or adapted for use in the manufacture of footwear, or in the working or manipulation of leather, or relating to eyelets or footwear findings of any description whatsoever, or to the manufacture thereof, together with any and all rights which the said Plant might, within said period, by agreement or otherwise, acquire or take over, covering any such inventions, improvements, letters patent of the United States and of other countries, applications for letters patent, and interest and rights therein.

In November, 1910, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey,
acquired from Adam H. Prenzel, of Halifax, Pa., all of his
1300 inventions and letters patent of the United States and of
all other countries relating to certain machines used in the manufacture of turned shoes, for $8,000 cash, and 25 per cent of all royalties on machines manufactured by defendants under the letters patent acquired from the vendor, until they shall have aggregated $75,000, although there was no obligation on the part of the vendee to manufacture any machines. Defendants required and took from the vendor, for the same consideration, covenants that he would convey to them all inventions, improvements, and letters patent of the United States and of any and all other countries which he should acquire or take over thereafter, relating to the class of machines covered by the agreement.

In December, 1910, defendants, in pursuance of their general purpose, through United Shoe Machinery Company, of New Jersey, acquired, for $25,000 in cash, the business of Maurice V. Bresnahan, William H. Bresnahan, and John J. Donlan, doing business under the firm name of M. V. Bresnahan & Company, at Lynn, Mass., engaged in the manufacture and in interstate trade and commerce in the sale and shipment of machines, tools, mechanisms, and devices designed and used in the manufacture of boots and shoes. The vendors agreed to enter the employ of the vendee. Defendants required and took from the vendors covenants that neither of them
should engage in, directly or indirectly, within 10 years after
1301 the termination of their employment, or financially or other-

wise assist any person, firm, or corporation to enter into, develop or carry on any business in any way relating to or pertaining to manufacturing, selling, or otherwise dealing in any machinery, mechanisms, tools, or devices adapted for use in the manufacture of boots and shoes, or in any business which would in any way interfere or compete with the business of said United Company; and they and each of them further agreed to convey to said United Company, for the same consideration, all inventions, improvements, letters patent, and applications therefor which they should make or acquire, or have an interest in, at any time within 10 years after the termination of said employment agreement relating to shoe machinery. The plant has been closed.

In April, 1911, defendants, in pursuance of their general purpose, through United Shoes Machinery Company, of New Jersey, acquired, for approximately $122,735 cash, the business of Charles P. Stanbon, doing business under the name of Charles P. Stanbon & Company, Lynn, Mass., long engaged in interstate trade and commerce in the manufacture, sale, and lease of machines, tools, mechanisms, and devices designed and used in the manufacture of boots and shoes. The vendor agreed to enter the employ of said United Shoe Machinery Company.

Since the organization of United Shoe Machinery Com-
1302 pany, of New Jersey, as aforesaid, and the acquisition through it of the properties of the various individuals and corporations as aforesaid defendants' entire business has been and now is conducted under one control, and in perfect harmony, and the competition which previously existed between said several concerns has been entirely destroyed.

VIII.

DOMINATION BY DEFENDANTS OF FOREIGN TRADE AND COMMERCE IN SHOE MACHINERY.

In addition to the foregoing, defendants, through United Shoe Machinery Company, of New Jersey, by the purchase of all or a controlling interest in the business of a number of individuals and corporations engaged in the shoe machinery business in foreign countries, by the organization of other corporations and the ownership of their capital stock, and by contracts, agreements, and combinations with such corporations, have restrained and monopolized, and now restrain and monopolize, trade and commerce in shoe machinery between this and foreign countries; the principal countries whose commerce with the United States is thus restrained and monopolized being as follows: Great Britain and Ireland, through a combination with the British United Shoe Machinery Company (Ltd.), a corporation or-

ganized under the laws of Great Britain; Norway, Sweden, and Denmark, through a combination with Aktieselskabet United Shoe
1303 Machinery Company of Copenhagen, a corporation organized under the laws of Denmark; the Dominion of Canada, through a combination with United Shoe Machinery Company of Canada, a corporation organized under the laws of the State of New Jersey; Germany, Austria, and Russia, through a combination with Deutsche Vereinigte Schuhmaschinen Gesellschaft G. m. b. H., a corporation organized under the laws of Germany; France, through a combination with United Shoe Machinery Company de France, a corporation organized under the laws of the Republic of France; Switzerland, through a combination with Schweiz. Vereinigte Schuhmaschinen A.-G., a corporation organized under the laws of Switzerland; Spain and Portugal, through a combination with the United Shoe Machinery Company, of Connecticut, a corporation organized under the laws of the State of Connecticut; the various States of South America, through a combination with the United Shoe Machinery Company of South America, a corporation organized under the laws of the State of Maine; and Mexico, through the United Shoe Machinery Company of Mexico, a corporation organized under the laws of the State of Maine.

Defendants maintain and operate factories at divers places in the United States and in foreign countries, and, among others, at Beverly, Brockton, West Medway, and New Bedford, Mass.; New York and Rochester, N. Y.; Cincinnati, Ohio; Manchester, N. H.; Seymour and Ansonia, Conn.; Montreal, Canada; Leicester,
1304 England; and Ivry sur Seine, France. The manufactured output of all the defendants is advertised, sold, leased, and transported to their agents, purchasers, and lessees throughout the various States of the United States and abroad as a part of interstate and foreign commerce.

IX.

ORGANIZATION OF UNITED SHOE MACHINERY CORPORATION, ITS PURPOSES, AND OPERATIONS.

For some time prior to April, 1905, defendants had under consideration the question of distributing among the holders of common stock of United Shoe Machinery Company, of New Jersey, a portion of the accumulated profits of that company, in addition to the regular dividends theretofore paid. To provide means therefor, and to secure better facilities for destroying competition and restraining and monopolizing interstate and foreign trade and commerce in shoe machinery, the directors, officers, and stockholders of

United Shoe Machinery Company, of New Jersey, caused to be organized, in May, 1905, under the laws of New Jersey, United Shoe Machinery Corporation with an authorized capital of $50,000,000 ($15,000,000 preferred, $35,000,000 common).

The objects of this corporation are declared in its charter to be not only to manufacture, sell, and lease shoe machinery, but to engage in practically every conceivable line of human industry and mercantile pursuits.

1305 United Shoe Machinery Corporation, shortly after its organization, acquired substantially all of the capital stock, preferred and common, of United Shoe Machinery Company, of New Jersey, giving therefor one share of the preferred stock of the corporation and 37½ cents in cash for each share of preferred, and one and one-half shares of its common stock and 75 cents in cash for each share of common stock, of United Shoe Machinery Company, of New Jersey. The dividends thus distributed among the common-stock holders amounted to about $5,360,404 in stock and about $321,624 in cash. At the time of the organization of United Shoe Machinery Corporation, United Shoe Machinery Company, of New Jersey, had an issued capital stock of $20,657,894 ($9,937,084.50 preferred, $10,720,809.50 common). By the issue of one and one-half shares of the common stock of United Shoe Machinery Corporation for each share of common stock of United Shoe Machinery Company, of New Jersey, the corporation required an issued capital stock of $26,018,298.75 ($9,937,084.50 preferred, $16,081,214.25 common).

The business of United Shoe Machinery Corporation has been confined to holding the stock of United Shoe Machinery Company, of New Jersey, and financing said company and its subsidiaries. United Shoe Machinery Company, of New Jersey, has continued as an operating company. Its officers and directors always have been and now are the officers and directors of United Shoe Ma-

1306 chinery Corporation. United Shoe Machinery Corporation and United Shoe Machinery Company, of New Jersey, acting directly in the name of either or both of them, or through other defendant corporations, own a controlling interest in the capital stock of all the other corporate defendants, except Boston Blacking Company, and dictate the election of their officers and directors, and dominate and control the conduct of their business and affairs. All of them are engaged in interstate trade and commerce, and many of them in foreign trade and commerce, in the sale, lease, and shipment of shoe machinery, and by agreement each one refrains from competing with each and every one of the others, and all have cooperated and are now cooperating for the purpose of securing the retirement from the shoe machinery business, except in association with them as employees or otherwise, of all successful, capable persons engaged

therein, to exclude all others therefrom, to destroy competition therein, and to monopolize the same for their own use and benefit to the detriment of the boot and shoe manufacturers engaged in business throughout the United States and of the public generally.

X.

PROFITS.

As the result of the unlawful contracts, combinations, conspiracies, and monopolies heretofore detailed defendants and others connected and associated with them have made enormous and
1307 unreasonable profits, the extent of which can not with accuracy be stated because, among other things, of the large number of associated corporations, the manipulations of securities, and the excessive valuation of properties for which stock was given in exchange.

United Shoe Machinery Company, of New Jersey, after it took over, in 1899, the properties and businesses of the old concerns, began business with an issued capital stock of $17,318,425 ($8,657,700 preferred, $8,660,725 common), and a surplus of about $500,000 in cash. That company sold stock for cash, during the period from 1899 to May, 1905, when its stock was taken over by United Shoe Machinery Corporation, amounting approximately to $3,000,000. During that period it paid dividends of 6 per cent on its preferred, aggregating about $3,466,085, and on its common stock 8 per cent, aggregating about $4,837,939, and accumulated a surplus of approximately $6,710,914.

From its organization in 1905 to July, 1911, United Shoe Machinery Corporation has paid 6 per cent per annum on its preferred stock (aggregating about $5,700,000) and has paid in stock dividends to its holders of common stock about $9,167,780 and approximately $11,000,000 in cash, or a total of about $20,167,780 as dividends to common-stock holders.

In May, 1905, United Shoe Machinery Company, of New Jersey, had a surplus of approximately $6,710,914. On March 1, 1911,
1308 that company's surplus was approximately $20,669,799, and that of United Shoe Machinery Corporation about $5,787,596, or a total of $26,457,395. Deducting the surplus of $6,710,914 which United Shoe Machinery Company, of New Jersey, had in 1905, their reports to stockholders show that the net earnings of the two companies since March 1, 1905, amount to approximately $45,314,261, or more than 37 per cent per annum on an actual investment of not exceeding $20,000,000.

XI.

EFFECT OF DEFENDANTS' UNLAWFUL AGREEMENTS, COMBINATIONS, AND CONSPIRACIES.

By virtue of the unlawful contracts and combinations above described defendants control all the large and important establishments in the United States which were formerly engaged in the manufacture, sale, and lease of machines designed and used for attaching the bottoms to the uppers of boots and shoes, and kindred and auxiliary machines; they have obligated scores of successful shoe machinery men to refrain from trade and commerce therein and have acquired a monopoly of interstate and foreign trade and commerce in shoe machinery, and have become so powerful that successful competition therein with them by any concern is practically impossible.

The extent of their monopoly is indicated by the fact that they now control more than 98 per cent of the manufacture, sale,
1309 and lease of all the essential and kindred and auxiliary machines and devices manufactured and used in the United States for attaching the bottoms to the uppers of boots and shoes; and they have it within their power to double or treble the royalties for the use of their machines whenever they may deem such action advisable.

XII.

CONCLUSION.

The acts of defendants, hereinbefore described are violative of the said act of Congress approved July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," in this:

1st. The organization of United Shoe Machinery Company, of New Jersey, by a consolidation of the properties and businesses of the several companies mentioned, was unlawful, because some of said companies were engaged in interstate and foreign trade and commerce in a line of business competing with that of others of said companies, which competition was thereby destroyed, and it was intended by the individuals who originated and perfected said plan of organization that all competition between the component companies should be destroyed, and it was further intended by the consolidation of the ownership of the principal lines of shoe machinery to create a dominating and irresistible power in the entire shoe
1310 machinery business, and to use that power, in the manner herein described, to monopolize interstate and foreign trade and commerce in shoe machinery, all of which has been fully consummated.

2nd. The various provisions in the leases and license agreements heretofore described are unlawful in this:

(a) It was not lawful for the lessor to exact of the lessee (i) a covenant that the lessee should use exclusively machines of the lessor to perform the same kind of work as that performed by the leased machine; (ii) a covenant that the lessee would use in accomplishing work other than that for which the leased machine was designed only machines controlled or leased by the lessor; (iii) a condition that should the lessee violate either of the covenants mentioned the lessee would thereby forfeit the use, not only of the machine leased, but other machines, both those designed to accomplish the same work as the leased machine and those designed to accomplish work entirely different; (iv) a covenant that the lessee should use the leased machine for seventeen years.

(b) All of the covenants and conditions above described in paragraph (a) are unlawful, regardless of whether the leased machines, mechanisms, or devices are protected by valid letters patent; in a number of instances the basic patents on the leased machines expired after the execution and before the termination of the lease
1311 and license agreements, and in others, the machines were not protected by valid basic patents when leased.

(c) The covenants and conditions appearing in the various lease and license agreements, examples of which are appended hereto, as exhibits, were and are required in pursuance of the general intent and purpose of defendants to restrain interstate and foreign trade and commerce and to monopolize the same, and are one of the most effective parts of the scheme initiated by the contracts and conspiracy to organize United Shoe Machinery Company, of New Jersey, and continued to the present time by the acquisition of the properties of competing companies and by the other acts heretofore described.

3rd. The acquisition by defendants, operating through United Shoe Machinery Company, of New Jersey, of the properties and business, or the controlling influence over the properties and business, of each and every one of the individuals and corporations heretofore described, was unlawful, because made with an intent, and in pursuance of a combination and conspiracy, to restrain and monopolize interstate and foreign trade and commerce, and did in fact restrain and monopolize the same.

4th. The other unfair and oppressive acts heretofore described were unlawful because made with the intent and as a part of a scheme to restrain and monopolize interstate and foreign trade
1312 and commerce, and because they did in fact restrain and monopolize the same; and said acts being unfair and oppressive,

and committed for an unlawful purpose, render the entire scheme of which they were a part unlawful.

5th. The organization, as described, of United Shoe Machinery Corporation and the acquisition by it of the capital stock of United Shoe Machinery Company, of New Jersey, was and is unlawful because done to better enable defendants to expand their business in shoe machinery and to render their restraint upon and monopoly of interstate and foreign trade and commerce in such business the more complete and effectual.

Complainant therefore alleges that the contracts and agreements by which United Shoe Machinery Company, of New Jersey, was organized and every contract and agreement by which it has acquired the business and properties of former competing concerns since its organization were and are unlawful, and that the continued existence of United Shoe Machinery Company, of New Jersey, and of United Shoe Machinery Corporation, and of the combinations and agreements between them and the several individual and corporate defendants, is an open defiance of the law, and that said organizations should be dissolved, and said contracts, combinations, and conspiracies should be declared null and void in order that the normal condition of competition in interstate and foreign trade and commerce in shoe machinery may be restored.

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XIII.

PRAYER.

Inasmuch as adequate remedy in the premises only can be obtained in equity, your petitioner prays your honors—

1. To order, adjudge, and decree that the contracts, combinations, and conspiracies hereinbefore described are unlawful and that all acts done or to be done in furtherance of the same are in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and that the defendants, and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, be perpetually enjoined and restrained from doing any act in pursuance of or for the purpose of carrying out the same.

2. That this court adjudge and decree that all lease and license agreements containing like or similar exclusive-use and tying provisions, as are contained in the forms hereto appended, which defendants have devised, adopted, and used, and are now using, and which are now in force, be declared illegal and void, and that the defendants, and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, be perpetually enjoined and

restrained from enforcing or attempting to enforce any of the exclusive-use and tying provisions of such lease and license
1314 agreements, or of any lease and license agreements of like or similar character which defendants have used and are now using and which are now in force.

3. That defendants, and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, be perpetually enjoined and restrained from making or enforcing any contracts, arrangements, agreements, or requirements with boot or shoe manufacturers to purchase or lease from said defendants either lasting machines, welt-sewing machines, or outsole-stitching machines, heeling machines, lacing machines, eyeletting machines, pulling-over machines, clicking machines, auxiliary machines, finishing machines, or pegging machines, or any other machines, mechanisms, tools, or devices, or any of them, owned and controlled by defendants, by which such boot and shoe manufacturers are compelled to purchase or lease any one or more of the above-named machines, or any other machines, mechanisms, tools, or devices, from said defendants, as a condition to the purchase or lease or supply of any other or all of said machines, or of any other machines, mechanisms, tools, or devices, or of any of them; and that defendants, and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, be perpetually enjoined and restrained from discriminating against any boot or shoe manufacturer desiring to purchase or lease any of said machines, or any other machines, mecha-
1315 nisms, tools, or devices, or any of them, because of the fact that such boot or shoe manufacturer purchases or leases any one or more of said machines from others.

4. That defendants, and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, be perpetually enjoined and restrained from making discounts or granting rebates, either by way of reduction of royalties on machines leased and licensed by them, or by cash discounts, or by any other scheme or device whatsoever, to boot or shoe manufacturers, to use exclusively, or as an inducement to them to use exclusively machines, mechanisms, tools, or devices, or any of them, owned and controlled by defendants.

5. That the court order, adjudge, and decree that United Shoe Machinery Corporation and United Shoe Machinery Company, of New Jersey, is each a combination in restraint of interstate and foreign trade and commerce, and that each has attempted and is attempting to monopolize, is in combination and conspiracy with other persons and corporations to monopolize, and has monopolized, part of the trade and commerce among the several States of the United States and with foreign nations, and order, adjudge, and

decree that each of them be restrained from engaging in interstate or foreign commerce, and that each of them be dissolved and sepa-
1316 rated into such parts that no one of them will constitute a monopoly or can become a monopoly of the shoe machinery business, or, if the court should be of the opinion that the public interest will be better subserved thereby, that receivers be appointed to take possession of all the property, assets, business, and affairs of said defendants and wind up the same, and otherwise take such course in regard thereto as will bring about conditions in trade and commerce among the States and with foreign nations in harmony with law.

6. That the holding of stock by one of the defendant corporations in another under the circumstances shown be declared illegal, and that each of them be enjoined from continuing to hold or own such shares in another and from exercising any right in connection therewith.

7. That defendants, and each of them, be enjoined from continuing to carry out the purposes of the above-described contracts, combinations, conspiracies, attempts to monopolize, and monopolies by the means herein described, or by any other, and be required to desist and withdraw from all connection with the same.

8. That petitioner have such other, further, and general relief as may be proper.

9. To the end, therefore, that the United States of America may obtain the relief to which it is justly entitled in the premises, may it please your honors to grant unto it writs of subpœna di-
1317 rected to the said defendants, United Shoe Machinery Company, of New Jersey, United Shoe Machinery Corporation, United Shoe Machinery Company, of Maine, United Shoe Repairing Machine Company, United-Xpedite Finishing Company, United Awl & Needle Company, United Fast Color Eyelet Company, O. A. Miller Treeing Machine Company, W. W. Cross & Company, Inc., S. A. Felton & Son Company, Campbell-Bosworth Machinery Company, Boston Blacking Company, J. C. Rhodes & Company, Inc.; The Rimmon Eyelet Company, Ross-Moyer Manufacturing Company, J. K. Krieg Company, Booth Brothers Company, S. O. & C. Corporation, Ellis Lacer Company, Thomas G. Plant Company, Sidney W. Winslow, William Barbour, Wallace F. Robinson, George W. Brown, Edward P. Hurd, John H. Connor, Louis A. Coolidge, Edwin P. Brown, Frank L. Babbott, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, Alfred R. Turner, Samuel Weil, Frank Wood, William Woodward, Harold G. Donham, and Edward N. Chase, and each and every one of them, commanding them, and each of them, to appear herein and answer, but not under oath (answer under oath being hereby expressly waived), the

allegations contained in the foregoing petition and abide by and perform such orders and decree as the court may make in the premises, and pending a final hearing of this case cause a tempo-
1318 rary restraining order to issue enjoining the defendants, and each of them, and each of their officers, agents, and servants, as hereinbefore prayed.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
GEO. W. WICKERSHAM,
Attorney General.
J. A. FOWLER,
Assistant to the Attorney General.
WILLIAM S. GREGG,
Special Assistant to the Attorney General.

1320 District Court of the United States, District of Massachusetts.

UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY OF NEW JERSEY et al.	In Equity.—No. 301 (C.C.911).

Joint and several answer of the defendants Sidney W. Winslow, William Barbour, Wallace F. Robinson, George W. Brown, Edward P. Hurd, John H. Connor, Louis A. Coolidge, Edwin P. Brown, Frank L. Babbott, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, Alfred R. Turner, Samuel Weil, Frank Wood, William Woodward.

[Filed April 1, 1912.]

These defendants, jointly and severally, now, and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants for answer say:

I. These defendants admit that they were at the time of the filing of the bill and now are directors of the United Shoe
1321 Machinery of New Jersey and the United Shoe Machinery Corporation, as alleged on pages 6 and 7 of said bill, except

[NOTE.—Pages 1 to 223, inclusive, comprise petition of United States of America, Petitioner, in this case, filed in Circuit Court December 12, 1911, and is bound in a separate volume.]

they say that defendant Frank L. Babbott was not at the time of the filing of the bill and is not now a director of either of said corporations.

II. These defendants further admit that Sidney W. Winslow was, at the time of the filing of the bill, and now is, president and director of the respective corporations of which he is alleged in said bill, at page 7, to be the president and director.

These defendants admit that William Barbour was, at the time of the filing of the bill, and now is, vice president and director, respectively, of the respective corporations of which he is alleged in said bill, at page 7, to be the vice president and director.

These defendants admit that George W. Brown was, at the time of filing of the bill, and now is, vice president and director, respectively, of the respective corporations of which he is alleged in said bill, at page 8, to be the vice president and director.

These defendants admit that Edward P. Hurd was, at the time of the filing of the bill, and now is, vice president and director, respectively, of the respective corporations of which he is alleged in said bill, at page 8, to be the vice president and director.

These defendants admit that Louis A. Coolidge was, at the time of the filing of the bill, and now is, a director of the corporations of which he is alleged in said bill, at pages 8 and 9, to be a director.

These defendants admit that Edwin P. Brown was, at the time of the filing of the bill, and now is, a director of the corporation of which he is alleged in said bill, at page 9, to be a director.

These defendants further admit the respective residences of each of the said defendants as set forth on pages 9 and 10 of said bill.

III. These defendants jointly and severally deny every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly deny each and every allegation, item, and particular contained in the first twelve sections of the petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

1322 IV. Further answering, these defendants jointly and severally say that the United Shoe Machinery Company of New Jersey was organized under the laws of the State of New Jersey in February, 1899, and more than twelve years prior to the bringing of this petition, for the purposes and with the powers set forth and contained in its charter, among which are the following:

"To manufacture, buy, sell, lease, operate, and deal in and with all kinds of machinery, tools and implements, and mechanical devices and contrivances of every name and nature whatsoever, and especially to manufacture, buy, sell, lease, operate, and deal in and

with all sorts of boot and shoe machinery and every kind of mechanism, contrivance, implement, tool, material, or thing in any way whatsoever connected with or useful in connection with the manufacture of boots, shoes, and footwear or the manufacture of leather and rubber goods, or goods made from materials and fabrics of any description whatsoever, or useful in connection with the manufacture or operation of any of the machinery, mechanical devices, or contrivances hereinbefore mentioned: to produce, prepare, and manufacture, buy, sell, and deal in and with leather and rubber, and materials and fabrics of all sorts, and the raw materials from which said leather, rubber materials, or fabrics are produced: to manufacture, buy, sell, and deal in and with boots, shoes, and footwear and all articles and things of every description that may be produced or manufactured, in whole or in part, from leather, rubber, or any other materials or fabrics; and in general to produce, prepare, manufacture, and deal in and with goods, wares, merchandise, property, materials, and things of every class and description. . . .

"To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, sell, assign, or otherwise dispose of any and all trade-marks, trade names, and distinctive marks, copyrights, and patent rights, and all inventions, improvements, and processes used in connection with or secured under letters patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trade-marks, patents, licenses, concessions, processes and the like."

and these defendants offer to produce at the trial of this case a certified copy of the said charter of said United Shoe Machinery Company of New Jersey, and make profert thereof.

V. Further answering, these defendants jointly and severally say that shortly after the organization of the United Shoe Machinery Company of New Jersey and pursuant to and in accordance
1323 with the terms of its said charter and more than twelve years prior to the bringing of this petition, said United Shoe Machinery Company of New Jersey acquired the capital stock, or a majority of the same, of the following corporations, organized under the laws of the State of Maine: Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company, Davey Pegging Machine Company, and the Goodyear Shoe Machinery Company of Canada, a corporation organized under the laws of the State of New Jersey; and thereafter acquired the business, assets, and letters patent of each of said corporations.

Each of said corporations, at the time of such acquisition, was engaged in an independent and noncompeting business, differing from that of any others of the said corporations.

Each of said corporations, except the Goodyear Shoe Machinery Company of Canada, the International Goodyear Shoe Machinery Company, and the International Eppler Welt Machine Company, at the time of such acquisition was engaged, under letters patent of the United States, in the manufacture of machines and parts thereof used in the manufacture of boots and shoes, and each of said corporations leased the machines so manufactured by it to shoe manufacturers, and licensed such shoe manufacturers to use the same under its said letters patent.

The Goodyear Shoe Machinery Company of Canada, the International Goodyear Shoe Machinery Company, and the International Eppler Welt Machine Company, at the time of such acquisition, were engaged, under letters patent of the foreign countries in which they did business, in the manufacture of machines and parts thereof used in the manufacture of boots and shoes, and each of said corporations, respectively, leased the machines so manufactured by it to shoe manufacturers and licensed such shoe manufacturers to use the same under its said letters patent.

VI. Further answering, these defendants jointly and severally say that the organization of the United Shoe Machinery Com-
1324 pany of New Jersey and its acquisition of the capital stock and businesses of said last-named corporations, as set forth in the two preceding paragraphs hereof, was simply the fusion of several corporations owning noncompeting, complementary machines covered by letters patent of the United States into one corporation, and was made with the expectation of an increase in business, economies in administration, and decrease in expenses, and cessation of patent litigation between the companies purchased, which had been expensive to them and annoying to shoe manufacturers, which results it was expected could be attained without increase of cost to the users of machinery made by the United Shoe Machinery Company of New Jersey, and that better attention to the care of the machines and assistance to the users could be afforded by the said United Shoe Machinery Company of New Jersey.

That said organization and acquisition was nothing more than the combination of various elements of machinery, all relating to the same art and the same school of manufactures, for the purpose of constructing economically and systematically and of furnishing a lessee the whole or any part of a gradually developed system of machines for use in the manufacture of shoes, and was and is in strict and normal compliance with modern trade progress.

VII. Further answering, these defendants jointly and severally say that since the organization of said United Shoe Machinery Company of New Jersey in 1899, said United Shoe Machinery Company of New Jersey has acquired from time to time, in the natural development and ordinary growth of its business, from various persons and corporations, various inventions, letters patent therefor, and businesses, in pursuance of the powers granted it under its said charter, all relating to the same art and the same school of manufactures, in order to better supply the demands of its lessees in accordance with the normal growth and development of its business. The greater part of said acquisitions are entirely new fields, having no connection with the machines originally acquired, owned, and manufactured by said United Shoe Machinery Company of New Jersey. Some of said acquisitions have more or less relation to
1325 the original lines of shoe machinery owned by said United Shoe Machinery Company of New Jersey, and were acquired by it for the purpose of compromising, settling, and avoiding expensive patent litigation, and for the purpose of protecting its lessees from suits for infringement of letters patent.

VIII. Further answering, these defendants jointly and severally say that the greater part of the business of said United Shoe Machinery Company of New Jersey consists in the manufacture, under letters patent of the United States, owned by it, of machines used in the manufacture of boots and shoes, and for the most part relating to the bottoming of boots and shoes, and in the leasing of machines so manufactured by it to shoe manufacturers, under licenses under said letters patent.

IX. Further answering, these defendants jointly and severally say that the greater part of the acts of said United Shoe Machinery Company of New Jersey complained of in said bill took place more than six years prior to the filing of said bill, and are barred by the statute of limitations.

X. Further answering, these defendants jointly and severally deny that they or either of them ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes, or in any other business, or that they or either of them ever monopolized or attempted to monopolize said interstate trade or commerce or said foreign trade or commerce, and these defendants further jointly and severally say that if said United Shoe Machinery Company of New Jersey is engaged in interstate trade and commerce—which they deny—and has any monopoly of such trade or commerce—which they deny—then these

defendants jointly and severally say that any such monopoly is a valid and legal monopoly of such trade and commerce derived under and pursuant to and coextensive with letters patent of the United States or of foreign countries owned by said United Shoe Machinery Company of New Jersey.

XI. Further answering, these defendants jointly and severally say that defendant, John H. Connor, became a director of the
1326 United Shoe Machinery Company of New Jersey on or about March 8, 1911; that defendant Edwin P. Brown became a director of the United Shoe Machinery Company of New Jersey on or about September 13, 1911; that defendant Louis A. Coolidge became a director of the United Shoe Machinery Company of New Jersey on or about December 8, 1909; that defendant Henry B. Endicott became a director of the United Shoe Machinery Company of New Jersey on or about July 11, 1910; that defendant Edmund LeB. Gardner became a director of the United Shoe Machinery Company of New Jersey on or about June 27, 1908; that defendant Charles G. Rice became a director of the United Shoe Machinery Company of New Jersey on or about December 11, 1907; and that defendant William Woodward became a director of the United Shoe Machinery Company of New Jersey on or about June 15, 1907.

XII. These defendants jointly and severally admit that the United Shoe Machinery Corporation was organized under the laws of New Jersey, in May, 1905, with an authorized capital of fifty million dollars ($50,000,000) (fifteen million dollars preferred and thirty-five million dollars common), but deny that it was organized by the directors, officers, and stockholders of the United Shoe Machinery Company of New Jersey or for the purpose of destroying competition or restraining or monopolizing interstate or foreign trade and commerce in shoe machinery. And answering say said United Shoe Machinery Corporation was organized for the legitimate and lawful purposes in its charter set forth. They jointly and severally aver that from time to time since its organization said United Shoe Machinery Corporation has purchased stock of the United Shoe Machinery Company of New Jersey, and has paid therefor partly in shares of its own stock and partly in cash, and that it has acquired practically all the common and preferred shares of the latter company, and says that the stock of the United Shoe Machinery Company so acquired was worth in the market all that the United Shoe Machinery Corporation gave in exchange for it.

They jointly and severally admit that the business of the United Shoe Machinery Corporation has been up to the time of bringing this bill holding shares of stock of the United Shoe Machinery
1327 Company, and since September, 1910, shares of stock of the Thomas G. Plant Company, and that it has not engaged in

manufacturing shoe machinery or in trade or commerce of any kind therein.

They jointly and severally admit that the officers and directors of said United Shoe Machinery Corporation are officers and directors of the United Shoe Machinery Company of New Jersey, but they jointly and severally deny that said United Shoe Machinery Corporation holds a controlling interest in any of the corporate defendants except said United Shoe Machinery Company of New Jersey and said Thomas G. Plant Company, and deny that it dictates the election of the officers and directors or dominates or controls the conduct of the business and affairs of any corporate defendant except its own.

They jointly and severally deny that said United Shoe Machinery Corporation is in any manner engaged in interstate or foreign trade or commerce or in the sale, lease, or shipment of shoe machinery, and deny that said United Shoe Machinery Corporation has or has at any time had any agreement with any other defendant or person whatsoever to refrain from competing with it, or that it has cooperated or is now cooperating with the other defendants or any of them to secure the retirement from the shoe machinery business of any persons or corporations whatsoever, or to exclude others therefrom, or destroy competition therein, or to monopolize the same to the detriment of the public or any person whatsoever.

All the other allegations of the bill not herein admitted are specifically denied.

And further answering, these defendants, jointly and severally, say that the United Shoe Machinery Corporation was organized for a lawful purpose and has always conducted its business and affairs in conformity with the law, has engaged in no combinations, contracts or agreements or monopolies in restraint of interstate or foreign trade or commerce.

And these defendants, jointly and severally, deny all and all manner of unlawful combination and confederacy wherewith they are by said bill charged, without this, that there is any other
1328 matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

By their solicitor:

H. G. DONHAM.

Answer of Defendant Harold G. Donham.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto himself all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant for answer says:

I. This defendant admits that he is president and a director of the Rimmon Eyelet Company, as alleged respectively on pages 5 and 9 of said petition.

II. This defendant admits that the individual defendants named at the bottom of page 6 of said petition are directors of the United Shoe Machinery Company of New Jersey and the United Shoe Machinery Corporation, with the exception that Frank L. Babbott was not at the time of the filing of said petition a director of either corporation.

III. This defendant denies every allegation, item and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

1329 IV. Further answering, this defendant expressly denies that he is engaged in trade and commerce in shoe machinery, or that he ever combined, contracted and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation to restrain interstate and foreign trade and commerce in shoe machines used in the manufacture of boots and shoes, or in any other business, or that he ever monopolized or attempted to monopolize said interstate trade and commerce or said foreign trade and commerce.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this

honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

HAROLD G. DONHAM.

Answer of defendant United Shoe Machinery Corporation.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefits and advantages of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. As to all the allegations of the bill regarding conditions, events, and acts prior to its incorporation in May, 1905, this defendant is ignorant and leaves the complainant to prove the same if material.

1330 II. It admits it was organized under the laws of New Jersey, in May, 1905, with an authorized capital of fifty million dollars ($50,000,000) (fifteen million dollars preferred and thirty-five million dollars common), but denies that it was organized by the directors, officers, and stockholders of the United Shoe Machinery Company or for the purpose of destroying competition or restraining or monopolizing interstate or foreign trade and commerce in shoe machinery. And answering, says that it was organized for the legitimate and lawful purposes in its charter set forth. It avers that from time to time since its organization it has purchased stock of the United Shoe Machinery Company of New Jersey, and has paid therefor partly in shares of its own stock and partly in cash, and that it has acquired practically all the common and preferred shares of the latter company, and says that the stock of the United Shoe Machinery Company of New Jersey so acquired was worth in the market all that this defendant gave in exchange for it.

III. It admits that its business has been up to the time of bringing this bill, holding shares of stock of the United Shoe Machinery Company of New Jersey, and since September, 1910, shares of stock of the Thomas G. Plant Company, and that it has not engaged in manufacturing shoe machinery or in trade or commerce of any kind therein.

IV. It admits that Henry B. Endicott, Edwin P. Brown, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, Alfred R. Turner,

Wallace F. Robinson, Samuel Weil, Frank Wood, William Woodward, and Louis A. Coolidge are directors of this defendant; that Sidney W. Winslow is its president and a director; that William Barbour is its vice president and a director; that George W. Brown is its vice president and a director; that Edward P. Hurd is its vice president and a director; but it says that Frank L. Babbott was not at the time of the bringing of the bill, and has not since been, a director.

V. It admits that its officers and directors are officers and directors of the United Shoe Machinery Company of New Jersey, but it denies that it holds a controlling interest in any of the cor-
1331 porate defendants except said United Shoe Machinery Company of New Jersey, and sai dThomas G. Plant Company, and denies that it dictates the election of the officers and directors or dominates or controls the conduct of the business and affairs of any corporate defendant except its own. It denies that it is in any manner engaged in interstate or foreign trade or commerce, or in the sale, lease, or shipment of shoe machinery, and denies that it has or has at any time had any agreement with any other defendant or person whatsoever to refrain from competing with it, or that it has cooperated, or is now cooperating, with the other defendants or any of them, to secure the retirement from the shoe machinery business of any persons or corporations whatsoever, or to exclude others therefrom or destroy competition therein, or to monopolize the same to the detriment of the public or any person whatsoever.

VI. All the other allegations of the bill not herein admitted are specifically denied.

VII. And further answering, this defendant says that it was organized for a lawful purpose and has always conducted its business and affairs in conformity with the law, has engaged in no combinations, contracts, or agreements or monopolies in restraint of interstate or foreign trade or commerce.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

1332 *Answer of defendant United Shoe Machinery Company of New Jersey.*

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits the following allegations of Section I of the petitioner's bill, to wit:

That it is a corporation organized under the laws of New Jersey, carrying on business in the District of Massachusetts, with its office and place of business at Boston, Massachusetts, and that its president is Sidney W. Winslow, and that the amount of its issued capital stock, preferred and common, is as alleged in said Section I.

II. It admits that the defendants Henry B. Endicott, Edwin P. Brown, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, John H. Connor, Alfred R. Turner, Wallace F. Robinson, Samuel Weil, Frank Wood, and William Woodward are directors of this defendant; that Sidney W. Winslow is its president and a director; that William Barbour is a vice president and a director; that George W. Brown is a vice president and a director; that Edward P. Hurd is a vice president and a director; that Louis A. Coolidge is a director; but says that the defendant Frank L. Babbott was not at the time of the filing of petitioner's bill, and is not now, a director of this defendant.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, con-
1333 tained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant says that it was organized under the laws of the State of New Jersey in February, 1899, and more than twelve years prior to the bringing of this petition, for the purposes and with the powers set forth and contained in its charter, among which are the following:

"To manufacture, buy, sell, lease, operate and deal in and with all kinds of machinery, tools, and implements, and mechanical de-

vices and contrivances of every name and nature whatsoever, and especially to manufacture, buy, sell, lease, operate, and deal in and with all sorts of boot and shoe machinery and every kind of mechanism, contrivance, implement, tool, material or thing in any way whatsoever connected with, or useful in connection with the manufacture of boots, shoes, and footwear, or the manufacture of leather and rubber goods, or goods made from materials and fabrics of any description whatsoever, or useful in connection with the manufacture or operation of any of the machinery, mechanical devices or contrivances hereinbefore mentioned; to produce, prepare, and manufacture, buy, sell, and deal in and with leather and rubber, and materials and fabrics of all sorts, and the raw materials from which said leather, rubber materials or fabrics are produced; to manufacture, buy, sell, and deal in and with boots, shoes and footwear and all articles and things of every description that may be produced or manufactured, in whole or in part, from leather, rubber, or any other materials or fabrics; and in general to produce, prepare, manufacture, and deal in and with goods, wares, merchandise, property, materials, and things of every class and description. * * *

"To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, sell, assign, or otherwise dispose of any and all trademarks, trade-names and distinctive marks, copyrights and patent rights, and all inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trademarks, patents, licenses, concessions, processes and the like."

and this defendant offers to produce at the trial of this case a certified copy of its said charter, and makes profer thereof.

V. Further answering, this defendant says that shortly after its organization, and pursuant to and in accordance with the terms
1334 of its said charter, and more than twelve years prior to the bringing of this petition, it acquired the capital stock, or a majority of the same, of the following corporations, organized under the laws of the State of Maine: Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company, Davey Pegging Machine Company, and the Goodyear Shoe Machinery Company of Canada, a corporation organized under the laws of the State of New Jersey; and thereafter acquired the business, assets and letters patent of each of said corporations.

Each of said corporations, at the time of such acquisition, was engaged in an independent and noncompeting business, differing from that of any others of the said corporations.

Each of said corporations, except the Goodyear Shoe Machinery Company of Canada, the International Goodyear Shoe Machinery Company, and the International Eppler Welt Machine Company, at the time of such acquisition, was engaged, under letters patent of the United States, in the manufacture of machines and parts thereof used in the manufacture of boots and shoes, and each of said corporations leased the machines so manufactured by it to shoe manufacturers, and licensed such shoe manufacturers to use the same under its said letters patent.

The Goodyear Shoe Machinery Company of Canada, the International Goodyear Shoe Machinery Company, and the International Eppler Welt Machine Company, at the time of such acquisition, were engaged, under letters patent of the foreign countries in which they did business, in the manfacture of machines and parts thereof used in the manufacture of boots and shoes, and each of said corporations respectively leased the machines so manufactured by it to shoe manufacturers, and licensed such shoe manufacturers to use the same under its said letters patent.

VI. Further answering, this defendant says that the organization of the United Shoe Machinery Company and its acquisition of the capital stock and businesses of said last named corporations, as
1335 set forth in the two preceding paragraphs hereof, was simply the fusion of several corporations owning noncompeting, complementary machines, covered by letters patent of the United States, into one corporation, and was made with the expectation of an increase in business, economies in administration, and decrease in expenses, and cessation of patent litigation between the companies purchased, which had been expensive to them and annoying to shoe manufacturers; which results it was expected could be attained without increase of cost to the users of machinery made by the United Shoe Machinery Company of New Jersey, and that better attention to the care of the machines and assistance to the users could be afforded by the said United Shoe Machinery Company of New Jersey.

That said organization and acquisition was nothing more than the combination of various elements of machinery all relating to the same art and the same school of manufactures, for the purpose of constructing economically and systematically, and of furnishing a lessee the whole or any part of a gradually developed system of machines for use in the manufacture of shoes, and was and is in strict and normal compliance with modern trade progress.

VII, Further answering, this defendant says that since its organization in 1899 this defendant has acquired from time to time, in the natural development and ordinary growth of its business, from various persons and corporations, various inventions, letters patent therefor, and businesses, in pursuance of the powers granted it under its said charter, all relating to the same art and the same school of manufactures, in order to better supply the demands of its customers in accordance with the normal growth and development of its business. The greater part of said acquisitions are entirely new fields, having no connection with the machines originally acquired, owned, and manufactured by this defendant. Some of said acquisitions have more or less relation to the original lines of shoe machinery owned by this defendant, and were acquired by it for the purpose of compromising, settling, and avoiding expensive patent litigation, and for the purpose of protecting its lessees from suits for infringement of letters patent.

1336 VIII. Further answering, this defendant says that the greater part of its business consists in the manufacture, under letters patent of the United States, owned by it, of machines used in the manufacture of boots and shoes, and for the most part relating to the bottoming of boots and shoes, and in the leasing of machines so manufactured by it to shoe manufacturers, under licenses under said letters patent.

IX. Further answering, this defendant says that the greater part of the acts of this defendant complained of in said bill took place more than six years prior to the filing of said bill, and are barred by the statute of limitations.

X. Further answering, this defendant denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes, or in any other business, or that it ever monopolized or attempted to monopolize said interstate trade and commerce, or said foreign trade and commerce, and this defendant further says that if this defendant is engaged in interstate trade and commerce, which it denies, and has any monopoly of such trade or commerce, which it denies, then this defendant says any such monopoly is a valid and legal monopoly of such trade or commerce derived under and pursuant to and coextensive with letters patent of the United States or of foreign countries, owned by it.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary

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for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

1337 *Answer of defendant J. K. Kreig Company.*

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits that it is a corporation organized under the laws of the State of New York, with its offices and place of business at New York City, and that its president is defendant Sidney W. Winslow, and that its issued capital stock is fifty thousand dollars ($50,000) at par, as set forth on pages 5 and 6 of said bill of complaint.

II. Further answering, this defendant says that it is engaged in the business of selling general supplies for shoe manufacturers, such as wax, thread, needles, blacking, eyelets, and practically all kinds of supplies, and that it acts as distributing agent for the United Shoe Machinery Company of New Jersey of machine parts manufactured by said United Shoe Machinery Company of New Jersey for machines leased by said United Shoe Machinery Company; that it also buys from said United Shoe Machinery Company of New Jersey, and sells for its own account, machine parts for use on machines which are sold on the market; that it is distributing agent for fastening material—that is, wire nails, and similar material—for use in metallic department machinery leased by said United Shoe Machinery Company of New Jersey.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

1338 IV. Further answering, this defendant expressly denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes or in any other business; or that it ever monopolized or attempted to monopolize said interstate trade and commerce or said foreign trade and commerce.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of defendant Booth Brothers Company.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits that it is a corporation organized under the laws of the State of New York, with its offices and place of business at Rochester, New York, and says that it was organized in 1908. It admits that its president is defendant Sidney W.
1339 Winslow, and that its issued capital stock is twenty-five thousand dollars ($25,000) at par, as set forth on page 6 of said bill of complaint.

II. Further answering, this defendant says that it is engaged in the manufacture of a machine known as the "Booth Impression Stitch Burnishing Machine," a "wheeling machine," and a "fudge stitch machine," which it sells exclusively to the United Shoe Machinery Company, of New Jersey. That in addition it manufactures machines known as the "Columbia Beader," "Victor Beader,"

"Sandal Snipper," and an ink shaking device, which this defendant sells either directly to consumers or to the United Shoe Machinery Company, of New Jersey.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant expressly denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes or in any other business; or that it ever monopolized or attempted to monopolize said interstate trade and commerce or said foreign trade and commerce.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed,
1340 with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of defendant W. W. Cross & Company (Inc.).

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits the following allegations of Section I of the petitioner's bill, on page 4 thereof, to wit, that it is a corporation organized under the laws of the State of Maine, with its

offices and places of business in Brockton, Massachusetts, and that its president is defendant Sidney W. Winslow, and that the amount of its issued capital stock is as set forth on said page 4 of said bill.

II. Further answering, this defendant says that it is engaged in the manufacture of tacks and nails, at Brockton, Massachusetts, and sells in the State of Massachusetts practically its entire output to the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, doing business in Massachusetts.

III. This defendant denies every allegation, item and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant expressly denies that it is engaged in the manufacture, sale and shipment, in inter-
1341 state commerce, of said nails and tacks, or that it is engaged in interstate commerce at all, and expressly denies that it ever combined, contracted and conspired with any person, firm or corporation mentioned in said bill of complaint, or with any other person, firm or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes, or in any other business, or that it ever monopolized or attempted to monopolize said interstate trade and commerce, or said foreign trade and commerce.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of Defendant Xpedite Finishing Company.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or

may be had or taken to the many errors, uncertainties and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits that it is a corporation organized under the laws of the State of Maine, with its offices and place of business at Boston, Massachusetts; that its president is defendant
1342 Sidney W. Winslow; that its issued capital stock is one million dollars ($1,000,000) at par, as set forth on page 3 of said bill of complaint.

II. Further answering, this defendant says that it is engaged in the business of leasing a machine known as the "Xpedite Finishing Machine," and tools to go with the same, to shoe manufacturers in the United States, under licenses under letters patent of the United States owned by it; said machines being used in the finishing of heels.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes, or in any other business, or that it ever monopolized or attempted to monopolize said interstate trade and commerce, or said foreign trade and commerce; and this defendant further says that if this defendant is engaged in interstate trade and commerce—which it denies—and has any monopoly of such trade or commerce—which it denies—then this defendant says any such monopoly is a valid and legal monopoly of such trade or commerce derived under and pursuant to and coextensive with letters patent of the United States.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and
1343 avoided or denied, is true, all which matters and things this

defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of defendant United Shoe Repairing Machine Company.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits the following allegations of Section I of the petitioner's bill, to wit, that it is a corporation organized under the laws of Maine, with its offices and place of business at Boston, Massachusetts, and that its president is defendant Sidney W. Winslow, and that the amount of its issued capital stock is fifty thousand dollars ($50,000) at par, as alleged in said Section I of said bill.

II. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

III. Further answering, this defendant says that it was organized in 1908, for the purpose of supplying the demand of cobblers for machines used in the repairing or cobbling of boots and shoes, and that since its organization in July, 1908, it has applied itself
1344 strictly to the business of supplying the demand of such cobblers for machines used in the repairing of boots and shoes. Its machines are for the most part covered by letters patent, and are leased to cobblers throughout the United States.

IV. Further answering, this defendant expressly denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes or in any other business; or that it ever monopolized or

attempted to monopolize said interstate trade and commerce or said foreign trade and commerce; and this defendant further says that if this defendant is engaged in interstate trade and commerce—which it denies—and has any monopoly of such trade and commerce—which it denies—then this defendant says any such monopoly is a valid and legal monopoly of such trade and commerce, derived under and pursuant to and coextensive with letters patent of the United States, owned by said United Shoe Machinery Company of New Jersey, from whom this defendant purchases its machines.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

1345 *Answer of defendant O. A. Miller Treeing Machine Company.*

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits that it is a corporation organized under the laws of the State of Maine, with its offices and place of business at Brockton, Massachusetts; that its president is defendant Sidney W. Winslow; and that its issued capital stock is two hundred thousand dollars ($200,000) at par, as set forth on page 4 of said bill of complaint.

II. Further answering, this defendant says that it is engaged in the business of manufacturing, selling, and leasing boot and shoe treeing machines, tree legs, tree feet, and other parts thereof, vamp-creasing machines, Miller breaking-in machines, Victor power irons, and electric and gas heated appliances used in the manufacture of boots and shoes, under letters patent of the United States, owned by it.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant expressly denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of
1346 boots and shoes or in any other business; or that it ever monopolized or attempted to monopolize said interstate trade and commerce or said foreign trade and commerce; and this defendant further says that if this defendant has any monopoly of interstate trade or commerce—which it denies—then this defendant says that any such monopoly is a valid and legal monopoly of such trade or commerce, derived under and pursuant to and coextensive with letters patent of the United States owned by it.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of defendant Ross-Moyer Manufacturing Company.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits that it is a corporation organized under the laws of the State of Ohio; that it has offices and a place of busi-

ness at Cincinnati, Ohio; that its president is defendant Sidney W. Winslow; and that its issued capital stock is one hun-
1347 dred ninety-seven thousand four hundred dollars ($197,400) at par, as set forth on page 5 of said bill of complaint.

II. Further answering, this defendant says that it is engaged in the business of selling general supplies for shoe manufacturers, such as wax, thread, needles, blacking, and eyelets, and practically all kinds of supplies, and that it acts as distributing agent for the United Shoe Machinery Company of machine parts manufactured by the United Shoe Machinery Company for machines leased by the United Shoe Machinery Company; that it also buys from United Shoe Machinery Company, and sells for its own account, machine parts for use on machines which are sold on the market; that it is distributing agent for fastening material—that is, wire, nails, and other material for use in metallic department machinery leased by said United Shoe Machinery Company.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of the petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant expressly denies that it ever combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes or in any other business; or that it ever monopolized or attempted to monopolize said interstate trade and commerce or said foreign trade and commerce.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this
1348 defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of defendant United Shoe Machinery Company, of Maine.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for it to make answer unto, this defendant for answer says:

I. This defendant admits that it is a corporation organized under the laws of the State of Maine, with its offices and place of business at Boston, Massachusetts; that defendant Sidney W. Winslow is its president; and that its issued capital stock is three million dollars ($3,000,000) at par, as set forth on page 3 of said bill of complaint.

II. Further answering, this defendant says that the greater part of its business consists in the leasing and licensing under letters patent of the United States of machines used in the manufacture of boots and shoes to shoe manufacturers engaged in business in various States of the United States.

III. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

IV. Further answering, this defendant denies that it ever
1349 combined, contracted, and conspired with any person, firm, or corporation mentioned in said bill of complaint, or with any other person, firm, or corporation, to restrain interstate and foreign trade and commerce in shoe machinery used in the manufacture of boots and shoes, or in any other business, or that it ever monopolized or attempted to monopolize said interstate trade and commerce, or said foreign trade and commerce; and this defendant further says that if this defendant is engaged in interstate trade and commerce—which it denies—and has any monopoly of such trade or commerce—which it denies—then this defendant says any such monopoly is a valid and legal monopoly of such trade or commerce derived under and pursuant to and coextensive with letters patent of the United States.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith it is by said bill charged, without this, that there is any other matter, cause, or thing in the said

petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

By its solicitor:

H. G. DONHAM.

Answer of defendant Edward N. Chase.

[Filed April 1, 1912.]

This defendant now, and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said petitioner's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant for answer says:

I. This defendant denies that the Ellis Lacer Company is a
1350 corporation organized under the laws of the State of Maine, with its offices and place of business at Boston, Massachusetts, and that this defendant is its president, as alleged on page 6 of said bill of complaint.

II. Further answering, this defendant denies that he is the president and director of the Ellis Lacer Company, as set forth on page 9 of said bill.

III. Further answering, this defendant says that the Ellis Lacer Company was a corporation organized under the laws of the State of Maine about the year 1903; that on or about the thirtieth day of September, 1911, pursuant to a vote of the majority of the stockholders of said corporation, at a meeting duly called for the purpose, this defendant, as president of said corporation, at that time filed in the Supreme Court of the State of Maine, sitting in and for the county of Kennebec, a petition for the dissolution of said corporation, alleging, among other things, that said corporation had no assets and no liabilities and was not doing business; and that thereafter such proceedings were had that on the twenty-ninth day of November, 1911, a decree of dissolution of said corporation was entered in said suit in said Supreme Court of Maine, sitting in and for said county of Kennebec; and that thereupon said corporation was dissolved.

IV. This defendant denies every allegation, item, and particular of the petitioner's bill of complaint as fully and specifically as if each allegation were in terms specifically denied, and particularly denies each and every allegation, item, and particular contained in the first twelve sections of petitioner's bill of complaint, contained on pages 1 to 83, inclusive, of said bill of complaint, except so far as any of the same are hereinbefore expressly admitted.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the said petitioner's said bill of complaint contained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, all which matters and things this
1351 defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

By his solicitor: H. G. DONHAM.

Replication to joint and several answer of defendants.

Sidney W. Winslow, William Barbour, Wallace F. Robinson, George W. Brown, Edward P. Hurd, John H. Connor, Louis A. Coolidge, Edwin P. Brown, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Metz, Charles G. Rice, Alfred R. Turner, Samuel Weil, Frank Wood, William Woodward.

[Filed April 8, 1912.]

For replication to the joint and several answer of the defendants Sidney W. Winslow, William Barbour, Wallace F. Robinson, George W. Brown, Edward P. Hurd, John H. Connor, Louis A. Coolidge, Edwin P. Brown, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, Alfred R. Turner, Samuel Weil, Frank Wood, and William Woodward, the United States of America says that the allegations of its petition are true, and that the defendants' joint and several answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

1352 *Replication to answer of defendant Harold G. Donham.*

[Filed April 8, 1912.]

For replication to the answer of the defendant Harold G. Donham, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant United Shoe Machinery Corporation.

[Filed April 8, 1912.]

For replication of the defendant United Shoe Machinery Corporation, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant United Shoe Machinery Company of New Jersey.

[Filed April 8, 1912.]

For replication to the answer of the defendant United Shoe Machinery Company of New Jersey, the United States of America says that the allegations of its petition are true, and that the
1353 defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant J. K. Krieg Company.

[Filed April 8, 1912.]

For replication to the answer of the defendant J. K. Kreig Company, the United States of America says that the allegations of its

petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant Booth Brothers Company.

[Filed April 8, 1912.]

For replication to the answer of the defendant Booth Brothers Company, the United States of America says that the allegations of its petition are true and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

1354 *Replication to answer of defendant W. W. Cross & Company, Incorporated.*

[Filed April 8, 1912.]

For replication to the answer of the defendant W. W. Cross & Company, Incorporated, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District ofMassachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant United Xpedite Finishing Company.

[Filed April 8, 1912.]

For replication to the answer of the defendant United Xpedite Finishing Company, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant United Shoe Repairing Machine Company.

[Filed April 8, 1912.]

For replication to the answer of the defendant United Shoe Repairing Machine Company, the United States of America says that the allegations of its petition are true, and that the de-
1355 fendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant O. A. Miller Treeing Machine Company.

[Filed April 8, 1912.]

For replication to the answer of the defendant O. A. Miller Treeing Machine Company, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant Ross-Moyer Manufacturing Company.

[Filed April 8, 1912.]

For replication to the answer of the defendant Ross-Moyer Manufacturing Company, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

1356 *Replication to answer of defendant United Shoe Machinery Company of Maine.*

[Filed April 8, 1912.]

For replication to the answer of the defendant United Shoe Machinery Company of Maine, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Replication to answer of defendant Edward N. Chase.

[Filed April 8, 1912.]

For replication to answer of defendant Edward N. Chase, the United States of America says that the allegations of its petition are true, and that the defendant's answer as set forth is not true, and this the petitioner is ready to prove.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

1357 *Motion for leave to dismiss as to certain defendants.*

[Filed April 16, 1912.]

And now comes the United States of America, petitioner in the above-entitled cause, and moves for leave to dismiss its petition as against the following parties named as defendants therein:

United Awl & Needle Company, United Fast Color Eyelet Company, S. A. Felton & Son Company, Campbell-Bosworth Machinery Company, Boston Blacking Company, J. C. Rhodes & Company (Inc.), The Rimmon Eyelet Company, S. O. & C. Corporation, Thomas G. Plant Company.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

Upon the foregoing motion the following order was entered the same day:

Apr. 16, 1912. DODGE, J.: Motion for leave to dismiss allowed and petition dismissed as against the following parties named as de-

fendants therein: United Awl & Needle Co., United Fast Color Eyelet Co., S. A. Felton & Son Co., Campbell-Bosworth Machinery Co., Boston Blacking Co., J. C. Rhodes & Co. (Inc.), The Rimmon Eyelet Co., S. O. & C. Corporation, and Thomas G. Plant Co.

1358 *Motion for appointment of a special examiner, April 20, 1912.*

And now comes the petitioner, and moves that Charles K. Darling, Esquire, of Boston, Massachusetts, be appointed a special examiner to take the testimony in the above-entitled cause.

ASA P. FRENCH,
United States Attorney for the District of Massachusetts.
W. S. GREGG,
Special Assistant to the Attorney General.

1359 *Notice to take testimony, April 26, 1912.*

The United States give notice that they desire evidence to be taken orally under the 67th rule in equity.

1360 *Docket entry of April 26, 1912.*

April 26, 1912. The United States gives notice that they desire evidence to be taken orally under the 67th rule in equity.

Order appointing examiner, April 26, 1912.

PUTNAM, J.: By agreement of parties Charles K. Darling, Esq., is hereby appointed special examiner to take evidence in this district under the sixty-seventh rule. The United States have four calendar months in which to take and file their proofs in chief. The respondents have four calendar months thereafter in which to take and file their proofs in answer, and the United States two calendar months thereafter in which to take and file their proofs in rebuttal.

1361 *Petitioner's protest against order of court prescribing private hearings in said cause.*

[Filed May 22, 1912.]

And now come the United States, petitioner in the above-entitled cause, and protest against and except to the order of a single judge of this honorable court in substance and effect that the public and the press shall be excluded from the hearings before the special examiner appointed by this court to take evidence in said cause, for the following reasons, namely:

First. Because the Attorney General of the United States having heretofore, to wit, on the twentieth day of May current, filed a cer-

tificate under the act of February 11, 1903, 32 St., 823, as amended, and copies thereof having been furnished by the clerk of said court to each of the circuit judges in this circuit, in accordance with the provisions of said act, this cause and all matters pertaining thereto thereupon became, and are, cognizable only by the special tribunal created by virtue of said act.

Second. Because the matters and issues involved in this petition are of great public importance, and the court has no jurisdiction to direct that they shall be kept from the public knowledge at any stage of the proceedings.

Third. Because, except only in the interest of public decency and morality, secret court proceedings are obnoxious to the administration of justice and to the principles of a free government.

Fourth. Because such an order is contrary to all precedent in causes in which the United States are a party, and especially
1362 in proceedings brought under the Sherman Act in which such hearings have invariably been fully open to the public, as, for example, in the Standard Oil case, the Tobacco case, the Bath Tub case, the Steel case, the Anthracite Coal case, the Steamship Trust case, and many others.

ASA P. FRENCH,
United States Attorney.
W. S. GREGG,
Special Assistant to the Attorney General.
EDWIN H. ABBOT, Junior.
Special Assistant U. S. Attorney.

1363 *Order that all further proceedings before the examiner cease until further order of court, May 22, 1912.*

PUTNAM, J: It is ordered, in view of the position taken by the United States that the power of a single judge ceases on filing a request for proceedings under the act of February 11, 1903, as amended by the act of June 25, 1910, that all further proceedings before the examiner cease until further order of court.

By the court:

CHARLES K. DARLING, *Clerk.*

1364 *Order of court designating three judges to sit in the case, May 28, 1912.*

Referring to the request of the Attorney General, filed on May 20, 1912, under the act approved June 25, 1910, chapter 428:

It appearing that Judge Schofield, circuit judge for this circuit, is, and will be, necessarily absent for an indefinite period by reason

of sickness, and the senior district judge regarding himself as disqualified, it is ordered, by the concurrence of Circuit Judges Colt and Putnam, that Honorable Arthur L. Brown, United States district judge for the District of Rhode Island, is assigned and designated to sit with said Circuit Judges Colt and Putnam in accordance with said statute and the request aforesaid.

It is further ordered that said judges, namely Circuit Judges Colt and Putnam and District Judge Brown, will hold the court, as required by the statute aforesaid and said request, at Boston at eleven o'clock on Tuesday, the eighteenth day of June next, or at such other time or times as may be hereafter designated, and at the time or times to which said sitting may be adjourned, for the purpose of hearing any matters proposed, or which may be proposed, by either of the parties in the case aforesaid.

By the court:

CHARLES K. DARLING, *Clerk.*

1365 *Docket entry of August 28, 1912.*

August 28, 1912. BROWN, J. (Colt, J., concurring; Putnam, J., sat at hearing, but did not participate in this opinion, having previously expressed an opinion on the question as a single judge): Opinion, the examiner will not, without the consent of both parties, allow the attendance of persons other than those mentioned in rule 67.

1366 District Court of the United States, District of Massachusetts.

UNITED STATES OF AMERICA, PETITIONER, *v.* UNITED SHOE MACHINERY COMPANY OF NEW JERSEY et al.	No. 301. In Equity.

Before Colt, Putnam, and Brown, JJ.

Opinion of the court, August 28, 1912.

BROWN, J: The United States, having given notice that it desires evidence to be taken orally under the 67th rule in equity, contends that the public and the press should be admitted to the proceedings wherein the depositions of witnesses are to be taken before the examiner.

It is urged that the public and press should be afforded an opportunity to attend and to hear whatever may be said upon the examination before it has been reduced to writing and signed by the witness and before the deposition is presented to the court. This contention is not supported by the citation of any authority and is so

contrary to the usual practice both at law and in equity that it might be summarily disposed of save for the statement of the United States attorney that in cases under the Sherman Act such a course has been followed. The cases cited by the United States which uphold the undisputed principle of publicity in trials and in judicial proceedings do not in the slightest degree support the contention of the
1367 United States, and afford no tssistance upon the question before us. This question is whether the public and the press should be admitted to the taking of depositions for use at a trial not then begun, but which is to take place in the future.

The question is easily solved upon a consideration of the essential difference between a trial or a judicial proceeding, held by an officer with judicial authority, and the merely preliminary step of taking depositions.

Equity rule 67 provides that the examination shall take place in the presence of the parties or their agents by their counsel or solicitors; that the depositions taken shall be reduced to writing by the examiner; that the testimony of each witness shall be read over to him and signed by him in the presence of the examiner and such of the parties or counsel as may attend, etc. The examiner may note objections, but he "shall not have the power to decide upon the competency, materiality, or relevancy of the questions." The original depositions, authenticated by the signature of the examiner, must be transmitted by him to the clerk of the court, to be there filed of record in the mode prescribed by Revised Statutes, sec. 865.

Rule 69 provides that upon the return of the commissions and depositions into the clerk's office, publication may be ordered by any judge of the court upon due notice to the parties, and further provides for publication by consent in writing of the parties.

The nature of this proceeding is well described in Wigmore on Evidence, sec. 1376 (2): "This process of securing in advance the evidential material for a trial is a part of the preliminary procedure of courts," etc.

It is also described by Wigmore in sec. 1331 as "testimony given extrajudicially before a specially authorized officer for the purpose of subsequent use at a trial. . . . In a deposition the testimony is the writing taken down by the officer and signed by the deponent. The officer's writing is not his report of the witness' oral deposition; there is only one testimonial utterance—the writing."

Mr. Wigmore refers also to the chancery practice, saying:
1368 "In this practice all testimony was taken in writing, and in the theory the testimony or deposition was the writing and nothing else."

The brief of the United States attorney asserts, "The right of the public is to hear testimony, and that is not accorded when it is

given merely the privilege to read it." It is also asserted, "There is a right of the public to hear what is being said in this case while it is being said."

It is quite apparent from what we have said that such a supposed right has never existed in the practice of the chancery courts, nor has such a right in respect to the taking of depositions ever existed at law. Both common law judges and juries are compelled to receive testimony in the form of written depositions, and upon such written testimony of witnesses whom they have never seen nor heard may make decisions as to the rights of parties.

The public has a right to such form of testimony as the law provides shall be received at trials at law or at hearings in equity or upon other judicial proceedings. If judges and juries may not object that they have not seen and heard the witness while he was testifying, the press and public may not object.

Furthermore, neither at law nor in equity does a deposition become evidence in a case until it is offered by one of the parties; until there is an opportunity for a judicial hearing as to its competency. A party in a cause has a right to the protection of the court in a judicial hearing. In the proceedings before an examiner such right is not afforded him. No question of right is submitted to the examiner, and under the provision of equity rule 67 and under the doctrine of Blease v. Garlington, 92 U. S., 1, 7, the examiner must take down all the examination in writing. The party has the right to have his exceptions noted and to file further exceptions when the deposition is filed in court. "The testimony is taken to be submitted to the court where the suit is pending, and all questions upon the evidence, its materiality and sufficiency, are to be determined by it, and after it by an appellate court. Nelson v. United States, 201 U. S., 92. The only opportunity for redress which the party has against improper or irrelevant testimony follows the filing of the deposition. If all is to be made public
1369 before it is reduced to final form in writing and before there is an opportunity for a hearing upon the propriety and competency of the testimony, all effective protection against scandal, impertinence, and irrelevancy is practically gone.

When justice is being administered by a judicial officer, the public is entitled to attend, save under exceptional conditions, with which we need not deal.

In Cowley v. Pulsifer et al., 137 Mass., 392, Mr. Justice Holmes considered the question of the policy of publicity, and marks the distinction between what takes place in open court and the filing in the clerk's office of a petition containing a written preliminary charge. Of such preliminary steps he said: "These do not con-

stitute a proceeding in open court. Knowledge of them throws no light upon the administration of justice."

Due process of law requires that the parties have an opportunity to be heard. For the court to enforce a rule that the public and the press shall have an opportunity to listen before the parties to the case have an opportunity to be heard would be a plain violation of elementary rules of fair play. The proceeding before the examiner lacks the essential element—an opportunity to be heard by a judicial officer and to submit questions of right to a judicial officer.

Furthermore, another essential difference is that upon a trial or judicial proceeding the rights of the parties are submitted for an adjudication. A party in equity ordinarily may dismiss his bill at any time before final hearing. Houghton v. Whitin Machine Co., 160 Fed. Rep., 227; Morton Trust Co. v. Keith, 150 Fed. Rep., 606. Under the view of the United States a bill may be filed, the testimony of hostile witnesses may be presented to an examiner, the public and the press may attend, and the complainant may then dismiss the bill, leaving the defendant no opportunity to reply or to procure an adjudication which will offset the injurious statements of witnesses. It is manifest from the nature of depositions, because they are not yet legal evidence and because the parties against whom they are taken have had no opportunity for a hearing, that the proper practice is that which has been uniformly observed. Equity Rule 69 expressly provides for publication either upon the order of a judge or by consent of parties, after the return of the depositions by the examiner.

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In Patterson v. Colorado, 205 U. S., 454, 462, it was said:

"The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print. What is true with reference to a jury is true also with reference to a court."

Premature publication of proceedings before an examiner might make the author subject to proceedings for contempt. In Wigmore on Evidence, sec. 1836, the writer states that publication of proceedings may be prohibited, and "of palpably just grounds, there are at least two: First, that the proceeding is only a preliminary or ex parte one, and that a publication would therefore give an erroneous impression of the conduct of the parties; secondly, that conditions of popular emotion exist, amid which the publication before verdict rendered would tend to excite the public mind, to cause pressure upon the minds of the witnesses, the judge, and the jury, and thus to do injustice to one of the parties by preventing a fair and unbiased investigation of the facts."

If upon these grounds a court may stop the publication of proceedings which have actually taken place in open court, it would follow that the court, were it necessary, might prohibit by order the publication of preliminary proceedings before an examiner; but such order is not necessary, for the reason that by common understanding of the bar and bench the taking of depositions is a private and not a public proceeding.

Testimony at times must be taken out of court. Alexander v. United States, 201 U. S., 117. Trials are held at times and places appointed by law. Depositions may be prepared at times and places whereof no public notice is given by law or is required from the parties; at places not accessible to the public, and at places where there is no provision for the attendance of the public. The court is provided with officers for the preservation of order; the examiner, under ordinary conditions, is not so provided. Depositions are taken at death beds, in prisons, in remote and even foreign
1371 jurisdictions. They may be taken in many jurisdictions for a trial in another jurisdiction. Within a short time it has been reported in the public prints that depositions in cases under the Sherman Act have been taken at a room in the Parker House in Boston and at a room in the Narragansett Hotel in Providence. What truth there is in such reports we do not know, but they illustrate what may properly be done and is ordinarily done in the course of taking depositions, but what is entirely inconsistent with the contention that public policy requires the attendance of the press and the public.

The impropriety of the publication, pending the suit, of depositions so taken is manifest from what we have already said. It is evident that upon ordinary principles of fair play the examiner's office should not be used as a vehicle for spreading statements which have not been subjected to judicial test.

The fact that testimony orally delivered is often more satisfactory than testimony read from a document has no bearing upon the present question. The mere preference for testimony of this character yields to the considerations of convenience and necessity which justify the general law of depositions.

What is termed by Mr. Wigmore in sec. 1396 "demeanor evidence," while desirable, is not essential. If, in the course of a chancery suit, it is desirable to produce particular witnesses in open court in order that their demeanor may be observed, there is provision that the court may, in its discretion, "permit the whole, or any specific part of the evidence, to be adduced orally in open court on final hearing." See equity rules 67, 78.

The provision in these rules is an indication that oral proceedings before an examiner are regarded as essentially different from proceedings in open court. It is quite clear that the taking of deposi-

tions, either at law or in equity, is in no proper sense a trial or a part of a judicial trial, using the term to mean "that final examination and decision of matter of law as well as fact, for which every antecedent step is a preparation, which we commonly denominate the trial." Carpenter v. Winn, 221 U. S., 533, 538, 539; Hess v.
1372 Reynolds, 113 U. S., 73, 80; Carson v. Hyatt, 118 U. S., 289; Delaware County Commissioners v. Diebold Safe & Lock Co., 133 U. S., 473; Nelson v. United States, 201 U. S., 92; Cowley v. Pulsifer, 137 Mass., 392.

In Ex parte Milligan, 4 Wall., 121, it was said: "Every trial involves the exercise of judicial power."

That the public and press should be entitled to hear what is not yet evidence and what may never become evidence, before the court which is to try the case hears it, is an unprecedented and unreasonable proposition. The contention that judicial proceedings shall be held with open doors is not under dispute. The proposition that the taking of depositions by an examiner, who is merely a ministerial officer, is subject to the same rule is in our opinion manifestly erroneous.

To justify a departure from the general practice and from the requirements of the natural meaning of the equity rules of the Supreme Court, which have the force of statute, it is necessary for the United States, if unable to produce authority, to show some reasons for its position. It asserts merely the right of the public to hear testimony. The public will have that right when testimony is offered. The public interests are fully preserved from the fact that the trial in the present case must be conducted with open doors.

The defendants claim that the court is bound, as a matter of positive law, by the sixty-seventh and sixty-ninth equity rules, and that these rules mean that no one else shall be present at the taking of the testimony except the parties mentioned in the rules; that if these rules do not fully cover the question equity rule 90 applies. The contention that upon a proper construction of equity rule 67 the examination is to be private is directly supported by the decision of Jessel, master of the rolls, In re Western of Canada Oil, Lands and Works Company, L. R. 6 Chan. Div., page 109.

"The place where the examiner sits is not a public court, but a mere office. That was so before the judicature acts, and those acts, so far as I know, have made no change in his position, and his office remains a private office to this day.

"The 31st section of the act 15 & 16 Vict. c. 86, which is still in force for this purpose, provides that 'all witnesses to be examined by or before one of the examiners of the court, or by or
1373 before an examiner to be specially appointed by the court, * * * and such examination shall take place in the pres-

ence of the parties, their counsel, solicitors, or agents.' That must mean in the presence of the parties, their counsel, solicitors, or agents exclusively. It can not mean that the parties, their counsel, solicitors, or agents must be present. It can only mean that the examination shall take place in their presence if they choose to attend. Subject to this, it is a private examination.

"In my opinion, the public have no right whatever to go into the examiner's office, and the examiner has no discretion as to admitting them."

The language construed by the learned judge was substantially that of rule 67.

We may further notice that rule 13 of the Circuit Court contained the form of commission upon interrogatories at law or in equity. Among other things it is provided:

"You will not, without the consent of the parties in writing, permit any person except yourself to attend at the taking of any deposition, or to communicate with any witness, whilst giving his deposition, in relation to the subject matter thereof; except that you may permit to be present such disinterested person (if any) as you may think fit to appoint as a clerk to assist you in reducing the deposition to writing; and you will take such deposition in a place separate and apart from all other persons."

Certainly this is inconsistent with the existence of any supposed rule that the public has a right to hear what is being said, as distinguished from an opportunity to hear it read at the trial. In conclusion we may say: Is it not time enough for the public to know what the testimony is when the court knows what it is? Is it not enough for the public to receive testimony in the form in which the court must receive it?

The examiner will not, without the consent of both parties, allow the attendance of person's other than those mentioned in rule 67.

Judge Putnam sat at the hearing of this matter by this court assembled under the statute, but as he had expressed an opinion when the question involved was brought before him as a single judge, he deemed it proper to withdraw from expressing any further opinion.

1374 *Docket entry of March 18, 1913.*

March 18, 1913. PUTNAM, DODGE, and BROWN, JJ.: Dodge, J., sitting under the statute in place of Colt, J., who has resigned. Order striking out order appointing Charles K. Darling special examiner.

Motion and affidavits of United States to try the cause to be filed by Thursday, March 20, 1913. Hearing continued to Wednesday, March 26, 1913, at 10 a. m.

1375. *Motion for appointment of special master.*

[Filed March 20, 1913.]

Now comes the United States of America, by William S. Gregg, special assistant to the Attorney General, and move that an order be entered herein requiring that the testimony in the above-entitled cause be taken before a special master, for the reasons appearing in the annexed affidavit.

WM. S. GREGG,
Of Counsel for Petitioner.

Affidavit in support of motion.

William S. Gregg deposes and says that he is a special assistant to the Attorney General, and of counsel for the petitioner in the above-entitled cause;

That on December 12, 1911, the petition in the above-entitled proceeding was filed; answers and replications thereto have been duly filed, and the cause is at issue;

That on May 20, 1912, a certificate of the Attorney General was filed, in accordance with the provisions of the act of Congress approved February 11, 1903, known as the "expediting act," as amended by the act of Congress of June 25, 1910, requesting that the case be heard before not less than three judges, as required by said acts, and that on May 28, 1912, an order was entered by the court designating three judges to sit as a special tribunal;

That this proceeding will require the examination of a large number of witnesses for the petitioner alone (the exact number your affiant is unable to state at this time); it is possible that among the witnesses for the petitioner approximately eighty could be examined before the court, and that the testimony of the other witnesses, approximately thirty, would have to be taken by deposition, due to the fact that they live out of this district and more than one
1376 hundred miles from the place of holding court, namely, in the States of New York, New Jersey, Pennsylvania, Ohio, Wisconsin, Illinois, and Missouri;

That it will be necessary to cause the production and examination of a large number of voluminous contracts, books, accounts, and other documents;

That the present case is an exception in equity proceedings under the Sherman Anti-Trust Act, in that there is involved thousands of letters patent in connection with which it may become necessary to produce expert testimony, which alone may occupy many weeks;

That equity proceedings brought under the Sherman Anti-Trust Act, wherein the United States is complainant, and wherein the Attorney General has filed a certificate, as authorized by said expediting act, and wherein a court of at least three judges has been constituted, are different from other equity proceedings in that the time of three judges instead of one will be occupied in hearing testimony;

That the interests of all of the parties to this proceeding would appear to be amply protected and the time of the court saved by a reference of the cause to a special master to take all of the testimony and report to the court.

WM. S. GREGG.

1377 Personally appeared before me William S. Gregg, who makes oath that the matters recited in the foregoing affidavit are true to the best of his information and belief.

Sworn to and subscribed before me this twentieth day of March, 1913.

[SEAL.] CHARLES K. DARLING,
Clerk U. S. District Court.

1378 *Application for leave to withdraw motion for appointment of special master.*

[Filed March 26, 1913.]

Now come the United States of America, by William S. Gregg, special assistant to the Attorney General, and requests leave of the court to withdraw the motion and affidavit filed with the clerk on March 20th, 1913, for the appointment of a special master to take testimony in the above-entitled cause.

WM. S. GREGG,
Of Counsel for Petitioner.

March 26, 1913.

PUTNAM, DODGE & BROWN, JJ. Ordered, there being no objection, the application of the United States for leave to withdraw its motion for appointment of special master is allowed without prejudice.

Attest:

CHARLES K. DARLING, *Clerk.*

1379 *Docket entry of March 26, 1913.*

March 26, 1913. PUTNAM, DODGE & BROWN, JJ. Ordered, there being no objection, the application of the United States for leave to withdraw its motion for appointment of special master is allowed without prejudice.

1380 *Petitioner's motion that the cause be set down for hearing.*

[Filed May 13, 1913.]

And now comes the United States of America, petitioner, and moves that the above-entitled cause be set down for hearing by the court for some date on or about the twenty-seventh day of May, current, and thereafter proceeded with continuously, or substantially so, upon regular court days until the taking of testimony by all parties shall have been completed.

ASA P. FRENCH,
United States Attorney.
WM. S. GREGG,
Special Assistant to the Attorney General.

1381 *Petitioner's alternate motion that the cause be set down for hearing before an examiner.*

[Filed May 13, 1913.]

And now comes the United States of America, petitioner, and without waiving its prior motion, filed herewith, moves, in the event that said prior motion is not allowed, that the above-entitled cause be referred to an examiner, under equity rule 47, to take the testimony therein beginning on or about the twenty-seventh day of May, current, and that the taking of said testimony be thereafter proceeded with continuously, or substantially so, until the taking of the testimony by all parties shall have been completed.

In support of this motion, the petitioner files the affidavit hereto annexed.

ASA P. FRENCH,
United States Attorney.
WM. S. GREGG,
Special Assistant to the Attorney General.

Affidavit in support of motion.

William S. Gregg deposes and says that he is a special assistant to the Attorney General and of counsel for the petitioner in the above-entitled cause:

That on December 12, 1911, the petition in the above-entitled proceeding was filed; answers and replications thereto have been duly filed, and the cause is at issue;

That on May 20, 1912, a certificate of the Attorney General was filed, in accordance with the provisions of the act of Congress approved February 11, 1903, known as the "expediting act," as amended by the act of Congress of June 25, 1910, requesting that

the case be heard before not less than three judges, as required
1382 by said acts, and that, on May 28, 1912, an order was entered by the court designating three judges to sit as a special tribunal:

That this proceeding will require the examination of a large number of witnesses for the petitioner alone (the exact number your affiant is unable to state at this time); it is possible that among the witnesses for the petitioner, approximately eighty, could be examined before the court, and that the testimony of the other witnesses, approximately thirty, would have to be taken by deposition, due to the fact that they live out of this district, and more than one hundred miles from the place of holding court, namely, in the States of New York, New Jersey, Pennsylvania, Ohio, Wisconsin, Illinois, and Missouri;

That it will be necessary to cause the production and examination of a large number of voluminous contracts, books, accounts, and other documents:

That the present case is an exception in equity proceedings under the Sherman Anti-Trust Act, in that there is involved thousands of letters patent in connection with which it may become necessary to produce expert testimony which alone may occupy many weeks;

That equity proceedings brought under the Sherman Anti-Trust Act, wherein the United States is complainant, and wherein the Attorney General has filed a certificate, as authorized by said expediting act, and wherein a court of at least three judges has been constituted, are different from other equity proceedings, in that the time of three judges instead of one will be occupied in
1383 hearing testimony;

That the interests of all the parties to this proceeding would appear to be amply protected, and the time of the court saved, by a reference of the cause to an examiner to take all of the testimony and report to the court.

WM. S. GREGG.

Personally appeared before me William S. Gregg, who makes oath that the matters recited in the foregoing affidavit are true to the best of his information and belief.

Sworn to and subscribed before me, this thirteenth day of May, 1913.

[SEAL.] JOHN E. GILMAN, Jr.,
Deputy Clerk, U. S. District Court, Dist. of Mass.

1384 *Docket entry of May 13, 1913.*

May 13, 1913. PUTNAM, DODGE & BROWN, JJ.: On motion for hearing of case in open court, ordered that case be assigned for hearing on Tuesday, May 20, 1913, at 10 a. m.

1385 *Defendants' motion for a bill of particulars.*

[Filed May 28, 1913.]

Now comes the several defendants and severally set forth that section six of said petition, headed "Other unfair and monopolistic acts of defendants," is couched in such general language and contains such vague and insufficient statements as to afford no information to the court and to these defendants of any specific acts complained of; that under rule 20 of the new equity rules of 1912, adopted by the Supreme Court of the United States, it is provided that further and better particulars of any matter stated in any pleading may be ordered by the court upon such terms as to costs or otherwise as may be just.

Wherefore, in view of the vagueness, insufficiency, generality, and indefiniteness of said section six of said bill of complaint, set forth at page 26 thereof, these defendants severally move that the United States be required to file forthwith such further and better particulars of the matters stated in said section six shall apprise the court of the claim made by the United States, and so that these defendants may know what things they have to meet in regard thereto, and with what they are charged.

CHARLES F. CHOATE, Jr.,
For Defendants.

1386 *Petitioner's response to defendants' motion for a bill of particulars, under Section VI of the petition, in the above-entitled cause.*

[Filed June 25, 1913.]

Responding to the motion of defendants for a bill of particulars, and the order of the court thereon, under Section VI of the plaintiff's petition, the following statement is filed in amplification of said section:

I.—Misrepresentation and threats to induce customers of competitors to abandon competing machinery.

a. The defendants or their agents have threatened to and have actually removed their leased machinery from factories where the machinery of competitors was being operated, the parties against whom said threats were made, when and where made, and the kinds of machines removed, and the kinds of competing machines which had been obtained, and from whom obtained, being as follows:

(1) Peter Tessier & Company, in or about March, 1904, in Haverhill, Massachusetts; machines removed being slugging machines, Goodyear welt and turn shoe machines, Grip slugging machines, Universal slugging machines, knife grinder, Goodyear turn channelers, and a Goodyear molding machine; the independent machine operated by Tessier & Company being a Duplessis turn sewing machine.

(2) Ernest Bottomley & Company, in or about January, 1904, at Haverhill, Massachusetts; machines removed being single head taper nail tacking machine, loose nailing machine, grip slugging machine, McKay knife grinder, American lightning nailing machine, McKay heel trimming and randing machine, McKay rotary grinder, Planet sole rounder; and the independent machine operated by Bottomley & Company being a Duplessis welt and turn machine.

b. The defendants or their agents threatened to remove, under the terms of their leases, their machines which were being operated by the following parties:

1387 (1) Mark J. Worthley, of Lynn, Massachusetts; Joseph Caunt, of Lynn, Massachusetts; Thomas G. Plant Company, of Boston, Massachusetts; A. E. Little Company, of Lynn, Massachusetts, and A. Garside & Sons, of New York City, because said individuals and firms were each operating in their factories or had obtained machines from the Standard Shoe Machinery Company. The petitioner is not informed as to the exact dates said threats were made, but is advised that they occurred in 1900 or 1901.

(2) In 1902 or shortly prior thereto, C. B. Lancaster Shoe Company, of Keene, New Hampshire, installed on trial in its factory a tackless lasting machine manufactured by the Tackless Shoe Machinery Company, whereupon the defendant United Shoe Machinery Company gave notice that if such machine was not returned forthwith, it would remove all of its machinery with which the factory of said Lancaster Shoe Company was almost entirely equipped, and as a result thereof said tackless lasting machine was returned and not purchased or leased.

(3) About the same time, Nutt & Pratt, of Natick, Massachusetts, whose factory was equipped with machinery leased from the United Shoe Machinery Company, also installed on trial one of said tackless lasting machines, but returned the same in consequence of a notice given by the United Shoe Machinery Company of like character to that it gave to C. B. Lancaster Shoe Company.

c. The defendants threatened to take back their machines under the terms of their leases and thereby force manufacturers to remove competing machines which had already been installed in the following instances:

(1) They so threatened T. D. Barry Shoe Company at Brockton, Massachusetts, in or about the spring or summer of 1900, and brought a proceeding to remove from said company's factory welting, stitching, heeling, lasting, slugging, insole channeling, and other machines, and thus compelled said company to remove a system of machines of like character, except slugging and channeling machines, which Barry & Company had obtained from the Standard Shoe Machinery Company.

(2) They so threatened Curtis & Jones, of Reading, Penn-
1388 sylvania, in or about the year 1903, and thus caused them to remove from their factory a full or nearly full line of machines which had been leased or purchased from the Duplessis Shoe Machinery Company.

d. Hilliard & Tabor, of Haverhill, Massachusetts, had installed a line of shoe machinery belonging to the United Shoe Machinery Company, and were operating the same. Early in 1911 said company installed a turn sewing machine manufactured by the Haverhill Shoe Machinery Company. Shortly thereafter, defendant Winslow, acting for the United Shoe Machinery Company, pointed out to Hilliard & Tabor that this machine was being operated in violation of the Shoe Machinery Company's leases, and threatened to change the terms of said leases and make them more onerous if said machines should be purchased and permanently installed; in consequence of which Hilliard & Tabor refused to purchase said machines.

e. In or about the year 1909 Harsh-Edmonds Shoe Company, of Milwaukee, Wisconsin, desired to lease one or more clicking machines, but on account of the burdensome conditions of the leases of the United Shoe Machinery Company they made an effort to obtain them from other parties. Shortly thereafter Mr. Harsh, while in Boston, was sent for by Mr. Willson, general manager of the United Shoe Machinery Company, and was warned and threatened by him with reference to his making further effort to procure such machines elsewhere, and was caused thereby to take clicking machines from the United Shoe Machinery Company.

f. Witherell & Dobbins, of Haverhill, Massachusetts, were engaged in the manufacture of turn shoes and were contemplating entering upon the manufacture of welt shoes, and in or about the spring of 1911 they were threatened by the United Shoe Machinery Company or its agents that if they continued to operate machines of competitors in the manufacture of turn shoes, they would exact from said Witherell & Dobbins installation charges on machines used in the manufacture of welt shoes, which charges were exorbitant in comparison with those rendered to manufacturers not operating competing machines.

1389 g. About the same time George A. Learned, of Newburyport, Massachusetts, was also engaged in the manufacture of turn shoes, and was contemplating entering upon the manufacture of welt shoes, and a threat of like character was made to said company by defendant shoe machinery company or its agents.

h. About June, 1911, Harry H. Wentworth, of Haverhill, Massachusetts, who was engaged in the manufacture of shoes, determined to install a heeling machine or machines manufactured by the Haverhill Shoe Machinery Company, but he was induced not to install said machines by representations on the part of the United Shoe Machinery Company or its agents that if he should do so said United Shoe Machinery Company would increase its installation charges upon future orders for machines, but that no additional charges would be made if orders were not placed with its competitors.

i. In certain conferences held in St. Louis in February, 1911, and in Boston in May, 1911, between Sidney W. Winslow, president of the United Shoe Machinery Company, and Jackson Johnson, Milton S. Florsheim, Frank C. Rand, Emanuel F. Selz, and other shoe manufacturers located in the Central West, said Winslow threatened said manufacturers that the United Shoe Machinery Company would enter upon the shoe manufacturing business, this threat being made in connection with efforts made by said manufacturers to procure a modification of the provisions in the United Shoe Machinery leases.

II.—Threats to use financial resources and power of combination to ruin competitors.

a. In 1900 and previous thereto the Standard Shoe Machinery Company was engaged in the manufacture of shoe machinery, and was endeavoring to perfect and place upon the market, in competition with the United Shoe Machinery Company, a full line of shoe machinery. In or about the spring of said year William Barbour, a director of, and acting power of, the United Shoe Machinery Company, arranged for a conference with James N. Darrah, an officer of said Standard Shoe Machinery Company, the object of said
1390 conference being to negotiate the purchase by the United Shoe Machinery Company of the properties and stock of said Standard Company. Said conference was had at the office of John R. Dos Passos. In the conference then held said Barbour said in substance the following:

"Well, you are making a big mistake because we always try to be nice to people—we offer to buy them at first and then we crush. You cannot do anything, because we control the banking influences both in New York and Boston, and you would not be able to get any money. You won't put in your machines because we have the shoe

manufacturers in a state of terror. I own a million dollars of that stock, and we can't afford to have any competition. My investment is liable to be jeopardized and we can't afford to have any competition against the United Shoe Machinery Company. We have the field and we are going to retain that field."

Thereafter and after the Standard Shoe Machinery Company had suspended operations, said Darrah, in 1905, had a talk with said Barbour, in which he, Darrah, remarked that he had thought of going back into the shoe machinery business, to which Barbour replied in substance:

"You would make a big mistake because you would never get in. We will never let you in or anyone else. You will never have a chance to get in. You will never be able to place your machinery with shoe manufacturers. You can't find any customers."

b. In 1908, and prior thereto, Richard H. Long, of South Framingham, Massachusetts, was engaged to some extent in the manufacture and sale of shoe machinery in competition with the United Shoe Machinery Company, and was endeavoring to increase his business along that line. In or about said year, for the purpose of enabling him to prosecute said business more successfully, he endeavored to arrange for a line of credit with the Chapin National Bank, of Springfield, Massachusetts, but was prevented from doing so by and through the influence of the United Shoe Machinery Company. About the same time he was offered a credit of $50,000 by the New England National Bank, but was subsequently refused the same through the influences brought to bear by the defendants.

1391 c. About 1908 one Bayley, an officer of high rank in the United Shoe Machinery Company, stated to J. S. Holt, who was then endeavoring to manufacture and sell shoe machinery in competition with the United Shoe Machinery Company, and for the purpose of intimidating said Holt, that the said Richard H. Long would be ruined and driven from business by the United Shoe Machinery Company unless he ceased trying to compete with this company, and that the same fate would befall any other who tried to enter the shoe machinery industry, and that said company would make every effort to ruin Long by destroying his credit with the banks, pointing out that the United Shoe Machinery Company controlled the First National Bank of Boston, one of the largest and most powerful financial institutions in New England, and possessed such strong banking connections that it would be able to prevent Long from obtaining the necessary capital to continue operations.

d. In 1904 and previous thereto Harry E. Cilley, of Rindge, New Hampshire, was engaged in making shoe machinery, principally Judd

leveling machines. In 1901 negotiations were being had between said Cilley and the United Shoe Machinery Company, through E. P. Hurd. During the negotiations Cilley was asked if he would accept $30,000, which was declined. Hurd then said in substance that Cilley could not do any business except by the sufferance of the United Shoe Machinery Company and that he was slow-witted if he did not appreciate it; that the United Shoe Machinery Company controlled all the manufacture of welt shoes and intended to control the manufacture of McKay sewed shoes, and that the control of the upper stitching process might be acquired; that the United Shoe Machinery Company did not care for either the common law or the Sherman law, that they could retain attorneys of reputation, and their money practically could control any suit started against them, and further that at the formation of the United Shoe Machinery Company constituent companies had its machines in factories, the removal of which by the United Shoe Machinery Company at that time would have put a shoe manufacturer out of business, since
1392 which time the shoe manufacturers, through threats of litigation and possible attacks upon credits, have been at the mercy of the combination.

e. Tower Brothers have been engaged at Hudson, Massachusetts, in manufacturing shoe machinery and placing the same upon the market in competition with the United Shoe Machinery Company. Said company's business was greatly injured by their employees being taken away to work in the factory of the United Shoe Machinery Company, they being induced to do so by agents of said company. On or about 1900 one Timothy Bresnahan, acting as agent for the United Shoe Machinery Company, under special authority given by said company, endeavored to purchase the property and business of said Tower Brothers, and made a proposition for the same, which was refused. Thereupon Bresnahan, acting for said defendant company, threatened to drive Tower Brothers from business by quoting such ruinously low prices that they could not possibly compete, at the same time informing said Tower Brothers that the object of the Shoe Machinery Company was to secure complete control of the edge-trimming or edge-cutting machine business.

f. Charles H. Morse, of Brookline, Massachusetts, was formerly engaged in the business of shoe machinery manufacture. In 1903, while said Morse was endeavoring to market the machine known to the trade as the "Frechette" pegging machine and a slugging machine which competed with the United Shoe Machinery Company machines for doing similar work, President Winslow requested said Morse to call at his office, at which time Winslow stated in substance: "You don't suppose we are going to let you continue placing that machine upon the market."

g. George H. Clark, of Winthrop, Massachusetts, an inventor of machines used in the manufacture of shoes, had invented a method of molding or lasting a shoe and stitching the same on the last on which it was molded, the edge being trimmed at the same time at a suitable distance from the edge of the last to enable the outer sole to be attached thereto.

Clark endeavored to introduce this method of manufactur-
1393 ing a molded shoe into various shoe factories, and particularly in the factory of E. B. Richardson, Reading, Massachusetts.

Clark visited the offices of the United Shoe Machinery Company in this connection about 1910 and endeavored to procure by purchase, lease, or rental a Goodyear rapid lock-stitch machine for use in the Richardson factory. Edward P. Hurd, a director and member of the executive committee and assistant treasurer of the United Shoe Machinery Company, at that time told Clark in substance:

"Our policy is to stick the knife in deep to the hilt in the case of anyone interfering with our system, and surely your method does interfere. We will never let you have a machine or have one used in any factory where you or your method may be found, for you to experiment with."

h. Irving A. Hadley and Herbert L. Kimball, doing business under the firm name of Kimball & Hadley, were engaged at Lynn, Massachusetts, in the manufacture of needles, awls, and drivers, and placing the same among shoe manufacturers in competition with the United Shoe Machinery Company.

The United Shoe Machinery Company, through its representatives, notified the shoe manufacturers that if they purchased and used needles and awls from said Kimball & Hadley, the United Company would withdraw its machines from their factories. And in a meeting with Charles W. Martin, assistant to Manager C. H. Bailey, of the United Shoe Machinery Company needle department, about 1903, Hadley was told in substance that the United Company would have his business sooner or later, and that he had better go in and see Mr. Bailey. Hadley afterwards visited said Bailey, as a result of Martin's suggestion, and was told by the latter that if necessary the United Company could give its needles away, in order to destroy the business of Kimball. In the fear that their business would be absolutely destroyed, Kimball & Hadley sold out to the United Shoe Machinery Company.

i. About 1904 the defendants entered into negotiations with Samuel A. Krewson, of Pensauken, New Jersey, an inventor of shoe machinery, with a view to purchasing his inventions. During
1394 a conference with Mr. E. L. Hurd, of the United Company Krewson was told in substance that he owned nothing but what the United Company could make—referring particularly to

Krewson's scouring and fudge wheeler machines. Krewson pointed out to Mr. Hurd that the United Company at that time had nothing like his device, and if it did put one on the market it would be equal to a duplication of his machines, to which Mr. Hurd replied in substance that the United Company could make scouring wheels and put them out by the thousand cheaper than Krewson could possibly do so. Krewson admitted that the United Company could do this, of course, but that it would lose money in so doing, to which Mr. Hurd replied in substance: "We do it to drive little fellows like you out of business." Mr. Hurd also stated to Krewson in substance that "You had better get out of the shoe machinery business," to which Krewson replied: "Would you have me breaking stone?" To which Hurd answered: "Well, I would do something else." At the same time Mr. Hurd remarked: "If we did buy anything, you would pop up again with something else," to which Krewson replied: "Wouldn't I have a right to pop up again?" Mr. Hurd replied: "That is just the trouble; we would have to buy you out again."

III.—Threats to prevent prospective competitors from entering business.

Specifications under this head are embraced in those given under Section II.

IV.—Acquisition of letters patent for valuable inventions—Withheld for long periods—To the detriment of manufacturers and the public.

a. From time to time, as patents have been issued upon various devices used in the manufacture of shoes and various attachments to shoe machinery, the defendants have systematically, for the purpose of preventing others from making a practical use of said patents in the manufacture of machines which would be sold or leased in competition with their machines, and for the purpose of
1395 further monopolizing the shoe machinery business to themselves, acquired said patents by purchase or otherwise, and after the acquisition, with but few exceptions, have suppressed the same, or have failed to make practical use thereof.

b. The defendants have, by suits and threats of suits, for alleged infringement of patents, used and employed patents covering mere details of construction, to prevent the manufacture, use, and sale of unpatented machines.

V.—Grant of rebates to manufacturers to effect exclusive use of machinery.

a. The defendants have granted, and are now granting, to exclusive users of their leased machinery and to such other shoe manu-

facturers upon such special terms as may be considered expedient, rebates of amounts equal to the sums paid by them, respectively, as royalty on Gem flexible insole machines of defendants during the period for which such rebates are made.

b. The defendants have granted a rebate of not less than 15 per cent on account of royalties received from their lessees of Goodyear welters and stitchers in the United States, and one of not less than 10 per cent on account of royalties from the use of Goodyear turn sewing machines, such rebate in each instance being received from a fund created by the investment by defendants each year in the common stock of the United Shoe Machinery Corporation, for three years, from January 1, 1910, to January 1, 1913, at the end of which period the said stock was to have been distributed among said lessees of defendants.

c. The defendants, on the other hand, have penalized, and have threatened to penalize, shoe manufacturers operating competing machinery by withdrawing the above mentioned rebates.

VI.—Purchase of business of competitors at exorbitant prices to eliminate competition.

a. The defendants have purchased the businesses of competitors and prospective competitors to eliminate competition, paying therefor, in many instances, exorbitant prices.

1396 VII.—Other unlawful acts.

a. The defendants have been instrumental in endeavoring to organize strikes and other labor disputes in factories of shoe manufacturers wherein machinery of competitors was also operated.

(1) In or about May, 1910, disaffection arose among the employees in the shoe machinery factory of Thomas G. Plant, then in operation at Boston, Massachusetts. Through an employee of the United Shoe Machinery Company conferences with reference to said labor troubles in Plant's factory were held between one Frank Morrison, Abraham Sochat, and Charles G. Ross, representing Plant's employees, and Charles H. Willson, then general manager of the United Shoe Machinery Company. In one of such conferences in or about June, 1910, said Willson assured Morrison and others that if they would form an organization among the employees of the Plant factory for the purpose of causing a strike therein, all expenses would be paid by the United Shoe Machinery Company, and that the leaders in the movement would be paid handsomely. Relying upon said representation, Morrison and others began to form such organization in accordance with instructions from Willson, and through their efforts about

three hundred operatives were brought within the union. But Plant, becoming suspicious, employed detectives to watch the movements of Morrison and his associates, and a strike in his factory was prevented. Said Morrison and his associates expended a large sum of money promoting said organization.

b. The defendants have taken into their employ officers and employees of competitors for the purpose of injuring their business, and have attempted to induce, hire, or bribe, and have induced, hired, and bribed, individuals to spy upon or betray the secrets of competitors in the following instances, to wit:

(1) In or about 1900 Charles H. Willson, representing the United Shoe Machinery Company, induced Solomon N. Cutter, who was under contract with said company, to go into the employ of the Standard Shoe Machinery Company, a corporation whose headquarters were at Boston, Massachusetts, the object of said
1397 Willson being to thus covertly obtain information as to the financial condition of said company and the state of its business, and afterwards endeavored to obtain from said Cutter information which said Cutter had received while in the employ of said Standard Company.

(2) The Harlow Shoe Finishing Machine Company is a corporation which has been for some time engaged in manufacturing especially the Harlow heel-burnishing machine, which competes with the Xpedite heel burnisher. In or about 1911, George H. Harlow, who was the president and a minority stockholder of said Harlow Shoe Finishing Machine Company—the person principally interested therein being E. E. Bartlett—was taken into the employ of the United Shoe Machinery.

(3) On or about June, 1910, one Richards and one Raymond, agents of the United Shoe Machinery Company at Lynn, Massachusetts, through Charles G. Ross and Abraham Sochat, employees at the Plant shoe factory at Boston, Massachusetts, induced a former expert laster at the Plant shoe factory to go to the P. J. Harney Shoe Company factory at Lynn, Massachusetts, where, under their supervision and in accordance with instructions from Charles H. Willson, general manager of the United Shoe Machinery Company, the said workman demonstrated a lasting machine invention operated in the Plant factory, using the lasting machine of the United Shoe Machinery Company as a model to illustrate the essential differences in operation between the said two machines.

(4) In 1910 and 1911 the Reece Buttonhole Machine Company, whose head office was in Boston, Massachusetts, was engaged in the manufacture of buttonhole machinery, and had in its employ Bernard T. Leveque, an inventor, and Charles M. Brown, a foreman. The United Shoe Machinery Company was then contemplating

entering upon the manufacture of buttonhole machinery and was experimenting for that purpose, and in order to injure the business of said Reece Buttonhole Machine Company it induced said Leveque and Brown to enter into its employ.

(5) In 1905 Charles P. Stanbon, doing business under the name of C. P. Stanbon & Company, was engaged at Lynn, Massachusetts, in manufacturing and selling stockfitting machinery in
1398 competition with the United Shoe Machinery Company, and said company was endeavoring to force said Stanbon to sell out his entire business. For the pørpose of accomplishing this object, the said United Shoe Machinery Company offered said Stanbon's employees higher wages and thereby induced one Horace Thompson, a special stock fitter, and other important employees of Stanbon to leave him and accept employment from said company.

c. The defendants have threatened to duplicate, and in numerous instances have duplicated, the inventions, patterns, and designs, patented and unpatented, of others and have used the same to their own advantage without proper payment therefor.

(1) In 1903 and previous thereto the Tripp Giant Leveler Compaay was engaged in the manufacture of a leveling machine. Said Leveler Company was controlled and owned by Charles H. Johnson and Maurice V. Bresnahan. About January of said year said Johnson and Bresnahan received a request from the United Shoe Machinery Company to enter into negotiations looking to the asquisition by said company of the Tripp Giant Leveler Company and another concern in which Bresnahan had an interest. At the first interview S. W. Winslow, president of said company, submitted a proposition to the effect that the business would be taken over at an appraised value for the tools and stock on hand, and that in lieu of payment for the Leveler Company's patents a commission was to be paid by the United Shoe Machinery Company on all Tripp Giant Leveler Company machines thereafter manufactured and sold, and a proposition was made embracing an offer for employment with the United Shoe Machinery Company for a period of ten years. When the contract was thereafter prepared and submitted, it materially differed from his proposition, and said Johnson refused to execute the same, and Bresnahan also refused. Thereupon Mr. Winslow said to Johnson in substance: "Johnson, you had better sign that contract. We are going to have your business any way." About six months thereafter the United Shoe Machinery Company began the manufacture of machines which were practically duplicates of the machines manufactured by the Tripp Giant Leveler Company.
1399 On account of the tremendous expense of patent litigation, it was considered inadvisable to institute legal proceedings to

prohibit the Shoe Machinery Company from further manufacturing same.

(2) Frank L. Harmon, of Beverly, Massachusetts, was an inventor of patent heeling machines, tacking and nailing machines, sewing machines, skiving and fulling machines, and shoe machinery of other kinds. In 1905 S. W. Winslow, president of the United Shoe Machinery Company, was endeavoring to purchase from said Harmon his patents on skiving and fulling machines, and in an interview said Winslow told Harmon that he would see to it that Harmon did not get any more money to work with. Winslow also said that he did not have to buy Harmon's machine; that he would rather have three machines do the work than one, because they would have more machines and more parts to make. Winslow further said that he could have Harmon's machines if he cared for them, and that Harmon could not prevent it, and said that Harmon could not prevent it, and said that Harmon was a fool not to have studied the power of money.

After Harmon had obtained a patent on a die block and for several years before same was assigned to the United Shoe Machinery Company said company manufactured and leased machines infringing said patent without any right whatever to do so, and without giving Harmon any compensation therefor.

One H. O. Woodbury furnished said Harmon money for experimentation, and while so engaged said Harmon invented and constructed a skiving machine. Said Woodbury negotiated with C. H. Willson, manager of the United Shoe Machine Company, and Willson said that if the patent was assigned to the company and the machine worked as represented, the company would pay for it a substantial sum. Trusting this representation, Woodbury assigned without present consideration, said patent, relying upon the oral understanding as stated. The company bought and tested said machine, which worked perfectly, but the company thereafter refused to pay any consideration for the patent.

(3) One Euclid I. LaChapelle in 1906 invented an appliance for holding uppers to soles during the sewing operation. Some
1400 time thereafter LaChapelle invented an improvement on the pulling-over machine, and also invented a machine for leveling the bottom of shoes, a welt guide, and many other improvements on other machines used in the manufacture of shoes. The United Shoe Machinery Company took said LaChapelle into its employ, upon representation that it would pay to him a reasonable consideration for said inventions when they should be developed by experimentation but said LaChapelle was subsequently purposely discharged from its employ, and many of said improvements have been perfected and

placed in operation, without any adequate consideration from the United Shoe Machinery Company.

(4) In or about November, 1903, one Nathaniel Sparks invented a heel compressing machine and assigned his invention to one William J. Young, but the patent was applied for in the name of said Sparks. Thereafter the United Shoe Machinery Company induced said Sparks to make an affidavit and file same at the Patent Office, denying that he had ever invented such machine. Subsequently the United Shoe Machinery Company began making machines under said invention, and said Young has never been able to realize any value therefrom.

(5) T. J. Edwards was engaged in the business of cutting stamps to be used in stamping shoes. In 1910 he was requested by the United Shoe Machinery Company to compile a catalogue of his stamp cuts, so that orders might be taken from said company by those desiring stamps. Understanding that the orders would be placed with himself, he compiled the catalogue, but received practically no orders through said company. Early in 1911 Edwards ascertained that the United Shoe Machinery Company had issued a catalogue of designs and distributed the same to all shoe manufacturers, in which it had included those which had been furnished by Edwards previously. The issuance of this catalogue practically ruined Edwards's business.

(6) The Fortuna Machine Company manufactures a skiving machine known as the Fortuna skiving machine. The United Shoe Machinery Company has for some years past been manufacturing a skiving machine which closely resembles the one manufactured
1401 by the Fortuna Company, and which it represents to the shoe manufacturers to be a Fortuna machine, and while it expresses willingness to said manufacturers to instal the same if they so desire, it discourages them from doing so, pretending that the machine is an inferior one. This is done in order to discredit the machine manufactured by the Fortuna Machine Company.

(7) About 1904 or 1905 one George E. Rollins invented a welt-grooving and champing machine and sold out two-thirds interest therein to Charles C. Merritt, of Brockton, and some machines manufactured thereafter were placed upon the market. After it was demonstrated that said machine was a success, the United Shoe Machinery Company, without any legal right whatever, began putting out a similar machine, which clearly infringed Rollins's patent, and placed same upon the market in competition with Rollins's machine, and destroyed the value thereof. Said Rollins has been deterred from litigation on account of the expense of same.

(8) In the spring of 1900 one A. McDowell invented a spring heel shaver, and looking to a purchase of this invention the United

Shoe Machinery Company carried on for a time negotiations with said McDowell. Thereafter said company informed McDowell that it had a machine for a like purpose of its own, which machine was in fact an infringement of McDowell's invention. Said McDowell also invented a heel seat cutter for trimming the heel seats of shoes on heel-shaving machines, upon which he obtained a patent in 1897, and he thereafter also procured a patent upon an adjustable independent background for heel seat cutters on shaving machines. The United Shoe Machinery Company has purposely produced machines embodying the patented features of each of the aforesaid patents, and thereby destroyed the value of the same, well knowing that said McDowell could not afford the expense of litigation against it.

d. The defendants have exacted royalties from various lessees among shoe manufacturers for work performed on machinery owned by such shoe manufacturers or furnished by competitors of defendants.

(1) On November 1, 1911, the defendants rendered a bill to
1402 Mr. Charles L. Clifford, who was engaged in the manufacture of children's turn shoes at Newton, New Hampshire, for 9,839 pairs of children's turns, sewed on a Fox (Haverhill) turn-sewing machine, at one cent per pair—or a total of $98.39, with a discount of fifty per cent (50%) if paid before November 15, 1911.

(2) About 1903 or 1904 Fred J. Thompson, of Haverhill, Massachusetts, shoe manufacturer, was using two stitching machines of the Duplessis Machinery Company. Later a line of machinery of the United Shoe Machinery Company was installed and Thompson was obliged to pay royalties to the United Company for all shoes manufactured by the Duplessis machinery.

e. The defendants have wrongfully exacted return charges from shoe manufacturers on leased machinery in instances where such charges did not properly apply.

f. The defendants have arbitrarily increased the installation, return, and other charges on machinery operated by shoe manufacture's who also operate machinery of competitors.

(1) N. D. Dodge Shoe Company, of Newburyport, Massachusetts, had greatly improved their work by the aid of the machines of the Haverhill Shoe Machinery Company, but were forced to discontinue their use when they went to the United Company for a welt line. The company would not put in the line unless they paid what would be a fair price for the machines when installed, and yet which gave them no equity in the machines, and they must then pay the same royalties as others who made no initial payment.

The United Company required them not only to discontinue the use of the sewing machines, but the channeling machines also.

g. The defendants have offered or granted special terms and prices to shoe manufacturers on machinery, parts, and supplies, at times below cost, to induce them to withdraw their business from competitors.

(1) About 1900, E. P. Reed Company, of Rochester, New York, were using machines of the Standard Shoe Machinery Company. The defendants offered to install their machines free of charge if the Reed Company would discontinue the use of Standard machines.

1403 h. The defendants have refused or delayed unnecessarily in furnishing machinery, parts, or supplies to shoe manufacturers also operating machinery furnished by competitors or owned by said shoe manufacturers.

i. The defendants have threatened to remove their leased machinery from factories wherein supplies purchased from competitors have been used.

j. The defendants have refused to furnish individual machines to shoe manufacturers operating machinery of competitors, such refusals being either absolute or modified by demands for prohibitive installation charges.

(1) About December, 1911, Carleton & Hunt, shoe manufacturers, Haverhill, Massachusetts, then manufacturers of turn and McKay shoes, were then using one sewing machine and channeling machine of the Haverhill Shoe Machinery Company. About that time they desired to engage in the manufacture of welt shoes and ordered a line of welt machinery from the defendants, and were informed by the defendants that they would have to discontinue the use of the Haverhill sewing machine before welt machinery could be installed. An alternative proposition, however, was made to Carleton & Hunt by the defendants to install welt machinery upon a payment of an installation charge, which was practically prohibitive, in addition to the regular royalty charges.

(2) About June, 1912, Ira J. Webster, shoe manufacturer, Haverhill, Massachusetts, who had been operating two Pettengill nailing machines which he owned outright, endeavored to obtain from the defendants a pulling-over machine and a toe-capping machine. In view of the fact that he was operating independent machinery, the defendants demanded an excessive installation charge on the pulling-over and toe-capping machines, in addition to the royalty charges, which Webster could not afford to pay. Webster then suggested his willingness to pay the regular royalty charges on the defendants' rapid heelers, in order to obtain the pulling-over and toe-capping machines from the defendants, provided he be allowed to continue operations on the Pettengill machines. He was unable to

1404 make any satisfactory arrangement with the defendants, and the Pettengill machines have been removed from his factory.

k. The defendants have threatened to take further steps to increase and perfect their control of the shoe machinery business, not only of the United States, but of the world.

J. A. FOWLER,
Assistant to the Attorney General.
WILLIAM S. GREGG,
Special Assistant to the Attorney General,
of Counsel for Petitioner.

STIPULATION.

[Filed July 23, 1913.]

It is hereby agreed and stipulated between counsel for all the parties that the demurrers of the following defendants:

Thomas G. Plant Company,
Rimmon Eyelet Company,
S. O. & C. Corporation,
Campbell, Bosworth Machinery Company,
United Fast Color Eyelet Company,
United Awl & Needle Company,
J. C. Rhodes & Company, Inc.,
Boston Blacking Company,

and the demurrer and answer of S. A. Felton & Son Company, need not be printed in the record, as the petition has been dismissed as to said defendants, by order of court, entered April 16, 1912.

W. S. GREGG,
Special Assistant to the Attorney General,
for Complainant.
CHARLES F. CHOATE, Jr.,
for Defendants.

1405 *Order of court directing the taking of testimony, with respect to patents, before an examiner, June 27, 1913.*

PUTNAM, BROWN, and DODGE, JJ. It is ordered that the taking of testimony, both for the peitioner and defendants, with respect to the allegations of the peition set forth in the paragraph beginning at the bottom of page 15 and ending at the beginning of Section IV on page 16, of the printed petition in the above-entitled cause, be, and is hereby, referred to Charles K. Darling, as special examiner; and that for the purpose of taking such testimony the petitioner

is allowed until August 12th, inclusive, to present its evidence in chief, and the defendants are allowed from that date until September 27th, inclusive, to present testimony in defence of the proofs presented by the petitioner before the examiner, and the petitioner is allowed from the last named date to October 11th, inclusive, 1913, to present evidence in rebuttal. The court reserves control of the proceedings before the examiner, so far as either party finds it necessary to protect their rights; and on any question as to the admission of proofs, either party may apply to the court.

By the court:

CHARLES K. DARLING, *Clerk.*

1406 *Order extending time for taking testimony before examiner under order dated June 27, 1913.*

[August 8, 1913.]

PUTNAM & DODGE, JJ. It is ordered (both parties consenting hereto) that the times for taking testimony under the order dated June 27, 1913, entitled "Order directing the taking of testimony with respect to patents before an examiner," be extended two (2) weeks, the petitioner to be allowed until August 26, 1913, inclusive, for evidence in chief, the defendants to have until October 11, 1913, inclusive, for testimony in defence, and the petitioner to have to October 25, 1913, inclusive, for rebuttal.

By the court:

CHARLES K. DARLING, *Clerk.*

The above-named parties hereby consent to the entry of the foregoing order.

ALLEN WEBSTER,
Special Assistant to the Atty. General
for Petitioner.
CHAS F. CHOATE, JR.,
for Defendants.

JULY 31, 1913.

1407 *Order extending time for taking testimony before examiner under order dated June 27, 1913.*

[September 12, 1913.]

PUTNAM, DODGE, & BROWN, JJ. It is ordered (both parties consenting hereto) that the times for taking testimony under the order dated June 27, 1913, as modified by the order of August 8, 1913, be further extended so that the petitioner be allowed until September

1, 1913, inclusive, for evidence in chief; the respondents be allowed until November 1, 1913, inclusive, for evidence in defense, and the petitioner be allowed to November 14, 1913, inclusive, for rebuttal.

By the court:

CHARLES K. DARLING, *Clerk.*

The above-named parties hereby consent to the entry of the foregoing order.

CHAS. F. CHOATE, Jr.,
for Defendants.
WM. S. GREGG,
Spl. Asst. to the Attorney General.

1408 *Stipulation.*

[Filed September 20, 1913.]

It is hereby agreed between counsel for the petitioner and for the defendants that petitioner's Exhibit No. 162, to wit, a certified copy of the record in the case of United Shoe Machinery Company vs. Thomas G. Plant Company et al., in the Supreme Judicial Court for Suffolk County, Massachusetts, may be used upon the final hearing and upon appeal in the cause at bar without printing the same as a part of the record.

W. S. GREGG,
of Counsel for Petitioner.
CHAS. F. CHOATE, Jr.,
Counsel for Defendants.

1409 *Petitioner's motion to strike out.*

[Filed December 2, 1913.]

Now comes the petitioner and shows that under the order of reference to a special examiner the defendants were only authorized to introduce testimony before the examiner in defence of the proofs presented by the petitioner before the examiner.

That the petitioner introduced proofs before the examiner relating to patents on—

Welt and turn machines, out-sole stitchers, lasting machines, heel-nailing and attaching machines, channeling machines, rough rounders and channelers, sole laying, leveling, or beating machines, skiving machines, pegging machines.

That the defendant the United Shoe Machinery Company offered patents and evidence in reply to the proofs presented by the petitioner, and further,

That in the proceedings before the examiner said defendant, against the objections of counsel for the petitioner seasonably inter-

posed, offered in evidence, and caused to be marked as exhibits hundreds of additional patents which did not relate to the patents offered in evidence by the petitioner and were not in defence of the petitioner's proofs, and offered and caused to be inserted in the records testimony in reference to said additional patents, none of which testimony was in defence of the proofs presented by the petitioner.

1410 That the machines in reference to which the defendant offered evidence, by way of patents and testimony in reference to such patents and in reference to pending applications, which evidence was not in defence of any of the proofs presented by the petitioner, comprise those noted in the list hereto attached and made a part hereof.

And the petitioner moves that all patents offered in evidence by the defendant relating to the machines noted in the schedule hereto annexed and all testimony in reference thereto and in referece to pending applications for patents and all other evidence offered by the defendant not in defence of the proofs presented by the petitioner before the examiner be stricken from the record.

The testimony, patents, and matters herein objected to are too numerous and extended to be herein specifically pointed out, but, if this honorable court so directs, will be specified hereafter by reference to pages, etc., of the printed record, when copies of the printed record are procured.

ALLEN WEBSTER,
Special Assistant to the Attorney General
in above-named case.

1411 *Petitioner's motion to strike out.*

[Filed December 2, 1913.]

Now comes the petitioner in the above-entitled cause, and shows that the petition was filed December 12, 1911.

That in the proceedings before the special examiner the defendant the United Shoe Machinery Company offered in evidence 157 patents bearing date and issued after the date of the filing of said petition, and caused said patents to be marked as exhibits in this cause, and caused to be inserted in the record testimony with reference to said patents and with reference to the structures shown therein and with reference to various transactions occurring after the date of the filing of the petition herein, all being against the objection of counsel for the petitioner seasonably taken. All of which matters and things tioner before the examiner be stricken from the record.

The petitioner prays that all said patents and all testimony with reference to the same, and with reference to all matters and things

occurring after the filing of the petition herein, be stricken from the record.

The matters herein referred to will be particularly pointed out by reference to page and number, if so directed by this honorable court.

ALLEN WEBSTER,
Special Assistant to the Attorney General
in the above named case.

1413 *List of parts of exhibits to be specifically relied upon by petitioner, etc.*

[Filed December 9, 1913.]

WASHINGTON, D. C., *November 12, 1913.*

To United Shoe Machinery Company and other defendants—In re United States, petitioner, v. United Shoe Machinery Company, of New Jersey, et al., in Equity No. 301—District Court of the United States for the District of Massachusetts.

There is hereby submitted the following information, indicating certain parts of exhibits introduced on the taking of testimony in open court, that will be specifically relied upon by petitioner, and also some of the purposes for which said documentary evidence was introduced, to wit:

1. Exhibit 1, certificate of incorporation of United Shoe Machinery Company, will be relied upon as a whole to show said company's incorporation, date of its organization, and the powers and objects thereof.

2. Exhibit 2, certificate of incorporation of United Shoe Machinery Corporation, will be relied upon as a whole to show said company's incorporation, date of its organization, and the powers and objects thereof.

3. Exhibits 3 to 13, inclusive, and Exhibit 59; forms of leases used by the companies which combined and promoted the organization of United Shoe Machinery Company. Said leases will be relied upon as a whole to show the status of the shoe machinery business before the organization of the United Company; the manner in which the several branches of said business had been conducted when said consolidation into United Shoe Machinery Company was made; and that there was competition between said several companies, and especially between the Eppler and Goodyear companies in respect to welting machines and out-sole stitching, and between the Goodyear Company and the Consolidated & McKay Lasting Machine
1414 Company with respect to lasting machines; and further, that there were unlawful restrictions in some of the leases in use by said companies, especially in Exhibits 3, 4, and 5, leases by the

Goodyear Company which contained clauses prohibiting the use of the elased machinery with other than Goodyear machines, and Exhibits 6, 7, 9, and 10, leases of the Consolidated & McKay Company, which contained clauses requiring the use of the leased machines to the full capacity, and also clauses requiring the lessee to take all additional machines which it might need from the lessor; and of Exhibit No. 13, by the Davey Pegging Machine Company, which contained clauses requiring the exclusive use of said pegging machine for pegging purposes, and requiring all additional machines that might be needed for said purposes to be taken from the lessor.

4. Exhibits 14 to 58, inclusive, 149 and 168 to 174, inclusive, and 176, forms of leases executed by the United Shoe Machinery Company and companies under its control. These leases will be relied upon as a whole to show the general system by which the United Comapny carries on its business, and the object and intent of said system. Furthermore, special clauses contained therein will be specifically relied upon, as follows:

(a) A provision which may be designated as the "full capacity" clause; an example of which, taken from Exhibit No. 21, reads as follows:

"The lessee shall use the leased machinery to its full capacity upon all boots, shoes, or other footwear, or portions thereof, made by or for the lessee in the manufacture or preparation of which such machinery is capable of being used." (Exhibit No. 21, lease for No. 5 lasting machine, B. of E., p. 185.)

This clause, or its equivalent, appears in Exhibits Nos. 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 42, 43, 44, 45, 46, 52, 168, 172, 173, 174, and 176.

(b) A provision which may be designated as the "additional machines" clause, an example of which, taken from Exhibit No. 31, is as follows:

"In case the lessee has more work of the kind which can be
1415 performed by any of the machines belonging to the metallic department of the lessor than the capacity of the metallic department machinery which he has under lease from the lessor will permit, then the lessee shall take from the lessor under a like lease and license sufficient additional metallic department machinery to perform the work." (Exhibit No. 31, metallic department lease, B. of E., p. 291.)

This clause, or its equivalent, appears in Exhibits Nos. 27, 29, 30, 31, 32. 33, 34, 35, 36, 39, and 176.

(c) A provision which may be designated as the "exclusive-use" clause, an example of which, taken from Exhibit No. 21, is as follows:

"If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting

all boots, shoes, and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use exclusively tacking mechanisms and appliances held by him under lease from the lessor, for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses of lasting machines, lasting machinery, lasting mechanisms, or lasting devices then existing between the lessor and the lessee, whether as a result of assignment to the lessor or otherwise; and the possession of and full right to and control of all lasting machines, lasting machinery, lasting mechanisms, and lasting devices, the lease or license of which is so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever." (Exhibit No. 21, lease for No. 5 lasting machine, B. of E., pp. 187–8.)

This clause, or its equivalent, appears in Exhibits 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 37, 38, 39, 44, 45, 46, 52, 149, 168, and 171.

(d) A provision which may be designated as the "prohibitive" clause, an example of which, taken from Exhibit No. 21, is as follows:

"The leased machinery shall not nor shall any part thereof be used in the manufacture or preparation of any welted boots, shoes, or other
footwear, or portions thereof, which have been or shall be
1416 welted in whole or in part or the soles in whole or in part stitched by the aid of any welt-sewing or sole-stitching machinery not held by the lessee under lease from the lessor, or in the manufacture or preparation of any turned boots, shoes, or other footwear, or portions thereof, the soles of which have been or shall be in whole or in part attached to their uppers by the aid of any turn sewing machinery not held by the lessee under lease from the lessor or in the manufacture of any boots, shoes, or other footwear which have been or shall be in whole or in part pulled over, slugged, heel-seat nailed, or otherwise partly made by the aid of any pulling over or 'metallic' machinery not held by the lessee under lease from the lessor." (Exhibit No. 21, lease for No. 5 lasting machine, B. of E., page 185.)

This clause, or its equivalent, appears in the following lease forms: Exhibits Nos. 15, 16, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, 34, 35, 36, 37, 38, 39, 40, 41, 43, 45, 51, 52, 56, 149, 168, 169, 170, 171, and 172.

(e) A provision which may be designated as the "forfeiture of every lease" clause an example of which, taken from Exhibit 21, is as follows:

"But if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or

contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. . . . Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted." (Exhibit No. 21, lease for No. 5 lasting machine, B. of E., page 185.)

This clause, or its equivalent, appears in every lease form of
1417 United Shoe Machinery Company and its subsidiary companies and introduced as exhibits.

(f) Petitioner will also rely on the clause which requires the lessee to purchase all repair parts from the lessor, and which appears in all of said lease forms, and also upon the clauses which specify the amount of royalty charged and the amount of initial payment, where such is required, and the amount of return charge, where such charge is required, for the purpose of showing the additional burdens assumed by the lessees under those leases which do not contain the "prohibitive clause."

5. Exhibits 59 to 131, inclusive, and 143 to 145, inclusive, some of which are contracts for the purchase of stocks and properties of other concerns engaged in different branches of the shoe machinery business, and some of which are contracts of employment by United Shoe Machinery Company.

Petitioner will rely upon said exhibits.

(a) Each as a whole, and also collectively, to show the general policy of defendants to acquire the business of shoe-machinery concerns and to eliminate all competitors and all possible competitors from such business, and to monopolize the shoe-machinery industry.

(b) It will rely particularly upon certain clauses which require the vendors to assign all rights and interests in and to all inventions and improvements in the machinery mentioned which might for an indefinite or for a definite period after the execution of the contract be possessed by the vendors, and which bind the vendors not to engage in certain lines of business for an indefinite or definite length of time and not to engage in any business in competition with the

United Shoe Machinery Company or the subsidiaries of said company. Clauses of this kind appear in Exhibits Nos. 60, 67, 68, 70, 74, 78, 81, 82, 83, 84, 85, 87, 91, 92, 93 94, 95, 98, 99, 100, 101, 104, 105, 106, 108, 109, 111, 112, 113, 114, 115, 120, 121, 122, 123, 124, 125, 127, 128, 129, 130, 143, 144.

(c) It will also rely upon certain clauses in the contracts of employment which bind the party employed to convey to the employer all improvements or inventions relating to the machinery
1418 described which the employee might acquire within an indefinite period or a period specifically fixed, and which binds the employee not to enter business in competition with United Shoe Machinery Company or with any of its subsidiaries. Clauses of the kind mentioned appear in Exhibits Nos. 64, 65, 69, 72, 73, 107, and 126.

6. Exhibits 133 to 142, inclusive, contracts between Thomas G. Plant and United Shoe Machinery Company. All parts of these exhibits will be relied upon to show the kind of properties acquired by said purchases and extent and value of same, and that said Plant and the United Company were at the time said purchase was made in active competition, and consequently the object of the United Company in acquiring said properties.

The record in the case of United Shoe Machinery v. Thomas G. Plant, which was introduced, but by agreement not printed, will be relied upon for the same purpose, and also to show the conduct of the United Company towards Plant prior to said purchase and the inducements which caused Plant to sell his property to the United Company.

7. Exhibit 146, an address to the lessees of the United Shoe Machinery Company, dated June 10, 1910, will be relied upon as a whole to show the policy and growth of the United Shoe Machinery Company, and the first paragraph on page 1071 of the printed record will be specially relied upon to show one of the methods of inducing manufacturers to patronize the United Shoe Machinery Company instead of its competitors.

8. Exhibit 147, statement of Charles H. Jones, published May 24, 1906, was introduced to show what was actually said by Mr. Jones and to make clear his explanation of parts thereof.

9. Exhibit 149, lease of Goodyear machines to Selz-Schwab & Company, dated April 4, 1905, will be relied upon as a whole to show terms of lease, and paragraphs 1, 7, and 8 will be especially relied upon to show that Selz-Schwab & Company was prohibited from using Haverhill machines, as testified to by Mr. Selz, and also such other machines as indicated in said clauses.

1419. 10. Exhibits Nos. 151, 152, 153, and 175, which are addresses of officers and directors to stockholders:

(1) Of McKay Shoe Machinery Company, dated February 15, 1899;

(2) Goodyear Shoe Machinery Company, dated February 8, 1899;

(3) International Goodyear Shoe Machinery Company, dated February 18, 1899; and

(4) Consolidated & McKay Lasting Machine Company, dated February 11, 1899.

All parts of said addresses will be relied upon to show method of organization of the United Company, the amounts paid the constituent companies, and the inducements that led up to and the purposes of its formation.

11. Exhibit No. 154, proposition submitted to Mr. Winslow by Jackson Johnson, representing certain shoe manufacturers, will be relied on to show efforts made by manufacturers to secure modification of leases and terms desired by them, and the continued and persistent denial of any relief by the United Company and its officers.

12. Exhibits Nos. 155 and 156, correspondence between F. C. Rand and Mr. Winslow, will be relied upon for the purpose stated under No. 11.

13. Exhibit No. 157, agreement between Drew, Selby & Company and United Company, dated March 13, 1900, will be relied upon to show that the United Company obtained control of the machines mentioned therein, in the manner mentioned, and also the company's method of restraining the use of independent machines.

14. Exhibits Nos. 180, 181, 182, 183, 184, 185, and 186, statements of financial condition of the United Shoe Machinery Company on March 1st of 1901, 1902, 1903, 1904, 1905, 1906, and 1907, and Exhibits 164, 165, 166, and 167, copies of reports of the United Shoe Machinery Corporation to the annual meetings of the stock-
1420 holders of said company for the years 1908, 1909, 1910 and 1911, will be relied upon to show the growth of the company's resources and power.

15. Exhibit No. 187, statement showing amount of capital stock and amount thereof owned by United Shoe Machinery Company, and nature of business of each corporation in which the United Shoe Machinery Company has a financial interest, and Exhibit No. 188, list showing officers and directors of such companies, will be relied upon as a whole to show relation between United Company and its subsidiaries, and that they are engaged in a naturally competitive business with that of the United Company, and also to show the

extent of control by the United Company over said subsidiaries and the entire shoe-machinery business.

16. Exhibit 189, agreement dated September 11, 1899, between United Shoe Machinery Company and Henry W. Peabody and others, doing business under the name of Henry W. Peabody & Company. The first paragraph of the preamble of this agreement is particularly relied upon to show that the United Company had already secured control of certain lines of the shoe-machinery business and was intending to secure control of other parts thereof.

The foregoing information is given in compliance with the suggestion of the presiding judge, made during the introduction of the Government's testimony in open court, and the defendant may be informed as to the principal reasons for introducing the said documents, and of many of the particular parts thereof, which will be relied upon; but some exhibits and some parts of other exhibits may by oversight or for other reasons be omitted herefrom, and petitioner expressly reserves the right to rely upon any and all exhibits, and any and all parts of exhibits, for any purpose which it may deem material to any question involved in the case, regardless of whether the parts and purposes are herein expressly stated or not.

J. A. FOWLER,
W. S. GREGG,
Special Assistants to the Attorney General.

1421 *Stipulation as to objections to testimony and further examination before special examiner.*

[Filed Jan. 19, 1914.]

With reference to the motions of the United States relating to the admission of testimony before the special examiner, which motions are shown by and printed in the record on pages 2841 and 2846, the United States withdraws its motions and waives its objections founded on the claim that the evidence was improperly taken before the special examiner, reserving all other objections for irrelevancy and incompetency heretofore or hereafter made with the understanding, to which the court assents and agrees, that the United States may make further cross-examination or introduce evidence in rebuttal with reference to the matters to which the objections and motions relate, the further examination and cross-examination to proceed before the special examiner or proceed at the resumption of the hearings on the third of February in open court, as the parties may hereafter agree or the court may order.

C. F. C., JR.
M. S. G.

1422 *Request for leave to amend petition.*

[Filed January 14, 1914.]

Petitioner in the above-entitled cause asks leave to amend its petition, upon its face, as follows:

I.

(1) That the first and second sentences in Section IV be amended so as to read as follows:

Defendants Sidney W. Winslow, William Barbour, Elmer P. Howe, John H. Hanan, George E. Keith, Edward P. Hurd, George W. Brown, Wallace F. Robinson, Rudolph Matz, and others, owners, officers, directors, and agents of said Goodyear Shoe Machinery Company, International Shoe Machinery Company, Goodyear Shoe Machinery Company of Canada, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company, and Davey Pegging Machine Company, not being satisfied with the benefit of the lawful monopolies and rights belonging to them under letters patent of the United States and of other countries, which they had enjoyed for many years, pertaining to shoe machinery, and parts thereof, and designing and intending unduly, unreasonably, and unlawfully to extend, expand, and perpetuate said monopolies and rights, and to enhance the value thereof at the expense of the boot and shoe manufacturers and of the public generally, and to use the same as a means for unlawfully controlling interstate and foreign trade and commerce in shoe machinery to a greater extent than was warranted by said letters patent, determined to acquire a complete monopoly of the manufacture, sale, and lease of all shoe machinery used in adjusting and attaching the upper to the last, in preparing the bottom and heel and fastening them to the upper, and in finishing the bottom and heel of the shoe after said operations had been performed; and to destroy existing competition among the manufacturers and dealers in such machinery, and through unlawful combinations and agreements to exclude all others from said trade
1423 and commerce. For the accomplishment of this purpose they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery of the kinds above described, and then to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to such manufacturer of shoes, and thereby to exclude all competition by other manufacturers of such shoe machinery and to monopolize

the trade and commerce therein among the States and with foreign countries.

(2) That the first paragraph of Section VIII down to and including the phrase "and foreign countries" be amended so as to read as follows:

In addition to the foregoing, defendants, through United Shoe Machinery Company of New Jersey, by the purchase of all or a controlling interest in the business of a number of individuals and corporations engaged in the shoe machinery business in foreign countries, by the organization of other corporations and the ownership of their capital stock, and by contracts, agreements, and combinations with such corporations, have restrained and monopolized, and now restrain and monopolize, trade and commerce, between this and foreign countries, of all the principal and auxiliary machines used for adjusting and attaching the upper to the last, preparatory to attaching the bottom to the upper, machines for preparing the bottom and heel and attaching them to the upper, and machines for finishing the bottom and heel, and clicking and eyeletting machines.

(3) That Section XI be amended so as to read as follows:

By virtue of the unlawful contracts and combinations above described, defendants control all the large and important establishments in the United States which were formerly engaged in the manufacture, sale, and lease of machines designed and used for adjusting and attaching the bottoms to the uppers of boots and shoes, and kindred and auxiliary machines; they have obligated scores of successful shoe machinery men to refrain from trade and
1424 commerce therein and have acquired a monopoly of interstate and foreign trade and commerce in machines used for adjusting and attaching the upper to the last preparatory to attaching the bottom to the upper, machines for preparing the bottom and heel and attaching them to the upper, and machines for finishing the bottom and heel, and clicking and eyeletting machines.

II.

That the second paragraph of Section XII, entitled "Conclusion," be amended so as to read as follows:

(1st) The lease and license agreements heretofore described when taken as a system, and the several restricted provisions therein when taken singly or in connection with the other provisions of the same lease, or with the same and other provisions of other lease and license agreements held by the same lessee, have been ever since their adoption, and still continue to be, unlawful in this:

(a) It was and is unlawful for defendants, or either of them, to exact from or to execute to any of its lessees an instrument of lease

or license containing any or all of the following covenants or agreements, or any agreement or covenant of a similar character, to wit, (i) a covenant or agreement that the lessee should use the leased machinery to its full capacity; (ii) an agreement that in case the lessee should have more work of the same kind as that performed by the leased machine than the capacity of such machine would permit, the lessee should take from the lessor sufficient additional machinery to perform such work regardless of whether such agreement was in the form of a covenant or of a condition authorizing the forfeiture of the leased machinery in case it should be violated; (iii) an agreement or stipulation that if the lessee should fail or cease to use exclusively designated machinery for performing the kind of work described in the lease, the lessor might at its option terminate that lease and all other leases held by the lessee from the lessor for machinery of the class or classes described; (iv) a covenant or agreement prohibiting the use of the leased machinery upon shoes or
1425 other footwear than such as had been or should be operated upon by certain designated machinery belonging to the lessor; (v) a covenant or agreement that if any breach or default should be made in the observance of any one or more of the conditions in that or any other lease or license agreement existing between the lessor and lessee, the lessor should have the right to terminate any and all leases of or licenses to use machinery then in force between the lessor and lessee; (vi) a covenant or agreement admitting the validity of the patents owned by the lessor, and under which lessee was licensed, any of the inventions of which might be embodied in the leased machinery, and also, in the Goodyear leases, admitting the validity of the title of the lessor to, and its right to the exclusive use of, the trade names of "Goodyear Welt" and "Goodyear Turn," and stipulating that the lessee should not infringe or contest at any time, either before or after their expiration, the letters patent specified in a schedule attached to the lease, or (in said Goodyear leases) the lessor's right to the use of said trade names; (vii) an agreement upon the part of the lessee extending the lease for a period of seventeen years.

(b) Said covenants and agreements have been and are especially unlawful when taken in connection with other covenants and agreements in the same lease, and with the same and other covenants and agreements in other leases held by the same lessee from the United Shoe Machinery Company, of New Jersey, or from the companies controlled by it.

(c) Each and all of the leases executed by defendants are especially unlawful when considered with reference to the existing conditions of the production of and commerce in the shoe machinery

described in this petition as amended, to wit, the fact that said defendants possess a practical monopoly of said production and commerce.

(d) The so-called alternative system of leases whereby for a certain initial payment or increased price of material the lessee might obtain a lease from which one or more of the restrictive clauses enumerated might be omitted is not free of illegality, because the state of production of and interstate and foreign commerce in shoe machinery is such that the omission of such clause
1426 or clauses has been and is of no practical benefit to the lessee, and because the amount of said initial payment, or increased price of material, is such as to induce and constrain the lessee to take the restricted leases in preference to the so-called unrestricted lease, and, further, because said so-called unrestricted leases are in and of themselves unlawful on account of the restrictive provisions, above described, contained therein.

(e) The system of leases as devised by said defendants and used by them is unlawful because it was and is designed to place the shoe machinery business, including the interstate and foreign commerce therein, under the domination and control of defendants, which object has been fully accomplished thereby.

(f) All of the covenants, conditions, and agreements, and the lease and license agreements wherein said covenants, conditions, and agreements are contained, are unlawful regardless of the claim of defendants that they have valid patents on the leased machinery or on parts thereof or on devices attached thereto, because (i) in many instances the machine was not, when the lease and license therefor was executed, protected by valid, basic patents; (ii) in other instances the patent on the leased machinery or appliances attached thereto expired, or will expire, after the execution, but before the termination, of the lease; (iii) the existence of a valid patent upon an entire machine, or any part thereof or attachment thereto, does not authorize in and of itself the execution of a lease for such machine containing any one or more of the restrictive clauses above described; and (iv) the covenants, conditions, and stipulations appearing in the various lease and license agreements heretofore described were and are required in pursuance of the general intent and purpose of defendant to restrain interstate and foreign trade and commerce in shoe machinery and monopolize the same, have been and are one of the most effective parts of the scheme initiated by the contracts and conspiracies to organize the defendant United Shoe Machinery Company, of New Jersey, and continued to the present time by the acquisition of the properties of competing companies and by the other acts heretofore described.

1427 III.

That Section XII of the petition be amended, by inserting a sixth reason why defendants' system of leasing machinery is unlawful, as follows:

(6th) The system of defendants in putting out their machinery by leases containing the covenants and agreements heretofore described is unlawful because it prevents full and free competition among shoe manufacturers in the production and sale in interstate commerce of shoes and other footwear.

J. A. FOWLER,
W. S. GREGG,
Special Assistants to the Attorney General.

Objections of defendants to motion of the United States to amend its bill, made January 14, 1914.

[Filed February 3, 1914.]

And now comes the defendants severally, and severally object to said motion of the United States to amend its bill, and severally set forth upon the record their objections thereto, as follows:

1. Because the defendants would be prejudiced by the allowance of the amendment.

2. Because the proposed change is one of substance and not one merely of form.

3. Because to allow the proposed amendment would be inequitable and unfair to and would greatly prejudice the defendants in that the issue which has been tried and as to which the defendants have cross-examined the witnesses of the United States and introduced their own testimony is materially different from the issue presented by the proposed amendment.

4. Because the cause has not been heard upon any assumption that the issues presented by the proposed amendment were the real issues in dispute.

1428 5. Because the proposed amendment would not conform the pleadings to the proof.

6. Because to allow the proposed amendment would be inequitable in that the defendants would suffer more hardship from the allowance of the amendment than the United States would suffer from its denial.

7. Because to allow the proposed amendment would be inequitable and unfair to the defendants in that it would be a real impossibility to separate from the record as it now stands the evidence relevant

to the issue as presented by the amendment from the evidence irrelevant to such issues.

8. Because the United States has not sustained the burden which rests upon it of showing that special circumstances exist to warrant the allowance of a material amendment of the bill at the present stage in the proceedings.

9. Because all the facts having any bearing upon the amendment were known to the United States at the date when the original bill was brought and the proposed amendment could, therefore, have been made a part of the original bill, or they were in any event known to the United States when it had presented its testimony and rested, and, therefore, it is now too late for the United States to present this amendment.

10. Because the proposed amendment is too vague, indefinite, and uncertain.

11. Because if any amendment is proper at this stage of the proceedings it should be clear and specific and should conform to the evidence, which is not true of the proposed amendment.

12. Because no evidence has been introduced pertaining to certain charges made in the proposed amendment.

13. Because if any decree were entered against the defendants upon the bill as amended, it would deprive the defendants of their right to have a decree or finding entered against them only after full hearing and the right to cross-examine all witnesses upon the charges made against them.

14. Because the defendants at this stage of the proceedings are entitled to a decree on the charges and issues presented by the
1429 original bill without such material change therein as would be effected if the proposed amendments were allowed.

15. Because any decree against the defendants which might follow an allowance of the proposed amendment would deprive the defendants of their property and rights without due process of law inasmuch as the defendants have had no opportunity to defend against the issues presented by the proposed amendment and no opportunity to cross-examine the witnesses presented by the Government as to the issues presented by such amendment.

16. Because the proposed amendment abandons the case alleged in their bill by the United States and makes a new and different case by way of amenement.

17. Because the original bill charges an intent to monopolize shoe machinery generally, and an actual monopoly in shoe machinery generally, while the bill, if amended, charges an intent to monopolize and an actual monopoly in only specific kinds of shoe machinery.

18. Because the intent charged in the original bill, with which all the acts charged therein were alleged to be done, was an intent to

monopolize shoe machinery generally, while the intent charged in the bill, if amended, is an intent to monopolize only specific kinds of shoe machinery.

19. Because the proposed amendment comes too late.

20. Because the attention of the United States was called to the necessity of either proving their allegations or amending, as early as May 20, 1913, before the taking of testimony herein, and the United States neglected and refused either to prove their allegations or to amend the same until January 13, 1914, after the close of defendants' testimony in the case, and then attempted to amend the same without any proof of the original allegations.

21. Because if the amendment be allowed at this stage, after the practical close of the case, it will require the reopening of the case, new pleadings, and new evidence.

22. Because if the propesed amendments are allowed, the bill as amended becomes inconsistent and repugnant in that the allegation in regard to the leases, at page 21 of the bill, alleging an
1430 intent to acquire complete ~~control~~ of shoe machinery, is inconsistent with the proposed amendment at page 17, alleging an intent to monopolize only specific kinds of shoe machinery.

23. Because if the proposed amendments are allowed, the bill becomes inconsistent and repugnant in that the allegation at page 27 in regard to acquisitions (described from pages 27 to 73 of this bill), and that they were acquired in pursuance of their purpose to monopolize the shoe machinery industry, is inconsistent with and repugnant to the allegation at page 17, as amended, in regard to an intent to monopolize only specific kinds of shoe machinery.

24. If the amendment on page 17, immediately heretofore described, is made, the allegation on page 69 of the bill, that defendants to monopolize trade and commerce in shoe machinery entered into agreements with Plant, becomes inconsistent with and repugnant to said amendment.

25. If the amendment on page 17 heretofore referred to is made, the allegation on page 26 as to the resulting concentration in defendants' hands of the almost entire shoe machinery business becomes inconsistent with and repugnant to said amendment.

26. If the amendment on page 17 heretofore referred to is made, the allegation in regard to the organization of the United Shoe Machinery Corporation, on page 75, relating to trade and commerce in shoe machinery generally, becomes inconsistent with and repugnant to said amendment.

27. Because the second section of the proposed amendment, relating to leases, sets up many new charges of invalidity as to lease provisions not heretofore set forth by the bill.

28. Because the second section of said proposed amendment complains of the invalidity of an alleged system of leases, whereas there is no evidence in the case as to the existence of any such system, and the same is not complained of in the bill.

29. Because the second section of said proposed amendment complains of the invalidity of an alleged system of leases, whereas the existence of any such system of leases has been heretofore expressly disclaimed by the counsel for the United States.

30. Because in the second section of said proposed amend-
1431 ment, under the heading "(1st) (a) (ii)," the clause therein referred to, which may be called the additional machinery clause, is new and not heretofore contained or set forth in the pleadings of the United States.

31. Because in the second section of said proposed amendment, under the heading "(1st) (a) (iv)," the clause therein referred to, which may be called the prohibitory use clause, is new and not heretofore contained or set forth in the pleadings of the United States.

32. Because in the second section of said proposed amendment, under the heading "(1st) (a) (v)," the clause therein referred to, which may be called the right-to-terminate clause, is new and not heretofore contained or set forth in the pleadings of the United States.

33. Because in the second section of said proposed amendment, under the heading "(1st) (a) (vi)," the covenant and agreement therein contained, in regard to the admission of the validity of patents, is new and not heretofore contained or set forth in the pleadings of the United States.

34. Because in the second section of said proposed amendment, subdivision "(b)," setting up that other covenants and agreements are especially unlawful, is new and not heretofore contained or set forth in the pleadings of the United States.

35. Because in the second section of said proposed amendment, subdivision "(c)," setting up that each lease is especially unlawful when considered in reference to existing conditions, is new and not heretofore contained or set forth in the pleadings of the United States, and differs materially and in substance from any charge therein contained.

36. Because in the second section of said proposed amendment, subdivision "(d)," relating to a so-called alternating system of leases, is new and not heretofore contained or set forth in the pleadings of the United States, and differs materially and in substance from any charge therein contained.

37. Because in the second section of said proposed amendment, subdivision "(e)," relating to the system of leases being unlawful,

is new and not heretofore contained or set forth in the plead-
1432 ings of the United States, and differs materially and in substance from any charge therein contained.

38. Because in the second section of said proposed amendment, subdivision "(f)," is objected to because it expands paragraph B at page 81 of the bill, so as to make the charge therein contained differ materially and in substance from the charge now contained therein.

39. Because the third section of complainant's proposed amendment, in relation to the system of defendants in putting out leases preventing competition in the manufacture of shoes, is absolutely new and novel and not set forth or referred to in any way in the pleadings of the United States.

40. Because upon the whole case this court should, in the exercise of its discretion, refuse to allow the amendment prayed.

By their attorneys:

FREDERICK P. FISH,
CHARLES F. CHOATE, Jr.,
WILLIAM A. SARGENT,
MALCOLM DONALD,
HAROLD G. DONHAM,
WALTER B. FARR,
LAFAYETTE R. CHAMBERLIN.

Order of court, February 4, 1914.

PUTNAM, DODGE, and BROWN, JJ.: As the request of the United States filed January 14, 1914, for leave to make sundry amendments to the petition with reference to Sections IV, VIII, and XI, with substitutions, is not urged as though the United States deemed the same necessary, and as it is objected to by the defendants, we do not feel justified at this late stage in allowing it, and the same is disallowed. This, however, is with the express statement on the part of the court that it reserves all questions with reference to the construction of the pleadings as urged by the defendants, whether as original or as modified by the progress of the case, is so modified.

1433 The request of the United States to be allowed to amend Section XII is denied.

It is ordered that the amendments offered by the United States and this ruling with reference thereto be made a part of the record of the proceedings.

By the court:

CHARLES K. DARLING, *Clerk.*

Order, February 10, 1914.

PUTNAM, DODGE, and BROWN, JJ.: With the consent of the parties, it is ordered that the United States shall have from February 24 to March 10, 1914, inclusive, for further cross-examination of Nelson W. Howard, and the introduction of evidence in rebuttal before the special examiner, Charles K. Darling, with reference to the matters provided for in the order entered in this cause on January 14, 1914; and also to introduce evidence before the special examiner in rebuttal to evidence submitted by the defendants in open court with respect to patents and machines obtained by the defendants from Thomas G. Plant.

And the defendants shall have from March 11 to March 24, 1914, inclusive, to introduce evidence in surrebuttal with respect to the evidence of the United States relating to matters provided for in the order of January 14, 1914, and evidence introduced by the United States before the special examiner with respect to patents and machines obtained by the defendants from Thomas G. Plant.

The court reserves control of the proceedings before the special examiner.

By the court:

CHARLES K. DARLING, *Clerk*,
By JOHN E. GILMAN, Jr., *Deputy Clerk*.

1434 District Court of the United States, District of Massachusetts.

UNITED STATES OF AMERICA, PETITIONERS, v. UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, and others, respondents.	In Equity. No. 301.

Before Putnam and Dodge, Circuit Judges, and Brown, District Judge.

[March 18, 1915.]

PUTNAM, J.: Of course, a proceeding on the criminal side of the court can not operate as an estoppel in a civil proceeding; but it may be referred to safely in an introductory way, and in explanation of questions of law to be relied on.

The general features of this case are largely stated in United States v. Winslow, 227 U. S., 202, and 195 Fed. Rep., 578; but there are differences, so that we will quote extensively from the bill in the present suit.

In so much of the bill as relates to the organization, we have no occasion to make any distinction between the United Shoe Machinery

Company and the United Shoe Machinery Corporation, two New Jersey organizations who are made respondents; and we do not know that we will have occasion to refer to the subordinate organizations made respondents and known as the United Shoe Machinery Company, of Maine, etc.

1435 The bill alleges the organization of the United Shoe Machinery Company, of New Jersey, as follows:

"Defendants Sidney W. Winslow, William Barbour, Elmer P. Howe, John H. Hanan, George E. Keith, Edward P. Hurd, George W. Brown, Wallace F. Robinson, Rudolph Matz, and others, owners, officers, directors, and agents of said Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Goodyear Shoe Machinery Company of Canada, Consolidated and McKay Lasting Machine Company, McKay Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company, and Davey Pegging Machine Company, not being satisfied with the benefit of the lawful monopolies and rights belonging to them under letters patent of the United States and of other countries which they had enjoyed for many years, pertaining to shoe machinery, and parts thereof, and designing and intending unduly, unreasonably, and unlawfully to extend, expand, and perpetuate said monopolies and rights and to enhance the value thereof at the expense of the boot and shoe manufacturers and of the public generally, and to use the same as a means for unlawfully controlling interstate and foreign trade and commerce in shoe machinery to a greater extent than was warranted by said letters patent, determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery, destroy existing competition among the manufacturers and dealers in such machinery, and through unlawful combinations and agreements to exclude all others from said trade and commerce. For the accomplishment of this purpose they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to such manufacturer of shoes, and thereby to exclude all competition by other manufacturers of such shoe machinery and to monopolize the trade and commerce therein among the States and foreign countries. The various contracts, combinations, conspiracies, and acts, hereinafter described, were steps in carrying out the above mentioned unlawful project. A preliminary agreement was made, and in February, 1899, they incorporated United Shoe Ma-

1436 chinery Company, under the laws of New Jersey, with an

authorized capital of $25,000,000 ($12,500,000 preferred, $12,500,000 common), with broad powers under its charter to manufacture, buy, sell, lease, operate, and deal in and with all kinds of machinery, tools, and implements, and especially in everything in any way connected with or used in the manufacture of boots and shoes. For the stock allotted to each, and for cash, at values far in excess of real worth, four of the old concerns, to wit, Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, and McKay Shoe Machinery Company, conveyed to the new corporation, as going concerns, their business of manufacturing, selling, leasing, and dealing in shoe machinery, including their letters patent of the United States and of other countries, and all property and rights used in connection therewith, wherever situated; and their principal owners, managers, directors, and officers became managers, directors, and officers in the new company. Stock of the new company was allotted and received as follows."

At this point the bill shows the distribution of the shares of capital stock of the new corporation among the prior corporations combined in it, or their shareholders. It alleges that the prior corporations conveyed to the new corporation their business, patents, and property rights "for the stock allotted to each and for cash, at values far in excess of real worth." No proof was offered in support of this final allegation, and it has not been insisted upon by the United States.

The bill proceeds: "Prior to the organization of United Shoe Machinery Company, of New Jersey, boot and shoe manufacturers, purchasing or leasing machines from one of the aforesaid companies, were not compelled to use exclusively machines mentioned in the aforesaid groups manufactured by either of the other companies. For example, the shoe manufacturer who held lasting machines under lease from the Consolidated & McKay Lasting Machine Company was not required to use, in connection with that company's lasting machines, welt-sewing machines or outsole-stitching machines of the Goodyear Shoe Machinery Company, or those of any other company, and he was free to obtain such machines wherever he could procure them to the best advantage.
1437 The same was true of the trade in welt-sewing machines and outsole-stitching machines, heeling machines, and metallic fastening machines. Defendants, however, not being satisfied or contented with said portion of the trade and commerce in shoe machinery which they acquired through the organization of United Shoe Machinery Company, of New Jersey, and with the intent to acquire complete control of the business of manufacturing and selling or leasing of shoe machinery among the States and with foreign

countries; to exclude all others therefrom, to enhance the cost of said machines to users thereof, and to wrong and to oppress the public, discontinued the sale to boot and shoe manufacturers of each and all of the machines included in said groups of machines, and unlawfully devised, adopted, and put into effect arbitrary, oppressive, and unreasonable lease and license agreements, which boot and shoe manufacturers have been and are required to agree and conform to in order to obtain from said defendants any of the machines included in said groups."

On the whole, as the case developed, no objection was persisted in by the United States to the fact that the policy of the Shoe Machinery Company was to lease its machines instead of selling them. It was plain that this policy was not injurious in a large sense. It enabled manufacturers of small and moderate means to embark in manufacturing to an extent which would have been impossible for them if they had been obliged to purchase machinery, because many machines are so expensive as to lock up capital and render it dead for practical purposes of financing shoe manufacturing. It is also apparent that a portion of the conditions and provisions of leases were in use without complaint before the United Shoe Company was organized; but it is not necessary that we should detail these facts, because we must take the result of the development as to this topic, at least, as it was found at the time the bill was filed in 1911; and, while the prior condition might mitigate any complaint on that point, it cannot answer it.

The bill further proceeds as follows:

"These agreements contain provisions, not found in their former lease and license agreements, which compel boot and shoe manufacturers leasing any of such machines from defendants to agree
1438 to use exclusively one or more of the classes of machines included in said groups of machines owned and controlled by them upon penalty of having all the machines included in said groups so leased to them by defendants immediately reclaimed and taken away and the lease and license agreements canceled. These contracts further require boot and shoe manufacturers to take each of said machines for a period of not less than seventeeen years, regardless of the terms of the patents relating thereto. Lessees thereunder are compelled to obtain all duplicate parts, extras, mechanisms, and devices of every kind needed or used in operating, repairing, or renewing the leased machinery from defendants, at exorbitant prices fixed by them from time to time. Many of these agreements further provide that the lessee shall, at the expiration of seventeen years, and after he has paid large royalties throughout that period, if he shall then have no further use for the machines, return the same to defendants

at their factory at Beverly, Mass., and shall pay to them a return charge, which in some cases amounts approximately to the original cost of building the machines. Defendants have continually, persistently, and arbitrarily enforced the provisions of said lease and license agreements by all the means in their power as against the boot and shoe manufacturers, and have made it their general policy and practice to refuse to furnish such machines to any and all boot and shoe manufacturers who fail to comply with the terms or spirit of the provisions of said lease and license agreements and to otherwise injure them.

"Defendants, in pursuance of their general purpose, inserted in, and made a part of, each lease and license agreement, provisions reserving to themselves the right to forthwith terminate and cancel all existing lease and license agreements between them and the boot and shoe manufacturers if the latter should fail or cease to use exclusively and to their full capacity machines leased or controlled by defendants, thereby prohibiting said manufacturers not only from using competing shoe machinery manufactured in the United States, but also from using any such machinery manufactured in foreign countries and imported here for sale or lease."

There is no proof that the United Shoe Company has enforced its leases in any arbitrary or unreasonable manner. On the whole, it seems to have been moderate with reference to such enforce-
1439 ments, and the number of cases in which anything in the way of a forfeiture has been demanded has been so small that, on looking over the great mass of the operations of the United Shoe Company, such enforcements have been so few as to be practically negligible; and there is no evidence that the duplicate parts, extras, and other incidentals furnished by the United Shoe Company have been sold at exorbitant prices fixed by it, or that the cost involved in the return of machinery has, in any way, approximated its original cost, unless, possibly, in some exceptional instances which have not caught the eye of the court. We do not think the case as developed has turned on these particular allegations.

It might have been expected in a proceeding of this importance, involving so many aspects, that the parties would not, at all times, have been in accord as to the pleadings of the United States. Referring to the allegation that the respondents "conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery," the utmost that the case can in any event be said to show is a purpose to acquire control of certain machinery connected with bottoming shoes, or later of certain clicking or eyeletting machines; and of this the United States became during the trial so far satisfied that it asked permission to amend the above allegation accordingly. On

the rules of equity pleading, however, which also are applied to some extent to pleadings at common law, an allegation of the whole field covers any part of it, and may be accepted as such without involving any variance.

Allegations such as the following, which run through these pleadings, color them all, and are to be accepted as controlling the entire bill, namely, "not being satisfied with the benefit of the lawful monopolies and rights belonging to them under letters patent of the United States"; "and intending unduly, unreasonably, and unlawfully to extend, expand, and perpetuate said monopolies and rights." The bill in the same line claims that the alleged confederates had, from the outset of the confederation, taken certain action described in the bill for the purpose of perpetuating the rights they had
1440 under existing patents after those patents should expire.

We are dealing now with allegations which seem to assert that the machines acquired by the corporation on its organization were covered by patents, and that its then purpose was to maintain this position, even after the then existing patents expired. This supports the proposition of the respondents that the machinery offered by the respondents was at all times protected by patents succeeding each other. At any rate, it must be accepted that from the beginning the machinery offered by the respondent corporation was, in all its essential elements, protected by patents, and that there has been no proof to the contrary. So that, for the purposes of this case, the machinery has been mainly, if not entirely, of that character.

To prevent possible misunderstanding of the position of the respondents in reference to the fact that the Shoe Machinery Company's machines are protected by patents, we repeat and accept what the respondents say, as follows:

"The extent and character of the rule of property established by the patent laws of the United States, under which this entire shoe machinery work from the very beginning has been carried on, is perfectly clear and definite. The industry has grown up under and has been based upon and made possible by the rights established by those patent laws."

The propositions thus quoted from the respondents are substantially supported by the record. It also may well be gathered from United States v. Winslow, 227 U. S., 202, that the United States, which were then free to put their case as they saw fit, thus put it with reference to the date of the organization of the Shoe Machinery Company, and thus gave it color which we are free to accept as abiding with the organization so long as effectual proof of change to the contrary was not furnished, as it was not. Under the circumstances of the case, this special observation is justifiable; notwithstanding, United States v. Winslow was a criminal proceeding,

because, no doubt, the natural presumption is that the United States made their case as they had reason to believe it to be. Indeed, it affirmatively and emphatically appears at various places in the bill, and it runs all through it, that all the essential interests
1441 which entered in 1899 into the combination forming the United Shoe Machinery Company were, at the time of the formation of that corporation, covered and protected by patents; and there has been no evidence that at any time in the history of the corporation there was any change from its original purposes.

It was at one time largely understood that the Supreme Court substantially held that all combinations of patents were outside the Sherman Anti-Trust Act. Bement v. National Harrow Company, 186 U. S., 70, decided on May 19, 1902, was thought to declare this view. In this case, at page 90 and sequence, some peculiar limited exceptions are referred to, as, for example, a statute requiring an inspection of burning oils and providing a penalty for its violation. The opinion then proceeds, at page 91:

"Notwithstanding these exceptions, the general rule is absolute freedom in the use or sale of rights under the patent laws of the United States. The very object of these laws is monopoly, and the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee and agreed to by the licensee for the right to manufacture or use or sell the article, will be upheld by the courts. The fact that the conditions in the contract keep up the monopoly or fix prices does not render them illegal."

This impression was apparently strengthened by expressions in United States v. Winslow, 227 U. S., 202, 217. It is true this case also gave effect to the fact that, on the face of the combination of patents then under review, there was an effort for greater efficiency; but the opinion continues that the machines involved were patented, and it assumes that making them was a monopoly in any case and that the exclusion of competitors from the use of them was the very essence of the right conferred by the patents. Then the opinion refers back to the Paper Bag Patent case, 210 U. S., 405, 429. There it appeared that the patent in suit had been locked up by the complainant, its owner, and that the complainant had neither used it nor allowed anyone else to use it. There was neither lack of means nor any other excuse for locking up the invention, except the desire to protect other machines which the complainant was
1442 manufacturing. After some incidental explanations, the court there said: "As to the suggestions that competitors were excluded from the use of the new patent, we answer that such exclusion may be said to have been of the very essence of the right conferred by

the patent, as it is the privilege of any other owner of property to use or not use, without question of motive." What was said there was directly in issue.

But other late decisions of the Supreme Court seem to demonstrate that the cases we have cited do not state the whole law, but only lead up to the general rule, without showing how this general rule yields to exceptional circumstances. Moreover, this position does not give full effect to the second section of the Sherman antitrust statute, which covers "every person who shall monopolize or attempt to monopolize," as well as those who combine or conspire with any other person, or persons, to monopolize. Certainly in United States v. Reading Company, 226 U. S., 325, reliance was placed at page 358 on Swift & Company v. United States, 196 U. S., 375, 396, where a plan said to consist of many parts or elements was held to constitute a monopoly forbidden by the act. There the court observed that whatever we may think of the elements separately, when taken up as distinct charges, they are alleged effectively as elements of a scheme. It is true that in the Reading Company case there was an underlying combination among the principal promoters of what resulted; but we find there this recognition of what may happen where there is no such combination, given in the language we have cited from Swift & Company v. United States.

The case, however, that controls the present proceeding in this important aspect is Standard Sanitary Company v. United States, 226 U. S., 20, decided on November 18, 1912. There the opinion was drawn by the same learned justice who drew the opinion in the Paper Bag Patent case, so that we may assume that the two cases go along hand in hand. The opinion in the Standard Sanitary Company case refers twice to the opinion in the Bement case, once at page 40 and again at page 48. At page 48 it is said as follows:

1443 "There was a contention in that case that the contract of the National Harrow Company with Bement & Sons was part of a contract and combination with many other companies and constituted a violation of the Sherman law, but the fact was not established and the case was treated as one between the particular parties, the one granting and the other receiving a right to use a patented article with conditions suitable to protect such use and secure its benefits. And there is nothing in Henry v. A. B. Dick Co., 224 U. S., 1, which contravenes the views herein expressed."

Thus the Standard Sanitary Company case and consequently the present proceeding were, and are, by express language distinguished from the Bement case, and the distinction thus made is that relied upon by the United States here, namely: Instead of dealing with one or more contracts between one or more parties, incidentally made

and having no relation to each other, we are dealing with a vast scheme which unavoidably affects the public interests. We need not elaborate other late decisions which indicate and enforce the proposition that a monopoly may be established in violation of the second section of the Sherman Antitrust act, conforming to the explanation of the Bement case which we have given, and without a formal combination; as, for example, United States v. Patten, 226 U. S., 525, 541 and sequence; United States v. Union Pacific R. R. Co., 226 U. S., 61, 85, 86; and Strauss v. Publishers' Association, 231 U. S., 222, at various points in that opinion. Therefore, in view of what we have said, it is necessary for us to go a step further and point out that we have here an organization, supported merely by a diversity of patents or machines patented in whole or in part, and inquire whether the alleged resulting monopoly is arrived at by injurious provisions contained in the licenses and leases referred to, which go beyond what the respondents might justly require.

We should now state generally that the United States claim that, while there are no contracts in form as between the different customers of the United Shoe Machinery Company, the matters are so tied together by the provisions of these licenses and leases, and ~~the~~ the scheme created thereby is so complete, as to have the same
1444 practical effect of producing the alleged monopoly which the statute prohibits, as though there had been agreements in a multiple form executed by the United Shoe Machinery Company and its various customers. They also claim that this results in a scheme such as we have already referred to. The allegations in this particular are for a large part of a very general character, and it may well be doubted whether the larger portion of them are not so general as to fail to require our attention according to the proper rules of pleading. Perhaps, however, on that score the variety and number of the leases, and of the various provisions thereof, are so great and the parties with whom the United Shoe Company have been dealing were and are so numerous, that it would be unreasonable to require the complainant to set out the facts in detail. We have, however, given the language of this part of the bill verbatim, and we can approach it with the general statement substantially in effect that there is nothing in the terms of the leases justifying any allegation indicating a purpose to enhance the cost of the machines to the users thereof, to wrong or oppress the public, or to impose any arbitrary, oppressive, or unreasonable terms.

The bill also alleges that these provisions are not found in the earlier leases and agreements existing prior to the organization of the United Shoe Company. Whether they were or not we regard as immaterial, except as excusing the respondents from any wrongful intention, because we agree with the United States in the propo-

sition that whether or not the conduct of the respondents is in fact in restraint of trade does not depend on the effect of any element considered singly, so that every element considered singly may be wholly innocent; but the question of an existing monopoly, or an intended monopoly, is to be determined by the effect of all the elements which are in fact combined.

The bill gives us no particular rule by which we can determine whether the provisions of the leases and licenses referred to are abnormal, or unjust, or unreasonable, nor where, nor how far, they are within the allowances which the law makes for the protection of legitimate trade and manufacture. We have nothing bearing directly on this topic except the apparent admission that the
1445 common provision contained in the leases and licenses, understood and called the "full capacity clause," standing alone, would be valid, and except also expressions like those found in Eastern States Lumber Association v. United States, 234 U. S., 600, 609, decided on June 22, 1914, summing up the previous decisions of the Supreme Court, that the Sherman Anti-Trust Act "in its proper construction" "was not intended to reach normal and usual contracts incident to lawful purposes and intended to further legitimate trade."

Nevertheless, we fail to find in the development of the United Shoe Machinery Company, and its operations, any support for the alleged charges in the bill of intended oppression, arbitrary conduct, or anything of that nature, especially so far as any allegations cover any attempts to destroy or cripple competitors. Looking at the great mass of facts proven in the case, and the immense number of transactions of the United Shoe Machinery Company, the evidence offered in that direction is so ineffectual that its weakness furnishes of itself satisfactory proof against what was intended to be established thereby. We find no evidence of what was shown especially in the Tobacco Company cases, namely, a purpose to destroy what could not be acquired by straightforward methods. The fact that the United Shoe Company has acquired so large a percentage of the business of the country to which it devoted itself comes so largely from the use of extraordinarily competent methods as to shut out from the eyes of the impartial investigator suggestions of other methods. So we lay aside that part of the case, and deal only with the proven facts, and the legitimate results of those facts, with little consideration, however, for any charges in this connection, or elsewhere, of intended oppression or unreasonable course of procedure, or of results which can be attributed to any unworthy motive. This, however, according to the well-known rules of law, does not necessarily relieve the respondents from what actually resulted from what-

ever they did, or from being responsible for these results so far as they might be expected to be foreseen.

The result of our consideration of what appears in the bill
1446 on this topic, and of the very general expressions found in it, and found in the authorities applicable hereto, have rendered necessary that we set out, as we will do with very considerable fullness, the claims of the respondents as to the nature and amount of the operations of the United Shoe Company, for the purpose of making clear the just amount of flexibility of the provisions of the leases and licenses as complained of by the United States, which should be regarded as applicable to what is admitted, or must be admitted, to be legitimate for the business of the United Shoe Company.

We may well call attention to some particular provisions in the leases and licenses, although they do not carry us very far towards solving the whole case before us. Among other provisions is one requiring lessees to use exclusively one or more classes of machines included in groups of machines, under penalty of having all the machines included in those of other groups reclaimed. The licenses also cover periods of not less than seventeen years, thus regardless of the unexpired terms of the patents relating thereto. Also they cover a requirement that the lessees obtain from the United Shoe Company all duplicate parts, extras, mechanisms, and devices used in operating, repairing, or renewing. With this there is an allegation that the parts can be obtained only at enormous prices. The record, as we repeat, gives us no definite rules for determining how far each of these provisions is legitimate or otherwise. It nevertheless appears that the prices for duplicate parts, and so forth, were never exorbitant, but that the contrary is true. Also it appears that, to a large extent, the requirement that duplicate parts, and so forth, should be obtained from the Shoe Machinery Company is for a large part reasonable. This and some other provisions may relate to the standardizing, and to continuous harmonious use of a long line of successive machines, for which standardization and harmonizing lie at the foundation, as they are the very life of some modern systems of production. Other allegations with reference to this topic are either frivolous or too general to support of themselves any practical results. Consequently, it becomes necessary for us to state the case more fully as claimed by the respondents, in order to attempt
1447 to furnish some tests as to how far provisions of the kind complained of are legitimate with reference to some portions of the business of the Shoe Machinery Company which everyone must admit it is entitled to pursue. The positions and peculiarities of the case are so extensive and novel that it is impossible to apply with any satisfaction any ordinary tests of what are reasonable and normal and what are unreasonable or abnormal requirements of the

leases or licenses, without a particular view thereof. The case in these respects, as stated by the respondents, has so many phases that the determination of what portions of the provisions of the leases and licenses are normal, legitimate, or reasonable as applied thereto is a complex topic, requiring much investigation, supported with great patience and care. What we now extract from the positions of the respondents in reference thereto is substantially supported by the record.

These extracts commence with the fact that the circumstances appearing in the well-known Standard Oil and the American Tobacco Company cases are so far unlike the circumstances appearing here that no particular assistance can be derived therefrom with reference to what conditions or requirements should be normal, legitimate, or reasonable here. The respondents say:

"This particular business of shoe machinery started about 1860 with the McKay sewing machine. There are men now alive who saw the first McKay machine, introduced about 1860. At the time the machine was invented by Lyman Blake there was not in a shoe factory a single machine outside of the sewing machine for stitching the uppers except a machine for making strips of outsoles and a knife organized into a frame which roughly shaped the outsole. There were a few crude pegging machines in use. There was not another machine, and shoes were made absolutely by hand. The business was insignificant as a whole even, and the individual units were most insignificant. McKay had $140,000 when he bought it. He thought that it was a perfect machine, but his $140,000 was gone before he was able to sew a shoe on it commercially. And that is the history of all these machines. They have been most expensive in their development. One unexpected failure after another has broken the hearts of the inventors and promoters before success was attained."

1448 "Then came the Civil War, and the demand for shoes for the soldiers was such that the McKay machine was able to get a start which otherwise it might not have gotten."

"At the moment when McKay started to put this machine out Elias Merwin and McKay together invented for this business the royalty system, and that system has prevailed throughout the shoe-machinery business from the beginning. It was a system of leasing machines, adopted in order that the shoe manufacturers might be induced readily to take the machines. Because in the case of each new machine it was all an experiment, the shoe manufacturers did not dare to take such machines and invest their capital in them. They did not have the capital to invest. This policy was satisfactory to the last degree, and from McKay's time to the present day the royalty and lease system has been the prevailing and characteristic

method of the shoe-machinery business so far as the great variety of elaborate and refined machines which have followed the first McKay machine are concerned. One thing which the Government asks in the case is that the leasing system which has prevailed from the start in this industry should be destroyed. If the court should declare illegal, as the United States ask it to do, the protective clauses in our leases which we have put there to make the system safe and practicable, the leasing system would have to go."

"There are two important aspects, at least, in which this shoe-machinery business is unique. One is that in every single step in this business up to the point where to-day we are building 350 machines, the machines have been patented machines, always patented and likely to be patented for an indefinite time in the future—because this art is not yet exhausted. Thirty-five millions of dollars of the property of the Shoe Machinery Company is in the hands of these shoe manufacturers. It finances them to that extent. It keeps those machines in repair, so that the shoe manufacturers have no question of maintenance; no cost of maintenance to deal with. It sees that information calculated to make the operation of the machinery more effective is collected and disseminated throughout the factories. The shoe manufacturers who deal with our company do not have to be on the watch to get the best possible machines. They know that the defendant will supply them with the best. They know that their machinery is the best in the world, and that, if
1449 better is devised, they will surely have it. There is nothing for them to look after except the question of labor, the purchase of material, the design of their goods and selling them. It is with this business, not with any other, that the court has to determine whether what these respondents have done, what contracts they have made, have been in the normal, orderly, natural line of development."

"McKay had his lasting machine; Thompson had his lasting machine; soon Copeland came along with his lasting machine; all patented; and the impression right straight through of those working in this art who were most intelligible was this, that you might do many things with machinery in shoe manufacturing, but you never could last by machinery, because you are dealing with leather, which is a most difficult thing to deal with. It is so expensive that every scrap should be saved and none injured. No two adjacent centimeters of leather are the same in character and condition. In flexibility and capacity for stretching no two spots are alike; the surface character constantly varies; and yet you must make a finished shoe without waste or loss and as perfect as possible, and the two shoes of every pair must be perfectly matched. It was the general belief that the lasting machine was an idle dream."

"But the lasting machine has come; and so has every other machine that was required in this industry. The 150 processes that are employed in making shoes are all done to-day by machinery. It is only a short time ago that there was some talk about cutting out the uppers; men said that you never could do that. Human intelligence seemed absolutely essential for the work. Now we have a machine that doubles the efficiency of the human operator in cutting or dieing out the uppers, and does it much better. This is the clicking machine."

"Moreover, the No. 5 laster of to-day is of such a character that the Ideal and the Chase of 1899 are practically obsolete machines. The welter and stitcher of to-day are enormously more useful, efficient, and economical than those of 1899, as the record shows. The rough rounder has been perfected. And so it goes right straight through with every machine in use in 1899, as to all of which there have been a long line of patented improvements, one succeeding another at frequent intervals, everyone of which does something that previously was done by hand, or was not done at all. So that to-day you have a completely developed organization of machinery
1450 adapted to the manufacture, under the most favorable conditions, of the shoes that the public require. If the requirements change, the machinery is at once changed to meet those new requirements, and there has been a continuous and large gain in economy and efficiency.

"We talk chiefly about the welt shoe, because that is the most important shoe of all and the one to which our business most largely relates. There were only 17,000,000 of them made in 1898, or less than 10 per cent of all shoes made. In 1910 there were made over 86,000,000 pairs, and the proportion of welt shoes to all shoes made has been steadily increasing. And why this increase? Because we have given to the shoe manufacturers, between 1899 and the present time, better machines and radically new machines, which enabled them to make those shoes successfully and at a low cost. We are solely responsible for this entire development. The whole credit of it belongs to us.

"Now, it is not unreasonable to look at this complex and complete shoe machinery system in this way. Take a screw machine. There there is an organization on one frame which feeds the bar, cuts off the right length, puts in the screw thread, makes the point, makes the head, and cuts the slot in the head, thus making a complete screw. The manufacture of a shoe in a modern factory is practically a unitary operation, like the making of a screw; every one of the many steps being coordinated to the others, as if all were taken in a single machine. Everything is aimed at one product, and every single machine is definitely related to the machines that follow it and to the

machines that are back of it. These machines that we have talked about as being classified into 'departments' cover sometimes machines of one department 'tied' to those of another; yet, there is no consecutive relation of one department to another in the order of use of the machines in making a shoe, but you start in with one machine from department 'A,' and take the next from department 'D,' and then one from 'C,' and then one from 'E,' the result being that, when you get through, they have all been interwoven, and the sequence worked out, not department by department, but one machine after another, in any order as far as the departments are concerned. That is, the whole is a continuous process, aimed at one unitary result; and each of the machines, whatever the distribution among the different departments, is organized to succeed the prior ma-
1451 chine efficiently, and to prepare the shoe for the next machine. Any one of the machines may spoil a shoe; and the result is that one of the great problems of this art has been to organize each machine so that not only will it do its work without injury to the shoe, but that there will be no difficulty when you come to the subsequent machines. The work of each machine must be done so that the next machine will work with the required accuracy."

That the whole system thus described, past and present, is, and has been, supported and covered by patented machinery, is shown by the extracts we have already made in that connection.

What we have submitted about the leasing system, and the propositions of the respondents which we have cited, and which cover so large a field, constitute an organization so successful in its operations, continuing so long a time, and so harmonious in its major parts, that anything which would bar out provisions in the leases and licenses necessary to the maintenance thereof must be admitted to be injurious to the manufacturers of shoes, as well as to the manufacturers of machinery, with regard to what each justly desires to accomplish. However, the numerous provisions prevailing in a very considerable variety of leases and licenses, in a very considerable variety of forms, involve so much investigation and so much study that that investigation and that study should not be claimed or expected from any court of justice as primary work, and it should first be taken in hand by a master. This proposition, moreover, is enormously enforced by the systems of standardization, and of other special peculiarities, involved in the enormous work of repairs, and incidentally of supplying parts, which the Shoe Machinery Company is now accomplishing at important but distant parts of the United States, at an annual expense said to be in the employment of over 600 men, giving their services exclusively thereto; and all to the unqualified satisfaction and the very great saving of time and

expense of the shoe manufacturers' industry. The better practice is to refer all such matters to special masters.

In this connection we make no special reference, and have come to no conclusions, in regard to the effect on the pending case of
1452 the legislation of Congress enacted since this case was submitted to us, nor with reference to the question whether or not the rights of the parties affected by this legislation would require supplemental pleadings. All such matters would primarily be a part of the special master's finding, if appointed.

We are brought next to a series of independent transactions on which the United States rely, relating to the acquisition of, and control by, the United Shoe Machinery Company of certain businesses, alleged to have been acquired for the purposes of destroying competition, and thus extending the monopoly alleged in the bill, and covering various periods from March, 1899, to the time of trial, amounting, by the schedule given us, to something more than fifty instances. Some of these on their faces are only "efforts after greater efficiency," as suggested in United States v. Winslow, 227 U. S., 202, 217, already referred to. Those that remain which are of any consequence are connected with the acquisition of patents, either directly or indirectly, and are covered by what we have already explained. Of this latter class, so far as we can understand it, is the acquisition of the capital stock of the Goddu Sons Metal Fastening Company. This case is worthy of being treated as a typical one. The transaction occurred in March, 1899, the month after the United Shoe Machinery Company was formed, and more than eleven years before this bill was filed. It related to patentable inventions for metallic fastenings. This transaction seems to be disposed of by the general propositions we have already laid down about patent rights. It also involves a complaint several times made that the United Shoe Machinery Company has taken agreements from inventors barring them from competing with it; but such agreements are legitimate in connection with sales so far as they run parallel to the sales, or wherever they avoid unnecessary competition. The law on this point, within this generation, has been extensively altered and broadened, so that now covenants of this kind may be taken coextensively with the breadth of the trade bargained for in connection with them. So far as we have been able to discover, the various agreements of the character spoken of, and included in the prosecution, have been
1453 no broader than the law now allows. There may be some minor exceptions, but they have not been brought specifically to our notice.

We come now to the transactions with Thomas G. Plant as alleged in the bill. The real life of this transaction is in what we have said about the patent rights involved here, and about the provisions of the

leases and licenses. Without those it would be impossible to construct any case of restraint of trade under the Sherman Anti-Trust Act mapped out by the bill we have before us. Without them there can be no illegal structure whatever. All the property, including that acquired from Plant personally, covered by these matters has been broken up and lost sight of as an entity, except only the shoe manufacturing business, the control of which was acquired by the control of Plant's shares of stock in the T. G. Plant Company, while the shoe manufacturing business is not within the purview of this prosecution because there is no claim of a monopoly acquired in that occupation. Whatever else was acquired from Plant was either patented machinery, or patents, or inventions which stood for incipient patents. So much, therefore, of the propery acquired from Plant, except the shoe manufacturing business property, is subject to what we have already said about patents, and the provisions contained in the leases and licenses we have referred to, incidental thereto. Moreover, as to all of these incidental matters, the learned counsel for the complainants said as follows:

"The leasing system in and of itself is not a violation of law, the acquisition of competitors was not a violation of law—the threats and intimidation of competitors did not constitute, in and themselves, a violation of law—but when all of these things are taken together they form an unlawful plan—therefore the plan will make the parts unlawful; so that if we started in 1899 with a lawful combination and that combination is used to build up a monopoly, we see no reason why the court can not go back to the original combination, and separate it for the purpose of restoring competitive conditions, because that combination has been used as an instrument for monopolizing the business."

This can justly be construed as a proper admission that the
1454 subject matters submitted by the bill are to be taken substantially as a whole; so that, if the fundamental matters which lay at the foundation on which the structure was intended to be built, go out, the whole goes out. The court is not called on to reconstruct what was intended to be built by the United States if the most essential parts of that structure have disappeared. It is well to observe that, to a stranger, the transaction with Thomas G. Plant seems a very large one; but, as compared with the manufactured product of some of the witnesses who testified in the case, it was a minor thing; and particularly so when compared with the product of 86,000,000 pairs of welt shoes in 1910, and as compared with the great transactions to which this prosecution relates.

There have been many unthinking criticisms of the respondents in this case, both Federal and State, some semiofficial, and some personal, and therefore irresponsible; but the conduct of this long and

laborious trial before this court has been a model for those who witnessed it. It has been conducted with extraordinary persistency and ability, but with fair and open hand, and constantly with that courtesy due the counsel and this tribunal.

The court having carefully considered the pleadings of the parties and their evidence, and heard the counsel, it is ordered, adjudged, and decreed that the bill of the United States herein be dismissed.

1455 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA
v.
UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, and others. } In Equity, No. 301.

[March 18, 1915.]

DODGE, J.: 1. United Shoe Machinery Company, of New Jersey, organized early in 1899 by consolidation of the properties and business of several constituent companies, is charged to have been formed in violation of the antitrust act.

This claim is based on two alleged grounds—(1) that it destroyed competition between the component companies, (2) that it was brought about with an unlawful intent on the organizers' part to destroy such competition and to use the consolidation as a step in carrying out an unlawful project formed by them to acquire a monopoly. (Petition, pp. 18, 80 of record.)

Has the United States proved that such destruction of competition resulted from the consolidation as made it a combination in restraint of trade? Taking the facts to which the evidence relates in order of time, this is the first question presented.

The restraint or monopoly alleged in the petition is restraint or monopoly of interstate commerce in "any and all kinds of shoe machinery," i. e., in shoe machinery generally.

But it appeared early in the trial that no such charge could be proved, because neither the business of the component com-
1456 panies in 1899 nor that of the United Shoe Company from its beginning until the bill was filed related to "all kinds of shoe machinery." Both were always limited to certain kinds only. This was finally conceded, and the field of trade in shoe machinery with which this case is concerned limited by concession of the complainant's counsel to machines of the following kinds: (1) Lasting or "pulling-over" machines, used for adjusting and attaching the upper of a shoe in process to a last; (2) machines for preparing bottoms and heels and fastening them to uppers; (3) machines for finishing bottoms and heels after they have been so fastened; (4) eyeletting

machines for inserting eyelets in uppers; (5) "clicking machines" for cutting out uppers. The "shoe machinery" as to which restraint or monopoly is charged, therefore, includes machines of the above kinds only, for the purposes of all questions hereinafter considered. It is to be noted that such machines are insufficient for the making of a complete shoe, and that no attempt to control machines for stitching uppers is charged.

We are concerned only with the first three of the above classes, so far as regards the above consolidation in 1899. None of the constituent companies then made or dealt in eyeletting or clicking machines. These originated with the United Company. It introduced and developed them later on, at different times during the development of its own business after 1899. Its eyeletting machines wer first produced about 1902; its clicking machines in 1908 or 1909.

The United Company was formed February 7, 1899, taking over, in exchange for its own stock, or for cash, or both, the business and property of each of the following concerns: Goodyear Shoe Machinery Company and International Goodyear Shoe Machinery Company (both in the same line of business and hereinafter together called Goodyear Company), Consolidated & McKay Lasting Machine Company (hereinafter called Consolidated Company), McKay Shoe Machinery Company (owning and controlling Davey Pegging Company and hereinafter called McKay Company). From money obtained by issue and sale of other shares of its own stock it bought in March, 1899, the stock, business, and property of the Eppler
1457 and International Eppler Welt Machine Companies. These, though strictly acquisitions of the newly formed United Company, after its formation, may, for the purposes of the present question, be regarded as constituent companies.

To allegations found in the petition (p. 18) that the business and property of the Goodyear Company, the Consolidated Company, and the McKay Company were taken over by the United Company "at values far in excess of real worth," reference is made at this point only in order to state that no proof of any kind was offered in support of them, it was not argued on the petitioners' behalf that they were true, and they therefore require no further notice for any purpose in the case. There can be no doubt that each concern had an established business already of great value and possessing great possibilities of development, or that each also owned patents and property of very great value in connection with its business.

Up to the time of their union each constituent concern had been dealing, generally speaking, in a line of shoe machinery for the most part distinct from that dealt in by the others. Thus the Goodyear concern's business had been that of making and dealing in welt-sewing and outsole-stitching machines and auxiliary machines for

use therewith, all designed for the manufacture of Goodyear welt shoes; also one kind of lasting machine, called the "Ideal," designed for lasting women's welt shoes. The machines of the Consolidated concern were lasting machines of three kinds, designed, respectively, for lasting men's welt shoes (this was called the "Chase"), heavy metallic fastened or pegged shoes, and McKay sewed shoes. The machines of the McKay concern were heeling machines, metallic fastening machines, and Davey pegging machines. The Eppler machines were welt-sewing machines and certain auxiliaries therewith used in making welt shoes (not Goodyear welts). After the union the United Company proceeded to make and deal in all the above machines.

It is here to be noted that the Goodyear welt method is only one of several methods of uniting the upper and sole of a sewed shoe.

This method was from the outset in direct competition with
1458 the McKay method, and it has so continued until the present time. The Eppler welt machine was for doing the same thing by still another method. As the McKay method is and has been open to all the world, shoe manufacturers are and have been always able to obtain machines for sewing uppers and machines (i. e., McKay sewing machines) for attaching bottoms to uppers independently of the United Company or any of its constituent companies.

The various machines produced as above by each constituent concern were, as the petition alleges (p. 15), all made "under letters patent of the United States and of other countries." The patents belonged to the respective concerns and covered improvements from time to time embodied in each machine during the course of its development by the concern producing it. Each concern had so far developed and improved its own machines that they were in 1899 the machines principally in use by shoe manufacturers throughout the United States in doing the respective kinds of work for which each was adapted as above. All the patents referred to passed by the consolidation to the United Company. Each concern had further improvements upon its machines under trial, and all the rights in these inventions also passed to the company.

The combination was not unlawful so far as it did no more than put the different groups of noncompeting patented machines into one control. U. S. v. Winslow, 227 U. S., 202. It was not unlawful unless, to an extent injurious to the public interest, it destroyed competition. In support of the charge that there was such destruction of competition, the United States contends that before the combination (1) the Goodyear Company and the Consolidated Company were competing in lasting machines, and (2) the Goodyear Company and the Eppler Company were competing in welt-sewing machines.

Unless the termination of such competition as existed between these concerns in respect of these machines made the combination unlawful, it was not unlawful because of any destruction of competition involved in it.

(1) As to the alleged competition in lasting machines, it is not claimed that there was any, so far as two of the three kinds
1459 made by the Consolidated Company are concerned. These are the "McKay-Copeland" laster for lasting heavy metallic fastened or pegged shoes or brogans and the "hand method McKay" laster for McKay sewed shoes; and neither of them could be used to last welt shoes, for which purpose alone the Goodyear Company's "Ideal" laster was adapted. The only question here is whether the latter machine can be regarded as competing with the remaining laster of the Consolidated Company (the "Chase"). With still another laster with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed.

There is no proof of any actual use of the "Chase" laster otherwise than for its intended purpose of lasting men's welt shoes. It could not work well for use with the lighter leather whereof women's shoes are made. The "Ideal" laster, used almost exclusively for its intended purpose of lasting women's welt shoes, could not be relied on to work well with the heavier leather whereof men's shoes are made. The proof relied on to show that it competed with the "Chase" went no further than to show that a number of "Ideal" machines, small in proportion to the total number then in use, were being used in a few factories on men's shoes, notwithstanding their want of adaptation to such use. That there was any attempt to put either machine into the market as against the other does not appear. No competition between the two in the usual sense of the term is shown. After the consolidation, by the addition of a patented "hold down attachment" added by the United Company to the "Ideal" in 1901 or 1902, some of the defects referred to were removed, but not until then can it be said to have been commercially successful for work on men's shoes. Before this improvement, it possessed at most a limited possibility of such use. I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines.

1460 (2) As to the alleged competition in welt-sewing machines, the question is to what extent the Eppler welting machinery can be regarded as competing with the Goodyear welting machinery.

Outside of that produced by these two concerns, no other welting machinery appears to have been on the market at the time.

The Eppler machines were adapted to produce men's thick-soled welt shoes only. They could not produce women's welt shoes (except perhaps those having the thickest soles), nor turn shoes of any kind, nor Goodyear welt shoes, either men's or women's, because of the difference between the respective machines in the character and position of the seam left in the inner sole of the shoe. The Goodyear machines could produce shoes of all the above kinds. The differences referred to resulted from differences in the character and operation of the machinery belonging to the different systems. These differences in character and in possible field of use had resulted when the United Company was formed in 1899 in the fact that over 2,500 Goodyear welting machines were in use, as against thirty or forty Eppler machines, one-third of these being used in the factory of the president of the Eppler Company. The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful. The Eppler machines were not suppressed by the United Company. It continued to supply them until the progress of improvement in such machinery superseded them. The patents covering them have long since expired, and it is open to anyone to make and use such machines if he desires. There is no present monopoly in them, and no action taken by the court could restore them to the field of competition, or encourage or create competition by them.

Nor, if such competition as is shown to have existed between the "Chase" and the "Ideal" laster be taken together with that shown to have existed between the Eppler welting machinery and the Goodyear welting machinery, do I find it credible that the avoid-
1461 ance of both amounted to a consideration of any substantial importance, so far as the formation of the United Company was concerned. No reason appears for supposing that the real purpose for which the constituent companies were brought together, as disclosed not only by the evidence regarding all the circumstances as they existed in 1899, but by the evidence as to the course of development thereafter pursued by the United Company, was other than that stated in a circular letter to the Goodyear stockholders issued February 8, 1899, the day following the organization of the United Company. (Petitioner's Exhibit 152.) This dwelt upon the advantages to be secured by putting into one control "the most efficient types" of shoe machinery. In U. S. v. Winslow, above cited, which was decided more than a year after the present bill was filed, it was

said that the combination here in question was, on its face, "simply an effort after greater efficiency," and the legality of combination for such a purpose is fully recognized.

Under their respective patents upon the "Chase" and the "Ideal" lasters there was litigation pending in 1899 between the Consolidated Company and the Goodyear Company, each claiming that the other's machine infringed its patents. Also, under the patents covering their welt-sewing machines there was similar litigation pending between the Eppler Company and the Goodyear Company. A result sought to be attained by both parties to these controversies, and accomplished by them through the acquisition of all the patents by the United Company, was the termination of all this litigation. Reference is made below to other later acquisitions by the United Company, an important feature of which was that litigation, troublesome and expensive on both sides, was avoided or terminated. In so far as any of the defendants' transactions were in order to accomplish results of this kind, it can not be said that their purpose was unlawful.

For the reasons stated, I am unable to find the charge that the United Company was unlawfully formed because of competition which it destroyed sufficiently supported by the evidence. It would, in any case, be difficult to regard this as sufficient ground for a decree dissolving the company into its component parts
1462 under a bill not filed until more than twelve years had passed since the combination complained of was accomplished. During this period, as the evidence shows, investments of a very large amount had been made, not merely by the defendants but also by the outside public, in the extension and development of the company's united business, the component companies passed out of existence, and the machines as made by them in 1899 were so far developed, improved upon, or added to by the United Company as now all to have become obsolete. To put the parties or the public back into that state of the prior art which existed in 1899 is, of course, an impossibility.

2. Coming next to the question whether or not it has been proved that the United Company was formed with an unlawful intent on the part of its organizers to destroy competition in the future and use the consolidation they then effected as a step in carrying out an unlawful project to establish a monopoly, we are brought to the consideration of the acts and doings of the United Company, or of the other defendants through its means, from the time it was formed until the filing of this petition in December, 1911. It appears that the United Company itself and what has been done in connection with it during that period has been under the control, speaking generally, of the same defendants who brought about its formation in

1899. Of their actual intent in forming it and in taking the various steps which they have taken as above in connection with it, there is no direct proof overcoming their denial that it was such as the petition charges, and no way of judging except from the necessary results of all the steps proved to have been taken by them, as a whole.

But it is important at this point first to determine how far certain allegations of the petition, which characterize the defendants' alleged project and their motives for forming it, have been sustained by the evidence. These are found on pages 15 to 17 of the record, and they are, in substance, that the component companies were in 1899 manufacturing their respective machines and parts thereof under patents: that "many of the basic patents on the principal machines were about to expire": that their manufacture
1463 and use was thus about to become open to the public "in the near future," and that the defendants, not being satisfied with the rights they had enjoyed under the patents and intending to expand and perpetuate them to the public detriment, devised the alleged project of acquiring a monopoly which the petition thereafter describes.

This trial began on May 20, 1913. On June 27, 1913, the petitioner, having introduced substantially all its other direct evidence, stated that it desired to offer proof in support of the allegations just referred to, but was not then prepared to go into the matter.

By consent, an order of reference to a special examiner was thereupon entered (pp. 262 T. 1996) for the purpose of taking such evidence as either party should offer regarding those allegations, out of court. Such evidence was required to be completed by October 11, 1913, but successive extensions of the time were afterward found necessary and allowed by consent. Before the examiner the petitioner did not complete its direct evidence until October 6, 1913, and the evidence on both sides was not completed until November 19, 1913.

At the final arguments, however, on June 2, 1914, the statement was made by petitioner's counsel that so many machines and patents were involved that examination of more than a very few had been impossible. It seems obvious, therefore, that the allegations in question could not have been founded, when they were made, upon any adequate or complete investigation of the facts.

Nor can it be said that they have been sustained by the evidence before the examiner. It seems unnecessary to spend time in considering what patents could and what could not properly be regarded as "basic," in view of the fact that, of the patents principally relied on as such by the petitioner, those protecting the welter and stitcher of the Goodyear Company, there were two, one upon its welter, the other upon its stitcher, which ran until 1908 and 1909, respectively.

The petitioner's final position, indeed, as to what was proved by the evidence before the examiner, was by no means that taken in the allegations referred to, but was only that the two machines above mentioned, and others protected in 1899 by patents not insisted on
1464 as "basic" patents, became free to anyone to make or use—without any of the patented improvements added to them by the United Company since 1899, but nevertheless capable of successful commercial use—before the filing of this petition in 1911. In view of all the above, I must regard the allegations here in question as not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organization of the United Company, or any of its subsequent doings. The effect of the evidence and of the petitioner's argument is to show that Goodyear machines of the old type are capable of commercial use and could have been made by anyone who chose to make them. That after the expiration of the two so-called basic patents machines constructed according to them were not used is sufficiently accounted for by the superiority of the newer machines which the defendants had introduced. For that reason the older machines did not enter into competition with them, and the defendants can not be charged with suppressing such competition.

3. The combined business of the component companies as conducted and developed since 1899 by the United Company, related most largely to the machines used in producing welt shoes. The use of such machines (and thereby the production of and demand for such shoes) is shown to have been very greatly promoted by patented improvements made upon the machines of 1899 by that company, greatly increasing their efficiency and capacity, and by improvements effected by that company since 1899 in the methods of manufacturing them. It appears that the total number of welt shoes produced in his country in 1899 was about 17 million pairs; in 1910 about 86 million; the total production of all kinds of shoes increasing during the same period from about 175 to about 280 million; the Goodyear welt shoes being all this time in direct competition with the McKay sewed shoe.

It is further shown that the above improvements in the machines and their manufacture were accomplished by means of constant investigation, experiment, testing, and invention by competent experts employed by this company, involving a very large expenditure on its part. These efforts were directed not only toward
1465 making each machine as efficient as possible by itself, but also toward increasing its efficiency for so performing its own operation upon a shoe as best to combine it with the work upon the same shoe by the numerous other machines required for performing the remaining necessary operations, in order that all the many suc-

cessive operations performed should cooperate toward the most economical and efficient accomplishment of the best final result in product. And besides thus developing and improving the machines of 1899, the company kept pace with the requirements of manufacturers by the invention and production of many other machines or improvements, unknown in 1899, as the need for them became apparent.

There is no question that the above-described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufaturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion.

It is nevertheless true that, considering the whole field of machinery for stitching together the bottoms and uppers of shoes, there has all the time been free competition. The use of other machinery to accomplish the purpose has always been open to shoe manufacturers. In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate means—better machines. Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success.

No support is found in the evidence, for the charge in the petition (Par. X) that "enormous and unreasonable profits" have been made.

This allegation is made in connection with and apparently
1466 depends upon the allegation of which, as above stated, there is no proof, that the properties combined in 1899 were taken over at excessive valuations. Nothing shown by the evidence warrants the conclusion that profits unreasonably out of proportion to the extremely large cost at which the business has been developed and is maintained, the great investment of capital it has required, and the enterprise, inventive skill, and business ability devoted to it, have been realized. Nor has it been made to appear that the charges made for the privilege of using the machines are exorbitant or unreasonable; especially in view of the great benefit to manufacturers using them, in lessening their cost of production.

If there is any sense in which the result attained as above can be called a "monopoly," it does not follow, in view of the circumstances shown, that the defendants have either restrained trade or been guilty of monopolizing or attempting to monopolize within

the meaning of the act. Nor can I regard the case as one in which any presumption arises, from the fact that so large a proportion of the users of these machines use the defendants'—that the defendants have committed any of the above forbidden acts in accomplishing the above result. The proof is too complete that it has been in fact reached by the use of methods entirely lawful, the leading features whereof are below indicated. As has been said, the field they have occupied is a special field, and the product for which their machinery is adapted is of higher price and quality than the product of the machinery of others.

The business which the defendants have developed and established is not, and has never been, one in which everybody might freely engage. No one else could lawfully make or use machines containing improvements covered by the defendants' patents. Nor can it be said that the demand for such machines which they have supplied existed independently of the defendants; on the contrary, they have created it by the new methods of shoe manufacture which their improvements have educated and enabled manufacturers to follow. It cannot justly be said that the case is one in which a field of commerce normally belonging to all has been captured by a single concern. The principles applying in such cases can not justly be applied here. In so far as the defendants' occupation of
1467 the field has been due to the greater desirability of their patented machines and to the superiority of their methods of making and supplying users with such machines, no reason appears for holding it unlawful, whatever its extent.

Supplementing the production and development of its various patented machines, methods introduced by the United Company for keeping them in efficient operating condition while in the hands of their various users throughout the country have most effectively aided the development of its business. It has undertaken not only to train operatives in the proper use of the machines and to secure the prompt repair of any machine disabled in use, but also to supply each user from time to time with the latest improvements, either by adding them to the machines or by substituting improved for superseded machines, without extra cost to the user. This service it has furnished by maintaining at central points bodies of competent employees who attend to the above matters whenever and wherever they are notified by users that such attention is desired.

A system of standardization, introduced since 1899, whereby corresponding parts of the various machines have been so constructed as to be interchangeable whenever possible, has, in connection with the service furnished as above, effected a great reduction in the time lost by machines in waiting for repair. The introduction of such a system could not have been effected by the component com-

panies because each carried on the manufacture of its machines at a different place. While each of them rendered to its users some service of the character described, this was done to a limited extent only, and the maintenance of any such system of rendering it as the United Company has pursued would have been impossible to them because of the heavy outlay involved.

The service secured to users of the machines by the system just described has been furnished to users without charge in addition to the royalties paid by them under the leases of their machines. For duplicate parts, extras, etc., required in operation, repair, or renewal, the terms of the leases required payment. Allegations in the petition that exorbitant prices were charged for such duplicate
1468 parts, etc., were not sustained by the evidence, and have not been insisted on in argument.

That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason.

So little room for doubt does the evidence leave that the success and preponderance referred to are the natural and legitimate result of the intrinsic merit of the patented machinery and service furnished as to require clear and convincing proof of any assertion that they are due to causes other than these. It can not be said that of themselves they justify any such presumption that unlawful means have been resorted to in attaining them, as has been held to exist when, in a business whereof no lawful monopoly is possible, because it is normally open to all, the success of one competitor has been attended by the disappearance of such competition as previously existed.

4. The petition charges the United Company with acquiring and absorbing the business of sixty different concerns or persons, described as "competitors," in pursuance of their alleged unlawful scheme, and as one method whereby what is called its "monopoly" has been built up. The nature and circumstances of these transactions are next to be considered.

As to one of these concerns (Boston Blacking Company), also made a defendant in the case, the charge was withdrawn early in the trial and the petition dismissed by consent so far as it is concerned. (Record, p. 261A.)

The petition has also been dismissed as against two other concerns also made defendants (J. C. Rhodes & Company and
1469 Thomas G. Plant Company)—though the charge regarding the acquisition of their business is still urged against the remaining defendants. The transaction involving the concern last mentioned requires consideration by itself. The fifty-eight remaining charges of unlawful acquisition may be more generally dealt with.

The fifty-eight concerns or individuals referred to made transfers to or agreements with the United Company at one time or another during the years 1899 to 1910, inclusive; and the transactions related more or less immediately to shoe machinery in general if the term be taken in its most inclusive sense. So far there is no dispute.

Eleven of the transactions were at various times in 1899; eight in 1900; six each in 1901 and 1902; three each in 1903, 1906, and 1908; nine in 1904; one each in 1905, 1906, and 1909; five in 1910. Though thus extended through a period of years, and though widely varying each from the others in character, both in respect to the nature of the transaction itself and also regarding the circumstances attending it, the petition sets them forth as if all had been in pursuance of one and the same scheme; there described as a scheme to control shoe machinery in general, though now called a scheme only to control the particular classes of shoe machinery before mentioned.

The nature of some of these acquisitions may be regarded as enough of itself to prevent them from being called indications of a purpose to control any of the particular classes of machinery now important, however it might have been were the scheme now asserted the one originally alleged for controlling all shoe machinery in general.

This seems clear in the cases where the business of concerns engaged in selling sandpaper, or in making patent brushes, or in making peg wood, was taken over; and hardly less clear, without further evidence, in the cases where the business acquired was making wire and spare parts for use in an obsolete metallic-fastening machine, or making treeing machines and parts thereof, or making needles, awls, and rawhide mallets, or making nails and tacks, or dealing in
1470 cement, blacking, and second-hand sewing machines, or making metallic heels and counters to go outside the shoe whereon they were used.

The business of four of the concerns acquired is described in the petition as that of making eyelets, enameled or not. Neither is alleged to have been making any eyeletting machine. The eyeletting machinery wherewith we are concerned, however, has been repeatedly described by the petitioner as machinery for inserting eyelets in

uppers; i. e., such as the machine first leased by the United Company in 1902.

To the cases wherein inventions or machines for pasting outer leather to linings or for cementing fabric to uppers were acquired little significance can be given, in view of the petitioner's abandonment of the claim of any scheme to monopolize machinery for producing uppers.

In several others of the transactions specified there was no acquisition of any tangible property whatever. These consisted of contracts only, either contracts for employment by the United Company or contracts in which undertakings by it were accepted in substitution for obligations previously assumed by one of the component companies. In none of these cases is it made to appear that the party contracted with was a "competitor" in any kind of shoe machinery, or that the business of any such "competitor" was "absorbed."

There remain a number of instances involving the acquisition of patent rights, patents, or machines relating to or capable of being included within some of those kinds of shoe machinery whereto the case is restricted as above. In the larger portion of these the device or machine acquired is shown to have been of a kind not then being produced by the United Company. There being nothing unlawful, as above stated, in the acquisition of different groups of noncompeting patented machines, it is clear that by such enlargements of the United Company's field of operation no "competitor" can be said to have been absorbed or driven out of business, and that no reason appears for holding the acquisitions thus made unlawful either in themselves or because made in furtherance of an unlawful purpose.

1471 The instances then remaining in which the United Company was at the time producing or trying to develop for production a patented machine for doing work more or less similar to that for which the invention of the machine acquired was intended, are the only ones capable of being regarded as of any possible significance for the purposes of the petitioner's case. In all such cases it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding in rendering commercially successful.

No case, however, is found among the acquisitions of the character last described wherein it has fairly been made to appear that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company, of such consequence as justifies either the con-

clusion that the acquisition was for the purpose of suppressing such competition, or the conclusion that a material restraint of trade was thereby accomplished. In most of the cases of this sort the machine or device acquired was claimed to infringe patents belonging to the United Company, or the patent acquired was one which some machine belonging to it was claimed to infringe, or the application acquired was in interference with applications of its own; and the object of the acquisition is shown to have been the avoidance or compromise of pending or threatened litigation. In such cases it is still less possible to say that any wrongful absorption of a "competitor's" business has been proved.

The acquisitions above regarded as the only ones of any possible significance in the case were made at various separated times during the period of eleven years or thereabouts above referred to. It can not be said that the later ones were in contemplation when the earlier acquisitions were made, because there is nothing to show that the circumstances attending any of them were such as could have been anticipated as likely to occur at the time of the preceding acquisitions. The most that can be said is, that as, in the progress of events, the needs of the United Company became
1472 manifest and these opportunities presented themselves, they were availed of.

Taken together, the acquisitions of this class are, in importance and amount, only of a consequence relatively small in proportion to the entire field then lawfully belonging to the United Company. It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build. Speaking of them generally, it may be said that the invention or machine obtained required further development in the company's hands before it could be properly used. Thus in the case of the Goddu Company, the first instance of alleged unlawful acquisition specified (p. 28), the metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines. In not a few of the cases specified the patent or machine, being wholly experimental when obtained, proved an ultimate failure so far as commercial success went, not-

withstanding much time and money expended in the attempt to develop it.

It further appears that, during the same period of time the cases wherein the business of a concern producing shoe machinery was offered to the United Company and refused by it were far more numerous than the cases of acquisition specified by the petitioner. As to several, at least, of these instances of refusal, the evidence warrants the belief that the business offered and refused much exceeded in importance to any such scheme of monopoly as now charged, any of the specified acquisitions. The cases in which inventions were offered and refused during the same period were many times
1473 more numerous than the patents or inventions acquired. If a monopoly of all machinery for attaching bottoms to uppers was really undertaken, it is hard to believe that opportunities would have been neglected, as they were, such as those for acquiring the Union lock-stitch machines or the welters and stitchers of the R. H. Long Company, all of the unpatented machines for use on welt shoes; or for acquiring a considerable business in producing McKay sewing machines, though these were unpatented and not capable of use on shoes of that kind.

The petition charges generally that covenants in writing were taken from substantially all those whose business was acquired as specified, (1) not to engage for long terms of years in competition with the defendants in commerce in shoe machinery, (2) to convey all inventions or patents in shoe machinery which they might make or acquire during such terms to the defendants.

These charges are not justified by the documents themselves, which have been produced. They are by no means uniform in their terms, there was no generally prescribed form for them, nor were they all the work of the same hands. Each was framed according to the circumstances of the particular transaction. In many cases, at least, the agreements required only that there should be no competition in the line of business involved in the particular transaction, or that all patents or inventions thereafter made in the particular line to which the acquired invention belonged should be transferred. There are enough of the agreements in these cases which are without covenants of the kind described, to leave the allegation unjustified that such covenants were required in substantially all. And of the instances wherein covenants are found in any degree answering the alleged description, it may be said generally that none are clearly shown to have exceeded what the law permits. Still less reasonable would it be to regard what is found in them as indicating a consistent purpose on the defendants' part to exclude all those with whom the agreements were made from all possible future competition with the United Company.

An allegation in the petition that the business of many competitors was bought at exorbitant prices, fails of support in the evidence relating to any specified instance of acquisition among those
1474 thus far considered. As to them, indeed, no claim of the kind seems to be seriously urged.

5. The acquisition in September, 1910, from Thomas G. Plant, consisting principally of a large number of patents, or applications therefor, relating to shoe machinery—machines embodying those inventions and Plant's controlling interest in the stock of the Thomas G. Plant Company, a shoe manufacturing concern, is the most important in amount of the acquisitions specified, and the one most relied on by the petitioner.

According to the petition, Plant was a competitor of the defendants, and they acquired his business in pursuance of their unlawful purpose.

The evidence does not show Plant to have been a competitor in the ordinary sense. He was not carrying on any going business in shoe machinery. He was neither producing his machines nor supplying them to users upon any commercial scale, nor was he prepared so to supply them, though he had issued an illustrated catalogue of them. The petition alleges that he had been inventing and patenting his improvements for at least two years before 1910. In one factory only were machines embodying them being operated; this belonged to the Thomas G. Plant Company, whereof he owned a majority of the stock. He installed them there in May, 1910, displacing the United Company's machines previously used there in order to do so. Before he installed them there, he had offered to equip two other factories with them without requiring royalties for their use, but these offers had been declined.

There is uncontradicted evidence of declarations by Plant in 1909 that his intention was to equip these two other factories and his own with his new machines and then sell out to the United Company. That the effecting of such a sale, and not any actual competition in the market with machines then in use, was his real purpose, is hardly left doubtful by the history of his subsequent negotiations with the defendants. These, set on foot by him and at first stopped by the defendants' unqualified rejection of his proposals, he persisted in renewing, through various intermediaries, until they resulted in the purchase above described. It appears
1475 without contradiction that Plant was for a time under agreement to pay an influential shoe manufacturer, whose assistance he procured, $250,000 if he succeeded in bringing about the desired sale; also that he later offered and ultimately had to pay a commission of five per cent on the price obtained to another intermediary who undertook to put the transaction through for him.

The evidence regarding Plant's negotiations with the defendants sufficiently proves that they were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else: but that, on the contrary, all the efforts toward such a purchase were made by him. The first overtures toward it came from him: he began them soon after he had put his machines into the Plant factory: they led to interviews, all of which he sought and at which his proposals were declined without encouragement to renew them. Nowhere in the evidence is any indication found that before Plant's overtures were thus made any purchase whatever from him had been suggested to or considered by the defendants.

Whatever the merit of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially successful in September, 1910, or to have been capable of such success in their then stage of development. They are shown to have been lightly built, not adapted to produce men's shoes, and by no means satisfactory in making women's shoes, the kind of work to which the Plant factory was devoted. The evidence is uncontradicted that, while operated there, they fell behind the United Company's machines, which they had supplanted, in efficiency—that breaking down and defective work was more frequent with them—and the cost per pair of making shoes with them distinctly greater. Though some of them, as later developed and improved by the United Company, proved to have merit, the most that can be fairly said of them in 1910, on the evidence, is that they were more or less promising experimental machines. There was no complete set of them for combined operation: for that purpose several important machines were yet to be developed. In the state in which the
1476 United Company took them over, they were not found capable of profitable use. Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were "right at the threshold of extensive competition with the United Company."

The petition alleges that a group of shoe manufacturers were in conference with Plant, in Boston, in September, 1910, "with a view to purchasing an interest in his inventions and machines, or to make some arrangement which would enable them to obtain machines for use in their factories and thereby be relieved from the domination and control of defendants." It further alleges that the defendants were "advised of the purpose and intent of said manufacturers," knew that if they succeeded in making arrangements with Plant there would be further removal of their own machines and competition thus created, and agreed with Plant upon the purchase made from him, in order to prevent such competition.

But the evidence fails to support these allegations. It does not charge the defendants with any knowledge, at the time they came to terms with Plant, of any negotiations between him and the manufacturers referred to. No reference appears to have been made to them or their doings during the defendants' negotiations with Plant, and no reason is found to believe that apprehension lest he might conclude some arrangement with them induced in any degree the defendants' final agreement with him. Were it important, it might be added that so far as the evidence can be said to show anything regarding Plant's intentions toward them, it shows that he never really meant to enter into any arrangement with others if he could get the defendants to take off his hands everything which he desired to sell; and no purchase so extensive as this appears to have been at any time contemplated by the manufacturers mentioned in the petition.

The terms finally agreed on with Plant were so much more favorable to the United Company than any he offered when he first approached them, and so inconsistent with his previous attitude toward them, as to leave no reasonable ground for believing that the defendants had ever sought, expected, or planned for the transaction
1477 as carried out. And in what they were thus unexpectedly enabled to acquire from him, there was included so much that was plainly of far greater consequence to them than could have been the avoidance of such competition as they can reasonably be supposed to have apprehended from his incomplete and undeveloped line of inventions—patents and machines also included—as to leave no sufficient ground for believing that avoidance of competition was their principal motive in accepting the opportunity offered. The normal, natural, and obvious business reasons, of wholly different kinds, why they should accept instead of refusing it, appear to have been so complete and sufficient as to render the conclusion unreasonable that it was accepted in order to escape competition.

Six million dollars, half in cash and half in United Company common stock at twice its par value of $25, was the price finally accepted by and paid to Plant for everything acquired from him. In the transaction no separate valuation was set by the parties upon the inventions, patents, and machines transferred distinct from that of the controlling interest in the shoe manufacturing establishment. That part of the acquisition is, of course, beyond criticism so far as the antitrust act is concerned. That it was of great value is shown beyond question by the dividends then and afterwards paid on the stock acquired by the United Company. These and the ultimate disposition of the stock itself afford every reason to believe its actual value when acquired sufficiently great to reduce the actual cost of the patented improvements also acquired to a comparatively small

proportion of the total payment made to Plant. Taking the transaction as a whole, if the total amount paid by the United Company was large, the total value of all that was received in exchange also appears, not as matter of opinion merely, but by actual results shown, quite sufficient to negative any claim that the defendants paid an exorbitant price for what they got.

The evidence that among these patented improvements obtained from Plant there were enough of sufficient value, in the defendants' hands and used as they only could have used them in further developing and perfecting the machines they were then producing or trying to produce, to make this part of the total acquisition
1478 extremely profitable to the United Company was not met by any sufficient proof to the contrary. The agreement to take the patents and inventions was not made until after a careful examination and report as to their merits. The belief thereon founded that, used as above, they would be worth acquiring upon the terms proposed, is shown to have been justified by the result, and the acquisition can not be criticised so far as it was occasioned by that belief. As developed and added to its own machines by the United Company, some of the inventions acquired have proved to be of a value such as fairly justifies their claim that the patents acquired were the controlling feature of the purchase.

The evidence shows also, without serious contradiction, that one result of the bargain made with Plant was to relieve the United Company from an amount of litigation, then pending or in prospect, which would otherwise have burdened and hindered it to an extent far greater than it had ever had reason to apprehend from any litigation with which it had before been concerned.

A suit by it to restrain the Plant Company from breaking the leases of its machines, displaced in order to instal the Plant machines as above, had been pending since May, 1910. And between Plant or concerns wherewith he was identified and the United Company there were pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents, so numerous, complicated, and important as to threaten interminable controversy.

It was part of the bargain with Plant, or followed from it as a result, that the above controversies were settled or avoided. That the prospect of accomplishing this result was a further normal, natural, and powerful inducement to the agreement made with him can not be reasonably doubted. In so far as the agreement was thus intended, no criticism of it can be valid.

The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must

have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion
1479 to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition. No such competition or prospect of competition at the time is proved as would justify such a conclusion. The competition threatened by Plant and his efforts to induce the defendants, in order to avoid it, to buy his machines and patents by themselves were wholly ineffectual. They met with nothing but refusal on the defendants' part to consider his proposals. It was not until he offered, through the intermediary he last employed (Smith), the shoe manufacturing business of the Plant Company as well that the defendants consented to deal with him.

While it may have been his plan to realize a profit by threatening competition, it was not until this proposition, based upon tangible property of substantial value and of patent rights, was made, that any sale was effected. The property acquired being proved to have been worth the amount paid, the argument that the defendants were so anxious to hold a monopoly as to be willing to pay $6,000,000, or any other large sum, in order to get rid of a competitor, or that this was done in pursuance of a general plan conceived in 1899, fails completely.

6. In paragraph VI of the petition a variety of acts described as "unfair and monopolistic" or "oppressive" are charged to have been committed by the defendants since the formation of the United Company by means of the predominance it has acquired. Of these, as set forth, "threats" of various kinds form a considerable proportion. It is charged that by "misrepresentations and threats" the defendants have induced competitors' customers to leave them, and have deterred others from attempting competition; also that they have threatened to use their financial or other power to secure to themselves the patronage of competitors. Under the above paragraph heading it is also charged that the defendants have bought up many patents for valuable inventions and held them long in disuse; that they have offered and granted rebates to such users of their machines as use them exclusively; and that they have bought out many
1480 competitors at exorbitant prices. There is a general charge of "many other unlawful acts too numerous to specify," and accordingly not specified in the petition.

A long bill of particulars, containing alleged specifications of these charges, was filed upon the defendants' motion during the trial (June 25, 1913). But there are very many of the charges so specified in support of which no proof whatever has been offered. Of those to support which some evidence was introduced, compara-

tively few have been insisted on in argument. The charge that competitors have been bought out at "exorbitant prices" is found not established in the case of the Plant acquisition, as has just been stated. Nor is evidence found sufficient to establish it in the case of any one of the numerous minor acquisitions specified in the petition. It has not been insisted on in argument that this charge is proved as to any one of them.

Nor has there been any evidence sufficient to show a practice followed by the defendants of buying up patented inventions to hold in disuse. This charge also is one not insisted upon in argument.

The charge that rebates have been given to exclusive users of the United Company's machines rests upon (1) the vote of the executive committee January 29, 1900, (2) a circular letter addressed on the company's behalf to its lessees ten years later, June 10, 1910. There is nothing sufficient to show that there was anything "unfair or monopolistic" about either the vote or the letter, or about anything done in pursuance of either.

The vote of 1900 was that royalties on the Gem insole machines be rebated to exclusive users of the company's machines. It appears that having acquired the Gem Company, which had machines in use under lease at the time at a royalty of one-half cent per pair, the United Company added the machine to its Goodyear auxiliary set, and to users of such sets paid back the one-half cent per pair in order to leave the rate upon the entire auxiliary set the same as before it included the Gem machine.

As to the circular letter of June, 1910, it announces the company's intention of investing fifteen per cent of the royalties paid by lessees of the Goodyear welting, stitching, and turn-sewing
1481 machines for three years in the company's common stock, and of distributing this stock proportionately at the end of the term among those lessees who should have faithfully observed the covenants of their leases during that period.

Neither of these acts on the company's part can be said to answer to the terms in which the charge of offering and granting rebates is made. That either act was inspired by the purpose of giving exclusive users of the company's machines an unfair advantage over those who did not, or that either had that effect, can not be said to have been proved, and the charge is not believed to require further notice. It would seem to have been suggested by those cases relating to railroads wherein "rebate" has acquired an obnoxious signification.

It remains to consider how far the evidence proves the defendants to have used "threats and intimidations" of the various kinds described in the petition. As to far the greater part of the specified instances set forth in the bill of particulars, the charges of this kind

have been allowed to go wholly without attempt at proof. Of those regarding which any such attempt was made, six only have been insisted upon in the petitioner's briefs or argument. No reason whatever to believe that any greater significance could be claimed for any others of the specified instances than for these appears from the evidence regarding them to be found in the record.

Mr. Winslow, president of the United Company, Mr. Barbour and Mr. Hurd, vice presidents, all of them directors, are the only defendants charged in these instances with using any threats or intimidations. The other persons charged with making them are Mr. Bayley and Mr. Willson (since deceased), managers for the company at various times, but never made parties to this suit.

The only "threats" which Barbour is charged with making are testified to by James N. Darrah, vice president in 1900 of the Standard Shoe Machinery Company. According to Darrah, Barbour, at a talk in New York in April of 1900, tried to get him to sell out stock in his company by telling him, in substance, that if competitors of the United Company could not be bought out they would be
1482 forced out. Barbour has denied that any such conversation took place. Darrah's evidence was not corroborated; and there is no proof that his concern, though it went out of business in 1901, was ever forced out or crushed by the defendants.

Mr. Winslow is charged, in testimony by Charles H. Morse, with having said to him at some time in 1901 or 1902: "You don't suppose we are going to allow you to put them on the market"—referring to certain pegging machines then being made by the Fifield Company, with which Morse was connected. Morse, on his own testimony, was then negotiating with Winslow about a sale of the Fifield Company business to the United Company, but they failed to agree as to price. Its business was sold in 1906, but not to the United Company. There is nothing to prove that the United Company ever interfered with the marketing of this machine.

Mr. Winslow is also charged, in testimony given by Charles S. Johnson, with having said to him during negotiations in 1902 or 1903, regarding a sale of the Tripp Giant leveler, in which he was interested, to the United Company: "You had better sign that contract, because we are going to have your business anyway." But the negotiations did not result in a sale, and the Tripp Company's business, though sold out in 1905, was not acquired by the United Company. Not long after, according to Johnson's testimony, the United Company put on the market machines considered by him to be substantially the same as the Tripp Giant leveler, but there is no other indication of any interference with the Tripp Company or its business by the defendants.

Mr. Winslow is also charged, in testimony given by Merrick and Luitweiler, president and treasurer of the Union Lock Stitch Company, then developing machines not yet put on the market, with having told them in 1905, while attempting to persuade them to sell out to the defendants, that they would not be allowed to make any money; that the United Company would build their machines; that their business would come round to it and be taken by it, and that it was cheaper to kill competitors than to acquire them. The alleged statements are denied by Winslow. The business referred to
1483 is one never acquired by the defendants, nor is any interference whatever with this business shown. This was admitted, and the testimony of the two witnesses named is that they have put out 350 to 400 of the machines in question.

Bayley, a department manager for the United Company, is charged, in testimony given by Irving A. Hadley, then representing Kimball & Hadley, manufacturers of awls and needles, with having said to him in January, 1904, in answer to a claim by him that Kimball & Hadley could sell needles as cheap as the United Company, that the United Company could give them away if necessary.

It does not seem possible to attach any serious importance, for any purpose, to the remark, if made, even if anything said at the interview can be supposed to have had reference to a possible purchase by the defendants of the Kimball & Hadley business. Bayley was in a sanitarium, unable to testify, at the trial. Further testimony from Hadley, however, that certain factories had refused needles offered them by him for fear of controversy with the United Company was contradicted by the managers he mentioned. The business of Kimball & Hadley was one of those acquired by the United Company, but it was not acquired until the following June. It consisted in making Goodyear needles, which at the time of the acquisition the United Company was not making at all. An attempt by Kimball & Hadley, in litigation with the United Company some time afterward, to prove that threats and intimidation had been used in acquiring their business wholly failed. (See United Co. v. Kimball, 193 Mass., 351.)

Mr. Hurd is charged, in the testimony of Harry E. Cilley, with having said to him in 1901, during a conference with respect to a possible sale of his business to the United Company: "You can't do any business except on our sufferance, and you can't get a new dollar for an old one." It appears that Cilley's business at the time consisted in building a sole-leveling machine; that he was not satisfied with an amount suggested by Mr. Hurd as a proper price for it, told Mr. Hurd he considered it "outrageous," and never renewed
1484 the negotiations. Neither the business of this witness nor the

remarks testified to, if made, can fairly be regarded as of any serious importance, in view of all the circumstances shown.

It thus seems clear that nothing proved as to the above instances of so-called "threats and intimidations" is sufficient to justify such allegations as are made in paragraph VI of the petition about them. Even if anything said by a representative of the United Company on these occasions can properly be called a "threat," in view of all the surrounding circumstances shown, there is certainly no adequate reason established for believing that any competitor's customers have been induced to abandon them, or that anybody has been prevented from attempting competition by what was said. The instances relied on are widely separate in time and distinct as to circumstances and persons. They can not reasonably be regarded as showing a concerted purpose to suppress competition through intimidation, such as paragraph VI purports to charge. In every instance the expressions said to have been used by a representative of the United Company were in interviews with persons interested in some concern or machine which the United Company was asked or might be asked to buy. As has appeared, propositions of this kind were constantly being made to its representatives, and many more of them were refused than were accepted.

Not in paragraph VI, but in the preceding paragraph V of the petition, the charge is made that certain provisions of the leases, under which the United Company's machines have been operated by users, have been arbitrarily enforced, in pursuance of a general policy and practice to refuse machines for failure to comply with the terms and spirit of the leases "and to otherwise injure" users so failing to comply.

In the above bill of particulars filed, as has been said, on June 25, 1913, "in amplification of Section VI of the petition," the defendants are charged, in a number of specified instances, with threatening to remove or removing machines from the factories of users because competing machines or machines obtained from other concerns were also being there used or because such use of other machines was in contemplation. No proof whatever has been offered as to a considerable proportion of the instances thus specified.

1485 In the instances specified regarding which there is some proof nothing more is shown than that the United Company insisted, to a greater or less extent, upon observance by the lessee of provisions in his lease to which he had expressly agreed when he took the machine, and which he was purposely violating or proposing to violate to the detriment of the lessor, because such violation would tend to decrease the number of pairs of shoes operated on by the machine and thus the royalty to be paid for its use by the lessee.

If the provisions referred to in the leases are contrary to law, it was unlawful to insist upon them. The question here involved is later considered. But unless the provisions were unlawful, the evidence regarding these specified instances in which their observance was insisted upon wholly fails to show that in any instance the defendants did or attempted anything whereof either the lessee of the machine or anyone else had any right to complain.

It may be said generally that the instances in which machines were in fact removed from the factories of lessees under the provisions referred to have been so few in proportion to the total number of leases as to leave the general charge that such provisions have been arbitrarily or oppressively enforced destitute of any sufficient foundation. Only five such cases appear in the evidence. In each the lessee's conduct was in wilful disregard of the lease agreements and afforded a complete justification for the lessor's action, unless none is possible.

The bill of particulars filed June 25, 1913, brought into the case for the first time allegations that the defendants have endeavored to organize strikes in factories of shoe manufacturers wherein shoe machinery competing with their own was operated.

The only specifications under this charge are, in substance, that in June, 1910, Willson, then general manager of the United Company, assured certain employees of the Thomas G. Plant Company that if they would organize a strike in that factory the United Company would pay all expenses and reward the leaders "handsomely"; that in reliance upon said assurance about 300 of the operatives were brought into such an organization and a large sum
1486 of money expended by the organizers; that Plant thereupon had the organizers watched, and no strike resulted.

The only evidence to show that Willson ever gave any such directions or assurances came from three witnesses, employees at the Plant factory in June and July, 1910, who gave their testimony in person before the court. No one else was present, according to their statements, at the various interviews they described between Willson and themselves during the two months just referred to. Willson having died in 1911, and before these charges were made, no direct contradiction was possible of their statements as to what was said by him to them.

He told them, according to their testimony, that if they would organize a strike at the factory and give him all the information they could about the Plant machines he would pay their expenses, get them jobs, and pay them also $2,000 in cash (according to two of them)—$1,000 (according to the other).

Willson never did pay them any money, as they all agreed. But their testimony was that they got about 300 men into an organization

and spent about $1,500 of their own money in doing so, mainly in entertaining the men who joined. According to their further statements, $600 was contributed by one of them, $500 by another, and $400 by a third; their wages at the time were $15 per week; these sums were the savings of eleven or twelve years; accounts, lists, and vouchers containing details of their doings and expenditures were kept, but all of these were either surrendered to Willson or destroyed by them. No written evidence of any kind was offered in support of their story.

It appeared that there was some prospect of trouble between Plant and the employees at the factory at the beginning of June, 1910, but after meeting a committee with regard to an increase of pay asked for, Plant granted it, and no strike or other trouble ever occurred. There was no proof whatever that he ever employed detectives to watch the three witnesses in question, or that any attempt by them at organizing a strike ever came to his knowledge.

The testimony of these three men was not corroborated by any others of the then employees at the factory. On the contrary,
1487 several of them, shown to have had ample opportunity for knowing the facts had there been any such organization attempted as testified to, denied any knowledge of such organization or of any such preparation for a strike.

Winslow, president of the United Company, testified that Willson had told him, in June, 1910, that three Armenians had been to him asking that he furnish them with money to start a strike in the Plant factory, and that his instructions to Willson thereupon were to have nothing to do with them. No money of the United Company was ever paid out for any such purpose.

Not only does the evidence of these three witnesses appear unworthy of belief in view of its improbability, its lack of corroboration, and the evidence tending to discredit it, but it is difficult to understand how the petitioner could seriously have expected the court to accept such testimony, or have considered itself justified in offering it.

The history of the proceedings in this case indicates that efforts which may fairly be described as extraordinary have been made to bring before the court, so far as possible, all sayings or doings of any of the numerous defendants or their representatives, during the period beginning with 1899 and ending with 1911, which might afford ground for charging them with oppressive, coercive, or like unfair conduct toward competitors of the United Company or the public. In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignificant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that

the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects.

7. It remains to consider the charges made in the petition as to certain provisions in the leases and license agreements, under which the United Company permits the use of its patented machines, that they are either unlawful in themselves or have been devised,
1488 adopted, and used by the defendants for the purpose of destroying competition. (Paragraph V.) Upon these charges the petitioner may be said to have finally put its main reliance.

With regard to the provisions in question, as with regard to many of the matters heretofore considered, the position finally taken by the petitioner has differed widely from that originally taken in the petition as filed.

None of the constituent companies were in 1899 selling outright the patented machines they manufactured. The bill alleges the contrary, and charges that one of the steps taken after 1899, in pursuance of the alleged scheme to restrain or monopolize, was to discontinue sales and compel leases. An attempt to support this charge by evidence wholly failed. Nothing of the kind was done, nor is it easy to see what grounds for making the charge could ever have been supposed to exist.

It appeared, on the contrary, that the method of marketing their patented machines followed by the constituent companies in and before 1899 was exclusively that of leasing, for a royalty upon each pair of shoes whereon the lessee should use the machine. Some of the leases also required an initial payment; others did not. The evidence also shows that the general system of leasing in this manner was, and had long been, the usual and accepted method of dealing between the makers of patented shoe machinery and those desiring to use their machines, and that, in its main features, it had thus become so widely and firmly established as to render the substitution of a different system practically impossible.

The defendants continued the policy which they found in use by the constitutent companies as to the kinds of machines to which this case now relates. Its machines of these kinds have never been sold outright; all users have taken them from the United Company upon leases granting the right to use the patented improvements embodied in them during the term of the lease.

It should be stated here, however, that as its business has progressed the United Company has developed a very large number of machines of other kinds useful in shoe manufacturing, as to which the policy of leasing only has not been followed. Such machines, included in what is known as the company's "General

1489 Department," have been and are sold outright to anybody willing to buy them, without restriction of any kind—a course of business more liberal than that pursued by either component company. The number of different machines wherein the United Company deals in the manner stated has come to be very considerable.

There was finally no contention that any law has been violated merely by the company's continuance of the policy of leasing only instead of selling.

That there was any violation of law in continuing, as the United Company did for a time after 1899, to maintain the leasing system and use the forms of leases which they found in use by the constituent companies, the petitioner is not in a position to contend.

There were suggestions in argument on its behalf that the system referred to was unlawful in some of its features, but the petition contains no such allegations. The claims therein made relate wholly to the leases put into use by the United Company after 1899 and rest on the proposition that these contain provisions "not found in (the) former lease and license agreements," the new provisions complained of being immediately thereafter specifically described. The petition characterizes them as "arbitrary, oppressive, and unreasonable." (Paragraph V.)

The United Company, of course, became after its formation the sole lessor of all the patented machines formerly leased by the different component companies. During the twelve years which then followed before this petition was filed there were, as is not denied, changes from time to time in the lease forms used for leases under which the use of certain of its machines were permitted. Generally speaking, one form was used with all leases of the same machine. There were some machines which might be taken under either of two alternative forms.

According to other allegations in the petition, it was part of the defendants' unlawful project, at the time of their combination in 1899, to refuse to sell or lease any essential machine except on condition that the lessee buy or lease of them practically all other machinery necessary or useful to him as a manufacturer of shoes.

No proof was offered at any stage of the case that the defend-
1490 ants had in mind in 1899 the system of leases they later developed or any of the modifications therein involved of the system which they found established in 1899.

At the argument the admission was made on behalf of the United States that there was no proof that at the time they formed the United Company the defendants "had in mind the adoption of the system of leasing which they later developed." And the position then taken by the petitioner in argument was that the leasing system referred to has resulted in illegal restraint or monopoly and that

the intent which prompted its development is therefore "absolutely immaterial."

As to the allegation that the defendants contemplated a policy of refusal to lease except on condition that the lessee buy or lease of them "practically all other machinery of whatever kind necessary or useful" to him as a manufacturer of shoes, it requires no further notice, now that the charge of restraint or monopoly in "any and all kinds of shoe machinery" has been abandoned. The evidence abundantly shows that nothing of this kind was ever contemplated, attempted, or done, and that there was never any justification for the charge as made.

With regard to the modifications introduced by the defendants upon the leases in use by the constituent companies in 1899, the petition alleges, in substance, (1) that under the former system lessees from one company were not held to the exclusive use of machines manufactured by any of the others; (2) that since 1899 the defendants have required their lessees, by provisions not found in the leases previously used—

"to agree to use exclusively one or more of the classes of machines included in said group of machines owned and controlled by them, upon penalty of having all the machines included in said group so leased to them by defendants immediately reclaimed and taken away and the lease and license agreement cancelled";

(3) that lessees are now obliged to hire each machine for a period of not less than seventeen years; (4) that lessees are now compelled to obtain all duplicate or repairs, parts, extras, etc., from the
1491 defendants at exorbitant prices; (5) also to pay return charges at the expiration of the lease, sometimes amounting to the original cost of building; (6) that the defendants now reserve to themselves in each lease the right to terminate all existing leases between themselves and the lessee upon his failure to use exclusively and to full capacity any machine leased to him by defendants. (Paragraph V.)

The evidence failed to show that lessees from the United Company had ever been compelled to pay exorbitant charges for repair parts, etc., or to pay any unreasonable return charges on leased machines. (4) and (5) of the above alleged modifications may therefore be now disregarded. In the subsequent sections of the petition no further reference to them is found.

In the "conclusion" section of the petition the following only, among the provisions thus alleged to have been added to the leases by the defendants after 1899, are charged to have been unlawful: Agreements by the lessee (1) that he would use exclusively machines of the lessor to perform the same kind of work as that performed by the machines leased, (2) that he would use in work

other than that for which the leased machine was designed only machines of the lessor, (3) that if the lessee should violate either of said agreements, he would forfeit the use not only of the leased machine, but others, whether accomplishing the same or different work, (4) that he should use the machine leased for seventeen years.

The objections made by the petitioner, at the argument, to agreements contained in the United Company's leases were not confined to those specified in the petition as above, but included others nowhere therein referred to.

At the argument, certain clauses extracted from the leases shown to have been used by the United Company, were said to embody the agreements objected to as unlawful.

But what was referred to as the "full capacity" clause, lessees agreed to use the machine to its full capacity on all shoes, etc., made by them in the manufacture whereof such machinery was capable of use.

By what was referred to as the "additional machinery"
1492 clause, lessees agreed that for any more work than their then leased machines could do, of the kind which machines belonging to the same department could perform, they would lease enough others to perform it from the lessor.

To neither of these two clauses was any reference made in the petition itself, as appears from the above summary of provisions in the leases therein complained of. The other clauses referred to at the argument were the following:

By what was referred to as the "exclusive use" clause, lessees agreed that if they should cease to use exclusively machines leased from the United Company, for doing work of the same kind upon shoes, etc., made by them, the lessor might, at its option, terminate all their leases of its machinery for doing work of that kind.

By what was referred to as the "prohibitive" or "tying" clause, lessees agreed that the leased machine should not be used upon shoes, etc., whereon certain other specified operations had been performed by machines not leased from the United Company.

By what was referred to as the "right to terminate all leases" clause, lessees agreed that failure on their part to observe any condition either of the lease of the particular machine or of any other lease from the United Company then in force, should give the lessor the right to terminate all leases of its machinery then held by them.

The above three clauses, and the alleged agreements requiring lessees to use the leased machine for seventeen years, appear to be the only provisions among those commented on in argument to which objection was made in the petition itself.

As to the use of such agreements as are expressed in the "full capacity" clause or the "additional machinery" clause, whereof, as has been stated, no complaint is found in the petition, the evidence shows that they were not new introductions by the United Company, but were contained in certain of the leases used by the component companies before 1899.

By neither was any agreement made which the evidence has shown to have been abnormal or unusual, or to have exceeded
1493 what was reasonably necessary to protect the lessor's interests in the contemplated use of its machine.

The lessor might well accept for the use of its machine a smaller royalty per pair, based upon the understanding that the machine would turn out as many pairs as its capacity permitted, than it could afford to accept without any such assurance.

Similar considerations apply to the "Additional machinery" clause. Without it, the lessee would be at liberty to do his slowest and most difficult work on the leased machine and the easiest on others or by hand.

The petitioner indeed conceded that both the above clauses might be unobjectionable had they not been used together with the others; but it relied upon their use with the others as tending to show the existence of an unlawful scheme. That this is an afterthought only, is shown by the failure to set forth either clause, in that aspect, in the petition. Moreover, as to the "Additional machinery" clause, the defendant had discontinued its use altogether two years before the petition was filed, a fact inconsistent with any claim either that it assisted monopoly or was intended to do so.

The consideration of the remaining clauses raises, in the first place, the question as to the truth of the allegations in the petition that such provisions were not found in the leases used before the consolidation of 1899, but were modifications thereafter introduced by the defendants, in pursuance of their alleged intent to monopolize the business.

The following facts appear regarding the leases in use by the component companies before 1899:

In the case of the more important machines an initial payment, of greater or less amount, was required of the lessee in addition to the royalty per pair stipulated in the lease. Such initial payments were required by all the leases from the Goodyear Company. The Consolidated & McKay Lasting Company required such an initial payment in leases of two out of the five patented lasting machines wherein it dealt; in its leases of two others no initial payment was required; and its remaining machine was leased either with or without initial payment at the lessee's option, the royalty being
1494 higher in the latter case than in the former. The McKay Com-

pany was the only one of the component companies whose leases did not require initial payments, whether those of the patented heeling or metallic fastening machines, which it made—or those of the Davey pegging machines, which it controlled.

It may be further stated with regard to the leases made by the constituent companies that two or more machines of the same company, intended for use in substantially the same operation, were generally leased as a group. Thus, Goodyear Company leases required its welter and out-sole stitcher to be used together, and permitted the auxiliary machines intended for use therewith to be used only on shoes welted and stitched thereon. As to its Ideal laster, the use thereof on welt shoes was restricted to use with its welter and stitcher. The leases of this company did not provide that the lessee should use its machines exclusively, and that unless so used the lease should terminate; but there were such provisions in the leases of the other companies. The Lasting Company's leases required use to the full capacity and the taking of additional machines for any additional work.

All the above leases were for terms for the most part either indefinite, or until cancellation by the lessor, or for the life of the patents embodied in the machines, or for seventeen years and thereafter during the life of any patent embodied.

In the forms of leases or license agreements which they found in use as above, the defendants made no change whatever until about a year had elapsed since the formation of the United Company. This the evidence shows without contradiction, and it further shows that when there were substitutions of new forms of leases in place of any of those in use as above, there was no change made all at once or in pursuance of any general plan, still less of any arbitrary plan; but, on the contrary, the change in each case was because special circumstances affecting the particular group of machines had come to render such change desirable.

The history of the successive changes adopted and of the reasons for each, was fully brought out in the evidence. Beginning with the first new lease form, adopted in March, 1900, the adoption of
1495 others followed at various times during the subsequent years. Some of the provisions most objected to by the petitioner were not adopted until 1904 or 1905.

Regarding the various modifications so introduced, it may be said in general that they tended to relax previous restrictions upon the use of leased machines, and to reduce the cost to the lessee of installing them. The most important changes made were, in substance, as below.

For agreements whereby the lessee expressly promised exclusive use of the lessor's machines belonging to the same group with that

leased, there were substituted options to cancel, reserved to the lessor, in case the lessee should discontinue such exclusive use.

The requirements found in leases used by some of the component companies that the leased machine should be used to its full capacity were extended to apply, in general, to all such machines, of the classes involved in this case, as were used in factories to measure the amount of work done, and thereby fix the amount of royalties to be paid upon the machines used in doing it.

As to certain groups of machines, provisions were introduced restricting the lessee's use of all machines belonging to the group to use only on shoes operated on by one or more of the other groups of United Company machinery. But in all such cases, without substantial exception, there was also offered an alternative lease form not containing such restrictions. An initial payment was required from all lessees preferring the latter form; no such initial payment was required from lessees under the form first mentioned.

A uniform term of seventeen years was adopted for all the leases.

Considering the clauses objected to in the light of what preceded them, and of the circumstances attending their adoption by the defendants, the petitioner has not, in my opinion, proved that the defendants' object in adopting them was the prevention of competition by others. Such prevention might, indeed, follow from the more favorable terms offered lessees, but modifications made in the existing system for the direct purpose of otherwise better
1496 adapting it to exclude competitors, would have been different in character from the modifications represented by these clauses.

Not only would it have been unreasonable, as has been said, to expect the defendants to substitute a wholly different system from the leasing system which they found in use, but the evidence affords no reason to believe that anything of the kind was desired by manufacturers in general. The advantages to them of not having to tie up capital in patented machines, and of paying for the privilege of their use only according to the amount of use, were advantages which they can not be supposed desirous of surrendering.

Modifications in the contracts offered them tending, as these are shown to have done, to enable the company, through provisions adapted to increase the number of shoes worked on by each machine, to lessen the royalty charged per pair, and to diminish or dispense with the initial payment before required, were so obviously prompted by the purpose of developing the company's business through the perfectly legitimate method of offering them on terms more advantageous to users, that it would be unjust to treat them, on evidence no stronger than that here presented, as really intended to accomplish an arbitrary exclusion of users from any dealings with others.

If it were made to appear that the leases containing these clauses accomplished in and of themselves an unlawful restraint of trade, or necessarily secured to the defendants an unlawful monopoly, the intent to accomplish these results would, of course, be imputed to the defendants without regard to their actual purpose in adopting and using them. But the evidence seems to me insufficient for the conclusion that such results are so accomplished. The contention that they are fails, in my opinion, to take into account the defendants' rights in the field lawfully secured to them in the various patented improvements they had lawfully controlled and combined; and fails also to concede them proper scope for the rights properly incidental to their control of said improvements, to make such agreements with their lessees as would best promote the efficiency in
1497 combined operation of the machines leased, and thereby best enhance and safeguard their just return therefrom in the form of royalties.

The complaints made regarding leases embodying the clauses referred to are not directed against those pertaining to any particular kind or kinds of machines, as more objectionable than others. It is their entire combined effect which is attacked.

Concurring as I do in the views expressed regarding them by Judge Brown, I am obliged to regard the petitioners' allegations of their illegality as not sustained by the evidence.

In my opinion the bill should be dismissed.

1499 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA
v.
UNITED SHOE MACHINERY COMPANY, OF New Jersey, and Others. | In Equity, No. 301.

[March 18, 1915.]

BROWN, J.: The United States charges that certain provisions in the lease and license agreements of the United Shoe Machinery Company with shoe manufacturers restrain interstate commerce and tend to create or perpetuate a monopoly of interstate commerce in shoe machinery.

We may examine this topic, which comprehends a large number of very long and elaborate documents and a very large portion of the briefs and arguments on each side, most conveniently by considering the effects which the United States claims result from such provisions, rather than by attempting to set forth in full the provisions themselves.

Complaint is made of the effect of such provisions:

I. Upon the shoe manufacturers.

II. Upon other manufacturers of shoe machinery.

The rights of these two classes and the effect of the leases upon each present quite distinct questions. The only competitors or possible competitors are other manufacturers of shoe machinery. The shoe manufacturers as such are not competitors. As the com-
plaints of the United States on behalf of the shoe manufac-
1500 turers and on behalf of other machinery manufacturers relate
to distinct matters, they should not be taken cumulatively, and should not be confused.

The effect of the leases upon the shoe manufacturers.

This may be considered in three aspects:

As bearing upon the question of the legality of the original combination or organization of the United Shoe Machinery Company;

As an alleged illegal and oppressive outgrowth of power obtained by combination;

As restricting the shoe manufacturer's freedom of choice in taking the machines of other manufacturers; as preventing him from using the machines of others; and as compelling him to use the machinery of the defendants.

The petition of the United States charges that the defendants—"conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to such manufacturer of shoes, and thereby to exclude all competition by other manufacturers of such shoe machinery and to monopolize the trade and commerce therein among the States and with foreign countries."

It is also alleged that certain lease and license agreements constitute steps in carrying out such project.

It is urged in effect that such plan comprehends a denial to shoe manufacturers of such opportunities to obtain machinery as existed before the consolidation, and a compulsion upon them, if they desire a special kind of machinery, to take also other machines of different kinds from the defendants.

There seems to be in the case no other basis for such allegations than the leases themselves.

This bill was filed December 12, 1911, before the decision in
United States v. Winslow, 227 U. S., 202. In that case the
1501 argument of the United States as to the so-called "tying

clause lease" shows a conception of the character and effect of the leases similar to that set forth in the bill of complaint in the present case. It was supposed that the effect of such leases was to compel customers to take all of their machines from the defendants, or all from other sources, and that this was a direct restraint upon competition and trade by depriving them of the existing right to use some machines without also using others.

The argument as to the effect of the leases both in United States v. Winslow and in the present case seems to be based rather upon an ingenious theory of bringing the defendants within the Sherman Act than upon any proper interpretation of the leases or accurate information as to the facts.

The union of noncompeting businesses in a single company would appear to have no tendency in itself to suppress competition. The union in a single company of distinct companies dealing in distinct patented inventions for performing different operations would seem remote from the sphere of the Sherman Act. To charge defendants, who were engaged in the manufacture and sale of patented machinery, with an attempt to monopolize had little plausibility in the face of the fact that grants of monopoly had been made by the United States.

The alleged plan of a refusal of what before could be had separately, as a means of compelling the taking of other machines, was a principal ground for invoking the Sherman Act.

The leases in evidence, as documents, fail to substantiate the charges either as to the contrivance of such a plan or as to its execution. It appears that after the consolidation there was no refusal or imposition of conditions as alleged, but that the defendants continued to give manufacturers terms which were substantially the same as before and in some instances better than those offered by the constituent companies before the consolidation. This is shown not only by the exhibits of "independent" leases but by the testimony of officers of the company.

The charge seems to have been based upon certain so-called "tying clauses." There has been some confusion as to the scope
1502 of the term "tying clauses." The United States gives the following definition:

"'Tied to' means that machinery can not be used in the manufacture of boots and shoes with machinery other than that owned and controlled by defendants."

This seems to require consideration of clauses of two kinds—(a) the "exclusive-use" clause; (b) the "prohibitive" clause.

The "exclusive use" clause reserves to the lessor a right to cancel the lease in case the lessee shall fail or cease to use exclusively machinery of the kind leased. This kind of tying has no direct bearing

upon the question of the legality of the combination. What was before separate is separate after the consolidation.

The "prohibitive" clause provides that the leased machinery shall not be used in the manufacture of shoes that have been or are to be operated upon by machines of certain specific kinds not leased from the lessor. Though a similar clause was in use before the consolidation, it related only to machines of the kind made by one of the constituent companies. After the consolidation it related also to machines of other kinds formerly made by other of the constituent companies.

The prohibitive clause, therefore, is the one that has relation to the supposed scheme of using the power acquired by combination to refuse machines that before were separately obtainable, and to offer such machines only on condition that other machines of different kinds should also be taken.

"Tying," therefore, does not mean that the manufacturer is required to agree, or agrees, not to use the machines of others, but merely that he has secured only limited rights of use, and that if he exceeds such limited rights he may lose his lease. It is not a question of the legal effect of the lease, but of the practical consequences of securing only restricted rights of use. The term is misleading in its implication that the manufacturer is bound by contract not to use the machines of others. He is bound only not to use the leased machinery in violation of the terms of the lease.

1503 "Tying" is an inexact and equivocal term, which may refer merely to the machine or may mean either that the lessee is bound by contract or merely is under strong practical inducement.

The restricted or prohibitive leases do not in themselves as documents prove the denial of the right to procure, as before, independent leases for individual machines. As matter of fact, independent leases which did give the right to use the machines with machines of other kinds, made by other machinery manufacturers, were always procurable. This was the general rule, and if there were any exceptions they were, so far as appears, inconsiderable.

It is a result of the consolidation that the United Company offers more attractive contracts for a group of machines of different kinds than for machines of one kind only; but as it still offers the contract for machines of one kind on as good terms as before it is difficult to see how that is detrimental to the shoe manufacturers.

The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would also use others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had no choice, or in disregard of the fact that it was merely an alternative form of lease. As the leases prove no such plan,

whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge.

It was, however, urged upon final argument, despite the decision in United States v. Winslow, 227 U. S., 202, that because the union of distinct lines in a single hand put it within the power of the company to devise and carry out such a scheme, the combination had such potentiality of evil that it should be disintegrated. This argument extends beyond reasonable limits the import of certain expressions of the Supreme Court in cases where there was such combination of competitors as to eliminate competition. This was within the statute, though none of the evils resulting from destruction of competition might yet have ensued.

In this case the mere consolidation of noncompetitive busi-
1504 nesses did not suppress competition, nor deprive customers of rights previously given by the constituent companies, and has no necessary or probable tendency to develop such a scheme as is unjustly attributed to the defendants. There must be added to the combination, from which naturally no such results would flow, an entirely new scheme.

The defendants having completely answered the charge that they devised or carried out such a scheme, the rejoinder that they might have devised and carried it out if they saw fit is entirely too far-fetched to bring the defendants either within the terms or within the spirit of the Sherman Act. Not only is there a failure of proof of the existence of such a scheme or of such a practice, but there is strong evidence to the contrary; not only in express denial but in the undisputed fact that the defendants' Goodyear welter and stitcher have never been put out on leases that prevented their use with machines of other kinds obtained from other manufacturers. These are the most important of the defendants' machines and the center of its system; they are the principal royalty paying machines and are furnished with a recording appliance to determine the number of shoes operated upon. The denial of their unrestricted use would have best served the alleged purpose of forcing the use of other kinds of machinery. The fact is that after the consolidation, as before, these machines, which the complainant's expert testifies are the only essential machines, and which are essential only if a shoe manufacturer chooses to make the special kind of shoes for which they are specially adapted, rather than shoes of other kinds, were put out only upon leases which did not contain the prohibitive clause.

The validity of the combination, therefore, is in no wise affected by the subsequent use of the prohibitive clauses.

We may next consider whether the shoe manufacturer who has chosen to take a lease permitting only a restricted or limited use of a particular machine is in any way injuriously or improperly affected by the fact that the businesses which before were in separate hands are now in a single hand.

1505 It can not be denied, and is practically conceded by the United States, that the "prohibitive clause," which is said to have the practical effect of tying together machines of different departments, is a limitation of the use of patented machines. The licensee has no right beyond the express provisions of his license, but is not bound by contract to take a machine for the performance of any other operation. If he desires to use for certain other operations the machinery of other manufacturers, he is met by the fact that the lease he has chosen, because it has been offered upon better terms than an unrestricted lease, gives him no right to continue the use of the leased machine. This, of course, may constitute a strong practical inducement to take other machines for other operations from the defendants rather than from other manufacturers. This inducement will be as strong as his desire to retain his lease. This, then, becomes not a legal but a business proposition.

The shoe manufacturer may untie the leased machine by taking another form of lease which contains no restriction, but requires an initial payment—though the royalties are the same. The amount of the "initial payment," which is a defined sum of money, seems, therefore, to constitute both the inducement to choose the restricted lease and the deterrent from changing a lease once taken for an independent lease.

This reduces the matter to one of dollars and cents. The defendants charge more for a machine used with machines of other manufacturers than for machines used as a part of a defined group of defendants' machines. Had they not combined the different companies they would have no occasion to do so.

The attack of the United States upon the "tying clause" makes no distinction between new machines which originated with the defendants and those in existence before the consolidation. There is, moreover, no attempt to show that the cost of independent machines has in any respect been increased since the consolidation, and the evidence from the defendants is to the contrary. Nor has the United States made any attempt to show by evidence that the prices charged for independent or unrestricted leases are excessive, or such as to prevent the manufacturer from using them profitably.

1506 The necessity of meeting the defendants' showing that there is no substantial obstacle in the way of a manufacturer who may desire to equip different departments with machines taken both from the United Shoe Machinery Company and from

other manufacturers is recognized by the United States, and the brief states:

"The amount of the initial charge for installing machinery under the so-called independent lease, and the cost for changing from one form of lease to another is so excessive as to restrain the manufacturers from choosing the independent system and to coerce them into taking the restricted forms."

Under this heading the United States relies merely upon the difference in price between the independent lease and the restricted lease. This is fallacious and does not meet the point. If the prices for independent leases are reasonable prices, if the shoe manufacturer can obtain what he could before, and upon reasonable terms, the fact that he and others are offered better prices for prohibitive leases is, of course, immaterial.

It is very earnestly contended that by this clause a shoe manufacturer is "bound hand and foot," and "is obligated" to take other machinery from the defendants. But when we consider that he has voluntarily chosen the limited right to use, and has merely declined to pay the price for the unlimited right to use—that he has got all he was willing to pay for—it seems fair to say that the only restraint upon him is the fact that he can not make use of another's property without his consent, and that this consent will cost him money.

It might well be said upon the authority of Henry v. Dick Co., 224 U. S., 1, 35, that the patentee's right embraces the lesser right of permitting others to use upon such terms as the patentee chooses to prescribe; and that the reasonableness of the terms offered for unrestricted use is not open to inquiry. But surely, if the argument is made that there is coercion through an excessive price, such an argument can have no weight whatever for any purpose legal or ethical unless the fact that it is excessive affirmatively appears. From such evidence as is presented in this case as to the amount of initial charges upon independent leases we can draw no support for the charge of coercion through excessive charges.

1507 The United States contends that the fact that independent leases are also offered is immaterial and that the validity of the prohibitive lease must be determined upon its terms alone. But this contention is clearly wrong. The tying of which complaint is made is merely the practical effect of the shoe manufacturer's choice of a restricted rather than an independent lease. When he wishes to provide himself with machines for other departments, his choice of the machines of other manufacturers may result in displacing machines leased from the defendants. If, however, he may still obtain the defendants' machines by the payment of an initial charge, then the only restraint upon his free choice is the sum of money required

to retain such of the defendants' machines as he has already installed. When a factory is equipped in the first instance with defendants' machines adequate in number for all departments, the choice between independent and restricted leases is a question merely of the comparative cost of installation. After a special equipment is outgrown, and there arises a demand for other individual machines to supplement it, then the manufacturer may desire a partial equipment with other machines of other manufacturers. Here arises from the prohibitive clause the substantial obstacle above referred to—that the installation and use of such machines may result in the removal of the whole equipment which he has taken from the defendants.

But the situation is one that can result only from a direct violation of one or more of his leases. While this may seem a harsh consequence of a breach of contract or of an infringement of the defendants' patent rights, it can not be said to touch the question of the validity of the prohibitive clauses. Even should we regard the agreed consequences of a breach of contract as serious, this does not relieve us from deciding the question whether the contract in itself is valid.

As it is not the purpose of the defendants to take their machines out of factories, but rather to put them in, we must consider those clauses which are designed to induce their installation, rather than those clauses that are designed to prevent a breach of contract,
1508 or which reserve a right to terminate the leases upon an infringement of patent rights.

We may assume that the prohibitive leases with the reduced prices are adopted by the defendants as an inducement to the manufacturer to take also several different kinds of machines, and that having once taken a restricted lease the manufacturer remains under a strong inducement to take machines of other departments from the defendants, and not from other shoe-machinery manufacturers.

The United States contends that the patent laws confer upon the owner of a group of machines, each protected by a distinct patent, no right to handle the entire group as a unit, thus making one patented machine aid another.

It is true that the right granted to the patentee to exclude others from the use of his patented invention is confined to the subject matter of that invention. It does not include the right to exclude the use of any other machine, patented or unpatented. When, however, a patentee has installed in a factory several distinct machines, each upon a restricted lease, he has as to each a full right of exclusion from other than the licensed use, and thus may legally exclude all machines that compose the group. But the proposition that patented machines can not be handled as a group is stated too broadly.

If what was before in separate hands is grouped in a single hand, and handled only as a unit, this might result in a refusal of what before was obtainable. But if the patented machines are handled both as individual machines and as a group, so that there is a free choice between the taking of individual machines and a group, we see no ground for objection.

One patented machine may be made to aid another in two ways—by using a refusal to deal with them separately as a means of compelling the taking of both, or by offering both at a lower price than the sum of the separate prices for each. The first is the way charged in the petition, but disproved as matter of fact; the second is the common device of wholesaling instead of retailing.

Were the defendants exercising merely the ordinary rights
1509 of owners of property, it could not be said that an entire contract concerning a group of such machines was illegal.

It is conceivable, if a single person should assemble in his hands a large number of distinct patented articles previously upon the market and refuse to sell any unless all were taken, that this in special circumstances might constitute such obstruction to a former freedom of trade as to fall within the Sherman Act. Where the patented machines were originated and first put upon the market by the defendants it is difficult to find any reason why they should not be grouped; but where there is no obstruction to a former freedom of trade, where there is no refusal of any article upon the former terms, it can not be illegal to offer a group for a price which is lower than the sum of the separate prices, or—what is the same thing—to offer each article at a lower price if other articles also are taken at a lower price.

We are unable to see that a shoe manufacturer has any just cause of complaint that the defendants offer him and their other customers restricted leases. One who refuses these leases and takes the independent leases may complain that other shoe manufacturers are getting their machinery on lower terms; but the royalty rate will be the same, and the cost of initial payments is fixed and may be weighed as against the estimated value of taking machinery from other manufacturers. It is a mere question of dollars and cents. It is legal for the defendants to discriminate in price between customers who take large amounts and those who take small amounts. In fact, it appears that certain large manufacturers have contended that it was unjust to them to fix the same royalty for a large manufacturer as for a small one, which has been the practice of the United Company.

We conclude, then, although the prohibitive leases, in so far as they tend to group together machines of different departments, may be regarded as a direct outgrowth of the consolidation; that the consolidation was not for this reason in any way detrimental

to the shoe manufacturer, but, on the contrary, was for his benefit, since it enabled the United Company to offer him better terms and enabled him to equip his factory cheaper than before. The
1510 argument of the United States upon the tying of department to department shows no reason for invoking the Sherman Act in behalf of the shoe manufacturer.

The effect upon other manufacturers of shoe machinery is a distinct topic to be considered later.

The leases are also complained of as restricting the shoe manufacturer's freedom of choice in taking the machines of other manufacturers; as preventing him from using the machines of others, and as compelling him to use the machinery of the defendants.

We may for the present disregard the fact that the United Shoe Machinery Company was organized by combining distinct companies.

The "exclusive-use" clause relates only to machines of a particular kind or department, thus differing essentially from the prohibitive clause. It was in use before the consolidation, and after the consolidation was not changed in this respect. Though it does not relate to grouping what before was separate, this clause imposes a limitation upon the right to use machines of a particular kind. The legal effect of it is merely a reservation of a right to cancel the lease in case the lessee should fail or cease to use the defendants' machines exclusively for work of a particular kind. It does not have the legal effect of a contract by the lessee not to use the machines of others. It is merely a limitation imposed by a patentee upon the right to use.

The reiteration by the United States of the statement that the lessee must use, or is required to use, defendants' machines exclusively is misleading. The distinction between a contract requiring a lessee not to take other machines and a limitation of the right to use the leased machines is very material.

The supplemental brief of the United States contends: "There can be no defense under the patent laws as to any provision complained of in the leases unless it be as to the use of the prohibitive clause." But no distinction can be made in this respect between the exclusive-use clause and the prohibitive clause. Both are limitations imposed by a patentee upon the use of his invention. The exclusive-use clause is effective only when the lessee is oper-
1511 ating machines of other manufacturers for doing work of a kind for which defendants' machines are available.

Here, again, the right of a patentee to so limit the license would seem to be directly sustained by the statement in Henry v. Dick Co., 224 U. S., 1, 35, already referred to.

The United States complains that it is the policy of the defendants to say to a lessee that for doing work of a particular kind he must use all or none of its machines.

If the general insistence upon the exclusive use clause is evidence of refusal by the defendants to lease their machinery for use with the same kind of machinery taken from other manufacturers, yet this refusal precedes any contractual relation between the defendants and the licensees. At this time the parties are unquestionably free to contract or not to contract, and by refusing the terms offered the shoe manufacturer loses nothing which he had before. "The public is always free to take or refuse the patented article on the terms imposed." Henry v. Dick Co., 224 U. S., 1.

The United States replies that the shoe manufacturers are not free to take or refuse; "they have entered into contracts which constitute an endless chain with respect to the use of the United Company's machines."

It is in evidence that during the existence of the United Company many new factories have been established and new installations made for persons who have voluntarily accepted these terms. Can the shoe manufacturers be permitted to complain, or the United States upon their behalf to complain, of what has thus been agreed to? These agreements have been entered into voluntarily by parties assenting on terms of equality. Can it now be urged that the acceptance of a limited right shall be declared a sufficient ground for making the right unlimited? Being free to choose in the first instance, and having chosen, can a lessee now urge that he is not free to use the defendant's property as he pleases as a reason for dispensing with the necessity of procuring that right from the owner of the machinery which he has installed?

It is merely rhetorical to say that these contracts constitute an endless chain. We have seen that as to the prohibitive clause
1512 there is a mere question of price. As to the exclusive clause there is a mere question of choosing between two different sets of equipment for one operation. The recent decision of the Supreme Court in Coppage v. Kansas, January 25, 1915, should put an end in this case to any argument upon behalf of the shoe manufacturers which alleges compulsion or coercion, or which asserts a freedom to use the property of another without procuring from him the right to do so.

"For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an agreement which, if fulfilled, prevents for the time any inconsistent course of conduct."

We must keep this in mind—that it is no part of the policy of the Sherman Act to relieve men of full age from the obligation of their

contracts, nor to interfere with contracts, except so far as they may restrain trade of contracting parties, or be aimed at the trade of third parties with a design to effect their exclusion from trade otherwise than by supplying a demand in fair and lawful competition. It could not be said that the trade of the shoe manufacturer was restrained by the denial to him in the first instance of the use of patented machinery, whether arbitrarily or by offering terms he could not accept. It would be equally unsound to say that his trade is restrained by a contract which provides for him at a very low price the most efficient machinery known at the time of the contract.

It is probably enough to say that, under the uniform rule recognized in many decisions, the defendants have the right, both as owners and as patentees, to refuse the use of the patented machines of any department as they may see fit, whether unreasonably or reasonably. However, as it seems to be contended that these rights have been impaired, to some extent, by the Sherman Act, we may consider whether or not the exclusive use clause is inserted for reasonable and proper purposes.

It can not be said that it is unreasonable or against public
1513 policy for the defendants to deal with shoe manufacturers only on the basis of a full equipment for a particular operation when the subject matter of the contract is not machines alone, but patented inventions as well. The inventions may reasonably be regarded as the principal subject matter of the contract rather than the number of machines necessary to a particular manufacturer. While the manufacturer may prefer to contract with reference to each machine as a unit, the defendants may prefer to regard the number of machines with which a manufacturer is to be furnished as incidental merely to a policy of licensing those only who will pay royalty according to the amount of work they have for machinery embodying the patented inventions. The amount of royalties to be paid by the manufacturer is, of course, a primary consideration.

While in the early stages of the case there were some criticisms of any leasing system as opposed to a system of selling, the very great advantages to shoe manufacturers in general of being provided with machine equipment of the highest efficiency, and of being relieved of individual effort in that most costly and difficult part of manufacturing, and the general satisfaction with the system were so overwhelmingly proved, that all doubt that the leasing system in general is unimpeachable has been removed. Furnishing capital to shoe manufacturers in the form of shoe machinery embodying costly inventions as well as great mechanical skill in manufacture, the defendants are fully entitled to claim a proper share of the advantages resulting from what they have produced. How to

obtain a just return for what they have contributed to the practical art has long been a problem with inventors. With many of them it has been a cause of complaint that a just share was denied them in what was attributable to their efforts. They have been accustomed, so far as they have been able, to reserve such rights as would secure to them a proper share in whatever business might be developed under the protection of patents covering their inventions.

In determining what is a reasonable share of profit when payment is to be made upon a royalty system, the value of the machinery as a means of production must, of course, be considered. A con-
1514 tract that a lessee should pay in advance a gross sum computed upon the capacity of the machine, or a rental computed upon the capacity of the machine alone, could not be criticised as unreasonable. A royalty system, however, in which payment is made only according to use is generally more acceptable.

If we are to consider such contract with regard to the rights of the lessor as well as to the rights and preferences of the lessee, it would be difficult to devise a more equitable arrangement than a requirement that the lessee should pay royalties according to the availability of the patented machinery for his use, rather than for such use of it as he may from time to time prefer to make. The lessor demands payment only so far as his machines are actually useful or available for the use of the lessee.

It is suggested in the brief of the United States that the lessor might accomplish all proper purposes by the fixing of a minimum amount of royalties; but such a suggestion does not solve the difficulty, for a minimum amount fixed in advance should include not only present use but such future use of the invention as might be developed. A royalty which has regard both to the capacity of the machines which the lessor furnishes and to the amount of work which the lessee may have to do upon machines embodying the patented inventions, seems beyond reasonable criticism. It is, of course, essential not only to fix a royalty rate but to provide a rate of use and a period of time for the use. A contract of this character must have permanency, and may be reasonably continued over a long period of years. A royalty may be likened to interest upon a principal.

A contract involving so largely the subject matter of inventions and of patent rights, and relating to the use of the tangible property of the defendants in the form of machinery and of intangible property in the form of patent rights, is substantially different from ordinary transactions of commerce, in that it relates so largely to the use merely of property, the title to which has not changed, and which continues for a long period in a fixed location, out of the path of interstate commerce. Browning v. Waycross, 233 U. S., 16.

Where the annual use is small it would seem necessary that the
1515 period be protracted, in order to secure a fair return upon the investment. Where machinery is furnished which is of a capacity beyond the work which the lessee has to do, the efficiency of the machine, its great productivity, which is due to constant improvements, is not fully availed of; and it may be said that there is value lost owing to the limited business of such lessee. Where the product of a manufacturer is very large, and where the capacity of many machines is availed of, the manufacturer may think that the important thing is the gross amount which he is called upon to pay, and that there should be some reduction in the rate of royalty or in the amount of use required. On the other hand, it might well seem to the Shoe Machinery Company that if its equipment had proved especially valuable to a particular business it should receive its full share on a pro rata basis.

There would seem to be little chance for a difference of opinion upon the question whether a shoe manufacturer who had been furnished with machinery of greater capacity than he was able to avail himself of should diminish his return of royalties by the employment of the machinery of others. The presence and use of other machinery would in such case be so directly inconsistent with the reasonable requirement that he should pay royalties to the extent of the use for which the leased machine was available, and use the machine to its full capacity so far as he had work for it, that the use of other than the leased machinery should be a sufficient cause for termination of the lease. It is said to be the case with a very large number—perhaps the majority in number—of shoe manufacturers that the machine equipment furnished them is more than sufficient for their work. The exclusive use clause, therefore, seems a necessary provision in these cases for securing what, from any point of view, must be regarded merely as reasonable compensation to the lessor.

With the large manufacturer the question is somewhat different. There will still exist the practical difficulty, if he introduces the machines of others, of determining what shoes are operated upon by such machinery and what by the defendants' machinery; but is
there reason for denying to the defendants the right to invoke
1516 the exclusive use clause merely as a means of securing to themselves their royalty upon the entire work of that kind done by the manufacturer?

Here, undoubtedly, is a chance for a decided difference of opinion between the large manufacturer and the Shoe Machinery Company as to what part of the business success should be attributed to the defendants' patented machinery and what to the business ability of the shoe manufacturer, and for decided difference of opinion as to whether the claim of the Shoe Machinery Company to a royalty

on all the work of a particular kind is reasonable. And here seems to be the only situation in which any question of the reasonable character of the exclusive use clause can arise. The terms, however, were fixed at the beginning, while both parties were free to contract or not. The machinery was installed with full notice that the lessee's right to its continued use was subject to the right of the Shoe Machinery Company to insist upon having royalties for all the work or to remove its machines if the lessee refused, as he has the right to do, to continue on that basis.

There is here no question of restraint of the trade of the shoe manufacturer, and no question whether a restraint of trade is reasonable or unreasonable. The lessee has contracted away no right which, but for the contract, he might freely exercise. The defendants stand ready to supply the manufacturer with machinery for the profitable carrying on of his trade. The shoe manufacturer has a full right to choose, and if the exclusive use clause is invoked is free from all obligation under his lease.

Furthermore, a contract providing that a manufacturer's business be carried on with machinery entirely adequate for the conduct of his trade, and which is the best machinery known for the purpose, does not injuriously affect him or the public. The reasons which underly the rule of public policy that forbids contracts in restraint of trade are absent.

A contract, requiring the use of certain machinery in a manufacturing business, between one who is to carry it on and one who is to furnish capital, or his own property tangible or intangible as a means for carrying it on, is a provision " for the prosecution of
1517 the business in a particular mode and not for its restraint." See Kinsman v. Parkhurst, 18 How., 289, 293; Chicago v. Pullman, 139 U. S., 79, 89.

This can not be treated as a petition for the reformation of contracts made between the defendants and the shoe manufacturers. An appeal to the public policy evidenced by the antitrust act can not be made to extend the rights of the shoe manufacturers, under their contracts. There being no restraint of his trade, the United States shows no ground for intervention on behalf of the shoe manufacturer.

The "additional machinery clause," though not included in the Government's definition of a tying clause, requires a brief consideration.

This is a contract by the lessee that if he has work for more machines than were first installed he will take from the defendants such additional machinery of the same kind as is necessary for doing all his work of a particular kind. This was an old form of contract

in use before the consolidation, and to some extent afterwards, though abandoned some time before the filing of the petition.

The grounds upon which the exclusive use clause is held reasonable support this clause also. The exclusive use clause, however, represents the present policy of the company.

The "full capacity clause," by which the lessee agrees to use defendants' leased machinery to its full capacity so far as he has work for which it is capable of use, has already been referred to. The direct purpose of this is to secure a substantial amount of royalties. It is inconsistent with the use of the machines of others, but of this no just complaint can be made. Having a license for the use of patented inventions, the lessee must pay the agreed consideration, and if the licensor insists he must pay it whether he in fact uses the machinery or not.

The agreement to use to full capacity is auxiliary to the purpose of fixing the gross amount of royalties. It relates to machines with a recording mechanism which shows the number of shoes operated upon. Upon a breach of the agreement to use to full
1518 capacity it is difficult to see that there could be any basis for damages other than the amount of royalties that would have been paid had the machines been so used. An alleged breach of a somewhat similar provision for determining a quantity upon which royalty was to be paid was held not to be an independent cause of action, the provision being merely a subordinate part of an agreement to pay royalties. Jobbins v. Kendall Mfg. Co., 196 Fed., 216; see also In re O'Gorman Co., 195 Fed., 650.

But the general impracticability of determining the amount due, except in the way contemplated, fully justifies the provision for a cancellation of the lease upon a discontinuance of the use of the machine and the production of the proper record.

The United States concedes that if the "full capacity clause" stood alone, thereby requiring the use of the leased machine alone as long as it could perform all work of that kind which the lessee had to do it would be subject to little criticism. The objection is to its use in conjunction with the "exclusive use" or "additional machinery" clause. This conjunction of clauses, it is said, inserted in a large number of leases, shows a policy to force or create in the defendants the power to force its lessees to use exclusively machines of that class. This it is asserted is unlawful.

But the mass of leases has, in this respect, no cumulative effect upon the shoe manufacturer, for each lease taken singly gives to the lessee notice that his right to use may be terminated if he fails or ceases to use exclusively. The question as to him is whether such a reservation of right made by the lessor of patented machinery is unlawful.

If there is any "force" exerted upon him, it is from his lease alone, and not from the mass of leases taken by others; and, as we have seen, is merely the result of a limited grant made by a patentee, who may refuse him any right of use. But here, as we have seen, is nothing that can justly be deemed coercion.

Complaint is also made in behalf of the shoe manufacturer that the term of the licenses is too long—seventeen years—and it is said that this period is regardless of the terms of the patents.

Allegations were made that these long terms were fixed for
1519 the purpose of tying up by contract what would soon be free from control through letters patent. It is true that the United States referred to certain licenses which ran beyond the terms of any patents mentioned in them. The evidence shows, however, that the leased machines were, as matter of fact, protected by letters patent throughout the period of the leases. Seventeen years, of course, is the term of a patent. Nothing is more common in agreements concerning patented inventions than to contemplate and provide for improvements. The shoe manufacturers who have assented to this period can not complain of it. They have secured very valuable rights at a very reasonable sum for a long period of years. The history of the company and the experience of the manufacturers, who have not been required to sink their capital in machinery which, as the evidence shows, will afford them no banking credit, shows no just cause for complaint as to the length of the contracts. The evidence shows that full value has been furnished by the defendants for the royalties which they have received.

In considering the reasonableness, as between the defendant company and the shoe manufacturer, of a long-term contract, we must look not alone to the fact that the shoe manufacturer may be bound for a long term. It is a case of reciprocal obligation, for the shoe manufacturer is bound for no longer period than that for which the defendants, upon a just construction of the lease contracts, are also bound. The requirement of use to full capacity, so far as the manufacturer has work, and the exclusive use or additional machinery clause impose upon the defendants the corresponding duty to furnish machines, and the shoe manufacturer is relieved from his obligation unless the defendants supply him with the means for fulfilling it.

It has been suggested that the terms of these contracts may be indefinitely prolonged by furnishing additional machines only for new periods of seventeen years. Apparently there is no force in this suggestion; for a failure of the defendants to furnish what was necessary for carrying out the requirements of the contract, or the refusal to do so except on terms inconsistent with the original contract, would release the lessee from his obligation.

1520 The insistence of the defendants upon the taking at the outset of an amount of machinery adequate for a lessee's entire work is, as we have said, unquestionably within their right. When additional machinery is sought, and the defendants insist upon the same general terms, their right to do so can not be abridged by the fact that there has been a previous installation of machines. The policy is not altered from that of which the lessee was apprised at the outset.

The cancellation clauses, however, provide a practical means of escape for those who consider the term too long. They may install other machinery and run the chance, and if the machinery so installed is satisfactory they may use it for their full equipment when the machines of the defendants are removed.

It is contended for the defendants, and there is evidence in support of such contention, that the actual practice of the Shoe Machinery Company is not fairly represented by reference to the literal terms of the leases, but that it is much more liberal, and that it is customary to make modifications in particular cases.

The general policy of the company has been clearly brought to the attention of its lessees and was exercised fairly and reasonably in those specific instances which the United States has brought to our attention.

It is stated upon the brief of the United States that the record shows that a number of the largest shoe manufacturers in the United States, lessees of defendants, are dissatisfied with their system of leasing. A number of these gentlemen have testified before us as to their very large production of shoes. They made no claim that the leases of which they complain have not furnished them with machinery entirely adequate for their business. Though the argument of the United States has urged upon us the unfortunate position of a shoe manufacturer after he has entered into contract with the Shoe Machinery Company, and deplores his supposed obligation to use the defendant's machinery throughout the contract period, yet these very intelligent gentlemen can not be regarded as objects of unjust
1521 oppression or coercion, unless that term be used in the very loose sense which was rejected by the Supreme Court in the case of Coppage v. Kansas, January 25, 1915.

The hardship to a manufacturer if, during this long period, there should come upon the market superior machinery has also been urged. During the period of the leases no such situation has apparently arisen. This argument was very sensibly dismissed in the United Shoe Machinery Company v. Brunet, 1909 A. C., 330, as based upon too remote a contingency. Such contingency was within the purview of the parties at the time they entered into the con-

tract, and the choice of the restricted instead of the independent form of lease would seem to indicate that the practical value of being able to meet it was not considered by the shoe manufacturers greater than the amount of the initial premiums for independent machines. A business contract, like a statute, is not to be upset "upon hypothetical and unreal possibilities, if it would be good upon the facts as they are." Pullman v. Knott, 235 U. S., 23.

As has been said, the Sherman Act was not designed to relieve parties from the obligation of contracts fairly entered into. It can not be invoked in this case to abridge the right of contract in order to establish what Justice Holmes terms "the equality of position between the parties, in which the liberty of contract begins." Coppage v. Kansas, 236 U. S., 1. Here the parties stand upon terms of entire equality. The large shoe manufacturers and the defendants seem to differ as to what are fair and reasonable terms, but the Sherman Act can not be invoked to settle a trade dispute of this character between such parties.

To justify interposition in behalf of the public it must appear that the interests are those of the public generally, as distinguished from those of a particular class. The legislature may not, in the guise of protecting the public interests, arbitrarily interfere with private business. Lawton v. Steele, 152 U. S., 133, 137. The rules of public policy which make a given contract void are not to be extended arbitrarily. Baltimore & Ohio v. Voigt, 176 U. S., 498, 505.

There remains to consider upon this branch of the case, and as directly bearing upon the reasonableness of these contracts, the
1522 important fact that a very large number of very intelligent and competent men, heads of manufacturing establishments, have independently accepted these terms. The large number of leases is strong evidence that upon the whole the terms are reasonable, and that the requirements from the lessee, of which complaint is made, have not been regarded as more than could be advantageously accepted. Such manufacturers have had free option to manufacture boots and shoes of other kinds. They may have from the defendants by purchase if they like the assistance of some 170 machines from their general department. They may have manufactured for them, if they see fit, those commercially practicable welters and stitchers upon which patents have expired, or they may manufacture largely by hand methods. It must be remembered that the defendants' machines are largely labor-saving devices. The situation is not that of a monopoly, and the case of the United States upon that aspect has completely broken down. These contracts which the United States attacks, moreover, give to the lessees, many of whom seem entirely satisfied with them, very valuable rights.

Nothing more impractical can be imagined than the prayer of the petition that these contracts should be cancelled. To restore the parties to the original situation would probably result merely in agreements which would meet the objections of the United States, and would yet be in substance the same. Payment of royalties according to use necessarily involve some provision as to the amount of use. The exclusive use clause can only be criticised as requiring too much use, and, therefore, too high a price. It is, after all, a question of price, and the right of the defendants to fix their prices covers so many different modes that if this particular mode of payment is found objectionable, other modes less convenient, but accomplishing the same result, could readily be adopted.

The United States also objects to the fact that certain auxiliary machines for use in conjunction with the Goodyear welter and stitcher are supplied only to those who take the Goodyear welter and stitcher. These auxiliary machines are supplied without royalty,

1523 and for the purpose of increasing the production of the welter and stitcher; but there is no proof that the combination affected these. The right of a person to promote the sale or use of one class of goods by giving also other goods or tokens for goods, though it has been attacked by legislation, has been upheld in decisions which hold such legislation by a State unconstitutional. Van Deman & Lewis v. Rast, 214 Fed., 827, 833; Little v. Tanner, 208 Fed., 605, 610; State v. Dalton, 22 R. I., 77.

The rule that a decree can not be made which injuriously affects the rights of third parties would seem to require that before the court in any event could proceed to a decree to annul these leases the lessees should be before the court as parties. Minnesota v. Northern Securities Co., 184 U. S., 234, 235; Shield v. Barrow, 17 How., 130; Gregory v. Stetson, 133 U. S., 579.

The effect of the leases upon other manufacturers of shoe machinery.

Here we have to consider the effect of the mass of defendants' leases upon persons who are not parties to them, and who, therefore, have not entered into any contracts in alleged restraint of their trade. The inquiry must be, therefore, whether by reason of the insertion in a large number of leases of those clauses of which the United States complains competition is suppressed to such extent as to tend to monopoly of interstate commerce in a field which otherwise would be open to competition.

It is most important to observe that the petition presented the leasing system as a part merely of a general plan of monopoly. The main brief of the United States so treated it.

The subject matter to which these leases relate is a part only of the machinery dealt in by defendants. The supposed field of monopoly

has now shrunk so that it is much narrower than the general field of shoe machinery, or of shoe machinery for the bottoming of shoes by stitches or otherwise, in which field it appears that there never has been a monopoly, but always active competition between defendants' machines and other machines.

The supposed monopoly, or suppression of commerce, relates to machines for performing a part only of the large number of
1524 operations necessary to complete a shoe. The leases relate to machines protected by patents; many of them were originated and first put upon the market by the defendants. Many of these machines have such individuality that there are no others which perform the same function or with which they could be classed.

With articles of common production the existence of competitors may be assumed, but here no such assumption is admissible.

If the question here is whether the leases have the effect of unlawfully excluding competitors from interstate commerce in shoe machinery, we must at the outset inquire in a general way as to the present or possible existence of competitors. In United States v. Winslow it was said:

"The machines are patented; making them is a monopoly in any case; the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents; Paper Bag Patent case, 210 U. S., 405, 429; and it may be assumed that the success of the several groups was due to their patents having been the best."

As the subject matter of the leases is patented machinery, the presumption is that there are no competitors who can offer the same machinery. Whether there are competitors able to supply other kinds of machinery, patented or unpatented, which can be used for work of the same general description as that for which defendants' patented machines are adapted and used is matter for conjecture.

The competitor who is excluded from supplying the defendants' lessees because the lessee is compelled to choose between his machines and the defendants' machines may be, and as to many of the machines is likely to be, an imaginary being.

It appears, however, that for some of the operations for which the leased machines are adapted there are upon the market machines made by other manufacturers, and that in a general sense there are competitors.

To determine how far the leases have had the actual effect of excluding competitors it would be necessary to consider in much detail the special subject matter of the leases, the dates of
1525 patents, and the special and peculiar operations performed by the machines.

The defendants insist that in order to meet a charge so much narrower than that of the petition it would be necessary for them

to offer evidence as to each unit, and to prepare a defense of an entirely different character from that required to meet the petition; and this seems probable. We may, however, refer to a few considerations of a general character.

In the first place we must make a clear distinction between that which undoubtedly the defendants have the right to do and that which it is said may improperly affect competitors.

As owners of patented machinery and as manufacturers of machinery, whether patented or unpatented, they have the right to supply to the best of their ability as many customers as can be induced to take their machinery. They have the right, for the reasons which we have stated, to enter into long term contracts with shoe manufacturers for the use of their patented machinery throughout the terms of the patents. Merely as manufacturers they have the right to enter into long term contracts for supplying their machine equipment to those who are willing to agree to long term contracts.

That, irrespective of the question of patents, a long-term contract, fifteen years, with exclusive rights, was not in general restraint of trade, and was not void as against public policy, was determined in Chicago etc. R. R. Co. v. Pullman Car Co., 139 U. S., 79, 89, et seq.

The United States relies greatly upon U. S. v. Reading Co., 226 U. S., 324, and seeks to establish an analogy between the so-called "sixty-five per cent contracts" in that case and the large number of contracts of the defendants with shoe manufacturers in this case. But the resemblance between the Reading case and the present case lies only in the fact that in each is a large number of contracts. In the Reading case an existing and definite supply of coal was monopolized, and a definite part of that supply was monopolized through the sixty-five per cent contracts. In this case, so far as the leases are concerned, there is no question of monopolizing an existing supply. The monopoly, if any, is a monopoly of
1526 customers for machines for performing the particular operations to which the leases relate. The complaint is that defendants' customers are so bound by the leases that they are no longer customers for other manufacturers of shoe machinery.

The monopolizing of a definite and limited supply of a commodity and the monopolizing of customers for machines for performing certain operations in the manufacture of shoes are as far apart as possible. The number of customers, or possible customers, for shoe machinery has been very largely increased during the life of the defendant company. Many of these customers were first induced to be customers for shoe machinery by the fact that machine equipments were offered them adequate for the establishment of a manufactory of shoes. The customers are not a fixed quantity.

They comprise such persons out of the entire population of the United States as may be induced to engage in a manufacturing business by knowledge that they can procure adequate machinery for that purpose on suitable terms.

We must take into consideration not only natural persons but also those artificial persons easily created under general laws of incorporation for the conduct of any enterprise requiring a considerable amount of capital. A large number of shoe manufacturers concerning whom there is evidence in this case are corporations, and the leases relate to the activities of corporations. The individuals who are stockholders or officers of such corporations may in new corporate forms engage in shoe manufacture.

Upon the face of it any undertaking to monopolize such an undefined field as that of customers for shoe machinery seems impracticable.

Counsel for the United States inquire what possible hope there is for other manufacturers to deal with the customers of the Shoe Machinery Company so long as their leasing contracts prevail. This inquiry would be substantially the same if all those provisions in the leases to which objection is made were stricken out.

Assume the existence of a large body of leases for only the period of patents and requiring merely payment for a right to use, but with the additional machinery clause, the exclusive use clause,
1527 and the prohibitive clause omitted; the inquiry would still be the same. It may be said, however, that with these clauses in it is somewhat more difficult to deal with a customer who has secured from defendants either a complete or partial equipment.

The exclusion from trade which results from the fact that many customers are supplied cannot be complained of by the United States. The complaint must be limited to such exclusion as results from the clauses objected to.

Perhaps the simplest way of treating the leases in this connection is to consider whether if the defendants had agreed in express terms to furnish for seventeen years entire equipments for shoe factories, and the shoe manufacturers had agreed to operate these equipments exclusively for that period, this could be condemned.

The true effect of the leases is much less than this, but if such agreements can be condemned it must be upon the theory that both the defendants and the shoe manufacturers have lost the freedom of contract which existed before the Sherman Act, and that contracts advantageous to both, and agreed upon by both, are invalid because they take customers out of the market.

The Sherman Act seeks to maintain competition as a means to the end that trades may be made and closed, and not to forbid con-

tracts in order that competition for particular customers may be perpetually maintained.

A public auction affords perhaps the fairest means for competition, but when the hammer falls the purpose for which the public auctioneer was employed is accomplished; competition has achieved its end—a binding contract.

If between the parties the contract is fair and has relation to the consideration which each is to render, if nothing which has no relation to this is inserted, the contract must be upheld even though it may destroy a third person's chances for competition. We must find in the leases, or in the conduct of the defendants in offering them, or in enforcing them, something which "transcended what was necessary to protect the use of the patent or the monopoly which the law conferred upon it." Standard Sanitary Mfg. Co., 226 U. S., 20, 48.

1528 If, for the sake of the competing manufacturer of shoe machinery, it was sought to obviate the objection that the leases are too long, a reservation to the shoe manufacturer of a choice to terminate his lease at any time would seem to be all that could reasonably be asked. If allowed an opportunity to choose at any time between the machines he has taken and the machines of others, this should answer the objection to the length of the leases.

But the shoe manufacturer has such a choice.

The exclusive use and cancellation clauses serve to facilitate this choice and not to prevent it. If the defendants exercise their rights under these clauses he is freed completely, and thus becomes a possible customer for a competitor. If the defendants do not exercise their rights, he continues bound by his agreement for the payment of royalties; but subject to this he may, as we have seen, without actionable breach of contract, install at once the machinery of others.

The contention of the United States that it is unlawful to make the shoe manufacturer, by the exclusive use clause, choose between the defendants' machines and other machines, we have seen cannot be sustained on behalf of the shoe manufacturer. Nor can it be sustained on behalf of the manufacturer of shoe machinery, for it opens to him a chance for competition. All cancellation clauses if exercised are in one way favorable to him. They are unfavorable only so far as the shoe manufacturer may desire to retain the machinery of the defendants.

In reality what stands in the way of a competitor is the desire of the shoe manufacturer to retain his rights under the leases. If compelled to choose he will choose the defendants' machinery, and thus the defendants, upon such choice, will win in competition.

It is quite true that when a shoe manufacturer has installed several machines under the prohibitive leases the extra cost of changing

all his prohibitive leases for independent leases may be so considerable that competition is difficult. He has taken the machines as a group, and one who has not a group to offer in substitution has little practical chance to compete. But a competitor must be able to compete. If leases for machines for use as a group are
1529 offered and accepted for sound business reasons, and if, because of the greater productivity of a group and of the less cost of maintenance, better prices can be made, the defendants and the shoe manufacturers need not forego the making of such contracts for the sake of possible competitors who may have only single machines to offer. Contracts for large equipments of machinery, furniture, and other articles are too common to be condemned for such reason.

The United States treats the question of the leases rather as an abstract or verbal question than as a practical question or a question of substance. The grouping of machines, each protected by one or more distinct patents, is treated as a mere artifice for making one machine aid another in a trade for machinery.

The assumption that it is highly desirable that the shoe manufacturer should be at liberty to group the defendants' machines with such other machines, taken from other manufacturers, as he may see fit, ignores the fact that though machines may be treated in the Patent Office as separate, in a shoe factory the machines have a very definite mechanical relation to each other and to the particular method of making a shoe. The grouping of machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them as groups and a sufficient business reason for dealing with them as groups.

That there are sound mechanical and business reasons for grouping together machinery as it is grouped by a series of prohibitive leases is abundantly established. The United States fails to show that the grouping of the machines is in fact made merely as an unlawful artifice and not because of sound mechanical and business reasons. It has referred to certain leases in which there appears to be no necessary mechanical relation between some of the machines grouped. Thus to a limited extent it may be true that the grouping is for the purpose of trade or of contract rather than because of the close relation of the machines in process of manufacture; but this is insufficient to show that the principal purpose was not, as is contended by the defendants, to secure by efficient cooperation of machines a larger production of shoes.

A contract for a group of related machinery, or for a sup-
1530 ply of machines not immediately related but used only in separate mechanical steps of a manufacturing business, is an entirely proper and normal contract. The matter cannot be better

stated than by Judge Putnam in United States v. Winslow, 195 Fed., 578, 592:

"It seems to be impossible to deny that the combination of various elements of machinery, all relating to the same art and the same school of manufactures, for the purpose of constructing economically and systematically and of furnishing any customer, the whole or any part of an entire system, is in strict and normal compliance with modern trade progress, as also it might be in strict compliance with modern progress to limit the manufacture and supply to certain details, as, for example, steam gauges, wheels for railroads cars, or axles for steam locomotives, without furnishing anything else, although by so doing the manufacturer of details becomes able to command the entire market. It is absolutely normal and in accordance with the rightful demand of the market for any dealer to supply mere details or an entire system of machinery, according as his customers may desire."

It may be admitted that the inducements offered by the United Company in the complete or partial installation of a machine equipment on terms which relieve the manufacturer from the expense of an initial payment and from the loss by deterioration make it a very formidable competitor. It may be assumed that the difficulty of introducing competing machines into factories so supplied is very great; but that this difficulty arises from the insertion of clauses in the leases which were directed at competitors, and were not inserted for the purpose of defining and securing a reasonable compensation to the defendants for the use of their patents and machinery, has not been made to appear.

The main purpose, to insure such permanency of the relation between lessor and lessees as has been agreed upon, being legitimate, and the judgment of a large number of practical men who have separately, and without concurrent action, accepted what was offered them by the United Company upon the terms offered being the best proof of the reasonableness of these terms, we must hold that

1531 the difficulty of a competitor arises from the fact that customers are already supplied rather than from any provisions designed to hold these customers to what they have agreed to, or which provide for the termination of the leases and the freeing of the manufacturer from his contracts with the United Company.

The free field in competition to which a new manufacturer of shoe machinery is at this date entitled is not a field where there is no prior art, nor where the shoe manufacturers are unsupplied with machinery, nor where there is an unsatisfied demand for machinery in every factory. One who goes into a field of manufacture already occupied must expect to find factories so fully equipped that they are no longer customers.

Counsel for the United States do not, however, sufficiently recognize the difference between the commercial situation relating to patented articles and that relating to articles of general production. The inventor seeks to displace by invention inferior methods, and such displacement is encouraged by giving to the patentee a free field for his invention, and by giving him the right to offer it upon such terms as he may induce the public to accept. During the period of monopoly he may establish a good will which will give him after the expiration of his patents a formidable advantage in competition over imitative manufacturers. Frequently this good will and the development of his business may be such as to practically and lawfully exclude competition after the expiration of his patents. When a thing is so successfully accomplished and perfected as to satisfy all requirements, further invention in that field is often discouraged. The manufacture of complicated machines, in order to be profitable, must be on a large scale and by an organization having mechanical skill.

The defendants saw before them a large field for the business of supplying labor-saving machines to shoe manufacturers. They saw, as was expressed in a circular of the Goodyear Shoe Machinery Company, dated February 8, 1889, "The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most efficient types of shoe machinery." This circular, instead of affording evidence of an improper purpose, shows a plan whose development has been of
1532 great advantage to the industry of shoemaking, and which has been determined to be lawful by the Supreme Court in United States v. Winslow, 227 U. S., 202, 217.

It was but natural that a company dealing with shoe manufacturers, in respect to a device for labor saving upon one operation of shoe manufacture, should extend its business so as to be able to supply labor-saving devices for other distinct operations. As the operations in making a shoe are said to be 150, more or less, it was a natural development, after effecting a saving in one operation, to invent mechanical means for saving in other operations. Instead of closing the door to invention, invention in the art of shoe machinery was thus greatly developed and greatly encouraged.

A company of sufficient capital to furnish a large line of labor-saving devices for different operations in shoemaking, which devices must necessarily be more or less related to each other, would properly strive to furnish not only single machines but groups of machines, or an entire machine equipment. The enterprise of the defendants in developing and occupying a field in this way rendered it impossible, of course, for any subsequent organization to have the

advantages of an unoccupied field. It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer. To say that this is due, in any substantial degree, to the fact that its leases run beyond the terms of patents, or because of the exclusive use, prohibitive or cancellation clauses, rests largely, if not entirely, upon assumption. But that the business of these defendants rests upon the lease provisions objected to in such a substantial amount as to constitute any factor of independent force in securing or maintaining a monopoly does not appear.

The clauses objected to are all subordinate and auxiliary to maintaining rights which unquestionably belong to the defendants; to charge their own prices and to choose as customers those who will pay those prices.

The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them.

Other modes, such as the requirement of arbitrary pay-
1533 ment for the full period of the patents, would escape all such attacks. The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions.

The defendants very forcibly contend that no decree for the United States can be based upon the leases alone as an independent ground for relief, for the reason that the leases were presented merely as parts of a general plan of monopoly. They, in turn, rely upon United States v. Reading Co., 226 U. S., 324; but to show that the petition can not be sustained under the first section of the anti-trust act, and insist also that the question whether the leases are contracts in restraint of trade can not be determined because the lessees have not been joined as parties, and are not before the court.

They further insist that the subject-matter of the leases is substantially different from the subject-matter of the petition, and requires that the defendants be given an opportunity to introduce specific evidence as to the different patents and different machines.

The defendants during the trial have waived no rights in respect to these contentions.

In view of the fact that my conclusions upon the merits of the lease question are favorable to the defendants, I pass these objections without a decision upon their validity.

In view of the full discussion of the other portions of the case by my associates, I need only state my general concurrence in their conclusions, and that I concur in all respects in the opinion of Judge Dodge upon the lease question, as well as upon all other questions in the case.

1534 *Decree, May 14, 1915.*

PUTNAM and DODGE, Circuit Judges, and BROWN, District Judge:

This cause came on to be heard at the March term of this court, to wit: On the 20th of May, 1913, and hearings were held from time to time thereafter; the evidence of all the witnesses (except certain testimony as to patents which was taken by an examiner, as further appears in the record of this cause) being heard orally in open court by three judges, a certificate of the Attorney General for speedy hearing by three judges having been filed on May 20, 1912, under act of Congress of February 11, 1903, 32 Stat., 823, and the court having carefully considered the pleadings of the parties and their evidence, and heard the counsel. Now, on motion of Charles F. Choate, jr., Esq., of counsel for the defendants, it is ordered, adjudged, and decreed that the bill of the United States of America be, and the same hereby is, dismissed.

All stipulations of record in the cause in respect to disbursements are hereby confirmed and decreed.

By the court:

WILLIAM NELSON, *Clerk.*

1535 *Petition of United States for appeal and assignment of errors.*

[Filed May 15, 1915.]

Petition for appeal.

The United States of America feeling itself aggrieved by the final decree entered in the above-entitled cause comes by counsel into open court and prays an appeal from the said decree to the Supreme Court of the United States.

The particulars in which the United States considers said decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

The United States further prays that a transcript of the record, proceedings, papers, and evidence upon which said decree was based, duly authenticated, may be transmitted to the Supreme Court of the United States; and that the United States may have until October 1, 1915, within which to file such transcript of record with the clerk of the Supreme Court and to docket its said appeal.

GEORGE W. ANDERSON,
United States Attorney.
H. LARUE BROWN,
Special Assistant to the Attorney General.

Dated this 15th day of May, 1915.

Allowed May 15, 1915.

FREDERIC DODGE,
U. S. Circ. J.

1536 Assignment of errors.

Comes now the United States of America by counsel and in connection with its application for appeal from the final decree pronounced in the above-entitled cause on the 18th day of March, 1915, presents in open court the following assignment of errors upon which it will rely upon said appeal.

The court erred.

I.

In dismissing the bill.

II.

In failing to adjudge that the United Shoe Machinery Company of New Jersey is a combination in restraint of interstate and foreign trade and commerce and that it has attempted and is attempting in combination with other persons and corporations to monopolize and that it has monopolized part of the trade and commerce among the several States of the United States and with foreign nations.

III.

In failing to adjudge that the United Shoe Machinery Corporation is a combination in restraint of interstate and foreign trade and commerce and that it has attempted and is attempting in combination with other persons and corporations to monopolize and that it has monopolized part of the trade and commerce among the several States of the United States and with foreign nations.

IV.

In refusing to decree that each of said defendant corporations be dissolved and a new condition brought about in harmony with and not repugnant to the law either as a consequence of the
1537 action of this court in determining an issue or in accepting a plan agreed upon; or, failing such dissolution, that each of said corporations be restrained from engaging in interstate or foreign commerce.

V.

In refusing to adjudge that the holding of stock by any of the denfendant corporations in other corporations as alleged in part seven of the bill herein is illegal, and in refusing to enjoin and

restrain said corporation from continuing to hold or own such shares and from exercising any rights in connection therewith.

VI.

In refusing to adjudge that the acquisitions set out and described in part VII of the petition herein, or any of them, were acts in unlawful restraint of interstate and foreign commerce and done in pursuance of a purpose to monopolize part of the interstate and foreign commerce in machinery adapted to the manufacture of shoes and were illegal.

VII.

In refusing to adjudge that the lease and license agreements devised and used by the defendants, as described in part five of the bill, and agreements containing like or similar provisions are, in respect of the restrictive provisions therein contained, illegal.

VIII.

In refusing to enjoin and restrain defendants and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, from enforcing or attempting to enforce any rights
existing or claimed under and by virtue of the restrictive
1538 provisions of such lease and license agreements.

IX.

In refusing to enjoin and restrain the defendants, and each of them, and their officers, directors, stockholders, agents, and servants, and each of them, from making in the future or insisting upon or enforcing any contracts, arrangements, agreements, or requirements with their customers relating to the loan, lease, or purchase from the defendants of machinery, mechanism, tools, or devices under which it is a condition of said agreements or contracts of lease, purchase, or loan that the defendants shall not acquire by lease, loan, or purchase from competitors of the defendants machines of similar character or shall not use machinery, mechanism, tools, or devices obtained upon loan, lease, or purchase from the defendants in the manufacture of shoes made in part with the use of machinery obtained from competitors of the defendants.

X.

In refusing to enjoin and restrain the defendants, and each of them, their officers, directors, stockholders, agents, and servants, and each of them, from making discounts or granting to boot and shoe

manufacturers rebates, either by way of reduction, of royalties, or by any other scheme or device whatever, as an inducement to persuade such manufacturers to use exclusively machines, mechanisms, tools, or devices owned or controlled by the defendants.

1539

XI.

In refusing to allow the motion of the United States to be permitted to amend its bill in the manner and under the circumstances disclosed by the record.

XII.

In refusing to adjudge that the combinations, contracts, and conspiracies described in the bill are illegal and that all acts done in furtherance of the same are in violation of the act of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," and to enjoin and restrain the defendants, and each of them, their officers, directors, stockholders, agents, and servants, and each of them, from doing any act in pursuance of or for the purpose of carrying out the same.

XIII.

In refusing to enter a decree in favor of the United States of America upon its petition herein and to order that its costs shall be paid by the defendants.

GEORGE W. ANDERSON,
United States Attorney.
H. LARUE BROWN,
Special Assistant to the Attorney General.

1540

Supreme Court of the United States.

Appeal from the District Court of the United States for the District of Massachusetts, in case entitled in that court,

THE UNITED STATES OF AMERICA
v.
UNITED SHOE MACHINERY COMPANY, OF New Jersey et al.

No. 301, Equity Docket (C. C. 911).

Order of enlargement of time for docketing case and filing record, May 17, 1915.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof with the clerk of this court be enlarged to and including Friday, October 1, 1915.

FREDERIC DODGE,
U. S. Circuit Judge.

1541 *Plaintiff's praecipe.*

[Filed September 7, 1915.]

To the clerk of said court:

The United States of America desires the following portions of the record of the above-entitled cause to be incorporated into the transcript on its appeal to the Supreme Court of the United States, namely, the petition of the plaintiff without the exhibits attached thereto, the answers of the several defendants, the replications of the plaintiff, the plaintiff's bill of particulars, the defendants' objections thereto, and all motions, orders of court, and the final decree filed in said cause; all the physical exhibits, the exhibits printed in Volumes IX, X, and XII of the Record as printed for the District Court, the testimony taken before the examiner as it appears in Volume V of said printed Record, and the evidence taken before the court as it is stated in narrative form in the transcript herewith lodged; also this praecipe, notice to counsel of its lodgment with the clerk, and of the time and place when the plaintiff will ask the court to approve plaintiff's statement of the evidence which it desires the court to approve and make a part of the record, and the return of the officer showing service of said praecipe and notice, together with the petition of the United States for appeal and its assignment of errors, and all orders, citations, and decrees of said district court made in connection therewith and in furtherance thereof.

GEORGE W. ANDERSON,
United States Attorney.
C. J. SMYTH,
H. LARUE BROWN,
Special Assistants to the Attorney General.

1542 BOSTON, *September 7th, 1915.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I hereby certify that I have this day made diligent search for Charles F. Choate, Esq., counsel for the within-named United Shoe Machinery Company of New Jersey and others, at his office at 30 State Street, said Boston, but was unable to find him, or his whereabouts in said district. Accordingly I have, by direction of Leo A. Rogers, Esq., Assistant U. S. Attorney, left at the office of the said Charles F.

Choate, at said 30 State Street, an attested copy of this precept in the hands of Miss Mary F. Hannigan, his secretary.

JOHN J. MITCHELL, *U. S. Marshal.*
By CHARLES A. BANCROFT, *Deputy.*

Fees:
Service, $2.00
Travel, .06
—— $2.06

1543 *Copy of notice of filing of præcipe and lodgment of statement in narrative form of evidence.*

[Filed September 7, 1915.]

BOSTON, *September 7, 1915.*

CHARLES F. CHOATE, JR., Esq.,
30 State St., Boston, Mass.

SIR: You are hereby notified that the United States has this day filed its præcipe with the clerk of the United States District Court for the District of Massachusetts in case #301 in equity, United States of America v. United Shoe Machinery Company of New Jersey, and others, indicating the portions of the record to be incorporated into its transcript on its appeal, and has lodged with the clerk of said court a statement in narrative form of the evidence which it desires to be included in said transcript on its appeal.

You are further notified that on Friday, September 18th, 1915, at ten o'clock a. m., or as soon thereafter as counsel can be heard, at Boston, in said District of Massachusetts, the United States will ask said District Court to approve said statement.

Respectfully,
For the United States Attorney:
(Signed) LEO A. ROGERS,
Assistant U. S. Attorney.

A true copy:
Attest:
CHARLES A. BANCROFT,
Deputy U. S. Marshal.

1544 UNITED STATES OF AMERICA,
District of Massachusetts, ss:

BOSTON, *September 7th, 1915.*

I hereby certify that I have this day made diligent search for the within-named Charles F. Choate, Esq., at his office at 30 State

Street, said Boston, but was unable to find him or his whereabouts in said district; accordingly I have, by direction of Leo A. Rogers, Esq., assistant U. S. attorney, left at the office of the said Charles F. Choate, at said 30 State Street, the original, of which the within is an attested copy, in the hands of Miss Mary F. Hannigan, his secretary.

JOHN J. MITCHELL, *U. S. Marshal*,
By CHARLES A. BANCROFT, *Deputy*.

Fees:
Service, $2.00.

1545 *Motion for extension of time.*

[Filed September 10, 1915.]

And now come the defendants in the above-entitled action and move that the time for incorporating additional portions of the record for filing objections and amendments proposed by the defendants and for approving the statement of the evidence be extended to January 1, 1916.

CHAS. F. CHOATE, Jr.,
Attorney for the Defendants.

Order extending time for incorporating additional portions of the record.

[September 11, 1915.]

DODGE, J. On defendants' motion, filed September 10, 1915, for extension of the time for incorporating additional portions of the record for filing objections and amendments proposed by defendants and for proving the statement of the evidence, it being at present uncertain on what day the entire court can be got together; it is hereby, after hearing the parties, counsel for the petitioner not assenting but objecting thereto, ordered as follows:

For good cause shown, that said time be extended as requested by said motion to January 1, 1916; this order to be without prejudice to the right of the petitioner to apply to the full court for such other or different limitation of said time as it may consider desirable.

By the court:

WILLIAM NELSON, *Clerk*.

1546 Supreme Court of the United States.

Appeal from the District Court of the United States for the District of Massachusetts, in case entitled in that court,

THE UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY, OF New Jersey, et al.	No. 301, Equity Docket (C. C. 911).

Order of enlargement of time for docketing case and filing record, September 11, 1915.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof with the clerk of this court be enlarged to and including Saturday, January 15, 1916.

FREDERIC DODGE,
U. S. Circuit Judge.

1547 *Petition for limitation of time for filing objections to statement of evidence.*

[Filed September 27, 1915.]

Now comes the petitioner and moves the court to reduce and restrict the time heretofore granted by his honor Judge Dodge to the defendants for the preparation and submission by them of objections or amendments to the statement of the evidence prepared by the petitioner and heretofore filed in said cause, so that the defendants will be required to present and submit such objections and amendments on or before the first day of November, 1915, and petitioner hereby requests that this motion be heard and passed upon by the same court which tried the case, to wit, the court organized under the expediting act for that purpose.

UNITED STATES OF AMERICA,
By GEORGE W. ANDERSON,
United States Attorney.

C. J. SMYTH,
H. LARUE BROWN,
Special Assistants to the Attorney General.

1548 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY, OF New Jersey, et al.	Equity Docket, No. 301 (C. C. 911).

Order of enlargement of time for docketing case and filing record, September 30, 1915.

For good cause shown it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including Saturday, January 15, 1916.

FREDERIC DODGE,
U. S. Circuit Judge.

1549 *Docket entry of October 13, 1915.*

October 13, 1915. PUTNAM, DODGE & BROWN, JJ. Heard on petition for limitation of time for filing objections to statement of evidence; ordered, against objections of the United States, that order entered September 11, 1915, by Dodge, J., stand.

1550 *Defendants' Praecipe for portions of the record for the transcript upon appeal.*

[Filed December 24, 1915.]

To Honorable William Nelson, clerk of the United States District Court, District of Massachusetts.

The defendants desire the following additional portions of the record of the above-entitled cause to be incorporated into the transcript of the record for the appeal allowed in this cause to the Supreme Court of the United States, namely:

(1) The petition, without the exhibits attached thereto.
(2) The answers of the several defendants.
(3) The replications of the petitioner.
(4) Petitioner's motion for leave to dismiss as to certain defendants, filed April 16, 1912.
(5) The order of the court upon said motion, April 16, 1912.
(6) The certificate of expedition, filed May 20, 1912.

(7) Defendants' motion for a bill of particulars, filed May 28, 1913.

(8) Petitioner's response to defendants' motion for a bill of particulars, under Section VI of the petition, filed June 25, 1913.

(9) Order of court directing the taking of testimony, with respect to patents, before an examiner, June 27, 1913.

(10) Stipulation, filed July 23, 1913.

(11) Order extending time for taking testimony before
1551 examiner under order dated June 27, 1913, August 8, 1913.

(12) Order extending time for taking testimony before examiner under order dated June 27, 1913, September 12, 1913.

(13) Petitioner's two motions to strike out, filed December 2, 1913.

(14) List of parts of exhibits to be specifically relied upon by petitioner, etc., filed December 9, 1913.

(15) Stipulation as to objections to testimony and further examination before special examiner, made January 14, 1914, filed January 19, 1914.

(16) Request for leave to amend petition, filed January 14, 1914.

(17) Objections of defendants to motion of the United States to amend its bill, made January 14, 1914, filed February 3, 1914.

(18) Order of court, February 4, 1914.

(19) Order of court, February 10, 1914.

(20) Opinions of Putnam and Dodge, circuit judges, and Brown, district judge, filed March 18, 1915.

(21) Final decree, entered May 14, 1915.

(22) Petition for appeal and assignment of errors by the United States, filed May 15, 1915.

(23) Order of court, May 15, 1915.

(24) Praecipe, filed by petitioner September 7, 1915.

(25) Copy of notice of filing of praecipe and lodgment of statement in narrative form of the evidence, filed by petitioner September 7, 1915.

1552 (26) Motion of defendants for extension of time, filed September 10, 1915.

(27) Order of court, September 11, 1915.

(28) Order of court, September 30, 1915.

(29) Abstract of the evidence which is lodged herewith incorporating defendants' objections and amendments to the abstract of the evidence before the court, filed by petitioner September 7, 1915, and the additional portions of the record which defendants desire to have incorporated into the transcript; and also incorporating an abstract of the testimony in Volume V of the record in the district court.

(30) This praecipe, notice to counsel of its lodgment with the clerk of said court, and the return of the officer showing service of said praecipe and notice.

(31) Any further orders which may be made by the district court.

(32) The exhibits which were printed in Volumes IX, X, and XII of the district court record, with the exception of those exhibits which appear in full in said abstract of the evidence, namely, defendants' Exhibits Numbered 105, 211, 215, 216, 218, 225, 226, 230, 230A, 234, 249, 251, 252, 253, 254, 259, 260, 261, 263, 264, 265, 266, 267, 270, 271, 272, 273, 274, 275, 331, 333, 334, 341, 342; and in lieu of each of these last-named exhibits it is requested that a page be substituted stating the title of the exhibit and the page in said abstract where said exhibit appears.

(33) All the physical exhibits, namely:

Plaintiff's Exhibits Numbered 162, 190, 193, 194, 220, 243, 244, 249, 251A, 251B, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 266, 268, 280, 281, 282, 283, 284, 285, 286, 287, 288.

1553 Defendants' Exhibits numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 72, 73, 76, 100, 102, 103, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 241, 255, 256, 257, 268, 276, 277, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 335, 340, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359.

FREDERICK P. FISH,
CHAS. F. CHOATE, Jr.,
MALCOLM DONALD,
Solicitors for Defendants.

DECEMBER 24, 1915.

If and in so far as the within præcipe is properly directed to me as United States attorney for the District of Massachusetts service thereof is hereby acknowledged, waiving, however, no objection either as to form or substance or as to the time of the return thereof, counsel in actual charge of said case for the Government being C. J. Smyth, Esq., of Omaha, Nebraska, and H. L. Brown, now commorant in Washington, D. C.

GEORGE W. ANDERSON.

1554 BOSTON, *December 24, 1915.*

UNITED STATES OF AMERICA,
Massachusetts District, ss:

I hereby certify that I have this day served the within præcipe on the Hon. U. S. district attorney, George W. Anderson, by giving

to him in hand an attested copy of the within defendants' præcipe, at Boston, in said district.

JOHN J. MITCHELL,
U. S. Marshal,
By JOSEPH A. MURPHY,
Deputy.

Fees:
Service, $2.00
Travel, .06
$2.06

1555 *Notice of filing of defendants' præcipe and abstract of evidence and marshal's return of service.*

[Filed December 24, 1915.]

To HONORABLE GEORGE W. ANDERSON,
United States attorney, Boston, Massachusetts:

You are hereby notified that on December 24th, 1915, the defendants filed, with the clerk of said court, defendants' præcipe for portions of the record for the transcript upon appeal, of which a true copy is hereto attached; and lodged with the clerk of said court their abstract of the evidence in this cause, incorporating their objections and amendments to the abstract of the evidence before the court, filed by petitioner September 7, 1915, and the additional portions of the record which they desire to have incorporated into the transcript; and also incorporating an abstract of the testimony in Volume V of the record in the District Court.

You are further notified that on Tuesday, January 4th, 1916, at ten o'clock a. m., or as soon thereafter as counsel can be heard, defendants will ask said District Court to approve said abstract of the evidence.

FREDERICK P. FISH,
CHAS. F. CHOATE, Jr.,
MALCOLM DONALD,
Solicitors for Defendants.

1556 BOSTON, *December 24th, 1915.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I hereby certify that I have served the within notice on the within named George W. Anderson, U. S. attorney, by giving to him in hand an attested copy of the within notice at Boston in said district.

JOHN J. MITCHELL,
U. S. Marshal,
By JOSEPH A. MURPHY,
Deputy.

Fees:
Service, $2.00.

1557 *Defendants' motion to approve abstract of testimony.*

[Filed January 4, 1916.]

Now come the defendants and move this court to approve the abstract of the evidence in the above-entitled case, filed by the defendants with their præcipe.

By their solicitors:

FREDERICK P. FISH,
CHAS. F. CHOATE, Jr.,
MALCOLM DONALD.

1558 *Docket entry of January 4, 1916.*

January 4, 1916. PUTNAM, DODGE & BROWN, JJ: Heard on question of make-up of appeal record. Defendants' written motion to approve their abstract of evidence filed. Heard and action postponed.

1559 *Motion to extend time for docketing appeal.*

[Filed January 12, 1916.]

The United States moves that the time for docketing in the Supreme Court of the United States its appeal in the above-entitled case be extended to March 15, 1916.

GEORGE W. ANDERSON,
United States Attorney.
H. LARUE BROWN,
Special Assistant to the Attorney General.

Defendants assent to allowance of this motion.

CHAS. F. CHOATE, Jr.,
For Defendants.

1560 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY, OF New Jersey, et al.	Equity Docket, No. 301 (C. C. 911).

Order of enlargement of time for docketing case and filing record, January 12, 1916.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including Wednesday, March 15, 1916.

FREDERIC DODGE,
U. S. Circuit Judge.

1561 *Motion to extend time for docketing transcript of appeal.*

[Filed March 11, 1916.]

Now comes the United States and moves that the time for docketing in the Supreme Court of the United States its appeal in the above-entitled cause be extended to May 1, 1916.

GEORGE W. ANDERSON,
United States Attorney.
C. J. SMYTH,
H. LARUE BROWN,
Special Assistant to the Attorney General.

The defendants being asked by the United States to grant further accommodation in point of time, will not oppose the granting of this motion.

By their atty.,

CHAS. F. CHOATE, JR.

1562 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, et al.	Equity Docket, No. 301 (C. C. 911).

Order of enlargement of time for docketing case and filing record, March 11, 1916.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including Monday, May 1, 1916.

FREDERIC DODGE,
U. S. Circuit Judge.

1563 *Motion to extend time for docketing transcript of appeal.*

[Filed April 28, 1916.]

Now comes the United States and moves that the time for docketing in the Supreme Court of the United States its appeal in the above-entitled cause be extended to June 1, 1916.

GEORGE W. ANDERSON,
United States Attorney.
C. J. SMYTH,
H. LARUE BROWN,
Special Assistants to the Attorney General.

At the request of the United States the defendants assent to the allowance of this motion.

C. F. CHOATE, JR., *for Defendants.*

1564 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, et al.	Equity Docket, No. 301 (C. C. 911).

Order of enlargement of time for docketing case and filing record, April 28, 1916.

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including Thursday, June 1, 1916.

FREDERIC DODGE,
U. S. Circuit Judge.

1565 *Motion to extend time for docketing transcript of appeal.*

[Filed May 31, 1916.]

Now comes the United States and says that since October 1, 1915, on which date the time for docketing the appeal of the United States in the above-mentioned cause was first extended, the parties, by their counsel, have been in repeated conference for the purpose of reaching an agreement upon the form in which the 4,979 printed pages of the testimony and the four volumes of exhibits of the record in this case as made up for the District Court shall be presented to the Supreme Court; that the work has proceeded with all the expedition reasonably possible under the circumstances and by far the greater portion of said testimony has become the subject of such agreement and has been stated in accordance with the same, but the parties have not yet completed the labor of reaching an agreement upon the entire record. In order, therefore, to afford time to reach or to attempt to reach such complete agreement, the United States moves that the time for docketing its appeal be extended until July 1, 1916.

GEO. W. ANDERSON,
United States Attorney.
H. LARUE BROWN,
Special Assistant to the Attorney General.

1566 District Court of the United States, District of Massachusetts.

THE UNITED STATES OF AMERICA *v.* UNITED SHOE MACHINERY COMPANY OF NEW JERSEY et al.	Equity docket, No. 301 (C. C. 911).

***Order** of enlargement of time for docketing case and filing record, May 31, 1916.*

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof in the Supreme Court of the United States be enlarged to and including Saturday, July, 1, 1916.

FREDERIC DODGE,
U. S. Circuit Judge.

Defendants assent to entry of this order by their atty.

CHAS. F. CHOATE, Jr.

1567 *Substituted praecipe of United States.*

[Filed June 19, 1916.]

To the clerk of said court:

Now comes the United States of America, petitioner and appellant in the above-entitled case, and substitutes the following for the praecipe heretofore filed in said case on September 7th, 1915, that is to say:

The United States of America desires the following portions of the record of the above-entitled case to be incorporated in the transcript on its appeal of said case to the Supreme Court of the United States, namely:

(1) The petition of the United States without the exhibits thereto.

(2) The answers of the several defendants.

(3) The replications of the United States.

(4) Expediting certificate filed May 20th, 1912.

(5) Protest of United States against private hearings filed May 22nd, 1912.

(6) Order with respect to private hearings filed August 28th, 1912.

(7) Motions of the United States to strike out evidence filed December 2nd, 1913, and order thereupon.

(8) Motion of defendants for bill of particulars filed May 28th, 1913.

(9) Bill of particulars filed June 25th, 1913.

(10) Objections thereto filed.

1568 (23) Order of Judge Dodge that defendants be given until January 1st to file their objections and suggestions of amendments to the reduced statement of facts of the evidence filed by the United States.

(24) Order of Circuit Judges Putnam and Dodge and District Judge Brown approving the order of Judge Dodge filed October 13th, 1915.

(25) Notice by the defendants to the United States of the filing of their objections, etc., filed December 24th, 1915.

(26) Order postponing hearing on last-mentioned motion filed January 4th, 1916.

(27) Order extending time for docketing case on appeal filed January 12th, 1916.

(28) Order extending time for docketing case on appeal filed March 11th, 1916.

(29) Order extending time for docketing case on appeal filed April 28th, 1916.

(30) Order extending time for docketing case on appeal filed May 31st, 1916.

(31) The testimony approved by the court June 19, 1916, and filed as a part of the record for the purposes of the appeal.

(32) All of the physical exhibits introduced in the course of the trial.

1569 (11) Requests of the United States for leave to amend petition and the amendments requested filed January 14th, 1914.

(12) Order denying requests of the United States for leave to amend, filed February 4th, 1914.

(13) Opinions of the judges, filed March 18th, 1915.

(13a) Final decree, filed May 14th, 1915.

(14) Petition of the United States for appeal and assignment of errors, filed May 15th, 1915.

(15) Order allowing petition for appeal, filed May 15th, 1915.

(16) Citation and proof of service thereof, filed May 15th, 1915.

(17) Order enlarging time for docketing case and preparing reduced statement of the evidence, filed May 15, 1915.

(18) Praecipe of the United States filed September 7th, 1915, and return of service thereof, notice to counsel of its lodgment, and of time of place at which United States would ask court to approve its statement of the evidence and proof of service thereon.

(19) Motion for extension of time, filed September 10th, 1915.

(20) Order extending time, filed September 11th, 1915.

(21) Order enlarging time for docketing case, filed September 11th, 1915.

(22) Petition for limitation of time, filed by United States September 27, 1915.

1570 (33) This substituted praecipe, filed June 19th, 1916.

(34) Stipulation of parties filed 19th of June, 1916.

(35) Order of court approving evidence and making it a part of record, filed June 19th, 1916.

THE UNITED STATES OF AMERICA,
By GEO. W. ANDERSON,
United States Attorney.
CONSTANTINE J. SMYTH,
H. LARUE BROWN,
Special Assistants to the Attorney General.

1571 *Stipulation.*

[Filed June 19, 1916.]

It is hereby stipulated and agreed by and between the parties to the above entitled action that the District Court may approve as part of the evidence in said case Volumes V, IX, X, and XII, inclusive, of the evidence and exhibits, as the same have been printed for the use of the District Court in said case and identified by the signatures of H. LaRue Brown and Nelson W. Howard on the first and last page of each volume thereof.

It is also stipulated and agreed that the typewritten manuscript consisting of 1,229 pages in three volumes and identified by the signatures of H. LaRue Brown and Nelson W. Howard on the first and last pages of each volume thereof comprises the testimony of all the witnesses who testified in open court and that the statement of the same contained in said manuscript is true, complete, and properly prepared and may be approved by the court.

It is further stipulated that the evidence contained in said Volumes V, IX, X, and XII, together with that in said typewritten manuscript, and the physical exhibits now on file with the clerk, constitute all the evidence taken in said case that is material or pertinent to the appeal from the decree therein, and the same, after Volumes V, IX, X, and XII, and said manuscript have been approved as aforesaid, shall be filed by the clerk as a part
1572 of the record in said case for the purposes of the appeal.

It is further stipulated and agreed that the clerk of the District Court shall send the original typewritten manuscript referred to in the preceding paragraph to the clerk of the Supreme Court of the United States as a part of the record in the case on appeal and that a printed copy of the same, when prepared by the clerk of said last mentioned court, may be substituted for the original manuscript in the files of the clerk of the District Court.

It is further stipulated and agreed that the clerk of the District Court shall certify as the record on appeal said Volumes V, IX, X, and XII, said typewritten manuscript verified as stated above, and said physical exhibits, and all papers not included in the above which are named in the praecipes or substitute praecipes of both parties, it being understood that no papers shall be duplicated in the transcript of the record.

It is further stipulated and agreed that the approvals aforesaid by the court, Judge Dodge presiding, shall have the same force and effect as if Judge Putnam and Judge Brown had been present and participated in said approvals.

GEO. W. ANDERSON,
United States Attorney.
CONSTANTINE J. SMYTH,
H. LARUE BROWN,
Special Assistants to the Attorney General.
CHAS. F. CHOATE, JR.,
Attorney for Defendants and Appellees.

1573 *Order June 19, 1916.*

Pursuant to the stipulation of the parties filed in this case on the 19th day of June, 1916, it is hereby ordered that the foregoing four (4) printed volumes numbered, respectively, V, IX, X, and XII of the evidence and exhibits, as the same have been printed for the use of the District Court in this case and identified by the signatures of H. LaRue Brown and Nelson W. Howard on the first and last pages of each volume thereof, and the foregoing typewritten manuscript consisting of 1,229 pages in three volumes and identified by the signatures of H. LaRue Brown and Nelson W. Howard on the first and last pages of each volume thereof, are hereby approved as being a true, complete, and properly prepared statement of all the evidence received or offered on the trial of said case, save the physical exhibits now on file with the clerk of said court, that is material or pertinent to the appeal from the decree therein, and of all rulings of the court with respect to said evidence, and that said four (4) Volumes V, IX, X, and XII, said typewritten manuscript, and said physical exhibits are hereby approved as all the evidence in said case material and pertinent as aforesaid, and are made a part of the record in said case for the purposes of the appeal.

By the court:

FREDERIC DODGE,
United States Circuit Judge.

The volumes referred to in this order accompany this record, being made up of seven volumes, each certified as appurtenant to this order.

1574 *Defendants' substitute praecipe for portions of the record for the transcript upon appeal.*

[Filed June 21, 1916.]

To Honorable William Nelson, Clerk of the United States District Court, District of Massachusetts:

The defendants desire the following additional portions of the record of the above entitled cause to be incorporated into the transcript of the record for the appeal allowed in this cause to the Supreme Court of the United States, namely:

(1) The petition, without the exhibits attached thereto.

(2) The answers of the several defendants.

(3) The replications of the petitioner.

(4) Petitioner's motion for leave to dismiss as to certain defendants, filed April 16, 1912.

(5) The order of the court upon said motion, April 16, 1912.

(6) Motion for appointment of a special examiner, filed April 20, 1912.

(7) Notice to take testimony, filed April 26, 1912.

(8) Docket entry, April 26, 1912, regarding notice to take testimony.

(9) Order appointing special examiner, entered April 26, 1912.

1575 (10) The certificate of expedition, filed May 20, 1912.

(11) Order that all further proceedings before the examiner cease until further order of court, entered May 22, 1912.

(12) Order of court designating three judges to sit in the case, entered May 28, 1912.

(13) Docket entry, August 28, 1912, as follows: Brown, J. (Colt, J., concurring; Putnam, J., sat at hearing but did not participate in this opinion, having previously expressed an opinion on the question as a single judge): Opinion, the examiner will not, without the consent of both parties, allow the attendance of persons other than those mentioned in rule 67. Opinion filed and entered.

(14) Opinion of the court, filed August 28, 1912.

(15) Docket entry, March 18, 1913, as follows: Putnam, Dodge & Brown, JJ. Dodge, J., sitting under the statute in place of Colt, J., who has resigned. Order striking out order appointing Charles K. Darling special examiner.

(16) Motion of petitioner for appointment of special master, filed March 20, 1913.

(17) Application of petitioner for leave to withdraw motion for appointment of special master.

(18) Docket entry, March 26, 1913, as follows: Putnam, Dodge & Brown, JJ. Ordered, there being no objection, the application of

the United States for leave to withdraw its motion for appointment of special master is allowed without prejudice. (Entered.)

(19) Petitioner's motion for hearing before court, filed May 13, 1913.

(20) Petitioner's alternate motion for hearing before an examiner, filed May 13, 1913.

(21) Docket entry, May 13, 1913, as follows: Putnam, Dodge & Brown, JJ. On motion for hearing of case in open court, ordered that case be assigned for hearing on Tuesday, May 20, 1913, at 10 a. m. (Entered in order book and journal.)

(22) Defendants' motion for a bill of particulars, filed May 28, 1913.

(23) Petitioner's response to defendants' motion for a bill of particulars, under Section VI of the petition, filed June 25, 1913.

(24) Order of court directing the taking of testimony, with respect to patents, before an examiner, entered June 27, 1913.

(25) Stipulation, filed July 23, 1913.

(26) Order extending time for taking testimony before examiner under order dated June 27, 1913, entered August 8, 1913.

1576 (27) Order extending time for taking testimony before examiner under order dated June 27, 1913, entered September 12, 1913.

(28) Stipulation in re printing of petitioner's exhibit 162, filed September 20, 1913.

(29) Petitioner's two motions to strike out, filed December 2, 1913.

(30) List of parts of exhibits to be specifically relied upon by petitioner, etc., filed December 9, 1913.

(31) Stipulation as to objections to testimony and further examination before special examiner, made January 14, 1914, filed January 19, 1914.

(32) Request for lease to amend petition, filed January 14, 1914.

(33) Objections of defendants to motion of the United States to amend its bill, made January 14, 1914, filed February 3, 1914.

(34) Order of court, entered February 4, 1914.

(35) Order of court, entered February 10, 1914.

(36) Opinions of Putnam and Dodge, circuit judges, and Brown, district judge, filed March 18, 1915.

(37) Final decree, entered May 14, 1915.

(38) Petition for appeal and assignment of errors by the United States, filed May 15, 1915.

(39) Order of court, entered May 15, 1915.

(40) Praecipe, filed by petitioner September 7, 1915.

(41) Copy of notice of filing of praecipe and lodgment of statement in narrative form of the evidence, filed by petitioner September 7, 1915.

(42) Motion of defendants for extension of time, filed September 10, 1915.

(43) Order of court, entered September 11, 1915.

(44) Order of court entered September 30, 1915.

(45) Order of court, entered October 13, 1915.

(46) Defendants' praecipe for portions of the record for the transcript upon appeal and return of service thereof, filed December 24, 1915.

(47) Notice of filing of defendants' praecipe and return of service thereof, filed December 24, 1915.

(48) Defendants' motion to approve abstract of evidence, filed January 4, 1916.

(49) Docket entry, January 4, 1916, as follows: Putnam, Dodge & Brown, JJ. Heard on question of make-up of appeal record. Defendants' written motion to approve their abstract of evidence filed. Heard and action postponed. (Entered.)

1577 (50) Petitioner's motion to extend time for docketing appeal, with assent by defendants, filed January 12, 1916.

(51) Order of enlargement of time for docketing case and filing record, entered January 12, 1916.

(52) Petitioner's motion to extend time for docketing transcript of appeal, with assent by defendants, filed March 11, 1916.

(53) Order of enlargement of time for docketing case and filing record, entered March 11, 1916.

(54) Petitioner's motion to extend time for docketing transcript of appeal, with assent by defendants, filed April 28, 1916.

(55) Order of enlargement of time for docketing case and filing record, entered April 28, 1916.

(56) Petitioner's motion to extend time for docketing transcript of appeal, filed May 31, 1916.

(57) Order of enlargement of time for docketing case and filing record, entered May 31, 1916, with defendants' assent thereto.

(58) Stipulation, filed June 19, 1916.

(59) Order, entered June 19, 1916.

(60) Abstract of the evidence before the court, filed June 19, 1916.

(61) The evidence taken before the examiner, as printed in Volume V of the District Court record.

(62) The exhibits as printed in Volumes IX, X, and XII of the District Court record.

(63) All the physical exhibits, namely:

Plaintiff's exhibits numbered 162, 190, 193, 194, 220, 243, 244, 249, 251A, 251B, 252, 253, 254, 255, 256, 257, 258 259, 260, 261, 262, 266, 267, 268, 280, 281, 282, 283, 284, 285, 286, 287, 288.

Defendants' exhibits numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 72,

73, 76, 100, 102, 103, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 241, 255, 256, 257, 268, 276, 277, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 335, 340, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359.

1578 (64) This substitute praecipe.

(65) Any further orders which may be made by the District Court.

(Signed) FREDERICK P. FISH,
MALCOLM DONALD,
CHAS. F. CHOATE, JR.,
For Defendants.

1579 *Citation on appeal.*

United States of America, ss:

The President of the United States to United Shoe Machinery Company, of New Jersey, a corporation organized under the laws of New Jersey, carrying on business in the district of Massachusetts, with its offices and place of business at Boston, Mass.; United Shoe Machinery Corporation, a corporation organized under the laws of New Jersey, with its offices and place of business at Boston, Mass.; United Shoe Machinery Company, of Maine, a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass.; United Shoe Repairing Machine Company, a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass.; United-Xpedite Finishing Company, a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass.; O. A. Miller Treeing Machine Company, a corporation organized under the laws of Maine, with its offices and place of business at Brockton, Mass.; W. W. Cross & Company (Inc.), a corporation organized under the laws of Maine, with its offices and place of business at Brockton, Mass.; Ross-Moyer Manufacturing Company, a corporation organized under the laws of Ohio, with its offices and place of business at Cincinnati, Ohio; J. K. Krieg Company, a corporation organized under the laws of New York, with its offices and place of business at New York City; Booth Brothers Company, a corporation organized under the laws of New York,

with its offices and place of business at Rochester, N. Y.; Ellis Lacer Company, a corporation organized under the laws of Maine, with its offices and place of business at Boston, Mass.; Sidney W. Winslow, a resident of the State of Massachusetts; William Barbour, a resident of the State of New York; George W. Brown, Wallace F. Robinson, Edward P. Hurd, John H. Connor, Louis A. Coolidge, and Edwin P. Brown, residents of the State of Massachusetts; Frank L. Babbott, a resident of the State of New York; Henry B. Endicott, a resident of the State of Massachusetts; Edmund LæB. Gardner, a resident of the State of New Jersey; John H. Hanan, a resident of the State of New York; Elmer P. Howe, Joseph C. Kilham, and George E. Keith, residents of the State of Massachusetts; Rudolph Matz, a resident of the State of Illinois; Charles G. Rice, a resident of the State of Massachusetts; Alfred R. Turner, a resident of the State of New Jersey; Samuel Weil, a resident of the State of New York; Frank Wood, a resident of the State of Massachusetts; William Woodward, a resident of the State of New York; Edward N. Chase; and Harold G. Donham, a resident of the State of Massachusetts, greeting:

1580 You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, D. C., on the fourteenth day of June next, pursuant to an appeal duly obtained from a decree of the District Court of the United States for the District of Massachusetts, wherein the United States of America and you are appellees, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frederic Dodge, United States circuit judge, this fifteenth day of May, in the year of our Lord one thousand nine hundred and fifteen.

FREDERIC DODGE,
U. S. Circuit Judge.

1581 *Acceptance of service on citation on appeal.*

I accept service of the within process for United Shoe Machinery Company.

CHAS. F. CHOATE, Jr., *Atty.*

We accept service of the within process for United Shoe Machinery Co. of N. J., United Shoe Machinery Corp., United Shoe Machinery Co. of Me., United Shoe Repairing Mach. Co., United Xpedite Finishing Co., O. A. Miller Treeing Machine Co., W. W. Cross & Co. (Inc.), Ross-Moyer Mfg. Co., J. K. Krieg Co., Booth Bros. Co., Ellis Lacer Co., Sidney W. Winslow, William Barbour,

Wallace F. Robinson, George W. Brown, Edward P. Hurd, John H. Connor, Louis A. Coolidge, Edwin P. Brown, Frank L. Babbott, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Joseph C. Kilham, George E. Keith, Rudolph Matz, Charles G. Rice, Alfred R. Turner, Samuel Weil, Wm. Woodward, Edward N. Chase, Harold G. Donham.

HAROLD G. DONHAM,
WALTER BATES FARR,
Attys.

1582 *Clerk's certificate.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, William Nelson, clerk of the District Court for the District of Massachusetts, certify that the foregoing are true copies of the papers indicated by the praecipes of the parties, as approved by the court, as being the portions of the record of said district court to be included in the record on the appeal of the United States, in the cause in said district court determined, entitled—

THE UNITED STATES OF AMERICA, plaintiff, *v.* UNITED SHOE MACHINERY COMPANY, OF New Jersey, et al., defendants.	No. 301, Equity Docket. (#911, C. C.)

together with the original citation issued upon the appeal of the plaintiff, with the acceptances of service thereon.

In testimony whereof I hereto set my hand and affix the seal of said district court, at Boston, in said district, this twenty-sixth day of June, A. D. 1916.

[SEAL.] WILLIAM NELSON, *Clerk.*

1583 In the Supreme Court of the United States.

UNITED STATES OF AMERICA
v.
UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.

Stipulation as to printing of record.

It is hereby stipulated and agreed by counsel for the respective parties that the clerk of the Supreme Court in printing the abstract

of the testimony in the above-entitled cause may number the lines on each page of said abstract.

JNO. W. DAVIS,
Solicitor General.
H. LARUE BROWN,
Special Assistant to the Attorney General.
CHAS. F. CHOATE, JR.,
For Defendants.

(Indorsement on cover:) File No. 25375. Massachusetts, D. C. U. S. Term No. 545. The United States, appellant, vs. United Shoe Machinery Company, of New Jersey, et al. Filed July 1st, 1916. File No. 25375.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 545.

THE UNITED STATES, APPELLANT,

vs.

UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

Stipulation.

It is hereby stipulated and agreed that a copy of the expediting certificate in the above-entitled cause may be printed by the clerk upon a separate sheet and attached to Volume I of the record in this cause.

JNO. W. DAVIS,
Solicitor General.
CHAS. F. CHOATE, JR.,
Solicitor for the Appellees.

(Indorsed:) In the Supreme Court of the United States. October term, 1916. No. 545. The United States, appellant, vs. United Shoe Machinery Company of New Jersey et al. Stipulation. Office of the clerk, Supreme Court, U. S. Received Jan. 15, 1917.

[Copy.]

In the District Court of the United States for the District of Massachusetts.

UNITED STATES OF AMERICA, PETITIONER, *v.* UNITED SHOE MACHINERY COMPANY OF New Jersey, and others, defendants.	Equity.

Certificate of Attorney General for speedy hearing under act of Congress of February 11, 1903.

(Filed May 20, 1912.)

the clerk of said court:

I hereby certify that the above-entitled cause now pending in said court is a suit in equity brought by the United States against the

United Shoe Machinery Company of New Jersey, and others, under the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and that said suit is in my opinion a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,'" approved February 11, 1903, you will file this certificate among the records of the above-entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the first circuit, to the end that said case shall be given precedence over other cases in said court, and be assigned for hearing at the earliest practicable date before not less than three judges of said circuit, as is provided by the said act of February 11, 1903.

GEORGE W. WICKERSHAM,
Attorney General.

WASHINGTON, D. C.

(Indorsed:) No. 301, Equity (#911, C. C.) United States of America *v.* United Shoe Machinery of New Jersey, and others. (Copy.) Certificate of Attorney General for speedy hearing under act of Congress of February 11, 1903. (Filed May 20, 1912.) (A true copy of the copy on file in the office of the clerk of the District Court.) H. LaRue Brown, counsel for petitioner. Chas. F. Choate, jr., counsel for respondents.

(Indorsed:) File No. 25375. Supreme Court U. S. October term, 1916. Term No. 545. The United States, appellant, *vs.* United Shoe Machinery Company et al. Stipulation of counsel and addition to record. Filed January 20, 1917.

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Vol. 2

RECORD IN DISTRICT COURT

(IN TWELVE VOLUMES)

District Court of the United States,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 301

THE UNITED STATES OF AMERICA

vs.

UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, AND OTHERS.

VOLUME V—TESTIMONY BEFORE EXAMINER, PLAINTIFF'S AND DEFENDANTS'.

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District Court of the United States,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 301 (C. C. 911).

UNITED STATES OF AMERICA

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.

EVIDENCE FOR THE UNITED STATES.

TAKEN PURSUANT TO ORDER OF COURT, ENTERED JUNE 27, 1913, BEFORE ME,

CHARLES K. DARLING,
Special Examiner.

BOSTON, MASS., July 14, 1913.

Present:

WILLIAM S. GREGG, Esq., *Assistant to the Attorney General,*
ALLEN WEBSTER, Esq., *Special Assistant to the Attorney General,*
of Counsel for Complainant;
FREDERICK P. FISH, Esq., and CHARLES F. CHOATE, Jr., Esq.,
of Counsel for Defendants.

Pursuant to the order of the court entered June 27, 1913, page 1902 of this record, the taking of testimony with respect to patents was resumed on the date above written, at room 132, Federal Building, Boston, Massachusetts, before Charles K. Darling, Esq., as Special Examiner.

By direction of the examiner and agreement of counsel, the hours of sitting are to be from 10 A. M. to 3.45 P. M. daily.

DEPOSITION OF NELSON W. HOWARD (*recalled*).

Direct Examination by ALLEN WEBSTER, Esq., *of Counsel for Complainant.*

Int. 1208. Mr. Howard, how long have you had charge of the patent department of the United Shoe Machinery Company?

Ans. Since its organization in February, 1899.

Int. 1209. And prior to that time, how were you occupied?

Ans. For some four months before that I was with the Mackay Shoe Machinery Company, and previously to my connection with that company I was for nearly three years in the office of the firm of Fish, Richardson & Storrow, the firm which is now named Fish, Richardson, Herrick & Neave.

Int. 1210. So that you have had how many years experience in patent matters?

Ans. Something over fifteen years.

Int. 1211. And has the larger portion of your time and labors been devoted to patents relating to shoe machinery?

Ans. Yes, sir.

Int. 1212. What are your duties in your employment, as having charge of the patent department of the United Shoe Machinery Company?

Ans. The duties are quite varied. I don't know that I could mention them all without taking considerable time, but in general I have charge of the soliciting of the patents of the company, except the patents on Goodyear machines. I have supervision of the work of my associates in preparing and prosecuting the application for patents; I examine patents and applications that are submitted for purchase, examine our experimental machines to determine whether or not they are free from infringement of patents owned by others, and frequently confer with officials of the company in connection with various patent questions which come up from time to time on matters in connection with which patents are discussed.

Int. 1213. Are you familiar with all the patents owned by the United Company?

Ans. I am more or less familiar with all of them, particularly those patents on machines which are in the departments in which the machines are classified on which I do the patent soliciting.

Int. 1214. You may state what departments you refer to in the last answer.

Ans. I do the patent soliciting on machines in the lasting, heeling, metallic eyeletting and general departments, with a few exceptions.

Int. 1215. Does that take in everything other than the Goodyear departments?

Ans. Practically.

Int. 1216. Are you also familiar with patents owned by the companies affiliated with the United Company?

Ans. I do not recall any to which my previous answer would not apply.

Int. 1217. Then, as I understand you, you think you are familiar with those patents?

Ans. I cannot say that I have them all in mind, but I am certainly more or less familiar with those patents.

Int. 1218. In response to questions by counsel for defence, you have testified with reference to many patents and machines; kindly state whether any of the patents of which you have testified relate to the cutting of soles for shoes.

Ans. May I ask you to define "cutting of soles" a little more clearly?

Int. 1219. Well, I mean cutting out soles for shoes.

Ans. Shaping them?

Int. 1220. No; simply original cutting them out. It may be a sole-cutting or dieing machine, or anything designed to cut the sole out,—the first operation of cutting the soles.

Ans. Certainly; I understand you now. The machine of the Breach Manufacturing Company was a machine particularly intended for cutting soles.

Int. 1221. It is and has been for many years common to cut or die out soles with a die, has it not?

Mr. CHOATE. I think that is rather a leading question, Mr. Webster.

Mr. WEBSTER. I will change it if you want.

Mr. CHOATE. Perhaps, if you will pursue a uniform practice, you will observe my objection to leading.

Mr. WEBSTER. That is a thing that we did not go into first. It was originally brought out before, as I recollect it.

The WITNESS. Shall I answer the question, Mr. Choate?

Mr. CHOATE. I understand Mr. Webster was going to change the form of the question.

Mr. WEBSTER. If you insist on it.

Mr. CHOATE. Yes, I will.

Mr. WEBSTER. I will do it out of courtesy to you.

Int. 1222. What was the old original method of cutting out soles?

Ans. Soles have been died out, and they have been shaped on sole-rounding machines.

Int. 1223. For how long a time, so far as you know, have they been died out?

Ans. I could not undertake to say, without investigating.

Int. 1224. Will you state approximately?

Ans. Well, I should suppose for over twenty years certainly.

Int. 1225. Dieing out a sole is somewhat similar to cutting cookies, isn't it? That is to say, you have a die and press it down through the material to be cut?

Ans. I think I am more impressed by the dissimilarity than by the similarity of the two operations.

Int. 1226. In dieing out a sole, you have a die, the shape of a sole, as I understand it; you place the die on the sole leather, and apply pressure. In that way the sole is cut out. Is that correct?

Ans. Will you kindly read the question?

[*Question read by stenographer.*]

Ans. That is correct, so far as it goes.

Int. 1227. The sole-cutting machines you have testified about in your cross-examination are not what is known as dieing-out machines, are they?

Ans. The machine of the Breach Manufacturing Company was certainly not a machine for forcing a die through a side or a piece of sole leather.

Int. 1228. In your cross-examination, have you testified, so far as you recollect, with reference to lasting machines or patents relating to lasting machines?

Ans. Yes, sir.

Int. 1229. Will you kindly testify what lasting machines or patents you have testified about?

Ans. The patents —

Mr. CHOATE. Does not the record show that, Mr. Webster?

Mr. WEBSTER. It is rather uncertain. I thought we could get it down to a concise statement.

Mr. CHOATE. Well, the record gives the numbers of the patents. That ought to be pretty definite.

Mr. WEBSTER. Of course it refers to a large number of cases. I thought he would have it in mind and it might shorten the record a good deal.

Mr. CHOATE. You can refer to your record, Mr. Howard, to refresh your recollection if you want to.

Mr. HOWARD. I can answer the question. Shall I?

Mr. CHOATE. Yes.

[*Question repeated by stenographer.*]

Ans. I testified in regard to the patents acquired from the Seaver Process Lasting Company.

Int. 1230. If that is a printed copy of the record, will you give the page? What page is that?

Ans. It is mentioned on page 36 of the petition.

Int. 1231. I thought you had a printed copy of the evidence.

Ans. Pardon me. This is the petition [*referring to the printed book before the witness*].

Int. 1232. Do you have in mind what welting machines you have testified about?

Mr. CHOATE. What kind of machines?

Mr. WEBSTER. Welters.

Ans. I testified in regard to the welter of the Globe Sewing

Machine Company and the welter of the Bay State International Shoe Machinery Company.

Int. 1233. I notice on page 623 of the printed record you say in answer to question 637 that "it was believed it would be possible to use a thinner, less substantial and less expensive insole than could be used with the present commercial type of welting machine, that is, a machine having but one thread inside the channel". Will you kindly state what you had reference to in the use of the term "present commercial type of welting machine"?

Ans. I had reference to the United Company's welt and turn machine. Your question reminds me that I also testified about a machine acquired from Rice and La Chappelle, to which your quotation from the record refers.

Int. 1234. Did any of the welting machines to which you made reference in your cross-examination go into use?

Ans. The lockstitch welter of the Globe Sewing Machine Company was used to a limited extent. The welter of the Bay State International Shoe Machinery Company was used to a small extent in England. The welter which we acquired from Rice and La Chappelle was only an experimental machine.

Int. 1235. Then the only welters to which you have testified in your cross-examination that went into use in the United States was the welter you have referred to as the Globe welter, as I understand you?

Ans. You refer now to machines to which I testified?

Int. 1236. Yes.

Ans. I believe that is correct.

Int. 1237. You say that the Globe welter went into use to a limited extent. Will you kindly explain what you mean by "a limited extent"?

Ans. I mean that a comparatively small number were used. I don't know the exact number, but it may have been thirty or forty.

Int. 1238. Will you kindly state the period of time when the Globe welter was in use?

Ans. I believe it was in use for several years preceding the purchase of the Globe Company's patents by the United Company.

Int. 1239. And did it go out of use after the purchase?

Ans. The demand for lockstitch welters ceased entirely within a year or two after the acquisition of the Globe Company's patents by the United Company, as it was found that a lockstitch was unsatisfactory for the inseam.

Int. 1240. As I recollect, you, on cross-examination, testified that patents were acquired by the United Company at the time of the purchase of the Globe and Bay State and Rice and Chappelle properties. Will you kindly state whether any of those patents related to the construction of what you refer to when you speak of the "present commercial type of welting machine"?

[*At the request of Mr. Choate the question was repeated by the stenographer.*]

Ans. I think that question is not very clear, Mr. Webster.

Mr. WEBSTER. If you will state in what respects you do not understand it, I will endeavor to explain.

The WITNESS [*to the stenographer*]. Will you read it?

[*Question repeated by stenographer.*]

The WITNESS. Perhaps I can explain my difficulty best by inquiring whether you mean to inquire whether any inventions of those patents are embodied in the present commercial machines?

Mr. WEBSTER. You may answer it in that way if you wish.

The WITNESS. That is what the question means, then?

Mr. WEBSTER. Not necessarily, but if you wish you may answer it giving the question that interpretation.

The WITNESS. The question is limited to welting machines, and it does not include outsole stitchers?

Mr. WEBSTER. The present question is limited to welting machines, — of the type referred to by you as the present commercial welting machine. [*To* Mr. FISH:] It may be that you would stipulate upon some of these points.

Mr. FISH. I would stipulate on most anything this warm weather.

Mr. WEBSTER. I want you to tell us what patents you have on the welter. You are going to tell us I presume before you get through.

Mr. FISH. Do you mean on all other machines, too?

Mr. WEBSTER. Oh, no; we don't need to go into any labyrinth.

Mr. FISH. If you will make a memorandum of just what you want, Mr. Choate and I will talk it over.

Mr. WEBSTER. If we have time enough and work hard enough, we can find out what patents you have on the welter. You know what you have and sooner or later you are going to tell us, and it might save time for the parties, the counsel and the court to let us know right now.

The WITNESS. Are you ready for me?

Mr. WEBSTER. I am, yes.

The WITNESS. The welter of the Globe Sewing Machine Company, — the lockstitch welter of the Globe Sewing Machine Company, — was covered by no patents so far as I recollect, on inventions now in commercial use, the reason being as I have explained that the demand for a lockstitch welter ceased shortly after the acquisition of the Globe Company's patents. If the demand for lockstitch welters had continued, I have no doubt that a machine incorporating many and possibly all of the features of the Globe machine would have been put out by the United Company. The Globe machine was superior to the lockstitch welter which we were just putting out at that time, because the shuttle thread was laid in the channel instead of on the welt as was the case in the machine which we were putting out. It was therefore possible in the use of the Globe machine to use a shuttle thread much larger than the needle thread which was in the operation of the Globe machine laid in the channel and pulled only slightly into the stock. This was a far better method of sewing welts by a lockstitch, because when the shuttle thread was laid on the welt there was much greater liability of cutting through the "between substance", so called, and damaging it. That machine also had a marked feature of superiority —

Int. 1241. You are referring now to the Globe machine?

Ans. I am speaking now of the Globe machine, the Globe lockstitch welter. That machine also had a marked superiority over the lockstitch welter which the United Company had just begun to put out —

Mr. CHOATE. Speaking now as of the time of the purchase?

The WITNESS. Certainly.

Int. 1242. Insert the date right in there, if you can.

Ans. I think it was February, 1901.

Mr. CHOATE. Yes.

[*Ans. continued:*] That machine also had a marked superiority over the lockstitch welter which the United Company had just begun to put out in that the welt support carrying the welt guide was movable about the same axis of oscillation as the needle and awl. So that there was assurance that the welt would always be presented in such location with reference to the work that the needle would enter the groove in the welt. These two features of superiority, together with others of less striking importance, would undoubtedly have been adopted in the United Company's lockstitch welting machine had it not been for the fact that shortly after the acquisition of the Globe Company's patents shoe manufacturers decided that they did not desire to sew the inseam by a lockstitch, and they refused to use lockstitch welters. In the year ending March 1, 1902, we put out only nine lockstitch welters, and six were returned; in the year ending March 1, 1904, we did not put out any machines, and five were returned. By "any machines" I mean of course lockstitch welting machines.

Int. 1243. Of the Globe type?

Ans. Of any type.

Int. 1244. And were those you put out of the Globe type?

Ans. The ones to which I have just referred, in stating the output and return, were machines known as Universal inseam sewing machines, that is, the United Company's commercial lockstitch welting machines. Referring now to the welter of the Bay State International Shoe Machinery Company —

Int. 1245. I beg your pardon. The question did not go into that. As I recollect, you said none of those went into use in the the United States.

Ans. Very well. Passing then to the machine acquired from —

Mr. CHOATE. Wait a moment. The question was, whether any

of these patents were involved or used in the present commercial type of welter. That is what you are answering?

Mr. WEBSTER. You are right. I should suppose he could answer the question briefly without going into all this detailed explanation.

Int. 1246. If you can do so, I suggest that the rest of your answer you answer briefly instead of trying to analyze.

Ans. The welt-sewing machine of the Bay State International Shoe Machinery Company, as it was put out in England, was a large — was a very unsatisfactory machine as compared with the welter then being put out by the United Shoe Machinery Company. The Bay State machine embodied a series of efforts to avoid patents owned by the United Company. In the machine representing the final stage of these efforts, the stitch was set by the needle through the —

Mr. CHOATE. May I interrupt you just a moment? Did you notice that the question is whether any of these patents which you have named are involved in the present commercial machine as you have defined it?

The WITNESS. I have that in mind, and I am endeavoring to explain why the inventions of these patents were not embodied in our machines.

Mr. CHOATE. I do not know whether you want to know that or not.

Mr. WEBSTER. I have suggested before that he might come to the point of answering more briefly rather than analyze the machine.

Mr. CHOATE. If none of them were, answer it no and we will take it up in recross-examination.

Ans. Then I will answer, as to the welting machine of the Bay State International Shoe Machinery Company, that so far as I know no patented inventions incorporated in that machine are embodied in the present commercial welting machine of the United Company.

Mr. CHOATE. You mean by "present commercial welting machine" the one being put out today?

The WITNESS. I think when I answered the question to which Mr. Webster directed my attention I meant the machine which was

being put out at the time of the Rice and La Chappelle acquisition, but I am now answering as of the present day. As to the machine acquired from Rice and La Chappelle, as I have previously testified, that machine has been experimented with by inventors of the United Company, but it has not yet been conclusively determined that the extra thread called for by the patents on that machine will be of commercial advantage, and the invention has not as yet been adopted by the United Company.

Int. 1247. I think, Mr. Howard, if you will kindly explain to the court just what you mean by "commercial machine" it may save considerable time, and for the purpose of saving time for the court and the parties, I will ask you to kindly examine the cut of a welting machine as illustrated in the catalogue of the United Shoe Machinery Company, and ask you to state whether that properly illustrates the present commercial type of welting machine of the United Company? Do you know where to find it?

Ans. That catalogue is some eight or ten years old, is it not, Mr. Webster?

Int. 1248. I don't know. You know. You had a cut of one of your last illustrations.

Ans. I think there is an index to that catalogue.

Int. 1249. At which end?

Ans. At the back end, I think.

Int. 1250. [*Counsel hands book to witness.*] That is page 6, isn't it, Mr. Howard?

Ans. Yes. [*Witness examines cut.*] The cut in this catalogue shows the Goodyear welt and turn shoe machine, which was superceded by welt and turn shoe machine Model G and again by welt and turn shoe machine Model K.

Int. 1251. Kindly state when Model G was first put in.

Ans. I don't know that I can state exactly without looking it up, but it was put out about 1907.

Int. 1252. When was Model K first put out, so far as you know?

Ans. I believe Model K was put out late in 1910 or early in 1911.

Int. 1253. Will you kindly examine the records and testify at some subsequent hearing as to the exact dates so far as possible?

Ans. I should be glad to.

Int. 1254. Kindly state for how long a period, so far as you know, the welter illustrated on page 6 of the United catalogue, to which illustration you have made reference in your previous answers, was in use.

Ans. I am afraid my recollection is too vague to venture a statement about that, Mr. Webster. I will be glad to look it up.

Int. 1255. State as nearly as you can recollect at the present time, and then you can look it up later, if you will, kindly.

Ans. I think it was in use for some eight or ten years.

Mr. CHOATE. Model F?

The WITNESS. That is a machine without a model name, — Goodyear welt and turn shoe machine.

Mr. WEBSTER. Mr. Choate, will you furnish us a catalogue like this so that we may put it in evidence?

The WITNESS. I think I can get one.

Mr. WEBSTER. For the present, I should like to have this marked for identification, and then put in one.

Mr. CHOATE. You mean the present catalogue? You mean another one like that?

Mr. WEBSTER. Yes.

The EXAMINER. Government Exhibit 190 for identification. That is the catalogue of what year?

Int. 1256. What year was this issued, if you know, Mr. Howard?

Ans. About 1902 or 1903, I think.

Int. 1257. Can you ascertain; and, if so, will you?

Ans. I will.

Int. 1258. And give us the date. Then, as I understand you, according to your recollection, the type of welter shown in the cut to which you have made reference was the commercial welter of the United Company for a period of ten years?

Ans. Approximately, so far as I can now recall.

Int. 1259. Can you state how many welters like the one illustrated in the cut referred to were put out by the United Company during the ten-year period?

Ans. Not without looking it up.

Int. 1260. Can you state approximately?

Ans. I should hardly venture to. I have had no occasion to know.

Int. 1261. Will you look it up and give us the date the next session?

Mr. CHOATE. The question is, how many?

Mr. WEBSTER. About how many; whether it is one hundred, a thousand, a million or ten million.

Mr. CHOATE. How is that question opened by anything asked in cross?

Mr. WEBSTER. It seems to me it is. I do not know.

Mr. CHOATE. I do not see how it is, and I should like to object to it, as very plainly the burden of looking up statistics is a tremendous one, even if Mr. Howard didn't have to testify. I do not want to have him loaded with looking up a lot of things if it is not material.

Mr. WEBSTER. Why don't you tell us?

Mr. CHOATE. It does not come in his department.

The EXAMINER. All we can do is to note the objection on the record.

Mr. CHOATE. I think I will suggest to Mr. Howard that he do not look it up.

Int. 1262. Will you kindly state what patents of the defendants were made upon the welting machine illustrated on page 6 of the catalogue?

Mr. CHOATE. To that question I object as not opened by any cross-examination.

Mr. WEBSTER. That is one of the questions, I suppose, we will have to leave for the court to pass upon later.

Int. 1263. Kindly state how the welting machine referred to by you as Model G differed from the welting machine illustrated on page 6 of the catalogue.

Mr. CHOATE. I make the same objection.

Int. 1264. Please state how the welting machine referred to by you as Model K differed from the welting machine illustrated on page 6 of the catalogue.

Mr. CHOATE. The same objection.

Int. 1265. Your answer with reference to the Globe welter was somewhat confused, as it seems to me, and, for the convenience of the court, will you kindly state briefly whether any of the Globe welters were manufactured and put out by the defendant company?

The EXAMINER. Before that question is answered, might it be made perfectly clear? Mr. Choate instructed the witness not to answer those questions which were objected to. It might appear from the record they were withdrawn. Ordinarily a question, although objected to, is answered; but if counsel directs the witness not to answer them, of course he does not.

Mr. CHOATE. I assume we have that right under the concluding cause of the order: "The Court reserves control of the proceedings before the examiner. So far as either party finds it necessary to protect their rights upon any question as to the admission of proof, either party may apply to the Court."

The EXAMINER. There will probably be questions to which you do object which may be answered?

Mr. CHOATE. Possibly.

Mr. WEBSTER. Counsel for the United States reserves the right to submit the questions objected to to the court so that the witness may be instructed as to whether they should be answered or not.

Mr. CHOATE. Why don't you conclude your re-examination, and then, if you believe it necessary to call him on these questions, I suppose you have a perfect right to do so?

Mr. WEBSTER. I suppose so, but I would like to group the whole business.

[*Question read by the stenographer as follows:*]

"Your answer with reference to the Globe welter was somewhat confused as it seems to me, and, for the convenience of the court, will you kindly state briefly whether any of the Globe welters were manufactured and put out by the defendant company?"

Ans. As I stated, the demand for lockstitch welters entirely ceased after this acquisition, and very few, if any, Globe welters were put out.

Int. 1266. Then, as I understand you, so far as you know, none

of the Globe welters were put out by the defendant company. Is that correct?

Ans. I cannot state now whether any were put out.

Int. 1267. But, so far as you know, none were?

Ans. I think I have answered that question.

Int. 1268. Will you kindly look that up and answer?

Ans. I might need more than a day for this.

Int. 1269. The question is, will you look it up?

Ans. It may involve the time of half a dozen clerks for several days possibly.

Int. 1270. You have not answered the question now.

Ans. Certainly.

Int. 1271. I notice in your cross-examination reference has been made to sole-laying machines, sole-beating machines, sole-leveling machines and sole-pressing machines. Will you kindly state whether these four machines differed materially in construction or whether those are different names of the same machine?

Ans. I was not aware that I had used all of those expressions, except possibly in quoting the titles of patents. I shall be glad, however, to explain that the term "sole-laying machine" is used in the trade as meaning a machine for pressing on the sole of a shoe, — the outsole, — and securing it temporarily to the shoe by cement, while the term "leveling machine" is a generic term including numerous types of machines for imparting to the sole by pressure, after the sole has been permanently attached, the shape which it is desired that the sole shall have in the finished shoe.

Int. 1272. Then, does the sole leveling include sole beating and sole pressing?

Ans. The term "sole beating" is sometimes used to designate leveling machines. I am not aware that the expression "sole pressing" is used in the trade.

Int. 1273. In your cross-examination you made reference to the Cutcheon patent, which patent I think you stated had been extensively litigated. Kindly state whether the Cutcheon patent to which you made reference is No. 384,893, beating-out machine, patented June 19, 1898, a copy of which patent I hand you for inspection.

Ans. Yes, sir.

Mr. WEBSTER. A copy of patent to J. C. Cutcheon, beating-out machine, dated June 19, 1898, No. 384,893, offered in evidence, is marked "Plaintiff's Exhibit 191".

Int. 1274. Kindly state whether at the time of purchase from the American Sole Laying Company of these properties, any suits, so far as you know, were pending between the United Company and the then owner of the Cutcheon patent.

Ans. Under the Cutcheon patents?

Int. 1275. Owner of the Cutcheon patents?

Ans. Yes. Suits under the Cutcheon patents?

Int. 1276. Yes.

Ans. I do not recall that at that time the United Company was a defendant in a suit on the Cutcheon patent.

Int. 1277. You say in your answer, page 524 of the typewritten record [printed page 699]: "That patent [*referring to the Cutcheon patent*] had been sustained by the Court of Appeals, and manufacturers had been forced to pay heavy damages for the infringement of the patent." Kindly state what suits you had reference to in making that answer.

Ans. The large number of suits had been brought by the Tripp-Giant Leveller Company, the owners of that patent, against users of machines made and put out by the Bresnahan concern, of which I think the name was M. V. Bresnahan & Company. As I stated in my previous testimony, the patent had been sustained by the Court of Appeals in one or more of those suits, and the Bresnahan concern and a large number of shoe manufacturers who had used the Bresnahan machine were forced to pay heavy damages on account of their infringement of that patent.

Int. 1278. In making your last answer, do you state facts of your own personal knowledge, or do you rely on statements made by others?

Ans. I did not have cognizance of these suits at the time they were brought, but I believe the facts to which I refer are largely, if not entirely, of record in this court.

Int. 1279. Have you examined the record?

Ans. No, sir.

Int. 1280. Then, with reference to these facts you are testifying from hearsay, are you not?

Ans. Perhaps I may say that I am entirely confident that the facts are as I have stated.

Mr. WEBSTER. The answer objected to as not responsive.

Int. 1281. I call your attention to the fact that the contract of transfer from the Bresnahan Company is dated December 10, 1910, while the Cutcheon patent to which you have testified expired in 1905. Will you kindly explain to the court how the purchase of a right under that patent after its expiration was important at the time of purchase so made?

Ans. I do not recall that I mentioned the Cutcheon patent in connection with the transaction which the United Company had with M. V. Bresnahan & Company in 1910. In testifying about the acquisition of the patents of the American Sole Laying Machine Company in 1902, I testified that the United Company desired to make a two-form machine out of the machine of the — out of the sole-laying machine which it had previously acquired from the Boot and Shoe Sole Laying Machine Company, but could not do this because a two-formed sole-laying machine of that type would infringe this Cutcheon patent; and I further explained that the American Company had a license under the Cutcheon patent 384,893, which license the United Company acquired from the American Company, so that it was then enabled to put out a two-form sole-laying machine of the — so that it was then able to transform the sole-laying machine which it was then putting out of the single type into a two-form machine which had double the capacity of the single type machine.

Int. 1282. Did the United Company to your knowledge manufacture and put out beating-out machines constructed as set forth in the Cutcheon patent 384,893?

Ans. After the acquisition of the American Sole Laying Machine Company and the license which that company had under the Cutcheon patent, the United Company put out two-form sole-laying machines, and they also put out two-form leveling machines, both of

which machines were covered by claim 1 of the Cutcheon patent in question.

Int. 1283. You perhaps did not understand the question. The question was: Did the United Company put out machines constructed as shown in the Cutcheon patent 384,893?

Ans. If I recall correctly, the license acquired from the American Company was limited to sole-laying machines, in which case, of course, the United Company had no right to put out leveling machines, — put out the leveling machine shown and described in the Cutcheon patent. It did not, so far as I am aware, put out (at least for some years) a machine like that shown in the Cutcheon patent.

Mr. CHOATE. You say the license was limited to sole laying?

The WITNESS. That is my recollection. I have not a copy of the license, but my notes would indicate that the license was limited to sole-laying machines.

Int. 1284. Pardon me, but I do not understand that you have answered the question. I will put it in this form: Did the United Company, to your knowledge, ever put out a machine constructed as shown in the Cutcheon patent 384,893?

Mr. CHOATE. I should like my objection noted to that question as immaterial and not opened by anything on cross-examination.

Ans. I have stated that the United Company put out machines embodying the invention covered by that patent. I am not aware that it has ever put out a machine identically like the machine shown in the drawings of the patent.

[*Adjourned to 10 A. M., Tuesday, July 15, 1913.*]

BOSTON, MASS., July 15, 1913.

Direct Examination by WILLIAM S. GREGG, Esq., *of Counsel for Complainant.*

Int. 1285. Mr. Howard, did you find that eyeletting agreement of 1897? You will remember I asked for it in connection with the Boston Fast Color Eyelet Company.

Ans. I could not find that, Mr. Gregg.

Int. 1286. You made a search for it?

Ans. Yes. It is an old instrument, you will recollect. The United Company was not a party to it. It was executed before 1899.

Int. 1287. I understand that, but it was a part of the agreement with the Boston Fast Color Eyelet Company. You made a search for it and could not find it?

Ans. I made a search for it and could not find it. It was not in the files where it would have been if we had had it.

Int. 1288. Did you make inquiries of anyone else about it?

Ans. I inquired of the clerk who had charge of the documents, and she could not remember such a document.

Direct Examination by ALLEN WEBSTER, Esq., *of Counsel for Complainant.*

Int. 1289. Did you bring in that catalogue?

Ans. Yes, Mr. Webster.

[*Passes to Mr. Webster "Illustrated Catalogue of Shoe Machinery Manufactured by the United Shoe Machinery Company."*]

Int. 1290. Do you give it to us?

Ans. Certainly, if you wish it.

Int. 1291. I want to multilate it.

Mr. WEBSTER. Counsel for defendant having kindly produced a copy of the catalogue of the United Shoe Machinery Company similar to the one marked for identification yesterday, counsel for the United States offers in evidence the cut on page 6 of said catalogue and the printed matter on page 7, said cut being entitled "Goodyear welt and turn shoe machine", the printed matter reading as follows:—

"This machine sews the welt on the shoe, fastening together with a chain stitch the welt, upper and insole. It practically duplicates the work of the hand welt sewer. This machine is immensely popular, and its use is constantly increasing. It has been improved and developed to the point of perfection. It measures the thread to the needle perfectly, thereby preventing all abrasion to the thread. After the needle has drawn the loop through the work and has returned again through the stock, the take-up tightens the stitch by pulling on the supply end of the thread while the needle firmly supports the leather between stitches against the sawing action or the thread. This is the only method yet discovered for

tightening the chain stitch without destroying the between substance. The chain and the stitch is placed on the outside of the welt or in the case of a turn shoe on the outside of the lining of the upper (before turning). This method of forming and tightening stitches gives a perfect result such as can be obtained in no other way."

I suppose it is unnecessary, Mr. Choate, to read the matter in small type.

Mr. CHOATE. I will ask the examiner to note the defendants' objection to this evidence as immaterial, irrelevant and inadmissible, and not opened by anything developed in the cross-examination.

[*Illustrated catalogue of shoe machinery manufactured by the United Shoe Machinery Company marked "Plaintiff's Exhibit 190".*]

Mr. CHOATE. I understand it is that cut and that reading matter which constitutes the exhibit?

The EXAMINER. Yes.

Int. 1292. When did the United Company put out the catalogue referred to in the last question?

Ans. About May 1st, 1902.

Int. 1293. And for how long a time did the United Company put out welting machines constructed as illustrated in the Exhibit 190?

Ans. The United Company continued to put out that machine for some years. As I stated yesterday, it was later superseded by Model G.

Int. 1294. Kindly state, as near as you are able, for how many years the United Company put out machines as illustrated in the Exhibit 190.

Ans. Excepting the small number of lockstitch welters which were put out, and excepting the Model E machines which were being put out, or which were put out at about the time this catalogue was issued, the machine shown in the exhibit was the regular commercial machine of the United Company until the adoption of the Model G, which was in 1908.

Mr. CHOATE. Wasn't it Model F?

The WITNESS. Model G.

Mr. CHOATE. Was there any hiatus between Models E and G?

The WITNESS. I don't know that there was.

Int. 1295. In the cross-examination you made reference to the patent referred to by you, as I recollect it, as the Briggs patent.

Mr. CHOATE. Where did he refer to that, Mr. Webster?

Mr. WEBSTER. I don't know where, but he did.

Int. 1296. Will you kindly—

Mr. CHOATE. I think that we better be exact about that.

Mr. WEBSTER. Do you doubt it?

Mr. CHOATE. No.

Mr. WEBSTER. The reference is on page 707 of the printed record.

Int. 1297. In the cross-examination you made reference to the patent referred to by you, as I recollect it, as the Briggs patent, the Briggs method. Kindly give the number, date and title of the Briggs patent referred to by you.

Ans. The Briggs patent to which I referred was No. 461,793, granted October 20, 1891.

Int. 1298. You may give the title.

Ans. "Method of Forming Chain Stitches."

Int. 1299. Did the Briggs patent No. 461,793 become the property of the United Company?

Ans. Yes, sir.

Int. 1300. Who was the owner of the Briggs patent at the time that suit was brought against the Globe Sewing Machine Company?

Ans. I have not the date of the suit before me, but recall that it was brought in the name of the Goodyear Shoe Machinery Company. That may have been, however, after the United Company was formed and before the patent had been formally assigned to the United Company.

Int. 1301. Did the United Company have any machines which carried out the Briggs method?

Ans. Yes, sir.

Int. 1302. What machines?

Mr. CHOATE. Wait a moment. I don't see how that was opened under anything in the cross-examination; do you?

Mr. WEBSTER. Well, I think it is.

Mr. CHOATE. Won't you point out what?

Mr. WEBSTER. It goes to the general subject-matter testified to by the witness.

Mr. CHOATE. He did not testify at all as to the machines which the company had, in this respect. He said the Globe Sewing Machine Company was in litigation, and that they were sued under this patent. That clearly had no connection with the machines which the United Company might have been making under that patent. You will note that our objection was to Mr. Howard's being examined in chief during the course of your redirect. It is going to save us both trouble and time if you will finish your redirect before you begin in this matter.

Mr. WEBSTER. It seems to me it will be easier for the court if we could get it all under one heading, rather than to spread it in different parts of the record.

Mr. CHOATE. Well, I don't think it would be. It would not, from our point of view, and I think we shall have to insist on our right there, that you shall finish your redirect.

Mr. WEBSTER. I don't think we are compelled to do that. I don't understand that the witness objects.

Mr. CHOATE. Well, I shall have to instruct the witness not to answer any questions which it seems to us are outside the legitimate scope of this examination.

Mr. WEBSTER. Then, as I understand you, you do instruct the witness not to answer?

Mr. CHOATE. Yes; I think this is not legitimate redirect.

Mr. WEBSTER. Then I suppose the witness ought to enter upon the record that, by instruction, he declines to answer?

Mr. CHOATE. Yes.

The WITNESS. By advice of counsel, I decline to answer.

Int. 1303. Referring now to the acquisition from Stanbon, referred to in Government Exhibit 145, you say the device was

commercially successful. Will you kindly state what you mean by the term "commercially"?

Mr. CHOATE. Will you state the number of the question you are quoting?

Mr. WEBSTER. This is on page 608.

Mr. CHOATE. Is not the question numbered?

Mr. WEBSTER. The first question I called his attention, where the acquisition is referred to, is 557. The particular question referred to where the words "commercially successful" are used in the interrogatory, where he adopted it, is 560.

Mr. CHOATE. Your question now is what?

[*Question read by the stenographer.*]

Mr. CHOATE. I think I used the term "commercially successful" in my question.

Mr. WEBSTER. Yes, but he adopted it. He says: "Yes; we had been using this thing ourselves prior to the declaration of interference."

Mr. CHOATE. All right. I don't care.

Mr. WEBSTER. I will change it if you prefer.

[*Question read by the stenographer.*]

Ans. In this instance, I meant that manufacturers had found that this device would perform the work for which it was intended very advantageously and rapidly and that the device had gone into extensive use in shoe factories.

Int. 1304. In answer to question 560, page 509 of the printed record, you refer to an interference. Kindly state whether a patent issued upon any of the applications involved in that interference; and, if so, give the number and date of the patent.

Ans. Upon the Stanbon application, serial No. 195,598, filed February 27, 1904, there was issued patent No. 1,004,705, granted October 3, 1911, for channel-cementing machine.

Int. 1305. And was that patent issued to the United Company?

Ans. Yes, sir.

Int. 1306. Was any other patent involved in that interference issued?

Ans. I believe that the application on which was granted patent

1,030,623, granted June 25, 1912, F. H. Warren, was also involved in the interference. I do not recall now, but can ascertain if desired, whether other applications involved in these interferences have matured into patents.

Int. 1307. I would appreciate it if you would kindly do so.

Ans. I would be glad to.

Int. 1308. Kindly state how many interferences were pending.

Ans. There were several. The exact number I cannot state from memory, but shall be glad to ascertain if desired.

Int. 1309. Please do so. In referring to the acquisition of the Booth perforator, you say, in answer to question 572, page 610 of the printed record: "Not under the circumstances that I refer to." Will you kindly explain what you mean by that answer?

Ans. I had reference by that answer to the special work for which the Stanbon perforating machine is adapted, as indicated in my answers to questions 564, 565 and 566.

Int. 1310. Your explanation does not seem clear to me. Will you kindly state under what circumstances the ornamentation of the two machines was different so as to avoid the necessity of referring to other questions and answers to ascertain your meaning?

Ans. The ornamentations of the two machines were different, when the Stanbon machine was adapted for doing embossing work rather than perforating; that is, when it was used with a heated tool for impressing the ornamentation in the upper stock rather than perforating it.

Int. 1311. And was the Stanbon machine adapted also to do the same class of work as the other machine to which you have referred?

Ans. These two machines have distinct fields owing to radical differences in their organizations. The machine acquired from the Booth Company is a punch feed machine and is far more accurate on curved work. The fact that it is a punch feed machine limits its range of work to that in which the spacing does not exceed a maximum of fifteen thirty-seconds of an inch. The Stanbon machine on the other hand is very much faster and therefore is better

adapted for substantially straight-edge work, and as the work operated upon in it is fed by a feed wheel it is has unlimited capacity as to spacing. I have in my hand a sample of work in which the spacing is one and one-eighth inch, which is more than double the maximum spacing permissible on the Booth perforator. This sample of work was done on the Stanbon machine.

[*Piece of leather with perforations produced by Stanbon machine marked "Defendants' Exhibit 100".*]

Int. 1312. Referring further to the acquisition from Stanbon, you say in answer to cross-question 574: "We haven't got it quite commercial yet", referring to the folding machine. Kindly state what you mean by "we".

Ans. The United Shoe Machinery Company.

Int. 1313. Well, do you mean the officers, managers, mechanics, or yourself, in using the term "we"?

Ans. Those who are engaged in developing and perfecting this machine or the inventors who are working upon it, the machinists and road men who are assisting them, and the experimental committee who are supervising and directing their work.

Int. 1314. In the same answer you say: "We think we have got it pretty nearly right now." Do you mean by that phraseology that you are testifying to what others have told you about it?

Ans. That opinion was based upon my personal knowledge of the machine, assisted of course by the views of experts.

Int. 1315. In answer to question 576, which was "not developed commercially" you say: "No, we have not put anything out, and that was a long way from a commercial machine when we took it." Do you mean by the words "not developed commercially", as understood by you, that the machine was not operative at that time?

Ans. No, sir; I did not mean that.

Int. 1316. In answer to question 578, you say: "I think all the machines are covered by patents." Will you kindly give a list of the patents referred to by you in that answer?

Ans. 640,426, January 2, 1900, —

Int. 1317. If you have the title there, put that right in.

Ans. On the list that I am referring to, there is a title given which I think is the title of the patent. It would take some little time to look at each copy of the patent.

Int. 1318. I am content that you should take the title as you have it in your record.

Ans. 640,426, granted January 2, 1900, leather punching machine; 955,711, granted April 19, 1910, leather punching machine; 607,140, granted July 12, 1898, channeling machine; 663,050, granted December 4, 1900, channeling machine; 607,139, granted July 12, 1898, channel flap turning machine; 898,016, granted September 8, 1908, channel flap turning machine; 1,004,705, granted October 3, 1911, channel-cementing machine; application serial No. 427,638, filed April 11, 1908, folding machine; application serial No. 508,723, filed September 6, 1910, machine for folding pliable material.

Int. 1319. Is that all? Is that your answer?

Ans. These are the patents acquired from Stanbon which covered his machines.

Int. 1320. Kindly state whether the applications referred to in your last answer have since merged into patents.

Ans. No, sir; they are still pending.

Int. 1321. Kindly explain to the court what you mean by the use of the term "covered" as employed in your last answer but one.

Ans. I mean that the inventions claimed in the patents and applications which I named are embodied in the machines which we acquired from Stanbon.

Int. 1322. In your answer to the question 582, page 611, you make reference to a large number of suits, this being in connection with the purchase from M. V. Bresnahan & Company. Your answer apparently is responsive to the question as to whether there had been a large number of suits brought by one side or the other. Kindly state what company you have reference to as parties to the litigation other than the Bresnahan Company.

Ans. I had reference to suits between Bresnahan, or concerns in which he had been interested, and the United Shoe Machinery Company.

Int. 1323. Will you kindly give the names of the concerns you refer to in your last answer, other than M. V. Bresnahan & Company?

Ans. I believe that Mr. Bresnahan had done business under the name of Bresnahan Shoe Machinery Company, and also I believe under the name of M. V. Bresnahan & Company. I think he may have done business also under the name Maurice V. Bresnahan.

Int. 1324. Are you testifying, with reference to the suits referred to and the settlements made, from your own personal knowledge, or because of what you have learned from others?

Ans. I have had personal knowledge of much of this litigation, — probably all of it.

Int. 1325. Are you sufficiently familiar with the litigation referred to so that you can give the names of the cases and the patents involved?

Ans. I can give information at this time about some of the suits for infringement of patents, although there were also other suits. Those which I recall are Equity No. 1772, United Shoe Machinery Company *v.* Bresnahan Shoe Machinery Company —

Int. 1326. If you have a record there of when the bill was filed, kindly state it.

Ans. The bill filed August 17, 1903, — and Equity No. 286, Maurice V. Bresnahan *v.* United Shoe Machinery Company, bill filed August 9, 1906.

Int. 1327. In referring to the acquisition of property from Bresnahan, you, in answer to cross-question 591, page 612, referring, as I understand it, to the burnishing machine, say: "An application was pending upon it." Kindly state whether the application has merged into a patent as yet; and, if so, give the number, date and title.

Ans. The patent has not yet been granted upon that application.

Int. 1328. Referring to the application of the Prenzel improvements, you say, in answer to question 595, page 612: "Yes. Patents had been granted." Will you kindly give the number, date and title of the patents referred to in that answer?

Ans. The question and the answer apparently relate to the

underwedge shoe, a process of making the shoe which we acquired — which the United Company acquired from Prenzel. The patent on the shoe was No. 967,053, granted October 9, 1910, which was reissued as No. 13,448 on July 23, 1912. The patent on the process of making this shoe was No. 960,234, granted May 31, 1910, which was also reissued as No. 13,447 on July 23, 1912. This process was also covered by patent No. 1,050,040, granted January 7, 1913. Although this question and answer do not refer to the machines for making the shoe, but to the patents on the Cack shoe, the process of making it and the machine for making it, I can state the data of those patents, if you desire.

Int. 1329. Please do so.

Ans. The various machines used by Prenzel in the manufacture of the underwedge shoe were covered by the following patents: 959,256, granted May 24, 1910; 965,744, granted July 26, 1910; 965,656, granted July 26, 1910, which was reissued as No. 13,375 on February 27, 1912. The Cack shoe was covered by an application which was pending at the time of the Prenzel acquisition, upon which was later granted patent 1,031,196, granted July 2, 1912.

Int. 1330. Did you give the title there?

Ans. "Shoe." The process of making the Cack shoe was likewise covered by a pending application, upon which was granted, on June 25, 1912, patent No. 1,030,609. The machine used in making the Cack shoe was covered by a pending application at that time, upon which was granted, on June 25, 1912, patent No. 1,030,608.

Int. 1331. Now, for the convenience of the court, will you kindly briefly explain the difference between the Prenzel shoe and the plain ordinary shoe that has been in use for twenty years?

Mr. CHOATE. He has fully described that in his examination, and we used exhibits to demonstrate it.

Mr. WEBSTER. My recollection is that it was quite extended. I should suppose he could state it in a very few words.

Int. 1332. Couldn't you state it very briefly, the principal points of difference; in other words, is it what is known as a freak shoe, or is it a common everyday shoe?

Ans. Perhaps I can refer to the patent in such a way as to be clear —

Int. 1333. I would prefer that you would not refer to the patent. I would like to have it clear in a brief, plain statement so that a layman could understand the difference.

Ans. I think I will need the exhibits, Mr. Webster.

Int. 1334. While waiting for the exhibits, I will ask you this question: Is the Prenzel shoe a shoe which has gone into extensive use?

Ans. The shoe, — the underwedge shoe, — invented by Prenzel has been manufactured in considerable numbers since the Prenzel acquisition.

Int. 1335. Who makes the Prenzel shoe?

Ans. Prenzel himself has made the shoe, and it has been made by several others. The expectations which were entertained at the time of the acquisition —

Int. 1336. Pardon me. I wish you would answer the question without going into explanation of expectations.

Ans. I have answered it.

Int. 1337. Can you give the name of any individual, copartnership or corporation other than Prenzel that are now manufacturing the Prenzel shoe?

Ans. I cannot from memory.

Int. 1338. Can you give the name of any party who has made it other than Prenzel?

Ans. The only one which I recall now is the concern which I believe is known as the Curtis & Jones Company.

Int. 1339. In referring to the acquisition from the Sturtevant Company, you said, as I understand you, that prior to the purchase from the Sturtevant Company the United Company bought its peg wood from others. (This matter is referred to on page 613, Cross-Interrogatory 605.) Kindly state, if you know, from whom the United Company bought peg wood prior to the time of the purchase from the Sturtevant Company.

Ans. I cannot name the concerns without looking them up.

Int. 1340. If you can look them up without inconvenience, will you kindly do so and give us the data later?

Ans. That is necessary, is it, Mr. Webster? That involves quite a little work.

Int. 1341. Can't you ascertain by inquiry? I won't ask you to go to the records.

Ans. If you are willing for me to take statements by others without examining the books, I should be glad to.

Int. 1342. In this matter; yes. In referring to the acquisition of the Wentworth Company property, you say, as I understand you, in answer to cross-question 615, found on page 614, that the shank-sticking machine and the heel-beating machine were patented. Will you kindly give the number, date and title of the patents referred to in that answer?

Ans. The shank-sticking machine was covered by patent No. 929,178, granted July 27, 1909.

Int. 1343. What is the title?

Ans. "Cement Heating and Distributing Apparatus." On the Wentworth heel seat forming machine —

Int. 1344. It is referred to here as "heel-beating machine". That means the same, does it?

Ans. —as I believe the beating machine was known commercially, were the following patents: No. 854,320, granted May 21, 1907; heel seat forming machine, No. 876,249, granted January 7, 1908; shoe ironer — that last patent should not be included; that was not commercial — No. 896,873, granted August 25, 1908; heel seat forming machine inventions which were embodied in most but not all of these machines, were covered by No. 844,293, granted February 12, 1907, 1,010,550, granted December 5, 1911, upon an application which was pending at the date of the acquisition of the Wentworth Company patent.

Int. 1345. Then it is your understanding that the term as used in the question "heel-beating machine" means the same as "heel seat forming machine". Is that correct?

Ans. These terms refer to the same machine which was known by various names during the period preceding the acquisition of the Wentworth patent.

Int. 1346. The term "heel beating" would appear to indicate

that the operation performed by the machine was on the heel, while "heel seat forming" seems to indicate that the operation was on the shoe. Kindly explain which is correct.

Ans. The machine was always used upon the shoe prior to the attachment of the outer sole.

Int. 1347. I understand you to say, in answer to cross-question 621, page 615, that the shank-sticking machine went into use and was furnished to customers. Kindly state where the machine went into use, if you know. To whom did you furnish it? Where is it in use?

Ans. I cannot answer all three questions in the question that is of record.

Int. 1348. You say, in answer to cross-question 623, as I understand you, that the United Company furnished the shank-sticking machine to customers. Kindly state to whom the United Company furnished that machine, and, if you know, where it is in use at the present time.

Ans. Question 623 inquires about the new machine which the United Company constructed by combining the best features of the Wentworth machine and the machine with which we had previously been experimenting. This improved machine has been put out in large numbers, but I cannot state from memory the names of any manufacturers who have it, as I had no occasion to have such information.

Int. 1349. Can you, without inconvenience, make inquiry and answer from information thus obtained, giving the names of a few?

Ans. I should be glad to as soon as I can do so. I will endeavor to before the next session, or before tomorrow.

Int. 1350. In your answer to question 625 on page 621, you make reference to the "Wentworth shoe-beating machine". Kindly state whether the term "shoe-beating" as applied by you in that answer has reference to heel seat beading or to some other operation.

Ans. The machine which I was referring in my answer to question 625 was the Wentworth heel seat forming machine.

Int. 1351. On page 621, his Honor Judge Putnam inquired of

you whether the wire lacing replaced the hand method, to which I understand you answered yes. Kindly explain whether you meant by that answer that it had entirely replaced the hand method or whether it had replaced it to a large extent.

Ans. I meant by that answer that prior to the invention of the Ellis lacer it had been the universal practice to lace uppers by hand, prior to lasting.

Int. 1352. Then you did not mean to convey the impression, as I understand you, that the hand method of lacing went out of use when the wire lacing came into use?

Ans. I think that the hand method did not go entirely out of use upon the introduction of the Ellis lacer. I should qualify my answer by explaining that the hand method to which I refer is the introduction into the eyelets of the shoe of a string and the tying of that string by hand. Of course the Ellis lacer was also put into the shoe by hand, but its introduction into the shoe was a much simpler and quicker operation.

Int. 1353. You have no knowledge I suppose as to the extent to which the string method is now employed?

Ans. I assume that you mean the method employed prior to the introduction of the Ellis lacer. That is the lacing of the shoe by hand, and the tying of the string by hand?

Int. 1354. Yes.

Ans. On that understanding I will answer that I am confident that the hand lacing is practiced to only a very limited extent, and I should not be surprised to know that it was practically not done at all.

Int. 1355. On page 622 of the printed record, in referring to patents relating to metal lacing devices, you say in answer to cross-question 630: "Nearly all these patents read upon all forms of the lacer." And in answer to cross-question 631 you say: "Most of them cover the device which I showed in all its features." Will you kindly explain to the court what you mean by this phraseology? I ask the question because it would seem to indicate that in your view more than one patent described and claimed the same device.

Ans. Assuming that you are inquiring whether or not more than one patent read upon the same Ellis lacing device, I answer yes.

Int. 1356. Then will you point out what two or more patents cover, as you term it, the same device?

Ans. The Ellis bal. lacer. That is, the one which is formed with straight prongs as distinguished from the blucher lacer, which is formed with outwardly turned ends, was covered by patent 688,297, granted December 10, 1901, Ellis.

Int. 1357. The title?

Ans. "Fastening for shoe uppers." Also by No. 744,659, granted November 8, 1904, Ellis, fastener for shoe uppers; and also by patent No. 715,316, granted December 9, 1902, Sweeney, upper fastener for boots or shoes. The Ellis blucher lacer was also covered by several patents, as follows: No. 688,297, granted December 10, 1901, Ellis, fastening for shoe uppers; No. 744,659, granted November 8, 1904, Ellis, fastener for shoe uppers; No. 825,710, granted July 10, 1906, Ellis, fastener for shoe uppers, and No. 715,316, granted December 9, 1902, Sweeney, upper fastener for boots and shoes. The Ellis adjustable lacer was covered by the three patents already enumerated as covering the bal. lacer and also by No. 825,710, granted July 10, 1906, Ellis, fastener for shoe uppers. The adjustable lacer was also covered by application serial No. 525,987, filed November 3, 1909, upon which has been granted patent No. 999,765, dated August 8, 1911. The adjustable lacer was further covered by application serial No. 501,471, filed June 11, 1909, Ellis, upon which has been granted patent No. 988,322, dated April 4, 1911. The three lacers upon which I have stated the patent protection were the three which were put out to the largest extent at the time of the acquisition of the Ellis patents. There were, however, possibly half a dozen other types of lacers for special use, all of which were also covered by patents or applications which I shall be glad to enumerate if desired.

Int. 1358. Please do so.

Ans. The spring or semi-hinged Ellis lacer was covered by patent 688,297, granted December 10, 1901, Ellis; by patent No. 744,659, granted November 8, 1904, Ellis, and by patent 936,391,

granted October 12, 1909, Whelan. The hinged Ellis lacer was covered by patent No. 688,297, granted December 10, 1901, Ellis; No. 744,659, granted November 8, 1904, Ellis, and on No. 704,451, granted July 8, 1902, Ellis. The Pierce single lacer was covered by No. 653,929, granted July 17, 1900, Harlow, and No. 915,755, granted March 23, 1909, Ellis. We also acquired from the Ellis Lacer Company one patent on machines used in the manufacture of Ellis lacers, No. 795,209, granted July 18, 1905, Ellis and Chadwick.

Int. 1359. Where you say two or more patents covered the same device, do you mean that the patents were of the same scope, or were of some generic and some specific?

Ans. Relying upon my memory and without examining all of these patents, I should state that in some instances the relation of two or more patents reading upon the same device is that of generic and specific patents, while in other cases the patents covered different parts or features of the device in question.

Int. 1360. Then, is it your understanding that where a patent covers, as you term it, a different part from the part which is covered by another patent, that they both cover the same device?

Ans. I should consider that where two patents covered different parts of the same wire lacing device, they both cover that device.

Int. 1361. Were any of the applications upon which the patents referred to by you were issued involved in interference with any of the other applications upon which any of such patents issued?

Ans. I cannot answer that question without looking up the matter, but call attention to the fact that most of these patents were taken out by the same inventor, Warren E. Ellis.

Int. 1362. If you can without inconvenience ascertain the fact, will you kindly do so and testify to the same at some later session?

Ans. Do you desire any of this information more promptly than some other?

Int. 1363. No. No hurry about it.

Ans. You are outlining considerable work for me.

Int. 1364. I thought you perhaps had it tabulated.

Mr. CHOATE. Is the question of interference of importance in this inquiry?

Mr. WEBSTER. It is not of much importance, but where there are two patents on the same thing I should like to know why.

The WITNESS. The patents speak for themselves more quickly than I can ascertain and state to you.

Int. 1365. Then I understand it is not convenient for you to make the search in answer to that question?

Ans. I shall be glad to, if you desire it.

Mr. CHOATE. It involves a great deal of time.

The WITNESS. I did not speak of that so much in connection with this particular question, but the accumulation of matters which I am to look up is getting large and all together they will require considerable time.

Int. 1366. If it involves much trouble or inconvenience, I will not ask it. If you find it convenient and involving very little time, I should like it.

Ans. Under those circumstances I shall certainly get it for you.

Int. 1367. Referring to the purchase from Rice and LaChappelle on page 622, in answer to questions 632 and 633, you refer to patents and applications. Kindly state whether the applications referred to have yet merged into patents or whether the applications are now pending.

Ans. It will be necessary for me to examine the schedule referred to in that question before I can answer that question.

Int. 1368. I think the schedule refers to applications.

Mr. CHOATE. Can we have Exhibit 128?

[*Exhibit 128, schedule, produced by the examiner and inspected by witness.*]

Ans. Referring to schedule A in Plaintiff's Exhibit No. 128, application serial No. 326,687 mentioned in that schedule has matured into patent No. 1,030,736, granted June 25, 1912.

Int. 1369. And the title?

Ans. "Attachment for chain stitch sewing machine." Application No. 332,970 has matured into patent No. 1,030,784, granted June 25, 1912, chain stitch seam and method of making chain stitches.

Application No. 261,956 has matured into patent No. 1,048,549, improvement in lockstitch shoe sewing machines, granted December 31, 1912.

Int. 1370. Referring to the acquisition from the Carver Cotton Gin Company, you say in answer to question 640, page 623, that that company had gotten into the business of making two or three shoe machines through having manufactured, at one time and another, machines on contract for certain parties who did not have shops of their own, and that they had gotten into it accidentally. If these statements are facts within your own knowledge, kindly state for whom that company manufactured machines on contract for other parties.

Ans. Those statements were made on the authority of Mr. Hobart, the president of the Carver Cotton Gin Company; but I cannot at this time state the names of any parties for whom the Carver Company had so manufactured machines under contract.

Int. 1371. Can you give the name of any party for whom the Carver Cotton Gin Company made shoe machines?

Ans. I can upon looking it up. It is a matter of common knowledge.

Int. 1372. If you can ascertain the fact inquired about without inconvenience, kindly do so. In question 641, page 623, reference is made to the Acme leveling machine. Kindly state whether or not the Acme leveling machine referred to in that question and answer is illustrated in the catalogue of the United Company issued, as stated by you heretofore, in 1902; and, if so, on what page?

Ans. I think not. I do not find it in the index.

Int. 1373. State whether the Acme leveling machine referred to in the question and answer was manufactured and put out by the United Company.

Ans. When?

Int. 1374. At any time.

Ans. Yes, sir.

Int. 1375. State when as nearly as you can.

Ans. It was put out by us for some years prior to the acquisition of the business of the Carver Company. We purchased from

the Carver Company the machines which we put out. After that acquisition, we continued to put out these machines in increasing numbers, — in large numbers.

Int. 1376. Was the United Company putting out the Acme leveling machine in 1907?

Ans. Yes, sir.

Int. 1377. Are they now putting it out?

Ans. Yes, sir.

Int. 1378. Is the particular machine referred to in question and answer 641 covered by patents owned by the United Company?

Ans. I believe the machine as now put out embodies an invention covered by a pending application.

Int. 1379. Then, as I understand your answer, so far as you know, the machine as acquired from the Carver Cotton Gin Company was not protected by any patent?

Ans. That is true.

Int. 1380. Kindly state, if you are able, the names of some of the concerns now using the Acme leveling machine.

Ans. I believe I have recently been informed that there is one of those machines in the factory of A. E. Little & Company in Lynn. They are in very general use, however.

Int. 1381. In what department of the United Company are the Acme leveling machines classified?

Ans. I believe that machine is in the general department; in fact, I am positive that it is.

Int. 1382. In answer to cross-interrogatory 646, page 624, I understand you to say that the peculiarity of the Acme leveler is that it is principally of utility on freak shoes. Kindly state if my understanding is correct.

Ans. It is not.

Int. 1383. Kindly state what you mean by the answer referred to.

Ans. The word "that" in this answer refers back to interrogatory 641 and the intervening interrogatories and answers.

Int. 1384. Then you wish to be understood that the Acme level-

ing machine is adapted for freak shoes and sample shoes only, or do you mean that it is adapted for use on any kind of shoe?

Ans. As pointed out in my answers to questions 646 and 647, the Acme leveler was particularly useful,—was and is particularly useful on sample or freak shoes, every consecutive one of which may be of different size or shape. The movements of the roll and jack on this machine are entirely hand controlled, while the Goodyear automatic leveling machine, which is the machine in general use for leveling welt shoes, must be adjusted for every variation in size or shape of last. The automatic leveler is so very much faster and does so much better work than the Acme that it is almost universally used for the regular work going through the factory; and, as I have stated, the Acme is used on sample and freak shoes.

Int. 1385. Then, as I understand you, the Acme leveling machine is adapted for use on all kinds of shoes?

Ans. No, sir.

Int. 1386. Upon what kind of shoes is it not adapted for use?

Ans. It is not adapted for use on turned shoes because it is too heavy; it exerts too much pressure; it is not adapted for use on McKay shoes because it is a roll machine and operates upon the shoe while the last is in it, while the McKay shoe requires a greater amount of pressure than can be exerted by the Acme machine and is leveled after the last has been removed from the shoe.

Int. 1387. Then do you mean that the Acme leveling machine is adapted for use upon all welt shoes?

Ans. The Acme machine could be used upon all welt shoes, but no manufacturer could afford to level his regular line of shoes upon that machine because it is extremely slow as compared with the automatic leveler, and the work which it does is not equal to the work of that machine.

Mr. WEBSTER. All that portion of the answer following the words "but no manufacturer" is objected to as not responsive. Counsel moves that it be stricken out.

Int. 1388. Referring further to the purchase of the Carver Cotton Gin Company, you say, on page 646, that the Amazeen skiver could not be used with commercial success as the vamp skiver pur-

chased of the Carver Cotton Gin Company. Will you kindly explain what you mean by that answer and explain why it could not be used with commercial success provided it were made of sufficient strength?

The WITNESS. Give me Defendants' Exhibits 28 and 29.

[*Question read by the stenographer.*]

Ans. The Amazeen machine was equipped with a light rotating knife, and the stock was fed to it by a thin rotating disc. This construction was particularly well adapted for light leathers, and if the parts were made heavy enough for heavy leather, the machine would not operate satisfactorily on the lighter leathers, for which it is particularly constructed and designed.

Int. 1389. Will you kindly examine the cut of machine on page 132 of the United Shoe Machinery Company catalogue issued, as stated by you, in 1902, and state whether it illustrates the Amazeen skiver referred to by you in the several previous answers?

Ans. The cut on page 132 of the catalogue referred shows the Amazeen skiving machine as it was put out at the date when this catologue was issued; that is, in 1902.

Int. 1390. Did the United Company put out the skiver purchased by it of the Carver Cotton Gin Company?

Ans. Yes, sir; we have put out that machine continuously since the purchase.

Int. 1391. What is its commercial name?

Ans. Carver vamp skiving machine.

Int. 1392. Is it illustrated in the catalogue of 1902?

Mr. CHOATE. Probably not. We did not buy it until 1908.

Mr. WEBSTER. Well, it is for him to say.

Ans. It is not illustrated in that catalogue.

Int. 1393. Is any machine illustrated in that catalogue adapted for accomplishing the same work as the skiver purchased of the Carver Cotton Gin Company?

Ans. I think not.

Int. 1394. Has the United Company any illustrations or descriptive printed matter relating to the skiver purchased of the Carver Cotton Gin Company?

Ans. Yes, sir; I have a leaflet which illustrates the Carver machine.

[*The witness produces leaflet relating to Carver vamp skiving machine, which is marked "Plaintiff's Exhibit 192".*]

Int. 1395. Kindly state whether the Carver vamp skiving machine illustrated in a leaflet produced by you and put in evidence as Exhibit 192 is constructed the same as the vamp skiver purchased of the Carver Cotton Gin Company.

Ans. I believe the construction of the machine shown in the exhibit is substantially the same as that of the machine acquired from the Carver Company.

Int. 1396. Referring now to the Amazeen skiving machine illustrated on page 132 of the catalogue heretofore referred to, kindly state whether the machine as there illustrated was put out by the United Company immediately after its organization in 1899.

Ans. This machine has been improved from time to time by the embodiment in it of inventions made since the United Company was organized, but the machine which the United Company has been putting out since its organization is of the same general type as that shown in the cut on page 132 of the catalogue.

Int. 1397. State if you know whether the Amazeen skiver illustrated on page 132 was put out by any of the companies which went to make up the United Company at the time of its organization.

Ans. It is my recollection that at the time the United Company was organized the Amazeen skiving machine was put out by the Amazeen Skiving Machine Company, the officers of which were closely related to the officers of the United Company, and the business was done in the same offices.

Int. 1398. And can you tell when the Amazeen Skiving Machine Company was organized?

Ans. I cannot, from my recollection.

Int. 1399. Was it prior to the organization of the United Shoe Machinery Company?

Ans. I think so.

Int. 00. Will you state what patents, so far as you know, were in existence at any time relating to the Amazeen skiver?

Mr. CHOATE. Pause a moment. Will you point out where that was opened on cross-examination?

Mr. WEBSTER. I cannot say that it was specifically referred to, although reference has been made to the Amazeen skiving machine.

Mr. CHOATE. Well, only to the fact that the United Company had such a machine at the time that it bought the Carver vamp skiving machine.

Mr. WEBSTER. Will you instruct the witness not to answer?

Mr. CHOATE. If there is anything that you can point out that shows that it was brought out on cross-examination, I won't object to his answering.

Mr. WEBSTER. I am strongly of the opinion that it is referred to in the cross-examination in such a manner as will entitle us to make the inquiry, but I am fearful that the time required to hunt it up will be far greater than to take it up at a later time.

Mr. CHOATE. Well, do you think that it is mentioned on cross-examination except on pages 646 and 647?

Mr. WEBSTER. I could not say. I am very strongly of the impression that it was referred to in such a manner as to entitle us to make the inquiry.

Mr. CHOATE. Well, I feel quite confident that there has been no mention of patents on that machine, so I shall instruct the witness not to answer until the court orders him to.

The WITNESS. Under instructions, I decline to answer.

Int. 1401. State, so far as you are able, when the Amazeen skiver, constructed as illustrated on page 132 of the catalogue referred to, first went into use.

Ans. I think the machine shown in that drawing incorporated inventions made shortly before the publication of this catalogue, so that this particular machine, as illustrated in the drawing, had not been in use for more than a year or so.

Int. 1402. Had there been another skiving machine made previously which was known as an Amazeen skiver?

Ans. Yes, sir.

Int. 1403. Can you point out briefly how it differed from the construction illustrated on page 132?

Ans. If agreeable I should prefer to defer answering that question until I have an opportunity to refresh my recollection by examining prior types of machines and the patents which cover the various types of machines.

Int. 1404. That is quite agreeable to counsel. In answer to cross-question 666, on page 648, you say, referring to the vamp skiver and Acme leveler: "The patents at that time had expired on those two machines. They were comparatively simple machines." Will you kindly state, if you are able at the present time, what patents had previously been issued relating to the vamp skiver and Acme leveler referred to by you in answer to the question?

Ans. I have not the data as to these patents at hand, but shall be glad to look them up, if desired.

Mr. WEBSTER. If not too much trouble, I would like to know of them.

Int. 1405. Referring now to the purchase from the Richardson Shoe Machinery Company, referred to in Exhibit 125, commencing "Inventions and Patents on the Improved McKay Sewing Machine", kindly state whether the applications referred to in schedule attached to Exhibit 125 have since merged into patents. I notice at the heading of the Schedule D as follows: "Patents (including applications and interest of Richardson Company)." Kindly state, if you know, whether any applications for patents were included in the transfer.

Ans. I do not recall that any applications for patents were assigned as a part of this transaction.

Int. 1406. You say in answer to cross-question 687, on page 650: "The claim of one of these patents clearly covered a very important feature of the Model B machine." Will you kindly state what patents contained the claim referred to, and state also in a general way what you mean by "Model B machine"?

Ans. The claim referred to was claim 16 of Richardson patent No. 710,613, dated October 7, 1902. The Model B machine, referred to in the answer to question No. 687, was the Model B McKay sewing machine of the United Company.

Int. 1407. And did the United Company then continue to put out the Model B McKay machine?

Ans. After what date?

Int. 1408. After the date of the purchase from the Richardson Company.

Ans. Yes, sir.

Int. 1409. And have they since continued to put it out?

Ans. Yes, sir.

Int. 1410. And is the machine now in common use, so far as you know?

Ans. Yes, sir.

Int. 1411. Can you state some one or more of the places where itis in use?

Ans. Not from memory, but I can easily ascertain.

Int. 1412. As I understand you, this machine, Model B, was not adapted for use on welt shoes at all?

Ans. Not at all. It was the essence of the machine that it should be adapted for use in attaching soles to McKay shoes.

Int. 1413. Referring now to the purchase from Booth Brothers, Exhibits 121, 122, 123 and 124, you refer, among other things, to a fudge-edge machine. Kindly state whether or not a fudge-edge machine is a machine for ornamentation.

Ans. A fudge-edge machine is intended and adapted for performing two operations simultaneously; that is, the formation of stitch impressions on the upper face of a sole edge and setting or burnishing the edge of the sole. This machine is adapted for performing such operations on light-weight McKay shoes or turned shoes.

Int. 1414. Purely ornamental, is it not?

Ans. No, sir; I should hardly regard the edge setting as pure ornamentation.

Int. 1415. You say that a fudge-edge machine operates to ornament as well as set the edge?

Ans. Yes, sir.

Int. 1416. I notice in question 709 reference is made to a fudge-edge machine. If that machine was covered by a patent, so far as you know, will you kindly point out what patent?

Ans. That machine was covered by patent 852,703, Carnes, granted May 7, 1907, wheeling and edge-setting machine.

Int. 1417. Then, is the term "fudge edge" a fanciful term?

Ans. The term "fudge-edge maker" or "fudge-edge machine" is one which has been used to describe a machine or tool for performing two operations,— performing simultaneously these two operations. I do not know the origin of the expression.

Int. 1418. Reference has been made in the same question to a wheeling machine. Kindly state how the operation of the wheeling machine differs from the operation of the fudge-edge machine.

Ans. Booth wheeling machines were used for the purpose of making a stitch impression upon the upper face of the edge of the sole of a welt shoe to prepare that face of the sole edge for the operation of the stitch-burnishing machine.

The fudge-edge machine, so far as its wheel operation was concerned, was complete in itself; that is, the upper face of the sole edge operated upon by the fudge-edge machine did not require any further treatment, and specifically did not require any burnishing, as did the edge of the welt shoe after it had been operated upon by the wheeling machine. The operations of the two machines further differed in that the fudge-edge machine was not adapted for use upon welt shoes, and its field was limited, as I have already stated, to light McKays or turns. This Exhibit 30, which is a shoe which has been operated upon by the fudge-edge maker, is a light McKay.

Int. 1419. Was the wheeling machine referred to in the question the subject-matter of a patent? And, if so, state what one.

Ans. Booth Brothers had two types of wheeling machines; one, known as the ratchet wheeler, was covered by the patent 817,309, granted April 10, 1906, Flynt; and No. 826,352, granted July 17, 1906, Olson and Flynt. The first was clutch and the second shoe machine. That machine was inactive at the time of the acquisition, as it had been superseded by an improved machine known as the Booth geared wheeler, which was covered by patent 958,913, granted May 24, 1910, Flynt imitation stitch machine.

Int. 1420. Reference is made in the same question to upper-shap-

ing machine. Kindly state whether the upper-shaping machine relates to the shaping of uppers.

Ans. Yes, sir. That was a simple machine for holding the upper of a shoe while it was cleaned.

Int. 1421. Patented?

Ans. I believe not. It was a very simple machine.

Int. 1422. Reference is also made in the same question to beading machine, notably the Columbia and Victor. Kindly state whether the beading operation related to uppers or to some other part of the shoe.

Ans. This beading operation was the operation known as upper beading. The operation was performed in the turning right side out of the lining and upper after they had been sewed together, that sewing operation being performed while the lining and upper are wrong side out.

Int. 1423. In answer to question 709, you refer to the Stillman A. West patent. While you may have given the date and number at some other point, I will ask you to kindly point out at this stage the date and number of the patent, if you can conveniently do so.

Ans. Later in the record I stated the number and date of the patent to Stillman A. West under which the Rochester lacer was manufactured. I believe I have not the date at hand, but possibly you will not be interested when I state that that patent was never acquired by the United Shoe Machinery Company, but that some years before the date of the Booth Brothers acquisition an exclusive license under the patent was granted to, and is still held by, the Boston Machine Works, of Lynn.

Int. 1424. Are the Boston Machine Works related in any way to the United Company?

Ans. No, sir.

Int. 1425. Did the United Company ever put out the Rochester lacer?

Ans. I think not; if it did, it purchased the machine from the Boston Machine Works.

Int. 1426. In answer to question 719, page 655, you refer to the

pending application. Kindly state whether the application referred to has merged into a patent.

Ans. No, sir.

Int. 1427. In answer to question 759, on page 660, you speak of a patent on a machine, the patent having expired. Will you kindly state what patent you had reference to, if you can do so at the present time?

Ans. I have not at hand the data of the patent on the Booth upper-shaping machine, but will look it up if you desire.

Int. 1428. If you can get at it readily without any loss of time and annoyance, I would like it; otherwise, not.

Ans. I shall be glad to get it.

Int. 1429. In cross-question 763, on page 660, reference is made to a heel-burnishing machine. Kindly advise whether the heel-burnishing machine is used for any purpose other than polishing or burnishing the heel.

Ans. I am not aware that a heel-burnishing machine is ever used otherwise than for burnishing heels.

Int. 1430. And the burnishing operation is a finishing operation, is it not?

Ans. Yes, sir.

Int. 1431. In answer to cross-question 765 reference is made to various pending applications. Will you kindly state whether any of those applications have merged into patents?

Ans. Application serial No. 252,647 has matured into patent 1,030,049, granted June 18, 1912. Application serial No. 304,880 has matured into patent No. 1,024,612, granted April 30, 1912.

Int. 1432. If you will give the titles, please?

Ans. The title of the first is: "Burnishing tool for boots and shoes." The title of the second is: "Tool for finishing the heels of boots and shoes."

Int. 1433. Does that take them all?

Ans. The patent on the other application, serial No. 252,646, has not yet issued.

Int. 1434. In question 770 reference is made to pending applications; the same are not, however, identified. Will you kindly

state whether those applications are pending or whether patents have been issued upon them?

Ans. I shall have to see the schedule, to identify the applications, Mr. Webster. [*Examines schedules, Exhibits 117 and 118.*] The application serial No. 245,704 has matured into patent 946,789, granted January 18, 1910, Smith, needle for shoe-lacing machines. On the schedule is enumerated application serial No. 296,385. That may be an error, as I find that the application serial No. 296,388 was filed January 16, 1906, and matured into patent 962,105, Smith, granted June 21, 1910, fastening machine. Serial No. 245,704 matured into patent 946,789, granted January 18, 1910; I have already given that, I believe. Application serial No. 259,839 was for reissue of patent No. 779,008, granted January 3, 1905.

Int. 1435. The title?

Ans. "Machine for automatically lacing shoe uppers." That reissue was granted on April 23, 1907, No. 12,638. That accounts for the three applications enumerated in the schedule.

Int. 1436. In answer to cross-interrogatory 787, page 665, reference is made to infringing some patents that cover the machine of Campbell and Nichols, which I understand was a tack puller. Will you kindly specify what patents you have reference to?

Ans. The patent which was infringed by the experimental machine of the United Company which was being developed at the time of the acquisition of the tack puller patents of the Brockton Supply Company was No. 777,795, granted December 20, 1904, Lyon.

Int. 1437. The title?

Ans. "Machine for pulling lasting tacks."

Int. 1438. In answer to cross-question 796, on page 666, you refer to an application by serial number and date. Kindly state whether a patent was issued on that application.

Ans. Courteau application serial No. 320,611 matured into patent No. 891,912, granted June 30, 1908, machine for supporting shoe uppers.

Int. 1439. Referring to acquisition of the property of Booth

Brothers, you refer to a considerable extent to perforating machines. Kindly state whether these machines related to or were designed for ornamenting the uppers of shoes, or for some other purpose.

Ans. They were designed for ornamenting uppers or parts of uppers of boots and shoes.

Int. 1440. Referring to the acquisition from Arnold, you speak of cementing machines, and I understand you to say that the patent and machine became valueless because of a machine put out by manufacturers having adhesive material. Kindly state if I am correct in my understanding.

Ans. The machine constructed under Dunn patent No. 728,793, May 19, 1903, and 930,593, August 10, 1909, was intended and adapted for applying cement to the flesh side of an insole preparatory to the application to the insole of reinforcing material. At about the time of the acquisition of these patents by the United Company prepared canvas, that is, canvas having adhesive material on it, or rather, canvas which was already provided with adhesive material, was put upon the market by several concerns other than the United Company, and as the use of this canvas effected a considerable economy over the older operation of cementing the canvas in the shoe factory, as well as being much cleaner and more convenient, the prepared canvas went into almost universal use, so that there was no longer any demand for machines constructed under the patents acquired from Arnold.

Int. 1441. In answer to cross-question 839, page 675, you seem to refer to needles furnished to users of Goodyear machines. Will you kindly define what you mean by "Goodyear machines" in that connection?

Ans. Welters and stitchers.

Int. 1442. Then, as I understand you, welters and stitchers put out by the United Company are commercially known as Goodyear machines; am I correct?

Ans. The welter put out by the United Company is known as the Goodyear welter, and the stitcher put out by the United Com-

pany is known as the Goodyear stitcher; that is, colloquially. Of course, the company has its own names for different models.

Int. 1443. Referring to your testimony relating to the acquisition from the American Glue Company, I understand no patents or inventions were involved in the transaction; am I correct?

Ans. I believe so.

Int. 1444. Referring to your testimony with reference to brushes, it is my understanding that the brushes are used for finishing purposes; kindly advise if I am correct.

Ans. If that term be used with a broad meaning, it probably covers the various uses to which brushes are put. It should be broad enough to include cleaning.

Int. 1445. On page 683 reference is made in your examination to cementing machine acquired from Joseph P. Curtis. Kindly state whether the machine or device referred to was the subject-matter of a patent.

Ans. Yes, sir. This machine was covered by patent No. 789,-718, granted May 16, 1905, J. P. Curtis, machine for applying adhesive or other coatings to sheets. At the time of the acquisition the application for this patent was still pending, serial No. 174,913, filed September 28, 1903.

Int. 1446. Reference is made in your examination, on page 685, to a Kreig machine for trimming the heel and sole. Kindly say whether the machine referred to by you was patented.

Ans. Yes, sir. The patent was No. 560,829, granted May 26, 1896, G. A. Ambler, rounding or trimming machine.

Int. 1447. The machine, as I understand you, had a cutter with an up and down motion?

Ans. Yes, sir; a reciprocating knife.

Int. 1448. A knife which operated similar to a mortising machine?

Ans. Well, the knife had an up and down and back and forth movement. It was arranged to feed the work as well as to cut off the material which it was designed to remove.

Int. 1449. So that it is not, as I understand, to be used on the Goodyear sole?

Ans. Yes, sir; in trimming the heel seat of a Goodyear shoe.

Int. 1450. Is it not true that the Goodyear soles are oftentimes cut to shape at the outset, the shape following the contour of the finished sole?

Ans. I believe that they are never so shaped prior to the — never so shaped at the heel end of the sole prior to the operation of the Goodyear outsole stitcher as put out by the United Company.

Int. 1451. I find here, in answer to question 934, a patent is mentioned. I take it to be the patent you have just testified to, 560,829, May 26, 1896.

Ans. That is the number of this patent; yes, sir.

[*Adjourned to 10.30* A. M., *July 16, 1913.*]

BOSTON, MASS., July 16, 1913.

Int. 1452. During the course of your examination, you kindly consented to bring in data and memoranda with reference to various matters you were unable to give during the time you were testifying. If you have any of that data, will you kindly spread it on the record at the present time?

Ans. You wished me to ascertain from whom the United Company was purchasing peg wood prior to the acquisition of the business of B. F. Sturtevant. I find that all the peg wood purchased by us prior to that date was obtained from B. F. Sturtevant. You requested the names of the users —the names of some users of the present commercial shank-sticking machine of the United Company. The names of four of the users are as follows: Endicott, Johnson & Company, Leicestershire, New York; George B. Jones & Company, Manchester, New Hampshire; Sears, Roebuck & Company, Springvale, Maine; A. E. Little & Company, Brockton, Massachusetts. You requested me to name one or more parties for whom the Carver Cotton Gin Company made machines under contract prior to the acquisition of the business of the — shoe machinery business of the Carver Company by the United Company. I am informed that the Carver Company made all the machines which were put out by S. D. Tripp until the Tripp patents ran out, after which the Carver Company made and sold these Tripp machines itself.

Int. 1453. Kindly state what character of machine you refer to when you speak of the Tripp machine.

Ans. As I recall, the Tripp machine was an edge-setting machine which became obsolete long ago. You requested me to obtain the data of the expired patents on the Acme leveling machine. These patents were No. 266,283, Gilmore, dated October 24, 1882, sole leveling machine; No. 344,650, Gilmore, dated June 24, 1886, sole leveling machine, and No. 403,495, Strong, dated May 14, 1889, sole leveling machine. You requested me to look up the expired patents on the Booth upper shaper. I find that these patents were numbered 355,966, I. E. Booth, dated January 11, 1887, a machine for stretching and finishing shoes, and No. 364,888, I. E. Booth, dated June 14, 1887, shoe-stretching machine. Perhaps I should add that I had learned that the machine had become obsolete before the acquisition of the business of Booth Brothers. You requested me to ascertain whether any of the applications for the patents of the Ellis Lacer Company had been involved in interferences with the applications for any other of the patents of the Ellis Lacer Company. A brief investigation indicates that there were no such interferences. You requested me to state the names of some users of the United Company's Model B McKay sewing machine. May I inquire as to the location of factories which you would prefer?

Int. 1454. Anything that is within easy reaching distance.

Ans. I will then name the following manufacturers located in Lynn as users of the Model B McKay sewing machine: Allen, Foster, Willett Company, George F. Daniels Company, William H. Ingalls Company, Adams Shoe Company, Tufts & Friedman, C. E. Blake & Company, John R. Donovan & Company. You also requested me to look up the data of the interferences in which the Stanbon application for channel-cementing machine, on which was granted patent 1,004,705, was involved, and to ascertain how many patents had been granted on the applications which were involved in those interferences. I find that the Stanbon application was involved in nine interferences, of which I can give the data if you desire.

Int. 1455. If you can give some of the data very briefly, that, perhaps, will be sufficient.

Ans. The numbers of the interferences in which the Stanbon application was involved were No. 25,427, 25,428, 25,429, 25,430, 25,431, 25,432, 25,433, 26,519, 26,520. Replying to the second part of your question, in addition to the Warren patent 1,030,623 and the Stanbon patent, to which I referred yesterday, I find that the following patents have been granted upon applications which were involved in one or more of these interferences: No. 1,030,659, C. E. Howe, dated June 25, 1912, cementing machine; No. 1,043,083, F. M. Furber, dated November 5, 1912, cementing machine. That is all the information that I have been able to get so far in response to your requests.

Int. 1456. You have testified to a considerable extent with reference to assignments of patents. Kindly state whether you have custody of the records of assignments, or whether you procured your information from some other official.

Ans. I personally have charge of all assignments of patents to the United Company, which are kept in safes in my offices.

Int. 1457. Do you also have charge of assignments of patents to the companies that are associated or affiliated with the United Company?

Ans. I have the custody of the assignments of nearly all, if not all, of those companies.

Int. 1458. In testifying in reference to the Arthur Fuller acquisition referred to in Exhibit 98, I understand you to say that the machine purchased of Arthur Fuller, doing business under the name of American Sole Laying Machine Company, was a double sole-laying machine, and that the United Company afterwards purchased a sole-laying machine from the Boot & Shoe Laying Machine Company, and that afterwards there was some combination of these machines which together went to make up the Goodyear improved twin sole-laying machine. Kindly state whether my understanding or interpretation of your testimony is correct. You will find that on page 697, and following.

Ans. The United Company had, previously to the acquisition

of the patents of the American Sole Laying Machine Company, acquired patents from the Boot & Shoe Sole Laying Company, under which it was putting out a single form sole-laying machine. The American Company held a license under Cutcheon patent No. 384,893, dated June 19, 1888, which enabled the American Company to put out a two-form sole-laying machine. That patent prevented the United Company from transforming its single-form machine into a two-form machine until this license was required from the American Company. After that acquisition, the United Company made a two-form machine of the machine which it had acquired from the Boot & Shoe Company, and that machine, as improved by the embodiment in it of subsequent inventions, is known as the Goodyear improved sole-laying machine.

Int. 1459. Did the American Sole Laying Company put out the sole-laying machine prior to the acquisition of the assets of that company by the United Company?

Ans. Yes, sir.

Int. 1460. And for how long a time prior to such acquisition had the American Sole Laying Company been putting out such machine?

Ans. I cannot state at this time for how long a period. I think, however, that they had put out such a machine for several years.

Int. 1461. By "several years" do you you mean three or four or five or six or seven years?

Ans. I cannot state it more accurately without looking it up.

Int. 1462. Do you know if many such machines had been put out by the American Sole Laying Machine Company?

Ans. I cannot from memory state the number more definitely than to say that I am confident that it was a substantial — that they had put out a substantial number of machines.

Int. 1463. Did the United Company put out any machines after its purchase from the American Sole Laying Machine Company constructed like the machines which had previously been put out by the American Sole Laying Machine Company?

Ans. After the acquisition of the American Sole Laying Machine Company the United Company put out the improved machines to

which I have referred, which embody the inventions of several of the patents acquired from the American Company. I am not advised whether or not machines identically like the drawings of any of the patents acquired from the American Company were put out by the United Company after the acquisition of those patents.

Int. 1464. Then, as I understand you, the acquisition from the Boot & Shoe Sole Laying Company was prior to the acquisition from the American Sole Laying Machine Company?

Ans. Yes, sir.

Int. 1465. And can you state for how long a time the Boot & Shoe Sole Laying Company had been putting out its laying machine prior to the acquisition of the assets of that company by the United Company?

Ans. The Boot & Shoe Sole Laying Company had been putting out its machine for some years prior to the acquisition of its patents by the United Company.

Int. 1466. State, if you know, whether they had put out a substantial number of machines.

Ans. I think they had put out the machine in considerable numbers.

Int. 1467. Did the United Company put out machines constructed like those previously constructed by the Boot & Shoe Sole Laying Company?

Ans. Yes, sir.

Int. 1468. And for how long a time did it continue to do so?

Ans. The United Company has continuously, since the date of the acquisition of patents of the Boot & Shoe Sole Laying Company, put out machines substantially like those put out by that company, except that, as I have already stated, the machine was made a two-form machine after the acquisition of the patents of the American Sole Laying Machine Company, and the machine has further been substantially improved from time to time by the embodiment in it of other inventions.

Int. 1469. Is the machine known as the Goodyear improved twin sole-laying machine the same machine you refer to in your last answer?

Ans. Yes, sir. Perhaps I should add that the machine may not have been known by that name during the entire period.

Int. 1470. State as nearly as you can for about how long a period of time the machine in question has been known as the Goodyear improved twin sole-laying machine.

Ans. Before the twin machine was developed subsequently to the acquisition of the patents of the American Sole Laying Machine Company, the machine put out by the United Company under the patents acquired from the Boot & Shoe Sole Laying Company was known as Goodyear improved sole-laying machine. This was the name by which the machine was known in 1902. I think it was within a short time after that date that the twin machine was developed.

Int. 1471. Kindly state whether an illustration of the Goodyear improved sole-laying machine referred to by you is found in the catalogue produced by you, published in 1902; and, if so, state upon what page the illustration is found.

Ans. Yes, sir. This machine is illustrated on page 22 of that catalogue.

Int. 1472. Will you briefly point out to the court the difference in construction of that machine from the construction of the machine of the Boot & Shoe Sole Laying Company?

Ans. The machine shown on page 22 of the catalogue in question is substantially the same machine which was put out by the Boot & Shoe Sole Laying Company.

Int. 1473. Have you an illustration of the Goodyear improved twin sole-laying machine?

Ans. I have not such an illustration with me.

Int. 1474. Will you kindly produce one?

Ans. I shall be glad to.

Int. 1475. Kindly state whether the sole-laying machine illustrated on page 22 of the catalogue is a single or a double machine.

Ans. It is a single machine.

Int. 1476. Is the single machine like the illustration referred to being put out at the present time by the United Company?

Ans. If manufacturers call for it, — but I think manufacturers

always prefer the double machine on account of its much greater capacity.

Int. 1477. Then, as I understand you, it is not being put out so far as you know?

Mr. CHOATE. Would it be more correct to say it is not called for?

Mr. WEBSTER. His answer is: "Not unless."

Int. 1478. The question is whether you have any knowledge as to whether the machine is in fact put out or not.

Ans. I cannot state at this time, because I have no occasion to have such information.

Int. 1479. Referring to the acquisition from the O. A. Miller Company referred to in Exhibits Nos. 93, 94 and 95, relating to treeing machines, I understand you to say that that was a new branch and that the treeing machines are essential for the process of finishing shoes. Kindly refer to the record on page 701, interrogatory 1072 and following, and state whether my understanding is correct.

Ans. At the date of this acquisition, the United Company had no machines of any description adapted for use in the treeing of shoes. That operation is the operation of cleaning and finishing the uppers after the manufacture of the shoe has been otherwise substantially completed.

Int. 1480. Kindly state just what you mean by the employment of the term "essential".

Ans. I did not use that expression.

Int. 1481. You seem to have adopted it as it was incorporated in the question. Kindly state, then, whether you intended to say in your cross-examination that treeing machines were essential to the process of finishing shoes.

Ans. As I read my answer to cross-interrogatory 1073, I seem to have answered the second part of that interrogatory and to have overlooked the first part.

Int. 1482. Will you now state whether you consider the treeing machines referred to essential to the process of finishing shoes?

Ans. I will answer that question by stating that present trade

conditions require that the treeing operation be performed upon shoes in the course of their manufacture.

Int. 1483. Will you kindly state just what you mean by the word "essential"?

Mr. CHOATE. He has not used it.

Mr. WEBSTER. I think he did in the last answer.

[*Answer read by the stenographer.*]

Int. 1484. Are you willing to state whether you used the word "necessary" as synonymous with "essential"?

Ans. I believe I have used neither word.

Int. 1485. Kindly state whether you used the word "require" as synonymous with "essential".

Ans. I intended to use the word "require" with its ordinary meaning.

Int. 1486. Referring now to the eyelet purchases, I think you produced at the time of your cross-examination some specimens of eyelets made under certain of the patents referred to by you. Will you kindly produce some duplicates?

Ans. I now produce samples of fast-color eyelets.

The EXAMINER. Samples of fast-color eyelets are "Plaintiff's Exhibit 193".

[*Ans. continued:*] Also samples of enamel eyelets.

The EXAMINER. Samples of enamel eyelets are "Plaintiff's Exhibit 194".

Int. 1487. Kindly point out briefly what patents cover the fast-color eyelets and what patents cover the enamel eyelets.

Ans. The fast-color eyelet was covered by patent No. 557,992, Kempshall, granted April 7, 1896, "eyelet". At the time of the acquisition there was pending an application covering the dies which were used in applying celluloid to the eyelets, which application had been filed February 9, 1895. That application was forfeited and was renewed August 23, 1902, serial No. 120,856. A patent was granted on the renewed application, No. 786,694, Kempshall, dated May 9, 1905, "dies for applying covering material to the faces of eyelets". The method of covering these fast-color eyelets was originally claimed in the die application filed

February 9, 1895. A divisional application covering this method was filed April 17, 1905, serial No. 255,990, on which application was granted patent No. 789,695, Kempshall, dated May 9, 1895, "method of forming eyelets".

Int. 1488. In answer to cross-question 1110, on page 707, you say that the Boot & Shoe Sole Laying Company, you are confident, had some of the Eppler patents, which you were to supply later. Kindly advise whether you have the list at the present time.

Ans. I can now state, if you desire, the data of all the patents or inventions which were incorporated in the machine of the Boot & Shoe Sole Laying Company at the time of its acquisition.

Int. 1489. Kindly give the name, title and date of the patents referred to in your answer to question 1110, on page 707, referred to as Eppler patents.

Ans. The Eppler patent to which I had reference in that answer was No. 315,923, April 14, 1885, "Eppler sole laying machine".

Int. 1490. Is that all?

Ans. My answer, to be responsive, should include other patents granted to Andrew Eppler, Junior, in addition to the one which I just named. The one which I named covered an invention embodied in the commercial machine, and in additon —

Mr. CHOATE. Wait a minute. What commercial machine?

The WITNESS. In the commercial machine put out by the Boot & Shoe Sole Laying Company at the time of the acquisition of its patents. Other patents acquired in that transaction which were granted on application of Andrew Eppler, Junior, were as follows: No. 304,415, September 2, 1884, sole-laying machine; No. 304,-416, September 2, 1884, sole-laying machine; No. 315,922, April 14, 1885, sole-laying machine; and No. 315,924, April 14, 1885, sole-laying machine.

Int. 1491. Referring to the Swain-Fuller Company acquisition (Exhibit 88), you refer in answer to question 1112, page 707, to "the Star leveling machine". Will you kindly briefly describe the construction of the Star leveling machine referred to by you?

Ans. The Star leveling machine as it was constructed at the time of the acquisition of the patents of the Swain-Fuller Manufacturing

Company was constructed substantially as shown in patent No. 435,882, A. K. Washburn, granted September 2, 1890, sole leveling machine, with the changes in that machine, shown in Washburn patent No. 435,883, granted September 2, 1890, sole-leveling machine.

Int. 1492. Kindly state whether the term "Star" as used in connection with a leveling machine was a trade name or designation.

Ans. It was a trade name in the proper sense, that is, an arbitrary name adopted by the manufacturers. It did not indicate any type of machine at the time the name was adopted.

Int. 1493. Does it now indicate a particular type of machine?

Ans. The name is still used to designate the machine which is still manufactured and put out by the United Company substantially as shown in the patents which I named.

Int. 1494. If the Star leveler is illustrated in the catalogue heretofore referred to, will you kindly point out the page?

Ans. The Star leveling machine is illustrated on page 171 of the 1902 catalogue of the United Company.

Mr. WEBSTER. Counsel for the Government offers in evidence the cut and printed matter on page 171 of catalogue of 1902.

[*Cut and printed matter on page 171 of catalogue of the United Shoe Machinery Company marked "Plaintiff's Exhibit 195".*]

Mr. WEBSTER. Counsel for the United States also offers in evidence cut of the Goodyear improved sole-laying machine and the printed matter shown on page 22 of the catalogue.

[*Cut and printed matter on page 22 of catalogue of United Shoe Machinery Company marked "Plaintiff's Exhibit 196".*]

Int. 1495. In answer to question 1132, on page 709, you say that the United Company had no machines for doing the work of nineteen of the machines referred to by you procured of the Ross-Moyer Company and specified in answer to cross-interrogatory 1118. You say that one of them, the heel seat beading machine, was a duplicate or did the same work as one which the company already had. On counting the list I find but nineteen in the list. Will you kindly state whether I am in error or whether some correction is required in your answer?

Ans. The list is correct, and I should have said eighteen instead of nineteen in my answer to cross-interrogatory 1132.

Int. 1496. The first on the list appears under the heading of "rolling machine". Will you kindly briefly state what a rolling machine is?

Ans. The chief use to which a rolling machine is put is to apply heavy pressure by means of rolls to sides of sole leather, to smooth it out and correct so far as possible lack of uniformity in thickness and in hardness of the stock.

Int. 1497. Kindly state briefly what a bottom-stamping machine is.

Ans. That is a machine for making an impression on the bottom of the sole or heel of a shoe.

Int. 1498. For ornamentation?

Ans. This impression may be of an ornamental character, but is more usually a trademark.

Int. 1499. Kindly state whether the button fly scalloping machine relates to treatment of uppers only.

Ans. It does.

Int. 1500. And heel seat beading machine relates to ornamentation?

Ans. I suppose the operation of that machine should be regarded as for the purpose of ornamenting the shoe, since the object of the operation is to improve the appearance of the shoe.

Int. 1501. Please explain briefly what the sole-gauging machine is.

Ans. I can state more definitely after recess.

Mr. CHOATE. Are you ready with your answer to the question, which was not answered, as to the sole-gauging machine?

The WITNESS. The sole-gauging machine of the Ross-Moyer Company was a machine for measuring and indicating to the operator the thickness of soles.

Int. 1502. Kindly state whether any patents were transferred by the Ross-Moyer Company to the United Company.

Ans. No, sir; the United Company acquired the stock of the

Ross-Moyer Company and the patents owned by that company remained in its possession.

Int. 1503. Does the Ross-Moyer Company now exist as a corporation?

Ans. Yes, sir.

Int. 1504. And I think you have heretofore testified that the officers of the Ross-Moyer Company are the same as the officers of the United Company?

Ans. I don't recollect whether I so testified.

Int. 1505. Do you know who the officers of the Ross-Moyer Company are?

Ans. No, I do not.

Mr. CHOATE. That was furnished by Mr. Donham to Mr. Gregg on one of the last days of the hearing, and is in the record somewhere. The Ross-Moyer Company is one of the defendants, you know.

Int. 1506. Kindly state whether the machines referred to in your answer to question 1134, on page 710, were manufactured and put out by the Ross-Moyer Company at the time of the acquisition of the stock of that company.

Ans. Yes, sir; all of those machines were being put out by the Ross-Moyer Company at the time the United Company acquired the stock of that company.

Int. 1507. I note the contract is dated September 20, 1900. Kindly state for how long a time, if you are able to tell, the Ross-Moyer Company were putting out the machines referred to in the previous question prior to the date of the contract.

Ans. The several machines had been put out by the Ross-Moyer Company for periods varying approximately with the dates of the respective inventions which were embodied in the machines.

Int. 1508. You have no record of the dates of the inventions, I assume?

Ans. The inventions were presumably made prior to the dates of the patents granted upon them.

Int. 1509. Then is it fair to say that the buffing machine was put out as early as April 29, 1890?

Ans. It was probably put out at about that time, or as soon after that date as a commercial machine could be constructed.

Int. 1510. Does the same answer apply to the bottom-stamping machine, the date of the patent of which is September 30, 1890?

Ans. I think that machine was put out at about that date or soon after.

Int. 1511. I note that you state that the embossing machine is covered by a patent dated December 2, 1890. Is it your understanding that the machines were put out at about that time?

Ans. I think so.

Int. 1512. I note that the patent as stated by you on the edge-setting machine is dated August 23, 1887. Is it your understanding that edge-setting machines were put out by that company at that date?

Ans. If you desire to know the dates at which the various machines were put out, I can ascertain them for you and would prefer to get the exact dates rather than to state them from memory.

Int. 1513. Will you kindly do so and testify to the facts inquired about at the next session?

Ans. I may be obliged to write to Cincinnati to get the information, but if available in Boston I will procure it before the next session.

Int. 1514. If you can state the dates approximately at the present time, I will be quite content.

Ans. I can really only guess at them, as I had no occasion to carry the dates in mind.

Int. 1515. Referring now to the Bay State International Shoe Machinery Company, Exhibit 86, you refer as I understand it to welting, stitching and rough-rounding machines, the reference being on page 710, cross-interrogatory 1135 and following. Kindly state whether those machines were the subject of United States patents.

Ans. I am prepared to give you the data of the British patents which were owned by the Bay State International Shoe Machinery Company. So far as I am advised, that company owned no United States patents.

Int. 1516. Kindly give the data of the foreign patents referred to by you.

Ans. The British patents of the Bay State International Shoe Machinery Company were as follows: 20,544 of 1897, dated September 7, 1897, —

Int. 1517. Give the title, if you will, Mr. Howard.

Ans. "Improvements in sewing machines for the manufacture of boots and shoes"; the machine of this patent was a chain stitch machine. No. 15,309 of 1898, dated July 12, 1898, improvements in waxed thread sewing machines. This machine was a chain stitch machine, and the patents covered the welting machine of the Bay State International Company. No. 24,853 of 1898, dated November 24, 1898, improvements in thread tension devices for sewing machines. This patent covered the welting machine of the Bay State International Company. No. 263 of 1899, dated January 5, 1899, improvements in sewing machines for use in the manufacture of boots and shoes. This machine covered the stitcher of the Bay State International Company.

Int. 1518. Was that a lockstitch?

Ans. The outsole lockstitch machine of the Bay State International Company, No. 4600 of 1899, dated March 2, 1899, improvements in stitch supporting and indenting machines for use in the manufacture of boots and shoes. No. 4645 of 1899, dated March 2, 1899, improvements in sewing machines for use in the manufacture of boots and shoes. This patent covered the outsole lockstitch machine of the Bay State International Company. No. 5952 of 1899, dated March 18, 1899, improvements in sole rounding and channeling machines. This company also owned certain French patents corresponding to the British patents above enumerated.

Int. 1519. Kindly state whether, so far as you know, the machines built under the patents referred to by you in the last answer went into extensive use in any country; and, if so, in what countries.

Ans. There were about ten sets of the machines put out in England.

Int. 1520. But none, so far as you know, put out in the United States?

Ans. My previous answer is the extent of my knowledge on the subject.

Int. 1521. To return briefly to the peg wood matter, kindly state whether, so far as you know, there was any concern putting out peg wood at the time the United Company acquired the peg wood interests of the Sturtevant Company.

Ans. At that time peg wood was being manufactured and sold by J. C. Lewis, of Orono, Maine, and by the United States Pegwood & Shank Company, of Charlestown.

Int. 1522. Do you know whether the concerns referred to in your answer are now in business?

Ans. I do not. My inquiry which produced this information was directed to conditions at the time of the Sturtevant acquisition as requested by you yesterday.

Int. 1523. Kindly state whether you have illustrations of the machines of the Bay State International Company to which you have made reference in your testimony.

Ans. Not except as they are illustrated in the drawings of the patents to which I have referred.

Int. 1524. Referring to the acquisition from the Stanley Manufacturing Company, you referred in your testimony on cross-examination, on page 711, to channeling machines. Kindly state whether you have an illustration of the type of channeling machine which was being manufactured by the Stanley Company at the time of the acquisition of the assets of that company by the Uninted Company.

Ans. The assets of the Stanley Manufacturing Company were not acquired by the United Company.

Int. 1525. In answer to cross-interrogatory 141, on page 711, I understand you to say that one of them, for channeling insoles, and another a combined rough rounder and channeler for trimming the edge of the sole of a Goodyear shoe, and at the same time forming the channel to receive the outsole stitch, were put out by the United Company. Kindly state whether they were put out in the United States.

Ans. The United Company was putting out in the United States

machines for channeling insoles for welt shoes and machines for simultaneously rough rounding and channeling the outsoles of welt shoes.

Int. 1526. Kindly state whether the machine referred to by you for rough rounding and channeling is illustrated in the catalogue of the United Company of 1902; and, if so, point out the page or pages.

Ans. The rough rounding and channeling machine put out by the United Company in 1902 is illustrated on page 18 of the 1902 catalogue.

Int. 1527. Kindly state whether the rounding and channeling machine illustrated on page 18 of the catalogue referred to and described on page 19 is constructed as set forth in any of the patents purchased by the United Company of any other company.

Ans. I am not aware that that is the fact.

Int. 1528. Are you willing to state whether the machine illustrated on page 18 of the catalogue and referred to on page 19 as the "Goodyear Universal Rounding and Channeling Machine" is constructed in accordance with the descriptions and drawings of any patent?

Mr. CHOATE. I think I will record my objection to that question because it is not open to anything on cross-examination, and I will ask the witness not to answer it.

The WITNESS. Under instruction of counsel, I decline to answer that question.

Mr. WEBSTER. The attention of the court is respectfully called to the fact that, while Mr. Howard is a witness produced by the United States, he declines to answer because of instructions from counsel for the defendants.

[*Counsel for the United States offers in evidence the cut identified by the witness and found on pages 18 and 19 of the catalogue of 1902. Cut on pages 18 and 19 marked "Plaintiff's Exhibit 197".*]

Int. 1529. You referred in your cross-examination, page 711, to a leveling machine, the same being a patented device procured from Winkley and Phillips which you afterwards developed into the Atlas leveler. Kindly state whether the Atlas leveler referred

to by you is illustrated in the catalogue of 1902; and, if so, kindly give the page.

Ans. I do not find the Atlas leveling machine in the index of this catalogue.

Int. 1530. Kindly state what you mean by the term "afterwards developed into the Atlas leveler".

Ans. I mean that the inventions acquired from Winkley and Phillips were experimented upon and developed, with the addition of other inventions, into a machine which was suitable for commercial use, and was put out for commercial use.

Int. 1531. Are you willing to produce an illustration of the Atlas leveler?

Ans. Certainly.

Int. 1532. In the question referred to reference is made to the device's being a patented device, and on page 713 you say: "The patent which was the subject of that agreement was No. 627,034, June 13, 1889. Am not sure that there were not others." Kindly state whether since that time you have ascertained whether there were others; and, if so, give the name, date and title.

Ans. There was at least one other, No. 557,744, April 7, 1896, Winkley sole-laying machine.

Int. 1533. Can you state briefly how the Atlas sole-laying machine differed from the Star?

Ans. The Atlas was a direct pressure machine, so called, which applied the leveling pressure to the sole through an iron form which was formed to give the desired shape to the sole, and during the application of pressure by that form the shoe was supported against the pressure by an iron form or last inside of the shoe. That type of machine was adapted and used for McKay work. The Star leveling machine was of an entirely different type. In that machine the leveling pressure, very much lighter than applied by the Atlas machine, was applied by a roll which was rapidly vibrated to and fro for short distances over the portion of the shoe being operated upon at the time, and which was, by relative movement of the roll and the shoe, made to operate successively upon different portions of the sole. The pressure was applied to the

roll through a spring so that a yielding pressure was exerted upon the shoe.

Mr. CHOATE. Have you finished by stating to which kind of shoe the Star was adapted?

The WITNESS. I should have added that the Star machine was a very light machine and was adapted and used only for leveling turn shoes, which, owing to the fact that they have but one sole, require and will stand a less degree of pressure than other types of shoes.

Int. 1534. Among patents referred to by you as having been conveyed to the United Company, I invite your attention to the patent to Coy, sole laying and pressing machine, dated November 20, 1888, No. 393,216. Will you kindly examine the copy of that patent which I now hand you and state whether or not a machine constructed as set forth in the patent was ever made and put out to your knowledge?

Ans. That patent was owned by the Swain-Fuller Manufacturing Company, and the American Sole Laying Machine Company had a license under it. I believe that no claims in that patent read upon any machine put out by the United Company, although it is possible that claim three reads upon the commercial machine of the American Sole Laying Machine Company.

Int. 1535. Pardon me, but the inquiry did not go to the question of the claim; simply as to the question whether machines were made and put out, so far as you knew, constructed as shown in the patent. With this explanation, will you kindly answer the question?

Ans. I cannot recall that machines identically like the machine shown in the drawings of this patent were ever put out by the United Company.

Int. 1536. Do you recall that machines substantially the same were ever put out by the United Company or any of its predecessors?

Ans. I do not recall.

Int. 1537. I observe in answer to cross-interrogatory 1125, on page 713, relative to the Lincoln Sewing Machine Company agreement: "There were patents involved, but I have not a list of

them." Kindly state whether you now have a list of the patents referred to by you.

Ans. Yes, sir.

Int. 1538. Has it been spread on the record as yet?

Ans. I think not.

Int. 1539. Will you kindly let us have the list, taking care to give us the name of the patentee, the number, date and title?

Ans. The patents assigned to the Goodyear Shoe Machinery Company by the Lincoln Sewing Machine Company on November 18, 1897, were the following: No. 453,568, G. A. Stiles, dated June 2, 1891, sole sewing machine; No. 494,969, G. A. Stiles, dated April 4, 1893, shoe sewing machine; No. 545,625, Fowler and Warren, dated September 3, 1895, sewing machine; No. 560,-705, Fowler and Warren, dated May 26, 1896, welt guiding mechanism for sewing machines; 564,985, Fowler and Warren, dated August 4, 1896, sewing machine; No. 564,986, Fowler and Warren, dated August 4, 1896, shoe sewing machine; No. 577,217, E. A. Webster, dated February 16, 1896, sewing machine. On February 17, 1900, the Lincoln Company assigned to the Goodyear Shoe Machinery Company No. 634,850, Fowler and Warren, dated October 10, 1899, shoe sewing machine. That is all.

Int. 1540. Kindly state whether the patents referred to in your last answer relate to the type of machine known as the Lincoln sewing machine.

Ans. Yes, sir; although not all of them covered the machine of the Lincoln Company as it was constructed in November, 1897.

Int. 1541. Kindly state whether any of the patents referred to in your answer relate to construction shown in the machine known as the Goodyear welt and turn machine or the Goodyear rapid outsole lockstitch machine.

Mr. CHOATE. I should like an objection noted to that question as not opened by anything on cross-examination.

Ans. Under advice of counsel, I decline to answer the question.

Int. 1542. On page 713 of the printed record you, in answer to cross-question 1156, refer to patents on lasting machines and pulling-over machines acquired from the Seaver Process Lasting

Company. Kindly state whether machines constructed in accordance with the patents enumerated by you are being manufactured by the United Company at the present time.

Ans. No, sir.

Int. 1543. Kindly state whether such machines were ever manufactured by the United Company.

Ans. No, sir.

Int. 1544. Kindly state whether such machines were ever manufactured by any company so far as you know.

Ans. The Seaver toe and heel lasting machine was manufactured by the Seaver Company, and they also manufactured several experimental pulling-over machines, so called.

Int. 1545. In answer to cross-interrogatory 1158, on page 714, referring to the acquisition of property of the Globe Shoe Tool Company, you say: "I think they had no patents." Kindly state whether since testifying you have ascertained whether there were any patents involved in that transaction.

Ans. The Globe Shoe Tool Company owned no patents at the time of this acquisition.

Int. 1546. In answer to cross-interrogatory 1159, page 714, you referred to a patent relating to the Brewer improvement on heel breasting. Kindly state whether devices made under, and in accordance with, that patent were manufactured and put out by the United Company.

Ans. Yes, sir.

Int. 1547. State whether such machines are illustrated in the catalogue of 1902.

Ans. Yes, sir; that machine is shown on page 176 of the 1902 catalogue.

Mr. WEBSTER. The cut testified to by the witness offered in evidence, together with the printed matter on page 177, and marked "Plaintiff's Exhibit 198".

Int. 1548. Kindly state whether the machine illustrated on page 176 of the catalogue of 1902 is now being manufactured and put out by the United Company?

Ans. That machine, with some modifications, is still being manufactured and put out by the United Company.

Int. 1549. Will you kindly briefly state the modifications?

Ans. After approximately 700 of the machines had been put out incorporating the Brewer invention, an improved construction of mechanism for stopping the knife automatically in accordance with the thickness of the shank of the shoe was adopted. Other changes have been made in the machine from time to time.

Int. 1550. Will you kindly state, provided opposing counsel does not object to your doing so, whether the modifications referred to by you now form the subject-matter of United States patents?

Ans. These modifications are covered by patents or pending applications.

Int. 1551. Will you kindly give the number, date and title of the patents?

Ans. I have not the data at hand.

Int. 1552. Will you kindly produce it at some future time?

Ans. Yes, sir.

Int. 1553. Referring now to Edwin T. Freeman's machine, page 714, in answer to cross-interrogatory 1160 you refer to certain patents, and at the end of your answer you say: "He had some other patents." Kindly state whether the other patents referred to by you were transferred to the United Company; and, if so, kindly give us the number, date and title.

Ans. I believe there was only one patent transferred by Freeman which I did not name in cross-interrogatory 1160. This was patent No. 607,924, dated July 26, 1898, nailing machine.

Int. 1554. Kindly state whether machines made in accordance with the patents referred to in your answer to cross-interrogatory 1160 are now being made by the United Company.

Ans. Machines have been constructed and put out embodying the inventions claimed in the patents assigned by Freeman, but no machine exactly like the machines shown in the drawings of the Freeman patents named has been built by the United Company.

Int. 1555. If the machine referred to in your last answer is illustrated in the catalogue of 1902, will you kindly point out upon what page the same is found?

Ans. Those machines are not illustrated in that catalogue.

Int. 1556. Are they illustrated in any catalogue so far as you know?

Ans. This is the only general catalogue ever put out by the United Company.

Int. 1557. Are they illustrated in any printed matter put out by the United Company?

Ans. Freeman's inventions have been embodied in three different types of machines which the United Company has built either commercially or experimentally. One of these machines is "loose nailing machine No. 2", and I can furnish an illustration of that machine. I do not know whether illustrations of the other two machines are available.

Int. 1558. If you are able to do so, will you kindly produce them at the next session?

Ans. I will.

Int. 1559. Referring to the acquisition of the property of the Breach Manufacturing Company, you say, in answer to cross-interrogatory 1171, as I understand your reply, that the Breach Company had the exclusive license for a machine for cutting out soles, and you give the number and dates of certain patents. Kindly state which one of the patents referred to by you in that answer relate to the machine for cutting out soles.

Ans. No. 318,540 and No. 589,409 cover the machine of the Breach Company as it stood at the time of this transaction. I ought to add that the machine at that time embodied inventions on which applications for patents were applied after the date of this transaction. On these applications patents were granted as follows: No. 676,457, June 18, 1901, Breach, machine for cutting articles from sheet material, and No. 678,935, July 23, 1901, Breach, machine for cutting articles from sheet material.

Int. 1560. Was the Breach machine for cutting out soles manufactured and put into use by the Breach Company?

Ans. By the Breach Company?

Int. 1561. Yes, the Breach Manufacturing Company.

Ans. A small number of machines of earlier types had been put

out by the Breach Company or by Breach personally before the date of this transaction.

Int. 1562. Were the machines made and put out by the United Company after the transaction referred to?

Ans. The United Company built experimental machines and put them out on trial but could not interest manufacturers to use them.

Int. 1563. Then, is it fair to say that machines made under the patents referred to are not such as are known as a commercial success?

Ans. Yes, sir.

[*Adjourned to 10* A. M., *July 17, 1913.*]

BOSTON, MASS., July 17, 1913.

Int. 1564. Kindly state whether you have any more of the data you were requested to produce and which was not convenient for you to produce yesterday.

Ans. I have some of the information here but not all. If equally convenient, I will present it all tomorrow morning, excepting the dates when the Ross-Moyer machines were first put out, for which information I must send to Cincinnati. I have already written for it.

Int. 1565. Kindly state whether you are able now to produce a cut of the Atlas leveling machine requested yesterday.

Ans. I can and do produce such a cut.

Mr. WEBSTER. Cut produced by the witness put in evidence and marked "Plaintiff's Exhibit 199".

Int. 1566. Referring to the affairs of the Goddu Sons Metal Fastenings Company mentioned on page 715 of the printed record, you refer to certain patents. Kindly state whether to your knowledge the loose nailer referred to by you in answer to question 1172 was manufactured and put out by the United Company or any of its affiliated companies.

Ans. It was not, so far as I am aware.

Int. 1567. Kindly state whether the rapid screw machine referred to in the same answer was put out by the United Company or any of its affiliated companies.

Ans. It was not, so far as I know.

Int. 1568. Kindly state whether the slugger referred to in the same answer was put out by the defendant or any companies associated with the defendants.

Ans. So far as I know, that was not put out.

Int. 1569. State whether the machine for making the string nail wire was put out by said companies, or either of them?

Ans. It was not, so far as I know.

Int. 1570. State whether the string nail wire referred to in that answer was put out.

Ans. So far as I know, it was not.

Int. 1571. And whether the machine for making the nail referred to in the answer was put out.

Ans. I think not.

Int. 1572. State whether the eight or ten patents referred to by you in answer to question 1174 were transferred to the United Company or any affiliated companies.

Ans. No, sir.

Int. 1573. I note you say in the answer: "We have obtained eight patents from them." Kindly explain what you mean by that statement.

Ans. That statement was erroneous and should be corrected. Of course, we did not obtain any patent from the Goddu Sons Metal Fastenings Company; that is, no patents were assigned to the United Company by the Goddu Sons Metal Fastening Company.

Int. 1574. The United Company did, however, as I recollect your testimony, acquire the stock of the Goddu Metallic Fastening Company?

Ans. Some of the stock.

Int. 1575. I note in answer to question 1173 you say, in referring to the patent: "There were some that I have not read that were not embodied in their machines." As you do not appear to have made reference to those particular patents, will you kindly give the date, title and number of such patent?

Ans. Two patents of the Goddu Sons Company I did not men-

tion were No. 583,047, May 25, 1897, W. Goddu, nailing machine, and 583,048, May 25, 1897, W. Goddu, nailing machine.

Int. 1576. Kindly state whether machines were made by the United Company or any affiliated company in accordance with the nailing machine patents referred to in your last answer.

Ans. Not so far as I know.

Int. 1577. In your answer to cross-question 1175, replying to the inquiry as to what patents were obtained from the Goddus themselves, you say: "There were ten patents altogether, of which I will note those first that were infringed by the machines of the Goddu Sons Metal Fastenings Company." Following this statement, you give the numbers and dates of certain patents. Kindly state whether you personally examined the machines of the Goddu Sons Metal Fastenings Company and compared the same with the patents enumerated by you.

Ans. In July, 1898, I spent about a week in examining the machines of the Goddu Sons Metal Fastenings Company. At the time I was examining these machines, or immediately after, I had drawings made illustrating the constructions of the respective machines, which drawings are still in my possession. With the aid of those drawings and notes made at the time, I am able to determine the exact construction of those machines. I have examined the patents mentioned by me in answer to question 1175 in drawings and notes to which I have referred, and my statement as to infringement of those patents named by me was based upon that examination. I should like to state that patent No. 614,460, which, as stated by me in that answer, was infringed by the Goddu Sons' loose nailer and the Goddu Sons' slugger, was also infringed by the Goddu Sons' string nailer.

Int. 1578. You say in answer to cross-interrogatory 1180, as I understand you, that there was litigation between the McKay Shoe Machinery Company and the Goddus, father and sons, and the Goddu Sons Metal Fastenings Company before the United Company came into existence. Kindly state what you mean by that statement. That is, were cases pending in court? If so, what cases? Were the cases for infringement, or on contract?

Ans. Before the formation of the United Company a suit had been brought against the Goddus, father and sons, and the Goddu Sons Metal Fastenings Company, in the name of the trustees of the McKay Metallic Fastening Association, James W. Brooks, principal trustee, and Frank L. Stanley, associate trustee, under the contract which Louis Goddu, the father of the sons, had entered into previously with the trustees of the Metallic Association. It was charged by the trustees of the Metallic Association that the inventions embodied in the machines of the Goddu Sons Company had been made by Louis Goddu, the father, —

Int. 1579. Pardon me. I do not care for all the details, but if you will tell me where the suit was pending?

Ans. — and this suit was brought to compel the transfer of these inventions to the Metallic Association. Prior to the formation of the United Company no infringement suits had been actually instituted, but bills of complaint and affidavits had been prepared and printed in support of motions for preliminary injunction.

Int. 1580. Kindly state in what court the action referred to by you, to compel transfer of inventions of patent, was brought.

Ans. I think it was in the Circuit Court, but I will verify that, if you desire.

Int. 1581. Kindly do so, and give the number of the case and the date when the bill was filed, if convenient. In your answer to cross-question 1175 you say the tacking machine of the Goddu Metal Fastenings Company was covered by patent 584,735, of June 15, 1897, and I understand you to say that you examined the tacking machine referred to. Kindly state whether the tacking machine was in operation or set up for operation at the time you examined it, and for how long a time, if you know, it had been in operation.

Ans. I examined this machine in the small machine shop adjacent to the residence of Louis Goddu, the father, in Winchester. The machine was in such condition that it could be turned over by hand or by power if desired.

Int. 1582. And had this type of machine been manufactured by

the Goddu Sons Metallic Fastenings Company prior to the time you examined it, as referred to by you in your last answer?

Ans. The particular machine which I examined at Winchester had, I understood, been constructed in that machine shop where I saw it.

Int. 1583. Then is it true that so far as you know the Goddu Company had not manufactured and put out the tacking machine of the type examined by you?

Ans. They had not put out any tacking machines.

Int. 1584. Then is not your statement in error that the tacking machine of the Goddu Metal Fastenings Company infringed the patent referred to by you, in view of the fact that no machines had been made or put out?

Ans. The machine which I saw, if made after June 15, 1897, the date of the patent No. 584,735, which date was more than a year before I saw the machine, constituted an infringement of that patent by the act of manufacture. However, it is of course a fact that the machine could not after June 15, 1897, be either made or used without infringing that patent.

Int. 1585. I understood you to say that patent 584,735 on the tacking machine was procured by the United Company from the individuals. I also understood you to say that the tacking machine you examined was made by the individuals from whom the United Company procured the patents. Kindly state if I am correct in my understanding.

Ans. I do not now recall that I stated by whom the machine of patent No. 584,735 which I saw had been constructed.

Int. 1586. Kindly state whether the tacking machine made under patent 584,735 was manufactured and put out by the United Company or any of its affiliated companies after the patent on that machine was acquired.

Ans. No, sir; it was not.

Mr. CHOATE. I am not a bit clear about that patent 584,735. It is not mentioned in your cross-examination.

The WITNESS. The first line at the top of page 716.

Mr. CHOATE. When you say "the tacking machine of the company" do you mean of the Goddu Company?

The WITNESS. Yes. That company had been named in the preceding line.

Int. 1587. Kindly state if you know whether the loose nailer referred to by you on page 716, in answer to question 1175, was made and put out by the Goddu Company.

Ans. Certainly one machine had been made, — the one which I examined, — but no machines were ever put out by the Goddu Sons Company.

Int. 1588. Kindly state whether the loose nailer examined by you, referred to in your last answer, was operative.

Ans. The machine could be turned over. I assume that answers your question.

Int. 1589. Do you mean you did not see it in operation?

Ans. I did not see it operating upon shoes. I don't know that it was ever used in the actual manufacture of a shoe.

Int. 1590. Kindly state whether the United Company, after acquiring the patent covering the loose nailer referred to, manufactured and put out loose nailers of that type.

Ans. I believe you have already inquired as to that, but I will state again that, so far as I know, it did not.

Int. 1591. Kindly state whether the slugger referred to by you in answer to question 1175 was manufactured and put out by the Goddu Company.

Ans. It was never put out by the Goddu Company.

Int. 1592. Was it ever put out by anyone, so far as you know?

Ans. No, sir.

Int. 1593. Will you kindly state whether the string nail wire referred to by you in answer to question 1175, which you say was broadly covered by patent 641,099, was made and put out by the Goddu Company or by any other company?

Ans. Not so far as I know.

Int. 1594. Kindly state whether the screw-threaded wire referred to by you in the same answer was manufactured and put out by the Goddu Company or by any other party.

Ans. The Goddu Sons' screw machine was tried in one shoe factory, and I understand that this wire was supplied for use on that machine, but I don't understand that it was sold, as this use to which I refer was purely experimental.

Int. 1595. Did the United ever put out the fastening material referred to by you in your last answer?

Ans. That fastening material was very similar to the old standard screw wire formerly put out by predecessors of the United Company, and possibly to a very limited extent by the United Company after March, 1899.

Int. 1596. Will you kindly explain just what you mean in your last answer in making reference to "the old standard screw wire"? That is, whether a machine known as the old standard screw machine was manufactured and put out by the United Company, or any of its predecessors, in which such wire was used?

Ans. The old standard screw machine was the machine which —

Mr. CHOATE. Mr. Howard, the question is as to wire and not as to the machine.

The WITNESS. The latter part of the question is as to the machine.

[*At the request of Mr. Choate the question was repeated by the stenographer.*]

Mr. CHOATE. I object to that question as leading, and not opened by anything on cross-examination.

Mr. WEBSTER. And you instruct the witness not to answer?

Mr. CHOATE. No. But why don't you really just ask for an explanation as to what "old standard screw wire" means?

Mr. WEBSTER. He knows what we want. It is desirable to make the record as short as possible, and it seems to me he might explain it and do away with the necessity of a vast number of questions.

Mr. CHOATE. Why don't you just ask him what he means by standard screw wire?

Int. 1597. In view of the suggestion of opposing counsel, I will not at the present time insist on an answer to the question, but will ask you to explain what you mean by standard screw wire.

Ans. The old standard screw wire to which I referred was a wire having a single thread.

Int. 1598. Will you now state when the old standard screw wire having a single thread first went into use, so far as you know, and in what machine it was employed?

Mr. CHOATE. I desire to note my objection to the question as immaterial and not opened by anything on cross-examination, the standard screw wire having simply been used as an illustration by the witness. I instruct the witness not to answer the question until directed to do so by the court.

The WITNESS. Under advice of counsel, I decline to answer that question.

Int. 1599. Are you willing to state when the material termed by you "old standard screw wire" first went into use?

Ans. I cannot give the exact date, but it was certainly more than twenty years ago.

Int. 1600. Are you willing to state whether the United Company or any of its predecessors made and put out a machine adapted to use the wire termed by you "old standard screw wire"?

Ans. The predecessors of the United Company put out such a machine.

Int. 1601. Are you willing to give the commercial name of the machine referred to in your last answer?

Ans. For many years it has been known as the "old standard screw machine".

Int. 1602. Are you willing to state what company made and put out the machine termed by you as the "old standard screw machine"?

Ans. The McKay Metallic Fastening Association put that machine out.

Int. 1603. Are you willing to state when, so far as you are able to state, the "old standard screw machine" was first put out approximately?

Ans. I cannot state it from memory.

Int. 1604. Kindly state whether the United Company ever put

out a machine adapted to accomplish the same result as the machine referred to by you as the "old standard screw machine".

Ans. The United Company has put out a machine for attaching the outer sole of a shoe by means of a screw of threaded wire.

Int. 1605. By the last answer do you wish to be understood as saying that the machine put out by the United Company is adapted to accomplishing the same result as the machine referred to by you as the old standard screw machine?

Ans. I should prefer to accompany my answer to that question by a somewhat detailed explanation of the essential differences between the machine of the Goddu Sons Company and the machine of the United Company. It seems to me that my previous answer is sufficient.

Int. 1606. In your answer to question 1175 you say "there were a number of other patents". I do not recollect that you have specified what these "other patents" were. Will you kindly give the number, date and title?

Ans. The patents not mentioned by me in my answer to question 1175, which were assigned by the individuals to the United Company, were: No. 569,152, October 6, 1896, W. Goddu, tacker; No. 572,538, December 8, 1896, N. and G. Goddu, sewing machine; No. 592,702, October 26, 1897, N. and G. Goddu, sewing machine for lasting boots or shoes; No. 595,878, December 21, 1897, W. Goddu, nailing machine. There were also assigned applications, serial No. 597,027, filed June 26, 1896, which matured into patent 745,819, December 1, 1903, W. Goddu, sewing machine; application serial No. 689,656, filed October 27, 1898, which matured into patent No. 950,693, March 1, 1910, G. Goddu, pegger.

Int. 1607. Will you now kindly state briefly whether any machines or devices made in accordance with the construction set forth in the patents referred to by you in your last answer were ever made or put out by any person, firm or corporation?

Ans. In the cases of some of these patents some steps were taken before March, 1899, toward the construction of machines, but most, if not all, of the machines were never completed. As to No. 950,693, March 1, 1910, the United Company constructed sev-

eral experimental pegging machines in which some of the inventions claimed in the application for that patent at the time of its acquisition were embodied.

Int. 1608. Kindly state whether the United Company are now putting out or ever have put out a machine known commercially as the Chase laster.

Mr. CHOATE. That is not opened on the cross-examination, Mr. Howard. I think I will interpose an objection and ask the witness not to answer.

Ans. Under advice of counsel, I decline to answer.

Mr. WEBSTER. The question is merely preliminary. It seems to counsel for the Government fair that the witness should answer. Counsel reserves the right to pray the judgment of the court.

Int. 1609. Referring again to the matter of the litigation to which you have made reference as between the Goddu Company and the McKay Company, you have referred to one suit. Kindly state if that is all the litigation, so far as you know, between the companies referred to and to which you made reference in cross-examination.

Ans. But one suit had actually been instituted, although, by my answers to questions 1180 and 1181, I doubtless had in mind proposed infringement suits which were about to be instituted, but which had not actually been begun before March 24, 1899.

Int. 1610. State, if you know, what patents were relied upon as foundation for the proposed litigation for alleged infringement in the proposed suits referred to by you.

Ans. These patents were as follows: No. 265,227, September 26, 1882, Goddu, machine for driving sole fasteners; No. 403,835, May 21, 1899, Goddu, machine for uniting soles to uppers; No. 289,103, November 27, 1883, Hopkins, nailing machine; No. 356,-107, January 18, 1887, Dunham, boot or shoe nailing machine; No. 383,455, May 29, 1888, Goddu, nailing machine; No. 385,802, July 10, 1888, boot and shoe nailing machine; No. 493,910, March 21, 1893, Cummings and Coupal, pegging machine; No. 563,-478, July 7, 1896, nailing machine; No. 490,625, January 24, 1893, nailing machine.

Int. 1611. Am I to understand you to say that bills of complaint for infringement of all the patents narrated by you in the last answer were prepared?

Ans. Yes, sir.

Int. 1612. Will you kindly state who was the complainant or complainants and defendant or defendants in these several proposed causes?

Ans. James W. Brooks, principal trustee, and Frank S. Stanley, associate trustee, of the McKay Metallic Fastening Association, were, I believe, the complainants in each of the proposed suits, and the Goddu Sons Metal Fastenings Company was the defendant. I am not certain now whether any individuals were joined as defendants.

Int. 1613. Is there any of that data called for that you could get right away if we had a recess?

Ans. I have it here. In five minutes I could probably get it so as to give it to you. I have some of it here. What I have I could probably give you.

Int. 1614. Give us what you can at the present time, and then if it requires a little time we may take a little longer recess so as to give you time to look it up.

Ans. You inquired at a previous session whether any Globe lock-stitch welters had been put out by the United Company. So far as I can ascertain, none were put out by the United Company. You asked me to produce an illustration of the twin sole-laying machine, and I now produce it. The name on this cut is "Goodyear Improved Sole Laying Machine". This machine is a development of the two-form sole-laying machine previously known as the "Goodyear Improved Twin Sole Laying Machine".

The EXAMINER. That will be marked "Plaintiff's Exhibit No. 200".

The WITNESS. There is still some information that I have not here but can give you later.

Mr. WEBSTER. Now, Mr. Choate, I cannot finish until he gives me the bulk of the data and information called for, which he kindly agreed he would furnish; and do you want to go ahead, allowing

me to stop now and you go ahead and then I take up the other matters later?

Mr. CHOATE. Now, what are the things he has not given?

Mr. WEBSTER. I don't know. I may have inadvertantly forgotten something. I want to save all the rights I am entitled to.

Mr. CHOATE. Does that complete all the things you have thought that he asked for?

The WITNESS. No. He wished me to obtain cuts showing the successive stages in the development of the Amazeen skiving machine and to give information about the patents on that machine in its successive stages.

Mr. CHOATE. Is that important?

Mr. WEBSTER. No. I do not consider it of large importance. I cannot tell until after I see it. The probability is that I would not take but a few minutes.

Mr. CHOATE. If you really wanted to have that followed up, I should think it would take some time to look it up.

The WITNESS. I think I have that in my office in fair shape.

Mr. CHOATE. You can have that this afternoon?

The WITNESS. Yes.

Mr. CHOATE. What else?

The WITNESS. Mr. Webster asked me to furnish a list of the patents and applications on inventions embodied in the —

Mr. WEBSTER. There is one patent I referred to yesterday which I intended to introduce. I do not think I introduced it. I cannot tell what particular one it was until I look at the record. Is there any objection to my putting it in later?

Mr. CHOATE. I would like to wait and see what it is before I decide. I will not object to your presenting it later.

The WITNESS. In the power heel-breasting machine shown on page 176 of the 1902 catalogue to which I referred yesterday in connection with the discussion of the Brewer patent.

Mr. CHOATE. Have you got those now?

The WITNESS. No. I asked for those about five o'clock last evening and requested that they be furnished me by 9.30 today, but I did not get them. They are probably ready now.

Mr. CHOATE. That is two things. Now, what else?

The WITNESS. The dates when the Ross-Moyer machines were introduced I cannot have before the first of next week, as that information must come from Cincinnati. This morning I was asked for the data of the suit brought by the trustees of the McKay Metallic Fastening Association against the Goddus.

Mr. CHOATE. Are there any inventions asked for?

The WITNESS. I was not asked that. That is in connection with the proposed patent infringement suit, wasn't it?

Mr. CHOATE. Does that cover everything?

The WITNESS. That covers everything except cuts of some machines which I referred to in connection with the discussion of the Freeman patents.

Mr. CHOATE. Then, outside of the subjects Mr. Howard has just enumerated, you have completed your re-examination?

Mr. WEBSTER. Unless I think of something else that I inadvertently omitted. I think now of one matter that I should like to touch upon briefly.

Int. 1615. You have testified in cross-examination with reference to litigation concerning the eyelet patents. My recollection is that you have not specified what suits were brought, upon what patents they were brought or who the complainants and defendants were. If you have this data, will you kindly spread it on the record at the present time?

Ans. I have now at hand data as to the following suits: Equity No. 1013, Enamel Eyelet Company of Maine *v.* John C. Rhodes, bill filed August 1, 1898, for infringement of design patent 24,867, November 12, 1895, Kempshall; Equity No. 1085, John C. Rhodes, et al. *v.* Lucius Beebe & Sons Company, bill filed November 5, 1900, for infringement of patent 565,091, August 4, 1896, Rhodes. This suit was against a user of the enamel eyelet put out by the Enamel Eyelet Company; Equity No. 1543, new series, J. C. Rhodes & Company, Inc. *v.* Morley Button Manufacturing Company, bill filed October 29, 1901, for infringement of patent 565,-091, August 4, 1896, Rhodes. Equity No. 1544, new series, J. C. Rhodes & Company, Inc. *v.* Morley Button Manufacturing Com-

pany, bill filed October 30, 1901, for infringement of design, patent 24,867, November 12, 1895, Kempshall. Those are all the suits that I have notes of before me.

Int. 1616. State, if you know, how the cases were disposed of.

Ans. The suits Equity No. 1013 and 1285 had not been prosecuted to a final hearing before the acquisitions of the Enamel Eyelet Company and J. C. Rhodes & Company. After these acquisitions, the suits were settled amicably.

Int. 1617. Do you know what the entry was?

Ans. In the former, the entry was: "Bill dismissed by consent." In the latter the entry was: "Bill dismissed", according to my notes. In Equity No. 1543 and Equity No. 1544, the suit brought by the Rhodes Company against the Morley Company, both bills were dismissed without prejudice and without costs in accordance with the agreement to that effect contained in the instrument dated December 4, 1901, to which the United Shoe Machinery Company and the Morley Company were parties, that agreement being the one which was made at the time of the acquisition of the Morley Company's eyelet patents by the United Shoe Machinery Company.

Mr. CHOATE. In other words, all this litigation continued until matters were finally composed by the acquisition of the companies?

The WITNESS. Yes; and settlement of the litigation between the Rhodes Company and the Morley Company was set forth in the agreement as one of the objects of the transaction.

Mr. WEBSTER. Would you rather we adjourned until two o'clock and let me see what else I want to put in, or let me pick up the tag ends afterwards?

Mr. CHOATE. I should like to use up the time, if agreeable, in recross and then let you complete anything you have at two o'clock.

Mr. WEBSTER. That is quite agreeable to me.

Mr. CHOATE. I mean if it is agreeable to everybody, as long as we have given up this time, to let us use it to the best advantage and get through.

Mr. WEBSTER. I am quite content. Of course, as I have said before, if I have omitted anything I want to save the right to put it in.

Cross Examination by CHARLES F. CHOATE, Jr., Esq., *of Counsel for Defendants.*

Cross-Int. 1618. The suit brought by Brooks and Stanley, trustees, against the Goddu Sons Company had been running for some little time before the stock of the Goddu Company was bought by the United Company, had it not?

Ans. Yes, sir.

Cross-Int. 1619. A good deal of testimony had been taken?

Ans. A very large amount.

Cross-Int. 1620. And the claims of the McKay Metallic Fasten ing Association developed and substantiated before the stock was purchased by the United Company?

Ans. Yes.

Cross-Int. 1621. As you have been asked about the subject of litigation and the character of the charges, I will ask you if you will kindly produce and attach to your deposition a copy of the bill filed in Brooks and others against Goodu Sons?

Ans. I will do so.

Cross-Int. 1622. You referred to a bill or bills of complaint which had been prepared, supported by affidavits, based upon the alleged infringement of the McKay Metallic Fastening Association by the Goddus, or by the Goddu Sons Company, and you have been asked also about the character of those complaints. I will ask you if you will produce a copy of that bill or bills, with the affidavit of James W. Brooks in support of it, and attach it to your deposition?

Ans. I shall be glad to. I will add, however, that there were other affidavits.

Cross-Int. 1623. I understand that the other affidavits related particularly to technical matters.

Ans. Yes.

Cross-Int. 1624. In brief, the substance of the quarrel between the Metallic Fastening Association and the Goddus was this, was it not: that Louis Goddu had been employed by the Metallic Fastening Association a good many years and had invented more

or less machinery; they made contracts with him, and from time to time they claimed he had broken them and they had been forced to make new ones; they could not get him to abide by his agreements with them; they had taken his sons into their employ, had gone to Winchester and built a factory at his desire, and then some difference had arisen as to who should be superintendent of that factory, and one by one the Goddu Sons had left the employment of the Metallic Fastening Association; Louis Goddu had opened a little shop in which his sons were working; patents were being taken out ostensibly in the names of the sons which the trustees of the Metallic Fastening Association charged were really the inventions of Louis Goddu, which were being taken out in the names of his sons to conceal their real origin, and a suit was brought to compel a transfer of those patents taken out in the names of the sons to the company as being inventions really made by Louis Goddu? In substance, that is the statement of the quarrel, isn't it?

Mr. WEBSTER. Question objected to as entirely improper, more in the nature of argument than inquiry.

Mr. CHOATE. Well, if you object to that statement of it I will withdraw it. I will not press it. I thought it a convenient summary of the situation.

The EXAMINER. Does it all go out?

Mr. WEBSTER. I think I ought to object to it. I do not believe it is fair to argue the case on the record that way.

Mr. CHOATE. Well, if you really object, I will withdraw it. I think you will find on examination of the papers it is a fair summary of what they charge.

The EXAMINER. Do you desire it stricken from the record? If Mr. Webster consents, strike it from the record.

Mr. WEBSTER. Let it stay as it is, and the record shows it is withdrawn.

Cross-Int. 1625. Mr. Howard, I take it that your catalogue referred to as the catalogue of 1902 is not necessarily a complete description of all machines of the United Company, is it?

Ans. At that time or now?

Cross-Int. 1626. Well, either then — of course not now.

Ans. That is true.

Cross-Int. 1627. From time to time as machines were developed, single sheet illustrations of them were prepared if desired for the trade?

Ans. That is so.

Cross-Int. 1628. The fact that a machine does not appear in the catalogue is not necessarily conclusive that it was not being offered to the trade by the United Company at that time?

Ans. That is correct.

Cross-Int. 1629. With reference to the Atlas leveler, of which you produced a cut this morning, Exhibit 199, had that been developed at the time of the compilation of the catalogue of 1902?

Ans. No, sir.

Cross-Int. 1630. The cut which you offered as Exhibit 199 was then prepared for distribution, I take it, some time afterwards?

Ans. Yes, sir.

Cross-Int. 1631. Did the United Company, embodying the ideas obtained from Winkley and Phillips in the Atlas leveling machine, manufacture and offer the machine to the trade?

Ans. Yes, sir.

Cross-Int. 1632. And was it put out to a large extent?

Ans. Yes, sir; about five hundred of them were put out.

Cross-Int. 1633. And which accommodation to the trade has continued, has it not, ever since?

Ans. Yes, sir; continuously.

Cross-Int. 1634. And they are still in use and still offered to the trade?

Ans. Yes; and still being put out.

Cross-Int. 1635. With reference to the Breach machine, was every assistance afforded by the United Company to Breach in an endeavor to make commercial the idea embodied in his alleged invention?

Ans. Every possible assistance.

Cross-Int. 1636. And work was continued on it for quite a long time?

Ans. Nearly or quite two years, as I remember it.

Cross-Int. 1637. A good deal of money spent on it?

Ans. A large amount.

Cross-Int. 1638. And the result was that a machine could not be produced which was acceptable to the shoe manufacturers?

Ans. That was the result.

Cross-Int. 1639. They could not be interested in it?

Ans. No, sir.

Cross-Int. 1640. And that was the occasion for cessation of efforts in putting out or attempting to put out any Breach machine?

Ans. That, accompanied by a development in trade conditions in which you may not be interested.

Cross-Int. 1641. You may briefly mention it.

Ans. Shortly before the time of the acquisition of the Breach patents, sole-rounding machines of the so-called Stanley and Julian type were introduced, which used a wooden pattern instead of a metal pattern such as had been previously used in sole-rounding machines, and as was used in the Breach machine. That pattern cost but a small fraction of the cost of the metal pattern, and was a very great improvement because it obviated the necessity of lubricating the edge of the pattern, which had always presented a serious difficulty.

Cross-Int. 1642. The Bay State International Shoe Machinery Company manufactured its machines, if any, where?

Ans. In Montreal, Canada.

Cross-Int. 1643. None in this country, so far as you know?

Ans. None whatever.

Cross-Int. 1644. What do you say with respect to the comparative merits of those machines as compared with those for performing the same or similar operations upon which the United Company was then at work? Did they develop as excellent qualities?

Ans. These machines were distinctly inferior to machines being put out by the United Company at that time. I am prepared, if desired, to explain in detail the inferiority and defects of the machines of the Bay State International Company.

Cross-Int. 1645. I won't ask you to go into detail, but these

machines were ones which you stated were patented in Great Britain and in France?

Ans. Yes, sir.

Cross-Int. 1646. The machines of the United Company, to which you say they were inferior, were patented in the United States, were they?

Ans. Yes, sir; and also abroad, of course.

Cross-Int. 1647. But the Bay State Company did not have United States patents?

Ans. No, sir; the Bay State International Shoe Machinery Company owned no United States patents.

Cross-Int. 1648. Their Canadian or British patents required them, if they desired to retain the patents, to manufacture in those countries?

Ans. The Canadian patent law required manufacturing in Canada, and the French patent law in France. At that time the manufacture was not required under British patents.

Cross-Int. 1649. It was later, was it not?

Ans. Yes.

Cross-Int. 1650. Calling your attention to the fact that among the matters involved in the transaction with the Seaver Process Lasting Company were certain inventions on pulling-over machines, have the inventions acquired from the Seaver Process Lasting Company been embodied in pulling-over machines which have been perfected and put out by the United Shoe Machinery Company or the ideas embodied in the inventions?

Ans. Yes, sir; and the mechanism embodying those features is of the utmost importance in that machine.

Cross-Int. 1651. The Seaver Company did not have any commercial machine at the time of the transaction, did it?

Ans. They had only an experimental machine.

Cross-Int. 1652. And there was not any commercial machine in the market at that time?

Ans. No, sir.

Cross-Int. 1653. And it was a combination of the ideas involved in the Seaver patents with those upon which your own people were

working that resulted in the present commercial pulling-over machine?

Ans. Yes, sir.

Cross-Int. 1654. Were the lasting inventions obtained from the Seaver Company as useful and as beneficial as it was hoped and expected that they would be at the time of the purchase? Did they develop so?

Ans. No, sir; there was no demand from shoe manufacturers after the purchase of the Seaver patents for the Seaver lasting machine.

Cross-Int. 1655. Was it found practicable to adopt or incorporate any of the features of the Seaver machine in machines which were desired by shoe manufacturers?

Ans. It was not, as the corresponding features in the United Company's machines were in each instance superior.

Mr. WEBSTER. Answer objected to as an expression of opinion rather than a statement of facts.

Cross-Int. 1656. You have been asked if in certain cases machines as described in a particular patent have been put out by the United Company. I will ask you whether it has not usually been the case that where patents have been acquired and the character of those patents has been studied and worked over, ideas or parts of ideas or suggestions have been developed from them which, if practicable, have been embodied in machines which have been put out by the United Company?

Mr. WEBSTER. Objected to as calling for an opinion, having reference to no particular matter referred to in the redirect examination.

Ans. That has been true in nearly every case.

Cross-Int. 1657. And is it not true that in all the cases so far as you have knowledge, and of which you have been asked in redirect examination, an effort has been made in good faith to do something with the ideas or patents acquired, and so far as they have developed novel or useful features, those have been put to practical use?

Mr. WEBSTER. The same objection, that it calls for an opinion,

having reference to no particular matter referred to in the redirect examination.

Ans. That is true.

Cross-Int. 1658. And where they have been in whole or in part rejected or not used, it has been because study and experiment has developed the fact that they were not practicable or were inferior to those machines which the art had already developed?

Mr. WEBSTER. The same objection, that it calls for an opinion, having reference to no particular matter referred to in the direct examination.

Ans. That has been true in every instance where the inventions acquired were not put into practical use.

Mr. CHOATE. That is all. Now, we have got fifteen minutes. If Mr. Howard could be excused he could get his material together and be ready at two o'clock to supply what Mr. Webster wants.

Mr. WEBSTER. You are through with your cross-examination?

Mr. CHOATE. Yes, except so far as you open up other subjects.

The EXAMINER. Then we will suspend until two o'clock.

Cross-Int. 1659. You now produce the bill of complaint in the patent case you spoke of?

Ans. I do.

Mr. CHOATE. I offer that as an exhibit.

The EXAMINER. "Defendants' Exhibit No. 101", bill of complaint and affidavit attached.

Cross-Int. 1660. I would like to ask you one more question with reference to Goddu machines: Mr. Webster asked you whether any of those machines were manufactured or put out by the United Company, and you made your answer that they were not. If there are any reasons why those machines have not been manufactured or put out, I wish you would state them.

Ans. There was a fundamental weakness in the loose nailer of patent No. 383,044, in that this machine had an edge feed. This rendered the machine entirely impracticable for nailing the heel seats of Goodyear shoes, which is the principal use to which a loose nailing machine is put. At the time the heel seat of a welt shoe is nailed the heel end of the blocked sole, which has previ-

ously been sewed around the shank and fore part, is not trimmed and presents corners, as in the sample which I exhibit. The impracticability of using an edge feed machine for this work is obvious upon inspection of this sample. It should further be noted that this machine was not equipped with a jack. The horn shown in Figure 5 of the patent is adapted only for McKay work. The machine would also be unfitted for shank reinforcing work on the welt shoe, because that operation is performed after the edge of the sole has been trimmed, and there would be liability of mutilating the edge of the sole by the edge feed. The slugging machine of patent 583,086 had the same defect as the loose nailer; that is, this machine had an edge feed instead of an awl feed. The impracticability of an edge-feed slugging machine will be obvious on inspection of a sample heel and top-lift, which I exhibit. It will be observed that the edge of the top-lift presents but little surface for engagement by the edge feeding device, and it is practically impossible to secure the proper spacing for the slugs, which are of course very prominent in the finished shoe. This slugging machine was further impracticable for commercial use because it was so constructed that the horn dropped too far to permit the work to be fed satisfactorily. This could not be remedied without infringing the patents of the United Company. The slugging machine also was not equipped with a jack, and accordingly was not adapted for slugging welt shoes. The standard screw machine of the Goddu Sons Metal Fastenings Company, patent No. 583,045, used a single threaded wire like the old standard screw machine. The speed of the machine was consequently limited to 125 to 140 nails a minute, while the rapid standard screw machine of the United Company, using a double-threaded wire, ran at a speed of from 225 to 240 nails a minute.

The EXAMINER. "Defendants' Exhibit 102" is blocked outsole such as used on welt shoes. "Defendants' Exhibit 103" is a slugged heel.

Cross-Int. 1661. There is a copy of the bill filed in the suit that was brought. I ask you to identify the copy of the bill in the suit

referred to in your redirect examination, and if that is a copy of it, I will put it in evidence.

Ans. This bill of complaint which you have handed to me is a copy of the bill of complaint filed February 2, 1898, in the Circuit Court of the United States, District of Massachusetts, No. 985, James W. Brooks et al. *v.* Goddu Sons Metal Fastenings Company et al.

The EXAMINER. "Defendants' Exhibit 104."

Mr. CHOATE. Nothing else, Mr. Webster.

Direct Examination resumed by Mr. WEBSTER.

Int. 1662. If you now have the data called for and not already put in, will you kindly produce the same?

Ans. You requested me yesterday to give the number, date and title of patents covering modifications adopted in the machine illustrated on page 176 of the United Company's catalogue of 1902, power heel-breasting machine, since 1902. These patents and applications are as follows: reissued patent No. 13,413, April 30, 1912, B. B. Waterman, heel-breasting machine; application of Warren Frazier, 458,603, filed December 7, 1909, renewed as No. 531,798, work support; patent No. 1,023,284, April 16, 1912, F. H. Warren, machines for use in the manufacture of boots and shoes; application serial No. 708,908, filed July 11, 1912, M. F. Brogan. A method of making knives for that machine is covered by application serial No. 712,316, filed July 30, 1912, E. L. Hurd, method of forming knives. You requested me to produce illustrations of the United Company's machines in which features of the machines of Edwin L. Freeman have been incorporated. I now produce an illustration of the United Company's loose nailing machine No. 2.

The EXAMINER. "Plaintiff's Exhibit 201."

[*Ans. continued:*] An illustration of the United Company's Ziz slugger, later named "slugging machine No. 5".

The EXAMINER. "Plaintiff's Exhibit 202."

[*Ans. continued:*] I also produce an illustration of the United Company's rapid standard screw machine. The machine incorpor-

ating the features of Freeman's machine is known as rapid "standard screw machine Model B", but I have not yet been able to procure an illustration of that machine. So far as the parts shown in the photograph are concerned, however, the Model B machine is substantially as shown in this illustration.

The EXAMINER. "Plaintiff's Exhibit 203."

[*Ans. continued:*] You requested me to produce illustrations of the successive models of the Amazeen skiving machine and to state the patents embodied in those models.

Mr. CHOATE. Is that quite the question?

The WITNESS. That is as I recall it. I should have looked that up. I overlooked it.

Mr. CHOATE. He asked you if there was any other machine previously in use known as the Amazeen skiver, and you said "Yes", and he asked how it differed from the Amazeen skiver shown in the catalogue, and that you were to look up.

The WITNESS. I find that Mr. Choate is correct. The machine shown on page 132 of the catalogue of 1902 is the machine then known as "new high speed Amazeen skiving machine". That was preceded by a machine now designated "Model No. 4", but formerly known as "new model" and by "Model No. 3", as it is now designated, formerly known as "old pattern", and illustrated on page 136 of the 1902 catalogue. There were also earlier models, No. 1 and No. 2, of which I do not have illustrations. I now produce illustrations of Model No. 4 and Model No. 3.

The EXAMINER. "Plaintiff's Exhibit 204" is an illustration of Model No. 4. "Plaintiff's Exhibit 205" is an illustration of Model No. 3.

[*Ans. continued:*] If you desire, I can, as previously requested by you, point out how the earlier models differed from that shown on page 132 of the 1902 catalogue, but this explanation would necessarily be somewhat detailed.

Int. 1663. I will not call for it at the present time.

Ans. The data which you requested me to produce this morning as to the suit against the Goddu Sons Metal Fastenings Company I have already furnished in introducing the exhibit bill of com-

plaint. That is all the information which I have ready at this time.

Int. 1664. I observe in bill of complaint, Defendants' Exhibit 101, James W. Brooks and others against Albert Van Wagenen and others, it is alleged that the respondents infringed patents Nos. 383,445, 385,802, 289,103 and 356,107 in the manufacture of a loose nailing machine. Kindly advise whether the United Company, to your knowledge, ever made a loose nailing machine constructed as set forth in the patents above referred to.

Ans. The United Company, or its predecessors in business, built and put out machines embodying the inventions of all these patents. I believe that inventions of all of these patents have been embodied in machines put out by the United Company.

Int. 1665. Kindly state, if you can, whether the loose nailing machines manufactured by the United Company immediately after its organization were constructed like the machines previously put out by the McKay Metallic Fastening Association.

Ans. Immediately after the organization of the United Company it continued to put out the same loose nailing machine which had been put out immediately before the organization of the United Company by the McKay Shoe Machinery Company, which had succeeded the McKay Metallic Fastening Association.

Mr. WEBSTER. Mr. Choate, are you willing to furnish the Government with a list of patents owned by the United Company or any of its associated companies, which patents expired prior to the filing of the petition in this case, and which patents relate to machines for cutting soles from sole leather, machines for lasting shoes, machines for attaching welts to uppers, machines for attaching welts to the outsoles, machines for leveling and laying soles and machines for rough rounding and channeling, thus saving the loss of time and, as it seems to us, unnecessary expense and annoyance involved in procuring this information in some other way?

Mr. CHOATE. It seems to us that it must be presumed that the United States has information to support the allegations made in its bill, and that that information should be supplied by the United States in the ordinary way.

Mr. WEBSTER. Then, as I understand, you decline to furnish the information called for?

Mr. CHOATE. I think I must decline to prepare and furnish the case for the United States.

Mr. WEBSTER. If any expense is involved in preparing the data called for, the Government would cheerfully pay the same. With that in view, have you any objection to furnishing the information?

Mr. CHOATE. That does not aid me, because to prepare its case for the United States would involve the labor of a good many of our men who have other important work to attend to. Now, have you finished with Mr. Howard on redirect?

Mr. WEBSTER. I want to see the record. My suggestion would be that we suspend until next Tuesday, and then I suppose in fifteen minutes we can finish with Mr. Howard on this matter and take up the other.

Mr. CHOATE. Well, what remains upon redirect?

Mr. WEBSTER. I took no memorandum as you were examining the witness. I supposed you would not finish your recross-examination for two days, and I, of course, relied upon the typewritten record. You finished it so quickly that I have no memorandum.

Mr. CHOATE. Well, that is all right.

The EXAMINER. Tuesday at 10 o'clock?

Mr. CHOATE. On Tuesday you will finish his redirect. Do you then want him on direct again at that time?

Mr. WEBSTER. I shall endeavor at that time to get him to tell us about some patents.

Mr. CHOATE. Can't you give him notice about the things you will want, so that he can prepare himself in advance?

Mr. WEBSTER. I will say this: I would like to show by Mr. Howard, unless we can agree upon it, what patents were owned by the United Company and its associate companies, which patents expired prior to the filing of the petition in this case, and which patents relate to machines for cutting soles from sole leather, to machines for lasting shoes, to machines for attaching welts to uppers of shoes, to machines for attaching outsoles to welts of shoes, to

sole-leveling machines, sole-laying machines, and rough-rounding and channeling machines, loose nailers and heelers.

Mr. CHOATE. And that will cover everything you want in the whole inquiry?

Mr. WEBSTER. I do not care at this time to go into any branch of the art other than those named.

Mr. CHOATE. Now, you will notice the allegation under which this evidence is being taken is that many of the patents on the principal machines owned or controlled by them were about to expire as of early in 1899. You do not want him to be prepared on the expiration of patents clear up to the filing of the bill, do you?

Mr. WEBSTER. I would like to run to approximately the time of the filing of the bill. It is a question as to what the term "were about to expire in the near future" means.

Mr. CHOATE [*to the witness*]. Can you be prepared on those points by next Tuesday?

The WITNESS. I would like to have the whole statement by Mr. Webster read to me before I answer that question.

[*Statement of Mr. Webster read by the stenographer as follows:*]

"I would like to show by Mr. Howard, unless we can agree upon it, what patents were owned by the United Company and its associate companies, which patents expired prior to the filing of the petition in this case, and which patents relate to machines for cutting soles from sole leather, to machines for lasting shoes, to machines for attaching welts to uppers of shoes, to machines for attaching outsoles to welts of shoes, to sole-leveling machines, sole-laying machines, and rough-rounding and channeling machines, loose nailers and heelers."

The WITNESS. Could you not narrow that a little? Because when you say "machines for attaching soles to welts" it is not clear whether you intend to include the auxiliary machines.

Mr. WEBSTER. I do not intend to include the auxiliary machines.

Mr. CHOATE. Then you want that information with reference to the welt-sewing machine and the sole-stitching machine, and you want it with reference to what lasting machine?

Mr. WEBSTER. As at present advised, I am more familiar with

the Chase lasting than any other. But I would like a memorandum with reference to other lasting machines if they have gone into use commercially.

Mr. CHOATE. The others which have been mentioned are the Consolidated hand method, — do you want that?

Mr. WEBSTER. As at present advised, I would like it, and I offer that suggestion because I am absolutely unfamiliar with it and do not know what the commercial term means.

Mr. CHOATE. McKay & Copeland, — do you want that?

Mr. WEBSTER. If it is convenient.

Mr. CHOATE. And the Ideal?

Mr. WEBSTER. Yes; but I have to say that after examining these patents I probably will not go into any detail with reference to more than one or two machines of any class. That is, taking lasters, I do not think we will submit evidence later with reference to more than one lasting machine, or one type of lasting machine.

Mr. CHOATE. Which loose nailer do you want him to be prepared on?

Mr. WEBSTER. Any loose nailer that has gone into use.

Mr. CHOATE. The one that came from the McKay Company?

Mr. WEBSTER. I am content.

Mr. CHOATE. And that is now loose nailer No. 2; is that right?

The WITNESS. It was then called "the new loose nailer", but we now speak of it colloquially as the "old loose nailer".

Mr. CHOATE. What heeling machine? The McKay automatic?

Mr. WEBSTER. I am not sufficiently familiar, at the present time, with the machines to be able to identify them from their commercial names.

Mr. CHOATE. Well, now, can't you, Mr. Webster, make yourself familiar with those so that you won't have to cover a great field that you don't care anything about?

Mr. WEBSTER. I will try to.

Mr. CHOATE. Now, I am going to ask to have that list of machines read again.

[*Stenographer reads from statement by Mr. Webster as follows:*]

"I would like to show by Mr. Howard unless we can agree upon it

what patents were owned by the United Company and its associate companies, which patents expired prior to the filing of the petition in this case, and which patents relate to machines for cutting soles from sole leather — "

Mr. CHOATE. You will note that that is not included in the bill at all.

Mr. WEBSTER. I had an impression that it was.

Mr. CHOATE. Do you mean a clicking machine?

Mr. WEBSTER. No; I don't care anything about the clicking machine; I understand the clicking machine is a special machine for cutting uppers.

The WITNESS. Then that would be a dinker.

[*Stenographer continues reading the statement of Mr. Webster:*]

"— to machines for lasting shoes, to machines for attaching welts to uppers of shoes, to machines for attaching outsoles to welts of shoes, to sole-leveling machines, —"

Mr. CHOATE. Now, let us stop there. Now, we have had the Star, the Acme, the Goodyear automatic, and the Atlas. Which one of those do you prefer?

Mr. WEBSTER. I would like all of them, if he has them classified in such a way as to produce the information readily.

Mr. CHOATE. All right.

[*Stenographer continues reading the statement of Mr. Webster:*]

"— sole-laying machines, —"

Mr. CHOATE. That is the Goodyear improved sole layer.

[*Stenographer continues reading the statement of Mr. Webster:*]

" — rough rounding and channeling machines, —"

Mr. CHOATE. There is only one of those.

[*Stenographer continues reading the statement of Mr. Webster:*]

" — loose nailers and heelers."

Mr. CHOATE. Mr. Howard will try to be prepared on those, but without waiving our rights to object to the introduction of any of the evidence which may seem to us inadmissible. Now, Mr. Webster, you asked for patents reading on those machines which expired between 1899 and the date of the filing of the bill?

Mr. WEBSTER. I do not care if they expired before.

Mr. CHOATE. Do you mean before 1899? That is before we came into existence.

Mr. WEBSTER. You would not have that unless it was in the hands of your predecessors, — so, the patents expiring after the United Company came into existence.

Mr. CHOATE. And up to the filing of the bill?

Mr. WEBSTER. Patents relating to those machines, the class of machines noted.

Mr. CHOATE. That is, both in existence and expired?

Mr. WEBSTER. I don't just get what you mean.

Mr. CHOATE. Do you want both the patents that are existing now and those which have expired?

Mr. WEBSTER. I simply care for those which have expired. I don't care for those which were alive at the time of the filing of the bill.

The WITNESS. Now, just what do you mean by the expression "relating to", Mr. Webster?

Mr. WEBSTER. Well, I don't wish to limit the inquiry to patents relating only to machines which the United Company have recently put out, but if the United Company were putting out a machine in 1899, 1900, 1901, 1902, 1903, 1904, 1905 or 1906, upon which any of these patents read, then I desire to know what patents read on such machines.

The WITNESS. My difficulty was the vagueness that I thought I saw in the expression "relating to". I understand that your inquiry is limited to patents the inventions of which were at some time embodied in the commercial machine?

Mr. WEBSTER. Yes.

Mr. CHOATE. Do you want the patents themselves?

Mr. WEBSTER. I would not go so far as to ask for the producing of the patents. I ought to furnish those myself. I shall have to hunt them up. Of course it would be very nice to have them at the time of the inquiry, but there has recently been sent to me about half a ton of patents from the department which are now in

Springfield being classified, and I hope to find among them the patents which I need.

The EXAMINER. We will adjourn to Tuesday morning next, at 11 o'clock.

[*Hearing adjourned to Tuesday, July 22, 1913, at 11 o'clock* A. M.]

BOSTON, MASS., July 22, 1913.

Mr. CHOATE. Mr. Howard desires to correct one statement in his testimony.

Mr. WEBSTER. Very well.

The WITNESS. I desire to correct my answer to a question on page 1969 of the typewritten record [printed page 2049]. The question was: "Did the United Company put out any machines, after its purchase from the American Sole Laying Company, constructed like the machines which had previously been put out by the American Sole Laying Company?" I have learned since that session that the United Company put out fifty sole-laying machines substantially the same as the machines which had been put out by the American Sole Laying Machine Company prior to its acquisition by the United Company. The United Company continued putting out these machines so long as there was any demand for them from shoe manufacturers.

In response to a request from Mr. Webster that I produce drawings or cuts of machines in which features of the Freeman machine had been incorporated, I produced a photograph of the rapid standard screw machine, explaining that the Freeman features had been embodied in the rapid standard screw machine Model B, but that I did not at the time have a cut of that machine. I now have and produce a photograph of the Model B rapid standard screw machine in which the features of the Freeman machine to which I refer have been incorporated.

[*Print of Model B rapid standard screw machine introduced in evidence and marked "Plaintiff's Exhibit 206".*]

Mr. CHOATE. I would like to ask one further question, to explain one of his answers.

Cross Examination resumed by Mr. CHOATE.

Cross-Int. 1666. In your answer as to the Goddu loose nailing machine and the Goddu slugging machine, you used the terms "edge feed" and "awl feed". Please describe what you mean by those terms and describe the difference between the two kinds of feeds.

Ans. In the loose nailer or slugging machine having an edge feed, there is a device which engages the edge of the sole and which is given a motion in the direction in which it is desired that the work be fed to move the work along into position for the insertion of the next fastening. This mechanism comprises a tool having a serrated or roughened edge for engaging the stock. In an awl feed loose nailing or slugging machine, the machine is so organized that, after the awl has entered the stock to make the hole for the reception of the next fastening, the awl is moved toward and under the driver to bring the hole made by it into exact alignment with the driver, after which the awl is removed from the stock and the driver operates to insert the fastening.

Cross-Int. 1667. Was it a simple matter to substitute one of those feeds for the other?

Ans. It would not be a simple matter in any machine, and in the two Goddu machines in question, that is, the loose nailer and the slugger, such substitution would have involved entire reconstruction of the machines, and the machines so reconstructed would have been entirely different from the machines as actually built by the Goddu Company.

Mr. CHOATE. That is all, Mr. Webster.

Direct Examination resumed by Mr. WEBSTER.

Int. 1668. Referring to the Breach machine, I understand you to say, in response to questions by Mr. Choate, that a large amount of money was spent in the endeavor to make the idea embodied in Breach's alleged invention commercial. Kindly state if you have any personal knowledge as to the amount of money spent as stated by you.

Ans. I was in touch with the work as it was going on, and I think I may properly say that I have personal knowledge that the United Company expended approximately $30,000 in this connection.

Int. 1669. Have you examined any data to enable you to testify as to the expenditure in question?

Ans. As to the amount which I have stated, I am relying upon information furnished by those who have access to the figures.

Int. 1670. Then, as to these facts you are testifying as to what some one else tells you; is that correct?

Ans. My testimony is based on my personal knowledge, as explained above, and upon information substantiating my personal knowledge, which I have received from others who have occasion to know the facts.

Int. 1671. In connection with the same matter, I understand you to say that shoe manufacturers could not be interested in the Breach sole-cutting machine. Kindly state just what you mean by that reply and your source of information.

Ans. I have personal knowledge that the machine was tried out in shoe factories. I was not directly informed by any shoe manufacturer that he did not wish to have the machine in his factory, but I was so advised by others who have direct dealings with shoe manufacturers.

Int. 1672. You refer in your recross-examination to the Bay State Company stitcher and welter, and I understand you to say that the Bay State Company did not have patents in the United States. Will you kindly state whether the stitchers and welters of the Bay State Company went into use abroad, if you know?

Ans. About ten sets of these machines were put out in England. By "set" I mean the combination of the two machines; that is, ten welters and ten stitchers.

Int. 1673. But whether any were put out in Canada you have no knowledge?

Ans. I have not at this time.

Int. 1674. In your recross-examination you refer to the Seaver lasting machine, and you said that there was no demand for that

machine after the purchase of the Seaver patents. Kindly state, if you know, whether the Seaver lasting machine was put out by the Seaver Company prior to the acquisition of the assets of the Seaver Company by the United Company.

Ans. Yes, sir; it was.

Int. 1675. Kindly say, if you know, for about how long a period the Seaver lasting machine was in use prior to the acquisition of the assets of that company by the United Company.

Ans. I cannot state from memory.

Int. 1676. State approximately if you can do so.

Ans. I could not state, without looking it up, that the machines were in use for as long a period as one year.

Int. 1677. You mean prior to the purchase?

Ans. Prior to the acquisition of the Seaver patents by the United Company.

Mr. WEBSTER. I do not think of anything further at the present time. Shall I go on with Mr. Howard?

Mr. CHOATE. Now, I understand you call him to examine him on direct on some other subject.

Mr. WEBSTER. Simply calling upon him for the list of patents as noted in the last hearing.

[*Signature waived.*]

Attest: CHARLES K. DARLING, *Special Examiner.*

SECOND DEPOSITION OF NELSON W. HOWARD.

Direct Examination by ALLEN WEBSTER, Esq., *of Counsel for Complainant.*

Int. 1. Will you now produce the list of patents belonging to the United Shoe Machinery Company and its affiliated companies, which patents expired prior to the filing of the petition in this case, and which patents relate to machines for cutting soles from sole leather, machines for lasting shoes, machines for attaching welts to uppers, machines for attaching welts to outsoles, machines for leveling and laying soles, machines for rough rounding and

channeling soles, and metallic fastening machines and heeling machines?

Ans. As to the next to the last machine mentioned by you, your request was for patents on loose nailers, and I have here lists of patents on loose nailing machines, as well as lists of patents on the other machines mentioned by you.

Int. 2. Kindly produce the lists of such expired patents relating to machines for cutting soles from sole leather.

Ans. The United Shoe Machinery Company did not acquire from any of the companies which went into the United Company in February, 1899, any machines for cutting soles or any patents on such machines, and the United Company did not manufacture and put out any sole-cutting machines for several years after February, 1899.

Int. 3. Will you kindly produce the list of expired patents called for relating to machines for lasting shoes?

Ans. I now produce a list of patents on "lasting machine, Chase". A list of patents on lasting machine —

Mr. CHOATE. Let us have that marked as an exhibit.

Int. 4. Kindly read to the magistrate the number, title, date and name of inventor of each patent on the Chase lasting machine, which patents expired prior to the filing of the petition in this case.

Mr. CHOATE. I shall have to object to that question, Mr. Webster, as not within the scope of this order. I am perfectly willing you should use those lists which will serve a useful purpose to get this thing in a condensed form quickly. But your order does not entitle you to make any such inquiry. It is limited to proof of Letters Patent under which the defendants were manufacturing their machines in 1899, and proof that many of those patents were about to expire. Now, we shall be glad to convenience you if the United States will occasionally convenience us.

Mr. WEBSTER. At the last session, counsel for the United States inquired of counsel for the defendants whether Mr. Howard would produce a list of patents of the United Company and its associated companies relating to the various machines referred to, which patents had expired prior to the filing of the bill. It was the

understanding of counsel for the United States that counsel for the defendants agreed that Mr. Howard would produce such list. This, as it seems to us, is one step going to the support of the allegation referred to by learned counsel for the defendants.

Mr. CHOATE. Well, it seems to us that it is a great deal broader than the allegations of the bill. The bill suggests a certain situation: that in 1899 the patents which had existed were about to expire, and that that was the occasion for doing something, which something was a conspiracy and combination which the bill charges. It does not seem to us that that opens to you the opportunity for an inquiry as to what patents expired all the way from 1899 up to 1911.

Mr. WEBSTER. Are we to understand that counsel for the defendants instructs the witness not to answer the question?

Mr. CHOATE. I think I shall have to, Mr. Webster.

Mr. WEBSTER. And does the witness, acting under instruction, decline to answer?

The WITNESS. I do.

Mr. WEBSTER. In view of the attitude of counsel for the defendants and the witness, I desire to confer with my superior, and suggest a recess to enable me so to do, and desire to know of counsel for the defendants whether he will permit me to submit the lists in question to my superior to ascertain his views with reference to acceding to request of counsel for defendants, or as to what method counsel for the Government will pursue.

Mr. CHOATE. Counsel for the defendants has not made any request. I shall have to correct your statement in that respect. You may do anything which you would like to do. You may take one of these lists showing in substance what each of them show, for the purpose of confering with your associates.

Mr. WEBSTER. It was the understanding of counsel for the United States that counsel for the defendants requested that if the lists went in, the lists should comprise not only the patents which had expired but also patents now alive. Hence the remark as to "acceding to request of counsel for defendants".

Mr. CHOATE. I don't think any such request was stated. I sug-

gested that it would be convenient if a list of patents on machines of any type was to be put in the record. It would be more intelligible if the complete list was put in, and put in in one place so that the court would not be required to search through various parts of the record to ascertain the patent protection of any particular machine; and to accomplish that desirable result I did not object to your going beyond the scope of the court's order. But I did suggest that if you went beyond the scope of the court's order that that would be a desirable result, and that if you did not think at the moment that you could confine yourself to that, it seemed to me that we better follow the court's order.

Mr. WEBSTER. The request was specific and related only to patents which expired prior to the filing of the petition. As at present advised, counsel for the United States does not care to introduce and does not call for a list of any patents other than those specifically referred to, to wit, those which had expired prior to the filing of the petition. And in view of the attitude of counsel for the defendants, counsel for the Government suggests that recess be had until counsel may have an opportunity to confer with his superior.

Mr. WEBSTER. I learn that Mr. Gregg is not in the city: that he cannot get here until Wednesday morning. I have telegraphed to Mr. Gregg and expect he will reach Boston early Wednesday. I therefore suggest a further postponement or recess until Wednesday at 10 o'clock in the forenoon.

[*Adjourned to 10* A. M., *Wednesday, July 23, 1913.*]

BOSTON, MASS., July 23, 1913.

[*By direction of the Examiner and agreement of counsel the hearing was further suspended until 2 o'clock* P.M.]

Int. 5. Will you now read into the record a list of the number, date, title and name of applicant of patents called for in previous interrogatories, to wit, those which had expired prior to December 12, 1911, and after February 7, 1899.

Ans. Lasting machine, Chase: No. 329,366, October 27, 1885, Crisp, tacking machine: No. 337,925, March 16, 1886, Chase,

lasting machine for boots or shoes; No. 340,860, April 27, 1886, Chase, lasting machine; No. 364,088, May 31, 1887, Chase, machine for lasting boots or shoes; No. 376,368, January 10, 1888, Chase, lasting machine; No. 483,375, September 27, 1892, Chase, tack-driving mechanism.

Lasting machine, Consolidated hand method: No. 274,207, March 20, 1883, Matzeliger, lasting machine; No. 281,306, July 17, 1883, Scott, lasting machine for boots and shoes; No. 284,906, September 11, 1883, Scott, machine for lasting boots and shoes; No. 292,575, January 29, 1884, Pearson, lasting machine; No. 415,726, November 26, 1889, Matzeliger, mechanism for distributing tacks, nails, etc.; No. 421,954, February 25, 1890, Matzeliger, nailing machine; No. 423,920, March 25, 1890, Gooding and Ladd, nail and tack driving machine; No. 423,921, March 25, 1890, Gooding and Ladd, pegging machine; No. 423,922, March 25, 1890, Gooding and Ladd, lasting machine; No. 423,937, March 25, 1890, Matzeliger, tack separating and distributing mechanism; No. 441,482, November 25, 1890, Gooding and Ladd, nail-driving machine; No. 459,899, September 22, 1891, Matzeliger, lasting machine; No. 500,141, June 27, 1893, Ladd, lasting machine; No. 510,972, December 19, 1893, Ladd, starting and stopping mechanism for lasting machines; No. 510,973, December 19, 1893, Ladd, lasting machine; No. 510,975, December 19, 1893, Ladd, lasting machine; No. 510,976, December 19, 1893, Ladd, tacking machine; No. 510,977, December 19, 1893, Ladd, lasting machine; No. 510,978, December 19, 1893, Ladd, tack separating and feeding mechanism; No. 523,939, July 31, 1894, Ladd, lasting machine.

Lasting machine, Ideal: No. 329,282, October 27, 1885, Copeland et al., lasting machine; No. 365,505, June 28, 1887, Copeland et al., lasting machine for boots or shoes; No. 422,734, March 4, 1890, Copeland et al., lasting machine; No. 446,631, February 17, 1891, Crisp et al., tack-driving machine; No. 455,174, June 30, 1891, Crisp et al., tack-driving machine; No. 465,073, December 15, 1891, Copeland et al., lasting machine; No. 500,225, June 27, 1893, Crisp et al., tack-driving machine; No. 500,319, June 27, 1893,

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Crisp, tack-driving machine: No. 521,954, June 26, 1894, Grandy, lasting machine.

Lasting machine, McKay and Copeland: No. 286,893, October 16, 1883, Brock, lasting machine; No. 288,689, November 20, 1883, Brock, lasting machine; No. 302,885, August 5, 1884, Brock, lasting machine; No. 306,671, October 14, 1884, Brock, tack-driving implement; No. 371,816, October 18, 1887, Brock, lasting machine.

Lasting Machine No. 5, U. S. M. C.; none of the patents covering inventions embodied in this machine expired prior to December 12, 1911.

Shoe machine, Goodyear welt and turn: No. 317,759, May 12, 1885, French, sole-sewing machine; No. 412,704, October 8, 1889, French and Meyer, shoe-sewing machine; No. 461,793, October 20, 1891, Briggs, method of forming chain stitches; No. 488,505, December 20, 1892, LaChapelle, tension device for sewing machines; No. 495,452, April 11, 1893, Cole, sewing machine; No. 507,873, October 31, 1893, Arnold and Arnold, shoe-sewing machine; No. 518,911, April 24, 1894, Briggs, take-up for shoe-sewing machines.

Sewing machine, Goodyear Universal inseam: No. 366,935, July 19, 1887, Dancel, sole-sewing machine; No. 412,703, October 8, 1889, French and Meyer, sewing machine; No. 488,505, December 20, 1892, LaChapelle, tension device for sewing machines; No. 495,452, April 11, 1893, Cole, sewing machine.

Lockstitch machine, Goodyear outsole rapid: No. 366,935, July 19, 1887, Dancel, sole-sewing machine; No. 412,703, October 8, 1889, French and Meyer, sewing machine; No. 424,966, April 8, 1890, French and Meyer, shuttle for sewing machines; No. 473,870, April 26, 1892, French and Meyer, sole-sewing machine; No. 474,774, May 10, 1892, French and Meyer, sole-sewing machine.

Leveling Machine, Atlas: none of the patents covering inventions embodied in this machine expired prior to December 12, 1911.

Leveling Machine, Goodyear Automatic Sole: none of the patents covering inventions embodied in this machine expired prior to December 12, 1911.

Leveling Machine, Goodyear Welt and Turn (Turn Work): none of the patents covering inventions embodied in this machine expired prior to December 12, 1911.

Leveling Machine, Goodyear Welt and Turn (Welt Work): none of the patents covering inventions embodied in this machine expired prior to December 12, 1911.

Leveling Machine, Hercules: none of the patents covering inventions embodied in this machine expired prior to December 12, 1911.

Laying machine, Goodyear improved sole: No. 304,416, September 2, 1884, Eppler, sole-laying machine; No. 315,923, April 14, 1885, Eppler, sole-laying Machine; No. 335,016, January 26, 1886, Coupal and Wood, sole-laying machine; No. 353,251, November 23, 1886, Coupal, sole-laying machine; No. 362,447, May 3, 1887, Holland, sole-laying machine; No. 375,549, December 27, 1887, Hamm, sole-laying machine; No. 376,406, January 10, 1888, Coy, sole-laying machine.

Laying Machine, Goodyear Rotary Sole: none of the patents covering inventions embodied in this machine expired prior to December 12, 1911.

Rounding machine, Briggs, rough; rounding and channeling machine, Goodyear Universal: No. 463,967, November 24, 1891, Briggs, rough rounding and channeling machine; No. 463,982, November 24, 1891, Briggs, rough rounding and channeling machine; No. 511,263, December 19, 1893, Briggs and Dancel, rough rounding and channeling machine; No. 529,900, November 27, 1894, French and Meyer, channeling machine.

Nailing machine, Hungarian; nailing machine, loose: No. 265,227, September 26, 1882, Goddu, machine for driving sole fastenings; No. 356,107, January 16, 1887, Dunham, boot or shoe nailing machine; No. 383,455, May 29, 1888, Goddu, nailing machine; No. 490,624, January 24, 1893, Goddu, machine for uniting soles to uppers.

Loading and attaching machine, McKay automatic heel: No. 310,488, January 6, 1885, Allen, heel-nailing machine for boots or shoes; No. 317,851, May 12, 1885, Raymond, heel-nailing machine; No. 346,137, July 27, 1886, Towns et al., nail making

and distributing machine; No. 413,554, October 22, 1889, Raymond, nail machine; No. 446,383, February 10, 1891, Glidden et al., heeling machine; No. 502,667, August 1, 1893, Glidden, heel-compressing and loading machine.

Nailing Machine, Alpha Wood Heel: none of the patents covering inventions embodied in this machine expired prior to December 12, 1911.

Nailing machine, American lightning: No. 305,723, September 23, 1884, Tyler, heel-nailing machine; No. 321,401, June 30, 1885, Tyler and Merritt, heeling machine; No. 321,530, July 7, 1885, Raymond, heel-nailing machine; No. 343,703, June 15, 1886, Demary, heel-nailing machine; No. 446,885, February 24, 1891, Pope, heel-nailing machine.

Nailing machine, McKay rapid: No. 310,488, January 6, 1885, Allen, heel-nailing machine for boots or shoes; No. 446,383, February 10, 1891, Glidden and Elliott, heeling machine; No. 477,098, June 14, 1892, Brown and McCoy, heel-nailing machine.

That is all, Mr. Webster.

Int. 6. Does the list of expired patents which you have read into the record include patents under which the Goodyear Shoe Machinery Company, the International Goodyear Shoe Machinery Company, Goodyear Shoe Machinery Company of Canada, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Eppler Welt Machine Company, International Eppler Welt Machine Company and Davey Pegging Machine Company operated under or owned at the time these companies were taken over by the United Shoe Machinery Company?

Ans. The patents which I have named are those which expired prior to December 12, 1911, and the inventions of which were embodied in the machines named, which machines are those mentioned in the request for this information in response to which the lists are produced. The machines which I have named were being put out in February, 1899, by the Consolidated & McKay Lasting Machine Company, the Goodyear Shoe Machinery Company and the McKay Shoe Machinery Company, respectively, excepting lasting machine No. 5 U. S. M. C., leveling machine Atlas, leveling machine Good-

year welt and turn (turn work), leveling machine Goodyear welt and turn (welt work), leveling machine Hercules, laying machine Goodyear improved sole, nailing machine Hungarian and nailing machine Alpha wood heel, each of which machines were first put out by the United Shoe Machinery Company subsequently to February 7, 1899.

Direct Examination by WILLIAM S. GREGG, Esq., *of Counsel for Complainant.*

Int. 7. Does that list include all the patents owned or controlled by the Goodyear Shoe Machinery Company, for example, on welting machines that expired prior to December 12, 1911, that were taken over by the United Shoe Machinery Company from the Goodyear Company at or about the time the United was formed?

Ans. The lists which I have read into the record comprise all patents covering inventions embodied in the machines of the Goodyear Shoe Machinery Company named by me and as to which information was specifically requested by Mr. Webster, in February, 1899, which expired prior to December 12, 1911.

Int. 8. What I intended to ask you there was, regardless of any request Mr. Webster made: Whether or not that list included all the patents, or whether that list is only in response to what he specifically requested?

Ans. The lists which I have read into the record do not include all patents owned by the Goodyear Shoe Machinery Company relating to machines of the types named. The lists are limited to patents the inventions on which were used in the machines named.

Int. 9. What do you mean by "machines named"? I merely took the words "sewing machine" as an example. Does the list include all the patents on the welt-sewing machine — just take that one machine that the Goodyear Company owned or controlled at the time it went into the United Company, and that expired prior to December 12, 1911?

Ans. The list of patents on the welt-sewing machine includes all the patents covering inventions used in the welt-sewing machine of

the Goodyear Shoe Machinery Company in February, 1899, which expired prior to December 12, 1911.

Int. 10. Then the list of expired patents, for example, on welt-sewing machine, which you have read into the record and which were acquired by the United Company of the Goodyear Shoe Machinery Company, includes all patents which expired prior to December 12, 1911, regardless of the date of assignment by the Goodyear Company to the United Company?

Ans. Yes, sir. I did not pay the slightest attention to the date of the assignment, because that was done at the convenience of counsel. I assumed, in preparing that list, that all the patents that read on those machines were under the control of the United Company from that date.

Int. 11. While I mentioned there the welt-sewing machine specifically, your answer would also apply to outsole stitching machines or any other machines acquired from the companies mentioned in the petition that became a part of the United Company?

Ans. Yes. My answer would apply likewise to all of the machines named by me.

Direct Examination by ALLEN WEBSTER, Esq., *of Counsel for Complainant.*

Int. 12 (*by* Mr. WEBSTER). The lists you have read into the record, as I understand your statement, are lists of patents expiring on or before December 12, 1911, covering inventions embodied in machines manufactured by the several companies which together went to make up the United Shoe Machinery Company. Am I correct in that understanding?

Ans. Yes; inventions embodied in the machines named.

Int. 13. Now, have you a list of patents owned or controlled by said several companies, which patents the inventions of which were not embodied in machines of said companies and which patents expired on or before December 12, 1911?

Ans. No, sir; I have not.

Int. 14. Could you procure such lists without serious inconvenience?

Mr. CHOATE. I do not see how that is included in this issue submitted to the Examiner.

Mr. WEBSTER. Let him say whether he could or not.

Mr. CHOATE. Well, I suppose it is possible, if men enough and time enough are taken, to procure any of those lists, but I do not see why he should be asked to do it.

Mr. WEBSTER. Do you instruct him not to answer?

Mr. CHOATE. No. I object to the question.

Mr. WEBSTER. The witness should say something.

The WITNESS. Am I instructed —

Mr. CHOATE. It seems to me that the question is outside the scope of the issue submitted to this Examiner. You can state how long it might take you to compile such list, how many men you would have to put on.

The WITNESS. If I were to present this list tomorrow, probably the preparation and verifying of the list would require that the entire force of the patent department work most of the night.

Mr. CHOATE. I think I really ought to insist upon the ordinary rule that the examination be by one counsel. I have not been very strict about that.

The EXAMINER. Do you apprehend that the Examiner has any control over that other than note your objection on the record?

Mr. CHOATE. Perhaps this will be sufficient.

Mr. GREGG. I have no objection to putting the questions through Mr. Webster.

Int. 15. Kindly state whether the inventions of any of the patents you have not specified and which expired prior to December 12, 1911, which patents were owned or controlled by the several companies going to make up the United Company, were incorporated in any machines afterwards manufactured by the United Company. This relates, of course, to the types of machines which I will enumerate: welt turn machines, welt sewing machines, outsole stitchers, lasters, sole layers, sole levelers, rough rounders, loose nailers and heelers.

Ans. It is quite possible that inventions of patents not embodied in commercial machines just prior to February, 1899, were subse-

quent to that date embodied by the United Shoe Machinery Company in different models or types of machines. I could not answer more definitely without an extended investigation. I now, of course, have reference to patents relating to machines of the types named in the lists which expired prior to December 12, 1911.

Mr. CHOATE. Have you completed your examination of Mr. Howard?

Mr. WEBSTER. The present examination.

Cross Examination by CHARLES F. CHOATE, Jr., Esq., *of Counsel for Defendants.*

Cross-Int. 16. In answer to questions of counsel for the United States, you read from lists which you had prepared, which lists show the patent protection upon the various machines which you have named between February, 1899, and the present date?

Ans. Yes, sir.

Cross-Int. 17. And have you those lists there before you?

Ans. Yes, sir.

Cross-Int. 18. In some instances were inventions embodied in machines prior to December 12, 1911, upon which patents have since been granted?

Ans. Yes, sir.

Mr. CHOATE. I offer these lists and ask to have them put into the record in full as to what Mr. Howard would have testified constituted the patent protection on the machines inquired of by the counsel for the United States during the period between February, 1899, and the present time.

Mr. WEBSTER. That is put in as defendants' exhibit?

Mr. CHOATE. Yes; for convenience, I would like to have them go into the record at this point. It will all go in as one exhibit.

[*List of patents on inventions embodied in machines inquired about by counsel for the United States between February, 1899, and the present time offered in evidence, and marked "Defendants' Exhibit 105", appended hereto, as follows:*]

DEFENDANTS' EXHIBIT 105.

[Put in Evidence, page 2112.]

LASTING MACHINE: CHASE.

Patents.

329,366	Oct. 27, 1885	Crisp	Tacking Machine
337,925	Mar. 16, 1886	Chase	Lasting Machine for Boots or Shoes
340,860	Apr. 27, 1886	Chase	Lasting Machine
364,088	May 31, 1887	Chase	Machine for Lasting Boots or Shoes
376,368	Jan. 10, 1888	Chase	Lasting Machine
483,375	Sept. 27, 1892	Chase	Tack Driving Mechanism
545,052	Aug. 27, 1895	Chase	Lasting Machines
558,011	Apr. 7, 1896	Chase	Press
569,182	Oct. 13, 1896	Dunphy	Last Clasp for Lasting Machines
569,231	Oct. 13, 1896	Ray	Pad Holder for Lasting Machines
569,590	Oct. 13, 1896	Shaw	Hand Tacking Machine
571,339	Nov. 17, 1896	Chase	Lasting Machine
571,404	Nov. 17, 1896	Shaw	Lasting Machine
571,429	Nov. 17, 1896	Chase	Lasting Machine
1,053,612	Feb. 18, 1913	Keyes	Reel

LASTING MACHINE: CONSOLIDATED HAND METHOD.

Patents.

274,207	Mar. 20, 1883	Matzeliger	Lasting Machine
281,306	July 17, 1883	Scott	Lasting Machine for Boots and Shoes
284,906	Sept. 11, 1883	Scott	Machine for Lasting Boots and Shoes
292,575	Jan. 29, 1884	Pearson	Lasting Machine
415,726	Nov. 26, 1889	Matzeliger	Mechanism for Distributing Tacks, Nails, etc.
421,954	Feb. 25, 1890	Matzeliger	Nailing Machine
423,920	Mar. 25, 1890	Gooding & Ladd	Nail and Tack Driving Machine
423,921	Mar. 25, 1890	Gooding & Ladd	Pegging Machine
423,922	Mar. 25, 1890	Gooding & Ladd	Lasting Machine
423,937	Mar. 25, 1890	Matzeliger	Tack Separating and Distributing Mechanism
441,482	Nov. 25, 1890	Gooding & Ladd	Nail Driving Machine
459,899	Sept. 22, 1891	Matzeliger	Lasting Machine
500,141	June 27, 1893	Ladd	Lasting Machine
510,972	Dec. 19, 1893	Ladd	Starting and Stopping Mechanism for Lasting Machines
510,973	Dec. 19, 1893	Ladd	Lasting Machine
510,975	Dec. 19, 1893	Ladd	Lasting Machine
510,976	Dec. 19, 1893	Ladd	Tacking Machine
510,977	Dec. 19, 1893	Ladd	Lasting Machine
510,978	Dec. 19, 1893	Ladd	Tack Separating and Feeding Mechanism

523,939	July	31, 1894	Ladd	Lasting Machine
533,394	Jan.	29, 1895	Mosher	Clutch
562,119	June	16, 1896	Carter	Lasting Machine
564,931	July	28, 1896	Ladd	Lasting Machine
584,741	June	15, 1897	Ladd	Lasting Machine
584,742	June	15, 1897	Ladd	Lasting Machine
584,744	June	15, 1897	Ladd & McFeely	Lasting Machine
597,321	Jan.	11, 1898	Ladd	Lasting Machine
696,717	Apr.	1, 1902	Cavanagh	Lasting Machine
696,740	Apr.	1, 1902	Ladd	Lasting Machine
718,586	Jan.	13, 1903	Stiggins	Edge Gage
726,087	Apr.	21, 1903	McAuliffe & Hogan	Lasting Machine
751,128	Feb.	2, 1904	Winn	Lasting Machine
784,251	Mar.	7, 1905	DeMinico	Lasting Machine
867,469	Oct.	1, 1907	Bond	Lasting Machine
893,331	July	14, 1908	Ladd	Lasting Machine
931,809	Aug.	24, 1909	Stiggins	Lasting Machine
944,116	Dec.	21, 1909	Wade	Lasting Machine
946,620	Jan.	18, 1910	Stiggins	Lasting Machine
999,233	Aug.	1, 1911	Ladd & Stiggins	Lasting Machine
1,003,984	Sept.	26, 1911	Clary	Fastening Inserting Mechanism
1,005,234	Oct.	10, 1911	Ladd & Stiggins	Gripper for Lasting Machines
1,005,929	Oct.	17, 1911	Bond	Lasting Machine
1,009,054	Nov.	21, 1911	DeMinico	Lasting Machine
1,014,940	Jan.	16, 1912	Bond	Machine for Inserting Fastenings
1,022,402	Apr.	9, 1912	Chick	Lasting Machine
1,027,510	May	28, 1912	Stiggins	Cutting Device

Applications.

127,116	Oct.	13, 1902	Stiggins	Lasting Machine

LASTING MACHINE: IDEAL.

Patents.

329,282	Oct.	27, 1885	Copeland et al.	Lasting Machine
365,505	June	28, 1887	Copeland et al.	Lasting Machine for Boots or Shoes
422,734	Mar.	4, 1890	Copeland et al.	Lasting Machine
446,631	Feb.	17, 1891	Crisp et al.	Tack Driving Machine
455,174	June	30, 1891	Crisp et al.	Tack Driving Machine
465,073	Dec.	15, 1891	Copeland et al.	Lasting Machine
500,225	June	27, 1893	Crisp et al.	Tack Driving Machine
500,319	June	27, 1893	Crisp	Tack Driving Machine
521,954	June	26, 1894	Grandy	Lasting Machine
552,834	Jan.	7, 1896	Grandy	Lasting Machine
558,043	Apr.	14, 1896	Copeland et al.	Lasting Machine
571,429	Nov.	17, 1896	Chase	Lasting Machine
947,818	Feb.	1, 1910	Heffernan	Holddown Attachment for Lasting Machines
1,053,612	Feb.	18, 1913	Keyes	Reel

LASTING MACHINE: McKAY & COPELAND.

Patents.

286,898	Oct. 16, 1883	Brock	Lasting Machine
288,689	Nov. 20, 1883	Brock	Lasting Machine
302,885	Aug. 5, 1884	Brock	Lasting Machine
306,671	Oct. 14, 1884	Brock	Tack Driving Implement
371,816	Oct. 18, 1887	Brock	Lasting Machine
548,671	Oct. 29, 1895	Stirckler	Lasting Machine
548,862	Oct. 29, 1895	Brock	Lasting Machine
601,933	Apr. 5, 1898	Brock	Lasting Machine
601,935	Apr. 5, 1898	Brock	Lasting Machine
601,936	Apr. 5, 1898	Brock	Lasting Machine
823,664	June 19, 1906	Brock	Lasting Machine
1,021,860	Apr. 2, 1912	Brock	Lasting Machine
1,030,564	June 25, 1912	Brock	Lasting Machine

LASTING MACHINE: NO. 5 U. S. M. C.

Patents.

552,834	Jan. 7, 1896	Grandy	Lasting Machine
569,231	Oct. 13, 1896	Ray	Pad Holder for Lasting Machines
571,429	Nov. 17, 1896	Chase	Lasting Machine
588,568	Aug. 24, 1897	Grandy	Lasting Machine
601,934	Apr. 5, 1898	Brock	Lasting Machine
958,280	May 17, 1910	Plant	Lasting Machine
1,002,818	Sept. 12, 1911	Brock	Lasting Mechanism
Re.13,292	Sept. 19, 1911	Snow	Lasting Machine
1,004,659	Oct. 3, 1911	Keyes	Lasting Machine
1,017,124	Feb. 13, 1912	Winkley & Alley	Lasting Machine
1,018,025	Feb. 20, 1912	Winkley & Alley	Lasting Machine
1,018,477	Feb. 27, 1912	Brock	Lasting Machine
Re. 13,505	Jan. 7, 1913	Glass	Lasting Machine
1,053,612	Feb. 18, 1913	Keyes	Reel
1,066,374	July 1, 1913	Brock	Shoe Support
1,066,375	July 1, 1913	Brock	Lasting Machine

Applications.

522,987	Oct. 16, 1909	Brock	Heel Lasting Mechanisms
540,549	Jan. 28, 1910	Fausse	Lasting Machine
580,400	Sept. 3, 1910	Keyes	Hold-downs for Lasting Machines
600,073	Dec. 30, 1910	Fausse	Rebound Control for Lasting Machines
600,272	Dec. 31, 1910	Brown	Rebound Control for Lasting Carriages
709,971	July 17, 1912	Brock	Heel Bands
711,678	July 26, 1912	Brown	Hold Down Devices for Lasting Machines

SHOE MACHINE: GOODYEAR WELT & TURN.
SHOE MACHINE: GOODYEAR WELT & TURN, MODEL E.
SHOE MACHINE: GOODYEAR WELT & TURN, MODEL G.
SHOE MACHINE: GOODYEAR WELT & TURN, MODEL K.

Patents.

317,759	May	12, 1885	French	Sole Sewing Machine
412,704	Oct.	8, 1889	French & Meyer	Shoe Sewing Machine
461,793	Oct.	20, 1891	Briggs	Method of Forming Chain Stitches
488,505	Dec.	20, 1892	LaChapelle	Tension Device for Sewing Machines
495,452	Apr.	11, 1893	Cole	Sewing Machine
507,873	Oct.	31, 1893	Arnold & Arnold	Shoe Sewing Machine
518,911	Apr.	24, 1894	Briggs	Take-up for Shoe Sewing Machines
533,301	Jan.	29, 1895	Laperriere	Sewing Machine
561,386	June	2, 1896	French	Sewing Machine
634,850	Oct.	10, 1899	Fowler & Warren	Shoe Sewing Machine
666,823	Jan.	29, 1901	Selby	Chain Stitch Shoe Sewing Machine
679,409	July	30, 1901	Alley	Take-up Mechanism for Sewing Machines
684,537	Oct.	15, 1901	Briggs	Awl Actuating Mechanism for Shoe Sewing Machine
684,538	Oct.	15, 1901	Briggs	Shoe Sewing Machine
687,719	Dec.	3, 1901	Briggs	Shoe Sewing Machine
700,279	May	20, 1902	Winkley	Welt Sewing Machine
710,612	Oct.	7, 1902	Richardson	Shoe Sewing Machine
732,729	July	7, 1903	French & Meyer	Thread-waxing Device for Sewing Machines
835,513	Nov.	13, 1906	Fuller	Guard for Inseam Sewing Machine
877,858	Jan.	28, 1908	Plant	Welt and Thread Cutting Means for Sewing Machines
877,859	Jan.	28, 1908	Plant	Welt Measuring Means for Sewing Machines
904,604	Nov.	24, 1908	Currier	Feed Point or Awl for Shoe Sewing Machine
930,115	Aug.	3, 1909	Alley	Thread Waxing Devices
935,726	Oct.	5, 1909	Alley	Sewing Machine
958,298	May	7, 1910	Plant	Sewing Machine
1,003,175	Sept.	12, 1911	Eppler	Inseam Shoe Sewing Machine
1,005,181	Oct.	10, 1911	Eppler	Welt Guide Mechanism for Welt Shoe Sewing Machines
1,015,304	Jan.	23, 1912	Eppler	Thread Waxing Devices for Sewing Machines
1,015,772	Jan.	30, 1912	Ashworth	Thread Waxing Devices
1,017,059	Feb.	13, 1912	McPherson & Orr	Welt Guide for Sewing Watertight Inseams
1,017,440	Feb.	13, 1912	Meyer	Shoe Sewing Machine
1,018,130	Feb.	20, 1912	Plant	Sewing Machine
Re. 13,374	Feb.	27, 1912	Plant	Sewing Machine

1,023,071	Apr. 9, 1912	Eppler	Thread Waxing Devices
1,028,474	June 4, 1912	Mayo	Tension Devices
1,030,512	June 25, 1912	Freese	Sewing Machine
1,030,742	June 25, 1912	Meyer	Tension Mechanism for Sewing Machines
1,030,743	June 25, 1912	Meyer	Tension Device for Sewing Machines
1,030,804	June 25, 1912	Briggs	Looper Mechanisms for Sewing Machines
1,030,816	June 25, 1912	Holmes	Sewing Machine
1,030,867	July 2, 1912	Briggs	Sewing Machine
1,048,511	Dec. 31, 1912	Eaton	Sole Rounding Machine

Applications.

247,117	Feb. 24, 1905	Eppler	Shoe Sewing Machine
447,542	Aug. 8, 1908	Eppler	Shoe Sewing Machine
529,412	Nov. 22, 1909	Eppler	Welt Guide Mechanism for Shoe Sewing Machine
558,866	May 2, 1910	Perry	Welt Sewing Machine
591,792	Nov. 11, 1910	Topham	Driving and Stopping Mechanism
640,836	July 27, 1911	Eppler	Sewing Machines
645,591	Aug. 23, 1911	Topham	Sewing Machines
682,243	Mar. 7, 1912	King	Welt Controlling Mechanism
683,087	Mar. 11, 1912	Eppler	Back Rest and Back Gage or Welt Guide Mechanisms for Shoe Sewing Machines
683,088	Mar. 11, 1912	Eppler	Shoe Sewing Machines
714,623	Aug. 12, 1912	Topham	Driving and Stopping Mechanism

SEWING MACHINE: GOODYEAR UNIVERSAL INSEAM.

Patents.

366,935	July 19, 1887	Dancel	Sole Sewing Machine
412,703	Oct. 8, 1889	French & Meyer	Sewing Machine
488,505	Dec. 20, 1892	LaChapelle	Tension Device for Sewing Mchs.
495,452	Apr. 11, 1893	Cole	Sewing Machine
583,522	June 1, 1897	Warren	Sewing Machine
705,062	July 22, 1902	French & Meyer	Feeding Mechanism for Shoe Sewing Machines
705,063	July 22, 1902	French & Meyer	Shoe Sewing Machine
732,729	July 7, 1903	French & Meyer	Thread Waxing Device for Sewing Machines
781,596	Jan. 31, 1905	French & Meyer	Feeding Mechanism for Sewing Machines
790,790	May 23, 1905	French & Meyer	Shoe Sewing Machine
1,030,742	June 25, 1912	Meyer	Tension Mechanism for Sewing Machines

LOCKSTITCH MACHINE: GOODYEAR OUTSOLE RAPID.
LOCKSTITCH MACHINE: GOODYEAR OUTSOLE RAPID, MODEL K.
LOCKSTITCH MACHINE: GOODYEAR OUTSOLE RAPID, MODEL M.

Patents.

366,935	July 19, 1887	Dancel	Sole Sewing Machine
412,703	Oct. 8, 1889	French & Meyer	Sewing Machine
424,966	Apr. 8, 1890	French & Meyer	Shuttle for Sewing Machines
473,870	Apr. 26, 1892	French & Meyer	Sole Sewing Machine
474,774	May 10, 1892	French & Meyer	Sole Sewing Machine
532,344	Jan. 8, 1895	Smith	Sewing Machine
553,139	Jan. 14, 1896	Smith	Sewing Machine
563,471	July 7, 1896	French & Meyer	Sole Sewing Machine
563,472	July 7, 1896	French & Meyer	Sole Sewing Machine
Re.11,578	Dec. 8, 1896	Hadaway	Welt Beveling Attachment for Sole Sewing Machines
582,510	May 11, 1897	Shriner & Adams	Sole Sewing Machine
641,330	Jan. 16, 1900	Rush	Needle Lubricating Device for Sewing Machines
675,783	June 4, 1901	Meloon	Guide for Shoe Sewing Machines
704,457	July 8, 1902	Hadaway	Shoe Sewing and Welt Beveling Machine
704,458	July 8, 1902	Hadaway	Shoe Sewing and Welt Beveling Machine
710,612	Oct. 7, 1902	Richardson	Shoe Sewing Machine
710,613	Oct. 7, 1902	Richardson	Presser Foot Mechanism for Shoe Sewing Machine
732,729	July 7, 1903	French & Meyer	Thread Waxing Device for Sewing Machines
900,925	Oct. 13, 1908	Haradon	Welt Channeling Attachment for Sole Sewing Machines
906,092	Dec. 8, 1908	Bayard	Apron for Shoe Stitching Machine
922,696	May 25, 1909	Hadaway	Needle Lubricating Device
930,115	Aug. 3, 1909	Alley	Thread Waxing Devices
940,055	Nov. 16, 1909	Plant	Sole Sewing Machine
940,723	Nov. 23, 1909	Plant	Channeling Device for Sewing Machines
940,725	Nov. 23, 1909	Plant	Shoe Sewing Machine
946,591	Jan. 18, 1910	Arnold	Sewing Machine
963,761	July 12, 1910	Hadaway	Sole Sewing Machines
974,309	Nov. 1, 1910	Thayer	Shuttle Tension Device
974,757	Nov. 1, 1910	Dow	Shuttle Tension Device
1,015,023	Jan. 16, 1912	Hatch	Bobbin Holding Device
1,015,304	Jan. 23, 1912	Eppler	Thread Waxing Devices for Sewing Machines
1,015,772	Jan. 30, 1912	Ashworth	Thread Waxing Devices
1,017,380	Feb. 13, 1912	Cady & Thayer	Welt Channeling Attachment for Sole Sewing Machines
1,017,397	Feb. 13, 1912	Fletcher & McLean	Sewing Machine

1,023,071	Apr.	9, 1912	Eppler	Thread Waxing Devices
1,027,791	May	28, 1912	Allen	Shoe Sewing Machine
1,030,582	June	25, 1912	Hadaway	Presser Foot Mechanism for Sewing Machines
1,030,742	June	25, 1912	Meyer	Tension Mechanism for Sewing Machines
1,030,767	June	25, 1912	Beckman	Grooving Device for Shoe Sewing Machines
1,048,565	Dec.	31, 1912	Meyer	Bobbin Holding Device for Lockstitch Sewing Machines
1,048,719	Dec.	31, 1912	Meyer	Shoe Sewing Machines

Applications.

321,958	June	16, 1906	Nash	Sewing Machines
488,430	Apr.	7, 1909	Allen	Tension Device
573,365	July	23, 1910	LaChapelle	Presser Foot Mechanism
576,053	Aug.	8, 1910	Bolton	Stitch Down Welt Guides
585,116	Oct.	3, 1910	Ashworth	Sewing Machines
591,792	Nov.	11, 1910	Topham	Driving and Stopping Mechanism
621,286	Apr.	15, 1911	Topham	Sewing Machines
635,114	June	24, 1911	Dow	Sewing Machines
645,591	Aug.	23, 1911	Topham	Sewing Machines
656,685	Oct.	25, 1911	Topham	Sole Sewing Machines
663,701	Dec.	4, 1911	Brogan	Sewing Machines
699,137	May	23, 1912	Ashworth	Sewing Machines
699,138	May	23, 1912	Ashworth	Sewing Machines
699,364	May	24, 1912	Ashworth	Sewing Machines
714,623	Aug.	12, 1912	Topham	Driving and Stopping Mechanism

LEVELING MACHINE, MODEL A: ATLAS.

Patents.

557,744	Apr.	7, 1896	Winkley	Sole Laying Machine
627,034	June	13, 1899	Winkley	Sole Pressing Machine
703,204	June	24, 1902	Heys	Leveling Machine
818,503	Apr.	24, 1906	Winkley	Sole Pressing Machine
818,504	Apr.	24, 1906	Winkley	Sole Pressing Machine
845,714	Feb.	26, 1907	Mayo	Sole Pressing Machine
881,478	Mar.	10, 1908	Mayo	Sole Pressing Machine
930,823	Aug.	10, 1909	Winkley	Form Adjusting Device

Applications.

674,686	Feb.	1, 1912	Preble	Sole Pressing Machine

LEVELING MACHINE: GOODYEAR AUTOMATIC SOLE.
LEVELING MACHINE: GOODYEAR AUTOMATIC SOLE, MODEL B.
LEVELING MACHINE: GOODYEAR AUTOMATIC SOLE, MODEL C.

Patents.

540,222	May	28, 1895	Winkley & Phillips	Sole Leveling Machine
540,223	May	28, 1895	Winkley & Phillips	Sole Leveling Machine
541,988	July	2, 1895	Winkley	Sole Leveling Machine
546,211	Sept.	10, 1895	Winkley & Phillips	Sole Leveling Machine
555,548	Mar.	3, 1896	Winkley	Sole Leveling Machine
580,746	Apr.	13, 1897	Winkley	Jack for Sole Leveling Machines
610,314	Sept.	6, 1898	Winkley	Sole Leveling Machine
668,635	Feb.	26, 1901	Gifford	Sole Levelling Machine
677,550	July	2, 1901	Meyer	Jack for Holding Boots or Shoes
692,401	Feb.	4, 1902	Winkley	Sole Leveling Machine
889,287	June	2, 1908	Winkley	Sole Leveling Machine
1,011,301	Dec.	12, 1911	Winkley	Sole Leveling Machine
1,054,263	Feb.	25, 1913	Winkley	Automatic Sole Leveling Machine

Applications.

750,325	Feb.	24, 1913	Baxter	Shoe Jacks
750,326	Feb.	24, 1913	Baxter	Leveling Machines

LEVELING MACHINE: GOODYEAR WELT AND TURN (TURN WORK)

Patents.

563,487	July	7, 1896	Howe	Machine for Beating out Shoe Soles
580,746	Apr.	18, 1897	Winkley	Jack for Sole Leveling Machines
677,550	July	2, 1901	Meyer	Jack for Holding Boots or Shoes
916,021	Mar.	23, 1909	Rigby	Sole Leveling Machine
925,509	June	22, 1909	Rigby	Sole Leveling Machine
996,707	July	4, 1911	Eppler	Sole Leveling Machine
1,004,155	Sept.	26, 1911	Eppler	Sole Leveling Machine

Application.

649,614	Sept.	16, 1911	Eppler	Shoe Supporting Jacks

LEVELING MACHINE: GOODYEAR WELT AND TURN (WELT WORK)

Patents.

580,746	Apr.	13, 1897	Winkley	Jack for Sole Leveling Machines
677,550	July	2, 1901	Meyer	Jack for Holding Boots or Shoes
925,509	June	22, 1909	Rigby	Sole Leveling Machine
996,707	July	4, 1911	Eppler	Sole Leveling Machine
1,004,155	Sept.	26, 1911	Eppler	Sole Leveling Machine

Application.

649,614	Sept.	16, 1911	Eppler	Shoe Supporting Jacks

LEVELING MACHINE, MODEL A: HERCULES.
LEVELING MACHINE, MODEL B: HERCULES.

Patents.

684,239	Aug. 8, 1901	Heys	Leveling Machine
707,414	Aug. 19, 1902	Heys	Leveling Machine
861,746	July 30, 1907	Mayo	Sole Pressing Machine
884,144	Apr. 7, 1908	Frasier	Sole Pressing Machine
932,220	Aug. 24, 1909	Winkley	Sole Pressing Machine
944,620	Dec. 28, 1909	Holt	Sole Pressing Machine
982,267	Jan. 24, 1911	Gouldbourn	Sole Pressing Machine
997,798	July 11, 1911	Frasier	Sole Pressing Machine

LAYING MACHINE: (SINGLE) GOODYEAR IMPROVED SOLE
LAYING MACHINE: (TWIN) GOODYEAR IMPROVED SOLE.
LAYING MACHINE: MODEL B, GOODYEAR IMPROVED SOLE.
LAYING MACHINE: MODEL C, GOODYEAR IMPROVED SOLE.

Patents.

304,416	Sept. 2, 1884	Eppler	Sole Laying Machine
315,923	Apr. 14, 1885	Eppler	Sole Laying Machine
335,016	Jan. 26, 1886	Coupal & Wood	Sole Laying Machine
353,251	Nov. 23, 1886	Coupal	Sole Laying Machine
362,447	May 3, 1887	Holland	Sole Laying Machine
375,549	Dec. 27, 1887	Hamm	Sole Laying Machine
376,406	Jan. 10, 1888	Coy	Sole Laying Machine
694,367	Mar. 4, 1902	Gifford	Pressing Form for Sole Laying Machines
781,636	Feb. 7, 1905	Davenport	Sole Pressing Machine
930,272	Aug. 3, 1909	Davenport	Sole Pressing Machine
942,133	Dec. 7, 1909	Davenport	Sole Pressing Pad
1,018,069	Feb. 20, 1912	Miller	Sole Laying Machine
1,066,473	July 8, 1913	Davenport	Sole Pressing Machine

LAYING MACHINE: GOODYEAR ROTARY SOLE.

Patents.

549,471	Nov. 5, 1895	Winkley	Form for Sole Laying Machines
553,948	Feb. 4, 1896	Winkley	Sole Laying Machine
553,949	Feb. 4, 1896	Winkley	Sole Laying Machine
557,744	Apr. 7, 1896	Winkley	Sole Laying Machine
579,205	Mar. 23, 1897	Winkley	Jack for Shoe Machines
579,206	Mar. 23, 1897	Winkley	Form for Sole Laying Machines
584,038	June 8, 1897	Gifford	Pressing Form for Sole Laying Machines
610,315	Sept. 6, 1898	Winkley	Mechanism for Adjusting Forms of Sole Laying Machines
627,035	June 13, 1899	Winkley	Sole Laying Machine
640,063	Dec. 26, 1899	Winkley	Sole Laying Machine

ROUNDING AND CHANNELING MACHINE: GOODYEAR UNIVERSAL.
ROUNDING AND CHANNELING MACHINE: GOODYEAR UNIVERSAL MODEL E.
ROUNDING MACHINE: BRIGGS ROUGH.

Patents.

463,967	Nov. 24, 1891	Briggs	Rough Rounding and Channeling Machine
463,982	Nov. 24, 1891	Briggs	Rough Rounding and Channeling Machine
511,263	Dec. 19, 1893	Briggs & Dancel	Rough Rounding and Channeling Machine
529,900	Nov. 27, 1894	French & Meyer	Channeling Machine
579,144	Mar. 23, 1897	Gifford	Sole Machine
595,764	Dec. 21, 1897	Cole	Rounding and Channeling Machine
599,602	Feb. 22, 1898	French & Meyer	Trimming and Channeling Machine
600,883	Mar. 22, 1898	French & Meyer	Sole Channeling and Trimming Machine
625,633	May 23, 1899	Alley	Rough Rounding and Channeling Machine
630,338	Aug. 8, 1899	French & Meyer	Rounding and Channeling Machine
630,339	Aug. 8, 1899	French & Meyer	Sole Trimming and Channeling Machine
682,679	Sept. 17, 1901	Fowler	Rounding and Channeling Machine
684,359	Oct. 8, 1901	Eaton	Rough Rounding and Channeling Machine
808,628	Jan. 2, 1906	Brainard	Rough Rounding and Channeling Machine
845,277	Feb. 26, 1907	Thayer	Sole Rounding and Channeling Machine
878,475	Feb. 4, 1908	Alley	Rough Rounding and Channeling Machine
878,478	Feb. 4, 1908	English	Rough Rounding Machine
1,010,854	Dec. 5, 1911	Cady	Rounding Machine
1,030,606	June 25, 1912	Perry	Machines for Operating on Shoe Soles
1,030,607	June 25, 1912	Perry	Machines for Operating on the Soles of Shoes

Applications.

719,706	Sept. 11, 1912	Perry	Machines for Operating on Shoes
729,235	Nov. 4, 1912	Perry	Machines for Operating on Shoes

NAILING MACHINE: HUNGARIAN.
NAILING MACHINE: LOOSE.
NAILING MACHINE: NO. 2 LOOSE.

Patents.

265,227	Sept. 26, 1882	Goddu	Machine for Driving Sole Fastenings
356,107	Jan. 18, 1887	Dunham	Boot or Shoe Nailing Machine
383,455	May 29, 1888	Goddu	Nailing Machine
490,624	Jan. 24, 1893	Goddu	Machine for Uniting Soles to Uppers
582,579	May 11, 1897	Cutter	Nailing Machine for Boots or Shoes
582,580	May 11, 1897	Cutter	Mechanism for Operating Stock Supports for Nailing Machines
609,874	Aug. 30, 1898	Casgrain	Jack for Slugging and Nailing Heels
705,512	July 22, 1902	Casgrain	Jack for Slugging and Nailing Machines
786,190	Mar. 28, 1905	Casgrain	Nailing Machine
856,399	June 11, 1907	Eaton	Hand Tacker
865,329	Sept. 3, 1907	Casgrain	Work-gage for Nailing Machines
886,313	Apr. 28, 1908	Cutter	Nailing Machine
919,424	Apr. 27, 1909	Cuff	Jack for Nailing and Slugging Machine
932,535	Aug. 31, 1909	Casgrain	Machine for Driving Fastenings
1,011,941	Dec. 12, 1911	Goddu	Work Supports
1,030,775	June 25, 1912	Goddu	Machines for Inserting Fastenings
1,031,438	July 2, 1912	Goddu	Work Support Actuating Mechanisms
1,045,717	Nov. 26, 1912	MacKenzie	Machines for Inserting Fastenings
1,045,784	Nov. 26, 1912	Goddu	Machines for Inserting Fastenings

Applications.

472,928	Jan. 18, 1901	Cuff	Gages

LOADING AND ATTACHING MACHINE: McKAY AUTOMATIC HEEL.
LOADING AND ATTACHING MACHINE: McKAY AUTOMATIC HEEL, MODEL B.

Patents.

310,488	Jan. 6, 1885	Allen	Heel Nailing Machine for Boots or Shoes
317,851	May 12, 1885	Raymond	Heel Nailing Machine
346,137	July 27, 1886	Towns et al.	Nail Making and Distributing Machine.
413,554	Oct. 22, 1889	Raymond	Nail Machine
446,383	Feb. 10, 1891	Glidden et al.	Heeling Machine
502,667	Aug. 1, 1893	Glidden	Heel Compressing and Loading Machine

571,931	Nov. 24, 1896	Raymond et al.	Device for Feeding Nails
577,212	Feb. 16, 1897	Small	Nail Selecting and Distributing Machine
577,231	Feb. 16, 1897	Small	Nail Selecting and Distributing Machine
577,241	Feb. 16, 1897	Elliott & Glidden	Nail Assorting and Distributing Apparatus
584,601	June 15, 1897	Raymond	Heel Attaching Machine
589,501	Sept. 7, 1897	Glidden	Heel Attaching Machine
611,370	Sept. 27, 1898	Winter	Heel Nailing Machine
694,656	Mar. 4, 1902	Mayo	Heel Nailing Machine
707,136	Aug. 19, 1902	Mayo	Nail Assorting Mechanism
707,137	Aug. 19, 1902	Mayo	Nail Assorting Apparatus
707,138	Aug. 19, 1902	Mayo & Elliott	Nail Assorting Mechanism
707,139	Aug. 19, 1902	Mayo	Nail Assorting Mechanism
707,140	Aug. 19, 1902	Elliott	Nail Assorting Apparatus
707,143	Aug. 19, 1902	Lougee	Means for Detaining or Releasing Top Lifts in Heel Nailing Machines
874,921	Dec. 31, 1907	Baddock	Top Lift or Heel Holder for Heel Attaching Machine
876,626	Jan. 14, 1908	Elliott	Machine for Inserting Nails
884,513	Apr. 14, 1908	Mayo	Heel Nailing Machine
884,524	Apr. 14, 1908	Pope	Heel Attaching Machine
929,830	Aug. 3, 1909	Burnham	Heel Attaching Device
958,281	May 17, 1910	Plant	Heeling Machine Attachment
958,282	May 17, 1910	Plant	Heeling Machine
1,000,119	Aug. 8, 1911	Pope et al.	Heel Attaching Machine
1,000,534	Aug. 15, 1911	Mayo	Heel Nailing Machine
1,000,957	Aug. 15, 1911	Bates	Machine for Inserting Nails in Heels
1,005,303	Oct. 10, 1911	Pope	Nail Assorting Machine
1,017,778	Feb. 20, 1912	Lund	Machines for Attaching Heels
1,030,654	June 25, 1912	Elliott	Nailing Machine
1,030,680	June 25, 1912	Pope	Machines for Attaching Heels
		Applications.	
402,285	Nov. 15, 1907	Pope	Heel Attaching Machines
427,684	Apr. 17, 1908	Barton	Heel Attaching Machines
494,569	May 7, 1909	Bates	Heel Attaching Machines
556,326	Apr. 19, 1910	Glidden, J. E.	Heeling Machines
560,440	May 10, 1910	Lund	Heeling Machines
590,271	Nov. 2, 1910	Glidden, L. L.	Heeling Machines
620,207	Jan. 12, 1911	Pope	Nailing Machines
696,953	May 13, 1912	Buckminster	Work Supports

NAILING MACHINE: ALPHA WOOD HEEL.

		Applications.	
386,588	Aug. 1, 1907	Tripp	Heel Attaching Machines

NAILING MACHINE: AMERICAN LIGHTNING.

Patents.

305,723	Sept. 23, 1884	Tyler	Heel-Nailing Machine
321,401	June 30, 1885	Tyler & Merritt	Heeling Machine
321,530	July 7, 1885	Raymond	Heel-Nailing Machine
343,703	June 15, 1886	Demary	Heel-Nailing Machine
446,885	Feb. 24, 1891	Pope	Heel-Nailing Machine
542,205	July 2, 1895	Pope & Waugh	Heel-Nailing Machine Attachment
584,752	June 15, 1897	Small	Heel-Nailing Machine
599,012	Feb. 15, 1898	Raymond	Heel-Nailing Machine
694,656	Mar. 4, 1902	Mayo	Heel-Nailing Machine
834,085	Oct. 23, 1906	Taylor	Heel for Boots and Shoes
887,870	May 19, 1908	Taylor	Machine for Inserting Nails
891,192	June 16, 1908	Small	Heel-Nailing Machine
958,302	May 17, 1910	Plant	Heeling Machine
1,000,957	Aug. 15, 1911	Bates	Machine for Inserting Nails in Heels

Applications.

60,622	May 17, 1901	Pope	Jack for Heel Nailing Machine
602,207	Jan. 12, 1911	Pope	Nailing Machines

NAILING MACHINE: McKAY RAPID.

Patents.

310,488	Jan. 6, 1885	Allen	Heel-Nailing Machine for Boots or Shoes
446,383	Feb. 10, 1891	Glidden & Elliott	Heeling Machine
477,098	June 14, 1892	Brown & McCoy	Heel-Nailing Machine
584,601	June 15, 1897	Raymond	Heel-Attaching Machine
884,524	Apr. 14, 1908	Pope	Heel-Attaching Machine

Cross-Int. 19. Calling your attention for the moment to these lists, where it appears that the date of the patent is subsequent to February, 1899, my understanding is that such patents as are named subsequent to that date cover inventions which were embodied in the machines under which they are listed?

Ans. Yes, sir; that is correct.

Cross-Int. 20. Will you look at your list, please, patents on shoe machines Goodyear welt and turn? Among the names of persons to whom the patents were issued appears the name "Eppler". Do you know whether that was Andrew J. Eppler?

Ans. That was Andrew Eppler, formerly Andrew Eppler, Jr.

Cross-Int. 21. And is it the same Eppler whose name appears in the list of patents under the heading "Lockstitch Machine, Goodyear Outsole Rapid"?

Ans. Yes, sir.

Cross-Int. 22. Your lists as given to counsel for the United States refer to a leveling machine, Goodyear welt and turn for turn work, and leveling machine, Goodyear welt and turn for welt work. Do those refer to machines, the one for doing work on turn shoes and the other for doing leveling on welt shoes?

Ans. Yes, sir.

Mr. CHOATE. That is all.

[*Signature waived.*]

Attest: CHARLES K. DARLING, *Special Examiner.*

Adjourned to 11 A. M., Monday, July 28, 1913.

By agreement of counsel the hearing was further suspended until 11 A. M. on July 29, 1913.

BOSTON, MASS., July 29, 1913.

DEPOSITION OF JOHN J. DOIDGE.

Direct Examination by ALLEN WEBSTER, Esq., *of Counsel for Complainant.*

Int. 1. Your name is John J. Doidge and you are the same John J. Doidge who has heretofore testified in this case?

Ans. Yes, sir.

Int. 2. In your former testimony you stated that the company with which you are connected had manufactured stitchers which I understand you testified were of the type known as the out-sole rapid lockstitch machine.

Ans. Yes, sir.

Int. 3. Kindly examine the cut I now hand you, the same being illustration found on page 24 of the United Shoe Machinery Company catalogue of 1902, and state whether the illustration is of a machine such as you understand to be known as an out-sole rapid lockstitch machine [*handing catalogue to witness*].

Ans. Yes, sir.

Mr. WEBSTER. The cut referred to by the witness, together with the printed matter on page 25, offered in evidence and marked "Plaintiff's Exhibit 207".

[*Cut of out-sole rapid lockstitch machine on page 24, and printed matter on page 25, of the catalogue, marked "Plaintiff's Exhibit 207".*]

Int. 4. Please examine the photograph which I now hand you, and state what it is a photograph of, and when, if you know, it was made [*handing photograph to witness*].

Ans. It is a photograph of a rapid out-sole lockstitch machine. The photograph was made yesterday.

Mr. WEBSTER. The photograph identified by the witness is offered in evidence and marked "Plaintiff's Exhibit 208".

[*Photograph of rapid out-sole lockstitch machine marked "Plaintiff's Exhibit 208".*]

Int. 5. Please state whether the machine of which Plaintiff's Exhibit 208 is a photograph is one of the machines referred to by you in your former testimony, as having been manufactured by the company with which you are connected, which were first made in the latter part of 1909.

Ans. [*After examining photograph Exhibit 208.*] Yes.

Int. 6. State whether the rapid out-sole lockstitch machines as shown in the photograph Plaintiff's Exhibit 208 are successfully operating machines.

Mr. CHOATE. Wait. That is not within the scope of the order, and the defendants object to it as not authorized by the order and as incompetent, inadmissible and immaterial.

Mr. WEBSTER. Well, I suppose he can answer the question and take it up later.

Ans. Yes.

Int. 7. State whether, to your knowledge, machines constructed like the machine illustrated in the photograph have been put in operation.

Mr. CHOATE. The same objection.

Ans. They have.

Int. 8. Mr. Howard, in his deposition, read into the record the following noted numbers and dates of patents as among the patents, the inventions of which were incorporated in lockstitch machines and which patents expired between February 7, 1899, and December 12, 1911, namely: —

French and Meyer, sole sewing machine, No. 474,774, dated May 10, 1892, expired May 10, 1909;

French and Meyer, sole sewing machine, No. 473,870, dated April 26, 1892, expired April 26, 1909;

French and Meyer, shuttle for sewing machines, No. 424,966, dated April 8, 1890, expired April 8, 1907.

State whether you have carefully examined the drawings of said patents and the descriptive portion of the specifications and compared such drawings and specifications with the machine illustrated in the photograph Plaintiff's Exhibit 208.

Ans. I would like to see the drawings.

Int. 9. Pardon me. [*Hands copies of patents to witness.*]

Ans. Yes, sir.

Int. 10. State whether the machine illustrated in photograph Plaintiff's Exhibit 208 is constructed and operates as shown in the patents referred to in the last question.

Mr. CHOATE. Please note defendants' objection to the question, as witness is not shown to be qualified to answer the question and as the subject-matter inquired of is not within the scope of the order, is immaterial and inadmissible.

Ans. As shown in Nos. 473,870 and 474,774, with one exception.

Int. 11. To save time, you might state the exception right here.

Ans. In drawing 474,774 it shows a flat spring and we used a U-shaped spring. That is the only difference. Part of 424,966 is used. I refer to the gate shown in Fig. 1, *h'*.

Int. 12. Were you present yesterday when Mr. Charles McC. Chapman, of New York, examined the machine you are testifying about?

Ans. Yes, sir.

Int. 13. State whether a welting machine was examined yesterday by yourself and Mr. Chapman.

Ans. There was.

Int. 14. Was a photograph made yesterday of the welting machine examined by yourself and Mr. Chapman yesterday?

Ans. Yes, sir.

Int. 15. Kindly examine photograph I now hand you and state whether it is a photograph of the machine examined by Mr. Chapman and yourself yesterday.

Ans. Yes, sir.

Mr. WEBSTER. Photograph identified by the witness introduced in evidence and marked "Plaintiff's Exhibit 209".

[*Photograph of welting machine marked "Plaintiff's Exhibit 209".*]

Int. 16. Please state whether the welter illustrated in Plaintiff's Exhibit 209 had any markings on it; and, if so, state what they were.

Ans. [*After examining photograph.*] The head is marked on a plate: "Property of the United Shoe Machinery Company, Lessor, Goodyear Department, Goodyear Welt and Turned Shoe Machine, No. 1941." The base had a plate marked: "423, Welt and Turn Shoe Machine, Patented. The property of the Goodyear Shoe Machinery Company, Lessor, Boston, Mass."

Int. 17. Mr. Howard testified with reference to patents on welters, the inventions of which had been incorporated in welters and which patents had expired between February 7, 1899, and December 12, 1911, among which patents he narrated the following: —

Patent to Z. T. French, sole sewing machine, No. 317,759, patented May 12, 1885; expired May 12, 1902;

Patent to French and Meyer, sole sewing machine, No. 412,704, dated October 8, 1889; expired October 8, 1906;

Patent to LaChapelle, tension device for sewing machines, No. 488,505, dated December 20, 1892; expired December 20, 1909;

Patent to Briggs, take-up for shoe sewing machines, No. 518,911, dated April 24, 1894, and expired April 24, 1911.

Kindly state whether you have examined the drawings and the

descriptive portions of the specifications of these several patents and whether you understand the construction therein illustrated and described [*passing copies of patents to witness*].

Ans. [*After examining patents.*] Yes, sir.

Int. 18. Please state whether the welting machine illustrated in photograph Plaintiff's Exhibit 209 is constructed as set forth in said patents examined by you, excepting, of course, the Briggs method patent.

Mr. CHOATE. Please note the defendants' objection to the question as not within the scope of the order, that the witness is not qualified to answer, and that the question is inadmissible and immaterial.

Mr. WEBSTER. Then you will have two objections, Mr. Choate; first, that it is not within the scope of the order; and, second, that he is not qualified, —

Mr. CHOATE. Yes.

Ans. The machine is built in accordance with No. 412,704 —

Mr. WEBSTER. Do you wish to examine as to his qualifications?

Mr. CHOATE. No.

Mr. WEBSTER. Then I would like to have it noted on the record that Mr. Choate is invited to examine the witness as to his qualifications and declines.

[*Ans. continued:*] — 438,505, 518,911, and has some of the elements shown in 317,759.

Int. 19. I don't know whether you mean that the machine has the elements without the patents.

Ans. Some of the elements shown in 317,759.

Int. 20. But not all of them?

Ans. Not all of them.

Int. 21. Just here, kindly state how much experience you have had in the manufacture of shoe machinery.

Ans. I worked at shoe machinery business since 1888, with the exception of four years between the dates 1902 and 1907.

Int. 22. State whether you have had any experience in building machines such as are illustrated in the photograph of stitcher marked "Plaintiff's Exhibit No. 208".

Ans. Yes.

Int. 23. How many years' experience have you had with reference to building such machines?

Ans. Since 1907.

Int. 24. State whether you have had any experience in building, operating or repairing welting machines such as illustrated in photograph Plaintiff's Exhibit 209.

Ans. I have had experience in making parts for a similar machine. I might correct that and say somewhat similar.

Mr. WEBSTER. You have no objection to his putting in "somewhat" there?

Mr. CHOATE. That is all right.

Int. 25. State, if you know, whether welting machines like that illustrated in photograph Plaintiff's Exhibit 209 have been extensively and successfully operated.

Ans. I believe they have.

Mr. CHOATE. Please note my objection to the answer as not responsive to the question and as not competent or admissible evidence.

Mr. WEBSTER. The United States offers in evidence the patents referred to by the witness. The same are marked as follows:— "French and Meyer Patent [stitcher] No. 474,774, Plaintiff's Exhibit 210"; "French and Meyer Patent [stitcher] No. 424,966, Plaintiff's Exhibit 211"; "French and Meyer Patent [stitcher] No. 473,870, Plaintiff's Exhibit 212"; "French Patent [welter] No. 317,759, Plaintiff's Exhibit 213"; "French and Meyer Patent [welter] No. 412,704, Plaintiff's Exhibit 214"; "LaChapelle Patent [tension device] No. 488,505, Plaintiff's Exhibit 215"; "Briggs Patent [take-up for welters] No. 518,911, Plaintiff's Exhibit 216"; "Briggs Patent [method of operating chain stitches] No. 461,793, Plaintiff's Exhibit 217."

You may inquire, Mr. Choate.

Mr. CHOATE. If it would not inconvenience you, I should like to suspend this cross-examination until 2 o'clock.

Mr. WEBSTER, You may. Shall we take a recess, then?

Mr. CHOATE. No. Haven't you another witness you can put on?

Mr. WEBSTER. I do not care to put him on until you finish with Mr. Doidge.

Cross Examination by CHARLES F. CHOATE, Esq., *of Counsel for Defendants.*

Cross-Int. 26. Where was the photograph Exhibit 208 taken?

Ans. Taken in South Framingham in one of the buildings known as the R. H. Long Machinery Company.

Cross-Int. 27. Was the machine which is the subject of the photograph a machine which had been built under your direction?

Ans. Yes, sir.

Cross-Int. 28. How long ago?

Ans. Some time in August, 1909, we started to build that machine.

Cross-Int. 29. And in what part of the R. H. Long factory was it when photographed?

Ans. It was in the building nearest Winter Street bridge.

Cross-Int. 30. What is the name or designation of that room?

Ans. The particular room? The needle room.

Cross-Int. 31. How long, if at all, has the machine been in operation?

Ans. It has been in operation in the assembling room, stitched on, for an hour or more, some time the last of last month or the beginning of this present month.

Cross-Int. 32. Is that all the operating that was ever done, to your knowledge?

Ans. That is all.

Cross-Int. 33. In was built in 1909 and was not operated at all until about how long ago?

Ans. I understood you to ask me when we started to build the machines. That particular machine was assembled some time last month. We started to build the machines some time in 1909.

Cross-Int. 34. I asked you when this machine was built.

Ans. I don't think I could give you any better answer than that. Possibly some of the parts were manufactured during 1909, and the machine not assembled until last month.

Mr. CHOATE. Without waiving the objections to the questions put on direct examination, the defendants propound the following questions *de bene:* —

Cross-Int. 35. In answer to Mr. Webster's questions, you examined the drawings attached to certain patents which he showed you, and you stated that the machine Exhibit 208 was constructed as shown in the drawings attached to two of those patents, namely, 473,870 and 474,774, with one exception. Do you mean that Exhibit 208 embodies all the features exhibited in drawings in 473,870?

Ans. Yes.

Cross-Int. 36. And do you mean that Exhibit 208 embodies all the features shown in the drawings attached to patent 474,774?

Ans. Yes.

Cross-Int. 37. And one feature taken from patent 424,966?

Ans. Yes.

Cross-Int. 38. Which feature was selected by you?

Ans. I believe I said *h*'.

Cross-Int. 39. You spoke of a spring; I want to know who selected that feature for embodiment in Exhibit 208. Did you do it, or did Mr. Webster, or did Mr. Long?

Ans. I picked it out; I believe I said *h*'; I should have said Figure 4.

Cross-Int. 40. You should have said Figure 4?

Ans. Yes.

Cross-Int. 41. What is Figure 4?

Ans. Locking gate.

Mr. WEBSTER. Now, Mr. Choate, do you think it is fair to interpose my name in there?

Mr. CHOATE. As I understood, on the examination before he said that he copied this machine under your direction.

Mr. WEBSTER. I do not think he has said that. My understanding is that he intended to testify and did testify that I told him he had a right to manufacture machines under expired patents.

Mr. CHOATE. Is there any question but you were the patent

adviser for R. H. Long before you became the patent adviser of the United States?

Mr. WEBSTER. It has nothing to do with it, has it?

Mr. CHOATE. I think it has something to do with it.

Mr. WEBSTER. I acted as one of Mr. Long's attorneys; I do not see any reason why you should insert my name in the record. You can if you want to.

Mr. CHOATE. Well, I think I will leave the question as it is. If the association is a proper one, I do not see why you should have any objection. I am quite sure that Mr. Doidge did say in his previous examination that this machine was copied at your suggestion.

Mr. WEBSTER. I challenge the statement upon the record.

Cross-Int. 42. You said that this machine Exhibit 208 was a successfully operating machine?

Ans. Yes, sir.

Cross-Int. 43. Was more than one of them made by the company with which you and Mr. Long were associated?

Ans. Yes, sir.

Cross-Int. 44. And did each embody the locking gate feature of which you have just spoken?

Ans. I believe I said that some of the features shown in 424,966 were embodied in the machine. I did not say that particular construction was embodied.

Cross-Int. 45. My question was: Did each of these successfully operating machines embody the locking gate feature that you have just spoken of?

Ans. Yes, sir.

Cross-Int. 46. Was that machine given a name as connected with Mr. Long, or with your company?

Ans. Do you mean the trade-name of the machine?

Cross-Int. 47. Yes.

Ans. Yes.

Cross-Int. 48. What was the name?

Ans. The Waldorf stitcher.

Cross-Int. 49. The Waldorf was the name of the shoe which Mr. Long manufactured?

Ans. There is such a shoe manufactured. I do not know who manufactures it.

Cross-Int. 50. Mr. R. H. Long is at the head of the company that makes the Waldorf shoe?

Ans. I don't know who is at the head of the company that makes the Waldorf shoe.

Cross-Int. 51. What is the name of your company?

Ans. The R. H. Long Machinery Company, Incorporated.

Cross-Int. 52. Is he connected with that company?

Ans. Yes, sir.

Cross-Int. 53. In what capacity?

Ans. Treasurer.

Cross-Int. 54. You, at some time, have testified that portions of Exhibit 208 were copied from similar parts of a machine leased from the United Shoe Machinery Company, have you not?

Ans. I don't believe so.

Cross-Int. 55. Well, is it the fact?

Ans. What is 208? [*Examines Exhibit 208.*] Now, what is the question?

Cross-Int. 56. [*Question repeated by stenographer.*]

Ans. I believe so; some time in 1907.

Cross-Int. 57. Well, it is the fact, isn't it?

Ans. I presume it must be if I stated it at that time.

Cross-Int. 58. And you testified that it was the only machine which you copied from the United Shoe Machinery Company's machines?

Ans. Do you mean by that, was one machine made? I don't think I understand the question.

Cross-Int. 59. No. I mean it was the only type of machine of which you made a copy.

Ans. The only type of the stitcher machine, or any machine?

Cross-Int. 60. Yes.

Ans. Yes.

Cross-Int. 61. Is that right?

Ans. Yes, that is right.

Cross-Int. 62. You testified that Exhibit 209 embodied the feat-

ures of certain patents which you named, which were 412,704, 488,505 and 518,911. Did Exhibit 209 embody all of the features of those three patents?

Ans. I shall have to examine the patents. [*Examines patents.*] It embodied all shown in 518,911 and 488,505; also some of the features shown in 412,704.

Cross-Int. 63. But not all?

Ans. Not all of them.

Cross-Int. 64. And it did not embody all of the features in 317,-759?

Ans. No, sir, it did not.

Cross-Int. 65. Did the patented features of which you have just spoken, embodied in the machine, comprise the entire machine, or were there parts of the machine in which those patented features were not embodied?

Mr. WEBSTER. Question objected to because it calls for the construction of what was not patented. The direct examination related only to a comparison of drawings and specifications, but not as to what was or was not patented. And the witness is instructed that he is not required to answer as an expert as to what is or is not patented.

Ans. There were parts of the machine in which those patented features were not embodied.

Cross-Int. 66. Was Exhibit 209 constructed in detail like the drawings attached to the patents the numbers of which you have given?

Ans. Not in all respects.

Cross-Int. 67. Do you mean that there were variations in size and form and feature of the details?

Ans. No; I did not mean that.

Cross-Int. 68. In some respects 209 differed in detail as to the size of the parts shown in the patent?

Ans. Most assuredly.

Cross-Int. 69. And in some respects as to the shape of the parts?

Ans. Yes, sir.

Cross-Int. 70. So that 209 is not an exact reproduction of the machine shown in the drawings attached to these patents?

Ans. No, sir; not in all respects.

Cross-Int. 71. And the modifications or alterations or variances were suggested by you?

Ans. I beg pardon?

Cross-Int. 72. Were the modifications or alterations or variances from the drawings suggested by you?

Ans. Well, I think I pointed out —

Mr. WEBSTER. What are you talking about now? The stitcher or the welter?

Mr. CHOATE. The welter.

[*Ans. continued:*] — I think I pointed out some of them.

Cross-Int. 73. And advised them?

Ans. Advised what?

Cross-Int. 74. Advised these differences?

Ans. I advised that there were such differences between the machine and the drawing.

Cross-Int. 75. I mean at the time the machine was made, did you advise that there were such differences?

Ans. That question has not come up, and I have not answered to that effect.

Mr. WEBSTER. Let me make a suggestion. You are laboring under the impression that he built the welter, and he did not. It is the United welter.

Cross-Int. 76. Let me ask you as to Exhibit 208. Was that machine in detail like the drawings shown in the patents that you referred to in connection with it?

Ans. Yes, with the exception of the differences that I pointed out.

Cross-Int. 77. Well, that was with reference to the locking gate?

Ans. The locking gate was one. There were some differences.

Cross-Int. 78. And spring?

Ans. And spring; yes, sir.

Cross-Int. 79. I mean as to detail of the size and shape of the

different parts; were they exactly as shown in the drawings attached to the patents?

Ans. There was a difference in cam in patent 473,870, outside of those I noted, the spring and lock gate.

Cross-Int. 80. Where was the photograph 209 taken?

Ans. In the needle room of the R. H. Long Machinery Company, South Framingham.

Cross-Int. 81. And how long had that machine been in the possession of the R. H. Long Machinery Company?

Ans. I could not tell you that.

Cross-Int. 82. Well, how long do you remember of its being there?

Ans. It has been there since I went there.

Cross-Int. 83. How many years is that?

Ans. I would like to modify that, to say that to the best of my knowledge it has been there since 1907, — in storage.

Cross-Int. 84. It was there when you came?

Ans. Not in that building.

Cross-Int. 85. Has it been in storage ever since you have been there?

Ans. Practically so.

Cross-Int. 86. It has not been in use?

Ans. Not to my knowledge.

Cross-Int. 87. The knowledge which you testified to, as to the successful operation of the stitching machine, had reference to the Waldorf stitcher?

Ans. Yes, sir.

Cross-Int. 88. And you expressed no knowledge, but only a belief, as to the welter of which you were asked, Exhibit No. 209?

Ans. That is correct.

Cross-Int. 89. Your machinery company has made no such welters?

Ans. No, sir.

Cross-Int. 90. And so far as Exhibit 209 itself is concerned, it has never been operated since you have been at the factory?

Ans. Not to my knowledge.

Cross-Int. 91. When you examined it yesterday, was it complete in all its parts or had anything been taken out of it?

Ans. Nothing removed to my knowledge. It was complete, so far as I know.

Cross-Int. 92. Can you say one way or the other?

Ans. I am quite positive the machine is complete in all its details.

Mr. CHOATE. That is all.

Direct Examination resumed by Mr. WEBSTER.

Int. 93. In cross-examination you were asked with reference to the particular stitching machine of which photograph Plaintiff's Exhibit 208 is a picture. State whether machines constructed like that machine have gone into successful use.

Ans. Yes, sir.

Mr. WEBSTER. That is all.

Cross Examination resumed by Mr. CHOATE.

Cross-Int. 94. I desire to ask one more question. The use of the machine photographed in Exhibit 208 is mostly by cobblers, isn't it, — shoe cobblers?

Ans. To a great extent; yes.

Cross-Int. 95. Now, Exhibit 209, you have said, had two plates on it; the head had a plate marked "No. 1941", the base had a plate which was marked "No. 423"?

Ans. Yes, sir.

Cross-Int. 96. Do you know when that head was put upon that base?

Ans. No, sir.

Cross-Int. 97. Or whether or not it was done there at your factory?

Ans. I don't believe it was done in the factory. It was taken right out of storage.

Cross-Int. 98. I say, do you know?

Ans. No, I do not know.

Cross-Int. 99. Did you have the machine taken out of storage?

Ans. Yes, sir.

Cross-Int. 100. Was it crated up when you took it out of storage?

Ans. No, sir.

Mr. CHOATE. That is all.

JOHN J. DOIDGE.

Attest: CHARLES K. DARLING, *Special Examiner.*

DEPOSITION OF CHARLES McCORMACK CHAPMAN.

Direct Examination by ALLEN WEBSTER, Esq., *of Counsel for Complainant.*

Int. 1. Please state your name, residence and profession.

Ans. Charles McCormack Chapman; age, forty-six; residence, New York City, State of New York; occupation, patent solicitor and patent expert.

Int. 2. Please state your education, experience and studies tending to fit you to testify with reference to patents and machines and a comparison between the two.

Ans. Education obtained in the public schools of the District of Columbia and the State of New York. Was graduated from the George Washington University, District of Columbia, with degrees of LL. B., LL. M., and Master of Patent Law. Was for over fourteen years an assistant examiner on the examining corps of the United States Patent Office, and for upwards of ten years have been practicing my profession. While in the Patent Office my duties involved the examination of applications for patents, comparison of claims contained therein with prior art structures, construction of claims in applications and patents, study of patents, inventions covered by them, and by applications filed in the Patent Office, and such other incidental duties as are necessarily involved in performing services as an assistant examiner upon the examining corps of the Patent Office. During the practice of my profession, in the past ten years, I have on numerous occasions rendered opinions concerning patents and the patentable novelty of inventions covered by them, have had occasion to construe and interpret claims of patents and apply the latter to machine structures. I have also had occasion to study the machine built under patents or in accordance

with them, and make comparisons of the same with other machines illustrating prior art. I have on several occasions given expert testimony for use in the Federal courts.

While in the Patent Office and for upwards of ten years I was employed on the class of sewing machines and during that period made a special study of and became familiar with all classes and types of machines having reference to shoe sewing and, in many instances, became familiar with other machines, incidental to shoe manufacturing. Since starting upon my professional career I have had occasion to make a special study of shoe-sewing machines and witness the practical operation of such machines and minutely examine the structures and modes of operation thereof.

Mr. WEBSTER. Mr. Choate, do you desire to examine the witness with with reference to his qualifications?

Mr. CHOATE. I will keep that until the general cross-examination.

Int. 3. Kindly examine the photograph I now hand you, the same being marked "Plaintiff's Exhibit 209"; and state whether you identify the photograph; whether you were present when it was made, and whether you examined the machine illustrated in the photograph [*handing to witness Plaintiff's Exhibit 209*].

Ans. I have examined the Plaintiff's Exhibit No. 209 and identify the machine portrayed therein as one which I examined in one of the buildings of the R. H. Long Machinery Company at South Framingham, Massachusetts. This machine was photographed in my presence in that building, and in the presence of Mr. Doidge and Mr. Webster, counsel for the United States.

Int. 4. You did not say when. I don't know as I asked you when you examined it.

Ans. The machine was photographed yesterday, July 28, 1913.

Int. 5. Kindly state whether you examined the machine of which Plaintiff's Exhibit 209 is a photograph, and compared the same with patents.

Ans. I did examine such machine and made comparisons thereof with certain patents.

Int. 6. Kindly examine copies of patents marked "Plaintiff's Exhibits 213", "214", "215", "216" and "217", the same being

copies of patents referred to, with one exception, by Mr. Doidge, and state whether the welting machine examined by you yesterday of which Plaintiff's Exhibit 209 is a photograph, is constructed and operates as set out in the machine patents referred to in the question. State also what marking, if any, you found on the welting machine.

Mr. CHOATE. Please note the defendants' objection to the question as not within the scope of the order, and as immaterial, incompetent and inadmissible.

Ans. The machine which I examined yesterday and on several previous occasions, and which is portrayed in Plaintiff's Exhibit 209, has two name plates, one containing the following being the top plate or plate applied to the head of the machine: "The property of the United Shoe Machinery Company, Lessor, Goodyear Department, Goodyear Welt and Turn Shoe Machine, No. 1941." On the bottom plate applied to the upper portion of the stand, the following: "423, Welt and Turned Shoe Machine. Patented. The Property of the Goodyear Shoe Machinery Company, Lessor, Boston, Mass."

Referring first to Plaintiff's Exhibit 214, being French and Meyer patent No. 412,704, I made a very careful comparison of the machine of Exhibit 209 with said patent and found said machine to contain in all material respects substantially the same structure illustrated in the drawings of the said Plaintiff's Exhibit 214. One difference in the machine as compared with said Exhibit 214 is the structure of the auxiliary take-up illustrated in Plaintiff's Exhibit 216, being patent of Briggs No. 518,911. Another difference is that the machine of Exhibit 209 has not therein the particular structure of mechanism for actuatiug the welt guide; that is to say, the structure contained in this Exhibit No. 213, being patent to French No. 317,759, is not contained in said machine Plaintiff's Exhibit 209.

Int. 7. You mean the machine illustrated in Plaintiff's Exhibit 209?

Ans. I am assuming that the machine and photograph are identical. This is also true of the structure illustrated in Figs. 3 and 4 of the drawings of Plaintiff's Exhibit 213. That is to say, the

so-called "sticker bar" is not contained in the machine of Plaintiff's Exhibit 209.

I found in the machine of Plaintiff's Exhibit 209 a portion of the structure illustrated in Plaintiff's Exhibit 215, being patent to LaChapelle No. 488,505. That is to say, I found in the said machine of Plaintiff's Exhibit 209 a device by means of which when the machine is brought to a standstill and the driving-shaft reversed to a predetermined position, the tension is released on the rolling tension device at the back of the machine. The portrayal of the structure in Fig. 3 of the said LaChapelle patent, Plaintiff's Exhibit 215, of the means by which the tension is released at a predetermined time, is not very clear, but the structure as contained in the machine of Plaintiff's Exhibit 209 would appear to be substantially as that of the said Fig. 3 of the LaChapelle patent, Plaintiff's Exhibit 215.

In examining the machine of Plaintiff's Exhibit 209 and comparing the same with Plaintiff's Exhibit 214, French and Meyer patent 412,704, I was careful to examine the various cam paths cut in the several discs carried by the driving-shaft, and to also, by operating the machine, obtain the various positions of parts portrayed in the several figures of the said French and Meyer patent Plaintiff's Exhibit 214, to verify the mode of operation of the machine of Plaintiff's Exhibit 209 with that operation which is illustrated by the said patent Plaintiff's Exhibit 214. In so doing, I found that the mode of operation of so-called method of forming chain stitches illustrated in Plaintiff's Exhibit 217, being patent to Briggs 461,793, was carried out in all material and substantial respects. A difference, however, between the two in favor of the machine of Plaintiff's Exhibit 209 and Plaintiff's Exhibit 214, French and Meyer patent 412,704, was observed by me in that feature of the finishing stroke of the needle which results in the complete setting of the stitch, which appeared to have been omitted from the Briggs patent structure, Plaintiff's Exhibit 217. I believe that answers the question.

Int. 8. State whether the welter examined by you yesterday and with reference to which you are now testifying was constructed

and operated as set out in the several machine patents you have referred to, and as referred to in the claims of said patents.

Mr. CHOATE. Note the defendants' objection to the question as not within the scope of the order and as inadmissible and immaterial.

Ans. With the exceptions heretofore noted the machine of Plaintiff's Exhibit 209 is constructed and operates substantially as set forth in the several patents referred to by me. There are claims in the patent 317,759, Plaintiff's Exhibit 213, which cover a construction not contained in the machine of Plaintiff's Exhibit 209. The claims I refer to are numbered 5 and 6 in the said Plaintiff's Exhibit 213, claim 5 referring to the means for varying the extent of, and the positive throw of, the welt guide slide, and the other claim, No. 6, referring to the sticker bar and means for actuating the same.

Int. 9. Kindly advise whether you have knowledge of a prior art as affecting the Briggs method patent, Plaintiff's Exhibit 217; and, if so, state what it is.

Mr. CHOATE. Note the defendants' objection to the question as not within the scope of the order and as immaterial and inadmissible.

Ans. In the prior art I found a patent granted to Stickel April 1, 1884, No. 296,084, for hand apparatus for forming stitches, which in the description of the mode of operation of the instrument made the subject of said patent describes the Briggs method of Plaintiff's Exhibit 217. The descriptive portion of the patent to Stickel referred to by me is that setting forth the mode of operation of the instrument in making chain stitches.

[*The copy of patent to Stickel offered in evidence and marked "Plaintiff's Exhibit 218".*]

Mr. CHOATE. Please note the defendants' objection to the introduction of the exhibit as not within the scope of the order and as incompetent, inadmissible and immaterial.

Mr. WEBSTER. In this connection, counsel for the United States offers copy of opinion and decree in the case of United Shoe Machinery Company *v.* Duplessis Company, as reported in Federal

Reporter, Vol. 155, page 842, Circuit Court of Appeals, First Circuit, the same having special reference to a controlling patent to French and Meyer, No. 412,704, in which it is held that said patent expired —

Mr. CHOATE. Do you think you should state what is held as long as you put in your exhibit?

Mr. WEBSTER. — in which the Government contends it is held that said patent expired September 17, 1902. I have not that copy here. Do you want to put it in later?

[*Opinion and decree referred to offered in evidence and marked "Plaintiff's Exhibit 219".*]

Mr. CHOATE. I shall object to it as not being within the scope of the order and as not the best evidence, and as incompetent and inadmissible and immaterial.

Int. 10. Kindly state whether you were present when photograph Plaintiff's Exhibit No. 208 was made, and whether you examined the machine therein illustrated in comparison with the patents, and when the photograph was made, if you know.

Ans. The machine portrayed in the photograph of Plaintiff's Exhibit No. 208 was photographed in my presence yesterday, July 28, 1913, and in the presence of Mr. Doidge and Mr. Webster, in one of the buildings of the R. H. Long Machinery Company at South Framingham, Massachusetts. I made a careful examination of this machine of the said Exhibit No. 208 with patents July 28, 1913, at South Framingham, Massachusetts.

Int. 11. Kindly state with what patents you made comparison of said machine and whether the machine so examined by you was constructed and operated as shown in said patents.

Ans. The patents which I examined and compared with the machine of Plaintiff's Exhibit 208 are Plaintiff's Exhibit 210, being French and Meyer patent No. 474,774; Plaintiff's Exhibit 211; Plaintiff's Exhibit 212, being French and Meyer patent No. 473,870. With the exception of a few immaterial details, I found the machine of Plaintiff's Exhibit 208 to be in all material respects substantially the same as that illustrated in the drawings of the Plaintiff's Exhibit 202, being French and Meyer patent 473,870. I also

found the machine of Plaintiff's Exhibit 208 to contain the structure, excepting one or two immaterial details illustrated in the Plaintiff's Exhibit 210, French and Meyer patent, 474,774. I found that the machine of the Plaintiff's Exhibit 208 in certain features differed quite materially from Plaintiff's Exhibit No. 211, being French and Meyer patent 424,966. The important point of difference resides in the structure of the bobbin case holding means, which is covered by the claims and portrayed in the drawings of Plaintiff's Exhibit 211, French and Meyer patent 424,966. Another difference between the last said exhibit and the machine of Plaintiff's Exhibit 208 resides in the means by which the thread is led from the bobbin to the outside of the shuttle, the machine of Plaintiff's Exhibit 208 being devoid of that particular means which is referred to and illustrated in Figures 1 and 2, and in details in Figure 3 of Plaintiff's Exhibit 211, French and Meyer patent 424,966.

Int. 12. Please state whether you found the machine of Plaintiff's Exhibit 208 to be constructed and operating as referred to in the claims of the several patents.

Mr. CHOATE. Please note the defendants' objection in the same phraseology as last given.

Ans. The structure called for by the three claims of Plaintiff's Exhibit 211, French and Meyer patent 424,966, is not contained in the machine of Plaintiff's Exhibit 208. The structure covered by the claims of Plaintiff's Exhibit 210, French and Meyer patent 474,774, is answered in all material respects by the machine of Plaintiff's Exhibit 208. With the possible exception of claims 8 and 10 of the Plaintiff's Exhibit 212, French and Meyer patent 473,870, the claims of said exhibit describe a structure contained in the machine of Plaintiff's Exhibit 208.

Int. 13. Should you say, from your knowledge, study and experience, that the patents to which you have referred in your deposition might properly be termed "basic patents" early in 1899, in reference to the machines in question, welters and stitchers?

Mr. CHOATE. Note the defendants' objection to the question as not within the terms of the order, as leading, inadmissible, incom-

petent and immaterial, and because the word "basic" has no recognized or accepted meaning with reference to the subject-matter.

Mr. WEBSTER. Attention is called to the fact that the words "basic patents" are found in the allegation of the petition, the paragraph beginning at the foot of page 15. For this reason the term is employed by counsel.

Mr. CHOATE. You may note the further objection that the inquiry, if material, relates to a matter to be decided by the court and not testified to by the witness.

[*The question is read.*]

Ans. Yes, with the exception of a few detailed claims contained in some of the patents examined by me, and with the exception of such patents as do not date back as early as 1899.

Int. 14. Just what do you mean by "do not date back"?

Ans. Some of the patents examined by me are not as early as 1899. In answering the foregoing question, I had in mind several patents which I examined in connection with those of the exhibits heretofore referred to by me; but in looking over the said exhibits I find that my answer is misleading, — that is, of the exhibits there are no patents subsequent to the year 1899.

Int. 15. Please explain what you mean by "patents subsequent"; that is, whether you mean patents the applications for which were filed in 1899.

Ans. I mean patents dated subsequent to the year 1899.

Mr. WEBSTER. You may inquire.

Mr. CHOATE. Does that complete your direct examination?

Mr. WEBSTER. So far as at present advised. I may think of something for which I pray your indulgence.

Mr. CHOATE. We should like, if convenient to you, to suspend until 2 o'clock tomorrow the cross-examination.

Mr. WEBSTER. I should be glad to accommodate you, Mr. Choate, at any time.

[*Adjourned to 2* P. M., *Wednesday, July 30, 1913.*]

BOSTON, MASS., July 30, 1913.

Mr. CHOATE. Is there anything further you have to ask of Mr. Chapman?

Mr. WEBSTER. I do not think of anything now. There may be something later on.

Mr. CHOATE. There may be something that you have forgotten?

Mr. WEBSTER. Yes. If I have anything further, I presume it will develop.

Mr. CHOATE. Except that you may have inadvertently overlooked something, you have completed your examination?

Mr. WEBSTER. Yes. I am not hiding anything.

Cross Examination by FREDERICK P. FISH, Esq., *of Counsel for Defendants.*

Mr. FISH. Cross-examination *de bene esse*, and without waiving objection.

Cross-Int. 16. During what period of ten years were you employed on the class of sewing machines in the Patent Office?

Ans. I first went on to the class of sewing machines in the middle of the year 1886, and remained on that class until my resignation in 1902.

Cross-Int. 17. Referring to the Stickel patent, April 1, 1884, No. 296,084, for hand apparatus for forming stitches, you have stated that that patent, in the description of the mode of operation of the instrument made the subject of said patent, describes the Briggs method of Plaintiff's Exhibit 217, and that the descriptive portion of the patent to Stickel so referred to by you is that setting forth the mode of operation of the instrument in making the chain stitches. Please compare the mode of operation of the instrument of the Stickel patent in making chain stitches with the method patented in the Briggs patent as defined in the claim, and state definitely the resemblances and the differences between them in order that the exact meaning of your testimony on direct may be clear.

Ans. In the Stickel patent the method of making chain stitches is illustrated in Figures 4, 5, 6 and 7. The process or method for making said chain stitches, as illustrated in those figures, is

described on page 2 of the patent description, beginning in the paragraph line 6 and ending with line 31, page 2, Figure 11 being referred to as the culmination of the steps of the process thus described. The method of the Briggs patent, Plaintiff's Exhibit No. 217, involves the following steps: First, "passing a loop of thread through a hole in the materials", this step being illustrated in Figure 4 of the Stickel patent, wherein several chain stitches are illustrated as having been completed and another stitch started, the loop thereof indicated by S being shown about the body or stock of the needle; second, "inserting an instrument through the loop and holding the instrument in a second hole in the materials at the point desired for the next stitch", this step likewise being illustrated in Figure 4 of the Stickel patent, wherein the instrument, *including* the hooked needle, is shown thrust through the materials and entered also in the loop S of the stitch about to be made. In the hand operation of the instrument of the Stickel patent the needle is held as called for in this second step of the Briggs method; third, drawing on the supply end of the thread. This step is illustrated in the Stickel patent in that operation of the operative wherein he takes hold of the end of the thread indicated by Z in all the figures but not indicated by Z in Figure 4. This supply end of the thread is drawn upon by the operative for the purposes and to produce the position shown in Figure 5 of the Stickel patent, the fourth step of the Briggs method being "thus drawing the loop that is now around the instrument against the material". This step of the Briggs method is illustrated in Figure 5 of the Stickel patent, wherein the operative has drawn upon the supply end of the thread and looped it about the holder and engaged it in the hook of the needle and thus drawn the loop indicated in Figure 4 as S about the stock of the needle, as clearly shown in Figure 5 of the Stickel patent. Fifth, "forming another loop from the supply thread on the opposite side of the materials". This step of the Briggs method is also illustrated in Figure 5 of the Stickel patent, the said other loop being that which is in sight, Figure 5, in the hook of the needle. Sixth, "removing the instrument from the second hole in the materials and from the drawn down loop", this step being illustrated in suc-

cession in Figures 5, 6 and 7 of the Stickel patent, wherein the second loop of thread is drawn through the second hole and also through the drawn down loop, which latter, as shown in Figure 7 of the Stickel patent, now lies snugly against the surface of the material in the direct line of sight, the second loop in the said Figure 7 of the Stickel patent remaining in the hook of the needle and being shown as pulled through the preceding loop referred to in the said last step of the Briggs method as the "drawn down loop". Seventh, "and passing the second loop made from the supply thread through the second hole in the materials and through the drawn down loop", this step being also illustrated in Figure 7, as above described.

Cross-Int. 18. Does the man who is operating the Stickel tool grasp the thread with his fingers or hand at the point Z of No. 5, 6 and 8 and at the corresponding point of No. 4 of the drawings?

Ans. According to my understanding; yes.

Cross-Int. 19. Does he maintain his hand throughout the operation permanently in position and without moving it, or is he obliged to move it at all, as by a pull?

Ans. Do you mean with reference to Figure 4, or the other figures?

Cross-Int. 20. My question relates to the entire operation from No. 4 to No. 7 of the drawings.

Ans. With the understanding of your last statement, the operator holding the supply end of the thread as at Z necessarily manipulates the thread so as to loop it about the yielding holder as well as the needle, to place the thread in the hook of the needle to form the successive loops.

Cross-Int. 21. Is that all his active participation in the operation in so far as his manipulation of the thread at Z is concerned?

Ans. So far as my observation and my understanding of the mode of manipulating the instrument of the Stickel patent is concerned; yes.

Cross-Int. 22. What is it that transforms the open loop S of No. 4 to the corresponding loop S of No. 5, which seems to be drawn down?

Ans. Primarily, manipulation of the instrument by the handle thereof to seek a succeeding position in the materials, and simultaneously therewith carrying the loop drawn through the material by the hooked needle into the second position for penetration; secondly, manipulation of the supply end of the thread to draw the said first loop into position shown in Figure 5 prior to drawing the second loop through the materials and into and through the first loop.

Cross-Int. 23. You have named two actions. Are both involved in the transformation of the loop S at No. 4 into its condition in No. 5?

Ans. Yes.

Cross-Int. 24. Exactly how does the first agency act in so doing?

Ans. The hand of the operator manipulating the instrument by its handle draws a loop of thread through the material, the thread having previously been looped about the holder and the needle as in Figure 5, and also drawing the loop on the shank of the needle on the opposite side of the material, and the movement of the instrument bodily laterally or toward the left of Figure 4 in order to seek a new point for penetration of the instrument.

Cross-Int. 25. Do you mean that the movement of the needle laterally to the left of figure 4 transforms the loop S of Figure 4 into the condition in which the same is shown in Figure 5?

Ans. Oh, no. You asked me about the operation of the first instrumentality. The first instrumentality referred to by me was the hand of the operator manipulating the instrument by its handle.

Cross-Int. 26. Now I ask you how the hand of the operator manipulating the instrument by its handle transforms the loop S of No. 4 into the form in which the same appears in No. 5?

Ans. I described that operation fully in my preceding answer and stated two instrumentalities.

Cross-Int. 27. I am referring only to the first instrumentality.

Ans. I have not stated that the first instrumentality alone accomplishes that result. The second instrumentality aids in accomplishing that result.

Cross-Int. 28. To what extent does the first instrumentality in and of itself contribute toward accomplishing that result?

Ans. Without it the result could not be accomplished at all; therefore, it aids very materially in accomplishing the result.

Cross-Int. 29. How far in and of itself, without reference to the second instrumentality, is the result accomplished by the first instrumentality?

Ans. The first instrumentality primarily locates the loop of the stitch; secondarily, acts as the snubbing post around which each loop is drawn tightly and snugly against the material, and, thirdly, accomplishes the result of drawing the second or succeeding loops through each preceding loop.

Cross-Int. 30. And what draws the loop about this snubbing post?

Ans. The hand of the operator drawing upon the supply end Z of the thread, plus the interposition of the holder and the end or hooked end of the needle.

Cross-Int. 31. Starting with the condition of things shown in No. 5, does the hook of the needle continuously bear against the same point on the thread in proceeding from No. 5 to No. 6 and to No. 7?

Ans. Maybe and maybe not, depending entirely upon the operator.

Cross-Int. 32. Please explain the conditions under which it may be so and may not be so and the nature and occasion for the intervention of the operator to cause one or the other condition of operation.

Ans. Assuming that the supply comes from a spool or cop or holder for the thread held in the left hand of the operator and that the right hand of the operator grasps the handle of the instrument, the proper operation of the device or instrument in making the chain stitches according to the Stickel patent would be substantially as follows: Assuming several stitches to have been made, as illustrated in both Figures 4 and 5, a loop of the thread will be drawn through the materials, the hole through which said loop may be drawn having first been made by the hooked needle being pushed through the materials from front to rear. By withdrawing the needle from the material, a loop of thread will be formed on the

front side and will be held in the hook of the needle. The needle will then be shifted with the instrument bodily toward the left and the point of the needle will be placed at the position next desired for a stitch.

The needle will then be pushed through the material from front to rear, still holding the first loop laid in its hook, and passing its shank clear into that first loop, thus positioning the hook of the needle so that a second loop may be formed therein. The second loop will then be formed by first casting the supply end of the thread with the left hand or other hand of the operative about the holder — described in the Stickel patent as finger *d* — and in the hook of the needle. At the same time the operative with his left hand, pulling upon the supply end, draws the loop now about the shank of the needle tightly down about the latter, thus laying that loop upon the face of the fabric snugly against the same. In this position with parts as illustrated in Figure 5 a new loop or second loop will be pulled through the material and also drawn through the preceding loop, the right hand of the operative manipulating the instrument so as to produce this result. The instrument will then again be moved to the left, with the second loop in the hook of the needle, and a new position will be sought and the needle pushed through the material at that position. Successive steps will be carried out as previously described.

Mr. FISH. Objected to as altogether irresponsive.

[*The question is repeated.*]

The WITNESS. The only other condition that I can see called for by the question is that if the instrument is not properly manipulated, and if the left hand of the operator does not properly control the supply end Z of the thread, then it is possible that the thread may reeve in the hook of the needle. On the contrary, if the supply end of the thread Z is properly held and manipulated, that condition will not occur.

Cross-Int. 33. Fitting the action of the operator definitely and precisely to the conditions shown in No. 5, will you state how he is to manipulate the thread which he holds at Z in such a way that

the hook of the needle will bear constantly upon the same point on the thread during its subsequent operations?

Ans. As illustrated in Figures 5 and 6, and assuming the manipulation of the instrument through those two figures to the position of Figure 7, if the operator properly controls the Z end of the thread he will prevent it from reeving in the hook of the needle, and will in manipulating the instrument give up the supply end of the thread proportionately with the movement of the needle rearwardly through the material into the position of Figure 7. This will result under the tension of the holder *d* in drawing and making the loop entirely from the thread extending from the hook of the needle to the material.

Cross-Int. 34. In Figure 5 the lowest thread of the loop S' is shown as extending from the fabric to the finger, which in Figure 2, for example, is marked "*d*". In No. 6 it is also shown as extending from the fabric to that finger, but the distance from the fabric to the finger is very much less. What has happened to that portion of the thread that has moved somewhere during the operation from No. 5 to No. 6?

Ans. By the manipulation of the supply end of the thread in casting it about the holder *d*, the operative has drawn upon the loop upon the face side of the material and tightly drawn that loop around the shank of the needle and snugly against the face of the material. The hook of the needle, in the meantime, by manipulating the instrument has been drawn closer to the rear face of the material and the operator has either at that time or at a period slightly before that time placed the thread in the hook of the needle and used the latter as an aid to drawing in the preceding loop.

Cross-Int. 35. And during that operation from No. 5 to No. 6, has or has not the thread rendered through the hook of the needle?

Ans. It may be so and it may not be so.

Cross-Int. 36. Isn't it inevitable that it should be so?

Ans. No.

Cross-Int. 37. Why not?

Ans. Because the operative, instead of tightening the supply end of the thread in the hook of the needle, as shown in Figure 5, may

wrap it about the shank of the needle below the hook, and thus draw in the thread to assume the position of Figure 6. He may then cast the thread into the hook of the needle as shown in Figure 6.

Cross-Int. 38. Of course, absolutely nothing of the sort is shown in No. 5, and you are clearly not entitled to advance any such hypothesis unless the specification justifies it. Where do you find such a suggestion in the specification?

Ans. The description of this patent to Stickel is, as I understand it, directed to those skilled in the art and not to novices; the description of the mode of producing a Stickel stitch is so clear to my mind that with the ordinary intelligence of the average operative the results described by me will necessarily be attained.

Mr. FISH. Objected to as irresponsive and volunteered. The question will be repeated.

[*The question is read.*]

The WITNESS. If my answer is not responsive, kindly explain in what particular.

Cross-Int. 39. Where do you find in the specification the suggestion of a mode of operation and of manipulation which you have made?

Ans. I first refer to the description of the Stickel patent, page 1, beginning on line 31. Next, page 1, beginning on line 54 and ending on line 72. Next, page 2, beginning on line 6 and ending on line 31.

Cross-Int. 40. You have referred to a great part of the descriptive matter of the specification. Can you not put your finger on any statement which justifies you in the hypothetical action which you have suggested?

Ans. The action which I have suggested is not hypothetical. On the contrary it is based on the description of the drawings of the Stickel patent, coupled with that necessary common sense of a skilled operative in manipulating the instrument for the purpose of producing the stitch described in the patent.

Cross-Int. 41. But it is not disclosed specifically in the specifications?

Ans. Why, the hands of the operator are not described in the

various manipulations of the tool, but those hand operations or manipulations of the instrument necessarily result from the clearly described mode of operation of the implement in the production of the stitch shown in Figure 11 through the several positions of Figures 4 to 7.

Mr. FISH. Objected to as irresponsive and voluntary. Question repeated.

[*The question is read.*]

The WITNESS. Please point out in what respect my answer is not responsive. I thought I had answered it fully.

Cross-Int. 42. The question related to a specific matter which the answer did not touch, even remotely. Question repeated.

[*The question is read.*]

Ans. Believing that my answers have been quite responsive, nevertheless I refer to the "process of making chain stitches as illustrated in Figures 4, 5, 6 and 7", which is set forth in the paragraph page 2, beginning line 6, of the Stickel patent. This description of mode of operation and process for producing the stitch illustrated in Figure 11 is my justification for the answers I have given as well as the mode of operation which I have described.

Cross-Int. 43. I call your attention to the following passage from and after line 15 of page 2 of the specification: —

"The thread is kept taut at Z, Fig. 5, and thereby the loop of the previous stitch on the top face of the leather is tightened. Then the tool is drawn back, the tension of the loop thereby increasing and swinging the movable finger inward toward the hook. The tension on the previous stitch will be constantly kept on until the needle with loop holder and finger has been drawn backward far enough so as to cause the loop of thread to slip off from the finger and to be drawn through the hole, as seen in Fig. 7."

Are these specific requirements of the specifications consistent with the hypothetical mode of operation which you have suggested?

Ans. I draw attention to the fact that in your quotation you omitted the words in brackets "[see Fig. 6]", which illustrates the tension position of the thread suggested in a portion of your quotation. Now, answering your question, there is no doubt that the

matter quoted by you is justification for the mode — not hypothetical — of operation described by me.

Cross-Int. 44. Loop S of No. 4 appears in a modified form in No. 5. Does it appear in No. 5 in its final form; and, if not, what further changes are there in it?

Ans. If by "modified form" you mean a different position, well and good, and assuming that to be your meaning my answer is that in the position of Figure 5 the same loop S has been drawn tightly about the shank of the needle and snugly against the face of the materials. This is not its final condition, that condition — final — not being reached until the needle has completely left in.

Mr. FISH. That is all, Mr. Webster.

Mr. WEBSTER. That completes the cross-examination of Mr. Chapman?

Mr. FISH. Yes.

The WITNESS. I would like to make a correction on the record.

Mr. FISH. There is one more question I would like to ask.

Cross-Int. 45. When was your attention first called to the Stickel patent with its relation to the Briggs patent?

Ans. If my memory serves me correctly, it was the year 1907, in the summer. I went to Washington for a client and made a search relative to the validity of the Briggs method and the claim of that patent. During that search I found the Stickel patent.

Mr. FISH. That is all, Mr. Webster.

The WITNESS. On typewritten page 2103 [printed page 2146] of the record in my answer with reference to Plaintiff's Exhibit 212, being French and Meyer patent 473,870, I stated that with the possible exception of claims 8 and 10 of that exhibit patent the claims of said exhibit described a structure contained in the machine of Plaintiff's Exhibit No. 208. I made that statement at that time because at the moment I could not remember whether the adjustments called for in claims 8 and 10 were present in the machine of Plaintiff's Exhibit 208. Since making that statement I have verified my recollection and claims 8 and 10 with the said exhibit machine, and find that the latter contains in all particulars the structure called for by claims 8 and 10. In making this veri-

fication I also discovered the fact that I omitted to state that claim 6 of the same patent exhibit is not found in the machine of Plaintiff's Exhibit 208.

Mr. WEBSTER. I do not think there will be any redirect, but in view of the fact that it is nearly time to close and I would like a little time to examine the record I will postpone the redirect examination until tomorrow. As at present advised, there will be no redirect examination of the witness. The postponement was had yesterday to enable the counsel for the defendants to prepare for cross-examination, and I apprehend there will be no objection to postponement of redirect until tomorrow.

[*Adjourned to 10* A. M., *August 14, 1913.*

Signature waived.]

Attest: CHARLES K. DARLING, *Special Examiner.*

DISTRICT COURT OF THE UNITED STATES,
DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 301.

UNITED STATES OF AMERICA, PETITIONER,
v.
UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.,
DEFENDANTS.

ORDER EXTENDING TIME FOR TAKING TESTIMONY BEFORE EXAMINER UNDER ORDER DATED JUNE 27, 1913.

August 8, 1913.

PUTNAM AND DODGE, JJ. (BROWN, J., *concurring.*) It is ordered (both parties consenting hereto) that the times for taking testimony under the order dated June 27, 1913, entitled "Order Directing the Taking of Testimony with Respect to Patents Before an Examiner" be extended two (2) weeks, the petitioner to be allowed until August 26, 1913, inclusive, for evidence in chief, the defendants to have until October 11, 1913, inclusive, for testimony in defence, and the petitioner to have to October 25, 1913, inclusive, for rebuttal.

By the Court,

CHARLES K. DARLING, *Clerk.*

The above-named parties hereby consent to the entry of the foregoing order.

July 31, 1913.

ALLEN WEBSTER,
Special Assistant to the Attorney General,
for Petitioner.
CHARLES F. CHOATE, JR.,
for Defendants.

BOSTON, MASS., August 14, 1913.

Mr. WEBSTER. Mr. Chapman, our expert, met with an accident. His eye is affected, and he is under a doctor's care. This may necessitate the asking for further time. I offer now —

Mr. CHOATE. Before leaving that matter I should like to call attention to the statement made by Mr. Webster at the last hearing, to the effect that he had concluded his examination of Mr. Chapman.

Mr. WEBSTER. I think you will find that I stated I had concluded the examination of Mr. Chapman with reference to those particular things. I certainly have not concluded with reference to other branches of the case, other patents and other machines.

Mr. CHOATE. Before we began the cross-examination of Mr. Chapman, I asked: "Is there anything further you have to ask Mr. Chapman?" You said: "I do not think of anything now. There may be something later on." I said: "There may be something that you have forgotten?" You said: "Yes. If I have anything further, I presume it will develop." I said: "Except that you may have inadvertently overlooked something, you have completed your examination?" You said: "Yes. I am not hiding anything." We should not have cross-examined except upon that statement.

Mr. WEBSTER. It has been my expectation to put Mr. Chapman on with reference to a vast number of patents and machines. I put him on with reference to welters and stitchers which he had examined, and patents on welters and stitchers, but I have always expected and now expect to put him on with reference to other machines and other patents. My statement, read from the record

by Mr. Choate, has reference to that examination with reference to those machines and those patents.

Mr. CHOATE. We should like to have it noted that we reserve any rights that we may have to object to Mr. Chapman being recalled.

Mr. WEBSTER. I suppose we have a right to recall a witness. I offer now in support of the notice that we may have to ask for an extension of time an affidavit by Mr. Chapman, and a certificate from Dr. Haskell. I do not think these ought to be made a part of the record. It is not a part of the case, but I will file the same with the examiner and furnish opposing counsel a copy if they desire.

The EXAMINER. These are filed with the clerk of the court?

Mr. WEBSTER. Filed with the examiner, I suppose.

Mr. CHOATE. I would like to see a copy of them.

[*Mr. Choate examines two papers filed by Mr. Webster with the examiner.*]

Mr. WEBSTER. I offer now the opinion and decree which was offered on page 2101 of the testimony [printed page 2145], to which Mr. Choate's objection was entered at the time.

Mr. CHOATE. Will you note it again now, please?

Mr. WEBSTER. The petitioner offers as an exhibit catalogue of Goodyear Shoe Machinery Company dated on the title page "Boston, Mass., January 1, 1897".

Mr. CHOATE. Is this something that has been referred to before, or something that you offer now?

Mr. WEBSTER. Something that I am offering now. I have not any copy of it. I wish you would furnish me a good copy, as this is somewhat mutilated.

[*Catalogue of Goodyear Shoe Machinery Company, January 1, 1897, introduced in evidence and marked "Plaintiff's Exhibit 220".*]

Mr. CHOATE. I would like to have our objection noted to the introduction of that exhibit. It is not within the scope of the order; it is not properly identified; it is incompetent, immaterial and inadmissible.

Mr. WEBSTER. Petitioner offers in evidence copy of United

States patents referred to by witness Howard as being patents the inventions of which were incorporated in machines and which patents expired after the organization of the United Company, and before the filing of the petition, the same being as follows: —

Patent of J. E. Crisp, tacking machine, dated October 27, 1885, No. 329,366;

Patent to Frank Chase, lasting machine for boots or shoes, dated March 16, 1886, No. 337,925;

Patent to Frank Chase, lasting machine, dated April 27, 1886, No. 340,860;

Patent to Frank Chase, machine for lasting boots or shoes, dated May 31, 1887, No. 364,088;

Patent to Frank Chase, lasting machine, dated January 10, 1888, No. 376,368;

Patent to Frank Chase, tack driving mechanism, dated September 27, 1892, No. 483,375.

[*Group of patents, relating to lasting machines, etc., as above enumerated, introduced in evidence, in one binder, and marked "Plaintiff's Exhibit No. 221".*]

Mr. WEBSTER. Petitioner offers also under the same heading patent to Matthias Brock, assignor to McKay & Copeland Lasting Machine Company, lasting machine, dated October 16, 1883, No. 286,898;

Patent to Matthias Brock, assignor to McKay & Copeland Lasting Machine Company, lasting machine, dated November 20, 1883, No. 288,689;

Patent to Matthias Brock, assignor to McKay & Copeland Lasting Machine Company, lasting machine, dated August 5, 1884, No. 302,885;

Patent to Matthias Brock, assignor to McKay & Copeland Lasting Machine Company, tack driving implement, dated October 14, 1884, No. 306,671;

Patent to Matthias Brock, assignor to McKay & Copeland Lasting Machine Company, lasting machine, deted October 18, 1887, No.371,816.

[*Group of patents to Matthias Brock, relating to lasting ma-*

chines, etc., as above enumerated, introduced in evidence, in one binder, and marked "Plaintiff's Exhibit No. 222".]

Mr. WEBSTER. The petitioner offers also under the same heading patent to George W. Copeland and Joseph E. Crisp, lasting machine, dated October 27, 1885, No. 329,282;

Patent to Copeland, Crisp and Grandy, lasting machine for boots or shoes, dated June 28, 1887, No. 365,505;

Patent to Copeland and Crisp, lasting machine, dated March 4, 1890, No. 422,734;

Patent to Crisp and Copeland, tack driving machine, dated February 17, 1891, No. 446,631;

Patent to Crisp and Copeland, tack driving machine, dated June 30, 1891, No. 455,174;

Patent to Copeland, Crisp and Grandy, lasting machine, dated December 15, 1891, No. 465,073;

Patent to Crisp and Junkins, tack driving machine, dated June 27, 1893, No. 500,225;

Patent to Crisp, tack driving machine, dated June 27, 1893, No. 500,319;

Patent to Grandy, lasting machine, dated June 26, 1894, No. 521,954.

[*Group of patents, relating to lasting machines and tack driving machines, as above enumerated, introduced in evidence, in one binder, and marked "Plaintiff's Exhibit 223".*]

Mr. WEBSTER. The petitioner offers also under the same heading patent to Allen, heel nailing machine for boots or shoes, dated January 6, 1885, No. 310,488;

Patent to Raymond, 2d, heel nailing machine, dated May 12, 1885, No. 317,851;

Patent to Towns and Raymond, 2d, nail making and distributing machine, dated July 27, 1886, No. 346,137;

Patent to Raymond, 2d, nail machine, dated October 22, 1889, No. 413,554;

Patent to Glidden and Elliott, heeling machine, dated February 10, 1891, No. 446,383;

Patent to Glidden, heel compressing and loading machine, dated August 1, 1893, No. 502,667.

[*Group of patents, relating to heel nailing machines, etc., as above enumerated, introduced in evidence, in one binder, and marked "Plaintiff's Exhibit 224".*]

Mr. WEBSTER. I offer copy of assignment from the Goodyear Shoe Machinery Company, of Connecticut, to the Goodyear Shoe Machinery Company, of Maine, dated March 9, 1893, recorded May 27, 1893, in Liber S. 48, page 122, of transfer of patents in the United States Patent Office. I ask that this assignment be marked for identification and I will procure a certified copy and introduce the same in evidence, provided opposing counsel insist upon a certified copy being produced.

Mr. CHOATE. What is that in support of, Mr. Webster?

Mr. WEBSTER. That one of the constituent companies was operating under the patents.

Mr. CHOATE. Please note our objection as immaterial, inadmissible and incompetent for the purpose suggested. We shall desire to ask that you get a properly certified copy.

[*Copy of assignment from Goodyear Shoe Machinery Company of Connecticut, to the Goodyear Shoe Machinery Company, of Maine, dated March 9, 1893, marked for identification "Plaintiff's Exhibit 225 for identification".*]

Mr. WEBSTER. The petitioner offers copies of all the patents referred to in the assignment.

Mr. CHOATE. We make the same objection as to the previous exhibit. We assume they are offered for the same purpose.

Mr. WEBSTER. They are offered for any purpose that they are admissible for, the same as the assignment was, to support the Government's case.

Mr. CHOATE. Note that we also object because they are not offered for any purpose within the scope of the order.

[*Copies of patents referred to in the assignment, in one binder, marked "Plaintiff's Exhibit 226".*]

Mr. WEBSTER. I will now ask Mr. Jones to take the stand.

DEPOSITION OF CHARLES H. JONES.

Direct Examination by ALLEN WEBSTER, Esq., *of Counsel for Complainant.*

Int. 1. Your name is Charles H. Jones and you are the same Charles H. Jones that has heretofore testified in this case?

Ans. Yes, sir.

Int. 2. You are, I believe, president of the Commonwealth Shoe & Leather Company?

Ans. Yes, sir.

Int. 3. Were you connected with the Commonwealth Shoe & Leather Company in January of 1899?

Ans. Yes, sir.

Int. 4. And for how long previous to that date were you connected with that company?

Ans. Since 1884,— the formation of the company.

Int. 5. Have you any personal knowledge as to whether the Goodyear Shoe Machinery Company were putting out machines early in 1899?

Ans. Yes, sir.

Int. 6. State what machines, to your knowledge, the Goodyear Shoe Machinery Company were putting out early in 1899.

Ans. They were putting out the welter and turn shoe machine, the rapid stitching machine — the rapid lockstitch stitching machine, it was called, I think; the rough rounding and channeling machine, outsole channelers, insole channelers, welt groovers and bevelers, lip turners, bobbin winders, and various other secondary machines, — auxiliary machines.

Mr. CHOATE. Please note our objection to that statement.

Int. 7. State, if you know, whether the Goodyear Shoe Machinery Company were putting out the machines referred to by you early in 1899, claiming the same to be protected by patents.

Mr. CHOATE. We object to the form of the question, and object to it also because it is leading and suggestive, and also because it is immaterial, irrelevant and inadmissible.

Ans. Yes, sir; they were.

Int. 8. State the foundation for your reply to the last question.

Mr. CHOATE. Note the same objections.

Ans. We were dealing with them continuously at that time. I find on our books during December, 1898, and January, 1899, numerous entries showing the transactions we were having with them at the time. We have had their leases before that time and since, and have been dealing with them continuously since 1884.

Mr. CHOATE. Please note our objection to the answer as not responsive to the question.

Int. 9. Have you, and can you produce, a lease agreement between the Goodyear Shoe Machinery Company and the Commonwealth Shoe & Leather Company dated approximately the date inquired about?

Ans. February, 1899. It is not a lease; it is a bill.

[*Produces a paper.*]

Int. 10. Kindly read the same that it may be entered on the record.

Ans. "Boston, February 14, 1899. Commonwealth Shoe & Leather Company, Marlboro, in account with the Goodyear & McKay Sewing Machine Company, 158 Summer Street. Subject to all the terms and conditions of any agreement or licenses between the said parties. For a lease and license of the following machinery:

One Good Lockstitch Machine, No. 223,
One Cop Winder, No. 181,
One Outsole Channeler No. 953,
One Three Foot Counter-shaft, all $350.
Terms, Cash, April 24, 1899. Shipped by Dart & Company's Express."

Mr. CHOATE. Please note our objection to the answer as not responsive to the question, as incompetent, inadmissible and immaterial.

[*Paper dated February 14, 1899, marked "Plaintiff's Exhibit 227".*]

Mr. CHOATE. And I ask to have noted on the record that the exhibit produced by the witness is not a bill of the Goodyear Shoe Machinery Company but purports to be a bill of the Goodyear & McKay Sewing Machine Company.

Int. 11. Mr. Jones, kindly state whether the bill you have produced and read into the record is the bill of the Goodyear Shoe Machinery Company?

Mr. CHOATE. Please note our objection to the question as seeking to contradict a written document by oral evidence; as incompetent, immaterial and inadmissible.

Ans. That is a bill from the same company that furnished us all our Goodyear machinery. I do not know the title of the company or when it was changed, if it has been changed. It was the company that we procured all our machinery from.

Mr. CHOATE. Note an objection to the answer as not responsive to the question.

Int. 12. Have you in your possession, and can you produce, a lease agreement between the Goodyear Shoe Machinery Company and the Commonwealth Shoe & Leather Company?

Mr. CHOATE. Do you fix any time?

Mr. WEBSTER. I will ask him the time when he produces it.

Ans. I have no leases with me. I have —

Mr. CHOATE. That is all you are asked.

The WITNESS. I beg your pardon. I have a lease; yes, sir.

Int. 13. Kindly give the date.

Ans. The first day of February, 1893. I have others. The first of February, 1893; the third day of January, 1895; the first day of March, 1892. I think those are all the leases I have here. I would not be sure. Here is one more: the fifth day of April, 1898; the eighth day of January, 1896; the twenty-third day of March, 1898; the eighteenth day of May, 1899; the twenty-first day of January, 1898.

Int. 14. Kindly produce the lease agreements called for dated April, 1898, and May 18, 1899.

Ans. [*Witness produces papers.*] Here is March, 1898. I do not know that you want that also.

Mr. WEBSTER. Do you admit the execution?

Mr. CHOATE. For the purposes of this case, waiving any other rights, we will admit the execution.

Mr. WEBSTER. The lease agreement referred to by the witness, dated April 5, 1898, is offered in evidence.

[*Agreement dated April 5, 1898, introduced in evidence and marked "Plaintiff's Exhibit 228".*]

Mr. CHOATE. Please note our objection to the exhibit as not containing any allegation in the scope of the order or included in the bill, and as incompetent, inadmissible and immaterial.

Mr. WEBSTER. Counsel for the Government respectfully calls attention to the recital in the leases of the patents.

The lease agreement produced by the witness, dated May 18, 1899, is offered in evidence.

[*Agreement dated May 18, 1899, introduced in evidence and marked "Plaintiff's Exhibit 229".*]

Mr. CHOATE. We ask that the same objection be noted as to the previous exhibit.

Mr. WEBSTER. Counsel for the petitioner calls particular attention to the recital in the lease agreements, reading as follows: —

"Whereas the lessor is the owner of or licensed under the several Letters Patent of the United States recited in the schedule following, namely, Schedule of Patents No. 240,307, dated April 19, 1881: —

No. 249,279, dated November 8, 1881;
No. 253,156, dated January 31, 1882."

Mr. CHOATE. Why not have that copied in without reading it?

Mr. WEBSTER. That is agreeable to me.

Mr. CHOATE. Or simply state that you call attention to the list of patents?

Mr. WEBSTER. I do not call attention to all of them. I call attention to the particular ones down to and including No. 488,481, dated December 27, 1892.

Those are the leases of January instead of April.

The WITNESS. Here is the April 5th one.

Mr. CHOATE. The patents you call attention to are the ones that expired before 1899?

Mr. WEBSTER. They include patents dated December 19, 1893, No. 511,263.

[*Lease dated May 18, 1899, introduced in evidence and marked "Plaintiff's Exhibit 229".*]

Int. 15. Kindly state whether you have knowledge as to whether the Consolidated & McKay Lasting Machine Company were putting out machines on or about the early part of 1899.

Ans. Yes, sir; they were.

Int. 16. State what machines the Consolidated & McKay Lasting Machine Company were putting out at the time referred to by you.

Ans. The ones on which I have knowledge are the Chase lasting machine and the Consolidated hand-method lasting machine.

Int. 17. State, if you know, whether the Consolidated & McKay Lasting Machine Company were putting out those machines at that time under claims of protection under patent.

Ans. Yes, sir; they were.

Mr. CHOATE. Please note our objection to the question, the same as that which was noted to the same question when previously put as to Goodyear machines.

Int. 18. State your reason for the statement that they were putting out machines under claim that the same were patented.

Ans. They tendered us leases for signature containing the list of the patents which they claimed covered these machines.

Int. 19. Have you any written memoranda dated on or about January, 1899, containing a recital of a list of patents claimed by that company?

Ans. I have a lease agreement dated January 23, 1900, with such a list.

Int. 20. Kindly produce the same for examination. [*Witness produces paper.*] I call your attention to the fact that the paper produced by you does not seem to be executed.

Ans. No, sir; he did not sign it. I have one dated the 24th of March, 1900, that is signed, a duplicate of that.

Int. 21. Kindly produce it. [*Witness produces paper.*]

Mr. WEBSTER. Do you admit the execution, Mr. Choate?

Mr. CHOATE. Do you offer this for any other purpose except to show that the Consolidated & McKay Lasting Machine Company

was doing business on the date of this paper under a claim of patents on these machines?

Mr. WEBSTER. And before that, of course. At that date and before.

Mr. CHOATE. That is the purpose of it? Limited to that purpose, we will admit the execution of the paper.

Mr. WEBSTER. The petitioner offers in evidence the paper produced by the witness, license and rental lease from the Consolidated & McKay Lasting Machine Company to the Commonwealth Shoe & Leather Company.

[*License and rental lease, dated March 24, 1900, from Consolidated & McKay Lasting Machine Company to Commonwealth Shoe & Leather Company introduced in evidence, and marked "Plaintiff's Exhibit 230".*]

Mr. WEBSTER. I call attention to the following recital: —

"This license and rental lease agreement, made in duplicate the 24th day of March A. D. 1900, by and between the Consolidated & McKay Lasting Machine Company, a corporation incorporated under the laws of the State of Maine, Licensor and party of the first part, and Commonwealth Shoe and Leather Co. of Skowhegan, Maine, Licensee and party of the second part, Witnesseth:

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting to wit:

No. 274,207, dated March 20, 1883,
No. 281,306, dated July 17, 1883,
No. 284,906, dated Sept. 11, 1883,
No. 292,575, dated Jan. 29, 1884,
No. 312,335, dated Feb. 17, 1885,
No. 415,726, dated Nov. 26, 1889,
No. 421,954, dated Feb. 25, 1890,
No. 423,920, dated March 25, 1890,
No. 423,921, dated March 25, 1890,
No. 423,922, dated March 25, 1890,
No. 423,937, dated March 25, 1890,
No. 441,482, dated Nov. 25, 1890,
No. 459,899, dated Sept. 22, 1891,
No. 482,349, dated Sept. 13, 1892,
No. 500,141, dated June 27, 1893,
No. 510,972, dated Dec. 19, 1893,
No. 510,973, dated Dec. 19, 1893,

No. 510,974, dated Dec. 19, 1893,
No. 510,975, dated Dec. 19, 1893,
No. 510,976, dated Dec. 19, 1893,
No. 510,977, dated Dec. 19, 1893,
No. 510,978, dated Dec. 19, 1893, . . ."

Mr. CHOATE. Please note our objection to the introduction of this exhibit as not in support of any allegation within the scope of the order or in the bill; and that it is incompetent, inadmissible and immaterial.

Int. 22. Kindly state whether you have knowledge as to whether the McKay Shoe Machinery Company was putting out machines under claim of patent protection early in 1899, or at about that time.

Mr. CHOATE. Please note our objection to the question, the same as was noted to the previous similar question as to the Goodyear machines.

Ans. Yes, sir; they were.

Int. 23. State what machines were being so put out by the McKay Shoe Machinery Company at that time.

Ans. Heeling machines and heel compressing machines.

Int. 24. Have you in your possession and can you produce any written memoranda, signed by that company, indicating under what patents it claimed protection?

Ans. The leases we have read from the McKay & Bigelow Heeling Machine Association, but our account, the money we paid, was to the McKay Shoe Machinery Company.

Mr. CHOATE. Please note our objection to the answer as not responsive to the question.

Int. 25. Have you refreshed your recollection by reference to your books to ascertain what dealings you had with reference to machines received by your company from the McKay Shoe Machinery Company at or about the date referred to?

Ans. Yes, sir.

Int. 26. State the facts in reference to the matter inquired about.

Mr. CHOATE. Please note our objection to the question, which has no reference to any intelligible previous question calling for an answer.

Ans. I have a lease and license, No. 1731, from the McKay-Bigelow Heeling Machine Association, dated December 17, 1897, for American lightning nailing machines, twelve of them, and for two Fisher compressing machines. [*Witness produces paper.*]

Mr. CHOATE. Please note our objection to the answer as not responsive to the question, and not in support of any allegation within the scope of the order or the bill.

Int. 27. State whether, within your knowledge, the McKay-Bigelow Heeling Machine Association, or it, associated with the McKay Shoe Machinery Company, continued up to early in 1899 putting out machines of the type referred to in the paper produced by you.

Mr. CHOATE. Please note our objection to the question as incompetent, inadmissible, irrelevant and not within the scope of the order.

Ans. It did so continue, sir.

Mr. CHOATE. Please note our objection to the answer as not competent evidence of the fact.

[*Lease and license No. 1731, from the McKay-Bigelow Heeling Machine Association, lessors, dated December 17, 1897, to the Commonwealth Shoe & Leather Company, lessee, introduced in evidence and marked "Plaintiff's Exhibit 231".*]

Mr. WEBSTER. Mr. Choate, will you admit the execution, as you did before?

Mr. CHOATE. We will admit the execution for the purpose of this case, but object to the introduction of the exhibit as not proving any fact within the scope of the order and as incompetent, immaterial and inadmissible.

Mr. WEBSTER. Counsel for petitioner calls attention to the following recital in the lease and license No. 1731: —

"Whereas, The Lessors are engaged in the manufacture of shoe machinery, and devices to be used in connection therewith, and particularly machinery and devices useful in the manufacture of the heel portions of boots and shoes; and

Whereas, The Lessors, at great expense, have endeavored, and are constantly endeavoring to improve and render more useful, the machinery and devices manufactured by them, and are the owners

of the following Letters Patent of the United States for improvements and inventions relating to machinery and devices for the manufacture of shoes, viz. : —

E. B. Allen, 310,488, Jan. 6, 1885;
314,411, March 24, 1885;
319,377, June 2, 1885;
332,032, Dec. 8, 1885;
332,984, Dec. 22, 1885;
348,091, Aug. 24, 1886;
348,092, Aug. 24, 1886;
374,387, Dec. 6, 1887;
374,885, Dec. 13, 1887;
375,913, Jan. 3, 1888;
377,284, 377,285, Jan. 31, 1888;
378,859, March 6, 1888;
384,343, June 12, 1888;
384,734, June 19, 1888.
C. H. Benjamin, 388,523, Aug. 28, 1888.
H. Bond, 297,785, Feb. 5, 1884.
E. Bourgeois, 277,207, May 8, 1883.
C. H. Brown and A. B. McCoy, 477,098, June 14, 1892.
C. W. Chase, 212,190, Feb. 11, 1879.
T. P. Coombs, 391,124, Oct. 16, 1888.
J. H. Cunningham, 381,493, April 17, 1888.
A. E. Ellis, 388,544, Aug. 28, 1888.
A. D. Elliott, 374,892, Dec. 13, 1887.
A. D. Elliott and J. E. Fellows, Nov. 19, 1889.
A. D. Elliott, 446,383, Feb. 10, 1891;
510,012, Dec. 5, 1893.
H. P. Fairfield, 224,005, Feb. 3, 1880;
388,547, 388,548, Aug. 28, 1888;
498,745, May 30, 1893;
518,917, April 24, 1894.
M. J. Ferren, 236,148, Jan. 4, 1881.
M. Fifield, 261,696, July 25, 1882.
E. Fisher, 246,945, Sept. 13, 1881;
248,582, Oct. 25, 1881;
248,582, Oct. 25, 1881;
250,654, Dec. 13, 1881;
258,905, June 6, 1882.
J. F. Freeman and C. W. Glidden, 443,434, Dec. 23, 1890.
C. W. Glidden, 217,866, July 29, 1879;
217,867, July 29, 1871;
224,011, 224,012, Feb. 3, 1880;
278,426, May 29, 1883;

321,017, June 30, 1885;
347,482, Aug. 17, 1886;
350,051, Sept. 28, 1886;
374,894, Dec. 13, 1887;
377,300, Jan. 31, 1888;
377,301, 377,302, Jan. 31, 1888;
382,762, May 15, 1888;
388,552, 388,578, Aug. 28, 1888;
393,103, 393,104, Nov. 20, 1888;
399,607, 399,608, March 12, 1889;
402,435, April 30, 1899;
399,608, March 12, 1889;
402,435, April 30, 1889;
403,747, May 21, 1889;
408,173, July 3, 1889;
409,637, Aug. 20, 1889;
409,783, 410,086, 410,087, 410,088, 410,089;
410,090, Aug. 27, 1889;
410,358, Sept. 3, 1889;
411,655, Sept. 24, 1889;
414,040, Oct. 29, 1889;
427,308, May 6, 1890;
439,060, Oct. 21, 1890;
454,428, June 16, 1891;
457,462, Aug. 11, 1891;
459,348, Sept. 8, 1891;
464,196, Dec. 1, 1891;
498,429, 498,513, May 30, 1893;
500,486, June 27, 1893;
502,667, 502,668, 502,669, Aug. 1, 1893;
242,268, April 30, 1895.

Glidden and Elliott, 457,462, Aug. 11, 1891.

R. M. Harrison, 233,504, Oct. 19, 1880.

M. P. Harrigan, 386,538, July 24, 1888;
406,582, July 9, 1889.

Harrigan and Packard, 473,874, April 26, 1892.

John J. Heys, 530,046, Nov. 27, 1894.

T. P. King and F. S. Strong, 267,544, Oct. 24, 1882.

Horne and Henderson, 389,077, Sept. 4, 1888.

W. Manley, 322,945, July 28, 1885;
336,332, Feb. 16, 1886;
342,371, May 25, 1886;
374,416, 374,417, 374,418, 374,419, Dec. 6, 1887.

J. F. McMullett, 266,298, Oct. 24, 1882;
373,409, Nov. 15, 1887.

J. L. Packard, 388,578, Aug. 28, 1888;
413,959, Oct. 29, 1889;
473,478, April 19, 1892.
M. D. Phelan, 400,788, April 2, 1889.
D. C. Pillsbury, 417,833, Dec. 24, 1889.
A. E. Stirckler, 212,116, Feb. 11, 1879.
E. A. Tripp, 406,183, 406,184, July 2, 1899.
C. K. Wead, 477,093, June 14, 1892.
A. H. Webster, 468,279, Feb. 2, 1892;
483,293, Sept. 27, 1892;
504,854, 502,854, 505,074, Sept. 12, 1893.
H. W. Winter, 401,619, 401,620, 401,622. April 16, 1889;
402,375, 402,376, April 30, 1889;
447,744, March 3, 1891;
448,310, March 17, 1891;
501,555, July 18, 1893;
505,043, Sept. 12, 1893.
E. C. Wright, 340,690, April 27, 1886.
Crocker, Sumner & Nash, 385,748, July 10, 1888;
388,535, Aug. 28, 1888.
J. H. Pope, 399,631, March 12, 1889;
399,777, March 19, 1889;
411,835, Oct. 1, 1889;
446,885, Feb. 24, 1891.
M. A. Tyler, 301,462, July 1, 1884;
305,723, Sept. 23, 1884.
Tyler & Merritt, 321,401, June 30, 1985;
382,121, May 1, 1888.
Tyler & Smith, 293,604, Feb. 12, 1884.
A. K. Washburn, 389,994, Sept. 25, 1888.
H. A. Henderson, 252,215, Jan. 10, 1882;
259,687, June 30, 1882;
316,894, April 28, 1885;
10,588, 10,589, April 28, 1885;
317,646, 317,647, May 12, 1885;
332,798, Dec. 22, 1885.
F. F. Raymond, 2d, 271,117, 271,118, Jan. 23, 1883;
280,399, July 3, 1883;
287,472, Oct. 30, 1883;
289,857, 290,109, Dec. 11, 1883;
315,458, 315,069, 315,070, April 7, 1885;
316,177, April 21, 1885;
316,661, 316,836, 316,827, April 28, 1885;
317,199, May 5, 1885;
317,672, 317,851, May 12, 1885;

318,134, May 19, 1885;
319,124, June 2, 1885;
321,530, 321,756, July 7, 1885;
322,126, July 14, 1885;
322,560, July 21, 1885;
322,561, 322,562, July 21, 1885;
325,271, 325,272, Sept. 1, 1885;
326,150, Sept. 15, 1885;
326,779, 326,780, 326,781, 326,782, Sept. 22, 1885;
329,079, Oct. 27, 1885;
329,951, 329,952, Nov. 10, 1885;
331,441, Dec. 1, 1885;
382,001, Dec. 8, 1885;
335,241, 335,242, Feb. 2, 1886;
340,358, April 20, 1886;
341,169, May 4, 1886;
341,689, May 11, 1886;
342,039, May 18, 1886;
342,461, May 25, 1886;
342,929, June 1, 1886;
343,339, June 8, 1886;
343,728, June 15, 1886;
344,136, June 22, 1886;
344,499, June 29, 1886;
344,985, July 6, 1886;
345,449, July 13, 1886;
345,920, July 20, 1886;
346,124, 346,125, July 27, 1886;
346,607, Aug. 3, 1886;
347,061, 347,062, 347,063, Aug. 10, 1886;
347,514, Aug. 17, 1886;
347,960, Aug. 24, 1886;
348,689, Sept. 7, 1886;
353,883, Dec. 7, 1886;
354,227, Dec. 14, 1886;
354,655, Dec. 21, 1886;
355,027, Dec. 28, 1886;
355,556, Jan. 4, 1887;
355,839, 355,840, Jan. 11, 1886;
356,209, Jan. 18, 1887;
356,549, 356,550, 356,551, Jan. 25, 1887;
356,552, 356,553, 356,554, Jan. 25, 1887;
356,890, Feb. 1, 1887;
357,335, Feb. 8, 1887;
357,735, Feb. 15, 1887;

359,298, Feb. 22, 1887;
358,695, March 1, 1887;
368,006, Aug. 9, 1887;
376,208, Jan. 10, 1888;
376,754, 376,908, Jan. 24, 1888;
377,172, Jan. 1, 1888;
377,577, Feb. 7, 1888;
377,958, Feb. 14, 1888;
378,216, Feb. 21, 1888;
378,617, Feb. 28, 1888;
379,029, March 6, 1888;
379,330, March 13, 1888;
379,810, March 20, 1888;
380,133, March 27, 1888;
380,596, April 3, 1888;
380,818, April 10, 1888;
381,280, April 17, 1888;
383,911, June 5, 1888;
385,960, July 10, 1888;
386,656, July 24, 1888;
394,298, Dec. 11, 1888;
394,609, 394,610, Dec. 18, 1888;
398,846, March 5, 1889;
405,598, June 18, 1889;
408,895, Aug. 13, 1889;
409,372, Aug. 20, 1889;
410,194, 410,195, 410,196, Sept. 3, 1889;
410,675, 410,676, 410,677, Sept. 10, 1889;
412,414, Oct. 1889;
412,896, Oct. 15, 1889;
413,553, 413,554, 413,555, Oct. 22, 1889;
413,963, 413,964, Oct. 29, 1889;
414,448, 414,582, Nov. 5, 1889;
414,952, Nov. 12, 1889;
415,559, Nov. 19, 1889;
415,560, Nov. 19, 1889;
461,448, 461,510, Oct. 20, 1891;
464,165, 464,255, Dec. 1, 1891;
464,991, 465,029, Dec. 15, 1891;
467,237, Jan. 19, 1892;
467,522, Jan. 26, 1892;
468,957, Jan. 16, 1892;
474,146, May 3, 1892;
474,407, 474,408, May 10, 1892;
475,001, 474,858, May 17, 1892;

475,417, May 24, 1892;
476,303, 476,307, June 7, 1892;
479,142, July 19, 1892;
480,415, Aug. 9, 1892;
480,741, Aug. 16, 1892;
528,805, Nov. 6, 1894;
531,644, 531,645, Jan. 1, 1895.
Raymond & Wheeler, 280,861, July 10, 1883.
G. T. Demary, 320,050, June 16, 1885;
321,696, July 7, 1885;
342,501, May 25, 1886;
343,703, June 15, 1886;
474,335, May 3, 1892.
Towns & Raymond, 346,137, July 27, 1886.
J. B. Gardner, 354,125, Dec. 4, 1886;
360,580, April 5, 1887.
J. W. Soule, 368,248, April 16, 1887.
C. C. Small, 375,209, Dec. 20, 1887;
376,049, Jan. 3, 1888;
413,973, Oct. 29, 1889;
461,853, Oct. 27, 1891;
467,242, Jan. 19, 1892.
E. E. Orr, 375,458, Dec. 27, 1887.
J. R. Prouty, 383,907, 383,908, 383,909, June 5, 1888;
515,175, Nov. 12, 1889.
James W. Carver, 401,131, April 9, 1889.
Benjamin & Simmons, 503,895, Aug. 22, 1893. . . ."

Int. 28. Kindly state whether you have knowledge as to whether the Eppler Welt Machine Company was putting out machines early in 1899.

Ans. Yes, sir; it was.

Int. 29. Kindly state what machines, to your knowledge, the Eppler Welt Machine Company were putting out at that time.

Ans. Machines for sewing welt and machines for stitching the outer soles.

Int. 30. Have you knowledge or memorandum tending to show whether the Eppler Welt Machine Company were at that time putting out machines under claims of patent protection?

Ans. I have no memoranda. I have knowledge, but no memoranda.

Int. 31. You may state what you have knowledge of.

Ans. I examined the machinery, and its agent referred to patents which did not conflict with patents of the Goodyear Company and which effectively protected his machine.

Mr. CHOATE. Please note our objection to the answer as not responsive to the question, as stating hearsay, and as incompetent, inadmissible, irrelevant and immaterial.

Int. 32. State whether you have knowledge as to whether the Davey Pegging Machine Company were putting out machines early in 1899 under the claim of patent protection.

Ans. They were. I cannot fix the date exactly. It was prior to 1899, but I cannot state exactly the date.

Int. 33. State what machines were being put out by the Davey Pegging Machine Company on or about the early part of 1899.

Ans. A machine for pegging on a horn. We have only our book records of transactions with them. Our ledger shows the charges and the payments; we had no lease. It was a purchased machine.

Int. 34. State whether or not the Commonwealth Shoe & Leather Company purchased any machine or machines of the Davey Pegging Machine Company; and, if so, what machines, and when the same were purchased.

Ans. The Commonwealth Company purchased a pegging machine, for pegging on a horn, of the Davey Pegging Machine Company, prior to January, 1899. I cannot tell exactly the date. I have no record.

Int. 35. State whether that machine is in use at the present time.

Ans. It is.

Int. 36. Now, referring particularly to welting machines procured as stated by you of the Goodyear Shoe Machinery Company, kindly state as nearly as you are able when the first welting machine was procured by you or your company from that company.

Ans. I think in the year 1884.

Int. 37. State whether that particular machine is in use today.

Ans. I think not, sir. I do not find any lease of it here, and I don't think it is.

Int. 38. State for how long a time any one particular welting machine procured by the Commonwealth Shoe & Leather Company from the Goodyear Shoe Machinery Company has been, to your knowledge, in operation.

Mr. CHOATE. Please note our objection to the question as not within the scope of the order, as incompetent, inadmissible, irrelevant and immaterial.

Ans. I find one here dated May, 1896. There are some older than that, I know. I am sure that we have had some of the machines in use nineteen years.

Mr. CHOATE. Please note my objection to the answer as not responsive to the question, not in support of any allegation within the scope of the order; inadmissible, irrelevant, immaterial and incompetent.

Int. 39. Kindly state whether you caused any of the machines in your factory at Whitman to be photographed recently.

Ans. I did, sir.

Int. 40. And what machines?

Ans. The welt machine, the rough-rounding machine, the channeling machine and leveler.

Int. 41. When were these photographs made?

Ans. The first part of th' week.

Int. 42. Will you kindly produce the photographs and state what they refer to?

Ans. Photograph of our welt machine, No. 228. That I found the lease for a moment ago. That is dated May 28, 1896.

Mr. WEBSTER. I offer this, being a photograph of welting machine referred to in transfer agreement dated May 21, 1896.

[*Photograph of welting machine introduced in evidence and marked "Plaintiff's Exhibit 232".*]

Int. 43. Kindly state whether the welting machine a photograph of which has just been produced by you had any markings upon it; and, if so, what they were.

Ans. It had two name plates: one of them "No. blank, welt and turn shoe machine, patented, the property of the Goodyear Shoe Machinery Company, Lessor, Boston, Mass."; the other name

plate read: "The property of the United Shoe Machinery Company, Lessor, Goodyear Department, Goodyear welt and turn shoe machine, No. 228."

Int. 44. Kindly produce the next photograph, and state what it has reference to.

Ans. The next photograph is a Universal rough-rounding and channeling machine, No. 31.

[*Photograph of Universal rough-rounding and channeling machine introduced in evidence and marked "Plaintiff's Exhibit 233"*]

The WITNESS. That is included in lease of January 8, 1896.

Int. 45. Kindly state whether the Universal rough rounder of which Plaintiff's Exhibit 233 is a photograph is in use at the present time?

Ans. It is.

Int. 46. Kindly produce the next photograph referred to by you.

Ans. The next photograph is automatic leveler, No. 35.

[*Photograph of automatic leveler introduced in evidence and marked "Plaintiff's Exhibit 234".*]

Int. 47. Kindly produce the next photograph you have made reference to.

Ans. This is of an insole channeling machine, No. 2072.

Int. 48. Procured when and of whom?

Ans. Procured of the Goodyear Shoe Machinery Company prior to January, 1899.

Int. 49. Give the date, if you are able, and state whether it was procured under lease or otherwise.

Ans. I should be able if I had time enough. I may not have the lease. I did not know that you wanted the date today.

Int. 50. Kindly look it up so that you may testify tomorrow.

Ans. I will, sir.

[*Photograph of insole channeling machine No. 2072 introduced in evidence and marked "Plaintiff's Exhibit 235".*]

Mr. WEBSTER. I suggest that we adjourn and get those dates and get those leases.

Mr. CHOATE. Can't you use up the rest of the time?

Mr. WEBSTER. I prefer, saving my rights, to allow you to pro-

ceed with your cross-examination. As at present advised, I do not think of anything further to ask this witness.

Mr. CHOATE. That is, you have finished your examination?

Mr. WEBSTER. As at present advised. I may think of something further between now and tomorrow morning that I shall want to ask. I am quite content you should use up the time in cross-examining if you desire.

Cross Examination by CHARLES F. CHOATE, Esq., *of Counsel for Defendants.*

Cross-Int. 51. Mr. Jones, who selected those machines to be photographed?

Ans. I did.

Cross-Int. 52. At whose request?

Ans. At the request of the Government.

Cross-Int. 53. What was the request?

Ans. That I photograph certain machines. I don't know as I can tell you exactly, but my recollection is that I was to cause photographs to be taken of certain machines which were bought prior to the formation of the United Machine Company.

Cross-Int. 54. You do not mean bought?

Ans. I mean leased, procured.

Cross-Int. 55. Any machines that you had acquired, or machines that you had acquired at a certain time?

Ans. Machines that we had acquired prior to the formation of the United Company.

Cross-Int. 56. Do you mean at any time prior?

Ans. As I remember it. I do not remember that there was any specification. I do not know that there was any specification as to time.

Cross-Int. 57. That is, to photograph any machines that you had acquired prior to February, 1899?

Ans. Of these different companies; yes, sir.

Cross-Int. 58. Did you have anything to do with the procuring of the Davey pegging machine?

Ans. No, sir.

Cross-Int. 59. Which you say your company had?

Ans. No, sir.

Cross-Int. 60. You have no idea when it was acquired?

Ans. I have as much idea as any of our people. We cannot, any of us, remember just the time; we talked it over. We cannot remember. We have no lease or anything that gives us the date. It was prior to 1899.

Cross-Int. 61. You speak of it as being purchased. Have you any knowledge whatever of the transaction by which it came into your possession?

Ans. Our treasurer tells us at the time he purchased it —

Cross-Int. 62. No.

Ans. I did not do it myself, if you mean that.

Cross-Int. 63. I do not want your statement of what somebody else told you.

Mr. CHOATE. I ask that that be stricken out.

Cross-Int. 64. Have you any knowledge of the transaction by which it came into your possession?

Ans. No personal — I did not do it myself. I have the same knowledge of it as I should have if our treasurer buys leather —

Cross-Int. 65. Have you made any examination of your books to ascertain the date?

Ans. I have.

Cross-Int. 66. Did you find anything to show when it was acquired?

Ans. I have not as yet. I found a ledger with the date of January, 1899, where was an entry of supplies purchased. I did not go back of that. I do not know whether I can find an earlier ledger or not.

Cross-Int. 67. You expect to be here tomorrow? I wish you would look up your books as far back as you have occasion to, to ascertain if you can find anything with reference to any purchase of that machine.

Ans. It would be quite impossible for me to find anything by that time, because for that remote time it is rather difficult, and the papers are not easily accessible.

Cross-Int. 68. You mean the transaction may have been any time between 1884 and 1899?

Ans. No; I do not mean that.

Cross-Int. 69. Between what dates?

Ans. For a long time after 1884 I was in the factory constantly. We did not use the Davey pegger.

Cross-Int. 70. Between what times approximately?

Ans. I should say my best judgment would be it would be between 1895 and 1899.

Cross-Int. 71. Please examine your books between 1895 and 1899 and see if you find any record of any purchase of the Davey pegging machine.

Ans. I will. If I can find the books I will examine them, certainly.

Cross-Int. 72. Was there any name on the machine?

Ans. On the Davey pegger?

Cross-Int. 73. Yes.

Ans. I have not examined it with that in mind.

Cross-Int. 74. Will you examine it and ascertain if there is any?

Ans. Yes, sir.

Mr. CHOATE. That is all.

[*Adjourned to 10 A. M., Friday, August 15, 1913.*]

BOSTON, MASS., August 15, 1913.

Direct Examination resumed by Mr. WEBSTER.

Int. 75. Did I ask you about a certain date?

Ans. Yes, about a date on a channeling machine.

Int. 76. Do you recollect where that is?

Ans. The date is in a lease which Mr. Keliher has, and I have not been able to get hold of it.

Int. 77. Then you can't give it this morning?

Ans. No.

Int. 78. Is there anything else?

Ans. Mr. Choate called for a memorandum in relation to the Davey pegger. I have made further examination and will be glad to state that, if this is the time.

Cross Examination resumed by Mr. CHOATE.

Cross-Int. 79. Have you obtained any information as to the time when your company acquired the Davey pegger?

Ans. I examined the ledger previous to the one I referred to in my testimony, and I find a credit to John F. Davey on July 3, 1895, machinery $300, and that item was paid for on August 29, 1895, and I believe that that was the pegging machine in question. But I have no bill for it and only the ledger entry, so I cannot say any further. I have written to a man who was cognizant of the matter, who was employed by us, but I have no answer of course, and I do not know whether I shall be able to get any further information or not.

Cross-Int. 80. So your best information is, from that investigation, that in July, 1895, the Commonwealth Shoe Company bought a pegger of John F. Davey?

Ans. Yes, sir.

Cross-Int. 81. And that is the one which you testified about yesterday?

Ans. Yes, sir.

Cross-Int. 82. So you would want to correct your statement, would you not, that it was bought of the Davey Pegging Machine Company? If it was bought of anybody, it was bought of John F. Davey, to whom the money was paid, wasn't it?

Ans. Exactly. At the time referred to in my statement yesterday, January, 1899, the account was in the name of the Davey Pegging Machine Company. On this previous ledger I find the name of John F. Davey crossed out, and the Davey Pegging Machine Company inserted in its place, or following it.

Cross-Int. 83. It would seem to indicate that the Davey Pegging Machine Company was not in existence at the time you got the machine?

Ans. It would seem to indicate that John F. Davey did the business, and was succeeded by the Davey Pegging Machine Company.

Cross-Int. 84. And that one transaction is all the knowledge

that you have about who put out or marketed the Davey Pegging Machine prior to 1899?

Ans. Oh, no. We were constant —

Cross-Int. 85. Pardon me. Have you personal knowledge of acquiring any other pegging machines by your company than the one of which you testified?

Ans. No, sir.

Cross-Int. 86. Did you look up any other matter yesterday for me?

Ans. I don't think so. I don't recollect anything else.

Mr. CHOATE. That is all.

Direct Examination resumed by Mr. WEBSTER.

Int. 87. You were asked in cross-examination yesterday as to your knowledge about the putting out of these pegging machines. Kindly state what knowledge you had about the Davey Pegging Machine Company putting out pegging machines in 1899 or about that time.

Mr. CHOATE. Please note my objection to the question as being a subject which was inquired about on direct examination and not opened again on redirect examination.

Ans. The business done by John F. Davey was continued by the Davey Pegging Machine Company and we were in constant dealing with them, and the Davey Pegging Machine Company offered us improvements on our machines some time prior to 1899, — shortly prior to 1899, I think.

Mr. WEBSTER. I inadvertently omitted to have the catalogue which is put in as Plaintiff's Exhibit No. 220 identified, and I pray the indulgence of the court and counsel for that purpose.

Int. 88. I will ask you to kindly examine the book I now hand you [*Exhibit 220*], the same being marked "Plaintiff's Exhibit 220", and ask you to state what it is.

Mr. CHOATE. Please note our objection to the question, as it does not appear that Mr. Jones ever had any connection with the company which it is claimed issued the catalogue, or that he had any

personal knowledge of the issuance of the catalogue whatever, or that he has ever seen the paper before.

Ans. This is like a catalogue that we had which we received from this company —

Mr. CHOATE. Which company?

The WITNESS. The Goodyear Shoe Machinery Company.

Ans. [*resumed:*] —and used in our business for several years.

Mr. CHOATE. Please note our objection to the answer as not being responsive to the question, and request that it be stricken out.

Mr. WEBSTER. That is all I think of now, Mr. Choate, to inquire of this witness at the present time.

Cross Examination resumed by Mr. CHOATE.

Cross-Int. 89. Mr. Jones, do you know whether the pegging machines, if any, which were put out by the Davey Pegging Machine Company prior to 1899 were in all respects similar to the machine which you have testified your company obtained from John F. Davey?

Ans. I don't think that they were in all respects similar. I think improvements were added to the machine brought out by the Davey Pegging Machine Company.

Mr. CHOATE. That's all.

Mr. WEBSTER. As tending to show that the Davey Pegging Machine Company were putting out machines claimed to be built under patents, the petitioner offers in evidence lease and license No. 186, between the Davey Pegging Machine Company and Selz, Schwab & Company, dated March 10, 1899, and calls particular attention to the recital therein, as follows: —

"Whereas the lessor is the owner of the following described Letters Patent of the United States, namely, No. 414,501, Nov. 5, 1889, to John F. Davey, No. 504,311, August 29, 1893, to John F. Davey."

[*Lease and license No. 186, between Davey Pegging Machine Company and Selz, Schwab & Company, dated March 10, 1899, offered in evidence and marked "Plaintiff's Exhibit 236".*]

Mr. CHOATE. Please note the defendants' objection to the intro-

duction of that paper as not tending to support any allegation which is within the scope of the order, or within the bill, and as not tending to sustain the proposition for which it is offered.

Mr. WEBSTER. Do you admit the execution?

Mr. CHOATE. For the purposes of this case we will admit of the paper's execution.

Mr. WEBSTER. In support of the petitioner's allegation that the Consolidated & McKay Lasting Machine Company were putting out machines claimed to be protected by Letters Patent early in 1899, petitioner offers license and rental lease No. 58 G, dated January 28, 1899, between the Consolidated & McKay Lasting Machine Company and R. H. Long Shoe Manufacturing Company, and calls particular attention to the patents therein enumerated as follows:—

"274,207, dated March 20, 1883,
281,306, dated July 17, 1883,
284,906, dated Sept. 11, 1883,
292,575, dated Jan. 29, 1884,
312,335, dated Feb. 17, 1885,
415,726, dated Nov. 26, 1889,
421,954, dated Feb. 25, 1890,
423,920, dated March 25, 1890,
423,921, dated March 25, 1890,
423,922, dated March 25, 1890,
423,937, dated March 25, 1890,
441,482, dated Nov. 25, 1890,
459,899, dated Sept. 22, 1891,
482,349, dated Sept. 13, 1892,
500,141, dated June 27, 1893,
510,972, dated Dec. 19, 1893,
510,973, dated Dec. 19, 1893,
510,974, dated Dec. 19, 1893,
510,975, dated Dec. 19, 1893,
510,976, dated Dec. 19, 1893,
510,977, dated Dec. 19, 1893,
510,978, dated Dec. 19, 1893,
518,933, dated April 24, 1894,
523,939, dated July 31, 1894,"—

copies of which patents are to be produced and introduced herein.

[*License and rental lease No. 58 G, Consolidated & McKay Last-*

ing Machine Company to R. H. Long Shoe Manufacturing Company, Springfield, Massachusetts, dated January 28, 1899, introduced in evidence and marked "Plaintiff's Exhibit 237".]

Mr. CHOATE. We admit the execution for the purposes of this case.

Mr. WEBSTER. In support of the petitioner's allegation that the Consolidated & McKay Lasting Machine Company put out machines early in 1899 claimed to be protected by Letters Patent, the petitioner offers in evidence the license and rental lease between the Consolidated & McKay Lasting Machine Company and Selz, Schwab & Company, dated December 17, 1898, and calls particular attention to the patents therein recited, of which patents copies will hereafter be produced and put in evidence, as follows: —

"319,784, dated June 9, 1885;
337,662, dated March 9, 1886;
337,924, dated March 16, 1886;
337,925, dated March 16, 1886;
338,930, dated March 30, 1886;
340,860, dated April 27, 1886;
356,619, dated January 25, 1887;
356,620, dated January 25, 1887;
363,283, dated May 17, 1887;
364,088, dated May 31, 1887;
376,368, dated January 10, 1888;
391,688, dated October 23, 1888;
477,788, dated June 28, 1892;
477,789, dated June 28, 1892;
478,501, dated July 5, 1892;
483,375, dated September 27, 1892."

In connection with this license and rental lease the petitioner offers memorandum attached thereto, dated March 11, 1899, reading as follows: "Boston, Mass., March 11th, 1899."

Mr. CHOATE. We do not object to that, but we think it would be convenient as you refer to those papers if you should state what they are leases of; don't you think so?

Mr. WEBSTER. So many have gone in without it that I do not suppose it would be of any advantage now. I will read the memorandum.

"Boston, Mass., March 11th 1899.

To Messrs. Selz, Schwab & Co. Chicago, Ill.

Gentlemen: — Enclosed please find your copies of the lease with signatures completed. Yours very truly,

Chase Dept.

CONSOLIDATED & McKAY LASTING MCH. Co.

R."

I also call attention to a memorandum attached dated Boston, Mass., March 17, 1899, reading as follows: —

"To Messrs. Selz, Schwab & Co., Chicago, Ill.

Gentlemen: — Enclosed please find your copy of the lease with signatures completed. Yours very truly,

Chase Dept.

CONSOLIDATED & McKAY LASTING MCH. Co."

[*License and rental lease, dated December 17, 1896, between Consolidated & McKay Lasting Machine Company and Selz, Schwab & Company, with two letters thereto attached as above stated, introduced in evidence and marked "Plaintiff's Exhibit 238".*]

Mr. WEBSTER. I very much regret the illness of Mr. Chapman. Mr. Gregg is to see Mr. Chapman in New York today and communicate with me at once, and he hopes he will be able to testify by the middle or latter part of next week. Under the circumstances, I do not see how I can proceed further until the middle or latter part of next week.

Mr. CHOATE. You will advise us as soon as you can when you can go ahead, will you?

Mr. WEBSTER. Yes; just as soon as I find out what I can do, I will notify you promptly and give you all the notice in advance possible.

Mr. CHOATE. You will not forget, will you, that we want to be away between the 9th of September and the 1st of October?

Mr. WEBSTER. Now, Mr. Keliher spoke to me about that, and I told him to say to you that it was impossible for me personally to agree to any extension of that kind; that personally I was perfectly agreeable. I was compelled to refer the matter to Mr. Gregg. I will confer with Mr. Gregg at the first opportunity. If it is within my power, I will be only too glad to accommodate you.

Mr. CHOATE. You perhaps notice that we have acquiesced in all your postponements?

Mr. WEBSTER. Yes. You have been fair about it.

[*Signature waived.*]

Attest: CHARLES K. DARLING, *Special Examiner.*

[*Adjourned subject to notice from counsel for the Government.*]

BOSTON, MASS., August 25, 1913.

Mr. WEBSTER. The petitioner now offers in evidence a certified copy of the assignment from the Goodyear Shoe Machinery Company, of Connecticut, to the Goodyear Shoe Machinery Company, of Maine, to take the place of the uncertified copy put in for identification as Plaintiff's Exhibit 225, and requests leave to withdraw the copy put in for identification and substitute the certified copy, and requests that the same be marked "Plaintiff's Exhibit 225".

Mr. CHOATE. There is no objection to that.

[*Certified copy of assignment from Goodyear Shoe Machinery Company, of Connecticut, to the Goodyear Shoe Machinery Company, of Maine, dated March 9, 1893, introduced in evidence and marked "Plaintiff's Exhibit 225".*]

Mr. WEBSTER. The petitioner offers in evidence group of twenty-four patents to which particular attention was called at the time of the introduction of Plaintiff's Exhibit 237, the same being patents to which attention was called in lease between the Consolidated & McKay Lasting Machine Company and the R. H. Long Shoe Manufacturing Company, said lease being dated January 28, 1899, said copies of patents comprising the following: —

Patent to J. E. Matzeliger, lasting machine, No. 274,207, dated March 20, 1883;

Patent to J. R. Scott, lasting machine for boots and shoes, No. 281,306, dated July 17, 1883;

Patent to J. R. Scott, machine for lasting boots and shoes, No. 284,906, dated September 11, 1883;

Patent to A. W. Pearson, lasting machine, No. 292,575, dated January 29, 1884;

Patent to C. Dancel, machine for lasting boots and shoes, No. 312,335, dated February 17, 1885;

Patent to J. E. Matzeliger, mechanism for distributing tacks, nails, etc., No. 415,726, dated November 26, 1889;

Patent to J. E. Matzeliger, nailing machine, No. 421,954, February 25, 1890;

Patent to Gooding et al., nail and tack driving machine, No. 423,920, dated March 25, 1890;

Patent to Gooding et al., pegging machine, No. 423,921, dated March 25, 1890;

Patent to Gooding et al., lasting machine, No. 423,922, dated March 25, 1890;

Patent to J. E. Matzeliger, tack separating and distributing mechanism, No. 423,937, March 25, 1890;

Patent to Gooding et al., nail driving machine, 441,482, November 25, 1890;

Patent to Matzeliger, lasting machine, 459,899, September 22, 1891; * *

Patent to Frechette, last machine, 482,349, September 13, 1892;

Ladd, lasting machine, 500,141, June 27, 1893;

Ladd, starting and stopping mechanism for lasting machines, 510,972, December 19, 1893;

Ladd, lasting machine, 510,973, December 19, 1893;

Ladd, lasting machine, 510,974, December 19, 1893;

Ladd, lasting machine, 510,975, December 19, 1893;

Ladd, tacking machine, 510,976, December 19, 1893;

Ladd, lasting machine, 510,977, December 19, 1893;

Ladd, tack separating and feeding mechanism, 510,978, December 19, 1893;

Wheeler, tack distributor, 518,933, April 24, 1894;

Ladd, lasting machine, 523,939, July 31, 1894.

Mr. CHOATE. Are those all the patents mentioned in the lease, or only part of them?

Mr. WEBSTER. Only part of them, I think.

[*Group of patents introduced in evidence and marked "Plaintiff's Exhibit 239".*]

Mr. WEBSTER. Petitioner offers in evidence lease and license, former number 1593, new number 1785, between James W. Brooks, principal trustee, and John Brooks, associated trustee for the McKay-Bigelow Heeling Machine Association, lessors, and Selz, Schwab & Company, lessee, dated March 21, 1898, and calls particular attention to the patents therein referred to, copies of which patents will be offered in evidence as soon as the same are procured.

Mr. CHOATE. This is only for the purpose of showing that the McKay Shoe Machinery Company was doing business under a claim of patents prior to 1899?

Mr. WEBSTER. Yes. And in connection therewith the petitioner offers letter dated November 2, 1898, reading as follows: —

"Office of the
McKAY SHOE MACHINERY COMPANY,
No. 76 Lincoln Street,
Heeling Department. Boston, November 2nd, 1898.
Mess. Selz, Schwab & Co., Chicago, Ill.,
Gentlemen: — Will you kindly number the lease sent you for the compressor #34 and Mayo rapid nailer #2555 at Joliet, which is now numbered #1593, to #1785, and greatly oblige?
Yours truly,
Dic. McKAY SHOE MACHINERY CO."

[*Lease and license No. 1785 from James W. Brooks, principal trustee, and John Brooks, associated trustee for the McKay-Bigelow Heeling Machine Association, lessors, to Selz, Schwab & Company, lessee, dated March 21, 1898, with letter of November 2, 1898, attached thereto marked "Plaintiff's Exhibit 240".*]

Mr. WEBSTER. Is the execution admitted?

Mr. CHOATE. Yes.

Mr. WEBSTER. Counsel for petitioner calls particular attention to the recital of the machines set forth in the lease just offered in evidence reading as follows: —

"McKay Pricking Machine,
McKay Heel Compressing and Loading Machine,
Fisher Compressing Machine,
Bresnahan Compressing Machine,
Heel Trimming and Randing Machine,

Heel Trimming and Randing (including Grinding) Machine,
No. 2 Automatic Heel Nailing and Trimming Machine,
Rapid Nailing Machine,
Union Heel Trimmer,
Spring Heel Trimmer,
American Lightning Nailing Machine,
American Compressing Machine,
Columbia Compressing Machine,
Automatic Heel Loading and Compressing Machine,
Improved National Nailing Machine,
Columbia Nailing Machine,
Automatic Spring-heel Nailing Machine,
Standard Automatic Nailing Machine,
Standard Automatic Nailing Machine, without Pricking Attachment,
Standard Automatic Loading or Compressing and Loading Women's Work Machine."

In support of petitioner's contention that the Goodyear Shoe Machinery was engaged in putting out machines early in 1899, and it being found difficult to procure any documents relating to that exact date, petitioner offers in evidence memoranda of the Goodyear Shoe Machinery Company dated November 29, 1897, and memoranda of the Goodyear Shoe Machinery Company dated March 27, 1900, in both of which memoranda the following machines are recited: —

"Goodyear Welt Shoe Machine, Chain Stitch,
Goodyear Turned Shoe Machine, Chain Stitch,
Goodyear Turned or Welt Shoe Machine, Lock Stitch,
Goodyear Outsole Stitcher, (Lock Stitch, "Rapid"),
Welt Channeller,
Outsole Channeller,
Turn Channeller,
Channel Lip Turner,
Universal Rounder and Channeller,
Sole Layer,
Hadaway Stitch Separating Machine,
Automatic Levelling Machine,
Welt Beater,
Bobbin Winder,
Welt Groover,
Welt Splitter,
Moulder,

Channel Opener,
Universal Shanking-Out Machine,
Inseam Trimmer."

Mr. CHOATE. We will admit the signature for the purpose of this case without waiving our objection to the competency of the papers for the purpose offered.

[*Proposal and acceptance dated November 29, 1897, and proposal and acceptance dated Whitman, Mass., March 27, 1900, introduced in evidence and marked "Plaintiff's Exhibit 241".*]

Mr. WEBSTER. Petitioner also, in support of its contention that the Goodyear Shoe Machinery Company was engaged in putting out machines early in 1899, offers memoranda of the Goodyear Shoe Machinery Company dated February 3, 1898, addressed to Messrs. L. C. Bliss & Co., Whitman, Mass., in which the following machines are recited: —

"Goodyear Turned or Welt Shoe Machine, Chain Stitch,
Goodyear Turned or Welt Shoe Machine, Lock Stitch,
Goodyear Outsole Stitcher, (Lock Stitch, 'Rapid'),
Welt Channeller,
Outsole Channeller,
Turn Channeller,
Channel Lip Turner,
Universal Rounder and Channeller,
Automatic Leveller,
Sole Laying Machine,
Welt Beater,
Shank Skiver,
Turn Trimmer,
Bobbin Winder,
Welt Groover,
Welt Splitter,
Moulder,
Channel Opener,
Universal Shanking-out Machine,
Stitch Separator."

Mr. CHOATE. We will admit the execution without waiving our objection to the competency of the papers.

[*Letter of Goodyear Shoe Machinery Company to L. C. Bliss & Co., dated February 3, 1898, introduced in evidence and marked "Plaintiff's Exhibit 242".*]

Mr. WEBSTER. Petitioner offers in evidence catalogue of McKay-Bigelow Heeling Machine Association bearing date on the front cover 1890, and bearing date on the inner cover, page 1, 1888.

Mr. CHOATE. Please note the defendants' objection to the exhibit as not properly identified, as not competent, as immaterial, irrelevant and inadmissible.

[*Catalogue of McKay-Bigelow Heeling Machine Association, 1888–1890, marked "Plaintiff's Exhibit 243".*]

Mr. WEBSTER. Petitioner offers in evidence catalogue of the Chase Lasting Machine Company dated 1886.

Mr. CHOATE. What is this offered for, Mr. Webster?

Mr. WEBSTER. It shows that certain machines were being put out, and we expect to connect it up later.

Mr. CHOATE. Note the defendants' objection to the exhibit as not tending to prove anything within the scope of the order or bill, as not properly identified, and as incompetent, immaterial, irrelevant and inadmissible.

[*Catalogue of the Chase Lasting Machine Company, dated 1886, marked "Plaintiff's Exhibit 244".*]

DEPOSITION OF CHARLES McC. CHAPMAN (*recalled*).

Direct Examination by ALLEN WEBSTER, Esq., *of Counsel for Complainant.*

Mr. CHOATE. Are you now calling Mr. Chapman again?

Mr. WEBSTER. In view of your objection, he will have to be called again.

Mr. CHOATE. I should like to have it noted on the record that we have understood Mr. Chapman's deposition has been closed except for anything that has been forgotten, and this does not appear to be any evidence that has been forgotten by the United States. We should therefore like to have our objection noted.

Mr. WEBSTER. Counsel for the United States states that, as heretofore stated by him, Mr. Chapman testified only with reference to particular machines and patents, and I now desire to put him on with reference to other machines and patents. For that purpose he is recalled.

Mr. CHOATE. We did not understand that counsel for the United States so stated, although we particularly inquired if his direct evidence had been closed, and should not have cross-examined him had we not been advised that it had been.

Int. 46. Kindly state whether since you have testified in this case you have examined the machine illustrated in photograph Plaintiff's Exhibit 232; and, if so, state where you examined the same.

Ans. I have examined the machine of the said exhibit, having found the same at the factory of the Commonwealth Shoe and Leather Company, Whitman, Massachusetts. In so examining the machine, I compared the machine with the illustration of the photograph Plaintiff's Exhibit No. 232, and also noted the number of the machine at the said factory to be 228.

Int. 46. State whether you have made comparison between the welter illustrated in Plaintiff's Exhibit Photograph No. 232 with the illustration of welt and turn machine found on page 13 of catalogue of parts of Goodyear Shoe Machinery Company, Plaintiff's Exhibit 220.

Ans. I have made such comparison.

Int. 48. State the likenesses and differences, if any, you found on making such comparison.

Ans. In comparing the machine of Plaintiff's Exhibit No. 232 with the welt and turn machine of the catalogue of Plaintiff's Exhibit 220, and the illustration of which machine found at page 13 of said catalgoue, I found the said machine and the machine of the cut of the catalogue to be substantially the same in point of structural features as illustrated in the catalogue. One difference noted by me was the lack in the machine of the catalogue at page 13 of the so-called LaChapelle tension release and stop mechanism. I, however, found that the said tension release parts are referred to in said catalogue of Plaintiff's Exhibit 220 on pages 225 and 226. I made comparison of the numbers of the said parts, as indicated in the catalogue, with the numbers on certain of the parts of the machine and found them to correspond. I particularly noted the numbers 1103, 1106 and 1108 on the corresponding parts of

the machine, and also found that other numbers in the list referred to parts descriptive of those found in the machine.

Int. 49. Have you examined, and do you understand, English patent No. 13,366 of 1888, to French and Meyer, a copy of which I now hand you?

Ans. I have examined this patent and believe I understand the same.

Mr. WEBSTER. English patent to French and Meyer 13,366 of 1888 put in evidence and marked "Plaintiff's Exhibit 245".

Int. 50. Have you made comparison between the drawings, specification and claims of the English patent Plaintiff's Exhibit No. 245 and the construction illustrated and described and claimed set forth in United States patent to French and Meyer No. 412,704, Plaintiff's Exhibit 214, and Briggs patent No. 461,793, Plaintiff's Exhibit 217? And if you have made such examination and comparison, kindly state what you found with reference to their likenesses and differences.

Mr. CHOATE. Please note the defendants' objection to Exhibit 245 and to the question now propounded, on the ground that it is not within the scope of the order, as incompetent, immaterial, irrelevant and inadmissible.

Ans. I have made a comparison of the British patent No. 13,366 of 1888 with the United States French *et al.* patent No. 412,704, Plaintiff's Exhibit 214, and the United States patent to Briggs 461,793, Plaintiff's Exhibit 217, both as to illustration, text or description and substance of subject-matter of the claims of the several patents. Referring to the British patent and the French *et al.* patent No. 412,704, I find that the first seven figures of the latter patent are substantially identical with the seven figures of the British patent, both as to views, position of parts and subject-matter illustrated, and practically as to reference characters and disposition of the same on the several figures of the drawings. In the United States patent there are several figures, 8 to 19 inclusive, which are not in the drawings of the British patent, but which relate entirely to details of the construction and apparently better illustration of parts. In point of descriptive matter, the

text of both the patents seems to be substantially the same, and in all material particulars the text of the one will read upon the drawings of the other. As to the claims, the first three claims of the British patent run to the structure shown in the United States patent, and the five claims of the United States patent run to the subject-matter illustrated in the British patent and described therein. There is a difference in phraseology in the claims of the respective patents, and in consequence a slight difference in scope of claims. In substance, however, the structure claimed is the same. Referring now to the Briggs patent 461,793, Plaintiff's Exhibit 217, I find that the method of this United States patent is substantially described and claimed in the British patent 13,366 of 1888, and that the subject-matter of the claim of said Briggs patent is illustrated in the British patent 13,366. In the British patent there are two claims, Nos. 4 and 5, which set up the method of making chain stitches shown, described and claimed in the Briggs patent. There is a difference in the phraseology and claim wording in the British claims 4 and 5, but the subject-matter of the British claims 4 and 5 is substantially that of the claim of the United States Briggs patent.

Mr. CHOATE. Please note that the defendants object to so much of the witness' answer as compares the United States patent to Briggs with the British patent as immaterial, irrelevant, incompetent and inadmissible.

Int. 51. State whether you have quite recently examined a machine known as the Chase laster, and whether as a result of such examination you understand the construction and operation of the same.

Ans. I have examined several Chase lasting machines, so called, one in South Framingham, Massachusetts, at the factory of the R. H. Long Machinery Company, and several at the factory of the Commonwealth Shoe and Leather Company, Whitman, Massachusetts, and believe that I understand the structure and mode of operation of the said machines.

Int. 52. State whether you have examined and understand United States patents to Chase, lasting machine No. 348,060, dated April

27, 1886; patent to Chase, machine for lasting boots or shoes, No. 364,088, dated May 31, 1887; patent to Chase, lasting machine, dated January 10, 1888, No. 376,368, and patent to Chase, tack driving mechanism, No. 483,375, dated September 27, 1892, copies of which I now hand you.

Ans. I have examined the several patents referred to and believe that I understand the same.

Int. 53. State whether you have made comparison between the machines illustrated and described in the patents referred to and the construction referred to in the claims of said patents with the machines which you say you examined.

Ans. I have.

Int. 54. State the likenesses and differences between the structures of the machines examined and the structures and operations of the machines shown in the patents referred to in the claims thereof.

Ans. Referring first to Chase patent 348,060, dated April 27, 1886, I made a careful comparison of the subject-matter of this patent with the machine at the Long factory in South Framingham, and found the subject-matter of the patent, in point of illustration, description and both the claims, to be embodied in said machine. Having studied the machine in connection with the said patents and becoming quite familiar with it, I also examined several machines at the Whitman factory and found them to contain the same subject-matter. The machine at the Long factory I assume is No. 300, or approximately that, owing to the fact of the parts of the machine having the series numbers 301, etc. There was no number on the face of this machine. The base of the machine, however, had the following marking: "The Property of the Chase Lasting Machine Company." In the factory at Whitman, however, the numbers of two of the machines are 529 and 801. I did not take the numbers of the other three. The base of these several machines, however, all had the same marking as the machine at South Framingham, viz.: "The Property of the Chase Lasting Machine Company."

Referring to the Chase patent No. 364,088, May 31, 1887, I

made a careful comparison of the subject-matter of this patent, as illustrated with the machine at the South Framingham factory, and found said machine to contain the subject-matter of the patent with the exception of a few details of construction, said details having reference to the gear drive, illustrated in Figure 1 of the said patent; in Figures 4, 5 and 6 the gearing shown in these several figures not being present in the said machine. This was also true of the several machines at the Whitman factory. Also, the particular means shown for adjusting the toe-clamp shown in Figure 2 is not embodied in the South Framingham machine in the matter of the screw and slot construction indicated by 4 and 5 in said Figure 2. In the machines at the said factory there was simply an adjusting screw bearing upon the opposite ends of the toe-clamp. In point of operation and function the structures, however, are the same. In Figure 7 of the Chase patent No. 364,088 is illustrated a pliable toe-clamp or clasp. In the machine at the South Framingham factory, my recollection is that the structure of this portion or part of the machine was slightly different in that instead of being a continuous link construction the machine has a solid central portion, to the opposite ends of which the links are connected. In substance, however, the structures of the patent and the machine are substantially identical. I carefully read the claims of this patent upon the said South Framingham machine and found that claims 1, 2, 3 and 4 and 9, 10 and 11 are fully and clearly embodied in said machine.

Referring to the Chase patent No. 376,368, dated January 10, 1888, I made the same careful comparison of the subject-matter thereof with the South Framingham machine and found the structure shown and described and claimed therein to be embodied in said machine, with the difference heretofore noted in connection with the previous patent running to the detail of the solid central portion of the clamp or clasp. I also compared the claims of this Letters Patent with the machine at South Framingham and found the substance of all four of the said claims fully embodied in the said machine.

Referring now to the Chase patent No. 483,375, dated Septem-

ber 27, 1892, which in subject-matter is for a tack-driving mechanism, I found the instrument described and shown in this patent suspended on the machine at the South Framingham factory, and similar instruments in use by the operatives in connection with the several machines at the Whitman factory. At the South Framingham factory I found the following marking on the instrument: "1150. The Property of the Chase Lasting Machine Company. Patd. October 14, 1884, January 25, 1887, September 27, 1892." I took this instrument all apart and carefully compared the same with the structure illustrated in the said patent 483,375 and found the subject-matter to be exactly the same. I also carefully read the claim of the patent on the instrument and found the structure thereof to be fully embodied in the instrument No. 1150.

Mr. WEBSTER. Copies of the four patents referred to by the witness put in evidence as one exhibit and marked "Plaintiff's Exhibit 246".

[*Copies of the following patents, patent to Chase, lasting machine, No. 348,060, dated April 27, 1886;*

Patent to Chase, machine for lasting boots or shoes, No. 364,088, dated May 31, 1887;

Patent to Chase, lasting machine, dated January 10, 1888, No. 376,368;

And patent to Chase, tack-driving mechanism, No. 483,375, dated September 27, 1892, introduced in evidence and marked "Plaintiff's Exhibit 246".]

Mr. CHOATE. I should like to have our objection noted to the exhibit as not supporting any claim included within the scope of the order or the bill; as incompetent, irrelevant, immaterial and inadmissible.

Int. 55. Kindly state whether you have recently examined a machine known as a Universal rounding and channeling machine of which Plaintiff's Exhibit (photograph) No. 233 is a picture.

Ans. I have, one at the South Framingham factory and one at the Whitman factory. The machine at the South Framingham factory has the following marking on the stand-plate: "The Property of the United Shoe Machinery Co., Lessors, Goodyear Depart-

ment, Goodyear Universal Rounding and Channelling Machine No. 408." The numbers on the parts of the head of the machine are all 2100 and upwards. The number of the machine at the Whitman factory which I examined is 31, and is that which is illustrated in the photograph Plaintiff's Exhibit No. 233.

Int. 56. Kindly examine copy of patent to Briggs, rough rounding and channeling machine, dated November 24, 1891, No. 463,982, issued to the Goodyear Shoe Machinery Company as assignor, and state whether you understand the same.

Ans. I have examined the said patent and believe that I understand the same.

Int. 57. Kindly examine British patent No. 3497 of 1896, and state whether you understand the same.

Ans. I have carefully examined this patent and believe that I understand the same.

Int. 58. State whether you have made comparison between the machine illustrated in Plaintiff's Exhibit 233 and the machines illustrated, described and referred to in the claims of the two patents to which you have just made reference, and state whether you find any differences or likenesses between the same, and, if so, kindly point them out.

Ans. At the South Framingham factory I carefully compared machine No. 408 with the subject-matter of the Briggs patent No. 463,982, and while I found that in point of structure and organization of the two machines there is a vast difference, I also found that in point of generic subject-matter the structure of the Briggs patent 463,982 and the structure of the machine No. 408 is in certain material particulars the same. The particulars referred to are the subjects-matter of claims 1, 2 and 3 of the Briggs patent No. 463,982. This subject-matter I found to be fully embodied in the Universal rough rounding machine No. 408 at the South Framingham factory. At the same time and place I compared the said machine No. 408 with the two patents to French and Meyer, one for sole channeling and trimming machine, No. 600,883, dated March 22, 1898, and the other for trimming and channeling machine, No. 599,602, dated February 22, 1898. In making my comparison

of the last two patents with the machine at the South Framingham factory, I went into all the detail possible and found that the subject-matter of the two patents, in description and illustration and in nearly all the claims thereof, is embodied in said machine. While I did not compare specifically the two patents with the machine at the Whitman factory, my knowledge of the structure of the patents and of rough rounding machines enabled me to note that in point of structure and mode of operation the said Whitman machine No. 31 is in all material respects substantially the same as that of two French and Meyer patents Nos. 600,883 and 599,602. Subsequently, I compared the subject-matter of the British patent No. 3497 of 1896 with the subject-matter of the two French and Meyer patents Nos. 600,883 and 599,602, and find that the subject-matter of the British patent is substantially the same as that of the French and Meyer United States patent No. 600,883. In fact, the several illustrations of the two patents just referred to are substantially identical, reference characters and all. There are more figures of drawings in the United States patent, but they show simply different views of the same machine. I direct attention to the fact, also, that in my comparison I found that, in point of general subject-matter, the British patent's structure and that of the French and Meyer patent 599,602 is substantially the same, there being a few structural differences in the United States patent not found in the British patent. This may be due, however, to the fact that the copy of specification of the patent, which I have been able to obtain and examine, has been somewhat amended, presumably under the British practice, resulting in cancellation of certain portions of the specification of the British patent, leaving those portions, however, clearly readable, but completely eliminating certain claims and figures of the drawings of the patent. As to the claims of the two United States patents and the British patent, the subject-matter, after careful comparison by me, I find to be substantially the same. There is a great difference in claim, wording and phraseology of the British claims, due to the patent practice in Great Britain, but in point of substance and generic subject-matter the claims of the

British patent run to the same subject-matter as the two United States French and Meyer patents.

Mr. CHOATE. Please note our objection to all that part of the answer which refers to, or makes comparison with, the British patent 3497 of 1896 as not tending to support anything within the scope of the order or the bill, and as incompetent, irrelevant, immaterial and inadmissible, and as not responsive to the question.

Mr. WEBSTER. Petitioner offers in evidence the three United States patents referred to by the witness, the same being French and Meyer, trimming and channeling machine, No. 599,602, dated February 22, 1898; French and Meyer, sole channeling and trimming machine, No. 600,883, March 22, 1898; Briggs, rough rounding and channeling machine, No. 463,982, November 24, 1891.

[*Copies of patents enumerated above introduced in evidence and marked "Plaintiff's Exhibit No. 247".*]

Mr. WEBSTER. The petitioner also puts in evidence copy of British patent No. 3497 of 1896 to French and Meyer entitled "Improvement in machine for trimming and channeling soles of boots and shoes."

[*Copy of British patent No. 3497 of 1896 to French and Meyer entitled "Improvement in machine for trimming and channeling soles of boots and shoes", introduced in evidence and marked "Plaintiff's Exhibit No. 248".*]

Mr. CHOATE. Please note our objection to the introduction of Exhibit 248, as not tending to support anything within the scope of the order or the bill, as incompetent, immaterial, irrelevant and inadmissible.

Int. 59. Kindly state whether you have made a careful examination of the illustration of rapid outsole stitcher found on page 61 of the Goodyear Shoe Machinery catalogue of January 1, 1897, the same being Plaintiff's Exhibit 220, with the "Long" stitcher shown in photograph Plaintiff's Exhibit 208, to which you have heretofore made reference; and if you answer yes, state whether the machine referred to is the same or different from the machine illustrated on said page 61.

Mr. CHOATE. Please note the defendants' objection to this ques-

tion as relating to a branch of the inquiry upon which the witness has already been fully examined on direct and cross and as to which his examination has been completed.

Ans. I have made a careful comparison of the machine illustrated on page 61 of the Plaintiff's Exhibit No. 220 with the Long rapid stitcher illustrated in Plaintiff's Exhibit 208. In making that comparison I found that practically all the details of construction, so far as I can make them out in the cut on said page 61, are embodied in the said Long machine. In some respects I was, of course, compelled to simply compare the likeness of one part with another, but so far as I could determine the said Long machine embodies the entire structure and arrangement of parts shown in the cut at page 61 of the said Goodyear catalogue of 1897.

Int. 60. Kindly state whether you have recently examined a separator at the Whitman factory.

Ans. I have examined a separator at the Whitman factory bearing the number 124.

Int. 61. Kindly examine the cut shown on page 89 of Plaintiff's Exhibit 220 and compare the same with the separator which you say you examined, and point out the likenesses and differences, if any there be.

Ans. I made a careful comparison of the separator at the Whitman factory with the cut illustrated on page 89 of the said Plaintiff's Exhibit 220 and found that the said Whitman separator embodies substantially all the features of construction illustrated in the said cut at page 89 of the catalogue. A detail of difference between the two is the facial construction of the support for the material, that on the machine being without the concentric grooves which appear to be illustrated in the cut at page 89 of the catalogue. A feature of construction which I found in the Whitman machine, and which I am unable to determine positively is in the machine of the cut of the catalogue, relates to a means by which the denting and separating blade is held periodically from upward movement. This construction in the machine has the function of preventing unusually hard materials or an extra thick material from forcing the separating blade vertically. A device thus holds the blade in

proper position whereby to produce uniform work. As stated, the cut at page 89 of the catalogue is somewhat obscure as to this feature, and I am unable to say that the said feature is shown in the said cut. The machine which I examined has a name plate which includes the following: "Hadaway Stitch Separator, No. 124, Patented. Property of the Goodyear Shoe Machinery Co., Boston, Mass., Lessor."

Int. 62. Please examine the photograph I now hand you, being marked "Plaintiff's Exhibit 235", and state whether you have recently examined the machine of which said photograph is a picture.

Ans. I have examined the machine which is illustrated in this exhibit.

Int. 63. What is the type of machine referred to?

Ans. A channeling machine.

Int. 64. Please examine the cut on page 95 of the innersole channeler in the Goodyear catalogue Plaintiff's Exhibit 220, and compare the cut in the catalogue with the machine examined by you, and state the likenesses or differences.

Ans. After making a careful comparison of the machine illustrated in the catalogue in the cut on page 95, I am able to state that there are a couple of differences between it and the machine of the photograph Plaintiff's Exhibit 235. One difference has reference to the lever extending horizontally over the driving shaft of the machine, to which a chain is connected for the purpose of operating said lever, the latter having the function of lifting one of the cutting devices. Another difference is that a driving pulley has been added to the machine in the Whitman factory on the driving shaft adjacent to the crank. One other detail of difference is the adjusting means which is illustrated in the photograph exhibit, and which is present in the Whitman factory machine, this particular adjusting means for the cutter not being present in the catalogue machine at page 95, the adjustment there being simply a screw. The Whitman factory machine, or machine of the photograph Plaintiff's Exhibit 235, is substantially the same as that illustrated on page 4 of another catalogue which I have, Plaintiff's

Exhibit No. 190. The Whitman factory machine which I examined is No. 2,072.

Int. 64. Kindly state whether in mode of operation the machine you examined and the machine illustrated in the Goodyear catalogue are the same or different.

Ans. So far as I can determine, the mode of operation is the same. The machine, when I examined it, was set for special work, the special work being that which is illustrated by the piece of material on which I saw the machine operate, and which I here produce and have marked with the machine number "2,072".

Mr. WEBSTER. Specimen referred to by the witness put in evidence and marked "Plaintiff's Exhibit 249".

Int. 65. Kindly state whether you have recently, at the Whitman factory, examined an outsole channeler; and, if so, state whether you have compared the same with the outsole channeler illustrated on page 108 of Plaintiff's Exhibit 220.

Ans. I have examined such machine at the Whitman factory, said machine being 419, and carefully compared the same with the catalogue cut of such a machine at page 108, Plaintiff's Exhibit 220.

Int. 66. Kindly state what you found by way of likenesses or differences.

Ans. The Whitman factory machine is substantially identical with that of the catalogue cut at page 108, but I noted that the catalogue cut of the machine is lacking the cutter which was on the machine at the Whitman factory which I examined. The place for the application of the cutter is shown in the catalogue cut at page 108, and various cutters or knives are illustrated on pages 110, 111 and 112 of said catalogue.

Int. 67. Please examine the photograph I now hand you, the same being marked "Plaintiff's Exhibit 234", and state whether you have recently examined the machine of which said exhibit is a photograph.

Ans. I have examined that machine at the Whitman factory and found it to be machine No. 35.

Int. 68. Kindly examine the cut on page 28 of Plaintiff's Exhibit 190, the same being catalogue of the United Shoe Machin-

ery Company of 1902, and state the likenesses and differences between the machine examined by you and the illustration referred to.

Ans. I made a careful comparison of this machine at the Whitman factory with the photograph and also with the cut in the catalogue of Plaintiff's Exhibit 190 and found that the only difference in construction between the Whitman factory machine and that of the cut is in the shape of the leveling rollers. In the catalogue cut at page 28 the leveling rollers are shown as having a grooved contour longitudinally, while the rollers of the machine are straight cylinders. The rollers such as are illustrated in the cut of catalogue Plaintiff's Exhibit 190 were in a box beside the machine, and those I examined and compared with the cut and found to be the same as the latter.

Int. 69. State whether you have recently examined a pegging machine at the Whitman factory.

Ans. I have examined such machine.

Int. 70. Kindly examine cut on page 76 of Plaintiff's Exhibit 190, and compare the construction and operation of the machine illustrated in the cut with the machine examined by you.

Ans. The Whitman factory Davey pegging machine is what I would term an old style. The one in the catalogue at page 76 is what might be called a modernized machine. In general appearance the two machines are very much alike. There are, however, some differences between the two machines, which may be noted as follows: —

The horn, or support, on which the shoe rests during operation has its supporting shaft and co-operating springs exposed in the Whitman factory machine, while in the catalogue machine at page 76 such parts are apparently covered by a casing. In consequence, I am unable to state that the structure at this point is identical with that of the factory machine. The frame casting is slightly different in shape, that of the catalogue being a much more graceful and modernized structure and being much more compact than the Whitman factory machine. The Whitman factory machine has its driving wheel at the end of the driving shaft outside the casing.

In the catalogue machine at page 76 the driving wheel seems to be partially enclosed, and the structure of the head of this machine is much more compact. So far as I have been able to determine from the catalogue machine as shown in the cut, page 76, coupled with the description, it is my opinion that in point of general mode of operation and functional results the two machines are substantially the same. I am not able to say that the Davey pegging machine at the Whitman factory is able in its operation to drive two or three rows of pegs at one time, as seems to be the function of the catalogue machine.

Int. 71. State whether you have examined an Amazeen skiver recently at the Whitman factory and compared the same with the high-speed Amazeen skiving machine illustrated on page 132 of Plaintiff's Exhibit 190; and, if so, kindly state the likenesses and differences.

Ans. I examined several so-called Amazeen skivers at the Whitman factory and made comparison between the same and the Amazeen skivers illustrated on page 132 and also on page 136 of the catalogue. I found the following in connection with all the Whitman factory machines as compared with the two Amazeen skivers illustrated in the said catalogue. No one of the Whitman factory machines contains the gear or worm drive shown in the catalogue machines. The Whitman factory machines, each of them, has a pulley and belt drive for all the parts, the gears and worms being eliminated from said machines. The factory machines had been evidently made over and transformed from gear to belt drive, as the old framework of the gear-driven machine was present, and castings and supports for the belt-driving mechanism were applied to said frames. One of the frames, or supports, for the belt-drive which I examined had cast therewith the inscription: "Dunham Improvement, Patent Pending." In point of function and mode of operation, the Whitman factory machines are identical in all material and substantial respects with those of the two catalogue cuts at pages 132 and 136 of Plaintiff's Exhibit 190; that is to say, the obvious mode of operation of the catalogue machines is necessarily that of the several skiving machines at the Whitman factory,

since the arrangement of parts, which may be called the executive elements of the machine, is substantially the same in the factory machines as in the catalogue machines.

Mr. WEBSTER. So far as at present advised, I have nothing further to inquire of this witness at the present time. Opposing counsel are invited to cross-examine.

Mr. CHOATE. Does that complete Mr. Chapman's entire deposition?

Mr. WEBSTER. I think so. I may find something else. I am entirely frank to state as at present advised that completes it.

Mr. CHOATE. Relying upon that statement, we do not care to cross-examine.

Mr. WEBSTER. Petitioner offers in evidence group of patents, sixteen in number, being copies of patents specified in Plaintiff's Exhibit No. 3, being lease dated March 16, 1898, between the Goodyear Shoe Machinery Company and Kiner Brothers.

[*Copies of the following patents introduced in evidence and marked "Plaintiff's Exhibit 250":* —

C. Dancel and A. Eppler, Jr., sole sewing machine, No. 240,307, patented April 19, 1881;

D. H. Campbell, wax thread sewing machine, No. 253,156, patented January 31, 1882;

A. Keats, machine for sewing boots and shoes, No. 260,990, patented July 11, 1882;

M. H. Pearson, boot and shoe sewing machine, No. 267,798, patented November 21, 1882;

Z. T. French, sole sewing machine, No. 317,758, patented May 12, 1885;

Z. T. French, sole sewing machine, No. 317,759, patented May 12, 1885;

Z. T. French and W. C. Meyer, shoe sewing machine, No. 412,704, patented October 8, 1889;

Z. T. French, channeling machine, No. 453,999, patented June 9, 1891;

H. Briggs, method of forming chain stitches, No. 461,793, patented October 20, 1891;

H. Briggs, rough rounding and channeling machine, No. 463,-967, patented November 24, 1891;

I. LaChapelle, tension device for sewing machines, No. 488,505, patented December 20, 1892;

H. E. Cole, sewing machine, No. 495,452, patented April 11, 1893;

H. Briggs, take-up for shoe sewing machines, No. 518,911, patented April 24, 1894.]

Mr. WEBSTER. I should like to change that. It is thirteen patents recited in Plaintiff's Exhibit No. 3, being the patents recited in said lease up to and including the one dated April 24, 1894, offered for the purpose of showing that the lessor was at that time putting out machines under patents, and which patents expired prior to the filing of the petition in this case.

[*Signature waived.*]

Attest: CHARLES K. DARLING, *Special Examiner.*

[*Adjourned subject to agreement of counsel.*]

DISTRICT COURT OF THE UNITED STATES,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 301 (C. C. 911).

UNITED STATES OF AMERICA, PETITIONER,

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL., RESPONDENTS.

ORDER EXTENDING TIME FOR TAKING TESTIMONY BEFORE EXAMINER UNDER ORDER DATED JUNE 27, 1913.

September 12, 1913.

PUTNAM, DODGE and BROWN, JJ. It is ordered (both parties consenting hereto) that the times for taking testimony under the order dated June 27, 1913, as modified by the order of August 8, 1913, be further extended so that the petitioner be allowed until September 1, 1913, inclusive, for evidence in chief; the respond-

ents be allowed until November 1, 1913, inclusive, for evidence in defence, and the petitioner be allowed to November 14, 1913, inclusive, for rebuttal.

By the Court,
CHARLES K. DARLING, *Clerk.*

The above-named parties hereby consent to the entry of the foregoing order.

CHARLES F. CHOATE, JR.,
for Defendant.
WILLIAM S. GREGG,
Special Assistant to the Attorney General.

BOSTON, MASS., October 6, 1913.

Mr. WEBSTER. By virtue of agreement made between counsel for petitioner and defendants, entered into before the expiration of the petitioner's time to introduce evidence, that petitioner might, after the expiration of the time assigned to it, introduce copies of patents, certified copies of assignments of patents, and the testimony of one witness, all to have the same force and effect as if introduced during the time allotted to the petitioner, the petitioner now offers the following: —

Petitioner offers in evidence two bound volumes, A and B, comprising copies of United States patents recited in lease and license agreement between McKay Heeling Machine Association and Selz, Schwab & Company dated March 21, 1898, said lease having been introduced in evidence as Plaintiff's Exhibit No. 240, said patents being numbered, dated and entitled as follows: —

No. 212,116.

No. 212,190, Chase, February 11, 1879; burnishing tool (expired February 11, 1896).

No. 217,866, Glidden, July 29, 1879; heel trimming machine (expired July 29, 1896).

No. 217,867, Glidden, July 29, 1879; heel trimming machine (expired July 29, 1896).

No. 224,005, Fairfield, February 3, 1880; machinery for sorting pieces of leather (expired February 3, 1897).

No. 224,011, Glidden, February 3, 1880; heel slicing machine (expired February 3, 1897).

No. 224,012, Glidden, February 3, 1880; machine for forming heel pile (expired February 3, 1897).

No. 233,504.

No. 236,148, Ferren, January 4, 1881; heel breasting machine (expired January 4, 1898).

No. 246,945, Fisher, September 13, 1891; machine for repairing heels for boot and shoes (expired September 13, 1898).

No. 248,582, Fisher, October 25, 1881; heel nailing machine (expired October 25, 1898).

No. 250,654, Fisher, December 13, 1881; machine for attaching heels to boots and shoes (expired December 13, 1898).

No. 252,215, Henderson, January 10, 1882; heel nailing machine (expired January 10, 1899).

No. 258,905, Fisher, June 6, 1882; boot and shoe heeling machine (expired June 6, 1899).

No. 259,687, Henderson, June 20, 1882; heel nailing machine (expired June 20, 1899).

No. 261,696, Fifield, July 25, 1882; heel trimming machine (expired July 25, 1899).

No. 266,298, McMullett, October 24, 1882; last (expired October 24, 1899).

No. 267,544, King and Strong, November 14, 1882; heel trimming machine (expired November 14, 1899).

No. 271,117, Raymond, January 23, 1893; heel nailing machine (expired January 23, 1900).

No. 271,118, Raymond, January 23, 1883; heel nailing machine (expired January 23, 1900).

No. 280,399, Raymond, January 3, 1883; heel nailing machine (expired January 3, 1900).

No. 277,207, Bourgeois, May 8, 1883; heel burnishing tool (expired May 8, 1900).

No. 278,426, Glidden, May 29, 1883; last (expired May 29, 1900).

No. 280,861, Raymond and Wheeler, July 10, 1883; heel nailing machine (expired July 10, 1900).

No. 287,472, Raymond 2d, October 30, 1883; heel nailing machine (expired October 30, 1900).

No. 289,857, Raymond, December 11, 1883; heel nailing machine (expired December 11, 1900).

No. 290,109, Raymond, December 11, 1883; heel nailing machine (expired December 11, 1900).

No. 293,604, Tyler and Smith, February 12, 1884; machine for finishing heel bottoms (expired February 12, 1901).

No. 297,787, Gordon and Dodge, April 29, 1884; trace trimming machine (expired April 29, 1901).

No. 301,462, Tyler, July 1, 1884; pegging machine (expired July 1, 1901).

No. 305,723, Tyler, September 23, 1884; heel nailing machine (expired September 23, 1901).

No. 310,488, Allen, January 6, 1885; heel nailing machine (expired January 6, 1902).

No. 314,411, Allen, March 24, 1885; heeling block (expired March 24, 1902).

No. 315,069, Raymond, April 7, 1885; heel nail plate (expired April 7, 1902).

No. 315,070, Raymond, April 7, 1885; wire heel nail blank (expired April 7, 1902).

No. 315,458, Raymond, April 7, 1885; nail holder and carrier (expired April 7, 1902).

No. 316,177, Raymond, April 21, 1885; heel attaching machine (expired April 21, 1902).

No. 316,827, Raymond, April 28, 1885; heel nailing machine (expired April 28, 1902).

No. 316,826, Raymond, April 28, 1885; heel nailing machine (expired April 28, 1902).

No. 316,661, Raymond, April 28, 1885; heel nailing machine (expired April 28, 1902).

No. 316,894, Henderson, April 28, 1885; heel nailing machine (expired April 28, 1902).

No. 10,588, Henderson, April 28, 1885; heel nailing machine (expired January 10, 1899).

No. 10,589, Henderson, April 28, 1885; heel nailing machine (expired June 20, 1899).

No. 317,199, Raymond, May 5, 1885; heel nailing machine (expired May 5, 1902).

No. 317,672, Raymond, May 12, 1885; heel nailing machine (expired May 12, 1902).

No. 317,647, Henderson, May 12, 1885; heel nailing machine (expired May 12, 1902).

No. 317,646, Henderson, May 12, 1885; heel nailing machine (expired May 12, 1902).

No. 317,851, Raymond, 2d, May 12, 1885; heel nailing machine (expired May 12, 1902).

No. 318,134, Raymond, May 19, 1885; heel nailing machine (expired May 19, 1902).

No. 319,124, Raymond, June 2, 1885; heel distributer for heel nailing machine (expired June 2, 1902).

No. 319,377, Allen, June 2, 1885; heeling machine (expired June 2, 1902).

No. 321,401, Tyler and Merritt, June 30, 1885; heeling machine (expired June 30, 1902).

No. 321,530, Raymond, 2d, July 7, 1885; heel nailing machine (expired July 7, 1902).

No. 322,126, Raymond, July 14, 1885; heel attaching machine (expired July 14, 1902).

No. 320,050, Demary, June 16, 1885; heel attaching machine (expired June 16, 1902).

No. 321,696, Demary, July 7, 1885; manufacturing and attaching heels to boots or shoes (expired July 7, 1902).

No. 321,756, Raymond 2d, July 7, 1885; heel nailing machine (expired July 7, 1902).

No. 322,562, Raymond, July 21, 1885; sole nailing machine (expired July 21, 1902).

No. 322,561, Raymond, July 21, 1885; process of applying top lifts to heel blanks (expired July 21, 1902).

No. 322,560, Raymond, July 21, 1885; heel nailing machine (expired July 21, 1902).

No. 321,017, Glidden, June 30, 1885; heel trimming machine (expired June 30, 1902).

No. 322,945, Manley, July 28, 1885; heel sole edge trimming machine (expired July 28, 1902).

No. 325,272, Raymond, September 1, 1885; heel making machine (expired September 1, 1902).

No. 325,271, Raymond, September 1, 1885; method of making heel nail plates (expired September 1, 1902).

No. 326,150, Raymond, September 15, 1885; method of attaching soles to boots and shoes (expired September 15, 1902).

No. 326,782, Raymond, September 22, 1885; nail for boots or shoes (expired September 22, 1902).

No. 326,781, Raymond, September 22, 1885; nailing machine (expired September 22, 1902).

No. 326,780, Raymond, September 22, 1885; nailing machine (expired September 22, 1902).

No. 326,779, Raymond, September 22, 1885; heel attaching machine (expired September 22, 1902).

No. 329,079, Raymond, October 27, 1885; heel nailing machine (expired October 27, 1902).

No. 329,952, Raymond, November 10, 1885; sole or heel fastening (expired November 10, 1902).

No. 329,951, Raymond 2d, November 10, 1885; heel nailing machine (expired November 10, 1902).

No. 331,441, Raymond, December 1, 1885; heel nailing machine (expired December 1, 1902).

No. 332,032, Allen, December 8, 1885; nailing machine for boots and shoes (expired December 8, 1902).

No. 332,798, Henderson, December 22, 1885; heel nailing machine (expired December 22, 1902).

No. 332,984, Allen, December 22, 1885; heel trimming machine (expired December 22, 1902).

No. 335,242, Raymond, February 2, 1886; heel nailing machine (expired February 2, 1903).

No. 335,241, Raymond, February 2, 1886; method of attaching heels (expired February 2, 1903).

No. 336,332, Manley, February 16, 1886; boot or shoe edge trimming machine (expired February 16, 1903).

No. 340,358, Raymond, April 20, 1886; boot or shoe sole (expired April 20, 1903).

No. 340,690, Wright, April 27, 1886; last and support for the same (expired April 27, 1903).

No. 341,169, Raymond, May 4, 1886; heel nailing machine (expired May 4, 1903).

No. 341,689, Raymond, May 11, 1886; heel nailing machine (expired May 11, 1903).

No. 342,039, Raymond, May 18, 1886; nailing machine (expired May 18, 1903).

No. 342,501, Demary, May 25, 1886; heel nailing machine (expired May 25, 1903).

No. 342,461, Raymond, May 25, 1886; spring heel blank (expired May 25, 1903).

No. 342,371, Manley, May 25, 1886; trimming cutter for boots or shoes (expired May 25, 1903).

No. 342,929, Raymond, June 1, 1885; nail making machine (expired June 1, 1903).

No. 343,339, Raymond, June 8, 1886; heel nailing machine (expired June 8, 1903).

No. 343,703, Demary, June 15, 1886; heel nailing machine (expired June 15, 1903).

No. 343,728, Raymond, June 15, 1886; process of attaching heels (expired June 15, 1903).

No. 344,136, Raymond, June 22, 1886; shoe nail (expired June 22, 1903).

No. 344,499, Raymond, June 29, 1886; heel nailing machine (expired June 29, 1903).

No. 344,985, Raymond, July 6, 1886; nail making machine (expired July 6, 1903).

No. 345,449, Raymond, July 13, 1886; heel nailing machine (expired July 13, 1903).

No. 345,920, Raymond, July 20, 1886; heel nailing machine (expired July 20, 1903).

No. 346,124, Raymond, July 27, 1886; sole nailing machine (expired July 27, 1903).

No. 346,125, Raymond, July 27, 1886; heel nailing machine (expired July 27, 1903).

No. 346,137, Towns and Raymond, 2d, July 27, 1886; nail making and distributing machine (expired July 27, 1903).

No. 346,607, Raymond, August 3, 1886; heel nailing machine (expired August 3, 1903).

No. 347,061, Raymond, August 10, 1886; heel attaching machine (expired August 10, 1903).

No. 347,062, Raymond, August 10, 1886; heel nailing machine (expired August 10, 1903).

No. 347,063, Raymond, August 10, 1886; heel nailing machine (expired August 10, 1903).

No. 347,514, Raymond, August 17, 1886; heel nailing machine (expired August 17, 1903).

No. 347,482, Glidden, August 17, 1886; heel nailing machine (expired August 17, 1903).

No. 347,960, Raymond, August 24, 1886; nail making and distributing machine (expired August 24, 1903).

No. 348,091, Allen, August 24, 1886; heel loading machine (expired August 24, 1903).

No. 348,092, Allen, August 24, 1886; heel loading machine (expired August 24, 1903).

No. 348,689, Raymond, September 7, 1886; heel nailing machine (expired September 7, 1903).

No. 350,051, Glidden, September 28, 1886; heel making machine (expired September 28, 1903).

No. 353,883, Raymond, December 7, 1886; sole and heel nailing machine (expired December 7, 1903).

No. 354,125, Gardner, December 14, 1886; heel nailing machine and method of attaching heels (expired December 14, 1903).

No. 354,227, Raymond, December 14, 1886; spring heel blanks (expired December 14, 1903).

No. 354,655, Raymond, December 21, 1886; heel nailing machine (expired December 21, 1903).

No. 355,027, Raymond, December 28, 1886; heel and process of attaching the same (expired December 28, 1903).

No. 355,556, Raymond, January 4, 1887; process of attaching heels to soles of boots or shoes (expired January 4, 1904).

No. 355,839, Raymond, January 11, 1887; process of making headed nails (expired January 11, 1904).

No. 355,840, Raymond, January 11, 1887; nail making and distributing machine (expired January 11, 1904).

No. 356,209, Raymond, January 18, 1887; nail distributing machine (expired January 18, 1904).

No. 356,[illegible]9, Raymond, January 25, 1887; heel nail (expired January 25, 1904).

No. 356,550, Raymond, January 25, 1887; heel nail and method of using same (expired January 25, 1904).

No. 356,554, Raymond, January 25, 1887; heel nailing machine (expired January 25, 1904).

No. 356,553, Raymond, January 25, 1887; heel nailing machine (expired January 25, 1904).

No. 356,551, Raymond, January 25, 1887; nail strip and method of forming nails (expired January 25, 1904).

No. 356,552, Raymond, January 25, 1887; nail making, distributing and driving device (expired January 25, 1904).

No. 356,890, Raymond, February 1, 1887; rand and process of making same (expired February 1, 1904).

No. 357,335, Raymond, February 8, 1887; method of laying outsoles (expired February 8, 1904).

No. 357,735, Raymond, February 15, 1887; method of forming heel rands (expired February 15, 1904).

No. 358,298, Raymond, February 22, 1887; heel nailing machine (expired February 22, 1904).

No. 358,695, Raymond, March 1, 1887; nail distributing and driving machine (expired March 1, 1904).

No. 360,580, Gardner, April 5, 1887; process of attaching heels (expired April 5, 1904).

No. 368,006, Raymond, August 9, 1887; process of attaching heels (expired August 9, 1904).

No. 368,248, Soule, August 16, 1887; heel nailing machine (expired August 16, 1904).

No. 373,409, McMullett, November 15, 1887; heel nailing machine (expired November 15, 1904).

No. 374,419, Manley, December 6, 1887; heel trimming machine (expired December 6, 1904).

No. 374,418, Manley, December 6, 1887; rotary cutter for trimming boot and shoe heels (expired December 6, 1904).

No. 374,417, Manley, December 6, 1887; rotary cutter (expired December 6, 1904).

No. 374,416, Manley, December 6, 1887; cutter head for boots or shoes (expired December 6, 1904).

No. 374,387, Allen, December 6, 1887; machine for assorting nails (expired December 6, 1904).

No. 374,894, Glidden, December 13, 1887; heeling machine (expired December 13, 1904).

No. 374,885, Allen, December 13, 1887; burnishing machine (expired December 13, 1904).

No. 374,892, Elliot, December 13, 1887; heel trimming machine (expired December 13, 1904).

No. 375,209, Small, December 20, 1887; nail making and distributing machine (expired December 20, 1904).

No. 375,458, Orr, December 27, 1887; heel nailing machine (expired December 27, 1904).

No. 376,049, Small, January 3, 1888; method of attaching heels to boots or shoes (expired January 3, 1905).

No. 375,913, Allen, January 3, 1888; heel loading machine (expired January 3, 1905).

No. 376,208, Raymond, January 10, 1888; nail making machine (expired January 10, 1905).

No. 376,754, Raymond, January 24, 1888; heel compressing machine (expired January 24, 1905).

No. 376,908, Raymond, January 24, 1888; heel compressing machine (expired January 24, 1905).

No. 377,172, Raymond, 2d, January 31, 1888; heel nailing machine (expired January 31, 1905).

No. 377,284, Allen, January 31, 1888; heel trimming machine (expired January 31, 1905).

No. 377,302, Glidden, January 31, 1888; heel trimming machine (expired January 31, 1905).

No. 377,300, Glidden, January 31, 1888; heeling machine (expired January 31, 1905).

No. 377,301, Glidden, January 31, 1888; heeling machine (expired January 31, 1905).

No. 377,285, Allen, January 31, 1888; heel nailing and breasting machine (expired January 31, 1905).

No. 377,577, Raymond, February 7, 1888; heel nailing and trimming machine (expired February 7, 1905).

No. 377,958, Raymond, February 14, 1888; heel attaching machine (expired February 14, 1905).

No. 378,216, Raymond, February 21, 1888; heel forming and attaching machine (expired February 21, 1905).

No. 378,617, Raymond, February 28, 1888; heel nailing machine (expired February 28, 1905).

No. 379,029, Raymond, March 6, 1888; method of forming and attaching heels (expired March 6, 1905).

No. 378,859, Allen, March 6, 1888; machine for making flexible nail strips (expired March 6, 1905).

No. 379,330, Raymond, March 13, 1888; nail distributing machine (expired March 13, 1905).

No. 379,810, Raymond, March 20, 1888; heel nailing machine (expired March 20, 1905).

No. 380,133, Raymond, March 27, 1888; method of flush nailing the heels of boots or shoes (expired March 27, 1905).

No. 380,596, Raymond, April 3, 1888; nail making and distributing machine (expired April 3, 1905).

No. 380,818, Raymond, April 10, 1888; nail making and distributing machine (expired April 10, 1905).

No. 381,280, Raymond, April 17, 1888; machine for making, distributing and driving nails (expired April 17, 1905).

No. 381,493, Cunningham, April 17, 1888; heel machine (expired April 17, 1905).

No. 382,001.

No. 382,121, Tyler and Merritt, May 1, 1888; heeling machine (expired May 1, 1905).

No. 382,762, Glidden, May 15, 1888; heeling machine (expired May 15, 1905).

No. 383,909, Prouty, June 5, 1888; pegging machine (expired June 5, 1905).

No. 383,908, Prouty, June 5, 1888; nail strip (expired June 5, 1905).

No. 383,907, Prouty, June 5, 1888; nail strip (expired June 5, 1905).

No. 383,911, Raymond, June 5, 1888; nail feeding and distributing machine (expired June 5, 1905).

No. 385,960, Raymond, July 10, 1888; slug for heel nailing (expired July 10, 1905).

No. 386,538, Harrigan, July 24, 1888; rotary cutter (expired July 24, 1905).

No. 386,656, Raymond, July 24, 1888; manufacture of loaded heel blanks (expired July 24, 1905).

No. 388,544, Ellis, August 28, 1888; heeling machine (expired August 28, 1905).

No. 384,343, Allen, June 12, 1888; heel nailing machine (expired June 12, 1905).

No. 385,748, Merritt, July 10, 1888; heel nailing machine (expired July 10, 1905).

No. 388,535, Merritt, August 28, 1888; manufacture of nail dies for heeling machine (expired August 28, 1905).

No. 388,523, Benjamin, August 28, 1888; rotary cutter (expired August 28, 1905).

No. 388,547, Fairfield, August 28, 1888; rotary cutter (expired August 28, 1905).

No. 388,578, Packard, August 28, 1888; tread guide for cutter heads (expired August 28, 1905)

No. 388,552, Glidden, August 28, 1888; rotary cutter (expired August 28, 1905).

No. 388,548, Fairfield, August 28, 1888; rotary cutter (expired August 28, 1905).

No. 389,077, Borne and Henderson, September 4, 1888; heel nailing machine (expired September 4, 1905).

No. 398,846.

No. 389,994, Washburn, September 26, 1888; heel filing machine (expired September 25, 1905).

No. 391,124, Cummings and Coombs, October 16, 1888; machine for molding and compressing heels (expired October 16, 1905).

No. 393,103, Glidden, November 20, 1888; heel trimming machine expired November 20, 1905).

No. 393,104, Glidden, November 20, 1888; heel making machine (expired November 20, 1905).

No. 394,298, Raymond, December 11, 1888; heel attaching machine (expired December 11, 1905).

No. 394,609, Raymond, December 18, 1888; nail making and distributing machine (expired December 18, 1905).

No. 394,610, Raymond, December 18, 1888; nail making and distributing machine (expired December 18, 1905).

No. 399,607, Glidden, March 12, 1889; method of manufacturing heels (expired March 12, 1906).

No. 399,608, Glidden, March 12, 1889; heel cutting die (expired March 12, 1906).

No. 399,631, Pope, March 12, 1889; heel nailing machine (expired March 12, 1906).

No. 399,777, Pope, March 19, 1889; heel nailing machine (expired March 19, 1906).

No. 400,788, Phelan, April 2, 1889; rotary cutter for trimming machines (expired April 2, 1906).

No. 401,131, Carver, April 9, 1889; heel burnishing machine (expired April 9, 1906).

No. 401,619, Winter, April 16, 1889; top lift carrier for heeling machines (expired April 16, 1906).

No. 401,620, Winter, April 16, 1889; top-lift holder for heeling machines (expired April 16, 1906).

No. 402,375, Winter, April 30, 1889; leather cutting tool (expired April 30, 1906).

No. 402,376, Winter, April 30, 1889; trimming tool for boots or shoes (expired April 30, 1906).

No. 402,435, Glidden, April 30, 1889; rotary trimming tool for boots or shoes (expired April 30, 1906).

No. 403,747, Glidden, May 21, 1889; heel trimming machine (expired May 21, 1906).

No. 405,598, Raymond, 2d, June 18, 1889; nail feeding implement (expired June 18, 1906).

No. 406,183, Tripp, July 2, 1889; top lift holder (expired July 2, 1906).

No. 406,184, Tripp, July 2, 1889; top lift holder (expired July 2, 1906).

No. 406,582, Harrigan, July 9, 1889; heel trimmer (expired July 9, 1906).

No. 408,173, Glidden, July 30, 1889; nail for boots or shoes (expired July 30, 1906).

No. 408,895, Raymond, 2d, August 13, 1889; machine for feeding and attaching rands to boots and shoes (expired August 13, 1906).

No. 409,372, Raymond, 2d, August 20, 1889; heeling nailing machine (expired August 20, 1906).

No. 409,637, Glidden, August 20, 1889; heel nailing machine (expired August 20, 1906).

No. 409,783, Glidden, August 27, 1889; top lift plate (expired August 27, 1906).

No. 410,086, Glidden, August 27, 1889; heel trimming machine (expired August 27, 1906).

No. 410,087, Glidden, August 27, 1889; heel trimming machine (expired August 27, 1906).

No. 410,088, Glidden, August 27, 1889; heel trimming machine (expired August 27, 1906).

No. 410,089, Glidden, August 27, 1889; sole trimming machine (expired August 27, 1906).

No. 410,090, Glidden, August 27, 1889; heel trimming machine (expired August 27, 1906).

No. 410,194, Raymond, 2d, September 3, 1889; heel nailing machine (expired September 3, 1906.)

No. 410,195, Raymond, 2d, September 3, 1889; heel nailing machine (expired September 3, 1906).

No. 410,196, Raymond, 2d, September 3, 1889; heel nailing machine (expired September 3, 1906).

No. 410,358, Glidden, September 3, 1889; heel trimming machine (expired September 3, 1906).

No. 410,675, Raymond, 2d, September 10, 1889; heel nail (expired September 10, 1906).

No. 410,676, Raymond, 2d, September 10, 1889; heel nailing machine (expired September 10, 1906).

No. 410,677, Raymond, 2d, September 10, 1889; heel nailing machine (expired September 10, 1906).

No. 411,655, Glidden, September 24, 1889; heel trimming machine (expired September 24, 1906).

No. 411,835, Pope, October 1, 1889; nail die for heeling machines (expired October 1, 1906).

No. 412,414, Raymond, 2d, October 8, 1889; heel nailing machine (expired October 8, 1906).

No. 412,896, Raymond, 2d, October 15, 1889; spring heel boot or shoe (expired October 15, 1906).

No. 413,553, Raymond, 2d, October 22, 1889; heel forming and loading machine (expired October 22, 1906).

No. 413,554, Raymond, 2d, October 22, 1889; nail machine (expired October 22, 1906).

No. 413,555, Raymond, 2d, October 22, 1889; nail making and distributing machine (expired October 22, 1906).

No. 413,959, Packard, October 29, 1889; heel trimming cutter (expired October 29, 1906).

No. 413,963, Raymond, 2d, October 29, 1889; method of attaching heels to boots or shoes (expired October 29, 1906).

No. 413,964, Raymond, 2d, October 29, 1889; nail making machine (expired October 29, 1906).

No. 413,973, Small, October 29, 1889; heel nailing machine (expired October 29, 1906).

No. 414,582.

No. 414,040, Glidden, October 29, 1889; apparatus for assembling heel lifts (expired October 29, 1906).

No. 414,448, Raymond, 2d, November 5, 1889; heel nailing machine (expired November 5, 1906).

No. 414,952, Raymond, 2d, November 12, 1889; nail making, distributing and driving machine (expired November 12, 1906).

No. 415,559, Raymond, 2d, November 19, 1889; heel machine (expired November 19, 1906).

No. 415,560, Raymond, 2d, November 19, 1889; method of compressing and attaching heels (expired November 19, 1906).

No. 427,308, Glidden, May 6, 1890; top lift holder (expired May 6, 1907).

No. 439,060, Glidden and Elliott, October 21, 1890; heel trimming machine (expired October 21, 1907).

No. 443,434, Freeman, December 23, 1890; edge trimming cutter (expired December 23, 1907).

No. 446,383, Glidden and Elliott, February 10, 1891; heel machine (expired February 10, 1908).

No. 446,885, Pope, February 24, 1891; heel nailing machine (expired February 24, 1908).

No. 447,744, Winter, March 3, 1891; heel trimming machine (expired March 3, 1908).

No. 448,310, Winter, March 17, 1891; heel trimming machine (expired March 17, 1908).

No. 454,428, Glidden, June 16, 1891; heel shaping or compressing machine (expired June 16, 1908).

No. 457,462, Glidden and Elliott August, 11, 1891; heeling nailing and trimming machine (expired August 11, 1908).

No. 459,348, Glidden, September 8, 1891; rotary cutter for leather trimming machine (expired September 8, 1908).

No. 461,448, Raymond, October 20, 1891; heel nailing machine (expired October 20, 1908).

No. 461,510, Raymond, October 20, 1891; shoe nail (expired October 20, 1908).

No. 461,853, Small, October 27, 1891; shoe nail (expired October 27, 1908).

No. 464,165, Raymond, December 1, 1891; cam or gear and blank therefor (expired December 1, 1908).

No. 464,255, Raymond, December 1, 1891; heel nailing machine (expired December 1, 1908).

No. 464,196, Glidden, December 1, 1891; nail assorting machine (expired December 1, 1908).

No. 464,991, Raymond, December 15, 1891: heel nailing machine (expired December 15, 1908).

No. 465,029, Raymond, December 15, 1891; heel blank (expired December 15, 1908).

No. 467,242, Small, January 19, 1892; heel machine (expired January 19, 1909).

No. 467,237, Raymond, January 19, 1892; combination nail strip (expired January 19, 1909).

No. 467,522, Raymond, January 26, 1892; method of making shoe slugs (expired January 26, 1909).

No. 468,279, Webster, February 2, 1892; heel nailing machine (expired February 2, 1909).

No. 468,957, Raymond, February 16, 1892; heel nailing machine (expired February 16, 1909).

No. 473,874, Harrigan and Packard, April 26, 1892; rotary trimmer (expired April 26, 1909).

No. 474,335, Demary, May 3, 1892; last (expired May 3, 1909).

No. 474,146, Raymond, May 3, 1892; method of attaching heels to soles of boots or shoes (expired May 3, 1909).

No. 474,407, Raymond, May 10, 1892; heeling machine (expired May 10, 1909).

No. 474,408, Raymond, May 10, 1892; heel randing machine (expired May 10, 1909).

No. 474,858, Raymond, May 17, 1892; combination strip of heel nails (expired May 17, 1909).

No. 475,001, Raymond, May 17, 1892; method of attaching heels (expired May 17, 1909).

No. 475,417, Raymond, May 24, 1892; nailing machine (expired May 24, 1909).

No. 476,307, Raymond, June 7, 1892; shoe nail (expired June 7, 1909).

No. 477,093, Wead, June 14, 1892; nail arranging device (expired June 14, 1909).

No. 477,098, Brown and McCoy; June 14, 1892; heel nailing machine (expired June 14, 1909).

No. 479,142, Raymond, July 19, 1892; heel nailing machine (expired July 19, 1909).

No. 480,415, Raymond, August 9, 1892; heel loading machine (expired August 9, 1909).

No. 480,741, Raymond, August 16, 1892; jack for heel nailing machine (expired August 16, 1909).

No. 483,293, Webster, September 27, 1892; method of attaching heels to boots or shoes (expired September 27, 1909).

No. 498,429, Glidden, May 30, 1893; nail assorting machine (expired May 30, 1910).

No. 498,745, Fairfield, May 30, 1893; rotary cutter (expired May 30, 1910).

No. 498,513, Glidden, May 30, 1893; heeling machine (expired May 30, 1910).

No. 500,486, Glidden, June 27, 1893; heel nailing machine (expired June 27, 1910).

No. 501,555, Winter, July 18, 1893; method of making rotary tooth cutters (expired July 18, 1910).

No. 502,669, Glidden, August 1, 1893; heel nailing machine (expired August 1, 1910).

No. 502,667, Glidden, August 1, 1893; heel compressing and loa ..g machine (expired August 1, 1910).

No. 502,668, Glidden, August 1, 1893; heel compressing and loading machine (expired August 1, 1910).

No. 503,895, Benjamin and Simmons, August 22, 1893; nail separating and feeding devices (expired August 22, 1910).

No. 503,895, Benjamin and Simmons, August 22, 1893; nail separating and feeding devices (expired August 22, 1910).

No. 504,854, Webster, September 12, 1893; machine for breasting heels of boots or shoes (expired September 12, 1910).

No. 505,074, Webster, September 12, 1893; heel attaching machine (expired September 12, 1910).

No. 505,043, Glidden and Winter, September 12, 1893; heel trimming machine (expired September 12, 1910).

No. 510,012, Elliott, December 5, 1893; heeling machine (expired December 5, 1910).

No. 514,852, Krewson, February 13, 1894; jack for heel nailing machines (expired February 13, 1911).

No. 518,917, Fairfield, April 24, 1894; rotary cutter (expired April 24, 1911).

No. 528,805, Raymond, November 6, 1894; nail making, distributing and driving device (expired November 6, 1911).

No. 530,046, Heys, November 27, 1894; heel pressing machine (expired November 27, 1911).

No. 531,644, Raymond, 2d, January 1, 1895; nail feeding implement (expired January 1, 1912).

No. 531,645, Raymond, January 1, 1895; nail feeding implement (expired January 1, 1912).

Comprising among said patents eighty-three on heel nailing, twenty-three on heel attaching, thirteen on heeling machines, fifteen on nails, sixteen on nail making, distributing and driving, besides 150 on miscellaneous machines and appliances.

Attention is also called to the fact that of said patents, over 300 in number, thirty expired prior to 1902, forty-six expired in 1902, thirty-nine expired in 1903, twenty-nine expired in 1904, fifty-four expired in 1905, fifty-one expired in 1906, fifteen expired in 1908, twenty-two expired in 1909, and that all but three of said total number of over 300 patents had expired prior to the filing of the petition herein.

(NOTE. Because of some of the numbers mentioned in the lease having apparently been transposed several of the patents apparently intended to have been referred to in the lease are omitted, as they could not be found.)

Said two bound volumes of patents are introduced as physical exhibits, and are marked "Plaintiff's Exhibits 251 A" and "251 B", and notice is given that the petitioner will not cause said physical exhibits to be reproduced unless upon the order or approval of the court or upon the request of counsel for either party, such request having the approval of the court.

[*Two bound volumes of patents as described above introduced in evidence, and marked "Plaintiff's Exhibit 251 A" and "Plaintiff's Exhibit 251 B".*]

Mr. WEBSTER. Petitioner offers in evidence group of sixteen patents, being the patents to which particular attention was called at the time Plaintiff's Exhibit 238 was introduced, being the sixteen patents, to which attention was called, found in the lease of the Consolidated & McKay Lasting Machine Company to Selz, Schwab & Company, dated December 17, 1898.

[*Group of patents as described introduced in evidence and marked "Plaintiff's Exhibit 252".*]

Mr. WEBSTER. Petitioner offers in evidence a certified copy of assignment from Sidney W. Winslow to McKay Shoe Machinery Company, dated June 1, 1900, recorded in United States Patent Office in Liber M-61, page 148, conveying to said McKay Shoe Machinery Company patent as follows: —

Patent issued to W. S. Hamm for stapling machine, No. 447,681, dated March 3, 1891.

Petitioner also offers in evidence copy of the patent referred to in said assignment.

[*Certified copy of assignment from Winslow to McKay, dated June 1, 1900, with copy of patent, introduced in evidence and marked "Plaintiff's Exhibit 253".*

Stipulation by counsel that the assignments of patents may be introduced as physical exhibits and not be reproduced and spread upon the record without request of counsel or order of the court.]

Mr. WEBSTER. Petitioner offers in evidence as a physical exhibit a certified copy of assignment from Christian Dancel to Goodyear Shoe Machinery Company, of Connecticut, dated January 2, 1892, as recorded in the United States Patent Office, in Liber S-57, page 463, conveying to said Goodyear Company patents as follows: —

Patent to C. Dancel, for machine for winding bobbins, No. 420,441, dated February 4, 1890.

Patent issued to C. Dancel, for sewing machine, No. 449,036, dated September 8, 1891.

Petitioner also offers in evidence copies of the patents referred to in said assignment to go in as one exhibit in connection with the assignment, all being put in as a physical exhibit.

[*Certified copy of assignment from Christian Dancel to Goodyear Shoe Machinery Company, dated January 2, 1892, with copy of patents, introduced in evidence, and marked "Plaintiff's Exhibit 254".*]

The EXAMINER. Now, in order that there may be no misunderstanding, if these go in as physical exhibits, it is understood that there are to be obtained three copies identically like them for use in the District Court.

Mr. FISH. Can't we leave that for the present? He puts it in, it is not reproduced without request of counsel or court, and later we can enforce that request for three copies if we want them.

The EXAMINER. Nothing that has been put in this morning is to be reproduced.

Mr. WEBSTER. Except upon request of either party or by direction of the court. Is that right, Mr. Fish, Mr. Choate?

Mr. CHOATE. Certainly.

Mr. WEBSTER. The petitioner offers in evidence a certified copy of assignment from Campbell Machine Company to Goodyear Shoe Machinery Company dated November 19, 1897, as recorded in United States Patent Office in Liber Z-56, page 243, conveying to said Goodyear Shoe Machinery Company patents as follows: —

Patent issued to D. H. Campbell for sewing machine, No. 231,954, dated September 7, 1880.

Patent issued to D. H. Campbell for sewing machine, No. 241,-608, dated May 17, 1881.

Patent issued to D. H. Campbell for sewing machine, No. 241,-609, dated May 17, 1881.

Patent issued to D. H. Campbell for sewing machine, No. 241,-610, dated May 17, 1881.

Patent issued to D. H. Campbell for sewing machine, No. 241,-611, dated May 17, 1881.

Patent issued to D. H. Campbell for sewing machine, No. 241,-612, dated May 17, 1881.

Patent issued to D. H. Campbell for sewing machine, No. 241,-613, dated May 17, 1881.

Patent issued to D. H. Campbell for wax thread sewing machine, No. 253,157, dated January 31, 1882.

Patent issued to A. B. Fowler for burnishing and trimming machine, No. 352,864, dated November 16, 1886.

Patent issued to E. C. Ross for presser foot and welt guide combined, No. 366,259, dated July 12, 1887.

Patent issued to A. B. Fowler for heel burnishing machine, No. 372,612, dated November 1, 1887.

Patent issued to D. H. Campbell for wax thread sewing machine, No. 374,934, dated December 20, 1887.

Patent issued to D. H. Campbell for machine for waxing thread and winding it into cops, No. 374,935, dated December 20, 1887.

Patent issued to D. H. Campbell for take-up device for wax thread sewing machines, No. 374,936, dated December 20, 1887.

Patent issued to D. H. Campbell for sewing machine shuttle, No. 374,937, dated December 20, 1887.

Patent issued to A. B. Fowler for burnishing machine, No. 377,-826, dated February 14, 1888.

Patent issued to Fowler and Warren for burnishing or trimming tool, No. 384,902, dated June 19, 1888.

Patent issued to W. C. Evans for heel burnishing machine, No. 385,702, dated July 10, 1888.

Patent issued to G. Ambon, Jr., for wax thread sewing machine, No. 388,752, dated August 28, 1888.

Patent issued to J. H. Ryder for heel beading machine, No. 388,790, dated August 28, 1888.

Patent issued to W. F. Nesmith for presser foot for sewing machine, No. 391,981, dated October 30, 1888.

Patent issued to Fowler and Warren for heel finishing machine, No. 396,690, dated January 22, 1889.

Patent issued to J. S. Turner for shoe welt sewing machine, No. 407,974, dated July 30, 1889.

Patent issued to G. Ambon, Jr., for combined welt and upper guide, No. 407,987, dated July 30, 1889.

Patent issued to D. H. Campbell for machine for waxing thread and winding the same on bobbins, No. 409,270, dated August 20, 1889.

Patent issued to E. P. Arnold for thread controlling device, No. 421,889, dated February 25, 1890.

Patent issued to A. B. Fowler for rotary cutter and trimmer, No. 425,214, dated April 8, 1890.

Patent issued to G. Ambon, Jr., for wax thread sewing machine, No. 425,722, dated April 15, 1890.

Patent issued to Fowler, Warren and Evans for heel burnishing machine, No. 438,997, dated October 21, 1890.

Patent issued to C. E. Wheeler for sewing machine, No. 446,398, dated February 10, 1891.

Patent issued to Fowler and Warren for heel burnishing machine, No. 452,345, dated May 12, 1891.

Patent issued to D. H. Campbell for wax pot for use in machines for waxing thread, No. 456,536, dated July 21, 1891.

Patent issued to G. E. Warren for scouring roll, No. 462,886, dated November 10, 1891.

Patent issued to Metcalf and Godding for sewing machine, No. 469,374, dated February 23, 1892.

Patent issued to Fowler and Warren for heeling trimming machine, No. 503,475, dated August 15, 1893.

Patent issued to E. P. and E. F. Arnold for welt guiding device for shoe sewing machine, No. 510,150, dated December 5, 1893.

Patent issued to J. W. Hynes for box loop attachment for sewing machine, No. 510,792, dated December 12, 1893.

Patent issued to Fowler and Warren for sewing machine, No. 549,353, dated November 5, 1895.

Patent issued to Fowler and Warren for shuttle driving mechanism for sewing machine, No. 560,704, dated May 26, 1896.

Patent issued to D. McNiven for buffing or polishing wheel, No. 577,111, dated February 16, 1897.

Patent issued to G. E. Warren for sewing machine, No. 583,522, dated June 1, 1897.

Patent issued to S. H. Dyer for shuttle for sewing machine, No. 583,793, dated June 1, 1897.

Patent issued to S. H. Dyer for sewing machine, No. 584,543, dated June 15, 1897.

Petitioner also offers in evidence copies of the patents referred to in said assignment.

[*Certified copy of assignment from Campbell Machine Company to Goodyear Shoe Machinery Company, dated November 19, 1897, with copies of patents, introduced in evidence, and marked "Plaintiff's Exhibit 255".*

Mr. WEBSTER. The petitioner offers in evidence a certified copy of assignment from Sidney W. Winslow to McKay Shoe Machinery Company, dated March 15, 1898, as recorded in United States Patent Office in Liber B-58, page 5, conveying to said McKay Shoe Machinery Company patents as follows: —

Patent issued to A. B. Smith for stapling machine, No. 335,154, dated February 2, 1886.

Patent issued to W. S. Hamm for stapling machine, No. 521,369, dated June 12, 1894.

Patent issued to Hamm and Eaton for machine for making and driving metallic fastenings, No. 571,227, dated November 10, 1896.

Petitioner also offers in evidence copies of the patents referred to in said assignment.

[*Certified copy of assignment from Winslow to McKay Shoe Machinery Company dated March 15, 1898, with copies of patents, introduced in evidence, and marked "Plaintiff's Exhibit 256".*]

Mr. WEBSTER. The petitioner offers in evidence a certified copy of assignment from John R. Nolan to Consolidated & McKay Lasting Machine Company, dated March 23, 1898, as recorded in United States Patent Office in Liber Y-57, page 38, conveying to said Consolidated & McKay Lasting Machine Company patents as follows: —

Patent issued to J. Q. A. Houghton for lasting machine, No. 385,557, dated July 3, 1888.

Petitioner also offers in evidence copy of the patent referred to in said assignment.

[*Certified copy of assignment from John R. Nolan to Consolidated & McKay Lasting Machine Company dated March 23, 1898, with copy of patent, introduced in evidence, and marked "Plaintiff's Exhibit 257".*]

Mr. WEBSTER. The petitioner offers in evidence a certified copy of assignment from Gordon McKay to Consolidated & McKay Lasting Machine Company, dated November 12, 1897, as recorded in United States Patent Office in Liber P-55, page 498, conveying to said Consolidated & McKay Lasting Machine Company patents as follows: —

Patent issued to M. J. Ferren for instep holder for shoes, No. 233,844, dated November 2, 1880.

Patent issued to McKay and Fairfield for instep holder, No. 234,488, dated November 16, 1880.

Patent issued to H. P. Fairfield for lasting machine, No. 234,912, dated November 30, 1880.

Patent to H. G. Thompson for upper for boots and shoes, No. 237,638, dated February 8, 1881.

Patent issued to H. P. Fairfield for boot and shoe upper, No. 240,585, dated April 26, 1881.

Patent issued to L. R. Blake for machine for lasting boots and shoes, No. 241,524, dated May 17, 1881.

Patent issued to G. McKay for expanding last, No. 245,303, dated August 9, 1881.

Patent issued to G. McKay for lasting machine, No. 251,452, dated December 27, 1881.

Patent issued to Thompson and Mower for lasting machine, No. 251,487, dated December 27, 1881.

Patent issued to E. P. Richardson for lasting machine No. 311,-850, dated February 3, 1885.

Patent issued to E. P. Richardson for lasting machine, No. 311,-851, dated February 3, 1885.

Patent issued to C. W. Glidden for lasting machine, No. 248,-448, dated October 18, 1881.

Patent issued to McKay and Fairfield for lasting machine, No. 250,450, dated December 6, 1881.

Patent issued to W. E. Fisher for lasting machine, No. 251,205, dated December 20, 1881.

Patent issued to C. W. Glidden for lasting machine, No. 251,-430, dated December 27, 1881.

Petitioner also offers in evidence copies of the patents referred to in said assignment.

[*Certified copy of assignment from Gordon McKay to Consolidated & McKay Lasting Machine Company, dated November 12, 1897, with copies of patents, introduced in evidence, and marked "Plaintiff's Exhibit 258".*]

Mr. WEBSTER. It being uncertain as to whether patents now to be introduced have been introduced heretofore, it is agreed that if it is found they have been heretofore introduced these exhibits may be withdrawn; is that right?

Mr. CHOATE. Yes.

Mr. WEBSTER. Petitioner offers in evidence group of patents on the list of patents read into the record by Mr. Howard, the inventions of which patents were, as petitioner understands, stated by Mr. Howard, incorporated in machines and which patents expired after the organization of the United Company and before the filing of the petition, such patents being as follows: —

Patent to C. Dancel, sole sewing machine, dated July 19, 1887, No. 366,935.

Patent to French and Meyer, sewing machine, dated October 8, 1889, No. 412,703.

Patent to French and Meyer, shuttle for sewing machines, dated April 8, 1890, No. 424,966.

Patent to French and Meyer, sole sewing machine, dated April 25, 1892, No. 473,870.

Patent to French and Meyer, sole sewing machine, dated May 10, 1892, No. 474,774.

[*Group of patents described above introduced in evidence, and marked "Plaintiff's Exhibit 259".*]

Mr. WEBSTER. The petitioner also offers under the same heading copies of patents as follows: —

Patent to French, sole sewing machine, dated May 12, 1885, No. 317,759.

Patent to French and Meyer, shoe sewing machine, dated October 8, 1889, No. 412,704.

Patent to Briggs, method of forming chain stitches, dated October 20, 1891, No. 461,793.

Patent to LaChapelle, tension device for sewing machine, dated December 20, 1892, No. 488,505.

Patent to H. E. Cole, sewing machine, dated April 11, 1893, No. 495,452.

Patent to E. P. and H. H. Arnold, shoe sewing machine, dated October 31, 1893, No. 507,873.

Patent No. 518,911 — which is out of print and I would like to furnish it hereafter.

[*Group of patents described above marked "Plaintiff's Exhibit 260".*]

Mr. WEBSTER. As at present advised this closes the petitioner's case in reference to the presenting of evidence under the order.

EVIDENCE FOR DEFENDANTS.

TAKEN PURSUANT TO ORDER OF COURT, ENTERED JUNE 27, 1913, BEFORE ME.

CHARLES K. DARLING,
Special Examiner.

BOSTON MASS., October 6, 1913.

Present:

ALLEN WEBSTER, Esq., *Special Assistant to the Attorney General, of Counsel for Complainant:*

FREDERICK P. FISH, Esq., *and* CHARLES F. CHOATE, Jr., Esq., *of Counsel for Defendants.*

DEPOSITION OF NELSON W. HOWARD.

Direct Examination by CHARLES F. CHOATE, Jr., Esq., *of Counsel for Defendants.*

Int. 1. State your full name, your residence and occupation, Mr. Howard.

Ans. Nelson W. Howard; Boston; I am a member of the bar, in charge of the patent department of the United Shoe Machinery Company.

Int. 2. State how long you have been in practice, the character of your practice and your experience generally.

Ans. Immediately after graduating from the Harvard Law School in 1895 I became connected with the firm of Fish, Richardson & Storrow, now named Fish, Richardson, Herrick & Neave. I remained with that firm for nearly three years. During that time I was exclusively engaged in work relating to patents, and a considerable portion of my time was spent in connection with litigation involving shoe machines and shoe machinery patents. On September 1, 1898, I became connected with the McKay Shoe Machinery Company, taking charge of the patent interests of that company. When the United Shoe Machinery Company was formed

in February, 1899, I assumed a similar position with that company, and from that date to the present time I have been in charge of the patent department of that company. During the period of about fifteen years since I became connected with the McKay Shoe Machinery Company my time has been devoted exclusively to matters relating to machines and methods used in the manufacture of shoes and to patents and patent applications on such machines and methods. My duties have comprised largely the comparison of the claims of patents and of applications for patents with the structures of machines. My duties have required frequent visits to shoe factories, and the observation and study of machines as they are used in the manufacture of shoes.

Int. 3. Please state fully your familiarity with the art and development of shoe machinery.

Ans. In connection with the prosecutions of applications for patents and general investigations of questions of infringement and anticipations I have had occasion to become familiar, in the course of the period of fifteen years during which I have been engaged upon this work, with the patents which have been granted upon shoe machines and methods for use in the manufacture of shoes from the beginning of the art.

Int. 4. In connection with the same work and during the same period, have you had occasion to follow and keep yourself familiar with the mechanical development of the art?

Ans. In order to do properly the work which I have had to do, it has been indispensable that I follow and be constantly familiar with the development of the art from day to day.

Int. 5. To what extent have you been, and are you now, familiar with the development of the manufacture of shoe machinery by the United Shoe Machinery Company, particularly in connection with the work carried on at its factory, and by conference or consultations with its engineers and inventors?

Ans. A proper discharge of my duties has required that I be in constant association with the mechanical experts and with the inventors employed by the United Shoe Machinery Company, and that I be constantly familiar with the experimental work which is

being carried on in improving the machines and developing new machines, and that I frequently examine experimental machines in their course of development in the company's experimental department at its manufacturing plant in Beverly.

Int. 6. State how familiar you are and have been with the commercial development of the machines put out by the United Company and their improvements and developments from time to time.

Ans. Again, the proper discharge of my duties has required that I become thoroughly familiar not only with machines as they have been constructed and used in the past but also with each improvement made upon the machines and with every new machine which has superseded an old machine. The obtaining of patents for all such improvements and new machines has been one of my principal duties, and familiarity both with the prior art and the improvements which were the subjects-matter of patent applications was of course indispensable to proper preparation and prosecution of such applications.

Int. 7. Have you, at our request, prepared a list of some of the improved machines put out by the United Shoe Machinery Company showing as to each machine the date when it was first put out by that company (to avoid unduly encumbering the record, I did not ask you to list all such machines), and if you have prepared such a list will you please produce it?

Ans. I have prepared such a list and do now produce it. I read the list: —

October 3, 1913.

SOME OF THE IMPORTANT MACHINES PUT OUT BY THE UNITED SHOE MACHINERY COMPANY.

	Department	First Put Out by U. S. M. Co.
Assembling machine, Rex	Pulling over	Sept. 1905
Assembling machine, model E, Rex	Pulling over	Aug. 1910
Assembling machine, Rex turn shoe	Pulling over	Feb. 1912
Assembling spindle	Pulling over	Sept. 1904
Beading machine, Columbia	General	Nov. 1907
Beating and slashing machine, Goodyear welt	Goodyear	Nov. 1904

Beveling machine, model B, Champion strip	General	Nov. 1909
Blacking machine, model A, Crest heel	General	Sept. 1908
Blacking machine, model B, Crest heel	General	May 1911
Building machine, Pyramid heel, models B, C, D	General	June 1909
Burnishing machine No. 2, Goodyear impression stitch	Goodyear	April 1908
Cementing machine, Hub lining, models E and F	General	May 1908
Cementing machine, model X, Stanbon channel	General	April 1911
Cementing machine, Star channel, models A and C	General	Oct. 1906
Cementing machine, Star channel, model D	General	April 1912
Channeling machine, Economy insole	Goodyear	May 1905
Channeling machine, Goodyear (insole and turn)	Goodyear	Feb. 1899
Channeling machine, Goodyear Universal (turn work)	Goodyear	Nov. 1908
Channeling machine, Goodyear Universal (welt work)	Goodyear	Sept. 1907
Clicking machine, model C, Ideal	General	Mar. 1908
Clinch machine, Universal double	Metallic	Nov. 1899
Compressing machine, model No. 4, Automatic heel	Heeling	Sept. 1900
Cutting and scoring machine, insole, models D and E	General	Dec. 1911
Embossing machine, model B	General	Jan. 1911
Eyeleting machine, Cameo foot power	Eyeleting	April 1910
Eyeleting machine, Duplex	Eyeleting	July 1902
Eyeleting machine, Universal	Eyeleting	Nov. 1902
Fastening machine, model D, Staple	Metallic	Jan. 1907
Finishing machine, USMC buttonhole	Fitting room	Jan. 1913
Flexible innersole machine, model X, Goodyear	Goodyear	Jan. 1911

Flexible Insole machine, Gem	Goodyear	Sept. 1900
Fudge Edge machine, Goodyear	Goodyear	May 1908
Generating machine, Goodyear pattern	Goodyear	Mar. 1911
Grooving and beveling machine, Goodyear power welt	Goodyear	July 1906
Heel-breasting machine, model B, Imperial	General	July 1902
Indenting and burnishing machine, Goodyear welt	Goodyear	July 1905
Jointing machine, Goodyear	Goodyear	Nov. 1910
Lacing machine, Ensign, models A and B	Fitting room	Feb. 1906
Lasting machine, Consolidated hand method	Lasting	Feb. 1899
Lasting machine, McKay & Copeland	Lasting	Feb. 1899
Lasting machine, No. 5 U. S. M. C.	Lasting	Jan. 1908
Laying machine, model A, Apex welt	General	Feb. 1910
Laying machine, model X, Apex welt	General	Feb. 1911
Laying machine, Goodyear channel	Goodyear	Feb. 1899
Laying machine, Goodyear improved sole, models B and C	Goodyear	Dec. 1910
Laying machine, Goodyear improved sole, twin	Goodyear	Dec. 1906
Leveling machine, model A, Atlas	General	Sept. 1903
Leveling machine, Goodyear automatic sole, models A, B, C	Goodyear	Feb. 1899
Leveling machine, Goodyear welt and turn (turn work)	Goodyear	June 1906
Leveling machine, Goodyear welt and turn (welt work)	Goodyear	June 1906
Leveling machine, Hercules, models A and B	General	Apr. 1903
Leveling and flexing machine, model N, Shin	General	Feb. 1906
Loading and attaching machine, McKay automatic heel	Heeling	Feb. 1899

Loading and attaching machine, model B, McKay automatic heel	Heeling	Nov. 1910
Lockstitch machine, model K, Goodyear outsole rapid	Goodyear	May 1910
Lockstitch machine, model M, Goodyear outsole rapid	Goodyear	Jan. 1912
Making machine, buttonhole	Fitting room	Jan. 1913
Marker, improved Star sole	General	Oct. 1910
Marking machine, model C, Paragon vamp	General	May 1906
Molding machine, American twin sole, models B and C	General	May 1907
Molding machine, Goodyear power	Goodyear	June 1910
Molding machine, stitch down upper	General	Nov. 1907
Nailing machine, Alpha wood heel	Heeling	Sept. 1907
Nailing machine, American Lightning	Heeling	Feb. 1899
Nailing machine, Loose	Metallic	Feb. 1899
Nailing machine, Hungarian	Metallic	Feb. 1899
Nailing machine, No. 2, Loose	Metallic	1909
Nurling machine, model A	Heeling	July 1901
Opening machine, model C, Apex channel	General	July 1906
Pegging machine, Davey	Metallic	Feb. 1899
Perforating machine, model B, Royal	General	Oct. 1904
Perforating machine, model M, Stanbon	General	Apr. 1911
Pincer, U. S. M. C. bench	General	1911
Pounding machine, model E, Rex	Pulling over	1904
Pounding machine, model C, Rex rotary	Pulling over	Mar. 1912
Pounding and beating up machine, model A, Rex rotary	Pulling over	Mar. 1912
Pounding and trimming machine, model B, Rex rotary	Pulling over	July 1908
Pricking machine, Premier heel	Heeling	July 1903
Pulling machine, Goodyear insole tack	Goodyear	Feb. 1909
Pulling machine, Goodyear upper tack	Goodyear	Nov. 1912

Pulling and resetting machine, Goodyear tack	Goodyear	Nov. 1910
Pulling and trimming machine, insole tack and turn shoe	Goodyear	Dec. 1911
Pulling over machine, model A, Rex	Pulling over	Sept. 1899
Pulling over machine, model B, Rex	Pulling over	July 1910
Pulling over machine, model C, Rex	Pulling over	Mar. 1911
Punching machine, model A, Royal tip	General	May 1911
Quilting machine, Spatter	Metallic	Feb. 1899
Reducing machine, Goodyear outsole channel shank	Goodyear	Apr. 1909
Reducing machine, model H, rotary feather edge and shank	General	Nov. 1904
Reinforcing machine, Economy insole	Goodyear	Sept. 1904
Repairing machine, model A, patent leather	General	Aug. 1912
Rounding machine, Goodyear heel seat	Goodyear	Aug. 1909
Rounding machine, Planet sole, models C and D	General	Nov. 1901
Rounding and channeling machine, Goodyear Universal	Goodyear	Feb. 1899
Rounding and channeling machine, model E, Goodyear Universal	Goodyear	Sept. 1910
Rounding and randing machine, Goodyear heel seat	Goodyear	Jan. 1913
Sanding machine, model AL, tap and sole	Heeling	June 1908
Scarfing machine, model N, tap	General	Sept. 1910
Scalloping machine, model B, top piece	General	May 1905
Scouring machine, model X, heel	General	Nov. 1911
Screw machine, Rapid Standard	Metallic	Feb. 1899
Screw machine, model B, Rapid Standard	Metallic	Jan. 1912
Separating machine, Hadaway Stitch	Goodyear	Feb. 1899
Shoe machine, Goodyear welt and turn	Goodyear	Feb. 1899

Shoe machine, model G, Goodyear welt and turn	Goodyear	Oct. 1908
Shoe machine, model K, Goodyear welt and turn	Goodyear	June 1911
Skiving machine, Amazeen	General	July 1905
Skiving machine, model A, Champion heel lift	General	Sept. 1907
Skiving machine, model A, Champion shank	General	Jan. 1909
Skiving machine, Eros rand	Heeling	Aug. 1906
Skiving machine, Goodyear shank welt	Goodyear	Jan. 1904
Skiving machine, Goodyear Universal shank	Goodyear	Feb. 1899
Skiving machine, Pluma, models C and D	General	Apr. 1909
Skiving and finishing machine, Monarch counter and box toe	Heeling	Jan. 1903
Skiving or Rand splitting machine, model C, Apex tap	General	Jan. 1908
Slashing machine, XX welt	General	Feb. 1911
Slugging machine, Universal	Metallic	Feb. 1899
Snipping machine, Goodyear insole toe	Goodyear	May 1911
Softening machine, toe, models C and D	General	Aug. 1911
Softening machine, toe, model E	General	Apr. 1912
Splitting machine, Empire, models C and D	General	Sept. 1908
Splitting machine, Summit	General	Apr. 1903
Stamping machine, model C, Eagle sole	General	Mar. 1910
Stamping machine, model C, Eagle Upper	General	Mar. 1910
Stamping machine, Regent, models B and C	General	May 1903
Stapling machine, Goodyear upper	Goodyear	Oct. 1910
Stapling machine, model B, Goodyear upper	Goodyear	1912
Sticking machine, model B, Shank piece	General	Sept. 1911

Stitching machine, Economy insole	Goodyear	Oct.	1909
Tacking machine, model A, Grip	Metallic	Feb.	1899
Tacking machine, model B, Grip	Metallic		1909
Tacking machine, No. 1 U. S. M. C. insole	Metallic		1910
Tacking machine, Power welt	Metallic	Feb.	1899
Trimming machine, Goodyear insole heel seat	Goodyear	Jan.	1911
Trimming machine, Goodyear insole heel seat, model B	Goodyear	Oct.	1912
Trimming machine, Goodyear Universal inseam	Goodyear	Feb.	1899
Trimming machine, model B, Rex toe	Pulling over	Oct.	1904
Trimming machine, model A, Rex upper	Pulling over	Dec.	1905
Trimming machine, model H, Rex upper	Pulling over	June	1908
Trimming machine, spring heel	Heeling	Feb.	1899
Trimming machine, Ultima heel	Heeling	Dec.	1904
Turning machine, Gem lip	Goodyear	May	1899
Turning machine, Goodyear forepart	Goodyear	Apr.	1901
Turning machine, Goodyear heel	Goodyear	Apr.	1901
Turning machine, Goodyear lip	Goodyear	Feb.	1899
Turning machine, Goodyear welt edge	Goodyear	Dec.	1901
Turning and slashing machine, Goodyear lip	Goodyear	Jan.	1912
Wheeling machine No. 2, Goodyear impression stitch	Goodyear	June	1908

WELT AND TURN SEWING MACHINES.

Int. 8. What is the function of a welt and turn machine in the manufacture of shoes?

Ans. A welt and turn machine is used to perform two different operations in the manufacture of shoes. In the manufacture of welt shoes it is employed to attach the welt and upper to the insole, and this is its principal use. It is also used to secure together the

upper and sole of a turn shoe. In this operation it sews the upper to the sole while the turn shoe is inside out.

Int. 9. What was the first patent definitely directed to a welt and turn machine of this general character?

Ans. The first patent which I recall, directed to a machine for attaching the welt and upper of a welt shoe to the insole, is patent No. 34,413, February 18, 1862, Destouy. This patent was reissued on September 7, 1869, as No. 3635. A typical claim of the reissue patent is claim 4, which is as follows: —

"4. A sewing mechanism, adapted to units, by machinery, the upper, welt, and sole, substantially as described, so as to produce a machine-made welted boot or shoe."

This Destouy machine was improved by the structure shown in patent No. 93,731, August 17, 1869, Mills, and by the improvements shown in patent No. 170,547, November 30, 1875, Goodyear and Hadley.

The improvements of patent No. 93,731 transformed the machine into a chain-stitch machine, the Destouy machine having been a lockstitch machine. The improvements of patent No. 170,547 reorganized the machine so that it laid the chain on the welt instead of in the channel. A typical claim of the Goodyear and Hadley patent No. 170,547 is the first, which is as follows: —

"1. A sewing mechanism for boots and shoes, in which the channel gauge and back gauge were combined with and arranged relatively to a circularly curved needle, substantially as set forth, so that the operation of sewing therewith places the loop or chain stitch on the outside of the seam, instead of in the channel in the sole."

The machine of this Goodyear and Hadley patent was put into commercial use and was extensively used for some years.

SHOE MACHINE: GOODYEAR WELT AND TURN.

Int. 10. Mr. Chapman has testified that the subjects-matter of certain Letters Patent, namely, No. 412,704, October 8, 1889, to French and Meyer; No. 488,505, December 20, 1892, to LaChapelle, and No. 518,911, April 24, 1894, to Briggs, was embodied in the welt and turn machine illustrated in Complainant's Exhibit

No. 209, which was the welt and turn machine put out by the Goodyear Shoe Machinery Company before February 1, 1899, and by the United Company thereafter. State if there were other patents of the United Company, the subjects-matter of which were embodied in this machine.

Ans. In addition to the patents named by Mr. Chapman, the welt and turn sewing machine as put by the Goodyear Shoe Machinery Company just before February, 1899, and by the United Shoe Machinery Company after that date in 1899, embodied the mechanism shown in the drawings, described in the specification and set forth in the claim of patent No. 561,386, June 2, 1896, French. The mechanism set forth in the claim of this patent comprised means for heating the looper of a welt and turn sewing machine, and the welt and turn sewing machine of 1899, and as put out before and after that date, embodied such means. It was important that a welt and turn sewing machine be provided with means for keeping the looper hot, because if the looper were cold it would chill the wax of the thread as the thread passed through it and would cause the thread to become hard and brittle, thus interfering with the operation of the stitch-forming mechanism and with the setting of the stitch, and causing frequent breakage of the thread. Before such means was incorporated in welt and turn sewing machines frequent difficulty was occasioned in the failure to keep the looper in the proper heated condition. So much difficulty was encountered in this connection with machines as used before the mechanism of this French patent No. 561,386 was incorporated in the machine that the operation of a machine was frequently interfered with seriously by the opening of a window near the machine. I have examined the welt and turn sewing machine No. 228 which was referred to by Mr. Chapman, and which is shown in the photograph Plaintiff's Exhibit No. 232, in the factory of the Commonwealth Shoe & Leather Company at Whitman, Massachusetts, and I find that that machine embodies the means set forth in the claim of this French patent No. 561,386, June 2, 1896.

Int. 11. State whether or not the Goodyear welt and turn machine of 1899 has continued to be the standard machine of the

United Company. If not, what machines have since been designed and put into use? What were their relations to the machine of 1899? When were they put into use? And if they embodied the subject-matter of any Letters Patent of the United Company, name the patents. State also to what extent, if at all, these new machines were an advancement in the art.

SEWING MACHINE: GOODYEAR UNIVERSAL INSEAM.

Ans. Just before the formation of the United Shoe Machinery Company in February, 1899, the Goodyear Shoe Machinery Com pany had been experimenting with a view to producing a lock-stitch welt-sewing machine. About that time shoe manufacturers thought they desired to attach the upper and welt of welt shoes to the insole by a machine which would sew with a lockstitch instead of the chainstitch of the welt and turn sewing machine of 1899. In recognition of this desire on the part of shoe manufacturers and in order to satisfy it the United Company continued the experimental work which had been begun by the Goodyear Shoe Machinery Company looking toward the production of a lockstitch welt-sewing machine, and in June, 1899, first put out for commercial use the machine which had been produced as the result of that experimenting.

That machine was known officially as "Sewing Machine Goodyear Universal Inseam". I might add that the reason why manufacturers at that time thought that they preferred to attach the welt and upper on a lockstitch sewing machine was that the stitch which is made by a lockstitch machine more nearly resembles the stitch which is made by the hand workman in sewing the welt and upper to the insole.

This lockstitch welt-sewing machine as first put out in June, 1899, embodied mechanisms shown in the drawings, described in the specifications and set out in the claims of the following patents, all owned or controlled by the United Shoe Machinery Company: —

No. 366,935, July 19, 1887, Dancel.

No. 412,703, October 8, 1889, French and Meyer.

No. 495,452, April 11, 1893, Cole.

No. 583,522, June 1, 1897, Warren.

No. 705,063, July 22, 1902, French and Meyer (application filed October 14, 1897).

No. 790,790, May 23, 1905, French and Meyer (application filed December 6, 1898).

No. 732,729, July 7, 1903, French and Meyer (application filed December 21, 1898).

No. 705,062, July 22, 1902, French and Meyer (application filed November 23, 1899).

In 1900 improvements were incorporated in the machine which are shown in the drawings, described in the specifications and set forth in the claim of patents —

No. 781,596, January 31, 1905, French and Meyer (application filed March 10, 1900).

No. 1,030,742, June 25, 1912, Meyer (application filed June 16, 1902).

Manufacturers of shoes did not use this lockstitch sewing machine long before they discovered that they did not, after all, wish to attach the welt and upper of a welt shoe by means of a lockstitch sewing machine. They found that it was impossible to secure the tight inseam, which is indispensable in the inseam of a welt shoe. Only seventy-three of these machines were put in use by shoe manufacturers.

After the failure of the lockstitch welting machine the United Shoe Machinery Company concentrated its efforts upon experiments which were already under way looking toward the production of a high-speed chainstitch welting maching. The inventors who were working upon this experimental machine believed that the machine which they had in mind would be capable of a much higher speed than the welt and turn sewing machine which was then the standard welt sewing machine; that is, the same machine which was being put out in February, 1899.

It was also believed that the organizations which the inventors had in mind would enable a machine constructed upon those lines to sew the welt and upper to an insole much thinner and lighter

than insoles which had to be used with the commercial machine at that time; that is, the 1899 machine.

The difference in expense between such an insole as was required by the 1899 machine, and the light, thin insole which it was anticipated could be handled by the proposed new machine, would have effected a substantial economy without any sacrifice in the quality of the shoe.

The experimental work to which I have referred was carried on very aggressively, and finally a commercial machine was produced and was first supplied to manufacturers in July, 1902, the machine being known officially as "Shoe Machine, Goodyear Welt and Turn, Model E".

SHOE MACHINE — MODEL E, GOODYEAR WELT AND TURN.

When the machine was put out, it incorporated mechanisms shown in the drawings, described in the specifications and set forth in the claims of the following patents, all owned or controlled by the United Shoe Machinery Company: —

No. 461,793, October 20, 1891, Briggs.

No. 488,505, December 20, 1892, LaChapelle.

No. 507,873, October 31, 1893, Arnold.

No. 884,537, October 15, 1901, Briggs.

No. 884,538, October 15, 1901, Briggs.

No. 687,719, December 3, 1901, Briggs.

No. 679,409, July 30, 1901, Alley.

The machine as first put out also embodied mechanisms which were set forth in the claims of applications which were then pending, upon which were subsequently granted the following patents:

No. 732,729, July 7, 1903, French and Meyer.

No. 1,030,742, June 25, 1912, Meyer (application filed June 16, 1902).

As I have stated, it was confidently anticipated that this new machine, which I shall for convenience refer to as the "model E" machine, could be run at much higher speed than the 1899 welt and turn sewing machine. This expectation, however, was not realized, and it was found that the machine could not be run under commer-

cial conditions at a speed above 375 stitches per minute, which was the normal commercial speed of the welt and turn sewing machine of 1899.

Furthermore, the expectations as to the value of the organizations which enabled the model E machine to operate upon shoes provided with lighter insoles were not realized as expected, because although the machine was capable of effecting that economy, reinforced insoles about this time were used largely in increasing numbers, so that the advantages of this model E machine in that connection were practically nullified by this great increase in the use of reinforced insoles, and the consequent disappearance of the field in which these advantages of the model E machine would have been realized.

Accordingly, the model E machine never superseded the welt and turn machine of 1899; a large number of the model E machines were put out, and it continued to be put out together with the old machine, that is, the 1899 machine, up to the time when the new welt and turn sewing machine, known as model G, was produced and put out for commercial use in 1908.

As I have stated, the expectations of the officials and experts of the United Company, as to the higher speed at which model E machine might be operated, were disappointed, although substantial progress was made in the model E machine toward the development of organizations which by themselves were capable of operation at much higher speed than the corresponding organizations of the 1899 machines.

In view of the failure to produce a high-speed machine in the model E machine, the officials of the United Company, as early as 1904, started several inventors on experimental work with the primary object of producing a high-speed welt and turn sewing machine on entirely different lines from those on which the welt and turn machine of 1899 was constructed. This experimental work was carried on steadily, several machines were constructed, one after another, were successively tried out and in turn abandoned. Finally, in 1906, two of the inventors who were engaged in this experimental work had produced machines which were so promis-

ing that they were both given extended experimental trials in shoe factories, under commercial conditions.

Finally, the two machines were tried out in the same shoe factory, side by side, and were run for a number of months on regular work in that factory. During this period they were under constant observation by experts of the United Company, with a view to determining which of the machines should be adopted for commercial use. Finally, the machine which was eventually developed into commercial form and known as model G machine was commercially adopted, having incorporated in it some of the valuable features of the other experimental machine.

SHOE MACHINE — MODEL G: GOODYEAR WELT AND TURN.

This machine was put into commercial use in October, 1908, and was known officially as "Shoe Machine, Goodyear Welt and Turn, Model G".

The machine was run regularly in the manufacture of shoes at a speed of 500 stitches per minute, as compared with the speed of 375 stitches per minute of the old welt and turn machine, that is, the machine of 1899. This speed of 375 for the machine of 1899 was the highest speed at which it was practicable to run that machine regularly under commercial conditions. Above that speed the machine occasionally missed a stitch, and, furthermore, it was so organized that a speed in excess of 375 would cause excessive wear of the machine and it would not stand up under constant use at a higher speed.

In the production of a high-speed welt and turn sewing machine, the inventors of the United Shoe Machinery Company encountered many serious problems. One of these problems had to do with a mechanism for putting the proper tension on the thread. It developed in the experimental work that when such a machine was run at a low speed the tension mechanism must offer a greater resistance than when the machine is run at a high speed. This was due to the inertia of the tension mechanism, which caused it to offer a greater resistance to the quicker pull on the thread which was exerted when the machine was run at a high speed. If the mech-

anism was so adjusted that it offered the same resistance as for low speed, the quicker pull on the thread at high speed would frequently break the thread. This problem was serious because it is frequently necessary in the operation of the welt and turn machine to run the machine more slowly on certain parts of the work, as in going around a narrow toe. This problem was overcome by incorporating in this new model G machine the tension mechanism which automatically offered a greater resistance to the pull of the thread at the slower speed, and a less resistance to the pull of the thread at higher speeds.

This mechanism is described in broad terms in patent No. 1,030,816, June 25, 1912, Holmes. Claim 1 of this patent is as follows:—

"In a sewing machine the combination with means offering and yielding resistance against which the stitch is set, of mechanism for varying such resistance when the speed of operation is varied, during the continued operation of the machine in sewing a seam."

The commercial construction of this mechanism was substantially as shown in the drawings of patent No. 1,030,743, June 25, 1912, Meyer, except that the mechanism was arranged at the back of the machine instead of at the front of the machine as shown in the drawings of this Meyer patent. Most of the claims of this patent No. 1,030,743, which was granted on an application filed September 1, 1909, set forth the mechanism to which I am referring.

A typical claim of the claims of this patent which are directed to this mechanism is the first, which is as follows:—

"1. A sewing machine, having, in combination, stitch forming devices, and means responsive to variations in the speed of the machine operating during the continued operation of the machine in sewing a seam to vary the tension on the thread when the speed of the machine varies."

Combined with this mechanism for automatically varying the resistance of the tension mechanism according to the speed of the machine, was a mechanism for varying the amount of this resistance at the different points in the cycle of the machine's operations in accordance with the requirements of the stitch-forming mechanism at successive stages in the cycle of the machine's operation.

Patent No. 1,030,743, June 25, 1912, which, as I have explained, disclosed substantially the automatic tension mechanism, also shows the double tension mechanism to which I am now referring, substantially as that mechanism was embodied in the commercial machine. And this mechanism is set forth in several claims in that patent. This mechanism is also set forth in broader terms in the claims of patent No. 1,028,474, June 4, 1912, Mayo (application filed November 22, 1909). A typical claim of this patent is No. 13:

"13. A chain stitch sewing machine, having, in combination, stitch forming devices including a take-up acting while the needle is in the work, a tension device, means for actuating said devices to exert a relatively light tension on the thread during the loop-drawing stroke of the needle, and a relatively heavy tension on the thread during the stitch-setting stroke of the take-up, means for simultaneously adjusting the amount of both tensions and means for adjusting the amount of one tension independently of the other."

This mechanism was also set forth in even broader terms in the claims of patent No. 1,017,440, February 13, 1912, Meyer (application filed November 4, 1904).

The fourth claim of this patent was as follows: —

"4. A chain stitch, shoe sewing machine, having, in combination, a needle, a looper, a stitch-setting take-up, a tension device operating to exert a uniform and relatively light tension upon the thread during the retracting stroke of the needle, and an increased tension during the setting of the stitch, and means for adjusting the tension device to vary the amount of increase in the tension without affecting the uniform and relatively light tension exerted thereby on the thread during the retracting stroke of the needle, substantially as described."

Another problem which had to be solved in the development of a high-speed welt and turn sewing machine was the production of such an organization, including the looper and means for actuating it, that in the operation of the machine at high speed the looper would never fail to supply the needle with thread. In the 1899 machine, as I have already explained, the looper would occasionally fail to supply thread to the needle when the machine was run at a speed in excess of 375 stitches per minute. The organization

of the model G machine has never failed to supply thread at any speed at which the machine has been run, and, as I have explained, the regular commercial speed of that machine is 500 stitches per minute. No patents have as yet been granted showing this organization of the model G machine.

Another defect of the old welt and turn machine, that is, the 1899 machine, was that the needle guide which must be so operated that it shall be down close to the stock while the needle is penetrating the stock, to afford proper support for the needle, would fail to operate properly at higher speeds. This was due to the fact that the 1899 machine was so organized that the needle guide was moved downwardly into its needle-supporting position by a spring, and if a lump of wax got on the needle, as would frequently happen, it would prevent the needle guide moving down into its proper needle-supporting position. Of course, if it were otherwise possible to run the 1899 machine at a higher speed than 375, the difficulty to which I have referred would increase out of all proportion to the speed of the machine, since the defects of this spring actuation of the needle guide would manifest themselves much more frequently at a higher speed.

The improvement on this mechanism in the model G machine, which, while an important improvement for such a machine whatever its speed, was of marked value in the high-speed machine, is not disclosed in any patent which has as yet been granted.

Another improvement in this model G machine to which I will direct attention is the organization permitting a yielding of the needle during the feeding of the stock. This improvement manifests its utility chiefly when the stock is being fed around sharply curved lines, as around the toe. The commercial form of this mechanism is not disclosed in any patent which has, as yet, been granted, but the mechanism is set forth in broad terms in the claims of —

Patent No. 935,726, October 5, 1909, Alley, and

No. 1,030,867, July 2, 1912, Briggs (application filed January 20, 1903).

This new machine of 1908, to which I have referred as the model

G machine, embodied many other improvements in addition to those to which I have specifically referred, many of which improvements are not yet disclosed in any granted patents.

The patents which do set forth mechanisms embodied in this machine are the following: —

No. 634,850, October 10, 1899, Fowler and Warren.
No. 666,823, January 29, 1901, Selby.
No. 835,513, November 13, 1906, Fuller.
No. 935,726, October 5, 1909, Alley.
No. 1,003,175, September 12, 1911, Eppler.
No. 1,005,181, October 10, 1911, Eppler.
No. 1,015,304, January 23, 1912, Eppler.
No. 1,015,772, January 30, 1912, Ashworth.
No. 1,017,059, February 13, 1912, McPherson and Orr.
No. 1,017,440, February 13, 1912, Meyer.
No. 1,023,071, April 9, 1912, Eppler.
No. 1,028,474, June 4, 1912, Mayo.
No. 1,030,742, June 25, 1912, Meyer.
No. 1,030,743, June 25, 1912, Meyer.
No. 1,030,816, June 25, 1912, Holmes.
No. 1,030,867, July 2, 1912, Briggs.

As to the advantages of the model G welt and turn machine over the welt and turn machine of 1899, it was run, as I have already explained, at a speed of 500, as compared with a maximum speed under commercial conditions of 375 for the 1899 machine. This increased speed, together with features of the organization of the model G machine which made its operation more convenient for the workman, gave the model G machine a capacity of a little over eight per cent more than the capacity of the 1899 machine. This model G machine was very favorably received by shoe manufacturers and over 1400 of these machines were put into shoe factories. The United Company was always behind in its orders. For example, for eight consecutive months, beginning December 1, 1910, the company was at all times more than 200 machines behind in filling its orders for the model G machines.

SHOE MACHINE — MODEL K: GOODYEAR WELT AND TURN.

This model G machine, or, to quote its official title, "Shoe Machine, Goodyear Welt and Turn, Model G", is not the present standard commercial machine of the United Shoe Machinery Company, for it was superseded in June, 1911, by still another improved machine, known officially as "Shoe Machine, Goodyear Welt and Turn, Model K". I shall, for convenience, refer to this machine as model K.

This new model K machine is substantially the same as the model G machine, with the incorporation in the organization of that machine of the valuable improvements which were acquired by the United Shoe Machinery Company from Thomas G. Plant in September, 1910.

In explanation of one of the most important of the improvements, in the use of the welt and turn sewing machine of 1899 and also in the use of the model G machine in 1908, it was necessary for the operator at the beginning of the sewing operation to hold with his finger the end of the welting. As the operator always took good care to keep his finger out of the way of the needle and awl, a substantial piece of the welting was always wasted in the operation of the 1899 and model G machines owing to this requirement in the operation of those machines.

When the operator had finished the welt sewing operation on each machine, he had to hold the shoe away from the machine and cut off the welting on the shoe from the supply of welting in the machine by means of a hand knife.

Thomas G. Plant was the first in the history of shoe machinery to provide a welt and turn sewing machine adapted for commercial use in the manufacture of shoes with an organization which held the end of the welting close to the point at which the stitch was to be formed and which at the completion of the welt sewing operation severed the welt close to the point where the last stitch had been formed.

Organized with this mechanism in the welt and turn sewing machine as constructed by Plant was the mechanism which automati-

cally prevented the operator from pulling too much of the welting away from the machine. As I have stated, in the operation of the 1899 and model G machines the operator had to pull a considerable length of welting from the machine in order to get the shoe into position where he could conveniently sever from the main supply of welting that portion of welting which had been secured to the shoe. The welt holding and cutting organization which Plant used in his machines did not, of course, require that this excess of welting should be pulled away from the machine, but his organization of welt-measuring mechanism effectively prevented the operator from pulling away too much welting through carelessness or for other reasons. An advantage of such mechanism in any machine is that after the operator has pulled out an excess length of welting he must, before he begins the sewing operation on the next shoe, pull the welting back into the machine, so that too much will not be presented and wasted at the beginning of the next stitch. The danger is that he is likely not to pull it back far enough into the machine, so that even more will be wasted than he needs, in order to hold the welting with his finger in the manner which I have described.

The advantages of the mechanism of the Plant machine, including these improvements, are very important in the saving of manual operations and in effecting a substantial saving in welting.

Immediately after the acquisition of the patents of Thomas G. Plant by the United Shoe Machinery Company in 1910 some four or five inventors were put to work by the United Company to adapt the Plant improvements for the model G welt and turn sewing machine, which was at that time the standard commercial machine of the United Company. In the reorganization of these mechanisms, which was necessary to adapt them for the model G machine, the United Company inventors made important improvements upon them so that as finally incorporated in the model G machine which, embodying these improvements, and others to which I shall refer, became known as model K machine, improvements were made which represent almost as important advances in the industry as did the Plant improvements. In operating the Plant welt holder

and cutter it was necessary for the operator to step up on a treadle at the time when he desired to sever the welt. In the model K machine it is only necessary for the operator to move the shoe slightly to the left, from the stitch-forming position into the path of the welt holding and cutting mechanism, and that mechanism is automatically and instantly moved forward into operative position by mechanism actuated by the slight pull on the welt which is effected in the movement of the shoe into welt-cutting position. In this quick forward movement of the welt holder and cutter it grips the welt and severs it close to the end of the line of stitches. The welt holder remains in this forward position, holding the end of the welt for the next shoe. In the operation of sewing the welt upon the next shoe, the end of the welt is held by the welt holder in this position close to the point where the first stitch is to be made. The holder remains in this forward position until the completion of the first stitch, when it is automatically retracted into a position where it is entirely out of the way of the shoe during the various positions in which the operator has to hold the shoe during the stitching operation.

I produce two shoes which illustrate the advantages of these improvements. One of these shows a shoe which had its welt attached on the old welt and turn machine, that is, the machine of 1899. It will be observed that on one side of the shoe, the side where the sewing operation began, there is a considerable length of welting which is wasted, and which extends beyond the line of stitching and must later be cut off and thrown away. This was the piece of welting which was held by the finger of the operator at the beginning of the machine's operation.

[*Shoe having welt attached by welt and turn machine of 1899 is marked "Defendants' Exhibit 106".*]

[*Answer to Int. 11 continued:*]

The other shoe which I produce had its welt attached on the present standard commercial machine of the United Company, the model K machine. It will be observed that the piece of welting on each side which extends beyond the line of stitching is short and of substantially the same length on each side. The amount of

welting saved on this shoe may be observed by comparing it with the long piece at the end of the welting beyond the line of stitching, on one side of the other shoe which I produced. That saving is approximately one inch on each shoe.

[*Shoe having welt attached on defendants' present commercial welt and turn machine, model K, is marked "Defendants' Exhibit 107".*]

[*Answer to Int. 11 continued:*]

The construction of these welt-holding, welt-cutting and welt-measuring improvements in the model K machine is not shown in any patents as yet granted, but these constructions are set forth in broad terms in patents —

No. 700,279, May 20, 1902, Winkley.

No. 877,858, January 28, 1908, Plant.

No. 877,859, January 28, 1908, Plant.

And an experimental stage in the development of the welt-measuring improvements is shown in patent No. 1,071,050, August 25, 1913, Holmes.

The typical claims of the Winkley patent No. 700,279, May 20, 1902, are the following: —

"1. A welt sewing machine, having, in combination, stitch forming mechanism, a welt guide, and a welt holder constructed and arranged to hold the end of the welt in contact with the upper, substantially as described."

"6. A welt sewing machine, having, in combination, stitch forming mechanism including a needle, a welt guide on one side of the needle, and a welt holder on the opposite side of the needle, substantially as described."

Claim 2 of Plant patent No. 877,858, January 28, 1908, is as follows: —

"2. In a boot and shoe sewing machine, the combination with stitch forming devices and means for guiding a boot or shoe in proper relation thereto for the stitching operations, of a welt guide, and welt severing and holding means whereby the welt may be severed and the welt strip held for the next stitching operation."

Claims No. 1 and 11 of Plant patent No. 877,859 are as follows: —

"1. In a welt attaching machine, a welt measuring device comprising stopping means for limiting the withdrawal of the welt upon withdrawal of the work from the machine."

"11. A sewing machine comprising stitch forming mechanism, welt severing means at one side thereof, and welt measuring means at the opposite side thereof, and means to operate the same."

Claim 15 of Holmes patent No. 1,071,050 is as follows: —

"A sewing machine having in combination a welt guide, a welt controlling device, movable with a welt as it is drawn forward, and means for connecting the device with the welt in bringing the machine into position for the removal of the shoe substantially as described."

By way of introduction to my discussion of the next important improvement which was set forth in the patents acquired from Plant, I will explain that in the operation of the model G welt and turn machine, as well as in the operation of the welt and turn machine of February, 1899, when the operation of the machine had been completed, and the machine had come to rest, the needle held in its hook the last loop formed, and before the shoe could be freed from the machine it was necessary for the operator to turn the machine back, advancing the needle so as to cast off this last loop from the hook of the needle. The operator had then to serve the thread with a hand knife.

Furthermore, neither of these machines, that is, the machine of 1899 and the model G machine, was provided with mechanism for stopping the machine.

It was accordingly necessary for the operator, as he approached the end of the stitching operation, to place his hand upon the belt pulley at the left of the machine, slow up the machine, stop it with his hand and then turn the machine back so as to bring the needle forward into position to cast off the loop.

In the welt-sewing machine as constructed by Plant there was incorporated for the first time mechanism for automatically stopping and reversing a welt-sewing machine and by the reversing movement casting off the last loop held by the needle.

This improvement is set forth in broad terms in patent —

No. 1,018,130, Plant, of February 20, 1912.

A typical claim of this patent is the first, as follows: —

"1. A chain stitch inseam shoe sewing machine, having, in combination, stitch forming devices including a curved hooked needle

and a looper and means, acting automatically upon stopping the machine, to free the last needle loop from the stitch forming devices and bring the needle to rest out of engagement with the work."

The mechanism which Plant used in his welt and turn machine for automatically stopping the machine and turning it back to free the last loop from the needle, was a very unsatisfactory mechanical organization, as it did not always act reliably and was subject to frequent breakage. The inventors who, as I have stated, were set to work to improve this Plant mechanism devised for the model K machine a radically different mechanism for stopping and turning back the machine to release the shoe from the machine by casting off the last loop from the needle. These improvements made by the United Shoe Machinery Company inventors are not yet shown in any granted patents.

Mr. WEBSTER. I would like to interpose an objection, before we start. Counsel for petitioner objects to statements by the witness heretofore made or that may be made hereafter with reference to what others said, thought or believed, as being mere hearsay. Counsel for petitioner also objects to the introduction of any evidence relating to mechanisms not shown and described in patents and referred to in claims of patents issued prior to the filing of the petition in this cause, both said objections being based on the ground that the same is immaterial, inadmissible and not competent in any respect.

Counsel for petitioner moves to strike out all such objectionable testimony heretofore introduced and gives notice that at the proper time hereafter a formal motion to strike out will, as he is at present advised, be made so as to formally bring the matter to the attention of the court.

[*Answer to Int. 11 continued:*]

Another important improvement set forth in patents acquired by the United Shoe Machinery Company from Plant was an improved welt-guide mechanism. In the 1899 machine the welt-guide moved from its rearward position which it took at each operation of the machine, to permit the feed of the welt directly into welt-presenting position.

It was not practicable in that organization to move the welt-guide closely into contact with the shoe because when the materials increased in thickness the welt-guide would press the shoe away from the path of the needle, so that the stitch would not be properly formed. The result was that it was the practice in the use of the old machine to adjust the welt-guide mechanism so that the welt-guide did not advance quite to the shoe. Consequently the welt-guide did not afford to the operator any substantial support against the backward movement of the needle at that time in frictional engagement with the stock and tending to pull the stock back with it, nor did the welt-guide assist the operator in resisting the thrust of the awl.

The Plant welt-guide mechanism is shown and set forth in the claims of reissued patent No. 13,374, reissued February 27, 1912, Plant (original patent No. 947,401, January 25, 1910).

In the mechanism set forth in this patent the welt-guide in its forward movement after the feed of the stock, at each operation of the machine, was first moved yieldingly into position to present the welt properly for the stitch-forming operation. Then, after the needle had entered the welt, the welt-guide was moved further forward, still yieldingly to press together the layers of material, and finally on completion of the forward movement of the needle the welt-guide was locked in its most advanced position, thus holding the layers of stock firmly pressed together and affording the needed assistance to the operator in resisting the frictional pull on the materials during the backward stroke of the needle and the following stroke of the awl in the same direction.

A typical claim of reissued patent No. 13,374 is 48 : —

"48. A sewing machine containing stitch forming mechanism including a needle, and feed mechanism, combined with a back gauge having movement toward and from the work, and means for moving the back gauge forward into substantial contact with the work in advance of the needle to approximately position the work and completing its forward movement after the needle has penetrated the work."

The "back gauge" of this claim is the part that I have above designated as the "welt-guide". The welt-guide performs a double

function of presenting the welt in position for attachment to the shoe and serving as a back gauge in the manner which I have described.

All of the improvements in welt and turn sewing machines which were set forth in patents acquired by the United Company from Plant were, as I have indicated in discussing some of them, substantially improved by inventors of the United Company before they were introduced into the organization of the model G machine, the machine of 1908, to produce the present commercial machine, the model K machine. These improvements by the United Company inventors are for the most part not yet shown in granted patents.

I should further explain that, while these Plant improvements were very valuable, as I have endeavored to explain, the Plant welt and turn sewing machine to which they were applied was a machine constructed substantially on the lines of the United Company's 1899 machine and was, in fact, not so satisfactory a machine as was the United Company's 1899 machine.

The utility of these Plant improvements manifested itself to a much greater degree when the improvements were incorporated in a high-speed machine and the value of the improvements increased out of proportion to the increase in the speed of the machine on which they were used. It was not, therefore, until these improvements were incorporated in the high-speed model G machine of the United Company that the advantages and utility of the improvements were fully realized.

The patents which have so far been granted on improvements embodied in the model K machine, including those embodied in the model G machine, except some of the improvements which were in the model G machine which were superseded by the improved mechanisms of the model K machine, are as follows: —

No. 666,823, January 29, 1901, Selby.

No. 700,279, May 20, 1902, Winkley.

No. 710,612, October 7, 1902, Richardson.

No. 835,513, November 13, 1906, Fuller.

No. 877,858, January 28, 1908, Plant.

No. 877,859, January 28, 1908, Plant.

No. 935,726, October 5, 1909, Alley.

Reissued No. 13,374, February 27, 1912, Plant (original patent dated January 25, 1910).

No. 958,296, May 17, 1910, Plant.

No. 1,003,175, September 12, 1911, Eppler.

No. 1,015,304, January 23, 1912, Eppler (application filed February 26, 1906).

No. 1,015,772, January 30, 1912, Ashworth (application filed November 22, 1909).

No. 1,017,059, February 13, 1912, McPherson and Orr (application filed August 15, 1910).

No. 1,017,440, February 13, 1912, Meyer (application filed November 4, 1904).

No. 1,018,130, February 20, 1912, Plant (application filed June 6, 1911).

No. 1,023,071, April 9, 1912, Eppler (application filed November 22, 1909).

No. 1,028,474, June 4, 1912, Mayo (application filed November 22, 1909).

No. 1,030,742, June 25, 1912, Meyer (renewed application filed December 9, 1904).

No. 1,030,816, June 25, 1912, Holmes (application filed May 22, 1909).

No. 1,030,867, July 2, 1912, Briggs (application filed January 20, 1903).

No. 1,048,511, December 31, 1912, Eaton (application filed December 5, 1907).

No. 1,071,050, August 26, 1913, Holmes (application filed August 30, 1909).

No. 1,071,435, August 26, 1913, King (application filed March 7, 1912).

The commercial advantages of the model K machine over the welt and turn machine of 1899 and over the model G machine of 1908 were striking. The model K machine was regularly run in shoe factories at the same speed as the model G machine; that is,

500 stitches per minute as compared with the speed of 375 stitches per minute of the 1899 machine; but the model K machine had a capacity of about six per cent over that of the model G machine and about fifteen per cent over that of the 1899 machine. This increase in capacity over both the 1899 machine and the immediate predecessor of the model K machine was due to two important advantages secured by the organization of model K machine. First, the improvements to which I have briefly referred saved a great deal of the time of the operator; and, second, those improvements facilitated the work of the operator in running the machine.

The result was that the time when the 1899 machine or the model G machine was idle was greatly reduced by the improvements of the model K machine, the present commercial machine, so that the machine was operating more of the time, and accordingly had increased the capacity. Of course, the increased speed which the model K machine had, like the model G machine, contributed substantially to the capacity of the model K machine as compared with the 1899 machine.

A further distinct improvement in the industry affected by the improvements incorporated in the model K machine was the substantial saving afforded to the manufacturer in the cost of his welting.

I have already explained how about an inch of welting is saved upon each shoe. This saving amounts to at least a quarter of a cent per pair of shoes, and is greater on men's shoes. This saving amounts in the aggregate to many thousands of dollars in a shoe factory of medium size.

All of these advantages resulted in a very favorable reception by shoe manufacturers of the model K machine immediately after it was offered to them. The first machine, as I have stated, was put out in June, 1911, but the company was not able to build them and put them out in substantial numbers before November, 1911. In the period between November 1, 1911, and September 1, 1913, 912 of these model K welt and turn machines were put into shoe factories. The company has always been behind in its orders for these machines. For example, on March 1, 1913, at the end of

the last fiscal year, the company was 197 machines behind in filling its orders.

Int. 12. If you have not already answered this question, I would like to have you answer it now: To what extent have these two types of machines, namely, models G and K, been put into use by the United Company?

Ans. Over 1400 of the model G machines were put into shoe factories, and, as I have just stated, up to September 1, 1913, 912 of the model K machines have been put into shoe factories.

Int. 13. Will you state the number of machines of models K and G type, also the old type, leased by the United Company during the last fiscal year?

Ans. During the last fiscal year of the company, ending March 1, 1913, six of the old machines, that is, the machine of 1899, were shipped; fifty-four of the model G machines, and 497 of the model K machines.

Int. 14. Reference was made by Mr. Chapman to Briggs patent 461,793, dated October 20, 1891. State, if you know, what change was required in the organization of a welt-sewing machine to enable it to perform the Briggs method.

[*By* Mr. WEBSTER. *Objected to as immaterial.*]

Ans. To adapt a welt and turn sewing machine to the practice of the method set forth in the claim of the Briggs patent No. 461,793, October 20, 1891, no change was necessary in the organization of such a machine. It was only necessary to provide the machine with a take-up and a thread finger, and both take-up and thread finger were old before the date of the Briggs invention in lock-stitch sewing machines. They are both disclosed in patent No. 253,156, January 31, 1882, Campbell. The welt and turn sewing machine of the Goodyear Shoe Machinery Company, that is, the standard commercial machine of the United Company in 1899, was held to infringe this Campbell patent No. 253,156. The decision of the court is reported in 47 Fed. Rep. page 118.

Int. 15. Did the United Company machine that you have just spoken of in your last answer practice the Briggs method?

Ans. Yes, sir.

Int. 16. Mr. Chapman has referred to patent to Stickel No. 296,084, dated April 1, 1884, disclosing a method of forming a chainstitch as anticipatiag the single claim of Briggs patent 461,-793, of October 20, 1891. What have you to say as to the correctness of Mr. Chapman's conclusion in this matter? Please note that this question is asked *de bene esse*, we having objected to the question put to Mr. Chapman and answered by him on the same subject.

Ans. I am of the opinion that Mr. Chapman was absolutely incorrect in his conclusions that the method set forth in the claim of Briggs patent No. 461,793, October 20, 1891, was disclosed in patent No. 296,084, April 1, 1884, Stickel. In my opinion, there is absolutely no suggestion in the Stickel patent of the method set forth in the single claim of the Briggs patent. The most important, and, in my opinion, a conclusive reason why the Stickel patent does not disclose the Briggs method is that it fails to suggest even an essential step in the Briggs method as defined in the claim of the Briggs patent; that is:—

"Passing the second loop made from the supply thread through the second hole in the materials and through the drawn down loop," . . .

This step of the Briggs method is well illustrated in Figs. 5 and 6 of the drawings of the Briggs patent. The Stickel patent fails absolutely to disclose this essential step of the Briggs method because, as stated in line 15 of page 2 of the Stickel specification:

"the thread is kept taut" . . .

and in lines 20 to 26, page 2, of the Stickel specification:—

"the tension on the previous stitch will be constantly kept taut (see Fig. 6) until the needle, with loop-holder and finger, has been drawn backward far enough so as to cause the loop of thread to slip off from the finger and to be drawn through the hole, as seen in Fig. 7."

As I understand these statements in that Stickel specification, the free end of the thread represented at G is kept under constant tension from the position of the tools represented in Fig. 5 through the position shown in Fig. 6 to the position illustrated in Fig. 7.

This being the case, it is obvious that at the moment the short loop shown in Fig. 6 is released from the spring finger, the thread in the loop will immediately be taken up by the tension. So that in passing through the stock from the position shown in Fig. 6 to the position shown in Fig. 7 the needle must form its own loop just as a needle in all chainstitch sewing machines in use at the time of the application for the Stickel patent had to form its own loop. It seems obvious, therefore, that there is no suggestion in this Stickel patent of the essential step of the method defined in the claim of the Briggs patent to which I have referred; th· is:—

"passing the second loop made from the supply thread through the second hole in the materials and through the drawn down loop," . . .

I call attention further to the fact that in the use of the Stickel tool there must necessarily be a very objectionable rendering of the thread, or see-sawing action of the thread through the hook of the needle which it was an object of the Briggs method to overcome. First, there must be a rendering of the thread through the hook of the needle in the change from the relative positions of the needle, hook and thread shown in Fig. 5 to the relative positions shown in Fig. 6. That there must be this rendering is clear from the statement in lines 17 to 20 on page 2 of the Stickel specification as follows:—

"Then the tool is drawn back, the tension of the loop thereby increasing and swinging the movable finger inward toward the hook."

This rendering of the thread through the hook of the needle is, of course, in the direction of the tension. Again, there must be a rendering of the thread through the hook of the needle in the opposite direction, in the progress of the needle from the position shown in Fig. 6 to that shown in Fig. 7. As I have explained, the instant that the thread is released by the spring finger, which release immediately follows the position of the part shown in Fig. 6, the thread which is in the small loop shown in Fig. 6 is immediately taken up by the tension. Accordingly what loop there was is now gone and the needle must form its own loop in passing through the materials and in moving to the position shown in Fig. 7. Furthermore, it

must be clear that even if I am incorrect in my view that according to the method of the Stickel specification the small loop shown in Fig. 6 is taken up by the tension immediately upon its release by the spring finger, it cannot be denied that the loop shown in Fig. 6 is less than half the size of the loop shown in Fig. 7, and it is certainly obvious that the loop shown in Fig. 7 cannot be produced without substantial rendering of the thread through the hook of the needle.

Another reason, which to my mind is alone conclusive, of the failure of the Stickel patent to disclose the method of the Briggs patent is that there is no suggestion in the Stickel patent of any effect whatever being produced upon the preceding stitch. The object of the method defined in the claim of the Briggs patent is to set the preceding stitch, not the stitch which is being formed. This is clear from the statement on page 2 of the specifications of the Briggs patent, in lines 93 to 99, as follows: —

"If now the supply thread *t* be pulled taut in the direction of the arrow, as shown in Fig. 7, the loop *h*' will be drawn tight about the instrument and laid against the surface of the material *b* preparatory to forming the third stitch, and at the same time the first stitch will be set."

Again, quoting from lines 66 to 70 on page 2 of the Briggs specification: —

"The supply thread *t* is represented as pulled taut in the direction of the arrow, the second loop *h*' as tightened around the instrument and laid against the material *b* and the first stitch *b* as set."

The change effected by the movement of the Stickel tool from the position represented in Fig. 4 to that represented in Fig. 5 is simply a tightening of the loop around the needle. There is no suggestion anywhere in the Stickel specification that any effect whatever is produced upon the preceding stitch by the transition from the position of the tool shown in Fig. 4 to that shown in Fig. 5, nor indeed is there anywhere on the Stickel specification a suggestion that Stickel sets the preceding stitch or any stitch in any way whatsoever.

The expression "previous stitch" in line 70 on page 1 of the

Stickel specification, and line 16 of page 2 of the Stickel specification, obviously, in view of the context, must mean the stitch being formed at the time, which comprises the loop then around the shank of the needle.

As I have stated, there is nothing in the Stickel specification to suggest that he intended or contemplated setting the stitch in any manner whatsoever, and much less is there any suggestion that he contemplated setting the stitch in any other manner than that which was the only way known at the time of the application for his patent; that is, by the needle, and by the needle alone, with the attendant rendering of the thread through the hook of the needle, which it was an object of the Briggs method to obviate.

Mr. Chapman attempted to support a hypothetical method of operation which he set up for the Stickel method by appealing to the knowledge of the "man skilled in the art". The conclusive answer to Mr. Chapman's statement in this connection is that at the date of the application for the Stickel patent, December 15, 1883, the Briggs method, as defined in the claim of the Briggs patent, had not been invented. The only way to set a stitch in a chain-stitch sewing machine which at that date was known to the man skilled in the art was the setting of the stitch by means of the needle, as it was done universally by all chain-stitch sewing machines at that time.

I should like to add that I never heard of the Stickel patent until it was mentioned by Mr. Chapman in his testimony, and it has never in any way been mentioned in connection with any litigation involving the Briggs patent No. 461,793.

Mr. CHOATE. This question is also asked *de bene esse* on the same ground that we objected to the subject-matter of it in Mr. Chapman's examination:

Int. 17. Mr. Chapman has asserted the identity of the subject-matter of claims 4 and 5 of British patent 13,366 of 1888 to French and Meyer with the Briggs method as defined in the single claim of the Briggs patent. State briefly what is your view of the accuracy of Mr. Chapman's conclusion.

Ans. I am forced to the conclusion that in taking this position

Mr. Chapman has failed to understand the Briggs method as set forth in the claim of Briggs patent 461,793. That method is a method of forming chain stitches. The method defined in claims 4 and 5 of British patent No. 13,366 in 1888 is a particular method to be practiced in the manufacture of boots and shoes, and includes only the single step of the method defined in the claim of the Briggs patent. A machine could be built and used which would infringe the claim of the Briggs patent without infringing the claims 4 and 5 of the British patent No. 13,366 of 1888; while, on the other hand, a machine could be built and used which would infringe the method defined in claims 4 and 5 of the British patent, but would not infringe the claims of the Briggs patent. For example, if the Eppler welter were provided with a thread finger and take-up, properly timed, the machine would infringe the claim of the Briggs patent, but would not infringe the two claims of the French and Meyer British patent. While, on the other hand, a welting machine which laid the chain on the welt and which was provided with a take-up but not with a thread finger would infringe claims 4 and 5 of the British patent, but would not infringe the single claim of the Briggs patent.

More than this, the single claim of the Briggs patent includes as an important and essential step in its method a step which is not set forth in claims 4 and 5 of the British patent, and the claims in the Briggs patent would have been patentable if a machine practicing the methods defined in claims 4 and 5 of the British patent had been a part of the prior art at the time the Briggs invention was made.

Mr. WEBSTER. All that portion of the answer relating to what was or was not patentable, with all that portion referring to what was or was not an infringement or what might or would be an infringement, is objected to as inadmissible, incompetent and an attempt on the part of the witness to pass on questions of law.

Int. 18. Have you collected under one cover various patents which have been referred to in your testimony?

Ans. I have.

Int. 19. Will you state what the volume of patents before you comprises?

Ans. The collection of patents which I produce comprises copies of all of the patents which I have mentioned in my deposition regarding welt and turn sewing machines.

[*One volume of copies of patents introduced in evidence and marked "Defendants' Exhibit 108".*]

Int. 20. Will you kindly read into the record the number, date and name of the patentee of each of those patents?

Mr. WEBSTER. And the title, too; don't you want that?

Mr. CHOATE. I don't care for it. That is to show exactly what is in this exhibit, without having to examine it itself.

Ans. No. 34,413, February 18, 1862, Destouy.

Reissue No. 3,635, reissued September 7, 1869, Destouy.

No. 93,731, August 17, 1869, Mills.

No. 170,547, November 30, 1875, Goodyear and Hadley.

No. 190,709, May 15, 1877, Dancel.

No. 253,156, January 31, 1882, Campbell.

No. 366,935, July 19, 1887, Dancel.

No. 412,703, October 8, 1889, French and Meyer.

No. 412,704, October 8, 1889, French and Meyer.

No. 461,793, October 20, 1891, Briggs.

No. 488,505, December 20, 1892, LaChapelle.

No. 495,452, April 11, 1893, Cole.

No. 507,873, October 31, 1893, Arnold.

No. 518,911, April 24, 1894, Briggs.

No. 533,301, January 29, 1895, LaPerriere.

No. 561,386, June 2, 1896, French.

No. 583,522, June 1, 1897, Warren.

No. 634,850, October 10, 1899, Fowler and Warren.

No. 666,823, January 29, 1901, Selby.

No. 679,409, July 30, 1901, Alley.

No. 684,537, October 15, 1901, Briggs.

No. 684,538, October 15, 1901, Briggs.

No. 687,719, December 3, 1901, Briggs.

No. 700,279, May 20, 1902, Winkley.

No. 705,062, July 22, 1902, French and Meyer.

No. 705,063, July 22, 1902, French and Meyer.

No. 710,612, October 7, 1902, Richardson.
No. 732,729, July 7, 1903, French and Meyer.
No. 781,596, January 31, 1905, French and Meyer.
No. 790,790, May 23, 1905, French and Meyer.
No. 833,513, November 13, 1906, Fuller.
No. 877,858, January 28, 1908, Plant.
No. 877,859, January 28, 1908, Plant.
No. 935,726, October 5, 1909, Alley.
Reissue No. 13,374, reissued February 27, 1912, Plant.
No. 958,298, May 17, 1910, Plant.
No. 1,003,175, September 12, 1911, Eppler.
No. 1,005,181, October 10, 1911, Eppler.
No. 1,015,304, January 23, 1912, Eppler.
No. 1,015,772, January 30, 1912, Ashworth.
No. 1,017,059, February 13, 1912, McPherson and Orr.
No. 1,017,440, February 13, 1912, Meyer.
No. 1,018,130, February 20, 1912, Plant.
No. 1,023,071, April 9, 1912, Eppler.
No. 1,028,474, June 4, 1912, Mayo.
No. 1,030,742, June 25, 1912, Meyer.
No. 1,030,743, June 25, 1912, Meyer.
No. 1,030,804, June 25, 1912, Briggs.
No. 1,030,816, June 25, 1912, Holmes.
No. 1,030,867, July 2, 1912, Briggs.
No. 1,048,511, December 31, 1912, Eaton.
No. 1,071,050, August 26, 1913, Holmes.
No. 1,071,435, August 26, 1913, King.

Mr. WEBSTER. The introduction of all patents issued after the date of the filing of the petition is objected to as having no bearing on the question at issue.

OUT-SOLE STITCHING MACHINES.

Int. 21. What is the function of an out-sole stitcher of the Goodyear type in the manufacture of shoes?

Ans. An out-sole stitcher is used to sew the out-sole of a welt shoe to the welt, in this manner attaching the out-sole to the shoe.

Int. 22. Mr. Chapman has testified that the subject-matter of certain Letters Patent, namely, 473,870, April 26, 1892, French and Meyer, and 474,774, May 10, 1892, French and Meyer, are embodied in the machine illustrated in Complainant's Exhibit 208, which is a photograph of on out-sole lockstitch machine manufactured by the Long Machine Company. How does the machine illustrated in Plaintiff's Exhibit 208 compare with the Goodyear rapid lockstitch out-sole machine put out by the United Company in February, 1899?

LOCKSTITCH MACHINE: GOODYEAR OUTSOLE RAPID.

Ans. I have not had an opportunity to examine the machine of which Plaintiff's Exhibit 208 is a photograph, but that machine is apparently a copy of the Goodyear out-sole rapid lockstitch machine as put out by the Goodyear Company just prior to February, 1899, and by the United Shoe Machinery Company after that date, except that the machine shown in this photograph is not organized to sew the out-soles of shoes provided with extension edges. I have examined an out-sole stitcher which bore the following name plate: "R. H. Long Machinery Company, So. Framingham, Mass., United States of America, Patent Applied For. Machine No. 870." That machine which I examined had a different base from the base shown in the Exhibit 208, owing, I assume, to the fact that it was a part of a cobbler's outfit, and it had a bobbin winder on the left end of the shelf. Otherwise that machine was a substantial duplicate of the United Company's machine of 1899, with the important exception to which I have previously referred; that is, it was not organized to sew shoes provided with extension edges.

Int. 23. What was the first patent definitely directed to a shoe stitcher of this general character?

Ans. The first patent for a machine of this type was No. 127,423, June 4, 1872, Mills. A typical claim of this patent is the second, as follows:—

"2. In a machine, as aforesaid, for sewing the welts and soles of boots and shoes, the barbed curved needle formed and moving within the small radius described, and operating in combination

with the shuttle, which lays its thread in the channel formed in the sole of the boot or shoe, substantially as set forth, for the purpose specified."

Among the later patents, illustrating drawings and setting forth in their claims machines for sewing out-soles of welt shoes, is patent No. 253,156, January 31, 1882, Campbell. The machine shown in that patent was commercially used for sewing out-soles to welts for many years.

Int. 24. Referring to the patents enumerated by Mr. Chapman, describe briefly the several alleged improvements shown and described in those patents which were embodied in the Goodyear machine of 1899 and in the Long machine illustrated in said Exhibit 208.

Ans. Referring, first, to patent No. 473,870, April 26, 1892, which was the first patent to which Mr. Chapman referred as describing in its claims mechanism embodied in the machine shown in Plaintiff's Exhibit 208, claims 1, 3, 5 and 6 of that patent describe the mechanisms connecting the pull-off and presser foot. Claims 4, 10 and 11 describe the mechanism for positively operating the thread lifter. Claim 7 is directed to mechanism for actuating the looper, and claims 8 and 9 of the mechanism employed in that machine for adjusting the thread clamp. The mechanism set forth in all of the eleven claims of this patent No. 473,870 was embodied in the out-sole rapid lockstitch machine as it was put out by the Goodyear Shoe Machinery Company just prior to February, 1899.

Patent No. 474,774, May 10, 1892, French and Meyer, the subject-matter of which Mr. Chapman also found to be embodied in the machine of Plaintiff's Exhibit 208, describes in its three claims the presser-foot lifting mechanism used in the Goodyear out-sole rapid lockstitch machine in 1899.

Patent No. 424,966, April 8, 1890, French and Meyer, was also discussed by Mr. Chapman in connection with the machine of Plaintiff's Exhibit No. 208. Assuming that that exhibit is a photograph of a machine substantially like the Long machine No. 870 which I have stated I have examined, I do not agree that the ma-

chine of Exhibit 208 does not include the mechanism defined in the first claim of this patent. If this claim is entitled to any liberality at all in the application of the doctrine of equivalents, it will, in my opinion, set forth mechanism which is incorporated both in the Goodyear out-sole lockstitch machine of 1899 and in the Long stitcher, although, of course, the utility of this mechanism is limited to the oscillating type of shuttle. Both of these machines, however, that is, both the Goodyear machine of 1899 and the Long stitcher, used the oscillating type of shuttle.

[*Adjourned to 10* A. M., *Tuesday, October 7, 1913.*]

BOSTON, MASS., October 7, 1913.

Present: ALLEN WEBSTER, Esq., *of Counsel for Complainant;*
BENJAMIN PHILLIPS, Esq., *appearing as counsel for Defendant, in the absence of* Mr. CHOATE.

Direct Examination by BENJAMIN PHILLIPS, Esq., *of Counsel for Defendant.*

Int. 25. Did the Goodyear stitchers put out by the United Company in 1899 involve any features of construction and organization not embodied in the machine illustrated in Complainant's Exhibit 208? If so, state what they were and their importance in the art. If the same were shown and described in Letters Patent of the United States, state the patents.

Ans. The Goodyear out-sole stitcher as put out by the Goodyear Company just prior to 1899 and by the United Company immediately after February, 1899, embodied the organization set forth in claims of the following patents: —

No. 563,471, July 7, 1896, French and Meyer.

No. 563,472, July 7, 1896, French and Meyer.

No. 582,510, May 11, 1897, Shriner and Adams.

The mechanism set forth in the claims of the three patents which I have just enumerated was described more broadly in an application for a patent which was then pending and upon which there was subsequently granted patent —

No. 675,783, June 4, 1901, Meloon.

In general terms the mechanism set forth in the claims of these

four patents which I have enumerated consisted in an organization in an out-sole stitching machine which adapted that machine to attach the out-soles of welt shoes, which were provided with extension edges. The term "extension edge" has been used generally to include what is more properly known as a Scotch edge, and what is usually termed a Baltimore edge.

I produce a shoe which is provided with a Scotch edge. In this shoe it will be noted that the edge of the sole around the forepart extends a substantial and uniform distance from the upper.

[*Shoe, extension edge, Scotch, introduced in evidence and marked "Defendants' Exhibit 109".*]

[*Answer to Int. 25 continued:*]

I produce also a shoe provided with a Baltimore edge, and call attention to the fact that in this shoe the edge also projects from the upper around the forepart, but that the extension is not uniform. The projecting edge of the sole increases gradually from the middle of the toe around the outside of the shoe and the width is greatest adjacent to the ball. On the inside of this particular shoe the extension edge on the sole increases gradually in width from the middle of the toe around the inside of the shoe, to a maximum width adjacent to the ball. There is a wide variety in the contours which are imparted to the extension edges of Baltimore edge shoes in their manufacture, according to the style of the shoe or the demand of the customers for whom these shoes are made.

[*Shoe, extension edge, Baltimore, introduced in evidence and marked "Defendants' Exhibit 110".*]

[*Answer to Int. 25 continued:*]

Of these two types of extension edges, that with the Scotch edge — that is, the extension with uniform width all around the forepart — is the older. Prior to 1895 shoes had for many years been made by hand which were provided with Scotch edges. The Baltimore edge was of more recent development, but that had, prior to about 1895, been used in hand-made shoes for several years.

I call attention to the fact that in both of the shoes which I have produced, Defendants' Exhibit 109 and Defendants' Exhibit 110, the edge of the sole is narrower in the shank than in the forepart.

And in the forepart, where substantial utility is secured by the wider edge, the maximum width of that extension in the Baltimore edge shoe is located at the part of the shoe where the advantages of the extension are most needed.

It is common experience that in the wear of a shoe the upper leather stretches. This is due partly to the elastic character of the leather, and partly to the strain upon the leather across the ball of the foot which is caused in walking. This stretching causes the upper to spread across the ball, and after the upper has been so stretched the outline of the stretched upper will be approximately parallel with the edge of the sole in the usual type of Baltimore edge shoe. Accordingly the extension edge affords a proper support for the upper, and for the foot at exactly the point where that additional support is needed; that is, at the ball, where the greatest stretching of the upper takes place. It is across the ball, also, that the wearer of the shoe needs the maximum support for the foot in walking, and the total width of the sole of an extension edge shoe, increased as it is by the extension edge of maximum width in the ball, affords the maximum support for the foot of the wearer across the ball where that maximum support is needed.

Another practical advantage of the Baltimore extension edge sole relates to the usual tendency of the foot to turn over toward the outside of the shoe. This tendency is resisted by the wider edge on the outside of a Baltimore edge shoe. A still further advantage in an extension edge, which projects beyond the upper all around the forepart, is that it protects the upper of the shoe and the foot of the wearer from injury in case of accidental contact with an obstacle in walking. It has been my own experience that many times I have avoided injury to my foot, when I have accidentally kicked against an obstacle in walking, by taking the force of the blow upon the extension edge of my shoe instead of upon the upper.

As I have stated, Scotch edges were made by hand for many years prior to 1895, and Baltimore edge shoes were also made by hand for several years prior to that date, and up to that date there had been provided no machines which were organized to sew the out-soles of shoes provided with extension edges.

Defining somewhat more specifically the extension edge organization of the out-sole rapid stitcher as it was put out in 1899, that organization enabled the machine to attach the out-sole to the welt by a line of stitching which was located around the forepart of the shoe as close as practicable to the edge of the sole, providing for this without interfering with the normal operation of the machine in the shank. It is desirable that the outseam in the shank shall be located as close as possible to the edge of the last. On the other hand, it is important that around the forepart the outseam shall be located as close as is practicable to the edge of the sole. Such location of the outseam around the forepart is important, because it prevents the out-sole and the welt from springing apart, which would not only result in unsightly appearance but would admit moisture between the welt and the out-sole, which would result in the rotting of the thread, and eventually in the breaking of the seam and the tearing away of the sole from the welt.

In 1899 two types of extension edge mechanisms were supplied to users of the Goodyear out-sole stitcher. These were known as types A and B. Type A was described in the claims of patent No. 675,783, June 4, 1901, Meloon, and No. 563,471, July 7, 1896, French and Meyer. Type B was described in the claims of patent No. 675,783, June 4, 1901, Meloon; No. 563,472, July 7, 1896, French and Meyer; and No. 582,510, May 11, 1897, Shriner and Adams.

It will be noted that I have included in the list of patents on both types patent No. 675,783, June 4, 1901, Meloon. This patent sets forth in its first claim an organization of out-sole stitching machine which enables such a machine to attach the soles of extension edges. The first claim of that patent is as follows:—

"1. In a sole sewing machine for uniting the outer sole and welt of a shoe while the shoe is on the last, the combination with the stitch forming mechanism, of means external to the shoe for engaging the outer sole and welt and holding both against the endwise movement of the needle, and a guide for engaging and externally guiding the shoe, the said guide being movable during the stitching operation for the purpose of varying at the will of the operator the position of the guide with relation to the stitching

mechanism, whereby the line of stitching may be located nearer to or farther from the upper, as set forth."

In 1899 manufacturers were divided in their preference as to the type of extension edge mechanism which was better adapted for their work. In recognition of this preference either type was supplied as ordered by manufacturers. Within a few years after 1899, however, the demand for type B fell off rapidly and type A was generally supplied with the machine. After 1899 the proportion of shoes which were made with extension edges increased rapidly, and by 1908 the demand for an out-sole stitcher organized for extension edge work was so universal that at the beginning of that year the out-sole stitcher as supplied by the United Company was regularly organized for this work.

At the end of the company's fiscal year March 1, 1911, practically all, if not every one, of the out-sole stitchers which were being used for attaching the out-soles of welt shoes were organized to sew extension edge shoes. At that time, as at the present time, and in fact as for some years prior to March 1, 1911, nearly all welt shoes, both men's and women's, which were being manufactured were provided with extension edges, and I am satisfied that no manufacturer in the country was not making the greater part, in fact nearly all, of his shoes with extension edges. Prior to the date which I mentioned, March 1, 1911, an organization for sewing extension edges had been incorporated in the model K out-sole stitcher which, as I shall explain later, was adopted in May, 1910, and superseded the out-sole stitcher of 1899.

Finally, as to the importance and value of an organization in an out-sole stitching machine which will enable it to attach the soles of extension edge shoes, I should state that in my opinion it is quite as important that the machine should be able to handle the shoe properly in such manner as to locate the line of stitching where good shoemaking requires that it should be located, as it is that the machine should properly form the stitch; and I regard the extension edge organization as important and as essential a part of an out-sole stitching machine under modern conditions as are the needle and awl.

Another improvement which was made in the Goodyear out-sole stitcher just prior to 1899 was the embodiment in it of mechanism which would bevel the welt simultaneously with the stitching. This mechanism was constructed as is described in all twelve claims of patent number 704,458, July 8, 1902, Hadaway. This improvement was set forth in more general terms in reissued patent No. 11,578 [original patent No. 549,124, November 5, 1895], and in patent No. 704,457, July 8, 1902, Hadaway.

Claim 7 of reissued patent No. 11,578 is as follows: —

"7. The combination with the stitch forming mechanism of a shoe sewing machine, of mechanism for feeding the work, and welt beveling mechanism arranged to bevel the welt during the sewing operation, substantially as described."

The advantage of this improvement was that such manufacturers as desired to perform this operation upon their shoes could in the use of an out-sole stitcher provided with this improvement perform the welt beveling and the stitching operation simultaneously, thus obviating the necessity on such work of performing the welt beveling operation subsequently, either by hand or by another machine operation.

Int. 26. State whether or not, since 1899, there have been any improvements or modifications introduced in or in connection with the Goodyear stitcher put out by the United Company. If so, what they were; the reason for them, and their importance in the art. If the same were shown and described in any Letters Patent of the United Company, name those patents.

Ans. I will first state that in 1910 a radically new out-sole stitching machine was put out by the United Company which was known as model K, and which superseded the out-sole stitching machine of 1899, and that model K was in turn superseded in 1912 by another new model, which was known as model M. Before discussing these machines, however, I will refer to a series of very useful improvements which were made in the out-sole stitcher of 1899 during the years following.

One of the most important of these improvements consisted in the organizing of the 1899 out-sole stitcher to stitch the outsole to

the welt by what is known as a "fudge stitch". The practice of sewing out-soles with a fudge stitch was introduced about 1905. Prior to that date it had been the practice to sew the out-sole by a stitch which was laid upon the upper surface of the welt, and these stitches were afterward "separated" by forming an indentation in the interval between successive stitches. About 1905, however, manufacturers decided that they preferred to finish the upper face of the welt in a different manner. That is, by wheeling this upper face of the welt to form imitation stitch impressions, and then by burnishing the stitch impressions so formed. To enable the face of the welt to be finished in this manner it was desirable that the stitches should be sunk below the face of the welt, to avoid injuring or possibly cutting the stitches in the operations of welting and burnishing.

The fudge stitch is shown in both exhibits of extension edge shoes which I have produced, Defendants' Exhibits Nos. 109 and 110. It will be observed that the fudge stitch presents a very attractive appearance, which is neater and more finished than is the edge of a shoe which has the stitches separated. In addition to this neat and attractive appearance, substantial practical advantages are secured in sewing the outsole by a fudge stitch. It is possible to make the stitches longer, since they are not visible on the top of the welt, and this effects an economy in both the amount of thread needed for a shoe and in the time required for the outsole stitching operation. It is entirely practicable to attach a sole satisfactorily and securely by longer stitches than would be permissible in a shoe as it is usually made when the stitch-separating operation is performed. A further advantage of the fudge stitch is that it is practicable to use a grade of welt which, while as strong and serviceable as the welt used in the shoes in which the stitches are separated, lacks the smooth finish which is required when the stitches are to be separated.

The United Company produced several types of mechanisms, either of which could be included in the organization of the out-sole stitcher to enable it to sew soles to the welt with the fudge stitch. The general principle of the operation of these several types was the

same. Each of them provided the machine with a knife arranged to form a slit in the upper face of the welt, and located just in advance of the needle so that the slit was formed in exactly the right location to receive each stitch as it was immediately to be made after the successive operations of the knife.

Furthermore, as it is usually desired to attach the sole with the fudge stitch only around the forepart, each of these fudge-stitch mechanisms was so organized that it was rendered operative at the same time that the extension edge mechanism was rendered operative, to provide for the proper sewing of the extension edge around the forepart.

The patents owned by the United Company which support in their claims these fudge stitch organizations are as follows: —

No. 900,925, October 13, 1908, Haradon (application filed February 4, 1907).

No. 946,591, January 18, 1910, Arnold (application filed December 8, 1905).

No. 1,017,380, February 13, 1912, Cady and Thayer (application filed October 11, 1907).

No. 1,017,397, February 13, 1912, Fletcher and Maclean (application filed March 31, 1905).

No. 1,027,791, May 28, 1912, Allen (application filed February 8, 1906).

Of the patents in the above list, Nos. 946,591, 1,017,397, 1,027,791 set forth in their claims mechanism embodied in all of the types of fudge-stitching mechanism which were supplied by the United Company with its out-sole rapid lockstitch machine. That is the machine of 1899. The patent which sets forth such an organization in its claims in the broadest terms in No. 946,591. A typical claim of this patent is the first, which is as follows: —

"1. An outseam sewing machine, having, in combination, stitch-forming mechanism including a curved hook needle, a work support engaging the shoe externally to support the welt and outsole in proximity to the needle and a welt channeling knife located in close proximity to the path of the needle for cutting a channel in the welt in advance of the stitch forming mechanism and in proper position with relation to the stitch forming mechanism so that the

seam of stitches shall be sewn in the bottom of the channel thus cut, substantially as described."

A typical claim of patent No. 1,017,397, which also describes in its claims in general terms the type of fudge-stitch mechanisms supplied on the outsole rapid stitcher, is claim 4, which is as follows: —

"4. In a sole sewing machine the combination with stitching mechanism of means for gauging the distance of the stitch from the edge of the sole, means acting in advance of said stitching mechanism for forming a slit in the leather and means for throwing said slit forming mechanism into or out of engagement upon change in said gauging means."

The practice of making shoes with the fudge stitch, which, as I have stated, began about 1905, became very general, and by 1908 over 75 per cent of all men's black shoes and nearly all women's black shoes were fudge stitched. The practice has continued, and in substantially the same proportion, to the present day. I have no hesitation in stating that modern commercial conditions require that an out-sole stitching machine be organized to sew out-soles with the fudge stitch.

In addition to the organization for enabling the out-sole stitching machine to attach the soles by the fudge stitch, a number of other improvements were embodied from time to time in the out-sole rapid lockstitch machine of 1899. An improved bobbin-holding mechanism was adopted in May, 1905. This is defined in the claims of patent No. 1,048,565, December 31, 1912, Meyer (application filed August 16, 1905).

This mechanism was improved by the construction set forth in patent No. 1,015,023, January 16, 1912, Hatch (application filed March 10, 1910), and the improved construction was adopted in November, 1908, as a regular equipment for the machine. In 1910 an improved bobbin tension was first incorporated in this machine and it became the regular equipment for the machine in January, 1911. This improvement has also been incorporated in nearly all of the out-sole stitchers which had previously been put out. This improvement is set forth in the claims of patent No. 974,309, Nov-

ember 1, 1910, Thayer, and No. 974,757, November 1, 1910, Dow. This improved mechanism has been continued in the later models of the out-sole stitcher, which, as I have previously indicated, were adopted, respectively, in 1910 and 1912.

In July, 1909, a needle-oiling device became a part of the regular equipment of the out-sole stitcher. This improvement is set forth in the claims of patent No. 641,330, January 16, 1900, Rush, and No. 922,696, May 25, 1909, Hadaway.

In addition to the improvements which I have enumerated which were adapted for all kinds of work and, as I have stated, were incorporated as parts of the organization of the out-sole stitcher, several improvements have been made in the machine which adapted it to do special kinds of work, and which, therefore, were not needed on all machines. These special equipments were, first, a presser foot provided with a channeling knife which enabled the machine to form a channel in the out-sole to receive the stitch simultaneously with the stitching operation. This improvement is defined in the claims of the patent No. 1,048,719, December 31, 1912, Meyer (application filed April 15, 1910).

Second, a presser foot with grooving knife which adapted the machine for the kind of work known as "stitching aloft" was adopted in March, 1909. The kind of work for which this special equipment was intended is illustrated in Defendants' Exhibit 109. This improvement is defined in the claims of patent No. 1,030,767, June 25, 1912, Beckman (application filed March 18, 1910).

Third, another special equipment for the out-sole stitcher was a welt-guide which adapted the machine for attaching the soles of that class of shoes known as "stitch downs". This improvement was adopted in February, 1910, and is not as yet shown in any granted patent.

In addition to the improvements which I have enumerated, important improvements were made from time to time, during the period after February, 1899, in the wax pots which were used on this machine. The wax pot which is known as type B and which was used as early as 1899 is set forth in the claims of patent No. 732,729, July 7, 1903, French and Meyer. A steam wax pot known

as type C, which was first put out in September, 1904, is set forth in the claims of patent 930,115, August 3, 1909, Alley.

In March, 1907, a greatly improved steam wax pot known as type D was first put out. This is defined in claims of patent No. 1,015,304, January 23, 1912, Eppler (application filed February 26, 1906). Further improvements represented in what is known as type E were adopted in January, 1910, and are defined in patent No. 1,015,304, which I have just mentioned, and also in patent No. 1,023,071, April 9, 1912, Eppler (application filed November 22, 1909).

These wax pots which I have last named, types D and E, have been used exclusively on the new models of the out-sole stitcher, models K and M, and also many of the old type of out-sole stitcher, that is, the machine of 1899, which had previously been put out were equipped with these improved wax pots after their adoption.

As to the importance of these improvements in wax pots, I should explain that it is highly important that the wax through which the thread passes on its way to the stitch-forming mechanism should be kept at the right temperature. If the wax is not kept hot enough, lumps form in the wax; these get on the thread, interfere with the operation of the wax stripper and prevent proper operation of the mechanism for putting the tension on the thread. On the other hand, if the wax is kept too hot certain of its constituents will evaporate and what is left will be hard and brittle and entirely unfit for use. Further, if the wax is kept too hot, it boils over. It was a common experience when old types of wax pots were used in connection with this machine to find as much wax on the floor under the wax pot as there was in the pot.

During all this period subsequent to 1899 when, as I have explained, the out-sole rapid stitcher was being improved to enable it to do the work required by the changing commercial conditions, the United Company was carrying on experimental work with a view to producing an entirely new out-sole rapid lockstitch machine, and during this period some four or five inventors were almost constantly engaged in experimental work looking to the production of such a machine. As a result of a long period of

experimental work there was finally developed a machine which, in May, 1910, was first put out for commercial use. The official name of this machine is "Lockstitch Machine, Model K, Goodyear Outsole Rapid". For convenience I shall hereafter refer to the machine as the model K machine.

LOCKSTITCH MACHINE: GOODYEAR OUTSOLE RAPID, MODEL K.

This model K outsole stitcher was a radically new machine, entirely different from any out-sole stitcher ever before used. In the experimental work which resulted in the production of this machine the primary object which was aimed at was the production of a machine which would run at a much higher speed than the 1899 out-sole stitching machine, and which, by virtue of its higher speed, would have a greater capacity than that machine. It was also endeavored, in the production of this machine, so to organize it that it would do better work and would enable the operator to operate it more conveniently.

The speed of the out-sole stitching machine of 1899 was limited, under practical commercial conditions, to 375 stitches per minute. The reasons for this limit to the speed of that machine were, first, the machine was organized with an oscillating shuttle and the burden of oscillating in two directions at each operation of the machine the comparatively heavy parts which comprised this shuttle mechanism stood in the way of a high speed for this machine. Second, the machine comprised in its organization a very heavy feed slide which had to be reciprocated in two directions at each operation of the machine. It was impracticable to reciprocate this heavy feed slide more rapidly than was done when the machine was run at a speed of 375, because the wear on the parts which operated the feed slide would soon become excessive at higher speeds and the operation of that slide would become uncertain, resulting in uneven feed of the work.

Third, another serious defect in the 1899 machine when it was run at high speed was due to the overthrow of the take-up. At high speed the inertia of the parts and the tendency of all lost motion in the operating mechanism occasioned by wear of the parts

or for other reasons to concentrate at the operative end of the take-up lever, are likely to cause inaccurate operation of the take-up, so that the lock of the stitch would not be properly located.

Fourth, in the organization of the out-sole stitching machine of 1899 the presser foot was always held in pressing engagement with the work. While the mechanism which forced the presser foot against the work was yielding, the presser exerted by it had to be substantial in order to force together properly the layers of work upon which the machine was operating. When the work increased in thickness as the operation of the machine proceeded, it was necessary for the work to wedge the presser foot away from the work table, which made the operation of the awl in the work-feeding mechanism harder and also frequently caused the awl to crowd the stock in front of it, which caused uneven stitches.

Fifth, the operative parts of the 1899 machine were actuated by cams and heavy levers and many operations of the stitch-forming mechanism, especially the awl, needle and take-up, required for their proper timing in the cycle of the machine's operations very abrupt cam movements which alone made it impracticable to run the machine at high speed.

All of the objections which I have enumerated to the out-sole stitcher of 1899 and the defects in the machine which rendered it impracticable to run the machine at a high speed were overcome in the model K machine introduced in May, 1910. Referring now to the improvements which enabled that machine to be run at a higher speed, as well as to produce better work, its organization included, instead of the heavy oscillating shuttle of the 1899 machine, a constantly rotating loop-taking hook which rotated always in the same direction and was operated in combination with a stationary thread case.

It has been found very advantageous in an out-sole stitcher so to organize the stitch-forming mechanism that the needle shall enter the stock before the awl has left it, and to secure this mode of operation in the model K machine the loop-taking hook to which I have referred was arranged to rotate three times during each cycle of the machine's operations, and in one of these rotations to take the

thread from the needle and carry it around the bobbin. Other improvements to which I shall not take time to refer made this shuttle mechanism of the model K machine extremely satisfactory in operation and very convenient for the operator.

Instead of the very heavy feed slide of the 1899 out-sole stitching machine, which, as I have explained, had to be reciprocated completely 375 times per minute in the regular operation of that machine, and which rendered it impracticable to run that machine at a higher speed, this new model K machine was provided with a very light feed slide which was operated by light pivoted levers as compared with much heavier operating mechanism for the feed slide of the old 1899 machines.

I produce a feed slide of the model K machine and also a feed slide of the old 1899 machine. The feed slide of the model K machine weighs three ounces; the feed slide of the old 1899 out-sole stitcher weighs four pounds and fourteen ounces. That is, the parts which had to be reciprocated in a right line at every operation of the old lockstitch machine of 1899, 375 times a minute, weighed twenty-five times as much as the parts which have to be reciprocated in the feeding of the work in the model K machine.

[*Feed slide of model K out-sole stitcher so produced is marked "Defendants' Exhibit 111".*

Feed slide of out-sole rapid stitcher of 1899 so produced is marked "Defendants' Exhibit 112".]

[*Answer to Int. 26 continued:*]

The difficulties attending the tendency of the take-up of the old out-sole stitcher, the 1899 machine, were overcome in the new model K machine by so organizing take-up of that machine that its operative end moved in the arc of a circle, so defined in relation to the stitch-forming mechanism that the operative end of the take-up always moved past a point at which it was at the greatest distance from the stitch-forming mechanism into a position of rest at which it was nearer to the stitch-forming mechanism. By this organization any overthrow of the take-up was of no importance, because it would take effect after the take-up had passed the point at which it

was at the greatest distance from the stitch-forming mechanism, and at which it had located the lock of the seam.

Associated with this improved take-up was an improved auxiliary take-up mechanism. The auxiliary take-up of the old machine was spring controlled, so that it would yield, to give up thread as required. The auxiliary take-up of the new model K machine was so organized that while yielding in its operation, as was needed, it was given positive movements to give up thread as required, and to co-operate properly with the improved take-up mechanism.

Another important advance in the organization of the model K machine over the 1899 machine was the means for lifting the presser foot to free the work from pressure during the feeding of the work by the awl. Combined with this mechanism was means for giving to the presser foot a positive compressing movement which caused it to force the stock together preparatory to the formation of the stitch.

All of the objections which I have enumerated to the presser-foot mechanism of the 1899 machine were overcome by this construction. The organization of an out-sole stitching machine by which the presser foot is operated to force together the layers of stock before the formation of the stitch is set forth in the third claim of patent No. 1,030,582, June 25, 1912, Hadaway (application filed September 29, 1904). This claim is as follows: —

"3. Presser foot mechanism for sewing machines, having, in combination, a work support, a presser foot movable toward and from the work support to accommodate stock of varying thickness, and means for positively moving the presser foot a predetermined uniform distance toward the work support from any position which it assumes in accommodating stock of varying thickness, substantially as described."

I have endeavored to mention only those features of the organization of the model K machine which are of more striking character. Without taking time to refer to others, I will state that the machine incorporated in its organization many other improvements which contributed in the attaining of high speed, and to the successful use of the machine under commercial conditions.

The machine runs under commercial conditions at a speed of

from 540 to 550 stitches per minute. The machine is easily capable of a speed of 650 stitches per minute and, undoubtedly, will eventually be run at that speed. The machine has a capacity over the 1899 out-sole stitching machine of about thirteen per cent.

While many of the improvements embodied in this model K out-sole stitcher are not shown in patents which have as yet been granted, many improvements are set forth in general terms in the following patents: —

No. 553,139, January 14, 1896, Smith.

No. 563,471, July 7, 1896, French and Meyer.

No. 675,783, June 4, 1901, Meloon.

No. 916,092, December 8, 1908, Bayard.

No. 922,696, May 25, 1909, Hadaway.

No. 940,055, November 16, 1909, Plant.

No. 940,723, November 23, 1909, Plant.

No. 940,725, November 23, 1909, Plant.

No. 946,591, January 18, 1910, Arnold.

No. 963,761, July 12, 1910, Hadaway.

No. 974,309, November 1, 1910, Thayer.

No. 974,757, November 1, 1910, Dow.

No. 1,015,304, January 23, 1912; Eppler (application filed February 26, 1906).

No. 1,015,772, January 30, 1912, Ashworth (application filed November 22, 1909).

No. 1,017,397, February 13, 1912, Fletcher and Maclean (application filed March 31, 1905).

No. 1,023,071, April 9, 1912, Eppler (application filed November 22, 1909).

No. 1,027,791, May 28, 1912, Allen (original application filed February 8, 1906).

No. 1,030,582, June 25, 1912, Hadaway (application filed September 29, 1904).

No. 1,030,742, June 25, 1912, Meyer (application filed June 16, 1902).

Mr. WEBSTER. I would like to interpose an objection here.

The petitioner objects to reference to any patents issued after the filing of the petition.

[*Answer to Int. 26 continued:*]

This model K out-sole rapid lockstitch machine, which, as I have stated, was first put out in May, 1910, superseded the machine officially known as "Lockstitch Machine, Goodyear Outsole Rapid"; that is, the out-sole rapid stitcher of 1899. A large number of these machines have been put out. During the fiscal year of the company ending March, 1912, 543 were put out into shoe factories. The United Company has always been behind in filling its orders for the machine, and in May, 1911, it was 145 machines behind its orders.

This model K out-sole stitching machine, although, as I have stated, it was put out as recently as May, 1910, was in turn superseded in January, 1912, by another model known officially as "Lockstitch Machine, Model M, Goodyear Outsole Rapid".

LOCKSTITCH MACHINE: GOODYEAR OUTSOLE RAPID, MODEL M.

The reason for the short life of the model K out-sole stitching machine as the standard commercial machine of the United Company was that inventors of the United Company had continued actively at work in making further improvements in machines of this type and their improvements were of such value that officials of the United Company decided that the company's commercial machine must be provided with these improvements.

The new model M machine, which, since January, 1912, has been the standard commercial out-sole stitcher put out by the United Company —

Mr. WEBSTER. Let me interpose, right there, that the petitioner objects to all evidence relating to matters occurring since the filing of the bill.

[*Answer to Int. 26 continued:*]

Let me repeat: the new model M machine, which, since January, 1912, has been the standard commercial out-sole stitcher put out by the United Company, is founded upon the model K machine, and incorporates substantially all improvements which characterize that

machine, with the addition of other important improvements to which I will now refer.

One of the most striking improvements in the model M machine, over all out-sole stitching machines previously used or known, related to the stopping of the machine. In the operation of the model K out-sole stitcher and in the operation of the out-sole stitcher of 1899, it was necessary for the operator to stop the machine by putting his hand upon the belt pulley of the machine as he neared the end of the stitch. This was a serious objection in both the 1899 machine and the model K machine, because at the time when the operator desired to stop the machine, that is, at the end of the stitching, he was finishing up the stitching in the shank, which is the most critical part of the operation of the out-sole stitcher, and he was accordingly obliged to withdraw the support of one hand from the shoe at that critical stage in the operation on the shoe. This objection, while serious in the 1899 machine, was still more serious in a high-speed machine because the operator would be obliged to allow more time for the stopping of the machine, and accordingly to withdraw the support of one hand from the shoe at a time when more of the work remained to be done in the shank.

These objections to prior machines were overcome in the new model M out-sole stitcher, that is, the present commercial machine of the United Company, by an improvement which automatically stops the machine at the desired point. This improvement comprises a mechanism which, at whatever speed the machine may be running at the time the operator wishes to stop it, first reduces the speed to a pre-determined low speed, and then automatically stops the machine at the proper time in the cycle of its operations, always at the same point.

I should explain that the incorporation of this improvement in the model M out-sole stitcher was due to the fact that Thomas G. Plant had provided out-sole stitching machines with an automatic stopping mechanism, and observation of the Plant machine had led inventors of the United Company to believe that a successful mechanism for stopping the machine, something which had long

been desired but had never before been provided in the out-sole stitching machine, could be devised which would operate satisfactorily. The Plant mechanism was far from satisfactory as it was not a good mechanical arrangement and occasioned much trouble through breakage. After the acquisition of the Plant patents by the United Company, in September, 1910, five different inventors employed by the United Company were put to work upon the problem of providing a commercially satisfactory stopping mechanism which could be incorporated in the organization of the model K out-sole stitcher, which was then the standard commercial machine of the United Company. The mechanism finally produced by the joint work of these five inventors was that which I have described and was entirely different in structure and mode of operation from the Plant mechanism. The organization of the model M out-sole stitching machine, which provides for this automatic stopping always at the same point in the cycle of the machine's operation, is not shown in any patent which has as yet been granted, but is defined in general terms in patent No. 710,612, October 7, 1902, Richardson. A typical claim of this patent is No. 29: —

"29. A sewing machine having a driving shaft adapted to stop at a fixed point in its rotation, means for stopping said shaft at said fixed point, stitching mechanism connected to and operated by said shaft, two driving mechanisms, rotating at different pre-determined speeds for driving said shafts, and manually controlled devices for connecting either of said driving mechanisms, with said shaft, and for causing the actuation of the stopping means."

To indicate the practical importance of this stopping mechanism as well as to suggest one of the problems which had to be met in producing it, I will explain that in the operation of an out-sole stitching machine the operator usually desires when sewing the out-sole at different parts of the shoe to run the machine at different speeds, and it is necessary that any automatic stopping mechanism shall be so organized that it will operate always in the same way and always stop the machine at the same point in its cycle of operations, at whatever speed the machine be running; whether, for example, it be running at a speed of 200 stitches per minute or at a speed of 500 stitches per minute. Obviously, however, the

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momentum of the parts of the machine at a speed of 200 is much less than the momentum of those parts at a speed of 500.

Another important and valuable improvement embodied in the model M machine comprises the mechanism for automatically lifting the presser foot when the machine stops. In explaining the improvements over the 1899 machine which were embodied in the model K machine, that is, the immediate predecessor of the model M machine, I stated that the model K machine was so organized that the presser foot was lifted during each feeding operation, so that it had the important advantage over the 1899 out-sole stitching machine that it was not necessary to feed the work against the pressure of the presser foot. In the use of the model K machine, however, as in the use of the 1899 machine, it was necessary for the operator when he had finished the operation upon each shoe to lift the presser foot by hand, engaging a hand lever for that purpose. He had to repeat this operation when he began to sew the next shoe, so that he had to lift the presser foot manually twice for each shoe presented to the machine. The model M machine was so organized that when the machine stopped the presser foot was automatically lifted and remained in raised position until the machine was again started with a shoe in position for the stitching operation, when the presser foot descended and held the shoe properly for the stitching operation. This improvement contributed greatly to the convenience of the operator. As I have explained, in the older machines he had to raise the presser foot manually twice for every shoe.

In addition to obviating this difficulty, his convenience was facilitated because he was able to hold in his hand throughout the operation on each shoe the knife which he must use at the completion of the operation to sever the thread. In the use of prior machines it was necessary for the operator before he could free the shoe from the machine to reach for the hand knife, cut the thread and then move his hand again to put the knife down. By the improvement to which I am now referring, combined with the automatic stopping of the machine which made it unnecessary for the operator to take his left hand off the shoe to stop the machine,

the machine was made so convenient for the operator that it was entirely practicable for him to hold the knife in his hand throughout the operation upon the shoe.

This improved presser-foot organization of the commercial model M machine is not as yet shown in a granted patent, but one of its features is set forth in broad terms in patent No. 710,613, October 7, 1902, Richardson, of which claim 16 is as follows: —

"16. A machine of the character described comprising a presser-foot resting on the surface of the work and adjusted automatically thereby, mechanism for locking said presser-foot in operative position, and a stop mechanism controlling the operation of the machine, said parts being arranged and operated whereby the presser-foot is automatically released when the stop motion is actuated to stop the machine, whereby the said presser-foot is then free to be moved manually."

The organizations of the model M out-sole stitching machine, the present commercial out-sole stitching machine supplied to manufacturers by the United Company, is not shown as a whole or in any of its parts in any patents which have as yet been granted, but the general organization and many important features of the organization are set forth in general terms in the following patents owned by the United Company: —

No. 553,139, January 14, 1896, Smith.
No. 563,471, July 7, 1896, French and Meyer.
No. 675,783, June 4, 1901, Meloon.
No. 710,612, October 7, 1902, Richardson.
No. 710,613, October 7, 1902, Richardson.
No. 906,092, December 8, 1908, Bayard.
No. 922,696, May 25, 1909, Hadaway.
No. 940,055, November 16, 1909, Plant.
No. 940,723, November 23, 1909, Plant.
No. 940,725, November 23, 1909, Plant.
No. 946,591, January 18, 1910, Arnold.
No. 963,761, July 12, 1910, Hadaway.
No. 974,309, November 1, 1910, Thayer.
No. 974,757, November 1, 1910, Dow.

No. 1,015,304, January 23, 1912, Eppler (application filed February 26, 1906).

No. 1,015,772, January 30, 1912, Ashworth (application filed November 22, 1909).

No. 1,017,397, February 13, 1912, Fletcher and Maclean (application filed March 31, 1905).

No. 1,023,071, April 9, 1912, Eppler (application filed November 22, 1909).

No. 1,027,791, May 28, 1912, Allen (application filed February 8, 1906).

No. 1,030,582, June 25, 1912, Hadaway (application filed September 29, 1904).

Attention should be called to the fact that both the model K out-sole stitching machine, that is, the machine introduced in 1910, and the model M machine, the present standard commercial machine of the United Company, are provided with organizations for sewing extension edges and for attaching out-soles with the fudge stitch. These mechanisms are set forth in broad terms in the claims of several patents which I discussed in connection with the out-sole stitching machine of 1899, and in addition these mechanisms have been improved in the model K and model M machines. The improved mechanisms are not shown in any patents which have as yet been granted.

The model M out-sole stitching machine has been received by shoe manufacturers with even greater favor than its immediate predecessor, the model K machine. The model M machine represents a great advance in the industry. Owing to its speed, which, like the model K machine, is from 540 to 560 stitches per minute, as compared with 375 stitches per minute for the 1899 out-sole stitching machine, and to the striking improvements to which I have referred which do away with several manual operations which the operator of the machine had to perform for every shoe which he stitched upon the 1899 machine, or the model K machine, which operations are all performed automatically by the model M machine, and owing to the great saving of the operator's time which is effected by the model M machine, as I have pointed out in some

detail, this model M machine, the present commercial machine, has an increased capacity of eight per cent over its immediate predecessor, the model K machine, and its capacity is about twenty-two per cent greater than that of the 1899 machine. The success of the machine is indicated by the fact that although it was first put out for commercial use as recently as January, 1912, 985 of the model M machines were in commercial use in shoe factories on September 1, 1913. The facilities of the company's factory for building this machine have been overtaxed all the time since it was introduced, and on the 1st of January, 1913, the company was 256 machines behind in filling its orders for model M machines.

I produce copies of patents which I have mentioned in the foregoing deposition relating to out-sole stitching machines. For convenience these patents have been bound in one volume.

[*Patents relating to out-sole stitching machines, used by the witness, are offered in evidence and marked "Defendants' Exhibit 113".*]

Int. 27. Will you kindly read into the record the number, date and name of the patentee of each of those patents?

Ans. No. 127,423, June 4, 1872, Mills.

No. 253,156, January 31, 1882, Campbell.

No. 424,966, April 8, 1890, French and Meyer.

No. 473,870, April 26, 1892, French and Meyer.

No. 474,774, May 10, 1892, French and Meyer.

Reissue No. 11,578, reissued December 8, 1896, Hadaway.

No. 553,139, January 14, 1896, Smith.

No. 563,471, July 7, 1898, French and Meyer.

No. 563,472, July 7, 1896, French and Meyer.

No. 582,510, May 11, 1897, Shriner and Adams.

No. 641,330, January 16, 1900, Rush.

No. 675,783, June 4, 1901, Meloon.

No. 704,457, July 8, 1902, Hadaway.

No. 704,458, July 8, 1902, Hadaway.

No. 710,612, October 7, 1902, Richardson.

No. 710,613, October 7, 1902, Richardson.

No. 732,729, July 7, 1903, French and Meyer.

No. 900,925, October 13, 1908, Haradon.
No. 906,092, December 8, 1908, Bayard.
No. 922,696, May 25, 1909, Hadaway.
No. 930,115, August 3, 1909, Alley.
No. 940,055, November 16, 1909, Plant.
No. 940,723, November 23, 1909, Plant.
No. 940,725, November 23, 1909, Plant.
No. 946,591, January 18, 1910, Arnold.
No. 963,761, July 12, 1910, Hadaway.
No. 974,309, November 1, 1910, Thayer.
No. 974,757, November 1, 1910, Dow.
No. 1,015,023, January 16, 1912, Hatch.
No. 1,015,304, January 23, 1912, Eppler.
No. 1,015,772, January 30, 1912, Ashworth.
No. 1,017,380, February 13, 1912, Cady and Thayer.
No. 1,017,397, February 13, 1912, Fletcher and Maclean.
No. 1,023,071, April 9, 1912, Eppler.
No. 1,027,791, May 28, 1912, Allen.
No. 1,030,582, June 25, 1912, Hadaway.
No. 1,030,742, June 25, 1912, Meyer.
No. 1,030,767, June 25, 1912, Beckman.
No. 1,048,565, December 31, 1912, Meyer.
No. 1,048,719, December 31, 1912, Meyer.

Mr. WEBSTER. Please note the objection of counsel for petitioner to the exhibits so far as the patents issued after the date of the filing of the petition are concerned, these having no bearing touching allegations of the bill.

ROUNDING AND CHANNELING MACHINES.

Int. 28. What was the function of a rounding and channeling machine like the Universal machine referred to by Mr. Chapman?

Ans. This machine was used to shape the sole of a welt shoe and to form simultaneously the channel to receive the outseam which was subsequently to attach the sole to the welt, and the operation was performed after the out-sole had been "laid", that is, temporarily attached to the shoe by cement, so that the shaping of the

sole and the forming of the channel was performed by the machine while the sole was on the shoe, and the operation of the machine was performed to adapt the shape of the sole and the location of the channel for the particular shoe and in relation to the shape of the last. Before it was operated upon by the rounding and channeling machine the sole was usually in the form of a "blocked sole", as is shown by the Defendants' Exhibit 102.

Int. 29. Mr. Chapman has compared the machine represented in Complainant's Exhibit 233, which is a machine of the Goodyear manufacture, with Briggs patent No. 463,982, dated November 24, 1891, and with French and Meyer patents 600,883, March 22, 1898, and 599,602, February 22, 1898. Describe briefly the subjects-matter of those several patents as the same are embodied in the machine represented by the Complainant's Exhibit 233?

Ans. The first of the patents referred to by Mr. Chapman, No. 463,982, November 24, 1891, Briggs, represents a step in the development of the machine which was known as the "Briggs rounding machine", the commercial form of which is shown in patent No. 511,263, December 19, 1893, Briggs and Dancel. That machine, that is, the Briggs rounding machine, was put out for a time, but about 1896 was superseded by the Goodyear Universal rounding and channeling machine.

ROUNDING AND CHANNELING MACHINE — GOODYEAR UNIVERSAL.

The commercial form of this Universal machine as it was put out by the Goodyear Company after 1896 is shown in patent No. 599,602, February 22, 1898, French and Meyer, which patent was also referred to by Mr. Chapman. The machine embodied mechanisms set forth in that patent No. 599,602, and also in the other patent referred to by Mr. Chapman, No. 600,883, March 22, 1898, Meyer and French. The commercial machine may also be fairly regarded as embodying mechanisms defined in the first two claims of the first patent referred to by Mr. Chapman, No. 463,982, November 24, 1891, Briggs.

I cannot, however, agree with Mr. Chapman that that machine embodied the mechanism set forth in the third claim of that Briggs

patent No. 463,982. The mechanism recited in that claim has never been incorporated in the Universal rounding and channeling machine at any time since that machine was produced, and is entirely different from the corresponding mechanism in the Universal machine.

Int. 30. State whether or not in rounders and channelers of the United Company in 1889 there were embodied the subjects-matter of any other patents of the United Company than those named by Mr. Chapman; if so, what were those patents?

Ans. The Briggs rounding machine, which, as I have stated, was superseded about 1896 by the Goodyear Universal rounding and channeling machine, was not organized to form extension edges. As I have heretofore explained fully in my deposition in regard to the out-sole stitching machine, about 1895 there was a radical change in methods of making shoes, owing to the fact that manufacturers began to make shoes with extension edges, and this occasioned a demand on the part of manufacturers for machines which would enable them to make by machinery these extension edge shoes which had previously been made by hand, so that only the more expensive shoes were provided with extension edges.

A number of inventors, including several not connected in any way with the Goodyear Shoe Machinery Company, went to work independently to solve the problem of providing a rounding and channeling machine which could be used in the manufacture of extension edge shoes. These inventors filed applications upon the mechanisms which they had produced for enabling a rounding and channeling machine to shape the soles of extension edge shoes, and there were numerous interferences in the Patent Office involving these applications. Two general types of mechanisms were developed by these inventors; one comprising a crease guide which was so incorporated in the organization of the rounding and channeling machine that it entered the crease between the welt and upper and was arranged to be moved to vary the position of the cut made by the rounding knife with relation to the edge of the last. The other type of mechanism for this purpose comprised two guides, one a crease guide which was stationary, and the other a guide for

engaging the upper above the crease guide and for varying the position of the shoe with relation to the rounding knife as required by the work. As I explained in my deposition regarding out-sole stitching machines, it is usually desired to form the extension edge around the forepart only, and it is also generally desired to provide the sole with a narrow edge in the shank.

I have for convenience used the expression "stationary crease guide" to distinguish it from the relatively movable upper guide in the second type of mechanism which I described. It should not, however, be inferred from this expression which I have adopted for convenience that the crease guide of the commercial machine has no movement.

In the Patent Office interference involving the combination of the crease guide and a relatively movable upper guide, which interferences involved the application for the Meyer and French patent No. 600,883, which was referred to by Mr. Chapman, priority of invention was awarded to Edward M. Cole, of Chicago, on whose application was issued patent No. 595,764, December 21, 1897, Cole. That patent was, after it was granted, assigned to the Goodyear Shoe Machinery Company. Typical claims of this Cole patent, which defined mechanisms which have always been embodied in the Goodyear Universal rounding and channeling machine, and which are embodied in machine No. 408 which is shown in the photograph Plaintiff's Exhibit 233, are claims 1 and 8, which are as follows: —

"1. A fixed guiding device for controlling the location of a shoe while being operated upon by rounding and channeling tools, an adjustable guiding device adapted to interpose so as to force the shoe farther from the said tools, and means for advancing and retracting said adjustable guiding device while the tools are in operation."

"8. In a machine for operation upon the soles of boots and shoes, two independent guides, one working along the shank portion, and the other around the fore part."

The other type of extension edge organization produced for rounding and channeling machines, that characterized by a single crease guide which was movable to locate the shoe properly in

relation to the rounding knife, was the subject-matter of interference in the Patent Office, in which interferences the application for the French and Meyer patent No. 600,883, which was referred to by Mr. Chapman, was also involved. In these interferences priority of invention was awarded to Frederick L. Alley, upon whose application was granted patent No. 625,663, May 23, 1899, Alley. The claims of the Alley patent which are directed to this single gauge organization do not set forth mechanism which is embodied in the commercial Goodyear rounding and channeling machine, but the Alley patent does contain several claims which set forth mechanism commercially used in that machine, and of these claims a typical claim is the following: —

"1. In a rough rounding and channeling machine, the combination with the throat plate, of a movable gauge forming an independently adjustable longitudional extension thereof, substantially as described."

Like the mechanism set forth in the claims of the Cole patent No. 595,764, to which I have referred, the mechanisms set forth in the first three claims of this Alley patent No. 625,633 have always been embodied in the commercial Goodyear Universal rough rounding and channeling machine and are embodied in machine No. 408, which is the machine shown in Plaintiff's Exhibit 233, as I have determined by an examination of that machine in the factory of the Commonwealth Shoe & Leather Company at Whitman.

The Goodyear Universal rounding and channeling machine as put out by the Goodyear Company prior to 1899, and by the United Company in 1899, also embodied the mechanisms defined in the claims of patent No. 630,339, August 8, 1899, French and Meyer. The mechanism of this patent constituted an improvement upon the mechanism shown, described and claimed in the patent No. 595,764, December 21, 1897, Cole, to which I have already referred.

This mechanism consisted in a cam which automatically determined the position of the upper guide with relation to the crease guide as the operation of the machine proceeded around the shoe.

Int. 31. State whether or not since 1899 there have been any

modifications or improvements in the rounders and channelers of the United Company. If so, what were they and what was their importance? If the same formed the subjects-matter of Letters Patent of the United Company, name the patents.

Ans. By far the most important advance made in the machine since 1899, has been the production in December, 1910, of a radically new and improved rounding and channeling machine known as "Rounding and Channeling Machine, Goodyear Universal, Model E", which was produced after several years of experimenting, as I shall later explain. Before discussing that machine, however, I will mention some improvements which were from time to time adopted in the Universal rounding and channeling machine as it was put out in 1899. These improvements enabled that machine to do certain kinds of work for which it had not been adapted prior to the adoption of the respective improvements.

The first of these improvements was a mechanism which was incorporated in the machine of 1900 and enabled the machine to prepare the sole for that kind of out-sole stitching which is known as "stitching aloft", and comprised means which could be actuated by the operator as the operation of the machine progressed around the shoe for throwing the channeling knife out of operation around the forepart. In making shoes in the manner which is known as "stitching aloft" it is usually desired that the stitches shall be located in a channel in the shank, but shall be placed upon the surface of the stock or in a groove in the forepart. This improvement is set forth in the claims of patent No. 579,144, March 23, 1897, Gifford, and No. 684,359, October 8, 1901, Eaton. Claim 3 of the Gifford patent, which defines this invention in broad terms, is as follows: —

"3. In a machine for operating upon the soles of boots and shoes, the combination of a movable trimming knife for operating upon the edge portion of the sole, a movable tool for operating upon the bottom of the sole, connected mechanisms for actuating the knife and tool, and means controlled by the operator for throwing the tool out of operation during the operation of the knife, substantially as described."

A typical claim of patent No. 684,359, all of the seven claims of

which describes this improvement, is claim 1, which is as follows: —

"1. In a rough rounding and channeling machine, the combination with a rounding knife, of a channeling knife, movable into and out of operation substantially in the plane of the bottom of the sole, substantially as described."

In 1903 mechanism was adopted by this machine which would enable all those manufacturers who desired to produce close edges around the forepart, as distinguished from extension edges, to round and channel their shoes upon this machine. That improvement is shown and is described in the claims of patent No. 845,-277, February 26, 1907, Thayer.

A typical claim of this patent is claim 1: —

"1. A sole rounding machine, having, in combination, a trimming knife, a shank guide, a forepart guide movable into and out of engagement with the shoe, and means for relatively moving the shank guide and trimming knife to allow the forepart of the sole to be trimmed closer to the upper than the shank portion, substantially as described."

In June, 1908, an improvement was made in the machine which had for its object the enabling of the operator to modify the operation of the automatic pattern cam, as the operation of the machine progressed around the forepart. This improvement is illustrated in the drawings and set forth in all of the ten claims of patent No. 1,010,854, December 5, 1911, Cady.

While this Goodyear Universal rounding and channeling machine was satisfactory to shoe manufacturers and was used very extensively after 1899, it was realized by experts of the United Company that the machine had serious defects which ought to be remedied. One of the most serious of these defects was that the cam, which, as I have explained, automatically controlled the position of the upper guide in relation to the crease guide, and so automatically positioned the shoe in the progress of the work, was adapted to operate properly only for a medium sized shoe, so that the machine was not organized properly to round and channel either sizes larger than the medium or sizes smaller than the medium. In the operation of the machine it was the practice for

operators to force the shoe ahead faster than it would normally be fed by the machine when operating upon a large size, and to hold a shoe back against the feeding operation when operating upon shoes smaller than the medium size. This defect of the machine imposed so great a burden upon the skill and judgment of the operator that the machine has always required for its operation the most skilled operators which are employed in shoe factories.

Another unsatisfactory feature of the Universal rounding and channeling machine, that is, the machine of 1899, was that whenever the shoes coming to the machine were to have their soles rounded with a different contour from those upon which the machine had been operating, it was necessary to change the cam which controlled the position of the upper guide, and this change, which, owing to the great variety in shapes desired for extension edge soles, had to be made frequently, required from seven to ten minutes' time, as the machine had really to be taken apart to some extent in order to substitute a cam which would be suited for the new class of work.

One of the company's inventors, Frederick H. Perry, explained to the company's officials and experts some ideas which he had for effecting substantial improvements in machines of this class. His plans were approved and he was authorized to proceed with the development of an entirely new rounding and channeling machine. His experimental work began in May, 1905, and had for its general objects the production of a machine which would operate at a higher speed than the Universal rounding and channeling machine, and which would, therefore, have an increased capacity over that machine, which would do better work than the 1899 machine and which would be more convenient for the operator.

Rounding and Channeling Machine — Model E, Goodyear Universal.

After several years of experimenting and the production of a number of experimental machines Mr. Perry succeeded in producing, in 1910, a machine which was commercially satisfactory, and the first machine was put out for commercial use in December,

1910, being known officially as "Rounding and Channeling Machine, Goodyear Universal, Model E". This machine ran at speed of 850 cuts per minute on the average, as compared with an average speed for the 1899 machine of about 650. This speed, combined with numerous improvements contributing to the convenience of the operator and saving much of his time which had been required in making adjustments to adapt the old machine for changes in the character of the work to be done, secured an average output for this model E machine of about 1500 pairs per day as compared with an average output for the 1899 machine of about 1200 pairs per day.

Among the improvements which contributed to this greatly increased capacity of the new model E machine was mechanism for automatically controlling the forepart guide to enable it to operate accurately for any size. As I have before explained, the mechanism of the 1899 machine which controlled the operation of the forepart guide, was adapted for one size only, that is, a medium size. The new model E machine was so organized that the machine could be instantly adapted for any size of shoe. This mechanism comprised a variable speed-driving mechanism for operating the pattern cam, which mechanism could be instantly set by the operator to adapt the machine so that the position of the forepart guide, which determines the distance of the rounding out from the edge of the last, would be right at a given point in the operation of the machine, whatever the size of the shoe. This mechanism is set forth in broad terms in the claims of patent No. 878,478, February 4, 1908, English, a patent which was acquired by the United Shoe Machinery Company in September, 1910, from Thomas G. Plant. Claim 51 of this patent is typical of the claims setting forth this improvement and is as follows: —

"51. In a rounding machine, a trimming knife, a guide co-operating therewith, means including a moving pattern to vary the relative position of said knife and guide to produce an extension on the edge of the sole, and a variable speed driving mechanism for the pattern."

The objection to the old machine, that is, the 1899 machine, that

so much time was required to change the machine when it had to operate upon shoes having edges of different contours from those on which it had been operating, when it was necessary for the operator to spend from seven to ten minutes in changing the pattern cam, as I have explained, were overcome in the new model E machine, the present commercial machine, by including in the organization of the machine 12 pattern cams of varying contours with means by which the mechanism for controlling the position of the upper guide could be changed from the control of one cam to the control of another cam in three seconds, as compared with the seven to ten minutes required for a corresponding change in the old machine. This improvement is set forth in many of the claims of patent No. 1,030,607, June 25, 1912, Perry (application filed December 11, 1908), of which claims 1 and 4 are typical.

"1. A machine for operating on the soles of shoes, having, in combination, a tool, a gauge, means for throwing the gauge into action during the relative travel of the tool about the shoe, a plurality of means for relatively actuating the tool and gauge, constructed and arranged to impart relative movements to the gauge and tool for shoes of different relative styles, and means for rendering any one of said means operative, substantially as described."

"4. A sole rounding or channeling machine, having, in combination, a knife, a gauge, means for throwing the gauge into action during the relative travel of the knife about the shoe, means for relatively actuating the gauge and knife comprising a plurality of cams and intermediate connections constructed and arranged to impart different relative movements to the gauge and knife for shoes of different styles, and means for rendering any one of said cams operative, substantially as described."

The first patent which disclosed mechanism comprising a plurality of cams each of which could be arranged to control the position of the forepart guide in a rounding and channeling machine was No. 682,679, September 17, 1901, Fowler, which patent is owned by the United Shoe Machinery Company. Claim 1 of this patent, which defines in general terms the improvement in the model E machine which I am discussing, is as follows: —

"1. A machine for operating on the soles of shoes, having, in combination, a suitable tool, a gauge, a plurality of means for relatively actuating the tool and gauge to vary the distance from the

inseam at which the tool acts on the sole, said plurality of means being constructed and arranged to impart different relative movements to the gauge and tool for shoes of different sizes or styles, and means for rendering any one of said means operative, substantially as described."

In the operation of the old rounding and channeling machine, that is, the machine of 1899, it was necessary for the operator after the operation of the machine upon one shoe had been finished, to manually adjust the mechanism for operating the pattern cam so that the pattern cam would reverse its movement in operating upon the next shoe, which would be a shoe for the other foot; that is, the pattern cam traveled in one direction for a right shoe, and in the opposite direction for a left shoe, and had to be reversed manually at the end of each operation. The convenience of the operator was greatly facilitated by an improvement in the new model E machine, which consists in means for automatically reversing the pattern mechanism at the end of the operation of the machine upon each shoe so that when the operator has finished one shoe the mechanism automatically adjusts itself for a proper operation upon the next shoe without the slightest thought or attention on the part of the operator.

This improvement is shown in the drawings and set forth in many of the claims of patent No. 1,030,606, June 25, 1912, Perry (application filed May 4, 1910), which patent illustrates in its drawings the machine in substantially its commercial form, although some improvements on which patents have not yet been granted are embodied in the commercial machine.

Of those claims which define the invention which I have just explained, typical claims are 18 and 22, which are of follows: —

"18. A machine for operating on shoe soles, having, in combination, a tool, a guide, pattern mechanism for relatively actuating the tool and guide to determine the path along which the tool operates, mechanism for actuating the pattern mechanism, and mechanism acting to automatically set the actuating mechanism to move the pattern mechanism alternately in opposite directions, substantially as described."

"22. A machine for operating on shoe soles, having, in combination, a tool, a guide, a pattern mechanism for relatively actu-

ating the tool and guide to determine the path along which the tool operates, mechanism for actuating the pattern mechanism in opposite directions for right and left shoes, and mechanism for alternately setting the actuating mechanism for right and left shoes, substantially as described."

An improvement in the machine which effected substantial economy for the manufacturer was the use of wood patterns instead of metal patterns which were used in the machine of 1899. The metal cams of the 1899 machine cost $1 each; the pattern cams for the model E machine, which are made of laminated wood, cost fifteen cents each. These wooden pattern cams are made from the pattern of the sole which it is desired to produce in the operation of the machine. The patterns are made by a machine known as "Generating Machine, Goodyear Pattern", which is set forth in general terms in the claims of patent No. 1,027,562, May 28, 1912, Perry (application filed February 12, 1908), and in patent No. 1,064,118, June 10, 1913, Allen (application filed October 11, 1909). A typical claim setting forth this mechanism is claim 29 of patent No. 1,027,562, which is as follows:—

"29. In a machine of the class described, means to be engaged movable and concurrently with a plurality of differently shaped regions of a model; and means controlled by said model engaging means to impart to the periphery of a disc a contour embodying the relative variations in contour of said engaged model regions."

I produce one of the metal pattern cams used on the 1899 machine which, as I have stated, costs $1. A different cam is required for every variation in the shape in the contour of the extension edge.

[*Metal pattern cam for 1899 machine was introduced in evidence and marked "Defendants' Exhibit 114".*

[*Answer to Int. 31 continued:*]

I also produce one of the laminated wood cams used on the model E rounding and channeling machine, the present commercial machine, which, as I have explained, costs fifteen cents each.

[*Wooden pattern cam for Universal rounding and channeling machine model E was introduced in evidence and marked "Defendants' Exhibit 115".*]

[*Answer to Int. 31 continued:*]

Another important improvement in the new model E rounding and channeling machine consisted in the mechanism for clamping the work between the cutter blade and the shoulder knife block. Such clamping of the work is characteristic of both the old machine, the 1899 machine, and the new model E machine, and in the old machine the operating mechanism for effecting this clamping was so organized that the pressure increased substantially when the work increased in thickness. This was very objectionable because during the movement of the channel knife block in the channel cutting operation the work is held clamped between the cutter plate and the channel knife block and a substantial increase in pressure increases the friction which must be overcome in the operation of the machine. This construction was further objectionable in the 1899 machine because, as I have already suggested, the operator of that machine, owing to the fact that the pattern cam was shaped only for a medium sized shoe, had to push on the shoe all the time when he was operating upon a larger shoe, and had to pull back on the shoe all the time that he was operating upon a smaller sized shoe, and this pushing and pulling was exerted against the stress of the strong spring which caused the clamping of the work between the channel knife block and the cutter plate. In the new model E machine the pressure exerted in this clamping of the stock is uniform whatever the thickness of the stock, and the convenience of the operator is greatly facilitated by this improvement. Among the claims in patent No. 1,030,606, June 25, 1912, Perry (application filed May 4, 1910), which set forth this invention, a typical claim is 35, which is as follows: —

"35. A machine for operating on shoe soles, having, in combination, a sole support, and a spring for holding the support against the sole of a shoe arranged to maintain a substantially constant pressure upon soles of varying thickness, substantially as described."

In addition to the several improvements to which I have specifically referred, it should be stated that the general organization of this new model E machine is adapted to afford every convenience

to the operator in the use of the machine, and particularly to save the operator's time which, in the use of the old machine of 1899, had to be devoted so largely to adjusting or changing the machine to adapt it for changing conditions in the work. In the new model E machine every possible variety of the work is provided for in the machine as regularly constructed. To adapt the machine from one class of work to an entirely different class of work the operator needs only to effect a quick adjustment which is provided for in the machine, while, in changing the 1899 machine to adapt it for any special kind of work, it was frequently necessary to put an attachment on the machine which, when it was on the machine, limited the utility of the machine to the special class of work for which the attachment was intended, and which, when the operator had finished that special work, must be removed before the machine could be used for any other class of work.

The commercial model E machine is constructed substantially as shown in patent No. 1,030,606, June 25, 1912 (application filed May 4, 1910). All of the 61 claims in that patent set forth mechanisms which were incorporated in the machine until September, 1912, at which date the features covered by claims 1 to 17 of the patent were discontinued as it was found that the mechanism set forth in those claims was no longer needed under commercial conditions. Twenty-five of the 31 claims of patent No. 1,030,607, June 25, 1912, Perry (application filed December 11, 1906), also set forth mechanisms which are embodied in the commercial model E machine. The subject-matter of the other six claims of that patent, which, although of later number than No. 1,030,606, shows an earlier stage in the development of the machine, were superseded by improved mechanisms as shown and defined in the claims of patent No. 1,030,606.

The commercial model E rounding and channeling machine embodies mechanisms defined in the claims of the following patents: —

No. 579,144, March 23, 1897, Gifford.

No. 595,764, December 21, 1897, Cole.

No. 599,602, February 22, 1898, Meyer and French.

No. 600,883, March 22, 1898, French and Meyer.
No. 625,633, May 23, 1899, Alley.
No. 630,338, August 8, 1899, French and Meyer.
No. 630,339, August 8, 1899, French and Meyer.
No. 682,679, September 17, 1901, Fowler.
No. 808,628, January 2, 1906, Brainard.
No. 845,277, February 26, 1907, Thayer.
No. 878,475, February 4, 1908, Alley.
No. 878,478, February 4, 1908, English.
No. 1,030,607, June 25, 1912, Perry (Application filed December 11, 1908).
No. 1,030,606, June 25, 1912, Perry (Application filed May 4, 1910).

Model E rounding and channeling machine has been very successful. It has entirely superseded the machine of 1899, that is, the Goodyear Universal rounding and channeling machine. Eight hundred and thirty-two of these machines were in shoe factories on September 1, 1913. It should be noted that one of these machines can easily round and channel shoes enough to run four welting machines to their capacity. The number of these model E machines out on September 1, 1913, may be compared with the 230 Universal rounding and channeling machines which were in use in February, 1899.

This machine is put out by the United Shoe Machinery Company, through its Goodyear department.

Mr. WEBSTER. Please note the petitioner's objection to all that portion of the answer which relates to what others said, did, or thought; also all that portion which relates directly or indirectly to patents and mechanisms of patents shown in patents issued after the date of the filing of the petition herein, all the same being incompetent, inadmissible, and having no bearing on the questions involved in this case.

Int. 32. Have you, at the request of counsel, collected in a volume the patents referred to by you as relating to rough rounding and channeling machines?

Ans. I have, and I now produce a volume including copies of

all of the patents to which I referred in my deposition. The rounding and channeling machine is and has been since February, 1899, put out by the United Shoe Machinery Company through its Goodyear department.

[*Volume of patents produced by the witness is offered in evidence and marked "Defendants' Exhibit 116".*]

Mr. WEBSTER. The petitioner objects to the introduction of all patents dated after the date of the filing of the petition herein.

Int. 33. Will you please state the number, date and name of the patentee of each of the patents contained in the volume Exhibit 116?

Ans. No. 463,982, November 24, 1891, Briggs.
No. 511,263, December 19, 1893, Briggs and Dancel.
No. 579,144, March 23, 1897, Gifford.
No. 595,764, December 21, 1897, Cole.
No. 599,602, February 22, 1898, French and Meyer.
No. 600,883, March 22, 1898, Meyer and French.
No. 625,633, May 23, 1899, Alley.
No. 630,339, August 8, 1899, French and Meyer.
No. 682,679, September 17, 1901, Fowler.
No. 684,359, October 8, 1901, Eaton.
No. 845,277, February 26, 1907, Thayer.
No. 878,475, February 4, 1908, Alley.
No. 878,478, February 4, 1908, English.
No. 1,010,854, December 5, 1911, Cady,
No. 1,027,562, May 28, 1912, Perry.
No. 1,030,606, June 25, 1912, Perry.
No. 1,030,607, June 25, 1912, Perry.
No. 1,064,118, June 10, 1913, Allen.

[*Adjourned to 10* A. M., *Wednesday, October 8, 1913.*]

BOSTON, MASS., October 8, 1913.

INSOLE CHANNELING MACHINES.

Int. 34. What is the function of an insole channeler in the manufacture of shoes?

Ans. An insole channeler is used to prepare the insole of a welt shoe for the lasting and welt-sewing operations, and is also with somewhat different organization used for preparing the soles of turned shoes for the lasting and sewing operations. In operating upon a welt insole, the insole channeler makes on the flesh side of the insole two cuts, one extending from the edge of the insole inward toward the middle of the sole, and the other beginning inside of the edge and extending downwardly and obliquely toward the first cut. These two cuts together define and produce the "between substance" to which the welt and upper are secured in the welt-sewing operation. Before the lasting and welt-sewing operations the lip formed by the outer cut is turned up and back. In operating upon a turn sole the machine makes an inner cut or slit substantially like the corresponding cut or slit made in channeling the welt insole. But the operation at and adjacent to the edge of the turn sole differs from the operation upon the welt insole in that the stock at the edge of a turn sole from the beginning of the cut to its end and extending from the end of the cut to the face of the flesh side is entirely removed, thus leaving a shoulder to which the upper is secured in the subsequent operation of sewing the upper of a turn shoe while the shoe is wrong side out. I produce a welt insole and a turn sole which have been operated upon by an insole channeling machine in the manner above indicated.

[*Channeled welt insole introduced in evidence, and marked "Defendants' Exhibit 117".*

Also channeled turn sole introduced in evidence, and marked "Defendants' Exhibit 118".]

Int. 35. Mr. Chapman, in his answers to questions 62, 63 and 64, compares the cut on page 95 of Plaintiff's Exhibit No. 220 with the insole channeling machine shown in the photograph in Plain-

tiff's Exhibit 235. What is the machine shown in Plaintiff's Exhibit 235, and have you examined the same in the Whitman factory; if so, is that machine now the same as when it was leased to the Commonwealth Shoe Company by the Goodyear Company, and what have you to say as to the accuracy of Mr. Chapman's comparison of that machine with the cut on page 95 of Plaintiff's Exhibit No. 220?

Ans. I have examined the channeling machine No. 2072 which is in the Whitman factory of the Commonwealth Shoe & Leather Company, and have compared that machine with the photograph of Plaintiff's Exhibit No. 235, and find that that machine No. 2072 is accurately represented in the photograph. That photograph, Plaintiff's Exhibit 235, shows the Goodyear insole channeling machine as it was put out shortly before February, 1899, by the Goodyear Shoe Machinery Company and after that date by the United Shoe Machinery Company. That photograph, however, does not accurately represent machine No. 2072 as it was leased to the Commonwealth Shoe & Leather Company by the Goodyear Shoe Machinery Company on February 8, 1893.

When the machine was leased on that date it was constructed as shown in the cut on page 95 of Plaintiff's Exhibit No. 220, which is the Goodyear Shoe Machinery Company catalogue of January 1, 1897. The machine as it now stands is substantially different from the machine shown in that cut, and the present organization of the machine is accurately shown in patent No. 550,402 November 26, 1895, Beckman, and as set forth in claims 4, 5 and 6 of that patent.

At the time machine No. 2072 was leased to the Commonwealth Shoe & Leather Company the mechanism shown in Beckman patent No. 550,402, of November 26, 1895, had not been produced. I shall later explain the advantages of the construction defined in the claims of this Beckman patent and at the same time explain the defects of the machine constructed as it was when leased to the Commonwealth Shoe & Leather Company, which defects were overcome by the improvements of the Beckman patent.

I will state now, however, that the machine of the cut on page 95 of Complainant's Exhibit No. 220, Goodyear Catalogue of 1897,

was obsolete before the formation of the United Shoe Machinery Company in 1899, and the United Company have never put out a machine as shown in that cut.

When I examined machine No. 2072 at the Whitman factory the machine was idle. In my examination I found that, as Mr. Chapman has stated, the machine was equipped for special work; that is, channeling felt insole. That is certainly a very specialized kind of work. The machine is not used in the Commonwealth Shoe & Leather Company factory for channeling leather insoles, and I observed two of the United Company's present commercial channeling insole machines known as "Channeling Machine, Goodyear Universal", which were being operated near the machine of Complainant's Exhibit No. 235, and those machines were being operated to full capacity in the channeling of regular welt insoles. All of the all-leather welt insoles which are used in that factory are channeled on these two new machines. None of that work, as I have stated, is done on the machine of Plaintiff's Exhibit 235.

As to the accuracy of Mr. Chapman's comparison of the machine of Plaintiff's Exhibit No. 235 with the cut on page 95 of Plaintiff's Exhibit 220, Goodyear catalogue of 1897, I am obliged to state that his comparison seems to me rather superficial and inaccurate, as might be expected from the comparison of a machine with a catalogue cut, inasmuch as Mr. Chapman failed to note the important improvements defined in claims 4 and 5 of the Beckman patent No. 550,402, November 26, 1895.

Mr. WEBSTER. Please note petitioner's objection to the answer because of the same being largely in the nature of argument, and the argumentative portion is objected to and notice given that petitioner will move to strike out the same hereafter.

Int. 36. It is not clear to me whether or not the mechanism of the Beckman patent to which you refer was embodied in the insole channeler as constructed in 1899. I will, therefore, ask you what patent, if any, of the United Company showed and described mechanism embodied in that machine as the same was constructed in 1899?

CHANNELING MACHINE: GOODYEAR (INSOLE AND OUTSOLE).

Ans. I should have stated in my preceding answer that the insole channeling machine put out by the Goodyear Shoe Machinery Company just prior to February, 1899, and by the United Company after that time, was constructed specifically as shown in the drawings and set forth in the claims of patent No. 550,402, November 26, 1895, Beckman. When the machine was used for channeling welt insoles it embodied the mechanism set forth in claims 4, 5 and 6 of this patent. When the machine was used for channeling turn soles, it embodied the mechanisms set forth in all six of the claims of the patent.

In explaining the advantages of the improvements shown in the drawings and set forth in the claims of the Beckman patent No. 550,402, it is necessary, first, to refer to the defects in the prior machine; that is, the machine as it was put out before the improvements of the Beckman patent were made and incorporated in the machine. That prior machine, which is the machine shown on page 95 of Plaintiff's Exhibit No. 220, Goodyear Company catalogue of 1897, did not do its work properly in going around the toe of an insole. This difficulty was greatly increased with the introduction about 1895 of narrow-toed lasts. The radical changes which have marked the development of modern lasts began about that time, and the first step in that development was the use of narrow-toed lasts which required insoles such as that shown in Fig. 10 on sheet 4 of the drawings of the Beckman patent No. 550,402. It was very difficult, and in fact impracticable, in the commercial manufacture of shoes to channel insoles, such as represented in Fig. 10 of the drawings of the Beckman patent, upon the old machine; that is, the machine shown on page 95 of Plaintiff's Exhibit 220, Goodyear Company's catalogue of 1897. These defects were overcome in the machine of 1899, embodying the mechanisms set forth in claims 4, 5 and 6 of Beckman patent No. 550,402. Of this group of claims a typical claim is 4:—

"4. In a sole channeling machine, the combination with a shoulder knife, of a channeling knife and laterally adjustable

presser-foot, and means for changing the relative lateral position of the shoulder knife and channeling knife, substantially as described."

The improvement defined in the above claim made it possible to channel successfully all shapes of toes as required for shoes made on the modern lasts, the development of which, as I have stated, dates from about 1895.

When the machine shown on page 95 of Plaintiff's Exhibit 220, Goodyear Company catalogue of 1897, was used in channeling turn soles, its operation was unsatisfactory because the edge of the sole frequently varied in thickness after the operation of the machine. It is highly important that the "feather edge" of a turn sole, such as shown in Defendants' Exhibit 118, be uniform in thickness all around the shank and forepart, as that edge is visible and prominent in the finished shoe. The old machine was not properly organized to insure the desired uniformity in the feather edge of a turn sole. The organization set forth in claims 1, 2 and 3 of Beckman patent No. 550,402, of November 26, 1895, which was, as I have stated, embodied in the commercial insole channeling machine of 1899 when that machine was used for channeling turn soles, enabled that machine to produce a feather edge on the turn sole which was always of uniform thickness.

Summarizing my discussion of the commercial insole channeling machine of 1899 and its relation to the machine which preceded it, I can state without hesitation that the old machine shown in the cut on page 95 of Plaintiff's Exhibit 220 could not have performed satisfactorily the work which has been required for insole channelers and turn sole channelers during the past fifteen years.

Int. 37. What has been the development in the matter of insole channelers put out by the United Company since 1899? If any new machines, or modifications of old ones, have been introduced, state what they were, and if embodying the subjects-matter of any Letters Patent of the United Company, name the patents.

CHANNELING MACHINE: GOODYEAR UNIVERSAL (WELT WORK).

Ans. The commercial insole and turn sole channeling machine of 1899, the machine shown in Plaintiff's Exhibit 235, was superseded in 1907 by a machine officially known as "Channeling Machine, Goodyear Universal", which is at present, and has been since that date, the standard commercial insole channeling machine of the United Company. The machine was first put into commercial use on welt work in September, 1907, and was first put into use on turn work in November, 1908.

This new machine, the present standard commercial channeling machine for welt insoles and turn soles, was produced after a long period of experimenting which began soon after the formation of the United Company, in the endeavor to provide a machine which would have much greater capacity than the 1899 machine, and which would at the same time do better work, and particularly would avoid occasional mutilation of the work which sometimes occurred in the operation of the 1899 machine.

The 1899 machine was limited in its capacity because it was hand operated. It was sometimes provided with what was known as a "power attachment", as is shown in Plaintiff's Exhibit 235, but this power attachment did not make the machine a power-operated machine, since it involved continuous manual operation by the workman of the crank which is shown at the right in that photograph, Plaintiff's Exhibit 235. The problem of operating an insole channeling machine by power proved a serious one for the United Company's inventors, because, while it is permissible and desirable to operate the machine at high speed along the straighter portions of the work, it is usually preferred and required for some classes of work that the operation be performed more slowly around sharply curved portions of the sole, as at the toe.

The problem of operating an insole channeling machine by power was solved in the machine which was produced in 1907, and which, as I have said, is the present standard commercial machine put out by the United Company, by the mechanism shown in the drawings, described in the specification and set forth in the claims of patent

No. 1,023,801, April 23, 1912, Bertrand (application filed April 30, 1908), which shows and describes the machine substantially as it is constructed and put out for channeling welt insoles. The solution of that problem of operating the machine by power, and at the same time permitting of slower operation around the toe is set forth in many of the claims of this patent No. 1,023,801, of which a typical claim is the second.

Mr. WEBSTER. Please note at this point objection of counsel for petitioner to introduction of patents or reference to patents issued after the date of filing of the petition herein, as having no reference to the questions involved in this cause.

[*Answer to Int. 37 continued:*]

Claim 2 of this patent No. 1,023,801, the application for which was filed, as I have stated, on April 30, 1908, is as follows:—

"2. A power channeling machine, having, in combination, a work table for supporting a flat sole and over which the sole is fed, a lip forming cutter supported opposite said table, a reciprocatory head, a work feeding foot sustained thereby for engaging the sole adjacent the point of operation of said cutter means for reciprocating said head to feed the sole step by step constructed and arranged to provide a relatively high speed of work feed, and provision for slowing down the speed of work feed a substantial amount during the operation of the machine and while cutting around the toe to facilitate the guiding of the sole by the operator relatively to the cutter."

The specific construction of the work-feeding mechanism of this new channeling machine, the present commercial machine, comprised means which clamped the stock on opposite sides and fed it forward between successive cutting operations of the channeling knives. The problem of reducing the speed of the machine's operations around the toe was ingeniously solved by mechanism under control of the operator and arranged for convenient operation by him, which shortened the feeding stroke of the work-engaging clamps. This mechanism permits wide variations in the length of the feed from the maximum down to nothing. It may be interesting note that, during the time that I observed the operation of the two Universal channeling machines in the Whitman factory of the Commonwealth Shoe & Leather Company, a large number of

insoles were channeled by the operators of the two machines, and in cutting around the toe, in every insole operated upon by the machines while I was observing them, the operator of each machine manipulated the feed-controlling mechanism to reduce substantially the speed of the work-feed around the toe.

This improved work-feeding mechanism of the new insole channeling machines of 1907 had a further distinct advantage over the feeding mechanism of the 1899 machine in that there was no liability of mutilating the stock during the operation of the machine. As will be noted on inspection of the drawings of Beckman patent No. 550,402, November 26, 1905, and inspection of Plaintiff's Exhibit 235, both of which show the commercial insole channeling machine of 1899, the work was fed into that machine by a toothed wheel which operated between the two channeling knives. This feed wheel operated by digging its teeth into the stock, and as the portion of the stock engaged by it was the "between substance" which was subsequently to receive the stitch in the operation of attaching the welt of a shoe, or attaching the upper of a turn shoe, and as it constituted the only means which secures the upper to the insole of a welt shoe, or to the sole of a turn shoe, it is obvious that such mutilation of this "between substance" as would impair its thread-holding power would be very objectionable as its thread holding would be weakened, with the result that the seam might give way in the wear of the shoe. The operation of this feed wheel caused the greatest difficulty in channeling around the toe. In operating at the toe the shoe must be turned to permit the knives to travel in curved paths around the toe and this turning must take place while the teeth of the feed wheel are engaged with and sunk into the "between substance". The liability of mutilating the "between substance" under these conditions is obvious. All this trouble was entirely obviated in the new Universal machine introduced in 1907.

This improved feeding mechanism was combined in the Universal machine of 1907 with vibrating knives which cut the two channels by a backward movement after the sole had been fed. In the old machine of 1899 stationary knives were employed and the toothed

feed wheel had to feed the sole forward against the two knives. The danger of the mutilation of the stock to which I have referred was, of course, greatly increased by this organization of the 1899 machine.

Combined with this organization of clamp-feeding mechanism and vibrating knives was a work retainer arranged to clamp the work during the backward cutting stroke of the knives. Many of the claims of patent No. 1,023,801, April 23, 1912, Bertrand, granted on application filed April 30, 1908, were directed to this point. Of these claims, the tenth is typical: —

"10. In a stock fitting machine for channeling soles, the combination with a feather edge forming knife and a channel forming knife, of means to reciprocate said knives and the work together in one direction to feed the work, and means to thereafter clamp the work against movement while said knives move backwardly to form the feather edge and channel."

I have endeavored to point out only some of the most striking improvement sincorporated in this Goodyear Universal channeling machine as the machine was organized for welt work. The improvements which I have mentioned, together with others, are defined in the claims of the following patents, all owned by the United Shoe Machinery Company: —

No. 644,571, March 6, 1900, Beckman.

No. 952,701, March 22, 1910, Eppler.

No. 984,772, February 21, 1911, Meyer.

No. 984,773, February 21, 1911, Meyer.

No. 989,142, April 11, 1911, Gordon.

No. 1,023,801, April 23, 1912, Bertrand (application filed April 30, 1908).

No. 1,030,703, June 25, 1912, Bertrand (application filed March 24, 1909).

No. 1,030,706, June 25, 1912, Bertrand (application filed April 15, 1911).

No. 1,030,708, June 25, 1912, Bertrand (application filed June 24, 1911).

No. 1,030,802, June 25, 1912, Bertrand (application filed May 16, 1910).

CHANNELING MACHINE: GOODYEAR UNIVERSAL (TURN WORK).

When a channeling machine is used for turn work a somewhat different organization is required from that which equips the machine for welt work. However, the Goodyear Universal channeling machine for turn work is, in general, substantially organized like the machine when equipped for welt work, and the machine equipped for turn work embodies the mechanisms set forth in the list of patents which I have just named excepting patent No. 989,142, April 11, 1911, Gordon, and excepting also the last three on the list.

Substituted for the mechanisms set forth in the claims of those four patents are mechanisms which adapt the organization of the machine for the channeling of turn soles and which are set forth in the claims of the following patents, all of which are owned by the United Company: —

Reissue No. 13,375, February 27, 1912, Prenzel (original patent No. 965,656, July 26, 1910).

Patent No. 1,030,536, June 25, 1912, Prenzel (application filed April 20, 1911).

No. 1,030,704, June 25, 1912, Bertrand (application filed May 10, 1909).

No. 1,030,710, June 25, 1912, Bertrand (application filed July 24, 1911).

While all of the improvements set forth in the list of patents which I have just enumerated are important and contributed to the success of the Goodyear Universal channeling machine on turn work, attention should perhaps be called particularly to the improvement defined in patent No. 1,030,704, June 25, 1912, Bertrand (application filed May 10, 1909).

In machines for channeling welt insoles or turn soles means for engaging the edge of the sole and properly locating it for the operation of the channeling knives has been found indispensable. It is important that this means should be operative at a point on the sole adjacent to the position where the knives are performing their cutting operation. In the Universal machine, therefore, in which

the knives vibrate, the means for engaging the edge of the sole, which may conveniently be called an edge gauge, is mounted to vibrate with the knives so that it is always adjacent to their cutting edges. In the experimental work directed to adapting this Universal channeling machine for turn work it was found that it was not practicable to move the edge gauge in a line parallel with the path of travel of the knives, because in operating upon the curved portions of a turn sole there was danger that the edge gauge would crowd the feather edge of the sole and mutilate it. As I have explained, it is important that the edge of a turn sole be in perfect condition after the channeling operation, because this edge is visible in the finished shoe. It was to obviate this danger of injuring the sole by the edge gauge that the improvement of patent 1,030,704 was incorporated in the machine. This improved organization comprised means for moving the edge gauge slightly away from the knives in the backward movement of the knives and edge gauge, thus permitting clearance between the edge gauge and edge of the sole in operating upon curved portions of the sole. The problem and its solution are indicated in Fig. 6 of the drawings of the Bertrand patent No. 1,030,704. All of the twenty-two claims of the patent are directed to mechanisms embodied in the commercial machine for turn work and are, most of them, directed to the organization which I have been discussing. A typical claim is 8:

"8. A channeling machine, having, in combination, a support for a flat sole, work feeding devices for engaging the face of the sole, an edge gauge, an automatic means for imparting a relative separating movement to said gauge and devices across the line of feed to relieve the pressure of the sole on the gauge, substantially as described."

The Universal channeling machine which, as I have stated, was introduced in 1907 for welt work and in 1908 for turn work has superseded the machine of 1899, the machine shown in Plaintiff's Exhibit 235, for both welt insole and turn channeling. Of the new machines 1094 were put out in the four years between March 1, 1909, and March 1, 1913, the latter date being the end of the United Company's last fiscal year. The Universal machine has a capacity for both welt insole work and turn sole work of from 10

to 25 per cent more than the 1899 machine. One of the new machines will channel enough soles to provide for the operation of three or four welt and turn sewing machines.

Int. 38. Have you collected in a volume the patents referred to by you in your testimony as relating to insole channeling machines?

Ans. I have and I now produce this volume [*producing volume*].

[*Volume of patents introduced in evidence, and marked "Defendants' Exhibit 119".*]

Mr. WEBSTER. Please note the petitioner's objection to introduction of any patents issued after the date of the filing of petition herein, on the ground that the same has no bearing with reference to any matters involved in this cause, and such patents are irrelevant, inadmissible and incompetent.

Int. 39. Will you please state the number, date, name of patentee of each of the patents contained in that volume, Defendants' Exhibit 119?

Ans. [*Reading.*]

No. 644,571, March 7, 1900, Beckman.

No. 952,701, March 22, 1910, Eppler.

No. 965,656, July 26, 1910, Prenzel.

Reissue No. 13,375, reissued February 27, 1912, Prenzel.

No. 984,772, February 21, 1911, Meyer.

No. 984,773, February 21, 1911, Meyer.

No. 989,142, April 11, 1911, Gordon.

No. 1,023,801, April 23, 1912, Bertrand (application filed April 30, 1908).

No. 1,030,536, June 25, 1912, Prenzel (application filed April 20, 1911).

No. 1,030,703, June 25, 1912, Bertrand (application filed March 24, 1909).

No. 1,030,704, June 25, 1912, Bertrand (application filed May 10, 1909).

No. 1,030,706, June 25, 1912, Bertrand (application filed April 15, 1911).

No. 1,030,708, June 25, 1912, Bertrand (application filed June 24, 1911).

No. 1,030,710, June 25, 1912, Bertrand (application filed July 24, 1911).

No. 1,030,802, June 25, 1912, Bertrand (application filed May 16, 1910).

The Universal channeling machine is put out by the United Company through its Goodyear department.

GOODYEAR OUTSOLE CHANNELING MACHINE.

Int. 40. In his answers to questions 65 and 66, Mr. Chapman refers to an out-sole channeler which he saw at the Whitman factory and compares it with what is illustrated on page 108 of Plaintiff's Exhibit 220. For what work in shoe manufacturing was the out-sole channeler at the Whitman factory, and that shown on page 108 of the catalogue, intended? What was its importance as a machine, and to what extent has it been employed to do the work for which it was designed?

Ans. The Goodyear out-sole channeler is a very old machine which, when it was active, was used for channeling the out-soles of welt shoes. Before there was introduced into the industry the rounding and channeling machine, it was the practice to shape out-soles of welt shoes in one or two ways. The workmen would either tack on the shoe the out-sole, trim it by hand to the desired contour, then remove it from the shoe and channel it upon the Goodyear out-sole channeler, or he would die out the out-sole with a die and channel it upon the Goodyear out-sole channeler before applying it at all to the shoe. When the rounding and channeling machine went into use these old methods of channeling out-soles became obsolete and the Goodyear out-sole channeler became obsolete as a machine for use in the manufacture of welt shoes at the same time.

As to the reasons why the old methods of channeling out-soles have been superseded by the rounding and channeling machine, it is difficult to locate properly upon the bottom of a welt shoe a sole which has previously been shaped to the contour desired for the sole of the finished shoe. The sole of a welt shoe has to be applied to the botton of a shoe, after, of course, the welt has been attached

and when the welt is extended laterally from the shoe all around the shoe in front of its heel end.

The outline of the shoe bottom defined by the edge of the laterally extending welt is larger than a sole that has been given the desired shape for the sole in the finished shoe, and it is difficult to locate properly the sole under these conditions. So far as I know, no customer of the United Company attempts to shape the out-soles of welt shoes before they are attached to the shoe. The rounding and channeling machine, as I have explained in my previous testimony, shapes the sole after it has been cemented to the shoe and imparts the shape in accordance with the shape of the last. At the same time it is very economical to use the rounding and channeling machine because it performs simultaneously two operations which, before its introduction, had to be performed separately; that is, the shaping of the sole and the forming of the channel which is to receive the out-seam.

For the reasons which I have stated there is, under modern conditions of shoe making, no place in a welt shoe factory for the Goodyear out-sole channeling machine, as a machine for use on welt shoes. This machine became inactive before the United Company was formed, and such small demand for the machine as there has been since the company was formed has been for special work.

Int. 41. Have you examined the machine at the Whitman factory; and, if so, for what purpose is it now used?

Ans. I have examined at the Whitman factory the machine which has been referred to by Mr. Chapman. As he stated, the machine is constructed substantially as shown in the cut on page 108 of Plaintiff's Exhibit 220, which is the Goodyear Shoe Machinery Company catalogue of 1897. When I saw this machine at the Whitman factory it was idle. The machine was equipped for special work, that is, for forming grooves in the bottom of the channels of out-soles for McKay sewed or standard screw shoes.

That machine is never used in the Whitman factory upon welt work of any kind. The out-soles of all welt shoes made in the Whitman factory are channeled on the Universal rounding and channeling machine at the same time that the sole is shaped.

There are ten Universal rounding and channeling machines in that factory, of which one is the new model E which I have discussed in my previous testimony.

Int. 42. How many Goodyear out-sole channeling machines like that shown on page 108 of Plaintiff's Exhibit 220 have ever been put into shoe factories by the United Company?

Ans. Seven.

LEVELING MACHINE: GOODYEAR AUTOMATIC SOLE.

Int. 43. Please explain the function of a leveling machine in the manufacture of shoes, and state the class of work for which the Goodyear automatic sole-leveling machine is used.

Ans. A leveling machine is used to give to the bottom of the sole of a shoe the shape desired in the finished shoe. The operation is performed after the sole has been attached and the desired shape is imparted to the sole by pressure. In the manufacture of welt shoes it is the practice to impart this pressure by means of a vibrating roll which is moved relatively to the shoe in such manner that it operates successively upon different portions of the sole. The Goodyear automatic sole-leveling machine is a machine of the vibrating roll type which is used exclusively for leveling the soles of welt shoes.

Int. 44. What was the first patent definitely directed to an automatic sole-leveling machine of the vibrating roll type?

Ans. An automatic sole-leveling machine of this type was for the first time shown in the drawings and described in the claims of patent No. 540,222, May 28, 1895, Winkley and Phillips.

The nature of the advance in the art represented by this patent may be indicated by quoting the first claim of the patent, which is as follows: —

"1. In a sole leveling machine, the combination of a vibrating leveling roll, a shoe supporting jack, and connected mechanism operating automatically to change the relative longitudinal position and lateral inclination of the roll and jack, substantially as decribed."

The machine shown in this patent was thoroughly automatic. The operator could, if he desired, after putting a shoe into posi-

tion for the operation of the machine and starting the machine, go away and leave it and when he came back he would find that the leveling operation had been completed by the machine, that the machine had stopped and that the shoe had been presented by the machine in proper position for its convenient removal and the substitution of another machine.

Int. 45. In his answers to questions 67 and 68 Mr. Chapman compared the machine of Plaintiff's Exhibit 234 with the cut on page 28 of Plaintiff's Exhibit No. 190, being the United Shoe Machinery Company's catalogue of 1902. What machine is shown on page 28, and when was that machine first put into use?

Ans. The cut on page 28 of Plaintiff's Exhibit 190, being the United Shoe Machinery Company's catalogue of 1902, shows the Goodyear automatic leveling machine as it was first put out for commercial use about 1896, and also correctly represents the machine as it was put out for commercial use in 1899. The machine shown in Plaintiff's Exhibit No. 234, which is No. 35, was leased to the Commonwealth Shoe and Leather Company by the Goodyear Shoe Machinery Company on May 26, 1897. I have examined the Goodyear automatic leveling machine No. 35, of which Plaintiff's Exhibit 234 is a photograph, and I find that that machine is not now in the condition in which it was leased by the Goodyear Company in 1897. The work-supporting mechanism which is shown in that photograph was of a type which was not adopted for commercial use until 1900, and that mechanism was substituted in the machine of Plaintiff's Exhibit 234 for the type of work-supporting mechanism which was commercially used prior to 1900, and which is that shown in the cut on page 28 of Plaintiff's Exhibit 190. The work-supporting mechanism now on the machine shown in Plaintiff's Exhibit 234 is illustrated in drawings and described in the specification set forth in the claims of patent No. 677,550, July 2, 1901, Meyer. Mr. Chapman apparently failed to note this difference between the work-supporting mechanism which is plainly shown in Exhibit No. 234 and the work-supporting mechanism which is also plainly shown in the cut on page 28 of Plaintiff's Exhibit 190.

Int. 46. If the subjects-matter of any patent of the United Company were embodied in the Goodyear automatic leveling machine as put out by the United Company in 1899, please name those patents and state briefly their relation to that machine.

Ans. The commercial Goodyear automatic leveling machine as put out in 1899 embodied mechanisms sets forth in the claims of the following patents, all owned or controlled by the United Shoe Machinery Company: —

No. 540,222, May 28, 1895, Winkley and Phillips.
No. 540,223, May 28, 1895, Winkley and Phillips.
No. 541,988, July 2, 1895, Winkley.
No. 546,211, September 10, 1895, Winkley and Phillips.
No. 555,548, March 3, 1896, Winkley.
No. 580,746, April 13, 1897, Winkley.
No. 610,314, September 6, 1898, Winkley.

Of these patents the first one, No. 540,222, was, as I have already stated, the first patent directed to an automatic leveling machine of the vibrating-roll type. I have already quoted a typical claim of that patent. The machine shown in the drawings of this patent, however, was not commercially used, but was an experimental machine which constituted one of the steps toward the development of the commercial machine which was constructed as shown and described in patent No. 555,548, March 3, 1896, Winkley. The commercial machine of 1899 embodied the mechanism set forth in all twelve of the claims of that patent No. 555,548, of which a typical claim is the eighth: —

"8. In a sole leveling machine, the combination of a pair of shoe supporting jacks, a leveling roll associated with each jack, means for relatively actuating one jack and its associated roll to level a right shoe, and the other jack and its associated roll to level a left shoe, and connected mechanism operating automatically to regulate the relative movement of each jack and its associated roll to shape the forepart and shank of a shoe independent of each other, substantially as described."

While this machine did not reach the stage of its development at which it was commercially successful until there were incorporated in it the improvements of the patent No. 555,548, to which I

have just referred, important steps in its development are represented in earlier patents and valuable improvements are set forth in the claims of those patents. For example, the commercial machine of 1899 embodied the mechanism set forth in all of the nineteen claims of patent No. 540,223, May 28, 1895, Winkley and Phillips. A typical claim of this patent is the first: —

"1. In a sole leveling machine, the combination of two shoe supporting jacks, a vibrating leveling roll, associated with each jack, and means common to both jacks for automatically presenting each jack independently to its associated roll when the jack is brought into operative position, substantially as described."

Further substantial advance toward the commercial machine of 1899 is represented by patent No. 541,988, July 2, 1895, Winkley, all five claims of which set forth mechanism embodied in the commercial machine. A typical claim is the first: —

"1. In a sole leveling machine the combination of a vibrating leveling roll, a shoe supporting jack, connected mechanism for relatively actuating roll and jack to level the sole of a shoe placed upon the jack, and an automatically operating adjusting device connected with said actuating mechanism whereby the same is operated to shape the shank and forepart of a sole independently of each other, substantially as described."

Int. 47. Please state whether or not since February, 1899, any improvements have been embodied in the Goodyear automatic leveling machine put out by the United Company. If so, state what they were, the reasons why they were introduced, and explain their importance in the industry.

Ans. Since February, 1899, many important improvements have been embodied in the Goodyear automatic sole-leveling machine as put out by the United Company. The first improvement was the work-supporting mechanism shown in patent No. 677,550, July 2, 1901, Meyer, and defined in the claims of that patent. This improvement was adopted in 1900, and, as I have already explained, the machine of Plaintiff's Exhibit No. 234 at the Whitman factory of the Commonwealth Shoe & Leather Company is now provided with the work-supporting mechanism of this patent No. 677,550, which was substituted on the machine of Plaintiff's Exhibit No.

234 for the mechanism used prior to this improvement in 1905. This improved work-supporting mechanism was more convenient for the operator and more positive in use and was also more accurate in its adjustments and permitted a wider range of adjustments of the shoe relative to the leveling roll.

In 1901 the machine was reorganized by incorporating in it the improvements shown in the drawings and described in the claims of patent No. 692,401, February 4, 1902, Winkley, and 668,635, February 26, 1901, Gifford. The 1899 machine was not organized to level properly the soles of shoes provided with Baltimore edges, because it was so organized that the leveling roll tipped at the same inclination on both sides of the forepart. This was not satisfactory in the leveling of Baltimore edges, because manufacturers did not desire to apply pressure at the same inclination to the outer extension edge as they did to the edge on the inner side of the shoe. Many manufacturers refused to use the automatic leveling machine until it was provided with the inventions of these patents No. 692,401 and 668,635.

The nature of the improvements which adapted the reorganized machine of 1901 for leveling shoes with extension edge soles is well indicated by typical claims of the patents. Claim 1 of patent No. 668,635, February 26, 1901, Gifford, is as follows: —

"1. A sole leveling machine, having, in combination, a leveling roll, a shoe supporting jack, connected mechanism for relatively actuating the roll and jack to level the sole of a shoe placed upon the jack, and two automatically operating adjusting devices connected with said actuating mechanism whereby the same is operated to shape the shank and the opposite edges of the forepart of a sole independently of each other, substantially as described."

Claim 1 of patent No. 692,401, February 4, 1902, Winkley, is as follows: —

"1. A sole leveling machine, having, in combination, a leveling roll, a shoe supporting jack, mechanism for relatively actuating the roll and jack to level the sole of a shoe placed upon the jack, an adjusting device connected with said mechanism, two independent mechanisms for automatically actuating said device and means for connecting said device to either of said mechanisms, substantially as described."

While the automatic leveling machine as reorganized in 1901 would level the great majority of shoes with entire satisfaction to manufacturers, it still lacked the flexibility of adjustment which was required to adapt it for all kinds of work and to meet all conditions which had to be dealt with in the leveling of welt shoes. For example, it lacked capacity for adjustment to vary the operation of the leveling roll at any point where the manufacturer might wish to vary its operation in accordance with the style of the shoe or the particular shape which he desired for the sole. It also lacked any provision for adjustment to enable it to level shoes which had shanks longer or shorter in proportion to the forepart than the shanks of the average shoe. Consistently with the development of this machine which has been steadily toward making it a universal machine which would be adapted to level satisfactorily all welt shoes of whatever kind or style, experimental work was carried on with the object of providing the machine with universal adjustments and adapting it for every possible kind of work which might come to it, and as a result of the experimental work there was produced, in December, 1910, a machine which was known as "Leveling Machine, Goodyear Automatic Sole, Model B." This new machine was characterized by two important improvements; the first consisted in an organization which permitted adjustment to vary independently the plane which was imparted to the sole at different regions. This improvement is set forth in all of the eight claims of patent No. 889,287, June 2, 1908, Winkley, a typical claim of which is the first: —

"1. A sole leveling machine, having, in combination, a sole leveling roll, a shoe supporting jack, means to change the relative lateral inclination of the roll and jack, and means for independently adjusting the relative lateral inclination of the roll and jack for operation upon any one of a plurality of different portions of the shoe."

The second important improvement which was characteristic of this model B machine consisted in means by which the machine could be adapted for operation upon shoes having shanks longer or shorter in proportion to the forepart than the shanks of average

shoes. This improvement is set forth in all of the twenty-one claims of patent No. 1,011,301, December 12, 1911, Winkley. Typical claims are the first and ninth, which are as follows: —

"1. A sole leveling machine, having, in combination, a shoe supporting jack, a sole leveling roll, connected mechanism acting automatically to change the relative longitudinal position and lateral inclination of the roll and jack, and means for varying the operation of said mechanism to compensate for variations in the relative length of the forepart and shank of shoes of different styles."

"9. A sole leveling machine, having, in combination, a shoe supporting jack, a sole leveling roll, connected mechanism acting automatically to change the relative longitudinal position and lateral inclination of the roll and jack including two compensating mechanisms acting respectively to control the operation of said mechanism while the inside margin and the outside margin of the sole are being operated upon, and means for adjusting said compensating mechanisms to vary the points on the inside and outside margins of the sole at which a change is made in the relative lateral inclination of the roll and jack for operation on the forepart."

Improvements embodied in this new model B machine are also set forth in all of the three claims of patent No. 1,054,263, February 25, 1913, Winkley (application filed October 3, 1910).

This model B machine is now undergoing further reorganization to incorporate additional improvements which contribute to the convenience of the operator, and particularly in the way of facilitating the effecting of all of the adjustments easily and quickly. It is also anticipated that further improvements of a nature to improve the quality of the work will be embodied in the machine.

This machine, the leveling machine, Goodyear automatic sole, is put out by the United Shoe Machinery Company through its Goodyear department.

Mr. WEBSTER. Please note petitioner's objection to all reference in the foregoing answer to patents dated after the date of the filing of the petition herein, as incompetent, inadmissible and irrelevant, and as having no reference to the questions at issue in this cause.

Int. 48. Have you collected in a volume the several Letters Patent to which you have referred to in your prior testimony as relating to automatic sole-leveling machines of the vibrating roll type?

Ans. Yes, sir, and I produce the volume.

[*Volume of patents so produced is introduced in evidence, and marked "Defendants' Exhibit 120".*]

Mr. WEBSTER. Please note objection of petitioner to introduction of patents issued after date of the filing of the petition herein.

Int. 49. Will you please give the number, date and the name of patentee of the several patents included in the volume which has just been offered in evidence as Defendants' Exhibit 120?

Ans. No. 540,222, May 28, 1895, Winkley and Phillips.

No. 540,223, May 28, 1895, Winkley and Phillips.

No. 541,988, July 2, 1895, Winkley.

No. 546,211, September 10, 1895, Winkley and Phillips.

No. 555,548, March 3, 1896, Winkley.

No. 580,746, April 13, 1897, Winkley.

No. 610,314, September 6, 1898, Winkley.

No. 668,635, February 26, 1901, Gifford.

No. 677,550, July 2, 1901, Meyer.

No. 692,401, February 4, 1902, Winkley.

No. 889,287, June 2, 1908, Winkley.

No. 1,011,301, December 12, 1911, Winkley.

No. 1,054,263, February 25, 1913, Winkley (application filed October 3, 1910).

STITCH-SEPARATING MACHINES.

Int. 50. What is the function of a stitch separator in the manufacture of shoes?

Ans. A stitch-separating machine is used to form indentations in the upper face of the welt of a welt shoe in the intervals between contiguous stitches. I produce a welt shoe which has been operated upon by the stitch-separating machine.

[*Shoe so produced is offered in evidence, and marked "Defendants' Exhibit No. 121".*]

Int. 51. What was the first patent directed to a stitch separator, and if the stitches were separated prior to that patent, how was it done?

Ans. The first patent disclosing a machine organized for separating the stitches of a finished out-seam was No. 521,978, June 26,

1894, Hadaway, which was reissued as reissue No. 11,538, May 12, 1896. The first commercial machine for performing this operation is shown in patent No. 543,012, July 23, 1895, Hadaway. Prior to the production of this machine stitches had been separated by a hand operation, the workman using a hand tool which was a form of chisel.

Int. 52. In his answers to questions 60 and 61 Mr. Chapman compared the cut shown on page 89 of Plaintiff's Exhibit 220 (catalogue of the Goodyear Company, issued January 1, 1897) with a stitch separator, No. 124, which he saw at Whitman. What does the cut on page 89 represent, and when was the machine of that cut first put into use?

SEPARATING MACHINE: HADAWAY STITCH.

Ans. The machine illustrated in the cut on page 89 of Plaintiff's Exhibit 220, Goodyear Shoe Machinery Company's catalogue of 1897, was the first commercial machine for separating stitches. That machine was first put out in September, 1895, and was the commercial stitch-separating machine of the United Shoe Machinery Company early in 1899.

Int. 53. If the subjects-matter of any Letters Patent of the United Company were embodied in that machine as the same was put out by the United Company in 1899, what were those patents, and state briefly their relation to said machine?

Ans. The machine as put out by the United Company in 1899 embodied mechanism set forth in the claims of —

Reissue patent No. 11,538, May 12, 1896, Hadaway;

No. 537,823, April 23, 1895, Hadaway;

No. 543,012, July 23, 1895, Hadaway.

Typical claims of reissue No. 11,538 are 2 and 14, which are as follows: —

"2. In a machine for separating the stitches of boot or shoe soles, the combination of a work support; an automatically adjustable separator for locating the intervals between the stitches whether of uniform or varying lengths; and means having provision for forcing said tool between the stitches when the point of said tool has located itself in the space between two stitches."

"14. In a machine for separating stitches, the combination with a work support, of locating an indenting means and connected mechanisms operating automatically to actuate said means to locate and indent the intervals between the stitches after the sewing has been completed."

The problem which had to be solved in the production of a commercial machine for separating stitches, that is, for performing an operation previously performed by hand, and, on account of the expense of the operation, performed only on the highest grades of shoes and the most expensive shoes, was indicated by the claims which I have just quoted. The stitches of the out-seam vary in length and a machine for performing this operation must be able to automatically find the interval between each pair of successive stitches, whatever their length, and force the indenting tool to properly enter the interval between each pair of contiguous stitches.

The machine shown in the drawings of this reissue patent No. 11,538 was not a commercial machine. In the experimental machine shown in those drawings the stitch-finding movement of the separating tool was in the same direction as its feeding movement, in which the tool, after it had formed the indentation, was moved to feed the work along a distance approximately equal to the length of a stitch. This organization required that the stitch-separating tool at the beginning of its finding movement come down upon the top of a stitch and there was constant liability that the tool would deface or mutilate the thread in the stitches. An attempt to overcome this difficulty is represented by patent No. 537,823, April 23, 1895, Hadaway. In the organization of the machine shown in the drawings of this patent the stitch-finding movement of the tool was in the opposite direction to the direction of its work-feeding movement. A typical claim of this patent, which represents an important step in the development of a commercial machine, is the first:—

"1. In a machine for separating the stitches on boot and shoe soles the combination of a work support; an automatically adjustable separator for locating the intervals between the stitches whether of uniform or varying lengths; and means for moving said tool in

one direction to locate the interval between the stitches and means for moving said tool in the opposite direction to feed the work."

The first commercial machine adapted for satisfactory use in shoe factories under commercial conditions was constructed as shown in the drawing set forth in the claims of patent No. 543,012, July 23, 1895. In the organization of the machine shown in this patent the liability of injuring the stitch by bringing the separating tool down upon the top of a stitch at the beginning of its stitch-finding movement and then rubbing the tool across the top of that stitch was overcome by arranging the tool so that at the end of its work-feed movement it went back the length of a standard stitch and then was depressed for its stitch-finding movement. If the stitch was of average or standard length, which would usually be the case, the tool would immediately drop into the stitch interval. The tool was, however, arranged to have a stitch-finding movement in two directions after it descended, so that if the stitch happened not to be of standard length the tool would quickly locate it, but without the danger of mutilating the tops of stitches which was present in the construction shown in the earlier patents.

Int. 54. State whether or not since 1899 there have been any improvements or modifications introduced in, or in connection with, the stitch separator put out by the United Company. If so, what they were, the reason for them, and their importance in the art; if the same are shown and described in any Letters Patent of the United Company, name the patents.

Ans. The 1899 stitch-separating machine was not provided with means for adjusting the machine to enable it to operate properly upon shoes having the tread face of the sole and the upper face of the welt in planes at varying inclinations. The machine was first provided with means for adjusting it to provide for such variations between the planes of the welt and the tread face of the sole by the improvement shown in patent No. 690,422, January 7, 1902, Hadaway. A typical claim defining this improvement is 4:—

"4. A stitch separating machine, having, in combination, an indenting tool and actuating means therefor, a slide, a work support mounted thereon arranged to engage the bottom of a shoe

sole, and means for adjusting the work support on said slide to vary the angle of inclination of the sole engaging surface, substantially as described."

This improvement was adopted in 1901. Another defect in the machine of 1899 was that on the heavier classes of work the machine could not be depended upon to force the tool the desired distance into the stock between the two stitches. In January, 1902, improved means for operating the stitch-separating tool was adopted which overcame this objection. The first claim of patent 719,584, February 3, 1903, Hadaway, is : —

"1. A stitch separating machine, having, in combination, a tool supporting lever, a stud projecting from one side of the lever, a tool stock pivotally mounted thereon, an indenting tool on the tool stock and a pressure lever for actuating the tool supporting lever provided with an abutment arranged to support the stud against the backward thrust of the tool, substantially as described."

The improvement of this patent combined with mechanism which is described in patent No. 690,422, to which I have referred, effectively overcame the failure of the machine to operate properly on heavy work. The improvement of patent No. 690,422, which was a step in the development of such means, is defined in claim 9 of that patent : —

"9. A stitch separating machine, having, in combination, an indenting tool, a lever upon one side of which the tool is mounted, a projection on the other side of the lever, a rigid support arranged to be engaged by said projection when the lever is sprung by a resistance offered to the tool, and means for actuating the lever, substantially as described."

The machine, as put out in 1899, was further defective in that it made an indentation which was of the same depth from the outer edge of the welt to the end of the indentation adjacent to the upper. Making the indentation adjacent to the upper of the same depth as in the outer portion of the edge was objectionable, because it involved danger of injuring the inseam and tearing the welt away from the upper. This objection was overcome by an improvement adopted in 1902 and shown in patent No. 906,705, December 15, 1908, Hadaway (application filed June 6, 1904). The improve-

ment is defined in the first two claims of that patent, of which a typical claim is the first: —

"1. A stitch indenting tool, having a grooved working face, the surfaces of which are substantially plane and continuous throughout the working face of the tool and which are curved upwardly at their outer ends to prevent this portion of the working face from marring the work when the remaining portion is forced below the surface of the work, substantially as described."

The improvement of this patent 906,705, like the improvement of patents Nos. 690,422 and 719,584, has been embodied in the commercial machine ever since its adoption.

In 1904, in the endeavor to extend the field of usefulness of the stitch-separating machine, an improvement was made in it which would adapt it to make imitation stitches in addition to its function as a stitch-separating machine. This improvement is shown in patent No. 933,174, September 7, 1909, Hadaway (application filed April 25, 1904). A typical claim of this patent is the first: —

"1. A machine for making imitation stitches, having in combination, a tool carrier, an automatically adjustable indenting tool mounted thereon, means including the tool carrier for actuating the tool to indent and feed the work, and means independent of the work acting automatically to move the tool on its carrier and thereby adjust the tool to regulate the extent of the feeding movements imparted to the tool, substantially as described."

The structure set forth in the claim which I have just quoted is regularly embodied in the commercial stitch-separating machine. This machine, the official name of which is "Separating Machine; Hadaway Stitch", is put out by the United Shoe Machinery Company through its Goodyear department. The company had put out 1361 machines before March 1, 1913.

Int. 55. Referring again to the stitch separator, No. 124, which Mr. Chapman examined at the Whitman factory, have you examined that machine?

Ans. I have.

Int. 56. State whether that machine is in the same condition as when it was leased by the Goodyear Company, and whether there are embodied in it the subjects-matter of any Letters Patent of the United Company issued after 1899.

Ans. Stitch-separating machine No. 124, which was referred to by Mr. Chapman and which I examined at the Whitman factory of the Commonwealth Shoe & Leather Company, is not now in the condition in which it was leased to the Commonwealth Shoe & Leather Company by the Goodyear Shoe Machinery Company. The machine has been reorganized and as now organized is constructed substantially as shown in part in the drawings of patent 719,584 and in part in the drawings of patent 933,174, both of which patents I have referred to above. The reorganized machine as it now stands in the Whitman factory embodies important inventions of the following patents: —

No. 690,422, January 7, 1902, Hadaway.

No. 719,584, February 3, 1903, Hadaway.

No. 933,174, September 7, 1909, Hadaway.

The importance of the mechanisms set forth in the claims of these patents has been indicated in the foregoing detailed discussion of those patents.

Int. 57. Have you collected in a volume the Letters Patent referred to by you in your prior testimony as relating to stitch separators; if so, will you please produce it?

Ans. Yes; and I produce the volume.

[*Volume of patents so produced is introduced in evidence, and is marked "Defendants' Exhibit 122".*]

Int. 58. Will you please state the number, date and name of patentee of each of the patents included in the volume Defendants' Exhibit 122?

Ans. No. 521,978, June 26, 1894, Hadaway.

Reissue No. 11,538, May 12, 1896, Hadaway.

No. 537,823, April 23, 1895, Hadaway.

No. 543,012, July 23, 1895, Hadaway.

No. 690,422, January 7, 1902, Hadaway.

No. 719,584, February 30, 1903, Hadaway.

No. 906,705, December 15, 1908, Hadaway.

No. 933,174, September 7, 1909, Hadaway.

PEGGING MACHINES.

Int. 59. What is the function of a pegging machine in the manufacture of boots and shoes?

Ans. Prior to February, 1899, and most of the time since that date pegging machines were used exclusively for attaching the soles of boots or shoes by means of wooden pegs. In recent years some five or six machines have been put out by the United Shoe Machinery Company for use in performing an operation known as "nailing heel seats", that is, securing the heel ends of the soles to the insole and upper. Within the past year a few machines have also been used for driving wooden slugs into the toplifts of heels. These heel slugs are almost universally of metal, and probably the slugging of the toplifts of heels with wooden pegs is a temporary fad.

Int. 60. What was the first pegging machine commercially used in the manufacture of shoes and boots?

Ans. One of the earliest patents on pegging machines is No. 21,593, September 1, 1858, Sturtevant. I am not advised as to the extent to which the machine of this patent No. 21,593 was put into use, but a commercial machine which was known as the "New Era Pegging Machine", and was very extensively used, is shown in patents No. 34,335, February 4, 1862, Sargent, and No. 44,048, August 30, 1864, Sargent. A typical claim of patent No. 34,355 is the first: —

"1. As a new machine, the combination of the mechanism for operating the awl, peg driver, and for feeding the work, with a mechanism for cutting and feeding the peg wood, all being arranged compactly in the frame A or its equivalent and operated by the cams and levers, arranged substantially as and for the purposes described."

Int. 61. Mr. Chapman in his answer to question 70 has compared the Davey pegging machine which is at the Whitman factory of the Commonwealth Shoe & Leather Company with a cut on page 76 of Plaintiff's Exhibit 190 (being United Company's catalogue of 1902); have you examined the pegging machine referred to by Mr. Chapman; and, if so, what have you to say as to the accuracy

of Mr. Chapman's comparison? In answering this question please state whether or not the pegging machine at the Whitman factory is in the same condition that it was in when it was purchased from John F. Davey in 1895.

Ans. I am forced to the conclusion that Mr. Chapman's comparison of the pegging machine in the Whitman factory with the cut on page 76 of Plaintiff's Exhibit 190, being the United Company's catalogue of 1902, was very hurried, and it is evident that Mr. Chapman had not had an opportunity to examine a modern pegging machine. As to his statement that "in point of general mode of operation and functional results the two machines are substantially the same", practically the only similarity between the two machines is that they both can be operated to drive a wooden peg. The pegging machine in the Whitman factory of the Commonwealth Shoe & Leather Company is an obsolete machine. No machine of that type has ever been supplied to a shoe manufacturer by the United Shoe Machinery Company, and that pegging machine in the Whitman factory is the only machine of that type which is in use in any shoe factory in the world, so far as I can ascertain. The machine as now used in the Whitman factory is not in the condition in which it was sold to the Commonwealth Shoe & Leather Company in 1895. When it was sold it was equipped with inventions shown and defined in the claims of patent 555,434, February 25, 1896, Davey. That patent was the first patent on what has since been known as a "horn pegging machine" and represented the intermediate step between the earlier type of pegging machine and the modern pegging machine illustrated in the cut on page 76 of Plaintiff's Exhibit 190, United Company's catalogue of 1902.

Prior to the machine illustrated in Davey patent 555,434 it had been the universal practice in pegging shoes to insert the pegs while the last was still in the shoe. The pegs were all of uniform length and all longer than the average thickness of the material to be united, so that the ends of the pegs were driven into the wooden last. Then the last had to be pulled out of the shoe and the ends of the pegs had to be cut or broken off by a tool such as I now produce, which is known as a "peg rasp".

[*Peg rasp so produced is introduced in evidence, and marked "Defendants' Exhibit No. 123".*]

[*Answer to Int. 61 continued:*]

In the use of the pegging machine which is illustrated in patent No. 555,434, February 25, 1896, Davey, it was possible to peg shoes on the horn. This machine represented a great advance in the art over the prior machines, the operation of which I have just described, since it saved considerable of the operator's time and also a great expense in lasts, which were very soon worn out by the constant driving into them of the ends of the pegs. It was still necessary, however, in the use of the pegging machine of patent No. 555,434 to break off the ends of the pegs inside the shoe by means of a tool such as is illustrated in Defendants' Exhibit 123. I produce a horn tip such as was used on the machine of patent No. 555,434 and such as was on the pegging machine in the Whitman factory of the Commonwealth Shoe & Leather Company when that machine was purchased from John F. Davey in 1895.

[*Horn tip of Davey pegging machine of 1895 so produced is introduced in evidence, and marked "Defendants' Exhibit No. 124".*]

PEGGING MACHINE: DAVEY.

[*Answer to Int. 61 continued:*]

This horn tip was the improvement in pegging machines which first made it possible to peg shoes on a horn instead of on a wooden last. The machine of this patent No. 555,434, February 25, 1896, represented, however, only a brief transitory period in the development of pegging machines. Before February, 1899, that machine had been superseded by an entirely new and different type of machine and the standard commercial pegging machine which was being supplied to shoe manufacturers in 1899 was organized to cut off the end of each peg inside the shoe at the instant the driving of the peg had been completed. That machine incorporated also some inventions made after February, 1899, and is the machine which is shown on page 76 of the Plaintiff's Exhibit 190, United Company's catalogue of 1902. In fact, the general operation of that machine which constitutes its fundamental distinction over all

prior machines is indicated in the descriptive matter on page 77 of Plaintiff's Exhibit 190, United Company's catalogue of 1902, which page 77 is directly opposite page 76, on which is shown the cut with which Mr. Chapman compared the machine at the Whitman factory. I quote from this descriptive matter the following statement:—

"There are cutting devices mounted in the tip of the horn and operated automatically by mechanism which cleanly cut off the projecting ends of the peg on the inside of the shoe as fast as the pegs are driven in."

I produce a horn tip such as was used in the commercial Davey pegging machine in 1902 at the date of the catalogue Plaintiff's Exhibit 190.

[*Horn tip of present commercial Davey pegging machine is introduced in evidence, and marked "Defendants' Exhibit 125".*]

[*Answer to Int. 61 continued:*]

In this exhibit the cutters in the tip of the horn which are operated immediately after each peg is driven to sever the end of the peg inside the shoe can be operated by moving a rod on the opposite end of the exhibit. In the commercial machine this rod is operated automatically by connections which extend down through the horn across the base of the machine and up through the machine frame to the driving shaft.

The pegging machine at the Whitman factory which was discussed by Mr. Chapman in his answer to question 70 is not now in the condition in which it was when it was purchased from John F. Davey in 1895. The machine is now provided with a "jack" or work support which is constructed substantially as illustrated and defined in the claims of patent No. 919,424, April 27, 1909, Cuff, which patent is owned by the United Shoe Machinery Company. The jack shown and claimed in that patent is known as "No. 8 Jack", and is supplied in large numbers by the United Shoe Machinery Company for use on loose-nailing machines and machines for slugging the toplifts of heels. As no photograph of the pegging machine at the Whitman factory has been introduced in evidence, and as I have had no opportunity to photograph that machine,

I have had a photograph made of Davey pegging machine No. 79, which was one of the machines constructed as shown in patent No. 555,434, February 25, 1896. According to Mr. Davey's records, the machine at the Whitman factory is No. 76, although in my examination of that machine I was not able to find any number on the machine. I have, however, compared the photograph which I now produce with the machine at Whitman, and I find that it shows accurately the machine as it was sold to the Commonwealth Shoe & Leather Company by Mr. Davey in 1895. The horn which was then on the machine and which is shown in this photograph is not now on the machine, but is lying on a shelf near it.

[*Photograph of old Davey pegging machine equipped with horn, patent No. 555,434, February 25, 1896, is introduced in evidence, and marked "Defendants' Exhibit 126".*]

[*Answer to Int. 61 continued:*]

After having made the photograph Exhibit 126, I had the horn shown in that exhibit removed from the machine and had a No. 8 jack, such as is on the machine at Whitman, substituted for the original horn. I now produce a photograph showing the Davey pegging machine of 1895 equipped with a No. 8 jack. I have compared this photograph with the pegging machine in the Whitman factory and find that it shows accurately that pegging machine in its present condition, with the unimportant exception that the shape of the upright rod which is supported in bearings extending from the machine frame, and which carries at its upper end the jack, is slightly different in the pegging machine at the Whitman factory.

[*Photograph of old Davey pegging machine equipped with No. 8 jack is introduced in evidence, and marked "Defendants' Exhibit 127".*]

Mr. WEBSTER. Please note the petitioner's objection to introduction of this exhibit as having no bearing on the questions at issue in this cause.

[*Answer to Int. 61 continued:*]

I also produce a photograph of the present commercial Davey pegging machine, the machine which is illustrated on page 76 of

Plaintiff's Exhibit 190, being the United Shoe Machinery Company catalogue of 1902, with which illustration Mr. Chapman compared the pegging machine at the Whitman factory. Comparison of this photograph with the photograph which I have produced showing substantially the present condition of the pegging machine at the Whitman factory will be of interest in considering the accuracy of Mr. Chapman's comparison.

[*Photograph of commercial Davey pegging machine shown in Plaintiff's Exhibit 190, page 76, is introduced in evidence, and marked "Defendants' Exhibit 128".*]

Mr. WEBSTER. Please note at this point the objection of counsel for petitioner to the unwarranted criticism by this witness of Mr. Chapman. Counsel for petitioner also objects to the statements heretofore made by this witness relating to what he learned from Mr. Davey's records, and any information which he obtained with reference to the machine at the Whitman factory from others, as hearsay, and therefore inadmissible and incompetent.

[*Adjourned to 10 A. M., Thursday, October 9, 1913.*]

BOSTON, MASS., October 9, 1913.

Int. 62. Please state whether in a commercial Davey pegging machine as put out by the United Company in February, 1899, there was embodied the subject-matter of any patent, and if the machine has been improved since February, 1899, please state what the improvements were, what was the reason for making them, and whether or not these improvements are described in any patents owned by the United Company; if so, name the patents.

Ans. The Davey pegging machine as supplied to shoe manufacturers in 1899 and just prior to that time was organized substantially as is shown in patent No. 581,066, April 20, 1897, Davey and Ladd. Nearly all of the thirty-two claims of that patent set forth mechanisms which were embodied in the commercial machine at that time. Typical claims of the patent are 1 and 5, which are as follows: —

"1. The combination of a rotatable horn or work support provided with a work supporting surface, and with a pair of cutting

jaws both movable with relation to said surface, and actuating mechanism therefor, substantially as described."

"5. The combination of the horn or work support capable of complete rotation and having a tip provided with a perforation concentric with the axis of rotation of the horn, a cutting device in said horn and means to move it to cut the peg tip, a pegging mechanism comprising an awl and driver and means for moving said awl and driver laterally to feed the material, and actuating mechanism for driving the awl longitudinally into the material at or near the beginning of said lateral feed movement, and for moving the awl wholly through the material at the completion of said lateral movement, substantially as described."

The organization of the two claims which I have just quoted solved for the first time in the history of the industry the problems which had to be dealt with in organizing a pegging machine which should cut off the ends of the pegs projecting through the stock inside of the shoe.

Among the most important of these problems was the provision of a peg-cutting organization which could be incorporated in a horn tip which was small enough to permit the driving of pegs at any point where they needed to be driven, to secure the sole properly, and obviously the horn tip must be small in order to permit proper operation at the toe; the organization of the horn tip with its peg-cutting mechanism in such manner that the stock would be supported against the thrust of the awl and the stroke of the driver forcing the peg through the stock on both sides of the stock closely adjacent to the point where the awl hole was made and the peg was driven; and, further, the machine must be so organized that the awl will form a hole which is at least as long as the peg to be inserted in the hole, because a wooden peg differs from a metal fastening in that it must have formed for its reception a hole which shall be at least as long as the peg; otherwise the wooden peg will break or splinter and cannot properly be driven.

As to the problem of forming a hole for the peg, it follows from what I have said that in the class of work for which pegging machines have generally been used and for which they are primarily intended, that is, attaching out-soles, the hole for the peg must be made entirely through the stock, comprising the out-sole and insole,

and in making this hole the machine must be so organized that the point of the awl may pass entirely through the insole and emerge beyond its inner face inside of the shoe.

The mechanism of the 1899 machine shown, as I have stated, in patent No. 581,065, which was employed in that machine for cutting off the ends of the pegs inside of the shoe as the pegs were driven, has, since the formation of the United Shoe Machinery Company, been reorganized so that its commercial form is now as shown in patent No. 1,028,240, June 4, 1912, McFeely (original application filed March 24, 1900).

The reorganization of the cutter-operating mechanism which is illustrated in the drawings of this patent No. 1,028,240, and which constitutes the subjects-matter of all of the twenty-eight claims of the patent, was necessitated by the fact that in the organization of the 1899 machine, when the horn was depressed to accommodate thicker stock, the cutters were necessarily moved toward each other, and when the stock was unusually thick the cutters were moved so near each other that they were sometimes in the way of the awl as it emerged from the stock inside of the shoe. This frequently resulted in breaking of the cutters and sometimes, also, the point of the awl was broken. These defects were entirely removed by the improvements of patent No. 1,028,240 by which the mechanism was so organized that vertical movement of the horn to whatever extent produced no effect whatever upon the cutters. A typical claim of patent No. 1,028,240 setting forth this improvement is the fifth, which is as follows: —

"5. In a pegging machine, the combination with a vertically movable horn; of a cutting device operating in said horn; means for operating the cutting device located independently of the horn; and connections from said means to said cutting device so constructed and arranged that the cutting device is actuated only by said means and is unaffected by vertical movements of the horn."

Mr. WEBSTER. Please note at this point petitioner's objection to all reference to patents issued since the date of the filing of the petition, for reasons heretofore given.

[*Answer to Int. 62 continued:*]

Further improvements in the present commercial machine relat-

ing to the so-called "button" which forms the bearing surface for the stock at the extreme tip of the horn, and which encloses and holds in position the cutter, are also disclosed and described in the claims of patent No. 1,028,240 and may be noted in Defendants' Exhibit No. 125. The cutters in the horn tip have frequently to be renewed and in the construction of the machine as put out in February, 1899, it was inconvenient to get out the old cutters and to replace them, and difficulty was occasioned by the means employed for securing the button to the horn. The present commercial construction is defined in a number of claims of patent No. 1,028,240, of which a typical claim is 28: —

"28. The combination with the horn provided with inner concave cylindrical bearing surfaces at opposite sides; of a pair of cutter jaws provided with convex cylindrical bearing surfaces at their outer sides and concave cylindrical bearing surfaces at their inner sides; and a cylindrical bearing member extending transversely through the horn to afford a support for the inner bearing surfaces of the cutter jaws; substantially as described."

This machine is now, and has been since February, 1899, put out by the United Company through its metallic department.

Int. 63. Have you collected in a volume the patents referred to by you in your testimony as relating to the Davey pegging machine?

Ans. Yes, sir; and I produce the volume. [*Witness produces volume.*]

Mr. PHILLIPS. We offer this.

[*Volume of patents relating to pegging machines introduced in evidence, and marked "Defendants' Exhibit 129".*]

Mr. WEBSTER. Petitioner objects to the introduction of patents dated since the date of the filing of the petition herein, the objection being for the reasons heretofore given.

Int. 64. Will you please give the number, the date and names of the patentees of the several patents included in the volume which has just been offered in evidence as Defendants' Exhibit 129?

Ans. No. 21,593, September 21, 1858, Sturtevant.

No. 34,335, February 4, 1862, Sargent.

No. 44,048, August 30, 1864, Sargent.

No. 555,434, February 25, 1896, Davey.

No. 581,066, April 20, 1897, Davey and Ladd.
No. 919,424, April 27, 1909, Cuff.
No. 1,028,240, June 4, 1912, McFeely.

SKIVING MACHINE: AMAZEEN.

Int. 65. What is the function of the Amazeen skiving machine such as referred to by Mr. Chapman in his answer to interrogatory 71?

Ans. The Amazeen skiving machine is used to form a wide beveled thin edge on parts of uppers which are subsequently to have that edge folded in order to impart to the edge the finished appearance which is desired in prominent parts of the upper of the shoe. The purpose of the operation is to permit the folding of the stock, that is, the turning over of its extreme edge upon the body of the stock without unduly increasing the thickness of the finished edge, which, without such skiving, would obviously be of double the thickness of the stock. A sample of the work done on the Amazeen skiving machine is shown in Defendants' Exhibit 28.

Int. 66. What was the first patent showing the skiving machine of the Amazeen type?

Ans. The first patent of which I am aware disclosing the Amazeen type of skiving machine is patent No. 200,682, February 26, 1878, Amazeen. I am not advised as to the extent of use of the machine constructed under that patent, but patent No. 220,906, October 28, 1879, Amazeen, shows the first commercial Amazeen skiving machine which was put into commercial use. In later years the machine which was constructed as shown in the drawings of that patent was known as "Amazeen Skiving Machine, Model No. 1".

A typical claim of patent No. 200,682 is the third, as follows:—

"3. The combination of a feeding device and a revolving cutting device, both substantially as above described, the cutting edge, when making a cut, moving away from the feed and in a direction across the line of feed, as set forth."

Int. 67. Have you examined the Amazeen skiving machines at the Whitman factory of the Commonwealth Shoe & Leather Com-

pany? If so, please state whether the machines which you examined embodied the subject-matter of any patent. If so, please name the patent.

Ans. I have examined the Amazeen skiving machines at the factory of the Commonwealth Shoe & Leather Company, and find that three of these machines are of the type knownas "Amazeen Skiving Machine, Model 6", and are constructed substantially as shown on page 132 of Plaintiff's Exhibit 190, being United Shoe Machinery Company catalogue of 1902, with the exception that these three machines are provided with mechanism illustrated in the drawings of patent No. 452,996, May 26, 1891, Dunham. In addition to the mechanism shown in this Dunham patent the machines embodied the mechanisms which are illustrated and set forth in the claims of the following patents:—

No. 609,868, August 30, 1898, Bayley.

No. 632,984, September 12, 1899, Bayley.

No. 636,942, November 14, 1899, Bayley.

No. 645,381, March 13, 1900, Bayley.

In addition to these three model 6 Amazeen skiving machines, I found in the Whitman factory a number of old machines of various types, some of which were of the type now designated as the model 3 Amazeen skiving machine and others of which I was not able to identify as having been manufactured either by the United Shoe Machinery Company or by its predecessor, the Amazeen Machine Company. All of these old machines, however, were organized as is illustrated in the drawings and set forth in the claims of patent No. 452,996, May 26, 1891, Dunham, which patent has been owned by the United Shoe Machinery Company and by its predecessor, the Amazeen Machine Company, since June 10, 1898.

Int. 68. Please state what improvements, if any, have been made by the United Shoe Machinery Company or its predecessor, the Amazeen Machine Company, upon the old type of machine which, as you state, is known as model 3. In answering this question please state the reason for such improvements as have been made, and whether such improvements constitute the subject-matter of United States Letters Patent. If so, name them.

Ans. The first improvement upon the model 3 machine consisted in means for providing ready adjustment of the relative positions of the knife and feed roll. This is a delicate adjustment and has to be made frequently, owing to the fact that the knife has to be ground very often — several times a day. This grinding decreases rapidly the diameter of the circular knife and wears it down so fast that the knife has to be renewed after a period from two to six weeks, according to the skill of the operator in grinding. This improvement provided a satisfactory quick adjustment for the relative positions of the cutter and feed roll, and before this improvement was made that adjustment was an awkward performance. This improvement is set forth in patent No. 518,774, April 24, 1894, Bayley. A typical claim of this patent, directed to this improvement, is the first: —

"1. In a skiving machine, the combination with a cutter to skive the material, of a rotating work supporting or feeding wheel, its shaft, and a yoke or frame therefor, and adjusting devices to adjust said yoke or frame toward and from said cutter and in a plane parallel with the plane of said cutter, substantially as described."

This patent No. 518,774 also illustrates and sets forth in its claims another improvement which represented a substantial advance in the machine. It is essential for the formation of a satisfactory bevel in the skiving operation that the extreme forward acting portion of the circular knife be located as nearly as possible in the middle of the bevel, whatever be the width of the bevel being formed by the knife. If the cutter is not so located it will cause buckling of the stock, and when that happens the knife will cut into the body of the stock and spoil the upper blank which is being operated. The improvement which contributed means for effecting this adjustment in the Amazeen skiving machine is set forth in claims of patent No. 518,774, April 24, 1894, Bayley, and a typical claim is the sixth: —

"6. In a skiving machine, the following instrumentalities, viz.: — A work supporting and feeding wheel, a rotating skiving cutter, bearings for the same and a carrier for the said cutter and its bearings, said carrier being adjustable longitudinally with relation

to said work supporting and feeding wheel, substantially as described."

When the machine had been reorganized to incorporate the two improvements to which I have referred, and which are illustrated and set forth in the claims of patent No. 518,774, the reorganized machine rapidly displaced the model 3 machines, that is, the machines which were like some of the old machines now in the Whitman factory, to which I have referred.

The next step in the development of the Amazeen skiving machine was the provision of a convenient organization for effecting the knife-grinding operation which, as I have explained, has to be performed several times a day, as the knife must be kept extremely sharp at all times during its operation. This improvement provided a grinder which could be moved instantly into and out of operative grinding relation to the knife, and which also moved with the knife in every one of the numerous adjustments which have to be made in the position of the knife. This improvement is illustrated in the drawings and set forth in the claims of patent No. 609,868, August 30, 1898, Bayley. A typical claim of this patent is the first:—

"1. The combination with a rotary disc cutter and movable bearing bracket or support therefor, of a grinder and grinder shaft and bearing frame or bracket therefor supported on said cutter shaft bracket, and means for adjusting the position of the grinder bracket upon the cutter bracket, whereby the said grinder may be set in proper position with relation to the cutter and retained therein independently of changes of position of the cutter, substantially as and for the purpose described."

The next improvement in the Amazeen skiving machine provided the machine with a sleeve bearing for the knife shaft, so constructed that the sleeve can be readily removed from the machine and the cutter shaft taken out without dismantling the machine. The purpose of the improvement is set forth in the following typical claim of patent 632,984, September 12, 1899, Bayley:

"1. In a skiving machine, the combination with a rotary knife shaft, of a sleeve surrounding and supporting said shaft, a movable bracket, means for detachably holding said sleeve in said movable

bracket, whereby the sleeve may be quickly and easily withdrawn to permit the removal of the knife without disturbing the relationship of the sleeve to the shaft."

The specific construction of this sleeve is illustrated in the drawings and set forth in the claims of patent No. 645,381, March 13, 1900. All of the seven claims of this patent set forth constructions embodied in the machine, and claim 1 is typical:—

"1. As a new article of manufacture a sleeve bearing for rotary longitudinally adjustable shafts, the same comprising cylindrical end portions and an open side intermediate connecting portion of enlarged interior diameter, substantially as and for the purpose described."

Improved mechanism which was embodied in the machine, and enabled the making of fine angular adjustments of the knife to vary the inclination of the bevel made on the stock, is shown and set forth in all of the six claims of patent No. 636,942, November 14, 1899, Bayley. A typical claim of this patent is the first:—

"1. A skiving machine embodying in its construction a feed bed or roll, the frame, a block having a sliding connection relatively to the frame, a pivoted bracket on the block, a knife carried by the bracket and operating at an angle with respect to the surface of the feed roll, means carried by the stock for effecting a tilting adjustment of the bracket on the block, and means for fixing the bracket in adjustable position on the block."

All of the improvements set forth in the patents which I have been discussing were incorporated in the model 6 Amazeen skiving machine which is shown on page 132 of Plaintiff's Exhibit No. 190, the United Shoe Machinery Company catalogue of 1902. These improvements are also embodied in the three model 6 Amazeen skiving machines which I examined at the Whitman factory of the Commonwealth Shoe & Leather Company.

Since February, 1899, further improvements have been embodied in the Amazeen skiving machine. The first of these improvements is illustrated in the drawings, and forms the subject-matter of the eight claims of patent No. 823,586, June 19, 1906, Davenport. The model 6 machine was organized to run at high speed, but it was not practicable to run it at the highest speed of which it was

capable because it would not operate properly around curved or irregular portions of the edge of the shoe. The improvement of patent 823,586 made it practicable to run the machine at higher speed than had before been commercially practicable. A typical claim is the first: —

"1. In a machine of the class described, a device for operating upon the work, in combination with independent mechanism for feeding the work to said operating device, said work feeding mechanism comprising a feed disc, means to actuate said disc, and a connection between said actuating means and said disc arranged to permit the movement of the feeding disc to be retarded by resistance applied to said disc and to allow the actuating mechanism to move independently of said disc."

This improvement enabled the operator to retard the feeding of the stock when he was operating upon curved or irregularly shaped portions of the shoe.

It had long been desired to provide No. 6 model of the Amazeen skiving machine with a belt-driving mechanism for the knife. Equipping the machine with such a mechanism, while it would seem an apparently simple matter, involved difficuties owing to the frequent adjustments in directions at right angles to each other which had to be made in the cutting knife and its shaft, and adjustments which varied the vertical inclination of the cutter shaft. In the model 6 machine the cutter shaft was operated by gears and when the cutter shaft was moved bodily in various adjusting operations, which had frequently to be made, it was necessary to move the gear on the driving shaft which operated the cutter shaft, and, further, those gears were not a satisfactory mechanical arrangement because they were not well adapted for operating the cutter at the high speed at which it must be driven. There have been provided by the construction shown in Dunham patent No. 452,996, to which I have referred, a belt-driving attachment which had been applied to many of the old model 3 machines, and to some of the No. 6 machines, but a more satisfactory mechanism for securing the advantages desired is illustrated in drawings and set forth in the claims of patent No. 823,578, June 19, 1906, Bayley. This mechanism also discloses means for preventing the side pull which

the belt would tend to exert upon the cutter shaft, and which would interfere with the delicate adjustments required by the nature of the work of the machine. These two improvements are set forth in all of the seven claims of patent No. 823,578, of which typical claims are 1 and 8: —

"1. A skiving machine comprising a machine frame, a knife frame, adjustable with relation to the machine frame, a driving shaft carried by said machine frame and provided with a pulley, a movable knife carried by said knife frame, idle pulleys also carried by said knife frame, and a belt connecting said driving pulley and said movable knife to actuate the latter, said belt being adapted to be passed around said idle pulleys, whereby the tension of said belt is maintained substantially uniform in the varying relative adjustments of the said frames."

"8. In a skiving machine, a shaft mounted in suitable bearings, a rotary skiving knife mounted on said shaft, a pulley carried by said shaft near one end, and an adjustable half bearing for said shaft at the end adjacent to the pulley to support the shaft against lateral strain."

The mechanism set forth in claim 1 permitted any desired adjustment of the knife for the character of the work or to compensate for grinding, while in the old machines at the Whitman factory, which are provided with the belt-driving attachment of the Dunham patent 452,996, any substantial adjusting movement of the knife requires corresponding adjustment of the belt-driving mechanism.

When the improvements of patents No. 823,578 and No. 823,586 were incorporated in the machine, the machine was known as "Model 7", and that model is, and has been for several years, the standard commercial Amazeen skiving machine put out by the United Company.

The improvements which I have described, and which have been incorporated in turn in the model 6 and model 7 Amazeen skiving machines are important, because outside of what is known as the Brockton or South Shore district these skiving machines are almost universally run by girls and their operation of the machine is, of course, greatly facilitated by the advantages afforded by the numerous improvements which I have discussed. This machine is

put out by the United Shoe Machinery Company through its general department.

Int. 69. Have you collected in a volume the patents relating to the Amazeen skiving machine with regard to which you have been testifying?

Ans. I produce a volume which comprises copies of each of the patents which I have mentioned in my discussion of the Amazeen skiving machine.

[*Volume of patents so produced is offered in evidence, and marked "Defendants' Exhibit 130".*]

Int. 70. Please give the number, date and name of the patentee of the several patents contained in the volume which has just been offered in evidence as Defendants' Exhibit 130.

Ans. No. 200,682, February 26, 1878, Amazeen.
No. 220,906, October 28, 1879, Amazeen.
No. 452,996, May 26, 1891, Dunham.
No. 518,774, April 24, 1894, Bayley.
No. 609,868, August 30, 1898, Bayley.
No. 632,984, September 12, 1899, Bayley.
No. 636,942, November 14, 1899, Bayley.
No. 645,381, March 13, 1900, Bayley.
No. 823,578, June 19, 1906, Bayley.
No. 823,586, June 19, 1906, Davenport.

LASTING MACHINES.

Int. 71. State briefly the function of the lasting machine and the place of the Chase machine in the lasting machine art.

Ans. The operation of lasting consists of drawing or straining the upper over the last to which it is to be fitted and which determines the shape of the shoe, and securing the upper to the insole which is located on the bottom of the thread face of the last, and in welt shoes and in the better grades of McKay shoes has previously been tacked to the last. There are two general types of lasting machines. One is known as the "bed" type. In this type of machine the last and shoe are supported on two supports comprising a heel support and a toe rest, and the upper materials are

worked over into lasted position at the heel and the toe by means of devices known as "wipers". Also at the heel end the upper materials, including the stiff "counter", that is, the piece of sole leather or other material as leather board, which preserves the shape of the shoe at the heel while it is being worn, are wrapped around the heel end of the last and forced into close fitting engagement with the last by means known as a "heel band". In the bed type of lasting machine the securing of the upper to the insole in lasted position is not automatic, but is accomplished by driving tacks into the upper at the necessary points by the use of what is known as a "hand tacker", except around the toe of welt shoes, in which region it has been the practice since about 1898 to secure the upper materials in lasted position, welt work only wired, by means of a wire which is secured to a tack at one side of the toe and is carried around the toe and secured to another tack on the opposite side.

Of the bed type of lasting machine are the Chase lasting machine, the Ideal lasting machine, the McKay & Copeland lasting machine and the comparatively new No. 5 lasting machine, which is the present commercial machine supplied by the United Company.

In the other type of lasting machine, which is known as the "hand method" type, the upper is worked over the last and automatically secured in position by a step-by-step operation. This type of machine includes grippers for seizing and pulling the upper at successive points around the shoe, wipers co-operating with these grippers for forcing the upper down closely on the insole after it has been gripped and pulled by the grippers, and tacking mechanism for securing the upper in the lasted position in which it has been placed by the grippers and wipers. And these mechanisms are all operated automatically and the organization operates step by step successively upon different portions of the shoe. Of this type is the Consolidated hand method lasting machine.

As to the place of the Chase lasting machine in the lasting machine art, in 1899 the Chase lasting machine was the standard machine for lasting men's welt shoes, and substantially all men's

welt shoes which were being lasted by machine in 1899 were being lasted on the Chase lasting machine.

Int. 72. Was the Chase machine the first lasting machine in use? If not, what preceded it?

Ans. The first patent of which I am aware disclosing a lasting machine of the bed type is No. 25,673, October 4, 1859, Purington. That patent was reissued as No. 1,382, reissued January 6, 1863, Purington. The first claim of the reissued patent is as follows: —

"1. Compressing the upper around the last by means of clamps provided with projecting plates or flanges to turn the projecting edges of the upper over upon the insole or last in any manner, substantially as described."

The Purington machine was reorganized by the improvements of patent No. 28,120, May 1, 1860, Wells, and patent No. 41,967, March 15, 1864, Wells.

The first claim of patent No. 41,967 is as follows: —

"1. The combination of hinged or folding flanges with the end jaws, heel, and toe."

As further improved by patent No. 44,916, November 1, 1864, Fischer, and No. 90,651, June 1, 1869, Fischer, this machine was put out and commercially used to a considerable extent in the late '60's and '70's. The commercial machine was constructed as shown by the patent No. 44,916 with the wipers shown in No. 41,967 and the tipping toe head illustrated in No. 90,651.

LASTING MACHINE: CHASE.

Int. 73. Mr. Chapman has referred to certain Letters Patent, namely, —

No. 340,860, April 27, 1886;

No. 364,088, May 31, 1887;

No. 376,368, January 10, 1888;

No. 483,375, September 27, 1892;

all to Chase, as for inventions embodied in the Chase machine. Describe briefly the subjects-matter of these patents as the same were embodied in the Chase machine of 1899.

Ans. The first patent referred to by Mr. Chapman, No. 340,860, April 27, 1886, Chase, illustrated a step in the development of the "retarder", which is shown in the form in which it was commercially used in 1899 in patent No. 364,088, May 31, 1887, Chase, which was also referred to by Mr. Chapman. The commercial construction in 1899 is set forth in claims 1 and 2 of patent No. 364,088.

The construction of claims 3 and 4 of patent No. 364,088 was superseded in the commercial machine before 1899 by the improvement shown in patent No. 376,368, January 10, 1888, Chase. The adjusting screws shown in patent No. 364,088 as arranged to adapt the ends of the toe clasp to the shape of the toe were, in the later construction, used merely to limit the outer opening movement of the ends of the clasp as set forth in claim 4 of patent 376,368.

Claim 9 of that patent 364,088 describes specifically the wiper-operating mechanism and claims 10 and 11 are directed to the construction of the toe clasp of the machine.

The other patent referred to by Mr. Chapman, No. 483,375, September 27, 1892, illustrates and sets forth in its claim specifically the hand tacker which was being used in connection with the Chase lasting machine in 1899.

Int. 74. State whether or not in the Chase machine of 1899 there were embodied the subjects-matter of any patents of the United Company other than those named by Mr. Chapman. If so, which patents?

Ans. Patents not mentioned by Mr. Chapman which set forth mechanisms embodied in the commercial Chase lasting machine in 1899 are: —

No. 545,022, August 27, 1895, Chase.
No. 566,831, September 1, 1896, Willard.
No. 569,182, October 13, 1896, Dunphy.
No. 569,231, October 13, 1896, Ray.
No. 571,339, November 17, 1896, Chase.
No. 571,404, November 17, 1896, Shaw.
No. 571,429, November 17, 1896, Chase.

About 1895 the Chase lasting machine was reorganized and the

new machine which was first put out in 1895 and was being put out in 1899 was known as the "High Speed Chase Lasting Machine". That machine, of which the general organization is shown in patent No. 571,429, November 17, 1896, Chase, with the modifications shown in No. 571,404, November 17, 1896, Shaw, superseded in 1895 the old type of Chase lasting machine which was constructed substantially as shown in the patents which were discussed by Mr. Chapman.

The reorganization of the Chase lasting machine, which, as I have stated, took place in 1895, was required by the changing commercial conditions at about that time. At that date the use of stiff box toes was becoming more general and added to the problems of securing good lasting. I should explain that a box toe is a piece of sole leather or other stiff material which serves the purpose in the finished shoe and during its wear of maintaining the shape of the toe. Defendants' Exhibits 109 and 110 are provided with box toes. The problem of lasting the toes of shoes provided with such stiff box toes, the edges of which constitute a part of the upper material which must be shaped to the toe, forced down upon the bottom of the insole and secured in lasted position, was one of the problems confronting the manufacturers of the Chase lasting machine just prior to 1895 which led to the reorganization of the machine.

Another important reason why the reorganization of the Chase machine was necessary in 1895 was that about 1895 radical changes were made in the styles of lasts and the old type of Chase lasting machine was not organized properly to last shoes on the last which went into use in 1895. Prior to about 1895 the lasts which were in general use did not present difficult problems for the lasting machine. I produce a last such as was in use in 1893 and 1894.

[*Last used in 1893–1894 is introduced in evidence, and marked "Defendants' Exhibit 131".*]

[*Answer to Int. 74 continued:*]

The first step in the development away from lasts such as shown in Defendants' Exhibit 131 was toward narrower-toed lasts. A step in this development is illustrated in the last which I now pro-

duce, which was used in 1895 to 1898 and was known as the "Cottage toe".

[*"Cottage toe" last, 1895–1898, is introduced in evidence, and marked "Defendants' Exhibit 132".*]

[*Answer to Int. 74 continued:*]

After the introduction of the cottage toe last, the next step toward modern shapes of lasts was the "Tokio" last, which also was introduced and used during the period from 1895 to 1898.

[*"Tokio" last, used in 1895–1896, is introduced in evidence, and marked "Defendants' Exhibit 133".*]

[*Answer to Int. 74 continued:*]

This tendency toward narrower toes was carried to an extreme in this period between 1895 and 1898, as shown in the "razor toe" last, which I now produce and which was also used during that period from 1895 to 1898.

[*"Razor toe" last, 1895–1898, is introduced in evidence, and marked "Defendants' Exhibit 134".*]

[*Answer to Int. 74 continued:*]

The extreme limit of this development toward narrower toe lasts was an even narrower last which was known as the "needle toe" last.

With the introduction of narrow-toed lasts came new shapes for the heel ends of lasts which, before 1895, had been nearly symmetrical at the heel ends, that is, with the faces of the heel on the opposite sides substantially alike. On looking at the heel end of the "cottage toe" last, Defendants' Exhibit 132, it will be observed that the opposite sides of the heel are not symmetrical and in the "razor toe" last, which is Defendants' Exhibit 134, lack of symmetry will be observed on looking at the bottom of the heel end of the last. This last of symmetry in the heel ends of the lasts presented problems for the lasting operations with which the Chase lasting machine as it was constructed prior to 1895 could not deal. The problems were increased by the further modification in styles of lasts resulting in the introduction of lasts which have come to be known as "crooked lasts", which went into general use soon after 1895. I produce a last which was used in the period from 1899

to 1901, which was known as the "Bull Dog" last. This last shows the development toward the crooked lasts and also illustrates the lack of symmetry in the opposite sides of the heel which has characterized most of the lasts used during the past twelve or fifteen years.

[*"Bull Dog" last, 1899–1901, is introduced in evidence, and marked "Defendants' Exhibit 135".*]

[*Answer to Int. 74 continued:*]

An explanation of the improvements which adapted the reorganized Chase lasting machine which was introduced in 1895 and, as I have stated, was then known as the "High Speed Chase Lasting Machine", may advantageously be made in connection with a discussion of the patents which I have enumerated as showing the reorganized machine as it was adopted and first put out in 1895. Referring first to patents No. 571,404, November 17, 1896, Shaw, and No. 571,429, November 17, 1896, Chase, which together show the reorganized Chase lasting machine first put out in 1895, and as put out in 1899 the invention of the Shaw patent No. 571,404 enabled the operator to withdraw the toe-lasting mechanism from the toe during the lasting operation to observe whether he was properly lasting the toe portion of the shoe and to do this without disturbing at all the relation of the heel-lasting mechanism to the shoe. In the old Chase machine which was constructed prior to 1895, when the operator wished to examine the toe during the lasting operation he had to release the shoe entirely from the machine as the shoe was held in position in the machine by clamping engagement of the toe clasp at the toe and the heel band at the heel, and when the pressure of either of these was released the shoe was no longer held by the machine and when the operator resumed operations he had practically to begin his work all over again. As the lasting of the toe portion of the shoe is the most critical part of the operation and was rendered more so by the introduction of the narrow toes illustrated in the lasts which I have produced, it became even more necessary for the operator frequently to examine the toe during the lasting operation to see whether he was properly performing the work and in order that he might remove

any wrinkles which he found had been formed in the upper on account of the puckering which takes place around the curved portion of the toe during the lasting of the toe.

The organization of the new machine of 1895 by which the operator was enabled to release the toe-lasting mechanism to inspect the toe without affecting the heel-lasting mechanism is shown in patent 571,404, November 17, 1896, and is defined in the claim of that patent.

In my general description of the bed type of lasting machine I explained that the upper materials at the heel end of the shoe, including the counter or stiffening piece, are wrapped around the heel end of the shoe in a bed type of lasting machine by a mechanism comprising a "heel band". The problem of getting the upper materials into close engagement with the sides of the heel end of the last was provided for in the new machines by improvements set forth in a number of claims of patents 571,404, November 17, 1896, Chase, of which a typical claim is 13: —

"13. In a lasting machine, the combination of a pad with a pad support having independently movable longitudinal sections at each end, substantially as and for the purpose set forth."

Another improvement set forth in the claims of this patent 571,429, which contributed to the convenience of the operator was the organization of the toe-lasting mechanism by which the toe rest or support for the toe end of the shoe moved with toe-lasting mechanism when that mechanism was adjusted for longer or shorter shoes. A typical claim is 20: —

"20. In a lasting machine, the combination of movable toe rest and reciprocating toe lasting mechanism, the toe rest moving with the shoe in the direction of the length of the shoe when the toe rest is reciprocated, substantially as and for the purpose set forth."

The lasting of russet and patent leather shoes was provided for in the reorganized Chase machine of 1895 by arranging the toe rest so that it would move with the shoe during such relative movements of the shoe and lasting mechanisms as occurred during the operation. This improvement prevented discoloring russet shoes

and marring patent leather shoes, and is defined in claim 26, as follows: —

"26. In a lasting machine, the combination of an end lasting mechanism with a toe rest which moves with the shoe in the direction of the length thereof by contact therewith, substantially as and for the purpose set forth."

It may be of interest to note that the mechanism set forth in this claim 26, which I have just quoted, has always, since its adoption, been embodied in the Chase machine and has always been incorporated in the successor to the Chase machine, which is the No. 5 lasting machine, the present commercial bed machine of the United Company, and was also embodied in the lasting machine which was constructed and used by Thomas G. Plant.

The problems in the lasting of the toe ends of the new types of lasts which were introduced, as I have explained, about 1895 and soon after that time were solved by the inventions of patents 569,182, October 13, 1896, Dunphy, and 569,231, October 13, 1896, Ray. The Dunphy patent 569,182 discloses and claims means used in the reorganized Chase machine for crowding the ends of box toes into their proper place at the ends of the tip seam. Those were the points where the greatest difficulty occurred in the lasting of box toes, as the stock at each end of the tip seam was thicker than at other portions of the toe. Claim 1 of the Dunphy patent is as follows: —

"In a lasting machine, the combination of a toe wiper carriage, and toe wiping instrumentalities with a flexible toe clasp, having at its ends rigid, pivotally connected toe cap pressure blocks, and between its ends a guide extension; and with a facing pad mounted on the face of said flexible toe clasp and of its rigid, pivotally connected toe cap pressure blocks, substantially as and for the purpose set forth."

Prior to the invention of the Ray patent 569,231 it had been necessary for the operator, whenever the shape of the toe of the last next to be operated upon differed substantially from the toe of the last upon which the machine had been operating, to substitute for the toe clasp which he had been using another toe clasp properly shaped to operate upon the new shape of toe. These

clasps prior to the improvement of the Ray patent cost $1.50 each, and it would have been necessary under the changing conditions, with widely varying shapes of toes, for the manufacturer to have had two toe clasps for each shape of last, one for right shoes and one for left. With the improved construction of the Ray patent No. 579,231 it was only necessary for the operator to change the contact piece in the toe clasp, which cost only forty cents each. This Ray improvement is set forth in all of the six claims of patent No. 569,231, October 13, 1896, of which a typical claim is the first: —

"1. As a new article of manufacture, a pad holder for lasting machines, the same comprising a clasp and one or more pad keepers projecting beyond the inner face of the clasp and provided with angular ends substantially as and for the purpose set forth."

It may be of interest to note that the improvement of this patent No. 569,231 was also embodied by Thomas G. Plant in his lasting machine.

Int. 75. State whether or not you have examined the Chase lasting machine in the factory of the Commonwealth Shoe & Leather Company of Whitman which was referred to by Mr. Chapman; if so, please state what class of shoes are being lasted on the machine, and whether or not all the shoes made in that factory are being lasted on those Chase lasting machines. Please state also whether those Chase lasting machines embody the subjects-matter of any of the patents not mentioned by Mr. Chapman which you have stated were in the Chase lasting machine in 1899.

Ans. I have examined the Chase lasting machines in the factory of the Commonwealth Shoe & Leather Company at Whitman which are referred to by Mr. Chapman. I found that those five machines were being used exclusively in the manufacture of long legged boots. The Commonwealth Shoe & Leather Company make a specialty of long legged boots, which are manufactured only in comparatively small numbers at the present time. So far as I can learn there are only ten factories in the country, out of a total of some 1200 manufacturers, in which long legged boots are made at all, and in those factories they constitute only a portion of the

work. The number of long legged boots manufactured is about one-tenth of one per cent of the number of shoes which are made.

The regular work at the Commonwealth Shoe & Leather factory, that is, shoes both high and low, is not being done upon the Chase lasting machine, but is being performed by the thirty-eight No. 5 lasting machines which are in that factory. The No. 5 lasting machine is the present standard bed lasting machine of the United Shoe Machinery Company.

The Chase lasting machines in the Whitman factory embody mechanisms which are set forth in the claims of the following patents: —

No. 569,182, October 13, 1896, Dunphy.

No. 569,231, October 13, 1896, Ray.

No. 571,429, November 17, 1896, Chase.

No. 1,053,612, February 18, 1913, Keyes (application filed December 26, 1908.)

Mr. WEBSTER. Please note petitioner's objection, for reasons heretofore given, to any patent issued after the date of the filing of the petition herein.

Int. 76. What lasting machines other than the Chase machine, if any, were manufactured and put into use by the United Company in the year 1899?

Ans. In addition to the Chase lasting machine the United Company was supplying to manufacturers in 1899 the Ideal lasting machine, McKay & Copeland lasting machine and the hand method lasting machine.

Int. 77. State whether or not after the organization of the United Company machines which generally speaking were of the type of the Chase lasting machine were designed and put out having in them modifications and improvements forming the subjects-matter of Letters Patent of the United Company. State the patents, if any.

Ans. I have previously referred to the development of the industry which took place about 1895 and during the years immediately following and have produced lasts showing a tendency toward more crooked lasts shortly after 1895, the last Defendants'

Exhibit No. 131 illustrating the nearly straight lasts in use prior to 1895, and the last Defendant's Exhibit No. 135 showing a last used from 1899 to 1901, which illustrates the tendency toward more crooked lasts. After 1900 the development of the industry was steadily toward still more crooked lasts. A step in this development is represented by a standard last of 1903, which I now produce.

[*Last of 1903 is introduced in evidence, and marked "Defendants' Exhibit 136".*]

[*Answer to Int. 77 continued:*]

I have placed upon the bottom of this 1903 last a straight line connecting the middle of the toe and the middle of the heel, and also lines which bisect the toe and heel respectively. These lines indicate the crookedness of this last. I also produce a last such as was used in 1905, and I have also marked upon the bottom of this last a line which connects the middle of the toe and the middle of the heel, and also lines which bisect the toe and the heel respectively. These lines indicate clearly the development of the industry toward crooked lasts.

[*Last of 1905 is introduced in evidence, and marked "Defendants' Exhibit 137".*

Model illustrating operation of Chase lasting machine is here introduced in evidence, and marked "Defendants' Exhibit 138".]

[*Answer to Int. 77 continued:*]

The model which I have produced, Defendants' Exhibit 138, will illustrate roughly the difficulties encountered in the lasting of a shoe made upon the last of Defendants' Exhibit 137, on the Chase lasting machine. I should state that of course this model Defendants' Exhibit 138 does not reproduce the elaborate lasting mechanism of the Chase machine. It is intended to illustrate only the action of the toe and heel wipers, but I believe that it correctly represents the difficulties to which I shall refer and in the explanation of which I shall use the model.

I produce a metal pattern for right shoe which is of the same contour as the bottom of the last Defendants' Exhibit No. 137.

[*Metal pattern of right shoe on last of Defendants' Exhibit 137 is introduced in evidence, and marked "Defendants' Exhibit 139".*]

[*Answer to Int. 77 continued:*]

I also produce a metal pattern for a left shoe which is of the same contour as the bottom of the last of Defendants' Exhibit 137.

[*Metal pattern of left shoe on last of Defendants' Exhibit 137 is introduced in evidence, and marked "Defendants' Exhibit 140".*]

[*Answer to Int. 77 continued:*]

On each of these patterns I have placed a rib which represents the rib of an insole, so that for the purpose of demonstrating the models these patterns may be regarded as insoles. In manipulating the model which I introduced, Defendants' Exhibit 138, I place the heel end of the pattern in the recess which illustrates roughly the heel-end lasting mechanism. I then move toward the toe end of the pattern the metal parts of the toe end which illustrate roughly to toe-lasting mechanism. It will be observed that in moving toward the insole the parts of the model which correspond to the wipers of a lasting machine the wiper on the outside of the pattern engages the rib which represents the rib of the insole and stops further movement of the wipers before the wiper on the inside of the pattern engages the channel rib; and after engagement of the wiper on the outside, the wiper on the inside can move no farther and occupies a position at a substantial distance away from the adjacent rib.

It is obvious that in a lasting machine operating in this manner it would be difficult to force the upper materials on the inside of the toe up against the channel rib, as it is important that they should be forced in order that the welt may be properly laid in the angle between the feather edge of the sole, that is, the portion of the sole outside of the rib, and the rib. By way of anticipating demonstration of a model which I shall produce illustrating the operation of the No. 5 lasting machine, the present commercial bed lasting machine of the United Company, I will call attention to the fact that the wipers in this model Defendants' Exhibit No. 138 move in a direction which coincides with the median line of the model, which would be the median line of a machine. This

median line is indicated by broken lines cut in the pattern. The fact that the wipers move on the median line of the machine explains the failure of the inside wiper to operate properly. It will be observed that as the wipers are moved toward the pattern the acting edge of the inside wiper moves in a direction which is not far from parallel with the rib on the pattern.

LASTING MACHINE: No. 5, U. S. M. C.

Soon after the organization of the United Shoe Machinery Company, Mr. Brock, one of the company's lasting machine inventors, conceived that in order to overcome the difficulties which I have explained a bed lasting machine ought to be organized in such a manner that the wipers at the toe should, in their operative movement, move toward the insole rib in a line coinciding with a line bisecting the forepart of the shoe, and that if a machine were so organized the toe-lasting mechanism would operate alike on both sides of the toe. Mr. Brock further conceived that corresponding advantages would be obtained if the heel-lasting mechanism, including the wipers and heel bands, were made to operate in a direction which should be likewise coincident with a line bisecting the heel end of the shoe, and he also conceived that the accomplishment of these desirable results at both the toe and the heel could be secured by arranging the toe and heel mechanisms so that they would be relatively movable about a pivot located approximately at the point where the line bisecting the toe intersects the line bisecting the heel.

I now produce a model which illustrates this characteristic mode of operation of the new machine which was developed by Mr. Brock, and which, in its commercial form, became known as the "No. 5 Lasting Machine", the official name of which is "Lasting Machine No. 5, U. S. M. C."

[*Model illustrating operation of United Company's present commercial bed lasting machine No. 5 is introduced in evidence, and marked "Defendants' Exhibit 141".*]

[*Answer to Int. 77 continued:*]

This model, like that which I have produced illustrating the

operation of the Chase machine, is not intended to illustrate the elaborate lasting mechanism of the No. 5 lasting machine, but only to show the manner of operation of the heel and toe wipers. While the wiper plates of this model may be reversed, it happens now to be adjusted for a right shoe, and I shall therefore use Defendants' Exhibit No. 139, pattern of the last of Defendants' Exhibit 137, showing the 1905 last, in demonstrating the model, this being the same pattern which I used in demonstrating the model of the Chase lasting machine.

In illustrating with this model the operation of the No. 5 lasting machine I place the heel end of the pattern in the recess representing roughly the heel-lasting mechanism; then swing the heel-lasting mechanism until the toe is brought into proper relation to the toe-lasting mechanism, after which I move the toe-lasting mechanism into operative position. In moving the wipers forward it will be noted that they move on the line scratched on the pattern which bisects the toe end of the pattern: that the wipers move alike in the same manner on each side toward the rib on the pattern, and that at the extreme forward position of the wipers they are in substantial engagement with the rib on both sides. This construction in the commercial machine insures that the upper materials shall be crowded properly into the angle between the rib and the feather edge on both sides of the toe, on the inside of the shoe in the same manner and as well as on the outside.

Referring now to the lasting of the heel end of the shoe, and placing the pattern of Defendants' Exhibit 139 again in the model Defendants' Exhibit 138, it will be observed that when the wipers at the heel end are moved toward the last the wiper on the outside of the pattern advances over the edge of the pattern well toward the middle of the heel before the forward end of the wiper on the inside has reached the pattern at all. This difficulty was overcome in the commercial Chase lasting machine to a considerable extent by making the wipers in rights and lefts, but even that did not secure their proper operation, owing to the fact that their movement is on the median line of the machine indicated by broken lines on the pattern, and not, as it should be, to secure uniform

operation for both sides of the heel, on the median line of the heel of the last.

Again, inserting the pattern of Defendants' Exhibit 139 in the model Defendants' Exhibit 141 illustrating the operation of the No. 5 lasting machine and moving the heel-lasting plates toward the shoe, it will be observed that these move in the median line of the heel end of the last and operate just alike on both sides of the heel.

The improved heel-lasting mechanism embodied in the No. 5 lasting machine and illustrated roughly in the model Defendants' Exhibit No. 141 was of great advantage in lasting the heel ends of crooked lasts. In the machine the heel-lasting mechanism includes a heel band which, as I have explained in discussing the Chase lasting machine, is the means which crowds the upper materials against the sides of the last. It was extremely difficult in the use of the Chase machine to crowd upper materials, including the stiff counter, properly into engagement with the side of the last on the inside of the shoe, as the prevailing style of lasts which have been used since soon after 1900 are so shaped in the region just forward of the heel that at least as much pressure must be exerted upon the upper materials in that region as upon the upper materials at the corresponding point on the outside of the last. In the operation of the Chase machine the heel band in operating upon a last, such as is shown in Defendants' Exhibit 137, will engage the outside of the last just forward of the heel and come to rest before the end of the heel band on the opposite side, that is, the inside, has reached the last, and in fact when it is at some distance from the last.

The No. 5 lasting machine as first put out was constructed as shown in the drawings of patent No. 1,018,477, February 27, 1912, Brock (application filed October 26, 1907).

The distinguishing characteristics of the organization of this machine which I have been discussing are set forth in many claims of this patent, of which a typical claim is the first: —

"1. A machine for use in lasting shoes and boots, comprising lasting devices for acting upon opposite ends of the last, constructed and arranged for relative movement about a center approxi-

mately at the intersection of the median line of the heel part and the median line of the forepart of the last."

Nearly all of the one hundred and sixteen claims of this patent No. 1,018,477 define mechanisms which are embodied in the commercial No. 5 lasting machine which was first put out for commercial use in January, 1908, being known officially as "Lasting Machine No. 5, U. S. M. C."

The claims of patent No. 1,066,374, July 1, 1913, Brock (original application filed October 26, 1907), define the general organization of the No. 5 lasting machine in terms of the means for supporting the last. Most of the nineteen claims of this patent define the organization of the No. 5 lasting machine, and a typical claim is the first: —

"1. In a machine of the class described, the combination with a support for one end of a last, of a support for the other end of the last, constructed and arranged for movement laterally about a center located approximately at the point of intersection of the median lines of the forepart and the heel part of the last."

Experimental word by other inventors which constitutes steps toward the invention finally developed in commercial form by Mr. Brock is illustrated and defined in the claims of patents No. 1,017,124, February 13, 1912, Winkley and Alley (application filed April 29, 1896), and No. 1,018,025, February 20, 1912, Winkley and Alley (application filed July 22, 1896).

Many of the claims of these two patents define in broad terms inventions embodied in the No. 5 lasting machine.

A typical claim of patent No. 1,017,124 is the nineteenth: —

"19. The combination with toe lasting mechanism, of a toe rest and a heel support arranged for lateral curvilinear adjustment relatively to cause the median line of the foreparts of lasts having different degrees of swing to coincide with the median line of the machine."

A typical claim of patent No. 1,018,025 is the twenty-seventh: —

"27. A lasting machine, comprising heel lasting mechanism including a heel embracing band, and means, independent of the shoe, constructed and arranged for effecting a lateral adjustment of the band into different positions to cause the band to act uni-

formly upon the two sides of the heel of a right or left shoe in the direction of the median line of the heel part."

The present commercial organization of the heel-band mechanism which was adopted in March, 1909, and constituted a distinct improvement in the machine, rendered the heel band self-adaptable to variations in the contours of the side faces at the heel end of the last.

The utility of mechanism which will shape itself to the heel ends of modern lasts will be obvious upon inspection of the heel end of a last which I now produce, which was used in 1907 and 1908 and which is typical of the unsymmetrical heel ends of modern lasts.

[*Last of 1907–1908, illustrating unsymmetrical heel ends of modern lasts, is introduced in evidence, and marked "Defendants' Exhibit 142".*]

[*Answer to Int. 77 continued:*]

This self-adapting heel mechanism is broadly defined in the claims of reissue patent No. 13,292, reissued September 19, 1911, of which the twelfth claim is typical: —

"12. In a lasting mechanism, the combination of an end embracing band, endwise movable bars acting on the band at opposite sides of the machine, an actuator, and an equalizing slide movable transversely of the machine."

Mr. Brock's improvements over the Snow invention are defined in the claims of patent No. 1,002,818, September 12, 1911, Brock. A typical claim of this patent is claim 30: —

"30. An end lasting mechanism having, in combination, an end embracing band, means for advancing the band ends longitudinally of the shoe and additional means movable transversely of the shoe and having its position controlled automatically by the work to effect equal band end closing pressure against the two sides of an unsymmetrical shoe."

All but one of the thirty-four claims of this patent No. 1,002,818 define mechanisms which are embodied in the commercial No. 5 lasting machine. This same mechanism which is disclosed in patent No. 1,002,818 embodies the subjects-matter of a number of claims in patent No. 958,280, May 17, 1910, Plant, of which a typical claim is the fiftieth: —

"50. In a lasting machine, shoe supporting means, end wipers, a pad, slide bars for supporting the end of the pad, means to advance said slide bars and means automatically conformable to the shape of the last to swing said slide bars toward or away from the pad."

A feature of this machine which contributes to the convenience of the operator, and therefore increases the capacity of the machine, and which has been in the machine since it was first put out for commercial use, is defined in the terms of reissue patent No. 13,505, reissued January 7, 1913, Glass, of which a typical claim is the thirteenth: —

"13. In a lasting machine, the combination with a heel lasting carriage adapted to move to and from a lasting position, of a jack post, means for retracting said jack post relatively to the carriage and for holding the same in its retracted position, and means automatically to release said jack post on the return of said carriage from its lasting position."

The claim which I have quoted is the same as claim 15 of the original patent No. 957,949, which was granted on May 17, 1910, to Glass' assignee, Thomas G. Plant.

This No. 5 lasting machine contains mechanisms defined in the claims of many other patents, the number of patents setting forth the organization of this machine being over twenty. As I have stated, the work of the No. 5 lasting machine was much superior to that done on the Chase lasting machine, and the great improvement in the quality of the work constituted the chief advantage of the No. 5 lasting machine over the Chase lasting machine. However, in addition to the superior quality of the work, the improvements which have been incorporated in the No. 5 lasting machine which enable it to do better work more rapidly, and which contribute to the convenience of the operator in using the machine, have given this No. 5 lasting machine an increased capacity of more than fifteen per cent over the capacity of the Chase lasting machine.

After manufacturers became acquainted with this No. 5 lasting machine the company was overwhelmed with orders. In February, 1911, the company was over 400 machines behind in its orders for No. 5 lasting machines, although it was building and shipping the

machines as fast as the facilities of its manufacturing plant would admit. For example, in April, 1911, the company shipped 208 machines. At no time since the machine was introduced has the company been able to catch up with its orders, and even as late as August, 1913, which is the date of the last report I have, the company was eighty-two machines behind in filling its orders. On that date, 4204 of these No. 5 lasting machines had been shipped. On December 1, 1911, over 3000 of these machines were in use in shoe factories.

From the beginning the No. 5 lasting machine has been adapted for lasting either men's or women's welt shoes. It has superseded the Ideal lasting machine as well as the Chase lasting machine, and it is now the standard commercial bed lasting machine supplied to manufacturers by the United Shoe Machinery Company.

At the present time the No. 5 lasting machine embodies mechanisms set forth in the claims of the following patents: —

No. 552,834, January 7, 1896, Grandy.

No. 569,231, October 13, 1896, Ray.

No. 571,429, November 17, 1896, Chase.

No. 588,568, August 24, 1897, Grandy.

No. 601,934, April 5, 1898, Brock.

Reissue No. 13,505, January 7, 1913, Glass (original patent 957,949, May 17, 1910).

No. 958,280, May 17, 1910, Plant.

No. 1,002,818, September 12, 1911, Brock (original application October 16, 1909).

Reissue No. 13,292, September 19, 1911, Snow.

No. 1,004,659, October 3, 1911, Keyes (application filed January 22, 1910).

No. 1,017,124, February 13, 1912, Winkley and Alley (application filed April 29, 1896).

No. 1,018,025, February 20, 1912, Winkley and Alley (application filed July 22, 1896).

No. 1,018,477, February 27, 1912, Brock (application filed October 26, 1907).

The above Letters Patent are all owned by the United Shoe

Machinery Company. This machine was put out by the United Shoe Machinery Company through its lasting department.

Mr. WEBSTER. Counsel for both parties having been temporarily called out for conference with the court, it is hereby stipulated that all evidence to which the petitioner might have objected at the time it was offered may be objected to now with the same force and effect as if objection was entered at the time the same was offered or being presented. And in pursuance of such stipulation, counsel for petitioner asks that objection be noted to the introduction of any patents and to the introduction of any testimony with reference to any patent or structure of any patent not issued before, or the title of which was not procured before, the filing of the petition herein.

Int. 78. You have referred to the McKay-Copeland lasting machine, the Ideal lasting machine and also to the hand method lasting machine. State as briefly as possible the history of the development of each of these machines, giving the Letters Patent under which the same were manufactured from time to time.

Mr. WEBSTER. In order to save interjecting objection during the taking of the testimony of the witness, petitioner asks that it be noted that the petitioner objects to evidence relating to patents and structures shown in patents, and to the introduction of patents issued or procured, after the date of the filing of the petition herein, on the ground that the same is inadmissible, incompetent, and as not affecting any of the issues involved in this case.

LASTING MACHINE: MCKAY & COPELAND.

Ans. Referring first to the McKay-Copeland lasting machine, that, like the Chase lasting machine, was of the bed type, that is, it comprised means for supporting the last at the heel and at the toe with a toe clasp and wipers at the toe arranged to last the upper around the toe, and a heel band and wipers at the heel arranged to last the heel portion of the shoe. Prior to 1899 and ever since the machine was and has been used exclusively on the heaviest kinds of shoes, that is, shoes having their soles attached with pegs, standard screw wire or nails.

I produce a sample of a shoe lasted on a McKay-Copeland lasting machine, which is a fair illustration of the quality of the work for which that machine is used, and for which alone it is adapted for use.

[*Shoe lasted on McKay-Copeland lasting machine is introduced in evidence, and marked "Defendants' Exhibit 143".*]

[*Answer to Int. 78 continued:*]

The McKay & Copeland lasting machine is more than twice as heavy as either the Chase or the Ideal lasting machine and its organization, which especially adapts it for lasting very heavy shoes, is such that it could not possibly be used with commercial success for the lasting of the better grades of men's welt shoes for which the Chase lasting machine was the standard lasting machine in 1899, and much less could it be used for lasting women's welt shoes, practically all of which were, so far as they were lasted by machine, lasted on the Ideal lasting machine in 1899.

The patents which define mechanisms embodied in the McKay & Copeland lasting machine in February, 1899, were as follows:—

No. 548,671, October 29, 1895, Stirckler.

No. 548,862, October 29, 1895, Brock.

No. 601,933, April 5, 1898, Brock.

No. 601,935, April 5, 1898, Brock.

No. 1,030,564, June 25, 1912, Brock (application filed July 19, 1898).

The McKay & Copeland lasting machine, or a machine known by that name, was put out for many years prior to February, 1899. In 1895 it had, like the Chase lasting machine, undergone a thorough reorganization to adapt the machine to meet the radically changed conditions caused by the changes which were made in lasts about 1895 and which constituted the beginning of the development in lasts which resulted in the modern lasts used exclusively for the past ten or twelve years.

To adapt the McKay & Copeland machine for lasting the right and left shoes on crooked lasts, both the heel mechanism and the toe mechanism of the machine were entirely reorganized. Referring, first, to the new toe-lasting head which was adopted in the

reorganized machine, experimental work in its development is represented by patent No. 548,671, October 29, 1895, Stirckler. The organization of the new toe-lasting head which was adopted in 1897 is set forth broadly in the eighth claim of the patent No. 548,671, which is as follows: —

"8. In a machine for lasting boots or shoes, wiper plates made adjustable about a centre located in a line drawn centrally from the extremity of the toe backward along the sole to thus place the edges of the said plates at like distances from the edges of the toe of the last whether a right or left, and means to move the said wiper plates forward to act substantially simultaneously and uniformly on the upper to wipe the same over the last, substantially as described."

The commercial construction of the new toe-lasting head as it was adopted in 1897 is shown in patent No. 601,933, April 5, 1898. All of the thirteen claims of this patent set forth features of the construction of the machine and of these claims the third is typical: —

"3. A lasting machine for use in lasting boots and shoes, containing a support for the last, an end lasting mechanism, constructed and arranged to permit relative and automatic movement of said last, an end lasting mechanism to enable the lever to act in a direction corresponding to the direction in which the end of the last faces, substantially as described."

[*Adjourned to 10 A. M., Friday, October 10, 1913.*]

BOSTON, MASS., October 10, 1913.

[*Answer to Int. 78 continued:*]

This new toe-lasting organization as shown in this patent No. 601,933, and as defined by its claims and different claims of the two earlier patents to which I have referred, represented so important an improvement in the machine that within two years after its adoption, and prior to February, 1899, practically all manufacturers who were using the old type of McKay & Copeland lasting machine had purchased from the Consolidated & McKay Lasting Machine Company, the company which put out the McKay & Copeland lasting machine, new toe-lasting heads at a cost of $150 each, and had had those new heads applied to their machines.

Simultaneously with the development of this new toe-lasting organization, Mr. Brock, the inventor who was at work improving his machine, was experimenting on an improved heel-lasting organization to adapt the machine for lasting properly the heel ends of right and left shoes made on crooked lasts. This heel-lasting organization as commercially adopted was constructed as shown in the drawings and set forth in the claims of patent No. 1,030,564, June 25, 1912, Brock, granted on an application filed July 19, 1898. The inventions defined by all of the seventy-one claims of this patent have, since their adoption in 1899, always been embodied in this machine. Typical claims are the following: —

"36. In a lasting machine, end lasting devices automatically adjustable to meet the right and left swing of lasts, and means co-operating with the side of a last to determine such automatic adjustment of said lasting devices, said means being constructed and arranged for automatically varying the right and left adjustment of said lasting devices according to the peripheral variation between the bottom of the last and the body section thereof above the bottom, for the purpose specified."

"46. In a machine of the class described, a clasp to embrace the end of the last, and means to sustain the free ends of said clasp whereby as the clasp is closed on the last its ends are compelled to roll on the sustaining means and adapt themselves to the configuration or inclined sides of the last."

"65. A lasting machine having, in combination, a flexible end lasting pad conformable to the end of a shoe, pad presenting means, and wipers, and additional means for simultaneously moving the said wipers and lasting pad for lasting the upper."

The experimental work on this heel-lasting head began in 1895 and one of the experimental constructions constituting a step in its development is illustrated in patent No. 601,935. The commercial construction embodies an important improvement set forth in claim 13 of this patent, which is as follows: —

"13. In a lasting machine, the combination with the swinging wipers and actuating means to open and close the same, of positioning means co-operating with the last to swing the said wipers, or either of them into starting position prior to movement of the same by said actuating means, substantially as described."

This reorganized heel-lasting head was, like the toe-lasting head,

received with great favor by shoe manufacturers and prior to February, 1899, practically all manufacturers had voluntarily had these new heel-lasting heads applied to their old machines, paying $150 each for the heads which they obtained from the Consolidated & McKay Lasting Machine Company.

The importance of the improved toe and heel lasting organizations which constituted the improvements of the patents which I have been discussing, may be judged from the fact that prior to 1899 practically all manufacturers who were using the McKay & Copeland lasting machines had had their machines substantially rebuilt by the substitution of the new toe and heel lasting heads, for which they had paid $300 for each machine to the Consolidated & McKay Lasting Machine Company.

The other important improvements which were made for, and adopted in, this machine had to do with the side-lasting mechanism of that machine. The McKay & Copeland machine was in 1899, and still is, provided with side-lasting straps which wrap around the shoe and are operated to stretch the upper over the ball and shank of the last and to carry the edges of the upper in those portions of the shoe over the edge of the last into lasted position. In lasting shoes on modern lasts, which as I have fully explained were, each year after 1895, becoming more and more crooked, it was found that the lasting straps of the old machine would not operate properly on the shanks and balls of shoes made on those crooked lasts. In 1901 there was adopted new side lasting mechanism by which these side-lasting straps were enabled to adapt themselves properly to the rights and lefts of crooked lasts. This improvement is shown in its commercial form in patent No. 823,664, June 19, 1906, Brock (application filed June 13, 1903). The improvements defined in all of the eighteen claims of this patent have, since 1901, been incorporated in the commercial machine and the majority of manufacturers using the machines which they had prior to the adoption of this improvement have had their machines equipped with the mechanisms shown and set forth in the claims of that patent No. 823,664. Claim 1 is typical: —

"1. In a machine of the class described, straps for encircling the

last and folding the edges of the upper over the last upon its opposite sides, in combination with means for automatically causing the straps to act uniformly on the shoe at the two sides of the last."

This machine is still being put out by the United Shoe Machinery Company through its lasting department for the lasting of very heavy shoes such as the shoe of Defendants' Exhibit 143. It is never used on medium or high grade shoes. The present commercial machine is constructed as set forth in the claims of the following patents: —

No. 601,933, April 5, 1898, Brock.

No. 601,935, April 5, 1898, Brock.

No. 823,664, June 19, 1906, Brock.

No. 1,030,564, June 25, 1912, Brock (application filed July 19, 1898).

LASTING MACHINE: IDEAL.

In addition to the Chase lasting machine and the McKay & Copeland lasting machine which I have discussed in my previous testimony, there was being put out in February, 1899, another type of bed-lasting machine known as the "Ideal" lasting machine. This machine was first put out for commercial use in May, 1895. It was especially designed for the lasting of women's welt shoes and in February, 1899, substantially all women's welt shoes which were lasted by machine were being lasted upon the Ideal lasting machine.

The commercial Ideal lasting machine as it was being put out in February, 1899, was constructed almost identically as shown in patent No. 552,834, January 7, 1896, Grandy. Two important features of the organization of the machine are defined in the claims of this patent No. 552,834. One of these features was the organization of the toe-lasting mechanism, which provided for lateral tipping of the wipers to adapt them to the plane of the bottom of the last at the toe and permitted the location of the axis upon which they turn substantially in the plane of the last bottom. This organization permitted the adjustment of the plane in which the wipers moved to accord with the plane of the bottom of the last at the toe, without changing the general relative position of

the wipers and the last bottoms at the toe. A typical claim of patent No. 552,834 directed to this improvement is the first: —

"1. In a lasting machine head, the combination of a base longitudinally pivoted, and adjustable, a sleeve supporting toe lasting mechanism mounted to revolve transversely thereon, lasting mechanism centrally mounted upon said sleeve, and worm and gear mechanism to revolve and hold said sleeve substantially as shown and described."

The importance of the improvement defined in the claim which I have just quoted may be judged from the fact that this organization was incorporated and has always been used in the No. 5 lasting machine and it was also used in the Plant lasting machine.

Another Important improvement which was incorporated in the Ideal lasting machine as it was put out in February, 1899, is set forth in the seventh claim of this patent No. 552,834, as follows: —

"7. In a lasting machine, the combination with the heel supporting band thereof, of supporting and operating slide bars, bell crank levers mounted thereon, carrying the heel supporting band substantially as described, inclines on said slide bars which act against the outer sides of the guide grooves and maintain the angular position of said bell crank levers for the different variations of shape and size of heel, substantially as shown and described."

The organization defined in this claim 7 was intended and adapted to enable the machine to last properly the heel ends of the more crooked lasts which were beginning to be used at that time when the Ideal lasting machine was first put out for commercial use. This organization enabled the machine to last with commercial success the heel ends of shoes made on the lasts which were being used in 1895 and which incorporated the changes which constituted the beginning of the development of modern lasts as used during the past twelve or fifteen years.

This heel end lasting mechanism of the Ideal lasting machine was set forth in broader terms in the first claim of patent No. 558,043, April 14, 1896, Copeland, Crisp, Grandy and Avery (application filed May 23, 1892).

This patent, although granted subsequently to patent No. 552,834, describes an improvement which was made before the improve-

ment of No. 552,834. Claim 1 of patent No. 558,043 is as follows: —

"1. In a lasting machine head of the class described, the combination of the band L, the slide bars g^1, the equalizing bar A, the spring connections h^3, and suitable connecting and operating mechanism, substantially as shown and described."

As used in 1899, the Ideal lasting machine also embodied the toe rest construction defined broadly in claim 26 of patent No. 571,429, November 17, 1896, Chase, which is as follows: —

"26. In a lasting machine, the combination of an end lasting mechanism with a toe rest which moves with the shoe in the direction of the length thereof by contact therewith, substantially as and for the purpose set forth."

The specific construction of the toe-rest mechanism of the Ideal lasting machine which adapted it particularly for women's welt shoes, for which, as I have explained, the machine was especially designed, is defined in claim 8 of patent No. 521,954, June 26, 1894, Grandy, which is as follows: —

"8. In a lasting machine, a toe rest or support provided with a longitudinal reciprocating contacting face, substantially as shown and described and for the purpose set forth."

The toe-rest mechanism as defined in the claim just quoted was of advantage in the machine because it prevented scarring of patent leather shoes, and the discoloring of russet shoes, by relative movement of the toe rest and the shoe. The improvement was of particular utility, also, in a machine which operated in the manner characteristic of the Ideal lasting machine because it prevented the formation of a fulness in the upper, back of the toe.

In addition to the eighth claim of patent No. 521,954 which has been quoted, that patent contained a number of other claims setting forth other features of the commercial Ideal lasting machine.

This machine, like the Chase lasting machine, was superseded in January, 1898, by the machine officially known as the "Lasting Machine No. 5, U. S. M. C." The Ideal machine, like the Chase machine, was not adapted for satisfactory work in lasting shoes made upon modern lasts such as have been used in the past eight

or ten years, the development of which into the crooked lasts so generally used today took place gradually between about 1895 and 1905. The explanation which I have made my previous testimony of the defects of the Chase lasting machine in the lasting of shoes on present day lasts, with the assistance of a model showing operation of that machine and of a pattern of the bottom of a crooked last, applies equally well to the Ideal lasting machine. After manufacturers were able to get the No. 5 lasting machine there was no demand at all for Ideal lasting machines.

Hand-Method Type of Lasting Machine.

At the beginning of my testimony in regard to the Chase lasting machine I explained in some detail the general differences between the bed type of lasting machine and the hand-method type of lasting machine. As I stated there, in the hand-method type of lasting machine the upper is worked over the last and automatically secured in lasted position by a step-by-step operation, the machine operating successively upon different portions of the shoe. The Consolidated hand method lasting machine which was being put out about February, 1899, was of this hand-method type. Generally speaking, the machine comprises grippers, wipers and tack mechanism, all operating automatically to grip the upper, wipe it over the bottom of the insole, and tack it in position. The machine got its name from the fact that its automatic operation is approximately the same as that of the hand laster. The grippers of this machine are organized to plait the upper around the toe, that is, to fold it, as is necessary to take care of the fulness of the upper around the curved toe and as is always done by the hand workman with his hand pincers in lasting around the toe.

Lasting Machine: Consolidated Hand Method (McKay).

The hand method lasting machine was the standard machine for lasting McKay sewed shoes, both men's and women's, in February, 1899. A large number of the machines were in use, and substantially all McKay sewed shoes which were lasted by machine in 1899 were being lasted upon the hand method lasting machine.

This was because the hand method machine had a capacity more than twice the capacity of any commercial lasting machine of the bed type, and the McKay sewed shoe manufacturers could not afford to use, and did not use, the slower machines of the bed type.

The commercial hand method lasting machine as put out just prior to February, 1899, was constructed substantially as shown in patent No. 584,744, June 15, 1897, Ladd and McFeely, except that the machine was not provided with some of the features of the organization of the machine shown in that patent which were particularly designed for adapting the hand method lasting machine for welt work. Prior to the adoption on the machine in 1898 of the inventions defined in the claims of this patent 584,744, and of other patents to which I shall refer later, the machine had been successful only on the cheaper grades of McKay shoes. Before that time the machine had been built substantially as shown in patent No. 423,922, March 25, 1890, Gooding and Ladd, although the machine shown in the patent No. 423,922 had been substantially improved by incorporating in it mechanisms defined in the claims of a number of patents of which the more important were No. 500,141, June 27, 1893, Ladd, and No. 510,973, December 19, 1893, Ladd.

The first of these patents relates to the means for controlling the plaiting mechanism of the machine, while the second of these patents defines in its claims an improvement in the mechanism for opening and closing the grippers, which, for the first time, rendered that mechanism entirely satisfactory in its operation, and which has been used continuously in substantially the same form to the present day.

A further step toward the commercial machine of 1899 was defined in the claims of patent No. 510,977, December 19, 1893, Ladd, which shows an improved mechanism for imparting the updraw movement to the grippers, and by patent No. 562,119, June 16, 1896, Carter, which defines in its claims the double-edge gauge adopted in 1895, comprising a thin gauge which would reach into the shank of the shoe, and a thick gauge such as is

needed to afford the necessary broad bearing for the work at the toe and the heel.

In the organization of the 1899 machine for slitting the upper around the toe of the heavier types of shoes, to facilitate the necessary plaiting or folding of the upper it is necessary at the toe to provide for the fulness which must be gathered in around the toe. Claim 1 of patent No. 564,931 is as follows: —

"1. In a lasting machine, in combination, upper working devices, a cutter mechanism including a plurality of cutter blades supported suitably for cutting the upper at opposite sides of the upper working devices, the blades being separately movable, and actuating appliances arranged for moving the cutter blades to cut the upper in different time relations, substantially as described."

The single claim of patent No. 584,742 defines the commercial construction used in the machine.

The machine shown in patent No. 423,922, modified and added to by the inventions of the later patents which have just been discussed, did acceptable work on the cheaper grades of McKay shoes, but, despite the effort to get this machine into factories making the better grades of McKay shoes, it was never successful on that class of work, and although tried many times in factories making the better grades of McKay shoes, it never stayed long in any of those factories, as the manufacturers would not use it on the better class of McKay work. Accordingly, as a result of experiments beginning in 1895 with the object of improving the quality of the work of the machine and extending its field to the better grades of McKay work, the machine was, about 1898, entirely reorganized by incorporating in it the improvements set forth in the claims of patent No. 584,774, June 15, 1897, Ladd and McFeely, to which I have previously referred as showing substantially the commercial machine of 1899 and also the improvements set forth in the claims of patent No. 597,321, January 11, 1898, Ladd.

The improvement set forth in the claims of patent No. 584,744, June 15, 1897, which was adopted in the hand method lasting machine for McKay sewed work, and which revolutionized that machine, was the organization which imparted to the grippers a

combined lateral and turning movement in the plaiting or folding movement of the grippers in lasting around the toe. Prior to this improvement the plaiting of the upper had been effected solely by a lateral or sidewise movement of the grippers. When, by embodying in the commercial machine, the improvement of patent No. 584,744, this plaiting movement was made a combined lateral and turning movement, the machine, for the first time, really approximated in its operation hand method lasting and justified its name. Typical claims of this patent No. 584,744 defining this improvement are 1 and 36, which are as follows: —

"1. A lasting machine having pincers for holding the upper, and means for pulling the upper held thereby, combined with means for moving the pincers forwardly over the last and laterally and turning the pincers, the pincers holding the upper continuously during said movements, substantially as described."

"36. A lasting machine of the character indicated, having devices for holding the upper, and devices for stretching the upper held thereby, combined with means for turning and shifting the positions of said devices relatively to the last whereby the upper is twisted with relation to the edge of the last and carried forwardly and laterally over the same, and strained continuously during said operations, substantially as described."

This organization defined in the foregoing claims was adopted in the commercial machine of 1899. At the same time there was incorporated in the machine the improvement defined in the eleven claims of patent No. 597,321, January 11, 1898, Ladd. The object of this invention was to adapt the machine for driving the tacks at an inclination to the plane of the insole so that as the tacks passed through the upper into the last they would tend to draw the upper material into the last they would tend to draw the upper material tighter. The disadvantages of driving the tack in a direction perpendicular to the facing of the insole was that just before the tack is driven the grippers let go and there is a tendency for the upper stock to slip back. Accordingly, a loose portion of upper was frequently found between the tack and the edge of the insole. When the tack was driven at an inclination the oblique movement of the tack overcame any such tendency of the upper to slip back. A typical claim of this patent No. 597,321 is the sixth: —

"6. A lasting machine, having a fastener inserting mechanism, and a shoe resting mechanism, said mechanisms being relatively disposed for resting the shoe for receiving the fastener with the plane of the fastener receiving part of the shoe inner sole oblique to the line of movement of the ingoing fastener, substantially as described."

The machine as reorganized by the inventions of patent No. 584,744 and No. 597,321 was found to be adapted for the lasting of all grades of McKay sewed shoes. The manufacturers of the machine, the Consolidated & McKay Lasting Machine Company, offered shoe manufacturers who were using machines of the old type an opportunity to exchange the heads of their old machines for reorganized heads embodying the improvements set forth in these patents, upon payment of fifty dollars for each new head, a sum which was considerably less than the cost of manufacturing the new head. I should, perhaps, explain that the head of the machine is the entire machine except the supporting column and the starting and stopping mechanism in the base of the machine. Practically all manufacturers who had old machines accepted this offer, so that in a short time nearly all machines in use embodied the improvements of these patents No. 584,744 and No. 597,321.

This hand method lasting machine for McKay sewed shoes has been substantially improved since February, 1899. The first improvement comprised means for changing the tension exerted in the updraw movement while the work progressed. It might be well to explain that the grippers of the machine are given this updraw movement to stretch the upper, and then an overdraw movement to lay the edge of the upper down upon the insole. This improvement is defined in all of the sixteen claims of patent No. 893,331, July 14, 1908, Ladd (application filed April 13, 1901). Claim 1 of this patent is typical:—

"1. A machine for working an upper over a last, comprising grippers for gripping the upper, actuating mechanism for the grippers including a yielding element, means for initially adjusting the actuating mechanism to determine the tension of said yielding element, and independent means under control of the workman for directly changing the tension of said yielding element to modify the pulling tension of the grippers."

The next change in the machine was a reorganization of the grippers which, as previously used, were shown in the patent No. 510,977, December 19, 1893, Ladd. The grippers mechanism of that patent was unsatisfactory because it involved inconvenience in getting the stock in between the two jaws of the grippers and did not hold the stock securely while the two jaws were pulling the upper. The important improvement over that construction, which was adopted during 1899, is accurately shown in the drawings and set forth in the claims of patent No. 1,005,234, October 10, 1911, Ladd and Stiggins (original application filed March 20, 1901).

The distinctive characteristic of the organization of the new grippers mechanism of this patent is that the movable jaw was operated in such a path that in each closing movement it reached out and gathered in the upper, as is well illustrated in Fig. 1 of the drawings of the patent. Of the thirty-eight claims of the patent, all of which define improvements embodied in the commercial grippers mechanism adopted late in 1899 and used ever since, a typical claim is the first :—

"1. In a machine for working an upper over a last, a grippers mechanism comprising a pair of jaws and means whereby one of said jaws may be moved relatively to the other to close the grippers, in combination with means for causing said movable jaw, in its movement to close the grippers, to reach out and gather in the upper."

Another important improvement made in the machine of 1899 was the change in its organization by which the machine was adapted to supply and drive either a long tack or a short tack as required by the particular operation of the stock being operated upon. I produce a McKay sewed shoe which has been lasted upon the hand method lasting machine.

[*McKay sewed shoe lasted on hand method lasting machine is introduced in evidence and marked "Defendants' Exhibit 144".*]

[*Ans. to Int. 78 continued:*]

On inspection of this shoe it will be seen that the upper materials lasted in at the toe and at the heel are thicker than the upper materials along the shank and ball of the shoe. This additional thickness is due at the toe to the edge of the box toe which constitutes

a part of the upper materials at the toe, and at the heel to the edge of the counter or stiffening piece. Prior to the improvement set forth in the claims of patent No. 999,233, August 1, 1911, Ladd and Stiggins (application filed March 20, 1901), the hand method lasting machine for McKay work had been so organized that it could drive but one length of tack. It is desirable, however, owing to the increased thickness of the upper materials of the toe and heel, that a longer tack be driven by the machine in lasting the toe and heel. On the other hand, it is undesirable to use a long tack in the shank and forepart, because in the use of a long tack there would be too long a point to clinch on the inside of the insole; the long clinched point would interfere with the operator of the McKay sewing machine in attaching the out-sole, since in the sewing operation the thread would frequently be abraded or broken by the long clinched points, and such extra long points on the inside of the shoe are also likely to cause discomfort to the wearer of the shoe because the points are liable to work up in the wear of the shoe and get into the foot of the wearer.

The difficulties to which I have referred were entirely overcome when the improvements of patent No. 999,233 above mentioned were incorporated in the machine. These improvements comprise providing the machine with mechanism for supplying tacks of different lengths, one length being that required at the heel and toe, and the other length being a shorter tack of just the right length for the forepart and shank, and connecting this tack-supplying mechanism with the edge-gauging mechanism which must be changed at the heel and at the toe, so that as the operator changed the edge-gauging mechanism he would be obliged at the same time, by the connections between the edge-gauging mechanism and the tack-delivering mechanism, to adjust the machine for delivering the right length of tack for the particular part of the shoe upon which he was operating. The operator was thus effectually prevented from using a tack of improper length for the part of the shoe which he was lasting. This improvement is set forth in all of the fifteen claims of patent 999,233 of which claims 7 and 8 are typical:

"7. In a machine of the class described, mechanism for supply-

ing fastenings of different kinds, a plurality of relatively movable rests, and means actuated by relative movement of said rests for causing said mechanism to stop supplying fastenings of one kind and supply fastenings of another kind.

"8. In a machine of the class described, a tack delivering mechanism arranged to deliver tacks of different sizes, a thin edge rest occupying a fixed position, a thick edge rest, means for moving said thick edge rest toward and from operative position, and means actuated by a movement of said thick rest for causing said tack delivering mechanism to stop delivering tacks of one size and deliver tacks of another size."

As I stated in explaining the construction of the 1899 hand method lasting machine, it was frequently desired, and often necessary, in lasting McKay sewed shoes made of heavier leathers, to slit the upper in lasting around the toe to permit the folded upper to lie down properly upon the insole. The slitting mechanism of the 1899 machine was designed for the old type of grippers organization in which the grippers were moved laterally, but did not have the combined lateral and turning movement which, when embodied in the machine in 1899, completely revolutionized the machine as I have explained.

Experimental work was begun in 1898 and continued until 1901 with a view to providing the modern machine, in which the grippers had a combined lateral and turning movement, with upper-slitting mechanism which would co-operate properly with that grippers organization.

The very satisfactory organization for this work which was adopted in 1901 is constructed substantially as shown, and as defined, in all of the fifty-two claims of patent No. 931,809, March 28, 1905, McFeely (application filed July 14, 1900). A characteristic of the commercial construction was that the cutter was operated first to engage the upper at a distance from the edge of the upper and then to form the slit by cutting toward and out of the edge of the upper. A typical claim of this patent No. 931,809 is the fortieth:—

"40. In a machine of the class described, the combination with pincers for pulling an upper over a last, and a cutting device, of

means for moving the cutting device in the direction of the pulling strain effected by the pincers to slit the upper."

The general organization of an upper slitting device with grippers which have the combined lateral and turning movements which, as the machine has been organized since 1899, is set forth in broad terms in many claims of patent No. 786,047, March 28, 1905, McFeely (application filed July 14, 1900), which patent shows a stage in the development of the organization which was commercially adopted and shown as I have explained in the Stiggins patent No. 931,809. A typical claim of patent 786,047 is the thirteenth: —

"In a machine for working an upper over a last, pincers for gripping the upper, a cutting device, means for actuating the cutting device to slit the upper, and mechanism for actuating the pincers to grip and stretch the upper and twist it with relation to the slit formed by the cutting device."

The hand method lasting machine for McKay work is the present standard commercial machine of the United Shoe Machinery Company for lasting McKay sewed shoes, and the machine is very extensively used; 4883 hand method lasting machines for McKay work were put out by the United Shoe Machinery Company between March 1, 1899, and March 1, 1913.

There is practically no demand for the bed type of lasting machine for McKay sewed shoes, because the hand method lasting machine for McKay work has practically twice the capacity of a bed lasting machine on that class of work. The machine is put out by the United Company through its lasting department. As it is now being put out it embodies the improvements shown and set forth in the claims of the following patents: —

No. 584,742, June 15, 1897, Ladd.

No. 584,744, June 15, 1897, Ladd and McFeely.

No. 597,321, January 11, 1898, Ladd.

No. 867,469, October 1, 1907, Bond.

No. 893,331, July 14, 1908, Ladd.

No. 931,809, August 24, 1909, Stiggins.

No. 999,233, August 1, 1911, Ladd and Stiggins.

No. 1,005,234, October 10, 1911, Ladd and Stiggins.

No. 1,014,940, January 16, 1912, Bond (application filed May 5, 1908).

LASTING MACHINE: CONSOLIDATED HAND METHOD (WELT).

In February, 1899, the hand method lasting machine was not commercially successful for lasting welt shoes, although experimental work had been going on for several years in the endeavor to adapt a machine for lasting welt shoes, and the stage in that experimental work is represented by some of the improvements which are shown in patent No. 584,744, June 15, 1897, Ladd and McFeely.

The lasting of welt shoes is a very different operation from the lasting of McKay shoes. As shown in Defendants' Exhibit 144, which is a McKay sewed shoe lasted upon the hand method lasting machine for McKay work, the insole of a McKay sewed shoe is flat, and in the lasting of such a shoe it is only necessary that the upper stock be worked properly over the edge of the last, laid down upon the flat insole, and tacked. The insole of a welt shoe, on the other hand, is formed with a channel lip or rib extending all the way around the shank, forepart and toe. The narrow strip between this lip or rib and the edge of the sole is known as the "feather edge". I produce a last having a welt insole tacked to it, which will serve to illustrate the problems which were encountered in the development of a hand method lasting machine properly organized for lasting welt shoes.

[*Last and welt insole attached is introduced in evidence, and marked "Defendants' Exhibit 145".*]

[*Answer to Int. 78 continued:*]

In this Exhibit 145 the feather edge is the extreme edge portion of the insole, and the channel lip which was formed by the insole channeling operation is turned back, as is required for the lasting and welt-sewing operations. In order that the shoe may be in proper condition for the welt-sewing operation, the upper must, in the lasting operation, be forced into the angle formed by the feather edge and the upturned lip, and must be secured in that position. The hand method lasting machine supplied for the last-

ing of McKay sewed shoes had no provision whatever for getting the upper into this angle between the feather edge and the lip, and for securing it in that position snugly against the lip. Not only was the hand method lasting machine for McKay work unsuited for the lasting of welt shoes satisfactorily, but in fact it could not possibly be used commercially for that work.

In the experimental work directed towards the development of a hand method lasting machine for welt work, a few experimental machines were built and tried out in shoe factories which incorporated improvements illustrated and set forth in the claims of patent No. 584,744. The important improvement of that patent, which consisted in the new toe-plaiting organization, comprising grippers having combined lateral and turning movements, has already been discussed in connection with the hand method lasting machine for McKay work. That improvement was also embodied in the experimental hand method machine for welt work, which was tried out before 1889, and in addition improvements especially designed for welt work, which are defined in the claims of that patent, were incorporated in the experimental welt machine. Typical claims setting forth these mechanisms are 16, 44 and 46, which are as follows: —

"16. A machine of the character indicated, having a plurality of separately movable work pressers, and supporting connections permitting movement to place a presser in position desired for bearing upon the overturned upper, combined with means whereby the presser may be placed in or removed from said position when required during the lasting process, substantially as described."

"44. In a lasting machine, the combination of mechanism adapted for feeding and separately delivering different sized tacks and permitting movement whereby it is shifted from delivering one sized tacks to delivering another sized tacks, a tack driving mechanism adapted for driving the tacks to different planes whereby the driven tacks are left with their head ends at different altitudes relatively to the plane or surface penetrated by the body parts thereof, said mechanism permitting movement to change its operation from driving the tacks to one of said planes or altitudes, to the operation for driving tacks to another of said planes or altitudes, and a connection between the feeding and delivering mechanism and the driving mechanism by means of which the shifting of one effects a corresponding shifting of the other, substantially as described."

"46. A lasting machine of the character indicated, having upper lasting appliances for lasting the upper over the last, combined with an auxiliary presser mechanism arranged for use in fulling or crimping the upper, substantially as described."

The importance of the imrovement defined in claim 44 above quoted may be briefly explained in connection with a lasted woman's welt shoe which has been lasted on the hand method lasting machine for welt work as now supplied by the United Company, which I now produce.

[*Woman's welt shoe lasted on hand method lasting machine (welt) introduced in evidence, and marked "Defendants' Exhibit 146".*]

[*Answer to Int. 78 continued:*]

It will be observed that in this Exhibit 146 the tacks around the heel are "driven home", while the tacks around the shank and forepart are not fully driven and their heads are located above the stock. Tacks are always so driven in the lasting of welt shoes, because trade conditions require that all the lasting tacks around the shank and forepart of a welt shoe shall be removed at later steps in the manufacture of the shoe.

The improvements recited in the claims which I have quoted from patent No. 584,774 were embodied in the lasting machine for welt work when it was finally adopted for commercial use, and have been retained in the machine to the present day. This experimental welt lasting machine was also provided with the improvement of patent No. 597,321, January 11, 1898, Ladd. General advantages of the improvement of this patent were pointed out in my previous testimony regarding the hand method lasting machine for McKay work, and those general advantages are also secured by the improvement as embodied in the machine for welt work, and in addition further advantages which are peculiar to welt work. In the commercial welt lasting machine as put out after 1899, the tack-supplying and tack-driving organization drove the tack obliquely into the angle of union of the feather edge and channel lip, which I explained in discussing Exhibit No. 145. This is also illustrated in Fig. 12 of the drawings of patent No. 597,321. Many of the claims of this patent are directed to the organization for welt work, a typical claim being the second: —

"2. A lasting machine, having means for pressing the upper in the angle of union of the shoe inner sole and channeling lip thereof, combined with fastener inserting mechanism for securing the upper to the inner sole, said mechanism operating to insert the fastenings through the overturned upper in said angle of union and obliquely toward the middle of the shoe, each of the inserted fastenings being independent of others, substantially as described."

The experimental machine before 1899 and the commercial machine as adopted after that time embody improvements defined in the claims of patent No. 584,741, June 15, 1897, Ladd. Claim 13 is as follows: —

"13. A lasting machine of the character indicated, having in combination, a work presser having at its work bearing end an angular or corner formation for bending the overturned upper inwardly to the angle of junction between the inner sole and vertical edge face of the welt lip thereof, substantially as described."

Several of these experimental hand method lasting machines were, as I have stated, being tried out in shoe factories before February, 1899, but they were not acceptable to shoe manufacturers and could not compete successfully with the lasting machine of the bed type, which was probably chiefly due to the fact that at about that time, in 1898, it became the general practice in lasting welt shoes on bed lasting machines to secure the toe portion of the upper in lasted position by a wire which was secured to a tack on one side of the toe, carried around the toe in such location as to hold the lasted upper in position in the angle of union between the feather edge and the channel lip, and secured to a tack on the opposite side of the toe. The upper, at the toe, is held in lasted position by such a wire in Defendants' Exhibit 146, showing a woman's welt shoe lasted on the present hand method lasting machine for welt work.

The use for such a wire was a substantial improvement in methods of lasting welt shoes because it did away with the driving of a large number of tacks around the toe, which was very objectionable, particularly in lasting shoes on the narrow-toed lasts, which were much in vogue at that time, as I have explained in my previous testimony. Such lasts are shown in Defendants' Exhibits Nos. 133 and 134.

The experimental hand method lasting machine for welt work

prior to February, 1899, not only was not provided with any mechanism for putting the wire around the toe, but its organization would not permit the use of such a wire. The only way that the hand method machine could last narrow-toed shoes then in use was by driving an excessive number of tacks around the toe, which alone was enough to condemn the machine for satisfactory commercial use.

Immediately after the organization of the United Shoe Machinery Company experimental work was undertaken with a view to produce an organization which would enable the hand method lasting machine to secure the uppers of welt shoes around the toe by means of wire. The organization first commercially used, and which was adopted in 1900, is shown in patent No. 696,740, April 1, 1902, Ladd, and is defined in eleven of the claims of that patent. Typical claims of this patent are the first and eighth: —

"1. A machine for working an upper over a last, comprising mechanism for presenting individual fastenings, mechanism for supplying continuous fastening material, and means for rendering either of said mechanisms operative or inoperative."

"8. A machine for working an upper over a last, comprising means for inserting fastenings, means to suspend the insertion of said fastenings during a number of repeated operations of said machine and means for placing wire or a similarly continuous material in position for holding the parts of said upper which are manipulated by operations of said machine taking place during said suspension of the insertion of said fastenings."

This organization is also defined in all of the seven claims of patent No. 696,717, April 1, 1902, Cavanagh. The caims of this patent define in broad terms an organization of a hand method lasting machine adapting it for using wire in lasting toes of welt shoes. A typical claim is the first: —

"A machine comprising grippers and means for actuating them to work an upper over a last, combined with means for superimposing wire or a similarly continuous material on said upper overworked by said grippers to secure the upper on the last."

The commercial success of the hand method lasting machine for welt work dates from the incorporation in it, in 1900, of the wire-

applying organization defined in the claims of the two patents last discussed.

While the organization shown in its commercial form in patent No. 696,740, April 1, 1902, did satisfactory work so far as concerned the getting of the wire into the proper position on the shoe, it was so constructed and operated that it interfered with the operation of the machine because it occasionally prevented proper positioning of the shoe at certain times in the progress of the work. It was also inconvenient for the operator to use because it required him to operate a second treadle in addition to the starting and stopping treadle upon which he had to rest one foot throughout the operation of the machine. In 1901 an improved wiring organization was adopted and superseded that shown in the Ladd patent 696,740. This new organization was constructed and operated substantially as shown in patent No. 946,620, January 18, 1910, Stiggins (application filed March 21, 1901), and in patent No. 1,027,510, May 28, 1912, Stiggins (original application filed March 21, 1901). This new organization also embodied improvements set forth in patent No. 944,116, December 21, 1909, Wade (application filed November 8, 1900), which patent shows in its drawings an experimental stage in the development of the new wire-applying organization.

Typical of the claims of this patent No. 944,116, setting forth improvements embodied in the commercial organization, are one and eight, as follows: —

"1. A machine for working an upper over a last, comprising overworking mechanism, and mechanism for superimposing wire or like continuous material and in position for binding the overworked upper, said machine having provision for advancing the wire at each operation of the overworking mechanism."

"8. A machine for working an upper over a last, comprising mechanism movable toward and from operative position for superimposing wire or like continuous material in position for binding the overworked upper, means to put said mechanism into operative position, and means to take up the wire automatically when said mechanism is in inoperative position."

The improvement set forth in the claims of which the first above quoted is typical was incorporated in the improved organization

shown in patent No. 946,620 and was used until that mechanism was again reorganized in 1906, as I shall shortly explain. The improvement set forth in the claims of patent No. 944,116, of which claim No. 8 is typical, was embodied in the reorganized wire-applying mechanism which was adopted in 1906.

The defect in the earlier organization of the wire-applying mechanism, which required the operator to use two treadles during the operation of the machine, was overcome by improvements defined in many of the claims of patent No. 946,620, January 18, 1910, Stiggins, of which a typical claim is the third: —

"3. In a machine for working an upper over a last, means for superimposing wire or like continuous material in position for binding the overworked upper, mechanism for retarding the advance movement of said wire, mechanism for starting and stopping the machine, and connections wherethrough said retarding mechanism may be controlled by the starting and stopping mechanism."

The objection to the earlier wire-applying organization, that it was in the way of the shoe during the last operation, was overcome in the organization, Stiggins patent No. 946,620, by the improvement defined in many claims of that patent, of which claim 16 is typical: —

"16. In a machine for working an upper over a last, means for superimposing wire or like continuous material in position for binding the overworked upper, said means including a wire supporting guide, and means for automatically shifting the position of said guide relatively to the plane of the shoe bottom when the wire placing mechanism is rendered inoperative."

The severing of the wire at the end of the operation upon each shoe was conveniently provided for in this organization by mechanism shown in patent 1,027,510, May 28, 1912, Stiggins (application originally filed March 21, 1901).

The wire-applying organization of the machine was again improved in 1906 by the organization defined in the claims of patent No. 1,005,929, October 17, 1911, Bond (application filed February 25, 1907). This new organization embodies all the best features which had been used in the prior constructions, and included

improvements contributing to the successful and convenient use of the machine in lasting the toe. That patent shows the wire-applying organization as now embodied in the hand method lasting machine for welt work.

In the foregoing review of the development of the hand method lasting machine for welt work, particular attention has been devoted to explaining the improvement which adapted the machine for welt work, and which distinguished the machine from the hand method lasting machine for McKay work. It should be understood, however, that many of the mechanisms which are embodied in the hand method lasting machine for McKay work, and which I explained in connection with that machine, are embodied in the machine as adapted for welt work.

The hand method lasting machine for welt work is put out by the United Shoe Machinery Company through its lasting department and as now organized embodies the mechanisms set forth in the claims of the following patents: —

No. 584,741, June 15, 1897, Ladd.

No. 584,744, June 15, 1897, Ladd and McFeely.

No. 597,321, January 11, 1898, Ladd.

No. 696,717, April 1, 1902, Cavanagh.

No. 696,740, April 1, 1902, Ladd.

No. 944,116, December 21, 1909, Wade.

No. 946,620, January 18, 1910, Stiggins.

No. 1,005,234, October 10, 1911, Ladd and Stiggins.

No. 1,005,929, October 17, 1911, Bond.

No. 1,027,510, May 28, 1912, Stiggins (original application filed March 21, 1901).

Up to March 1st, 1913, the end of the company's last fiscal year, 2,750 Consolidated hand method lasting machines for welt work were put out. There is a difference of opinion among shoe manufacturers as to the desirability of using the hand method machine or the bed type of lasting machine for welt shoes. Those manufacturers who believe that they can secure better lasting upon the bed type of lasting machine prefer, and are supplied with, lasting machine No. 5, U. S. M. C., the United Company's standard com-

mercial bed lasting machine, which was introduced in 1908. Other manufacturers who are satisfied with the quality of the work done on the hand method lasting machine for welt work prefer that machine because they can get twice the amount of work from it as from the bed type of lasting machine. Either type is supplied to the manufacturer by the United Company, according to his preference.

Hand Method Lasting Machines for Turn Shoes.

In February, 1899, there was no commercial lasting machine which was adapted for successful work in lasting either the toes or the heels of turn shoes. Neither the hand method lasting machine for welt work, nor the hand method lasting machine for McKay work was adapted for use in lasting turn shoes. The machine for McKay work was not adapted for that use, for reasons which were similar to the reasons which I have pointed out why that machine was not adapted for the lasting of welt shoes, and for other reasons due to the peculiar problems attending the lasting of turn shoes. The McKay machine may be disregarded in the discussion of the adaptability of the hand method type of lasting machine for the lasting of turn shoes.

As for the reasons why the hand method machine for welt work was not adapted for the lasting of turn shoes, perhaps the most important reason is that in lasting the forepart of a turn shoe by machine it is not practicable to use tacks. A turn shoe is unique in that it has but one sole. A turn sole is shown in Defendants' Exhibit 118. A turn shoe is lasted wrong side out, and during the lasting operation the grain side of the sole which is to form the tread face of the sole in the finished shoe is against the bottom of the last. In the lasting operation tacks must not be driven clear through the sole, as in that case they would pass through the grain face of the sole and when they were withdrawn would leave holes in the bottom of the sole. Attempts were made to use the hand method lasting machine for welt work with an organization which would not drive the tacks clear though the sole, but this proved to be impracticable, as the mechanism of the machine could not be

depended on to operate in this way and frequently drove a tack clear through the sole, and so defaced the grain inside.

Another explanation of the failure of the hand method lasting machine for welt work in lasting turn shoes was the lack, in that machine, of means for properly taking care of the feather edge of the turn sole during the lasting operation. In a welt shoe the feather edge of the insole is concealed in the finished shoe, but in a turn shoe the feather edge of the sole, that is, the extreme edge portion between the edge of the sole and the channel rib, is exposed in the finished shoe, and it is therefore important that that edge shall not be defaced or injured in the lasting operation. During the lasting operation this feather edge lies against the last at the extreme edge of the last, and, in fact, as turn shoes are usually made, it extends somewhat over the edge of the last. Accordingly, there is a constant tendency in the operation of the lasting machine to turn up the feather edge during the straining of the upper up over the edge of the last. This tendency to curl up the edge of the sole is aggravated by the fact that during the lasting operation the sole must be "in temper", that is, must be so thoroughly dampened by water that after the lasting operation, and after the last has been removed from the shoe, it can be turned right side out without danger of breaking the sole.

The hand method lasting machine was not, in February, 1899, organized so that it could last a turn shoe without constant danger of curling up the edge of the sole. This was fatal to its success on that work, as the needle of the turn sewing machine, the operation of which follows the lasting while the shoe is still wrong side out, and with the feather edge still inside of the shoe, would frequently strike the upturned edge of the sole and would mutilate it and sometimes spoil it, so that all the work on the shoe up to that time had to be undone and a new sole substituted.

LASTING MACHINE: CONSOLIDATED HAND METHOD (TURN TOE).

The first machine designed and adapted particularly for lasting the toes of turned shoes was produced and supplied to shoe manufacturers by the United Company in 1906. This machine was con-

structed substantially as shown in the drawings and as set forth in the claims of patent No. 1,009,054, November 21, 1911, DeMinico, granted on an application originally filed December 12, 1906, with the incorporation in the organization shown in that patent No. 1,009,054 of the mechanism illustrated in the drawings and set forth in the claims of patent No. 784,251, March 7, 1905, DeMinico.

In this machine no tacking mechanism whatever was employed, as the machine was organized to secure the upper in lasted position around the toe by means of wire, the wire-attaching organization being substantially the same as that employed on the hand method lasting machine for welt work, with an improvement which adapted that organization for the peculiar conditions of turn work.

The necessity of this change was that owing to the fact, as I have explained, it is not permissible to drive tacks clear through the turn sole, the tacks to which the upper-holding wire is secured do not hold the wire which secures the upper in lasted position with sufficient strength to permit of the use of the wire-severing mechanism of the welt machine organization, and after that wire-severing means had been tried on a few of the turn toe-lasting machines it was discarded as impracticable and there was substituted for it a wire-cutting mechanism which is operated by a limited movement of the starting and stopping treadle of the machine, which movement is not sufficient to start the machine. This arrangement, which was very convenient for the operator, is defined in many claims of patent No. 1,009,054, November 21, 1911, DeMinico, of which claim 14 is typical: —

"14. In a machine of the class described, a starting and stopping mechanism, a treadle, a connection between the said mechanism and the treadle, a cutting device, and a connection between the treadle and the cutting device, said parts being constructed and arranged to permit the treadle to be actuated for operating the cutting device without operating the starting and stopping mechanism."

Many turn shoes are made with plain toes, that is, without any tip, the tip being the small portion of upper stock which commonly forms the toe end of the upper in shoes as usually made.

Furthermore, these plain-toed turn shoes are also often made without toe boxes, the toe box being the stiff material usually

interposed between the lining and upper of a welt shoe to give permanent shape to the toe portion of the upper while it is being worn. In lasting this plain-toed shoe the stock would not stand as much pulling strain by the grippers as is ordinarily required in the operation of the machine. To adapt a turn toe-lasting machine to this class of work it was so organized that the operator could instantly adjust the machine to provide for a shorter pulling stroke. This mechanism was defined in many claims of patent No. 1,009,054, November 21, 1911, DeMinico, of which claim No. 1 is typical: —

"1. In a machine for working an upper over a last, the combination with grippers to seize and pull the upper and means for actuating them automatically to draw the upper inwardly over the edge of the last for laying it in position to be fastened, of means adapted to be adjusted for varying the position to which said actuating means can move the grippers inwardly over the last bottom."

In the same class of work it is also frequently necessary, in addition to shortening the pulling movement of the grippers, to lighten the strain exerted by them in the combined sidewise and turning movement which they have in plaiting or folding the upper in lasting around the toe. This was provided for in the turn toe-lasting machine by providing means arranged for convenient manipulation by the operator for quickly varying this plaiting tension.

This improvement is also set forth in numerous claims of patent No. 1,009,054, of which a typical claim is the twenty-fourth.

"24. In a machine for working an upper over a last, the combination with grippers, of mechanism to actuate the grippers to plait the upper while lasting around the toe portion of the shoe, including a spring and means, arranged in position to be manipulated by the operator standing in working relation to the machine, by which the plaiting tension may be increased and diminished as the plaiting progresses."

The problem of preventing the turning up of the extreme edge, that is, the "feather edge" of the sole, which was one of the most serious problems to be dealt with in organizing the hand method lasting machine for turn work, was solved by the mechanism illustrated in the drawings and set forth in the claims of patent No. 784,251, March 7, 1905, DeMinico.

No hand method lasting machine has been successfully used in

the lasting of the foreparts of turn shoes which was not provided with this improvement defined in the ten claims of this patent. The nature of the improvement is well indicated by claims 1 and 14, which are as follows: —

"1. In a lasting machine, the combination with means for working an upper over a last, of a downhold having a portion shaped to overlie the shoulder or rib of the sole of a shoe being lasted and a portion formed to bear upon the marginal portion of the sole outside said shoulder or rib and at one side of the said upper working means."

"14. In a machine for lasting shoes, the combination with means for working an upper over a last, and a rest for engaging the sole to position the shoe, of a yielding downhold mounted on the rest and extending beyond the latter for engaging the feather edge of the sole to prevent displacement of the edge of the sole during the lasting operation."

It has been attempted in the foregoing discussion of the hand method lasting machine for turn toes to refer in detail only to the improvements which adapted the hand method machine particularly for this work. It should be understood, however, that most of the features of the organization of the hand method lasting machine for welt work are also embodied in the machine when organized for lasting toes of turn shoes. On January 1, 1913, the standard commercial hand method lasting machine for lasting turn toes, put out by the United Company, embodied the mechanisms defined in the claims of the following patents: —

No. 584,741, June 15, 1897, Ladd.

No. 584,744, June 15, 1897, Ladd and McFeely.

No. 696,717, April 1, 1902, Cavanagh.

No. 696,740, April 1, 1902, Ladd.

No. 784,251, March 7, 1905, DeMinico.

No. 893,331, July 14, 1908, Ladd.

No. 946,620, January 18, 1910, Stiggins.

No. 1,005,234, October 10, 1911, Ladd and Stiggins.

No. 1,009,054, November 21, 1911, DeMinico.

I produce a lasted turn shoe, the toe of which was lasted on this new turn toe lasting machine, the official name of which is "Lasting Machine, Consolidated Hand Method Turn Toe".

[*Lasted turn shoe having toe lasted on hand method turn toe lasting machine is introduced in evidence, and marked "Defendants' Exhibit 147".*]

[*Answer to Int. 78 continued:*]

This machine is put out by the United Shoe Machinery Company through its lasting department.

LASTING MACHINE: CONSOLIDATED HAND METHOD (TURN HEEL SEAT).

Until 1906 the hand method lasting machine had not been adapted for lasting the heel ends of turn shoes. Turn shoes are made in two ways as regards the attachment of the heel end of the toe and the upper. Some turn shoes have the upper secured to the sole on the turn sewing machine all the way around the sole, including the heel seat, the heel seat being the heel end of the sole to which the heel is subsequently to be attached. Other turn shoes have the sole attached on the turn sewing machine only in the shank and in the forepart, leaving the heel seat of the sole unattached, to be secured subsequently in the operation known as "heel seat nailing". This class of turn shoes is illustrated in Defendants' Exhibit 147, in which the channeling on the sole indicates that the operation of the turn sewing machine is to stop at the heel seat. Such a shoe is also shown in the turn shoe which I now produce, which has had the upper secured to the sole on the turn sewing machine, and has been turned right side out.

[*Turn shoe having its heel seat lasted by lasting machine "turn heel seat" is introduced in evidence, and marked "Defendants' Exhibit 148".*]

[*Ans. to Int. 78 continued:*]

In the lasting of shoes which have their soles sewed in the shank and forepart, but not around the heel seat, it is the practice, after the shoe has been turned to insert a last on which the subsequent operations are to be performed, to place a "heel-seat piece" on the heel end of the last to form an anchor for the lasting tacks and then to last the upper over this heel-seat piece and secure the upper to it by means of tacks. The problem in doing this work by machine

was to organize a machine which could operate properly in the angle between the loose end of the sole and the upper. On inspecting Defendants' Exhibit 148, the difficulty of lasting in the portion of the upper adjacent to the seam and of tacking it in lasted position will be clear. Attempts had been made to use the hand method lasting machine, welt, in this operation of lasting heel seats of turn shoes, but it was not commercially successful for that work because it was not organized to operate in the small space between the sole and upper adjacent to the end of the seam. Accordingly a reorganized hand method lasting machine was produced for this special work and was first put out for commercial use in April, 1906. The machine did not reach its present commercial form until 1907, when the combined wiper and tack-locating means shown in the drawings and defined in the claims of patent No. 1,003,984, September 26, 1911, Clary (application filed December 13, 1907), was adopted. The mechanism of that Clary patent made this machine commercially successful. The organization is defined in all ten claims of that patent, typical claims of which are 1 and 2 :—

"1. In a machine of the class described, a horizontally moveable tack block having at its forward end a transverse driver passage towards which said block is tapered, the forward end of said tack block being rounded in two dimensions, and a yielding tack retaining pocket in line with said driver passage.

"2. In a machine of the class described, fastening, retaining and guiding means comprising a horizontal support provided at its forward end with a transverse driver passage towards which said support is tapered, the forward end of said support being rounded in two dimensions and a pair of spring fingers extending lengthwise of said support, said fingers being rigidly attached to the sides of said support at their ends remote from said passage, and being bent towards each other and shaped at their other ends to form between them a nail pocket in line with said passage."

Another improvement contributed to the success of this machine for this special work and is defined in the claims of patent No. 718,586, January 13, 1903, Stiggins. The utility of this invention in this organization is due to conditions peculiar to turn shoes, which must be provided for in lasting their heel seats. Owing to the fact that the counter must be introduced into the shoe while it

is turned wrong side out, as will be noted in Defendants' Exhibit 147, it is impossible to use in such shoes what is known as a "molded" counter, that is, a counter which, before it is assembled in the shoe, is molded to approximately the shape which it is to have in the finished shoe, and in particular has formed upon it in the molding operation a flange which, when the counter is placed in the shoe, rests upon the face of the insole of a welt or McKay shoe around the heel end of the shoe. The reason why a molded counter cannot be used in a turn shoe is because when, after the lasting operation, the shoe is turned right side out, the counter must be turned too, and in that turning operation every curve in the counter must be reversed. It would be impracticable, therefore, to use a molded counter since the flange on the counter would have to be reversed, which would be impracticable and difficult, and also the utility of the molded counter after it had been turned would be impaired.

Accordingly, in the manufacture of turn shoes, a "straight" counter is always used, that is, a flat piece of leather of the dimensions required, which is bent to fit the heel end of the last when it is introduced into the shoe. To facilitate the turning of the shoe this counter must be "in temper", that is, it must be thoroughly dampened so that during the turning operation the shape of the counter may be readily reversed without damaging it. In practically all McKay sewed shoes and in the majority of welt shoes it is the practice to use molded counters which, during the lasting operation, are dry. The proper shaping of the counter around the heel end of the shoe, at the ends of the counter at the beginning of the shank, presents problems peculiar to turn shoes. These problems were met by providing the organization of the turn heel lasting machine with the edge gauge which is shown in patent No. 718,586, January 13, 1903, Stiggins. This edge gauge was so constructed that it would engage the counter positively and firmly adjacent to the tread face of the last while it was self-adaptable to the varying inclinations of the side of the last around the rear end and sides of the heel and at the beginning of the shank. Claims 4 and 5 of this patent No. 718,586 are as follows: —

"4. An edge gage comprising a support, a segment piece, movable on said support in the arc of a circle and a contact piece mounted on said segment piece and having the center of said arc located in its contact surface.

"5. An edge gage comprising a support having a rib and segment piece having a groove to fit on said rib, a contact piece on said segment piece, and the spring tending to maintain said contact piece in normal position."

The organization of these claims enables the edge gauge to press positively and firmly against the stock requiring the most force to shape it properly to the last and yielding against that portion which requires less pressure.

In addition to the patents which I have mentioned which adapt the organization of this machine to the peculiar conditions met in the lasting of turn heel seats, the machine embodies mechanisms set forth in other patents which have been described in connection with other models of the hand method lasting machine. The patents defining in their claims the mechanism embodied in this machine at the present time are as follows: —

No. 584,743, June 15, 1897, Ladd.

No. 597,321, January 11, 1898, Ladd.

No. 718,586, January 13, 1903, Stiggins.

No. 1,003,984, September 26, 1911, Clary.

No. 1,014,940, January 16, 1912, Bond (original application filed February 25, 1907).

This machine is put out by the United Shoe Machinery Company through its lasting department.

LASTING MACHINE: CONSOLIDATED HAND METHOD (WELT SIDE).

For a number of years after the formation of the United Shoe Machinery Company in 1899, it was the general practice for shoe manufacturers who use lasting machines of the bed type for welt shoes to last toes and heels of the shoes on the bed lasting machine and to last the sides, that is, the shanks and foreparts, by hand; and this practice continued for a number of years after the formation of the United Shoe Machinery Company in those factories where the bed type of lasting machine was used.

In those factories, however, where the welt shoes were lasted on the hand method lasting machine the shoes were lasted all around by machine so that no hand operation was necessary. The machine known as the "Lasting Machine, Consolidated Hand Method (Welt Side)" was developed in order that the company might be able to supply to those manufacturers who were using the No. 5 lasting machine, the standard bed lasting machine of the United Company since January, 1908, a machine for use in lasting the sides of the shoe in foreparts and shanks, so that users of the No. 5 lasting machine might, like users of the hand method lasting machine on welt work, last their shoes all around by machine. It was not practicable to use regular hand method lasting machines for lasting sides of shoes because that machine is a highly organized machine provided with elaborate mechanisms intended particularly for use in lasting the toe, the most difficult part of the lasting operations, which mechanisms not only were not needed for the much simpler operation of lasting the sides of the shoe, but would actually be in the way of the operator. Accordingly there was produced and put into commercial use in September, 1908, a machine especially built for lasting the sides of welt shoes. Improvements embodied in this machine are defined in claims of those patents which have already been discussed in connection with the welt hand method lasting machine, so that it will be unnecessary to do more here than enumerate the patents, which are: —

No. 184,744, June 15, 1897, Ladd.

No. 597,321, January 11, 1898, Ladd.

No. 893,331, July 14, 1908, Ladd.

No. 1,005,234, October 10, 1911, Ladd and Stiggins.

This machine is supplied entirely free, without any charge whatever either by way or royalty or by way of initial payment, to shoe manufacturers using the No. 5 lasting machine and the pulling-over machine. The machine is put out by the United Company through its lasting department.

I produce a shoe, the sides and forepart of which were lasted on this hand method welt-side lasting machine. The toe and heel of this shoe were lasted on the No. 5 lasting machine.

[*Shoe illustrating operation of hand method welt-side lasting machine in shanks and forepart, and No. 5 lasting machine at toe and heel, is introduced in evidence and marked "Defendants' Exhibit 149".*]

Int. 79. Have you collected under one or more separate covers the patents relating to lasting machines with regard to which you have testified?

Ans. Yes, sir; and I produce five volumes of patents, the first comprising the patents mentioned in the portion of my testimony relating to the Chase lasting machine.

[*Volume of patents relating to Chase lasting machine is introduced in evidence, and marked "Defendants' Exhibit 150".*]

[*Answer to Int. 79 continued:*]

The second volume comprises patents mentioned in the portion of my testimony relating to lasting machine No. 5, U. S. M. C.

[*Volume of patents relating to lasting machine No. 5, U. S. M. C., is offered in evidence, and marked "Defendants' Exhibit 151".*]

[*Answer to Int. 79 continued:*]

The third volume comprises the patents mentioned in the portion of my testimony relating to the Ideal lasting machine.

[*Volume of patents relating to Ideal lasting machine is introduced in evidence, and marked "Defendants' Exhibit 152".*]

[*Ans. to Int. 79 continued:*]

The fourth volume comprises the patents mentioned in the portion of my testimony relating to the McKay & Copeland lasting machine.

[*Volume of patents relating to the McKay & Copeland lasting machine is offered in evidence, and marked "Defendants' Exhibit 153".*]

[*Ans. to Int. 79 continued:*]

The fifth volume comprises all of the patents mentioned in the portion of my testimony dealing with all five of the models of the hand method lasting machine. These models are: —

"Lasting Machine, Consolidated Hand Method (McKay)".

"Lasting Machine, Consolidated Hand Method (Welt)".

"Lasting Machine, Consolidated Hand Method (Turn Toe)".

"Lasting Machine, Consolidated Hand Method (Turn Heel Seat)".

"Lasting Machine, Consolidated Hand Method (Welt Side)".

[*Volume of patents dealing with five models of hand method lasting machine is introduced in evidence, and marked "Defendants' Exhibit 154".*]

Int. 80. Please give the number, date and name of the patentee of the several patents contained in the several volumes just offered in evidence as Defendants' Exhibits Nos. 150, 151, 152, 153 and 154.

Ans. DEFENDANTS' EXHIBIT 150.

No. 25,673, October 4, 1859, Purinton.

Reissue, No. 1,382, January 6, 1863, Purinton.

No. 28,120, May 1, 1860, Wells.

No. 41,967, March 15, 1864, Wells.

No. 44,916, November 1, 1864, Fischer.

No. 9,651, June 1, 1869, Fischer.

No. 340,860, April 27, 1886, Chase.

No. 364,088, May 31, 1887, Chase.

No. 376,368, January 10, 1888, Chase.

No. 483,375, September 27, 1892, Chase.

No. 545,052, August 27, 1895, Chase.

No. 566,831, September 1, 1896, Willard.

No. 569,182, October 13, 1896, Dunphy.

No. 569,231, October 13, 1896, Ray.

No. 571,339, November 17, 1896, Chase.

No. 571,404, November 17, 1896, Shaw.

No. 571,429, November 17, 1896, Chase.

No. 1,053,612, February 18, 1913, Keyes (application filed December 26, 1908.)

DEFENDANTS' EXHIBIT 151.

No. 552,834, January 7, 1896, Grandy.

No. 569,231, October 13, 1896, Ray.

No. 571,429, November 17, 1896, Chase.

No. 588,568, August 24, 1897, Grandy.

No. 601,934, April 5, 1898, Brock.

No. 946,708, January 18, 1910, Snow.

Reissue No. 13,292, September 19, 1911.

No. 957,949, May 17, 1910, Glass.

Reissue No. 13,505, January 7, 1913, Glass (application filed December 30, 1905.)

No. 958,280, May 17, 1910, Plant.

No. 1,002,818, September 12, 1911, Brock.

No. 1,004,659, October 3, 1911, Keyes.

No. 1,017,124, February 13, 1912, Winkley and Alley (application filed April 29, 1896).

No. 1,018,025, February 20, 1912, Winkley and Alley (application filed July 22, 1896).

No. 1,018,477, February 27, 1912, Brock (application filed October 26, 1907).

No. 1,066,374, July 1, 1913, Brock (application filed October 26, 1907).

DEFENDANTS' EXHIBIT 152.

No. 521,954, June 26, 1894, Grandy.

No. 552,834, January 7, 1896, Grandy.

No. 558,043, April 14, 1896, Copeland, Crisp, Grandy and Avery.

No. 571,429, November 17, 1896, Chase.

DEFENDANTS' EXHIBIT 153.

No. 548,671, October 29, 1895, Stirckler.

No. 548,862, October 29, 1895, Brock.

No. 601,933, April 5, 1898, Brock.

No. 601,935, April 5, 1898, Brock.

No. 823,664, June 19, 1906, Brock.

No. 1,030,564, June 25, 1912, Brock (application filed July 19, 1898).

DEFENDANTS' EXHIBIT 154.

No. 274,207, March 20, 1883, Matzeliger.

No. 281,306, July 17, 1883, Scott.

No. 284,906, September 11, 1883, Scott.

No. 292,575, January 29, 1884, Pearson.

No. 415,726, November 26, 1889, Matzeliger.
No. 421,954, February 25, 1890, Matzeliger.
No. 423,920, March 25, 1890, Gooding and Ladd.
No. 423,921, March 25, 1890, Gooding and Ladd.
No. 423,922, March 25, 1890, Gooding and Ladd.
No. 423,937, March 25, 1890, Matzeliger.
No. 441,482, November 25, 1890, Gooding and Ladd.
No. 459,899, September 22, 1891, Matzeliger.
No. 500,141, June 27, 1893, Ladd.
No. 510,972, December 19, 1893, Ladd.
No. 510,973, December 19, 1893, Ladd.
No. 510,975, December 19, 1893, Ladd.
No. 510,976, December 19, 1893, Ladd.
No. 510,977, December 19, 1893, Ladd.
No. 510,978, December 19, 1893, Ladd.
No. 523,939, July 31, 1894, Ladd.
No. 533,394, January 29, 1895, Mosher.
No. 562,119, June 16, 1896, Carter.
No. 564,931, July 28, 1896, Ladd.
No. 584,741, June 15, 1897, Ladd.
No. 584,742, June 15, 1897, Ladd.
No. 584,743, June 15, 1897, Ladd and McFeely.
No. 584,744, June 15, 1897, Ladd and McFeely.
No. 597,321, January 11, 1898, Ladd.
No. 696,717, April 1, 1902, Cavanagh.
No. 696,740, April 1, 1902, Ladd.
No. 718,586, January 13, 1903, Stiggins.
No. 784,251, March 7, 1905, DeMinico.
No. 786,047, March 28, 1905, McFeely.
No. 893,331, July 14, 1908, Ladd.
No. 931,809, August 24, 1909, Stiggins.
No. 944,116, December 21, 1909, Wade.
No. 6,620, January 18, 1910, Stiggins.
No. 999,233, August 1, 1911, Ladd and Stiggins.
No. 1,003,984, September 26, 1911, Clary.
No. 1,005,234, October 10, 1911, Ladd and Stiggins.

No. 1,005,929, October 17, 1911, Bond.

No. 1,009,054, November 21, 1911, DeMinico.

No. 1,014,940, January 16, 1912, Bond (application filed February 25, 1907).

No. 1,027,510, May 28, 1912, Stiggins (application filed March 21, 1901).

[*Adjourned to 10 o'clock* A. M., *Tuesday, October 14, 1913.*]

BOSTON, MASS., October 14, 1913.

MACHINES RELATING TO THE MANUFACTURE AND ATTACHING OF HEELS.

Int. 80. In the list of machines submitted by you in answer to interrogatory 7, you refer to machines relating to the manufacture and attaching of heels. State as briefly as possible what were the more important of the machines for these purposes that were standard with the United Company in 1899, and their place in the manufacture of shoes. If the same were the subjects-matter of Letters Patent of the United Company, name the patents. State also the extent and character of the development of this machinery since 1899, what improvements and modifications have been made, if any, and if such improvements and modifications have been the subjects-matter of Letters Patent of the United Company, name the patents.

Ans. The heel-attaching operation comprises, generally speaking, the securing of the heel and the toplift to the shoe by the driving of nails through the heel, out-sole and insole and clinching them on the itside of the shoe by turning the points back into the insole. This work is done in two ways. When the heel is "surface nailed" the nails are driven through the toplift and heel at one operation. When the heel is "blind nailed" the heel proper is attached by driving nails through the heel, out-sole and insole and clinching them as I have described, leaving the head ends of the nails projecting above the outer face of the heel a distance slightly less than the thickness of the toplift, and then "spanking" the toplift upon those projecting head ends of the nails. Only the heels of the cheaper grades of shoes are "surface

nailed", and the heels of all the better and higher grades of shoes are always "blind nailed", as "blind nailed" heels present a much more attractive appearance. Heel-attaching machines of the present day are highly organized machines, comprising elaborate mechanism for presenting in proper relation for the heel-attaching operation the shoe, heel, toplift and nails. I will not undertake at this time to enumerate these mechanisms or to state their respective functions.

Heels are prepared for the heel-attaching operation in the following manner: The first step is "building" the heel. In this operation the heel "lifts" comprising pieces of leather, died out to the required shape, are placed one upon another until the heel blank is of the required height and then the lifts are usually secured together by driving one or two nails through the lifts. These heel lifts, however, are often warped, owing to the fact that the portions of the hide from which they are cut are warped, and even if the lifts were always flat they would not fit tightly enough together, so that if attached to the shoe in this condition there would be substantial cracks between adjacent lifts. Furthermore, the "heel-seat face" of the heel is not of the proper shape to fit the more or less convex heel-seat end of the sole. Accordingly, before the heel-attaching operation, it is the practice to compress heels, the object of this operation being to force the lifts closely together and simultaneously to shape the "heel-seat face" of the heel so that it will fit approximately the heel seat of the sole. This operation is performed by putting the heels through a heel-compressing machine which subjects a heel to great pressure, usually at least fifty or sixty tons.

Heel Compressing Machines.

A heel-compressing machine of the present commercial type comprises, generally speaking, side dies for shaping the sides and curved rear end of the heel, a breast die for engaging and shaping the breast face, that is, the front face of the heel, and relatively movable dies for engaging and shaping the tread face and heel-seat face. These dies are operated to impart great pressure to the heel

in the operation of the heel-compressing machine, which is very heavy and powerful. After the heel-compressing operation the heel lifts are forced closer together so that the heel is practically one solid piece of leather, and the heel-seat face of the heel is given the desired concave shape to correspond with the shape of the heel end of the sole.

The first commercial heel-compressing machine is shown in patent No. 105,030, July 5, 1870, Bigelow. This machine was commercially used for many years. A typical claim of this Bigelow patent is the first: —

"1. The combination of the follower F with the die E, substantially as and for the purposes set forth."

The "follower F" of this claim is the die for engaging the heel-seat face of the heel. This die is known in the trade as a "follower".

Just prior to February, 1899, the McKay Shoe Machinery Company was putting out two types of heel-compressing machines. One of these, known as the "Fisher Compressing Machine", was constructed substantially as shown in patent No. 350,051, September 28, 1886, Glidden. This machine was adapted for use in connection with the heel-attaching machine known as the "McKay Rapid Nailer". That machine required that the heel to be attached by it should be "loaded" before the heel-attaching operation. A loaded heel is a heel which has been compressed and into which the nails have been partially inserted, to be fully driven later by the heel-attaching machine. The Fisher compressing machine, in addition to compressing the heel, formed holes extending part way through the heel into which nails were stuck by boys, and the heels were then ready for the operation of the McKay rapid nailer.

About 1893 the inventors of the McKay & Bigelow Heeling Machine Association, predecessor in business of the McKay Shoe Machinery Company, which was putting out the Fisher compressing machine, produced a machine which was a substantial advance in the industry in that it not only compressed the heels and formed holes for the reception of the nails, like the Fisher compressing machine, but it also inserted the attaching nails in those holes, thus

producing automatically a compressed and loaded heel. As I have explained, the Fisher compressing machine only formed the holes and the nails had to be inserted in the holes by hand. I produce a loaded heel which was compressed and loaded on this improved machine first put out about 1893 and known as the "Automatic Heel Compressing and Loading Machine".

[*Loaded heel produced by "Automatic Heel Compressing and Loading Machine" is offered in evidence, and marked "Defendants' Exhibit 155".*]

[*Answer to Int. 80 continued:*]

This machine was being put out by the McKay Shoe Machinery Company just prior to February, 1899, and was constructed substantially as shown in patent No. 543,804, July 30, 1895, Glidden and Small. The machine embodied mechanisms set forth in all twelve of the claims of that patent. The machine was organized to take nails from bulk in a hopper and to present in position for the nail-inserting operation the desired number of nails properly arranged to be inserted at each operation of the machine. The nail-arranging mechanism was constructed substantially as shown in patent No. 577,212, February 16, 1897, Small, and six of the seven claims of that patent define mechanism embodied in the nail-handling organization of that machine. That mechanism was also defined more broadly in the claims of patent No. 577,212, February 16, 1897, Small.

This later machine, the Automatic compressing and loading machine, was, like the Fisher compressing machine, a companion machine for the McKay rapid nailer. As I have stated, the McKay rapid nailer required that the heel which was to be attached should have been loaded previously to the operation of that machine. This McKay rapid nailer was, however, superseded in 1898 by the machine then known as the "Improved Rapid Nailer", which was organized to take from a mass of nails the required number of nails for each heel, automatically arrange those nails with their points all extending in the same direction, present them in proper position for the operation of the drivers, and then to drive the nails automatically and thereby attach the heel to the shoe.

Obviously, in the operation of this improved rapid nailer, it was no longer necessary that the heels should be loaded before the heel-attaching operation. On the other hand, trade conditions required then, that is, about 1898, as they always have since, that heels be compressed before they are attached to shoes. The Fisher compressing machine was already out of date, and competitors were offering to the trade a greatly improved heel-compressing machine. Under these conditions the McKay Shoe Machinery Company was obliged to supply for the operation of compressing heels, either the out-of-date Fisher compressing machine with the pricking awls stripped from it, or the elaborate Automatic compressing and loading machine stripped of its nail-arranging organization, awls and nail drivers.

In other words, the McKay Shoe Machinery Company, just prior to February, 1899, did not have a satisfactory heel-compressing machine.

Compressing Machine: Model 4, Automatic Heel.

Immediately after the formation of the United Shoe Machinery Company in February, 1899, it undertook the development of a satisfactory modern heel-compressing machine, and eventually produced the machine which has since been known as the "Compressing Machine No. 4, Automatic Heel", which was first put out for commercial use in September, 1900. The machine as first put out was constructed substantially as shown in patent No. 776,787, December 6, 1904, Leland (application filed August 29, 1902). One of the chief objects which the inventors had in mind in developing this machine was to produce a machine which would handle the heel throughout its operation in such manner as not to deface or injure the heel in any way. In both the Fisher compressing machine and the Automatic compressing and loading machine, the heel had been removed from the mold by means of awls in the heel-seat die which were forced into the heel during the compressing operation and removed it from the mold, in the Fisher machine holding it in the path of the heel-ejecting mechanisms, there being two such awls in the Fisher machine and three in the Automatic

compressing and loading machine. This arrangement was objectionable because awls defaced the heel and because they often failed to operate properly so that the heels were occasionally spoiled, and occasionally also the machinery was broken. In the operation of the Fisher compressor sometimes awls would get an unusually strong grip on the heels and, when the ejecting mechanism operated to knock the heels off the awls, sometimes the two or three lifts which were held by the awls would remain in the machine, the rest of the heel being knocked off from those lifts. This spoiled that heel, and also the next one which was operated upon, and frequently caused breakage of the machine. The machine of the Leland patent No. 776,787, December 6, 1904, was provided with an entirely new organization for getting the heel into the mold, and discharging it from the mold after the compressing operation. The machine was so organized that when, after the compressing operation, the mold was opened by moving the side and breast dies away from the heel, the bottom plate of the mold was raised to the same plane as the top surfaces of the side molds, thus presenting a substantially continuous plane face on which the heel rested in position to be ejected. The heel was then pushed off from that plate by a combined heel-ejecting and heel-feeding mechanism, which, immediately after knocking off the compressed heel, deposited a new uncompressed blank on the bottom plate, still in its raised position. The moment this bottom plate had received the new uncompressed blank it dropped back into normal position at the bottom of the mold, ready for a repetition of the compressing operation. In this manner the heel was handled by the machine in such manner that nothing was done to it at all except the application of the great pressure, which was, of course, the object of the operation.

The development of an organization by which the heel could be handled in the manner I have just indicated, presented problems which may be very briefly indicated as follows: It is important that the heel be deposited in the mold when the mold is open to substantially the fullest extent, in order that accidental engagement of the heel with the side or breast dies, consequent misplac-

ing of the heel, and possible breakage of the machine, may be avoided. On the other hand, as much time as possible must be afforded for the ejecting of the compressed heel and the feeding and depositing in the mold of the uncompressed blank. These problems were effectively solved in the operation of this new "No. 4 Heel Compressing Machine". A typical claim of patent No. 776,787, directed to this organization, is the forty-second, which is as follows:—

"42. A compressing machine, comprising a mold and a co-operating die, means for relatively moving said mold and die, and an independently movable plate normally forming the bottom of the mold, combined with means for moving said plate to cause a compressed heel to be discharged from the mold during the first portion of the movement of the mold away from the die, and for causing said plate to return to normal position during the first portion of the movement of the mold toward the die."

The operation of this organization was greatly facilitated by a combined heel feeding and ejecting mechanism which presented a new uncompressed blank for the operation of the machine immediately upon the ejection of the previously compressed blank. A typical claim of patent No. 776,787 directed to this organization is the fifth:—

"5. In a heel compressing machine, feeding and ejecting means comprising arms having clamping portions for holding the heel blank to be fed and abutments for engaging the heel to be ejected."

The proper introduction and removal of heels from this machine was further facilitated by mechanism which operated to keep the molds open to their widest extent during as long a period as practicable during each cycle of the machine's operations. This mechanism is defined in a number of claims of the Leland patent No. 776,787, of which a typical claim is the third:—

"3. In a heel compressing machine, means for compressing a heel, said means including a reciprocating head, a mold comprising movable members mounted on said head, actuating links therefor, each connected at one end to said members and having its other end connected to a fixed part of the machine, one of said connections permitting a limited amount of lost motion, and means for controlling the period when said lost motion may take place,

whereby the mold is open during the first portion of the descent of the reciprocating head, and remains open until the last portion of the rise of the head."

The desired co-operation of the side and the breast dies for opening and closing the mold was secured by the organization defined in a number of claims of this Leland patent No. 776,787, of which a typical claim is the twenty-fifth: —

"25. A heel compressing machine provided with a heel mold comprising side compressing dies and a breast plate connected together to permit a limited movement for closing and opening the mold, and means to move said members in the same plane, for the purpose described."

The machine of this Leland patent No. 776,787, December 6, 1904, embodying mechanisms defined in most of the forty-two claims of that patent, provided a far more satisfactory heel-compressing machine than either the old Fisher machine or the Automatic compressing and loading machine, and the occasional spoiling of heels and frequent breakage of parts which seriously interfered with the operation of those two older machines was obviated in this new No. 4 heel compressing machine.

During the first months of the commercial use of machines constructed as shown in Leland patent No. 776,787 it was found that the operation of the machine could be improved upon by embodying in it improvements shown in patent No. 776,823, December 6, 1904, Allen (application filed November 12, 1902). These improvements which were adopted in May, 1901, comprised, first, improved means for keeping the mold wide open as long as possible during each cycle of the machine's operation. A typical claim on this feature is the first: —

"1. In a heel compressing machine, means for compressing a heel, said means including a reciprocating head and a divided mold comprising movable members, means for closing the mold, a spring interposed between said members for separating them to open the mold, said closing means having provision for positively opening the mold in case the spring fails to act properly."

Secondly, improved mechanism for properly locating the heel in the blank-feeding mechanism was defined in a number of claims of this patent No. 776,823, of which No. 5 is typical: —

"5. In a heel compressing machine, heel blank feeding mechanism having a holder comprising an abutment for the breast of the heel, and arms provided with movably mounted spring actuated devices, arranged to engage the oppositely curved surfaces at the rear of the heel to force it toward the abutment, substantially as described."

Third, an important improvement over this first construction which is defined by a number of claims of this Allen patent No. 776,823 was directed to preventing the heel plate of the mold, known as "toplift plate" because it engages the toplift face of the heel, from jumping out of the mold at the end of its necessarily quick rising movement, to raise the compressed heel at the completion of the compressing operation. A typical claim directed to this improvement is the fourteenth: —

"14. In a machine of the class described, heel compressing dies, a top lift plate comprising part of one of said dies, means for giving said top lift plate an independent relative movement, and means movable into and out of operative position for limiting the extent of independent movement of said top lift plate."

At the same time that the Allen improvements were adopted there were also incorporated in the machine further improvements shown in the drawings and set forth in the claims of patent No. 776,875, December 6, 1904, Tripp (application filed February 24, 1903).

These improvements consisted in reorganizing the blank-feeding mechanism so that it could be instantly removed to permit access to the dies so that the dies could be readily changed. In adapting the machine for different sizes and for different styles of heels, it is frequently necessary to change most, and generally all, of the dies, and mechanism which permits this change to be made quickly adds, of course, to the convenience of the operator, and decreases the time that the machine is idle during the changing of the dies.

Another improvement defined in the claims of this Tripp patent No. 776,875 was directed to preventing breakage of parts of the blank-feeding mechanism in case there were an obstruction to its operation, as would be occasioned, for example, by a misplaced heel. The organization of this No. 4 heel compressing machine was again improved in 1909 by a still further improved means for

keeping the molds wide open as much of the time as possible during the cycle of the machine's operations. These improvements are shown in the drawings and defined in the claims of patent No. 1,012,007, December 19, 1911, Pope (application filed July 6, 1909). This improvement was a matter of considerable practical importance in saving the operator's time and reducing the time that the machine was idle, owing to the necessity of replacing parts.

Several other improvements contributing to the successful operation of this machine are not shown in any patents which have as yet been granted. I should add also that the machine is provided with a considerable number of improvements which adapt it for operating on special classes of work. These improvements are shown and set forth in the claims of a number of patents in addition to those which I have mentioned, and are so numerous that I will not undertake to enumerate them at this time. However, all these improvements are, of course, of importance as they enable a manufacturer to do any kind of work which may come to the machine in the regular course of a day's work.

Condensed Toplift.

A new use was found for this No. 4 heel compressing machine after the invention of the condensed toplift, which is shown and defined in the claims of patent No. 781,236, January 31, 1905, Small. A typical claim of this Small patent is the first: —

"1. As a new article manufacture, a top lift comprising a blank cut from a piece of leather and thereafter compressed and condensed by great pressure both upon its faces and its edges to such an extent that substantial changes are effected in its characteristics or qualities, substantially as described."

This invention, introduced commercially in 1903, completely revolutionized the making of toplifts. Uncompressed toplifts are frequently warped and have irregular edges, and great difficulty had been experienced, prior to the invention of the condensed toplift, in properly handling toplifts in the heel-attaching machine. The toplift-handling mechanism of such a machine engages the toplift at its edges, and when the toplift is warped or its edges are

irregular there is great danger that the toplift will spring out during the sudden, quick movement of the toplift-holding mechanism into attaching position, and great difficulty was experienced in the spoiling of toplifts, and frequently in breakage of the machine, owing to the dislodgement or misplacement of the toplift in this way.

Furthermore, a blank which had been cut for a toplift was frequently found to have blemishes or defacing marks upon its grain face, that is, the face which is to be exposed in the finished shoe, which would prevent its use as a toplift, although otherwise, as regards the quality of its leather and other requisites for a toplift blank, this blank was entirely suited for use as a toplift. It was discovered by one of the United Company's inventors that a warped toplift could be made perfectly flat, that the edges could be made uniform, and that blemishes in the grain face of the blank could be removed so that either a blank which before compressing operation would be unfit for use could be, after being compressed, satisfactorily used as a toplift, or a toplift blank suitable for a cheap grade of shoes could be so substantially improved as to adapt it for a higher grade of shoes.

The No. 4 heel compressing machine was, after the production of this improved toplift, organized for applying to it the amount of pressure required to produce the substantial and striking improvements which are afforded by applying to a toplift blank a very heavy pressure. As the condensed toplift is ordinarily made, it has applied to it in the compressing machine a pressure of about seventy-five tons. In the operation of the No. 4 compressing machine for the production of condensed toplifts there was practiced the method defined in patent No. 772,840, October 18, 1904, Small, of which a typical claim is the first: —

"1. The method of producing a top lift which consists in first reducing the diameter of a top lift blank by pressure on its edges, and then exerting great pressure on its faces, whereby the characteristics and qualities of the top lift are appreciably changed."

I produce a sample of an uncompressed toplift.

[*Sample of uncompressed toplift is introduced in evidence, and marked "Defendants' Exhibit 156".*]

[*Answer to Int. 80 continued:*]

I also produce a compressed toplift which was made from a blank cut out from a piece of sole leather right beside the uncompressed blank of Defendants' Exhibit 156.

[*Sample of compressed toplift is introduced in evidence, and marked "Defendants' Exhibit 157".*]

[*Answer to Int. 80 continued:*]

I further produce the piece of sole leather from which these two blanks were cut. The uncompressed and compressed blanks are numbered, respectively, 2 and 3, and the piece of sole leather is likewise numbered to indicate the openings from which the two toplifts were cut.

[*Piece of leather from which Exhibits 156 and 157 were cut is offered in evidence, and marked "Defendants' Exhibit 158".*]

[*Answer to Int. 80 continued:*]

By way of further illustration of the advantages of the condensed toplift, particularly in its enabling the use for toplifts of portions of the hide of which no one would have thought of making toplifts prior to the introduction of the condensed toplift, I produce another condensed toplift, together with the piece of leather from which the toplift was died out.

[*Condensed toplift is introduced in evidence, and marked "Defendants' Exhibit 159".*

Piece of leather from which Defendants' Exhibit 158 was cut is introduced in evidence, and marked "Defendants' Exhibit 160".]

[*Answer to Int. 80 continued:*]

As indicating the permanent character of the transformation in the lift effected by condensing it, it may be of interest to note that the toplift of Defendants' Exhibit 159 was condensed over two years ago.

This condensed toplift was received with great favor by shoe manufacturers, and has gone into very extensive use. Practically every toplift which is being used in Brockton is condensed.

In 1905 this condensed toplift was improved by incorporating in it the improvements shown in the drawings and set forth in the claims of patent No. 1,007,687, November 7, 1911, Glidden (appli-

cation filed January 9, 1907). The improvement of this Glidden patent facilitated the application of the toplift to heels by providing a roughened surface to receive the cement used to assist in holding the toplift to the heel, surrounded by a narrow plane surfaced rim to act as a dam for the purpose of preventing the cement from flowing out on the edge of the toplift and heel. Without this dam there would be danger that in the toplift "spanking" operation the cement would be squeezed out. This improvement is defined in the three claims of patent No. 1,007,687, of which the second claim is typical: —

"2. As an article of manufacture, a flat leather top lift for a heel having its inner flesh face provided with numerous separate, relatively shallow, depressions to receive and to retain an adhesive for uniting the lift to the adjacent lift of the heel and with a relatively narrow rim having a plane surface extending around the margin of the lift and constituting a closing wall or dam for preventing the exaudation of the adhesive from the depressions when the top lift is being attached to the body portion of the heel."

This improvement is embodied in the two condensed toplifts of Defendants' Exhibits 157 and 159, having been incorporated in substantially all condensed toplifts which have been produced since the adoption of the improvement in 1905. In 1905 the condensed toplift was also further improved, as shown and set forth in the claims of patent No. 890,434, June 9, 1908, Mayo. The nature of this improvement is indicated by claim 3 of that patent, which is as follows: —

"3. As an article of manufacture, a leather top lift, the edge of which comprises a beveled upper portion and a relatively narrow portion adjacent the tread face, substantially perpendicular to said face and arranged and shaped to serve as a guide in the trimming of the heel."

In explanation of this invention it may be well to add that in the heel-trimming operation the heel is guided by a thin plate, which engages the edge of the toplift closely adjacent to the tread face of the toplift. Securing of the proper contour of the heel depends, therefore, upon the shape of the toplift at its edge next to the tread face of the heel. On the other hand, the portion of the edge

between that guiding surface and the flesh side of the lift, which is next to the body of the heel, should be beveled to afford sufficient stock to be trimmed off in the shaping of the heel as a whole. Modern styles of shoes require more or less inclination for the edge of the heel.

The improvement of this Mayo patent No. 890,434 is embodied in both of the toplifts of Defendants' Exhibits 157 and 159, and all condensed toplifts made since this improvement was adopted in 1905 have incorporated this improvement. Mechanism for producing the toplift shown and defined in all of the seven claims of patent No. 890,434 is shown in the drawings and defined in the claims of patent No. 1,012,681, December 26, 1911, Mayo (application filed February 20, 1907). A typical claim of this patent is the third: —

"3. In a machine for molding and condensing top lifts, a plurality of relatively movable dies through which great pressure is exerted both upon the faces and the edge of a top lift to shape and condense it, said dies being constructed and arranged to enclose, when in molding position, a chamber of the area and height of a condensed top lift consisting of a single thickness of sole leather, those dies which act upon the faces of the top lift having generally plane parallel surfaces and those dies which act upon the edge of the top lift at the sides and rear comprising a beveled portion and a perpendicular portion for engaging the top lift, each of such engaging portions being of less height than the thickness of the top lift and the active perpendicular portion being of lesser height than the beveled portion."

This heel-compressing machine which I have been discussing, the official name of which is "Compressing Machine, Model No. 4, Automatic Heel", is put out by the United Shoe Machinery Company through its heeling department.

Mr. WEBSTER. Please note petitioner's objection to patents, and reference to patents, issued after the filing of the petition herein.

NAILING MACHINE: LOOSE.

[*Answer to Int. 80 continued:*]

I have explained how the heel and toplift are prepared for the heel-attaching operation, but before the heel is attached to the shoe the

heel end of the sole must be prepared for the reception of the heel. In welt shoes the out-seam, that is, the line of stitching which secures the out-sole to the welt, always terminates on each side of the shoe at a point near the position of the front edge or breast of the heel after the heel is attached to the shoe, and in the majority of McKay sewed shoes also the line of stitching which secures the out-sole to the insole terminates substantially at the breast of the heel. Accordingly, at the end of the out-sole attaching operation the heel ends of the soles of all welt shoes, and a large proportion of McKay sewed shoes, are unattached, and before the heel can be attached to a shoe the heel end of the sole must be attached to the shoe. This operation is known as "heel-seat nailing". This operation is usually performed by a machine known as a "Loose Nailing Machine". Such a machine, as its name implies, is a machine for driving previously formed nails, and probably received its name from the fact that the earlier types of nailing machines in the shoe industry formed the fastenings as well as inserted them. Owing to the character of the fastenings which it inserts, the loose nailing machine presents a difficult problem which put it in a class by itself. Of these problems the most striking are the necessity for separating successively each nail from the body of nails which precedes it in the raceway down which the nails travel toward the point where they are to be inserted, the presentation of the nails in proper position to be driven, the forming of an awl hole in the stock to receive each nail, placing this awl hole in position in alignment with the driver so that the nail may enter the hole properly, the clamping of the work to maintain the awl hole in alignment with the driver and to support the shoe against the blow of the driver, the clinching of the point of the nail as it emerges from the stock, the release of the clamping pressure on the work to permit feeding of the shoe to present a new awl hole in position for the next fastening, and, finally, the provision of necessary adjustments in most of these mechanisms for adapting the machine, first, for variations in the work being done from point to point, and, secondly, for operating upon the many different kinds of work which may be represented to it and for enabling the machine to perform

its operation upon each different kind of work in the desired manner.

The machine which was being put out just prior to February, 1899, by the McKay Shoe Machinery Company was constructed substantially as shown in the drawings and set forth in the claims of patent No. 490,624, January 24, 1893, Goddu. Typical claims of this patent are the following:—

"1. In a nailing machine, a driver bar, a driver, a nose, and an awl bar slotted transversely at its lower end to constitute an awl receiving slot, and a clamp, combined with an awl adjustable in said slot toward and from the driver, substantially as described."

"3. In a nailing machine a pivoted head B provided with a projection B^{14} to leave a slot as D^3, and a rock shaft D^2, having a grooved arm D^4, combined with a stud made adjustable in the slot of said arm, and provided with blocks D^7 to slide in the slot D^3, substantially as described."

The principal work for which loose-nailing machines were used just prior to February, 1899, and for which they have been used since that time, is the nailing of heel seats, and the majority of loose-nailing machines which are being put out are being supplied for nailing heel seats of welt shoes. The machine is especially organized for this work. As to the requirements for this work of nailing heel seats of welt shoes, in the first place the organization must include proper means for supporting the last which is still in a welt shoe at this stage of its manufacture, and for holding the last properly in position to have a row of nails inserted around the margin. In the second place, the machine must have proper mechanism for determining with relation to the outline of the heel end of the shoe the line in which the fastenings shall be inserted, and this requirement is complicated by the fact that the sole blank used in a welt shoe is a "blocked sole" like Defendants' Exhibit No. 102, and at the time that the heel seat is nailed the heel end of the sole has not been trimmed and consequently in the heel seat nailing operation it is impossible to guide the shoe by means of the edge of the sole. To adapt the loose-nailing machine for meeting the first of the requirements above indicated, that is, properly supporting the last, it was organized as put out just prior to Febru-

ary, 1899, with the work-supporting mechanism shown and defined in the claims of patent No. 919,424, April 27, 1909, Cuff (application filed June 20, 1899). The majority of the twenty-seven claims of this patent define the mechanism as it was used at that time. Typical claims are the first and the eighth : —

"1. In a jack, a bed, a rocking foot having a curved under side sustained by and adapted to rock on said bed, and a jack spindle joined to said foot and extending therefrom in a direction approximately radial to the curved under side of said foot."

"8. In a jack, a rocker bed, a rocking foot sustained on said bed, said foot rolling from end to end on said bed, during changing positions of the spindle, a jack spindle joined at its lower end to said rocking foot centrally between its ends, and means to adjust said rocker bed, foot and spindle vertically."

The work-supporting means defined in the claims of this patent No. 919,424 enable the work to be presented with the heel seat of the sole in a substantially horizontal plane as the heel seat nailing operation progresses around the heel.

The second requirement above set forth for the successful use of a loose-nailing machine in the operation of heel-seat nailing, that is, the proper positioning of the line of fastenings with relation to the outline of the heel end of the last, necessitates, first, that the work be located by means which shall engage the upper of the shoe, close to the sole, since, as I have explained, the shoe cannot, during this operation, be guided by the edge of the heel end of the blocked sole. Secondly, that this means for engaging the upper move up and down with the shoe as the shoe is raised or lowered to permit the feeding of the work. And third, this means must be so constructed and operated that it shall not interfere with the removal of the shoe after the operation has been completed, or with the introduction of another shoe. These problems were solved by including in the organization of the machine the work-engaging means which is shown in the drawings and set forth in all of the ten claims of patent No. 865,329, September 3, 1907, Casgrain (original application filed August 4, 1898).

A typical claim of this patent is the third :—

"3. In a mechanism for inserting fastenings, a presser, a yield-

ingly mounted support adjacent thereto and movable in a vertical path relatively to said presser, a work engaging member on said support and adjustable means to positively regulate the extent of the movement of the latter in both directions."

NAILING MACHINE: HUNGARIAN.

Just before February, 1899, this loose-nailing machine was organized for performing special work for which there was then, and has continued to be, a limited demand. This special work was the driving of what is known as "Hungarian nails", that is, nails having large, wear-resisting rounded heads, which are used in shoes made for laborers engaged in certain occupations. When the machine is equipped for this special work it is known as "Nailing Machine, Hungarian". These nails are difficult to handle both in moving them along the raceway on their way to the inserting position and in separating the endmost nail in turn to present it to the driver. The mechanism which especially adapts the machine for Hungarian nailing is shown in the drawings and set forth in the claims of patent No. 932,535, August 31, 1909, Casgrain (granted on an application filed April 27, 1900). Typical claims of this patent are 19 and 21 : —

"19. In a machine of the class described, the combination with a nail raceway of a knock-off device therefor, and means constructed and arranged to impart to said device a series of impulses of varying force in a prearranged order."

"21. In a machine of the class described, a nail raceway, a separator, and means for moving said separator behind the endmost nail in the raceway to discharge the same, said separator being constructed and arranged to overlie and engage the head and also engage the shank of the endmost nail thereby to maintain it in a vertical position while being discharged."

NAILING MACHINE: NO. 2, LOOSE.

Soon after the organization of the United Shoe Machinery Company experiments were started with a view to producing a new high-speed loose-nailing machine. The organization of the old machine as it was put out in February, 1899, absolutely limited the speed of that machine, which was regularly run in commercial use, to a speed of 350 nails per minute. There were many reasons

for this limited speed of the old 1899 machine, of which perhaps the most important was the fact that in order to get the awl, nail and driver substantially in the same vertical line, the whole front of the machine carrying the awl, the driver, the raceway and nail separator was arranged to swing back and forth for every nail-driving operation of the machine. The momentum of the heavy casting which was thus oscillated in both directions 350 times a minute caused excessive vibration in the machine which was prohibitive of a higher speed, and also precluded a proper handling of the nails at any speed substantially higher than the regular commercial speed of that machine, which, as I have stated, was 350 nails per minute.

The experiments looking toward the production of a new high-speed loose-nailing machine were begun in February, 1903, and covered a number of years, during which time two experimental machines were successively constructed and tried out before a machine was produced which was considered sufficiently satisfactory to justify trying it out in shoe factories. The third machine, after extensive experimental use in different shoe factories, and after the many changes and improvements which are always made in the course of such experimental use, as weaknesses develop in the machine, or necessity for further improvements to adapt the machine for various kinds of work is recognized, the machine was adopted as the company's standard commercial loose-nailing machine in 1909. This machine was radically different from the old machine of 1899 in all respects and every step in its operation was performed in a different manner. It is impracticable at this time to refer to all of the novel mechanisms embodied in the machine, and it will perhaps be sufficient to state that among the more striking improvements in this new machine which is known as "Nailing Machine No. 2, Loose", are, first, the organization for getting successively in the same vertical line the awl, nail, and driver; secondly, the mechanism for supporting and clamping the work and the arrangement for operating this supporting means to release the work to be fed between the insertion of successive nails, and finally to release the work at the end of the machine's operations to facilitate the removal of the shoe and the introduction of another

shoe; and, third, the organization of the entire machine including all of its operating parts so that a certain operation of every part of the machine is assured at high speed. The organization of this new machine, "Nailing Machine No. 2, Loose," is set forth in the claims of the following patents:—

No. 582,579, May 11, 1897, Cutter.

No. 856,399, June 11, 1907, Eaton.

No. 886,313, April 28, 1908, Cutter.

No. 932,535, August 31, 1909, Casgrain.

No. 1,011,941, December 19, 1911, Goddu (application filed May 10, 1910).

No. 1,030,775, June 25, 1912, Goddu (application filed February 8, 1909).

No. 1,031,438, July 2, 1912, Goddu (application filed October 10, 1907).

The commercial machine was and still is constructed substantially as shown in patent No. 1,030,775, June 25, 1912, Goddu.

When this machine is used for nailing heel seats of welt shoes and thereby preparing the heel ends of the soles of welt shoes for the reception of the heel in the heel-attaching operation, which is the most important use to which a loose nailing machine is put, it is also organized with mechanisms defined in the claims of patent No. 865,329, September 3, 1907, Casgrain, and patent No. 919,424, April 27, 1909, Cuff. Both of these patents were discussed by me, and typical claims quoted from them, in connection with my testimony in regard to the old loose nailing machine of 1899.

Referring to those patents on the list which I have just read, which represent the more notable improvements embodied in this new No. 2 loose nailing machine, the present standard commercial machine mechanism for controlling the operation of the work supporting and presenting means is defined in the claims of the following patents:—

No. 582,579, May 11, 1897, Cutter.

No. 1,011,941, December 19, 1911, Goddu (application filed May 10, 1910).

No. 1,031,438, July 2, 1912, Goddu (application filed October 10, 1907).

Claim No. 23 of patent No. 582,579 is as follows: —

"23. In a nailing machine, a stock support, a starting and stopping mechanism, a driving shaft, mechanism operated by said shaft to periodically depress said support to permit the feeding of the work, and independent means controlled by said starting and stopping mechanism to finally depress the horn when the machine is stopped, for the purpose set forth."

The first claim of patent No. 1,031,438 is as follows: —

"1. In a machine of the class described, the combination with a work support, of means for causing said working support normally to clamp the work, adapted to accommodate itself to varying thicknesses, means for intermittently suspending the operation of said first named means without disturbing the adjustment of the work support for the particular thickness clamped, and positively controlled means co-operating with said suspending means to positively lower the work support a uniform distance while the operation of said first named means is suspended and then to positively restore said work support to the control of said first named means."

An important characteristic of the nail-handling machine of this new No. 2 loose nailing machine is set forth in patent No. 586,313, April 28, 1908, Cutter, of which a typical claim is the seventeenth:

"17. In a nailing machine, an awl, a driver and a movable nail throat, means to actuate said awl to feed the work, means to move the nail throat out of the path of the awl during the feeding movement of said awl and means also actuated by said last named means for delivering a nail to said nail throat as said nail throat again comes into line beneath the driver."

Another important feature of this nail-handling mechanism is set forth in broad terms in the twenty-fourth claim of patent No. 932,535 August 31, 1909, Casgrain, which is as follows: —

"4. In a machine of the class described, the combination with a driver, a part provided with a passage for said driver, and a nail raceway, of a separator arranged for a two step nail separating movement, comprising an initial movement to separate the endmost nail in the raceway from the others, a dwell to permit the driver to ascend to clear the driver passage and a further movement to force the separated nail into the driver passage, and means to actuate said separator."

Patent No. 1,030,775, June 25, 1912, Goddu (application filed February 8, 1909), which, as I have already stated, shows sub-

stantially the commercial machine, defines in nearly all of its forty-six claims mechanisms embodied in the present standard commercial loose-nailing machine put out by the United Company. Typical claims of this patent are the following:—

"8. In a machine of the class described, the combination with a driver, a raceway and an awl, of a movable throat having a fastening receiving opening, means for bringing said awl and the fastening receiving opening of said throat alternately beneath the driver, and means for delivering a fastening from said raceway to said fastening receiving opening of said throat as said throat comes into position beneath the driver."

"10. In a machine of the class described, the combination with an awl and a fastening receiving throat movable alternately to the same point in direction substantially normal to each other, of means for controlling positively the movements of said awl and said throat, means for delivering a fastening to said throat, and means to drive said fastening into the awl hole while the throat is located at said point."

"18. In a machine of the class described, a driver, a fastening receiving throat and an awl movable alternately to a point beneath the driver in directions at substantially right angles to each other, a raceway in the line of movement of said awl, means for controlling positively the movements of said awl and said throat, a separator movable with said throat into co-operative relation to said raceway, and yielding connections between said separator and said throat whereby misplaced fastenings will not interfere with the timing of the movements of the positively controlled parts."

"25. A machine of the class described, having, in combination, a raceway, a driver guide provided with a driver passage into which said raceway opens, a driveway and separator constructed to move the shank of the fastening into the driver passage in advance of the head, means for operating said driver and said separator constructed and arranged to operate therein in such time relation to each other that the separator traps in the driver passage the shank of the endmost fastening in the raceway while the driver retains the head of said fastening in the raceway and that then there is a dwell in the movement of the separator while the driver rises to release the head of said fastening."

"45. A machine of the class described, having, in combination, an awl, means for moving said awl to feed the work, a fastening receiving throat normally located within the path of the work feeding movement of said awl and movable transversely to said path to place it out of the way of the awl during its work feeding movement, a driver and means for imparting to said driver a quick

upward movement to clear the throat in advance of the work feeding movement of said awl."

The organization in the loose nailing machine set forth in the claims which have just been quoted solved the problems of getting the awl, nail and driver successively in the same location by operations which together impose so light a burden upon the machine that the organization permits the running of the machine at practically any speed which is desired.

Machines constructed substantially as set forth in the patents which have been discussed, but also embodying other mechanisms defined in the claims of other patents as well as some mechanisms on which patents have not as yet been granted, are being tried out under commercial conditions in shoe factories and will probably soon be adopted. These mechanisms adapt this loose-nailing machine No. 2 for a new class of work, that is, for attaching out-soles of the cheaper grades of shoes by what is known as "all around nailing". Improvements which adapt the machine for that special work have to do with the automatic supplying of nails of different lengths according to the thickness of the stock being operated upon. In most shoes of the class for which this machine will be used there is a substantial difference between the thickness of the stock in the forepart and in the shank and a longer nail is required for the forepart than the shank.

The minimum speed at which this No. 2 loose-nailing machine, the present standard commercial loose-nailing machine, is being operated in shoe factories is 525 nails per minute, which is a capacity fifty per cent greater than that of the old 1899 loose-nailing machine, which, as I have stated, was run regularly at a speed of 350 nails per minute. In many factories the new loose-nailing machine is speeded up to 550 or 600 nails per minute.

This loose-nailing machine No. 2 is put out by the United Company through its metallic department. Up to September 1, 1913, 442 of the new machines had been put into use. One of these machines is adapted to nail heel seats of shoes which have been operated upon by from five to seven welt and turn sewing machines.

Heel Attaching Machines.

For the heel-attaching operation there were used, just prior to February, 1899, two types of machines, both of which were being supplied to shoe manufacturers by the McKay Shoe Machinery Company, one of the predecessors of the United Shoe Machinery Company. One of these machines was then known as the "Improved Rapid Nailer", and now as improved from time to time since that date, as the "Loading and Attaching Machine, McKay Automatic Heel". The other machine was known as the "American Lightning Nailing Machine". The first of these machines, the improved rapid nailer as it was known in 1899, was adapted for attaching heels of McKay sewed shoes and the heavier kinds of shoes, such as nailed, pegged and standard screwed shoes. The other machine, the American lightning nailing machine, was used to attach the heels of welt shoes. While these two machines were very differently organized, and while there were certain fundamental differences between them which I shall later point out, they were both provided with means for supporting the work, with means for presenting a heel in proper relation to the heel end of the shoe for attachment to the shoe, and for subsequently presenting a toplift to be attached to the heel, with means for successively presenting the heel against the shoe and the toplift against the heel, and with means for driving nails through the heel to attach it to the shoe. In both types of machines on the better classes of work the nails which attached the heel to the shoe were left projecting slightly above the surface of the heel and the toplift was attached to the heel by forcing it upon the projecting head ends of the nails. This toplift attaching operation is known in the trade as toplift "spanking", and heels having their toplifts attached in this manner are called "blind nailed heels", probably because the head ends of the nails are not visible in the finished shoe as they do not project entirely through the toplift. On the cheapest grades of shoes the toplift is not separate from the heel and the attaching nails are driven through both the toplift and the heel.

LOADING AND ATTACHING MACHINE: MCKAY AUTOMATIC HEEL (IMPROVED RAPID NAILER).

The average capacity of the improved rapid nailer in 1899 was nearly twice the average capacity of the lightning machine and consequently the improved rapid nailing machine was used almost exclusively in the attaching of the heels of McKay sewed shoes and for the cheaper grades of shoes for which work it was intended and particularly adapted. The most striking feature of the organization of the improved rapid nailer was the mechanism by which the required number of nails for each heel were taken automatically from a mass of nails in a hopper, were arranged automatically, all with their points extending in the same direction, and were presented in the required horseshoe-shaped outline in proper position to be driven into the heel at the proper time. The improved rapid nailer was the first commercial machine comprising such an organization. The immediate predecessor of this machine was the McKay rapid nailer, which was not provided with any nail-arranging or nail-handling mechanism and which, as I have stated in previous testimony, required that the heel be "loaded" before it was operated upon by the machine. As I have explained, a loaded heel is a heel in which nail holes have been formed and the nails have been partially inserted before the heel-attaching operation. This McKay rapid nailer had been superseded by the improved rapid nailer just before the organization of the United Shoe Machinery Company, and each improved rapid nailer when run to full capacity was effecting a saving of from one dollar to three dollars a day as compared with the old machine when run to full capacity. The improvements which contributed to this greater capacity of the improved rapid nailer are shown and described in the claims of patents —

No. 694,656, March 4, 1902, Mayo (application filed March 3, 1897);

No. 707,136, August 19, 1902, Mayo (application filed June 15, 1898);

No. 707,139, August 19, 1902, Mayo (original application filed February 25, 1898).

The machine as first put out embodied the improvements defined in all of the fifty-eight claims of the first patent on the above list, No. 694,656. Many of these claims define in varying terms the organization of the nail-supplying and heel-attaching mechanisms as always embodied in the improved rapid nailer and in the machine now put out and known as "Loading and Attaching Machine, McKay Automatic Heel". A typical claim directed to the organization of the machine is claim 45 : —

"45. A heel attaching machine comprising mechanism for supporting a shoe and for presenting a heel to be attached to the shoe, nail driving mechanism, nail assorting mechanism, a movable device to transfer nails from the nail assorting mechanism to the nail driving mechanism and means for delivering nails from the nail assorting mechanism to the transferring device."

This machine of 1899 also comprised means for automatically presenting a heel and a toplift successively in proper relation to the shoe. A number of claims of this patent 694,656 are directed to this feature of the organization of the machine. Among its claims are 28 and 48, which are as follows : —

"28. In a heeling machine, a nail block, a heel holder and a top lift holder movable independently of said nail block, and means to adjust one of said holders with relation to the other to insure the application of the top lift in proper position with relation to the attached heel."

"48. In a heel attaching machine, mechanism for securing a heel to a shoe, a heel holder, and a top lift carrier, means to place the heel holder in position for the heel to be attached to the shoe, means for locking the heel holder in said position and automatic means to remove the heel holder and put the top lift carrier in position for the top lift to be attached to the heel."

The organization shown in this patent No. 694,656 for taking the nails from a mass of nails in a hopper and delivering them, all pointed in the same direction, did not prove commercially satisfactory because it failed frequently to deliver the full number of nails required, and also frequently failed to arrange the nails all pointed in the same direction. Failure in either of these respects was sufficient to prevent the commercial success of the nail-handling organization. Accordingly, prior to February, 1899, this nail-handling

organization was improved by incorporating in it the mechanism shown in patent No. 707,139, August 19, 1902, Mayo (application filed February 25, 1898).

The improved mechanism is set forth in all of the claims of that patent, of which a typical claim directed to the mechanisms for arranging the points of the nails all in the same direction, is the first: —

"1. In a nail assorting mechanism, a raceway to receive and guide nails, a device to reverse the nails traveling point first on said raceway, and means to prevent said device from acting on the nails traveling head first on said raceway."

A characteristic feature of the organization of all the various types of nail arranging mechanisms which have been used on heel-attaching machines is a slightly inclined table comprising a large number of raceways down which the nails are made to travel by rapid, short reciprocations of the table lengthwise of the raceways. In the operation of the machine provided with the nail-handling organization of patent No. 694,656, it was found that the reciprocations of the nail-arranging mechanism jarred it to such an extent as frequently to knock the nails off the raceways. This difficulty was ingeniously overcome by the improvement defined in the claims of patent No. 707,136, August 19, 1902, Mayo (application filed June 15, 1898). A typical claim of this patent is the first: —

"In a nail assorting mechanism, a raceway composed of a plurality of grooved transversely arranged plates, and means to move them independently simultaneously in opposite directions, substantially as described."

By dividing the raceway-carrying table into two plates and by reciprocating these two plates in opposite directions the momentum of the two plates neutralized each other sufficiently to overcome most of the difficulty occasioned by the excessive jarring of the nails on the raceways, which was the reason for the commercial failure of the earlier construction, as has been explained.

The machine as shown in patent No. 694,656, March 4, 1902 (application filed March 3, 1897), with the improvements which have just been discussed, was the commercial heel-attaching machine being put out by the McKay Shoe Machinery Company just

prior to February, 1899. For a short time after its formation the United Shoe Machinery Company continued to put out this machine in substantially the same form that it had been put out by the McKay Shoe Machinery Company. Immediately after the organization of the United Company experimental work was undertaken and carried on continuously for a period of several years looking toward the improvement of this improved rapid nailer to make it perform its work more satisfactorily. The attention of the United Company's inventors was first directed toward remedying the difficulties that were still encountered in the operation of the mechanism for arranging and delivering the nails all with their points in the same direction. One difficulty with this mechanism was its failure always to deliver nails properly to the nail block after they had been arranged all with their points in the same direction. This difficulty was due to the fact that in the organization of the heel-attaching machine the heel and toplift holder must necessarily move in their heel and toplift delivering operations between the nail block and the device for transferring nails from the nail-arranging mechanism to the nail block. There was, consequently, so much space between this device and the nail block that the nails frequently failed to enter the nail block properly. This difficulty was overcome in 1900 by adding to the organization a nail guide located between the nail-transferring device and the nail block. This improvement is defined in a number of claims of patent No. 884,513, April 14, 1908 (application filed January 10, 1902, Mayo). A typical claim directed to this improvement is the third:—

"3. In a machine of the class described, a nail block, a transferrer to present nails to the nail block, and a nail guide fixed in its position with relation to said transferrer and interposed between the nail holes of the transferrer and the nail holes in said nail block to guide the nails after leaving the transferrer on their way into the holes of the nail block."

Occasional failure of long nails on their way from the point-arranging mechanism to the transferring device, to enter properly the nail-receiving holes in the transferring device, was remedied by providing a "nail gauge", which is defined in a number of claims of this patent No. 884,513, of which a typical claim is the sixth:—

"6. In a heel-nailing machine, a nail transferrer provided with a nail receiver to receive nails and present them to a nail block, combined with an independent detachable nail gauge sustained by said nail receiver and having holes normally in line with the nail holes of said receiver."

The heel and toplift holding mechanism of the machine were also improved by the incorporation in the machine in 1900 of an improvement also defined in the claims of this patent No. 884,513, of which claim 22 is typical: —

"22. In a heel-nailing machine, a plate having a guideway, a breast gauge having its shank held loosely in said guideway, a back gauge, means to move said back gauge to adapt the same to the work to be done, and a spring connected at one end to said breast gauge, and at its opposite end adjustably connected to said plate, that the pressure of the breast gauge may be exerted uniformly on the stock held between it and the back gauge, whatever its size."

The machine was further substantially improved in 1900 by improvements shown in the drawings and set forth in the claims of patent No. 1,030,654, June 25, 1912, Elliott (original application filed March 13, 1902). The most important of the improvements defined by the claims of this patent was a reorganization of the mechanism for imparting yielding pressure to the shoe and the heel prior to and during the operation of driving the nails. This improvement is defined in several claims of patent No. 1,030,654, of which claim No. 19 is typical: —

"19. In a nailing machine, a driver carrying head, a set of drivers, spring sustainers depending from said head, a nail block head, a nail block, rods extending from said nail block head and guided by said driver carrying head, springs surrounding and supporting said rods and sustained by said spring sustainers, and means to move said driver carrying head positively in attaching a heel to a sole, the nail block head deriving a yielding movement from said springs whereby the nail block mounted on the nail block head is adapted to compress and hold the heel against the sole while the drivers act to drive nails contained in the nail block into the heel."

An improvement adding to the convenience of the operator and saving much of his time is defined in a number of the claims of this patent No. 1,030,654, of which No. 21 is typical: —

"21. In a nailing machine, a foot plate having a series of nail holes, and a guideway; combined with a mug having its nail holes arranged to correspond with some but not all the holes of said plate, and shaped to engage said guideway."

An improvement contributing to more accurate work of the machine is defined in a number of claims of this patent, of which the following is typical: —

"25. In a nailing machine, a band clamp holder, provided with an adjustable stop and a band clamp, the inner position of which is determined by the position of said stop in said holder."

The attention of the United Company's inventors was next directed toward improving the mechanism for taking the nails from bulk in a hopper, arranging the number of the nails required for the particular kind of work being done, with their points all in the same direction, and delivering them in position for the nail-driving operation. Despite numerous improvements which had been made in this mechanism shortly before 1899, considerable difficulty was still being experienced with it, particularly in the mechanism for getting the nails from the hopper on the raceways, and in the mechanism for delivering from the raceways to the device which transferred the nails to the nail block, in failing to supply the full number of nails required for each driving operation. The latter difficulty was remedied in 1902, by providing the organization with means which stopped momentarily the reciprocation of the raceways while each group of nails was being delivered. This improvement is set forth in the claims of patent No. 707,137, August 19, 1902, Mayo. A typical claim is the twenty-third: —

"23. In a nail assorting mechanism a raceway, a device to transfer nails from the raceways, means to reciprocate the raceway, and means for intermittently stopping the reciprocation of the raceway while the transferring device operates."

The difficulty which had been encountered in supplying to the raceways the proper number of nails required for each attaching operation was overcome in 1902 by the improvements of patent No. 707,138, August 19, 1902, Mayo and Elliott. Nine of the ten claims of this patent set forth improvements which were then

adopted, and many of the improvements have been retained in the nail-handling mechanism of this machine through its successive stages of development since that time. A typical claim of the patent setting forth mechanism which has always been used since 1902 is the ninth: —

"9. In a machine of the class described, a raceway for receiving and guiding nails, said raceway having provision for rejecting nails not properly lodged thereon, a returning table for receiving and conveying the rejected nails, and a rotary magazine for supplying nails in bulk to the raceway and having an opening in one side to permit the return of nails to the magazine by the returning table."

Other improvements in the general organization of the machine have been made from time to time and the machine has also been provided, as required in the development of the industry, with improvements enabling it to operate satisfactorily on special kinds of work, for example, spring-heeled shoes and rubber-heeled shoes, and these improvements are defined in the claims of so many patents that it is not practicable to discuss them here. Some of these improvements are defined in the claims of pending applications. In the aggregate, including the patents to which I have specifically referred, the improvements now embodied in the commercial heel-attaching machine put out by the United Company for McKay work, that is, the "Loading and Attaching Machine, McKay Automatic Heel", embodies improvements set forth in the claims of more than twenty patents.

This machine is the present standard commercial machine put out by the United Company for attaching the heels of McKay sewed shoes and of shoes having their soles attached by wooden pegs, nails, or standard screws. Up to the end of the company's last fiscal year, March 1, 1913, 1567 of these machines had been put out. The machine has a large capacity and its output is about 1500 pairs per day. It is put out by the United Company through its heeling department.

[*Adjourned to 10 o'clock* A. M., *Wednesday, October 15, 1913.*]

BOSTON, MASS., October 15, 1913.

NAILING MACHINE: AMERICAN LIGHTNING.

[*Answer to Int. 80 continued:*]

In the manufacture of a welt shoe the last remains in the shoe, as a rule, throughout all the stages of the manufacture of the shoe. Accordingly, the last is still in the shoe when the heel is attached. It is clear, therefore, that the amount of pressure which can be exerted by the machine during the heel-attaching operation must be regulated, otherwise there would be danger of frequently breaking the lasts by excessive pressure as the stock upon which the pressure is exerted, comprising the heel, out-sole and insole, always varies somewhat in height in successive shoes operated upon by the machine. The American Lightning nailing machine is organized to meet these conditions, and was especially designed for attaching the heels of welt shoes while they are still upon the last. The construction of this machine just prior to February, 1899, was substantially as shown in patent No. 446,885, February 24, 1891, Pope. Ten of the thirteen claims of that patent set forth mechanisms which were embodied in the Lightning heeling machine at that time, that is, in 1899. One of the most important features of the organization of the machine was the means for preventing excessive pressure to avoid breaking the wooden lasts upon which the shoes were heeled. A typical claim directed to the means for accomplishing this purpose is the fifth:—

"5. In a heel nailing machine, the combination of a main frame, a stationary, perforated die block, a reciprocating nail driver block, a sliding jack, a jack support provided with a jack screw having a pinion, a horizontally reciprocating rack engaging the pinion, and a treadle mechanism connected with the rack to reciprocate the same for raising and lowering the jack, substantially as described."

The usual operation of the organization defined in the claim which has just been quoted was this: After jacking the shoe, that is, mounting it upon the work support, the operator brought the shoe into contact with the heel which was held against the stationary nail block by operating a foot treadle, in this manner exerting

upon the shoe and heel the preliminary measuring pressure which, broadly speaking, was manually effected. The operator then started the machine, and a predetermined amount of additional pressure sufficient to force the heel properly against the shoe was automatically applied by the machine, and then the attaching nails were driven and the toplift was attached. This operation was fundamentally different from that of the machine which I have discussed in my previous testimony, known as the "Improved Rapid Nailer", which, as I have explained, was the standard machine just prior to February, 1899, for attaching the heels of McKay sewed shoes, and for the heavier grades of shoes, including pegged, standard screwed and nailed shoes. The operation of the improved rapid nailer was automatic throughout, and as there was no means for measuring in any manner the pressure exerted by the machine, that pressure was greater for a higher heel. If it were attempted to attach the heel to a shoe on a wooden last by means of the improved rapid nailer, the last would almost always be broken when the stock, including the heel and the two soles, was thicker than the average. At this time, that is, just prior to February, 1899, the American Lightning heel nailing machine, which, for convenience, I shall refer to as the "lightning heeler", also incorporated mechanism set forth in the claims of a number of other patents. The heel blank-holding mechanism of the machine, which was organized to handle and to present properly to the nail-driving mechanism any heel blank of whatever size, was set forth in the claims of patent No. 584,752, June 15, 1897, Small.

The organization of means for providing the machine with the proper number of nails for each attaching operation, comprising two independent sets of mechanism which were operated alternately and which added considerably to the capacity of the machine, is defined in claim 6 of patent No. 599,012, February 15, 1898, Raymond, which is as follows: —

"6. The combination in a heel nailing machine, with the nail driving devices, of the templet and the nail carrier plates C^2, C^3, supported by their respective holding plates, one of which nail carrier plates is pivoted at one side of the median line of the templet

from front to rear, and the other of which nail carrier plates is pivoted upon the opposite side thereof, substantially as described."

The means for exerting automatically the final pressure upon the heel and shoe just prior to the driving of the nail, which is an important feature of the organization of the Lightning heeler, is defined in many claims of patent No. 891,192, June 16, 1908, Small. Typical claims of this patent directed to this feature of the organization of the machine are 39 and 49: —

"39. A machine for attaching heels, having in combination, a templet provided with driver passages, and a work support arranged for vertical movement toward and from the templet, and means for raising said work support vertically to subject the work to pressure between said support and the templet, comprising a cam arranged in substantial alignment with the driver passages."

"49. A machine for attaching heels, having in combination, a templet provided with driver passages, drivers arranged for movement in said passages, a movable pressure head, means for guiding said pressure head in a vertical path, a work support arranged to be moved vertically toward the templet by the pressure head, and a cam arranged to sustain said pressure head and in substantial alignment with the driver passages, and constructed to move the work support toward the templet and to hold the work under pressure during the driving of the nails."

Another important feature of the organization of the Lightning heeler consisted in the means which permitted adjustment of the automatic mechanism for applying the final pressure to adapt that mechanism for varying heights of heels. This improvement is also defined in the Small patent No. 891,192, June 16, 1908, and a typical claim is the fortieth: —

"40. The combination in a heel nailing machine of the templet, the work support, a vertically movable spindle supporting the same, a vertically movable pressure head, a device in alignment with the pressure head for actuating the pressure head, and an auxiliary head and means for varying its position upon the pressure head."

Including the claims directed to the features of the organization of the Lightning heeler, to which reference has already been made, this Small patent No. 891,192 contains sixteen claims which set forth features of the organization of the lightning heeling machine as it has been constructed for a number of years.

Among the improvements which have been made upon the Lightning heeling machine since February, 1899, is an improved means for supporting heels of the shoes made on unusually unsymmetrical lasts. The quality of the work was substantially improved by the adoption in the machine in 1900 of this improvement which is defined in allowed claims of a pending application filed May 17, 1901.

In 1905 the Lightning heeler was substantially reorganized to adapt it for attaching what are known as "high pitched" heels, that is, high heels which have their edge surfaces at the rear end sharply inclined backwardly from the tread face of the heel toward the upper, and which also have their breast faces inclined backwardly from the tread faces toward the sole of the shoe. About 1904, manufacturers of women's shoes began to make shoes with high-pitched heels in largely increasing numbers, and since that time the proportion of women's shoes made with high-pitched heels has been steadily increasing so that for a number of years the majority of all women's shoes have been made with this type of heel.

I produce a shoe which has a high pitched-heel, such as I have been describing.

[*Shoe having high-pitched heel is offered in evidence and marked "Defendants' Exhibit 161".*]

[*Answer to Int. 80 continued:*]

The abnormal shape of this heel requires that the attaching nails, in order to secure the heel properly, be driven at an inclination to the tread face of the heel. The reorganization of the Lightning heeler in 1905 enabled the machine to attach such heels properly by driving the nails at an inclination from the tread face toward the rear end of the heel at its junction with the end of the sole. The reorganized machine embodied improvements defined broadly in eleven claims of patent No. 1,000,957, August 15, 1911, Bates, granted upon an application originally filed August 15, 1903. A typical claim of this Bates patent is the following: —

"47. A machine for operating on heels having in combination, a pressure resisting member for engaging one side of the heel, a

gang of tools located on the opposite side of the heel and mounted to reciprocate toward and from said member, and a work engaging plate provided with perforations in alignment with said tools, all of said tools being inclined in the same general direction from normal to the work engaging face of said plate at the points at which the paths of the tools intersect said face and moving throughout their reciprocations in right line paths."

It may be of interest to note in connection with this Bates patent that the heeling machine constructed by Thomas G. Plant embodied improvements defined in a large number of claims of this patent.

The commercial construction of the Lightning heeler as reorganized in 1905 to adapt it for the attaching of high-pitched heels was almost identical, as shown in the drawings, described in the specifications and set forth in the claims of patent No. 887,870, May 19, 1908, Taylor (application filed August 8, 1904). The organization is set forth in thirteen of the claims of this patent, somewhat more specifically than in the Bates patent, No. 1,000,957, August 15, 1811, Bates, to which the Taylor patent is subordinate. Typical claims of the Taylor patent 887,870 are the first and tenth : —

"1. In a machine of the class described, the combination, with mechanism for driving vertically a group of nails, of means for holding a heel under pressure in oblique position with relation to the path of the nails."

"10. A heel attaching machine comprising mechanism for driving nails into a heel in an inclined direction, and means to spank a toplift on the ends of the nails in a direction parallel with the path of the nails."

The product of the Lightning heeler as reorganized in 1905 to insert heel-attaching nails at an inclination is defined in the three claims of patent 834,085, October 23, 1906, Taylor. A typical claim of this patent is the seconk : —

"2. In a boot or shoe, a heel comprising a series of lifts secured to the boot or shoe by nails having a uniform inclination from the treadface of the heel toward the rear of the heel, said nails being arranged over substantially the entire area of the treadface of the heel."

This patent No. 834,085 illustrates clearly in its drawings the type of heel to which I am referring and the advantages of driving

the heel-attaching nails at an inclination. It may be of interest to note here, also, that the product of the Plant heel-attaching machine is well described in all of the three claims of this patent No. 834,085.

While the reorganized Lightning heeler was successfully used for a number of years after 1905, the pressure necessarily exerted upon the heel preliminary to the operation of driving the nails was exerted at an oblique angle to the nail block, which constituted one of the pressure-applying members. This difficulty was remedied by one of the United Company's inventors by so reorganizing the machine that the heel-engaging nail block is at a right angle to the line of pressure exerted by the machine. This improvement is defined in all of the thirteen claims of patent No. 1,072,986, granted September 9, 1913, Pope (application filed January 12, 1911). A typical claim is the second:—

"2. A heeling machine having, in combination, a plate provided with a heel engaging face and a plurality of guiding passages extending at an inclination to said face, a full gang of tools for operating on a heel mounted obliquely and parallel with the guiding passages in said plate, said tools being movable into and out of said passages, and means for guiding said tools for movement in a vertical path while out of said passages, said means being constructed and arranged to permit the tools to move out of operative relation thereto on entering the guiding passages, whereby they may be guided in an oblique path by the guiding passages."

This improved inclined nailing organization which was incorporated in the machine early in July, 1911, is also defined in somewhat broader terms in two claims of patent No. 958,302, May 17, 1910, Plant. One of these claims is 16:—

"16. In a heeling machine, the combination with devices for operating on a heel, a nail block having apertures for the reception of said devices and means for moving said parts relatively toward and from each other, of means for guiding said devices and apertures into alignment, said means being constructed and arranged to lose control of the moving parts after said devices and apertures have become engaged."

The adoption of this improved organization which is constructed substantially as illustrated in the drawings of the Pope patent No.

1,072,986, above referred to, was prevented for some time because of the two claims in the Plant patent No. 958,302, to which I have referred, and the improvement was not adopted until after the Plant patent had been acquired by the United Company.

The importance of this inclined nailing organization may be judged from the fact that since December, 1905, over 60 per cent of all the Lightning heelers which have been put out have been organized as set forth in the Taylor patent No. 834,085, October 23, 1906, and as set forth more broadly in the claims of patent No. 1,000,957, August 15, 1911, Bates, which have been discussed in detail above. The proportion of the reorganized machines which have been supplied to manufacturers has been steadily increasing since December, 1909, over 70 per cent of all machines shipped having been so organized. A large number of machines which had been put out prior to the reorganization of the machine in 1905 have, at the request of the manufacturers using these machines, been reorganized to embody these improvements so that a large majority of all Lightning heelers which are now in use are organized to include these inventions. While, as has been stated, the reorganized Lightning heeler was originally intended for the attaching of high-pitched heels of women's shoes, it is advantageous to attach nearly all heels by means of this organization, and it is now being largely used on all classes of work. Its use on nearly every type of heel secures better attachment of the heel because most heels at their rear ends are inclined backwardly from the tread face toward the upper, and because in nailing practically all heels it is necessary to have the head ends of the nails a substantial distance from the edge of the toplift so as not to interfere with the insertion of slugs in the toplift, and it is also important that the points of the nails be clinched as near as possible to the edge of the sole in order to prevent any danger of the heel breaking away from the sole around the rear end and leaving a disfiguring space between the heel and the out-sole. Accordingly, to secure these advantages, the majority of all kinds of heels on welt shoes are now being attached by nails driven at an inclination rearwardly from the tread face of the toplift toward the sole.

The Lightning heeler has recently been again reorganized so that its operation is now entirely automatic. Until these recent improvements the preliminary heel-measuring engagement of the heel and shoe had always been secured by a treadle-operated mechanism, as was fully explained in a previous part of my testimony. In the new organization of the machine this preliminary measuring pressure is effected automatically. By this improvement the capacity of the machine is substantially increased and a more uniform and more accurate measuring operation is secured, since in the machine as formerly constructed the treadle-effected pressure varied with the force exerted by the operator in depressing the treadle. A substantial saving is also effected in lasts. The operator of the Lightning heeler would occasionally apply too much preliminary measuring pressure to the shoe, so that the final automatic pressure was excessive and would break the last. The commercial form of this newly organized Lightning heeler is shown approximately in a pending application filed in July, 1912, but it also embodies improvements defined in the claims of another pending application filed May 7, 1909, and two pending applications filed respectively September 9, 1910, and November 2, 1910.

An important feature of the reorganized automatic Lightning heeler is defined in several claims of patent No. 958,282, May 17, 1910, Plant, of which a typical claim is the fourth: —

"4. In a heel nailing machine, heel attaching mechanism, means for operating the same, devices for starting said means into operation, said devices being normally locked against movement in a direction to operate said mechanism, heel measuring mechanism, and means controlled by the heel measuring mechanism to unlock the said devices and permit operation of the heel attaching operating means."

Loading and Attaching Machine — Model B: McKay Automatic Heel.

In November, 1910, some time before the reorganization of the Lightning heeler to render that machine entirely automatic, there was first put out for commercial use by the United Company a machine for attaching heels of welt shoes, known officially as "Load-

ing and Attaching Machine, McKay Automatic Heel, Model B." This machine is now the standard commercial machine of the United Company for attaching heels of welt shoes. The Lightning heeler continues, however, to be in some demand as manufacturers already equipped with Lightning heelers may not, when they need an additional heeling machine, be prepared to change over all their machines and substitute the entirely different model B heelers, and, accordingly, when they need an additional machine they order the Lightning machine. That machine is also preferred and probably will be preferred for an indefinite period by those manufacturers who prefer to attach heels while the shoe is bottom side up. In the new loading and attaching machine, McKay automatic heel, model B, which for convenience I shall hereafter refer to as the model B machine, the heel is attached while the shoe is right side up, and some manufacturers believe that their operators cannot observe the heel-attaching operation so satisfactorily while the shoe is in that position, that is, with the sole and heel on the under side of the shoe. It also seems probable that in view of the reorganization of the Lightning heeler, making that machine entirely automatic in its operation, there will continue to be a substantial demand for that machine particularly from manufacturers who wish to attach their heels while the shoe is bottom side up, but the large majority of manufacturers will prefer the model B machine because it has a substantially increased capacity over the Lightning heeler.

The production of the model B machine is the result of a long period of experimenting which began even before the formation of the United Company and has been carried on practically continuously by its inventors ever since, in the endeavor to produce a machine for attaching the heels of welt shoes which would apply automatically the preliminary heel-measuring pressure to the heel and shoe. These efforts have been mainly directed toward producing an entirely automatic machine on the lines of the loading and attaching machine, McKay automatic heel, which, as has been explained, is the standard heel-attaching machine put out by the United Company for attaching the heels of McKay sewed shoes. The reason for the desire to produce a welt heel-attaching machine

on the lines of the loading and attaching machine, McKay automatic heel, was that that machine on McKay work had a very large capacity, and it was anticipated that a similar increased capacity could be secured for the machine when used upon welt work if it should prove possible to organize the machine for that work.

The model B machine, first put out for commercial use in November, 1910, was produced as the result of this long period of experimenting and was the first machine ever used commercially which would automatically apply the preliminary heel-measuring pressure. By this machine was solved for the first time the great problem with which inventors had dealt for over a dozen years, of securing an automatic preliminary heel-measuring pressure in such a manner that the final pressure upon the heel would not break the last.

The commercial construction of this new model B heeler is not shown in any patent which has as yet been granted, but the organization of the machine is set forth in broad terms in a number of patents to which I will now refer.

One of these patents defines in numerous claims the organization of the machine by which the final positive pressure of the heel and shoe to hold them properly pressed together during the driving of the nails is effected independently of the operation of the nail-driving mechanism. This patent is No. 1,000,119, August 8, 1911, Pope and Elliott (application filed May 26, 1898). Typical claims of this patent are the following: —

"6. In a heel attaching machine a rigidly sustained shoe support, a nail block adopted to support a heel and having a series of driver passages, means for positively actuating said nail block for forcing the heel sustained thereon against a shoe upon said support, and compressing said heel, a series of drivers projecting at all times into the driver passages of the nail block, and means for moving said drivers while the nail block is substantially at rest, for driving nails through the heel and into the sole of the shoe."

"11. In a heel attaching machine, a nail block provided with driver passages, nail drivers arranged to project at all times into the passages of the nail block, means for positively actuating said nail block to compress the heel and means for thereafter actuating the drivers independently of the nail block to drive nails through the heel into the shoe."

In prior organizations of this type of machine the pressure effected by the nail block was imparted first yieldingly and then positively through connections with the driver-actuating spindle so that the maximum pressure on the heel and shoe was not exerted until the very end of the nail-driving operation. In the prior construction there was danger of sidewise displacement of the heel during the driving operation, but in the new organization of the model B machine all the pressure which the heel is to receive is imparted before the nail-driving operation begins, and danger of this lateral displacement is entirely obviated.

Further features of this improvement are defined in claim 11 of patent No. 958,282, May 17, 1910, Plant.

In recognition of the superior quality of work secured by nailing all kinds of heels by driving the heel-attaching nails at an inclination, as has been fully explained, this model B machine has, ever since it was first put out, been regularly organized for driving the attaching nails at an inclination to the tread face of the heel, and accordingly the machine always embodies the improvements defined broadly in the claims of patent No. 1,000,957, August 15, 1911, Bates, and also the improvements defined in the claims of patent No. 1,072,986, September 9, 1913, Pope (granted on an application filed January 12, 1911).

Both of these patents were discussed at length in my previous testimony relating to the Lightning heel-attaching machine. The product of the machine is defined in the claims of patent No. 834,085, October 23, 1906, Taylor.

It is impracticable to discuss in any detail the improvements set forth in the claims of all the other numerous patents which are embodied in this model B heeling machine. Attention should, however, be called to the fact that this machine includes in its organization mechanism for taking nails from bulk, arranging them with their points all in the same direction, and presenting them in horseshoe shape outline as required for the heel-attaching operation. The improvements embodied in this organization are defined in the claims of seven patents which have been discussed in the previous testimony in regard to the loading and attaching machine,

McKay automatic heel. This model B machine also embodies the improvements broadly set forth in the claims of patent No. 694,656, March 4, 1902, Mayo, which, as has been previously explained, disclosed the first commercial machine comprising the organization with heel-nailing mechanism of means for taking from bulk the required number of nails and presenting them, all pointing the same way, properly located for the nail-driving operation.

Without referring in detail to any other patents, I will state that the model B heeling machine as now supplied to shoe manufacturers embodies improvements set forth in the following eighteen patents: —

No. 571,931, November 24, 1896, Raymond *et al.*

No. 577,241, February 16, 1897, Elliott and Glidden.

No. 589,501, September 7, 1897, Glidden.

No. 611,370, September 27, 1898, Winter.

No. 694,656, March 4, 1902, Mayo.

No. 707,136, August 19, 1902, Mayo.

No. 707,137, August 19, 1902, Mayo.

No. 707,138, August 19, 1902, Mayo and Elliott.

No. 707,143, August 19, 1902, Lougee.

No. 884,513, April 14, 1908, Mayo.

No. 884,524, April 14, 1908, Pope.

No. 958,281, May 17, 1910, Plant.

No. 958,282, May 17, 1910, Plant.

No. 1,000,119, August 8, 1911, Pope and Elliott.

No. 1,000,957, August 15, 1911, Bates.

No. 1,005,303, October 10, 1911, Pope.

No. 1,030,654, June 25, 1912, Elliott (application filed March 13, 1902).

No. 1,072,986, September 9, 1913, Pope (application filed January 12, 1911).

While the actual number of shoes operated upon by the model B heeling machine and the Lightning heeler vary somewhat, as is the case with nearly all shoe machines, according to the skill of the operator and according to the number of hours that he works in a day, a fair estimate of the comparative outputs of the two machines

is that when the Lightning heeler and the model B machine are run under the same conditions and by the same operator, the model B machine will show an average capacity exceeding that of the Lightning heeler by over twenty per cent.

Nailing Machine: Alpha Wood Heel.

Another machine supplied by the United Shoe Machinery Company for attaching is the machine known officially as "Nailing Machine, Alpha Wood Heel", which was first put out in 1907 in response to a limited demand from shoe manufacturers for a machine to attach wooden heels. Before the introduction of this machine wooden heels had always been attached by hand. The machine is not shown in any patent which has as yet been granted, but is shown in the drawings and described in the claims of a pending application filed August 1, 1907.

All of the heeling machines which have been discussed, loading and attaching machine, McKay automatic heel, nailing machine, American Lightning, loading and attaching machine, McKay automatic heel, model B, and nailing machine, alpha wood heel, are put out by the United Company through its heeling department.

Slugging Machine: Universal.

Subsequently to the securing of heels by the insertion of the heel-attaching nails it is the general practice to perform another fastening inserting operation upon the heel of the shoe. This is the operation known as "slugging". Slugs are short fastenings, usually of metal, which are driven through the toplift, that is, the outer lift of the heel, and through one or two of the heel lifts adjacent to the toplift. The utility of these slugs is to assist in holding the toplift to the body of the heel and to add to the wear-resisting qualities of the heel, particularly the toplift. Slugs are also ornamental and, accordingly, are frequently arbitrarily shaped to increase the ornamental effect. The standard commercial machine offered to manufacturers by the United Shoe Machinery Company for performing this slugging operation is known as "Slugging Machine, Universal".

Defendants' Exhibits numbered 13, 109, 110 and 121 are provided with heels which have been operated upon by the Universal slugging machine, and which illustrate some of the different ways in which it is the practice to arrange these slugs.

The machine as it is now constructed and supplied to manufacturers is described in the claims of the following patents: —

No. 582,579, May 11, 1897, Cutter.

No. 582,580, May 11, 1897, Cutter.

No. 765,650, July 19, 1904, Casgrain.

No. 786,190, March 28, 1905, Casgrain.

No. 1,017,381, February 13, 1912, Casgrain.

No. 1,040,273, October 8, 1912, Casgrain.

In addition to the patents on the above list which set forth mechanisms which are now, and have been for a number of years, incorporated in all the machines, the machine is especially equipped with various improvements adapting it for special kinds of work which, together with the patents directed to these improvements, will be discussed later.

The commercial machine is constructed substantially as shown in patent No. 786,190, March 28, 1905, Casgrain.

Referring now to such of the patents on the above list as set forth the more striking characteristics of the organization of the Universal slugging machine, typical claims of patent No. 582,579, May 11, 1897, are 23 and 24:—

"23. In a nailing machine, a stock support, a starting and stopping mechanism, a driving shaft, mechanism operated by said shaft to periodically depress said support to permit the feeding of the stock, and independent means controlled by said starting and stopping mechanism to finally depress the horn when the machine is stopped, for the purpose set forth.

"24. In a nailing machine, a stock support, a starting and stopping mechanism, a driving shaft, connecting mechanism between said support and shaft to periodically depress said support to allow the feeding of the stock, a mechanism connected to the starting and stopping mechanism independent of the nail driving mechanism, operating on said support and governed by the starting and stopping mechanism of the machine respectively to raise and lower said support when the machine is started or stopped, and a device controlling said independent mechanism and preventing its opera-

tion on said support until such time as will insure the complete operation of the machine, for the purpose set forth."

The object of the mechanism defined in the claims above quoted is to relieve the operator of the burden of frequently depressing the work-support treadle to permit frequent changes in the location of the work upon the work support. Such depression of the horn, to permit change in the work, is frequently required several times during the slugging operation upon most heels.

Furthermore, this mechanism gives a final depression to the work support when the machine stops, without the necessity of the operation of the work-support treadle against its very strong spring, which must be strong enough to sustain the shoe against the blow of the driver in the slug-inserting operation. It is believed that a slugging machine would not be acceptable to manufacturers, and particularly to operators, which did not embody the improvements set forth in the claims above quoted from patent No. 582,579, and which is also defined in claim 1 of patent No. 582,580, which is as follows: —

"1. A stock support movable up and down, a driving shaft, a cam on said shaft driven thereby, and connections between said cam and stock support operated by said cam, whereby the support is automatically raised by the first movement of the driving shaft when the machine is started and held in its raised position until the machine is stopped, for the purpose set forth."

As already stated, the commercial machine is constructed substantially as shown in patent No. 786,190, March 28, 1905, Casgrain, of which typical claims are the first and the sixth: —

"1. In a machine of the class described, a main shaft, mechanism for inserting fastenings, a clutch and a brake, means governed by rotation of said shaft to effect release of the clutch, operating devices actuated from the main shaft and arranged to derive their final movement from the main shaft after release of the clutch, whereby the momentum of said shaft is taken up and utilized prior to application of the brake, and means to maintain the brake in inoperative position until after such utilization of the momentum to prevent shock as the machine is stopped."

"6. In a nailing machine, a horn, a main shaft, means, including a governing member, operated by said shaft, to periodically depress the horn for feeding the work, and a device between said shaft and

said governing member, to give to the latter an additional movement and thereby impart to the said horn a final depression when the machine is stopped."

The first successful mechanism ever used in the shoe industry for holding and delivering wire for the operation of machines for inserting slugs, or any type of metallic fastening, is shown in the drawings substantially as used in this machine and set forth in all of the nine claims of patent No. 765,650, July 19, 1904. A typical claim of this patent is the first: —

"1. In a device of the class described, a support, having a bearing, and a reel, adapted to receive a coil of wire or like material, suspended at its upper part from said bearing, and being out of contact with said support or bearing except at the upper part of the reel, said reel being arranged to rotate freely upon the bearing in substantially a horizontal plane as said material is drawn off, whereby twisting of the material is avoided."

It may be of interest, as bearing upon the importance of the mechanism set forth in this patent No. 765,650 to note that the mechanisms set forth in all of the nine claims of this patent have been embodied in machines made by the Duplessis Shoe Machinery Company and in several different types of machines, including the slugging machines, which were built by Thomas G. Plant.

When the Universal slugging machine is used for slugging the heels of welt shoes, it is provided with improvements defined in nearly all of the twenty-seven claims of patent No. 919,424, April 27, 1909, Cuff. A typical claim of this patent is the second: —

"2. The combination with a sustaining bed, of a jack spindle having a tipping movement in one direction and provided with a foot having a curved under side resting on said bed upon which the spindle may rock in another direction, the contour of said curve being such that the upper end of the spindle will move in a substantially horizontal plane during the normal operative movement of the spindle."

A typical claim of patent No. 1,017,381, February 13, 1912, Casgrain, several claims of which define improvements embodied in the Universal slugging machine, is the seventh: —

"7. In an apparatus of the class described, wire feeding devices, an elongated fixed guide below them, a fixed and a movable cutter,

to sever the wire, a bodily movable guide for the wire located adjacent to cutters, and a sliding support on which the movable cutter is mounted, said guide moving with the wire when the latter is engaged by the cutters to relieve the strain upon the latter."

The gauge for performing the important function of causing proper location of the slugs in relation to the edge of the toplift is as embodied in the commercial machine set forth in all of the eleven claims of patent No. 1,040,273, October 8, 1912, Casgrain. A typical claim is the first: —

"1. A two way gauge comprising, in combination, a gauge slide, excentric means through which said slide may be moved to and fro longitudinally between limits determined by the excentricity of said means, and means for determining other limits between which said slide may be freely moved, comprising co-operating stops one of which is fixed and the other of which is adjustable about the axis of turning of said excentric means into different angular relations to said means to determine different limits for the effective free movement of said means."

When the Universal slugging machine is used for slugging spring heeled shoes it is provided alternatively with a work-supporting mechanism shown and set forth in the claims of patent No. 609,874, August 30, 1898, Casgrain, or No. 705,512, July 22, 1902, Casgrain.

This machine is put out by the United Shoe Machinery Company through its metallic department.

Slugging Machine: No. 5 (Ziz).

Since 1900 the United Shoe Machinery Company has carried on experimenting, which has been practically continuous, in the effort to produce an entirely new slugging machine which would have a greater capacity than the Universal slugging machine, and since the organization of the company no less than seven different experimental machines have been constructed in the course of this experimenting. The experimental work upon the most promising of these machines began in 1902, and has been continuously carried on since then and is still going on. In the course of this experimental work there was built an experimental machine substantially as shown in patent No. 1,012,811, December 26, 1911, Casgrain,

and a machine substantially as shown in that patent was tried out in a shoe factory in February, 1905. A second experimental machine on similar lines, which was constructed substantially as shown in patent No. 1,054,173, February 25, 1913, Casgrain, was built and was tried out in a shoe factory for several months early in 1907. It is found that this machine, while it operated satisfactorily under the eyes of one of the company's experts, could not be depended upon to operate with commercial success under usual factory conditions and when operated by the average operator. It was decided, therefore, that this experimental machine was not even an approximation of a commercial machine, and after it had been used experimentally for a few months it was sent back to the company's factory for further experimental work. As a result, late in that year, 1907, another experimental machine was put into a shoe factory for a trial under commercial conditions. This machine proved sufficiently promising during its experimental use, so that after some months of this trying out under commercial conditions it was decided to build a number of additional machines in order that the machine might be tried out in a number of different factories on different classes of work. Accordingly, fourteen of those machines were constructed and were put out from 1909 to 1913. The company's experts were at that time very optimistic as to the future of this machine, because although the machine was giving considerable trouble from time to time, that is only the usual experience at such a stage of the development of an entirely new machine, and it was confidently believed that the difficulties being encountered in the use of the machine could all be overcome in time. Those fourteen machines were run regularly at an average speed of about 700 slugs per minute as compared with a maximum commercial speed of 375 for the Universal slugging machine, and the new machine had been run at the company's factory at a speed of 1500 slugs per minute.

The problems which had been encountered in the use of the experimental machines were not overcome as anticipated, and, although the machine has been for several years almost within sight of commercial success, the company's experts and inventors have

not yet been able to get the organization of the machine into such condition that the machine could be satisfactorily used by the average operator under commercial conditions. Whether or not the machine will ever become commercially successful is still problematical. Considerably over $100,000 has been spent already in the experimental work upon this machine. The patents which set forth in their claims the organization of this machine in its present form, and as it is now being operated under commercial shoe factory conditions, are as follows: —

No. 582,579, May 11, 1897, Cutter.

No. 582,580, May 11, 1897, Cutter.

No. 601,255, March 29, 1898, Horton.

Reissue 11,962, January 21, 1902, Freeman (original patent January 24, 1899).

Reissue 12,820, June 23, 1908, Preston (original patent May 15, 1906).

Reissue 12,821, June 30, 1908, Preston (original patent June 5, 1906).

No. 691,354, January 21, 1902, Casgrain.

No. 714,572, November 25, 1902, Freeman.

No. 809,160, January 2, 1906, Wingo.

No. 978,297, December 13, 1910, Keith.

No. 998,043, June 27, 1911, Ambler.

No. 1,000,490, August 15, 1911, Buckminster.

No. 1,001,815, August 29, 1911, Casgrain.

No. 1,002,864, September 12, 1911, Perry.

No. 1,004,240, September 26, 1911, Casgrain.

No. 1,005,920, October 17, 1911, Ambler.

No. 1,006,533, October 24, 1911, Casgrain.

No. 1,012,811, December 26, 1911, Casgrain (application filed February 16, 1906).

No. 1,030,829, June 25, 1912, Preston (application filed August 3, 1905).

No. 1,053,479, February 18, 1913, Casgrain (application filed September 12, 1908).

This machine is of a radically different type from any machine

for inserting fastenings or slugs ever before used. The character of the organization of the machine may be indicated by quoting typical claims from reissue patent No. 12,821 and patent No. 1,053,479, both of which are enumerated in the above list. Claim 19 of reissue 12,821 is as follows:—

"19. A machine of the character described comprising, in combination with a work support, a movable carrier and a pair of opposed severing jaws mounted thereon and adapted to move simultaneously towards a strip of fastening material located between them, means for presenting said strip in a predetermined line of drive, and means for actuating said carrier and jaws to cause the latter to grip said strip, drive it into the work and completely sever said strip immediately at the end of the driving operation to form a fastening."

The third claim of patent No. 1,053,479, which contains 183 claims setting forth mechanisms embodied in this machine, is as follows:—

"3. In a machine for inserting fastenings, the combination with a pair of cutters constructed and arranged to grip a strip of fastening material, insert the end thereof into a piece of work and sever a portion of said strip to form a fastening, of means for controlling positively and continuously the operations of said cutters."

Without attempting to discuss in detail any of the mechanisms set forth in others of the patents enumerated on the above list, attention should be called to one feature of the organization of this machine which is of striking novelty and which will undoubtedly be incorporated in any high-speed slugging machine which the company may develop. This consists in means for automatically stopping the insertion of the slug at the proper point adjacent to the breast of the heel. Unlike the operation of most fastening inserting machines it is of great importance that the line of slugs shall terminate at the proper point in relation to the breast of the heel as the slugs are prominent in the finished shoe. At such speed as that at which this experimental machine has regularly been run, it probably would be impossible for the operator to stop the machine within one or two slugs of the proper stopping point. Accordingly the experimental machine has been provided with an automatic organization for stopping the machine at exactly the proper point

in its operation. This organization is defined in the claims of patent No. 1,006,533, October 24, 1911, Casgrain, and patent No. 1,053,-479, February 18, 1913, Casgrain. A typical claim directed to this organization is claim 142 of patent No. 1,053,479, which is as follows:—

"142. In a machine for inserting fastenings, the combination with fastening inserting mechanism and a source of fastening supply, of automatic means governed by the contour of the work for causing the insertion of fastenings to be discontinued at a predetermined distance from the end of the work."

In view of the doubt as to the ultimate commercial success of the experimental machine which I have been discussing, which has been known successively as the "Ziz Slugging Machine" and as the "Slugging Machine No. 5", the company has for some time had inventors engaged in experimental work with a view to the production of a new machine on entirely different lines from that of the Universal slugging machine or of the slugging machine No. 5. This experimental work is being carried on on two different lines, with the object of producing two differently organized machines which will be tried out together under commercial conditions with a view to the selection and commercial adoption of the machine which proves most satisfactory.

Heel Breasting Machines.

A further operation which must be performed upon the heel before the work upon this part of the shoe is completed is the operation known as "heel breasting". The function of a heel-breasting machine is to remove from the forward end of the heel the surplus stock and form a smooth front or breast face on the front end of the heel. The operation is usually performed by a knife acting in a direction approximately perpendicular to the shank portion of the sole and cutting from the tread face of the toplift to the shank.

Prior to February, 1899, all heel breasting was done by foot-power machines, several types of which were supplied to manufacturers. These machines comprise, generally speaking, a knife and a shoe support which are moved relatively to each other by a

foot treadle, all the power required for forcing the knife through the successive layers of stock in the heel being applied by the operator through the treadle. The operation of this machine was a great tax upon the operator's strength, and prior to the formation of the United Shoe Machinery Company attempts had been made to develop a power-operated machine which should relieve the operator of the arduous task of operating the knife by his foot. The reason why the industry had waited so long for a power-operated heel-breasting machine is that all heels vary in height, even the heels of shoes which are intended to be substantially alike, and the breasting cut must, on the one hand, extend entirely to the shank of the shoe so as to sever completely the surplus stock which is to be removed, while on the other hand it is equally important that the knife shall not cut further than the shank of the sole and deface the sole by cutting into the shank.

No power-operated commercial machine had ever been devised until a machine was produced by the United Shoe Machinery Company which could deal successfully with the problem of cutting just far enough to sever completely the surplus stock and, at the same time, not cut far enough to deface the shank of the sole. Just prior to February, 1899, the McKay Shoe Machinery Company had been carrying on experimental work on a power-operated heel-breasting machine. This experimental work was carried on continuously by the United Company from the time of its formation until a successful commercial machine was produced. During 1900 and 1901 some fifty experimental machines were constructed and were put out into shoe factories, but none of the machines was commercially successful and none of them was operated at all after a few months' trial. Eventually all of these fifty machines were returned to the company's factory and were junked.

HEEL BREASTING MACHINE — MODEL B: POWER.
HEEL BREASTING MACHINE — MODEL B: IMPERIAL.

The difficulty with which the United Company's inventors were struggling was the problem of providing a mechanism which would be satisfactory for a shoe machine and for operation by the aver-

age shoe factory workman, which, at the same time, would be sufficiently delicate in its operation to suspend the operation of the power mechanism for operating the knife at just the right time to stop the knife as it reached the shank of the shoe and after it had traveled far enough to sever the surplus stock completely. In 1902 the machine was entirely redesigned and then became commercially successful for the first time. The redesigned machine was named "Heel Breasting Machine, Model B, Power". As it was then constructed the machine embodied mechanism set forth in the claims of patent No. 636,990, November 14, 1899, Heys, and No. 645,994, March 27, 1900, Brewer. Patent No. 636,990 defined broadly the principle of operation of the machine. Typical claims of this patent are the first and fourteenth: —

"1. A heel breasting machine comprising a shoe support, a knife, mechanism for forcing the knife positively or unyieldingly through the heel to the sole, and mechanism for automatically checking the movement of the knife when it has cut through the heel."

"14. A heel breasting machine comprising a shoe support, a movable knife, and mechanism for automatically driving said knife through a heel of any height to the sole, said mechanism including a bunter for limiting the movement of the knife, said bunter being arranged to engage the sole with a pressure less than that with which the knife engages the heel."

A typical claim of patent No. 645,994 is the fourth: —

"4. A heel breasting machine comprising a work support, a carrier positively reciprocated toward and from the support, a knife holder located between the carrier and support and having a breasting knife, a toggle connecting carrier and knife holder, an adjustable stock on the knife holder adapted to support toggle against a braking movement in one direction, and automatic means for imparting the braking movement in the opposite direction to said toggle."

The machine was greatly improved in 1903 when the mechanism for arresting the movement of the knife when it reached the shank of the shoe was recognized. This improvement is set forth in the claims of reissue No. 13,413, April 30, 1912, Waterman (original patent No. 738,502, September 8, 1903).

With the incorporation in it of the improvements set forth in

this Waterman reissue patent the machine became immediately successful and 229 machines were put out during the company's fiscal year ending March 1, 1904. A typical claim of reissue No. 13,413 is the twentieth: —

"20. A heel breasting machine, having, in combination, an actuator having a constant stroke, a knife carrier arranged for movement parallel therewith, rotatable means mounted upon said carrier on an axis transverse to the direction of movement of the carrier and arranged in the part of a portion of said actuator for movement of the carrier by the actuator, said means being constructed and arranged to clear said other part when permitted to rotate, means normally restraining said rotatable means from rotation, and shoe engaging means carried by the carrier arranged to release said rotatable means when the motion of said shoe engaging means is stopped."

About January, 1906, the name of this machine was changed to "Heel Breasting Machine, Model B, Imperial."

To meet peculiar conditions in the Philadelphia territory and to supply a demand from manufacturers in that territory for a machine for breasting small shoes on lasts which varied greatly in height, a reorganized machine was constructed and supplied to those manufacturers in 1908, and since that time, which is constructed as shown in the drawings and set forth in all of the twenty-four claims of patent No. 1,068,423, July 29, 1913, Frasier (original application filed October 20, 1908). Typical claims of this patent are the third and sixteenth: —

"3. A heel breasting machine having, in combination, a reciprocating breasting knife arranged to be driven the same distance at each stroke, a support for sustaining a shoe with its heel in the path of the breasting knife arranged for movement manually in the line of motion of the knife, and a stop constructed for adjustment to definite distances from the limit of movement of the knife and arranged to be engaged by the tread surface of the heel to limit movement of the shoe toward the knife, the said stop being stationary during the cutting stroke of the knife."

"16. In a machine of the class described, a knife having a definite lower limit of movement manually, means adjacent the shoe for positively elevating the shoe to bring the tread surface of its heel to a predetermined distance from said limit, and means engaging the heel to receive the thrust of said elevating means."

An organization of this machine which enables it to breast spring heels is set forth in all of the ten claims of patent No. 1,023,284, April 16, 1912, Warren (application filed July 8, 1911). Without taking time to quote a claim, I will state that the fourth claim is typical.

To adapt the machine for peculiar conditions attending its operation upon extremely crooked lasts, an improvement was adopted in 1910 which is set forth in the claims of a pending application.

The method which is practiced in the making of the peculiarly shaped knives for use upon this power heel-breasting machine is defined in the claims of a pending application.

On October 1, 1913, over 1600 of these machines had been put out by the United Company through its general department. The capacity of the machine is from 1500 to 2500 pairs per day, according to the class of work.

Mr. WEBSTER. Please note the petitioner's objection to the foregoing answer, especially to all testimony or statements therein relating to patents issued since the filing of the petition herein; to all testimony relating to pending applications for patents or to constructions shown in pending applications; to all statements of the witness as to what others said, thought, or did; to all reference to experimental machines, to all expressions of opinion of the witness, to all that portion of the answer as is argumentative, and to all testimony before the Special Examiner not in defence of the evidence introduced by the petitioner before the examiner; all said objections being on the ground that all such testimony and evidence is incompetent, irrelevant and inadmissible and as having no bearing on the issues involved in this cause, and especially as having no reference to the matters referred to in the order for taking testimony before the Special Examiner. And notice is hereby given that counsel for the petitioner will hereafter file a motion to strike such testimony and evidence from the records, which motion will specifically point out the matters objected to.

Int. 81. Have you collected under one or more covers the several patents referred to by you in your answer to the last question,

as relating to machines for manufacturing and attaching heels to boots and shoes?

Ans. Yes, sir; and I produce a collection of the patents referred to in the portion of my testimony relating to heel-compressing machines.

[*Volume of patents relating to heel-compressing machines is offered in evidence, and marked "Defendants' Exhibit 162".*]

Mr. WEBSTER. Please note petitioner's objection to the introduction of patents dated after the filing of the petition herein as incompetent, inadmissible and irrelevant and having no bearing on the questions involved in this cause, and especially as having no bearing on the matters submitted before the examiner.

[*Answer to Int. 81 continued:*]

I also produce a collection of patents referred to in the portion of my testimony relating to loose-nailing machines.

[*Volume of patents referring to loose-nailing machines is introduced in evidence, and marked "Defendants' Exhibit 163".*]

[*Answer to Int. 81 continued:*]

I also produce a collection of the patents referred to in that portion of my testimony which dealt with heel-attaching machines.

[*Volume of patents referring to heel-attaching machines is introduced in evidence, and marked "Defendants' Exhibit 164".*]

[*Answer to Int. 81 continued:*]

I produce also a collection of the patents named in the portion of my testimony relating to slugging machines.

[*Volume of patents relating to slugging machines is introduced in evidence, and marked "Defendants' Exhibit 165".*]

[*Answer to Int. 81 continued:*]

I also produce a collection of the patents referred to in the portion of my testimony relating to heel-breasting machines.

[*Volume of patents relating to heel-breasting machines is introduced in evidence, and marked "Defendants' Exhibit 166".*]

Int. 82. Will you please give the number, date and name of the patentee of the several patents referred to in the volume of patents just offered in evidence as Defendants' Exhibits 162, 163, 164, 165 and 166?

Ans. EXHIBIT 162.

No. 105,030, July 5, 1870, Bigelow.

No. 350,051, September 28, 1886, Glidden.

No. 543,804, July 30, 1895, Glidden and Small.

No. 577,212, February 16, 1897, Small.

No. 577,213, February 16, 1897, Small.

No. 772,840, October 18, 1904, Small.

No. 776,787, December 6, 1904, Leland.

No. 776,823, December 6, 1904, Allen.

No. 776,875, December 6, 1904, Tripp.

No. 781,236, January 31, 1905, Small.

No. 890,434, June 9, 1908, Mayo.

No. 1,007,687, November 7, 1911, Glidden.

No. 1,012,007, December 19, 1911, Pope (application filed July 6, 1909).

No. 1,012,681, December 26, 1911, Mayo (application filed February 20, 1907).

No. 490,624, January 24, 1893, Goddu.

No. 582,579, May 11, 1897, Cutter.

No. 856,399, June 11, 1907, Eaton.

No. 865,329, September 3, 1907, Casgrain.

No. 886,313, April 28, 1908, Cutter.

No. 919,424, April 27, 1909, Cuff.

No. 932,535, August 31, 1909, Casgrain.

No. 1,011,941, December 19, 1911, Goddu (application filed May 10, 1910).

No. 1,030,775, June 25, 1912, Goddu (application filed February 8, 1909).

No. 1,031,438, July 2, 1912, Goddu (application filed October 10, 1907).

No. 1,045,717, November 26, 1912, MacKenzie (application filed February 8, 1909).

No. 1,045,784, November 26, 1912, Goddu (application filed February 8, 1909).

EXHIBIT 164.

No. 446,885, February 24, 1891, Pope.

No. 584,752, June 15, 1897, Small.

No. 599,012, February 15, 1898, Raymond.

No. 694,656, March 4, 1902, Mayo.

No. 707,136, August 19, 1902, Mayo.

No. 707,137, August 19, 1902, Mayo.

No. 707,138, August 19, 1902, Mayo and Elliott.

No. 707,139, August 19, 1902, Mayo.

No. 834,085, October 23, 1906, Taylor.

No. 884,513, April 14, 1908, Mayo.

No. 887,870, May 19, 1908, Taylor.

No. 891.192, June 16, 1908, Small.

No. 958,282, May 17, 1910, Plant.

No. 958,302, May 17, 1910, Plant.

No. 1,000,119, August 8, 1911, Pope and Elliott.

No. 1,000,957, August 15, 1911, Bates.

No. 1,030,654, June 25, 1912, Elliott (application filed March 13, 1902).

No. 1,072,986, September 9, 1913, Pope (application filed January 12, 1911).

EXHIBIT 165.

No. 582,579, May 11, 1897, Cutter.

No. 582,580, May 11, 1897, Cutter.

No. 601,255, March 29, 1898, Horton.

Reissue No. 11,962, January 21, 1902, Freeman (original patent No. 618,082, January 24, 1899).

No. 609,874, August 30, 1898, Casgrain.

No. 691,354, January 21, 1902, Casgrain.

No. 705,512, July 22, 1902, Casgrain.

No. 714,572, November 25, 1902, Freeman.

No. 765,650, July 19, 1904, Casgrain.

No. 786,190, March 28, 1905, Casgrain.

No. 809,160, January 2, 1906, Wingo.

Reissue No. 12,820, June 23, 1908, Preston (original patent No. 820,670, May 15, 1906).

Reissue No. 12,821, June 30, 1908, Preston (original patent No. 822,867, June 5, 1906).

No. 919,424, April 27, 1909, Cuff.

No. 978,297, December 13, 1910, Keith.

No. 996,043, June 27, 1911, Ambler.

No. 1,000,490, August 15, 1911, Buckminster.

No. 1,001,815, August 29, 1911, Casgrain.

No. 1,002,864, September 12, 1911, Perry.

No. 1,004,240, September 26, 1911, Casgrain.

No. 1,005,920, October 17, 1911, Ambler.

No. 1,006,533, October 24, 1911, Casgrain.

No. 1,012,811, December 26, 1911, Casgrain (application filed February 16, 1906).

No. 1,017,381, February 13, 1912, Casgrain (application filed October 24, 1898).

No. 1,030,829, June 25, 1912, Preston (application filed August 3, 1905).

No. 1,040,273, October 8, 1912, Casgrain (application filed October 24, 1898).

No. 1,053,479, February 18, 1913, Casgrain (application filed September 12, 1908).

No. 1,054,173, February 25, 1913, Casgrain (application filed September 5, 1907).

EXHIBIT 166.

No. 636,990, November 14, 1899, Heys.

No. 645,994, March 27, 1900, Brewer.

No. 738,502, September 8, 1903, Waterman.

Reissue No. 13,413, April 30, 1912 (application filed October 18, 1904).

No. 1,023,284, April 16, 1912, Warren (application filed July 8, 1911.)

No. 1,068,423, July 29, 1913, Fraiser (application filed October 20, 1908).

Int. 83. What is the function of the insole as a part of the organization of a boot or shoe, and what is meant by a "reinforced" insole?

Mr. WEBSTER. In view of the fact that no testimony in reference to insoles was introduced by the petitioner before the examiner, counsel for petitioner objects to the question as calling for matter not admissible at this stage of the proceedings.

Ans. The insole is that part of the shoe to which, in the lasting operation, the upper is secured during the shaping of the upper to the last. In a later stage of the manufacture of the shoe the out-sole is secured to the insole, either directly by stitching the out-sole to the insole, as in a McKay sewed shoe, or securing it by pegs or metallic fastenings, as in a pegged or nailed shoe, or indirectly through the welt, as in a welt shoe.

An insole for a McKay shoe requires no preparation other than giving it a shape corresponding with the shape of the bottom of the last. This is because the out-sole of a McKay sewed shoe is attached directly to the insole by a through-and-through stitch. Owing to this fact that the out-sole of a McKay sewed shoe is secured by a stitch passing entirely through the insole, the insole for the McKay sewed shoe requires no preparation to enable it to receive the stitch, and it may be of comparatively cheap and thin stock and still afford ample holding power for the chain stitch seam which secures the out-sole to the insole. In the welt shoe, on the other hand, the out-sole is secured to a welt, this being the only means of attachment of the out-sole to the shoe. The welt must previously, together with the upper, be sewed to the insole and in attaching the welt and the upper to the insole the line of stitching cannot pass through the insole, and the stitch depends for its holding power upon a narrow portion of stock on the flesh side of the insole which is known as the "between substance". In an all-leather insole this "between substance" is the narrow strip of stock between a lip which is formed on the outer edge of the insole by a cut approximately parallel with the face of the flesh side, and another cut made in the flesh side of the stock from a line somewhat removed from the edge, which cut is directed outwardly toward the edge of the sole. A "reinforced" insole is an insole which has had applied to its flesh side a piece of reinforcing fabric, usually canvas. In preparation for the application of the fabric a

lip or lips on the flesh side of the insole are turned up into a position approximately perpendicular to the flesh side of the sole, and the reinforcing fabric is applied while the lip or lips occupy this approximately perpendicular position.

Int. 84. What type of reinforced insole was in most extensive practical use in 1899, and what machines were put out for making such insoles? What development has been made in the reinforced insole art since 1899, and in machines for making reinforced insoles? If the insoles are the subjects-matter of patents of the United Shoe Machinery Company, state the patents; and if the machines embody mechanisms shown and described in Letters Patent of the United Shoe Machinery Company, state the patents.

Mr. WEBSTER. The same objection repeated.

GEM INSOLE.

Ans. Shortly before 1889 there was being used commercially a reinforced insole known as a "Gem" insole. This was the first successful insole of this character devised for the purpose of providing an insole which would be as satisfactory in the manufacture and wear of a shoe, or even more satisfactory, than an all-leather insole, which, owing to the requirements which I indicated in the preceding answer, had to be made of expensive leather of good quality. It was found that by forming a lip by cutting into the edge of the sole a short distance and turning up the lip thus formed, and then applying reinforcing material to the entire flesh side of the insole, the reinforcing material over the lip upturned from the flesh side of the leather blank, an insole could be produced which would be less expensive than a leather insole, which could be used for the same class of work, and would, in fact, be more satisfactory in the wear of the shoe. An insole of this type was known as the "Gem" insole, which was first used in 1898. This insole as commercially used in 1899, and as still used, is illustrated in patent No. 575,460, January 19, 1897, Cole. There were supplied to manufacturers for producing this Gem insole several machines which comprised the so-called "Gem System", to which I will briefly refer before specifically explaining the insole and several machines for producing it.

The machine for turning up and setting the lip of the leather blank is known as the "Turning Machine, Gem Lip", and the commercial machine is constructed substantially as shown in patent No. 638,010, November 28, 1899, Hadaway. That machine is now being superseded by the "Turning and Slashing Machine, Goodyear Lip", which is shown and described in a pending application.

The machine known as the "Flexible Insole Gem" is the machine which is used for applying the reinforcing canvas to the Gem insole and for shaping it to the upturned leather lip, and is shown substantially in its commercial form in patent No. 614,860, November 29, 1898, Hadaway.

Referring now more in detail to the patents owned by the United Shoe Machinery Company which relate to the Gem insole and to the machines above enumerated for making the insole, the Gem insole itself is defined in the claims of patent No. 575,460, January 19, 1897, Cole, which is as follows: —

"As an improved article of manufacture, an insole comprising a body of leather, a lip and feather formed by splitting the outer edge of the body in the usual manner, and a continuous reinforcing covering secured to the central portion of the bottom of the sole, indented over the lip, and terminating upon and secured to the bottom of the feather upon opposite sides of the sole, substantially as described."

I produce a Gem insole such as is defined in the above claim.

[*Gem insole is offered in evidence, and marked "Defendants' Exhibit 167".*]

[*Ans. to Int. 84 continued:*]

The machine for turning up the lip which is formed, as stated in the claim of patent 575,460, by "splitting the outer edge of the body in the usual manner", is known as "Turning Machine, Gem Lip", and embodies mechanisms defined in the claims of the following patents: —

No. 610,326, September 6, 1898, Keith.

No. 623,306, April 18, 1899, Coupal and Gordon.

No. 638,010, November 28, 1899, Hadaway.

Of the above patents, No. 638,010 shows in the drawings and describes in its specifications the machine substantially as con-

structed for commercial use. The improvements which are set forth in the claims of this patent are those which made the machine commercially successful. A typical claim of this patent No. 638,-010 is the first : —

"1. In a lip turning machine, the combination with a reciprocating lip setting tool, of means to so actuate said tool and to support the work so as to cause said tool to strike and act upon the lip at the base thereof within the angle formed by the lip and feather of the insole, substantially as described."

It is important that the leather lip of the insole be raised into a position substantially perpendicular to the face of the insole because, first, it must be in this position in order that the reinforcing canvas shall be applied to it properly ; and secondly, because after the canvas has been applied to the bottom of the insole it is necessary that the reinforced lip shall be perpendicular to the face of the insole in order that the upper stock may be properly lasted into the angle of union between the lip and the feather edge, that is, the portion of the stock between the shoulder formed by the lip and the extreme edge of the sole. It is further important that this angle formed by the lip and the feather edge shall be clearly defined so that the upper stock can be lasted into it properly, and later that the welt and the upper may be properly attached to the lip in the inseam-sewing operation. It was a difficult problem to raise this lip and make it stand in this substantially vertical position, owing to the tendency of the lip to turn backward toward the face of the sole. The improvemenst of this Hadaway patent No. 638,010, November 28, 1899, provided for the first time an organization for a lip-turning machine which would make this leather lip stand up permanently in the desired perpendicular position and which would sharply define the angle of union between the lip and the feather edge.

Improvements which are embodied in the commercial machine are also defined in broad terms in the four claims of patent No. 610,326, September 6, 1908, Keith, of which typical claims are the first and third : —

"1. In a lip turning machine, the combination with a lip turn-

ing plow and a lip setting roll located adjacent thereto, of a work support arranged to hold the work against said plow and roll, the lip setting roll being inclined relatively to the surface to the work support, substantially as described."

"3. In a lip turning machine, the combination with a lip turning plow and a lip setting roll arranged adjacent to and following the plow, of a work support rotating in a horizontal plane and a rotating feed wheel arranged to enter the angle between the feather and lip of the sole, substantially as described."

This Gem lip-turning machine also embodies improvements set forth in claim 2 of patent No. 623,306, April 18, 1899, Coupal and Gordon.

Turning and Slashing Machine: Goodyear Lip.

In the use of this Gem lip-turning machine it was found that frequently after the operation of the machine the portions of the lip which had been turned up in sharply curved shanks between the ball and the middle of the shank would not always remain in the desired perpendicular position, owing to the fact that in turning up the lip the edge of the lip had been forced into a curved line of larger radius than the curved line in which the edge of the lip had been located before it was turned up, and there was a constant tendency for the lip to return from the desired perpendicular position to its original condition. It was, accordingly, the practice of the operator, when he observed this tendency of the lip to turn back toward the body of the insole, to slash the lips at two or more points in the shank by a hand knife and relieve the strain on the lip occasioned by the stretching of its edge. With a view to producing a lip-turning machine which would perform this slashing operation, before performed by hand, the United Company, in January, 1909, started experimental work with the object of producing a reorganized machine in the operation of which the lip could be slashed whenever desired, as in the shank, while the lip-turning operation was progressing. This experimental work resulted in the production of a machine by which, as the operation of the machine was proceeding around the insole, the operator could by depressing a treadle render operative automatic mechanism for cutting a vertical slit through the lip, from the tip of the

lip to its base, thus overcoming the tendency of the lip to swing back out of vertical position by relieving the stretching strain on the top edge of the lip. This machine was developed into a commercial form and first put out for commercial use in January, 1912. It is organized to perform mechanically the operation previously performed by hand, as has been described. This machine embodies the improvements defined in the three patents already mentioned, Nos. 610,326, 623,306 and 638,010, but the reorganized machine is not shown in its commercial form in any granted patent, but is shown in drawings described in the specification and set forth in the claims of a pending application filed on March 3, 1911.

FLEXIBLE INSOLE MACHINE: GEM.

The machine of the Gem system which applies the reinforcing material to the insole, which is known as the "Flexible Insole Machine, Gem", embodies mechanism set forth in the claims of the following patents:—

No. 603,763, May 10, 1898, Hadaway.

No. 609,103, August 16, 1898, Keith.

No. 609,110, August 16, 1898, Milner.

No. 614,860, November 29, 1898, Hadaway.

The commercial machine is constructed substantially as shown in the drawings of patent No. 614,860.

In the manufacture of the Gem insole, after the lip has been turned up by the Gem lip-turning machine an oblong strip of canvas previously cemented is roughly applied by hand to the flesh side of the insole, that is, the side on which the lip has been formed, and this oblong strip is necessarily of such size that there is more or less excess canvas extending beyond the margin of the insole all around the insole except at the heel end, which does not need reinforcing since the inseam by which the welt and upper are secured to the insole terminates on each side at a point located approximately at the forward or breast end of the heel in the finished shoe. The general object of the reinforcing machine is to crimp the canvas so that it will fit closely over the lip of the leather blank, and particularly so that it shall fit in the angles formed on

both sides of the lip at the junction of the lip and the body of the insole on the inside and the feather edge on the outside.

The machine shown in patent No. 603,763, May 10, 1898, Hadaway, was the first machine ever devised for reinforcing insoles, but the machine was a satisfactory commercial machine and was not put into commercial use. This patent, however, represents an important step in the development of the commercial machine and sets forth broadly in its claims mechanism which was embodied in the commercial machine. Typical claims of this patent No. 603,763, directed to the organization of the commercial machine, are 16, 18 and 21, which are as follows:—

"16. In a machine for applying reinforcing material to insoles, the combination with a work support, of bead forming tools and mechanisms to actuate said tools to cause them to form a bead or crimp in said reinforcing material, substantially as described."

"18. In a machine for applying reinforcing material to insoles, the combination with bead forming mechanism for forming the bead or crimp in the reinforcing material, of edge trimming mechanism for trimming the edge of said reinforcing material, substantially as described."

"21. In a machine for applying reinforcing material to insoles, mechanism operating automatically to form a bead or crimp in said reinforcing material, and to secure said reinforcing material to an insole, substantially as described."

One of the difficulties in the production of a commercially satisfactory machine for applying reinforcing material to an insole was due to the tendency of the cemented canvas to stick to the upper edge of the lip of the insole after it had been roughly applied by hand, as has been explained, and prior to and during the reinforcing operation. One of the important features of this reinforcing machine was the means incorporated in it for lifting the cemented canvas away from the lip just before and during the operation of the crimping means. The importance of this means for freeing the cemented canvas from the edge of the lip may be understood if it be explained that it is essential that the reinforcing material be forced properly into the angle on the inside of the lip formed between the lip and the bottom of the insole, and that it is also desirable that the reinforcing material be likewise crowded down

into the angle on the outside of the lip between the lip and the feather edge, and it would be practically impossible to get the reinforcing material properly into either of these angles unless the cemented canvas were freed from the upper edge of the lip, as otherwise, when the canvas was crimped into the angle on the inside of the lip it would pull the lip over with it, making it impossible to get the canvas properly into the inside angle and also impossible to complete the reinforcing operation by getting canvas properly into the angle on the outside of the lip. This problem was solved by the incorporation in the organization of the reinforcing machine, of the means to which I have referred for raising the canvas out of contact with the edge of the lip just before and during the crimping operation. This means, which is termed in the claims of the patent an "anvil or former", is defined in broad terms in seven claims of patent No. 603,763, May 10, 1898, Hadaway. Claim 26 is typical: —

"26. In a machine for applying reinforcing material to insoles, the combination with a beading or crimping tool of an anvil or former having a bead molding head projected therefrom, substantially as described."

All of the twelve claims of patent No. 614,860, November 29, 1898, Hadaway, define mechanisms embodied in the commercial machine. Among other improvements this patent defines an improved construction of under-forming mechanism which I have just discussed and which is defined broadly in the claim above quoted. This improved under-former of the commercial machine is set forth in a number of claims of this patent, of which a typical claim is the fifth: —

"5. In a machine for reinforcing insoles, the combination with a bead forming tool, of a former or anvil, and means to impart a vertical movement to the former or anvil toward and away from the working end of said tool, substantially as described."

This patent No. 614,860 also sets forth in its claims an improved organization of the tools which co-operate in the beading or crimping of the reinforcing material about the lip of the leather blank. Of these claims a typical claim is the first: —

"1. In a machine for reinforcing insoles, the combination with an anvil or former, of a plurality of bead forming tools, one of said tools being a fixed tool and another of said tools being movable toward and from the fixed tool, substantially as described."

The experimental machine shown in the drawings of patent No. 603,763, May 10, 1898, Hadaway, was provided with means for severing excess canvas projecting beyond the edge of the insole which comprised a fixed cutter and a reciprocating cutter co-operating with the fixed cutter. This combination would not cut the canvas cleanly enough and was also arranged to trim the canvas before it had been attached to the insole, so that the line of cutting could not be depended upon to follow the edge of the insole after the fabric had been secured to the feather edge. This organization was substantially improved by the mechanism shown in patent No. 609,103, August 16, 1898, Keith. This improved construction comprised overlapped rotary cutters, rotating in a vertical plane, which severed the excess canvas after the canvas had been cemented to the feather edge, and which also were organized to be held yieldingly against the edge of the insole so that they would operate to trim the excess exactly at the edge of the insole, as is desired.

This improvement is defined in the seventh and thirteenth claims of patent No. 609,103, which are as follows: —

"7. A machine of the character specified, comprising means for pressing a sole rib, sole feeding mechanism, and a yieldingly supported trimming mechanism movable toward and from the edge of the sole to conform automatically to the edge of the sole."

"13. In a machine for reinforcing insoles, the combination with a work support arranged to support the insole, of means to conform the reinforcing material to the insole and cutters movable toward and from the edge of the insole arranged to automatically follow the edge of the insole and trim the edge of the reinforcing material, substantially as described."

The commercial construction of this canvas-severing mechanism is shown in the drawings and set forth in the claim No. 11 of patent No. 614,860.

The importance of the improvements shown in the drawings and set forth in the claims of patent No. 614,860, November 29, 1898, Hadaway, may be judged from the fact that while the experimental

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machine of patent No. 603,763 had a capacity of 500 insoles per day, the machine of patent No. 614,860 had an average capacity of 1200 insoles per day.

The saving effected in the use of Gem insoles of the best quality over the all-leather insole which the manufacturer would otherwise use for the grade of work in which the best Gem insole is used, is from one-half a cent to three cents per pair, the variation depending largely upon the cost of the leather base which is reinforced. A manufacturer will often reinforce a leather insole which is almost, but not quite, good enough for use without the reinforcing, or he may reinforce the insole in order to be certain that the insole will be satisfactory in the finished shoe. In such case the minimum saving will be shown; while in case he uses a leather base made of split leather, such as is more generally used for Gem insoles, and which, when reinforced, makes an entirely satisfactory insole, the maximum saving over an all-leather insole will be effected.

ECONOMY INSOLE.

While the Gem insole was used, and still is used, to a large extent, it was open to the objection that the base of the reinforced lip on the inside of the lip is in a different plane and is higher than the base of the lip on the feather edge or outside of the lip. This difference in the height of the stock on the inside and outside of the lip of the Gem insole sometimes occasioned difficulty in its use, owing to the fact that the needle of the welt-sewing machine entering the stock at the base of the lip adjacent to to the feather edge did not always emerge from the stock at the base of the lip on the inside as it should, but penetrated further into the body of the insole and emerged from the insole at a point removed from the lip. In attempting to remedy this difficulty there was danger that the needle would enter the lip too high on the outside so that the thread would not have sufficient support in the stock, and, further, that the upper and welt would not be forced down properly into the angle between the lip and the feather edge, as is required for good welt-sewing operation. To overcome these objections to the Gem insole the United Company's inventors produced an insole

now known as the "Economy Insole", which was made substantially as shown in patent No. 849,245, April 2, 1907, except that as commercially made now the two lips shown in that patent are stitched together instead of being cemented, which is stated in the patent to be the preferred manner of forming the insole.

The distinguishing characteristic of the Economy insole as compared with the Gem, is that while in the Gem insole there is a single lip turned up from the outside with reinforcing canvas covering the entire lip face of the insole clear to the edge, as has been fully explained, in the Economy insole there are two lips turned up from the leather blank, one turned up from the outside in a similar manner as in preparing the Gem blank, and the other lip turned up from the inside by cutting a lip out of the body of the insole inside the first mentioned lip. In the manufacture of the Economy insole, after the two lips have been formed and have been secured together, as I shall explain later, the reinforcing material is applied to the body of the insole inside the lips, and to the inside of the inner lip, but does not extend over the rib formed by the two leather lips, as in the Gem insole. It is a distinct advantage of the Economy insole over the Gem that, owing to the additional strength afforded by the two leather lips, it is not necessary to carry the reinforcing material over the top of the lip and down upon the feather edge. The saving in canvas thus effected amounts to about four cents per dozen pairs of insoles.

Reinforcing Machine: Economy Insole.

Early in 1902 the United Company began experimental work in the development of machines for making Economy insoles. An important machine of the system for manufacturing these insoles is "Reinforcing Machine, Economy Insole", which was first put out commercially by the United Company in May, 1905. The commercial machine is constructed substantially as shown in the drawings and set forth in the claims of patent No. 979,836, December 27, 1910, Eppler (granted on an application filed February 24, 1905). The reinforcing of an Economy insole presented different problems from those which had to be dealt with in the reinforcing of

a Gem insole, on account of the inner lip, which, as already stated, is cut out from the body of the insole on the inside of the outer lip. It is, accordingly, necessary to force the reinforcing material down into the angle between the inner lip and the adjacent portion of the insole which is below the plane in which the body of the insole lies. Another difference in the requirements for this machine was that the excess canvas must be trimmed off at the top edge of the rib formed by the two lips instead of at the edge of the insole, as in making the Gem insole. These problems were solved by the organization of the patent just referred to, No. 979,836, and their solution is indicated by typical claims of that patent: —

"2. An insole reinforcing machine, having, in combination, a work support, a pressing device, and means for moving the pressing device downward to engage the reinforcing material on the insole and then move inward and farther downward so as to draw the material into the channel and press it against the lip, substantially as described."

"7. An insole reinforcing machine, having, in combination, provision for supporting an insole and for feeding it through the machine, a guide roll bearing at its periphery against the outer side of the lip of the insole and a rotating flat knife for trimming the edge of the lip, substantially as described."

Stitching Machine: Economy Insole.

It was originally intended to secure together the two lips raised from the insole blank prior to the reinforcing operation by cement, as indicated in the specification of patent No. 849,245, April 2, 1907, Johnson. Experimental work was carried on for several years in the endeavor to devise means which could be satisfactorily used for securing the two lips together by cement, but the company's inventor did not succeed in producing a practical machine for that purpose. Accordingly, after considerable experimenting, a successful machine for stitching together the two lips turned up from the leather blank was produced, which is known as "Stitching Machine, Economy Insole". The organization of this machine in its commercial form comprises means for turning up the lips from the body of the insole, acting progressively upon successive portions of the lip just prior to the stitching operation, means

for clamping the lips together, means for exerting pressure upon the body of the insole on the grain side opposite to the point where the stitching is taking place, to maintain the lips in proper relation to the stitching mechanism, and the means for making the stitch. No patent has as yet been granted upon this machine for sewing together the lips of the leather blank, but its organization is shown and described in applications filed May 14, 1908, January 25, 1909, and in two applications filed January 14, 1910.

I produce an Economy insole which was formed by the machines which I have just been describing.

[*Economy insole is introduced in evidence, and marked "Defendants' Exhibit 168".*]

[*Answer to Int. 84 continued:*]

This insole is broadly defined in two of the three claims of patent No. 849,245, April 2, 1907, Johnson, to which reference has already been made. A typical claim is the third: —

"3. An insole for use in manufacturing sewed shoes, consisting of a body portion having two lips cut therefrom and turned up and united to form a single stitch receiving lip around the shaft and forepart of the body portion of the insole, and a sheet of re-enforcing material cemented to the surface of the body portion and to the inner surface of the lip."

When the Economy insole stitching machine was adopted as a commercial machine in October, 1909, the Economy insole became for the first time a practicable commercial insole, and since that time the machines for making the insole have been put out extensively and have gone into general use.

Channeling Machine: Economy Insole.

With the reinforcing machine and the stitching machine is furnished a machine for channeling the leather insole blank to form the two lips, which is known as the "Channeling Machine, Economy Insole". The commercial machine is constructed substantially as shown in the drawings and described in the specifications of patent No. 984,773, February 21, 1911, Meyer. A typical claim of this patent is the tenth: —

"10. A channeling machine, having in combination, a rotatable

work support for supporting a flat sole, a work feeding device above the work support, actuating means for said feeding device to cause it to engage and feed the sole and means for rotating the work support intermittently in unison with the feeding movement of the work feeding device, substantially as described."

The work-supporting mechanism of the machine embodies mechanism set forth in the claims of patent No. 984,772, February 21, 1911.

All of these machines of the Gem and Economy systems — turning machine, Gem lip; turning and slashing machine, Goodyear lip; flexible insole, machine Gem; reinforcing machine, Economy insole; stitching machine, Economy insole; and channeling machine, Economy insole — are put out by the United Shoe Machinery Company through its Goodyear department. About 40 per cent of all welt insoles used at the present time are reinforced soles.

Mr. WEBSTER. The answer is objected to in so far as it relates to the mechanisms of pending applications, patents issued since the filing of the petition herein, and especially in so far as it relates to matter not in reply to, or in defence of, matter introduced before the examiner by the petitioner, as being incompetent, inadmissible and irrelevant, and having no relation to the matters involved herein.

Int. 85. Have you collected under a single cover the patents referred to by you in your answer to the last question as relating to reinforced insoles and machines for making such insoles?

Ans. Yes, sir; I have. I produce the volume.

[*Volume of patents referring to reinforced insoles and machines for making such insoles is introduced in evidence, and marked "Defendants' Exhibit 169".*]

Mr. WEBSTER. The introduction of patents relating to matters to which objection has been heretofore made is objected to as not competent, immaterial and inadmissible.

Int. 86. Will you please give the number, date and name of patentee of the several patents contained in the volume which has just been offered in evidence as Defendants' Exhibit 169?

Ans. No. 575,460, January 19, 1897, Cole.

No. 603,763, May 10, 1898, Hadaway.
No. 609,103, August 16, 1898, Keith.
No. 609,110, August 16, 1898, Milner.
No. 610,326, September 6, 1898, Keith.
No. 614,860, November 29, 1898, Hadaway.
No. 623,306, April 18, 1899, Coupal and Gordon.
No. 638,010, November 28, 1899, Hadaway.
No. 849,245, April 2, 1907, Johnson.
No. 979,836, December 27, 1910, Eppler.
No. 984,772, February 21, 1911, Meyer.
No. 984,773, February 21, 1911, Meyer.

WELT BEATING MACHINES.

Int. 87. In the list of machines given by you in your prior testimony [question No. 7] you referred to a machine, "Beating and Slashing Machine, Goodyear Welt", as being put out in November, 1904, by the United Shoe Machinery Company through its Goodyear department. What is the function of that machine and how was the operation of beating and slashing welts performed prior to its introduction? If such machine embodies mechanisms forming the subjects-matter of patents of the United Company, state the patents and state briefly the development of the art made by the United Shoe Machinery Company since 1899. If, in answering this question, you refer to any machines shown and described in Letters Patent of the United Company, name the patents.

Mr. WEBSTER. The question is objected to for that it calls for matter not referred to in the evidence presented by the petitioner before the examiner.

Ans. After the welt has been attached to the shoe by the inseam sewing operation it is curled up around the upper of the shoe, particularly around the toe, owing to the attachment of a straight strip of welting around the curved outline of the shoe. Before the out-sole can be attached to the shoe the welt must be beaten out so that it will lie in substantially one plane all around the shoe. Prior to 1899 two types of machines had been put out by the Goodyear Shoe Machinery Company for performing this operation of beating

out the welt. The earlier machine was known as "Beating Machine, Goodyear Welt", and was constructed substantially as shown and described in patent No. 320,075, June 16, 1885, Littlefield.

BEATING MACHINE: GOODYEAR UNIVERSAL WELT.

This machine, however, had been discarded before 1899 and the Goodyear Company had adopted in its place the commercial machine shown in the drawings and described in the specifications and set forth in the claims of patent No. 598,727, February 8, 1898. This machine, known as "Beating Machine, Goodyear Universal Welt", is illustrated on page 41 of Plaintiff's Exhibit No. 220, which is a copy of the catalogue of the Goodyear Shoe Machinery Company, dated January 1, 1897. The object of the improved machine of patent No. 598,727 was to enable the operator to vary the force of the blow imparted to the welt as required for different portions of the work. The curling up of the welt, to which I have referred, frequently wrinkles and bunches or thickens the welt around the toe as the natural effect of attaching a straight strip of welting around a sharply curved outline. Consequently there is the greatest need for beating, and the hardest blows are required to flatten out the welt around the curved thickened toe portion. The machine of the Littlefield patent referred to had no provision whatever for varying the force of the blow during the operation of the machine.

In the Goodyear Universal welt beating machine as shown in patent No. 598,727, above referred to, the operator was enabled instantly, by depressing a treadle, to vary the force of the blow imparted by the machine, and by imparting a harder blow in beating out the welt around the toe portion the time required for the operation on each shoe was materially lessened. The improvements illustrated in that patent No. 598,727, February 8, 1898, also included means by which the machine was made to absorb the force of the blow of the hammer instead of transmitting it through the treadle connections to the foot of the operator. A typical claim of this patent No. 598,727 is the first:—

"1. In a welt beating machine, the combination of a welt beating hammer, a table upon which the welt is placed, a movable support

therefor, a movable abutment against or upon which said table support continuously rests, bearings for said abutment which are at all times in the line of thrust of the table support, means for moving said abutment to lower the table for the introduction of the work, and a treadle connected with said abutment for moving it to raise said table to different elevations, substantially as described."

BEATING AND SLASHING MACHINE: GOODYEAR WELT.

In using the machine of Littlefield, patent No. 320,075, which machine, as already stated, had been superseded prior to 1899, it had been necessary in order to make the welt lie down flat around the toe, as is required, for the operator to slit the welt around the toe by hand on a large proportion of the shoes operated upon by the machine. While, as has been stated, the operation around the toe of the machine of patent No. 598,727, February 8, 1898, was much more satisfactory than that of the earlier machine, which it had superseded before 1899, the improved organization of the 1899 machine had not done away with the necessity of slitting the welt around the toe on a large proportion of the shoes operated upon by the machine. This operation of slitting the welt, which, in the use of the 1899 machine, as in the use of the earlier machine, had to be performed by hand, required considerable time and was a delicate operation because it was important that the slits should not extend entirely through the welt, as if they did they would be visible on the grain side of the welt, that is, its upper face, and would be placed in such a manner as to be objectionable in the finished shoe, and it was even more objectionable to have the slits extend entirely through the welt, because in that case they would impair the strength of the welt. As to the first objection, it should be noted that the welt around the toe portion of the shoe is particularly prominent in the finished shoe, particularly in modern shoes provided with extension edges.

It being recognized that the majority of shoes made required or would be improved by slitting around the toe, the United Company proceeded soon after its organization to develop a machine which would slit the welt whenever desired during the operation of the machine. The production of such a machine presented a number

of problems which had to be dealt with by the United Company's inventors. In the first place, it is usually desired to slit the welt only at the toe where the greatest difficulty is encountered in making the welt lie down flat in the beating-out operation. Furthermore, it is undesirable to slit the welt where it is not needed, that is, along the straighter portions of the welt, because the slitting naturally weakens the welt somewhat, and it is along the straighter portions at the ball that the greatest strain is exerted upon the outseam, that is, the line of stitching which secures the out-sole to the welt, in the wear of the shoe. Secondly, as just explained, the slits must not extend entirely through the welt to its upper face, because if the slit were so formed the welt would be weakened and its exposed upper face would be defaced. Thirdly, those slits must be oblique to the face of the welt and must be comparatively long so that they will overlap, and the welt be firmly secured in the out-sole stitching operation. Fourth, the hammer on the welt-beating machine must, for commercial success, be operated at a high speed. The usual practice is to operate the machine at a speed which imparts about 2000 blows to the welt per minute. This speed of operation of the hammer greatly complicated the developing of an organization which would automatically slit the welt because the knife, cutting in as it does from the edge of the thin welt, can only operate successfully while the welt is clamped, and the only manner in which the welt can be clamped is by holding it between the hammer and the work support.

A machine in which all of these problems were successfully solved was produced by the United Company and was first put out for commercial use in November, 1904. This machine, known as "Beating and Slashing Machine, Goodyear Welt", is constructed substantially as shown, described and set forth in the claims of patent No. 875,171, December 31, 1907, Hadaway.

[*Adjourned to 10 o'clock* A. M., *Thursday, October 16, 1913.*]

BOSTON, Mass., October 16, 1913.

[*Answer to Int. 87 continued:*]

In this machine the problems which I have recited were solved in the following manner: First, the machine was so organized that the operator could slit the welt at any point desired in the progressive operation of the machine around the welt. A typical claim of patent No. 875,171, directed to this organization, is the sixteenth: —

"16. A machine for operating upon welts, having, in combination, means for beating out the welt after attachment to the shoe, means for slitting the welt, and means for throwing the welt slitting means into and out of operation during the continued operation of the welt beating means, substantially as described."

The second problem above referred to, that is, the forming of the slit obliquely to the face of the welt and extending only part way through the welt, that is, forming an oblique slit which would not extend to the exposed grain surface of the welt, was solved in this new machine by an organization defined in a number of claims of patent No. 875,171, of which the first claim is typical: —

"1. A machine for operating upon welts, having, in combination, means for beating out the welt after attachment to the shoe, and means for simultaneously forming in the welt a series of slits extending partially through the thickness of the welt, substantially as described."

The third problem referred to, namely, that of forming the slits during the operation of the rapidly reciprocating hammer, was solved in this machine by an organization defined in many claims of this patent No. 875,171, of which typical claims are the 12th and 19th, as follows: —

"12. A machine for operating upon welts, having, in combination, a welt beating hammer, means for actuating the same to beat out the welt, a work support shaped to support the welt after attachment to the shoe, a welt slitting knife, and means for actuating the knife to slit the welt while the welt is clamped between the hammer and work support, substantially as described."

"19. A machine for operating upon welts, having, in combination, a welt beating hammer arranged to act on the welt after attachment to the shoe, and welt slitting means operating to make

a single cut in the welt by a plurality of forward steps, substantially as described."

It might be well to explain the organization set forth in claim 19 by referring again to the fact that the hammer of this machine is operated to strike approximately 2000 blows per minute. It would probably be impracticable to cut into the edge of the welt and make the oblique slit desired during one engagement of the hammer with the stock, and, as has been explained, it is essential that the welt be clamped during that slitting operation. This problem was ingeniously met in this machine by an organization which effected the cut by advancing the knife while it was cutting the welt in three successive steps, these steps being taken during successive engagements of the hammer with the welt.

Before leaving this patent, attention should be called to the fact that some of its claims define in broad terms the combination of a vibrating welt-beating hammer and means for slitting the welt. A typical claim is the second:—

"2. A machine for operating upon welts, having, in combination, a work support shaped to support the welt after attachment to the shoe, a vibrating welt beating hammer, means for actuating the hammer to beat out the welt, and means for simultaneously slitting the welt, substantially as described."

The hammer mechanism of this machine is defined in the single claim of patent No. 643,455, February 13, 1900, Bayley, which is as follows:—

"1. In a machine of the character described, the combination of a lever having a tubular head; a hammer having a stem extending through said head; a spring surrounding the stem within the head between shoulders of the latter and the stem; a stop nut on the stem above the head; and sound deadening or cushioning material interposed between said nut and the head."

The knife which is used in this machine for forming the slit in the welt is defined in the claims of patent No. 875,172, December 31, 1907, Hadaway. This knife is so constructed that a slit of the same length, that is, of the same dimension lengthwise of the welt, is formed in the welt, whatever the thickness of the stock. Without this improvement the slit would naturally become longer

as the stock increased in thickness. Typical claims of this patent No. 875,172, directed to this improved knife, are as follows: —

"2. A knife for welt slitting machines having a cutting edge shaped to cut slits of substantially the same length in welts of various thicknesses when the knife is laterally inclined to the surface of the welt and is reciprocated in substantially the plane of the welt, substantially as described."

"5. A knife for welt slitting machines consisting of a flat bar having a cutting edge at its end comprising two portions arranged at an angle with each other, and shaped to cut a transverse inclined slit in a welt when the knife is reciprocated longitudinally in substantially the plane of the welt, substantially as described."

The standard commercial welt-beating machine now being leased by the United Shoe Machinery Company is constructed substantially as shown in patent No. 875,171, December 31, 1907, Hadaway, and in patent No. 875,172, December 31, 1907, Hadaway.

This machine is put out by the United Company through its Goodyear department, and after its adoption in 1904 up to March 1, 1913, the end of the company's last fiscal year, 992 of these machines had been put out. One of the machines will take care of the output of four or five welt-sewing machines.

Int. 88. Have you collected in a single volume the patents to which you have referred in your last answer as relating to welt-beating machines?

Ans. Yes, sir; and I produce the volume.

[*Volume of patents relating to welt-beating machines is offered in evidence, and marked "Defendants' Exhibit 170".*]

Int. 89. Will you please give the number, date and name of patentee of the several patents contained in the volume just offered in evidence as Defendants' Exhibit 170?

Ans. No. 320,075, June 16, 1885, Littlefield.

No. 598,727, February 8, 1898, French and Meyer.

No. 643,455, February 13, 1900, Bayley.

No. 875,171, December 31, 1907, Hadaway.

No. 875,172, December 31, 1907, Hadaway.

Int. 90. What is the function of the machine to which you have heretofore referred as "Inseam Trimming Machine, Goodyear

Universal"? If that machine embodies subjects-matter of any Letters Patent of the United Company, state the patents, and also state what developments have been made in the inseam trimming art by the United Shoe Machinery Company, if any, since 1899. If such developments form the subjects-matter of any Letters Patent of the United Company, state the patents.

Mr. WEBSTER. Counsel for petitioner objects to the question and to all testimony in reference to inseam trimming machines, on the ground that no reference has been made to such machines or patents relating thereto in the testimony thus far presented by the petitioner, and that such testimony is, therefore, inadmissible, incompetent and irrelevant as having no reference to any matter presented by the petitioner, or in reply to or in defence of any evidence submitted by the petitioner.

TRIMMING MACHINE: GOODYEAR UNIVERSAL INSEAM.

Ans. After the welt-sewing operation the shoe is left with a substantial ridge projecting outwardly from the bottom of the sole, which comprises the upper stock and the edge of the channel or rib on the insole. Before the out-sole can be attached to the welt, this projecting ridge of stock must be trimmed off, as it would prevent the desired and necessary close fitting of the out-sole on the bottom of the shoe. A shoe having the welt attached, and which shows the necessity for the inseam trimming operation is shown in Defendants' Exhibit 107. Prior to February, 1899, the Goodyear Shoe Machinery Company had been leasing an inseam trimming machine which is illustrated on page 34 of Plaintiff's Exhibit No. 220, being the Goodyear Shoe Machinery Company catalogue of January 1, 1897. Only a small number of these machines was being put out by the Goodyear Company, however, and only a limited number were in use in February, 1899. At that date the inseam trimming operation was performed almost entirely by hand. In February, 1899, the inseam trimming machine being put out by the Goodyear Shoe Machinery Company, known officially as "Trimming Machine, Goodyear Universal Inseam", embodied mechanisms set forth in the claims of the following patents: —

No. 540,438, June 4, 1895, Harris.

No. 542,813, July 16, 1895, Spencer.

No. 558,379, April 14, 1896, French and Meyer.

No. 558,380, April 14, 1896, French and Meyer.

No. 558,381, April 14, 1896, French and Meyer.

No. 559,314, April 28, 1896, Spencer.

No. 590,831, September 28, 1897, French and Meyer.

Of these patents, the first, No. 540,438, shows in its drawings a machine not even remotely resembling the commercial inseam trimming machine of 1899, and the machine of that patent was not a commercial success. All of its four claims, however, set forth mechanisms embodied in the commercial machine.

Only one experimental machine was constructed as shown in the drawings of patent No. 542,813, but the first claim of that patent defines mechanisms embodied in the commercial machine of 1899.

The commercial inseam trimming machine as put out by the Goodyear Company just prior to February, 1899, was constructed substantially as shown and described in patents —

No. 558,379, April 14, 1896, French and Meyer;

No. 558,380, April 14, 1896, French and Meyer;

No. 558,381, April 14, 1896, French and Meyer;

No. 590,831, September 28, 1897, French and Meyer.

All of the seventeen claims of the first patent just enumerated, No. 558,379, April 14, 1896, defined mechanisms embodied in the 1899 machine, and retained in the machine in the different stages of its development since that time. Typical claims of this patent are the following: —

"1. In a welt seam trimming machine, a welt seam trimming knife turning on an axis, a means for holding and feeding the work, having as a co-operative part of it a device which acts upon the under side of the welt and projects inwardly and terminates close to the point where the cutting is being done, thereby entering the gradually contracted space between said knife and welt, tangent to the curvature of the knife, and holding the work directly opposite where the cutting is being done, substantially as described."

"15. In a welt seam trimming machine, the combination of feeding mechanism for the work, two work-supports as *c* and *r* located

a short distance apart to receive the welt seam between them, and a curved trimming knife crossing said space and means for moving it substantially at right angles to the progress of the work, substantially as described."

The fifth claim of patent No. 558,380 is as follows: —

"5. In a welt seam trimming machine, the combination of a work support, a pair of feeding jaws, the front jaw terminating just above the work support, and a trimming knife, substantially as described."

Claim 1 of patent No. 558,381 is as follows: —

"1. In a welt seam trimming machine, the combination of a work support at the face side of the welt, a welt seam trimming knife at the opposite side thereof having a cutting edge upon one side, means for moving it, a pair of clamp feeding jaws, and means for operating them to grip the welt, and to feed along the work against the cutting edge of the moving knife, substantially as described."

The problem of keeping always sharp the edge of the crown knife used on this machine was solved by the organization shown in the drawings and defined in the claims of patent No. 590,831. Prior to the adoption of this improvement great difficulty had been experienced in keeping the knife properly sharpened, as, owing to the severe work which it has to do and the frequent engagement of the edge with a lasting tack which had not been removed, or with the point of a lasting tack which had been broken off and remained in the stock, the operator had to spend a considerable portion of his time in sharpening the knife. The improvement of this patent No. 590,831 provided the machine with automatically operating knife-grinding mechanism which, without any attention at all from the operator, moved the grinding means intermittently into its knife-grinding position. By this improvement the knife was always kept properly sharpened and the operator lost no time in stopping the machine and grinding the knife. A typical claim of this patent No. 590,831 directed to this improvement is the first: —

"1. In a welt seam trimming machine, a grinding wheel, its shaft, a supporting frame for said shaft having a bearing in which it is free to rotate, a frame constructed and arranged to receive and support said shaft supporting frame having rods upon which

said shaft supporting frame is free to slide in the direction of the length of the shaft, means for rotating said shaft, and means for moving its supporting frame back and forth, to thereby rotate the grinding wheel and cause it to automatically travel back and forth across the beveled cutting edge of the trimming knife, substantially as described."

Another feature of the organization of the commercial machine of 1899, and of the present day, is defined in the fifth claim of this patent No. 590,831, which is as follows: —

"5. In a welt seam trimming machine, a crown knife having a flaring flange and two work supports as *c* and *r*, located a short distance apart to receive the welt seam between them, said knife working in and across said space, the work support *r* being located in front of said knife and made adjustable in and out, substantially as described."

All of the six claims of this patent No. 590,831 define mechanisms embodied in the commercial machine of 1899, and ever since.

At the time the United Company was formed, in February, 1899, there was, as I have stated, only a small number of these inseam trimming machines in use, and the inseams of nearly all welt shoes being made at that time were trimmed by hand. The chief reason why the machine had not superseded the hand operation was that the machine was not so organized as to insure that it would always perform its work properly and would not occasionally cut too deep a gouge into the inseam, which, of course, would spoil the inseam and the shoe. The operation of inseam trimming was a delicate one, because the cutting must be done as closely as possible to the inseam, and yet not so close as to damage the inseam and weaken the shoe. This requirement will be understood on inspection of Defendants' Exhibit No. 1, which is a shoe which has had its inseam trimmed, and I also produce a part of a shoe, the inseam of which has been partially trimmed on the present commercial inseam trimming machine.

[*Shoe showing partial operation of inseam trimming machine is offered in evidence, and marked "Defendants' Exhibit 171".*]

The inseam trimming machine was not a commercial success in February, 1899, and for over ten years the United Company's

inventors were engaged almost continuously in the endeavor to improve the machine so that it would trim the inseam properly and rapidly without the danger of gouging into the line of stitching. The first improvement which was sufficiently successful so that it was incorporated in the commercial machine was adopted in 1904. This improvement comprised a guide for engaging the inner edge of the welt during the operation of the machine, the object of the improvement being to limit the movement of the shoe toward the cutter, and thereby prevent the gouging of the cutter into the inseam. The improvement is defined in all of the seven claims of patent No. 788,796, May 2, 1905, Selby, of which typical claims are 1 and 5:—

"1. An inseam trimming machine, having, in combination, a trimming knife, and means for guiding a welted shoe comprising a guide arranged to bear upon the edge of the welt at one side of the upper and support the upper while being cut by the knife, substantially as described."

"5. An inseam trimming machine, having, in combination, a cylindrical trimming knife and a guide extending within the periphery of the knife arranged to bear against the edge of the welt of a welted shoe and support the upper while being cut by the knife, substantially as described."

While the improvement of the Selby patent has always, since its adoption, been embodied in the commercial machine, and while it improved the operation of the machine sufficiently so that a somewhat larger number were put into use, the machine was still far from perfect in its operation and was not yet, even with this improvement, a satisfactory commercial machine. The next improvement, resulting from the experimental work constantly being carried on with the object of perfecting the machine, was the incorporation in the machine's organization of a guide arranged to engage the insole inside of the inseam and close to it, and also close to the point of operation of the knife. This improvement, adopted in 1906, is shown in the drawings and defined in the claims of patent No. 939,498, November 9, 1909, Hawkins and Bourgeois. A typical claim of this patent is the third:—

"3. An inseam trimming machine, having, in combination, a cylindrical knife, means for guiding a shoe during the trimming

operation comprising a guard consisting of a thin sheet extending outside of the knife in close proximity thereto, and arranged to bear on the sole inside of the inseam, and a support for the guard located in front of the cutting edge of the knife arranged to support the guard close to the edge of the knife."

This improvement was incorporated in the machine from its adoption in 1906 until it was superseded in 1909 by another improvement to which I shall shortly refer. The machine as so improved in 1906 was nearer than ever before to commercial success, but it was still unsatisfactory to the majority of shoe manufacturers, and the greater number of shoes being manufactured still had their insoles trimmed by hand. In 1909, however, there were embodied in the machine improvements which so improved the quality of the work, and so thoroughly insured the machine against the danger of cutting too deep a gouge into the inseam and against the danger of injuring parts of the upper remote from the trimming knife by accidental engagement with the knife, and so increased the capacity of the machine, that for the first time in the history of the machine it could be regarded as an entirely successful commercial machine. The improvements adopted in 1909 are defined in the claims of patent No. 956,971, May 3, 1910, Johnson, and this patent, except in one respect, to which I will later refer, shows in its drawings and describes in its specifications the commercial inseam trimming machine as it is now being put out by the United Company. These improvements are defined in all of the twelve claims of this patent. Perhaps the most valuable of the improvements is the organization of the crease guide which engages the inseam in the angle between the welt and upper, and the channel guide by which they constantly grip the inseam and hold it tightly between them adjacent to the point where the knife is operating. In the machine as organized before these improvements were incorporated in it the crease guide and channel guide, although adjustable, were stationary, and there was no provision for varying thickness in the inseam, and consequently these guides did not hold and grip the inseam as tightly as was necessary for the proper operation of the machine. In the machine as improved in 1909 the channel guide is provided with a stock-engaging roll

which is held yieldingly pressed against the material of the inseam, this yielding movement toward the inseam being in the arc of a circle which is concentric with the circular-crowned knife. Typical claims of the Johnson patent No. 956,971, directed to this organization, are the first and fourth :—

"1. An inseam trimming machine, having, in combination, a trimming knife, and relatively yielding crease and channel guides for continuously engaging the crease and lip of a welted shoe to position the shoe with relation to the trimming knife, substantially as described."

"4. An inseam trimming machine, having, in combination, a cylindrical trimming knife, a crease guide arranged to enter the crease between the upper and welt of a welted shoe, a channel guide mounted to move in an arc substantially concentric with the axis of the cutter, and means for holding the channel guide against the lip of the insole during the trimming operation, substantially as described."

This organization is defined in broader terms in patent No. 877,036, January 21, 1908, Bates, of which the third claim is typical : —

"3. An inseam trimming machine, having, in combination, a trimming knife, a fixed guide arranged to engage a shoe externally, an internal guide arranged to engage the lip of the insole of the shoe continuously and co-operate with the external guide to position the shoe properly with relation to the trimming knife, and means for yieldingly holding the internal guide continuously in engagement with the lip of the insole."

The improvements of the Johnson patent also included a guard for the knife, arranged to protect the shoe in case it were accidentally tipped by the operator. A typical claim of the Johnson patent No. 956,971, directed to this guard, is the sixth : —

"6. An inseam trimming machine, having, in combination, a trimming knife, a crease guide arranged to enter the crease between the upper and welt of a welted shoe, a channel guide, and a guard arranged to engage the shoe beyond the cutting point of the trimming knife, substantially as described."

The specific form of this guard which is indicated at 14 in the drawings of the Johnson patent is not now used in the machine, as it has been superseded by an improved form of guard which is

the subject-matter of pending applications filed October 3, 1910, and May 4, 1912. Otherwise the drawings of this patent No. 956,971 show the present commercial inseam trimming machine.

The importance of the improvements which have been made in the inseam trimming machine from time to time since 1899, culminating in the improvements shown and set forth in the claims of the Johnson patent No. 956,971, may be judged from the following facts: —

During the first year after the United Company was formed only fifteen inseam trimming machines were put out; during the second year, twelve; during the third year, seventeen; and during the fourth year, only eleven. After the incorporation of the Johnson improvements together with the other improvements made since 1899, the output of the machine increased to eighty-nine during the year ending March 1, 1910; to 119 during the year ending March 1, 1911; and to 153 machines put out during the year ending March 1, 1912. On March 1, 1909, there were 158 of these machines out, although the machine had been on the market for over a dozen years; that is, during the first three years after the Johnson improvements had been incorporated in the machine more than twice as many machines were put out as had been supplied during the entire previous life of the machine up to March 1, 1909. By March 1, 1913, at the end of the company's last fiscal year, 747 machines had been put out. Under ordinary conditions an inseam trimming machine will take care of the output of three welt and turn machines.

In dwelling upon the importance of the inventions of this Johnson patent No. 956,971, I should not be understood as stating or implying that these improvements have superseded the improvements of the earlier patents which have been discussed, except the improvements set forth in the claims of patent No. 939,498, which were superseded by the improvements defined in the claims of the Johnson pateet. All of the claims which have been quoted from the other earlier patents define important features of the present commercial machine.

Since the Johnson improvements and the other more recent im-

provements referred to have been incorporated in the machine there has been a further improvement in the machine which is defined in the claim of patent No. 1,049,452, January 7, 1913, Dow.

In the endeavor to produce a still more satisfactory inseam trimming machine the United Company's inventors have been engaged for several years in experimental work which has resulted in the production of two inseam trimming machines which are now being tried out under commercial conditions. One of these machines is constructed substantially on the same lines as the present commercial machine, while the other machine is of an entirely different type.

This machine, the "Trimming Machine, Goodyear Universal Inseam", is put out by the United Company through its Goodyear department.

Int. 91. Have you collected under a single cover the patents to which you referred in your last answer relating to inseam trimming machines?

Ans. I have, and I produce a volume comprising copies of those patents.

[*Volume of patents relating to inseam trimming machine is introduced in evidence, and marked "Defendants' Exhibit 172".*]

Mr. WEBSTER. The petitioner objects to the introduction of any patents dated after the date of the filing of the petition herein.

Int. 92. Will you please give the number, date and name of patentee of the several patents contained in the volume which has just been offered in evidence as Defendants' Exhibit 172?

Ans. No. 540,438, June 4, 1895, Harris.

No. 542,813, July 16, 1895, Spencer.

No. 558,379, April 14, 1896, French and Meyer.

No. 558,380, April 14, 1896, French and Meyer.

No. 558,381, April 14, 1896, French and Meyer.

No. 559,414, April 28, 1896, Spencer.

No. 590,831, September 28, 1897, French and Meyer.

No. 788,796, May 2, 1905, Selby.

No. 877,036, January 21, 1908, Bates.

No. 939,498, November 9, 1909, Hawkins and Bourgeois.

No. 956,971, May 3, 1910, Johnson.

No. 1,049,462, January 7, 1913, Dow (application filed March 11, 1912).

Int. 93. In the list of machines given by you in your prior testimony (question No. 7) you referred to a machine, Goodyear Universal shank skiving machine, as put out by the United Shoe Machinery Company through its Goodyear department on February, 1899. State the function of such a machine and whether or not the mechanism embodied therein forms the subjects-matter of any Letters Patent of the United Company, and what improvements have been made, if any, by the United Shoe Machinery Company since 1899 in machines for skiving shanks. If such improvements form the subjects-matter of any Letters Patent of the United Shoe Machinery Company, state the patents, and state briefly the reasons for the adoption of such improvements.

SHANK REDUCING MACHINES FOR WELT WORK.

Ans. On all, or practically all, women's welt shoes, and on probably the majority of men's single-soled welt shoes, it is desired that the combined thickness of the welt and the out-sole in the shank shall be reduced at the edges of the sole on both sides. This result is, at the present time, usually secured by removing some of the stock at the edge of the out-sole in the shank under the channel lip formed during channeling operation. There is also used to a considerable extent a machine for obtaining this result by removing some of the material from the under side of the welt, that is, the face of the welt which engages the out-sole.

Some years before February, 1899, the Goodyear Shoe Machinery Company had supplied to shoe manufacturers a machine which skived, that is, removed, the stock from the flesh side of the sole before the sole was attached to the shoe. This machine was unsatisfactory, however, because the operator could only guess where he should begin and leave off the skiving operation, and when the sole was attached to the shoe it was frequently found that on one or both sides the thinner portion of the sole was either too long or too short to fit the shoe to which it was attached.

SKIVING MACHINE: GOODYEAR UNIVERSAL SHANK.

This led to the development by the Goodyear Shoe Machinery Company, before 1899, of a machine known as "Skiving Machine, Goodyear Universal Shank", which was adapted to trim off stock from the flesh side of the sole between the sole and the welt, after the sole had been cemented to the shoe preparatory to the out-seam stitching operation. This machine, which is illustrated on page 54 of Plaintiff's Exhibit 220, being the catalogue of the Goodyear Shoe Machinery Company of January 1, 1897, was the machine which was being put out by the Goodyear Company just prior to February, 1899, and which the United Company continued to put out after its formation.

That machine was constructed substantially as shown and described in patent No. 540,616, June 4, 1895, French and Meyer, and all of the eight claims of that patent define mechanisms embodied in this machine. Typical claims of this patent are the following: —

"1. In a shanking and feather edging machine, a cutter to feather edge the outer sole while on a last, a guide to hold the said cutter in a plane inclined with relation to the plane of the face of the outer sole combined with a four-motioned clamping feed, composed of a dog and an opposed member adapted to grasp said outer sole between them, the said dog working in the space between the inner side of the outer sole and the outer side of the inner sole substantially as described."

"4. The feed frame, a feed dog having its shank mounted in a guideway in said frame, and an opposed feeding member carried by said frame, combined with devices to move said frame and carry with it the said feeding dog and opposed feeding member, and to reciprocate said feeding dog independently on said frame to grasp and release the outer sole; a cutter; an interposed edge gage; and a movable spring supported carrier therefor, whereby the said edge gage may be moved to vary the quantity of the material removed from the edge of the outer sole while on the last, substantially as described."

SKIVING MACHINE: GOODYEAR SHANK WELT.

During the first few years after the oganization of the United Company it continued to put out the 1899 machine, Goodyear

Universal shank skiving machine, which had been the standard commercial machine of the Goodyear Company, but the operation of that machine was not satisfactory, because it was essential to its operation that it force apart the out-sole and the welt which had been cemented together in the sole-laying operation preparatory to the out-sole-stitching operation. With a view to producing a machine which would perform this shank-reducing operation in such manner that in the operation of the machine it would not be necessary to force apart the welt and the out-sole, the United Company proceeded with experimental work which had been begun by inventors of the Goodyear Company before the formation of the United Company. This experimental work resulted eventually in the production of a machine known as "Skiving Machine, Goodyear Shank Welt", which was first put out for commercial use in January, 1904, and which secured the desired reduction in the thickness of the combined welt and out-sole in the shank by reducing the thickness of the welt. The welt-skiving operation of this machine was performed after the welt had been secured to the shoe, but before the out-sole was stitched to the welt. A double advantage was secured over previous methods by the organization and mode of operation of this new machine. In the first place, the location of the skiving cut could be accurately determined with relation to each particular shoe, with assurance that the cut would be of just the right length for the particular shoe. In the second place, since the operation was performed before the out-sole was cemented to the shoe, the objectionable forcing apart of the out-sole and the welt which was necessary in the operation of the Universal shank skiving machine, the machine of 1899, was obviated. This new machine was so organized that the limit of operation of the trimming knife with relation to the inseam could be accurately adjusted, thus obviating any danger of injuring the inseam during the operation of the machine, and the inclination of the cut, that is, the amount of stock removed by the machine, could also be accurately determined by the adjustment. While the commercial machine is not shown in any granted patent, but is shown in the drawings and set forth in the claims of a pending application filed March 18,

1903, important mechanisms incorporated in the machine are defined in the claims of patent No. 620,205, February 28, 1899, Winkley, of which a typical claim is the first:—

"1. In a welt skiving machine, the combination with a feed roll and a combined work support and crease guide, of a skiving knife and knife supporting means, said knife supporting means having means for longitudinal, angular and vertical adjustment of the knife with reference to the combined work support and crease guide, substantially as described."

This machine, skiving machine, Goodyear shank welt, first put out in January, 1904, as has been stated, was immediately accepted by shoe manufacturers as a great advance over the Universal shank skiving machine, the machine of 1899, and the demand for the 1899 machine ceased immediately after the introduction of the new machine, which was put out in large numbers and was used on both men's and women's shoes.

REDUCING MACHINE: GOODYEAR OUTSOLE CHANNEL SHANK.

Many manufacturers of women's shoes desired, however, to reduce the combined thickness of the welt and the out-sole in the shank more than was practicable by removing the stock from the welt alone, and also some manufacturers desired to effect this reduction by removing stock from the sole alone, without skiving the welt at all. Accordingly, the United Company undertook the development of a machine by which the thickness of the sole could be reduced without the necessity of tearing away from the welt the cemented out-sole, which had been necessary in the operation of the machine used in 1899 for skiving the out-sole, as has been previously explained. As a result of experimental work looking to the production of such a machine, there was first put out for commercial use in April, 1909, a machine which was organized for removing stock from the out-sole under the channel flap. This machine is known as "Reducing Machine, Goodyear Outsole Channel Shank", and in its commercial form is shown and defined in the claims of pending applications filed March 18, 1903, and May 27, 1909, and some of the mechanisms embodied in the machine are defined in granted patents, of which one is No. 620,205,

February 28, 1899, Winkley, to which I have already referred in connection with the skiving machine, Goodyear shank welt.

Another patent which defines in its claims mechanisms embodied in this new machine of 1909 is No. 1,018,045, February 20, 1912, Goddu, granted on an application filed September 25, 1908. A typical claim of this patent is the tenth : —

"10. A shank trimming machine, having, in combination, a trimming knife adapted to trim off a portion of the edge of a shoe sole, a guide arranged to engage the channel of the outsole while on the shoe and means for adjusting the guide with relation to the knife, substantially as described."

Before this new machine was produced by the United Company and put into commercial use in April, 1909, no machine had ever before been used which was organized to remove stock from the out-sole of a shoe, and thereby thin the edge of the out-sole without tearing the out-sole away from the welt.

Both the shank welt skiving machine, introduced by the United Company in 1904, and the out-sole channel shank reducing machine, introduced by the United Company in 1909, are now being supplied to shoe manufactnrers according to their preferences, although the demand for the channel shank reducing machine is greater than the demand for the other machine. Some manufacturers of women's shoes use both machines, securing an extreme thinness in the shank of the sole by removing material both from the welt and from the sole.

Between January, 1904, and March 1, 1913, 344 of the shank welt skiving machines were put out; and between April, 1909, when the later machine was introduced, and March 1, 1913, 160 outsole channel shank reducing machines had been supplied to shoe manufacturers. The shank welt skiving machine has a capacity which enables it to operate upon the shoes the welts of which have been sewed on six welt-sewing machines, or one channel shank reducing machine will operate upon the product of five or six welt-sewing machines.

Both of those machines, skiving machine, Goodyear shank welt, and reducing machine, Goodyear outsole channel shank, are put

out by the United Shoe Machinery Company through its Goodyear department.

Mr. WEBSTER. The petitioner objects to the portion of the foregoing answer which makes reference to mechanisms not shown in patents issued prior to the filing of the petition herein.

Int. 94. Have you collected the patents referred by you in your last answer under a single cover?

Ans. Yes, sir; I produce a volume comprising those patents.

[*Patents relating to shank reducing machine for welt shoes is introduced in evidence, and marked "Defendants' Exhibit 173".*]

Mr. WEBSTER. The petitioner objects to the introduction in evidence of the patents issued after the date of the filing of the petition.

Int. 95. Will you please give the number, date and the name of patentee of the several Letters Patent in the volume which has just been offered in evidence as Defendants' Exhibit 173?

Ans. No. 540,616, June 4, 1895, French and Meyer.

No. 620,205, February 28, 1899, Winkley.

No. 1,018,045, February 20, 1912, Goddu (application filed September 25, 1908.)

WHEELING AND BURNISHING MACHINES.

Int. 96. In the list of machines submitted by you in your previous testimony (question No. 7) you referred to a machine, indenting and burnishing machine, Goodyear welt, and also to a machine, burnishing machine No. 2, Goodyear impression stitch. Please state the function of these machines, and if the mechanisms embodied therein form the subjects-matter of Letters Patent of the United Company, state the patents; also state the development in the art to which these machines relate, if any, made by the United Company since 1899. If, in answering this question, you refer to machines disclosed in Letters Patent, name the patent.

Mr. WEBSTER. The question is objected to for that it calls for matter in reference to which the petitioner has submitted no evidence, and therefore the matter called for is not in reply to, or in defence of, any matter presented by the petitioner.

Ans. The field for the two machines inquired about was created about 1905, by the introduction at that time of the new method of making welt shoes, which consisted in attaching the out-sole by a seam known as a "fudge stitch", as explained fully in my previous testimony relating to out-sole stitching machines. Prior to 1905, it was the usual practice to finish the upper face of the welt by indenting or separating the stitches on the Hadaway stitch-separating machine, but this machine was adapted particularly for use on shoes which had had their out-soles secured on the out-sole stitching machine by a seam which was exposed on the upper face of the welt, which was the way in which the shoes had been generally made prior to 1905. A shoe which has been operated upon by the stitch-separating machine is shown in Defendants' Exhibit 121. When, however, it became the more general practice to attach out-soles of welt shoes by the fudge stitch, that is, by forming a slit in the upper face of the welt and embedding the stitch of the out-seam in the slit, manufacturers no longer desired to use a stitch-separating machine on that class of work, but wished to finish the upper face of the welt by forming imitation stitch impressions in it, and then imparting a high finish to those imitation stitches by burnishing them. No machine was being supplied to shoe manufacturers in 1899 for performing the operation of stitch burnishing.

INDENTING AND BURNISHING MACHINE: GOODYEAR WELT.

To supply the demand from shoe manufacturers for a machine adapted for use under these new conditions of manufacture of welt shoes, the United Company developed, and first put out for commercial use in July, 1905, a machine known as the "Indenting and Burnishing Machine, Goodyear Welt". This machine was offered to manufacturers and was used to perform both the preliminary operation of "wheeling", that is, forming imitation stitch impressions on the upper face of the welt, and also the operation of burnishing these imitation stitch impressions after they had been formed. The machine was constructed substantially as shown in the drawings and described in the specifications of patent

No. 768,560, August 23, 1904, Casgrain, as modified by incorporating in the organization of that machine the mechanism shown and described in the claims of patent No. 906,705, December 15, 1908, Hadaway.

The majority of the twenty-five claims of patent No. 768,560 set forth mechanisms embodied in this machine. The general principle of operation of the machine is well set forth in the following typical claims of that patent: —

1. "In a machine of the class described, a leather working tool, and means for imparting to said tool while in contact with the stock a succession of rapid blows."

"8. In a machine of the class described, a stock support, a rotary tool to engage and travel over the face of the stock, and means to effect rapid relative movements of the stock support and tool toward and from each other to subject the stock to a succession of rapid blows."

The purpose of the improvements defined in the claims of patent No. 906,705, as well as the construction of the commercial machine embodying this improvement, is well set forth in the claims of that patent, of which a typical claim is the first: —

"1. A stitch indenting tool, having a grooved working face the surfaces of which are substantially plane and continuous throughout the working face of the tool and which are curved upwardly at their outer ends to prevent this portion of the working face from marring the work when the remaining portion is forced below the surface of the work, substantially as described."

The mechanism embodied in the organization of this machine which provided for presentation to the action of the tool of sole edges of widely varying classes and styles of work, is defined in claim 4 of patent No. 690,422, January 7, 1902, Hadaway. This claim is as follows: —

"4. A stitch separating machine, having, in combination, an indenting tool and actuating means therefor, a slide, a work support mounted thereon arranged to engage the bottom of a shoe sole, and means for adjusting the work support on said slide to vary the angle of inclination of the sole engaging surface, substantially as described."

For some few years after this machine, the indenting and bur-

nishing machine, Goodyear welt, was first put out it was used to perform both operations required for finishing the fudge stitched shoes; first, wheeling, that is, the making of the imitation stitch impressions, and, secondly, the burnishing of those stitch impressions. The machine was very successful in the performance of the first operation, but it was not satisfactory as a stitch-burnishing machine.

BURNISHING MACHINE, NO. 2: GOODYEAR IMPRESSION STITCH.

After the acquisition of the patents of Booth Brothers, the United Company adopted as its commercial stitch-burnishing machine the machine which had previously been put out by Booth Brothers, and then put out its first machine, that is, the indenting and burnishing machine, primarily as a wheeling machine, so that after that time the United Company's customers were supplied with the indenting and burnishing machine for wheeling, and with the Booth machine, known as "Burnishing Machine No. 2, Goodyear Impression Stitch (Booth)", for burnishing the stitches.

The superiority of the Booth machine for the stitch-burnishing operation was due largely to the fact that the stitch was burnished by a wheel shaped to fit the indentations previously made in the wheeling, which, while in contact with the stock, was reciprocated very rapidly longitudinally of the stitch impressions, thus burnishing and imparting a high finish to the upper face of the welt. The length of this reciprocating burnishing movement is about one-sixteenth of an inch, and as the machine imparts to the tool between 6000 and 7000 complete reciprocating movements a minute, each portion of the welt receives the benefit of a large number of these burnishing reciprocations. The result of the operation of this stitch-burnishing machine was shown in Defendants' Exhibits 109 and 110.

This present commercial stitch-burnishing machine of the United Company is shown in drawings and set forth in all of the thirty-nine claims of patent No. 845,939, March 5, 1907, Flynt. A typical claim of this patent is the eighth: —

"8. In a machine of the character described, a burnishing tool

formed to engage indentations arranged transversely at the edges of the stock, and means for imparting rapid polishing movements to said tool in a direction substantially lengthwise of the indentations."

In adopting this Booth burnishing machine the United Company improved its operation by embodying in it an invention previously used in the Goodyear welt indenting and burnishing machine, which is defined in three of the claims of patent No. 906,705, December 15, 1908, Hadaway, from which I have already quoted a typical claim in the portion of my testimony relating to the Goodyear welt indenting and burnishing machine.

To protect the upper from injury by transmission of heat from the tool to the upper, of which there was danger in the operation of the machine, since the burnishing tool has to be heated, usually by a gas flame, the machine was provided with the mechanism set forth in all of the 15 claims of patent No. 1,005,185, October 10, 1911, Flynt.

Both of these machines, Goodyear welt indenting and burnishing machine and burnishing machine No. 2, Goodyear impression stitch, are put out by the United Company through its Goodyear department for welt work, and through its general department to a comparatively small extent for use on McKay sewed shoes. Nineteen hundred and fifty-three of the welt indenting and burnishing machines had been put out between the date of its introduction in 1905 and March 1, 1913, while since the adoption of the Booth stitch-burnishing machine 519 of those machines have been put out.

Int. 97. Have you collected in a single cover the several patents referred to by you in your last answer as relating to wheeling and burnishing machines? If so, will you please produce such volume?

Ans. I have, and I produce the volume.

[*Volume of patents relating to wheeling and burnishing machines is offered in evidence, and marked "Defendants' Exhibit 174".*]

Int. 98. Please give the number, date and name of patentee of the several patents contained in the volume which has just been offered in evidence as Defendants' Exhibit 174.

Ans. No. 690,422, January 7, 1902, Hadaway.
No. 768,560, August 23, 1904, Casgrain.
No. 845,939, March 5, 1907, Flynt.
No. 906,705, December 15, 1908, Hadaway.
No. 1,005,185, October 10, 1911, Flynt.

Int. 99. After the operation of the lasting machine is the shoe then in condition to have the welt attached thereto by the operation of the welt-sewing machine? If not, what operation or operations had to be performed according to the method of manufacturing shoes in 1899? If any such operations were necessary in 1899, state what has been done by the United Company to provide shoe manufacturers with machines for performing such operations. If such machines form the subjects-matter of any Letters Patent of the United Company, refer to such patents. If, in answering this question, you have occasion to refer to any prior machines disclosed in the United Company's Letters Patent, please refer to such patents. If the United Company has developed any new methods or machines which rendered unnecessary any of such operations, describe such methods and machines, and if they form the subjects-matter of Letters Patent of the United Company, state the patents.

Mr. WEBSTER. The question is objected to for that it calls for matter not referred to in evidence presented by the petitioner, and because the same is not in reply to, or in defence of, any matter presented by the petitioner.

UPPER TRIMMING AND TACK PULLING MACHINES.

Ans. Immediately after the lasting operation a shoe has projecting outwardly around its bottom a bunch of stock comprising the upper leather and lining, and at the toe the edge of the box toe, if a box toe is used. This projecting stock is liable to interfere with the operation of the looper and the thread arm on the welt sewing machine in the subsequent operation of sewing the welt and upper to the insole. Accordingly this sulplus material must be trimmed off before the welt-sewing operation.

A lasted shoe, illustrating the condition in which the shoe is left

after the lasting operation, and illustrating the bunch of excess material at the toe to which I have referred, is shown in Defendants' Exhibit 149. Furthermore, the heavy lasting tacks which are inserted during the lasting operation to hold the upper in lasted condition, and which are also shown in Defendants' Exhibit No. 149, must be removed before the welt-sewing operation, as these tacks are liable to be broken by the needle of the welter, since they extend across the path of the needle, being driven into the bottom of the last; or, if the needle strikes a lasting tack squarely the needle will almost always be broken, resulting in a heavy expense in replacing needles. The removal of the lasting tacks is further desirable in view of the danger of breaking the thread of the inseam by stranding it on a lasting tack. Accordingly, it is the general practice to remove the lasting tacks before the welt-sewing operation.

TRIMMING MACHINE — MODEL A: REX UPPER.

As to the first of the operations to which I have referred, that is, the trimming off of the surplus upper stock to prepare the shoe for the operation of the welter, that operation was, prior to 1899, always performed by hand by the use of a hand knife. The United Company soon after its formation undertook to develop a machine for performing this upper-trimming operation, always before performed by hand, as I have stated. As a result of the experimental work of its inventors two entirely different types of machines were produced. The one which was first developed into commercial condition was that which is now known as "Trimming Machine, Model A, Rex Upper", and the first machine of this type was put into commercial use in December, 1905. The machine as commercially used was constructed substantially as shown in patent No. 961,200, June 14, 1910, Ashton.

One of the most serious problems which had to be dealt with in providing a machine for doing this work was the necessity for gathering the irregularly located and wrinkled stock into proper position for the operation of the cutting means. Substantial progress toward the solution of this problem was made by the improve-

ment of this Ashton patent No. 961,200, of which a typical claim is the following: —

"1. A vamp trimming machine, having, in combination, vamp trimming means arranged to trim the projecting edges of the vamp and lining of a lasted shoe, and a guiding roll located in close proximity to the trimming means and arranged to extend inside of the vamp and lining of a lasted shoe and direct the vamp and lining to the trimming means."

TRIMMING MACHINE — MODEL H: REX UPPER.

While, as I have stated, the machine shown in this patent No. 961,200, and defined in all of its sixty-eight claims, was the first machine to be put into commercial use, and while the machine was in general use for some two years and represented a substantial advance in the industry, and substantial progress towards the production of the satisfactory commercial machine which is now being put out by the United Company, the other inventor to whom I have referred, Hadaway, whose experimental work antedated Ashton's, was in the meantime developing a machine which ultimately proved to be a much more satisfactory machine for performing this operation. Hadaway had found, early in his experimental work, that there was danger that the plaited portion of the upper stock around the toe would not be properly trimmed, first because this stock flared outward, as is shown in Defendants' Exhibit 8, so that means must be provided for straightening up this flaring stock and presenting it in proper position for the action of the knife; and secondly, because there was liability of the folds of the upper stock working backwardly during successive operations of the knife so that it would not be trimmed at all. A weakness of the machine of the Ashton patent No. 961,200 was that the lining of the upper, which it is important to trim at this operation, was not always presented properly for the operation of the knife. As the result of Hadaway's experimenting, extending through a period of several years, he finally produced a successful machine, the organization of which provided for all of the difficulties to which I have referred. This machine was adopted as the standard commercial machine of the United Company in June, 1908, and it then superseded the model A

machine of the Ashton patent No. 961,200. The new machine is officially known as "Trimming Machine, Model H, Rex Upper". This new machine, as it has been put out for commercial use since its adoption in 1908, is constructed substantially as shown in patent No. 922,697, May 25, 1909, Hadaway. All of the thirty-nine claims of that patent define the organization of this new upper trimming machine. Typical claims which indicate in a general way Hadaway's solution of the problems which I have enumerated are the following: —

"6. A vamp trimming machine, having, in combination, a trimming knife for trimming the edge of the vamp and means for bending the edge of the vamp inwardly toward the medial line of the shoe into position to be acted upon by the trimming knife."

"13. A vamp trimming machine, having, in combination, vamp trimming knives, a frusto conical roll provided upon its peripheral surface with spiral ribs arranged to exert an outward wiping action on the shoe lining in proximity to the trimming knives, and means for rotating the roll."

"30. A vamp trimming machine, having, in combination, vamp trimming knives, and means acting on the projecting edge of the vamp of a lasted shoe in proximity to the knives to bend the vamp inwardly and force the bent-in portion relatively to the shoe in the direction of feed."

This new upper-trimming machine also embodied the guiding roll which was a characteristic feature of the machine of the Ashton patent No. 961,200, and a typical claim setting forth in broad terms this feature of the organization of both the Ashton machine and the Hadaway machine is the first claim of the Ashton patent No. 961,200, which has already been quoted.

The new model H upper-trimming machine also embodied in its organization improvements made by Hadaway at various stages of his experimental work, which are defined in broad terms in other Hadaway patents, No. 968,553, August 30, 1910, Hadaway, and 968,554, August 30, 1910, Hadaway. A typical claim of the first of these patents is the following: —

"11. A vamp trimming machine, having, in combination, a vamp trimming knife, a knife co-operating therewith arranged to extend inside of the vamp of a lasted shoe, and a guide separate from the knives, arranged to bear on the sole inside of the lip and raise the

vamp and direct it between the cutting edges of the knives, substantially as described."

A typical claim of patent No. 968,554 is the following: —

"8. A vamp trimming machine, having, in combination, a trimming knife for trimming the edge of the vamp, a co-operating knife arranged to extend inside of the vamp of the lasted shoe, and means acting on the vamp in front of said co-operating knife to raise the vamp and direct it between the cutting edges of the knives."

Four hundred and twenty-nine of the present commercial upper trimming machines, known as "Trimming Machine, Model H, Rex Upper", have been put out by the United Company through its pulling over department. One of these machines will easily take care of as many shoes as are welted upon four or five welt-sewing machines.

PULLING AND RESETTING MACHINE: GOODYEAR TACK.

Referring now to the other operation which, as was stated in the early part of my answer to this question, has to be performed after the operation of the lasting machine before the shoe is in condition to have the welt attached to it by the welt-sewing machine, it is the general practice to remove the lasting tacks which are inserted during the lasting operation to hold the upper in lasted condition. As has been explained, these lasting tacks, if allowed to remain in the shoe, cause prohibitive expense through breakage of needles on the welting machine, as well as for other important reasons.

It is important, however, that after the lasting tacks are removed the upper shall be retained in lasted position until the welt and the upper are together secured to the insole in the welt-attaching operation. It was accordingly the general practice, up to two or three years ago, and is still the practice in some factories, to insert lighter tacks known as "stay tacks" at the time the lasting tacks are pulled, to hold the upper in lasted position during the welting operation, that is, until the upper is permanently secured to the insole. Prior to February, 1899, there was no commercial machine for pulling the lasting tacks which had any provision for inserting any kind of fastening to hold the upper properly in lasted

condition after the lasting tacks had been pulled. The inventors of the Goodyear Shoe Machinery Company had done some experimental work with a view to producing such a machine, but the experimental machine had not reached a commercial condition in February, 1899. After the organization of the United Company, its inventors continued the experimental work which had been begun by the Goodyear Company, and beginning with the first experimental machine which is shown in patent No. 864,532, August 27, 1907, Hadaway, granted on an application filed November 6, 1899, a number of experimental machines were built in succession in the progress toward a satisfactory commercial machine. It proved a serious problem to organize a machine which would first pull the lasting tacks properly and pull them in such a manner as not to throw them all over the factory; and secondly, insert the stay tacks properly; and thirdly, insert the stay tacks only when and where desired by the operator. . However, after experimental work extending over a period of some ten years, there was produced and put into commercial use in November, 1910, a satisfactory commercial machine for pulling the lasting tacks and for inserting a less number of stay tacks to hold the upper for the welting operation. The commercial machine which is known as "Pulling and Resetting Machine, Goodyear Tack" is constructed substantially as shown in patent No. 1,049,474, January 7, 1913, Hadaway (application filed April 8, 1911). Although the specific construction of the stay tack-driving mechanism is not disclosed in any patent which has as yet been granted, the specific construction of the tack-pulling mechanism is constructed as shown in the drawings of patent No. 1,013,944, January 9, 1912, MacKenzie (application filed April 8, 1911).

The general organization of this tack pulling and resetting machine is set forth in broad terms in the claims of the first patent to which reference was made in discussing this machine, No. 864,532, August 27, 1907, Hadaway, of which typical claims are the following: —

"25. In a machine for preparing shoes for sewing, the combination with a tack pulling tool, of a downhold bearing against the

edge of the upper inside and adjacent to the line of tacks to be pulled, substantially as described.

"26. In a machine for preparing shoes for sewing, the combination with tack pulling mechanism for pulling lasting tacks and tack driving mechanism for driving holding tacks, of means for holding the upper of the shoe in position while the lasting tacks are being pulled and until the holding tacks are driven, substantially as described."

"38. A machine for operating on lasted shoes, comprising the combination with automatic means for withdrawing the lasting tacks, of means for driving stay tacks at will while removing said lasting tacks."

An important feature of the organization of the tack-pulling mechanism of this machine is claim 4 of patent No. 746,306, December 8, 1903, Eaton, which is as follows: —

"4. In a tack pulling machine, the combination of a movable tack puller and a guard or foot provided with an abutment arranged transversely to the line of movement of said tack puller and against which the tacks are held, substantially as described."

The organization enabling the tack-pulling mechanism of the machine to pull the lasting tacks of varying diameters is defined in the claim of patent No. 960,294, June 7, 1910, Eppler. A typical claim of this patent is the first: —

"1. A tack pulling machine, having, in combination, a tack pulling jaw, a jaw co-operating therewith, mechanism acting independently of the tacks for relatively actuating the jaws to engage and pull a tack and yielding means to permit the jaws to accommodate themselves to tacks of different diameters."

The general organization of the tack-driving mechanism with relation to the tack-pulling mechanisms which insured the proper location and positioning of the stay tacks is defined in claims of patent No. 1,049,474, January 7, 1913, Hadaway, granted on an application filed April 8, 1911, and of the many claims of this patent directed to this general organization, a typical claim is the first: —

"1. A tack pulling and resetting machine having, in combination, a tack pulling tool, a tack driving plunger adjacent thereto, the tack pulling tool and the tack driving plunger having tack pulling and tack driving movements respectively lying in planes

inclined to one another and extending in the direction of feed, and means co-operating with the plunger to deflect the course of the tack into a plane substantially parallel to the plane of the tack pulling movement."

The stay tack-driving mechanism illustrated in this Hadaway patent No. 1,049,474 was also improved upon by mechanism which is not as yet shown in any granted patent in the form in which it is embodied in the commercial machine. Patent No. 1,049,474 also contains claims to the general organization of the tack-pulling mechanism finally adopted in the commercial machine. A typical claim of this patent directed to this organization is the sixth: —

"6. A tack pulling and resetting machine comprising a jaw supporting arm, a crank directly connected to one end of the arm, an oscillatory supporting link pivotally connected to the arm intermediate its ends, a tack pulling jaw depending from the free end of the arm and having its tack engaging end directed toward the crank, and means for rotating the crank in a direction to cause the jaw to move forward over a tack and pull the tack on its backward stroke."

Further improvements which were made in the progress of this machine toward commercial success are defined in the claims of patent No. 1,011,773, December 12, 1911, Hadaway, granted on an application filed September 9, 1905. Typical claims of this patent are the following: —

"1. A tack pulling machine, having, in combination, a tack pulling device, means for actuating said device to engage a projecting lasting tack and remove the tack from the shoe, and means engaging the upper on opposite sides of the tack constructed and arranged to guide the tack transversely to the plane of movement of the tack pulling device into position to be acted upon by the tack pulling device."

"11. A tack pulling machine, having in combination, a tack pulling device, a stationary ejecting device for removing a tack from the tack pulling device, and means for actuating the tack pulling device to remove a projecting lasting tack from a shoe and bring the tack into engagement with the ejecting device."

Stapling Machine: Goodyear Upper.

The United Company also put out another machine for removing lasting tacks from welt shoes, which was first supplied to man-

ufacturers in November, 1912. This machine, however, was especially devised for use in connection with a machine known as "Stapling Machine, Goodyear Upper", which machine does away with the necessity for inserting stay tacks. In order that the discussion of tack-pulling machines may be complete, it will be necessary to explain briefly the purpose of this upper-stapling machine and the field which it occupies.

This upper-stapling machine, introduced in April, 1911, performed for the first time in the industry the operation of securing the lasted upper in position for the welting operation by driving a staple of soft, fine wire through the upper, lining and channel lip or rib, locating this staple just above the path of the needle of the welting machine in the subsequent welting operation, and just below the path of the knife of the inseam trimming machine in the subsequent inseam trimming operation. I produce a partially made shoe which has been operated upon by this upper-stapling machine, and to which a welt has been sewed on one side. The wire of which the staples are made is so fine that it is somewhat difficult to find the staples which have been inserted, although their clinched points can be seen inside of the outer lip of the insole, and the heads of one or two of the staples are visible on the outside of the upper.

[*Shoe having upper secured by stapling machine, Goodyear upper, is introduced in evidence, and marked "Defendants' Exhibit 175".*]

This upper stapling machine as first put out was constructed substantially as shown in patent No. 1,011,592, December 12, 1911, Drey (application filed October 3, 1910). Typical claims of this patent are the following: —

"9. A machine of the class described having, in combination, staple forming and inserting means arranged to insert a staple through the upper and insole channel lip of a lasted shoe while these parts are in their original lasted condition, and means constructed and arranged to enter into the angle of union between the feather of the insole and the channel lip for forcing the upper into said angle in advance of the staple inserting operation."

"13. A machine of the class described having, in combination,

fastening inserting means constructed and arranged to insert a fastening through the upper and insole channel lip of a lasted shoe, and means for forcing the upper into the angle of union between the channel lip and the feather of the insole before the fastening inserting operation begins, constructed to guide the fastening during the fastening inserting operation in such manner that it is inserted through the upper and channel lip above the path of operation of the needle of the welter."

The method which is practiced in the manufacture of shoes, comprising as a step the insertion of staples by this upper-stapling machine, is defined in all of the ten claims of patent No. 1,023,555, April 16, 1912, Drey (application filed October 3, 1910), of which claims the first is typical: —

"1. That improvement in the art of making shoes which consists in lasting the upper over the edge of the sole and securing it in lasted position by temporary fastening means, permanently uniting the upper and the sole by inserting individual fastenings through the upper and channel lip of the sole while the shoe is in its original lasted condition, removing the temporary fastening means, and then uniting the upper and sole with stitches."

The shoe, which is produced by the method defined in the claims of patent No. 1,023,555, and in the manufacture of which this upper-stapling machine is used, is defined in all of the eight claims of patent No. 1,068,867, July 29, 1913, Drey (application filed December 13, 1910). A typical claim of this patent is the eighth:

"8. A shoe, comprising an upper and an insole, staples of fine wire attaching said upper to said insole, a welt attached to said upper and insole by stitches which also serve to unite the upper and insole, said staples being located inside the inseam trimming line and having their outer ends covered by the welt and their inner ends covered by the inner channel lip."

Stapling Machine — Model B: Goodyear Upper.

In the operation of the upper-stapling machine, as first put out, the workmen would sometimes, through carelessness, so operate the machine that a staple was not fully driven. To make the machine proof against improper operation through carelessness, and to incorporate other improvements which had been devised for the machine, it was reorganized and a new type of machine known as

"Stapling Machine, Model B, Goodyear Upper", was adopted on November 21, 1911. This reorganized machine embodies improvements defined in all of the seven claims of patent No. 1,059,984, April 29, 1913, Erickson and Cosgrove (application filed October 10, 1912), which shows the machine substantially as put out at the present time. A typical claim of this patent is the following:—

"1. A machine for attaching an upper to the channel lip or rib or shoulder of a sole, comprising, in combination, automatic staple inserting means, automatic staple forming means organized to form a staple after the operation of the inserting means and during the same cycle of operations of the machine, and to stop with the staple held in position to be acted upon by said inserting means during the next cycle of operation of the machine, means for pressing together the parts to be united and manually controlled means connected to said pressing means to operate said pressing means and having provision for further movement, after said pressing means has been operated, to actuate said automatic inserting means to cause said inserting means to drive the staple which has previously been formed by and is held in said forming means."

This reorganized machine adopted in November, 1911, as already stated, embodies further improvements, on which patents have not as yet been granted.

This upper-stapling machine, which performs an operation never before performed in the manufacture of shoes either by hand or by machine, affords shoe manufacturers several important practical advantages.

First, by the use of the machine a substantial saving is effected through avoidance of breakage of welter needles, which was caused frequently, usually a number of times every day, in the operation of each welt-sewing machine by the striking of the needle against a stay tack.

Second, since the staples are of fine wire and are not visible in the finished shoe, it is not necessary to remove them, and, in fact, it is desirable to leave them in the shoe, as they reinforce the inseam. Accordingly, the operation of pulling stay tacks is rendered unnecessary by the operation of the machine, effecting a saving to the manufacturer of the cost of the operation of pulling stay tacks.

Third, since the staples are inserted before the lasting tacks are pulled, there is no opportunity for the upper to slip out of position. In the method of manufacturing shoes generally followed prior to the introduction of this upper-stapling machine, it was the usual practice to allow shoes to stand for twenty-four hours after they had been lasted before pulling the lasting tacks, in order that the upper might become "set", to avoid slipping back of the upper and undoing to that extent of the lasting operation when the lasting tacks were pulled and the stay tacks inserted. When the upper-stapling machine is used it is not necessary to wait until the upper is "set", because the staples are inserted before the lasting tacks are drawn, and effectively hold the upper so that the lasting tacks can immediately be pulled without any delay after the lasting operation. As the shoe can immediately be welted after the lasting and stapling operation, there is a saving in the average shoe factory of at least twenty-four hours of the time formerly required in the manufacture of the shoe, which, among other advantages, increases substantially the efficiency of the manufacturer's supply of lasts.

By way of concrete illustration of the benefits derived by the manufacturer from the use of the Goodyear upper-stapling machine, in one factory where about 3000 pairs of shoes are made every day, and which is fully equipped with the upper-stapling machines, the saving which has been, and is now being, effected by the use of this machine, due chiefly to preventing the breakage of welter needles, to dispensing with the operation of pulling stay tacks and to saving of time and labor, amounts to from twenty dollars to thirty dollars per day.

Pulling Machine: Goodyear Upper Tack.

Since when the Goodyear upper-stapling machine is used there are no stay tacks to be pulled, the only tack-pulling operation which is needed is the pulling of the lasting tacks, and the United Company has developed, and supplies to manufacturers for use in connection with the upper stapling machine, a machine known as the "Pulling Machine, Goodyear Upper Tack", which comprises sub-

stantially the same tack-pulling organization as the pulling and resetting machine, Goodyear tack, which has been discussed in an earlier portion of this answer. All of the claims which have been referred to in connection with patents defining the organization of the tack-pulling and resetting machine, which are directed to the tack-pulling mechanism of that machine, define mechanisms which are embodied in this machine, pulling machine, Goodyear upper tack. Those patents are:—

No. 746,306, December 8, 1903, Eaton.

No. 960,294, June 7, 1910, Eppler.

No. 1,011,773, December 12, 1911, Hadaway (application filed September 9, 1905).

No. 1,013,944, January 9, 1912, MacKenzie (application filed April 8, 1911).

No. 1,049,474, January 7, 1913, Hadaway (application filed April 8, 1911).

The organization of this machine also is broadly defined in claim 25 of patent No. 864,532, August 27, 1907, Hadaway, as follows:—

"25. In a machine for preparing shoes for sewing, the combination with a tack pulling tool, of a downhold bearing against the edge of the upper inside and adjacent to the line of tacks to be pulled, substantially as described."

Of the machines which I have been discussing, the company had put out, up to March 1, 1913, the end of the company's last fiscal year, 123 pulling and resetting machines, Goodyear tack, and 156 of the stapling machines, Goodyear upper. Two of the upper-stapling machines have an average capacity equal to that of five or six welt-sewing machines.

Pulling Machine: Goodyear Insole Tack.

Another tack-pulling operation must be performed upon the shoe before the out-sole can be attached. In the manufacture of probably all welt shoes which are made the insole is secured to the last before the assembling and pulling over operations, which precede the lasting operation, by means of tacks which must be pulled before the out-sole is attached. Such tacks are shown in many

of the defendants' exhibits, of which one is Defendants' Exhibit No. 7.

At the same time that these insole tacks are removed from the shoe, stay tacks, if any were inserted when the lasting tacks were removed, must also be pulled.

Prior to February, 1899, there was no commercial machine offered to shoe manufacturers for performing either of these operations, that is, the pulling of insole tacks or the pulling of stay tacks, and it was at that time the universal practice to remove insole and stay tacks by hand tools.

In 1904 the inventors of the United Company began experimental work with a view to producing a machine for pulling insole and stay tacks. The production of a machine for performing these operations presented serious problems because the insole tacks are driven with their heads either flush with the face of the insole or imbedded below the surface and their points are driven well into the last. The pulling of the stay tacks also presented an entirely different problem from that of pulling lasting tacks, because while the lasting tacks are, in the lasting operation, always inserted with their heads projecting around the shank and forepart of a welt shoe, so that the tool of a lasting tack-pulling machine can readily get under the heads of the tacks, the welt is attached to the shoe after the stay tacks have been driven, and at the time when the stay tacks are to be removed their heads are often flush with, or below, the adjacent edge of the welt. Accordingly, a machine for pulling stay tacks must be so organized that the tack-removing tool can dig down below the projecting edge of the welt to get under the head of the stay tack, while at the same time the operation must be so performed as to avoid any liability of damaging the inseam or the welt.

The United Company's inventors were at work on these problems for some five years. After this long period of experimenting there was finally produced in February, 1909, a commercial machine which embodied the better part of the various improvements which had been made in a number of experimental machines which had been built from time to time during the experimentnl period.

This machine was known as "Pulling Machine, Goodyear Insole Tack". Although the machine was put into commercial use, as stated, in February, 1909, it had not even then reached its final commercial form as it is now put out, and several different types of tools for pulling both the insole tacks and the stay tacks were used on the machine, in turn, for more than a year. As finally put out the machine in its ultimate commercial form, and as it is now being put out, embodies mechanisms defined in the claims of a number of patents. Both the insole tack-pulling tool and the stay tack-pulling tool in all forms in which the tools have been used since the machine was first put out in February, 1909, embody an improvement defined in reissue patent No. 13,581, June 24, 1913, Miller (original patent 897,003, August 25, 1908). Claim 2 of this reissue patent is as follows: —

"2. In a tack pulling machine for lasted shoes, the combination of a rotary shaft, a wheel on said shaft having a circumferentially grooved periphery, and an extract or blade on said wheel extending crosswise of its periphery, for the purpose set forth."

An important characteristic of the insole tack-pulling mechanism is defined in the claims of patent No. 968,755, August 30, 1910, Eppler, of which a typical claim is the fifteenth: —

"15. A machine for pulling insole tacks from a lasted shoe, having, in combination, a tack pulling tool provided with a working end shaped to dig into the sole of a shoe and pass beneath the head of a tack, mechanism for actuating the tool to dig into the sole and engage a tack and pull the tack from the shoe, and means for securing the proper presentation of the shoe to the tool."

Passing over several patents defining in their claims forms of tack-pulling tools which were used for a while and then superseded, the insole tack-pulling mechanism as finally adopted and now used in the commercial machine is defined in the claims of patent No. 995,670, June 20, 1911, Hadaway, of which typical claims are the first and fourth: —

"1. A rotary tack pulling tool, having, in combination, a puller provided with a transverse tack pulling edge and an eccentric periphery back of said edge, a guard flange at one side of the puller, and means permitting adjustment of the puller across the axis of rotation of the tool, substantially as described."

"4. A rotary tack pulling tool, having, in combination, a puller provided with a transverse tack pulling edge and an eccentric periphery back of said edge, and a guard flange at one side of the puller provided with an opening for the ejectment of waste materials, said opening having its end at the heel of the puller beveled outwardly to assist the materials in passing out, substantially as described."

In patent No. 1,016,328, February 6, 1912, Hadaway (application filed April 14, 1909), which disclosed an insole tack-pulling tool used only experimentally, is a claim which defines an improvement embodied in the commercial insole tool, as follows: —

"9. A tack pulling machine, having, in combination, a tack pulling tool provided with a blade extending crosswise of its periphery and having a convex edge adapted to dig under the head of a sole tack, and a work supporting guard, substantially as described."

The commercial form of said tack puller is shown in the drawings of patent No. 1,028,455, June 4, 1912, Hadaway (application filed February 23, 1910), and defined in all of the five claims of that patent. Typical claims which indicate the problems which had to be solved in the production of a commercially satisfactory stay tack-pulling device, and also indicating the solution of the problems in the commercial machine, are the first and second, which are as follows: —

"1. A rotary tack pulling tool provided with one or more tack pulling blades, and guard flanges projecting beyond their working edges between which the inseam is fed longitudinally, substantially as described.

"2. A rotary tack pulling tool provided with tack pulling blades, guard flanges on opposite sides of the blades projecting beyond their working edges between which the inseam is fed longitudinally, and an intermediate flange to press on the inseam beyond which the working edges of the blades project, substantially as described."

This machine is put out by the United Company through its Goodyear Department, and at the end of the company's last fiscal year, March 1, 1913, there had been put out, since the introduction of the machine in 1909, 318 of these machines, pulling machine, Goodyear insole tack. One of these machines will take care of the output of five or six welting machines when the machine is used to pull both the insole and stay tacks. In factories where the Good-

year upper-stapling machine is used, so that there are no stay tacks to be pulled, this insole tack-pulling machine will remove the insole tacks from shoes which have been welted on a larger number of welt-sewing machines.

PULLING AND TRIMMING MACHINE: INSOLE TACK AND TURN SHOE.

The machines which have heretofore been discussed in this answer were devised and are adapted particularly for use on welt shoes. After these machines had been developed into commercial form and were being supplied to manufacturers, the inventors of the United Company directed their attention to the development of a machine for pulling lasting tacks from turn shoes. The lasting tacks on turn shoes present different problems for a machine from the lasting tacks of welt shoes. In the first place, in the lasting of turn shoes the lasting tacks must not be driven through the sole, since, if they were, the tacks would pass out of the sole on the grain side, forming holes in the grain side of the sole, which would deface it and seriously impair the appearance and salability of the finished shoe. Also, a much lighter lasting tack is used, lighter even than the stay tacks which were formerly, and are still to some extent, inserted in welt shoes after the pulling of the lasting tacks.

The first commercial machine ever produced, so far as I know, for the pulling of lasting tacks from turn shoes was put out by the United Company on December 6, 1911, being known officially as "Pulling and Trimming Machine, Insole Tack and Turn Shoe". The lasting tack-pulling mechanism of this machine is shown in the drawings, described in the specifications and defined in the four claims of patent No. 931,946, August 24, 1909, Miller. Typical claims of this patent are the following:—

"1. A rotary tack pulling wheel provided with a peripheral groove, with a tack pulling blade extending across said groove, and with a recess to admit a tack fed transversely to the wheel into the path of the blade."

"3. A rotary tack pulling wheel provided with a spiral groove on its periphery and with a plurality of tack pulling blades extending across said groove."

In addition to this patent No. 931,946 several of the patents which have been referred to in connection with pulling machine, Goodyear insole tack, contain claims defining mechanisms embodied in this machine for pulling lasting tacks of turn shoes. These patents are:

Reissue No. 13,581, June 24, 1913 (original patent No. 897,003, August 25, 1908), Miller.

No. 968,755, August 30, 1910, Eppler.

No. 995,670, June 20, 1911, Hadaway.

No. 1,016,328, February 6, 1912, Hadaway (application filed April 14, 1909).

Of the machines which have been discussed in the foregoing answer, the following machines are put out by the United Company through its pulling over department:—

"Trimming Machine, Model A, Rex Upper", superseded by

"Trimming Machine, Model H, Rex Upper",

while the other machines discussed are put out by the United Company through its Goodyear department, namely:—

"Pulling and Resetting Machine, Goodyear Tack";

"Stapling Machine, Goodyear Upper", superseded by

"Stapling Machine, Model B, Goodyear Upper";

"Pulling Machine, Goodyear Upper Tack";

"Pulling Machine, Goodyear Insole Tack";

"Pulling and Trimming Machine, Insole Tack and Turn Shoe".

Mr. WEBSTER. The answer is objected to because the same relates to matters in reference to which no evidence has been introduced by the petitioner, and therefore the answer relates to matter which is inadmissible, incompetent and irrelevant as to any of the issues involved herein. The answer is further objected to because it does not relate to matters in reply to, or in defence of, evidence introduced before the examiner by the petitioner. The petitioner further objects to the answer in so far as it relates to mechanisms not shown in patents and referred to in the claims of such patents as were issued prior to the filing of the petition herein.

Int. 100. Have you collected under one cover the patents referred

to by you in your last answer as relating to upper trimming and tack-pulling machines?

Ans. I have.

Int. 101. Will you please produce it?

Ans. I produce a volume comprising all of the patents mentioned by me in my testimony relating to upper trimming and tack-pulling machines.

[*Volume of patents relating to upper trimming and tack-pulling machines is introduced in evidence, and marked "Defendants' Exhibit 176".*]

Mr. WEBSTER. The petitioner objects to the introduction as exhibits of all patents issued after the date of the filing of the petition herein.

Int. 102. Will you please give the number, date and name of the patentee of the several patents contained in the volume which has just been introduced in evidence as Defendants' Exhibit 176?

Ans. No. 746,306, December 8, 1903, Eaton.

No. 864,532, August 27, 1907, Hadaway.

No. 897,003, August 25, 1908, Miller (reissued).

Reissue No. 13,581, June 24, 1913, Miller (original patent No. 897,003, August 25, 1908).

No. 922,697, May 25, 1909, Hadaway.

No. 931,946, August 24, 1909, Miller.

No. 960,294, June 7, 1910, Eppler.

No. 961,200, June 14, 1910, Ashton.

No. 968,553, August 30, 1910, Hadaway.

No. 968,554, August 30, 1910, Hadaway.

No. 968,755, August 30, 1910, Eppler.

No. 995,670, June 20, 1911, Hadaway.

No. 1,011,592, December 12, 1911, Drey (application filed October 3, 1910).

No. 1,011,773, December 12, 1911, Hadaway (application filed September 9, 1905).

No. 1,013,944, January 9, 1912, MacKenzie (application filed April 8, 1911).

No. 1,016,328, February 6, 1912, Hadaway (application filed April 14, 1909).

No. 1,023,555, April 16, 1912, Drey (application filed October 3, 1910).

No. 1,028,455, June 4, 1912, Hadaway (application filed February 23, 1910).

No. 1,049,474, January 7, 1913, Hadaway (application filed April 8, 1911).

No. 1,059,984, April 29, 1913, Erickson and Cosgrove (application filed October 10, 1912).

No. 1,068,867, July 29, 1913, Drey (application filed December 13, 1910).

[*Adjourned to 10* A. M. *Friday, October 17, 1913.*]

BOSTON, MASS., October 17, 1913.

Int. 103. To bring the unlasted upper of a shoe into its lasted position what operations, if any, are necessary besides the operation performed by the lasting machine which you have already described? If any further operations are necessary, please state what they are, how they were performed prior to 1899, and what, if anything, has been done by the United Company since 1899 to provide shoe manufacturers with machines for performing such operations. If such machines form the subjects-matter of Letters Patent of the United Company, state the patents.

Mr. WEBSTER. The question is objected to by counsel for the petitioner because of its calling for evidence or testimony in reference to matters which have not been touched upon in the evidence or testimony submitted by the petitioner and being in no sense in reply to, or in defence of, evidence of the petitioner.

PULLING OVER.

Ans. In the manufacture of practically all shoes it is necessary that the shoe be "pulled over" before it goes to the lasting machine. The operation of pulling over a shoe comprises pulling the upper over the last by means of grippers on each side of the forepart near the tip seam and at the toe, and securing the upper at

these points by tacks. Before the upper is secured the workman must carefully inspect the upper and assure himself that the "lines" of the upper are properly located on the last; that is, the tip seam must be straight and must at all points be at the proper distance from the end of the toe, and the lacing slit must not be pulled out of its proper position toward either side of the shoe. As this operation was performed just prior to February, 1899, it was exclusively a hand operation. In performing the operation the workman would first pull the upper at the toe by hand pincers and tack it at that point; then pull the upper on one side and fasten it there, pull the upper at the other side and fasten that portion of the upper, and next turn the shoe over to examine the tip seam and lacing slit to determine whether they were properly located. If the tip seam were not straight, or not properly located, as above explained, at the same distance at all points from the end of the toe, or if the upper were distorted so as to displace the lacing slit, he had to remove one or more, sometimes all, of the tacks which he had driven to secure the upper and try again, sometimes repeating this operation several times before the lines of the upper were properly located on the last. This operation is critical because it is at this time that the lines of the upper are permanently fixed.

It was the almost universal opinion in the industry prior to 1899, and, in fact, for several years after that date, that this operation of pulling over the shoe was the one operation in the manufacture of shoes which could never be performed by machine, owing to the necessity for adjusting the lines of the upper during the pulling-over operation. However, the Consolidated and McKay Lasting Machine Company had, some time prior to the formation of the United Shoe Machinery Company in February, 1899, undertaken to produce a pulling-over machine if it were possible to develop a machine which would perform the operation acceptably.

Postponing for later detailed discussion the problems which had to be dealt with in the production of a commercial pulling-over machine, I will now refer briefly to the successive steps in the experimental work toward the production of a pulling machine

which could be successfully used to perform this critical operation in the manufacture of shoes. The experimental work, begun by the Consolidated & McKay Lasting Machine Company, was taken up by the United Shoe Machinery Company immediately after its organization in February, 1899, and by September, 1899, a machine was produced, the third experimental machine which had been constructed, which was deemed worthy of a shoe factory trial. From that machine were prepared drawings of patent No. 633,777, December 11, 1900, McFeely. While the experimental use of this first machine of September, 1899, was sufficient to demonstrate that there was hope of producing a machine which would be commercially successful, the machine itself fell short of commercial success. Continuous experimental work was done upon the machine, and its next stage is represented by patent No. 950,701, March 1, 1910, McFeely (application filed October 31, 1901). A number of experimental machines constructed as shown in the drawings of this patent No. 950,701 were put out for shoe factory trials under commercial conditions. The lessons learned in the experimental use of these machines led to the development of the machine in its third stage, and in June, 1903, there was put out a machine constructed as shown in patent No. 1,029,387, June 11, 1912, McFeely (application filed March 28, 1903).

Pulling Over Machine — Model A: Rex.

When this machine was produced the pulling-over machine was, for the first time, an assured success. Up to this time, June, 1903, the ultimate success of the pulling-over machine had been problematical. All pulling-over machines put out by the United Company since June, 1903, have embodied practically all of the mechanisms set forth in the claims of this patent No. 1,029,387.

Referring now to some of the many serious problems which had to be dealt with in the development of a commercially pulling-over machine, probably the most important were, first, the provision of practical means for adjusting the upper on, and in relation to, the last, after the upper had been put under pulling strain, to properly locate the lines of the upper so that the tip seam would be straight

and would be located at all points at the same distance from the end of the toe, and to assure proper location for the lacing slit; and, secondly, the general problem of performing all of the machine's operations, the pulling of the upper, the adjusting of the upper while under strain, and the securing of the upper in properly adjusted condition in such manner and so quickly that it would be advantageous to use the machine instead of pulling over by hand.

The first of these problems was met, in the first commercially successful machine shown, as I have stated, in patent No. 1,029,387, June 11, 1912, McFeely (application filed March 28, 1903), by so organizing the machine that the two pairs of grippers which simultaneously pulled the upper on opposite sides adjacent to the tip seam could be quickly operated to adjust the upper in any desired manner over, and with relation to, the last. The grippers could thus be manipulated either to straighten a misplaced tip seam or to adjust into proper position an incorrectly located lacing slit. The second of the problems above referred to was met by so organizing the machine that it pulled at the toe and on opposite sides of the shoe substantially simultaneously and, after the upper had been adjusted, simultaneously wiped the portions of the upper held by the grippers over upon the bottom of the last, and simultaneously drove tacks at the toe and at both sides of the shoe to hold the upper in pulled-over position. Each of these operations was performed almost instantaneously with a dwell between the two groups of operations to afford opportunity for adjustment of the upper while held under strain by the grippers.

The general principles of operation above indicated were all present in the experimental machine of the first patent, No. 663,777, December 11, 1900, but in the experimental use of that machine and of its successor, the machine of patent No. 950,701, March 1, 1910 (application filed October 31, 1901), it was found that many changes in, and additions to, the organization of the machine of each patent in turn must be made to adapt the machine for commercial use.

An explanation of all the improvements which had to be made

before the experimental machine of patent No. 663,777 was developed into the commercial machine which was produced, as has been stated, in June, 1903, and was constructed as shown in patent No. 1,029,387, and the reasons why each improvement had to be made, and how it solved the problems which it was to meet, would be a long story. It will, perhaps be sufficient to quote claims of patents disclosing the more important features of the organization of the machine of June, 1903. These patents were as follows:—

No. 663,777, December 11, 1900, McFeely.

No. 791,986, June 6, 1905, McFeely.

No. 950,701, March 1, 1910, McFeely (application filed October 31, 1901).

No. 988,582, April 4, 1911, McFeely (application filed October 31, 1901).

No. 1,029,387, June 11, 1912, McFeely (application filed March 28, 1903).

No. 1,030,264, June 18, 1912, McFeely (application filed October 31, 1901).

No. 1,030,522, June 25, 1912, McFeely (application filed March 28, 1903).

This machine of June, 1903, also borrowed from the hand-method lasting machine art some features of its mechanism which are defined in the claims of patents—

No. 597,321, January 11, 1898, Ladd;

No. 893,331, July 14, 1908, Ladd (application filed April 13, 1901);

No. 910,251, January 19, 1909, Wheeler (application filed August 7, 1901.

Nearly all of the 186 claims of the first patent on the above list, No. 663,777, December 11, 1900, McFeely, deseribe mechanism embodied in the commercial machine of 1903 and always since incorporated in the machine. Typical claims are as follows:—

"1. A pulling over machine comprising in combination means for pulling the upper at different points, means for placing said pulled upper over the inner sole, means for securing said overturned upper to the inner sole, the combination being adapted for

working on uppers placed loosely over a last, whereby said uppers are pulled over the last and secured at different points in position for lasting."

"28. A pulling over machine comprising means for automatically pulling the upper first longitudinally of the last and then transversely of the last."

"76. A last supporter adapted for resting on the bottom of a last, in combination with means for pulling the upper over the last, and independent means, becoming operative after the upper is pulled, to support the last against the operations of securing the upper to the inner sole."

"170. Means for pulling an upper over a last, combined with means for moving said pulled upper around said last longitudinally.

"171. Means for pulling an upper over a last, combined with means for moving said pulled upper around said last transversely."

"173. A pulling over machine comprising means for stretching the upper over and holding it upon the last, with means for adjusting the pulled over upper on the last."

A majority of the ninety-four claims of patent No. 950,701, March 1, 1910, McFeely (application filed October 31, 1901), described mechanisms embodied in the commercial machine of 1903, and always since incorporated in the machine. Typical claims are the following: —

"12. In a machine of the class described, means to engage an upper, and means to sink the last into the upper and to actuate the last longitudinally during the sinking movement."

"20. Means for pulling an upper over a last at opposite sides of the shoe simultaneously, in combination with automatic means for moving an inner sole upon the last."

"31. In a pulling over machine, mechanism for pulling an upper over a last, combined with means for clamping the pulled over upper against the inner sole, and mechanism for securing the upper to the inner sole."

"52. In a machine of the class described, the combination with means for pulling an upper over a last, of a plurality of pressers, actuating mechanism comprising independently yielding means cooperating with each presser for forcing the pressers against the upper on opposite sides of the last and means for insuring uniform pressure on each side of the last."

All of the sixty-six claims of patent No. 1,030,264, June 18, 1912, McFeely (continuation of application filed October 31, 1901), describe mechanisms embodied in the commercial machine of 1903,

and always since incorporated in the commercial pulling-over machine. A typical claim of this patent is the fifty-third: —

"53. In a gripper mechanism, jaws for gripping and pulling stock, and actuating mechanism therefor constructed and arranged to be disconnected from the jaws while the stock is under tension."

Nearly all of the forty-two claims of patent No. 988,582, April 4, 1911, McFeely (original application filed October 31, 1901), recite mechanisms embodied in the commercial machine of 1903, and always since incorporated in the commercial machine. Claim 2 of this patent is as follows: —

"2. In a machine for working an upper over a last, the combination with a wiper, automatically operating means to actuate the wiper inwardly and downwardly for wiping the upper over the bottom of the last, and means for supporting the last unyieldingly to the action of the wiper, of means for allowing variation of the altitude of the wiper in relation to the bottom of the last during the overwiping operation."

Over 100 claims of patent No. 1,029,387, June 11, 1912, McFeely (application filed March 28, 1903), which shows, as already stated, the first really successful commercial pulling-over machine, describe mechanisms which have always been embodied in the machine ever since it was adopted. One of the most important improvements in the organization of the machine set forth in the claims of this patent was a rest for the heel of the last which was self-adjustable to adapt it for properly supporting the rights and lefts of crooked lasts, and which was automatically movable into and out of proper position for engaging and supporting the heel end of a shoe. This improvement overcame a difficulty which had been experienced in the experimental use of the earlier models of the pulling-over machine, owing to the backward strain exerted upon the last by the toe grippers, the toe wiper and the mechanism for driving the tacks at the toe, all of which tended to force the last backwardly. Operators of the earlier machines had endeavored to meet this strain by grasping the shoe at the heel with one hand, but this taxed the operator's strength unduly and, moreover, he frequently did not hold the shoe firmly enough to prevent objectionable backward movement of the last. Such slipping back of

the last interfered with practically every operation performed by the machine and prevented satisfactory pulling over. That difficulty was completely overcome by the improvements of this patent No. 1,029,387 which made the machine commercially satisfactory. This improvement, and other important improvements, are set forth in more than 100 of the claims of this patent No. 1,029,387, of which the following are typical: —

"2. A pulling over machine having, in combination, means for gripping an upper at the toe and at opposite sides of the forepart and pulling it over a last, a rest for the heel of the last, and means for automatically pressing said rest forwardly into position to support the last against longitudinal rearward displacement by the toe pulling means."

"13. In a pulling over machine, means for pulling an upper over a last, in combination with last supporting means having inclined contact faces for engaging opposite sides of the last, and means for automatically actuating said supporting means into engagement with the last, said supporting means being automatically adjustable laterally according to the position of the portion of the last engaged thereby."

"33. Means for pulling an upper over a last, in combination with automatic means adapted for moving an inner sole upon the last, said means being arranged for adjustment to move the inner sole either forwardly or backwardly."

"106. A pulling over machine having, in combination, pulling over means, and shoe supporting means which includes a rest for the heel end face of the last."

The mechanism described in patent No. 1,030,522, June 25, 1912, McFeely (application filed March 28, 1903), and set forth in the claims of that patent, comprises means for so actuating the grippers as to pull the uppers away from the edge of the last while it is being stretched, in order to reduce the friction on the upper and prevent the liability of curling upward the edge of the insole, and also comprises two pairs of grippers for engaging the upper on each side, with means for equalizing the strain of each pair on the same side so that they shall operate alike.

Of the forty-nine claims of this patent, typical claims are the seventh and twelfth: —

"7. In a pulling over machine, grippers for gripping an upper

and pulling it over a last, means for relatively actuating the grippers and last for pulling the upper, and means for holding the upper away from the edge of the last while it is being pulled."

"12. In a grippers mechanism for pulling an upper over a last, a plurality of pairs of grippers for engaging the same side of the upper, a single operating means for closing and lifting said grippers, and equalizing means whereby the several pairs of grippers are caused to put the different portions of upper acted upon under the same strain."

Proceeding now to a discussion of the improvements which have been made in the pulling-over machine as put out for commercial use in 1903, and as shown in patent No. 1,029,387, the development of the machine during 1904, 1905 and 1906 and the improvements adopted in the machine from time to time during that period are shown and described in the claims of the following patents: —

No. 959,874, May 31, 1910, McFeely (application filed October 12, 1906).

No. 1,001,701, August 29, 1911, Spencer (application filed August 15, 1907).

No. 1,002,421, September 5, 1911, McFeely (application filed May 26, 1904).

No. 1,002,422, September 5, 1911, McFeely (application filed October 12, 1906).

No. 1,007,766, November 7, 1911, Ashton (application filed August 2, 1907).

In 1908 and 1909 further improvements were made in the machine and have ever since been embodied in the regular organization of the machine, upon most of which patents have not been granted but for which it is expected that patent protection will eventually be obtained. All of the improvements made between 1903 and 1911 were adopted in the commercial pulling-over machine as soon as each improvement in turn had been embodied in commercially satisfactory mechanism. The commercial machine of 1911, embodying all of these improvements, was renamed "Pulling Over Machine, Model A, Rex", upon the introduction of the new model C machine, to which I shall presently refer.

Patents which have so far been granted, setting forth the organization of the model A pulling-over machine, are as follows: —

No. 597,321, January 11, 1898, Ladd.

No. 663,777, December 11, 1900, McFeely.

No. 791,986, June 6, 1905, McFeely (application filed September 19, 1899).

No. 893,331, July 14, 1908, Ladd (application filed April 13, 1901).

No. 910,251, January 19, 1909, Wheeler (application filed August 7, 1901).

No. 950,701, March 1, 1910, McFeely (application filed October 31, 1901).

No. 959,874, May 31, 1910, McFeely (application filed October 12, 1906).

No. 988,582, April 4, 1911, McFeely (application filed October 31, 1901).

No. 1,001,701, August 29, 1911, Spencer (application filed August 15, 1907).

No. 1,002,421, September 5, 1911, McFeely (application filed May 26, 1904).

No. 1,002,422, September 5, 1911, McFeely (application filed October 12, 1906).

No. 1,007,766, November 7, 1911, Ashton (application filed August 2, 1907).

No. 1,029,387, June 11, 1912, McFeely (application filed March 28, 1903).

No. 1,030,264, June 18, 1912, McFeely (application filed October 31, 1901).

No. 1,030,522, June 25, 1912, McFeely (application filed March 28, 1903).

No. 1,030,838, June 25, 1912, Ashton (application filed August 2, 1907).

PULLING OVER MACHINE — MODEL C: REX.

In March, 1911, there was first put out for commercial use a pulling-over machine which embodied so many improvements that it was designated as a new model, and is known as "Pulling Over Machine, Model C, Rex". While the fundamental principles of operation of the earlier types of the machine were continued in the

new model as set forth in all of the claims which I have quoted in this answer, there are incorporated in it many valuable improvements for which as yet but one patent has been granted. This patent is No. 1,055,016, March 4, 1913, Brothers (application filed September 23, 1908), claims of which describe in broad terms one of these improvements. Typical claims of this patent are the sixth and twenty-third: —

"6. A pulling over machine having in combination, side grippers, manually operable tip straightening means, and means including a single actuating member, adapted for movement by the operator to relieve the tension on the upper during the operation of the tip straightening means."

"23. In a pulling over machine the combination with oppositely disposed side grippers and power mechanism for operating them, of means, including a single actuated member, which may be employed by the machine operator at will to modify the rate at which the power driven side gripper pulling movement shall take effect."

The improvements broadly defined in this patent No. 1,055,016, March 4, 1913, Brothers, are embodied in the "New Model C Pulling Over Machine" in different mechanical constructions embodying many further improvements upon which it is expected that patent protection will eventually be obtained. Further improvements in the model C machine comprise provision for inserting more tacks on the outside of the shoe, where more are needed, than on the inside of the shoe, and means by which the operator can at will modify or, if desired, arrest the pulling by the grippers during their operation, which enables him to modify the straining action of the grippers in accordance with the needs of each shoe. These improvements, and others which are embodied in the model C machine which is now the United Company's standard commercial pulling-over machine for welt work, are not yet patented. It is anticipated, however, that patents will eventually be granted for all of these improvements. Since the introduction of the model C machine, which, as has been stated, is now the standard machine for welt work, the model A machine has been the standard machine for McKay sewed work. A reorganized machine for McKay sewed work, embodying all the improvements incorporated in the model

C machine which were adapted for a machine used on McKay sewed work, has recently been developed. This new machine has been adopted as a commercial machine and a number of these machines are in the course of construction and will shortly be supplied to manufacturers of McKay sewed shoes.

The organization of the model C pulling-over machine embodies mechanism set forth in the claims of all of the sixteen patents which have been enumerated as defined in the organization of the model A machine, except patent No. 1,030,838, and in addition to this patent the model C machine embodies the improvements set forth in patent No. 1,055,016, March 4, 1913, Brothers.

PULLING OVER MACHINE — MODEL B: REX.

In July, 1910, there was adopted for commercial use a combined pulling-over and lasting machine for turn work, which was the result of more than three years of constant experimenting. This machine is known as "Pulling Over Machine, Model B, Rex", and comprises improvements which are in part substituted for mechanisms on the model A pulling-over machine, and in part are additions to the organization of that machine. The machine comprises, generally speaking, means for pulling over a shoe and means for automatically lasting the forward portion of the shoe and securing it in lasted position, and mechanisms embodied in this machine are described in the claims of most of the patents which have been referred to in the discussion of the pulling-over machine, but no patents have yet been granted on the organization of a combined pulling-over and lasting machine, or upon the many improvements which have made this machine a commercially successful machine as a combined pulling-over and lasting machine for turn work. It is anticipated, however, that the machine will eventually receive patent protection.

All of the sixteen patents which have been enumerated as defining mechanisms embodied in the model A machine also define the organization of the model B machine except Nos. 1,007,766 and 1,030,838. In addition to those patents the model B machine embodies improvements set forth in the claims of patents numbered

584,192, June 8, 1897, Preston, and 999,327, August 1, 1911, McFeely.

I produce a McKay sewed shoe which was pulled over on the model A pulling-over machine.

[*McKay sewed shoe pulled over on model A pulling-over machine is introduced in evidence, and marked "Defendants' Exhibit 177".*]

[*Answer to Int. 103 continued:*]

I also produce a welt shoe which has been pulled over upon the model C pulling-over machine.

[*Welt shoe pulled over on the model C pulling-over machine is introduced in evidence, and marked "Defendants' Exhibit 178".*]

[*Answer to Int. 103 continued:*]

The shoe which I now produce is a turn shoe which has had its forepart pulled over and lasted on the model B pulling-over machine.

[*Turn shoe having forepart pulled over and lasted on the model B pulling-over machine is introduced in evidence, and marked "Defendants' Exhibit 179".*]

[*Answer to Int. 103 continued:*]

In concluding the discussion of the pulling-over machine it may be well to state that interesting facts about this machine are: that it performs operations which, in February, 1899, and always before, had been performed by hand; that it performs these operations much better than they were ever performed by hand; that the nature of the operation is such that the machine is the most elaborate and highly organized machine now used in the manufacture of shoes; that nearly a million dollars was spent in the development of the machine before any revenue was derived from it; and that while each machine does enough work to supply at least two, and frequently three, lasting machines of any type in use, the demand for the pulling-over machine has been so great that 4180 machines had been put out prior to October 1, 1913; and that in its early years the development of the machine was so rapid that after an entirely successful machine had been produced the United Company voluntarily supplied the successful machine to manufacturers who had machines of the earlier models, and broke up for junk over

100 machines which had been built and put out less than three years before.

This machine is put out by the United Shoe Machinery Company through its pulling-over department.

While the pulling-over machine performed the greater and most important part of the work in preparing a shoe for the lasting operation, there still remained the operation of assembling the parts of shoes preparatory to the pulling-over operation, which still, after the introduction of the pulling-over machine, had to be performed by hand as it was performed in February, 1899, and always before that time. In fact, this assembling operation, together with the pulling operation, constituted portions of the work performed by the hand laster before the introduction of lasting machines.

ASSEMBLING.

Prior to the operation of the pulling-over machine, the parts of the shoe, comprising an insole, the upper and its lining, and a counter, which, as explained in my previous testimony, is a piece of stiffening material, as sole leather, inserted between the upper and lining to maintain the shape of the heel end of the upper during the wear of the shoe, must be gotten together about the last, adjusted to their proper relations, and secured at one or more points; and this step in the manufacture of the shoe is known as "assembling".

ASSEMBLING SPINDLE: REX.

As stated, this operation was always performed by hand until September, 1904, when the United Company first put out for commercial use a machine known as "Assembling Spindle, Rex", which represented the first step in the development of the present commercial assembling machine, and was constructed as shown in the drawings and described in all of the six claims of patent No. 893,-696, July 21, 1908, Ashton (application filed October 20, 1905). A typical claim of this patent is the first:—

"1. A machine for assembling parts of boots and shoes preliminary to lasting, comprising a last pivot arranged to support a last normally for free pivotal movement in an approximately horizontal

plane, and clamping mechanism arranged to hold the upper against the last at the heel and to hold the last simultaneously from movement upon said pivot."

While I have called the device shown in this patent No. 893,696 a machine, it was really an assembling spindle, as indicated by its name and by the claim which has just been quoted. It comprises a so-called "jack-spindle", on which the last was mounted, and a device for forcing the upper materials, including the counter, against the rear end of the last and holding the upper materials in that position while the operator drove tacks by hand through the upper, the flange of the counter, the lining and the insole. While this assembling spindle was useful in the hand operation of assembling, and over 200 of them were put out before the development of the present commercial machine, and while very likely manufacturers would still be using this assembling spindle if it had not been superseded by the present highly-organized commercial assembling machine, it seems today very crude in comparison with that machine. It did not automatically fasten the upper; it did not force the upper materials, including the flange of the counter, in over the bottom of the last at the rear end to prepare the upper materials to receive the fastening tack, and hence it rendered no assistance to the operator in shaping the edge of an unflanged counter; and, further, it rendered no assistance to the operator in holding the forward ends of the counter, and preventing frequent misplacing, which, as will be later explained, is an important function of the present commercial assembling machine.

ASSEMBLING MACHINE: REX.

In view of the crude character of this assembling spindle, and the desirability of an organization which would perform automatically all of the operations which, as I have just stated, the assembling spindle did not and could not perform, the United Company inventors proceeded to develop an organized power-operated assembling machine. Such a machine was produced and was first put out for commercial use in September, 1905. This was the first commercial machine ever constructed or used for assembling on a last the several parts of the upper in their proper relations to each

other and to the last, and securing such parts in their proper relations. Furthermore, this new machine performed all of these operations automatically. It held the forward ends of the counter closely pressed against the sides of the last, pressed the counter and upper into close relation to the heel end of the inner sole, drove a tack through the upper and counter into the rear end of the last to secure the parts against displacement relatively to each other or to the last, and it forced the upper materials and the edge of the counter over the rear edge of the last down upon the bottom of the last, and drove a tack through these parts and through the insole, clinching the end of the tack on the iron heel plate of the last, thus producing a shoe having its parts assembled on the last in proper relation to each other and ready for the pulling-over operation.

This assembling machine as first put out in September, 1905, was constructed substantially as shown in the drawings and as set forth in nearly all of the forty-eight claims of patent No. 1,023,-794, April 23, 1912, Ashton (application filed August 15, 1906). Of those claims of this patent which describe broadly the organizations of both the original machine of 1905 and the present commercial assembling machine, typical claims are the first and thirtieth: —

"1. A machine for assembling an upper, a counter and a sole, having in combination means for adjusting relatively said upper, counter and sole and means for securing said upper, counter and sole together at the heel."

"30. A machine of the class described having in combination means for securing together an upper and an inner sole sustained upon a last, and means for securing the upper to the rear end of the last."

Assembling Machine — Model E: Rex.

As the result of experimental work begun soon after the first machine had been put into commercial use, the assembling machine was reorganized to incorporate many improvements, and the reorganized machine was first put out in August, 1910, being known as "Assembling Machine, Model E, Rex", and this new machine soon superseded the earlier model. In the reorganized machine

means was provided for insuring that the tack which, as I have explained, was driven through the upper and counter into the rear end of the last to secure the upper materials from displacement relatively to the last, should be accurately located. This improvement was important because it is desirable, first, that this counter tack shall be driven near the rear seam of the upper, while, secondly, the tack must not be driven through that seam, as in almost every instance it would cut the thread and injure the shoe if it were driven through the seam.

The new machine of 1910 was also organized to wipe the upper along the sides of the shoe upon its heel end to points on each side of the shoe adjacent to the forward ends of the counter. This operation aids materially in drawing the upper smoothly around the end of the last and in preventing the forward ends of the counter from becoming misplaced by bending down below the insole and frequently being caught by the insole with a consequent loss of time on the part of an operator who must raise the ends of the counter into proper position before the shoe is lasted.

The reorganized machine of 1910, which is the present commercial machine, is constructed substantially as shown in patent No. 1,026,940, May 21, 1912, Ashton (application originally filed December 26, 1907), and embodies mechanisms defined in all of the thirty claims of that patent, of which claims 2 and 22 are typical:—

"2. A machine of the class described, having in combination, mechanism for inserting a fastening in the rear face of a shoe, and means for determining the position in the width of said face at at which the fastening is inserted."

"22. A machine of the class described, having in combination, means for supporting a last and parts to be assembled arranged loosely upon the last, means for adjusting the upper forwardly along the sides of the last at the heel and for holding the ends of the counter against the sides of the last, and means for thereafter securing the upper to an inner sole mounted upon the last."

Other mechanisms embodied in the present commercial assembling machine are described in the claims of patent No. 1,000,660, August 15, 1911, Ashton, and No. 1,026,067, May 14, 1912, Ashton (application filed November 30, 1908).

The improvement of the first of these patents, No. 1,000,660, enabled the machine to operate satisfactorily in assembling shoes upon lasts of different lengths. This improvement made the machine universal by rendering it capable of satisfactory use upon all sizes and kinds of lasts. All of the ten claims of this patent No. 1,000,660 define this improvement in its commercial form, and a typical claim is the first: —

"1. A last support, having a supporting member for engaging the cone of a last and means for positioning the last in the direction of its length upon the supporting member, said means being adjustable into two different positions whereby the area of the bearing surface of said member that engages the last at the rear of the positioning means may be varied to suit lasts of different lengths, and means for locking said positioning means in either position of adjustment."

The method which is practiced in operation of the assembling machine is stated in the claims of an allowed application filed October 26, 1907. The patent will be granted on this allowed application on next Tuesday, October 21, 1913. According to the method set forth and claimed in this allowed application, the inner sole is supported on a bottom of a last, the upper and counter are arranged about the last, and the ends of the counter are held inwardly against the sides of the last, so that the forward ends of the counter are prevented from becoming misplaced, and particularly are prevented from being forced down below the plane of the last bottom, which would otherwise usually be caused by the subsequent pressure exerted by the machine on the rear end of the counter so that the operator would have to pull up and properly locate the ends of practically every counter before the lasting operation. In the next step of the method the counter is pressed against the rear face of the last and against the rear edge of the inner sole, so that the parts of the shoe at this point are brought into their proper relation to each other, and the counter and upper are thereafter forced inwardly from the bottom of the last at the rear end and are secured together. Parts of the shoe are now in proper relation to each other and to the last, and the shoe is ready for the pulling over and the subsequent operations. A typical claim of this

allowed application on which, as I stated, the patent will issue on October 21, 1913, is the first: —

"1. The method of assembling parts of boots and shoes which consists in supporting an inner sole upon the bottom of a making last, arranging an upper and counter about the last in unsecured relation thereto, holding the ends of the counter against the sides of the last, then pressing the counter against the rear face of the last adjacent to its tread face and against the rear edge of the inner sole, pressing the counter against the face of the inner sole and thereafter securing the counter to the inner sole."

This machine is extensively used by shoe manufacturers, over 1800 having been put out since the machine was introduced in September, 1905. The machine is so automatic in its action that a skilled workman is not required for its operation, and most machines are operated by girls. The operation of the machine upon a McKay shoe is illustrated in Defendants' Exhibit 177, which exhibit illustrates the operation of the assembling machine at the rear end of the shoe, and the operation of the pulling-over machine in the forepart of the shoe. A welt shoe which has been operated upon by the assembling machine is shown in Defendants' Exhibit 178. In this exhibit, also, the rear portion of the shoe has been operated upon by the assembling machine, while the forepart illustrates the operation of the pulling-over machine.

The assembling machine is put out by the United Company through its pulling-over department.

Pounding, Blocking and Trimming.

In addition to the assembling machine, other auxiliary machines of the pulling-over department which are supplied with the pulling-over machine as a part of the pulling-over system, are: —

"Pounding Machine, Model E, Rex";

"Pounding and Trimming Machine, Model B, Rex Rotary";

"Pounding Machine, Model C, Rex Rotary";

"Pounding and Beating Up Machine, Model A, Rex".

The general object of these machines is to perform the final operations formerly performed by a hand workman during and as a part of the lasting operation. The projecting bunches of upper

material on the shoe bottom at the heel and at the toe caused by the folding or puckering of the upper during the lasting would interfere with the proper attachment of the outsole, and at the toe end of a welt shoe would also interfere with the proper attachment of the welt, as has been fully explained in my previous testimony in regard to the upper-trimming machine which has been developed and put out by the United Company. On a McKay sewed shoe it is the custom to cut off the excess upper stock at the toe and then to pound the bottom of the shoe at the heel and toe, and sometimes all the way around the bottom of the shoe, to smooth down and level the bottom before attaching the out-sole. On welt shoes it is the practice to pound the bottom of the shoe at the heel end and to trim off the excess material at the toe before the operation of attaching the welt, this trimming operation on welt shoes now being performed by trimming machine, model H, Rex upper, which has been discussed in my previous testimony. All of these pounding and trimming operations, like the operation now performed by the pulling over and assembling machine, were a part of the operations of hand lasting before the introduction of lasting machines, and in February, 1899, the pounding and trimming was done by hand by the lasting machine operator, as a part of the lasting operation.

Prior to 1904 it was the universal practice to trim off the excess upper stock at the toe of a McKay sewed shoe by cutting it off with a hand knife, and it was also the general practice to beat down the folded or puckered upper stock at the heel, and that remaining at the toe after the trimming operation, by pounding the stock at the heel and toe with a hammer. It was also customary for the workman to hammer more gently, and to rub with the hammer, the upper stock around the heel and toe adjacent to the bottom of the last, for the purpose of shaping the upper stock, including the box toe at the toe, and the stiff counter at the heel, to define more sharply the angle of union adjacent to the edge of the last, and particularly at the heel where it is desired to force the counter as closely as possible to the last. The operation on

the bottom of the shoe was known as "pounding", and the operation on the side of the shoe was known as "blocking".

POUNDING MACHINE: REX POUNDING MACHINE — MODEL E: REX.

In 1904, the United Company first put out for commercial use a machine then named "Pounding Machine, Rex", which was constructed substantially as shown in the drawings, described in the specifications and set forth in the claims of patent No. 1,019,067, March 5, 1912, McFeely (application filed August 15, 1904). This machine was organized with a hammer arranged to strike an oblique inward blow on the shoe bottom and to move inwardly over the stock, and with a blocking tool to engage the upper close to the bottom of the last adjacent to the point where the blow of the hammer was struck, and operating simultaneously with the hammer. Typical claims of this patent No. 1,019,067 are the following: —

"1. A machine of the class described, having in combination, devices constructed and arranged to engage the upper on the bottom and side of a shoe substantially to its edge, and automatic actuating means for causing said devices to form the upper against the inner sole and side of the last and to shape the edge of the shoe."

"3. A machine of the class described having, in combination, devices for engaging contiguous portions of upper material on the bottom and side of a shoe, and automatic actuating means for causing said devices to force said portions respectively downwardly and inwardly with relation to the last for shaping the edge of the shoe."

The machine described and shown in the claims above quoted, and more specifically in many other claims of that patent, successfully solved the problem of substituting automatic mechanical means for the inclined drawing blow of the hammer in the operator's hand, and it improved upon the hand operation because it treated both the bottom and sides of the shoe simultaneously at the same point, while the hand workman had to treat them at different times. Prior to 1904 there was no machine in the industry for pounding the bottoms and blocking the sides of shoes, either welt or McKay sewed.

The United Company owns a number of patents which describe

in their claims the mechanisms of this machine in broader terms than those above quoted. These patents, and typical claims of each, are as follows: No. 731,168, June 16, 1903, Eaton: —

"1. A heel seat and counter-beating machine, having in combination, a suitable jack for supporting a lasted shoe, a hammer for beating the heel seat of such shoe, a hammer for beating the counter thereof, and connected mechanism for operating the hammers, substantially as described."

No. 893,440, July 14, 1908, Carter (application filed April 3, 1899): —

"30. In a machine of the class described, a pounder movable to force the upper inwardly from the edge of the inner sole and downwardly toward the inner sole, a carrier for the pounder, means for actuating the carrier and pounder together to effect one of said movements of the upper, and means for actuating the pounder relatively to the carrier to effect the other movement of the upper."

No. 910,251, January 19, 1909, Wheeler (application filed August 2, 1901): —

"54. In a machine of the class described, the combination with a pounder, of means for positioning the shoe, and means for actuating the pounder upwardly away from the shoe and then toward the shoe in a path inclined downwardly and inwardly with relation to the shoe bottom, the machine having provision for effecting a yielding engagement of the pounder with the shoe."

No. 1,018,526, February 27, 1912, Snow (application filed July 9, 1904): —

"31. In a machine of the class described, the combination with pounding-up means, of mechanism for actuating said pounding-up means into and out of engagement with the work, and other means for moving said pounding-up means forwardly over the work."

Reissued patent No. 12,825, July 7, 1908, Kron (original patent No. 733,974, July 21, 1903): —

"9. In a machine for beating the upper on the bottom of a shoe, the combination, with a beating device, of means for actuating said beating device downwardly toward the shoe bottom and inwardly away from the edge of the shoe bottom, and then upwardly away from the shoe in a different path."

When this machine was used on shoes having sharply inclined

shanks it was found that the blocking tool, which was properly shaped for the heel and toe, but was not shaped to fit such shanks, was liable to injure the upper in the shank. Accordingly, in 1906, there was adopted in the machine an improvement which was aimed to overcome this difficuity and which enabled the operator to render the blocking tool inoperative upon the shank. This improvement is defined in the seventh claim of patent No. 1,048,788, December 31, 1912, Ashton (application filed June 16, 1908), as follows: —

"7. In a machine of the class described, the combination with means for pounding a shoe and means for blocking the shoe, of means for rendering one of said means inoperative while the other means continues in operation."

Other mechanisms set forth in the claims of this patent No. 1,048,788 were used for a time and were then superseded in 1907 by improvements set forth in the claims of patent No. 1,030,751, June 25, 1912, Shattuck (original application filed December 17, 1906). The nature of this improvement is well set forth in the tenth claim of that patent: —

"10. In a machine of the class described, the combination with pounding up means and means for actuating it to force the upper on the bottom of a shoe downwardly and inwardly away from the edge of the shoe, of rollers arranged on either side of the pounding up means to engage the upper on the side of the shoe, and means for actuating the rollers to rub the upper adjacent to the edge of the shoe."

In 1906 this pounding machine was named officially "Pounding Machine, Model E, Rex", and from the time of its adoption in 1904 until the adoption of pounding and trimming machine, Rex rotary, in July, 1908, 650 of the Rex pounding machines had been put out. One of these machines will take care of the output of from six to eight lasting machines of any type in commercial use.

Trimming Machine: Rex Toe.

In the first part of this answer it was stated that before the operation of the pounding machine on the toe of a McKay shoe it was desirable to remove the surplus stock left at the toe at the end of

the lasting operation. Prior to 1904 the operation of trimming off the surplus stock at the toe had always been performed by hand. In the latter part of 1904 the United Company offered to manufacturers the first commercial machine for performing this operation, which was known as "Trimming Machine, Rex Toe". The general problems which had to be met in the production of a machine for performing this operation were, first, to present the shoe for the operation of cutting in such manner that only the proper amount of excess stock would be removed; and, secondly, to provide an organization for the machine which would enable it to remove the excess stock satisfactorily without undoing the work of the lasting machine. The second problem was met, and substantial progress was made toward the solution of the first problem, by the organization of this Rex toe-trimming machine as it was first put out. It was then constructed as shown in the drawings of patent No. 891,130, June 16, 1908 (application filed June 26, 1905), and as set forth in all of the twenty-two claims of that patent, of which typical claims are the following: —

"6. In a toe trimming machine, the combination with a cutter, of a gage having an acting portion shaped to receive the toe part of a shoe and to permit projections on said toe part to extend outwardly from the plane of said acting portion and arranged to maintain the shoe normally out of the path of the cutter and to move with the shoe to permit said projections to be brought within the path of the cutter."

"21. In a toe trimming machine, the combination with means for positioning the toe part of a shoe, of means for trimming projecting portions of the upper from said toe part by the separation from the shoe of successive layers of stock progressively from the toe tip toward the heel."

In the use of the machine constructed as shown in the drawings of patent No. 891,130 it was found that this organization was not readily adaptable for operation upon toes of varying widths. Accordingly, in September, 1906, the machine was improved by embodying in its organization the mechanism shown in the drawings and described in the eight claims of patent No. 891,131, June 16, 1908, Ashton. The most important of the improvements defined in the claims of this patent was means automatically adjust-

able by the shoe to present toes of different widths in the same manner for the operation of the cutter. A typical claim is the seventh: —

"7. A machine for reducing projecting portions of an upper upon the bottom of a shoe at the toe, having in combination a tool for separating from the shoe the surplus material to be removed, a gage formed to engage the bottom of the shoe at the toe and to project inwardly over the edge of the shoe, and arranged to present the projecting portions of the upper to the tool and constructed for adjustment in width to receive shoes varying in size, and means for adjusting said gage actuated by the movement of the shoe into operative relation to the gage."

This trimming machine, Rex toe, had a capacity which enabled it to trim the toes of shoes which had been lasted on from eight to twelve lasting machines of any type which was in commercial use. Four hundred and forty-two of the machines had been put out prior to July, 1908, when, as will be later explained, the machine was combined with a new type of pounding machine.

Pounding and Trimming Machine: Rex Rotary.

Pounding and Trimming Machine — Model B: Rex Rotary.

The pounding machine which had been discussed in the earlier part of this answer and which was known as "Pounding Machine, Model E, Rex", was the standard pounding machine for both McKay sewed and welt work for some four years. In July, 1908, it was superseded, for McKay sewed shoes, by a machine known as "Pounding and Trimming Machine, Rex Rotary", and later, as I shall explain, it was also superseded for welt work.

This first pounding machine, now known as "Pounding Machine, Model E, Rex", which, as I have explained, was the first machine for performing the pounding operations formerly done by hand, and which performed these operations effectively, required a "jack" or work support, because the operation of the pounding mechanism of that machine was strictly a mechanical operation and the blows were too hard to be resisted by the hands of the operator alone. In view of the desirability of a machine which would not require a work support, and in the operation of which no time

would be lost in jacking the shoe, experimental work was undertaken by the United Company with a view to producing a machine of radically different organization which would do as good work as the original Rex pounding machine and which would not require a work support.

After some two years of experimental work, including the usual trying out of experimental machines in different shoe factories, there was adopted for commercial use and offered to manufacturers in July, 1908, a machine known as "Pounding and Trimming Machine, Rex Rotary". The machine as first put out was constructed substantially as shown in the drawings and described in the claims of patent No. 1,030,837, June 25, 1912, Ashton (application filed December 12, 1907), and the first machine embodied mechanism defined in substantially all of the forty-one claims of that patent, which also define the organization of the present commercial machine. Of the claims of this patent, the fourth and twenty-ninth indicate the characteristic construction and mode of operation of the machine. These claims are as follows: —

"4. In a machine of the class described, a rotary shoe beater comprising a carrier and beating members arranged about the periphery of the carrier, each member consisting of a plurality of rings mounted for swinging movement about their connection with the carrier."

"29. In a machine of the class described, a rotary shoe beater comprising a carrier and an annular series of beating members movable bodily outwardly with relation to the carrier from an inoperative position to an operative position by centrifugal force when the beater is rotated."

The blocking of a shoe, that is, the light hammering and rubbing of the sides of the upper adjacent to the insole was provided for in this machine by the organization shown in the drawings of patent No. 1,019,878, March 12, 1912 (application filed November 19, 1908). Of the ten claims of this patent defining the blocking mechanism of this machine, the first is typical: —

"1. A machine of the class described, having in combination, means for treating the bottom of a shoe, means for resting the side of the shoe during the bottom treating operation, and actuating mechanism for said two means, said resting means being constructed

and arranged to be operatively connected with its actuating means to beat the side of the shoe at the will of the workman without interrupting the operation of the machine in beating a shoe."

The principle of operation of this side beating or blocking mechanism of this machine is broadly set forth in claim 3 of patent No. 768,560, August 23, 1904, Casgrain, which is as follows: —

"3. In a machine of the class described, a leather working tool, and means for imparting to said tool a succession of rapid blows when said tool is in contact with the stock, said means being arranged and constructed to cease actuating the tool when the tool is out of contact with the stock."

The organization of this machine, including combined pounding and blocking tools, is set forth in broad terms in the claims of patent No. 1,019,067, March 5, 1912, McFeely (application filed August 15, 1904), typical claims of which patent have previously been quoted in the earlier part of this answer in the discussion of "Pounding Machine, Model E, Rex".

For the convenience of the operator the toe-trimming machine, known as "Trimming Machine, Rex Toe", which also has been discussed in an earlier part of this answer, was combined with the pounding and blocking organization of this machine so that the pounding operations of trimming the toe and pounding the shoe bottom could be performed by the operator while standing before one machine. Accordingly, this machine, "Pounding and Trimming Machine, Rex Rotary", included the organization of the Rex toe-trimming machine which has already been discussed, and which, as I have stated, is set forth in the claims of patent No. 891,130, June 16, 1908, Ashton, and patent No. 891,131, June 16, 1908, Ashton.

In December, 1901, the bottom-pounding organization of this machine was improved by incorporating the mechanism illustrated in the drawings and set forth in all of the nine claims of patent No. 1,003,434, September 19, 1911, Covell. In March, 1910, a radically new toe-trimming mechanism was adopted for this machine, which is shown in the drawings and described in nearly all of the twenty-six claims of patent No. 1,054,656, February 25, 1913,

McFeely (application filed April 18, 1910). A typical claim of this patent is the fifth : —

"5. A machine for removing surplus stock from boots or shoes or parts thereof, comprising a hollow abading tool having perforations adapted to permit passage to the interior of the tool of waste particles taken from the stock by the abrading surface, a shoe support to present the toe portion of the shoe for the operation of said tool, and means for drawing a current of air through the interior of said tool."

After the adoption of the new toe-trimming mechanism of this patent No. 1,054,656, this was offered to shoe manufacturers alternatively with the toe-trimming mechanism of the Ashton patents Nos. 891,130 and 891,131, previously discussed.

This pounding and trimming machine, Rex rotary, became, immediately after its introduction, the standard pounding and trimming machine for McKay sewed shoes. It had the advantage over the original pounding machine, pounding machine, model E, Rex, that it did not require jacking of the shoe, since it was organized to strike about 28,000 light blows per minute instead of 800 to 1200 heavy blows per minute struck by the old machine, and it had the further advantage for manufacturers of McKay shoes that it performed the two operations of trimming the toe and pounding the bottom of the shoe and saved the floor space which formerly had been required for two machines to perform those two operations separately. This new machine also added to the operative's convenience by enabling him to perform these two operations, that is, trimming of the toes and pounding and blocking of the bottom and sides, while standing before the same machine. Accordingly, manufacturers of McKay sewed shoes generally preferred this new machine of which 931 had been put out after its adoption in 1908 up to September 1, 1913. One of these rotary pounding and trimming machines will easily trim the toes, pound the bottoms and block the sides of all the shoes lasted upon two hand-method lasting machines.

To illustrate the operation of this machine I produce a McKay shoe which has been lasted, but has not yet been operated upon. The necessity of trimming the toe and then pounding the toe, and

of pounding the bottom of the heel end of the shoe before attaching the out-sole will be obvious.

[*Lasted McKay shoe before trimming and pounding operations is introduced in evidence, and marked "Defendants' Exhibit 180".*]

[*Answer to Int. 103 continued:*]

I also produce a lasted McKay shoe which has been operated upon by the Rex rotary pounding and trimming machine and which has had the excess material removed from the toe by the trimming operation of that machine, and has been pounded all around the bottom of the shoe and has had its sides blocked by that machine. The improvement effected by the operation of the machine will be obvious upon comparing this shoe with that of Defendants' Exhibit 180.

[*Lasted McKay shoe which has been operated upon by Rex rotary pounding and trimming machine is introduced in evidence, and marked "Defendants' Exhibit 181".*]

POUNDING MACHINE — MODEL C: REX ROTARY.

[*Answer to Int. 103 continued:*]

This rex rotary pounding and trimming machine was not, however, adapted for welt work, because in welt work the lasting tacks adjacent to the heel, as well as along the shank and forepart, must be left with their head ends projecting from the stock to facilitate pulling them, as is illustrated in Defendants' Exhibit 149. There was no way in which this machine could be used on welt shoes without danger either of ripping out these tacks or of tearing up the lasted upper from the insole. Accordingly, the original pounding machine, model E, Rex, introduced in 1904, as has been explained, was continued as the standard machine for pounding heel seats of welt shoes, until the introduction in March, 1912, of "Pounding Machine, Model C, Rex Rotary".

This machine was a reorganization of pounding and trimming machine, Rex rotary (now designated as "Model B"), to adapt that machine for welt work. The mechanisms set forth in the claims of all the patents which I have previously discussed in this answer in connection with pounding and trimming machine, Rex

rotary, are embodied in this new model C machine for welt work, except the mechanisms described in the claims of the three patents —

No. 891,130;

No. 891,131, and

No. 1,054,656,

which relate to the toe-trimming mechanisms of the model B rotary pounding and trimming machine which were adapted for use upon McKay shoes only.

In addition to the patents, mechanisms of which are common both to the model B machine and the model C machine, the model C machine embodies mechanisms adapting it particularly for welt work, which are defined in six claims of patent No. 1,010,550, December 5, 1911, Wentworth; three claims of patent No. 1,030,751, June 25, 1912, Shattuck (original application filed December 17, 1906); and all ten claims of patent No. 1,032,356, July 9, 1912, Ashton (application filed September 11, 1911).

Referring to typical claims of these patents, claim 3 of patent No. 1,010,550 is as follows: —

"3. A machine for shrinking and ironing the upper of a lasted shoe, having, in combination, a heated ironing roll shaped to treat different portions of the upper of the shoe, means for applying viscous material to the heated roll, and means for driving the roll to rub and heat the upper and automatically to distribute the viscous material over the surface of the upper engaged by the roll to prevent injury to the leather by the heated roll."

The third claim of patent No. 1,030,751 is as follows: —

"3. In a machine of the class described, the combination with a stationary support, a roller mounted thereon and formed and arranged to engage the side of a shoe adjacent to its edge, of means for actuating the roller to remove wrinkles or surface inequalities from the upper at and adjacent to the edge of the shoe."

Among the claims of patent No. 1,032,356 which set forth the purpose of the mechanism illustrated in the drawings of that patent and embodied in this model B machine are the following: —

"1. In a machine of the class described, a beater, a horizontal

work resting member, and an adjacent vertical abutment between the horizontal member and the beater, arranged to serve as a guard to prevent the beater from engaging and forcing toward the edge of the last bottom the upper on the lower side of the heel seat while the beater is forcing inwardly the upper on the upper side of the heel seat."

"5. In a machine of the class described, a beater, a rest for engagement with one side of the heel portion of the shoe while the heel seat at the other side is being beaten, and vertical stops at each lateral side of said rest in position to engage the rear partially driven side lasting tacks of a lasted shoe and guide the operator in so presenting the shoe to the beater that the portions of the upper, held by the side lasting tacks, will be prevented from engagement with the beater."

This machine, pounding machine, Rex rotary, model C, is now the standard commercial machine for pounding heel seats of welt shoes, which is the class of work for which the machine was especially designed and to which its field is limited.

I produce a welt shoe which has been operated upon at its heel end by this machine, which also illustrates at its toe end the operation of trimming machine, model H, Rex, which has been discussed in my previous testimony.

[*Welt shoe operated upon by pounding machine, Rex rotary, model C, and by trimming machine, model H, Rex upper, is introduced in evidence, and marked "Defendants' Exhibit 182".*]

POUNDING AND BEATING UP MACHINE — MODEL A: REX ROTARY.

[*Ans. to Int. 103 continued:*]

In March, 1912, there was first supplied for commercial use a machine for pounding and beating up the soles of turn shoes, which, while a development of pounding and trimming machine, Rex rotary, model B, is a reorganization of that machine particularly adapting the new machine for turn work. This machine is officially known as "Pounding and Beating Up Machine, Model A". The mechanism which particularly adapts this machine for turn work is not shown or described in any patents which have as yet been granted, but it is anticipated that patent protection will eventually be obtained for these improvements. The machine em-

bodies mechanisms set forth in the claims of the following patents:—

No. 764,569, July 12, 1904, Erickson.

No. 768,560, August 23, 1904, Casgrain.

No. 1,003,434, September 19, 1911, Covell.

No. 1,010,550, December 5, 1911, Wentworth.

No. 1,019,067, March 5, 1912, McFeely (application filed August 15, 1904).

No. 1,030,751, June 25, 1912, Shattuck (application filed December 17, 1906).

No. 1,030,837, June 25, 1912, Ashton (application filed December 12, 1907).

To illustrate the operation of this pounding and beating-up machine, model A, I produce a turn shoe having its sole attached, which has not been operated upon by this machine.

[*Turn shoe before operation of pounding and beating machine, model A, is introduced in evidence, and marked "Defendants' Exhibit 183".*]

[*Answer to Int. 103 continued:*]

The shoe which is Defendants' Exhibit 183 is a right shoe; I now produce a left shoe of that pair which has been operated upon by pounding and beating-up machine, model A.

[*Turn shoe after operation of pounding and beating-up machine, model A, is introduced in evidence, and marked "Defendants' Exhibit 184".*]

[*Ans. to Int. 103 continued:*]

The demand for this model A machine is limited. It was especially designed and built to supply a demand for such a machine from manufacturers in the Philadelphia territory.

All of the machines which have been discussed in the foregoing answer are put out by the United Company through its pulling-over department.

Mr. Webster. The petitioner respectfully calls the attention of the court to the fact that the foregoing answer is largely in the nature of argument; that it contains reference to what others thought, said and did, and statements in reference to alleged

mechanisms and machines of applications for patents now pending, and reference to mechanisms of patents issued after the filing of the petition herein; that it contains statements as to what is contemplated, what alleged experiments and experimental machines have been made, and expenses involved in experiments; and also contains statements as to the opinion of the witness. And all statements of the witness in reference to said matters are objected to as inadmissible, incompetent and immaterial, as having no bearing on the questions at issue herein, and as in no sense in reply to, or in defence of, any evidence or matters offered by the petitioner; and counsel for petitioner reserves the right to, after the record shall have been transcribed by the stenographer, call attention specifically to the matters objected to and to move that the same be stricken from the record.

Int. 104. Have you collected under one or more covers the patents referred to by you in your last answer; if so, will you please produce them, and as you produce them state briefly to which of the machines referred to by you the patents contained in the several volumes relate?

Ans. I produce, first, a volume of patents mentioned in the portion of my testimony relating to the several models of the pulling-over machine.

[*Volume of patents relating to pulling-over machine is introduced in evidence, and marked "Defendants' Exhibit 185".*]

[*Answer to Int. 104 continued:*]

I also produce a volume comprising copies of patents which are mentioned in the portion of my testimony relating to assembling machines.

[*Volume of patents relating to assembling machines is introduced in evidence, and marked "Defendants' Exhibit 186".*]

[*Answer to Int. 104 continued:*]

I also produce a volume of copies of patents mentioned in the portion of my preceding answer relating to pounding machines and toe-trimming machines.

[*Volume of patents relating to pounding machines and toe-trim-*

ming machines is offered in evidence, and marked "Defendants' Exhibit 187".]

Mr. WEBSTER. The petitioner objects to the introduction of patents issued after the date of the filing of the petition herein.

Int. 105. Please give the number, date and name of patentee of the several patents referred to in the volumes of patents which have just been offered in evidence as Defendants' Exhibits 185, 186 and 187.

Ans. DEFENDANTS' EXHIBIT 185.

No. 584,192, June 8, 1897, Preston.

No. 597,321, January 11, 1898, Ladd.

No. 663,777, December 11, 1900, McFeely.

No. 791,986, June 6, 1905, McFeely.

No. 893,331, July 14, 1908, Ladd.

No. 910,251, January 19, 1909, Wheeler.

No. 950,701, March 1, 1910, McFeely.

No. 959,874, May 31, 1910, McFeely.

No. 988,582, April 4, 1911, McFeely.

No. 999,327, August 1, 1911, McFeely.

No. 1,001,701, August 29, 1911, Spencer.

No. 1,002,421, September 5, 1911, McFeely.

No. 1,002,422, September 5, 1911, McFeely.

No. 1,007,766, November 7, 1911, Ashton.

No. 1,029,387, June 11, 1912, McFeely (application filed March 28, 1903).

No. 1,030,264, June 18, 1912, McFeely (application filed January 26, 1910).

No. 1,030,522, June 25, 1912, McFeely (application filed March 28, 1903).

No. 1,030,838, June 25, 1912, Ashton (application filed August 2, 1907).

No. 1,055,016, March 4, 1913, Brothers (application filed September 23, 1908).

DEFENDANTS' EXHIBIT 186.

No. 893,696, July 21, 1908, Ashton.

No. 1,000,660, August 15, 1911, Ashton.

No. 1,023,794, April 23, 1912, Ashton (application filed August 15, 1906).

No. 1,026,940, May 21, 1912, Ashton (application filed December 26, 1907).

No. 1,026,067, May 14, 1912, Ashton (application filed November 30, 1906).

DEFENDANTS' EXHIBIT 187.

No. 731,168, June 16, 1903, Eaton.

No. 733,974, July 21, 1903, Kron.

Reissue No. 12,825, July 7, 1908, Kron (original patent No. 733,974).

No. 764,569, July 12, 1904, Erickson.

No. 768,560, August 23, 1904, Casgrain.

No. 891,130, June 16, 1908, Ashton.

No. 891,131, June 16, 1908, Ashton.

No. 893,440, July 14, 1908, Carter.

No. 910,251, January 19, 1909, Wheeler.

No. 1,003,434, September 19, 1911, Covell.

No. 1,010,550, December 5, 1911, Wentworth.

No. 1,018,526, February 27, 1912, Snow (application filed July 9, 1904).

No. 1,019,067, March 5, 1912, McFeely (application filed August 15, 1904).

No. 1,019,878, March 12, 1912, Ashton (application filed November 19, 1908).

No. 1,030,751, June 25, 1912, Shattuck (application filed December 17, 1906).

No. 1,030,837, June 25, 1912, Ashton (application filed Decemtion 12, 1907).

No. 1,032,356, July 9, 1912, Ashton (application filed September 11, 1911).

No. 1,048,788, December 31, 1912, Ashton (application filed June 16, 1906).

No. 1,054,656, February 25, 1913, McFeely (application filed April 18, 1910).

[*Adjourned to Tuesday, October 21, 1913, 10* A. M.]

BOSTON, MASS., October 21, 1913.

Int. 106. In answer to a previous question propounded to you by counsel for petitioner you referred to the following sole-leveling machines: —

"Leveling Machine, Goodyear Welt and Turn (Turn Work)";

"Leveling Machine, Hercules";

"Leveling Machine, Atlas".

Please state the field in the leveling machine art occupied by each of these machines, and if these machines as put out by the United Shoe Machinery Company embody improvements which are the subjects-matter of Letters Patent of the United Company, refer to such improvements and state the patents.

LEVELING MACHINES: TURN, ROLLING PRESSURE AND DIRECT PRESSURE.

Ans. In my previous testimony relating to leveling machine, Goodyear automatic sole, I have explained that the purpose of the leveling operation is to impart to the bottom of the sole the shape which is desired in the finished sole, and that this desired shape is imparted by means of pressure after the sole has been attached to the shoe. The Goodyear automatic leveling machine is especially designed and adapted for leveling soles of welt shoes, and it is used exclusively on welt shoes. Because it exerts too heavy a pressure for turn shoes, and also because it is not organized to impart pressure of the particular kind, and in the particular manner required for turn shoes, as I shall later explain, it is never used for leveling turn shoes, and the United Company puts out for leveling turn shoes a machine especially designed for that work and adapted for its peculiar conditions, which is known as "Leveling Machine, Goodyear Welt and Turn (Turn Work)".

The other two machines referred to in the question are the two which the United Company puts out for leveling shoes other than welt and turn shoes.

Leveling machine, Hercules, is of the rolling-pressure type and is adapted and put out for leveling heavy shoes, such as men's McKay

sewed shoes and shoes having their soles attached by screws, nails or pegs.

The other machine, leveling machine, Atlas, is of the direct pressure type and is adapted and used for leveling lighter weight McKay sewed shoes, and practically all women's, misses' and children's McKay sewed shoes have their soles leveled on the Atlas leveling machine.

LEVELING MACHINE: GOODYEAR WELT AND TURN (TURN WORK).

Referring now the machine which the United Company puts out for leveling turn shoes, "Leveling Machine, Goodyear Welt and Turn (Turn Work)", which was first put out in June, 1906, the organization of that machine is shown in patent No. 1,004,155, September 26, 1911, Eppler (application filed May 3, 1906), with the improvements shown and described in patent No. 996,707, July 4, 1911, Eppler; No. 916,021, March 23, 1909, Rigby; and No. 925,509, June 22, 1909, Rigby.

A characteristic feature of this machine is the leveling roll, which is especially designed to meet conditions peculiar to the leveling of turn shoes. As explained in my previous testimony, a turn shoe is a light weight shoe having but one sole, and while on the one hand the turn sole will not stand as much pressure as the welt sole and the action of the leveling tool must not be so hard as to injure the sole, unsupported as it is by an insole, on the other hand it is essential that sufficient force be exerted upon the sole, and in such manner, and on such portions, as effectively to beat down the seam which secures the sole to the upper, and to remove the wrinkles in the shank of the sole formed during the operation of turning the shoe right side out, which operation follows the operation of attaching the sole to the upper when the shoe is wrong side out. To meet these conditions this turn leveling machine comprises a leveling roll, which, unlike the smooth roll of the Goodyear automatic leveling machine, is formed with hammering and rubbing ribs, and also, unlike the roll of the automatic machine, the roll on the turn machine is positively driven, both of which characteristics contribute to its effective operation on turn

shoes. A ribbed roll is broadly described in the claims of patent No. 563,487, July 7, 1896, Howe, of which claim 1 is as follows:—

"1. In a beating-out machine, the combination with a rotary shaft of a beating-out roll provided with a series of fixed, rigid, longitudinal projections, separated sufficiently from each other to strike the sole, in the rotation of the roll, with distinct blows to work the leather of the insole as desired, substantially as described."

Ribbed rolls substantially like the rolls shown in the Howe patent were tried out by the United Company, but while the use of these rolls demonstrated the utility of ribs for beating down the seam, it was found that the roll needed improvements, first, because the action of the ribs was not uniform, and also because, owing to the shape of the ribs, as shown in Fig. 2 of the Howe patent, they struck too hard a blow and did not do enough rubbing. The roll of this Howe patent was improved upon in the first commercial machine put out for turn work in June, 1906, by the substitution of the roll shown and described in patent No. 1,004,155, September 26, 1911, Eppler, which shows the roll as provided with a series of rubbing and pounding projections or ribs, which are separated by slots of the same width throughout the length of the roll, and these ribs were constructed to do more rubbing and less hammering than the ribs of the roll of the Howe patent. This construction, which rendered the pounding action of the roll the same on all portions of the sole acted upon, is defined in several claims of that patent, of which claim 1 is typical:—

"1. A sole leveling roll, concave longitudinally, and provided with a series of slots of the same width throughout their length, dividing the roll into a series of sole rubbing and pounding projections or ribs, adapted to pound the sole in a substantially uniform manner throughout the length of the roll."

The general organization of the commercial machine as first put out and as now, with improvements, supplied to manufacturers, is defined in the claims of this patent No. 1,004,155, all of the fourteen claims of which define mechanisms embodied in the machine as it has been put out since its adoption and as it is now being put out.

The roll of the Eppler patent was, in turn, improved upon as

shown in the drawings and set forth in the claims of patent No. 916,021, March 23, 1909, Rigby. In the improved construction of this Rigby patent the middle portion of the roll was left smooth, so that the desired pounding effect could be secured along the edges of the sole over the seam without pounding the middle portion of the sole, where pounding was not needed, and where, in fact, it was undesirable, since it frequently stretched the sole lengthwise. The construction shown in this Rigby patent No. 916,021 is that now used on the commercial machine, and is defined in the five claims of this Rigby patent, of which claims 1 and 2 are typical: —

"1. A sole leveling roll provided at its centre with a smooth sole rubbing surface, and at its ends with a series of sole beating projections.

"2. A sole leveling roll provided at its centre with a smooth sole rubbing surface and at its ends with a series of sole beating projections arranged obliquely to the axis of the roll and adapted to exert an outward wiping action on the sole of a shoe."

The mechanism embodied in this machine whereby, when the roll is adjusted for different heights of lasts, the pressure mechanism is simultaneously adjusted so that substantially the same pressure will be exerted upon the sole, whatever the height of the last, is defined in all of the eight claims of patent No. 925,509, June 22, 1909, Rigby. A typical claim is the first: —

"1. A sole leveling machine, having, in combination, a shoe supporting jack and a sole leveling tool relatively movable both vertically and longitudinally, pressure mechanism for forcing one of said parts toward the other to exert pressure on the sole of the shoe, a stop to determine the proper relative vertical position of said parts when the leveling tool is disengaged from the shoe, means for adjusting said stop to position the parts properly for different shoes, and means acting simultaneously to adjust the pressure mechanism to cause it to exert substantially the same pressure on the different shoes."

In addition to the mechanisms defined in the claims of the patents already discussed, this turn leveling machine embodies improvements set forth in all of the four claims of patent No. 996,707, July 4, 1911, Eppler, and also embodies improvements on

which patents have not yet been granted, but for which it is anticipated that patent protection will ultimately be obtained.

This machine is put out by the United Shoe Machinery Company through its Goodyear department. Over two hundred of the machines have been put out since it was first introduced in 1906 up to March 1, 1913, the end of the United Company's last fiscal year. The field for the machine is somewhat limited, as only about thirteen per cent of the shoes made in this country are turn shoes.

Leveling Machines for Shoes Other than Welt and Turn Shoes.

Referring now to the machines which the United Company puts out for leveling shoes other than welt or turn shoes, it should first be explained that the leveling of McKay sewed or nailed shoes presents different problems from those which have to be dealt with in the leveling of welt or turn shoes. In the first place, when a welt or turn shoe is leveled it is still upon a wooden last, while the last has to be removed from a McKay sewed, or a nailed shoe, immediately after the lasting operation because the last cannot be in the shoe during the attaching of the sole by means of the McKay sewing machine, or a metallic fastening or pegging machine. Accordingly, during the leveling operation a McKay sewed, or a nailed, shoe has to be mounted upon an iron last or form which is a part of the leveling machine, and which, to facilitate the application and removal of the shoes, must fit the shoe somewhat loosely. Co-operating with that iron last or form, a sole pressing form must be used which is shaped to correspond with the contour which it is desired to impart to the sole by the leveling operation. It is not practicable, in leveling McKay sewed, or nailed shoes, to use a roll operating upon different portions of the sole successively, because, as has been explained, the iron last or form must fit the shoe more loosely than a wooden last and a roll operating first on one side of the sole and then on the other would displace the shoe on its loosely fitting form and would distort the sole. Accordingly, it is the universal practice to use leveling forms shaped to impart the desired shape to the sole, and machines of two types are used for

leveling soles of McKay sewed and nailed shoes, in both of which types the pressure is applied in a direction substantially perpendicular to the sole.

In one of these types, known as "rolling pressure type", the pressure is applied by oscillating the iron last or form which supports the shoe and a co-operating curved leveling form so that the pressure is applied progressively from the heel to the toe, and back from the toe to the heel, in lines extending clear across the sole. Leveling machine, Hercules, is of this type.

In the other type, known as "direct pressure type", the leveling pressure is applied to the sole by a form shaped to impart the desired contour and arranged for right line pressing movement relatively to the shoe so that the leveling pressure is exerted upon the entire face of the sole simultaneously. Of this type is leveling machine, Atlas.

LEVELING MACHINE — MODEL A: HERCULES.

The Hercules leveling machine, which is of the first type of the two types of leveling machines which I have just explained in general terms, is provided with two iron shoe-supporting forms or jacks and with two co-operating curved pressing forms which constitute two pairs of leveling mechanisms arranged to be operated alternately, and in each pair the jack and sole engaging form are given oscillatory movements so that they roll on each other and apply pressure to different narrow portions of the sole progressively from heel to toe, and back from toe to heel.

The Hercules leveling machine as now being put out commercially by the United Company embodies mechanism set forth in the claims of the following patents: —

No. 861,746, July 30, 1907, Mayo.

No. 884,144, April 7, 1908, Frasier.

No. 932,220, August 24, 1909, Winkley.

No. 944,620, December 28, 1909, Holt.

No. 982,267, January 24, 1911, Gouldbourn.

No. 997,798, July 11, 1911, Frasier.

The Frasier patent No. 884,144 represents the first stage in the

commercial development of this machine. Two characteristics of the commercial machine are set forth in the claims of this patent. The first is the organization of the machine by which the operator can control the number of oscillations of the form and thus determine the amount of the leveling action effected by the machine. This was new in machines of this type. The other feature is the organization by which the two pairs of jacks are thrown into operation alternately. In earlier machines of this type it had been necessary for the operator to actuate independently the mechanism for operating the jack and form constituting each pair of pressure-applying mechanisms. These important features of the Hercules leveling machine are defined in the first and sixth claims of the Frasier patent No. 884,144:—

"1. A sole pressing machine, having, in combination, a shoe supporting jack, a co-operating sole pressing form, mechanism acting continuously to move the jack and form to subject the sole of a shoe supported upon the jack to a plurality of rolling pressures and means controlled by the operator acting whenever it is put into operation to stop the jack and form with the jack in a position of presentation, substantially as described."

"6. A sole pressing machine, having, in combination, two shoe supporting jacks, two co-operating sole pressing forms, means for actuating each jack and form to subject the sole of a shoe supported upon the jack to a rolling pressure, and means for causing the jacks and their co-operating forms to be thrown into operation alternately, substantially as described."

The machine of this Frasier patent No. 884,144 was only an experimental machine, and but one machine was built. This experimental machine was entirely reorganized and the improvements incorporated in the machine by this reorganization as shown in patent No. 861,746, July 30, 1907, Mayo, which shows the commercial form of the machine as it was first put out in April, 1903. Among the more important improvemeuts set forth in the claims of this patent was means for counteracting the tendency of a machine of this type to work the sole forwardly during the leveling operation, a disadvantage which had limited the field of usefulness of machines of this type. Among the sixteen claims of this patent, all defining mechanisms embodied in the commercial machine

as first put out, and as it is being supplied to manufacturers today, a more notable claim is the third:—

"3. A sole pressing machine, having, in combination, a shoe supporting last, a sole pressing form, a last carrier, a form carrier, and mechanism for actuating said carriers to subject the sole of a shoe supported upon the last to a rolling pressure acting to draw the form over the sole while in contact therewith, substantially as described."

An important feature of the organization of the Hercules machine is defined in claim 5 of patent No. 932,220, August 24, 1909, Winkley, as follows:—

"5. A sole pressing machine, having, in combination, a plurality of shoe supporting jacks, a plurality of co-operative sole pressing forms, mechanism common to all the jacks and forms for actuating any jack and its co-operating form when connected therewith to subject the sole of a shoe supported upon the jack to a rolling pressure, and means for connecting each jack and its co-operating form to said mechanism and for disconnecting them therefrom whereby one jack and form can remain at rest while the other jack and form are in operation, substantially as described."

A useful feature of the machine is the means for maintaining the shoe and sole properly positioned on the jack during the leveling operation. It is important to do this, but it was a difficult problem because at different times every point of the sole is under pressure. The means disclosed in patent No. 997,798, July 11, 1911, Frasier, was a clamp arranged to engage the heel of the sole while the heel was not under pressure, and to let go of the sole momentarily as the form approached and engaged the heel end of the sole. This means is defined in all of the thirteen claims of this Frasier patent No. 997,798. A typical claim is the eighth:—

"8. A sole pressing machine, having, in combination, a shoe supporting jack, a sole pressing form, means for actuating the jack and form to subject the sole of a shoe supported upon the jack to a rolling pressure, a sole clamp mounted to move into and out of engagement with the sole of the shoe, and means for moving the clamp, substantially as described."

BEVELING MACHINE — MODEL B: HERCULES.

The commercial Hercules leveling machine as put out between 1903, when it was adopted, and 1905 had proved inconvenient for the operator because the pressing form was in his way while he was applying the shoe to the jack, or removing a shoe from it. The machine was accordingly reorganized to overcome this difficulty and the new machine was first supplied to manufacturers in June, 1905, the reorganized machine being known as "Leveling Machine, Model B, Hercules". The average output of the new machine is from 1400 to 1600 pairs of shoes a day as compared with an average of 1200 to 1400 pairs per day on the earlier model. This model B machine, which is the present standard commercial machine, embodies all the mechanisms set forth in the patents which have been discussed in connection with the earlier model, which, since the adoption of the model B machine, has been known as "Model A". But the reorganized machine also incorporates in its present commercial form a number of improvements which have been made since it was adopted.

The first of these improvements is an improved form of heel-engaging mechanism, for properly locating the work on the form, as has been explained. This improvement was adopted in May, 1907, and is shown in the drawings and defined in the claims of patent No. 944,620, December 28, 1909, Holt, of which a typical claim is the second: —

"2. A sole pressing machine, having, in combination, a pivotally mounted last carrier, including a last post, a form carrier co-operating therewith to subject the sole of a shoe to a rolling pressure, a heel clamp mounted on the last post, and means acting automatically to move the clamp into and out of engagement with the shoe."

The heel clamp of this Holt patent which has been used in the commercial machine since its adoption in 1907 is also defined in broader terms in the ten claims of Frasier patent No. 997,798, of which claim 8 has already been quoted.

In 1912 the model B Hercules machine was further improved by the incorporation in it of improved means for adjusting the jack

and locking it in adjusted position to vary the amount of pressure exerted by the machine in accordance with the thickness of the sole. This improvement is defined in the first claim of patent No. 982,267, January 24, 1911, Gouldbourn.

Since the machine was first adopted in April, 1903, 729 Hercules leveling machines have been put out by the United Company up to March 1, 1913. As I have already stated, the average day's work on the present model of the machine is from 1400 to 1600 pairs per day, and as has also been explained this machine is adapted for leveling heavy shoes such as men's McKay sewed and nailed shoes. It is particularly useful on heavy shoes because in this type of machine in which the pressure is exerted progressively only a narrow portion of the sole extending transversely across the sole is under pressure at one time and the amount of pressure required for heavy shoes can be safely exerted in this manner without danger of breaking the iron form or last upon which the shoe is mounted.

LEVELING MACHINE: ATLAS.

"Leveling Machine, Atlas", is of the type known as the "direct pressure type". This type of machine is provided with a form of jack which supports the shoe, and with a co-operating pressing form which engages the sole of the shoe, pressure being exerted through these two forms in a right line and being applied directly to the whole surface of the sole at once.

A distinguishing characteristic of the Atlas leveling machine is that it was the first leveling machine in the industry which was organized to adjust the machine automatically to various thicknesses of work, and then exert uniform pressure upon the sole of the shoe, irrespective of its thickness. Hence this machine is particularly adapted to operate upon lighter weight McKay sewed shoes such as could not withstand the relatively harsher action of the Hercules leveling machine, which would frequently distort the soles of lighter weight shoes. This characteristic of the Atlas machine is defined in the first claim of patent No. 557,744, April 7, 1896, Winkley, which is as follows:—

"1. In a sole laying machine the combination of a pressing form and shoe supporting jack, mechanism for relatively actuating the form and jack to secure pressure upon the sole of a shoe placed upon the jack, and means for automatically seating the form, in operative connection with said pressure mechanism, and acting to adjust the said pressure mechanism for shoes of different heights, substantially as described."

This characteristic principle of operation of the Atlas machine is further set forth in patent No. 627,034, June 13, 1899, Winkley, of which claim 1 is as follows: —

"1. In a sole pressing machine, the combination with a jack and form, of independent mechanisms operating automatically and successively to seat the form and to bring the form and jack into a position of pressure, substantially as described."

The machine of patent No. 627,034 was only an experimental machine, and was not put into commercial use. An important step in the development of that experimental machine toward a commercial machine is represented in patent 818,503, April 24, 1906, Winkley, and is defined in several claims of that patent, of which the third is typical: —

"3. A sole pressing machine, having, in combination, a plurality of shoe supporting jacks, a plurality of pressing forms, cooperating respectively therewith, mechanism for relatively actuating the jacks and forms to cause each jack and its cooperating form to press the sole of a shoe placed on the jack, comprising means for imparting relative vertical movements to each jack and form to produce pressure and clearance, means controlled by the operator for connecting each jack with said actuating mechanism, and automatic means for disconnecting each jack therefrom, substantially as described."

The first commercial Atlas leveling machine was constructed substantially as shown in the drawings and described in the nineteen claims of patent No. 818,504, April 24, 1906, Winkley. The more important improvements set forth in the claims of this patent are well described in the first two claims, which are as follows: —

"1. A sole pressing machine, having, in combination, a shoe supporting jack, a sole pressing form, mechanism acting automatically to bring the jack and form into a position of pressure to hold the jack and form in such position and thereafter separate the jack and form, and means for varying the time during which the jack

and form are held in a position of pressure, substantially as described.

"2. A sole pressing machine, having, in combination, a shoe supporting jack, a sole pressing form, mechanism for relatively actuating the jack and form to press the sole of a shoe, means acting automatically to stop said mechanism with a jack and form in a position of pressure, and means acting automatically to thereafter start said mechanism into operation, substantially as described."

The machine organized as set forth in the claims above quoted was the first leveling machine in the art to provide for holding the shoe under pressure for a predetermined time, and was also the first machine in the industry in which there was provision for varying this predetermined time. While the machine shown in this Winkley patent No. 818,504 was used commercially for some two years, it was not entirely satisfactory through lack of certainty in its operation and on account of excessive breakage of parts. The machine was therefore reorganized in successive stages which are represented in patent No. 845,714, February 26, 1907, Mayo, and set forth in eleven claims of that patent, and in patent No. 881,478, March 10, 1908, Mayo, which shows the commercial Atlas leveling machine as now put out. A typical claim of patent No. 845,714 is the first: —

"1. A sole pressing machine, having, in combination a plurality of shoe supporting jacks, a plurality of cooperating sole pressing forms, mechanism for relatively actuating each jack and its cooperating form to press the sole of a shoe, connecting devices for operatively connecting the jacks and forms to said mechanism, and means controlled by the operator for positively actuating said devices to operatively connect each jack and its cooperating form to said mechanism."

The present commercial Atlas leveling machine embodies the mechanisms set forth in the claims of the following patents: —

No. 627,034, June 13, 1899, Winkley.
No. 818,503, April 24, 1906, Winkley.
No. 818,504, April 24, 1906, Winkley.
No. 845,714, February 26, 1907, Mayo.
No. 881,478, March 10, 1908, Mayo.
No. 930,823, August 10, 1909, Winkley.

Over 600 Atlas leveling machines have been put out by the United Company. The machine has an average capacity of from 1000 to 1200 pairs of shoes per day.

Both leveling machine, Hercules, and leveling machine, Atlas, are put out by the United Company through its general department.

Mr. WEBSTER. Counsel for petitioner objects to all statements made by the witness in the foregoing answer relating to mechanisms not shown in patents issued prior to the filing of the petition herein, and to all statements made by the witness in reference to matters which have not been presented by the petitioner before the examiner, on the ground that the same is incompetent, inadmissible and immaterial and in no sense in reply to or in defence of matters presented before the examiner by the petitioner.

Int. 107. Have you collected in a single volume the patents relating to the Goodyear turn leveler, Hercules leveler and the Atlas leveler referred to in your preceding answer? If so, will you produce that volume?

Ans. I produce a volume comprising all of the patents referred to in my testimony regarding the three machines named.

Mr. PHILLIPS. I offer in evidence this volume of patents relating to Hercules, Atlas and Goodyear turn leveling machines.

[*One volume of patents relating to Hercules, Atlas and Goodyear turn leveling machines marked "Defendants' Exhibit 188".*]

Int. 108. Will you please name the number, the date and the patentee of the several patents contained in the volume just offered in evidence and marked "Defendants' Exhibit 188"?

Ans. No. 557,744, April 7, 1896, Winkley.
No. 563,487, July 7, 1896, Howe.
No. 627,034, June 13, 1899, Winkley.
No. 818,503, April 24, 1906, Winkley.
No. 818,504, April 24, 1906, Winkley.
No. 845,714, February 26, 1907, Mayo.
No. 861,746, July 30, 1907, Mayo.
No. 881,478, March 10, 1908, Mayo.
No. 884,144, April 7, 1908, Frasier.

No. 916,021, March 23, 1909, Rigby.
No. 925,509, June 22, 1909, Rigby.
No. 930,823, August 10, 1909, Winkley.
No. 932,220, August 24, 1909, Winkley.
No. 944,620, December 28, 1909, Holt.
No. 982,267, January 24, 1911, Gouldbourn.
No. 996,707, July 4, 1911, Eppler.
No. 997,798, July 11, 1911, Frasier.
No. 1,004,155, September 26, 1911, Eppler.

Int. 109. In the list of machines produced by you and read into the record in a prior portion of your testimony, you refer to clicking machine, model C, Ideal, as being first put out in March, 1908, by the United Shoe Machinery Company through its general department. What is the function of a clicking machine in the process of the manufacture of shoes? How was this work performed prior to 1899 and what advancement has been made by the United Shoe Machinery Company in this art since that date? If such advancements are disclosed in Letters Patent of the United States of the United Company, state the patents.

Mr. WEBSTER. Question objected to by counsel for the petitioner on the ground that it calls for testimony in reference to matters to which no reference has been made in the evidence heretofore submitted by the petitioner, and because it calls for matters that are in no wise in reply to or in defence of any matters presented by the petitioner before the examiner.

CLICKING MACHINE — MODEL C: IDEAL.

Ans. The clicking machine supplied to manufacturers by the United Shoe Machinery Company was designed, and is adapted, for use in the shaping of the parts of uppers of boots and shoes.

In 1899, and prior to that time, nearly all of the shaping of parts of uppers was done by a hand operation. The workman placed a skin of leather on a cutting table, located a pattern upon the skin and cut out the upper blank by running a knife around the edge of the pattern. I produce a number of patterns such as were used in that hand operation.

[*Four patterns used in hand cutting of uppers are introduced in evidence, and marked "Defendants' Exhibit 189".*]

[*Answer to Int. 109 continued:*]

To a very small extent the parts of uppers of coarse, heavy shoes were dyed out by means of handled dies. Such dies were placed upon the skin by the workman and forced through the stock by striking the die with a mallet. To a very limited extent also uppers of coarse, heavy shoes, such as brogans, were died out on sole-cutting machines. Neither of these dieing out methods, however, was suited for the shaping of parts of uppers for the medium or better grades of shoes, and before 1908 the parts of uppers of nearly all shoes were shaped, as first explained, by cutting around the pattern with a hand knife.

The United Shoe Machinery Company developed a machine for shaping parts of uppers which was first put out for commercial use in the United States in March, 1908, and is officially named "Clicking Machine, Model C, Ideal". This machine was the first commercially successful machine ever produced for this work. It seems strange that this important and expensive step in the manufacture of shoes had remained a hand operation until so late a date. The explanation probably is that the character of the work is unique, depending largely for its success upon the eye, skill and judgment of the operator. The skins from which upper blanks are cut vary largely in quality in different parts of the skin. The best portions must be utilized for the vamps, that is, the portion of the upper which extends upwardly from the sole and around the ball of the shoe, because that portion of the upper is the most conspicuous in the finished shoe and is subjected to the most wear. The next best portion of the stock must be used for quarters, that is, the parts above the vamp in which the eyelets, lacing hooks or buttons are set. Smaller parts of the best portions of the stock must be utilized for toe tips, and the other parts left after the cutting out of the vamps, uppers and tips must be utilized to the best advantage for other small and less conspicuous parts of the upper. The success of this hand operation depends entirely upon the workman's skill and judgment in selecting the portions of the skin

to be cut for the respective parts of the upper, and in so cutting the parts as to utilize the stock to the best advantage, avoiding any unnecessary waste. Probably the controlling reason why a machine for doing this work was never produced before 1908 was that it is impossible to dispense with this skill and judgment of the workman. Prior to the invention of the United Company's machine no one had been able to produce a machine by which the operation could be so performed as to utilize to the same extent as in hand work the skill and judgment of the operator, and at the same time enable the workman to do a sufficiently increased amount of work to justify the use of the machine. The solution of the problem by the United Company was to provide a machine organized to perform the purely mechanical work done by the hand workman, while at the same time affording full opportunity for the exercise of the requisite skill and judgment. The machine as first constructed is shown in patent No. 921,503, May 11, 1909, Bates. This machine was provided with a die block for supporting a skin to be operated upon, with which were used shallow, open dies with cutting edges shaped to the contours of the blanks which were to be cut. I produce a number of these dies of different shapes.

[*Four dies used on clicking machines are introduced in evidence, and marked "Defendants' Exhibit 190".*]

[*Answer to Int. 109 continued:*]

In the operation of the machine each die was in turn located upon the skin by the operator just as he had been accustomed to locate the upper pattern, with the advantage that as the die was shallow and open he could see the skin inside the die which was to constitute the blank, and which he could not see when the pattern was on the stock in the hand operation. The die was forced through the stock by a pressure arm which was mounted on a column behind the die bed and arranged to be swung to one side entirely out of the way of the operator so that he could inspect the stock as fully and conveniently as he had been accustomed to do in the hand operation, and after he had located the die properly he moved the arm over the die bed and operated the machine to force the die through the stock. This pressure arm was provided with a handle

to facilitate its swinging by the operator, and that handle was connected with a light tripping device for actuating the mechanism for operating the pressure arm so that the operator could, by merely depressing lightly the handle by which he had swung the pressure arm over the die, effect the operation of the pressure arm and then swing it out of the way, exposing the skin again for convenient inspection of the stock and another positioning of the die. The reciprocation of the pressure arm took place in one-sixth of a second, and the machine was so organized as to prevent a second reciprocation of the pressure arm, with the attending danger of injuring the operator, the blank or the skin. The organization by which these and other advantages are secured in the commercial machine is set forth in all of the seventy-three claims of patent No. 921,503, May 11, 1909, Bates. Typical claims are the following:—

"2. In a machine for dieing out thin sheet material such as upper leather for boots or shoes, the combination with a bed, of a presser member movable laterally with respect to said bed, means for reciprocating said presser member toward and away from said bed and a starting device movable laterally with said presser member."

"10. In a machine for dieing out thin sheet material such as upper leather for boots or shoes, the combination with a bed, of a free movable die, a presser member laterally movable into different operative positions over such bed, automatic mechanism for moving said presser member toward said bed into a position at a predetermined distance from said bed, means for adjusting the machine to vary the predetermined distance, and a light, quick acting device for rendering said mechanism operative at any point in the lateral movement of the presser member."

"22. In a machine for dieing out thin sheet material such as upper leather for boots or shoes, the combination with a cutting bed, of a free movable die, a presser member movable into a position over the die wherever located on the bed, and automatic mechanism for moving the presser member toward the bed to force the die through stock supported on the bed, both of said operations being controlled by the hand of the operator."

"66. A machine for dieing out thin sheet material, such as upper leather for boots or shoes, comprising a cutting bed, a free die movable over said bed, a presser member movable from a position at one side of the die into a position over the die, mechanism for moving the presser member toward the bed to force the die through

stock supported on the bed, and then moving the presser member away from the bed, a device for rendering said mechanism operative, and means whereby the presser member is positively restricted to a single reciprocation for each actuation of said device, and is automatically stopped in raised position at the end of every reciprocation."

The machine as first put out, and as always since constructed, was also provided with means for holding and protecting the surplus stock, that is, the portions of the skin remote from the part being cut, from being soiled by oil through contact with parts of the machine, as set forth in the nine claims of patent No. 950,986, March 1, 1910, Bates, of which a typical claim is the following: —

"3. In a machine of the class described, the combination of a bed, a presser-applying member movable laterally into and out of position over said bed, a support for said member located at one side of the bed, said parts being arranged to provide a recess between the support and the bed, and a trough in said recess, interposed between the bed and operating parts of the machine, to receive surplus stock and hold it out of contact with parts of the machine."

The starting mechanism of this machine is described in all of the thirteen claims of patent No. 1,011,903, December 19, 1911, Bates (application filed July 11, 1908).

In August, 1909, the convenience of the operator in using the machine was increased by providing a convenient receptacle for the scraps of leather which are constantly being produced in the operation of the machine, and which are preserved and sold by the manufacturer. This waste guide is arranged in front of the machine, and is so organized that the receptacle closes up out of the way of the operator as he leans over the die bed to inspect the skin and to locate the die, and automatically opens when the operator stands erect to operate the machine or to brush the scrap leather off the die bed. This organization is set forth in many claims of patent No. 946,619, January 18, 1910, Sherman, of which typical claims are the 10th and 12th: —

"10. The combination with a work support of a normally open waste guide constructed and arranged to be moved to closed posi-

tion and to return automatically to open position when the closing pressure is removed."

"12. The combination with a work support, of a yieldingly-mounted waste guide, arranged to be moved to closed position as the body of the operator comes in contact therewith in approaching said support, and to automatically move to open position as the operator moves away from said support."

In the operation of the commercial machine as it was first used, rapid operators would sometimes start the mechanism for depressing the pressure arm so that the arm would go down before its lateral swinging positioning movement was completed, thus striking an oblique blow, which sometimes injured the stock, the die, or the cutting block, and occasionally all of them. To remedy this the United Company's inventors developed a mechanism for stopping the lateral swinging movement of the pressure arm before it engaged the die in its downward movement. A further improvement which added to the convenience of the workman in operating the machine, and which was adopted at the same time, comprised means for automatically swinging the pressure arm to one side after the die had operated, relieving the operator of the necessity of swinging the arm laterally with his hand. A reorganized machine incorporating these two improvements was commercially adopted in the latter part of 1909, and is the present commercial machine. Three different inventors had a part in the development of this new organization. Successive steps in the experimental work resulting in the new machine, and different features of its organization, are represented in the claims of four patents, from which I will quote typical claims.

Twenty-three claims of patent No. 968,117, August 23, 1910, Buckminster, set forth this organization in broad terms: —

"7. A machine of the class described, comprising a bed, a die freely movable over said bed, a pressure applying member having a pressure surface area less than that of the bed and movable into operative position over the die wherever located on the bed, means for moving said member toward and away from the bed to cause it to engage the die and effect a pressing operation, and automatic means for preventing movement of the pressure applying member over the bed at the time it engages the die in the pressing operation."

Claim 4 of patent No. 1,006,453, October 24, 1911, Ashworth, is as follows:—

"4. In a machine of the class described, the combination with a bed, a die movable over said bed, and a pressure applying member movable over said bed into operative position above said die, of means for actuating said pressure member to apply pressure to said die, and means for automatically moving said member out of its operative position over said die after such actuation."

A typical claim of patent No. 1,010,476, December 5, 1911, Buckminster, is as follows:—

"52. In a machine for dieing out leather for boots and shoes, the combination of a cutting bed, a presser member freely movable laterally over said bed into operative position, and means acting to automatically move the presser member laterally into inoperative position."

The new organization is defined in all of the thirty-seven claims of patent No. 1,004,757, October 3, 1911, Eaton, which shows in its drawings the organization of the present commercial machine. A typical claim of this patent is the fourteenth:—

"14. A machine of the class described having in combination, a bed, a presser member manually movable over the bed into operative positions over different parts of the bed and movable toward and away from the bed to effect a pressing operation, and means for utilizing the momentum of the presser member acquired in its manual movement into operative position to effect its movement out of operative position after the pressing operation."

During the year 1911 there were adopted improvements in the machine for facilitating the cutting simultaneously of many thicknesses of cloth lining material from a roll supported outside of the die bed, on which improvements has been granted patent No. 1,070,133, August 12, 1913, Howe (application filed April 3, 1912), of which a typical claim is the first:—

"1. In a machine of the class described, the combination with a bed for supporting material to be cut and a presser member movable into engagement with a die supported upon said material, of means for clamping during the cutting operation a portion of said material that projects beyond the edge of the bed."

The use of the Ideal clicking machine effects a distinct improvement in quality and a striking economy over hand work in the cutting of uppers. In Brockton, where cutters are paid by the day, an operator using a machine dies out on an average over 80 per cent more blanks than he formerly shaped by hand. Cutters are paid $3.50 a day in the Brockton district for operating a machine as compared with $3.25 for hand work, but notwithstanding this increased cost of labor the average saving to the Brockton manufacturer by the use of the clicking machines is over two cents per pair. Use of the machine also effects an additional saving in stock of from 2 to 5 per cent as compared with hand cutting, since all waste caused by deviation from the pattern or by cutting beyond a corner of the pattern by the hand knife is obviated. The amount of the saving in stock, of course, varies with the quality of the stock and on high-grade leather is considerable, frequently amounting to more than the saving in labor.

The demand of shoe manufacturers for the Ideal clicking machine has exceeded the demand for any other new machine which has ever been produced by the United Company. At one time the company was 440 machines behind in filling its orders, and during the last six months of 1908 the company was all the time more than 400 machines behind in its orders. For several years the capacity of the factory was taxed in the building of these machines. During the last six months of 1909 over forty machines were shipped each week. At this date, over 6000 of the machines have been put into shoe factories in the United States. The machine is put out by the United Company through its general department.

The problem of providing dies for the clicking machine was one which had to be met by the United Company at the outset. Prior to the introduction of the clicking machine all dies used in the shoe industry, particularly for cutting sole leather, were made by skilled die makers. Within a short time after the clicking machine was first put into use the demand for dies became so great that it could not have been supplied by these skilled die makers if all in the country had spent their time exclusively in the making of dies for the clicking machine. For this reason, and because it

was important that the dies should be furnished to shoe manufacturers at a price much less than would be necessary if the dies were made by high-priced skilled die makers, the United Company developed an entirely new method by which unskilled labor could be employed for manufacturing clicking dies, and all dies which have been supplied by the United Company for use on the clicking machine have been manufactured in accordance with this method. Successive steps in the development of this method are represented by the following patents:—

No. 922,926, May 25, 1909, Lynch.

No. 1,029,877, June 18, 1912, Lynch (application filed April 23, 1909).

No. 1,030,641, June 25, 1912, Braden (original application filed December 9, 1909).

No. 1,030,781, June 25, 1912, Hollander (application filed March 16, 1910).

Of the twenty-two claims of patent No. 922,926, Lynch, all of which describe steps performed in the making of the dies, claim 4 is typical:—

"4. That improvement in the art of making dies which consists in bending to the outline of the desired pattern to be cut by said die material somewhat longer than said outline and butt welding together the ends of said material and at the same time forcing said ends together to reduce the blank or die thus formed to the size of the pattern, and maintaining the cutting edges on the ends in alignment during the butt welding operation."

The first dies made by the company gave trouble, owing to the unequal hardening of the cutting edge, so that the commercial method was improved in November, 1908, by including the method of patent No. 1,029,877, June 18, 1912, Lynch, granted on an application filed April 23, 1909. All of the ten claims of this patent describe steps now practiced in the making of the dies. Claim 1 is typical:—

"1. That improvement in the art of hardening and tempering tools which consists in simultaneously heating different parts of the tool in different contiguous heat conducting mediums so arranged and of such relative conductivity that the part of the tool

to be hardened is heated to the desired hardening temperature and that the adjacent part is heated detrimentally from the part to be hardened, and then entirely removing said tool from the heat conducting mediums and immersing it forthwith in a hardening bath."

Further improvements in the method and apparatus for performing it were described in the claims of patent No. 1,030,641, June 25, 1912, Braden (granted on an application originally filed December 9, 1909), and in the claims of patent No. 1,030,781, June 25, 1912, Hollander (granted on an application filed March 16, 1910), and it is anticipated that further patent protection will ultimately be obtained upon steps which are practiced in the making of the dies. Since the first clicking machine was put out for commereial use in March, 1908, and up to September, 24, 1913, the United Company has manufactured and supplied 783,465 clicking dies, all made in accordance with this method.

Like the Ideal clicking machine, dies for that machine are supplied to manufacturers by the United Company through its general department.

Mr. WEBSTER. The answer is objected to for that it contains statements in reference to mechanisms, methods and apparatus not shown and claimed in patents issued prior to the filing of the petition herein. And the same is further objected to for the reason that it is not in any sense in reply to, or in defence of, evidence submitted by the petitioner before the examiner.

Int. 110. Have you collected under one cover the several patents referred to by you in your answer to the last question relating to clicking machines; if so, will you please produce that volume?

Mr. WEBSTER. The introduction of patents issued after the date of the filing of the petition herein is objected to as incompetent, inadmissible and immaterial.

Ans. I produce a volume comprising copies of the patents mentioned in the foregoing answer relating to clicking machines and clicking machine dies.

[*Volume of copies of patents relating to clicking machine and clicking machine dies is introduced in evidence, and marked "Defendants' Exhibit 191".*]

Int. 111. Will you give the number, date and name of patentee of the several patents contained in the volume which has just been offered in evidence as Defendants' Exhibit 191?

Ans. No. 921,503, May 11, 1909, Bates (continuation of application filed October 8, 1906).

No. 922,926, May 25, 1909, Lynch.

No. 946,619, January 18, 1910, Sherman.

No. 950,986, March 1, 1910, Bates.

No. 968,117, August 23, 1910, Buckminster.

No. 1,004,757, October 3, 1911, Eaton.

No. 1,006,453, October 24, 1911, Ashworth.

No. 1,010,476, December 5, 1911, Buckminster.

No. 1,011,903, December 19, 1911, Bates (application filed July 11, 1908).

No. 1,029,877, June 18, 1912, Lynch (application filed April 23, 1909).

No. 1,030,641, June 25, 1912, Braden (application filed December 9, 1909).

No. 1,030,781, June 25, 1912, Hollander (application filed March 16, 1910).

No. 1,070,133, August 12, 1913, Howe (application filed April 3, 1912).

Int. 112. In the list of machines produced and read into the record by you as a part of your prior testimony, you refer to the lacing machine, Ensign, models A and B, as put out February, 1906, by the United Company through its fitting room department. Please state what is the function of this machine in the process of making shoes. If this Ensign lacing machine as put out in February, 1906, by the United Company embodied any mechanisms or devices which form the subjects-matter of Letters Patent of the United Company, state the patent and the importance of such mechanism or devices.

Mr. WEBSTER. The question is objected to for that it calls for matters in no sense in reply to, or in defence of, evidence or matters submitted by the petitioner either before the examiner or elsewhere.

Ans. In the process of manufacturing a laced shoe it is necessary for good shoe making that the shoe be laced before it is lasted, since owing to the tension exerted upon the upper all around the shoe, including the ball, during the lasting operation the exposed eyeletted edges of the upper would be pulled apart and the shoe would be distorted unless in some way these eyeletted edges were held the proper distances apart during the lasting operation. This danger will be immediately noted upon examining some of the defendants' exhibits, for example, Defendants' Exhibit 8. Unless the eyeletted edges of the shoe of Defendants' Exhibit 8 had been secured against relative displacement during the lasting operation, it would have been practically impossible to have maintained the proper relation of the opposed eyeletted edges during the lasting operation.

LACING MACHINE — MODEL A: ENSIGN.

In most shoe factories, it is the practice preliminary to lasting to lace a number of eyelets with twine, which is tied to insure the proper relative positions of the opposed eyeletted edges during the lasting operation. This lacing was done in 1899 by girls, who passed twine through the eyelets much as a shoe lacing is inserted through the eyelets of a shoe, and who tied the ends of the twine after passing it through the eyelets. Until 1906 this operation was always performed by hand. Since that date the operation has been performed automatically upon a machine known as "Lacing Machine, Ensign", which laces the twine through the eyelets, severs the twine from the source of supply, and ties the ends.

The operation of this Ensign lacing machine is illustrated in Defendants' Exhibits 7, 149, 178 and 182.

Excepting one or two experimental lacing machines put out by the Smith Lacing Machine Company, the first lacing machine ever commercially used in the manufacture of shoes was put out by the United Shoe Machinery Company in February, 1906.

As it is now being supplied to manufacturers, the Ensign lacing machine embodies the mechanisms set forth in the claims of the following patents: —

Reissue No. 12,638, April 23, 1907, Smith (original patent No. 779,008, January 3, 1905).

No. 855,969, June 4, 1907, Paine and Winkley.

No. 946,789, January 18, 1910, Smith.

No. 962,105, June 21, 1910, Smith.

No. 1,030,547, June 25, 1912, Smith (application filed March 31, 1908).

No. 1,030,559, June 25, 1912, Alexander (application filed September 7, 1909).

No. 1,030,573, June 25, 1912, Enslin (application filed January 30, 1908).

No. 1,030,619, June 25, 1912, Smith (application filed January 16, 1906).

No. 1,030,753, June 25, 1912, Smith (application filed September 8, 1908).

The first commercial lacing machine, now known as model A, was constructed substantially as shown in patent No. 962,105. That machine was put out until the latter part of 1908. In the latter part of 1907 and in the early part of 1908, the model A machine was redesigned to incorporate improvements in nearly all of the mechanisms of the machine, which improvements had been developed since the model A machine was first put out. That redesigned and improved machine, known as "Lacing Machine, Model B, Ensign", has been the standard commercial machine supplied by the company since 1908. As first put out it was constructed substantially as shown in the drawings of patent No. 1,030,573, June 25, 1912, Enslin (application filed January 30, 1908), except for some improvements which were incorporated in the machine during its reorganization, and which were made after the filing date of the application for the Enslin patent.

The development of the lacing machine into commercial form and the steps in that development are represented by the following patents: —

No. 855,969, June 4, 1907, Paine and Winkley.

Reissue No. 12,638, April 23, 1907, Smith (original patent No. 779,008, January 3, 1905).

No. 962,105, June 21, 1910, Smith.

Discussing first the successive stages of the development of the machine as indicated by these patents, the fundamental requisites for a machine for lacing uppers are that the thread be passed through the eyelets and that for this operation the eyelets be properly located; that sufficient slack be produced in the thread to allow the opposite edges of the lacing slit to assume and maintain their proper relations during the lasting operation, and that the ends of the lacing be secured to make the lacing effective.

Elements fulfilling these fundamental requisites of a lacing machine are defined in the claims of patent No. 855,969, June 4, 1907, Paine and Winkley. Eleven claims of this patent define broadly the organization of the commercial machine in all stages of its development. Typical claims of this Paine and Winkley patent are the following: —

"35. A shoe lacing machine having, in combination, means for passing a continuous thread through the eyelet holes of an upper to form a lacing and for securing the ends thereof, and means for producing a predetermined amount of slack in said lacing to permit the edges of the lacing slit to be positioned properly on the last."

"38. A shoe lacing machine, having, in combination, a thread supply, means for holding the free end of the thread, and means for passing a continuous thread from said supply through the eyelet holes of an upper to form a lacing and for securing the ends thereof."

"45. A shoe lacing machine, having, in combination, means for passing a continuous thread through the eyelet holes of an upper to form a lacing, and means passing through aligned eyelet holes in opposite sides of the upper to locate the eyelet holes in position to receive the lacing."

The machine of this Paine and Winkley patent was only experimental, and was never used commercially. That experimental machine had but a single needle.

The next important step in the development of a commercial lacing machine was a machine organized with a plurality of needles which could lace at one operation a plurality of eyelets. This step in the art is represented by reissued patent No. 12,638, reissued April 23, 1907, Smith. All of the twenty-five claims of this pat-

ent describe mechanisms embodied in the commercial machine. A typical claim is the twenty-fifth : —

"25. In a machine of the character described, means comprising a plurality of needles for engaging and locating a plurality of pairs of eyelets of a shoe upper, and forming therein a series of connected loops, and means for completing the lacing and for securing the ends of the lacing to prevent withdrawal."

The first commercial successful machine is shown and described in the patent No. 962,105, June 21, 1910, Smith. The most important of the improvements illustrated in the drawings and set forth in the claims of this patent were the means for effecting simultaneous adjustment of the needles for spacing them in accordance with the spacing of the eyelets, that is, the distance apart of the eyelet in the upper on the same side of the lacing slit, and means for quickly adjusting the organization of the machine so that as the result of its operation the opposed eyeleted edges of different styles of uppers would be located at the desired distances apart. The organizations by which these and other advantages were secured are defined in nearly all of the forty claims of this patent No. 962,-105, and nearly all of those claims set forth mechanisms which are now embodied in the standard commercial machine. Typical claims setting forth the improvements to which I have specifically referred and which are embodied in both models of the Ensign lacing machine are 7 and 13 : —

"7. A machine for lacing shoe uppers, having, in combination, a plurality of needles arranged to pass a series of loops of lacing cord through the eyelet holes of an upper, and means for simultaneously adjusting said needles to space the needles in accordance with the spacing of the eyelet holes in the upper to be laced."

"13. A machine for lacing shoe uppers, having, in combination, means including a plurality of needles for forming loops in a lacing cord and for passing said loops through the eyelet holes of an upper and means for simultaneously adjusting the length of a plurality of said loops to vary the amount of slack in the completed lacing."

LACING MACHINE — MODEL B : ENSIGN.

The machine shown in this Smith patent No. 962,105 was the commercial machine for some two years. That machine has been

known as the "Model A Machine" since it was reorganized in 1908 to incorporate improvements in nearly all of its mechanisms which had been made during the two years of its commercial use. It should be understood, however, that the reorganized machine, now known as the "Model B Machine", embodied the organization broadly defined in the claims which have been quoted in reviewing the development of the machine.

The more important improvements embodied in the redesigned or model B machine are set forth in the claims of patent No. 1,030,547, June 25, 1912, Smith (application filed March 31, 1908), and patent No. 1,030,573, June 25, 1912, Enslin (application filed January 30, 1908).

Referring only to the two more important improvements over the model A machine which have been incorporated in the model B machine, the first of these had to do with providing an extra amount of slack in the lacing cord. It had been found in the commercial use of model A machines that on certain kinds of work a greater amount of slack in the lacing cord or thread is needed than is usually required; for example, in blucher shoes additional slack in the lacing cord is needed in order to permit the lower ends of the opposed eyeletted edges to assume their proper position on the last, and the relative positions which they should have in the finished shoe. The patent to Smith No. 1,030,547 defines in its claims means for securing such slack thread when required. The first claim of this patent is as follows: —

"1. A machine for lacing shoe uppers, having in combination, means for forming a series of loops of lacing cord, and thereafter inserting said series of loops in the eyelet holes of an upper, and additional means for varying the amount of slack in the completed lacing, substantially as described."

Twenty-nine of the claims of this Smith patent No. 1,030,547 set forth mechanisms embodied in the model B machine. While the mechanism set forth in this patent provided means for securing the requisite additional amount of slack in the lacing cord, it was found that the slack which was formed by that mechanism was not retained where it was needed, that is, at the lower end of the

lacing, and for the lower pair of opposed eyelets. Accordingly, the mechanism of the Smith patent was improved by organization of the slack thread mechanism so that it would not only properly form the desired additional slack in the thread, but would retain that slack where it was needed, that is, at the lower end of the lacing. This improvement is set forth in claim 23 of patent No. 1,030,573, June 25, 1912, Enslin (application filed January 30, 1908), which claim is as follows: —

"23. A machine for lacing shoe uppers, having, in combination, means for inserting a lacing cord in the eyelet hole of an upper, mechanism for tying the ends of the lacing together, and means acting on the lower portion of the lacing to provide slack therein, substantially as described."

The other more important improvement which was embodied in the model B machine is shown in this Enslin patent No. 1,030,573, and consisted in means for effecting the simultaneous adjustment of the loopers and the needles which co-operate in the machine in forming loops to be passed through the eyelet holes, thus adding to the convenience of the operator and insuring greater accuracy in the work by enabling these parts to be positioned for different spacing of the eyelets by one adjustment instead of two separate adjustments. A number of claims of the Enslin patent are directed to this improvement, and a typical claim is the second: —

"2. A machine for lacing shoe uppers, having, in combination, a plurality of needles, means co-operating therewith to form a series of loops in the lacing cord, and means for simultaneously adjusting said needles and co-operating means to space the same in accordance with the spacing of the eyelet holes in the upper to be laced, substantially as described."

A number of other improvements embodied in the model B machine are set forth in the claims of this patent No. 1,030,573, all of the fifty-nine claims of which define mechanisms embodied in the commercial model machine. Further improvements which were incorporated in the model B machine in 1909, and have been embodied in the commercial machine as put out since that time, are set forth in eight claims of patent No. 1,030,559, June 25, 1912, Alexander (application filed September 7, 1909). Other improve-

ments were incorporated in the machine in 1912, for which patent protection has not yet been obtained.

Comparing the machine with hand work, on the better grades of shoes where particular pains were taken to locate the opposed edges at the proper distance apart, the average day's work by the hand operator was 500 pairs. On the medium and cheaper grades of shoes, where less pains were taken and more or less careless work was done, the average number of pairs laced by hand would be 800. On the Ensign lacing machine the average number of uppers laced is from 1400 to 2500 pairs per day. In some districts 2500 pairs is the regular average day's work on this machine. It should further be noted that, whatever the quality of the shoe, the upper laced on the machine is always laced right, while accuracy could be secured in hand work only by constant and unusual care.

Fourteen hundred and fifteen Ensign lacing machines had been put out up to March 1, 1913, the end of the company's last fiscal year. An Ensign lacing machine will take care of as many shoes as from four to seven welt-sewing machines, and nearly all lace shoes now being made are laced on this machine.

The Ensign lacing machine is now put out by the United Company through its fitting room department, which department was organized just prior to January 1, 1913. Previously the machine was put out through the lasting department.

Mr. WEBSTER. The answer is objected to for that it relates to matters in reference to which no evidence has been presented by the petitioner, either before the examiner or elsewhere; and, further, because the answer refers to a large extent to patents issued after the date of the filing of the petition herein. The answer is further objected to because of the same being largely argumentative.

Int. 113. Have you collected in a single volume the patents referred to in your last answer as relating to Ensign lacing machines?

Ans. Yes, sir; and I produce a volume comprising all of the patents referred to by me in connection with the Ensign lacing machine.

[*Volume of patents relating to Ensign lacing machine is introduced in evidence, and marked "Defendants' Exhibit 192".*]

Mr. WEBSTER. The introduction of the patents as exhibits is objected to because they relate to matters not touched upon, and upon which no evidence has been submitted, by the petitioner, before the examiner or elsewhere, and, further, all patents issued after the date of the filing of the petition herein are especially objected to on the ground of the same being incompetent, immaterial and inadmissible.

Int. 114. Will you please give the number, date and name of patentee of the several patents contained in the volume which has just been offered in evidence as Defendants' Exhibit 192?

Ans. No. 779,008, January 3, 1905, Smith.

Reissue No. 12,638, April 23, 1907, Smith (original patent No. 779,008).

No. 855,969, June 4, 1907, Paine and Winkley.

No. 946,789, January 18, 1910, Smith.

No. 962,105, June 21, 1910, Smith.

No. 1,030,547, June 25, 1912, Smith (application filed March 31, 1908).

No. 1,030,559, June 25, 1912, Alexander (application filed September 7, 1909).

No. 1,030,573, June 25, 1912, Enslin (application filed January 30, 1908).

No. 1,030,619, June 25, 1912, Smith (application filed January 16, 1906).

No. 1,030,753, June 25, 1912, Smith (application filed September 8, 1908).

Int. 115. What is the function of the machine referred to as trimming machine, Goodyear insole heel seat, in the list of machines submitted by you in your prior testimony? How was the operation, performed by this machine, performed prior to 1899? What has been the development of this art since 1899? If the standard machine put out by the United Company for performing this operation embodies the subjects-matter of any Letters Patent of the United Company, state the patents.

Mr. WEBSTER. The question is objected to for that it calls for testimony with reference to matters not touched upon by the petitioner, and calls for matter which is not in reply to, or in defence of, any evidence submitted by the examiner.

TRIMMING MACHINE: GOODYEAR INSOLE HEEL SEAT.

Ans. After an insole has been channeled and been tacked to the bottom of the last it is usually necessary to trim the insole around its heel end to shape it accurately to the rear end of the last. While the insole is originally died out to correspond with the pattern of the bottom of the last, it frequently becomes distorted during the channeling operation and during the lip-turning operation, that is, the operation of raising the lip and turning it back upon the bottom of the insole. An insole upon which these operations have been performed is shown in Defendants' Exhibit No. 145. This distortion of the insole takes effect in lengthwise stretching and frequently results, after the insole has been tacked to the last with its forepart fitted to the forepart of the last, as illustrated in Defendants' Exhibit 149, in an excess of stock at the rear end of the insole. To insure a good lasting operation this excess of stock must be trimmed off and the heel end of the insole shaped accurately to the contour of the bottom face of the rear end of the last. This operation was always performed by hand prior to 1899, and in fact was a hand operation until January, 1911.

The United Shoe Machinery Company put out in January, 1911, the first machine ever commercially used for performing this operation of trimming off the excess stock at the rear end of the insole and shaping the rear end of the insole to fit the last accurately. Before this machine was developed many attempts had been made to devise a machine for performing this operation, and several of the United Company's inventors had endeavored to produce a machine for doing this work. One difficulty in performing this operation by machine was that all lasts are provided with iron plates on their bottoms at the rear end to turn over and clinch the nails used in attaching the heel end of the outsole to the shoe, and also the nails which are driven to attach the heel to the shoe.

This iron plate is illustrated in Defendants' Exhibit 145. The insole lies against this iron plate on the rear end of the last, and prior to January, 1911, no machine had been produced which could meet the problem of trimming the heel end of the insole to the contour of the last without ruining the cutter by running it against the iron plate on the bottom of the last.

A further problem which had to be met was that the insole stock is frequently rather soft and flexible, so that it tends to buckle or wrinkle during this trimming operation, and the moment that such buckling or trimming occurs, the accuracy of the cut is defeated.

The first of the problems referred to was met in the machine first put out by the United Company in January, 1911, by an organization comprising a rotary cutter, means for lifting the insole slightly away from the iron bottom of the last into the path of the rotary cutter and means for guiding the insole and the last relatively to the cutter by engagement with the edge of the last close to its tread face. This permitted accurate trimming of the insole to shape it to the contour of the last bottom without any danger of injuring the cutter by running it against the iron plate.

The second problem, that is, the problem of preventing the wrinkling or buckling of the insole in such a manner as to defeat the accuracy of the cut, was provided for in this organization by means for pressing the insole against the device which raised it off the last, thus clamping the insole closely adjacent to the point where the cutter operated. This means, so arranged as to exert pressure yieldingly upon the insole, and mounted for adjusting movement toward and away from the device which lifted the insole off the iron plate, provided the necessary support for the insole close to the point where the cutter was operating, and effectively prevented any buckling or wrinkling of the insole, and, further, enabled the organization to adapt itself to insoles of varying thicknesses. The organization further included means for presenting the insole for the operation of the cutter, which was arranged to afford support for the last, and at the same time to permit the trimming operation to proceed along the straighter side portions of the heel end of the last, as well as around the curved rear end.

This organization is defined in all of the seventeen claims of patent No. 1,076,431, October 21, 1913, Keyes (application filed October 3, 1910). Typical claims of this patent are as follows:—

"1. A machine for trimming to the contour of the heel end of a last the heel portion of an insole attached to the bottom of the last comprising, in combination, a cutter, and guiding means for relatively positioning the last and cutter including a device constructed to extend between the tread face of the last and the insole and of such length and thickness as to raise the insole from the last and permit it to be trimmed by the cutter without interference between said cutter and the edge of the last.

"2. A machine for trimming an insole attached to the bottom of a last comprising, in combination, a cutter, guiding means to engage the sides of the last, a device located adjacent to the cutter to extend between the bottom of the last and the insole, and means to support the insole sufficiently close to the point of operation of the cutter to hold it against any tendency to bend away from the cutter."

"17. A machine for trimming an insole attached to the bottom of a last comprising a driven cutter, guiding means positioned close to the cutter having a part designed to engage and guide the side surfaces of the last and another part arranged to project between the last bottom and the inner face of the insole, a device arranged to engage the outer face of said sole close to the point of operation of the cutter, and a support for the last constructed to permit movement of the last relatively to the cutter to enable the trimming operation to proceed along the sides of the heel as well as around the end of the heel."

The method practiced in the operation of this machine is defined in all of the eleven claims of patent No. 1,076,432, October 21, 1913, Keyes (original application filed October 3, 1910). Typical claims of this patent are as follows:—

"1. The method of trimming an insole attached to a last which consists in raising a portion of the insole away from the last, and trimming the raised portion of the insole to the edge contour of the tread face of the last."

"6. The method of trimming an insole attached to a last which consists in gripping successively different portions of the insole close to points opposite the margin of the tread face of the last and holding said portions away from the last, and trimming said portions of the insole while so held to the dimensions and the edge contour of the corresponding portions of the tread face of the last."

Further improvements were incorporated in this machine in 1912, for which it is expected that patent protection will eventually be obtained.

One hundred and thirty-three of these insole heel-seat trimming machines have been put out since its introduction in January, 1911. The machine will trim at least 3000 pairs of insoles per day, and at least one operator is trimming 5000 pairs a day on this machine, which will prepare the insoles for from twelve to twenty No. 5 lasting machines. The field for the machine is in the factories where the medium and better grades of welt shoes are made. This trimming machine, Goodyear insole heel seat, is put out by the United Company through its Goodyear department.

Mr. WEBSTER. The answer is objected to for that it relates to matters with reference to which no evidence has been submitted by the petitioner, and because the answer is not in reply to, or in defence of, any evidence submitted by the petitioner before the examiner, and because it relates to none of the issues involved in this cause, and for the reasons aforesaid the answer is inadmissible, irrelevant and incompetent.

Int. 116. Have you collected under a single cover the patents referred to in your last answer referring to insole heel-seat trimming machines?

Ans. Yes, and I now produce the same.

[*Patents relating to insole heel-seat trimming machines are introduced in evidence, and marked "Defendants' Exhibit 193".*]

Mr. WEBSTER. The introduction of the patents is objected to for the same reasons as the answer was objected to.

Int. 117. Will you please state the number, date, and name of patentee of the patents which form the exhibit offered in evidence as Defendants' Exhibit 193?

Ans. No. 1,076,431, October 21, 1913, Keyes (application filed October 3, 1910);

No. 1,076,432, October 21, 1913, Keyes (original application filed October 3, 1910).

Int. 118. In the list of machines heretofore submitted by you in a prior part of your testimony (question 7) you refer to the

jointing machine, Goodyear. What is the function of that machine in the operation of making shoes; how was the work done by that machine prior to 1899? If the United Company are putting out any machines for that purpose which embody mechanism forming the subjects-matter of any Letters Patent of the United Company, state the patents and describe the development of this art since 1899.

Mr. WEBSTER. The question is objected to for that it calls for matter in no sense in reply to, or in defence of, any matters introduced by the petitioner.

JOINTING MACHINE: GOODYEAR.

Ans. Preparatory to blacking or staining and finishing the edge of a shoe sole, the edge must be finally shaped and smoothed up, and this operation is universally performed by rotary cutters, it being the usual process to use two cutters, one formed to impart the desired shape to the edge of the forepart of the sole, and the other being formed to impart the desired shape to the edge of the shank portion of the sole. After this edge-trimming operation there is left, immediately in front of the breast of the heel, that is, the front face of the heel, a portion of the edge of the sole shank on each side, about one-half an inch long, which has not been shaped in the edge-trimming operation, owing to the inability of operating the rotating shank-trimming cutter any nearer to the breast of the heel, without danger of frequently mutilating the heel. This surplus stock must be removed prior to the edge-setting operation, that is, the finishing operation on the edge of the sole.

I produce a shoe in which, on the right-hand side of the shoe, is shown the condition of the edge of the shank of the sole in front of the heel breast after the edge-trimming operation, while on the left side of the shoe the bunch of the stock in front the heel breast has been removed. The step in the manufacture of shoes which comprises the removal of this surplus stock from the edge of the sole in the shank is known as "jointing". This operation was performed, on the inside of the shoe which I produce, by the

United Company's "Jointing Machine, Goodyear", which was first put into commercial use in November, 1910.

[*Shoe illustrating operation of jointing machine, Goodyear, is introduced in evidence, and marked "Defendants' Exhibit 194".*]

In February, 1899, and always before the introduction of the United Company's jointing machine, this operation was a hand operation and was performed by a hand knife. In this hand operation the operator would run the knife lengthwise of the edge of the shank to sever the surplus stock longitudinally of the sole edge and would then cut off the surplus stock at the heel breast by a cut cross-wise of the sole. The requirements for a satisfactory jointing operation were, first, that the longitudinal cut should be a continuation of the operation of the edge trimmer; that is, that the cut should be made in the same plane as the trimmed edge, and at the same angle to the bottom of the sole as the cut made by the edge trimmer. And, secondly, that the transverse cut should be made in the plane of the heel breast.

As to the first requirement the face of the edge which is left after the surplus stock is removed must be just like the edge left by the edge-trimming machine in front of this cut, because otherwise the edge-finishing iron used in the edge-setting operation would not fit at this point and the edge setting at this point would not be properly performed. Unless unusual pains were taken by the hand workman in jointing, these requirements for satisfactory work were not met so that a good edge-finishing operation would be performed.

Early in 1905 the United Company undertook to develop a machine for performing this operation, and after several years of experimenting and trying out of several experimental machines in shoe factories, a successful machine was finally produced and, as stated, was put into commercial use in November, 1910. Prior to that date a number of machines had been constructed as shown in patent No. 1,030,605, June 25, 1912, Perry (application filed February 9, 1910), and had been used in shoe factories, but that use was of an experimental nature and the machine was not regarded as a commercial success until it had been reorganized and con-

structed substantially as shown in patent No. 1,047,982, December 24, 1912, Perry (application filed April 29, 1911). The reorganized machine shown in the drawings and set forth in the claims of that patent No. 1,047,982 was adapted as a standard commercial machine in November, 1910.

The first problem which had to be solved in the production of this machine was the making of the longitudinal cut and the transverse cut in such manner that the paths of the cutting knives should intersect, to insure that the surplus stock should be severed completely from the shoe, and this had to be done in such manner that neither cut should extend beyond the point of intersection of the two cuts, as that would deface the shoe. Further, the longitudinal cut must, as already explained, be a continuation of the cut made in the edge-trimming operation; that is, it must be in the same plane as the plane of the trimmed edge of which it is a continuation. These requirements were met in the commercial machine by providing two reciprocating knives. The knife which formed the longitudinal cut in continuation of the work of the edge-trimming cutter has a contour which is the same as that of the shank cutter on the edge-trimming machine. The cut made by this knife is about a quarter of an inch long and the other knife which reciprocates in a plane parallel to the breast of the heel cuts to a line intersecting the cut made by the first knife at the end of that cut. In the operation of the machine the edge of the shank is presented for the action of the cutters at the point where the edge-trimming operation left off and the shoe is moved quickly to transfer the point of operation of the cutters to the plane of the heel breast, when the operation is completed. The second problem which had to be dealt with in developing this machine was the insuring of proper protection of other parts of the shoe, particularly the heel and the upper of the shoe, from injury by the cutters. This problem was met in the commercial machine without interfering at all with the operation of the cutters. The third problem which had to be met in the production of a machine for performing this hand operation was to produce a machine which manufacturers could afford to use in preference to the inexpensive hand operation. This

problem was met by the general organization of the machine providing for convenient and quick operation and by providing two sets of trimming mechanisms arranged close together, one set comprising cutters shaped and arranged to perform the operation on the right side of the shoe, and the other, cutters shaped and arranged to perform the operation on the left side of the shoe, so that practically all that the operator in changing from one side to the other had to do was to turn the shoe over.

In the commercial use of this machine it was found that it had a capacity of considerably over twice the number of shoes which could be operated upon by a hand workman. The organization by which the problems which I have discussed were solved is set forth in nearly all of the seventy-five claims of patent No. 1,030,605, June 25, 1912, Perry (application filed February 10, 1910), of which the following claims are typical: —

"1. In a machine of the class described the combination with means for trimming the edge of a shoe sole to the line of the heel breast, of additional means operating at the same presentation of the shoe to the machine to detach the trimmed material from the sole in a line with said heel breast.

"2. In a machine of the class described, the combination with means for trimming the edge of a shoe sole to the line of the heel breast, of means for positioning the shoe for the operation of said trimming means, and means for detaching the trimmed material from the sole edge in a line with said heel breast while the shoe is positioned by said positioning means."

"21. An edge trimming machine comprising a trimming knife having right and left edges, right and left chopping knives co-operating respectively with said right and left edges, said chopping knives each being arranged to move in a path transverse to that of its co-operating trimming edge and means for moving said trimming knife to cause its edges to move alternately to their respective lines of intersection with the paths of the chopping knives."

"60. In a trimming machine, the combination of a cutter arranged to trim that portion of the sole edge between the heel breast and the point in the shank at which the usual machine trimming operation is stopped, means for driving the cutter, and means for protecting the other parts of the shoe during the trimming operation from injury by said cutter, but permitting the cutter to trim to the heel breast."

The organization of the machine which enabled the operator to remove the knives from the machine, sharpen them, and return them to the machine without disturbing the adjustments of the knives, which were necessarily delicate for the reasons which I have explained in detail, is defined in all of the nineteen claims of patent No. 1,047,982, December 24, 1912, Perry, of which claim 6 is typical: —

"6. A machine of the class described comprising, in combination, a plurality of knives, connected holders for said knives, mechanism for driving said holders and means for retaining said holders in operative relationship to said driving mechanism constructed to permit the holders to be removed readily from the driving mechanism while retaining their connection with each other undisturbed."

In August, 1911, important improvements were incorporated in the machine. It had been found that occasionally a heel would be damaged in the operation of the machine if the operator were careless. The liability of such injury was obviated by the improvements defined in two of the claims of patent No. 1,048,196, December 24, 1912, Moody (application filed November 18, 1907). A typical claim is the fifth: —

"5. In a machine for cutting in shoe shanks, a knife for trimming along the edge of a shoe sole adjacent to the heel breast, a second knife for curring off the trimmed material substantially in line with the heel breast, means for operating said knives, and a stop positioned to engage the breast of the heel to limit the movement of the shoe relatively to said knives, said stop being adjustable relatively to said knives."

As has already been stated, the capacity of this machine was more than twice the number of shoes which could be jointed by the hand workman, and moreover the quality of the work done by it was always the same and perfect, while the hand workman could perform the operation perfectly only by the taking of unusual pains which would reduce the amount of work which he would do. One hundred and sixty-two machines were put out by the United Company between the time when the machine was introduced in November, 1910, and October 1, 1913. One machine will take care of three or four welters. The demand for this machine has, so far,

been exclusively for the manufacture of welt shoes. This machine is put out by the United Company through its Goodyear department.

Mr. WEBSTER. The answer is objected to in that it relates to matter wholly immaterial to the questions involved herein, and as having no reference to matters and in no sense in defence of matters introduced by the petitioner, and for the reasons aforesaid the answer is objected to as incompetent, immaterial and inadmissible.

Int. 119. Have you collected under separate cover several Letters Patent referred to by you in your answer to the last question relating to the jointing machine?

Ans. Yes, sir, and I produce the volume [*introducing volume of patents*].

[*Volume of patents relating to jointing machines marked "Defendants' Exhibit 195".*]

Mr. WEBSTER. The introduction of the patents offered in evidence is objected to for that they were all issued after the date of the filing of the petition herein, and are therefore incompetent, immaterial and inadmissible.

Int. 120. Will you state the number, the date and the name of the patentee in each of them?

Ans. No. 1,030,605, June 25, 1912, Perry (application filed February 10, 1910.

No. 1,047,982, December 24, 1912, Perry (application filed April 29, 1911).

No. 1,048,196, December 24, 1912, Moody (application filed November 18, 1907).

Int. 121. In the list of machines submitted by you in connection with your prior testimony you referred to several eyeletting machines. What is the function of the eyeletting machine in the process of manufacturing boots and shoes? Which of the eyeletting machines referred to by you is the standard machine for regular work? Describe the development of such standard machine since 1899. If it embodies mechanisms which form the subjects-matter of any Letters Patent to the United Company, name the patents.

Mr. WEBSTER. The question is objected to on the ground that it calls for matter not in any sense in reply to, or in defence of, any evidence offered by the petitioner, and is immaterial, irrelevant and inadmissible.

Ans. An eyeletting machine is used in the manufacture of shoes to set eyelets in the edges of the "quarters" of lace shoes, both men's and women's.

EYELETTING MACHINE: DUPLEX.

At the time of its organization in February, 1899, the United Company had no machine for setting eyelets. Since that time it has developed and supplied to shoe manufacturers several types of eyeletting machines of which the company's standard machine for regular work is the machine known as "Eyeletting Machine, Duplex", which is put out by the company through its eyeletting department. This machine was first put out for commercial use in July, 1902. The organization of the machine as now put out is described in the claims of the following patents: —

No. 636,175, October 31, 1899, Prime.

No. 672,056, April 16, 1901, Davey and Ladd.

No. 683,488, October 1, 1901, Pearson.

No. 926,903, July 6, 1909, Smith.

No. 934,066, September 14, 1909, Goddu.

No. 964,626, July 19, 1910, Dunphy.

No. 1,013,215, January 2, 1912, Pearson (application filed May 18, 1903).

No. 1,017,602, February 13, 1912, Smith (application filed June 28, 1910).

No. 1,023,275, April 16, 1912, Rogers (application filed December 1, 1911).

No. 1,030,833, June 25, 1912, Rumney (application filed August 8, 1906).

No. 1,048,840, December 31, 1912, Littlefield (application filed November 2, 1906).

No. 1,057,068, March 25, 1913, Like (application filed June 28, 1909).

The commercial machine is constructed substantially as shown in the drawings and described in the specifications and claims of Goddu patent No. 934,066, September 14, 1909, although the organization of the present commercial machine embodies improvements shown in the drawings of several of the later patents and set forth in their claims. It should also be noted that some of the features of the organization shown in the Goddu patent No. 934,066 are more broadly defined in the claims of patent No. 1,013,215, January 2, 1912, Pearson (application filed May 18, 1903).

This Duplex eyeletting machine was the first and only machine ever used for inserting eyelets in the upper simultaneously on both sides of the lacing slit. Eyeletting machines of the type previously in general use were organized to set one eyelet at a time, and were used, first, to set eyelets one at a time in the upper on one side of the lacing slit, and then to set the eyelets one at a time on the other side of the lacing slit. The Duplex eyeletting machine has a double advantage over that type of single machine in that the quality of its work is superior, since eyelets of each pair in the opposed edges are properly located opposite each other and the capacity of the machine is greater, being over 50 per cent more than that of the single machine.

Referring now to such of the patents as represent most marked steps in the development of the Duplex eyeletting machine, No. 636,175, October 31, 1899, Prime, is the first patent in the industry showing and describing a machine for inserting eyelets simultaneously in the two opposite edges of the upper. Fifteen claims of this patent describe in broad terms the organization of the present commercial machine. Typical claims are 1 and 3:—

"1. An eyeletting machine comprising suitable mechanism, and means for causing said mechanism to simultaneously set two eyelets in axial alignment in two layers of work, one superimposed upon the other."

"3. An eyeletting machine comprising two oppositely arranged sets, and an anvil disposed between said sets and having its faces formed to co-act therewith."

The machine of the Prime patent was only experimental and was not adapted for commercial use. A substantial step toward a com-

mercial machine is represented by patent No. 683,488, October 1, 1901, Pearson. Important features of the organization of the commercial machine are set forth in thirty-two claims of that patent.

Among the more notable of these features are mechanism for punching the holes in the material which was subsequently to receive the eyelets and the organization for feeding the work between successive eyelet-setting operations. There are many claims in this patent No. 683,488 directed to each of these features, of which claims 1 and 26 are typical: —

"1. In an eyeletting machine, the combination with a pair of punches and a pair of setting dies, of a support therefor, the members of each of said pairs being oppositely disposed, substantially as described."

"26. An eyeletting machine, having punching devices, two oppositely acting setting dies adapted to feed the work and a die plate co-acting with the setting dies both to set the eyelets and to feed the work, substantially as described."

The next important step in the development of this machine into commercial form is represented by patent No. 1,013,215, January 2, 1912, Pearson, granted upon an application filed May 18, 1903. The most important contribution to the machine described in the claims of this patent is the organization which enables the machine to adopt itself automatically to differences in the relative thickness of the stock on opposite sides of the lacing slit. Typical claims of this patent defining this organization are claims 21 and 22: —

"21. An eyeletting machine, having, in combination, two oppositely disposed work engaging tools and a self adjusting die block between them, substantially as described.

"22. An eyeletting machine, having, in combination, two oppositely disposed work engaging tools and a movable die block located between them and movable in the line of motion of the tools, substantially as described."

Fourteen claims of this patent No. 1,013,215 set forth mechanisms always embodied in the commercial machine.

The final step in the production of a satisfactory commercial machine is represented by patent No. 934,066, September 14, 1909, Goddu (application filed April 22, 1903).

Thirty-eight claims of this patent describe mechanisms always embodied in the commercial machine. It will perhaps be sufficient to quote only a typical claim : —

"34. An eyeletting machine, having, in combination, oppositely disposed eyelet sets, edge guides, and means for varying the positions of the edge guides during the operation of the machine, substantially as described."

Mechanism set forth in the claims of this patent, of which the quoted claim is typical, first provided the machine with means for adjusting its operation to vary the distance of the eyelets from the respective edges of the stock while the machine was running, thus enabling the operator to get the desired contour of the line of eyelets with relation to the edge of the stock. This improvement is particularly useful when the machine is eyeletting uppers of high-grade shoes, other than oxfords and bluchers, in most of which it is desired to set the eyelets at the lower end of the line of eyelets at a greater distance from the lacing slit than the eyelets above. Further improvements, some of which are incorporated in all commercial machines and others of which adapt the machine for special kinds of work, are shown and described in patents of later date than those which I have discussed, or it is anticipated will be the subjects-matter of patents yet to be granted.

Twelve hundred and nineteen Duplex eyeletting machines were in use in shoe factories on October 1, 1913. The average capacity of the Duplex eyeletting machine is 2500 pairs per day. One machine will set the eyelets of shoes which are to be welted on six or seven welt and turn sewing machines.

This Duplex eyeletting machine is put out by the United Company through its eyeletting department.

Mr. WEBSTER. The answer is objected to for that it relates wholly to matter that is immaterial, inadmissible and irrelevant and is in no sense in reply to, or in defence of, any evidence submitted by the petitioner before the examiner, and all reference to patents or mechanisms of patents or structures not shown in claims of patents issued prior to the filing of the petition herein is especially objected to as incompetent, inadmissible and irrelevant and as having no bearing on the questions involved herein.

Int. 122. Have you collected under a single cover the several Letters Patent referred to by you in your last answer as relating to the Duplex eyeletting machine?

Ans. I have, and I produce the volume.

[*Volume of patents relating to Duplex eyeletting machine as introduced in evidence, and marked "Defendants' Exhibit 196".*]

Mr. WEBSTER. The introduction of the patents offered in evidence is objected to as inadmissible, irrelevant and incompetent, and the introduction of all patents issued after the date of the filing of the petition herein is especially objected to as having no reference in any manner to the question involved herein.

Int. 123. Will you please give the number, date and name of patentee of the several patents contained in the volume which has just been offered in evidence as Defendants' Exhibit 196?

Ans. No. 636,175, October 31, 1899, Prime.

No. 672,056, April 16, 1901, Davey and Ladd.

No. 683,488, October 1, 1901, Pearson.

No. 926,903, July 6, 1909, Smith.

No. 934,066, September 14, 1909, Goddu.

No. 964,626, July 19, 1910, Dunphy.

No. 1,013,215, January 2, 1912, Pearson (application filed May 18, 1903).

No. 1,023,275, April 16, 1912, Rogers (application filed December 1, 1911).

No. 1,030,833, June 25, 1912, Rumney (application filed August 8, 1906).

No. 1,048,840, December 31, 1912, Littlefield (application filed November 2, 1906).

No. 1,057,068, March 25, 1913, Like (application filed June 28, 1909).

Int. 124. In the list of machines heretofore submitted by you, you refer to blacking machine, model A, crest heel, and blacking machine, model B, crest heel. What is the function performed by these machines in the process of making shoes, and what has been the development of this art since 1899? If the United Company is putting out any standard machine for this pur-

pose which embodies any mechanisms forming the subjects-matter of Letters Patent of the United Company, refer to such patents.

Mr. Webster. Question objected to because it calls for statements with reference to matter not referred to in any evidence submitted by the petitioner before the examiner, and is utterly immaterial, inadmissible and irrelevant with reference to the issues involved herein.

Ans. Before the heel-burnishing operation, that is, the final finishing operation on the heel, blacking must be applied to the edges of the heels of black shoes, and russet stain to the edges of the heels of russet shoes. The two machines inquired about, blacking machine, model A, crest heel, and blacking machine, model B, crest heel, are two differently organized machines which have been produced by the United Shoe Machinery Company for performing this operation. The present standard commercial machine is the model B machine.

Blacking Machine — Model A: Crest Heel.

At the time the United Company was formed, in February, 1899, the universal practice was to apply blacking or stain to heels with a hand brush, and it was one of the most inexpensive operations in the manufacture of shoes, as the work was always done by a boy or girl. The quality of the work was not satisfactory, however, as the blacking or stain was frequently splashed on the upper or on the tread face or breast edge of the heel. The great problem in devising a machine for performing this hand operation was, therefore, the producing of a machine which would meet the low labor cost of the hand operation by doing this work in a superior way and by doing a great deal more of it. The United Company produced a machine which met these conditions and which was first put out for commercial use in September, 1908, the machine then put out now being known as "Blacking Machine, Model A, Crest Heel." This machine comprised two rotary brushes so located that they applied blacking simultaneously to opposite sides of a heel. Each brush was especially constructed for both getting blacking into the rand crease, that is, the crease between the upper and the

upper edge of the sole above the heel, and spreading blacking on the body of the heel edge. Means were provided in the machine to prevent getting blacking upon the upper, and to avoid getting blacking upon the breast of the heel the brushes were rotated in opposite directions, both toward the breast of the heel. The machine was so organized that a boy or girl running it could not get blacking upon the upper or on the breast of the heel, and was so rapid in its operation that its average capacity was at least double that of the hand operation. The organization of this model A machine is defined in the claims of the following patents: —

No. 805,763, November 28, 1905, Tuttle.

No. 1,007,777, November 7, 1911, Furber.

No. 1,015,433, January 23, 1912, Furber (application filed July 29, 1910).

No. 1,056,454, March 18, 1913, Rollins (application filed September 12, 1907).

Referring to typical claims of these patents, claims 6 and 11 of patent No. 805,763 are as follows: —

"6. A machine of the class described, comprising a pair of rotary brushes arranged to act upon opposite sides of a heel, combined with a work rest arranged relatively to said brushes to be engaged by the heel when presented to either brush."

"11. A machine for finishing parts of boots and shoes, comprising a plurality of rotary work members having yielding peripheries and mounted with their acting peripheral faces adjacent and arranged to permit the heel of a boot or shoe to be advanced curved end foremost between them, said work members being rotatable in directions to cause the movement of their acting faces to be from said curved end toward the breast of the heel."

Representative claims of patent No. 1,056,454 are the 14th and 21st: —

"14. In a machine of the character described, the combination of a tank adapted to contain liquid material, a pair of brushes mounted to rotate on vertical axes side by side, means for simultaneously rotating said brushes, and means for lifting the liquid material out of said tank and applying same to each of the brushes."

"21. A heel blacking machine comprising, in combination, two rotary brushes for applying blacking arranged side by side and spaced apart to permit the partial introduction of a heel between

them, means for delivering blacking to said brushes and devices associated with said two brushes but additional to their working faces to locate the heel laterally between the brushes."

Twenty claims of this patent No. 1,056,454 set forth the organization of the model A machine.

In patent No. 1,007,777, Furber, which shows substantially the commercial machine, and describes the machine in thirty-three of its claims, typical claims are the following: —

"23. A heel blacking machine, having, in combination, a heel blacking brush comprising a thin section having short stiff bristles and tapered from its upper edge downwardly for forcing the blacking into the rand crease, and a thick section of soft bristles for wiping blacking upon the edge of the heel, and means for actuating the brush."

"41. A heel blacking machine, having, in combination, two rotary brushes for applying blacking to the opposite edges of a heel, means for adjusting said brushes from and toward each other into definite relations to act simultaneously upon opposite sides of heels of different widths, and a common driving means for rotating the brushes in their adjusted positions."

Between the date of its introduction in September, 1908, and March 1, 1913, the end of the company's last fiscal year, 173 of these machines were put out. The model A machine has a capacity of from 3600 to 4200 pairs per day, and a boy can black on the machine at least double the number of shoes that he can black by hand.

Blacking Machine — Model B: Crest Heel.

The model A machine proved acceptable for the lower-priced shoes, but it was not satisfactory for the better grades of shoes because it was found that the average boy operator could not be relied upon so to operate the machine that it would spread the blacking uniformly, and the machine therefore frequently put too much blacking in the rand crease and too much on the rear end of the heel. The machine was, however, used on the higher grades of work as well as upon the cheaper grades, and manufacturers of all grades of shoes would probably have continued to use it had they not been supplied with a more satisfactory machine. Soon after the model A machine had been put into commercial use the

United Company had started experimental work with a view to producing a machine which would apply blacking uniformly to all parts of the heel edge and on the rand, and which would eliminate the danger of imperfect work being caused by the carelessness of a boy operator. This experimental work resulted in the production of a radically new heel-blacking machine of an entirely different type, known as "Model B". This machine, which was first put into commercial use in May, 1911, is shown as it was then constructed in patent No. 1,025,523, May 7, 1912, Furber (application filed December 31, 1910).

[*Adjourned to 10 o'clock* A. M., *October 23, 1913.*]

BOSTON, MASS., October 27, 1913.

[*Ans. to Int. 124 continued:*]

This machine differs radically from the model A machine in that the blacking-applying brush moves across the heel from the top of the heel adjacent to the upper to the tread face of the heel, while the two brushes of the model A machine moved longitudinally of the heel and the shoe. This mode of operation of the model B machine insures the application of a uniform film of blacking all over the heel. A further important feature of the organization of this new model B machine is that one shape of brush is equally satisfactory on all the usual shapes of heels, while in the earlier model A machine brushes adapted for one shape of heel were not suited for heels of radically different shape.

The organization of this model B machine, including features to which I have not specifically referred, is defined in nearly all of the forty-five claims of patent No. 1,025,523, May 7, 1912 (granted on an application filed December 31, 1910, Furber). Of these claims the following are typical: —

"1. A machine of the class described comprising in combination, means movable across the heel edge to apply blacking thereto and additional means operating simultaneously therewith for applying blacking to the rand crease."

"9. A machine of the class described comprising in combination a rotary rand crease guide, means for supplying blacking to the rand engaging face of said guide and a rotatable brush arranged to take blacking from said guide and deliver it to the work."

"42. A machine of the class described comprising in combination, a brush mounted for operative movement, means for driving the brush, means for supplying blacking to the brush, and guiding means to engage the shoe during the blacking operation, said guiding means being so positioned with relation to the brush that the brush will move across the lifts of the shoe heel toward the tread face of the heel."

Some of the features of the organization of the model B machine were adopted from the model A machine and are set forth in general terms in some of the claims of patent No. 1,007,777, November 7, 1911, Furber. Typical claims directed to this feature are the following:—

"4. A machine of the class described having, in combination, means for blacking the rand crease of a shoe and means for blacking the edge of the heel, and means for supplying coloring material directly to the crease blacking means and indirectly to the edge blacking means."

"15. A heel blacking machine having, in combination, a blacking brush, means to actuate the brush, and means to straighten the bristles of the brush as it is actuated."

Since this model B machine was first put into commercial use it has been further improved, and it is expected that additional patent protection will be obtained upon these improvements.

Between May, 1911, and September, 1, 1913, one hundred and eighteen of these model B heel-blacking machines were put out. The average output of the machine is about 3000 pairs per day, which is over sixty per cent more than the average number of shoes which a hand workman will black in a day. The work done by this model B machine is so superior to the work of the earlier model A machine that the model B machine will probably entirely supersede the model A machine.

These two machines, blacking machine, model A, crest heel, and blacking machine, model B, crest heel, are put out by the United Company through its general department.

Mr. WEBSTER. The answer is objected to for that it relates to matters in no wise at issue or involved in the issues of this cause, and for the further reason that the answer relates to matters in reference to which no evidence has been submitted by the petitioner,

and said answer is not in reply to, or in defence of, any evidence submitted before the examiner; and for said reason the answer is objected to as inadmissible, irrelevant and incompetent.

The answer, in so far as it relates to patents or mechanisms of patents issued since the date of the filing of the petition herein, is objected to for the reasons aforesaid.

Int. 125. Have you collected under a single cover patents referred to by you in your last answer as relating to heel-blacking machines?

Ans. I have, and I produce the volume.

[*Volume of patents relating to heel-blacking machines is introduced in evidence, and marked "Defendants' Exhibit 197".*]

Mr. WEBSTER. The introduction of the patents offered in evidence is objected to as incompetent, inadmissible and immaterial, and all patents issued after the date of the filing of the petition herein are especially objected to as having no reference to matters involved herein.

Int. 126. Please give the number, date and name of patentee of each of the patents in the volume which has been offered in evidence as Defendants' Exhibit 197.

Ans. No. 805,763, November 28, 1905, Tuttle.

No. 1,007,777, November 7, 1911, Furber.

No. 1,015,433, January 23, 1912, Furber (application filed July 29, 1910).

No. 1,025,523, May 7, 1912, Furber (application filed December 31, 1910).

No. 1,056,454, March 18, 1913, Rollins (application filed September 12, 1907).

Int. 127. In the list of machines submitted by you in answer to a previous question (question No. 7), you referred to a machine designated as repairing machine, model A, patent leather. Please state what the function of that machine is in the manufacture of shoes, how such function was performed prior to 1899, and also state what improvements, if any, have been made by the United Company in this art since 1899, and their importance in the art. If such improvements form the subjects-matter of Letters Patent of the United Company, state the patents.

Mr. Webster. Question objected to for that it calls for matters having no bearing on the questions involved in this cause, and for the further reason that it calls for matter in no sense in reply to, or in defence of, matters presented by the petitioner before the examiner.

The petitioner also objects to all reference to patents or structures shown in patents issued after the date of the filing of the petition herein, and for the reasons aforesaid said question is objected to as incompetent, inadmissible and immaterial.

Repairing Machine — Model A: Patent Leather.

Ans. The machine inquired about, "Repairing Machine, Patent Leather", is used in the repairing of patent leather shoes before they are shipped from shoe factories to be marketed.

A large proportion of patent leather shoes, from a minimum of about forty per cent of shoes made of the better grades of patent leather to a maximum of over seventy per cent of shoes made from the cheaper grades of patent leather, have to be repaired after the making operation, before they can be marketed. Until quite recently this operation of repairing patent leather shoes was always done by hand. The necessity for the operation is due to the cracking in the patent leather which occurs during the lasting operation. This cracking is chiefly caused by the strain to which the leather is subjected in lasting it around the curved toe, so that most of the repairing has to be done on the toe tip, although occasional cracks occur in other parts of the upper which have to be repaired. These damaged portions must all be repaired before the shoe can be marketed, and in all factories making patent leather shoes a regular operation is that of patent leather repairing. A patent leather shoe which requires repairing before it could be marketed is shown in Defendants' Exhibit No. 13, and the patent leather shoes of Defendants' Exhibits Nos. 149 and 182 will obviously need repairing after the making operations are completed.

In this repairing operation enamel is first buffed off in the region of the cracks, as illustrated on the left portion of the toe tip in Defendants' Exhibit No. 13, and then liquid enamel must be applied

to the buffed portion. The application of this liquid enamel was so essentially a hand operation that it was done by putting the enamel on a soft cloth wrapped about the fingers of the workman, and rubbing it into the leather. Several coats of the enamel had to be applied to each buffed spot.

Probably no minor operation upon the shoe ever presented so difficult a problem for inventors as the devising of a machine for performing this hand operation properly and in such manner that it would effect a saving for the manufacturer to use the machine. The first problem was to devise a tool which would take the place of the operator's fingers and the soft cloth, and which, like them, would fit the curved surfaces around the toe and would also act satisfactorily in the crease between the welt and upper. The second problem was to devise means for operating this tool which again would take the place of the operator's fingers. The United Company's inventors in their experimental work soon found that a tool which had a reciprocating motion would rub the enamel off the spot to which it was the object of the operation to apply enamel, while a tool having a rotary motion would throw the enamel away from the centre of its revolution. The third problem was to meet the condition presented by the hand workman using each portion of the cloth until that portion had absorbed so much enamel that its surface was unfit for further use, and finally, after the entire cloth was thus rendered unfit for further use, throwing it away and taking another piece.

Over two years of constant experimenting were required before a machine was produced which was satisfactory for commercial use, and during this period several different machines were built and were discarded as useless. Early in 1911 a machine was produced which solved all of the problems to which I have referred. In this machiue the yielding character of the finger rubbing was produced by a spongy rubber tool. The cloth was provided in the form of an endless piece over a yard long, the necessary rubbing motion was obtained by imparting to the tool a very rapid movement approximately in the form of a figure eight, and moving the cloth as each successive portion of the cloth was unfit for further

use was provided for by making the tool in the form of a large roll, over and from which the cloth was stretched to another roll which supported and held it taut, and on which it was moved by means which, at the touch of a finger, would move the cloth just far enough to bring a new, fresh part of the cloth into operative position.

As already stated, the first machine which would perform this operation satisfactorily was produced early in 1911. As is the company's usual practice, this machine was given an extended trying out in a number of different factories under different commercial conditions, and was finally adopted as a commercial success in the summer of 1911, and manufacture of machines for commercial use was then begun.

No patent has as yet been granted upon this machine, but its organization is set forth in many allowed claims of a pending application for patent filed November 21, 1911. Improvements upon the machine shown in that application and defined in allowed claims are set forth in the claims of another pending application.

This machine, repairing machine, patent leather, is put out by the United Company through its general department. One hundred and fifteen machines were put out during the first year of its commercial use. The quality of the work done by the machine is superior to hand work, and it has an increased capacity over hand work of from a minimum of seventy-five per cent to a maximum of over 200 per cent, according to the quality of the shoes and the conditions under which the work is done. On an average, a saving of about one cent per pair is made in using the machine over hand work. In one factory operators are repairing at least 200 pairs per day on the machine, and in that factory where there are four machines each machine when running to its capacity is effecting a saving for the manufacturer of two dollars per day, or eight dollars for the four machines.

Mr. WEBSTER. Answer objected to for that it relates to matters in no wise involved in the issues in this cause, and further for the reason that reference is made in the answer to structures not shown in patents issued prior to the filing of the petition herein.

Further, the answer is objected to for the reason that it is not in

any sense in reply to, or in defence of, any evidence submitted by the petitioner before the examiner; and for the reasons aforesaid the answer is objected to as incompetent, inadmissible and irrelevant.

Int. 128. In answer to a prior question (question No. 7), you submitted a list of some of the important machines put out by the United Company, giving the official name of the machine, the date when it was first put out and the department of the United Shoe Machinery Company through which it was put out. In answer to previous questions you have already described a number of these machines and compared the mechanisms embodied therein with the subjects-matter of Letters Patent of the United Company. Will you please state the function in the shoe manufacturing art of the machines on that list to which you have not specifically referred, and if such machines have formed, or now form, the subjects-matter of Letters Patent of the United Company, state the patents.

Mr. WEBSTER. Question objected to for that it calls for matter in no way competent with reference to the issues involved in this cause, and in no wise in reply to, or in defence of, any evidence submitted before the examiner by the petitioner.

And for the reasons aforesaid the question is objected to as calling for matter which is inadmissible, incompetent and irrelevant.

ASSEMBLING MACHINE: REX TURN SHOE.
Pulling Over Department.

Ans. This is a machine used for inserting the tacks used in assembling, and sometimes used in lasting the sides of turn shoes, some of which tacks must be fully driven while others must be left with their heads projecting different distances. The machine is organized to provide by an instantaneous adjustment the desired depth of insertion for any tack or series of tacks. The machine was adopted in February, 1912. This machine is set forth in the claims of the following patents and pending applications, owned by the United Company: —

Patent No. 1,026,067, May 14, 1912, Ashton (application filed November 30, 1908).

One application for patent filed prior to December 12, 1911.
One application for patent filed since December 12, 1911.

BEADING MACHINE: COLUMBIA.
General Department.

This machine is used to turn inside out, and then to pound flat, the seam by which the upper and lining are fastened together wrong side out. The machine was adopted in 1907. This machine is set forth in the claims of the following patents owned by the United Company:—

Patent No. 623,872, April 25, 1899, Booth.

Patent No. 624,426, May 2, 1899, Booth.

Patent No. 1,027,411, May 28, 1912, Flynt (application filed December 14, 1908).

BEVELING MACHINE — MODEL B: CHAMPION STRIP.
General Department.

This machine is used to cut leather board into strips and to split the strips diagonally from corner to corner, preparatory to dieing out wedge heel lifts. It was first put out by the United Company in November, 1909, and is set forth in the claims of the following patents owned by the United Company:—

Patent No. 1,025,556, May 7, 1912, Winter (application filed June 3, 1908).

Patent No. 1,048,278, December 24, 1912, Benjamin (application filed April 7, 1911).

BUILDING MACHINE — PYRAMID HEEL: MODELS B, C, D.
General Department.

In the use of this machine heel lifts, either pieced or whole, are placed one upon another to produce a heel of the desired height, and the machine automatically aligns them and nails them together. The machine was first put out in June, 1909, and embodies mechanisms set forth in the claims of the following patent, and an application owned by the United Company:—

Patent No. 1,056,720, March 18, 1913, Tripp (application filed June 9, 1909).

One application for patent filed prior to December 12, 1911.

CEMENTING MACHINE: HUB LINING — MODELS E AND F.
General Department.

This machine is used to apply cement to doubling material which is inserted between the upper and the lining to strengthen the upper. The machine was adopted in 1908 and constitutes the subjects-matter of applications owned by the United Company as follows: —

One application for patent filed prior to December 12, 1911.

One application for patent filed since December 12, 1911.

CEMENTING MACHINE — MODEL X: STANBON CHANNEL.
General Department.

This machine is used to apply cement to the channel and channel flap of an out-sole preparatory to laying the flap over the stitches by which the sole is attached to the insole and upper. It is particularly adapted for McKay soles having wide channels. The machine was adopted in April, 1911, and its organization is set forth in the claims of a patent owned by the United Company: —

Patent No. 1,004,705, October 3, 1911, Stanbon.

CEMENTING MACHINE — STAR CHANNEL: MODELS A AND C.
General Department.

This machine is used to apply cement to the channel and channel flap preparatory to laying the flap over the stitches by which the out-sole is attached to the upper. It was adopted in October, 1906, and is described in the claims of the following patents owned by the United Company: —

Patent No. 743,929, November 10, 1903, Rollins.

Patent No. 1,013,735, January 2, 1912, Brogan (application filed November 19, 1908).

Patent No. 1,030,769, June 25, 1912, Brogan (application filed October 27, 1906).

CEMENTING MACHINE — STAR CHANNEL: MODEL D.
General Department.

This machine is used to apply cement to the channel and channel flap of the sole preparatory to laying the flap over the stitches by which the sole is attached to the upper. The machine is particularly designed for operating on McKay soles having wide channels. It was adopted in April, 1912, and embodies mechanisms set forth in the claims of patents owned by the United Company as follows: —

Patent No. 743,929, November 10, 1903, Rollins.

Patent No. 1,004,705, October 3, 1911, Stanbon.

Patent No. 1,013,735, January 2, 1912, Brogan (application filed November 19, 1908).

Patent No. 1,030,769, June 25, 1912, Brogan (application filed October 27, 1906).

CLINCH MACHINE — UNIVERSAL DOUBLE.
Metallic Department.

This machine is used to secure the out-sole of a metallic fastened shoe to the insole by means of a wire fastening which is clinched at both ends. The machine was first put out in November, 1899, and is defined in the claims of the following patents owned by the United Company: —

Patent No. 611,990, October 4, 1898, Casgrain.

Patent No. 669,023, February 26, 1901, Casgrain.

Patent No. 693,686, February 18, 1902, Casgrain.

Patent No. 765,650, July 19, 1904, Casgrain.

Patent No. 891,907, June 30, 1908, Casgrain.

Patent No. 1,030,971, July 2, 1912, Casgrain (application filed January 31, 1910).

The shoe which is produced by the operation of this machine and the fastening which is inserted by the machine, as well as the methods practiced by the use of the machine, are defined in the claims of the following patents owned by the United Company: —

Patent No. 669,022, February 26, 1901, Casgrain.

Patent No. 669,025, February 26, 1901, Casgrain.
Patent No. 669,026, February 26, 1901, Casgrain.
Patent No. 721,016, February 17, 1903, Casgrain.
Patent No. 724,432, April 7, 1903, Casgrain.

CUTTING AND SCORING MACHINE — INSOLE: MODELS D AND E.
General Department.

This machine is used to cut the ends of the lip of a welt insole, before the lip is turned up by the lip-turning machine. At the same time the machine also marks the insole, so as to guide the operators in sewing the inseam on the welt-sewing machine and in butting the welt; and simultaneously with these two operations the machine stamps the size number upon the insole and makes a mark to guide the operator in applying canvas if the insole is to be reinforced. The machine was adopted as a standard commercial machine in December, 1911. There was no machine for doing this work in 1899. The organization of the machine is set forth in the following patents and applications for patents owned by the United Company: —

Patent No. 957,598, May 10, 1910, Cook.

Patent No. 1,033,764, July 23, 1912, Mirandette (application filed February 1, 1911).

Two applications for patents filed prior to December 12, 1911.

EMBOSSING MACHINE — MODEL B.
General Department.

This machine is used for embossing a trademark, the name of the manufacturer or the retailer's name on the inside of the upper of a shoe. The embossing is usually done with gold leaf or bronze powder. The machine was first put out for commercial use in January, 1911, and is defined in the claims of patents and applications owned by the United Company as follows: —

Patent No. 1,028,567, June 4, 1912, Gordon and Topham (application filed December 23, 1903).

One application for patent filed prior to December 12, 1911.

Two applications for patents filed since December 12, 1911.

EYELETTING MACHINE — CAMEO: FOOT POWER.
Eyeletting Department.

This is a foot-power machine for inserting eyelets in material previously punched, and it is used for setting odd eyelets and eyelets of special shapes. It was first put out in April, 1910, and constitutes the subject-matter of an application for patent owned by the United Company as follows: —

One application for patent filed prior to December 12, 1911.

EYELETTING MACHINE — UNIVERSAL.
Eyeletting Department.

This is a machine for inserting eyelets in shoe uppers, and comprises automatic means for punching holes for the eyelets, inserting the eyelets and feeding the work. It was adopted in November, 1902, and among the patents and applications owned by the United Company which define the organization of this machine are the following: —

Patent No. 603,023, April 26, 1898, Field.

Patent No. 638,994, December 12, 1899, Smith.

Patent No. 672,056, April 16, 1901, Davey et al.

Patent No. 880,376, February 25, 1908, Field.

Patent No. 1,048,840, December 31, 1912, Littlefield (application filed November 2, 1906).

One application for patent filed prior to December 12, 1911.

FASTENING MACHINE — MODEL D: STAPLE.
Metallic Department.

This machine makes and drives staples and is used in tacking outsoles to the insoles of light-weight McKay sewed shoes, women's, misses' and children's, to hold them in place until the soles are permanently secured, also for tacking insoles of welt shoes to lasts and for other miscellaneous tacking. The machine was adopted in January, 1907, and has embodied or now embodies mechanisms set forth in the claims of patents owned by the United Company as follows: —

Patent No. 447,681, March 3, 1891, Hamm.

Patent No. 571,227, November 10, 1896, Hamm and Eaton.

Patent No. 765,650, July 19, 1904, Casgrain.

Patent No. 899,093, September 22, 1908, Ashton.

Patent No. 1,016,930, February 13, 1912, Borden (application filed January 16, 1905).

FINISHING MACHINE — U S M C: BUTTONHOLE.
Fitting Room Department.

This machine is used after buttonholes have been sewed on "Making Machine, Buttonhole", to gather in line both the loose ends of the threads and the stay cord which is used to reinforce the edges of the buttonholes, and then to bind down by blind stitches said ends and cord upon the under face of the buttonhole piece. After experimental work begun some time before December 12, 1911, this machine was adopted in January, 1913. It constitutes the subjects-matter of pending applications owned by the United Company as follows: —

Three applications filed prior to December 12, 1911.

One application filed since December 12, 1911.

FLEXIBLE INNERSOLE MACHINE — MODEL X: GOODYEAR.
Goodyear Department.

This machine is used to make a welt insole flexible by forming slashes between the lips extending part way through the insole at an angle to its surface, the machine automatically varying the lengths of the slashes according to the distance between the insole lips. The machine was adopted in January, 1911, and is defined in the claims of patents owned by the United Company as follows: —

Patent No. 539,835, May 28, 1895, Tirrell.

Patent No. 871,967, November 26, 1907, Stewart.

Patent No. 871,969, November 26, 1907, Stewart.

Patent No. 958,029, May 17, 1910, Stewart.

The United Company also owns a patent on the insole which is produced by the operation of this machine, which is: —

Patent No. 871,968, November 26, 1907, Stewart.

FUDGE EDGE MACHINE: GOODYEAR.
Goodyear Department.

This machine "sets" or burnishes the edge of a shoe sole and simultaneously wheels the upper face of the sole edge to form imitation stitch impressions. It is used on light McKay sewed or turned shoes. A sample of the work of this machine is shown in Defendants' Exhibit 30. The machine was adopted in May, 1908, and is defined in the claims of a patent owned by the United Company as follows: —

Patent No. 852,703, May 7, 1907, Carnes.

GROOVING AND BEVELING MACHINE — GOODYEAR: POWER WELT.
Goodyear Department.

This is a machine for grooving and beveling a strip of welting preparatory to its attachment with the upper to the insole by the welt-sewing machine. The groove is formed to receive the thread of the inseam and the beveling facilitates proper seating of the welt against the upper and insole lip. The machine was first put out in July, 1906, and is defined in the claims of the United Company's patent —

No. 1,020,346, March 12, 1912, Eppler (application filed July 30, 1906).

LAYING MACHINE — MODEL A: APEX WELT.
General Department.

This machine is used to cement a mock welt to the edge of a McKay sole before the sole is attached to the shoe. The machine was adopted for commercial use in February, 1910, and is defined in the claims of the United Company's patent —

No. 1,005,394, October 10, 1911, Winter.

LAYING MACHINE — MODEL X: APEX WELT.
General Department.

This machine lays a McKay welt on a McKay sole and cuts off the welt after it is laid. It was adopted in February, 1911, and its mechanism is set forth in the claims of the United Company's patent —

No. 957,987, May 17, 1910, McLeod.

LAYING MACHINE — GOODYEAR CHANNEL.
Goodyear Department.

This machine is used to turn down over the outseam the channel flap of an out-sole after the out-sole has been stitched to the welt. Prior to this operation both flap and channel are cemented on the channel-cementing machine to make the flap stick when it is turned down. The United Company's patents which set forth the mechanisms embodied in this machine are as follows: —

No. 576,114, February 2, 1897, Hadaway.

No. 759,273, May 10, 1904, Hadaway.

No. 981,190, January 10, 1911, Hadaway.

LAYING MACHINE — GOODYEAR IMPROVED SOLE: MODELS B AND C.
Goodyear Department.

This is an improved machine for pressing a cemented out-sole with uniform predetermined pressure against the bottom of a welt shoe to hold the out-sole in place while it is being rounded and channeled, and until the out-sole is finally secured to the welt by the out-sole stitching machine.

This machine was adopted in December, 1910, and its organization is defined in the claims of the following patents owned by the United Company: —

No. 694,367, March 4, 1902, Gifford.

No. 930,272, August 3, 1909, Davenport.

No. 942,133, December 7, 1909, Davenport.

No. 1,066,473, July 8, 1913, Davenport (application filed October 10, 1910).

LAYING MACHINE — GOODYEAR IMPROVED SOLE: TWIN.
Goodyear Department.

This machine is used to secure an out-sole temporarily to the bottom of a welt shoe by cement to hold the out-sole in place during the rounding and channeling operation and until the out-sole is permanently attached to the welt by the out-sole stitching machine. This machine was adopted and first put out in December,

1906, and is defined in the claims of the following patents owned by the United Company: —

Patent No. 694,367, March 4, 1902, Gifford.

Patent No. 781,636, February 7, 1905, Davenport.

Patent No. 930,272, August 3, 1909, Davenport.

Patent No. 942,133, December 7, 1909, Davenport.

LEVELING AND FLEXING MACHINE — MODEL N: SHIN.

General Department.

This machine is used to flatten out "shins" or portions of the hide which come off the legs. The machine scores or cuts the stock on the flesh side and rolls it. The organization of the machine is defined in the United Company's patent —

No. 740,709, October 6, 1903, Stowe.

MAKING MACHINE: BUTTONHOLE.

Fitting Room Department.

This machine cuts a buttonhole in the upper of a button shoe and sews around its edge with binding stitches which pass over the edge of the material and over a stay cord. After several years of experimenting, begun some time before December 12, 1911, the machine was finally adopted and put out for commercial use on January 1, 1913. The organization of the machine is defined in the claims of patents and pending applications for patents owned by the United Company as follows: —

Patent No. 1,063,729, June 3, 1913, Ray (application filed August 28, 1912).

Patent No. 1,063,795, June 3, 1913, Hill (application filed November 12, 1912).

Patent No. 1,063,880, June 3, 1913, Hill (application filed February 10, 1912).

Two applications filed prior to December 12, 1911.

Three applications filed since December 12, 1911.

MARKER: IMPROVED STAR SOLE.

General Department.

This is an implement for marking sizes and half sizes on soles

preparatory to sorting them in lots of the same size. It was first put out in October, 1910. The mechanisms embodied in this implement are defined in the claims of patents and a pending application owned by the United Company as follows: —

Patent No. 509,576, November 28, 1893, Gordon.

One pending application for patent filed prior to December 12, 1911.

MARKING MACHINE — MODEL C: PARAGON VAMP.
General Department.

This machine is used to make on the vamp portion of an upper marks which indicate the lines on which the toe tip and blucher quarters should be attached. It also marks the median line of the vamp to facilitate the pulling-over operation. The machine was first put out for commercial use in May, 1906, and its organization is defined in the claims of patents owned by the United Company as follows: —

Patent No. 968,746, August 30, 1910, Davenport.

Patent No. 1,030,275, June 25, 1912, Bayley (application filed April 17, 1906).

MOLDING MACHINE — AMERICAN TWIN SOLE: MODELS B AND C.
General Department.

This machine is used to bend an out-sole before it is attached to a shoe in order to fit it approximately to the bottom of the last. It was adopted in May, 1907, and is defined in the claims of patents and applications owned by the United Company as follows: —

Patent No. 627,122, June 20, 1899, Keighley.

Patent No. 935,212, September 28, 1909, Manent.

Patent No. 997,927, July 11, 1911, Mayo.

Patent No. 1,003,970, September 26, 1911, Ball.

Patent No. 1,003,971, September 26, 1911, Ball.

Patent No. 1,004,075, September 26, 1911, Preble.

Patent No. 1,004,076, September 26, 1911, Preble.

Patent No. 1,048,579, December 31, 1912, Preble (application filed August 8, 1910).

Two pending applications for patents, both filed prior to December 12, 1911.

MOLDING MACHINE: GOODYEAR POWER.
Goodyear Department.

This machine is used to bend down the margin of a thick-edged turn sole, before it is put on the last, so that it will clear the needle of the turn-sewing machine while the upper is being attached. This machine was adopted in June, 1910, and constitutes the subject-matter of a pending application owned by the United Company as follows:—

One application filed prior to December 12, 1911.

MOLDING MACHINE: STITCH-DOWN UPPER.
General Department.

This machine performs the operation of molding to shape the heel and toe ends of the uppers of that class of stitch-down shoes which have the insoles attached before the uppers are placed upon the lasts. A stitch-down shoe is one in which the lower edge of the upper is turned outwardly, forming a flange to which the outsole is secured. Sandals and some children's shoes are made this way. This machine was first put out for commercial use in November, 1907, and its organization is set forth in patents and pending applications owned by the United Company as follows:—

Patent No. 871,963, November 26, 1907, Stewart.

Patent No. 871,966, November 26, 1907, Stewart.

Patent No. 947,895, February 1, 1910, Engel.

Patent No. 998,682, July 25, 1911, Engel.

Patent No. 1,001,745, August 29, 1911, Engel.

Patent No. 1,027,408, May 28, 1912, Engel (application filed August 5, 1907).

One pending application for patent filed prior to December 12, 1911.

NURLING MACHINE — MODEL A.
Heeling Department.

This machine is used to make a row of ornamental indentations around the margin of the tread face of a shoe sole. It was adopted

in July, 1901, and is defined in the claims of the United Company's patent No. 768,560, August 23, 1904, Casgrain.

OPENING MACHINE — MODEL C: APEX CHANNEL.
General Department.

This machine is used to lift and lay back the channel flap on the sole of a McKay sewed shoe, so as to expose the channel for the subsequent stitching and cementing operations. The machine was adopted in July, 1906, and its organization is defined in the claims of patents owned by the United Company as follows: —

Patent No. 1,004,614, October 3, 1911, Winter.

Patent No. 1,007,685, November 7, 1911, Furber.

Patent No. 1,030,630, June 25, 1912, Winter (application filed April 3, 1908).

PERFORATING MACHINE — MODEL B: ROYAL.
General Department.

This is a machine, operating step by step, which is used to make an ornamental row of perforations along the margin of upper stock and it is particularly adapted for curved work. The machine was first put out for commercial use in October, 1904, and embodies mechanisms set forth in the claims of patents owned by the United Company as follows: —

Patent No. 701,107, May 27, 1902, Treen.

Patent No. 941,704, November 30, 1909, Flynt.

PERFORATING MACHINE — MODEL M: STANBON.
General Department.

This is a step-by-step machine which is used to make an ornamental row of perforations along the margin of upper stock; it is capable of wider spacing than perforating machine, model B, Royal, and also operates more rapidly along straight edges. This machine was adopted in April, 1911, and is defined in the claims of the United Company's patents as follows: —

Patent No. 640,426, January 2, 1900, Stanbon.

Patent No. 955,711, April 19, 1910, Stanbon.

PINCER: U S M C, BENCH.
General Department.

This is a machine for drawing uppers of assembled shoes forwardly on the last preparatory to presentation of the shoe to the pulling-over machine. The machine was adopted and first put out for commercial use in August, 1911, and is defined in the claims of patents and applications of the United Company as follows: —

Patent No. 1,030,579, June 25, 1912, Gorsuch (application filed November 1, 1910).

One pending application for patent filed prior to December 12, 1911.

PRICKING MACHINE: PREMIER HEEL.
Heeling Department.

This is a power machine for punching holes in high heels to receive and guide the nails which are subsequently driven by the heel-attaching machine, to attach the heel to the shoe. It was adopted in July, 1903, and as now being supplied to manufacturers embodies mechanism defined in claims of the United Company's patent No. 1,057,011, March 25, 1913, Sargent (application filed March 15, 1911).

PUNCHING MACHINE — MODEL A: ROYAL TIP.
General Department.

This is a gang machine, used to make an ornamental row of perforations all at once in the margin of the toe tip. The machine was adopted in May, 1911, and is defined in the claims of the following patents and pending applications: —

Patent No. 783,403, February 21, 1905, Knight.

One pending application filed since December 12, 1911.

QUILTING MACHINE: SPATTER.
Metallic Department.

This machine forms and drives slugs or nails of wire into the out-sole of a shoe, to increase the wearing qualities of a sole. It is used principally upon boys' and children's shoes. The United

Company's patents which define the organization of this machine are the following: —

Patent No. 765,650, July 19, 1904, Casgrain.

Patent No. 1,019,118, March 5, 1912, Ashton (application filed May 16, 1901).

REDUCING MACHINE — MODEL A: ROTARY FEATHER EDGE AND SHANK.

General Department.

This machine is used to thin, by beveling, the shank portion of a sole before the sole is attached to a shoe. The machine was first put out in November, 1904, and embodies mechanism defined in the claim of the United Company's patent No. 1,003,981, September 26, 1911, Busell.

ROUNDING MACHINE: GOODYEAR HEEL SEAT.

Goodyear Department.

This machine removes the surplus stock from the sole around the heel end of a welt shoe after the sole has been attached to the shoe and leveled. The outline of the heel end of the sole before this operation is indicated by Defendants' Exhibit No. 102. This machine was first adopted in August, 1909, and its organization is defined in patents owned by the United Company as follows: —

Patent No. 613,228, November 1, 1898, Barbour.

Patent No. 1,005,545, October 10, 1911, Heys.

Patent No. 1,005,573, October 10, 1911, Phelan.

Patent No. 1,027,638, May 28, 1912, Allen (application filed August 24, 1908).

Patent No. 1,034,560, August 6, 1912, Allen (application filed July 16, 1909).

ROUNDING MACHINE: PLANET SOLE — MODELS C AND D.

General Department.

This machine is used to shape a sole blank according to the contour of a pattern upon which the blank is supported, and it is used for shaping insoles of all kinds of shoes and for shaping out-soles for shoes other than welt. The machine was first put out in

November, 1901, and has embodied, or now embodies, mechanism defined in the claims of patents and pending applications owned by the United Company as follows: —

Patent No. 579,870, March 30, 1897, Hartford.

Patent No. 881,994, March 17, 1908, Allen.

Patent No. 882,009, March 17, 1908, Mayo.

Patent No. 1,048,511, December 31, 1912, Eaton (application filed December 5, 1907).

Two pending applications for patents filed prior to December 12, 1911.

One application for patent filed since December 12, 1911.

ROUNDING AND RANDING MACHINE: GOODYEAR HEEL SEAT.
Goodyear Department.

This machine removes the surplus stock from the out-sole around the heel end of the welt shoe, and rands the heel seat, that is, smooths off the projecting edge portion of the sole next to the upper. This machine was adopted and first put out in January, 1913, after several years of experimental work begun some time prior to December 12, 1911, and constitutes the subject-matter of a pending application for patent owned by the United Company as follows: —

One application filed April 4, 1912.

SANDING MACHINE — MODEL A: TAP AND SOLE.
Heeling Department.

This machine is used to buff or smooth box toes, counters and insoles. It was adopted in June, 1908, and the patents and pending applications owned by the United Company which define its organization are: —

Patent No. 868,021, October 15, 1907, Scott.

One pending application for patent filed prior to December 12, 1911.

SCARFING MACHINE — MODEL N: TAP.
General Department.

This machine is used to form a bevel on the rear edge of "taps"

or "slip soles", which are inserted between the out-sole and insole in the forepart to provide a double sole in the forepart. The machine was adopted in September, 1910, and constitutes the subject-matter of a pending application owned by the United Company:—

One application filed prior to December 12, 1911.

SCALLOPING MACHINE — MODEL B: TOP PIECE.
General Department.

This machine is used to cut an ornamental scollop in the breast edge of a heel. It was adopted in May, 1905, and is defined in the claims of the United Company's patent —

No. 1,030,567, June 25, 1912, Busell (application filed August 8, 1906).

SCOURING MACHINE — MODEL X: HEEL.
General Department.

This machine is used to scour the sides of a heel and to smooth or straighten the corners at which the sides and breast meet. The machine was adopted in November, 1911, and is defined in the United Company's patents as follows:—

Patent No. 883,445, March 31, 1908, Bohr.

Patent No. 957,993, May 17, 1910, McLeod.

SCREW MACHINE: RAPID STANDARD.
Metallic Department.

This machine screws the end of a double-threaded wire through the out-sole and the insole of coarse shoes to attach the out-sole to the insole, the machine automatically cutting off the screw flush with the outer face of the out-sole as soon as its end has reached the inner face of the insole. These shoes are known as "standard screw shoes".

Among the patents owned by the United Company, the claims of which define the organization of this machine, are the following:—

Patent No. 490,621, January 24, 1893, Goddu.

Patent No. 565,073, August 4, 1896, Goddu.

Patent No. 908,437, January 5, 1909, Ambler.

Patent No. 1,005,921, October 17, 1911, Ambler.

SCREW MACHINE — MODEL B: RAPID STANDARD.
Metallic Department.

This machine is an improved model of the rapid standard screw machine, the improvement insuring more accurate measurement of the length of the fastenings according to the thickness of the work, and facilitating the presentation of the work to the machine and the removal of the work. This model was adopted in January, 1912, and it is defined in the claims of patents and pending applications owned by the United Company as follows: —

Patent No. 565,073, August 4, 1896, Goddu.

Patent No. 582,579, May 11, 1897, Cutter.

Patent No. 691,354, January 21, 1902, Casgrain.

Patent No. 898,435, September 15, 1908, Casgrain.

Patent No. 908,437, January 5, 1909, Ambler.

Patent No. 1,005,921, October 17, 1911, Ambler.

One pending application for patent filed prior to December 12, 1911.

SKIVING MACHINE —MODEL A: CHAMPION HEEL LIFT.
General Department.

This machine is used to bevel leather heel lifts to form wedge lifts for use in high-pitched heels. The machine was first put out for commercial use in September, 1907, and is defined in the claims of patents, and of pending applications for patents, owned by the United Company as follows: —

Patent No. 894,850, August 4, 1908, Nash.

Two pending applications for patents filed prior to December 12, 1911.

SKIVING MACHINE —MODEL A: CHAMPION SHANK.
General Department.

This machine is used to cut out from a died-out blank a "shoe shank", a stiffening piece which is placed between the insole and the out-sole in the shank portion of a shoe. The machine was adopted in January, 1909, and is defined in the claims of patents and pending applications owned by the United Company as follows: —

Patent No. 894,850, August 4, 1908, Nash.

Three pending applications for patents filed prior to December 12, 1911.

SKIVING MACHINE: EROS BRAND.

Heeling Department.

This machine is used to cut from the waste skiving produced by the Monarch skiving and finishing machine a heel rand which is tacked around the edge of the upper portion of a heel to provide a proper seat for the heel portion of the sole. The machine was first put out for commercial use in August, 1906, and is defined in the claim of the United Company's patent —

No. 1,001,073, August 22, 1911, Pope.

SKIVING MACHINE — PLUMA: MODELS C AND D.

General Department.

This machine is used to bevel the edge of upper stock preparatory to folding the edge. It is capable of making a wider bevel than can be made by the Amazeen skiving machine, and it can be used on heavier stock. The machine was adopted in April, 1909, and its organization is set forth in the claims of the following patents and pending applications of the United Company: —

Patent No. 632,990, September 12, 1899, Dunham.

Patent No. 650,349, May 22, 1900, Bayley.

Patent No. 1,003,409, September 19, 1911, Alexander.

Patent No. 1,029,176, June 11, 1912, Davenport (application filed December 26, 1911).

Five pending applications for patents filed prior to December 12, 1911.

SKIVING AND FINISHING MACHINE: MONARCH COUNTER AND BOX TOE.

Heeling Department.

This machine is used to bevel the edges of counter stiffeners and toe stiffeners. It was adopted in January, 1903, and its organization is defined in patents owned by the United Company as follows: —

Patent No. 671,072, April 2, 1901, Scott.

Patent No. 703,617, July 1, 1902, Scott.
Patent No. 760,025, May 17, 1904, Scott.
Patent No. 760,082, May 17, 1904, Scott.
Patent No. 777,550, December 13, 1904, Scott.
Patent No. 961,736, June 14, 1910, Scott.
Patent No. 969,987, September 13, 1910, Scott.
Patent No. 975,495, November 13, 1910, Bayley and Mayo.

SKIVING OR RAND SPLITTING MACHINE — MODEL C: APEX TAP.
General Department.

This machine is used to cut stock into strips and to split the strips diagonally from corner to corner to make rands and to bevel the rear edges of taps and slit soles which are placed between the forward portion of the insole and the out-sole. The machine was adopted in January, 1908, and its organization is defined in the claims of the United Company's patent.

No. 1,025,556, May 7, 1912, Winter (application filed June 3, 1908).

SLASHING MACHINE: XX WELT.
General Department.

This machine is used to form a series of inclined slits along one edge of a strip of welting so that the welts can be made more readily to conform to the contour of an out-sole for a mock welt shoe, either McKay sewed or metallic fastened. The machine was adopted in February, 1911, and is defined in the claims of the United Company's patents as follows: —

Patent No. 737,430, August 25, 1903, Lyon.
Patent No. 745,965, December 1, 1903, Lyon.

SNIPPING MACHINE: GOODYEAR INSOLE TOE.
Goodyear Department.

This machine is used to notch the lip at the toe of a channeled welt insole so that it may more readily be turned up and set by the lip-turning machine. The machine was adopted in May, 1911, and constitutes the subject-matter of a pending application owned by the United Company as follows: —

One pending application for patent filed prior to December 12, 1911.

SOFTENING MACHINE — TOE: MODELS C AND D.
General Department.

These machines are used to soften and render pliable, by means of steam or moist vapor, toe portions of shoes, preparing them for the toe-lasting operation. The necessity for this operation was created by the development of modern lasts. The first model was adopted in August, 1911. These machines constitute the subjects-matter of pending applications owned by the United Company as follows: —

Five pending applications for patents all filed prior to December 12, 1911.

SOFTENING MACHINE — TOE: MODEL E.
General Department.

This is another machine used for softening and rendering pliable the toe portions of shoes to prepare them for the lasting operation. This result is obtained by subjecting the toe portions of the shoes to the action of steam or moist vapor which is generated within the machine. This machine, which was adopted in April, 1912, constitutes the subjects-matter of pending applications for patents owned by the United Company as follows: —

Five pending applications for patents all filed prior to December 12, 1911.

SPLITTING MACHINE — EMPIRE: MODELS C AND D.
General Department.

This machine is used to slit the heel portion of an out-sole either (1) in such manner as to form a pocket to receive a cushion heel lift, or (2) so as to form a flap which may be bent down and fastened to the breast of a high wooden heel. The machine was adopted in September, 1908, and is defined in the claims of patents and pending applications owned by the United Company as follows: —

Patent No. 745,591, December 1, 1903, Furber.

One pending application for patent filed prior to December 12, 1911.

SPLITTING MACHINE: SUMMIT.

General Department.

This machine is used to split or "even" soles by removing portions from the flesh side to make the soles of uniform thickness. The machine was first put out for commercial use in April, 1903, and is defined in the claims of the following patent owned by the United Company: —

Patent No. 894,850, August 4, 1908, Nash.

STAMPING MACHINE — MODEL C: EAGLE SOLE.

General Department.

This machine is used for impressing the size and width indications on loose soles. It is organized to permit different combinations of indicating marks so that it can be adjusted to mark properly soles of all sizes and widths. The machine was adopted and first put out for commercial use in March, 1910, and is defined in the claims of the United Company's patents and pending applications as follows: —

Patent No. 1,028,567, June 4, 1912, Gordon and Topham (application filed December 23, 1903).

One pending application for patent filed prior to December 12, 1911.

STAMPING MACHINE — MODEL C: EAGLE UPPER.

General Department.

This is a machine for impressing size, width, and, if desired, case marking or other identifying indications, on parts of uppers. It is organized to permit of a large number of combinations of indicating marks so that it can be adjusted to stamp any desired combination of as many as a dozen different symbols. The machine was adopted in March, 1910, and its organization is set forth in the claims of the United Company's patents and pending applications for patents as follows: —

Patent No. 1,028,567, June 4, 1912, Gordon and Topham (application filed December 23, 1903).

One pending application for patent filed prior to December 12, 1911.

STAMPING MACHINE — REGENT: MODELS B AND C.
General Department.

This is a machine for stamping trademarks or the name of manufacturer or dealer on the sole or welt of a finished shoe. It is constructed to operate in the same manner automatically on any thickness of stock. The machine was adopted and first put out in May, 1903, and its mechanism is defined in the claims of the following patents owned by the United Company: —

Patent No. 1,022,412, April 9, 1912, Gillespie (application filed October 7, 1908).

Patent No. 1,028,567, June 4, 1912, Gordon and Topham (application filed December 23, 1903).

STICKING MACHINE — MODEL B: SHANK PIECE.
General Department.

This machine is used to apply adhesive to a "shoe shank", a stiffening piece which is placed between the out-sole and insole in the shank portion of a shoe. The machine was adopted in September, 1911, and is defined in the claims of the United Company's patent —

No. 1,048,527, December 31, 1912, Hadaway (application filed October 3, 1910).

TACKING MACHINE — MODEL A: GRIP.
Metallic Department.

This machine makes and drives pointed nails, and is used for attaching the out-sole to the insole of the heaviest standard screw and pegged work, to hold the out-sole in place until it is permanently secured. The point of the nail is clinched upon the inside of the insole. The machine is defined in the claims of the following patents owned by the United Company: —

Patent No. 555,314, February 25, 1896, Flint.

Patent No. 591,658, October 12, 1897, Robinson.

Patent No. 765,650, July 19, 1904, Casgrain.

TACKING MACHINE — MODEL B: GRIP.
Metallic Department.

This machine is an improved model of the grip-tacking machine, and is used for the same classes of work as the model A machine except that the model B machine can be used on work requiring a longer nail than can be handled by the model A machine, owing to improvements in the nail forming and guiding mechanism. This machine was adopted and first put out in 1909, and is defined in the claims of the United Company's patents as follows: —

Patent No. 555,314, February 25, 1896, Flint.
Patent No. 591,658, October 12, 1897, Robinson.
Patent No. 765,650, July 19, 1904, Casgrain.
Patent No. 910,149, January 19, 1909, Perry.

TACKING MACHINE NO. 1 — U S M C: INSOLE.
Metallic Department.

This machine, which drives a headed tack, is used to secure the insole of a welt shoe upon the bottom of the last by means of tacks, preparatory to the lasting operation. The machine was adopted in 1910 and forms the subject-matter of —

One pending application filed January 2, 1912.

TACKING MACHINE: POWER WELT.
Metallic Department.

This machine is designed and used for tacking a false welt around the margin of the sole of a McKay sewed shoe before the sole is attached to the shoe, and comprises means for supporting and guiding both the sole and the welt. Among the United Company's patents containing claims which define mechanisms embodied in this machine are: —

Patent No. 490,625, January 24, 1893, Goddu.
Patent No. 568,248, September 22, 1896, Goddu.
Patent No. 611,405, September 27, 1898, Casgrain.

TRIMMING MACHINE: SPRING HEEL.
Heeling Department.

This machine trims the edges of the heels of spring-heeled shoes, such as are illustrated in Defendants' Exhibit No. 14. The organization of the machine is defined in the United Company's patents as follows:—

Reissue Patent No. 11,770, September 5, 1899, Mayo (original patent No. 609,518, August 23, 1898).

Patent No. 735,546, August 4, 1903, Mayo.

TRIMMING MACHINE: ULTIMA HEEL.
Goodyear Department.

This machine is used to trim the edge of a heel of a shoe after the heel has been secured to the shoe, and it gives to the heel edge its final shape. The machine was adopted in December, 1904, and its organization is defined in the claims of patents and pending applications owned by the United Company as follows:—

Patent No. 961,752, June 21, 1910, Busell.

Patent No. 999,050, July 25, 1911, Matthews.

Patent No. 1,049,309, December 31, 1912, Matthews (application filed May 2, 1910).

One pending application for patent filed prior to December 12, 1911).

TURNING MACHINE: GOODYEAR FOREPART.
Goodyear Department.

This machine is used to turn right side out the forepart portion of a turn shoe after the sole has been attached on the turn sewing machine, and after the heel portion has been turned by the turning machine, Goodyear heel. The machine was adopted in April, 1901, and is defined in the claims of the United Company's patents as follows:—

Patent No. 706,038, August 5, 1902, Eppler.

Patent No. 1,022,660, April 9, 1912, Dow (application filed March 29, 1911).

Turning Machine: Goodyear Heel.
Goodyear Department.

This machine is used to turn right side out the heel portion of a turn shoe after the sole has been sewed to the upper on the turn sewing machine. The machine was adopted in April, 1901, and is defined in the claims of the United Company's patents as follows:

Patent No. 460,526, September 29, 1891, Edgerly.
Patent No. 594,810, November 30, 1897, Ryan.
Patent No. 763,620, June 28, 1904, Meyer.
Patent No. 851,737, April 30, 1907, Eppler.
Patent No. 944,260, December 28, 1909, Eppler.

Turning Machine: Goodyear Lip.
Goodyear Department.

This machine is used to turn and set the lip of a welt insole before the insole is attached to the last. The organization of this machine is defined in the claims of the following patents owned by the United Company: —

Patent No. 623,306, April 18, 1899, Coupal and Gordon.
Patent No. 635,772, October 31, 1899, Hadaway.
Patent No. 638,010, November 28, 1899, Hadaway.

Turning Machine: Goodyear Welt Edge.
Goodyear Department.

This machine prepares the welt of close-edged women's shoes for the wheeling or other finishing operation by turning a portion of the outer edge of the welt upwardly and backwardly over the outseam and smoothing down the stock so turned backwardly to cause it to conceal the stitches of the outseam, which otherwise would appear upon the upper surface of the welt. This machine was adopted and first put out in December, 1909, and its organization is defined in the claims of the following patents owned by the United Company: —

Patent No. 993,543, May 30, 1911, Olson.

Patent No. 1,026,032, May 14, 1912, Hadaway (application filed January 22, 1910).

Patent No. 1,026,033, May 14, 1912, Hadaway and Allen (application filed March 7, 1910).

WHEELING MACHINE No. 2: GOODYEAR IMPRESSION STITCH.

General Department.

This machine wheels or makes a series of imitation stitch impressions on the upper projecting marginal surface on the forepart of the sole of a McKay sewed shoe, and on the corresponding surface of the welt of a welt shoe. This machine was adopted by the United Company in June, 1908, and its patents which define in their claims the organization of the machine are as follows: —

Patent No. 584,597, June 15, 1897, Mower.

Patent No. 690,422, January 7, 1902, Hadaway.

Patent No. 784,263, March 7, 1905, Heys.

Patent No. 906,705, December 15, 1908, Hadaway.

Patent No. 958,913, May 24, 1910, Flynt.

Mr. WEBSTER. The answer is objected to for the following reasons: —

Because it relates to matters not within the scope of the order for taking of evidence before the examiner.

Because the answer relates in no wise to any of the matters presented by the petitioner before the examiner.

Because the answer relates to matters not involved in the issues in this cause.

Because the answer relates to patents and mechanisms of patents not issued prior to the filing of the petition herein.

Because the answer relates to alleged pending applications and to the mechanisms of such applications.

And for the reasons aforesaid the answer is objected to as incompetent, inadmissible and irrelevant.

Int. 128. Have you collected under one or more separate covers the patents referred to by you in your last answer?

Ans. I have collected these patents in three volumes, which I now produce.

[*These three volumes are offered in evidence by the defendant, as Defendants' Exhibits, patents mentioned in Mr. Howard's deposition regarding machines on the list put in evidence, which have not been specifically discussed by him in his previous testimony, and the volumes being marked, respectively, "I", "II" and "III". Volume I is now marked "Defendants' Exhibit 198", Volume II is now marked "Defendants' Exhibit 199", and Volume III is now marked "Defendants' Exhibit 200".*]

Mr. WEBSTER. The introduction of the exhibits now offered in evidence is objected to because they relate to matters in no wise presented before the examiner by the petitioner.

Because the exhibits contain patents issued after the filing of the petition herein.

And because the patents comprising the three exhibits relate to matters in no manner involved in the issues in this cause.

Int. 129. Will you please state the number, date and name of patentee of the several Letters Patent contained in the three volumes which have just been offered in evidence as Defendants' Exhibits 198, 199 and 200?

Ans. DEFENDANTS' EXHIBIT 198.

Patent No. 447,681, March 3, 1891, Hamm.
Patent No. 460,526, September 29, 1891, Edgerly.
Patent No. 490,621, January 24, 1893, Goddu.
Patent No. 490,625, January 24, 1893, Goddu.
Patent No. 509,576, November 28, 1893, Gordon.
Patent No. 539,835, May 28, 1895, Tirrell.
Patent No. 555,314, February 25, 1896, Flint.
Patent No. 565,073, August 4, 1896, Goddu.
Patent No. 568,248, September 22, 1896, Goddu.
Patent No. 571,227, November 10, 1896, Hamm and Eaton.
Patent No. 576,114, February 2, 1897, Hadaway.
Patent No. 579,870, March 30, 1897, Hartford.
Patent No. 582,579, May 11, 1897, Cutter.
Patent No. 584,597, June 15, 1897, Mower.

Patent No. 591,658, October 12, 1897, Robinson.
Patent No. 594,810, November 30, 1897, Ryan.
Patent No. 603,023, April 26, 1898, Field.
Patent No. 609,518, August 23, 1898, Mayo.
Reissue patent No. 11,770, September 5, 1899, Mayo (reissue of 609,518).
Patent No. 611,405, September 27, 1898, Casgrain.
Patent No. 611,990, October 4, 1898, Casgrain.
Patent No. 613,228, November 1, 1898, Barbour.
Patent No. 623,306, April 18, 1899, Coupal and Gordon.
Patent No. 623,872, April 25, 1899, Booth.
Patent No. 624,426, May 2, 1899, Booth.
Patent No. 627,122, June 20, 1899, Keighley.
Patent No. 632,990, September 12, 1899, Dunham.
Patent No. 635,772, October 31, 1899, Hadaway.
Patent No. 638,010, November 28, 1899, Hadaway.
Patent No. 638,994, December 12, 1899, Smith.
Patent No. 640,426, January 2, 1900, Stanbon.
Patent No. 650,349, May 22, 1900, Bayley.
Patent No. 669,022, February 26, 1901, Casgrain.
Patent No. 669,023, February 26, 1901, Casgrain.
Patent No. 669,025, F ɔruary 26, 1901, Casgrain.
Patent No. 669,026, February 26, 1901, Casgrain.
Patent No. 671,072, April 2, 1901, Scott.
Patent No. 672,056, April 16, 1901, Davey and Ladd.
Patent No. 690,422, January 7, 1902, Hadaway.
Patent No. 691,354, January 21, 1902, Casgrain.
Patent No. 693,686, February 18, 1902, Casgrain.
Patent No. 694,367, March 4, 1902, Gifford.
Patent No. 701,107, May 27, 1902, Treen.
Patent No. 703,617, July 1, 1902, Scott.
Patent No. 706,038, August 5, 1902, Eppler, Jr.
Patent No. 721,016, February 17, 1903, Casgrain.
Patent No. 724,432, April 7, 1903, Casgrain.
Patent No. 735,546, August 4, 1903, Mayo.
Patent No. 737,430, August 25, 1903, Lyon.

DEFENDANTS' EXHIBIT 199.

Patent No. 740,709, October 6, 1903, Stowe.
Patent No. 743,929, November 10, 1903, Rollins.
Patent No. 745,591, December 1, 1903, Furber.
Patent No. 745,965, December 1, 1903, Lyon.
Patent No. 759,273, May 10, 1904, Hadaway.
Patent No. 760,025, May 17, 1904, Scott.
Patent No. 760,082, May 17, 1904, Scott.
Patent No. 763,620, June 28, 1904, Meyer.
Patent No. 765,650, July 19, 1904, Casgrain.
Patent No. 768,560, August 23, 1904, Casgrain.
Patent No. 777,550, December 13, 1904, Scott.
Patent No. 781,636, February 7, 1905, Davenport.
Patent No. 783,403, February 21, 1905, Knight.
Patent No. 784,263, March 7, 1905, Heys.
Patent No. 851,737, April 30, 1907, Eppler, Jr.
Patent No. 852,703, May 7, 1907, Carnes.
Patent No. 868,021, October 15, 1907, Scott.
Patent No. 871,963, November 26, 1907, Stewart.
Patent No. 871,966, November 26, 1907, Stewart.
Patent No. 871,967, November 26, 1907, Stewart.
Patent No. 871,968, November 26, 1907, Stewart.
Patent No. 871,969, November 26, 1907, Stewart.
Patent No. 880,376, February 25, 1908, Field.
Patent No. 881,994, March 17, 1908, Allen.
Patent No. 882,009, March 17, 1908, Mayo.
Patent No. 883,445, March 31, 1908, Bohr.
Patent No. 891,907, June 30, 1908, Casgrain.
Patent No. 894,850, August 4, 1908, Nash.
Patent No. 898,435, September 15, 1908, Casgrain.
Patent No. 899,093, September 22, 1908, Ashton.
Patent No. 906,705, December 15, 1908, Hadaway.
Patent No. 908,437, January 5, 1909, Ambler.
Patent No. 910,147, January 19, 1909, Perry.
Patent No. 930,272, August 3, 1909, Davenport.

Patent No. 935,212, September 28, 1909, Manent.
Patent No. 941,704, November 30, 1909, Flynt.
Patent No. 942,133, December 7, 1909, Davenport.
Patent No. 944,260, December 28, 1909, Eppler.
Patent No. 947,895, February 1, 1910, Engel.
Patent No. 955,711, April 19, 1910, Stanbon.
Patent No. 957,598, May 10, 1910, Cook.
Patent No. 957,987, May 17, 1910, McLeod.
Patent No. 957,993, May 17, 1910, McLeod.
Patent No. 958,029, May 17, 1910, Stewart.
Patent No. 958,913, May 24, 1910, Flynt.
Patent No. 961,736, June 14, 1910, Scott.
Patent No. 961,752, June 21, 1910, Busell.
Patent No. 968,746, August 30, 1910, Davenport.
Patent No. 969,987, September 13, 1910, Scott.
Patent No. 975,495, November 13, 1910, Bayley and Mayo.
Patent No. 981,190, January 10, 1911, Hadaway.
Patent No. 993,543, May 30, 1911, Olson.

DEFENDANTS' EXHIBIT 200.

Patent No. 997,927, July 11, 1911, Mayo.
Patent No. 998,682, July 25, 1911, Engel.
Patent No. 990,050, July 15, 1911, Matthews.
Patent No. 1,001,073, August 22, 1911, Pope.
Patent No. 1,001,745, August 29, 1911, Engel.
Patent No. 1,003,409, September 19, 1911, Alexander.
Patent No. 1,003,970, September 26, 1911, Ball.
Patent No. 1,003,971, September 26, 1911, Ball.
Patent No. 1,003,981, September 26, 1911, Busell.
Patent No. 1,004,614, October 3, 1911, Winter.
Patent No. 1,004,075, September 26, 1911, Preble.
Patent No. 1,004,076, September 26, 1911, Preble.
Patent No. 1,004,705, October 3, 1911, Stanbon.
Patent No. 1,005,394, October 10, 1911, Winter.
Patent No. 1,005,545, October 10, 1911, Heys.
Patent No. 1,005,573, October 10, 1911, Phelan.
Patent No. 1,005,921, October 17, 1911, Ambler.

Patent No. 1,007,685, November 7, 1911, Furber.

Patent No. 1,013,735, January 2, 1912, Brogan (application filed November 19, 1908).

Patent No. 1,016,930, February 13, 1912, Borden (application filed January 16, 1905).

Patent No. 1,018,069, February 20, 1912, Miller (application filed August 14, 1909).

Patent No. 1,019,118, March 5, 1912, Ashton (application filed May 16, 1901).

Patent No. 1,020,346, March 12, 1912, Eppler (application filed July 30, 1906).

Patent No. 1,022,412, April 9, 1912, Gillespie (application filed October 7, 1908).

Patent No. 1,022,660, April 9, 1912, Dow (application filed March 29, 1911).

Patent No. 1,025,556, May 7, 1912, Winter (application filed June 3, 1908).

Patent No. 1,026,032, May 14, 1912, Hadaway (application filed January 22, 1910).

Patent No. 1,026,033, May 14, 1912, Hadaway and Allen (application filed March 7, 1910).

Patent No. 1,026,067, May 14, 1912, Ashton (application filed November 30, 1908).

Patent No. 1,027,408, May 28, 1912, Engel (application filed August 5, 1907).

Patent No. 1,027,411, May 28, 1912, Flynt (application filed December 14, 1908).

Patent No. 1,027,638, May 28, 1912, Allen (application filed August 24, 1908).

Patent No. 1,028,567, June 4, 1912, Gordon and Topham (application filed December 23, 1903).

Patent No. 1,029,176, June 11, 1912, Davenport (application filed December 26, 1911).

Patent No. 1,030,275, June 25, 1912, Bayley (application filed April 17, 1906).

Patent No. 1,030,567, June 25, 1912, Busell (application filed August 8, 1906).

Patent No. 1,030,579, June 25, 1912, Gorsuch (application filed November 1, 1910).

Patent No. 1,030,630, June 25, 1912, Winter (application filed April 3, 1908).

Patent No. 1,030,769, June 25, 1912, Brogan (application filed October 27, 1906).

Patent No. 1,030,971, July 2, 1912, Casgrain (application filed January 31, 1910).

Patent No. 1,033,764, July 23, 1912, Mirandette (application filed February 1, 1911).

Patent No. 1,034,560, August 6, 1912, Allen (application filed July 16, 1909).

Patent No. 1,048,278, December 24, 1912, Benjamin (application filed April 7, 1911).

Patent No. 1,048,511, December 31, 1912, Eaton (application filed December 5, 1907).

Patent No. 1,048,527, December 31, 1912, Hadaway (application filed October 3, 1910).

Patent No. 1,048,579, December 31, 1912, Preble (application filed August 8, 1910).

Patent No. 1,048,840, December 31, 1912, Littlefield (application filed November 2, 1906).

Patent No. 1,049,309, December 31, 1912, Matthews (application filed May 2, 1910).

Patent No. 1,056,720, March 18, 1913, Tripp (application filed June 9, 1909).

Patent No. 1,057,011, March 25, 1913, Sargent (application filed March 15, 1911).

Patent No. 1,063,729, June 3, 1913, Ray (application filed August 28, 1912).

Patent No. 1,063,795, June 3, 1913, Hill (application filed November 12, 1912).

Patent No. 1,063,880, June 3, 1913, Hill (application filed February 10, 1912).

Patent No. 1,066,473, July 8, 1913, Davenport (application filed October 10, 1910).

Int. 130. Did the United Shoe Machinery Company, between 1899 and the filing of the petition in this case, and does it now, furnish shoe manufacturers machines not referred to by you in the list which you have heretofore given which are the subjects-matter of Letters Patent?

Mr. WEBSTER. Question objected to in so far as it calls for matters relating to what the defendant has done since the filing of the petition herein.

Ans. Yes, sir; a large number during the period between 1899 and the filing of the petition in this case, and since that time; and during the entire period since February, 1899, new machines have been coming along all the time.

Mr. WEBSTER. Answer objected to in so far as it relates to anything occurring since the date of the filing of the petition herein.

Int. 131. You have been questioned with regard to many machines put out by the United Shoe Machinery Company for performing a large number of different and successive operations in the manufacture of shoes. State generally whether and to what extent, if any, the efficiency of the operation of one of these machines in the manufacture of shoes depends on the efficiency of the operation of any of the others in their work on the same shoe, giving such specific illustrations as occur to you.

Mr. WEBSTER. Question objected to for that it calls for matter not within the scope of the order for the taking of testimony before the examiner.

Ans. The manufacture of shoes is unique in that a great number of different successive operations are performed by different machines upon the shoe and its several parts. It is essential for the success of the operation of each machine that the shoe come to that machine in the right condition for its operation, and that requires that the operations of machines which have previously been used upon the shoe shall have been performed properly. If such prior operations have not been properly performed, the work of that machine cannot be done right. On the other hand, proper

performance of subsequent operations upon the shoe requires that each machine in turn shall efficiently prepare the shoe for the operation of the next machine to which the shoe is to be presented; and improper operation of any machine in the line may impair the efficiency of the operation of one or many of the machines which are to perform subsequent steps in the manufacture of the shoe. Frequently the combined effects of improper operations of a number of machines will accumulate as the shoe goes through the factory and will result in a poorly made shoe. It quite often happens that when the finished shoe is not right it requires some time to find out what machine is responsible, and frequently it will be found that the poor work is the combined effect of impaired efficiency of several machines which operate successively upon the shoe. It is therefore of the utmost importance that every machine shall be designed with a view to the succeeding machines, and so that it will deal accurately and efficiently with the precise shoe organization that comes to it from the preceding machines; and every machine must be kept in its most efficient and satisfactory condition. That requires incessant and careful supervision of the machines all along the line.

Moreover, it is of great importance that each machine in the line be properly constructed from a mechanical standpoint. If a machine is poorly constructed, for example if some of the operating parts are weak, or if some of the movements given to any of the parts are too abrupt, or if the mechanical organization is not good, so that excessive wear and lost motion with consequent erratic operation results, a machine will frequently be put out of operation by breakage of parts or by necessity for adjustment to make the parts co-operate as they must to perform the machine's work. Every time a machine is put out of operation for any reason, shoes accumulate in front of that machine and there are no shoes for the operation of the machines for performing subsequent steps, so that those succeeding machines and their operators are idle and the whole factory suffers on account of that one disabled machine.

One of the machines which is put at a disadvantage in performing its operations, if prior machine operations on the shoe have

not been satisfactorily performed, is the lasting machine. The lasting machine cannot do its work properly if the operation of the assembling machine was not properly performed. The assembling machine, as explained in my previous testimony, establishes the proper relations of the parts of the shoe at its rear end, and secures them in that relation, the operation of the machine at the rear end of the shoe being illustrated in Defendants' Exhibits 177 and 178.

If one of those parts of the shoe is improperly located by the assembling machine, either the shoe will not be properly lasted or if the lasting machine operator detects the improper results of the assembling machine operation he must take time to remedy its bad work as best he can. A characteristic of the operation of assembling machine, Rex, is that it so performs the assembling operation that the ends of the counter are not forced below the insole, which, unless the machine were especially designed so to operate as to prevent it, would usually occur when the machine forced the rear end of the counter against the end of the insole. If the assembling machine failed to hold up the counter ends, the lasting machine operator would be obliged to reach down between the upper and the lining for the counter ends and pull them up into proper position before he could last the heel end of the shoe.

The success of the operation of the lasting machine is further dependent on the proper operation of the pulling-over machine. If the tip-seam or the lacing slit had not been located right in the operation of the pulling-over machine, as explained in my previous testimony, either the shoe will be lasted with the tip-seam or the lacing slit, or both, improperly located, resulting in a damaged shoe, or at great inconvenience and with loss of time the lasting machine operator must attempt to remedy by hand work the poor work of the pulling-over machine. Again, even if the pulling-over machine does properly locate the tip-seam and the lacing slit, such proper locations may be disturbed during the operation of the lasting machine if the pulling-over machine has not properly stretched the upper; and further, in the shaping of uppers to high-toed lasts, such as have been largely used for the last seven or eight years and are illustrated in Defendants' Exhibit 135 and in

the lasts on which the shoes of Defendants' Exhibits 177 and 180 were lasted, the stretching across the low part behind the high toe must be done chiefly on the pulling-over machine, and if that portion of the upper is not properly stretched in the operation of the pulling-over machine, the improper work of that machine can be remedied during the operation of the lasting machine only with great difficulty, if at all.

Not only is the lasting machine at a disadvantage if the operations of machines previously used on the shoe were not properly performed, but in turn if the operation of the lasting machine is not right the machines which are used subsequently upon the shoe cannot operate efficiently. It is essential to the proper operation of the welt-sewing machine that in the lasting operation the upper be forced into the angle between the channel lip and the feather edge of the insole and closely against the lip, and be secured in that position. If the lasting machine fails to get the upper into that position, the operation of the welt-sewing machine cannot be performed properly and the inseam cannot be made right. The reasons why such improper operation of the lasting machine would prevent effective operation of the welt-sewing machine will be explained later, in discussing the welt-sewing machine. The difficulties in getting the upper into satisfactory lasted position around the toes of modern lasts have been explained in the latter part of that portion of my previous testimony in regard to lasting machine, Chase, and in the earlier part of that portion of my previous testimony relating to lasting machine No. 5. It should be added that unsatisfactory operation of the welt-sewing machine may also be caused by failure of the lasting machine to seat the upper materials properly against the insole channel lip in the rear portion of the shank. The shapes of modern lasts as illustrated in Defendants' Exhibits 136, 137 and 142, have made it difficult for the lasting machine to force the upper materials, including the counter, into proper lasted position on the inside of the shoe in the shank unless the machine is especially adapted for that work.

Poor lasting of a turn shoe also makes the welt and turn sewing machine operate inefficiently in attaching the soles of turned shoes.

As fully explained in my previous testimony in regard to hand-method lasting machines for turned shoes, if the feather edge of the turn sole is curled up during the lasting operation, the needle of the welt and turn sewing machine will frequently strike the curled up feather edge and deface it or spoil it, so that a new sole must be substituted. It is therefore essential to satisfactory and effective operation of the welt and turn sewing machine on turn shoes that the lasting operation be properly performed. The problem of lasting the toes of turned shoes, so as to prepare them properly for the operation of the welt and turn sewing machine, was so serious that, as explained in my previous testimony, the United Company produced a machine particularly designed and exclusively adapted for that work, known as "Lasting Machine, Consolidated Hand Method (Turn Toe)."

Improper lasting on the inside of the shank of a shoe also puts the heel-attaching machine at a disadvantage in the subsequent heel-attaching operation. In that operation on several types of machines the shoe is positioned relatively to the heel by a "band clamp" which embraces the rear end of the shoe. If the counter on the inside is not forced properly against the sides of the last, the band clamp, engaging the ends of the counter, will displace the shoe to one side, so that the heel will be improperly located on the shoe.

It has already been stated that the welt-sewing machine cannot attach the welt and upper to the insole properly if the lasting machine in its operation has failed to force the upper snugly against the insole lip close to the feather edge of the insole, and that there is danger of such poor lasting as will prevent the proper operation of the welt and sewing machine around the toe or at the rear end of the inseam in the shank. Poor lasting at either of these points causes inefficient operation of the welt-sewing machine because the welt-sewing machine cannot make a tight inseam as is required for good shoe making. When the shoe is improperly lasted at these points the welt-sewing machine will either "sew high",— that is, the needle will enter the upper edge portion of the lip at points removed from the feather edge,— or the machine will "sew wide",

that is, while the needle will enter the angle at the base of the lip as it should, it will enter the upper at a point substantially removed from the base of the lip, and the result will be a loose seam. If the machine "sews high", there will be a loose connection of the upper and welt to the insole, there will be an objectionable wide space between the upper and welt of the finished shoe and the inseam stitches will show around the toe; and, further, there is danger that the welt and upper will break away from the insole in the wear of the shoe. If the welting machine "sews wide", the inseam will be loose and there is danger that the thread will break, and that the shoe will come to pieces.

If the upper-trimming machine, which removes the bunch of excess upper material at the toe which is left after the lasting operation, as shown in Defendants' Exhibits No. 8 and No. 149, does not do its work right, and fails to remove some of the stock, that stock may get in the way of the thread arm or looper of the welt-sewing machine and cause that machine to miss stitches, and it will also make it difficult for the operator to present the shoe in right position for the operation of the welt-sewing machine.

The operation of the tack-pulling machine which pulls the lasting tacks, illustrated in Defendants' Exhibit No. 149, must also be properly performed, because if that machine breaks off some of the lasting tacks those tacks will frequently be struck by the welter needle, causing the needle to damage the stock, as by tearing away a portion of the channel lip, as well as breaking the needle, resulting in considerable expense and loss of the operator's time in replacing needles in the machine and in repairing damaged work.

It has been explained how inefficient operation of the lasting machine will make the welt-sewing machine operate improperly by sewing wide, so that the "welt crease", or the angle formed by the welt and upper, will be displaced outwardly away from the insole lip. This inefficient operation of the lasting machine causing, and followed by, improper operation of the welt-sewing machine, also causes bad results in the operations of the rounding and channeling machine and the out-sole stitching machine. A rounding and channeling machine is so organized that errors in the

location of the inseam by the welting machine are reproduced in the shaping of the sole and the cutting of the channel on the rounding and channeling machine.

The out-sole stitching machine is caused to operate inefficiently in attaching the out-sole to the welt by improper operation of the lasting machine, of the welt-sewing machine, or of the rounding and channeling machine. If the lasting machine fails to push the upper materials snugly against the channel lip so that the welting machine "sews wide", the needle of the out-sole stitcher will usually cut into the inseam in the shank. This frequently results in the cutting of the inseam and sometimes in the breaking of both the inseam and the outseam so that the shoe will come apart in its wear. If the welting machine "sews high", that is, if the inseam is near the top of the channel lip instead of at its base, the out-sole stitching machine will, in this operation, pull the welt away from the upper so that the inseam stitches will be exposed in the finished shoe. Also if a wide inseam has caused the rounding and channeling machine to shape and channel the sole improperly, the outseam will not be properly located. Further, if the channeling knife on the rounding and channeling machine should not be adjusted for correct operation of that machine on the shank of the sole, the out-sole stitching machine could not operate right, because if the channel were too far from the edge, the out-sole stitcher would cut into the inseam with results similar to those already explained as resulting from too wide an inseam made by the welter, while if the rounding and channeling machine cuts the channel too near the edge of the out-sole in the shank, the needle and the awl holder of the out-sole stitcher would, in its operation in the shank, strike and damage the upper.

The heel-attaching machine is put at a disadvantage, as already explained, by improper lasting on the inside of the shank of a shoe. In the heel-attaching operation on several types of machine the heel is held in predetermined position by the heel holder, and the shoe is positioned relatively to the heel by a "band clamp" which embraces the rear end of the shoe and engages the upper adjacent to the ends of the counter. If the counter is not forced against the

last on the inside of the shoe in the lasting operation, the "band clamp" which occupies a predetermined relation to the heel holder displaces the shoe to one side with relation to the heel, so that the heel is not properly located on the shoe in the heel-attaching operation. The heel-attaching machine may further be prejudiced by inefficient operation of the lasting machine if the counter is forced in further over the insole on one side than the other, which is likely to happen on a lasting machine not adapted for proper operation on modern crooked lasts. The portion of the counter which should be lasted over the insole is skived and is thinner than the body of the counter, and if a portion of the body of the counter is forced over on the insole on one side during the lasting operation it makes the stock thicker on that side than on the other side; consequently, when the heel is attached it will be tilted to one side by the extra thickness on one side of the shoe.

The impairment of the efficiency of the operation of one machine by the failure of machines which have previously operated upon the shoe to do their work right extends all the way through the long line of machines which operate successively upon the shoe, and includes even those machines which perform minor operations. The difficulties which I have specifically discussed are merely illustrations of what may occur throughout the factory.

Mr. WEBSTER. The answer is objected to as largely argumentative and as having reference to matters outside the scope of the order referring the taking of evidence to the examiner, and because it relates to matters in no wise involved or at issue in this cause; and for the reasons aforesaid the answer is objected to as incompetent, inadmissible and irrelevant.

Int. 132. In your previous testimony in regard to a number of machines you stated that such machines performed operations which were performed by hand in 1899. Please state, if you know, how many machines now being supplied to shoe manufacturers by the United Shoe Machinery Company perform operations which were performed by hand in 1899. State also when each of such machines, if any, were first put out by the United Company.

Mr. WEBSTER. The question is objected to as calling for matter

not within the scope of the order referring the taking of testimony to the examiner, and because of calling for matter having no reference to the questions involved in this cause.

Ans. The United Company is putting out many machines which perform operations that were performed by hand in 1899 or were not performed at all in 1899, either by hand or by machine. On a list which I have before me I have enumerated thirty-nine such machines; but there are very likely more which I did not recall as I prepared this list. The machines on this list, all of which are patented or are subjects-matter of pending applications, are as follows: —

MACHINES PUT OUT BY UNITED SHOE MACHINERY COMPANY WHICH DO WORK ALWAYS DONE BY HAND IN 1899 OR NOT DONE AT ALL, EITHER BY HAND OR BY MACHINE, IN 1899.

Name of Machine.	Department.	First put out by United Shoe Machinery Company.
Assembling Machine: Rex	Pulling Over Department	September, 1904
Beating and Slashing Machine: Goodyear Welt	Goodyear Department	November, 1904
Beveling Machine: Goodyear Underwedge	Goodyear Department	Early in 1911
Blacking Machine: Crest Heel	General Department	September, 1908
Buffing Machine: Velvet Box Toe	Heeling Department	January, 1904
Clicking Machine: Ideal	General Department	March, 1908
Clinch Machine: Universal Double	Metallic Department	November, 1899
Eyeletting Machine: Duplex [first machine to set two eyelets on opposite sides of an upper simultaneously]	Eyeletting Department	July, 1902

Embossing Machine: Goodyear Heel	Goodyear Department	1910
Gumming Machine: Rex Toe [superseded by Shellacing Machine: Rex Box Toe]	Pulling Over Department	October, 1904
Jointing Machine: Goodyear	Goodyear Department	November, 1910
Lacing Machine: Ensign	Fitting Room Department	February, 1906
Lasting Machine: Consolidated Hand Method (Turn Heel Seat)	Lasting Department	April, 1906
Lasting Machine: Consolidated Hand Method (Turn Toe)	Lasting Department	April, 1906
Lasting Machine: Staple	Lasting Department	1912
Molding Machine: Stitch-down Upper	General Department	November, 1907
Nailing Machine: Alpha Wood Heel	Heeling Department	September, 1907
Pounding Machine: Rex [superseded by Pounding Machine, Model E, Rex]	Pulling Over Department	1904
Pincer: U S M C Bench	General Department	August, 1911
Pounding and Beating Up Machine — Model A: Rex Rotary	Pulling Over Department	March, 1912
Pulling Machine: Goodyear Insole Tack	Goodyear Department	February, 1909
Pulling-Over Machine: Rex	Pulling Over Department	September, 1899 [Experimental]
Pulling-Over Machine Model B: Rex [Pulling Over and Lasting Turn Shoes]	Pulling Over Department	July, 1910

Pulling and Resetting Machine: Goodyear Tack	Goodyear Department	November, 1910
Pulling and Trimming Machine: Insole Tack and Turn Shoe	Goodyear Department	December, 1911
Recessing Machine: Goodyear Underwedge	Goodyear Department	1910
Reducing Machine: Goodyear Out-sole Channel Shank	Goodyear Department	April, 1909
Repairing Machine: Patent leather	General Department	August, 1911
Skiving Machine: Eros Rand	Heeling Department	August, 1906
Skiving Machine: Goodyear Shank Welt	Goodyear Department	January, 1904
Softening Machine: Toe	General Department	August, 1911
Stapling Machine: Goodyear Upper	Goodyear Department	October, 1910
Stitching Machine: Economy Insole	Goodyear Department	October, 1909
Trimming Machine: Goodyear Insole Heel Seat	Goodyear Department	January, 1911
Trimming Machine: Rex Toe [superseded by Pounding and Trimming machine, Rex Rotary]	Pulling Over Department	October, 1904
Trimming Machine: Rex Upper	Pulling Over Department	December, 1905
Turning Machine: Goodyear Forepart	Goodyear Department	April, 1901
Turning Machine: Goodyear Heel	Goodyear Department	April, 1901

Turning Machine: Good-
year Welt Edge Goodyear Department December, 1909.

Mr. WEBSTER. The answer is objected to because it relates to matters not within the scope of the order of reference to the examiner, and because it relates to matters not in reply to, or in defence of, any evidence presented by the petitioner and because it relates to a considerable extent to matters and things not limited by the date of the filing of the petition herein; and for the reasons aforesaid the answer is objected to as incompetent, inadmissible and immaterial.

[*Adjourned to Tuesday, October 28, 1913, at 10* A. M.]

BOSTON, MASS., October 28, 1913.

Mr. PHILLIPS. I desire to state that the witness desires to call attention to certain clerical errors in the printed record of his testimony as taken in open court, and to inquire if there is any objection on the part of counsel for the Government to his calling attention to the errors at this time.

Mr. WEBSTER. Counsel for the Government states that he sees no objection to Mr. Howard's calling attention at this time to the clerical errors referred to.

The WITNESS. In the middle of page 481, fourth line from the end of the answer to interrogatory 46, the words "a fine" should be stricken out.

Page 483, in the fifth line of the answer to interrogatory 55, the comma and dash before "fore-part" should be cancelled and "and" should be inserted.

Page 485, in the first line the first word of the answer should be "A" instead of "The". In the sixth line "to be" should be canceled and "being" substituted. In the fifteenth line cancel "possibly" and substitute "and". In the seventeenth line before "nails" insert "heel attaching".

Page 489, the paragraph beginning in the second line is a duplication of a matter contained in a paragraph at the top of page 485. It is out of place on page 489 and should be canceled. On the same page, in line nine of the answer to interrogatory 82, the sec-

ond word, "heel", should be canceled and "sole" should be substituted.

Page 491, third line, instead of "A standard screw machine is a screw", it should be "A standard screw machine is a machine".

Page 529, in the second and third lines of the answer to interrogatory 260, the expression "in this branch of its business" is surplusage and, to secure clarity, should be canceled.

On page 539, in the fifth line of the answer to interrogatory 301, "for" should be "after".

On page 542, in the seventh line of the answer to interrogatory 316, the word "being" should be "performing".

On page 543, in the third line of the answer to interrogatory 320, "clogging" should be canceled and "crowding" should be substituted.

On page 546, in the fourth line of the answer to interrogatory 332, "fast" should be "fair".

On page 561, it is clear that in the sentence "Mr. Choate. And the awl on the metallic machine makes a straight hole for the needle?" should read: "And the awl on the metallic machine makes a straight hole for the nail?" That is, the word "nail" should be substituted for the word "needle".

On page 562, in the third line of the answer to interrogatory 404, "fresh" should be changed to "flesh".

On page 563, in the third line of the answer to interrogatory 406, "slit" should be "slip". On the same page, in the middle of the page, the sentence "This was a machine usable with the operation with the Gem insole" should read: "This was a machine useful only in preparing the Gem insole."

On page 570, in the fourth line, "that counter" should read "the counter".

On page 574, in the last line, the first word should be "tool" instead of "heel".

On page 575, in the fourth and fifth lines to the answer to interrogatory 441, "patented" should be "intended".

In the seventh line of that answer, in the first line of interrogatory 444, in the answer to interrogatory 444, and in two instances

in the second line of the answer to interrogatory 445, "beating" should be "beading".

On page 581, in the fourth line of the answer to interrogatory 472, "in" should be "on". The same page, in the second line of the answer to interrogatory 474, the word "Emerson" should be "Amazeen".

On page 582, in the third line of the answer to interrogatory 481, "to" after "on" should be canceled.

On page 583, in the second line, before the word "loose" the word "the" should be changed to "a".

On page 586, in the third line of answer to interrogatory 500, a comma and "a" should be inserted after "sole".

On page 595, in the eighth line of the first paragraph, "the" before "heel" should be "a". In the middle of the page, in the fourth and fifth lines of the answer to interrogatory 518, clearness will be secured if the surplus expression "as the shoes had been made before the sole had been sewed" be canceled.

On page 615, in the first line of the answer to cross-interrogatory 622, "two devices" should be "best features".

On page 649, in the first line of the answer to cross-interrogatory 674, a period should be inserted after the word "agency", the following "of" should be canceled, and the next word "all" should begin with a capital. In the next line the word "that" should be canceled.

On page 651, in answer to cross-interrogatory 693, in the fifth and seventh lines thereof, the word "twirl" should be "whirl".

On page 652, in the second line of the answer to cross-interrogatory 696, the word "round" should be "room".

On page 654, the last word in the last line of the answer to cross-interrogatory 714 should be "stitches" instead of "stickers".

On page 667, in the answer to cross-interrogatory 806, the second word "it" should be canceled.

On page 682, in the ninth line of the answer to cross-interrogatory 895, the fifth word should be "used" instead of "done".

On page 706, in the ninth line of the answer to cross-interrogatory 1101, the third word should be "were" instead of "is".

On page 712, in the fifth line of the answer to cross-interrogatory 1151, the word "core" should be "cone".

Mr. PHILLIPS. Counsel for defendants inquires whether or not counsel for petitioner will agree that the printed record may be corrected, so far as practicable, in accordance with the statement just given by the witness.

Mr. WEBSTER. I see no objection in the interest of fairness, why the corrections should not be made.

Mr. PHILLIPS. So far as I am at present advised, this closes my direct examination of this witness, and the witness is offered to counsel for petitioner for cross-examination.

Cross Examination by ALLEN WEBSTER, Esq., *of Counsel for Defendants.*

Cross-Int. 133. Mr. Howard, as I understand your previous testimony you have had fifteen years' experience as attorney for the United Company and its predecessor, the McKay Shoe Machinery Company, and that during that time you have given substantially all of your time to an investigation of the art with reference to which you have testified, and have thus become perfectly familiar with the whole art. Am I right in my understanding?

Ans. I should not be willing to say that I had devoted all of my time to investigation of the art and certainly could not say that I have become "perfectly familiar with the whole art". My work has required a great deal of investigation of the art, and I believe that I have acquired a considerable familiarity with patents relating to the manufacture of shoes.

Cross-Int. 134. You say, in answer to question 1, among other things, that you spent a considerable portion of your time in connection with litigation involving shoe machines and shoe machinery patents. Will you kindly state on the record the names of the various cases you refer to in that portion of your answer?

Ans. Among the suits to which I had reference in my answer were a number brought by the Goodyear Shoe Machinery Company against the Eppler Welt Machine Company and, at least, one suit brought by one of the lasting machine companies, I think it was

the McKay & Copeland Lasting Machine Company, against the Goodyear Shoe Machinery Company. Before I left the firm of Fish, Richardson & Storrow, as it was then known, to become connected with the McKay Shoe Machinery Company, I was also engaged on work connected with the proposed infringement suits which the McKay Shoe Machinery Company was proposing to bring, in the name of the trustees of the McKay Metallic Fastening Association, against Louis Goddu, the Goddu sons and the Goddu Sons Metal Fastening Company.

Cross-Int. 135. Were any of the cases with which you were connected involving shoe machinery patents entered in court? And if so, kindly give the names of the cases, if it is possible for you to do so.

Mr. FISH. You mean at this time?

Mr. WEBSTER. Were they ever entered?

Mr. FISH. Are you talking about the time that he was connected with my firm, or since?

Mr. WEBSTER. Any time.

Ans. As regards the suits to which I referred in my answer to the preceding interrogatory, all of the suits were pending in court except the proposed suit to which I referred against the Goddus and the Goddu Sons Metal Fastening Company. I have not at hand the numbers of the suits, although I should be glad to obtain them if desired.

As regards suits on shoe machinery patents upon which I have been engaged during the period since I first became connected with the McKay Shoe Machinery Company in September, 1898, to the present time, there have been a great many of such suits which have been entered in court and in many of which final decrees have been entered. I have not at hand the data of such suits, although I shall be glad to furnish them if desired.

Cross-Int. 136. Can you at the present time give the number, date, title and name of patentee of the patents involved in the litigation referred to by you?

Mr. PHILLIPS. The question is objected to as not pertinent to anything referred to in the direct examination of this witness.

Mr. WEBSTER. Counsel for petitioner respectfully calls attention to the fact that the question goes to the qualification of the witness, also to patents which counsel understands have been referred to in the testimony of the witness.

Ans. Among over a hundred patents that have been involved in the litigation with which I have been connected are the following: —

No. 776,823, December 6, 1904, Allen, heel-compressing machine.

No. 530,046, November 27, 1894, Heys, heel-compressing machine.

No. 776,787, December 6, 1904, Leland, heel-compressing machine.

No. 946,591, January 18, 1910, Arnold, sewing machine.

No. 961,200, June 4, 1910, Ashton, vamp-trimming machine.

No. 921,503, May 11, 1909, Bates, machine for cutting out thin sheet material such as upper leather for boots and shoes.

No. 950,986, March 1, 1910, Bates, press.

No. 1,000,957, August 15, 1911, Bates, machine for inserting nails in heels.

No. 461,793, October 20, 1891, Briggs, method of forming chain stitches.

No. 463,982, November 24, 1891, Briggs, rough rounding and channeling machine.

No. 511,263, December 19, 1893, Briggs and Dancel, rough rounding and channeling machine.

No. 601,933, April 5, 1898, Brock, lasting machine.

No. 601,934, April 5, 1898, Brock, lasting machine.

No. 765,650, July 19, 1904, Casgrain, reel.

No. 364,217, June 7, 1887, Coburn, mold for molding heels.

No. 582,579, May 11, 1897, Cutter, nailing machine.

No. 563,471, July 7, 1896, French and Meyer, sole sewing machine.

No. 600,883, March 22, 1898, French and Meyer, sole channeling and trimming machine.

No. 630,339, August 8, 1899, sole trimming and channeling machine.

No. 552,834, January 7, 1896, Grandy, power lasting machine.

No. 725,077, April 14, 1903, Hadaway, welting for welt shoes.

No. 864,532, August 27, 1907, Hadaway, machine for preparing shoes for sewing.

No. 963,761, July 12, 1910, Hadaway, sole-sewing machine.

No. 968,555, August 30, 1910, Hadaway, vamp-trimming machine.

No. 627,122, June 20, 1899, Keighley, sole-molding machine.

No. 524,446, August 14, 1894, Lombard, lasting machine.

No. 675,783, June 4, 1901, Meloon, guide for shoe-sewing machine.

No. 596,305, December 28, 1897, Pettingill, last support.

No. 884,524, April 14, 1908, Pope, heel-attaching machine.

No. 561,608, June 9, 1896, Raymond, heel-attaching machine.

No. 619,707, February 14, 1899, Raymond, heel-attaching machine.

No. 591,698, October 12, 1897, Robinson, nailing machine.

No. 781,236, January 31, 1905, Small, top-lifts.

No. 548,671, October 29, 1895, Stirckler, lasting machine.

No. 834,085, October 23, 1906, Taylor, heels for boots and shoes.

No. 982,550, January 24, 1911, Towle, heel-nailing machines.

No. 700,279, May 20, 1902, Winkley, welt-sewing machine.

Cross-Int. 137. Have you now the data with reference to the litigation with which you were connected; and, if so, will you kindly state what cases you were engaged in involving shoe machinery, giving the name of the case and where the same was entered, that is, in what circuit?

Mr. PHILLIPS. Objected to as improper cross-examination and as having no bearing on the matter touched upon in the direct examination of this witness.

Ans. Among the several hundred suits on patents relating to shoe machinery, with which suits I have been familiar and in connection with which I have done considerable work, are the following: —

United Shoe Machinery Company *v.* W. J. Young Machinery Company et al., Equity No. 2118 (27), District of Massachusetts.

United Shoe Machinery Company *v.* Charles W. Bowen, Equity No. 2120 (29), District of Massachusetts.

United Shoe Machinery Company *v.* Peter J. Carroll, Equity No. 2119 (28), District of Massachusetts.

United Shoe Machinery Company *v.* Charles E. Greenman, Equity No. 2051, District of Massachusetts.

United Shoe Machinery Company *v.* Duplessis Independent Shoe Machinery Company, Equity No. 2050, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant, Equity No. 775, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant Company, Equity No. 208 (old No. 774), District of Massachusetts.

United Shoe Machinery Company *v.* George H. Snow, Equity No. 311, District of Massachusetts.

United Shoe Machinery Company *v.* George H. Snow Company, Equity No. 795 (220), District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant, Equity No. 766, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant Company, Equity No. 767, District of Massachusetts.

United Shoe Machinery Company *v.* E. M. Chesley and William A. Rugg, Equity No. 884 (227), District of Massachusetts.

United Shoe Machinery Company *v.* James M. Caunt, Equity No. 1939, District of Massachusetts.

United Shoe Machinery Company *v.* Harry R. Emery, Equity No. 2006, District of Massachusetts.

United Shoe Machinery Company *v.* Fred J. Thompson, Equity No. 2045, District of Massachusetts.

Consolidated & McKay Lasting Machine Company *v.* Carver Cotton Gin Company, Equity No. 1156, District of Massachusetts.

Consolidated & McKay Lasting Machine Company *v.* Busell Lasting Machine Company, Equity No. 1253, District of Massachusetts.

Consolidated & McKay Lasting Machine Company *v.* Michael Sheehy et al., Equity No. 1251, District of Massachusetts.

Consolidated & McKay Lasting Machine Company *v.* Ezra H. Stetson et al., Equity No. 1254, District of Massachusetts.

Consolidated & McKay Lasting Machine Company *v.* Frank H. Torrey, Equity No. 1255, District of Massachusetts.

Consolidated & McKay Lasting Machine Company *v.* Patrick J. Harney, Equity No. 1252, District of Massachusetts.

Consolidated & McKay Lasting Machine Company *v.* Seaver Process Lasting Company et al., Equity No. 1167, District of Massachusetts.

United Shoe Machinery Company *v.* C. E. Greenman, Equity No. 1994 (158), District of Massachusetts.

United Shoe Machinery Company *v.* E. Bottomley, Equity No. 2007, (168), (148), District of Massachusetts.

United Shoe Machinery Company *v.* Duplessis Independent Shoe Machinery Company, Ltd., et al., Equity No. 1993 (157), (141), District of Massachusetts.

United Shoe Machinery Company *v.* George B. Leavitt, Equity No. 2008 (169), (149), District of Massachusetts.

United Shoe Machinery Company *v.* H. E. Lewis, Equity No. 2004 (166), (146), District of Massachusetts.

United Shoe Machinery Company *v.* The Wentworth Company, Equity No. (blank), Southern District of Ohio.

United Shoe Machinery Company *v.* George M. Greene et al., Equity No. 1341, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant, Equity No. 768, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant Company, Equity No. 769, District of Massachusetts.

Goodyear Shoe Machinery Company *v.* Thomas D. Barry et al., Equity No. 1348, District of Massachusetts.

United Shoe Machinery Company *v.* Duplessis Shoe Machinery Company, Equity No. 2077 (300), District of Massachusetts.

United Shoe Machinery Company *v.* E. M. Chesley and William A. Rugg, Equity No. 370, District of Massachusetts.

United Shoe Machinery Company et al. *v.* Charles E. Greenman, Equity No. 1974, District of Massachusetts.

United Shoe Machinery Company *v.* Duplessis Independent Shoe Machinery Company, Ltd., et al., Equity No. 1973, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant, Equity No. 749, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant Company, Equity No. 750, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant Company, Equity No. 195 (old No. 755), District of Massachusetts.

United Shoe Machinery Company *v.* Charles H. Alden and C. H. Alden Company, Equity No. 413, District of Massachusetts.

United Shoe Machinery Company *v.* Moses N. Arnold and M. N. Arnold Company, Equity No. 412, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant, Equity No. 777, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant Company, Equity No. 209 (old No. 776), District of Massachusetts.

United Shoe Machinery Company *v.* George H. Snow Company, Equity No. 796 (221), District of Massachusetts.

United Shoe Machinery Company *v.* Bresnahan Shoe Machinery Company et al., Equity No. 1772, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant, Equity No. 764, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant Company, Equity No. 763, District of Massachusetts.

United Shoe Machinery Company *v.* The Duplessis Shoe Machinery Company, Ltd. and Richard H. Long, Equity No. 450 (65), District of Massachusetts.

United Shoe Machinery Company *v.* Long Shoe Manufacturing Company and Richard H. Long, Equity No. 429 (59), District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant, Equity No. 751, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant Company, Equity No. 752, District of Massachusetts.

United Shoe Machinery Company *v.* E. M. Chesley and William A. Rugg, Equity No. 837, District of Massachusetts.

United Shoe Machinery Company *v.* N. W. Kimball et al., Equity No. 1723 (80), (76), District of Massachusetts.

United Shoe Machinery Company *v.* Charles S. Fuller and Fred P. Fuller (Cape Ann Shoe Company), Equity No. 1729 (83), (79), District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant et al., Equity No. 1113, District of Massachusetts.

United Shoe Machinery Company *v.* N. W. Kimball et al., Equity No. 1688 (69), District of Massachusetts.

United Shoe Machinery Company *v.* J. H. Cross et al., Equity No. 1118, District of Massachusetts.

United Shoe Machinery Company *v.* M. F. Donovan, Equity No. 1119, District of Massachusetts.

United Shoe Machinery Company *v.* E. P. Faunce et al., Equity No. 1115, District of Massachusetts.

United Shoe Machinery Company *v.* R. C. Kellam et al., Equity No. 1114, District of Massachusetts.

United Shoe Machinery Company *v.* A. F. Smith, Equity No. 1116, District of Massachusetts.

United Shoe Machinery Company *v.* Aaron F. Smith et al., Equity No. 1124, District of Massachusetts.

United Shoe Machinery Company *v.* W. W. Williams, Equity No. 1121, District of Massachusetts.

United Shoe Machinery Company *v.* Woodward Manufacturing Company et al., Equity No. 1120, District of Massachusetts.

United Shoe Machinery Company *v.* Kimball, Equity No. (blank), District of New Hampshire.

United Shoe Machinery Company *v.* C. K. Fox, Equity No. 1692 (71), (17), District of Massachusetts.

United Shoe Machinery Company *v.* George W. Herrick, Equity No. 1117 (5), District of Massachusetts.

United Shoe Machinery Company *v.* J. E. Maguire et al., Equity No. 1684 (68), (16), District of Massachusetts.

United Shoe Machinery Company *v.* Duplessis Shoe Machinery Company, Equity No. 1975 (146), District of Massachusetts.

United Shoe Machinery Company *v.* C. E. Greenman, Equity No. 1976 (131), District of Massachusetts.

Consolidated & McKay Lasting Machine Company *v.* Seaver Process Lasting Company, Equity No. 1168, District of Massachusetts.

United Shoe Machinery Company *v.* Edward M. Chesley and William A. Rugg, Equity No. 836, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant Company, Equity No. 765, District of Massachusetts.

United Shoe Machinery Company *v.* Edward M. Chesley and William A. Rugg, Equity No. 833, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant, Equity No. 753, District of Massachusetts.

United Shoe Machinery Company *v.* Thomas G. Plant Company, Equity No. 194 (old No. 754), District of Massachusetts.

M. V. Bresnahan et al. *v.* United Shoe Machinery Company, Equity No. 362, District of Massachusetts.

Essex Machine Company *v.* O. A. Miller Treeing Machine Company, Equity No. 813, District of Massachusetts.

Cross-Int. 138. As I understand your testimony, you had full and complete charge of all the patent soliciting work of the McKay Shoe Machinery Company and later of the United Shoe Machinery Company; am I correct?

Ans. I had entire charge of the patent soliciting of the McKay Shoe Machinery Company, and since the formation of the United Shoe Machinery Company I have had entire charge and sole responsibility for the soliciting of patents relating to machines in all departments other than the Goodyear department. The soliciting of patents on machines in the Goodyear department has been done by the firm of Phillips, Van Everen & Fish under my general supervision.

Cross-Int. 139. So that in the course of your employment you became familiar with the art in all branches; is that correct?

Ans. That is substantially correct.

Cross-Int. 140. And does this include the development of the art with reference to inventions made by parties having no connection with either of your employers, or is it limited to the art as developed through applications by your employers or those interested with them?

Ans. The proper discharge of my duties has required that I keep advised of the general development of the art, including inventions made and patented by inventors not in any way connected with the United Shoe Machinery Company or with its predecessor, the McKay Shoe Machinery company.

Cross-Int. 141. In your direct testimony you read into the record a list of 149 machines in response to question 7. Do you wish to have it understood that you testified that all of the machines specified in that list are necessary for the successful manufacture of shoes?

Ans. I do not recall that I so testified.

Cross-Int. 142. Then they are not all necessary to the manufacture of shoes, are they?

Mr. PHILLIPS. The question is objected to as vague and ambiguous.

Ans. The machines on that list are all useful in or in connection with the manufacture of shoes. Some of them, of course, are particularly adapted for one type of shoe, as, for example, the welt shoe, the turn shoe, or the McKay sewed shoe; and frequently machines especially adapted for use in the manufacture of one type of shoe are not needed and have no place in the manufacture of other types of shoes.

Cross-Int. 143. Now, taking up first machines employed in the manufacture of what is known as the McKay shoe, will you kindly specify what types of machines are necessary for the bottoming of the McKay shoe by machinery?

Mr. PHILLIPS. Counsel for the defendants would like to have counsel for petitioner explain what he means by "types of machines".

Mr. WEBSTER. In view of the suggestion of counsel for defendants I will put the question in this way: —

Cross-Int. 144. In the bottoming of a McKay shoe by machinery, is anything more required than the employment of a lasting machine and a McKay sewing machine?

Mr. PHILLIPS. Your question is still ambiguous. Have you any objection to stating what you mean by "anything more"?

Mr. WEBSTER. By the term "anything more" I mean any other machinery.

Mr. PHILLIPS. As I understand the question proposed to the witness, it is stated as follows: "In the bottoming of a McKay shoe by machinery is any other machinery required than a lasting machine and a McKay sewing machine?"

Ans. A large number of machines in addition to lasting and McKay sewing machines are used by all manufacturers of McKay shoes in the bottoming room.

Cross-Int. 145. Is it not a fact that a considerable number of the 149 machines mentioned by you in answer to direct question 7 relate to the ornamentation or the finishing of shoes?

Mr. PHILLIPS. Question objected to as uncertain and ambiguous.

Ans. Some of the machines on the list referred to are used by manufacturers for rendering the shoes made by them marketable, both in the way of rendering the shoes presentable after their numerous handlings in the factory and in the way of rendering them attractive in appearance so that they will be salable and will be pleasing to the wearer.

Mr. WEBSTER. Answer objected to, because not responsive and evasive.

Cross-Int. 146. Do you wish the court to understand that you testify that the employment of a blacking or polishing machine adds in any way to the wearing quality of shoes?

Mr. PHILLIPS. Question objected to as referring to no machine enumerated in the list of machines submitted by the witness.

Ans. I did not intend to state, and think that I did not state, that the operation of any such machine adds to the wearing quality of the shoe.

Cross-Int. 147. Does the employment of a burnishing machine add to the wearing quality of a shoe?

Ans. I think not; but it adds materially to the salability of the shoe and to the satisfaction of the wearer of the shoe.

Mr. WEBSTER. All that portion of the answer following the words "I think not" is objected to as non-responsive, and the attention of the witness is respectfully directed to the fact that we are all desirous of shortening the record as much as possible and he is invited to assist by simply answering the questions and stopping.

Cross-Int. 148. Does the employment of a beading machine add in any way to the wearing quality of the shoe?

Ans. A beading machine is very useful in the manufacture of a shoe, and the work done by it would have to be done by hand at great expense if manufacturers did not have machines for performing the work done by beading machines.

Mr. WEBSTER. Answer objected to as being not responsive, evasive and argumentative, and counsel for petitioner moves that the answer be stricken from the record.

Cross-Int. 149. Will you now state whether, in your opinion, the employment of a beading machine in the manufacture of shoes adds in any wise to the wearing quality of the shoe?

Ans. I think that it does.

Cross-Int. 150. Now, explain how the employment of a beading machine adds to the wearing quality of a shoe.

Ans. Every machine which is used in the manufacture of the shoe, and does its work right, probably contributes something to the wear of the shoe. The beading machine, which is used after the upper and lining have been stitched together wrong side out, as is the universal practice, is used in the operation of turning upper and lining right side out and in flattening and setting the seam which unites the lining and upper. If that seam were not properly pressed out and flattened by the beading machine, it would not be as secure and there would be more danger of the seam ripping and the lining and upper coming apart.

Cross-Int. 151. I observe in your list of machines "clicking machine"; is it not a fact that this is employed for cutting out uppers only?

Ans. That machine is employed in the shoe industry exclusively for cutting out parts of uppers and linings for such parts.

Cross-Int. 152. I observe in your list three machines under the heading of "eyeletting machine"; is it not a fact that these are used only for setting eyelets in uppers?

Ans. Yes, sir; that is their only use in the shoe industry.

Cross-Int. 153. I also note "finishing machine, buttonhole"; does that relate to anything but buttonholes in shoe uppers?

Ans. No, sir, so far as the manufacture of shoes is concerned.

Cross-Int. 154. I observe in the list "indenting and burnishing machine"; does that relate to anything but ornamenting the shoe?

Ans. At the same time that the machine "ornaments" the upper it makes presentable the upper face of the welt, which, up to the time of its operation, presented a rough and unsightly appearance which would prevent its marketability except as a damaged shoe.

Cross-Int. 155. Then the machine referred to relates to finishing or ornamenting, does it not?

Ans. Yes, sir.

Cross-Int. 156. And does the "nurling machine" relate to anything more than ornamentation or finishing?

Ans. That is its chief use.

Cross-Int. 157. Is it not true that the "perforating machines" mentioned in the list are designed and adapted only for making ornamental operations?

Ans. Those machines are used with the purpose of adding to the salability of the shoe and the satisfaction of the wearer by imparting an attractive appearance to the shoe.

Cross-Int. 158. Is it not true also that "punching machine" and the "quilting machine" mentioned in the list relate to, and are designed only for, producing ornamentation? Kindly answer the question directly, if possible.

Ans. My answer immediately preceding will apply to the punching machine. The quilting machine is used for the purpose of increasing the wear of soles of shoes by inserting a large number of metal "slugs" in the bottoms of soles.

Cross-Int. 159. Is it not true that the "sanding machine" mentioned in the list is for finishing only?

Ans. No, sir.

Cross-Int. 159*a*. What is it for?

Ans. It is used to prepare box toes and counters in such manner that they will not injure the adjacent upper when they occupy their proper positions in the shoe.

Cross-Int. 160. Then it is used for the purpose of smoothing, is it?

Mr. PHILLIPS. Question objected to, as the witness has already stated what the function of a sanding machine is.

Ans. In the operation of the machine, after it has removed rough portions of counters or box toes which might injure the upper, it finally imparts a smooth surface which removes all liability of such injury.

Cross-Int. 161. Is the "scalloping machine" mentioned in the list for anything other than ornamentation?

Ans. On shoes which are to be operated upon by the scalloping machine it is practicable to use a top-lift having in its portion which is to be removed, in the operation of the scalloping machine, defects or blemishes, which, without the operation of that machine, would render that top-lift unfit for use. For this reason I must answer the question in the affirmative.

Cross-Int. 162. Is the "scouring machine" mentioned in the list adapted for anything more than smoothing and finishing the heel?

Ans. The operation of the scouring machine is of such importance in the manufacture of a shoe that, undoubtedly, a shoe of the medium or better grades which has not been operated upon by the scouring machine would not be salable.

Mr. WEBSTER. Answer objected to as not responsive and evasive, and the attention of the court is respectfully called to the attitude of the witness and his apparent disregard of the request to answer the questions briefly and without comments.

Cross-Int. 163. I observe in the list stamping machine, model C, Eagle sole; stamping machine, model C, Eagle upper; stamping machine, Regent, models B and C; is it not a fact that these machines are used only for marking and ornamentation?

Ans. No, sir.

Cross-Int. 164. Please explain.

Ans. The last machine, stamping machine, Regent, is frequently used for ornamenting purposes only, but more generally it is used to stamp the maker's or retailer's name on the shoes. The first two machines named, stamping machine, model C, Eagle sole, and stamping machine, model C, Eagle upper, are used to mark the parts of uppers or soles to facilitate sorting them and getting together, out of many thousands of parts of shoes, those parts which are to be put together in one shoe.

Cross-Int. 165. Then the stamping machine, model C, Eagle upper, is a marking machine, is it not?

Ans. Yes, sir.

Cross-Int. 166. And that is all it is, isn't it?

Ans. Yes, sir.

Cross-Int. 167. I observe in your direct examination you refer to the various departments of the United Shoe Machinery Company. As these are scattered through the record, I will ask you if you will kindly now state those various departments all together?

Ans. The departments through which the United Company does its business are the —

Pulling over department,
Lasting department,
Goodyear department,
Metallic department,
Heeling department,
Eyeletting department,
Fitting room department, and
General department.

Cross-Int. 168. And has the United Company any outside departments, associations, or corporations under its control which handle any of its products?

Mr. PHILLIPS. Question objected to as relating to nothing touched upon in the direct examination of this witness, and counsel for defendant will instruct the witness not to answer the question unless ordered to do so by the court.

Ans. Under instructions of counsel, I decline to answer the question.

Cross-Int. 169. Are the machines under control of the United Company handled in any other manner than through the several departments you have specified?

Mr. PHILLIPS. The same objection.

Ans. Under instruction of counsel, I decline to answer.

Mr. WEBSTER. The attention of the court is respectfully called to the fact that the witness has testified in direct examination that various machines were put out through various departments, and it is respectfully urged that it is within the scope of cross-examination to inquire of the witness whether any of such machines were put out in any other manner.

Mr. PHILLIPS. Counsel for defendants has no objection to the question if limited to machines referred to during the examination of this witness.

[*Question read by stenographer.*]

Mr. PHILLIPS. The same instructions to the witness by counsel unless the question is modified.

Ans. Under instructions of counsel, I decline to answer.

Mr. PHILLIPS. Counsel for defendants instructs the witness to answer the interrogatory in so far as it relates to any machines which have been touched upon in his direct examination.

The WITNESS. As regards all of the machines mentioned by me in my previous testimony, none of them is put out otherwise than by the United Shoe Machinery Company through the department which I named in discussing the machine.

Cross-Int. 170. Will you kindly state what you mean by the term "put out"; that is, whether put out on lease, or rent, royalty, sold, or otherwise? And in order to save encumbering the record with interrogatories with reference to each of said machines, I would ask you to state particularly how each machine is "put out", going through the list without further interrogation in reference to the same.

Mr. PHILLIPS. Objected to as relating to nothing touched upon in the direct examination of this witness, and as having no bearing on any matter at issue in this hearing before the examiner, being incompetent, irrelevant and immaterial. As the interrogatory is

understood, it calls for a detailed statement as to each machine referred to by the witness. With this understanding of the interrogatory, I instruct the witness not to answer the question unless ordered to do so by the court. I can see no objection to the witness making a general answer as to machines referred to by him if counsel for petitioner desires to question him on such lines.

Ans. Under instructions of counsel, I decline to answer the question.

Mr. WEBSTER. The witness has testified in a manner to tend to show that all of the 149 machines mentioned in the list recited by him are covered by patents, and that they were "put out" by various departments. It is respectfully suggested by counsel for petitioner that it is within the scope of cross-examination to ascertain how such alleged patented things were "put out", whether under lease or otherwise. If counsel objects to the question because it relates to a large number of machines, counsel for petitioner will particularize, but it seems useless to encumber the record in that manner.

Mr. PHILLIPS. It seems perfectly evident that by the expression "put out" the witness means that the machines were placed in the hands of customers, and in his direct examination he touched in no manner upon the details of the contracts under which they were put out, nor is it to be assumed that he has any knowledge of such details, nor do the details of such contracts seem to have any bearing at all on any issue before this examiner. I therefore repeat my instructions to the witness.

Mr. WEBSTER. Counsel for the petitioner reserves the right to present this matter to the court at some convenient time.

Cross-Int. 171. You have in your direct testimony made reference in several instances to "minor machines". Will you kindly specify what you mean by that term?

Ans. The only machine in connection with which I recall using that expression is "repairing machine, model A, patent leather". I so characterized that operation because the hand operation which that machine superseded was a simple one, performed by girls, and

its object was the remedying of damage which had been done the shoe in the manufacturing operations.

Cross-Int. 172. Are there any machines in the remaining 148 machines specified by you which are of more importance and more essential and necessary in the bottoming of shoes than any of the other said 148 machines?

Mr. PHILLIPS. Question objected to as ambiguous, uncertain and vague, and not in any way based upon the direct examination of this witness.

Ans. I hesitate to draw any lines between the machines as regards their importance because all of them are so important that manufacturers demand them and use them. I should add, however, that not all of the machines on the list have to do with the bottoming operation.

Cross-Int. 173. Will you point out what machines have to do with bottoming operations only?

Ans. I should say that the following machines have to do with bottoming operations only: —

Assembling machine, Rex.
Assembling machine, model E, Rex.
Assembling machine, Rex turn shoe.
Assembling spindle.
Beating and slashing machine, Goodyear welt.
Blacking machine, model A, Crest heel.
Blacking machine, model B, Crest heel.
Burnishing machine No. 2, Goodyear impression stitch.
Cementing machine, model X, Stanbon channel.
Cementing machine, Star channel, models A and C.
Cementing machine, Star channel, model D.
Channeling machine, Economy insole.
Channeling machine, Goodyear (insole and turn).
Channeling machine, Goodyear Universal (turn work).
Channeling machine, Goodyear Universal (welt work).
Clinch machine, Universal double.
Cutting and scoring machine, insole, models D and E.
Fastening machine, model D, staple.

Flexible innersole machine, model X, Goodyear.
Flexible insole machine, Gem.
Fudge edge machine, Goodyear.
Grooving and beveling machine, Goodyear power welt.
Heel-breasting machine, model B, Imperial.
Indenting and burnishing machine, Goodyear welt.
Jointing machine, Goodyear.
Lasting machine, Consolidated hand method.
Lasting machine, McKay and Copeland.
Lasting machine, No. 5 U S M C.
Laying machine, Goodyear channel.
Laying machine, Goodyear improved sole, models B and C.
Laying machine, Goodyear improved sole (twin).
Leveling machine, model A, Atlas.
Leveling machine, Goodyear automatic sole, models A, B, C.
Leveling machine, Goodyear welt and turn (turn work).
Leveling machine, Goodyear welt and turn (welt work).
Leveling machine, Hercules.
Loading and attaching machine, McKay automatic heel.
Loading and attaching machine, model B, McKay automatic heel.
Lockstitch machine, model K, Goodyear out-sole rapid.
Lockstitch machine, model M, Goodyear out-sole rapid.
Molding machine, stitch-down upper.
Nailing machine, Alpha wood heel.
Nailing machine, American lightning.
Nailing machine, loose.
Nailing machine, Hungarian.
Nailing machine, No. 2 loose.
Opening machine, model C, Apex channel.
Pegging machine, Davey.
Pincer, U S M C bench.
Pounding machine, model E, Rex.
Pounding machine, model C, Rex rotary.
Pounding and beating-up machine, model A, Rex rotary.
Pounding and trimming machine, model B, Rex rotary.
Pricking machine, Premier heel.

Pulling machine, Goodyear insole tack.
Pulling machine, Goodyear upper tack.
Pulling and resetting machine, Goodyear tack.
Pulling and trimming machine, insole tack and turn shoe.
Pulling-over machine, model A, Rex.
Pulling-over machine, model B, Rex.
Pulling-over machine, model C, Rex.
Reducing machine, Goodyear out-sole channel shank.
Reinforcing machine, economy insole.
Rounding machine, Goodyear heel seat.
Rounding and channeling machine, Goodyear Universal.
Rounding and channeling machine, model E, Goodyear Universal.
Rounding and randing machine, Goodyear heel seat.
Scalloping machine, model B, top piece.
Scouring machine, model X, heel.
Screw machine, rapid standard.
Screw machine, model B, rapid standard.
Separating machine, Hadaway stitch.
Shoe machine, Goodyear welt and turn (when equipped for welt work).
Shoe machine, model G, Goodyear welt and turn (when equipped for welt work).
Shoe machine, model K, Goodyear welt and turn (when equipped for welt work).
Skiving machine, Goodyear shank welt.
Skiving machine, Goodyear universal shank.
Slugging machine, Universal.
Snipping machine, Goodyear insole toe.
Softening machine, toe, models C and D.
Softening machine, toe, model E.
Stapling machine, Goodyear upper.
Stapling machine, model B, Goodyear upper.
Sticking machine, model B, shank piece.
Stitching machine, economy insole.
Tacking machine, model A, grip.

Tacking machine, model B, grip.
Tacking machine, No. 1 U S M C insole.
Trimming machine, Goodyear insole heel seat.
Trimming machine, Goodyear insole heel seat, model B.
Trimming machine, Goodyear Universal inseam.
Trimming machine, model B, Rex toe.
Trimming machine, model A, Rex upper.
Trimming machine, model H, Rex upper.
Trimming machine, spring heel.
Trimming machine, Ultima heel.
Turning machine, Gem lip.
Turning machine, Goodyear forepart.
Turning machine, Goodyear heel.
Turning machine, Goodyear lip.
Turning machine, Goodyear welt edge.
Turning and slashing machine, Goodyear lip.
Wheeling machine No. 2, Goodyear impression stitch.

Cross-Int. 174. I observe that you have now specified 104 machines out of the 149 heretofore mentioned by you, which, as I understand your testimony, 104 machines are used in the bottoming of shoes. Please state whether some of the machines last referred to by you are adapted for use only in connection with welt shoes; and, if so, will you kindly point out what machines are adapted for the bottoming only of welt shoes?

Ans. The following machines have to do with bottoming operations on welt shoes only: —

Beating and slashing machine, Goodyear welt.
Channeling machine, economy insole.
Channeling machine, Goodyear (insole and turn) (when equipped for insole channeling).
Channeling machine, Goodyear Universal (welt work).
Cutting and scoring machine, insole, models D and E.
Flexible innersole machine, model X, Goodyear.
Flexible insole machine, Gem.
Grooving and beveling machine, Goodyear power welt.
Jointing machine, Goodyear.

Lasting machine, Consolidated hand method (welt).
Laying machine, Goodyear channel.
Laying machine, Goodyear improved sole, models B and C.
Laying machine, Goodyear improved sole twin.
Leveling machine, Goodyear automatic sole, models A, B, C.
Leveling machine, Goodyear welt and turn (welt work).
Lockstitch machine, model K, Goodyear out-sole rapid.
Lockstitch machine, model M, Goodyear out-sole rapid.
Pounding machine, model C, Rex rotary.
Pulling machine, Goodyear insole tack.
Pulling machine, Goodyear upper tack.
Pulling and resetting machine, Goodyear tack.
Reducing machine, Goodyear out-sole channel shank.
Reinforcing machine, economy insole.
Rounding machine, Goodyear heel seat.
Rounding and channeling machine, Goodyear Universal.
Rounding and channeling machine, model E, Goodyear Universal.
Rounding and randing machine, Goodyear heel seat.
Separating machine, Hadaway stitch.
Shoe Machine, Goodyear welt and turn (when equipped for welt work).
Shoe machine, model G, Goodyear welt and turn (when equipped for welt work).
Shoe machine, model K, Goodyear welt and turn (when equipped for welt work).
Skiving machine, Goodyear shank welt.
Skiving machine, Goodyear Universal shank.
Snipping machine, Goodyear insole toe.
Stapling machine, Goodyear upper.
Stapling machine, model B, Goodyear upper.
Stitching machine, Economy insole.
Trimming machine, Goodyear insole heel seat.
Trimming machine, Goodyear insole heel seat, model B.
Trimming machine, Goodyear Universal inseam.
Trimming machine, model A, Rex upper.

Trimming machine, model H, Rex upper.

Turning machine, Goodyear lip.

Turning machine, Goodyear welt edge.

Turning and slashing machine, Goodyear lip.

Cross-Int. 175. You have now enumerated, if I have counted correctly, forty-six out of said 104 machines which are adapted only for bottoming of welt shoes. Will you now kindly specify those that are adapted only for bottoming of McKay sewed shoes?

Ans. On a somewhat hurried review of the machines which I have enumerated as having to do with bottoming operations only, I note only one which is adapted for use on McKay sewed shoes only, and that is leveling machine, model A, Atlas. I believe, however, that several other machines are, as a matter of fact, used only on McKay sewed shoes, such as pounding and trimming machine, model B, Rex rotary, and trimming machine, model B, Rex toe.

Cross-Int. 176. Will you now kindly specify what machines are adapted for use in bottoming turn shoes only?

Ans. Assembling machine, Rex turn shoe.

Channeling machine, Goodyear insole and turn (equipped for turn work).

Channeling machine, Goodyear Universal (turn work).

Lasting machine, Consolidated hand method (turn toe).

Lasting machine, Consolidated hand method (turn heel seat).

Leveling machine, Goodyear welt and turn (turn work).

Molding machine, Goodyear power.

Pounding and beating-up machine, model A, Rex rotary.

Pulling and trimming machine, insole tack and turn shoe.

Pulling-over machine, model B, Rex.

Shoe machine, Goodyear welt and turn (when equipped for turn work).

Shoe machine, model G, Goodyear welt and turn (when equipped for turn work).

Shoe machine, model K, Goodyear welt and turn (when equipped for turn work).

Turning machine, Goodyear forepart.

Turning machine, Goodyear heel.

Cross-Int. 177. Are some of the machines you have enumerated as having to do with bottoming operations adapted for both welt bottoming and turn bottoming? If so, will you specify such machines?

Ans. Blacking machine, model A, Crest heel.

Blacking machine, model B, Crest heel.

Burnishing machine No. 2, Goodyear impression stitch.

Channeling machine, Goodyear (insole and turn; may be equipped for either work).

Channeling machine, Goodyear Universal (may be equipped for either work).

Heel-breasting machine, model B, Imperial.

Lasting machine, Consolidated hand method (special models for either work).

Loading and attaching machine, model B, McKay automatic heel.

Nailing machine, American lightning.

Nailing machine, loose.

Nailing machine No. 2, loose.

Scalloping machine, model B, top piece.

Scouring machine, model X, heel.

Shoe machine, Goodyear welt and turn (may be equipped for either work).

Shoe machine, model G, Goodyear welt and turn (may be equipped for either work).

Shoe machine, model K, Goodyear welt and turn (may be equipped for either work).

Slugging machine, Universal.

Tacking machine, No. 1 U S M C insole.

Trimming machine, Ultima heel.

Cross-Int. 178. Are any of the machines mentioned by you as adapted only for bottoming shoes adapted for bottoming McKay nailed or metallic-fastened shoes?

Ans. The following machines, which I have enumerated as having to do with bottoming operations only, are adapted for use in

connection with the bottoming of nailed, standard screwed or pegged shoes: —

Assembling machine, Rex.
Assembling machine, model E, Rex.
Assembling spindle.
Blacking machine, model A, Crest heel.
Blacking machine, model B, Crest heel.
Burnishing machine, No. 2, Goodyear impression stitch.
Cementing machine, model X, Stanbon channel.
Cementing machine, Star channel, models A and C.
Cementing machine, Star channel, model D.
Clinch machine, Universal double.
Fastening machine, model D, staple.
Heel-breasting machine, model B, Imperial.
Indenting and burnishing machine, Goodyear welt.
Lasting machine, Consolidated hand method (McKay).
Lasting machine, McKay & Copeland.
Leveling machine, Hercules.
Loading and attaching machine, McKay automatic heel.
Nailing machine, loose.
Nailing machine, Hungarian.
Nailing machine, No. 2 loose.
Opening machine, model C, Apex channel.
Pegging machine, Davey.
Pincer, U S M C Bench.
Pounding and trimming machine, model B, Rex rotary.
Pricking machine, Premier heel.
Pulling-over machine, model A, Rex.
Scalloping machine, model B, top piece.
Scouring machine, model X, heel.
Screw machine, rapid standard.
Screw machine, model B, rapid standard.
Slugging machine, Universal.
Softening machine, toe, models C and D.
Softening machine, toe, model E.
Tacking machine, model A, grip.

Tacking machine, model B, grip.
Trimming machine, Ultima heel.
Wheeling machine No. 2, Goodyear impression stitch.
[*Adjourned to 10 o'clock* A. M., *Wednesday, October 29, 1913.*]

BOSTON, MASS., October 29, 1913.

Cross-Int. 179. Kindly state whether any of the machines set out in the list of 149 machines are adapted only for use in the manufacture of shoes having extension edges, Scotch edges or Baltimore edges; and, if so, will you kindly specify such machines or appliances?

Ans. I do not know that any of the machines enumerated on the list produced in answer to interrogatory 7 is adapted only for use in the manufacture of shoes having extension edges, either Scotch edges or Baltimore edges.

Cross-Int. 180. Are any of the machines about which you have testified, and in which testimony you have made special reference to the use of such devices or machines in the manufacture of shoes having extension edges, necessary for the production of shoes which do not have extension edges?

Mr. PHILLIPS. Question objected to as vague and ambiguous.

Ans. I do not know that any machine is necessary for the production of shoes not having extension edges. Such shoes were made long before there were any shoe machines.

Cross-Int. 181. In various portions of your direct testimony you have referred specifically to machines and appliances which, if I understand you, you testify are useful in the manufacture by machinery of shoes having extension edges. Will you now inform the court whether such machines and appliances for the manufacture of shoes by machinery are necessary, in the manufacture of shoes by machinery, which shoes do not have extension edges?

Mr. PHILLIPS. Question objected to as vague, ambiguous and uncertain.

Ans. It is the practice in the manufacture of shoes to use the machines which, as explained in my previous testimony, are adapted for use in the manufacture of shoes having extension

edges, both in the manufacture of such shoes and in the manufacture of shoes which do not have extension edges so far as such shoes are made.

Mr. WEBSTER. Answer objected to as not responsive, and evasive.

Cross-Int. 182. Have you now answered the question as fully as you are able?

Ans. Perhaps I should add that in the use of some of the machines referred to in my preceding answer the mechanism adapting those machines particularly for efficient operation on extension edge shoes would not be operated when the machines were used on shoes not having extension edges, while in other machines the organization enabling those machines to do extension edge work would be operated in a different manner when the work being done by the machine was not extension edge work.

Cross-Int. 183. Well, shoes without extension edges were manufactured by machinery many, many years before shoes having extension edges were manufactured by machinery, were they not?

Ans. Shoes not having extension edges were manufactured by machinery many years before shoes having extension edges were made by machinery.

Cross-Int. 184. In your direct testimony you have made reference to machines and mechanisms adapted for the manufacture of shoes by machinery on "razor toe lasts", such as is shown in Defendants' Exhibit 134. Kindly state whether machines or mechanisms to which you have so referred are necessary for the manufacture of a plain, ordinary shoe, such as, for instance, shown in Defendants' Exhibit 161.

Mr. PHILLIPS. Question objected to as vague and ambiguous.

Ans. Defendants' Exhibit 134 was produced by me to illustrate the early steps in the development of modern lasts which began about 1895 and which led to the use of lasts having wide variations in widths and shapes of toes, as illustrated in Defendants' Exhibits 135, 136, 137 and 142. That development in lasts led to general use of so-called "crooked lasts", as distinguished from the nearly straight lasts used until about 1895 and illustrated in

Defendants' Exhibit No. 141. The shoe of Defendants' Exhibit 161 was made upon a modern "crooked last". The improvements to which I have referred in my previous testimony as adapting machines for the changing conditions of 1895 and of the years immediately following, as illustrated in Defendants' Exhibit 134 and in the other exhibits to which I have just referred, better adapted those machines for operating upon shoes such as shown in Defendants' Exhibit 161, and the improvements in older machines and the new machines which have been introduced since the period when lasts like Defendants' Exhibit 134 were used are very useful and are extensively used in the manufacture of shoes made on modern lasts, as was the shoe of Defendants' Exhibit 161.

Mr. WEBSTER. Answer objected to as evasive and not responsive.

Cross-Int. 185. Have you now answered the question as fully as you are able?

Mr. PHILLIPS. It is suggested that the question is answered as well as it it possible to answer it in the form in which it is stated.

Ans. I endeavored to make my preceding answer clear and responsive. However, I can try again by stating that the operations of the machines in question could be performed by hand, if desired, on a shoe like Defendants' Exhibit No. 161, so that the machines or machinery inquired about are not strictly "necessary" for the production of this shoe.

Mr. WEBSTER. Answer objected to as evasive and not responsive.

Cross-Int. 186. Am I correct in understanding that you testify that the last marked "Defendants' Exhibit 131" is what is known as a straight last and is the kind of last that was in use many years pior to 1895?

Ans. I believe I have never called the last of Defendants' Exhibit No. 131 a "straight" last. For convenience in comparing it with modern "crooked lasts", I have referred to it as "nearly straight". That last was produced by me as "a last such as was in use in 1893 and 1894".

Cross-Int. 187. Will you now state whether lasts like the last marked "Defendants' Exhibit 131" were in use prior to 1893?

Ans. Yes, sir; lasts substantially like the last of Defendants' Exhibit 131 were in use prior to 1893.

Cross-Int. 188. And for how long prior, so far as you know, or according to your best information?

Ans. Lasts having the simple lines and regular formation of the last of Defendants' Exhibit 131 were in use for a long time prior to 1893, although in the earlier years they were even simpler and more symmetrical on the opposite sides than is this last of Defendants' Exhibit 131.

Cross-Int. 189. Will you now state what you mean approximately by the term "for a long time prior to 1893"; that is, whether you mean five years, ten years, or twenty years?

Ans. I mean the entire period during which machines have been used in the manufacture of shoes.

Cross-Int. 190. Now, will you kindly state the period referred to in your last answer during which shoes have been manufactured by machine?

Mr. PHILLIPS. Question objected to as relating to nothing touched upon in the direct examination of this witness, and as being vague and ambiguous, it not appearing what machine processes are referred to, whether in the manufacture of the whole shoe or merely parts.

Ans. Machines for performing various operations in the manufacture of different kinds of shoes were first produced and used at different times in the nineteenth century. The first machine for attaching soles of McKay shoes was produced in the early sixties. The first commercial pegging machine of which I am aware was also introduced in the sixties, while the first lasting machine which was commercially used was first put into shoe factories in the late sixties. The first commercial machine for attaching the welts and uppers of welt shoes to their insoles was put into commercial use in the seventies. I believe that the first machine for attaching out-soles of welt shoes to their welts was also first used commercially in the seventies.

Cross-Int. 191. Now, as I understand you, lasts substantially like the last of Defendants' Exhibit 131 were in use as early as

1885, and that shoes were lasted by machinery over such lasts as early as 1885. Kindly state if I am correct in my understanding.

Ans. That statement is substantially correct, qualified, of course, by the explanation made in my preceding answers that as we go back through the period prior to the date when this last was used, that is, 1893 and 1894, we find the lasts increasingly simple and symmetrical on their opposite sides.

Cross-Int. 192. In your direct testimony you have made, as I recollect it, special reference to machines adapted for the manufacture of shoes by machinery over razor-toe lasts such as are shown in Defendants' Exhibit 134, and also over lasts known as "bull dog" such as are shown in Defendants' Exhibit 135. Will you now kindly inform the court whether the machines and mechanisms to which you have testified with reference to lasting shoes by machinery over said lasts known as "razor toe" and "bull dog" are necessary in the lasting of shoes over the old type of last, which you say was in use as early as 1885?

Mr. PHILLIPS. Objected to as vague and ambiguous.

Ans. Such machines are obviously not necessary in making shoes on lasts like that of Defendants' Exhibit No. 131, since, among other reasons, at the period inquired about, 1885, these machines had not been produced.

Cross-Int. 193. In your direct testimony you have frequently made reference to machines as "commercial". Will you kindly explain just what you mean when you refer to a machine as having first become a commercial machine?

Ans. When I have stated in my direct testimony that a machine was first put out for commercial use on a given date, I have meant that on that date the machine was first put into a shoe factory for regular use under commercial conditions, after a long period of experimental use of the machine, including, first, a trying out at our Beverly factory, and then experimental use of the machine, or, sometimes, of several of the machines, under differing commercial conditions in various shoe factories, during which period parts of the machine which were found weak and likely to break were strengthened or redesigned, any abrupt or harsh movements in the

operating mechanisms were remedied and such changes were made as were needed to make the machine universal, that is, adapted to all kinds of work for which it was designed.

Cross-Int. 194. In your direct testimony you frequently state certain patents are "owned or controlled" by the United Company. Kindly state what you mean by the word "controlled" as distinguished from the word "owned".

Ans. The United Company has exclusive licenses under certain patents, and some patents setting forth in their claims mechanisms embodied in the machines of the United Company are owned by other companies in which the United Company has a controlling stock interest. I used the expression "controlled" to include such patents as could not be said strictly to be "owned" by the United Company.

Cross-Int. 195. Will you specify what patents are controlled by the United Company because of its controlling a majority interest in such company as is the owner of such patents?

Mr. PHILLIPS. Objected to as having no relation to any matter touched upon in direct examination of this witness, and having no bearing upon any issue before this examiner under the order of the court. The witness is instructed not to answer the question unless ordered to do so by the court.

Ans. Under instructions of counsel, I decline to answer.

Mr. WEBSTER. Counsel for the petitioner respectfully calls the attention of the court to the fact that the question of "patents" is before the examiner, and that, in view of the fact that the defendant justifies under patents alleged by it as being its property, it is respectfully submitted that the question is entirely competent.

Cross-Int. 196. In your direct testimony you frequently state that a machine "embodies the means set forth in the claim" of a patent. Do you wish to be understood as testifying when using such language that such machine operates in all respects as defined in the claim referred to by you?

Mr. PHILLIPS. I shall have to ask you to be a little more specific and point out the direct testimony of the witness, or the portion of the testimony, in which he has used the language referred to in your question.

Mr. WEBSTER. In response to the request of counsel for defendants, counsel for petitioner calls attention to the phraseology found in the witness' answer on page 2276 of the typewritten record [printed page 2278], reading as follows: "The mechanism set forth in all of the eleven claims of this patent No. 473,870 was embodied in the out-sole rapid lockstitch machine as it was put out by the Goodyear Shoe Machinery Company just prior to February, 1899."

Mr. PHILLIPS. It does not seem to me that the language just quoted justifies the question.

Mr. WEBSTER. Do you object to it and tell him not to answer?

Mr. PHILLIPS. I do, unless you point out the portion of the record in which witness has used the language referred to in the question.

Mr. WEBSTER. And you instruct him not to answer? [*No response.*] Counsel for petitioner calls attention further to the phraseology found on page 2288 [printed page 2286] at the bottom of the page, reading as follows: "Of the patents in the above list . . . set forth in the claims mechanisms embodied in all of the types of fudge edge stitching mechanisms."

Mr. PHILLIPS. I have no objection to the witness stating what he means by any language used in the testimony, but it does not seem to me of any materiality that he define language which does not appear to have been used by him.

Mr. WEBSTER. Does he decline to answer, or do you instruct him not to answer?

Mr. PHILLIPS. I instruct the witness not to answer the question in its present form.

The WITNESS. Under instructions of counsel, I decline to answer the question in its present form.

Cross-Int. 197. Do you say you have not used that language?

Ans. No, sir; I do not say that.

Cross-Int. 198. If you have used such language, will you state whether you meant by it that the machines referred to by you operated as defined in the claim?

Ans. If I have, in any of my previous testimony, stated in con-

nection with any machine which I was discussing that the machine "embodies the means set forth in the claim" of a patent to which I referred, I meant that upon comparing the structure recited in the claim with the structure of the machine in question I found that the structure recited in the claim was present in the machine.

Cross-Int. 199. Then you did not mean that the machine operated as defined in the claim, but that it was capable of so operating. Am I right in my statement?

Mr. PHILLIPS. Question objected to as being too vague and ambiguous to be intelligibly answered, it not appearing what specific claims are referred to or that any claim referred to defines a mode of operation.

Ans. If I have used the expression "embodies the means set forth in the claim" with reference to a claim which contained a functional statement indicating how the mechanism recited in the claim operates, I have meant that the machine with which I have compared the claim operated as stated in the claim.

Cross-Int. 200. You have, in your direct testimony, enlarged to a considerable extent as to the large cost to the defendant company in the production of various machines and in the invention of various types of machines, as shown in patents to which you have made reference. I now ask you whether you wish to have it understood by such testimony that all of the inventions set forth in the various patents about which you have testified were inventions made by salaried or hired employees of the United Company?

Ans. No, sir; I do not wish so to be understood.

Cross-Int. 201. Is it, then, a fact that very many of the patents about which you have testified were purchased by the United Company of parties other than its employees?

Ans. It is a fact as to some of them; yes, sir.

Cross-Int. 202. Do any of the patents about which you have testified relate to machines known as "slugging machines", such as were manufactured by one Preston, or such as were made under patents issued to, or owned by, one Preston?

Mr. PHILLIPS. Question objected to as having no bearing upon anything touched upon in the direct examination of this witness,

and the witness is instructed to answer the question only so far as it relates to any patent with regard to which he has testified.

Ans. In my testimony regarding the experimental slugging machine, first known as "Ziz slugging machine", and later as "slugging machine No. 5", I enumerated, in the list of "patents which set forth in their claims the organization of this machine", certain patents granted to the United Shoe Machinery Company as assignee of Albert F. Preston.

Cross-Int. 203. Will you kindly enumerate the patents referred to in your last answer?

Ans. Reissue patent No. 12,820 (reissued June 23, 1908), Albert F. Preston, machine for driving fasteners.

Reissue patent No. 12,821 (reissued June 30, 1908), Albert F. Preston, nailing machine.

Patent No. 1,030,829, June 25, 1912, Albert F. Preston, machine for making and driving fasteners.

Cross-Int. 204. Do any of the patents about which you have testified relate to machines known as "the Richardson machine"?

Mr. PHILLIPS. Objected to as relating to nothing touched upon in the direct examination of this witness, and unless counsel can show for what reason the question is competent I shall instruct the witness not to answer.

Ans. Under instructions of counsel, I decline to answer.

Mr. WEBSTER. Counsel for petitioner respectfully suggests that the competency of the question should be left for the determination of the court hereafter.

Cross-Int. 205. In your testimony you have referred to machines for attaching the bottoms of McKay sewed shoes, and in connection with such testimony you have referred to various patents. Will you state whether any of the patents to which you have made reference in your testimony relate to a machine for attaching bottoms of McKay sewed shoes of the type of machine known as "the Richardson machine"?

Mr. PHILLIPS. The same objection and the same instruction.

Ans. Under instructions of counsel, I decline to answer.

Cross-Int. 206. During your direct testimony you made refer-

ence to various machines and mechanisms which you stated were covered by claims of pending applications, and I, during the time of such testimony, entered on record a notice that I would call for the names of the applicants, together with the date of the filing of such applications, and I now, without waiving the objection heretofore made to the introduction of such testimony, will ask you if you will give the names of the various applicants for patents of said pending applications and the date when said applications were filed?

Mr. PHILLIPS. It does not seem to be material what the exact date of a pending application is. I see no objection to the witness giving the name of the applicant and a statement as to whether the application was filed before or after December 12, 1911, and I shall instruct him to answer the question with this limitation.

Ans. The request for this information was made in connection with the machines, the discussion of which begins on page 2787 of the typewritten record [printed page 2631]. The names of the applicants who filed pending applications for patents referred to in that discussion are as follows: —

ASSEMBLING MACHINE: REX TURN TOE.

One application for patent, Orrell Ashton, filed prior to December 12, 1911.

One application for patent, Orrell Ashton, filed since December 12, 1911.

BUILDING MACHINE — PYRAMID HEEL: MODELS B, C, D.

One application for patent, John H. Richardson, filed prior to December 12, 1911.

CEMENTING MACHINE — HUB LINING: MODELS E AND F.

One application for patent, William G. Eaton, filed prior to December 12, 1911.

One application for patent, Edward Erickson and John W. Cosgrove, filed since December 12, 1911.

CUTTING AND SCORING MACHINE — INSOLE: MODELS D AND E.

One application for patent, Miller Cook, filed prior to December 12, 1911.

One application for patent, James Cavanagh, filed prior to December 12, 1911.

EMBOSSING MACHINE: MODEL B.

One application for patent, Henry W. Winter, filed prior to December 12, 1911.

One application for patent, Malcolm F. Wallace, filed since December 12, 1911.

One application for patent, Henry W. Winter, filed since December 12, 1911.

EYELETTING MACHINE: CAMEO FOOT POWER.

One application for patent, Daniel W. Colby, filed prior to December 12, 1911.

EYELETTING MACHINE: UNIVERSAL.

One application for patent, Walter Shaw, filed prior to December 12, 1911.

FINISHING MACHINE: U S M C BUTTONHOLE.

Three applications for patents, George S. Hill, filed prior to December 12, 1911.

One application for patent, George S. Hill, filed since December 12, 1911.

MAKING MACHINE: BUTTONHOLE.

Two applications for patents, George S. Hill, filed prior to December 12, 1911.

Three applications for patents, George S. Hill, filed since December 12, 1911.

MARKER: IMPROVED STAR SOLE.

One applicatiou for patent, Hiram W. Gordon, filed prior to December 12, 1911.

MOLDING MACHINE — AMERICAN TWIN SOLE: MODELS B AND C.

Two applications for patents, Edwin N. Preble, both filed prior to December 12, 1911.

MOLDING MACHINE: GOODYEAR POWER.

One application for patent, William C. Meyer, filed prior to December 12, 1911.

MOLDING MACHINE: STITCH-DOWN UPPER.

One pending application for patent, Karl Engel and Louis M. Brown, filed prior to December 12, 1911.

PINCER MACHINE: U S M C BENCH.

One application for patent, Pearl J. Wentworth, filed prior to December 12, 1911.

PUNCHING MACHINE — MODEL A: ROYAL TIP.

One pending application for patent, John H. Rigby, filed since December 12, 1911.

ROUNDING MACHINE — PLANET SOLE: MODELS C AND D.

One pending application, Benjamin F. Mayo, filed prior to December 12, 1911.

One application for patent, Frederick J. Nash, filed prior to December 12, 1911.

One application for patent, Gideon Julian, filed since December 12, 1911.

ROUNDING AND RANDING MACHINE: GOODYEAR HEEL SEAT.

One application for patent, William C. Baxter, filed since December 12, 1911.

SANDING MACHINE — MODEL A: TAP AND SOLE.

One pending application, Jacob R. Scott, filed prior to December 12, 1911.

SCARFING MACHINE — MODEL N: TAP.

One pending application, John B. Hadaway, filed prior to December 12, 1911.

SCREW MACHINE — MODEL B: RAPID STANDARD.

One application for patent, Louis A. Casgrain, filed prior to December 12, 1911.

SKIVING MACHINE — MODEL A: CHAMPION HEEL LIFT.

One application for patent, Joseph H. Pope, filed prior to December 12, 1911.

One application for patent, Frederick J. Nash, filed prior to December 12, 1911.

SKIVING MACHINE — MODEL A: CHAMPION SHANK.

One application for patent, Joseph H. Pope, filed prior to December 12, 1911.

One application for patent, Frederick J. Nash, filed prior to December 12, 1911.

One application for patent, Jacob K. Kourian, filed prior to December 12, 1911.

SKIVING MACHINE — PLUMA: MODELS C AND D.

One application for patent, Paul Krippendorf, filed prior to December 12, 1911.

One application for patent, Eugene F. Davenport, filed prior to December 12, 1911.

Three applications for patents, Alexander M. Alexander, filed prior to December 12, 1911.

SNIPPING MACHINE — GOODYEAR INSOLE TOE.

One application for patent, John B. Hadaway, filed prior to December 12, 1911.

SOFTENING MACHINE — TOE: MODELS C AND D.

One application for patent, Eugene L. Keyes, filed prior to December 12, 1911.

One application for patent, William A. Boyden, filed prior to December 12, 1911.

One application for patent, Louis M. Brown, filed prior to December 12, 1911.

One application for patent, Frank E. Fernald, filed prior to December 12, 1911.

One application for patent, Gustaf E. Hallquist, filed prior to December 12, 1911.

SOFTENING MACHINE — TOE: MODEL E.

One application for patent, Eugene L. Keyes, filed prior to December 12, 1911.

One application for patent, William A. Boyden, filed prior to December 12, 1911.

One application for patent, Louis M. Brown, filed prior to December 12, 1911.

One application for patent, Frank E. Fernald, filed prior to December 12, 1911.

One application for patent, Gustaf E. Hallquist, filed prior to December 12, 1911.

SPLITTING MACHINE — EMPIRE: MODELS C AND D.

One application for patent, Frederick M. Furber, filed prior to December 12, 1911.

STAMPING MACHINE — MODEL C: EAGLE SOLE.

One application for patent, Henry W. Winter, filed prior to December 12, 1911.

STAMPING MACHINE — MODEL C: EAGLE UPPER.

One application for patent, Henry W. Winter, filed prior to December 12, 1911.

TACKING MACHINE — No. 1 U S M C INSOLE.

One application for patent, Fred L. MacKenzie, filed since December 12, 1911.

TRIMMING MACHINE — ULTIMA HEEL.

One application for patent, Alonzo E. West, filed prior to December 12, 1911.

Cross-Int. 207. Do you decline to give the date of the filing of said applications?

Mr. PHILLIPS. In view of the immateriality of the exact date of the filing of these applications, so far as relates to any issue triable under the order of the court before this examiner, I shall instruct the witness not to give the dates any further than he has heretofore, unless instructed to do so by the court.

Ans. Under instructions of counsel, I decline to state the exact dates when the applications referred to in my answer immediately preceding were filed.

Cross-Int. 208. *De bene*, and without waiving the objection heretofore made, does the list of pending applications you have

just read into the record comprise all the pending applications with reference to which you have testified?

Ans. I have, in many instances, used such expressions as: "It is anticipated that patent protection will eventually be obtained." I cannot state, without going through the records, whether when I have specifically referred to pending applications I have stated the name of the inventor and indicated whether the application was filed before or since December 12, 1911.

Cross-Int. 209. Do you decline to produce and read into the record or to testify as to all applications for patents with reference to which you have testified in your direct examination, giving the names of the applicants and the dates of the filing of such applications?

Mr. PHILLIPS. We have already stated our position in this matter, that in view of the immateriality of the exact date of the filing of any of these applications, as at present advised the witness is instructed not to state such dates unless ordered to do so by the court.

Ans. If desired, I can go through the record and note instances where I have specifically referred to pending applications and prepare a list stating the name of the inventor and indicating whether the application was filed before or since December 12, 1911.

Cross-Int. 210. And you decline to give the date of the filing of such applications, do you?

Ans. Under instructions of counsel, I do, except where such dates have already been stated on the record.

Mr. WEBSTER. Counsel for the petitioner gives notice that objection heretofore made to all testimony or reference to pending applications or the structures of pending applications will be insisted upon at the hearing, and that at the proper time motion will be made to strike from the record all testimony relating to such applications and mechanisms referred to in such applications.

Cross-Int. 211. Are all departments of the United Company under one management or head?

Mr. PHILLIPS. Question objected to as relating to nothing that has been referred to in the direct examination of this witness and

nothing of any materiality to any issue to be heard before this examiner under the order of the court, and as the witness can be assumed to have no knowledge as to the management of the United Shoe Machinery Company, the witness is instructed that he need not answer the question unless ordered to do so by the court.

Ans. Under instructions of counsel, I decline to answer the question.

Mr. WEBSTER. The attention of the court is respectfully called to the fact that the witness has testified that various machines were put out under various departments specified by him, and it is respectfully urged that in cross-examination the petitioner is entitled to know whether these departments are independent of each other, dependent upon each other, or under one management.

Cross-Int. 212. Now, inviting your attention to your testimony with reference to welt and turn machines, I understand that the machine which you have designated as the 1899 machine went into use prior to 1899; am I correct in my understanding?

Ans. Yes, sir.

Cross-Int. 213. Kindly state how long prior to 1899 the welt and turn machine designated by you as the 1899 machine went into use.

Ans. I don't know the exact date, but it was several years prior to 1899.

Cross-Int. 214. And by what company was it put out?

Ans. By the Goodyear Shoe Machinery Company.

Cross-Int. 215. Do you know whether that was the Goodyear Shoe Machinery Company of Connecticut, or of Maine?

Mr. PHILLIPS. Question objected to as relating to nothing touched upon in the direct examination of this witness, and the witness can be assumed to know nothing with regard to the incorporation of the Goodyear Shoe Machinery Company, whether it was in Maine or Connecticut.

Ans. It was put out by the company which was doing business under the name of "Goodyear Shoe Machinery Company". I do not recollect under the laws of what State that company was incorporated.

Cross-Int. 216. Are you willing to ascertain and testify later?

Ans. Yes, sir; if so instructed by counsel.

Mr. WEBSTER. Counsel for petitioner inquires of counsel for defendant whether he will permit the witness to ascertain the fact inquired about and testify to it later?

Mr. PHILLIPS. It seems to me that this whole matter is foreign to any inquiry material under the present order of the court, and that it has all been gone into in the testimony of several witnesses in open court. But as at present advised I can see no objection to the witness securing such data, but I reserve any objection that I may desire to make until later.

Cross-Int. 217. I notice that in your answer 8 you say: "a welt and turn machine is used to perform two different operations in the manufacture of shoes . . . to attach the welt and upper to the insole and also to secure together the upper and sole of a turn shoe." Kindly state whether any change is required in the welt and turn machine referred to when it is performing the "different operations".

Ans. Yes, sir.

Cross-Int. 218. What changes?

Ans. The welt guide of the machine which is used when the machine is employed on welt work has to be removed and a guide suitable for the turn work substituted.

Cross-Int. 219. And the operation of the remainder of the machine is the same in both instances?

Ans. Yes, sir.

Cross-Int. 220. So that the change is merely a change in guides; am I right?

Ans. Yes, sir.

Cross-Int. 221. I observe in your answer 9 you say: "The machine of this Goodyear and Hadley patent was put into commercial use and was extensively used for some years." Kindly state for how many years that machine was used, according to the best of your information.

Ans. I think it was used for at least three or four years.

Cross-Int. 222. And what machine followed the machine you refer to as the Goodyear and Hadley machine?

Ans. The machine of the Goodyear and Hadley patent No. 170,547, November 30, 1875, was superseded by the machine of patent No. 190,709, May 15, 1877, Dancel.

Cross-Int. 223. And for how long a time was the machine of the Dancel patent of May 15, 1877, in use, so far as you are informed?

Ans. Machines constructed substantially as shown in the Dancel patent No. 190,709 were used commercially for many years; certainly over twenty years.

Cross-Int. 224. And were the machines of the Dancel patent 190,709 adapted for welt and turn work?

Ans. Yes, sir.

Cross-Int. 225. And did the machine of the Dancel patent No. 190,709 continue in commercial use until the machine you designate as the welt and turn machine of 1899 came into use?

Ans. Yes, sir.

Cross-Int. 226. And are you unable to state when the old machine called by you the "welt and turn machine of 1899" first went into use?

Ans. I cannot at this time state the time accurately, although, as I have previously stated, it was several years prior to 1899.

Cross-Int. 227. Pardon me, but the term "several years" may mean three years and may mean fifteen years; will you kindly approximate it as near as you possibly can?

Ans. I believe the machine was first put into commercial use about 1894, or within one or two years before or after that date.

Cross-Int. 228. And was the machine you refer to as having gone into use in 1894, or thereabouts, the machine that was officially known as "Sewing Machine, Goodyear Universal Inseam"?

Ans. No, sir.

Cross-Int. 229. Has the machine termed by you "welt and turn machine of 1899" ever gone out of use, so far as you know?

Ans. No, sir; the machine is still being used.

Cross-Int. 230. And is it still being manufactured?

Ans. No new machines like the welt and turn machine of 1899

are now being built, as the demand has practically or entirely ceased, and any order for one of those machines which the company might receive would be filled from the large number of machines which have been superseded by the later models, and which the company has on hand.

Cross-Int. 231. When you say in the last answer that none of the welt and turn machines of 1899 are being built, you mean that such machines are not being built by the United Company, do you not?

Ans. Yes, sir.

Cross-Int. 232. Can you state approximately how many of the welt and turn machines of the kind referred to by you as being welt and turn machine of 1899 are now in use in the United States?

Ans. I cannot state from memory, but shall be glad to ascertain, if desired?

Cross-Int. 233. Will you kindly do so, and at the same time, if convenient, ascertain and be prepared to testify later as to how many of such machines were in use in the United States in January, 1908, 1909, 1910, 1911 and 1912?

Ans. I shall be glad to obtain the information requested.

Cross-Int. 234. As I recall your direct testimony, the welt and turn machine of 1899 continued to be the successful commercial welt and turn machine up to October, 1908. Kindly state if I am correct in my understanding.

Ans. The welt and turn machine of 1899 continued to be the standard commercial machine of the United Company until the improved machine known as "Shoe Machine, Welt and Turn, Model G" was introduced in 1908. I should add, however, that from the time shoe machine, Goodyear welt and turn, model E, was introduced in July, 1902, that machine was put out in considerable numbers during the entire period from 1902 until the model G machine was introduced.

Cross-Int. 235. Can you give us any idea as to about how many of the 1899 welt and turn machines are in use today; that is, whether it is a dozen, hundreds, or more?

Ans. I prefer not to guess at the number of those machines now

in use, but have already arranged to ascertain the exact number and shall be prepared to state that number at the next session.

Cross-Int. 236. The welt and turn machine of 1899 was constructed and arranged to carry out the so-called Briggs method as defined in the patent to Briggs No. 461,793, October 20, 1891, was it not?

Ans. Yes, sir.

Cross-Int. 237. And the mechanism incorporated in that welt and turn machine of 1899 is set forth in patent to French and Meyer No. 412,704, dated October 8, 1889, is it not?

Ans. Patent No. 412,704, October 8, 1889, French and Meyer, shows substantially the welt and turn sewing machine of 1899 with the changes in the organization shown in the drawings and described in the specifications of that patent, which are shown and described in the claims of patents of later date about which I have previously testified.

Cross-Int. 238. The "patents of later date", as I understand your testimony, are:—

Patent No. 488,505, LaChapelle, dated December 20, 1892, tension device for sewing machine.

Patent No. 518,911, Briggs, dated April 24, 1894, take-up for shoe-sewing machine.

Patent No. 561,386, French, dated June 2, 1896, sewing machine. Am I correct in my understanding?

Ans. Yes, sir.

Cross-Int. 239. Then the welt and turn machine of 1899 was, as I understand it, constructed and the machine operated as set forth in those four patents; am I correct?

Ans. Yes, sir.

Cross-Int. 240. And, so far as you know, the welt and turn machine of 1899 was not within the terms of any patent other than the four mentioned; am I right?

Ans. There is another patent, No. 495,452, April 11, 1893, Cole, sewing machine, which shows in its drawings and describes in its specification and in its two claims mechanism which was embodied in the welt and turn sewing machine of 1899.

Cross-Int. 241. Was the mechanism of the Cole patent last referred to by you incorporated in all the machines that were put out by the United Company of the welt and turn type?

Ans. I think so.

Cross-Int. 242. Have you now enumerated all the patents which relate to the welt and turn machine of 1899?

Ans. In addition to those patents there are some claims in patent No. 317,759, May 12, 1885, French, which define some features of construction of the 1899 welt and turn machine, and patent No. 732,729, July 7, 1903, French and Meyer, granted on an application filed December 21, 1898, discloses and defines in its claims an alternative form of wax pot used on the welt and turn machine of 1899.

Cross-Int. 243. Have you now mentioned all the patents that have any bearing or relation, so far as you know, to the welt and turn machine of 1899?

Ans. Yes, sir, as that machine was put out in 1899.

Cross-Int. 244. Were any of the mechanisms defined in any of the patents you have specified omitted from the welt and turn machine of 1899 when it was being put out in 1899?

Ans. Not so far as I know, except that the wax pot of patent No. 732,729, July 7, 1903, was, as I have stated, an alternative form, and was not supplied on all machines.

Cross-Int. 245. Were the mechanisms of any of the patents specified by you necessary to the successful operation of the machine when constructed as set out in patent No. 412,704, or were these mechanisms simply required for the purpose of making the machine more efficient or improving its operation?

Ans. So far as I know, the machine was never commercially used until it incorporated the mechanisms shown and set forth in the claims of the following patents: —

Patent No. 488,505, December 20, 1892, LaChapelle.

Patent No. 518,911, April 24, 1894, Briggs.

Patent No. 561,386, June 2, 1896, French.

Accordingly, I do not know that I can state whether or not the mechanisms set forth in those patents were necessary to the success of the operation of the machine.

Cross-Int. 246. So that you, from your extended experience and study of the art, cannot inform the court whether the machine of patent No. 412,704, designed and adapted to carry out the Briggs method, was operative commercially without the addition of the mechanisms of the three patents referred to, or not; is that correct?

Ans. It is not correct.

Cross-Int. 247. Will you, then, kindly explain?

Ans. I did not make any statement as to the operativeness of the machine of patent No. 412,704.

Cross-Int. 248. Do you now say it was operative commercially if constructed as set out in patent No. 412,704, or do you say you do not know whether it was, or would be, or not?

Ans. I have no doubt that the machine shown in the drawings and described in the specifications of patent No. 412,704 could be used in attaching the welt of a welt shoe. My preceding answer, in which I referred to the LaChapelle, Briggs and French patents, was in answer to a question which inquired whether the mechanisms of those patents were necessary to the success of the operation of the machine, and I did not understand that that question involved the question of mere operativeness of the machine of patent No. 412,704.

Cross-Int. 249. Very well; what do you say now? If a machine were constructed as set forth in patent No. 412,704 without having incorporated in it the mechanisms of other patents you have referred to, would such a machine be a successful commercially operative machine?

Mr. PHILLIPS. Question objected to as calling for mere guesswork on the part of the witness, it not appearing that he ever saw a machine so constructed or had an opportunity to observe its operation.

Mr. WEBSTER. Counsel for the petitioner respectfully calls the attention of the court to the fact that this witness has qualified, or, at least, attempted to qualify, as an expert with reference to patents and operative mechanisms, and therefore it is respectfully submitted that the question is competent in every respect.

Mr. PHILLIPS. The witness has already testified that the machine

of that patent would be an operative machine for the purpose of sewing a welt and upper to the insole of a welt shoe.

Ans. I can only state that I have never seen a welt and turn machine of 1899 which did not embody in its organization the mechanisms set forth in the LaChapelle patent No. 488,505, Briggs patent No. 518,911 and French patent No. 561,386. I know that the mechanisms set forth in those later patents are very useful in the machine and I am certain that no customer of the United Company would have accepted at any time since February, 1899, the welt and turn machine of 1899 which did not embody in its organization the improvements of those patents.

Cross-Int. 250. When you refer in your last answer to mechanisms of the three patents 488,505, 518,911 and 561,386, do you mean the mechanisms claimed in those patents?

Ans. Yes, sir.

Cross-Int. 251. Does the mechanism claimed in the LaChapelle patent No. 488,505, December 20, 1892, affect the operation of the mechanism of patent 412,704, which, as I understand you to say, is adapted for carrying out the Briggs method?

Ans. Yes, sir, in so far as it affects the operation of the tension mechanism of the machine of French and Meyer patent No. 412,704.

Cross-Int. 252. And is the mechanism claimed in the LaChapelle patent referred to necessary to the successful carrying out of the Briggs method as defined in patent 412,704?

Ans. As I have stated, I consider that the mechanism of the LaChapelle patent No. 488,505 is important to the commercial success of the welt and turn machine of 1899; but I will state that I do not understand that the incorporation of the LaChapelle improvement in the machine of patent No. 412,704 affected in any way the practice of the Briggs method by the machine shown in that patent.

Cross-Int. 253. Do you make the same answer with reference to patent No. 518,911, Briggs?

Ans. Yes, sir; with the addition that the practice of the Briggs method by the machine shown in French and Meyer patent No.

412,704 was, undoubtedly, facilitated by the improvement set forth in the Briggs patent No. 518,911.

Cross-Int. 254. Referring now to Briggs patent No. 518,911, if the plunger *d* is fixed in position, will the device then be such a device or mechanism as is referred to in the claims of that patent?

Ans. No, sir; in my opinion, it would not.

Cross-Int. 255. You were knowing to the fact, were you not, when you testified in direct examination that patent No. 412,704 had been held by the courts to have expired September 17, 1902?

Ans. Yes, sir.

Cross-Int. 256. So that the live patents applicable to the welt and turn machine of 1899 were, after September 17, 1902: —

Patent of LaChapelle No. 488,505.

Patent of Briggs No. 518,911.

Patent of French No. 561,386.

Patent of Cole No. 495,452.

Patent of French and Meyer No. 732,729.

Kindly state if I am correct.

Ans. That list will be correct with the addition of patent No. 461,793, October 20, 1891, Briggs.

Cross-Int. 257. You did not mean by your last answer that there is any mechanism of the Briggs patent incorporated in the welt and turn machine of 1899, did you?

Ans. No, sir; but that machine in its operation practiced the method defined in the claim of the Briggs patent No. 461,793.

Cross-Int. 258. Specify which one of the patents, as applying to the welt and turn machine of 1899, was alive at the date of the filing of the petition herein?

Ans. Patent No. 561,386, June 2, 1896, French.

Patent No. 732,729, July 7, 1903, French and Meyer.

Cross-Int. 259. Now, taking up the first wax pot patent, is that essential to the successful operation of the welt and turn machine of 1899?

Ans. Probably not.

Cross-Int. 260. Is the mechanism claimed in the patent to

French No. 561,686 essential to the successful commercial operation of the welt and turn machine of 1899?

Mr. PHILLIPS. Question objected to because the witness has already stated that he never saw a machine operated without this mechanism.

Ans. As I explained in detail in the early part of my testimony relating to shoe machine, Goodyear welt and turn, the improvement of patent No. 561,386, June 2, 1896, French, contributed substantially to the successful commercial operation of the welt and turn machine of 1899 and overcame serious difficulties which had been experienced in the commercial use of welt-sewing machines before this improvement was made. As I have stated, I have never seen one of the welt and turn machines of 1899 which was not provided with this improvement, and I am confident that no customer of the United Company would have used one of those machines without the advantages secured by this improvement.

Cross-Int. 261. In speaking of the improvement of patent No. 561,386 in your last answer, do you mean the improvement defined in the claim of that patent?

Ans. Yes, sir.

Cross-Int. 262. Did you ever see a welt and turn machine of 1899 in which the looper carrier was intermittently put in contact with the heated block or plate?

Ans. I never saw one in which it was not.

Cross-Int. 263. In answer to question 10 you say, among other things, that you have examined the welt and turn sewing machine No. 228, illustrated in plaintiff's photograph Exhibit 232, at the factory at Whitman, Massachusetts, and that you find that machine embodies the means set forth in the claim of this French patent No. 561,386, June 2, 1896; are you still of the opinion that the mechanism of the machine referred to, No. 228, is so constructed and arranged that the heater block or plate comes in actual contact with the looper mechanism?

Mr. PHILLIPS. Question objected to as absolutely immaterial.

Ans. The claim of patent No. 561,386 calls for means to move the looper carrier "to put it in contact intermittingly with the said

heated block or plate". In my opinion, the machine No. 228 at the Whitman factory of the Commonwealth Shoe & Leather Company operates as called for by that claim.

Cross-Int. 264. Did you turn the machine over when you examined it; that is, did you revolve the shaft so as to put the mechanism in operation?

Ans. No, sir; the machine was being used and I observed it during its operation.

Cross-Int. 265. Now, if the looper carrier is not brought in actual contact intermittingly with the heater block, then the mechanism is not such as is referred to in the claim of the patent in question, is it?

Mr. PHILLIPS. This line of examination is objected to as trivial.

Ans. In my opinion, the claim of patent No. 561,386 would accurately describe an organization in which the looper or looper carrier moved near enough to the heated block or plate to be heated by it, whether or not the looper carrier was moved actually into contact with the heated block or plate.

Cross-Int. 266. Are you familiar with the case of United Shoe Machinery Company *v.* Greenman, reported in 146 Fed., page 759, in which patent No. 561,386 was passed upon by the court?

Ans. My attention has not been called to that case for several years, so I cannot say that at this time I am familiar with the case.

Cross-Int. 267. I desire to be perfectly fair with you, and I therefore inquire whether you would like to examine that case and state whether you wish to change your testimony in any respect after such examination?

Ans. I shall be glad to examine that case and shall certainly wish to change any testimony I have given if I find that to be incorrect.

Cross-Int. 268. Will you kindly state whether any of the welt and turn machines of 1899 have been returned to the United Shoe Machinery Company by the lessees?

Ans. Yes, sir; a great many.

Cross-Int. 269. State what has become of the machines so returned.

Ans. I cannot answer that question of my own knowledge, but

I have no doubt that, in accordance with the usual practice of the company when old machines are returned which have been replaced by improved machines, many of those old welt and turn machines of 1899 have been junked.

Cross-Int. 270. Can you ascertain and tell us about how many of the welt and turn machines of 1899 have been junked?

Ans. I do not know whether any record was kept, but I will endeavor to ascertain.

[*Adjourned to 10 o'clock* A. M., *Thursday, October 30, 1913.*]

BOSTON, MASS., October 30, 1913.

Cross-Int. 271. Have you prepared the data called for at the session yesterday with reference to the number of welt and turn machines of 1899 out at certain dates; and, if so, will you kindly spread the same upon the record?

Ans. I was requested to ascertain and state how many of the 1899 welt and turn machines were in use on January 1, 1908, and on the 1st of January in each succeeding year, to and including January 1, 1912; also, the number which are now in use. I find that the numbers of machines on the dates named which were in shoe factories were as follows: —

On January 1, 1908, there were 1914 of the welt and turn machines of 1899 in shoe factories.

On January 1, 1909, there were 1991.

On January 1, 1910, there were 1958.

On January 1, 1911, there were 1714.

On January 1, 1912, there were 1278.

On October 1, 1913, there were 739.

The date last named, October 1, 1913, is the last date for which it is convenient to state the number in use as the United Company's records are kept.

Cross-Int. 272. You have stated the numbers of welt and turn machines of 1899 in shoe factories; kindly state whether such machines, during the period inquired about, were also used in shoe repairing shops and places other than in factories.

Ans. I think they are used to some extent, but I am not advised

as to how many are in use in cobblers' shops. Such machines as are in use in cobblers' shops were, however, put out by the United Shoe Repairing Machine Company.

Cross-Int. 273. And is the United Shoe Repairing Machine Company one of the branches of, or under the dominion of, the United Shoe Machinery Company?

Ans. The United Shoe Repairing Machine Company is controlled by the United Shoe Machinery Company.

As to the other requests for information: first, as to whether the welt and turn sewing machines of 1899 which have been returned to the United Shoe Machinery Company by its customers have been junked, and as to whether the Goodyear Shoe Machinery Company which was putting out the welt and turn sewing machine of 1899 prior to February, 1899, was organized under the laws of Maine or Connecticut, I will produce that information at a later session.

Cross-Int. 274. Does the model G welt and turn machine do any better work, that is, sew any better seam, than the welt and turn machine of 1899?

Ans. No, sir.

Cross-Int. 275. Model G welt and turn machine is the machine that went into commercial use in October, 1908, as I understand it; am I correct?

Ans. Yes, sir.

Cross-Int. 276. And now, to get the data all together, will you kindly state when the model K welt and turn machine went into commercial use?

Ans. In June, 1911.

Cross-Int. 277. Does the model K welt and turn machine do any better work, that is, make any better stitch, than the welt and turn machine of 1899?

Ans. The model K machine does not make any better seam than the welt and turn machine of 1899.

Cross-Int. 278. As I recollect your direct testimony, you stated that the model G and the model K welt and turn machines had a capacity of 500 stitches per minute; am I right in my understanding?

Ans. Yes, sir; that is the speed at which those machines are regularly run in shoe factories.

Cross-Int. 279. Do you say that the capacity of a machine to do the work is dependent upon the number of stitches per minute it is capable of making?

Ans. No, sir; I don't say that, because the capacity of a machine is also largely dependent upon the facilities which it affords the workman for its convenient operation, and upon the presence or absence in its organization of means which decreases the time during which the machine is necessarily idle. I do say, however, that the speed at which a machine operates has an important bearing upon its capacity, because obviously a machine running at higher speed will do more work while it is operating than a machine running at a lower speed.

Cross-Int. 280. Would you say that if the welt and turn machine, models G and K, had a capacity of 3000 stitches per minute, more work could be done on those machines by the ordinary operative than with the machine running at 500 stitches per minute?

Mr. PHILLIPS. Question objected to as purely hypothetical and based on nothing touched upon in the direct examination of the witness, and calling for absurd and impracticable speed of operation.

Ans. As those machines are at present organized, I doubt whether an operator could present a shoe properly for the operation of the machine run at as high a speed as 3000 stitches per minute.

Cross-Int. 281. Then it is a fact, is it not, that the capacity of a welt and turn machine cannot be determined by the number of stitches per minute only; am I correct?

Mr. PHILLIPS. Question objected to as being mere repetition of a former interrogatory which the witness has fully answered.

Ans. I think that my second preceding answer fully answered this question, although I shall be glad to express my opinion again if desired.

Cross-Int. 282. Can you answer that by yes or no?

Mr. PHILLIPS. The witness is instructed that he is not obliged

to give a categorical answer to the question, but may state such explanation as he deems proper.

Ans. As I have previously stated, the capacity of a welt and turn machine cannot be determined by its speed alone, because the conveniences afforded to the operator in his use of the machine and provision in the organization of the machine for reducing the time during which the machine is idle in the course of the day have an important bearing upon the capacity of the machine. I repeat, however, that it is obvious that while the machine is operating it will do more work as the speed is increased.

Cross-Int. 283. Are you willing to state whether, so far as you know, the introduction of the models G and K welt and turn machines has resulted in lessening the cost of manufacture of shoes?

Mr. PHILLIPS. Question objected to as vague and indefinite, it not appearing what kind of shoes are referred to.

Ans. As regards the model G machine, when operators are paid by the day the increased capacity of the machine will obviously result in a saving to the manufacturer. When the operator is paid according to the number of shoes which he sews, there are two elements to be considered in figuring the saving to the manufacturer. If the operator is paid less per pair of shoes on the machine having the greater capacity, the manufacturer will effect a saving, while in any event there will be some saving in capital expense owing to the fact that a less number of machines having the greater capacity will be needed for a given daily output, and less factory space and less power will be required.

As regards the model K machine, the foregoing statements will apply in greater degree to that machine, owing to its increased capacity over the model G machine, and, furthermore, as I have previously testified, that machine effects a saving to the manufacturer of not less than one-quarter of a cent per pair of shoes in his welting.

Mr. WEBSTER. Answer objected to as not responsive, as evasive and argumentative, and counsel for petitioner moves that the same be stricken from the record, excepting as to that portion in which

the witness states that there is a saving in the use of the model K machine in the cost of welting.

Cross-Int. 284. Will you kindly examine the shoe I now hand you, and state whether it is a plain, ordinary welt shoe?

Ans. [*Witness examines shoe and says:*] That would appear to be a proper characterization of the shoe which was handed me for examination.

[*The shoe presented to and examined by the witness is offered in evidence, and is marked "Plaintiff's Exhibit 261".*]

Cross-Int. 285. How many pairs of shoes like Plaintiff's Exhibit 261 would you say could be sewed by an ordinary operative on a welt and turn machine of 1899 in a day of eight hours?

Ans. The number of shoes which an average operator of the welt and turn machine of 1899 will sew in a day of eight hours will vary greatly according to the kind of work and the rapidity with which the operator handles the shoe. The output of that machine as run by average operators will, accordingly, vary from, say, 250 pairs per day to a maximum of probably 500 pairs per day when conditions are favorable and the operator works rapidly.

Cross-Int. 286. In your direct testimony with reference to outsole stitchers and stitcher patents, in answer to question 23 (page 2275 of typewritten record) [printed page 2277] the first patent for a machine of this type was No. 127,423, June 4, 1872, Mills. Have you any information as to whether the sewing machine of the Mills patent of June 4, 1872, went into use and as to how long it was used commercially?

Ans. I understand that the machine which is shown substantially in the Mills patent No. 127,423, June 4, 1872, was put into commercial use and was used for a number of years.

Cross-Int. 287. In the same answer you refer to patent No. 253,156, dated January 31, 1882, Campbell, and you say: "The machine shown in that patent was commercially used for sewing out-soles to welts for many years." Kindly state, so far as you are able, for how many years the machine of the Campbell patent of January 31, 1882, was commercially used.

Ans. I think that machine was used for attaching out-soles to welts for at least eight or ten years.

Cross-Int. 288. In referring to welt and turn machines, you designated a certain machine made under certain patents as the "welt and turn machine of 1899", and for convenience I ask you whether it will be convenient to designate the out-sole stitcher which was in use in 1899 as the "stitcher of 1899"?

Ans. Yes; it will be entirely convenient to refer to that machine as the "Goodyear out-sole lockstich machine of 1899".

Cross-Int. 289. Can you state whether the machine for attaching out-soles to welts manufactured and put out, as you say, commercially as shown in patent to Campbell of 1882, was the commercial machine up to the time of the adoption of the machine constructed and operating as shown in patent No. 473,870, April 26, 1892?

Ans. It was not the only commercial machine, as many manufacturers were using a chain-stitch machine for attaching out-soles to welts. Prior to the introduction of the machine shown substantially in patent No. 473,870, April 26, 1892, French and Meyer, that is, the Goodyear out-sole lockstitch machine of 1899, both that chain-stitch machine and the machine of Campbell patent No. 253,156, January 31, 1882, had been superseded by the machine of patent No. 366,935, July 19, 1887, Dancel.

Cross-Int. 290. Will you kindly state by whom, so far as you know, the several machines referred to, viz., the machine put out under the Mills patent of 1872, the machine put out under the Campbell patent of 1882 and the machine put out under the Dancel patent of 1887, were put out; that is, sold or leased?

Mr. PHILLIPS. Objected to as having no relation to any matter referred to by this witness in his direct examination and as the witness cannot be assumed to have any knowledge as to the matter inquired about.

Ans. The machine of Mills patent No. 127,423, June 4, 1872, and the machine of Dancel patent No. 366,935, July 19, 1887, were put out by the Goodyear Shoe Machinery Company or its predecessors in business.

Cross-Int. 291. Well, who were the predecessors, if you know?

Ans. I could not tell you now. It is my understanding that the machine of Campbell patent No. 253,156, January 31, 1882, was put out by a company named The Campbell Machine Company or The Campbell Shoe Machine Company, or by its predecessors in business, but I could not state this positively without an investigation.

Cross-Int. 292. Kindly state when, so far as you are informed, the Goodyear out-sole lockstitch machine of 1899 manufactured as set out in patents 473,870, of 1892, and 474,774, of 1892, was put out first and by whom.

Ans. I cannot state accurately without investigation, but I think it was between 1890 and 1893 or 1894.

Cross-Int. 293. To save referring to detailed answer in direct examination, will you kindly state up to what time the Goodyear out-sole lockstitch machine of 1899 continued in use as a commercial machine?

Ans. The Goodyear out-sole lockstitch machine of 1899, with the improvements which I discussed in detail in my previous testimony which were incorporated in it from time to time, continued to be the standard out-sole lockstitch machine put out by the United Company until the adoption of lockstitch machine, Goodyear out-sole rapid, model K, which was first put out for commercial use in May, 1910.

Cross-Int. 294. Kindly state whether the Goodyear out-sole lockstitch machine of 1899 was ever put out without having incorporated in it the devices or alleged inventions of the four patents referred to by you in your direct examination, namely, French and Meyer, two patents, Nos. 563,471 and 563,472, of 1896; Shriner and Adams, No. 582,510, of 1897; and Meloon, No. 675,783, of 1901; and if you answer yes, state for how long a period of time such machine was in commercial use without having embodied therein the construction of said four patents, or any of them.

Ans. The Goodyear out-sole lockstitch machine of 1899, when it was first put out in the early nineties, was not organized as set forth in the four patents named. As explained in my previous

testimony, that machine was so organized about 1895. For several years after that time a portion of the Goodyear out-sole lockstitch machines of 1899 which were supplied to shoe manufacturers were not organized for operation upon extension edge shoes as set forth in the patents named, but as early as January 1, 1900, a greater number of mechanisms for organizing the machine for sewing extension edge soles were being supplied to manufacturers than the number of machines which were being supplied to manufacturers.

Cross-Int. 295. Would it be a convenient and proper designation to use hereafter, in reference to the four patents, to refer to them as "extension edge appliance patents", so as to avoid unnecessary repetition of numbers, titles, dates, etc.?

Ans. I believe I have used in my previous testimony the expression "extension edge mechanism", and for convenience it may be better to continue that expression in referring to the organization of an out-sole lockstitch machine which enables that machine to attach the out-soles of extension edge shoes.

Cross-Int. 296. Kindly state whether, so far as you know, any of the Goodyear out-sole lockstitch machines of 1899 were in use as late as the early part of 1908 without having incorporated in them any of the mechanisms referred to as "extension edge mechanism"?

Ans. I believe there were a few Goodyear out-sole lockstitch machines of 1899 still in use as late as 1908 which were not organized for operation upon extension edge soles, although I understand that shortly after that time all of the Goodyear out-sole lockstitch machines of 1899 were so organized.

Cross-Int. 297. Do you know, and, if so, will you state, the capacity of the Goodyear out-sole lockstitch machine of 1899 when constructed without the extension edge mechanism, and when being operated by the ordinary average operator in a day of eight hours, and when operating, for instance, upon shoes substantially like Plaintiff's Exhibit 261?

Ans. I have no means of judging as to the capacity of the Goodyear out-sole lockstitch machine of 1899 when not provided with extension edge mechanism, as I do not recall ever having seen one

of those machines in operation which was not provided with the extension edge mechanism.

Cross-Int. 298. Am I correct in my recollection that you testify that welting like that shown on the shoe marked "Defendants' Exhibit 106" costs the manufacturer six cents per running foot?

Ans. I understand that welting such as is used in welt shoes costs from about four cents to about seven cents per running yard, according to the quality of the welting and the type of shoe for which it is to be used. Including both men's and women's shoes, probably a fair average of the cost of welting would be five cents per running yard, although the cost of welting for men's shoes of good quality would be more.

Cross-Int. 299. Kindly state, as near as you are able, how many of the Goodyear out-sole lockstitch machines of 1899 were out, or, in other words, in use, on or about June 1, 1909, thus including the machines with and without the extension edge mechanism.

Ans. I have not the figures for June 1, 1909, but on March 1, 1909, there were out 2442 of the Goodyear out-sole lockstitch machines of 1899.

Cross-Int. 300. You have stated that extension edge mechanisms were incorporated in many of the Goodyear out-sole lockstitch machines of 1899; will you kindly state whether the machines of 1899 were returned to the factory in order to have the attachments applied, or whether the attachments were applied at the shoe factories where the machines were in use?

Ans. It was the usual practice, where a manufacturer desired to organize for operation upon extension edge shoes a Goodyear outsole lockstitch machine of 1899 which he had and which was not so organized, to incorporate the mechanism in the machine in his factory.

Cross-Int. 301. In your direct testimony with reference to rough rounders and channelers you made reference to the rough rounder and channeler of the patent to Briggs No. 463,982, dated November 24, 1891; kindly state, if you know, whether the machine constructed and operating as set forth in that patent went into use, and, if so, when it first went into use and by whom it was put out.

Ans. As stated in my previous testimony, the machine of patent 463,982, November 24, 1891, Briggs, was not put into commercial use.

Cross-Int. 302. From what source do you get your information that the machine of the patent of 1891 referred to did not go into use?

Ans. I have compared that patent with the machine known as "Briggs rounding machine", which was a commercial machine at one time.

Cross-Int. 303. And is that the whole source of your information?

Ans. Perhaps it will answer the question if I state that that patent No. 464,982, of November 24, 1891, was owned by the Goodyear Shoe Machinery Company, and I know that the Goodyear Shoe Machinery Company did not put out a commercial machine constructed as shown in the drawings of that patent.

Cross-Int. 304. You say, in one of your answers to rough rounding and channeling machines, as I understand your answer, that the mechanism of patent 463,982, November 24, 1891, Briggs, represents a step in the development of the machine which was known as "Briggs rounding machine", the commercial form of which is shown in patent No. 511,263, December 19, 1893, Briggs and Dancel, and that that machine was put out for a time. Will you kindly state by whom the machine you refer to was put out, when it was put out, and for how long a time it was in use, so far as you know?

Ans. The Briggs rounding machine was first put out by the Goodyear Shoe Machinery Company within a year or two after 1890. It was put out until about 1896, when it was superseded by the machine now known as "rounding and channeling machine, Goodyear Universal".

Cross-Int. 305. Can you state how many of the Briggs rounding machines such as referred to in the question and answer were put out?

Ans. About 200.

Cross-Int. 306. Will you now, if you have the data at hand,

answer the questions submitted to you yesterday as to the number of welt and turn machines of 1899 which were "junked", and also as to the laws of what State under which the Goodyear Shoe Machinery Company to which you referred was organized?

Ans. Between October 18, 1908, and October 30, 1913, the United Shoe Machinery Company "junked" 1315 of the welt and turn sewing machines of 1899.

The Goodyear Shoe Machinery Company was organized in 1889 under the laws of the State of Connecticut. That company was reorganized in 1893 under the laws of the State of Maine with the name "Goodyear Shoe Machinery Company".

Cross-Int. 307. By the term "junked" as used by you, am I correct in understanding that it means broken up and destroyed?

Ans. Yes, sir.

Cross-Int. 308. Referring now to your testimony with reference to insole channelers, have you any personal knowledge as to the condition of the machine No. 2072 leased to the Commonwealth Shoe & Leather Company?

Ans. Yes, sir, I have personal knowledge that the machine which was leased to the Commonwealth Shoe & Leather Company by the Goodyear Shoe Machinery Company on February 8, 1893, did not embody the improvements shown in the drawings and set forth in the claims of patent No. 550,402, November 26, 1895, Beckman, because those improvements had not been made and the mechanism embodying them did not exist in February, 1893.

Cross-Int. 309. How do you know personally, and of your own knowledge, that such mechanism did not exist in 1893?

Ans. My knowledge as to this fact is based upon many sources of information, among which is the fact that the application for that patent No. 550,402 was filed on April 17, 1895, which is more than two years after February 8, 1893.

Cross-Int. 310. And do you, a lawyer, consider that you are justified in stating a fact of your own knowledge when your information is founded upon a printed or written document executed by someone else?

Ans. I did not state my knowledge was based solely upon the

information obtained from the Beckman patent, but stated that my knowledge was acquired from many sources, and I might add that I also have personal knowledge of the fact that after the Beckman improvements had been produced they were incorporated in most, if not all, of the insole channeling machines which had been put out by the Goodyear Shoe Machinery Company before the Beckman improvements were made.

Cross-Int. 311. Were you ever in the employ of the Goodyear Shoe Machinery Company?

Ans. No, sir.

Cross-Int. 312. Have you, or did you have, personal knowledge of the business and affairs of that company in 1893?

Ans. No, sir.

Cross-Int. 313. Then, is it not a fact that your information with reference to the fact inquired about is obtained solely and only from statements made by others?

Ans. As further evidence as to the construction of the insole channeling machine, and as to the condition of that machine when it was leased to the Commonwealth Shoe & Leather Company on February 8, 1893, I refer to the cut on page 95 of Plaintiff's Exhibit 220, being the Goodyear Shoe Machinery Company catalogue of January 1, 1897. That cut shows the machine in the condition in which it was leased in February, 1893.

Cross-Int. 314. Did you have anything to do with getting up the cut or illustration referred to by you?

Ans. No, sir.

Cross-Int. 315. Did you ever see the machine from which the cut was made?

Ans. I have seen a machine like that cut, which was shipped to my office from the "museum" at the United Company's Beverly factory, but I have no reason for believing that this cut was made from that particular machine which I have seen.

Cross-Int. 316. Is it your understanding, as a lawyer, that the information you have given the court as to your source of information entitles you to testify to the facts inquired about as of your own knowledge?

Mr. PHILLIPS. Objected to as improper cross-examination, the opinion of the witness on this matter being absolutely immaterial.

Ans. I am confident that all of my testimony in this connection is absolutely correct.

Cross-Int. 317. Is that the best answer you care to make to the question?

Ans. I can only add that I have stated what I know to be facts.

Cross-Int. 318. Will you kindly state whether, so far as you know, the machine illustrated on page 95 of Plaintiff's Exhibit 220, the same being entitled a "turn and insole channeling machine", was shown and described in any patent; and, if so, what patent?

Ans. I have not at hand now data which will enable me to answer this question, but shall be glad to bring it at the next session if desired.

Mr. WEBSTER. Kindly do so.

Cross-Int. 319. Can you state from such information as you have whether the channeling machine illustrated on page 95 of Plaintiff's Exhibit 220 was used commercially for any period of time. And, if so, kindly state how long and by whom it was put out.

Ans. I think the machine had been put out for some years prior to the date when machine No. 2072 was leased to the Commonwealth Shoe & Leather Company, that is, February 8, 1893, but I cannot state for how long a period it had been put out. It was put out by the Goodyear Shoe Machinery Company.

Cross-Int. 320. I observe that in your direct testimony with reference to out-sole channelers you say (page 2352 of typewritten record) [printed page 2330]: "The Goodyear out-sole channeler is a very old machine, which, when it was active, was used for channeling the out-soles of welt shoes." Will you kindly state whether the Goodyear out-sole channeler referred to by you in that language was shown and described in any United States patent; and, if so, what patent? And in this connection, to save encumbering the record, I wish you would state for how long the Goodyear out-sole channeler was "active".

Ans. I have not at hand the data which will enable me to answer this question fully, and can only state that the Goodyear out-sole channeler became inactive soon after the introduction of rounding and channeling machine, Goodyear Universal, about 1896. There is no place for the Goodyear out-sole channeling machine in the manufacture of welt shoes according to modern methods.

Cross-Int. 321. Can you ascertain, without undue inconvenience, whether the Goodyear out-sole channeler referred to was ever covered by patent; and, if so, will you kindly do so and testify to the fact at the next session?

Ans. I shall be glad to.

Cross-Int. 322. You have testified at some length with reference to leveling machines, and I gather from your direct testimony that the Goodyear automatic leveling machine, constructed as shown in patent to Winkley and another, No. 540,222, May 28, 1895, was an important step in advance. Will you now kindly state what type of leveling machine was in use prior to the production of the machine of the patent referred to?

Ans. The leveling machine which was used for leveling welt shoes prior to the introduction of the Goodyear automatic leveling machine was a vibrating roll machine in which the operator controlled by hand, during the operation of the machine, the relative inclination of the jack and the roll as required for leveling different parts of the sole. Each such machine contained only one roll and one jack, while, as I have explained, the Goodyear automatic machine comprises two rolls and two jacks, and the machine automatically levels one shoe while the operator is removing from the machine a shoe previously leveled and is substituting another shoe to be automatically leveled by the machine while he is removing from the machine the shoe first referred to. In some factories one operator runs two machines, comprising four pairs of jacks and rolls.

Cross-Int. 323. In order to avoid unduly extending the record I will ask you if you are willing to give the court the benefit of your knowledge and research with reference to leveling machines, and state in a general way what leveling machines were in use prior to

the date of the patent referred to, 1895, by whom they were put out, how extensively they were used, so far as you know, and whether they formed the subject-matter of any patent; and, if so, what patent?

Mr. PHILLIPS. Objected to as improper cross-examination.

Ans. Referring, first, to leveling machines of the vibrating roll type intended or adapted for use on welt shoes, the first patent of which I am aware showing a machine of this type is No. 44,946, Gilmore, November 8, 1864. It may be of interest to quote the second claim of this patent, which is as follows: —

"2. So arranging the jack carriage and the mechanism which impels the polisher that the polisher has a reciprocating movement but partially over the surface to be polished, while the carriage is fed through this plane of movement substantially as described, to bring the entire length of surface to the action of the polisher."

The "polisher" of this claim is a vibrating leveling roll. Prior to the Gilmore patent, No. 44,946, had been granted a patent No. 38,257, April 21, 1863, Budding, but in the machine of that patent the leveling roll was given a continuous reciprocating movement over the entire length of the sole, as distinguished from the short vibrating movement back and forth over a limited portion of the sole, as in the machine of the Gilmore patent No. 44,946 and as in the Goodyear automatic sole leveling machine of the present day. I understand that machines constructed substantially as shown in the drawings of Gilmore patent 44,946 were commercially used, but at all events machines constructed substantially as shown and described in patent No. 266,283, October 24, 1882, Gilmore, were commercially used to a considerable extent. In that machine the oscillation of the jack or work support to move the shoe in order to present the different portions of the sole to the action of the vibrating roll was effected by power.

The next machine of the vibrating-roll type which was supplied to manufacturers is shown in patent No. 403,495, May 14, 1889, Strong. This machine was really an improvement upon and development of the machine of Gilmore patent No. 266,283, October 24, 1882.

I do not now recollect the names of the concerns which put out the first types of vibrating roll machines to which I have referred, but I believe that in February, 1899, the machine of the Strong patent No. 403,495, May 14, 1889, was being supplied to manufacturers by the Carver Cotton Gin Company. It was known as "Acme Leveling Machine", and was, as I am informed, the machine in general use for leveling welt shoes when the automatic leveling machine was first supplied to manufacturers, shortly before February, 1899.

There was another machine of the vibrating roll type which was being supplied to shoe manufacturers in 1899, known as the "Star Leveling Machine". That machine was constructed substantially as shown in patent No. 435,882, September 2, 1890, Washburn. That machine was much lighter than the Acme machine, and was adapted and used for leveling turn shoes. I believe that machine was supplied to manufacturers by the Swain, Fuller Manufacturing Company. As I have explained in detail in my previous testimony on page 2711 of typewritten record [printed page 2579], it is not practicable to use a leveling machine of the vibrating roll type in leveling McKay sewed, nailed or pegged shoes, and in the portion of my testimony to which I have just referred the reasons why a vibrating roll leveling machine is not practicable for use on those classes of shoes were stated fully. It was also explained that it is, and always has been, the universal practice in leveling McKay sewed or nailed shoes to employ machines having iron lasts or jacks to support the shoe and co-operating pressing forms for imparting pressure to the sole, the machines in which such iron lasts and pressing forms were used being organized to impart pressure to the sole in a direction substantially perpendicular to the face of the sole.

I further explained that machines for leveling McKay sewed and nailed shoes are of two types, known as "rolling pressure type" and "direct pressure type", and in the portion of my testimony relating to leveling machine, Hercules, and leveling machine, Atlas, I explained that machines of these two types have different

fields and are adapted for use on different kinds or types of McKay sewed and nailed shoes.

The first patent of which I am aware disclosing a leveling machine of the rolling pressure type is No. 96,638, November 9, 1869, Tripp. It may be of interest to note the first claim of this patent, which is as follows:—

"1. The combination, with a last, arranged to oscillate as described, of a former, oscillating in unison therewith, and against the face thereof, and provided with a longitudinal convexity, fitting the hollow of the last when oscillating thereon, and concavities at the ends, fitted to work upon the heel and toe of the said last, substantially as specified."

The machine of the Tripp patent which was manually operated was commercially used, as I am informed. That machine was improved and developed into the leveling machine disclosed in patent No. 296,486, April 8, 1884, Tripp. It is my understanding that the machines of both Tripp patents were supplied to manufacturers by the Tripp Giant Leveler Company or by its predecessors in business.

The machine of the Tripp patent No. 296,486 was further improved as shown in patent No. 707,414, August 19, 1902, Heys, and the machine of that patent, known as "New Giant Leveler", went into extensive commercial use.

The United Shoe Machinery Company did not, in February, 1899, supply to shoe manufacturers any leveling machines of the rolling pressure type, nor did any of its predecessors supply such a machine just prior to February, 1899. As fully explained in my previous testimony in regard to leveling machine, Hercules, the first machine of this type which was built and put out by the United Company, and, in fact, the first leveling machine of any type which the United Company constructed and put out for use in leveling McKay sewed or nailed shoes, was put out in April, 1903, and the machine as then put out, and as subsequently improved from time to time, has been known as "Leveling Machine, Hercules".

[*Adjourned to 10 o'clock* A. M., *Friday, October 31, 1913.*]

BOSTON, MASS., October 31, 1913.

[*Answer to Cross-Int. 323 continued:*]

All leveling machines of the rolling pressure type which were in use before the introduction of the Hercules leveling machine were open to the objection that after they had been used a short time they were likely to tear the wide, thin channel lips of the soles on which they operated. This difficulty was entirely obviated in the Hercules leveling machine.

As to the direct pressure type of leveling machines, the first patent of which I am aware showing a machine of the direct pressure type is patent No. 71,495, November 26, 1867, Johnson. The machine of that patent was improved as shown in patent No. 75,428, March 10, 1868, Johnson. The machine of the first Johnson patent, No. 71,325, was put out to a limited extent by the patentee, Johnson. The machine of the second Johnson patent, No. 75,428, March 10, 1868, was put out extensively by the Swain, Fuller Manufacturing Company.

The next step in the development of direct pressure leveling machines is illustrated in patent No. 118,185, August 22, 1871, Blaney. So far as I can learn, only a few machines constructed as shown in this Blaney patent were put into commercial use.

Patent No. 141,058, July 22, 1873, Johnson, illustrates an improvement in the Johnson machine as put out by the Swain, Fuller Manufacturing Company. The machine of patent No. 141,058, July 22, 1873, was a double machine comprising two pairs of co-operating pressing forms and iron lasts.

In the machines of the direct pressure type as constructed under the patents already referred to there was no convenient means for adjusting the relative positions of the pressing form and last to adjust them approximately in accordance with varying thicknesses of work. Manually adjustable pressing forms were first disclosed in patent No. 164,363, June 15, 1875, Collyer, which discloses a gang machine of the rotary type. A later development in this direction is represented by patent No. 230,187, July 20, 1880, Johnson. This patent shows a machine provided with two pairs of

pressing forms and iron lasts and a machine constructed substantially as shown in this patent No. 230,187, but provided with six pairs of lasts and jacks, was put out extensively by the Swain, Fuller Manufacturing Company.

The next step in the development of direct pressure leveling machines is disclosed in patent No. 384,893, June 19, 1888, Cutcheon. The distinctive characteristic of this machine was provision for moving one of the iron lasts into pressing position simultaneously with the movement of the other last away from the pressing form into position of presentation. It may be of interest to note the first claim of this Cutcheon patent No. 384,893, which is as follows: —

"1. A machine for beating out the soles of boots and shoes, provided with two jacks, two molds, and means, substantially as described, having provision for automatically moving one jack in one direction while the other is being moved in the opposite direction, whereby the sole of the shoe upon one jack will be under pressure while the other jack will be in a convenient position for the removal of the shoe therefrom."

The machine of this Cutcheon patent 384,893 was supplied to manufacturers by the Tripp Giant Leveler Company, or by its predecessors in business.

As I have already indicated, the earlier machines of the direct pressure type had no provision for adjustment in accordance with varying thicknesses of the stock, that is, the combined thickness of the insole and out-sole, while the machines commercially used, beginning with the machine of Collyer patent No. 164,363, June 15, 1875, were provided with means for manually adjusting the relative position of the iron last and the pressing form. This manual adjustment, however, adapted the machine only approximately for its operation upon varying thicknesses of stock, and the adjustment was largely, and perhaps entirely, a matter of guesswork on the part of the operator. The first patent disclosing a machine which was adjusted automatically to varying thicknesses of work, and then exerted uniform pressure upon the sole of the shoe irrespective of its thickness, was No. 557,744, April 7, 1896, Winkley. This improvement was an important advance in the art, as all direct pressure leveling machines in use up to that time

had exerted different degrees of pressure upon stock of different thicknesses, frequently imparting enough pressure to thicker stock to injure the sole and often imparting insufficient pressure to thinner stock so that the sole did not receive enough pressure to level it properly. As has been explained in my previous testimony, the United Company's leveling machine, Atlas, embodying mechanism defined in broad terms in the Winkley patent No. 557,744, April 7, 1896, is shown substantially as it was first put into commercial use in patent No. 818,504, April 24, 1906, Winkley.

In the earlier part of this answer I have stated that the Star leveling machine constructed substantially as shown in patent No. 435,882, September 2, 1890, Washburn, was used for leveling turn shoes. This machine, which was known in the industry as "the man killer", was superseded by the United Company's leveling machine, Goodyear welt and turn (turn work), which, as stated in my previous testimony in regard to that machine, was first put into commercial use in June, 1906, and is shown substantially as it was first put out in patent No. 1,004,155, September 26, 1911, Eppler (application filed May 3, 1906).

Cross-Int. 324. Do the terms "leveling machine", "laying machine" and "beating machine" relate to the same general type or class of machines; that is, are they all designed for shaping the sole?

Ans. A sole-laying machine is used in the manufacture of welt shoes for pressing upon the bottom of the shoe the sole, to the flesh side of which has previously been applied a coating of cement. The object of this operation is to secure the sole temporarily in position during the rounding and channeling and the out-sole stitching operations. Such shaping as is imparted to the sole during this operation is chiefly, and perhaps only, for the purpose of getting approximately all of the flesh side of the sole into contact with the bottom of the shoe and any effect which this machine has upon the final shaping of the finished sole is negligible; in fact, it is customary to "mold" soles before they are laid, to give them a contour approximating that of the bottom of the last, to facilitate the laying.

The leveling operation, as has been fully explained in my previous testimony, is performed for the purpose of imparting the final face contour to the bottom of the sole after it has been secured to the shoe. Such machines are sometimes styled in the industry "beating out machines". The single word "beating" is probably too general to be applied to this operation, as it is also used to indicate other operations performed upon the shoe.

Cross-Int. 325. Then would it be proper to say that the machine of the Cutcheon patent dated June 19, 1888, No. 384,893, entitled "Beating Out Machine", the same being Plaintiff's Exhibit 191, is a leveling machine?

Ans. Yes, sir; the machine shown in the drawings of that patent is a sole-leveling machine.

Cross-Int. 326. And is a machine so constructed adapted also to be used as a laying machine?

Ans. Very likely it could be used as a sole-laying machine, and undoubtedly a machine embodying mechanisms set forth in the claims of that Cutcheon patent could be used for laying soles.

Cross-Int. 327. You have referred at some length to the automatic feature of some of the leveling machines, among which is the machine termed "Automatic Leveler" shown in Plaintiff's Exhibit 234, which, as I understand from your testimony, is the same as shown in the cut on page 28 of Plaintiff Exhibit 190, and I would like to inquire just what you mean by the term "automatic", that is, whether the machine stops within a predetermined period of time, or after a certain number of revolutions of a part of its mechanism, or whether its stopping period is determined by some other condition?

Ans. In the first place I beg to call attention to the fact that I have testified that the machine shown in Plaintiff's Exhibit 234 is not like the machine shown on page 28 of Plaintiff's Exhibit 190, being United Company's catalogue of 1902, because the work-supporting mechanism shown in Plaintiff's Exhibit No. 234 is substantially different from that illustrated in the cut on page 28 of Plaintiff's Exhibit 190.

As to the automatic operation of the Goodyear automatic sole-

leveling machine, the operation upon each shoe stops automatically after the machine has performed its operations successively upon different portions of the shoe; that is, at a predetermined time in the cycle of the machine's operations upon a given shoe the operation upon that shoe stops and the shoe is presented in a position for its convenient removal by the operator and the application of another shoe to be operated upon by the machine.

Cross-Int. 328. Then, if I understand you, in the operation of the machine referred to, after the driving mechanism has revolved a certain number of times the machine stops; am I correct in my understanding?

Ans. No, sir.

Cross-Int. 329. What makes the machine stop, or, in other words, is the stopping of the machine dependent upon the condition of the sole being operated upon, or is it dependent upon the number of operations performed by the machine on the sole?

Ans. The machine itself does not stop at the completion of the operation upon a given shoe. It would be more correct to state that the operation upon that given shoe stops. The stopping of the operation upon each shoe takes place after the machine has operated automatically in a predetermined way upon that shoe.

Cross-Int. 330. Perhaps we can get at it in this way: as I understand you, the leveling rolls that come in actual contact with the sole operate a certain number of times on a certain sized type and kind of shoe; am I right?

Ans. Perhaps that is correct in that one leveling roll operates upon one shoe once. During its operation upon that shoe it is continuously in engagement with the shoe, being vibrated rapidly over each portion of the sole successively, and automatically tipping as required to adapt it according to the varying face contour desired for each portion of the sole of the finished shoe.

Cross-Int. 331. And does the roll operate upon a soft sole a different number of times than it operates on a hard sole of the same size and shape?

Ans. No, sir; that condition is provided for by convenient adjustment to vary the amount of pressure.

Cross-Int. 332. Approximately, how long does it take to operate upon one sole with the machine referred to?

Ans. I do not remember that I have timed the operation of the machine, and should prefer to do that before stating the time required for one shoe. I should add, however, that the time required for each shoe would, of course, vary with the speed at which the machine was run.

Cross-Int. 333. Well, supposing you had a dozen pairs of shoes all of the same size and kind, some of them having soft soles and some of them having hard soles, the machine being operated on all without change of adjustment: then would the time employed in the operation on each of the soles be the same?

Ans. The conditions stated in the question are not the commercial conditions under which this machine operates in shoe factories. The machine is generally used in shoe factories on regular work in which a large number of shoes substantially alike as regards the quality of their soles are presented successively to the operation of the machine. As explained in my previous testimony in open court, it is not customary to level on this Goodyear automatic leveling machine either freak shoes or sample shoes.

Mr. WEBSTER. Answer objected to as not responsive, and evasive.

Cross-Int. 334. Does the condition of the sole as to hardness or softness have anything to do with the automatic stopping of the portion of the machine which operates on the sole?

Ans. Yes, sir, in that the machine is organized to level the sole properly, and when it has done that its operation on that sole stops.

Cross-Int. 335. So that if a soft sole is presented to the machine immediately after a hard sole has been operated upon, and there has been no change in the adjustment of the machine, the time of the stopping of the portion of the machine operating on the soles differs; is that correct?

Ans. No, sir.

Cross-Int. 336. Would the time expended in operating on the two soles referred to in the previous question be the same?

Ans. Yes, sir.

Cross-Int. 337. Now, inviting your attention to your direct examination with reference to pegging machines, you say, among other things, that prior to February, 1899, pegging machines were used exclusively for attaching soles of boots or shoes by means of wooden pegs, and that the pegging machine of patent No. 555,434, February 25, 1896, was the first patent on what has since been known as a horn pegging machine, and that prior to the machine illustrated in the patent referred to it had been the universal practice in pegging shoes to insert the pegs while the last was still in the shoe; do you still adhere to that expression of your opinion of the art?

Ans. Yes, sir.

Cross-Int. 338. You also stated that this machine, referring to the Davey machine of patent of February 25, 1896, represented a great advance in the art over the prior machines, and, as I understand your testimony, that the horn tip of the Davey pegging machine of that patent first made it possible to peg shoes with a horn instead of a wooden last; do you still adhere to that statement?

Ans. Yes, sir.

Cross-Int. 339. Had you, at the time of testifying with reference to the pegging machine looked into the prior art with reference to pegging machines provided with horn tips for the purpose of pegging without the employment of lasts in the machine?

Ans. I have had occasion to become somewhat familiar with the prior art in this connection.

Cross-Int. 340. And at the time of testifying were you familiar with the patent of Sturtevant and Bickford, dated February 15, 1897, No. 173,428, a copy of which I now hand you?

Mr. PHILLIPS. Question objected to as having no bearing on any matter touched upon in the direct examination of this witness, and being immaterial to any issue under the order of the court submitting this case to be heard by this examiner, and as being improper cross-examination.

Ans. Yes, sir.

Cross-Int. 341. Were you also familiar with, and had you exam-

ined, and did you understand, the various constructions set out in the following patents:—

Allen, channel cutting machine, February 19, 1889, No. 398,305;

Scott, sewing machine, October 19, 1880, No. 233,561;

Carey, machine for uniting soles and uppers, January 6, 1891, No. 444,126;

Carey, machine for uniting soles and uppers of boots and shoes, March 26, 1895, No. 536,183;

Ley, pegging machine, March 7, 1893, No. 492,906;

copies of which I now hand you?

Mr. PHILLIPS. Question objected to as having no bearing on any subject-matter opened upon the direct examination of this witness, as being improper cross-examination, and further objected to as immaterial to any issue triable before this examiner under the order of the court.

Ans. I cannot state that I have examined any constructions set out in the patents referred to, but I was familiar with the patents. As I recall these patents, only one of them relates to a machine for inserting wooden pegs. That is patent No. 492,906, March 7, 1893, Ley. The Allen patent, No. 398,305, and the Scott patent, No. 233,561, relate to sewing machines; and the two Carey patents, Nos. 444,126 and 536,183, relate, as I recall them, to "machines principally used for securing together soles and uppers of boots and shoes or for attaching the uppers thereof and stitching harness, belting, and the like, by a seam composed of a continuous thread of wire in loops and short lengths of wire or other like material inserted in the same". (Specification of Carey patent No. 536,183, page 1, lines 12 to 19.)

As regards the Ley patent No. 492,906, March 7, 1893, as well as the Sturtevant and Bickford patent 173,428, February 15, 1876, the latter of which was inquired about in the preceding question, these patents serve to indicate that during a period of at least twenty years preceding the production of the first type of Davey horn pegger, the desirability of pegging shoes "off the last" and avoiding the great expense explained in my preceding testimony, was fully recognized. So far as I know, no machines constructed

as shown in either of these patents were ever put into commercial use, and, as I have previously stated, the first commercially successful horn pegging machine, that is, the first machine for pegging shoes "off the last", was the machine embodying the construction set forth in patent No. 555,434, February 25, 1896, Davey.

[*Patents shown to the witness are offered in evidence in one volume, and are marked "Plaintiff's Exhibit 262".*]

Mr. PHILLIPS. The introduction of these patents is seasonably objected to on the ground that they are improperly offered on the cross-examination of this witness and are of no materiality to any issue triable before this examiner under the order of the court.

Cross-Int. 342. Were you aware at the time of testifying, or are you now aware, that the patent to Davey No. 555,434, dated February 25, 1896, pegging machine, had been passed upon and construed by the court?

Ans. Yes, sir, I was aware of the fact at the time I testified.

Cross-Int. 343. And were you familiar with the decision in the case of Davey Pegging Machine Company *v.* Isaac Prouty & Company et al., reported in 96 Fed. Rep., page 336?

Ans. I have been familiar with the decision, although my attention has not been called to it for several years.

Cross-Int. 344. And also with the decision in the same case in the Court of Appeals, reported in 107 Fed. Rep. 505?

Ans. My preceding answer will apply to this question.

Cross-Int. 345. Do you know whether Isaac Prouty & Company were in business prior to 1899?

Mr. PHILLIPS. Objected to as improper cross-examination, referring to no matter brought out in the direct examination of this witness.

Ans. I think they were.

Cross-Int. 346. And do you now say that it is not clearly shown in the Sturtevant and Bickford patent of 1876 that the machine therein shown was adapted to drive pegs and cut off their ends inside the shoe, and without the employment of a last?

Mr. PHILLIPS. Question objected to as relating to no matter re-

ferred to in the direct examination of this witness and pertinent to no issue triable before this examiner.

Ans. I have not made such a statement and do not make it now. I have stated, and repeat, that, so far as I know, no machines were constructed and commercially used as illustrated in the Sturtevant and Bickford patent No. 173,428, although, as I have previously stated, that patent serves to indicate that as early as 1876 the desirability of pegging shoes "off the last" was recognized.

Mr. WEBSTER. All that portion of the answer after the words "I have not made such a statement and do not make it now" is objected to as not responsive, and evasive.

Cross-Int. 347. Is it your understanding that the claims of Davey patent No. 555,434, dated February 25, 1896, which patent has been referred to by you in your direct testimony, go broadly to a pegging machine wherein the projecting ends of the pegs are cut on the inside of the shoe at or about the same time they are driven?

Mr. PHILLIPS. The same objection.

Ans. No, sir; I should not give that construction to the claims, but should like to add that I understand that those claims are directed to the organization of the first practically successful machine for pegging shoes "on the horn".

Mr. WEBSTER. All that portion of the answer after "No, sir" is objected to as non-responsive, and evasive.

Cross-Int. 348. You say in one of your answers that according to Mr. Davey's records the machine at the Whitman factory is No. 76; when did you examine Mr. Davey's records?

Ans. Within two or three weeks before the day on which I made that statement in my testimony.

Cross-Int. 349. Where did you examine Mr. Davey's records?

Ans. In my office.

Cross-Int. 350. From whom did you procure them?

Ans. From Mr. Davey and a Mr. Hope, who was asssociated with Mr. Davey at the time that the pegging machine in question was sold to the Commonwealth Shoe & Leather Company.

Cross-Int. 351. Are the Davey records now in your possession?

Ans. No, sir.

Cross-Int. 352. Can you procure them and produce them here for examination and verification?

Mr. PHILLIPS. I instruct the witness that it will be unnecessary for him to procure such records until instructed so to do by counsel or by the court.

Ans. It will involve considerable inconvenience to obtain and produce the records to which I have referred, and I should prefer not to do so unless instructed by counsel or by the court.

Cross-Int. 353. Did you not know at the time you testified that you had no right to rely upon reeords and testify as to the same without producing such records in court?

Ans. I attached little importance to the number of the Commonwealth Shoe & Leather Company machine because I believe all of the machines supplied by John F. Davey embodying the mechanism of patent No. 555,434, February 25, 1896, were alike. I mentioned that number merely to indicate that the machine was apparently constructed at about the same time as the machine No. 79, which I had photographed, and photographs of which were introduced in evidence as Defendants' Exhibits Nos. 126 and 127. As a matter of fact, I consider the number of the machine at the Commonwealth Shoe & Leather Company's factory as immaterial, since I have testified as to the identity of that machine and the machine shown in Defendants' Exhibits Nos. 126 and 127.

Mr. WEBSTER. Answer objected to as not responsive, and evasive.

Cross-Int. 354. You also testified that the photograph which you produced of the machine at the Whitman factory showed accurately the machine as it was sold to the Commonwealth Shoe & Leather Company by Mr. Davey in 1895. Did you get any of that information from the Davey records?

Ans. I did not testify that the photograph of Defendants' Exhibit 126 was a photograph of the machine at the Whitman factory. I testified that it was a photograph of machine No. 79 and that I compared it with the machine at the Whitman factory. The ground for my testimony, therefore, was my personal examination

of the machine at the Whitman factory as well as of machine No. 79.

Mr. WEBSTER. Answer objected to as not responsive, and evasive.

Cross-Int. 355. You say: "The horn which was then on the machine and which is shown in this photograph is not now on the machine." Have you any personal knowledge as to what horn was on the machine in 1895?

Ans. I have every reason to believe that the horn which was on the machine in 1895 was the horn which was on a bench near the machine in the Whitman factory, or a horn like that such as was a part of machines like this as sold by Davey in 1895.

Mr. WEBSTER. Answer objected to as not responsive, and evasive.

Cross-Int. 356. You have testified that the five Chase lasters at Jones' factory were being used only for long-legged boots. Do you mean by that statement that they were used only for long-legged boots while you were present, or do you mean that they had not been used for any period of time on anything other than long-legged boots?

Ans. I meant that the machines were fitted for lasting long-legged boots, and that they were all being used for lasting long-legged boots while I was in the factory.

Cross-Int. 357. Reference has been made in your direct examination to a machine called the Amazeen skiver, and I note at one point in your testimony you refer to prior types of machines, and among other things you say that patents at that time had expired on these two machines. In view of the fact that this testimony is scattered through the record, will you kindly now briefly state what patents on vamp skivers and Amazeen skivers, so called, were known to you existing in the prior art running back ten or fifteen years prior to 1899, and whether machines constructed as set forth in that patent were put out, and, if so, by whom, and approximately to what extent they were used, so far as you are informed? Please note I do not ask for an extended discussion of

this matter, but desire at this point to get the facts on the record briefly.

Ans. I have not at hand copies of patents which I need to have before me in order to answer the question in reference to machines of the type shown in Plaintiff's Exhibit 192, which is a cut of the Carver vamp-skiving machine adapted for skiving heavy vamps and box toes, but I have before me copies of patents on the Amazeen skiving machine and will accordingly answer the question so far as I am now able by giving the information requested in regard to the Amazeen skiving machine.

As stated in my previous testimony relating to this machine, officially known as "Skiving Machine, Amazeen", the first patent of which I am aware disclosing that type of skiving machine is No. 200,682, February 26, 1878, Amazeen. The next patent is No. 220,906, October 28, 1879, Amazeen, and the first commercial skiving machine of which I am informed was constructed substantially as is shown in that patent No. 220,906. The machine of that patent has, of recent years, been designated as "Model No. 1".

The next step in the development of the Amazeen skiving machine is illustrated in patent No. 273,931, March 13, 1883, Amazeen. The machines which are now known as model No. 2 and model No. 3 were constructed substantially as shown in that patent No. 273,931, the differences between the two models being differences in mechanical construction.

The machine now known as model No. 4 was constructed substantially as shown in patent No. 518,774, April 24, 1894, Bayley. Model No. 5 was a step in the development from the preceding models, which resulted in model No. 6, which is the machine illustrated on page 132 of Plaintiff's Exhibit 190, being United Shoe Machinery Company's catalogue of 1902. All of the models preceding this model No. 6 are no longer manufactured, and have not been manufactured for some years. This model No. 6 is constructed substantially as shown in patent No. 645,381, March 13, 1900, Bayley, and No. 636,942, November 14, 1899, Bayley.

The present commercial Amazeen skiving machine is known as

model No. 7, and is constructed substantially as shown in patents No. 823,578, June 19, 1906, Bayley, and No. 823,586, June 19, 1906, Davenport.

Cross-Int. 358. Kindly state by whom the machines of the earlier patents referred to by you were put out, and the extent of use, approximately, so far as you know.

Ans. The machines were put out in succession by Christopher Amazeen, the Amazeen Machine Company and the United Shoe Machinery Company. Each of the models preceding model No. 7, to which I have referred, was in turn the standard commercial machine for several years, until it was superseded by the next succeeding model. As stated in my previous answer, the present standard commercial machine is model No. 7.

Cross-Int. 359. Do you know whether any of the models 1, 2, 3 and 4 are now in use?

Ans. I think that none of the models 1 or 2 is in use, but there are some model 3 machines still in use. I think, however, that most, if not all, of the No. 3 model which are still in use have been equipped with the improvements of patent No. 452,996, May 26, 1891, Dunham.

Cross-Int. 360. Kindly state whether any of the exhibit shoes thus far introduced by the defendant are shoes of the kind you have referred to in your testimony as "freak shoes"?

Ans. On examining the shoes which have been put in evidence as exhibits by the defendants, I do not find any which I regard as "freak shoes".

Cross-Int. 361. Are any of the lasts which have been introduced by the defendants lasts adapted for the manufacture of freak shoes?

Ans. The Tokio last of Defendants' Exhibit No. 133, and the razor-toe last of Defendants' Exhibit No. 134, and possibly the cottage toe last of Defendants' Exhibit 132, would be regarded as freak lasts today, although they were regularly and extensively used about fifteen to eighteen years ago.

Cross-Int. 362. In your testimony in chief you made reference to lasting machines adapted peculiarly, as I recollect your statement, for the lasting of freak shoes. Will you briefly explain what

particular type of shoe or shoes you had reference to in using the term "freak shoes"?

Ans. I shall be obliged to ask you to refer me to the testimony to which you refer. I do not recall that I have testified in regard to any lasting machines peculiarly adapted for the lasting of freak shoes.

Cross-Int. 363. Do you recollect testifying that certain lasting machines were used principally for the making of sample and freak shoes?

Ans. No, sir. I have, however, testified that the Acme leveling machine was used for leveling freak and sample shoes in factories where the regular work was done on the Goodyear automatic leveling machine.

Cross-Int. 364. Now, will you kindly explain what kind of shoes you referred to when you spoke of "freak shoes"?

Ans. I had reference to shoes made on lasts having exaggerated or extreme lines. I have a number of such shoes in my office which I shall be glad to produce by way of illustration.

Cross-Int. 365. In your direct testimony you said, among other things: "Machines known as McKay & Copeland lasting machines were put out for many years prior to 1899." Will you at this point kindly state whether the McKay & Copeland lasting machines referred to by you were put out as early as 1890, and if put out as early as that date, or earlier, state, so far as you are able, when and by whom?

Ans. The McKay & Copeland lasting machine about which I have previously testified is the present standard commercial McKay & Copeland lasting machine adapted and used exclusively for very heavy shoes, such as brogans, as illustrated in Defendants' Exhibit 143. That machine without the improvements which have subsequently been adopted was first put out about 1897. Prior to that time there had been put out for many years a machine which, in the successive stages of its development, beginning in 1882, had been known as the McKay & Copeland lasting machine. Prior to 1882 the predecessor of that machine, known as the Copeland lasting machine, had been put out for some two or three years. This

Copeland lasting machine was put out by the Copeland Lasting Machine Company, and the machine which in its earlier form was put into commercial use in 1882 was put out in its successive improved forms until its reorganization in 1895 and 1897 by the McKay & Copeland Lasting Machine Company.

Cross-Int. 366. If you have before you the patents under which the early machines referred to by you were manufactured, will you kindly read the number, date, title and name of patentee in the record at this point?

Ans. The earlier machines to which I have referred, that is, the machines which were put out before the reorganization of the McKay & Copeland machine in 1895 and 1897, were constructed as shown or embodied mechanisms set forth in the claims of the following patents: —

Patent No. 191,937, June 12, 1877, Copeland, Woodward and Brock, reissued as No. 8,138, March 26, 1878.

Patent No. 197,607, November 27, 1877, Copeland, Woodward and Brock.

Patent No. 208,156, September 17, 1878, Copeland, Woodward and Brock.

Patent No. 90,651, June 1, 1869, Fischer.

Patent No. 231,076, August 10, 1880, McKay and Fairfield.

Patent No. 251,430, December 27, 1881, Glidden.

Patent No. 286,898, October 16, 1883, Brock.

Patent No. 193,446, July 24, 1877, Hatch, reissued as No. 8,764, June 17, 1879.

Patent No. 254,617, March 7, 1882, Copeland and Brock.

Patent No. 286,898, October 16, 1883, Brock.

Patent No. 288,689, November 20, 1883, Brock.

Patent No. 302,885, August 5, 1884, Brock.

Patent No. 371,816, October 18, 1887, Brock.

Cross-Int. 367. In your examination in chief you have referred, to a considerable extent, to the change in machines for the manufacture of shoes growing out of the manufacture by machinery of extension edge shoes, which, as I understand your testimony, occurred somewhere about 1895. Do you wish to be understood

as saying that when the extension edge shoes came into more extensive use the machines previously employed and which were not adapted for the manufacture of extension edge shoes became obsolete and were abandoned?

Ans. Yes, in one case; while in another case the organization of the machine previously used was modified to adapt the machine for operation upon extension edge shoes.

Cross-Int. 368. Please explain what you meant in your last answer when you said: "Yes, in one case".

Ans. The Briggs rounding machine was not adapted for use on extension edge soles and was superseded by the machine now known as "Rounding and Channeling Machine, Goodyear Universal".

Cross-Int. 369. Kindly explain what you mean in your last answer but one when you used the phraseology: "while in another case the organization of the machine previously used was modified to adapt the machine for operation upon extension edge shoes".

Ans. I referred to the machine now known as "Lockstitch Machine, Goodyear Outsole Rapid", which has been usually referred to in the testimony before the examiner as the Goodyear out-sole lockstitch machine of 1899.

Cross-Int. 370. Have you any statistics, which you consider reliable, giving the number of shoes having extension edge soles manufactured in the United States covering any period of years, also shoes without extension edges?

Ans. No, sir, I have not such statistics, but made inquiries recently which led me to the conclusion that nearly all men's and women's welt shoes which have been manufactured for at least five or six years were made with extension edge soles.

Cross-Int. 371. Kindly state your source of information.

Ans. The inquiries were made through the branch offices of the United Shoe Machinery Company located in the leading shoe centres and through the company's employees connected with those offices who have been, during that period, most familiar with the work being done from day to day in shoe factories making welt shoes.

Cross-Int. 372. Can you specify in what factories the inquiry was made?

Ans. I did not state that inquiries were made in any factories.

Cross-Int. 373. Then the information does not come from factories; is that correct?

Ans. The information comes from men whose duties in the care of machines used in factories throughout the United States in the manufacture of welt shoes have kept them in constant touch with the work being done in those factories from day to day during the period referred to.

Cross-Int. 374. And the men referred to in your last answer from whom the information was obtained are employees of the United Shoe Machinery Company, are they not?

Ans. Yes, sir.

[*Adjourned to 10 o'clock* A. M., *Wednesday, November 5, 1913.*]

BOSTON, MASS., November 5, 1913.

Cross-Int. 375. If you now have the data as to the insole channeling machine illustrated on page 95 of Plaintiff's Exhibit 220, as to whether the device illustrated on said page 95 is the subject-matter of any patent, and, if so, what patent, and as to the period of time the Goodyear out-sole channeler was active, kindly now answer the question.

Ans. The earliest date which I have been able to ascertain when the turn and insole channeling machine illustrated on page 95 of Plaintiff's Exhibit 220, being Goodyear Shoe Machinery Company's catalogue of January 1, 1897, was commercially used in the manufacture of shoes, is 1876, although the machine may have been put out for a year or two before that year. The machine as it was then put out was, I am advised, constructed substantially as shown in patent No. 143,237, September 30, 1873, Hadley. The machine of the Hadley patent, with such changes as brought it into the form shown on page 95 of Plaintiff's Exhibit 220, was used until the machine was reorganized about 1894 by incorporating in it the improvements shown in the drawings and set forth in the claims of patent No. 550,402, November 26, 1895, Beckman,

which improvements have been discussed in detail in my previous testimony relating to channeling machine, Goodyear (insole and turn).

The first shipment of the Goodyear out-sole channeler of which I have obtained definite information was in 1879, although I am confident that the machine was used for probably two or three years before that date. The machine was used until it was superseded about 1891 by the Briggs rough rounding machine.

Cross-Int. 376. Is it not a fact that heels were attached to shoes by machinery as early as 1885?

Ans. Yes, sir; heels were attached by machinery as early as 1867.

Cross-Int. 377. Is it not a fact that heels were compressed by machinery as early as 1885?

Ans. Yes, sir; heels were compressed by machinery as early as 1871.

Cross-Int. 378. Will you please very briefly explain the difference between surface nailing of heels and blind nailing?

Ans. As I have previously explained in detail, when heels are "surface nailed" the heel-attaching nails are driven through the entire heel, including the top-lift, so that the head ends of the attaching nails are substantially flush with the tread face of the top-lift and are visible in the finished shoe. When heels are "blind nailed" the top-lift is not secured to the body of the heel when that is attached to the shoe. In attaching the body of the heel to the shoe the head ends of the nails are left projecting above the outer face of the heel and then the top-lift is attached to the body of the heel by "spanking" it upon the head ends of the nails, that is, the top-lift is attached to the body of the heel by forcing the head ends of the nails into its inner side by pressing the top-lift upon them. In a blind-nailed heel the head ends of the heel-attaching nails are not visible in the finished shoe.

Cross-Int. 379. Is it fair to say that the distinguishing characteristic generally stated between a loose-nailing machine and other nailing machines is that in a loose-nailing machine the nails are in

a hopper or reservoir in a loose condition and the machine gathers them up and arranges the nails for proper feeding to the machine?

Ans. No, sir, I think it would not be fair to state the distinguishing characteristic in that way.

Cross-Int. 380. Will you give the names of the four or five inventors who were put to work to adapt the Plant improvements for the model G welt and turn sewing machine which you say was at that time, in 1910, the standard commercial machine of the United Company?

Ans. Among them were the following inventors: Laurence E. Topham, Andrew Eppler, Ralph C. Simmons, E. E. Winkley, William C. Stewart, Albert Latham.

Cross-Int. 381. Can you now state the number of welt and turn machines which have been put out by the United Company or its subsidiary company, the United Shoe Repairing Machine Company, among cobblers in the United States up to December 1, 1911?

Ans. No, sir: I have not that data at hand, but shall be glad to get it.

Cross-Int. 382. Kindly do so and at the same time get the same information with reference to rapid out-sole lockstitch machines.

Ans. Yes, sir.

Cross-Int. 383. What became of the Eppler welters and stitchers taken over by the United Company from the Eppler Company?

Mr. PHILLIPS. Question objected to as relating to no matter touched upon in the direct examination of this witness and as the witness cannot be assumed to have any personal knowledge of the matter.

Ans. Such welters and stitchers taken over by the United Company from the Eppler Company as were in the hands of shoe manufacturers were retained and used by those manufacturers until the manufacturers displaced them by Goodyear machines. Such machines as were taken over from the Eppler Company by the United Company as were not in the hands of shoe manufacturers were kept on hand to supply demands for such machines from shoe manufacturers. It is my recollection that about forty of the

Eppler welters were supplied to shoe manufacturers during the first year or two after the United Company was formed.

Cross-Int. 384. Did the United Company manufacture Eppler welters and stitchers?

Mr. PHILLIPS. Objected to as relating to nothing referred to in the direct examination of this witness and as the witness cannot be assumed to have any personal knowledge of the matter.

Ans. I could not be sure about that without looking it up. I think it quite likely, however, that the United Company was able to supply such small demand as there was for those machines by supplying rebuilt machines which had been returned by shoe manufacturers.

Mr. WEBSTER. Answer objected to as not responsive.

Cross-Int. 385. So far as you know at the present time, the United Company did not manufacture Eppler welters and stitchers, did it?

Mr. PHILLIPS. Question objected to as improper cross-examination, relating to no matter touched upon in the direct examination of this witness.

Ans. I don't know.

Cross-Int. 386. Do any of the patents you have discussed in your deposition in chief have reference to the construction shown in the Eppler welters and stitchers?

Mr. PHILLIPS. Question objected to as improper cross-examination because it relates to no matter referred to in the direct examination of this witness.

Ans. The only patent which I recall having mentioned in my testimony in chief relating to welters or stitchers which was acquired by the United Company from the Eppler Company is patent No. 507,873, October 31, 1893, Arnold.

Cross-Int. 387. Have you in mind, or have you a memorandum of, any other patents relating to the Eppler welter or stitcher; and, if so, will you kindly give the number, date and title?

Mr. PHILLIPS. Question objected to as improper cross-examination because manifestly relating to no matter touched upon by this witness in his direct examination, and the witness is instructed

that he is under no obligation to answer the question unless instructed so to do by counsel or by the court.

Ans. Under instructions of counsel, I decline to answer the question.

Cross-Int. 388. Pardon me, but I call your attention to the fact that I do not understand you have been instructed to decline to answer the question. Do you decline to answer?

Mr. PHILLIPS. As at present advised, I instruct the witness not to answer the question unless ordered to do so by the court.

Ans. Under instructions of counsel, I decline to answer the question.

Cross-Int. 389. Kindly give the date when you first went with the firm of Fish, Richardson & Storrow.

Ans. December 1, 1895.

Cross-Int. 390. Kindly give the date when you first became associated with the McKay Shoe Machinery Company.

Ans. September 1, 1898.

Cross-Int. 391. And then, as I understand you, you became associated with the United Shoe Machinery Company in February, 1899?

Ans. Yes, sir.

Cross-Int. 392. And your first connection with shoe machinery of any kind was after your connection with the firm of Fish, Richardson & Storrow; is that correct?

Ans. That is substantially correct.

Cross-Int. 393. You have testified at considerable length with reference to slugging machines, and in connection with such testimony you made reference to a considerable number of patents, the earliest of which seems to be May 11, 1897. Will you kindly state if you know of patents on slugging machines of a date earlier than said patent referred to?

Ans. The first patent of which I am aware which discloses a slugging machine is patent No. 410,927, September 10, 1889, Robinson and Watt. Prior to 1888 or 1889 heel slugging was universally done by hand.

Mr. WEBSTER. All that portion of the foregoing answer begin-

ning with and following "Prior to 1888" objected to as not responsive.

Cross-Int. 394. Would it be proper to say that a slugging machine is included in the general term of metallic fastening machines?

Ans. I think so.

Cross-Int. 395. And a slugging machine is a machine that is usually employed to drive metallic slugs into the heel, is it not?

Ans. Yes, sir; that is, into and through the top-lift and one or two adjacent lifts of the heel.

Cross-Int. 396. In your direct examination you testified under objection with reference to certain machines put out by the United Shoe Machinery Company which do work always done by hand in 1899, or not done at all either by hand or machine in 1899, and I now ask you *de bene* and without waiving objection to the question or the answer if you will kindly point out which of the machines in the list spread upon the record by you do work not done at all either by hand or by machine in 1899?

Ans. Clinch machine, Universal double, attaches soles in a novel manner and by means of a novel fastening which had never been used for attaching soles at the time the machine was introduced.

Eyeletting machine, Duplex, was the first machine which set two eyelets on opposite sides of an upper simultaneously.

Embossing machine, Goodyear heel, performed an operation which, so far as I know, had never been performed either by hand or by machine before that machine was introduced.

Lasting machine, staple, was a machine which, so far as I am advised, performed the lasting of the shoe and securing it in place in a manner in which that work had never been done before.

Stapling machine, Goodyear upper, also performed an operation which, prior to the introduction of that machine, had not before been performed either by hand or by machine.

Stitching machine, Economy insole, is another machine which performed an operation never performed either by hand or by machine before that machine was produced.

Mr. WEBSTER. This closes the cross-examination of the witness as counsel is at present advised, unless through inadvertence, acci-

dent or mistake counsel has omitted to inquire of the witness, and except as to the matters with reference to which the witness is to produce data, and excepting as to matters to which the witness has refused to make answer, and counsel reserves the right to go into these matters at a later period if permitted by the court or if opposing counsel shall withdraw their instructions to the witness with reference to such answers.

[*Adjourned to 10 A. M., Thursday, November 6, 1913.*]

BOSTON, MASS., November 6, 1913.

Direct Examination resumed by Mr. PHILLIPS.

Int. 397. Have you the data called for by counsel for the United States in regard to the number of welters and stitchers of the United Company in use by cobblers?

Ans. I was requested to ascertain and state the number of welt and turn machines which have been put out by the United Company or by the United Shoe Repairing Machine Company among cobblers in the United States up to December 1, 1911. I find that no welt and turn machines have been supplied either by the United Company or by the United Shoe Repairing Machine Company to cobblers, that is, to those engaged exclusively in the business of repairing shoes. I should add, however, that the United Company has supplied welters to twelve different shoe manufacturers who do some shoe repairing in connection with their regular business of manufacturing shoes. I cannot state whether those welters are used by such manufacturers in their repairing work.

I was also requested to obtain similar information in regard to out-sole lockstitch machines. I find that on December 1, 1911, the United Shoe Repairing Machine Company had put out for use by cobblers 961 out-sole lockstitch machines. In addition to those machines, the twelve shoe manufacturers who also do some repairing work, to whom I referred in the preceding paragraph, have out-sole stitchers which were supplied to them by the United Shoe Machinery Company.

Int. 398. In a cross-interrogatory counsel for the United States referred to a list of machines which was read into the record by

you in your direct examination, and you were asked in substance if you testified that "all the machines specified in that list" were necessary for the successful manufacture of shoes. Will you please state what machines, if any, are necessary for the manufacture of a welt shoe, what for a turn shoe, and what for a McKay shoe? Please state what advantage is secured by the use of modern machinery in the manufacture of shoes.

Mr. WEBSTER. Question objected to for that it calls for matter fully gone into in the direct examination.

Ans. A welt shoe requires no machine for its proper manufacture, and in fact welt shoes were made by hand long before machines were introduced for their manufacture. The turn shoe was also made by hand long before there were machines adapted for use in its manufacture. A McKay sewed shoe is in part essentially a machine-made shoe, since that term is used to designate shoes the soles of which have been attached by the use of the McKay sewing machine. McKay sewed shoes were, however, manufactured in large numbers some years before the first lasting machine was put into commercial use, and aside from the McKay sewing machine no machine is required for the manufacture of a McKay sewed shoe.

The advantage gained by the use of modern shoe machinery in the manufacture of shoes is a decrease in the cost of production, and, since the latest types of shoe machines have been introduced, an improvement in the quality of the work. I do not wish to be understood as testifying that a shoe can be made any better by machinery than by hand work, assuming that the hand workman was sufficiently skillful, took the amount of time necessary and gave enough care to produce perfect work, but I do wish to say that the average shoe made by modern machines is better than the average shoe which was made in shoe factories largely by hand processes prior to the introduction of modern machines.

Ths welt shoe, so called, is the most satisfactory construction known to the shoe-making art as regards comfort, durability, wear and the facility of repairing it, although in cases where extreme lightness and flexibility are required there are advantages

in the turn shoe. All the better grades of men's shoes are welt shoes, and all the better grades of women's shoes are either welt shoes or turn shoes. The difference in cost between hand-made shoes and shoes made by modern machine processes is a matter of such common knowledge that it hardly need be referred to, and the wearing qualities of a welt or turn shoe made by modern machine processes are superior to the wearing qualities of a welt or turn shoe as it would be made by hand under factory conditions; that is, the machine-made welt and turn shoes which are supplied to the public today are better shoes than they would be if they were made by hand, and of course they are much less expensive.

I will also state that the industry has been brought to such a point that the saving of a fraction of a cent in the manufacturing cost of a pair of shoes is of the greatest importance to shoe manufacturers, since in a factory of average capacity such a saving would amount to several thousands of dollars a year.

Int. 399. You have been interrogated by counsel for the United States in your cross-examination in regard to machines used for the ornamentation of shoes. Will you please state what, if any, importance the ornamentation of shoes is to the modern shoe manufacturer?

Mr. WEBSTER. Objected to for that the witness has not qualified in a manner to tend to show that he is competent to testify as to the importance of such matters to manufacturers, and as merely calling for the opinion of the witness, and, further, as calling for matter in no wise pertinent to the issues involved in this cause.

Ans. The neatness or finished appearance of a shoe often means the difference between the salability or the unsalability of a product, so that obviously the giving to the shoe of a sightly and pleasing appearance is of great importance to the modern manufacturer. The extensive introduction of American shoes into foreign markets, particularly into the English market, is largely due to their neater appearance.

Int. 400. Were the processes which have been referred to by you in your cross-examination as wholly or partly for the purpose

of ornamentation of sufficient importance to have been performed by hand prior to the introduction of machinery for that purpose?

Ans. Yes; I understand that all of those operations were formerly performed by hand, although I believe in no instance as effectively as they are now performed by machine.

Int. 401. You were asked on cross-examination whether the employment of a burnishing machine or of a blacking or polishing machine added to the wearing quality of a shoe, and whether the indenting and burnishing machine relates to anything but ornamenting a shoe. Please state whether there is anything that you wish to add to that portion of your deposition. If so, will you kindly state it?

Ans. In answering the questions about those machines I should have explained the important work which they do in protecting the shoe against the action of water and moisture. The burnishing operation performed upon the edge of the sole is known in the industry as "edge setting", while the burnishing operation upon the edge of the heel is known as "heel bnrnishing". Before these operations are performed the edge of the sole and the edges of the "lifts" of the heel are raw and porous, and if left in that condition would quickly absorb water when the shoe was worn and would even absorb moisture from the atmosphere. Referring first to the edge-burnishing or edge-setting operation, before that operation is performed the edge of the sole and the edge of the welt in a welt shoe are coated with blacking which contains about twelve per cent of wax. In the operation of the edge-setting machine this blacking is forced into the pores of the leather on the edge of the sole and the edge of the welt, fills up any crack which there may be between the sole and the welt, and when the operation is completed there is a thin film of wax on the combined edge of the sole and welt which effectively prevents the water or moisture entering the pores of the leather and penetrating between the sole and the welt. If the water entered the pores of the leather in the sole it would cause the sole to swell, and when it dried the sole and welt would, in the shrinking of the sole as it dried, pull away from each other or "check", as it is designated in the industry, This would allow

water and fine gravel to enter between the welt and sole, which would penetrate to the outseam and eventually to the inseam, and would result in damage to one or both of those seams, so that one or both would be likely to give way and the shoe come apart.

As to the practical advantages of the heel-burnishing operation, if this were not performed, water and moisture would enter the open pores of the edges of the heel lifts and would penetrate between adjacent lifts, which would cause the lifts to swell, with danger of forcing the top-lift off the heel. When the lifts shrunk or dried the heel would "check", that is, there would be cracks between adjacent lifts which, besides giving the heel an unsightly appearance, would expose it still more to the action of water and moisture, and soon the leather of the heel would rot and its wearing qualities become seriously impaired. It is the practice to burnish heels in one of two ways: either blacking is applied to the heel before the burnishing operation, which, like the blacking applied to the sole edge, as previously stated, contains about twelve per cent of wax; or the heel is first coated with blacking which does not contain wax and then in the burnishing operation clear melted wax is applied to the heel. As the result of a heel-burnishing operation by either of these methods, any cracks in the edge of the heel are filled up and a thin film of moisture-resisting wax is spread over the entire edge of the heel.

The indenting and burnishing machine operates upon a welt in the condition which is illustrated in the shoe which I now produce.

[*Fudge stitched shoe prior to wheeling and burnishing operation is introduced in evidence, and marked "Defendants' Exhibit 201".*]

Mr. WEBSTER. The introduction of the exhibit is objected to as utterly immaterial.

[*Answer to 401 continued:*]

As explained in my previous testimony relating to "Wheeling and Burnishing Machine", an indenting and burnishing machine is used upon shoes which have been fudge stitched, that is, which have had their soles attached by a seam which is sunk in a slit formed in the upper surface of the welt as illustrated in Defendants' Exhibit No. 201. This slit in the welt, if it were not closed

up, would obviously collect water, sand and gravel, which would quickly rot and decompose the outseam. This danger is obviated by the successive use of the wheeling machine and the stitch-burnishing machine. Prior to the operations of those machines the upper surface of the welt is coated with blacking, which is applied to the upper face of the welt at the same time that it is applied to the sole edge, and, as previously explained, that blacking contains about twelve per cent of wax. By the two operations that are then performed upon the upper face of the welt, first a wheeling to form imitation stitch impressions, and secondly the burnishing of those stitch impressions by a rapidly reciprocating tool, the slit in the upper face of the welt is closed and the coating of blacking and wax effectively prevents any water or fine gravel from entering the slit. A further advantage of the wheeling and burnishing operations is that they tend to harden the welt and to crowd it down into firmer and closer contact with the sole, owing to the pressure exerted upon the welt by the wheeling and burnishing tools.

Int. 402. You were asked upon cross-examination, in substance, to explain how the employment of a beading machine adds to the wearing quality of shoes. Will you please consider your answer to this question, and if you desire to make any additions thereto, or corrections therein, will you please do so?

Ans. In my previous testimony I explained that after the upper and lining have been stitched together wrong side out the beading machine is used in the operation of turning the upper and lining right side out and in flattening the seam which unites the upper and lining, and I further stated that if the seam were not properly flattened by the beading machine it would not be as secure and there would be more danger of the seam ripping and the upper and lining coming apart. I should like to add to that answer, that after the upper and lining have been turned right side out and the seam has been hammered and flattened by the beading machine it is the universal practice to stitch the upper and lining together by another seam close to the edge of the lining and upper, the operation of so stitching the lining and upper being known in

the industry as the "second closing". That seam of course adds greatly to the security of the attachment of the upper and lining and insures against their coming apart. It would be entirely impracticable to sew the upper and lining together by this second seam if the first seam, made when the lining and upper were wrong side out, were not properly flattened after they had been turned right side out.

My previous answer was incorrect in the statement that it is the "universal practice" to stitch the upper and lining together wrong side out. Formerly a large majority of shoes, including nearly all women's shoes, were made in that way, but since I made the statement from which I have quoted I have learned that it is now the more common practice to fold the edge of the upper and the edge of the leather "stay piece" which forms the marginal portion of the lining, and then to stitch the upper and lining together right side out. When the upper and lining are sewed together in this manner it is not customary to use the beading machine.

Int. 403. You have been interrogated on cross-examination in regard to the "scouring machine". What operation on the edge of the heel follows that of the scouring machine to make the finished product, and what is the effect of the combined operations of the scouring machine and such later processes, if any, on the durability of the shoe?

Ans. In my answer to the second preceding question I explained how the heel-burnishing operation adds to the durability and contributes to the wearing qualities of the heel. The operation of the heel-scouring machine must be performed before a heel can be burnished. After the operation of heel trimming the shoe is left in the rough condition illustrated in the shoe which I now produce, in which the heel has been trimmed but has not been scoured.

[*Shoe showing heel after heel-trimming operation, and before heel-scouring operation, is introduced in evidence, and marked "Defendants' Exhibit 202".*]

[*Answer to Int. 403 continued:*]

The particular effect of the burnishing operation in protecting the heel from the action of moisture and water would be largely

defeated if the heel were burnished in this condition. I now produce the mate of the shoe of Defendants' Exhibit 202, the heel of which has been scoured and illustrates the smooth condition in which the heel is left after the heel-scouring operation.

[*Shoe with scoured heel is introduced in evidence, and marked "Defendants' Exhibit 203".*]

[*Answer to Int. 403 continued:*]

It will be observed that by the heel-scouring operation all the rough and furry edges in Defendants' Exhibit 202 have been removed and the heel edge is perfectly smooth. The heel of Defendants' Exhibit 203 is in perfect condition to receive the protecting coat of blacking and wax which is applied by the heel-burnishing operation, while the heel of Defendants' Exhibit 202 cannot be properly burnished until it has been scoured.

Int. 404. You have been interrogated in your cross-examination with regard to the introduction of new machines in the shoe manufacturing art, and displacement of former machines and appliances thereby. Please state what difficulties were met with, if any, by the United Company in the introduction of such machines, and what generally, so far as you know, is the difficulty, if any, attendant upon the introduction of new machines in the shoe manufacturing art.

Mr. WEBSTER. The question is objected to because of being general in its scope, not being limited to any particular field, and because it calls for matter in no wise pertinent to the issues involved in this cause, and therefore calls for matter which is immaterial, inadmissible and incompetent.

Ans. Operators who have run machines for years become very familiar with those machines, know exactly what they will do and are able to get from those machines the maximum amount of work of which the machines are capable. When such an operator begins to run a new machine which is radically different in its organization from the old machine he is entirely unaccustomed to the new machine and it frequently takes him a long time to become as familiar with the new machine as he was with the old machine; consequently it often requires a long period before such an operator

becomes sufficiently familiar with the new machine so that he can get from it the amount of work which he was getting from the old machine, and much less the increased output of which the new machine is capable. It often happens that an unskilled operator will learn to run a radically new machine more readily and more quickly than will an old operator who has been accustomed to an old type of machine for doing the same work. Accordingly, considerable opposition has been encountered by the United Company on the part of operators of old machines when the company has attempted to introduce new machines. It is further a fact that shoe manufacturers often partake to some extent of the prejudice of operators, and dislike to make a change in the machines which they are using for fear that such change may intertere with their business. Further, some manufacturers who are using a number of old machines for doing the same work dislike to make any gradual change, but prefer to postpone using any of the new machines until they can change all of the machines for doing that work which they have in their factories.

Mr. WEBSTER. Answer objected to because the same is more in the nature of argument and expression of opinion with reference to matters of which the witness has no personal knowledge, and it is therefore incompetent, inadmissible and immaterial.

Int. 405. You have been interrogated at some length in your cross-examination in regard to the Acme leveler and the Goodyear automatic leveler. Please state the relative amount of skill required upon the part of the operator of an Acme leveler and of a Goodyear automatic leveler, and also state the relative capacity of these machines and how many of each of these machines were put out by the United Company up to March 1, 1913.

Mr. WEBSTER. Question objected to because it does not yet appear that the witness has had any personal experience in operating the machines referred to in the question, and because the question calls for matters occurring since the filing of the bill.

Ans. The automatic leveling machine requires no skill on the part of the operator. The machine is adjusted to impart a predetermined shape to the bottom of the sole of a shoe without any

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interference on the part of the operator. The successful operation of the Acme leveling machine, on the other hand, depends entirely upon the skill and judgment of the operator, because the relative inclination of the leveling roll and the sole in the operation of the roll on every point of the sole is determined manually by the operator, and the extent of the inclination depends entirely upon his skill and judgment. If his skill or judgment fails, the operation will not be performed properly. Accordingly, the automatic leveling machine can be operated by an unskilled workman or by a boy, while the Acme leveling machine requires a skilled workman for its successful operation. The capacity of the automatic leveling machine is about twice that of the Acme leveling machine.

As to the number of each of these machines which have been put out by the United Company up to March 1, 1913, the end of the company's last fiscal year, 1033 of the automatic sole leveling machines have been put out, while prior to that date 145 of the Acme leveling machines had been put out. During the year ending March 1, 1913, nine Acme levelers were supplied to manufacturers, while ninety-eight of the automatic levelers were put into shoe factories.

Mr. WEBSTER. Answer objected to for the reasons given in objecting to the question, and especially all reference to anything occurring after the date of the filing of the bill herein is objected to as utterly incompetent, inadmissible and irrelevant.

Int. 406. You have been cross-examined at some length in regard to the looper heater on the Goodyear welt and turn machine of 1899. Will you please describe the construction of the looper heater of that machine, and state whether or not the decision to which your attention was called on cross-examination alters in any way any opinion which you have expressed with regard to the relation of such construction to the subject-matter of any United States Letters Patent?

Ans. The "heated block or plate" which is an element of the claim of patent No. 561,386, June 2, 1896, French, is in the commercial welt and turn swing machine of 1899 a thin composition casting made of copper and zinc. Accordingly this plate may be

easily bent so that the looper carrier will not, in its movement, be put into actual physical contact with the heated plate. When the plate has been so bent, however, it may easily be bent back into its proper position so that the looper carrier will engage it at each operation of the machine; and, however that may be, a welt and turn sewing machine of the 1899 type which is provided with such a plate is always capable of operating as called for by the claim of the French patent No. 561,386. So far as I can see, the decision of the Circuit Court of Appeals for the First Circuit in United Shoe Machinery Company *v.* Greenman, to which decision my attention was called on cross-examination, has no bearing upon my previous testimony in regard to this French patent No. 561,386. That decision merely held that a construction comprising "a spring support keeping the heated block constantly in contact with the looper carrier throughout the movement of the looper carrier" (146 Fed. Rep., page 760) did not infringe the claim of the French patent in question, which calls for "means to move said carrier to put it in contact intermittingly with the said heated block or plate".

Int. 407. In your cross-examination you were asked in regard to the automatic leveler: "Does the condition of the sole as to hardness or softness have anything to do with the automatic stopping of the portion of the machine which operates on the sole?" Your answer to this question, in view of the two following answers, is not quite clear to me. Will you please explain this matter more fully than you have heretofore done?

Ans. The automatic leveling machine is organized to level the sole of any shoe which it is capable of leveling without manual interference on the part of the operator after the shoe has been presented to the leveling mechanism. It is provided with suitable adjustments for adapting it to operate properly upon a shoe of any size which may be presented to it, and it is also provided with an adjustment for varying the amount of pressure which is applied to the soles through the leveling roll, so that a shoe having a hard, thick sole can be leveled under greater pressure than a shoe having a soft or thin sole. The adjustment of the machine for adapting it to shoes of different sizes is made before the jack carrying the

shoe and presenting it for the operation of the leveling roll is brought by the operator into connection with the mechanism which operates the jack. The adjustment for varying the amount of pressure exerted upon the sole is also usually a preliminary adjustment, as it is not customary for the operator to change that adjustment while the machine is in operation. The operation of the machine on each shoe, however, assuming the machine to be running at a uniform speed, takes place in the same length of time whether the sole of the shoe be hard or soft.

Int. 408. In your present deposition you have referred, both in your direct and cross-examination, to many patents of the United Shoe Machinery Company under which it has made and put out machines. If any of those patents are not directly the property of the United Shoe Machinery Company, name the same.

Ans. In my discussion of blacking machine, model A, crest heel, one of the patents to which I referred as setting forth in its claims the organization of that machine was No. 805,763, November 28, 1905, Tuttle. That patent is owned by the United-Xpedite Finishing Company, a majority of the capital stock of which is owned by the United Shoe Machinery Company. The United Company, further, has a license under that patent.

One of the patents which defines in its claims mechanisms embodied in the flexible insole machine, Gem, is No. 609,110, August 16, 1898, Milner. The United Shoe Machinery Company does not own this patent, but has a license under it.

In discussing the patents which set forth mechanisms embodied in lacing machine, Ensign, I mentioned patent No. 855,969, June 4, 1907, Paine and Winkley. The United Company now has a license under that patent, which will eventually be assigned to the United Company.

Two of the patents which I mentioned as setting forth mechanisms embodied in lasting machine No. 5, U S M C, were No. 1,017,124, February 13, 1912, Winkley and Alley, and No. 1,018,025, February 20, 1912, Winkley and Alley. The United Shoe Machinery Company now owns a half interest in each of these

patents. The other half interest will be assigned to the company in due course.

Two of the patents mentioned by me in connection with leveling machine, Atlas, are No. 818,503, April 24, 1906, Winkley, and No. 818,504, April 24, 1906, Winkley. The United Company is entitled to an assignment of both of these patents under the agreement between Winkley and Phillips and the United Shoe Machinery Company which constitutes Plaintiff's Exhibit No. 77, and is reproduced as an exhibit on page 615 of the record. Formal assignment of these two patents has not as yet been made, but will be effected in due course.

In my discussion of the experimental slugging machine, No. 5, I mentioned patent No. 809,160, January 2, 1906, Wingo. After that machine had been constructed it was found that a mechanical movement embodied in it prima facie infringed that Wingo patent, which was owned by the Brown & Sharpe Manufacturing Company, of Providence, Rhode Island. Accordingly, the United Shoe Machinery Company obtained a license under that patent.

Otherwise than as I have above indicated, all of the patents which have been referred to by me in this deposition as containing claims defining mechanisms embodied in machines made and put out by the United Company are directly owned by that company.

Mr. WEBSTER. All testimony with reference to ownership or title to patents is objected to as secondary, and therefore incompetent, immaterial and inadmissible as showing title in, or rights under, patents, it not having been shown that the instruments conveying title cannot be produced. All reference to the ownership or title of, or rights under, any patents issued after the date of the filing of the petition herein is objected to as incompetent, immaterial and inadmissible as having no bearing on the questions involved in this cause.

Mr. PHILLIPS. So far as at present advised, my redirect examination of this witness is closed.

Cross Examination resumed by Mr. WEBSTER.

Cross-Int. 409. You have testified as to the number of rapid out-sole lockstitch machines put out by the United Shoe Repairing Machine Company. Will you kindly state when that company first began to put out rapid out-sole lockstitch machines with cobblers?

Ans. I have not data at hand which will enable me to answer the question accurately, but I think it was in 1908 or 1909.

Cross-Int. 410. And, as I understand you, the United Shoe Machinery Company never put out the rapid out-sole lockstitch machine among cobblers?

Ans. I did not wish to be so understood, and should explain that prior to the formation of the United Shoe Repairing Machine Company the United Shoe Machinery Company had supplied out-sole stitchers to cobblers, and during the fiscal year ending March 1, 1909, such machines as the United Shoe Machinery Company had previously supplied to cobblers were transferred to the United Shoe Repairing Machine Company.

Cross-Int. 411. So that the number given by you, 961 out-sole stitchers, includes those put out by the United Company and those put out by the United Shoe Repairing Machine Company; am I right?

Ans. Yes, sir.

Cross-Int. 412. Will you kindly state when the United Shoe Machinery Company first put out out-sole stitchers among cobblers?

Ans. I have not data at hand which will enable me to answer that question.

Cross-Int. 413. Will you answer it approximately, or as near as you can at the present time, and at the next session give the exact date?

Ans. I shall be glad to ascertain the exact date, and if agreeable would prefer to defer answering the question until I can answer it accurately.

Cross-Int. 414. Do the out-sole stitchers which have been put out by the United Company and by the repair company among cobblers, or in repair shops, differ in construction from the out-sole

stitcher put out by the United Company among shoe manufacturers?

Mr. PHILLIPS. Question objected to as ambiguous and uncertain.

Cross-Int. 415. State whether during the period the out-sole stitchers were being put out among cobblers the machines differed in construction from the machines then being put out with shoe manufacturers?

Mr. PHILLIPS. Same objection.

Ans. Up to the date of the adoption of lockstitch machine, Goodyear out-sole rapid, model K, which became the standard commercial machine of the United Shoe Machinery Company on May 21, 1910, and which was succeeded in January, 1912, by lockstitch machine, Goodyear out-sole rapid, model M, the same machine was supplied to shoe manufacturers and to cobblers, that is, the Goodyear out-sole lockstitch machine of 1899 as subsequently improved. Since the date of the adoption of the model K lockstitch machine the same machine has been supplied to cobblers as before that date, that is, the machine officially known as lockstitch machine, Goodyear out-sole rapid.

Cross-Int. 416. In other words, as I understand your question, out-sole stitchers were adapted for both manufacturers' use and cobblers' use; am I right?

Ans. Yes, sir.

Cross-Int. 417. Are you willing to state whether the out-sole stitchers that are put out in repair or cobbler shops are put out under a lease or are sold outright?

Mr. PHILLIPS. Objected to as relating to nothing referred to either in the direct or redirect examination of this witness, and the witness is instructed that he is not called upon to answer the question unless ordered to do so by the court.

Ans. In view of advice of counsel, I decline to answer the question.

Cross-Int. 418. In your redirect testimony you referred to the case of United Shoe Machinery Company *v.* Greenman, reported in 146 Fed. Rep., page 759, this being a cause in which the interpretation of the claim of patent to French, sewing machine, dated

January 2, 1896, patent No. 561,386, was involved; and I now ask you whether in reaching your conclusion as to the meaning of the claim of that patent you took into consideration the matter quoted by the court, the same being, as I understand it, an extract from the file-wrapper and contents of said patent, which matter, following the remark by the court "Upon appeal to the examiners in chief, it was urged by the complainant", reads as follows: —

"The prime requisite definitely made vital in the above issue is: There must be a heated block or plate and a looper-carrier, and the looper-carrier must move into, and out of, direct contact (*i. e.* touching engagement) with the block or plate, and the looper-carrier must be properly and continuously heated by this intermittent contact with said heated block or plate. . . ."

"The examiner does not base his rejection on any anticipatory device, but rejects it on the general state of the art, the said art being shown in nine patents, five of which are discussed in the examiner's statement. . . ."

"A review of these nine patents of record shows that there is no suggestion of heating any part by 'intermittent contact' thereof with a heated block. . . ."

"Again, each reference either has the heating means in constant contact with the part to be heated (as in Aldrich (2), Ashe, Garton), or it never at any time has the heating means in contact with the part to be heated (as in Wardwell (W14), 262,160, and Brown (D) 498,505). . . ."

"What is claimed is 'intermittent contact', and this only, and this is precisely what is shown and what is novel."

Mr. PHILLIPS. Question objected to as a mere repetition of cross-interrogatory, not relating to any new matter touched upon by the witness in his redirect examination.

Ans. Yes, sir.

Cross-Int. 419. Then do you mean that the word "contact" in the claim of the patent referred to has no meaning?

Mr. PHILLIPS. Same objection.

Ans. No, sir, I don't mean that.

Cross-Int. 420. Does it not mean "touching engagement"?

Mr. PHILLIPS. The same objection, and further objected to because the meaning of the word, in view of the decision referred to, is obviously purely a question of law.

Ans. I prefer to adopt the conclusion of the court that in view of the Patent Office proceedings it means "an intermittent contact as distinguished from a constant contact".

Cross-Int. 421. Well, if the heater plate and looper carrier are not brought in actual physical contact intermittingly, is the mechanism such as is referred to in the claim under discussion?

Mr. PHILLIPS. Question objected to as vague and indefinite, it not appearing what mechanism counsel for the Government has in mind, and the witness not being called upon to speculate as to hypothetical structures.

Ans. I adhere to the opinion which I have expressed in my previous testimony, that the claim of patent No. 561,386 would accurately describe an organization in which the looper carrier was intermittingly moved to a position sufficiently near the heated block or plate so that the looper carrier was heated by that block or plate. Undoubtedly the claim under discussion calls for an organization providing for intermitting movement of the looper carrier toward, and away from, the heated block or plate.

Cross-Int. 422. Is it not a fact that a very much more efficient result is attained in the mechanism under discussion when the heater block or plate comes in actual physical contact intermittingly with the looper carrier than when the parts are only to a position where the plate and carrier are near enough to heat the looper carrier and without being in actual contact?

Mr. PHILLIPS. Same objection.

Ans. The measure of the efficiency of the combination called for by the claims of the French patent is the imparting of a sufficient heat to the looper to prevent chilling the wax on the thread as the thread passes through the looper. If that result is secured, the maximum of efficiency is attained and nothing can be gained by imparting more heat.

Cross-Int. 423. Your answer does not seem quite clear to me, and I will put it in this way: whether actual physical contact intermittingly between the heated block or plate and the looper carrier is necessary for attaining the desired result?

Mr. PHILLIPS. Question objected to as based upon a hypothetical structure which the witness has had no opportunity to examine.

Ans. I think not in all cases. For example, on a cold winter day, when a factory was well heated and the steam under considerable pressure, an operator might very likely find that he would secure better results if the loop carrier did not quite touch the heated plate and he might accordingly find it advisable to bend the heated plate slightly so that the looper carrier would not quite touch it.

Cross-Int. 424. In your redirect examination you have made reference to "modern machines". Will you kindly state just what you mean by the term "modern machines"?

Ans. I mean, as they have been constantly and continuously improved during recent years, that improvement in respect to some machines dating back prior to the formation of the United Shoe Machinery Company. The term "modern machines" must, in view of the rapid development of the industry, be a relative term. Strictly, it means something different today from what it meant a year ago today, and as used a year ago today it would mean something different from what it would have meant if used as of conditions two years ago today.

Cross-Int. 425. Then in your testimony you did not use the term "modern machines" with any well defined meaning, did you?

Ans. Yes, sir.

Cross-Int. 426. I observe in your redirect testimony you say that at present shoes are less expensive than heretofore. Will you kindly point out what particular class of shoes are less expensive than they were a year or two years ago?

Ans. I believe that at no time in my testimony have I compared prices of shoes today with prices of shoes a year or two ago.

Cross-Int. 427. And is that the best answer you can make to the question?

Ans. I can add that I stated that shoes made by modern machines are much less expensive than shoes would be if made by hand processes.

[*Adjourned to 10 A. M., Friday, November 7, 1913.*]

BOSTON, MASS., November 7, 1913.

Cross-Int. 428. If you now have the data with reference to out-sole stitchers put out by the United Shoe Machinery Company among cobblers, as to the number put out by that company and the date when they were first put out, will you kindly spread it on the record?

Ans. The first Goodyear out-sole rapid lockstitch machine supplied by the United Shoe Machinery Company to a cobbler was shipped on February 18, 1899. Up to the time that the business with cobblers was taken over by the United Shoe Repairing Machine Company, in 1908, the United Company had supplied 292 of these machines to cobblers.

Cross-Int. 429. You say in your direct examination that the "extensive introduction of American shoes into foreign markets, particularly in the English market, is largely due to their neater appearance". Please state your authority for that statement.

Ans. It is common knowledge in the industry.

Cross-Int. 430. Where did you get your information?

Ans. I suppose I have been absorbing this information for years from actual contact with manufacturers and machinery men, from trade papers and from consular reports.

Cross-Int. 431. And do you say that shoes, especially welt shoes, as made now in England are not as neat in appearance as similar kinds of shoes made in the United States?

Ans. In view of the acknowledged superiority of American made shoes in respect to their style and appearance, English manufacturers have been striving for years to improve the style and appearance of their shoes, and at the present day there is by no means as great difference between the appearance of an American made shoe and an English made shoe as there was several years ago.

Cross-Int. 432. Is it not a fact that the English manufacturers have, for a considerable number of years, had the same kinds of machines furnished them by the United Company, or some company manufacturing the same machines, that the manufacturers of shoes have had in the United States?

Ans. English manufacturers have used some, but not all, of the machines which manufacturers in the United States use in the manufacture of shoes.

Cross-Int. 433. Could not English manufacturers have the various machines referred to by you for heel burnishing, blacking, edge setting, wheeling, etc., if they desired to use them?

Ans. Yes, sir; they could have had them if they had desired to use them.

Cross-Int. 434. I am endeavoring to fully appreciate the awful condition of things and the danger of shoes coming apart and water and gravel becoming lodged in the edges of the soles and the heels if the machine referred to for treating the edges of heels and the edges of soles were not employed, and I would like you to state whether it is not a fact that all of the various operations referred to by you, relating to the treatment of the edges of soles and the surfaces of heels, in your redirect examination cannot be performed by machines other than the machines furnished by the United Company.

Mr. PHILLIPS. Question objected to as referring to nothing touched upon in the direct examination of this witness, and as being argumentative and utterly immaterial to any issue before this examiner.

Mr. WEBSTER. Counsel for the petitioner respectfully calls attention to the phraseology of the witness found on page 2976 of the typewritten record [printed page 2772], as follows:—

"This would allow water and fine gravel to enter between the welt and sole, which would penetrate to the outseam and eventually to the inseam, and would result in damage to one or both of these seams, so that one or both would be likely to give way and the shoe come apart."

Counsel also calls attention to the frequent reference by the witness to the collection of water, sand and gravel which would quickly rot and decompose the outseam, to avoid which danger the witness certainly seems to say that the employment of wheeling machines, burnishing machines and polishing machines seems to be necessary.

Mr. PHILLIPS. Does the witness anywhere in redirect examina-

tion say that the operations of burnishing and edge setting cannot be performed by hand, or that they require any machines for their proper performance?

Mr. WEBSTER. Counsel states that he believes it does appear in the record that the witness states that all these things could be performed by hand, but the question now propounded is whether the same operations could be performed by machinery other than the machinery of the United Company.

Mr. PHILLIPS. With that understanding, the question is objected to as being improper cross-examination.

Ans. Machines for burnishing heels, machines for burnishing the edges of soles known as "edge setting" machines, and machines for wheeling and burnishing the upper face of the welt are offered to shoe manufacturers by other machinery concerns, in addition to those which are offered by the United Shoe Machinery Company.

Cross-Int. 435. *De bene*, and without waiving objections heretofore made, in your redirect examination you state that opposition was encountered by operators and manufacturers to the introduction of new machines, and that they disliked to make changes in machines they were using. Kindly state what means were employed to bring about the changes desired by the United Company and objected to by operatives and manufacturers.

Mr. PHILLIPS. Question objected to as containing assumptions unwarranted by the record and as being improper cross-examination.

Ans. I have made no reference to "changes desired by the United Company", although, perhaps, I should add to this statement that it is the fixed policy of the company to offer to manufacturers the best machines which can be produced for use in the manufacture of shoes. As a matter of fact, and as I have pointed out repeatedly in my previous testimony in regard to new machines, the facilities of the United Company's manufacturing plant have always been taxed to the limit in building new machines as they have been introduced from time to time, and in the case of every machine the company has always been seriously embarrassed in

supplying the urgent orders of manufacturers, and in each such case has been a long way behind its orders for years after the machines were first introduced. It is undoubtedly fortunate, from the standpoint of the United Company, that all manufacturers do not wish to change their machines immediately upon the introduction of a new and improved machine, as the company's manufacturing facilities would not be adequate to change all machines immediately.

Mr. WEBSTER. Answer is objected to as evasive and non-responsive.

Cross-Int. 436. I observe that you state in your last answer that "it is the fixed policy of the company to offer to manufacturers the best machines which can be produced for use in the manufacture of shoes". Do you mean by that portion of your answer that the United Shoe Machinery Company is the only concern in existence that can furnish "best machines" for the manufacture of shoes?

Mr. PHILLIPS. Question objected to as having no bearing on any matter introduced in the redirect testimony of this witness, or in his direct testimony, and as having no bearing on any issue triable before this examiner, which issue relates purely to patents owned and controlled by the United Company.

Mr. WEBSTER. Counsel for the petitioner respectfully calls the attention of the court to the statement voluntarily inserted in the record by the witness and quoted in the foregoing interrogatory.

Mr. PHILLIPS. Counsel instructs the witness that he is under no obligation to answer any question with regard to what other companies can do, unless so instructed by the court.

Ans. Under advice of counsel, I decline to answer the question, but I should like to state that the statement made by me in my preceding answer, and quoted in this question, was made in the course of my explanation that my testimony had been improperly quoted in the preceding question.

Mr. WEBSTER. In view of the attitude of the witness in declining to answer various cross-interrogatories propounded to him in the taking of his deposition, counsel for petitioner states that he

does not care to proceed further with the cross-examination until the question as to whether the witness shall be required by the court to answer the various questions he has declined to answer has been decided, and states that he is now waiting for instructions from his superior to determine what method of procedure to take to bring the matter to the attention of the court.

NELSON W. HOWARD.

Attest: CHARLES K. DARLING, *Special Examiner.*

[*Adjourned to 10 o'clock* A.M., *Wednesday, November 12, 1913.*]

EVIDENCE FOR THE UNITED STATES IN REPLY.

TAKEN PURSUANT TO ORDER OF COURT, ENTERED JUNE 27, 1913, BEFORE ME,

CHARLES K. DARLING,
Special Examiner.

BOSTON, MASS., November 12, 1913.

Present: ALLEN WEBSTER, Esq., *Special Assistant to the Attorney General, of Counsel for Complainant;*
BENJAMIN PHILLIPS, Esq., *of Counsel for Defendant.*

DEPOSITION OF CHARLES McCORMICK CHAPMAN.

Direct Examination by ALLEN WEBSTER, Esq., *of Counsel for Complainant.*

Int. 1. Are you the same Charles McCormick Chapman who has heretofore testified in this case?

Ans. I am.

Int. 2. The defendant the United Company has offered evidence in the effort or tending to show that a large number of machines were, in the commercial manufacture of shoes, essential (prior to the date of the filing of the bill herein) in the bottoming of shoes by machinery in accordance with the so-called Goodyear process. Have you studied the art of bottoming shoes by machinery sufficiently to enable you to testify what machines were, prior to said date, essential or necessary for the bottoming of welt shoes in the commercial manufacture of shoes by machinery under the Goodyear process. And, if you answer yes, state what machines were so necessary or essential.

Mr. PHILLIPS. Questions objected to as improper rebuttal, and because the witness has not qualified to express an opinion in this matter.

Ans. I have studied the art relating to the bottoming of shoes according to the so-called Goodyear process, and as a result of my

study and research am able to state that there are but two absolutely essential or indispensable machines necessary to the production of a Goodyear welt and turn shoe made in accordance with the so-called Goodyear process. Those machines are the machine which is familiarly known as welt and turn machine and out-sole rapid stitcher.

Int. 3. Now, referring to the machine designated as welt and turn machine, Mr. Howard has testified, among other things, that the welt and turn machine constructed like the welt and turn machine No. 228 at the Whitman factory, and which type of machine has been designated in the record by common consent as welt and turn machine of 1899, was constructed and operated as set forth in the following patents: —

Patent No. 412,704, October 8, 1889, French and Meyer.
Patent No. 488,505, December 20, 1892, LaChapelle.
Patent No. 518,911, April 24, 1894, Briggs.
Patent No. 561,386, June 2, 1896, French.
Patent No. 495,452, April 11, 1893, Cole.
Patent No. 317,759, May 12, 1885, French.
Patent No. 732,729, July 7, 1903, French and Meyer.
Patent No. 461,793, October 20, 1891, Briggs.

Have you examined the above noted patents; do you understand the same; have you compared the same with the welt and turn machine referred to, and can you state which of said patents might properly be termed basic?

Mr. PHILLIPS. Question objected to as improper rebuttal, because it relates to no matter touched upon by the defendants in any testimony submitted by them in their defence. And it is further objected to as calling for a special opinion on the part of this witness on a matter which is purely a matter to be determined by the court.

Ans. I have examined the said patents, some of them being patents to which I referred in my previous testimony, and I have made a comparison of said patents with the said machine. There are but two of the several patents mentioned which I would term basic, viz., the patent to French and Meyer No. 412,704, October

8, 1889, which is referred to and covers a shoe-sewing machine; and the patent to Briggs, method of forming chain stitches, No. 461,793, October 20, 1891, the said method being exemplified in the operation of the said French and Meyer patent 412,704.

Mr. PHILLIPS. Answer objected to as incompetent and immaterial.

Int. 4. State your reasons for reaching your conclusion that the two patents mentioned by you in your answer are the only ones of the group that may properly be termed basic; that is, explain why the others may not also be termed basic.

Mr. PHILLIPS. Question objected to as improper rebuttal, as entirely without the terms of the order under which issues were submitted to this examiner, as leading, inadmissible, incompetent and immaterial, because the word "basic" has no recognized or accepted meaning with reference to the subject-matter.

Ans. The two patents referred to by me, viz., French and Meyer No. 412,704 and Briggs No. 461,793, are basic because the first one refers to the fundamental organization of a welt and turn machine, and the second, because the so-called method thereof exemplifies the fundamental mode of operation of the machine covered by the first patent. The remaining patents referred to by Mr. Howard, instead of being basic or running to the fundamental organization of such machine, relate to and cover by claim mere details of construction, the majority of which may or may not be used in the basic machine, and consequently do not affect the operation of the fundamental structure of said basic machine.

Referring particularly to the patent to French No. 317,759, there is a construction shown and described which relates to needle guide and actuating mechanism, welt guide and actuating mechanism, and a so-called sticker bar and actuating mechanism. With reference to the latter structure, although I have examined a number of welt and turn machines I have never seen the same embodied therein.

Referring to the LaChapelle patent No. 488,505, it will be seen that the same relates to a tension and brake mechanism whereby when the machine is brought to a certain position, determined by a

feature of the driving shaft, the tension may be altered or released. This is a detail which may or may not be used and has no reference to the fundamental organization of the welt and turn machine.

The patent to Cole No. 495,452 refers to a combination of elements including a wax pot, stripper for the thread, and a tension so associated as to produce certain results; also a means whereby the tension may be released and applied according to certain predetermined requirements. These mechanisms may or may not be used in the fundamental machine, and, while under some conditions may be desirable, do not run to the fundamental organization.

The patent to Briggs No. 518,911 has reference to a take-up mechanism including main and auxiliary devices for operating upon the thread during certain periods of the stitch formation. While primarily this take-up mechanism may be effective and in some sense desirable in the machine, its effectiveness is more or less overcome by after conditions of the machine in which it is used, owing to the fact that operation of the auxiliary take-up is impeded, due to clogging of the parts by the wax used on the thread of the machine. In fact, I have seen one or more machines in which this auxiliary take-up was practically out of commission, due to the condition just described by me.

The patent to French No. 561,386 has reference to a heating plate arranged in juxtaposition to the looper or looper carrier and particularly covers a construction wherein the looper carrier is caused to intermittingly contact with the plate or heater block. This particular construction is a non-essential in the machine covered by the basic patent, owing to the fact that intermittent contact between the heating plate and the looper carrier is unnecessary. Furthermore, I have seen machines originally equipped with this heating plate and arranged in juxtaposition to the looper carrier devoid of such plate either because it had been physically removed by the operator, or partially devoid of the plate by reason of the fact that the operator had smashed a portion of it off with a hammer or other implement. The reason for this is that in the machine to which it was applied the heating plate or block was found to be in the way and to be an impediment to the operative in get-

ting at certain parts for the purpose of setting or resetting the same. Furthermore, it has been found that the heating system otherwise applied to the machine, and more or less encompassing the same and applied to the vital parts thereof, is amply sufficient for all the purposes in the machine during its operation.

The patent to French and Meyer No. 732,729 has reference to a thread-waxing device which may or may not be used on the machine, or any machine, and the claims of this patent run to details of construction which clearly are not necessary to the fundamental organization or basic structure of the machine covered by French and Meyer patent No. 412,704.

Mr. PHILLIPS. The answer is further objected to as being argumentative, because of lack of qualification of the witness to express any opinion in the matter in regard to which he assumes to testify.

Int. 5. Are the mechanisms referred to in the claims of the several patents to which you have made reference necessary to the successful commercial operation of the machine described in the patent termed by you basic, namely, No. 412,704?

Mr. PHILLIPS. Question objected to, first, because it is improper rebuttal; second, it is utterly without the terms of the order; third, it is leading, inadmissible, incompetent, immaterial, because the word "basic" has no recognized or accepted meaning with reference to the subject-matter; and, further, because if of any possible materiality it relates to matter to be decided by the court and not testified to by the witness, and because the witness is entirely unqualified to express any opinion as to the matters referred to in the interrogatory.

Ans. They are not.

Int. 6. Referring now to rapid out-sole stitchers, it appears from the testimony offered by the defendant the United Company that the machine designated in the record by common consent as the rapid out-sole stitcher of 1899 was constructed in accordance with patents No. 473,870, April 26, 1892, French and Meyer, and No. 474,774, May 10, 1892, French and Meyer, and in connection with such testimony various patents were introduced and testimony in reference to the same submitted. Will you kindly examine said

two patents referred to in the question in connection with the other patents introduced by the defendants (excluding, however, all reference to any patent issued after December 12, 1911), and state whether the two patents referred to in the question might properly be considered basic as compared with said machine, and as compared with the other patents introduced (exclusive of those issued after the filing of the bill herein), and give your reasons for such statement as you may make?

Mr. PHILLIPS. Question objected to, first, because it is improper rebuttal; second, it is utterly without the terms of the order; third, it is leading, inadmissible, incompetent, immaterial, because the word "basic" has no recognized or accepted meaning with reference to the subject-matter; and, further, because if of any possible materiality it relates to matter to be decided by the court and not testified to by the witness, and because the witness is entirely unqualified to express any opinion as to the matters referred to in the interrogatory.

Ans. The patents No. 473,870, French and Meyer, and 474,774, French and Meyer, are patents to which I have referred in my previous testimony and are respectively Plaintiff's Exhibits No. 212 and No. 210. The first patent, No. 473,870, comparatively speaking, is basic to the present day rapid stitcher. The patent No. 474,774 runs to a detail of construction or mechanism illustrated in the other patent, but not claimed therein in its details. The latter patent structure may be said to be a part of the former patent structure.

Since the testimony of Mr. Howard closed it has been a physical and mental impossibility for me or for counsel to go into the various patents with a view to determining their bearing on the questions at issue, but I will answer the remaining portion of the question to the best of my ability and will refer in order to the other patents which I understand were referred to by Mr. Howard. I may say, however, that I am more or less familiar with a number of these patents and the structures comprehended therein, and many of them have a very familiar appearance, since while I was in the

Patent Office I frequently had cause to examine the same and determine their structure and scope.

Referring, first, to the patent to Hadaway, reissue No. 11,578, reissued December 8, 1896 (original patent No. 549,124, November 5, 1895), which covers a welt-beveling attachment for sole-sewing machines, the combination of elements going to make up the organization of the patent structure, while probably convenient, is not essential to the fundamental organization of the rapid stitcher of patent No. 473,870.

The patent to Smith No. 553,139, January 14, 1896, has reference to details of improvement of a lockstitch machine, and while some of the claimed features might be useful in the rapid stitcher of the patent No. 473,870, provided they could be applied thereto, they are not by any means essential to said rapid stitcher.

The patent to French and Meyer, July 7, 1896, No. 563,471, has reference to a guiding mechanism which is not essential to the rapid stitcher of the patent No. 473,870, and has reference really to a means by which a certain form or shape of sole may be used as a controller in the proper location of the stitches in securing the sole to the welt. This is known in the art as the Baltimore or Scotch edge and the mechanism is more in the nature of a special attachment to machines of the rapid stitcher type.

The same is true of the French and Meyer patent, July 7, 1896, No. 563,472, and also of the patent to Shriner et al., May 11, 1896, No. 582,510.

It might be convenient at this point to refer to Defendants' Exhibit No. 109 as illustrating the Scotch edge or Baltimore type of shoe in contradistinction to such a shoe as is illustrated in Plaintiff's Exhibit No. 261.

The patent to Rush, January 16, 1900, No. 641,330, has reference to needle-lubricating device for sewing machines and is applicable to practically any sewing machine of the curved needle type and is not essential to the rapid stitcher of the patent No. 473,870.

The patent to Meloon, June 4, 1901, No. 675,783, granted on an application filed October 19, 1893, forfeited and then renewed November 22, 1899, has reference to a guiding mechanism similar

to those just referred to by me in connection with the Scotch edge shoe, and belongs in the same category with said two patents mentioned.

The patent to Hadaway, July 8, 1902, No. 704,457, has reference to a welt-beveling mechanism for shoe-sewing machines and runs particularly to means for throwing the welt-beveling mechanism into and out of operation during the operation of the machine. Such a structure, device or mechanism is not essential to the rapid stitcher of patent 473,870, although it may be convenient from a commercial standpoint.

The patent to Hadaway, July 8, 1902, No. 704,458, also refers to a welt-beveling mechanism for shoe-sewing machines and is combined with an edge gage and falls in the category with the patent last mentioned.

The patent to Richardson, October 7, 1902, No. 710,612, has reference to a different type of machine from that illustrated in the patent 473,870, and while it is conceivable that some of the claimed structure might be applied to the machine of the said rapid stitcher, such mechanism is by no means essential to the rapid stitcher structure of the said patent 473,870.

The patent to Richardson, October 7, 1902, No. 710,613, has reference to the same type of machine illustrated in the last patent mentioned and is different in type and structure from the French et al. patent structure No. 473,870. My statements relative to the last mentioned Richardson patent apply in like manner to this patent now under discussion.

The French and Meyer patent, July 7, 1903, No. 732,729, for thread-waxing device for sewing machines, is the one which I have considered in connection with the previous question relating to the welt and turn machine and, as before stated in connection with that machine, the structure of this patent is not essential to either that machine or to the rapid stitcher of the patent No. 473,870, since it has reference to a wax pot and holding and heating means for the wax.

The patent to Haradon, October 13, 1908, No. 900,925, for welt-channeling attachment for sole-sewing machines, covers a detail of

construction relative to mounting the channeling knife in combination with the stitch-forming devices of said machine and is not essential to the rapid stitcher of the patent 473,870.

The patent to Bayard, December 8, 1908, No. 906,092, has reference to a so-called apron and may or may not be used according to desire in connection with the machine of patent No. 473,870. It is by no means essential to the structure of the latter machine.

The patent to Hadaway, May 25, 1909, No. 922,696, has reference to a detail of construction running to a needle-lubricating device. It may or may not be used in the machine of the rapid stitcher type and is not essential to the latter.

The patent to Alley, August 3, 1909, No. 930,115, covers a thread-waxing device and is applicable to various types of machines, may be convenient therein, but is not essential to such a machine as that covered by the patent 473,870.

The patent to Plant, November 16, 1909, No. 940,055, has reference to a particular form of work support and guard in combination therewith, and is not at all essential to the machine of patent No. 473,870.

The patent to Plant, November 23, 1909, No. 940,723, runs to a channeling device for sewing machines, and the details of construction of said device are by no means essential to the rapid stitcher of patent 473,870.

The patent to Plant, November 23, 1909, No. 940,725, has reference to details of construction in a machine for stitching soles, while convenient and possibly desirable, are not essential to the rapid stitcher of patent 473,870.

The patent to Arnold, January 18, 1910, No. 946,591, has reference to details of construction running to the channeling knife and its arrangement with reference to the stitch-forming mechanism and welt-guiding device, and is not essential to the rapid stitcher of patent 473,870.

The patent to Hadaway, July 12, 1910, No. 963,761, refers to a mechanism for channeling the welt to receive the stitches and has reference to nothing which is absolutely essential to the rapid stitcher of patent No. 473,870.

The patent to Thayer, November 1, 1910, No. 974,309, relates to a tension device of a shuttle of lockstitch machines. This structure can be used with only certain types of shuttles used in lockstitch machines and is not essential to the rapid stitcher of patent 473,870.

The patent to Dow, November 1, 1910, No. 974,757, has reference to the same type of device as the last preceding patent, and the same remarks apply to it.

Int. 7. Are the structures or mechanism of any of the claims of any of the patents referred to by you in your last answer necessary to the successful operation of the rapid out-sole lockstitch machine of patent No. 473,870 in the commercial operation of that machine in attaching welts and out-soles in the manufacture of shoes by machinery?

Mr. PHILLIPS. The question is objected to as improper on rebuttal, referring to no matter referred to by the defendants submitting testimony before this examiner. It is further objected to as being leading and incompetent, relating to no matter at issue before the examiner, and, further, because of the utter lack of qualification on the part of the witness to express any opinion on these matters.

Ans. I cannot answer that question with reference to all the claims of all the patents referred to, for the reason that I have been unable to go through the patents in detail sufficiently to give a comprehensive answer. In making my last answer, however, I read and had in mind the structures of certain of the claims of all the patents, and in connection with my prior familiarity with a number of the patents and the structures covered thereby I can state that there is no claimed structure, so far as I have been able to determine, or so far as I know anything of the patents, which is referred to which is absolutely essential or necessary to the structure of the rapid stitcher of the patent No. 473,870.

Int. 8. I neglected in interrogating you with reference to the patents relating to welt and turn machine of 1899 to call your attention to the testimony of Mr. Howard with reference to the Briggs patent, October 20, 1891, No. 461,793, and I will now ask you whether you agree or disagree with Mr. Howard in his statement

with reference to the Briggs patent in comparing the same with the patent to Stickel No. 296,284, dated April 1, 1884, and give your reasons for the same?

Mr. PHILLIPS. Objected to as immaterial to any matter before this examiner in the trial of this cause.

Ans. I have read over hastily, in the very short time allotted to me since the close of Mr. Howard's testimony, that portion of his testimony relating to the Briggs method, the Stickel anticipation as alleged by me, and my construction of the said Stickel patents.

I do not agree with Mr. Howard in his exposition of the Stickel patent and the method of operation disclosed therein with reference to the hand implement thereof, and my disagreement is based upon two general propositions,—the first being that Mr. Howard has clearly misinterpreted the Stickel patent and the mode of operation of the implement covered thereby, and the second being that I have made a practical demonstrattion of the mode of operation of the Stickel instrument in making chain-stitches. In fact, I have used the implement made strictly in accordance with the Stickel patent, have made chain-stitches on a piece of work identical with that of the Briggs patent, and have verified in every particular all statements made by me in my previous testimony.

In order to clearly demonstrate the mode of operation described by the patent to Stickel and make a comparison thereof with the Briggs method as described in the patent No. 461,973, I have prepared a sheet of drawings which I here produce illustrating the precise character of work shown in Figs. 8, 9 and 10 of the said Briggs patent, excepting only the welt, which in that patent is indicated by the reference character *d*.

[*For convenience the sheet of drawing produced by the witness is put in evidence at this point, and marked "Plaintiff's Exhibit 263".*]

Mr. PHILLIPS. The introduction of this exhibit is objected to on behalf of the defendants, it being entirely immaterial to any issue triable before this examiner.

[*Ans. to Int. 8 continued:*]

In this sheet of drawings which I have produced I have illustrated five important positions of the Stickel implement during the

process of making a plurality of chain-stitches in accordance with the Briggs method. As before stated, I have omitted the welt because I found in manipulating the instrument with the shoe placed on a jack it was difficult for me to hold the welt while operating the implement and passing it through the several stitches illustrated by the five figures of the Exhibit No. 263.

It should be noted in passing that Figs. 1 to 7 of the Briggs method patent correspond in point of material substantially with the material or work shown in the Stickel patent, and that the figures of Plaintiff's Exhibit 263 have been made to correspond with Figs. 8, 9 and 10 of the Briggs patent and to show the last, the sole with its channel and lip upturned, the upper and a piece of lining which is usual in making shoes, the lining, however, being omitted from the Briggs drawings. In the figures of Exhibit No. 263 the "between substance" is indicated by words, while in the Briggs patent it is indicated by the reference character *e*.

Now, by comparing the figures of drawings of the Stickel patent with the figures of drawings of Plaintiff's Exhibit 263, and the three Figs. 8, 9 and 10 of the Briggs patent, the following will be apparent: —

Assuming that a plurality of chain-stitches have been made as shown in Fig. 1 of the exhibit, in Fig. 9 of the Briggs patent and in Fig. 7 of the Stickel patent, and that a loop has been drawn through from the channel side of the sole and down through a preceding loop of the finished chain-stitches, we have the implement of the Stickel patent in the position shown in "No. 7" and the position of Fig. 9 in the Briggs patent. Now, by moving the needle laterally the loop on the hook thereof is moved laterally and a new position is located for the penetration of the needle to pass through the upper, and first a welt, if a welt be used as in the Briggs patent, and then through the between substance and into the channel of the sole. In doing so the needle passes from the position of "No. . Stickel patent to the position of "No. 4" and into the position of Fig. 2 of the Exhibit 263, and the position of Fig. 10 of the Briggs patent. At this point the preceding loop indicated by *s* in the exhibit and in the Stickel patent and by *h* in the Briggs

patent is drawn down tightly about the shank of the needle by tension applied to the thread in the direction of the arrow indicated by the numeral 10, Fig. 10, Briggs patent, by the arrow at *z* of the Exhibit 263, Fig. 2, and the extreme end of the thread at "No. 4" position of the Stickel patent, this end of the thread in the other figures, "No. 5", "No. 6" and "7", being indicated by *z*.

[*Answer suspended.*]

Mr. WEBSTER. Counsel for the United States states that, in view of the vast number of patents introduced by the defendants and the utter impossibility of examining the same and preparing to proceed in the limited time given, it is desirable that an adjournment be now taken until the 14th instant to enable counsel and the expert to examine the patents as far as possible during the interval.

[*Hearing adjourned to 10 o'clock* A. M., *Friday, November 14, 1913.*]

BOSTON, MASS., November 14, 1913.

[*Answer to Int. 8 continued:*]

In this position of the parts the preceding loop which has been drawn taut about the shank of the needle is also drawn snugly against the face of the work. It will also be clear that the precise direction of strain or tension upon the thread is not of the essence of the Briggs method, nor of the operation of the Stickel implement. However, such tension or direction of pull for the purpose of drawing the preceding loop or first loop against the surface of the work and around the shank of the needle may be such as will necessarily bring about the result required and, at the same time, or in direct sequence therewith, the thread may be wrapped about the holder *d* of the Stickel instrument and then about the needle thereof so as to place the thread in the hook of said needle and thereby form the second loop indicated by S' in Fig. 3 of Plaintiff's Exhibit (drawing) 263, and in "No. 5" position of the Stickel patent, the corresponding position in the Briggs patent being illustrated in Fig. 8 of the drawings thereof. The implement will now be retracted, referring to Plaintiff's Exhibit (drawing) No. 263, in the direction of the arrow 3, Fig. 4, the thread being held under tension at Z while the instrument is being withdrawn. A corre-

sponding position in the Stickel patent is shown in the "No. 6" position. There is, however, no corresponding position in the Briggs patent drawings.

During the retracting movement of the implement as just described the second loop S' is gradually drawn into the between substance through the lining and the upper and into the position of Fig. 5, Plaintiff's Exhibit (drawing) No. 263, preparatory to the lateral movement of the instrument to assume the position of that figure. This operation results in drawing in the second loop of thread S' of the Stickel patent into the position of No. 7 of that patent, a corresponding position being shown in the Briggs patent at Fig. 9. The thread, during this operation, is, of course, under more or less tension at the point Z, Plaintiff's Exhibit (drawing) No. 263 and Stickel patent, and the result is that the second loop S' is also drawn through the preceding loop S preparatory to shifting the instrument laterally to locate another needle-penetrating position, this latter position being shown in Fig. 5 as well as in Fig. 1 of Plaintiff's Exhibit (drawing) No. 263 and the "No. 7" position of the Stickel patent. In carrying out this method with the implement upon work precisely as illustrated in Plaintiff's Exhibit (drawing) No. 263, I used both unwaxed and waxed thread. Waxed thread being the usual condition in sewing shoes, I used that more frequently, and in each instance found that it was a physical impossibility for the thread at any stage in the manipulation of the instrument to reeve or slide in the hook of the needle. In using unwaxed thread more tension was required at the point Z during the manipulation of the instrument to prevent reeving, but reeving was prevented by the proper manipulation of the thread at all points in the manipulation of the instrument.

Now, with reference to Plaintiff's Exhibit (drawing) No. 263, and in order to nail the Stickel mode of operation fast to the Briggs method, I will read the latter upon said Exhibit No. 263, wherein according to the first step of the Briggs method the loop S, Fig. 1 of the exhibit, has been drawn through the material or a hole therein to the position shown in said figure. The next step is "inserting an instrument through the loop and holding the instru-

ment in a second hole in the materials at the point desired for the next stitch". This is illustrated in both Figs. 1 and 2 of the exhibit drawing wherein the instrument holds the loop S by its hook and in the Fig. 2 position the instrument is inserted and held in a second hole in the materials at the point desired for the next stitch. The next step of the method is "drawing on the supply end of the thread, thus drawing the loop that is now around the instrument against the materials". This step is illustrated by both Figs. 2 and 3 of the exhibit drawing, wherein, first, the tension is applied at the point Z to the thread, Fig. 2, to draw the loop S about the shank of the needle and snugly against the face of the work and, at the same time or by a continuous operation, the second loop S' is formed as shown in Fig. 3. The next step is "forming another loop from the supply thread on the opposite side of the materials", this step being, as before stated, illustrated in Fig. 3, wherein, by the succeeding or continuous operation of drawing in the preceding loop S, the succeeding loop S' is thrown about the holder *d* and into the hook of the needle. The next step of the method is "removing the instrument from the second hole in the materials and from the drawn down loop, and passing the second loop made from the supply thread through the second hole in the materials and through the drawn down loop". Each of these steps, as you choose, is illustrated in Figs. 4 and 5 of the exhibit drawing No. 263, wherein the second loop S' is being drawn into the materials and while the needle or instrument is being removed from the second hole in the materials, and the subsequent portion of this step is shown in Fig. 5, wherein the needle A is shown as having drawn the loop S' through the preceding loop S, by which act the needle has been drawn from the latter or removed from the latter.

It will thus be seen that every word, every step and every action of the Briggs method is exemplified in the drawings of Plaintiff's Exhibit 263, which is an exemplification of the mode of operation described in the patent to Stickel with reference to the implement illustrated therein.

I will here note that in reciting the Briggs method upon the

drawing of Plaintiff's Exhibit 263 I have, for convenience, made less subdivisions of the steps of the method than in a preceding exposition of the said method heretofore given in my testimony, this being because I found it simpler in reading the method upon the drawings of the Plaintiff's Exhibit 263 to follow the steps of the Briggs method in the manner stated by me. I will note in passing that the gist of the Briggs method lies in preventing as much as possible the reeving of the thread against the between substance in the formation of the chain-stitches and, in so doing, drawing the loop or loops of thread snugly against the face of the work and in the channel of the sole and tightly around the needle shank or stock.

Int. 9. In order to have your answer briefly stated, I have to say that it is my understanding that you testify that the method of the claim of the Briggs patent is shown and anticipated in the prior patent to Stickel. Kindly state if I am correct in my understanding.

Mr. PHILLIPS. Question objected to as improper rebuttal, as leading, as immaterial to any issue triable before this examiner, and as calling upon the witness for an expression of opinion on what, if of any materiality at all, would be purely a matter of law for the court.

Ans. You are correct.

Int. 10. Have you knowledge of any statements by way of advertisement or reports of the United Company or its officials which tend to support your statement that welters and stitchers are the only indispensable machines required for the commercial bottoming of shoes by machinery?

Mr. PHILLIPS. Question objected to as improper rebuttal and as immaterial to any issue triable before this examiner, and as calling for secondary evidence, and being incompetent and irrelevant.

Ans. I found in the record, at page 1141 of plaintiff's exhibits, Plaintiff's Exhibit 167, which is, I believe, a portion of the annual report of President S. W. Winslow to the stockholders of the United Shoe Machinery Corporation of June 17, 1911. In this exhibit there occurs the following: —

"In constructing a Goodyear welt shoe which is the highest type of shoe now generally worn, the indispensable machines which the company supplies exclusively are the Goodyear welt machine and the Goodyear stitching machine. These are the machines by which the sole and the upper are sewed together after the manner in which they would be sewed by hand."

By this I understand the welt and turn machine and the rapid stitcher to be referred to.

Int. 11. In the commercial manufacture of shoes by machinery, what machines are of secondary importance in the bottoming of shoes?

Mr. PHILLIPS. Question objected to as improper rebuttal and as having been fully gone into by counsel for petitioner in his opening case before the examiner, and as immaterial and incompetent and outside the scope of the order upon which proofs are being taken before this examiner.

Ans. The machines of secondary importance are a machine for insole channeling, a machine for lasting, a machine for sole laying, a machine for rough rounding and channeling, a machine for heel-seat nailing, and such machines as are ordinarily employed in the heeling operation generically considered, a machine for edge trimming.

Int. 12. I notice you omit from the list machines for leveling or beating soles. Are they properly included in the list of secondary machines?

Mr. PHILLIPS. The same objection.

Ans. They may be considered of secondary importance.

Int. 13. Mr. Howard has testified at some length in behalf of the defendants in reference to insole channeling machines and in reference to patents relating to insole channelers. If you have knowledge of any patents which tend to limit the scope of any of such patents put in evidence by the defendants, will you please specify the same and state the relation of such patents to the patents put in evidence by the defendants, and if patents commented upon by you as anticipatory show any prior structure adapted for channeling insoles, point out the same and in that connection state whether such patents may be considered basic or anticipatory with reference

to the patents introduced by the defendants, and give your reasons for same.

Mr. PHILLIPS. Question objected to as entirely without the scope of the order of the court under which this testimony before the examiner is being taken, and for the further reason that the word "basic" has no proper definition in the art, and, further, because if of any materiality it is a question of law for the court.

Ans. As heretofore stated, I have had very little opportunity to study or go into the prior state of the art having reference to or bearing upon those patents to which Mr. Howard has made reference, but in answer to the question I refer to the patent to Wellington No. 454,631, June 23, 1891, for channeling machine, which shows a structure involving the fundamental principles required for the purpose of insole channeling. This patent, in its claims, calls for details of construction, but those details are embodied in a fundamental organization or structure which, in a generic sense, is essential to all insole channeling machines. The various patents referred to by Mr. Howard also run to details of construction in their claims, and while the claims of such patents may not be specifically answered by this patent to Wellington, or the structure shown therein, nevertheless the Wellington structure is such as to lay the field of insole channeling wide open to the public and prevent any basic claim or generic claim in any of the said patents referred to by Mr. Howard, if such claims existed, from being valid. As before stated, the Wellington machine as illustrated in the patent marks substantially the foundation of the present day insole channelers. By this I do not mean to be understood that the insole channelers of the present day structure are not more effective or more convenient from the commercial standpoint than the Wellington machine, but simply that the latter machine may be taken as an exemplification of a pioneer structure upon which all present day structures are founded.

Mr. PHILLIPS. Answer objected to as involving merely guesswork on the part of the witness, and statements purely of matters which, if of any materiality, would be questions of law for the court.

[*Counsel for petitioner offers the Wellington patent testified to by the witness in evidence, and asks that the same be marked "Plaintiff's Exhibit 264".*]

Mr. PHILLIPS. Please note my objection to this exhibit as immaterial and as having no bearing on any issue triable before this examiner.

Int. 14. Mr. Howard has testified in behalf of the defendant the United Company with reference to lasting machines of the type known as Chase lasters. Will you kindly state whether you have knowledge of any of the art existing prior to the patents introduced in behalf of the defendants under the head of "Chase lasters" and testified to by Mr. Howard, and state how the same affects the scope, etc., of the said patents referred to by Mr. Howard, to the exclusion, however, of any patent issued after December 12, 1911, and in connection with such answer you may comment upon the patents introduced by the defendants dated as late as January 10, 1888, as found in Defendants' Exhibit 150.

Mr. PHILLIPS. Question objected to on the ground that the matter inquired about is beside any issue triable before this examiner, and for the further reason that if of any materiality the question of scope of any of the patents referred to is a question of law for the court and not properly addressed to an expert witness.

Ans. I have found it unnecessary to go outside of, or beyond, the art brought into the case by Mr. Howard as I understand it; that is to say, Mr. Howard has referred to a number of very early patents relating to lasting machines as shown in Defendants' Exhibit No. 150 preceding those patents granted to Chase on such machines, and from which the machine in question takes its name. The various patents referred to by Mr. Howard and granted to Purinton,—

No. 25,673, October 4, 1859;

No. 1,382, reissued January 6, 1863, Purinton;

No. 28,120, May 1, 1860, Wells;

No. 41,967, March 15, 1864, Wells;

No. 44,916, November 1, 1864, Fischer;

No. 90,651, June 1, 1869, Fischer;

all show lasting machines and devices and mechanisms to be used

in lasting machines which are clearly of pioneer character from the mechanical lasting standpoint. These patents clearly constitute a prior state of the art in view of which patents on such structures as are shown in the patents to Chase No. 340,860, April 27, 1886; No. 364,088, May 31, 1887, Chase, and the succeeding patents in the same exhibit, Defendants' Exhibit No. 150, are necessarily limited. Some of these patents referred to by Mr. Howard, and forming the Defendants' Exhibit 150, I have heretofore commented upon in my previous testimony, and it requires but a cursory glance at the claims of the said patents to determine the fact just stated by me with reference to the prior art.

I may note in passing that the patent to Chase No. 571,339, dated November 17, 1896, and entitled "Lasting Machine", contains a claim covering a structure which I have several times carefully examined both on the Chase lasting machines at the factory of the Shoe & Leather Company at Whitman, Massachusetts, and at the Long factory at South Framingham, Massachusetts. This structure has reference to the means by which the sidewise tiltable carriage may be locked from tilting, — said means being indicated at 21, Fig. 1, of the drawings of said patent No. 571,339, consisting of a couple of arms on the ends of a transverse shaft adapted to be raised and lowered for the purpose of engaging and disengaging the bottom of the tiltable carriage. I have been unable to discover that this structure has any real commercial value, and I have been unable to find a single operative who, if he knew the device were in the machine, ever used it for any purpose. In fact, every operative of whom I have inquired, and this runs to all the machines which I have examined, has, in the first instance, been unable to tell me the function of the device, and in each instance has looked with astonishment at the structure when I pointed it out to him. Each in turn said he had never used it, and each in turn would speculate upon its value. I may add that in not one of the machines examined by me did I find this device in actual use, and at no time during the process of lasting a shoe did any of the operatives either use it, or apparently find any use for it.

Mr. PHILLIPS. All that portion of the answer relating to alleged conversation of operatives is objected to as hearsay.

Int. 15. Mr. Howard has testified at considerable length with reference to sole-laying machines, sole-leveling machines, and sole-beating machines, and in connection with such testimony there was introduced, and he has commented upon, the various patents. Have you knowledge of any patents prior to those comprising Defendants' Exhibit 120 (excluding all reference to patents issued after December 12, 1911), showing devices adapted for accomplishing the results testified to by Mr. Howard as shown in said patents? And, if so, state what such prior patents are, and state the relation of the same to patents of said exhibit, exclusive, as before stated, of any patent issued after December 12, 1911.

Mr. PHILLIPS. Question objected to as outside the scope of the order of the court under which this testimony is being taken, and as immaterial and incompetent.

Ans. Within the short time allotted to me I have been unable to make an extensive examination of the arts of sole laying, leveling and beating, but I have found one patent which is long prior to any of those mentioned by Mr. Howard and included within Defendants' Exhibit 120, the same being the patent to Cutcheon No. 384,893, June 19, 1888, entitled "Beating Out Machine".

Preliminarily, I will state that I understand the terms "beating", or "beating out", or "leveling", to be synonymous. The term "laying", or "sole laying", however, does not mean the same thing as beating and leveling.

The patent to Cutcheon shows a structure, however, which may be used as a sole-laying machine, although primarily and fundamentally constructed for the purpose of beating or leveling the sole. This machine is duplex in character, or is what is known in the art as a "gang" machine, and includes the fundamental idea of means of holding the shoe for leveling or beating in position to receive the direct pressure of a die or mold. This patent also includes in its structure the fundamental idea of means of presenting the shoe alternatively to the operator and to the press or leveling device. This patent to Cutcheon No. 384,893 may be described

as a pioneer and as containing a basic claim, and in this connection I refer particularly to claim 1.

Most of the patents referred to by Mr. Howard I note are of the type which may be termed "roller pressure" machines, in contradistinction to the type illustrated by Cutcheon patent No. 384,893, which is of the direct pressure type. Notwithstanding this fact, the fundamental principle involved in the two types of machines is the idea of means of smoothing or rendering uniform the surface of the sole of a shoe, and runs to the idea of reducing the hills of the sole to the dales thereof, which in practice are more or less prominent. It makes no difference in the fundamental operation whether the pressure for this purpose is applied by the rolling or sliding action of the devices employed in the patents referred to by Mr. Howard, or by the direct pressure at a right angle to the sole as in the Cutcheon patent. As before stated, I look upon the Cutcheon patent and the claims thereof as pioneer and basic and as a direct limitation upon all those patents referred to by Mr. Howard and embodied in the Defendants' Exhibit No. 120.

I may note in passing that at the Whitman factory I examined one of the sole-leveling machines and commented on the same in my previous testimony, and found that it involves the fundamental principle of such patents as are referred to by Mr. Howard in the Defendants' Exhibit 120, and particularly the patent to Winkley et al. No. 540,222, May 28, 1895, No. 540,223, May 28, 1895, Winkley et al., and others of similar type, of later date, included in the said Defendants' Exhibit 120.

The machine at Whitman is of the gang type, that, is, it is duplex in that it employs a pair of rollers and a pair of shoe supports operated so as to alternately present the shoe to the operator and to the roller by the leveling operation.

I note that a good deal has been said in some of the patents of Defendants' Exhibit 120 relative to the automatic operation of the roller pressure means which enables the machine to operate so as to come to a stop at certain times, so as to present the shoe for removal, and another one to be placed in convenient position for the operator. The machine at Whitman was so constructed as to

carry out this operation, but the mechanism for doing the work just described was blocked out of operation. By this I mean that, although the clutch and the mechanism for operating the same were in the machine, and capable of carrying out the operation intended, nevertheless the operator had blocked the clutch members into constant contact so that the machine actually continuously operated, thereby eliminating the automatic stopping and starting.

Int. 16. Mr. Howard has testified in behalf of the defendants at considerable length with reference to rough rounding and channeling machines, and in connection with such testimony there was introduced various patents with reference to which Mr. Howard testified. Kindly state whether you have knowledge of any prior art or whether you find in any of the patents forming a part of Defendants' Exhibit 116 any structures of patents containing basic claims or open to a construction of a pioneer or anticipating patent relating to the art as disclosed in said patent. Will you please note that the inquiry eliminates any comment by you with reference to any patent issued after December 12, 1911?

Mr. PHILLIPS. Question objected to as being outside of the order of the court, as being incompetent and immaterial because the word "basic" has no proper definition in the art, and because if the subject-matter of the interrogatory is of any materiality it is a question of law for the court and not a proper subject of interrogatory addressed to an expert witness.

Ans. I have examined all the patents referred to by Mr. Howard and included within the Defendants' Exhibit 116, and find among them a couple of patents to which I referred in my previous testimony, viz., the patent to Briggs, November 24, 1891, No. 463,982, and Briggs et al. No. 511,263, December 19, 1893. Primarily, I look upon these two patents as constituting a state of the art prior to all the other patents referred to by Mr. Howard in the said Defendants' Exhibit 116, in view of which the said other patents are necessarily limited and subordinated in the matter of their structure and their claims.

These two patents run to the fundamental organization of a rough rounding and channeling machine, and the arrangement of

knives or cutters for the purpose of channeling and trimming the sole. The later of the two patents, viz., No. 511,263, also discloses a guiding mechanism of duplex character for the purpose of gauging the operation of the knife or knives relatively to the edge of the sole or the upper of a shoe, and may be interesting from the standpoint of the so-called improvement in guides or gauges for producing the work of the Baltimore edging attachment, or Scotch edging attachment, or extension sole attachment applied to the rapid stitcher.

As anticipating all of these patents, however, because of its prior date and fundamental structure, I note the patent to Turner, dated September 21, 1880, No. 232,382, for a machine for channeling and trimming boot and shoe soles. This patent contains a structure fundamental in character for channeling the sole and trimming the edge thereof, and the claims of this patent are basic or generic in character. In view of this prior patent illustrating an early state of the art, all the patents referred to by Mr. Howard are necessarily subordinate and should or must necessarily, in their claims, run to details of construction and limited features of invention.

[*Patent to Turner, machine for channeling and trimming boot and shoe soles, September 21, 1880, No. 232,382, referred to by the witness, is offered in evidence, and counsel asks that the same be marked "Plaintiff's Exhibit 265".*]

Mr. PHILLIPS. Please note my objection to the exhibit as immaterial to any issue within the order of the court.

Int. 17. Mr. Howard has testified at considerable length with reference to welt beaters, and in connection with such testimony various patents have been introduced and commented upon. Kindly state whether you have knowledge of any patent in the art prior to those commented upon by Mr. Howard and introduced in evidence by the defendants, or whether you find among those introduced by the defendants and commented upon by Mr. Howard, same being shown in Defendants' Exhibit 170, any patent which shows the operative device in welt beaters which is in the nature of a pioneer patent or disclosure containing a claim or claims basic in character, and compare the same with the remaining patents in said exhibit.

Mr. PHILLIPS. Question objected to as outside the order of the court, and for the reason that the term "pioneer and basic" has no proper definition in the art, and if the matter inquired about is of any materiality it is a question of law for the court.

Ans. Among the patents referred to by Mr. Howard, and included within the Defendants' Exhibit 170, I find the patent to Littlefield No. 320,075, June 16, 1885, machine for beating out welts. This patent discloses in the drawings, and describes in the specification, a fundamental organization adapted for beating out welts, now commonly known as "welt beaters". The organization described and illustrated is covered by a very generic claim in the said patent, which is as follows: —

"1. In a machine for beating out welts attached to the uppers and soles of boots and shoes, the work support shaped to enter the space between the upper and its attached welt, combined with an automatically reciprocated hammer to hammer the said welt, substantially as described."

In view of this very broad claim, all other patents referred to by Mr. Howard and included within the said exhibit No. 170 are necessarily directed to subordinate specific structures and are necessarily classed as mere improvements in the art. This patent, with reference to all the other patents referred to by Mr. Howard, is necessarily a pioneer.

Mr. PHILLIPS. Answer objected to as involving expression of opinion on a question which, if of any materiality, would be purely a question of law.

Int. 18. Mr. Howard in testifying in behalf of the defendant the United Company has referred at considerable length to Amazeen skivers, and in connection with such testimony various patents were introduced by the defendants. Will you kindly examine the patents comprising Defendants' Exhibit 130, and state what you find with reference to the prior art as disclosed in those patents, as compared with those which had not expired December 12, 1911.

Mr. PHILLIPS. Objected to as improper rebuttal and outside of any issue triable before this examiner, and as incompetent and immaterial.

Ans. Among the patents referred to by Mr. Howard, and included within Defendants' Exhibit 130, I find the early patent to Amazeen, dated February 26, 1878, No. 200,682. This patent includes in its organization, as shown in the drawings and described in the specification, a structure fundamental in character and adapted for skiving or shaving leather or other materials. The claims of this patent run to the fundamental organization of a leather skiving machine and relate to the arrangement of the cutter, the bed and the feed. This patent embodies in its structure the general principles of the present day Amazeen skiver and other skivers, and the subsequent patents referred to by Mr. Howard in the said exhibit, beginning with the patents of 1898, are necessarily directed to improvements and the claims thereof are necessarily subordinately specific to the claims or claimed structure of the said early Amazeen patent first referred to by me.

Other patents referred to by Mr. Howard in the said Exhibit No. 130 are Dunham, May 26, 1891, No. 452,996, and Bayley, April 24, 1894, No. 518,774. These two patents relate to the same fundamental organization as the early Amazeen patent and contain features of addition with reference to the said Amazeen structure, and claims directed to said additional features are more or less specific. The early Amazeen patent, with reference to the later patents offered by Mr. Howard, is clearly fundamental in character and answers to the term or expression "pioneer".

Int. 19. Mr. Howard in his testimony in behalf of the defendant the United Company has testified at some length with reference to heeling machines and machines for attaching heels, etc., and in connection with such testimony various patents have been introduced upon which he has commented. Will you kindly examine the patents comprised in Plaintiff's Exhibit 251A and 251B, being patents specified in the lease agreement Plaintiff's Exhibit 240, and state what you find with reference to the art of heel attaching, and generally what you find disclosed in the patents of that exhibit as affecting the art testified to by Mr. Howard, and, if convenient, kindly classify the patents of said exhibit briefly?

Mr. PHILLIPS. Objected to as improper rebuttal and outside the scope of the order of the court.

Ans. In the Plaintiff's Exhibit 240 there are listed in Plaintiff's Exhibits 251A and 251B a great many patents relating to heeling machines, and I believe the number is approximately 300. The Plaintiff's Exhibit 240, as I understand it, is a lease conveying to the lessee the right to use two particular machines, one indicated as McKay heel compressing and loading machine and the other indicated as rapid nailing machine, the first machine being given the number in the lease 34 and the second being given the number in the lease 2555. As before noted, there are upwards of 300 patents stated in this lease, and the lease contains the following paragraph: —

"Fifth: The lessee hereby agrees as an essential part of the consideration for this lease and license, that he will not in any way violate or infringe or contest the validity of any of the patents hereinbefore referred to as belonging to the lessors or which may now or hereafter be owned by the lessors, or any reissue or extension of the same, or the title of the lessors to said patents or any of them."

I have examined all of the patents referred to in the lease of Plaintiff's Exhibit No. 240 and have attempted to make a general classification of the subjects-matter of the said patents. I may note in this connection that I have not classified the patents according to claimed structures, but simply according to general subjects-matter. Among the patents I find the following: —

Nineteen patents running to nail making and distributing machines, machines for making nail strips of flexible character, and machines which in structure are more or less allied to nail-making machines or have combined therewith other structures such as driving mechanism. These patents run, in date, from the year 1886 to the year 1889.

Four patents for burnishing tools or heel-burnishing machines or burnishing machines generally, the dates of which run from the year 1883 to the year 1897.

One patent for a machine for finishing heel bottoms, the date of which is in the year 1884.

Twenty-six patents having reference to trimmers or cutters for heeling machines, guards for the cutters, and in most instances rotary heel-cutting devices. These patents range in date from the year 1886 to the year 1893.

One patent for a heel-cutting die, dated in the year 1889.

One patent for a heel-filing machine, dated in the year 1888.

Two patents for a heel-breasting machine, dated in the years, respectively, 1881 and 1893.

Three patents for heel-loading machines, granted in the years 1886 and 1888.

Six patents for so-called top-lift holders, or heeling machines, or holders for such machines, or top-lift plates for use in such machines, the dates of which range through the years 1889 and 1890.

Seven patents for jacks, heeling blocks, last supports and similar devices, ranging through the years 1882 to 1894.

Four patents for nail distributors for heel-nailing machines, some of them also including driving mechanisms, these patents ranging through the years 1885 to 1887.

Four patents for machines for assorting nails, or nail-arranging devices, the dates of which are in the years 1887 to 1893.

One patent for machinery for assorting pieces of leather, dated in the year 1880.

Twenty-four patents for heel-trimming machines and sole-edge trimming machines, these patents running to a more or less general structure and ranging through the years 1882 to 1891.

Two patents for machines for feeding and attaching rands to boots or shoes, dated in the years, respectively, 1889 and 1892.

Two patents for heel-nailing machines, dated in the years, respectively, 1888 and 1892.

Nine patents for heel-attaching machines, ranging through the years 1881 to 1893.

Fifteen patents for heeling machines, so called, and apparently running to general subject-matter with reference to heel-attaching mechanisms, these patents ranging through the years 1882 to 1893.

Two patents on pegging machines, dated, respectively, in the years 1884 and 1888.

One patent for apparatus for assembling heel lifts, dated in the year 1889.

One patent for the method of making heel nail plates, dated in the year 1885.

Fifteen patents for the method of forming and attaching heels, running to different modes or processes for producing the functions stated, these patents ranging through the years 1887 to 1892.

Three patents for the method or process of laying out-soles or attaching soles, or attaching heels, ranging through the years 1885 and 1887.

Three patents for the method of manufacturing heels and for the so-called article spring-heel blanks, these patents ranging through the years 1886 to 1889.

One patent for the method of making rotary-toothed cutters, dated in the year 1893.

Two patents for the method of forming heel rands, dated in the year 1887.

Two patents for the process of making headed nails, or slugs, for shoes, dated in the years 1887 and 1892, respectively.

One patent for the process of manufacturing loaded heel blanks, dated in the year 1888.

One patent for so-called spring-heel boot or shoe, dated in the year 1889.

One patent for a heel blank, dated in the year 1891.

One patent for a machine for forming a pile of heels, or a heel pile, dated in the year 1880.

One patent running to a boot or shoe structure, dated in the year 1886.

Five patents for machines for molding and compressing heels, or for heel forming and attaching machines, ranging through the years 1881 to 1888.

Eight patents for heel forming and loading machines, ranging through the years 1888 to 1894.

Four patents for nail-feeding implements or separating and feeding machines or apparatus, ranging through the years 1888 to 1895.

Seven patents covering nail strips, so called, ranging through the years 1885 to 1892.

One patent for a nail holder or carrier, dated in the year 1885.

Two patents for nail dies to be used in heeling machines, dated in the years 1888 and 1889, respectively.

Eleven patents running to different structures of nails or fastenings for the heels of boots or shoes, and ranging through the years 1885 to 1892.

Three patents for nail distributing and feeding machines, dated in the year 1888.

Ninety patents for heel-nailing machines, including a myriad of structures, arrangements, mechanisms and devices in heel-attaching machines generally.

I have made no attempt, in the short time allotted to me, to determine in any manner the scope of the claims of these various patents, and have directed my attention, in consequence, simply to a general classification of the patents included within the lease of Plaintiff's Exhibit No. 240, and ostensibly running to the two leased machines to which I have heretofore referred.

I may add in this connection that, with the same idea in mind as stated by me in the foregoing, I have also examined some other leases, samples of which have been made exhibits by the petitioner, and note particularly the Plaintiff's Exhibit No. 26. This exhibit is simply a sample of lease and apparently runs to no particular lessee, but seems to be general in form. I have not been able to examine all the patents referred to in this lease, which I believe are upwards of 254, but have been able to obtain, in the short time allotted to me for the purpose of my testimony, only 138 of the patents. I have made the same general classification in connection with these 138 patents of the Plaintiff's Exhibit 26, and find among the same approximately twenty-six congeries of inventions, that is to say, there are twenty-six types or groups of machines or subjects-matter of invention among the said 138 patents of the said exhibit. I will make no attempt at this time to indicate the various groups of patents under their titles, but simply refer to the same as an example of the patents included within

such leases as have come to my notice as having been made between the defendants as lessor and certain purchasers of the defendants' machines as lessees.

Mr. PHILLIPS. Answer objected to as irresponsive to the interrogatory and volunteered on the part of the witness, as relating to matters entirely without the order of the court, and as assuming to construe written instruments, which construction, if of any materiality, would be purely a question of law for the court.

Mr. WEBSTER. This will close the direct examination of this witness unless through inadvertence, accident or mistake counsel for the petitioner has omitted to interrogate the witness, and as to such matters he will pray the indulgence of counsel and of the court, if necessary, at some later period. Counsel for defendant is invited to cross-examine.

[*Adjourned to 10 o'clock* A. M., *Tuesday, November 18, 1913.*]

BOSTON, MASS., November 19, 1913.

Mr. WEBSTER. Counsel for the petitioner states that he was, on Monday last, advised by telephone by counsel for defendant that counsel for defendant did not wish to cross-examine Mr. Chapman, the last witness produced by the petitioner, and that the witness' signature to the deposition will be waived and he need not be produced at this sitting.

Mr. PHILLIPS. Counsel for defendant repeats this statement.

[*Signature waived.*]

Attest: CHARLES K. DARLING, *Special Examiner.*

DEPOSITION OF LAWRENCE BANNICAN.

Direct Examination by ALLEN WEBSTER, Esq., *of Counsel for Complainant.*

Int. 1. Your name is Lawrence Bannican, and you reside in Whitman, Massachusetts?

Ans. Yes, sir.

Int. 2. Where are you now employed?

Ans. At the Commonwealth Shoe & Leather Company, Whitman.

Int. 3. For how many years have you worked in the factory at Whitman?

Ans. Thirty-one years.

Int. 4. Have you during your employment operated machines known as "welt and turn machines"?

Ans. Yes, sir.

Int. 5. For how many years have you operated welt and turn machines?

Ans. Twenty-four.

Int. 6. Please examine the photograph I now hand you, the same being marked "Plaintiff's Exhibit 232", and state whether it is, to your knowledge, a photograph of a machine in the factory in which you are employed.

Ans. [*Witness examines exhibit.*] Yes, sir.

Int. 7. Do you know the number of the machine of which said exhibit is a photograph?

Ans. Yes, sir.

Int. 8. What is the number of the machine?

Ans. 228.

Int. 9. State whether the welt and turn machines operated by you were like said machine 228.

Ans. Yes, sir.

Int. 10. How many welt and turn machines like said machine No. 228 are at the factory of the Commonwealth Shoe & Leather Company at Whitman, Massachusetts, where you are employed?

Ans. Twelve.

Int. 11. Please examine the copy of patent to Z. T. French, sewing machine, dated June 2, 1896, No. 561,386, which I now hand you, and state whether you understand the construction of the looper-heater mechanism shown in the drawings of said patent.

Mr. PHILLIPS. Question objected to as outside the order of the court, and because the witness is not qualified to express any opinion with regard to constructions shown and described in Letters Patent.

Ans. I do.

Int. 12. Please state whether the twelve welt and turn machines

at the factory at Whitman where you are employed are equipped with looper-heater mechanism such as is shown in the drawings of the patent referred to in the last question.

Mr. PHILLIPS. Objection repeated.

Ans. Well, they are, part of them, broken off.

Int. 13. How many are broken off?

Ans. There is five in the twelve.

Int. 14. State, if you know, whether any of the heater blocks or plates in any of the machines at the Whitman factory come in contact, when the machine is in operation, with the looper carrier lever.

Mr. PHILLIPS. Objection repeated.

Ans. No, sir, they don't.

Int. 15. You say in a previous answer that some of the plates of the looper-heater mechanism were broken off; please state what part of the plate was broken off.

Mr. PHILLIPS. Objection repeated.

Ans. Well, it is the front part, facing the machine.

Int. 16. Is the front part referred to by you the part of the heater block or plate that extends to a position to heat the looper carrier if the plate was intact?

Mr. PHILLIPS. Objected to as leading, and for the reasons heretofore stated in connection with the objection to the preceding interrogatory.

Ans. Yes, sir.

Int. 17. State the length of the part of the heater block or plate which has been broken off, as stated by you.

Ans. Well, I should answer that it was possibly an inch or an inch and a half.

Int. 18. State whether you have operated a welt and turn machine having the heater plate complete and not broken off.

Ans. Yes, sir.

Int. 19. State whether you have operated a welt and turn machine having the heater block or plate broken off.

Ans. Yes, sir.

Int. 20. State whether the machine operates any differently with the plate on or off.

Ans. I don't see any difference.

Int. 21. For how long have you operated a welt and turn machine of the kind testified to by you wherein the heater plate was broken off?

Ans. Somewhere in the neighborhood of eight or nine years.

Int. 22. Are the twelve welt and turn machines referred to by you at the Whitman factory provided with any plates upon which there is any marking or lettering?

Ans. There are plates; United Shoe Company plates, and Goodyear Shoe Company plates, I think.

Int. 23. State how many, if you know, are marked with the United Company plates.

Ans. There are four with the United Shoe Machinery plates and no others; five machines with Goodyear plates on and no others; three machines with Goodyear and United Machine plates.

Int. 24. Please examine the copy of patent I now hand you, the same being patent to H. Briggs, take-up shoe sewing machines, dated April 24, 1894, No. 518,911, and state whether you understand the construction as shown in the drawings of said patent, especially with reference to the spring-pressed plunger marked "*d*".

Mr. PHILLIPS. Objected to as improper rebuttal, as outside the order of the court, and because the witness is not qualified to express any opinion with regard to constructions disclosed in Letters Patent.

Ans. [*Witness examines the patent and says:*] Yes, sir; I do.

Int. 25. State whether the twelve welt and turn machines at the Whitman factory are provided with a spring-pressed plunger mechanism like that shown in the drawings of the patent examined by you.

Mr. PHILLIPS. The objection to the preceding interrogatory is repeated.

Ans. No, sir.

Int. 26. State whether any of the twelve welt and turn machines referred to by you were ever, to your knowledge, provided with the spring-pressed plunger mechanism referred to.

Mr. PHILLIPS. Same objection repeated.

Ans. Yes, sir.

Int. 27. State what changes, if any, to your knowledge, have been made with reference to the spring-pressed plunger mechanism in the twelve machines, or any of them, referred to by you.

Mr. PHILLIPS. Please note the same objection.

Ans. In some of them this plunger has been taken out and the front part filled in with a plug or screw.

Int. 28. Have you operated a welt and turn machine which was provided with the spring-pressed plunger mechanism referred to?

Mr. PHILLIPS. Question objected to as improper rebuttal, as outside the order of the court, and because of lack of qualification of the witness.

Ans. Yes, sir.

Int. 29. Have you operated a welt and turn machine which was not provided with the spring-pressed plunger mechanism referred to?

Mr. PHILLIPS. Objection repeated.

Ans. Yes, sir; I have.

Int. 30. For how long a time have you operated a welt and turn machine which was not provided with the spring-pressed plunger mechanism?

Mr. PHILLIPS. Same objection.

Ans. I could not state exactly. I operated the machine before it was ever put on there.

Int. 31. Is the machine now being operated by you provided with the spring-pressed plunger mechanism?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir.

Int. 32. Have you operated any of the welt and turn machines which at one time were provided with the spring-pressed plunger mechanism after such mechanism was removed from the machine?

Mr. PHILLIPS. Objected to as improper rebuttal and outside the order of the court.

Ans. Yes, sir; I have.

Int. 33. State whether the presence or absence of the spring-

pressed plunger mechanism makes any difference in the operation of the machine.

Mr. PHILLIPS. Objected to as improper rebuttal, outside the order of the court, and immaterial, incompetent and irrelevant.

Ans. Not that I can see.

Int. 34. Do you know whether the welt and turn machine No. 228 at the Whitman factory, of which Plaintiff's Exhibit 232 is a photograph, has had a new centre head within the last few years?

Mr. PHILLIPS. Objected to as improper rebuttal, outside the order of the court, as immaterial and incompetent, and because of lack of qualification of the witness.

Ans. It has; about three years ago it had a new centre head.

Int. 35. Is the new centre head which you say was put on machine No. 228 about three years ago provided with the spring-pressed plunger mechanism?

Mr. PHILLIPS. Same objection, and further objected to as being leading.

Ans. No, sir, it is not.

Int. 36. What is the number of the machine operated by you, if you know?

Ans. 2217.

Int. 37. How long have you operated that machine?

Ans. About five years.

Int. 38. State, if you know, what number of stitches the welt and turn machine operated by you and referred to in the last answer makes per minute.

Mr. PHILLIPS. Objected as improper rebuttal, outside the order of the court, and incompetent and immaterial.

Ans. About 400.

Int. 39. Can you state, from your twenty-four years' experience in operating welt and turn machines, what is the fair average capacity of the welt and turn machine like that operated by you, by an average skilled operator in a day of nine hours?

Mr. PHILLIPS. Question objected to as improper rebuttal, outside the order of the court, and because the witness is not qualified

to express an opinion as to the matter inquired about, and as being incompetent and immaterial.

Ans. Four dozen pairs an hour.

Mr. WEBSTER. You may cross-examine.

Cross Examination (de bene esse) by BENJAMIN PHILLIPS, Esq., *of Counsel for Defendants.*

Cross-Int. 40. How long did you say you had been running machine No. 2217?

Ans. I said nearly five years; possibly more. I could not state the exact time.

Cross-Int. 41. The same machine?

Ans. Yes, sir.

Cross-Int. 42. In what condition is that machine now in regard to the looper-heating plate; is there a looper-heating plate on the machine?

Ans. It is broken off.

Cross-Int. 43. Did you break it off yourself?

Ans. Yes, sir.

Cross-Int. 44. How long ago?

Ans. I think very soon after I got the machine.

Cross-Int. 45. How much of the looper-heating plate is broken off?

Ans. From an inch to an inch and a half.

Cross-Int. 46. Do you know what the catalogue number of the looper-heating plate is?

Ans. I could not inform you.

Cross-Int. 47. Who orders the parts in the Commonwealth factory, if you know?

Ans. We tell the foreman if we want parts.

Cross-Int. 48. That is, the operator tells the foreman and then the parts are ordered through the foreman?

Ans. Yes, sir.

Cross-Int. 49. What is the name of the foreman under whom you are now working?

Ans. Harvey D. Reed.

Cross-Int. 50. Is there any system in the Commonwealth Shoe factory in regard to giving out the work to welters?

Ans. Yes, sir.

Cross-Int. 51. What is it?

Ans. It is what we call "passing the buck"; that is, a wire that is hung up in front of each man's machine. As the tacks are pulled and ready for them, he runs the shoes out and marks them, the number of them, and then he removes the buck to the next machine.

Cross-Int. 52. How many pairs of shoes does each operator get in a day, according to that system?

Ans. Twenty-four to twenty-six dozen.

Cross-Int. 53. Will you please explain a little more fully about the system of passing the buck? I do not quite understand.

Ans. The shoes are trimmed and the tacks are pulled. The tack puller gets his case ready and runs it down the line. Wherever this buck is hanging in front of a machine, he marks it to that machine. Then he goes back and removes it to the next machine. The next work that comes out goes to the next machine, and so on down the line, and then it is brought back to number one.

Cross-Int. 54. So that each operator gets a certain number of shoes, and gets them in rotation?

Ans. Yes, sir.

Cross-Int. 55. Do you know how many of the looper-heater plates have been purchased by the Commonwealth Shoe Company within the past year?

Ans. No, sir.

Cross-Int. 56. You do not know, then, to what extent they have been called for by the other operators and by the foreman?

Ans. No, sir; I don't.

Cross-Int. 57. Do you know what an auxiliary take-up is in the welt and turn sewing machine?

Mr. WEBSTER. Objected to as going into matter not touched upon in the direct examination, unless counsel shall specify that he has reference to the spring-pressed plunger mechanism when using the term "auxiliary take-up".

Mr. PHILLIPS. This question, of course, is asked *de bene esse*,

without waiving any objections, but I refer particularly to the language "auxiliary take-up" used in the Briggs patent No. 518,911.

Ans. It is to hold the slack thread.

Cross-Int. 58. What do you mean by that?

Ans. I mean it is slack thread when this take-up pulls it up. When it comes down there is a slack thread and this auxiliary comes down and holds it taut.

Cross-Int. 59. What is the object of holding it taut?

Ans. To keep it from dropping off of your needle; keep it tight on your needle.

Cross-Int. 60. Keep it from mislooping?

Ans. Skipping, as we call it.

Cross-Int. 61. What is the effect on the work done by a machine if this mislooping or skipping occurs?

Ans. It leaves skipped stitches.

Cross-Int. 62. Does it affect the quality of the work any?

Ans. Yes, sir.

Cross-Int. 63. It makes imperfect work?

Ans. Makes imperfect work.

Cross-Int. 64. Do you know what the object is of heating the looper in the machine which you state you have been running?

Ans. Yes, sir; I do.

Cross-Int. 65. What is it?

Ans. To keep it clear from wax.

Cross-Int. 66. Just what do you mean by that?

Ans. A cold looper will collect wax from the thread; stick to it; clog it up.

Cross-Int. 67. And what effect does that have on the operation of the machine?

Ans. It makes the thread draw hard; liable to snap it.

Cross-Int. 68. Liable to make the machine break thread?

Ans. Yes, sir.

Cross-Int. 69. Did you ever see a gas flame used for the purpose of heating the looper?

Ans. A gas flame in the head of the machine; yes, sir.

Cross-Int. 70. Just state briefly how it was heated with the gas flame.

Ans. It was a gas flame in the head of the machine, and I don't know whether you observed that hole in that machine right there. [*Witness points to a hole that appears in photograph, which is at the base of the head of the machine, and immediately in front thereof.*] That originally was intended for a hollow pipe, bent about that shape [*bent in about the shape of a curved finger*]. The heat comes from that, and I have run them, and it always kept it clear; always kept those parts clear. If the heat was there, it was properly heated.

Cross-Int. 71. Didn't the operators find considerable fault with that arrangement, owing to heated air rising in their faces?

Ans. It heated the machine up a great deal more, the whole machine.

Cross-Int. 72. And made it harder to run?

Ans. Not necessarily.

Cross-Int. 73. Hotter?

Ans. Made it hotter.

Cross-Int. 74. Well, isn't it true that you had to breathe the air that came up through the pipe and passed over the looper?

Ans. No; I had to breathe it some, of course, surely; the fumes from it.

Cross-Int. 75. Do you know what is meant by "operator's slip"?

Ans. As I understand, the royalty book.

Cross-Int. 76. Did you keep any record of the number of pairs of shoes sewed by you on the welt machine upon which you said you worked?

Ans. I have put them down every day; supposed to. I have them on a book, and copy them off.

Cross-Int. 77. You put down a written memorandum of the number of pairs?

Ans. Yes; figure them up every day.

Cross-Int. 78. Did you sign those memoranda or slips?

Ans. Yes, sir.

Cross-Int. 79. Will you look at the paper I now hand you and

state whether the signature in lead pencil at the bottom of the paper is your signature? [*Witness examines paper.*]

Ans. Yes, sir.

Cross-Int. 80. And to explain this memorandum, it means that on the 1st of July, 1911, you stitched 140 pairs?

Ans. Yes, sir.

Cross-Int. 81. And on the 2d day six pairs?

Ans. No, sir; that I put down to signify Sunday.

Cross-Int. 82. On the 10th, 191?

Ans. Yes, sir.

Cross-Int. 83. On the 11th, 193?

Ans. Yes, sir.

Cross-Int. 84. On the 12th, 231?

Ans. Yes, sir.

Cross-Int. 85. On the 13th, 218?

Ans. Yes, sir.

Cross-Int. 86. On the 14th, 253?

Ans. Yes, sir.

Cross-Int. 87. And so on, down the column?

Ans. Yes, sir.

Cross-Int. 88. So that the figures in lead pencil under the heading "men" represent the number of welted shoes which you sewed on a date which is given in the opposite column?

Ans. The opposite date; yes, sir.

[*Bannican slip for July, 1911, is offered in evidence, and marked "Defendants' Exhibit 204".*]

Cross-Int. 89. I show you another paper; will you please state whether the signature "L. Bannican" is your signature?

Ans. Yes, sir.

Cross-Int. 90. And that slip is of the same character; the figures in the column marked "men" indicate the number of pairs of welt shoes which you sewed on a day, the date of which appears in the first column?

Ans. Yes, sir.

[*Bannican slip of April, 1911, is offered in evidence, and marked "Defendants' Exhibit 205".*]

Cross-Int. 91. I show you a similar slip for September, 1911; will you state whether the signature that appears at the bottom is your signature?

Ans. Yes, sir.

Cross-Int. 92. That slip indicates the number of pair of men's shoes that you sewed in the month of September, 1911?

Ans. Yes, sir.

[*Bannican slip for September, 1911, is offered in evidence, and marked "Defendants' Exhibit 206".*]

Cross-Int. 93. I show you another slip of January, 1913, and ask you if the signature "L. Bannican" at the bottom of the slip is your signature?

Ans. My signature; yes, sir.

Cross-Int. 94. And this slip indicates the number of pairs of welt shoes that you sewed in January, 1913?

Ans. Yes, sir.

[*Bannican slip for January, 1913, is offered in evidence, and marked "Defendants' Exhibit 207".*]

Cross-Int. 95. I hand you a slip for April, 1913, and ask you if the signature "L. Bannican" is your signature?

Ans. Yes, sir.

Cross-Int. 96. And whether that slip indicates the number of pairs of welt shoes which you sewed in that month?

Ans. It does; yes, sir.

[*Bannican slip for April, 1913, is offered in evidence, and marked "Defendants' Exhibit 208".*]

Cross-Int. 97. I hand you another slip for April, 1912, and ask you if the signature "L. Bannican" is your signature, and whether that slip indicates the number of pairs of welted shoes which you sewed in that month?

Ans. Yes, sir.

[*Bannican slip for April, 1912, is offered in evidence, and marked "Defendants' Exhibit 209".*]

Cross-Int. 98. I show you another slip of August, 1912, and ask you if the signature "L. Bannican" is your signature?

Ans. Yes, sir.

Cross-Int. 99. And that slip indicates the number of pairs of welt shoes that you sewed during the month of August, 1912?

Ans. Yes, sir.

[*Bannican slip for August, 1912, is offered in evidence, and marked "Defendants' Exhibit 210".*]

Mr. PHILLIPS. That is all.

Direct Examination resumed by Mr. WEBSTER.

Int. 100. What kind of shoes do you operate on?

Ans. Men's shoes.

Int. 101. Are they the regular run, or do you work on samples?

Ans. I work on samples altogether when we are running.

Int. 102. Can a man do as much work on sample shoes as on the regular run of shoes?

Ans. I cannot.

Int. 103. What is your age?

Ans. My age is fifty-two last March.

Int. 104. State whether the shoes referred to in the slips which have been introduced in evidence were sample shoes.

Ans. I could not state as to that. Sample shoes and all are put right in together when I figure them up. If I did not have enough samples I took a regular case to fill out my day.

Mr. WEBSTER. Nothing further.

Cross Examination resumed by Mr. PHILLIPS.

Cross-Int. 105. What do you mean by sample shoes?

Ans. The shoes that they send out for samples, and one-pair lots, and I suppose what they call jobbers' samples, eighteen-pair lots and twelve-pair lots, as they come along; also one-pair lots of special shoes, ten days, not sample but special order. That is what I work on.

Mr. PHILLIPS. That is all.

Mr. WEBSTER. This, as at present advised, closes the evidence in rebuttal before the examiner in behalf of the petitioner, with the exception of the introduction of some patents which counsel has not been able to procure up to the present time.

Mr. PHILLIPS. The signature to this deposition is waived. As far as I am at present advised, this closes the defendants' case before the examiner.

[*Signature waived.*]

Attest: CHARLES K. DARLING, *Special Examiner.*

It is stipulated by and between counsel that, if the court assents, the various interrogatories propounded by counsel for the petitioner to the witness Howard before the examiner, and which questions the witness declined to answer under instruction of counsel, may be propounded to the witness at the hearing in open court hereafter, thus avoiding the delay incident to procuring a ruling of the court in the matter and rendering it more convenient for court and counsel.

Hearing closed.

ADDITIONAL EVIDENCE FOR DEFENDANTS.

TAKEN PURSUANT TO ORDER OF COURT, ENTERED FEBRUARY 10, 1914, BEFORE ME,

CHARLES K. DARLING,
Special Examiner.

BOSTON, MASS., February 25, 1914.

Present:

ALLEN WEBSTER, Esq., *Special Assistant to the Attorney General,*
WILLIAM S. GREGG, Esq., *Assistant to the Attorney General, of Counsel for Complainant;*
FREDERICK P. FISH, Esq., and BENJAMIN PHILLIPS, Esq., *of Counsel for Defendants.*

DEPOSITION OF NELSON W. HOWARD (*resumed*).

Mr. WEBSTER. Counsel for the United States gives notice that it reserves its right to insist upon its motion to strike out and suppress; and that the cross-examination of witnesses for the defendants and direct examination of witnesses for the plaintiff will be *de bene esse* and without waiver of objections made or to be made and without waiver of said motion to strike out and suppress. And counsel for the plaintiff gives notice that the plaintiff will especially insist on striking out of testimony with reference to matters and things taken under patents issued after the date of the filing of the bill herein; and to strike out all evidence with reference to machines made in accordance with and as shown in patents issued after the filing of the bill; also as shown in applications which were pending at the filing of the bill. It will also insist upon its motion to remove from the record all patents put in evidence as exhibits by the defendants which were issued after the filing of the bill herein, and also of other exhibits relating to matters taking place after the filing of the bill.

Mr. FISH. Counsel for respondents calls the attention of the

Court to the order of the court entered in the record January 14, 1914.

Cross Examination by ALLEN WEBSTER, Esq., *of Counsel for Complainant.*

Cross-Int. 437. In direct examination you testified at some length with reference to Plant patent for stopping mechanism, dated November 16, 1909, No. 940,052. It is not clear to me whether you intended to testify that the mechanism of the claims of that patent was incorporated in the welt and turn machine and the rapid out-sole stitcher of the United Company. Will you kindly state the fact?

Ans. I do not recall that I have ever referred to patent No. 940,-052 at any point in my testimony.

Cross-Int. 438. In your testimony in chief you, as I recollect it, made reference to the Plant mechanism for stopping the machine. Did you have reference to the Plant mechanism as shown in the patent referred to? Or, in order to shorten the examination, will you kindly state whether as a fact the mechanism of the Plant patent No. 940,052 was incorporated by the United Company in its welters and out-sole stitchers?

Mr. PHILLIPS. Counsel for defendants objects to that as not within the scope of the order.

Ans. That patent No. 940,052 was not the patent which I had in mind in my testimony in regard to the Plant stop motion, and no claims of patent No. 940,052 set forth mechanism which is embodied in the United Company's machines, so far as I am aware.

Cross-Int. 439. In your testimony in chief you have made reference to the Plant patent dated May 17, 1910, No. 958,298, entitled "Sewing Machine", but relating, as I understand it, particularly to a welt-holding, welt-measuring and welt-cutting device. Will you kindly point out on the record what particular claims of that patent define the mechanism which was embodied in the machines of the United Company?

Ans. Claims 1, 2, 3, 4, 5, 6, 7, 13, 15, 16, 17, 19, 21, 27 and 30.

Cross-Int. 440. Will you now kindly state when the mechanisms

defined in the claims referred to by you in your last answer were incorporated in the machines of the United Company? That is to say, whether before or after the Plant acquisition.

Mr. PHILLIPS. Question objected to as not within the scope of the order under which this testimony is to be taken.

Ans. The mechanisms defined in the claims of patent No. 958,-298, May 17, 1910, Plant, were first embodied in commercial machines of the United Company in June, 1911, during which month shoe machine, model K, Goodyear welt and turn, became the standard commercial welting machine of the United Company.

Cross-Int. 441. I observe that the claims referred to by you, or many of them, include "the combination of stopping and starting means". Have you any objection to stating in a general way and briefly what "stopping and starting means" was in fact incorporated in the United machine referred to by you, viz.: "Model K Welter"?

Ans. The starting and stopping machine of the model K welting machine was of the character shown generally in patent No. 1,018,-130, February 20, 1912, Plant, and comprised mechanism for stopping the machine and then reversing it for the purpose of freeing the needle of the machine from the last loop formed by the stitch-forming instrumentalities.

Cross-Int. 442. Do you mean by your last answer to convey the idea that the starting and stopping mechanism incorporated in the United machine contained the spring-acting mechanism as illustrated in Figure 5 of the Plant patent No. 1,018,130?

Ans. No. The specific construction of the mechanism embodied in the model K welter and incorporating the improvement set forth in all four claims of patent 1,018,130 was quite different from the mechanism shown in Figure 5 of that patent.

Cross-Int. 443. For convenience in illustrating the construction of stopping and starting mechanism which is in fact incorporated in the model K United welter, will you kindly state whether there is to your knowledge any patent issued or drawings readily accessible which illustrates such starting and stopping mechanism?

Ans. No patent has as yet been issued which shows in its draw-

ings the exact construction of the starting and stopping mechanism of the model K welter.

Cross-Int. 444. You testified, as I recollect it, that applications for patent for the mechanism referred to in the last question and answer were pending. Have you any objection to producing copies of such applications for inspection and to enable counsel to refer to the drawings for the purpose of illustrating such construction?

Mr. PHILLIPS. Objected to as not within the scope of the order, and as calling for the production of matter which cannot under this order be required.

Ans. I am reluctant to produce and make public drawings of applications pending in the United States Patent Office, but I can do that if necessary. I would like to make a statement on the record, however, to the effect that the model K welting machine has been placed at the disposal of counsel and experts for the United States and that its construction and operation have been fully explained, the explanation being accompanied by taking the machine apart and illustrating in detail the mode of operation of the respective parts.

Mr. WEBSTER. Counsel for the plaintiff admits that the defendants have very courteously afforded counsel for the plaintiff every convenience and facility for the examination of the machine referred to, but in view of the fact that the witness has testified that various machines, including the one referred to, were constructed as shown in the claims, and in some instances in allowed claims, of pending applications for patent, it would seem but fair that counsel for the plaintiff have an opportunity to examine such applications in order to determine whether to proceed with the examination in reference to the claim, or whether to submit evidence to meet the testimony of the witness in reference to such applications; and in order to raise the question at this stage as to all such pending applications, counsel for the plaintiff desires the witness or opposing counsel to state on the record whether such pending applications will be produced for examination by counsel for the plaintiff to enable counsel to proceed with his examination with reference thereto,

and to enable the Court to learn whether the testimony of the witness is in accordance with the facts.

Mr. PHILLIPS. I should like to have you point out the portion of the witness' testimony in which he has testified as to the pendency of any applications for United States Letters Patent involving the mechanism referred to.

Mr. WEBSTER. The question goes generally to pending applications, and counsel for the plaintiff would like very much to learn the attitude of counsel for the defendants with reference to pending applications, thus avoiding spreading upon the record a vast number of interrogatories which seem to be unnecessary.

Mr. PHILLIPS. I recall no such testimony, Mr. Webster. My objection is directed to this specific question. It seems to me that the only proper way to take up the matter is specifically, and not generally.

Mr. WEBSTER. Counsel for the plaintiff states that he is unable at the present moment to refer to the particular portion of the record called for by counsel for the defendants, but will endeavor to ascertain just where it is and call attention of counsel to it at a later stage in this hearing.

Mr. PHILLIPS. In view of the fact that the witness has not testified that there were any pending applications for United States Letters Patent relating to this mechanism, and in view of the fact that a complete disclosure has been made to counsel for the plaintiff of the mechanism involved which has been explained to him by experts and which mechanism is still open for his examination, counsel for the defendants objects to the production of pending applications if there are any relating to said mechanism. Counsel for the plaintiff may have any drawings which he desires prepared from the machine itself, which will be open to his inspection and the inspection of any experts whom he may care to have examine it at any time.

Mr. WEBSTER. Counsel for the plaintiff reserves the right to move to strike out all testimony with reference to pending applications for patents, or machines constructed as shown in pending

applications, on the ground that the defendants decline to submit the machine for inspection on cross-examination.

Mr. PHILLIPS. Counsel for defendants calls attention to the fact that the defendants do not decline to produce pending applications.

Cross-Int. 445. Kindly state whether the model K welt and turn machine as constructed by the United Company contains the mechanism shown in claim 1 of the patent to Plant referred to No. 1,018,130, dated February 20, 1912.

Ans. Yes, sir; it does.

Cross-Int. 446. Then it is a fact, is it, that this machine as constructed contains a member adapted to free the last needle loop from the stitch-forming devices?

Ans. The word "member" does not occur in the claim in question. Adopting the language of that claim, it is a fact that the model K welter embodies "means, acting automatically upon stopping the machine, to free the last needle loop from the stitch forming devices and bring the needle to rest out of engagement with the work".

Cross-Int. 447. Will you kindly define briefly what "means" are employed in the mechanism of the machine in question, model K welter, to free the last needle loop from the stitch-forming devices?

Ans. Generally speaking, the "means" comprises mechanism for stopping the forward movement of the machine at the proper point, and then reversing the machine. That is, running it backward in such manner and in such time relation to the stitch-forming instrumentalities that the needle is freed from the last needle loop formed by the stitch-forming instrumentalities.

Cross-Int. 448. Is it not a fact that in the machine as constructed the retraction of the needle takes place just before the loop would have been formed in the hook of the needle, had the needle continued in its forward motion?

Mr. PHILLIPS. Question objected to as ambiguous.

Ans. No, sir; I should not consider that to be the fact. I will add, however, that what is specifically aimed at in the model K welter, as in the Plant welter, is to free the last loop formed from the needle.

Cross-Int. 449. As a matter of fact, if the machine is stopped just before the loop would be thrown into the hook of the needle had the needle continued its forward movement and the machine is then reversed, the object sought to be obtained by the patent No. 1,018,130 would be accomplished, would it not?

Ans. Yes, sir; because the last loop formed will be freed from the needle if the needle is first moved forward to a point in engagement with the work or any point beyond, provided the forward operations of the machine do not continue to the point where a new loop is taken by the needle, and consequently the needle is then moved back from that point without a new loop. The result of this operation will be the freeing from the stitch-forming instrumentalities of the last loop formed.

Mr. WEBSTER. All that portion of the foregoing answer following the words "Yes, sir", objected to as not responsive, and counsel for plaintiff moves that all that portion of the answer following the words "Yes, sir" be stricken from the record.

Cross-Int. 450. Referring to the paper put in by the defendant and marked "Defendants' Exhibit 342", entitled "United States Patents acquired in the Plant acquisition, the inventions of which have been incorporated in machines of the United Shoe Machinery Company", I note the first patent in the exhibit referred to is No. 944,294, December 28, 1909, Stewart and Hooper. Have you a copy of that patent?

Ans. I have.

Cross-Int. 451. Will you kindly state which one of the claims of said patent defines the mechanism which, as I understand you, you say was incorporated in the machines of the United Shoe Machinery Company?

Ans. All of the twenty-seven claims of that patent.

Cross-Int. 452. Kindly state whether a heel-beading machine for heel seats is a machine such as is known as an auxiliary machine.

Ans. I don't know as I quite understand the question as applied to this machine, but a satisfactory answer may be that this machine is put out by the United Company's general department.

Cross-Int. 453. And it is used for producing an ornamental or beaded edge?

Ans. That is one object, but probably not the principal object, of its use.

Cross-Int. 454. Please state the principal object.

Ans. In addition to forming an ornamental impression on the edge of the out-sole around the heel seat, the machine beads down and rubs waxed blacking into the projecting upper edge of the flesh side of the out-sole in what is known as the Rand crease, thus closing up the open pores of the flesh side of the out-sole, so that it will not so readily absorb moisture. Each of these operations is illustrated in Defendants' Exhibit 110.

Cross-Int. 455. Referring now to finishing and brush cleaning machine, model X, Climax, kindly state what the claims of the patent No. 957,989, May 17, 1910, McLeod, were which were incorporated in the machine of the United Company and when so incorporated.

Ans. All the six claims of patent No. 957,989, May 17, 1910, McLeod, set forth mechanisms embodied in the United Company's finishing and brush cleaning machine, model X, Climax. This machine was adopted in January or February, 1911. I can furnish the exact date if desired.

Cross-Int. 456. Kindly state briefly what the finishing and brush cleaning machine is designed to accomplish.

Ans. This machine is used for polishing by brushing stain or finish applied to the bottom of a shoe. The machine has provision for cleaning the brushes by steam or water.

Cross-Int. 457. And did the finishing and brush cleaning machine of the McLeod patent above referred to take the place of some other machine adapted for a like purpose, or was it entirely new in the art, so far as you are informed?

Ans. It was an improved machine for doing work which had previously been performed by other machines.

Cross-Int. 458. Will you kindly state whether the beading machine of the Stewart and Hooper patent heretofore referred to by

you took the place of some other machine designed to accomplish a like result, or whether it was a distinct improvement in the art?

Ans. I think I can properly answer in the affirmative both questions contained in the last interrogatory.

Cross-Int. 459. Then it did supplant some prior machine adapted for accomplishing a like result; is that right?

Ans. Yes, sir.

Cross-Int. 460. Referring now to your memorandum, grinding machine, model H, Imperial, patent No. 944,238, December 21, 1909, Heys, kindly state what the machine of that patent was used for.

Ans. That machine is used to grind the knives used on the Imperial power heel-breasting machine.

Cross-Int. 461. That is to say, it is a grinding machine for grinding blades; is that right?

Ans. Yes, sir.

Cross-Int. 462. And the novel feature comprised the construction whereby the two opposite edges of the blade could be presented at different angles; is that right?

Mr. PHILLIPS. Objected to as not within the scope of the order of the court under which this testimony is being taken.

Ans. No, sir. The novel improvements embodied in grinding machine, model H, Imperial, were for the purpose of enabling that machine to operate properly upon the transversely-curved knives such as are used in heel-breasting machines, the grinding of which presents peculiar difficulties not ordinarily encountered.

Cross-Int. 463. When did the United Company first put out the grinding machine of the Heys patent No. 944,238, so far as you are informed?

Ans. The machine has embodied the invention of the Heys patent No. 944,238 ever since the date of the Plant acquisition.

Cross-Int. 464. And did that machine take the place of some machine used before that date for accomplishing a like result?

Ans. It is my recollection that before the adoption of that machine it was the practice for the operator to guide by hand, practi-

cally without any aid from the machine, the knife which he was sharpening.

Cross-Int. 465. Grooving and beveling machine, model X, Goodyear welt, patent No. 966,484, August 9, 1910, Stanbon. Kindly state what part of the shoe this machine operated upon.

Ans. This machine operates upon the welt before its attachment to the shoe to prepare it for the attaching operation.

Cross-Int. 466. And does it operate to cut a groove lengthwise of the welt and also to bevel the welt at the same time?

Ans. Yes, sir.

Cross-Int. 467. Did this machine take the place of some machine used before that time to accomplish a like result?

Ans. The machine was an improved machine for performing an operation which had previously been performed by other machines.

Cross-Int. 468. Kindly state whether the machine of the Stanbon patent No. 966,484 was adopted by the United Company and put into use before or after the Plant acquisition.

Ans. After the Plant acquisition.

Cross-Int. 469. If you have the patent before you, will you kindly state whether the mechanism of the grooving and beveling machine put out by the United Company has incorporated in it the mechanism of all the claims of the Stanbon patent referred to?

Mr. PHILLIPS. Question objected to as not within the scope of the order under which testimony is being taken.

Ans. Yes, sir; it does.

Cross-Int. 470. Kindly state whether the grooving and beveling machine of the Stanbon patent referred to as put out commercially is constructed as shown in the Stanbon patent.

Mr. PHILLIPS. Question objected to as not within the scope of the order under which testimony is being taken.

Ans. No, sir; not exactly.

Cross-Int. 471. Referring now to indenting and burnishing machine, model X, Goodyear welt, made as I understand your memoranda under patent to Heys No. 860,377, July 16, 1907, and under an application pending in the name of Heys and McClure,

serial number 631,395, June 5, 1911, will you kindly state whether the patent has yet issued on the application referred to?

Ans. No, sir; it has not.

Cross-Int. 472. Kindly state when the indenting and burnishing machine referred to by you as model X and made under such patent and application went into use or was put out by the United Company.

Ans. It was first put out by the United Company March 31, 1911.

Cross-Int. 473. Did it take the place of some other adapted for accomplishing a like result?

Ans. It is supplied as an alternative machine for performing operations which are performed by other machines.

Cross-Int. 474. State what features of the machine in question are within the terms of the claims of the Heys patent referred to.

Ans. The claims of Heys patent No. 860,377, July 16, 1907, are directed to the general organization of the machine in question, indenting and burnishing machine, model X, Goodyear welt.

Mr. WEBSTER. In view of the fact that counsel for plaintiff has no access to the application referred to by the witness, the statement with reference to said application is objected to and plaintiff moves that it be stricken from the record.

Mr. PHILLIPS. Counsel for defendants calls attention to the fact that complainant's counsel has given no notice that he desired to inspect the pending application referred to or any notice to defendants' counsel to produce it.

Mr. WEBSTER. It is the understanding of counsel for plaintiff that counsel for defendants has refused to produce for inspection any pending applications. Hence the statement made on the record. If counsel for defendants has had a change of heart, he is hereby requested to kindly produce the application referred to in statement by the witness, in Defendants' Exhibit 342, for inspection.

Mr. PHILLIPS. Question objected to because complainant's counsel has given no notice that he desired the application to be produced.

Mr. WEBSTER. Counsel for the plaintiff now gives notice that

he desires to have produced for purposes of inspection and examination, to lay a foundation for interrogatories to be submitted to the witness, the particular application referred to, together with all other pending applications. It is the understanding of counsel for plaintiff that counsel for defendants well knew that these applications would in all probability be called for, and it was not understood that any formal notice was to be required. The same, however, is now given so that there may be no further misapprehension.

Mr. PHILLIPS. With regard to the specific application, inspection of which is requested, counsel for defendants would like to know when it is desired that such application be produced.

Mr. WEBSTER. At the earliest possible moment convenient for the witness and opposing counsel.

Mr. PHILLIPS. Counsel for defendants states that with regard to such application, if it is found to be competent under the order of the Court, it will be produced at the next session. If not, the reason for not producing it will be fully stated. With regard to the general request that all pending applications be produced, it is too vague and indefinite for counsel to take any position in the matter.

Mr. WEBSTER. In the employment of the term "all pending applications", counsel for plaintiff desires it to be understood that he made reference to pending applications testified to by the witness.

Cross-Int. 475. Lasting bench, model X, McLeod application, serial No. 524,952, October 27, 1909. Kindly state if you are willing to produce that application for examination, laying the foundation for submitting cross-interrogatories.

Mr. PHILLIPS. Counsel for defendants has already stated that no notice has been given to produce any pending applications, and for that reason the question is objected to.

Cross-Int. 476. Kindly state whether the lasting bench model X, referred to as made under said application, was adopted by the United Company when it went into use, and what allowed claims of pending applications, if any, covered the construction, and point out what the novel construction comprises.

Mr. PHILLIPS. Question objected to as not within the terms of the order under which this testimony is being taken, and for the

further reason that no notice had been given to produce any pending applications.

Ans. The machine was adopted February 8, 1911, and has been put out since that time. I have not at hand the file of the application or copies of the claims, and shall have to defer answering the balance of the question until I have an opportunity to refresh my recollection by examining the papers of the application.

Cross-Int. 477. Was the lasting bench model X a radically new contrivance, or was it simply an advancement in the art?

Mr. PHILLIPS. Question objected to for the reason that it is not within the scope of the order under which the testimony is being taken.

Ans. I should characterize the machine rather as an improvement upon constructions previously used than as a machine for performing an operation not before performed by machines.

Cross-Int. 478. I observe in your statement, Defendants' Exhibit 342, you refer to this device as a "Lasting Bench", while in your answers now made you refer to it as a machine. Will you kindly state for the information of the Court whether it is a machine or a bench?

Ans. Its name aptly describes it. I used the word "machine" for convenience, or through thoughtlessness.

Cross-Int. 479. Kindly examine the cut on page 45 of Defendants' Exhibit 267, and state whether it properly illustrates the lasting bench model X, made under the application referred to.

Ans. Yes, sir; it does.

Cross-Int. 480. Referring now to your memorandum Defendants' Exhibit 342, under the title "Lasting Machine No. 5, U. S. M. C.", I notice that you appear to say that the No. 5 laster had incorporated in it the mechanisms of patent to Glass No. 957,949, May 17, 1910, reissued No. 13,505, January 7, 1913, and patent to Plant, 958,280, May 17, 1910. Will you kindly state what particular claims of these several patents define the mechanism which I understand you to say was incorporated in the No. 5 laster by the United Company?

Ans. Of reissued patent No. 13,505, January 7, 1913 (original

patent No. 957,949, May 17, 1910), claims 13, 14, 15 and 16 define mechanisms embodied in lasting machine No. 5, U. S. M. Co., and of patent No. 958,280, May 17, 1910, Plant. Claims 46, 47, 49 and 50 define improvements embodied in lasting machine No. 5.

Cross-Int. 481. Can you now very briefly, for the information of the court, point out in a general way what those various mechanisms as referred to in the claims were, so as to avoid necessity of careful analysis of the claims?

Ans. The claims of the Glass patent, reissue No. 13,505, referred to in my preceding answer, are directed to the mechanisms for jacking and unjacking the shoe. The claims of Plant patent No. 958,280 named in my preceding answer are directed to the heel-band operating mechanism of lasting machine No. 5.

Cross-Int. 482. Kindly state when the machine was first put out by the United Company under the head of "No. 5 Laster"?

Ans. January, 1908.

Cross-Int. 483. Kindly state when the heel-band operating mechanism referred to by you as being found in claims 13, 14, 15 and 16 of the reissued patent to Glass No. 13,505, and claims 46, 47, 49 and 50 of the Plant patent No. 958,280 were first, so far as you are informed, incorporated in the No. 5 laster.

Ans. The mechanisms set forth in claims 13 to 16 of Glass reissue No. 13,505 were embodied in the machine when it was first put out in January, 1908, the heel-band operating mechanism defined in claims 46, 47, 49 and 50 of Plant patent 958,280 was first incorporated in the machine in March, 1909.

Cross-Int. 484. Was the No. 5 laster inoperative without having incorporated in it the constructions referred to in your last answer?

Ans. The machine would not be so convenient for the operator, nor would it do so good work without the mechanisms referred to.

Cross-Int. 485. I note you state in Defendants' Exhibit 342, under the head of "Laying Machine, Model X, Apex Welt", that the mechanism defined in the McLeod patent 957,987, May 17, 1910, were incorporated in that machine. Will you kindly state when they were so incorporated by the United Company?

Ans. Laying machine, model X, Apex welt, was a Plant machine which was adopted by the United Company in February, 1911. And the mechanisms set forth in nearly all of the thirteen claims of patent No. 957,987 have been embodied in that machine since that date.

Cross-Int. 486. And was the mechanism of the McLeod patent referred to a radical change and advancement in the art, or was it constructed similar to machines that had previously been used for a like purpose?

Ans. There had been machines previously used for performing the operation which laying machine, model X, Apex welt, is used, but this machine was a distinct improvement upon prior machines, and in its operation did work which was not done by the machines previously used. That is, this machine was organized for severing from the source of supply the welt which had been attached to the shoe. That operation was never before performed by a welt-laying machine.

Cross-Int. 487. Kindly examine the cuts on page 4 of Defendants' Exhibit 267, and state whether or not the one marked "Plant" illustrates the Plant machine made under the McLeod patent, and whether the one on the right marked "Apex Welt Laying Machine — Model A" illustrate the machine previously made by the United Company.

Ans. I answer both questions in this interrogatory in the affirmative.

Cross-Int. 488. Kindly state when the Apex welt-laying machine, model A, was first put out, and when the Plant machine made under the McLeod patent was first put out, so far as you are informed.

Ans. As I previously stated, the laying machine, model X, Apex welt, was adopted in February, 1911. Laying machine, model A, Apex welt, was put out by the United Company in February, 1910.

Cross-Int. 489. And had a machine designed to accomplish a similar purpose been previously put out by the United Company?

Ans. No, sir.

Cross-Int. 490. Had no machine been put out, so far as you know, adapted for laying the welt?

Ans. There had been used for many years a machine for tacking a mock welt to a McKay out-sole; but I do not now recall any machine used before February, 1910, for attaching a mock welt to a McKay out-sole by means of cement, which was the means by which the welt is attached by both laying machine, model A, Apex welt, and laying machine, model X, Apex welt.

Cross-Int. 491. Now, in order to make that matter clear for the court, will you explain when the laying operation took place? Was it after the McKay shoe was stitched or before?

Ans. It was before the stitching operation.

Cross-Int. 492. And the machine operated to cement the welt on the sole, did it?

Ans. Yes, sir.

Cross-Int. 493. I note in Defendants' Exhibit 267, on page 4, the cuts, following the cuts which you have identified, entitled "Fair-stitch Welt Attachment". Do you understand that that has reference to the same machines for laying a mock welt on the edge of a sole of a McKay stitched shoe?

Ans. Yes, sir; the explanation probably being that a McKay welt is almost always "fair-stitched", so that the completed shoe shall resemble in appearance a welt shoe.

Cross-Int. 494. Then am I right in assuming that the laying machine to which reference has been made has no connection whatever with the manufacture of a welt shoe?

Ans. Yes, sir.

Cross-Int. 495. And the apex welt-laying machine which was controlled or manufactured by the United Company prior to the Plant acquisition was adapted to accomplish the same result as the Plant, excepting that the Plant machine cut off the welt at the finishing of the cementing operation; is that right?

Mr. PHILLIPS. Objected to as not within the scope of the order under which this testimony is being taken. The order of the court under which this testimony is being taken reads as follows: —

"With the consent of the parties it is ordered that the United States shall have from February 24 to March 10, inclusive, for the further cross-examination of Nelson W. Howard and the introduction of evidence in rebuttal before the Special Examiner, Charles K. Darling, with reference to matters provided for in the order entered in this cause, on January 14, 1914, and also to introduce evidence before the Special Examiner in rebuttal to evidence submitted by defendants in open court with respect to patents and machines obtained by the defendants from Thomas G. Plant. . . ."

This whole line of cross-examination seems to be directed to the cross-examination of Mr. Howard as to evidence submitted in open court, in connection with Defendants' Exhibit 342, and does not appear that under the order of the court any such cross-examination is authorized. This whole line of examination is therefore objected to.

Ans. I should prefer not to state that the two machines accomplished the same results, as the model X machine was a superior machine throughout. So far as concerns the operations for which the machines were intended, the distinction made in the interrogatory is substantially correct. That is, the model X machine differed from the model A machine in that it cut off the welt at the conclusion of the operation upon each shoe, and that was not done by the model A machine.

Cross-Int. 496. You have referred in your testimony to laying machine, model X, Goodyear channel, made, as I understand your testimony, under patent to Hooper No. 861,179, July 23, 1907, entitled "Channel Flap Layer". Kindly state when, if at all, the machine constructed as set forth in said patent was first put out by the United Company.

Mr. PHILLIPS. Question objected to because it does not relate to any subject-matter referred to by this witness in his testimony before the Special Examiner, and for that reason it is outside the order of the Court under which this testimony is being taken.

Ans. Laying machine, model X, Goodyear channel, constructed as set forth in all of the seventeen claims, excepting claim 13, of patent No. 861,179 was first put out by the United Company on May 5, 1911.

Cross-Int. 497. What machine, if any, had the United Company previously put out for accomplishing the same purpose?

Mr. PHILLIPS. Objected to as outside the order of the Court under which this testimony is being taken.

Ans. A machine known as "laying machine, Goodyear channel".

Cross-Int. 498. Kindly examine the two cuts on page 80 of Plaintiff's Exhibit 267, and state whether the one on the left properly illustrates the Plant machine as put out by the United Company under said patent to Hooper, and whether the one on the right properly illustrates the machine previously put out by the United Company adapted for the same purpose.

Mr. PHILLIPS. Objected to as outside the order of the court and for the reasons already stated.

[*Witness here examines cuts and says:*]

Ans. The two cuts referred to on page 80 of Plaintiff's Exhibit 267 accurately illustrates the two machines referred to in the interrogatory.

Cross-Int. 499. Kindly state whether the laying machine, model X, Goodyear channel, is designed for any purpose other than to turn the channel flap back over the seam after the seam has been laid in the channel.

Mr. PHILLIPS. The same objection.

Ans. The machine was designed to perform that operation, and, so far as I know, for no other operation.

Cross-Int. 500. Is it for use on welt shoes only, or on McKays?

Mr. PHILLIPS. The same objection.

Ans. It was designed particularly for, and is used on, welt shoes.

Cross-Int. 501. You have testified with reference to leveling machine, model B, Hercules, and, as I understand your testimony, it is to the effect that such machine as put out by the United Company was within the terms of some of the claims of patent to Heys No. 684,239, October 8, 1901, and patent to Heys No. 707,414, August 19, 1902. Will you kindly point out which particular claims of those patents include the construction of the machine as

put out by the United Company, and what particular features, stated in your own language, are so covered?

Mr. PHILLIPS. Objected to as relating to nothing touched upon in the prior testimony of this witness before the examiner, and therefore not within the order of the Court authorizing the cross-examination of the witness.

Ans. Leveling machine, model B, Hercules, embodies the mechanism set forth in claims 4, 10 and 13 of patent No. 684,239, Heys, October 8, 1901, and claim 11 of patent No. 707,414, Heys, August 19, 1902.

Cross-Int. 502. Kindly state when the machine was first put out embodying the claims you have referred to in that Heys patent.

[*It is hereby stipulated that the objection heretofore entered on the record by counsel for defendants to this line of examination, because of its being outside the scope of the order, may be hereafter covered in the record by the words "Same objection", without having the objection spread at length upon the record.*]

Ans. In June, 1905.

Cross-Int. 503. That relates to both patents?

Ans. Yes, sir.

Cross-Int. 504. Can you, without inconvenience, state where one of the machines which had incorporated in it the construction set forth in the claims of the two patents referred to and put out in 1905 or 1906 may be found for examination?

Mr. PHILLIPS. Same objection.

Ans. I shall be glad to provide a machine at my office for your inspection.

Cross-Int. 505. Pardon me, but I desire to ascertain the whereabouts of such machine which was put out and put into actual use in 1905 or 1906, and if you can give the information it will very much oblige.

Mr. PHILLIPS. The same objection.

Ans. I cannot state at this time where one of these machines is in operation, but at the next session I shall be glad to submit a list of factories where those machines may be seen in operation.

Cross-Int. 506. Were you not knowing to the fact in 1905 when

the leveling machine, model B, Hercules, was put out by the United Company that it was an infringement upon the Heys patent referred to?

Mr. PHILLIPS. Same objection.

Ans. I was aware of that fact at that time, or soon after that time.

Cross-Int. 507. Did the United Company continue, after acquiring such knowledge, to put out such machine in infringement of those patents?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir.

Cross-Int. 508. Are you not knowing to the fact that counsel advised the United Company that the machine so put out did not infringe the patents referred to?

Mr. PHILLIPS. The same objection, and further objected to because it relates to advice of counsel, which is privileged and cannot be inquired into.

Ans. I am not.

Cross-Int. 509. You have testified with reference to loading and attaching machine, model B, McKay automatic heel, and, as I understand your testimony, such machines as put out by the United Company fell within the terms of the claims of patent to Plant No. 958,281, dated May 17, 1910, and patent to Plant No. 958,282, dated May 17, 1910. Will you kindly state when the loading and attaching machine, model B, McKay automatic heel, was first put out by the United Company containing the constructions set forth in the claims of such patents, or either of them, and point out which particular claims define such construction?

Mr. PHILLIPS. Same objection.

Ans. The loaning and attaching machine, model B, McKay automatic heel, was first put out in November, 1910, after a year or more of experimental factory use. It embodied the improvements set forth in claim 8 of patent No. 958,281, May 17, 1910, Plant, and claims 10 and 11 of patent No. 958,282, May 17, 1910, Plant.

Cross-Int. 510. What machine had the United Company put out

to accomplish the same purpose prior to putting out loading and attaching machine, model B, McKay automatic heel?

Mr. PHILLIPS. Same objection.

Ans. For the attaching of the heels of welt shoes, which was the class of work for which loading and attaching machine, model B, was designed, the United Company had been putting out nailing machine, American Lightning.

Cross-Int. 511. Stated in other words, a loading and attaching machine, as I understand it, is a machine for attaching the heel to the sole of the shoe; am I right?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir.

Cross-Int. 512. And for the information of the Court and counsel, will you kindly state what the designation "loading" means in connection with the rest of the title adopted by your company?

Ans. In loading and attaching machine, model B, McKay, automatic heel, the heel-attaching nails are automatically taken from a mass of nails in a hopper and the proper number of nails for the heel to be attached are arranged with their points all in the same direction; are automatically delivered to a nail transferer, and are deposited by that transferer in the nail block from which they are driven to attach the heel. The word "loading" in the name of the machine has reference to this automatic supplying of the proper number of nails for each operation of the machine.

Cross-Int. 513. There is some evidence on the record in your deposition relating to molding machine, stitch-down upper; kindly state briefly for what character of shoe such a machine is adapted for operation.

Mr. PHILLIPS. The same objection.

Ans. That machine is adapted particularly for the making of stitch-down shoes.

Cross-Int. 514. In other words, will you kindly explain to the Court what kind of a shoe a shoe is which has a stitch-down upper; that is, whether it is a welt shoe, a McKay shoe, or what kind of a shoe?

Mr. PHILLIPS. The same objection.

Ans. In making a stitch-down shoe, during the lasting operation the edge of the upper, instead of being laid over the bottom of the insole or over the feather edge of the insole as in a McKay sewed or welt shoe respectively, is out-turned away from the corner of the last formed by its side and its bottom, and the out-sole is secured to the shoe by stitching passing through the out-turned flange of the upper and the out-sole.

Cross-Int. 515. Do you know whether there is any considerable amount of stitch-down upper shoes made and sold?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir; a large number of stitch-down shoes are being manufactured all the time.

Cross-Int. 516. Are they heavy or light shoes?

Mr. PHILLIPS. Same objection.

Ans. Probably the greater proportion of them are children's shoes, but a considerable number of sandals for both men and women are made in this way, and the proportion of men's and women's shoes made by this method is rapidly increasing.

Cross-Int. 517. I observe that the patents referred to in your list Defendants' Exhibit 342, under the head of "Molding Machine, Stitch-down Upper", are entitled, No. 871,963, November 26, 1907, Stewart, "Machine for making Pad Covers", and that the other patent referred to, namely, No. 871,966, November, 26, 1906, Stewart, is entitled "Method for making Pad Covers". Do the titles quoted from the patents correctly designate the subject-matter of the patents referred to?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir; in that patent No. 871,963 shows and describes a machine primarily intended for making pad covers, and patent No. 871,966 sets forth a method which is described in that patent as practiced in the making of pad covers.

Cross-Int. 518. Did the United Company ever carry out the method of making pad covers defined in patent No. 871,966?

Mr. PHILLIPS. Same objection.

Ans. Its machine known as "Molding Machine, Stitch-down

Upper" practices in its operations the method set forth in claims 1, 2 and 4 of that patent No. 871,966.

Cross-Int. 519. Did the United Company ever carry out the method?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir; to the extent that it builds and supplies to manufacturers machines which can be operated only by practicing the method set forth in the claims named in my last answer.

Cross-Int. 520. Kindly state when the United Company first put out its machines like that set forth in the patent for machine for making pad covers.

Mr. PHILLIPS. Same objection.

Ans. In November, 1907, the United Company first put out a machine embodying mechanism set forth in claims 4, 7, 28 and 37 of patent No. 871,963.

Cross-Int. 521. And had the United Company, prior to November, 1907, put out any machine adapted for accomplishing a like result?

Mr. PHILLIPS. Same objection.

Ans. For a few months before that date the United Company had put out separate machines for molding the toe and the heel of a stitch-down shoe. Molding machine, stitch-down upper, was, in effect, a combination of the two earlier machines and comprises in one machine mechanism for molding both the toe and the heel of a stitch-down shoe.

Cross-Int. 522. And did the United Company continue from November, 1907, to put out molding machine, stitch-down upper, in infringement of the Stewart patents referred to until the purchase of patents from Plant?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir.

Cross-Int. 523. In your testimony you make reference to the Plant patents No. 958,302, May 17, 1910, and No. 958,282, May 17, 1910, the constructions set out in some of the claims of which patents were incorporated, as I understand you, in the United Com-

pany's nailing machine, American Lightning. Will you kindly state when such construction was first embodied in such machine?

Mr. PHILLIPS. Same objection.

Ans. Mechanism embodying improvements defined in the claims of patent No. 958,302, May 17, 1910, Plant, was first used on the nailing machine, American Lightning, in January, 1910, but as it was found to infringe that patent it was discontinued until after the Plant acquisition. On September 29, 1910, after the Plant acquisition, under instructions from the patent department, the mechanism was adopted and a large number of machines have since been put out embodying this mechanism. Mechanism embodying the subject-matter of claims of patent No. 958,282, May 17, 1910, Plant, is incorporated in the reorganized automatic machine which was adopted in July, 1913, after many months of experimental use.

Cross-Int. 524. In order to shorten the record as much as possible, I will ask you to kindly examine the heel having nails driven therein, which heel was kindly delivered to me yesterday by yourself or Mr. Warren, and state whether it properly illustrates the kind of work the machine in question, having the mechanism of the Plant patent referred to incorporated therein, is adapted to perform.

Mr. PHILLIPS. The same objection.

Ans. The heel which you have submitted for my inspection is a "loaded heel" which was loaded on the machine illustrated in patent No. 958,302, May 17, 1910, Plant. The nailing machine, American Lightning, does not use a loaded heel. This heel, however, does illustrate roughly the driving of heel-attaching nails at an inclination, which is done by the Lightning machine.

Cross-Int. 525. The alleged Plant improvement, as I understand it, related to the mechanism by which the nails were fed at an angle to the tread surface of the heel; am I right?

Mr. PHILLIPS. Same objection.

Ans. The improvements defined in the claims of Plant patent No. 958,302, the mechanisms of which are incorporated in the nailing machine, American Lightning, have to do with the driving of heel-attaching nails in directions inclined rearwardly.

Cross-Int. 526. Is it not a fact that nails were previously driven, inclined rearwardly through the heel, prior to the disclosure of the mechanisms set forth in said Plant patents?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir; the mechanism which we have been discussing constituted an improvement upon nailing machine, American Lightning, as it had previously been organized for driving nails inclined rearwardly.

Cross-Int. 527. You have testified with reference to opening machine, model X, Goodyear channel. If the construction of that machine is illustrated in Plaintiff's Exhibit 267, will you kindly point out upon what page such illustration appears?

Mr. PHILLIPS. Same objection.

Ans. That machine is illustrated on page 73 of Plaintiff's Exhibit 267, in the cut at the left.

Cross-Int. 528. Kindly state when the opening machine referred to by you, constructed as set forth in the patent to Hooper No. 947,509, January 25, 1910, was first put out by the United Company.

Mr. PHILLIPS. Same objection.

Ans. In May, 1911.

Cross-Int. 529. I observe that the patent referred to by you under the heading of opening machine is entitled "Channel Lip Turning Machine". Do I understand the two terms mean the same?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir.

Cross-Int. 530. Had any machine been put out by the United Company, previous to the Plant acquisition, designed and adapted to accomplish the same purpose?

Mr. PHILLIPS. The same objection.

Ans. Yes, sir.

[*Adjourned to 10* A. M., *February 26, 1914.*]

BOSTON, MASS., February 26, 1914.

Mr. WEBSTER. The witness having kindly produced the copy of patent to Bertrand of March 7, 1882, containing an illustration of what is known as a stitch-down shoe, counsel for the plaintiff offers in evidence a drawing marked "Fig. 3" of the patent in question.

Mr. PHILLIPS. The introduction of the exhibit is objected to as outside the order of the Court under which this testimony is being taken.

[*Drawing marked "Fig. 3" of Bertrand patent No. 254,594 is marked "Plaintiff's Exhibit 280".*]

Cross-Int. 531. Will you kindly examine the shoe I now hand you, and state whether it is a welt shoe for men?

Ans. The shoe submitted for my inspection appears to be a man's welt shoe.

[*Man's welt shoe examined by the witness is offered in evidence, and marked "Plaintiff's Exhibit 281".*]

Cross-Int. 532. Will you kindly examine the shoe I now hand you, and state whether it is a welt shoe for women?

Ans. The last shoe submitted for my inspection appears to be a woman's welt shoe, unusually heavy and of large size.

[*Woman's welt shoe examined by the witness is offered in evidence, and marked "Plaintiff's Exhibit 282".*]

Cross-Int. 533. Will you kindly examine the cuts on page 108 of Plaintiff's Exhibit 267, and state whether either of the cuts properly illustrate the knife grinding about which you testified yesterday?

Mr. PHILLIPS. Question objected to as outside the order of the court under which this testimony is being taken, there being no authority in said order to cross-examine this witness on any subject-matter not referred to in his testimony previously given in behalf of the defendants before this examiner. It is agreed that an objection noted as "The same objection" shall be equivalent to a repetition of this objection.

Ans. No, sir. Neither of the cuts on page 108 of Plaintiff's Exhibit 267 illustrates the grinding machine, model H, Imperial, about which I testified yesterday.

Cross-Int. 534. Will you kindly give the trade designation, as employed by the United Company, of the cut at the right of page 108 if the same is a machine put out by the United Company?

Mr. PHILLIPS. Same objection.

Ans. The United Company did not adopt the Plant machine shown in the cut at the right of page 108 of this exhibit, and has not put that machine out.

Cross-Int. 535. Do either of the machines illustrated in the cuts on page 108 of Plaintiff's Exhibit 267 show a construction such as is defined in the claims of the patent purchased of Plant, to which you made reference yesterday, Heys No. 944,238, December 21, 1909?

Mr. PHILLIPS. Same objection.

Ans. No; the machine of Heys patent No. 944,238 is intended and adapted for entirely different uses from those for which the machines on page 108 of the Exhibit 267 are adapted.

Cross-Int. 536. If the grinding machine of the Heys patent is illustrated in Plaintiff's Exhibit 267, will you kindly state upon what page it is found?

Mr. PHILLIPS. Same objection.

Ans. I believe that the machine of Heys patent No. 944,238 is not illustrated in Plaintiff's Exhibit 267.

Cross-Int. 537. You testified with reference to polishing machine, model X, Climax, and as I understand it your testimony is to the effect that such machine was constructed by the United Company in accordance with some of the claims of the patent to Plant No. 958,288, dated May 17, 1910, and patent to Plant No. 965,223, dated July 26, 1910. Will you kindly state when a machine was first put out by the United Company constructed as set forth in said claims?

Mr. PHILLIPS. Same objection.

Ans. That machine, polishing machine, model X, Climax, was adopted in February, 1911.

Cross-Int. 538. And had the United Company previously put out a machine adapted for accomplishing the same purpose?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir.

Cross-Int. 539. I note that patent No. 965,223 is entitled "Dust Gatherer for Abrading Machine"; will you state briefly whether that patent relates to anything more than is indicated in the title of the patent, to-wit, a dust gatherer?

Mr. PHILLIPS. Same objection.

Ans. Perhaps I ought to explain that the "dust" in this title means the material which is removed from the stock in the operation of the machine. In the operation of such a machine the air about the machine is constantly filled with this fine material removed in the operation of the machine, unless means is provided for removing it. With this explanation I should state that the title properly designates the improvement as set forth in this patent.

Cross-Int. 540. I note that the other patent, to-wit, patent No. 958,288, dated May 17, 1910, is entitled "Boot and Shoe Buffing Machine"; am I to understand that the terms "polishing machine" and "buffing machine" are used as synonymous terms in this connection?

Mr. PHILLIPS. Same objection.

Ans. I do not understand the question.

Cross-Int. 541. I note that in the title employed by you in the paper marked "Defendants' Exhibit 342" you make reference to "Polishing Machine, Model X, Climax", to refer to the patents noted in the previous question and answers. I note also that in one of these patents the title is stated as "Boot and Shoe Buffing Machine". My question is whether the term "polishing machine" as employed by you in Defendants' Exhibit 342 is a synonymous term with "buffing machine" as employed in the patent?

Mr. PHILLIPS. Same objection.

Ans. No, sir.

Cross-Int. 542. Then am I to understand that the buffing machine of the Plant patent No. 958,288 is not a polishing machine?

Mr. PHILLIPS. Same objection.

Ans. Not as the terms "buffing machine" and "polishing machine" are technically used in the industry. It should of course be understood that improvements which are useful in a buffing ma-

chine may also be useful in a polishing machine, and that is the situation in this case.

Cross-Int. 543. Did it involve any change in the construction of the machine to employ the mechanism of the buffing machine of the Plant patent referred to, to turn it into a polishing machine such as is referred to in the exhibit?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir; it involved some mechanical changes, such as altering dimensions of parts.

Cross-Int. 544. Will you kindly examine Figure 2 of patent to Plant, entitled "Boot and Shoe Buffing Machine", No. 958,288, and state whether it properly illustrates the invention sought to be protected by the claims of that patent?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir; it does.

Cross-Int. 545. Do you know whether the record contains an illustration of the polishing machine, model X, Climax, as put out by the United Company?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir; that machine is illustrated in the cut at the left on page 134 of Plaintiff's Exhibit 267.

Cross-Int. 546. You have testified with reference to pulling-over machine, model B, Rex, and I understand your testimony is to the effect that such machine as put out by the United Company was constructed as set forth in some of the claims of patent to Heys No. 957,955, dated May 17, 1910, and while you have heretofore stated on the record what claims were embodied in such machine, I will ask you to kindly state the same now and also state when that machine was first put out by the United Company constructed as set forth in such claims.

Mr. PHILLIPS. Same objection.

Ans. Pulling-over machine, model B, Rex, was adopted in July, 1910. The improvement defined in claim 55 of patent No. 957,955, May 17, 1910, Heys, was adopted on September 30, 1910, after the acquisition of the Plant patents.

Cross-Int. 547. You have testified with reference to rounding

machine, Goodyear heel seat, and as I understand your testimony such machine was put out by the United Company constructed as set forth in patent to Heys No. 1,005,545, October 10, 1911, and patent to Phelan No. 1,005,573, October 10, 1911. Will you kindly state when such machine was first put out by the United Company containing structures defined in the claims of such patents, and what claims define such structures?

Mr. PHILLIPS. Same objection.

Ans. This machine, rounding machine, Goodyear heel seat, in its first form was put out by the United Company in September, 1906. In view of British patent No. 12,613, May 31, 1907 (priority claimed June 1, 1906), granted to M. D. Phelan, whom we knew to be one of Plant's inventors, we discontinued the first type of the machine, as we assumed that a United States application corresponding to that British patent was pending. Such an application was pending and on it was granted patent No. 1,005,573, October 10, 1911. If the first form of our machine had been continued, it would have infringed that patent. In the endeavor to avoid this infringement the machine was reorganized and was again adopted commercially in August, 1909. The new construction avoided infringement of the Phelan patent, but further difficulty was encountered when, on February 1, 1910, an interference, No. 31,422, was declared between an application on this second form of machine owned by the United Company and an application, serial No. 309,997, filed April 5, 1906, Heys, on which was granted patent No. 1,005,545, October 10, 1911. When this interference was declared we learned for the first time that Plant's inventor, Heys, was prior to Phelan. The issues of that interference were claims 8, 15, 17, 18 and 21 of patent No. 1,005,545, October 10, 1911, Heys. If we had continued to put out this second form of the machine, it would have infringed those claims and also claims 1, 2 and 6 of that patent. Accordingly we discontinued the machine and did not put it out again until after the acquisition of the Plant patent. It was then again adopted and put into extensive commercial use.

Cross-Int. 548. The machine of these patents comprises as one

of its principal novel features a curved flexible knife which moves to cut the surplus stock from the out-sole at the heel portion of the shoe, does it not?

Mr. PHILLIPS. Same objection.

Ans. The machine comprises such a knife, but that is not one of the principal novel features defined in the claims of the Heys and Phelan patents.

Cross-Int. 549. Referring again for a moment to pulling-over machine, model B, Rex, I note that claim 55 to which you have made reference cites, among other things, "a gaging device movable into and out of operative position". Kindly state whether this gaging device is illustrated in Fig. 1 of the patent and point out the marking as indicating such device.

Mr. PHILLIPS. Same objection.

Ans. Yes, sir: the gaging device, which is an element of claim 55 of patent 957,955, is illustrated in Fig. 1 of that patent. The part of the device which engages the shoe is marked "110".

Cross-Int. 550. And this device comprises a pin or rod marked "109", bent downwardly as indicated by 110 and mounted to be moved as desired upon a support, does it not?

Mr. PHILLIPS. Same objection.

Ans. As I have stated, the part of the device which engages the shoe is marked "110" in Fig. 1 of patent No. 957,955. If it be attempted to identify the other elements of claim 55, it will be necessary to name many more parts than are mentioned in the interrogatory.

Cross-Int. 551. Very well. The part 110 is integral of the part 109, is it not?

Mr. PHILLIPS. Same objection.

Ans. No, sir; it is not.

Cross-Int. 552. Is it a separate member mounted upon the end of the part marked "109"?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir.

Cross-Int. 553. But the part marked "109" is the rod upon which part 110 is mounted, is it not?—

Mr. PHILLIPS. Same objection.

Ans. Yes, sir.

Cross-Int. 554. You have testified with reference to rounding and channeling machine, model E, Goodyear Universal, and as I understand your testimony such machine as put out by the United company at one time was constructed as set forth in some of the claims of patent to English No. 878,478, February 4, 1908. Will you kindly state when such machine was first put out constructed as set forth in the claims heretofore referred to, to-wit, 51, 52, 53 and 54 of said patent?

Mr. PHILLIPS. Same objection.

Ans. The machine inquired about, rounding and channeling machine, Goodyear Universal, model E, was first put out by the United Company in December, 1910. The machine as then constructed embodied the improvements set forth in claims 51, 52, 53 and 54 of patent No. 878,478, February 4, 1908, English. Every machine which has been put out has embodied improvements set forth in those claims 51 to 54. The machine as originally designed before it was put out for commercial use also embodied the improvements set forth in claims 18, 20 and 21 of this patent No. 878,478, February 4, 1908, English, but with great difficulty and at much expense the machine was changed to avoid this infringement before it was put into commercial use.

Cross-Int. 555. What was the trade-name or designation of the rounding and channeling machine put out by the United Company previous to such machine which embodied the construction referred to in the four claims 51, 52, 53 and 54?

Mr. PHILLIPS. Same objection.

Ans. Rounding and channeling machine, Goodyear Universal.

Cross-Int. 556. Is it not a fact that in claims 51 to 54, inclusive, a variable speed mechanism is one of the essential elements?

Mr. PHILLIPS. Same objection.

Ans. Claim 51 includes as an element "a variable speed-driving mechanism for the pattern", and an element defined in more or less similar terms is in each of claims 52, 53 and 54.

Cross-Int. 557. In other words, this variable speed mechanism

is a contrivance in which, by the moving of a lever, a high or low speed of the pattern may be attained; is that right?

Mr. PHILLIPS. Same objection, and further objected to as ambiguous and uncertain.

Ans. I prefer to explain the mechanism as I have heretofore explained it in my testimony in regard to this machine. The improvement comprised mechanism never before used in such a machine for controlling the operation of the pattern cam in such manner that the position of the forepart guide which determines the distance of the rounding cut from the edge of the last would be right at any given point in the operation of the machine whatever the size of the shoe.

Cross-Int. 558. That result is attained by changing the speed of the pattern, is it not?

Mr. PHILLIPS. Same objection.

Ans. Roughly speaking, that is correct.

Cross-Int. 559. You have testified with reference to scouring machine, model X, heel, and as I understand you the same was constructed as shown in patent to Bohr No. 883,445, March 31, 1908, and as shown in patent to McLeod No. 957,993, May 17, 1910. Will you kindly state when such machine was first put out by the United Company constructed as shown in said patents and referred to in the claims thereof?

Mr. PHILLIPS. Same objection.

Ans. Scouring machine, Model X, heel, was first put out by the United Company in November, 1911. Its commercial form is shown in the cut at the left, marked "Plant", on page 109 of Plaintiff's Exhibit 267.

Cross-Int. 560. Kindly state what machine was put out by the United Company prior to November, 1911, designed and adapted to accomplish the same purpose as the Plant device.

Mr. PHILLIPS. Same objection.

Ans. The heel-scouring machine which was put out by the United Company in November, 1911, is illustrated in the cut at the right, entitled "Heel Scouring Machine", on page 109 of Plaintiff's Exhibit 267.

Cross-Int. 561. You have testified with reference to splitting machine, Rapid noiseless wonder, which I understand you to say was constructed as shown in patent to Heys No. 844,128; kindly state when such machine was put out so constructed by the United Company.

Mr. PHILLIPS. Same objection.

Ans. This machine was first put out in September, 1910.

Cross-Int. 562. What was the trade designation of the machine before that time put out by the United Company designed for accomplishing a like result?

Mr. PHILLIPS. Same objection.

Ans. The United Company was putting out a machine known as the "Summit Splitting Machine".

Cross-Int. 563. State if you know whether there is in the record an illustration of the splitting machine, Rapid noiseless wonder.

Mr. PHILLIPS. Same objection.

Ans. I don't recall that there is.

Cross-Int. 564. Would it be convenient to produce one?

Ans. Yes, sir; I think I can produce one.

Cross-Int. 565. Will you kindly do so and very much oblige?

Ans. I shall be glad to.

Cross-Int. 566. You have testified with reference to treeing machine, model H, Miller twin, constructed, as I understand your testimony, in accordance with the patent to Hooper No. 944,365, December 28, 1909. Will you kindly state when such machine was first put out by the United Company and what claims of said patent show such construction, and the trade designation of the machine before the time designed to accomplish a like result, put out by the United Company?

Mr. PHILLIPS. Same objection.

Ans. Treeing machine, model H, Miller twin, had been put out for some years prior to the Plant acquisition by the O. A. Miller Treeing Machine Company, a constituent company of the United Shoe Machinery Company. In 1911 this machine was improved

by incorporating in it improvements set forth in the claims of patent No. 944,365, December 28, 1909, Hooper.

Cross-Int. 567. To state it in a homely way, a treeing machine is an apparatus to be inserted in a shoe and stretch the upper to the desired shape, is it not?

Ans. No, sir.

Cross-Int. 568. What is it designed for?

Ans. A treeing machine is intended and adapted for supporting and presenting properly a shoe for the operation of cleaning and finishing the upper at practically the end of the many making operations on the shoe.

Cross-Int. 569. I observe that the patent to Hooper referred to, No. 944,365, is entitled "Boot and Shoe Tree and Stretcher". Is that designation a correct designation for that patent in question?

Mr. PHILLIPS. Same objection.

Ans. Yes; this patent discloses and sets forth in its claims improvements on the portion of the treeing machine indicated in its title.

Cross-Int. 570. You have testified with reference to wetting machine, model X, Crest sole, and as I understand you the same was constructed by the United Company at one time as shown in patent to McLeod No. 957,992. Will you kindly examine that patent, and state whether Fig. 1 of the drawing properly illustrates the construction of such device or machine as put out by the United Company?

Mr. PHILLIPS. Same objection.

Ans. Fig. 1 of the drawings of the McLeod patent No. 957,992, which is a sectional view, shows with substantial accuracy the construction of the United Company's commercial wetting machine, model X, Crest sole, except that in the commercial machine a change has been made in the support indicated at "8" in that drawing, so that that support is now adjustable.

Cross-Int. 571. Kindly state when the United Company first put out a machine constructed as shown in said McLeod patent, and the trade designation as employed by the United Company of the machine or apparatus used before that time for the same purpose.

Mr. PHILLIPS. Same objection.

Ans. Wetting machine, model X, Crest sole, was adopted in February, 1911. The name of the machine previously put out by the United Company was wetting machine, Crest sole.

Cross-Int. 572. You have testified with reference to wetting machine, model X, Economy insole, constructed by the United Company, as I understand you, in accordance with patent to Hooper No. 957,961, May 17, 1910. Will you kindly state when the United Company first put out a machine constructed as shown in said patent, and the trade designation of machine prior to that time put out by the United Company for accomplishing the same result?

Mr. PHILLIPS. Same objection.

Ans. Wetting machine, model X, Economy insole, was adopted by the United Company in February, 1911. The machine previously put out is shown at the right on page 31 of Plaintiff's Exhibit 267, and I believe the official designation of that machine was "Wetting Machine, Economy Insole".

Cross-Int. 573. And does the cut at the left on page 31 of Plaintiff's Exhibit 267 properly illustrate the construction of the machine as put out by the United Company after February, 1911?

Ans. Yes, sir.

Mr. PHILLIPS. Counsel for defendants desires to repeat his objection to this whole line of cross-examination relating to Defendants' Exhibit 342, or to any evidence taken in open court in regard to the same, on the ground that such cross-examination is outside the order of the court under which this testimony is being taken, because such order does not authorize cross-examination of this witness except as to certain matters testified to by him in his testimony heretofore given in behalf of the defendants before this examiner.

Mr. WEBSTER. Counsel for the plaintiff respectfully calls attention to the fact that while in his opinion cross-examination with reference to matters referred to in the Defendants' Exhibit 342 is entirely within the scope of the order, the fact remains, nevertheless, that while that exhibit has been referred to for convenience, the record of the proceedings before the Special Examiner clearly

shows that the witness testified in direct examination with reference to the same devices, machines and patents, and therefore, even within the field conceded by counsel for the defendants, the cross-examination is entirely proper.

[*By subsequent agreement of counsel, hearing to be resumed at 10* A. M., *February 27, 1914.*]

BOSTON, MASS., February 27, 1914.

Mr. WEBSTER. Counsel for the plaintiff inquires of counsel for the defendants whether he is prepared to produce copies of the pending applications for United States patents called for yesterday.

Mr. PHILLIPS. Counsel for defendants states that the cross-examination of Mr. Howard, during which pending applications were called for, was entirely outside of the order of the Court, but that without waving that objection, or without admitting the right of the complainant to call for the production of any applications pending in the United States Patent Office, and saving all defendants' rights in the premises, he is ready to produce the applications identified by counsel for complainant and requested to be produced, and he herewith produces such applications and submits them to counsel for the plaintiff.

The WITNESS. At the session on February 25, 1914, I was requested to produce copies of applications Serial No. 631,395, June 5, 1911, Heys and McClure, and serial No. 524,952, October 27, 1909, McLeod. I now produce for the inspection of counsel for the United States copies of the specifications, claims and drawings, as filed, of each of these applications.

Cross-Int. 574. Will you also produce copies of amendments and Office actions?

Mr. PHILLIPS. Counsel for defendants objects to the foregoing interrogatory and request as outside the order of the Court under which this testimony is being taken, for the reason hereinbefore fully stated and for the further reason that no reference has been made by this witness in any of his testimony to the Office actions upon any pending application; that such actions have no materiality in this cause; that the inventions sought to be patented in the

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applications produced are clearly disclosed in the drawings and described in the specifications, and the discussions between the examiner and solicitor prosecuting such applications and any question arising during that prosecution can be of no materiality. The original applications are, of course, all on file in the United States Patent Office and cannot be produced.

Cross-Int. 575. Is there any paper among the papers produced by you, alleging to be copies of pending applications, indicating officially when either or any of said applications were filed, whether they have been acted upon, and what claims, if any, stand allowed?

Mr. PHILLIPS. Objected to for the reasons hereinbefore fully stated.

Ans. As to the first question in the interrogatory, in order that the request of counsel for the United States might be met promptly it was impracticable to obtain certified copies of these applications from the United States Patent Office. Accordingly the copies were made from the file copies of the solicitors in the respective applications.

As to the second and third questions in the interrogatory, the copies submitted are, as I have previously stated, copies of the respective specifications, claims and drawings as originally filed which contain full disclosures of the improvements sought to be patented, but which do not show such subsequent proceedings as have been had in the Patent Office.

Mr. PHILLIPS. With regard to proceedings in the Patent Office, the defendants' counsel desires to add that, in accordance with the well known procedure in the Office, the statements of any examiner in charge of an application for a patent are made as then advised on the art and are no indication of the patentability of any claim referred to, and in practice are frequently altered and reversed; that an application for a patent, even after notice of so-called final allowance, is frequently withdrawn from issue and refused to the applicant on account of interference or for other reasons. For that reason the discussions of the attorney and the examiner can be of no materiality in any issue in this cause.

Mr. WEBSTER. Are we then to understand from the statement

of counsel for defendants that none of the claims of the pending applications to which the witness has testified are in fact allowed?

Mr. PHILLIPS. I am not aware that any claim of a patent is declared to include a patentable subject-matter until the grant of the patent. As my Brother Webster well knows, the refusal of the examiner to admit the patentability of a claim is often reversed by the Board of Examiners-in-Chief, and the Board of Examiners-in-Chief reversed by the Commissioner, and the Commissioner reversed by the Court of Appeals.

Mr. WEBSTER. It is the understanding of counsel for complainant that the statement made by learned counsel for the defendants is correct, and that none of the claims of a pending application may properly be said to be allowed until such time as the application as a whole is allowed and parties finally notified of that fact. The call for the copies of the applications which the witness has testified to was made because of the fact that the witness has frequently referred to "allowed claims" of pending applications, and now in view of the statement of counsel for defendants that no such claims were in fact allowed, counsel for complainant will not ask to examine the applications, but will insist upon the motion to strike out and erase from the record all testimony heretofore entered tending to show that claims of such pending applications were in fact allowed.

Counsel for complainant desires further to state that he did not call upon defendants to produce certified copies of any such applications, but did expect such copies to be presented as in fact formed a part of the application, thus including amendments and letters from the Patent Office; and counsel desires to say that he will be perfectly content with any paper which the witness states is a copy of any paper forwarded to the Patent Office. In view, however, of the statements heretofore made, it now becomes entirely unnecessary to go further with reference to pending applications.

Mr. PHILLIPS. Counsel for defendants calls the attention of the Court to the fact that the copies of the applications submitted to counsel for the plaintiff contain a complete disclosure of the invention for which it was expected to obtain United States Letters Pat-

ent, and that from such disclosure the learned counsel for the Government and his experienced expert can determine what that invention is with as great ease and facility as they could if the invention had actually gone to patent and the patent were presented to them. The statements of plaintiff's counsel as to Office actions and their utility in determining the novelty or patentability of an invention are frivolous.

Mr. WEBSTER. We are well aware that it is common practice among enthusiastic applicants for patents to claim everything possible relating to the art forming the subject-matter of such application, and if we were to rely upon such applications it would be apparent that the defendants might justify under applications covering every conceivable form of mechanism.

Mr. PHILLIPS. The only question of any materiality in this matter being as to whether or not these applications contained patentable subject-matter, that fact can be fully determined on the complete disclosure contained in the copies submitted to counsel for the plaintiff.

Cross-Int. 576. In the printed record on page 2286 you testify with reference to three patents issued after the filing of the bill herein, the same relating to fudge-stitch mechanisms, incorporated in out-sole rapid lockstitch machine. Kindly state whether the mechanisms defined in the claims of such patents are incorporated in the out-sole rapid lockstitch machine of the United Company, and when first so incorporated, and which claims define the mechanisms so incorporated.

Ans. Discussing first the second patent of the group of three to which the interrogatory relates, fudge-stitch mechanisms constructed substantially as shown in patent No. 1,017,397, February 13, 1912, Fletcher and MacLean (application filed March 31, 1905), were first embodied in the rapid out-sole lockstitch machine early in 1905 and this form has been furnished on that machine when desired ever since. That mechanism embodies the improvements set forth in claims 1 to 7 inclusive, 9, 13, 14 and 15 of that patent No. 1,017,397.

Early in 1906 there was adopted the form of fudge-stitch mechan-

ism shown specifically in patent No. 1,017,380, February 13, 1912, Cady and Thayer (application filed October 11, 1907). That form of the mechanism has been the most generally used and has been supplied on the machine ever since its introduction, which, as I have already stated, was early in 1906. That form, known as type A, embodies the improvements set forth in all five of the claims of patent No. 1,017,380.

Another form of fudge-stitch mechanism which has been preferred by some manufacturers is constructed substantially, but not exactly, as shown in the third patent of the group inquired about, namely, No. 1,027,791, May 28, 1912, Allen (original application filed February 8, 1906). This form is known as type B and embodies mechanisms set forth in all of the five claims of this patent No. 1,027,791. The improvements set forth in broad terms of this patent No. 1,027,791 are embodied in all forms of fudge-stitch mechanisms which have been incorporated in the different models of the out-sole lockstitch machine since the fudge-stitch mechanism was first embodied in that machine early in 1905.

Cross-Int. 577. Then, as I understand you, the improvements of said several patents issued after the filing of the bill herein were incorporated in the model M out-sole rapid lockstitch machine; is that correct?

Ans. The form of fudge-stitch mechanism which has always been embodied in the model M rapid out-sole lockstitch machine since it was first put out embodies mechanisms set forth in patent No. 1,017,397, February 13, 1912, Fletcher and MacLean (application filed March 31, 1905), and patent No. 1,027,791, May 28, 1912), Allen (original application filed February 8, 1906). That mechanism on the model M machine also embodies improvements defined in the claims of a number of other patents, but it does not embody the improvements defined in patent No. 1,017,380, February 13, 1912, Cady and Thayer.

While discussing the model M stitcher, I should like to correct my statement in the sixth line on page 2301 of the printed record. I stated there that this machine "was first put out for commercial use as recently as January, 1912". Since making that statement

I have learned that on January 6, 1912, the first leases were executed for eight of these machines, but that two machines had previously been put into commercial use in shoe factories. The first of these was put out in June, 1911, and was continuously used in shoe factories until June 24, 1912. The second machine put out for commercial use was first used in a shoe factory on August 14, 1911, and has been in continuous use in shoe factories from that date to the present time.

Mr. WEBSTER. All the last portion of the answer is objected to as non-responsive. Counsel is, however, quite content that it remain as part of the record by way of correction, as I understand it was intended.

Cross-Int. 578. The subject-matter of these patents, stated in a homely way, is, as I understand it, a provision by which a channel may be cut in the welt in advance of the stitching operation; am I correct?

Ans. Roughly speaking, that is correct, it of course being understood that the channel or groove is automatically formed by the out-sole stitcher itself immediately preceding the formation of the stitch which is to be received in the groove so cut.

Cross-Int. 579. And is it not a fact to your knowledge that the same operation had been performed prior to the applications for said patents?

Mr. PHILLIPS. Objected to as outside the scope of the order.

Ans. Yes, sir; I understand a few fudge-stitch mechanisms constructed specifically as shown in patent No. 1,017,397, February 13, 1912, Fletcher and McLean, were used for a few months prior to the filing of the application for that patent.

Cross-Int. 580. On page 2293 of the printed record you make reference to patent to Hadaway dated June 25, 1912, relating, as I understand, to mechanism by which the presser-foot in an out-sole rapid lockstitch machine operates to force together the layers of stock before the formation of the stitch. Kindly state when, so far as you are advised, such mechanism was first incorporated in the lockstitch machine of the United Company.

Ans. The improvements defined in the claims of patent No.

1,030,582, June 25, 1912, Hadaway (application filed September 29, 1904), were first embodied in a commercial machine supplied by the United Shoe Machinery Company on May 21, 1910. Those improvements were incorporated in lockstitch machine, Goodyear out-sole rapid, model K, which, on that date, became the standard commercial out-sole stitching machine of the United Company. The improvements defined in the claims of that patent were also embodied in lockstitch machine, Goodyear out-sole rapid, model M, which, as appears from my corrected testimony in regard to that machine, was first put out for commercial use in June, 1911.

Cross-Int. 581. In your testimony with reference to out-sole rapid lockstitch machine, model M, you make reference, so far as the printed record is concerned, to the same having been first put out after the filing of the bill. You now, as I understand you, correct that testimony and say that it was first put out prior to the filing of the bill. In view, however, of the printed record, I would like permission to ask of you a general, concise statement of the organization of the model M out-sole stitcher in so far as the stopping mechanism is concerned. I am led to submit this interrogatory because the printed record clearly shows your testimony to the effect that it was put out after the filing of the bill, and although I have no objection to the correction I would like you to describe the stopping mechanism as actually embodied in the model M machine.

Mr. PHILLIPS. Objected to as outside the scope of the order.

Ans. The mechanism for stopping lockstitch machine, Goodyear out-sole rapid, model M, comprises means which, at whatever speed the machine is running at the time the operator wishes to stop it, first reduces the speed of the machine to a predetermined low speed, and then from that predetermined low speed stops the machine always at the same predetermined point in the cycle of its operation.

Cross-Int. 582. You have now stated the result of the operation of the mechanism. I would like to have spread on the record a brief statement or word picture of the mechanism. I desire this especially because I understand from your testimony no patent has

yet been issued which clearly shows such mechanism. I therefore ask you if it is not a fact that the mechanism employed by the United Company, crudely stated perhaps, comprises a shaft having a clutch, which shaft revolves backwardly or in a direction opposite to the forward motion of the shaft of the machine; that when it is desired to stop the machine a brake mechanism operates to check the forward motion of the main shaft of the machine; the clutch then revolving in an opposite direction is brought into engagement with a clutch on the main shaft and such clutch causes the reverse motion of the main shaft to a predetermined point.

Mr. PHILLIPS. Objected to as outside the order of the court.

Ans. No, sir; that is not a correct description of the operation of the stopping mechanism of the model M stitcher.

Cross-Int. 583. Will you kindly spread upon the record a brief description of the stopping mechanism as embodied in the model M machine, but which you say is not shown in any patent yet issued?

Mr. PHILLIPS. The same objection.

Ans. Lockstitch machine, Goodyear out-sole rapid, model M, comprises two mechanisms for operating the driving shaft of the machine. One of these, which may conveniently be termed the "high-speed driving mechanism", operates the driving shaft at the various speeds desired during the operation of the machine, varying from the highest speed on the straight and easy portions of the work, to the somewhat lower speeds generally desired on the more difficult portions of the work, as in the shank. The other driving mechanism may be conveniently termed the "low-speed driving mechanism". When the operator wishes to stop the machine he renders inoperative the high-speed driving mechanism and at the same time renders operative the low-speed driving mechanism. This low-speed driving mechanism first operates to reduce the speed of the machine to a predetermined low speed, and then it operates to drive the machine at that predetermined low speed until the point in the cyle of the machine's operations is reached at which the machine should stop. At that point the machine is automatically stopped, obviously with much less jar and less wear on the machine than would be the case if the machine were stopped

while running at its normal high speed. It is also obvious that by this construction the stopping will always take place at the proper predetermined point in the cycle of the machine's operation, which would probably be impossible if it were attempted to stop the machine while running at any of the varying high speeds at which the machine is normally operated.

Cross-Int. 584. Were the model M machines which you say were put out in 1911 constructed like the model M machine which you kindly showed to me in the building at the corner of Beach and Lincoln Streets very recently?

Mr. PHILLIPS. The same objection.

Ans. The model M stitcher as first put out in 1911 was constructed substantially as it is now constructed, and was substantially the same in respect to the mechanism described in my preceding answer as the machine which was exhibited to you in the Albany Building at the corner of Beach and Lincoln Streets.

Cross-Int. 585. And is the stopping mechanism of the model K welter the same as the stopping mechanism of the model M stitcher?

Mr. PHILLIPS. The same objection.

Ans. The stopping mechanism of the model K welter, officially known as "Shoe Machine — Model K: Goodyear Welt and Turn", embodies mechanisms substantially similar to those incorporated in the lockstitch machine, model M, Goodyear out-sole rapid, but in the model K welter the slow-speed driving mechanism runs in the opposite direction from the direction in which the high-speed driving mechanism operates.

Cross-Int. 586. Is any clutch mechanism employed in the stopping mechanism of either of these machines?

Mr. PHILLIPS. The same objection.

Ans. Yes, sir.

Cross-Int. 587. And is it employed in both?

Mr. PHILLIPS. The same objection.

Ans. Yes, sir.

Cross-Int. 588. And are the high and low-speed shafts driven independently of each other?

Ans. I don't quite understand the question.

Cross-Int. 589. Is an independent belt or driving mechanism employed to drive the low-speed shaft in both machines, or in either?

Ans. There is a separate belt for operating the slow-speed driving mechanism in each machine, if that is what is meant by the question.

Cross-Int. 590. And does the slow-speed shaft revolve continually?

Ans. The slow-speed driving mechanism is being continuously driven by its belt during the normal operation of the machine.

Cross-Int. 591. And the slow-speed mechanism in the welter revolves in a direction opposite to that of the stitcher; is that correct?

Ans. In the model K welter the slow-speed driving mechanism revolves in an opposite direction to that in which the driving shaft of the machine operates; while in the model M stitcher the slow-speed driving mechanism and the high-speed driving mechanism run in the same direction.

Cross-Int. 592. And in both machines is the stopping point predetermined?

Ans. Yes, sir.

Cross-Int. 593. In the model M stitcher is there any reverse movement after the slow-speed driving mechanism is put into operation?

Ans. No, sir.

Cross-Int. 594. And the clutch mechanism referred to in your previous answers is a friction clutch mechanism, is it not?

Ans. The slow-speed driving mechanism in the model M stitcher is so organized and constructed that it may serve, first, to reduce the speed of the machine to a predetermined low speed, and may then drive the machine at that predetermined low speed. It is perhaps proper to designate it roughly as a friction clutch mechanism.

The WITNESS. Referring to the correction which I have previously made in the sixth line of page 2301 of the printed record, I should like, if I may be permitted, to have the same correction

apply in any other instance where I stated that lockstitch machine, Goodyear out-sole rapid, model M, was first put out in January, 1912. The date of June 7, 1911, should be substituted in each such instance.

Cross-Int. 595. On page 2299 of the printed record, in referring to the presser-foot organization of the model M stitcher, you say: "This improved presser-foot organization . . . is not yet shown in a granted patent", and one of the features is set forth in broad terms in patent to Richardson. Can you briefly point out the construction referred to by you in that phraseology which differs from the one feature which you say is set forth in broad terms in the Richardson patent?

Ans. In the model M stitcher the presser-foot is automatically raised when the machine stops, so that the operator can remove the shoe upon which the machine has been operating and substitute another shoe for the operation of the machine without the necessity of twice lifting the presser-foot by hand. When the machine starts in its operation upon a new shoe the presser-foot is automatically lowered into pressing engagement with the work. It should, of course, be understood that there are other important differences in the organization and operation of the presser-foot mechanism on the model M machine, but I understand the one to which I have specifically referred is that to which the interrogatory had reference.

Cross-Int. 596. Am I to understand that you mean by your last answer that the mechanism by which the operation is performed, which you described, is not defined in the Richardson patent?

Ans. No, sir; I did not mean that, because the mechanism which I described embodies the improvement defined in claim 16 of the Richardson patent No. 710,613, October 7, 1902.

Cross-Int. 597. Please explain the difference between the mechanism not covered by patent and the mechanism defined in the Richardson patent as embodied in the model M stitcher.

Ans. Claim 16 of the Richardson patent No. 710,613 does not set forth mechanism for automatically lifting the presser-foot when

the machine stops, nor for automatically lowering the presser-foot into engagement with the work when the machine starts.

Cross-Int. 598. I note on page 2316 of the printed record you make reference to two patents issued after the filing of the bill, and in connection with the same I understand you to say that the model E rounding and channeling machine superseded the 1899 machine, but you do not state when the model E machine superseded the 1899 machine. Will you kindly state?

Ans. Rounding and channeling machine, Goodyear Universal, model E, was first shipped December 8, 1910, and since that date has been the standard commercial rounding and channeling machine furnished to shoe manufacturers by the United Shoe Machinery Company.

Cross-Int. 599. On page 2326 of the printed record you make reference to a patent to Bertrand issued after the filing of the bill, to wit, April 23, 1912, in connection with channeling machine, Goodyear Universal (welt work). Kindly state when such machine containing the mechanism of the Bertrand patent was first put out by the United Company.

Ans. Channeling machine, Goodyear Universal (welt work) was first put out by the United Company September 28, 1907, and the machine at that time and ever since embodied the mechanism set forth in claims of patent No. 1,023,801, April 23, 1912, Bertrand (application filed April 30, 1908).

Cross-Int. 600. For the convenience of Court and counsel, will you kindly state whether the several channeling machines referred to by you in the printed record, beginning on page 2318 and ending on page 2330, are illustrated in any exhibit or exhibits now in the record in this case? I refer particularly to illustrations other than in patents.

Ans. The Goodyear Universal insole channeling machine as it was put out prior to February, 1899, by the Goodyear Shoe Machinery Company, and for a time after that date by the United Shoe Machinery Company, is illustrated in Plaintiff's Exhibit No. 235. The insole channeling machine which was superseded by that machine is illustrated on page 95 of Plaintiff's Exhibit No.

220, which is the Goodyear Shoe Machinery Company's catalogue of January 1, 1897. I do not recall that channeling machine, Goodyear Universal (welt work), or channeling machine, Goodyear Universal (turn work), are illustrated in any exhibits other than certain of the patents which form a part of Defendants' Exhibit 119.

Cross-Int. 601. Would it be convenient for you, for the convenience of Court and counsel, to furnish cuts or illustrations of such channeling machines referred to in your previous answer as do not appear to be illustrated in any of the exhibits other than patents now in the record?

Ans. Yes, sir; I shall be glad to produce such illustrations.

Cross-Int. 602. In the printed record, beginning with page 2339 and ending with page 2345, you testify at some length concerning stitch-separating machines. Will you kindly state whether you understand such designation to indicate the class of machines known as "auxiliary machines"?

Mr. PHILLIPS. Objected to as outside the order of the court.

Ans. No, sir; that expression does not indicate the class of machines known as "auxiliary machines", but the stitch-separating machine put out by the United Shoe Machinery Company is an auxiliary machine of defendants' Goodyear department.

Cross-Int. 693. That is to say, it is a separate and distinct machine designed for stitch separation only; am I correct?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir.

Cross-Int. 604. Will you state whether the stitch-separating machines to which you have made reference in your testimony are shown in any illustrations now in the record other than in patents?

Mr. PHILLIPS. Same objection.

Ans. The first type of commercial machine for separating stitches which was first put out by the Goodyear Shoe Machinery Company in September, 1895, and which is referred to on page 2340 of the record, is illustrated in the cut on page 89 of Plaintiff's Exhibit 220, Goodyear Shoe Machinery Company's catalogue of 1897. There is no illustration of later types of that machine, or of the

present commercial machine now in the record otherwise than in patents, so far as I recollect.

Cross-Int. 605. Would it be convenient for you to produce cuts or illustrations of the several stitch-separating machines with reference to which you have testified, other than the one which you say is already illustrated in one of the catalogues?

Mr. PHILLIPS. Same objection.

Ans. I think I can produce an illustration of the present commercial stitch-separating machine, and will endeavor to find and produce illustrations of the machine in different stages of its development since 1895.

Mr. WEBSTER. Kindly note that I do not ask for illustrations of anything other than machines with reference to which you have testified.

Cross-Int. 606. I note on page 2372 of the printed record you make reference to the Keyes patent issued February 18, 1913. Will you kindly state when, if at all, the mechanisms of the claims of the Keyes patent of 1913 were incorporated in the lasting machine to which you refer?

Ans. The improvements set forth in all of the six claims of patent No. 1,053,612, February 18, 1913, Keyes (application filed December 26, 1908), were incorporated in the Chase lasting machine in December, 1907, and all Chase lasting machines shipped since that date, and I believe all which were then out in shoe factories, have had these improvements embodied in them.

Cross-Int. 607. I do not find in the record a statement made by you as to the mechanisms of this Keyes patent of 1913. Can you conveniently briefly state the subject-matter of the claims?

Ans. It is the universal practice during the lasting operation to secure the lasted upper of welt shoes around the toe by means of wire instead of by means of tacks, as was the practice prior to 1898. The improvements of patent No. 1,053,612 relate to mechanism for supplying such wire for use on lasting machines of the bed type.

Cross-Int. 608. Is it not a fact that the alleged invention of the

Keyes patent of February 18, 1913, No. 1,053,612, relates to reels rather than lasters?

Ans. It is a fact that the patent No. 1,053,612 relates to reels particularly designed for use on lasting machines.

Cross-Int. 609. I observe on page 2377 of the printed record you make reference to patent to Brock, dated February 27, 1912, and as I understand your testimony you say that the mechanism of the claims of such patent were incorporated in the No. 5 lasting machine. Will you kindly state briefly just what the alleged improvements were?

Ans. Improvements set forth in one hundred and ten of the one hundred and sixteen claims of patent No. 1,018,477, February 27, 1912, Brock (application filed October 26, 1907), were incorporated in the No. 5 lasting machine as it was first put out for commercial use in January, 1908, and have ever since been embodied in that machine. These improvements have to do with nearly every part of the machine, but perhaps the most important improvements are those which adapted that machine for the first time in the industry to last satisfactorily shoes made upon modern crooked lasts, such as are shown in Defendants' Exhibit 137. The organization of the machine which enabled it to last shoes on crooked lasts satisfactorily was discussed by me on pages 2376 and 2377 of the printed record, and was also explained by me on pages 4276 to 4278 of the typewritten record [printed pages 4941–4943]. I shall be glad to make further explanations of the advantages of these improvements and of the many others which are set forth in the claims of patent No. 1,018,477, if desired.

Cross-Int. 610. I observe on page 2424 of the printed record, in commenting upon heel-compressing machines, you say: —

"The nail-arranging mechanism was constructed substantially as shown in patent No. 577,211, February 16, 1897, Small, and six of the seven claims of that patent define mechanism embodied in the nail-handling organization of that machine. That mechanism was also defined more broadly in the claims of patent No. 577,212, February 16, 1897, Small."

Will you kindly state whether the record is in error, and, if so, how it should be corrected?

Ans. Yes, that is an error. The number of the patent first mentioned in the quotation should be No. 577,213. The date is correct as it stands.

Cross-Int. 611. I note you say on page 2425: "The McKay Shoe Machinery Company just prior to February, 1899, did not have a satisfactory heel-compressing machine." Do you mean by that statement that the machine that that company had was abandoned and that a new construction was adopted by the United Company?

Mr. PHILLIPS. Objected to as outside the order of the court under which this testimony is taken.

Ans. Yes, sir; an entirely new machine was produced by the United Company.

Cross-Int. 612. Kindly state if a heel-compressing machine is properly designated as an auxiliary machine.

Mr. PHILLIPS. The same objection.

Ans. No, sir; I should not so designate it.

Cross-Int. 613. Is it not, to your knowledge, so designated in the leases of the United Company?

Mr. PHILLIPS. The same objection.

Ans. I do not recall; my duties do not require familiarity with the leases of the United Company.

Cross-Int. 614. Would you say that a machine for compressing top-lifts was an auxiliary machine?

Mr. PHILLIPS. The same objection.

Ans. I should not so regard it.

Cross-Int. 615. Would you say that a nailing machine was an auxiliary machine or a principal machine?

Mr. PHILLIPS. The same objection.

Ans. I should not regard a nailing machine as an auxiliary machine.

Cross-Int. 616. Would you regard it as a principal machine?

Ans. It is certainly a very important machine.

Cross-Int. 617. But you cannot state whether it is a principal machine or not?

Mr. PHILLIPS. The same objection, and further objected to because the witness is not called upon to define abstract terms.

Ans. I don't know that I understand what is meant by the term "principal machine", but I have no hesitation in stating that nailing machines are among the important machines supplied by the United Company.

Cross-Int. 618. And do you say you don't know whether it is designated by that company as one of its principal machines, or not?

Mr. PHILLIPS. The same objection, and further objected to because the witness is not called upon to hazard a guess as to the meaning of such terms, if employed by others.

Ans. I do not recall that in the heeling and metallic departments, through which nailing machines are put out, there is any division of the machines which would justify me in attaching more importance to one than to others.

Cross-Int. 619. Am I to understand from your last answer that from your standpoint each machine put out by the United Company is fully as important as every other machine?

Mr. PHILLIPS. Objected to as outside the order of the court.

Ans. No, sir.

Cross-Int. 620. Is there any line of demarcation between the most important and the less important machines, in your mind?

Mr. PHILLIPS. Objected to as outside the order of the court, and entirely immaterial and incompetent.

Ans. Some of the machines are doubtles more important than others.

Cross-Int. 621. Is there any objection to stating what machines you consider the most important?

Mr. PHILLIPS. Objected to as outside the order of the court under which this testimony is being taken, and immaterial and incompetent.

Ans. I could probably express my views in response to this interrogatory if desired, but should need some time to prepare such an answer as I would be willing to make.

Cross-Int. 622. Will you be good enough to prepare such an answer and submit it at the next session?

Mr. PHILLIPS. Objected to as outside the order of the court under which this testimony is being taken.

Ans. No, sir; because it would require more time than I could devote to it before the next session.

Cross-Int. 623. I notice on page 2467 of the printed record you refer to patent to Casgrain, dated February 13, 1912, in connection with which you say that claim 7 defines improvements embodied in Universal slugging machine. Kindly state when the invention defined in the seventh claim referred to was first embodied in the slugging machine.

Ans. The improvement defined in claim 7 of patent No. 1,017,381, February 13, 1912 (application filed October 24, 1898), was embodied in machines first put out by the United Company in February, 1899, and has been incorporated in all machines put out since that date.

Cross-Int. 624. I note, beginning with page 2473 of the printed record you discuss heel-breasting machines. Will you kindly state briefly whether it is not a fact that a heel-breasting machine is a machine for cutting the face of the heel from the top-lift to the shank, that is, cutting off the surplus stock?

Ans. Yes, sir; a heel-breasting machine is used for removing the surplus stock on the front or breast face of the heel, from the top-lift to the shank of the sole.

Cross-Int. 625. And appliances for accomplishing this result have been in use for twenty-five years, have they not?

Mr. PHILLIPS. Objected to as outside the order of the court under which this testimony is being taken.

Mr. WEBSTER. The attention of counsel is respectfully called to the fact that heel-breasting machines are clearly within the order of the court because they are especially referred to in the motion to strike out.

Ans. Yes, sir.

Cross-Int. 626. And it has been universal, has it not, to accomplish the result by a moving blade or knife traveling down across the breast of the heel?

Mr. PHILLIPS. The same objection.

Ans. No, sir.

Cross-Int. 627. How, then, has it been done?

Ans. In some of the crude foot-power machines, such as were universally used before the introduction of the power machine by the United Shoe Machinery Company, the heel breast was trimmed by moving the shoe into engagement with a stationary knife.

Cross-Int. 628. Then the broad difference between the old type and the new type was that in one the shoe was moved, while in the other the blade moved; is that correct?

Mr. PHILLIPS. Same objection.

Ans. That is not at all correct.

Cross-Int. 629. Does it make any difference in the result of the operation whether the blade moves or the shoe moves?

Mr. PHILLIPS. Same objection.

Ans. The old foot-power machines were of two types. In one type the blade was moved and in the other type the shoe was moved. Manufacturers found one type or the other better suited for certain classes of work. In the power heel-breasting machine now known as "Heel Breasting Machine, Model B: Imperial", the knife moves with relation to the shoe, but that is not a very necessary incident of the very important improvements which characterize that machine.

Cross-Int. 630. The old type of machine was used for a great many years, was it not?

Mr. PHILLIPS. Same objection.

Ans. Yes, sir; the old types were used for many years.

Cross-Int. 631. On page 2493 you refer to channeling machine, Economy insole. Kindly state whether the channeling machine for an insole differs materially from a channeling machine for any other kind of a sole, and point out the difference.

Ans. Channeling machine, Economy insole, is a machine designed particularly and used for preparing the blank for reinforcement by canvas to produce the improved insole known as "Economy" insole. The United Company also supplies to manufacturers another machine known as "Channeling Machine, Goodyear Insole (welt work)", which is designed particularly for, and used for, channeling "all leather" insoles.

Both of these machines operate upon the insole before the insole

becomes a part of the shoe. Neither of them is adapted, nor can either of them be used, for channeling out-soles. It is a general practice to channel and round the out-sole after it has been temporarily attached to the shoe by cement, the machine for this purpose being known as a rounding and channeling machine. In short, the differences between insole and out-sole channeling machines are radical and fundamental.

Cross-Int. 632. Both are channels cut in the sole, aren't they?

Mr. PHILLIPS. Same objection.

Ans. I do not understand what is meant by the word "both" in the interrogatory.

Cross-Int. 633. The channel in an insole is cut in the sole, is it not?

Ans. An insole channeling machine forms two channels on the flesh side of an insole.

Cross-Int. 634. And how many channels does an out-sole channeling machine form?

Ans. The United Company does not put out any machine which may be characterized as an out-sole channeling machine. The rounding and channeling machine supplied by the United Company trims or rough-rounds the out-sole and simultaneously forms a single channel on the grain side of the sole to receive and conceal the outseam.

Cross-Int. 635. Is it not a fact known to you that an out-sole channeling machine was used by some one of the companies that went to make up the United Company after the United Company's organization?

Mr. PHILLIPS. Objected to as entirely outside the order of the court under which this testimony is being taken, and further as being incompetent, immaterial and irrelevant to any issue in this court.

Ans. A machine known as Goodyear out-sole channeling machine was supplied to manufacturers by the Goodyear Shoe Machinery Company prior to the invention and introduction to the trade of rounding and channeling machines, but that machine was obsolete

before the United Shoe Machinery Company was formed in February, 1899.

Mr. WEBSTER. All that portion of the answer beginning with the words "but that machine was obsolete" are objected to as non-responsive, and motion is made to strike the same from the record.

Cross-Int. 636. Through inadvertence yesterday I neglected to have the loaded heel to which you made reference marked as an exhibit. Will you now state to the examiner whether the heel I now hand you is the one you referred to yesterday?

Ans. Yes, sir; it is.

[*Loaded heel is introduced in evidence, and marked "Plaintiff's Exhibit 283".*]

Cross-Int. 637. Kindly examine the strip of welting I now hand you, and state whether it is a fair sample of the welting produced on one of the welt grooving and beveling machines, as testified to by you.

Ans. The piece of welting shown me was grooved, beveled and slashed on the Plant welt slasher and groover, shown on page 82 of the Plant catalogue Plaintiff's Exhibit 266.

[*Strip of welting grooved, beveled and slashed on Plant welt slasher and groover is marked "Plaintiff's Exhibit 284".*]

Cross-Int. 638. Did the United Company put out a machine for manufacturing such welting strips prior to the acquisition of the Plant outfit?

Mr. PHILLIPS. Objected to as outside the order of the court under which this testimony is being taken.

Ans. The United Company put out a machine which grooved and beveled the welt, but did not slash it, prior to the acquisition of the Plant patents.

Cross-Int. 639. Is it common for shoe manufacturers to use strips of welting grooved, beveled and slashed?

Mr. PHILLIPS. Objected to as outside the order of the court.

Ans. The usual practice is to use welting which has been grooved and beveled, and then, after the welt has been attached to the shoe, to slash it around the toe, but not elsewhere, during the welt-beating operation. The two operations of beating out the welt and

slashing it around the toe are performed as one operation on the United Company's machine "Beating and Slashing Machine — Goodyear Welt".

[*Adjourned to 10* A. M., *Monday, March 2, 1914.*]

BOSTON, MASS., March 3, 1914.

Cross-Int. 640. On page 2473 of the printed record you testify with reference to heel breasting machine, model B, Imperial. Kindly examine the illustration I now hand you, and state whether it properly illustrates that machine.

Ans. The cut entitled "Imperial Heel Breasting Machine — Model B", illustrates the United Company's machine known as "Heel Breasting Machine — Model B: Imperial".

Cross-Int. 641. Will you kindly examine the illustration marked "Imperial Heel Breasting Machine — Model B", and mark thereon with the word "knife" connecting same with the cutting blade of that machine?

Ans. I have, as requested, indicated the knife on the cut of the machine in question, by writing the word "knife" at one side of the cut and running a lead line therefrom to the illustration of the knife in the machine.

Cross-Int. 642. On page 2485 of the printed record you testify with reference to "Turning and Slashing Machine, Goodyear Lip". Kindly examine the illustration I now hand you, and state whether it is a correct illustration of that machine.

Ans. Yes, sir; the cut inquired about, entitled "Turning and Slashing Machine, Goodyear Lip", correctly illustrates that machine.

Cross-Int. 643. The machine termed "Turning and Slashing Machine, Goodyear Lip", is a machine employed in connection with the Gem insole, is it not?

Ans. The machine is used in the preparation of the leather blank for reinforcement by canvas to produce the Gem insole, but it is also used upon all leather insoles, which is the use for which it was primarily designed.

Cross-Int. 644. Have you before you an illustration of the Gem insole; and, if so, will you kindly produce it?

Mr. PHILLIPS. Objected to as outside the order of the court.

Ans. I have no illustration of the Gem insole, but samples of Gem insoles constitute Defendants' Exhibits No. 17 and 167.

Cross-Int. 645. On page 2493 you testify with reference to "Channeling Machine, Economy Insole". If you have an illustration of that machine, will you kindly produce it?

Ans. As requested, I produce an illustration of that machine entitled "Economy Insole Channeling Machine".

Cross-Int. 646. On page 2496 you testify with reference to "Beating Machine, Goodyear Universal Welt". If you have an illustration of that machine before you, will you kindly produce it?

Ans. I produce an illustration of that machine entitled "Goodyear Universal Welt Beating Machine".

Cross-Int. 647. On page 2497 of the printed record you testify with reference to "Beating and Slashing Machine, Goodyear Welt". If you have before you an illustration of that machine will you kindly produce it?

Ans. I produce an illustration of that machine entitled "Goodyear Welt Beating and Slashing Machine".

Cross-Int. 648. On page 2512 of the printed record you testify with reference to "Skiving Machine, Goodyear Universal Shank". If you have an illustration of that machine before you, will you kindly produce it?

Ans. I produce an illustration of that machine entitled "Goodyear Universal Shank Skiving Machine".

Cross-Int. 649. On page 2512 of the printed record you testify with reference to "Skiving Machine, Goodyear Shank Welt". If you have before you an Illustration of that machine, will you kindly produce it?

Ans. I produce an illustration of that machine entitled "Goodyear Shank Skiving Machine".

Cross-Int. 650. On page 2514 of the printed record you testify with reference to "Reducing Machine, Goodyear Outsole Channel Shank". If you have an illustration of that machine before you, will you kindly produce it?

Ans. I produce an illustration of that machine entitled "Goodyear Outsole Channel Shank Reducing Machine".

Cross-Int. 651. On page 2517 of the printed record you testify with reference to "Indenting and Burnishing Machine, Goodyear Welt". If you have an illustration of that machine before you, will you kindly produce it?

Ans. I produce an illustration of that machine entitled "Goodyear Welt Indenting and Burnishing Machine".

Cross-Int. 652. On page 2519 of the printed record you testify with reference to "Burnishing Machine No. 2: Goodyear Impression Stitch". If you have an illustration of that machine before you, will you kindly produce it?

Ans. I produce an illustration of that machine entitled "Goodyear Impression Stitch Burnishing Machine, No. 2".

Cross-Int. 653. On page 2522 of the printed record you testify with reference to "Trimming Machine — Model A: Rex Upper". If you have an illustration of that machine before you, will you kindly produce it?

Ans. I produce an illustration of that machine entitled "Rex Upper Trimming Machine — Model A".

Cross-Int. 654. On page 2523 of the printed record you testify with reference to "Trimming Machine — Model H: Rex Upper". If you have an illustration of that machine before you, will you kindly produce it?

Ans. I produce an illustration of that machine entitled "Rex Upper Trimming Machine — Model H".

Cross-Int. 655. Somewhere in the record you make reference to "Assembling Spindle, Rex". Kindly state whether that machine is now in use, and if it was ever abandoned state as nearly as possible when.

Mr. PHILLIPS. Objected to as outside the order of the court.

Ans. The machine inquired about, "Assembling Spindle, Rex", was superseded in September, 1905, by "Assembling Machine: Rex", and "Assembling Spindle, Rex" has been obsolete since 1905.

Cross-Int. 656. Have you before you an illustration of that spindle or machine?

Ans. I have not been able as yet to secure an illustration of

"Assembling Spindle, Rex", although I may be able to get such an illustration in the course of a day.

Cross-Int. 657. On page 2554 you testify with reference to "Assembling Machine: Rex". If you have an illustration of that machine before you, will you kindly produce it?

Ans. The cut which I now produce, entitled "Rex Assembling Machine", is an illustration of that machine.

Cross-Int. 658. On page 2560 you testify with reference to "Pounding Machine: Rex", and "Pounding Machine — Model E, Rex". If you have illustrations of those machines before you, will you kindly produce them?

Ans. I produce an illustration entitled "Rex Pounding Machine —Model E". This machine when it was first introduced was known as "Pounding Machine: Rex", so that the illustration which I now produce shows the machine under both names.

Cross-Int. 659. On page 2562 you testify with reference to "Trimming Machine — Rex Toe". If you have an illustration of that machine, will you kindly produce it?

Ans. I produce a cut entitled "Rex Toe Trimming Machine — Model B", which shows the machine as it was put out after September, 1906, incorporating the improvements referred to at the bottom of page 2563 of the record.

Cross-Int. 660. On page 2564 you testify with reference to "Pounding and Trimming Machine — Rex Rotary", and "Pounding and Trimming Machine — Model B: Rex Rotary". If you have an illustration of that machine, or those machines, if there are two of them, will you kindly produce the same?

Ans. I produce an illustration entitled "Rex Rotary Pounding and Trimming Machine — Model B". This machine, when it was first put out in July, 1908, was known as "Pounding and Trimming Machine — Rex Rotary", so that the illustration which I now produce shows the machine as it was put out under both names.

Cross-Int. 661. Will you kindly examine the illustration entitled "Rex Rotary Pounding and Trimming Machine — Model B", and

indicate thereon the parts which operate upon the shoe by suitable terms, connecting the same with a line?

Ans. As requested, I have written on the illustration the words "ironing", "blocking", "pounding", "toe trimming" and "oiling", connecting these words with lead lines to the appropriate parts as shown in the illustration.

Cross-Int. 662. In order to avoid encumbering the record with repeated interrogatories, I will ask you the following general question: On the following noted pages you testified with reference to the following machines: —

	Page
Separating machine: Hadaway stitch	2340
Compressing machine: Fisher	2423
Compressing machine — model No. 4: automatic heel	2425
Pounding machine — model C: Rex rotary	2570
Pounding and Beating-up machine — model A: Rex rotary	2570
	2570
Jointing machine: Goodyear — model A	2611
Blacking machine — model A: Crest heel	2622
Blacking machine — model B: Crest heel	2624
Repairing machine — model A: patent leather	2628
Assembling machine: Rex turn shoe	2631
Beading machine: Columbia	2632
Beveling machine — model B: Champion strip	2632
Building machine: Pyramid heel — models B, C and D	2632
Cementing machine: Hub lining — models E and F	2633
Cementing machine — model X: Stanbon channel	2633
Cementing machine: Star channel — model D	2634
Cutting and Scoring machine: Insole — models D and E	2635
Embossing machine — model B	2635
Flexible Innersole machine — model X: Goodyear	2637
Fudge Edge machine: Goodyear	2638
Grooving and Beveling machine: Goodyear power welt	2638
Marker: Improved Star sole	2640
Nurling machine — model A	2642
Opening machine — model C: Apex channel	2643

Page
Perforating machine — model B: Royal . . . 2643
Perforating machine — model M: Stanbon . . . 2643
Pincer: U S M C Bench 2644
Pricking machine: Premier heel 2644
Punching machine — model A: Royal tip . . . 2644
Reducing machine — model H: Rotary feather edge and shank 2645
Rounding machine: Goodyear heel seat . . . 2645
Rounding machine: Planet sole — models C and D . . 2645
Rounding and Randing machine: Goodyear heel seat . 2646
Sanding machine — model A: tap and sole . . . 2646
Scarfing machine — model N: tap 2646
Scalloping machine — model B: top piece . . . 2647
Scouring machine — model X: heel 2647
Skiving machine — model A: Champion shank . . 2648
Skiving machine: Eros Rand 2649
Skiving machine: Pluma — models C and D . . . 2649
Skiving and Finishing machine: Monarch counter and box toe 2649
Skiving or Rand splitting machine — model C: Apex tap . 2650
Slashing machine: XX welt 2650
Snipping machine: Goodyear insole toe . . . 2650
Softening machine: Toe — models C and D . . . 2651
Splitting machine: Empire — models C and D . . 2651
Splitting machine: Summit 2652
Stamping machine — model C: Eagle sole . . . 2652
Stamping machine — model C: Eagle upper . . . 2652
Stamping machine: Regent — models B and C . . 2653
Sticking machine — shank piece: model B . . . 2653
Trimming machine: spring heel 2655
Trimming machine: Ultima heel 2655
Turning machine: Goodyear forepart 2655
Turning machine: Goodyear heel 2656
Turning machine: Goodyear lip 2656
Turning machine: Goodyear welt edge 2656
Wheeling machine — No. 2: Goodyear impression stitch . 2657

If you have illustrations of those machines, will you kindly produce them?

Ans. I produce illustrations of the machines inquired about, which are entitled as follows: —

"Hadaway Stitch Separating Machine."
"Fisher Compressing Machine."
"Automatic Heel Compressing Machine — No. 4."
"Rex Rotary Pounding Machine — Model C."
"Rex Rotary Pounding and Beating-up Machine — Model A."
"Goodyear Jointing Machine — Model A."
"Crest Heel Blacking Machine — Model A."
"Crest Heel Blacking Machine — Model B."
"Patent Leather Repairing Machine — Model A."
"Rex Turn Shoe Assembling Machine."
"Columbia Beading Machine."
"Champion Strip Beveling Machine — Model B."
"Pyramid Heel Building Machine — Model B."
"Pyramid Heel Building Machine — Model C."
"Pyramid Heel Building Machine — Model D."
"Hub Lining Cementing Machine — Model E."
"Hub Lining Cementing Machine — Model F."
"Star Channel Cementing Machine — Model D."
"Insole Lip Cutting and Scoring Machine — Model D."
"Insole Lip Cutting and Scoring Machine — Model E."
"Embossing Machine — Model B."
"Flexible Innersole Machine — Model X: Goodyear."
"Goodyear Fudge Edge Machine."
"Goodyear Power Welt Grooving and Beveling Machine."
"Improved Star Sole Marker."
"Nurling Machine — Model A."
"Apex Channel Opening Machine — Model C."
"Royal Perforating Machine — Model B."
"Stanbon Perforating Machine — Model M."
U S M C Bench Pincer."
"Premier Heel Pricking Machine."
"Royal Tip Punching Machine — Model A."

"Rotary Feather Edge and Shank Reducing Machine—Model H."
"Goodyear Heel Seat Rounding Machine."
"Planet Sole Rounding Machine — Model C."
"Planet Sole Rounding Machine — Model D."
"Goodyear Heel Seat Rounding and Randing Machine."
"Tap and Sole Sanding Machine — Model A."
"Tap Scarfing Machine — Model N."
"Top Piece Scalloping Machine — Model B."
"Heel Scouring Machine — Model X."
"Champion Shank Skiving Machine — Model A."
"Eros Rand Skiving Machine."
"Pluma Skiving Machine — Model C."
"Pluma Skiving Machine — Model D."
"Monarch Counter and Box Toe Skiving and Finishing Machine."
"Apex Tap Skiving or Rand Splitting Machine."
"XX Welt Slashing Machine."
"Goodyear Insole Toe Snipping Machine."
"Toe Softening Machine — Model D."
"Empire Splitting Machine — Model C."
"Empire Splitting Machine — Model D."
"Summit Splitting Machine."
"Eagle Sole Stamping Machine — Model C."
"Eagle Upper Stamping Machine — Model C."
"Regent Stamping Machine — Model B."
"Regent Stamping Machine — Model C."
"Shank Piece Sticking Machine — Model B."
"Spring Heel Trimming Machine."
"Ultima Heel Trimming Machine."
"Goodyear Forepart Turning Machine."
"Goodyear Heel Turning Machine."
"Goodyear Lip Turner."
"Goodyear Welt Edge Turning Machine."

In the short time since you requested me to produce these illustrations, I have not been able to obtain illustrations of the two following machines: —

"Cementing Machine — Model X: Stanbon Channel."
"Wheeling Machine — No. 2: Goodyear Impression Stitch."

I may be able to furnish illustrations of these two machines at a later hearing.

Cross-Int. 663. I am uncertain whether the illustration of "Rapid Noiseless Wonder Splitting Machine" has been introduced in evidence. I will ask you therefore to kindly examine the illustration I now hand you, and state whether it properly illlustrates this machine, and if you answer yes, will you kindly write at the bottom of the illustration the proper title of the same?

Mr. PHILLIPS. Objected to as outside the order of the court.

Ans. The illustration submitted to me is a correct showing of the United Company's machine known as "Splitting Machine: Rapid Noiseless Wonder", and I have written that title on the cut.

Cross-Int. 664. I ask you the same question relative to the illustrations I now hand you. I have not in mind, however, the particular page upon which reference is made to these machines; but I will ask you to kindly examine the illustrations and state whether the titles marked thereon correctly identify the respective machines?

Ans. Cuts which have been handed to me correctly illustrate the following machines, the page of the printed record upon which they are mentioned being indicated in the following list opposite each name: —

	Page.
"Briggs Rough Rounding Machine"	2303
"Goodyear Universal Rounding and Channeling Machine — Model E"	2309
"Goodyear Universal Channeling Machine (Welt Work)"	2323
"Goodyear Universal Channeling Machine (Turn Work)"	2327
"Goodyear Outsole Channeling Machine"	2330
"Goodyear Welt Beating Machine"	2495
"Star Channel Cementing Machine — Model A" . .	2633
"Star Channel Cementing Machine — Model C" . .	2633
"Universal Double Clinch Machine"	2634
"Economy Insole Reinforcing Machine"	2491

[*The illustrations identified by the witness at this session are put*

in evidence as a single physical exhibit, and it is requested that the same be marked "Plaintiff's Exhibit 285".]

Cross-Int. 665. You kindly consented to produce a part of a heeling machine adapted to support a wood last. Will you kindly state briefly what the device is, and its employment in a heeling machine?

Mr. PHILLIPS. Objected to as outside the order of the court.

Ans. The device submitted for my inspection is the last support which was used on the Plant "heel attacher on wood lasts" and which is referred to on page 23b of Defendants' Exhibit 273.

[*Last support used on Plant "heel attacher on wood lasts" is offered in evidence, and marked "Plaintiff's Exhibit 286".*

Mr. WEBSTER. Unless through inadvertence, accident or mistake, I have omitted to interrogate the witness with reference to some other matters, the cross-examination is closed, it being stated as at the outset of the cross-examination of this witness that the cross-examination is *de bene* and without waiver of objections, notices and motions.

Direct Examination resumed by Mr. PHILLIPS.

Int. 666. In your cross-examination your attention was called to page 2299 of the printed record and you were interrogated in regard to certain statements made by you in your direct examination before the examiner to the effect that certain mechanisms embodied in the model M stitcher were "not shown in a granted patent". Please state whether or not since that testimony was given by you any United States Letters Patent have been granted to the United Shoe Machinery Company relating to such mechanisms; if so, please produce such patent and point out the claims therein which, in your opinion, describe such mechanisms.

Mr. WEBSTER. Objected to as going into matters relating to patent issued after the filing of the bill herein, and therefore incompetent, inadmissible and irrelevant.

Ans. I produce a copy of patent No. 1,087,602, February 17, 1914, Nash, granted on an application filed June 16, 1906. This patent sets forth in all of its twelve claims mechanism embodied in

the present standard commercial out-sole stitching machine put out by the United Company, officially known as "Lockstitch Machine: Goodyear Outsole Rapid — Model M." The mechanisms set forth in the twelve claims of this patent have been incorporated in this machine since it was first put out it June, 1911. Each of the twelve claims recites the mechanism or features of the mechanism employed in that machine for raising the presser-foot from engagement with the work when the machine stops, and for lowering the presser-foot into engagement with work when the machine starts. A typical claim of this patent is the first, which is as follows: —

"[1] A shoe sewing machine having, in combination, stitch forming devices including a needle, driving mechanism therefor, a presser-foot, means operating automatically to raise the presser-foot at a certain point in each cycle of operations of the stitch forming devices, means under the control of the operator for stopping the machine at another point in the cycle of operations with the needle raised from the work, and mechanism normally inoperative during the sewing of the seam operating automatically to lift the presser-foot as the machine is stopped."

[*A Patent Office copy of the Nash patent referred to by the witness in his last answer is offered in evidence as "Defendants' Exhibit 346".*]

Mr. WEBSTER. The introduction of the exhibit is objected to for the reasons heretofore stated.

Int. 667. Referring to Defendants' Exhibit 346, and for the purpose of further identifying the same, will you state whether or not that is a patent which was issued upon application referred to in Defendants' Exhibit 273 in connection with "Stitcher (Plant catalogue, page 112)", and, if so, whether or not the claims referred to in said exhibit as allowed claims are included among the claims in said patent?

Mr. WEBSTER. The same objection repeated.

Ans. Yes, sir; this Nash patent, No. 1,087,602, was granted on application, serial No. 321,958, filed June 16, 1906, as to which the statement is made on page 17 of Defendants' Exhibit 273 that the allowed claims 3, 5, 7, 10 and 12 of that application were in-

fringed by the Plant stitcher. Those allowed claims were identical, respectively, with claims 3, 5, 7, 10 and 12 of the patent No. 1,087,602.

Int. 668. Please state whether or not, since your testimony in chief before the examiner, United States Letters Patent have been granted to the United Shoe Machinery Company relating to any other of the machines referred to by you in such direct examination. If so, please produce such patents, state to what machines they relate, and point out the claims, if any, therein, which describe mechanisms embodied in said machine.

[*It is stipulated that the objection heretofore made shall have the same force and effect as if repeated at length, wherever objection is made in the form of "Objection repeated", or "Same objection".*]

Mr. WEBSTER. Same objection repeated.

Ans. A number of United States Letters Patent have been granted to the United Shoe Machinery Company since I gave my testimony in chief before the examiner. These patents are as follows:—

SHOE MACHINE, MODEL K, GOODYEAR WELT AND TURN.

No. 1,076,878, October 28, 1913, Eppler [application filed July 27, 1911].

No. 1,079,436, November 25, 1913, Perry [application filed May 2, 1910].

Of these patents, the Eppler patent No. 1,076,878 sets forth in all of its twenty claims improvements embodied in the welt-holding, welt-cutting and welt-measuring mechanisms of shoe machine, model K, Goodyear welt and turn, as that machine has been constructed since it was first put out in June, 1911. Typical claims of this patent are the first, fourth and fifteenth, which are as follows:—

"[1] A sewing machine, having, in combination, stitch forming mechanism, devices for severing and holding the welt at the completion of the sewing, and means for maintaining the holding devices in engagement with the welt during at least one cycle of operations of the machine at the beginning of the sewing operation, substantially as described."

"[4] A sewing machine, having, in combination, stitch forming mechanism, welt severing and holding devices mounted for movement with the shoe, and means for operating the devices to sever and hold the welt at the completion of the sewing operation, substantially as described."

"[15] A sewing machine, having, in combination, stitch forming mechanism, and means for determining the amount of welt drawn forward in the removal of the shoe rendered active by the reversal of the machine, substantially as described."

Perry patent No. 1,079,436 sets forth in broad terms in claims 7, 8, 9 and 10 improvements embodied in the welt-holding mechanism of shoe machine, model K, Goodyear welt and turn, ever since that machine was first put out in June, 1911. A typical claim is the seventh, which is as follows:—

"[7] A welt sewing machine, having, in combination, stitch forming mechanism, a welt holder for holding the end of the welt in the rear of the sewing point, and mechanism for retaining the holder in engagement with the welt and moving it with the shoe independently of this engagement with the shoe during at least one cycle of operations of the machine, substantially as described."

SHOE MACHINE, MODEL G, GOODYEAR WELT AND TURN.

No. 1,076,201, October 21, 1913, Eppler [application filed Novem- 22, 1909].

The improvements set forth in claims 1, 2, 3, 4, 7 and 8 to 11, inclusive, of this patent were embodied in shoe machine, Goodyear welt and turn, model G, from the time of its introduction in October, 1908, until it was superseded by shoe machine, model K, Goodyear welt and turn. Among the improvements defined in these claims, the welt guide and means for operating it were important. The nature of this improvement is well indicated in the first claim of that patent, which is as follows:—

"[1] An inseam shoe sewing machine, having, in combination, stitch forming devices, a welt guide, means acting during the normal operation of the machine in sewing a seam to move the guide toward and from the shoe during each cycle of operations of the machine, and means for holding the guide in advance position during at least one cycle of operations of the machine."

ASSEMBLING MACHINE, REX.

No. 1,076,620, October 21, 1913, Ashton [application filed October 26, 1907].

No. 1,081,872, December 16, 1913, Stiggins [application filed October 13, 1902].

The first of these patents, No. 1,076,620, is the patent on the method practiced in the operation of assembling machine, Rex. On pages 2557 and 2558 of the record I stated that this method was set forth in the claims of an allowed application filed October 26, 1907, and that the patent would be granted on this application October 21, 1913. This patent No. 1,076,620 is the patent which was granted on that application. All of the five claims of that patent define the method which is practiced in the operation of both models of assembling machine, Rex. The first claim of the patent is quoted on page 2558 of the record.

Claims 7 and 15 of patent 1,081,872 set forth in broad terms the organization for supporting the shoe for the operation of the machine and for operating that in proper time relation to the operations of other parts of the assembling machine. The improvement set forth in these two claims, 7 and 15, has been incorporated in assembling machine, Rex, and its successor, assembling machine, model E, Rex, since September, 1905.

NAILING MACHINE: ALPHA WOOD HEEL.

No. 1,081,917, December 16, 1913, Tripp [application filed August 1, 1907].

On page 2464 of the record I stated that this machine was not shown in any patent which had as yet been granted, but that it was shown in the drawings and described in claims of a pending application filed August 1, 1907. This patent, No. 1,081,917, was granted on the application to which I then referred. The improvements set forth in all of the eighteen claims of this patent have been embodied in nailing machine, Alpha wood heel, ever since that machine was first put out in 1907. A typical claim is the first: —

"[1] A heel attaching machine, having in combination, means for pressing a heel upon the heel seat of a shoe arranged to exert

pressure toward the heel seat upon a predetermined portion of the surface of the heel at the rear intermediate its tread surface and its heel seat surface and constructed for adjustment to accommodate heels varying in size or contour, and means for securing the heel to the shoe."

The improvements set forth in the claims of this Tripp patent No. 1,081,917 made it possible for the first time in the industry to attach wooden heels to shoes by a machine.

CEMENTING MACHINE, MODEL F: HUB LINING.

No. 1,080,959, December 9, 1913, Eaton [application filed September 19, 1908].

The improvements set forth in claims 3, 4 and 5 of this patent No. 1,080,959 have been embodied in cementing machine, model F, Hub lining, since the machine was first introduced in October, 1911.

FINISHING MACHINE, U. S. M. C. BUTTONHOLE.

No. 1,080,341, December 2, 1913, Hill [application filed January 24, 1910].

No. 1,080,342, December 2, 1913, Hill [application filed March 7, 1911].

No, 1,080,343, December 2, 1913, Hill [application filed April 1, 1911].

Of these patents, No. 1,080,341 sets forth the general organization of finishing machine, U.S.M.C. buttonhole, in claims 1, 2, 3, 5, 6, 15 to 22, 41, 45, 54, 55 and 59. The starting and stopping mechanism of this machine is set forth in claims 3, 8 to 11 and 15 to 17 of patent No. 1,080,342. The needle-actuating mechanism of this machine is defined in claims 1, 2, 4, 5, 6 and 17 of patent No. 1,080,343.

GROOVING AND BEVELING MACHINE, MODEL X: GOODYEAR WELT.

No. 1,076,073, October 21, 1913, Stanbon [application filed December 9, 1911].

This patent sets forth in all of its six claims improvements which were embodied in the Plant welt slasher and groover, shown on page 83 of the Plant catalogue of Plaintiff's Exhibit 266. While

the application for the patent was not filed until after the Plant acquisition, the improvements were embodied in the Plant welt slasher and groover before the acquisition of the Plant patents by the United Company.

LASTING MACHINE, U. S. M. C., No. 5.

No. 1,085,400, January 27, 1914, Brown [application filed March 1, 1911].

The twenty-eighth claim of this patent sets forth in broad terms an important improvement embodied in the hold-down mechanism of lasting machine, U. S. M. C., No. 5, which was adopted in August, 1910, and has been used continuously on the machine ever since that time.

LOCKSTITCH MACHINE, MODEL M: GOODYEAR OUTSOLE RAPID.

No. 1,080,877, December 9, 1913, Ashworth [original application filed October 3, 1910].

No. 1,087,602, February 17, 1914, Nash [application filed June 16, 1906].

The Nash patent No. 1,087,602 was discussed by me in my answer to a preceding interrogatory.

The Ashworth patent No. 1,080,877 sets forth in each of its five claims an improvement in the needle oiling mechanism which has been embodied in lockstitch machine, model M, Goodyear out-sole rapid, since that machine was first put out in June, 1911, and was also embodied in lockstitch machine, model K, Goodyear out-sole rapid, from the time when that machine was first put into commercial use in May, 1910.

MAKING MACHINE: BUTTONHOLE.

No. 1,080,342, December 2, 1913, Hill [application filed March 7, 1911].

No. 1,088,420, February 24, 1914, Hill [original application filed February 10, 1912].

The first of these patents is one of the patents on finishing machine, U. S. M. C., buttonhole, to which I have already referred.

One claim, the fifteenth, of this patent sets forth mechanism which is also embodied in making machine, buttonhole.

All of the eight claims of patent No. 1,088,420 set forth improvements which are embodied in making machine, buttonhole.

MARKER: IMPROVED STAR SOLE.

No. 1,083,278, January 6, 1914, Gordon [application filed March 2, 1911].

The two claims of this patent set forth improvements which have been embodied in marker, improved Star sole, since the latter part of 1910.

MOLDING MACHINE: AMERICAN TWIN SOLE.

No. 1,084,526, January 13, 1914, Ball [application filed November 14, 1908].

Claims 1 to 5 and 8 to 11 of this patent set forth improvements which have been embodied in molding machine: American twin sole, model B, since September, 1911, and molding machine: American twin sole, model C, since that machine was first introduced in May, 1911. The improvements set forth in these claims are designed to enable an expert operator to run the machines at a higher speed than was practicable before the improvements were incorporated in the machines, while at the same time rendering the machines safe and satisfactory for unskilled operators.

POUNDING AND BEATING-UP MACHINE, MODEL A: REX ROTARY.

No. 1,076,940, October 28, 1913, Ashton [application filed September 11, 1911].

This patent is the one to which I made general reference at the bottom of page 2570 of the record, and sets forth in all of its twenty-three claims improvements embodied in pounding and beating-up machine, model A, Rex rotary. Typical claims of this patent are the first and twelfth, which are as follows: —

"[1] In a machine of the class described, a rotary beater comprising a carrier and a plurality of beating members consisting of spiral coils arranged about the periphery of the carrier and mounted to permit them to move radially with relation to the axis of the carrier."

"[12] A rotary beater comprising a carrier and a plurality of beating members consisting of an annular series of resilient coils arranged about the periphery of the carrier and extending lengthwise thereof to form collectively a normally cylindrical beating surface concentric with the axis of rotation of the carrier."

PULLING AND RESETTING MACHINE, GOODYEAR TACK.

No. 1,081,456, December 16, 1913, MacKenzie [application filed January 11, 1911].

This patent sets forth in all of its fourteen claims, and illustrates in its drawings, the commercial form of the stay tack driving mechanism of pulling and resetting machine, Goodyear tack. The mechanism was referred to near the top of page 2528 of the record.

PULLING-OVER MACHINE, MODELS A, B AND C: REX.

No. 1,082,487, December 30, 1913, Bates [application filed March 2, 1908].

No. 1,082,488, December 30, 1913, Bates [original application filed March 2, 1908].

These two patents set forth improvements which were first embodied in pulling over machine, model A, in June, 1910, which were incorporated in pulling-over machine, model B, Rex, when that machine was first put out in July, 1910, and have been incorporated in pulling-over machine, model C, Rex, since that machine was first shipped in March, 1911.

REDUCING MACHINE, GOODYEAR OUTSOLE CHANNEL SHANK.

No. 1,080,171, December 2, 1913, Ross and Freeman [application filed May 27, 1909].

This patent, which was granted on the application referred to by me near the bottom of page 2514 of the record, shows in its drawings substantially the commercial reducing machine, Goodyear outsole channel shank, and sets forth in all of its twenty claims mechanisms embodied in that machine. Typical claims of this patent are the following:—

"[1] A skiving machine, having, in combination, a work support arranged to support the projecting edge of the sole of a shoe in position to be acted upon by a skiving knife and a feed roll rela-

tively yielding to compensate for variations in the thickness of the sole, and a skiving knife blade maintained in fixed relation to the feed roll with its edge continuously in position to shave a skiving from the lower outer margin of the sole, substantially as described."

"[9] A skiving machine, having, in combination, devices adapted to engage the opposite surfaces of a channeled, attached outsole, for feeding the same, a channel guard and a skiver extending between the devices and terminating adjacent the guard, substantially as described."

ROUNDING AND RANDING MACHINE: GOODYEAR HEEL SEAT.

No. 1,080,191, December 2, 1913, Baxter [application filed April 4, 1912].

The commercial form of this machine is shown in the drawings of this patent and is set forth in claims 4 to 10. This patent, No. 1,080,191, is the application referred to by me on page 2646 of the record. The improvements set forth in these claims have been embodied in this machine throughout its entire period of development, beginning early in 1911.

SCARFING MACHINE — MODEL M: TAP.

No. 1,082,629, December 30, 1913, Hadaway [application filed March 8, 1910].

The improvements set forth in all of the eleven claims of this patent have been embodied in this machine since its introduction in September, 1910.

SKIVING MACHINE — MODELS C AND D: PLUMA.

No. 1,079,462, November 25, 1913, Alexander [application filed November 8, 1909].

The improvements set forth in the first six claims of this patent have been incorporated in skiving machine, model C, Pluma, since the machine was first put out in April, 1909, and in skiving machine, model D, Pluma, since that model was first put out in 1910.

SKIVING MACHINE, MODEL D: PLUMA.

No. 1,076,934, October 28, 1913, Alexander [application filed October 16, 1909].

No. 1,084,521, January 13, 1914, Alexander [application filed February 21, 1913].

The improvements set forth in all six claims of patent No. 1,076,934 were embodied in skiving machine, model D, Pluma, when that machine was first put out in November, 1910, and these improvements have been embodied in that machine ever since that date.

The improvements set forth in all of the four claims of patent No. 1,084,521 have been embodied in skiving machine, model D, Pluma, since November, 1912.

SNIPPING MACHINE, GOODYEAR INSOLE TOE.

No. 1,087,578, February 17, 1914, Hadaway [application filed October 13, 1910].

This machine is illustrated in its commericial form in the drawings of this patent No. 1,087,578, and all of the twelve claims of the patent set forth improvements which have been embodied in the machine since it was first put out in May, 1911. A typical claim is the first:—

"[1] An insole toe cutting machine, having, in combination, a work table, two power driven knives to co-operate therewith, one of said knives being arranged to incise the lip of an insole placed on the work table, and the other of said knives being arranged to incise the channel flap of said insole, engaging means to position the insole with relation to the knives."

Mr. WEBSTER. Answer objected to for the reason that it relates in substantially all its parts to matters not even remotely touched upon in the cross-examination of this witness, and for the further reason that it relates wholly to patents issued after the filing of the bill herein, and for the further reason that the testimony is inadmissible and incompetent, having no bearing whatever on the issues involved herein at the date of the filing of the bill, and counsel for the plaintiff moves that the answer be stricken from the record.

Int. 669. Have you collected in a single volume the patents referred to in your last answer?

Ans. I have and produce a volume of patents entitled "Copies

of Patents recently granted on machines referred to in Mr. Howard's direct testimony before the Examiner."

[*Volume of patents entitled "Copies of Patents recently granted on machines referred to in Mr. Howard's direct testimony before the Examiner" is marked "Defendants' Exhibit 347".*]

Mr. WEBSTER. The introduction of the exhibit is objected to for the reasons stated in the objections to the question and answer.

Mr. PHILLIPS. The attention of the Court is called to the introduction by the plaintiff, during Mr. Howard's present cross-examination, of Exhibit 285, illustrations of machines testified to by Mr. Howard, and also to Mr. Howard's cross-examination as to his statements in his direct examination before the examiner as to mechanisms forming the subject-matter of patents not yet granted.

Mr. WEBSTER. Counsel for the plaintiff states on the record that while it is true that various illustrations were introduced in the record in the cross-examination of this witness, no reference was made at the time with reference to patents issued either before or after the filing of the bill, and attention is called to the fact that among the patents offered in evidence by the defendants and marked "Defendants' Exhibit 347" there appear various patents, the applications for which were filed after the filing of the bill herein.

Int. 670. Please state on the record the number, date and name of patentee of the several patents forming Defendants' Exhibit 347.

Mr. WEBSTER. The same objection repeated.

Ans. DEFENDANTS' EXHIBIT 347.

No. 1,076,073, October 21, 1913, Stanbon [application filed December 9, 1911].

No. 1,076,201, October 21, 1913, Eppler [application filed November 22, 1909].

No. 1,076,620, October 21, 1913, Ashton [original application filed August 15, 1906].

No. 1,076,878, October 28, 1913, Eppler [application filed July 27, 1911].

No. 1,076,934, October 28, 1913, Alexander [application filed October 16, 1909].

No. 1,076,940, October 28, 1913, Ashton [application filed September 11, 1911].

No. 1,079,436, November 25, 1913, Perry [application filed May 2, 1910].

No. 1,079,462, November 25, 1913, Alexander [application filed November 8, 1909].

No. 1,080,171, December 2, 1913, Ross and Freeman [application filed May 27, 1909].

No. 1,080,191, December 2, 1913, Baxter [application filed April 4, 1912].

No. 1,080,341, December 2, 1913, Hill [application filed January 24, 1910].

No. 1,080,342, December 2, 1913, Hill [application filed March 7, 1911].

No. 1,080,343, December 2, 1913, Hill [application filed April 1, 1911].

No. 1,080,877, December 9, 1913, Ashworth [original application filed October 3, 1910].

No. 1,080,959, December 9, 1913, Eaton [application filed September 19, 1908].

No. 1,081,456, December 16, 1913, MacKenzie [application filed January 11, 1911].

No. 1,081,872, December 16, 1913, Stiggins [application filed October 13, 1902].

No. 1,081,917, December 16, 1913, Tripp [application filed August 1, 1907].

No. 1,082,487, December 30, 1913, Bates [application filed March 2, 1908].

No. 1,082,488, December 30, 1913, Bates [original application filed March 2, 1908].

No. 1,082,629, December 30, 1913, Hadaway [application filed March 8, 1910].

No. 1,083,278, January 6, 1914, Gordon [application filed March 2, 1911].

No. 1,084,521, January 13, 1914, Alexander [application filed February 21, 1913].

No. 1,084,526, January 13, 1914, Ball [application filed November 14, 1908].

No. 1,085,400, January 27, 1914, Brown [application filed March 1, 1911].

No. 1,087,578, February 17, 1914, Hadaway [application filed October 13, 1910].

No. 1,087,602, February 17, 1914, Nash [application filed June 16, 1906].

No. 1,088,420, February 24, 1914, Hill [original application filed February 10, 1912].

Int. 671. In your cross-examination you were asked about Plaintiff's Exhibits No. 281 and 282. Have you anything to add to your testimony in regard to such exhibits; if so, state it.

Ans. With reference to Plaintiff's Exhibit 282 I stated, on page 4352 of the typewritten record [printed page 2836 (26)], that the shoe of this exhibit "appears to be a woman's welt shoe, unusually heavy and of large size". I should have added that the shoe of this exhibit is what is known in the trade as a "mannish shoe". On comparing the shoe of Exhibit 282 with the man's shoe of Exhibit 281, it will be noted that the sole of Exhibit 282 is as heavy as the sole of the man's shoe of Exhibit 281, and that the heel of the woman's shoe of Exhibit 282 is of substantially the same height as the heel of the shoe of Exhibit 281.

At no time during the past sixteen or eighteen years has more than a very small percentage of women's shoes been made as heavy or substantially as heavy as the shoe of Plaintiff's Exhibit 282. The reason why relatively few women's shoes have been of this character, that is, of the type known as "mannish shoe", is that it is a shoe which is purchased and worn only by well-to-do women who can afford to have a large number of pairs of shoes for all sorts of occasions. Such a shoe would be worn only occasionally, in stormy weather, or for tramping or mountain climbing. In other words, the shoe of Plaintiff's Exhibit 282 is not at all a typical woman's shoe. I produce three women's welt shoes of different types which I regard as typical women's shoes.

[*Three women's welt shoes are offered in evidence, and marked,*

respectively, "Defendants' Exhibit 348", "Defendants' Exhibit 349" and "Defendants' Exhibit 350".]

Practically every woman has a pair of shoes of the character indicated by Defendants' Exhibits 348 and 349, which are ordinary women's street shoes. Defendants' Exhibit 350 is a more dressy shoe, and nearly every woman provides herself with a pair of shoes of this character for social occasions. The ordinary woman, instead of going to the expense of providing herself with an additional pair of heavy shoes, such as is illustrated in Plaintiff's Exhibit 282, would, in stormy weather, wear a shoe of the character indicted in Defendants' Exhibit 348 and 349, with a pair of rubbers to protect her shoes and feet.

Mr. WEBSTER. All that portion of the foregoing answer, beginning with "at no time during the past sixteen or eighteen years" is objected to as in the nature of argument pure and simple and as in no wise in the nature of testimony responsive to, or to meet any, interrogatories submitted by the plaintiff. Notice is given that motion will be made to strike out all the said argument at some convenient time in the future.

Mr. PHILLIPS. The redirect examination of this witness is closed, unless counsel shall find that by inadvertence he has neglected to ask the witness a question.

[*Adjourned to 10 A. M., March 4, 1914.*]

BOSTON, MASS., March 4, 1914.

Cross Examination resumed by Mr. WEBSTER.

Mr. WEBSTER. The testimony with reference to patents issued after the filing of the bill herein having been seasonably objected to, the recross-examination will be *de bene esse* and without waiver of the objections entered.

Cross-Int. 672. You have now testified with reference to twenty-eight patents, all issued after the filing of the bill herein. Kindly state whether any of those patents were issued upon applications which were acquired in the Plant acquisition.

Mr. PHILLIPS. Objected to as outside the order of the court.

Ans. No, sir; although I ought to explain that patent No.

1,076,073, October 21, 1913, Stanbon, granted on an application filed December 9, 1911, sets forth in its claims improvements which were made by C. P. Stanbon for Plant and which were incorporated in the Plant welt slasher and groover at the date of the acquisition of the Plant patents in September, 1910.

Cross-Int. 673. One would be led to believe from your employment of the term "welt slasher and groover" that the Stanbon patent related to a machine somewhat broadly. Kindly state if it is not a fact that the Stanbon patent referred to relates simply and only to a box for holding rolls of welt, which box might be employed in connection with any machine wherein it was desirable to hold a roll of welting.

Mr. PHILLIPS. Question objected to as containing argumentative statements of counsel, and as improper cross-examination.

Ans. As stated in the interrogatory, patent No. 1,076,073 sets forth and claims "improvements in boxes for holding rolls of welt". Those improvements could doubtless be advantageously used on any machine presenting similar difficulties and problems to those which were encountered in the use of the Plant welt slasher and groover. The improvements were, however, designed for the Plant welt slasher and groover and are illustrated in the drawings of the patent as incorporated in that machine. The improvements of this patent No. 1,976,073 are also illustrated as embodied in the Plant welt slasher and Groover in the cut on page 82 of the Plant catalogue Plaintiff's Exhibit 266.

Cross-Int. 674. And would you say that the welt slasher and groover would be inoperative without having incorporated therein the mechanism of the Stanbon patent about which you have been testifying?

Ans. No, sir; I should not wish to make so strong a statement as that as to the value of the improvements of patent No. 1,076,-073. I should prefer to characterize these improvements as very useful parts of the Plant welt slasher and groover.

Cross-Int. 675. Among the twenty-eight patents issued after the filing of the bill herein, altogether forming the volume of copies of patents Defendants' Exhibit 347, I observe that four, issued on

the applications of Hill, relate to buttonhole finishing. Am I right, that all of the Hill patents in the exhibit relate to buttonholes and buttonhole-sewing machines, and do not relate in any wise to welt and turn machines or rapid out-sole stitchers?

Mr. PHILLIPS. Question objected to as containing argumentative statements of counsel, and as improper cross-examination.

Ans. The statements in the interrogatory not being entirely correct, I will answer the question by stating that three of the Hill patents, namely, No. 1,080,341, No. 1,080,342 and No. 1,080,343, relate to buttonhole finishing machines and one of the Hill patents, No. 1,088,420, sets forth improvements in buttonhole-making machines.

Cross-Int. 676. I note that all the twenty-eight patents issued after the filing of the bill were issued to the United Shoe Machinery Company. Can you state whether the United Shoe Machinery Company had a transfer of these alleged inventions or applications at the time they were filed and had the control and management of the applications during the time they were pending?

Ans. That is true as to nearly all of the applications upon which were granted the patents included in Defendants' Exhibit No. 347. It may be true of all of them, but I am in doubt as to several without examining the files of our assignments.

Cross-Int. 667. I observe the patent issued on the application of E. A. Stiggins, lasting machine, dated December 16, 1913, recites that the application was filed on October 13, 1902. I note also that the drawings are signed by yourself as attorney for the applicants. Have you any objection to explaining to the court the cause of eleven years' delay in the issue of that patent after the filing of the application?

Mr. PHILLIPS. Question objected to as entirely outside the scope of the order of the court under which this testimony is being taken, and as being incompetent, immaterial and irrelevant.

Ans. I have no objection whatever to making the explanation suggested, but I should need to refresh my recollection by examination of the file of the application for this patent, which I have not at hand at this time.

Cross-Int. 678. Is it your opinion that the Plant machines, or any of them, fell within the terms of the claims of any of the patents to which you have testified and which issued after the filing of the bill herein? And, if you answer yes, kindly answer briefly, stating the particular kind of machines, but without going into detail.

Mr. PHILLIPS. Objected to as outside the scope of the order of the court under which this testimony is being taken.

Ans. I fear that I do not quite understand the interrogatory. Of course, as is set forth in detail in Defendants' Exhibit 273, entitled "Infringement by Plant machines of patents and applications of the United Shoe Machinery Company", the Plant machines embodied improvements set forth in the claims of a number of patents owned by the United Shoe Machinery Company which were issued after the filing of the petition in this suit, and which, when issued, contained claims which were allowed in the respective applications prior to September, 1910, the subjects-matter of which claims were incorporated in Plant machines. I am in doubt as to whether I should construe the interrogatory as including those patents.

Cross-Int. 679. Did the Plant welt and turn machine contain mechanism such as is set forth in the claims of the patent to Eppler No. 1,076,201, dated October 21, 1913? I do not ask you for the particular claims, if any, but simply a brief answer, yes or no, if you can answer in that manner.

Mr. PHILLIPS. The same objection.

Ans. No, sir.

Cross-Int. 680. I ask the same question with reference to patent to Eppler No. 1,076,878, dated October 28, 1913, and ask you to consider the question as applying to both welters and stitchers?

Mr. PHILLIPS. The same objection.

Ans. No, sir.

Cross-Int. 681. Did the Plant welt and turn machine contain a mechanism such as defined in any of the claims of patent to Perry No. 1,079,436, dated November 25, 1913?

Mr. PHILLIPS. The same objection.

Ans. No, sir.

Cross-Int. 682. Did any of the Plant machines contain mechanism such as is defined in any of the claims of patent to Baxter No. 1,080,191, dated December 2, 1913?

Mr. PHILLIPS. The same objection.

Ans. No, sir.

Cross-Int. 683. Did any of the Plant machines contain a mechanism such as is referred to in any of the claims of patent to Ashworth No. 1,080,877, dated December 9, 1913?

Mr. PHILLIPS. The same objection.

Ans. No, sir.

Cross-Int. 684. Did any of the Plant machines contain a mechanism such as is referred to in the claims of the patent to MacKenzie, tack-driving machine, No. 1,081,456, dated December 16, 1913?

Mr. PHILLIPS. The same objection.

Ans. No, sir.

Cross-Int. 685. The same question is asked with reference to patent to Stiggins, lasting machine, No. 1,081,872, dated December 16, 1913?

Mr. PHILLIPS. The same objection.

Ans. No, sir.

Cross-Int. 686. The same question is asked with reference to patent to Tripp, heel-attaching machine, No. 1,081,917, dated December 16, 1913.

Mr. PHILLIPS. The same objection.

Ans. Yes, sir; seven claims of the application for that patent No. 1,081,917, December 16, 1913 (application filed August 1, 1907), were infringed by both the Plant heeler and the Plant heel attacher on wood lasts.

Cross-Int. 687. The same question is asked with reference to patent to Bates, machine for use in the manufacture of boots and shoes, No. 1,082,487, dated December 30, 1913?

Mr. PHILLIPS. The same objection.

Ans. No, sir.

Cross-Int. 688. The same question is asked with reference to

patent to Ball, starting and stopping mechanism, No. 1,084,526, January 13, 1914?

Mr. PHILLIPS. The same objection.

Ans. No, sir.

Cross-Int. 689. The same question is asked with reference to patent to Brown, hold-down, No. 1,085,400, January 27, 1914?

Mr. PHILLIPS. The same objection.

Ans. No, sir.

Cross-Int. 690. The same question is asked with reference to patent to Hadaway, insole toe-cutting machine, No. 1,087,578, dated February 17, 1914?

Mr. PHILLIPS. The same objection.

Ans. No, sir.

Cross-Int. 691. The same question is asked with reference to patent to Nash, sewing machine, No. 1,087,602, dated February 17, 1914?

Mr. PHILLIPS. The same objection.

Ans. Yes, sir; as pointed out on page 17 of Defendants' Exhibit 273, the Plant stitcher infringed five allowed claims of the application for patent No. 1,087,602, February 17, 1914, Nash (application filed June 16, 1906).

Cross-Int. 692. Referring now briefly to your testimony with reference to Plaintiff's Exhibits 281 and 282, I understand you to say that at no time during the past sixteen or eighteen years has more than a very small percentage of women's shoes been made as heavy, or substantially as heavy, as Plaintiff's Exhibit 282. Will you kindly state to the court what experience you have had during the last sixteen or eighteen years to qualify you to testify with reference to what kind of shoes women have used during that period?

Ans. Practically all my experience during that period qualifies me to express that opinion.

Cross-Int. 693. Have you sold shoes at wholesale or retail?

Ans. No, sir.

Cross-Int. 694. Do you know what kind of shoes women who are employed on farms wear?

Ans. Generally speaking, I think I do.

Cross-Int. 695. Do you say they do not wear a shoe as heavy as Plaintiff's Exhibit 282?

Ans. Probably no woman employed on a farm ever wears a welt shoe, except possibly a dress shoe.

Cross-Int. 696. I am not asking for probabilities; I am asking for what you absolutely know about it. I apprehend the court is desirous of getting at the facts from someone who has actual knowledge of the facts. Do you say you know of your own knowledge what character of shoe is generally worn by women employed in and about farms throughout the United States?

Ans. I think I may say that I know that women employed as servants on farms usually wear cheaper shoes than welt shoes.

Cross-Int. 697. Now, will you give the court the benefit of your experience, stating how you get the information?

Ans. It is common trade knowledge.

Cross-Int. 698. And are you engaged, or have you been engaged, in the sale of shoes?

Ans. No, sir.

Cross-Int. 699. Do you know what kind of shoes the women wear out in the hop picking regions?

Ans. I know that the shoes which are manufactured for women engaged in employments of that character are not welt shoes.

Cross-Int. 700. Then you have no personal knowledge, have you, as to what the women do wear in the hop picking regions?

Ans. I never observed the shoes worn by women engaged in hop picking.

Cross-Int. 701. Have you any knowledge of the kind of shoe largely worn by the women of northern Vermont and New Hampshire?

Ans. The kind of shoes worn by women in that part of the country, as in other parts of the country, depends largely upon the condition of their purses.

Cross-Int. 702. Then, do you tell the Court that, from your knowledge and experience, none but women who can afford to have several pairs of shoes wear shoes like Plaintiff's Exhibit No. 282?

Ans. Yes, sir; as a general rule that is correct.

Cross-Int. 703. And you make that statement founded on your experience as set out in the record; is that correct?

Ans. Yes, sir; that statement is based upon my experience and upon information which may be characterized as trade knowledge.

Cross-Int. 704. Now, Mr. Howard, is it not a fact that there are very many shoes for women that are fully as heavy, and made of as heavy material, as very many light-weight shoes made for and used by men?

Mr. PHILLIPS. Question objected to as outside the order of the court.

Ans. Yes, sir; it is a fact that many welt shoes of the character of Plaintiff's Exhibit No. 282, which is to all intents and purposes a man's shoe, are made each year; but, as I have previously testified, the number is relatively few as compared with the number of women's welt shoes which are made each year.

Cross-Int. 705. Now, do you say that Plaintiff's Exhibit 282 is a shoe for men or a shoe for women?

Ans. The shoe of Plaintiff's Exhibit 282, which, as I have previously testified, is a woman's "mannish shoe", was undoubtedly meant for women's wear, as the parts of the upper are shaped on the lines of a woman's shoe.

Mr. WEBSTER. In view of the attitude of the witness in declining to answer the questions without incorporating in his answer matter which seems evasive, to which the attention of the Court is respecfully called, counsel for plaintiff will not proceed further with the cross-examination.

The WITNESS. If counsel for the United States will kindly point out any interrogatory which has not been satisfactorily answered, I will endeavor to correct any errors which I have made as indicated by the interrogatory.

Mr. WEBSTER. The attention of the witness is called to the various questions which might have been answered by yes or no, and which, in fact, have been answered by matter in the nature of argument and evasion rather than by a direct answer to the question.

Mr. PHILLIPS. The attention of the Court is called to the fact that the record does dot substantiate any such statement on the part of counsel for the plaintiff. So far as at present advised, there will be no further redirect examination of this witness.

NELSON W. HOWARD.

Attest: CHARLES K. DARLING, *Special Examiner.*

[*Adjourned to 2* P. M., *Thursday, March 5, 1914.*]

ADDITIONAL EVIDENCE FOR THE UNITED STATES.

TAKEN PURSUANT TO ORDER OF COURT, ENTERED FEBRUARY 10, 1914, BEFORE ME,

CHARLES K. DARLING,
Special Examiner.

BOSTON, MASS., March 5, 1914.

Present:

ALLEN WEBSTER, Esq., *Special Assistant to the Attorney General,*
WILLIAM S. GREGG, Esq., *Assistant to the Attorney General,*
of Counsel for Complainant;
FREDERICK P. FISH, Esq., and BENJAMIN PHILLIPS, Esq.,
of Counsel for Defendants.

SECOND DEPOSITION OF CHARLES McCORMICK CHAPMAN.

Direct Examination by ALLEN WEBSTER, Esq., *of Counsel for* THE UNITED STATES.

Int. 19. Are you the same Charles McCormick Chapman who has heretofore testified for the complainant in this cause?

Ans. I am.

Int. 20. Mr Howard has testified that a loading and attaching machine, designated by him as "Model B, McKay Automatic Heel", as manufactured by the United Shoe Machinery Company, in his opinion, infringed claims 10 and 11 of patent No. 958,282, May 17, 1910, Plant. Kindly state whether you have had pointed out to you the machine referred to by Mr. Howard, and by whom pointed out, and whether you have examined the same in connection with said claims of said patent, and whether you find in such machine the mechanism defined and referred to in said claims.

Ans. I saw the machine referred to in the question at the general office of the United Shoe Machinery Company, 89 Beach Street, the machine having been shown me by Mr. Warren of that company. I made a comparison of claims 10 and 11 of the patent to

Plant No. 958,282, May 17, 1910, with the said machine, and in my opinion said claims 10 and 11 are not infringed by said machine. My opinion is based upon the fact that claim 10, among other elements, calls for "nail driving devices sustained by the cross-head", this element not being found in said machine.

As to claim 11, the element "nail drivers carried by the cross-head" is not found in said machine. Because of these two differences set up in the two claims respectively, I cannot see upon what the allegation of infringement is based.

Int. 21. Mr. Howard has testified that a certain nailing machine, designated by him as "American Lightning", in his opinion infringed claims 15 and 16 of patent to Plant No. 958,302, dated May 17, 1910. Kindly state whether this machine has been pointed out to you, whether you have examined the same and compared the mechanism with said claims 15 and 16, and whether you find the mechanism of said claims incorporated in said machine.

Ans. I examined the said machine referred to, which has thereon number 3070, at the same place, the same having been shown me by Mr. Warren, and made a comparison of the same, with claims 15 and 16 of the said patent to Plant No. 958,302, May 17, 1910. In my opinion, claims 15 and 16 of said patent are not infringed by said machine, for the following reasons: —

Claim 15 includes as an element "and a support adjacent to path and movement of said devices", which I could not find in said machines. Furthermore there is a limitation included within the clause of claim 15, "said moving parts and support having, one, a slot parallel with the apertures in said block", which limitation I was unable to find in the machine.

As to claim 16, I was unable to find in the combination of said machine "devices for operating on a heel", coupled with the further clause or element of the claim "of means for guiding said devices and apertures into alignment".

In the matter of the two above quotations the machine referred to is clearly not covered by the said claim 16 of the patent.

Int. 22. Mr. Howard has testified with reference to indenting and burnishing machine designated by him as Goodyear welt, and

that the work-supporting mechanism of that machine, in his opinion, infringed claims 1, 2 and 6 of the Plant patent to Heys No. 860,377, dated July 16, 1907. Please state whether that machine has been pointed out to you, and by whom, whether you have examined the same, have compared the mechanism with the claims in question, and what you have to say with reference to the mechanisms being the same as those referred to in the claims.

Ans. Mr. Warren showed me the machine referred to at the same place as stated by me, and I made a comparison of the structure of the same with claims 1, 2 and 6 of the said patent to Heys No. 860,377, July 16, 1907. In each of claims 1 and 2 there is a limitation in the matter of an element, "means also to tip it", this referring to the work table upon which the work is supported and in connection with which the work is fed or moved. The machine lacking this particular element of the two claims is clearly not an infringement of said claims.

With reference to claim 6 I failed to find the "means to tip it", referring to the work support, and also the element "a worm and worm wheel connections geared to rotate said table in any of its positions". Lacking these two statements of means, or rather lacking in elements answering to such statements, the claim is not infringed by said machine.

Int. 23. Mr. Howard has testified with reference to pulling-over machine, designated by him as "model B Rex", and has testified that the United Company were anxious to put out a pulling-over machine having a tip-measuring device, and that the United Company could not put out such a machine containing such device because it would infringe claim 55 of Plant patent to Heys No. 957,955, dated May 19, 1910. Kindly state whether one of the United Company's pulling-over machines was pointed out to you by anyone, and by whom, which contained in its make-up a tip-measuring device, and state whether such mechanism is that that is referred to and specified in claim 55 of the patent in question.

Ans. Mr. Warren showed me a machine allegedly the one infringing the said patent to Heys No. 957,955, May 17, 1910, in the matter of said claim 55. I compared the said claim with the

said machine and found the latter lacking in the element of the claim "and a gaging device movable into and out of operative position and co-operating with the pulling-over means to properly position the upper of the shoe".

In the machine referred to, and which I examined, there is a device which is capable of being thrown over into engagement with the shoe under-hand manipulation. There is, however, no co-operation of said device with the pulling-over means as called for by the said claim 55 of the patent. Therefore, it is my opinion that the claim is not infringed by such machine.

Int. 24. Mr. Howard has testified with reference to wheeling machine, designated by him as "No. 2, Goodyear Impression Stitch", and that the machine in question as manufactured by the United Company infringed, in his opinion, claims 2 and 5 of patent No. 784,263, dated March 7, 1905, issued to Heys, and which patent was the property of the Bresnahan Shoe Machinery Company. Kindly state whether the machine referred to was pointed out to you by anyone, whether you examined the same and compared the mechanism with the mechanism defined and referred to in the claims in question, and what you have to say with reference to the same.

Ans. The machine was shown me by Mr. Warren at the same place, and I noted thereon a name plate indicating Booth Brothers, with the number 986. I made a comparison of the claims 2 and 5 of the Heys patent No. 784,263, March 7, 1905, with the structure of said machine, and reached the conclusion, as the result of my comparison, that claims 2 and 5 of the patent are not infringed by said machine. My reason for this opinion is that the machine is lacking in the elements of claim 2, as follows: "Movable means for supporting the tool", in combination with "mechanism for automatically moving said supporting means to inactive position and operating said clutch to effect a cessation of rotation of the heel".

As to claim 5, the machine lacks the element "a movable head therefor", referring to the movable head of the patent for supporting the rotary tool. The machine also lacks the element of claim 5, "means for simultaneously unclutching the clutch mechan-

ism from the shaft to stop the rotation of said tool and moving the said head toward inoperative position".

Int. 25. Mr. Howard has testified with reference to lockstitch machine designated by him as "Model K, Goodyear Outsole Rapid", but states that that machine as put out by the United Company in 1910, in his opinion, in so far as the fudge-stitch mechanism was concerned, infringed claims 1, 2, 4, 5 and 9 of patent to Plant No. 940,723, dated November 23, 1909, and infringed claims 9 and 10 of patent to Plant No. 940,725, dated November 23, 1909. Will you kindly state whether the machine in question was pointed out to you by anyone, whether you examined the same and whether the mechanisms defined and referred to in said claims were found by you in the machine in question.

Ans. Mr. Warren showed me a machine at the same place, which he stated was lockstitch machine, model M, and on which I found the number 927 and in connection with which he alleged that all the structure allegedly infringing said two patents of the question would be found in said machine. I made a comparison of claims 1, 2, 4, 5 and 9 of patent to Plant No. 940,723, November 23, 1909, with said machine and found that the latter contained apparently all the elements called for by said claims in substantially the relation noted, and apparently for the same purpose or purposes.

It should be noted in this connection, however, that in each of the claims there is a clause, which is substantially the closing clause of each claim above referred to, calling for the movement of the slitting device to initial position to cause the said device to slit the work, this being on the return movement of the said device. From my knowledge of the art, this would seem to be the distinguishing element, if such it may be called, lending alleged patentability or patentable novelty to each of the claims. The said clause in each of the claims having reference to a mere mode of operation or particular timing of a device whereby to bring about the slitting of the work is, in my opinion, a trivial limitation and hardly important enough to impart patentable novelty to the several claims of the patent under discussion, in view of the prior art.

Regarding patent to Plant No. 940,725, November 23, 1909, I

found substantially the same condition with reference to claims 9 and 10 when compared with the structure of the said machine, and also the same condition with reference to the limitation of said claims wherein the material or work is slit or cut on return movement of the slitting knife.

Mr. PHILLIPS. All portions of the answer relating to the prior art are objected to as outside the order of the court, incompetent, irrelevant and immaterial.

[*Adjourned to 10 A. M. Friday, March 6, 1914.*]

BOSTON, MASS., March 6, 1914.

Mr. WEBSTER. The witness is submitted to opposing counsel for cross-examination, counsel for the complainant reserving the right to call the witness again with reference to matters not gone into in this examination, and counsel states that if the witness is again called the examination with reference to such other matters will be very brief.

Cross Examination by BENJAMIN PHILLIPS, Esq., *of Counsel for Defendants.*

Cross-Int. 26. Did you ever see the loading and attaching machine designated as "Model B, McKay Automatic Heel", in regard to which you testified, in operation?

Ans. If you have reference to the machine in connection with which I examined the patent to Plant No. 958,282, my answer is in the negative, with the further statement that it was not necessary to see it in operation for the purposes of claims 10 and 11 of the said patent, which I examined.

Cross-Int. 27. Will you try to confine your answers to matter responsive to my interrogatories during the rest of your examination?

Ans. I will, to the extent that such questions as you may ask will not, if answered categorically, compel me to qualify in order that my answers may be properly understood.

Cross-Int. 28. Will you please describe what you understand to be the "cross-head" in loading and attaching machine, model B, McKay automatic heel?

Ans. In the machine referred to there are two parts sliding relatively to each other, one part having sleeves at opposite ends working on rods at opposite ends of the other parts. One of these parts I took to be the cross-head since it was nearly like, and answered more nearly to, the element 5 of the Plant patent No. 958,282.

Cross-Int. 29. Did you consider that the part which carried the nail block was the cross-head of the machine referred to?

Ans. What element do you call the "nail block" in that machine?

Cross-Int. 30. The element which contains the apertures in which the nails are inserted and which the drivers enter to drive the nails.

Ans. I did.

Cross-Int. 31. Would you say that the uprights secured to each side of the part which carries the nail block were parts of the cross-head?

Ans. My recollection is that they are.

Cros-Int. 32. To what is the bottom of those uprights secured?

Ans. In the machine I examined, a heavy piece of casting extending transversely of the machine.

Cross-Int. 33. Would you say that the heavy piece of casting was part of the cross-head?

Ans. Not necessarily part of the cross-head, but a part of the cross-head frame.

Cross-Int. 34. Then you make a distinction between the cross-head and the cross-head frame?

Ans. Yes; because the cross-head must be carried by something.

Cross-Int. 35. Isn't it true that the part which carries the nail block is a heavy casting connecting the upper ends of the vertical rods to which you have referred?

Ans. According to my recollection, yes.

Cross-Int. 36. Isn't it further true that the lower heavy casting and the upper heavy casting are both actuated by the toggle at the sides of the machine to cause the compression of the heel?

Ans. Just at this moment I do not recall whether the toggle

mechanism in that machine actuated the cross-head or whether it actuated the nail drivers.

Cross-Int. 37. Was there more than one toggle mechanism in the machine, according to your vivid recollection?

Ans. There is another mechanism for actuating the other part to which I have referred, and I do not recall whether it was toggle mechanism or not.

Cross-Int. 38. In the machine which you examined did the nail-driving devices have a movement independent of the cross-head movement?

Ans. Yes.

Cross-Int. 39. By what instrumentality was that movement caused?

Ans. Either the toggle mechanism referred to by you or the other mechanism referred to by me.

Cross-Int. 40. As a matter of fact were not there two toggle mechanisms, one actuating the cross-head and the other the nail-driving device?

Ans. I have just stated my best recollection of the matters to which you referred.

Cross-Int. 41. You do not know then upon what the nail-driving device rested when in its lowermost position, do you?

Ans. No.

Cross-Int. 42. Do you know how the nail-driving mechanism was raised in so far as in its upward movement it moved with the cross-head?

Ans. No, for I did not see the machine in operation.

Cross-Int. 43. You have stated that you examined a certain nailing machine known as the American Lightning, and have compared the same with the mechanism set forth in claims 15 and 16 of patent to Plant No. 958,302. Will you examine the patent to Pope No. 1,072,986, September 9, 191°, which patent is one of the patents included in Defendants' Exhibit No. 164, and state whether or not that patent illustrates in the drawings and describes in the specification any features of the American Lightning machine examined by you?

Mr. WEBSTER. Question objected to for that it does not relate to the patent inquired about in direct examination, and for the further reason that the patent now inquired about was issued after the filing of the bill herein, and any evidence in reference thereto is therefore incompetent, inadmissible and irrelevant.

Mr. PHILLIPS. Counsel for defendants desires to state that this patent is shown to the witness for the purpose of identifying the structure in regard to which he has claimed to testify in his direct examination.

Mr. WEBSTER. Counsel for the complainant replies that counsel can hardly expect the witness to identify the structure of a machine and compare the same with such machine unless he has the machine before him at the time of examining the illustration as requested.

Ans. Without reading the specification of this patent, and upon merely cursory inspection of the drawings, I will state that in some respects the Figures 1 and 2 of said patent resemble the structure of the machine referred to in the question. That is to say, the machine examined by me and referred to in the question (if they are the same) is provided with a sliding nail driver supported upon and sliding relatively to a vertically reciprocating member or cross-head. In the rear of the cross-head of the machine I examined there is a depending spindle similar to the one indicated by "32", Fig. 1 of the patent to Pope, of the question, on which slides a lug indicated by "30" in said patent carried by the sliding nail driver. In the machine I examined, as well as in the patent to Pope of the question, the nail drivers are inclined to the vertical toward the rear of the machine and in the bed below through which the nail drivers work are a series of apertures similar to those indicated at "13" in the patent to Pope in which the nail drivers operate and which are correspondingly inclined. If the above does not satisfy the question, I will take the time to read the specification and amplify my answer.

Cross-Int. 44. Assuming the parts of the machine which you examined to be in a position such as is indicated in Fig. 1 of the drawings of the Pope patent which I just showed you, are the

drivers in or out of alignment with the apertures which you state were similar to the apertures 13 disclosed in the patent?

Ans. Presumably in alignment.

Cross-Int. 45. Will you examine the drawings a little more carefully and see if you do not desire to correct your answer?

Ans. I qualified my answer by saying "presumably in alignment", the reason for which is that the view or figure is a perspective, in consequence of which it is impossible to state that the drivers are actually in alignment with the respective apertures with which they co-operate.

Cross-Int. 46. If the drivers maintain the positions in which they are shown in said Fig. 1, I mean their lateral position with reference to the cross-head, and were moved down vertically without any lateral movement, would they register with the apertures when they came in contact with the nail block?

Ans. Under your question, obviously if the drivers came in contact with the nail block they could not register with the apertures.

Cross-Int. 47. If they were moved in vertical lines from the positions which they now occupy in Fig. 1 of the Pope patent, would such movement bring the nail drivers into engagement with the apertures in the nail block?

Ans. For the reason stated in the previous answer, compelling the qualification I made, it is impossible to answer that question in either the affirmative or the negative, owing to the fact that the view is a perspective view.

Cross-Int. 48. Didn't you observe the machine with sufficient care to answer such question with regard to the machine?

Ans. I have understood all your questions to refer to the patent to Pope, and not the machine I examined.

Cross-Int. 49. You have evidently misunderstood my questions. Referring now to the machine which you examined, and assuming that the nail drivers were in their raised positions, would a vertical movement of such drivers in a straight line cause them to engage the apertures in the nail block?

Ans. As an actual fact, under the impelling power imposed upon the machine by Mr. Warren, the nail drivers did actually descend

and enter the apertures in the bed of the machine, said apertures being similar to those indicated by "13" of the patent to Pope.

Cross-Int. 50. Did you observe the machine with sufficient care to be able to state by what mechanism the result which you have just stated was accomplished?

Ans. My recollection is that in the machine the nail drivers were maintained in a given position during the entire descent of the cross-head until the lug at the rear of the driver carrier parted from the vertical spindle. At that time the nail drivers were all in register with the apertures in the bed and descended into the respective apertures in said bed.

Cross-Int. 51. That is to say, the machine was provided with means arranged to lose control of the moving parts after the nail drivers and apertures had become engaged?

Ans. Your expression "lose control of the moving parts" is a little broad, but if you intend to confine that expression to the driver carrier, the lug, the spindle and the bed with the apertures, my answer is in the affirmative.

Cross-Int. 52. Will you kindly read upon the record that portion of the Pope specification commencing with line 107 on page 1 and ending with the end of the sentence in line 8 on page 2?

Ans. It is as follows: —

"To this end another feature of the invention consists in providing guiding means for controlling the position of the driver block and drivers upon the head when it is moved sufficiently from the work pressing members to carry the ends of the drivers out of the passages, said means being arranged to release the driver block and leave the drivers free to follow the path of the passages when the head is again moved sufficiently to enter the ends of the drivers in the passages."

Cross-Int. 53. The specification of the Pope patent further states at the bottom of the first claim on page 2, line 65: "suitable means are provided for guiding the drivers in a vertical path while they move towards or from the driver passages in order that the ends of the drivers may be properly located to enter the ends of the driver passages when the cross-head moves downwardly". Please

state whether or not you found in the machine which you examined the means referred to in the statement which I just read you.

Ans. Yes.

Cross-Int. 54. Now, assuming that the drivers have the vertical movement referred to when they are in their raised or most elevated position, are they in alignment or out of alignment with the apertures?

Ans. I should say they are in alignment with the apertures, unless some element in the machine has shifted the base in which the apertures similar to 13 are located.

Cross-Int. 55. Would you say that the two pencils which I now show you were in alignment?

Ans. In accordance with the question, you are holding two pencils inclined to the vertical, end to end, and supposedly in identically the same inclined plane. My answer is yes.

Cross-Int. 56. Now, assuming that I raise the point of one of these pencils vertically, would you say that the pencils were still in alignment?

Ans. Under the question you have shifted the pencils into parallelism.

Cross-Int. 57. Would you say they were in alignment?

Ans. No; not if they are in parallelism.

Cross-Int. 58. Now, is not that precisely what occurs in the case of the drivers and the apertures through which the drivers pass in the machine which you examined?

Ans. It may be so, and it may not be so. My recollection is that the head carrying the drivers or the plate carrying the drivers similar to the one with the lug 30 thereon in the Pope patent, while capable of movement relatively to the bed, with the apertures 13 therein in the Pope patent did not move relatively to said bed.

Cross-Int. 59. Isn't it true that the lower ends of the drivers were moved in a vertical line from the upper end of the apertures in the upward movement of the cross-head?

Ans. Yes.

Cross-Int. 60. How could that be done without moving the aper-

tures and drivers out of alignment, assuming that the nail block remained stationary?

Ans. In the first place, the entire movement, as I observed it in the machine under discussion, of the driver and its head was vertical, and no change whatever took place between the relation of the drivers and the apertures in the bed under the vertical movement.

Cross-Int. 61. Isn't it true that the lower ends of the drivers moved upward in a vertical line after they were disengaged from the apertures?

Ans. Yes.

Cross-Int. 62. How could that movement take place without throwing the drivers and apertures out of alignment?

Ans. By maintaining the same relation between the drivers and the bed with the apertures therein; that is, by avoiding any shift laterally of either of the parts.

Cross-Int. 63. Could the points or lower ends of the driver move in that way and avoid a lateral movement of the drivers with reference to the apertures?

Ans. Yes; provided the guiding devices were maintained in co-operative relation until the pins or drivers were caused to register with the apertures.

Cross-Int. 64. You do not dispute, do you, that the lower ends of the drivers during the upward movement of the cross-head move in vertical lines?

Ans. No.

Cross-Int. 65. It is true, then, is it not, that every point on every driver moves along a vertical line?

Ans. Yes.

Cross-Int. 66. If that is true, how can such vertical movement be accomplished without throwing the drivers and the apertures out of alignment?

Ans. The points of the drivers might move through a myriad of different planes and yet maintain the aligned relation of the pins with the apertures in the bed, under the proper operation of the machine.

Cross-Int. 67. I will put my question a little differently. It is true, is it not, that if the drivers were in alignment with the apertures when the cross-head was in its raised position, that a movement of the drivers in the direction of their longitudinal axis would cause them to register with and pass through the apertures?

Ans. Of course the question is purely suppositional, but if I understand the meaning of it my answer is in the affirmative. I can see, however, that counsel and I have been working at cross purposes in connection with the machine and the structure thereof in question, and in order to place counsel on the same plane with me in the matter of my answers I will suggest the following: at times the questions have referred to the points of the drivers with reference to the apertures; at times with reference to the entire length of each driver or considering the drivers as a whole and not merely their points, and at times with reference to the alignment of the drivers and the apertures, the latter may be, or may be not, being considered in their entirety.

Now, with reference to these differences, and as I have caught the meaning of the questions, I will state that both in the machine I examined as well as the patent it is quite obvious that when the driver carrier is raised so that the guiding devices co-operate to control the carrier, the drivers are bodily moved in a vertical plane, and throughout their length are not in alignment obviously with the entire length of the apertures, considered as passages through the base. The drivers, however, in any position which they might assume with reference to the base, are necessarily in alignment with the apertures considered merely as holes at or around the surface of the base. Possibly that explanation will place counsel and the witness on the same basis of understanding.

Cross-Int. 68. In view of your present understanding, just what is meant, according to your interpretation, in claim 15 where it is stated that "one, a slot parallel with the apertures in the block"? I am referring to patent to Plant No. 958,302.

Ans. The apertures referred to in the matter quoted from claim 15 of said Plant patent means the entire passage or passages such as are indicated by "13" in the base of the Pope patent, the pas-

sages being of considerable length. This is also true in the machine I examined, that is, the apertures are of considerable length, and are passages into which the drivers pass and in which they operate. The slot referred to in claim 15 of the patent to Plant is the slot "104", shown clearly in each of Figures 13 and 14 of the Plant patent, sheet 10 of the drawings. In the Plant patent referred to the slot "104" in the upright of the member "52" which co-operates with the pin apparently carrying an anti-frictional roller "106" is parallel with the passages or apertures in which the drivers and cutters or punchers operate, the said passages or apertures being in the member "44" in the same figures of the Plant patent. The corresponding passages or apertures in the Pope patent are inclined to the vertical and are consequently at an angle, not only to the passage or aperture in the lug "30" but also to the pin "32", which co-operates with said lug.

Cross-Int. 69. Do you give the word "apertures" as used in claim 16 of the same Plant patent No. 958,302 a different meaning?

Ans. No.

Cross-Int. 70. What element was it which, in your opinion, was included in the description of claim 16 which is not found in the machine which you examined? I am referring to the nailing machine, American Lightning.

Ans. The element included within the expression "with devices for operating on a heel", coupled with the element included within the clause "of means for guiding said devices and apertures into alignment".

Cross-Int. 71. Wouldn't you call the drivers in the American Lightning machine devices for operating on a heel?

Ans. Yes; but not within the terms of this claim of the Plant patent, that is, claim 16.

Cross-Int. 72. Isn't it true that the Plant specification refers both to awls and drivers?

Ans. Yes; and the said sixteenth claim includes them both.

Cross-Int. 73. Under what expression?

Ans. In the expression "with devices for operating on a heel".

Cross-Int. 74. In the Plant machine does the guiding means,

that is, the slot and the roll, act in connection with more than one set of devices at a time?

Ans. No.

Cross-Int. 75. And when one set of devices is in operation the other is absolutely inoperative?

Ans. Not inoperative, but out of operative position.

Cross-Int. 76. It is performing no operation?

Ans. Correct, as just stated.

Cross-Int. 77. And in so far as the action of the slot and roll is concerned when operating in connection with the drivers, in so far as its operation is concerned the awls might as well be off the machine?

Ans. Why, no; certainly not. You are assuming an inoperative machine in contradistinction to an operative machine including devices which are at all times capable of operation and performing a function when brought into the proper relation with other devices in the machine.

Cross-Int. 78. What effect, if any, upon the operation of a slot and roll in the machine of the Plant patent, when acting as a guide for the nailing devices, does the existence of the puncturing awl on a machine have?

Ans. None.

Cross-Int. 79. It is true, is it not, in the Plant machine that the slot which acts as a guiding slot is a vertical slot?

Ans. I assume you refer to the slot "104" in Figures 13 and 14. My answer, therefore, is yes.

Cross-Int. 80. It is true, is it not, they are parallel to the apertures simply because the apertures are vertical?

Ans. That may be a condition, but I could not say that it is "simply because", since, as I understand the Plant machine and the idea of invention thereof, the arrangement of the apertures or passages for the drivers and awls parallel with the slot "104" was intentional and not merely because.

Cross-Int. 81. Isn't it true in the Plant machine that when the drivers have registered and engaged with the apertures in the nail block the roll "106" passes out of the slot "104", so that the

motion of the drivers is no longer controlled by the slot, and it is absolutely immaterial whether the slot is parallel with the drivers or not, provided it is suitably shaped and in a suitable position on the machine to guide the drivers into engagement with the apertures?

Ans. The condition suggested by the question is undoubtedly true. The supposition of the question being merely a reference more to the idea of the inventor, I cannot answer.

Cross-Int. 82. Isn't it true that both the vertical slot "104" in the Plant machine and the vertical rod in the nailing machine, American Lightning, act to guide the drivers in their downward movement and to cause them to engage the apertures in the nailing block?

Ans. Yes

Cross-Int. 83. Isn't it true of both devices that when the drivers are thus engaged they are released from the guiding devices and left to move free from the control thereof?

Ans. Yes.

Cross-Int. 84. Isn't it true that the vertical pin which is referred at "32" in Pope patent No. 1,072,986 is adjacent to the path of movement of the drivers?

Ans. Oh, yes; it may be so considered.

Cross-Int. 85. Referring now to wheeling machine No. 2, Goodyear impression stitch, with regard to which you have testified, did you examine that machine with sufficient care to be able to state whether or not it comprised a rotary tool?

Ans. Yes; I found it to contain a rotary tool.

Cross-Int. 86. Did the machine last referred to, as far as you are able to state, also comprise a shaft connected with the rotary tool and having a clutch mechanism thereon?

Ans. I think so.

Cross-Int. 87. Is it not further true that said machine comprises means for relatively moving the tool and the work support so that the tool is out of operative engagement with the work?

Ans. Not precisely as stated by the question. I found in the machine a work support which could be depressed relatively to the

operative position of the tool. The result of that condition in the machine is that when the work support is depressed relatively to the tool the work may be taken away from the action of the tool. You will note that this is not precisely in the language of the question, the latter stating it in such a way that I was compelled to qualify.

Cross-Int. 88. Is it not true that when the work support has been depressed to permit removal of the work, as you have stated, that the tool is out of operative engagement with the work?

Ans. Not necessarily; you may depress the work support and still hold the work in engagement with the tool.

Cross-Int. 89. But it is true, is it not, that if the work continued to rest upon the work support, the work support may be depressed so that the tool is out of working engagement with the work?

Ans. It is.

Cross-Int. 90. Isn't it also true that in the machine of the Heys patent No. 784,263, if the operator continues to hold the work against the tool when the tool is raised, it will not be out of working engagement with the work?

Ans. Yes, and no. Physically the shoe would be in engagement with the tool when the latter is elevated. Considering it from an operative or operating standpoint, when the tool is lifted it goes out of action, since the clutch mechanism is thrown out of action. Hence we may consider the shoe as not in operative engagement with the tool.

Cross-Int. 91. Isn't it true of wheeling machine No. 2, Goodyear impression stitch, that it comprises means for simultaneously unclutching the clutch mechanism of the shaft to stop the rotation of the tool and relatively move the tool and work support so that the tool is out of operative engagement with the work?

Ans. I would say may be out of engagement with the work, and with the qualification of my foregoing answer, my answer to the last question is yes.

Cross-Int. 92. Your theory is, as I understand it, in wheeling machine No. 2, Goodyear impression stitch, the work might be held by the operator against the tool after the work support had

been depressed. Isn't it true, however, that the tool at this time would not be in rotation, so that while there might be physical contact between the work and tool, the tool could not be said to be in operative engagement with the work?

Ans. Correct.

Cross-Int. 93. Referring now to indenting and burnishing machine, Goodyear welt, did you examine that machine with sufficient care to state whether or not it comprised a tool for acting upon the sole of a shoe?

Ans. Yes; I did.

Cross-Int. 94. Did it?

Ans. It did.

Cross-Int. 95. Did it also comprise a work table for supporting and moving the work?

Ans. Yes.

Cross-Int. 96. Did it also comprise worm and worm wheel connections geared to and to rotate said table in any of its positions?

Ans. No.

Cross-Int. 97. What mechanism referred to in my last question did it lack?

Ans. All the mechanism stated by the question.

Cross-Int. 98. That is, you mean the gear and the gear wheel connection?

Ans. No; I mean the worm and worm wheel connection as stated by your question.

Cross-Int. 99. Are you sure that you examined the machine with sufficient care to answer that question?

Ans. I think so.

Cross-Int. 100. And you feel as positive in this matter as you do with regard to your other statements which you have made as to machines which you examined?

Ans. Yes.

Cross-Int. 101. Will you please describe the mechanism by means of which the table was rotated?

Ans. Ordinary driving gear; that is, a gear wheel arranged in a horizontal plane with its teeth in a vertical plane, co-operating with

a gear on the table or support arranged at an inclination to the first named gear; this in contradistinction to the mechanism referred to in your question, viz., worm and worm wheel connection, etc.

Cross-Int. 102. Isn't it true that in the machine of the Heys patent the table is rotated by means of a bevel gear, arranged in substantially horizontal position, which meshes with another bevel gear arranged in a vertical position, which in turn meshes with a bevel gear on the lower portion of the work table?

Mr. WEBSTER. Objected to for that it calls for matter foreign to the direct examination.

Mr. PHILLIPS. Counsel for defendants calls attention to the fact that this witness has assumed to understand a machine of the Heys patent No. 860,377 sufficiently to express an opinion on the question of infringement of certain of its claims.

Mr. WEBSTER. The attention of the Court is respectfully called to the fact that the question here at issue is with reference to a comparison of certain claims with a certain machine and not with reference to the whole Heys patent.

Mr. PHILLIPS. It is evident from this expert's testimony that he seems to have considered the claim without reference to the patent, if that is what is meant by my brother Webster.

Ans. Yes, that is true; but I direct attention to the fact that the teeth of the several gears vary in depth.

Cross-Int. 103. Which one of those gears would you call a worm?

Ans. Neither of them.

Cross-Int. 104. Isn't it true that means are provided in the indenting and burnishing machine, Goodyear welt, whereby it is possible to tip the table into any desired angular or oblique position at any level without in any manner disturbing the driving connections to rotate it?

Ans. The machine I examined has co-operating parts such that the table may be tilted to any desired position, within limits, relatively to the rotary tool, but such means of co-operating parts are what may be called "set" means; that is, a bolt in one part working through a slot in another, the bolt being capable of being loos-

ened and tightened for the purpose of shifting the table. This, however, is not the means referred to in claims 1, 2 and 6 of the Heys patent No. 860,377, and embraced within the terms "means also to tip it", claim 1, "means to tip it", claim 2, and a similar clause in claim 6.

Mr. PHILLIPS. Answer objected to as utterly irresponsive after the words "This, however, is not the means referred to".

Cross-Int. 105. Isn't it true that the machine of the Heys patent is provided with what you have chosen to term "set" means for tilting the table into any desired position, within limits?

Mr. WEBSTER. Objected to for that the inquiry goes to the machine of the Heys patent, while the direct examination went only to a comparison of claims 1, 2 and 6 of that patent with the machine examined by the witness.

Ans. Yes, and also with the other means referred to in the several claims above referred to in the clauses quoted by me therefrom.

Cross-Int. 106. The means to which you have referred in your last answer, aside from what you have termed the "set" means, for adjusting the angularity of the table, are the treadle and connections between the treadle and the table which simultaneously change its elevation and the pitch of the table, are they?

Ans. Yes, and includin the set means.

Cross-Int. 107. Means to which I referred in my last question are the means stated in claim 2 of the Heys patent No. 860,377, are they?

Ans. Yes; as I understand it, it is the mechanism or devices by means of which the table may be tilted relatively to the tool at the same time that it is elevated or depressed relatively to the tool.

Cross-Int. 108. For the information of the Court will you kindly read claim 2 upon the record?

Ans. It is as follows: —

"[2] In a machine of the class described, the combination with a working tool, of a work table for moving the work with relation to said table and the tool, means to raise and lower the table, means to tip it, and means to rotate it in any elevated or tipped position."

Cross-Int. 109. Will you kindly read upon the record claim 3 of the Heys patent?

Mr. WEBSTER. Objected to for that claim 3, or the structure referred to therein, is not involved in this inquiry and no reference was made to the same on direct examination.

Ans. It is as follows: —

"[3] In a machine of the class described, the combination with a working tool for acting upon the sole of a shoe, of a work table for supporting the work for the action of said tool, a treadle and connections between said treadle and table for simultaneously changing the elevation and pitch of the table."

Cross-Int. 110. Do you find in either claim 1 or claim 2 any express limitation as to any simultaneous change of the elevation and pitch of the table?

Ans. Just what you mean by "express limitation" I do not now grasp. An express limitation may be by words in the claim, or by necessity of the prior art, in view of which the claim was written, amended or changed, or in view of which it was originally written. Therefore I am compelled to ask what you mean by the expression in your question which I have quoted above.

Cross-Int. 111. Do you find in claim 1 or 2 any language requiring the simultaneous change in the elevation and pitch of the table?

Ans. My answer must be the same as the last, for the reasons stated.

Cross-Int. 112. What language do you find in either claim 1 or 2 which refers to any simultaneous change in the pitch or elevation of the table?

Ans. As I have before stated in answer to the last two preceding questions, the question as to whether there is a limitation to a structure within the meaning of the word "simultaneous" of the question, depends entirely upon the prior art and other conditions stated by me, and in this connection I may state that I have not considered the prior art nor the history of the claims referred to, nor any of the reasons leading up to the use of the language of the two particular claims mentioned. I am, therefore, not able to answer the question in the precise way in which it is asked.

Cross-Int. 113. I was not inquiring about the prior art; I was asking you concerning the language of the claim as stated in the patent as a matter of mechanical definition.

Ans. I so understood the question and my answer now is identically the same as before, for all the reasons stated. And I might add that "mechanical definition" of any of the elements of the claims must necessarily be dependent upon standards and conditions in view of which the words were used, or the terms were employed, in defining the invention of the patent.

Cross-Int. 114. Prior to your direct examination had you read the specification of the Heys patent No. 860,377?

Ans. Partially.

Cross-Int. 115. Then, as I understood you, your construction of the claim in regard to which you testified was not based on the prior art and was given after only a partial reading of the specification; is that correct?

Ans. Yes; with this qualification, that by "partial" I mean in contradistinction to studying it in the way that I would with file-wrapper and contents in view, prior art, etc.

Cross-Int. 116. Prior to your giving your testimony in this case just what portion of the Heys specification in patent No. 860,377 had you read?

Ans. I may say that I skimmed hurriedly over the entire specification, but particularly I read portions beginning with line 105, page 1, down through the paragraph ending on line 34, page 2, and those portions on page 3 beginning line 74 and ending with line 100.

Cross-Int. 117. Now, will you kindly read upon the record the portion following line 34 on page 2, at which you say you stopped carefully reading the Heys specification? I refer to matter from lines 35 to 41, inclusive.

Ans. It is as follows: —

"Not only is the driving engagement with and to rotate the table maintained in all vertical positions of the table, but because the said table is tipped about the axis of the double bevel-gear *c* (see Fig. 2 and 3), it is possible to tip the table into any desired

angular or oblique position, at any level, without in any manner disturbing the driving connections for rotating it."

Cross-Int. 118. Isn't it true that to bring the table into any desired angular or oblique position at any level it is necessary to make use of what you have called the set tipping means disclosed in the Heys patent?

Ans. Why, yes, in the sense that said means in accordance with the Heys construction is manipulated to first give the supporting table a^5 a predetermined arrangement relatively to the rotating tool indicated at *e*, Fig. 3. This done, manipulation of the treadle a^{10} to which is connected two rods a^9 and b^1, will bring about the double function referred to in the several claims to which I have particularly referred.

Cross-Int. 119. Do you find in any portion of the specification of the Heys patent any reference to varying the pitch of the work-supporting table?

Ans. Yes.

Cross-Int. 120. In what part of the specifications?

Ans. In the part beginning line 105, page 1, and ending line 3, page 2; and also in the matter beginning line 76, page 3.

Cross-Int. 121. In the machine which you examined, to wit, indenting and burnishing machine, Goodyear welt, is any means provided for changing the elevation of the table or work support?

Ans. Yes, as heretofore stated by me in answer to previous questions.

Cross-Int. 122. How is such change in elevation accomplished?

Ans. Through the medium of a treadle, connecting rod and connection of the latter with the table.

Cross-Int. 123. Is the table mounted upon a swinging lever?

Ans. As I remember it, yes.

Cross-Int. 124. Is the arrangement of gearing such that in any position to which the table is swung by the action of the swinging lever the driving mechanism is still effective to rotate the table?

Ans. Within the limits of that machine as I saw it operated, yes.

Cross-Int. 125. Do you find any reference in either claims 1, 2

or 6 of patent to Heys No. 860,377 to any mechanism for changing the pitch of the table; I mean in direct language?

Ans. Yes; in the means which I have heretofore quoted from each of said claims.

Cross-Int. 126. Of course you do not find the word "pitch" used in either of the claims referred to?

Ans. Why, no.

Cross-Int. 127. And it is a matter of opinion on your part, is it, that the word "tip" and changing the pitch are used synonymously?

Ans. In the Heys specification and claims; yes.

Cross-Int. 128. In claim 3 where the treadle mechanism is referred to it is true, is it not, that the language employed to designate the angular movement of the table is "changing the pitch of the table", while in claims 1, 2 and 6, which make no direct mention of the treadle mechanism, the means for changing the angular position of the table are described as "means also to tip it"?

Ans. In the first place, if you intended to quote from claim 3, or if you intended your quotation above to be from claim 3, it is inaccurate, no such expression or language as that quoted by you appearing in the claim. The language is, if you had reference to claim 3, "a treadle and connections between said treadle and table for simultaneously changing the elevation and pitch of the table".

Now, answering the question, the means for changing the angular position of the table, which is your language, or substantially your language, necessarily includes the combination of devices and elements beginning with lever a^{10} and extending to rods a^{9} and b^{1} and connections of said rods at their upper ends with the said table. In the operation of the Heys machine of the said patent 860,377 the angular position of the table is brought about, as well as changes in that position, by the connections just described.

In the static condition of the machine the angular position of the table and changes in that angular position are brought about by the means which I have stated as set means, through the medium

of which the lever a^4 of the patent may change the position of said table indicated as a^5. Hence in claims 1 and 2, in order to give any meaning to the language thereof, "means also to tip it" and "means to tip it" necessarily have reference to the combined mechanisms and their combined effect to which I have just referred. Of course I appreciate the fact that by dissecting either of these claims, as well claim 3 or even claim 6, it may be possible to cause the language thereof as expressing individual mechanisms or devices to apply to most anything and be wholly senseless in the claims in so far as the structure of the patent is concerned and the true intendment of the language or above claims and specification.

Cross-Int. 129. Then, as I understand your testimony, you would deem it a senseless construction of a claim if the claim was construed to cover mechanisms specifically disclosed in the drawings and pointed out and described in the specification of a patent, without also including all the other mechanisms shown and described in said patent?

Ans. Oh, no; you have inverted my meaning. What I said was, and the meaning which I intended to convey is, that in construing the particular expressions of the claim they must be given meaning with reference to the specification and the particular cooperation of the part stated for the purposes of the machine structure covered by the patent.

Cross-Int. 130. Isn't it one of the purposes of the machine structure covered by the patent to provide means whereby it is possible to tip the table into any desired angular or oblique position at any level without in any manner disturbing the driving connections for rotating it?

Ans. Surely, if you understand the word "disturbing" of your question to mean changing the driving relations of the parts.

Cross-Int. 131. What do you understand it to mean in view of the Heys specification?

Ans. What I stated in the last past of my last answer.

Cross-Int. 132. Referring to pulling-over machine, model B, Rex, with regard to which you testified, did you examine it with

sufficient c[illegible] to be able to identify any of its features in the drawings and specification of United States Letters Patent?

Ans. Assuming that your question is directed to a patent which possibly illustrates the particular machine shown me by Mr. Warren, I will say that in so far as I examined that machine I believe I would be able to identify like parts in any patent allegedly covering the same.

Cross-Int. 133. To what features in the machine was your attention particularly directed when you examined the same with Mr. Warren?

Ans. Shoe-supporting means, pulling-over means arranged at the side and toe of the shoe, and a hand-operated gaging means capable of movement independently of, but relatively to, the pulling-over means and the shoe-supporting means.

Cross-Int. 134. What do you mean by "gaging means"; means for gaging what?

Ans. I mean the device which I found in that machine consisting of a pivoted, bent lever, having in one end an aperture through which had been thrust a nail. The apparent function of the device is, as I understood the machine, to enable the operative to determine whether the upper is properly positioned on the last and maintains that proper position during the operation of the pulling-over means.

Cross-Int. 135. Had you read, prior to your direct testimony in this case, specification of Letters Patent to Heys No. 957,955?

Ans. Yes.

Cross-Int. 136. Will you please examine the United States Letters Patent granted to the United Shoe Machinery Company on the application of O. Ashton, No. 1,030,763, and state whether or not it illustrates in the drawings and describes in the specifications any features of the pulling-over machine examined by you and in regard to which you testified in your direct examination?

Mr. WEBSTER. Objected to as outside the scope of proper cross-examination, nothing of this kind having been referred to in the direct examination.

Ans. I do not recognize in the patent anything of the construc-

tion of the machine which I examined as stated by me in my direct examination.

Mr. PHILLIPS. The Patent Office copy of the Ashton patent No. 1,030,763, June 25, 1912, is offered in evidence.

[*Patent Office copy of Ashton patent No. 1,030,763, June 25, 1912, is marked "Defendants' Exhibit 351, Ashton Patent".*]

Mr. WEBSTER. The introduction of the exhibit is objected to as incompetent, inadmissible and irrelevant, both on the grounds that it has no relation to the matter inquired about on direct examination and for the further reason that it is a copy of a patent issued after the filing of the bill herein.

Cross-Int. 137. Will you please describe the gauging device of the Heys patent and the means of moving it into and out of operative position?

Ans. You mean the Heys device of patent No. 957,955, granted May 17, 1910?

Cross-Int. 138. Yes.

Ans. I believe it is fair to assume that the description of the Heys patent referred to by you of the gauge and means for operating the same is correct, and I therefore refer you to the said description. If, however, there is anything in the description or in the illustration of the Heys patent which strikes you as being obstruse, I will be glad to attempt to explain it.

Cross-Int. 139. Will you kindly describe in your own language, as you understand it from your study of the patent, the operation of the gauging device of the Heys patent and the means for moving it into and out of operative position?

Ans. Referring to Fig. 1 of the drawings of the Heys patent No. 957,955, the numeral 106 refers to a frame portion of the machine at the top of which is pivoted a member carrying a rod 109, the latter being adjustable in said member by means of thumb nut 111. The forward end of the rod, or more properly the lower end of the rod, which co-operates with the upper on the shoe is downly bent and is provided with an anti-frictional ball. A spring 113 tends to normally depress the gauging end of the rod 109, and an arm 112 connected by rod or link 114 is operated to manipulate the

rod 109 through the medium of cam 116 on lever 104 journaled at 92. The foregoing briefly is the construction referred to in the question, detailed description of which will be found in the specification of the Heys patent in the second column of page 5.

Cross-Int. 140. Please describe how, by means of mechanism which you have just referred to, the gauge 110 on the rod 109 is thrown into and out of operative position.

Ans. Normally the gauge rod 109 is elevated through the medium of the weight of the rod 114 connected to the arm 112 of the member 108 and, in the language of the specification in column on page 5 referred to by me, when the operative depresses the handle 104 to push the last back into the heel portion of the upper the cam 116 of the hub of said handle lever is turned upward and acts upon the roller stud 115 to lift the rod 114, and through the spring 113 throw the tip gauge downward into yielding contact with the upper and in full view of the operative looking down upon the shoe from above.

Cross-Int. 141. What is the function of the gauge 110 in the machine illustrated and described in Letters Patent to Heys No. 957,955?

Ans. Primarily to enable the operative to cause the tips of the uppers as stretched upon the last to be uniform in position on the last throughout any number of uppers and tips so placed; that is, to bring about uniformity of product of the machine with reference to a given style of shoe.

Mr. PHILLIPS. Cross-examination closed.

Direct Examination resumed by Mr. WEBSTER.

Int. 142. State whether or not the cross-examination has brought to your attention anything which leads you to change your opinion as expressed in your direct examination.

Ans. It has not.

Mr. WEBSTER. Redirect examination closed.

[*Signature waived.*]

Attest: CHARLES K. DARLING, *Special Examiner.*

Adjourned subject to call.

BOSTON, MASS., March 16, 1914.

Mr. WEBSTER. It having been heretofore stipulated and agreed by and between counsel for the respective parties, and to accommodate counsel for both parties, that the introduction of the following exhibits might be delayed until the coming in for the purpose of taking evidence in surrebuttal, therefore the complainant now offers in evidence a certified copy of the file-wrapper and contents in the matter of Letters Patent to Thomas G. Plant, dated January 28, 1908, No. 877,858, entitled "Improvement in Welt and Thread Cutting Means for Sewing Machines", and the same is marked "Plaintiff's Exhibit 287".

[*The complainant also offers in evidence printed Patent Office copies of the patents referred to in said file-wrapper, the same being:*

Patent to Coombs, stay-cutting attachment for sewing machines, dated July 28, 1891, No. 456,692;

Patent to Marsh, stay-cutting attachment for sewing machines, dated March 7, 1905, No. 784,220;

Patent to Harris, inseam trimming machine, dated March 30, 1897, No. 579,751;

Patent to Arnold, attachment for applying welts or rands, dated December 24, 1901, No. 689,532;

Patent to Roberts, thread holder and cutter for buttonhole sewing machines, dated August 12, 1890, No. 434,181;

Patent to Hawes, thread-trimming device for sewing machines, dated May 10, 1898, No. 603,688;

Patent to Allen, thread-cutting device for sewing machines, dated January 5, 1904, No. 749,012;

Patent to Folson, sewing machine, dated May 24, 1864, No. 42,846,

which patents are marked "Plaintiff's Exhibit 288".

It is agreed that said file-wrapper and patents now introduced may have the same force and effect in all respects as if introduced during the time assigned in the order of the court under which this testimony is being taken, and is subject to the following objection by

the defendant: that the introduction of said exhibit is unauthorized by and outside the order of the court under which this testimony is being taken, and that all of said exhibits are incompetent, irrelevant and immaterial.

Counsel for complainant states that he has no further evidence to offer in rebuttal.]

ADDITIONAL EVIDENCE FOR DEFENDANTS.

TAKEN PURSUANT TO ORDER OF COURT, ENTERED FEBRUARY 10, 1914, BEFORE ME,

CHARLES K. DARLING,
Special Examiner.

BOSTON, MASS., March 16, 1914.

Present:

ALLEN WEBSTER, Esq., *Special Assistant to the Attorney General,*
WILLIAM S. GREGG, Esq., *Assistant to the Attorney General, of Counsel for Complainant;*
FREDERICK P. FISH, Esq., and BENJAMIN PHILLIPS, Esq., *of Counsel for Defendants.*

DEPOSITION OF ARTHUR S. BROWNE.

Direct Examination by BENJAMIN PHILLIPS, Esq., *of Counsel for Defendants.*

Int. 1. Please state your name, residence, occupation and what experience you have had which enables you to testify as an expert in this case.

Ans. Arthur S. Browne; Chevy Chase, Maryland; occupation, patent solicitor and expert. I was graduated from Dartmouth College in 1881, and have been actively and continuously engaged in my present profession for the past thirty-two years. I have had a great deal to do with shoe machinery for twenty-five years last past. My experience has been in examining machines of this character, in preparing and prosecuting applications for patents on such machines, in studying patents in regard thereto, and testifying in patent suits on patents involving such machines.

Int. 2. Have you read the direct and cross-examination of Mr. Charles McCormick Chapman, a witness produced in behalf of the petitioner, in rebuttal, under the order of the court under which this testimony is being taken?

Ans. Yes.

Int. 3. Have you read and do you understand the several Letters Patent of the United States referred to by Mr. Chapman in his said testimony?

Ans. Yes.

Int. 4. Mr. Chapman has testified in regard to pulling-over machine, model B, Rex, which he states that he examined and compared with claim 55 of Heys patent No. 957,955, May 17, 1910, that such machine did not, in his opinion, infringe said claim 55. Please state whether or not you agree with Mr. Chapman; if not, whether you find in pulling-over machine, model B, Rex, the devices set forth in said claim 55, and if you do, state what errors, in your opinion, led to Mr. Chapman's stated conclusions as to infringement.

Ans. I have examined pulling-over machine, model B, Rex, which I will refer to as "model B Rex machine". I do not agree with Mr. Chapman.

Mr. Chapman when he testified evidently had forgotten the construction of the model B Rex machine. In answer to one of the cross-questions, he identified this machine by stating that it had "a pivoted, bent lever, having in one end an aperture through which had been thrust a nail". This is not true of the model B Rex machine.

In order to illustrate the exact construction of the model B Rex machine in this respect, I here produce two photographs of it. One of these photographs shows a shoe in position in the machine, and the other photograph shows the machine with no shoe in it.

[*Photograph of pulling-over machine, model B, Rex, with shoe in, is marked "Defendants' Exhibit 352".*

Photograph of pulling-over machine, model B, Rex, without shoe in, is marked "Defendants' Exhibit 353".]

I have indicated in these photographs the tip-gaging device by the letter "A". Manifestly, this tip-gaging device bears no resemblance to a bent nail.

In further illustration of this model B Rex machine, I refer to the Ashton United States patent No. 1,030,763, June 25, 1912,

which is Defendants' Exhibit 351. This patent illustrates several forms of tip-gaging devices. The form illustrated in Fig. 2 of the drawings of this patent is substantially like the tip-gaging device of the model B Rex machine. The tip-gaging device itself is shown at 16 in Fig. 2 of this patent.

As I understand Mr. Chapman's evidence, he does not dispute the presence of the several elements of claim 55 of the Heys patent No. 957,955 in the model B Rex machine, but his contention is that there is no "co-operation of said device" (namely, the tip-gaging device) "with the pulling-over means as called for by the said claim 55 of the patent".

In this Mr. Chapman is in error, because in the model B Rex machine there is exactly the same co-operation between the tip-gaging device and the pulling-over means as there is between the corresponding characteristics of the machine of the Heys patent No. 957,955.

The purpose of the machine of the Heys patent No. 957,955 is to pull the upper tightly over the shoe last preparatory to securing the upper to the last so that the upper will be in proper condition for the subsequent operations of securing the upper to the sole of the shoe. It is highly important that the upper should be exactly fitted to the last and in proper relation thereto.

The object of the tip-gaging device shown at 110 in various figures of the drawings of the Heys patent No. 957,955, such as Figs. 1 and 3, is to afford a guide to enable the operator to so adjust the shoe upper to the last that he knows that it is in just the right relation.

The tip-gaging device of model B Rex machine has exactly the same function and office.

In both machines, after the shoe has been placed in the machine the workman swings the tip-gaging device into position over the forepart of the shoe. If the tip-gaging device then registers accurately with the tip seam of the shoe, the operator knows that the shoe upper is properly related to the last.

If this proper relation does not exist, then in both machines the workman makes the proper manipulation to secure relative move-

ment between the last and the upper so that the tip gauge will register with the tip seam of the shoe upper.

In both machines this adjustment which is determined by the tip-gaging device puts the shoe upper in the proper position for the further action of the pulling-over means.

Accordingly, there is exactly the same co-operation in the two machines between the tip-gaging device and the pulling-over means. In both machines there is a true co-operation between those instrumentalities because the proper action of the pulling-over means is determined by the tip-gaging device.

Accordingly, I do not agree with Mr. Chapman. The entire subject-matter of claim 55 of the Heys patent No. 957,955 is present in the pulling-over machine, model B, Rex.

Int. 5. Mr. Chapman also referred to indenting and burnishing machine, Goodyear welt, which he said he compared with claims 1, 2 and 6 of patent to Heys No. 860,377, June 16, 1907, and that, in his opinion, said machine did not infringe said claims. State whether or not you have examined this machine, and, if you have, state whether you agree with Mr. Chapman as to his conclusion as to infringement, and, if not, state whether or not you find in such machine the mechanism set forth in said claims and point out, in your opinion, what are the errors which led Mr. Chapman to the conclusions as to the infringement which he stated.

Ans. I have examined this indenting and burnishing machine, Goodyear welt, which I will hereafter refer to as indenting and burnishing machine. I do not agree with Mr. Chapman.

The purpose of the Heys patent No. 860,377 is to make indentations in the upper surface of the projecting edge of the shoe. The work is done by the co-operation of an indenting and burnishing tool shown at *e* in the drawings of the Heys patent and a work table a^5. When the shoe is being acted upon the sole rests on the work table and the projecting edge extends below the indenting and burnishing tool *e*. This work table is rotated by suitable driving gear so that it acts to feed the shoe along during the indenting and burnishing operation.

Mr. Chapman gives one reason which, in his opinion, excludes

indenting and burnishing machine from each of claims 1, 2 and 6 of the Heys patent No. 860,377, and he gives a second reason why, in his opinion, the indenting and burnishing machine does not have the subject-matter of claim 6 of said patent.

I will take up this second reason first. With respect to the second reason given by Mr. Chapman, he is in error as to the construction and mode of operation of the indenting and burnishing machine.

Mr. Chapman says that this indenting and burnishing machine lacks "a worm and worm wheel connections geared to, and to rotate, the said table in any of its positions" as defined in claim 6.

The worm and worm wheel thus defined in claim 6 are shown at c^4 and c^3 in Figures 1 and 2 of the drawings of the Heys patent No. 860,377.

The indenting and burnishing machine has a similar worm and worm wheel, which Mr. Chapman evidently overlooked in his examination of this machine.

In order to illustrate the indenting and burnishing machine I here produce drawings thereof, comprising two sheets.

[*Drawings, in two sheets, of indenting and burnishing machine, Goodyear welt, are marked "Defendants' Exhibit 354".*]

As shown in these drawings, 10 is the rotary work table. It receives its rotation from a power shaft 5. This power shaft carries a worm 20, shown in Fig. 2, and this worm co-operates with a worm wheel A shown in Fig. 3. Accordingly, indenting and burnishing machine has "a worm wheel connection geared to rotate said table in any of its positions", as called for by claim 6 of the Heys patent 860,377. Indeed, the driving gearing for the work table in the indenting and burnishing machine is substantially identical with that of the Heys patent.

Heys has the main shaft c^5, the worm c^4, the worm wheel c^3, the pinion c^1 (see Fig. 7), the double-tooth pinion c, gear teeth on the work table a^3, together with the shafts and spindles therefor. Similarly the indenting and burnishing machine has the main shaft 5, the worm 20, the worm wheel A, the pinion 18, the double-tooth

pinion 17, 15, the gear teeth 14 on the work table, and the shafts and spindles carrying said gears.

Mr. Chapman's other reason is applicable to each of claims 1, 2 and 6 of the Heys patent No. 860,377. Each of these three claims recites "means to tip" the work table, and Mr. Chapman denies that this feature is present in the indenting and burnishing machine.

The work table tipping means of the Heys patent 860,377 is best shown in Fig. 3 of the drawings. As there shown, the work table a^3 is carried by a table lever a^4, which is pivoted at a^5 on the upper end of a supporting rod a^2. At its outer end this table lever a^4 has a fork which embraces a double flanged adjusting nut b^4, which can be screwed up and down on the rod b. By adjusting this nut, the table lever a^4 can be swung up and down, thus tipping the table more or less, thereby adapting the machine to the particular character of work for which it is for the time being intended.

The indenting and burnishing machine has means for giving the same tip to the table, for the same purpose. As shown in Figs. 1 and 2 of the drawings, Defendants' Exhibit 354, the work table 10 is supported by, and turns upon, a bracket 11, which in turn is adjustably connected to arm 12. This bracket has an elongated slot and the arm 12 carries an adjustable clamping bolt 13 which passes through this slot. By loosening this bolt 13 the work table can be tipped to any desired extent within the range of adjustment and can be maintained in any adjusted position by tightening up the clamping bolt 13.

Accordingly, the indenting and burnishing machine has "means to tip" the work table as specified in each of claims 1, 2 and 6 of the Heys patent, and this table-tipping means is from a mechanical viewpoint identical with the corresponding table-tipping means of Heys patent No. 860,377, which I have just described, and has the same purpose and effect.

Mr. Chapman's contention of lack of infringement of these claims is based upon the circumstance that the Heys patent No. 860,377 has a second means for tilting the work table. He refers to the table-tipping means which I have just described as "set" means,

meaning thereby, I assume, that by this tipping means the work table can be set to any tipped position which the attendant may desire.

He contends, however, that the essential characteristic of the table-tipping means defined in claims 1, 2 and 6 demands the presence of the other tilting mechanism shown in the patent.

It will be noted on reference to the patent that the rod a^2 which supports the table lever a^4 is connected through a coupling a^{12} and a rod a^9 to a treadle a^{10}. Likewise, the rod b which supports the adjusting nut b^1 for tipping the work table is connected by a link b^4 with the same treadle. The connections between these respective rods and the treadle are at different distances from the pivot a^{11} of the treadle. Consequently, as the treadle is depressed these respective supporting rods are moved to different extents and with the result of giving a tilt to the table as it is raised and lowered.

Mr. Chapman endeavors to include these instrumentalities in claims 1, 2 and 6 under the expression "means to tip" the work table.

This contention is negatived by the patent itself.

The Heys patent refers to this tilting action not as tipping the table, but as varying its pitch. For example, beginning at line 76, page 3, the specification says: "I will now explain why I have provided the means for varying the pitch of the work-supporting table simultaneously with the depression of the same." This makes it unmistakable that the pitch-varying means is operative when the work-supporting table is depressed, which is not true of the table-tipping means, which is a "set" means for maintaining a desired operative adjustment.

When Heys wanted to claim his pitch-varying means he did so by appropriate language. Claims 3, 4, 5 and 14 of the patent include this changing of the pitch of the table. For example, claim 3 refers to "connections between said treadle and table for simultaneously changing the elevation and pitch of the table".

It is therefore certain that Heys does not refer to this pitch-varying means when he recites "means to tip" the work table in claims 1, 2 and 6.

Accordingly, I find the subject-matter of each of these claims 1, 2 and 6 of the Heys patent No. 860,377 in the indenting and burnishing machine made by the defendant.

Indeed, it would be interesting to know how Mr. Chapman would draw a claim different from claims 1, 2 and 6 if he wished to define the "set" table-tipping means of the Heys patent to the exclusion of the pitch-varying means. Obviously these identical claims would have been appropriate in a patent specification describing indenting and burnishing machine.

Int. 6. Mr. Chapman, a witness called on behalf of the petitioner, was interrogated in regard to loading and attaching machine, model B, McKay automatic heel, as manufactured by the United Shoe Machinery Company, and states that he examined that machine and compared the same with claims 10 and 11 of patent to Plant No. 958,282, May 17, 1910, and that, in his opinion, said claims 10 and 11 are not infringed by said machine. Please state whether or not you have examined the machine referred to by Mr. Chapman and whether you agree with him in the conclusions which he has stated in regard to said claims 10 and 11 of patent to Plant No. 958,282. If not, state whether or not, in your opinion, said machine embodies the mechanism set forth in said claims, and point out briefly what, in your opinion, are the errors, if any, in the premises whereby Mr. Chapman reached his stated conclusion as to infringement.

Ans. I have examined the loading and attaching machine, model B, McKay automatic heel, and I will refer to it as the loading and attaching machine, model B. Mr. Chapman is in error as to the construction and operation of this machine.

Mr. Chapman states that loading and attaching machine, model B, does not have "nail driving devices sustained by the cross-head" as recited in claim 10 of Plant patent No. 958,282, and that it does not have "nail drivers carried by the cross-head" as recited in claim 11 of said patent.

Mr. Chapman is wrong as to the facts.

In the machine of this Plant patent the main functional office of the cross-head is to compress a heel prior to driving nails into the

heel. The cross-head rigidly sustains a nail block having apertures for the nails. After the heel has been compressed by the cross-head then the nail-driving devices, carried and sustained by the cross-head, have an independent movement of their own, and as a result the nail drivers registering with the holes in the nail block drive the nails into the heel.

All of this is true of the loading and attaching machine, model B. To illustrate this machine I produce a photograph of it, to which I have added reference letters to indicate the parts to correspond to those recited in claims 10 and 11 of the said Plant patent No. 958,282.

[*Photograph of loading and attaching machine, model B, McKay automatic heel, is offered in evidence, and marked "Defendants' Exhibit 355".*]

As shown in this photograph, the loading and attaching machine, model B, has an open frame cross-head comprising two horizontal bars A and B rigidly connected to each other by means of two vertical rods C. Only one of these two rods C is shown in the photograph, the second one being concealed by the intervening mechanism. The upper bar A carries the nail block with its apertures in which the nails are placed preparatory to being driven into the heel.

The gang of nail drivers is shown at D. These nail drivers, constituting nail-driving devices, are mounted upon a horizontal bar E, which has rigidly connected with it two depending sleeves F. Each of these sleeves F surrounds one of the vertical rods C, upon the frame cross-head.

When the machine is at rest these sleeves F rest upon the lower bar B of the cross-head. Accordingly, the cross-head sustains and carries the nail drivers or nail-driving devices.

In the action of the machine the cross-head is first moved for the purpose of compressing the heel. This movement is effected by toggles which are shown at G in the photograph. After the heel has thus been compressed, the nail drivers or nail-driving devices have a movement of their own independent of the cross-head, this movement being effected by the toggle shown at H in the photo-

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graph. As a result of this independent movement of the nail drivers the nails are driven into the heel.

As pointed out, Mr. Chapman's contention of non-infringement is based upon the supposition that the nail-driving devices or nail drivers are not sustained or carried by the cross-head. In this he is wrong.

Loading and attaching machine, model B, contains and embodies the entire subject-matter of each of claims 10 and 11 of Plant patent No. 958,282.

Int. 7. Referring to lockstitch machine, model M, No. 927, which Mr. Chapman states was shown him by Mr. Warren, Mr. Chapman testified in substance that he finds therein all the elements called for by claims 1, 2, 4, 5 and 9 of patent to Plant No. 940,723, November 23, 1909, and all the elements called for in claims 9 and 10 of patent to Plant No. 940,725 in substantially the relation noted and apparently for the same purpose. He also states that each of said claims calls for the movement of a slitting device to initial position to cause said device to slit the work, this being on return movement of the said device, and states that this feature is a distinguishing element lending alleged patentability or patentable novelty to each of the claims. He also referred to this feature as a trivial limitation and hardly important enough to impart patentable novelty to said claims. What have you to say in regard to these statements by Mr. Chapman?

Ans. I have examined lockstitch machine, model M, No. 927, which I will refer to as "lockstitch machine — model M". I agree with Mr. Chapman that this machine has the subject-matter of the claims of the two Plant patents No. 940,723 and No. 940,725 as enumerated in the question. I do not agree with Mr. Chapman's assertion that the improvement, consisting of the slitting knife and its adjuncts, is a triviality. On the contrary, it is a valuable and important improvement upon the character of lockstitch sewing machine shown in the two Plant patents and exemplified by the lockstitch machine, model M.

These lockstitch machines are used to sew the out-sole to the shoe, the stitches passing through the out-sole and through the projecting welt extending outwardly from the insole of the shoe.

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The purpose of the movable slitting knife is to cut a slit in which the stitches may be concealed.

One of these lockstitch machines is a very intricate and complicated machine involving a large number of operative instrumentalities working within a small space. Such a machine involves a needle, a looper, a shuttle, a take-up, a movable presser-foot, a work table, a pull-off, a thread-measuring finger, and feeding mechanism which comprises an awl and awl carrier. These parts must co-operate together in making the stitches, and many of them have to be grouped right close to the stitch-making point.

One of the important factors in the machine resides in the awl-feeding mechanism. This awl is a slender instrument which has to pierce the welt and the out-sole, then feed the shoe along, and then retire from the leather and move backwardly to its initial position ready for again feeding the shoe. After the awl has completed its feeding movement the presser-foot clamps the shoe in place.

On account of the slender nature of the awl, it is important that its labor should be minimized in the case of a high-speed machine.

The inventions of the two patents to Plant in question include a slitting knife, the purpose of which is to make a slit in advance of the stitching. The knife is a movable one, and it is so organized that it performs its slitting movement at a time when the shoe is clamped against the work table by the presser-foot and when the awl is performing its idle return movement and not doing any mechanical work.

As the result of this organization the knife performs its work at the right place, and at the right time, and without burdening the awl. It performs its cutting stroke when the shoe is clamped in place, so that the cutting stroke is of a uniform depth and uniform length.

In the organization of these two Plant patents, and in the lockstitch machine, model M, the movable slitting knife is applicable to high-speed machines and does not involve any cutting down of the speed thereof.

I do not understand on what ground Mr. Chapman characterizes

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this improvement as a trivial one. It can only be compared with a stationary knife. Obviously, if the knife were stationary it could slit the leather only when the leather was being fed along by the awl, thus imposing additional labor upon the awl, which, already, has the maximum mechanical work to perform in the machine. Also, the cutting of the stationary knife would be accomplished when the shoe was not clamped in place by the presser-foot and work table, since the feeding of the shoe demands that it shall not be clamped in place. Accordingly, the depths of the slit would be variable.

In the case of a high-speed machine, the slitting work accomplished by a stationary knife would be the result of the movement of the slender awl and the result inevitably would be to flex the awl more or less and accordingly to make stitches of variable lengths.

There is no justification for belittling the importance of this improvement. It is an advantage and a very meritorious improvement.

Int. 8. Have you examined the machine officially known as "Lockstitch Machine, Model K, Goodyear Outsole Rapid"? If so, how does the fudge-stitch mechanism of that machine compare with that embodied in the model M machine?

Ans. I have examined the model K machine, and so far as the fudge-stitch mechanism, namely, the movable slitting knife and its adjuncts, is concerned the model K is like the model M.

Int. 9. Mr. Chapman, a witness called in behalf of the petitioner, testifies that he examined nailing machine, American Lightning, No. 3070, and made a comparison of the same with claims 15 and 16 of patent to Plant No. 958,302, May 17, 1910, and that, in his opinion, said claims 15 and 16 are not infringed by said machine. Please state whether or not you have examined said machine, whether or not you agree with Mr. Chapman in his conclusions, and whether or not you find in said machine the mechanisms set forth in said claims 15 and 16 of said Plant patent No. 958,302.

Ans. I have examined the nailing machine, American Lightning, No. 3070, which I will refer to as the "American Lightning ma-

chine". I do not agree with Mr. Chapman. This machine does embody the subject-matter of each of claims 15 and 16 of the Plant patent No. 958,302.

Concerning claim 16, Mr. Chapman states that its subject-matter is not in the American Lightning machine, because that machine lacks "devices for operating on a heel", coupled with the further clause or element of the claim "of means for guiding said devices and apertures into alignment".

In this Mr. Chapman is mistaken. The purpose of the machine of this Plant patent No. 958,302 is to drive nails into a heel at an angle to the outer or tread face of the heel, as shown in Fig. 14 of the patent drawings. This diagonal driving is especially useful in connection with heels which are inclined forwardly at the rear, as is conspicuously true of the heel of a lady's shoe, and to some degree in practically all shoes.

As shown in the Plant patent, there is a stationary nail block 44, having apertures in which the nails are inserted preparatory to being driven into the heel. The driving of the nails is accomplished by a plurality or gang of nail drivers 56, which move in and out of the apertures of the nail block 44. These nail drivers are carried by a suitable reciprocating support.

It is highly important in this organization that when the nail-driving devices or nail drivers descend for the purpose of entering the holes in the nail block and driving the nails that they should accurately register with the nail holes as they approach them. This is particularly important, as any lost motion or loose joints may result in the nail drivers hitting the nail block and not entering the holes. Accordingly, the Plant patent provides means for guiding the devices which operate on the heel. These guiding means comprise a guide 104, shown in Fig. 14, which co-operates with the roller 107, carried by the nail drivers' support at one side. As a result, the nail drivers are brought into proper registration with the nail holes in the nail block.

Also the organization is such that just as soon as registration is effected the guiding means lose control of the nail drivers so that

thereafter they are free to accommodate themselves to the nail block as occasion may demand.

The American Lightning machine has the same guiding means as called for by claim 16 of the Plant patent No. 958,302. In order to explain the American Lightning machine I refer to the Pope patent No. 1,072,986, September 9, 1913, which constitutes one of the patents included in Defendants' Exhibit 164. This Pope patent illustrates the pertinent mechanism of the American Lightning machine.

As shown in the drawings, there is a stationary nail block 12 having nail holes 13, into which the nails are introduced preparatory to their being driven into the heel of the shoe. These nail holes extend at an inclination, as is desired in nailing the class of heels to which I have referred.

Above the nail block is a reciprocating cross-head 14, which carries the support for the nail drivers 26, which in this Pope patent constitutes the means for operating on the heel. The support for the nail drivers is a slide composed of a block 24 and a plate 22. The nail drivers are guided into proper registration with the nail holes 13 by means of a guide rod 32, and an aperture in the outer end of the slide plate 22. This guide rod 32 is mounted upon a fixed support 36.

When the heel-operating devices, namely, the drivers, are in their raised position, the guide rod 32 enters the hole in the driver slide, as shown in Fig. 1. As the drivers descend, this guiding means accurately guides the drivers until their lower ends are in register with the holes in the nail block beneath. As soon as this registration is secured, the guiding means loses control of the nail drivers, because the aperture in the slide passes below the end of the guide rod 32. Thereafter the guiding means no longer controls the nail drivers, which are free to accommodate themselves to the holes in the nail block.

Mr. Chapman's contention is that this American Lightning machine does not have the subject-matter of claim 16 of the Plant patent No. 958,302, because it has no "devices for operating on a heel". Obviously this is wrong, because the American Lightning

machine has the nail drivers 26, which are devices for operating on a heel and correspond exactly to the like nail drivers of the Plant patent.

On cross-examination, however, it seems that Mr. Chapman endeavors to distinguish between the Plant machine and the American Lightning machine, because Plant has two groups of tools which operate upon the heel, whereas the American Lightning machine has only one group of tools, namely, the drivers.

In the machine of the Plant patent No. 958,302 there is a set of awls 54, as well as the set of nail drivers 56, and the specific operation of the machine is, first, to puncture holes in the heel by means of the awls, and then to move the awls out of action and bring the nail drivers into action, so that the nail drivers drive the nails into the holes punctured in the heel by the awls.

Mr. Chapman's contention, as I understand it, is that the "devices for operating on a heel", as recited in claim 16, necessarily mean both awls and the drivers, and because under this contention the American Lightning machine only has half of the Plant invention, the subject-matter of the claim is not present.

This contention is untenable, as demonstrated by the Plant patent itself.

In the first place, "devices for operating on a heel", as defined in claim 16, is a generic expression equally applicable to define both the drivers and the awls. Plant was entitled to a claim which would cover his guiding means, whether used with awls or with drivers. He could not have chosen more apt language than that used in claim 16 to cover generically the invention. Indeed, claim 16 would be an appropriate claim to present in a patent specification on the American Lightning machine; it is also apparent from other claims presented in this Plant patent that when Plant wished to be specific he knew how to do so by proper language. When he wanted to claim both awls and drivers he did so in the manner shown by claim 25, which calls for a turret having "awls and drivers". On the other hand, when he wished to identify one set of his heel-operating devices he did so by proper language. Take claim 5, for example, which specifies "nail driving devices".

Moreover, the claims are in accord with the specification. Beginning at line 25, page 2, the specification says: "Preferably the intended offices of the machine are performed by an appropriate tool or tools when a heel is engaged between the anvil 30 and the nail block 44. In the illustrative machine (Fig. 3) there are two groups of tools — a gang of awls 54 and a gang of drivers 56 which in the usual manner enter apertures in the nail block 44."

Further on, beginning at line 103, page 2, the Plant patent specifically says: "Preferably some means is provided for guiding the awls or drivers in their downward movement in order to aline them with the apertures in the nail block."

Hence, it is apparent that the invention including the guiding means is applicable to either the awls or the nail drivers optionally, and that the inclusion of both of these sets of tools in one machine is merely illustrative of the generic invention.

Accordingly, therefore, I find the entire subject-matter of claim 16 in the American Lightning machine.

In connection with claim 15 of this Plant patent No. 958,302, Mr. Chapman urges the same contention with respect to claim 15, which I need not further discuss.

In addition, he gives another reason for not finding the subject-matter of claim 15 in the American Lightning machine, namely, that claim 15 recites "said moving parts and supports having one a slot parallel with the apertures in said block".

That is to say, in the Plant patent the guide 104 is parallel with the holes in the nail block 44. On the other hand, the guide of the American Lightning machine, as shown at 32 in the drawings of the Pope patent No. 1,072,986, is at an inclination to the holes in the nail block.

This geometrical distinction between the two machines does exist.

Practically there is no substantial difference between the two machines in which the instrumentalities act in the same way for producing the same result. In both machines it is desired to drive the nails at an angle to the tread face of the heel. This Plant accomplished by inclining his entire machine, as shown in Fig. 6

of the drawings of his patent No. 958,302; and thus inclining the entire machine his guide is parallel with his nail holes. But, on the contrary, in the American Lightning machine the same result is obtained, not by inclining the entire machine, but by inclining the holes in the nail blocks and correspondingly inclining the nail drivers.

In both machines the purpose of the guiding means is to guide the nail drivers until they register with the nail holes and then to lose control over the nail drivers, so that thereafter the nail drivers may accommodate themselves to the holes in the nail block. From a mechanical viewpoint the two arrangements are equivalent.

Accordingly I find the subject-matter of claim 15 of the Plant patent No. 958,302 in the American Lightning machine.

Int. 10. Mr. Chapman has referred to wheeling machine No. 2, Goodyear impression stitch, which he says was shown to him by Mr. Warren, and carries name-plate indicating Booth Brothers, No. 986. Mr. Chapman states that he made a comparison of claims 2 and 5 of the Heys patent No. 784,263, March 7, 1905, with the structure of said machine and reached the conclusion that claims 2 and 5 of the patent are not infringed by said machine. Please state whether or not you agree with Mr. Chapman in his conclusion. If not, state whether, in your opinion, said machine embodies the subject-matter of claims 2 and 5.

Ans. I have examined the wheeling machine No. 2, Goodyear impression stitch, bearing the name-plate with the words "Booth Brothers", and the number "986". I will refer to it as the wheeling machine No. 2.

I do not agree with Mr. Chapman. Mr. Chapman points out a mechanical difference which does exist between the machine of the Heys patent No. 784,263 and the wheeling machine No. 2, but this is of no importance, because the construction of the wheeling machine No. 2 simply has a reversal of corresponding parts of the Heys patent No. 784,263, accomplishing the same purpose. This Heys patent No. 784,263 is for a stitch-indenting machine for making indentations on the upper surface of the projecting margin of the shoe sole, and its co-operative instrumentalities are

a support 60 for the shoe sole, and a power-driven rotary indenting tool 26. Figures 1 and 2 of the drawings of the Heys patent show the shoe in position between the shoe support and the rotating indenting tool.

As disclosed in this Heys patent, when the shoe is to be placed into operating position on the machine and withdrawn therefrom after the work has been completed, there is a relative separation effected between the shoe support and the indenting tool. At the same time the rotary tool is unclutched from its power pulley, so that the tool does not rotate when the machine is idle. In the specific embodiment of the invention shown in the patent, the separation between the tool and the shoe support is effected by moving the tool away from the shoe support concurrently with the unclutching of the rotary tool from its driver.

The only difference between the machine of the Heys patent, so far as the subject-matter of claims 2 and 5 thereof are concerned, and the wheeling machine No. 2 is that in the wheeling machine No. 2 the separation of the tool and shoe support is effected by moving the shoe support away from the tool instead of moving the tool away from the support. This is an obvious reversal and from the mechanical viewpoint the two arrangements are equivalent.

The construction of the wheeling machine No. 2 is illustrated in the Flynt patent No. 958,913, May 24, 1910, which constitutes one of the patents in Defendants' Exhibit 199. As shown in the drawings of this patent, 2 is the rotary impression wheel, and 24 is the work support. When the shoe is to be placed in the machine or removed, the work table is moved downwardly away from the tool, and at the same time the tool is unclutched from its source of power. This reversal of the movement of two operating parts is the distinction which Mr. Chapman relies upon in distinguishing the wheeling machine No. 2 from the subject-matter of claims 2 and 5.

In this connection, Mr. Chapman says that the wheeling machine No. 2 lacks the elements of claim 2, which are defined as "'movable means for supporting the tool', in combination with 'mechanism for automatically moving said supporting means to inactive posi-

tion and operating said clutch to effect a cessation of rotation of the tool.'" And, "as to claim 5, the machine lacks the element 'a movable head therefor', referring to the movable head of the patent for supporting the rotary tool", and also "lacks the element of claim 5 'means for simultaneously unclutching the clutch mechanism from the shaft to stop the rotation of said tool and moving the said head toward inoperative position'."

Mr. Chapman is correct as to the distinction that he draws with respect to the mechanical facts, but he does not point out that the wheeling machine No. 2 has a mere reversal of the movement of the parts defined in these two claims. This mere reversal is a mechanical equivalent from a mechanical viewpoint. Therefore, wheeling machine No. 2 contains the entire subject-matter of each of claims 2 and 5 of the Heys patent No. 784,263.

Mr. PHILLIPS. The direct examination of the witness is closed, reserving, however, the right to recall the witness in case counsel has inadvertently failed to ask him any questions.

[*Hearing adjourned, subject to agreement of counsel.*]

BOSTON, MASS., March 19, 1914.

Cross Examination by ALLEN WEBSTER, Esq., *of Counsel for* THE UNITED STATES.

Mr. WEBSTER. In view of the fact that the deposition of this witness consists largely of matter in the nature of argument rather than testimony, counsel for complainant objects to the same and reserves the right to insist upon such objection at the hearing, and the cross-examination will be without waiver of such right.

Cross-Int. 11. You have testified to a considerable extent with reference to the practicability of the machines to which you have made reference; have you had any experience in the operation of any of said machines?

Ans. Only to the extent of having seen them work; I have never personally done the work on these machines.

Cross-Int. 12. Have you ever compared the operation of the machines about which you have testified with other machines designed to accomplish similar results?

Ans. No.

Cross-Int. 13. As I understand your testimony, you concede that Mr. Chapman's statements as a general rule with reference to the mechanical differences are correct, but that such changes merely, in your opinion, amount to reversals or mechanical equivalents. Kindly state if I am right in my understanding.

Ans. You are so far as Heys patent No. 784,363 and a comparison with the wheeling machine No. 2 is concerned, and so far as the comparison between the second reason urged by Mr. Chapman in comparing claim 15 of the Plant patent No. 958,302 with the American Lightning machine is concerned.

Cross-Int. 14. In testifying with reference to pulling-over machine, model B, Rex, you say, as I understand you, that you have examined the machine to which you made reference. Will you kindly examine the patent to Heys No. 957,955, to which you made reference in your testimony, and particularly examine Fig. 1, the part marked "109", and state whether you found in the machine examined by you a rod or part shaped like the part marked "109" in Fig. 1?

Ans. I did not. The shape of the corresponding guiding device in pulling-over machine, model B, Rex, is well shown in the photographs Defendants' Exhibit 353 and Defendants' Exhibit 352. As shown by both these photographs, the speceific shape of the guiding device is different from that of the guiding device 109, Fig. 1 of the Heys patent.

Mr. WEBSTER. All of the foregoing answer following the words "I did not" is objected to as not responsive.

Cross-Int. 15. Do you wish the court to understand that the general construction of the machine examined by you, and as stated by you is illustrated in Defendants' Exhibits Photographs No. 352 and 353, is the same as the machine illustrated in patent to Heys No. 957,955?

Ans. No.

Cross-Int. 16. Now, it is a fact, is it not, that the gaging device referred to in claim 55 of the Heys patent 957,955 is merely some kind of a device which is laid over on top of, or just above, the

shoe to indicate to the operative where to move the upper; am I right?

Ans. Yes.

Cross-Int. 17. And any kind of a contrivance that would be capable of being moved over and indicate the position to which the leather was to be moved would accomplish the desired result, would it not?

Ans. Yes.

Cross-Int. 18. And in the device of the patent to Heys referred to in the claim in question the operative moves this gaging or indicating device into position, does he not?

Ans. Yes.

Cross-Int. 19. And the same result would be obtained whether he moved it into position by a foot lever or simply took hold of the measuring device by hand, would it not?

Ans. Yes.

Cross-Int. 20. Then the gaging device of claim 55 is merely some kind of an arm which is capable of being moved over and held at the desired point on top of, or just above, the leather, is it not?

Ans. Yes.

Cross-Int. 21. And, as I read your testimony, the only material difference between your testimony and Mr. Chapman's with reference to this contrivance is that you contend that it co-operates with the rest of the machine, while Mr. Chapman claims that there is no co-operation; am I right in my understanding?

Ans. I don't think so. Mr. Chapman's contention, as I understand it, is that the pulling-over machine, model B, Rex, does not have the subject-matter of claim 55 because it lacks the combination or co-operation called for by that claim. I do not agree with Mr. Chapman because there is exactly the same co-operation and combination in the pulling-over machine, model B, Rex, as there is in the machine of the Heys patent.

Cross-Int. 22. The real difference between you two experts is that one claims there is co-operation, and the other claims there is no co-operation; is not that correct?

Ans. No; not at all. Mr. Chapman does not deny that co-opera-

tion exists in the machine of the Heys patent. What he does state is that the pulling-over machine, model B, Rex, does not have the subject-matter of the claim because it lacks the co-operation existing in the machine of the Heys patent. In that he is wrong. There is exactly the same co-operation in the pulling-over machine, model B, Rex, as there is in the machine of the Heys patent.

Cross-Int. 23. Then the differences between you do hover around co-operation, do they?

Ans. Yes, so far as the pulling-over machine, model B, Rex, is concerned, Mr. Chapman denying that that machine has the same co-operation which is present in the Heys machine.

Cross-Int. 24. As I understand your testimony relating to indenting and burnishing machine, I understand you to hold that in the patent to Heys No. 860,377, about which you testified, that the word "pitch" means something different from the word "tip"; am I right in my understanding?

Ans. Yes; as the patent itself makes the distinction. That is to say, there is one particular kind of tilting or tipping which the patent refers to as varying the pitch, this occurring simultaneously with the depression of the work-supporting table. In addition the patent describes a tipping of the table by means of an adjustment with which the machine is provided.

Cross-Int. 25. In the machine examined by you does the work support tip at all simultaneously with the depression of the same?

Ans. In an absolute sense I presume that is true. That is to say, in the indenting and burnishing machine the work table is carried by a swinging arm, shown at 54 in Defendants' Exhibit 354, and consequently as the work table is depressed when this arm swings its angle to any given plane changes.

Cross-Int. 26. Then you state as a fact, do you, that the machine examined by you, and to which you have testified, is so constructed that when the supporting table is moved vertically its pitch is varied at the same time?

Ans. Absolutely; yes; but not within the meaning of the Heys patent.

Cross-Int. 27. And when you say "not within the meaning of

the Heys patent" you mean not within the meaning of the claims to which you have made reference in the Heys patent, do you?

Ans. Yes; so far as those claims are concerned which are directed to varying the pitch of the table, such as claims 3, 4, 5 and 14. The claims which I discussed, namely, claims 1, 2 and 6, have nothing to do with varying the pitch.

Cross-Int. 28. You testified with reference to loading and attaching machine, model B, McKay automatic heel; you say, among other things: "In the machine of this Plant patent the main functional office of the cross-head is to compress a heel prior to driving nails into the heel." Do you understand that this function was not employed in any nail-driving machine prior to its employment as set out in the Plant patent?

Mr. PHILLIPS. Question objected to as not pertinent to any matter touched upon in the direct examination of this witness, and as outside the order of the court under which this testimony is being taken.

Ans. No.

Cross-Int. 29. The question as to the function of a part as defined in a claim is to be determined somewhat, is it not, by the prior art?

Ans. No.

Cross-Int. 30. Then do you say the prior art makes no difference?

Mr. PHILLIPS. Objected to as improper cross-examination.

Ans. Absolutely. A device performs its functions whether it is old or new.

Cross-Int. 31. Then the meaning of a claim is precisely the same, is it, without reference to the prior art?

Mr. PHILLIPS. Objected to as improper cross-examination.

Ans. Yes, unless the claim is an ambiguous one. If the claim is plain and it is unmistakable on its face in connection with the patent of which it forms a part, no extraneous matters are necessary in order to understand its meaning. If the claim, however, is ambiguous, it may be necessary to seek light outside of the patent itself to find out the meaning.

Cross-Int. 32. Do you wish to convey the impression to the court

that the photograph Defendants' Exhibit 355 is a picture of the machine illustrated in the patent to Plant No. 958,282?

Ans. No.

Cross-Int. 33. There is in fact a vast difference in the construction and operation of the two machines, is there not?

Ans. There are many differences.

Cross-Int. 34. I note, in testifying with reference to lockstitch machine, model M, in speaking of the awl, you say "it is a slender instrument". Kindly state, if you are able, the diameter of the awl to which you refer.

Ans. It is a long time since I have actually measured an awl. It is somewhat larger in diameter than a needle.

Cross-Int. 35. Can you tell the diameter of a needle?

Ans. Not in fractions of an inch.

Cross-Int. 36. Can you approximate it?

Ans. Not sufficiently to justify a statement. There is one of these awls in evidence, Defendants' Exhibit 111. It speaks for itself as to the dimensions of the awl.

Cross-Int. 37. As it may not be convenient for the Court to examine the awl itself, have you any objection to stating on the record its diameter or distance through?

Ans. I have no measuring instruments here. I should say it was about one-thirty-second of an inch square.

Cross-Int. 38. Do you know whether awls are made larger or smaller for ordinary work?

Ans. All that I have seen have been substantially like this exhibit. They ought to be as small as possible. It is objectionable to punch a hole any bigger than is necessary.

Cross-Int. 39. In the prior mechanisms to which you made reference I understand you to say that the burden of the work involved in cutting the slit was borne by the awl; am I right?

Ans. I simply referred to a hypothetical case for the purpose of affording a standard of comparison. In accordance with my hypothesis the burden would be borne by the awl.

Cross-Int. 40. Then, as I understand you now, you do not wish

to convey the idea to the Court that as a fact the awl has been called upon to sustain the burden of the feed?

Ans. Certainly the awl does bear the burden of the feed: that is what it is for. It is the feeding instrumentality in the machine.

Cross-Int. 41. And does it bear such burden when it is inserted in the material as far as it will enter, or is it at some intermediate point?

Ans. When it has entered the material as far as it goes.

Cross-Int. 42. Then after it has completed its entering stroke it moves laterally, does it?

Ans. Yes.

Cross-Int. 43. So that the feeding burden is applied when the larger and stronger portion of the awl is in the work; am I right?

Ans. No; the awl never penetrates the work far enough to bring that larger portion into the leather.

Cross-Int. 44. Using Defendants' Exhibit 111 for illustration, will you kindly state how far the shank of the awl projects from the supporting mechanism, or, in other words, where the awl proper begins and where the shank leaves off?

Ans. As I understand the question, you refer to the larger portion of the awl as the shank, and the rest of it as the awl proper. I will have to guess at the measurement because I have no instruments. I should say the full width of the shank extends about one-tenth of an inch beyond the carrier or support. There is then a taper for about one-sixteenth of an inch more; then there is about a half an inch of the awl proper until the bevel point is reached. The bevel is longer on one portion of the awl than on the other, perhaps one-sixteenth of an inch on one side and one-thirty-second on the other. These measurements are, of course, mere estimates, as I have no way of verifying them.

Cross-Int. 45. Will you state to the Court what particular machine you have personal knowledge of where the awl gave or bent or flexed while feeding the material, resulting in imperfect work?

Mr. PHILLIPS. Objected to as not pertinent to any matter touched upon in the direct examination of this witness, and outside the order of the court.

Ans. So far as my observation has gone, when the awl has been used as the work feeder, it has properly acted. I do not for the moment recall any instance of the awl failing to operate properly except when some accident has occurred.

Cross-Int. 46. And you say that the cutting stroke would not be of uniform depth and uniform length if it took place when the material was being fed by the awl?

Ans. I understand that this question now refers to my hypothesis of the employment of a stationary slitting knife in a high-speed machine. I am entirely confident that the extra work thus put upon the awl would cause such irregularity as to produce irregularity in the length and depth of the cuts. I make this statement upon my general mechanical knowledge.

Cross-Int. 47. And the fact that machines had operated successfully for anywhere from ten to twenty years without having incorporated in them the mechanisms to which you have made reference in testifying about lockstitch machine, has no influence in your mind with reference to the question as to whether the operation of the machines without the Plant improvement were successful or not?

Mr. PHILLIPS. Objected to as relating to nothing touched upon in the direct examination of this witness, and outside the order of the court.

Ans. I don't understand what machine you have reference to as having been used from ten to twenty years.

Cross-Int. 48. You know, do you not, that lockstitch machines designed for attaching the welt to the out-sole have been in successful use for twenty years?

Mr. PHILLIPS. Objected to as relating to nothing touched upon in the direct examination of this witness, and outside the order of the court.

Ans. I did not know that you referred to the ordinary out-sole stitcher. I am familiar with those machines. In those the awl has simply the work to do of feeding the shoe along. Those machines were low-speed machines. The speed being low and the awl having nothing to do except feed the work, it did the work properly.

Cross-Int. 49. Do you wish the Court to understand that from your knowledge the mechanism in a lockstitch out-sole machine was not employed successfully until the mechanisms of these Plant patents was incorporated therein, in so far as cutting a groove in the welt is concerned?

Mr. PHILLIPS. Objected to as relating to nothing touched upon in the direct examination of this witness, and outside the order of the court.

Ans. No.

Cross-Int. 50. Can you state when mechanisms were first incorporated in out-sole lockstitch machines adapted for cutting a channel in the welt as it was being attached to the out-sole?

Mr. PHILLIPS. Objected to as relating to nothing touched upon in the direct examination of this witness, and outside the order of the court.

Ans. No.

Cross-Int. 51. It is a fact within your knowledge, is it not, that such devices were used prior to the date of the Plant patents?

Mr. PHILLIPS. Objected to as relating to nothing touched upon in the direct examination of this witness, and outside the order of the court.

Ans. No.

Cross-Int. 52. Have you any practical knowledge of what was used to cut such channel before the incorporation of the alleged improvement of the Plant patent?

Mr. PHILLIPS. Objected to as relating to nothing touched upon in the direct examination of this witness, and outside the order of the court.

Ans. No.

Cross-Int. 53. So that, so far as the particular subject-matter under discussion is concerned, you have no practical knowledge of the operation of the machines and no practical knowledge or experience as to what defects, if any, did in fact exist, have you?

Mr. PHILLIPS. Objected to as relating to nothing touched upon in the direct examination of this witness, and outside the order of the court.

Ans. What machine are you talking about now?

Cross-Int. 54. Rapid out-sole lockstitch machine, having special reference to the channel-cutting mechanism which operates during the stitching operation.

Ans. The only out-sole lockstitch machines having a slitting knife with which I am familiar are lockstitch machines, models K and M. Both of those machines have the improvement of the Plant patents Nos. 940,723 and 940,725.

Cross-Int. 55. In testifying concerning nailing machine, American Lightning, you say, among other things: "The purpose of the machine of this Plant patent No. 958,302 is to drive nails into a heel at an angle to the outer or tread face of the heel, as shown in Fig. 14 of the patent drawings. The diagonal driving is especially useful in connection with heels which are inclined forwardly at the rear, as is conspicuously true of the heel of a lady's shoe, and to some degree in practically all shoes." Kindly state whether by that phraseology you mean to say that practically all shoes have their heels attached by nails which are driven through the heels at an angle from the tread face.

Ans. No.

Cross-Int. 56. Then is it true that very many shoes have their heels attached in such manner that the attaching nails are driven through the heels at right angles to the tread face?

Ans. Yes.

Cross-Int. 57. And very many heels which are inclined forwardly at the rear are attached with nails which are not driven at an angle with the tread face, are they not?

Ans. Yes.

Cross-Int. 58. Kindly examine Plaintiff's Exhibit No. 283, and state whether it correctly illustrates, so far as you are informed, the relation of the nail to the heel in the kind of shoe you have made reference to in your testimony in chief.

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. Substantially so.

Cross-Int. 59. Kindly examine Defendants' Exhibit 350, and

state whether it is a shoe of the character referred to in your direct examination.

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. Yes; this is an extreme case.

Cross-Int. 60. And do you say that the heel of that shoe, Defendants' Exhibit 350, is attached by the driving of nails in the manner as set forth in the machine of the patent to which you have testified?

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. I have not the faintest idea.

Cross-Int. 61. Will you examine Plaintiff's Exhibit 281, and state, if you can, whether the heel is attached by having the nails driven at right angles to the tread face, or whether they are driven at an angle?

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. It is impossible to tell from the completed shoe how nails have been driven without taking the shoe to pieces. It is useless to show me any more shoes; I cannot tell how any of them have been nailed unless I tear them apart.

Cross-Int. 62. Kindly examine Plaintiff's Exhibit 282, and state whether the heel of that shoe is inclined forwardly at the rear.

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. It is.

Cross-Int. 63. Kindly state whether the shoe examined by you, Plaintiff's Exhibit 282, is the kind of shoe referred to in your testimony when you say: "This diagonal driving is especially useful in connection with heels which are inclined forwardly at the rear."

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. It is.

Cross-Int. 64. State, if you can, whether the heel of Plaintiff's Exhibit 282 is attached by nails driven diagonally to the tread face.

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. I cannot tell except by such examination as would involve ripping the exhibit apart.

Cross-Int. 65. Have you any information as to when this diagonal driving of nails to attach heels to shoes first went into use?

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. No.

Cross-Int. 66. So that you have no information as to whether the claims of the Plant patent to which you have testified concerning a machine for driving nails at an angle were in the nature of pioneer claims or not, have you?

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. The claims of this patent which I have discussed do not purport to cover diagonal driving. On the contrary, these claims are directed to means for guiding the drivers into registration with the holes in the nail block and then letting go. So far as I am aware, Plant was the pioneer in doing this.

Cross-Int. 67. And is it not a fact, to your knowledge, that heels had been attached to shoes by nails driven at an inclination to the tread face long prior to the alleged invention of Plant patent to which you have testified?

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. No.

Cross-Int. 68. Have you any knowledge at all with reference to this?

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. I had seen a great many heel-nailing machines prior to the application date for this Plant patent, but I never saw one which did diagonal driving.

Cross-Int. 69. About when, so far as you are able to state, did you see a machine of the character referred to in your last answer?

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. From about 1896 or 1897 up to about, say, 1907 or 1908.

Cross-Int. 70. And did the machines which you have knowledge of, extending from, say, 1896 to 1907 or 1908, successfully attach heels to shoes such as is shown in Defendants' Exhibit 348?

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. I never saw those machines used on heels of the character of this exhibit.

Cross-Int. 71. Can you state whether the machines referred to by you, which you have knowledge of as existing between 1896 and 1907 or 1908, were operated successfully for attaching heels in the manner as shown in Plaintiff's Exhibit 282?

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. I would not be sure about that. I should say they were more of the kind shown in Exhibit 281.

Cross-Int. 72. You do not wish to convey the impression to the Court that heels cannot be attached to shoes as shown in Plaintiff's Exhibit 282 by nails being driven therethrough in a direction at right angles to the tread of the shoe?

Mr. PHILLIPS. Objected to as pertinent to nothing in the direct examination of this witness, and outside the order of the court.

Ans. No.

[*The signature of the witness to this deposition is waived.*]

Attest: CHARLES K. DARLING, *Special Examiner.*

[*Adjourned to 10 A. M., Monday, March 23, 1914.*]

BOSTON, MASS., March 23, 1914.

DEPOSITION OF GEORGE E. WARREN.

Direct Examination by BENJAMIN PHILLIPS, Esq., *of Counsel for Defendants.*

Int. 1. Your name is George E. Warren, and you testified in open court as a witness on behalf of the defendant, did you not?

Ans. I did.

Int. 2. I believe you stated that since the organization of the defendant corporation, with the exception of about two years, you had been in the employ of the defendant as a mechanical engineer; is that correct?

Ans. It is.

Int. 3. Please state what experience you have had since you have been in the employ of the defendant company as a designer of shoe-sewing machines, including out-sole stitching machines.

Ans. I have been constantly employed in that capacity.

Int. 4. Did you take any part in the designing of the machines which have been referred to in this record as lockstitch machines, Goodyear outsole rapid, models K and M?

Mr. WEBSTER. Objected to as immaterial.

Ans. They were designed under my direction.

Int. 5. Mr. Chapman, a witness called on behalf of the petitioner, has testified in regard to the so-called fudge-stitch mechanism embodied in lockstitch machine, model M. Please describe briefly the operation of lockstitch machine, model M, embodying this mechanism, with particular reference to the co-operation of such mechanism with the other operating parts of the machine.

Mr. WEBSTER. Objected to as immaterial, irrelevant and as not admissible by way of surrebuttal.

Ans. This device is arranged on the model M stitcher to cut a slit in the welt, of uniform depth, without imposing this duty on the awl. The knife projects above the work table a sufficient distance to cut the slit of such a depth that the stitches will be concealed. The knife is attached to a holder mounted on the frame of the machine and is so connected by levers and links with the feed

slide that the knife has whatever movements the feed slide and awl have. While the awl is through the leather and feeding the work, the slitting knife moves with it in the same direction, and after the awl is withdrawn from the work and making its idle return movement the slitting knife moves back with it and cuts a slit in the welt while the shoe is firmly clamped between the work table and presser-foot.

Int. 6. What is the importance, from the standpoint of a practical designer, of machines of this class, of so organizing the model M stitcher that in producing a fudge-stitch seam it will operate as you have just described?

Ans. The importance is that a slit will be cut in the welt, of uniform depth, and the awl will not have the added duty of dragging the shoe against the slitting knife to do the cutting. The awl is a very slender instrument and besides puncturing the hole in the stock is used to feed the shoe, which is on a last, along for each stitch. In high-speed machines like the model M, it was a serious problem to feed the work along so that the stitches would be of uniform length, and the needle must be able to enter the awl hole in the proper manner, so that the stitch-handling devices will be properly operated.

In order to get this uniform length of stitch and also have the needle properly enter the awl hole it was necessary to have the work so relieved during the feeding operation that the awl would have a minimum amount of work to do. To accomplish this it was found necessary to lift the presser-foot at each feeding operation so that the shoe would not have the friction on the work table and the presser-foot. While the presser-foot is so lifted and the work is fed along by the awl, it is found practically impossible to cut a slit in a welt, of uniform depth, because the tendency of the knife is to lift the work from the work table, and as it was found necessary, in order to get the high speed which was desired, to lift the foot from the work, it was necessary to arrange the slitting knife so that it would cut the slit while the work was securely held. Accordingly it was so arranged that the slitting knife would advance with the awl while the awl was feeding the work. Then

it does the cutting during the idle return movement of the feed slide and awl, while the work is securely clamped between the table and the presser-foot. Accordingly a uniform depth of slit was obtained and the awl had only the duty of puncturing the work and feeding it along.

Int. 7. Will you please state whether or not the fudge-stitch mechanism embodied in model K stitcher was the same as that embodied in model M, and whether or not its relation to the operation of the presser-foot was the same?

Ans. Its operation was exactly the same, and also its relation to the presser-foot.

Int. 8. Please state whether or not at the request of counsel for the United States certain machines were placed at the disposal of counsel for the United States and his expert at the office of the defendant in the Albany Building, 89 Beach Street, Boston.

Ans. Yes.

Int. 9. Will you please give a list of such machines? If they were Plant machines, indicate that fact in the list, and if they were machines put out by the United Shoe Machinery Company, also indicate that fact.

Ans. The following is a list of the Plant machines placed at their disposal: —

PLANT MACHINES.

Upper clicking machine.
Double lip channel opener.
Single lip channel opener and edge compressor.
Innersole flexor.
Innersole cloth tucker and lip trimmer.
Sole rounder.
Grinder.
Top-lift compressor.
Puller over and tip measurer.
Rapid side laster.
Toe and heel laster.
Turn heel laster.
Staple tacker.

Heel seat nailer.
Welt slasher and groover.
Tack puller and baster.
Welter.
Custom sole layer.
Rough rounder.
Heel seat dinker.
Shoe channeler.
Stitcher.
Loose nailer.
Leveler.
Heel loader.
Heeler.
Heel attacher on wood lasts.
Heel slugger.
Heel breaster.
Stitch indenter and burnisher.
Stitch separator.
Top-lift scalloper.
Heel waxer and burnisher.
Seat beader.
Treeing machine.
Bresnahan automatic sole-molding machine.
Keighley inseam trimmer.

And the following is a list of the United Shoe Machinery Company's machines: —

UNITED SHOE MACHINERY COMPANY'S MACHINES.

Lockstitch machine, model M, Goodyear outsole rapid.
Shoe machine, model K, Goodyear welt and turn.
Channeling machine, Goodyear Universal (turn work).
Grooving and beveling machine, Goodyear power welt.
Indenting and burnishing machine, Goodyear welt.
Lasting machine, No. 5, U. S. M. Co.
Leveling machine, model B, Hercules.
Loading and attaching machine, model B, McKay automatic heel.

Nailing machine, American Lightning.
Pulling-over machine, model B, Rex.
Rounding and channeling machine, model E, Goodyear Universal
Wheeling machine No. 2, Goodyear impression stitch.
Rounding machine, Goodyear heel seat (2 machines).

Int. 10. Please state whether or not the list of machines above stated by you includes all the machines referred to in Defendants' Exhibits 273 and 274.

Ans. All, with the exception of three machines, which I explained to Mr. Chapman it was not practical to have there, but they could be shown him in nearby shoe factories where they were in operation.

[*It is stipulated and agreed that counsel for defendants and his expert, Mr. Chapman, were given ample opportunity for the examination of all the machines in the lists heretofore given by this witness.*]

Int. 11. Please state whether or not you personally pointed out and explained to Mr. Chapman any of the machines in the lists which you have just stated on the record. If yes, please give a list of the machines which you so pointed out and explained.

Ans. Yes; I pointed out and explained the following Plant machines: —

PLANT MACHINES.

Upper clicking machine.
Double lip channel opener.
Single lip channel opener and edge compressor.
Innersole flexor.
Innersole cloth tucker and lip trimmer.
Sole rounder.
Grinder.
Top-lift compressor.
Puller over and tip measurer.
Rapid side laster.
Staple tacker.
Heel seat nailer.
Welt slasher and groover.
Tack puller and baster.
Welter.

Custom sole layer.
Rough rounder.
Heel seat dinker.
Shoe channeler.
Stitcher.
Leveler.

And the following machines made by the United Shoe Machinery Company: —

UNITED SHOE MACHINERY COMPANY'S MACHINES.

Channeling machine, Goodyear Universal (turn work).
Indenting and burnishing machine, Goodyear welt.
Leveling machine, model B, Hercules.
Loading and attaching machine, model B, McKay automatic heel.
Lockstitch machine, model M, Goodyear out-sole rapid.
Nailing machine, American Lightning.
Pulling-over machine, model B, Rex.
Rounding and channeling machine, model E, Goodyear Universal.
Shoe machine, model K, Goodyear welt and turn.
Wheeling machine No. 2, Goodyear impression stitch.

Int. 12. Please state whether or not Mr. Chapman examined the machines which you pointed out and explained to him, and compared them with any United States Letters Patent.

Ans. He did.

Int. 13. Were you present during the taking of Mr. Chapman's deposition before the examiner?

Ans. I was.

Int. 14. Mr. Chapman referred to the United Shoe Machinery Company's machines with regard to which he testified as having been shown to him by Mr. Warren. Are you the Mr. Warren to whom he referred?

Ans. I am.

Int. 15. Did you show Mr. Chapman the machines with regard to which he testified?

Ans. I did.

Int. 16. Mr. Browne, an expert called on behalf of the defend-

ants, testified that he examined certain machines at the office of the United Shoe Machinery Company, Albany Building, Boston. Were you present when Mr. Browne examined such machines?

Ans. I was.

Int. 17. Please give the official titles of the machines examined by Mr. Browne.

Ans. Lasting and attaching machine, model B, McKay automatic heel.

Nailing machine, American Lightning, No. 3070.

Lockstitch machine, model M, Goodyear outsole rapid, No. 927.

Indenting and burnishing machine, Goodyear welt.

Pulling-over machine, model B, Rex.

Wheeling machine No. 2, Goodyear impression stitch, No. 986.

Int. 18. Please state whether or not these were the same machines that you showed to Mr. Chapman and which he has referred to in his testimony under the same titles.

Ans. They were the same machines.

Int. 19. Have you examined the photographs of the pulling-over machine, model B, Rex, produced by Mr. Browne and offered in evidence as "Defendants' Exhibits Nos. 352" and "353"?

Ans. I have.

Int. 20. Please state whether or not these photographs are photographs of the machine which you showed to Mr. Chapman and which he referred to in his testimony as "Pulling-Over Machine, Model B, Rex".

Ans. One photograph shows pulling-over machine with a shoe in position; the other one, Defendants' Exhibit 352, is the same machine without the shoe. Mr. Chapman saw the machine without the shoe, as shown in Defendants' Exhibit 352. Both photographs show the gaging mechanism which is part of a machine.

Int. 21. Mr. Browne also showed a photograph which was offered in evidence as "Photograph of Loading and Attaching Machine, Model B, McKay Automatic Heel, Defendants' Exhibit 355". Please state whether or not that photograph is a photograph of a machine like loading and attaching machine shown by you to Mr.

Chapman and referred to by him as "Loading and Attaching Machine, Model B, McKay Automatic Heel".

Ans. This photograph, Defendants' Exhibit 355, is a photograph of our commercial loading and attaching machine, model B, McKay automatic heel, and is exactly the same as the machine shown to Mr. Chapman, with the exception that this photograph has a brush for putting oil on the drivers, which was not on the machine shown to Mr. Chapman.

Int. 22. Mr. Browne produced two sheets of drawings of indenting and burnishing machine, Goodyear welt, which were offered in evidence as "Defendants' Exhibit 354". Please state whether or not those drawings correctly represent the indenting and burnishing machine shown to Mr. Chapman, which he referred to in his testimony as "Indenting and Burnishing Machine, Goodyear Welt".

Ans. These drawings correctly represent the machine referred to by Mr. Chapman.

Int. 23. Were you present while Mr. Nelson W. Howard was testifying in this case before the examiner?

Ans. I was.

Int. 24. Have you read the printed record of Mr. Howard's deposition given before the examiner, found on pages 2239 to 2663, inclusive?

Mr. WEBSTER. Objected to as utterly immaterial.

Ans. I have.

Int. 25. Are you familiar with, and can you identify, the machines referred to by him in that portion of his testimony which I have just referred to?

Mr. WEBSTER. Objected to as immaterial.

Ans. I am, and can.

Int. 26. Mr. Howard, at the request of counsel for the petitioner and during the taking of the testimony under the order of the court under which this testimony is taken, produced photographs illustrating a number of machines referred to by him in that portion of his testimony found in the printed record, pages 2239 to 2663, inclusive. Do said photographs illustrate all the machines

referred to by Mr. Howard in the portion of his testimony just referred to?

Mr. WEBSTER. Objected to as utterly immaterial and as not admissible by way of surrebuttal.

Ans. No, sir.

Int. 27. Have you prepared, and can you produce, a collection of photographs illustrating all of the United Shoe Machinery Company's machines referred to by Mr. Howard in his deposition, printed pages 2239 to 2663, inclusive?

Mr. WEBSTER. The same objection repeated.

Ans. I have, and do produce a collection of photographs of United Shoe Machinery Company's commercial machines referred to by Mr. Howard in the portion of his testimony referred to in the question. Some machines referred to by Mr. Howard were obsolete at the time of the filing of the bill herein, and photographs of some of those machines are not in this volume.

Under the name of each machine there is a date given when the machine was first put out by the United Shoe Machinery Company. In some places there are two dates, which indicate that the machine was first put out at the first date, but was replaced on the second date by a later type or model.

An instance of this is channeling machine, Goodyear turn and insole, page 13. These dates are the dates that were stated in Mr. Howard's testimony.

Some of the photographs which show the present commercial machines include many improvements over the machines first put out, as explained in Mr. Howard's testimony. Examples of those machines that have been improved would be lasting machine, Consolidated hand method, McKay, page 29; loading and attaching machine, McKay automatic heel, page 45.

[*The collection of photographs just produced by the witness is offered in evidence as United Shoe Machinery Company's machines referred to in N. W. Howard's deposition, record pages 2239–2663, as "Defendants' Exhibit 356."*]

Mr. WEBSTER. The introduction of the exhibit offered is objected to as inadmissible by way of rebuttal.

Cross Examination by ALLEN WEBSTER, Esq., *of Counsel for* THE UNITED STATES.

Cross-Int. 28. You have testified at some length with reference to your experience concerning stitchers and mechanism employed in the models M and K rapid stitchers for cutting a channel in the welt for producing what is known as a fudge stitch. Will you kindly state whether your experience has been sufficient to give you a knowledge as to what mechanisms were used to produce a like result in stitchers prior to the model M stitcher?

Mr. PHILLIPS. Question objected to as touching upon nothing referred to in the direct examination of this witness, and outside the order of the court.

Mr. WEBSTER. Counsel for complainant respectfully calls attention to the fact that it goes to the witness' experience.

Ans. I am familiar with some of the devices that have been used on other machines for slitting a welt.

Cross-Int. 29. Will you explain how these differ from the construction of the device you have testified to with reference to the model M machine?

Mr. PHILLIPS. Question objected to as touching upon nothing referred to in the direct examination of this witness, and outside the order of the court.

Ans. One device which I am familiar with consists of a stationary knife, and every time the awl feeds the work along the cutting is done by the awl dragging the work against the cutting knife.

Cross-Int. 30. What other one have you knowledge of?

Mr. PHILLIPS. Question objected to as touching upon nothing referred to in the direct examination of this witness, and outside the order of the court.

Ans. Several types, all having a stationary knife, I am familiar with; all applied to the same machine.

Cross-Int. 31. And in such several prior devices to which you have made reference was the whole burden of the work placed on the awl?

Mr. PHILLIPS. Question objected to as touching upon nothing

referred to in the direct examination of this witness, and outside the order of the court.

Ans. If you mean by that the work of cutting a slit, yes.

Cross-Int. 32. And do you say that such channels were never before cut successfully and satisfactorily until the fudge-stitch channel mechanism employed in the model M machine was used?

Mr. PHILLIPS. Question objected to as touching upon nothing referred to in the direct examination of this witness, and outside the order of the court.

Ans. Such mechanisms which I referred to I never saw only on machines which ran at a comparatively low speed; that is, about 375 revolutions per minute, and while they were used successfully, because it was the best thing there was, the device which is now in use on the model M stitcher, running over 500, would have been an improvement even on a machine running at 375.

Cross-Int. 33. Now, as touching the question to which you have referred as to successful operation, for how many years back did the device for cutting the channel operate with the machine which ran, as you say, 375 stitches per minute?

Mr. PHILLIPS. Question objected to as touching upon nothing referred to in the direct examination of this witness, and outside the order of the court.

Ans. I think such devices have been in extensive use since 1907 or 1908.

Cross-Int. 34. Will you kindly state whether the channel-cutting mechanism to which you have testified as applied to rapid stitchers is a permanent part of the machine or fixture to be attached to the machine or detached as desired?

Mr. PHILLIPS. Question objected to as touching upon nothing referred to in the direct examination of this witness, and outside the order of the court.

Ans. The device is incorporated and organized as a part of the machine. Of course, if they do not desire to make a fudge stitch, the knife can be removed, but the rest of the mechanism stays in place.

Cross-Int. 35. Has it, or has it not, been common to provide a

welt with the channel already cut to receive the stitching for the producing of the fudge stitch?

Mr. PHILLIPS. Question objected to as touching upon nothing referred to in the direct examination of this witness, and outside the order of the court.

Ans. You mean before the shoe is presented to the stitching machine?

Cross-Int. 36. Yes.

Ans. I never heard of its being done.

Cross-Int. 37. Will you kindly state whether there was among the machines in the room where the machines were allowed to be examined by defendants' expert a machine having a measuring device or rod thereon similar in appearance to the part marked "109" in Figure 1 of patent to Heys No. 957,955, dated May 17, 1910, a copy of which patent I now hand you?

Ans. There was a machine that had a rod similar to this.

Cross-Int. 38. Is it not a fact that it was practically impossible for Mr. Chapman or anyone else to examine some of the machines pointed out to him by you and obtain a practical knowledge of the operation of the machines because of the fact that the machines were at rest?

Mr. PHILLIPS. Question objected to as calling for mere guess work on the part of the witness as to Mr. Chapman's ability to understand a machine, and as improper cross-examination.

Ans. Some of the machines, for instance model K welter and model M stitcher, Mr. Chapman said he could not quite see the operation of the stop motion, and it was asked by Mr. Chapman if they could not be seen in some factory. I suggested that we go to the factory of George E. Keith, which was nearby, where we could see both machines in operation. I believe Mr. Chapman asked where it was, and I told him in South Boston, and it would take us only a short time to go there; but I heard nothing more in regard to that. One or two of the other machines were very difficult to turn over, and I suggested to Mr. Chapman that I could get a man who would come in and help me move the machine

around so that it could be turned over by hand, but he thought it was hardly worth while.

Cross-Int. 39. Some of the machines pointed out by you to Mr. Chapman were lacking some of their parts, were they not?

Ans. I think there were some. I remember particularly a Plant heel seat dinker, which I explained had some parts missing, but it was a machine with four operating knives when complete, and only one or two of the knives were in commission, so that the machine as a whole had some parts missing.

Cross-Int. 40. Is it not a fact that you found it impossible to operate some of the machines; that is, to turn them over and show the mechanism in operation?

Ans. I did, as explained in my last answer but one, and offered to get a man who would assist me so that they could be operated.

Cross-Int. 41. How about the rough rounder?

Ans. The Plant rough rounder was such a machine.

Cross-Int. 42. You could not make it work, could you?

Ans. Not the particular feature which Mr. Chapman wished to see, but I offered to have a man there the next morning so that I could show the machine in operation, but Mr. Chapman said it would not be necessary.

Cross-Int. 43. There was no shafting or power in the room connected up with the machines, was there?

Ans. No, sir.

Cross-Int. 44. Were any of the photographs in Defendants' Exhibit 356, entitled "United Shoe Machinery Company's Machines referred to in N. W. Howard's Deposition", made from any of the machines in the office building of the United Company where the machines were submitted for inspection of complainant's expert?

Ans. I don't feel sure about that in every case, but I think in nearly all cases they were not made from machines in that room.

Direct Examination resumed by Mr. PHILLIPS.

Int. 45. What machine was it that had the part like the part designated by the reference numeral "109" in Heys patent No. 957,955?

Ans. It was the Plant pulling-over machine.

Int. 46. Referring to heel seat dinker, I believe you stated that it was provided with four sets of cutting mechanisms or knives. Were any of the mechanisms incomplete?

Ans. Yes; one or two of them.

Int. 47. And how did those compare with those which were complete?

Ans. There were parts missing; they were the same as the complete ones, as far as they went.

Int. 48. That is to say, it was a mere duplication of mechanism?

Ans. That is correct.

Int. 49. Referring to the model M stitcher and the model K welter, besides offering to show Mr. Chapman those machines in operation, did you do anything else to enable him to get a full understanding of the construction and mode of operation of said machines?

Ans. I explained them to him as well as I could, and in the case of the model K welter I had all the parts of the stop motion taken apart for his inspection.

Int. 50. From what were the photographs contained in Defendants' Exhibit 356 taken?

Ans. They were taken from machines at the Beverly factory. I do not know that every one of them was, but I think nearly all were.

Int. 51. In so far as the photographs in the collection of photographs referred to bear the titles of the machines stated by you in the lists of machines which were open to the inspection of counsel for the Government and his expert, how do the machines illustrated in these photographs compare with machines referred to by you in said list?

Ans. They are practically the same.

Int. 52. Please state whether or not the photographs in said Defendants' Exhibit 356 are photographs of regular commercial machines put out by the United Shoe Machinery Company.

Mr. WEBSTER. Objected to as leading.

Ans. They are.

Int. 53. Please state whether or not the machines referred to by you in your list as being machines of the United Shoe Machinery Company are regular commercial machines put out by that company.

Ans. They are.

Int. 54. Please state whether or not they are illustrated by photographs contained in the collection which you have produced and which has been offered in evidence as Defendants' Exhibit 356.

Ans. They are.

Cross Examination resumed by Mr. WEBSTER.

Cross-Int. 55. You say that the photographs in Defendants' Exhibit 356 are photographs of commercial machines; please state when these photographs were made.

Ans. I don't know in every case when they were made. Some of them were made quite recently.

Cross-Int. 56. Then you were not present when the exposures for the photographs were made?

Ans. I was not.

Cross-Int. 57. Then you have no knowledge as to when the photographs were in fact made?

Ans. No; I did not see them made.

Cross-Int. 58. You have testified that you took apart the parts of the stop-motion mechanism of the welter and showed the same to Mr. Chapman; is it not a fact that you at the same time, or substantially the same time, while explaining these machines stated that the machines did not contain the so-called Plant stop-motion mechanism?

Mr. PHILLIPS. Question objected to as outside the order of the court and as bearing on nothing referred to either in the direct or redirect examination of this witness.

Ans. I don't remember saying whether it embodied the Plant stop motion or not. I simply described the mechanism in that machine.

Cross-Int. 59. Did you not at that time point out that the stop-

ping mechanism was operated, in both the welter and stitcher, by an independent driving mechanism?

Ans. I stated that there was a constantly running member in both of the stop motions.

Cross-Int. 60. Did you not state it was entirely independent of the driving mechanism?

Ans. I stated that there was a constantly running member in both of the stop motions.

Cross-Int. 61. Did you not state it was entirely independent of the driving mechanism of the machine?

Ans. It was driven entirely independent.

Cross-Int. 62. And did you not state there was no spring mechanism incorporated therein to bring about the reverse motion?

Mr. PHILLIPS. This line of examination is objected to on the ground that it refers to nothing in the direct or redirect examination of this witness.

Ans. I don't remember what I stated, but in looking at the parts, after it was taken apart, it could be easily seen that there was no spring arrangement such as you refer to.

Cross-Int. 63. Is it not a fact that some of the machines pointed out by you were stated by you as being obsolete and inoperative?

Mr. PHILLIPS. This line of examination is objected to on the ground that it refers to nothing in the direct or redirect examination of this witness.

Ans. You mean the Plant machines, or the United Shoe Machinery Company's machines?

Cross-Int. 64. Any of them?

Mr. PHILLIPS. This line of examination is objected to on the ground that it refers to nothing in the direct or redirect examination of this witness.

Ans. I did state that some of the Plant machines were not commercial.

Direct Examination resumed by Mr. PHILLIPS.

Int. 65. Will you please give the titles of the photographs in Defendants' Exhibit 356 which illustrate the United Company's machines which were submitted to counsel for the Government and

his expert for examination, as stated in the lists heretofore given by you, and the number of the several pages on which such photographs are found in said exhibit?

Mr. WEBSTER. Objected to as not admissible under redirect examination.

Ans. Lockstitch machine, model M, Goodyear outsole rapid . . . . . page 47
Shoe machine, model K, Goodyear welt and turn . page 78
Channeling machine, Goodyear Universal (turn work) page 14
Grooving and beveling machine, Goodyear power welt . . . . . page 24
Indenting and burnishing machine, Goodyear welt . page 25
Lasting machine No. 5, U. S. M. Co. . . . . page 34
Leveling machine, model B, Hercules . . . page 43
Loading and attaching machine, McKay automatic heel page 45
Nailing machine, American Lightning . . . page 53
Pulling-over machine, model B, Rex . . . page 64
Rounding and channeling machine, model E, Goodyear Universal . . . . . page 72
Wheeling machine No. 2, Goodyear impression stitch, page 105
Rounding machine, Goodyear heel seat . . . page 73

[*The signature of the witness is waived.*]

Attest: CHARLES K. DARLING, *Special Examiner.*

[*Adjourned subject to call.*]

BOSTON, MASS., March 24, 1914.

Mr. PHILLIPS. For the convenience of the Court, counsel for defendants offers in evidence two volumes of patents identified in Defendants' Exhibit 341 [*Exhibit 341 introduced in evidence page 4944 printed record*], and said volumes are marked "Volume 1, Patents named in Defendants' Exhibit 341, Defendants' Exhibit 357"; and "Volume 2, Patents named in Defendants' Exhibit 341, Defendants' Exhibit 358".

Defendants' counsel also offers in evidence in one volume the patents identified in Defendants' Exhibit 342 [*Defendants' Exhibit 342 offered in evidence page 4944 printed record*], and said vol-

ume is marked "Volume of Patents named in Defendants' Exhibit 342, Defendants' Exhibit 359".

So far as at present advised, the defendants have no further testimony to offer before the examiner.

Mr. WEBSTER. Now comes counsel for the complainant and moves that depositions taken in its behalf not already filed, be filed by the examiner with the clerk, so that such depositions may become a part of the record in this cause.

[*Adjourned.*]

District Court of the United States,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 301 (C. C. 911).

UNITED STATES OF AMERICA

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.

EXHIBITS FOR THE UNITED STATES OF AMERICA.

PLAINTIFF'S EXHIBIT 1.

[Put in Evidence, page 312.]

(10c. Internal Revenue Stamp cancelled.)

UNITED SHOE MACHINERY COMPANY. CERTIFICATE OF INCORPORATION.

First: The name of the corporation is United Shoe Machinery Company.

Second: The location of its principal office in the State of New Jersey is at No. 152 Market Street, in the City of Paterson, County of Passaic.

The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is The Paterson Safe Deposit and Trust Company.

Third: The objects for which, and for any of which, this corporation is formed are to do any or all of the things herein set forth, to the same extent as natural persons might or could do the same, and in any part of the world, namely:

To manufacture, buy, sell, lease, operate and deal in and with

all kinds of machinery, tools and implements, and mechanical devices and contrivances of every name and nature whatsoever, and especially to manufacture, buy, sell, lease, operate and deal in and with all sorts of boot and shoe machinery and every kind of mechanism, contrivance, implement, tool, material or thing in any way whatsoever connected with, or useful in connection with the manufacture of boots, shoes and footwear, or the manufacture of leather and rubber goods, or goods made from materials and fabrics of any description whatsoever, or useful in connection with the manufacture or operation of any of the machinery, mechanical devices or contrivances hereinbefore mentioned; to produce, prepare and manufacture, buy, sell and deal in and with leather and rubber, and materials and fabrics of all sorts, and the raw materials from which said leather, rubber materials or fabrics are produced; to manufacture, buy, sell and deal in and with boots, shoes and footwear and all articles and things of every description that may be produced or manufactured, in whole or in part, from leather, rubber or any other materials or fabrics; and in general to produce, prepare, manufacture and deal in and with goods, wares, merchandise, property, materials and things of every class and description.

To purchase, acquire, erect, establish, hold and dispose of manufactories, workshops, plants and buildings of every description, and to fully equip the same with a view to carrying out the purposes herein set forth, or any of them.

To purchase, lease or otherwise acquire, and to sell, let, mortgage, or otherwise dispose of, to the same extent that a natural person might do, lands, buildings and all sorts of property, both real and personal, within or without the State of New Jersey, and in any part of the world.

To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, sell, assign or otherwise dispose of any and all trade-marks, trade-names and distinctive marks, copyrights and patent rights, and all inventions, improvements and processes used in connection with or secured under Letters Patent of the United States or elsewhere, or otherwise, and

to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trade-marks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired, and, with a view to the working and development of the same, to carry on any legal business whatsoever, whether manufacturing or otherwise, which the corporation may deem calculated, directly or indirectly, to accomplish these objects, or any of them.

To acquire the good-will, rights, stock and property of all kinds, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this corporation, bonds, or otherwise.

To issue from time to time, so far as may be convenient for the accomplishment of the purposes, or any of them, herein contained, bonds of the corporation to such amount, in such denomination and on such terms as the Board of Directors may determine, and, if desired, to secure the same by pledge or mortgage of any or all of its property, and, if deemed advisable, by mortgage of the franchises of the company, in such manner as may be allowed by law.

To hold, purchase, or otherwise acquire and invest in, sell, assign and transfer, mortgage, pledge, guarantee, or otherwise dispose of shares of the capital stock, bonds, debentures, or other evidences of indebtedness created by any other corporation or corporations; and, while the holder of such stock, bonds and debentures, to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

To make and enter into contracts of every sort and kind with any individual, firm, association, corporation — private, public or municipal — and with the Government of the United States, of any state, territory or colony thereof, or any foreign government.

To carry on any other business, and to do any and all other things which may seem to the company capable of being conveniently carried on or done in connection with the objects hereinbefore set forth, or any of them, or calculated, directly or indirectly, to develop the company's business, or to enhance the

value of the company's property or rights; and to do all or any of the above things within or without the State of New Jersey, and in any part of the world, as principals, agents, contractors, trustees, or otherwise, and by or through trustees, agents or otherwise, and either alone or in conjunction with other individuals, firms, associations or corporations.

It is intended that the objects specified and clauses contained in this third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to, or inference from the terms of any other clause of this, or any other paragraph in this charter, but that the objects specified in each of the clauses of said third paragraph shall be regarded as independent objects, and shall further be regarded as in furtherance of and not in limitation of the general powers conferred by the laws of the State of New Jersey.

Fourth: The total amount of the capital stock of said corporation is to be twenty-five million dollars ($25,000,000), divided into one million (1,000,000) shares, with a par value of twenty-five dollars ($25) each. Of said capital stock, five hundred thousand (500,000) shares, amounting at par to twelve million five hundred thousand dollars ($12,500,000), are to be preferred stock, and five hundred thousand (500,000) shares, amounting at par to twelve million five hundred thousand dollars ($12,500,000), are to be common stock.

From time to time, the preferred stock and the common stock shall be issued in such amounts and proportion as shall be determined by the Board of Directors, and as may be permitted by law.

The rights, privileges and conditions following shall attach to the shares aforesaid, that is to say:

The preferred stock shall be entitled, out of the surplus net earnings, after all amounts which may be determined upon have been reserved as working capital, to a fixed cumulative preferential dividend at the rate of, but never exceeding, six per cent. per annum on the par value of said stock, and such dividends shall be declared in January of each year, unless some specified day or days for that purpose be fixed by the by-laws. If, in any year,

dividends amounting to six per cent. per annum, shall not be paid on such preferred stock, the deficiency shall be a charge on said net earnings over and above the amount reserved as working capital, and be payable, but without interest, before any dividends shall be paid upon or set apart for the common stock. In the event of the dissolution of the corporation, or the distribution of its assets, the holders of the preferred stock and the holders of the common stock shall share and share alike.

The common stock shall be subject to the prior rights of the preferred stock, as herein declared, but the shares of preferred and common stock shall have equal voting power.

If, after appropriating the accumulated profits of the company, in excess of the amount reserved as working capital, to such dividends on the preferred stock of the company as may be required, there remain further accumulated profits, over and above the amount reserved as working capital, the Directors shall, in January of each year, unless some specific day or days for that purpose be fixed in the by-laws, declare a dividend of said profits on the common stock.

Fifth: The names and the post-office address of the incorporators, and the number of shares of the common stock subscribed for by each, the aggregate of which being three thousand (3,000) dollars, is the amount of capital stock with which the corporation shall commence business, are as follows:

Names.	P. O. Address.	No. of Shares of Common Stock.
J. Wilson Smyth,	14 Hill St., Newark, N. J.	Forty shares
Robert Miller,	Main St., Paterson, N. J.	Forty shares
John S. Tylee,	VanHouten St., Paterson, N. J.,	Forty shares

Sixth: The duration of the corporation is to be perpetual and unlimited.

Seventh: The property and business of the corporation shall be managed by a Board of Directors, who shall have power, among other things, without the assent or vote of the stockholders, to make, alter, amend and rescind the by-laws of this corporation; to fix the amount to be reserved as working capital; to authorize and

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cause to be executed mortgages and liens upon the real and personal property of the corporation, to issue bonds of the corporation, and, if deemed advisable, to secure the same, and, from time to time, to sell, assign, transfer or otherwise dispose of any or all of the property of the corporation, but no such sale of all the property shall be made, except pursuant to a vote of at least two-thirds of the Board of Directors.

The corporation may use and apply its surplus earnings or accumulated profits, authorized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock, from time to time, to such extent and in such manner and upon such terms as its Board of Directors shall determine. And neither the property nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purposes of declaration or payment of dividends, unless otherwise determined by the Board of Directors.

The Board of Directors may from time to time sell, assign, transfer or otherwise dispose of any or all of the property or the capital stock so purchased and acquired, and may reinvest or reserve the proceeds thereof as working capital.

The corporation, in its by-laws, may prescribe the number necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number; and, by vote of the Board of Directors, the number of Directors may at any time be increased or altered, and, in case of such increase, the Board of Directors shall have power to elect additional Directors to fill the directorships created by such increase, such additional Directors to hold office until the next annual meeting of the stockholders, or until their successors shall be elected.

The Board of Directors, by resolution passed by a majority of the whole Board, may designate three or more Directors to constitute an Executive Committee, which Committee, to the extent provided in said resolution, or in the by-laws of the corporation, shall have and may exercise the power of the Board of Directors in the management of the business and affairs of the corporation, and

shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have the right of inspecting any account, or book, or document of the corporation, except as conferred by statute, or authorized by the Board of Directors, or by a resolution of the stockholders.

The Board of Directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books) outside of this State, at such places as may be from time to time designated by them.

We, the undersigned, for the purpose of forming a corporation in pursuance of an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations" (Revision of 1896) and the various acts amendatory thereof and supplemental thereto, do associate ourselves into a corporation, and do make, record and file this certificate, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly hereunto have set our hands and seals.

Dated at Paterson aforesaid this seventh day of February, 1899.

J. WILSON SMYTH [L. S.]
ROBERT MILLER [L. S.]
JOHN S. TYLEE [L. S.]

In presence of:
Wm. I. Lewis.

State of New Jersey
County of Passaic ss

Be it remembered that on this seventh day of February, A. D. eighteen hundred and ninety-nine, before the undersigned personally appeared J. Wilson Smyth, Robert Miller and John S. Tylee, who, I am satisfied, are the persons named in and who executed the foregoing certificate, and, I having first made known to them, and each of them, the contents thereof, they did each acknowledge that

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they signed, sealed and delivered the same as their voluntary act and deed.

WM. I. LEWIS,
A Master in Chancery of New Jersey.

[Endorsed:]

"Received in the Clerk's Office of the County of Passaic on the 7th day of Feby A. D., 1899, at o'clock, in the noon, and recorded in Book G of Certificates for said County, on pages 308, &c.

A. D. WINFIELD, Clerk.

"Filed Feb 7 1899 George Wurts Secretary of State."

STATE OF NEW JERSEY.
Department of State.

I, S. D. Dickinson, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of the certificate of incorporation of United Shoe Machinery Company, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Seventh day of February A. D. 1899, and now remaining on file and of record therein.

In testimony whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this Eleventh day of August A. D. 1911.

S. D. DICKINSON
Secretary of State.

[SEAL]

[Endorsed:]

Certified Copy of Certificate of Incorporation of United Shoe Machinery Company.

PLAINTIFF'S EXHIBIT 2.

[Put in Evidence, page 312.]

State of New Jersey, ss:

We, the undersigned, in order to form a corporation for the purposes hereinafter stated under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey entitled "An Act Concerning Corporations (Revision of 1896)" and the Acts amendatory thereof and supplemental thereto, do hereby certify as follows: —

First. The name of the corporation is "United Shoe Machinery Corporation".

Second. The location of its principal office in this State is at Number 152 Market Street, in the City of Paterson, and County of Passaic. The name of the agent therein and in charge thereof upon whom process against this corporation may be served is The Paterson Safe Deposit and Trust Company.

Third. The objects for which the corporation is formed are: —

To manufacture, buy, sell, lease, operate and deal in and with all kinds of machinery, tools, and implements, and mechanical devices and contrivances of every name and nature whatsoever, and especially to manufacture, buy, sell, lease, operate and deal in and with all sorts of boot and shoe machinery, lasts, trees, forms, and every kind of mechanism, contrivance, implement, tool, material, or thing in any way whatsoever connected with, or useful in connection with the manufacture of boots, shoes and footwear, or the manufacture of leather and rubber goods, or goods made from materials and fabrics of any description whatsoever, or useful in connection with the manufacture or operation of any of the machinery, mechanical devices or contrivances hereinbefore mentioned; to produce, prepare and manufacture, buy, sell and deal in and with leather and rubber, and materials and fabrics of all sorts, and the raw materials from which said leather, rubber materials or fabrics are produced; to manufacture, buy, sell and deal in and with boots, shoes and footwear and all articles and things of every description that may be produced or manufactured, in whole or in

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part, from leather, rubber or any other materials or fabrics; and in general to produce, prepare, manufacture and deal in and with goods, wares, merchandise, property, materials and things of every class and description.

To carry on the business of manufacturers of and dealers in all kinds of eyelets, hooks, buttons, studs, nails, wires, rivets, tacks, metallic and other plates, metallic, wood and other fastenings, laces, cloth, linen, tape and other fabrics, brushes, abrasive materials, cements, dressings, stains, blackings and other requisites for the improvement and treatment of boots and shoes, threads, elastic material, buttons and inner soles, and other articles or substances for protecting feet from damp or heat, and other articles or substances used in connection with the manufacture of boots and shoes, corsets, stationery, sails, tents, clothing and for analogous purposes, and to carry on the business of manufacturers of and dealers in all kinds of appliances, devices, findings, tools, mechanisms, accessories, processes and things which may be used or useful in connection with the manufacture or treatment of any of the above named articles or substances.

To acquire, own, lease, occupy, use or develop any lands, containing coal, metals, or minerals, or other ores, or oil, which shall be useful or convenient in carrying on said business. To mine or otherwise extract or remove and deal in coal, ores, minerals, or timber from any lands owned, acquired, leased or occupied by the company.

To purchase, acquire, erect, establish, hold and dispose of manufactories, workshops, plants, and buildings of every description, and to fully equip the same with the view of carrying out the purposes herein set forth or any of them; to purchase, lease or otherwise acquire, hold and dispose of in any manner lawful for individuals, lands, buildings, houses for employees, and all sorts of property both real and personal, within or without the State of New Jersey or in any part of the world, which shall be necessary or convenient for carrying out the purposes herein set forth or any of them.

In connection with and in furtherance of the general business of

the company, to lay out lands for building purposes and to build on, improve, let on building lease, advance money to persons building thereon or otherwise develop the same in such manner as may seem expedient to advance the company's interest.

To construct bridges, buildings, machinery, shops, boats, engines, cars and other equipment, railroads, docks, slips, elevators, waterworks, gas works and electric works, viaducts, aqueducts, canals and other waterways, and any other means of transportation, and to sell or otherwise dispose of the same, or to maintain or operate the same but not to maintain or operate any railroad or canal in the State of New Jersey.

To apply for, obtain, register, purchase, lease or otherwise acquire, and to hold, own, use, operate, introduce, sell, assign or otherwise dispose of any and all trade-marks, trade-names and distinctive marks, copyrights, patents and patent rights, and all inventions, improvements and processes used in connection with or secured under Letters Patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trade-marks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired, and, with a view to the working and development of the same, to carry on any legal business whatsoever, whether manufacturing or otherwise, which the corporation may deem calculated, directly or indirectly, to accomplish these objects or any of them.

To acquire the good-will, rights, stock and property of all kinds, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, carrying on any business which this corporation is authorized to carry on, and to pay for the same in cash, shares of stock of this corporation, bonds or otherwise.

To purchase, acquire by subscription or otherwise, and to hold for investment or otherwise, use, sell, assign, transfer, mortgage, pledge, or otherwise dispose of and to guarantee any shares of stock, bonds, securities, or other obligations of any other corporation or association carrying on any business which this corpora-

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tion is authorized to carry on; to aid in any manner any such corporation or association whose shares of stock, bonds or other obligations are held or in any manner guaranteed by the company, and to do any other act or things now or hereafter permitted by law for the preservation, protection, improvement, or enhancement of the value of such shares of stock, bonds, securities or other obligations, and to do any acts or things permitted by law designed for any such purpose; and while owner of any such shares of stock, bonds, securities or other obligations, to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting powers thereon to the same extent as a natural person might or could do.

To enter into partnership or into any arrangement for sharing profits, union of interest, joint adventure or co-operation with any person, partnership, association or corporation carrying on or engaged in any business which this corporation is authorized to carry on or engage in.

To establish and support, or to aid in the establishment and support of associations, institutions or conveniences calculated to benefit employees or ex-employees of the company, or any of its predecessors in business, or the dependents or connections of such persons, and to grant pensions and allowances, and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general or useful object.

To issue from time to time, when and as may be convenient for the accomplishment of the purposes or any of them herein set forth, bonds and other securities, or obligations of the corporation to such amount and in such denomination and on such terms as the Board of Directors shall determine; and, when authorized by the stockholders as hereinafter provided, to pledge, mortgage or convey in trust any and all shares of stock, bonds, securities, obligations or other property of the corporation, to secure any bonds, securities or other obligations so issued.

To make, enter into and guarantee contracts of every sort and kind with any individual, firm, association, corporation — private,

public or municipal, — or with the government of the United States of America, or of any State, Territory or Colony thereof, or any foreign government, for the purpose of attaining or furthering any of the purposes herein set forth; and to carry on any other business and to do any and all other acts which may seem to the corporation capable of being conveniently carried on or done in connection with the purposes herein set forth or any of them or calculated directly or indirectly to develop the business of the corporation, or enhance the value of the property or rights of the corporation, and to do any or all of the above things within or without the State of New Jersey, or in any part of the world as principals, agents, contractors, trustees, guarantors or otherwise, or by or through trustees, agents or otherwise, and either alone or in conjunction with other individuals, firms, associations or corporations, and to exercise any and all other powers for the accomplishment and furtherance of the purposes herein set forth, which a copartnership or natural person could do or exercise, and which now is or hereafter shall be authorized or permitted by law.

To use and apply from time to time its surplus or net profits arising from its business to the purchase or acquisition of its bonds, securities or other obligations or shares in its own capital stock, to such extent and in such manner and upon such terms as the Board of Directors shall determine; and from time to time to accept as security for, or in payment on account of or in satisfaction of any claim or demand of the corporation, shares in its own capital stock on such terms as the Board of Directors may determine.

To do all and everything necessary or convenient for the accomplishment of the purposes, objects and powers above-mentioned, or incidental thereto, and to conduct its business, or do anything which it is authorized to do, in every State and in the Territories and Colonies of the United States of America and in foreign countries, and to have one office or more than one office, and to keep the books of the corporation outside of the State of New Jersey, except as otherwise may be provided by law; and to hold, purchase, mortgage and convey real and personal property either in or out of the State of New Jersey, but not to engage in any business

hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey or which is prohibited to corporations formed under the statutory provisions aforesaid.

It is declared that the objects and powers specified, and the clauses contained in this paragraph "Third", shall be in no wise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this certificate.

Fourth: The total amount of the authorized capital stock of the corporation is Fifty Million Dollars ($50,000,000.) divided into two million (2,000,000) shares of the par value of Twenty-five Dollars ($25.00) each. Of such authorized capital stock, Six Hundred Thousand (600,000) shares, amounting at par to Fifteen Million Dollars ($15,000,000.) shall be preferred stock, and One Million Four Hundred Thousand (1,400,000) shares amounting at par to Thirty-five Million Dollars ($35,000,000.) shall be common stock. The amount of the capital stock with which the corporation shall commence business is Thirty Thousand Dollars ($30,000.).

From time to time the amount of the capital stock hereby authorized may be increased according to law and as provided in this certificate, and the preferred and common stock, hereby authorized, and all capital stock which shall hereafter be authorized, may be issued from time to time by the Board of Directors, in such amounts and proportions and for such considerations as shall from time to time be determined by the Board of Directors and as shall be permitted by this certificate and by law.

The rights, privileges and conditions following shall attach to the shares aforesaid:

The holders of the preferred stock shall be entitled to receive, when and as declared by the Board of Directors, from the surplus or net profits arising from the business of the corporation, after all amounts which shall have been determined upon by the Board of Directors shall have been reserved as working capital, cumulative dividends at the rate of, but never exceeding, six per cent. (6%) per annum, payable quarterly on dates to be fixed by the by-laws or by the Board of Directors, in preference and priority to the declaration or payment of any dividend on the common stock.

Shares of preferred stock issued between the dates fixed for the payment of dividends shall be entitled at the next dividend date to a dividend at the rate aforesaid from the date of issue.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid thirty-five dollars ($35) per share and the unpaid dividends accrued thereon, out of the capital of the corporation or the proceeds thereof before any amount shall be paid therefrom to the holders of the common stock; and after the payment to the holders of the preferred stock of the sum of thirty-five dollars in respect to each share thereof and the accrued dividends thereon, the remaining assets and funds of the corporation shall be divided and paid to the holders of the common stock according to their respective shares.

The holders of the preferred stock shall not be entitled to any other or further share in the surplus or net profits of the corporation, nor shall they be entitled to any other or further payment or distributive share in the capital of the corporation in the event of liquidation, dissolution or winding up, than as above provided, nor shall they be entitled in any event to any right to subscribe to, or to take, or to receive any preferred or common stock of the corporation, which is hereby authorized or preferred, common or other stock which shall be hereafter authorized, whether the preferred, common or other stock now or hereafter authorized shall be issued for cash at prices at or above par to be determined by the Board of Directors, or in or on account of payment for property purchased, or by way of stock dividends, or by way of capitalization of the surplus or net profits, or however otherwise lawfully issued.

If, in respect to any quarterly dividend period, a dividend at the rate of six per cent. per annum upon the par value of the preferred stock shall not be declared and paid the deficiency shall be a charge on the surplus or net profits arising from the business of the corporation over and above the amount which the Board of Directors shall have reserved as working capital, and shall be payable, but without interest, before any dividends shall be declared or paid in respect to the common stock.

So long as dividends on the preferred stock shall be paid quarterly as aforesaid, the holders of the preferred stock shall have no voting power on any question as to the increase of the authorized capital stock by additional common stock, or by any stock deferred to the preferred stock in respect to dividends and lien upon the capital of the corporation; but should any dividend on the preferred stock be not declared and paid, when payable as above provided, and remain so unpaid for a period of three months, then and so long as such dividend or any part thereof, remains unpaid by reason of any default or neglect of the corporation, the holders of the preferred stock entitled to such unpaid dividend or part thereof, shall be entitled to the same voting powers thereon as belong to the holders of common stock, but upon the payment of such unpaid dividend or part thereof, the voting power upon said preferred stock shall again cease as aforesaid, and so on from time to time as long as any dividend or part thereof upon the preferred stock shall remain unpaid for three months after the same has become payable as above provided. Upon all other questions, and, in particular, upon questions relating to the increase or decrease of the authorized preferred stock, the holders of the preferred stock and the holders of the common stock shall at all times have equal voting powers.

Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly instalments for the current year shall have been declared, and the corporation shall have paid such cumulative dividends for previous years, and such accrued quarterly instalments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits.

Fifth. The names and Post Office addresses of the undersigned incorporators and the number of shares of stock for which severally and respectively we do here subscribe (the aggregate of our subscription being thirty thousand dollars ($30,000), is the amount

of the capital stock with which the corporation will commence business) are as follows: —

Name.	Post Office Address.	Number of Shares. Common Stock.	Preferred Stock.
John Reynolds	Paterson, N. J.	400	
William Berdan	" "	400	
Frank Gledhill	" "	400	

Sixth. The duration of the corporation shall be perpetual.

Seventh. The first Board of Directors of the corporation shall consist of three persons to be elected by the stockholders at their first meeting. Thereafter the number to constitute the Board shall be fixed from time to time by the by-laws or by the Board of Directors.

The Board of Directors shall have the management and entire control of all the property and business affairs of the corporation, and, for that purpose, they shall have and exercise all the powers of the corporation which are not reserved to the stockholders by this certificate or by the laws of the State of New Jersey, now or hereafter in force.

Among all other powers which may be exercised by the Board of Directors, the Board shall, subject to by-laws made by the stockholders, have full power with respect to the following: —

1. To make by-laws and from time to time to alter, amend and repeal any by-laws, but any by-laws made by the Board of Directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of the meeting.

2. To prescribe the number necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number; and, by vote of the Board of Directors, the number of Directors may at any time be increased or altered, and, in case of such increase, the Board of Directors shall have the power to elect additional Directors to fill the directorships created by such increase, such additional Directors to hold office until the next annual meeting of the stockholders, or until their successors shall have been elected and qualified. In case of any vacancy

among the Directors through death, resignation, disqualification or other cause, the Directors remaining in office may elect a successor Director to hold office for the unexpired portion of the term of the Director whose office shall have become vacant and until the election and qualification of a successor.

3. By the affirmative vote of a majority of the whole Board, to designate three or more Directors to constitute an Executive Committee, and to determine what number thereof shall constitute a quorum, which Committee, to the extent provided in said vote, or in the by-laws of the corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the corporation, including power to authorize the seal of the corporation to be affixed to all papers which may require it.

4. By the affirmative vote of a majority of the whole Board, to appoint other standing committees, and such standing committees shall have and may exercise such powers as shall be conferred upon them or authorized by the by-laws or by the votes appointing them.

5. To elect or appoint one or more Vice Presidents, one or more Assistant Treasurers, and one or more Assistant Secretaries; and to the extent provided in the by-laws the persons so appointed respectively shall have and may exercise all the powers of the President, of the Treasurer, and of the Secretary respectively, to elect, appoint, and at their discretion remove, all officers and committees; to employ and remove at their pleasure managers, agents, clerks and workmen; to fix the compensation of all officers and employees, and to require of them security for the faithful performance of their respective duties; and to confer by vote or resolution upon any officer or committee, the right to appoint and remove at pleasure all officers, managers, agents, clerks and workmen, except the President, the Vice President, the Treasurer and the Secretary.

6. To fix and determine and to vary the amount to be reserved as working capital from time to time; to issue bonds, debentures, notes, or other obligations or evidences of the debt of the corporation; and from time to time, to sell, assign, transfer or otherwise

dispose of any or all property of the corporation; but no such sale of all the property shall be made except pursuant to a vote of at least two-thirds of the Board of Directors.

7. To declare and pay dividends, but only from the surplus or from the net profits arising from the business of the corporation, after deducting therefrom the amount, at the time when any dividend is declared, which shall have been reserved by the Directors as working capital.

8. To use and apply from time to time the surplns or net profits arising from the business of the corporation, to the purchase or acquisition of property and to the purchase or acquisition of its bonds, securities or other obligations or shares of its own capital stock, to such extent and in such manner and upon such terms as the Board of Directors shall determine; to sell, assign, transfer or otherwise dispose of from time to time any or all of the property, obligations or shares of stock so purchased or acquired, unless such shares shall have been retired for the purpose of decreasing the corporation's capital stock, as provided by law; and to reinvest or reserve the proceeds thereof as working capital, or dispose of the same as surplus or net profits of the corporation.

9. To hold meetings of the Board of Directors, to have one or more offices, and to keep the books of the corporation, except the stock and transfer books outside of the State of New Jersey at such places as the Board shall from time to time designate.

10. To determine from time to time, by the by-laws or by vote, whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have the right of inspecting any account, or book, or document of the corporation, except as conferred by statute, or authorized by the Board of Directors, or by a resolution of the stockholders.

Unless authorized by votes given in person or by proxy by stockholders holding at least two-thirds of the capital stock of the corporation, which is represented and voted upon in person or by proxy at a meeting specially called for that purpose, or at an

annual meeting, the Board of Directors shall not mortgage or pledge any of its real property, or any shares of the capital stock of any other corporation; but this prohibition shall not be construed to apply to the execution of any purchase-money mortgage or any other purchase-money lien.

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the seventeenth section of "Act concerning Corporations (Revision of 1896)" any action which theretofore required the consent of the holder of two thirds of the stock at any meeting, after notice to them given, or required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

The corporation reserves the right to amend, alter or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation, except that there shall be no change in the per centum or cumulation of quarterly dividends upon the preferred stock, or of the lien of the preferred stock upon the capital of the corporation in case of liquidation, dissolution or winding up.

In witness whereof the undersigned have hereto set their hands and seals the first day of May A. D. One Thousand Nine Hundred and Five.

JOHN REYNOLDS [L. S.]
WM. BERDAN [L. S.]
FRANK GLEDHILL [L. S.]

Signed, Sealed and Delivered in the presence of
John W. Griggs

State of New Jersey
County of Passaic, ss.

Be it remembered That on this first day of May A. D. Nineteen Hundred and Five before the undersigned, personally appeared John Reynolds, William Berdan and Frank Gledhill who I am sat-

isfied are the persons named in and who executed the foregoing certificate, and I having first made known to them and each of them the contents thereof, they did each acknowledge that they signed and delivered the same as their voluntary act and deed.

JOHN W. GRIGGS
A Master in Chancery of New Jersey.

Received in the Clerk's Office of the County of Passaic on the First day of May A. D. 1905, at 4.15 o'clock in the afternoon, and recorded in book "O" of Certificates for said County on pages

JNO. J. SLATER, Clerk.

[Endorsed:]

"Filed and recorded May 2 1905 S. D. Dickinson Secretary of State."

STATE OF NEW JERSEY.
Department of State.

I, S. D. Dickinson, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of the certificate of incorporation of "United Shoe Machinery Corporation", and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the second day of May A. D. 1905, and now remaining on file and of record therein.

In testimony whereof, I have hereunto set my hand and affixed my official seal at Trenton, this eleventh day of August A. D. 1911.

S. D. DICKINSON
[SEAL] Secretary of State.

[Endorsed:]
Certified Copy of Certificate of Incorporation of "United Shoe Machinery Corporation".

PLAINTIFF'S EXHIBIT 3.

[Put in Evidence, page 316.]

Lease No. *4279* Turn Set. [Form 597.]

Transfer from Lease No.

This Lease and Agreement, made at Boston, Massachusetts, this *16th* day of *March* A.D. 189*8*, by and between Goodyear Shoe Machinery Company, a corporation established under the laws of the State of Maine, Lessor, and party hereto of the first part, and *Kiner Bros., Agents, doing business in Mount Holly, N. J.* Lessee, and party hereto of the second part, Witnesseth;

Whereas, the Lessor is the owner of or is licensed under the several Letters Patent of the United States, recited in the schedule following, viz.:

SCHEDULE OF PATENTS.

No. 240,307, dated April 19, 1881.	No. 461,793, dated October 20, 1891.
No. 253,156, dated January 31, 1882.	No. 463,967, dated November 24, 1891.
No. 260,990, dated July 7, 1882.	No. 488,505, dated December 20, 1892.
No. 267,798, dated November 21, 1882.	No. 495,452, dated April 11, 1893.
No. 317,758, dated May 12, 1885.	No. 518,911, dated April 24, 1894.
No. 317,759, dated May 12, 1885	No. 533,301, dated January 29, 1895.
No. 412,704, dated October 8, 1889.	No. 540,438, dated June 4, 1895.
No. 453,999, dated June 9, 1891.	No. 561,886, dated June 2, 1896.

And, whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above-recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz.:

SCHEDULE OF MACHINES.

Goodyear Turn Machine , No. *1285*
Turn Channeler , No. *737*
Moulder , No. *620*
Turn Shoe Trimmer , No.

The said machines being the property of the Lessor:

Now, therefore, the Lessor in consideration of one dollar and

[MEMO BY CLERK.— All words and figures printed in italics in these exhibits were in handwriting in the originals.]

other valuable consideration to it paid by the Lessee, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said machines, or either or any of them, but upon the agreements and conditions hereinafter set forth; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor, notwithstanding any express or implied waiver of any prior breach, may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to any one in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon re-vest in the Lessor;

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license:

First. The Lessee hereby agrees to use, and is hereby licensed to use, the machines hereby leased and the inventions patented as aforesaid only in his factory in *Mount Holly* in the State of *New Jersey* and only in the manufacture of boots and shoes, and agrees to keep the said machines in working order at his own expense and to procure of the Lessor or its agents all parts for repairing the machines hereby leased, and agrees not to add to or subtract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, nor to remove or deface any dates, numbers or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and

inspectors of the Lessor, at all reasonable times, to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to add improvements to the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions hereafter embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The following is the schedule of rents and royalties hereinafter referred to, and which it is understood and agreed is to be paid by the Lessee for each pair of shoes or boots respectively made by the aid of the machines hereby leased, or either or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, viz.:

SCHEDULE OF RENTS AND ROYALTIES FOR GOODYEAR TURNED WORK.

Children's . . .	2 cents per pair.
Misses'	2 " "
Women's . . .	3 " "
Youths'	3 " "
Boys'	3 " "
Men's	3 " "

Fourth. The Lessee hereby agrees to keep proper books of account, and make true and complete entries therein of all transactions relating to the manufacture and sale of all boots and shoes made by him, or by any other person for him or for others, by the aid of the machines hereby leased, or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, and to render an account thereof to the Lessor on or before the tenth day of each month, which account shall specify the number of pairs of boots and shoes made under this lease and license during the calendar month next preceding, and the class to which they belong according to the above schedule of rents and royalties; and the Lessee agrees that he will require the operator or operators on said machines to keep a daily account of all boots or shoes made by the

aid of said machines upon the printed forms to be furnished by the Lessor, in duplicate, one copy of which, containing such reports for the calendar month next preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor, and, whenever required by the Lessor, to make oath to the correctness of said returns, and to allow the Lessor, by its agents or attorneys, to examine and take copies or extracts from the original book or books of account of the Lessee and the accounts kept by the operator or operators as aforesaid; and the Lessee hereby agrees to send to the Lessor, on or before the tenth day of each month, in case the machines hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, marked across the face with the words "not running," or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased, and as royalty for the use of the inventions patented as aforesaid as hereby licensed, the rent and royalty specified in the schedule forming part of Section Third herein, for each pair of boots or shoes of the respective kinds mentioned or described in said schedule, made by the aid of the said machines, or either or any of them, or by the use of the said inventions, or either or any of them; the rents and royalties for all such boots and shoes, made as aforesaid during one calendar month, to be due and payable on the last day of the calendar month next following; but the Lessor hereby agrees that, **if the rents and royalties due on the last day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty per cent. from the rents and royalties specified in the schedule aforesaid.**

Sixth. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots or shoes known in the trade as "turns" or "turned work," and that he will not use or permit the use of said machines, or either or any of them, upon boots or shoes of any other class, or for any other purpose, unless the consent in writing of the Lessor shall first have been obtained, and that he will not use, or permit the use, in his factory, of any

sewing machine for uniting the soles of turn shoes to their uppers which is not leased to him by the Lessor, unless the consent in writing of the Lessor shall first have been obtained.

Seventh. The Lessee hereby agrees that he will not in any way violate or infringe, or contest the validity of, any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents, or either or any of them.

Eighth. This lease and license is not assignable by the Lessee, by his own act or by operation of law.

Ninth. The following are also agreed to by the parties to this instrument as conditions of this lease and license:

(*a*) That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machines embodying the patented inventions aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or either or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the Lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire, and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent and royalty under this instrument.

(*b*) That in case the Lessee refuses or neglects to perform, or violates any of the conditions in this lease and license contained, the Lessor, its successors or assigns, notwithstanding any express or implied waiver of any prior breach shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do and upon the giving of such notice this lease

and license shall be terminated, and the possession of said machines shall thereupon re-vest in the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor its successors or assigns, or its authorized agent or agents, may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license.

(*c*) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein contained) until the expiration of all and every the Letters Patent referred to in the foregoing the Schedule of Patents, or any extensions or renewals of the same, and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

Tenth. In case any other machines than those hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor, its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions or improvements, and shall govern the parties respectively to the same extent as if the said machines, inventions or improvements had been expressly included in this lease and license. The Lessor shall give written notice of its election as aforesaid after it shall have received written notice from the Lessee of the possession of such machines, but may give such notice without having received notice from the Lessee of the possession of such machines.

Eleventh. The Lessee agrees that he will not disturb or interfere with, nor permit anyone else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon the machines as aforesaid.

Twelfth. All the rights and interests which, under this instru-

ment, and by reason of the ownership of said machines and patents and patent rights, belong to the Lessor, shall be deemed to belong to and may be enforced in the names of the Lessor and its successors and assigns, and all the agreements and conditions binding on the Lessee shall be binding on his legal representatives.

Thirteenth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural, as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally hereto.

In witness whereof, the Lessor has caused these presents to be signed in its name, and its corporate seal to be affixed hereto by its Treasurer, and the Lessee has set his hand and seal hereto the day and year first above written.

Executed in Duplicate.

GOODYEAR SHOE MACHINERY COMPANY,

[SEAL] By Geo. W. Randall, Treasurer.

Lessee will please sign here ☞ KINER BROS., Agts.

PLAINTIFF'S EXHIBIT 4.

[Put in Evidence, page 317.]

Lease No. 4731 Full Set. [Form 597.]

Transfer from Lease No.

This Lease and Agreement, made at Boston, Massachusetts, this *13th* day of *June* A. D. 189*9*, by and between Goodyear Shoe Machinery Company, a corporation established under the laws of the State of Maine, Lessor, and party hereto of the first part, and *Johansen Bros., doing business in St. Louis, Mo.* Lessee, and party hereto of the second part, Witnesseth;

Whereas, the Lessor is the owner of or is licensed under the several Letters Patent of the United States, recited in the schedule following, viz:

SCHEDULE OF PATENTS.

No. 240,307, dated April 19, 1881.
No. 249,279, dated November 8, 1881.
No. 253,156, dated January 31, 1882.
No. 317,758, dated May 12, 1885.
No. 317,759, dated May 12, 1885.
No. 320,075, dated June 16, 1885.
No. 330,928, dated November 24, 1885.
No. 366,935, dated July 19, 1887.
No. 369,563, dated September 6, 1887.
No. 412,703, dated October 8, 1889.
No. 412,704, dated October 8, 1889.
No. 424,966, dated April 8, 1890.
No. 453,999, dated June 9, 1891.
No. 456,041, dated July 14, 1891.
No. 461,793, dated October 20, 1891.
No. 463,967, dated November 24, 1891.
No. 463,982, dated November 24, 1891.
No. 473,870, dated April 26, 1892.
No. 474,774, dated May 10, 1892.
No. 483,393, dated September 27, 1892.
No. 488,505, dated December 20, 1892.
No. 488,591, dated December 27, 1892.
No. 488,841, dated December 27, 1892.
No. 495,452, dated April 11, 1893.
No. 500,060, dated June 20, 1893.
No. 510,127, dated December 5, 1893.
No. 546,211, dated September 10, 1895.
No. 546,851, dated September 24, 1895.
No. 546,852, dated September 24, 1895.
No. 548,309, dated October 22, 1895.
No. 549,125, dated November 5, 1895.
No. 549,126, dated November 5, 1895.
No. 549,471, dated November 5, 1895.
No. 553,948, dated February 4, 1896.
No. 553,949, dated February 4, 1896.
No. 555,547, dated March 3, 1896.
No. 555,548, dated March 3, 1896.
No. 556,146, dated March 10, 1896.
No. 557,744, dated April 7, 1896.
No. 558,379, dated April 14, 1896.
No. 558,380, dated April 14, 1896.
No. 558,381, dated April 14, 1896.
No. 558,382, dated April 14, 1896.
No. 558,888, dated April 21, 1896.
No. 559,314, dated April 28, 1896.
No. 560,976, dated May 26, 1896.
No. 561,386, dated June 2, 1896.
No. 563,471, dated July 7, 1896.
No. 563,472, dated July 7, 1896.
No. 564,379, dated July 21, 1896.
No. 564,883, dated July 28, 1896.
No. 11,578, reissued December 8, 1896.

No. 511,263, dated December 19, 1893.
No. 514,364, dated February 6, 1894.
No. 514,741, dated February 13, 1894.
No. 518,911, dated April 24, 1894.
No. 520,020, dated May 15, 1894.
No. 529,900, dated November 27, 1894.
No. 533,301, dated January 29, 1895.
No. 536,338, dated March 26, 1895.
No. 537,823, dated April 23, 1895.
No. 540,222, dated May 28, 1895.
No. 540,223, dated May 28, 1895.
No. 540,438, dated June 4, 1895.
No. 540,616, dated June 4, 1895.
No. 541,988, dated July 2, 1895.
No. 542,813, dated July 16, 1895.
No. 543,012, dated July 23, 1895.
No. 573,068, dated December 15, 1896.
No. 573,069, dated December 15, 1896.
No. 573,144, dated December 15, 1896.
No. 11,587, reissued February 2, 1897.
No. 579,205, dated March 23, 1897.
No. 579,206, dated March 23, 1897.
No. 579,207, dated March 23, 1897.
No. 579,231, dated March 23, 1897.
No. 580,746, dated April 13, 1897.
No. 576,114, dated February 2, 1897.
No. 579,146, dated March 23, 1897.
No. 580,773, dated April 13, 1897.
No. 583,968, dated June 8, 1897.
No. 584,038, dated June 8, 1897.
No. 584,039, dated June 8, 1897.

And whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above-recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz.:

SCHEDULE OF MACHINES.

Goodyear Welt and Turn Shoe Machine , No.
Goodyear Outsole Stitcher (Lock Stitch "Rapid"), No.
(Welt Bevelling Attachment, No.)
Goodyear Channeller (Insole), No.
Goodyear Channeller (Outsole), No.
Rounding and Channelling Machine , No.
Universal Rounding and Channelling Machine , No. *297*
Channel Lip Turner , No.
Goodyear Channel Opener , No. *248*
Goodyear Welt Beater , No.
Goodyear Shank Skiver , No.
Universal Shank Skiver , No.
Goodyear Bobbin Winder , No.
Goodyear Welt Groover , No.
Goodyear Welt Splitter , No.
Goodyear Basting Machine , No.
Universal Inseam Trimmer , No.

Goodyear Sole Layer , No.
Goodyear Automatic Sole Leveller , No.
Hadaway Stitch Separator , No. *247*

The said machines being the property of the Lessor:

Now, therefore, the Lessor, in consideration of one dollar and other valuable consideration to it paid by the Lessee, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said machines, or either or any part of them, but upon the agreements and conditions hereinafter set forth; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor, notwithstanding any express or implied waiver of any prior breach, may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to any one in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon re-vest in the Lessor;

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license:

First. The Lessee hereby agrees to use, and is hereby licensed to use, the machines hereby leased and the inventions patented as aforesaid only in his factory in *St. Louis* in the State of *Missouri* and only in the manufacture of boots and shoes, and agrees to keep the said machines in working order at his own expense and to procure of the Lessor or its agents all parts for repairing the machines hereby leased, and agrees not to add to or subtract from the said machines any part or mechanism whatever, now or hereafter organ-

ized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, nor to remove or deface any dates, numbers or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to add improvements to the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions hereafter embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The following is the schedule of rents and royalties hereinafter referred to, and which it is understood and agreed is to be paid by the Lessee for each pair of shoes or boots respectively made by the aid of the machines hereby leased, or either or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, viz.:

SCHEDULE OF RENTS AND ROYALTIES FOR GOODYEAR WELTS.

Children's . . .	3	cents	per pair.
Misses'	4	"	"
Women's . . .	6	"	"
Youths'	4	"	"
Boys'	6	"	"
Men's	8	"	"

Fourth. The Lessee hereby agrees to keep proper books of account, and make true and complete entries therein of all transactions relating to the manufacture and sale of all boots and shoes made by him, or by any other person for him or for others, by the aid of the machines hereby leased, or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, and to render an account thereof to the Lessor on or before the tenth day of each month, which account shall specify the number of pairs of boots and shoes made under this lease and license dur-

ing the calendar month next preceding, and the class to which they belong according to the above schedule of rents and royalties; and the Lessee agrees that he will require the operator or operators on said machines to keep a daily account of all boots or shoes made by the aid of said machines upon the printed forms to be furnished by the Lessor, in duplicate, one copy of which, containing such reports for the calendar month next preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor, and, whenever required by the Lessor, to make oath to the correctness of said returns, and to allow the Lessor, by its agents or attorneys, to examine and take copies or extracts from the original book or books of account of the Lessee and the accounts kept by the operator or operators as aforesaid; and the Lessee hereby agrees to send to the Lessor, on or before the tenth day of each month, in case the machines hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, marked across the face with the words "not running" or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor as rent for the machines hereby leased, and as royalty for the use of the inventions patented as aforesaid [illegible] hereby licensed, the rent and royalty specified in the schedule forming part of Section Third herein, for each pair of boots or shoes of the respective kinds mentioned or described in said schedule, made by the aid of the said machines, or either or any of them, or by the use of the said inventions, or either or any of them; the rents and royalties for all such boots and shoes, made as aforesaid during one calendar month, to be due and payable on the last day of the calendar month next following: but the Lessor hereby agrees that, **if the rents and royalties due on the last day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof grant a discount of fifty per cent. from the rents and royalties specified in the schedule aforesaid.**

Sixth. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots or shoes known in the trade as "Goodyear Welts," and that he will not use or permit the

use of said machines, or either or any of them, upon boots or shoes in the manufacture of which any sole or welt sewing machine not leased to him by the Lessor is employed, or for any other purpose than the manufacture of Goodyear Welts, unless the consent in writing of the Lessor shall first have been obtained.

Seventh. The Lessee hereby agrees that he will not in any way violate or infringe, or contest the validity of, any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents, or either or any of them.

Eighth. This lease and license is not assignable by the Lessee, by his own act or by operation of law.

Ninth. The following are also agreed to by the parties to this instrument as conditions of this lease and license:

(*a*) That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machines embodying the patented inventions aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or either or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire, and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent and royalty under this instrument.

(*b*) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, its successors or assigns, notwithstanding any express or implied waiver of any prior breach, shall have the right to ter-

minate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon re-vest in the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successor or assigns, or its authorized agent or agents, may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license.

(*c*) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein contained) until the expiration of all and every the Letters Patent referred to in the foregoing Schedule of Patents, or any extensions or renewals of the same, and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

Tenth. In case any other machines than those hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor, its successors or assigns, then in case of the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions or improvements, and shall govern the parties respectively to the same extent as if the said machines, inventions or improvements had been expressly included in this lease and license. The Lessor shall give written notice of its election as aforesaid after it shall have received written notice from the Lessee of the possession of such machines, but may give such notice without having received notice from the Lessee of the possession of such machines.

Eleventh. The Lessee agrees that he will not disturb or interfere with, nor permit any one else to disturb or interfere with, any

indicator which now is or which may be hereafter placed upon the machines hereby leased.

Twelfth. All the rights and interests which, under this instrument, and by reason of the ownership of said machines and patents and patent rights, belong to the Lessor, shall be deemed to belong to and may be enforced in the names of the Lessor and its successors and assigns, and all the agreements and conditions binding on the Lessee shall be binding on his legal representatives.

Thirteenth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural, as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally hereto.

In witness whereof, the Lessor has caused these presents to be signed in its name, and its corporate seal to be affixed hereto by its Treasurer, and the Lessee has set his hand and seal hereto the day and year first above written.

Executed in Duplicate.

GOODYEAR SHOE MACHINERY COMPANY,

[SEAL] By Geo. W. Brown Treasurer.

Lessee will please sign here. ☞ JOHANSEN BROS [SEAL]

[Endorsed:]
Cancelled File
Lease No. 4731 Full Set.
Goodyear Shoe Machinery Company, Lessor.
Johansen Bros., Lessee.
Dated June 13th 1899

PLAINTIFF'S EXHIBIT 5.

[Put in Evidence, page 317.]

[Form 995.] Lasting Machine Set (Royalty).
Lease and License, No. *L 271.*
Transfer from Lease No.

This Lease and License, made at Boston, Massachusetts, this *24th day of January* A. D. 189*9*, by and between Goodyear Shoe Machinery Company, a corporation incorporated under the laws of the State of Maine, and having an office in said Boston, Lessor, and party hereto of the first part, and *Rosenthal, Feder & Co.* doing business in *San Francisco, California*, Lessee, and party hereto of the second part, Witnesseth,

That, whereas, the Lessor is the owner of or is licensed under the several Letters Patent of the United States, recited in the schedule following, viz: —

SCHEDULE OF PATENTS.

No. 211,612, dated January 21, 1879.
No. 212,131, dated February 11, 1879.
No. 214,754, dated April 29, 1879.
No. 215,438, dated May 20, 1879.
No. 216,926, dated June 24, 1879.
No. 218,354, dated August 5. 1879.
No. 219,224, dated September 2, 1879.
No. 224,516, dated February 17, 1880.
No. 226,817, dated April 20, 1880.
No. 226,818, dated April 20, 1880.
No 230,386, dated July 20, 1880.
No. 234,854, dated November 30, 1880.
No. 247,143, dated September 13, 1881.
No. 248,398, dated October 18, 1881.
No. 253,250, dated February 7, 1882.
No. 312,691, dated February 24, 1885.
No. 329,280, dated October 27, 1885.
No. 329,282, dated October 27, 1885.
No. 329,283, dated October 27, 1885.
No. 329,366, dated October 27, 1885.
No. 329,367, dated October 27, 1885.
No. 333,709, dated January 5, 1886.
No. 336,539, dated February 16, 1886.
No. 343,689, dated June 15, 1886.
No. 354,462, dated December 14, 1886.
No. 360,147, dated March 29, 1887.
No. 365,497, dated June 28, 1887.
No. 365,504, dated June 28, 1887.
No. 365,505, dated June 28, 1887.
No. 365,731, dated June 28, 1887.
No. 385,747, dated July 10, 1888.
No. 420,268, dated January 28, 1890.
No. 422,734, dated March 4, 1890.
No. 439,051, dated October 21, 1890.
No. 446,631, dated February 17, 1891.
No. 455,174, dated June 30, 1891.
No. 465,073, dated December 15, 1891.
No. 500,225, dated June 27, 1893.
No. 500,319, dated June 27, 1893.
No. 501,872, dated July 18, 1893.
No. 501,873, dated July 18, 1893.
No. 513,384, dated January 23, 1894.
No. 521,954, dated June 26, 1894.
No. 521,975, dated June 26, 1894.
No. 517,947, dated April 10, 1894.

And, whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz: —

SCHEDULE OF MACHINES.

Ideal Lasting Machines,	No. *295*,	No. ,	No. ,	No. ,	No.
Rapid Lasting Machines (foot power),	No.	No. ,	No. ,	No. ,	No.
Rapid Lasting Machines (foot power),	No.	No. ,	No. ,	No. ,	No.
Rapid Power Lasting Machines,	No.	No. ,	No. ,	No. ,	No.
Rapid Loose Tackers, with Hoppers,	No. *425*,	No. ,	No. ,	No. ,	No.
Rapid Loose Tackers, with Hoppers,	No. *426*,	No. ,	No. ,	No. ,	No.
Nicking Machines,	No.	No. ,	No. ,	No. ,	No.

The said machines being the property of the Lessor.

Now, therefore, the Lessor, in consideration of one dollar and other valuable consideration to it paid by the Lessee, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing schedule of machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said machines, or either or any of them, but upon the agreements and conditions hereinafter set forth; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor, notwithstanding any express or implied waiver of any prior breach, may at its option cancel and terminate this lease and license, and upon written notice thereof

by the Lessor to the Lessee or to any one in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon re-vest in the Lessor;

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license: —

First. The Lessee hereby agrees to use, and is hereby licensed to use, the machines hereby leased and the inventions patented as aforesaid only in his factory in *San Francisco*, in the State of *California* and agrees to keep the said machines in working order at his own expense, and to purchase of the Lessor or its agents all parts for repairing the machines hereby leased, and all tacks to be used in the loose tackers and hoppers hereby leased, and agrees not to add to or subtract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, except by an authorized agent or employee of the Lessor, nor to remove or deface any dates, numbers, or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient access to the machines, to examine and inspect the same and the use thereof, and to add improvements or to alter the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions hereafter embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The Lessee agrees to keep proper books of account and to make true and complete entries therein, showing the number of pairs of boots or shoes which are lasted, in whole or in part, upon or by the aid of the machines hereby leased, or either or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, and to render an account thereof to the Lessor on or before the tenth day of each month, which account

shall specify the number of pairs of boots and shoes so lasted, in whole or in part, as aforesaid; and the Lessee agrees to require each operator on said lasting machines to keep in duplicate in books or on printed forms to be furnished by the Lessor, a daily record of all the boots or shoes lasted, in whole or in part, upon or by the aid of the said machines, one copy of which, containing the record for the calendar month next preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor, and, whenever requested by the Lessor, to make oath to the correctness of said record, and to allow the Lessor, by its agents and attorneys, to examine and take copies or extracts from the original book or books of account of the Lessee and the record kept by the operator or operators as aforesaid; and the Lessee hereby agrees to send to the Lessor, on or before the tenth day of each month, on a form to be furnished by the Lessor, the number of movements or revolutions of the shaft of each lasting machine hereby leased, as registered by the indicator thereon on the last day of the calendar month next preceding; and the Lessee hereby agrees to send to the Lessor, on or before the tenth day of each month, in case the machines hereby leased have not been run during the month preceding, one of the aforesaid books or forms furnished by the Lessor, marked across the face with the words, "not running", or "not in use".

Fourth. The Lessee agrees that he will not use or permit the use of the machines hereby leased, or either or any of them, on boots or shoes which are to be partially or wholly completed by the aid of any sole- or welt-sewing machine not leased to him by the Lessor (except that they may be used in lasting boots and shoes known in the trade as "McKay Sewed"), and that he will not use or permit the use of any of the tackers hereby leased on boots or shoes which have been partially or wholly lasted by the aid of any lasting machine not leased to him by the Lessor.

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased and as royalty for the use of the inventions patented as aforesaid as hereby licensed, the sum of one cent for each and every pair of boots or shoes lasted, in whole or in part,

upon or by the aid of the machines hereby leased, or either or any of them, or by the use of the said inventions, or either or any of them, the rents and royalties for all such boots and shoes lasted as aforesaid during one calendar month to be due and payable on the last day of the calendar month next following; but the Lessor hereby agrees that if the rents and royalties due on the last day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty per cent. from the rents and royalties above specified.

Sixth. The Lessee agrees that he will not in any way violate or infringe, or contest the validity of, any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Lessor, to said patents, or any of them.

Seventh. The following are also agreed to by the parties as conditions of this lease and license: —

(*a*) That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machine embodying the inventions patented as aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or either or any of them, can only be made with the consent of the Lessor; and that if the Lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer, or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, this lease and license shall thereupon terminate and expire; and the Lessor may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent and royalty under this instrument.

(*b*) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, notwithstanding any express or implied waiver of any

prior breach, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon revest in the Lessor free and discharged of this lease and license; and the Lessor, or its authorized agent or agents, may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease and license.

(*c*) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein contained) until the expiration of all and every the Letters Patent referred to in the foregoing Schedule of Patents, or any extensions or renewals of the same; and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

Eighth. The Lessee hereby agrees that if the indicator attached to any lasting machine hereby leased shall cease to register or indicate correctly the number of movements or revolutions of the shaft to which it is connected, or if the glass covering of the face of the indicator shall be broken, he will not use the said lasting machine, or allow it to be used, until the indicator thereon shall have been repaired or replaced by the Lessor; and agrees that if the glass covering of the indicator shall become broken, or if, for any reason, the indicator shall cease to indicate or register correctly, he will forthwith notify the Lessor in writing thereof; and the Lessee agrees that he will not, nor will he allow any one, except an authorized agent or employee of the Lessor, to remove the indicator from the said lasting machine, or injure, alter, or in any way tamper therewith, or permit any such alteration, injury, or tampering to take place.

Ninth. This lease and license is not assignable by the Lessee by his own act or by operation of law; and all the rights and interests which under this instrument, and by reason of the ownership of said machines and patents and patent rights belong to the Lessor, shall be deemed to belong to and may be enforced in the names of

the successors and assigns of the Lessor, and all the agreements and conditions binding on the Lessee shall be binding on his executors or administrators.

Tenth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In witness whereof, the Lessor has caused these presents to be signed and its corporate seal to be affixed hereto by its Treasurer, and the Lessee has set his hand and seal hereto the day and year first above written.

Executed in Duplicate.

GOODYEAR SHOE MACHINERY COMPANY,

[SEAL] By Geo. W. Randall, Treasurer.

Lessee will please sign here. ☞ ROSENTHAL, FEDER & Co. [SEAL]

[RIDER ATTACHED TO PLAINTIFF'S EXHIBIT 5.]

[Form 995.] Lasting Machine Set (Royalty). 24th.

APPLICATION FOR LEASE OF MACHINES.

Jan 28 1899

To Goodyear Shoe Machinery Company, 104 Bedford Street, Boston, Mass.

Being desirous of using your machines, mentioned in the schedule below, in the manufacture of boots and shoes, the undersigned hereby requests a lease of the said machines and a license to use the patented inventions embodied therein, and consents to accept a

lease and license of the tenor of the Lease and License "Form 995," adopted by your Company.

Upon receipt of such lease and license from you, the undersigned agrees to sign the lease and license in duplicate, to return one original to you, and to pay, upon delivery of the said machines, the sum of $300.00 as consideration for the delivery of such lease and license, for the expenses of setting up said machines, and for the possession of the said machines under the lease and license.

Schedule of Machines Referred to Above.

One Ideal Lasting Machines *295*.
Rapid Lasting Machines (foot power).
Rapid Power Lasting Machines.
Two Rapid Loose Tackers, with Hoppers, *425*, *426*.

Mar 13 1899 *Paid $300.*
Mens Work 1311 & 1312 B Plates.

It is understood that the undersigned is to send you patterns of the largest and widest innersoles of each style of boots or shoes to be lasted on the machines, in order to fit the toe wipers properly, and that you will furnish ten pairs of wipers gratis with each lasting machine. Additional wipers are to be paid for by the undersigned.

The undersigned agrees to pay the freight end transportation charges on said machines from Boston, Mass.

How shall the machines be shipped, by freight or express? *Md. Dis. Chigo. N. W. & U. P.*

Dated *Jan 23*, 1899

Applicant will sign here. ROSENTHAL FEDER & Co.

In compliance with the foregoing application, the Goodyear Shoe Machinery Company agrees to grant you such lease and license of said machines, and will deliver the machines F. O. B. in Boston, and at its own expense will send a competent man to set up and put said machines in operation.

GOODYEAR SHOE MACHINERY COMPANY,
By Fredk. G. King, General Manager.

Dated *Jan. 30th*, 1899
Terms O.K.
E. D. Cox

PLAINTIFF'S EXHIBIT 6.

[Put in Evidence, page 319.]

200-7-9-1898-AA.

License and Rental Lease No. *225*

Transfer from *Cloutman, Dunham & Co.* License No. *204*

This license and rental lease agreement, made in duplicate the *31st* day of *January* A. D. 18 *1900*, by and between the

United Shoe Machinery Co.

~~Consolidated & McKay Lasting Machine Company~~,

(McKay & Copeland Department),

a corporation incorporated under the laws of the State of Maine, Licensor and party of the first part, and *the Milford Shoe Co.* of *Milford, Mass.*, Licensee and party of the second part, Witnesseth:

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting, to wit: No. 247,143, dated September 13, 1881; No. 248,398, dated October 18, 1881; No. 248,448, dated October 18, 1881; No. 250,450, dated December 6, 1881; No. 251,205, dated December 20, 1881; No. 251,430, dated December 27, 1881; No. 254,617, dated March 7, 1882; No. 284,174, dated September 4, 1883; No. 286,898, dated October 16, 1883; No. 288,689, dated November 20, 1883; No. 302,885, dated August 5, 1884; No. 306,671, dated October 14, 1884; No. 309,519, dated December 23, 1884; No. 312,550, dated February 17, 1885; No. 312,962, dated February 24, 1885; No. 352,851, dated November 16, 1886; No. 371,816, dated October 18, 1887; No. 444,792, dated January 13, 1891; No. 458,000, dated August 18, 1891; No. 458,001, dated August 18, 1891; No. 473,873, dated April 26, 1892; No. 507,551, dated October 31, 1893; No. 516,074, dated March 6, 1894; No. 524,445, dated August 14, 1894; No. 524,446, dated August 14, 1894; No. 524,447, dated August 14, 1894; No. 536,780, dated April 2, 1895; No. 537,269, dated April 9, 1895; No. 537,270, dated April 9, 1895; No. 539,065, dated May 14, 1895; No. 548,671, dated October 29, 1895; No. 548,862, dated October 29, 1895; No. 601,933, dated April 5,

1898; No. 601,934, dated April 5, 1898; No. 601,935, dated April 5, 1898; No. 601,936, dated April 5, 1898; No. 601,937, dated April 5, 1898; No. 601,938, dated April 5, 1898; No. 601,939, dated April 5, 1898; No. 601,940, dated April 5, 1898; No. 601,941, dated April 5, 1898; No. 601,942, dated April 5, 1898; and other patents applied for and now pending, and is, moreover, the owner of or licensee under other patents not herein enumerated.

And, whereas, the Licensee desires the right to use, under the terms of this License and Lease Agreement, the hereinafter described machines and accessories belonging to and owned by the Licensor, and also any improvements relating to the machines and accessories hereby licensed and leased for rental, which may hereafter be acquired by the Licensor, and attached to any of the machines and accessories hereby licensed and leased for rental, or delivered to the Licensee, to be used in connection therewith; and, also, any other machines, machinery, or device made by or for the Licensor, which may hereafter come into the possession of the Licensee:—

Now, therefore, the Licensor, in consideration of one dollar to it paid by the Licensee, the receipt whereof is hereby acknowledged, and the further consideration of dollars to be hereafter paid for this license, and of the agreements and conditions herein agreed upon, to be kept and performed by the Licensee, does hereby license and lease for rental, unto the Licensee, the machines and accessories herein designated by their respective numbers, said machines or accessories embodying the inventions of some of the foregoing named patents, viz.:—

Lasting Machines (Copeland) Nos. ~~344~~, ~~385~~, ~~386~~, ~~388~~.
Hand Tackers (Brock) Nos. ~~591~~, ~~594~~, ~~598~~, ~~600~~.
Pinking Machines (Copeland) Nos. ~~245~~, ~~256~~, ~~368~~, ~~369~~

property of the Licensor, into the possession of the Licensee for lasting shoes and boots at the factory of the Licensee, and nowhere else. Said machines or accessories are constructed in accordance with and embody the invention or inventions, or some part thereof, described in said letters patent granted, and other letters patent

hereafter to be granted, and to which other letters patents when granted this license and lease agreement shall apply, and the parties hereunto shall be bound relatively thereto, the same in all respects, as if all said patents had been granted and the numbers and dates thereof specially enumerated in this license and lease for rental before signing.

And the Licensor does hereby license the Licensee, and the operatives in his employ, to use said machines and accessories, but only upon the terms and conditions herein set forth, and the Licensor does hereby also license the Licensee to use the inventions of all or any of said patents above enumerated or referred to, and all re-issues, renewals, and extensions of the same, embodied in said machines or accessories, or hereafter attached to or incorporated therein; Provided, however, and this license and lease is granted upon the expressed condition, that the Licensee shall faithfully keep and perform all the agreements and conditions herein contained, on his part to be kept and performed, and upon breach of the same or either of them by the Licensee, the Licensor may, at its option, cancel and terminate this license and lease for rental by giving written notice to the Licensee, or to anyone in the possession or apparent control of the machines, that it has elected so to do, and upon giving such notice, this license and lease for rental shall terminate, and upon the Licensor demanding or taking possession of said machines as herein provided, or demanding, taking, or accepting possession of a part of said machines or accessories without cancellation of this agreement, or otherwise, then the possession of said machines and accessories demanded, taken or accepted shall thereupon revest in the Licensor.

And the following terms and conditions of this license and lease for rental of the machines, together with those hereinbefore expressed, the Licensee hereby agrees to keep and perform, and upon condition of such faithful performance, this license and lease for rental is granted:

Article 1. The Licensee is by this license and lease for rental authorized to use the machines and accessories, herein described, only by himself or operators in his direct employ, and only in

Milford State of *Mass.* He shall not add to or subtract from the machines or accessories, any part or mechanism whatever now or hereafter organized or connected therewith by the Licensor, its agents, its direction or with its consent; nor make or allow to be made any change or alteration in the same, without the written consent of the Licensor, nor interfere with the proper operation of the machines and accessories, or any mechanism forming a part thereof, or attached thereto, or which may hereafter be attached thereto, or any device used in connection therewith, nor remove or deface any dates, numbers or inscriptions now or hereafter impressed thereon, or affixed thereto, by the Licensor, or by its direction. And the Licensee shall at all times, at his own expense, keep and maintain the machines and accessories in as good and efficient working order as the same now are or may hereafter be put by the Licensor.

Article 2. The Licensor and its agents shall, at all reasonable times, have access to the machines and accessories to examine and inspect the same and the use thereof, and to repair, improve or add to the same so far as it sees fit; and all covenants, stipulations and conditions herein contained shall apply to all improvements which the Licensor or its agents shall hereafter add to the machines or accessories, and to any patents which have or may be issued therefor with the same effect as if all such patents had been enumated in this license and lease for rental with the letters patent previously herein enumerated.

Article 3. The Licensee agrees to pay unto the Licensor on or before the fifteenth day of each month, as rental for the previous month, for the machines and accessories hereby licensed and leased for rental, and for the use of the inventions of the patents under which a license is hereby granted, a sum of lawful money equal to two cents for each and every pair of shoes and boots lasted, in whole or in part, by the aid of said machines or accessories, or any of them, or by the use of any of the inventions of said patents, or any of them, or in the making of which any of the inventions of said patents shall be used, and said rental of two cents for each and every pair of shoes and boots is hereby agreed upon by and between the parties hereto as the just, fair and correct value to the Licensee

for the rental and use of the machines and accessories, or any of them, and of the patents and inventions hereby licensed to the Licensee by the Licensor, if any are so used, and that the abated rental hereinafter named is not the true value of the license hereby granted, but is a concession and abatement of such value for and in consideration of the conditions hereunto attached, and this agreement and responsibility, and all others in this license and rental lease, shall extend to and in respect of all shoes and boots made or lasted, in whole or in part, by the aid of said machines and accessories, or any of them, embracing any inventions of any of the patents which the Licensee is hereby licensed to use, whether made by the Licensee, or by other persons for him, or obtained by the Licensee from any source whatever; provided, however, that in all cases when the Licensee shall pay to the Licensor in lawful money, on or before the fifteenth day of each month, the abated rental of one half of one cent per pair for each and every pair of shoes lasted in whole or in part by the use of said machines, or any of them, or in which any of the inventions or any of the patents shall have been used, except upon "Goodyear" or "welt shoes," upon which the abated rental shall be one cent per pair, and the abated rental of three quarters of one cent per pair for each and every pair of boots (having long legs) lasted as aforesaid, then said payments so duly made, together with any other indebtedness then due to the Licensor, shall be full payment and satisfaction of the rental for the use of said machines and accessories, or any of them, and of the license for the use of said patents, so far as may have been used for such shoes and boots, in respect to which said payment shall have been so duly made, and it is further agreed that on default of payment of such abated rental, together with any other indebtedness due to the Licensor, on or before the fifteenth day of each and every month, the Licensee shall forfeit the right to any abatement of the full rental of two cents per pair as herein provided, and it is agreed between the parties hereto that the abated rental shall be the same for the same kind of work to all Licensees in the United States for like machines and accessories acquired from the Licensor. And it is hereby further agreed that for each and every pair of

shoes and boots made or lasted, in whole or in part, by the aid of said machines or accessories, or any of them, hereby licensed or made by or for the Licensee by the use of any of the inventions of the patents hereby licensed, and in respect to which there shall not have been paid the abated rental as hereinbefore set forth, the Licensee agrees to pay in lawful money, to the Licensor, the sum of two cents as liquidated, fixed and settled damages. And it is also specially agreed that the monthly rental reports may be computed at abated rental, and in addition to the foregoing agreements relative to rental and to the abated rental, and to payments as liquidated damages of the full rental value, in case of neglect or default of, or refusal to make payment when due (it is agreed by the Licensee that in case he becomes insolvent, or makes an assignment for the benefit of creditors, or in case his property or business goes into the hands of a receiver), that then all rental due to the Licensor shall be at once computed at the full rental value, as previously provided herein, and the Licensee expressly obligates himself and assigns to promptly pay the same and not to contest or dispute any claim for the said full rental of two cents per pair for all shoes and boots lasted as herein provided.

Article 4. The Licensee agrees that the operators on the machines hereby licensed and leased shall keep a daily account (on blanks furnished by the Licensor for this purpose) of the number of pairs of shoes and boots lasted by them, and the class to which they belong, or which were lasted, in whole or in part, by the aid of any of said machines or accessories, or in the making of which any of the inventions of said patents were employed, which account shall be signed by the operator (and verified and signed by the Licensee if so requested by the Licensor) and delivered by the Licensee to the Licensor at Boston, Mass., not later than the fifth of each month during the continuance of this license and lease for rental for the month then next preceding, and rental shall be paid by the Licensee on the basis of said account, unless the Licensor requests payment to be made by count as indicated by the indicators attached to each and every lasting machine, and the Licensee agrees to give the Licensor, its successors or assigns, or its or their

authorized agents, free access at all times to the premises where the machines and accessories hereby licensed and leased are located, for the purpose of verifying the operators' reports, or the reports of the reading of said indicators, and in case operators' or indicators' reports shall not be duly made as provided, then it shall be the right of the Licensor to appoint a competent man to keep the accounts herein required, and all reasonable compensation for the services of such man (which shall not exceed $3.00 per day), and his necessary expenses shall be at the charge of the Licensee, and the Licensee hereby agrees to pay the same upon demand of the Licensor.

The Licensee agrees that he will allow the Licensor, its successors or assigns, and its and their agents at any time hereafter, to attach an indicator, or any other mechanism, to any machine embracing any of the inventions of the patents hereby licensed, which now is or may hereafter come into the possession of the Licensee for the purpose of recording the number of revolutions of the driving-shaft of said machines, or otherwise indicating the number of shoes and boots lasted upon by said machine, or the quantity of work done by said machines, and to examine, modify, repair, or replace such indicator, and the Licensee will not disturb or interfere with, nor permit anyone to disturb or interfere with, any indicator which now is or may hereafter be placed upon any machine as aforesaid, and in case any indicator shall become inoperative, the Licensee agrees to give immediate notice to the Licensor, and to keep and render as herein provided a correct account of the shoes and boots lasted, in whole or in part, on, or by the aid of, any of the machines and accessories while said indicators are out of order.

Article 5. The Licensee hereby agrees that he will not in any way violate, or infringe, or contest, the validity of any of the patents, or any re-issue or extension of same, under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Licensor to said patents, or any of them, and hereby specially admits the validity and sufficiency thereof as an important part of the consideration of this license and lease for rental.

Article 6. The Licensee hereby agrees that the machines and accessories shall not be transferred, and that this license and lease agreement for rental is not assignable by the Licensee by his own act or by operation of law.

Article 7. The Licensee hereby agrees that the power conveyed by this license and lease is only the right to use the specified machines and accessories and not the right to make, sell, or alter any machine embodying the inventions of the patents aforesaid, or any of them, and a transfer or removal of machines hereby licensed and leased shall only be made with the written consent of the Licensor, and if the Licensee is, or becomes at any time, insolvent or bankrupt, or a sale, loan, transfer or removal of said machines shall be made or attempted by the Licensee, or anyone acting in his interests, or by operation of law, or by any legal officer, representative or assignee, as the property of the Licensee, or otherwise, without the written consent of the Licensor, then this license and lease agreement for rental shall, at the option of said Licensor, terminate and expire, and said Licensor may then take possession of said machines, and accessories, without the Licensee or his representatives having any claim for repayment of any sum, or sums, which he may have paid as consideration for the delivery of this license for rental, or for any other purpose under this instrument.

Article 8. The licensee further agrees that if for any cause any of the machines hereby licensed and leased for rental shall remain unused for a period of four consecutive months, to the extent that each of said machines does not earn for the said Licensor, at the above mentioned rates, an amount equal to, or in excess of, twenty dollars for each of said four consecutive months, then said Licensor may by paying to the Licensee a sum of money equal to one third of the amount paid by him for this license, pro rata, as the sum paid for this license bears to the number of lasting machines hereby licensed, cancel and terminate this license and lease for rental, so far as it relates to said unused machines, by giving written notice that it has elected so to do, and upon giving such notice, this license and lease for rental shall be terminated, to the

extent aforesaid and the title and possession of said unused machines and accessories shall thereupon revest in said Licensor, or the Licensor may at its option, at any time thereafter, while the said unused machines remain unused, cancel this license and lease for rental, so far as it relates to said unused machines, by giving written notice (as herein provided) that it has elected so to do, and upon giving such notice, this license and lease for rental shall terminate to the extent aforesaid, and the title and possession of said unused machines and accessories shall thereupon revest in said Licensor, but, in case of this latter form of cancellation and reclamation, the Licensor shall pay the Licensee the proporation of the original price paid by the Licensee for this license and lease in proporation to the number of lasting machines originally delivered under said license and lease, and for which said sum of money was then paid, after deducting therefrom the cost of putting the machines and accessories in good repair, including all improvements, and also deducting for deterioration of machines by use or otherwise, and other expense in reference thereto, as provided and enumerated in Article 12, and these options and rights of cancellation and reclamation shall be independent of any other options or conditions contained in this license and lease agreement.

Article 9. This license and lease for rental shall continue until canceled by the Licensor for breach of condition or otherwise, but in case the Licensee refuses, or neglets to perform, or violates any condition of this license and lease, the Licensor shall have the right to terminate this license and lease by giving written notice aforesaid that it has elected so to do, and upon giving of such notice for any cause whatsoever, as herein provided for, this license and lease shall then terminate, and the possession of said machines and accessories shall thereupon revest in the Licensor, free and discharged of this license and lease. Upon the termination of this license and lease, by lapse of time, cancellation, breach of condition, non-use of machines, or otherwise, the Licensee shall forthwith deliver the machines and accessories hereby licensed and leased to the Licensor in good condition, reasonable wear and tear excepted, all risk and expense of transportation to and from

Licensee's factory being assumed and paid by the Licensee, and upon such termination, and without prejudice to any other legal rights or remedies for violation of contract, use of machines or accessories, without right, or infringement of patents, the Licensor or its agents may thereupon enter the premises where said machines and accessories may be and may take and remove the same, and the Licensee shall have no claim whatsoever against the Licensor under this license and lease.

Article 10. The Licensee hereby further agrees to keep all said machines and accessories insured for the benefit of the ~~Consolidated & McKay Lasting Machine~~ United Shoe Machinery Company (McKay and Copeland Department) for a sum not less than three hundred dollars for each and every lasting machine and its accessories, and to pay all taxes assessed on said machines and accessories. In case any of these machines or accessories are destroyed by fire, the Licensee agrees to pay to the Licensor the sum of three hundred dollars for each lasting machine and its accessories as partial compensation to the Licensor for its equity in this license and lease for rental, for such destruction of said machine and accessories.

Article 11. In case any other machines than those hereby licensed and leased, embracing any of the inventions of any of the patents under which this license is hereby granted, shall hereafter be ordered by, or come into the possession of the Licensee, without any other license and lease from the Licensor, then, in case the Licensor shall so elect, all the covenants herein contained shall apply to such machines and accessories, and shall govern the parties respectively to the same extent as if the said machines and accessories had been expressly included in this license and lease. The Licensor shall give written notice of its election, as aforesaid, within thirty (30) days after it shall have received written notice from the Licensee of the possession of such machines and accessories, but it may give such notice without having received such notice from the Licensee.

Article 12. It is declared and understood that it is the intention of the Licensee to use said machines and accessories herein licensed

and leased for lasting all of the shoes and boots made by him applicable to said machines, and not to have them in his possession as a means of reducing the price of hand-lasting, nor to control hand-lasters, or to influence any trade in connection with any other lasting machines not controlled by the Licensor, or the price-list for lasting thereon; and the Licensor enters into this contract because of and by reason of such understanding and upon such agreement on the part of the Licensee. It is therefore agreed that the Licensee shall use said machines and accessories hereby licensed and leased for rental, lasting all of his shoes and boots to their full capacity, limited only to the demands of his business; and should the demands of his business require, he shall take the license and lease of such additional machines and accessories as may be required to last all of his work, and in default of such use, the Licensor may at its option remove said machines and accessories, or any of them, from the possession of the Licensee, and may cancel this license and lease; and, in that case, the Licensor shall pay the Licensee, pro rata, the sum paid it for this license and lease for the return and possession of said machines and accessories, after deducting therefrom, viz.: —

1st. Fifteen per cent for deterioration.

2d. Whatever expense the Licensor may have been at in setting up, adjusting said machines, instructing operators, and getting said machines and accessories into use in the factory of the Licensee.

3d. The cost of rebuilding and improving said machines, or putting them in suitable order, for again being licensed to, and operated by, other Licensees.

Article 13. It is agreed that the Licensee shall buy of the Licensor, or its authorized agents, and only of it or them, all spare parts for repairing the machines hereby licensed and leased for rental, and also all the string-nail, tack-strips, or other fastenings, driven by any appliance for lasting all shoes or boots lasted in whole or in part by the aid of any of the machines or accessories hereby licensed and leased, or in the making of which any of the inventions of said patents shall be used, and that the same shall be sold by the Licensor at the same price to all Licensees for the time

being. The prices for the same to be fixed by the Licensor. And the Licensee shall and does hereby accept, at the option of the Licensor, delivery of machine or machines, f. o. b. cars, either at Lawrence, Mass., or at Beverly, Mass.

Article 14. All the rights and interests, which, under this instrument, and by reason of the ownership of said machines, accessories, patents, and patent rights, belong to the Licensor, shall be deemed to belong to, and may be enforced in its name, or otherwise, by the Licensor, its successors and assigns, and its or their representatives and assigns. All of the stipulations and agreements binding on the Licensee shall be binding on his or their representatives, successors and assigns.

Article 15. It is agreed that this instrument may be used for Licensees of the female sex, or for corporations, and in that case the masculine pronoun denoting the Licensee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and, also, that when the party of the second part shall consist of more than one person, the termination of the words relating to the said party shall be considered as singular or plural, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this license and lease for rental, either individually or by their firm signature, such signature or signatures shall bind them, both jointly and severally, to the terms and agreements herein contained; and, also that the numbers of the machines delivered under, or named in, or covered by this license and lease, may be entered herein by the Licensor after signing; and, that as this instrument is designed and intended for continuous use between the parties hereto, in case the Licensee shall have more than one machine (or set of machines) it is agreed that the termination of words relating to the machine shall be considered as written in the singular or plural, as the number of machines (or set of machines) entered in this license and lease for rental may require.

In Witness Whereof, the parties aforesaid have hereunto set their hands and seals, the said parties of the second part binding them-

selves, their legal representatives, and assigns, to all the foregoing agreements, both jointly and severally.

~~Consolidated & McKay Lasting Machine Company~~,
United Shoe Machinery Co. [SEAL]
by L. H. Baker, Sect'y. Treasurer.
[SEAL] Milford Shoe Co.
by W. W. Jenckes, Treas.

[Endorsed:]
Cancelled
"AA" License No. 225 Dated Jan. 31st, 1900.
Milford Shoe Co. Licensee.
Lasting Machines Nos. ~~344~~, 385, ~~386~~, ~~388~~.
Hand Tackers Nos. ~~591~~, ~~594~~, ~~598~~, ~~600~~.
Pinking Machines Nos. ~~245~~, ~~256~~, ~~368~~, ~~369~~.

PLAINTIFF'S EXHIBIT 7.

[Put in Evidence, page 321.]

200-6-8-1898-CCC.

License and Rental Lease No.

Transfer from License No.

This License and Rental Lease Agreement, made in duplicate the *19th* day of *September*, A. D. 18*98*, by and between the

Consolidated & McKay Lasting Machine Company,

(Chase Department)

a corporation incorporated under the laws of the State of Maine, Licensor and party of the first part, and *Thayer, Maguire & Field* of *Haverhill, Mass.*, Licensee and party of the second part, Witnesseth:

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting, to wit: No. 319,784, dated June 9, 1885; No. 337,662, dated March 9, 1886; No. 337,924, dated March 16, 1886; No. 337,925, dated March 16, 1886; No. 338,930, dated March 30, 1886; No. 340,860, dated April 27, 1886; No. 356,619, dated January 25, 1887; No. 356,620, dated January 25, 1887; No. 363,283, dated May 17, 1887; No. 364,088, dated May 31,

1887; No. 376,368, dated January 10, 1888; No. 391,688, dated October 23, 1888; No. 477,788, dated June 28, 1892; No. 477,789, dated June 28, 1892; No. 478,501, dated July 5, 1892; No. 483,375, dated September 27, 1892; No. 545,052, dated August 27, 1895; No. 558,011, dated April 7, 1896; No. 561,189, dated June 2, 1896; No. 571,404, dated November 17, 1896; No. 569,590, dated October 13, 1896; No. 569,182, dated October 13, 1896; No. 569,231, dated October 13, 1896; No. 571,339, dated November 17, 1896; No. 571,429, dated November 17, 1896; No. 571,509, dated November 17, 1895; and other patents applied for and now pending, and is, moreover, the owner of other patents not herein enumerated;

And, whereas, the Licensee desires to use the hereinafter described machines belonging to the Licensor:—

Now, therefore, the Licensor, in consideration of one dollar to it paid by the Licensee, the receipt whereof is hereby acknowledged, and of the stipulations and conditions hereinafter contained on the part of the Licensee to be kept and performed, doth loan unto the Licensee the machines designated by their numbers in the following schedule, the said machines embodying some of the foregoing named patents:—

1 Lasting Machine (Chase) No. *596.*

2 Hand Tackers (Chase Stop Motion) Nos. *2130, 2135.*

And the Licensor does hereby license the Licensee, and operatives in his employment, to use said specified loan or rented machines upon the terms and conditions herein set forth; provided, however, and this loan is made and this license is granted on the expressed condition that the Licensee shall faithfully keep and perform all the conditions and stipulations herein contained on his part to be kept and performed, and upon breach of the same or either of them by the Licensee, the Licensor may, at its option, cancel and terminate this loan and license, and upon written notice thereof by the Licensor to the Licensee, or to anyone in the possession or apparent control of the machines, this loan and license shall terminate, and possession of said machines shall thereupon revest in the Licensor. It is also agreed that the Licensor may, at

its option, upon breach of any condition herein contained, take possession of said machines, or any of them, without termination of this agreement.

And the following are also agreed to as terms and conditions of the loan and license of the machines which the Licensee is hereby licensed to use, all of which, together with those hereinbefore expressed, the Licensee hereby agrees to keep and perform: —

First.—The Licensee is by this loan and license authorized to use the machines hereby loaned, only by himself or operatives in his direct employ, and only in *Haverhill, Mass.*

He shall not add to nor subtract from the machines any mechanism whatever now or hereafter organized or connected therewith by the Licensor, nor make nor allow to be made any change or alteration in the same, without the consent thereto in writing of the Licensor, nor interfere with the proper operation of the machines, nor any mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers or inscriptions, now or hereafter impressed thereon or affixed thereto by the Licensor, and shall at all times at his own expense, keep and maintain the machines in as good and efficient working order as the same now are or may hereafter be put by the Licensor. All risks and expense of transportation to and from the Licensee's factory shall be assumed by the Licensee. Inasmuch as the machines are only loaned by the Licensor, and the Licensee pays no purchase price for the machines, the said machines do and shall continue to belong exclusively to and remain wholly the property of, and subject to the control of the Licensor, and the Licensee acquires no right to buy or to retain said machines except by the written consent of the Licensor. The Licensee agrees to keep the Lasting Machines and accessories in first-class order and repair at his own expense. The Licensee also hereby covenants and agrees to keep the Lasting Machines and accessories insured by a policy satisfactory to the Chase Department of the Consolidated & McKay Lasting Machine Company for two hundred dollars each, and to pay all taxes assessed on said machines. In case any Lasting Machines are damaged by fire, directly or indirectly, the Licensee

agrees to pay to the Licensor the sum of two hundred dollars for each Lasting Machine, including its accessories, so damaged.

Second.—The Licensor and its agents may, at all reasonable times, have convenient access to the machines to examine and inspect the same and the use thereof, and to repair and improve the same so far as it sees fit; and the covenants, stipulations and conditions herein contained shall apply to all improvements which the Licensor shall hereafter add to the machines and to all patents on said improvements, the right to use which shall be owned by the Licensor, with the same effect as if said patents were included in the list of patents hereinbefore set forth.

Third.—The Licensee agrees to pay unto the Licensor on the fifteenth (15th) day of each month, as rent or royalty for the previous month for the machines hereby loaned, and for the use of the patents hereby licensed, for each and every pair of shoes or boots lasted by the aid of said machines or any of them, or by the use of said patents or any of them, or in the making of which any of said patents shall be used, the sum set forth in the classified schedule hereto annexed in the column headed "Royalty Value"; and said royalty is hereby agreed upon by and between the parties hereto as the just, fair and correct value to the Licensee for rental of the machines and for use of the patents and inventions hereby licensed to the Licensee by the Licensor, and that the "abated rent or royalty" hereinafter named is not the true value of the license hereby granted, but is a concession and abatement of such value for and in consideration of the conditions hereto attached, and this agreement and responsibility, and all others in this license contained shall extend to and in respect of all shoes or boots made or lasted by the aid of said machines or on any machine embracing any of the patents which the Licensee is hereby licensed to use, whether made by the Licensee or by other persons for him; provided, however, that in all cases when the Licensee shall pay to the Licensor, on or before the fifteenth day of each month, the "abated rent or royalty" as hereinafter set forth, per pair for each and every pair of shoes or boots lasted in whole or in part by the use of said machines or patents, or any of them; said payments so duly made

shall be full payment and satisfaction of the rent or royalty for the use of said machines and of the license for the use of the patents, for such shoes or boots in respect to which said payments shall have been so duly made, and it is agreed that default of payment of said rent or royalty or of any indebtedness to the Licensor when due, that is, on or before the fifteenth (15th) of each month, shall forfeit the Licensee's right to any abatement of the full rent or royalty as herein provided. And it is hereby agreed that for each and every pair of shoes and boots made or lasted by the aid of the machines hereby loaned, or made by or for the Licensee by the use of the patents hereby licensed, or any of them, and in respect of which there shall not have been paid the "abated rent or royalty" as hereinbefore set forth, the Licensee shall pay to the Licensor the rental or royalty value named in said classified schedule as liquidated, fixed, and settled damages. It is hereby agreed that the monthly rent or royalty returns shall be computed at "abated rent or royalty". In addition to these agreements relating to rent or royalty, and to the "abated rent or royalty" and to payments as liquidated damages of the full rental or royalty value, in case of neglect or default of or refusal to make payment when due, it is agreed by the Licensee that in case he becomes insolvent or makes an assignment for the benefit of creditors, or in case his property or business goes into the hands of a receiver, all rent or royalty due to the Licensor shall be at once computed at the full rent or royalty value, as expressed in the schedule of rentals or royalties herewith attached, and the Licensee expressly agrees to this computation of the rental or royalty value, and further agrees not to contest or dispute any claim for the said full rental or royalty value. It is agreed and convenanted by the Licensee that whenever requested, in writing, by the Licensor, he will pay not less than ten dollars per month, as a minimum amount of rental or royalty for the use of each Lasting Machine, except when his factory is not running. But until further notice, given in writing, it is agreed between the parties hereto that if the Licensee pays the rental or royalty on or before the fifteenth (15th) of the month following the month when the lasting was done, and otherwise keeps all the

terms of this License, there will be a discount made for such payment sufficient to reduce the cost of "abated rent or royalty" on all classes of shoes to one half cent per pair, excepting on long-legged boots, on which the abatement will be sufficient to reduce the cost to three fourths of a cent a pair, but it is specially agreed that this abatement ceases upon written notice given by the Licensor to the Licensee.

Fourth.—The Licensee agrees that the operator on each machine shall keep a daily account of the number of pairs of shoes and boots lasted by him and the class to which they belong; which account shall be signed by the operator and verified and signed by the Licensee and forwarded by the Licensee to the Licensor on the first day of each month, and rental or royalty shall be paid by the Licensee on the basis of said account. And the Licensee agrees to give the Licensor, its successors, or assigns, or its or their authorized agent or agents, free access at all times to the premises where the machines hereby loaned are stored or operated, for the purpose of verifying the operators' reports, and in case operators' reports shall not be made as above provided, it shall be the right of the Licensor to appoint a competent man to keep the accounts herein required; and all reasonable compensation for the services and expenses of such man, which shall not exceed three dollars per day, shall be at the charge of the Licensee, and the Licensee hereby agrees to pay the same.

The Licensee agrees that he will allow the Licensor, its successors, and assigns, and its or their agents at any time hereafter, to attach an indicator or counter to any machine embracing any of the patents hereby licensed, which now is or which may hereafter come into the possession of the Licensee, for the purpose of indicating the number of shoes or boots made, and to examine, modify, repair, or replace the said indicator, and that he, the Licensee, will not disturb or interfere with, nor permit anyone else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon any machine as aforesaid.

Fifth.—The Licensee hereby agrees that he will not in any way violate, or infringe, or contest, the validity of any of the patents,

or any reissue or extension of the same, which he is hereby licensed to use, or the sufficiency of their specifications, or the validity of the title of the Licensor to said patents, or any of them, and expressly admits the validity and sufficiency thereof.

Sixth.—The machines cannot be transferred, and this loan and license is not assignable by the Licensee, by his own act or by operation of law.

Seventh.—The power conveyed by this license is only the right to use the said specific machines, and not the right to make, sell, or alter any machines embodying the patents aforesaid, or any of them; and a transfer or removal of the machines hereby loaned can only be made with the written consent of the Licensor; and if the Licensee is or becomes at any time insolvent or bankrupt, or if a sale, lease, transfer, alteration, or removal of said machines shall be made or attempted by the Licensee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Licensee, without the written consent of the Licensor, the possession of said machines shall thereupon revest in the Licensor, and it may take possession of said machines without the Licensee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this license, or for rental or royalty under this instrument, nor shall he be released thereby from any of the conditions of this agreement.

Eighth.—In case any machine hereby loaned shall remain unused for the period of four consecutive months, the Licensor may, at any time thereafter, while it remains unused, cancel this loan and license so far as relates to said unused machines, by giving written notice, as herein provided, that it has elected so to do, and, upon giving such notice, this loan and license shall be terminated to the extent aforesaid, and the possession of said unused machines shall thereupon revest in said Licensor, but in case of such cancellation and reclamation, the Licensee shall thereupon pay the Licensor the sum stated in article twelfth for deterioration of the machines by use or otherwise, and other expenses in reference to the same.

Ninth.—In case the Licensee refuses or neglects to perform, or

violates any of the conditions of this license, the Licensor shall have the right to terminate this license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this license shall be terminated, or upon taking or demanding possession of the machines without cancellation of this agreement, the possession of said machines shall thereupon revest in the Licensor; and upon the termination of the loan and license by lapse of time, cancellation, breach of condition, or otherwise, it shall be the duty of the Licensee forthwith to deliver the machines hereby loaned and licensed, to the Licensor in good condition, reasonable wear and tear excepted; and upon such termination or taking or demanding possession of the machines by the Licensor, and without prejudice to any other legal rights or remedies for violation of contract, use of machines without right, or use of patents without license, the Licensor or its agents may thereupon enter the premises where said machines may be, and may take and remove the same, and the Licensee shall have no claim whatever on account of any sum or sums he may have paid under this license as rent or royalty or otherwise, nor shall he be released from his agreements contained herein regarding sum due for return of machines, repairs, instruction of operators, deterioration, etc., as mentioned in article twelfth.

Tenth.—This license shall continue (unless the Licensor shall cancel this license for breach of condition) until the expiration of all the Letters Patent which the Licensee is hereby licensed to use, and which are or may hereafter be embodied in the hereby loaned machines, and the other patents or improvements referred to shall be considered as included in this license the same as if entered in this license by date and number, or any extensions or renewals of the same; and upon the expiration thereof the Licensee shall deliver to the Licensor the machines and accessories hereby loaned in good order, natural wear and tear alone excepted.

Eleventh.—In case any other machines than those now hereby loaned and licensed, embracing any of the patents hereby licensed, shall hereafter be ordered by, or come into the possession of, the Licensee then, in case the Licensor shall so elect, all the covenants herein contained shall apply to such machines, and shall govern the

parties respectively to the same extent as if the said machines had been expressly included in this loan and license. The Licensor shall give written notice of its election as aforesaid, and the entry into and under this License Agreement of all machines in possession of the Licensee is hereby specially agreed to by the Licensee, but this shall not take away the Licensor's right to refuse such entry in case of machines transferred without written consent of the Licensor.

Twelfth.—It is declared and understood that it is the intention of the Licensee to use said machines herein licensed for lasting all of the shoes and boots that shall be made by him applicable to the said machines, and not to have them in his possession as a means of reducing the price of hand-lasting, or of controlling hand-lasters, or of influencing a trade with the owners of any other Lasting Machines or of reducing the price thereof, or the prices for labor thereon, and the Licensor enters into this contract because of and by reason of such understanding and intention on the part of the Licensee. It is agreed that the Licensee shall use such machines hereby loaned for lasting all of his shoes and boots, to their full capacity, limited only by the demands of his business; and should the demands of his business require, he shall take and pay for the loan of such additional machines as may be required to do all his work; and in case any Lasting Machine in this agreement is returned to the Licensor, whether voluntarily or because of the Licensee's insolvency or the appointment of a Receiver for his business, or for non-compliance with this agreement, or otherwise, the Licensee or his assigns shall pay the Licensor one hundred (100) dollars as compensation for setting up each machine at his factory, for instructing operators, and other expenses incurred, and he shall also pay, in addition thereto, the cost of putting the machine into good condition and repair, as well as freight expense of returning the same.

Thirteenth. — It is agreed that the Licensee shall buy of the Licensor, and only of it, all the fittings and all the spare parts for repairing the machines hereby licensed, and also all the string-nail, tack-strips, or other fastenings to be driven by any appliance for lasting the shoes or boots, whether lasted in whole or in part by

the aid of any of the machines hereby licensed, or by the use of any of the said patents, or in the making of any of which any of said patents shall be used; and that the same shall be sold by the Licensor at the same prices to all Licensees for the time being. The prices and terms for the same to be fixed by the Licensor; and in all cases whenever the machines are returned to the possession of the Licensor all the accessories, which shall include all spare parts and fittings, shall be returned with the machines, free from any claim as to title, and all unused tack-strips remaining in the possession of the Licensee at the time of the return of the machines shall also be returned to the Licensor's possession free from any claim as to title, but credit for such tack-strips shall be given by the Licensor.

Fourteenth. — All the rights and interests which, under this instrument and by reason of the ownership of said machines and patents and patent rights belonging to the Licensor, shall be deemed to belong to and may be enforced by the Licensor, its representatives, and assigns, and all the stipulations binding on the Licensee shall be binding on his or their representatives or assigns.

Fifteenth. — It is agreed that this instrument may be used for Licensees of the female sex, or for corporations, and in that case the masculine pronoun denoting the Licensee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that when the party of the second part shall consist of more than one person the termination of the words relating to the said party shall be considered as singular or plural, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this License and Lease for the Rental, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained, and also that the numbers of the machines named in or covered by this License and Lease may be entered herein by the Licensor after signing; and that as this instrument is designed and intended for continuous use between the parties hereto, in case the Licensee shall have more than one machine, it is agreed that the termination of words relating to the machine shall be considered as written in the singular or

plural, as the number of machines entered in this License and Lease Agreement may require.

SCHEDULES OF RENTALS OR ROYALTIES.
(Referred to in Article third.)

	Men's Shoes and Boots.					
	Plain.		Tips.		Tips & Boxes.	
	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.
Buff and Grain . .	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	1c.
Flesh Split . .	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	1c.
Calf, etc. . . .	2c.	$\frac{7}{10}$c.	3c.	$\frac{9}{10}$c.	3c.	1c.
Goodyear . . .	4c.	$1\frac{4}{10}$c.	4c.	$1\frac{4}{10}$c.	4c.	$1\frac{4}{10}$c.

	Boys' and Youth's Shoes.						Boots.		Women's.	
	Plain.		Tips.		Tips & Boxes.		Long Legs.			
	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Value.
Buff and Grain,	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	$\frac{9}{10}$c.	3c.	1c.	2c.	$\frac{6}{10}$c.
Flesh Split .							3c.	1c.	2c.	$\frac{6}{10}$c.
Calf, etc. .							3c.	1c.	2c.	$\frac{6}{10}$c.
Goodyear .	3c.	1c.	3c.	1c.	3c.	1c.	4c.	1c.	4c.	1c.

In Witness Whereof, the parties aforesaid have hereunto set their hands and seals, the said parties of the second part binding themselves, their legal representatives, and assigns, to all the foregoing agreements, both jointly and severally.

[SEAL] CONSOLIDATED & MCKAY LASTING MACHINE COMPANY,
by Geo. W. Brown, Treasurer.
THAYER MAGUIRE & FIELD.

[Endorsed:]
"AAA" License No. 38 Lasting Machines Nos. 596.
Hand Tackers Nos. 2130, 2135.
Thayer, Maguire & Field, Licensee.
Dated Sept. 19, 1898.
Cancelled file.

PLAINTIFF'S EXHIBIT 8.

[Put in Evidence, page 323.]

1000-4-18-1898-A

License and Rental Lease No. *201*

This License and Rental Lease Agreement, made in duplicate the *26* day of April A. D. 18*99*, by and between the

Consolidated & McKay Lasting Machine Company,

a corporation incorporated under the laws of the State of Maine, Licensor and party of the first part, and *Riverside Shoe Co.* of *Dixon Ills*, Licensee and party of the second part, Witnesseth:

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting, to wit: No. 274,207, dated March 20, 1883, No. 281,306, dated July 17, 1883, No. 284,906, dated Sept. 11, 1883, No. 292,575, dated Jan. 29, 1884, No. 312,335, dated Feb. 17, 1885, No. 415,726, dated Nov. 26, 1889, No. 421,954, dated Feb. 25, 1890, No. 423,920, dated March 25, 1890, No. 423,-921, dated March 25, 1890, No. 423,922, dated March 25, 1890, No. 423,937, dated March 25, 1890, No. 441,482, dated Nov. 25, 1890, No. 459,899, dated Sept. 22, 1891, No. 482,349, dated Sept. 13, 1892, No. 500,141, dated June 27, 1893, No. 510,972, dated Dec. 19, 1893, No. 510,973, dated Dec. 19, 1893, No. 510,974, dated Dec. 19, 1893, No. 510,975, dated Dec. 19, 1893, No. 510,-976, dated Dec. 19, 1893, No. 510,977, dated Dec. 19, 1893, No. 510,978, dated Dec. 19, 1893, No. 518,933, dated April 24, 1894, No. 523,939, dated July 31, 1894, No. 533,394, dated Jan. 29, 1895, No. 560,767, dated May 26, 1896, No. 562,119, dated June 16,1896, No. 564,931, dated July 28, 1896, No. 567,566, dated Sept. 8, 1896, No. 584,741, dated June 15, 1897, No. 584,742, dated June 15, 1897, No. 584,743, dated June 15, 1897, No. 584,744, dated June 15, 1897, No. 579,321, dated January 11, 1898, and other patents applied for and now pending, and is, moreover, the owner of or Licensee under other patents not herein enumerated;

And, whereas, the Licensee desires the right to use, under the terms of this License and Lease Agreement, the hereinafter

described machine belonging to and owned by the Licensor, and also any improvements relating to the machine hereby licensed and leased for Rental, which may hereafter be acquired by the Licensor and attached to the machine hereby licensed and leased for Rental, or delivered to the Licensee to be used in connection therewith, and also any other machine, machinery, or device made by or for the Licensor, which may hereafter come into the possession of the Licensee :

Now, therefore, the Licensor, in consideration of Three Hundred Dollars ($300.00) to be paid for this License by the Licensee, and of the stipulations, conditions and agreements herein contained, on the part of the Licensee to be kept and performed, does license unto the Licensee, Lasting Machine No. *241*, property of the Licensor, but delivered f. o. b. cars at Beverly, Mass., into the possession of the Licensee for lasting boots and shoes at the factory of the Licensee in *Dixon* State of *Ills.* and nowhere else. Said machine is constructed in accordance with and embodies the invention or inventions or some part thereof described in said Letters Patent granted and to be granted, to which Letters Patent when granted this License and Lease agreement shall apply and the parties hereunto shall be bound relatively thereto, the same in all respects as if the patents had been granted and the numbers thereof specially enumerated in this License and Lease agreement before signing.

The Licensor does hereby license the Licensee and the operatives in his employ to use said patented machine upon the terms and conditions herein set forth, and the Licensor does hereby also license the Licensee to use the inventions of all said patents above enumerated or referred to and all reissues, renewals and extensions of the same embodied in said machine; provided, however, and this License and Lease is granted on the express conditions that the Licensee shall at all times faithfully perform all and every condition herein contained upon his part to be kept and performed, and upon breach of said conditions or any of them by the Licensee, the Licensor at its option may cancel and terminate this License and Lease Agreement and upon written notice thereof to the

Licensee or to any one in possession of or apparent control of the machine this License and Lease Agreement shall terminate and the possession of said machine may thereupon be taken by the Licensor or its duly authorized Agents.

And the following are conditions and agreements which the Licensee hereby agrees to keep and perform and upon condition of the faithful performance of which, this License and Lease agreement is granted.

First.—The Licensee agrees that the operator on this machine shall keep a daily account on blanks, furnished by the Licensor for that purpose, of the numbers of pairs of boots and shoes and the kinds thereof lasted on or by the use of said machine or by the use of any of the inventions of said patents or in the making of which any of the inventions of said patents were employed or the machine performed a part, which account shall be signed by the operator (and verified and signed by the Licensee, if requested by the Licensor) and forwarded by the Licensee to the Licensor on or before the fifth day of each and every month in each and every year during the continuance of this License and Lease Agreement, for the month then next preceding, and on or before the fifth day thereafter the Licensee shall pay to the Licensor as rent for the use of said machine and the use of any of the inventions of said patents, a sum of lawful money equal to one-half (1-2) of one cent for each and every pair of boots and shoes lasted on or by the use of said machine or by the use of any of the inventions of said patents, or in the making of which said machine performed a part, during the month then next preceding, but seventy-two (72) pairs of Misses' and Children's shall be considered equivalent to (60) pairs of other kinds.

Second.—If, for any cause, this machine shall not be in use during twelve (12) consecutive months to the extent of its earning for the said Licensor at the above mentioned rates an amount equal to or in excess of Seventy-five Dollars ($75.00), then said Licensor may by paying to the Licensee a sum of money equal to one-third (1-3) of the amount paid by him for this License, cancel and terminate this License and Lease Agreement as hereinbefore

specified, this option and condition to be independent of any other options and conditions contained in this License and Lease Agreement.

Third.—The Licensee hereby agrees that he will not in any way violate or infringe or contest the validity of any of the patents he is hereby licensed to use or the sufficiency of their specifications or the validity of the title of the Licensor to said patents or any of them.

Fourth.—This License and Lease Agreement is not assignable and shall not be assigned by the Licensee by his own act or by the operation of law.

Fifth.—The power conveyed by this License and Lease Agreement is only the right to use said machine herein enumerated and embodying any of the inventions of said patents, and not the right to make, use or sell any other machine embodying any of the inventions of the patents aforesaid; the transfer or removal of the machine hereby licensed and leased can only be made with the consent of the Licensor; and if the Licensee is or becomes at any time insolvent or bankrupt, or a sale, transfer or removal of said machine shall be made or attempted by the Licensee or by the operation of law or by any legal officer, representative, or assigns as the property of the Licensee without the consent in writing of the Licensor, this License and Lease Agreement shall at the option of said Licensor terminate and expire, and said Licensor may take possession of said machine without the Licensee or his representative having any claim for repayment of any of the sum or sums which he may have paid as consideration for the delivery of this License or for rent or royalty under this instrument.

Sixth.—The Licensee agrees that he will allow the Licensor or its Agents at any time hereafter to attach an indicator or other mechanism to any machine embracing any of the inventions of the patents hereby licensed which now is or may hereafter come into the possession of the Licensee for the purpose of recording the number of revolutions of the driving-shaft of said machine, or of otherwise indicating the quantity of boots and shoes operated by said machine or the quantity of work done by said machine, and to

examine, modify, repair or replace said indicator, and the Licensee will not disturb or interfere with, or permit anyone else to disturb or interfere with, any indicator which now is or may hereafter be placed upon a machine as aforesaid.

And the Licensee shall not add to or subtract from the machine any mechanism whatever now or hereafter organized or connected therewith by the Licensor, nor make nor allow to be made any change or alteration in the same without the consent thereto in writing of the Licensor, nor interfere with the proper operation of the machine or any mechanism forming a part thereof or attached thereto, or that may be hereafter attached thereto, and shall at all times at his own expense keep and maintain the machine in as good and efficient working order as the same now is or may hereafter be put by the Licensor, and to obtain from the Licensor or its Agents all duplicate parts for said machine whenever any are needed.

The Licensor and its Agents may at all reasonable times have convenient access to the machine to examine and inspect the same, and the use thereof, and to repair and improve or add to the same so far as it may see fit; and all the covenants, stipulations, conditions and terms of this License and Lease Agreement shall apply to all improvements which the Licensor shall hereafter add to the machine, and to all patents therefor, with the same effect as if such additional patents were enumerated in the previous list herein set forth.

Seventh.— In case the Licensee refuses or neglects to perform, or violates any of the conditions of this License and Lease Agreement, the Licensor shall have the right to terminate this License and Lease Agreement, by giving written notice as aforesaid that it has elected so to do, and, upon the giving of such notice, this License and Lease Agreement shall terminate, and it shall be the duty of the Licensee forthwith to deliver the possession of said machine to the Licensor, in good condition, reasonable wear and tear excepted, and without prejudice to any other legal rights or remedies for violation of this contract, use of machine, or use of any of the inventions of said patents without license. The Licensor

or its Agents may thereupon enter the premises wherein said machine may be, and take and remove the same, and the Licensee shall have no claim whatever on account of any sum or sums he may have paid for this License, or under this License and Lease Agreement.

Eighth.— This License and Lease Agreement shall continue (provided the Licensee keeps and performs the conditions thereof) until the expiration of all Letters Patent, or any extensions or renewals thereof, now or hereafter owned by the Licensor, or any inventions which are or shall be hereafter embodied in, or used in connection with, said machine; and, upon the expiration of all said Letters Patent, the Licensee shall, upon demand, deliver to the Licensor the machine hereby leased or rented, in good order and repair; and the Licensee shall have no claim whatsoever on account of any sum or sums that may have been paid for this License, or under this License and Lease Agreement.

All the rights and interests which, under this instrument and by reason of the ownership of said machine and patents and patent rights, belong to the Licensor, shall be deemed to belong to, and may be enforced in its name or otherwise by the Licensor, its successors and assigns and its or their representatives or assigns; all the stipulations and agreements binding on the Licensee shall be binding upon their representatives, successors or assigns.

Ninth.— It is agreed that this instrument may be used for Licensees of the female sex, or for corporations, and in that case the masculine pronoun denoting the Licensee shall, whenever it occurs, be instead of, and indicate the feminine or neuter; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to said party shall be considered as plural or singular, as the case may require; and when said party of the second part so consists of several persons, and they sign this License and Lease Agreement, either individually or by their firm signature, such signature or signatures shall bind them, both jointly and severally, to the terms and agreements herein contained, and also that the number of the machine named in this

License and Lease Agreement may be entered by the Licensor, after signing, and that as this instrument is designed and intended for use between the parties hereto, in case the Licensee shall require more than one machine, and it is entered in this License and Lease Agreement, it is agreed that the termination of the words relating to the machine shall be construed and considered as written in the singular or plural, as the number of machines entered in this License and Lease Agreement may require.

In witness whereof, the parties aforesaid have hereunto set their hands and seals, the said parties of the second part binding themselves, their legal representatives, and assigns, to all the foregoing agreements, both jointly and severally.

CONSOLIDATED & MCKAY LASTING MACHINE COMPANY,
[SEAL] by Geo. W. Brown, Treasurer.
RIVERSIDE SHOE CO.
by F. A. Watson, V. Prest.

[Endorsed:]
"A" License No. 201 Machine No. 241
Riverside Shoe Co., Licensee. Dated April 26, 1899

PLAINTIFF'S EXHIBIT 9.

[Put in Evidence, page 324.]

1000-3-18-1898-B

License and Rental Lease No. *129 "G"*

This license and rental lease agreement, made in duplicate the *16th* day of *March* A. D. 1*900*, by and between the

Consolidated & McKay Lasting Machine Company,

a corporation incorporated under the laws of the State of Maine, Licensor and party of the first part, and *Leonard, Shaw and Dean* of *Middleboro, Mass*, Licensee and party of the second part, Witnesseth: —

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting, to wit: No. 274,207, dated March 20, 1883, No. 281,306, dated July 17, 1883, No. 284,906, dated Sept.

11, 1883, No. 292,575, dated Jan. 29, 1884, No. 312,335, dated Feb. 17, 1885, No. 415,726, dated Nov. 26, 1889, No. 421,954, dated Feb. 25, 1890, No. 423,920, dated March 25, 1890, No. 423,921, dated March 25, 1890, No. 423,922, dated March 25, 1890, No. 423,937, dated March 25, 1890, No. 441,482, dated Nov. 25, 1890, No. 459,899, dated Sept. 22, 1891, No. 482,349, dated Sept. 13, 1892, No. 500,141, dated June 27, 1893, No. 510,972, dated Dec. 19, 1893, No. 510,973, dated Dec. 19, 1893, No. 510,974, dated Dec. 19, 1893, No. 510,975, dated Dec. 19, 1893, No. 510,976, dated Dec. 19, 1893, No. 510,977, dated Dec. 19, 1893, No. 510,978, dated Dec. 19, 1893, No. 518,933, dated April 24, 1894, No. 523,-939, dated July 31, 1894, No. 533,394, dated Jan. 29, 1895, No. 560,767, dated May 26, 1896, No. 562,119, dated June 16, 1896, No. 564,931, dated July 28, 1896, No. 567,566, dated Sept. 8, 1896, No. 584,741, dated June 15, 1897, No. 584,742, dated June 15, 1897, No. 584,743, dated June 15, 1897, No. 584,744, dated June 15, 1897, and other patents applied for and now pending, and is, moreover, the owner of or Licensee under other patents not herein enumerated;

And, whereas, the Licensee desires the right to use, under the terms of this License and Lease Agreement, the hereinafter described machine belonging to and owned by the Licensor, and also any improvements relating to the machine hereby licensed and leased for Rental, which may hereafter be acquired by the Licensor and attached to the machine hereby licensed and leased for Rental, or delivered to the Licensee to be used in connection therewith, and also any other machine, machinery, or device made by or for the Licensor, which may hereafter come into the possession of the Licensee:

Now, therefore, the Licensor, in consideration of one dollar to it paid by the Licensee, the receipt whereof is hereby acknowledged, and of the agreements and conditions herein agreed upon, to be kept and performed by the Licensee, does hereby license and lease for Rental unto the Licensee the machine herein designated by its number, said machine embodying the inventions of some of the foregoing named patents: — Lasting Machine No. *2224*.

And the Licensor does hereby license and lease the Licensee and operators in his employ to use said machine, but only upon the terms and conditions herein set forth; Provided, however, and this License and Lease is granted upon the express condition that the Licensee shall faithfully keep and perform all the conditions and agreements herein contained on his part to be kept and performed, and upon breach of the same or either of them by the Licensee the Licensor may, at its option, cancel and terminate this License and Lease by giving written notice to the Licensee or to any one in possession or apparent control of the machine, that it has elected so to do, and upon the giving of such notice this License and Lease shall terminate, and upon the Licensor taking or demanding possession of this machine, as herein provided, or without cancellation of this Agreement, then the possession of said machine shall thereupon revest in the Licensor. And inasmuch as the machine is only leased and rented by the Licensor, and the Licensee pays no purchase price whatsoever for the machine, therefore the said machine does and shall continue to belong exclusively to, and remain wholly the property of, and subject only to the control of the Licensor, and the Licensee acquires no right to buy or retain said machine except by written consent of the Licensor.

Upon the termination of this License and Lease for Rental by lapse of time, cancellation, breach of contract, non-use of machine, or otherwise, the Licensee shall forthwith deliver the machine, hereby licensed and leased, to the Licensor in good condition, reasonable wear and tear excepted, and also pay to the Licensor the sum of One Hundred and Fifty (150) Dollars, as compensation for setting up the machine at his factory, for instructing operators, and deterioration.

And the following terms and conditions of the License and Lease of the machine, together with those hereinbefore expressed, the Licensee hereby agrees to keep and perform:

First. — The Licensee is by this License and Lease for Rental authorized to use the machine herein described, only by himself or operators in his direct employ, and only in *Middleboro Mass.* He shall not add to, nor subtract from, the machine any part or mechan-

ism whatever, now or hereafter organized or connected therewith by the Licensor, nor make, nor allow to be made any change or alteration in the same, without the consent thereto in writing of the Licensor, nor interfere with the proper operation of the machine, nor any mechanism forming a part thereof or attached thereto, nor any device used in connection therewith, nor remove or deface any dates, numbers, or inscriptions, now or hereafter impressed thereon, or affixed thereto by the Licensor or by its direction, and the Licensee shall at all times at his own expense keep and maintain the machine in as good and efficient working order as the same now is or may hereafter be put by the Licensor.

Second. — The Licensor and its agents shall, at all reasonable times, have access to the machine to examine and inspect the same and the use thereof, and to repair and improve the same so far as it sees fit, and all covenants, stipulations, and conditions herein contained shall apply to all improvements which the Licensor shall hereafter add to the machine, and to any patents which have or may be issued thereon, with the same effect as if the patents were enumerated in this License and Lease with the Letters Patent previously herein enumerated.

Third. — The Licensee agrees to pay unto the Licensor, on the tenth day of each month, as Rental for the previous month for the machine hereby licensed and leased, and for the use of the inventions of the patents under which a License is hereby granted, a sum of lawful money equal to one-half ($\frac{1}{2}$) of one cent for each and every pair of Misses' and Children's and five-eighths (5-8) of one cent for each and every pair of all other kinds of boots and shoes lasted by the aid of this machine, or by the use of the inventions of said patents, or any of them, or in the making of which the inventions of said patents shall be used; and should such Rental fall short of an average of Fifteen (15) Dollars per month, for any twelve (12) consecutive months (excepting months during the whole of which the factory is idle), then the Licensee agrees to pay, upon demand, such an amount as will make the average Fifteen (15) Dollars per month for such twelve (12) consecutive months.

Fourth. — The Licensee agrees that the operator on the machine hereby licensed and leased shall keep a daily account of the number of pairs of boots and shoes lasted by him, and the class to which they belong, which account shall be signed by the operator, and verified and signed by the Licensee, if so requested by the Licensor, and delivered by the Licensee to the Licensor at Boston, Mass., not later than the fifth of each month, and Rental shall be paid by the Licensee on the basis of said account, and the Licensee agrees to give the Licensor, its successors, or assigns, or its or their authorized agents, free access at all times to the premises where the machine hereby licensed and leased is located, for the purpose of verifying the operators' reports, and in case operators' reports shall not be made as provided above, it shall be the right of the Licensor to appoint a competent man to keep the accounts herein required; and all reasonable compensation for the services and expenses of such man, which shall not exceed $3 per day, shall be at the charge of the Licensee, and the Licensee hereby agrees to pay the same upon demand to the Licensor.

The Licensee agrees that he will allow the Licensor, its successors, or assigns, and its and their agents, at any time hereafter, to attach an indicator, or counter, to any machine embracing any of the patents under which a License is hereby granted, which now is or may hereafter come into possession of the Licensee, for the purpose of indicating the number of boots and shoes lasted, and to examine, modify, repair, or replace the said indicator, and that he, the Licensee, will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is or may hereafter be placed upon any machine as aforesaid.

Fifth. — The Licensee hereby agrees that he will not in any way violate, or infringe, or contest the validity of any of the patents, or any reissue, or extension of the same, under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Licensor, to said patents or any of them, and hereby expressly admits the validity and sufficiency thereof as an important part of the consideration for this License and Lease for Rental.

Sixth. — This machine shall not be transferred, and this License

and Lease for Rental is not assignable by the Licensee by his own act or by operation of law.

Seventh.— The power conveyed by this License and Lease is only the right to use the said specific machine, and not the right to make, sell, or alter any machine embodying the inventions of the patents aforesaid, or any of them; and a transfer or removal of the machine hereby licensed and leased shall only be made with the written consent of the Licensor, and if the Licensee is or becomes at any time insolvent or bankrupt, or if a sale, loan, transfer, or removal of said machine shall be made or attempted by the Licensee, or by the operation of law, or by any legal officer, representative, or assignee, as the property of the Licensee, or otherwise, without the written consent of the Licensor, the Licensor may cancel and terminate this License and Lease Agreement, and then the possession of said machine shall thereupon revest in the Licensor, and it may take possession of said machine without the Licensee having any claim for the repayment of any part of the sum or sums which he may have paid as Rent or License under this instrument.

Eighth.— In case any machine hereby licensed shall remain unused for the period of four consecutive months, the Licensor may at any time thereafter, while it remains unused, cancel this License and Lease Agreement, so far as relates to said unused machine, by giving written notice, as herein provided, that it has elected so to do; and upon giving such notice this License and Lease Agreement shall be terminated to the extent aforesaid, and possession of said unused machine shall thereupon revest in said Licensor.

Ninth.— This License and Lease Agreement shall continue until cancelled by the Licensor for breach of condition or otherwise, but in case the Licensee refuses or neglects to perform, or violates any condition of this License and Lease Agreement, the Licensor shall have the right to terminate this License and Lease Agreement by giving written notice, as aforesaid, that it has elected so to do; and upon the giving of such notice for any cause whatsoever, as herein provided for, this License and Lease Agreement shall then terminate, and the possession of said machine shall thereupon revest in the Licensor, free and discharged of this License and Lease. Upon

the termination of this License and Lease by lapse of time, cancellation, breach of condition, non-use of machine, or otherwise, it shall be the duty of the Licensee forthwith to deliver the machine hereby licensed and leased to the Licensor in good condition, reasonable wear and tear excepted, and to pay to the Licensor the sum of One Hundred and Fifty (150) Dollars for each machine so delivered; and upon such termination, and without prejudice to any other legal rights or remedies for violation of contract, use of machine without right, of infringement of patents, the Licensor, or its agents, may thereupon enter the premises where said machine may be and may take and remove the same, and the Licensee shall have no claim whatsoever against the Licensor under this License and Lease Agreement.

Tenth.— The Licensee also covenants and agrees to keep this machine and accessories insured, for the benefit of the Consolidated & McKay Lasting Machine Company, to the amount of Two Hundred (200) Dollars, and to pay all taxes assessed on said machine. In case this machine is destroyed by fire, the Licensee agrees to pay to the Licensor the sum of Two Hundred (200) Dollars, as partial compensation for such destruction of machine.

Eleventh.— In case any other machine than that hereby licensed and leased, embracing the invention of any of the patents under which the License is hereby granted, shall hereafter come into the possession of the Licensee, without a written License and Lease from the Licensor, then, in case the Licensor shall so elect, all the covenants herein contained shall apply to such machine, and shall govern the parties respectively to the same extent as if the said machine had been expressly included in this License and Lease Agreement. The Licensor shall give written notice of its election, as aforesaid, within thirty (30) days after it shall have received written notice from the Licensee of the possession of such machine, but it may give such notice without having received such notice from the Licensee.

Twelfth.— It is declared and understood that it is the intention of the Licensee to use said machine herein licensed and leased for lasting all the boots and shoes made by him applicable to the said

machine, and not to have it in his possession as a means of reducing the price of hand lasting or of controlling hand lasters, or of influencing a trade with any other lasting machine not controlled by the Licensor, or the list price thereon, and the Licensor enters into this contract because of and by reason of such understanding and agreement on the part of the Licensee. It is therefore agreed that the Licensee shall use such machine hereby licensed and leased for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work.

Thirteenth. It is agreed that the Licensee shall buy of the Licensor, or its authorized agents, and only of it or them, the spare parts for repairing *also the wire for lasting shoes in* the machine hereby licensed and leased, and shall and does hereby accept delivery of machine at Beverly, Mass., f. o. b. cars.

Fourteenth. All the rights and interests which, under this instrument and by reason of the ownership of said machines and patents and patent rights, belong to the Licensor, shall be deemed to belong to, and may be enforced, in its name or otherwise, by the Licensor, its successors and assigns, and its or their representatives and assigns. All of the stipulations and agreements binding on the Licensee shall be binding on his or their representatives, successors, and assigns.

Fifteenth. It is agreed that this instrument may be used for Licensees of the female sex, or for corporations, and in that case the masculine pronoun denoting the Licensee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that when the party of the second part shall consist of more than one person, the termination of the words relating to the said party shall be considered as singular or plural, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this License and Lease for Rental, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained, and also that

the numbers of the machines named in or covered by this License and Lease may be entered herein by the Licensor after signing; and that as this instrument is designed and intended for continuous use between the parties hereto, in case the Licensee shall have more than one machine, it is agreed that the termination of words relating to the machine shall be considered as written in the singular or plural, as the number of machines entered in this License and Lease Agreement may require.

In witness whereof, the parties aforesaid have hereunto set their hands and seals, the said parties of the second part binding themselves, their legal representatives, and assigns, to all the foregoing agreements, both jointly and severally.

Seven (7) words inserted in clause 13 before execution.

CONSOLIDATED & MCKAY LASTING MACHINE COMPANY,
[SEAL] by Geo. W. Brown, Treasurer.
LEONARD SHAW & DEAN [SEAL]

[Endorsed:]
License No. 129 "G" Machine No. 2224
Leonard Shaw & Dean Licensee.
Dated March 16 1900

PLAINTIFF'S EXHIBIT 10.

[Put in Evidence, page 324.]

1000-3-9-1898-C

License and Rental Lease No. *19G*

This License and Rental Lease Agreement, made in duplicate the *25* day of April A. D. 18*98*, by and between the

Consolidated & McKay Lasting Machine Company,

a corporation incorporated under the laws of the State of Maine, Licensor and party of the first part, and *Brown Shoe Co.* of *St. Louis, Mo.*, Licensee and party of the second part, Witnesseth:

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting, to wit: No. 274,207, dated March 20, 1883, No. 281,306, dated July 17, 1883, No. 284,906, dated Sept. 11, 1883, No. 292,575, dated Jan. 29, 1884, No. 312,335, dated

Feb. 17, 1885, No. 415,726, dated Nov. 26, 1889, No. 421,954, dated Feb. 25, 1890, No. 423,920, dated March 25, 1890, No. 423,921, dated March 25, 1890, No. 423,922, dated March 25, 1890, No. 423,937, dated March 25, 1890, No. 441,482, dated Nov. 25, 1890, No. 459,899, dated Sept. 22, 1891, No. 482,349, dated Sept. 13, 1892, No. 500,141, dated June 27, 1893, No. 510,972, dated Dec. 19, 1893, No. 510,973, dated Dec. 19, 1893, No. 510,974, dated Dec. 19, 1893, No. 510,975, dated Dec. 19, 1893, No. 510,976, dated Dec. 19, 1893, No. 510,977, dated Dec. 19, 1893, No. 510,978, dated Dec. 19, 1893, No. 518,933, dated April 24, 1894, No. 523,939, dated July 31, 1894, No. 533,394, dated Jan. 29, 1895, No. 560,767, dated May 26, 1896, No. 562,119, dated June 16, 1896, No. 564,931, dated July 28, 1896, No. 567,566, dated Sept. 8, 1896, No. 584,741, dated June 15, 1897, No. 584,742, dated June 15, 1897, No. 584,743, dated June 15, 1897, No. 584,744, dated June 15, 1897, and other patents applied for and now pending, and is, moreover, the owner of or Licensee under other patents not herein enumerated;

And, whereas, the Licensee, desires the right to use, under the terms of this License and Lease Agreement, the hereinafter described machine belonging to and owned by the Licensor, and also any improvements relating to the machine hereby licensed and leased for Rental, which may hereafter be acquired by the Licensor and attached to the machine hereby licensed and leased for Rental, or delivered to the Licensee to be used in connection therewith, and also any other machine, machinery, or device made by or for the Licensor, which may hereafter come into the possession of the Licensee.

Now, therefore, the Licensor, in consideration of one dollar to it paid by the Licensee, the receipt whereof is hereby acknowledged, and of the agreements and conditions herein agreed upon, to be kept and performed by the Licensee, does hereby license and lease for Rental unto the Licensee the machine herein designated by its number, said machine embodying the inventions of some of the foregoing named patents:— Lasting Machine No. *1933*.

And the Licensor does hereby license and lease the Licensee and

operators in his employ to use said machine, but only upon the terms and conditions herein set forth; provided, however, and this License and Lease is granted upon the express condition that the Licensee shall faithfully keep and perform all the conditions and agreements herein contained on his part to be kept and performed; and upon breach of the same or either of them by the Licensee the Licensor may, at its option, cancel and terminate this License and Lease by giving written notice to the Licensee or to any one in possession or apparent control of the machine, that it has elected so to do, and upon the giving of such notice this License and Lease shall terminate, and upon the Licensor taking or demanding possession of this machine, as herein provided, or without cancellation of this Agreement, then the possession of said machine shall thereupon revest in the Licensor. And inasmuch as the machine is only leased and rented by the Licensor, and the Licensee pays no purchase price whatsoever for the machine, therefore the said machine does and shall continue to belong exclusively to, and remain wholly the property of, and subject only to the control of the Licensor, and the Licensee acquires no right to buy or retain said machine except by written consent of the Licensor.

Upon the termination of this License and Lease for Rental by lapse of time, cancellation, breach of contract, non-use of machine, or otherwise, the Licensee shall forthwith deliver the machine, hereby licensed and leased, to the Licensor in good condition, reasonable wear and tear excepted, and also pay to the Licensor the sum of One Hundred and Fifty (150) Dollars, as compensation for setting up the machine at his factory, for instructing operators, and deterioration.

And the following terms and conditions of the License and Lease of the machine, together with those hereinbefore expressed, the Licensee hereby agrees to keep and perform:

First.—The Licensee is by this License and Lease for Rental authorized to use the machine herein described, only by himself or operators in his direct employ, and only in *St. Louis, Mo.* He shall not add to, not subtract from, the machine any part or mechanism whatever, now or hereafter organized or connected therewith

by the Licensor, nor make, nor allow to be made, any change or alteration in the same, without the consent thereto in writing of the Licensor, nor interfere with the proper operation of the machine, nor any mechanism forming a part thereof or attached thereto, nor any device used in connection therewith, nor remove or deface any dates, numbers, or inscriptions, now or hereafter impressed thereon, or affixed thereto by the Licensor or by its direction, and the Licensee shall at all times at his own expense keep and maintain the machine in as good and efficient working order as the same now is or may hereafter be put by the Licensor.

Second.— The Licensor and its agents shall, at all reasonable times, have access to the machine to examine and inspect the same and the use thereof, and to repair and improve the same so far as it sees fit, and all covenants, stipulations and conditions herein contained shall apply to all improvements which the Licensor shall hereafter add to the machine, and to any patents which have or may be issued thereon, with the same effect as if the patents were enumerated in this License and Lease with the Letters Patent previously herein enumerated.

Third.— The Licensee agrees to pay unto the Licensor, on the tenth day of each month, as Rental for the previous month for the machine hereby licensed and leased, and for the use of the inventions of the patents under which a License is hereby granted, a sum of lawful money equal to five-sixths (5-6) of one (1) cent for each and every pair of Misses' and Children's and one (1) cent for each and every pair of all other kinds of boots and shoes lasted by the aid of this machine, or by the use of the inventions of said patents, or any of them, or in the making of which any of the inventions of said patents shall be used; and should such Rental fall short of an average of Fifteen (15) Dollars per month, for any twelve (12) consecutive months (excepting months during the whole of which the factory is idle), then the Licensee agrees to pay, upon demand, such an amount as will make the average Fifteen (15) Dollars per month for such twelve (12) consecutive months.

Fourth.— The Licensee agrees that the operator on the machine hereby licensed and leased shall keep a daily account of the number

of pairs of boots and shoes lasted by him, and the class to which they belong, which account shall be signed by the operator, and verified and signed by the Licensee, if so requested by the Licensor, and delivered by the Licensee to the Licensor at Boston, Mass., not later than the fifth of each month, and Rental shall be paid by the Licensee on the basis of said account, and the Licensee agrees to give the Licensor, its successors, or assigns, or its or their authorized agents, free access at all times to the premises where the machine hereby licensed and leased is located, for the purpose of verifying the operators' reports, and in case operators' reports shall not be made as provided above, it shall be the right of the Licensor to appoint a competent man to keep the accounts herein required; and all reasonable compensation for the services and expenses of such man, which shall not exceed $3 per day, shall be at the charge of the Licensee, and the Licensee hereby agrees to pay the same upon demand to the Licensor.

The Licensee agrees that he will allow the Licensor, its successors, or assigns, and its and their agents, at any time hereafter, to attach an indicator, or counter, to any machine embracing any of the patents under which a License is hereby granted, which now is or may hereafter come into possession of the Licensee, for the purpose of indicating the number of boots and shoes lasted, and to examine, modify, repair, or replace the said indicator, and that he, the Licensee, will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is or may hereafter be placed upon any machine as aforesaid.

Fifth.— The Licensee hereby agrees that he will not in any way violate, or infringe, or contest the validity of any of the patents, or any reissue, or extension of the same, under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Licensor, to said patents or any of them, and hereby expressly admits the validity and sufficiency thereof as an important part of the consideration for this License and Lease for Rental.

Sixth.— This machine shall not be transferred, and this License

and Lease for Rental is not assignable by the Licensee by his own act or by operation of law.

Seventh.— The power conveyed by this License and Lease is only the right to use the said specific machine, and not the right to make, sell, or alter any machine embodying the inventions of the patents aforesaid, or any of them; and a transfer or removal of the machine hereby licensed and leased shall only be made with the written consent of the Licensor, and if the Licensee is or becomes at any time insolvent or bankrupt, or if a sale, loan, transfer, or removal of said machine shall be made or attempted by the Licensee, or by the operation of law, or by any legal officer, representative, or assignee, as the property of the Licensee, or otherwise, without the written consent of the Licensor, the Licensor may cancel and terminate this License and Lease Agreement, and then the possession of said machine shall thereupon revest in the Licensor, and it may take possession of said machine without the Licensee having any claim for the repayment of any part of the sum or sums which he may have paid as Rent or License under this instrument.

Eighth.— In case any machine hereby licensed shall remain unused for the period of four consecutive months, the Licensor may at any time thereafter, while it remains unused, cancel this License and Lease Agreement, so far as relates to said unused machine, by giving written notice, as herein provided, that it has elected so to do; and upon giving such notice this License and Lease Agreement shall be terminated to the extent aforesaid, and possession of said unused machine shall thereupon revest in said Licensor.

Ninth.— This License and Lease Agreement shall continue until cancelled by the Licensor for breach of condition or otherwise, but in case the Licensee refuses or neglects to perform, or violates any condition of this License and Lease Agreement, the Licensor shall have the right to terminate this License and Lease Agreement by giving written notice, as aforesaid, that it has elected so to do; and upon the giving of such notice for any cause whatsoever, as herein provided for, this License and Lease Agreement shall then terminate, and the possession of said machine shall thereupon

revest in the Licensor, free and discharged of this License and Lease. Upon the termination of this License and Lease by lapse of time, cancellation, breach of condition, non-use of machine, or otherwise, it shall be the duty of the Licensee forthwith to deliver the machine hereby licensed and leased to the Licensor in good condition, reasonable wear and tear excepted, and to pay to the Licensor the sum of One Hundred and Fifty (150) Dollars for each machine so delivered; and upon such termination, and without prejudice to any other legal rights or remedies for violation of contract, use of machine without right, of infringement of patents, the Licensor, or its agents, may thereupon enter the premises where said machine may be and may take and remove the same, and the Licensee shall have no claim whatsoever against the Licensor under this License and Lease Agreement.

Tenth.—The Licensee also covenants and agrees to keep this machine and accessories insured, for the benefit of the Consolidated & McKay Lasting Machine Company, to the amount of Two Hundred (200) Dollars, and to pay all taxes assessed on said machine. In case this machine is destroyed by fire, the Licensee agrees to pay to the Licensor the sum of Two Hundred (200) Dollars, as partial compensation for such destruction of machine.

Eleventh.—In case any other machine than that hereby licensed and leased, embracing the invention of any of the patents under which the License is hereby granted, shall hereafter come into the possession of the Licensee, without a written License and Lease from the Licensor, then, in case the Licensor shall so elect, all the covenants herein contained shall apply to such machine, and shall govern the parties respectively to the same extent as if the said machine had been expressly included in this License and Lease Agreement. The Licensor shall give written notice of its election, as aforesaid, within thirty (30) days after it shall have received written notice from the Licensee of the possession of such machine, but it may give such notice without having received such notice from the Licensee.

Twelfth.—It is declared and understood that it is the intention of the Licensee to use said machine herein licensed and leased for

lasting all the boots and shoes made by him applicable to the said machine, and not to have it in his possession as a means of reducing the price of hand lasting or of controlling hand lasters, or of influencing a trade with any other lasting machine not controlled by the Licensor, or the list price thereon, and the Licensor enters into this contract because of and by reason of such understanding and agreement on the part of the Licensee. It is therefore agreed that the Licensee shall use such machine hereby licensed and leased for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work.

Thirteenth.— It is agreed that the Licensee shall buy of the Licensor, or its authorized agents, and only of it or them, the spare parts for repairing the machine hereby licensed and leased, and shall and does hereby accept delivery of machine at Beverly, Mass., f. o. b. cars.

Fourteenth.— All the rights and interests which, under this instrument and by reason of the ownership of said machines and patents and patent rights, belong to the Licensor, shall be deemed to belong to, and may be enforced, in its name or otherwise, by the Licensor, its successors and assigns, and its or their representatives and assigns. All of the stipulations and agreements binding on the Licensee shall be binding on his or their representatives, successors, and assigns.

Fifteenth.— It is agreed that this instrument may be used for Licensees of the female sex, or for corporations, and in that case the masculine pronoun denoting the Licensee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that when the party of the second part shall consist of more than one person, the termination of the words relating to the said party shall be considered as singular or plural, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this License and Lease for Rental, either individually or by their firm signature, such signature or signatures shall bind them both jointly and sev-

erally to the terms and agreements herein contained, and also that the numbers of the machines named in or covered by this License and Lease may be entered herein by the Licensor after signing; and that as this instrument is designed and intended for continuous use between the parties hereto, in case the Licensee shall have more than one machine, it is agreed that the termination of words relating to the machine shall be considered as written in the singular or plural, as the number of machines entered in this License and Lease Agreement may require.

In witness whereof, the parties aforesaid have hereunto set their hands and seals, the said parties of the second part binding themselves, their legal representatives, and assigns, to all the foregoing agreements, both jointly and severally.

CONSOLIDATED & MCKAY LASTING MACHINE COMPANY,
[SEAL] by Geo. W. Brown, Treasurer.
THE BROWN SHOE CO. [SEAL]
G. W. Brown Pt.

[Endorsed:]
License No. 19G. Machine No. 1933.
Brown Shoe Co., Licensee. Dated March 27, 1898.
Cancelled.

PLAINTIFF'S EXHIBIT 11.

[Put in Evidence, page 326.]

Lease and License, No. *1780.*

This Lease and Agreement, made this *First* day of *April* A. D. 1*898*, by and between James W. Brooks, Principal Trustee, and John Brooks, Associate Trustee, for the McKay-Bigelow Heeling Machine Association, Lessors, and *G. Edwin Smith Columbus Ohio* Lessee, witnesseth:

Whereas, The Lessors are engaged in the manufacture of shoe machinery, and devices to be used in connection therewith, and particularly machinery and devices useful in the manufacture of the heel portions of boots and shoes; and

Whereas, The Lessors, at great expense, have endeavored, and

are constantly endeavoring to improve and render more useful, the machinery and devices manufactured by them, and are the owners of the following Letters Patent of the United States for improvements and inventions relating to machinery and devices for the manufacture of shoes, viz.: E. B. Allen, 310,488, Jan. 6, 1885; 314,411, March 24, 1885; 319,377, June 2, 1885; 332,032, Dec. 8, 1885; 332,984, Dec. 22, 1885; 348,091, Aug. 24, 1886; 348,092, Aug. 24, 1886; 374,387, Dec. 6, 1887; 374,885, Dec. 13, 1887; 375,913, Jan. 3, 1888; 377,284, 377,285, Jan. 31, 1888; 378,859, March 6, 1888; 384,343, June 12, 1888; 384,734, June 19, 1888. C. H. Benjamin, 388,523, Aug. 28, 1888. H. Bond, 297,787, Feb. 5, 1884. E. Bourgeois, 277,207, May 8, 1883. C. H. Brown and A. B. McCoy, 477,098, June 14, 1892. C. W. Chase, 212,190, Feb. 11, 1879. T. P. Coombs, 391,124, Oct. 16, 1888. J. H. Cunningham, 381,493, April 17, 1888. A. E. Ellis, 388,544, Aug. 28, 1888. A. D. Elliott, 374,892, Dec. 13, 1887. A. D. Elliott and J. E. Fellows, Nov. 19, 1889. A. D. Elliott, 446,383, Feb. 10, 1891; 510,012, Dec. 5, 1893. H. P. Fairfield, 224,005, Feb. 3, 1880; 388,547, 388,548, Aug. 28, 1888; 498,745, May 30, 1893; 518,917, April 24, 1894. M. J. Ferren, 236,148, Jan. 4, 1881. M. Fifield, 261,696, July 25, 1882. E. Fisher, 246,945, Sept. 13, 1881; 248,582, Oct. 25, 1881; 250,654, Dec. 13, 1881; 258,905, June 6, 1882. J. F. Freeman and C. W. Glidden, 443,434, Dec. 23, 1890. C. W. Glidden, 217,866, July 29, 1879; 217,867, July 29, 1871; 224,011, 224,012, Feb. 3, 1880; 278,426, May 29, 1883; 321,017, June 30, 1885; 347,482, Aug. 17, 1886; 350,051, Sept. 28, 1886; 374,894, Dec. 13, 1887; 377,300, Jan. 31, 1888; 377,301, 377,302, Jan. 31, 1888; 382,762, May 15, 1888; 388,552, 388,578, Aug. 28, 1888; 393,103, 393,104, Nov. 20, 1888; 399,607, 399,608, March 12, 1889; 402,435, April 30, 1889; 399,608, March 12, 1889; 402,435, April 30, 1889; 403,747, May 21, 1899; 408,173, July 3, 1889; 409,637, August 20, 1889; 409,783, 410,086, 410,087, 410,088, 410,089, 410,090, Aug. 27, 1889; 410,358, Sept. 3, 1889; 411,655, Sept. 24, 1889; 414,040, October 29, 1889; 427,308, May 6, 1890; 439,060, Oct. 21, 1890; 454,428, June 16, 1891; 457,462, Aug.

11, 1891; 459,348, Sept. 8, 1891; 464,196, Dec. 1, 1891; 498,429, 498,513, May 30, 1893; 500,486, June 27, 1893; 502,667, 502,668, 502,669, Aug. 1, 1893; 242,268, April 30, 1895. Glidden and Elliott, 457,462, Aug. 11, 1891. R. M. Harrison, 233,504, Oct. 19, 1880. M. P. Harrigan, 386,538, July 24, 1888; 406,582, July 9, 1889. Harrigan and Packard, 473,874, April 26, 1892. John J. Heys, 530,046, Nov. 27, 1894. T. P. King and F. S. Strong, 267,544, Oct. 24, 1882. Horne and Henderson, 389,077, Sept. 4, 1888. W. Manley, 322,945, July 28, 1885; 336,332, Feb. 16, 1886; 342,371, May 25, 1886; 374,416, 374,417, 374,418, 474,419, Dec. 6, 1887. J. F. McMullett, 266,298, Oct. 24, 1882; 373,409, Nov. 15, 1887. J. L. Packard, 388,578, Aug. 28, 1888; 413,959, Oct. 29, 1889; 473,478, April 19, 1892. M. D. Phelan, 400,788, April 2, 1889. D. C. Pillsbury, 417,833, Dec. 24, 1889. A. E. Stirckler, 212,116, Feb. 11, 1879. E. A. Tripp, 406,183, 406,184, July 2, 1889. C. K. Wead, 477,093, June 14, 1892. A. H. Webster, 468,279, Feb. 2, 1892; 483,293, Sept. 27, 1892; 504,854, 502,854, 505,074, Sept. 12, 1893. H. W. Winter, 401,619, 401,620, 401,622, April 16, 1889; 402,375, 402,376, April 30, 1889; 447,744, March 3, 1891; 448,310, March 17, 1891; 501,555, July 18, 1893; 505,043, Sept. 12, 1893. E. C. Wright, 340,690, April 27, 1886. Crocker, Sumner & Nash, 385,748, July 10, 1888; 388,535, Aug. 28, 1888. J. H. Pope, 399,631, March 12, 1889; 399,777, March 19, 1889; 411,835, Oct. 1, 1889; 446,885, Feb. 24, 1891. M. A. Tyler, 301,462, July 1, 1884; 305,723, Sept. 23, 1884. Tyler & Merritt, 321,401, June 30, 1885; 382,121, May 1, 1888. Tyler & Smith, 293,604, Feb. 12, 1884. A. K. Washburn, 389,994, Sept. 25, 1888. H. A. Henderson, 252,215, Jan. 10, 1882; 259,687, June 20, 1882; 316,894, April 28, 1885; 10,588, 10,589, April 28, 1885; 317,646, 317,647, May 12, 1885; 332,798, Dec. 22, 1885. F. F. Raymond, 2d, 271,117, 271,118, Jan. 23, 1883; 280,399, July 3, 1883; 287,472, Oct. 30, 1883; 289,857, 290,109, Dec. 11, 1883; 315,458, 315,069, 315,070, April 7, 1885, 316,177, April 21, 1885; 316,661, 316,836, 316,827, April 28, 1885; 317,199, May 5, 1885; 317,672, 317,851, May 12, 1885; 318,134, May 19, 1885; 319,124,

June 2, 1885; 321,530, 321,756, July 7, 1885; 322,126, July 14, 1885; 322,560, July 21, 1885; 322,561, 322,562, July 21, 1885; 325,271, 325,272, Sept. 1, 1885; 326,150, Sept. 15, 1885; 326,-779, 326,780, 326,781, 326,782, Sept. 22, 1885; 329,079, Oct. 27, 1885; 329,951, 329,952, Nov. 10, 1885; 331,441, Dec. 1, 1885; 382,001, Dec. 8, 1885; 335,241, 335,242, Feb. 2, 1886; 340,358, April 20, 1886; 341,169, May 4, 1886; 341,689, May 11, 1886; 342,039, May 18, 1886; 342,461, May 25, 1886; 342,929, June 1, 1886; 343,339, June 8, 1886; 343,728, June 15, 1886; 344,136, June 22, 1886; 344,499, June 29, 1886; 344,985, July 6, 1886; 345,449, July 13, 1886; 345,920, July 20, 1886; 346,124, 346,125, July 27, 1886; 346,607, Aug. 3, 1886; 347,061, 347,-062, 347,063, Aug. 10, 1886; 347,514, Aug. 17, 1886; 347,960, Aug. 24, 1886; 348,689, Sept. 7, 1886; 353,883, Dec. 7, 1886; 354,227, Dec. 14, 1886; 354,655, Dec. 21, 1886; 355,027, Dec. 28, 1886; 355,556, Jan. 4, 1887; 355,839, 355,840, Jan. 11, 1886; 356,209, Jan. 18, 1887; 356,549, 356,550, 356,551, Jan. 25, 1887; 356,552, 356,553, 356,554, Jan. 25, 1887; 356,890, Feb. 1, 1887; 357,335, Feb. 8, 1887; 357,735, Feb. 15, 1887; 358,298, Feb. 22, 1887; 358,695, March 1, 1887; 368,006, Aug. 9, 1887; 376,208, Jan. 10, 1888; 376,754, 376,908, Jan. 24, 1888; 377,172, Jan. 1, 1888; 377,577, Feb. 7, 1888; 377,958, Feb. 14, 1888; 378,216, Feb. 21, 1888; 378,617, Feb. 28, 1888; 379,029, March 6, 1888; 379,330, March 13, 1888; 379,810, March 20, 1888; 380,133, March 27, 1888; 380,596, April 3, 1888; 380,818, April 10, 1888; 381,280, April 17, 1888; 383,911, June 5, 1888; 385,960, July 10, 1888; 386,656, July 24, 1888; 394,298, Dec. 11, 1888; 394,-609, 394,610, Dec. 18, 1888; 398,846, March 5, 1889; 405,598, June 18, 1889; 408,895, Aug. 13, 1889; 409,372, Aug. 20, 1889; 410,194, 410,195, 410,196, Sept. 3, 1889; 410,675, 410,676, 410,-677, Sept. 10, 1889; 412,414, Oct. , 1899; 412,896, Oct. 15, 1889; 413,553, 413,554, 413,555, Oct. 22, 1889; 413,963, 413,-964, Oct. 29, 1889; 414,448, 414,582, Nov. 5, 1889; 414,952, Nov. 12, 1889; 415,559, Nov. 19, 1889; 415,560, Nov. 19, 1889; 461,448, 461,510, Oct. 20, 1891; 464,165, 464,255, Dec. 1, 1891; 464,991, 465,029, Dec. 15, 1891; 467,237, Jan. 19, 1892; 467,-

522, Jan. 26, 1892; 468,957, Jan. 16, 1892; 474,146, May 3, 1892; 474,407, 474,408, May 10, 1892; 475,001, 474,858, May 17, 1892; 475,417, May 24, 1892; 476,303, 476,307, June 7, 1892; 479,142, July 19, 1892; 480,415, Aug. 9, 1892; 480,741, Aug. 16, 1892; 528,805, Nov. 6, 1894; 531,644, 531,645, Jan. 1, 1895. Raymond & Wheeler, 280,861, July 10, 1883. G. T. Demary, 320,050, June 16, 1885; 321,696, July 7, 1885; 342,501, May 25, 1886; 343,703, June 15, 1886; 474,335, May 3, 1892. Towns & Raymond, 346,137, July 27, 1886. J. B. Gardiner, 354,125, Dec. 4, 1886; 360,580, April 5, 1887. J. W. Soule, 368,248, April 16, 1887. C. C. Small, 375,209, Dec. 20, 1887; 376,049, Jan. 3, 1888; 413,973, Oct. 29, 1889; 461,853, Oct, 27, 1891; 467,242, Jan 19, 1892. E. E. Orr, 375,458, Dec. 27, 1887. J. R. Prouty, 383,907, 383,908, 383,909, June 5, 1888; 515,175, Nov. 12, 1889. James W. Carver, 401,131, April 9, 1889. Benjamin & Simmons, 503,895, Aug. 22, 1893. S. A. Krewson, 514,852, Feb. 13, 1894; and also are the owners of other inventions relating to machinery and devices for the manufacture of boots and shoes, and intend to secure Letters Patent therefor, some of which inventions, patented or to be patented, are embodied in the machines, or some of them, leased to the Lessee hereunder;

And whereas, the Lessee desires the right to use, under the terms of this lease and license, the hereinafter described machinery or devices belonging to the Lessors, and also any other improvements relating to the machinery hereby leased, which may hereafter be acquired by the Lessors, and attached by or with the permission of the Lessors to the machinery hereby leased or delivered to the Lessee, to be used in connection therewith, and also any other machines, machinery or devices made by or for the Lessors, which may hereafter come into the possession of the Lessee;

Now, therefore, the Lessors, in consideration of one dollar paid by the Lessee, the receipt whereof is hereby acknowledged, and of the covenants and agreements of the Lessee hereinafter contained, do hereby lease unto the Lessee (provided the Lessee keeps and observes the covenants and conditions of this agreement) the machinery or devices described by name and number or numbers,

following, and all other machines and machinery made by or for the lessors which may hereafter come into the possession of the lessees with the written consent of the lessors and which are not the subject of another lease between the parties hereto: —

McKay Pricking Machine
McKay Heel Compressing and Loading Machine
Fisher Compressing Machine
Bresnahan Compressing Machine
Heel Trimming and Randing Machine ,
Heel Trimming and Randing (including Grinding) Machine ,
No. 2 Automatic Heel Nailing and Trimming Machine ,
Rapid Nailing Machine
Union Heel Trimmer ,
Spring Heel Trimmer ,
1 American Lightning Nailing Machine *No. 571*
American Compressing Machine
Columbia Compressing Machine ,
Automatic Heel Loading and Compressing Machine
Improved National Nailing Machine
Columbia Nailing Machine ,
Automatic Spring-heel Nailing Machine
Standard Automatic Nailing Machine ,
Standard Automatic Nailing Machine , without Pricking Attachment ,
Standard Automatic Loading or Compressing and Loading Women's Work Machine ,

And the Lessors do hereby license the Lessee to use such machines and devices, and any patented parts, mechanisms or devices connected therewith or relating thereto, whether on said machinery when the same is received, or which may be added thereto by the Lessors, and including such machines, devices and machinery as may hereafter come into the possession of the Lessee with the written consent of the Lessors, under the aforementioned patents or any patents, reissues of patents or renewals, which may hereafter be owned or acquired by the Lessors; the term of said license to be the full term of this lease; but this lease is made and this

license is granted, on the express condition that the Lessee shall faithfully keep and observe each and all of the conditions and agreements herein contained, on his part to be kept and observed; and that upon a breach of the same or either of them by the Lessee, the Lessors may, at their option, cancel and terminate this lease and license, and upon written notice thereof by the Lessors to the Lessee, or to any one in the possession or apparent control of the machines, devices or machinery, this lease and license shall terminate, and the possession of, and the full right to and control of the said machines, devices and machinery shall thereupon revest in the Lessors.

The word "machinery" as hereinafter used shall be construed as designating any and all machines, devices, tools and machinery held by the Lessee under this lease and license whether now or hereafter delivered to or in the possession of the Lessee, and the covenants and conditions of this lease shall apply to all such machines, devices, tools and machinery.

And the following are agreed to as terms and conditions of the lease and license of the machines, devices, tools and machinery which the Lessee is hereby licensed to use; all of which together with those hereinbefore expressed, the Lessee agrees to keep and perform.

First. The Lessee is by this lease and license authorized to use the "machinery", hereby leased only by himself or operatives in his direct employ and only at his factory, situate at *Columbus Ohio*

He shall not add to the "machinery," nor subtract therefrom any part, mechanism or device whatsoever now or hereafter forming a part thereof or connected therewith by the Lessors; nor make, nor allow to be made any change or alteration in the said "machinery," without the consent in writing of the Lessors, nor interfere with the proper operation of the same or any mechanism forming a part thereof or attached thereto; nor remove nor deface any dates, numbers, or inscriptions, now or hereafter impressed thereon or affixed thereto by the Lessors; and shall at all times and at his own expense keep the "machinery" in good and efficient working order and condition.

And the Lessee further agrees that he will purchase from the Lessors exclusively at the regular prices from time to time established by the Lessors, all the spare parts, forms, plates, knives, moulds, extras, devices and mechanism of every sort and kind needed or used by him in repairing, renewing, changing the styles, form of nailing, or in operating the "machinery" hereby leased.

Second. The Lessors and their agents may at all reasonable times have convenient access to the "machinery," covered by this lease to examine and inspect the same and the use thereof, and to repair and improve or add to the same so far as they may see fit; but they shall not be bound to make any repairs or improvements and the covenants, stipulations, conditions and terms of this lease shall apply to all improvements which the Lessors shall hereafter add to the same and to any patents which have been or may be issued thereon with the same effect as if the patents were included in this lease and license with the Letters Patent already referred to.

Third. The lessee agrees to pay unto the Lessors on the fifteenth day of each month, as rent or royalty for the machinery hereby leased, the sum of one half cent for each and every pair of boot or shoe heels manufactured wholly or in part by the aid or use of any of the machines or machinery hereby leased, said rent or royalty to be paid each month for all boot or shoe heels made during the preceding calendar month, and it is hereby agreed between the parties hereto that said rental or royalty at one half cent per pair is a just, fair and correct value to the Lessee of the use of said machinery, and that the abated royalty hereinafter named is not the true value of the lease and license hereby granted, but is a concession and abatement of such value for and in consideration of the conditions thereto attached; and all agreements herein shall extend to all boot or shoe heels made by or for the Lessee; provided, however, that in all cases where the Lessee shall pay the Lessors on or before the fifteenth day of each month, as an abated royalty, the sum of one quarter of a cent per pair for each and every pair of heels made during the preceding calendar month, said payment so made shall be full payment and satisfaction of said rent or royalty. And it is agreed that in default of the payment of said abated royalty,

when due, as aforesaid, the Lessee's right to an abatement of the full royalty of one half cent per pair shall thereby be forfeited, and full royalty shall be due for the same, not as penalty, but as a liquidated, fixed and settled rental and license fee for the use of said machines or machinery.

And, as the machines leased hereby are supplied to the Lessee without cash payment covering the cost of manufacture, the Lessee hereby guarantees that, during the continuation of this lease, the abated rent and royalty due and actually paid over to the Lessors under the terms hereof shall not in and for any period of three months be less than *25* dollars. But it is agreed that if, at any time during the continuance of this lease, the Lessee shall pay to the Lessors a sum equal to the amount of insurance hereinafter named, the Lessee shall, provided he has not violated any of the terms of this lease, be freed from his guarantee to pay more than the rent and royalty hereinbefore stipulated for each pair of boot or shoe heels manufactured as aforesaid, all the other terms and conditions of this lease remaining in force as before. And the Lessee cannot avail himself of the provision set forth in this paragraph for anything less than all the machines hereby leased; and he shall not be allowed any diminution of the sum to be paid because of the wear and tear or destruction of any of the machinery hereby leased.

Fourth. It is understood that the Lessors may at any time attach to said "machinery" or any part thereof an indicator, for the purpose of registering the number of boots or shoes in the manufacture of which said "machinery" is utilized, or the number of revolutions or movements of the same or any thereof; and the Lessee agrees that in case an indicator shall be attached to said "machinery" or any part thereof by the Lessors, it shall not be disturbed or interfered with by any person, and that prompt notice will be given to said Lessors in case the same shall be disturbed or inaccurate or out of repair. And the Lessee agrees to keep a full and accurate account independently of any indicators that may be placed upon the "machinery" of all boots and shoes in the manufacture of which said "machinery" is used; and the Lessee further agrees to

require each of its operators upon the "machinery" hereby leased to keep upon blanks or blank books to be furnished by the Lessors, accurate daily records of the number of pairs of boots or shoes in the making of which said "machinery" shall have been used, and to require his operator to furnish any further information called for by said blanks or blank books and to sign such daily records and to deliver them to the Lessee; and the Lessee agrees to send to the office of the Lessors on or before the fifteenth day of each month, the original records for the preceding calendar month kept by his operators as above provided for. And the Lessee agrees to allow the Lessors or their agents to have access at all times to said records kept by his operators and to all accounts kept by him, of the shoes prepared or manufactured by him.

Fifth. The Lessee hereby agrees as an essential part of the consideration for this lease and license, that he will not in any way violate or infringe or contest the validity of any of the patents hereinbefore referred to as belonging to the Lessors or which may now or hereafter be owned by the Lessors, or any reissue or extension of the same, or the title of the Lessors to said patents or any of them.

Sixth. The "machinery" held under this lease cannot be transferred, and this lease and license is not assignable by the Lessee by his own act or by operation of law. The Lessee agrees at his own expense to pay all taxes levied on said "machinery" or on account of this lease and to insure against loss by fire and to keep so insured the "machinery" held by him at any time under this lease in a sum total equal to *Two Hundred and fifty* dollars, and in case of loss or damage, the Lessee agrees to pay the full amount of the insurance to the Lessors.

Seventh. The power conveyed by this lease and license is only the right to use the said "machinery" and not the right to make or sell any "machinery" embodying the inventions of any of the patents aforesaid or any patent hereafter owned by the Lessors. And a removal of the "machinery" or any portion thereof from the factory of the Lessee can only be made with the written consent of the Lessors, and on conditions satisfactory to the Lessors; and if

the Lessee is or becomes at any time insolvent or bankrupt, or if a sale, transfer, removal or lease of said "machinery" or any portion thereof shall be made or attempted without the written consent of the Lessors, then this lease and license and all rights of the Lessee thereunder shall forthwith, at the option of the Lessors, cease and determine, and the possession of said "machinery" shall revest in the Lessors, and they may take possession of the same without the Lessee having any claim against the Lessors.

Eighth. This lease and license shall, unless cancelled by agreement of the parties hereto, continue, provided the Lessee faithfully keeps and performs the terms and conditions hereof, for seventeen years from the date hereof, and for such further time as may be covered by the term of any Letters Patent now or or hereafter owned by the Lessors, and any inventions of which are contained in any of the "machinery" hereby leased or which shall be added to or embodied in said "machinery" or used in connection therewith. But inasmuch as the "machinery" has been delivered by the Lessors to the Lessee without any charge or payment representing its cost (excepting such payments as have been made on account of moulds, dies, forms, clamps, lasts, and other parts or devices used in connection with said "machinery"), it is understood and agreed that the Lessors may at any time, in case the Lessee refuses or neglects to perform or violates any of the conditions of this lease and license, or provides himself with any other machine to do any part of the work which any of said Lessors' machines are capable of doing, terminate this lease upon giving written notice to the Lessee of their election so to do. And immediately upon such notice, this lease and license and all the rights of the Lessee thereunder shall be terminated and the title to and right of possession of said "machinery" and all said moulds, dies, forms, clamps, lasts and other parts or devices used in connection with said "machinery" shall at once vest in the Lessors free and discharged of this lease and license. And the Lessee agrees forthwith to deliver the "machinery" hereby leased and licensed, together with all moulds, dies, forms, clamps, lasts, and other parts or devices used in connection therewith to the Lessors, and to pay to the Lessors the sum of fifty

dollars for each individual machine then leased to the Lessee, and to pay in addition the expense of transporting the "machinery" to such place of business of the Lessors as the Lessors shall direct, and without prejudice to any other legal rights or remedies for violation of contract, use of "machinery" without right, or use of patents without license, which the Lessors may have; and the Lessors or their agents may forthwith enter the premises where said "machinery" or any part of it may be, and may take and remove the same, including all said moulds, dies, forms, clamps, lasts and other parts or devices used in connection therewith, and the Lessee shall have no claim whatever against the Lessors under this lease or otherwise.

In case this lease shall run for its full term, then immediately upon its expiration the Lessee shall deliver to the Lessors the "machinery" hereby leased, together with all moulds, dies, forms, clamps, lasts and other parts or devices used in connection with said "machinery", and the Lessee shall have no claim whatever to said "machinery" or to a continuation of his possession or use thereof.

Ninth. In case any other machines, devices, or machinery than those now hereby leased and licensed, embracing or to be used in connection with the inventions of any of the Letters Patent under which a license is hereby granted, or any other patents under which the Lessee may hereafter become licensed by the terms of this agreement, shall hereafter come into the possession of the Lessee without a written lease or license from the Lessors, then, in case the Lessors shall so elect, all the covenants and agreements herein contained, including the obligation to pay a monthly rental or royalty, shall apply to the same and shall govern the parties respectively to the same extent as if the same had been expressly included in this lease and license. The Lessors may write the numbers of any such "machinery" as shall hereafter come into the possession of the Lessors into this lease after the same is executed.

Tenth. All the rights and interests which under this agreement and by reason of the ownership of said "machinery" and patents and patent rights belong to the Lessors shall be deemed to belong

to and may be enforced in their name or otherwise by the Lessors' successors and assigns and their representatives and assigns. All of the stipulations and agreements binding on the Lessee shall be binding on his or their representatives and assigns.

Eleventh. It is agreed that this instrument may be used for Lessees of the female sex or for corporations, and that in that case the masculine pronoun denoting the Lessee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that this instrument may be used in cases where the Lessee shall consist of more than one person, and in that case the termination of the words relating to the Lessees shall be considered as plural or singular, as the sense may require; and that when the Lessees so consist of several persons and they sign this lease either individually or by the firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In Witness Whereof, the parties aforesaid have hereunto set their hands and seals and to another instrument of even date and like tenor, the principal Trustee being authorized to sign for himself and his associate trustee, and to do all acts hereunder, and said Lessee or Lessees under this agreement binding itself, himself, or themselves to all the foregoing agreements, both jointly and severally.

JAMES W. BROOKS
Principal Trustee.
J. Brooks, Atty. [SEAL]

Signatures of Lessees. G. EDWIN SMITH [SEAL]

[Endorsed:]
No. 1780 G. Edwin Smith

PLAINTIFF'S EXHIBIT 12.

[Put in Evidence, page 329.]

License and Lease No. *3447.*

Transfer from Lease No.

This Lease and Agreement, made the *twenty-fifth* day of *September* A. D. 18*97*, by and between James W. Brooks, principal trustee, and Frank F. Stanley, associate trustee for the McKay Metallic Fastening Association, Lessors and parties of the first part, and *Gordon, Kiley Company, a corporation doing business in East Weymouth, Massachusetts*, Lessee and party of the second part witnesseth:

Whereas, the Lessors now are the owners of the following Letters Patent of the United States, viz: No. 147,430, E. P. Richardson, Feb. 10, 1874; No. 149,007, C. Tyson, Mar. 24, 1874; No. 149,008, C. Tyson, Mar. 24, 1874; No. 149,009, C. Tyson, Mar. 24, 1874; No. 149,010, C. Tyson, Mar. 24, 1874; No. 152,686, E. P. Richardson, June 30, 1874; No. 152,847, Knowlton & Shepherd, July 7, 1874; No. 154,129, H. Dunham, Aug. 18, 1874; No. 155,349, A. Van Wagenen, Sept. 22, 1874, No. 155,962, (reissue 7014), McKay & Fairfield, Oct. 13, 1874; No. 157,929, E. P. Richardson, Dec. 22, 1874; No. 158,107, McKay & Fairfield, Dec. 22, 1874; No. 158,763, W. S. Watson, Jan. 12, 1875; No. 159,015, Blake & McKay, Jan. 26, 1875; No. 161,280, W. A. Rogers, Mar. 23, 1875; No. 161,842, A. Van Wagenen, April 6, 1875; No. 162,087, G. McKay, April 13, 1875; No. 162,643, L. Goddu, April 27, 1875; No. 164,474, L. Goddu, May 18, 1875; No. 163,475, L. Goddu, May 18, 1875; No. 163,476, L. Goddu, May 18, 1875; No. 163,477, L. Goddu, May 18, 1875; No 164,345, C. Tyson, June 8, 1875; No. 165,470, L. R. Blake, July 13, 1875; No. 166,659, A. Van Wagenen, Aug. 10, 1875; No. 166,661, A. Van Wagenen, Aug. 10, 1875; No. 166,662, A. Van Wagenen, Aug. 10, 1875; No. 166,663, A. Van Wagenen, Aug. 10, 1875; No. 167,349, G. McKay, Aug. 31, 1875; No. 167,523, L. Goddu, Sept. 5, 1875; No. 167,760, L. Goddu, Sept. 14, 1875; No. 168,478, L. Goddu, Oct. 5, 1875; No. 169,062, F. O. Tobey,

Oct. 19, 1875; No. 169,257, L. Goddu, Oct. 26, 1875; No. 169,-429, W. Fitzgerald, Nov. 2, 1875; No. 169,463, McKay & Fairfield, Nov. 2, 1875; No. 170,085, S. Harris, Nov. 16, 1875; No. 171,300, McKay & Fairfield, Dec. 21, 1875; No. 171,609, (reissue 9315), L. Goddu, Dec. 28, 1875; No. 171,610, (reissue 7033), L. Goddu, Dec. 28, 1875; No. 172,658, E. P. Richardson, Jan. 25, 1876; No. 173,415, McKay & Fairfield, Feb. 15, 1876; No. 177,264, G. McKay, May 9, 1876; No. 178,768, S. Harris, June 13, 1876; No. 180,146, G. McKay, July 25, 1876; No. 182,434, L. Goddu, Sept. 19, 1876; No. 182,495, C. H. Trask, Sept. 19, 1876; No. 184,281, H. Dunham, Nov. 14, 1876; No. 188,354, L. Goddu, March 13, 1877; No. 188,355, L. Goddu, Mar. 13, 1877; No. 188,810, G. McKay, March 27, 1877; No. 188,874, H. Dunham, March 27, 1877; No. 190,575, L. Goddu, May 8, 1877; No. 191,874, G. McKay, June 12, 1877; No. 193,965, Kimball & Merritt, Aug. 7, 1877; No. 195,022, J. E. Kimball, Sept. 11, 1877; No. 196,179, J. Ashworth, Oct. 16, 1877; No. 198,103, L. Goddu, Dec. 11, 1877; No. 206,688, E. F. Richardson, Aug. 6, 1878; No. 207,956, H. Dunham, Sept. 10, 1878; No. 213,938, E. F. Richardson, April 1, 1879; No. 215,116, L. Goddu, May 6, 1879; No. 215,117, (reissue 9299), L. Goddu, May 6, 1879; No. 216,299, A. J. Wilbur, June 10, 1879; No. 216,789, L. Goddu, June 24, 1879; No. 217,324, L. R. Blake, July 8, 1879; No. 217,868, L. Goddu, July 29, 1879; No. 226,062, L. Goddu, March 30, 1880; No. 240,119, L. Goddu, April 12, 1881; No. 242,188, Wm. H. Cuff, May 31, 1881; No. 242,-277, Wm. H. Cuff, May 31, 1881; No. 244,046, L. Goddu, July 12, 1881; No. 250,723, L. Goddu, Dec. 13, 1881; No. 260,-141, A. Van Wagenen, June 27, 1882; No. 260,142, A. Van Wagenen, June 27, 1882; No. 260,715, A. Van Wagenen, July 4, 1882; No. 261,931, J. E. Kimball, Aug. 1, 1882; No. 262,287, L. Goddu, Aug. 8, 1882; No. 263,657, L. Goddu, Aug. 29, 1882; No. 265,227, L. Goddu, Sept. 26, 1882; No. 269,279, L. Goddu, Dec. 19, 1882; No. 287,375, L. Goddu, Oct. 23, 1883; No. 288,-421, L. Goddu, Nov. 13, 1883; No. 288,422, L. Goddu, Nov. 13, 1883; No. 288,423, L. Goddu, Nov. 13, 1883; No. 288,424, L.

Goddu, Nov. 13, 1883; No. 288,425, L. Goddu, Nov. 13, 1883; No. 289,103, W. P. Hopkins, Nov. 27, 1883; No. 301,114, L. Goddu, July 1, 1884; No. 310,816, L. Goddu, Jan. 13, 1885; No. 310,817, L. Goddu, Jan. 13, 1885; No. 329,031, H. P. Fairfield, Oct. 27, 1885; No. 329,449, L. Goddu, Nov. 3, 1885; No. 331,926, A. Van Wagenen, Dec. 8, 1885; No. 351,372, L. Goddu, Oct. 26, 1886; No. 356,107, H. Dunham, Jan. 18, 1887; No. 360,428, L. Goddu, April 5, 1887; No. 360,585, L. Goddu, April 5, 1887; No. 370,135, L. Goddu, Sept. 20, 1887; No. 370,136, L. Goddu, Sept. 20, 1887; No. 374,549, H. F. Murray, Dec. 6, 1877; No. 383,455, L. Goddu, May 29, 1888; No. 385,801, L. Goddu, July 10, 1888; No. 385,802, L. Goddu, July 10, 1888; No. 388,128, L. Goddu, Aug. 21, 1888; No. 398,606, L. Goddu, Feb. 26, 1889; No. 402,014, L. Goddu, April 23, 1889; No. 403,835, L. Goddu, May 21, 1889; No. 440,805, L. Goddu, Nov. 18, 1890; No. 456,113, L. Goddu, July 14, 1891; No. 478,055, L. Goddu, June 28, 1892; No. 478,056, L. Goddu, June 28, 1892; No. 490,621; L. Goddu, Jan. 24, 1893; No. 490,622, L. Goddu, Jan. 24, 1893; No. 490,623, L. Goddu, Jan. 24, 1893; No. 490,624, L. Goddu, Jan. 24, 1893; No. 490,625, L. Goddu, Jan. 24, 1893.

And whereas the Lessee desires to use the hereinafter described machines belonging to the Lessor, —

Now, therefore, the Lessors, in consideration of one dollar to them paid by the Lessee, the receipt whereof is hereby acknowledged, and of the stipulations and conditions hereinafter contained on the part of the Lessee to be kept and performed, do lease unto the Lessee the machines designated by their numbers in the following schedule, the said machines embodying the foregoing named patents, or some of them: —

Standard Screw Machine, No.
Cable Wire Machine, No.
Cable Wire Tacking Machine, No.
String Nail Tacking Machine, No.
Taper Nail Tacking Machine, No.
Loose Nail Tacking Machine, No.
Corrugated Wire Machine, No.

Taper Nail Attaching Machine, No.
Loose Nail Attaching Machine, No. *786.*
Universal Slugging " " *422.*

And all the machinery which the parties of the second part may hereafter order of the party of the first part, constructed according to the specifications and embodying the inventions contained in patents owned by said Trustees, applicable to said machines and machinery; and doth hereby license said parties of the second part to use said machines and machinery and also to embody and use therein any other patents, renewals and extensions thereof, which the said party of the first part may now have or may hereafter obtain, by assignment or otherwise, applicable to the said machines and machinery, for the term of the existence of said patents or of any of them, and for all renewals and extensions of them or any of them.

And the Lessors do hereby license the Lessee, and operatives in his employment, to use said patented machines, upon the terms and conditions herein set forth; provided, however, and this lease is made and this license is granted on the express Condition, that the Lessee shall faithfully keep and perform all the conditions and stipulations herein contained on his part to be kept and performed, and upon breach of the same, or either of them, by the Lessee, the Lessors may at their option, cancel and terminate this lease and license, and upon written notice thereof by the Lessors, or either of them, to the Lessee, or to any one in the possession or apparent control of the machine, this lease and license shall terminate, and possession of said machine shall thereupon revest in the Lessors.

And the following are also agreed to as terms and conditions of the lease and license of the machine which the Lessee is hereby licensed to use, all of which, together with those hereinbefore expressed, the Lessee hereby agrees to keep and perform: —

First. The Lessee is by this Lease and License authorized to use the machine hereby leased only by himself or operatives in his direct employ and only in *East Weymouth, Massachusetts.* He shall not add to nor subtract from the machine any mechanism whatever now or hereafter organized or connected therewith by the Lessors, nor

make nor allow to be made any change or alteration in the same, without the consent thereto in writing of the Lessors, nor interfere with the proper operation of the machine, nor any mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessors, and shall at all times, at his own expense, keep and maintain the machine in as good and efficient working order as the same now is or may hereafter be put by the Lessors.

Second. The Lessors and their agents may at all reasonable times have convenient access to the machine, to examine and inspect the same and the use thereof, and to repair and improve the same so far as they may see fit; and the covenants, stipulations and conditions herein contained shall apply to all improvements which the Lessors shall hereafter add to the machine, and to all patents embodied therein, the right to use which shall be owned by the Lessors (so long as the Lessee shall use said improvements), with the same effect as if said patents were included in the list herein set forth.

Third. The Lessee agrees to pay unto the Lessors, as rent for the machine hereby leased, and for the use of the patents hereby licensed, the sum of ten cents for each and every pair of boots or shoes made by the aid of said machines or any of them, and by the use of said patents or any of them, or in the making of which any of said patents shall be used, and this agreement and responsibility, and all others in this lease contained, shall extend to and in respect of all shoes made or channelled by the aid of said machine, or on which it shall be used, although they should be made for persons other than the Lessee, or by persons other than him; and it is hereby agreed that for each and every pair of boots and shoes made by the aid of the machine hereby leased, or made or sold by or for the Lessee by the use of the patents hereby licensed, or any of them which shall not have been united by material purchased as hereinafter set forth, the Lessee shall pay to the Lessors the sum of ten cents as liquidated, fixed and settled damages, provided, however, that in all cases when the Lessee shall purchase of the

Lessors, paying therefor in cash, on delivery, the material to be used in the machine for fastening together the shoes or other work to be united, which is to be bought at prices much in excess of the cost to the Lessors, with the intent that such excess shall be the rent and license fee hereunder, such purchase and use of the uniting material shall be full payment and satisfaction of the rent for the use of said machine and of the license for the use of the patents for such boots or shoes as shall be united with the material so purchased and used; and it is agreed between the parties hereto that the price of said uniting material shall be fixed by the Lessors from time to time, and shall for all machines to be licensed by the trustees of this Association be the same for the same kind of material to be used in the same kind of machine, to all licensees in the United States, as for all like machines acquired from the Lessors.

And it is hereby agreed that for each and every pair of boots and shoes made by the aid of the machine hereby leased, or made by or for the Lessee or by the use of the patents hereby licensed, or any of them, which shall not have been united by the aforesaid material purchased of the Lessors or their agent, the Lessee shall pay to the Lessors the sum of ten cents as liquidated, fixed and settled damages.

Fourth. The Lessee hereby agrees that he will not in any way violate or infringe or contest the validity of any of the patents, or any reissue or extension of the same, which he is hereby licensed to use, or the sufficiency of their specifications, or the validity of the title of the Lessors to said patents or any of them, and expressly admits the validity and sufficiency thereof.

Fifth. The machine cannot be transferred, and this lease and license is not assignable by the Lessee, by his own act or by operation of law.

Sixth. The power conveyed by this lease and license is only the right to use the said specific machine, and not the right to make or sell any machine embodying the patents aforesaid, or any of them, and a transfer or removal of the machine hereby leased can only be made with the written consent of the Lessors; and if the Lessee is or becomes at any time insolvent or bankrupt, or if a sale, lease,

transfer or removal of said machine shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative or assignee, as the property of the Lessee, without the written consent of the Lessors, this lease and license shall thereupon terminate and expire, and the possession of said machine shall thereupon revest in the Lessors, and they may take possession of said machine without the Lessee's having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent or license under this instrument; provided, however, that at any time before the Lessors shall have given a notice to terminate this lease and license as herein provided, the Lessee may deliver and surrender any or all of the machines received from the Lessors into the actual possession of the agent of the Association, at Winchester, Mass., or in such other place as the agent may direct, and in a form to be prescribed by the Lessors, relinquish all his rights hereunder, and pay all that may be due to the Lessors under this lease and license; and thereupon the agent shall then put the machine in thorough repair, and lease the machine to such applicant (if any shall apply) as he may deem a suitable person to receive a lease, collecting from him for delivery of possession under such lease such sum as in his opinion shall be just and proper, all of which sum, less the cost of repairs and other expenses actually incurred, to be made up and determined by such agent, shall be accounted for to the Lessee. The Lessee shall, on sending the machine to the agent aforesaid, sign and forward to the Lessors a request to have the machine thus re-leased, and a relinquishment of all his rights and claims on the machine under this lease, except to the avails of the re-leasing as aforesaid, in a form satisfactory to the Lessors.

Seventh. In case any machine hereby leased shall remain unused for the period of six consecutive months, the Lessor may, at any time thereafter, while it remains unused, cancel this lease by written notice so far as relates to said unused machine, but in case of such cancellation the Lessors shall thereafter pay the Lessee the price originally paid for the possession and lease, less the reason-

able cost of putting the machine in good repair, the deterioration of the machine by use or otherwise, and other expenses in reference to the same.

Eighth. In case the Lessee refuses or neglects to perform, or violates any of the conditions of this lease and license, the Lessors shall have the right to terminate this lease and license by giving written notice as aforesaid that they have elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the title and possession of said machine shall thereupon revest in the Lessors, free and discharged of this lease and license; upon the termination of this lease and license by lapse of time, cancellation, breach of condition or otherwise, it shall be the duty of the Lessee forthwith to deliver the machine hereby leased and licensed to the Lessors in good condition, reasonable wear and tear excepted; and upon such termination and without prejudice to any other legal rights or remedies for violation of contract, use of machine without right or use of patents without license, the Lessors or their agents may thereupon enter the premises where said machine may be, and may take and remove the same, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license.

Ninth. This lease and license shall continue (provided the Lessee complies with the terms and conditions thereof) until the expiration of all the Letters Patent which the Lessee is hereunder licensed to use, or any extensions or renewals of the same; and upon the expiration thereof the Lessee shall deliver to the Lessors the machine hereby leased in good order, natural wear and tear alone excepted; and the Lessee shall thereupon, if he has kept all the conditions of this lease, have the right to purchase said machine for the sum of one dollar.

Tenth. In case any other machines than those now hereby leased and licensed, embracing any of the patents hereby licensed, shall hereafter come into the possession of the Lessee without a written lease or license from the Lessors, then, in case the Lessors shall so elect, all the covenants herein contained shall apply to such machines, and shall govern the parties respectively to the same

extent as if the said machines had been expressly included in this lease and license. The Lessors, or one of them, shall give written notice of their election as aforesaid within thirty days after he shall have received written notice from the Lessee of the possession of such machines, but he may give such notice without having received notice from the Lessee of the possession of such machines.

Eleventh. The Lessee agrees that he will allow the Lessors or their agents, at any time hereafter, to attach an indicator or counter to any machine embracing any of the patents hereby licensed, which now is or may hereafter come into the possession of the Lessee, for the purpose of recording the number of revolutions of the cam-shaft of said machine or of indicating the quantity of uniting material used, and to examine, modify, repair or replace said indicator; and that he, the Lessee, will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon a machine as aforesaid.

Twelfth. All the rights and interests which under this instrument and by reason of the ownership of said machines and patents and patent rights belonging to the Lessors shall be deemed to belong to and may be enforced in his or their own names or otherwise by the Lessors' successors in trust, and his and their representatives and assigns, and all the stipulations binding on the Lessee shall be binding on his or their representatives.

Thirteenth. It is agreed that this instrument may be used for Lessees of the female sex, and in that case the masculine pronoun denoting the Lessee shall, whenever it occurs, be instead of and indicate the feminine; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly or severally to the terms and agreements herein contained; and also that the numbers of the machines named in or covered by this lease may be entered herein by the

Lessors after signing; and that as this instrument is designed and intended for use between the parties hereto, in case the Lessee shall have more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural, as the number of machines entered in the lease and license may require.

In witness whereof, the parties aforesaid have hereunto put their hands and seals, the principal Trustee being authorized to sign for himself and his associate and for both, to do all acts hereunder, the said parties of the second part binding themselves to all the foregoing agreements, both jointly and severally.

JAMES W. BROOKS, [SEAL]
Principal Trustee.
GORDON-KILEY COMPANY [SEAL]
By W. H. Gordon, Pres.

Please sign individual names opposite ☞

[RIDER ATTACHED TO PLAINTIFF'S EXHIBIT 12.]

Addition to and Modification of Lease and License No. *3447*, dated *September 25th*, 1897, from the Trustees of the McKay Metallic Fastening Association to *Gordon, Kiley Company, a corporation doing business in East Weymouth, Massachusetts.*

Inasmuch as the lessors have furnished to the lessee, without charge or payment representing its cost, the machinery which the lessee is to use under said lease and upon payment of the royalties therein specified, said machinery remains the absolute property of the lessors who have the right to remove it and also to terminate the lease and license whenever the lessee shall provide himself with any other machine to do any part of the work which said lessors' machines are, in the lessors' opinion, capable of doing or whenever, for a period of three consecutive months, the lessee shall have purchased and paid for, according to the terms of the lease, less than one hundred pounds of the fastening material required for each machine, or whenever the lessee shall alter any of said machines or machinery without consent of the lessor or shall use for repair or

replacement of any portion thereof duplicate parts obtained from any one except the lessor. The lessee agrees to pay the expense of transporting the machinery from and returning it to the lessors' shop and also the expense of repairing the same and any taxes that may be assessed thereon and further agrees to fully insure and keep insured all machines at any time held by him under this lease and license, each for the value in the following schedule named, and, in case of loss, to pay the full amount thereof to the lessor.

Insurance to be made on machines at the values named herewith.

Rapid Standard Machines . . .	$400.00 each.
Old Style Standard Machines . .	350.00 each.
Loose Nail Attaching Machines . .	250.00 each.
Slugging Machines	250.00 each.
Universal Nailing Machines . .	250.00 each.
Tacking-on Machines . . .	75.00 each.

Agreed to

JAMES W. BROOKS, [SEAL]
Principal Trustee.
GORDON-KILEY COMPANY, Lessees. [SEAL]
By W. H. Gordon, Pres.

PLAINTIFF'S EXHIBIT 13.

[Put in Evidence, page 330.]

Lease and License, No.

This Lease and Agreement made this day of A.D. by and between the Davey Pegging Machine Company, a corporation existing under the laws of Maine, Lessor, and Lessee: Witnesseth:

Whereas, the Lessor is owner of the following-described Letters Patent of the United States, viz.: —

No. 414501, November 5, 1889, to John F. Davey,
No. 504311, August 29, 1893, to John F. Davey,
No. 555434, February 25, 1896, to John F. Davey,
No. 559532, May 5, 1896, to William W. Kelly,
No. 581066, April 20, 1897, to J. F. Davey and S. W. Ladd,

and others, for improvements in pegging machines and of the inventions shown and described therein, and also is the owner of several other inventions relating to pegging machines, or to be used in connection therewith, and is constantly endeavoring to make improvements on such machines, and devices to be used therewith, and intends to secure Letters Patent therefor;

And whereas, the Lessee desires the right to use under the terms of this lease and license the hereinafter-described pegging machine or machines belonging to the Lessor, and embodying or to be used in connection with the inventions of the above-mentioned Letters Patent, and also any other patented improvements relating to the machine or machines hereby leased, and which may hereafter be acquired by the Lessor and attached to the machine or machines hereby leased or delivered to the Lessee to be used in connection therewith, and also any other machines, machinery or devices made by or for the Lessor, which may hereafter come into the possession of the Lessee.

Now, therefore, the Lessor, in consideration of one hundred dollars paid by the Lessee for each machine hereby leased, the receipt whereof is hereby acknowledged, and of the covenants and agreements of the Lessee hereinafter contained, does hereby lease unto the Lessee (provided the Lessee keeps and observes the covenants and conditions of this agreement) the pegging machine or machines, described by number or numbers, as follows, namely: —

of which numbers those numbered are delivered to the Lessee upon the execution of this lease, and also the Lessor does hereby lease all other machines, devices and machinery, made by or for the Lessor, which may hereafter come into the possession of the Lessee from or with the consent of the Lessor; and the Lessor doth hereby license said Lessee and parties in his employ to use only in the manufacture of boots or shoes, said pegging machines, devices and machinery, and any parts, mechanism or devices connected therewith, or relating thereto, whether on said machines and machinery when the same are received, or which may be added thereto by the Lessor for and during the term of this lease, and

upon the terms and conditions herein contained, and provided, however, and this lease is made and this license is granted on the express condition that the Lessee shall faithfully keep and observe each and all of the conditions and agreements herein contained on his part to be kept and observed; and that upon a breach of the same, or either of them, by the Lessee, the Lessor may, at his option, cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee, or to any one in the possession or apparent control of the said machines, devices or machinery, this lease and license shall terminate, and the possession of and the full right to and control of the said machines, devices and machinery shall thereupon revest in the Lessor.

The word "Machine," as hereinafter used shall be construed as designating any and all machines, devices and machinery held by the Lessee under this lease and license, whether now or hereafter delivered to the Lessee, and the covenants and conditions of this lease shall apply to all such devices, machines and machinery.

And the following are also agreed to as terms and conditions of the lease and license of the machines, devices and machinery which the Lessee is hereby licensed to use: all of which together with those hereinbefore expressed, the Lessee agrees to keep and perform: —

First. The Lessee is by this lease and license authorized to use the machine hereby leased only by himself or operatives in his direct employ, and only in his factory situate at

He shall not add to the machine nor subtract therefrom any mechanism whatever, now or hereafter, forming a part thereof or connected therewith by the Lessor; nor make nor allow to be made any change or alteration in the said machine without the consent, in writing, of the Lessor, nor interfere with the proper operation of the same, or any mechanism forming a part thereof or attached thereto; nor remove nor deface any dates, numbers or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor; and shall, at all times and at his own expense, keep the machine in as good and efficient working order as the same now is or may here-

after be put by the Lessor, and shall purchase of the Lessor all spare parts used in repairing the machine.

Second. The Lessor and his agents may, at all reasonable times, have convenient access to the machine covered by this lease to examine and inspect the same and the use thereof, and to repair and improve or add to the same, so far as they may see fit; but he shall not be bound to make any repairs or improvements, and the covenants, stipulations, conditions, and terms of this lease shall apply to all improvements which the Lessor shall hereafter add to the same, and to any patents which have or may be issued thereon, with the same effect as if the patents were included in this lease and license with the Letters Patent already referred to.

Third. The Lessee agrees to pay unto the Lessor, on the fifteenth day of each month, as rent or royalty for the machine hereby leased, the sum of two cents for each and every pair of boots or shoes, of any kind, pegged by the aid or use of said machine, or in the pegging or manufacture of which said machine is utilized, said rent or royalty above referred to to be paid on the fifteenth day of each month, for all boots or shoes in the making or manufacture of which said machine shall have been used during the preceding calendar month; and it is hereby agreed between the parties hereto that said rental or royalty, of two cents per pair of boots or shoes, is a just, fair, and correct value to the Lessee of the use of the machine hereby leased to the Lessee, and that the abated royalty of three-quarters cent per pair, hereinafter named, is not the true value of the license hereby granted, but is a concession and abatement of such value for and in consideration of the conditions thereto attached; and this agreement and responsibility, and all others in this lease contained, shall extend to and in respect of all boots or shoes pegged by the aid of said machine, or in the making or manufacture of which said machine shall have been used, whether made by the Lessee or by other persons for him; provided, however, that in all cases where the Lessee shall pay the Lessor, on or before the fifteenth day of each month, three-quarters cent per pair for each and every pair of boots or shoes, of any kind, pegged in whole or in part, by the aid or use of said machine, or in the manu-

facture of which said machine shall have been utilized, said payment so duly made, shall be full payment and satisfaction of the rent or royalty for the use of the patents for such boots and shoes in respect to which said payments shall have been so duly made. And it is agreed that, in the default of the payment of said royalty when due, that is, on or before the fifteenth day of each month, the Lessee's right to an abatement of the full royalty of two cents per pair, as herein provided, shall thereby be forfeited; and it is agreed that, for each and every pair of boots or shoes pegged by the aid of said machine, or in the manufacture of which said machine shall have been used, and in respect to which there shall not have been paid the abated rent or royalty, in accordance with the terms hereinbefore set forth, the Lessee shall pay to the Lessor the sum of two cents, as liquidated, fixed and settled damages. The Lessee hereby guarantees that the abated royalty, due and paid over to the Lessor under the terms herein, shall not be less than ten dollars for each machine, for each calendar month, and in case said abated royalty, in any month, shall be less than ten dollars for each machine, then the Lessee agrees to pay to the Lessor, at the time for the payment of the abated royalty, whatever additional sum may be necessary to bring the abated royalty for that month up to ten dollars for each machine.

Fourth. It is understood that the Lessor may, at any time, attach to said machine an indicator, for the purpose of registering the number of boots or shoes pegged upon said machine, or the number of revolutions or movements of said machine; and the Lessee agrees that in case an indicator shall be attached to said machine by the Lessor, it shall not be disturbed or interfered with by any person, and that prompt notice will be given to said Lessor in case the same shall be disturbed, or inaccurate, or out of repair. And the Lessee agrees to keep a full and accurate account, independently of any indicator that may be placed upon the machine, of all boots and shoes which shall be pegged upon said machine, or in the manufacture of which said machines shall have been used; and the Lessee further agrees to require each of its operators upon the machine hereby leased to keep, upon blanks to be furnished by the Lessor,

accurate accounts of the number of pairs of boots or shoes pegged by him each day upon said machine, or in the making of which said machine shall have been used, and to require his operator to sign such daily records, and deliver them daily to the Lessee, and such account shall be verified by the oath of the operator, if the Lessor shall so require, and the Lessee also agrees to send to the office of the Lessor, on or before the tenth day of each month, a written report for the preceding calendar month of the number of pairs of boots or shoes pegged upon or with the aid of said machine, or in the pegging of which said machine shall have been used, together with the records kept by his operators as above provided for. And the Lessee agrees to allow the Lessor or his agents to have access, at all times, to said records kept by his operators, and to the accounts kept by him of the shoes pegged or manufactured on the machines leased hereby.

Fifth. The Lessee hereby agrees that he will do all the pegging of boots and shoes manufactured by him upon the said machines of the Lessor which are leased hereby, and that in case he has too much work for the machines hereby leased, he will take from the Lessor, under this lease or a similar lease containing the same terms and provisions, sufficient additional machines to perform the work, which machines shall be in all respects subject to this lease and license as if at the date hereof delivered to the Lessor and named herein.

Sixth. The Lessee hereby agrees that he will not in any way violate or infringe or contest the validity of any of the patents hereinbefore referred to, or now or hereafter owned by the Lessor, or any reissue or extension of the same, or the title of the Lessor to said patents or any of them, and expressly admits the validity and sufficiency thereof, and that the claims are to be construed broadly.

Seventh. This machine cannot be transferred, and this lease and license is not assignable by the Lessee, by his own act or by operation of law. The Lessee agrees to insure and to keep insured each pegging machine held by him, at any time under this lease, in

the sum of $200, and in case of loss or damage the Lessee agrees to pay the full amount of the insurance to the Lessor.

Eighth. The power conveyed by this lease and license is only the right to use the said machine, and not the right to make or sell any machine embodying the inventions of the patents aforesaid, or any patent hereafter owned by the Lessor. And a removal of the machine from the factory of the Lessee can only be made with the written consent of the Lessor, and on conditions satisfactory to the Lessor; and if the Lessee is or becomes at any time insolvent or bankrupt, or if a sale, transfer, or lease of said machine, devices or machinery shall be made or attempted without the written consent of the Lessor, then this lease and license, and all rights of the Lessee thereunder shall forthwith, at the option of the Lessor, cease and determine, and the possession of said machine shall revest in the Lessor, and he may take possession of the same without the Lessee having any claim against the Lessor.

Ninth. In case the Lessee refuses or neglects to perform or violates any of the conditions of this lease and license, the Lessor shall have the right to terminate this lease and license by giving written notice that he has elected so to do; and immediately upon such notice this lease and license and all the rights of the Lessee thereunder shall be terminated, and the possession of said machine shall thereupon revest in the Lessor, free and discharged of this lease and license. Upon the termination of this lease and license, by the non-performance or breach on the part of the Lessee of any condition or agreement to be kept or performed by the Lessee under the terms hereof, it shall be the duty of the Lessee forthwith to deliver the machine hereby leased and licensed to the Lessor, and to pay to the Lessor the sum of one hundred dollars for each machine hereby leased, and to pay in addition the expense of transporting the machine to such place of business of the Lessor as the Lessor shall direct, and without prejudice to any other legal rights or remedies for violation of contract, use of machine without right or use of patents without license; and the Lessor or his agents may forthwith enter the premises where said machine may be and may

take and remove the same, and the Lessee shall have no claim whatever against the Lessor.

Tenth. This lease and license shall continue, provided the Lessee faithfully keeps and performs the terms and conditions thereof, until the expiration of the Letters Patent above referred to, and until the expiration of any extensions or renewals thereof, and the expiration of any Letters Patent now or hereafter owned by the Lessor, any inventions of which shall be added to or embodied in said machines, or used in connection therewith.

In case this lease shall run for its full term, then immediately upon its expiration the Lessee shall deliver to the Lessor the machine hereby leased, and the Lessee shall have no claim whatever to said machine or to a continuation of his possession or use thereof.

Eleventh. In case any other machines, devices, or machinery than those now hereby leased and licensed, embracing or to be used in connection with the inventions of any of the Letters Patent under which a license is hereby granted, or any other patents under which the Lessee may hereafter become licensed by the terms of this agreement shall hereafter come into the possession of the Lessee without a written lease or license from the Lessor, then, in case the Lessor shall so elect, all the covenants and agreements herein contained, including the obligation to pay a monthly rental or royalty, shall apply to the same and shall govern the parties respectively to the same extent as if the same had been expressly included in this lease and license. The Lessor may write the numbers of any such machines as shall hereafter come into the possession of the Lessee into this lease, after the same is executed.

Twelfth. All the rights and interests which, under this agreement and by reason of the ownership of said machines and patents and patent rights, belong to the Lessor, shall be deemed to belong to, and may be enforced, in his name or otherwise, by the Lessor's successors and assigns, and its or their representatives and assigns. All of the stipulations and agreements binding on the Lessee shall be binding on his or their representatives and assigns.

Thirteenth. It is agreed that this instrument may be used for Lessees of the female sex, or for corporations, and that in that

case the masculine pronoun denoting the Lessee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that this instrument may be used in cases where the Lessee shall consist of more than one person, and in that case the pronouns and the termination of the words relating to the Lessees shall be considered as plural or singular, as the sense may require; and that when the Lessees so consist of several persons, and they sign this lease either individually or by the firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In Witness Whereof, the parties aforesaid have hereunto set their hands and seals and to another instrument of even date and like tenor, said Lessee or Lessees, under this agreement, binding itself, himself, or themselves to all the foregoing agreements, both jointly and severally.

PLAINTIFF'S EXHIBIT 14.

[Put in Evidence, page 333.]

Lasting Machine Department. [Form 1200-300-½.]

Lease and License Number *761*.

Consolidated Hand Method Machine.

This Lease and Agreement made at Boston, in the State of Massachusetts, this *fourteenth* day of *December* 19*00*, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *R. E. Larcom* of *Beverly* in the State of *Massachusetts*, hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use

Consolidated Hand Method Lasting Machine No. *982*,

now or hereafter delivered to the lessee, and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said

designated machine, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (which machine, together with all duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at *Beverly* in the State of *Massachusetts*. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the

purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery, or in respect to this lease and license, or the right to payments hereunder upon whomsoever assessed.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, and other footwear made in his factory in the manufacture of which it can be used.

Five. The lessee shall pay to to the lessor immediately after the execution hereof as a lease premium the sum of *fifty* dollars, and the lessee shall also pay to the lessor on the last day of each calendar month as rent or royalty the sum of one (1) cent for each pair of boots, shoes or other footwear, or portions thereof, lasted or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar**

month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent from such rent or royalty due for such preceding calendar month. Seventy-two pairs of misses' and children's boots, shoes or other footwear shall be considered equivalent to sixty (60) pairs of other kinds. If, for any cause, the leased machinery shall not be in use for twelve (12) consecutive months to the extent of its earning for the lessor at the rental and royalty herein provided to be paid (less all abatements) an amount equal to or in excess of seventy-five dollars ($75), then the lessor may, by paying to the lessee a sum equal to one-third (⅓) of the sum paid by him as the lease premium hereunder, cancel and terminate this lease and license, and this option and condition shall be independant of any other options and conditions in this lease and license contained.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or anyone in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, the sum of one cent per pair for each pair of boots, shoes or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any

indicators that may be placed upon the leased machinery, showing the number of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, or other footwear or portions thereof made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and if requested so to do by the lessor, shall verify the same under oath, and shall also furnish any further information called for by said blanks or blank books; and the lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month.

And that the following agreements, stipulations, and provisions are agreed to:—

Seven. If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him which are lasted by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may, at its option, terminate forthwith by notice in writing this lease and license and any other lease or license of lasting machines, lasting machinery or lasting devices then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and

control of all lasting machines, lasting machinery or lasting devices held by the lessee under lease or license from the lessor or its assignors shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted; and the lessee, for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power, and authority

to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery.

Nine. A notice in writing, signed by the president, a vice-president, or the treasurer of the lessor, or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cessor of this lease and license from any causs whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writ-

ing, signed by the president, a vice-president, or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company, and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In Witness Whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

UNITED SHOE MACHINERY CO. [SEAL]
L. H. Baker, Secretary
R. E. LARCOM [SEAL]

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Ten herein.)

No. 281,306, dated July 17, 1883.
No. 284,906, dated Sept. 11, 1883.
No. 292,575, dated Jan. 29, 1884.
No. 312,335, dated Feb. 17, 1885.
No. 415,726, dated Nov. 26, 1889.
No. 421,954, dated Feb. 25, 1890.
No. 423,920, dated March 25, 1890.
No. 423,921, dated March 25, 1890.
No. 423,921, dated March 25, 1890.
No. 423,937, dated March 25, 1890.
No. 441,482, dated Nov. 25, 1890.
No. 459,899, dated Sept. 22, 1891.
No. 482,349, dated Sept. 13, 1892.
No. 500,141, dated June 27, 1893.
No. 510,972, dated Dec. 19, 1893.
No. 510,973, dated Dec. 19, 1893.
No. 510,974, dated Dec. 19, 1893.
No. 510,975, dated Dec. 19, 1893.
No. 510,976, dated Dec. 19, 1893.
No. 510,977, dated Dec. 19, 1893.
No. 510,978, dated Dec. 19, 1893.
No. 518,933, dated April 24, 1894.
No. 523,939, dated July 31, 1894.
No. 533,394, dated Jan. 29, 1895.
No. 560,767, dated May 26, 1896.
No. 562,119, dated June 16, 1896.
No. 564 931, dated July 28, 1896.
No. 567.566, dated Sept. 8, 1896.
No. 584,741, dated June 15, 1897.
No. 584,742, dated June 15, 1897.
No. 584,743, dated June 15, 1897.
No. 584,744, dated June 15, 1897.
No. 597,321, dated Jan. 11, 1898.

[Endorsed:]
United Shoe Machinery Company.
Lasting Machine Department.
Consolidated Hand Method Machine. 1-2.
Lease No. 761. R. E. Larcom, Lessee.
Date, Dec. 14 1900. Machine No. 982.
Cancelled.

PLAINTIFF'S EXHIBIT 15.

[Put in Evidence, page 333.]

Lasting Machine Department. [Form 1200—W. & T.—5/8].

Lease and License No. *227G*.

Consolidated Hand Method Machine.

This Lease and Agreement made at Boston, in the State of Massachusetts, this *sixth* day of *April* 1901, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *Keighley-Mullen Company* of *Vineland* in the State of *New Jersey*, hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use

Consolidated Hand Method Lasting Machine No. *1888*,

now or hereafter delivered to the lessee, and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (which machine, together with all duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at *Vineland* in

the State of *New Jersey*. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the leased ma-

chinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall at his own expense insure the leased machinery against loss by fire, and keep the same insured to the amount of Two Hundred (200) Dollars, and in case the same is lost or destroyed by fire, or otherwise, before the expiration or termination of this lease, then the lessee shall pay to the lessor upon demand the sum of Two Hundred (200) Dollars as partial compensation for such loss or destruction. The lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery, or in respect to this lease and license, or the right to payments hereunder upon whomsoever assessed.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, and other footwear made in his factory in the manufacture of which it can be used, but the leased machinery shall not, nor shall any part thereof, be used in the manufacture of any boots, shoes, or other footwear which are or shall be welted, or the soles stitched on welt sewing or sole stitching machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any turn boots, shoes, or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines, not leased to the lessee by the lessor or its assignor.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one (1) cent for each pair of misses' and children's and one and one quarter (1¼) cents for each pair of all other kinds of boots, shoes or other footwear, or portions thereof, lasted or manufactured or prepared during the next preceeding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent from such rent or royalty due for such preceding calendar month.** The lessee guarantees that the rent or royalty herein provided (less all

abatements) shall amount in each calendar year, ending December 31, to at least fifteen (15) dollars for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one twelfth for each such month that the factory thus remains wholly idle.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or anyone in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, one and one quarter (1¼) cents per pair for each pair of boots, shoes, or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take

copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, or other footwear or portions thereof made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and if requested so to do by the lessor, shall verify the same under oath and shall also furnish any further information called for by said blanks or blank books; and the lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month.

And that the following agreements, stipulations, and provisions are agreed to: —

Seven. If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him which are lasted by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may, at its option, terminate forthwith by notice in writing this lease and license and any other lease or license of lasting machines, lasting machinery or lasting devices then exisiting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all lasting machines, lasting machinery or lasting devices held by the lessee under lease or license from the lessor or its assignors shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner ter-

minated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor the sum of One Hundred and Fifty ($150) dollars as compensation for setting up the leased machinery in his factory, for instructing operators, and for deterioration of the leased machinery; and the lessee, for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take posses-

sion thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery.

Nine. A notice in writing, signed by the president, a vice-president, or the treasurer of the lessor, or by any assignee of the lessor's rights hereunder and posted by pre-paid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cessor of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe

Machinery Company, and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

KEIGHLEY MULLEN CO.
Wm Keighley
[SEAL]
UNITED SHOE MACHINERY CO. [SEAL]
L. H. Baker Secretary.

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Ten herein.)

No. 281,306, dated July 17, 1883.
No. 284,906, dated Sept. 11, 1883.
No. 292,575, dated Jan. 29, 1884.
No. 312,335, dated Feb. 17, 1885.
No. 415,726, dated Nov. 26, 1889.
No. 421,945, dated Feb. 25, 1890.
No. 423,920, dated March 25, 1890.
No. 423,921, dated March 25, 1890.
No. 423,922, dated March 25, 1890.
No. 423,937, dated March 25, 1890.
No. 441,482, dated Nov. 25, 1890.
No. 459,899, dated Sept. 22, 1891.
No. 482,349, dated Sept. 13, 1892.
No. 500,141, dated June 27, 1893.
No. 510,972, dated Dec. 19, 1893.
No. 510,973, dated Dec. 19, 1893.
No. 510,974, dated Dec. 19, 1893.
No. 510,975, dated Dec. 19, 1893.
No. 510,976, dated Dec. 19, 1893.
No. 510,977, dated Dec. 19, 1893.
No. 510,978, dated Dec. 19, 1893.
No. 518,933, dated April 24, 1894.
No. 523,939, dated July 31, 1894.
No. 533,394, dated Jan. 29, 1895.
No. 560,767, dated May 26, 1896.
No. 562,119, dated June 16, 1896.
No. 564,931, dated July 28, 1896.
No. 567,566, dated Sept. 8, 1896.
No. 584,741, dated June 15, 1897.
No. 584,742, dated June 15, 1897.
No. 584,743, dated June 15, 1897.
No. 584,744, dated June 15, 1897.
No. 597,321, dated Jan. 11, 1898.

[Endorsed:]
United Shoe Machinery Company.
Lasting Machine Department.
Consolidated Hand Method Machine. W. & T., 5-8.
Lease No. 227G Keighley-Mullen Co. Lessee.
Date, April 6 1901.
Machine No. 1888.

PLAINTIFF'S EXHIBIT 16.

[Put in Evidence, page 334.]

Lasting Machine Department. [Form 900 — 5/8.]

Lease and License Number *2299*.

Consolidated Hand Method Machine.

This Lease and Agreement made at Boston, in the State of Massachusetts, this *thirty-first* day of *October*, 1900, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *New Ulm Boot and Shoe Company* of *New Ulm* in the State of *Minnesota*, hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use

Consolidated Hand Method Lasting Machine No. *3135*,

now or hereafter delivered to the lessee, and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (which machine, together with all duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at *New Ulm*

in the State of *Minnesota*. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the

leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall at his own expense insure the leased machinery against loss by fire, and keep the same insured to the amount of Two Hundred (200) Dollars, and in case the same is lost or destroyed by fire, or otherwise, before the expiration or termination of this lease, then the lessee shall pay to the lessor upon demand the sum of Two Hundred (200) Dollars as partial compensation for such loss or destruction. The lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery, or in respect to this lease and license, or the right to payments hereunder upon whomsoever assessed.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, and other footwear made in his factory in the manufacture of which it can be used, but the leased machinery shall not, nor shall any part thereof, be used in the manufacture of any boots, shoes, or other footwear which are or shall be welted, or the soles stitched on welt sewing or sole stitching machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any turn boots, shoes, or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any boots, shoes, or other footwear which have been or shall be slugged, heel seat nailed, or otherwise partly made by the aid of any "Metallic" machinery not leased to the lessee by the lessor or its assignors.

Five. The Lessee shall pay to the Lessor on the last day of each calendar month as rent or royalty the sum of one (1) cent for each pair of misses' and children's and one and one quarter (1¼) cents for each pair of all other kinds of boots, shoes, or other footwear, or portions thereof, lasted or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next pre-**

ceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent from such rent or royalty due for such preceding calendar month. The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount in each calendar year, ending December 31, to at least fifteen (15) dollars for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one twelfth for each such month that the factory thus remains wholly idle.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or anyone in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, one and one quarter (1¼) cents per pair for each pair of boots, shoes, or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, show-

ing the number of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, or other footwear or portions thereof made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and if requested so to do by the lessor, shall verify the same under oath and shall also furnish any further information called for by said blanks or blank books; and the lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month.

And that the following agreements, stipulations, and provisions are agreed to: —

Seven. If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him which are lasted by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may, at its option, terminate forthwith by notice in writing this lease and license and any other lease or license of "Lasting Machine Department" machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all the leased machinery, and all "Lasting Machine Department"

machinery held by the lessee under any other lease or license from the lessor or its assignors shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted: and shall thereupon pay to the lessor the sum of One Hundred and Fifty (150) dollars as compensation for setting up the leased machinery in his factory, for instructing operators, and for deterioration of the leased machinery; and the lessee, for himself, his heirs,

executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power, and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery.

Nine. A notice in writing, signed by the president, a vice-president, or the treasurer of the lessor, or by any assignee of the lessor's rights hereunder and posted by pre-paid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity of each and every of the Letters Patent of the United States of America owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed, and that he shall be forever estopped from so doing. The termination or cessor of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the

lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company, and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

NEW ULM B. & SHOE CO. [SEAL]
By Jacob Klossner Jr. Pres'd.
" H. Heimerdinger Sec'y. & Treas.

[SEAL] UNITED SHOE MACHINERY CO.
L. H. Baker, Secretary.

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Ten herein.)

No. 281,306, dated July 17, 1883.
No. 284,906, dated Sept. 11, 1883.
No. 292,575, dated Jan. 29, 1884.
No. 312,335, dated Feb. 17, 1885.
No. 415,726, dated Nov. 26, 1889.
No. 421,954, dated Feb. 25, 1890.
No. 423,920, dated March 25, 1890.
No. 423,921, dated March 25, 1890.
No. 423,922, dated March 25, 1890.
No. 423,937, dated March 25, 1890.
No. 441,482, dated Nov. 25, 1890.
No. 459,899, dated Sept. 22, 1891.
No. 482,349, dated Sept. 13, 1892.
No. 500,141, dated June 27, 1893.
No. 510,972, dated Dec. 19, 1893.
No. 510,973, dated Dec. 19, 1893.
No. 510,974, dated Dec. 19, 1893.
No. 510,975, dated Dec 19, 1893.
No. 510,976, dated Dec. 19, 1893.
No. 510,977, dated Dec. 19, 1893.
No. 510,978, dated Dec. 19, 1893.
No. 518,933, dated April 24, 1894.
No. 523,939, dated July 31, 1894.
No. 533,394, dated Jan. 29, 1895.
No. 560,767, dated May 26, 1896
No. 562,119, dated June 16, 1896.
No. 564.931, dated July 28, 1896.
No. 567,566. dated Sept. 8, 1896.
No. 584,741, dated June 15, 1897.
No. 584,742, dated June 15, 1897.
No. 584,743, dated June 15, 1897.
No. 584,744, dated June 15, 1897.
No. 597,321, dated Jan. 11, 1898.

[Endorsed:]
United Shoe Machinery Company.
Lasting Machine Department.
Consolidated Hand Method Machine. 5-8.
Lease No. 2299 New Ulm B. & S. Co., Lessee.
Date Octo. 31, 1900.
Machine No. 3135.

PLAINTIFF'S EXHIBIT 17.

[Put in Evidence, page 335.]

Lasting Machine Department. [Form J. L. J., 1206.]

Lease and License Number .

Consolidated Hand Method Lasting Machine.

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Consolidated Hand Method Lasting Machine, No. ,

now or hereafter delivered to the lessee and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (which machine, together with all duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter

impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The lessee shall use the leased machinery to its full capa-

city on all boots, shoes and other footwear made in his factory in the manufacture of which it can be used.

Five. The lessee shall pay to the lessor immediately after the execution hereof as a lease premium the sum of dollars, and the lessee shall also pay to the lessor on the last day of each calendar month as rent or royalty the sum of one (1) cent for each pair of misses' and children's and one and one-quarter (1¼) cents for each pair of all other kinds of boots, shoes or other footwear, or portions thereof, lasted or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month the lessor will, in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.** If, for any cause, the leased machinery shall not be in use for twelve (12) consecutive months to the extent of its earning for the lessor at the rental and royalty herein provided to be paid (less all abatements) an amount equal to or in excess of seventy-five dollars ($75), then the lessor may, by paying to the lessee a sum equal to one-third (⅓) of the sum paid by him as the lease premium hereunder, cancel and terminate this lease and license, and this option and condition shall be independent of any other options and conditions in this lease and license contained.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time

explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or anyone in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, one and one-quarter (1¼) cents per pair for each pair of boots, shoes or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of each kind of boots, shoes and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes or other footwear, or portions thereof made by the aid of leased machinery or any part thereof and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of each kind of boots, shoes and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month. The lessee

shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations and provisions are agreed to: —

Seven. If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use exclusively lasting and tacking mechanisms and appliances held by him under lease from the lessor for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of lasting and tacking mechanisms and appliances, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases of or licenses to use lasting machines, lasting machinery, and lasting and tacking mechanisms and appliances then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all the leased machinery and all lasting machines, lasting machinery, and lasting and tacking mechanisms and appliances held by the lessee under lease or license from the lessor or its assignors shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith this lease and license, and also, if the lessor so elects, any other lease or license agreements then in force between the lessor and the lessee, whether as the result of

assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors, and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and in no case (excepting, as hereinbefore provided, in the event of termination by the lessor under the option reserved in Article Five hereof, for failure to use to the amount therein specified, and for no other reason) shall the lessee have any claim for the repayment of any sum or sums or any part thereof which he shall have paid as consideration for the grant of this lease and license or for rent or royalty or otherwise in respect to the leased machinery.

Nine. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor, or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby

granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Ten herein.)

No. 415,726, dated Nov. 26, 1889.
No. 421,954, dated Feb. 25, 1890.
No. 423,920, dated March 25, 1890.
No. 423,921, dated March 25, 1890.
No. 423,922, dated March 25, 1890.
No. 423,937, dated March 25, 1890.
No. 441,482, dated Nov 25, 1890.
No. 459,899, dated Sept. 22, 1891.
No. 482,349, dated Sept. 13, 1892.
No. 500,141, dated June 27, 1893.
No. 510,972, dated Dec. 19, 1893.
No. 510,973, dated Dec. 19, 1893.
No. 510,974, dated Dec. 19, 1893.
No. 510,975, dated Dec. 19, 1893.
No. 510,976, dated Dec. 19, 1893.
No. 510,977, dated Dec. 19, 1893.
No. 510,978, dated Dec. 19, 1893.
No. 518,933, dated April 24, 1894.
No. 523,939, dated July 31, 1894.
No. 533,394, dated Jan. 29, 1895.
No. 560,767, dated May 26, 1896.
No. 562,119, dated June 16, 1896.
No. 564,931, dated July 28, 1896.
No. 567,566, dated Sept. 8, 1896.
No. 581,066, dated April 20, 1897.
No. 584,741, dated June 15, 1897.
No. 584,742, dated June 15, 1897.
No. 584,743, dated June 15, 1897.
No. 584,744, dated June 15, 1897.
No. 597,321, dated Jan. 11, 1898.
No. 663,471, dated Dec. 11, 1900.
No. 663,777, dated Dec. 11, 1900.
No. 696,717, dated April 1, 1902.
No. 696,740, dated April 1, 1902.
Re. No. 12,012, dated July 15, 1902.
No. 718,586, dated Jan. 13, 1903.
No. 726,087, dated April 21, 1903.
No. 751,128, dated Feb. 2, 1904.
No. 784,251, dated March 7, 1905.
No. 786,047, dated March 28, 1905.

[On back:]

United Shoe Machinery Company.
Lasting Machine Department.
Consolidated Hand Method Machine.
L. P. 5-8 W. & T.

Lease No.

Lessee.

Date, 19

Machine No.

PLAINTIFF'S EXHIBIT 18.

[Put in Evidence, page 336.]

Lasting Machine Department. [Form 801.]

Lease and License Number *303*.

Ideal Lasting Machine.

This Lease and Agreement made at Boston in the State of Massachusetts this *twenty-sixth* day of *September*, 19*01*, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *Hanan and Son* of *Brooklyn* in the State of *New York*, hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use the machine or machines of the Lasting Machine Department of the lessor now or hereafter delivered to the lessee, and designated by number in the following schedule, viz: —

SCHEDULE OF MACHINES.

Ideal Lasting Machine, No. *389*.
Rapid Lasting Machine (Foot Power), No. .
Rapid Power Lasting Machine, No. .
Rapid Loose Tacker (with Hopper and Loader), No. *332 333*.

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines together with all duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease

and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at *Brooklyn* in the State of *New York*. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery, or in respect to this lease and license, or the right to payments hereunder upon whomsoever assessed.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, and other footwear made in his factory in the manufacture of which it can be used, but the leased machinery shall not nor shall any part thereof be used in the manufacture of any boots, shoes, or other footwear which are or shall be welted or the soles stitched on welt sewing or sole stitching machines not leased to the lessee by the lessor or its assignor or in the manufacture of any turn boots, shoes, or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines not leased to the lessee by the lessor or its assignor.

Five. The lessee shall pay to the lessor immediately after the execution hereof as a lease premium the sum of three hundred dollars, and the lessee shall also pay to the lessor on the last day of each calendar month as rent or royalty the sum of one (1) cent for each pair of boots, shoes, or other footwear, or portions thereof, lasted or manfactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in**

all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month. If, for any cause, the leased machinery shall not be in use for twelve (12) consecutive months to the extent of its earning for the lessor at the rental and royalty herein provided to be paid (less all abatements) an amount equal to or in excess of seventy-five dollars ($75) then the lessor may, by paying to the lessee a sum equal to one-third (⅓) of the sum paid by him as the lease premium hereunder, cancel and terminate this lease and license, and this option and condition shall be independent of any other options and conditions in this lease and license contained.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, the sum of one cent per pair for each pair of boots, shoes, or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The

lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, or other footwear or portions thereof made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations, and provisions are agreed to: —

Seven. If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use exclusively tacking mechanisms and appliances held by him under lease from the lessor, for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, the lessor,

although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing this lease and license and any other lease or license of lasting machines, lasting machinery, lasting mechanisms, or lasting devices then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all the leased machinery and all lasting machines, lasting machinery, lasting mechanisms, and lasting devices held by the lessee under lease or license from the lessor or its assignors shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part

of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted; and the lessee, for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power, and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery.

Nine. A notice in writing, signed by the president, a vice-presi- or the treasurer of the lessor, or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cessor of this lease and license from any cause whatever shall not in any way affect the provisions of this clause,

or release or discharge the lessee from the admission and estoppel herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

UNITED SHOE MACHINERY CO. [SEAL]
by L. H. Baker, Secretary.
HANAN & SON.

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Ten herein.)

Number.	Dated.	Number.	Dated.
302,885	August 5, 1884.	500,225	June 27, 1893.
306,671	October 14, 1884.	500,319	June 27, 1893.
309,519	December 23, 1884.	501,872	July 18, 1893.
312,550	February 17, 1885.	501,873	July 18, 1893.
312,691	February 24, 1885.	507,551	October 31, 1893.
312,962	February 24, 1885.	513,384	January 23, 1894.
319,784	June 9, 1885.	516,074	March 6, 1894.
329,280	October 27, 1885.	517,947	April 10, 1894.
329,282	October 27, 1885.	521,954	June 26, 1894.
329,283	October 27, 1885.	521,975	June 26, 1894.
329,366	October 27, 1885.	524,445	August 14, 1894.
329,367	October 27, 1885.	524,446	August 14, 1894.

333,709	January 5, 1886.	524,447	August 14, 1894.
336,539	February 16, 1886.	536,780	April 2, 1895.
337,662	March 9, 1886.	537,269	April 9, 1895.
337,924	March 16, 1886.	537,270	April 9, 1895.
337,925	March 16, 1886.	539,065	May 14, 1895.
338,930	March 30, 1886.	545,052	August 27, 1895.
340,860	April 27, 1886.	548,671	October 29, 1895.
343,689	June 15, 1886.	548,862	October 29, 1895.
352,851	November 16, 1886.	552,834	January 7, 1896.
354,462	December 14, 1886.	558,011	April 7, 1896.
356,619	January 25, 1887.	558,026	April 14, 1896.
356,620	January 25, 1887.	558,043	April 14, 1896.
360,147	March 29, 1887.	560,896	May 26, 1896.
363,283	May 17, 1887.	561,189	June 2, 1896.
364,088	May 31, 1887.	566,831	September 1, 1896.
365,497	June 28, 1887.	568,463	September 29, 1896.
365,504	June 28, 1887.	569,182	October 13, 1896.
365,505	June 28, 1887.	569,231	October 13, 1896.
365,731	June 28, 1887.	569,357	October 13, 1896.
371,816	October 18, 1887.	569,590	October 13, 1896.
376,368	January 10, 1888.	571,339	November 17, 1896.
385,747	July 10, 1888.	571,404	November 17, 1896.
391,688	October 23, 1888.	571,429	November 17, 1896.
420,268	January 28, 1890.	571,509	November 17, 1896.
422,734	March 4, 1890.	583,404	May 25, 1897.
439,051	October 21, 1890.	588,568	August 24, 1897.
444,792	January 13, 1891.	588,569	August 24, 1897.
446,631	February 17, 1891.	601,933	April 5, 1898.
455,174	June 30, 1891.	601,934	April 5, 1898.
458,000	August 18, 1891.	601,935	April 5, 1898.
458,001	August 18, 1891.	601,936	April 5, 1898.
465,073	December 15, 1891.	601,937	April 5, 1898.
473,873	April 26, 1892.	601,938	April 5, 1898.
477,788	June 28, 1892.	601,939	April 5, 1898.
477,789	June 28, 1892.	601,940	April 5, 1898.
478,501	July 5, 1892.	691,941	April 5, 1898.
483,375	September 27, 1892.	601,942	April 5, 1898.

[Endorsed:]
United Shoe Machinery Co.
Lasting Machine Department. Ideal Lasting Machine.
Lease No. 303. Hanan & Son, Lessee.
Date, September 26, 1901. Ideal Lasting Machine, No. 389.
Rapid Lasting Machine (Foot Power), No.
Rapid Power Lasting Machine, No.
Rapid Loose Tacker, No. 332–333.

PLAINTIFF'S EXHIBIT 19.

[Put in Evidence, page 337.]

Lasting Machine Department. [Form 601.]

Lease and License Number *2*

Chase Lasting Machine.

This Lease and Agreement made at Boston in the State of Massachusetts this *sixteenth* day of *July* 1901, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *Fitzpatrick Shoe Company* of *Stoughton* in the State of *Massachusetts*, hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use the machine or machines of the Lasting Machine Department of the lessor now or hereafter delivered to the lessee, and designated by number as follows, viz.: —

Chase Lasting Machine No. *124, 235*

Chase Hand Tacker (Stop Motion) No. *1545, 2274*

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter deliv-

ered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at *Stoughton* in the State of *Massachusetts*. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same. The lessee shall also purchase from the lessor exclusively at the prices from time to time established by the lessor all supplies, including string nail, tack strips, and other fastening material used in connection with the leased machinery.

Three. The lessee shall at his own expense insure the leased machinery against loss by fire, and keep the same insured to the amount of Two Hundred (200) Dollars for each Chase Lasting Machine hereby leased and in case the same is lost or destroyed by fire, or otherwise, before the expiration or termination of this lease, then the lessee shall pay to the lessor upon demand the sum of Two Hundred (200) Dollars for each such Chase Lasting Machine and accessories as partial compensation for such loss or destruction. The lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery or in respect to this lease and license or the right to payments hereunder, upon whomsoever assessed.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, and other footwear made in his factory in the manufacture of which it can be used, but the leased machinery shall not nor shall any part thereof be used in the manufacture of any boots, shoes, or other footwear which are or shall be welted or the soles stitched on welt sewing or sole stitching machines not

leased to the lessee by the lessor or its assignor or in the manufacture of any turned boots, shoes, or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any boots, shoes, or other footwear which have been or shall be slugged, heel seat nailed, or otherwise partly made by the aid of any "Metallic" machinery not leased to the lessee by the lessor or its assignors.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one and one half (1½) cents for each pair of long-legged boots and of one (1) cent for each pair of all other kinds of boots, shoes, or other footwear, or portions thereof, lasted or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.** The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount in each calendar year, ending December 31, to at least ten (10) dollars for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to

disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate or becomes or remains inaccurate or the glass covering becomes or remains removed, broken, or injured because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, one and one-half (1½) cents per pair for each pair of boots, shoes, or other footwear, or portions thereof, in the manufacture of which the leased machinery, or any part thereof, shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of each kind of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery, or any part thereof, shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, or other footwear, or portions thereof, made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery, or any part thereof, to keep, upon blanks or blank books to be furnished by the lessor, accurate daily records of the number of each kind of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each

calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month. The lessee shall also furnish any further information which may called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations, and provisions are agreed to: —

Seven. If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use exclusively tacking mechanisms and appliances held by him under lease from the lessor, for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing this lease and license and any other lease or license of lasting machines, lasting machinery, lasting mechanisms, or lasting devices then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all the leased machinery and all lasting machines, lasting machinery, lasting mechanisms, and lasting devices held by the lessee under lease or license from the lessor or its assignors shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon

the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor the sum of One Hundred (100) Dollars for each Chase Lasting Machine and its accessories as compensation for setting up the leased machinery in his factory, for instructing operators and for deterioration of the leased machinery, and the lessee for himself, his heirs, executors, and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery. The lessee shall also without prejudice to any other rights and remedies of the lessor hereunder pay to the lessor such sums as may be

necessary to put the leased machinery in suitable order and condition to lease to another lessee as well as paying the freight expense of returning the same.

Nine. A notice in writing, signed by the president, a vice-president, or the treasurer of the lessor or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Ten. The lessee admits the validity of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity of or the title of the lessor to any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cesser of this lease and license from any cause whatever shall not in any way affect the provisions of this clause or release or discharge the lessee from the admission and estoppel herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the con-

ditions and agreement binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In Witness Whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

UNITED SHOE MACHINERY CO. [SEAL]
L. H. Baker, Secretary.

[SEAL] FITZPATRICK SHOE CO.
by John C. Kelly, Mgr.

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Ten herein.)

Number.	Dated.	Number.	Dated.
302,885	August 5, 1884.	524,446	August 14, 1894.
306,671	October 14, 1884.	524,447	August 14, 1894.
309,519	December 23, 1884.	536,780	April 2, 1895.
312,550	February 17, 1885.	537,269	April 9, 1895.
312,962	February 24, 1885.	537,270	April 9, 1895.
319,784	June 9, 1885.	539,065	May 14, 1895.
337,662	March 9, 1886.	545,052	August 27, 1895.
337,924	March 16, 1886.	548,671	October 29, 1895.
337,925	March 16, 1886.	548,862	October 29, 1895.
338,930	March 30, 1886.	558,011	April 7, 1896.
340,860	April 27, 1886.	561,189	June 2, 1896.
352,851	November 16, 1886.	566,831	September 1, 1896.
356,619	January 25, 1887.	569,182	October 13, 1896.
356,620	January 25, 1887.	569,231	October 13, 1896.
363,283	May 17, 1887.	569,590	October 13, 1896.
364,088	May 31, 1887.	571,339	November 17, 1896.
371,816	October 18, 1887.	571,404	November 17, 1896.
376,368	January 10, 1888.	571,429	November 17, 1896.
391,688	October 23, 1888.	571,509	November 17, 1896.
444,792	January 13, 1891.	601,933	April 5, 1898.

458,000	August 18, 1891.	601,934	April 5, 1898.
458,001	August 18, 1891.	601,935	April 5, 1898.
473,873	April 26, 1892.	601,936	April 5, 1898.
477,788	June 28, 1892.	601,937	April 5, 1898.
477,789	June 28, 1892.	601,938	April 5, 1898.
478,501	July 5, 1892.	601,939	April 5, 1898.
483,375	September 27, 1892.	601,940	April 5, 1898.
507,551	October 31, 1893.	601,941	April 5, 1898.
516,074	March 6, 1894.	601,942	April 5, 1898.
524,445	August 14, 1894.		

[Endorsed:]

United Shoe Machinery Company.
Lasting Machine Department. Chase Lasting Machine.
Lease No. 2 Fitzpatrick Shoe Co., Lessee.
Date, July 16 1901.
Chase Lasting Machine No. 124, 235.
Chase Hand Tacker No. 1545, 2274
Old form See other lease No. 2

PLAINTIFF'S EXHIBIT 20.

[Put in Evidence, page 338.]

Lasting Machine Department. [Form 803.]

Lease and License Nunmber *263*.

McKay & Copeland Lasting Machine.

This Lease and Agreement made at Boston in the State of Massachusetts this *First* day of *June* 19*03*, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *Parker & Peakes Company* of *Bangor* in the State of *Maine*, hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use

McKay & Copeland Lasting Machine, No. *312, 316, 319, 321,*

Brock Hand Tacker, No. *569, 573, 576, 582, 567,*

Copeland Pinking Machine, No. *319, 320, 321, 331,* now or hereafter delivered to the lessee and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at *Bangor* in the State of *Maine*. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other

lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same. The lessee shall also purchase from the lessor exclusively at the prices from time to time established by the lessor all string-nail, tack strips and other fastening material used in or in connection with the leased machinery.

Three. The lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery, or in respect to this lease and license, or the right to payments hereunder upon whomsoever assessed.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, and other footwear made in his factory in the manufacture of which it can be used, but the leased machinery shall not nor shall any part thereof be used in the manufacture of any boots shoes, or other footwear which are or are to be welted or the soles stitched or attached to their uppers by welting or stitching or sewing

machines not leased to the lessee by the lessor or its assignors, or in the manufacture of any boots, shoes, or other footwear which have been or shall be pegged, slugged, heel seat nailed, or otherwise partly made by the aid of any pegging or "metallic" machinery not leased to the lessee by the lessor or its assignors, or in the manufacture of any boots, shoes or other footwear, the heels of which have been or are to be compressed or prepared by the lessee in whole or in part or shall be attached by any "heeling" machinery not leased to the lessee by the lessor or its assignors.

Five. The lessee shall pay to the lessor immediately after the execution hereof as a lease premium the sum of dollars, and the lessee shall also pay to the lessor on the last day of each calendar month as rent or royalty the sum of one and one-half (1½) cents for each pair of long-legged boots and of one (1) cent for each pair of all other kinds of boots, shoes, and other footwear, or portions thereof, lasted or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.** If, for any cause, the leased machinery shall not be in use for twelve (12) consecutive months to the extent of its earning for the lessor at the rental and royalty herein provided to be paid (less all abatements) an amount equal to or in excess of one hundred and twenty-five dollars ($125) for each McKay & Copeland Lasting Machine hereby leased, then the lessor may, by paying to the lessee a sum equal to one-third (⅓) of the sum paid by the lessee to the lessor as above set forth as the lease premium hereunder, cancel and terminate this lease and license, and this option and condition shall be independent of any other options and conditions in this lease and license contained.

Six. The lessor may attach to the leased machinery, or any

thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, the sum of two cents per pair for each pair of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of each kind of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes and other footwear or portions thereof made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of each kind of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof,

and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations, and provisions are agreed to:—

Seven. If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use exclusively lasting and tacking mechanisms and appliances held by him under lease from the lessor, for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of lasting and tacking mechanisms and appliances, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing this lease and license and any other leases or licenses of lasting machines, lasting machinery, and lasting and tacking mechanisms and appliances then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all the leased machinery and all lasting machines, lasting machinery, and lasting and tacking mechanisms and appliances held by the lessee under lease or license from the lessor or its assignors shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from

the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted; and the lessee, for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power, and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and in no case (except ing in the event of the exercise by the lessor of the option to terminate, provided for in Article Five hereof, for failure to use to the amount therein provided) shall the lessee have any claim for the repayment of any sum or sums or any part thereof, which

he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery.

Nine. A notice in writing, signed by the president, a vice-president, or the treasurer of the lessor, or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent for royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cesser of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the con-

ditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

PARKER & PEAKES CO.

[SEAL] By G. W. Parker, Prest.

UNITED SHOE MACHINERY CO. [SEAL]

Meylert Bruner, Secretary.

☞If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Ten herein.)

Number	Dated.	Number.	Dated.
352,851	November 16, 1886.	537,269	April 9, 1895.
354,462	December 14, 1886.	537,270	April 9, 1895.
356,619	January 25, 1887.	539,065	May 14, 1895.
356,620	January 25, 1887.	545,052	August 27, 1895.
360,147	March 29, 1887.	548,671	October 29, 1895.
363,283	May 17, 1887.	548,862	October 29, 1895.
364,088	May 31, 1887.	552,834	January 7, 1896.
365,497	June 28, 1887.	552,343	January 21, 1896.
365,504	June 28, 1887.	558,011	April 7, 1896.
365,505	June 28, 1887.	558,026	April 14, 1896.
365,731	June 28, 1887.	558,043	April 14, 1896.
371,816	October 18, 1887.	560,896	May 26, 1896.
376,368	January 10, 1888.	561,189	June 2, 1896.
385,557	July 3, 1888.	566,831	September 1, 1896.
385,747	July 10, 1888.	568,463	September 29, 1896.
391,688	October 23, 1888.	569,182	October 13, 1896,
418,694	January 7, 1890.	569,231	October 13, 1896.
420,268	January 28, 1890.	569,357	October 13, 1896.
422,734	March 4, 1890.	569,590	October 13, 1896.
439,051	October 21, 1890.	570,220	October 27, 1896.

444,792	January 13, 1891.	571,339	November 17, 1896.
446,631	February 17, 1891.	571,404	November 17, 1896.
455,174	June 30, 1891.	571,429	November 17, 1896.
458,000	August 18, 1891.	571,509	November 17, 1896.
458,001	August 18, 1891.	583,404	May 25, 1897.
465,073	December 15, 1891.	583,674	June 1, 1897.
473,873	April 26, 1892.	588,568	August 24, 1897.
477,788	June 28, 1892.	588,569	August 24, 1897.
477,789	June 28, 1892.	590,639	September 28, 1897.
478,501	July 5, 1892.	595,809	December 21, 1897.
483,375	September 27, 1892.	596,308	December 28, 1897.
500,225	June 27, 1893.	596,323	December 28, 1897.
500,319	June 27, 1893.	596,325	December 28, 1897.
501,872	July 18, 1893.	601,933	April 5, 1898.
501,873	July 18, 1893.	601,934	April 5, 1898.
507,550	October 31, 1893.	601,935	April 5, 1898.
507,551	October 31, 1893.	601,936	April 5, 1898.
513,384	January 23, 1894.	601,937	April 5, 1898.
516,074	March 6, 1894.	601,938	April 5, 1898.
517,947	April 10, 1894.	601,939	April 5, 1898.
521,954	June 26, 1894.	601,940	April 5, 1898.
521,975	June 26, 1894.	601,941	April 5, 1898.
524,444	August 14, 1894.	601,942	April 5, 1898.
524,445	August 14, 1894.	609,426	August 23, 1898.
524,446	August 14, 1894.	618,085	January 24, 1899.
524,447	August 14, 1894.	635,124	October 17, 1899.
536,780	April 2, 1895.	635,129	October 17, 1899.

[Endorsed:]
United Shoe Machinery Company.
Lasting Machine Department.
McKay & Copeland Lasting Machine.
License No. 263.
Parker & Peakes Co., Lessee.
Date, June 1, 1903.
McKay & Copeland Lasting Machine, No. 312, 316, 319, 321.
Brock Hand Tacker, No. 569, 573, 576, 582, 567.
Copeland Pinking Machine, No. 319, 320, 321, 331.

PLAINTIFF'S EXHIBIT 21.

[Put in Evidence, page 339.]

Lasting Machine Department. (1207.)

Lease and License Agreement Number .

U. S. M. Co. Lasting Machine No. 5.

This Agreement made at Boston, in the State of Massachusetts, this day of , 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines of the Lasting Machine Department of the lessor now or hereafter delivered to the lessee and designated by number or numbers in the following schedule, viz: —

SCHEDULE OF MACHINES.

U. S. M. Co. Lasting Machine(s) No. 5, No(s).
Loose Tacker(s), No(s).

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agree-

ment, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of unless the lessor shall by an instrument in writing signed by its president, vice-president or treasurer authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove

any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case any machine or machines hereby leased shall be destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor upon demand the sum of Two Hundred and Twenty-five Dollars ($225) in respect to each lasting machine so destroyed as partial reimbursement to the lessor for such destruction, and the lessee shall forthwith return whatever remains of all the machinery so destroyed to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the

lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The leased machinery shall be used for no other purpose than for lasting boots, shoes or other footwear made by or for the lessee. The leased machinery shall not nor shall any part thereof be used in the manufacture or preparation of any welted boots, shoes or other footwear or portions thereof which have been or shall be welted in whole or in part or the soles in whole or in part stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor, or in the manufacture or preparation of any turned boots, shoes or other footwear or portions thereof the soles of which have been or shall be in whole or in part attached to their uppers by the aid of any turn sewing machinery not held by the lessee under lease from the lessor or in the manufacture of any boots, shoes or other footwear which have been or shall be in whole or in part pulled over, slugged, heel seat nailed or otherwise partly made by the aid of any pulling over or "Metallic" machinery not held by the lessee under lease from the lessor. Subject to the foregoing limitations, the lessee shall use the leased machinery to its full capacity upon all boots, shoes or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machinery is capable of being used.

Six. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one and one-quarter (1¼) cents for each pair of boots, shoes or other footwear, or por-

tions thereof, lasted or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.** The lessee guarantees that for each Lasting Machine hereby leased the rent or royalty herein provided (less all abatements) shall amount in each calendar year, ending December 31, to at least ten (10) dollars for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty.

Seven. The lessor may attach to the leased machinery or any thereof an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with any such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights or remedies of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, the sum of one and one-quarter (1¼) cents per pair for each pair of boots, shoes or other footwear or portions thereof, in the manu-

facture or preparation of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes and other footwear, or portions thereof, in the manufacture or preparation of which the leased machinery, or any part thereof, has been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes and other footwear, or portions thereof, made or prepared by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery, or any part thereof, to keep upon the blank or blank-books to be furnished by the lessor accurate daily records of the number of boots, shoes and other footwear, or portions thereof, in the making or preparation of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, any one or more of the machines hereby leased has been entirely idle, the lessee, on or before the fifth day of the next succeeding calendar month, shall send to the office of the lessor in Boston the blank for said month for each such idle machine marked "not in use" and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to: —

Eight. If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to

use exclusively tacking mechanisms and appliances held by him under lease from the lessor, for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses of lasting machines, lasting machinery, lasting mechanisms, or lasting devices then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all lasting machines, lasting machinery, lasting mechanisms, and lasting devices the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

Nine. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as in this agreement provided, for the full term of this agreement. But if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended

indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor without prejudice to any other rights or remedies of the lessor the sum of One Hundred and Fifty Dollars ($150) in respect to each lasting machine hereby leased as partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators; and the lessee for himself, his heirs, executors and administrators, successors and assigns, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and in no case shall the lessee have any claim for the repayment or offset of any sum or sums or any part thereof which shall have been paid under this agreement or in respect to the lease or license herein contained or in any wise in respect to the leased machinery.

Ten. In case at any time the lessee shall have in his possession more lasting machines than, in the opinion of the lessor, based upon the capacity of such machines, are sufficient for performing the work which the lessee has for such machines, the lessor may at its option, upon thirty days' notice in writing to the lessee, terminate the lease of and license to use any one or more of the lasting machines hereby leased. In case, however, the lease of and license to use any such lasting machine or machines shall be thus terminated in the exercise of the option contained in this article hereof

only and not in the exercise of any other right of termination, the lessee shall pay to the lessor such sum as may be necessary to put such machine or machines, the lease and license of which is so terminated, in suitable order and condition to lease to another lessee in lieu of paying the sum of One Hundred and Fifty Dollars ($150) provided for in Article Nine hereof. The termination in the exercise of the option contained in this article hereof of the lease of and license to use any one or more machines shall not affect the lease of or license to use any other machine or machines or the obligations of the lessee in respect thereto.

Eleven. In case at any time the leased machines, or any thereof, shall have parts missing or broken or shall not otherwise, in the opinion of the lessor, be in good and efficient working order and condition, the lessor, without prejudice to any other of its rights or remedies, may forthwith put the same in good and efficient working order and condition, and may replace all broken or missing parts, and the lessee shall forthwith pay the lessor the expense of making such repairs and for all parts supplied at the regular prices established by the lessor for such parts.

Twelve. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease or license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Thirteen. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal

thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, or of any of the Letters Patents referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Fourteen. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Fifteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

Schedule of Patents.

(Referred to in Article Thirteen herein.)

Number.	Dated.	Number.	Dated.
536,780	April 2, 1895.	596,308	December 28, 1897.
537,269	April 9, 1895.	596,323	December 28, 1897.
537,270	April 9, 1895.	596,325	December 28, 1897.
539,065	May 14, 1895.	597,247	January 11, 1898.
545,052	August 27, 1895.	598,111	February 1, 1898.
548,671	October 29, 1895.	601,933	April 5, 1898.
548,862	October 29, 1895.	601,934	April 5, 1898.
552,834	January 7, 1896.	601,935	April 5, 1898.
553,343	January 21, 1896.	601,936	April 5, 1898.
558,011	April 7, 1896.	601,937	April 5, 1898.
558,026	April 14, 1896.	601,938	April 5, 1898.
558,043	April 14, 1896.	601,939	April 5, 1898.
559,130	April 28, 1896.	601,940	April 5, 1898.
560,896	May 26, 1896.	601,941	April 5, 1898.
561,189	June 2, 1896.	601,942	April 5, 1898.
562,518	June 23, 1896.	602,068	April 12, 1898.
566,831	September 1, 1896.	606,596	June 28, 1898.
568,463	September 29, 1896.	608,012	July 26, 1898.
569,017	October 6, 1896.	609,426	August 23, 1898.
569,182	October 13, 1896.	618,085	January 24, 1899.
569,231	October 13, 1896.	623,848	April 25, 1899.
569,357	October 13, 1896.	629,476	July 25, 1899.
569,590	October 13, 1896.	635,124	October 17, 1899.
570,220	October 27, 1896.	635,129	October 17, 1899.
571,339	November 17, 1896.	640,999	January 9, 1900.
571,404	November 17, 1896.	644,120	February 27, 1900.
571,429	November 17, 1896.	654,840	July 31, 1900.
571,509	November 17, 1896.	662,898	November 27, 1900.
574,612	January 5, 1897.	671,356	April 2, 1901.
575,029	January 12, 1897.	673,028	April 30, 1901.
576,823	February 9, 1897.	681,516	August 27, 1901.
581,516	April 27, 1897.	693,620	February 18, 1902.

583,404	May 25, 1897.	823,664	June 19, 1906.
583,674	June 1, 1897.	856,399	June 11, 1907.
584,192	June 8, 1897.	919,533	April 27, 1909.
584,600	June 15, 1897.	929,869	August 3, 1909.
585,940	July 6, 1897.	947,818	February 1, 1910.
588,568	August 24, 1897.	Re. 13,147	August 23, 1910.
588,569	August 24, 1897.	974,202	November 1, 1910.
590,639	September 28, 1897.	1,002,818	September 12, 1911.
593,780	November 16, 1897.	1,003,484	September 19, 1911.
594,179	November 23, 1897.	Re. 13,292	September 19, 1911.
594,997	December 7, 1897.	1,004,659	October 3, 1911.
595,809	December 21, 1897.		

[On back:]
United Shoe Machinery Company.
Lasting Machine Department.
U. S. M. Co. Lasting Machine No. 5.
Lease No. Lessee.
Date, 19
Machines.

PLAINTIFF'S EXHIBIT 22.

[Put in Evidence, page 339.]

Lasting Machine Department. (1213)

Lease and License Agreement Number .

U. S. M. Co. Lasting Machine No. 5.

This Agreement made at Boston, in the State of Massachusetts, this day of , 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or here-

after shall be embodied therein or employed in the operation thereof, to use the machine or machines of the Lasting Machine Deparment of the lessor now or hereafter delivered to the lessee and designated by number or numbers in the following schedule, viz:

SCHEDULE OF MACHINES

U. S. M. Co. Lasting Machine(s) No. 5, No(s).
Loose Tacker(s), No(s).

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform:—

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of , unless the lessor shall by an instrument in writing, signed by its president, vice-president or treasurer, authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of

trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from or in the leased machinery or interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this arti-

cle, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportioned part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The leased machinery shall be used for no other purpose than for lasting boots, shoes or other footwear made by or for the lessee and the lessee shall use the leased machinery to its full capacity limited only by the number of boots, shoes or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machinery is capable of being used.

Five. The lessee shall pay to the lessor immediately after the execution hereof, as a lease premium, the sum of Three Hundred Dollars (300) for each machine hereby leased and the lessee shall also pay to the lessor on the last day of each calendar month as rent or royalty the sum of one and one-quarter (1¼) cents for each pair of boots, shoes and other footwear or portions thereof, lasted or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for**

the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent from such rent or royalty due for such preceding calendar month. If, for any cause, the leased machinery shall not be in use for twelve (12) consecutive months to the extent of its earning for the lessor at the rental and royalty herein provided to be paid (less all abatements) an amount equal to or in excess of seventy-five dollars ($75), for each Lasting Machine hereby leased, then the lessor may, by paying to the lessee a sum equal to one-third (⅓) of the sum paid by him as the lease premium hereunder, cancel and terminate this lease and license, and this option and condition shall be independent of any other options and conditions in this lease and license contained.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or anyone in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights or remedies of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, the sum of one and one-quarter (1¼) cents per pair for each pair of boots, shoes or other footwear, or portions thereof, in the manufacture or preparation of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be

placed upon the leased machinery, showing the number of boots, shoes, and other footwear, or portions thereof, in the manufacture or preparation of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes and other footwear or portions thereof, made or prepared by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of boots, shoes, and other footwear, or portions thereof, in the making or preparation of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, any one or more of the machines hereby leased has been entirely idle, the lessee on or before the fifth day of the next succeeding calendar month shall send to the office of the lessor in Boston the blank for said month for each such idle machine marked "not in use," and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to:—

Seven. If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use exclusively tacking mechanisms and appliances held by him under lease from the lessor, for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which

is done by the aid of tacking mechanisms and appliances, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing this lease and license and any other lease or license of lasting machines, lasting machinery, lasting mechanisms, or lasting devices then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all the leased machinery and all lasting machines, lasting machinery, lasting mechanisms, and lasting devices held by the lessee under lease or license from the lessor or its assignors shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as in this agreement provided, for the full term of this agreement. But if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations, and provisions in this agreement contained, and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this

agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained, by notice or by reason of any default on the part of the lessee as to the terms of this agreement or any other lease or license agreement from the lessor or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee; and the lessee, for himself, his heirs, executors and administrators, successors and assigns, hereby grants to the lessor, its successors and assigns, full right, power, and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and in no case shall the lessee have any claim for the repayment or offset of any sum or sums, or any part thereof, which shall have been paid under this agreement or in respect to the lease or license herein contained or in any wise in respect to the leased machinery.

Nine. In case at any time the leased machines, or any thereof, shall have parts missing or broken or shall not otherwise, in the opinion of the lessor, be in good and efficient working order and condition, the lessor, without prejudice to any other of its rights or remedies, may forthwith put the same in good and efficient working order and condition, and may replace all broken or missing parts, and the lessee shall forthwith pay the lessor the expense of making such repairs and for all parts supplied at the regular prices established by the lessor for such parts.

Ten. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor, or by any assignee of the lessor's rights hereunder and posted by pre-paid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby

granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Eleven. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease or license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Twelve. None of the conditions, stipulations, or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Thirteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Eleven herein.)

Number.	Dated.	Number.	Dated.
513,384	January 23, 1894.	588,568	August 24, 1897.
516,074	March 6, 1894.	588,569	August 24, 1897.
517,947	April 10, 1894.	590,639	September 28, 1897.
521,954	June 26, 1894.	593,780	November 16, 1897.
521,975	June 26, 1894.	594,179	November 23, 1897.
524,444	August 14, 1894.	594,997	December 7, 1897.
524,445	August 14, 1894.	595,809	December 21, 1897.
524,446	August 14, 1894.	596,308	December 28, 1897.
524,447	August 14, 1894.	596,323	December 28, 1897.
536,780	April 2, 1895.	596,325	December 28, 1897.
537,269	April 9, 1895.	597,247	January 11, 1898.
537,270	April 9, 1895.	598,111	February 1, 1898.
539,065	May 14, 1895.	601,933	April 5, 1898.
545,052	August 27, 1895.	601,934	April 5, 1898.
548,671	October 29, 1895.	601,935	April 5, 1898.
548,862	October 29, 1895.	601,936	April 5, 1898.
552,834	January 7, 1896.	601,937	April 5, 1898.
553,343	January 21, 1896.	601,938	April 5, 1898.
558,011	April 7, 1896.	601,939	April 5, 1898.
558,026	April 14, 1896.	601,940	April 5, 1898.
558,043	April 14, 1896.	601,941	April 5, 1898.
559,130	April 28, 1896.	601,942	April 5, 1898.
560,896	May 26, 1896.	602,068	April 12, 1898.
561,189	June 2, 1896.	606,596	June 28, 1898.
562,518	June 23, 1896.	608,012	July 26, 1898.

566,831	September 1, 1896.	609,426	August 23, 1898.
568,463	September 29, 1896.	618,085	January 24, 1899.
569,017	October 6, 1896.	623,848	April 25, 1899.
569,182	October 13, 1896.	629,476	July 25, 1899.
569,231	October 13, 1896.	635,124	October 17, 1899.
569,357	October 13, 1896.	635,129	October 17, 1899.
569,590	October 13, 1896.	640,999	January 9, 1900.
570,220	October 27, 1896.	644,120	February 27, 1900.
571,339	November 17, 1896.	654,840	July 31, 1900.
571,404	November 17, 1896.	662,898	November 27, 1900.
571,429	November 17, 1896.	671,356	April 2, 1901.
571,509	November 17, 1896.	673,028	April 30, 1901.
574,612	January 5, 1897.	681,516	August 27, 1601.
575,029	January 12, 1897.	693,620	February 18, 1902.
576,823	February 9, 1897.	823,664	June 19, 1906.
581,516	April 27, 1897.	856,399	June 11, 1907.
583,404	May 25, 1897.	919,533	April 27, 1909.
583,674	June 1, 1897.	929,869	August 3, 1909.
584,192	June 8, 1897.	946,708	January 18, 1910.
584,600	June 15, 1897.	947,818	February 1, 1910.
585,940	July 6, 1897.	Re 13,147	August 23, 1910.
		974,202	November 1, 1910.

[On back:]

United Shoe Machinery Company.
Lasting Machine Department.
U. S. M. Co. Lasting Machine No. 5.
(300-§)

Lease No. Lessee.
Date, 19 .
Machines

PLAINTIFF'S EXHIBIT 23.

[Put in Evidence, page 350.]

Goodyear Department. [Form 1200.]

Lease and License Number *4789*.

Full Set.

This Lease and Agreement made at Boston, in the State of Massachusetts, this *twenty-fourth* day of *January* 19*01*, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *The Baldwin Manufacturing Company* of *Milford* in the State of *Connecticut* hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use the machine or machines known as "Goodyear Department" machinery now or hereafter delivered to the lessee and designated by number or numbers in the following schedule, viz.: —

SCHEDULE OF MACHINES.

Goodyear Welt and Turn Shoe Machine, No. *1286*,
Goodyear Universal Inseam Sewing Machine No.
Goodyear Bobbin Winder (Universal), No.
Goodyear Outsole Rapid Lockstitch Machine, No. *967*,
Goodyear Bobbin Winder (Rapid), No. *528*,
Extension Edge Attachment (A), No. *556*,
Extension Edge Attachment (B), No.
Welt Beveling Attachment No.
Goodyear Welt Sewing Machine (D), No.
Goodyear Welt Grooving and Beveling Machine, No. *424*,
Goodyear Welt Splitting Machine, No. *567*,
Goodyear Channeler, { Turn / Insole / Outsole } No. *1124*,
Goodyear Welt Beater, No. *500*,
Goodyear Shank Skiving Machine, No. *202*,

Goodyear Universal Inseam Trimming Machine, No.
Goodyear Universal Rounding and Channeling Machine, No. *420*,
Goodyear Channel Opening Machine, No. *311*,
Goodyear Automatic Sole Leveling Machine, No.
Goodyear Rotary Sole Laying Machine No.
Hadaway Stitch Separating Machine, No.
Goodyear Channel Laying Machine, No.
Goodyear Flexible Sole Machine, No.
Goodyear Moulding Machine, No. *740*,
Goodyear Turn Shoe Trimming Machine, No.
Goodyear Lip Turning Machine, No.
Goodyear Improved Sole Laying Machine, No.
Goodyear Direct Leveling Machine, No.

and any duplicate parts, extras, mechanisms and devices, relating thereto, or used in connectiou therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor, (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at *Milford* in the State of *Connecticut*. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned

by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall

be levied in respect to the leased machinery, or in respect to this lease and license or the right to payments hereunder, upon whomsoever assessed.

Four. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear, known in the trade as "Goodyear Welts," which are or shall be welted and the soles stitched on welt sewing and stitching machines hereby, or by other instrument, heretofore or hereafter, leased to the lessee by the lessor or its assignor, or in the manufacture of boots, shoes or other footwear, known in the trade as "Goodyear Turns," the soles of which are or shall be attached to their uppers by turn sewing machines hereby, or by other instrument, heretofore or hereafter, leased to the lessee by the lessor or its assignor.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the rental or royalty set forth in the following schedule for each pair of boots, shoes or other footwear or portions thereof manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part by the aid of the leased machinery or any part thereof: —

SCHEDULE OF RENTS AND ROYALTIES FOR GOODYEAR WELTS AND TURNS.

	Sizes. Form No.	To. No.	Welts.	Turns.
Children's	1	10½ inclusive.	3 cents.	1 cent.
Misses'	11	2 "	4 "	1½ cents.
Women's	2½	and over.	6 "	1½ "
Youths'	9	13½ inclusive.	4 "	1½ "
Boys'	1	5 "	6 "	1½ "
Men's	5½	and over.	8 "	1½ "

provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent from such rent or royalty due for such preceding calendar month.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, eight cents per pair for each pair of boots, shoes and other footwear, or portions thereof in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number and kind of boots, shoes and other footwear or portions thereof in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times by its agents or attorneys to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes or other footwear, or portions thereof, made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number and kind of boots, shoes, and other footwear, or portion thereof, in the making of which he has used the leased machin-

ery or any part thereof, and shall require his operators to sign such records, and if requested so to do by the lessor, shall verify the same under oath and shall also furnish any further information called for by said blanks or blank books; and the lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month.

And that the following agreements, stipulations and provisions are agreed to: —

Seven. If at any time the lessee shall fail or cease to use exclusively welt sewing and outsole stitching machinery held by him under lease from the lessor, in the manufacture of all welted boots, shoes or other footwear made by or for him, the welts or soles of which are sewed by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing this lease and license and any other lease or license of machines, machinery or devices like those or any of them, mentioned in the foregoing "Schedule of Machines," or designed for similar purposes, then exisiting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and the possession of and full right to and control of all such machines, machinery or devices held by the lessee under lease or license from the lessor or its assignor shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon

the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery.

Nine. A notice in writing, signed by the president, a vice-president, or the treasurer of the lessor, or by any assignee of the lessor's rights hereunder and posted by pre-paid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of

posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cesser of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

THE BALDWIN MFG. CO., [SEAL]
by Albert A. Baldwin Treas
UNITED SHOE MACHINERY CO. [SEAL]
L. H. Baker Secretary

☞ If lessee is a corporation, add corporate seal.

Schedule of Patents.

(Referred to in Article Ten herein.)

Number.	Date.	Number.	Date.
317,758	May 12, 1885.	557,744	April 7, 1896.
317,759	May 12, 1885.	558,379	April 14, 1896.
320,075	June 16, 1885.	558,380	April 14, 1896.
330,928	November 24, 1885.	558,381	April 14, 1896.
343,452	June 8, 1886.	588,382	April 14, 1896.
366,935	July 19, 1887.	558,888	April 21, 1896.
369,563	September 6, 1887.	559,314	April 28, 1896.
374,935	December 20, 1887.	11,538	(Reissue) May 12, 1896.
412,703	October 8, 1889.	560,976	May 26, 1896.
412,704	October 8, 1889.	561,386	June 2, 1896.
424,966	April 8, 1890.	563,471	July 7, 1896.
429,065	May 27, 1890.	563,472	July 7, 1896.
453,999	June 9, 1891.	564,379	July 21, 1896.
456,041	July 14, 1891.	564,883	July 28, 1896.
461,793	October 20, 1891.	11,578	(Reissue) December 8, 1896.
463,967	November 24, 1891.	573,068	December 15, 1896.
463,982	November 24, 1891.	573,069	December 15, 1896.
473,870	April 26, 1892.	573,144	December 15, 1896.
474,774	May 10, 1892.	11,587	(Reissue) February 2, 1897.
483,393	September 27, 1892.	576,114	February 2, 1897.
488,505	December 20, 1892.	579,146	March 23, 1897.
488,508	December 20, 1892.	579,205	March 23, 1897.
488,591	December 27, 1892.	579,206	March 23, 1897.
488,841	December 27, 1892.	579,207	March 23, 1897.
495,452	April 11, 1893.	579,231	March 23, 1897.
500,060	June 20, 1893.	580,746	April 13, 1897.
505,598	September 26, 1893.	580,773	April 13, 1897.
510,127	December 5, 1893.	582,510	May 11, 1897.
511,263	December 19, 1893.	583,968	June 8, 1897.
514,264	February 6, 1894.	584,038	June 8, 1898.
514,741	February 13, 1894.	584,039	June 8, 1897.
518,911	April 24, 1894.	590,597	September 28, 1897.

502,020	May 15, 1894.	590,831	September 28, 1897.
529,900	November 27, 1894.	595,764	December 21, 1897.
533,301	January 29, 1895.	598,223	February 1, 1898.
536,338	March 26, 1895.	598,727	February 8, 1898.
537,823	April 23, 1895.	599,602	February 22, 1898.
540,222	May 28, 1895.	609,100	August 16, 1898.
540,223	May 28, 1895.	610,314	September 6, 1898.
540,438	June 5, 1895.	610,315	September 6, 1898.
540,616	June 4, 1895.	610,323	September 6, 1898.
541,988	July 2, 1895.	615,215	November 29, 1898.
542,813	July 16, 1895.	623,306	April 18, 1899.
543,012	July 23, 1895.	625,633	May 23, 1899.
546,211	September 10, 1895.	627,035	June 13, 1899.
546,851	September 24, 1895.	633,836	September 26, 1899.
546,852	September 24, 1895.	635,015	October 17, 1899.
548,309	October 22, 1895.	635,772	October 31, 1899.
549,125	November 5, 1895.	638,010	November 28, 1899.
549,126	November 5, 1895.	640,063	December 26, 1899.
549,471	November 5, 1895.	644,571	March 6, 1900.
553,948	February 4, 1896.	644,654	March 6, 1900.
553,949	February 4, 1896.	651,406	June 12, 1900.
555,547	March 3, 1896.	652,908	July 3, 1900.
555,548	March 3, 1896.	653,227	July 10, 1900.
556,146	March 10, 1896.	653,236	July 10, 1900.

[Endorsed:]

United Shoe Machinery Company.
Goodyear Department. Full Set.
Lease No. 4789. The Baldwin Mfg. Co., Lessee.
Date, Jan 24 1901.

Machines.

Welt 1286. Rapid Stitcher No. 967. Bobbin Winder No. 528. Ex Edge "A." No. 556. Welt Groover No. 424. Welt Splitter No. 567. Insole Channeler No 1124. Welt Beater No. 500. Shank Skiver No. 202. U. Rounder No. 420. Channel Opener No. 311. Moulder No. 740.

PLAINTIFF'S EXHIBIT 24.

[Put in Evidence, page 351.]

Goodyear Department. [Form A. A. J., 1021.]

Lease and License Agreement Number .

Sewing and Stitching Machines.

This Agreement made this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, hereinafter referred to as the lessor, of the one part, and of in the State of hereinafter referred to as the lessee, of the other part:

Witnesseth that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines of the "Goodyear Department" of the lessor designated by number or numbers in the following schedule, viz.: —

SCHEDULE OF MACHINES.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Welt and Turn Shoe Machine (Model E), No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Bevelling Attachment, No.

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered, with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto, by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is herein-

after referred to as the "leased machinery"), subject to the conditions hereinafter contained; and the lessor hereby grants to the lessee a license to use, in connection with welted boots, shoes or other footwear made by the lessee, the welts of which have been sewed to their uppers wholly by Goodyear Welt and Turn Shoe Machines or by Goodyear Universal Inseam Sewing Machines hereby leased or now held by the lessee under lease from the lessor heretofore executed, and the outsoles of which have been stitched to their welts wholly by Goodyear Outsole Rapid Lockstitch Machines hereby leased or now held by the lessee under lease from the lessor heretofore executed, the trade name or trade mark "Goodyear Welt," and to use, in connection with turned boots, shoes or other footwear made by the lessee the soles of which have been attached to their uppers wholly by the use of Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines hereby leased or now held by the lessee under lease from the lessor heretofore executed, the trade name or trade mark "Goodyear Turn."

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of , unless the lessor shall by an instrument in writing, signed by its president, vice-president or treasurer, authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust

or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case any welting or stitching or sewing machine or machines hereby

leased shall be lost or destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor in respect to each such machine so lost or destroyed the sum of Two Hundred and Twenty-five (225) Dollars as partial reimbursement to the lessor for such loss or destruction, and the lessee shall forthwith return whatever remains of all the machinery so lost or destroyed to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear made by the lessee known in the trade as "Goodyear Welts" which have been or are to be welted wholly by Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held by the lessee

under lease from the lessor, and the soles of which have been been or are to be attached to their welts wholly by Goodyear Outsole Rapid Lockstitch Machines held by the lessee under lease from the lessor or in the maunfacture of boots, shoes or other footwear made by the lessee known in the trade as "Goodyear Turns" the soles of which have been or are to be attached to their uppers wholly by Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held by the lessee under lease from the lessor. The lessee shall not represent or sell as "Goodyear Welts" any boots, shoes or other footwear which are not welted wholly by the use of Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held under lease from the lessor or the soles of which are not attached to their welts wholly by the use of Goodyear Outsole Rapid Lockstitch Machines held under lease from the lessor, or as "Goodyear Turns" any boots, shoes or other footwear the soles of which are not attached to their uppers wholly by the use of Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held under lease from the lessor. The lessee shall use the leased machinery to its full capacity in the manufacture of "Goodyear Welts" and "Goodyear Turns" limited only by the number of welted and turned boots, shoes and other footwear made by or for him.

Six. The lessee shall pay to the lessor throughout the full term of this agreement the respective amounts set forth in the following schedule in respect to each pair of welted boots, shoes or other footwear, or portions thereof, manufactured or prepared by or for the lessee, which shall have been welted in whole or in part or the soles of which shall have been in whole or in part attached to welts by the use of any welting or stitching or sewing machinery, and in respect to each pair of "turned" boots, shoes or other footwear, or portions thereof, manufactured or prepared by or for the lessee, the soles of which shall have been sewed or attached to their uppers in whole or in part by the use of any sewing or stitching machinery, viz. : —

SCHEDULE OF PAYMENTS PER PAIR.

	Sizes. From No.	To No.	Welts.	Turns.
Children's	1	10½ inclusive.	3 cents.	1 cent.
Misses'	11	2 "	4 "	1½ cents.
Women's	2½	and over.	6 "	1½ "
Youths'	9	13½ inclusive.	4 "	1½ "
Boys'	1	5 "	6 "	1½ "
Men's	5½	and over.	8 "	1½ "

Such payments shall be made on the last day of each calendar month in respect to all such boots, shoes and other footwear manufactured or prepared by or for the lessee during the next preceding calendar month, **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the amount due pursuant to the Schedule in this Article hereof contained for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from the amount so due for such preceding calendar month.** The lessee, however, guarantees that the payments made in accordance with the foregoing Schedule of Payments under this agreement, in respect to boots, shoes or other footwear operated upon by the welting, stitching or sewing machines hereby leased (after deducting all abatements) shall amount in each calendar year to at least fifteen dollars ($15.00) for each calendar month for each welting or stitching or sewing machine hereby leased, and at the end of each calendar year the lessee shall pay to the lessor the amount, if any, by which the total of such payments for said year is less than such guaranteed amount. All payments and the guarantee in this agreement provided for are independent of and in addition to all payments and guarantees provided for in any other leases or licenses or agreements between the lessor and the lessee, provided, however, that (excepting in so far as is required by the guarantees herein contained or contained in other lease and license agreements between the lessor and the lessee), in case under any other "Goodyear Department" lease and license

agreement between the lessor and the lessee and covering one or more Goodyear Welt and Turn Shoe Machines, Goodyear Universal Inseam Sewing Machines or Goodyear Outsole Rapid Lockstitch Machines, the lessee shall have paid to the lessor the amount set forth in the Schedule of Payments in such lease and license agreement contained in respect to any pair of boots, shoes or other footwear, then the lessee shall be relieved from said payment hereunder in respect to that pair of boots, shoes or other footwear.

Seven. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or anyone in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights or remedies of the lessor, the lessee shall pay the lessor, without the right to any discount, eight cents per pair for each pair of boots, shoes or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number and kind of boots, shoes and other footwear or portions thereof manufactured or prepared by or for the lessee which have been welted in whole or in part or the soles of which have been in whole or in part attached to welts by the use of welting or stitching or sewing machinery, and of turned boots, shoes or other footwear or portions thereof manufac-

tured or prepared by or for the lessee, the soles of which have been sewed or attached to their uppers in whole or in part by the use of sewing or stitching machinery, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such boots, shoes or other footwear, or portions thereof; and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number and kind of boots, shoes, and other footwear, or portions thereof, in the manufacture or preparation of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for and in case, in any calendar month, any one or more of the machines hereby leased has been entirely idle, the lessee on or before the fifth day of the next succeeding calendar month shall send to the office of the lessor in Boston the blank for said month for each such idle machine marked "not in use" and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to: —

Eight. If, at any time, the lessee shall fail or cease to use exclusively welt sewing and outsole stitching machinery held by him under lease from the lessor in the manufacture of all welted boots, shoes or other footwear made by or for him, the welts or soles of which are sewed, stitched or attached by the aid of machinery, or shall fail or cease to use exclusively turn sewing machinery held by him under lease from the lessor in the manufacture of all turned boots, shoes or other footwear made by or for him, the soles of which are sewed or attached by the aid of machinery, the lessor,

although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases of or licenses to use "Goodyear Department" machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and the possession of and full right to and control of all machinery the lease or license of which is so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever.

Nine. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor, as in this agreement provided, for the full term of this agreement, but, if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as hereinafter provided. Upon the expiration or termination of this agreement or any extension thereof or of the lease and license

herein contained, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted, and shall thereupon pay to the lessor without prejudice to any other rights or remedies of the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee. The lessee for himself, his heirs, executors, and administrators, successors and assigns, hereby grants to the lessor, its successors and assigns, full right, power, and authority upon such expiration or termination and without prejudice to any other rights or remedies of the lessor to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and in no case shall the lessee have any claim for the repayment or offset of any sum or sums, or any part thereof, which shall have been paid under this agreement or in respect to the lease and license herein contained or in anywise in respect to the leased machinery.

Ten. Upon the expiration or termination of this agreement, or any extension thereof, or of the lease and license hereby granted, the lessee, in addition to all other payments in this agreement provided for and without prejudice to any other rights or remedies of the lessor, shall pay to the lessor in respect to each welting or stitching or sewing machine hereby leased the sum of One Hundred and Fifty (150) Dollars as partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators.

Eleven. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor, or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license

hereby granted shall be without prejudice to any rights or remedies which the lessor may have for violation of contract, use of machines without right, use of patented inventions without license or otherwise.

Twelve. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery, and the validity of and title of the lessor to the exclusive ownership of the trade names or trade marks "Goodyear Welt" and "Goodyear Turn," used in connection with boots, shoes and other footwear. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof, or of any extension or renewal thereof, of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or the title of the lessor thereto and that he will not directly or indirectly infringe or contest the validity of or the title of the lessor to the said trade names or trade marks "Goodyear Welt" or "Goodyear Turn." The expiration or termination of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Thirteen. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Fourteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Twelve herein.)

Number.	Date.	Number.	Date.
412,703	October 8, 1889.	584,039	June 8, 1897.
412,704	October 8, 1889.	607,404	July 12, 1898.
424,966	April 8, 1890.	637,225	November 21, 1899.
461,793	October 20, 1891.	665,376	January 1, 1901.
473,870	April 26, 1892.	666,823	January 29, 1901.
474,774	May 10, 1892.	670,195	March 19, 1901.
487,214	November 29, 1892.	675,783	June 4, 1901.
488,505	December 20, 1892.	684,537	October 15, 1901.
488,508	December 20, 1892.	684,538	October 15, 1901.
495,452	April 11, 1893.	684,540	October 15, 1901.
507,873	October 31, 1893.	686,011	November 5, 1901.
518,911	April 24, 1894.	11,951	(Re.) November 26, 1901.
533,301	January 29, 1895.	687,719	December 3, 1901.
549,125	November 5, 1895.	704,457	July 8, 1902.
560,705	May 26, 1896.	704,458	July 8, 1902.
561,386	June 2, 1896.	705,062	July 22, 1902.
563,471	July 7, 1896.	705,063	July 22, 1902.
563,472	July 7, 1896.	706,045	August 5, 1902.
564,379	July 21, 1896.	718,199	January 13, 1903.
564,883	July 28, 1896.	732,729	July 7, 1903.
11,578	(Re.) December 8, 1896.	781,596	January 31, 1905.
579,146	March 23, 1897.	790,790	May 23, 1905.
580,773	April 13, 1897.	820,964	May 22, 1906.
582,510	May 11, 1897.	827,699	August 7, 1906.
583,522	June 1, 1897.	835,513	November 13, 1906.
583,968	June 8, 1897.		

[On back:]
United Shoe Machinery Company.
(Goodyear Department.) J.
Sewing and Stitching Machines.
Lease No.
Lessee.
Date, 19
Machine.

PLAINTIFF'S EXHIBIT 25.

[Put in Evidence, page 352.]

Goodyear Department. [Form A. A. K., 1022.]

Lease and License Agreement Number .

AUXILIARY MACHINES.

This Agreement made this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth that Whereas the lessee now holds under lease from the lessor one or more of the machines of the "Goodyear Department" of the lessor designated by name as follows, viz.: — Goodyear Welt and Turn Shoe Machine, Goodyear Universal Inseam Sewing Machine, Goodyear Outsole Rapid Lockstitch Machine;

And Whereas the lessee has requested the lessor to lease to the lessee and to grant to the lessee a license under the patents of the lessor to use the "Auxiliary Machinery" of the "Goodyear Department" of the lessor hereinafter specified, upon the terms and conditions hereinafter set forth,

Now, Therefore, the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof to use the auxiliary machine or machines of the "Goodyear Department" of

the lessor designated by number or numbers in the following schedule, viz.: —

SCHEDULE OF AUXILIARY MACHINES.

	I.	II.
Goodyear Bobbin Winding Machine (Rapid), No.	$20.	$1.
Goodyear Bobbin Winding Machine (Universal)	20.	1.
Goodyear Welt Grooving and Beveling Machine, No.	15.	1.
Goodyear Welt Splitting Machine, No.	10.	1.
Goodyear Channeling Machine, { Turn / Insole / Outsole } No.	20.	1.
Goodyear Universal Welt Beating Machine, No.	30.	3.
Goodyear Welt Beating and Slashing Machine, No.	150.	10.
Goodyear Universal Shank Skiving Machine, No.	100.	10.
Goodyear Universal Inseam Trimming Machine, No.	225.	15.
Goodyear Universal Rounding and Channeling Machine, No.	225.	15.
Goodyear Channel Opening Machine, No.	20.	1.
Goodyear Automatic Sole Leveling Machine, No.	375.	35.
Goodyear Rotary Sole Laying Machine, No.	300.	30.
Hadaway Stitch Separating Machine, No.	225.	15.
Goodyear Channel Laying Machine, No.	30.	3.
Goodyear Flexible Sole Machine, No.	100.	10.
Goodyear Moulding Machine, No.	10.	1.
Goodyear Turn Shoe Trimming Machine, No.	30.	3.
Goodyear Lip Turning Machine, No.	40.	5.
Goodyear Improved Sole Laying Machine, No.	100.	7.50
Goodyear Shank Welt Skiving Machine, No.	40.	5.
Goodyear Forepart Turning Machine, No.	60.	5.
Goodyear Heel Turning Machine, No.	60.	5.
Goodyear Welt Indenting and Burnishing Machine, No.	30.	3.

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added

thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of , unless the lessor shall by an instrument in writing, signed by its president, vice-president or treasurer, authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machin-

ery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessor shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case any machine or machines hereby leased shall be lost or destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor in respect to each machine so lost or destroyed as partial reimbursement to the lessor for such loss or destruction the amount set opposite the name of such machine in the column numbered "L" in the Schedule of Machines hereinbefore contained, and the lessee shall forthwith return whatever remains of the machinery so lost or destroyed to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases,

licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment, as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed: provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear made by the lessee known in the trade as "Goodyear Welts" which have been or are to be welted wholly by Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held by the lessee under lease from the lessor, and the soles of which have been or are to be attached to their welts wholly by Goodyear Outsole Rapid Lockstitch Machines held by the lessee under lease from the lessor or in the manufacture of boots, shoes or other footwear made by the lessee known in the trade as "Goodyear Turns" the soles of which have been or are to be attached to their uppers wholly by Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held by the lessee under lease from the lessor. The lessee shall not represent or sell as "Goodyear Welts" any boots, shoes or other footwear which are not welted wholly by the use of Goodyear Welt and Turn Shoe Machines or Goodyear Universal

Inseam Sewing Machines held under lease from the lessor or the soles of which are not attached to their welts wholly by the use of Goodyear Outsole Rapid Lockstitch Machines held under lease from the lessor, or as "Goodyear Turns" any boots, shoes or other footwear the soles of which are not attached to their uppers wholly by the use of Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held under lease from the lessor.

Six. The lessee shall pay to the lessor throughout the full term of this agreement the respective amounts set forth in the following schedule in respect to each pair of welted boots, shoes or other footwear, or portions thereof, manufactured or prepared by or for the lessee, which shall have been welted in whole or in part or the soles of which shall have been in whole or in part attached to welts by the use of any welting or stitching or sewing machinery, and in respect to each pair of turned boots, shoes or other footwear, or portions thereof, manufactured or prepared by or for the lessee, the soles of which shall have been sewed or attached to their uppers in whole or in part by the use of any sewing or stitching machinery, viz. : —

SCHEDULE OF PAYMENTS (PER PAIR).

	Sizes. From No.	To No.	Welts.	Turns.
Children's	1	10½ inclusive.	3 cents.	1 cent.
Misses'	11	2 "	4 "	1½ cents.
Women's	2½	and over.	6 "	1½ "
Youths'	9	13½ inclusive.	4 "	1½ "
Boys'	1	5 "	6 "	1½ "
Men's	5½	and over.	8 "	1½ "

Such payments shall be made on the last day of each calendar month in respect to all such boots, shoes and other footwear manufactured or prepared by or for the lessee during the next preceding calendar month, **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the amount due pursuant to the Schedule in this Article hereof contained for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a**

discount of fifty per cent. from the amount so due for such preceding calendar month. All payments in this agreement provided for are independent of and in addition to all payments provided for in any other leases or licenses or agreements between the lessor and the lessee, provided, however, that in case under any other "Goodyear Department" lease and license agreement between the lessor and the lessee and covering one or more Goodyear Welt and Turn Shoe Machines, Goodyear Universal Inseam Sewing Machines or Goodyear Outsole Rapid Lockstitch Machines the lessee shall have paid to the lessor the amount set forth in the Schedule of Payments in such lease and license agreement contained in respect to any pair of boots, shoes or other footwear, then the lessee shall be relieved from said payment hereunder in respect to that pair of boots, shoes or other footwear.

Seven. Independently of and in addition to all other payments to be made by the lessee, the lessee shall annually throughout the full term of this agreement pay to the lessor, in respect to each machine hereby leased, the amount set opposite the name of such machine in the column numbered "II." in the Schedule of Machines hereinbefore contained. Such annual payment shall be made in advance on the first day of January in each year, excepting that the first of such payments shall be made on the day of the date of this agreement and shall be such proportion of said respective sum or sums as the unexpired portion of this calendar year bears to the entire year.

Eight. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In

case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights or remedies of the lessor, the lessee shall pay the lessor, without the right to any discount, eight cents per pair for each pair of boots, shoes or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number and kind of boots, shoes and other footwear or portions thereof manufactured or prepared by or for the lessee which have been welted in whole or in part or the soles of which have been in whole or in part attached to welts by the use of welting or stitching or sewing machinery, and of turned boots, shoes or other footwear or portions thereof manufactured or prepared by or for the lessee, the soles of which have been sewed or attached to their uppers in whole or in part by the use of sewing or stitching machinery, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such boots, shoes or other footwear, or portions thereof; and the lessee shall produce all such accounts and entries upon request. The lessee shall if so requested by the lessor at any time require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number and kind of boots, shoes and other footwear, or portions thereof, in the manufacture or preparation of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for and in case, in any

calendar month, any one or more of the machines hereby leased has been entirely idle, the lessee on or before the fifth day of the next succeeding calendar month shall send to the office of the lessor in Boston the blank for said month for each such idle machine marked "not in use" and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to: —

Nine. If, at any time, the lessee shall fail or cease to use exclusively welt sewing and outsole stitching machinery held by him under lease from the lessor in the manufacture of all welted boots, shoes, or other footwear made by or for him, the welts or soles of which are sewed, stitched or attached by the aid of machinery, or shall fail or cease to use exclusively turn sewing machinery held by him under lease from the lessor in the manufacture of all turned boots, shoes or other footwear made by or for him, the soles of which are sewed or attached by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases of or licenses to use "Goodyear Department" machinery, then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and the possession of and full right to and control of all machinery the lease or license of which is so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever.

Ten. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor as in this agreement provided, for the full term of this agreement, but if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing

to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as hereinafter provided. Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted, and shall thereupon pay to the lessor without prejudice to any other rights or remedies of the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee. The lessee for himself, his heirs, executors and administrators, successors and assigns, hereby grants to the lessor, its successors and assigns, full right, power and authority upon such expiration or termination and without prejudice to any other rights or remedies of the lessor to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and in no case shall the lessee have any claim for the repayment or offset of any sum or sums or any part thereof which shall have been paid under this agreement or in respect to the lease or license herein contained or in anywise in respect to the leased machinery.

Eleven. Upon the expiration or termination of this agreement or any extension thereof or of the lease and license hereby granted

the lessee, in addition to all other payments in this agreement provided for and without prejudice to any other rights or remedies of the lessor, shall pay to the lessor as partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators, an amount in respect to each machine hereby leased equal to two-thirds of the sum set opposite the name of such machine in the column numbered "I." in the Schedule of Machines hereinbefore contained; provided, however, that in case the lease and license hereby granted shall continue throughout the full term of seventeen years hereinbefore provided for as the full term of this agreement and the lessee at the time of returning the leased machinery at the end of said full term shall not be in default as to any of the payments under or other conditions, stipulations or provisions of this or any other lease or license agreement between the lessor and the lessee, then the payment in this article hereof provided for shall not be required to be made.

Twelve. In case the lessee, at any time, shall have in his factory more machines adapted for doing the same work as any machine or machines hereby leased, than in the opinion of the lessor are sufficient for performing the work which the lessee has in his factory, based upon the capacity of such machines and the number and kind of boots, shoes and other footwear made by the lessee for any period of twelve (12) consecutive months next preceding, the lessor may, at its option, upon thirty (30) days' notice in writing to the lessee, terminate the lease and license herein contained in respect to such of the said machines as in the opinion of the lessor are unnecessary; but in the event that the lease and license hereby granted with respect to any machine or machines shall be thus terminated under the provisions of this Article and for no other reason whatsoever, then, provided the lessee is not at the time of such termination in default as to any of the payments under or other conditions, stipulations or provisions of this or any other lease or license agreement between the lessor and the lessee, neither the payment provided for in Article Eleven hereof in respect to such machine or machines nor any further payments under the provi-

sions of Article Seven hereof in respect to such machine or machines shall be required to be made. The termination under the provisions of this Article of the lease or of license to use any one or more of the machines hereby leased shall not affect the lease or license herein contained in respect to any other machine or machines.

Thirteen. In case at any time any of the leased machinery shall not, in the opinion of the lessor, be in good and efficient working order and condition, the lessor without prejudice to any other of its rights or remedies may give written notice to the lessee to put such machinery in good and efficient working order and condition and to replace all broken or missing parts; and in case the lessee does not within (15) days from the date of such notice comply with the requiremeats thereof, as herein set forth, the lessor may cause such machinery to be put in such good and efficient working order and condition, and may supply such broken or missing parts, and the lessee shall forthwith pay to the lessor the expense of making such repairs and the cost at the regular prices established by the lessor therefor of all parts so supplied.

Fourteen. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall be without prejudice to any rights or remedies which the lessor may have for violation of contract, use of machines without right, use of patented inventions without license or otherwise.

Fifteen. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of Amer-

ica, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery, and the validity of and title of the lessor to the exclusive ownership of the trade names or trade marks "Goodyear Welt" and "Goodyear Turn," used in connection with boots, shoes and other footwear. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, or any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or the title of the lessor thereto and that he will not directly or indirectly infringe or contest the validity of or the title of the lessor to the said trade names or trademarks "Goodyear Welt" or "Goodyear Turn." The expiration or termination of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Sixteen. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Seventeen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

Schedule of Patents.

(Referred to in Article Fifteen herein.)

Number.	Date.	Number.	Date.
393,215	November 20, 1888.	583,522	June 1, 1897.
393,216	November 20, 1888.	583,968	June 8, 1897.
412,703	October 8, 1889.	584,038	June 8, 1897.
412,704	October 8, 1889.	584,039	June 8, 1897.
424,966	April 8, 1890.	590,597	September 28, 1897.
429,065	May 27, 1890.	590,831	September 28, 1897.
435,882	September 2, 1890.	594,810	November 30, 1897.
435,883	September 2, 1890.	595,764	December 21, 1897.
436,034	September 9, 1890.	598,727	February 8, 1898.
442,770	December 16, 1890.	599,602	February 22, 1898.
453,999	June 9, 1891.	600,883	March 22, 1898.
456,041	July 14, 1891.	607,404	July 12, 1898.
460,526	September 29, 1891.	609,100	August 16, 1898.
461,793	October 20, 1891.	610,314	September 6, 1898.
463,967	November 24, 1891.	610,315	September 6, 1898.
463,982	November 24, 1891.	620,205	February 28, 1899.
473,870	April 26, 1892.	622,460	April 4, 1899.
474,774	May 10, 1892.	625,633	May 23, 1899.
483,393	September 27, 1892.	627,034	June 13, 1899.
487,214	November 29, 1892.	627,035	June 13, 1899.
488,505	December 20, 1892.	630,338	August 30, 1899.
488,508	December 20, 1892.	633,836	September 26, 1899.
488,591	December 27, 1892.	635,015	October 17, 1899.
488,841	December 27, 1892.	635,772	October 31, 1899.
495,452	April 11, 1893.	637,225	November 21, 1899.
500,060	June 20, 1893.	638,010	November 28, 1899.
505,598	September 26, 1893.	640,063	December 26, 1899.
507,873	October 31, 1893.	644,571	March 6, 1900.
510,127	December 5, 1893.	644,654	March 6, 1900.
511,263	December 19, 1893.	651,406	June 12, 1900.
514,364	February 6, 1894.	652,908	July 3, 1900.
514,741	February 13, 1894.	653,227	July 10, 1900.
518,911	April 24, 1894.	653,236	July 10, 1900.

520,020	May 15, 1894.	664,405	December 25, 1900.
529,900	November 27, 1894.	665,376	January 1, 1901.
533,301	January 29, 1895.	666,823	January 29, 1901.
536,338	March 26, 1895.	667,086	January 29, 1901.
536,352	March 26, 1895.	668,635	February 26, 1901.
537,823	April 23, 1895.	670,195	March 19, 1901.
540,222	May 28, 1895.	675,783	June 4, 1901.
540,223	May 28, 1895.	677,315	June 25, 1901.
540,438	June 4, 1895.	677,550	July 2, 1901.
540,616	June 4, 1895.	682,315	September 10, 1901.
541,988	July 2, 1895.	684,359	October 8, 1901.
542,813	July 16, 1895.	684,537	October 15, 1901.
543,012	July 23, 1895.	684,538	October 15, 1901.
546,211	September 10, 1895.	684,540	October 15, 1901.
546,851	September 24, 1895.	686,011	November 5, 1901.
546,852	September 24, 1895.	686,371	November 12, 1901.
548,309	October 22, 1895.	11,951	(Re.) Nov. 26, 1901.
549,125	November 5, 1895.	687,719	December 3, 1901.
549,126	November 5, 1895.	688,411	December 10, 1901.
549,471	November 5, 1895.	690,422	January 7, 1902.
553,948	February 4, 1896.	691,903	January 28, 1902.
553,949	February 4, 1896.	692,401	February 4, 1902.
555,547	March 3, 1896.	694,367	March 4, 1902.
555,548	March 3, 1896.	699,679	May 13, 1902.
557,744	April 7, 1896.	700,913	May 27, 1902.
558,379	April 14, 1896.	704,457	July 8, 1902.
558,380	April 14, 1896.	704,458	July 8, 1902.
558,381	April 14, 1896.	705,062	July 22, 1902.
558,382	April 14, 1896.	705,063	July 22, 1902.
558,888	April 21, 1896.	706,038	August 5, 1902.
559,314	April 28, 1896.	706,045	August 5, 1902.
11,538	(Reissue) May 12, 1896.	712,669	November 4, 1902.
560,705	May 26, 1896.	718,199	January 13, 1903.
560,976	May 26, 1896.	719,584	February 3, 1903.
561,386	June 2, 1896.	732,729	July 7, 1903.
563,471	July 7, 1896.	759,273	May 10, 1904.

563,472	July 7, 1896.	763,620	June 28, 1904.
563,487	July 7, 1896.	768,560	August 23, 1904.
564,379	July 21, 1896.	781,596	January 31, 1905.
564,883	July 28, 1896.	781,628	January 31, 1905.
11,578	(Re.) December 8, 1896.	781,636	February 7, 1905.
573,068	December 15, 1896.	788,796	May 2, 1905.
573,069	December 15, 1896.	788,809	May 2, 1905.
11,587	(Re.) February 2, 1897.	790,790	May 23, 1905.
576,114	February 2, 1897.	804,645	November 14, 1905.
579,146	March 23, 1897.	808,628	January 2, 1906.
579,205	March 23, 1897.	820,964	May 22, 1906.
579,206	March 23, 1897.	827,699	August 7, 1906.
579,207	March 23, 1897.	835,513	November 13, 1906.
579,231	March 23, 1897.	845,277	February 26, 1907.
580,746	April 13, 1897.	851,737	April 30, 1907.
580,773	April 13, 1897.		
582,510	May 11, 1897.		

[On back:]

United Shoe Machinery Company.
Goodyear Department.
Auxiliary Machines. K.
Lease No. Lessee.
Date, 19
Machine.

PLAINTIFF'S EXHIBIT 26.

[Put in Evidence, page 363.]

Goodyear Department. (1101)

Lease and License Number .

Full Set.

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of , 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor in consideration of the covenants and

agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter may be embodied therein or employed in the operation thereof, to use the the machine or machines known as "Goodyear Department" machinery now or hereafter delivered to the lessee and designated by number or numbers in the following schedule, viz. : —

SCHEDULE OF MACHINES.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Welt and Turn Shoe Machine — Model E, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Bobbin Winding Machine (Universal), No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Goodyear Bobbin Winding Machine (Rapid), No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.
Goodyear Welt Grooving and Beveling Machine No.
Goodyear Welt Splitting Machine No.
Goodyear Channeling Machine, { Turn / Insole / Outsole } No.
Goodyear Universal Welt Beating Machine, No.
Goodyear Welt Beating and Slashing Machine, No.
Goodyear Universal Shank Skiving Machine, No.
Goodyear Universal Inseam Trimming Machine, No.
Goodyear Universal Rounding and Channeling Machine, No.
Goodyear Channel Opening Machine, No.
Goodyear Automatic Sole Leveling Machine, No.
Goodyear Rotary Sole Laying Machine, No.
Hadaway Stitch Separating Machine, No.
Goodyear Channel Laying Machine, No.
Goodyear Flexible Sole Machine, No.
Goodyear Moulding Machine, No.
Goodyear Turn Shoe Trimming Machine, No.

Goodyear Lip Turning Machine, No.
Goodyear Improved Sole Laying Machine, No.
Goodyear Shank Welt Skiving Machine, No.
Goodyear Forepart Turning Machine, No.
Goodyear Heel Turning Machine, No.
Goodyear Welt Indenting and Burnishing Machine, No.
Goodyear Steam Generator, No.

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such

case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the

lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear, known in the trade as "Goodyear Welts," which are or shall be welted and the soles stitched on welt sewing and stitching machines hereby, or by other instrument, heretofore or hereafter, leased to the lessee by the lessor or its assignor, or in the manufacture of boots, shoes or other footwear, known in the trade as "Goodyear Turns," the soles of which are or shall be attached to their uppers by turn sewing machines hereby, or by other instrument, heretofore or hereafter, leased to the lessee by the lessor or its assignor. The lessee shall use all Goodyear Welt and Turn Shoe Machines, Goodyear Universal Inseam Sewing Machines and Goodyear Outsole Rapid Lockstitch Machines hereby leased or held by him under other lease or license or agreement from the lessor, whether as the result of assignment to the lessor or otherwise, to their full capacity, limited only by the number of welted or turned boots, shoes and other footwear made by or for him.

Five. The lessee shall pay to the lessor immediately after the execution hereof, as a lease premium, the sum of Dollars and the lessee shall also pay to the lessor on the last day of each calendar month as rent or royalty the rental or royalty set forth in the

following schedule for each pair of boots, shoes or other footwear or portions thereof manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part by the aid of the leased machinery or any part thereof: —

SCHEDULE OF RENTS AND ROYALTIES FOR GOODYEAR WELTS AND TURNS.

	Sizes. From No.	To. No.	Welts.	Turns.
Children's	1	10½ inclusive.	3 cents.	1 cent.
Misses'	11	2 "	4 "	1½ cents.
Women's	2½	and over.	6 "	1½ "
Youths'	9	13½ inclusive.	4 "	1½ "
Boys'	1	5 "	6 "	1½ "
Men's	5½	and over.	8 "	1½ "

provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will, in consideration of such prompt payment, grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen the lessee shall immediately by writing notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or anyone in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to

any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, eight cents per pair for each pair of boots, shoes and other footwear, or portions thereof in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number and kind of boots, shoes, and other footwear or portions thereof in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, or other footwear, or portions thereof, made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep, upon blanks or blank books to be furnished by the lessor, accurate daily records of the number and kind of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and if requested so to do by the lessor, shall verify the same under oath and shall also furnish any further information called for by said blanks or blank-books; and the lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and, in case in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month.

And that the following agreements, stipulations and provisions are agreed to: —

Seven. If at any time the lessee shall fail or cease to use exclusively welt sewing and outsole stitching machinery held by him under lease from the lessor, in the manufacture of all "welted" boots, shoes, or other footwear made by or for him, the welts or

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soles of which are sewed by the aid of machinery, or shall fail or cease to use exclusively turn sewing machinery held by him under lease from the lessor in the manufacture of all "turn" boots, shoes or other footwear, the soles of which are sewed by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing this lease and license and any other lease or license of "Goodyear Department" machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all the leased machinery and all "Goodyear Department" machinery held by the lessee under lease or license from the lessor or its assignor shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased ma-

chinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery.

Nine. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of

the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Ten herein.)

Number.	Date.	Number.	Date.
424,966	April 8, 1890.	677,550	July 2, 1901.
429,065	May 27, 1890.	682,315	September 10, 1901.
435,882	September 2, 1890.	684,359	October 8, 1901.
435,883	September 2, 1890.	684,537	October 15, 1901.
436,034	September 9, 1890.	684,538	October 15, 1901.
442,770	December 16, 1890.	684,540	October 15, 1901.

453,999	June 9, 1891.	685,991	July 5, 1901.
456,041	July 14, 1891.	686,011	November 5, 1901.
460,526	September 29, 1891.	686,371	November 12, 1901.
461,793	October 20, 1891.	11,951	(Re.) Nov. 26, 1901.
463,967	November 24, 1891.	687,719	December 3, 1901.
463,982	November 24, 1891.	688,411	December 10, 1901.
473,870	April 26, 1892.	690,422	January 7, 1902.
474,774	May 10, 1892.	691,903	January 28, 1902.
483,393	September 27, 1892.	692,401	February 4, 1902.
487,214	November 29, 1892.	694,367	March 4, 1902.
488,505	December 20, 1892.	699,679	May 13, 1902.
488,508	December 20, 1892.	700,913	May 27, 1902.
488,591	December 27, 1892.	702,196	June 10, 1902.
488,841	December 27, 1892.	704,457	July 8, 1902.
495,452	April 11, 1893.	704,458	July 8, 1902.
500,060	June 20, 1893.	705,062	July 22, 1902.
505,598	September 26, 1893.	705,063	July 22, 1902.
507,873	October 31, 1893.	706,038	August 5, 1902.
510,127	December 5, 1893.	706,045	August 5, 1902.
511,263	December 19, 1893.	712,669	November 4, 1902.
514,364	February 6, 1894.	718,199	January 13, 1903.
514,741	February 13, 1894.	719,584	February 3, 1903.
518,911	April 24, 1894.	732,729	July 7, 1903.
520,020	May 15, 1894.	759,273	May 10, 1904.
529,900	November 27, 1894.	763,620	June 28, 1904.
533,301	January 29, 1895.	764,569	July 12, 1904.
536,338	March 26, 1895.	768,560	August 23, 1904.
536,352	March 26, 1895.	781,596	January 31, 1905.
537,823	April 23, 1895.	781,628	January 31, 1905.
540,222	May 28, 1895.	781,636	February 7, 1905.
540,223	May 28, 1895.	788,796	May 2, 1905.
540,438	June 4, 1895.	788,809	May 2, 1905.
540,616	June 4, 1895.	790,790	May 23, 1905.
541,988	July 2, 1895.	797,802	August 22, 1905.
542,813	July 16, 1895.	797,803	August 22, 1905.
543,012	July 23, 1895.	804,645	November 14, 1905.

546,211	September 10, 1895.	808,628	January 2, 1906.
546,851	September 24, 1895.	817,309	April 10, 1906.
546,852	September 24, 1895.	820,964	May 22, 1906.
548,309	October 22, 1895.	826,352	July 17, 1906.
549,125	November 5, 1895.	827,699	August 7, 1906.
549,126	November 5, 1895.	835,513	November 13, 1906.
549,471	November 5, 1895.	845,277	February 26, 1907.
550,402	November 26, 1895.	845,939	March 5, 1907.
553,948	February 4, 1896.	851,737	April 30, 1907.
553,949	February 4, 1896.	852,703	May 7, 1907.
555,547	March 3, 1896.	875,171	December 31, 1907.
555,548	March 3, 1896.	875,172	December 31, 1907.
557,744	April 7, 1896.	877,036	January 21, 1908.
558,379	April 14, 1896.	878,475	February 4, 1908.
558,380	April 14, 1896.	880,792	March 3, 1908.
558,381	April 14, 1896.	885,232	April 21, 1908.
558,382	April 14, 1896.	885,244	April 21, 1908.
558,888	April 21, 1896.	887,957	May 19, 1908.
559,314	April 28, 1896.	887,991	May 19, 1908.
11,538	(Reissue) May 12, 1896.	888,083	May 19, 1908.
560,705	May 26, 1896.	889,287	June 2, 1908.
560,976	May 26, 1896.	894,332	July 28, 1908.
561,386	June 2, 1896.	895,623	August 11, 1908.
563,471	July 7, 1896.	900,248	October 6, 1908.
563,472	July 7, 1896.	900,925	October 13, 1908.
563,487	July 7, 1896.	904,604	November 24, 1908.
564,379	July 21, 1896.	906,092	December 8, 1908.
564,883	July 28, 1896.	906,705	December 15, 1908.
11,578	(Re.) December 8, 1896.	910,339	January 19, 1909.
573,068	December 15, 1896.	916,021	March 23, 1909.
573,069	December 15, 1896.	917,807	April 13, 1909.
11,587	(Re.) February 2, 1897.	917,872	April 13, 1909.
576,114	February 2, 1897.	922,696	May 25, 1909.
579,146	March 23, 1897.	922,697	May 25, 1909.
579,205	March 23, 1897.	925,509	June 22, 1909.
579,206	March 23, 1897.	930,115	August 3, 1909.

579,207	March 23, 1897.	930,272	August 3, 1909.
579,231	March 23, 1897.	930,542	August 10, 1909.
580,746	April 13, 1897.	933,174	September 7, 1909.
580,773	April 13, 1897.	933,175	September 7, 1909.
582,510	May 11, 1897.	934,434	September 21, 1909.
583,522	June 1, 1897.	935,726	October 5, 1909.
583,968	June 8, 1897.	935,765	October 5, 1909.
584,038	June 8, 1897.	937,504	October 19, 1909.
584,039	June 8, 1897.	939,007	November 2, 1909.
590,597	September 28, 1897.	939,498	November 9, 1909.
590,831	September 28, 1897.	939,621	November 9, 1909.
594,810	November 30, 1897.	942,133	December 7, 1909.
595,764	December 21, 1897.	942,919	December 14, 1909.
598,727	February 8, 1898.	944,260	December 28, 1909.
599,602	February 22, 1898.	944,498	December 28, 1909.
600,883	March 22, 1898.	946,591	January 18, 1910.
607,404	July 12, 1898.	947,149	January 18, 1910.
609,100	August 16, 1898.	950,616	March 1, 1910.
610,314	September 6, 1898.	952,701	March 22, 1910.
610,315	September 6, 1898.	956,971	May 3, 1910.
620,205	February 28, 1899.	958,913	May 24, 1910.
622,460	April 4, 1899.	960,781	June 7, 1910.
625,633	May 23, 1899.	961,200	June 14, 1910.
627,034	June 13, 1899.	962,138	June 21, 1910.
627,035	June 13, 1899.	962,139	June 21, 1910.
630,338	August 30, 1899.	963,708	July 5, 1910.
633,836	September 26, 1899.	963,761	July 12, 1910.
635,015	October 17, 1899.	965,656	July 26, 1910.
635,772	October 31, 1899.	968,553	August 30, 1910.
637,225	November 21, 1899.	968,554	August 30, 1910.
638,010	November 28, 1899.	968,555	August 30, 1910.
640,063	December 26, 1899.	968,556	August 30, 1910.
644,571	March 6, 1900.	971,014	September 20, 1910.
644,654	March 6, 1900.	971,674	October 4, 1910.
651,406	June 12, 1900.	973,038	October 18, 1910.
652,014	June 19, 1900.	973,182	October 18, 1910.

652,908	July 3, 1900.	974,309	November 1, 1910.
653,227	July 10, 1900.	974,757	November 1, 1910.
653,236	July 10, 1900.	976,450	November 22, 1910.
664,405	December 25, 1900.	981,190	January 10, 1911.
665,376	January 1, 1901.	981,345	January 10, 1911.
666,823	January 29, 1901.	984,772	February 21, 1911.
667,086	January 29, 1901.	984,773	February 21, 1911.
668,635	February 26, 1901.	988,332	April 4, 1911.
670,195	March 19, 1901.	989,142	April 11, 1911.
675,082	May 28, 1901.	993,543	May 30, 1911.
675,725	June 4, 1901.	995,670	June 20, 1911.
675,783	June 4, 1901.	996,483	June 27, 1911.
677,315	June 25, 1901.	996,707	July 4, 1911.

[On back:]

United Shoe Machinery Company.
Goodyear Department.
(Lease Premium.)

Lease No. , Lessee.

Date, 19 .

Machines.

PLAINTIFF'S EXHIBIT 27.

[Put in Evidence, page 370.]

United States. Heeling Department. 100.

Lease and License Number *10*.

This Lease and Agreement made at Boston, in the State of Massachusetts, this *twenty-third* day of *April*, 1900, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *M. Felix and Company* of *Cincinnati, Ohio* hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use the machine

or machines now or hereafter delivered to the lessee and designated by their number or numbers in the following schedule, viz.:—

McKay Heel Pricking Machine, No. *477*,
Bigelow Heel Compressing Machine, No.
McKay Heel Compressing and Loading Machine, No.
Fisher Compressing Machine, No.
Bresnahan Compressing Machine, No.
American Compressing Machine, No.
Columbia Compressing Machine, No.
Bigelow Heel Nailing Machine, No.
McKay Rapid Nailing Machine, No. *1651*,
McKay No. 2 Automatic Heel Nailing and Trimming Machine, No.
McKay Automatic Heel Loading and Attaching Machine, No.
American Lightning Nailing Machine, No.
Improved National Machine, No.
Columbia Nailing Machine, No.
McKay Heel Trimming and Randing Machine, No. *620*,
McKay Knife Grinding Machine, No. *396*,
McKay Rand Trimming Machine, No.
McKay Rand Trimming and Scouring Machine, No.
King Heel Trimming Machine, No.
Smith Heel Trimming Machine, No.
Bussel Heel Trimming Machine, No.
McKay Heel Breast Trimming Machine, No.
McKay Power Heel Breasting Machine, No.

and any parts, mechanisms, tools or devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, parts, mechanisms, tools or devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as "the said machinery"), subject to the conditions hereinafter contained.

And the following are agreed to as conditions of the lease and

license of the said machinery, all of which the lessee covenants and agrees to keep and perform : —

One. The said machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at *Cincinnati* in the State of *Ohio*. The said machinery shall not be transferred or delivered or sublet to another, and the lease or the license hereby granted cannot be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of said machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee shall at the option of the lessor cease and determine, and the possession and full right to and control of all the said machinery, and any machinery held by the lessee under any other lease or license from the lessor, shall thereupon revest in the lessor free from all claims or demands whatsoever. The said machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein but only the right to use the same, upon the conditions herein contained.

Two. The lessor and its agents and employees shall at all times have access to the said machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Three. The lessee shall at all times and at his own expense keep the said machinery in good and efficient working order and condition, and shall obtain from the lessor exclusively and shall pay therefor at the regular prices from time to time established by the lessor all the duplicate parts, extras, devices, and mechanisms of every kind needed or used in operating, repairing, or renewing the said machinery, and the lessee shall not otherwise make or allow

to be made any addition, subtraction or alteration to, from, or in the said machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same. The lessee shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the said machinery by the lessor. The lessee shall use the said machinery to its full capacity so far as the number and kind of boots and shoes made in his factory will permit, and in case the lessee has more work of the kind which can be performed by the said machinery than its capacity will permit, or has work in his factory which can be performed by any of the machines above named belonging to the Heeling Department of the lessor, then the lessee shall take from the lessor, under a like lease and agreement, sufficient additional machinery to perform the work. The lessee shall pay all taxes and assessments which may be levied in respect to the said machinery upon whomsoever assessed. The lessee shall at his own expense insure against loss by fire and keep insured to the full value thereof the said machinery, and in case of loss shall pay forthwith to the lessor a sum equal to the full amount of the loss occasioned to the lessor.

Four. The lessee shall pay to the lessor on the fifteenth day of each calendar month as rent or royalty the sum of one half a cent for each pair of boot or shoe heels or boots or shoes attached or trimmed or manufactured or prepared in any way, whether wholly or in part, by the aid or use of said machinery or any part thereof during the preceding calendar month, provided, however, that in all cases where the lessee shall pay the lessor on or before the fifteenth day of the calendar month the royalty due for boots or shoes made wholly or in part by the aid of said machinery or any part thereof, the lessor will in consideration of such prompt payment grant a discount of fifty per cent from the rent due for such preceding calendar month. As the said machinery is supplied to the lessee without cash payment covering the cost of manufacture, the lessee agrees that the abated royalty herein provided for shall not be less that *Two hundred thirty* dollars, during each calendar year embraced by this lease, excepting that a reduction from this guaranteed

amount of one twelfth of said amount shall be allowed at the end of the year for each calendar month during which the factory of the lessee has remained wholly idle, and for the same reason it is agreed that the lessor may at any time cancel this lease and license by giving sixty days' notice in writing of its intention so to do.

Five. The lessor may attach to the said machinery an indicator or indicators to register the number of movements of any part thereof, and the lessee shall not allow any person (other than the lessor or its agent) to disturb or interfere with such indicator. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering the indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor and at the same time explain the circumstances under which the same has happened. In case the indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken or injured because of any fault of the lessee or anyone in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent one cent per pair for each pair of boots or shoes or any part thereof in the manufacture of which the said machinery or any part thereof shall have been used. The lessee shall keep a full and accurate account, independently of any indicators that may be placed upon the said machinery, of all boots and shoes in the manufacture of which the said machinery or any part thereof shall be used, and shall allow the lessor and its agents to have access at all times to such accounts; and the lessee further agrees to require each of his operators upon the said machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of boots or shoes in the making of which the said machinery or any part thereof shall have been used, and to require his operators to furnish any further information called for by said blanks or blank books and to sign such daily records and to deliver them to the lessee, and the lessee agrees to

send to the office of the lessor, on the first day of each month, the original records for the preceding calendar month kept by his operators as above provided for.

Six. This lease and license shall continue, unless sooner terminated by the lessor by notice or because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. If, upon the expiration of the full term of this lease, the lessor does not request the return of the said machinery, then the said machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the said machinery shall be delivered forthwith to the lessor, as herein provided. But if any breach or default shall be made in the observance of any one or more of the conditions or agreements herein contained or contained in any other lease subsisting between the lessor and lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory on the lessee, the lessor shall have the right, by notice in writing to the lessee to terminate forthwith this lease and license and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor, and in case this lease and license shall be terminated by reason of any default on the part of the lessee, as to the terms of this lease or any other lease with the lessor, the lessee, in addition and without prejudice to any other rights and remedies of the lessor hereunder, shall forthwith pay to the lessor such sum as may be necessary to put the said machinery in good order and condition.

Upon the termination of this lease and license before expiration for breach of condition or otherwise, or the expiration of the full term thereof, the lessee shall forthwith deliver the said machinery to the lessor at its office or factory; and the lessee for himself,

his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the said machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Seven. A notice in writing, signed by the president, a vice-president, or the treasurer of the lessor or by the assignee of the lessor's rights hereunder and posted by pre-paid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patents without license.

Eight. The lessee admits the validity of each and every of the letters patent of the United States owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery, and agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of the patents; and that he shall be forever estopped from so doing. The termination or cesser of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.

Nine. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Ten. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the con-

ditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In Witness Whereof, the parties hereto have duly executed this instrument the day and year first above written.

M. FELIX & Co.
M. Felix.

[SEAL] UNITED SHOE MACHINERY CO.
Geo. W. Brown, Treas.

☞ If lessee is a corporation, add seal.

[Endorsed:]
Heeling Department.
Lease No. 10 M. Felix and Co., Lessee.
Date, April 23 1900.
Machines.
McKay Pricker No. 477. Rapid Nailer No. 1651. McKay Trimmer No. 620. Grinder No. 396.
Guarantee $230.00
Cancelled file

PLAINTIFF'S EXHIBIT 28.

[Put in Evidence, page 371.]

Heeling Machine Department. (1306)

Lease and License Number .

This Lease and Agreement made at Boston, in the State of Massachusetts this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to

grant such license affecting any inventions which are now or hereinafter shall be embodied therein or employed in the operation thereof, to use the machine or machines of the Heeling Machine Department of the lessor now or hereafter delivered to the lessee, and designated by number or numbers in the following schedule, viz: —

SCHEDULE OF MACHINES.

Automatic Heel Compressing Machine (No. 4, Model), No.
McKay Rapid Nailing Machine, No.
McKay Automatic Heel Loading and Attaching Machine, No.
American Lightning Nailing Machine, No.
Improved National Nailing Machine, No.
McKay Heel Trimming and Randing Machine, No.
McKay Knife Grinding Machine, No.
Smith Heel Trimming Machine, No.
Bussel Heel Trimming Machine, No.
Ultima Heel Trimming Machine, No.

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at

in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expira-

tion or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case the same shall be lost or destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor as partial reimbursement to the lessor for such loss or destruction the agreed sum of dollars and the lessee shall forthwith return whatever remains of the machinery so lost or destroyed to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The lessee shall use the leased machinery to its full capacity for doing all work in manufacturing, preparing and

attaching all heels and top-lifts and in manufacturing and preparing all soles and taps made or prepared or attached in his factory in the manufacture or preparation or attaching of which it can be used, and the leased machinery shall be used for no other purpose. The leased machinery shall not however nor shall any part thereof be used for manufacturing, preparing or attaching heels, top-lifts, soles or taps for any boots, shoes or other footwear which have been or shall be welted or the soles stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor, or for any turn boots, shoes or other footwear the soles of which have been or shall be attached by the aid of any turn sewing machinery not held by the lessee under lease from the lessor, or for any boots, shoes or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed or otherwise partly made by the aid of any lasting, pegging or metallic machinery not held by the lessee under lease from the lessor.

Six. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one-half of one cent for each pair of heels manufactured or prepared or attached during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.**

Seven. In case any Compressing Machine (or Machines) hereby leased shall be used for compressing or otherwise operating upon top-lifts, soles or taps the lessee shall pay to the lessor independently of and in addition to the rental or royalty provided for in Article Six hereof a rental or royalty of one-quarter of one cent for each pair of top-lifts, soles or taps so compressed or operated upon. Such royalty shall be paid at the same time and in the same manner as the royalty provided for in said Article Six and

shall be subject to discount for prompt cash payment, as in said Article Six provided.

Eight. The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount to at least dollars during each year embraced by this lease and at the end of each year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle.

Nine. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, one-half of one cent per pair for each pair of heels, top-lifts, soles or taps, in the manufacture or preparation or attaching of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of heels, top-lifts, soles and taps, in the manufac-

ture or preparation or attaching of which the leased machinery, or any part thereof, shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such heels, top-lifts, soles and taps and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery, or any part thereof to keep upon blanks or blank books to be furnished by the lessor, accurate daily records of the number of heels, top-lifts, soles or taps, in the manufacture or preparation or attaching of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations, and provisions are agreed to:—

Ten. If at any time the lessee shall fail or cease to use exclusively machinery held by him under lease from the lessor, for doing all machine work done by or for him of a kind for which any of the machines mentioned by name in the foregoing Schedule of Machines is capable of being used, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases of or licenses to use machinery of any or all the kinds mentioned by name in said schedule then existing between the lessor and the lessee (whether as the result of assignment to the lessor or otherwise) and the possession of and full right to and control of all machinery, the lease of which of is so terminated, shall there-

upon revest in the lessor, free from all claims and demands whatsoever.

Eleven. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted; and without prejudice to any other rights or remedies of the lessor hereunder, shall pay to the lessor upon demand such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and

assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Twelve. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Thirteen. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Fourteen. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge

of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Fifteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Thirteen herein.)

Nos. 520,768, June 5, 1894; 528,805, Nov. 6, 1894; 530,046, Nov. 27, 1894; 531,644, Jan. 1, 1895; 531,645, Jan. 1, 1895; design, 24,268, April 30, 1895; 541,481, June 25, 1895; 542,205, July 2, 1895; 542,616, July 9, 1895; 543,349, July 23, 1895; 543,647, July 30, 1895; 543,682, July 30, 1895; 543,732, July 30, 1895; 543,804, July 30, 1895; 544,771, Aug. 20, 1895; 548,438, Oct. 22, 1895; 548,528, Oct. 22, 1895; 555,240, Feb. 25, 1896; 555,241, Feb. 25, 1896; 559,554, May 5, 1896; 559,789, May 5, 1896; 561,607, June 9, 1896; 561,608, June 9, 1896; 561,609, June 9, 1896; 561,610, June 9, 1896; 561,611, June 9, 1896; 565,467, Aug. 11, 1896; 569,055, Oct. 6, 1896; 569,517, Oct. 13, 1896; 569,518, Oct. 13, 1896; 570,437, Oct. 27, 1896; 570,648, Nov. 3, 1896; 571,087, Nov. 10, 1896; 571,499, Nov. 17, 1896; 571,931, Nov. 24, 1896; 575,040, Jan. 12, 1897; 577,212, Feb. 16, 1897; 577,213, Feb. 16, 1897; 577,241, Feb. 16, 1897; 581,039, April 20, 1897; 581,408, April 27, 1897; 583,093,

May 25, 1897; 584,601, June 15, 1897; 584,602, June 15, 1897; 584,752, June 15, 1897; 588,936, Aug. 24, 1897; 589,396, Aug. 31, 1897; 589,501, Sept. 7, 1897; 595,707, Dec. 21, 1897; 596,-064, Dec. 28, 1897; 596,305, Dec. 28, 1897; 598,256, Feb. 1, 1898; 599,012, Feb. 15, 1898; 599,627, Feb. 22, 1898; 605,647, June 14, 1898; 607,939, July 26, 1898; 607,940, July 26, 1898; 607,941, July 26, 1898; 607,942, July 26, 1898; 609,519, Aug. 23, 1898; 619,707, Feb. 14, 1899; 624,538, May 9, 1899; 624,-539, May 9, 1899; 625,728, May 23, 1899; 629,441, July 25, 1899; 631,029, Aug. 15, 1899; 635,196, Oct. 17, 1899; 637,216, Nov. 14, 1899; 638,664, Dec. 5, 1899; 641,266, Jan. 9, 1900; 650,420, May 29, 1900; 651,447, June 12, 1900; 652,371, June 26, 1900; 681,344, Aug. 27, 1901; 684,588, Oct. 15, 1901; 694,-656, March 4, 1902; 694,665, March 4, 1902; 699,113, April 29, 1902; 707,136, Aug. 19, 1902; 707,137, Aug. 19, 1902; 707,138, Aug. 19, 1902; 707,139, Aug. 19, 1902; 707,140, Aug. 19, 1902; 707,141, Aug. 19, 1902; 707,142, Aug. 19, 1902; 707,143, Aug. 19, 1902; 707,144, Aug. 19, 1902; 734,584, July 28, 1903; 735,-546, Aug. 4, 1903; 745,971, Dec. 1, 1903; 764,668, July 12, 1904; 764,696, July 12, 1094; 767,520, Aug. 16, 1904; 767,521, Aug. 16, 1904; 772,840, Oct. 18, 1904; 776,787, Dec. 6, 1904; 776,823, Dec. 6, 1904; 776,832, Dec. 6, 1904; 776,860, Dec. 6, 1904; 776,875, Dec. 6, 1904; 781,236, Jan. 31, 1905; 784,340, March 7, 1905; 799,768, Sept. 19, 1905; 823,582, June 19, 1906; 834,085, Oct. 23, 1906; 860,692, July 23, 1907; 874,921, Dec. 31, 1907; 876,626, Jan. 14, 1908; 880,583, March 3, 1908; 880,898, March 3, 1908; 884,513, April 14, 1908; 884,524, April 14, 1908; 887,870, May 19, 1908; 889,383, June 2, 1908; 890,434, June 9, 1908; 891,192, June 16, 1908; 891,513, June 23, 1908; 900,244, Oct. 6, 1908; 911,120, Feb. 2, 1909; 919,678, April 27, 1909; 929,830, Aug. 3, 1909; 938,118, Oct. 26, 1909; 939,302, Nov. 9, 1909; 943,723, Dec. 21, 1909; 958,-896, May 24, 1910; 959,869, May 31, 1910; 961,752, June 21, 1910; 974,405, Nov. 1, 1910; 982,550, Jan. 24, 1911; 996,656, July 4, 1911; 999,049, July 25, 1911; 999,050, July 25, 1911; 1,000,119, Aug. 8, 1911; 1,000,534, Aug. 15, 1911; 1,000,957,

Aug. 15, 1911; 1,001,073, Aug. 22, 1911; 1,002,836, Sept. 12, 1911; 1,005,303, Oct. 10, 1911; 1,007,687, Nov. 7, 1911; 1,009,710, Nov. 21, 1911; 1,009,761, Nov. 28, 1911; 1,011,308, Dec. 12, 1911; 1,012,007, Dec. 19, 1911; 1,012,681, Dec. 26, 1911.

[On back:]

United Shoe Machinery Company.
Heeling Machine Department.
Lease No. Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 29.

[Put in Evidence, page 376.]

United States. Metallic Department. 300.

Lease and License Number *43*.

This Lease and Agreement made this *ninth* day of *April* 1900, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, hereinafter referred to as the lessor, of the one part, and *R. C. Dean* of *Cochituate, Massachusetts*, hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use the machine or machines now or hereafter delivered to the lessee, and designated by their number in the following schedule, viz.: —

Rapid Standard Screw Machine, No.
Old Style Standard Screw Machine, No. ~~490~~,
Loose Nailing Machine, No.
Universal Slugging Machine, No.
Taper Nail Tacking Machine (D. H.), No.
Taper Nail Tacking Machine (S. H.), No.
Spring Nail Tacking Machine, No.
Power Welt Tacking Machine, No.
Cable Tacking Machine, No.

Universal Quilting Machine, No.
Circlet Driving Machine, No.
Grip Slugging Machine, No.
Grip Clinch Machine, No.
Grip Tacking Machine, No. ~~303~~,
Lewis Nailing Machine, No.
Spatter Quilting Machine, No.
Double Row Pegging Machine, No.
National Slugging Machine, No.
Simplex Slugging Machine, No.
Champion Heel Seat Nailing Machine, No.
Champion Slugging Machine, No.
Staple Fastening Machine, No.
Automatic Staple Nailing Machine, No.
Universal Double Clinch Machine, No.
Gordon Staple Tacking Machine, No.
Corrugated Wire Tacking Machine, No.

and any parts, mechanisms, tools or devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor or be added thereto with the consent of the lessor (the whole of which machine or machines, parts, mechanisms, tools or devices held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as "the said machinery"), subject to the conditions hereinafter contained.

And the following are agreed to as conditions of the lease and license of the said machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The said machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at *Cochituate* in the State of *Massachusetts*. The said machinery shall not be transferred or delivered or sublet to another, and the lease or the license hereby granted cannot be assigned by the lessee by his own act or by operation of law. If

the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of said machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, shall, at the option of the lessor, cease and determine, and the possession and full right to and control of all the said machinery, and any machinery held by the lessee under any other lease or license from the lessor, shall thereupon revest in the lessor free from all claims or demands whatsoever. The said machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained.

Two. The lessor, and its agents and employees, shall at all times have access to the said machinery for the purpose of inspecting it, or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Three. The lessee shall at all times and at his own expense keep the said machinery in good and efficient working order and condition, and shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, devices, and mechanisms of every kind needed or used in operating, repairing, or renewing the said machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the said machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same. The lessee shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the said machinery by the lessor. The lessee shall use the said machinery to its full capacity so far as the number and kind of boots and shoes made in his factory will per-

mit, and in case the lessee has more work of the kind which can be performed by the said machinery than its capacity will permit, or has work in his factory which can be performed by any of the machines above named belonging to the Metallic Department of the lessor, then the lessee shall take from the lessor, under a like lease and agreement, sufficient additional machinery to perform the work. The lessee shall pay all taxes and assessments which may be levied in respect to the said machinery upon whomsoever assessed. The lessee shall at his own expense insure against loss by fire and keep insured to the full value thereof the said machinery, and in case of loss shall pay forthwith to the lessor a sum equal to the full amount of the loss occasioned to the lessor.

Four. The lessee agrees, as rent or royalty for the said machinery, to purchase of the lessor at the prices established by the lessor, all the material or fastening used by him in or in connection with the said machinery, paying therefor in cash on delivery. As the said machinery is supplied to the lessee without cash payment covering the cost of manufacture, the lessee hereby guarantees that for each machine hereby leased the amount of material or fastening used by him and purchased from the lessor in accordance with the terms hereof shall not be less than four hundred pounds during each calendar year embraced by this lease, excepting that a reduction of thirty-three pounds from the amount thus guaranteed for each machine shall be allowed at the end of the year for each calendar month during which the factory of the lessee has remained wholly idle, and for the same reason it is agreed that the lessor may at any time cancel this lease and license by giving sixty days' notice in writing of its intention so to do.

Five. The lessor may attach to the said machinery an indicator or indicators to register the number of revolutions or movements of any part thereof, and the lessee shall not allow any person (other than the lessor or its agent) to disturb or interfere with such indicator. The lessee shall whenever requested by the lessor keep, or cause his operators to keep, independently of any indicators, full and accurate accounts showing the number of boots or shoes or parts thereof in the manufacture of which the said machinery or

any part thereof shall have been used, and shall, if requested by the lessor, send to the lessor on the fifth day of each calendar month such accounts or copies thereof covering the preceding calendar month, and shall verify such accounts by affidavit.

Six. This lease and license shall continue, unless sooner terminated by notice or because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. If, upon the expiration of the full term of this lease, the lessor does not request the return of the said machinery, then the said machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the said machinery shall be delivered forthwith to the lessor, as herein provided. But if any breach or default shall be made in the observance of any one or more of the conditions or agreements herein contained, or contained in any other lease subsisting between the lessor and lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory on the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith this lease and license, and also if the lessor so elects any other lease and license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. In case this lease and license shall be terminated by reason of any default on the part of the lessee, as to the terms of this lease or any other lease with the lessor, the lessee, in addition and without prejudice to any other rights and remedies of the lessor hereunder, shall forthwith pay to the lessor such sum as may be necessary to put the said machinery in good order and condition.

Upon the termination of this lease and license, before expiration for breach of condition or otherwise, or the expiration of the full term thereof, the lessee shall forthwith deliver the said machinery

to the lessor at its office or factory; and the lessee, for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the said machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Seven. A notice in writing, signed by the president, a vice-president, or the treasurer of the lessor, or by the assignee of the lessor's rights hereunder, and posted by pre-paid letter addressed to the lessee, or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patents without license.

Eight. The lessee admits the validity of each and every of the Letters Patent of the United States owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the said machinery, and agrees that he will not directly or indirectly infringe or contest the validity of or the title of the lessor to any of said patents, and that he shall be forever estopped from so doing. The determination or cessor of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.

Nine. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Ten. The term "lessor" shall include the said United Shoe Ma-

chinery Company, and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument on the day and year first above written.

R. C. DEAN,

[SEAL] UNITED SHOE MACHINERY COMPANY,

Geo. W. Brown, Treas.

☞ If lessee is a corporation, add seal.

[Endorsed:]

Metallic Department. Lease No. 43.
R. C. Dean, Lessee. Date, April 9, 1900.
Machines.
O. S. No. ~~400~~.
Grip Tacker No. ~~303~~.
Machines destroyed by fire Sept. 21, 1900.
Cancelled — file.

PLAINTIFF'S EXHIBIT 30.

[Put in Evidence, page 376.]

Metallic Department. 600.

Lease and License No. *283B.*

This Lease and Agreement made at Boston in the State of Massachusetts this *twentieth* day of *November* 1900, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *Easton Boot and Shoe Company* of *Easton, Pennsylvania*, hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use the machine or machines now or hereafter delivered to the lessee and designated by number in the following schedule, viz.: —

Rapid Standard Screw Machine, No.
Old Style Standard Screw Machine, No.
Loose Nailing Machine, No.
Universal Slugging Machine, No. *1258–1268*,
Taper Nail Tacking Machine (D. H.), No.
Taper Nail Tacking Machine (S. H.), No.
String Nail Tacking Machine, No.
Power Welt Tacking Machine, No.
Cable Tacking Machine, No.
Universal Quilting Machine, No.
Heel Protector Driving Machine, No.
Grip Slugging Machine, No.
Grip Clinch Machine, No.
Grip Tacking Machine, No.
Lewis Nailing Machine, No.
Spatter Quilting Machine, No.
Double Row Pegging Machine, No.
National Slugging Machine, No.
Simplex Slugging Machine, No.
Champion Heel Seat Nailing Machine, No.
Champion Slugging Machine, No.
Staple Fastening Machine, No.
Automatic Staple Nailing Machine, No.
Universal Double Clinch Machine, No.
Gordon Staple Tacking Machine, No.
Corrugated Wire Tacking Machine, No.

and any parts, extras, duplicates, mechanisms, tools and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, parts, extras, duplicates, mechanisms, tools and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as "the said machinery"), subject to the conditions hereinafter contained.

And the following are agreed to as conditions of the lease and license of the said machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The said machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at *Easton* in the State of *Pennyslvania*. The said machinery shall not be transferred or delivered or sublet to another, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of said machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee shall at the option of the lessor cease and determine, and the possession and full right to and control of all the said machinery, and any machinery held by the lessee under any other lease or license from the lessor, shall thereupon revest in the lessor free from all claims or demands whatsoever. The said machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein but only the right to use the same, upon the conditions herein contained.

Two. The lessor and its agents and employees shall at all times have access to the said machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Three. The lessee shall at all times and at his own expense keep the said machinery in good and efficient working order and condition, and shall obtain from the lessor exclusively and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, devices and mechanisms of every kind needed or used in operating, repairing or renewing the

said machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from or in the said machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same. The lessee shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the said machinery by the lessor. The lessee shall use the said machinery to its full capacity so far as the number and kind of boots and shoes made in his factory will permit, except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines other than those leased from the lessor or any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor. In case the lessee has more work of the kind which can be performed by any of the machines belonging to the Metallic Department of the lessor than the capacity of the Metallic machinery which he has under lease from the lessor will permit, then the lessee shall either take from the lessor, under a like lease and agreement, sufficient additional machinery to perform the work, or in case the lessee does not thus lease additional Metallic machinery from the lessor, then the lessor may, if it so elects, cancel forthwith this lease and any other lease of Metallic machinery then in force between the lessor and the lessee, whether as a result of assignment or otherwise. The lessee shall pay all taxes and assessments which may be levied in respect to the said machinery, or in respect to this lease and license or the right to payments hereunder, upon whomsoever assessed. The lessee shall at his own expense insure against loss by fire and keep insured to the full value thereof the said machinery, and in case of loss shall pay forthwith to the lessor a sum equal to the full amount of the loss occasioned to the lessor.

Four. The lessee agrees, as rent or royalty for the said machinery, to purchase of the lessor at the prices established by the lessor, all the fastening material used by him in or in connection

with the said machinery, paying therefor in cash on delivery. The lessee hereby guarantees that for each machine hereby leased the amount of fastening material used by him and purchased from the lessor in accordance with the terms hereof shall not be less than four hundred pounds during each calendar year embraced by this lease, excepting that a reduction of thirty-three pounds from the amount thus guaranteed for each machine shall be allowed at the end of the year for each calendar month during which the factory of the lessee has remained wholly idle.

Five. The lessor may attach to the said machinery an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon said machinery, showing the number of boots and shoes or parts thereof in the manufacture of which the said machinery or any part thereof shall be used, and shall allow the lessor at all times by its agents or attorneys to examine and to take copies of such accounts and entries of the lessee as may serve to indicate the total number of boots and shoes made by the aid of said machinery or any part thereof, and the lessee shall produce all such papers and books upon request.

Six. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions or agreements herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith this lease and license and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee whether as the result of assignment to the lessor or otherwise, and this not-

withstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the said machinery, then the said machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the said machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease or any other lease with the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the said machinery to the lessor at its office or factory; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the said machinery, or any part thereof, may be, and take possession thereof, and take away the same, and the lessee in addition and without prejudice to any other rights and remedies of the lessor hereunder, shall thereupon pay to the lessor such sum as may be necessary to put the said machinery in suitable order and condition to lease to another lessee.

Seven. A notice in writing, signed by the president, a vice-president or the treasurer of the lessor or by the assignee of the lessor's rights hereunder and posted by the pre-paid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent for the period prior to such termination, and shall be without prejudice to any other rights or reme-

dies which the lessor may have for violation of contract, use of machines without right, or use of patents without license.

Eight. The lessee admits the validity of each and every of the letters patent of the United States owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the said machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed, and that he shall be forever estopped from so doing. The termination or cesser of this lease and license from any cause whatever shall not in way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.

Nine. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Ten. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

[SEAL] EASTERN BOOT & SHOE CO.
Allen Carpenter, Pres.
UNITED SHOE MACHINERY CO. [SEAL]
L. H. Baker, Secretary

☞If lessee is a corporation, add seal.

Schedule of Patents.

(Referred to in Article Eight.)

Nos. 297,718, April 29, 1884; 319,127, June 2, 1885; 325,274, Sept. 1, 1885; 325,275, Sept. 1, 1885; 334,361, Jan. 12, 1886; 334,362, Jan. 12, 1886; 334,809, Jan. 26, 1886; 346,127, July 27, 1886; 346,128, July 27, 1886; 346,129, July 27, 1886; 346,-130, July 27, 1886; 354,051, Dec. 7, 1886; 354,052, Dec. 7, 1886; 364,776, June 14, 1887; 364,777, June 14, 1887; 364,778, June 14, 1887; 364,779, June 14, 1887; 380,662, Apr. 3, 1888; 403,081, May 7, 1889; 410,927, Sept. 10, 1889; 413,463, Oct. 22, 1889; 416,272, Dec. 3, 1889; 429,862, June 10, 1890; 431,-339, July 1, 1890; 432,074, July 15, 1890; 440,723, Nov. 18, 1890; 447,358, March 3, 1891; 447,359, March 3, 1891; 457,257, Aug. 4, 1891; 459,698, Sept. 15, 1891; 487,404, Dec. 6, 1892; 520,437, May 29, 1894; 525,066, Aug. 28, 1894; 554,200, Feb. 4, 1896; 554,931, Feb. 18, 1896; 555,314, Feb. 25, 1896; 560,-968, May 26, 1896; 561,206, June 2, 1896; 562,597, June 23, 1896; 562,703, June 23, 1896; 578,696, March 9, 1897; 579,390, March 23, 1897; 582,579, May 11, 1897; 582,580, May 11, 1897; 591,658, Oct. 12, 1897; 601,255, March 29, 1898; 610,475, Sept. 6, 1898; 612,799, Oct. 18, 1898; 612,487, Oct. 18, 1898; 287,-375, Oct. 23, 1883; 288,421, Nov. 13, 1883; 288,422, Nov. 13, 1883; 288,423, Nov. 13, 1883; 288,424, Nov. 13, 1883; 288,425, Nov. 13, 1883; 289,103, Nov. 27, 1883; 300,077, June 10, 1884; 301,114, July 1, 1884; 301,493, July 8, 1884; 310,816, Jan. 13, 1885; 310,817, Jan. 13, 1885; 329,031, Oct. 27, 1885; 329,449, Nov. 3, 1885; 331,925, Dec. 8, 1885; 331,926, Dec. 8, 1885; 351,372, Oct. 26, 1886; 356,107, Jan. 18, 1887; 360,428, April 5, 1887; 360,585, April 5, 1887; 370,135, Sept. 20, 1887; 370,-136, Sept. 20, 1887; 373,234, Nov. 15, 1887; 374,549, Dec. 6, 1887; 383,455, May 29, 1888; 385,801, July 10, 1888; 385,802, July 10, 1888, 388,128, Aug. 21, 1888; 398,606, Feb. 26, 1889; 398,891, March 5, 1889; 403,835, May 21, 1889; 402,014, April 23, 1889; 429,527, June 3, 1890; 429,528, June 3, 1890; 440,-805, Nov. 18, 1890; 443,077, Dec. 16, 1890; 451,001, April 21,

1891; 456,113, July 14, 1891; 472,638, April 12, 1892; 467,104, Jan. 12, 1892; 475,729, May 24, 1892; 475,868, May 31, 1892; 478,054, June 28, 1892; 478,055, June 28, 1892; 478,056, June 28, 1892; 490,621, Jan. 24, 1893; 490,622, Jan. 24, 1893; 490,623, Jan. 24, 1893; 490,624, Jan. 24, 1893; 490,625, Jan. 24, 1893; 493,910, March 21, 1893; 502,212, July 25, 1893; 545,487, Sept. 3, 1895; 552,903, Jan. 14, 1896; 556,501, March 17, 1896; 559,129, April 28, 1896; 559,130, April 28, 1896; 563,478, July 7, 1896; 565,073, Aug. 4, 1896; 565,074, Aug. 4, 1896; 568,248, Sept. 22, 1896; 577,235, Feb. 16, 1897; 581,458, April 27, 1897; 581,459, April 27, 1897; 584,775, June 22, 1897; 587,144, July 27, 1897; 602,184, April 12, 1898; 603,394, May 3, 1898; 606,045, June 21, 1898; 609,874, Aug. 30, 1898; 611,990; Oct. 4, 1898; 611,991, Oct. 4, 1898; 611,405, Sept. 27, 1898; 335,154, Feb. 2, 1886; 447,681, March 3, 1891; 521,369, June 12, 1894; 571,227, Nov. 10, 1896; 347,323, Aug. 17, 1886; 575,296, Jan. 12, 1897; 538,322, April 30, 1895; 610,320, Sept. 6, 1898; 280,267, June 26, 1883; 291,443, Jan. 1, 1884; 299,041, May 20, 1884; 301,464, July 1, 1884; 335,260, Feb. 2, 1886; 335,261, Feb. 2, 1886; 341,193, May 4, 1886; 426,274, April 22, 1890; 434,274, Aug. 12, 1890.

[Endorsed:]
Metallic Department.
Lease No. 283B.
Easton B & S Co. Lessee.
Date, Nov. 20 1900
Machines.
U. S. No. 1258–1268.
Cancelled file

PLAINTIFF'S EXHIBIT 31.

[Put in Evidence, page 377.]

Independent Lease. 301.

Metallic Department.

Lease and License Number .

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use the machine or machines known as "Metallic Department" machinery now or hereafter delivered to the lessee and designated by number in the following schedule, viz:—

SCHEDULE OF MACHINES.

Rapid Standard Screw Machine, No.
Old Style Standard Screw Machine, No.
Loose Nailing Machine, No.
Universal Slugging Machine, No.
Taper Nail Tacking Machine (D. H.), No.
Taper Nail Tacking Machine (S. H.), No.
String Nail Tacking Machine, No.
Power Welt Tacking Machine, No.
Cable Tacking Machine, No.
Universal Quilting Machine, No.
Heel Protector Driving Machine, No.
Grip Slugging Machine, No.
Grip Clinch Machine, No.
Grip Tacking Machine, No.
Lewis Nailing Machine, No.
Spatter Quilting Machine, No.

National Slugging Machine, No.
Simplex Slugging Machine, No.
Champion Heel Seat Nailing Machine, No.
Champion Slugging Machine, No.
Staple Fastening Machine, No.
Automatic Staple Nailing Machine, No.
Universal Double Clinch Machine, No.
Gordon Staple Tacking Machine, No.
Corrugated Wire Tacking Machine, No.

and any duplicate parts, extras, mechanisms and devices, relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereinafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform:—

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in

writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery, or in respect to this lease and license or the right to payments hereunder, upon whomsoever assessed. The lessee shall at his own expense insure against loss by fire and keep insured to the full value thereof the leased

machinery, and in case of loss shall pay forthwith to the lessor a sum equal to the full amount of the loss occasioned to the lessor.

Four. **The lessee, as rent and royalty for the leased machinery, shall purchase exclusively of the lessor all the fastening material used by him in or in connection with the leased machinery, and shall pay the lessor in cash on delivery the regular and uniform prices therefor as established from time to time by the lessor, which shall not be more than ten (10) per cent. in excess of the prices to be established from time to time by the lessor for like fastening material to be used in its Metallic Department machinery by lessees who shall agree not to use the Metallic Department machinery leased to them in the manufacture of boots or shoes which are lasted on machines other than those leased from the lessor, or of welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or of turned shoes the soles of which are not attached by turn sewing machines leased from the lessor.**

Five. The lessor may attach to the leased machinery an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes and other footwear or portions thereof in the manufacture of which the leased machinery or any part thereof shall be used, and shall allow the lessor at all times by its agents or attorneys to examine and to take copies of such accounts and entries of the lessee as may serve to indicate the total number of boots, shoes and other footwear, or portions thereof made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such papers and books upon request.

And that the following agreements, stipulations and provisions are agreed to: —

Six. The lessee for a period of five years from the date of this

lease and license shall use the leased machinery to its full capacity so far as the number and kind of boots and shoes made in his factory will permit, and his failure to use the leased machinery to its full capacity shall render him liable in damages to the lessor. During the remainder of the term of this lease and license after five years from the date hereof, the lessee shall continue to use the leased machinery to its full capacity so far as the number and kind of boots and shoes made in his factory will permit.

In case the lessee has more work of the kind which can be performed by any of the machines belonging to the Metallic Department of the lessor than the capacity of the Metallic Department machinery which he has under lease from the lessor will permit, then the lessee shall take from the lessor under a like lease and license sufficient additional Metallic Department machinery to perform the work, and the lessor shall lease such additional Metallic Department machinery to the lessee from time to time when required by the lessee, under a like lease and license if this lease and license is then in force, and if the lessee is not then in default in respect to any of the conditions, agreements, stipulations, and provisions in this lease and license contained.

Whenever for a period of three consecutive months the lessee shall fail to use all the leased machinery to an amount that will give to each machine at least three-fourths of a fair day's work during such period, the lessee from time to time and at all times upon the written request of the lessor, shall return to the lessor by delivery at its office or factory, such of the leased machinery as, in the opinion of the lessor, shall not be reasonably required by the lessee in the operation of his said factory, and shall pay to the lessor such sums as may be necessary to put the machinery so returned in suitable order and condition to lease to another lessee.

The lessee hereby agrees that for each machine hereby leased the amount of fastening material used by him and purchased from the lessor in accordance with the terms hereof shall not be less than four hundred (400) pounds during each calendar year embraced by this lease, excepting that a reduction of thirty-three (33) pounds from the amount thus guaranteed for each machine shall be

allowed at the end of the year for each calendar month during which the factory of the lessee has remained wholly idle. Upon any breach or default on the part of the lessee in the observance of the agreements, stipulations and provisions in this article "Six" contained, the lessor, although it may have waived or ignored prior breaches or defaults, may, at its option, terminate forthwith by notice in writing this lease and license and any other lease or license of Metallic Department machines, machinery or devices, like those or any of them mentioned in the foregoing Schedule of Machines, then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all Metallic Department machinery held by the lessee under lease or license from the lessor or its assignors shall thereupon revest in the lessor, free from all claims and demands whatsoever, and the lessee shall thereupon pay to the lessor such sum as shall be necessary to put all such machinery in suitable order and condition to lease to another lessee; but a breach or default on the part of the lessee in the observance of his agreements in respect to the extent of the use of the leased machinery and the amount of fastening material to be purchased by him in this article "Six" contained shall not entitle the lessor to any other remedy than the right to terminate this lease and license and any other lease or license of Metallic Department machinery as above provided, except the right to damages for breach of the first agreement, covering the term of five years, in this article "Six" contained and therein expressly given.

Seven. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith this lease and license, and also, if

the lessor so elects, any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term, but thereafter either the lessee, or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted ; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same ; and the lessee, in addition and without prejudice to any other rights and remedies of the lessor hereunder, shall thereupon pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee.

Eight. Whenever the right to terminate this lease and license shall have accrued to the lessor, a notice in writing, signed by the president, a vice-president, or the treasurer of the lessor, or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license

from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Nine. The lessee admits the validity of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cesser of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth, so far as any act committed during the existence of this lease and license is concerned.

Ten. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

Twelve. The lessee, if not in default in respect to any of the conditions, agreements, stipulations and provisions herein contained, upon giving six months' notice in writing to the lessor of his intention so to do, shall have the privilege of surrendering this lease and

license, by executing such other form of lease and license agreement in respect to the leased machinery as the lessor shall have in use at the time of such surrender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Nine herein.)

Nos. 297,718, April 29, 1884; 319,127, June 2, 1885; 325,274, Sept. 1, 1885; 325,275, Sept. 1, 1885; 334,361, Jan. 12, 1886; 334,362, Jan. 12, 1886; 334,809, Jan. 26, 1886; 346,127, July 27, 1886; 346,128, July 27, 1886; 346,129, July 27, 1886; 346,-130, July 27, 1886; 354,051, Dec. 7, 1886; 354,052, Dec. 7, 1886; 364,776, June 14, 1887; 364,777, June 14, 1887; 364,778, June 14, 1887; 364,779, June 14, 1887; 380,662, April 3, 1888; 403,-081, May 7, 1889; 410,927, Sept. 10, 1889; 413,463, Oct. 22, 1889; 416,272, Dec. 3, 1889; 429,862, June 10, 1890; 431,339, July 1, 1890; 432,074, July 15, 1890; 440,723, Nov. 18, 1890; 447,358, March 3, 1891; 447,359, March 3, 1891; 457,257, Aug. 4, 1891; 459,698, Sept. 15, 1891; 487,404, Dec. 6, 1892; 520,437, May 29, 1894; 525,066, Aug. 28, 1894; 554,200, Feb. 4, 1896; 554,931, Feb. 18, 1896; 555,314, Feb. 25, 1896; 560,968, May 26, 1896; 561,206, June 2, 1896; 562,597, June 23, 1896; 562,-703, June 23, 1896; 578,696, March 9, 1897; 579,390, March 23, 1897; 582,579, May 11, 1897; 582,580, May 11, 1897; 591,658, Oct. 12, 1897; 601,255, March 29, 1898; 610,475, Sept. 6, 1898; 612,799, Oct. 18, 1898; 612,487, Oct. 18, 1898; 287,375, Oct. 23, 1883; 288,421, Nov. 13, 1883; 288,422, Nov. 13, 1883; 288,423, Nov. 13, 1883; 288,424, Nov. 13, 1883; 288,425, Nov. 13, 1883; 289,103, Nov. 27, 1883; 300,077, June 10, 1884; 301,114, July 1, 1884; 301,493, July 8, 1884; 310,816, Jan. 13, 1885; 310,-817, Jan. 13, 1885; 329,031, Oct. 27, 1885; 329,449, Nov. 3, 1885; 331,925, Dec. 8, 1885; 331,926, Dec. 8, 1885; 351,372, Oct. 26, 1886; 356,107, Jan. 18, 1887; 360,428, April 5, 1887;

360,585, April 5, 1887; 370,135, Sept. 20, 1887; 370,136, Sept. 20, 1887; 373,234, Nov. 15, 1887; 374,549, Dec. 6, 1887; 383,455, May 29, 1888; 385,801, July 10, 1888; 385,802, July 10, 1888; 388,128, Aug. 21, 1888; 398,606, Feb. 26, 1889; 398,891, March 5, 1889; 403,835, May 21, 1889; 402,014, April 23, 1889; 429,527, June 3, 1890; 429,528, June 3, 1890; 440,805, Nov. 18, 1890; 443,077, Dec. 16, 1890; 451,001, April 21, 1891; 456,113, July 14, 1891; 472,638, April 12, 1892; 467,104, Jan. 12, 1892; 475,729, May 24, 1892; 475,868, May 31, 1892; 478,054, June 28, 1892; 478,055, June 28, 1892; 478,056, June 28, 1892; 490,621, Jan. 24, 1893; 490,622, Jan. 24, 1893; 490,623, Jan. 24, 1893; 490,624, Jan. 24, 1893; 490,625, Jan. 24, 1893; 493,910, March 21, 1893; 502,212, July 25, 1893; 545,487, Sept. 3, 1895; 552,903, Jan. 14, 1896; 556,501, March 17, 1896; 559,129, April 28, 1896; 559,130, April 28, 1896; 563,478, July 7, 1896; 565,073, Aug. 4, 1896; 565,074, Aug. 4, 1896; 568,248, Sept. 22, 1896; 577,235, Feb. 16, 1897; 581,458, April 27, 1897; 581,459, April 27, 1897; 584,775, June 22, 1897; 587,144, July 27, 1897; 602,184, April 12, 1898; 603,394, May 3, 1898; 606,045, June 21, 1898; 609,874, Aug. 30, 1898; 611,990, Oct. 4, 1898; 611,991, Oct. 4, 1898; 611,405, Sept. 27, 1898; 335,154, Feb. 2, 1886; 447,681, March 3, 1891; 521,369, June 12, 1894; 571,227, Nov. 10, 1896; 347,323, Aug 17, 1886; 575,296, Jan. 12, 1897; 538,322, April 30, 1895; 610,320, Sept. 6, 1898; 280,267, June 26, 1883; 291,443, Jan. 1, 1884; 299,041, May 20, 1884; 301,464, July 1, 1884; 335,260, Feb. 2, 1886; 335,261, Feb. 2, 1886; 341,193, May 4, 1886; 426,274, April 22, 1890; 434,274, Aug 12, 1890; 607,924, July 26, 1898; 615,481, Dec. 6, 1898; 548,343, Oct. 22, 1895; 586,153, July 13, 1897; 586,154, July 13, 1897; 669,022, Feb. 26, 1901; 669,023, Feb. 26, 1901; 669,024, Feb. 26, 1901; 669,025, Feb. 26, 1901; 669,026, Feb. 26, 1901.

399,410, March 12, 1889; 408,173, July 30, 1889; 415,175, Nov. 12, 1889; 461,510, Oct. 20, 1891; 461,853, Oct. 27, 1891; 467,522, Jan. 26, 1892; 520,437, May 29, 1894; 541,201, June 18, 1895; De. 24,483, July 16, 1895; De. 24,757, Oct. 15, 1895;

De. 24,758, Oct. 15, 1895; De. 24,759, Oct. 15, 1895; De. 24,760, Oct. 15, 1895; De. 24,761, Oct. 15, 1895; De. 24,762, Oct. 15, 1895; De. 24,763, Oct. 15, 1895; De. 24,764, Oct. 15, 1895; De. 24,765, Oct. 15, 1895; 551,118, Dec. 10, 1895; De. 25,211, March 3, 1896; 570,633, Nov. 3, 1996; 575,296, Jan. 12, 1897; 584,735, June 15, 1897; 602,390, Apr. 12, 1898; 614,460, Nov. 22, 1898; 618,027, Jan. 17, 1899; De. 30,112, Jan. 31, 1899; 639,694, Dec. 19, 1899; 641,099, Jan. 9, 1900; 654,762, July 31, 1900; 655,223, Aug. 7, 1900; 687,686, Nov. 26, 1901; 687,687, Nov. 26, 1901; 691,354, Jan. 21, 1902; Re. 11,962, Jan. 21, 1902; 693,686, Feb. 18, 1902; 705,512, July 22, 1902; 711,248, Oct. 14, 1902; 712,866, Nov. 4, 1902; 714,572, Nov. 25, 1902; 721,016, Feb. 17, 1903; 722,659, March 17, 1903; 724,432, Apr. 7, 1903; 736,825, Aug. 18, 1903; 741,522, Oct. 13, 1903; 762,-802, June 14, 1904; 765,392, July 19, 1904; 765,650, July 19, 1904; 767,520, Aug. 16, 1904; 767,521, Aug. 16, 1904; 768,-560, Aug. 23, 1904; 768,811, Aug. 30, 1904; 768,812, Aug. 30, 1904; 776,832, Dec. 6, 1904; 784,249, March 7, 1905; 786,190, March 28, 1905.

[On back:]
United Shoe Machinery Company.
Metallic Department.
Independent Lease.
Lease No. , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 32.

[Put in Evidence, page 378.]

[TYPEWRITTEN RIDER ATTACHED TO THE FOLLOWING LEASE.]

The following provisions contained in Article Three of Metallic Department Lease and License No. , dated , granted by the United Shoe Machinery Company as lessor to of as lessee, covering is hereby stricken out, namely:

"except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines or by the aid of lasting or tacking mechanisms other

than those leased from the lessor or any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor."

Excepting as herein expressly provided none of the conditions, agreements, stipulations or provisions contained in said Lease and License is hereby in any wise waived or modified.

Dated this day of 19

Metallic Department. 600.

Lease and License Number .

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines now or hereafter delivered to the lessee and designated by the number in the following schedule, viz.: —

Rapid Standard Screw Machine, No.
Old Style Standard Screw Machine, No.
Loose Nailing Machine, No.
Universal Slugging Machine, No.
Taper Nail Tacking Machine (D. H.), No.
Taper Nail Tacking Machine (S. H.), No.
String Nail Tacking Machine, No.
Power Welt Tacking Machine, No.
Cable Tacking Machine, No.

Universal Quilting Machine, No.
Heel Protector Driving Machine, No.
Grip Slugging Machine, No.
Grip Clinch Machine, No.
Grip Tacking Machine, No.
Lewis Nailing Machine, No.
Spatter Quilting Machine, No.
Double Row Pegging Machine, No.
National Slugging Machine, No.
Simplex Slugging Machine, No.
Champion Heel Seat Nailing Machine, No.
Champion Slugging Machine, No.
Staple Fastening Machine, No.
Automatic Staple Nailing Machine, No.
Universal Double Clinch Machine, No.
Gordon Staple Tacking Machine, No.
Corrugated Wire Tacking Machine, No.
Knife Grinding Machine, No.

and any parts, extras, duplicates, mechanisms, tools and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto, with the consent of the lessor (the whole of which machine or machines, parts, extras, duplicates, mechanisms, tools and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as "the said machinery"), subject to the conditions hereinafter contained.

And the following are agreed to as conditions of the lease and license of the said machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The said machinery shall be used only by the leseee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The said machinery shall not be transferred or delivered or sublet to another, and neither the lease nor the license hereby granted can be assigned

by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of said machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and licenee and any other lease or license then existing between the lessor and the lessee shall at the option of the lessor cease and determine, and the possession and full right to and control of all the said machinery, and any machinery held by the lessee under any other lease or license from the lessor, shall thereupon revest in the lessor free from all claims or demands whatsoever. The said machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained.

Two. The lessor and its agents and employees shall at all times have access to the said machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Three. The lessee shall at all times and at his own expense keep the said machinery in good and efficient working order and condition, and shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, devices, and mechanisms of every kind needed or used in operating, repairing or renewing the said machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the said machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same. The lessee shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the said machinery by the lessor. The lessee shall use the said machinery to its full capacity so far as the number

and kind of boots and shoes made in his factory will permit, except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines or by the aid of lasting or tacking mechanisms other than those leased from the lessor or any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor. In case the lessee has more work of the kind which can be performed by any of the machines belonging to the Metallic Department of the lessor than the capacity of the Metallic machinery which he has under lease from the lessor will permit, then the lessee shall either take from the lessor, under a like lease and agreement, sufficient additional machinery to perform the work, or in case the lessee does not thus lease additional Metallic machinery from the lessor, then the lessor may, if it so elects, cancel forthwith this lease and any other lease of Metallic machinery then in force between the lessor and the lessee, whether as the result of assignment or otherwise. The lessee shall at his own expense insure against loss by fire and keep insured to the full value thereof the said machinery, and in case of loss shall pay forthwith to the lesser a sum equal to the full amount of the loss occasioned to the lessor.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the said machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all ma-

chinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed: provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The lessee agrees, as rent or royalty for the said machinery, to purchase of the lessor at the prices established by the lessor, all the fastening material used by him in or in connection with the said machinery, paying therefor in cash on delivery. The lessee hereby guarantees that for each machine hereby leased the amount of fastening material used by him and purchased from the lessor in accordance with the terms hereof shall not be less than four hundred pounds during each calendar year embraced by this lease, excepting that a reduction of thirty-three pounds from the amount thus guaranteed for each machine shall be allowed at the end of the year for each calendar month during which the factory of the lessee has remained wholly idle.

Six. The lessor may attach to the said machinery an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon said machinery, showing the number of boots and shoes or parts thereof in the manufacture of which the said machinery or any part thereof shall be used, and shall allow the lessor at all times by its agents or attorneys to examine and to take copies of such accounts and entries of the lessee as may serve to indicate the total number of boots and shoes made by the aid of said machinery or any part thereof, and the lessee shall produce all such papers and books upon request.

Seven. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions or agreements herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith this lease and license and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the said machinery, then the said machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the said machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease or any other lease with the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the said machinery to the lessor at its office or factory in good order and condition, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the said machinery, or any part thereof, may be, and take possession thereof, and take away the same, and the lessee in addition and without prejudice to any other rights and remedies of the lessor hereunder, shall thereupon pay to the lessor

such sum as may be necessary to put the said machinery in suitable order and condition to lease to another lessee.

Eight. A notice in writing, signed by the president, a vice-president or the treasurer of the lessor, or by the assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determintion of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patents without license.

Nine. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the letters patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the said machinery or embodied in the operation thereof. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Ten. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

☞ If lessee is a corporation, add seal.

SCHEDULE OF PATENTS.
(Referred to in Article Nine.)

Nos. 388,128, Aug. 21, 1888; 398,606, Feb. 26, 1889; 398,891, March 5, 1889; 399,410, March 12, 1889; 402,014, April 23, 1889; 403,081, May 7, 1889; 403,835, May 21, 1889; 408,173, July 30, 1889; 410,927, Sept. 10, 1889; 413,463, Oct. 22, 1889; 415,175, Nov. 12, 1889; 416,272, Dec. 3, 1889; 429,527, June 3, 1890; 429,528, June 3, 1890; 429,862, June 10, 1890; 431,339, July 1, 1890; 432,074, July 15, 1890; 440,723, Nov. 18, 1890; 440,805, Nov. 18, 1890; 443,077, Dec. 16, 1890; 447,358, March 3, 1891; 447,359, March 3, 1891; 447,681, March 3, 1891; 451,001, April 21, 1891; 456,113, July 14, 1891; 457,257, Aug. 4, 1891; 459,698, Sept. 15, 1891; 461,510, Oct. 20, 1891; 461,853, Oct. 27, 1891; 467,104, Jan. 12, 1892; 467,522, Jan. 26, 1892; 472,638, April 12, 1892; 475,868, May 31, 1892; 478,054, June 28, 1892; 478,055, June 28, 1892; 478,056, June 28, 1892; 487,404, Dec. 6, 1892; 490,621, Jan. 24, 1893; 490,622, Jan. 24, 1893; 490,623, Jan. 24, 1893; 490,624, Jan. 24, 1893; 490,625, Jan. 24, 1893; 493,910, March 21, 1893; 502,212, July 25, 1893; 520,437, May 29, 1894; 521,369, June 12, 1894; 525,066, Aug. 28, 1894; 538,322, April 30, 1895; 541,201, June 18, 1895; De. 24,483, July 16, 1895; 545,487, Sept. 3, 1895; De. 24,757, Oct. 15, 1895; De. 24,758, Oct. 15, 1895; De. 24,759, Oct. 15, 1895; De. 24,760, Oct. 15, 1895; De. 24,761, Oct. 15, 1895; De. 24,762, Oct. 15, 1895; De. 24,763, Oct. 15, 1895; De. 24,764, Oct. 15,

1895; De. 24,765, Oct. 15, 1895; 548,343, Oct. 22, 1895; 551,118, Dec. 10, 1895; 552,903, Jan. 14, 1896; 554,200, Feb. 4, 1896; 554,931, Feb. 18, 1896; 555,314, Feb. 25, 1896; De. 25,211, March 3, 1896; 560,968, May 26, 1896; 561,206, June 2, 1896; 562,597, June 23, 1896; 562,703, June 23, 1896; 563,478, July 7, 1896; 565,073, Aug. 4, 1896; 565,074, Aug. 4, 1896; 568,248, Sept. 22, 1896; 570,633, Nov. 3, 1896; 571,227, Nov. 10, 1896; 575,296, Jan. 12, 1897; 577,235, Feb. 16, 1897; 578,696, March 9, 1897; 579,390, March 23, 1897; 581,459, April 27, 1897; 582,-579, May 11, 1897; 582,580, May 11, 1897; 584,735, June 15, 1897; 584,775, June 22, 1897; 586,153, July 13, 1897; 586,154, July 13, 1897; 587,144, July 27, 1897; 591,658, Oct. 12, 1897; 601,255, March 29, 1898; 602,184, April 12, 1898; 602,390, April 12, 1898; 603,394, May 3, 1898; 606,045, June 21, 1898; 607,924, July 26, 1898; 609,874, Aug. 30, 1898; 610,320, Sept. 6, 1898; 610,475, Sept. 6, 1898; 611,990, Oct. 4, 1898; 611,405, Sept. 27, 1898; 611,991, Oct. 4, 1898; 612,487, Oct. 18, 1898; 612,799, Oct. 18, 1898; 614,460, Nov. 22, 1898; 615,481, Dec. 6, 1898; 618,027, Jan. 17, 1899; De. 30,112, Jan. 31, 1899; 639,-694, Dec. 19, 1899; 641,099, Jan. 9, 1900; 654,762, July 31, 1900; 655,223, Aug. 7, 1900; 669,023, Feb. 26, 1901; 669,024, Feb. 26, 1901; 669,025, Feb. 26, 1901; 669,026, Feb. 26, 1901; 687,686, Nov. 26, 1901; 687,687, Nov. 26, 1901; 691,354, Jan. 21, 1902; Re. 11,962, Jan. 21, 1902; 693,686, Feb. 18, 1902; 705,512, July 22, 1902; 711,248, Oct. 14, 1902; 712,866, Nov. 4, 1902; 714,572, Nov. 25, 1902; 721,016, Feb. 17, 1903; 722,-659, March 17, 1903; 724,432, April 7, 1903; 736,825, Aug. 18, 1903; 741,522, Oct. 13, 1903; 762,802, June 14, 1904; 765,392, July 19, 1904; 765,650, July 19, 1904; 767,520, Aug. 16, 1904; 767,521, Aug. 16, 1904; 768,560, Aug. 23, 1904; 768,811, Aug. 30, 1904; 768,812, Aug. 30, 1904; 776,832, Dec. 6, 1904; 784,249, March 7, 1905; 786,190, March 28, 1905.

[On back:]

Metallic Department.

Lease No. Lessee.

Date, 19 .

Machines.

PLAINTIFF'S EXHIBIT 33.

[Put in Evidence, page 380.]

Metallic Department. 1100.

Lease and License Number .

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines now or hereafter delivered to the lessee and designated by number in the following schedule, viz.:—

SCHEDULE OF MACHINES.

Rapid Standard Screw Machine, No.
Loose Nailing Machine, No.
Universal Slugging Machine, No.
Taper Nail Tacking Machine, No.
Grip Tacking Machine, No.
Staple Fastening Machine, No.

and any parts, extras, duplicates, mechanisms, tools and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, parts, extras, duplicates, mechanisms, tools and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as "the said machinery"), subject to the conditions hereinafter contained.

And the following are agreed to as conditions of the lease and license of the said machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The said machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The said machinery shall not be transferred or delivered or sublet to another, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of said machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee shall at the option of the lessor cease and determine, and the possession and full right to and control of all the said machinery, and any machinery held by the lessee under any other lease or license from the lessor, shall thereupon revest in the lssor free from all claims or demands whatsoever. The said machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained.

Two. The lessor and its agents and employees shall at all times have access to the said machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Three. The lessee shall at all times and at his own expense keep the said machinery in good and efficient working order and condition, and shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, devices, and mechanisms of every kind needed or used in operating, repairing, or renewing the

said machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the said machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same. The lessee shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the said machinery by the lessor. The lessee shall use the said machinery to its full capacity so far as the number and kind of boots and shoes made in his factory will permit, and in case the lessee has more work of the kind which can be performed by any of the machines belonging to the Metallic Department of the lessor than the capacity of the Metallic machinery which he has under lease from the lessor will permit, then the lessee shall either take from the lessor, under a like lease and agreement, sufficient additional machinery to perform the work, or in case the lessee does not thus lease additional Metallic machinery from the lessor, then the lessor may, if it so elects, cancel forthwith this lease and any other lease of Metallic machinery then in force between the lessor and the lessee, whether as the result of assignment or otherwise.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the said machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment

has been assessed: provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The lessee shall pay to the lessor immediately upon the execution hereof as a lease premium the sum of dollars, and the lessee agrees, as rent or royalty for the said machinery, to purchase of the lessor at the prices established by the lessor, all the fastening material used by him in or in connection with the said machinery, paying therefor in cash on delivery. The lessee hereby guarantees that for each machine hereby leased the amount of fastening material used by him and purchased from the lessor in accordance with the terms hereof shall not be less than four hundred pounds during each calendar year embraced by this lease, excepting that a reduction of thirty-three pounds from the amount thus guaranteed for each machine shall be allowed at the end of the year for each calendar month during which the factory of the lessee has remained wholly idle.

Six. The lessor may attach to the said machinery an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon said machinery, showing the number of boots and shoes or parts thereof in the manufacture of which the said machinery or any part thereof shall be used, and shall allow the lessor at all times by its agents or attorneys to examine and to take copies of such accounts and entries of the lessee as may serve to indicate the total number of boots and shoes made by the aid of said machinery or any part thereof, and the lessee shall produce all such papers and books upon request.

Seven. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions or agreements herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith this lease and license and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the said machinery, then the said machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the said machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease or any other lease with the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the said machinery to the lessor at its office or factory in good order and condition, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the said machinery, or any part thereof, may be, and take possession thereof, and take away the same, and the lessee in addition and without prejudice to any other rights and remedies of the lessor hereunder, shall thereupon pay to the lessor

such sum as may be necessary to put the said machinery in suitable order and condition to lease to another lessee.

Eight. A notice in writing, signed by the president, a vice-president or the treasurer of the lessor or by the assignee of the lessor's rights hereunder and posted by pre-paid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patents without license.

Nine. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the letters patent of the United States of America owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the said machinery or embodied in the operation thereof. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Ten. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

☞ If lessee is a corporation, add seal.

SCHEDULE OF PATENTS.

(Referred to in Article nine.)

Nos. 520,437, May 29, 1894; 521,369, June 12, 1894; 525,066, Aug. 28, 1894; 538,322, April 30, 1895; 541,201, June 18, 1895; De. 24,483, July 16, 1895; 545,487, Sept. 3, 1895; De. 24,757, Oct. 15, 1895; De. 24,758, Oct. 15, 1895; De. 24,759, Oct. 15, 1895; De. 24,760, Oct. 15, 1895; De. 24,761, Oct. 15, 1895; De. 24,762, Oct. 15, 1895; De. 24,763, Oct. 15, 1895; De. 24,764, Oct. 15, 1895; De. 24,765, Oct. 15, 1895; 548,343, Oct. 22, 1895; 551,118, Dec. 10, 1895; 552,903, Jan. 14, 1896; 554,200, Feb. 4, 1896; 554,931, Feb. 18, 1896; 555,314, Feb. 25, 1896; De. 25,-211, March 3, 1896; 560,968, May 26, 1896; 561,206, June 2, 1896; 562,597, June 23, 1896; 562,703, June 23, 1896; 563,478, July 7, 1896; 565,073, Aug. 4, 1896; 565,074, Aug. 4, 1896; 568,248, Sept. 22, 1896; 570,633, Nov. 3, 1896; 571,227, Nov. 10, 1896; 575,296, Jan. 12, 1897; 577,235, Feb. 16, 1897; 578,-696, March 9, 1897; 579,390, March 23, 1897; 581,459, April 27, 1897; 582,579, May 11, 1897; 582,580, May 11, 1897; 584,735, June 15, 1897; 584,775, June 22, 1897; 586,153, July 13, 1897; 586,154, July 13, 1897; 587,144, July 27, 1897; 591,658, Oct. 12, 1897; 601,255, March 29, 1898; 602,184, April 12, 1898; 602,390, April 12, 1898; 603,394, May 3, 1898; 606,045, June 21, 1898; 607,924, July 26, 1898; 609,874, Aug. 30, 1898; 610,-320, Sept. 6, 1898; 610,475, Sept. 6, 1898; 611,405, Sept. 27, 1898; 611,990, Oct. 4, 1898; 611,991, Oct. 4, 1898; 612,487, Oct. 18, 1898; 612,799, Oct. 18, 1898; 614,460, Nov. 22, 1898;

615,481, Dec. 6, 1898; 618,027, Jan. 17, 1899; De. 30,112, Jan. 31, 1899; 639,694, Dec. 19, 1899; 641,099, Jan. 9, 1900; 654,762, July 31, 1900; 655,223, Aug. 7, 1900; 669,023, Feb. 26, 1901; 669,024, Feb. 26, 1901; 669,025, Feb. 26, 1901; 669,026, Feb. 26, 1901; 685,991, July 5, 1901; 687,686, Nov. 26, 1901; 687,687, Nov. 26, 1901; 691,354, Jan. 21, 1902; Re. 11,962, Jan. 21, 1902; 693,686, Feb. 18, 1902; 705,512, July 22, 1902; 711,248, Oct. 14, 1902; 712,866, Nov. 4, 1902; 714,572, Nov. 25, 1902; 721,016, Feb. 17, 1903; 722,659, March 17, 1903; 724,432, April 7, 1903; 736,825, Aug. 18, 1903; 741,522, Oct. 13, 1903; 762,802, June 14, 1904; 765,392, July 19, 1904; 765,650, July 19, 1904; 767,520, Aug. 16, 1904; 767,521, Aug. 16, 1904; 768,560, Aug. 23, 1904; 768,811, Aug. 30, 1904; 768,812, Aug. 30, 1904; 776,832, Dec. 6, 1904; 784,249, March 7, 1905; 786,190, March 28, 1905; 853,742, May 14, 1907; 864,951, Sept. 3, 1907; 865,329, Sept. 3, 1907; 886,313, April 28, 1908; 889,383, June 2, 1908; 889,752, June 2, 1908; 890,447, June 9, 1908; Re. 12,820, June 23, 1908; Re. 12,821, June 30, 1908; 891,907, June 30, 1908; 896,293, Aug. 18, 1908; 898,435, Sept. 15, 1908; 898,573, Sept. 15, 1908; 899,093, Sept. 22, 1908; 908,437, Jan. 5, 1909; 910,147, Jan. 19, 1909; 919,424, April 27, 1909; 920,241, May 4, 1909; 922,447, May 25, 1909; 924,965, June 15, 1909; 930,047, Aug. 3, 1909; 931,042, Aug. 17, 1909; 931,107, Aug. 17, 1909; 932,535, Aug. 31, 1909; 938,118, Oct. 26, 1909; 945,064, Jan. 4, 1910; 959,666, May 31, 1910; 959,984, May 31, 1910; 960,278, June 7, 1910; 963,708, July 5, 1910; 970,702, Sept. 20, 1910; 970,908, Sept. 20, 1910; 973,604, Oct. 25, 1910; 973,605, Oct. 25, 1910; 976,269, Nov. 22, 1910; 976,837, Nov. 29, 1910; 978,297, Dec. 13, 1910; 983,665, Feb. 7, 1911; 988,365, April 4, 1911; 944,334, June 6, 1911; 994,354, June 6, 1911; 995,022, June 13, 1911; 995,050, June 13, 1911; 996,043, June 27, 1911; 996,065, June 27, 1911; 997,238, July 4, 1911.

[On back:]

Metallic Department. (Lease Premium)

Lease No. . , Lessee.

Date, 19

Machines.

PLAINTIFF'S EXHIBIT 34.

[Put in Evidence, page 380.]

Metallic Department. 800.

Lease and License Number .

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of hereinafter referred to as the lessee, of the other part:

Witnesseth that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines now or hereafter delivered to the lessee and designated by number in the following schedule, viz.:—

SCHEDULE OF MACHINES.

Loose Nailing Machine, No.
Universal Slugging Machine, No.
Taper Nail Tacking Machine, No.
Grip Tacking Machine, No.
Staple Fastening Machine, No.
Knife Grinder, No.

and any parts, extras, duplicates, mechanisms, tools and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor, (the whole of which machine or machines, parts, extras, duplicates, mechanisms, tools and devices held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as "the said machinery"), subject to the conditions hereinafter contained.

And the following are agreed to as conditions of the lease and license of the said machinery, all of which the lessee covenants and agrees to keep and perform : —

One. The said machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The said machinery shall not be transferred or delivered or sublet to another, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of said machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee shall at the option of the lessor cease and determine, and the possession and full right to and control of all the said machinery, and any machinery held by the lessee under any other lease or license from the lessor, shall thereupon revest in the lessor free from all claims or demands whatsoever. The said machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained.

Two. The lessor and its agents and employees shall at all times have access to the said machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Three. The lessee shall at all times and at his own expense keep the said machinery in good and efficient working order and condition, and shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, devices, and mechanisms of every kind needed or used in operating, repairing, or renewing the

said machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the said machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same. The lessee shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the said machinery by the lessor. The lessee shall use the said machinery to its full capacity so far as the number and kind of boots and shoes made in his factory will permit, except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines or by the aid of lasting or tacking mechanisms other than those leased from the lessor or any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor. In case the lessee has more work of the kind which can be performed by any of the machines belonging to the Metallic Department of the lessor than the capacity of the Metallic machinery which he has under lease from the lessor will permit, then the lessee shall either take from the lessor, under a like lease and agreement, sufficient additional machinery to perform the work, or in case the lessee does not thus lease additional Metallic machinery from the lessor, then the lessor may, if it so elects, cancel forthwith this lease and any other lease of Metallic machinery then in force between the lessor and the lessee, whether as the result of assignment or otherwise. The lessee shall at his own expense insure against loss by fire and keep insured to the full value thereof the said machinery, and in case of loss shall pay forthwith to the lessor a sum equal to the full amount of the loss occasioned to the lessor.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the said machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this

article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed: provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The lessee agrees, as rent or royalty for the said machinery, to purchase of the lessor at the prices established by the lessor, all the fastening material used by him in or in connection with the said machinery, paying therefor in cash on delivery. The lessee hereby guarantees that for each machine hereby leased the amount of fastening material used by him and purchased from the lessor in accordance with the terms hereof shall not be less than four hundred pounds during each calendar year embraced by this lease, excepting that a reduction of thirty-three pounds from the amount thus guaranteed for each machine shall be allowed at the end of the year for each calendar month during which the factory of the lessee has remained wholly idle.

Six. The lessor may attach to the said machinery an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon

said machinery, showing the number of boots and shoes or parts thereof in the manufacture of which the said machinery or any part thereof shall be used, and shall allow the lessor at all times by its agents or attorneys to examine and to take copies of such accounts and entries of the lessee as may serve to indicate the total number of boots and shoes made by the aid of said machinery or any part thereof, and the lessee shall produce all such papers and books upon request.

Seven. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions or agreements herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith this lease and license and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the said machinery, then the said machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the said machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease or any other lease with the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the said machinery to the lessor at its office or factory in good order and condition,

reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the said machinery, or any part thereof, may be, and take possession thereof, and take away the same, and the lessee in addition and without prejudice to any other rights and remedies of the lessor hereunder, shall thereupon pay to the lessor such sum as may be necessary to put the said machinery in suitable order and condition to lease to another lessee.

Eight. A notice in writing, signed by the president, a vice-president or the treasurer of the lessor or by the assignee of the lessor's rights hereunder and posted by pre-paid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patents without license.

Nine. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the letters patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the said machinery or embodied in the operation thereof. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted

shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Ten. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

☞ If lessee is a corporation, add seal.

SCHEDULE OF PATENTS.
(Referred to in Article Nine.)

Nos. 520,437, May 29, 1894; 521,369, June 12, 1894; 525,066, Aug. 28, 1894; 538,322, April 30, 1895; 541,201, June 18, 1895; De. 24,483, July 16, 1895; 545,487, Sept. 3, 1895; De. 24,757, Oct. 15, 1895; De. 24,758, Oct. 15, 1895; De. 24,759, Oct. 15, 1895; De. 24,760, Oct. 15, 1895; De. 24,761, Oct. 15, 1895; De. 24,762, Oct. 15, 1895; De. 23,763, Oct. 15, 1895; De. 24,764, Oct. 15, 1895; De. 24,765, Oct. 15, 1895; 548,343, Oct. 22, 1895; 551,118, Dec. 10, 1896; 552,903, Jan. 14, 1896; 554,200, Feb. 4, 1896; 554,931, Feb. 18, 1896; 555,314, Feb. 25, 1896; De. 25,211, March 3, 1896; 560,968, May 26, 1896; 561,206, June 2, 1896; 562,597, June 23, 1896; 562,703, June 23, 1896; 563,478, July 7, 1896; 565,073, Aug. 4, 1896; 565,074, Aug. 4, 1896; 568,248, Sept. 22, 1896; 570,633, Nov. 3, 1896; 571,227, Nov. 10, 1896; 575,296, Jan. 12, 1897; 577,235, Feb. 16, 1897; 578,696, March 9,

1897; 579,390, March 23, 1897; 581,459, April 27, 1897; 582,579, May 11, 1897; 582,580, May 11, 1897; 584,735, June 15, 1897; 584,775, June 22, 1897; 586,153, July 13, 1897; 586,154, July 13, 1897; 587,144, July 27, 1897; 591,658, Oct. 12, 1897; 601,-255, March 29, 1898; 602,184, April 12, 1898; 602,390, April 12, 1898; 603,394, May 3, 1898; 606,045, June 21, 1898; 607,924, July 26, 1898; 609,874, Aug. 30, 1898; 610,320, Sept. 6, 1898; 610,475, Sept. 6, 1898; 611,405, Sept. 27, 1898; 611,990, Oct. 4, 1898; 611,991, Oct. 4, 1898; 612,487, Oct. 18, 1898; 612,799, Oct. 18, 1898; 614,460, Nov. 22, 1898; 615,481, Dec. 6, 1898; 618,027, Jan. 17, 1899; De. 30,112, Jan. 31, 1899; 639,694, Dec. 19, 1899; 641,099, Jan. 9, 1900; 654,762, July 31, 1900: 655,-223, Aug. 7, 1900; 669,023, Feb. 26, 1901; 669,024, Feb. 26, 1901; 669,025, Feb. 26, 1901; 660,026, Feb. 26, 1901; 685,991, July 5, 1901; 687,686, Nov. 26, 1901; 687,687, Nov. 26, 1901; 691,354, Jan. 21, 1902; Re. 11,962, Jan. 21, 1902; 693,686, Feb. 18, 1902; 705,512, July 22, 1902; 711,248, Oct. 14, 1902; 712,-866, Nov. 4, 1902; 714,572, Nov. 25, 1902; 721,016, Feb. 17, 1903; 722,659, March 17, 1903; 724,432, April 7, 1903; 736,825, Aug. 18, 1903; 741,522, Oct. 13, 1903; 762,802, June 14, 1904; 765,392, July 19, 1904; 765,650, July 19, 1904; 767,520, Aug. 16, 1904; 767,521, Aug. 16, 1904; 768,560, Aug. 23, 1904; 768,-811, Aug. 30, 1904; 768,812, Aug. 30, 1904; 776,832, Dec. 6, 1904; 784,249, March 7, 1905; 786,190, March 28, 1905; 853,742, May 14, 1907; 864,951, Sept. 3, 1907; 865,329, Sept. 3, 1907; 886,313, April 28, 1908; 889,383, June 2, 1908; 889,752, June 2, 1908; 890,447, June 9, 1908; Re. 12,820, June 23, 1908; Re. 12,821, June 30, 1908; 891,907, June 30, 1908; 896,293, Aug. 18, 1908; 898,435, Sept. 15, 1908; 898,573, Sept. 15, 1908; 899,093, Sept. 22, 1908; 908,437, Jan. 5, 1909; 910,147, Jan. 19, 1909; 919,424, April 27, 1909; 920,241, May 4, 1909; 922,-447, May 25, 1909; 924,965, June 15, 1909; 930,047, Aug. 3, 1909; 931,042, Aug. 17, 1909; 931,107, Aug. 17, 1909; 932,-535, Aug. 31, 1909; 938,118, Oct. 26, 1909; 945,064, Jan. 4, 1910; 959,666, May 31, 1910; 959,984, May 31, 1910; 960,278, June 7, 1910; 963,708, July 5, 1910; 970,702, Sept. 20, 1910;

970,908, Sept. 20, 1910; 973,604, Oct. 25, 1910; 973,605, Oct. 25, 1910; 976,269, Nov. 22, 1910; 976,837, Nov. 29, 1910; 978,297, Dec. 13, 1910; 983,665, Feb. 7, 1911; 988,365, April 4, 1911; 944,334, June 6, 1911; 994,354, June 6, 1911; 995,022, June 13, 1911; 995,050, June 13, 1911; 996,043, June 27, 1911; 996,065, June 27, 1911; 997,238, July 4, 1911; 999,203, Aug. 1, 1911; 1,000,490, Aug. 15, 1911; 1,000,573, Aug. 15, 1911; 1,000,573, Aug. 15, 1911; 1,000,998, Aug. 22, 1911; 1,001,815, Aug. 29, 1911; 1,002,864, Sept. 12, 1911; 1,004,240, Sept. 26, 1911; 1,004,772, Oct. 3, 1911; 1,005,920, Oct. 17, 1911; 1,005,921, Oct. 17, 1911; 1,006,533, Oct. 24, 1911; 1,011,941, Dec. 19, 1911; 1,012,811, Dec. 26, 1911.

[On back:]

Metallic Department.

Lease No. Lessee.

Date, 19

Machines.

PLAINTIFF'S EXHIBIT 35.

[Put in Evidence, page 381.]

Metallic Department. 900.

Lease and License Number .

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines now or hereafter delivered to the lessee and designated by number in the following schedule, viz:—

SCHEDULE OF MACHINES.
Rapid Standard Screw Machine Co.
Knife Grinder, No.

and any parts, extras, duplicates, mechanisms, tools and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, parts, extras, duplicates, mechanisms, tools and devices held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as "the said machinery"), subject to the conditions hereinafter contained.

And the following are agreed to as conditions of the lease and license of the said machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The said machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The said machinery shall not be transferred or delivered or sublet to another, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of said machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee shall at the option of the lessor cease and determine, and the possession and full right to and control of all the said machinery, and any machinery held by the lessee under any other lease or license from the lessor, shall thereupon revest in the lessor free from all claims or demands whatsoever. The said machinery shall at all times remain and be

the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained.

Two. The lessor and its agents and employees shall at all times have access to the said machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Three. The lessee shall at all times and at his own expense keep the said machinery in good and efficient working order and condition, and shall obtain from the lessor exclusively and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, devices, and mechanisms of every kind needed or used in operating, repairing, or renewing the said machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the said machinery, without the consent in writing of the lessor, nor interfere with the proper operation of the same. The lessee shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the said machinery by the lessor. The lessee shall use the said machinery to its full capacity so far as the number and kind of boots and shoes made in his factory will permit, except that the lessee agrees that said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines or by the aid of lasting or tacking mechanisms other than those leased from the lessor or any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor. In case the lessee has more work of the kind which can be performed by any of the machines belonging to the Metallic Department of the lessor than the capacity of the Metallic machinery which he has under lease from the lessor will permit, then the lessee shall either take from the lessor, under a like lease and agreement, sufficient additional machinery to perform the work, or in case the lessee does not thus lease additional

Metallic machinery from the lessor, then the lessor may, if it so elects, cancel forthwith this lease and any other lease of Metallic machinery then in force between the lessor and the lessee, whether as the result of assignment or otherwise. The lessee shall at his own expense insure against loss by fire and keep insured to the full value thereof the said machinery, and in case of loss shall pay forthwith to the lessor a sum equal to the full amount of the loss occasioned to the lessor.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the said machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed: provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The lessee agrees, as rent or royalty for the said machinery, to purchase of the lessor at the prices established by the lessor all the fastening material used by him in or in connection with the said machinery, paying therefor in cash on delivery. The lessee

hereby guarantees that for each machine hereby leased the amount of fastening material used by him and purchased from the lessor in accordance with the terms hereof shall not be less than four hundred pounds during each calendar year embraced by this lease, excepting that a reduction of thirty-three pounds from the amount thus guaranteed for each machine shall be allowed at the end of the year for each calendar month during which the factory of the lessee has remained wholly idle.

Six. The lessor may attach to the said machinery an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon said machinery, showing the number of boots and shoes or parts thereof in the manufacture of which the said machinery or any part thereof shall be used, and shall allow the lessor at all times by its agents or attorneys to examine and to take copies of such accounts and entries of the lessee as may serve to indicate the total number of boots and shoes made by the aid of said machinery or any part thereof, and the lessee shall produce all such papers and books upon request.

Seven. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be be made in the observance of any one or more of the conditions or agreements herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith this lease and license and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been

unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the said machinery, then the said machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the said machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease or any other lease with the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the said machinery to the lessor at its office or factory in good order and condition, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the said machinery, or any part thereof, may be, and take possession thereof, and take away the same, and the lessee in addition and without prejudice to any other rights and remedies of the lessor hereunder, shall thereupon pay to the lessor such sum as may be necessary to put the said machinery in suitable order and condition to lease to another lessee.

Eight. A notice in writing, signed by the president, a vice-president or the treasurer of the lessor or by the assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the

lessor may have for violation of contract, use of machines without right, or use of patents without license.

Nine. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the letters patent of the United States of America owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the said machinery or embodied in the operation thereof. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Ten. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

☞If lessee is a corporation, add seal.

Schedule of Patents.

(Referred to in Article Nine.)

Nos. 520,437, May 29, 1894; 521,369, June 12, 1894; 525,066, Aug. 28, 1894; 538,322, April 30, 1895; 541,201, June 18, 1895; De. 24,483, July 16, 1895; 545,487, Sept. 3, 1895; De. 24,757, Oct. 15, 1895; De. 24,758, Oct. 15, 1895; De. 24,759, Oct. 15, 1895; De. 24,760, Oct. 15, 1895; De. 24,761, Oct. 15, 1895; De. 24,762, Oct. 15, 1895; De. 24,763, Oct. 15, 1895; De. 24,764, Oct. 15, 1895; De. 24,765, Oct. 15, 1895; 548,343, Oct. 22, 1895; 551,118, Dec. 10, 1895; 552,903, Jan. 14, 1896; 554,200, Feb. 4, 1896; 554,931, Feb. 18, 1896; 555,314, Feb. 25, 1896; De. 25,-211, March 3, 1896; 560,968, May 26, 1896; 561,206, June 2, 1896; 562,597, June 23, 1896; 562,703, June 23, 1896; 563,478, July 7, 1896; 565,073, Aug. 4, 1896; 565,074, Aug. 4, 1896; 568,248, Sept. 22, 1896; 570,633, Nov. 3, 1896; 571,227, Nov. 10, 1896; 575,296, Jan. 12, 1897; 577,235, Feb. 16, 1897; 578,-696, March 9, 1897; 579,390, March 23, 1897; 581,459, April 27, 1897; 582,579, May 11, 1897; 582,580, May 11, 1897; 584,735, June 15, 1897; 584,775, June 22, 1897; 586,153, July 13, 1897; 586,154, July 13, 1897; 587,144, July 27, 1897; 591,658, Oct. 12, 1897; 601,255, March 29, 1898; 602,184, April 12, 1898; 602,390, April 12, 1898; 603,394, May 3, 1898; 606,045, June 21, 1898; 607,924, July 26, 1898; 609,874, Aug. 30, 1898; 610,-320, Sept. 6, 1898; 610,475, Sept. 6, 1898; 611,405, Sept. 27, 1898; 611,990, Oct. 4, 1898; 611,991, Oct. 4, 1898; 612,487, Oct. 18, 1898; 612,799, Oct. 18, 1898; 614,460, Nov. 22, 1898; 615,481, Dec. 6, 1898; 618,027, Jan. 17, 1899; De. 30,112, Jan. 31, 1899; 639,694, Dec. 19, 1899; 641,099, Jan. 9, 1900; 654,-762, July 31, 1900; 655,223, Aug. 7, 1900; 669,023, Feb. 26, 1901; 669,024, Feb. 26, 1901; 669,025, Feb. 26, 1901; 669,026, Feb. 26, 1901; 685,991, July 5, 1901; 687,686, Nov. 26, 1901; 687,687, Nov. 26, 1901; 691,354, Jan. 21, 1902; Re. 11,962, Jan. 21, 1902; 693,686, Feb. 18, 1902; 705,512, July 22, 1902; 711,-248, Oct. 14, 1902; 712,866, Nov. 4, 1902; 714,572, Nov. 25, 1902; 721,016, Feb. 17, 1903; 722,659, March 17, 1903; 724,-

432, April 7, 1903; 736,825, Aug. 18, 1903; 741,522, Oct. 13, 1903; 762,802, June 14, 1904; 765,392, July 19, 1904; 765,650, July 19, 1904; 767,520, Aug. 16, 1904; 767,521, Aug. 16, 1904; 768,560, Aug. 23, 1904; 768,811, Aug. 30, 1904; 768,812, Aug. 30, 1904; 776,832, Dec. 6, 1904; 784,249, March 7, 1905; 786,190, March 28, 1905; 853,742, May 14, 1907; 864,951, Sept. 3, 1907; 865,329, Sept. 3, 1907; 886,313, April 28, 1908; 889,383, June 2, 1908; 889,752, June 2, 1908; 890,447, June 9, 1908; Re. 12,820, June 23, 1908; Re. 12,821, June 30, 1908; 891,907, June 30, 1908; 896,293, Aug. 18, 1908; 898,435, Sept. 15, 1908; 898,573, Sept. 15, 1908; 899,093, Sept. 22, 1908; 908,437, Jan. 5, 1909; 910,147, Jan. 19, 1909; 919,424, April 27, 1909; 920,241, May 4, 1909; 922,447, May 25, 1909; 924,965, June 15, 1909; 930,047, Aug. 3, 1909; 931,042, Aug. 17, 1909; 931,107, Aug. 17, 1909; 932,535, Aug. 31, 1909; 938,118, Oct. 26, 1909; 945,064, Jan. 4, 1910; 959,666, May 31, 1910; 959,984, May 31, 1910; 960,278, June 7, 1910; 963,708, July 5, 1910; 970,702, Sept. 20, 1910; 970,908, Sept. 20, 1910; 973,604, Oct. 25, 1910; 973,605, Oct. 25, 1910; 976,269, Nov. 22, 1910; 976,837, Nov. 29, 1910; 978,297, Dec. 13, 1910; 983,665, Feb. 7, 1911.

[On back:]

Metallic Department.
Rapid Standard Screw Machine.
Lease No. Lessee.
Date, 19
Machines.

PLAINTIFF'S EXHIBIT 36.

[Put in Evidence, page 385.]

Lasting Machine Department. [Form 302.]
Lease and License Number .
Pulling Over Machine.

This Lease and Agreement made at Boston in the State of Massachusetts this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter

referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use Pulling Over Machine No. , now or hereafter delivered to the lessee, and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (which machine, together with all duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform:—

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then

existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall at his own expense insure the leased machinery against loss by fire, and keep the same insured to the amount of Three Hundred (300) Dollars, and in case the same is lost or destroyed by fire or otherwise before the expiration or termination of this lease, then the lessee shall pay to the lessor upon demand the sum of Three Hundred (300) Dollars as partial compensation for such loss or destruction. The lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery or in respect to this lease and license or the right to payments hereunder upon whomsoever assessed.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, and other footwear made in his factory in the manufacture of which it can be used, but the leased machinery shall not, nor shall any part thereof, be used in the manufacture of any boots, shoes or other footwear which are or are to be welted, or the soles of which are to be stitched or attached to their uppers by welting or stitching or sewing machines not leased to the lessee by the lessor or its assignors, or in the manufacture of any boots, shoes or other footwear which have been, or shall be lasted otherwise than by machines and devices held by the lessee under lease from the lessor or in the manufacture of any boots, shoes or other footwear which have been or shall be pegged, slugged, heel seat nailed, or otherwise partly made by the aid of any pegging or "metallic" machinery not leased to the lessee by the lessor or its assignors, or in the manufacture of any boots, shoes or other footwear, the heels of which are to be compressed or prepared in whole or in part or shall be attached by any "heeling" machinery not leased to the lessee by the lessor or its assignors. In case at any time the lessee has more work of the kind which can be performed by the leased machinery than the leased machinery and other like machinery held by him under lease from the lessor is sufficient to perform, the lessee shall take from the lessor under the regular lease and license then in use by the lessor for such machines sufficient additional machinery to perform all of such work.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one half of one cent for each pair of boots, shoes or other footwear or portions thereof, manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof: **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due**

for such preceding calendar month. The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount in each calendar year to at least fifteen (15) dollars for each calendar month and at the end of each calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty: provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one twelfth for each such month that the factory thus remains wholly idle.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, one half of one cent per pair for each pair of boots, shoes, or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall

have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, or other footwear or portions thereof made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations and provisions are agreed to: —

Seven. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the

result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted, and shall thereupon pay to the lessor the sum of Two Hundred Dollars ($200) as compensation for setting up the leased machinery in his factory, for instructing operators and for deterioration of the leased machinery; and the lessee for himself, his heirs, executors, and administrators, hereby grants to the lessor, its successors, and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Eight. A notice in writing, signed by the president, a vice-president, or the treasurer of the lessor or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination

of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Nine. The lessee admits the validity of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity of or the title of the lessor to any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cessor of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.

Ten. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Nine herein.)

No. 663,777, December 11, 1900.

[On back:]
United Shoe Machinery Company.
Lasting Machine Department.
Pulling Over Machine.
Lease No. Lessee.
Date, 19 .
Machine No.

PLAINTIFF'S EXHIBIT 37.

[Put in Evidence, page 387.]

Pulling Over System. [Form J. P. A. 105.]

License and Lease Number .

Pulling Over System.

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use, subject to the conditions, stipulations and provisions hereinafter contained, the machine or machines designated by number or numbers in the following schedule, viz.: —

SCHEDULE OF MACHINES.

Class A.	I.
Rex Pulling Over Machine, No. . .	$300.
Class B.	
Rex Pounding Machine, No. . .	125.
Rex Toe Gumming Machine, No. . .	75.
Rex Toe Trimming Machine, No. . .	50.
Rex Assembling Spindle, No. . .	10.
Rex Strip Tacker, No. . . .	10.
Rex Tacker Support, No. . . .	5.

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor.

The term the "principal machinery hereby leased" wherever used herein shall be construed to include the whole of the machine or machines hereby leased included in Class A in the foregoing schedule, together with all duplicate parts, extras, mechanisms and devices relating thereto held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee.

The term the "auxiliary machinery hereby leased" wherever used herein shall be construed to include the whole of the machine or machines hereby leased included in Class B in the foregoing schedule, together with all duplicate parts, extras, mechanisms and devices relating thereto held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee.

The term the "leased machinery" wherever used herein shall be construed to include both the "principal machinery hereby leased" and the "auxiliary machinery hereby leased."

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the the State of unless the lessor shall by an instrument in writing signed by its president, vice-president or treasurer authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease

nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of and licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery of the lessor the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times until the expiration or termination of this lease and license and the redelivery of the leased machinery into the possession of the lessor, as herein-

after provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case any machine or machines hereby leased shall be lost or destroyed by fire or otherwise before such expiration or termination and redelivery, the lessee as partial reimbursement to the lessor for such loss or destruction, shall pay to the lessor in respect to each machine so lost or destroyed the sum set opposite the name of such machine in the column numbered "I" in the schedule of machines hereinbefore contained, and shall forthwith return whatever remains of the machinery so lost or destroyed to the lessor, at Beverly, Mass.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease and license, upon whomsoever assessed. All taxes or assessment in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed for the purposes of this Article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part, but not wholly, to machinery of the lessor in the possession of the lessee, the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The lessee shall use the principal machinery hereby leased to its full capacity upon all boots, shoes and other footwear or por-

tions thereof made by him in the manufacture of which it is capable of being used and in case at any time the lessee has more work of the kind which the principal machinery hereby leased is capable of performing than such machinery held by him under lease from the lessor is sufficient to perform the lessee shall take from the lessor under the printed form of lease and license agreement then in use by the lessor or machinery for doing such work sufficient additional machinery to perform all of such work. The auxiliary machinery hereby leased shall be used only in the manufacture of boots, shoes or other footwear which have been or shall be pulled over by Pulling Over Machines held by the lessee under lease from the lessor.

Six. The leased machinery shall not nor shall any thereof be used in the manufacture of any welted boots, shoes or other footwear, which have been or shall be welted in whole or in part or the soles of which have been or shall be in whole or in part stitched or attached by the aid of any welting or sewing or stitching machinery not held by the lessee under lease from the lessor; or in the manufacture of any turned boots, shoes or other footwear the soles of which have been or shall be in whole or in part attached by the aid of any sewing or attaching machinery not held by the lessee under lease from the lessor; or in the manufacture of any boots, shoes or other footwear which have or shall be lasted otherwise than by Consolidated Hand Method Lasting Machines held by the lessee under lease from the lessor; or which have been or shall be pegged, slugged, heel seat nailed or otherwise partly made by the aid of any pegging or metallic machinery not held by the lessee under lease from the lessor, or the heels of which have been or shall be compressed or prepared by the lessee in whole or in part or shall be attached by the aid of any heeling machinery not held by the lessee under lease from the lessor.

Seven. The lessee shall pay to the lessor the sum of one (1) cent in respect to each pair of boots, shoes or other footwear or portions thereof made by or for him during the continuance of this lease and license of the kind upon which it is provided in Article Five hereof the principal machinery hereby leased shall be used. Pay-

ment as herein provided shall be made on the last day of each calendar month in respect to all such boots, shoes or other footwear or portions thereof made by or for the lessee during the next preceding calendar month: **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the amount due in accordance with this Article hereof for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from the amount so due for such preceding calendar month.** All payments in this agreement provided for are independent of and in addition to all payments provided for in any other leases or licenses or agreements between the lessor and the lessee, excepting, however, that in case at the date of these presents the lessee has under other Pulling Over System lease and license agreements from the lessor one or more "Rex Pulling Over" Machines, in addition to the "Rex Pulling Over" Machine or Machines hereby leased then payment under and in accordance with this Article hereof in respect to any pair of boots, shoes, or other footwear, shall relieve the lessee from his obligation to make like payment in respect to that pair of boots, shoes or other footwear under the Article of such other Pulling Over System lease and license agreement or agreements corresponding to this Article hereof. The lessee, however, guarantees that the payments made by him in accordance with the terms of this Article hereof or of like terms contained in other Pulling Over System lease and license agreements between the lessor and the lessee, based upon the number of boots, shoes or other footwear of the kind referred to in Article Five hereof made by or for him shall amount in each calendar year (after deducting all abatements), to at least Twenty (20) Dollars for each calendar month for each "Rex Pulling Over" Machine held by the lessee under lease from the lessor, and at the end of each calendar year the lessee shall pay to the lessor the amount, if any, by which the total of such payments for said year have been less than such guaranteed amount: provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount guaranteed for that

year hereunder shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than ten (10) months out of any twelve (12) consecutive calendar months.

Eight. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agent) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken or injured because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor, the lessee shall pay the lessor (without the right to any discount) the sum of two cents per pair for each pair of boots, shoes or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes and other footwear, or portions thereof, made by or for him of the kind upon which the principal machinery hereby leased is capable of being used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such boots, shoes or other footwear, or portions thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the principal machinery hereby leased (and also if so requested by the lessor

upon the auxiliary machinery hereby leased), or any part thereof, to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of boots, shoes and other footwear, or portions thereof, in the manufacture of which he has used said machinery, or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, any one or more of the machines hereby leased has been entirely idle the lessee, on or before the fifth day of the next succeeding calendar month, shall send to the office of the lessor in Boston the blank for such machine or machines for said month marked "not in use" and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to:—

Nine. If at any time the lessee shall fail or cease to use exclusively pulling over machinery held by him under lease from the lessor for pulling over all boots, shoes or other footwear made by or for him, which are pulled over by the aid of machinery, or which are of the kind upon which the principal machinery hereby leased is capable of being used, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses of machinery, then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and the possession of and full right to and control of all machinery the lease or license of which is so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever.

Ten. This lease and license shall continue, unless sooner terminated by the lessor as herein provided, for seventeen years from the

date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions, stipulations or provisions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease and license, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor without prejudice to any other rights or remedies of the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, including the cost of all parts replaced at the regular prices established by the lessor therefor. The lessee for himself, his heirs, executors and administrators, successors and assigns, hereby grants to the lessor, its successors and assigns, full right, power and authority without prejudice to any other rights or remedies of the lessor to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Eleven. Upon the expiration or termination of this lease and

license or any extension thereof the lessee, in addition to all other payments in this agreement provided for and without prejudice to any other rights or remedies of the lessor, shall pay to the lessor in respect to each "Rex Pulling Over" machine hereby leased the sum of two hundred dollars ($200.00) as partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators.

Twelve. In case the lessee, at any time, shall have in his factory more machines adapted for doing the same work as any auxiliary machine or machines hereby leased, than in the opinion of the lessor are sufficient for performing the work which the lessee has in his factory, based upon the capacity of such machines and the number and kind of boots, shoes and other footwear made by the lessee for any period of twelve (12) consecutive months next preceding, the lessor may, at its option, upon thirty (30) days' notice in writing to the lessee, terminate the lease and license herein contained in respect to such of the said auxiliary machines hereby leased as in the opinion of the lessor are unnecessary. The termination under the provisions of this Article of the lease of or license to use any one or more of the machines hereby leased shall not affect the lease or license herein contained in respect to any other machine or machines.

Thirteen. In case at any time any of the leased machinery shall not, in the opinion of the lessor, be in good and efficient working order and condition, the lessor without prejudice to any other of its rights or remedies may give written notice to the lessee to put such machinery in good and efficient working order and condition and to replace all broken or missing parts; and in case the lessee does not within fifteen (15) days from the date of such notice comply with the requirements thereof, as herein set forth, the lessor may cause such machinery to be put in such good and efficient working order and condition, and may supply such broken or missing parts, and the lessee shall forthwith pay to the lessor the expense of making such repairs and the cost at the regular prices established by the lessor therefor of all parts so supplied.

Fourteen. A notice in writing, signed by the president, a vice-

president, the treasurer or the assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall be without prejudice to any rights or remedies which the lessor may have for violation of contract, use of machines without right, use of patented inventions without license or otherwise.

Fifteen. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or any of the inventions of which are now or shall hereafter be embodied in the leased machinery or the title of the lessor thereto. The termination or cesser of this lease and license or any extension thereof shall not in any way affect the provisions of this Article, or release or discharge the lessee from the admissions and estoppel herein set forth.

Sixteen. None of the conditions, stipulations or provisions, of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Seventeen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In

the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

UNITED SHOE MACHINERY COMPANY
by

(Lessee will please sign here.)
by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Fifteen herein.)

483,375	September 27, 1892	663,777	December 11, 1900
569,590	October 13, 1896	731,168	June 16, 1903

[On back:]
United Shoe Machinery Company.
Pulling Over System.
Lease No. , Lessee.
Date, 19
Machines.
Rex Pulling Over Machine, No.

PLAINTIFF'S EXHIBIT 38.

[Put in Evidence, page 387.]

Pulling Over System. [Form A. E. E. 1095.]

Lease and License Number .
Pulling Over System.

This Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants

and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines designated by number or numbers in the following schedule, viz:—

SCHEDULE OF MACHINES.

	I.	II.	III.	IV.	V.
Rex Pulling Over Machine, No.	–	$10.	$300.	$200.	$5.
Rex Toe Gumming Machine, No.	¼c.	4.	75.	50.	2.
Rex Assembling Machine, No.	¼c.	4.	100.	65.	2.
Rex Pounding Machine, No.	¼c.	4.	125.	85.	2.
Rex Toe Trimming Machine, No.	¼c.	4.	50.	35.	2.
Rex Rotary Pounding and Trimming Machine, No.	¼c.	4.	150.	100.	2.
Rex Upper Trimming Machine, No.	¼c.	4.	50.	35.	2.
Rex Upper Trimmer Grinding Machine, No.	–	–	25.	15.	–
Rex Rotary Knife Grinding Machine, No.	–	–	25.	15.	–

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform:—

One. The leased machinery shall at all times remain and be the

sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of unless the lessor shall by an instrument in writing signed by its president, vice-president or treasurer authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of and licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor,

all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of this lease and license and the redelivery of the leased machinery into the possession to the lessor, as hereinafter provided, be held at the sole risk of the lessee from injury, loss, or destruction, and in case any machine or machines hereby leased shall be destroyed by fire or otherwise before such expiration or termination and redelivery, the lessee as partial reimbursement to the lessor for such loss or destruction, shall pay to the lessor in respect to each machine so destroyed the sum set opposite the name of such machine in the column numbered "III." in the schedule of machines hereinbefore contained, and shall forthwith return whatever remains of the machinery so destroyed to the lessor, at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee, the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax

or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The machinery hereby leased or held by the lessee under other lease or license agreement from the lessor shall be used only in the manufacture or preparation of boots, shoes or other footwear made by or for the lessee and shall be used for no other purpose than for performing the work for which it is designed and leased. The machinery of the Pulling Over System of the lessor hereby leased or held by the lessee under other lease or license agreement from the lessor shall not nor shall any thereof be used in the manufacture of any welted boots, shoes or other footwear which have been or shall be welted in whole or in part or the soles of which have been or shall be in whole or in part stitched or attached by the aid of any welting or sewing or stitching machinery not held by the lessee under lease from the lessor; or in the manufacture of any turned boots, shoes or other footwear the soles of which have been or shall be in whole or in part attached by the aid of any sewing or attaching machinery not held by the lessee under lease from the lessor; or in the manufacture of any boots, shoes or other footwear which have been or shall be lasted in any way whether in whole or in part otherwise than by lasting machines held by the lessee under lease from the lessor; or which have been or shall be pegged, slugged, heel seat nailed or otherwise partly made by the aid of any pegging or metallic machinery not held by the lessee under lease from the lessor, or the heels of which have been or shall be compressed or prepared by the lessee in whole or in part or shall be attached by the aid of any heeling machinery not held by the lessee under lease from the lessor; or in the manufacture of any boots, shoes or other footwear upon which any operation for which any of the machines of the lessor mentioned by name in the foregoing schedule of machines are designed, has been or is to be

performed by machinery not held by the lessee under lease from the lessor. Subject to the foregoing limitations, the lessee shall use all Rex Pulling Over Machines held by him under lease from the lessor to their full capacity upon all boots, shoes or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machines are capable of being used, and shall use all other machinery of the Pulling Over System of the lessor held by him under lease from the lessor to its full capacity upon all work in the manufacture or preparation of boots, shoes and other footwear, or portions thereof, which is done by or for the lessee by the aid of machinery and which is of a kind which such machinery is designed to perform.

Six. The lessee throughout the full term of this agreement shall pay to the lessor the sum of one-half of one cent in respect to each pair of boots, shoes or other footwear or portions thereof made by or for him which are pulled over in any way, whether wholly or in part, by the aid of machinery. The lessee shall also, during the continuance of the lease hereby granted or any lease heretofore granted to the lessee covering any one or more machines of the lessor of a kind or kinds mentioned by name in the foregoing schedule of machines, pay to the lessor in respect to each pair of boots, shoes or other footwear or portions thereof in the manufacture or preparation of which any such machine or machines are used, the amount in respect to each machine so used set opposite the name of such machine in Column I. of said schedule. Payments as herein provided shall be made on the last day of each calendar month in respect to all such boots, shoes or other footwear or portions thereof operated upon during the next preceding calendar month; provided, however, that in case the lessee shall use lasting and tacking machinery, mechanisms and appliances held by him under lease from the lessor for doing all work in the manufacture of all boots, shoes and other footwear, or portions thereof, made by or for him which is done by the aid of lasting or tacking machinery, mechanisms or appliances, then the total amount to be paid by the lessee to the lessor for any calendar month under the foregoing provisions of this article shall not exceed a maximum amount computed at the rate of three-quarters of one

cent for each pair of all boots, shoes or other footwear, or portions thereof, lasted by or for the lessee, during said month; **and provided, also, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the amount due in accordance with this Article hereof for the next preceding calendar month, the lessor will, in consideration of such prompt payment, grant a discount of fifty per cent. from the amount so due for such preceding calendar month.** All payments in this agreement provided for are independent of and in addition to all payments provided for in any other leases or licenses or agreements between the lessor and the lessee, excepting, however, that in case at the date of these presents the lessee has under other Pulling Over System lease and license agreements from the lessor one or more machines of a kind or kinds mentioned by name in the foregoing Schedule of Machines, then payment under and in accordance with this Article hereof in respect to any pair of boots, shoes or other footwear shall relieve the lessee from his obligation to make like payment in respect to that pair of boots, shoes or other footwear under the Article of such other Pulling Over System lease and license agreement or agreements corresponding to this Article hereof. The lessee, however, guarantees that the payments made by him in accordance with this Article hereof in respect to each machine of a kind or kinds mentioned by name in the foregoing Schedule of Machines held by the lessee under this agreement or under any other lease or license agreement or agreements from the lessor shall amount, in each calendar year (after deducting all abatements), to at least the amount for each calendar month for each machine set opposite the name of such machine in Column II. of said schedule, and at the end of each calendar year the lessee shall pay to the lessor the amount, if any, by which the payments for said year have been less than such guaranteed amount: provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount guaranteed for that year hereunder shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than

ten (10) months out of any twelve (12) consecutive calendar months.

Seven. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor, the lessee shall pay the lessor (without the right to any discount) the sum of two cents per pair for each pair of boots, shoes or other footwear or portions thereof in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes and other footwear, or portions thereof, made by or for him which are pulled over either wholly or in part by the aid of machinery and the number of boots, shoes, or other footwear which are operated upon in any way by any machinery of the lessor of a kind or kinds mentioned by name in the foregoing Schedule of Machines, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such boots, shoes or other footwear, or portions thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon any machines

of a kind or kinds mentioned by name in said Schedule, to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of boots, shoes and other footwear, or portions thereof, in the manufacture of which he has used the leased machinery, or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for, and in case, in any calendar month, any one or more of such machines has been entirely idle, the lessee, on or before the fifth day of the next succeeding calendar month, shall send to the office of the lessor in Boston the blank for such machine or machines for said month marked "not in use" and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to: —

Eight. If at any time the lessee shall fail or cease to use exclusively machinery held by him under lease from the lessor for performing all work in the manufacture or preparation of all boots, shoes, or other footwear made by or for him which is performed by the aid of machinery and which is of a kind or kinds which any or all of the machines of the lessor mentioned by name in the foregoing Schedule of Machines are designed to perform, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses of machinery of the Pulling Over System of the lessor then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

Nine. The term of this agreement shall be seventeen years from

the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor as in this agreement provided, for the full term of this agreement; but, if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as hereinafter provided. Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted, and shall thereupon pay to the lessor without prejudice to any other rights or remedies of the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, including the cost of all parts replaced at the regular prices established by the lessor therefor. The lessee for himself, his heirs, executors, and administrators, successors and assigns hereby grants to the lessor, its successors and assigns, full right,

power and authority upon such expiration or termination and without prejudice to any other rights or remedies of the lessor to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Ten. Upon the expiration or termination of this agreement or any extension thereof or of the lease and license hereby granted the lessee, in addition to all other payments in this agreement provided for and without prejudice to any other rights or remedies of the lessor, shall pay to the lessor as partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators, in respect to each machine hereby leased the sum set opposite the name of such machine in the column numbered IV. in the Schedule of Machines hereinbefore contained.

Eleven. In case at any time the lessee shall have in his possession more machines of any kind or kinds of the Pulling Over System of the lessor than in the opinion of the lessor are necessary for the lessee's work and the lessor shall give the lessee notice in writing thereof designating the machine or machines which in its opinion are unnecessary for the lessee's work, the lessee shall at his own option either return to the lessor at Beverly, Massachusetts, within the period of thirty (30) days from the delivery of said notice the machine or machines therein designated, whereupon the lease of and license to use the machine or machines so returned shall be terminated, or pay to the lessor on the fifteenth day of each succeeding calendar month after the expiration of said period of thirty days in respect to each machine designated in said notice and retained by the lessee and in addition to all other payments and guaranties in this agreement provided for the sum set opposite the name of such machine in Column V. in the foregoing Schedule of Machines; provided, however, that in case the lease of or license to use any machine or machines shall be terminated by the return thereof under the provisions of this Article hereof and without any breach or default in respect to any of the conditions, stipulations or provisions of this agreement or of any other lease or license or

agreement between the lessee and the lessor, the lessee shall pay to the lessor such sum as may be necessary to put the machine or machines so returned in suitable order and condition to lease to another lessee, but shall not be required, in respect to any machine so returned, to make the payment provided for in Article Ten hereof or in the article of any other Pulling Over System lease and license agreement between the lessee and the lessor corresponding to Article Ten hereof. The provisions of this Article hereof are independent of and in addition to all other rights or remedies of the lessor whatsoever, and termination of the lease of or license to use any one or more machines under the provisions of this Article hereof shall not affect the lease of or license to use any other machine or the obligations of the lessee in respect thereto.

Twelve. In case at any time any of the leased machinery shall not, in the opinion of the lessor, be in good and efficient working order and condition, the lessor without prejudice to any other of its rights or remedies may give written notice to the lessee to put such machinery in good and efficient working order and condition and to replace all broken or missing parts; and in case the lessee does not within fifteen (15) days from the date of such notice comply with the requirements thereof, as herein set forth, the lessor may cause such machinery to be put in such good and efficient working order and condition, and may supply such broken or missing parts, and the lessee shall forthwith pay to the lessor the expense of making such repairs and the cost at the regular prices established by the lessor therefor of all parts so supplied.

Thirteen. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of such lease and license shall be with-

out prejudice to any rights or remedies which the lessor may have for violation of contract, use of machines without right, use of patented inventions without license or otherwise.

Fourteen. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or any of the inventions of which are now or shall hereafter be embodied in the leased machinery or the title of the lessor thereto. The termination or cesser of the agreement or of the lease and license hereby granted or any extension thereof shall not in any way affect the provisions of this Article, or release or discharge the lessee from the admissions and estoppels herein set forth.

Fifteen. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Sixteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Fourteen herein.)

483,375	September 27, 1892	855,831	June 4, 1907
569,590	October 13, 1896	872,617	December 3, 1907
663,777	December 11, 1900	891,130	June 16, 1908
666,282	January 22, 1901	891,131	June 16, 1908
701,052	May 27, 1902	Re. 12,825	July 7, 1908
731,168	June 16, 1903	893,440	July 14, 1908
764,569	July 12, 1904	893,696	July 21, 1908
791,986	June 6, 1905		

[On back:]

United Shoe Machinery Company.
Pulling Over System.
E.

Lease No. Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 39.

[Put in Evidence, page 388.]

Pulling Over System. (1502.)

Lease and License Number .

Pulling Over System.

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patents belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use, subject to the conditions, stipulations and provis-

ions hereinafter contained, the machine or machines designated by number or numbers in the following schedule, viz. : —

SCHEDULE OF MACHINES.

Class A.

Rex Pulling Over Machine, No.

Class B.

Rex Pounding Machine, No.
Rex Assembling Machine, No.
Rex Toe Gumming Machine, No.
Rex Toe Trimming Machine, No.
Rex Upper Trimming Machine, No.
Rex Upper Trimmer Grinding Machine, No.
Rex Rotary Pounding and Trimming Machine, No.
Rex Rotary Knife Grinding Machine, No.

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor.

The term the "principal machinery hereby leased" wherever used herein shall be construed to include the whole of the machine or machines hereby leased included in Class A in the foregoing schedule, together with all duplicate parts, extras, mechanisms and devices relating thereto held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee.

The term the "auxiliary machinery hereby leased" wherever used herein shall be construed to include the whole of the machine or machines hereby leased included in Class B in the foregoing schedule, together with all duplicate parts, extras, mechanisms and devices relating thereto held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee.

The term the "leased machinery" wherever used herein shall be construed to include both the "principal machinery hereby leased" and the "auxiliary machinery hereby leased."

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform : —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of unless the lessor shall by an instrument in writing signed by its president, vice-president or treasurer authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of and licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove

any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license, upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this Article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part, but not wholly, to machinery of the lessor in the possession of the lessee, the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The lessee shall use the principal machinery hereby leased

to its full capacity limited only by the number of boots, shoes, and other footwear or portions thereof made by or for him in the manufacture or preparation of which it is capable of being used.

Five. The auxiliary machinery hereby leased shall be used only in the manufacture of boots, shoes or other footwear which have been or shall be pulled over by Pulling Over Machines held by the lessee under lease from the lessor.

Six. The lessee shall pay to the lessor immediately after the execution hereof as a lease premium the sum of Dollars and the lessee shall also pay to the lessor on the last day of each calendar month as rent or royalty for the leased machinery the sum of one (1) cent in respect to each pair of boots, shoes or other footwear or portions thereof in the manufacture or preparation of which the principal machinery hereby leased has been used during the next preceding calendar month: **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the amount due in accordance with this Article hereof for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from the amount so due for such preceding calendar month.** All payments in this agreement provided for are independent of and in addition to all payments provided for in any other leases or licenses or agreements between the lessor and the lessee, excepting, however, that in case at the date of these presents the lessee has under other Pulling Over System lease and license agreements from the lessor one or more "Rex Pulling Over" Machines in addition to the "Rex Pulling Over" Machine or Machines hereby leased, then payment under and in accordance with this Article hereof in respect to any pair of boots, shoes, or other footwear shall relieve the lessee from his obligation to make like payment in respect to that pair of boots, shoes or other footwear under the Article of such other Pulling Over System lease and license agreement or agreements corresponding to this Article hereof. The lessee, however, guarantees that the payments made by him in accordance with the terms of this article hereof shall amount, in each calendar year (after deducting all abatements), to at least

Twenty Dollars ($20) for each calendar month for each "Rex Pulling Over Machine" hereby leased and at the end of each calendar year the lessee shall pay to the lessor the amount, if any, by which the total of such payments for said year have been less than such guaranteed amount: provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount guaranteed for that year hereunder shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than ten (10) months out of any twelve (12) consecutive calendar months.

Seven. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor, the lessee shall pay the lessor (without the right to any discount) the sum of two cents per pair for each pair of boots, shoes or other footwear or portions thereof in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes and other footwear, or portions thereof, in the manufacture or preparation of which the leased machinery or any part thereof is used,

and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such boots, shoes or other footwear, or portions thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the principal machinery hereby leased (and also if so requested by the lessor upon the auxiliary machinery hereby leased), or any part thereof, to keep upon blanks or blank-books to be furnished by the lessor accurate daily records of the number of boots, shoes and other footwear, or portions thereof, in the manufacture of which he has used said machinery, or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for, and in case, in any calendar month, any one or more of the machines hereby leased has been entirely idle, the lessee, on or before the fifth day of the next succeeding calendar month, shall send to the office of the lessor in Boston the blank of such machine or machines for said month marked "not in use" and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to:—

Eight. If at any time the lessee shall fail or cease to use exclusively pulling over machinery held by him under lease from the lessor for pulling over all boots, shoes or other footwear made by or for him, which are pulled over by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses of Pulling Over System machinery, then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all machinery

the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

Nine. This lease and license shall continue, unless sooner terminated by the lessor as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease and license, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted, and shall thereupon pay to the lessor without prejudice to any other rights or remedies of the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, inclu" g the cost of all parts replaced at the regular prices established by the lessor therefor. The lessee for himself, his heirs, executors, and administrators, successors and assigns hereby grants to the lessor, its successors and assigns, full right, power and authority without prejudice to any other rights or remedies of the

lessor to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Ten. In case at any time any of the leased machinery shall not, in the opinion of the lessor, be in good and efficient working order and condition, the lessor without prejudice to any other of its rights or remedies may give written notice to the lessee to put such machinery in good and efficient working order and condition and to replace all broken or missing parts; and in case the lessee does not within (15) fifteen days from the date of such notice comply with the requirements thereof, as herein set forth, the lessor may cause such machinery to be put in such good and efficient working order and condition, and may supply such broken or missing parts, and the lessee shall forthwith pay to the lessor the expense of making such repairs and the cost at the regular prices established by the lessor therefor of all parts so supplied.

Eleven. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall be without prejudice to any rights or remedies which the lessor may have for violation of contract, use of machines without right, use of patented inventions without license or otherwise.

Twelve. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed

in the grant thereof or of any extension or renewal thereof of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or any of the inventions of which are now or shall hereafter be embodied in the leased machinery or the title of the lessor thereto. The termination or cesser of this lease and license or any extension thereof shall not in any way affect the provisions of this Article, or release or discharge the lessee from the admissions and estoppels herein set forth.

Thirteen. None of the conditions, stipulations or provisions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents, or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Fourteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Twelve herein.)

483,375	September 27, 1892	893,440	July 14, 1908
569,590	October 13, 1896	893,696	July 21, 1908
663,777	December 11, 1900	896,873	August 25, 1908
666,282	January 22, 1901	918,486	April 13, 1909
701,052	May 27, 1902	922,697	May 25, 1909
731,168	June 16, 1903	929,869	August 3, 1909
764,569	July 12, 1904	940,419	November 16, 1909

791,986	June 6, 1905	950,701	March 1, 1910
844,239	February 12, 1907	955,934	April 26, 1910
854,320	May 21, 1907	959,874	May 31, 1910
855,831	June 4, 1907	961,200	June 14, 1910
872,617	December 3, 1907	968,553	August 30, 1910
876,249	January 7, 1908	968,554	August 30, 1910
891,130	June 16, 1908	968,555	August 30, 1910
891,131	June 16, 1908	968,556	August 30, 1910
Re. 12,825	July 7, 1908		

[On back:]

United Shoe Machinery Company.
Pulling Over System. (Lease Premium.)
Lease No. , Lessee.
Date 19 .
Machines.
Rex Pulling Over Machine, No.

PLAINTIFF'S EXHIBIT 40.

[Put in Evidence, page 389.]

General Department. [Form A. H. T., 1181.]

Lease and License Agreement Number .

This Agreement made at Boston in the State of Massachusetts this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines of the General Department of the lessor now or hereafter delivered to the lessee and designated by number or numbers in the following schedule, viz.:—

and any duplicate parts, extras, mechanisms and devices, relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereinafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform:—

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and

control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of

all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based at the established rate, upon the fair valuation, to be determined by the lessor of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The leased machinery shall not nor shall any part thereof be used in the manufacture of any welted boots, shoes or other footwear which have been or shall be welted or the soles stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor or in the manufacture of any turn boots, shoes or other footwear the soles of which have been or shall be attached to their uppers by the aid of any turn sewing machinery not held by the lessee under lease from the lessor, or in the manufacture of any boots, shoes or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed, or otherwise partly made by the aid of any lasting or pegging or "Metallic" machinery or mechanisms not held by the lessee under lease from the lessor.

Five. The lessee shall pay to the lessor immediately after the execution hereof, as a lease premium, the sum of dollars.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened.

And that the following stipulations and provisions are agreed to: —

Seven. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for the full term of this agreement, but if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith the lease and license hereby granted, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of the lease hereby granted or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the lessee shall forthwith at his own expense deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority

to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of the lease and license herein contained, or for rent or royalty, or otherwise in respect to the leased machinery.

Eight. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Nine. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of said Letters Patent or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Ten. None of the conditions, stipulations or provisions of this

agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

[On back:]

United Shoe Machinery Company.
General Department. (Lease Premium.) T.
Lease No. . , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 41.

[Put in Evidence, page 390.]

General Department. (1810)

Lease and License Agreement Number .

This Agreement made at Boston in the State of Masssachusetts this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and in the State of hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does

hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines of the General Department of the lessor now or hereafter delivered to the lessee and designated by number or numbers in the following schedule, viz. : —

SCHEDULE OF MACHINES.

	I.	II.	III.
	$	$	$

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform : —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale,

mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and, in case any machine or machines hereby leased shall be destroyed by fire or otherwise before such expiration or termination and re-delivery,

the lessee shall pay to the lessor in respect to each machine so destroyed the sum set opposite the name of each such machine in column numbered "I." in the "Schedule of Machines" hereinbefore contained as partial reimbursement to the lessor for such destruction, and the lessee shall forthwith return whatever remains of the machinery so destroyed to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The leased machinery shall not nor shall any part thereof be used in the manufacture of any welted boots, shoes or other footwear which have been or shall be welted or the soles stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor or in the manufacture of any turn boots, shoes or other footwear the soles of which have

been or shall be attached to their uppers by the aid of any turn sewing machinery not held by the lessee under lease from the lessor, or in the manufacture of any boots, shoes or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed, or otherwise partly made by the aid of any lasting or pegging or "Metallic" machinery or mechanisms not held by the lessee under lease from the lessor.

Six. The lessee shall pay to the lessor annually during the period of ten years from the date hereof in respect to each machine hereby leased the amount set opposite the name of such machine in column numbered "II." in the "Schedule of Machines" hereinbefore contained, and annually thereafter during the continuance of the lease hereby granted or any extension thereof shall pay to the lessor, in respect to each machine hereby leased, one-half of such amount. Such annual payment shall be made on the first day of July in each year, excepting that the first payment shall be made immediately upon the execution of this agreement and shall be such proportionate part of the amount set forth in said column "II." in respect to each machine as the time from the date hereof up to the first day of July next succeeding bears to an entire year.

Seven. Independently of and in addition to all other payments herein provided for the lessee upon the expiration or termination of the lease hereby granted or any extension thereof shall pay to the lessor in respect to each machine hereby leased the amount set opposite the name of such machine in column numbered "III." in the "Schedule of Machines" hereinbefore contained; provided, however, that in case at all times prior to such expiration or termination the lessee shall have faithfully kept, observed and performed all of the conditions, terms, agreements, stipulations and provisions of this lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and is not in default in respect to any payment or otherwise hereunder or thereunder, and shall promptly and fully carry out all obligations incumbent upon the lessee upon such expiration or termination, the payment in this article hereof provided to be made in respect to each such machine shall be reduced by an amount equal to one-half of

the annual payments theretofore made by the lessee to the lessor in respect to such machine under the provisions of Article Six hereof; or in case one-half of such annual payments theretofore made by the lessee to the lessor in respect to such machine equals or exceeds the payment in this article hereof provided to be made in respect thereto then said payment under this article hereof in respect to said machine shall be waived.

Eight. The lessor may attach to the leased machinery or any thereof an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened.

And that the following stipulations and provisions are agreed to: —

Nine. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for the full term of this agreement. But if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith the lease and license hereby granted, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased

machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the lessee shall forthwith at his own expense deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and the lessee, for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Ten. In case at any time any of the leased machinery shall not, in the opinion of the lessor, be in good and efficient working order and condition, the lessor without prejudice to any other of its rights or remedies may give written notice to the lessee to put such machinery in good and efficient working order and condition and to replace all broken or missing parts; and in case the lessee does not within fifteen (15) days from the date of such notice comply with the requirements thereof, as herein set forth, the lessor may cause such machinery to be put in such good and efficient working order and condition, and may supply such broken or missing parts, and the lessee shall forthwith pay to the lessor the expense of making such repairs and the cost at the regular prices established by the lessor therefor of all parts so supplied.

Eleven. A notice in writing, signed by the president, a vice-presi-

dent, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Twelve. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof), of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of said Letters Patent or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Thirteen. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Fourteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In

the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

[On back :]
United Shoe Machinery Company.
General Department.
Lease No. Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 42.

[Put in Evidence, page 392.]

Eyeletting Department. [Form A. F. U., 1179.]

Lease and License Agreement Number .

This Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Power Eyeletting Machine(s) No(s.)

now or hereafter delivered to the lessee, and any duplicate parts,

extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspect-

ing it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based,

at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, footwear, and other articles made in his factory in the manufacture of which it can be used.

Five. The lessee shall pay to the lessor immediately after the execution hereof, as a lease premium, the sum of one hundred dollars ($100) for each machine hereby leased, and the lessee shall also, as rent or royalty for the leased machinery, purchase exclusively of the lessor or its authorized agents, at the prices from time to time established by the lessor, all eyelets used by him in or in connection with the leased machinery, and shall pay therefor upon the regular terms established by the lessor therefor.

Six. The lessor may attach to the leased machinery or any thereof an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened.

And that the following stipulations and provisions are agreed to: —

Seven. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for the full term of this agreement; but in case at any time the lessee shall discontinue or suspend the operation of said factory, or shall discontinue or sus-

pend the manufacture in said factory in the regular course of business of articles in the manufacture of which the leased machinery can be used, or if at any time or for any reason the lessee shall fail or cease to make regular use of the leased machinery in the ordinary course of business, then the lessor shall have the right at its option, by notice in writing to the lessee, to terminate forthwith the lease and license hereby granted, and in case at any time any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of the lease hereby granted or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the lessee shall forthwith at his own expense deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the

lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and the lessee in addition and without prejudice to any other rights or remedies of the lessor hereunder shall thereupon pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee.

Eight. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Nine. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the

provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Ten. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Nine herein.)

No. 603,023 Apr. 26, 1898.	No. 833,515 Oct. 16, 1906.
No. 605,574 June 14, 1898.	No. 874,669 Dec. 24, 1907.
No. 606,964 July 5, 1898.	No. 880,376 Feb. 25, 1908.
No. 636,175 Oct. 31, 1899.	No. 898,729 Sept. 15, 1908.
No. 638,994 Dec. 12, 1899.	No. 908,453 Jan. 5, 1909.
No. 663,389 Dec. 4, 1900.	No. 915,996 Mar. 23, 1909.
No. 672,056 Apr. 16, 1901.	No. 918,694 Apr. 20, 1909.
No. 672,884 Apr. 30, 1901.	No. 921,648 May 11, 1909.
No. 683,488 Oct. 1, 1901.	No. 926,903 July 6, 1909.
No. 707,643 Aug. 26, 1902.	No. 934,066 Sept. 14, 1909.
No. 707,644 Aug. 26, 1902.	No. 964,626 July 19, 1910.

[On back:]
United Shoe Machinery Company.
Eyeletting Department.
Power Eyeletting Machine. U.
Lease No. . , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 43.

[Put in Evidence, page 392.]

Eyeletting Department. [Form A. F. T., 1177.]

Lease and License Agreement Number .

This Agreement made at Boston, in the State of Massachusetts, this day of , 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Power Eyeletting Machine(s) No(s).

now or hereafter delivered to the lessee, and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agree-

ment, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay

therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case the same or any thereof be destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor in respect to each machine so destroyed the sum of One Hundred and Fifty Dollars ($150) as partial reimbursement to the lessor for such destruction, and the lessee shall forthwith return whatever remains of the machinery so destroyed to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assess-

ment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The lessee shall use the leased machinery to its full capacity on all boots, shoes, footwear, and other articles made in his factory in the manufacture of which it can be used, but the leased machinery shall not nor shall any part thereof be used in the manufacture of any welted boots, shoes, or other footwear which have been or shall be welted or the soles stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor, or in the manufacture of any turn boots, shoes, or other footwear the soles of which have been or shall be attached to their uppers by the aid of any turn sewing machinery not held by the lessee under lease from the lessor or in the manufacture of any boots, shoes or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed, or otherwise partly made by the aid of any lasting or pegging or "Metallic" machinery or mechanisms not held by the lessee under lease from the lessor or in the manufacture of any boots, shoes, or other footwear the heels of which have been or shall be compressed or prepared by the lessee in whole or in part, or have been or shall be attached by the aid of any "heeling" machinery not held by the lessee under lease from the lessor.

Six. The lessee, as rent or royalty for the leased machinery, shall purchase exclusively of the lessor or its authorized agents, at the prices from time to time established by the lessor, all eyelets used by him in or in connection with the leased machinery, and shall pay therefor upon the regular terms established by the lessor therefor.

Seven. The lessor may attach to the leased machinery or any thereof an indicator or indicators to register the number of revolu-

tions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes, footwear, and other articles, or portions thereof in the manufacture or preparation of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times by its agents or attorneys to examine and to take copies of such accounts and entries of the lessee as may determine the total number of boots, shoes, footwear, and other articles, or portions thereof, made or prepared or operated upon by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to: —

Eight. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for the full term of this agreement; but in case at any time the lessee shall discontinue or suspend the operation of said factory, or shall discontinue or suspend the manufacture in said factory in the regular course of business of articles in the manufacture of which the leased machinery can be used, or if at any time or for any reason the lessee shall fail or cease to make regular use of the leased machinery in the ordinary course of business, then the lessor shall have the right at its option,

by notice in writing to the lessee, to terminate forthwith the lease and license hereby granted, and in case at any time any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of the lease hereby granted or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the lessee shall forthwith at his own expense deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, and in addition thereto the lessee shall also, without prejudice to any other rights or remedies of the lessor hereunder, pay to the lessor the sum of One Hundred Dollars ($100) for each machine hereby leased as compensation for setting up the leased machinery

in his factory, for instructing operators, and for deterioration of the leased machinery; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Nine. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Eleven. None of the conditions, stipulations or provisions of

this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Ten herein.)

No. 603,023 Apr. 26, 1898.	No. 833,515 Oct. 16, 1906.
No. 605,574 June 14, 1898.	No. 874,669 Dec. 24, 1907.
No. 606,964 July 5, 1898.	No. 880,376 Feb. 25, 1908.
No. 636,175 Oct. 31, 1899.	No. 898,729 Sept. 15, 1908.
No. 638,994 Dec. 12, 1899.	No. 908,453 Jan. 5, 1909.
No. 663,389 Dec. 4, 1900.	No. 915,996 Mar. 23, 1909.
No. 672,056 Apr. 16, 1901.	No. 918,694 Apr. 20, 1909.
No. 672,884 Apr. 30, 1901.	No. 921,648 May 11, 1909.
No. 683,488 Oct. 1, 1901.	No. 926,903 July 6, 1909.
No. 707,643 Aug. 26, 1902.	No. 934,066 Sept. 14, 1909.
No. 707,644 Aug. 26, 1902.	No. 964,626 July 19, 1910.

[On back:]
United Shoe Machinery Company.
Eyeletting Department.
Power Eyeletting Machine. T.
Lease No. , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 44.

[Put in Evidence, page 394.]

General Department. [1809]

Lease and License Agreement Number .

This Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Ideal Clicking Machine(s), No(s).

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor, and also the Clicking Machine dies of the lessor now, heretofore or hereafter delivered to the lessee subject to the conditions hereinafter contained.

The term "leased machinery" wherever used herein shall be construed to include the whole of the machine or machines hereby leased, and all said duplicate parts, extras, mechanisms and devices except dies.

The term "Clicking Machine dies of the lessor" wherever used herein shall be construed to include all Clicking Machine dies originally manufactured or supplied by the lessor and obtained by the lessee either directly from the lessor or from another lessee of the lessor's Clicking Machines.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform:—

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of , unless the lessor shall by an instrument in writing signed by its president, vice-president or treasurer, authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. **Clicking Machine dies of the lessor shall be used only in connection with Ideal Clicking Machines held by the lessee under lease from the lessor; but the same may be transferred by the lessee to any other lessee of the lessor's Clicking Machines, subject, however, to the conditions of the lease or leases under which such Clicking Machines are held by such other lessee.** If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery or to the Clicking Machine dies of the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, or interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss, or destruction, and in case any machine or machines hereby leased shall be destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor upon demand the sum of One Hundred and Fifty Dollars ($150) in respect to each machine so destroyed as partial reimbursement to the lessor for such destruction, and the lessee shall forthwith return whatever remains of all the machinery so destroyed to the lessor, at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery and dies or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part, but not wholly, to machinery of the

lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The leased machinery shall be used for no other purpose than for cutting out the parts of footwear made by or for the lessee, which are cut from materials other than sole leather, and for that purpose the lessee shall use the leased machinery to its full capacity limited only by the amount of work of the kind which the leased machinery is designed to perform done by or for the lessee by the aid of machinery. The leased machinery shall not be used for cutting sole leather.

Six. The lessee shall pay to the lessor on the last day of each calendar month the amount or amounts set forth in the following Schedule of Payments in respect to each pair of footwear of a kind or kinds therein specified cut during the preceding calendar month in whole or in part by the aid of any clicking machine or machines held by the lessee under lease from the lessor or by the aid of any Clicking Machine dies of the lessor.

SCHEDULE OF PAYMENTS.

	Per Pair.
For all footwear which is lasted by machinery not held by the lessee under lease from the lessor . .	1 cent
For all welted footwear which is welted or stitched by machinery not held by the lessee under lease from the lessor	6 cents

For all turned footwear the soles of which are sewed to their uppers by machinery not held by the lessee under lease from the lessor . . . . . 1¾ cents

Provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the amount due to the lessor under the provisions of this paragraph for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from the amount due for such preceding calendar month.

Seven. The lessee shall also pay to the lessor an amount equal to five cents for each inch of cutting edge of all dies (other that Clicking Machine dies of the lessor) which are used in or in connection with the leased machinery or which during the continuance of any lease between the lessee and the lessor covering any one or more Clicking Machines are manufactured or obtained by or for the lessee which are adapted for use in or in connection with the leased machinery for any purpose sor which the leased machinery is hereby licensed. Said amount in respect to any such dies now in the possession of or in the factory of the lessee shall be due and payable forthwith, and in respect to all such dies hereafter manufactured or obtained by or for the lessee shall be due and payable immediately upon the manufacture or obtaining thereof by or for the lessee, as the case may be. The lessee shall forthwith notify the lessor in writing of any and all such dies now in the possession of or in the factory of the lessee, and at any and all times hereafter upon any such dies coming into the possession of or the factory of the lessee by manufacture, purchase, or otherwise the lessee shall likewise notify the lessor in writing. The notices by the lessee to the lessor herein provided for shall give to the lessor all such information as may be necessary for the lessor to determine the amount due to the lessor in respect to any and all such dies, and, if the lessor so desires, the lessee shall permit the lessor to examine and measure the same. Excepting Clicking Machine dies of the lessor, the lessee agrees that he will not use or permit to be used in or in connection with the leased machinery or in or in connection with any Clicking machinery held by the lessee under any lease or license

or agreement from the lessor any dies in respect to which the lessee has not paid to the lessor five cents per inch for each inch of cutting edge thereof.

Eight. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with any such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without any prejudice to other rights or remedies of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, the sum of seven cents per pair for each pair of footwear, or portions thereof, in the manufacture or preparation of which the leased machinery or any part thereof shall have been used. The lessee shall, if so requested by the lessor, keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the amount of footwear, or portions thereof, in the manufacture or preparation of which the leased machinery or any part thereof or Clicking Machine dies of the lessor shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total amount of footwear, or portions thereof, made or prepared by the aid of the leased machinery or any part thereof, or by the aid of the Clicking Machine dies of the lessor, and the lessee shall produce all such accounts and entries upon request. The lessee shall also, if so requested by the

lessor, require each of his operators to keep upon blanks or blank-books to be furnished by the lessor accurate daily records of the amount of footwear, or portions thereof, in the making or preparation of which he has used the leased machinery or any part thereof, or Clicking Machine dies of the lessor, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, any one or more of the machines hereby leased has been entirely idle, the lessee, on or before the fifth day of the next succeeding calendar month, shall send to the office of the lessor in Boston the blank for said month for each such idle machine marked "not in use" and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to: —

Nine. If at any time the lessee shall fail or cease to use exclusively Clicking Machines held by him under lease from the lessor for cutting all footwear made by or for him, which is cut by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases of or licenses to use Clicking Machines then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

Ten. The term of this agreement shall be seventeen years from the date hereof. The lease of and license to use the leased machinery and Clicking Machine dies of the lessor hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as in this

agreement provided, for the full term of this agreement. But if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery and dies shall continue to be held and used under and in accordance with the conditions, stipulations, and provisions in this agreement contained, and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained, by notice or by reason of any default on the part of the lessee as to the terms of this agreement or any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor without prejudice to any other rights or remedies of the lessor the sum of One Hundred Dollars ($100) in respect to each machine hereby leased as partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators; and the lessee, for himself, his heirs, executors and administrators, successors and

assigns, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and in no case shall the lessee have any claim for the repayment or offset of any sum or sums, or any part thereof, which shall have been paid under this agreement or in respect to the lease or license herein contained or in any wise in respect to the leased machinery or dies.

Eleven. In case at any time the lessee shall have in his possession more Clicking Machines than in the opinion of the lessor are necessary for the lessee's work and the lessor shall notify the lessee in writing requesting the return of one or more such Clicking Machines, the lessee shall either return to the lessor at Beverly, Massachusetts, or at the leesee's election may retain such machines upon a monthly rental for each such machine of one dollar per month, payable upon the fifteenth day of each month. In case such excess machines shall be returned by the lessee to the lessor in accordance with the provisions of this Article only and without breach or default by the lessee in respect to any of the conditions, stipulations or provisions of this agreement or of any other lease or license agreement between the lessee and the lessor, the lessee shall pay to the lessor such sum as may be necessary to put the machine or machines so returned in suitable order and condition to lease to another lessee and shall not be required to make the payment provided for in Article Ten hereof. In case the lessee elects to retain such machines upon rental as aforesaid, such rental shall continue until such time as the lessee shall either return the same to the lessor at said Beverly or the lessor shall notify the lessee that such payment may be discontinued.

The provisions of this article hereof are independent of and in addition to all other rights of the lessor hereunder.

Twelve. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor, or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last

known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination and shall be without prejudice to any rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Thirteen. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery or dies. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Fourteen. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Fifteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number

and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Thirteen herein.)

918,728, April 20, 1909	1,003,480, Sept. 19, 1911
921,503, May 11, 1909	1,004,757, Oct. 3, 1911
922,926, May 25, 1909	1,005,139, Oct. 10, 1191
946,619, Jan. 18, 1910	1,006,453, Oct. 24, 1911
950,986, March 1, 1910	1,006,568, Oct. 24, 1911
968,090, Aug. 23, 1910	1,007,126, Oct. 31, 1911
968,117, Aug. 23, 1910	1,010,476, Dec. 5, 1911
968,118, Aug. 23, 1910	1,011,903, Dec. 19, 1911
974,373, Nov. 1, 1910	1,016,983, Feb. 13, 1912
985,973, March 7, 1911	1,018,520, Feb. 27, 1912
990,248, April 25, 1911	

[On back:]

United Shoe Machinery Company.
General Department.
Ideal Clicking Machine.
Lease No. . , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 45.

[Put in Evidence, page 396.]

Pegging Machine Department. [Form J. P. M. A., 1206.]

Lease and License Number .

Davey Pegging Machine.

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patents belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein, to use

Davey Pegging Machine No.

now or hereafter delivered to the lessee and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (which machine, together with all duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall

be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the

leased machinery nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case the same shall be destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor the sum of Two Hundred Dollars ($200) as partial reimbursement to the lessor for such destruction, and the lessee shall forthwith return whatever remains of the leased machinery to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the

balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The lessee shall use the leased machinery to its full capacity on all boots, shoes, and other footwear made in his factory which are or are to be pegged, except that the leased machinery shall not, nor shall any part thereof, be used in the manufacture of any boots, shoes, or other footwear which have been or shall be lasted on machines not held by the lessee under lease from the lessor, or in the manufacture of any boots, shoes or other footwear which have been or shall be slugged, heel seat nailed, or otherwise partly made by the aid of any "Metallic" machinery not held by the lessee under lease from the lessor.

Six. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of two (2) cents for each pair of men's and boys' and the sum of one and one half (1½) cents for each pair of women's, misses', youths' and children's boots, shoes or other footwear, or portions thereof, pegged or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of any leased machinery or any part thereof: **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.** The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount in each calendar year, ending December 31, to at least ten (10) dollars for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty: provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one twelfth for each such month that the factory thus remains wholly idle.

Seven. The lessor may attach to the leased machinery or any thereof an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor, as rent or royalty without the right to any discount, two cents per pair for each pair of boots, shoes, or other footwear or portions thereof in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts indep ndently of any indicators that may be placed upon the leased machinery, showing the number of each kind of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes or other footwear or portions thereof made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of each kind of boots, shoes and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part

thereof, and shall require his operators to sign such records, and if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee, on or before the fifth day of the next succeeding calendar month shall send to the office of the lessor in Boston the blank for said month marked "not in use," and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations and provisions are agreed to: —

Eight. If at any time the lessee shall fail or cease to use exclusively pegging machinery held by him under lease from the lessor for pegging all boots, shoes, and other footwear made by or for him which are pegged by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may, at its option, terminate forthwith by notice in writing any or all leases of or licenses to use "Pegging Machine Department" machinery, then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and the possession of and full right to and control of machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

Nine. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith any or all leases of or

licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor without prejudice to any other rights or remedies of the lessor the sum of Two Hundred Dollars ($200) as partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators; and the lessee for himself, his heirs, executors and administrators, successors and assigns, hereby grants to the lessor, its successors and assigns, full right, power, and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment or offset of any sum or sums, or any part thereof, which shall have been paid in any wise in respect to this lease and license or the leased machinery.

Ten. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder and posted by prepaid

letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Eleven. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this lease and license or any extension thereof or its termination or cesser shall not in any affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Twelve. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Thirteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gen-

der of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Eleven herein.)

No. 414,501	Nov. 5, 1889.	No. 612,487	Oct. 18, 1898.
No. 500,652	July 14, 1893.	Re. No. 11,803	Jan. 23, 1900.
No. 504,311	Aug. 29, 1893.	No. 672,056	April 16, 1901.
No. 555,434	Feb. 25, 1896.	No. 732,052	June 30, 1902.
No. 557,769	April 7, 1896.	No. 763,466	June 28, 1904.
No. 559,532	May 5, 1896.	No. 800,724	Oct. 3, 1905.
No. 581,066	April 20, 1897.	No. 834,923	Nov. 6, 1906.

[On back:]

United Shoe Machinery Company.
Pegging Machine Department.
Davey Pegging Machine.
Lease No. , Lessee.
Date, 19 .
Machine No.

PLAINTIFF'S EXHIBIT 46.

[Put in Evidence, page 397.]

Pegging Machine Department. [Form J. P. M. B., 107.]

Lease and License Number .

Davey Pegging Machine.

This Lease and Agreement made at Boston in the State of Massachusetts this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein, to use

Davey Pegging Machine No. ,

now or hereafter delivered to the lessee and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (which machine, together with all duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform:—

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the

same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of unless the lessor shall by an instrument in writing signed by its president, vice-president or treasurer authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the

leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case the same shall be destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor upon demand the sum of Two Hundred Dollars ($200) as partial reimbursement to the lessor for such destruction, and the lessee shall forthwith return whatever remains of the leased machinery to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined

by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The lessee shall use the leased machinery to its full capacity on all boots, shoes, and other footwear made in his factory which are or are to be pegged.

Six. The lessee shall pay to the lessor immediately after the execution hereof, as a lease premium, the sum of dollars, and the lessee shall also pay to the lessor on the last day of each calendar month as rent or royalty the sum of two (2) cents for each pair of men's and boys' and the sum of one and one half (1½) cents for each pair of women's, misses', youths' and children's boots, shoes, or other footwear, or portions thereof, pegged or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.** The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount in each calendar year, ending December 31, to at least ten (10 dollars) for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty: provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be allowed in respect to more than ten (10) months in any one year.

Seven. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolu-

tions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with any such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor, as rent or royalty without the right to any discount, two cents per pair for each pair of boots, shoes, or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of each kind of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents, or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, or other footwear or portions thereof made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of each kind of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same

under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee on or before the fifth day of the next succeeding calendar month shall send to the office of the lessor in Boston the blank for said month marked "not in use," and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations, and provisions are agreed to: —

Eight. If at any time the lessee shall fail or cease to use exclusively pegging machinery held by him under lease from the lessor for pegging all boots, shoes, and other footwear made by or for him which are pegged by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may, at its option, terminate forthwith by notice in writing any or all leases of or licenses to use "Pegging Machine Department" machinery, then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

Nine. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith any or all leases of or

licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee; and the lessee, for himself, his heirs, executors and administrators, successors and assigns, hereby grants to the lessor, its successors and assigns, full right, power, and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and in no case shall the lessee have any claim for the repayment or offset of any sum or sums, or any part thereof, which shall have been paid in any wise in respect to this lease and license or the leased machinery.

Ten. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor, or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby

granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Eleven. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this lease and license or any extension thereof or its termination or cesser shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Twelve. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Thirteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Eleven herein.)

No. 414,501, Nov. 5, 1889.	No. 612,487, Oct. 18, 1898.
No. 500,652, July 14, 1893.	Re. No. 11,803, Jan. 23, 1900.
No. 504,311, Aug. 29, 1893.	No. 672,056, April 16, 1901.
No. 555,434, Feb. 25, 1896.	No. 732,052, June 30, 1902.
No. 557,769, April 7, 1896.	No. 763,466, June 28, 1904.
No. 559,532, May 5, 1896.	No. 800,724, Oct. 3, 1905.
No. 581,066, April 20, 1897.	No. 834,923, Nov. 6, 1906.

[On back:]

United Shoe Machinery Company.
Pegging Machine Department.
Davey Pegging Machine. L. P.
Lease No. , Lessee.
Date, 19 .
Machine No.

PLAINTIFF'S EXHIBIT 47.

[Put in Evidence, page 400.]

Order and Agreement. [Form JM-1A-405.]
Sale Machines.

To United Shoe Machinery Company (General Department), Boston, Mass.:

Please ship the following machines to the undersigned at his factory at in accordance with the terms and conditions hereinafter stated:

Machines.	Price.
	Total.

The undersigned agrees to purchase from you the machines

hereby ordered and to pay you for the same upon demand the sums set opposite the names of the respective machines in the list above, amounting to a total of $\frac{}{100}$ Dollars.

The title to all machines hereby ordered shall remain in you at all times, although possession shall have been given to the undersigned, until the amount of the purchase price of all shall have been paid to you in full; and on default in any payment you may retake possession of all of said machines free from all claims whatsoever, and may retain as consideration for the use of said machines theretofore any sums which may have been theretofore paid in respect to said machines. The said machines shall at all times be held at the sole risk of the undersigned from loss, damage, or destruction, and they shall not nor shall any thereof be removed from the said factory of the undersigned without your written consent at any time before said payment in full shall have been made. The undersigned shall pay all taxes which may be assessed in respect to said machines from delivery thereof to the undersigned, upon whomsoever assessed.

The "machine numbers" of the machines hereby ordered may be entered in the above list by you upon or after acceptance of this order.

Delivery is to be f. o. b. your factory or office at and freight and transportation charges on said machines from your factory or office shall be paid by the undersigned.

(For detail of equipment and shipping directions, see other side.)

Dated 19

Signature of applicant

by

Order accepted Boston, 19

UNITED SHOE MACHINERY COMPANY.

Order taken by by

[On back:]

Please answer these questions. Answer here.

How shall machines be fitted?

How shall machines be shipped, by freight or express?

General Department.

Sale Machines.

PLAINTIFF'S EXHIBIT 48.

[Put in Evidence, page 400.]

Order. [Form JM. 61.]

To United Shoe Machinery Company: Department.

Please enter the order of the undersigned for a lease of the machine(s) designated in the following Schedule of Machines for use in the factory of the undersigned at
and forward to the undersigned for execution an agreement in duplicate, to be dated as of even date with this order, for a lease to the undersigned of said machine(s) and a license under any Letters Patent owned by you, or under which you are authorized to grant such license, covering the inventions, if any, embodied in said machine(s), to use said machine(s) subject to and and in accordance with the terms and conditions of such agreement.

SCHEDULE OF MACHINES.

Lease Premium.

Upon return to you of the duplicate copies of said agreement duly executed by the undersigned you are requested to deliver said machine(s) to the undersigned, and it is understood that one counterpart of said agreement duly executed by you shall thereafter be forwarded to the undersigned.

No title to any of the machine(s) hereby ordered shall be acquired by the undersigned but only the right to use the same, during the continuance of the lease thereof, subject to and in accordance with the terms and conditions of the lease and license agreement above referred to.

Lease Premium. The undersigned will pay you as a "lease premium," the sum(s) set opposite the names of the respective machine(s) in the foregoing schedule, amounting to a total of
100 Dollars.

The "machine number(s)" of the machine(s) hereby ordered may be entered in the above Schedule by you upon or after acceptance of this order.

Said machine(s) are to be delivered by you to the undersigned

at (city or town) in the State of in accordance with the shipping instructions upon the back of this order, and the carrier transporting the same shall do so as your agent and not as agent of the undersigned and shall be your agent for making such delivery at the point of destination. The undersigned shall have no control over said machine(s) and assumes no responsibility for the safety thereof until arrival of the same at the place for delivery, but the undersigned does assume and agree to pay all freight and other transportation charges from your place of shipment.

(For detail of equipment and shipping directions see other side.)

Dated 19

Signature of Applicant

by

Order taken by

We have entered your order as above and hand you herewith lease and license agreement in duplicate for execution.

UNITED SHOE MACHINERY COMPANY.

Date By

[On back:]

SHIPPING AND EQUIPMENT INSTRUCTIONS.

[Goods shipped by freight delivered at freight station at point of destination. Goods shipped by express delivered at express office at point of destination. All transportation at expense of and charges to be paid by applicant. Men furnished by lessor at lessor's expense to set up machine(s) if nature requires.]

Please Answer These Questions.	Answer Here.
How shall machine(s) be shipped, by freight or express?	
To what point shall machine(s) be shipped? City or town	
State	
How are machines to be heated, by steam, gas, or lamp?	
Shall men be sent to set up machine(s)?	
How shall machines be fitted?	

Department

Order

PLAINTIFF'S EXHIBIT 49.

[Put in Evidence, page 401.]

Order. [Form JM. 60A.]

To United Shoe Machinery Company: Department.

Please enter the order of the undersigned for a lease of the machine(s) designated in the following Schedule of Machines for use in the factory of the undersigned at
and forward to the undersigned for execution an agreement in duplicate, to be dated as of even date with this order, for a lease to the undersigned of said machine(s) and a license under any Letters Patent owned by you, or under which you are authorized to grant such license, covering the inventions, if any, embodied in said machine(s) subject to and in accordance with the terms and conditions of such agreement.

SCHEDULE OF MACHINES.

Upon return to you of the duplicate copies of said agreement duly executed by the undersigned you are requested to deliver said machine(s) to the undersigned, and it is understood that one counterpart of said agreement duly executed by you shall thereafter be forwarded to the undersigned.

No title to any of the machine(s) hereby ordered shall be acquired by the undersigned but only the right to use the same, during the continuance of the lease thereof, subject to and in accordance with the terms and conditions of the lease and license agreement above referred to.

The "machine number(s)" of the machine(s) hereby ordered may be entered in the above Schedule by you upon or after acceptance of this order.

Said machine(s) are to be delivered by you to the undersigned at (city or town) in the State of in accordance with the shipping instructions upon the back of this order, and the carrier transporting the same shall do so as your agent and not as agent of the undersigned

and shall be your agent for making such delivery at the point of destination. The undersigned shall have no control over said machine(s) and assumes no responsibility for the safety thereof until arrival of the same at the place for delivery, but the undersigned does assume and agrees to pay all freight and other transportation charges from your place of shipment.

(For detail of equipment and shipping directions see other side.)

Dated . 19

Signature of Applicant

Order taken by

By

We have entered your order as above and hand you herewith lease and license agreement in duplicate for execution.

UNITED SHOE MACHINERY COMPANY.

Date By

[On back:]

SHIPPING AND EQUIPMENT INSTRUCTIONS.

[Goods shipped by freight delivered at freight station at point of destination. Goods shipped by express delivered at express office at point of destination. All transportation at expense of and charges to be paid by applicant. Men furnished by lessor at lessor's expense to set up machine(s) if nature requires.]

Please Answer These Questions. Answer here.

How shall machina(s) be shipped, by freight or express?

To what point shall machine(s) be shipped? City or Town

State

How are machines to be heated, by steam, gas, or lamp?

Shall men be sent to set up machine(s)?

How shall machines be fitted?

Department.

Order

PLAINTIFF'S EXHIBIT 50.

[Put in Evidence, page 402.]

[RIDER ATTACHED TO THE FOLLOWING LEASE.]

[Duplicate. Form 107.]

Dated *Kansas City, Mo., Oct. 18*, 1899.

We hereby propose to take a lease of the machinery mentioned below, of the Gem Flexible Insole Company, according to the form of lease adopted by the Company therefor, and we agree to pay, upon delivery of the said machinery, the sum of $300.00 (as below) as consideration for the delivery of said lease, for the expenses of setting up said machinery, and for possession under the lease of said machinery.

One (1) Gem Flexible Insole Machine. *166*
One (1) Gem Lip Turner. *160*
One (1) Gem Cementer. *164*

It is understood and agreed that instead of cash on delivery, as provided for above, that we are to pay for the above machines Jan. 1st, 1900, or return machines to the Gem Flexible Insole Co.

Please answer these questions.	Answer here.
How shall we ship, by freight or express?	*Freight.*
What kind of goods do you make, men's or women's?	*Men's & Women's Goodyear Welts.*

No title to the above mentioned machinery is acquired other than is given in the lease aforesaid.

A competent man is to be sent to set up said machinery at the expense of the said Company.

Freight and transportation charges on said machinery from the factory shall be paid by the lessee.

Applicant sign here

BOND SHOE CO.

By Geo. A. Bond, Prest.

We accept the above proposition, and promise to deliver the lease and machinery as specified therein.

GEM FLEXIBLE INSOLE CO.

Boston, *Oct. 26th*, 1899. By Fred'k G. King.

Terms O. K. E. D. Cox.
Received Oct. 25, 1899. E. D. C.

Lease No. (Form 997–598.)

This Lease and Agreement, made at Boston, Massachusetts, the *27th* day of *November* A. D. 1899, by and between the Gem Flexible Insole Company, a corporation organized and existing under the laws of the State of Maine, having its Treasurer's office in said Boston, hereinafter called the Lessor, party of the first part, and *Bond Shoe Company, Kansas City, Missouri* hereinafter called the Lessee, party of the second part, witnesseth,

Whereas, the Lessor is the owner of, or is licensed under the several Letters Patent of the United States referred to in the schedule following, viz: —

SCHEDULE OF PATENTS.

No. 275,248, dated April 3, 1883.	No. 28,547, dated May 3, 1898.
No. 343,832, dated June 15, 1886.	No. 534,159, dated February 12, 1895.
No. 442,897, dated December 16, 1890.	No. 603,763, dated May 10, 1898.
No. 575,460, dated January 19, 1897.	No. 603,764, dated May 10, 1898.

Other patents pending.

And, whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the Letters Patent referred to in said schedule of patents, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz: —

SCHEDULE OF MACHINES.

One Gem Flexible Insole Machine , No. *166*
One Gem Lip Turner , No. *160*
One Gem Cementer , No. *164*

The said machines being the property of the Lessor.

Now, therefore, the Lessor, in consideration of one dollar and

other valuable consideration to it paid by the Lessee, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also the inventions patented as aforesaid, or either or any of them, but upon the agreements and conditions hereinafter set forth; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor, notwithstanding any express or implied waiver of any prior breach, may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to any one in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon re-vest in the Lessor.

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license: —

First. The Lessee hereby agrees to use, and is hereby licensed to use, the machines hereby leased and the inventions patented as aforesaid only in his factory in *Kansas City* in the State of *Missouri* and only in the manufacture of insoles or soles for boots and shoes, and agrees to keep the said machinery in working order at his own expense, and to procure of the Lessor or its agents all parts for repairing the machines hereby leased, and agrees not to add to or subtract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, nor to remove or deface any dates, numbers, or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient

access to the machines, to examine and inspect the same and the use thereof, and to take an account of the number of revolutions of the main shaft of said insole reinforcing machine as registered by the indicator attached thereto, and to add improvements to the machines as the Lessor may see fit; and to repair or replace any indicator which now is or which may hereafter be attached to any machine hereby leased; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions hereafter embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The Lessee agrees that he will not manufacture or use in his said factory any insoles or soles embodying the inventions, or either of them. or made in whole or in part by any process patented in any of the Letters Patent under which he is hereby licensed, except and unless the reinforcing material is applied by the aid of an insole reinforcing machine leased to him by the Lessor.

Fourth. The Lessee agrees, on or before the tenth day of each calendar month, while this lease remains in force, to render to the Lessor, on printed forms to be furnished by the Lessor, a statement which shall show the number of revolutions made, during the calendar month next preceding, by the main shaft of said insole reinforcing machine, as registered by the indicator attached thereto, which statement shall be signed by the Lessee or by the operator of said machine; and in case the machines hereby leased have not been used during that month, the Lessee agrees to send one of such printed forms to the Lessor signed by him or his operator, marked across the face with the words "Not in use."

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased and as royalty for the use of the inventions patented as aforesaid as hereby licensed, the sum of three cents for each and every one thousand revolutions made by the main shaft of the insole reinforcing machine hereby leased, as registered by the indicator attached thereto, the sum accruing for rent and royalties during one calendar month to be due and payable on the last day of the calendar month next following; but the

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Lessor hereby agrees that **if the amount due on the last day of any month for rent and royalties shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty per cent.**

Sixth. If at any time, or from time to time, the indicator affixed to the said insole reinforcing machine shall from any cause cease to indicate or correctly register the number of revolutions of the main shaft of said machine, or if the glass covering of the indicator shall be removed or be broken or injured, then, and as often as the same shall happen, the Lessee shall immediately certify the fact by a notice in writing delivered to the Lessor at its office in Boston aforesaid.

Seventh. The Lessee hereby agrees that he will not in any way violate or infringe, or contest the validity of, any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents, or either or any of them.

Eighth. This lease and license is not assignable by the Lessee, by his act or by operation of law.

Ninth. The following are also agreed to by the parties to this instrument as conditions of this lease and license:

(a) That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machines embodying the patents aforesaid, or any of them, and not the right to use any of the inventions hereby licensed except by the aid of an insole reinforcing machine leased to the Lessee by the Lessor; and that a transfer or removal of the machines hereby leased, or either or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the Lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer, or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire; and the Lessor, its successors or assigns,

may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent and royalty under this instrument.

(b) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, its successors or assigns, notwithstanding any express or implied waiver of any prior breach, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon revest in the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successors or assigns, or its authorized agent or agents, may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license.

(c) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein contained) until the expiration of all and every the Letters Patent referred to in the foregoing Schedule of Patents, or any extensions or renewals of the same, and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

Tenth. In case any other machines than those hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come in possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor, its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to machines, inventions or improvements, and shall govern the parties respectively to the same extent as if the said machines, inventions or improvements had been expressly included

in this lease and license. The Lessor shall give written notice of its election as aforesaid after it shall have received written notice from the Lessee of the possession of such machines, but may give such notice without having received notice from the Lessee of the possession of such machines.

Eleventh. The Lessee agrees that he will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon the machines as aforesaid.

Twelfth. All the rights and interests which, under this instrument, and by reason of the ownership of said machines and patents and patent rights, belong to the Lessor, shall be deemed to belong to and may be enforced in the names of the Lessor and its successors and assigns, and all the agreements and conditions binding on the Lessee shall be binding on his legal representatives.

Thirteenth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural, as the number of machines entered in the lease and license may require; and also that this instrument may be used in case where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally hereto.

In witness whereof, the Lessor has caused these presents to be signed in its name, and its corporate seal to be affixed hereto by its Treasurer, and the Lessee has set his hand and seal hereto the day and year first above written.

Executed in Duplicate. GEM FLEXIBLE INSOLE COMPANY,

[SEAL] By Geo. W. Brown, Treasurer.

Lessee will please sign here. ☞ BOND SHOE CO. [SEAL]

by Geo. A. Bond.

PLAINTIFF'S EXHIBIT 51.

[Put in Evidence, page 402.]

Goodyear Department. (1105.)

Lease and License Number

Gem Insole Machinery.

This Lease and Agreement made at Boston in the State of Massachusetts this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and in the State of hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use the machine or machines of the "Goodyear Department" of the lessor now or hereafter delivered to the lessee, and designated by number or numbers in the following schedule, viz.: —

Gem Flexible Insole Machine No. ,

Gem Lip Turner No. ,

Gem Cementer No. ,

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have

no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of

every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery, or in respect to this lease and license or the right to payments hereunder, upon whomsoever assessed.

Four. The leased machinery shall be used only in the manufacture or preparation of reinforced insoles which embody the invention patented in Letters Patent of the United States of America, dated January 19, 1897, numbered 575,460, owned by the lessor, for use in boots, shoes and other footwear, which are or shall be welted and the soles stitched either by hand or upon welt sewing and stitching machines leased to the lessee by the lessor or its assignor, and for the use of all of which machines the lessee is continuing to pay the lessor the regular rental or royalty charged by the lessor for each pair of boots, shoes, or other footwear or portions thereof made by the aid of said welt sewing and stitching machines or any part thereof.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty, the sum of three cents for each and every one thousand revolutions made during the next preceding calendar month by the main shaft of the Gem Flexible Insole Machine hereby leased, as indicated by the indicator attached thereto by the lessor; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.**

Six. The lessor shall attach to the Gem Flexible Insole Machine hereby leased an indicator to register the number of revolu-

tions of the main shaft thereof, and may attach to the leased machinery or any thereof an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken or injured because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, one cent per pair for each pair of reinforced insoles in the manufacture or preparation of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of reinforced insoles in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times by its agents or attorneys to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of reinforced insoles made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall on or before the fifth day of each calendar month render to the lessor upon blanks or blank books to be furnished by the lessor, a statement which shall show the number of revolutions made during the calendar month next preceding by the main shaft of the Gem Flexible Insole Machine hereby leased, as indicated or registered by the indicator attached thereto, which statement shall be signed

by the lessee or by the operator or operators of said machine, and if requested by the lessor, such statement shall be verified by the lessee under oath. The lessee shall also furnish any further information required by the lessor in reference to the use of the leased machinery, and in case in any calendar month none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact on or before the fifth day of the next succeeding calendar month.

And that the following agreements, stipulations and provisions are agreed to: —

Seven. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other

lease or license from the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory, in good order, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery.

Eight. A notice in writing, signed by the president, a vice-president or the treasurer of the lessor or by any assignee of the lessor's rights hereunder and posted by pre-paid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Nine. The lessee admits the validity of each and every of the Letters Patent of the United States of America owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cesser of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or

release or discharge the lessee from the admission and estoppel herein set forth.

Ten. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Nine herein.)

Number.	Date.	Number.	Date.
343,832	June 15, 1886.	609,110	August 16, 1898.
442,897	December 16, 1890.	610,326	September 6, 1898.
575,460	January 19, 1897.	614,860	November 29, 1898.
28,547	(Design) May 3, 1898.	635,772	October 31, 1899.
603,763	May 10, 1898.	638,010	November 28, 1899.
603,764	May 10, 1898.	849,245	April 2, 1907.
609,103	August 16, 1898.		

[On back :]

United Shoe Machinery Company.
Goodyear Department.
Gem Insole Machinery.
Lease No. . , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 52.

[Put in Evidence, page 403.]

Goodyear Department. (1106)

Lease and License Agreement Number .

Economy Insole Reinforcing Set.

This Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use, subject to the conditions, stipulations and provisions hereinafter contained, the machine or machines designated by number or numbers in the following schedule, viz.: —

SCHEDULE OF MACHINES.

Class A.	
Economy Insole Reinforcing Machine, No. . .	$150
Class B.	
Economy Insole Channeling Machine, No. . .	200
Economy Insole Stitching Machine, No. . .	30
Rapid Rotary Cementing Machine, Model J, No. .	75

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor.

The term the "principal machinery hereby leased" wherever used herein shall be construed to include the whole of the machine or machines hereby leased included in Class A in the foregoing sche-

dule, together with all duplicate parts, extras, mechanisms and devices relating thereto held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee.

The term the "auxiliary machinery hereby leased" wherever used herein shall be construed to include the whole of the machine or machines hereby leased included in Class B in the foregoing schedule, together with all duplicate parts, extras, mechanisms and devices relating thereto held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee.

The term the "leased machinery" wherever used herein shall be construed to include both the "principal machinery hereby leased" and the "auxiliary machinery hereby leased."

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of unless the lessor shall by an instrument in writing signed by its president, vice-president or treasurer authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all

leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and, in case any machine or machines hereby leased shall be destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor in respect to each machine so destroyed the sum set opposite the name of such machine in the Schedule of Machines hereinbefore contained as partial reimbursement to the lessor for such destruction, and the lessee shall forth-

with return whatever remains of the machinery so destroyed to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The leased machinery shall be used only in the manufacture or preparation of reinforced insoles which embody the inventions patented in Letters Patent of the United States of America numbered 849,245, dated April 2, 1907, owned by the lessor, for use in welted boots, shoes and other footwear known in the trade as "Goodyear Welts," which have been or are to be welted wholly by Goodyear Welt and Turn Machines or Goodyear Universal Inseam Sewing Machines held by the lessee under lease from the lessor, and the soles of which have been or are to be attached to their welts wholly by Goodyear Outsole Rapid Lockstitch Machines held by

the lessee under lease from the lessor, or for use as insoles or soles of turned boots, shoes and other footwear known in the trade as "Goodyear Turns" the soles of which have been or are to be attached to their uppers by Goodyear Welt and Turn Shoe Machines or Goodyear Universal Inseam Sewing Machines held by the lessee under lease from the lessor, and in the manufacture or preparation of such patented insoles (or soles) the lessee shall use the principal machinery hereby leased to its full capacity so far as the lessee uses reinforced insoles (or soles) in the manufacture of such footwear. The auxiliary machinery hereby leased shall be used only in the manufacture or preparation of said patented insoles (or soles) which have been or are to be reinforced wholly by an Economy Insole Reinforcing Machine hereby leased or held by the lessee under other lease and license from the lessor.

Six. The lessee is hereby licensed under said Letters Patent of the United States numbered 849,245, dated April 2, 1907, to manufacture by the use of the principal machinery hereby leased during the continuance in force of this lease and license the patented insoles covered by said Letters Patent and to use such patented insoles so made by the lessee in the manufacture of welted or turned boots, shoes or other footwear which have been or are to be manufactured as provided in Article Five hereof.

Seven. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of three (3) cents for each and every one thousand (1000) revolutions made during the next preceding calendar month by the main shaft of the Economy Insole Reinforcing Machine hereby leased as indicated by the indicator attached thereto by the lessor: **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month said rental or royalty in accordance with this Article hereof for the next preceding calendar month, the lessor will, in consideration of such prompt payment, grant a discount of fifty per cent. from the amount so due for such preceding calendar month.** The lessee, however, guarantees that the payments made by him in accordance with the terms of this Article hereof shall amount, in each calendar year ending

December 31st (after deducting all abatements), to at least Fifteen Dollars ($15) for each calendar month for each Economy Insole Reinforing Machine hereby leased, and at the end of each calendar year the lessee shall pay to the lessor the amount, if any, by which the total of such payments for said year have been less than such guaranteed amount: provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount guaranteed for that year hereunder shall be reduced by one-twelfth for each such month that the factory has thus remained wholly idle, but such reduction shall not be made in respect to more than ten (10) months out of any twelve (12) consecutive calendar months.

Eight. The lessor shall attach to each Economy Insole Reinforcing Machine hereby leased an indicator or indicators to register the number of revolutions of the main shaft thereof and may attach to the leased machinery or any thereof an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then without prejudice to any other rights of the lessor, the lessee shall pay the lessor (without the right to any discount) the sum of one cent per pair for each pair of reinforced insoles (or soles) in the manufacture or preparation of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be

placed upon the leased machinery, showing the number of reinforced insoles (or soles) in the manufacture or preparation of which the leased machinery, or any part thereof, has been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such reinforced insoles (or soles) and the lessee shall produce all such accounts and entries upon request. The lessee shall, if so requested by the lessor, require each of his operators upon the leased machinery, or any part thereof, to keep upon blanks or blank-books to be furnished by the lessor accurate daily records of the number of reinforced insoles made by the aid of the leased machinery or any part thereof, and shall require his operators to sign such records, and if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, a statement made upon blanks or blank-books furnished by the lessor which shall show the number of revolutions made during the next preceding calendar month by the main shaft of each Economy Insole Reinforcing Machine hereby leased as registered by the indicator attached thereto. Each such statement shall be signed by the lessee, and, if so requested by the lessor, the lessee shall verify said statements under oath. In case, in any calendar month, the principal machinery (and, if the lessor shall request record of the use of the auxiliary machinery, in case any of the auxiliary machinery) hereby leased has been entirely idle, the lessee, on or before the fifth day of the next succeeding calendar month, shall send to the office of the lessor in Boston the blank for such machine or machines for said month marked "not in use" and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to:—

Nine. If at any time the lessee shall fail or cease to use exclusively insole reinforcing machinery held by him under lease from the lessor for reinforcing all reinforced insoles (or soles) made by

or for him, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses of insole reinforcing or auxiliary machinery, then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

Ten. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for the full term of this agreement. But if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of the lease

hereby granted or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the lessee shall forthwith at his own expense deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, including the cost of all parts replaced at the regular prices established by the lessor therefor; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Eleven. Upon the expiration or termination of this agreement or any extension thereof or of the lease and license hereby granted the lessee, in addition to all other payments in this lease and license agreement provided for and without prejudice to any other rights or remedies of the lessor, shall pay to the lessor as partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators, an amount in respect to each machine hereby leased equal to two-thirds of the sum set opposite the name of such machine in the Schedule of Machines hereinbefore contained.

Twelve. In case the lessee, at any time, shall have in his factory more machines adapted for doing the same work as any one or more of the auxiliary machines hereby leased than in the opinion of the lessor are sufficient for performing the work which the lessee has in his factory, based upon the capacity of such machines and the amount of such work done by the lessee for any period of twelve (12) consecutive months next preceding, the lessor may, at its option, upon thirty (30) days' notice in writing to the lessee, terminate the lease and license herein contained in respect to such of the said auxiliary machines hereby leased as in the opinion of

the lessor are unnecessary. The termination under the provisions of this Article of the lease of or license to use any one or more of the machines hereby leased shall not affect the lease or license herein contained in respect to any other machine or machines.

Thirteen. In case at any time any of the leased machinery shall not, in the opinion of the lessor, be in good and efficient working order and condition, the lessor without prejudice to any other of its rights or remedies may give written notice to the lessee to put such machinery in good and efficient working order and condition and to replace all broken or missing parts; and in case the lessee does not within fifteen (15) days from the date of such notice comply with the requirements thereof, as herein set forth, the lessor may if it so elects cause such machinery to be put in such good and efficient working order and condition, and may supply such broken or missing parts, and the lessee shall forthwith pay to the lessor the expense of making such repairs and the cost at the regular prices established by the lessor therefor of all parts so supplied.

Fourteen. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Fifteen. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the

inventions of which are or hereafter may be embodied in the leased machinery or used in the operation thereof or embodied in the reinforced insoles made by the aid of the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the title of the lessor to or the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of said Letters Patent or any of the Letters Patent referred to in the Schedule of Patents hereto annexed. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Sixteen. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Seventeen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Fifteen herein.)

No. 550,402 Nov. 26, 1895	No. 656,842 Aug. 28, 1900
Des. No. 28,547 May 3, 1898	No. 675,007 May 28, 1901

No. 603,763 May 10, 1898	No. 675,082 May 28, 1901
No. 603,764 May 10, 1898	No. 728,793 May 19, 1903
No. 623,306 Apr. 18, 1899	No. 849,245 Apr. 2, 1907
No. 637,926 Nov. 28, 1899	No. 952,701 Mar. 22, 1910
No. 638,010 Nov. 28, 1899	No. 979,836 Dec. 27, 1910
No. 641,863 Jan. 23, 1900	No. 984,772 Feb. 21, 1911
No. 644,571 Mar. 6, 1900	No. 984,773 Feb. 21, 1911

[On back:]
United Shoe Machinery Company.
Goodyear Department.
Economy Insole Reinforcing Set.
Lease No. . , Lessee.
Date 19 .
Machines.

PLAINTIFF'S EXHIBIT 53.

[Put in Evidence, page 404.]

O. A. Miller Treeing Machine Company. [Form 1001.]
Lease and License Number .

This Lease and Agreement made at Boston in the State of Massachusetts this day of 19 , between the O. A. Miller Treeing Machine Company, a corporation organized under the laws of the State of Maine, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Victor Power Ironing Machine No.

and any tree legs, tree feet, tree backs, irons, duplicates, parts, extras, mechanisms and devices relating thereto, or used in con-

nection therewith, now attached to or delivered with the said designated machine, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (which machine, together with all tree legs, tree feet, tree backs, irons, duplicates, parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or

watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions, now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the tree legs, tree feet, tree backs, irons, duplicates, parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tan-

gible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The lessee shall use the leased machinery to its full capacity, limited only by the number of boots, shoes, and other footwear made by or for him.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of four and one-fifth (4 1-5) cents for each and every dozen pairs, or fraction thereof, of boots, shoes or other footwear operated upon by the leased machinery or any part thereof during the next preceding calendar month; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month the lessor will in consideration of such prompt payment, accept the sum of four (4) cents per dozen pairs or fraction thereof, in lieu of said rental or royalty of four and one-fifth (4 1-5) cents per dozen pairs.**

Six. The lessee guarantees that the net amount of rent or royalty paid by him under the provisions of Article Five hereof shall amount to at least fifteen dollars ($15.00) for each calendar month; and on or before the last day of each calendar month the lessee shall pay to the lessor the amount, if any, by which the net amount of rent or royalty paid by him in respect to the use of the leased machinery during the preceding calendar month is less than such guaranteed rent or royalty.

Seven. The lessor may attach to the leased machinery, or any part thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair,

or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, the sum of one-half of one cent per pair for each pair of boots, shoes or other footwear, or portions thereof, operated upon by the aid of the leased machinery or any part thereof. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes and other footwear, or portions thereof, operated upon by the aid of the leased machinery or any part thereof, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such boots, shoes and other footwear, or portions thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank-books, to be furnished by the lessor, accurate daily records of the number of boots, shoes or other footwear, or portions thereof, operated upon by the aid of the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Brockton, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators, as above provided for; and, in case in any calendar month none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding

calendar month. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations and provisions are agreed to: —

Eight. If at any time the lessee shall fail or cease to use exclusively ironing and treeing machinery held by him under lease from the lessor for doing all work in the manufacture or preparation of all boots, shoes or other footwear made by or for him, which is done by the aid of treeing or ironing machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may, at its option, terminate forthwith, by notice in writing, any or all leases of or licenses to use machinery then existing between the lessor and the lessee; and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated shall thereupon revest in the lessor, free from all claims or demands whatsoever.

Nine. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the

lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor such sum as may necessary to put the leased machinery in suitable order and condition to lease to another lessee, and in addition thereto the lessee shall also, without prejudice to any other rights and remedies of the lessor hereunder, pay to the lessor the sum of One Hundred Dollars ($100) as compensation for setting up the leased machinery in his factory, for instructing operators and for deterioration of the leased machinery; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Ten. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination and shall be without prejudice to any other rights or remedies which the lessor may have for violation of con-

tract, use of machines without right or use of patented inventions without license.

Eleven. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of said Letters Patent or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Twelve. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Thirteen. The term "lessor" shall include the said O. A. Miller Treeing Machine Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞If lessee is a corporation, add corporate seal.

[On back:]
O. A. Miller Treeing Machine Company.
Victor Power Ironing Machine.
Lease No. . , Lessee.
Date, 19 .
Machine No.

PLAINTIFF'S EXHIBIT 54.

[Put in Evidence, page 404.]

Lease and License Number [4001.]
Shoe Repair Outfit.

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Repairing Machine Company, a corporation organized under the laws of the State of Maine, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter may be embodied therein or employed in the operation thereof, to use the machine or machines now or hereafter delivered to the lessee and designated by number or numbers in the following schedule, viz.:—

SCHEDULE OF MACHINES.

Machine Bench, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Steam Generator, No.
Goodyear Rapid Bobbin Winding Machine, No.
Edge Trimming Machine, No.
Cutter Grinding Machine, No.
Edge Trimming Machine Blower, No.

Buffing Machine, No.
Finishing Machine, No.
Edge Setting Machine, No.
Tap Scarfing Machine, No.
Impression Stitch Machine, No.

and any duplicate parts, extras, mechanisms and devices, relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only on the premises now occupied by him at No. Street in in the State of unless the lessor shall in each instance by an instrument in writing signed by its President, Vice-President or Treasurer authorize the lessee to remove the leased machinery and use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or

execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees, shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed upon or in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part, but not wholly to machinery of the lessor in the possession of the lessee the lessee shall

pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery and other tangible property in respect to which the unapportioned tax or assessment has been assessed.

Four. The leased machinery shall be used in repairing footwear only and shall be used for no purpose other than that for which it is designed and hereby leased. It shall not nor shall any part thereof be used in the manufacture of new footwear. It shall not nor shall any part thereof be used in repairing any welted footwear other than the footwear known in the trade as "Goodyear Welts" or "Hand Welts" the welts of which have been attached by Goodyear Welt Sewing Machines or by hand and the outsoles of which have been attached by Goodyear Outsole Stitching Machines or by hand. It shall not nor shall any part thereof be used upon any welted footwear in the repair of which any Outsole Sewing or Stitching Machine other than Goodyear Outsole Rapid Lockstitch Machines held by the lessee under lease from the lessor or its assignor has been or is to be used. Subject to the foregoing limitations all Goodyear Outsole Rapid Lockstitch Machines hereby leased or held by the lessee under other lease from the lessor (whether as the result of assignment to the lessor or otherwise) shall be used by the lessee to their full capacity limited only by the amount of work done by or for the lessee in which the same can be used.

Five. The lessee shall pay to the lessor upon the execution hereof, as a lease premium, the sum of Dollars and the lessee shall also pay to the lessor on the last day of each calendar month the sum of twenty-four (24) cents for each and every one thousand (1000) revolutions made during the next preceding calendar month by the main shaft of each Goodyear Outsole Rapid Lockstitch Machine held by the lessee under any lease or license or other agreement subsisting between the lessor and the lessee (whether as the result of assignment to the lessor or otherwise) which contains a

provision for payment based upon the number of revolutions similar to that herein contained as indicated by the indicator attached thereto by the lessor or its assignor: **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the amount due for the next preceding calendar month, and such amount shall exceed the guaranteed amount hereinafter provided for, the lessor will, in consideration of such prompt payment, grant a discount of fifty per cent. from said amount for such preceding calendar month, except that such discount shall in no case exceed the difference between the amount due for such preceding calendar month and said guaranteed amount.** The lessee, however, guarantees that the total amount paid to the lessor in accordance with the provisions of this paragraph hereof (less all abatements) shall be at least five (5) dollars for each calendar month for each such Goodyear Outsole Rapid Lockstitch Machine, and the lessee shall pay to the lessor on the last day of each calendar month the amount, if any, by which the amount paid for the preceding calendar month is less than said guaranteed amount.

Six. The lessor may attach to the leased machinery or any thereof an indicator or indicators to register the number of revolutions or movements of any part or parts thereof and the lessee shall not allow any person other than the lessor or its agents to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen, the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened, and the lessee shall pay to the lessor the sum of six cents per pair for each pair of footwear operated upon by any Goodyear Outsole Rapid Lockstitch Machine held by the lessee under lease from the lessor (whether as the result of assignment to the lessor or otherwise) during such time as any indicator attached thereto by the lessor or its assignor shall be or remain disturbed or out of repair or the glass covering

the same shall be or remain removed, broken or injured. The lessee shall keep full and accurate accounts, independently of any indicator that may be placed upon the leased machinery, showing the number of pairs of footwear or portions thereof operated upon by each Goodyear Outsole Rapid Lockstitch Machine held by the lessee under lease from the lessor (whether as the result of assignment to the lessor or otherwise), and shall allow the lessor at all times by its agents or attorneys to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of pairs of such footwear or portions thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall, on or before the fifth day of each calendar month, render to the lessor upon blanks or blank books to be furnished by the lessor, a statement which shall show the number of revolutions made during the calendar month next preceding as indicated by the indicator attached to each such Goodyear Outsole Rapid Lockstitch Machine, which statement shall be signed by the lessee or by the operator or operators of said machine, and, if requested by the lessor, such statement shall be verified by the lessee under oath. The lessee shall also whenever requested by the lessor render to the lessor a statement showing the number of pairs of footwear or portions thereof operated upon by any such Goodyear Outsole Rapid Lockstitch Machine during any period which the lessor may request, and shall, if so requested by the lessor, verify such statement under oath. The lessee shall also furnish any further information which may be called for by the lessor with reference to the leased machinery or the use thereof.

And that the following terms, stipulations and provisions are agreed to:—

Seven. In case at any time the lessee shall fail or cease to use exclusively stitching machinery held by him under lease from the lessor or its assignor for doing all work which is of the kind for which he is licensed to use the stitching machinery held by him under lease from the lessor or its assignor and which is done by or for him by the aid of sole stitching machinery, the lessor, although it may have waived or ignored prior instances of such failure or

cessation, may, at its option, terminate forthwith by notice in writing this lease and license and any or all other leases of or licenses to use machinery then existing between the lessor and the lessee (whether as the result of assignment to the lessor or otherwise) and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. In case at any time the leased machines, or any thereof, shall have parts missing or broken or shall not otherwise, in the opinion of the lessor, be in good and efficient working order and condition, the lessor, without prejudice to any other of its rights or remedies, may forthwith put the same in good and efficient working order and condition, and may replace all broken or missing parts, and the lessee shall forthwith pay the lessor the expense of making such repairs and for all parts supplied at the regular prices established by the lessor for such parts.

Nine. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license now or hereafter existing between the lessee and the lessor (whether as the result of assignment to the lessor or otherwise) and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the

lessee or the lessor, upon thirty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided.

Ten. Independently of and in addition to all other rights and remedies of the lessor hereunder the lessor shall have the right to terminate this lease and license at any time upon thirty days' notice in writing to the lessee.

Eleven. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and in no case shall the lessee have any claim for the repayment or offset of any sum or sums, or any part thereof, which shall have been paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery; excepting alone, however, that in case the lease and license hereby granted shall be terminated by the lessor at any time within five years from the date hereof in the exercise by the lessor of the option contained in Article Ten, hereof, without any breach or default whatsoever on the part of the lessee and without any other right of termination having accrued to the lessor, the lessor shall repay to the lessee such proportionate part of the sum paid by the lessee to the lessor as a lease premium upon the grant of this lease and license as the unexpired portion of said period of five years from the date hereof bears to said entire period of five years, less the amount of any indebtedness of the lessee to the lessor under this lease and license agreement or otherwise.

Twelve. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Thirteen. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease or license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Fourteen. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Fifteen. The term "lessor" shall include the said United Shoe Repairing Machine Company and its successors and assigns. All

the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

By

By

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Thirteen herein.)

No. 528,467 October 30, 1894	No. 732,729 July 7, 1903
No. 563,471 July 7, 1896	No. 900,925 October 13, 1908
No. 563,472 July 7, 1896	No. 906,092 December 8, 1908
No. 564,379 July 21, 1896	No. 917,872 April 13, 1909
No. 564,883 July 28, 1896	No. 922,696 May 25, 1909
No. 572,878 December 8, 1896	No. 930,115 August 3, 1909
No. 582,510 May 11, 1897	No. 944,498 December 28, 1909
No. 583,522 June 1, 1897	No. 946,591 January 18, 1910
No. 583,968 June 8, 1897	No. 963,761 July 12, 1910
No. 584,039 June 8, 1897	No. 971,014 September 20, 1910
No. 675,783 June 4, 1901	No. 974,309 November 1, 1910
No. 704,457 July 8, 1902	No. 974,757 November 1, 1910
No. 704,458 July 8, 1902	

[On back:]

United Shoe Repairing Machine Company.
Shoe Repair Outfit.
Lease No. . , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 55.

[Put in Evidence, page 405.]

Lease and License Agreement Number . [Form 1003.]

This Agreement made this day of 19 , between the O. A. Miller Treeing Machine Company, a corporation organized under the laws of the State of Maine, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and during the continuance of such lease does license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Miller Shoe Breaking-In and Forming Machine(s) No(s). now or hereafter delivered to the lessee and all tools, duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, tools, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct

employ. The leased machinery shall be used only the premises now occupied by the lessee at No. Street in in the State of , unless the lessor shall by an instrument in writing, signed by its president, vice-president or treasurer, authorize the lessee to remove the leased machinery, and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the special tools, duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing

the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the leased machinery nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case any machine or machines hereby leased shall be destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor upon demand the sum of One Hundred and Fifty Dollars ($150) in respect to each machine so destroyed as partial reimbursement to the lessor for such destruction, and the lessee shall forthwith return whatever remains of the leased machinery so destroyed to the lessor at Brockton, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor in the possession of the lessee upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself.

Five. The lessee shall pay to the lessor immediately upon the execution hereof as an installation fee the sum of Twenty-five Dollars ($25) in respect to each machine hereby leased. The lessee shall also pay to the lessor annually, in advance, a rental or royalty of Twenty-five Dollars ($25) per year in respect to each machine hereby leased, the first such payment to be made forthwith in addition to the installation fee and subsequent payments to be made on the anniversary of the date of this agreement in each year.

Six. The lease hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee or otherwise as herein provided, for a period of one (1) year from the date hereof, and unless terminated by either party by

written notice to the other upon the expiration of said period of one year shall continue thereafter from year to year until such time as either party shall have given to the other, at least thirty days prior to the expiration of any lease year, notice in writing to terminate the same upon the expiration of such lease year. In case, however, at any time any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease and license agreement between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults have been unnoticed, waived, or condoned by the lessor. Upon the expiration or termination of the lease hereby granted or any extension thereof by notice or by reason of any default on the part of the lessee or otherwise in any manner whatsoever, the lessee shall forthwith, at his own expense, deliver the leased machinery to the lessor at Brockton, Massachusetts, complete and in good order, reasonable wear and tear alone excepted, and shall thereupon pay to the lessor such sum as may be necessary to put the leased machinery in good and efficient working order and condition, including payment at the regular rates established by the lessor therefor for any broken or missing parts, tools or mechanisms, and in no case shall the lessee be entitled to the return or offset of any sum or any part thereof which he shall have paid as consideration for the grant of this lease and license or for rent or royalty or otherwise in respect to the leased machinery. The lessee, for himself, his heirs, executors, administrators, successors and assigns, hereby grants to the lessor and its agents full right, power, and authority upon such expiration or termination to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and to take possession thereof and take away the same.

Seven. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Eight. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof, or of any extension or renewal thereof, of any of said Letters Patent or the title of the lessor thereto. The expiration or termination of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Nine. None of the conditions, stipulations or provisions of this agreement shall be be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Ten. The term "lessor" shall include the said O. A. Miller Treeing Machine Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall

be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞If lessee is a corporation, add corporate seal.

[On back:]
O. A. Miller Treeing Machine Company.
Miller Shoe Breaking-In and Forming Machine.
Lease No. , Lessee.
Date, 19 .
Machine(s) No(s).

PLAINTIFF'S EXHIBIT 56.

[Put in Evidence, page 405.]

Lease and License Agreement Number . (1808)

This Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Patent Leather Repairing Machine(s), No(s).

and any finishing belts, duplicate parts, extras, mechanisms and

devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, finishing belts, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees

shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the finishing belts, duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case any machine or machines hereby leased shall be destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor upon demand the sum of One Hundred Dollars ($100) in respect to each machine so destroyed as partial reimbursement to the lessor for such destruction, and the lessee shall forthwith return whatever remains of all the machinery so destroyed to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to pay-

ments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The leased machinery shall be used only in the manufacture of welted footwear which has been or shall be welted and the soles stitched by welt sewing and sole stitching machinery held by the lessee under lease from the lessor, or in the manufacture of turned footwear, the soles of which have been or shall be attached to their uppers by turn sewing machinery held by the lessee under lease from the lessor, or in the manufacture of other kinds of footwea. which have been or shall be lasted by lasting machines held by the lessee under lease from the lessor.

Six. The lessee shall pay to the lessor immediately after the execution hereof as a lease premium the sum of One Hundred Dollars ($100) for each machine hereby leased. The lessee shall also pay to the lessor as rental or royalty for the leased machinery the fixed sum of Four Dollars ($4) per month for each machine hereby leased, payable on the fifteenth day of each calendar month in respect to the preceding calendar month.

Seven. The lessor may attach to the leased machinery, or any

thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. The lessee shall, if so requested by the lessor any time, keep full and accurate accounts independently of any indicators that may be placed upon the leased machinery showing the number of boots, shoes and other footwear, or portions thereof, in the manufacture or preparation of which the leased machinery or any part thereof shall be used, and shall, upon request, allow the lessor at any and all times, by its agents or attorneys, to examine and take copies of all such accounts and entries of the lessee as may aid in determining the number of boots, shoes and other footwear, or portions thereof, operated upon by the leased machinery or any part thereof; and the lessee shall produce all such accounts and entries upon request. The lessee shall, if so requested by the lessor at any time, render to the lessor such statements and furnish to the lessor such other information as may be called for with reference to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to:—

Eight. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee or otherwise as herein provided, for the full term of this agreement. But if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of

assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith any or all leases of or licenses to use machinery then existing between the lessor and the lessee, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained, and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or any other lease or license agreement from the lessor, or otherwise in any manner whatsoever, the lessee shall forthwith, at his own expense, deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted and shall thereafter upon demand pay to the lessor such sum as may be necessary to cover replacement of all missing or broken parts at the regular prices established by the lessor therefor; and the lessee, for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power, and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof and take away the same; and the lessee shall have no claim for the repayment of any sum or sums or any part thereof which he shall have paid as consideration for the grant of this lease and license or for rent or royalty or otherwise in respect to the leased machinery.

Nine. In case at any time the leased machinery, or any thereof, shall have parts missing or broken or shall not otherwise, in the opinion of the lessor, be in good and efficient working order and condition, the lessor, without prejudice to any other of its rights or remedies, may forthwith put the same in good and efficient working order and condition, and may replace all broken or missing parts, and the lessee shall forthwith pay the lessor the expense of making such repairs and for all parts supplied at the regular prices established by the lessor for such parts.

Ten. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor, or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Eleven. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof, or of any extension or renewal thereof, of any of said Letters Patent or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release

or discharge the lessee from the admissions and estoppels herein set forth.

Twelve. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Thirteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞If lessee is a corporation, add corporate seal.

[On back:]
United Shoe Machinery Company.
Lease No. . , Lessee.
Date, 19 .
Patent Leather Repairing Machine(s), No(s).

PLAINTIFF'S EXHIBIT 57.

[Put in Evidence, page 406.]

General Department. (1806)

Lease and License Agreement Number .

This Agreement made at Boston, in the State of Massachusetts, this day of , 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines of the General Department of the lessor now or hereafter delivered to the lessee and designated by number or numbers in the following schedule, viz. : —

SCHEDULE OF MACHINES.

Miller Twin Shoe Treeing Machine, No.
Right Tree Leg, No.
Left Tree Leg, No.

and any tree legs, tree feet, tree backs, irons, duplicates, parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, tree legs, tree feet, tree backs, irons, duplicates, parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform : —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither

this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the tree legs, tree feet, tree backs, irons, duplicates, parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery

of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The leased machinery shall not nor shall any part thereof be used in the manufacture of any welted boots, shoes, or other footwear which have been or shall be welted or the soles stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor or in the manufacture of any turn boots, shoes or other footwear the soles of which have been or shall be attached to their uppers by the aid of any turn sewing machinery not held by the lessee under lease from the lessor, or in the manufacture of any boots, shoes, or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed, or otherwise partly made by the aid of any lasting or pegging or "Metallic" machinery or mechanisms not held by the lessee under lease from the lessor.

Five. The lessee shall pay to the lessor immediately after the execution hereof, as a lease premium, the sum of dollars.

Six. The lessor may attach to the leased machinery or any thereof an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with any such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened.

And that the following stipulations and provisions are agreed to:

Seven. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for the full term of this agreement. But if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor,

upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of the lease hereby granted or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the lessee shall forthwith at his own expense deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums or any part thereof which shall have been paid as consideration for the grant of this lease and license or for rent or royalty or otherwise in respect to the leased machinery.

Eight. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Nine. The lessee admits the validity for the full term expressed

in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Ten. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Nine herein.)

No. 543,147, July 23, 1895	No. 589,731, Sept. 7, 1897
No. 543,148, July 23, 1895	No. 589,732, Sept. 7, 1897

No. 543,436, July 23, 1895
No. 556,497, Mar. 17, 1896
No. 564,407, July 21, 1896
Design No. 26,040, Sept. 15, 1896
No. 569,857, Oct. 20, 1896
No. 589,696, Sept. 7, 1897
No. 589,697, Sept. 7, 1897
No. 589,744, Sept. 7, 1897
No. 610,235, Sept. 6, 1898
No. 612,114, Oct. 11, 1898
No. 612,482, Oct. 18, 1898
No. 618,700, Jan. 31, 1899
No. 623,085, Apr. 11, 1899
No. 677,043, June 25, 1901

[On back:]
United Shoe Machinery Company.
General Department.
Miller Twin Shoe Treeing Machine.
Lease No. . , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 58.

[Put in Evidence, page 406.]

Lease and License Number . [2901]

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United-Xpedite Finishing Company, a corporation organized under the laws of the State of Maine, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use Xpedite Finishing Machine No. now or hereafter delivered to the lessee, and also for use in connection with said machine or other like machines held by the lessee under lease and license from the lessor but not otherwise all tools, brushes, brush rolls, beads, duplicates, parts, extras, mechanisms and devices relating to said machine or for use in connection therewith, now attached to or delivered with the said designated machine or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the con-

sent of the lessor and especially does lease to and does license the lessee under its patents to use in connection with said machine or other like machines held by the lessee under lease from the lessor, but not otherwise Xpedite Finishing Tool(s) No(s). (which machine together with all tools, brushes, brush rolls, beads, duplicates, parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, including said designated Xpedite Finishing Tool(s) is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform:—

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor

free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively and shall pay therefor at the regular prices from time to time established by the lessor, all finishing tools, beads, duplicates, parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery with the same force and effect as if the same had been delivered to the lessee upon the execution of these presents, and the numbers of any additional Xpedite Finishing Tools hereafter delivered to or in the possession of the lessee may be inserted herein by the lessor, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease and license hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case the Xpedite Finishing Machine hereby leased shall be lost or destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor the sum of Seventy-five (75) Dollars as partial reimbursement to the lessor for such loss or destruction, and the lessee shall forthwith return whatever remains of the leased machinery to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall

be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The leased machinery shall be used for no other purpose than for polishing or finishing the heels of boots, shoes and other footwear made by the lessee and no Xpedite Finishing Tool held by the lessee shall be used separately or in any manner otherwise than in combination with and as a part of the Xpedite Finishing Machine hereby leased or other like machine held by the lessee under lease from the lessor.

Six. The lessee shall use the leased machinery to its full capacity for polishing and finishing the heels of all boots, shoes, and other footwear made in his factory in the manufacture of which it can be used.

Seven. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one-sixth of one cent

for each pair of heels polished or finished or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof: **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.** The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount to at least Fifty (50) Dollars during each calendar year embraced by this lease and at the end of each calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle.

Eight. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as

rent or royalty, without the right to any discount, one-fourth of one cent per pair for each pair of heels in finishing or polishing or manufacturing or preparing which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of heels in finishing or polishing or manufacturing or preparing which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of heels finished or polished or manufactured or prepared by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books, to be furnished by the lessor, accurate daily records of the number of heels, in polishing or finishing or manufacturing or preparing which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and, in case in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations, and provisions are agreed to: —

Nine. If at any time the lessee shall fail or cease to use exclusively finishing machinery, tools and devices held by him under lease from the lessor for finishing the heels of all boots, shoes and other footwear made by or for him, the lessor, although it may have waived or ignored prior instances of such failure or cessation,

may, at its option, terminate forthwith, by notice in writing this lease and license and any or all other leases or licenses then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and the possession of and full right to and control of all the leased machinery, and all machinery, tools and devices held by the lessee under lease or license from the lessor shall thereupon revest in the lessor free from all claims and demands whatsoever.

Ten. This lease and license shall continue, unless sooner terminated by the lessor by notice or because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. If any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith this lease and license, and also if the lessor so elects any or all other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor or otherwise in any manner whatsoever, the lessee shall forthwith deliver the

leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted; and without prejudice to any other rights and remedies of the lessor hereunder, shall thereupon pay to the lessor the sum of Fifty (50) Dollars as compensation for setting up the leased machinery in his factory, for instructing operators and for deterioration of the leased machinery; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Eleven. A notice in writing, signed by the president, a vice-president, or the treasurer of the lessor or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Twelve. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery or which cover any process in the carrying out of which the leased machinery is intended or adapted to be employed. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant

thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Thirteen. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Fourteen. The term "lessor" shall include the said United-Xpedite Finishing Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument, the day and year first above written.

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Twelve herein.)

No. 557,823.	Feb. 23, 1897.	No. 805,763.	Nov. 28, 1905.
No. 616,432.	Dec. 20, 1898.	Reissue (No. 11,466).	Mar. 27, 1906.
No. 624,741.	May 9, 1899.	No. 824,931.	July 3, 1906.
No. 676,947.	June 25, 1901.	No. 859,104.	July 2, 1907.
No. 699,476.	May 6, 1902.	No. 950,301.	Feb. 22, 1910.
No. 699,628.	May 6, 1902.	No. 959,880.	May 31, 1910.
No. 743,956.	Nov. 10, 1903.	No. 960,391.	June 7, 1910.
No. 743,988.	Nov. 10, 1903.	No. 974,422.	Nov. 1, 1910.
No. 743,993.	Nov. 10, 1903.	No. 993,477.	May 30, 1911.
No. 743,994.	Nov. 10, 1903.	No. 1,024,612.	Apr. 30, 1912.
No. 790,679.	May 23, 1905.	No. 1,025,549.	May 7, 1912.

[On back:]
United-Xpedite Finishing Company.
Lease No. . , Lessee.
Date 19 .
Xpedite Finishing Machine No.
Xpedite Finishing Tool(s) No(s).

PLAINTIFF'S EXHIBIT 59.

[Put in Evidence, page 409.]

Lease No.

Transfer from Lease No.

This Lease and Agreement made the *24th* day of *May* A. D. 1897, by and between the Eppler Welt Machine Company, a corporation organized under the laws of the State of Maine, having a place of business at Boston, Massachusetts, Lessor, the party of the first part, and *P. W. Kane of Geneva N. Y.* Lessee, the party of the second part, witnesseth:

Whereas, the Lessor is now the owner of the following Letters Patent of the United States, viz.: —

No. 325,063, dated Aug. 25, 1885;
No. 387,059, dated July 31, 1888;
No. 487,011, dated Nov. 29, 1892;
No. 409,281, dated Aug. 20, 1889;
No. 507,873, dated Oct. 31, 1893.
No. 387,058, dated July 31, 1888;
No. 447,872, dated March 10, 1891;
No. 487,214, dated Nov. 29, 1892;
No. 498,017, dated May 23, 1893;

And whereas the Lessee desires to use the hereinafter described machines belonging to the Lessor;

Now, therefore, the Lessor, in consideration of one dollar to it paid by the said Lessee, the receipt whereof is hereby acknowledged, and of the stipulations and conditions hereinafter contained on the part of the Lessee to be kept and performed, doth lease unto the said party of the second part the machines designated by their numbers in the following schedule: —

one Eppler Inseam Sewing Machine , No. *111*
one Eppler Outsole Lock Stitch Machine , No. *117*
one Eppler Insole Channeler , No. *70*
~~one~~ Eppler Outsole Channeler , No.

one Eppler Welt Groover and Beveler , No. *96*
one Eppler Welt Splitter , No. *55*
one Eppler Welt Beater , No. *60*
~~Eppler Channel Lip Turner , No.~~
~~Eppler Shank Skiver , No.~~
one Eppler Bobbin Winder , No. *77*

It is understood that said machines are and shall remain the property of said Eppler Welt Machine Company, and subject to the conditions of this lease and agreement.

And the Lessor doth hereby license the Lessee, and the operatives in his employment, to use said machines, upon the terms and conditions hereinafter set forth ; provided, however, and this lease is made and this license is granted on the express condition, that the Lessee shall faithfully keep and perform all the conditions and stipulations herein contained on his part to be kept and performed ; and upon breach of the same or of any of them by the Lessee, the Lessor, its successors or assigns, may, at their option, cancel and terminate this lease and license ; and upon written notice thereof by the Lessor, its successors or assigns, to the Lessee, or to any one in the possession or apparent control of the said machines, or any of them, this lease and license shall terminate, and possession of said machines shall thereupon be transferred to said Lessor, its successors or assigns. And the said party of the second part hereby agrees to keep and perform all the following conditions of this lease and license : —

First. The Lessee is by this lease and license authorized to use the machines hereby leased only in said *Geneva N. Y.* he shall not add to nor subtract from the said machines any mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor make, nor allow to be made, any change or alteration in the same, without the consent thereto in writing by the Lessor, nor interfere with the proper operation of the machines, or any mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers, or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. It shall be lawful for the Lessor, or its duly authorized

agent, at all reasonable times to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to improve the machines, and to affix indicators thereto, as it may see fit; and the covenants, stipulations and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, to indicators now or hereafter affixed thereto, and to all patents hereafter embodied therein, with the same effect as if said patents were included in the list herein set forth.

Third. The following is the schedule of rents or royalties hereinafter referred to, and which it is understood and agreed is to be paid on each pair of shoes or boots respectively made by the aid of these machines or any of them, or by the use of the said patents or any of them, viz.: —

SCHEDULE OF RENTS AND ROYALTIES.

Children's . .	3 cents.	Youths' . .	4 cents.
Misses' . .	4 "	Boys' . . .	6 "
Women's . .	6 "	Men's . .	8 "

Fourth. The Lessee hereby agrees to keep an account of all boots and shoes sewed by him or by any other person for him or for others, by the aid of the machines hereby leased, or by the use of the patents aforesaid and to render an account thereof to the Lessor, its successors or assigns, on or before the tenth day of each month; which account shall specify the number of pairs of boots and shoes, made under this lease and license during the calendar month next preceding, and the class to which they belong according to the above schedule; and the said Lessee agrees that he will require the operator or operators on said machines to keep a daily account of all boots and shoes sewed on said machines, upon the printed forms to be furnished by the Lessor, in duplicate; one copy of which, containing such reports for the calendar month preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor; and whenever required by the Lessor, its successors or assigns, to make oath to the correctness of said returns; and to allow the Lessor, its successors, assigns, or authorized agents to

examine the original books and accounts of the Lessee, in order to verify the returns aforesaid, and the Lessee agrees to send to the Lessor, on or before the tenth day of each month, in case the machines, or any of them, hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, for each such machine, signed by the Lessee, and marked across the face with the words "not running" or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased, the rent or royalty specified in the schedule forming part of Section Third herein, on each pair of boots or shoes of the respective kinds mentioned or described in said schedule made by the aid of said machines or of any of them, or by the use of said patents or of any of them; the rents and royalties for all such boots and shoes made as aforesaid during one calendar month, to be due on the first day of the calendar month next following, and to be paid within three months from that day; but the Lessor hereby agrees that **if the rents and royalties due on the first day of any month shall be paid for on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty per cent. from the rents and royalties specified in the schedule aforesaid; and the Lessee further agrees to pay, while he shall retain possession of the machines hereby leased, all taxes thereon, to whomsoever laid or assessed.** The Lessee hereby further agrees that the rents or royalties actually paid by the Lessee for each sewing or stitching machine herein leased shall, in each and every year, during the continuance of this lease, amount in the aggregate to at least one hundred dollars. The Lessee shall also pay the expense of transportation of the machines herein leased from and to the Lessor's premises, and also the expense of keeping said machines in repair; and shall keep said machines and all of them fully insured in the amounts hereinafter mentioned against loss by fire, and in case of loss of or damage to said machines or any of them shall pay to the Lessor or its order upon demand the full amount of such insurance. The insurance upon said machines shall be in the following amounts, to wit: —

Eppler Inseam Sewing Machine	$250.00
Eppler Outsole Lock Stitch	190.00
Eppler Insole Channeler	50.00
Eppler Outsole Channeler	50.00
Eppler Welt Groover and Beveler	15.00
Eppler Welt Splitter	10.00
Eppler Welt Beater	25.00
Eppler Channel Lip Turner	25.00
Eppler Shank Skiver	35.00
Eppler Bobbin Winder	25.00

Sixth. The Lessee hereby agrees that he will not in any way violate or infringe, or contest the validity of any of the patents he is hereby licensed to use, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents, or either or any of them.

Seventh. This lease and license is not assignable by the Lessee, by his own act or by operation of law.

Eighth. The following are also agreed to by the parties to this instrument as the terms of lease and license of the machines which the Lessee is hereby licensed to use: —

1st. That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machine embodying the patents aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the Lessee is, or becomes at any time, insolvent or bankrupt, or makes an assignment for the benefit of creditors, or if a sale, lease, transfer, or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire; and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums

which he may have paid as consideration for the delivery of this lease and license, or for rent or license under this instrument.

2d. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots and shoes known in the trade as "Eppler Welts," and that he will not use or permit the use of said machines, or either or any of them, upon boots or shoes in the manufacture of which any sole or welt sewing machine not leased to him by the Lessor is employed, or for any other purpose, unless the consent in writing of the Lessor shall first have been obtained.

3d. That in case the Lessee refuses or neglects to perform, or violates any of the terms or conditions of this lease and license, the Lessor, its successors or assigns, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon be transferred to the lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successors or assigns, or its authorized agent or agents, may thereupon enter the premises where said machines may be, and may take and remove the same without being deemed guilty of any trespass; and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license.

4th. That this lease and license shall continue (provided the Lessee complies with the terms and conditions thereof) until the expiration of all the Letters Patent which the Lessee is hereunder licensed to use, or any extensions or renewals of the same, or additional patents; and upon the expiration thereof, the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased, in good order; natural wear and tear alone excepted.

Ninth. In case any other machines than these hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor,

its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions or improvements; and shall govern the parties respectively to the same extent as if the said machines, inventions or improvements had been expressly included in this lease and license. The Lessor shall give written notice of its election as aforesaid within thirty days after it shall have received written notice from the Lessee of the possession of such machines; but may give such notice without having received notice from the Lessee of the possession of such machines.

Tenth. The Lessee agrees that he will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is, or which may be hereafter, placed upon the machines as aforesaid.

Eleventh. All the rights and interests which under this instrument and by reason of the ownership of said machines and patents and patent rights belonging to the Lessor shall be deemed to belong to, and may be enforced in, the names of the Lessor and its successors and assigns, and all the stipulations binding on the Lessee shall be binding on his executors or administrators.

Twelfth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and in case the Lessee shall require more than one machine, it is agreed that the termination to words relating to the machines shall be construed and considered as written in the singular or plural, as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In Witness whereof, the parties aforesaid have hereunto put

their hands and seals; the said parties of the second part binding themselves to all the foregoing agreements, both jointly and severally.

EPPLER WELT MACHINE COMPANY. [SEAL.]
By Walter B. Trowbridge Treas
P. W. KANE. [SEAL]

[Endorsed:]
No.
Name P. W. Kane
Address Geneva, N. Y.
Date May 24, 1897.

Machine.	No.	Page.
Inseam Sewing Machine . .	111	
Outsole Lock Stitch . . .	117	
Insole Channeler . . .	70	
Outsole Channeler . . .		
Welt Groover and Beveler . .	96	
Welt Splitter	55	
Welt Beater	60	
Channel Lip Turner . . .		
Shank Skiver		
Bobbin Winder	77	

PLAINTIFF'S EXHIBIT 60.

[Put in Evidence, page 454.]

This Agreement made this first day of March, A. D., 1899 by and between Louis Goddu, Louis H. Goddu, George Goddu, William Goddu, Napoleon Goddu, and Eloie Goddu, all of Winchester in the County of Middlesex and Commonwealth of Massachusetts, parties of the first part; and the United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey, party of the second part; Witnesseth:

That whereas the said Goddus are the owners either jointly or severally of a majority of the shares of the capital stock of the Goddu Sons Metal Fastening Company, a corporation duly organized and existing under the laws of the State of Maine; and,

Whereas the said Goddus have heretofore jointly or severally invented certain useful improvements and devices relating to shoe machinery and to the manufacture of boots and shoes; and,

Whereas there have been granted to some or all of the said Goddus either jointly or severally Letters Patent of the United States and various foreign countries for certain of the said inventions and improvements; and,

Whereas applications in the names of some or all of the said Goddus either jointly or severally for Letters Patent of the United States and various foreign countries for certain others of the said inventions and improvements are now pending; and,

Whereas the United Shoe Machinery Company is desirous of purchasing all the said shares of capital stock of the said Goddu Sons Metal Fastening Company owned by the said Goddus jointly or severally, and all the said inventions, Letters Patent, and applications therefor, whether of the United States or of any foreign country, and all inventions which the said Goddus may hereafter make either jointly or severally relating to shoe machinery or the manufacture of boots and shoes, or the production or preparation of fastenings or other materials or things used or useful in connection with the manufacture of boots or shoes, for the period of ten (10) years from the date of the execution hereof; and,

Whereas the United Shoe Machinery Company has entered into an agreement with the said Goddus to purchase the stock in the said Goddu Sons Metal Fastening Company and to deliver to the said Goddus certificates of shares of stock of the United Shoe Machinery Company in exchange for the said shares of capital stock of the Goddu Sons Metal Fastening Company owned by the said Goddus at the rate of one dollar in value of the common stock of the United Shoe Machinery Company (each share of the common stock having an agreed value of thirty-five (35) dollars), and one dollar in value of the preferred stock of the United Shoe Machinery Company (each share of the preferred stock having an agreed value of (30) dollars) for each share of the capital stock of the said Goddu Sons Metal Fastening Company; and,

Whereas the United Shoe Machinery Company has further agreed to purchase the said inventions jointly and severally made by the said Goddus by placing in the hands of Sidney W. Winslow, as trustee, an amount of the common and preferred stock of the

United Shoe Machinery Company equal to the preferred and common shares to be issued to the said Goddus in exchange for their shares of capital stock in the Goddu Sons Metal Fastening Company, as recited in the preceding paragraph, such shares of stock to be held by the said Winslow as trustee under the terms of a declaration of trust of even date herewith and annexed hereto;

Now therefore, in consideration of the respective promises and agreements herein contained and of one dollar and other good and valuable considerations to each of the parties hereto by the others in hand paid, the receipt whereof is hereby respectively acknowledged, the said parties covenant and agree as follows, viz.: —

1. The said several Goddus hereby jointly and severally sell, assign, transfer and set over unto the United Shoe Machinery Company, its successors and assigns, all the shares of the capital stock of the said Goddu Sons Metal Fastening Company owned by them either jointly or severally; and they do jointly and severally covenant and agree each for himself and for the others that they are the lawful owners jointly or severally of the number of shares of the said capital stock of the said Goddu Sons Metal Fastening Company set opposite their respective signatures to this instrument, and that the said shares are free from all incumbrances and that they have good right to sell the same, and that the said shares so sold and assigned constitute a majority of the shares of the issued capital stock of the said Goddu Sons Metal Fastening Company and that the total number of shares of the said Goddu Sons Metal Fastening Company is not in excess of fifty thousand of a total par value of five hundred thousand (500,000) dollars; and the said Goddus further covenant that the said Goddu Sons Metal Fastening Company is altogether free from debt and is under no contract or other liability for services heretofore or hereafter to be rendered, or for any other cause or relating to any subject matter whatever;

And for the same consideration the said Goddus have jointly and severally sold, assigned, transferred, and set over, and do hereby jointly and severally sell, assign, transfer, and set over to the United Shoe Machinery Company, its successors and assigns, all inventions and improvements for any and all countries relating in

any way to shoe machinery or to mechanisms or appliances or devices of any sort or kind used or useful in connection with the adaptation of leather to or the manufacture of boots or shoes, or relating in any way to the manufacture of boots and shoes, or to the fastenings or any other materials or things used in the manufacture of boots or shoes, or useful in connection with the manufacture of boots or shoes, or relating to the production or preparation of such machinery, mechanism, appliances, devices, fastenings, materials, or other things heretofore made by any or all of the said Goddus jointly or severally, and all Letters Patent of the United States and of all foreign countries for such inventions or improvements, and all applications for any Letters Patent of the United States and of foreign countries, and all renewals, reissues and extensions of such Letters Patent of the United States and of any and all foreign countries.

And for the same consideration the said Goddus have jointly and severally sold, assigned, transferred, and set over, and do hereby jointly and severally sell, assign, transfer, and set over to the said United Shoe Machinery Company, its successors and assigns, all claims and demands whether at law or in equity which any or all of them jointly or severally now have or may hereafter acquire for any infringement of any or all of the said Letters Patent prior to the date hereof; and the said Goddus hereby jointly and severally authorize the United Shoe Machinery Company to sue for and collect the same, using any or all of their names if need be.

To have and to hold the said inventions, improvements, Letters Patent, applications for Letters Patent, reissues, renewals, and extensions of the said Letters Patent, claims and demands, to the said United Shoe Machinery Company, its successors and assigns, to its and their own use and behoof forever.

But the said Goddus except from the above sale and assignment of inventions and Letters Patent therefor of the United States and of any and all foreign countries, all such inventions and Letters Patent as they have jointly or severally heretofore sold and assigned by written assignments duly recorded to either the trustees of the McKay Metallic Fastening Association, or to the McKay Shoe

Machinery Company, or to the Goddu Sewing Machine Company, or to the Goddu Sons Metal Fastening Company, or to the Goddu Improvement Company, and they also except from the above sale and assignment of claims and demands, all claims and demands for the infringement prior to the date hereof of any and all of the above excepted Letters Patent.

And for the same consideration the said Goddus have jointly and severally sold, assigned, transferred, and set over, and do hereby jointly and severally sell, assign, transfer, and set over to the said United Shoe Machinery Company, its successors and assigns, all right, title and interest in and to any and all inventions which they may jointly or severally hereafter make during the term of ten (10) years from the date hereof, or which, during the same term, they jointly or severally do now or hereafter may have in their possession or control, or in or to which, during the same term, they may jointly or severally have any right, title or interest whatever, whether direct or indirect, which may be necessary or convenient to or for or which relate in any way to shoe machinery or to mechanisms or appliances or devices of any sort or kind used or useful in connection with the adaptation of leather to or the manufacture of boots or shoes or relating in any way to the manufacture of boots and shoes, or to fastenings or any other materials or things used in the manufacture of boots or shoes or useful in connection with the manufacture of boots or shoes, or relating to the production or preparation of such machinery, mechanism, appliances, devices, fastenings, materials, or other things.

And for the same consideration the said Goddus do jointly and severally covenant and agree each for himself and for the others that they and each of them, so far as he is able, will at all times promptly and as often as requested by the said United Shoe Machinery Company, its successors or assigns, communicate to the United Shoe Machinery Company and its patent solicitors and attorneys by means of descriptions, drawings and writings, and exhibit, explain, and describe freely and fully all inventions, improvements, processes, discoveries, and applications for patents

which are or may become subject to the terms of this contract, and will do and perform all acts and give to the United Shoe Machinery Company and its solicitors and attorneys all the information and execute and deliver to the said United Shoe Machinery Company any and all assignments and applications for patents of the United States and all foreign countries, and for reissues, extensions, and renewals thereof, and all other instruments which may be necessary or proper or convenient to permit the said United Shoe Machinery Company, its agents, solicitors and attorneys, conveniently and properly to prepare and file and prosecute applications for and secure to and vest in the said United Shoe Machinery Company the entire right, title and interest in and to, and the enjoyment of, patents of the United States and all foreign countries for and upon all inventions, improvements, processes or discoveries which under and pursuant to the terms of this agreement the said Goddus have conveyed or may hereafter be bound to convey to the said United Shoe Machinery Company, and will execute and deliver all further instruments and do all further acts requested by the said United Shoe Machinery Company, its successors and assigns, which may be necessary or proper or convenient to secure to and vest in the said United Shoe Machinery Company and give it the full benefit and enjoyment of all the inventions, applications for Letters Patent, Letters Patent, renewals, reissues and extensions thereof, and all claims and demands, and all other rights whatsoever, conveyed to it by the terms of this instrument or intended to be hereby conveyed.

And for the same consideration, in order that the United Shoe Machinery Company may derive and secure the fullest benefit and enjoyment from the ownership and control of the inventions and Letters Patent hereby sold and assigned to the said company, the said Goddus hereby jointly and severally covenant and agree each for himself and for the others that for the term of ten (10) years from the date hereof they will not and none of them shall, jointly or severally, directly or indirectly, become financially interested in or engage in the business of making and selling any inventions or improvements relating in any way to shoe machinery or to mechan-

isms or appliances or devices of any sort or kind used or useful in connection with the adaptation of leather to or the manufacture of boots or shoes, or relating in any way to the manufacture of boots and shoes, or to fastenings or any other materials or things used in the manufacture of boots or shoes or useful in connection with the manufacture of boots or shoes or relating to the production or preparation of such machinery, devices, mechanism, appliances, fastenings, materials, or other things, either on their own account or as the employees of any person, firm, or corporation, or as the members of any partnership, or stockholders or officers in any corporation other than the United Shoe Machinery Company, or in any other way, without the consent in writing of the United Shoe Machinery Company; and that they will not and none of them shall do anything either jointly or severally, directly or indirectly, to injure in any way or in any way to threaten injury to the business of the United Shoe Machinery Company relating to the making, use, sale, lease, or exploitation of shoe machinery or relating to methods or processes or devices of any sort for or connected with or incidental to the manufacture of boots and shoes, or relating to any of the inventions sold and assigned to it by virtue of this instrument, or intended so to be sold and assigned to it.

2. The United Shoe Machinery Company covenants and agrees that within five days of the execution of this instrument it will cause to be issued or transferred to each of the said several Goddus fully paid up stock of the United Shoe Machinery Company in exchange for the shares of the capital stock of the Goddu Sons Metal Fastening Company sold, assigned, and transferred by the said several Goddus to the United Shoe Machinery Company at the rate of one dollar in value of the common stock of the United Shoe Machinery Company (each share of the common stock having an agreed value of thirty-five (35) dollars), and one dollar in value of the preferred stock of the United Shoe Machinery Company (each share of the preferred stock having an agreed value of thirty (30) dollars,) for each share of the capital stock of the Goddu Sons Metal Fastening Company.

The United Shoe Machinery Company further covenants and

agrees that in order to pay for the inventions and improvements purchased from the Goddus in accordance with the terms of this instrument, it will issue or caused to be transferred to Sidney W. Winslow, to be by him held in trust, under the terms of the declaration of trust annexed hereto, to secure the faithful performance on the part of the said several Goddus of the agreements, covenants, and guarantees herein made by the said Goddus, an amount of the common and preferred stock of the United Shoe Machinery Company equal to the preferred and common shares of the capital stock of the United Shoe Machinery Company issued or transferred by the United Shoe Machinery Company to the said Goddus in exchange for the shares of the capital stock of the Goddu Sons Metal Fastening Company.

3. As soon as this agreement shall have been duly executed by all the parties and delivered to the United Shoe Machinery Company, the preliminary agreement dated February 24, 1899, entered into between these same parties shall be rescinded and annulled, and shall be destroyed by the United Shoe Machinery Company.

In Witness Whereof the said United Shoe Machinery Company has caused its corporate name and seal to be hereto affixed, and the said Louis Goddu, Louis H. Goddu, George Goddu, William Goddu, Napoleon Goddu, and Eloie Goddu have hereunto set their hands and seals this first day of March, A. D. 1899.

7700 shares	LOUIS GODDU	[SEAL]
5950 "	LOUIS H. GODDU	[SEAL]
5930 "	GEORGE GODDU	[SEAL]
5820 "	WILLIAM GODDU	[SEAL]
6000 "	NAPOLEON GODDU	[SEAL]
6000 "	ELOIE GODDU	[SEAL]

UNITED SHOE MACHINERY COMPANY

[SEAL] By Geo. W. Brown, Treasurer.

10 Cent Revenue Stamp.

Commonwealth of Massachusetts.

Suffolk, ss. Boston, 1st March, 1899.

Then personally appeared the above-named Louis Goddu, Louis

H. Goddu, George Goddu, William Goddu, Napoleon Goddu, and Eloie Goddu, all well known to me, and jointly and severally acknowledged the foregoing instrument to be their free act and deed, before me,

Edward Russell Coffin, Notary Public.

Know all Men by these Presents:

That Whereas, one thousand sixty-five (1065) fully paid shares of the common stock of the United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey, and twelve hundred forty-six (1246) fully paid shares of the preferred stock of the said Company have been issued to me, Sidney W. Winslow, of Beverly, Massachusetts, in accordance with the vote of the directors of the said United Shoe Machinery Company, to hold as trustee for the benefit of Louis Goddu, Louis H. Goddu, George Goddu, Napoleon Goddu, William Goddu, and Eloie Goddu, all of Winchester, Massachusetts, in accordance with and under the provisions of an agreement annexed hereto and of even date herewith, between the said United Shoe Machinery Company and the said Goddus:

Now, therefore, in consideration of the sum of one dollar and other good and valuable considerations to me paid by the said several Goddus, the receipt whereof is hereby acknowledged, I, the said Sidney W. Winslow, do hereby ackowledge and declare that I will and my heirs, executors, administrators and assigns shall hold the said one thousand sixty-five (1065) shares of common stock and the said twelve hundred forty-six (1246) shares of preferred stock of the said United Shoe Machinery Company in trust for the said Goddus; but this trust is nevertheless intended to secure and is conditioned upon the true and faithful observance and performance by the said several Goddus and their respective representatives of all the promises, agreements, covenants, and guarantees contained in the annexed agreements of even date herewith, by the said several Goddus to be observed and performed either jointly or severally; and in case of any default or breach in or of the true and faithful observance or performance by any of

the said Goddus of any such promises, agreements, covenants, or guarantees, the said United Shoe Machinery Company shall, upon its election communicated to me in writing, be entitled to receive from me to its own use and behoof, discharged and free from any trust or condition, one third of each class of the said shares, both common and preferred, held by me as trustee under this instrument, together with all the dividends accruing upon such third of each class of the said shares after the date of such default or breach; and in case of a second or any further or continuing breach or default in or of the true and faithful performance by any of the said Goddus of any such promises, agreements, covenants, or guarantees, the said United Shoe Machinery Company, irrespective of whether or not it has waived the first or any subsequent defaults or breaches, or any part of a continuing breach or default, may entirely and finally determine the trust hereby declared and acknowledged, upon its election so to do, communicated to me in writing; and in event of such an election communicated to me in writing, the said United Shoe Machinery Company shall be entitled to receive from me to its own use and behoof, discharged and free from any trust or condition, all the shares both common and preferred, held by me as trustee under this instrument at the date when its election shall be so communicated to me, together with all the dividends accruing after the date of any such default or breach committed by any of the said Goddus upon which the United Shoe Machinery Company shall elect to determine the said trust.

For the above consideration I do hereby for myself and for my heirs, executors, administrators and assigns, covenant and agree with the said Goddus, their heirs, executors, administrators and assigns, subject to the right of the said United Shoe Machinery Company, as hereinbefore provided, to elect to receive from me, discharged and free from any trust or condition, one third of each class of shares held by me as trustee under this instrument in case of any default or breach committed by any of the said Goddus in or of the true and faithful observance or performance of any promises, agreements, covenants, or guarantees contained in the annexed

agreement of even date herewith by the said Goddus to be observed and performed whether jointly or severally, and subject to the further right of the United Shoe Machinery Company, as also hereinbefore provided, to elect finally and wholly to determine the said trust in case of any second or further or continuing default or breach by any of the said Goddus, I will and my heirs, executors, administrators and assigns shall immediately upon the receipt of any and all dividends on the said shares, both common and preferred, of the capital stock of the said United Shoe Machinery Company, pay over the said dividends to the said Goddus, their heirs, executors, administrators and assigns; and the amount which any one of the said Goddus or his representatives shall be entitled to receive of the total amount of any one dividend paid on the shares so held by me in trust, shall bear the same proportion to the total amount of said dividend as the number of shares of the said United Shoe Machinery Company, issued to him in accordance with and under the provisions of the annexed agreement of even date herewith, bears to the total number of shares so issued to all the said Goddus.

And for the same consideration, I, the said Sidney W. Winslow, do further for my heirs, executors, administrators and assigns, covenant and agree with the said Goddus, their heirs, executors, administrators and assigns, that subject to the right of the said United Shoe Machinery Company, as hereinbefore provided, to elect to receive from me, discharged and free from any trust or condition, one third of each class of shares held by me as trustee under this instrument, in case of any default or breach committed by any of the said Goddus in or of the true and faithful observance or performance of any promises, agreements, covenants, or guarantees contained in the annexed agreements of even date herewith by the said Goddus to be observed and performed whether jointly or severally, and subject to the further right of the United Shoe Machinery Company, as also hereinbefore provided, to elect finally and wholly to determine the said trust in case of any second or further or continuing default or breach by any of the said Goddus, I will or my heirs, executors and administrators shall at the expira-

tion of ten (10) years from the date hereof, transfer and convey, free from any trust or condition, the said shares, both common and preferred, of the capital stock of the said United Shoe Machinery Company to the said Goddus or their representatives as aforesaid, in the same proportions in which the dividends on the said shares of capital stock are to be paid to the said Goddus; and execute and deliver any and all papers which may be necessary or convenient to secure to and vest in the said Goddus or their representatives as aforesaid, in the same proportions, all my right, title and interest which I hold personally or as said trustee in and to the said shares, both common and preferred, of the capital stock of the said United Shoe Machinery Company.

In witness whereof, I, the said Sidney W. Winslow, have hereunto set my hand and seal this first day of March A. D. 1899.

SIDNEY W. WINSLOW. [SEAL]

PLAINTIFF'S EXHIBIT 61.

[Put in Evidence, page 456.]

This Agreement made at Boston in the Commonwealth of Massachusetts, United States of America, this eighth day of June, A.D. 1899, between Marshall Henry Pearson and Charles Bennion, both of Leicester, England, parties of the first part; and the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, party of the second part, Witnesseth:

That Whereas the parties of the first part own or control all of the capital stock of Pearson & Bennion, Limited, a corporation duly organized under the laws of Great Britain, and having a place of business at the Union Works, Belgrave Road, Leicester, England; and

Whereas the party of the second part is engaged in the manufacture and sale of shoe machinery, a large portion of which is protected by British patents;

Now therefore, in consideration of one dollar and other valuable considerations by each of the parties hereto to the other in hand paid, the receipt of which is hereby acknowledged by each of the

parties hereto, said parties of the first part and the said party of the second part do hereby Covenant and Agree with each other as follows, viz. : —

1. The party of the second part shall form or cause to be formed a corporation organized under the laws of Great Britain for the especial purpose of taking over and carrying on the shoe machinery business now carried on respectively by the parties of the first part and the party of the second part. The said corporation shall be organized with common or ordinary shares and preference shares of the par value of £10 each. The common shares shall amount to 20,000 shares of a total par value of £200,000. The preference shares shall amount to 25,000 shares of a total par value of £250,000. The preference shares shall be entitled in each year to a dividend out of the earnings of that year equal to six per cent per annum, and the preference shares shall be preferred as to assets to the extent of their par value, any balance of the assets to belong wholly to the common stock, and said preferred stock shall be redeemable at par at the option of the corporation at any time after the expiration of five (5) years from the date of organization of the corporation.

2. The party of the second part covenants and agrees as soon as said Company shall have been formed, that upon the receipt of 5,000 shares of the preference stock of the said Company of the total par value of £50,000., and also the receipt of 16,000 shares of the ordinary stock of the said Company amounting to a total par value of £160,000., that it will assign, transfer and convey to the said corporation all its British patents (not including, however, the patents of any English colonies or any other countries outside of England, Ireland and Scotland), together with all its accounts receivable and all its leases and all its assets of every sort and kind located in Great Britain at the time of such transfer, except that any accounts due from Pearson & Bennion, Limited, to the Consolidated & McKay Lasting Machine Company shall be still due and payable to that Company, together with the entire goodwill of its English business.

It is further agreed that the new English Company shall have

the option upon paying the expenses of taking out British patents of securing British patents for all inventions belonging to the party of the second part, though the party of the second part does not bind itself to protect the rights of such English patents but only to place such matters in the hands of reputable solicitors and to endeavor to use due care.

3. The parties of the first part hereby covenant and agree that within thirty (30) days after the organization of the corporation hereinbefore provided for, and the transfer to the said corporation of the English business of the said United Shoe Machinery Company, in accordance with the provisions set forth in the section numbered 2 hereof, the said parties of the first part will assign, transfer and convey to the said new corporation in exchange for 4,000 shares of the preference stock of said new corporation of the total par value £40,000, and 4,000 shares of the common or ordinary stock of said new corporation of the total par value of £40,000, the entire right, title and interest in and to the total issued or allotted capital stock of the said Pearson & Bennion, Limited; and the said parties of the first part also agree that at the same time and for the same consideration they will assign, transfer and convey to the said new corporation all Letters Patent for Great Britian and all other countries, and all inventions and all pending applications for patents of Great Britain and all other countries, together with all drawings, models, or experimental machines belonging to the said parties of the first part or either of them, together with their joint or several right, title and interest in any and all contracts or agreements relating to the business carried on by Pearson & Bennion, Limited, or relating in any way to shoe machinery, and the said parties of the first part, for the same consideration, covenant and agree to assign, transfer and convey to the said new corporation any and all inventions which they may hereafter make and which relate in any way to shoe machinery, or to the manufacture of boots or shoes, or to materials used in the manufacture of boots or shoes.

And the said parties of the first part jointly and severally covenant and agree with the said party of the second part that at the time of such transfer to the new corporation of the capital stock of

the said Pearson & Bennion, Limited, the assets of the said Pearson & Bennion, Limited, shall not be less than the assets set forth in the "Schedule of Assets and Liabilities, Pearson & Bennion, Limited," which is annexed to this agreement and made a part hereof, and that the liabilities of the said Pearson & Bennion, Limited, shall not be greater than the liabilities set forth in the said "Schedule of Assets and Liabilities;" and furthermore the said parties of the first part covenant and agree that until said corporation shall have been formed and said assignments made to said corporation, as hereinbefore provided, no profits shall be withdrawn from the said Pearson & Bennion, Limited, but that the said business of the said Pearson & Bennion, Limited, shall be carried on as a going company for the benefit of the said new corporation, which is to own all the capital stock thereof.

4. It is understood and agreed between the parties of the first part and the party of the second part that the free hold property of Pearson & Bennion, Limited, situate at Blue Boar Lane, Leicester, England, which is not included in the said annexed "Schedule of Assets and Liabilities," but which still belongs to Pearson & Bennion, Limited, shall be sold to the said parties of the first part for £4,300, payment of said £4,300 to be made at the time when the parties of the first part assign and transfer the capital stock of said Pearson & Bennion, Limited, according to the terms of section numbered 3 hereof. And it is further understood and agreed that the free hold property known as the Union Works, Belgrave Road, Leicester, England, where the manufacturing of Pearson & Bennion, Limited, is now carried on, and which is referred to in the above schedule of assets but which has not yet been transferred to Pearson & Bennion, Limited, shall be transferred to Pearson & Bennion, Limited prior to the purchase of the capital stock of Pearson & Bennion, Limited hereinbefore provided for. And it is understood that the free hold property, the said Union Works, shall be transferred to Pearson & Bennion, Limited free from all liabilities except that Pearson & Bennion, Limited, shall assume at the time of the transfer of said property the personal liability which Messrs. Pearson and Bennion have jointly

incurred at the Stamford, Spaulding & Boston Bank, Leicester, England, amounting to not more than £17,250, in order to secure said new factory, and that Pearson & Bennion, Limited will also pay to the said Pearson and the said Bennion £1,000 each for cash which they have personally advanced towards the purchase of the said factory and free hold.

5. It is further agreed that the said new corporation shall pay to Messrs. Pearson and Bennion £4,300, it being understood that said payment shall be made at the time that the said parties of the first part assign and transfer the capital stock of said Pearson & Bennion, Limited to said new corporation, in accordance with the terms of the section numbered 3 hereof.

In Witness Whereof on the day and year first above written the said parties of the first part have hereunto set their respective names and seals, and the said corporation, the United Shoe Machinery Company, has caused its corporate name and seal to be hereto affixed by its Treasurer, thereunto duly authorized.

MARSHALL H. PEARSON [SEAL]

CHAS. BENNION [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY

By Geo. W. Brown Treasurer.

SCHEDULE OF ASSETS AND LIABILITIES PEARSON AND BENNION LIMITED.

Liabilities.

To Share Capital authorized, viz.:		
	2,000 shares of 10 each 20,000. 0. 0.	
	of which 1020 are allotted and fully paid up	10,200. 0. 0.
	and 100 Mortgage Debentures of 100 each	10,000. 0. 0.
"	Sundry Creditors,	11,523. 7. 9.
"	M. H. Pearson,	3,653. 4. 10.
"	C. Bennion,	2,327. 2. 8,
	Stamford, Spaulding & Boston bank loan on a/c new factory,	17,250. 0. 0.

M. H. Pearson, loan a/c new factory,		1,000. 0. 0.
C. Bennion, loan a/c new factory,		1,000. 0. 0.
Assets.		
By Union Works, Belgrave Road factory (new factory)		20,000. 0. 0.
" Patent and Trade Marks		1,046. 12. 6.
" Plant & Machinery Leicester	6,596. 19. 2.	
London	138. 10. 0.	6,735. 9. 2.
" Stock in Trade Leicester	13,984. 1. 4.	
London	864. 13. 10.	14,848. 15. 2.
" Fixtures and Fittings London		72. 0. 0.
" Profits for year ending May 31, 1899,		8,000. 0. 0.
" Models & Patterns,		823. 5. 7.
" Sundry Debtors Leicester	21,654. 15. 1	
London	3,194 7. 5	24,849. 2. 6.
" Bills Receivable Leicester	1,503. 12. 11.	
London	404. 0. 1.	1,907. 13. 0.
" Cash at Bank and in hand		
Leicester	859. 8. 9.	
London	244. 5. 6.	1,103. 14. 3.
" Stain Department		1,795. 11. 5.

PLAINTIFF'S EXHIBIT 62.

[Put in Evidence, page 457.]

This Memorandum of Agreement made this 30th day of June 1899 between Silas Pierce and John M. Kingsbury, being the owners of a majority of the stock of the Corrugated Wire Fastening Company, parties of the first part, and Edward P. Hurd, party of the second part, Witnesseth:

That the parties of the first part agree to sell and deliver to the party of the second part all the stock in said Company owned or controlled by them as follows, viz: — the said Pierce two thousand nine hundred and sixty-four (2964) shares and the said Kingsbury

five thousand (5000) shares, for which the said party of the second part agrees to pay the sum of eighty-five cents per share on the delivery of certificates for said stock endorsed in blank and properly stamped, at any time on or before August 10, 1899.

And in consideration of the premises, the party of the second part further agrees that he will purchase any part or the whole of the balance of the stock of said Company, the certificates for which, endorsed in blank and properly stamped, may be tendered to him at the office of Charles M. Reed, 704 Exchange Building Boston at any time on or before August 10, 1899 and that he will pay for the same at the rate of eighty-five cents per share.

In witness whereof the said parties have hereunto and to a duplicate hereof set their hands and seals the day and year above written.

SILAS PIERCE [SEAL]
J. M. KINGSBURY
EDWD. P. HURD

PLAINTIFF'S EXHIBIT 63.

[Put in Evidence, page 458.]

Agreement made this thirty-first day of July, A. D., 1899, by and between the Breach Manufactureing Company, a corporation organized and existing under the laws of the State of Maine (hereinafter called the Breach Company), party of the first part, and United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey (hereinafter called the United Company), party of the second part.

Whereas the Breach Company is the owner of the entire interest in and to Letters Patent of the United States:

No. 318,539 dated May 26, 1885, originally granted to James J. Breach;

No. 318,540, dated May 26, 1885, originally granted to James J. Breach;

No. 589,409, dated September 7, 1897, originally granted to James J. Breach,

and is entitled to the entire interest, within and for the United States of America and the Territories thereof, and foreign countries, in all inventions or improvements made or hereafter to be made by said Breach in machines for rounding or cutting soles for boots or shoes or for cutting patterns;

Now this Agreement Witnesseth:

1. The Breach Company, in consideration of the sum of ten thousand dollars ($10,000) to it paid by the United Company, the receipt of which is hereby acknowledged, and in consideration of the agreements of the United Company herein contained, has granted and by these presents doth grant to the United Company an exclusive license, under the above recited Letters Patent of the United States of America and under such Letters Patent of the United States and of other countries as shall hereafter be granted or assigned to it for inventions or improvements made by said Breach, or in which said Breach Company shall own or acquire the entire or any less interest, to make, use, and sell to others to vend and use during the term or terms for which said Letters Patent No. 589,409 have been or shall hereafter be granted, machines embodying the inventions patented or to be patented in the Letters Patent above recited or referred to, or either or any of them, except that the United Company shall not be licensed hereby to sell, but only to make and use, itself, or by its agents, machines for cutting patterns.

2. The Breach Company agrees that, if it shall neglect or refuse to cause applications for Letters Patent of the United States to be filed for any inventions or improvemants made by said James J. Breach, which said Breach is legally bound to convey to the Breach Company, the United Company, during the term of this license, shall have the right to cause such applications to be filed by said Breach and to prosecute the same. Any and all Letters Patent of the United States obtained upon such applications shall be assigned to the Breach Company; and the United Company, by virtue of this instrument shall be the exclusive licensee thereunder, as if the numbers and dates of such patents were recited in the granting clause of this instrument; but the Breach Company agrees, if

requested so to do by the United Company, to execute and deliver to the United Company, from time to time, as such patents shall be issued, supplemental instruments which shall grant to the United Company an exclusive license under each such patent, describing it by its number and date of grant, subject to the terms and provisions of this instrument.

3. The United Company agrees to keep proper books, in which shall be entered all sales, leases, or other dispositions of machines and parts hereof, and of patterns cut by the aid of pattern-cutting machines made by it under this license, and agrees, in the months of January and July of each calendar year while this license remains in force, to render an account in writing to the Breach Company which shall state all such sales, leases, or other dispositions made of such machines, parts, and patterns, and the gross proceeds thereof received by the United Company during the six calendar months next preceding the month in which such account shall have been rendered, and agrees to pay to the Breach Company in each January and July, beginning with January, 1900, a sum equal to ten per cent (10%) of the gross proceeds of such sales, leases, or other dispositions of such machines, parts thereof, and patterns which shall have been received by the United Company.

4. The United Company agrees not to dispose of or sell patterns made by the aid of the pattern-cutting machines under the above patents for less than seven cents ($.07) apiece, or rounding machines made under the above patents for less than Three Hundred Dollars ($300) apiece, without the written consent of the Breach Company.

5. In the event that the United Company shall fail, after written demand therefor, to render accounts or make payments to the Breach Company as provided in Section Three of this instrument, the Breach Company may (upon reimbursing the United Company for the actual cost to the United Company, without interest, of all Letters Patent which shall have been granted or assigned to the Breach Company under the provisions of section two hereof, and, if the United Company shall so request, upon purchasing from the United Company at cost without interest all patterns and special

jigs and tools procured by the United Company for the manufacture of machines under this license) cancel and terminate this license by giving sixty days' written notice to the United Company of its intention so to do.

6. The United Company may cancel and terminate this license at any time by giving sixty days' written notice to the Breach Company of its intention so to do.

7. In the event of the termination and cancellation of this license by either party, the United Company shall nevertheless be thereafter licensed to complete any and all machines in process of construction at the date of such termination; to make and furnish parts for machines, to repair and replace parts of machines which it shall have disposed of prior to the date of such termination, or shall have completed subsequent to the date of such termination under the provisions of this license; and to use all pattern cutting machines made or which are in process of construction at the date of such termination; but the United Company shall account and pay royalty as aforesaid to the Breach Company upon all such machines and parts thereof, and patterns, made and disposed of subsequent to the termination of this license, as if the same had not been terminated.

8. The Breach Company hereby agrees without further consideration to loan to the United Company all drawings, patterns, special tools and jigs which the Breach Company now has, or which while this license remains in force, it shall hereafter acquire, the same to be retained and used by the United Company so long as it shall desire to retain the same or any of them for the purpose of making machines or parts of machines under this license.

9. The provisions of this instrument incumbent upon or for the benefit of the parties hereto shall be incumbent upon and for the benefit of their respective successors and assigns.

In witness whereof, the said Breach Manufacturing Company has caused its corporate seal to be hereto affixed and these presents to be signed by Elmer Loring, its President and James J. Breach, its Treasurer, and the said United Shoe Machinery Company has caused its corporate seal to be hereto affixed and these presents to

be signed by George W. Brown, its Treasurer, the day and year first above written.

ELMER LORING, President [SEAL]
JAMES J. BREACH, Treasurer.
[SEAL] UNITED SHOE MACHINERY CO.
By Geo. W. Brown, Treas.

At a special meeting of the directors of the Breach Manufacturing Company, duly called, and held at 11 High Street, in the City of Boston in the State of Massachustetts, on the 27th day of July, 1899, at which a quorum was present, and voted in favor of the following resolution, the terms of the foregoing agreement between the Breach Manufacturing Company and the United Shoe Machinery Company, having been submitted to the Board, on motion duly made and seconded, it was resolved: —

That the President and Treasurer of this corporation be, and they hereby are, authorized to execute a certain agreement in writing this day submitted to the Board, granting an exclusive license to the United Shoe Machinery Company under certain letters patent owned by this Company, by affixing the seal of this Company thereto, and by signing the same as such President and Treasurer.

A true copy from the records of the directors of the Breach Manufacturing Company.

THE BREACH MANUFACTURING CO.
[SEAL] James J. Breach, Sec'y & Treas.
Attest. Secretary.

PLAINTIFF'S EXHIBIT 64.

[Put in Evidence, page 458.]

Agreement made this first day of August, 1899, by and between Peter A. Coupal, of Boston, in the County of Suffolk, and State of Massachusetts, of the one part and United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, of the other part.

Whereby it is agreed as follows: —

1. The said Coupal agrees to enter the employment of said Company in its tool department and that he will, while he remains in

the employment of said Company, give his exclusive time, services and skill to said Company in the manufacture of shoe machinery and tools and appliances for the same.

2. The said Company, while said Coupal shall remain in its employ, agrees to pay him the sum of thirty dollars ($30) per week as compensation for his services.

3. In consideration of said employment and of the purchase by said Company from said Coupal of his interests in certain Letters Patent of the United States this day conveyed by him, the said Coupal agrees without further consideration to convey to said Company all improvements or inventions in or relating to shoe machinery, leather working, tools, appliances and methods for the manufacture of shoes or shoe machinery or leather working which he has invented but not patented, and which he shall hereafter, while he remains in the employment of said Company, invent, except his interest in Letters Patent and applications for Letters Patent for the inventions of Edward F. White, for improvements in randing and trimming devices, and to disclose and explain to said Company or its counsel, all such inventions or improvements.

4. And said Coupal, for himself, his executors and administrators, agrees from time to time, and at any time hereafter, if the said Company shall request him so to do, to do all such acts and to execute and make oath to all such applications, specifications, assignments and other written instruments as in the opinion of the counsel of said Company shall be necessary and proper to obtain the grant of Letters Patent for such inventions or improvements both for the United States and for other countries and to vest the legal title to all such applications and patents in said Company, the cost of all such applications and patents to be borne by said Company.

In Witness Whereof the said Coupal has set his hand and seal hereto and said United Shoe Machinery Company has caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by George W. Brown its Treasurer, the day and year first above written.

PETER A. COUPAL. [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY.

By Geo. W. Brown, Treasurer.

PLAINTIFF'S EXHIBIT 65.

[Put in Evidence, page 458.]

Agreement, made this first day of August 1899 by and between William Gordon, of Boston, in the State of Massachusetts, of the one part and United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey of the other part

Whereby it is agreed as follows: —

1. Said Gordon agrees with said Company that he will enter its employment in the management of a department to be organized for the sale of finishing machinery for boots and shoes and such other machines, tools and articles as shall be put in his charge, and that while he remains in the employment of said Company he will render and give his exclusive time and services to said Company under the supervision of its President and General Manager, to the management of said department.

2. The said Company while said Gordon remains in its employment agrees to pay him at the rate of One Hundred and Twenty five Dollars ($125.) per month, and a commission to be hereafter agreed upon, upon the gross proceeds of the sales in the department under his charge.

3. In consideration of said employment and of the purchase by said Company from said Gordon of his interest in certain Letters Patent of the United States and certain machines, and tools this day conveyed by him and Peter A. Coupal, to said Company, the said Gordon agrees to convey to said Company all inventions or improvements in or relating to shoe machinery, leather working, and tools, appliances and methods for the manufacture of shoes and shoe machinery or leather working, which he now owns or which he has invented, or which he shall hereafter, while he remains in the employment of said Company, invent (except his interest in Letters Patent and applications for Letters Patent for the inventions of Edward F. White for improvements in randing and trimming devices) and to promptly disclose and explain to said Company all such inventions or improvements.

4. And the said Gordon for himself, his executors and administrators agrees from time to time hereafter and at all times whenever the Company shall request him so to do, to do all such acts and to execute and make oath to all such applications, specifications, assignments and other written instruments as shall, in the opinion of the counsel of said Company, be necessary and proper to obtain a grant of Letters Patent both for the United States and for other countries for such inventions as the said Gordon has hereby agreed to convey to said Company, and to vest the legal title to all such applications or patents in said Company; the cost of all such applications and patents to be borne by said Company.

In witness whereof the said Gordon has set his hand and seal hereto, and the United Shoe Machinery Company has caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by George W. Brown, its Treasurer, the day and year first above written.

WILLIAM GORDON [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY

By Geo. W. Brown Treasurer.

PLAINTIFF'S EXHIBIT 66.

[Put in Evidence, page 458.]

Know all men that we, Peter A. Coupal and William Gordon, both of Boston, in the County of Suffolk and Commonwealth of Massachusetts, in consideration of one dollar and other valuable consideration to us paid by United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, of Paterson in the State of New Jersey, the receipt of which is hereby acknowledged, have sold, transferred and delivered and by these presents do sell, transfer and deliver unto the said United Shoe Machinery Company the goods and chattels specified and described in the schedule hereto annexed marked "Schedule A", as the same existed on the fifteenth day of July, 1899, we agreeing to deliver to said United Shoe Machinery Company the

proceeds thereof in case any of the articles specified in said schedule have been sold since the date last mentioned.

To have and to hold all and singular the said goods and chattels to said United Shoe Machinery Company and its successors and assigns forever and we do hereby covenant with the vendee that we are the lawful owners of the said goods and chattels and have good right to sell and dispose of the same as aforesaid, that the same are free from all encumbrances and that we will warrant and defend the same against the lawful claims and demands of all persons.

In witness whereof, we hereunto set our hands and seals this first day of August, 1899.

PETER A. COUPAL [SEAL]
WILLIAM GORDON [SEAL]

STOCK ACCOUNT OF MACHINERY, TOOLS, ETC. IN THE FACTORY OF P. A. COUPAL & CO., BOSTON, MASS.

"SCHEDULE A".

1 15 inch by 6 ft. Blaisdell Speed Lathe,	$50.00
1 Luscome Arbor Straightening Press,	30.00
1 Little Slide Rest for Speed Lathe,	8.00
1 Greenard Arbor Press, #3,	10.00
1 Pair Scales,	5.00
1 Hand Forge,—$10.00; 1 Anvil,—$5.60,—	15.60
2 Hammers, 7 pair Tongs, 1 Sledge, hot & cold Chisel,	6.00
1 5 h. p. Brayton Kerosene Engine,	(?) 200.00
Paid $150.00, laid out $70.00, could sell $200.	
1 Emery Wheel and Stand, without Countershaft,	7.00
1 Davis & Egan #4 Turret Lathe, 12″ Un. 2 jaw Chuck Cross Slide,	550.00
1 16″ x 6 Blaisdell Engine Lathe,	125.00
1 13″ x 5 " " "	125.00
1 Davis & Egan Sensitive Spindle Drill,	30.00
1 3 Spindle Drill,	100.00
1 Garvin Hand Miller,	125.00
1 " #1 Universal Milling Machine,	350.00
	1736.60

				1736.60
1 Putnam 22″ x 22″ x 5 Planer,				240.00
1 Power Hack Saw (Miller's Falls)				15.00
1 Snyder Upright Drill, 25″				125.00
1 Whitcomb Crank Planer, 18″ x 18″,				225.00
1 15″ h. p. Crocker & Wheeler Electric Motor,				(?) 250.00
1 Grindstone Frame & Dresser,				25.00
1 Pratt & Whitney #2 Hand Screw Machine, Wire Feed, 19 Spring Chucks,				225.00
1 Garvin Cutter Grinder,				25.00
1 Grinder,				10.00
1 30″ Peck, Stow & Wilcox Squaring Shears,				38.00
1 Gallagher Shears,				5.00
1 Peck, Stow & Wilcox Beading Machine,				20.00
1 Band Saw,				30.00
1 Surface Plate,				15.00
19 3½″ Prentiss & Lewis Swivel Vises, @ $3.00,				57.00
1 ½ Ton Yale & Towne Tackle,				8.00
74 feet (740 lbs.) 1 15/16 turned shafting, @ .02½		18.50		18.38
24 feet (240 ") 1 3/16 C. R. " " .02½		6.00		24.50
1 18″ Boston Hanger 1 15/16 Box,			25%	2.70
8 24″ " " " " "	$3.60			28.80
4 12″ " " " " "	2.28			9.12
4 Brackets, 1 15/16				
2 6″ Boston Hangers 1 3/16 "	1.32			2.64
Pulleys (Wrought Iron)				
2 18×6	@ $7.65	$15.30		
2 20×6	9.00	18.00		
1 12×5		4.80		
4 16×4	5.75	23.00		
3 14×4	5.20	15.60		
2 10×6	4.65	9.30		
1 14×8		7.05		
2 12×6	5.33	10.66		
				3135.74

			3135.74
2 8×3	3.45	6.90	
2 10×3	3.75	7.50	
1 5×8		4.70	
1 12×7		5.50	
1 16×6		6.90	
		$135.21	
	Less 60%	54.08	
	" 25	13.52	
			40.56
Pulleys (Cast Iron)			
3 9×2½	.71	2.13	
11 4½×2,	.50	5.50	
2 3×2	.50	1.00	
2 6×2½	.50	1.00	
1 12×6½		1.58	
2 13×2	2.42	4.84	
1 8×4½		.96	
2 8×3	.89	1.78	
1 13×6		1.70	
1 7×2½		.88	
1 13×4		1.34	
1 10×2½		.90	
1 8×3		.89	
1 6×3½		.77	
1 14×5		1.60	
1 24×4		2.45	
1 10×4		1.11	
1 12×6		1.58	
1 15×4		1.50	
1 24×8		4.02	
1 4×10		1.15	
1 30×6		4.37	
			43.05
			3208.29

3208.29

Pulleys (Wooden)

1 8×5,		$2.80
1 8×6,		3.00
1 13×4,		3.55
1 20×8,		7.60
1 11×5,		3.50
1 17×6,		5.40
1 6×6,		2.75
1 7½×12,		4.50
3 9×4,	@ $2.80	8.40
1 9×6,		3.25
1 11×4½,		3.25
1 3½×3,		1.90
1 12×3,		3.15
1 7×4,		2.45
1 7½×4½,		2.45
1 10×8,		4.00
1 16×4½,		4.15
1 8×4½,		2.60
1 12×4½,		3.40
1 4×4½,		2.10
1 19×6½,		5.90
1 7×5,		2.65
1 14×8,		5.10
1 13×9,		5.20
1 12×4,		3.40
1 10×4½,		3.00
1 10×5,		3.25
1 12×4½,		3.40
1 14×5,		4.00
1 10×4,		3.00
1 4½×6½,		2.40
1 10½×12,		5.40
1 8×5½,		2.80

3208.29

			3208.29
1 7×4½,		2.45	
1 18×4½,		4.70	
1 18×8,		6.70	
		$137.55	
	Less 60 %	54.02	
	" 25 %	13.50	
			40.52
Belting on Machines, Tools & Shafting, etc.			
81 feet 6″	@ .92,	74.52	
215 " 3″	.44	94.60	
240 " 2½″	.36	86.40	
321 " 2″	.28	89.88	
161 " 1½″	.20	32.20	
59 " 1¼″	.16	7.04	
16 " 1″	.12	1.92	
		386.56	
	Less 50 & 10 %	173.95	
	" 50 %	86.97	
			86.97
New Belting.			
125 feet 1″	@ .12	15.00	
75 " 1½″	.20	15.00	
41 " 1-3/4″	.24	9.84	
		39.84	
	Less 50 & 10 %		17.93
Reamers, shell			
1 3″		$9.60	
1 2″		5.20	
1 1½″		3.00	
2 1¼″	@ $2.20	4.40	
1 1 3/16″		2.00	
1 1 1/6″		1.80	
7 1″	1.80	12.60	
			3353.71

			3353.71
2 1¼″	2.20	4.40	
1 1 1/8″	1.90	1.90	
2 9 1/6″	3.20	6.40	
2 ½″	1.40	2.80	
1 7/16″		1.30	
1 11/16″		1.60	
1 1 1/16″		1.80	
		58.80	
	Less 25 & 5%	41.90	
	" 40%		25.14
Hand Reamers,			
1 1 5/8″		7.20	
1 1½″		6.40	
1 1 3/8″		5.60	
1 1 5/16″		5.20	
1 1¼″		4.90	
1 1 3/16″		4.60	
1 1 1/8″		4.30	
2 1″	@ $3.70	7.40	
1 1 1/16″		4.00	
1 7/8″		3.10	
3 3/4″	2.60	7.80	
3 5/8″	2.20	6.60	
4 ¾″	1.90	7.60	
3 7/16″	1.75	5.25	
4 3/8″	1.60	6.40	
2 5/16″	1.50	3.00	
2 ¼″	1.40	2.80	
2 3/16″	1.20	2.40	
1 13/32″		1.75	
1 17/32″		1.90	
		98.20	
	Less 25 & 3	69.97	
	" 40		42.00
			3420.85

3420.85

Rose Chucking.

1 7/8″		1.80	
1 1 1/16″		2.25	
1 1 3/8″		3.00	
1 1 1/4″		2.70	
1 1″		2.10	
1 3/4″		1.60	
1 ½″		1.20	
2 3/8″	@ $1.00	2.00	
		16.65	
	Less 25 & 5	11.87	
	" 40		7.12
Reamers, 23 Taper			8.00
" Shank, 19, miscellaneous ½ to 1¼			10.00

Reamers,— Expansion.

1 1¼″		$9.25	
1 1 3/16″		9.25	
2 1″	@ $9.25	18.50	
1 7/8″		8.25	
1 3/4″		7.50	
1 11/16″		7.50	
1 5/8″		7.25	
1 9/16″		7.25	
1 ½″		7.25	
1 7/16″		7.25	
1 3/8″		6.00	
1 5/16″		6.50	
1 ¼″		5.00	
		106.75	
	Less 25 & 5,	75.01	
	" 40		45.00
			3490.97

3490.97

Twist Drills, Taper Shank.

1 1 35/64″		6.60	
1 1 3/8″		5.20	
1 1 23/64″		5.20	
1 1 15/64″		4.50	
1 1 17/64″		4.65	
1 1¼″		4.50	
1 1 1/8″		3.80	
2 1 7/64″	@ 3.80	7.60	
1 63/64″		9.80	
1 15/16″		2.75	

Twist drills.

1 1 3/16″		4.20	
1 31/32″		2.90	
1 63/64″		9.80	
1 15/16″		2.75	
1 59/64″		9.50	
1 55/64″		9.20	
1 7/8″		2.45	
1 51/64″		8.80	
1 3/4″		1.85	
2 47/64″	@ 8.40	16.80	
1 11/16″		1.60	
1 43/64″		7.80	
1 5/8″		1.40	
2 39/64″	" 7.20	14.40	
1 9/16″		1.20	
2 36/64	" 6.60	13.20	
2 17/64″	" 4.65	9.30	
5 1/2″	" 1.00	5.00	
1 31/64″		6.00	
4 15/32″	" .95	3.80	
2 7/16″	.90	1.80	
			3490.97

			3490.97
2 27/64″	5.60	11.20	
3 13/32″	.85	2.55	
3 3/8″	.80	9.40	
25 5/16″	.70	17.50	
6 Centre Oil Feed Drills, 17/32″		18.60	
		240.60	
	Less 60, 10, 10,	77.96	
	" 25,	19.49	35.29
7 15/64″,	@ .22	$1.54	
8 #1,	.22	1.76	
5 3,	.22	1.10	
5 4,	.22	1.10	
3 5,	.22	.66	
6 6,	.21	1.26	
2 7,		.42	
3 8,		.63	
3 9,		.63	
6 10,		1.26	
8 11,	.20	1.60	
9 12,		1.80	
6 13,		1.20	
1 14,		.20	
7 15,		1.40	
5 17,	.19	.95	
4 18,		.76	
11 19,		2.09	
1 20,		.19	
6 21,	.17	1.02	
1 22,		.17	
3 23,		.51	
4 24,		.68	
3 25,		.51	
4 26,	.15	.60	
6 27,		.90	
			3526.26

			3526.26
7 28,		1.05	
5 29,		.75	
7 30,		1.05	
12 31,	.14	1.68	
2 32,		.28	
2 33,		.28	
4 34,		.96	
2 35,		.28	
1 36,	.12	.12	
4 37,		.48	
2 38,		.24	
7 39,		.84	
6 40,		.72	
5 41,	.10	.50	
4 42,		.40	
2 43,		.20	
5 44,		.50	
4 45,		.40	
8 46,	.09	.72	
8 47,		.72	
5 48,		.45	
7 49,		.63	
11 50,		.99	
5 51,		.45	
4 52,		.36	
4 54,		.36	
5 55,		.45	
15 56,		1.35	
6 57,		.54	
7 58,		.63	
6 59,		.54	
6 60,		.54	
		44.50	
	Less 60, 10 & 10		14.42
			3538.68

			3538.68
Taps, — Pipe.			
1 3/4″		$2.50	
1 1″		3.12	
1 1/2″		1.87	
1 3/8″		1.50	
1 1/4″		1.25	
1 1/8″		1.12	
		11.36	
	Less 60 & 5	4.31	
	" 25,		3.23
Dies for Pipe Taps,			
1 3/8″		9.50	
1 1/4″		9.50	
1 1/8″		9.50	
		28.50	
	Less 60 & 5	10.83	
	" 25		8.12
8 Odd Taps,			5.00
Taps,			
1 1″		2.00	
2 3/4″	@ 1.20	2.40	
3 5/8″	.90	2.70	
2 9/16″	.80	1.60	
14 1/2″	.70	9.80	
4 7/16″	.60	2.40	
16 3/8″	.55	8.80	
14 5/16″	.50	7.00	
13 1/4″	.45	5.85	
14 #14,	.38	5.32	
9 10,	.35	3.15	
4 6,	.35	1.40	
1 1/8 x 40,		.35	
		52.77	
			3555.03

		3555.03
Less 60 & 5	20.05	
" 50		10.03
Arbors, 58 Miscellaneous, ¼" to 1 7/8		25.00
1 5/16		.38
Drills, 40 Long & Extension,		14.00
Boring Bars, 50,		10.00
Cutters, Stem, Miscellaneous,		15.00
" Slotting, 1, 3" x 1/8		1.00
Counterboards,— miscellaneous,		15.00
3 Tap Wrenches,	@ 1.25	3.75
1 Nicholson File Holder,		.75
4 Wood Hand Screws,	.25	1.00
1 Clapp & Whitney Com. Rest with Grind Attach.		10.00
1 Belt Stripper,		.50
4 Xurnel Holders with Kurnels,	.50	2.00
1 Washer Stripper,		.50
1 Boring Tool Holder with Boring Tools,		.50
10 Socket Wrenches,— miscellaneous,		2.00
15 Small Dies with Holder, 13/16	.20	3.00
8 " " " " 1 1/2	.35	2.80
3 " " 2¼	.50	1.50
16 Misc. Reamer Guides,	.15	2.40
21 Brown & Sharpe Gear Cutters	1.00	21.00
79 Misc. Milling Cutters,		15.00
1 Pair Counter Scales,		5.00
5 Hack Saws,	1.50	7.50
11 Flat Chucking Drills,	.35	3.85
8 Misc. Emery Wheels,		6.00
1 Morse Twist Drill Gauge,		.50
3 Sets of Figures & 1 Alphabet		4.00
1 Alphabet, 5/16		2.50
1 Drafting Protractor, B. & S.		6.00
1 Height Gauge,		20.00
		3758.11

			3758.11
Plugs & Rings.— Standard.			
1 1/4″		13.50	
1 1/8″		12.50	
1″	$11.50 1/2	5.75	
7/8″		10.00	
3/4	9.00 1/2	4.50	
11/16″		8.50	
5/8″	8.00 1/2	4.00	
9/16″	7.50 1/2	3.75	
			62.50
Snap Gauges.			
3/16″		2.00	
3/8″		2.30	
9/16″	2.60 1/2	1.30	
13/16″		3.00	
15/16″		3.20	
1	3.30 1/2	1.65	
1 1/8″	3.50 X	3.50	
			15.95
219 Lathe Tools, 31 Screw Mach. Tools, 250 @ .25			62.50
Chucks.			
4½″ Weir,	@ 4.05	16.20	
7 3/8″ Weir	3.38	23.66	
2 1″ Little Giant	4.88	9.76	
1 4 jaw Ind. Whiton,		8.25	
1 7″ 4 jaw, Universal,		.90	
1 8″ 4 " Ind. Universal,		8.25	
1 12″ 4 " " "		11.25	
1 16″ 4 " " " Nat'l		10.00	
1 4½″ 2 jaw Cushman		5.85	
			103.12
Hand Tapping Machine, 6 Spindles,			20.00
Backing Off Device with Leaders, etc., for Backing off Cutters, 4 part Randall			50.00
			4072.18

		4072.18
2 Automatic Die Holders, for Davis & Egan Screw Mch.		
2 Automatic Die Holders, for B. & S. Mch.		
1 Small Die Holder for Pratt & Whitney,		$43.00
1 Large Box Tool Pratt & Whitney,		50.00
4 Colets, Davis & Egan Mch.	@ $2.00	8.00
34 Screw Mch. Dies	.60	20.40
1 Brown & Sharpe Box Tool,		14.00
1 Expanding Chucking Reamer, 1 7/8″ up,		15.00
8 Straight Collets	.50	9.00
4 Turning Tools for Screw Mch.	3.50	14.00
1 Armstrong Boring Tool	1.50	1.50
1 Box Tool for Rounding Ends of Pins, D. & E. Mch.		2.00
3 Counterboards,		5.00
2 Fan. Tools D. & E. Mch.	5.00	10.00
6 Sets Cast Iron Jaws for Chucks	1.00	6.00
8 " Jaws, Small Chucks,	1.00	8.00
9 Collets for #2 Screw Mch.	1.00	9.00
Misc. Rose Reamers, Flat Chucks, Drills, Counter-Boards, Taps, Cluted Chuck Drills, Split Collars for Drills		22.00
2 Sewing Machines, Universal Feed, 1 Union,		(?) 15.00
1 Rag. Brush		1.00
2 Wool Brushes	.50	1.00
63½ lbs. Spring Wire, fine		
123 lbs. " " Coarse, 186½ lbs.	@ .05	9.33
6 " Copper Wire	@ .34	2.04
24 " Brass	@ .18	4.32
2 3/4 lbs. Music Wire	.75	1.97
1 Broken Roll Emery Cloth,		1.50
445 lbs. Machine Steel,	" .16	71.20
740 " Bessener Steel	" .02½	18.50
208.5 lbs. Tool Steel	" .20	41.70
		4385.54

		4385.54
20 lbs. Sq. & Hex. Brass	@ .25	5.00
21 " Brass Tubing,	" .35	7.35
40 1/2 lbs. Brass, solid,	" .25	10.12
102 lbs. Crucible Steel,	" .10	10.20
66 lbs. Bess. Steel,	" .02½	1.65
8 Bess. Steel Shafts, 1/2 finished,	" .205	1.64
16 lbs. Cast Iron Socket Wrenches,	" .05	.80
196 " Steel Castings,		
2 Surface Plates,	" 6.00	12.00
10 gal. Lard Oil	.45	4.50
10 " Lu. Oil,	.34	3.40
2 Oil Tanks,	1.00	2.00
1 Water Tank		1.00
52 lbs. Bess. Steel,	.025	1.30
10 pair Hand Screws, 8"	.25	2.50
25 Dogs,		15.00
Straps, Parallel Pinch Pieces, Tool Holders, Planer Bolts, etc.		15.00
C. Clamps,		10.00
8 Misc. Angle iron,		13.00
1 Planer Shoe, 4 feet x 14"		18.00
1 " " 18" x 10"		5.00
2 " " 12" x 4"	@ 2.50	5.00
1 Surface Plate,		12.00
1547 lbs. Scrap iron,	.45 c.w.t.	2.47
38 lbs. Hard Metal,	.36	13.68
230 Scrap Brass,	.09	20.70
240 " "	.10	24.00
Tools for, but not owned by, the Rockingham Co.		75.00
Washington Light Tools,		66.40
" " Patterns,		150.00
Gas Stove		1.00
Gas Fixtures		10.00
		5025.75

			5025.75
Files,			
10″ flat Bastard, —	47,	$6.00	
10″ Mill "	31,	3.75	
6″ " "	6,	.45	
12″ round "	12,	2.10	
11″ square "	4,	.60	
10″ one-half round,	9,	1.20	
12″ square,	2,	.18	
10″ round,	1,	.15	
10″ square,	2,	.20	
12″ round,	3,	.56	
8″ one-half round,	24,	2.70	
11″ " " "	2,	.18	
12″ #4 Swiss,	1,	.09	
7″ square, Swiss,	14,	.98	
4″ #4, one-half round, Grobert,	5	.33	
Die Sinking Files,	5	.60	
7″ round, Swiss,	8	.80	
		20.87	20.87
60 8″ Star Hack Saw Blades,		@ .50 doz.	2.50
60 15″ X. L. " " "		.50 "	2.50
4 Oil Cans,		.25	1.00
1 Diamond Dresser,			5.00
Misc. Milling Machine Arbors,			10.00
Garvin Cam Cutter Attachment,			130.00
Wire Cutter,			2.00
Screw Slotting Device,			4.00
1 Monkey Wrench,			1.00
4 Strips for Cushman Chucks,		"3.00	12.00
124 feet Bench & Overhead Work,			50.00
Sink, Piping & Fixtures,			15.00
1 Wardrobe,			2.00
1 Chest & Woodwork Tools,			15.00
			5298.62

			5298.62
Foot Bellows, Piping, Soldering Iron,			12.00
Nail Puller, Stillson Wrench,			3.00
1 National Sewing Machine,			10.00
1 Test Pump,			10.00
1 Screw Machine Countershaft,			4.00
2 Waste Barrels,			2.00
Washington Light Parts,			
500 Safety Couplings,	@ .05	$25.00	
222 Needle Valves,	.36	79.92	
5 Doz. Screws for Drip. Cup. Doz.	.50	2.50	
300 Cap Screws #32,	.05	15.00	
75 Sets Pump Supports,	.25	18.75	
76 " #8	.05	3.80	
42 #22	.06	2.52	
23 #19	.06	1.38	
75 #25	.15	11.25	
149 #9	.10	14.90	
15 #16	.25	3.75	
108 #24, two-thirds finished,	.10	10.80	
77 #28	.25	19.25	
65 #13	.30	19.50	
78 #34	.12	9.36	
28 #24	.15	4.20	
100 #35	.40	40.00	
75 #5	.10	7.50	
69 #27	@ .12	$8.28	
198 Pieces Celluloid,	.04	7.92	
76-16A	.25	19.00	
459 #12	.05	22.95	
12 #3	.25	3.00	
81 #20	.60	48.60	
27 #15	.25	6.75	
			5339.62

			5339.62
15 #2	.20	3.00	
3 Tank Valves, Complete	3.49	10.47	
73 # 23 " " bodies,	2.00	146.00	
89 #10,	.06	5.34	
58 #33,	.20	11.60	
70 #4,	.15	10.50	
22 1/2 lbs. Lead Pipe,	.065	1.46	
75 Filters, #17,	.10	7.50	
73 #31,	.55	40.15	
54 #1,	.50	27.00	
54 #2,	.20	10.80	
54 #3,	.25	13.50	
53 #11,	.02	1.06	
31 # 7,	.07	.93	
60 pieces each #14 @ .35			
15 " .25			
16 " .25	.85	51.00	
30 #21	.05	1.50	
94 Pins for #21	.01	.94	
46 #18	.07	3.22	
48 lbs. Castings,	.27	11.56	
20 " "	.36	7.20	
620 Air Tubes.	.02	12.40	
135 Crowns, half finished,	.50	67.50	
17 Cages & Bands,	.58	9.86	
100 Bands,	.13	13.00	
2 3/4 lbs Wire,	.34	.95	
75 rings,	.05	3.75	
		878.07	
	Less 10%	87.81	
			$790.26
Economy Cementer Parts,			
32 Press Gauges	@ $1.35	43.20	
48 Stop Cock Valves,	.55	26.40	
			6129.88

			6129.88
14 Pump Clamps,	.05	70.00	
18 Long Nipples,	.03	.54	
7 Treadles, comp.	.25	1.75	
17 Sets Adj. Screws,	.05	.85	
24 Brushes	.38	9.12	
8 Pump Valves,	.25	2.00	
28 Checks,	.06	1.68	
23 Pump Cylinders,	.25	5.75	
6 " Plungers, comp.	.50	3.00	
25 Cover Binders,	.25	6.25	
10 Pump Levers,	.25	2.50	
11 Brush Valve Levers,	.10	1.10	
5 Straps for Cover,	.20	1.00	
6 Chains,	.30	1.80	
8 Covers,	.40	3.20	
20 pc. Leather Packing,	.08	1.60	
16 Pins for Pump Lever,	.05	.80	
50 Packings,	.02	1.00	
30 Valves,	.33	9.90	
34 Brush Holder Castings, 8 1/2 lbs.	.27	2.30	
10 lbs. Brass Tubing	.35	3.50	
8 Fire Buckets,	.15	1.20	
			131.14
Rockingham Stock			
63 Feed Wheels	@ .22	$13.86	
20 Sets Brush Flangers,	.12	2.40	
1 #8 Burnisher & 2 Castings,		2.00	
50 Brass Castings,	.27	13.50	
123 lbs. Cast Iron			
156 " " " 288 lbs.	.035	10.08	
40 Castings, Cast Iron,	.05	2.00	
40 " " "	.10	4.00	
			6261.02

			$6261.02
37	.05	1.85	
6 Shipper Parts,	.15	.90	
19 Castings,	.12	2.28	
24 "	.10	2.40	
13 R. #100	.30	3.90	
Rockingham Finished Parts			
15 #355	.50	7.50	
5 #426		15.45	
24 #412	.305	7.32	
44 #357	.27	11.88	
39 #236	.27	10.53	
3 #347	.41	1.23	
27 #244	.24	6.48	
40 #384	.91	36.40	
9 #441	1.08	9.72	
2 #121	1.68	3.36	
9 #217	1.02	9.18	
20 #501	1.83	36.60	
21 #502	1.67	35.07	
15 #218	1.08	16.20	
5 #220	1.78	8.90	
4 #219	1.35	5.40	
10 #351	.75	7.50	
1 #404	1.69	1.69	
2 #405	1.03	2.06	
12 #219, two-thirds finished	.93	11.16	
30 #294	.64	19.20	
11 #293	.64	7.04	
35 #71	.08	2.80	
23 #164	.27	6.21	
5 #301	.51	2.55	
8 #181	.46	.92	
13 #84	.20	2.60	
			6261.02

			6261.02
115 #194	.08	9.20	
16 #190	.06	.96	
16 #624	.60	9.60	
32 #99	.45	14.40	
7 #247	.34	2.38	
5 #134	.15	2.25	
5 #248	.635	3.18	
38 #126	.37	14.06	
10 166A	.25	2.50	
17 #509	.40	6.80	
21 #298	.43	9.03	
28 #295	.15	4.20	
3 #28	.42	1.26	
5 #283	1.00	5.00	
44 #103	.22	9.68	
164 #265	.64	104.96	
17 #655	.07	1.19	
18 #297	.07	1.26	
13 #314	.50	6.50	
3 #62, (61, 62, 63)	.40	1.20	
28 #66	.36	10.08	
9 #116	.20	1.80	
55 #241	.24	13.20	
13 #620	2.00	26.00	
8 #242	.50	4.00	
			609.11
5 #246	@ $1.20	$6.00	
1 #47		5.00	
11 #197	1.14	12.54	
5 #221	1.14	5.70	
25 each (#308 & 309)	.69	17.25	
7 #434	2.60	18.20	
2 #464	2.70	5.40	
			6870.13

			$6870.13
29 #481 Comp.	.34	9.86	
4 #145	3.00	12.00	
6 #140	.80	4.80	
29 #482	.25	7.25	
22 #472	.29	6.38	
24 #367	.80	19.20	
14 #448	.50	7.00	
6 #394, Comp.	.60	3.60	
27 B			
26 C			
29 D 82 Heel Plates,	.20	16.40	
10 #303 A	.15	1.50	
11 #78	.13	1.43	
99 #478	.56	55.46	
24 #4826	.07	1.68	
28 #558	.05	1.40	
28 #559	.05	1.40	
22 #348	.75	16.50	
7 #105 A	.20	1.40	
22 #244	.24	5.28	
4 #475	.20	.80	
41 #474	.13	5.33	
15 #473	.31	4.65	
50 #249	.64	32.00	
9 #237	1.20	11.80	
52 #348	.38	19.76	
44 #182	.25	11.00	
10 #238	1.00	10.00	
12 (#471 A & 475 comp.)	3.20	38.40	
13 #598	.19	2.47	
12 #590	.19	2.28	
53 #543	.07	3.71	
143 B 20	.14	20.02	
23 B 20 C	.20	4.60	
			6870.13

				6870.13
1 B 20 F			.15	
33 B 19		.14	4.62	
1 B 19 C Spec.			.15	
24 B 19 C C		.15	3.60	
4 B 19 C C #5		.15	.60	
26 B 19 S 5		.15	3.90	
10 B 19 #5		.15	1.50	
22 B 19 C		.15	3.30	
8 B 19 C C #5		.15	1.20	
8 D 19		.15	1.20	
60 Mixed Wheels,		.15	9.00	
7 #432		5.09	35.63	
21 Ryders		.15	3.15	
5 B 17 C C		.15	.75	
13 D 18 C		.15	1.95	
18 D 18 C #5		.15	2.70	
15 B 18 C U C		.15	2.25	
122 B. 19 C		.15	18.30	
114 B 18		.14	15.96	
101 B 18 C		.15	15.15	
26 Brushes	Doz.	15.00	32.50	
8 "	"	12.00	8.00	
4 "	"	12.00	4.00	
3 #3	"	24.00	6.00	
3 6 x 4	ea.	13.60	10.80	595.69
13 Brushes	Doz.	$7.00	$7.58	
3 "	"	18.00	4.50	
12 #407		.375	4.50	
58 #57		.03	1.74	
65 Screws Rander,		.10	6.50	
45 " Adj.		.10	4.50	
16 Heel Seat Cutters		3.91	62.50	
				7465.82

			7465.82
132 4 Part Rander Cutters	.75	99.00	
13 #104 1/2 finished,	.525	6.83	
21 #234	.65	13.65	
4 #4 Burnishers Stands	2.00	8.00	
6 #3 Beaders	4.00	24.00	
21 6 foot Shafts,	6.00	126.00	
2 6-foot Shafts, 2/3 finished	4.00	8.00	
6 #1 Beaders,	5.00	30.00	
1 #8 Burnisher,		8.00	
9 Frictions, 8″ Brush,	1.50	13.50	
2 Tapley Burnishers,	70.00	140.00	
4 #4 Beaders	10.00	40.00	
1 Second hand Buffing Machine		10.00	
1 Gordon Heel Burnisher,		3.00	
1 Old Style Tacker Stand,		2.00	
1 Rolling Machine,		10.00	
1 6-foot Finishing Shaft with Beading & Finishing Roll,		20.00	
23 Soapstones,	.80	18.40	
2 Carburette Pumps,	5.00	10.00	
1 " Comp.		15.00	
8 " Tanks,	10.00	80.00	
1 #5 Burnisher,		100.00	
15 Heel Scourers,	35.00	525.00	
16 #5 Beaders,	10.00	160.00	
7 Heel Seat Trimmers,	40.00	280.00	
12 Rockingham Edge Setters,	65.00	780.00	
1 " " " Unfin.		40.00	
4 Shawmut Edge Setters, rebuilt,	20.00	80.00	
Labor on Rockingham Buffer,		10.00	
1 Heel at Grinder,		20.00	
1 Second hand #3 Rockingham Burnisher,		15.00	
2 Rapid Inseam Trimmers	50.00	100.00	
1 Vose Heel Randing Machine, second hand,		20.00	
			7465.82

				7465.82
1 Blower,			8.00	
1 Julian Inseam Trimmer,			65.00	
13 Economy Cement Pots,		15.00	195.00	
1 Sample Heel Scouring Wheel,			4.00	
8 lbs. Composition Castings,		.27	2.16	
1425 Edge Setter Springs, #480		.05	71.25	
2 1/2 lbs. Rubber Tubing,		.45	1.12	
1 Welt Polishing Machine,			40.00	
75 1/4″ Bolts,	Cwt.	.60	.45	
Lumber, 500 feet,			8.00	
Shop Office Fixtures,				
1 Drawing Table,		5.00		
1 Safe		14.00		
1 Roll Top Desk & Chair,		11.50		
1 Chair & Stool,		.75	31.25	
				3333.43
				$10799.25

PLAINTIFF'S EXHIBIT 67.

[Put in Evidence, page 458.]

Agreement made this sixteenth day of August, 1899, between Timothy A. Bresnahan, of Boston, in the State of Massachusetts, of the first part and United Shoe Machinery Company a corporation organized and existing under the laws of the State of New Jersey, hereinafter called the United Company, of the second part.

1. Said Bresnahan agrees to sell and the United Company to purchase a certain piece or parcel of land with the buildings thereon situated on the Westerly side of Boston Street in that part of said Boston called South Boston, bounded and described as follows:

Beginning at a point at the Southerly corner of the granted premises and the Easterly corner of land formerly of Pratt and running thence Northwesterly on said land formerly of said Pratt 125.72 feet to land formerly of the Boston Wharf Company, thence turning and running Northeasterly on said land formerly of the Boston Wharf Company 51 feet to land formerly of Sanborn,

thence turning and running Southeasterly on said land formerly of Sanborn 122.17 feet to Boston Street, thence turning and running Southwesterly on said Boston Street 61.65 feet to land formerly of Pratt and the point begun at, and containing 6792 square feet, being the same premises conveyed to said Bresnahan by deed of John J. Merrill, dated May 23, 1892, recorded with Suffolk Deeds Libro 2061, page 550.

Said premises are to be conveyed within ten days from this date by a good and sufficient warranty deed of the said Bresnahan, conveying to said United Company or to such person or corporation as the United Company shall in writing designate as grantee a good and clear title to the same free from all incumbrances. Full possession of the said premises subject to the rights of the Boston Shoe Tool Company as tenant is to be delivered to the grantee at the time of the execution of this agreement. The deed is to be delivered to the grantee and the consideration, hereinafter mentioned, paid at the office of said United Company, 111 Lincoln Street, Boston, Mass.

2. The said Bresnahan agrees to sell, and the said United Company to purchase, the machines, tools and other chattels specified in an account of stock of T. A. Bresnahan, taken June 10, 1899, a copy whereof is hereto annexed marked "Schedule A" (said machines, tools and chattels being situated in the machine shop on the real estate hereinbefore described), and all other machines, tools or chattels owned by said Bresnahan, which are in said shop.

3. Said Bresnahan agrees to sell and the said United Company to purchase, the entire capital stock of the Boston Shoe Tool Company, a corporation organized and existing under the laws of the State of Maine, of Portland, in said State, said capital stock being divided into 5000 shares of the par value of $10.00 each.

The transfer of the certificates of said stock shall be made as of August 1st, 1899, and said Bresnahan warrants that said corporation is free from debt except the indebtedness incurred or contracted since July 31st 1899, and that the property of said corporation is free from all liens or incumbrances. It is understood and agreed that said Boston Shoe Tool Company shall pay to said

Bresnahan a sum equal to the cash in its treasury on August 1st 1899 and all accounts and bills receivable and claims payable to it, which were outstanding on August 1st 1899.

Said Bresnahan also warrants and represents that the machines, tools and personal property specified in Schedule B annexed hereto were consigned by said Boston Shoe Tool Company to Thomas Turner of Leicester, England, and if not disposed of by him are in his possession at No. 9 Newark Street, in said Leicester, and that said Boston Shoe Tool Company is the owner of said consigned goods, or if the same have been sold or otherwise disposed of, that it is entitled to the proceeds thereof, less the proper charges and commissions of said Turner, as its consignee or agent.

4. Said Bresnahan agrees for the term of two years from the date hereof to give the United Company the benefit of his services in the management of the business of the said Boston Shoe Tool Company, and in developing and increasing its business, and in devising and perfecting improvements in its products, and in tools and methods for the manufacture of the same, and during that period, to give to the United Company, or to said Boston Shoe Tool Company, as the said United Company shall elect, the benefit of any improvements or inventions which he shall devise or make in or relating to boot and shoe or leather working machinery, machines, tools and appliances made or dealt in by the United Company, or by either or any of the corporations controlled by the United Company, and to promptly disclose and explain to the officers of said United Company all such inventions and improvements and from time to time and at all times whenever the Company shall request him so to do, to do all such acts and to execute and make oath to such applications, specifications, assignments and other written instruments as shall in the opinion of the counsel of said Company be necessary to obtain the grant of Letters Patent both for the United States and for other countries for such inventions or improvements, and to vest the legal title to all such applications and patents in the United Company, or in such persons or corporations as it shall direct; the cost of all such applications and patents to be borne by the United Company.

5. Said Bresnahan is to covenant and agree that he will not hereafter engage in, nor directly or indirectly aid, assist or encourage anyone to engage in the manufacture of heel trimming, edge trimming or edge setting machines and tools, cutters or irons for heel or edge trimming or edge setting or of any of the machinery, machines, tools and products now made by him or by said Boston Shoe Tool Company, and that he will do no act directly or indirectly to aid, assist or encourage any competition with said Boston Shoe Tool Company or its business or any infringement of its trade marks, trade names or patents; and that he will do everything in his power to promote the interests of the United Shoe Machinery Company.

6. Said Bresnahan as an officer of said Boston Shoe Tool Company agrees to use his best efforts to purchase on terms and at prices approved by said United Company, the business of any persons, firms or corporations engaged in a like or similar business to that now carried on by said Boston Shoe Tool Company, and the patterns, special tools, parts of machines used by them in the manufacture of cutters, trimmers, and edge trimming and edge setting and heel trimming machines or tools, and the stock of such machines, cutters, trimmers or tools on hand, or in process of construction, together with the goodwill of such businesses and Letters Patent, trade marks and trade names employed by them in carrying on such businesses.

7. Said United Company upon the delivery to the grantee designated by it of a deed of said real estate as hereinbefore provided for, and upon the delivery to it of certificates for 4997 shares of the stock of said Boston Shoe Tool Company duly endorsed for transfer, and an agreement to cause to be delivered certificates for the other three shares of the capital stock of said Company, duly endorsed, when the same can be found; and upon the execution and delivery to it or to a vendee designated to it by said Bresnahan of a bill of sale of the machines, tools and other chattels referred to in paragraph 2 of this agreement; and upon the execution and delivery by said Bresnahan to it of an agreement containing the covenants and agreements on his part to be performed mentioned

in paragraphs 4, 5, and 6 of this instrument, agrees to issue and deliver or cause to be issued and delivered to said Bresnahan 1960.78 shares of the Preferred Capital Stock of said United Shoe Machinery Company, together with a bond or agreement of said United Company agreeing to pay to said Bresnahan, or his order, the sum of $23,000. in instalments of $2875. each, quarterly, as follows:—

On the first day of November 1899	$2875.
On the first day of February 1900	2875.
On the first day of May 1900	2875.
On the first day of August 1900	2875.
On the first day of November 1900	2875.
On the first day of February 1901	2875.
On the first day of May 1901	2875.
On the first day of August 1901	2875.

In Witness Whereof said Bresnahan has set his hand and seal hereto and said United Shoe Machinery Company has caused its corporate seal to be affixed hereto and these presents to be signed by George W. Brown, its Treasurer, the day and year first above written.

TIMOTHY A. BRESNAHAN [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY

By Geo. W. Brown Treasurer.

Schedule A removed and affixed to agreement betw. Bresnahan and Boston Shoe Tool Co.

[Written in blue pencil on original]

SCHEDULE B.

Stock carried at No. 9 Newark Street, Leicester, England
c/o Thomas Turner.

3614 Cutters
317 Shank Cutters
359 Shields
70 Shank Shields
12 Doz. Emery Wheels, 3 inch
2 Trimmers complete

1 Trimmer, head with Pat. shaft
2 Corthell Edge Setter
11 J A B Edge Gauges
24 Speed Indicators
10 Welt Trimmers
9 Feather Edgers
4 Tack Pullers
74 Union Irons
4 Dodge Irons
31 Emery Wheels 4 x 3/4
2 Breasting Knives
1 Spring Heel Machine
1 Show Case

PLAINTIFF'S EXHIBIT 68.

[Put in Evidence, page 463.]

Indenture made this ninth day of October, 1899, by and between Edwin Theophilus Freeman, of Halifax, in the Province of Nova Scotia, Dominion of Canada, party of the first part, and United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey and having an office and usual place of business in Boston, in the Commonwealth of Masschusetts, (hereinafter called the United Company) party of the second part,

Whereas: The said Freeman has invented certain improvements in nailing machines, designed for use in the manufacture of boots and shoes, but adapted also for leather work and for other uses, and has been and is now engaged in manufacturing machines embodying said improvements and in developing and perfecting improvements in shoe and leather working machinery, and has obtained the grant to him of certain Letters Patent,

And Whereas, the said United Company desires to purchase said Letters Patent, and the business established by said Freeman together with all machines, machinery and other property appurtenant to said business, and all improvements in or relating to shoe and leather working machinery which said Freeman now has, or

which he shall hereafter invent, and to secure the aid and co-operation of said Freeman in perfecting and developing improvements in said art.

Now this Indenture Witnesseth

First. In consideration of Five Hundred Dollars to him paid by the said United Company, the receipt of which is hereby acknowledged, and of the agreements of the United Company hereinafter contained, the said Freeman has sold, assigned and conveyed to said United Company, by his deed of even date herewith, to be recorded in the Patent Office of the United States, the entire interest in the following described Letters Patent of the United States, namely: —

Letters Patent, numbered 607,924, dated July 26th, 1898

Letters Patent, numbered 615,481, dated December 6th, 1898

Letters Patent, numbered 618,082, dated January 24th, 1899,

and in and to an application for the grant of Letters Patent of the United States, filed by him September 30th, 1898, Serial No. 692,324.

Second. For the consideration aforesaid, the said Freeman has sold, transferred and conveyed, and does hereby sell, transfer and convey to said United Company all his boot and shoe and leather working machinery constructed or in process of construction, and parts of such machinery, all his machines, tools, jigs, patterns, models, situate in the premises occupied by him on Columbia Street, in said Boston, or wherever else situated, and, in particular, five completed nailing machines and one machine for making or forming wire for use in said machines, which are now in said premises on said Columbia Street, and does agree to deliver all said chattels to said United Company, at the factory of the McKay Shoe Machinery Company in Winchester, Massachusetts;

And said Freeman has sold, transferred and conveyed to said United Company all Letters Patent and rights and interests in or under Letters Patent, both of the United States and of other countries, for improvements in or relating to boot and shoe and leather working machinery, machines, tools and appliances which he has, or is entitled to have, other than the Letters Patent above referred

to by number and date, the good will of his said business, and the exclusive right to the use of his name and of any and all trade marks or trade names to which he is entitled, in connection with such machinery.

And the said Freeman doth hereby covenant with the said United Company that he is the lawful owner of the chattels and interests hereby conveyed; that they are free from all incumbrances; that he has good right to sell the same as aforesaid; and that he will warrant and defend the same as against the lawful claims and demands of all persons.

Third. And for the consideration aforesaid, said Freeman agrees to convey to said United Company any and all improvements or inventions in or relating to boot and shoe or leather working machinery, machines, tools and appliances which he had made, but has not patented, or which he shall hereafter make; and agrees to promptly disclose and explain to the officers or counsel of said United Company all such inventions or improvements in such manner as to enable the said United Company to have applications prepared for the grant of Letters Patent therefor and to practice such inventions or improvements; and agrees from time to time hereafter and at all times, when said United Company shall request him so to do, to do all such acts and to execute and make oath to all such applications, specifications, assignments and other written instruments as shall, in the opinion of the counsel of said United Company be reasonable and proper or necessary to obtain the grant of Letters Patent, both for the United States and for other countries, for such inventions or improvements, and to vest the legal title to all such applications and patents in said United Company, or in such persons or corporations as it shall direct; the cost of all such applications, patents, assignments or other instruments to be borne by said United Company.

Fourth. And said Freeman for the consideration aforesaid doth further agree with said United Company and its successors and assigns that he will not hereafter engage in the manufacture of, or deal in, or directly or indirectly aid, assist or encourage anyone to engage in the manufacture of or to deal in boot and shoe or leather

working machinery, machines, tools or appliances in competition with said United Company, the corporations owned or controlled by it and its or their successors or assigns; and that he will not infringe or aid, assist or encourage anyone to infringe the trade marks, trade names or letters patent now owned or which shall hereafter be owned by said United Company or by corporations owned or controlled by it, and its or their successors and assigns, in connection with the business of manufacturing and dealing in boot and shoe and leather working machinery; and that he will use his influence to promote the interests of said United Company in the prosecution of such business and of the corporations owned or controlled by it, and its and their successors and assigns.

Fifth. And said Freeman further agrees to execute, acknowledge and deliver from time to time hereafter, (but at the expense of the United Company its successors or assigns) such other deeds, assignments, disclaimers, applications for reissues or extensions of letters patent, or other written instruments and to do such acts as, in the opinion of the counsel for said United Company are reasonable and proper or necessary to confirm to the United Company, its successors or assigns or any or all the chattels, rights and interests hereby conveyed or intended to be conveyed.

Sixth. The said United Company, in consideration of the premises agrees upon the delivery of the machines and other goods sold and conveyed by said Freeman in paragraph "Second" hereof at the factory of the McKay Shoe Machinery Company in Winchester and upon the delivery to it of assignments of the said Letters Patent of the United States, Nos. 607,924, 615,481 and 618,082, and said pending application, Serial No. 692,324 which convey the entire interest in and to said Letters Patent and said pending application, free and clear of all incumbrances or licenses, to pay to said Freeman the sum of ten thousand five hundred Dollars ($10,500.00) in addition to the five hundred dollars paid by it mentioned in paragraph "First" hereof; and further agrees, that so long as the said Freeman faithfully performs his agreements contained in paragraphs "Third" and "Fourth" hereof, and is not in default in respect to the same or any thereof, it will,

(*a*) during the term of eight years from the date of this instrument, pay to said Freeman the sum of ten dollars for each nailing machine made and sold, leased or otherwise disposed of, in the United States of America by it, or by any persons, firms or corporations controlled by it, which embodies in its construction one or more of the inventions or improvements heretofore made or to be hereafter made by said Freeman, for which Letters Patent of the United States have been granted to said Freeman and assigned to said United Company as aforesaid, or for which Letters Patent of the United States shall hereafter be granted upon his application and assigned to the United Company, its nominee or successors or assigns, under the provisions of this instrument:

(*b*) And will keep or cause to be kept an accurate account of the number of such nailing machines made and sold, leased or otherwise disposed of in the United States of America by it, or by any persons, firms or corporations controlled by it, which shall be open at all reasonable times to the inspection of said Freeman or his authorized agent, or attorneys:

(*c*) And will in the months of April and October of each calendar year during said term render, or cause to be rendered to said Freeman a statement in writing showing the number of such nailing machines made and sold, leased or otherwise disposed of, in the United States of America by it, or by any persons, firms or corporations controlled by it, in the six calendar months preceding the month in which such statement is rendered, and will simultaneously with the rendering of any such statement, in April and October of each year, pay or remit to said Freeman, or cause to be paid or remitted to him the sum of ten dollars for each such nailing machine made and sold, leased or otherwise disposed of, as shown by such statement.

(*d*) And, in case the sum paid or to be paid to said Freeman under the terms of this paragraph "Sixth", in any year ending September 30th, is less than Five Hundred Dollars ($500) will, in rendering the statement of account and in making the payment required hereby to be made in October of each such year, pay or cause to be paid to said Freeman such sum in addition to that

called for by the statement, as shall make the amount paid to him for that year the sum of Five Hundred Dollars, the said United Company hereby agreeing to pay to said Freeman the sum of, at least, Five Hundred Dollars per year, during the term of eight years from the date of this instrument, provided that said Freeman shall, in good faith, perform all his agreements in this instrument contained.

In Witness Whereof, the said Freeman has set his hand and seal hereto, and said United Company has caused its corporate seal to be hereto affixed and these presents to be signed by George W. Brown its Treasurer the day and year first above written.

Executed in Duplicate.

EDWIN THEOPHILUS FREEMAN [SEAL]

[CORPORATE SEAL] UNITED SHOE MACHINERY CO.

Geo. W. Brown, Treas. [SEAL]

PLAINTIFF'S EXHIBIT 69.

[Put in Evidence, page 466.]

Agreement made this tenth day of October 1899 by and between George W. Freeman of Boston in the Commonwealth of Massachusetts, party of the first part, and United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, having an office and place of business in said Boston (hereinafter called the United Company) of the second part.

Whereas by an indenture of even date herewith, Edwin T. Freeman, the father of said George W. Freeman has sold and the said United Company has purchased the business, of manufacturing nailing machinery designed for use in boot and shoe or leather work heretofore carried on by said Edwin, and his machines, machinery, tools, Letters Patent and other property, rights and interests:

And Whereas, the said George W. Freeman is and has been associated with his father in said business and as a part of the consideration for said purchase the said United Company has agreed to take the said George W. Freeman into its employ;

Now it is Agreed as follows:

1. The said George W. Freeman agrees with said United Company that he will, for one year from October 1st, 1899, render and give to said Company, or the corporations controlled by it, his exclusive time, services and skill, in such employment as shall be assigned to him by the General Manager of said United Company.

2. The said United Company agrees to employ said George W. Freeman for at least one year from October 1st, 1899, and during the said term to pay him at the end of every calendar month thereof, the sum of Sixty Six and 66/100 Dollars ($66.66) the first of such payments to be made on the 31st day of October, 1899.

3. In consideration of said employment and of the said purchase from Edwin T. Freeman, the said George W. Freeman agrees with said United Company and its successors and assigns that he will not hereafter engage in the manufacture of, or deal in, or directly or indirectly aid, assist, or encourage anyone to engage in the manufacture of or to deal in boot and shoe and leather working machinery, machines, tools or appliances in competition with said United Company, the corporations owned or controlled by it, and its or their successors or assigns; and that he will not infringe, or aid, assist or encourage anyone to infringe the trade marks, trade names or letters patent, now owned, or which shall hereafter be owned by said United Company, or by the corporations owned or controlled by it, and its or their successors or assigns in connection with the business of manufacturing and dealing in boot and shoe and leather working machinery, and that he will use his best efforts and influence to promote the interests of said United Company, and of the corporations owned or controlled by it, in the prosecution of such business.

4. And said George W. Freeman, for the consideration above mentioned further agrees to convey to said United Company any and all improvements or inventions in or relating to boot and shoe or leather working machinery, machines, tools and appliances which he has made, but has not patented, or which he shall hereafter make; and agrees to promptly disclose and explain to the officers or counsel of said United Company all such inventions or improvements in such manner as to enable the said United Com-

pany to have applications prepared for the grant of Letters Patent therefor and to practice such inventions or improvements; and agrees from time to time hereafter and at all times, when said United Company shall request him so to do, to do all such acts and to execute and make oath to all such applications, specifiations, assignments and other written instruments as shall, in the opinion of the counsel of said United Company be reasonable and proper or necessary to obtain the grant of Letters Patent, both for the United States and for other countries, for such inventions or improvements, and to vest the legal title to all such applications and patents in said United Company, or in such person or corporations as it shall direct; the cost of all such applications, patents, assignments or other instruments to be borne by said United Company.

In Witness Whereof, said George W. Freeman has set his hand and seal hereto, and said United Company has caused its corporate seal to be affixed hereto, and these presents to be signed by George W. Brown, its Treasurer, the day and year first above written.

Executed in Duplicate.

GEO. W. FREEMAN [SEAL]

[SEAL] UNITED SHOE MACHINERY CO.

Geo. W. Brown, Treas.

PLAINTIFF'S EXHIBIT 70.

[Put in Evidence, page 466.]

This Agreement, made this eleventh day of October, A. D. 1899, by and between Albert G. Brewer, of Hopkinton, in the Commonwealth of Massachusetts, party of the first part, and the United Shoe Machinery Company, a Corporation duly organized under the Laws of the State of New Jersey, and having a place of business at No. 111 Lincoln Street, in Boston, Massachusetts, hereinafter called the United Company, party of the second part,

Witnesseth, That whereas the said Brewer has made application for Letters Patent of the United States, Ser. No. 714,671, filed April 27th, 1899, for an improvement in Heel Breasting Machines; and

Whereas, the United Company is desirous of acquiring said application and the invention therein shown and described;

Now, therefore, the said Brewer and the said United Company do mutually covenant and agree as follows:

The said Brewer shall concurrently with the execution of this instrument, execute and deliver to the United Company an assignment in proper form of said application and said invention. The United Company shall, upon the execution and delivery of said assignment, pay to the said Brewer the sum of Two Hundred and Fifty ($250.00) Dollars.

The United Company further covenants and agrees that it will, until the expiration of the United States Letters Patent which may be granted on said application, pay to the said Brewer, or his legal representatives or assigns, the sum of Five Dollars ($5.00), for each and every Heel Breasting Machine embodying any of the inventions described and claimed in the claims of the Letters Patent which may be granted on the said application, and put out by the United Company into any Shoe Factory.

The said Brewer hereby sells, assigns, and delivers to the United Company all machines already constructed by said Brewer, and embodying the said invention, in particular one machine now in the factory of Cloutman & Dunham, at said Hopkinton, together with all models, patterns, jigs, and special tools used in, or adapted for the manufacture of said machines.

The said Brewer also assigns to the United Company any and all inventions which he may hereafter make relating to machines for breasting heels "on the last"; and the said Brewer covenants and agrees that he will, and his legal representatives shall, fully disclose all such inventions to the United Company, its successors or assigns, and that he will, and they shall, sign any and all applications, or other papers, which may be necessary to enable the United Company, its successors or assigns, to obtain Letters Patent of the United States, or any other countries, for the said inventions.

The United Company hereby covenants and agrees to render an account to the said Brewer, or his legal representatives, once in

every six months, of all machines put out into shoe factories from the date of the last settlement to the end of the preceding calendar month, and embodying any of the inventions described and claimed in the claims of the Letters Patent which may be granted on said application, and agrees to pay to the said Brewer, at the same time, the amount then due to said Brewer under the terms of this agreement, as shown by said account.

In Witness Whereof the said Brewer has hereunto set his hand and seal, and the said United Shoe Machinery Company has caused this instrument to be signed, and its Corporate seal to be hereunto affixed by Edwd. P. Hurd, its Asst. Tres., thereunto duly authorized, in duplicate, the day and year first above written.

ALBERT G. BREWER [SEAL]

[SEAL] UNITED SHOE MACHINERY CO.

By Edwd. P. Hurd, Asst. Tres.

PLAINTIFF'S EXHIBIT 71.

[Put in Evidence, page 467.]

This Indenture, made this twenty-fourth day of October, A. D. 1899, by and between James H. Reed and Alfred L. Barrett, both of Brookline, Henry M. Loomer, of Boston, Ward Perkins, of Saugus, and Ralph W. Burnham, of Ipswich, all in the Commonwealth of Massachusetts, co-partners doing business in said Boston under the firm name and style of Globe Shoe Tool Co., as manufacturers of edge cutters and irons for use in the manufacture of boots and shoes, shoe machinery and special parts of such machinery, parties hereto of the first part, and United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, of Paterson in said State, having an office and usual place of business in said Boston, party hereto of the second part, Witnesseth:

First. The said parties of the first part, in consideration of the sum of thirty thousand dollars ($30,000) to them in hand paid this day, the receipt of which is hereby acknowledged, have sold, transferred, conveyed and delivered, and by these presents do sell,

transfer, convey and deliver to said party of the second part all the stock in trade, manufactured and in process of manufacture, raw or unworked material, machinery, machines, tools, jigs, patterns, models, drawings, blue prints, shafting, hangers, pulleys, benches, and furniture and all the goods, chattels and fixtures situate in the factory at No. 124 to 134 Pearl Street in said Boston, occupied by said Globe Shoe Tool Co., or wherever else situated, which belongs to said Globe Shoe Tool Co., including all goods and chattels in the hands of any other person or persons whether under lease, on trial or consignment or otherwise held which belong to said Globe Shoe Tool Co.

Also all letters patent or rights to obtain letters patent, or interests in or licenses under letters patent owned by said Globe Shoe Tool Co., or to which it is or may be entitled, and in particular the beneficial interest of said Globe Shoe Tool Co., in and under a certain indenture of license under Letters Patent of the United States of America numbered 625,068, granted May 16, 1899 to Charles A. Squire for an improvement in sole edge trimming machines, which indenture is dated June 14th, 1899, and was made by and between said Squire of the one part and said Globe Shoe Tool Co., of the other part, together with the right to use and exercise the said license in the name of said Globe Shoe Tool Co., the said party of the second part assuming and agreeing to pay all royalties accruing after the date of this instrument.

Also the exclusive right to use all trade marks and trade names employed by said Globe Shoe Tool Co., and the good will of the business heretofore carried on by said Globe Shoe Tool Co.

And said parties of the first part do also hereby assign, transfer, convey and set over the lease or leases under which said Globe Shoe Tool Company is entitled to occupy the premises now used by it as an office and factory at Nos. 124 to 132 Pearl St., in said Boston — the said party of the second part assuming and agreeing to pay all rent accruing for the said premises after the date of this instrument until the expiration of the existing lease or leases thereof:

Also all accounts, bills receivable, and choses in action of said

Globe Shoe Tool Co., and its books of account and records of every nature and description.

To Have and to Hold all and every the said goods, chattels, fixtures, choses in action and other rights and interests to the said party of the second part and its successors and assigns forever.

Second. And said parties of the first part do covenant with said party of the second part that all and every the premises hereby conveyed or intended to be conveyed are free from all incumbrances, that they have good right to sell and convey the same as aforesaid and that they will warrant and defend the same against the claims of all persons; and said parties of the first part hereby jointly and severally covenant and agree with said party of the second part to assume and pay any and all liabilities and undertakings of said Globe Shoe Tool Company existing at the date of this instrument, and to indemnify and hold harmless the said party of the second part against the same.

Third. And for the consideration aforesaid the said parties of the first part hereby jointly and severally covenant and agree with the party of the second part and its successors and assigns from time to time and at all times hereafter, to execute such deeds or other instruments and to do such acts as, in the opinion of the counsel of said party of the second part, shall be necessary or proper to confirm and vest in said party of the second part, its successors or assigns, a clear title to the premises hereby conveyed or intended to be and secure to it and them the beneficial interests hereby sold.

Fourth. Said party of the second part further agrees to assume and pay the rent of the premises now occupied by said Globe Shoe Tool Company at Nos. 124 to 132 Pearl St. in said Boston until the expiration of the existing lease or leases under which said Globe Shoe Tool Co. is tenant, and also agrees to assume and pay royalties to said Squire, under the terms of said license granted by him as aforesaid for such trimming sleeves as it shall sell after the date of this instrument and while said license shall remain in force.

Fifth. Said party of the second part further covenants and agrees

to use reasonable diligence in collecting the accounts, bills receivable, and choses in action outstanding at the date of this instrument and hereby conveyed, and to pay over to said Reed for the benefit of said parties of the first part the proceeds thereof from time to time, as the same shall be collected, after deducting any and all legal expenses which it shall incur in the collection of the same, but otherwise without deduction.

In Witness Whereof the said parties of the first part have set their hands and affixed their seals hereto, and said party of the second part has caused these presents to be sealed with its corporate seal and to be signed in its name by George W. Brown, its Treasurer, the day and year first above written.

Executed in Duplicate.

JAMES H. REED [SEAL]
ALFRED L. BARRETT [SEAL]
HENRY M. LOOMER [SEAL]
WARD PERKINS [SEAL]
RALPH W. BURNHAM [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY
Geo. W. Brown, Treasurer.

PLAINTIFF'S EXHIBIT 72.

[Put in Evidence, page 468.]

Indenture made this twenty-fourth day of October A. D. 1899 by and between Henry M. Loomer of Boston, in the Commonwealth of Massachusetts, as party of the first part, and United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, having an office and usual place of business in Boston, in said Commonwealth (hereinafter called the United Company) as party of the second part.

Whereas, the said United Company, by an indenture of even date herewith, has purchased the business of manufacturing edge cutters and irons for use in the manufacture of boots and shoes, shoe machinery and special parts of such machinery, including (heel trimming machines and cutters and) fore part trimming ma-

chines and cutters, established and carried on by the Globe Shoe Tool Company, a co-partnership, of which said Loomer is a member, and has purchased the goodwill of said business;

And whereas, it was agreed as an inducement to the United Company to take over said business and to purchase the property and assets of said partnership, that said Loomer should make and enter into an agreement of the tenor following, and that said United Company should take the said Loomer into its employ;

Now this Indenture Witnesseth: —

First. Said Loomer agrees with said United Company that he will for one year from the date hereof render and give to said United Company, or to the firms and corporations controlled by it, his exclusive time, services and skill in such employment as shall be assigned to him by the General Manager of said United Company.

Second. Said United Company agrees to employ said Loomer for at least one year from the date hereof, and during said term to pay him at the end of every calendar week thereof the sum of Twenty-five Dollars ($25.00), the first of said payments to be made on the thirty-first day of October 1899.

Third. In consideration of said employment and of the purchase from said Globe Shoe Tool Company by said United Company said Loomer agrees with said United Company, and its successors and assigns, that he will not hereafter engage in the manufacture of or deal in or directly or indirectly aid, assist or encourage anyone to engage in the manufacture of or to deal in boot and shoe or leather working machinery, machines, tools and appliances in competition with said United Company, and the firms or corporations owned or controlled by it, and its or their successors or assigns; and that he will not infringe or aid, assist or encourage anyone to infringe the trade marks, trade names or Letters Patent now owned, or which shall hereafter be owned by said United Company or by the firms or corporations owned or controlled by it and its or their successors or assigns, in connection with the business of manufacturing, selling or leasing any boot and shoe or leather working machinery, and that he will use his best efforts and influence to promote the

interests of said United Company, and of the firms or corporations owned or controlled by it, in the prosecution of said business.

Fourth. And said Loomer for the consideration above mentioned further agrees to convey to said United Company any and all improvements or inventions in or relating to boot and shoe or leather working machinery, machines, tools and appliances, which he has made, but has not patented, or which he shall hereafter make; and agrees to promptly disclose and explain to the officers or counsel of said United Company all said inventions or improvements in such manner as to enable said United Company to have applications prepared for the grant of Letters Patent therefor, and to practice such inventions and improvements; and agrees from time to time hereafter, and at all times, when said United Company shall request him so to do, to do all such acts and to execute and make oath to all such applications, specifications, assignments and other written instruments, as shall in the opinion of the counsel for said United Company be reasonable and proper or necessary to obtain a grant of letters patent both for the United States and for other countries for such inventions and improvements, and to vest the legal title for all such applications and patents in said United Company, or in such persons or corporations as it shall direct, the cost of all such applications, assignments and other written instruments to be borne by said United Company.

In witness whereof said Henry M. Loomer has set his hand and seal hereto and said United Company has caused its corporate seal to be hereto affixed and these presents to be signed by George W. Brown, its Treasurer, the day and year first above written.

Executed in Duplicate.

HENRY M. LOOMER [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY,

By Geo. W. Brown, Treasurer.

PLAINTIFF'S EXHIBIT 73.

[Put in Evidence, page 468.]

Indenture made this twenty-fourth day of October A. D. 1899, by and between Ward Perkins of Saugus, in the Commonwealth of Massachusetts, as party of the first part, and United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, having an office and usual place of business in Boston, in said Commonwealth (hereinafter called the "United Company") as party of the second part,

Whereas, the said United Company by an indenture of even date herewith has purchased the business of manufacturing edge cutters and irons for use in the manufacture of boots and shoes, shoe machinery and special parts of such machinery, including heel trimming machines and cutters and fore part trimming machines and cutters, established and carried on by the Globe Shoe Tool Company, a co-partnership of which said Perkins is a member, and has purchased the good-will of said business,

And whereas, it was agreed as an inducement to the United Company to take over the said business and to purchase the property and assets of said partnership, that said Perkins should make and enter into an agreement of the tenor following, and that said United Company should take the said Perkins into its employ;

Now this Indenture Witnesseth:—

First. Said Perkins agrees with said United Company that he will for one year from the date hereof render and give to said United Company, or to the firms and corporations controlled by it, his exclusive time, services and skill in such employment as shall be assigned to him by the General Manager of said United Company.

Second. Said United Company agrees to employ said Perkins for at least one year from the date hereof, and during said term to pay him at the end of every calendar week thereof the sum of Twenty Dollars ($20.00) the first of said payments to be made on the thirty first day of October 1899.

Third. In consideration of said employment and of the purchase

from said Globe Shoe Tool Company by said United Company said Perkins agrees with said United Company and its successors and assigns that he will not hereafter engage in the manufacture of or deal in or directly or indirectly aid, assist or encourage anyone to engage in the manufacture of or to deal in boot and shoe or leather working machinery, machines, tools and appliances in competition with said United Company, and the firms or corporations owned or controlled by it, and its or their successors or assigns; and that he will not infringe or aid, assist or encourage anyone to infringe the trade marks, trade names or Letters Patent now owned, or which shall hereafter be owned by said United Company or by the firms or corporations owned or controlled by it and its or their successors or assigns, in connection with the business of manufacturing, selling or leasing any boot and shoe or leather working machinery, and that he will use his best efforts and influence to promote the interests of said United Company and of the firms or corporations owned or controlled by it, in the prosecution of said business.

Fourth. And said Perkins, for the consideration above mentioned, further agrees to convey to said United Company any and all improvements or inventions in or relating to boot and shoe or leather working machinery, machines, tools and appliances, which he has made, but has not patented, or which he shall hereafter make; and agrees to promptly disclose and explain to the officers or counsel of said United Company all said inventions or improvements in such manner as to enable said United Company to have applications prepared for the grant of Letters Patent therefor, and to practice such inventions or improvements; and agrees from time to time hereafter and at all times when said United Company shall request him so to do, to do all such acts and to execute and make oath to all such applications, specifications, assignments and other written instruments as shall in the opinion of the counsel for said United Company be reasonable and proper or necessary to obtain a grant of letters patent both for the United States and for other countries for such inventions and improvements, and to vest the legal title for all such applications and patents in said United Company, or in such persons or corporations as it shall direct, the cost

of all such applications, assignments, and other written instruments to be borne by said United Company.

In witness whereof said Ward Perkins has set his hand and seal hereto and said United Company has caused its corporate seal to be hereto affixed and these presents to be signed by George W. Brown, its Treasurer, the day and year first above written.

Executed in Duplicate.

WARD PERKINS [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY

By Geo. W. Brown, Treasurer.

PLAINTIFF'S EXHIBIT 74.

[Put in Evidence, page 469.]

This Agreement made this second day of November eighteen hundred and ninety-nine, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey (hereinafter called the United Company) party of the first part and the John Ritchie Company, a corporation having its principal place of business at Quebec, Province of Quebec, Dominion of Canada; and John Ritchie, of Quebec, parties of the second part; Witnesseth:

That in consideration of One Dollar and other good and valuable considerations by each of the parties hereto, to the other in hand paid, the receipt whereof the several parties hereto severally acknowledge, the said parties do hereby jointly and severally covenant and agree with each other as follows, viz.:

1. The parties of the second part jointly and severally hereby assign, transfer, and deliver the entire right, title and interest, possession, and control, except as hereinafter provided for, in all the standard screw machines, slugging machines, tacking machines, and machines, mechanism, and appliances for inserting, or for manufacturing metallic fastenings, including standard screw wire, slugger wire, and tacker wire, which are owned, or controlled, by the parties of the second part, or either of them, or which heretofore have been used by the said John Ritchie, or the said Ritchie

Company, in the manufacture of the standard screws, slugging, or tacking wire heretofore used in the manufacture of boots or shoes in the factory of the said John Ritchie Company, and which are still under the control of the said John Ritchie Company.

The parties of the second part also jointly and severally agree that the said John Ritchie Company shall duly execute and deliver to the United Company the regular shoe machinery lease, or license, which shall be adopted by the United Company for its Canadian licenses, or by such subsidiary Company as the United Company may utilize for carrying on its Canadian business, said lease or license to embrace the machines assigned by this instrument to the United Company, and other machines of the United Company that may be adopted by the John Ritchie Company, and the said parties of the second part jointly and severally covenant and agree that the said John Ritchie Company shall observe and perform all the conditions and agreements to be contained in the said lease and license, in so far as the same are not inconsistent with any of the conditions of the present instrument.

The said parties of the second part further severally and jointly covenant and agree that they or either of them will not at any time hereafter manufacture, or sell, or become directly or indirectly, interested in any wire fastening shoe machinery, or machines for making the same, or parts thereof, or any standard screw wire, slugger wire, tacker wire, or any other metallic fastening, or other fastening materials now or hereafter manufactured or dealt in by the said United Company, or any of its subsidiary companies (a majority of the stock of which is directly or indirectly owned or controlled by the United Company) and the said parties of the second part further agree that they will jointly and severally do all in their power to promote the success and prosperity of the business of the United Company, and its subsidiary companies, and will not in any way compete with said Company, or its subsidiary companies, in any wire fastening or wire making machinery, and where the parties of the second part see that it will be to their advantage, they agree to adopt the other machines controlled by the United Company, on the same terms and conditions as other

manufacturers; and the parties of the second part agree to afford the United Company every facility for demonstrating the advantages of any of its machines, in the factory of the John Ritchie Company, provided always that the John Ritchie Company is not put to any expense in such demonstration of new machinery; but nothing in this agreement, or in any lease or license to be signed by the parties of the second part can be construed into binding them to take such machine, or machines from the United Company, unless it is demonstrated as aforesaid that said machines will do the work for which they are designed cheaper, and better than the machines of others, and that the John Ritchie Company requires in its business machines to do the class of work for which these machines are designed.

The said John Ritchie Company shall have the right to use the Standard Screw Machines, slugging machines, and tacking machines, hereby assigned to the United Company upon the terms hereinafter set forth.

2. The United Company agrees, provided the said John Ritchie, and the John Ritchie Company, continue to observe and perform all the covenants and conditions of this agreement, and so long as the John Ritchie Company continues to observe and perform all the conditions and agreements (in so far as the same are not inconsistent with the terms and conditions of this agreement as aforesaid) to be contained in the lease, or license, of the United Company, or its local Canadian Company, which is to be hereafter presented to the John Ritchie Company for execution, in accordance with the terms hereof, that it, the said United Company will permit the John Ritchie Company to continue to use the Standard Screw Machines, sluggers, and tackers, which are hereby assigned to the United Company until the said lease or license is presented to the said John Ritchie Company, and for such time thereafter as the John Ritchie Company continues to observe and perform all the conditions and agreements (not actually inconsistent herewith) contained in the said lease or license.

The United Company further agrees to sell, and deliver, to the John Ritchie Company at the actual cost manufacture, to the United

Company or any subsidiary Company controlled by them such quantities of its standard screw, slugging, and tacking wire as the John Ritchie Company may need for use in its own factory, it being understood and agreed, that the John Ritchie Company is to pay all the expenses incurred by the United Company in the production of said wire, including especially all freight, express, or other carriage, and also all Canadian duties on said wires which may be paid by the United Company; and the John Ritchie Company agrees to pay the United Company for said wire in cash, at such place as the United Company may designate, on the fifteenth day of the calendar month next ensuing after the calendar month during which the said wires were delivered; but should the United Company, or any of its subsidiary companies manufacture wire in Canada, at any future time, it is hereby agreed that they will deliver all, or any, of said wires from the Canadian factories at actual cost, free of any Canadian duties, except the duties on the crude material.

3. The said United Company further agrees that during the continuance of this agreement, provided the said John Ritchie, and the John Ritchie Company, observe and perform each and every condition and agreement, on their several parts to be observed and performed, and herein contained and contained in said lease, or license, to be hereafter executed in so far as said lease or license does not conflict with the terms of this agreement, that it, the said United Company, will pay the said John Ritchie Company the sum of seven hundred and fifty dollars ($750) per annum, the first payment of the said seven hundred and fifty dollars to be made on the first day of January nineteen hundred; but, should the said United Company desire to discontinue the annual payments of seven hundred and fifty dollars, it shall be at its option to pay to the said John Ritchie Company fifteen thousand dollars ($15,000) within three months after any annual payment has been made, or it may make such other arrangements as may be mutually agreed upon between the parties to this agreement.

4. The United Company further agrees to loan to the John Ritchie Company, during such period as the said John Ritchie

Company shall wish to use the same in the manufacture of boots and shoes, such standard screw, slugging and tacking machines of the best type now manufactured by the United Company, or by the McKay Metallic Fastening Association (which is an association controlled by the United Shoe Machinery Company), or by any other company controlled by the United Shoe Machinery Company, as the John Ritchie Company shall require to replace the machines at present in use in their factory for the manufacture of its boots and shoes, and the United Company agrees to loan such machines to the said John Ritchie Company for use as aforesaid free of all charge, and to supply wire to be used in the same on the terms specified in paragraph two of this agreement, but otherwise such machines are to be loaned to said John Ritchie Company subject to the terms and conditions contained in the regular lease and loan agreements then in use by the United Company, or by any other association or company controlled by the United Company which owns the machines so loaned; but it is agreed, nevertheless, that the United Company shall only be bound hereby to supply tacking machines for the purposes for which tacking machines are now being used in the factory of John Ritchie Company, and not for sole laying or fastening soles.

In case the John Ritchie Company desires to tack or lay or fasten soles, then it agrees to take additional machines therefor under the regular lease or license of the United Company, paying for the tacker wire used therein upon the regular terms and prices given to other licensees of the United Company in the Dominion of Canada.

5. It is agreed that the John Ritchie Company shall be permitted by the United Company to retain and use the wire screwing machine now in its possession until such time as they shall have finished the stock of wire which the John Ritchie Company has on hand at the date of this instrument; and further the John Ritchie Company is permitted to sell screw wire of its own make until such time as it shall be notified in writing by the United Company to discontinue doing so.

6. It is further agreed between the parties hereto that this agree-

ment shall prevail wherever there is any actual inconsistency between the terms thereof and the lease or license, which is to be hereafter adopted by the United Company and signed by the John Ritchie Company.

7. This agreement shall continue in force so long as the John Ritchie Company Limited shall exist as a corporation, and shall continue to manufacture boots and shoes.

In Witness Whereof the said United Shoe Machinery Company and the said John Ritchie Company have caused their respective corporate names and seals to be hereto affixed, and the said John Ritchie has hereunto set his name and seal on the day and year first above written.

[SEAL] UNITED SHOE MACHINERY COMPANY
By Geo. W. Brown, Treas.

[SEAL] JOHN RITCHIE COMPANY
By John Ritchie, Pres.
A. R. Drysdale, Secy.

[SEAL] JOHN RITCHIE

At a special meeting of the Executive Committee of the Directors of the United Shoe Machinery Company duly called and held at the office of the Company, No. 111 Lincoln Street, Boston, Mass. on the second day of November, 1899, the foregoing agreement between United Shoe Machinery Company of the first part and the John Ritchie Company and John Ritchie, parties of the second part, was submitted to the Committee and it was thereupon unanimously

Voted: That George W. Brown, the Treasurer of this Company, be and he is hereby authorized and directed to sign said agreement in duplicate in the name of this Company and to affix its corporate seal thereto.

A true copy from the records of the Executive Committee of the Directors of United Shoe Machinery Company.

Attest: Louis H. Baker, Secretary.

[CORPORATE SEAL]

At a meeting of the Directors of the John Ritchie Company, Limited, held at the office of the Company No. 183 St. Helene St. St. Rochs, Quebec, on the seventh day of November 1899, the foregoing agreement between the United Shoe Machinery Company, of the first part, and the John Ritchie Company, Limited, and John Ritchie, parties of the second part, was laid before the Directors, and it was unanimously resolved,

"That John Ritchie, President, and Alexander Ritchie Drysdale, Secretary, of this Company are hereby authorized and instructed to sign the said agreement in duplicate in the name of this Company and to affix its corporate seal thereto."

A true copy from the minutes of Directors meetings of the John Ritchie Company Limited.

A. R. Drysdale Secretary.

PLAINTIFF'S EXHIBIT 75.

[Put in Evidence, page 469.]

This Agreement made this 13th day of January, 1900, between Edward B. Seaver, of Boston in the State of Massachusetts, and Louis H. Baker, of said Boston.

Whereas the said Seaver is the owner of thirty-one thousand, seven hnndred and forty-one (31,741) shares of the capital stock of the Seaver Process Lasting Company a corporation organized under the laws of Maine, hereinafter called the Seaver Company; and,

Whereas the said Seaver Company is indebted to the said Seaver in the sum of thirty thousand, one hundred and twenty-five dollars and fifty-three cents ($30,125.53) for cash advanced to the Company, and interest thereon, and the sum of nine thousand, one hundred and fifty dollars ($9,150.) for services; and,

Whereas, the said Seaver Company is insolvent and is unable to continue its business or to pay its debts; and,

Whereas the said Baker is willing to purchase all the assets of the corporation upon the terms and conditions hereinafter set forth;

Now Therefore, in consideration of the mutual covenants herein

contained, and the sum of one dollar by each of the parties hereto to the other paid, the receipt of which the said parties respectively acknowledge, the said parties hereby Covenant and Agree with each other as follows: —

(1) The said Seaver hereby sells and assigns to the said Baker all his claims and demands against the Seaver Company of every sort and kind, including the said indebtedness of the Seaver Company to him for $39,275.53, together with every other claim he may have against the Seaver Company, and appoints the said Baker his true and lawful attorney in the name of the said Baker, or of him, the said Seaver, to do all acts and to bring all actions either at law or in equity which may be necessary or desirable to secure the payment of the said claim, and for the said purpose to appoint a substitute or substitutes, and at pleasure to revoke such appointment.

The said Seaver hereby warrants that the said indebtedness of $39,275.53, hereby assigned, is a good and valid liquidated debt for $39,275.53 due from the Seaver Company for cash loaned to and services rendered that Company by the said Seaver and the said Seaver warrants that he has good right to assign the same to the said Baker. And the said Seaver further warrants that the Seaver Company has no debts except the said debt of $39,275.53, hereby assigned, and no other liability, direct or contingent, of any sort whatever; and he covenants and agrees with the said Baker that he will assume and pay any valid claims and demands, should any be found to exist besides the said debt of $39,275.53, and that he will forever hold harmless and keep indemnified the said Baker and his executors, administrators, and assigns from any loss or damage, direct or indirect, arising from any such claims or demands, including counsel fees incurred in defending or resisting any such claims and demands if such claims are sustained.

And the said Seaver further warrants that the said company is the owner of the following property, viz: —

Good accounts to the value of	$843.50
Furniture, estimated value, ...	40.00

Tools and Machinery, estimated value, ... 3,000.00
Amount due from the Seaver Process Lasting Syndicate, Limited, ... 300.00

Besides eighty-eight (88) lasting machines in the hands of lessees of the Company, the title to which machines belongs to the Seaver Company, and two (2) sewing machines in the hands of lessees, and also fifty (50) completed lasting machines in the factory of the Seaver Company, except that of this number twenty-five (25) are not assembled; and duplicate parts, needles, drawings, patterns, and other equipment stock and materials in the factory at 40 Stanhope Street, Boston, where the machines of the Seaver Company are made, and also the entire right, title, and interest to the following Letters Patent of the United States:—

484,958	October 25, 1892.	Charles S. Gooding and Thomas K. Keith.
467,743	January 26, 1892.	Augustus Seaver.
488,523	December 20, 1892.	Thomas K. Keith
487,023	November 29, 1892.	Augustus Seaver
489,945	January 17, 1893.	Charles S. Gooding
537,767	April 16, 1895.	William S. Hamm
559,311	April 28, 1896.	Augustus Seaver
559,617	May 5th, 1896.	Augustus Seaver
559,618	May 5th, 1896.	Augustus Seaver
564,015	July 14, 1896.	William S. Hamm
570,252	October 27, 1896.	William S. Hamm
596,308	December 28, 1897.	Augustus Seaver
590,639	September 28, 1897.	Fred P. Bullard and William S. Hamm
583,674	June 1st, 1897.	Arthur W. Eaton and William S. Hamm
596,325	December 28, 1897.	William S. Hamm
596,323	December 28, 1897.	Arthur W. Eaton
635,129	October 17, 1899.	Arthur W. Eaton
635,124	October 17, 1899.	Fred P. Bullard

Also Letters Patent of Great Britain No. 1559, dated January 26, 1892.

Also Letters Patent of Switzerland No. 4460, dated February 2, 1892.

And the said Seaver agrees that until the assets, business, and good-will of the Seaver Company have been sold at public auction, or to the said Baker, as hereinafter provided for, the assets of the Company shall not be decreased in any way, and that no lasting machines shall be sold or leased, and that no liabilities shall be incurred; and, further, that the present assets of the Seaver Company are not less than said assets were on the 23rd day of December, 1899.

(2) The said Seaver also hereby sells, assigns, and transfers to the said Baker all shares of the capital stock of the said Seaver Company belonging to the said Seaver, and warrants that the shares in the capital stock of the said Company owned by him and hereby sold and transferred, are not less than thirty-one thousand, seven hundred and forty-one (31,741) shares out of a total capital stock of the Company of not more than sixty thousand (60,000) shares, of which 60,000 shares twelve thousand, two hundred and sixty-three (12,263) shares are in the Treasury of the Company free from any claim and available for the future purposes of the Company.

(3) It is agreed that the said stock shall continue to stand in the name of the said Seaver until the said Baker shall request the said Seaver Company or the said Seaver to transfer the same to him or his assignee, and the said Seaver agrees that the treasury stock shall not be disposed of or encumbered in any way without the consent in writing of the said Baker.

(4) The said Seaver also sells, assigns, and transfers unto the said Baker all shares in the Lasted Toe Cap Company, a corporation duly organized in accordance with the laws of the State of Maine, owned or controlled by him or in which he has any interest, either alone or jointly with others, and he warrants that he is the owner of the same, and that he does hereby transfer to the said Baker a majority of the issued capital stock of the Lasted Toe Cap Company, not including, however, a majority of or any of the treasury stock hereinafter referred to. And it is agreed that the

said stock shall continue to stand in the name of the said Seaver until the said Baker shall request the said Seaver or the Lasted Toe Cap Company to transfer the same to him; and the said Seaver agrees that any reissued stock or the treasury stock shall not be issued or disposed of or encumbered by the said Lasted Toe Cap Company except with the consent of the said Baker, and that no patents shall be sold or licenses granted or agreements entered into by the Lasted Toe Cap Company except with the consent of the said Baker; and the said Seaver covenants and agrees that he will at any time within twenty days of a request by the said Baker cause to be elected such officers for the Lasted Toe Cap Company, in place of the present officers, as the said Baker shall request; and he covenants that the present officers will resign or peaceably surrender their offices and the custody of all the property of the Company to such new officers.

(5) The said Seaver for the consideration aforesaid, hereby surrenders and cancels all his claims against the Lasted Toe Cap Company, including especially a claim for fourteen thousand (14,000) dollars which he has against the last said Company, and all other claims and demands of every kind which he has against the Lasted Toe Cap Company; and he warrants that the Lasted Toe Cap Company is free from any debt or liability of any sort to any other person, and agrees that whenever requested he will execute and deliver to the Lasted Toe Cap Company a valid release of every claim on the part of the said Seaver against the Lasted Toe Cap Company.

And the said Seaver also agrees to assign or cause to be assigned to the Lasted Toe Cap Company, without other consideration than herein expressed, the following applications for Letters Patent: —

Great Britain — Communication from Augustus Seaver, case filed October 17, 1899. No. 20,787. Application in the name of Henry Harris Lake,

Germany, filed October 17, 1899, in name of Augustus Seaver: — Both for Machine for Stretching Uppers.

(6) The said Seaver further assigns and transfers to the said Baker his one share in Class A of the Seaver Process Lasting Syn-

dicate, Limited, a corporation duly organized in accordance with the Companies Acts of Great Britain, and all the shares in the Seaver Process Lasting Syndicate, Limited, owned or controlled by him, or in which has any interest.

(7) The said Seaver appoints the said Baker his true and lawful attorney in his name or in the name of the said Seaver to do all acts and bring all actions at law or in equity which may be necessary to secure to himself the full benefit of all the property and rights hereby conveyed and intended so to be, and for such purposes to appoint a substitute or substitutes, and at pleasure to revoke such appointment.

(8) Said Seaver covenants and agrees to call a meeting of the shareholders of the said Seaver Company within ten (10) days from the date hereof, and to explain to the shareholders the situation of the Seaver Company, and to give the shareholders the option of voting to sell the assets, business, and good-will of the Seaver Company at public auction, subject to a covenant on the part of the bidder to pay all the debts of the Seaver Company before receiving a conveyance, or at private sale to the said Baker for a covenant on the part of the said Baker to pay the debts of the Seaver Company to an amount not exceeding thirty-eight thousand (38,000) dollars; and in case the said Baker shall purchase at said auction or at such private sale, will cause to be executed proper transfers to convey all the said property to the said Baker or such persons as he shall direct; but in case at any such public auction some other person than the said Baker or his agents shall bid a greater sum than the debts of the corporation, then the said Seaver shall see that before any conveyance is made to the said purchaser, the said bidder shall pay to the said Baker the entire debt and claims due to the said Seaver and hereby assigned to the said Baker, and from the sum so received the said Baker shall pay to the said Seaver the sum of thirty-eight thousand (38,000) dollars and shall retain for himself one thousand, two hundred and seventy-five dollars and fifty-three cents ($1,275.53) and the proportion of the remainder of the purchase price above thirty-nine thousand two hundred and seventy-five dollars and fifty-three cents

$39,275.53) to which the said Baker is entitled, by reason of the stock in the Seaver Company hereby conveyed to him. But it is understood and agreed that the said Seaver will vote in favor of a transfer to the said Baker of the property of the corporation at private sale, unless the said Baker shall be convinced that it is the desire of a number of the stockholders, holding a substantial minority of the stock, to sell the property of the Company at public auction.

(9) The said Seaver further covenants and agrees that within seven (7) days of any request on the part of the said Baker, he will cause the resignations of all the officers of the Seaver Company to be tendered to and accepted by the Seaver Company, and will cause the election of such persons for the officers of the Company as the said Baker shall in writing request of the said Seaver.

(10). Provided the said Seaver observes and performs all the agreements and undertakings on his part hereinbefore contained, and provided the said Baker, his representatives and assigns, secure and enjoy the property, assets, and good-will of the said Seaver Company herein referred to, the said Baker covenants and agrees that the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, (hereinafter called the United Company) shall pay to the said Seaver, or his legal representatives and assigns, on the twenty-fifth day of each calendar month, beginning with the twenty-fifth day of March, 1900, a sum of money which shall be equal to half the amount of money received during the preceding calendar month, by the United Company, as royalty for the use of its lasting machines, of whatever kind, from the George E. Keith Company, a corporation organized under the laws of Massachusetts; and from the Charles A. Eaton Company, a corporation organized under the laws of said State; and the Preston B. Keith Shoe Company, a corporation organized under the laws of said State; these payments to continue until the said Seaver shall have received the sum of thirty-eight thousand dollars ($38,000) without interest. And in case the said monthly payments shall cease before the said $38,000 has been paid in full, because of the discontinuance of the use of the

lasting machines leased by the said shoe manufacturers from the United Company, then the United Shoe Machinery Company shall continue to make monthly payments to the said Seaver at such rate as shall equal the average monthly payment paid to the said Seaver in accordance with the terms hereof during the six months proceding the cessation of such payments until the said Seaver shall have received the said sum of $38,000.

In case the property of the said Seaver Company shall be sold at public auction to some other person than the said Baker, and the said bidder shall pay to the said Baker the claims of the said Seaver against the Seaver Company, hereby assigned to the said Baker, then, from the sums thus received by the said Baker, the said Baker shall pay $38,000 to the said Seaver, retaining the remainder to his own use.

And the said Seaver, for the consideration aforesaid, covenants and agrees that he will, upon request, do all further acts and execute all further instruments which the said Baker or his representatives and assigns shall deem necessary or desirable to secure to him or them the full benefit and enjoyment of all the property and rights hereby conveyed or intended to be conveyed.

In Witness Whereof, the said Edward B. Seaver and the said Louis H. Baker have hereto respectively set their names and seals on the day and year first above written.

EDWARD B. SEAVER [SEAL]
LOUIS H. BAKER [SEAL]

In consideration of one dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, the United Shoe Machinery Company hereby guarantees the faithful and due performance by the said Baker of all the promises on his part set forth in the above agreement dated the 13th day of January, 1900.

In Witness Whereof, the United Shoe Machinery Company has caused its corporate name and seal to be hereto affixed by Edwd. P. Hurd its Asst. Tres. on the day and year first above written.

[SEAL] UNITED SHOE MACHINERY CO.
by Edwd. P. Hurd, Asst Tres.

PLAINTIFF'S EXHIBIT 76.

[Put in Evidence, page 469.]

An Agreement made at Boston, Massachusetts, this fifteenth day of February, 1900, between the United Shoe Machinery Company, a corporation duly organized under the laws of the State of New Jersey, having a place of business at 111 Lincoln Street, in said Boston, party of the first part; and Frank N. Stackpole of said Boston, George D. Pike of Brookline, Massachusetts, Joseph H. Ordway of said Brookline, and John R. Stuart, Junior of Roxbury, Massachusetts, parties of the second part; and Sidney W. Winslow of Beverly, Massachusetts, and also George W. Brown, Edward P. Hurd, and James J. Storrow of said Boston, parties of the third part;

Whereas, the parties of the second part are engaged in the business of manufacturing and selling blacking, cement, stains, and other products chiefly intended for polishing, staining, cementing, filling or otherwise dressing or preparing leather, boots, shoes, and other articles made in whole or in substantial part of leather, and carry on said business as partners under the firm name of the Boston Blacking Company, having a place of business at 96 Beverly Street, in said Boston; and

Whereas, the party of the first part has agreed to purchase one half interest in said business, or substantially one-half thereof, for eleven thousand, two hundred (11,200) shares of the preferred stock of the said United Shoe Machinery Company of the par value of twenty-five (25) dollars each; and

Whereas, as an incident to the purchase of a one-half interest in said business it has been agreed by the several parties hereto that a corporation shall be formed under the laws of the State of Maine, to be called the Boston Blacking Company, for the purpose of taking over the said business;

Now Therefore this Agreement Witnesseth;

That in consideration of one dollar and other good and valuable consideration by each of the above-mentioned parties to the other in hand paid, the receipt whereof each of the parties hereto hereby

acknowledges, the said parties do hereby covenant and agree each with the other as follows, viz: —

One. There shall be formed forthwith by Franklin C. Payson of Portland, Maine, under the laws of the state of Maine, a corporation having a capital stock of Six Hundred Thousand (600,000) Dollars, divided into six thousand (6,000) shares of the par value of One Hundred (100) Dollars each, and having Articles of Agreement and Bylaws in the form set forth hitherto agreed to and now in the hands of Franklin C. Payson of Portland, Maine.

The name of said new corporation shall be the "Boston Blacking Company", and the Board of Directors at the time of its organization shall be the said Stackpole, Pike, Ordway, Stuart, Winslow, Brown, Hurd and Storrow. And at the time of the organization of the said corporation the said Stackpole, Pike, Ordway and Stuart shall each subscribe and pay for two (2) shares of the capital stock in cash and the said Brown, Hurd, Winslow and Storrow shall each subscribe and pay for one (1) share in cash.

Two. As soon as the said corporation shall have been organized the parties of the second part agree to duly execute and deliver to the said new corporation instruments which shall properly assign and convey to the said new corporation the entire right, title and interest in all the partnership, property and partnership assets of every kind of the parties of the second part, including especially all property whatever whether real or personal which is being utilized in conducting the said business carried on under the name of the Boston Blacking Company and including especially the following instruments, viz: — (1) Bill of Sale; (2) Deed of Real Estate; (3) Assignment of Leases to the said new corporation in the form set forth in "Schedule B" hereto annexed, and the said Stackpole, Pike, Ordway, Stuart, Brown, Hurd, Winslow and Storrow agree that as Directors of said new corporation they will cause to be issued in full payment of the property thus to be transferred to the said new corporation five thousand nine hundred and eighty-eight (5988) fully paid up shares of the capital stock of said new corporation of a total par value of Five Hundred Ninety Eight Thousand and Eight Hundred (598,800) Dollars, said five thousand nine hundred and

eighty-eight (5,988) shares to be divided among the parties of the second part as follows: —

To Frank N. Stackpole one thousand four hundred and ninety-seven (1,497) shares of a total par value of One Hundred and Forty-Nine Thousand Seven Hundred (149,700) Dollars.

To George D. Pike one thousand four hundred and ninety-seven (1,497) shares of a total par value of One Hundred and Forty-Nine Thousand Seven Hundred (149,700) Dollars;

To Joseph H. Ordway one thousand four hundred and ninety-seven (1,497) shares of a total par value of One Hundred and Forty-Nine Thousand Seven Hundred (149,700) Dollars;

To John R. Stuart, Jr., one thousand four hundred and ninety-seven (1,497) shares of a total par value of One Hundred and Forty-Nine Thousand Seven Hundred (149,700) Dollars.

Three. The parties of the second part jointly and severally covenant and agree that they are the lawful owners of said business heretofore carried on under the name of the Boston Blacking Company and that they will transfer and convey the same as herein provided to the said new corporation free from debt and from any encumbrance whatsoever except an existing indebtedness not exceeding Thirteen Thousand Thirty-four and 70/100 (13,034.70) Dollars which the said new corporation is to assume and pay; and they further covenant and agree that the gross sales of merchandise made by them in carrying on said business have been as follows: —

Gross sales July 1, 1896 to July 1, 1897,	$457,593.79
Gross sales July 1, 1897 to July 1, 1898,	$560,717.12
Gross sales July 1, 1898 to July 1, 1899,	$605,776.30
Gross sales July 1, 1899 to Jan. 1, 1900,	$382,183.63

and that the net profits after making all proper allowances for all losses, depreciations and expenses of every sort and after deducting salaries paid to the parties of the second part, amounting to Thirty Thousand (30,000) Dollars per year, have been as follows: —

Net profits July 1, 1896 to July 1, 1897,	$78,672.61
Net profits July 1, 1897 to July 1, 1898,	$91,887.72

Net profits July 1, 1898 to July 1, 1899,	$104,860.47
Net profits July 1, 1899 to Jan. 1, 1900,	$51,989.02

and, further, that the assets on the first day of February, 1900, (and which are to be assigned and transferred to the new corporation, together with such increase in assets as are represented by the profits of the American business since February 1, 1900, and the profits of the foreign business since January 1, 1900) amount to not less than the following: —

Accounts including English account,	$120,879.79
Cash on hand	16,513.47
Merchandise, estimated,	65,000.00
Real Estate,	5,130.71
Chelsea Machinery,	2,274.71
Boston Machinery,	1,759.07
Furniture,	113.26
	$211,671.01
Assets of English Branch,	34,287.30
	$245,958.31
Less 10% of profits of English business for the year ending July 1, 1899,	2,386.25
	$243,572.06

Four. Inasmuch as the said new corporation is to be organized with a majority of its stock owned by the parties of the second part, therefore the parties of the second part expressly covenant and agree with the party of the first part and with the parties of the third part that they will faithfully, diligently, and efficiently manage the affairs and business of the said new corporation, and, furthermore, that they, the said parties of the second part, for the period of six (6) years from the date hereof will continue to devote their entire knowledge of the business and time and attention to promoting the business and welfare of said new corporation, serving the corporation in such capacity as may be necessary to efficiently carry on its business, and will transfer to said new corporation any inventions, discoveries, or secret processes, or com-

positions of matter which they may make, own, or acquire at any time during said term, and any Letters Patent or applications for Letters Patent of the United States or any foreign countries which they may own or make or in which they may acquire any interest, legal or equitable, during said period; and that they will take as their total compensation for such exclusive services and for such Letters Patent, applications, inventions, discoveries, processes, and compositions of matter (except for such dividends as shall be declared pro rata to all the stockholders of the said new corporation) salaries not in excess of six thousand (6,000) dollars per annum for each of them.

They further agree that for the period of (10) years from the date hereof (unless the one hundred shares of the new corporation which are to be placed in escrow are offered to the party of the first part for cash, as herein provided) they will not permit any salaries or compensations for services to be paid to anyone else in excess of two thousand (2,000) dollars per annum without getting the assent of the party of the first part and that they will not permit any contract for services for more than one year to be made by the said new corporation with any person or corporation except with the consent of the party of the first part. And inasmuch as the parties of the second part have built up the said business by their personal skill and attention and as the value of the business and goodwill to be conveyed to the said new corporation is dependent on the skill, knowledge, and attention of the parties of the second part, they covenant and agree that for the period of fifteen (15) years from the date hereof they will not whether jointly or severally or directly or indirectly, or as owner, agent, or employee or as stockholder of any corporation (except as they may be shareholders and employees of the said new corporation) engage in or become interested in any way in the business of buying or making or selling or dealing in blacking, or stains or cement or inks or wax or any other supplies intended primarily for use in manufacturing or finishing leather or boots or shoes or other articles made in chief part of leather in that portion of the United States east of the Mississippi or Missouri Rivers, or any portion of Missouri, Louisiana, Nebraska,

Kansas, or California, or any portion of Canada to the eastward of the Albany River, Lake Nipigon and Lake Superior, or any portion of Europe excepting Spain, Portugal, Turkey, Greece, Servia, and Bulgaria; and will not directly or indirectly sell any such materials or supplies to manufacturers carrying on business in the above-defined territory or manufacture or sell any such materials or supplies to be dealt in or used by others within such territory; and will transfer to said new corporation without further consideration any inventions, discoveries, or secret processes, or compositions of matter which they may make, own, or acquire at any time during said term, and any Letters Patent or applications for Letters Patent of the United States or any foreign countries which they may own or make or in which they may acquire any interest legal or equitable during said period. The said parties of the second part further agree that they will permit the President of the party of the first part, or such representatives as he may appoint, to have free access at all times to all premises occupied by or on behalf of the said new corporation and complete opportunity to familiarize himself with all details of the business of the corporation, and also at all times when requested by the President or his representative to furnish the President or his representative with any knowledge he may desire in regard to the business, including a knowledge of all secret processes and methods of manufacture employed by the said new corporation; and furthermore, the said parties of the second part covenant that the said new corporation shall keep full and accurate books of account which shall show at all times the condition of the corporation and its business, and that such books shall be open at all times to the inspection of the officers of the party of the first part or such experts as it may employ, with full liberty to make copies thereof in case of the party of the first part shall so desire.

Five. The parties of the second part agree that of the stock of the new corporation thus to be issued to them, certificates for two thousand, nine hundred and ninety-two (2,992) shares shall be at once duly endorsed in blank and delivered to Charles W. Lamb of Stoneham, to be held by him in escrow upon the terms that when the party of the first part shall deliver to the said Charles W. Lamb

eleven thousand, two hundred (11,200) fully paid up shares of the preferred stock of the party of the first part said eleven thousand two hundred (11,200) shares to be issued as follows: —

Two thousand, eight hundred shares in the name of the said Stackpole;

Two thousand, eight hundred shares in the name of the said Pike;

Two thousand, eight hundred shares in the name of the said Ordway;

Two thousand, eight hundred shares in the name of the said Stuart;

then the said Charles W. Lamb shall simultaneously deliver the certificate or certificates for the said two thousand, nine hundred and ninety-two (2,992) shares in said new corporation to the party of the first part, and the certificates for the said eleven thousand, two hundred (11,200) shares to the several parties of the second part, the last said certificates being delivered to the several parties of the second part according as they have been issued to the different parties of the second part.

Said parties of the second part further agree that besides the two thousand nine hundred and ninety-two (2,992) shares of the new corporation which are to be held as above provided for, they will also, as soon as the certificates for the said five thousand, nine hundred and eighty-eight (5,988) shares of the new corporation are delivered to them, duly indorse and deliver to the said Charles W. Lamb and to William R. Dresser of Waban, one hundred (100) of said shares, the said one hundred (100) shares to be held in trust by them, the said Lamb and Dresser and the survivor of them and his successor in said trust upon the following terms, but the parties of the second part may vote on said 100 shares of stock until it is transferred to the parties of the first part as hereinafter provided.

Whenever the total sales or transfers of the stock of the new corporation made by the parties of the second part, or any of them, excepting transfers of stock to each other, shall have amounted to seven hundred and fifty (750) shares, then the said trustees, the survivor or successor of them, shall offer in writing to the party of the first part to sell, transfer, and assign to the party of the first part the said one hundred (100) shares for the sum of ten thousand

(10,000) dollars, and if the party of the first part shall not accept said one hundred (100) shares and pay for the same the sum of ten thousand (10,000) dollars within ninety days from the date of such offer in writing, then the said one hundred (100) shares shall be divided equally among the parties of the second part or their assigns; and if the party of the first part shall purchase the said one hundred (100) shares, then the said trustees, the survivor of them or his successor, shall distribute the said sum of ten thousand (10,000) dollars thus received equally among the four parties of the second part, their successors and assigns. And if at the end of twenty (20) years from the date hereof the total sales of shares made by the parties of the second part as aforesaid shall not amount to seven hundred and fifty (750) shares, then the said trustees, the survivor of them or his successor, shall divide the said one hundred (100) shares equally among the parties of the second part, and their assigns. No shares shall be sold or transferred by the parties of the second part except to the party of the first part, or to each other, except after first offering said shares to the party of the first part as hereinafter more fully provided.

Six. The said parties of the second part furthermore agree as an essential part of the consideration furnished by them for the said eleven thousand, two hundred (11,200) shares of the preferred stock of the party of the first part, that they will and their representatives and assigns shall always vote all stock in said new corporation owned or controlled by them, or any of them, in favor of four (4) Directors who shall be representatives of the party of the first part, the said four Directors to consist of the President, the Treasurer, the Assistant Treasurer, and the Assistant Manager of the party of the first part unless the party of the first part shall notify the parties of the second part, their representatives or assigns, that the party of the first part desires to be represented by four persons named in such notice, in which event the said stock shall be voted in favor of the four persons thus named.

The parties of the second part further agree for themselves and their executors, administrators, and assigns, that the three thousand and four (3004) shares which are to be issued to them in accord-

ance with the terms hereof shall not nor shall any part thereof be sold at any time within twenty-one (21) years from the date hereof except as regards sales of the parties of the second part to each other, without first notifying the party of the first part of the price and terms offered for the stock and giving the party of the first part sufficient information to establish the bona fide character of the offer and then permitting the party of the first part to purchase the stock for its own benefit at the price and upon the terms offered. And they further agree that the certificates for the said three thousand and four (3004) shares shall have written on the face thereof the words: "Not to be sold unless first offered to the United Shoe Machinery Company, According to Agreement of February 1900".

Seven. The parties of the second part further agree for themselves, their administrators, executors and assigns that they will not except with the assent of the party of the first part, permit the said new corporation to mortgage its franchise or its property or any portion thereof, or make or give any notes or incur any indebtedness except such regular accounts for merchandise as the business may require.

Eight. The parties of the second part further covenant and agree for themselves, their executors, administrators and assigns, that the said new corporation shall sell the different products, supplies and materials made or dealt in by it to the United Shoe Machinery Company of Canada, the British United Shoe Machinery Company and such other subsidiary corporations, agents or branches as the party of the first part may establish or appoint to carry on the business of the party of the first part in foreign countries at prices which shall be as low as such products, supplies and materials can be procured from other makers thereof or dealers therein (proper allowance being made for all differences in quality), and also as low as the said new corporation sells such products, materials and supplies to any other person, firm or corporation.

Nine. Each of the parties hereto covenants and agrees to execute and deliver such instruments and to do all such things as may be

necessary or proper in order to carry out so far as he is concerned the spirit and terms of this agreement.

In Witness Whereof the said United Shoe Machinery Company has hereto affixed its corporate seal by its and the said several parties have hereto affixed their several names and seals on the day and year first above written.

FRANK N. STACKPOLE
GEORGE D. PIKE
JOHN R. STUART, Jr.
JOSEPH H. ORDWAY
SIDNEY W. WINSLOW
GEO. W. BROWN
EDWARD P. HURD
JAMES J. STORROW
UNITED SHOE MACHINERY COMPANY
By Geo. W. Brown, Treasurer.

Commonwealth of Massachusetts.

Suffolk, ss. Boston, March 15, 1900.

Then personally appeared the above named Frank N. Stackpole, George D. Pike, Joseph H. Ordway, John R. Stuart, Jr., Sidney W. Winslow, George W. Brown and James J. Storrow, and acknowledged the foregoing instrument to be their free act and deed, and the said George W. Brown acknowledged that he executed the foregoing instrument on behalf of the United Shoe Machinery Company and that it is the free act and deed of the United Shoe Machinery Company. Before me

Guy Cunningham, Notary Public.

Commonwealth of Massachusetts.

Suffolk, ss. Boston, March 16, 1900.

Then personally appeared the above named Edward P. Hurd and acknowledged the foregoing instrument to be his free act and deed. Before me,

William H. Walker, Notary Public.

SCHEDULE B.

BILL OF SALE.

Know all Men by these Presents:

That we, Frank N. Stackpole of Boston, Massachusetts, George D. Pike and Joseph H. Ordway, both of Brookline, Massachusetts and John R. Stuart, Junior, of Roxbury, Massachusetts, copartners doing business under the firm name and style of the Boston Blacking Company, and having a usual place of business at 96 Beverly Street in said Boston, in consideration of Five Thousand Nine Hundred and Eighty-eight (5,988) shares of the capital stock of the Boston Blacking Company, a corporation duly organized under the laws of the State of Maine, a new corporation formed to succeed to the business of the said partnership and hereinafter called the new corporation, to us paid by the said new corporation, the Boston Blacking Company, the receipt of which is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said new corporation, the Boston Blacking Company, its successors and assigns, the following property, to wit: —

All the property and assets, real and personal, of the said partnership, including the interest of Edward F. Wilder therein which has been transferred by an instrument dated the seventeenth day of February, A. D. 1900, to the said Frank N. Stackpole, including the real estate, buildings, improvements, appurtenances, easements, plant, engines, boilers, motors, machinery, tools, drawings, models, patterns, blacking, cement, wax, stock on hand manufactured and unmanufactured, books of account, office furniture and fixtures, trade-marks, trade rights, prescriptions, recipes, labels, brands, trade names, inventions, formulas, trade secrets, rights, privileges and advantages, accounts and notes receivable, cash on hand or on deposit in banks or elsewhere, whether situated at our place of business, 96 Beverly Street in said Boston, or at Chelsea, Massachusetts, or elsewhere in the United States, or in England, Germany, France or elsewhere, including the good-will of the said partnership it being the intention of this instrument to convey to the said new corporation, the Boston Blacking Company, every

right, privilege and asset of every name and nature to which the partnership, the Boston Blacking Company, has any right, title and interest, legal or equitable, including the said share of the said Wilder therein; subject however to debts of the said partnership not in excess of Thirteen Thousand and Thirty-four Dollars and Seventy Cents ($13,034.70) which debts not in excess of Thirteen Thousand and Thirty-four Dollars and Seventy Cents ($13,034.70) the said new corporation hereby assumes and agrees to pay.

To Have and to Hold the premises, together with all the privileges and appurtenances, to the said new corporation, the Boston Blacking Company, and its successors and assigns, to their own use and behoof forever.

And for the consideration aforesaid we and each of us do hereby covenant and agree that we will execute, acknowledge and deliver all deeds necessary or desirable to convey to the said new corporation, the Boston Blacking Company, all our right and interest and the interest of the said partnership in, to and under all the assets hereby conveyed or intended so to be; and we and each of us do hereby appoint the said new corporation, the Boston Blacking Company, its successors and assigns, the true and lawful attorney of us and each of us, in the names of us or either of us or in its own name, to bring such action at law or in equity, and do such other acts as it may deem necessary or desirable to secure to it the full benefit and advantage of the rights hereby conveyed or intended so to be, and for such purposes to appoint a substitute or substitutes and at pleasure to revoke such appointment.

And inasmuch as we have built up the business of the partnership, the Boston Blacking Company, by our personal skill and attention, and inasmuch as the value of the business and good-will conveyed to the said new corporation, the Boston Blacking Company, is largely dependent on our skill, knowledge and attention, we and each of us do covenant and agree that for the period of six years from the date hereof we will continue to devote our entire knowledge of the business and our entire time and attention to the service of the new corporation, the Boston Blacking Company, and to the promotion of its business and welfare, serving the corpora-

tion in such capacity as may be necessary to efficiently carry on its business, receiving as our total compensation for such exclusive services (except for such dividends as shall be declared pro rata to all the stockholders of the said new corporation) salaries not in excess of six thousand dollars ($6,000) per annum for each of us.

And for the consideration aforesaid we and each of us do covenant and agree that for the period of fifteen years from the date hereof neither we nor any of us jointly or severally, directly or indirectly, or as owner, agent or employee, or as stockholder of any corporation (except as we may be shareholders or employees of the new corporation) will engage in or become interested in any way in the business of buying or making or selling or dealing in blacking, or stains, or cement, or inks, or wax, or any other supplies intended primarily for use in manufacturing or finishing leather, or boots, or shoes, or other articles made in chief part of leather, in that portion of the United States east of the Mississippi or Missouri Rivers, or in Missouri, Louisiana, Nebraska, Kansas or California, or any portion of Canada to the eastward of the Albany River, Lake Nipigon and Lake Superior, or any portion of Europe except Spain, Portugal, Turkey, Greece, Servia and Bulgaria, and will not directly or indirectly sell any such materials or supplies to persons carrying on business in the above-defined territory, or manufacture or sell any such materials or supplies to be dealt in or used by others within such territory.

In Witness Whereof we the said Frank N. Stackpole, George D. Pike, Joseph H. Ordway and John R. Stuart, Junior, have hereunto set our hands and seals this day of A. D. 1900.

Commonwealth of Massachusetts,

Suffolk, ss. Boston, 190 .

Then personally appeared the above named
and acknowledged the foregoing instrument to be their free act and deed, before me,

Know all men by these presents: That we, Frank N. Stackpole, of Boston, Massachusetts, George D. Pike and Joseph H. Ordway, both of Brookline, Massachusetts, and John R. Stuart, Junior, of Roxbury, Massachusetts, copartners doing business under the firm name and style of the Boston Blacking Company and having a usual place of business in said Boston, in consideration of one dollar and other valuable considerations to us paid by the Boston Blacking Company, a new corporation duly organized according to the laws of the State of Maine, to succeed to the business of the said partnership, the Boston Blacking Company, the receipt whereof is hereby acknowledged, do hereby remise, release, and forever quitclaim unto the said new Corporation, the Boston Blacking Company, its successors and assigns, the following described parcels of land with the buildings thereon, all situated in Chelsea, in Suffolk County, in said Commonwealth. The first of said parcels comprises the whole of lot of land numbered fifty-nine (59) situated on the corner of Third and Cypress Streets, as seen on a plan of Winnisimmet Lands and containing 6,900 square feet more or less and bounded northeasterly by Third Street 60 feet; northwesterly by Cypress Street 115 feet; southwesterly by Lot No. 60 on said plan 115 feet; southeasterly by Lot No. 57 on said plan 60 feet. Said plan may be found at end of Vol. 616 in Registry of Deeds for Suffolk County.

The second of said parcels comprises the whole of Lot No. 60 on Summer Street as seen on Shearer's Plan of Winnisimmet Company's land, containing 6,900 square feet more or less, bounded northwesterly by Cypress Street 115 feet; northeasterly by Lot No. 59 Third Street 60 feet; southeasterly by Lot No. 58 Summer Street 115 feet; southwesterly by Summer Street 60 feet, be measurements more or less; being the same premises conveyed to George D. Pike and others by deed of Matilda C. Morse and others, dated May 22, 1894, and recorded with Suffolk Deeds book 2201, page 526, and the premises conveyed to George D. Pike and others by deed of Mary S. Page, dated July 24, 1891, and recorded with Suffold Deeds book 2011, page 557. This instrument includes also the interest conveyed to Edward F. Wilder in said deeds, the

interest of said Edward F. Wilder under said deeds having been conveyed to said Frank N. Stackpole by deed dated February 21, 1900, and intended to be recorded herewith, the interest of the said Edward F. Wilder in the said premises being included in this conveyance.

To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said new corporation, the Boston Blacking Company, and its successors and assigns to its and their own use and behoof forever.

And we do hereby, for ourselves and our heirs, executors and administrators, covenant with the said grantee and its successors and assigns that the granted premises are free from all incumbrances made or suffered by us; and that we will and our heirs, executors, and administrators shall warrant and defend the same to the said grantee and its successors and assigns forever against the lawful claims and demands of all persons claiming by, through, or under us, but against none other.

And for the consideration aforesaid, we, Minna J. Stackpole, wife of Frank N. Stackpole, and Mabel F. Pike, wife of George D. Pike, and Grace Ordway, wife of Joseph H. Ordway, and Helen D. Stuart, wife of John R. Stuart, Junior, do hereby release unto the said grantee and its successors and assigns all right of or to both dower and homestead in the granted premises.

In Witness Whereof, we the said Frank N. Stackpole and Minna J. Stackpole, George D. Pike and Mabel F. Pike, Joseph H. Ordway and Grace Ordway, and John R. Stuart, Jr., and Helen D. Stuart, hereunto set our hands and seals this day of in the year one thousand nine hundred.

Signed, sealed, and delivered in the presence of:

Commonwealth of Massachusetts.

Suffolk, ss. Boston, 1900.

Then personally appeared the above named and acknowledged the foregoing instrument to be their free act and deed before me,

Justice of the Peace.

This indenture, made this day of A. D. 1900, between George D. Pike, Joseph H. Ordway, John R. Stuart, Junior, and Frank N. Stackpole, copartners doing business under the firm name and style of Boston Blacking Company, and having a usual place of business in Boston, Massachusetts, and the Boston Blacking Company, a new corporation formed to succeed to the business of the said partnership; witnesseth:

That the said parties, in consideration of the mutual covenants herein contained, covenant and agree as follows:

The said George D. Pike, Joseph H. Ordway, John R. Stuart, Jr., and Frank N. Stackpole do assign, transfer and set over unto the said new corporation, the Boston Blacking Company, its successors and assigns, a lease dated the twenty-first day of November, 1894, between Frank W. Boles, Trustee, and the said partnership, the Boston Blacking Company, relating to the building numbered 94, 96, 98 and 100 Beverly Street, Boston, together with the advantage of all the covenants contained in said lease.

To have and to hold the said indenture of lease to the said new corporation the Boston Blacking Company and its successors and assigns forever.

And for the consideration aforesaid, the said corporation, the Boston Blacking Company, does covenant and agree that it will perform all the covenants to be performed by the partnership, the Boston Blacking Company, under the terms of the said indenture of lease.

In witness whereof the said George D. Pike, Joseph H. Ordway, John R. Stuart, Jr., and Frank N. Stackpole have hereunto set their hands and seals and the corporation, the Boston Blacking Company, has caused this instrument to be signed and its corporate seal to be hereto affixed on the day and year first above written.

PLAINTIFF'S EXHIBIT 77.

[Put in Evidence, page 470.]

Indenture made this sixteenth day of March, A. D., 1900, by and between Erastus E. Winkley and Benjamin Phillips, both of Lynn, in the Commonwealth of Massachusetts, parties hereto of the first part and the United Shoe Machinery Company, a corporation established under the laws of the State of New Jersey, of Paterson, in said State (hereinafter referred to as the "United Company"), party hereto of the second part.

Whereas the said Winkley and Phillips did, on the seventeenth day of January, 1896 enter into a certain written agreement dated that day with the Goodyear Shoe Machinery Company, a corporation established under the laws of the State of Maine (hereinafter referred to as the "Goodyear Company");

And whereas, in pursuance of said agreement with said Goodyear Company, the said Winkley and Phillips have sold, assigned and transferred to said Goodyear Company the entire interest in and to the following described Letters Patent of the United States of America, namely:

No. 549,471, dated November 5, 1895, granted to said Winkley for Improvements in Forms for Sole Laying Machines;

No. 553,948, dated February 4, 1896, granted to said Winkley and Phillips for Improvements in Sole Laying Machines;

No. 553,949, dated February 4, 1896, granted to said Winkley and Phillips for Improvements in Sole Laying Machines;

No. 557,744, dated April 7, 1896, granted to said Goodyear Company for Improvements in Sole Laying Machines.

No. 573,069, dated December 15, 1896, granted to said Goodyear Company for Improvements in Pressing Forms for Sole Laying Machines.

No. 579,205, dated March 23, 1897, granted to said Goodyear Company for Improvements in Jacks for Sewing Machines;

No. 579,206, dated March 23, 1897, granted to said Goodyear Company for Improvements in Forms for Sole Laying Machines;

No. 627,034, dated June 13, 1899, granted to said Winkley and Phillips for Improvements in Sole Pressing Machines;

Also, application for Letters Patent of the United States Serial No. 721,317, filed June 21, 1899 by said Winkley for Improvements in Sole Pressing Machines (allowed November 21, 1899);

And whereas in pursuance of said agreement with said Goodyear Company the said Winkley and Phillips have, at the request and by the direction of said Goodyear Company conveyed to the British United Shoe Machinery Company, Limited, a corporation duly organized in Great Britain under the Companies Act 1862 to 1898 and having its registered office at Leicester, England, a majority of the capital stock of which is owned by said United Company, their beneficial interest in

British Letters Patent No. 2537, dated February 4, 1896, granted to James Grieve Lorrain for an Improvement in Sole Layers:

British Letters Patent No. 7417, dated April 7, 1896, granted to said Lorrain for an Improvement in Sole Layers;

And whereas said Winkley and Phillips under the terms of said agreement are to convey or cause to be conveyed to said Goodyear Company or to such person or corporations as it shall nominate to be the assignee or assignees thereof, the following Letters Patent, namely: —

Letters Patent of France, No. 287,920, dated April 17, 1899, granted to said United Company;

Application for Letters Patent of Great Britain, No. 6990, dated April 1, 1899, filed by A. G. Brookes as a communication from the said United Company;

Application for Letters Patent of Germany, filed April 19, 1899, No. U. 1442 1/72 Kassenbuch No. 2459, filed by the said United Company.

And whereas, in and by said agreement with said Goodyear Company, the said Winkley and Phillips reserve to themselves and their executors, administrators and assigns an exclusive license and the exclusive right, free of royalty or license fee, to use in the United States or elsewhere any and all of the inventions or im-

provements patented in the several Letters Patent referred to in said agreement or to be patented in pursuance of said agreement in machines other than Sole Laying Machines, which exclusive license the said United Company is desirous of acquiring.

Now this Indenture Witnesseth:

1. That in consideration of the covenants and agreements of the United Company hereinafter contained, the said Winkley and Phillips hereby jointly and severally covenant and agree to sell, assign and convey, or to cause to be assigned and conveyed to the said United Company and its successors or assigns, or to such persons or corporations as the United Company shall designate to be assignee or assignees thereof; the exclusive license and right, free of royalty or license fee reserved by and to said Winkley and Phillips in said agreement dated January 17, 1896 with said Goodyear Company to use in the United States or elsewhere in machines other than sole laying machines, the inventions or improvements patented in the several Letters Patent of the United States and of other countries referred to in said agreement or to be patented in pursuance of said agreement;

2. That in consideration of these presents, the said United Company hereby covenants and agrees with the said Winkley and Phillips to pay in due course after bill rendered, all the expenses of building the first machine for sole levelling embodying the inventions patented in said Letters Patent and applications hereby agreed to be conveyed; provided, however, that such expenses shall not exceed the sum of two thousand dollars ($2,000);

3. That in consideration of these presents, the said United Company hereby covenants and agrees to pay to each of said parties of the first part the sum of twenty dollars ($20.) as royalty for each sole levelling machine for boots and shoes embodying the improvements patented or to be patented as aforesaid or either or any of them which shall be made and sold, leased or otherwise disposed of by it in the United States or elsewhere from the date hereof until the expiration of the term of that Letters Patent of the United States which shall be the latest in date of the United States patents granted or which shall hereafter be granted to said Winkley and

Phillips or either of them at the request of said United Company and assigned to or by the direction of the said United Company in pursuance of this indenture.

4. The said United Company further agrees to make full and true reports to the said Winkley and Phillips in the months of January and July of each year while this ageeement remains in force, showing all sole levelling machine made and sold, leased or otherwise disposed of by it in the United States or elsewhere which embody the improvements or either or any of them patented in said Letters Patent and applications hereby agreed to be conveyed, or which shall be patented and conveyed to said United Company in pursuance of this indenture and agrees to keep in its books an account which shall show the number of such machines made by it and the names and addresses of those to whom it shall have sold, leased or otherwise disposed of such machines and agrees to allow said Winkley and Phillips or their attorneys to inspect the same at all reasonable times;

5. The said United Company further agrees to pay to said Winkley and Phillips in the months of January and July in each year during the continuance of this agreement, the royalties above mentioned for each such machine made and sold, leased or otherwise disposed of by it as stated in the account to be rendered under the provisions of section 4 hereof, it being understood and agreed, however, that it is to pay no royalty for parts of such machines which it shall furnish, sell or lease to keep in repair the machines which it shall have sold, leased or otherwise disposed of;

6. And said Winkley and Phillips further covenant and agree that if said United Company shall at any time within eighteen months from the first day of July, A. D. 1899 pay to them the sum of eight thousand dollars ($8,000.) less an amount equal to the royalties which shall have been paid to them up to that time under this indenture, they will jointly and severally release and discharge in writing and under their respective seals the said United Company from all and every obligation, covenant and agreement herein made incumbent upon the said United Company.

7. The said Winkley and Phillips further covenant and agree

from time to time hereafter to promptly communicate to the officers or counsel of the said United Company all inventions or improvements in sole levelling or sole pressing machines which they or either of them shall hereafter made (except such inventions and improvements in sole levelling machines as they are bound to communicate and convey to said Goodyear Company in pursuance of a written agreement dated October 19th, 1895, and such inventions and improvements in sole laying machines as they are bound to communicate and convey to said Goodyear Company in pursuance of said agreement dated January 17th, 1896) and to explain the same in such manner that the said United Company may have applications prepared for the grant of Letters Patent therefor both of the United States of America and of other countries, and from time to time hereafter and whenever requested by said United Company so to do, and without further consideration paid to them, to execute such applications, specifications, assignments and other written instruments and to do such acts as shall be reasonable and proper or necessary to secure the grant of Letters Patent for such inventions or improvements (except such as are to be conveyed to the said Goodyear Company as aforesaid) and to vest the entire interest in such inventions or improvements and patents therefor in said United Company or in such persons, or corporation as it shall designate to be assignees thereof the entire expense attendant upon all such applications, patents, assignments or other instruments or proceedings to be borne by the said United Company;

8. The covenants, agreements and provisions in this instrument which are incumbent upon or for the benefit of said Winkley and Phillips shall be incumbent upon and for the benefit of their executors, adminstrators and assigns; and those which are incumbent upon or for the benefit of said United Company shall be incumbent upon and for the benefit of its successors and assigns.

In Witness Whereof, the said Winkley and Phillips have hereunto set their hands and seals and the said United Shoe Machinery Company has caused its corporate seal to be hereto affixed and

these presents to be signed by its Treasurer, the day and year first above written.

Executed in duplicate.

ERASTUS E. WINKLEY [SEAL]
BENJAMIN PHILLIPS [SEAL]
[SEAL] UNITED SHOE MACHINERY CO.
By Geo. W. Brown, Treasurer

PLAINTIFF'S EXHIBIT 78.

[Put in Evidence, page 471.]

This Agreement made this nineteenth day of March, A. D. 1900, by and between the United Shoe Machinery Company of Paterson, a corporation under the laws of New Jersey, hereinafter called the United Company, and the Stanley Manufacturing Company, a corporation under the laws of Maine, hereinafter called the Stanley Company: Witnesseth:

That the said United Company shall purchase from the said Stanley Company the stock of machines, parts and supplies which it now has on hand at Frankfurt, Germany, and in transit to Frankfurt, and all accounts and bills owing to the said Stanley Manufacturing Company in Germany, whether overdue or not, which the United Company shall approve as collectable.

The Stanley Manufacturing Company guarantees all of the accounts thus taken over to represent machines, parts and supplies actually sold to responsible persons, firms or corporations, debtors, and the said Stanley Manufacturing Company hereby agrees to reimburse to the said United Shoe Machinery Company so much of the amount from said accounts as may be uncollectable by reason of the insolvency of any of the said debtors occurring during a period of six months from May 1st, 1900.

That the said United Company shall pay for the property and accounts thus taken over by the issue to the said Stanley Company of its preferred stock at par, taking the machines, parts and supplies at a price which shall be the cost to the said Stanley Company of such machines, parts and supplies laid down in Frankfurt, less a proper deduction for anything obsolete, imperfect, unsaleable, or

second-hand, and taking the accounts and bills at their face value, less such discounts as have been usually allowed by the said Stanley Company. If parties disagree as to the value of any of the machines, parts or supplies, such machines, parts or supplies shall be withdrawn from the operation of this contract and shipped by the Stanley Company to the United States.

The said United Company further agrees, if requested by the said Stanley Company, to undertake the collection of any existing accounts of the said Stanley Company which are not assigned as aforesaid, and to use its best care and diligence in collecting the same, and to charge the said Stanley Company only with the actual expense of making such collection.

That the said Stanley Company will at once give up its branch office in Germany, so far as relates to the sale or disposal of shoe machinery or shoe manufacturers supplies, and that the Stanley Company will not in the future establish an office, or maintain an agent or representative of any kind to solicit orders for the sale of such machinery and supplies outside of the United States of America, and will not export, or sell or dispose of to others for export, any boot or shoe machinery or supplies therefor outside of the United States except through the United Company, and except further as hereinafter provided.

That the said United Company shall use its best endeavors to sell in foreign countries, machines made by the said Stanley Company, but in common with such other machines for a like purpose, as it may desire to sell.

That the said United Company shall not copy, or purchase, or deal in any way in imitations of the styles of machines used by the Stanley Company so long as such machines made by the Stanley Company continue to be sold in foreign countries through the United Company.

That should the said United Company at any time after one year from the first day of May, 1900, desire to discontinue the purchase and sale of any of the machines, parts or supplies made by the said Stanley Company, then and in that case it shall be privileged to do so, and the said Stanley Company may then and thereafter sell such

machines, parts or supplies thus discontinued to any and all persons without respect to the country to which they are to be sent.

That the said Stanley Company may advertise and create and maintain in all proper business ways a demand for its machines in any and all countries in the world.

That this agreement shall go into effect May first, 1900.

In Witness Whereof the said United Shoe Machinery Company and the said Stanley Manufacturiug Company have caused these presents to be duly executed on the day and year first above written.

STANLEY MANUFACTURING CO.
F. F. Stanley, Treasurer.

[SEAL] UNITED SHOE MACHINERY COMPANY
by Sidney W. Winslow, President.

Whereas the Stanley Manufacturing Company of Massachusetts, an unincorporated association, of which Frank F. Stanley is principal trustee, is engaged in the manufacture of machines, parts and supplies for the Stanley Manufacturing Company of Portland, Maine, party to the above agreement, the said Association, in consideration of one dollar and other valuable considerations to be paid by the United Shoe Machinery Company, the receipt whereof is hereby acknowledged, and in consideration of the execution of the foregoing contract by the said United Shoe Machinery Company, hereby agrees during the continuance of the foregoing contract not to export or knowingly sell for export to countries outside the United States any boot and shoe machines, parts or supplies therefor except at the times and to the countries when and where like sales are permitted to said Maine corporation under the terms of the above agreement.

Witness my hand and seal this nineteenth day of March, A. D. 1900.

STANLEY MANUFACTURING CO. [SEAL]
Frank F. Stanley Principal Trustee

Approved
Amos P. Tapley
Frank F. Stanley
Chas. F. Randall
Executive Committee.

PLAINTIFF'S EXHIBIT 79.

[Put in Evidence, page 501.]

Agreement made this first day of November, 1897 between The Lincoln Sewing Machine Company, a corporation organized and existing under the laws of the State of New Hampshire, hereinafter called the "Lincoln Company", as party hereto of the first part, and the Goodyear Shoe Machinery Company, a corporation organized and existing under the laws of the State of Maine, hereinafter called the "Goodyear Company", as party hereto of the second part.

The Lincoln Company agrees to sell and the Goodyear Company agrees to purchase all the property of the Lincoln Company (except its shares of capital stock), including all its machinery, tools, jigs, patterns, drawings, machines under lease or in stock or in process of construction, materials raw, wrought or in process, bills and accounts receivable and choses in action, Letters Patent of the United States and foreign countries, pending applications for Letters Patent and interests in inventions or claims against infringers of any and all Letters Patent owned by the Lincoln Company or in which it has an interest, leases of machines and licenses under Letters Patent, together with the good will of the business of the Lincoln Company and all its assets of every name and nature, except its shares of capital stock above mentioned.

The Lincoln Company covenants and agrees with the Goodyear Company that it has good right to sell and convey the property above referred to, and agrees to convey the same forthwith to the Goodyear Company by good and sufficient deeds conveying a good and clear title to the same, free from all encumbrances.

The Goodyear Company covenants and agrees with the Lincoln Company to pay it for the property to be conveyed to it as aforesaid, in the manner following:

The Goodyear Company agrees to pay to the Lincoln Company each year a sum equal to three per cent (3%) per annum on sixty thousand dollars, the present capital of the Lincoln Company, if the total dividends of the Goodyear Company in that year (from

Nov. 1st of one year to Oct. 31st of the next year, both inclusive) shall equal three per cent (3%) or more but less than six per cent (6%) on three million dollars, the present capital of the Goodyear Company; but if the total dividends of the Goodyear Company in any year (from Nov. 1st of one year to Oct. 31st of the next year, both days inclusive) shall equal six per cent (6%) or more but less than nine per cent (9%) on three million dollars, then the payment for that year shall be four per cent (4%) on sixty thousand dollars; and if the total dividends of the Goodyear Company in any year (reckoned as above) shall equal nine per cent (9%) or more but less than eighteen per cent (18%) on three million dollars, then the payment for that year shall be five per cent (5%) on sixty thousand dollars; and if the total dividends of the Goodyear Company in any year (reckoned as above) shall equal eighteen per cent (18%) or more but less than twenty-five per cent (25%) on three million dollars, then the payment for that year shall be six per cent (6%) on sixty thousand dollars; and if the total dividends of the Goodyear Company in any year (reckoned as above) shall equal twenty-five per cent (25%) or more on three million dollars, then the payment for that year shall be seven per cent (7%) on sixty thousand dollars.

The first payment by the Goodyear Company on account of the annual payments above agreed upon shall be made on the day the first dividend of the Goodyear Company after the date hereof is payable, and the amount of that payment on account shall be determined by computing the percentage per annum of that dividend on three million dollars, reckoning as the time to be taken in that computation, the time between that day and the day on which the next preceding dividend of the Goodyear Company was payable; and the percentage per annum thus computed shall determine what percentage shall be used, and the time thus taken shall be the time used in determining the amount of payment to the Lincoln Company due that day. The next payment on account shall be made on the day the second dividend of the Goodyear Company after the date hereof is payable, and the amount of that payment on account shall be determined as above; and so on as to every dividend of

the Goodyear Company after the date hereof. But, as under this agreement as to partial payments on account, it may happen that the total payments to the Lincoln Company during any year, reckoning from November 1st, to October 31st, both inclusive, may be more or less than the annual payment due that year, the accounts shall be adjusted at the end of each October by computing the percentage on three million dollars of the total dividends paid during that year; and any balance due to the Lincoln Company shall be paid on the fifteenth day of November of each year; but any balance due from the Lincoln Company shall be applied in reduction of the next payment on account; and no interest shall be reckoned as to any balance found under such annual adjustment.

The foregoing agreements of the Goodyear Company in respect to a payment to the Lincoln Company, whenever a dividend is paid by the Goodyear Company to its stockholders shall remain in force for forty-nine years from November 1, 1897, but, if at any time within that period, the Goodyear Company shall be duly dissolved and a final distribution of its assets and property shall be made, then, in such case, the Lincoln Company agrees that, after deducting from the assets and property of the Goodyear Company the amount of any additions to the capital of the Goodyear Company made subsequent to November 1st, 1897, which have been paid in cash, or in property at a fair valuation, it will receive in lieu of further payments to it under this agreement one-sixtieth of the remaining assets and property of the Goodyear Company.

The Lincoln Company agrees that all its income and collections after October 19th, 1897, until the delivery of its assets and property to the Goodyear Company in pursuance of this agreement, shall be applied to the payment of its unsecured indebtedness or shall be turned over to the Goodyear Company at the time of the delivery of said property.

The Lincoln Company covenants and agrees that it shall and will not at any time or times within forty-nine years from November 1, 1897, directly or indirectly engage in the manufacture or sale of shoe machinery or wax thread sewing machines, within any of the several States and Territories of the United States of America or

within the district of Columbia, excepting the States of Florida, Montana and Nevada, and further covenants and agrees not to engage in any business, or do any act, which shall injure or impair the good will of the business to be conveyed to the Goodyear Company as aforesaid.

The Lincoln Company agrees, from time to time hereafter, to execute all such deeds, assignments and other written instruments and to do all acts necessary or proper to vest the legal title to the property, Letters Patent and interests above referred to in the Goodyear Company, its successors and assigns.

The provisions of this agreement incumbent on, or for the benefit of either of the parties hereto shall be incumbent on and for the benefit of their respective successors and assigns.

In Witness Whereof, the Lincoln Sewing Machine Company has caused these presents to be signed in its name and its corporate seal to be hereto affixed by Daniel McNiven, its President and the Goodyear Shoe Machinery Company has caused these presents to be signed in its name and its corporate seal to be hereto affixed by John H. Hanan, its President, the day and year first above written.

[SEAL] LINCOLN SEWING MACHINE COMPANY
By Daniel McNiven, President.

[SEAL] GOODYEAR SHOE MACHINERY COMPANY
By John H. Hanan, President.

Pawtucket, R. I., November 9th, 1897.

At a meeting of the board of directors of the Campbell Machine Company, held October 30th, 1897, it was voted "that the president be and he is hereby authorized and instructed to cancel the contract of the Campbell Machine Company with the Lincoln Sewing Machine Company, dated April 9th, 1895, as soon as the stockholders of the Campbell Machine Company shall have approved the contract which has been negotiated with the Goodyear Shoe Machinery Company."

A true copy from the records
Attest DANIEL MCNIVEN, Secretary.

Pawtucket, R. I., November 9th, 1897.

Referring to the above recited vote, and the stockholders of the Campbell Machine Company having this day approved the contract with the Goodyear Shoe Machinery Company above referred to, I hereby, in pursuance of instructions as above, declare the contract of the Campbell Machine Company with the Lincoln Sewing Machine Company, dated April 9th, 1895, to be cancelled.

President of Campbell Machine Company,
GEORGE B. CHAMPLIN.

COPY OF VOTE OF DIRECTORS OF LINCOLN SEWING MACHINE COMPANY, OCTOBER 27th, 1897.

Pawtucket, R. I., October 27th, 1897.

A special meeting of the directors of the Lincoln Sewing Machine Company was held at the office of Julian A. Chase on above date. Three members were present, Messrs. Chase, McNiven and Warren, being a quorum.

It was voted unanimously that the contract with the Campbell Machine Company, dated April 9th, 1895, be cancelled, and it was also voted that the following contract with the Goodyear Shoe Machinery Company be approved, provided the Campbell Machine Company agrees to the cancellation of said contract of April 9th, 1895, and that it be submitted to the stockholders of the Lincoln Sewing Machine Company.

Meeting then adjourned. GEO. E. WARREN,
Clerk of Board Directors.

Exeter, N. H., Oct. 29, 1897.

A special meeting of the stockholders of the Lincoln Sewing Machine Co., was held at the office of John A. Brown, Exeter, N. H., in accordance with a call to that effect. The meeting was called to order, and on motion of Geo. E. Warren, it was adjourned until 4 o'clock in the afternoon.

At that time the meeting again came to order, with the following stock represented: Geo. E. Warren, 367 shares; Geo. E. Warren,

as trustee, 675 shares; Daniel McNiven, by his proxy Arthur O. Fuller, 406 shares; Julian A. Chase, by his proxy, John A. Brown, 392 shares.

The call for the meeting was read by the clerk. The proposed contract between the Lincoln Sewing Machine Co. and the Goodyear Shoe Machinery Co., was read.

Voted, that the proposed contract between the Goodyear Company and this Company, which has been submitted to the board of directors and approved by them be and is hereby approved to take effect Nov. 1, 1897, and that Daniel McNiven, president of the Lincoln Sewing Machine Co. be and is hereby authorized to execute, seal and deliver said contract in behalf of said Company.

Adjourned.

A true copy Attest. JOHN A. BROWN, Clerk.

Pawtucket, R. I., Oct. 21, 1897.

John A. Brown, Clerk Lincoln Sewing Machine Co.: —

We the undersigned stockholders of the above company desire a special meeting to see if the stockholders will approve of certain contracts submitted to the directors.

GEO. E. WARREN
JULIAN A. CHASE
DANIEL MCNIVEN

A true copy Attest John A. Brown, Clerk.

PLAINTIFF'S EXHIBIT 80.

[Put in Evidence, page 501.]

This Agreement made at Boston this sixth day of April, 1900, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, hereinafter called the United Company; and the Lincoln Sewing Machine Company, a corporation organized under the laws of the State of New Hampshire, hereinafter called the Lincoln Company; Witnesseth:

That Whereas the Goodyear Shoe Machinery Company, a corporation organized under the laws of the State of Maine, herein-

after called the Goodyear Company, has heretofore entered into an agreement with the Lincoln Company dated the first day of November, 1897, and whereas there remain certain payments and obligations on the part of the Goodyear Company to be made or performed to or toward the Lincoln Company in accordance with the terms of said agreement of the first day of November, 1897:

Now Therefore, the parties hereto in consideration of one dollar and other good and valuable considerations each to the other paid, the receipt of which the parties hereto severally acknowledge, do hereby Covenant and Agree each with the other as follows, viz.: —

First. The Lincoln Company hereby sells, transfers, and assigns to the United Company all rights and interests of every kind and nature to which it is or may be entitled from the Goodyear Company under the said agreement of November first 1897, and especially assigns to the United Company all right which the Lincoln Company has or may have to any payments of any sort or kind under the terms of the said agreement, and the Lincoln Company hereby authorizes the United Company to bring suit in the name of the Lincoln Company and to perform any other acts which may be necessary or proper to assert its rights as assignee of the Lincoln Company under said agreement of November first, 1897, but at the expense of the United Company, and the United Company shall indemnify and hold the Lincoln Company harmless from all expenses and losses in consequence thereof.

Second. The United Company agrees to issue to the Lincoln Company or to such persons as the Lincoln Company may in writing direct, twelve hundred and twenty-five (1225) shares of the fully-paid, non-assessable common stock of the United Company; and the United Company further agrees to pay immediately after the execution and delivery of this agreement the sum of twenty-four hundred and fifty (2,450) dollars in cash to the Lincoln Company.

In Testimony Whereof the parties hereto have interchangeably caused their respective corporate seals to be hereto affixed and these

presents to be signed by their respective officers for this purpose duly authorized, the day and year first above written.

[SEAL] LINCOLN SEWING MACHINE CO.
Geo. E. Warren, Treas.

[SEAL] UNITED SHOE MACHINERY COMPANY
By S. W. Winslow, President.

The Lincoln Sewing Machine Company hereby directs the United Shoe Machinery Company to issue the twelve hundred and twenty-five shares of its common capital stock referred to in the foregoing agreement to the following shareholders of the Lincoln Company giving to each the number of shares set opposite his name.

Name of Stockholder	No. of Shares Common Stock U. S. M. Co.	
Daniel McNiven, Pawtucket, R. I.	288	
Julian A. Chase, Pawtucket, R. I.	278	
Henry B. Metcalf, Pawtucket, R. I.	269	
Geo. E. Warren, 12 Ware St., Dorchester, Mass.	264	
William Gordon 54 Lincoln St., Boston.	70	
J. H. DeFriez, Medford, Mass.	56	
		1225

[SEAL] LINCOLN SEWING MACHINE CO.
Geo. E. Warren, Treas.

PLAINTIFF'S EXHIBIT 81.

[Put in Evidence, page 503.]

This Agreement made at Boston, Massachusetts, this 30th day of June, A. D. 1900 by and between Theophilus King of Quincy, Massachusetts, and Henry Tolman and Eleazer Kempshall, both of Newton in said state, parties of the first part, and the United Shoe Machinery Company, a corporation duly organized in accordance with the laws of the state of New Jersey, and having a usual place of business in said Boston, hereinafter called the United Company, party of the second part; Witnesseth: That

Whereas, the parties of the first part have represented to the United Company that the said King is owner of 145,635 shares of

the capital stock of the Boston Fast Color Eyelet Company, a corporation duly organized in accordance with the laws of the state of Maine, and having a usual place of business at said Boston, hereinafter called the Boston Company, said shares being held in trust for the said King, Tolman and Kempshall; and that the said Tolman is the owner of 9,163 shares of the capital stock of the said Boston Company, as trustee for the said King, Kempshall and Tolman; and that the said King owns 50 shares, the said Tolman 1 share, the said Kempshall 1 share, and Delcevare King 2 shares free from any trust; and that the entire capital stock of the said Boston Company consists of 200,000 shares of the par value of $1,000,000, so that the parties of the first part are together the owners of 154,852 shares, being more than three-fourths of the total capital stock of the said Boston Company, and the said King, Tolman and Kempshall are Directors in the said Boston Company, the said Kempshall being President of said Boston Company and the said Tolman Treasurer of said Boston Company, and the said King being Vice-President of said Company: and

Whereas the parties of the first part have represented that the Boston Company has, for the calendar year 1899, manufactured and sold over fifty million eyelets covered with celluloid, called plastic covered eyelets, and that the net profit from the manufacture and sale of such eyelets by it in the United States for said year has amounted to a sum in excess of $13,000; and

Whereas the said parties of the first part represent that the said King is the owner of six shares of the capital stock of the National Fast Color Eyelet Company, a corporation duly organized under the laws of the State of Maine and having an office in said Boston, hereinafter called the National Company, which is engaged in the purchase and sale of eyelets under the provisions of an agreement dated May 29, 1897, between the said National Company, the said Boston Company, the Scoville Manufacturing Company, a corporation duly organized under the laws of the State of Connecticut and having a usual place of business in Waterbury, Connecticut, Marenus J. Goodenough and Arthur Mathison, co-partners doing business under the name and style of the Fast Color Eyelet Company,

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having a usual place of business at Springfield, in said State of Massachusetts, hereinafter called the Fast Color Company, and John M. McFetheries, William E. Wright, and Charles E. Van Norman, co-partners doing business under the name and style of the Springfield Covered Eyelet Company, having a usual place of business in said Springfield, hereinafter called the Springfield Company; and A. D. Cutler, as trustee for himself and M. O. Parenteau and William H. Force, formerly co-partners doing business under the name and style of the Bay State Manufacturing Company, having their usual place of business in said Springfield, hereinafter called the Bay State Company, acting also through and by said Theophilus King, under the terms of which the National Company is the sole selling agent of the parties and purchases the covered eyelets needed to fill its orders from the parties in proportions set forth in said contract of May 29, 1897, by which the Boston Company is entitled to supply the said National Company with thirty per cent. of all covered eyelets sold in the United States of America by said National Company at the price of forty cents per thousand, and fifty per cent. of all covered eyelets sold by the said National Company in foreign countries at said price of forty cents per thousand, as more fully set forth in said contract of May 29, 1897, the profit upon all eyelets sold by the said National Company being divided between the parties to the said agreement, as more fully set forth in said contract of May 29, 1897; and

Whereas the parties of the first part represent that the said King has purchased from the said Springfield Company its entire right to supply the National Company with covered eyelets, being twenty per cent. of all the eyelets required by the National Company, as set forth more fully in said agreement of May 29, 1897; and

Whereas the parties of the first part represent that the Boston Company has purchased the entire rights of the Bay State Company under said agreement of May 29, 1897, to be held, however, only so long as the said Boston Company shall make certain payments to the Bay State Company not exceeding the sum actually received by the Boston Company monthly under said agreement of May 29, 1897, according to the monthly returns of the National

Company, on account of the net profits received by the National Company on the purchase at forty cents per thousand and sale of 50,000 eyelets per day for twenty-five days in each month at the average net selling price for the month, it being further understood that the Boston Company does not in any way guarantee that the National Company shall make a profit or undertake to control the prices at which the eyelets are to be sold by the National Company or the distribution of profits by the National Company; and that the Boston Company is entitled to retain all of said profit paid it by the National Company in excess of said profit on fifty thousand eyelets per day for twenty-five days in each month; and

Whereas, the said parties of the first part represent that the said King for himself and as agent for the Boston Company, and the said Mathison as agent for the Fast Color Company, own a plant for the manufacture of covered eyelets in England, and have entered into a contract giving an exclusive agency for the sale of covered eyelets in all countries except the United States and Canada to the Fast Colour Eyelet Company Limited of Brighton Chambers, Denman Street, London Bridge, S. E., and the entire profit from said foreign business is divided equally between the said Mathison and said King, the said King by an agreement with the Boston Company having acquired for himself a third interest in said half of the foreign business as consideration for advancing money and services in connection with said business, and holding the remaining two-thirds of the half of said business held by him as agent for the Boston Company; and

Whereas, the said parties of the first part desire to transfer their entire interest of every sort and kind in the manufacture of covered eyelets, including their stock in the said Boston Company, to a new corporation to be formed under the laws of the State of Maine, with a capital of one million five hundred thousand (1,500,000) dollars, divided into preferred and common stock, as more fully set forth hereafter; and,

Whereas, the United Company is willing to join in the formation of the said Company and give it the benefit of its good-will relating to the manufacture and sale of celluloid covered eyelets (though

not as to other kinds of eyelets), in reliance on said representations :

Now, Therefore, this agreement witnesseth that the said parties. in consideration of the respective covenants herein contained, do Covenant and Agree as follows :—

First: The said United Company shall cause to be formed a corporation under the laws of the State of Maine, with an authorized capital of one million five hundred thousand (1,500,000) dollars, divided into fifteen thousand shares of the par value of one hundred (100) dollars each, of which five thousand shares, having a total par value of five hundred thousand (500,000) dollars shall be preferred stock, and ten thousand shares having a total par value of one million (1,000,000) dollars shall be common stock. The preferred stock shall be entitled to a cumulative preferred dividend from the net profits of the company at the rate of six per cent. per year. After the payment in any year of the six per cent. dividend upon the preferred stock, and all dividends at said rate upon the preferred stock unpaid in previous years, a dividend of six per cent. for that year may be paid upon the common stock from any net profits then remaining, and after the payment of six per cent. in any one year on both the preferred and the common stock, any net profits still remaining may be divided among all the shares without preference until a total dividend for that year of ten per cent. on all the stock shall have been paid, after which any remaining net profits may be divided among the common stockholders.

The name of the Company shall be The United Fast Color Eyelet Company, and it is hereinafter referred to as the "New Company". Sidney W. Winslow shall be elected President of the New Company, but the position may be held temporarily by some other person.

The New Company shall be empowered to manufacture and sell eyelets, hooks, rivets, lacing studs, and similar articles, and to acquire and hold stock in any corporation or corporations doing a similar business, and deal in Letters Patent and inventions and rights therein and all machinery, processes and products used or useful in connection therewith, and the powers may be made broader

than the terms of this agreement in case the incorporators shall deem it wise; but the New Company shall not be bound to extend its business beyond the manufacture and sale of plastic covered eyelets.

Upon the organization of this New Company, the parties of the first part shall transfer to said New Company the following property:

1. One hundred and fifty-four thousand eight hundred and fifty-two shares of the capital stock of the said Boston Company, of which one share each shall be held in the name of the said Kempshall, King, and Tolman until they cease to be Directors of the Boston Company, when said shares shall be transferred to the New Company.

2. All the right of the said King, Kempshall, and Tolman or any of them, to any part in the profit of said Boston Company relating to foreign business, or of the National Company relating to foreign business, either by virtue of a vote of the said Boston Company, passed April 13, 1898, or by reason of any other contracts relating thereto, subject to the payment to said King of $5,000 for his rights therein.

3. All the rights of the said Springfield Company under the terms of said contract of May 29, 1897, or otherwise, relating to the manufacture of eyelets which the said King, Kempshall, and Tolman, or any of them, has heretofore acquired.

4. An agreement on the part of the said King to take such active part as may be assigned to him by the said New Company in carrying on the foreign and other business of the Boston Company and the New Company, for a period of fifteen years.

5. An agreement of the said Tolman and of the said Kempshall, whenever requested by the United Company, within the period of fifteen years from the date hereof, to assist the New Company and the Boston Company, receiving for such services reasonable compensation.

6. The entire right, title and interest which the said King, Kempshall, and Tolman and each of them may now have or may hereafter within fifteen years from the date hereof acquire as the result of

invention, purchase, or otherwise, in, to, and under all inventions, applications for Letters Patent, and Letters Patent of the United States and foreign countries relating to covered eyelets or relating to any machinery, plant, processes or products used or intended for use or useful in the manufacture thereof or the application thereof to or the insertion thereof into the material into which they are to be inserted. Also a joint and several agreement on the part of the said King, Kempshall, and Tolman that they will, upon request of the New Company or the United Company or either of them, assign and convey to the New Company all such inventions, applications for Letters Patent, and Letters Patent of the United States or foreign countries except such inventions and applications for Letters Patent and Letters Patent as have been heretofore conveyed by them or either of them to some other persons or corporations; and that they will execute proper applications for Letters Patent of the United States and foreign countries for any such inventions, and sign all papers necessary to desirable to enable the said New Company, or such person or corporation as it may choose, to make, in its own name, such applications if it desires, and that they will do all other acts necessary or desirable to cause full title to such Letters Patent and applications for Letters Patent and any Letters Patent which may be issued upon such applications, or for such inventions, to be vested in the New Company or such persons or corporations as it may desire, subject to the right of Sidney W. Winslow under three agreements of even date herewith to patents and inventions not adapted for use in the covered eyelet business, and to a license to use any patents or inventions which are adapted for use in the covered eyelet business in the business of making, selling, or applying enamel or japanned or plain eyelets or rivets or lacing studs of any kind to boots, shoes, or other materials.

Also a joint and several agreement on the part of the said King, Kempshall, and Tolman that they will not, jointly or severally, at any time prior to July first, 1915, enter the employ or become interested in the business of any person, corporation, partnership, or association, the business of which is hostile to the development and prosperity of the business relating to covered eyelets carried

on by the said New Company (either directly or through the Boston Company) except with the consent of the United Company.

7. The agreement of the said King to transfer to the New Company, or such person or corporation as it may request, as soon as he may legally do so, the shares held by him in the said National Company personally or for others.

8. The agreement by the said King, Kempshall, and Tolman to transfer on demand to the said New Company every right or interest whatsoever which they have relating to the production or sale of covered eyelets, and especially all right, title and interest in stock of any corporation (except such stock in the New Company as they are to retain in accordance with the terms hereof) or any business relating to covered eyelets or machinery used or to be used in the manufacture thereof or the application thereof to the material in which they are to be inserted, or in connection therewith.

Second: The said Tolman shall forthwith present his resignation as Treasurer of the Boston Company to the Directors of the Boston Company, and Charles H. Willson shall be elected Treasurer in his place. The said Kempshall shall forthwith place his resignation as President in the hands of the United Company, and the said King, Kempshall, and Tolman shall forthwith place their resignations as Directors in the hands of the United Company and will cause them to be accepted and such persons elected in their places as the United Company shall request.

Third: After the issue for cash of shares in the New Company necessary to qualify the officers there shall be issued jointly to the said King, Kempshall, and Tolman in payment for the property and rights transferred by them to the New Company above mentioned, one million dollars in par value of the common stock of the said New Company, and three hundred thousand dollars in par value of the preferred stock, as hereinafter provided,

Upon the issue of the said stock to the said King, Kempshall, and Tolman, they shall at once transfer the said stock as follows:—

(a) Fifty thousand dollars ($50,000) in par value of said pre-

ferred shares, being 500 shares of the par value of one hundred dollars ($100) each, shall be transferred to the said King.

(b) Fifty thousand dollars ($50,000) in par value of said preferred shares, being 500 shares of the par value of one hundred dollars ($100) each, shall be transferred to the said Kempshall.

(c) Fifty thousand dollars ($50,000) in par value of said preferred shares, being 500 shares of the par value of one hundred dollars ($100) each, shall be transferred to the said Tolman.

(d) Five thousand dollars ($5,000) in par value of said preferred shares, being 50 shares of the par value of one hundred dollars ($100) each, shall be transferred to the said King, Kempshall, and Tolman in such proportions as they shall agree.

(e) One million dollars ($1,000,000) in par value of said common shares of said Company, being 10,000 shares of the par value of one hundred dollars ($100) each, shall be transferred to the United Company as its absolute property and for its sole benefit.

(f) One hundred and forty-five thousand dollars ($145,000) in par value of said preferred shares of said Company, being 1450 shares of the par value of one hundred dollars ($100) each, shall be transferred to the United Company.

Fourth: The remainder of the authorized capital shall not be issued at once but shall be held unissued until the New Company shall find it desirable to use it to acquire further businesses or property or cash for carrying on its business.

Fifth: The United Company shall pay in cash to the said King the sum of Thirty-five thousand dollars ($35,000), for which sum the said King shall assign to the said United Company a debt of Twenty thousand dollars ($20,000) due from the said Boston Company to the said King; and five promissory notes of Four thousand dollars ($4,000) each, dated July 2nd, 1900, and given to the said King for said debt, which notes the said King shall endorse to the said United Company without recourse to him; and the said King, Kempshall, and Tolman shall also assign to the United Company all other debts due to them or either of them from said Boston Company except the sum of Five thousand dollars ($5,000) due from the said Boston Company to the said King by virtue of two

promissory notes for $2,500 each, dated July 2nd, 1900, and payable ; and the said King, Kempshall, and Tolman covenant and agree that, except for the debts due to them and hereby agreed to be transferred to the United Company, and the further debt of $5,000 due from the Boston Company to the said King upon said two notes of $2,500 each, and current debts amounting to $6,-138.88, and certain liabilities to Latham & Nourbourn and the Florence Manufacturing Company not now due but contingent under certain written contracts, the said Boston Company is free from all debts whatsoever.

They further jointly and severally covenant and agree that they will at once pay any just claims and demands which shall be found to exist against the said Boston Company outside of the claims hereby agreed to be transferred and outside of the said other indebtedness above expressly excepted.

Sixth: In case at any time within five years from the date hereof, the said King, Kempshall, and Tolman, or either of them, shall willfully or knowingly fail to perform any of their joint or several covenants herein contained, or any of those covenants to be made with the New Company pursuant to the terms hereof; then, the individual thus failing to carry out his said covenants, shall forfeit all right to dividends upon the preferred and common stock of the New Company which he is to receive in accordance with the terms of this instrument.

Seventh: The term "covered eyelets" wherever used in this agreement shall include the kind of covered eyelets referred to in said agreement of May 29, 1897, with the National Company, and all eyelets covered with celluloid or similar material, but shall not include enamelled eyelets or japanned eyelets or uncovered eyelets.

Eighth: The said King, Kempshall, and Tolman covenant and agree that they will do all acts and sign all instruments which may be necessary or desirable to fully carry out the intent of this instrument and vest in the New Company and the United Company the full benefit and advantage of the rights hereby agreed to be conveyed to the said New Company or the said United Company, or intended so to be, and they and each of them appoint the United

Company and its successors and assigns their true and lawful attorneys in the name of them or either of them, or in its own name, to do all acts necessary or desirable to secure to the New Company or to the United Company the full benefit and advantage of the rights hereby conveyed or intended so to be, and for said purpose authorize it to appoint a substitute or substitutes and at pleasure to revoke such appointment.

The reasonable expenses relating to the formation of the Company and the transfer to it of the property and rights herein provided for shall be borne by the New Company.

In Witness Whereof, the said Theophilus King, Henry Tolman, and Eleazer Kempshall have hereunto set their hands and seals, and the said United Shoe Machinery Company has caused this instrument to be signed and its corporate seal to be hereto affixed on the day and year first above written.

THEOPHILUS KING [SEAL]
ELEAZER KEMPSHALL [SEAL]
HENRY TOLMAN [SEAL]
[SEAL] UNITED SHOE MACHINERY CO.
by Sidney W. Winslow, President.

PLAINTIFF'S EXHIBIT 82.

[Put in Evidence, page 504.]

This agreement made at Boston, Massachusetts, this 30th day of June, 1900, by and between Theophilus King, of Quincy, Massachusetts, and Henry Tolman and Eleazer Kempshall, both of Boston, Massachusetts, and the United Shoe Machinery Company, a corporation duly organized in accordance with the laws of the State of New Jersey, and having a usual place of business in Boston, Massachusetts, hereinafter called the United Company, and Sidney W. Winslow, of Beverly, Massachusetts, hereinafter called the Trustee; Witnesseth: That

Whereas, certain inventions relating to the manufacture and sale of lacing studs, japanned eyelets and plain eyelets, or a license under the same, are to be transferred by the Boston Fast Color

Eyelet Company to the said Sidney W. Winslow, as trustee, to be held by him under the terms of this instrument, especially including the Letters Patent included in the list hereinafter given; and

Whereas, the parties desire to provide for the ownership and conduct of the business of manufacturing and selling lacing studs, or japanned or plain eyelets, or all of them, in case it is deemed wise to enter upon the said business, or to dispose of it if it is deemed desirable;

Now Therefore in consideraton of the covenants of the respective parties herein contained, the parties covenant and agree as follows: —

The said King, Kempshall and Tolman covenant and agree that they will cause to be transferred to Sydney W. Winslow of Beverly, Massachusetts, as trustee, for the purposes hereinafter stated, the following Letters Patent of the United States and foreign countries to wit: —

UNITED STATES OF AMERICA.

No. 552,841	Jan. 7, 1896.	No. 595,482	Dec. 14, 1897.
553,165	Jan. 14, 1896.	599,906	Mar. 1, 1898.
569,971	Oct. 20, 1896.	532,204	Jan. 8, 1898.
569,968	Oct. 20, 1896.	569,969	Oct. 20, 1896.
571,596	Nov. 17, 1896.	599,905	Mar. 1, 1898.
579,112	Mar. 16, 1897.	599,904	Mar. 1, 1898.
	548,316	Oct. 22, 1895	

DESIGN PATENTS.

No. 25,836	July 28, 1896.	No. 25,863	Aug. 4, 1896.
25,837	July 28, 1896.	25,864	Aug. 4, 1896.
	25,939	Aug. 18, 1896.	

DOMINION OF CANADA.

No. 51,825 of April 1, 1896. No. 54,735 of Jan. 23, 1897.
License under No. 54,732 of Jan. 22, 1897.

GREAT BRITAIN.

No. 2923 and No. 5924 of Mar. 17, 1896. No. 10,918 of Feb, 24, 1897.
17,163 of July 20, 1897.

BELGIUM.

No. 120,485 Mar. 17, 1896. License under No. 120,486 of
128,809 May 6, 1897. Mar. 17, 1896.
120,488 Mar. 17, 1896.

GERMANY.

No. 96,736 Oct. 7, 1897.

FRANCE.

No. 254,815 Mar. 17, 1896. No. 268,896 July 20, 1897.
266,648 May 5, 1897. 254,817 Mar. 17, 1896.
License under No. 254,816 Mar. 17, 1896

also all other inventions, applications for Letters Patent and Letters Patent of the United States or foreign countries owned or controlled by the Boston Fast Color Eyelet Company, or in which it has any interest relating exclusively to lacing studs, japanned eyelets or plain eyelets, and an exclusive license to use, so far as the manufacture or insertion of lacing studs, japanned eyelets and plain eyelets are concerned, for the full term of the patents, inventions or improvements which do not relate exclusively to the manufacture of lacing studs, japanned eyelets or plain eyelets, but may be useful in the manufacture thereef.

And the said King covenants and agrees that he will pay to the said Boston Company for its rights in said patents the sum of twenty-five hundred dollars ($2500), to be paid by the surrender to said Boston Company of an indebtedness of said Boston Company of twenty-five hundred dollars ($2500), which sum the United Company shall pay the said King on said surrender in return for the interest in said Letters Patent and inventions, and the other rights acquired by the United Company under this instrument.

The said King, Kempshall and Tolman jointly and severally covenant and agree that, in consideration of the covenants of the said Winslow herein contained, they will assign to the said Winslow all Letters Patent and applications for Letters Patent of the United States and foreign countries and all inventions which they or either of them own or control, or in which they or either of them have any interest, or which they or either of them shall make or

acquire or control or obtain any interest in within fifteen years from the date hereof which relate to lacing studs, japanned eyelets or plain eyelets, and all inventions, patents, and applications for Letters Patent of the United States and all foreign countries, relating to eyelets of any kind, or the manufacture or insertion thereof, except such inventions, applications for patents, and patents as are expressly reserved to the United Fast Color Eyelet Company under the provisions of an agreement of even date herewith between the United Shoe Machiney Company and the said King, Kempshall and Tolman, or to the said Winslow trustee, under the terms of an agreement of even date herewith between the said King, Kempshall and Tolman and the said United Shoe Machinery Company and the said Winslow trustee; and also will secure to the said Winslow, trustee, the exclusive right to use, so far as the manufacture or insertion of lacing studs, japanned eyelets, plain eyelets and eyelets of all kinds (except enamelled eyelets and covered eyelets) are concerned, for the full term of the patents, any inventions or improvements which are to be conveyed to the said United Fast Color Eyelet Company or the said Winslow, trustee, under the terms of one of said agreements of even date herewith, but which do not relate exclusively to the manufacture of lacing studs, japanned eyelets, or plain eyelets, but may be useful in the manufacture thereof.

And the said King, Kempshall and Tolman jointly and severally covenant and agree that they and each of them will do all acts and execute all applications for Letters Patent and all licenses and other instruments which may be necessary or desirable to procure, and to vest in the said Winslow, trustee, the entire right, title and interest in such Letters Patent as are to be conveyed to said Winslow, trustee, under the terms hereof and to secure to the said Winslow, trustee, such licenses under Letters Patent as are to be granted the said Winslow, trustee, in accordance with the terms hereof, it being the understanding of the parties hereto that the rights of the said Winslow, trustee, to said Letters Patent, inventions, and licenses are subject to the rights of the United Company under an agreement of even date herewith, entered into

between the said King, Kempshall and Tolman and the United Company, and the rights of a new corporation to be called the United Fast Color Eyelet Company, which is to be formed as provided for in said agreement.

The said Winslow, trustee, shall have the right to continue to build up and carry on the business of manufacturing and selling, or otherwise disposing of lacing studs, or japanned eyelets, or plain eyelets, and all profits which he shall make in the conduct of the business may be retained in the business as a working capital, or may be by him paid to the United Company as its own property, free and discharged of this trust.

The said Winslow, trustee, may at any time form a corporation and transfer the property held by him in trust hereunder to said corporation for such portion of its capital stock as he shall deem proper, or he may at any time sell the property held by him as trustee hereunder; and when such a sale or transfer of the property held by him hereunder shall be made by the said Winslow, trustee, he shall give to said King two per cent of the net proceeds received from such sale or transfer after the payment of all existing indebtedness and liabilities, and to the said Kempshall two per cent, and to the said Tolman two per cent of the said proceeds. But it is understood and agreed that the said Winslow, trustee, is not bound in any way whatever to make such sale or transfer, but that he can continue to manage the business as said trustee, and to turn over all profits which may be derived therefrom to the United Company so long as he shall desire to do so.

The said Winslow, trustee, shall have authority to borrow money to carry on the business herein provided for, and to pledge the property held by him as trustee hereunder to secure the payment thereof and the United Company may loan money to said Winslow, trustee, for carrying on and developing said business and may acquire from the said Winslow, trustee, security to secure the payment of the money thus loaned.

Nothing in this agreement shall prevent the United Company from undertaking for its own exclusive benefit the manufacture and sale or disposal of lacing studs, or japanned or plain or other eye-

lets, and the manufacture, lease, or disposal otherwise of machines for the insertion of lacing studs or eyelets.

In Witness Whereof, the said Theophilus King, Henry Tolman and Eleazer Kempshall have hereunto set their hands and seals and the said United Shoe Machinery Company has caused its corporate name and seal to be hereto affixed and the said Sidney W. Winslow, trustee, has hereunto set his hand and seal on the day and year first above written.

THEOPHILUS KING [SEAL]
ELEAZER KEMPSHALL [SEAL]
HENRY TOLMAN [SEAL]
SIDNEY W. WINSLOW [SEAL]
[SEAL] UNITED SHOE MACHINERY CO.
By Sidney W. Winslow President.

PLAINTIFF'S EXHIBIT 83.

[Put in Evidence, page 506.]

This Agreement, made this 30th day of June, 1900, by and between Theophilus King, of Quincy, Massachusetts, and Henry Tolman and Eleazer Kempshall, of Boston, Massachusetts, and the United Shoe Machinery Company, a corporation duly organized in accordance with the laws of the State of New Jersey, and having a usual place of business in Boston, Massachusetts, hereinafter called the United Company, and Sidney W. Winslow, of Beverly, Massachusetts, hereinafter called the Trustee, Witnesseth: That

Whereas, the said King and Eleazer Kempshall and Henry Tolman are the owners of sixty thousand (60,000) shares in the capital stock of the Enamel Eyelet Company, a corporation duly organized according to the laws of the State of Maine, hereinafter called the Enamel Company, the entire capital stock of said Enamel Company consisting of one hundred thousand (100,000) shares, of which eighty thousand (80,000) shares only are issued; and

Whereas, the said King, Kempshall and Tolman desire the devel-

opment of said business to be taken up by the said Sidney W. Winslow;

Now, Therefore, in consideration of the covenants of the respective parties herein contained, the parties covenant and agree as follows:—

The said King, Kempshall and Tolman covenant and agree that they will cause to be transferred to Sidney W. Winslow, of Beverly, Massachusetts, as trustee, for the purposes hereinafter stated, the entire sixty thousand shares in said Enamel Eyelet Company hereinbefore referred to; the Letters Patent of the Boston Fast Color Eyelet Company, No. 24,867, dated November 12, 1895, relating to enamel eyelets under which the said Enamel Company has a license; and also the entire right, title, and interest in and to all Letters Patent of the Boston Company relating exclusively to enamel eyelets or the manufacture thereof, together with such license for the full term thereof, under any patents and reissues thereof owned by the Boston Company, as shall be necessary to give the said Winslow and his assigns the exclusive right under said patents to manufacture and sell enamel eyelets embodying the inventions of said Letters Patent, and also the right to use for the full term of the patents in the manufacture of enamel eyelets any inventions belonging to the Boston Company which may be useful in the manufacture of such eyelets, together with an assignment to the said Winslow of all its right, title, and interest to any share in the assets or earnings, present or future, of the Enamel Eyelet Company. The said King shall pay to the said Boston Company, for its rights in said patents and said assignment of the share in the assets or earnings of the Enamel Company the sum of $2,500, to be paid by the surrender to said Boston Company of a promissory note of said Boston Company of $2,500, dated pay-able which sum the United Company shall pay the said King on said release in return for the interest in said Enamel Company and patents and other rights acquired by the United Company under this instrument.

The said King, Kempshall and Tolman further jointly and severally covenant and agree that, in consideration of the covenants

of the said Winslow, Trustee, herein contained, they will assign to the said Winslow, Trustee, all Letters Patent and applications for Letters Patent of the United States and foreign countries, and all inventions which they or either of them own or control, or in which they or either of them have any interest, or which they or either of them shall make or acquire or control or obtain any interest in within fifteen years from the date hereof, which relate especially to enamel eyelets or the manufacture thereof; and also will secure the said Winslow, Trustee, the exclusive right to use, so far as the manufacture of enamel eyelets is concerned, for the full term of the patents, any inventions or improvements which may not relate exclusively to the manufacture of enamel eyelets but may be useful in the manufacture thereof.

And the said King, Kempshall and Tolman jointly and severally covenant and agree that they and each of them will do all acts and execute all applications for Letters Patent and all licenses and other instruments which may be necessary or desirable to procure, and to vest in the said Winslow, Trustee, the entire right, title, and interest in such Letters Patent as are to be conveyed to said Winslow, Trustee, under the terms hereof, and to secure to the said Winslow, Trustee, such licenses under Letters Patent as are to be granted the said Winslow, Trustee, in accordance with the terms hereof, it being the understanding of the parties hereto that the rights of the said Winslow, Trustee, to said letters patent, inventions and licenses are subject to the rights of the United Company under an agreement of even date herewith entered into between the said King, Kempshall and Tolman and the United Company, and the rights of a new corporation to be called the United Fast Color Eyelet Company, which is to be formed as provided for in said agreement.

The said King, Kempshall and Tolman further jointly and severally covenant and agree that they and each of them will, without further consideration than is hereinafter provided, use their best endeavors to enable the said Winslow to make the said enamel eyelet business carried on by said Winslow successful; and that for the period of fifteen years from the date hereof neither they or

either of them will enter into any business in competition therewith, except with the consent of the said Winslow in writing.

The said Winslow, Trustee, shall have the right to continue to build up and carry on the business of manufacturing and selling or otherwise disposing of enamel eyelets, and all profits which he shall make in the conduct of the business may be retained in the business as working capital or may be by him paid to the United Company as its own property free and discharged of this trust.

The said Winslow, Trustee, may at any time form a corporation and transfer the property held by him in trust hereunder to said corporation for such portion of its capital stock as he shall deem proper, or he may at any time sell the property held by him as trustee hereunder, and when such a sale or transfer of the property held by him hereunder shall be made by the said Winslow, Trustee, he shall give to said King two per cent. of the net proceeds received from such sale or transfer after the payment of all existing indebtedness and liabilities, and to the said Kempshall two per cent., and to the said Tolman two per cent. of said net proceeds. But it is understood and agreed that the said Winslow, Trustee, is not bound in any way whatever to make such sale or transfer, but that he can continue to manage the business as said trustee and to turn over all profits which may be derived therefrom to the United Company so long as he shall desire to do so.

The said Winslow, Trustee, shall have authority to borrow money to carry on the business herein provided for, and to pledge the property held by him as trustee hereunder to secure the payment thereof; and the United Company may loan money to the said Enamel Company or to the said Winslow, Trustee, for carrying on and developing said business, and may acquire from the Enamel Company or the said Winslow, Trustee, security to secure the repayment of the moneys thus loaned.

Nothing in this agreement shall prevent the United Company from undertaking for its own exclusive benefit the manufacture and sale or disposal of enamel or other eyelets, and the manufacture, lease, or disposal otherwise of machines for the insertion of enamel or other eyelets.

The United Company further covenants and agrees that it will cause to be transferred to the said King, Kempshall and Tolman, after the transfer by them to the said Winslow, Trustee, of the shares in the Enamel Eyelet Company and other rights above provided, twenty-five thousand dollars ($25,000) each in par value of the preferred capital stock of a corporation to be formed under the provisions of an agreement of even date herewith, to be called the United Eyelet Company.

In Witness Whereof the said Theophilus King, Henry Tolman, Eleazer Kempshall and Sidney W. Winslow have hereto set their hands and seals and the said United Shoe Machinery Company has caused its corporate name and seal to be hereto affixed on the day and year first above written.

THEOPHILUS KING [SEAL]
ELEAZER KEMPSHALL [SEAL]
HENRY TOLMAN [SEAL]
SIDNEY W. WINSLOW [SEAL]

[SEAL] UNITED SHOE MACHINERY CO.
By Sidney W. Winslow, President.

PLAINTIFF'S EXHIBIT 84.

[Put in Evidence, page 507.]

This Agreement made this 30th day of June A. D., 1900, by and between Theophilus King, of Quincy, Massachusetts, the United Shoe Machinery Company, a corporation duly organized in accordance with the laws of the State of New Jersey and having a usual place of business in Boston, Massachusetts, hereinafter called the United Company, and Sidney W. Winslow, of Beverly, Massachusetts, hereinafter called the Trustee; Witnesseth: That

Whereas, the said King is the owner of certain machinery, rivets, and other property, Letters Patent, applications for Letters Patent, and inventions relating to rivets:

Now therefore, in consideration of the covenants of the respective parties herein contained, the parties covenant and agree as follows: —

Said King covenants and agrees that he will cause to be transferred to Sidney W. Winslow of Beverly, Massachusetts, as trustee for the purposes hereinafter stated, the following property, to-wit: —

Six (6) rivet-making machines and special tools for making the same; four or more hand setters; thirty to forty bench setters; twenty to twenty-five foot-power setting machines complete; twenty to twenty-five power setting machines, six completed and the others nearly completed; two rattlers; the belting attached to the rattlers and other machines; material for making rivets, in all one or two tons; manufactured rivets, from one to three tons; being the machinery now or recently situated at 133 Oliver Street in said Boston, and being all the rivet-making machinery, rivets, and rivet materials owned by the said Theophilus King, the greater part of said material having been purchased by the said King from the Reversible Rivet and Stud Company.

Also the following Letters Patent of the United States and Applications for Letters Patent of the United States and licenses under the same: —

No. 547,142	October 1, 1895	H. H. Cummings
No. 552,042	December 24, 1895	H. S. Crombie
No. 561,324	June 2, 1896	E. Kempshall
No. 565,855	August 11, 1896	H. H. Cummings
No. 580,638	April 13, 1897	H. S. Crombie
No. 616,729	December 27, 1898	G. L. Reenstierna
No. 628,098	July 4, 1899	E. Kempshall
No. 648,883	May 1, 1900	G. L. Reenstierna

Application Serial Number 641,257 to E. Kempshall for Riveting Machine;

Application Serial Number 656,332 to G. L. Reenstierna for Clutch Mechanism;

Application Serial Number 657,551 to for Feeding Mechanism.

Also all other Letters Patent, applications for Letters Patent and inventions, as well of the United States as of foreign countries, owned or controlled by the said King, relating to rivets or in which he has any interest. Also all the capital stock held by

the said King in the Reversible Rivet and Stud Company, a corporation duly organized according to the laws of the State of Maine and having a usual place of business in being shares, the entire issue of the capital stock of the Reversible Rivet and Stud Company being shares.

The said King further covenants and agrees that in consideration of the covenants of the said Winslow, herein contained, he will assign all other Letters Patent, applications for Letters Patent or inventions of the United States which he owns or controls, or in which he has any interest, relating to rivets or to any machinery or processes for making the same or applying the same to the material in which they are to be inserted. The said King will also convey to said Winslow all future inventions which he shall, for the period of fifteen years, make or acquire or control, or in which he has any interest, and all Letters Patent and applications for Letters Patent for such inventions which he shall own or control, or in which he has any interest for said period of fifteen years from the date hereof. And he covenants and agrees that he will do all acts and execute all applications for Letters Patent and other instruments which may be necessary or desirable to procure Letters Patent for such inventions and upon such applications in the United States and all foreign countries in the name of the said Sidney W. Winslow; and vest in him, the said Winslow, the entire right, title, and interest in said Letters Patent and said inventions and any Letters Patent for the United States or foreign countries which may be issued upon such applications for Letters Patent or for the inventions therein described.

The agreements of the said King herein contained, however, are subject to the rights of the United Company and a proposed corporation, the United Fast Color Eyelet Company, to inventions not relating exclusively to rivets, and the right of the said Winslow under the terms of this agreement to such inventions, Letters Patent and applications shall be confined to a license under such Letters Patent so far as they relate to rivets, or machinery, or processes for making the same or applying the same to the material in which they are to be inserted.

The said King further covenants and agrees that he will, without further consideration than is hereinafter provided, use his best endeavors to enable the said Winslow to make the said rivet business, carried on by said Winslow, successful; and that, for the period of fifteen years from the date hereof, he will enter into no business in competition therewith except with the consent of the said Winslow, in writing.

Said Trustee may take such means as he deems wise to secure a profit from the property hereby conveyed to him, and for that purpose may sell the whole or any part of the property hereby conveyed to him in trust, at public auction or private sale, upon such terms as he may deem wise, and the purchaser shall not be bound to see to the application of the purchase money.

The said United Company shall pay to the said King, on the transfer to the said Winslow, Trustee, of the property above set forth, $25,000 in par value of the preferred stock of the United Fast Color Eyelet Company, a corporation to be hereafter formed, said preferred stock to be of the par value of $100 per share.

The said Winslow, Trustee, shall have the right to continue to build up and carry on the business of manufacturing and selling or otherwise disposing of rivets in such manner as he shall deem wise, and all profits which he shall make in the conduct of the business may be retained in the business as a working capital, or may be by him paid to the United Company as its own property free and discharged of this trust.

The said Winslow, Trustee, may at any time form a corporation and transfer the property held by him in trust hereunder to said corporation for such portion of its capital stock as he shall deem proper, or he may at any time sell the property held by him as trustee hereunder, and when such a sale or transfer of the property held by him hereunder shall be made by the said Winslow, Trustee, he shall give to said King six per cent (6%) of the net proceeds received from such sale or transfer after the payment of all existing indebtedness and liabilities; but it is understood and agreed that the said Winslow, Trustee, is not bound in any way whatever to make such sale or transfer, but that he can continue to manage

the business as such trustee, and to turn over all proceeds which may be derived therefrom so long as he shall desire to do so.

The said Winslow, Trustee, shall have authority to borrow money to carry on the business herein provided for, and to pledge the property held by him as trustee hereunder to secure the payment thereof; and the United Company may loan money to said Winslow, Trustee, for carrying on and developing said business, and may acquire from said Winslow, Trustee, security to secure the payment of the money thus loaned.

Nothing in this agreement shall prevent the United Company from undertaking, for its own exclusive benefit, the manufacture and sale or disposal of rivets and the manufacture, lease or disposal otherwise of machines for the insertion of rivets.

In Witness Whereof, the said King and Winslow have hereunto set their hands and seals and the United Shoe Machinery Company has caused its corporate name and seal to be hereto affixed on the day and year first above written.

THEOPHILUS KING [SEAL]
SIDNEY W. WINSLOW [SEAL]
[SEAL] UNITED SHOE MACHINERY CO.
by Sidney W. Winslow

PLAINTIFF'S EXHIBIT 85.

[Put in Evidence, page 507.]

This agreement, between Theophilus King of Quincy, Massachusetts, and the United Shoe Machinery Company, a corporation duly organized according to the laws of the State of New Jersey, and having a usual place of business in Boston, Massachusetts, hereafter called the United Company; Witnesseth: that

Whereas, by an agreement of even date herewith, to be herewith delivered, between the said King and Henry Tolman and Eleazer Kempshall and the said United Company, it was provided that all the debts due the said King from the Boston Fast Color Eyelet Company should be transferred to the said United Company and that all the rights of the said King, Kempshall and Tolman as to

foreign business should be transferred to a new company, subject to the repayment to the said King of $5,000; and,

Whereas, it is desired by the parties hereto that the said King shall have the benefit of a note for $2,500, signed by the Boston Fast Color Eyelet Company, payable to said King two months from date, dated July 2, 1900, notwithstanding his said agreement of even date herewith to assign all such debts to the United Company; and that the said United Company shall have the sum of $5,000 from the foreign business of the said King, Kempshall and Tolman, which is, by said agreement of even date herewith, to be reserved for said King:

Now Therefore, in consideration of the agreements of the respective parties herein contained, and of the execution of said instrument of even date herewith by the parties, and other valuable considerations, the receipt of which is acknowledged by each of the parties, the parties hereto covenant and agree as follows:—

The said King assigns to the said United Company the right to profits from the foreign business relating to eyelets of the Boston Fast Color Eyelet Company and the National Fast Color Eyelet Company, referred to in said agreement, and now carried on by him, to the extent of $5,000; and will execute all further instruments and do all further acts necessary to secure said sum for the United Company.

The said United Company agrees that said note of $2,500 dated July 2nd, 1900, payable to said King 2 months from date, above referred to, may be retained by the said King for his own use and need not be transferred to the United Company as provided by his said agreement of even date herewith.

In Witness Whereof, the said King has hereunto set his hand and seal, and the United Shoe Machinery Company has caused this instrument to be signed and its corporate seal to be hereto affixed by Sidney W. Winslow, its President, this thirtieth day of June, A. D. 1900.

THEOPHILUS KING [SEAL]

[SEAL] UNITED SHOE MACHINERY CO.
by Sidney W. Winslow, President.

PLAINTIFF'S EXHIBIT 86.

[Put in Evidence, page 512.]

Agreement made this thirtieth day of January 1901 between Willard B. Hosmer, of Boston in the State of Massachusetts, party of the first part, Sidney W. Winslow, of Beverly, in said State, party of the second part, and United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, and having an office in said Boston (hereinafter called the United Company) party of the third part.

Whereas said Hosmer with Joseph E. Bertrand of said Boston as parties of the one part, entered into a certain agreement in writing dated the 15th day of December 1900 with said Winslow as party of the other part, providing for the sale by said Hosmer and Bertrand and for the purchase by said Winslow of all the shares of the capital stock of the Bay State International Shoe Machinery Company, which agreement is hereinafter referred to as the "Option Contract", and which is made a part hereof;

And Whereas the said Winslow has duly and seasonably notified the said Bertrand and Hosmer that he has elected to waive the right to rescind said option contract (which right was conferred upon him by said option contract), and that he will complete the purchase of said shares on or before sixty days from the date of said option contract;

And Whereas the said United Company has this day delivered to said Bertrand a certificate or certificates endorsed for transfer to said Bertrand for six hundred (600) shares of the fully paid up Preferred capital stock of the United Company of the par value of Fifteen Thousand Dollars ($15,000) and has delivered to the said Hosmer a certificate or certificates endorsed for transfer to said Hosmer for four Hundred (400) shares of the fully paid up Preferred capital stock of the United Company of the par value of Ten Thousand Dollars ($10,000) in satisfaction of Twenty-five Thousand Dollars ($25,000) of the purchase money provided to be paid to said Hosmer and Bertrand by Article One of said option contract.

And Whereas, the said Winslow has this day delivered to the

said Hosmer a certificate or certificates for One Thousand (1000) fully paid up shares of the Preferred capital stock of the United Company, of the par value of Twenty-five Thousand Dollars ($25,000) with a duly executed power of attorney for transfer by the holder of record thereof.

Now the parties hereto agree as follows: —

1. The said Hosmer shall if requested so to do within fourteen (14) days from the date of these presents, by said Winslow or the United Company forthwith borrow the sum of Twenty-five Thousand Dollars ($25,000) for a period not exceeding six months, upon his, the said Hosmer's promissory note or notes, and shall deliver the said sum of Twenty-five Thousand Dollars ($25,000) to such person as the said Winslow or the United Company shall designate to receive and apply the same to the cost and expenses of procuring the cancellation by the London Shoe Machinery Syndicate of a certain written agreement, dated the 8th day of October 1900, made between the Bay State International Shoe Machinery Company and said London Shoe Machinery Syndicate (referred to in said option contract) and all contracts existing between said International Company and said Syndicate, and the conveyance and delivery to said International Company of the property of said Syndicate conformably and pursuant to the provisions of Article 4 of said option contract.

2. The United Company promises, on or before six months from the delivery of said sum of Twenty-five Thousand Dollars ($25,000) to the person it or the said Winslow shall designate to receive and apply the same, to pay to said Hosmer the sum of Twenty-five Thousand Dollars ($25,000) plus such amount as the said Hosmer shall have paid as interest or discount on his said promissory note or notes, upon the surrender to said Winslow or his order of the certificate or certificates for One Thousand (1000) shares of the Preferred capital stock of the United Company which have been delivered by said Winslow to said Hosmer as aforesaid.

In Witness Whereof, the parties of the first and second parts have hereto set their hands and seals and the party of the third part has caused its corporate seal to be hereto affixed and these

presents to be signed by its Asst. Treasurer the day and year first above mentioned.

Executed in Duplicate.

WILLARD B. HOSMER [SEAL]
SIDNEY W. WINSLOW [SEAL]
[SEAL] UNITED SHOE MACHINERY COMPANY
By Edwd. P. Hurd, Asst. Tres.

We, the undersigned, Joseph E. Bertrand and Willard B. Hosmer, hereby acknowledge to have received from Sidney W. Winslow a certificate or certificates endorsed for transfer to Joseph E. Bertrand for Six Hundred (600) shares of the fully paid up Preferred capital stock of the United Shoe Machinery Company, of the par value of Fifteen Thousand Dollars ($15,000) and a certificate or certificates endorsed for transfer to Willard B. Hosmer for Four Hundred (400) shares of the fully paid up Preferred capital stock of said United Shoe Machinery Company, of the par value of Ten Thousand Dollars ($10,000) in full satisfaction of Twenty-five Thousand Dollars ($25,000) of the purchase money provided to be paid to us by said Winslow for shares of the capital stock of the Bay State International Shoe Machinery Company by a certain written contract made the 15th day of December 1900 between us, the said Bertrand and Hosmer, of the one part and the said Winslow, of the other part.

Witness our hands this thirtieth day of January 1901.

GEORGE ELI BERTRAND
WILLARD B. HOSMER

PLAINTIFF'S EXHIBIT 87.

[Put in Evidence, page 514.]

Agreement made at Boston, Mass., this 20th day of September 1900, between Simon Ross of Cincinnati, Ohio and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey.

Whereas the United Shoe Machinery Company has agreed to purchase all the shares of the Ross-Moyer Manufacturing Company, including the shares in that Company held by said Ross, and is willing to take the said Ross into its employ, either in the management of said Ross-Moyer Company, or in such other capacity as it shall elect,

Now it is agreed as follows: —

1. The said United Company agrees to employ the said Ross and to pay or cause to be paid to him a salary of not less than four thousand dollars ($4,000.) per year in equal monthly installments, and said Ross agrees during his said employment to give to the United Company his exclusive time, services and skill.

2. In consideration of said purchase by the United Company and of its agreement to employ him as aforesaid, the said Ross agrees with the United Company and its successors and assigns that he will not during the period of ten years from the date of this instrument engage in the manufacture of, or deal in, or directly or indirectly aid, assist or encourage any one to engage in the manufacture of or deal in boot, shoe and leather working machinery, machines, tools or appliances in competition with said United Company, or corporations owned or controlled by it; and that he will not infringe, or aid or assist any one to infringe the trade marks, trade names, or letters patent now owned, or which shall hereafter be owned by said United Company, or by the corporations owned or controlled by it, and its or their successors or assigns in connection with the business of manufacturing and in dealing in boot and shoe and leather working machinery.

3. And said Ross for the consideration above mentioned further agrees to communicate and convey to said United Company any

and all inventions and improvements in or relating to boot and shoe leather working machinery, machines, tools and appliances which he has made but has not patented, and which he now owns, and all inventions or improvements in or relating to said art, which he shall hereafter, during the period of ten years from the date of this instrument, invent; and agrees to promptly disclose and explain to the officers or counsel of said United Company all such inventions or improvements in such manner as to enable the said United Company to have applications prepared for the grant of Letters Patent therefor and to practice such inventions or improvements; and agrees from time to time hereafter and at all times, when said United Company shall request him so to do, to do all such acts and to execute and make oath to all such applications, specifications, assignments and other written instruments as shall in the opinion of the counsel of the said United Company be reasonable and proper or necessary to obtain the grant of Letters Patent, both for the United States and for other countries for such inventions or improvements, and to vest the legal title to all such applications and patents in said United Company, or in such persons or corporations as it shall direct; the cost of all such applications, patents, assignments or other instruments to be borne by said United Company.

4. Inasmuch as said Ross is now interested as a holder of shares in the Consolidated Rotary Rounder Company, and in a certain harness and die business, formerly owned by the Ross-Moyer Company, it is agreed (notwithstanding any provisions in this agreement inconsistent herewith) that said Ross may continue to hold said interest until such time as he shall be able to dispose of the same, he agreeing to use reasonable diligence in disposing of them if the United Company shall request him so to do.

In Witness Whereof the said Simon Ross has set his hand and seal hereto and said United Company has caused its corporate seal to be affixed hereto and these presents to be signed by George W. Brown, its Treasurer, the day and year first above written.

S. Ross.

United Shoe Machinery Co.

By Geo. W. Brown, Treasurer.

PLAINTIFF'S EXHIBIT 88.

[Put in Evidence, page 517.]

Know all Men by these Presents:

That the Swain Fuller Manufacturing Company (hereinafter called "the vendor"), a corporation organized and existing under the laws of the State of Maine, and having an established place of business in Boston, in the State of Massachusetts, in consideration of the sum of Twelve thousand seven hundred and seventy-six dollars and ninety-two cents ($12,776.92) to it paid by United Shoe Machinery Company (hereinafter called "the vendee"), a corporation organized and existing under the laws of the State of New Jersey and having an established place of business in said Boston, the receipt whereof is hereby acknowledged, has sold, transferred and delivered and by these presents does sell, transfer and deliver unto said vendee all the property of every name and nature belonging to the vendor as it stood at the opening of business on Monday the twenty-eighth day of January, 1901, situate in its premises at number 160 to 162 High Street and at number 130 Lincoln Street in said Boston, or wheresoever situate, together with the good-will of its business of manufacturing and dealing in boot and shoe machinery; also the entire interest of the vendor in, to and under all inventions, letters patent and pending applications for letters patent which the vendor now owns or in which it has or is entitled to have an interest and the exclusive right to the use upon or in connection with boot and shoe machinery of all trademarks, and trade names heretofore adopted and used by the vendor. The machinery, goods and chattels hereby sold are described in an inventory, herewith delivered to the vendee by the vendor. All orders for machinery received by the vendor on and after January 1st, 1901, are hereby sold and are to be turned over to the vendee to be filled and the vendee shall have the proceeds of all such orders as have been filled since January 1st, 1901.

The vendor reserves and excepts from this sale the lease of its premises at number 160 to 162 High Street in Boston, Massachusetts, and the lease of its office and ware rooms at number 54 South

Street in said Boston, but it agrees that the vendee shall have the right to occupy and use the said premises on High Street during the month of February, 1901; but the vendee shall pay as rent for that month the sum of eighty-three dollars and thirty-three cents ($83.33).

The vendor also reserves and excepts from this sale bills and accounts receivable outstanding and the cash on hand at the opening of business on the twenty-eighth day of January, 1901; all accounts and bills receivable created and cash received from sales or their disposition of any of the goods and chattels of the vendor made since the opening of business January 28, 1901 are hereby sold.

To Have and to Hold all and singular the premises hereby sold, conveyed and delivered to the vendee, its successors and assigns forever; and the vendor hereby covenants with the vendee that it is the lawful owner of all and singular the premises hereby sold and has good right to sell and dispose of the same as aforesaid; that the same are free from all encumbrances and that it will warrant and defend the same against the lawful claims and demands of all persons.

In Witness Whereof, said Swain Fuller Manufacturing Company has caused its corporate seal to be hereto affixed and these presents to be signed by Arthur Fuller, its Treasurer this 2d day of February 1901.

[SEAL] SWAIN FULLER MANUFACTURING CO.
Arthur Fuller, Treasurer.

At a meeting of the stockholders of the Swain Fuller Manufacturing Company duly called and held at the office of the Company in Portland, Maine, on the Seventh day of June 1900, on motion duly made and seconded it was

Voted unanimously that the Directors are hereby authorized in their discretion to sell, assign, transfer and convey any and all property owned by the Swain Fuller Manufacturing Company.

A true copy from the records of the stockholders of the Swain Fuller Manufacturing Company.

[SEAL] Attest: Arthur Fuller, Treasurer.

At a meeting of the Board of Directors of the Swain Fuller Manufacturing Company duly called and held at the office of the Company in Boston, Mass., on the 30th day of January, 1901, on motion duly made and seconded it was

Voted unanimously that Arthur Fuller, Treasurer is hereby authorized to sell, assign, transfer and convey any or all of the property owned by the Swain, Fuller Manufacturing Company for such consideration and on such terms as he shall deem to be for the best interests of the company and to affix the corporate seal to and to execute in the name and behalf of the company such deeds, assignments and other instruments as shall in the opinion of the Treasurer be necessary or proper to vest a good title to said property in the purchaser or purchasers thereof.

A true copy from the records of the Directors of the Swain Fuller Manufacturing Company.

Attest: Arthur Fuller, Treasurer.

PLAINTIFF'S EXHIBIT 89.

[Put in Evidence, page 519.]

This instrument made this fifteenth day of February, A.D. 1901, by and between Mellen Bray of Newton in the Commonwealth of Massachusetts, hereinafter called the Vendor, and the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey and having a usual place of business in Boston in said Commonwealth, hereinafter called the Purchaser, Witnesseth:

Whereas the Vendor has agreed to sell and assign and to cause to be transferred to the Purchaser fifty-nine thousand and nine hundred and twenty-one (59,921) shares of the capital stock of the Globe Sewing Machine Company, a corporation duly organized and existing under the laws of the State of Maine, hereinafter referred to as the Globe Company, the corporate name of said Company being formerly "Bertrand Sewing Machine Company", the certificates of the shares so to be sold, assigned and transferred

now standing of record on the books of the said Globe Company as follows: —

Mellen Bray	59,901
Mellen N. Bray	10
M. E. Crocker	10
	59,921

Now be it known: —

First. The Vendor hereby warrants and covenants that the total amount of the issued capital stock of the said Globe Company does not exceed one hundred thousand shares each of the par value of ten dollars; and that of said amount of capital stock there is now standing of record in the name of Mellen Bray, Treasurer, Trustee, ten thousand (10,000) shares subject to the disposition and control of the Directors of said Globe Company; that the said Globe Company is free from all indebtedness and direct or contingent obligations, except the indebtedness specifically set forth in the Schedule hereto, amounting at the date of the execution of these presents to $, and except such liabilities as exist or may arise by reason of the following described written agreements or indentures: —

(a) An agreement made the 29th day of June, 1895, between Mellen Bray and Joseph Eli Bertrand, of the one part, and Phipps & Son, of College Street, Northampton, England, Engineers of the other part.

(b) An indenture made the ninth day of October, 1895, between Mellen Bray and Joseph Eli Bertrand, of the one part, and the Bertrand Sewing Machine Company of the other part, wherein and whereby the Bertrand Sewing Machine Company covenanted and assumed to perform all the covenants, agreements and stipulations in said agreement above referred to between said Bray and Bertrand and said Phipps & Son which were to be performed by or on the part of said Bray and Bertrand or either of them.

(c) An agreement of guaranty executed by Mellen Bray in favor of M. C. Dizer & Company, dated June 21, 1895.

(d) An agreement between the Bertrand Sewing Machine Company and M. C. Dizer & Company, contained in a letter dated

March 20, 1897, addressed and delivered to said Company by said Dizer & Company and accepted by said Company under date of April 24, 1897.

(e) An agreement made the 31st day of December, 1896, by and between Alfred B. Fowler of Pawtucket, Rhode Island, of the first part, and the Bertrand Sewing Machine Company of the second part.

(f) An agreement made the 28th day of November, A.D., 1898, by and between said Globe Sewing Machine Company, Alfred B. Fowler and Mellen Bray.

(g) An agreement made the 30th day of June, 1899, by said Globe Sewing Machine Company and Mellen Bray with C. K. Fox.

(h) An agreement made the 27th day of January, 1899, by said Globe Sewing Machine Company and Mellen Bray with E. G. Morrison & Co.

(i) Such agreements as have been given by the said Globe Sewing Machine Company, either alone or jointly, with the Vendor, to protect persons taking machines put out by it against suits for infringements of patents.

Second. The Vendor agrees that, whenever requested so to do by the Purchaser, he will co-operate with the Purchaser to cause the officers and Directors of said Globe Company to resign, and to cause their resignations to be accepted in such order as the Purchaser shall desire, and to cause the several nominees of the Purchaser to be elected as officers and Directors in the place of the present officers and Directors.

Third. The Vendor, in consideration of one dollar and other valuable consideration to him paid, the receipt of which is hereby acknowledged, has sold and assigned and by these presents does sell and assign to the Purchaser the above-mentioned 59,921 shares of the capital stock of the Globe Company, the certificates for which stand of record on the books of the Globe Company in the names of —

Mellen Bray	59,901
Mellen N. Bray	10
M. E. Crocker	10
	59,921

and does agree to deliver on demand to the Purchaser the certificates for said 59,921 shares duly endorsed in blank by the respective holders thereof.

Fourth. And the Purchaser hereby agrees to indemnify and hold harmless the Vendor for and against any loss, cost or damage which he may suffer by reason of any liability which he now is or hereafter may be under to any of the parties named in any of the agreements aforesaid by virtue of the provisions thereof, whether such liability exists or may arise out of anything heretofore done or omitted, or may arise out of future acts or omissions; and the benefit of this covenant shall extend to the representatives of the Vendor.

In Testimony Whereof the parties have hereto set their hands and seals the day and year first above written, the said United Shoe Machinery Company having caused its name and corporate seal to be hereto affixed by its President thereunto duly authorized.

MELLEN BRAY [SEAL]

[SEAL] UNITED SHOE MACHINERY CO.
by S. W. Winslow, President.

SCHEDULE

Globe Sewing Machine Co. 1st Schedule Liabilities Feb. 14, 1901.

Mellen Bray & Co.	86984.21	
A. B. Fowler	3529.23	
Farnsworth, Hoyt & Co.	113.29	
G. L. Roberts & Bro.	1148.96	
Sundry Current Bills, not over	300.00	
		$92075.69

PLAINTIFF'S EXHIBIT 90.

[Put in Evidence, page 521.]

Know all Men by these Presents: That the Boot & Shoe Sole Laying Company, a corporation duly organized under the laws of the State of Maine (hereinafter called the Sole Laying Company) in consideration of the sum of one dollar and other valuable considerations to it paid by the United Shoe Machinery Company, a corporation duly organized under the laws of the State of New Jersey (hereinafter called the United Company), the receipt of which is hereby acknowledged, does hereby grant, sell, assign, transfer, and deliver unto the said United Company, its successors and assigns, all the property real and personal owned or held by the Sole Laying Company, wherever situated, and the entire business of the said Sole Laying Company together with the good-will thereof, including all machines, machinery shafting, tools, special tools, patterns, drawings, models, stock on hand manufactured, unmanufactured, or in process of manufacture, spare parts, all books of entry and account, office furniture and fixtures, and all other property owned by the said Sole Laying Company and now on the premises occupied by the said Sole Laying Company at 205 Lincoln Street, Boston, Massachusetts, or elsewhere; also all shoe machines loaned or held upon lease of which the said Sole Laying Company is the owner or in which it has any right, title or interest, legal or equitable, wherever said machines may now be located, together with all leases, licenses, or contracts relating to said machines, all Letters Patent of the United States or foreign countries, all applications for Letters Patent of the United States or of foreign countries, all inventions for which Letters Patent have not as yet been applied, and all rights in, to or under said Patents, applications or inventions, all cash on hand or on deposit, all choses in action, including all claims and demands for any past infringement of Letters Patent; also all books and accounts receivable, stock of corporations, notes and other evidences of indebtedness, and all contracts, leases and agreements of said Sole Laying Company to which it is a party or in which it has any beneficial interest, and

all property wherever situated owned by the said Sole Laying Company, including the good-will and all trade-marks and trade-names; provided, however, that the record books aud books of entry and account shall remain in the custody of the officers of the Sole Laying Company with full right to use the same until the Sole Laying Company shall be dissolved according to law.

To Have and to Hold the aforesaid property and rights to the said United Shoe Machinery Company, its successors and assigns, to their own use and behoof forever.

And for the consideration aforesaid the said Sole Laying Company does hereby covenant and agree that it will and its successors shall, whenever requested by the said United Company or its successors or assigns, do all acts and execute and deliver all instruments and papers which may be necessary or convenient to carry into effect the terms and intent of this instrument and to vest in the said United Company and its successors and assigns, or such other corporations as it may request, the full and complete title in and to all property and rights hereby conveyed or intended so to be; at the expense, however, of the said United Company.

And for the consideration aforesaid, it does hereby appoint the said United Company, its successors and assigns, its true and lawful attorney in the name of the Sole Laying Company or of the United Company to take such action at law or in equity or otherwise as it may deem desirable to secure to it the full benefit and advantage of the rights hereby conveyed or intended so to be.

In Witness Whereof the said Boot & Shoe Sole Laying Company has caused this instrument to be signed by Louis H. Baker its Treasurer, and its corporate seal to be hereto affixed this 25th day of May 1901.

BOOT & SHOE SOLE LAYING COMPANY
by Louis H. Baker, Treasurer.

I. R. Stamp Cancelled.

Commonwealth of Massachusetts.

Suffolk, ss. Boston, June 1, 1901.

Then personally appeared the above-named Louis H. Baker, Treasurer, and acknowledged that he executed the foregoing instru-

ment and that the foregoing instrument is the free act and deed of the Boot & Shoe Sole Laying Company, before me

[SEAL] Guy Cunningham, Notary Public.

PLAINTIFF'S EXHIBIT 91.

[Put in Evidence, page 525.]

This Agreement made and entered into this nineteenth day of June, 1901, by and between John C. Rhodes and John B. Rhodes, both of New Bedford, Massachusetts, and doing business under the firm name and title of J. C. Rhodes & Company, parties of the first part (hereinafter called the vendors), and the United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey, having its registered office in Paterson, New Jersey, and its principal place of business in Boston, Massachusetts, party of the second part, (hereinafter called the United Company): Witnesseth, That

Whereas, the vendors are carrying on the business of manufacturing and selling eyelets of various descriptions, but principally for boots and shoes; and

Whereas the vendors desire to sell the said business and all the property owned therein or in connection therewith, both real and personal, together with the goodwill of the said business; and

Whereas the United Company is desirous of purchasing the same for the account of the Eppler Welt Machine Company.

Now, Therefore, in consideration of one dollar by each of the said parties to the other in hand paid (the receipt whereof is hereby respectively acknowledged), and in consideration of the covenants and agreements hereinafter contained, the said parties hereby covenant and agree as follows:

(1) The vendors shall and hereby do convey, transfer and deliver unto the said Eppler Welt Machine Company, its successors and assigns, the entire business of the firm of J. C. Rhodes & Company, of New Bedford, Massachusetts, as a going concern, together with the goodwill thereof and expressly including in the said conveyance, transfer and delivery, all the assets and property pertain-

ing to, used in or connected with the said business, including the factory and the factory site and premises at 123 North Front Street, New Bedford, with all the machine shops, buildings, constructions, engines, boilers, furnaces and fixtures thereon, and easements and appurtenances thereunto belonging, and all machinery, belting, shafting, tools, mechanical devices, patterns, models of every sort and description, japans, and all other chemical mixtures and combinations, all patents and applications for patents, licenses under patents and all other patent rights, all inventions regardless of whether patents have been applied for or not, together with all processes, whether mechanical or chemical or both, expressly including all secret processes and all other trade secrets, known and used by the vendors in the same business or in any way relating thereto, (and the vendors agree to use their best endeavors to persuade any employees in the said business to convey, transfer and deliver all and any such secret processes used or known by them), and all trademarks and trade-names (including the right to continue to do business for three (3) years from the date hereof under the name "J. C. Rhodes & Co." or any similar name and during and after such three years the name of the "Rhodes Eyelet Company" or any other name not including the initial letters "J" or "J. C." or "J. B." or the name "John" in connection with the name "Rhodes"), also the entire stock in trade of the vendors and all goods, whether finished or in process of manufacture, and raw material, all books, journals, ledgers, letters, copybooks and other papers and documents, which books, journals, ledgers, letters, copybooks and other papers and documents shall be open at all reasonable times for the inspection of the vendors, and all book accounts, credits, claims, notes and bills receivable, all contract rights, and all rights of action, either at law or in equity, and all franchises, privileges and other assets of whatever description of the said vendors used in, relating to or intended or adapted for the said business. The said conveyance, transfer and delivery shall take place as of June 1, 1901, and all transactions by the said vendors since that date shall be considered as having taken place on behalf of the said Eppler Welt Machine Company. The said Eppler Welt Machine Company

shall assume the liabilities of the said business as of June 1, 1901; but the vendors expressly covenant and guarantee that on the said June 1, 1901, the liabilities of the vendors in respect of the said business and hereby assumed by the said Eppler Welt Machine Company, whether direct or indirect, due and payable, or accrued but not payable, or contingent, were not in excess of forty-three thousand ($43,000.00) dollars; and that since the said June 1, 1901, the vendors have not incurred any unusual expense in respect of their said business or contracted any debts or liabilities outside of the ordinary course of business; and it is expressly understood and agreed that the assumption by the said Eppler Welt Machine Company of the liabilities of the said business as hereinbefore recited is conditional upon the truth of the statements contained in the covenant and guaranty immediately hereinbefore preceding. The vendors shall at any time hereafter without expense to themselves or either of them at the request of the said Eppler Welt Machine Company or the United Company, do, sign, execute, and deliver any and all things, papers, instruments, deeds, bills of sale, and assignments which either of the said Companies may be advised are necessary to give the said Eppler Welt Machine Company a good and perfect title to any and all of the property hereby conveyed or intended to be conveyed.

(2) The vendors shall use their best efforts during the three months next following the date hereof to teach and instruct thoroughly any nominees of the United Company, not exceeding three in number, in any and all of the secret processes and other trade secrets heretofore known and used by the vendors, or either of them, in or in connection with the vendors' said business, and the vendors agree to use their best endeavors to persuade their employees to do the same, and shall, if so requested within twelve months from date, reduce such instructions to writing as fully, clearly and intelligibly as possible, and deliver the same to the said nominees of the United Company; and the vendors shall take any and all reasonable and proper steps which they shall be requested to take or which shall suggest themselves as expedient, not inconsistent with the provisions hereof, in order that the said nominees

of the United Company shall be made thoroughly conversant with the said secret processes and trade secrets, and enabled to make use of and employ such processes and trade secrets with the same degree of facility as the vendors or their employees; and the United Company agrees that the said nominees shall be suitable and proper persons to receive such instructions, and that they shall be designated and shall present themselves for such instructions at the factory in New Bedford within thirty (30) days from the date of the execution of this agreement, so as to enable the vendors to teach and instruct them within said three months from the date hereof.

(3) The said John B. Rhodes shall for three months from the date hereof take charge of, manage and carry on the said business, and shall devote as much time to the management and carrying on of said business for said Company as aforesaid as has heretofore been devoted by him to said business, when carried on by the vendors; and the vendors and either of them shall at all times during a period of five years from date give the fullest information in their power, upon request of the United Company, its officers, agents or nominees, upon any and all points connected with the history, development or management of the said business or of any of its parts, branches or departments.

(4) The United Company shall pay the vendors the sum of Two hundred thousand (200,000) Dollars cash upon the execution of this agreement, together with interest to date thereon from June 1, 1901, calculated at the rate of six per cent. per annum, and the receipt of either of the vendors shall be evidence that the United Company has complied with this provision. The United Company shall also issue to the vendors within five (5) days after the execution of this agreement, one hundred and seventy-five thousand (175,000) dollars at par of its preferred capital stock (that is, seven thousand (7,000) shares of such preferred capital stock), and the receipt of either of the vendors shall be evidence that the United Company has complied with this provision. The vendors shall not sell all or any part of the said seven thousand (7,000) shares of preferred capital stock within a period of twelve (12)

months from the date hereof without first making an offer in writing to Sidney W. Winslow, of Beverly, Massachusetts, President of the United Company to sell the same to him or to his nominee at the current market price upon the date of such offer. The said Winslow shall accept or reject such offer in writing within five (5) days after the receipt of such offer, and if he accept such offer, shall pay for same within (30) days from the receipt of such offer. The United Company shall further issue to the vendors, within five (5) days after the execution of this agreement, four hundred thousand (400,000) dollars at par of its preferred capital stock (that is, sixteen thousand (16,000) shares of such preferred capital stock) and the receipt of either of the vendors shall be evidence that the United Company has complied with this provision. The vendors shall not sell all or any part of the said sixteen thousand (16,000) shares of preferred capital stock within a period of three (3) years from the date hereof, at less than twenty-seven and 50-100 (27.50) dollars per share; except, and provided that, however, the vendors may notify the United Company in writing at or before the end of the second year from the date hereof that they desire the United Company to purchase from them at the end of the third year from the date hereof, all or any part of such sixteen thousand (16,000) shares of preferred capital stock, at twenty-five (25) dollars per share, whereupon the United Company shall be bound to purchase from the vendors at or before the end of the said third year from the date hereof, at twenty-five (25) dollars per share, such number of the said sixteen thousand (16,000) shares as the vendors may have designated in the said written notification; but the United Company shall have the privilege of purchasing such shares during the said third year in instalments, if it shall so desire, and upon the payment of any such instalment a pro rata number of the shares elected to be sold by the vendors as aforesaid shall be transferred to the United Company. The United Company shall further pay the vendors on or before July 15, 1901, an amount equal to the interest on five hundred seventy-five thousand (575,000) dollars for one month, calculated at the rate of six (6) per centum per annum, that is to say, the sum of twenty-eight hundred seventy-five

(2875) dollars, which sum shall be in lieu of any claim that the vendors might otherwise have to share in the last declared dividend on the preferred stock of the United Company, payable to stockholders of record on June 20, 1901. All the said stock referred to in this paragraph, that is, twenty-three thousand (23,000) shares of preferred stock, shall be issued jointly or severally to the vendors, as they shall in writing designate.

(5) It is further expressly provided and agreed that if at any time within three years next following the date hereof the net cash assets of the United Company (that is, the cash assets of the United Company over and above the liabilities of said Company (or if the surplus earnings and accumulated profits of said United Company at any time within said three years fall below the sum of eight hundred thousand (800,000) dollars, then the United Company shall upon receiving written notification of the election of vendors or either of them to avail themselves of this provision purchase for cash within thirty days from the receipt of said notification all or such part of the said sixteen thousand (16,000) shares of preferred stock at par as may be designated in the said written notification. The vendors or either of them shall in furtherance of the right in this paragraph hereinbefore provided have the further right at any time within the said three years to name in writing three public accountants, from whom one shall be selected by the United Company and such public accountant so selected by the United Company from the three named by the vendors or either of them shall have the right to examine the commercial books and accounts of the United Company, and if he shall find and report in writing that either the net cash assets of the United Company as hereinbefore defined or the surplus earnings and accumulated profits of the said United Company have fallen below eight hundred thousand (800,000) dollars, then the right of the said vendors to avail themselves of the provisions in this paragraph shall forthwith accrue.

(6) Upon the death of the vendors or either of them the rights hereby granted to and the liabilities hereby assumed by them or either of them in respect of the said twenty-three thousand (23,000) shares of preferred stock shall pass and inure to and be exercised

and assumed by the legal representatives of the vendors respectively.

(7) In order more fully to protect the goodwill of the business hereby conveyed, the vendors, and each of them, hereby covenant and agree that neither of them (except as hereinafter employed by or connected in some official capacity with, or as shareholder in the United Company, or the said Eppler Welt Machine Company, their respective assigns and successors) will, for a period of fifteen (15) years from the date hereof, either as proprietor, manager, manufacturer, partner, agent, employee, or stockholder of any corporation, carry on, engage in or be connected with, either directly or indirectly, the business of manufacturing or selling eyelets of any description or any substitutes therefor or any machinery for making eyelets, but it is understood for the purpose of this agreement that lacing hooks or buttons shall not be considered as substitutes for eyelets, and each of the vendors covenants never to disclose to any other than the said nominees of the United Company any of the said secret processes or trade secrets, nor for a period of fifteen years from the date hereof to disclose any secret processes or secrets relating to the said business hereby conveyed that may hereafter become known to either of them; but for the period of fifteen (15) years aforesaid to promote the success of the said business to the best of their several ability by communicating and disclosing to the nominees of the United Company any ideas or suggestions as to the conduct or management of the business, and any knowledge of inventions or improvements of present processes, or any new processes relating to the said business that may occur to or become known to either of the vendors, but without pecuniary expense to either of them.

(8) The Company agrees from the date hereof that the said John C. Rhodes shall be given full information from time to time regarding the management and operation of the business of the Company to the same degree and extent as any director of the Company, and shall have the right to inspect and examine any report made to the directors by any auditor of the Company.

(9) The vendors agree to sign any decree or stipulation or to

take any step or action in or in respect of any litigation in which they are engaged, upon the request of the United Company, provided that compliance with such request shall not involve any liability or expense on the part of the vendors.

(10) The vendors agree to furnish the certificate of an attorney at law of publicly recognized good standing and reputation that he has examined the chain of title to the real estate hereby conveyed for at least a period of thirty years back, and that he is satisfied that the vendors' title to the same is clear and free from all encumbrances.

(11) All covenants made and all conditions assumed by the vendors herein shall be binding upon them jointly and severally.

In Witness Whereof the said John C. Rhodes and the said John B. Rhodes have hereunto set their hands and seal and the United Company has caused these presents to be executed and its corporate seal to be hereto affixed by Sidney W. Winslow, its President, thereunto duly authorized the day and year first above written.

JOHN C. RHODES. [SEAL]

JOHN B. RHODES. [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY

By Sidney W. Winslow, President.

Attest: Louis H. Baker, Secretary.

PLAINTIFF'S EXHIBIT 92.

[Put in Evidence, page 529.]

Indenture made this fourteenth day of December 1901, between Morley Button Manufacturing Company, a corporation organized and existing under the laws of the State of Maine (hereinafter called the Vendor) party hereto of the first part, and United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, (hereinafter called the Vendee) party hereto of the second part.

Whereas, the Vendor is engaged in the business of manufacturing and selling eyelets, and has in its factory in Portsmouth in the State of New Hampshire, certain machinery, tools, fixtures, appa-

ratus, materials, patterns and drawings for use in manufacturing eyelets and machines for making and finishing the same, the principal items of which are mentioned in Schedule A hereto annexed and is the owner of certain trade marks, inventions and improvements, an application for the grant of Letters Patent of the United States, and Letters Patent of the United States numbered 672,884, dated the 30th day of April, 1901, and certain secret processes for the manufacture of eyelets and secret formulas for preparing the finishing or coating material which it has applied to its eyelets, all which property of every nature hereinbefore referred to, together with the good will of said business and of the officers of the Vendor, the Vendee desires to purchase;

Now this Indenture Witnesseth that,

In consideration of the sum of Thirty-one Thousand Dollars ($31,000) paid by the Vendee to the Vendor, and of other valuable consideration, the receipt of which is hereby acknowledged

1. The Vendor has sold and conveyed, and by these presents does sell, convey and deliver unto the Vendee all the goods, chattels and property of the Vendor belonging to its eyelet business, consisting principally of all the machinery, tools, fixtures, apparatus, materials patterns and drawings now situated in the factory of the Vendor in said Portsmouth or elsewhere which have been used by the Vendor, or which were or are intended for use in manufacturing eyelets or machines and appliances for making and finishing eyelets, (the principal items thereof being mentioned in Schedule A hereto annexed) and the Vendor does also by these presents sell and convey unto the Vendee all trade marks used by the Vendor in the prosecution of said eyelet business; all the present right, title and interest of the Vendor in inventions and improvements which relate to eyelets, or machinery, machines, appliances, processes or methods used in the manufacture of eyelets, all secret processes or methods used by or known to the Vendor which are adapted for use in the manufacture of eyelets, and the good will of its said eyelet business; together with the entire interest in the inventions described in an application for the grant of Letters Patent of the United States for an improvement in eyelets invented

by one R. L. Ellery, filed in the United States Patent Office on the 6th day of May, 1901, Serial No. 58,897, and the entire interest in Letters Patent of the United States No. 672,884, dated April 30, 1901, granted upon the application of one Walter E. Bennett.

Reserving, however, to the Vendor its books of acconnt, cash on hand and in banks and all debts, bills receivable and obligations due or payable to it in respect to said eyelet business, also the stock of eyelets, finished and in process, brass and scrap, such stock being substantially as described in Schedule B hereto annexed.

To Have and to Hold all and singular the said goods, chattels, property and rights to Vendee and its successors and assigns.

2. And for the consideration aforesaid the Vendor covenants with the Vendee that the property and premises conveyed as aforesaid are free from all incumbrances; that the Vendor has good right to sell the same; that the Vendor will warrant and defend the same against the lawful claims and demands of all persons; and that the Vendor will from time to time hereafter, at the cost of the Vendee, execute and deliver to the Vendee such deeds, assignments or other written instruments and will do such acts, or cause them to be done upon the request of the Vendee, as shall in the opinion of the counsel of the Vendee be necessary or proper to vest and confirm in the Vendee the legal title to the property and premises hereby conveyed and, in especial, to assure to and vest in the Vendee the entire interest of the Vendor in and to all patentable inventions or improvements hereby conveyed and in and to Letters Patent of all countries therefor.

3. As further consideration of said sale and conveyance, the Vendee covenants that, in two suits in equity now pending in the Circuit Court of the United States for the District of Massachusetts, in each of which the J. C. Rhodes & Co. Incorporated is plaintiff and the Vendor is defendant, which charge infringement by the Vendor of Letters Patent of the United States for an improvement in eyelets, numbered 565,091 and dated August 4, 1896, and of Letters Patent of the United States for a design for an eyelet numbered 24,867 and dated November 12, 1895, it will

cause the bills of complaint to be dismissed without prejudice and without costs; and the Vendee covenants that without charge to the Vendor it will cause said J. C. Rhodes & Co. Incorporated, to execute and deliver to the Vendor a release under seal from all claims for damages or profits which J. C. Rhodes & Co. Incorporated or its predecessors in ownership of said several Letters Patent have by reason of the manufacture, sale or use of eyelets by the Vendee, or its customers, in infringement of said Letters Patent or either of them; and, further, the Vendee covenants that it will cause J. C. Rhodes & Co. Incorporated, as owner of said Letters Patent No. 565,091 and No. 24,867, to license the Vendor for the consideration of One Dollar, to manufacture the brass and the eyelets in process referred to in said Schedule B into eyelets which shall embody the invention and design respectively patented in said Letters Patent, and to sell such eyelets and the finished eyelets referred to in said schedule, to the Vendee or its nominees, or otherwise as hereinafter provided and during the term of one year from the date of these presents, to make and sell eyelets to the Vendee, or its nominees, or otherwise as hereinafter provided which shall embody the said invention and the said design.

4. The Vendee hereby agrees that, pursuant to the license to be granted to the Vendor under said Letters Patent No. 565,091 and No. 24,867, as aforesaid, the Vendor may sell to its present agents or customers a sufficient number of the finished eyelets referred to in said Schedule B, or eyelets to be completed or made from the eyelets in process or the brass referred to in said Schedule, to fill all orders which are on the books of the Vendor at the date of these presents and such orders as the agents of the Vendor have taken of which the Vendor shall be notified within thirty days from the date of these presents; but the Vendor agrees that it will not sell such eyelets at less than the prices mentioned in said Schedule C. hereto annexed. And the Vendor further agrees that the Vendee shall have the option to purchase at the lowest prices mentioned in said Schedule C for jobbers all such eyelets mentioned in said Schedule or made up from the material referred to in said Schedule, which shall not be required by the Vendor to fill its orders and the

orders to be taken by its agents as aforesaid, and if such option shall not be exercised within thirty days after the Vendee is notified thereof by the Vendor, the Vendor shall be at liberty to sell to the trade at not less than the prices mentioned in said Schedule C any of such eyelets which it then has on hand.

5. The Vendor, if so requested to do by the Vendee, will allow the machinery and apparatus mentioned in Schedule A hereto to remain for one year from the date of these presents in the factory of the Vendor at said Portsmouth substantially as now located in said factory, without charge for rent or storage, and also will, if requested so to do by the Vendee, manufacture eyelets for the Vendee during said year, by the aid of said machinery and apparatus, charging therefor the actual cost of labor and materials plus a reasonable charge for power, light and heat and for services of superintendents, but making no charge for rent. The Vendor shall only sell such eyelets to nominees of, or to customers approved by the Vendee, at prices from time to time to be fixed by the Vendee. The Vendor shall render bills on the first day of each month for all charges and disbursements in connection with the manufacture of eyelets for the Vendee, and the Vendee shall pay such bills on or before the 15th day of the month in which they shall be rendered.

6. The Vendor agrees, at any time during one year from the date hereof, to assist the Vendee in moving from said factory of the Vendor the property hereby sold and purchased, by suitably boxing, crating and otherwise preparing the same for shipment and by loading the same on the cars at said Portsmouth, and will charge therefor only the actual cost of the labor and materials employed. And the Vendor further agrees that, if the Vendee shall so request, the Vendor will at any time within three months after the removal of said property from said Portsmouth furnish skilled men from its factory, who thoroughly understand the manufacture of eyelets as hitherto conducted by the Vendor, to assist the Vendee in setting up said machinery and apparatus and to instruct the superintendents and workmen of the Vendee in the operation of the same and in the use of the secret and other processes heretofore practiced by the Vendor in the manufacture of

eyelets and in preparing and applying thereto finishing or coating material, and the Vendee shall reimburse the Vendor for the wages and expenses of workmen and other disbursements incurred by it in rendering such assistance.

7. The Vendor, for the consideration aforesaid, covenants and agrees with the Vendee, that it, during the term or terms of said Letters Patent No. 672,884, or of such Letters Patent of the United States as shall be granted upon the application of said Ellery hereby conveyed, will not directly or indirectly engage in the manufacture or sale of eyelets and will not engage in the eyelet business in competition with the Vendee, and will not encourage, aid or assist others in such competition, and will, so far as it shall exercise its influence in the trade, both in the United States and in foreign countries, endeavor to promote the interests of the Vendee and to assure to the Vendee the exclusive advantages intended to be secured by this instrument; and, to this end, the Vendor will cause its treasurer to join in the execution of this indenture binding thereby not only the Vendor, but also its said treasurer individually to the covenants in this Section 7 contained.

8. The covenants and agreements herein contained incumbent upon or for the benefit of the Vendor and of the Vendee respectively shall be incumbent upon and for the benefit of their respective successors and assigns.

In Witness Whereof, the Vendor has caused its corporate seal to be hereto affixed and these presents to be signed by its treasurer, under his seal, whose signature hereto shall bind the Vendor to all the covenants and agreements on the part of the Vendor herein contained and shall also bind its said treasurer individually to the observance of the covenants and agreements contained in Section 7 hereof, and the Vendee has caused its corporate seal to be hereto affixed and these presents to be signed by its President the day and year first above written.

Executed in duplicate.

[SEAL] MORLEY BUTTON MANUFACTURING COMPANY
By S. M. Merrill, Treas.

[SEAL] UNITED SHOE MACHINERY COMPANY
By S. W. Winslow, President.

SCHEDULE A.

Inventory of the Eyelet Department of the Morley Button Manufacturing Company at Portsmouth, N. H.

Standard Machinery, Tools, Fixtures Shafting Pulleys, Belting, etc.

	Cost
Standard Machines and Tools	$1825.80
Shafting Pulleys and Belting	475.00
Motor, Switch, Starting Box, etc.	500.00
Scales, (4 sets)	200.00
Special Machinery for making eyelets.	
6 large Multiple presses with countershafts	3994.00
Dies and tools for same	1024.75
Dies and tools for same in process	268.60
Annealing furnaces	937.00
Gas japan ovens	160.00
1 multiple rolling in machine $1000.00	
13 Roll in Machines at $150	1950.00
Dies, Tools, etc., for the same	263.45
Machinery for finishing eyelets.	
Tumbling barrels & Fixtures for Cleaning and dipping eyelets	786.40
Paint mills, japan tumbling bbls., tools, etc.	345.00
2 eyelet carding machines at $500	1000.00
1 card punching machine	100.00
1 eyelet stripping	100.00
Materials for making and finishing.	
Material for cleaning and tinning	318.70
Miscellaneous stock for japanning & finish	744.85
1 car load coke	48.44
Patterns and Drawings	2500.00
	$17,541.99

SCHEDULE B.

Stock Finished and in process.

Finished Eyelets.

No. 2 Standard	3825 M
No. 2 Standard	2185 M
" 32 Roll Top	22053 M
" 5 Roll Top	700 M
" 11 Special	7920 M
" 2A	2900 M

In Process.

No. 2 Standard	12711 M
" 3 Standard	11323 M
" 32 Roll Top	41000 M

Brass.

9430 pounds brass

Scrap.

6953 pounds scrap

SCHEDULE C.

Stock Finished and in Process.

Finished Eyelets.

			Jobbers.		Mfrs.	
#2 Standard	3825 M	400.	10–5 & 2%		5–30	6–10
#3 "	2185 M	350.	10–5 & 2%		"	"
#32 Roll Top	32053 M	75.	72–	2%		2%
#5 " "	700 M	100.	86–	2%		2%
#11 Special	7920 M	120.	100–	2%	5–30	6–10
#A	2900 M	125.	105–	2%	"	"

UNITED SHOE MACHINERY COMPANY.

At a special meeting of the Executive Committee of the Board of Directors of the United Shoe Machinery Company duly called and held at the office of the Company in Boston, Massachusetts on the fourteenth day of December 1901 at which a quorum was present, it was unanimously

Voted: —

That this Company do enter into an indenture with the Morley Button Manufacturing Company of the tenor of the foregoing instrument, and that the President be and he is hereby authorized to execute such indenture in duplicate in the name and on behalf of this Company, and to affix the seal of the Company thereto.

A true copy from the records of the Executive Committee of the Board of Directors of United Shoe Machinery Company.

Attest: , Secretary.

At a special meeting of the Directors of the Morley Button Manufacturing Company held at the office of the Company in Boston, Massachusetts on the 14th day of December, 1901, at which a quorum were present, it was unanimously

Voted: —

That this Company do enter into an indenture with the United Shoe Machinery Company of the tenor of the foregoing instrument, and that the Treasurer be and he is hereby authorized to execute such indenture in duplicate in the name and on behalf of this Company and to affix the seal of the Company thereto.

A true copy from the records of the Directors of the Morley Button Manufacturing Company.

Attest: Henry T. Gould, Secretary.

PLAINTIFF'S EXHIBIT 93.

[Put in Evidence, page 530.]

Agreement made this fifteenth day of February, 1902, between Oliver A. Miller, of Brockton, Massachusetts, (hereinafter called the Vendor) of the first part, and the United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey, and having an office in Boston, Massachusetts, (hereinafter called the Vendee) of the second part.

Whereas, the Vendor has for many years past carried on the business of manufacturing and trading in "Treeing Machines" at said Brockton, with offices in said Boston, and in Northampton,

England, and with agencies in France, Germany, Australia and elsewhere; and

Whereas, the Vendor is willing to sell and the Vendee desires to purchase the said "Treeing Machine" business, together with the goodwill thereof, and the plant at said Brockton; and

Whereas, in carrying out said sale the Vendor has by an instrument dated February 8, 1902, transferred to the Vendee the land and buildings at said Brockton comprising the plant aforesaid; and by an instrument dated February 11, 1902, the Vendor has transferred to the Vendee certain United States Letters Patent relating to said "Treeing Machines" and parts thereof; and by an instrument dated February 11, 1902, the Vendor has transferred to the Vendee the machinery, tools, fixtures, stock, etc., situated in said plant; and by an instrument dated February 11, 1902, the Vendor has transferred to the Vendee certain machinery, tools, fixtures, stock, etc., situated at Northampton, England.

(a) Now, Therefore, in consideration of the sum of One Hundred and Sixty Thousand Dollars ($160,000.00), the agreed purchase price for said business, goodwill, plant, stock, Letters Patent, etc., the receipt whereof in full is hereby acknowledged, the Vendor has further sold, assigned and transferred, and by these presents does sell, assign, and transfer to the Vendee, the goodwill of said business in "Treeing Machines" heretofore carried on at said Brockton and elsewhere under the name of O. A. Miller, together with the exclusive right to use the name of "O. A. Miller" in connection with the words "Treeing Machine" as a part of the corporate name of a corporation which shall be organized to carry on said business of manufacturing and selling said "Treeing Machines", but not otherwise, together with the right to represent such corporation and its successors and assigns as carrying on said business in said "Treeing Machines" in continuation of the Vendor and in succession to him, but not otherwise.

Except as above specified, nothing herein contained shall be construed as giving the Vendee any rights whatever to the use of the name "O. A. Miller", the Vendor expressly reserving all other rights in connection with the name of "O. A. Miller" and the

otherwise free and unrestricted right to use said name "O. A. Miller" or any part thereof in any and all countries.

(b) And for the said consideration the Vendor hereby further sells, assigns and transfers to the Vendee, all orders in connection with said "Treeing Machine" business outstanding on the 1st day of February, 1902, and all orders received since that date, together with all the benefits and advantages of the business transacted since that date, but the Vendee shall indemnify and hold the Vendor harmless against all expenses and liabilities incurred in the usual course of business in carrying on the business since that date.

Nothing herein contained is to be construed as giving to the Vendee any right whatever to the cash on hand, or in banks, or to books, books of account, accounts, bills receivable, debts, or obligations in existence on the 1st day of February, 1902, belonging to said business or the proceeds thereof, all and each of which are and is hereby expressly reserved by the Vendor for his own use and behoof, clear and free of any claim of or for or on behalf of the Vendee.

(c) And for the said consideration the Vendor further agrees that he will not at any time within fifteen years from the date of this Agreement, in any country in which "Treeing Machines" are used, either solely or jointly, with or as manager or agent for any other person or persons, or company, directly or indirectly, carry on or be engaged or concerned or interested in the business of manufacturing, selling, or dealing in boot or shoe "Treeing Machines", or "tree" legs, "tree" feet, or other parts thereof, or "treeing" tools for the "treeing" of boots or shoes by manufacturers before the said boots or shoes are packed or made ready for shipment. But nothing herein contained shall be construed as having any reference whatever to the manufacture or sale of Domestic or Retail boot or shoe "Trees", Polishers, Holders, or parts thereof, or Lasts, Followers, or Foot Forms, in respect to each and all of which the Vendor parts with no rights whatever, but hereby expressly reserves to himself the free and unrestricted right in any and all countries to make, use, or sell the same, or to

authorize others to make, use, and sell the same, either as agents, assigns, vendees or otherwise, as the Vendor may elect.

(d) The Treeing Machines referred to in clause (a) as being transferred to the Vendee, are machines designed and adapted for "treeing" boots or shoes in shoe factories before the boots or shoes are packed or made ready for shipment.

The Domestic or Retail boot or shoe "Trees", Polishers, and Holders referred to in clause (c) are devices designed and intended for the dressing, etc., of boots and shoes in Retail stores and elsewhere after the boots and shoes are received from the maker.

(e) And for the said consideration, the Vendor, for himself and his executors and administrators, covenants and agrees with the Vendee, and its successors and assigns, to execute and deliver such other deeds, assignments, powers of attorney or other instruments, and to do such acts as shall be necessary or proper to secure to and confirm in the Vendee, and its successors and assigns, all the plant, machinery, tools, fixtures, office furniture, merchandise, material of every nature, either crude or in process of manufacture, all Letters Patent, licenses and interests in Letters Patent or inventions, and all chattels and effects of every kind, nature and description, and the benefit of all contracts which belong to the Vendor and which constitute a part of the "Treeing Machine" business and plant hereby sold, wherever the same or any part thereof are situate.

In Witness Whereof, the party of the first part has hereunto set his hand and affixed his seal, and the party of the second part has caused its corporate name to be signed and its corporate seal to be affixed in token of its acceptance of this Agreement, the day and year first above written.

Witnesses: OLIVER A. MILLER [SEAL]
William Quinby
Elmer P. Howe

[SEAL] UNITED SHOE MACHINERY CO.
Witnesses: Edward P. Hurd, Asst. Tres.
L. H. Baker

PLAINTIFF'S EXHIBIT 94.

[Put in Evidence, page 531.]

ASSIGNMENT.

Whereas, Oliver A. Miller, of Brockton, Massachusetts, is the owner of the entire right, title and interest in and to Letters Patent of the United States hereinafter enumerated; and

Whereas, the United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey, of Paterson, in the State of New Jersey, is desirous of acquiring the entire right, title and interest of said Miller in and to the several Letters Patent of the United States of America hereinafter referred to, and inventions therein shown, described and claimed:

Now, this indenture witnesseth, that for and in consideration of the sum of One Dollar, and other good and valuable considerations, the receipt whereof in full is hereby acknowledged, the said Oliver A. Miller has sold, assigned and transferred, and by these presents does sell, assign and transfer unto the said United Shoe Machinery Company, its successors and assigns, the entire right, title and interest in and to the following inventions and Letters Patent, and any reissue, renewal or extension thereof, for, to and in the United States, and for, to and in no other place or places:

No. 319,354, granted to Oliver A. Miller, assignee of Abel D. Tyler, Jr., for Boot Tree, June 2, 1885;

No. 319,355, granted to Oliver A. Miller, assignee of Abel D. Tyler, Jr., for Boot Tree, June 2, 1885;

No. 319,356, granted to Oliver A. Miller, assignee of Abel D. Tyler, Jr., for Boot Tree, June 2, 1885;

No. 347,309, granted to Oliver A. Miller, assignee of Alexander R. Wellman, for Boot Tree, August 10, 1886;

No. 348,937, granted to Oliver A. Miller, assignee of Abel D. Tyler, Jr., for Boot or Shoe Tree, September 7, 1886;

No. 393,003, granted to Oliver A. Miller, assignee of Alfred B. Fowler, for Boot-treeing Machine, November 20, 1888;

No. 427,698, granted to Howard G. Locke and Brockton Last Company, for Boot or Shoe Tree, May, 13, 1890;

No. 440,788, granted to Oliver A. Miller, assignee of Jothan H. Burbank, Lovina J. Burbank, Administratrix, for Boot Tree, November 18, 1890;

No. 441,115, to Oliver A. Miller, assignee of F. L. Stone and Alexander R. Wellman, for Boot or Shoe Tree, November 18, 1890;

No. 441,116, granted to Oliver A. Miller, asignee of Alexander R. Wellman, for Boot Tree, November 18, 1890;

No. 441,117, granted to Oliver A. Miller, assignee of Alexander R. Wellman, for Boot Tree, November 18, 1890;

No. 442,033, granted to Oliver A. Miller, assignee of Alfred B. Fowler, for Boot-treeing Machine, December 2, 1890;

No. 442,034, granted to Oliver A. Miller, assignee of Alfred B. Fowler, for Boot-treeing Machine, December 2, 1890;

Design No. 26,040, granted to Oliver A. Miller, for Ironing Tool, September 15, 1896.

No. 612,114, granted to Oliver A. Miller, assignee of Howard G. Locke, for Boot or Shoe-Treeing Machine, October 11, 1898;

No. 618,700, granted to Oliver A. Miller, assignee of Don Curtis Luce, for Boot Tree, January 31, 1899;

And one-half of the entire right, title and interest in and to the following United States Letters Patent: —

No. 342,298, granted to Oliver A. Howe, for Boot or Shoe Tree-Foot, May 18, 1886;

No. 420,501, granted to Clarence A. Sumner and Oliver A. Miller, for Boot or Shoe-treeing Machine, February 4, 1890, and all my right title and interest in and to Letters Patent No. 452,142 dated May 12, 1891.

The same to be held and enjoyed by the said United Shoe Machinery Company, its successors and assigns, to the full end of the term for which said Letters Patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by the said Oliver A. Miller had this assignment not been made.

And for the hereinbefore-mentioned consideration, the said

Oliver A. Miller hereby sells, assigns and transfers unto the said United Shoe Machinery Company, its successors and assigns, all claims and demands, both at law and in equity, that the said Oliver A. Miller has or may have for damages or profits accrued, or which may accrue, on account of any infringement of the said Letters Patent, prior to the date hereof; and the said Oliver A. Miller hereby authorizes and empowers the said United Shoe Machinery Company, its successors and assigns, to sue for and collect the same, using said Oliver A. Miller's name, if need be, as party plaintiff.

And the said Oliver A. Miller hereby covenants with the said United Shoe Machinery Company, its successors and assigns, that he has the lawful right to transfer the interests herein conveyed, in the manner and form as herein expressed, and that the same are free from all prior grants, mortgages, licenses, or other encumbrance, whatever.

In testimony whereof, the said Oliver A. Miller has hereunto set his hand and affixed his seal, this 11th day of February, 1902.

OLIVER A. MILLER [SEAL]

Personally appeared before me, the above-mentioned Oliver A. Miller, known to me to be the identical person described in, and who executed the above instrument, and acknowledged said instrument to be his own free act and deed, and that the same was executed and delivered by him for the considerations, purposes and uses therein expressed, on the day and year therein mentioned.

Given under my hand and seal, at Boston, Massachusetts, this 15th day of February, 1902.

William Quinby, Notary Public.

PLAINTIFF'S EXHIBIT 95.

[Put in Evidence, page 531.]

Know all Men by these Presents, That I, Oliver Ammi Miller, of Clarence Avenue, in the Borough of Northampton, England, Manufacturer, in consideration of One Dollar, and other valuable consideration to me paid by the United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey, hereinafter called the United Company, the receipt whereof in full is hereby acknowledged, do hereby sell, assign and transfer unto the said United Company, all my right, title and interest in and to the treeing machines, stock in trade and effects owned by me and held on my account on and after February 1, 1902, by the O. A. Miller Last Company, Limited, under an agreement dated December 14, 1900, made between said O. A. Miller Last Company, Limited, and myself, a copy of which agreement and of the schedules referred to therein is hereunto annexed, and also all moneys now or hereafter owed me by said O. A. Miller Last Company, Limited, on account of sales made on or after said February 1, 1902, under said agreement, and hereby sell, assign and transfer unto said United Company the said agreement dated December 14, 1900, and all my right, title and interest therein accrued or accruing on or after February 1, 1902, reserving, however, to myself, my executors or administrators or assigns, the right to collect all moneys due me under said agreement for sales made prior to February 1, 1902, and I hereby agree on demand to execute, acknowledge and deliver to said United Company such further instruments, notices and papers and to do all such further acts as may be necessary or proper or required by said United Company to vest the said property and rights hereby sold and assigned to the said United Company, its successors or assigns, and hereby authorize the said United Company, its successors or assigns, in my name to carry out the provisions and terms of said agreement so far as the same are encumbent upon me, or so far as I am entitled to act thereunder with the right at any time

on or prior to July 1, 1902, to determine the said agreement in my name, as provided for therein.

To Have and to Hold the same unto the said United Company, its successors and assigns, to their own use and behoof forever.

The United Company is to hold me harmless from any debt or liability incurred on account of said business on or after the date of this agreement, and from all errors and shrinkage in the foregoing schedules.

In Testimony Whereof, the said Oliver Ammi Miller has set his hand and affixed his seal, and the said United Company has caused its corporate name to be signed and its corporate seal to be annexed by its assistant treasurer, to this instrument, and to another of like tenor and date, this eleventh day of February, 1902.

OLIVER AMMI MILLER [SEAL]
UNITED SHOE MACHINERY COMPANY [SEAL]
By Edwd. P. Hurd, Asst. Tres.

Vol 4

RECORD IN DISTRICT COURT

(IN TWELVE VOLUMES)

District Court of the United States,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 301

THE UNITED STATES OF AMERICA

vs.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, AND OTHERS.

VOLUME X—PLAINTIFF'S EXHIBITS.

INDEX.

PLAINTIFF'S EXHIBITS.

Agreements, Bills of Sale, Assignments, Releases.

		Exhibit No.	Exhibit Vol.	Exhibit Page	Put in Evidence Vol.	Put in Evidence Page
Goodyear Shoe Machinery Co.						
Commonwealth S. & L. Co. (From Goodyear and McKay Sewing Machine Co.)	(Bill)	227	X	1303	V	2165
Goodyear Shoe Machinery Co. of Conn. to Goodyear Shoe Machinery Co. of Maine	(Asgt.)	225	X	1297	V	2163 2190
Lincoln Sewing Machine Co.	(Agt.)	79	IX	623	II	501
United Shoe Machinery Co.						
American Glue Co.	(Agt.)	110	X	796	II	557
American Sole Laying Co.	"	98	X	705	II	534
Arnold Machine & Supply Co.	"	113	X	816	II	562
Bay State International Shoe Machinery Co.	"	86	IX	655	II	512
Beaudry, Zotique	"	120	X	850	II	570
Boot & Shoe Sole Laying Co.	(B/S)	90	IX	666	II	521
Booth Brothers — (1904)	(Agt.)	114	X	822	II	564
" " — (1907)	(B/S)	121	X	856	II	572
" " "	(Agt.)	122	X	861	II	572
" " "	(B/S)	123	X	862	II	573
" " "	(Agt.)	124	X	867	II	573
Boston Blacking Co.	"	76	IX	599	II	469
Boston Fast Color Eyelet Co.	"	81	IX	630	II	503
Breach Mfg. Co.	"	63	IX	531	II	458
Bresnahan, Timothy A. (Boston Shoe Tool Co.)	"	67	IX	563	II	458
Bresnahan, M. V. & Co.	"	144	X	1053	II	597
Brewer, Albert G.	"	70	IX	575	II	466
Brockton Supply Co.	(B/S)	116	X	831	II	566
Carver Cotton Gin Co.	"	127	X	893	II	579
Corrugated Wire Fastening Co.	(Agt.)	62	IX	530	II	457
Coupal, Peter A. and William Gordon	"	64	IX	535	II	458
" " " " " "	"	65	IX	537	II	458
" " " " " "	(B/S)	66	IX	538	II	458
Courteau, Leopold J.	(Agt.)	115	X	826	II	566
Cross & Co. (Inc.) W. W.	"	103	X	744	II	547
Curtis, Joseph P.	"	106	X	754	II	552
Daniels, George H.	"	97	X	703	II	532

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Drew, Selby & Co.	(Agt.)	157	X	1106	III	1198
Ellis Lacer Co.	"	129	X	905	II	584
Emerson, George W. & Co.	"	101	X	725	II	542
Enamel Eyelet Co.	"	82	IX	640	II	504
Farnham Brush Mfg. Co., F. G.	"	109	X	769	II	555
Freeman, Edwin Theophilus	"	68	IX	568	II	463
Freeman, George W.	"	69	IX	573	II	466
French, Zachary Taylor	"	111	X	803	II	558
Globe Sewing Machine Co. (Mellen Bray)	"	89	IX	662	II	519
Globe Shoe Tool Co.	"	71	IX	577	II	467
Goddu Sons Metal Fastening Co.	"	60	IX	514	II	454
Keighley Co., The	"	275	X	1529	VIII	4649
Kimball & Hadley	"	112	X	814	II	559
King, Theophilus, Henry Tolman and Eleazer Kempshall	"	83	IX	645	II	506
King, Theophilus	"	84	IX	649	II	507
" "	"	85	IX	653	II	507
Krieg, Estate of John K., and others (See Exhibit 105)	"	104	X	746	II	549
Leary, Joseph W.	"	108	X	765	II	554
Lincoln Sewing Machine Co.	"	80	IX	628	II	501
Loomer, Henry M.	"	72	IX	580	II	468
Marlboro Awl & Needle Co.	"	96	X	693	II	532
Metallic Heel & Counter Co.	"	119	X	843	II	569
Miller, Oliver A.	"	93	IX	683	II	530
" " "	(Asgt.)	94	IX	687	II	531
" " "	(B/S)	95	IX	690	II	531
Morley Button Mfg. Co.	(Agt.)	92	IX	675	II	529
Norris Machine Co., The T. A.	(B/S)	102	X	734	II	545
Peabody, Henry W. & Co.	(Agt.)	189	X	1250	IV	1945
Pearson & Bennion (Ltd.)	"	61	IX	525	II	456
Perkins, Ward	"	73	IX	583	II	468
Perry, Fred H.	"	107	X	758	II	553
Plant, Thomas G.	"	132	X	931	II	590
" " "	(B/S)	133	X	1017	II	591
" " "	"	134	X	1018	II	591
" " "	(Agt.)	135	X	1023	II	592
" " "	(B/S)	136	X	1025	II	592
" " "	(Release)	137	X	1037	II	592
" " "	(Agt.)	138	X	1038	II	593
" " "	(Release)	139	X	1039	II	593
" " "	(Agt.)	140	X	1040	II	593
" " "	"	141	X	1042	II	593
" " "	"	142	X	1043	II	593
Prenzel, Adam H.	"	143	X	1046	II	594
Rhodes & Co., J. C.	"	91	IX	668	II	525
Rice, Harry L. and Fred La Chapelle	"	128	X	898	II	582
Richardson, John H.	"	126	X	887	II	577
Richardson Shoe Machinery Co.	"	125	X	871	II	577

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Seaver Process Lasting Co.	"	75	IX	591	II	469
Smith Lacing Machine Co., The	"	117	X	834	II	568
" " " " "	(B/S)	118	X	840	II	568
Smith Machinery Co., The George A.	(Agt.)	100	X	721	II	540
Stanbon & Co., Charles P.	(B/S)	145	X	1064	II	599
Stanley Mfg. Co	(Agt.)	78	IX	620	II	471
Sturtevant Co., B. F.	(B/S)	131	X	928	II	588
Swain-Fuller Mfg. Co.	"	88	IX	660	II	517
Wentworth Co., The	(Agt.)	130	X	913	II	586
Webster, Edwin A.	"	158A	X	1108	IV	1438
Winkley, Erastus E., and Benjamin Phillips	"	77	IX	615	II	470
Young, William J.	"	99	X	713	II	537

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Cuts, Drawings, Pamphlets, etc.

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" " " — "old pattern"	205	X	1270	V	2091
Automatic leveler	234	X	1343	V	2180
Goodyear improved sole laying machine	200	X	1265	V	2078
Insole channeling machine	235	X	1345	V	2180
Loose nailing machine	201	X	1266	V	2090
Outsole rapid lockstitch machine	208	X	1274	V	2127
Slugging machine	202	X	1267	V	2090
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" " " " " "	206	X	1271	V	2098
Universal rough rounding and channeling machine	233	X	1341	V	2180
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" "	232	X	1339	V	2179

CUTS AND LEAFLETS

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Carver vamp skiving machine	192	X	1257	V	2036
Goodyear outsole rapid lockstitch machine	207	X	1272	V	2127
Goodyear improved sole laying machine	196	X	1259	V	2055
Goodyear universal rounding and channeling machine	197	X	1260	V	2061
Goodyear welt and turn shoe machine	190	X	1255	V	2016
Power heel breasting machine	198	X	1262	V	2065
Star leveling machine	195	X	1258	V	2055
Welt and turn machine, Rapid outsole stitcher, Hadaway stitch separator, Turn and insole channeling machine, Outsole channeling machine, Outsole channeling knives, Square heel knives	220	X	1288	V	2160

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PAMPHLETS					
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Goodyear Shoe Machinery Co., To Stockholders of	152	X	1097	II	928
International Goodyear Shoe Machinery Co., To Stockholders of	153	X	1100	II	929
McKay Shoe Machinery Co., To Stockholders of	151	X	1094	II	927
United Shoe Machinery Co., To Lessees of — (1910)	146	X	1067	II	726
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United Shoe Machinery Co., of New Jersey:					
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" " " 1902	181	X	1226	IV	1930
" " " 1903	182	X	1227	IV	1930
" " " 1904	183	X	1228	IV	1930
" " " 1905	184	X	1229	IV	1931
" " " 1906	185	X	1230	IV	1931
" " " 1907	186	X	1231	IV	1931
United Shoe Machinery Co., of New Jersey, and United Shoe Machinery Corp.:					
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" " " 1910	166	X	1133	IV	1762
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Cons'd h-m lasting machines	230	X	1319	V	2169
" " "	237	X	1355	V	2188
" " "	8	IX	68	II	323
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Davey Pegging Machine Company.					
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" "	236	X	1347	V	2186
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Gem insole machinery	50	IX	436	II	402
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" "	229	X	1311	V	2167
"Turn Set"	3	IX	22	II	316
Lasting Machine Set — Ideal	5	IX	37	II	317
Proposal and Acceptance Form for installation of machinery	241	X	1387	V	2194
McKay Shoe Machinery Company.					
Heeling Machines:					
McKay-Bigelow Heeling Machine Ass'n	11	IX	90	II	326
" " " " "	231	X	1326	V	2171
" " " " "	240	X	1374	V	2192
Metallic Machines:					
McKay Metallic Fastening Ass'n.	12	IX	103	II	329
O. A. Miller Treeing Machine Company.					
Breaking-in and forming machines	55	IX	479	II	405
Victor power ironing machines	53	IX	461	II	404

UNITED SHOE MACHINERY COMPANY.

	Exhibit No.	Exhibit Vol.	Exhibit Page	Put in Evidence Vol.	Put in Evidence Page
Eyeletting Department:					
Duplex eyeletting machines — (Initial payment)	173	X	1184	IV	1766
" " " (Non-initial payment)	172	X	1176	IV	1766
Power " " (Initial payment)	42	IX	387	II	392
" " " (Non-initial payment)	43	IX	394	II	392
Vulcan foot-power eyeletting machines	174	X	1191	IV	1767
General Department:					
General form — (Initial payment)	40	IX	373	II	389
" " (Annual rental)	41	IX	379	II	390
Ideal clicking machines	44	IX	402	II	394
McKay sewing machines	170	X	1161	IV	1765
Miller twin shoe treeing machines	57	IX	491	II	406
Goodyear Department:					
Auxiliary machines	25	IX	226	II	352
Economy insole reinforcing machines	52	IX	450	II	403
"Full set" form	23	IX	204	II	350
" " " (Full capacity clause)	26	IX	241	II	363
" " " (Selz, Schwab & Co.)	149	X	1082	II	905
Gem insole machines	51	IX	443	II	402
Sewing and stitching machines	24	IX	214	II	351
Heeling Department:					
Heeling machinery — (Initial payment)	27	IX	254	II	370
" " (Non-initial payment)	28	IX	261	II	371
Lasting Department:					
Boston lasting machines	169	X	1154	IV	1765
Chase " "	19	IX	163	II	337
Cons'd h-m lasting machines — (Initial payment)	14	IX	121	II	333
" " " " " "	17	IX	145	II	335
" " " " (Non-initial payment)	15	IX	129	II	333
" " " " " " "	16	IX	137	II	334
" " " " " " "	168	X	1144	IV	1764
Ideal lasting machines	18	IX	154	II	336
McKay & Copeland lasting machines	20	IX	172	II	338
No. 5 lasting machines — (Initial payment)	22	IX	193	II	339
" " " — (Non-initial payment)	21	IX	182	II	339
Ensign lacing machines	171	X	1167	IV	1766
Metallic Department:					
Metallic machinery — (Independent)	31	IX	287	II	377
" " " (Curtis, Jones & Co)	176	X	1212	IV	1899
" " (Initial payment)	29	IX	272	II	376
" " (Non-initial payment)	30	IX	278	II	376
" " " " "	34	IX	315	II	380

	Exhibit No.	Exhibit Vol.	Exhibit Page	Put in Evidence Vol.	Put in Evidence Page
Metallic Machinery — (With rider eliminating tying clause attached)	32	IX	297	II	378
" " (Embodying rider eliminating tying clause)	33	IX	307	II	380
" " (Standard screw machines)	35	IX	323	II	381
Pegging Machine Department:					
Davey pegging machines — (Initial payment)	46	IX	422	II	397
" " " (Non-initial payment)	45	IX	413	II	396
Pulling-Over System:					
Pulling-over machinery — (Initial payment)	39	IX	363	II	388
" " " (Non-initial payment)	36	IX	331	II	385
Auxiliary machines — (Initial payment)	37	IX	339	II	387
" " (Non-initial payment)	38	IX	350	II	387
Patent Leather Repairing machines	56	IX	484	II	405
Order and Agreement Form — (Sale machines)	47	IX	430	II	400
" " " " (Initial payment)	48	IX	432	II	400
" " " " (Non-initial payment)	49	IX	434	II	401
UNITED SHOE REPAIRING MACHINE CO.					
Repairing machines	54	IX	469	II	404
UNITED-XPEDITE FINISHING CO.					
Xpedite finishing machines and tools	58	IX	498	II	406

Lists, Memoranda, Statements, etc.

Brown & Sons, J.,					
Machines in factory of — (Amplified list showing sources from which obtained)	269	X	1441	VIII	4264
Commonwealth S. & L. Co.,					
Machines in factories of —	150	X	1094	II	922
" " " "	279	X	1557	VIII	4872
Duplessis Shoe Machinery Co., and successors,					
Customers of —	159	X	1113	IV	1589
Haverhill Shoe Machinery Co.,					
Machinery output of — (classified)	161	X	1118	IV	1754
Standard Shoe Machinery Co.,					
Customers of —	160	X	1116	IV	1668
United Shoe Machinery Co.,					
Auxiliary machines (16) of, required by factories— (Referred to in memorandum of pulling-over, lasting, heeling, metallic and Goodyear departments) (See Defts' Ex. 230)	270	X	1446	VIII	4294
Goodyear, lasting, heeling or metallic department machinery held by shoe manufacturers on independent, unrestricted leases of,—(Jan. 1, 1905)	272	X	1477	VIII	4298

	Exhibit No.	Exhibit Vol.	Exhibit Page	Put in Evidence Vol.	Put in Evidence Page
Lasting, heeling or metallic department machinery held by shoe manufacturers on independent, unrestricted leases of — (January 1, 1905)	273	X	1504	VIII	4298
Lasting, heeling or metallic department machinery held by lessees on independent, unrestricted leases of — (January 1, 1905)	271	X	1447	VIII	4297
Machinery leased at date of March 1, 1911, on leases executed prior and subsequent to February 7, 1899 —	163	X	1125	IV	1759
Officers and Directors of — (1899-1907, inc.)	274	X	1524	VIII	4380
Officers and Directors in companies in which stock is held by —	188	X	1240	IV	1939
Stockholdings by, in outside companies —	187	X	1232	IV	1933
Records.					
Duplessis Shoe Machinery Co., United Shoe Machinery Co. vs.,— (French and Meyer patent) — (Opinion and Decree) (See also Physical Exhibits)	219	X	1277	V	2145
Reports.					
Eppler Welt Machine Co., To Mass. Com'r of Corporations — (1896)	175B	X	1200	IV	1835
" " " " " (1897)	175C	X	1204	IV	1835
" " " " " (1898)	175D	X	1207	IV	1835
United Shoe Machinery Co., To Mass. Com'r of Corporations — (1910)	276	X	1536	VIII	4865
" " " " " (1911)	277	X	1544	VIII	4865
" " " " " (1912)	278	X	1550	VIII	4865
United Shoe Machinery Co.— (From Mayo and Warren — on Plant system)	267	X	1395	VII	3511
Physical Exhibits.					
	Exhibit No.			Put in Evidence Vol.	Put in Evidence Page
CATALOGS:					
Chase Lasting Machine Co.	244			V	2195
Goodyear Shoe Machinery Co.	220			V	2160
McKay-Bigelow H. M. Ass'n	243			V	2195
United Shoe Machinery Co.	190			V	2016
Wonder Worker Shoe Machinery Co.	266			VI	3418
CUTS:					
Briggs Rough Rounding Machine	285			V	2836(66)
Economy Insole Reinforcing Machine					
Goodyear Universal Rounding and Channeling Machine — Model E					

	Exhibit No.	Put in Evidence Vol.	Page
Goodyear Universal Channeling Machine — (Welt Work)			
" " " " (Turn Work)			
" Outsole Channeling Machine			
" Welt Beating Machine			
Star Channel Cementing Machine — Model A			
" " " " " C			
Universal Double Clinch Machine			
DRAWING illustrating stitch-down shoe — (Bertrand patent No. 254,594 —"Fig. 3")	280	V	2836 (26)
EYELETS:			
Fast color (specimens)	193	V	2053
Enamel "	194	V	2053
Heel — (loaded)	283	V	2836 (57)
Last support — (used on Plant "heel attacher on wood lasts")	286	V	2836 (67)
PATENTS:			
Allen, Arnold, Coombs, Folsom, Harris, Hawes, Marsh and Roberts patents — (Referred to in file wrapper of Plant patent) (See Pltff's Ex. 287)	288	V	2836 (120)
Allen, Benjamin, Borne, Bourgeois, Brown, Carver, Chase, Coombs, Cummings, Cunningham, Demary, Dodge, Elliott, Ellis, Fairfield, Ferren, Fifield, Fisher, Gardner, Glidden, Gordon, Harrigan, Henderson, Heys, King, Krewson, Manley, McCoy, McMullett, Merritt, Orr, Phelan, Pope, Prouty, Raymond, Simmons, Small, Smith, Soule, Strong, Tripp, Tyler, Wa[illegible]burn, Wead, Webster, Wheeler and Wright patents — (Referred to in lease of McKay Shoe Machinery Company — (McKay Heeling Machine Ass'n) to Selz, Schwab & Co.;) — (See Pltff's Ex. 240)	251A&B	V	2230
Allen, Bickford, Carey, Davey, Ley, Scott and Sturtevant patents	262	V	2754
Ambon, Arnold, Dyer, Evans, Godding, Hynes, McNiven, Metcalf, Nesmith, Ross, Ryder, Turner, Warren and Wheeler patents — (Assignment — Campbell Machine Company to Goodyear Shoe Machinery Company)	255	V	2234
Arnold, Briggs, Cole, French, LaChapelle and Meyer patents — stitching machines and methods — (Incorporated in machines and which expired subsequent to organization of United Company but prior to filing of petition)	260	V	2237
Blake, Fairfield, Ferren, Fisher, Glidden, McKay, Moore, Richardson, and Thompson patents — (Assignment — Gordon McKay to Consolidated & McKay Lasting Machine Co.)	258	V	2236

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Dancel patents — sewing and bobbin winding machines — (Assignment — Dancel to Goodyear Shoe Machinery Co., of Connecticut)	254	V	2231
Dancel, French and Meyer patent — stitching machines — (Incorporated in machines and which expired subsequent to organization of United Co. but prior to filing of petition)	259	V	2237
Eaton, Hamm and Smith patents — stapling machine — (Assignment — S. W. Winslow to McKay Shoe Machinery Company)	256	V	2234
Hamm patent — stapling machine — (Assignment — S. W. Winslow to McKay Shoe Machinery Company)	253	V	2230
Houghton patent — lasting machine — (Assignment — J. R. Nolan to Consolidated & McKay Lasting Machine Company)	257	V	2235
Plant patent — welt and thread cutting device	287	V	2836 (120)
Winkley patent — welt sewing machine —	268	VII	3746
Patents referred to in lease of Consolidated & McKay Lasting Machine Co. to Selz, Schwab & Co. (See Pltff's Ex. 238)	252	V	2230
Plant Company — Thomas G. et al., United Shoe Machinery Co. vs. (Record)	162	IV	1756
Specimen of material operated upon by insole channeling machine — (See Pltff's Ex. 235)	249	V	2207
Welt shoe	261	V	2733
" " (man's)	281	V	2836 (26)
" " (woman's)	282	V	2836 (26)
Welting strip — grooved, beveled and slashed on Plant welt slasher and groover) — (See Pltff's Ex. 266, p. 82)	284	V	2836 (57)

PLAINTIFF'S EXHIBIT 96.

[Put in Evidence, page 532.]

This Agreement made this 30th day of June A. D. 1902, by and between the owners and holders of shares of the capital stock of the Marlboro Awl & Needle Company, hereinafter called the Marlboro Company, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, who are subscribers hereto and who may hereafter become parties or assent hereto, each for himself and not for the others, hereinafter called the Stockholders, parties of the first part; the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, hereinafter called the United Company, party of the second part; and William H. Coolidge of Newton, Massachusetts, hereinafter called the Trustee, party of the third part, Witnesseth:

Whereas the said United Company proposes to cause a corporation to be formed for the purpose of carrying on the business of manufacturing and dealing in Awls and the like, (which proposed corporation is hereinafter referred to as the new corporation.)

And whereas the Stockholders believe it will be for their advantage, and for the advantage of all the Stockholders of the said Marlboro Company, to sell and transfer all property of the said Marlboro Company to such new corporation, and to merge the business now carried on by the said Marlboro Company in the business of such new corporation, provided satisfactory terms can be made for so doing;

And Whereas the United Company has given favorable consideration to a proposal for causing such new corporation to acquire and take over the business and property of the said Marlboro Company upon certain terms hereinafter set forth, which proposal said Stockholders believe to be a fair and advantageous one for the Stockholders of the said Marlboro Company;

And Whereas the said William H. Coolidge has been requested by the said Stockholders and by the said United Company to under-

take the duties of Trustee, as hereinafter set forth, for the purpose of consolidating the interests of the said Stockholders, and of so disposing and controlling the affairs of the said Marlboro Company, that the Agreement between the said Stockholders and the said United Company and the sale and transfer of the property of the said Marlboro Company may be carried out with certainty and without delay after the organization of said new corporation;

And Whereas the said William H. Coolidge is willing to undertake said trust.

Now, Therefore, in consideration of the premises and of the covenants and agreements on the part of the respective parties herein contained, the said Stockholders, the said United Company and the said Trustee do hereby covenant and agree as follows: —

One. The said Stockholders, and each of them, shall immediately upon the execution of these presents deliver into the possession of the said Trustee the certificate or certificates covering all stock owned or controlled by them, or any of them, or standing in their respective names upon the books of the said Marlboro Company, duly endorsed in blank, to be held by the said Trustee for the purposes hereinafter set forth, and for the purpose of

Two. The said Stockholders, and each of them, who are officers of the said Marlboro Company, shall immediately tender in due form their resignations as such officers, to take effect upon acceptance thereof by the Board of Directors or by the Stockholders or otherwise, in accordance with the Charter and By-Laws of said Marlboro Company.

Three. The said Stockholders, and each of them, shall at any and all times upon request of the said Trustee, so far as is within their control or power as officers or otherwise, cause meetings of the Board of Directors and of the stockholders of the said Marlboro Company to be held, and shall cause all such votes to be passed, and all such acts to be authorized and done by the said Marlboro Company as shall be requested by the said Trustee for the accomplishment of the purposes hereof, and shall cause the resignations of officers of the said Marlboro Company to be accepted at such time or times and in such order as requested by the said Trustee,

and shall cause the vacancies made by said resignations to be filled by the election of such person or persons as shall be designated by the said Trustee.

Four. The United Company agrees that upon the execution of this instrument, and relying upon the covenants herein contained on the part of the said Stockholders and of the said Trustees, and upon the trust hereby created, it will cause other steps to be taken for acquiring other property for the purposes of said new corporation and otherwise for establishing conditions favorable for the establishment and conduct of a successful business by the said new corporation, and that it will within six months from the date of these presents cause such new corporation to be formed, with such purposes and powers and subject to such regulations as may seem to it advisable for developing and carrying on said business.

Five. The United Company agrees that after the organization of the said new corporation, and when the said new corporation is in condition to acquire property and to do business, it will cause an offer to be made by such new corporation to the said Marlboro Company to purchase the entire property, business and good-will of the said Marlboro Company, except cash on hand and accounts receivable, and free from any and all accounts or bills payable, and any and all other liabilities, and in payment for the same to cause to be issued capital stock of the said new corporation to an amount based upon the value, according to an inventory to be taken, of the merchandise and stock on hand, tools, machinery, fixtures and other like tangible property of the said Marlboro Company.

Six. The value of said merchandise and stock on hand, tools, machinery, fixtures, and other like tangible property shall be determined in the following manner: —

The said Marlboro Company shall appoint one person and the said new corporation shall appoint one person to investigate and make an inventory of all such property owned by the said Marlboro Company, which inventory shall be upon the same basis as an inventory of like property of the said Marlboro Company made during the month of May, A. D. 1902 by Mr. Daniels, acting in behalf of the said Marlboro Company, and Mr. Lamb, acting in

behalf of the said United Company, omitting, however, certain gas engines and special tools relating thereto in said inventory contained and therein valued at $617.00, which shall not be included in the offer of the said new corporation. (Copies of which inventory of May A. D. 1902 have been delivered to the United Company and to the said Trustee, and are identified by the signatures of George H. Daniels, Treasurer of the said Marlboro Company, and of C. H. Bayley, acting in behalf of the United Company, and of the said Trustee, together with the date of affixing such signatures, which is the same as the date of this instrument.

So far as relates to property included in said inventory of May, 1902, the values therein stated shall be binding upon the parties, and in the event of disagreement between the two persons appointed, as aforesaid, by the said Marlboro Company and by the said new corporation, as to the proper valuation to be placed upon any other property included in said transfer, a third person shall be appointed by the said Trustee to join with the persons previously appointed in determining said value, and the value of the property as determined by the representatives of the said Marlboro Company and of the said new corporation, or in case of disagreement and the appointment of a third person, as herein provided, the value as determined by the majority, shall be binding upon all parties.

Seven. The total amount of the capital stock of the said new corporation shall be such amount as the United Company shall consider desirable for the conduct of the business proposed to be carried on by the said new corporation, and it shall consist in equal amounts of Preferred Stock and of Common Stock.

The Preferred Stock shall be entitled out of the surplus net earnings, if sufficient, after all proper reservations for working capital, to a non-cumulative preferential dividend at the rate of six per cent (6%) per annum on the par value of said Preferred Stock, but each dividend period shall stand and be considered separately, and no deficiency for any dividend period shall be a charge upon or payable out of the net earnings of any other period, and no dividends shall be declared except from the surplus of net profits arising from the corporation's business.

If after appropriating the accumulated profits of the corporation in excess of the amounts reserved as working capital to the dividends above provided there remain further accumulated profits over and above the amounts reserved as working capital, dividends of said profits shall be declared upon the Common Stock up to at the rate of six per cent (6%) per annum on the par value of said Common Stock, and any further such profits remaining and applicable to dividends shall be distributed upon Preferred and Common Stock share and share alike.

Dividends in accordance with and subject to the foregoing provision shall be declared semi-annually in January and July of each year.

In the event of the dissolution of the corporation or the distribution of its assets the Preferred Stock shall be entitled to be paid in full before any payment shall be made on account of the Common Stock.

The Common Stock shall be subject to the prior rights of the Preferred Stock, as herein declared, but the shares of Preferred and Common Stock shall have equal voting powers.

Eight. The Preferred Stock of said new corporation shall be issued only for cash at par or for the acquiring of other properties at a fair and just valuation, determined so far as may be in a manner similar to that above provided for determining the value of the property of the said Marlboro Company.

Nine. The amount of capital stock which shall be issued by the said new corporation for the purchase of the business and assets of the said Marlboro Company shall be equal in par value of Preferred Stock to the value, determined in the manner hereinbefore set forth, of the merchandise and stock on hand, tools, machinery, fixtures and other like tangible property of the said Marlboro Company, and there shall likewise be issued to the said Marlboro Company an equal amount in par value of Common Stock, which Common Stock shall be transferred to the United Company, as hereinafter provided.

Ten. The said Stockholders, and each of them, and the said Trustee hereby covenant and agree that upon the receipt by the

officers of the said Marlboro Company of an offer as herein set forth from the said new corporation to purchase the entire business and assets of the said Marlboro Company, they, and each of them, will vote upon all stock then standing in their names, and will so far as is within their control or power or the control or power of any of them, cause all votes to be passed, and all instruments and acts to be authorized by the said Marlboro Company, and will do, and so far as is within their control or power will cause to be done all acts, and will execute, and so far as is within their control or power will cause to be executed all instruments, and will aid in every way and use their influence and best endeavors to cause said offer to be accepted by the said Marlboro Company and the business and property of the said Marlboro Company to be transferred and delivered to the new corporation.

Eleven. The said Trustee is hereby given full authority and power at any time or times when in his judgment it becomes necessary or desirable for the accomplishment of the purposes of this Agreement and for carrying out the full intent of this instrument, to cause any or all of the stock of the said Marlboro Company delivered to him under the provisions hereof to be transferred into his own or such other name or names as he shall consider desirable, and at any time to cause such meeting to be called and such votes to be passed as in his judgment are necessary or desirable for that end, and to cause the resignations of any or all officers to be accepted and the vacancies thus caused to be filled with such person or persons as he shall consider desirable, and in general to exercise all control and to perform or cause to be performed all acts, and execute or cause to be executed all instruments which in his judgment are necessary or desirable for the carrying out of the full intent of this undertaking, and the said Trustee hereby covenants and agrees that in all things he will faithfully and impartially perform the duties of this trust, and will in the exercise of his judgment do and cause to be done all things which he shall consider necessary or advantageous to be done for the accomplishment of the purposes herein set forth.

Twelve. Upon the acceptance of said offer by the said Marlboro

Company the officers of the said new corporation shall be forthwith notified, and all necessary or desirable instruments shall be executed to transfer to and vest in the said new corporation the title in and to the said business and property of the said Marlboro Company, and such instruments shall be delivered into the possession of the said Trustee for delivery to the said new corporation upon receipt by the said Trustee of certificates of the capital stock of the said new corporation equal in par value of Preferred shares to the value of the merchandise and stock on hand, tools, machinery, fixtures and other like tangible property of the said Marlboro Company determined in the manner above set forth, together with a like amount in par value of Common Stock.

Thirteen. Upon delivery to the said Trustee of the said stock in the new corporation, as aforesaid, the said Trustee shall hold the same in trust for the following purposes : —

1. He shall transfer and deliver or cause to be transferred and delivered the said Common Stock to the said United Company to its own use and behoof.

2. He shall hold the said Preferred stock for the use and subject to the instructions of the said Marlboro Company.

Fourteen. The said stockholders and the said Trustee shall cause a proper vote or votes to be passed by the said Marlboro Company that the said Preferred Stock be distributed among the share holders of the said Marlboro Company as their interests may appear upon delivery by said share holders of their stock duly endorsed in blank for delivery to the said new corporation, and requesting and authorizing the said Trustee to transfer the said Preferred Stock in accordance with the said vote.

Fifteen. Not less than five (5) or more than twenty (20) shares of Preferred Stock of the said new corporation shall be subscribed for and issued to the incorporators of the said new corporation, and shall be transferred to the said United Company or shall be held for the use of the said United Company by such person or persons as the United Company may desire. The said shares shall be paid for in cash at par.

Sixteen. It is agreed that the said United Company shall retain

control of the said new corporation, and that in all cases where Preferred Stock is issued as hereinbefore provided for the acquiring of properties for the purposes of the said new corporation Common Stock to a like amount in par value to the par value of the Preferred Stock necessary for such purpose shall be issued to the United Company as part of such transaction.

Seventeen. If at any time within three (3) years from the date of the transfer of the property of the said Marlboro Company, as aforesaid, to the said new corporation, any of the said Stockholders shall desire to sell or transfer the whole or any part of their holdings of stock in the said new corporation acquired by them under the provisions hereof, they shall offer the same to the United Company and the United Company shall (upon thirty days' notice) at any time within said three (3) years take such stock offered to it by the said Stockholders, or any of them, and shall pay for the same at par, and excepting as herein provided said stock shall not be transferred or transferable.

Eighteen. The United Company shall have the right at its option at any time within three (3) years from the date of said transfer of the property of the said Marlboro Company to take any or all of the stock of the new corporation held by the said Stockholders under the provisions hereof by paying for the same in cash at par, and said stock shall be received by the said Stockholders, and shall be held at all times subject to this right.

Nineteen. The United Company agrees that it will give to the said new corporation the benefit of its influence in the conduct of its business, and will give to the said new corporation such business as in the judgment of the said United Company can be done by the said Marlboro Company with equal advantage and on equally favorable terms as with any other manufacturer or dealer in such lines, but nothing herein contained shall be construed to bind the United Company to give to the said new corporation the whole or any part of its business in any line or lines, or to deal with the said new corporation in any wise, excepting in so far as it shall be deemed by the said United Company for its advantage to do, the intent of this provision being that the United Company

shall in good faith endeavor to so control and manage the said new corporation that its business shall be successful and profitable, and to that end shall on equally favorable terms in its discretion give preference to the said new corporation over other manufacturers or dealers in similar lines.

Twenty. Upon the completion of the sale and transfer of the property of the said Marlboro Company to the said new corporation, and receipt by the said Trustee of the consideration as hereinbefore set forth therefor, from the said new corporation, the stock of the said Marlboro Company delivered to him under the provisions hereof shall be held by him in trust for the said new corporation, and upon request by the said new corporation the said Trustee shall forthwith deliver the same to and cause the same to be transferred into the name of the said new corporation or its nominees to its or their own use and behoof.

Twenty-One. The said Trustee is hereby authorized and empowered to construe this Agreement, and he may supply defects and omissions herein, and in general may make such modifications as may be necessary or expedient in his judgment to carry out properly and effectively the purposes hereof.

Twenty-Two. Until the formation of said new corporation and the transfer to it of the property and business of the said Marlboro Company, the persons for the time being acting as officers of the said Marlboro Company or in charge of its affairs shall carry on or shall permit or cause to be carried on said business under its present management, in the manner and along the lines in which it is now doing business, but no new lines shall be developed and no radical changes shall be made in its conduct, and no steps shall be taken which shall materially increase or decrease the property and holdings of the said Marlboro Company otherwise than as such changes take place in the ordinary course of its business, the intent being that at the time of the sale and transfer of its business and property to the said new corporation the said Marlboro Company shall be in the same condition in which it now is, with such changes and modifications only as come about in the ordinary course of its business.

Twenty-Three. It is agreed that no expense for salaries, rent or other similar fixed charges are to be charged against the said new corporation beyond the present expenses of the said Marlboro Company for said purposes, excepting in so far as increase may become necessary by reason of the development of the business of the said new corporation and the greater volume of business carried on by the said new corporation.

Twenty-four. It is agreed that all fractional parts of shares of the capital stock of the said new corporation to which the several Stockholders of the said Marlboro Company shall be respectively entitled in the distribution of the said stock of said new corporation among the share holders of the said Marlboro Company according to their respective holdings of the capital stock of the said Marlboro Company, shall be transferred to the said United Company, and that the said United Company shall take and shall pay for the same at the par value thereof in cash, and the said Trustee shall be authorized and instructed to distribute said stock in accordance with the provisions of this Section, and to apply the amount received for the stock so transferred to the United Company among the share holders entitled thereto, in proportion to their respective interests in such shares.

In Witness Whereof the said Stockholders and the said Trustee have hereunto and to two other instruments of even date and like tenor with these presents set their hands and seals, and the United Shoe Machinery Company has caused this instrument to be signed in triplicate by Edwd. P. Hurd, its Asst. Treasurer and its corporate seal to be affixed the day and year first above written.

	Name	No. Shares.	
	Geo. H. Daniels		[seal]
	Silas E. Simonds		[seal]
	Winslow M. Warren		[seal]
	Wm. H. Coolidge		[seal]

[seal] Stockholders Marlboro Awl & Needle Company

[seal] United Shoe Machinery Co.
by Edwd. P. Hurd, Asst Treasurer

PLAINTIFF'S EXHIBIT 97.

[Put in Evidence, page 532.]

Agreement made this 30 day of June A. D. 1902, by and between George H. Daniels, of Marlboro in the Commonwealth of Massachusetts, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, of Paterson, in said State of New Jersey.

Whereas, by instrument of even date with these presents, an agreement has been entered into by and between certain stockholders of the Marlboro Awl and Needle Company (hereinafter called the Marlboro Company), a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and having its usual place of business at Marlboro, in said Commonwealth, party of the first part, the said United Shoe Machinery Company, party of the second part, and William H. Coolidge of Newton Mass., trustee, party of the third part, and a trust has been created for the purpose of accomplishing the sale and transfer of all the property and business of the said Marlboro Company to a new corporation to be formed for the purpose of carrying on business in lines similar to the lines of business now carried on by the said Marlboro Company.

And whereas the said Daniels (who is a party to said agreement) is the Treasurer of the said Marlboro Company and has been actively engaged in the management of the business of the said Marlboro Company, and is experienced in matters relating to the lines of business proposed to be carried on by the said New Corporation;

And whereas the said United Shoe Machinery Company will have a large interest in the said New Corporation and by reason of its holdings of stock will be in control of the business management of the said New Corporation.

And whereas the said United Shoe Machinery Company is desirous that the said New Corporation shall have the benefit of the experience and services of the said Daniels in the management of its affairs.

And whereas the said Daniels desires to be employed by the said New Corporation,

Now, therefore, it is agreed as follows: —

The said Daniels shall continue in his present relation to the said Marlboro Company until such time as the said New Corporation shall have been formed and the business and property of the said Marlboro Company shall have been transferred and delivered to the said New Corporation.

The said United Shoe Machinery Company, upon the formation of said New Corporation and the transfer to it of the business and property of the said Marlboro Company, shall cause the said Daniels to be employed by the said New Corporation in its management for a term of at least three years from the commencement of said employment, and for such further time as shall be mutually agreed upon between the said Daniels and the said New Corporation, and as compensation for his services will cause a salary to be paid to him by the said New Corporation at the rate of fifteen hundred and sixty dollars ($1560) per year.

The said Daniels hereby covenants and agrees that he will enter into the employment of the said New Corporation when formed and will remain in said employment for a term of at least three years from the commencement thereof, and for such further time as may be agreed upon by and between the said Daniels and the said New Corporation, and that during the continuance of such employment he will devote his entire time and best judgment and endeavor to the promotion and development and successful conduct of the business of said New Corporation along such lines as shall be decided upon by the said New Corporation, receiving from the said New Corporation in return for his services, a salary at the rate of fifteen hundred and sixty dollars ($1560) per year.

In Witness Whereof the said George H. Daniels has hereunto and to another instrument of even date and like tenor set his hand and seal, and the United Shoe Machinery Company has caused these presents to be executed in duplicate the day and year first above written.

GEORGE H. DANIELS [SEAL]

In presence of Silas E. Simonds

[SEAL] UNITED SHOE MACHINERY CO.
by Edwd. P. Hurd, Asst. Treasurer.

H. G. Donham to U. S. M. Co.

PLAINTIFF'S EXHIBIT 98.

[Put in Evidence, page 534.]

Agreement made this twenty fifth day of September A. D. 1902, by and between Arthur Fuller, of Boston, in the County of Suffolk and Commonwealth of Massachusetts, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, of Paterson in said State of New Jersey, having a place of business in said Boston (hereinafter called the United Company), Witnesseth:

Whereas, the said United Shoe Machinery Company is engaged in the manufacture of, and is interested in other companies engaged in the manufacture of machinery of all kinds for use in the manufacture of boots and shoes, and of supplying the same to manufacturers of boots and shoes in all parts of the United States and in all other countries;

And Whereas, the said Fuller is the owner of the majority of the capital stock of the American Sole-Laying Machine Company, a corporation organized and existing under the laws of the State of Maine, of Portland in said State of Maine (hereinafter referred to as the American Company), which corporation is the owner of certain patent rights and other property relating to the manufacture of certain machines for use in the manufacture of boots and shoes, and has been engaged in the business of manufacturing such machines and supplying the same to manufacturers of boots and shoes, and the said Fuller controls the actions of the said Company, and is in position to acquire the entire capital stock of the said Company;

And Whereas, the said Fuller desires to convey or cause to be conveyed to the said United Company all the property, interests and rights owned or controlled by the said American Company, and the said United Company desires to acquire the same.

Now, Therefore, the said Fuller and the said United Company, each in consideration of the covenants and agreements on the part of the other herein contained, do hereby covenant and agree as follows:

One. The said Fuller shall execute and deliver or cause to be executed and delivered to the said United Company any and all instruments, and shall do and cause to be done any and all acts necessary or desired by the said United Company to vest in the said United Company, its successors and assigns, the entire right, title and interest in and to all property, interests and rights of every name and nature owned by the said American Company, except alone its franchise, and all property, interests and rights to which the said American Company is entitled or which the said American Company has any right by agreement or otherwise to acquire or take over, and the entire business of the said American Company, together with the good-will thereof, including herein all Letters Patent of the United States and of any and all foreign countries owned or controlled by the said American Company; all inventions and improvements; all applications for Letters Patent of the United States and of any and all foreign countries, and all rights in, to and under Letters Patent, applications and inventions; all contracts, interests, rights, machinery, machines in stock or in process of construction, stock on hand, manufactured, unmanufactured or in process of manufacture, tools, special tools, supplies, jigs, models, patterns, drawings, fixtures, furniture, duplicate parts, pads, all claims and demands under agreement or otherwise for the use of inventions or for infringement of Letters Patent owned or controlled by the said American Company, and any and all other property, interests and rights of the said American Company wherever the same or any part thereof may be situated.

Two. The said Fuller hereby covenants and agrees with the said United Company, its successors and assigns, that the said American Company is now the owner, free from any and all encumbrances, of the entire right, title and interest in, to and under Letters Patent of the United States, No. 536,352, and in and to the inventions and improvements as secured by said Letters Patent and that the

same shall be conveyed to the said United Company under the foregoing provisions hereof, free from any and all encumbrances.

Three. The said Fuller hereby covenants with and warrants to the said United Company, its successors and assigns, that on the twentieth day of June, A. D. 1902, the property owned by the said American Company included the property set forth in the Schedule hereto annexed and marked Schedule "A"; that no substantial change has been made in said property and the amounts and quantities thereof since said date, and that the property now owned by the said American Company and to be conveyed to the said United Company under the provisions hereof is the same, subject to slight changes therein as to the amounts and quantities of parts and supplies by way of subtraction therefrom and addition thereto, as it was on said twentieth day of June, A. D. 1902.

Four. The said Fuller shall discharge or shall cause to be discharged all outstanding debts and direct and contingent obligations of the said American Company, and under the advice and with the approval of counsel for the said United Company shall take or cause to be taken the necessary steps to wind up the business of and to cause the dissolution of the said American Company, or in case the said United Company shall so elect after the discharge of all debts and other direct or contingent obligations of the said American Company, shall assign or cause to be assigned, and shall cause to be transferred to the said United Company, or to the nominee or nominees of the said United Company the entire issued capital stock of the said American Company.

Five. The said United Company upon receipt by it of instruments satisfactory to it, transferring to it the aforesaid property, interests and rights, shall pay to the said Fuller the sum of Fifteen Hundred (1500) Dollars, and shall likewise pay to the said Fuller the cost, not exceeding One Hundred (100) Dollars for each machine of two (2) new Two-Last machines referred to in the Schedule hereto annexed and included in the transfer to the said United Company.

Six. In addition to the payments in the preceding paragraph hereof provided for, the said United Company, its successors or

assigns, shall pay to the said Fuller the sum of Thirty-five Hundred (3500) Dollars, upon the terms and in the manner hereinafter set forth.

Seven. The said United Company shall on the last day of June and December in each year, until said sum of Thirty-five Hundred (3500) Dollars shall be paid in full, cause an account to be taken of all machines manufactured and put out by it, or under its authority, of the types heretofore manufactured and sold by the said American Company embodying any one or more of the inventions and improvements covered by said Letters Patent of the United States, No. 536,352, and shall on or before the last day of the calendar month next succeeding each such accounting pay to the said Fuller a royalty of Fifty (50) Dollars for each such machine; Provided, however, that in no case shall the said Fuller receive more than said sum of Thirty-five Hundred (3500) Dollars in the aggregate, and that the United Company shall have the right at any time, at its option, to pay to the said Fuller the balance then unpaid of said sum of Thirty-five Hundred (3500) Dollars, and when the said Fuller shall have received in the aggregate said sum of Thirty-five Hundred (3500) Dollars, all further interests of the said Fuller hereunder shall cease and determine.

Eight. The said United Company hereby guarantees to the said Fuller that the amount of royalty payable to the said Fuller under the provisions hereunder after the year 1902, and until said sum of $3500.00 shall have been paid in full shall not be less than Five Hundred (500) Dollars in each calendar year, and on the last day of January in each calendar year, after January 1903, until said sum of Thirty-five Hundred (3500) Dollars shall have been paid in full, the said United Company shall pay to the said Fuller such sum, if any, as may be necessary to bring the total amount paid on account of the preceding calendar year up to the sum of Five Hundred (500) Dollars.

Nine. The said Fuller hereby covenants and agrees with the said United Company, its successors and assigns, that he will not at any time within ten (10) years from the date hereof directly or indirectly, individually, as partner, or as officer in any corporation, or

in any other manner in the United States or in any other country, enter into or be engaged in, or financially, or otherwise assist any person, firm or corporation in entering into or engaging in or developing any business which relates to or is in any way concerned in the manufacture or sale of any machinery or machines intended or adapted for use in the operation of laying or levelling the soles of boots or shoes.

In Witness Whereof, the said Fuller has hereunto and to another instrument of even date and like tenor set his hand and seal, and the said United Company has caused this instrument to be signed in duplicate by Edward P. Hurd its Assistant Treasurer and its corporate seal to be affixed the day and year first above written.

ARTHUR FULLER

UNITED SHOE MACHINERY COMPANY

By Edward P. Hurd, Asst. Treas.

In the presence of H. G. Donham.

AMERICAN SOLE LAYER PARTS NOT FINISHED CASTINGS.

2 #51A
1 #46
1 #38A
3 #14
8 #17
15 #56
5 #31
6 #29A
1 #22
1 #26
3 Sleeve Castings
1 #65
2 #35
1 #36
4 #35A
8 #28
31 #30A
16 Steel Pinions 6 Form Machine
10 #17A
17 #26A
8 Plungers for 2 Form
6 #94
1 #19
1 #15A
1 #11
3 #27A
27 Heel Swivels for 2 Form
4 Nut connection
1 #0
1 #3

5 Roll Castings
19 Heel Posts 6 Form "
2 #28A
4 Short Sleeves
18 Brake Levers old style
11 #72
2 #25A
9 Caps for Bottom Girth
6 Shank Pad Holders
2 #34A
11 #37A
4 #7
2 #33A
1 #41A
10 Caps for #71
29 #60
8 Pad Holders for Men's work
9 " " " Shanks
1 #108
1 #109
2 #107
1 #106
2 #105
25 #2
34 #1
12 #5
16 #10 for 2 Form
2 #26A
46 #9
4 Steel Bevel Gears for 6 Form
8 #8
7 #23A
3-L
6 #54
1 #10-6 Form
6 #71

Arthur Fuller.

AMERICAN SOLE LAYER PARTS, FINISHED PARTS.

6 #96
7 #15
19 #27A
37 #60
26 #3
8 Roll Supports for Treadle
20 #50A
1 #71
3 #15A
3–L
3 #31A
3 #57
1 –long Sleeve Bushing
3 #32A
1 #28
2 #41A
2 #36A
3 #54
9 Rolls for #11
41 #57
3 #20A
3 #25
1 #17
1 #56
1 #28
4 Collars for Driving Shaft
6 #17A
1 #7

SCREWS ON HAND (MACHINE SCREWS)

16–18×1/2 –234
1/4–20×5/8–260
18–18×1 15
3/8–16×1 –115
" 16×1–1/2–30

18–20×1 – 18
1/4–20×1–1/4–81
16–18×1/2–40
1/4–20×1/2–125
12–20×5/8 175
Cotter Pins 155

Cap Screws

3/8–16×1–12
7/16–14×1–1/2–15
1/2–12×5/8–12

Rubbers

19–B–R–377
2–B–R–350
12–B–L–377
3–B–L–350
1–B–L 240
2–B–L

2–B–L #377
11–M–H–P #377
3–"–"–P #240
1–"–"–P
1–W–H–P #350
1–"–"–" #
2–C–L–# 350
1–G–H
1–no number

Shanks
"

Arthur Fuller

37 Springs for the Jack Post
111 Set Screws Special 1–5/16
98 " " " 1–3/4
96 " " " 1–3/16
93 " " " 9/16
93 " " " 1″
107 " " " 1/2
44 Cap " 3″
23 " " 3/4
14 French Head Screws
6 Set Screws
35 Machine Screws
78 Hexagon Nuts 1/4
1 2nd hand 6 Last Sole Layer
2 New Twin Layers without Rubbers

Arthur Fuller

PLAINTIFF'S EXHIBIT 99.

[Put in Evidence, page 537.]

This Agreement made this 1st day of October, A. D. 1902, by and between William J. Young, of Peabody, in the County of Essex and Commonwealth of Massachusetts, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, of Paterson, in said State of New Jersey, having a place of business in Boston in said Commonwealth of Massachusetts (hereinafter called the United Company), Witnesseth:

Whereas, the said United Company is engaged in the manufacture of machinery of all kinds for use in the manufacture of boots and shoes, and in putting the same out to manufacturers of boots and shoes, and to others, in all parts of the United States and in other countries, and is largely interested in the business of other companies engaged in like lines of business in the United States and in other countries;

And Whereas the said Young is the inventor of certain new and useful improvements in machines and devices for use in the manufacture and preparation of heels, for which Letters Patent of the United States and of other countries have been granted, and for which other Letters Patent may hereafter be granted, and is skilled in the art which pertains to machines and devices for such purposes and may hereafter make other inventions in said art, and is engaged in the manufacture of machines for use in the manufacture or preparation of heels, and in putting the same out to manufacturers of heels;

And Whereas the said Young desires to sell and transfer to the said United Company, and the said United Company desires to acquire, upon the terms and conditions hereinafter set forth, the entire right, title and interest in, to and under any and all Letters Patent of any countries other than the United States and Dominion of Canada which have been granted or may hereafter be granted for inventions or improvements relating or pertaining in any way to machinery or devices intended or adapted for use in the manu-

facture or preparation of heels heretofore made or which may hereafter within the term of fifteen (15) years from the date of these presents be made by the said Young, and in and to all such inventions and improvements in any and all countries other than the United States and the Dominion of Canada.

Now, Therefore, the said Young and the said United Shoe Machinery Company, each in consideration of the covenants on the part of the other herein contained, do hereby covenant and agree as follows: —

One. The said Young hereby grants, sells, assigns, transfers and sets over unto the said United Company, its successors and assigns, and shall hereafter upon request execute and deliver or cause to be executed and delivered to the said United Company any and all further instruments, and will do or cause to be done any and all further acts necessary or desired by the said United Company to fully vest and confirm the same to the said United Company, its successors and assigns, its or their nominee or nominees, the full and exclusive right, title and interest in all countries other than the United States and the Dominion of Canada in and to any and all inventions and improvements heretofore made by the said Young or which may hereafter at any time within the term of fifteen (15) years from the date of these presents be made by the said Young, relating or pertaining in any way to machinery or devices intended or adapted for use in the manufacture or preparation of heels, and the entire right, title and interest, free from any and all encumbrances, in, to and under any and all Letters Patent of any and all countries other than the United States and the Dominion of Canada which have been granted or may hereafter be granted for such inventions or improvements, and especially, shall execute or cause to be executed any and all instruments, and shall perform and caused to be performed any and all acts necessary or convenient or desired by the said United Company, to fully vest and confirm in the said United Company, its successors and assigns, its or their nominee or nominees, the entire right, title and interest, free from any and all encumbrances, in, to and under the Letters Patent referred to in the Schedule hereto annexed and

marked Schedule "A"; and the exclusive right, title and interest in all countries other than the United States and the Dominion of Canada in and to the inventions and improvements therein shown or described; and the entire right, title and interest in, to and under any and all Letters Patent of any and all countries other than the United States and the Dominion of Canada which have been or may hereafter be granted for the said inventions and improvements or any of them.

Two. The said Young hereby grants, sells, assigns, transfers and sets over unto the said United Company, its successors and assigns, and shall hereafter upon request execute and deliver or cause to be executed and delivered any and all further instruments, and will do or cause to be done any and all further acts necessary or convenient or desired by the said United Company to fully vest and confirm the same to the said United Company, its successors and assigns, its or their nominee or nominees, all right, title and interest, so far as the same relates or pertains to or may be or become useful in any country or countries other than the United States and the Dominion of Canada, had by the said Young, or which the said Young may at any time hereafter within the term of fifteen (15) years from the date of these presents have, or which the said Young has or may at any time hereafter within the term of fifteen (15) years from the date of these presents have any right by agreement or otherwise to acquire or take over in and to any and all inventions and improvements made or which may hereafter be made, relating or pertaining in any way to machinery or devices intended or adapted for use in the manufacture or preparation of heels, and in, to and under any and all Letters Patent of any and all countries other than the United States and the Dominion of Canada heretofore granted, or which may hereafter be granted for such inventions and improvements.

Three. The said Young hereby covenants and agrees with the said United Company, its successors and assigns, that without further or other consideration than that herein expressed he will forthwith fully and particularly disclose to the officers and patent solicitors of the said United Company all inventions and improvements

heretofore made by him and all rights, title and interests in inventions and improvements of others, made or to be made, now owned or possessed by him, or which he has any right by agreement or otherwise to acquire or take over, which relate or pertain in any way to machinery or devices intended or adapted for use in the manufacture or preparation of heels, and that hereafter upon making any inventions or improvements relating or pertaining in any way to machinery or devices intended or adapted for use in the manufacture or preparation of heels, or acquiring any right, title or interest in or to, or any right to acquire or take over any such inventions or improvements of others made or to be made, or any interest therein, or acquiring any right, title or interest in, to or under, or any right to acquire or take over any Letters Patent (or any interest therein) of any country other than the United States or the Dominion of Canada for such inventions or improvements at any time within the term of fifteen (15) years from the date of these presents, he will forthwith disclose the same to the said United Company, its successors or assigns, its or their officers and patent solicitors; that he will repeat such disclosures when and as often as requested by the said United Company, its successors or assigns; will execute and deliver any and all assignments, application papers and other instruments, and will do or cause to be done all acts necessary or convenient or desired by the said United Company, or by its successors or assigns, to vest in the said United Company, its successors and assigns, its or their nominee or nominees, the full and complete right, title and interest in all countries other than the United States and the Dominion of Canada in, to and under said inventions, improvements, Letters Patent, and such interests therein and rights thereunder; and, so far as is or shall be within his power, to enable the said United Company, its successors or assigns, to obtain Letters Patents covering such inventions and improvements, or any thereof, in any and all countries other than the United States and the Dominion of Canada, in which the said United Company, its successors or assigns, shall desire to obtain Letters Patent therefor, and to enjoy the full benefit of such inventions, improvements, Letters Patent and interests and rights.

Four. The said Young hereby sells, assigns, transfers and sets over unto the said United Company, its successors and assigns, all business and good-will which he now possesses or enjoys, relating or pertaining in any way to the business of manufacturing or dealing in machinery or devices intended or adapted for use in the manufacture of heels in any and all countries other than the United States and the Dominion of Canada, and agrees that upon receipt by him of any orders for such machines or devices at any time within the term of fifteen (15) years from the date of these presents he will promptly and without further consideration communicate and transfer the same to the said United Company, its successors or assigns.

Five. The said Young does hereby further covenant with the said United Company, its successors and assigns, that he will not without the consent in writing of the said United Company, its successors or assigns, at any time prior to fifteen (15) years from the date of these presents, directly or indirectly, individually, as partner, or as officer in any corporation, or in any other manner enter into or be engaged in, or financially or otherwise assist any person, firm or corporation in engaging in or developing or carrying on in any country other than the United States and the Dominion of Canada any business which consists in whole or in part in or relates to or is concerned in any way in the manufacture or lease or sale of machinery or devices intended or adapted for use in any way in the manufacture or preparation of heels.

Six. The United Company, provided the said Young shall faithfully keep and perform all covenants and agreements herein contained or implied on his part to be kept and performed, shall pay to the said Young, his heirs, executors, administrators and assigns, in accordance with and subject to the provisions herein contained, the sum of Fourteen Thousand (14,000) Dollars in installments as hereinafter set forth. And assignment or alienation of said sum, or any part thereof, shall be subject and shall be expressed to be subject to all equities, rights and privileges, by way of set-off, counter-claim or otherwise of the said United Company and to the performance of all covenants for the benefit of said United Com-

pany herein contained or implied, and the said United Company shall in no case be bound to recognize any assignment or alienation of said sum, or any part thereof, unless notice of such assignment or alienation in writing, signed by the said Young and by the said assignee, and containing an order on the part of the said Young to pay to the said assignee, shall be received by the said United Company within five (5) days from the date of such assignment or alienation.

Seven. Said sum of Fourteen Thousand (14,000) Dollars shall be paid as follows, to wit:—

On or before the first day of December in each of the years 1903, 1904, 1905 and 1906, the sum of Three Thousand (3000) Dollars, and on or before the first day of December in the year 1907, the sum of Two Thousand (2000) Dollars; provided, however, that the said United Company shall have the right at any time, at its option, to pay to the said Young the balance then unpaid of said sum of Fourteen Thousand (14,000) Dollars, less a discount from the amount then unpaid at the rate of five per cent. (5%) per annum; and further provided that the amount by which the prices charged for all machines purchased from the said Young by the said United Company, or by any of its associate or subsidiary companies as hereinafter provided (less discounts for cash if such discounts are actually taken) exceeds the manufacturing cost of such machines shall as hereinafter provided be deducted from the amounts to be paid to the said Young, his heirs, executors, administrators and assigns, hereunder,

Eight. The said Young shall fill any and all orders which he may receive from the said United Company, or its subsidiary or associate companies, at any time within five (5) years from the date hereof, for Compressing Machines for export to such countries other than the United States and the Dominion of Canada, as the said United Company, its subsidiary or associate companies, may desire, of the type now manufactured by the said Young; and in case the said United Company or its associate or subsidiary companies shall order any such machine or machines from the said Young and shall desire to have the same constructed embodying

therein changes and modifications from the said machines as now constructed, the said Young shall fill such orders with machines embodying such changes and modifications; provided, however, that if at any time the said Young shall discontinue the manufacture of Compressing Machines, he shall, upon six (6) months notice to the said United Company of his intention so to discontinue, be relieved from any further obligation hereunder to fill orders for such machines. Such notice thall take effect upon the expiration of six (6) months from the receipt thereof by the said United Company.

Nine. All machines purchased from the said Young by the said United Company, or by any of its associate or subsidiary companies under the foregoing provisions hereof shall be charged to the said purchaser at the rate at which like machines are now charged to the said United Company, its subsidiary and associate companies, subject, however, to additions thereto or deductions therefrom, equal to any differences in manufacturing cost caused by reason of any changes or modifications from the machines as now constructed made at the request of said United Company, its subsidiary or associate companies.

Ten. On the first day of December in each year, until the said sum of Fourteen Thousand (14,000) Dollars, less deductions therefrom, as herein provided, shall have been paid in full to the said Young, his heirs, executors, administrators, or assigns, an account shall be taken to determine the number of machines, if any, which have prior to each such accounting been ordered by the said United Company, or its subsidiary or associated companies, and have been or are to be supplied by the said Young hereunder on account of which deduction as herein provided has not already in some prior accounting been made and the manufacturing cost of such machines shall be deducted from the charging price as hereinbefore provided therefor (less discounts for cash if such discounts are actually taken) and the difference between such manufacturing cost and such charging price shall be deducted, as herein provided from the amount payable hereunder by the said United Company to the said Young, his heirs, executors, administrators or assigns. Such de-

duction on account of each machine so ordered shall be made from the amount of the installment hereinbefore provided, next to become payable after the date on which such machine is ordered so that the amounts payable to the said Young, his heirs, executors, administrators and assigns hereunder on the respective dates hereinbefore provided for the payment of said several installments shall be the respective amounts hereinbefore provided less in each case an amount equal to the sum by which the amounts charged as aforesaid for all such machines so ordered prior to said respective dates, and on account of which such deduction has not already been made, exceeds the manufacturing cost of such machines.

In Witness Whereof the said William J. Young has hereunto and to another instrument of even date and like tenor set his hand and seal, and the said United Shoe Machinery Company has caused this instrument to be signed in duplicate by George W. Brown its Treasurer and its corporate seal to be affixed the day and year first above written.

WILLIAM J. YOUNG [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY

George W. Brown, Treasurer.

In the presence of H. G. Donham

SCHEDULE "A".

British Letters Patent, No. 12918, granted June 21, 1899 to Alfred George Brookes upon disclosure from abroad by William J. Young for Improvements in Heel Compressing Machines.

Letters Patent of the Empire of Germany, No. 133,038, dated July 5, 1899, granted to Deutsche Vereinigte Schuhmaschinen Gesellschaft m. b. H., in Frankfurt a. M., and described as follows: —

Zuführungs- und Ablegevorrichtung für Absatzpressen.

PLAINTIFF'S EXHIBIT 100.

[Put in Evidence, page 540.]

This Agreement made this twentieth day of November A. D. 1902, by and between George A. Smith, of Philadelphia, in the County of Philadelphia and Commonwealth of Pennsylvania, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, of Paterson, in said State of New Jersey, and having a place of business in Boston, Massachusetts (hereinafter called the United Company), Witnesseth:

That Whereas the United Company is engaged in the manufacture of machines, appliances, devices and supplies for use in the manufacture of boots and shoes and in the business of supplying such machines, appliances, devices and supplies to manufacturers of boots and shoes and to others in all parts of the United States and in other countries;

And Whereas the said Smith is the owner of the majority of the capital stock of The George A. Smith Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, and having a place of business in said Philadelphia (hereinafter called the Smith Company), which corporation is engaged in the business of manufacturing and dealing in machinery, appliances, devices and supplies used by manufacturers and dealers in boots or shoes and by others;

And Whereas the said Smith desires to assign, transfer and deliver and cause to be assigned, transferred or delivered to the United Company the property, assets and business of the said Smith Company, as hereinafter set forth, and the entire capital stock of the said Smith Company, and the said United Company desires to acquire the same upon the terms hereinafter set forth.

Now, Therefore, the said George A. Smith and the said United Company, each in consideration of the covenants and agreements on the part of the other herein contained, do hereby covenant and agree as follows:—

One. The said Smith shall upon demand, after the execution of

these presents, execute and deliver, or shall cause to be executed and delivered any and all instruments and shall do and cause to be done all acts necessary or desired by the said United Company to convey and transfer to and fully and completely vest in the said United Company, its successors and assigns, its nominee or nominees, the full and complete right, title and interest in and to all the property, assets and business of the said Smith Company, including stock in trade, furniture, fixtures, orders, the good-will of said business and any and all other property and assets of every name and nature, excepting its franchise and excepting its accounts, notes and bills receivable, claims and choses in action and excepting also any portion or portions of its stock in trade, fixtures or furniture which, as hereinafter provided, shall not be included in the inventory of such stock in trade, fixtures and furniture hereinafter provided to be made.

Two. As soon as convenient after the execution of these presents an inventory shall be taken by the said George A. Smith and by a representative of the said United Company to be appointed for that purpose, of the stock in trade, furniture and fixtures of the said Smith Company, setting forth in detail such property, together with a valuation of the several items contained in such inventory at such valuation as shall be agreed upon by and between the said Smith and the said representative of the said United Company,

Provided however, that if the said United Company shall elect not to acquire or if the said Smith and the said representative of the United Company shall be unable to agree upon a valuation to be placed upon any portion or portions of said stock in trade, fixtures and furniture, such portion or portions shall not be included within such inventory and shall be excepted from the property hereby agreed to be conveyed.

Three. The said Smith shall provide for the discharge of all outstanding indebtedness and direct or contingent obligations of the said Smith Company, and shall deliver to the said United Company duly endorsed in blank the certificates representing the total issued and outstanding stock of the said Smith Company.

Four. The said Smith hereby covenants and agrees with the said United Company, its successors and assigns, that he will not at any time within ten (10) years from the date of these presents, within the United States or in any other country, directly or indirectly, individually, as partner, or as an officer or stockholder in any corporation or otherwise (excepting in so far as he may be interested in or may be employed by the said United Company) without the written consent of the said United Company enter into or be engaged in or financially or otherwise assist any person, firm or corporation in entering into or developing or carrying on any business which relates or pertains in any way to the manufacture or sale or lease of any machines, machinery, devices or appliances intended or adapted for use in any way in the manufacture of boots or shoes, or any business which relates to or is concerned in the manufacture or sale or otherwise supplying to manufacturers of boots or shoes or to others, supplies intended or adapted for use in or about or in connection with any such machines, machinery, devices or appliances, or any business which will in any way compete with or interfere with any business carried on by the said United Company or by any company in which the said United Company is the legal or equitable owner of the majority of the capital stock; provided, however, that nothing herein contained shall interfere with the right of said Smith to engage in any business in any line or lines of shoe manufacturers' supplies or findings, which at the time of his entering into or engaging in such business are not dealt in by the said United Company or by any company in which the said United Company is legal and equitable owner of the majority of the capital stock.

Five. The United Company, upon receipt by it of all instruments of assignment and transfer and other instruments, and the performance of all acts necessary or desired by the United Company to vest in the said United Company, its successors and assigns, its nominee or nominees, good, clear and complete title in and to all property, assets, business and good-will of the said Smith Company (excepting its franchise and excepting its accounts, notes and bills receivable, claims and choses in action and excepting also

any portion or portions, if any, of its stock in trade, furniture and fixtures as shall be excepted under the provisions hereinbefore contained), and upon delivery to the said United Company of all such property and also of the certificates representing the entire capital stock of the said Smith Company duly endorsed in blank shall pay to the said Smith an amount equal to the valuation as fixed by the inventory above provided for of all the stock in trade, furniture and fixtures included therein.

Six. Inasmuch as the said Smith is the owner of the building and premises No. 415 Arch Street in Philadelphia, now occupied by the said Smith Company for the purposes of the business hereby agreed to be conveyed to the said United Company, and it is desired that the said United Company shall continue to occupy said building and premises for the purpose of carrying on upon said premises such part of the business formerly carried on by the said Smith Company as it shall deem advisable together with such extensions thereof and additions thereto as it may consider advisable, it is hereby agreed that the said Smith, as owner, shall lease to and the said United Company shall accept from the said Smith a lease of the said building and premises, No. 415 Arch Street in said Philadelphia for the term of from , paying to the lessor rental therefor at the annual rate of $2500.00.

Seven. The said United Company agrees that in case the said Smith so desires, the United Company will use its best efforts for the collection of the outstanding accounts, notes and bills receivable of the said Smith Company in the ordinary course of business without charge to the said Smith in excess of the actual expense thereof to the United Company.

In Witness Whereof the said George A. Smith has hereunto and to another instrument of even date and like tenor to these presents set his hand and seal, and the said United Shoe Machinery Company had caused these presents to be signed in duplicate by George W. Brown, its Treasurer, and its corporate seal to be affixed the day and year first above written.

GEORGE A. SMITH

UNITED SHOE MACHINERY CO.

George W. Brown, Treasurer.

PLAINTIFF'S EXHIBIT 101.

[Put in Evidence, page 542.]

This Agreement made this eighteenth day of December, A. D. 1902, by and between George A. Emerson and William R. Sampson, both of Lynn, in the County of Essex and Commonwealth of Massachusetts, copartners, doing business in said Lynn under the name and style of George W. Emerson & Company, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, of Paterson, in said State of New Jersey, having a place of business in Boston in said Commonwealth of Massachusetts (hereinafter called the United Company), Witnesseth:

That Whereas the said Emerson and Sampson as copartners as aforesaid are engaged in the business of manufacturing and dealing in machinery, appliances, devices and supplies intended or adapted for use in the manufacture of boots and shoes and otherwise, and are, as copartners aforesaid and individually, the owners of machinery, tools, fittings and other equipment useful in connection with said business, and of such machinery, appliances, devices and supplies, manufactured or in process of manufacture, and are likewise the owners of certain inventions and improvements, and of Letters Patent and applications for Letters Patent of the United States and of other countries covering the same;

And Whereas the United Company is engaged in the manufacture of machines, appliances, devices and supplies for use in the manufacture of boots and shoes, and in the business of supplying such machines, appliances, devices and supplies to manufacturers of boots and shoes in all parts of the United States and in other countries;

And Whereas the said Emerson and Sampson desire to sell, assign, transfer, set over and deliver to the said United Company, and the said United Company desires to acquire all and entire the property, assets, interests and rights of every name and nature relating or pertaining in any way to the said business heretofore carried on by the said Emerson and Sampson as copartners as

aforesaid, and all property, assets, interests and rights of every name and nature owned or controlled by the said Emerson and Sampson, or by either of them, relating or pertaining in any way to machinery, appliances, devices and supplies intended or adapted for use in the manufacture of boots and shoes or to the manufacture thereof, or to the business of dealing therein.

Now, Therefore, the said George A. Emerson and the said William R. Sampson, and each of them, in consideration of the covenants and agreements on the part of the said United Company herein contained, and the said United Company in consideration of the covenants and agreements on the part of the said Emerson and the said Sampson, and each of them, herein contained, do hereby covenant and agree as follows: —

One. The said Emerson and Sampson do hereby sell, assign, transfer and deliver unto the said United Company, its successors and assigns, and they and each of them shall hereafter if requested by the said United Company, its successors or assigns, execute and deliver and cause to be executed and delivered any and all instruments, and shall perform and cause to be performed any and all acts necessary or desired by the said United Company, its successors or assigns, to fully and completely confirm in the said United Company, its successors and assigns, full and complete title thereto, all property, assets, interests and rights of every name and nature (except alone bills, notes and accounts receivable) owned or controlled by the said Emerson and Sampson as copartners as aforesaid, and all property, assets, interests and rights of every name and nature of the said Emerson and Sampson, or either of them, relating or pertaining in any way to machinery, appliances, devices or supplies intended or adapted for use in the manufacture of boots and shoes or to the manufacture thereof, or to the business of dealing therein, including herein all Letters Patent of the United States and of any and all foreign countries, all inventions and improvements, all applications for Letters Patent of the United States and of any and all foreign countries, and all rights in, to and under such Letters Patent, applications and inventions, all leases, rights, machines, appliances, devices and supplies in stock or in process of

construction, stock on hand manufactured, unmanufactured or in process of manufacture, machinery, tools, special tools, jigs, patterns, drawings, fixtures, duplicate parts, supplies, the entire equipment and fittings of the plant heretofore occupied by the said George W. Emerson & Company, all orders on hand and the goodwill of the business which has heretofore been carried on by the said copartnership, all claims and demands under agreement or otherwise for the use of inventions or for infringement of Letters Patent, and any and all other property, assets, interests and rights of every name and nature (except notes, bills and accounts receivable) of the said George W. Emerson & Company, and all other property, interests and rights of every name and nature of the said Emerson and Sampson, or either of them, relating or pertaining in any way to machinery, appliances, devices or supplies intended or adapted for use in the manufacture of boots and shoes or to the manufacture thereof, or to the business of dealing therein.

Two. The said Emerson and Sampson do especially hereby sell, assign, transfer and deliver unto the said United Company, its successors and assigns, all of the property referred to in an inventory which has been made of the machinery and stock on hand of the said George W. Emerson & Company, a copy of which has been furnished to the said United Company, and a summary of which is set forth in the schedule hereto annexed and marked "Schedule A," and the said Emerson and Sampson, and each of them, do hereby covenant with and warrant to the said United Company, its successors and assigns, that they are the sole and exclusive owners of all the property set forth in said inventory, that the said property is free from all encumbrances, and that they have good right to sell and assign the same as aforesaid, and that they and each of them will warrant and defend the same against the lawful claims and demands of all persons.

Three. The said Emerson and the said Sampson, and each of them, do hereby especially grant, sell, assign, transfer and set over unto the said United Company, its successors and assigns, the entire right, title and interest had by the said Emerson and Sampson, or by either of them, or which they or either of them have

any right by agreement or otherwise to acquire or take over in and to any and all inventions and improvements made or to be made relating or pertaining in any way to machinery, appliances, devices or supplies intended or adapted for use in the manufacture of boots or shoes, and the entire right, title and interest had by the said Emerson and Sampson, or by either of them, in, to and under any and all Letters Patent of the United States and of any and all foreign countries for such inventions and improvements, and in, to and under any and all applications for Letters Patent of the United States and of any and all foreign countries therefor, including herein especially the entire right, title and interest, free from any and all encumbrances, in, to and under the Letters Patent of the United States, and of other countries, and the applications for Letters Patent referred to in the schedule hereto annexed and marked "Schedule B," and in and to the inventions and improvements therein shown or described, and in, to and under any and all Letters Patent to the United States, and of any and all foreign countries which have been or may hereafter be granted upon such inventions and improvements, or any of them.

Four. The said Emerson and Sampson, and each of them, do hereby covenant with and warrant to the said United Company, its successors and assigns, that they are the sole and exclusive owners of the entire right, title and interest in, to and under each and every of the Letters Patent of the United States and of other countries, and of the applications for Letters Patent referred to in said "Schedule B," and the entire right, title and interest in and to the inventions and improvements therein shown or described; that they have good right to sell and assign the same, and that they will warrant and defend the same against the lawful claims and demands of all persons. And the said Emerson and Sampson, and each of them, do further covenant and agree that upon request of the United Company, its successors and assigns, they will execute and deliver and will cause to be executed and delivered any and all instruments, and will perform and cause to be performed any and all acts necessary or desired by the said United Company, its successors or assigns, to vest and confirm in the said United Company,

its successors and assigns, the entire right, title and interest, free from any and all encumbrances, in, to and under each and every of said Letters Patent, applications, inventions and improvements, and to enable the said United Company, its successors and assigns, to show good and complete title to each of said Letters Patent and applications upon the records of the Patent Offices of the respective countries in which the said Letters Patent have been granted and the said applications filed, or otherwise to dispose said title as the said United Company, its successors and assigns, may desire; and, further, that they will execute and deliver and will cause to be executed and delivered to the said United Company, its successors and assigns, all applications and other instruments, and will do and cause to be done all acts which the said United Company, its successors or assigns, may desire to enable the said United Company, its successors and assigns, to apply for and to obtain for the sole benefit of the United Company, its successors and assigns, Letters Patent covering said inventions and improvements, or any of them, in any and all countries in which the said United Company, its successors and assigns, may desire to obtain Letters Patent covering the same, and to invest and confirm the full and complete title to all such Letters Patent in the said United Company, its successors and assigns.

Five. The said Emerson and the said Sampson, and each of them, do hereby grant, sell, assign, transfer and set over unto the said United Company, its successors and assigns, the entire right, title and interest in and to any and all inventions and improvements which they or either of them may make, own or have any right by agreement or otherwise to acquire or take over at any time within fifteen (15) years from the date of these presents relating or pertaining in any way to machinery, appliances, devices or supplies intended or adapted for use in the manufacture of boots and shoes, and the entire right, title and interest in and to any and all Letters Patent of the United States and of any and all foreign countries covering the same.

Six. The said Emerson and Sampson, and each of them, do hereby covenant and agree with the said United Company, its suc-

cessors and assigns, that hereafter upon making any inventions or improvements in or relating to machinery, appliances, devices or supplies intended or adapted for use in the manufacture of boots or shoes at any time within fifteen (15) years from the date of these presents, or within said period acquiring any right, title or interest in any such inventions or improvements, they, and each of them, shall forthwith disclose the same to the said United Company, its successors and assigns, its and their officers and patent solicitors; will repeat such disclosures when and as often as requested by the said United Company, its successors or assigns; will execute and deliver any and all assignments, application papers and other instruments, and will do any and all acts necessary or desired by the said United Company, its successors or assigns, and to vest in the said United Company, its successors and assigns, the full and complete right, title and interest in, to and under said inventions, improvements, Letters Patent and applications for Letters Patent, and such interests therein and rights thereunder, and to enable the said United Company, its successors or assigns, to obtain Letters Patent covering such inventions and improvements or any thereof in the United States and in any and all foreign countries in which the said United Company, its successors or assigns, shall desire to obtain Letters Patent therefor, and to enjoy the full benefit of such inventions, improvements, Letters Patent, applications, interests and rights.

Seven. The said Emerson and the said Sampson, and each of them, hereby covenant and agree with the said United Company, its successors and assigns, that they will not, nor will either of them, without the consent in writing of the said United Company, at any time prior to fifteen (15) years from the date of these presents, directly or indirectly, individually, as partner, or as officer in any corporation, or in any other manner (excepting in so far as they or either of them may be interested in or employed by the said United Company, its successors or assigns), enter into or be engaged in or financially or otherwise assist any person, firm or corporation in entering into or developing or carrying on any business which relates to or is in any way concerned in the manufac-

ture or sale of or otherwise dealing in any machinery, appliances, devices or supplies intended or adapted for use in the manufacture of boots and shoes, or in any business which will in any way interfere with or compete with any business carried on by the said United Company, its successors or assigns.

Eight. All right, title and interest of the said Emerson and Sampson, or either of them, in and to all burnishing machines put out by the said George W. Emerson & Company, and which on the tenth day of December, A. D. 1902, were not paid for are hereby transferred to the said United Company, its successors and assigns, together with all amounts due or to become due as payment therefor, and all claims on account thereof; and the said Emerson and Sampson do hereby irrevocably constitute and appoint the said United Company, its successors and assigns, the true and lawful attorney of them, and each of them, to institute in the name of the said Emerson and Sampson, or otherwise, such proceedings at law or in equity as the said United Company may deem desirable to secure, protect and enforce the same.

Nine. It is agreed that between the eighteenth day of December aforesaid and the date of actual delivery of the property hereby agreed to be conveyed to the said United Company, all business relating to the property hereby conveyed or agreed to be conveyed shall be carried on for the benefit of the said United Company, and that all amounts received from the sale of goods included within the terms hereof, or otherwise from the conduct of said business after the said eighteenth day of December, A. D. 1902, and all amounts collected after said tenth day of December, A. D. 1902, on account of the burnishing machines above referred to put out prior to said tenth day of December and not then paid for, shall be turned over to the said United Company, and that all amounts payable on account of goods sold or delivered or business done since said eighteenth day of December, A. D. 1902, shall be payable to the said United Company, the said United Company assuming the expenses of conducting such business from and after the said eighteenth day of December.

Ten. The said United Company shall upon receipt by it of all

instruments duly executed which shall be immediately requested by it for the purpose of carrying out the foregoing terms of this instrument, and upon delivery to it of the property hereinbefore agreed to be conveyed, pay to the said Emerson and Sampson jointly the sum of Forty-one Thousand, Five Hundred Dollars ($41,500). Such payments shall not, however, relieve the said Emerson and Sampson from any obligation to execute and deliver and to cause to be executed and delivered any and all further instruments, and to do and cause to be done any and all further acts necessary or desired by the said United Company, its successors or assigns, to carry out the full purpose and intent of this instrument, but the said Emerson and Sampson shall continue to be bound at any and all times hereafter to execute and cause to be executed all such further instruments, and to do and cause to be done all such further acts.

In Witness Whereof the said Emerson and Sampson have caused this instrument to be signed in the name of the said George W. Emerson & Company by George A. Emerson thereto duly authorized, and have hereunto set their respective hands and seals, and the said United Shoe Machinery Company has caused these presents to be signed by Sidney W. Winslow its President and its corporate seal to be hereunto affixed the day and year first above written.

GEORGE W. EMERSON & COMPANY
By George A. Emerson
GEORGE A. EMERSON
WILLIAM R. SAMPSON
UNITED SHOE MACHINERY CO.
By Sidney W. Winslow, President

In the presence of H. G. Donham.

SCHEDULE "A"

Summary of Inventory — To which reference may be had.

Pulleys	Finished Parts
Belting	Shafting
Machines	Hangers

Brushes	Couplings
Splitter Knives	Machinery
Parts	Tools
Composition Castings	Fixtures
Iron Castings	Patterns
Bar steel	Furniture

SCHEDULE "B"

Letters Patent of the United States.

No. 11,580, (Reissue) dated December 29, 1896, issued to S. D. Tripp, for Edge Finishing Machine.

No. 587,378, dated August 3, 1897, issued to S. D. Tripp, for Edge Finishing Machine.

No. 638,862, dated December 12, 1899, issued to Samuel J. Brissette, Assignor, to Geo. A. Emerson and William R. Sampson, for Leather Rolling Machine.

No. 650,998, dated June 5, 1900, issued to Seth D. Tripp, Assignor to Thaxter N. Tripp, for Sole Edge Burnishing Machine.

No. 653,016, dated July 3, 1900, issued to Samuel J. Brissette, Assignor, to George A. Emerson, for Heel Scarfing Machine.

No. 690,549, dated January 7, 1902, issued to Milton H. Ballard, Assignor, to George W. Emerson & Company, for Buffing Machine.

No. 701,425, dated June 3, 1902, issued to S. D. Tripp, Assignor, to Thaxter N. Tripp, for Edge Finishing Machine.

No. 705,550, dated July 29, 1902, issued to Milton H. Ballard, Assignor to Geo. W. Emerson & Company, for Polishing Machine.

British Letters Patent.

No. 19,314, dated September 1, 1896, granted to Seth Dexter Tripp, for Improvements in Edge Finishing Machines for Boots and Shoes.

Letters Patent of France.

No. 259,374, dated September 1, 1896, granted to Seth Dexter Tripp, for Edge Finishing Machine; also Patent of Addition to said Patent No. 259,374, said Patent of Addition being dated August 3, 1897.

Letters Patent of Germany.

No. 92,486, dated September 1, 1896, granted to Seth Dexter Tripp, for Maschine zum Zurichten der Sohlenkanten; also Patent of Addition to said Patent No. 92,486, said Patent of Addition being numbered 96,269, dated August 3, 1897, granted to Seth Dexter Tripp, for Maschine zum Zurichten der Sohlankanten.

Applications for Letters Patent of the United States.

Serial No. 99,851, filed March 25, 1902, Robert W. Thomson, Heel Waxing Machine.

Serial No. 129,998, filed November 3, 1902, Robert W. Thomson, Heel Waxing Machine.

PLAINTIFF'S EXHIBIT 102.

[Put in Evidence, page 545.]

Know all Men by these Presents:

That The T. A. Norris Machine Company, a corporation duly organized under the laws of the Commonwealth of Massachusetts, and having a principal place of business at 74 Commercial Street, in Brockton, in the County of Plymouth, in said Commonwealth, hereinafter called the Norris Company, in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to it paid by the United Shoe Machinery Company, of Paterson, in the State of New Jersey, a corporation duly organized under the laws of the said State of New Jersey, and having a place of business at 205 Lincoln Street, in Boston, in said Commonwealth of Massachusetts, hereinafter called the United Company, the receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and deliver unto the said United Shoe Machinery Company, all machines, machinery, tools, special tools, jigs, patterns, models, drawings, parts of machines, findings, shafting, hangers, pulleys, belting, office furniture and fixtures, owned by the Norris Company, including especially the chattels enumerated on the annexed schedules marked "Schedule A", "Schedule B" and "Schedule C", which chattels enumerated on the said schedules are now in the

building numbered 74 Commercial Street in said Brockton, and all other chattels belonging to the Norris Company wherever located, excepting only the accounts, books of account, stock books, blank certificates of stock, and the corporate seal of the said Norris Company;

To Have and to Hold the above granted goods and chattels, together with all the rights, privileges and appurtenances thereunto pertaining to the said United Shoe Machinery Company and its successors and assigns forever.

The said Norris Company for the consideration aforesaid does hereby for itself and for its successors and assigns, covenant and agree with the United Company and its successors and assigns that it is the legal owner of the goods and chattels enumerated on the said Schedules hereto annexed, that it has good right to sell and convey the same, and that the said goods and chattels are free from all debts and liabilities of the Norris Company.

And for the consideration aforesaid the Norris Company for itself and its successors and assigns covenants and agrees with the United Company and its successors and assigns that the Norris Company will and its successors and assigns shall execute and deliver any and all instruments and do all things which may be necessary or convenient to carry out the terms and intent of this instrument, and to vest in the United Company, its successors and assigns, the full and complete legal title to all goods and chattels owned by the Norris Company, with the exception aforesaid.

In Witness Whereof said The T. A. Norris Machine Company has caused this instrument to be executed and its corporate seal to be hereunto affixed by Thomas A. Norris, its President, thereunto duly authorized, this 1st day of July, A. D. 1902.

THE T. A. NORRIS MACHINE COMPANY

[SEAL] By Thomas A. Norris, President.

United States of America.
Commonwealth of Massachusetts.

Suffolk, ss. Boston, July 1, A. D. 1902.

Then personally appeared the above named Thomas A. Norris,

to me personally known, and known by me to be the President of The T. A. Norris Machine Company, and acknowledged that he executed the foregoing instrument as President of The T. A. Norris Machine Company, and that the same is the free act and deed of The T. A. Norris Machine Company.

Before me,

[SEAL] Nelson W. Howard, Notary Public.

SCHEDULE A.

T. A. Norris Machine Company. Summary of Inventory.	
Shoe Machinery in stock	$3335.85
Machine shop tools, and tool room Patterns, jigs and special tools.	3025.00
Office furniture and fixtures,	496.00
Belting & Lace,	1245.22
Wood Pulleys	489.93
Shafting, Hangers, etc.	403.16
McKay Parts, (Sewer)	624.69
McKay Channeler and Raymond rotary parts,	157.87
Machine parts and Findings, etc., (Sheets 5–6–8)	1170.70
Parts of machines in cases	578.36
	$11526.78

SCHEDULE B.

Machines at the T. A. Norris Machinery Company, June 10, 1902.
Mr. Putnam & Mr. Nash.

1 Woods Gilder	Junk
1 Repair Machine	Junk
1 Union Single Edge Setter	Junk
1 Light Post Edge Trimmer	Junk
1 Chan. Layer Stand S. H.	Junk
1 Tower Roller	Junk
1 Tapley Twin Burnisher S. H.	Junk
1 38″ Safford Splitter	Junk
1 38″ O. S. Stowe Splitter	Junk

1 24″ Whitemore Splitter S. H.		Junk
1 26″ O. S. Stowe Splitter		Junk
1 Goddard Box Toe Machine		Junk
1 F. S. Loop Cutter		Junk
1 Williams St. Edge Folder		Junk
1 Power Welt Cutter S. H.		Junk
1 Stetson Channeler S. H.		Junk
1 Whitemore Siding Machine		Junk
1 14″ Chase Skiver S. H.		Junk
1 Watson Beader S. H. O. S.		Junk
2 Wheeler Waukenphast Machines		"
1 Brock Chan. Layer		"
1 Monitor Eyeletter		"
1 N. O. S. Skiver		"
2 Stimpson Tip Punches		"
1 G. S. Eyeletter		"
1 Whitcomb Boot Attachment		"
1 Bresnahan Heel Beader		"
1 Bonney Snipper		"
1 Stimpson Tip Punch		"
1 Eureka Eyeletter		"
1 Whitcher Strap Cutter		"
1 O K Eyeletter Frame		"
1 Norris Feather Edger O. S.		"
1 Stimpson Tip Punch		"
1 Upside Down Machine		"
2 Lining Stay Markers, New		"
1 Norris F. P. Gang Punch Frame	Out of date.	Junk
1 Loop Stitch Cutter		Junk
1 Edge Trimmer Grinder		"
1 Buffer A. Power Eyeletter, Reb.		"
2 Stetson Rand Turners		"
1 Com. Seam Hammer		Junk
1 O. S. Carver Vamp Skiver		"
1 F. S. Loop Cutter		"
1 Nevins Vamp Skiver		"

1 O. S. Vamp Polisher	Junk
3 Nute Seam Rubbers	"
1 Severance Tap Rounder	"
1 Edge Trimmer S. H.	"
1 Naumkeag Buffer, Pneu. Top Arm	"
1 Busell Edge Trimmer, Light	"
1 Merritt F. P. Eyeletter	"

Basement.

4 Vose Heel Seat Rounder	Junk
1 Wardwell Stitcher	"
1 Williams Bal Folder	"
2 Monitor Eyeletters	"
1 Norris Bench Channel Layer	"
1 Brewer Gore Cutter	"
1 30" Shoe Machinery Roller	"
1 O. S. American Slug Grinder	"
1 O. S. 26" Stowe Splitter	"
2 Rock. Hot Kit Twin Burnishers	"
1 Busell Heel Burnisher	"
4 Smith Rounders	"
1 Rock. Twin Hot Kit	"
1 O. S. S. & F Moulder Frame	"
1 Knox Blocker (No table)	"

Junk Machinery.

3 Hartford Rounders, 2 high, 1 Bench.
3 McKay Machines, Sunk Head Frame
1 Heel Chopper
1 Singer I. M. Machine.

SCHEDULE C.

Estimate of Machines at the T. A. Norris Machinery Company, June 10, 1902, By Mr. Putnam and Mr. Nash.

2 Amazeen Machines, Dunham Belt Attachment (1 rebuilt $5.00: 1 New $12.00)	17.50
1 O K Eyeletter	2.50

1 Lufkin Folder	25.00
1 Imp. Stitch Machine	9.00
1 Fischer Chan. Turner	12.00
1 #1 Rock. Heel Key and Brush	6.00
1 Norris Tip Punch (Cost $10.00)	10.00
1 Norris Hot Kit Burn (Cost $16.00) Like #8 Burnisher	16.00
1 Norris Piece Heel Builder (Cost $5.00)	5.00
1 Pinking Machine & Cutter	3.00
1 Rebuilt Edge Trimmer, Post	10.00
1 Fifield Chan. Layer	5.00
1 Ross Breaster	11.00
1 Smith Heel Trimmer	10.00
1 Ross Twin Edge Setter	25.00
1 Washburn Channel Layer New, Cost $12.00	9.00
1 18″ C. S. Bench U. L. Splitter Fifield	20.00
1 18″ C. S. Sole Evener	20.00
1 Sq. Base Edge Trimmer	12.00
1 Washburn Chan. Layer New Cost $12.00	9.00
1 Brush Shaft & Heel Key	3.00
1 Buzzell Heel Scourer	12.50
1 Washburn Channel Layer, New (Cost $12.00)	9.00
1 Buzzell S. W. Buffer	17.50
1 Gilmore Buffer	25.00
1 Bresnahan Rand Chopper	8.00
1 McKay Sewer, Peare Horn	65.00
1 18″ Centennial Splitter U. L.	20.00
1 18″ Stowe Splitter U. L.	16.00
1 S. & F. Moulder, Heavy	25.00
1 Carver Heel Scourer	25.00
1 Stur. Exhauster 40″	25.00
1 L. W. Splitter	20.00
1 Ross Twin Edge Setter	25.00
1 McKay Sewer Stanley Gas Horn	50.00
1 Tapley Wauk. Machine	5.00
1 Norris Rand Chopper, New Cost $5.00	5.00
1 Busell Sq. Base Trim.	21.00

1 18″ Stowe Splitter U. L.	16.00
2 18″ C. S. Sole Eveners	40.00
2 18″ Carver Sole Evener	60.00
1 Smith Heel Trimmer	10.00
1 4′ Hawkins Sole Cutter New Cost $120.00	120.00
1 Adams Top Pc. Scourer	15.00
1 Giant Leveler, Second-hand, Short Rack	25.00
1 Rock. Heel Finisher	15.00
1 Heel Press Screw	3.00
1 Edge Rimmer, S. H., Base (S. & F.)	3.00
1 #4 Sturt. Blower S. H.	5.00
1 W. B. 30 Roller Cast Gears	30.00
1 18″ Stowe Splitter U. L.	16.00
1 30″ W. B. Roller Cut Gear	30.00
2 40″ Brush Shafts, Norris	7.50
1 Puritan 4-row Strapper	70.00
1 Twin Union Edge Setter	25.00
1 9′ Hawkins Gearless Cutter	100.00
6 Norris 6′ Brush Shafts (Cost $5.50 each)	33.00
2 Carver 4′ Brush Shaft	7.00
1 Six Gang Veneer Press	2.00
1 18″ Cent. Splitter, U. L.	25.00
1 22″ Tripp Roller	16.00
1 9′ Hawkins Sole Cutter Gear	75.00
2 Baby Sole Cutter	100.00
3 Fisher Channel Turners S. H.	15.00
3 No. 1 American Grinders (Small)	6.00
8 American Grinders (Large)	24.00
2 Common Punches New	2.00
3 Edge Trimmer Tin Hoods	1.10
1 12″ Chase Skiver	2.00
1 Uni. Cementer S. H.	5.00
1 Common Seam Rubber S. H.	.75
1 Gilmore Buffer Blower	.50
1 No. 00 Sturt. Blower	.50
1 8″ Chase Skiver S. H.	.50

6 Norris Tapley Imp. Stitch Mach. New Cost $9.00 each	54.00
2 No. 0 Edge Trimmer Blowers	1.00
2 Washburn Boot Jacks	1.00
1 Young Counter Waxer	10.00
2 King Cement Pots	.50
1 Stimpson Pinking Machine	.50
1 Arnold Chan.	5.00
1 Norris Heel Beader (Cost 7.50)	7.50
1 Amazeen Skiver, Dunham Attachment	5.00
1 Star Rand Turner	2.00
4 Brockton Gore Markers	70.00
1 Adams Heel Gauge	1.00
1 St. Edge Folder	1.00
2 Norris Rand Choppers (New)	10.00
3 Crispin Jacks	1.50
4 Norris Welt Cutters (New) Comp $20.00	58.00
2 Amazeen Knife Grinders	14.00
1 Com. Punch (New)	1.00
11 Last Spindles	2.75
7 Norris Heel Builders (New) Cost $5.00	35.00
2 Pinking Machines	2.00
4 Fisher Flap Turners Rebuilt	48.00
9 Pinking Roll Turners (New)	9.00
1 Ross Moyer Cement Pot New	2.00
2 Imp. Tripp Skivers Reb.	10.00
1 Norris Heel Beader New	7.50
1 P. & W. Skiver	15.00
3 Amazeen Skivers, Dunham Attachment New	37.50
4 Norris Tip Punches New	40.00
2 Corthell Edge Setters	2.00
1 Union Seam Finisher Rebuilt	10.00
1 Union Cementer Rebuilt	10.00
4 Corthell Edge Setter, New Cost $6.50	15.00
1 Norris Bench Roller, Cost $12.00	12.00
1 O. S. Rogers Vamp Marker	5.00
1 Safford U. L. Splitter, Hand,	.50

1 Brockton Gore Marker		17.50
1 Norris Power Welt Cutter,	Cost $20.00	20.00
1 Stanbon Tap Rounder S. H.		7.50
2 McKay Channelers		6.50
1 Fischer Chan. Opener, Reb.		12.00
1 St. Folder		1.00
1 Norris Power Welt Cutter,	Cost $20.00	20.00
1 Amazeen Skiver, Dunham Attach.,	Cost $12.50	12.50
1 Lufkin Folder		5.00
2 Stanbon Tap Rounders New		36.00
2 Gilmore Buffer Rolls, Reb.		20.00
1 Acme Heel Trimmer, Rebuilt		10.00
1 Ross Edge Setter, (Trimmer Reb.)		25.00
1 C. Cotton Gin Slug Grinder, S. H.		2.50
1 Emerson S. W. Buffer Rebuilt		17.50
3 McKay Sewers, Comp. less Horns	Cost comp. $100. Less Horns $85	202.50
3 McKay Sewer Frames		36.00
1 Stanley Gas Horn		17.50
1 S. H. McKay Chan. Junk		2.50
2 Knight Creasers		14.00
1 McKay Sewer, Peare Horn, Rebuilt		40.00
2 Ross Moyer Breasters, Rebuilt		14.00
9 6′ Morris Shafts New 51.50		47.50
5 Norris Hot Kit Burnishers		80.00
1 18″ Stowe Splitter Rebuilt U. L.		16.00
2 Power Attach. McKay Chan., New,	Cost $12.50 Junk	12.50
9 40″ Norris Bench Shafts $5.75		33.75
1 Smith Heel Trimmer S. H.		10.00
2 Ellison Stampers		4.00
1 18″ Stowe Eye. Splitter S. H.		25.00
1 Carver Heel Scourer, S. H.		5.00
1 Bre. Single Moulder, Rebuilt		20.00
1 Gilmore Buffer Roll, Rebuilt		7.50
1 " " " S. H.		3.00

1 Washburn Channel Layer S. H.	7.00
6 Fea. Edge Machines, New Cost $8.50 each	51.00
1 Buzzell Heel Scourer N. S., Metal Wheels,	10.00
12 Pinking Machines, Geared, New, Cost $5.00	60.00
1 Busell Heel Trimmer	10.00
12 W. & H. Breasters New Cost $14.00	168.00
Basement.	
1 30″ Roller (Haw)	5.00
2 18″ Stowe U. L. Splitters	16.00
1 Edge Trimmer Post Frame	2.00
1 S. & F. Brush Stand Frame	1.00
1 Ross Buffer Split Roll	15.00
2 18″ Stowe Sole Eveners	17.50
1 Edge Trimmer Blower	.50
1 Smith Heel Trimmer	10.00
2 Edge Trimmer Frames	4.00
1 McKay Sewer, McKay Horn	15.00
1 10-Screw Veneer Press	3.00
1 Ellison Stamp	1.00
1 Chamb. Wax Hot Kit Burnisher	5.00
2 Acme Heel Trimmers Junk	20.00
2 Foot Power Moulders	4.00
1 Gilmore Buffer	12.00
1 30″ Hawkins Roller	5.00
1 McKay Frame	4.00
1 McKay Stanley G. Horn	25.00
1 Young Twin Counter Moulder O. S.	25.00
1 Young Counter Waxer Box	5.00
1 Smith Counter Skiver	5.00
	3335.85

PLAINTIFF'S EXHIBIT 103.

[Put in Evidence, page 547.]

This indenture, made this eighteenth day of February, 1903, between William B. Cross, of Brockton, in the State of Massachusetts, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, of Paterson, in said State, hereinafter called the United Company. Witnesseth:

Whereas, W. B. Cross is the owner of five hundred (500) shares of Preferred and Three Hundred and Thirty (330) shares of Common Stock of the W. W. Cross & Company, Incorporated, a corporation duly established under the laws of the State of Maine, of Portland, in said State, and

Whereas, the United Company owns or controls the balance of said Preferred and Common Stock of said W. W. Cross & Company, Incorporated, not owned by said W. B. Cross, and desires to be in position at any time to acquire the said stock now owned by the said Cross:

Now, Therefore, the parties hereto in consideration of the premises, and of the sum of One (1) Dollar to each paid by the other, the receipt of which is hereby acknowledged, hereby covenant and agree to and with each other as follows: —

One. The United Company shall have the option at any time upon reasonable notice to said Cross, or, in the event of the death of said Cross, upon reasonable notice to the executors or administrators of the estate of said Cross, to purchase the said Five Hundred (500) shares of Preferred and Three Hundred and Thirty (330) shares of Common Stock of the W. W. Cross & Company, Incorporated, owned by the said Cross upon the payment to said Cross or to the executors or administrators of said Cross, as the case may be, of the sum of Fifty Thousand (50,000) Dollars therefor.

Two. The United Company hereby acknowledges that it has received from said William B. Cross said Five Hundred (500) shares of the Preferred Capital stock, and Three Hundred and

Thirty (330) shares of the Common Capital Stock of the W. W. Cross & Company, Incorporated, standing in the name of William B. Cross, and endorsed by him in blank, as collateral security to assure the performance of the option given to the United Company by this indenture, to be held and disposed of by said United Company as follows, viz. :— in the event, at any time, of the exercise by the United Company of the option given to it by the provisions of paragraph "one" hereof, to transfer said Five Hundred (500) shares of Preferred and Three Hundred and Thirty (330) shares of Common Stock of said W. W. Cross & Company, Incorporated, or cause the same to be transferred, to the United Company or its nominees, and thereupon to pay the sum of Fifty Thousand (50,000) Dollars to said W. B. Cross, his executors or administrators.

Three. Said United Company may, if it desire, while it holds said stock hereunder, prior to the exercise by it of the option given it hereunder, cause the same to be transferred into its name or the names of its nominees provided it causes proxies upon the same to be given to said W. B. Cross his executors or administrators, and causes all dividends thereon to be paid to said W. B. Cross, or to the estate of the said W. B. Cross.

Four. It is understood and agreed that said W. B. Cross shall not assign or transfer any interest in said stock so held by said United Company, to any other person, firm or corporation.

In Witness Whereof said W. B. Cross has hereunto set his hand and seal and the said United Shoe Machinery Company has caused its corporate seal to be hereto affixed and these presents to be executed in its name and behalf by George W. Brown, its Treasurer, the day and year aforesaid.

WILLIAM B. CROSS [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY

By George W. Brown, Treasurer.

In the presence of H. G. Donham.

PLAINTIFF'S EXHIBIT 104.

[Put in Evidence, page 549.]

Agreement, made this sixth day of May 1903, at Boston, Massachusetts, by and between the Estate of John K. Krieg, late of New York, in the Borough of Manhattan, and State of New York, by Hermine L. Krieg, of said New York, administratrix of said Estate, duly constituted and qualified, Lewis G. Metzger, Charles O. Kuhnert and Lemuel R. Mears, all of Brooklyn, in the Borough of Brooklyn, and State of New York, (hereinafter referred to as the Vendors) of the first part; Carl H. Krieg of said New York for any interest he may have in the estate of John K. Krieg, and for his own account of the second part; and the United Shoe Machinery Company, (hereinafter called the United Company), a corporation organized and existing under the laws of the State of New Jersey, of Paterson, in the State of New Jersey, having a place of business at said Boston, of the third part, Witnesseth:

Whereas heretofore a certain partnership, under the firm name and style of J. K. Krieg & Company has been engaged in carrying on a certain business of manufacturing and dealing in shoe machinery and shoe manufacturers' goods, findings, supplies and equipment, and also in the business of manufacturing and dealing in goods, supplies and equipment for retail shoe stores and for cobblers, having its principal place of business at No. 39 Warren Street, New York, N. Y. and

Whereas prior to the death of John K. Krieg, the said John K. Krieg, Louis G. Metzger, Charles O. Kuhnert and Lemuel R. Mears were the sole partners and the sole owners of all the property, business and goodwill of the said partnership, and since the death of the said John K. Krieg, the said Louis C. Metzger, Charles O. Kuhnert and Lemuel R. Mears, the surviving partners, and the estate of John K. Krieg have been at all times, and are now the owners of all property, business and goodwill of the said partnership in liquidation, and said business has been carried on since the death of John K. Krieg, under the same firm name, with the consent of all persons interested, and

Whereas, the vendors desire to assign and transfer to the said United Company, and the United Company desires to acquire, upon the terms and conditions hereinafter set forth, the entire property and assets (excepting, however, a certain blacking manufacturing plant also owned by J. K. Krieg & Company, and excepting notes, accounts and bills receivable on account of goods sold and business done prior to the first day of January A. D. 1903) of the said firm of J. K. Krieg & Company, and the business and good will of J. K. Krieg & Company as a going concern; said transfer to take effect as of January 1st, A. D. 1903, —

Now, therefore, the said vendors, jointly and severally, for themselves, their heirs, executors and administrators, the said Carl H. Krieg for himself, and his personal representatives, and the United Company for itself its successors and assigns, each in consideration of one dollar by each of the others in hand paid, the receipt of which is hereby acknowledged, and in consideration of the covenants and agreements on the part of the others herein contained, do hereby covenant and agree as follows:

One: The vendors shall execute and deliver, and shall cause to be executed and delivered to the United Company, all papers, and shall perform, and cause to be performed, all acts necessary or desired by the United Company, to vest in the United Company, its successors and assigns, its or their nominee or nominees, the full right, title and interest, free from any and all encumbrances, in and to the property and business of every name and nature, of J. K. Krieg & Company, including herein, without prejudice to the generality of said assignment, all tangible property, notes, bills and accounts receivable, on account of goods sold or business done since the first day of January A. D. 1903, all letters patent, and all rights and interests in and to and under letters patent, the good will of said business and all profits, and the benefit and advantage of all business done since the 1st day of January, 1903, but not including, however, the blacking plant hereinbefore referred to, or any bills, notes or accounts receivable for goods sold or business done prior to January 1st, 1903.

Two: The instruments of transfer shall be in a form satisfactory

to the United Company, and shall include, with other covenants, full covenants of title and for further assurances, and shall also include full covenants of warranty on the part of the vendors, that on the 1st day of January, A. D. 1903, the property owned by the said J. K. Krieg & Company, included all of the property set forth in a certain inventory of the stock in trade and other tangible property (excepting the blacking plant) of J. K. Krieg & Company, made by J. K. Krieg & Company as of January 1st, 1903, and which has been furnished to the United Company for inspection, and that the actual cost value of the said property, and of the various items thereof, included in said inventory, were as is set forth in said inventory, with proper deductions from said cost value for depreciation as to all goods in anywise deteriorated, or for any reason, not promptly salable in the ordinary course of business, and that the property of the said J. K. Krieg & Company on hand at the date of the transfer herein provided for, includes with other property acquired since that date, all the property set forth in said inventory of January 1st, 1903, excepting insofar as the same has been used since January 1st, 1903, in manufacturing for the business of J. K. Krieg & Company, or as has been sold by said J. K. Krieg & Company since said date in the ordinary course of business.

Three: The said property and business shall be conveyed free from all direct or contingent obligations and liabilities, and from all claims and demands of every nature; but the expenses of conducting the business and the purchase of additional supplies and materials for use in the business transferred, since the 1st day of January, A. D. 1903, shall be borne by the United Company.

Four: The vendors, including herein specifically the executor or administrator of the estate of John K. Krieg, the said Louis C. Metzger, Charles O. Kuhnert and Lemuel R. Mears, and the said Carl H. Krieg, shall assign, transfer and set over, or shall cause to be assigned, transferred and set over to the United Company, its successors or assigns, its nominee or nominees, by instruments in such form and with such covenants as shall be desired by the United Company, all inventions and all letters patent of the United States and of any and all foreign countries owned or controlled by

them, or any one or more of them, relating or pertaining in any way to shoe machinery, or to shoe manufacturers' goods, supplies, findings or equipment, or the manufacture thereof, and shall likewise assign any and all interests had by them, or by any one or more of them, in, to or under such invention or letters patent.

Five: The consideration to be paid by the United Company for the transfer and delivery to it as aforesaid, of all the said property, assets and business, shall be an amount equal to the actual cost price, less discounts, of the stock in trade and other property of J. K. Krieg & Company on hand January 1st A. D. 1903, which is set forth in the inventory of January 1st 1903, above referred to, less proper deductions therefrom in the case of goods not readily salable and for depreciation, provided, however, that in the determination of the amount to be paid by the United Company, no value shall be put on any goods which are obsolete, or such that they will not be readily salable within two years from the date of transfer.

Six: The United Company shall also pay interest at the rate of five per cent per annum from the 1st day of January, 1903 to the time of the transfer and payment, upon the sum, determined, as in the next preceding paragraph hereof provided, as the value of the property included in said inventory, and shall further pay an additional amount as hereinafter provided, to cover the good will of the business of J. K. Krieg & Company.

Seven: The transfer to the United Company, its successors, assigns or nominees, shall include the good will of the business of J. K. Krieg & Company, with the title to and exclusive right to use all trade names, marks and brands owned, controlled or used by J. K. Krieg & Company, whether registered or not, and shall especially include the exclusive right to the use of the name of J. K. Krieg & Company or J. K. Krieg, or any name so similar thereto as to cause, or to be reasonably likely to cause confusion with said name of J. K. Krieg & Company or to confuse any other business with the business and good will to the conveyed hereunder. And the said vendors and the said C. H. Krieg shall enter into a covenant with the United Company, its successors, assigns or nom-

inees, that they will not, nor will any of them individually, or in combination, as partners, or otherwise, with others use the same. It is provided, however, that the said Carl H. Krieg, notwithstanding anything in this paragraph hereof provided, shall be at liberty to use the name of Carl H. Krieg & Company in connection with any business other than the business of manufacturing or dealing in shoe machinery, or shoe manufacturers' goods, findings, supplies or equipment.

Eight: For the purpose of enabling the United Company, its successors and assigns or nominees, to enjoy the benefit of the good will thus acquired, the vendors, including especially the executor or administrator of the estate of John K. Krieg, the said Louis C. Metzger, the said Charles O. Kuhnert and the said Lemuel R. Mears, and the said Carl H. Krieg, shall enter into binding covenants with the United Company, its successors and assigns, or with the nominees of the United Company in such form as shall be desired by the United Company, that they will not, nor will either or any of them, at any time within fifteen years from the date of said transfer, individually, as partner, as officer or employee of any corporation or otherwise, excepting as they may be employed by the United Company, its successors, assigns or nominees, enter into or be engaged in, or financially or otherwise assist any person, firm or corporation in entering into or developing or carrying on any business which relates or pertains in any way to manufacturing or dealing in shoe machinery or shoe manufacturers' goods, findings, supplies or equipment, or in any business which will in any way interfere with or compete with the said United Company, its successors, assigns or nominees, in the business of manufacturing or dealing in shoe machinery or shoe manufacturers' goods, findings, supplies or equipment, but the provisions of this paragraph shall not be construed as preventing the said vendors or the said Carl H. Krieg from engaging in the business of dealing in goods, supplies and equipment for retail shoe stores or for cobblers.

Nine: The United Company, as a consideration for the good will of J. K. Krieg & Company and for the covenants herein provided for shall pay, in addition to the payments hereinbefore provided

for, an amount equal to ten per cent (10%) of the value (determined as in paragraph 5 hereof provided) of that part of the property owned by J. K. Krieg & Company on the first day of January, 1903, and included in said inventory of January 1st, 1903, which consists of shoe machinery and shoe manufacturers' goods, findings, supplies and equipment (as distinguished from supplies, findings and equipment for shoe retailers and for cobblers and from fixtures.)

Ten: Inasmuch as it is understood and agreed between all the parties hereto, and the United Company enters into this agreement only upon the condition that the said Carl H. Krieg and Hermine L. Krieg, shall, on or before the first day of July, 1903, purchase from the United Company, all property acquired in connection with, or for the purposes of that part of the business herein provided to be conveyed, which pertains to retail shoe dealers and to cobblers, and the said Carl H. Krieg and Hermine L. Krieg have entered into a written agreement with the United Company of even date with these presents, providing for the purchase by them as aforesaid, it is hereby expressly provided, that all obligations of the United Company under this instrument are contingent upon the performance by the said Carl H. Krieg and Hermine L. Krieg of their agreement to purchase said property in accordance with the terms in said instrument set forth; and upon default of the said Carl H. Krieg and Hermine L. Krieg therein, the United Company shall, at its election, be freed from all obligations hereunder.

In Witness Whereof, the said Louis C. Metzger, Charles O. Kuhnert, Lemuel R. Mears and Carl H. Krieg have hereunto set their respective hands and seals, the United Shoe Machinery Company has caused these presents to be signed by Edward P. Hurd its Assistant Treasurer and its corporate seal to be hereto affixed, and the Estate of John K. Krieg has signed and sealed these Presents by Hermine L. Krieg, the administratrix of said estate thereto duly authorized, the day and year first above written.

Signed and sealed

In the presence of:
Louis C. Metzger
H. G. Donham

ESTATE OF JOHN K. KRIEG
Hermine L. Krieg, Administratrix.
LOUIS C. METZGER

H. G. Donham
Anna Elinor Mears
H. G. Donham

CHARLES O. KUHNERT
LEMUEL R. MEARS
CARL H. KRIEG
UNITED SHOE MACHINERY COMPANY
By Edward P. Hurd, Asst. Treas.

PLAINTIFF'S EXHIBIT 105.

[Put in Evidence, page 549.]

New York, N. Y., January 23, 1903.

United Shoe Machinery Company, Boston, Massachusetts.

Dear Sirs: — We beg to make to you the following proposition for the purchase by you of the business of J. K. Krieg & Company: —

We offer to sell to you the entire property and business of J. K. Krieg & Company for a consideration to be determined as follows, namely: — An inventory of all the stock in trade of J. K. Krieg & Company shall be immediately taken, in which inventory the value to be given to such property shall be based upon the actual cost of such property, with proper deductions for depreciation as to all goods not promptly salable in the ordinary course of business, or which otherwise are properly subject to such deductions.

We estimate that such inventory will show stock amounting to approximately $110,000, and will guarantee that not less than $95,000 worth of such goods are goods of such nature as will be readily salable within one year in the ordinary course of business, and that the balance is made up of goods which, in the ordinary course of business, it will be possible to sell within two years. Any stock which appears to be obsolete or such that it will not be readily salable within two years shall be included in the sale, but shall not be given any value in the inventory.

The cost prices of goods above referred to are to be figured less all discounts, and exclusive of any charge for freight, expressage or carting.

The foregoing proposition includes all of the property of J. K. Krieg & Company excepting its Blacking Factory, and the consid-

eration for which we offer to sell to you all of said property (except the Blacking Factory) is an amount equal to the value as set forth in the inventory above provided for of the stock in trade, plus an amount equal to ten per cent. (10%) of such inventoried value to cover good-will and all other property, interests and rights relating to the business transferred.

In case you wish to take over also the Blacking Factory it shall be included in the sale to you or we will dispose of it as you may direct upon your paying to us the inventoried value thereof, or, in case you elect not to acquire the same, it shall not be included in the sale to you. We will also turn over to you the Machine Shop, which is owned by the Krieg estate and is operated independently of the J. K. Krieg & Company business, at its inventoried value, which we place at $5000.00. No allowance shall be made for good-will or other interests of the Blacking Factory or of the Machine Shop.

In consideration of your taking the foregoing proposition under advisement and your agreement to take steps to investigate the business and property proposed to be conveyed, we agree that this proposition shall be open for your acceptance for sixty (60) days from the date hereof. In case after investigation the trade shall be consummated, the consideration above provided, based upon the inventory of property, shall be paid to us in cash upon the execution of the papers; and it shall further be provided that Messrs. Krieg, Metzger and Kuhnart shall enter into the employment of and shall be employed by the United Company at salaries of Fifty (50) Dollars per week each, and that they shall each enter into an agreement, in usual form, with the United Company against engaging in any business which will in any way compete with the business of the United Company, at any time within a period of fifteen (15) years from the execution thereof.

In order that you may investigate and determine the facts as to the property and business hereby offered to be conveyed, it is understood that all the books relating to the business and all property included in this offer shall be open at any and all times, during the sixty (60) days during which this offer is to remain

open, to the inspection of the experts of the United Company, and that we will give to the experts all assistance within our power to enable them to determine the actual condition of the said property and business.

It is understood that the word "property" on page 2, line 4, does not include, Cash, Bills Receivable and Accounts.

Very truly yours,

Est. J. K. Krieg,
by Carl H. Krieg
Louis C. Metzger
C. O. Kuhnert.

(CLB)

PLAINTIFF'S EXHIBIT 106.

[Put in Evidence, page 552.]

This agreement made this twentieth day of October, A. D. 1903, by and between Joseph P. Curtis, of Everett, in the Commonwealth of Massachusetts, and the United Shoe Machinery Company, of Paterson, in the State of New Jersey, a corporation duly organized under the laws of said State of New Jersey and having a place of business at 205 Lincoln Street, Boston, in said Commonwealth (hereinafter called the United Company), Witnesseth:

That Whereas the said Curtis has invented certain improvements in Cementing Machines and has described and claimed the same in applications for Letters Patent of the United States, to wit:— Serial No. 135,039, filed December 13, 1902, and Serial No. 174,-913, filed September 28, 1903, and has made or caused to be made for him thirty-four (34) machines, more or less, embodying the said improvements, and he desires to sell the inventions set forth in said applications, and the said United Company desires to buy the said inventions on the terms and conditions hereinafter set forth:

Now, Therefore, in consideration of the sum of (1) one dollar and other good and valuable considerations by each of said parties to the other paid, the receipt whereof is hereby mutually acknowledged, and in further consideration of the mutual covenants and agree-

ments hereinafter contained, the parties do hereby covenant and agree as follows: —

The said Curtis hereby sells, assigns, transfers and sets over unto the said United Company, its successors and assigns, the entire right, title and interest in and to each and all of the inventions disclosed in the said applications and any and all Letters Patent of the United States or of any foreign countries which may be granted for the said inventions.

The said Curtis further covenants and agrees that he will execute any and all application papers, assignments, and other documents and do all other things which may be necessary or convenient to enable the United Company to obtain good and valid Letters Patent of the United States and of any foreign countries where the United Company may desire to patent the said invention and to vest in the United Company the complete legal and equitable title to any applications which may be made for Letters Patent and to any and all Letters Patent which may be granted for the said invention.

The said Curtis also hereby sells, assigns, transfers and sets over unto the said United Company, its successors and assigns, any and all inventions and improvements which he may at any time hereafter make in Cementing Machines, either as sole inventor or as joint inventor with others, and all right, title and interest in, to and under all inventions and improvements in Cementing Machines which he may in anywise own or control or which he may have any right by agreement or otherwise to acquire or take over, and all Letters Patent and interests therein and rights thereunder, and he does hereby covenant and agree with said United Company, its successors and assigns, that upon making any such inventions or improvements or acquiring any title, interest, or right in, to or under such inventions or improvements, he will forthwith disclose the same to said United Company, its officers and patent solicitors, and that he will, and his heirs, executors, and administrators shall, at any time thereafter, upon request of the said United Company, its successors or assigns, execute any and all applications, assignments, and other papers and will perform or cause to be performed

any and all acts which may be necessary or desired by the said United Company, its successors or assigns, to obtain Letters Patent of the United States and of any foreign countries where it desires to obtain Letters Patent covering such inventions, and improvements, or any of them, made, owned or controlled by the said Curtis and to fully and completely vest and confirm in said United Company, its successors and assigns, the full and complete right, title, and interest, in, to, and under all such inventions, improvements, applications, Letters Patent, interests, and rights.

The United Company covenants and agrees that upon the receipt by it from the Patent Office of a notice of the allowance of the said application Serial No. 174,913, filed September 28, 1903, it will pay to the said Curtis the sum of five hundred (500) dollars.

The United Company also covenants and agrees that it will, until the expiration of the term of the Letters Patent which may issue on said application Serial No. 174,913, or until the aggregate amount of royalty paid hereunder shall have reached the sum of five thousand (5000) dollars, whichever shall first transpire, pay to the said Curtis the sum of ten (10) dollars as a royalty fee for each and every machine embodying the inventions covered by the claims of said Letters Patent put out by the United Company in the United States or in any country in which it may obtain Letters Patent for the said invention. It is Provided, however, that in the event that the United Company is unsuccessful in obtaining Letters Patent of the United States which in the opinion of counsel for the United Company adequately protect the machines shown in the said two applications Serial No. 135,039 and Serial No. 174,913, then, upon notice to that effect being given by the said United Company to the said Curtis, the said royalty payments shall cease and no further payment of any kind under this agreement shall be made by the United Company to the said Curtis. The royalty payments provided for above shall be made as follows, viz. : —

On or before the tenth day of each month the United Company shall render an account showing the number of machines theretofore put out by it, and for which it has received payment, embodying the inventions covered by said Letters Patent and on account

of which royalty as herein provided has not already been paid and shall accompany such account by payment to said Curtis of the said sum of ten (10) dollars as royalty for each such machine; it being understood, however, that if a machine is returned on which a royalty fee has once been paid, no further fee is to be paid in the event of such machine being again put out. It is Provided, however, that the royalty payments of the United Company to the said Curtis shall cease in any event whenever said royalty payments shall have amounted in the aggregate to the sum of five thousand (5000) dollars — that is, in the event of the sum of ten (10) dollars per machine having been paid to the said Curtis upon five hundred (500) machines, no further payments shall be made.

The obligation of the said United Company to pay royalty to the said Curtis for machines put out by it is, however, subject to the following conditions: —

The said Curtis hereby covenants and agrees that he will protect from infringement the United States Letters Patent which may issue for the inventions disclosed in said applications, and that if any competing machine is put upon the market which in the opinion of counsel for the said United Company infringes any one of said Letters Patent, said Curtis shall, upon notice from said United Company so to do, promptly institute legal proceedings to stop such infringement and shall prosecute such suit with all possible vigor, and in case he is unsuccessful in stopping such infringement, then the obligations of the United Company to pay royalty on machines thereafter sold by it shall cease and determine. It is also hereby agreed by the said Curtis that the United Company may in its discretion withhold payment of royalty on machines sold by it while infringement of the patent or patents continues and pending the determination of the proceedings taken to stop such infringement.

The said Curtis further covenants and agrees that if any of the machines which he has heretofore made and sold are returned to him by the purchaser, he will thoroughly repair such returned machines and bill them to the United Company at twenty-five (25) dollars per machine.

The said Curtis also hereby for himself and for his heirs, executors, administrators, and assigns covenants and agrees with said United Company and its successors and assigns that he is the sole and exclusive owner of the inventions set forth in said applications and that he has good right and title to sell and assign the said inventions, and that he has granted no license or licenses for the use of said inventions.

The covenants and agreements of the said Curtis herein contained shall be binding upon him and upon his heirs, executors, and administrators, and the benefits thereof shall enure to and be enforcible by the successors and assigns of the said United Company.

The covenants and agreements of the United Company herein contained shall be binding upon and enforcible against the successors and assigns of the United Company.

In Witness Whereof the said Joseph P. Curtis has hereunto set his hand and affixed his seal and the United Shoe Machinery Company has caused this instrument to be signed and its corporate seal to be hereunto affixed by Edward P. Hurd, its Assistant Treasurer, thereunto duly authorized, in duplicate, the day and year first above written.

JOSEPH P. CURTIS [SEAL]
UNITED SHOE MACHINERY COMPANY [SEAL]
By Edwd. P. Hurd, Assistant Treasurer.

PLAINTIFF'S EXHIBIT 107.

[Put in Evidence, page 553.]

This Agreement made at Boston, Massachusetts, this 1st day of January, A. D. 1904, by and between Fred H. Perry, of West Medford, in the County of Middlesex and Commonwealth of Massachusetts, of the one part, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, of Paterson, in said State of New Jersey, having a place of business in said Boston (hereinafter called the United Company), of the other part: Witnesseth:

Whereas the United Company is engaged throughout the United

States of America and elsewhere in the business of manufacturing and dealing in and with machinery, tools, mechanisms, devices, materials, supplies, processes and things for use in the manufacture of boots and shoes, and in manufacturing and dealing in and with eyelets, lacing hooks, grommets and similar articles not only for boots and shoes but also for all other purposes, and machinery, tools and devices for manufacturing, setting and otherwise operating upon and with such eyelets, lacing hooks, grommets and like articles, and is largely interested by reason of its ownership of shares of the capital stock of such companies or otherwise in the business of other companies also engaged in the business of manufacturing and dealing in and with such machinery, tools, mechanisms, devices, materials, supplies, processes and things, eyelets, lacing hooks, grommets and similar articles, and machinery, tools and devices for manufacturing, setting and otherwise operating upon and with the same, and also in other lines of business incidental thereto or connected therewith, and not only in the United States but also throughout the Dominion of Canada and the several countries of Europe and elsewhere in all parts of the world where such machinery or other articles are used, which said companies are hereinafter referred to as the "associate, allied and subsidiary companies" of the said United Company.

And Whereas the said Perry desires to enter into an agreement with the said United Company, under which the said United Company shall employ the said Perry or shall cause the said Perry to be employed by one or more of its associate, allied and subsidiary companies as hereinafter set forth, and the said United Company desires to secure the services of the said Perry as hereinafter set forth, and to obtain for itself, its associate, allied and subsidiary companies, the benefit of the inventions of the said Perry as hereinafter set forth.

Now, Therefore, be it Known, that the said Perry in consideration of one dollar ($1.00) and other good and valuable considerations to him paid by the United Company, the receipt of which he hereby acknowledges, and of the covenants and agreements on the part of the United Company hereinafter contained, and the United

Company in consideration of one dollar ($1.00) and other valuable considerations, the receipt of which from the said Perry the said United Company hereby acknowledges, and of the covenants and agreements on the part of the said Perry herein contained, do respectively covenant and agree, each with the other as follows: —

One. The United Company hereby covenants and agrees with the said Perry that, provided the said Perry shall faithfully and truly keep and perform each and all of the covenants and agreements on his part herein contained, the United Company for a period of one (1) year from the date of these presents, and thereafter during such further time, if any, as may be mutually desired by the parties hereto, shall employ the said Perry or shall cause the said Perry to be employed by one or more of its associate, allied or subsidiary companies in such capacity and in the performance of such duties as may from time to time be assigned to the said Perry by the said United Company, or by such person or persons as may be designated for such purpose by the said United Company, in experimenting upon, originating, inventing, improving, constructing, remodeling and reconstructing machinery and devices for the purposes of the said United Company, its associate, allied and subsidiary companies, and in working out, developing and embodying in such machinery and devices, improvements and ideas, whether originated by the said Perry or orignated by others and referred by the said United Company to the said Perry, including therein such work as machinist or otherwise as may be necessary or convenient in connection with such duties; and that the United Company shall pay or shall cause to be paid to the said Perry compensation as hereinafter provided.

Two. The said Perry covenants and agrees to and with the said United Company that for a period of one (1) year from the date of these presents, and throughout any time thereafter during which he may be employed by the said United Company, its associate, allied or subsidiary companies, he will well and truly serve the United Company and its associate, allied and subsidiary companies in such capacity and in the performance of such duties as aforesaid as may from time to time be assigned to him as aforesaid, and that

he will give his entire time and the full and entire benefit of his skill, co-operation and endeavor to the accomplishment of the purposes and the performance of the duties of said employment so assigned to him, and that he wlll at all times faithfully and truly and to the best of his skill and ability act diligently and loyally for the promotion of the interests of the said United Company, its sssociate, allied and subsidiary companies, receiving compensation as hereinafter provided.

Three. Inasmuch as through his relationship with the United Company, its associate, allied and subsidiary companies, the said Perry will from time to time in the course of his employment become possessed of secret or confidential information concerning the business and affairs of the said United Company, its associate, allied and subsidiary companies, to a greater or less extent, the said Perry hereby covenants and agrees to and with the said United Company that all information concerning the business and affairs of the said United Company or of any of its associate, allied or subsidiary companies of which he shall at any time become possessed, which is of a confidential or private nature, he shall carefully guard and keep, and that he will at no time, either while he is in the employment of the United Company, its associate, allied or subsidiary companies, or after such employment shall have ceased, disclose any such information to any person, or employ the same in anywise other than for the benefit of the United Company, its associate, allied or subsidiary companies, in connection with said employment.

Four. The said Perry hereby sells, assigns, transfers and sets over unto the said United Company any and all inventions and improvements heretofore made by him, or which he may at any time hereafter during said period of one (1) year from the date hereof, or within any time thereafter during which he shall be employed by the United Chmpany, or by any one or more of its associate, allied or subsidiary companies, or at any time within five (5) years from the termination of any such employment make either as sole inventor or as joint inventor with others and whether made in or out of the usual working hours or upon the premises of the

United Company, its associate, allied or subsidiary companies, or elsewhere, and all inventions, improvements, Letters Patent of the United States and of any and all foreign countries, and applications for Letters Patent, and all right, title and interest in, to or under inventions, improvements, Letters Patent and applications for Letters Patent which he now owns, controls or has any right by agreement or otherwise to acquire or take over, or which he may at any time during which he shall be in the employment of the said United Company, its associate, allied or subsidiary companies, or at any time within said period of five (5) years from the termination of any such employment in anywise own or control or have any right by agreement or otherwise to acquire or take over relating or pertaining in any way to footwear or to machinery, tools, mechanisms, devices, materials, supplies, processes or things intended or adapted for use in the manufacture thereof, or to eyelets, lacing hooks, grommets or similar articles for use in boots or shoes, or for any other purpose, or to machinery or devices for manufacturing, setting or otherwise operating upon or with such eyelets, lacing hooks, grommets or like articles; and does hereby covenant and agree to and with the said United Company that upon making any such inventions or improvements or acquiring any right, title or interest in, to or under or any right to acquire or take over any right, title or interest in any such inventions or improvements, Letters Patent or applications for Letters Patent, he will forthwith disclose the same to the United Company, its officers and patent solicitors, and will repeat such disclosures when and as often as requested by the United Company; and that he will and his heirs, executors and administrators shall at any and all times thereafter upon the request of the United Company, execute and cause to be executed any and all applications for Letters Patent, assignments, and other papers, and will perform and cause to be performed any and all acts which may be necessary or desired by the said United Company, to obtain to the said United Company, its successors, assigns or nominees, Letters Patent of the United States and of any and all other countries where it may be desired to obtain Letters Patent covering such inventions and

improvements, or any of them made, owned or controlled by the said Perry, and to fully and completely vest and confirm in the said United Company, its successors and assigns, or in the nominee or nominees of the said United Company, its successors or assigns, the full and complete right, title and interest in, to and under all such inventions, improvements, Letters Patent, applications, interests and rights, and to enable the said United Company, its successors, assigns or nominees to secure and enjoy the full benefits and advantages thereof.

Five. The said Perry hereby further covenants and agrees to and with the said United Company that he will not at any time within said term of one (1) year from the date of these presents, or at any time thereafter during which the said Perry may be in the employment of the United Company, or of any one or more of its associate, allied or subsidiary companies, or at any time within five (5) years from the termination of any such employment, in any country (without the consent in writing of the United Company) either directly or indirectly, individually or in combination with others, or as officer or stockholder of a corporation, or as manager, agent or employee, or otherwise (excepting as an employee of the said United Company, its associate, allied or subsidiary companies) enter into or be engaged or interested in or financially or otherwise assist any person, firm or corporation in entering into, developing or carrying on any business which consists in whole or in part of, or relates or pertains in any way to manufacturing or dealing in machinery, tools, mechanisms, devices, materials, supplies, processes or things relating or pertaining in any way to boots or shoes, or to the manufacture thereof, or any business which consists in whole or in part of, or relates or pertains in any way to manufacturing or dealing in eyelets, lacing hooks, grommets or similar articles for use in boots or shoes or for any other purpose, or manufacturing or dealing in machinery, tools, or devices intended or adapted for use in manufacturing, setting or otherwise operating upon or with eyelets, lacing hooks, grommets or like articles, or in making, developing or exploiting any invention pertaining to such machinery, tools, mechanisms, devices, materials,

supplies, processes or things, or to eyelets, lacing hooks, grommets or similar articles, or such machinery, tools or devices therefor, or in any business which will in any way compete or interfere with the business or interests of the United Company, or the business of any of the associate, allied or subsidiary companies of the United Company.

Six. The United Company hereby covenants and agrees to and with the said Perry that, provided the said Perry shall faithfully and truly keep and perform each and all of the covenants and agreements on his part herein contained, and shall well and truly perform the duties of his employment herein provided for, the United Company shall pay or cause to be paid to the said Perry compensation therefor at the rate of thirty dollars ($30.00) per week for said term of one (1) year from the date hereof, and at the rate of not less than thirty dollars ($30.00) per week during such time thereafter as the said Perry may be in the employment of the said United Company or of any one or more of its associate, allied or subsidiary companies, such compensation to paid to the said Perry weekly at the end of each week during such employment.

Seven. The term "United Company" as herein used, shall be held to include the said United Shoe Machinery Company and its successors and assigns, and all covenants and agreements on the part of the said Perry herein contained may be enforced for the benefit of the said United Company, its successors or assigns, or of any one or more of its or their associate, allied or subsidiary companies.

In Witness Whereof I, the said Fred H. Perry, have hereunto set my hand and seal, and the said United Shoe Machinery Company has caused these presents to be signed in its name and on its behalf by Sidney W. Winslow, its President, and its corporate seal to be hereto affixed the day and year first above written.

FRED H. PERRY [SEAL]

UNITED SHOE MACHINERY COMPANY [SEAL]

By S. W. Winslow, President.

Commonwealth of Massachusetts:

Suffolk, ss. Boston, Massachusetts.

On this 11th day of January A. D. 1904, before the undersigned, a Notary Public duly constituted and qualified, personally appeared Fred H. Perry personally known to me and known to me to be the Fred H. Perry described in and who executed the foregoing instrument, and the said Perry did acknowledge that he executed the same as his free act and deed for the uses and purposes therein mentioned;

And at the same time and place personally appeared before me Sidney W. Winslow, personally known to me and known to me to be the President of the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, and the said Winslow did acknowledge that, being thereto duly authorized, he executed the foregoing instrument in the name and on the behalf of the said United Shoe Machinery Company as the act and deed of the said United Shoe Machinery Company, for the uses and purposes therein mentioned.

HAROLD G. DONHAM,
Notary Public.

[SEAL]

PLAINTIFF'S EXHIBIT 108.

[Put in Evidence, page 554.]

I, Joseph W. Leary, of Lynn, Massachusetts, in consideration of the sum of three thousand, fifty-two dollars, seventy-two cents ($3052.72) and other valuable considerations to me paid by the United Shoe Machinery Company, a New Jersey corporation, having a place of business in Boston, Massachusetts, (hereinfter called the United Company) the receipt of which I hereby acknowledge, have sold and delivered and do hereby sell, assign, transfer and set over unto the said United Company the entire business heretofore carried on by me in said Lynn and elsewhere of dealing in and with shoe machinery, devices and supplies, cements, blackings and stains, and the entire good-will of said business and the stock in trade and other property and assets relating thereto,

including all trade names, marks and brands used in connection therewith — all free from any and all notes, bills and accounts payable and other encumbrances whatsoever. This transfer, however, does not include any cash on hand or on deposit or any notes, bills or accounts receivable or the books of entry and account. And I, the said Leary, will at any and all times hereafter upon request of the United Company execute and cause to be executed any and all instruments and perform and cause to be performed any and all acts necessary or desired by the United Company to fully and completely vest and confirm in the United Company the full and complete title to said business, good-will and property, free from any and all encumbrances whatsoever, and to enable the said United Company to secure and enjoy the full and entire benefits and advantages thereof.

And I, the said Leary, and the said United Company, each in consideration of the foregoing purchase and transfer and of other good and valuable considerations by the other paid, the receipt of which is hereby acknowledged, and of the covenants and agreements on the part of the other herein contained, do hereby covenant and agree as follows: —

One. The United Company hereby covenants and agrees with the said Leary that provided the said Leary shall faithfully and truly keep and perform each and all of the covenants and agreements on his part herein contained, the United Company for the period of five (5) years from the date of these presents, and thereafter during such further time, if any, as may be mutually desired by the parties hereto, shall employ the said Leary or shall cause the said Leary to be employed by one or more of its associate, allied or subsidiary companies in such capacity and in the performance of such duties connected with the business and affairs of the United Company, or its associate, allied and subsidiary companies, as may from time to time be assigned to him by the said United Company, or by such person or persons as shall be designated by the said United Company for such purposes, and that the United Company shall pay or shall cause to be paid to the said Leary compensation as hereinafter provided.

Two. The said Leary covenants and agrees to and with the said United Company that for a period of five (5) years from the date of these presents, and throughout any time thereafter during which he may be employed by the said United Company, its associate, allied or subsidiary companies, he will well and truly serve the said United Company and its associate, allied and subsidiary companies, in such capacity and in the performance of such duties as may from time to time be assigned to him by the said United Company, or by such person or persons as may be designated for such purpose, and that he will give his entire time and the full and entire benefit of his skill, co-operation and endeavor to the accomplishment of such purposes and the performance of such duties as may from time to time be assigned to him as aforesaid, and that he will at all times faithfully and truly and to the best of his skill and ability act diligently and loyally for the promotion of the interest of the said United Company, its associate, allied and subsidiary companies, receiving compensation therefor as hereinafter provided.

Three. The said Leary hereby further covenants and agrees to and with the said United Company that he will not at any time within said term of five (5) years from the date of these presents, or at any time thereafter during which the said Leary may be in the employment of the said United Company or of any one or more of its associate, allied or subsidiary companies, or at any time within ten (10) years from the termination of such employment, in any country (without the consent in writing of the said United Company) either directly or indirectly, individually or in combination with others, or as an officer or stockholder of a corporation, or as manager, agent or employee or otherwise (excepting as an employee of the said United Company, its associate, allied or subsidiary companies) enter into or be engaged or interested in or financially or otherwise assist any person, firm or corporation in entering into, developing or carrying on any business which consists in whole or in part of or relates or pertains in any way to manufacturing or dealing in or with machinery, tools, mechanism, devices, materials, supplies, processes or things relating or pertaining in any way to boots or shoes or to the manufacture thereof,

or manufacturing or dealing in or with eyelets, lacing hooks, grommets or similar articles for any purpose, or machinery, tools, mechanisms, devices, materials, supplies, processes or things for operating upon or with such eyelets, lacing hooks, grommets or similar articles, or manufacturing or dealing in cements, blackings or stains, or in making, developing or exploiting any invention which pertains to machinery, tools, mechanisms, devices, materials, supplies, processes or things of the kinds above mentioned, eyelets, lacing hooks, grommets or similar articles, cements, blackings or stains, or in any business which will otherwise, in any way, compete or interfere with the business or interests of the said United Company or the business of any of its associate, allied or subsidiary companies.

Four. The said Leary shall not be required to disclose his secret formulae for making cements, blackings or stains, but if at any time during the continuance of the employment herein provided for the said United Company, its associate, allied or subsidiary companies, shall desire to have any cements, blackings or stains made in accordance with such formulae, the said Leary will, without compensation other than his regular salary, manufacture from time to time such cements, blackings or stains in such amounts as may be desired by the said United Company, its associate, allied or subsidiary companies, and will deliver the same as may be directed; the United Company, its associate, allied or subsidiary companies, paying the cost of the raw materials and expense of manufacture thereof.

Five. The United Company hereby further covenants and agrees to and with the said Leary that provided the said Leary shall faithfully and truly keep and perform each and all of the covenants and agreements on his part herein contained, and shall well and truly perform the duties of his employment herein provided for, it will during such time as the said Leary shall be in the employ of the said United Company, its associate, allied or subsidiary companies, pay or cause to be paid to the said Leary compensation as follows, viz: —

For said term of five (5) years from the date hereof, hereinbe-

fore provided for, such compensation shall be at the rate of forty dollars ($40.00) per week.

After the expiration of said period of five (5) years from the date hereof, during such further time as the said Leary shall be in the employment of the said United Company, its associate, allied or subsidiary companies, such compensation shall be at such rate as may be agreed upon by and between the said Leary and the said United Company.

Six. The term "United Company" as herein used shall be held to include the said United Shoe Machinery Company, its successors and assigns, and all covenants and agreements on the part of the said Leary herein contained may be enforced for the benefit of the said United Company, its successors or assigns, or of any one or more of its or their associate, allied or subsidiary companies.

In Witness Whereof the said Joseph W. Leary has hereunto set his hand and seal, and the said United Shoe Machinery Company has caused these presents to be signed by Edwd P. Hurd its Assistant Treasurer, and its corporate seal to be hereto affixed this first day of January, A. D. 1904.

JOSEPH W. LEARY [SEAL]
UNITED SHOE MACHINERY COMPANY [SEAL]
Edwd. P. Hurd, Assistant Treasurer.

In the presence of H. G. Donham

PLAINTIFF'S EXHIBIT 109.

[Put in Evidence, page 555.]

This Indenture, made this twenty-third day of January, A. D. 1904, by and between the F. G. Farnham Brush Manfg. Co., a corporation organized and existing under the laws of the State of New Jersey, having a place of business at Honesdale, Wayne County, Pennsylvania, (hereinafter called the "Brush Company") party of the first part, Frank G. Farnham, of said Honesdale, party of the second part, and the United Shoe Machinery Company, a corporation organized and existing under the laws of said State of New Jersey, having a place of business in Boston, County of Suf-

folk, Massachusetts (hereinafter called the "United Company") party of the third part, Witnesseth:

Whereas the Brush Company is engaged and has for some time been engaged at said Honesdale and elsewhere in the business of manufacturing and dealing in and with brushes, sleeves, collars, hubs, fillers, bristles, fiber and other parts and supplies therefor, and is the owner of various inventions, improvements, Letters Patent and other property, interests and rights relating thereto, and has established in connection with said business a valuable good-will;

And Whereas the said Farnham by reason of his ownership of shares of the capital stock of said Brush Company and otherwise is largely interested in and is identified with said Brush Company, and the said Farnham is also personally the owner of certain inventions, improvements and Letters Patent relating to brushes and parts and supplies therefor, and property relating to the business of manufacturing and dealing therein, and the said Farnham in negotiating the trade covered by this indenture has acted both for himself personally and also as representing the said Brush Company;

And whereas the said Farnham and the said Brush Company, and each of them, desire to sell and convey and to cause to be sold and conveyed, and the United Company desires to acquire the said business of the said Brush Company, the good-will thereof and the said inventions, improvements, Letters Patent, and other property, interests and rights relating to said business of manufacturing and dealing in brushes and parts and supplies therefor, all upon the terms and conditions hereinafter set forth;

Now, Therefore, be it Known that the said Brush Company and the said Farnham, in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to each of them paid by the said United Company, the receipt of which the said Brush Company and the said Farnham hereby acknowledges, have made and do hereby make the assignments and transfers hereinafter set forth, and that the said Brush Company and the said Farnham, each in consideration of the covenants and agreements on the part

of the United Company hereinafter contained, and the United Company in consideration of the said assignments and transfers and the covenants and agreements on the part of the said Brush Company and the said Farnham hereinafter contained, have entered and do enter into the covenants and agreements hereinafter set forth.

The said Brush Company has sold and does hereby sell, assign, transfer, set over and deliver unto the said United Company, its successors and assigns, the entire property and business of every name and nature, excepting as hereinafter expressly excluded, of the said Brush Company, including herein, without prejudice to the generality of the foregoing assignment, the entire manufacturing plant of the said Brush Company, tools, machine tools, special tools, jigs, models, patterns, drawings, supplies and equipment, stock on hand manufactured, unmanufactured or in process of manufacture, brushes, hubs, sleeves, collars, fillers, bristles, fiber and other parts and supplies therefor, all formulae, trade lists and information, all books of entry and account, the benefit of all contracts relating to said business, and all other interests and rights of every name and nature, and especially including the good-will of said business and all trade names, marks and brands (whether registered or not) used or useful in connection with said business, but excepting from this transfer, however, the franchise of said Brush Company, its cash on hand and on deposit, and all notes, bills and accounts receivable.

The said Farnham has sold and does hereby sell, assign, transfer, set over and deliver unto the said United Company, its successors and assigns, all property, interests and rights of every name and nature, owned or controlled by him relating or pertaining in any way to the business of manufacturing or dealing in brushes or parts or supplies therefor.

The said Farnham and the said Brush Company and each of them have sold and set over and do hereby specifically and without prejudice to the generality of the foregoing assignment sell, assign, transfer, and set over unto the said United Company, its successors and assigns, all inventions and improvements, Letters Patent

of the United States and of any and all foreign countries, applications for Letters Patent, and all interests and rights in, to or under inventions, improvements, Letters Patent or applications for Letters Patent now owned or controlled by them or by either of them, or which they or either of them have any right by agreement or otherwise to acquire or take over, or which they or either of them may at any time within fifteen (15) years from the date of these presents, make, acquire, own or control or have any right by agreement or otherwise to acquire or take over relating or pertaining in any way to brushes or to hubs, sleeves, collars, bristles, fiber or other parts or supplies therefor.

To Have and to Hold all of the property, business and good-will and all interests and rights of every name and nature included within this instrument to the said United Shoe Machinery Company, its successors and assigns to its and their own use and behoof absolutely.

All the property, business and good-will of every name and nature included within this instrument are conveyed free from any and all bills and accounts payable and other obligations and encumbrances whatsoever; and for the consideration aforesaid the said Brush Company and the said Farnham and each of them do hereby, without prejudice to the generality of the foregoing assignments, covenant with and warrant to the said United Company, its successors and assigns, that the tangible property hereby conveyed and the absolute title to which is hereby vested in the United Company, its successors and assigns, includes all the property set forth in an inventory of the stock in trade and other property of the said Brush Company made as of the date of these presents and a copy of which is hereto annexed and marked "Schedule A"; and that the Letters Patent and inventions hereby conveyed, and the absolute title to which is hereby vested in the United Company, its successors and assigns, include all the Letters Patent of the United States and of other countries which are set forth in the schedule annexed to this instrument and marked "Schedule B" and the inventions covered thereby; that the said Brush Company is the absolute owner of all of the said property included in said "Sche-

dule A" and that the said Brush Company or the said Farnham is the absolute owner of the said Letters Patent and each of them included in said "Schedule B", and the inventions and improvements covered thereby; that the said Brush Company and the said Farnham, or one of them, has good right, title and authority to sell and transfer as aforesaid all the property, business and good-will and all interests and rights of every name and nature included within the terms of this instrument; that we, the said Brush Company and the said Farnham, and each of us, will warrant and defend the name and every part thereof against the claims and demands of any and all persons whatsoever, and that we, the said Brush Company and the said Farnham, and each of us, will at any and all times hereafter upon request of the said United Company, its successors and assigns, execute and cause to be executed any and all further instruments and will perform and cause to be performed any and all further acts necessary or desired by the said United Company, its successors or assigns, to fully and completely vest in the said United Company, its successors and assigns, the full and entire right, title and interest in, to and under all the property, business and good-will and every part thereof included within the foregoing assignments, and to enable the said United Company, its successors and assigns, to secure and enjoy the full benefits and advantages thereof.

The said Brush Company and the said Farnham and each of them shall at any and all times hereafter upon making, owning or acquiring at any time within fifteen (15) years from the date of these presents, or becoming possessed of any right to acquire or to take over any inventions or improvements or any Letters Patent or applications for Letters Patent of the United States or of any foreign country, or any right, title or interest in, to or under any such inventions, improvements, Letters Patent or applications for Letters Patent relating or pertaining in any way to brushes or to fillers, hubs, sleeves, collars, bristles, fiber or other parts or supplies therefor, shall forthwith fully disclose the same or cause the same to be disclosed to the said United Company, its successors and assigns, and its or their officers and patent solicitors, and at

any and all times thereafter they and each of them shall upon the request of the said United Company, its successors or assigns, execute and cause to be executed any and all applications for Letters Patent, assignments and other papers, and shall perform and cause to be performed any and all acts which may be necessary or desired by the said United Company, its successors or assigns, to obtain to the said United Company, its successors or assigns, Letters Patent of the United States and of any and all foreign countries where it may be desired to obtain Letters Patent covering such inventions and improvements, or any of them, so made, owned or controlled by the said Farnham and the said Brush Company, or by either of them, and to fully and completely vest and confirm in the said United Company, its successors and assigns, the full and complete right, title and interest in, to and under all such inventions, improvements, Letters Patent, applications, interests and rights, and to enable the said United Company, its successors or assigns, to secure and enjoy the full benefits and advantages thereof, — all without further consideration than that hereinbefore set forth but at the expense of the said United Company, its successors and assigns.

The said Brush Company and the said Farnham, and each of them, do hereby covenant and agree to and with the said United Company, its successors and assigns, that they will not nor will either of them at any time within fifteen (15) years from the date of these presents, in any country, (without the consent in writing of the said United Company, its successors or assigns) directly or indirectly, in any manner, enter into or be engaged in or financially or otherwise assist any person, firm or corporation in entering into, developing or carrying on any business which consists of or relates or pertains in any way to manufacturing or dealing in brushes, or manufacturing or dealing in sleeves, collars, fillers, hubs, bristles, fiber or other parts or supplies therefor, or in any business which will interfere or compete with the business of the United Company, its successors or assigns, relating to brushes or parts or supplies therefor, or in developing or exploiting any invention relating thereto, but that they will co-operate with the said United Company, its successors and assigns, to enable the said United Com-

pany, its successors and assigns, to obtain and enjoy the entire benefits and advantages of the good-will hereby conveyed. The said Brush Company and the said Farnham shall also obtain and deliver to the United Company a like covenant, duly executed by Mr. F. G. Farnham and by Mr. N. C. Farnham, who have been and are now identified with and interested in the business of the said Brush Company.

The United Company shall pay to the said Brush Company and to the said Farnham jointly upon the execution of this instrument and such other instruments in accordance with the terms hereof as may be requested at the same time with the execution of this instrument and delivery of the property set forth in said inventory, "Schedule A," the sum of Twenty Thousand Nine Hundred Fifteen and 32/100 Dollars.

The United Company shall also, in addition to said sum of Twenty Thousand Nine Hundred Fifteen and 32/100 Dollars above provided for, make to the said Brush Company and to the said Farnham jointly further payments as hereinafter provided, but not, however, exceeding in the aggregate the sum of Five Thousand (5000) Dollars, viz: —

During the continuance in force of Letters Patent of the United States, No. 673,119, dated April 30, 1901, granted to Frank Gunn Farnham for Improvements in Brushes (hereby conveyed to the said United Company) until the payments herein provided for shall have amounted in the aggregate to the sum of Five Thousand (5000) Dollars, provided said Letters Patent, No. 673,119, shall so long remain in force, the United Company shall pay to the said Brush Company and to the said Farnham jointly as aforesaid an amount equal to three (3) per centum of the net receipts from sales by the said United Company of brushes embodying inventions covered by any one or more of the Letters Patent of the United States enumerated in said "Schedule B" hereto annexed; Provided, however, that in case said Letters Patent of the United States, No. 673,119, shall not have been declared invalid prior to the first day of January 1909, the United Company shall on or before said first day of January 1909 pay to the said Brush Company and to

the said Farnham such sum, if any, as may be necessary to bring the aggregate amount of payments under the provisions of this paragraph up to said total sum of Five Thousand (5000) Dollars.

An account shall be kept by the United Company of all brushes so sold by it embodying any of the inventions covered by any one or more of the said Letters Patent of the United States included in said "Schedule B" hereto annexed, and shall on or before the thirteenth day of January, April, July and October in each year, until the obligations of the United Company under this paragraph hereof shall have terminated, render to the said Brush Company and to the said Farnham jointly an account showing the net receipts during the three (3) calendar months ending with the last day of the month preceding each such account from sales of such brushes so sold by or under the authority of the said United Company, and whether sold within the United States or elsewhere, and shall accompany each such accounting with payment to the said Brush Company and to the said Farnham jointly of an amount equal to three (3) per centum of such net receipts during the period covered by each such accounting. When the total amount of payments hereunder by the United Company shall have reached in the aggregate the sum of Five Thousand (5000) Dollars, or in the event prior to such time of said Letters Patent, No. 673,119, having been declared invalid, all further obligations of the United Company hereunder shall cease; and it is further provided that the United Company shall have the right at any time at its election to pay to the said Brush Company and to the said Farnham jointly such sum as at the time of such payment may be necessary to bring the payments hereunder up to the total of Five Thousand (5000) Dollars, and thereupon all obligations of the United Company hereunder shall cease.

If so requested by the said Brush Company or by the said Farnham the accounts provided for by the preceding paragraph hereof shall be duly verified and sworn to.

The said Brush Company and the said Farnham and each of them hereby covenant and agree to and with the said United Company that if the said United Company shall so elect the said United

Company may, for such period, not exceeding six (6) months from the date hereof, as the said United Company may desire, carry on the business hereby conveyed at the works heretofore occupied by the said Brush Company at Honesdale, Pennsylvania, the said United Company paying to the said Brush Company an amount equal to the rent thereof during such time as it shall so continue to occupy said works at the rate heretofore paid by the said Brush Company, and also (the said business from the date hereof being the business of the said United Company) paying all running expenses, including electric light, power, gas, fuel, superintendence, book-keeping and labor of said factory.

The property hereby conveyed by the said Farnham includes certain collars (estimated by the said Farnham about One Thousand (1000) pairs) for use in connection with brushes used by metal or nickel plate workers and now either on hand or in the possession of metal or nickel plate workers to whom they have been loaned; And it is Hereby Agreed that, in case the United Company shall either itself or through some other Company continue the manufacture of said type of brushes for metal or nickel plate trade after the United Company shall have removed the business hereby conveyed from Honesdale, or shall sell and convey that part of said business which relates to brushes for use by metal or nickel plate workers to some other party, the United Company shall pay or shall cause to be paid to the said Farnham personally, as an additional compensation for such collars, a sum of not less than Five Hundred (500) Dollars, and if in the event of such sale as aforesaid the United Company is able to obtain on account of such collars any sum in excess of Five Hundred (500) Dollars it will pay to the said Farnham such additional sum as it may receive up to the sum of Two Hundred and Fifty (250) Dollars in excess of said sum of Five Hundred (500) Dollars.

The said Brush Company and the said Farnham and each of them, without prejudice to the generality of the assignments and other covenants herein contained, hereby covenant with and warrant to the said United Company, its successors and assigns, that said Letters Patent and inventions hereby conveyed included within

said "Schedule B" hereto annexed are free from all prior grants, licenses and encumbrances whatsoever, and do hereby sell, assign, transfer and set over to the said United Company, its successors and assigns, for its and their own use and behoof absolutely, all claims and demands at law, in equity or otherwise, accrued or which may hereafter accrue for damages, profits or otherwise arising out of infringement of said Letters Patent or any of them, and do hereby irrevocably constitute and appoint the said United Company, its successors and assigns, the true and lawful attorney of the said Brush Company and of the said Farnham, and each of them, in the name of the said Brush Company and of the said Farnham, or either of them, or in the name of the said United Company or otherwise, to take such action at law or in equity or otherwise as may be necessary or desired by the said United Company to secure and enforce such claims and demands or otherwise to enable the said United Company to secure and enjoy the full benefits and advantages of all the property, business, good-will, interests and rights of every name and nature hereby conveyed or intended so to be.

All covenants and agreements herein expressed as on the part of the said Brush Company and the said Farnham and each of them shall be taken as joint and several covenants, enforceable against the said Brush Company and the said Farnham or either of them; and inasmuch as the said United Company has entered into this indenture relying upon the representations of the said Farnham as to the power and authority of the said Brush Company to make the assignments and enter into the covenants herein set forth and the consent of all the stockholders of the said Brush Company thereto the said Farnham does hereby covenant with and warrant to the said United Company, its successors and assigns, that all necessary votes by the said Brush Company have been or shall be passed, and all necessary acts have been or shall be done to enable the said Brush Company lawfully to enter into and to carry out the intent of this indenture and to vest and confirm, free from all claims and demands, in the said United Company, its successors and assigns,

the business, good-will and property of every name and nature of the said Brush Company as herein provided.

It is understood and agreed that the said Brush Company shall have the use of the books of entry and account heretofore used in connection with its business, for the purpose of collecting outstanding bills and accounts receivable, and otherwise settling up the matters connected with such business transacted prior to the date hereof.

The United Company assumes no responsibility for the application or distribution of the sums to be paid to the said Brush Company and to the said Farnham hereunder, and it is agreed that payment by the said United Company by valid check, made to the order of the said Brush Company and delivered to the said Farnham as Treasurer of said Company, of any sum due or payable under the provisions hereof shall fully discharge the United Company from its obligations as to such sum, and the said Farnham is hereby authorized to receipt for any payments hereunder, both in his own name and in the name of said Brush Company.

The said Farnham and the said Brush Company and each of them shall deliver to the said United Company receipts covering all hubs, sleeves or collars owned by the said Brush Company or by the said Farnham, which are in the hands of users thereof or others upon loan from the said Brush Company or from the said Farnham, in so far as such receipts have been or can, by any reasonable effort, be obtained by the said Farnham or by the said Brush Company.

The said Brush Company and the said Farnham hereby covenant with and warrant to the said United Company, its successors and assigns, that they and each of them will indemnify, protect and hold harmless the said United Company, its successors and assigns, against any and all claims or demands which may be made in, to or under any of the property of any nature hereby conveyed or any attachment which may be made upon such property by any creditor of the said Brush Company, or of the said Farnham or any other person claiming to hold or attach the same or any interest therein

by, through or under or as to the property of the said Brush Company or the said Farnham.

In Witness Whereof the said F. G. Farnham Brush Manfg. Co. has caused these presents to be signed by Fred C. Farnham, its president and its corporate seal to be hereto affixed, the said Farnham affixes his hand and seal, and the said United Shoe Machinery Company has caused these presents to be signed by Edward P. Hurd, its Assistant Treasurer, and its corporate seal to be hereto affixed this twenty-third day of January, A. D. 1904.

[SEAL] THE F. G. FARNHAM BRUSH MFG. CO.
Per Fred C. Farnham, President
Attest: N. C. Farnham, Secretary
FRANK G. FARNHAM. [SEAL]
[SEAL] UNITED SHOE MACHINERY COMPANY
Edward P. Hurd, Assistant Treasurer
Attest: Meylert Bruner.

Commonwealth of Pennsylvania
County of Wayne, ss. 1904

On this twenty-fourth day of February, A. D. 1904 before me personally appeared Frank G. Farnham, personally known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Robert A. Smith, Notary Public
[SEAL] Commission expires January 14th, 1905.

Commonwealth of Pennsylvania
County of Wayne, ss. 1904

Be it Remembered that on this twenty-fourth day of February, A. D. 1904 personally appeared before me Fred C. Farnham the President of The F. G. Farnham Brush Manfg. Co. who, being duly affirmed, deposes and says that he was personally present at the execution of the foregoing indenture and did affix the corporate seal of the said corporation, The F. G. Farnham Brush Manfg. Co., that the seal so affixed is the common or corporate seal of The F. G. Farnham Brush Manfg. Co., and that the foregoing indenture

was duly signed, sealed and delivered as and for the act and deed of The F. G. Farnham Brush Manfg. Co., for the uses and purposes therein mentioned, and that the signature of this deponent to the said indenture as President of the said corporation is of this deponent's own proper handwriting.

FRED C. FARNHAM

Subscribed and sworn to before me at Honesdale, Wayne County, Pennsylvania, this twenty-fourth day of February, A. D., 1904.

Robert A. Smith, Notary Public

[SEAL] Commission expires January 14th, 1905.

SCHEDULE B.

Letters Patent of the United States.

No. 571,559, dated November 17, 1896, Frank G. Farnham, for Rotary Brushes.

No. 645,523, dated March 13, 1900, Frank G. Farnham, for Brushes.

No. 648,166, dated April 24, 1900, Frank G. Farnham, for Brushes.

No. 649,289, dated May 8, 1900, Frank G. Farnham, for Brushes.

No. 649,290, dated May 8, 1900, Frank G. Farnham, for Brushes.

No. 673,119, dated April 30, 1901, Frank G. Farnham, for Brushes.

No. 677,502, dated July 2, 1901, Frank G. Farnham, for Rotary Brushes.

No. 709,312, dated September 16, 1902, Frank G. Farnham, for Polishing Wheels.

No. 713,080, dated November 11, 1902, Frank G. Farnham, for Rotary Brushes.

No. 741,643, dated October 20, 1903, Frank G. Farnham, for Rotary Brushes.

Letters Patent of Germany.

No. 135,297, dated July 10, 1900, Frank G. Farnham.

Letters Patent of France.

No. 302,364, dated July 20, 1900, Frank G. Farnham.

Letters Patent of Belgium.

No. 151,750, dated August 25, 1900, Frank G. Farnham.

Letters Patent of Great Britain.

No. 12,242, dated July 6, 1900, Frank G. Farnham, for Improvements in Brushes.

No. 7,681, dated April 1, 1902, Frank G. Farnham, for Polishing Brushes.

Letters Patent of Canada.

No. 76,253, dated June 10, 1902, Frank G. Farnham, for Improvements in Wheel Brushes.

Special meeting of the Stockholders of The F. G. Farnham Brush Man'f'g Co., Camden, New Jersey, February 23, 1904.

A special meeting of the stockholders of The F. G. Farnham Brush Man'f'g Co. was duly held at the registered office of the company, to-wit, at the office of the New Jersey Corporation Guarantee & Trust Company, Nos. 417–419 Market Street, Camden, New Jersey, on Tuesday, the twenty-third day of February, 1904, at ten o'clock A. M., pursuant to the call of the President, due notice thereof, as provided by the By-Laws, having been given by the Secretary, as appears by the following original affidavit: —

Commonwealth of Pennsylvania,

County of Wayne, ss.

Norman C. Farnham, being duly sworn, doth depose and say that he is the Secretary, duly constituted and qualified, of the F. G. Farnham Brush Man'f'g Co., a corporation of the State of New Jersey, and that he did give notice of a special meeting of the stockholders of said company to be held at the office of the company in Camden, New Jersey, on Tuesday, the twenty-third day of February, 1904, in accordance with the call of the President, by sending a written notice, of which the following is a copy, stating the day, hour and place of the meeting and the general nature of the business to be transacted, to each stockholder of record at least five (5) days, exclusive of the day of mailing, before the date of said special meeting, at such address as appears on the stock book of the company.

[CORPORATE SEAL] Norman C. Farnham, Secretary

Subscribed and sworn to before me this twenty-fourth day of February, A. D. 1904.

Robt. A. Smith, Notary Public.

[SEAL] Commission expires January 14th, 1905.

Honesdale, Pennsylvania, February 15, 1904.

The F. G. Farnham Brush Manf'g Co. Notice of Special Meeting of Stockholders.

Notice is hereby given that at the call of the President a special meeting of the stockholders of this company will be held on Tuesday, the twenty-third day of February, 1904, at ten o'clock in the forenoon, at the office of the company, No. 417 Market Street Camden, New Jersey, for the following purposes:

1. To take action with reference to the sale of the property, assets, business and good-will of this company, as negotiated by a committee appointed for that purpose by the Board of Directors.

2. To take action upon a proposition to sell the entire property, assets, business and good-will of this company, except alone its franchise, cash, and bills, notes and accounts receivable, to the United Shoe Machinery Company, a New Jersey corporation.

3. To take action with reference to the execution by this company of a certain instrument which has been prepared covering the transfer by this company of its property, assets, business and good-will to the United Shoe Machinery Company, a New Jersey corporation, upon the terms in said instrument set forth. A copy of said instrument is now on file at the office of this company at Honesdale, Pennsylvania, and the same will be presented for action at the meeting hereby called.

4. To authorize, direct, ratify, confirm and approve the execution of all papers and the performance of all acts necessary or desirable to carry into effect the votes of the stockholders, including, if such shall be the vote of the stockholders, the sale of the property, assets, business and good-will of this company to the United Shoe Machinery Company, a New Jersey corporation.

5. To transact any other business which may properly come before the meeting.

[CORPORATE SEAL] N. C. Farnham, Secretary.

In the absence of the President the meeting was called to order by Mr. F. G. Farnham, who upon motion duly seconded was duly elected President pro tempore and presided at the meeting.

The secretary not being present, Mr. Jos. F. Cotter was upon motion duly seconded duly chosen Secretary of the meeting and kept the records thereof. He was sworn to the faithful performance of his duties as follows:

State of New Jersey,

County of Camden, ss.,

Jos. F. Cotter, secretary of the special meeting of stockholders of The F. G. Farnham Brush Man'f'g Co., held at the registered office of the company at Camden, New Jersey, this twenty-third day of February, 1904, being by me duly sworn, upon his oath does promise and swear that he will faithfully discharge the duties of Secretary of said meeting to the best of his skill and ability.

Jos. F. Cotter, Secretary

Subscribed and sworn to before me this twenty-third day of February, 1904.

Wm. F. Eidell, Notary Public

The notice calling the meeting was read.

The Secretary was directed to investigate and report upon the representation at the meeting and subsequently made a report as follows: —

Total stock issued and outstanding 1109 shares

Stockholders present in person.

Mr. F. G. Farnham 560 shares

Stockholders represented by proxy.

Mr. J. S. Brown
by F. G. Farnham, proxy, 5 shares

	Proxy	Shares
Mr. John Brown, Ex.	F. G. Farnham	5
Grace A. Brown	"	5
E. B. Calloway	"	2
N. C. Farnham	"	21
F. C. Farnham	"	161

E. A. Farnham	F. G. Farnham	90
John Kubach	"	20
H. H. Richards	"	10
Geo. H. Seaman	"	10
T. R. Thersk	"	19
F. G. Myers	"	20

It appearing from the report of the Secretary that stockholders holding a majority of the amount of stock issued and outstanding, and entitled to be voted upon at this meeting, were present in person or by proxy, a quorum was declared to be present for the transaction of business. The proxies were directed to be filed with the Secretary.

The minutes of the special meeting of the Directors of the company held at Honesdale, Pennsylvania, on December 30, 1903, appointing a committee to negotiate a sale of the company's property and business, and of the special meeting of Directors held at Honesdale, Pennsylvania, on January 9, 1904, at which meeting the committee appointed to negotiate the sale of the property and business of the company made its report, were read, and it was stated to the meeting that a committee having been, as in said minutes set forth, appointed by the Directors to negotiate the sale of the property, assets, business and good-will of the company, such committee had succeeded in negotiating a sale to the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, having a place of business in Boston, Massachusetts, at a price based upon cost value of materials and property on hand, plus certain additional sums on account of patents, good-will and other assets, of the entire property, business and good-will of every name and nature of the company, excepting alone its franchise and all cash on hand and on deposit, and notes, bills and accounts receivable, and also a sale to the said United Shoe Machinery Company by Mr. Frank G. Farnham of certain foreign patent rights and other property owned by Mr. Farnham personally, it having been necessary, it order to negotiate the trade with the said United Shoe Machinery Company, to include all of said property, not only of this company but also

of Mr. Farnham personally and to make the trade as a single transaction. It is also called to the attention of the meeting that in accordance with the terms negotiated for such sale it would be necessary for this company and for Mr. Farnham to enter into proper covenants in favor of the purchaser, including especially covenants as to title to the property, assets, business and good-will conveyed, for further assurances, for the transfer of any inventions or patent rights hereafter acquired or owned by this company or by Mr. Farnham relating to brushes or to fillers, hubs, sleeves, collars, bristles, fibre or other parts or supplies therefor, and against competition.

It was further stated to the meeting that since the seventh day of January an inventory of the materials and property of the company on hand had been made and the amount of the consideration to be paid by the said United Shoe Machinery Company for said purchase and covenants had been more accurately determined to be the sum of twenty thousand, nine hundred fifteen dollars, thirty-two cents ($20,915.32) in cash, and five thousand dollars ($5000) in royalty (in accordance with and subject to the terms of the instrument embodying said trade, referred to in the call for this meeting) upon brushes sold embodying the inventions or improvements covered by certain Letters Patent of the United States included within the sale to the United Shoe Machinery Company, plus an additional sum not yet determined but estimated at about eighteen hundred dollars ($1800) on account of certain sleeves and collars now in the hands of manufacturers; and that of said purchase price the sum of twenty thousand, nine hundred fifteen dollars, thirty-two cents ($20,915.32) in cash, and the sum of five thousand dollars ($5000) in royalty, as aforesaid, is to be paid on account of the property, assets, business and good-will and the covenants of this company, the balance being on account of the personal transfers and covenants of Mr. F. G. Farnham.

The instrument referred to was submitted to the meeting for inspection.

Upon motion duly seconded it was

Voted: — That the action of the Directors and of the committee

appointed by the Directors in negotiating a sale to the United Shoe Machinery Company upon the terms above set forth of the entire property, assets and business of every name and nature of this company, except alone its franchise, cash on hand and on deposit, and notes, bills and accounts receivable, be and the same hereby is confirmed, ratified and approved, and is adopted as the act and deed of this company.

Upon motion duly seconded it was

Voted: — That the sale of the property, assets, business and good-will of this company to the said United Shoe Machinery Company as negotiated and as set forth in the written proposition made under date of January 6, 1904 by the committee appointed by the Board of Directors for that purpose, and in the written acceptance of said proposition by the said United Shoe Machinery Company under date of January 7, 1904, be and the same hereby is authorized, confirmed, ratified and approved, and is adopted as the act and deed of this company.

Upon motion duly seconded it was

Voted: — That this company do sell, assign, transfer, set over and deliver to the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, having a place of business in Boston, Massachusetts, the entire property, assets, business and good-will of every name and nature of this company, except alone the franchise of this company and any and all cash on hand or on deposit, and bills, notes or accounts receivable, and do enter into proper covenants with the said purchaser in support thereof; said sale and transfer to take effect as of the twenty-third day of January, 1904.

Upon motion duly seconded it was

Voted: — That the sale provided for in the next preceding vote be made in consideration of the payment by the said United Shoe Machinery Company to this company for the property, assets, business and good-will included therein and covenants in support thereof, of the sum of twenty thousand, nine hundred and fifteen dollars, thirty-two cents ($20,915.32) in cash, and the undertaking of the said United Shoe Machinery Company, in accordance

with and subject to the terms of the written instrument embodying the terms of this sale, referred to in the call for this meeting and now before the meeting, to pay to this company during the continuance in force of Letters Patent of the United States, No. 673,-119, dated April 30, 1901, until the aggregate sum of five thousand dollars ($5000) shall have been paid, a certain sum, in the nature of royalty upon brushes sold by the United Shoe Machinery Company embodying the inventions or improvements covered by certain Letters Patent of the United States included in the transfer from this company.

Upon motion duly seconded it was

Voted: — That this company execute under date of the twenty-third day of January 1904 an instrument of transfer to the United Shoe Machinery Company, a New Jersey corporation, of all the property, assets, business and good-will of this company of every name and nature, except alone its franchise, cash on hand and on deposit and notes, bills and accounts receivable, and containing covenants on the part of this company in the form of the following instrument between this company as party of the first part, Frank G. Farnham, of Honesdale, Pennsylvania, party of the second part, and the said United Shoe Machinery Company, party of the third part; said instrument being the instrument referred to in the call for this meeting and referred to in the preceding vote, viz.: —

At this point there is inserted in the original record a full copy of the Indenture of January 23, 1904, herein referred to, it being a duplicate copy of the foregoing instrument to which this certified copy of the record is annexed.

Attest: Norman C. Farnham, Secretary.

[CORPORATE SEAL]

Upon motion duly seconded it was Voted:

That this company do execute and cause to be executed any and all instruments, and do perform and cause to be performed any and all acts necessary or desired to carry into effect the terms of the instruments referred to in the next preceding vote and to fully

and completely vest and confirm in the said United Shoe Machinery Company, its successors, assigns or nominees, any and all of the property, assets, business and good-will of this company, excepting its franchise, cash, bills, notes and accounts receivable, including herein without prejudice to the generality of this vote the transfer to the said United Shoe Macninery Company, its successors, assigns, or nominees, of all inventions or improvements, and all Letters Patent of the United States and of any and all foreign countries, and all trade names, marks and brands, and all interests and rights in, to or under the same, owned or controlled by this company.

Upon motion duly seconded it was Voted:

That the execution by Mr. Fred C. Farnham, as President of this company, for, in the name of and in behalf of this company of any and all of the instruments referred to in the two preceding votes be and the same hereby is authorized, confirmed, ratified and approved, and that the President be and he hereby is authorized and directed to formally execute for, in the name and on behalf of this company and under its corporate seal an instrument in the form of that above set forth at length in these minutes, giving same date as of the twenty-third day of January, A. D. 1904, and to execute any and all further instruments and to perform any and all acts necessary or desired to carry out the terms of said instrument or to carry out the intent of any and all of the votes passed at this meeting, and to deliver all such instruments to the said United Shoe Machinery Company upon or after delivery by the said United Shoe Machinery Company to this company of a duplicate of said instrument of January 23, 1904, duly executed by the said United Shoe Machinery Company.

Each and all of the votes passed at this meeting were passed by the unanimous vote of all stockholders present in person or by proxy, to-wit, were passed by the affirmative vote of the holders of a majority of the stock issued and outstanding.

There being no further business to come before the meeting, it was on motion duly seconded

Voted: To adjourn.

Adjourned.

Jos. F. Cotter, Secretary pro tem.

Attest: F. G. Farnham.

Norman C. Farnham,

[CORPORATE SEAL] Secretary of the Company

Honesdale, Pennsylvania, February 24, 1904.

THE F. G. FARNHAM MAN'F'G CO.

A special meeting of the Board of Directors of The F. G. Farnham Brush Man'f'g Co. was duly called by the President and was held at the office of the company, in Honesdale, Pennsylvania, on Wednesday, the twenty-fourth day of February, 1904, at three o'clock P. M.

There were present of the Board

Messrs. F. G. Farnham,	Signed
John Kuback	"
F. G. Farnham	"
N. C. Farnham	"
T. R. Thersk	"
Geo. W. Seaman	"

The records of the special stockholders' meeting, held at the office of the company in Camden, New Jersey, on Tuesday, the twenty-third day of February, 1904, were read, from which it appeared that the company had, by affirmative vote of the holders of a majority of the stock issued and outstanding, voted to sell, assign and transfer to the United Shoe Machinery Company, a New Jersey corporation, having a place of business at Boston, Massachusetts, the entire property, assets, business and good-will of this company, excepting alone its franchise, cash on hand and on deposit, and bills, notes and accounts receivable.

There was also presented to the meeting a written consent, signed by the holders of a majority of the stock of this company issued and outstanding, consenting to and approving such sale.

Thereupon, upon motion duly seconded, it was Voted:

That this company do sell, assign, transfer, set over and deliver

to the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, having a place of business in Boston, Massachusetts, the entire property, assets, business and good-will of every name and nature of this company, except alone the franchise of this company and any and all cash on hand or on deposit, and bills, notes or accounts receivable, and do enter into proper covenants with the said purchaser in support thereof; said sale and transfer to take effect as of the twenty-third day of January, 1904.

Upon motion duly seconded, it was Voted:

That the sale provided for in the next preceding vote be made in consideration of the payment by the said United Shoe Machinery Company to this company for the property, assets, business and good-will included therein and covenants in support thereof, of the sum of twenty thousand, nine hundred fifteen dollars, thirty-two cents ($20,915.32) in cash, and the undertaking of the said United Shoe Machinery Company, in accordance with and subject to the terms of the written instrument embodying the terms of this sale, which is set forth at length in the minutes of and the execution of which was authorized by the stockholders at the special meeting of the stockholders of this company, held at Camden, New Jersey, on Tuesday, the twenty-third day of February, 1904, to pay to this company during the continuance in force of Letters Patent of the United States No. 673,119, dated April 30, 1901, until the aggregate sum of five thousand dollars ($5000) shall have been paid, a certain sum, in the nature of royalty upon brushes sold by the United Shoe Machinery Company embodying the inventions or improvements covered by certain Letters Patent of the United States included in the transfer from this company.

Upon motion, duly seconded, it was Voted:

That this company execute under date of the twenty-third day of January, 1904, an instrument of transfer to the United Shoe Machinery Company, a New Jersey corporation, of all the property, assets, business and good-will of this company of every name and nature, except alone its franchise, cash on hand and on deposit and notes, bills and accounts receivable and containing covenants on

the part of this company in the form of the instrument between this company as party of the first part, Frank G. Farnham, of Honesdale, Pennsylvania, party of the second part, and the said United Shoe Machinery Company, party of the third part, which instrument is set forth at length in the minutes of and the execution of which was authorized by the stockholders at the special meeting of the stockholders of this company, held at Camden, New Jersey, on Tuesday, the twenty-third day of February, 1904.

Upon motion, duly seconded, it was Voted:

That this company do execute and cause to be executed any and all instruments, and do perform and cause to be performed any and all acts necessary or desired to carry into effect the terms of the instrument referred to in the next preceding vote, and to fully and completely vest and confirm in the said United Shoe Machinery Company, its successors, assigns or nominees, any and all of the property, assets, business and good-will of this company, excepting its franchise, cash, bills, notes and accounts receivable, including herein without prejudice to the generality of this vote the transfer to the said United Shoe Machinery Company, its successors, assigns or nominees, of all inventions or improvements, and all Letters Patent of the United States and of any and all foreign countries, and all trade names, marks and brands, and all interests and rights in, to or under the same, owned or controlled by this company.

Upon motion duly seconded, it was Voted:

That the execution by Mr. Fred C. Farnham as President of this company, for, in the name of and in behalf of this company of any and all of the instruments referred to in the two preceding votes be and the same hereby is authorized, confirmed, ratified and approved, and that the President be and he hereby is authorized and directed to formally execute for, in the name and on behalf of this company and under its corporate seal an instrument in the form of that which is set forth at length in the minutes of and the execution of which was authorized by the stockholders at the special meeting of the stockholders of this company, held at Camden, New Jersey, on Tuesday, the twenty-third day of February, 1904,

giving same date as of the twenty-third day of January, A. D. 1904, and to execute any and all further instruments and to perform any and all acts necessary or desired to carry out the terms of said instrument or to carry out the intent of any and all of the votes passed at this meeting, and to deliver all such instruments to the said United Shoe Machinery Company upon or after delivery by the said United Shoe Machinery Company to this company of a duplicate of said instrument of January 23, 1904, duly executed by the said United Shoe Machinery Company.

Each and all of the votes passed at this meeting were approved and favorably voted upon by a majority of the whole Board of Directors of this company.

There being no further business to come before the meeting, it was, on motion duly seconded, Voted: To adjourn.

Adjourned.

Attest: Norman C. Farnham, Secretary.

[CORPORATE SEAL]

Commonwealth of Pennsylvania

County of Wayne, ss. Honesdale, February 24th, 1904.

Norman C. Farnham, being by me duly sworn, upon his oath doth depose and say that he is the Secretary, duly constituted and qualified, of the F. G. Farnham Brush Man'f'g Co. a corporation organized and existing under the laws of the State of New Jersey, that, as such Secretary, he has in his custody the records of the meetings of the stockholders and directors of said company, that the foregoing are full, true and complete copies of the records of a special meeting of the stockholders of said company, held at Camden, New Jersey, on Tuesday, the twenty-third day of February, 1904, and of a special meeting of the Board of Directors of said company, held at Honesdale, Pennsylvania, on Wednesday, the twenty-fourth day of February, 1904, that no votes annulling or in any wise modifying the votes passed at said respective meetings have been passed since the holding of said respective meetings as in said copies set forth, and that said votes are now operative and in full force and effect.

[CORPORATE SEAL] Norman C. Farnham, Secretary.

Subscribed and sworn to before me this day of February, 1904.

Robt. A. Smith, Notary Public.

[SEAL] Commission expires Jany. 14th, 1905.

We, the undersigned, owners and holders of shares of the capital stock of the F. G. Farnham Brush Man'f'g Co. a corporation organized and existing under the laws of the State of New Jersey, having a place of business at Honesdale, Pennsylvania, do hereby consent to the sale and transfer to the United Shoe Machinery Company, a New Jersey Corporation, having a place of business at Boston, Massachusetts, upon the terms approved by the stockholders at the special meeting of the stockholders of said company held at Camden, New Jersey, on Tuesday, the twenty-third day of February, 1904, of the entire property, assets, business and goodwill of the said The F. G. Farnham Brush Man'f'g Co. excepting alone its franchise, cash on hand and on deposit, and bills, notes and accounts receivable, and do hereby consent to, authorize, ratify, confirm and approve the execution for and on behalf of this company of the instrument under date of January 23rd, 1904, covering said sale, authorized at the said special meeting of the stockholders, and do hereby consent to and authorize the execution of any and all further instruments and the performance of any and all further acts on the part of the said The F. G. Farnham Brush Man'f'g Co. which may be necessary or desired to carry out the terms and intent of the said instrument or otherwise to carry out the sale to the said United Shoe Machinery Company herein referred to.

F. G. Farnham,	shares	560
F. C. Farnham		161
N. C. Farnham		21
John Kubach		20
T. A. Thirsk		19
Geo. N. Seaman	&	10
		791

Commonwealth of Pennsylvania

County of Wayne, ss Honesdale, February 24, 1904.

Norman C. Farnham, Secretary of The F. G. Farnham Brush Man'f'g Co. having been duly sworn, doth depose and say that the total number of shares of the capital stock of said company issued and outstanding this twenty-fourth day of February 1904, is Eleven Hundred and Nine shares, and that the persons whose signatures are affixed to the foregoing consent are the holders of the majority of the said stock so issued and outstanding.

[CORPORATE SEAL] Norman C. Farnham, Secretary

Subscribed and sworn to before me this twenty-fourth day of February 1904.

Robt A. Smith, Notary Public

[SEAL] Commission expires Jany. 15, 1905

The undersigned, being a majority of the whole Board of Directors of The F. G. Farnham Brush Man'f'g Co. do hereby signify their assent to and concurrence in the sale of the property, assets, business and good-will of said company, provided for in the record of the foregoing meeting of the Board of Directors, held this twenty-fourth day of February, 1904, and do consent to and concur in all votes passed at said meeting as entered in said records.

F. C. Farnham	161
John Kubach	90
F. G. Farnham	560
N. C. Farnham	21
T. A. Thirsk	19
Geo. H. Seaman	10
	861

PLAINTIFF'S EXHIBIT 110.

[Put in Evidence, page 557.]

This Agreement made this second day of May A. D. One Thousand Nine Hundred and Four, by and between the United Shoe Machinery Company, a corporation duly organized under the laws of the State of New Jersey, with a registered office at Paterson, New Jersey, and a usual place of business at 205 Lincoln Street, in Boston in the Commonwealth of Massachusetts, (hereinafter called the United Company), party of the first part, and The American Glue Company, a corporation duly organized under the laws of the State of New Jersey with a registered office at Trenton, New Jersey, and a usual place of business at 121 Beverly Street, in said Boston, (hereinafter called the American Company), party of the second part, herein acting for and on behalf of and hereby binding not only itself but any and all branch companies which now are or may hereafter be organized or controlled by the American Company or in which the American Company is or may be interested, Witnesseth: —

That Whereas the United Company and the American Company, on the Sixteenth day of February, One Thousand Nine Hundred and One, entered into an agreement by which the United Company became the exclusive agent for Europe for the sale of all Sand Paper made for or by the American Company for use in the manufacture of boots and shoes;

And Whereas the said Companies are now desirous of entering into an agreement whereby the United Company shall become the exclusive agent of the American Company for the sale of all Sand Paper, owned, handled, or manufactured by or for the American Company, or in which it is or may be in any way interested, for use in the manufacture of boots and shoes in the United States and Dominion of Canada.

Now, Therefore, in consideration of the sum of One Dollar ($1.00) by each of the parties to the other paid, the receipt whereof is hereby acknowledged, and in further consideration of the mutual

covenants and agreements herein contained, the said parties do hereby covenant and agree as follows: —

The American Company agrees that the United Company shall have from the First day of June, A. D. One Thousand Nine Hundred and Four, the exclusive agency for the United States and the Dominion of Canada, for the sale of all Sand Paper in all forms, owned, handled, or manufactured by or for the American Company, or in which it is or may be in any way interested, and used or intended for use in the manufacture of boots and shoes.

The United Company agrees to make every reasonable effort to extend and increase the sale of the American Company's Sand Paper, and agrees and hereby binds itself that during the continuance of this agreement it will not use, or cause to be used in any of the factories which it may own or control, and that it will not sell any Sand Paper except that obtained from the American Company, except such brands, trade marks, grades and qualities as the American Company after reasonable trials is unable to produce to the satisfaction of the consumer at prices not greater than the United Company can obtain equal quantities elsewhere, and at any time when the American Company can furnish such equal qualities at equal prices, it shall receive the preference on all orders placed by the United Company.

The United Company also agrees to furnish the American Company or its representatives, at any time, such information as it may desire regarding sales and prices.

The American Company agrees to furnish exclusively for, and sell and deliver to the United Company promptly on receipt of its orders, unavoidable delays excepted, all Sand Paper which the United Company may from time to time order, and to use suitable materials and all due care and precaution in manufacturing and in the seasoning of the same; also to furnish free of charge, samples for testing and experimenting and to employ a competent man, whose duty it shall be to investigate, upon request, all complaints, and assist the United Company to increase the sale of its Sand Paper.

This Agreement shall continue for One Year from the First day

of June, A. D. One Thousand Nine Hundred and Four, unless sooner terminated as hereinafter provided. It is agreed, however, that either party shall have the right to terminate this agreement by a three months' notice in writing delivered to the other of said parties, and in case such notice shall be given, then this agreement shall, at the end of the said three months, terminate. If this agreement shall continue for the full term of one year without such notice having been given by either party, then it shall continue in full force and effect until it is terminated by a three months' notice in writing, delivered by one of the parties to the other as hereinbefore provided. In the event that the American Company gives such notice, it hereby agrees to do nothing that might operate to the disadvantage of its exclusive agent, the United Company, until the expiration of the three months' period and the termination of this contract, and the United Company may return to the American Company such stock of unsold goods as shall have been purchased under this contract, at the expense of the American Company, and the American Company will pay the United Company for such returned goods at the prices existing at the termination of this contract.

The American Company shall from time to time fix minimum selling prices, below which the United Company shall not sell without the consent of the American Company.

In the event of any material change in the conditions governing the selling prices to consumers, a new schedule of prices shall be arranged between the American Company and the United Company.

All goods shall be delivered to the warehouses of the United Company in Boston, or to any railroad depots or steamship docks in Boston, free of cost of delivery to the United Company. On all direct shipments by the American Company to points in New England outside of Boston, an allowance of Fifteen Cents (15c) per One Hundred Pounds for freight shall be deducted from the invoice prices herein set forth, and on direct shipments by the American Company to all points in the Dominion of Canada and the United States outside of New England, an allowance of Fifty

Cents (50c) per One Hundred Pounds shall be deducted from the invoice prices herein set forth.

Payment shall be Sixty Days net, or less Two Per Cent (2%) for cash if paid between the Tenth and Twentieth day of the month succeeding that in which invoices are rendered.

Any Sand Paper manufactured by the American Company and in the hands of the United Company, its agents or customers, which after careful investigation is found to be defective in quality through any fault of the American Company, may be returned to and at the expense of the American Company, and charged back to them at the then existing prices, but no allowance made to customers by the United Company shall be charged back to the American Company except by its written consent.

It is further agreed that from time to time and at its own expense the United Company may return to the American Company and charge back at the then existing prices any sand paper in good condition and readily salable in other territories, but which at the time of such return is unsalable in the district making such returns.

All orders and inquiries for Shoe Paper received by the American Company after the First Day of June, A. D. One Thousand Nine Hundred and Four shall not be filled by it, but shall be turned over to the United Company; nor shall the American Company solicit any orders for this class of business between this date and June 1st, 1904.

It is mutually agreed that the term "Sand Paper" or "Shoe Paper" wherever used in this agreement is understood and acknowledged to cover and include Emery, Garnet Flint, and any and all abrasives whether natural or artificial, which have been or may hereafter be applied to paper and cloth, or any combination of the two, or any similar material which has been or may be used.

The United Company reserves the right to purchase from companies, other than the American Company, Sand Paper for use on the Buffing or Cleaning Machines of the "Naumkeag" type, in case it should hereafter engage in manufacturing or dealing in Naumkeag or similar machines.

All orders shipped on and after the Second Day of May, One

Thousand Nine Hundred and Four, shall be invoiced at list prices and discounts as per attached Price Lists marked "A" and Discount Sheet marked "B" until such time as new lists and discounts are made as hereinbefore provided, except shipments to the Dominion of Canada, which shall be invoiced as per attached Price Lists marked "A" and Discount Sheet marked "C".

In the event of strikes, combinations of working people, accidents to machinery, floods, ice, fires, wars, civil commotion, epidemics, or any other causes beyond the control of either of the parties to this agreement, by reason of which the obligations entered into are interrupted or rendered impossible, the conditions of this agreement may and shall be suspended during such reasonable time as may be required by either party to resume them.

It is further agreed and understood that this agreement shall also be binding on and enforceable against the successors and assigns of the parties hereto.

In Witness Whereof the United Shoe Machinery Company has caused this contract to be executed and its corporate seal to be hereto affixed by Edward P. Hurd, its Assistant Treasurer, and the American Glue Company has caused this contract to be executed and its corporate seal to be hereto affixed by D. Webster Dow, its Second Vice-President, in duplicate, the day and year first above written.

[SEAL] UNITED SHOE MACHINERY COMPANY
Edwd. P. Hurd, Assistant Treasurer.

[SEAL] AMERICAN GLUE CO.
By D. Webster Dow, 2nd V. Pres.

A.

Two printed price lists of the American Glue Company, November 1, 1903.

Identified by initials E. P. H. and D. W. D.

DISCOUNT SHEET "B"

Ream, Roll and Webster Shape Garnet Paper,	50%
Moulded and Flat Strips Garnet Paper, Garnet Cloth Paper, Garnet Cloth and Emery Cloth,	40%
Flint Cloth Paper, Moulded,	25%
Garnet Cloth,	45%
Combination Garnet Cloth Paper,	45%
Emery Cloth, Domestic manufacture,	65%
" " Wellington Mills,	50%
Ream, Roll, and Webster Shape Alundum Paper,	30%
Moulded and Flat Strips Alundum Paper, Cloth Paper, and Cloth,	30%
Alundum Cloth in Wide Rolls and Reams,	50%
Alundum Cloth Paper, rolls and reams,	30%
Hercules Belts,	35%

E. P. H.
D. W. D.

DISCOUNT SHEET "C"

Ream, Roll, and Webster Shape Garnet Paper,	50%
Moulded and Flat Strips Garnet Paper, Garnet Cloth Paper, Garnet Cloth and Emery Cloth,	50%
Flint Cloth Paper, Moulded,	40%
Garnet Cloth, Wide Rolls and Reams,	60 & 5%
Combination Cloth Paper, Wide Rolls,	45%
Emery Cloth, Domestic manufacture,	65%
" " Wellington Mills,	50%
Ream, Roll and Webster Shape Alundum Paper,	37½%
Moulded and Flat Strips Alundum Paper, Cloth Paper and Cloth,	37½%
Alundum Cloth in wide rolls and reams,	60%
Alundum Cloth Paper, " " "	37½%
Hercules Belts,	35%

E. P. H.
D. W. D.

It is hereby mutually understood and agreed that all orders within the terms of the foregoing contract between the American Company and the United Company, dated May 2, 1904, for use in the United States and Dominion of Canada, placed with the United Company after November 6, 1906, shall be invoiced by the American Company on Price Lists "A" attached to said contract, and shall be subject to the Discount Sheet "BB" hereto attached, instead of the Discount Sheets "B" & "C" attached to said contract.

In Witness Whereof the United Shoe Machinery Company has caused this agreement to be executed and its corporate seal to be hereto affixed by Edwd. P. Hurd, its Assistant Treasurer, and the American Glue Company has caused this agreement to be executed and its corporate seal to be hereto affixed by J. P. Lyman, its President, in duplicate.

United Shoe Machinery Company
Edward P. Hurd, Assistant Treasurer.
American Glue Company,
J. P. Lyman, President.

DISCOUNT SHEET "BB".
Superseding Discount Sheets "B" & "C".

Flat Goods.

Garnet Comb. & F. C. P.,	47½%
" Roll, Ream & Webster Paper,	42½%
" Cloth,	42½%
Emery Cloth,	60 & 5%
Alundum Cloth,	50%
" Roll, Ream & Webster Paper,	25%
" Combination,	25%

Moulded Goods.

(–Moulded Garnet Paper,–)	35%
(" C. P. & Cloth,)	35%
" Emery Cloth,	35%
" F. C. P.,	20%
" Alundum Cloth or Paper,	25%
" " Combination,	25%

Miscellaneous Goods.

Churchill Discs, 3/0 to 1½	$1.50 per C
Pin Wheels,	.22 " "
Emerson Pin Wheels,	.12 " "
Belts,	30%
Cones,	30%
Heel Breast Paper,	.36 " "
" " C. P.,	.95 " "
" " Cloth,	.95 " "
" " Emery Cloth,	.95 " "

PLAINTIFF'S EXHIBIT 111.

[Put in Evidence, page 558.]

Indenture made this First day of January, 1904, by and between Zachary Taylor French, of Boston, in the Commonwealth of Massachusetts, as party of the first part: United Shoe Machinery Company, a corporation organized and existing under the laws of the State of Maine, formerly named Goodyear Shoe Machinery Company, (hereinafter called the Maine Company) party hereto of the second part: and United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey (hereinafter called the New Jersey Company) party hereto of the third part.

Whereas, by a certain written agreement, dated the 19th day of December 1895, made between said French and one William C. Meyer, as parties of the first part, and the Maine Company (under the name of Goodyear Shoe Machinery Company), as party of the second part, recorded November 27, 1899 in the Patent Office of the United States of America, in Liber F. 60, Page 436 of Transfers of Patents, the said French and the said Meyer did grant to the Maine Company the exclusive right and license to make, use and sell certain inventions described and claimed in and by certain Letters Patent therein specifically mentioned and which should be patented in and by such Letters Patent as should be granted to them or either of them upon certain pending applications therein men-

tioned, which agreement is hereinafter referred to as the "Rounding and Channeling Machine Agreement," and

Whereas, by another agreement dated the 19th day of December 1895, hereinafter referred to as the "Shanking and Feather Edging Machine Agreement", made by and between the same parties as were parties to said "Rounding and Channeling Machine Agreement", recorded November 27, 1899 in the Patent Office of the United States of America, in Liber F. 60, Page 442, said French and Meyer did grant to said Maine Company the exclusive right and license to make, use and sell certain inventions described and claimed in and by certain Letters Patent referred to in said "Shanking and Feather Edging Machine Agreement", and which should be patented in and by such letters patent as should be granted to said French and Meyer or either of them, upon certain pending applications referred to in said last mentioned agreement; and

Whereas, by a certain agreement dated the 2nd day of January 1899, hereinafter referred to as the "Agreement of January 2nd, 1899", made by and between the same parties as were parties to said "Rounding and Channeling Machine Agreement" recorded November 27, 1899 in the Patent Office of the United States of America in Liber F. 60, Page 448, of Transfers of Patents, the said French and Meyer did grant and agree to grant to said Maine Company the sole and exclusive license to make, use and sell certain inventions described and claimed in and by certain Letters Patent referred to in said "Agreement of January 2nd, 1899", and in such letters patent as should be granted to them or either of them upon certain pending applications for letters patent referred to in said last mentioned agreement; said three agreements being also referred to hereinafter as the "License Agreements"; and

Whereas, all the royalties or license fees due and payable to said French from the Maine Company pursuant to said three License Agreements which are payable in respect to machines sold, leased or otherwise disposed of by the Maine Company prior to the date of this instrument, have been paid to said French, and all the covenants and agreements for the benefit of said French incumbent

upon the said Maine Company have been fully performed by the Maine Company; and

Whereas, the Maine Company desires to purchase, and the said French is willing to sell and convey to the Maine Company the entire right, title and interest of said French in and to all the inventions, Letters Patent and applications for Letters Patent mentioned or referred to in or contemplated by said three License Agreements, and to be forever released and discharged after the date of this instrument from the payment to said French or his executors or administrators of royalties or license fees, or other sums, pursuant to said three License Agreements, or either of them; and

Whereas, the New Jersey Company desires to purchase, and the said French is willing to sell and convey to the New Jersey Company, the entire right, title and interest of said French in and to all other inventions or improvements in or relating to machines, machinery, tools, appliances, articles, and methods to be used or adapted for use in the manufacture of footwear, footwear findings, leather articles or for leather working, which said French has heretofore invented, discovered or acquired, or which he shall hereafter invent, discover or acquire during the period of ten years from the 1st day of January, 1904, and in and to all letters patent, both of the United States of America, and of other countries, which have been or shall be hereafter obtained for such inventions or improvements or any of them; and

Whereas, the Letters Patent and applications for Letters Patent mentioned or referred to in said three License Agreements so far as now known to the parties hereto are described in the "Schedule of Patents and Applications for Patents" hereinafter contained:

Now, therefore, the parties hereto agree as follows: —

1. The said French in consideration of the sum of One Dollar and other valuable consideration to him paid contemporaneously with the execution and delivery of this Indenture, the receipt of which is hereby acknowledged, has sold, assigned and conveyed and does hereby sell, assign and convey to the Maine Company all his right, title and interest in and to the several Letters Patent and Appli-

cations for Letters Patent described or referred to in the "Schedule of Patents and Applications for Patents", herein contained, and all his right, title and interest in and to the several inventions therein described and claimed; also all his right, title and interest in and to all inventions or improvements mentioned, referred to or contemplated by said three License Agreements, which are not described or referred to in said "Schedule of Patents and Applications for Patents", and all his right, title and interest in and to such Letters Patent, both of the United States of America and of other countries, as have been or shall be hereafter obtained for such inventions or improvements or either or any of them.

To Have and to Hold all such inventions, improvements and letters patent to the Maine Company, and its successors and assigns to the full end of the respective terms of such letters patent as have been or shall be granted for such inventions or improvements, or either or any of them and to the full end of any and all reissued or extended terms thereof.

2. The said French for the consideration aforesaid, which he acknowledges has been paid to and is received by him in full satisfaction for all royalties, license fees and other sums provided to be paid to him in and by said three License Agreements for inventions or improvements made and for his services rendered prior and up to the date of this instrument, hereby forever releases and discharges the Maine Company from all its covenants and agreements in said three License Agreements contained, and acknowledges that it has fully performed all and every its said covenants and agreements.

3. The said French, for himself and not for said Meyer, for the aforesaid consideration, hereby agrees that said License Agreements shall hereafter be unrestrictedly assignable by the Maine Company, and that all the beneficial interest of the Maine Company created by said three License Agreements shall hereafter be construed to be for the benefit of the Maine Company and its successors and assigns; and that, if requested so to do, he will assent in writing to any and all such assignments which shall be made from time to time by the Maine Company, its successors or assigns.

4. The said French, for the aforesaid consideration, hereby authorizes and requests the Commissioner of Patents of the United States of America to issue from time to time to the Maine Company, its successors and assigns, as the assignee of his entire interest therein, all such Letters Patent of the United States of America as shall hereafter be allowed upon pending applications for letters patent mentioned or referred to in the "Schedule of Patents and Applications for Patents" hereinafter contained, or upon any and all such applications made in renewal thereof or as divisional applications. And agrees with the Maine Company from time to time hereafter, upon the request, but at the expense of the Maine Company, to do such acts and execute and make oath to and deliver all such deeds of assignment, powers of attorney, or other written instruments as shall, in the opinion of the counsel of said Maine Company, be necessary or convenient to vest the legal title to his entire interest in and to such inventions and improvements hereby sold and conveyed, and in and to all Letters Patent therefor both of the United States of America and of foreign countries, in said Maine Company, or in such nominee or nominees as it shall designate to take title to the same, or either or any thereof; and that he will upon the request, but at the expense of the Maine Company, from time to time hereafter do whatever may be deemed necessary and proper by the counsel of the Maine Company to secure the grant of letters patent for such inventions or improvements and reissues or extensions thereof and to enable or assist the Maine Company to maintain and defend its title to the inventions, improvements and letters patent hereby sold and conveyed or agreed to be sold and conveyed to it.

5. The said French, in consideration of the agreement of the New Jersey Company hereinafter contained, to pay to him, his executors and administrators, the sum of Fifteen Thousand Dollars ($15,000.) in ten (10) annual payments of Fifteen Hundred Dollars ($1500.) each, payable on the last day of each calendar year for the next ten (10) years, hereby sells, assigns and conveys to the New Jersey Company, its successors and assigns all his right, title and interest in and to all letters patent for inventions or

improvements in or relating to machines, machinery, tools, appliances, articles and methods to be used in the manufacture of footwear, footwear findings, leather articles or for leather working (except such letters patent as he has agreed to sell and convey to the Maine Company) and all his right, title and interest in and to all such inventions or improvements, whether made by himself or by or with another or others, which he has invented, discovered or acquired but not patented (except such inventions and improvements as he has agreed to sell and convey to the Maine Company) or which he shall hereafter invent or discover or acquire during the period of ten (10) years beginning the first day of January 1904 and ending the thirty-first day of December 1913; and agrees that he will promptly communicate to the President, General Manager, or counsel of the New Jersey Company, all such inventions or improvements hereby sold and conveyed to the New Jersey Company, or which he shall make, discover or acquire during said period of ten (10) years, whether the same have been or shall be made by himself or by or with another or others; and whenever so requested to do, will disclose or explain all such inventions or improvements hereby sold and conveyed or agreed to be sold and conveyed to the New Jersey Company fully and completely to the New Jersey Company, or its President, General Manager or counsel, and that he will upon the request but at the expense of said New Jersey Company, execute and make oath to all such applications, specifications, powers of attorney or other written instruments in such form as the New Jersey Company, or its President, General Manager or counsel shall deem proper to obtain the grant of letters patent of the United States of America, and of foreign countries and reissues and extensions thereof for such inventions and improvements hereby sold and conveyed or agreed to be sold and conveyed to the New Jersey Company; and that he will, upon the request, but at the expense of the New Jersey Company, do such acts and execute and make oath to and deliver all such deeds of assignment, powers of attorney or other written instruments as shall, in the opinion of the counsel of said New Jersey Company be necessary or convenient to vest the legal title to his entire interest

in and to such inventions and improvements hereby sold and conveyed or agreed to be sold and conveyed to the New Jersey Company and in and to all Letters Patent therefor, both of the United States of America and foreign countries in said New Jersey Company or in such nominee or nominees as it shall designate to take title to the same, or either or any thereof, and that he will upon the request, but at the expense of the said New Jersey Company from time to time hereafter do whatever may be deemed necessary and proper by the counsel of the New Jersey Company to enable or assist the New Jersey Company to maintain or defend its title to such inventions, improvements and Letters Patent hereby sold and conveyed or agreed to be sold and conveyed to the New Jersey Company.

To Have and to Hold all such inventions, improvements and letters patent to the New Jersey Company and its successors and assigns to the full end of the respective terms of such letters patent as have been or shall be granted for such inventions or improvements or either or any of them, and to the full end of any and all reissued or extended terms thereof.

6. And the said French further agrees with the New Jersey Company, that during the period of ten years beginning the first day of January 1904 and ending on the 31st day of December, 1913, he will not, except by the request of, or for the benefit of the New Jersey Company or the Maine Company, either by himself or jointly with another or others, or directly or indirectly, or as a stockholder, agent, servant or employee, become interested in or engage in inventing, making, selling or developing any machine, machinery, appliance, device or method designed or adapted to be employed in the manufacture of footwear, or in the manipulation of leather or the manufacture of footwear findings, in competition with the New Jersey Company or corporations controlled by it, and that he will not during said period, except by the request of the New Jersey Company, directly or indirectly, aid, assist or encourage anyone to engage in the manufacture of or to deal in machines, machinery, tools, appliances or articles to be used or adapted to be used in the manufacture of footwear, footwear findings, leather

articles or for leather working, in competition with the New Jersey Company or corporations controlled by it, and that he will not infringe or aid or assist anyone to infringe any trade marks, trade names or Letters Patent now owned or which shall hereafter be owned by said New Jersey Company or by corporations controlled by it.

7. The New Jersey Company, in consideration of the herein contained agreements with it on the part of said French, agrees to pay to him, his executors and administrators, the sum of Fifteen Thousand Dollars ($15,000) in ten (10) annual payments of Fifteen Hundred Dollars ($1500) each, during the ten (10) years next ensuing, the first of said payments to be made on the thirty-first day of December 1904, and the last of said payments on the thirty-first day of December 1913.

8. The Maine Company in consideration of one Dollar and other valuable consideration to it paid by the other parties hereto, the receipt of which is hereby acknowledged, hereby assents to this agreement.

9. The covenants and agreements herein contained which are incumbent upon or for the benefit of the Maine Company or the New Jersey Company shall be construed to be incumbent upon and for the benefit of their respective successors, and those which are incumbent upon or for the benefit of said French shall be construed to be incumbent upon and for the benefit of his executors and administrators.

10. The Maine Company and the New Jersey Company severally agree that the payments to be made by them respectively to the said French at the time of the execution and delivery of this Indenture as provided in paragraph 1 hereof, and the ten annual payments of fifteen hundred dollars ($1500) each, referred to in paragraphs 5 and 7 hereof shall be net to the said French without reduction or abatement upon any account, and, in consideration thereof, the said French hereby releases and discharges the Maine Company and the New Jersey Company from any and all claims and demands which he has or may have against said Companies or either of them arising out of any and all matters or things existing

or accruing prior to the date of this Indenture; and the Maine Company and the New Jersey Company in consideration of the covenants and agreements of said French herein contained hereby release and discharge the said French from any and all claims and demands which they or either of them respectively have against him by reason of any and all matters or things existing or accruing prior to the date of this Indenture, except claims of the Maine Company or the New Jersey Company to such right, title and interest in inventions, applications for letters patent and letters patent as the said French has sold and conveyed or agreed to sell and convey to the Maine Company or to the New Jersey Company.

11. The following is the "Schedule of Patents and Applications for Patents" hereinbefore referred to:

LETTERS PATENT OF THE UNITED STATES OF AMERICA.

Number	Date	Invention
No. 500,060	June 20, 1893	Channeling Machine
No. 505,598	Sept. 26, 1893	Welt Making Machine
No. 510,127	Dec. 5, 1893	Sole Gouging Machine
No. 529,900	Nov. 27, 1894	Channeling Machine
No. 540,616	June 4, 1895	Shanking & Feather Edging Mch.
No. 546,851	Sept. 24, 1895	Machine for Trimming Edges of Welts and Uppers
No. 546,852	Sept. 24, 1895	Rounding & Channeling Mch.
No. 558,379	Apr. 14, 1896	Welt Seam Trimming Machine
No. 558,380	Apr. 14, 1896	Do.
No. 558,381	Apr. 14, 1896	Do.
No. 558,382	Apr. 14, 1896	Do.
No. 563,471	July 7, 1896	Sole Sewing Machine
No. 563,472	July 7, 1896	Do.
No. 590,381	Sept. 28, 1897	Welt Seam Trimming Machine
No. 598,727	Feb. 8, 1898	Welt Beating Machine
No. 599,602	Feb. 22, 1898	Rounder
No. 600,883	Mar. 22, 1898	Rounder
No. 630,338	Aug. 8, 1899	Rounder
No. 630,339	Aug. 8, 1899	Rounder
No. 705,062	July 22, 1902	Sewing Machine

No. 705,063 July 22, 1902 Sewing Machine
No. 732,729 July 7, 1903 Sewing Machine

Pending Applications

Serial No. 698,463, filed Dec. 6, 1898, Sewing Machine
Serial No. 8,186, filed Mar. 10, 1900, Sewing Machine

FOREIGN PATENTS.

	Number	Date
Belgium	No. 83,338	Sept. 20, 1888
	No. 83,339	Sept. 20, 1888
	No. 91,070	June 28, 1890
	No. 115,900	June 4, 1895
France	No. 206,661	June 27, 1890
	No. 230,969	June 20, 1893
	No. 247,885	June 4, 1895
	No. 254,007	Feb. 15, 1896
	No. 255,544	Apr. 14, 1896
	No. 257,888	July 7, 1896
	No. 275,254	Feb. 22, 1898
	No. 308,443	Feb. 25, 1901
Germany	No. 87,362	June 5, 1895
	No. 91,932,	April 14, 1896
	No. 94,776,	Feb. 16, 1896
	No. 104,556	July 7, 1896
	No. 110,994,	Feb. 22, 1898
Great Britain	No. 10,960,	June 4, 1895
	No. 12,069,	June 20, 1893
	No. 3,497,	February 15, 1896
	No. 7,874,	April 14, 1896
	No. 15,043,	July 7, 1896
	No. 4,426,	February 22, 1898
	No. 6,908,	April 12, 1900
Russia	No. 3,621,	March 11, 1894
Canada	No. 44,386,	October 4, 1893
	No. 44,384,	October 4, 1893
	No. 51,863,	April 7, 1896

	No. 53,280,	August	19, 1896
	No. 55,826,	May	6, 1897
	No. 59,531,	April	5, 1898
	No. 79,894,	March	24, 1903
New South Wales	No. 11,066,	May	31, 1901
New Zealand	No. 13,688,	June	6, 1901
South Australia	No. 5,274,	May	31, 1901
Victoria	No. 18,187,	May	29, 1901

Pending Foreign Applications

Germany	No. F. 13,443,	October	29, 1900
	No. F. 14,051,	April	17, 1901
	No. F. 14,052,	April	17, 1901

In Witness Whereof the said Zachary Taylor French has set his hand and seal hereto, and the Maine Company has caused its corporate seal to be hereto affixed and these presents to be signed in its name by Edwd. P. Hurd its Asst. Tres. and the New Jersey Company has caused its corporate seal to be hereto affixed and these presents to be signed in its name by Sidney W. Winslow, its President, the day and year first above mentioned.

ZACHARY T. FRENCH [SEAL]
UNITED SHOE MACHINERY COMPANY
OF MAINE [SEAL]
By Edwd. P. Hurd Asst. Tres.
UNITED SHOE MACHINERY COMPANY
OF NEW JERSEY [SEAL]
By S. W. Winslow President

PLAINTIFF'S EXHIBIT 112.

[Put in Evidence, page 559.]

Know all Men by these Presents:

That we, Herbert L. Kimball and Irving A. Hadley, both of Lynn, Massachusetts, heretofore engaged as copartners at said Lynn and elsewhere in the business of manufacturing and dealing in needles, awls, drivers, and similar articles under the firm name and style of Kimball & Hadley, in consideration of the sum of four thousand, seven hundred and fifty dollars ($4750.00) in cash to us paid by the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, having a place of business in Boston, Massachusetts, the receipt of which we hereby acknowledge, have sold and do by these presents sell, assign, transfer, set over and deliver to the said United Shoe Machinery Company, its successors and assigns, the said business heretofore carried on by us, together with the good-will thereof, and all business, good-will, property, interests and rights of every name and nature had by us or by either of us or which we or either of us is in anywise, by agreement or otherwise, entitled to acquire or take over relating to needles, awls, drivers, and like articles, including herein all merchandise, needles, awls, drivers, supplies, materials manufactured, unmanufactured or in process of manufacture, machines, machinery, tools, fixtures, furniture and equipment, the good-will of all such business, and all trade names, marks and brands, and all other property, interests and rights, benefits and advantages of whatsoever name or nature relating thereto; Excepting, However, that this assignment does not include any cash on hand or any bills, notes and accounts receivable.

To Have and to Hold all of the said business, good-will, property, interests and rights to the said United Shoe Machinery Company, its successors and assigns, to its and their own use and behoof absolutely.

And for the same consideration we and each of us do hereby covenant with and warrant to the said United Shoe Machinery Company, its successors and assigns, that the property hereby

conveyed includes all of the property set forth in the schedule hereto annexed and marked "Schedule A"; that we are the absolute owners of all the business, good-will, property, interests and rights hereby conveyed or expressed or intended to be conveyed; that the same are free from any and all incumbrances; that we have good right to sell and assign the same as aforesaid, and will warrant and defend the same against the lawful claims and demands of all persons.

And for the same consideration we and each of us do hereby covenant and agree to and with the said United Shoe Machinery Company, its successors and assigns, that at any and all times hereafter we and each of us will without further consideration execute and cause to be executed any and all further assignments or other instruments, and will perform and cause to be performed any and all further acts necessary or desired by the said United Shoe Machinery Company, its successors or assigns, to fully and completely vest and confirm in the said United Shoe Machinery Company, its successors and assigns, the full and absolute title in and to all the business, good-will, property, interests and rights, benefits and advantages hereby conveyed or expressed or intended to be conveyed, and to enable the said United Shoe Machinery Company, its successors and assigns, to secure, protect, and enjoy the full benefits and advantages thereof.

And for the same consideration we and each of us do hereby covenant and agree to and with the said United Shoe Machinery Company, its successors and assigns, that we will not nor will either of us at any time within fifteen (15) years from the date of these presents directly or indirectly, individually or in combination with others, as manager, agent or employee, or as officer or stockholder in a corporation, or otherwise, in any manner, enter into or be engaged or interested in or financially or otherwise assist any person, firm or corporation in entering into, developing or carrying on any business which consists in whole or in part of or relates to manufacturing or dealing in needles, awls or drivers.

This sale shall take effect as of the close of business on the tenth day of June, A. D. 1904.

In Witness Whereof we, the said Herbert L. Kimball and Irving A. Hadley have hereunto set our respective hands and seals, and have signed these presents in the name of the said partnership this eleventh day of June, A. D. 1904.

KIMBALL & HADLEY [SEAL]
By Herbert L. Kimball
HERBERT L. KIMBALL [SEAL]
IRVING A. HADLEY [SEAL]

SCHEDULE A.

This schedule consists of an inventory made Monday, June 13, 1904, by Mr. Charles W. Martin and the same will be identified by signature of the parties and attached to this instrument later.

H & H

PLAINTIFF'S EXHIBIT 113.

[Put in Evidence, page 362.]

Indenture made this twenty-eighth day of June A. D. 1904, by and between William B. Arnold of North Abington, Massachusetts, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey (hereinafter called the "United Company")

Whereas the said Arnold had heretofore been engaged in the business of manufacturing and dealing in cementing machines and devices, and is an officer of the Arnold Machine & Supply Company, a corporation organized and existing under the laws of the State of Maine (hereinafter called the "Arnold Company") likewise engaged in the business of manufacturing and dealing in cementing machines and devices, and by reason of his ownership of capital stock of the said Arnold Company controls the action of said Arnold Company; and

Whereas the United Company desires to acquire all the business, property and interests of the said Arnold and of the said Arnold Company relating to cementing machinery or devices, and the said Arnold desires to sell and convey and to cause the same to be sold and conveyed to the said United Company as hereinafter provided;

Now, therefore, this instrument Witnesseth:

That the said Arnold, in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to him paid by the said United Company, the receipt of which the said Arnold hereby acknowledges, has sold and does hereby sell, assign, transfer, set over and deliver to the said United Company, its successors and assigns, all business, good-will, property, interests and rights of every name and nature had by the said Arnold or which he is in anywise entitled to acquire or take over relating to cementing machinery or devices or to the manufacture or sale thereof.

Without prejudice to the generality of the foregoing assignment the said Arnold hereby sells, assigns, transfers and sets over to the said United Company, its successors and assigns, all inventions, improvements and Letters Patent and all rights in, to or under inventions, improvements or Letters Patent now had by him or which he has any right by agreement or otherwise to acquire or take over, or which he may at any time hereafter within fifteen (15) years from the date of these presents make, either alone or jointly with others, own, control or have any right by agreement or otherwise to acquire or take over relating to cementing machinery or devices.

To Have and to Hold all of the business, good-will, property, interests and rights hereby conveyed or agreed to be conveyed to the said United Company, its successors and assigns, to its and their own use and behoof absolutely.

And for the same consideration the said Arnold does hereby covenant and agree to and with the said United Company, its successors and assigns, that at any and all times hereafter upon making or acquiring or obtaining any right to acquire or take over within fifteen (15) years from the date of these presents any invention, improvement or Letters Patent, or any interest or right therein, thereunder or thereto relating to cementing machinery or devices he will forthwith disclose the same to the said United Company, its successors and assigns, its or their attorneys and patent solicitors, and will repeat such disclosures when and as often as requested, and that at any and all times upon request he will execute and

cause to be executed any and all applications, assignments and other instruments, and will perform and cause to be performed any and all acts necessary or desired by the said United Company, its successors and assigns, to enable the said United Company, its successors or assigns, to apply for and procure in the name of the said United Company, its successors or assigns, or of such persons or corporations as the said United Company, its successors or assigns, may designate, Letters Patent of the United States and of any and all foreign countries where the said United Company, its successors or assigns, may desire to obtain Letters Patent therefor, covering in such form as the said United Company, its successors or assigns, may desire, the inventions or improvements, or any of them, hereby conveyed or agreed to be conveyed, and to fully and completely vest and confirm in and to enable the said United Company, its successors and assigns, to secure, protect and enjoy the full benefits and advantages of said inventions, improvements, Letters Patent, property, interests and rights hereby conveyed or intended to be conveyed — all without further consideration than herein expressed, but the expense of obtaining Letters Patent as aforesaid to be borne by the said United Company, its successors or assigns.

And for the same consideration the said Arnold does hereby covenant and agree to and with the said United Company, its successors and assigns, that he will not at any time within fifteen (15) years from the date of these presents, directly or indirectly, individually or in combination with others, as manager, agent or employee or as officer or stockholder in a corporation, or otherwise, enter into or be engaged in, or financially or otherwise assist any person, firm or corporation in entering into, developing or carrying on any business which consists in whole or in part of or relates to manufacturing or dealing in cementing machinery or devices, or in developing or exploiting any invention (excepting the inventions assigned to the United Company, its successors and assigns, as aforesaid) relating to such machinery or devices.

And for the same consideration the said Arnold does hereby covenant and agree to and with the said United Company, its suc-

cessors and assigns, that he will cause all necessary actions to be taken and papers to be executed to fully and completely vest in the said United Company, its successors and assigns, all business, good-will, property, interests and rights of every name and nature of the said Arnold Company relating or pertaining in any way to cementing machinery or devices, including in such assignment from the Arnold Company, without prejudice to the generality thereof, all inventions, improvements, Letters Patent and interests and rights therein, thereunder or thereto relating to cementing machinery or devices now or hereafter owned by the said Arnold Company or which the said Arnold Company has now or may hereafter have any right by agreement or otherwise to acquire or take over, together also with a covenant on the part of the said Arnold Company that it will not hereafter engage in the cementing machine business.

The said Arnold hereby covenants with and warrants to the said United Company, its successors and assigns, that the said Arnold Company is the absolute owner of the inventions and improvements covered by Letters Patent of the United States, No. 728,793, dated May 19, 1903, granted to George F. Dunn, Assignor of one-half to William B. Arnold, for an Innersole-Cement Machine, and of said Letters Patent; and of the inventions shown and described in a certain pending application for Letters Patent of the United States, filed July 16, 1903, by one George F. Dunn, for Improvements in Cement-Applying Machines, said application being Serial Number 165,743, and of said pending application; that no prior grant of or license to use the inventions or any of them covered by said Letters Patent or included in said application has been made, and that the same are in all respects free from incumbrances; that the said Arnold Company has good right to assign said inventions, said Letters Patent, and said application, and that the said Arnold will cause a clear and perfect title to said inventions, Letters Patent, application, and any Letters Patent which may be issued upon said application or for said inventions to be vested in the said United Company, its successors and assigns; and (without pre-

judice to the generality of said assignment) that the other property hereby conveyed or agreed to be conveyed includes the following:

Three (3) complete cementing machines (assembled and ready to put out)

Patterns
Jigs
Tools

The said Arnold hereby states that the following enumerated machines embodying the novel roll (a^3) of said Letters Patent of the United States, No. 728,793, have heretofore been put out by by the said Arnold or by the said Arnold Company, viz:

M. N. Arnold & Company, North Abington, Mass.	1 machine
W. L. Douglas Company, Brockton, Mass.	2 machines
Commonwealth Shoe & Leather Company, Whitman, Mass.	1 machine
Commonwealth Shoe & Leather Company, Gardner, Mass.	1 machine
L. A. Crossett, North Abington, Mass.	1 machine
Leonard & Barrows, Middleboro, Mass.	1 machine

and covenants with and warrants to the said United Company, its successors and assigns, that no other machines embodying the inventions of said Letters Patent, No. 728,793, or of said application Serial Number 165,743, or any of them, have been put out by or under the authority of the said Arnold or the said Arnold Company.

The United Company hereby covenants to and with the said Arnold that the United Company will pay to the said Arnold immediately after the execution of these presents the sum of five hundred dollars ($500.00) in cash.

The United Company further covenants and agrees to and with the said Arnold that hereafter during the continuance in force as a good and valid Letters Patent of said Letters Patent of the United States, No. 728,793, or of such Letters Patent of the United States, if any, as may issue upon said application Serial Number 165,743, the United Company will pay to the said Arnold as royalty under such Letters Patent the sum of fifteen dollars ($15.00) for each

innersole-cementing machine, for cementing so-called "Gem Insoles," — embodying the invention patented in Letters Patent of the United States of America, dated January 19, 1897, No. 575,460, — sold by the United Company for use within the United States of America embodying any one or more inventions covered and secured by any one or more claims then existing and valid of said Letters Patent, No. 728,793, or of such Letters Patent of the United States as may issue as aforesaid upon said application Serial Number 165,743, and will pay to the said Arnold the sum of ten dollars ($10.00) for each and every such cementing machine embodying any one or more such inventions of said Letters Patent, No. 728,793, or such Letters Patent of the United States as may issue as aforesaid upon said application Serial Number 165,743 sold by the United Company for use within the United States, other than the machines for cementing so-called "Gem Insoles" above provided for.

The United Company shall keep true and accurate account during the continuance in force of said Letters Patent of all cementing machines sold by it on account of which royalty is payable to the said Arnold as aforesaid, and shall semi-annually on or before the last day of August and February in each year render to the said Arnold a statement showing the number of machines so sold by it during the six (6) calendar months ending with the last day of June and December next preceding such accounting, and shall accompany such accounting by payment to the said Arnold of the amount of the royalty shown by such accounting to be due.

In Witness Whereof the said William B. Arnold has hereunto set his hand and seal, and the said United Shoe Machinery Company has caused these presents to be signed by Edwd. P. Hurd, its Assistant Treasurer, and its corporate seal to be hereto affixed the day and year first above written.

WILLIAM B. ARNOLD

UNITED SHOE MACHINERY COMPANY.

By Edward P. Hurd, Asst. Treas.

Commonwealth of Massachusetts.

County of Suffolk, ss. Boston,

On this 28th day of June A. D. 1904 before me personally appeared William B. Arnold, to me personally known, and having executed the foregoing instrument in my presence did acknowledge the same to be his free act and deed.

Harold Gregory Donham, Notary Public.

PLAINTIFF'S EXHIBIT 114.

[Put in Evidence, page 564.]

This Agreement made this 25th day of October, A. D. 1904, by and between Irving E. Booth and Quentin W. Booth (hereinafter called Booth Brothers) both of the City of Rochester, in the State of New York, parties of the first part, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey and having a place of business at No. 205 Lincoln Street, Boston, Massachusetts, (hereinafter called the United Company) party of the second part. Witnesseth: —

Whereas said Booth Brothers, one or both, are owners of a certain invention known as a "Perforating Machine" on which there is existing at the present time Letters Patent of the United States No. 701107, dated May 27th, granted to William H. Treen.

Whereas said Booth Brothers desire to make the following assignment and enter into the agreement, hereinafter set forth, with the United Company and the United Company desire to acquire the rights hereinafter granted;

Now, Therefore, be it known that the said parties hereto for and in consideration of the sum of one dollar and other good and valuable consideration by each to the other in hand paid, the receipt of which is hereby acknowledged, do hereby agree as follows:—

1. That said Booth Brothers agree to deliver to the said United Company an assignment of a valid title to the patent covering the said machine and also the experimental machine and all tools, patterns, drawings, etc., used in the manufacture and for the construction of this machine and upon such delivery the United Com-

pany agrees to pay Booth Brothers the sum of twenty-four hundred dollars ($2400.00) and the United Company agree to buy Booth Brothers the sum of fifteen dollars ($15.00) on each Perforating machine sold in the United States embodying said patent or patents to be issued on the present construction of the said machine; and the said United Company agree to pay Booth Brothers the sum of ten dollars ($10.00) on each Perforating Machine sold embodying the patent or patents to be issued on the present construction of the machine in Canada or in other foreign countries not included in the contract between Booth Brothers and the United Company, dated the 17th day of September, 1904, with regard to foreign patents on this same machine.

2. The United Company hereby agree that for the term of four years from this date the royalty on the output of the said machines shall amount to the sum of seven hundred fifty dollars ($750.00) per annum and if at the end of the four years from date the total amount of the royalties agreed upon do not amount to the sum of three thousand dollars ($3,000.00) (the amount which will have been paid under the guarantee), the United Company may continue to manufacture and sell without paying further royalties until the total amount of royalties beginning this date amount to the sum of three thousand dollars ($3,000.00), from which time the royalties shall again be paid as in paragraph 1. Said royalties shall be paid on or before February fifteenth and August fifteenth of each year for the period of six months preceding January first and July first, respectively, and shall continue until the total amount paid Booth Brothers, including the twenty-four hundred dollars ($2400.00) aforesaid, shall amount to the total sum of ten thousand dollars ($10,000.00), after which no royalties shall be paid and all interest of the said Booth Brothers in the said inventions shall cease.

3. The United Company agree to take over the experimental machine, tools, patterns, assignments, etc., as soon as they conveniently can and not to exceed two months from this date, and to commence the manufacture and sale of the said invention and machine at the earliest practical date. Until such taking over by the United Company, Booth Brothers may finish up as far as possible

the machines they have in stock and may make such sales as come to them in the regular course of their business and on any sales made by them prior to the time of the taking over of the business by the United Company the said Booth Brothers are to have whatever profit there may be in the business, but Booth Brothers agree to make delivery at any time upon request of the United Company and, as to any completed Perforating Machines or parts of machines which are salable and new, the United Company agree to take same paying the cost of the manufacture of same in addition to the specified amount of twenty-four hundred dollars ($2400.00).

4. If at any time within six months from the date of this contract the United Company elect to make an outright purchase of all the right, title and interest of the said Booth Brothers of in and to the said invention and patent, the United Company may do so upon the payment of fifty-five hundred dollars ($5,500.00), less the amount of twenty-four hundred dollars ($2,400.00), aforesaid, and the amount of five hundred dollars ($500.00) paid them on account of said contract made September 17th, 1904, provided said five hundred dollars ($500.00) has been paid, but if the United Company exercise this option of purchase it is further agreed that the United Company, if able to obtain Letters Patent of the United States covering the present construction of the Perforating Machine not covered by the Treen Patent, shall upon the granting of said United States patent or patents make further payment to the said Booth Brothers of the sum of twenty-five hundred dollars ($2,500.00).

5. It is further agreed that the United Company shall apply for Letters Patent in the United States, and in such other countries as it may elect, to cover and protect the machine as now constructed and which ideas are not already covered by the Treen Patent, which patents are to be taken out at the expense of the United Company; and said Booth Brothers agree that they and each of them will execute and cause to be executed any and all assignments, applications for Letters Patent, and other instruments, and will perform and cause to be performed any and all acts which may be necessary or desired by the United Company to enable the United Company to

apply for and obtain in its name Letters Patent, as aforesaid, in such form as the United Company may desire for delivering the complete title to the United Company of said invention and patent.

6. It is further agreed that if during the term the United Company are selling the Perforating Machine under the royalty agreement proceedings are instituted against the United Company for infringement of patent or patents for building and selling said Perforating Machine, that the United Company shall pay all the expense of said litigation and in case an injunction should be issued against the United Company preventing it from building and selling Perforating Machines under said patent or patents the United Company shall be released from any further payments to Booth Brothers on account of said royalties or on account of the guarantee of royalties during the continuance of such injunction.

7. It is further agreed that in case an injunction is issued, as aforesaid, and the United Company are prevented from building and selling the said Perforating Machines, that Booth Brothers may have the right to purchase from the United Company the tools, patterns and drawings for the sum of twenty-four hundred dollars ($2,400.00) and refunding to the United Company all royalties which have been paid and any additional cost which the United Company may have incurred for obtaining patent or patents in the United States covering the present construction of the said machines, and the United Company also agree upon the said payments by Booth Brothers of said sums to transfer back to Booth Brothers the Treen Patent above referred to and also any patent or patents taken out in the United States by the United Company covering the present construction of the machine; it being understood that said Booth Brothers' right of purchase shall not be operative, provided the United Company has exercised its option and purchase Booth Brothers' interest outright.

8. Booth Brothers further agree that they will not, or will either of them, engage in the manufacture or sale of any Perforating Machine or become interested in any manner whatever in such machine during the terms of the patents covering the machine herein described.

9. It is further agreed that the words "United Shoe Machinery Company" and "United Company" include the successors and assigns of the said Company; and the words "Booth Brothers" include the above personal and legal representatives of the said Booth Brothers and each of them.

In Witness Whereof the said parties hereto have duly executed this instrument in duplicate the day and year first above written.

IRVING E. BOOTH [SEAL]
QUENTIN W. BOOTH [SEAL]
UNITED SHOE MACHINERY COMPANY [SEAL]
By Edward P. Hurd, Asst. Trs.

PLAINTIFF'S EXHIBIT 115.

[Put in Evidence, page 566.]

This Indenture made this first day of October, A. D. 1904, by and between Leopold J. Courteau, of Brockton, Massachusetts, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, having a place of business in Boston, Massachusetts, hereinafter called the "United Company", Witnesseth:

Whereas the said Courteau has devised a mechanism for holding the linings of shoes during the process of pasting the outer leather to the lining, which mechanism the said Courteau believes to embody certain features of novelty and invention;

And Whereas the said Courteau desires to assign such invention, if any, to the said United Company and has requested the said United Company to accept and enter into the following agreement with the said Courteau;

Now, Therefore, be it Known That I, the said Leopold J. Courteau, in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to me paid by the said United Company, the receipt of which I hereby acknowledge, have sold and do by these presents sell, assign, transfer and set over to the said United Company, its successors and assigns, the entire right, title and interest in, to and under any and all inventions

and improvements embodied in the mechanism heretofore devised by me for holding linings and any and all inventions, improvements or Letters Patent, or rights or interests therein which I have heretofore made or now have relating to machinery or devices for the same or any similar purposes.

The said Courteau hereby covenants with and warrants to the said United Company, its successors and assigns, that the inventions, interests and rights hereby conveyed, referred to in the preceding paragraph hereof are free from all prior grants; that he has good title to and right to assign the same as aforesaid; and that no licenses to make, use or vend mechanisms embodying said inventions have heretofore been granted by him, but that the same are free from all incumbrances of every nature.

It is understood and agreed that the said United Company shall as soon as convenient after the execution of these presents make an investigation of said mechanism devised by the said Courteau with a view to determining the patentability of the same and also whether or not it is practicable to build said mechanisms and put the same on the market and that the said Courteau will without further compensation than that herein provided for upon request of the said United Company give all advice and assistance in his power which may be necessary or desired for such purposes.

In case in the opinion of the patent solicitors of the United Company Letters Patent of the United States can be obtained giving any substantial protection covering invention of the said Courteau embodied in said mechanism the United Company shall apply for and if possible obtain such Letters Patent of the United States.

The United Company hereby covenants and agrees to and with the said Courteau that in case Letters Patent of the United States, as aforesaid, shall be obtained by the United Company covering invention of the said Courteau embodied in said mechanism, the United Company will pay to the said Courteau in the nature of royalty an amount equal to ten per cent. (10%) of the net selling price received by the United Company for all devices made and sold by the said United Company or under its authority within the United

States of America embodying such invention of the said Courteau covered by said Letters Patent of the United States during the continuance in force as good and valid Letters Patent the said Letters Patent of the United States obtained as aforesaid — subject, however, to the right of the United Company, as hereinafter provided, to terminate all further obligations to make payments hereunder to the said Courteau by payment to the said Courteau of the sum of one thousand dollars ($1000.00).

The United Company further covenants and agrees to and with the said Courteau that in case any Letters Patent of countries other than the United States shall be obtained by or under the authority of the said United Company covering invention of the said Courteau embodied in the mechanism hereinbefore referred to the United Company will pay or cause to be paid to the said Courteau in the nature of royalty an amount equal to ten per cent. (10%) of the net selling price received by the said United Company or by such company as the United Company may authorize to manufacture and sell such mechanism from the sale of mechanisms embodying said invention covered by such Letters Patent existing and protecting such invention in the country of manufacture and sale — subject, however, to the right to the United Company, as herein provided, to terminate all further obligations to make or cause to be made any further payments to the said Courteau. The United Company assumes no obligations to apply for such foreign Letters Patent, but will for itself determine the advisability of so doing.

In the event of any mechanisms being made and sold in respect to which the said Courteau is entitled to royalties hereunder the United Company shall render to the said Courteau an account showing the number of such devices in respect to which royalties are so due; such accounts to be rendered semi-annually on or before the fifteenth day of February and August covering all mechanisms in respect to which such royalty is payable sold during the six (6) calendar months ending with the last day of December or June next preceding each such accounting. Each such accounting shall be accompanied by payment of the amount due as royalty in respect to the mechanisms covered thereby.

In case any mechanisms embodying said invention of the said Courteau shall be sold as aforesaid the United Company shall be at liberty at all times without restriction or control by the said Courteau to fix the selling price of the same. It is provided, however, and the United Company hereby agrees that if at any time prior to the expiration, as hereinafter provided, of the obligation of the United Company to render accounts and pay royalty hereunder, the said Courteau shall request the United Company to supply to the M. A. Packard Company, a corporation now doing business in Brockton, Massachusetts, mechanisms embodying said invention of the said Courteau and the United Company is then manufacturing and putting out such mechanisms the United Company will furnish to the said M. A. Packard Company, under lease without royalty, and at a price equal to the cost of manufacture of the same to the United Company, sufficient of said mechanisms for the reasonable requirements of the said M. A. Packard Company for use in its own factory in the manufacture of boots and shoes made by said company. This provision for the sale of mechanisms to the M. A. Packard Company is to be strictly limited as herein set forth, and all further obligations of the United Company to furnish such mechanisms shall forthwith cease and determine in case at any time any attempt shall be made to transfer any such mechanisms so furnished to the M. A. Packard or if any such mechanisms shall be delivered by the said M. A. Packard Company or permitted to pass into the possession of any other person, firm or corporation. No royalty shall be paid to the said Courteau in respect to mechanisms furnished to the said M. A. Packard Company under the provisions of this paragraph.

In case at any time the United Company shall so desire it is hereby provided and agreed that the United Company may, by paying to the said Courteau the sum of one thousand dollars ($1000.00), terminate all further obligation hereunder to pay or cause to be paid to the said Courteau further royalties under the provisions hereof. Such payment, however, shall not in anywise affect the obligations of the said Courteau to sign all papers and perform all acts herein made incumbent upon him.

The said Courteau hereby sells, assigns, transfers and sets over to the said United Company, its successors or assigns, any and all inventions, improvements and Letters Patent of the United States and of any and all foreign countries, and any and all rights, title or interest in such inventions, improvements or Letters Patent which he may at any time hereafter within fifteen (15) years from the date of these presents make, own or possess, or have any right by agreement or otherwise to acquire or take over which may be an improvement upon the mechanism hereinbefore referred to devised by him, or is intended for similar purposes, or which in anywise relates to mechanisms or devices for handling or holding linings.

The said Courteau hereby covenants and agrees to and with the said United Company, its successors or assigns, that he will at any and all times hereafter make all disclosures, render all assistance, execute and cause to be executed any and all applications for Letters Patent, assignments and other instruments and will perform and cause to be performed any and all acts which may be necessary or desired by the said United Company, its successors or assigns, to fully and completely vest and confirm in the said United Company, its successors or assigns, the full and complete right, title and interest in, to and under any and all inventions, improvements, Letters Patent, interests and rights included within the foregoing terms of this instrument, and to enable the said United Company, its successors or assigns, to obtain in the name of the said United Company, or of the said Courteau, or otherwise as the said United Company may desire, Letters Patent of the United States and of any and all foreign countries where the United Company may desire to obtain Letters Patent covering in such form as the United Company may desire any or all of the inventions and improvements included herein with claims in such form as the United Company may desire, and to enable the United Company, its successors or assigns, to secure, possess, enjoy and enforce the full benefit and advantages of all said inventions, improvements, Letters Patent, interests and rights —all without further consideration than herein provided for, but the expense of applying for and obtaining Letters Patent as afore-

said, preparation of assignments and other instruments to be borne by the said United Company, its successors or assigns.

In Witness Whereof the parties hereto have duly executed this instrument in duplicate the day and year first above written.

LEOPOLD J. COURTEAU [SEAL]
UNITED SHOE MACHINERY CO. [SEAL]
By Edwd. P. Hurd, Asst. Treas.

Witness to the signature of L. J. Courteau
John S. Kent.

Commonwealth of Massachusetts.

Plymouth, ss. Brockton, Oct. 14, 1904.

Then personally appeared Leopold J. Courteau, known to me to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed. Before me,

Jas. E. Handrahan,
Notary Public.

[SEAL]

PLAINTIFF'S EXHIBIT 116.

[Put in Evidence, page 567.]

Know all Men by these Presents:

Whereas we, Oscar A. Campbell and Samuel H. Nichols, both of Brockton, in the Commonwealth of Massachusetts, copartners in business under the name and style of Brockton Supply Company are the owners of the following Letters Patent of the United States, to wit:

No. 777,795, granted December 20, 1904, to Harry Lyon, assignor to us, Oscar A. Campbell and Samuel H. Nichols, co-partners as Brockton Supply Company, for Machine for Pulling Lasting Tacks:

No. 795,631, granted July 25, 1905, to Harry Lyon, assignor to us, Oscar A. Campbell and Samuel H. Nichols, co-partners as Brockton Supply Company, for Machine for Pulling Lasting Tacks:

and of the following application for Letters Patent of the United States, to wit:—

Serial No. 263,233, filed by Harry Lyon June 1, 1905, for Improvements in Tacking Mechanisms, and

Whereas United Shoe Machinery Company, of Paterson, in the State of New Jersey, a corporation duly organized under the laws of said State of New Jersey and having a place of business at 205 Lincoln Street, Boston, in said Commonwealth of Massachusetts, hereinafter called the United Company, is desirous of acquiring the entire right, title and interest in, to and under the said Letters Patent and the said application, together with any and all inventions therein shown or described and any and all Letters Patent of the United States or of foreign countries which have been or which may be granted for said inventions, or any of them, and together with any and all reissues, renewals, or extensions of said Letters Patent, or any of them, which may be granted,

Now, Therefore, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations to each of us paid by the United Company, the receipt whereof is hereby acknowledged, we, the said Campbell and the said Nichols, do hereby jointly and severally, sell, assign, transfer and set over unto the United Company the entire right, title and interest in, to and under the said Letters Patent No. 777,795 and No. 795,631, and the said application Serial No. 263,233, together with any and all inventions therein shown or described and any and all Letters Patent of the United States or of foreign countries which have been or which may be granted for said inventions, or any of them, and together with any and all reissues, renewals, or extensions of said Letters Patent, or any of them which may be granted.

To Have, to Hold and to Enjoy the said inventions, the said application, and all the said Letters Patent, reissues, renewals and extensions to the United Company, its successors and assigns, to its and their own use and behoof forever.

And we do hereby authorize and request the Commissioner of Patents of the United States to issue any United States Letters Patent which may be granted on the said application Serial No. 263,233, or for the invention or inventions therein shown or described or on any divisional or renewal applications for any of

said inventions to said United Shoe Machinery Company, its successors and assigns, as assignee of the entire right, title and interest therein and thereto.

And for the same consideration, we the said Campbell and the said Nichols, do hereby, jointly and severally, sell, assign, transfer and set over unto the United Company, its successors and assigns, all claims and demands both at law and in equity which we, or either of us, have or may hereafter acquire on account of any infringement of said Letters Patent No. 777,795, and No. 795,631, or either of them, prior to the date hereof and we do hereby, jointly and severally, authorize and empower the United Company, its successors and assigns, to sue for and collect the same using our names if need be, to its and their own absolute use.

And for the same consideration, we, the said Campbell and the said Nichols, for ourselves and for our legal representatives, do hereby, jointly and severally, covenant and agree with the United Company, its successors and assigns, that we, have granted no license to make, use or sell any of the inventions described in said Letters Patent No. 777,795 or No. 795,631 or in said application Serial No. 263,233, that our right, title and interest therein has not been encumbered, that we have good right and title to sell and assign the same as aforesaid, and that we will not execute any instrument in conflict herewith.

And we, for ourselves and for our legal representatives, do hereby, jointly and severally, further covenant and agree with the United Company, its successors and assigns, that upon request we will and our legal representatives shall execute, divisional, renewal or reissue applications, amended specifications or rightful oaths; communicate to the United Company, its successors and assigns, any facts known to us relating to any of the inventions described in said Letters Patent No. 777,795 and No. 795,631 and in said application Serial No. 263,233, or to the history of said inventions; execute preliminary statements and testify in any interference proceedings; execute and deliver any application papers, assignments, or other instruments and do all other acts which in the opinion of counsel for the United Company may be necessary or convenient

to carry out the terms and extent of this instrument and to secure the grant of Letters Patent to the United Company in the United States and in all other countries where the United Company may desire to patent said inventions, or any of them, with specifications and claims in such form as shall be approved by counsel for the United Company, and to vest and confirm in the United Company, its successors and assigns, the full and complete legal and equitable title to all such Letters Patent, without further consideration than now paid but at the expense of the United Company, its successors and assigns.

In Witness Whereof we, the said Oscar A. Campbell and the said Samuel H. Nichols have hereunto set our respective hands and seals this first day of November, 1905.

OSCAR A. CAMPBELL [SEAL]
SAMUEL H. NICHOLS [SEAL]

Commonwealth of Massachusetts.

County of Suffolk, ss. November 1, 1905.

Then personally appeared the above named Oscar A. Campbell and Samuel H. Nichols, to me personally known, and known by me to be the persons described in and who executed the foregoing instrument and severally acknowledged the same to be their free act and deed, before me,

Nelson W. Howard,
Notary Public.

[SEAL]

PLAINTIFF'S EXHIBIT 117.

[Put in Evidence, page 568.]

Agreement made this thirty first day of January 1906 by and between The Smith Lacing Machine Company as vendor, hereinafter called the Smith Company, and the United Shoe Machinery Company as purchaser, hereinafter called the United Company.

Whereas the Smith Company is a corporation duly organized and existing under the laws of the State of Maine, with its principal office in Kittery, in the State of Maine, and is and has been engaged in Boston in the Commonwealth of Massachusetts in the

manufacture of machines for lacing boot and shoe uppers hereinafter referred to as Smith lacing machines, and

Whereas the United Company is a corporation duly organized and existing under the laws of the State of New Jersey, with its principal office in Paterson in said State of New Jersey, and has an office in said Boston, and

Whereas the Smith Company has agreed to sell all its property and assets except its franchise, its cash on hand and such bills and accounts receivable as it has to the United Company on the following terms: —

Now the Parties Hereto Agree as Follows: —

1. The Smith Company agrees to sell to the United Company and the United Company agrees to purchase all the property and assets of the Smith Company of every name and nature, except its franchise, its cash on hand and such bills and accounts receivable as it had on the sixth day of January 1906.

The property sold includes: —

(a) Letters Patent and applications for letters patent described in the schedule of Patents and Applications for Letters Patent forming a part hereof, and all title, interest and rights in to or under, and all licenses under, letters patent, and in and to any and all inventions and improvements, and any and all applications for letters patent, and all claims and demands under agreement or otherwise for the use of inventions or for infringement of Letters Patent.

(b) Lacing machines, known as "Smith Lacing Machines" including fifty of said lacing machines in process of construction by the Metallic Heel and Counter Company at its factory, Number 100 Purchase Street, in said Boston, and drawings, patterns, jigs, special tools and appliances for the manufacture of the same or designed for use in connection with the same.

(c) The good will of the Smith Company and of its business

(d) The exclusive right to all inventions and improvements in lacing or tying machines, devices or methods for use in lacing or tying or temporarily fastening boot or shoe uppers which have been or shall hereafter be invented by Willard A. Smith of Ports-

mouth in the State of New Hampshire, now the Secretary of the said Smith Company, and the exclusive right to all letters patent of any and every country which shall or may be obtained for said inventions or improvements or either or any of them.

2. The United Company agrees to pay to the Smith Company in consideration of the covenants and agreements of the Smith Company herein contained, the sum of One Hundred and Seventeen Thousand, Five Hundred Dollars ($117,500.) of which sum Fifty Thousand Dollars ($50,000.) shall be paid in cash simultaneously with the execution of this agreement, and the balance thereof, namely Sixty-seven Thousand and Five Hundred Dollars ($67,-500.) (hereinafter referred to as the deferred payment) shall be paid as follows:—

On the fifteenth day of January and on the fifteenth day of July in each year until the said deferred payment shall have been paid in full, the United Company shall pay to the Smith Company in respect to each lacing machine sold or leased by the United Company during the six calendar months ending January 1st and July 1st next preceding, the sum of Seventy-five Dollars ($75.00) except that if the United Company shall lease or cause to be leased any lacing machines in countries foreign to the United States of America at a royalty to be paid for the use of the same of one half cent or less per dozen pairs of boot or shoe uppers laced by the aid of such machines, then the amount to be paid to the Smith Company by the United Company in respect to each lacing machine so leased in a foreign country shall be fifty dollars ($50.00). Nothing herein shall be construed to require the United Company to make any payment in respect to lacing machines which the United Company shall put out for a limited period on trial, or shall substitute for leased machines destroyed by fire or other casualty, or shall exchange for Smith Lacing Machines sold or leased by it.

3. The United Company agrees to keep full and accurate books of account which shall show the number of all lacing machines which shall be made by or for it in the United States of America or elsewhere, and the names of all those to whom such machines shall have been sold or leased, and the price or the amount of the

lease premium received therefor; and agrees to allow the Treasurer of said Smith Company or its attorneys to inspect such books at all reasonable times to verify the accuracy of such accounts; and that it will in the months of January and July of each year make full and true returns to the Smith Company of all Lacing machines sold or leased by it during the next preceding six months.

4. The United Company agrees that it will not charge more than Three Hundred Dollars ($300.) for each Smith Lacing Machine when leased or caused to be leased by it without royalty in the United States and that it will not charge a royalty in excess of One Cent per dozen pairs of boot or shoe uppers laced by the aid of any Smith lacing machine, when the machines are leased without an initial premium charge, but if the United Company shall lease Smith lacing machines for a royalty of one cent or less per dozen pairs of boot or shoe uppers laced by the aid of such machines, it may charge an initial fee to the lessee.

5. The Smith Company agrees that the United Company may complete the fifty Smith Lacing Machines now in process of construction in the factory of the Metallic Heel and Counter Company, and the United Company undertakes to promptly complete the same under the supervision of Messrs. George E. Warren and Willard A. Smith, The Smith Company agrees to pay to the United Company a sum equal to the cost to the United Company of completing said machines, the labor employed thereon to be charged at fifty-five (55) cents per hour.

6. The United Company agrees that it will use its best effort to promote the sale or lease of Smith lacing machines of the type recently completed by the Smith Company, and agrees that if it manufactures sells or leases any other lacing machines than machines of the type of the Smith lacing machine, until the deferred payment above mentioned shall have been paid in full, it will pay to the Smith Company in respect to such substituted lacing machines the amounts above provided to be paid in respect to the Smith Lacing Machines.

7. The Smith Company agrees upon receipt of the cash payment hereinbefore provided to be made to it to forthwith pay all of its

debts including the cost of completing said fifty Smith Lacing Machines, and when all of its debts shall have been paid, to distribute ratably among its shareholders the balance of cash remaining after the payment of its debts, and any and all other cash or bills or accounts receivable or the proceeds thereof which it shall have, and agrees that from time to time hereafter when and as it shall receive from the United Company payments under this agreement to distribute the same ratably among its shareholders, and when the deferred payment herein agreed to be paid by the United Company shall have been paid in full to require its shareholders to surrender their respective certificates of stock to its Treasurer endorsed in blank and to deliver to the United Company all such certificates so endorsed in blank to the United Company, and all its books of account, stock books and corporate papers.

8. The Smith Company agrees from time to time hereafter and whenever so requested to do by the United Company to execute and deliver such bills of sale, assignments, powers of attorney, or other written instruments and to do or cause to be done such acts as in the opinion of the counsel of the United Company shall be necessary or proper to secure to and to confirm in the United Company and its successors and assigns all the property hereby conveyed, and the exclusive legal title to all letters patent, licenses and interests in said letters patent or inventions hereby sold and conveyed and the benefit of all contracts which the Smith Company has.

9. The Smith Company hereby covenants with the United Company its successors and assigns that it has the lawful right to sell and transfer the property hereby agreed to be sold and conveyed and agrees to convey the same free from all prior grants, mortgages, licenses or other encumbrances whatever.

10. The Smith Company agrees to turn over its business as of the close of business on January 6th, 1906, and agrees that all the profits or income of its business, if any, arising from business transacted since that date shall inure and be paid to the United Company. The United Company agrees to pay all the expenses of carrying on the business incurred since the sixth day of Janu-

ary, 1906, except the cost of completing said fifty Smith Lacing Machines provided in Paragraph 5 hereof to be paid by the Smith Company. The Smith Company covenants and agrees hereafter to transact no further or other business than to liquidate as provided in Paragraph 7 hereof, and agrees to forthwith notify the Commissioner of Corporations of Massachusetts that it has ceased to transact business, and to apply to the Attorney General of the State of Maine to be excused from filing returns with the Secretary of the State of Maine.

SCHEDULE OF PATENTS AND APPLICATIONS FOR LETTERS PATENT.

Patents of United States of America.

No. 740,938, granted October 6, 1903, to Willard A. Smith, for an improvement in Means for Securing Shoe Uppers Preparatory to Lasting.

No. 767,844, granted August 16, 1904, to Smith Lacing Machine Company as assignor of Willard A. Smith, for an improvement in Friction Clutches.

No. 779,008 granted January 3rd, 1905 to Smith Lacing Machine Company as assignor of Willard A. Smith for an improvement in Machines for Automatically Lacing Shoe Uppers.

No. 795,073 granted July 18th 1905 to Willard A. Smith for an Improvement in Means for Temporarily Lacing Shoe Uppers.

Applications for Letters Patent of the United States.

Serial No. 245,704 filed February 15, 1905 by Willard A. Smith for an improvement in needles for shoe lacing machines.

Serial No. 259,839 filed May 10, 1905 by Willard A. Smith for the reissue of Letters Patent No. 779,008.

Serial No. 296,385 filed January 16, 1906 by Willard A. Smith for an improvement in fastening machines.

Letters Patent of Great Britain.

No. 16,520, dated July 26, 1904 granted to Willard Allan Smith of 10 Wibird Street, Portsmouth in the County of Rockingham and State of New Hampshire, U. S. A., Mechanical Engineer, for "An Improved Automatic Machine for lacing shoe uppers".

Letters Patent of France.

No. 345,797, to Monsieur Smith (Willard Allan) représenté par Mrs. Lavoix et Moses, 7, Rue de Chateaudun, a Paris, applied for the 12th day of August 1904, delivered on the 29th day of October 1904 for "Machine a lacer les empeignes."

Letters Patent of Germany.

No. 163,497, dated July 31, 1904, pubiished October 24, 1905, to Willard Allan Smith in Portsmouth (New Hampshire, U. S. A.) for "Maschine zum Verschnüren der mit Schnürlöchern versehenen Oberlederteile von Schnurstiefeln vor dem Aufziehen auf den Leisten".

In Witness Whereof the Smith Company pursuant to a vote of its stockholders at a special meeting duly called and held at the office of the company in Kittery, Maine, has caused these premises to be signed in its behalf and its corporate seal to be hereto affixed by its Treasurer and the United Company has caused these presents to be signed in its behalf and its corporate seal to be hereto affixed by its President.

Executed in Duplicate.

[SEAL] THE SMITH LACING MACHINE COMPANY
By Geo. E. Warren, Treasurer.

[SEAL] UNITED SHOE MACHINERY COMPANY
By Sidney W. Winslow, President.

PLAINTIFF'S EXHIBIT 118.

[Put in Evidence, page 568.]

Know all Men by these Presents:—

That the Smith Lacing Machine Company, a corporation duly organized and existing under the laws of the State of Maine, with its principal office in Kittery, in the State of Maine, and having an office and place of business in Boston in the Commonwealth of Massachusetts, in consideration of One Dollar and other valuable consideration to it paid by United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey, with its principal office in Paterson in said State of

New Jersey, and having an office and place of business in said Boston, the receipt of which is hereby acknowledged, has sold, transferred and delivered, and by these presents does sell, transfer and deliver unto the said United Shoe Machinery Company, all the property and assets of it, the said The Smith Lacing Machine Company, (hereinafter called the Smith Company) of every name and nature except its franchise, its cash on hand and such bills and accounts receivable as it had on the 6th day of January 1906.

The property sold includes:—

(a) Letters Patent and applications for letters patent described in the Schedule of Patents and Applications for Letters Patents forming a part hereof, and all title, interest and rights in, to or under, and all licenses under, letters patent, and in and to any and all inventions and improvements, and any and all applications for letters patent, and all claims and demands under agreement or otherwise for the use of inventions or for infringement of letters patent.

(b) Lacing machines, known as "Smith Lacing Machines" including fifty of said lacing machines in process of construction by the Metallic Heel & Counter Company at its factory, Number 100 Purchase Street, in said Boston, and drawings, patterns, jigs, special tools and appliances for the manufacture of the same or designed for use in connection with the same.

(c) The good will of the Smith Company and of its business

(d) The exclusive right to all inventions and improvements in lacing or tying machines, devices or methods for use in ~~connection~~ lacing or tying or temporarily fastening with boot or shoe uppers which have been or shall hereafter be invented by Willard A. Smith of Exeter in the State of New Hampshire, now Secretary of the said Smith Company, and the exclusive right to all letters patent of any and every country which shall or may be obtained for said inventions or improvements or either or any of them. G. E. W.

To Have and to Hold all and singular the property and assets hereby sold to the said United Shoe Machinery Company and its successors and assigns forever.

And the vendor hereby covenants with the vendee that it is the

lawful owner of the said property and assets, and has a good right to sell and dispose of the same as aforesaid, and that the same are free from all incumbrances, and that it will warrant and defend the same against the lawful claims and demands of all persons.

In Witness Whereof The Smith Lacing Machine Company has caused its corporate seal to be hereto affixed and these presents to be signed in its name and behalf by George E. Warren its Treasurer this thirty first day of January 1906.

THE SMITH LACING MACHINE COMPANY

[SEAL] By Geo E. Warren Treasurer

SCHEDULE OF PATENTS AND APPLICATIONS FOR LETTERS PATENT.

Patents of United States of America.

No. 740,938, granted October 6, 1903 to Willard A. Smith, for an improvement in Means for Securing Shoe Uppers Preparatory to Lasting.

No. 767,844, granted August 16th, 1904, to Smith Lacing Machine Company as assignor of Willard A. Smith, for an improvement in Friction Clutches.

No. 779,008 granted January 3rd, 1905, to Smith Lacing Machine Company as Assignor of Willard A. Smith for an improvement in Machines for Automatically Lacing Shoe Uppers.

No. 795,073 granted July 18th 1905 to Willard A. Smith for an improvement in Means for Temporarily Lacing Shoe Uppers.

Applications for Letters Patent of the United States.

Serial No. 245,704 filed February 15, 1905 by Willard A. Smith for an improvement in needles for shoe lacing machines.

Serial No. 259,839 filed May 10, 1905 by Willard A. Smith for the reissue of Letters Patent No. 779,008.

Serial No. 296,385, filed January 16, 1906, by Willard A. Smith for an improvement in fastening machines.

Letters Patent of Great Britain.

No. 16,520, dated July 26, 1904 granted to Willard Allan Smith of 10 Wibird Street, Portsmouth, in the County of Rockingham

and State of New Hampshire, U. S. A., Mechanical Engineer, for "An Improved Automatic Machine for lacing shoe uppers."

Letters Patent of France.

No. 345,797, to Monsieur Smith (Willard Allan) represente par Mrs. Lavoix et Moses, 7, Rue de Chateaundun, a Paris, applied for the 12th day of August 1904, delivered on the 29th day of October 1904 for "Machine a lacer les empeignes."

Letters Patent of Germany.

No. 163,497, dated July 31, 1904, published October 24, 1905, to Willard Allan Smith in Portsmouth (New Hampshire, U. S. A.) for "Maschine zum Verschnuren der mit Schnurlochern verschenen Oberlederteile von Schnurstiefeln vor dem Aufziehen auf den Leisten."

PLAINTIFF'S EXHIBIT 119.

[Put in Evidence, page 569.]

Agreement made this thirty-first day of January, 1906, by and between the Metallic Heel and Counter Company as vendor, hereinafter called the Metallic Company, and the United Shoe Machinery Company as purchaser, hereinafter called the United Company.

Whereas the Metallic Company is a corporation duly organized and existing under the laws of the State of Maine, with its principal office in Kittery, in the State of Maine, and is and has been engaged in Boston in the Commonwealth of Massachusetts in the manufacture of metallic heels and counters and machines of various kinds; and

Whereas the United Company is a corporation duly organized and existing under the laws of the State of New Jersey, with its principal office in Paterson in said State of New Jersey, and has an office in said Boston, and in connection with its other business is about to engage in the manufacture of Smith Lacing Machines, so-called, for lacing or tying the uppers of boots and shoes, and in selling or leasing such Lacing machines.

Whereas the Metallic Company has agreed to sell all its property and assets hereinafter described and referred to, except its

franchise, its cash on hand and such bills and accounts receivable as it has, to the United Company on the following terms: —

Now the parties hereto agree as follows: —

1. The Metallic Company agrees to sell to the United Company and the United Company agrees to purchase all the property and assets of the Metallic Company of every name and nature, except its franchise, its cash on hand, such bills and accounts receivable as it had on the sixth day of January, 1906, and all its gasoline engines, whether completed or in the process of construction, and parts of such engines.

The property hereby agreed to be sold includes: —

(a) The Letters Patent and applications for Letters Patent described in the Schedule of Patents and applications for Letters Patent forming a part hereof.

(b) All title, interest and rights in, to or under, and all licenses under letters patent, and in and to any and all inventions and improvements and any and all applications for letters patent, and all claims and demands under agreement or otherwise for the use of inventions or for infringement of letters patent.

(c) Machines, machinery, tools, special tools and appliances, drawings, patterns, jigs, duplicate parts, fixtures and furniture situated in the factory of the Metallic Company in Boston.

(d) Stock on hand, manufactured or in process of manufacture, merchandise and supplies, consisting in the main of the articles specified in the "Memorandum of finished and raw material on hand January 6, 1906," forming a part hereof.

(e) All interest or lien which the Metallic Company has upon fifty Smith Lacing Machines, so called, in process of manufacture for the Smith Lacing Machine Company.

(f) The good will of the Metallic Company and of its business, and all property, interests and rights of every name and nature wherever situate owned by the Metallic Company, or to which it is in any way entitled, except the property, interests and rights hereinbefore expressly reserved to the Metallic Company.

2. The United Company agree to pay to the Metallic Company in consideration of the covenants and agreements of the Metallic

Company herein contained the sum of One Hundred Nineteen Thousand Eight Hundred and Twenty and twenty-four one hundredths Dollars ($119.820.24) of which sum Fifty-two Thousand Three Hundred and Twenty and Twenty-four one hundredths Dollars ($52,320.24) shall be paid in cash simultaneously with the execution of this agreement, and the balance thereof, namely Sixty-seven Thousand Five hundred Dollars ($67,500.) (hereinafter referred to as the deferred payment) shall be paid as follows:—

On the fifteenth day of January and on the fifteenth day of July in each year until the said deferred payment shall have been paid in full, the United Company shall pay to the Metallic Company in respect to each lacing machine sold or leased by the United Company during the six calendar months ending January 1st and July 1st next preceding, the sum of seventy-five Dollars ($75) except that if the United Company shall lease or cause to be leased any lacing machines in countries foreign to the United States of America at a royalty to be paid for the use of the same of one-half cent or less per dozen pairs of boot or shoe uppers laced by the aid of such machines, then the amount to be paid to the Metallic Company by the United Company in respect to each lacing machine so leased in a foreign country shall be fifty dollars ($50.00).

Nothing herein shall be construed to require the United Company to make any payment in respect to lacing machines which the United Company shall put out for a limited period on trial, or shall substitute for leased machines destroyed by fire or other casualty, or shall exchange for Smith Lacing Machines sold or leased by it.

3. The United Company agrees to keep full and accurate books of account which shall show the number of all lacing machines which shall be made by or for it in the United States of America or elsewhere, and the names of all those to whom such machines shall have been sold or leased, and the price or the amount of the lease premium received therefor; and agrees to allow the Treasurer of the Metallic Company or its attorney to inspect such books at all reasonable times to verify the accuracy of such accounts; and that it will in the months of January and July of each year make full and true returns to the Metallic Company of all lacing machines sold or leased by it during the next preceding six months.

4. The United Company agrees that it will not charge more than Three Hundred Dollars ($300.) for each Smith Lacing Machine when leased or caused to be leased by it without royalty, in the United States, and that it will not charge a royalty in excess of One cent per dozen pairs of boot or shoe uppers laced by the aid of any Smith Lacing Machine, when the machines are leased without an initial premium charge, but if the United Company shall lease Smith Lacing Machines for a royalty of one cent or less per dozen pairs of boot or shoe uppers laced by the aid of such machines, it may charge an initial fee to the lessee.

5. The United Company agrees that it will use its best efforts to promote the sale or lease of Smith lacing machines of the type recently completed by the Metallic Company for the Smith Lacing Machine Company, and agrees that if it manufactures sells or leases any other lacing machines than machines of the type of the Smith lacing machine, until the deferred payment above mentioned shall have been paid in full, it will pay to the Metallic Company in respect to such substituted lacing machines the amounts above provided to be paid in respect to the Smith lacing machines.

6. The United Company agrees to perform all uncompleted contracts which the Metallic Company is bound to perform, and the Metallic Company agrees to pay to the United Company the cost and expense of so doing, the labor employed to be charged at 55 cents per hour. All the profits realized from such contracts above the amounts so to be charged by the United Company are to be retained by the Metallic Company, except in the case of the contract with the Library Bureau, the profits arising from which shall inure to the United Company, and the losses, if any, shall be paid by the Metallic Company.

7. The Metallic Company agrees upon receipt of the cash payment hereinbefore provided to be made to it to forthwith pay all of its debts and when all of its debts shall have been paid, including such sums as shall be necessary to enable it to make any payments required to be made by it under the provisions of paragraph 6 hereof to distribute ratably among its shareholders the balance of cash remaining after the payment of its debts, and any and all other

cash or bills or accounts receivable or the proceeds thereof which it shall have, and agrees that from time to time hereafter when and as it shall receive from the United Company payments under this agreement to distribute the same ratably among its shareholders, and when the deferred payment herein agreed to be paid by the United Company shall have been paid in full, to require its shareholders to surrender their respective certificates of stock to its Treasurer endorsed in blank and to deliver to the United Company all such certificates so endorsed in blank to the United Company, and all its books of account, stock books and corporate papers.

8. The Metallic Company agrees from time to time hereafter and whenever so requested to do by the United Company to execute and deliver such bills of sale, assignments, powers of attorney, or other written instruments and to do or cause to be done such acts as in the opinion of the counsel of the United Company shall be necessary or proper to secure to and to confirm in the United Company and its successors and assigns all the property hereby conveyed, and the exclusive legal title to all letters patent, licenses and interests in said letters patent or inventions hereby sold and conveyed and the benefit of all contracts which the Metallic Company has.

9. The Metallic Company hereby covenants with the United Company, its successors and assigns, that it has the lawful right to sell and transfer the property hereby agreed to be sold and conveyed, and agrees to convey the same free from all prior grants, mortgages, licenses or other encumbrances whatever.

10. The Metallic Company agrees to turn over its business as of the close of business of January 6th, 1906, and agrees that all the profits or income of its business, if any, arising from business transacted since that date, except as otherwise provided in Paragraph 6 hereof, shall inure and be paid to the United Company. The United Company agrees to pay all the expenses of carrying on the business incurred since the 6th day of January, 1906, except as otherwise provided in Paragraph 6 hereof. The Metallic Company covenants and agrees hereafter to transact no further or other business than to liquidate as provided in Paragraph 7 hereof, and

agrees to forthwith notify the Commissioner of Corporations of Massachusetts that it has ceased to transact business, and to apply to the Attorney General of the State of Maine to be excused from filing returns with the Secretary of State of Maine.

SCHEDULE OF PATENTS AND APPLICATIONS FOR LETTERS PATENT.

Patents of United States of America.

No. 419,499, dated January 14, 1890, granted to Goswin Castle for improvements in heels.

No. 706,551, dated August 12, 1902, granted to Metallic Heel and Counter Company as assignee of William Gordon and George E. Warren, for improvement in boots and shoes.

No. 640,900, dated January 9, 1900, granted to William Gordon for improvement in boots or shoes.

No. 706,515, dated August 12, 1902, granted to Metallic Heel and Counter Company upon the application of George E. Warren for improvement in machines for making pieced soles.

No. 638,879, granted December 12, 1899, to Metallic Heel and Counter Company, Assignee of David H. Packard for improvement in shoe heel and counter protectors.

Applications for Letters Patent of the United States.

Serial No. 135,029, filed December 13, 1902 by George E. Warren for an improvement in heel making machines.

Serial No. 146,437, filed March 6, 1903 by George E. Warren for an improvement in counter stiffeners for boots and shoes.

Serial No. 174,890, filed September 28, 1903 by William Gordon for an improvement in boots and shoes.

Letters Patent of Great Britain.

No. 21,694 of October 29, 1901, granted to Wallace Fairweather, C. E., 62 Saint Vincent Street, in the City of Glasgow Chartered Patent Agent, for machine for making pieced soles for boots and shoes. A communication from Metallic Heel and Counter Company, a corporation having its principal place of business at 19 Columbia Street, in the City of Boston, State of Massachusetts, U. S. A.

MEMORANDUM OF FINISHED AND RAW MATERIAL ON HAND JAN. 6, 1906.

28,076 pr. Heels and wood fillings	(finished)	.05	1403.80
457 pounds of nails	"	.05	22.85
11 M Rivets		.45	4.95
65 gals. enamel		.60	39.00
1 Brl. Soda			2.80
45,600 Rough woods		2.50	114.00
11,275 lbs. Bottom stock		2.50	281.87
12,643 lbs. Counter Stock		3.30	417.22
1,350 lbs. Nail wire		2.50	33.75
			$2320.24

In Witness Whereof, the Metallic Company pursuant to a vote of its stockholders at a special meeting duly called and held at the office of the Company in Kittery, Maine, has caused these presents to be signed in its behalf and its corporate seal to be hereto affixed by its Treasurer and the United Company has caused these presents to be signed in its behalf and its corporate seal to be affixed by its President.

[SEAL] METALLIC HEEL AND COUNTER COMPANY
by Geo. E. Warren, Treasurer

[SEAL] UNITED SHOE MACHINERY COMPANY
by Sidney W. Winslow, President

In consideration of the purchase by United Shoe Machinery Company of the property and assets of the Metallic Heel and Counter Company referred to in the foregoing agreement, and in cousideration of One Dollar to us paid by said United Shoe Machinery Company, we, George E. Warren of Boston, and John B. Hadaway of Brockton, in the Commonwealth of Massachusetts, hereby jointly and severally covenant and agree with said United Shoe Machinery Company that if it shall sustain a loss in the performance of the contract made by said Metallic Heel and Counter Company with the Library Bureau referred to in paragraph 6 of the foregoing agreement, they will pay on demand to said United

Shoe Machinery Company a sum equal to the amount of that loss, unless a sum equal to the amount of said loss shall have been paid by the Metallic Heel and Counter Company.

In Witness Whereof we hereunto set our hands and seals, this ninth day of February 1906.

GEO. E. WARREN [SEAL]
JOHN B. HADAWAY [SEAL]

PLAINTIFF'S EXHIBIT 120.

[Put in Evidence, page 570.]

This Indenture made at Boston, Massachusetts, this fourth day of September, A. D. 1906, by and between Zotique Beaudry, of Lynn, Massachusetts, and the United-Xpedite Finishing Company, a corporation organized and existing under the laws of the State of Maine (hereinafter called the "Finishing Company") Witnesseth:

That whereas the said Beaudry has heretofore made various inventions in machinery, methods, mechanisms, tools and devices for burnishing or finishing the heels of boots and shoes or useful in the performance of such work, and may hereafter make other such inventions (all of which subjects of invention shall be hereafter referred to as and shall be included in the phrase "heel finishing machinery, methods and devices" wherever hereinafter used), and has carried on certain business in machinery, mechanisms, tools and devices for burnishing or finishing heels and has established certain good-will therein:

And whereas the said Beaudry desires to sell to the said Finishing Company the present and future inventions made, owned or acquired by the said Beaudry in "heel finishing machinery, methods and devices" and said business in heel burnishing or finishing machinery, mechanisms, tools and devices, together with the goodwill thereof, and the said Finishing Company desires to acquire the same and to secure the benefit of the covenants on the part of the said Beaudry hereinafter set forth:

Now, Therefore, be it Known that in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to the said Beaudry paid by the said Finishing Company, the

receipt of which the said Beaudry hereby acknowledges, the said Beaudry does hereby sell, assign, transfer and set over to the said Finishing Company, its successors and assigns, all inventions, improvements, Letters Patent of the United States and of any and all other countries, and applications for Letters Patent, and interests and rights in, to and under inventions, improvements, Letters Patent and applications for Letters Patent now had by the said Beaudry or which he has any right by agreement or otherwise to acquire or take over, or which at any time hereafter within a period of fifteen (15) years from the date hereof he may make, own, acquire or have any right by agreement or otherwise to acquire or take over in "heel finishing machinery, methods or devices."

And for the same consideration the said Beaudry does hereby sell, assign, transfer, set over and deliver to the said Finishing Company, its successors and assigns, said business in heel burnishing or finishing machinery, mechanisms, tools and devices, together with the good-will thereof, and all heel finishing machinery, mechanisms and devices, drawings, blue prints, models and other property, interests and rights now or hereafter had by the said Beaudry which consist of or relate to heel finishing machinery, tools, mechanisms, methods or devices.

To Have and to Hold all of the foregoing to the said Finishing Company, its successors and assigns, to its and their own use and behoof absolutely.

And this Instrument further Witnesseth that the said Beaudry in consideration of the covenant and agreements on the part of the Finishing Company hereinafter contained, and the said Finishing Company in consideration of the foregoing assignment and of the covenants and agreements on the part of the said Beaudry herein contained, do hereby covenant and agree, each with the other, as follows: —

One. The said Beaudry, without prejudice to the generality of the foregoing assignments, hereby covenants with and warrants to the said Finishing Company, its successors and assigns, that the inventions and applications for Letters Patent hereinbefore con-

veyed include the following applications for Letters Patent of the United States now pending in the United States Patent Office, viz:

Application of Zotique Beaudry Serial No. 191,247, filed January 30, 1904, for Inventions in Machines for Burnishing the Edges of the Heels and Soles of Boots and Shoes: — Renewed March 29, 1905, Serial No. 252,646;

Application of Zotique Beaudry Serial No. 196,813, filed March 5, 1904, for Inventions in Burnishing Tools for Boots and Shoes: — Renewed March 29, 1905, Serial No. 252,647;

Application of Zotique Beaudry Serial No. 304,880, filed March 8, 1906, for Improvement in Tools for Finishing the Heels of Boots and Shoes;

together with the inventions covered thereby; that he is the owner, free from any and all prior grants, licenses or other incumbrances, of the same and of all interests and rights therein, thereunder and thereto in the United States and in all other countries; that he has good right to sell, assign and transfer the same as aforesaid and will warrant and defend his title thereto against the lawful claims and demands of all persons claiming by, through or under him.

Two. The said Beaudry hereby covenants and agrees to and with the said Finishing Company that he will forthwith fully and completely disclose to the said Finishing Company, its officers and patent solicitors, all inventions and improvements in and all Letters Patent and applications for Letters Patent of the United States and of any and all other countries for inventions in "heel finishing machinery, methods and devices", and all property, interests and rights included within the foregoing assignments now had by him or which he has any right by agreement or otherwise to acquire or take over; and that hereafter at any and all times upon making, owning or acquiring or obtaining any right by agreement or otherwise to acquire or take over any invention, improvement, Letters Patent or application for Letters Patent, property, interests or right included within the terms of the assignment hereinbefore contained, he will promptly disclose the same to the said Finishing Company, its officers and patent solicitors; will repeat all such disclosures when and as often as requested; and at any and all times

hereafter will execute and cause to be executed any and all applications, assignments and other instruments, and will perform and cause to be performed any and all acts necessary or desired by the Finishing Company to enable the Finishing Company to obtain Letters Patent of the United States and of such other countries as the said Finishing Company may desire, covering in such form as shall be approved by the attorneys for the Finishing Company the inventions and improvements or any of them included within the terms of the foregoing assignment, and to fully and completely vest and confirm in the said Finishing Company or its nominees, its or their successors and assigns, such Letters Patent and all inventions, improvements, Letters Patent, property, interests and rights included within the terms of the assignments in this instrument contained, and to enable the said Finishing Company to secure and enjoy the full benefits and advantages thereof — all without further consideration than that hereinafter provided for but the expense of obtaining such Letters Patent to be borne by the said Finishing Company.

Three. The said Beaudry hereby covenants and agrees to and with the said Finishing Company, its successors and assigns, that he will not at any time within the period of fifteen (15) years from the date of these presents (without the consent in writing of the said Finishing Company) directly or indirectly, individually or in combination with others, as officer or stockholder of a corporation, as manager, partner, agent or otherwise be engaged or interested in or financially or otherwise assist any person, firm or corporation (other than the said Finishing Company, its successors or assigns) in making, developing or exploiting any invention or improvement in "heel finishing machinery, methods or devices", or in entering into, developing or carrying on any business which consists in whole or in part in manufacturing or in any wise dealing in machinery, mechanisms, tools or devices for burnishing or finishing heels. It is recognized that in addition to the finishing or burnishing of the heels of footwear there is the operation of finishing or setting the edges of the soles, as distinguished from the heel, and that machines and tools can be made for finishing or setting

the edges of the soles which are not adapted or intended for doing the work of heel finishing or burnishing machines. Such machines and tools are hereinafter termed "edge setting machines" and "edge setting tools", and are the machines and tools referred to by said terms wherever hereinafter used. It is also recognized that it is sometimes possible for a shoe manufacturer to use "edge setting machines" and "edge setting tools" for "setting the edges" of "spring" heels and to a very limited extent of other low heels. In view thereof, and of the fact that the said Beaudry desires to be at liberty to carry on the business of manufacturing and dealing in such "edge setting machines" and "edge setting tools" it is understood and agreed that the machinery hereinbefore referred to and covered by the covenant of the said Beaudry in this Article Three hereof contained is machinery intended or adapted for use in finishing or burnishing heels and that the said Beaudry, his successors or assigns, remain at liberty to carry on the business of manufacturing and dealing in "edge setting machines" and "edge setting tools" as distinguished from machines intended or adapted for use in finishing or burnishing heels and shall not be barred from putting out such "edge setting machines" or "edge setting tools" by reason of the fact that such machines or tools are in some instances used by the purchaser thereof for "setting the edges" of spring heels or other low heels of a total height, including the top lift, not greater than four-eighths (4/8) of one (1) inch, measured from the heel-seat line to the outside of the top lift in place, but (excepting to the slight extent that the "edge setting machines" and "edge setting tools" put out as aforesaid by the said Beaudry may be capable of use upon spring heels or other low heels of a height not lower than four-eighths (4/8) of one (1) inch, as above defined) the said Beaudry shall not manufacture or deal in any machines or tools of any description intended or adapted (with or without modification) for use upon heels of any description or as combination machines or tools for doing work upon both soles and heels. Nothing herein contained shall be construed as any limitation upon the scope of the assignments hereinbefore contained of present or future inventions, or as any reservation on the part of the said

Beaudry or any grant to the said Beaudry of any right or interest in or any right to use any of the inventions herein conveyed or provided to be conveyed to the said Finishing Company.

Four. In consideration for the foregoing assignments and covenants by the said Beaudry the said Finishing Company shall pay to the said Beaudry the sum of twelve thousand five hundred dollars ($12,500) upon the execution of this instrument.

Five. The term "Finishing Company" wherever herein used shall include the said United-Xpedite Finishing Company, its successors and assigns.

In Witness Whereof the said Zotique Beaudry has hereunto set his hand and seal; and the said United-Xpedite Finishing Company has caused its corporate seal to be hereto affixed and this instrument to be signed in its name and behalf by Louis H. Baker, its Assistant Treasurer, this fourth day of September, A. D. 1906.

ZOTIQUE BEAUDRY [SEAL]

[SEAL] UNITED-XPEDITE FINISHING COMPANY

By Louis H. Baker

Commonwealth of Massachusetts.

Suffolk, ss. Boston

On this fourth day of September personally appeared before me Zotique Beaudry, known to me and known to me to be the person described in and who executed the foregoing instrument, and acknowledged the foregoing instrument to be his free act and deed.

Harold Gregory Donham

[SEAL] Notary Public

PLAINTIFF'S EXHIBIT 121.

[Put in Evidence, page 572.]

Know all Men by these Presents

That Whereas, Irving E. Booth and Quentin W. Booth, both of Rochester in the State of New York (hereinafter called the "vendors") have been heretofore engaged as co-partners doing business under the firm name and style of "Booth Brothers" in the business of manufacturing and dealing in machinery, tools, mechanisms, devices, findings, materials, supplies, methods, processes and things relating to or used in the manufacture of boots, shoes and other footwear, and leather working, having a manufacturing establishment at said Rochester and doing business at said Rochester and elsewhere throughout the United States of America and in foreign countries, and are possessed of a manufacturing plant and equipment for carrying on such business, and of inventions, improvements and Letters Patent of the United States and of foreign countries and of rights to and under such Letters Patent and applications therefor covering inventions relating to such business, and have also established a valuable good-will in connection with said business;

And Whereas, the said vendors desire to sell to the vendee hereinafter named, and said vendee desires to acquire said business and said plant, equipment, inventions, improvements, patents, patent rights and good-will of said vendors, together with certain warranties and covenants on the part of the said vendors, — all as hereinafter more fully set forth;

Now, Therefore, we, the said Irving E. Booth and Quentin W. Booth, both individually and as co-partners as aforesaid, the vendors, in consideration of one dollar ($1.00) and other good and valuable considerations to us paid by the United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey (hereinafter called the "vendee") the receipt of which is hereby acknowledged, do hereby grant, sell, assign, transfer, set over, convey and deliver unto the said vendee the entire business of the vendors above described, and all and sin-

gular the plant, equipment, inventions, improvements, Letters Patent of the United States of America and of other countries, and rights to or under such Letters Patent or applications therefor, and good-will of the vendors or of either of them in any way relating to or connected with said business, excepting therefrom such parts of said plant and equipment as are hereinafter specifically mentioned and stated to be excepted from the terms of this instrument, and excepting also an invention now owned or controlled by the vendors and described in an application for Letters Patent of the United States, Serial Number 313,775, of which disposal may be made according to the terms of an option and agreement covering the same, dated November 1, 1907, executed by the vendors and delivered to the vendee simultaneously with these presents and as part of the same transaction but not otherwise.

Including in said business plant, equipment and good-will hereby conveyed without prejudice to the generality of the foregoing assignment:

1. All machines, machinery, shafting, tools, mechanisms, devices, jigs, patterns, drawings and other articles or things except machinery, tools and other articles or things specially designed for use in connection with the invention covered by said application Serial Number 313,775 above mentioned.

2. The entire business of said vendors above described, together with the good-will thereof.

3. Any and all trade-marks, trade names and brands, relating to or connected with said business which have been heretofore used by the vendors or either of them, or to which the said vendors or either of them have any right or are in any way entitled.

And we do also hereby grant, sell, transfer and deliver unto the said vendee all stock on hand, manufactured or unmanufactured or in process of manufacture, except such as embodies the invention covered by said application Serial Number 313,775 above mentioned, and all merchandise, goods and other supplies — all as specifically set forth in an inventory thereof now in the possession of said vendee, marked "Stock Inventory, November 1, 1907", and identified by the signatures of the vendors and vendee.

To Have and to Hold the same to the said vendee, its successors and assigns, to its and their own use and behoof absolutely.

Expressly excepted from the terms of this instrument are

1. Real estate and any and all interests in real estate owned by the vendors or either of them, either severally or in common with others.

2. Bills, notes, debts and accounts receivable on the day of the date hereof.

3. Books of entry and account.

4. Cash on hand or on deposit on the day of the date hereof.

5. Machines heretofore sold conditionally or put out on trial.

6. The copies of the "Official Gazette" of the United States Patent Office in the office of said Booth Brothers.

No claims against the vendee under agreements made between the vendors and the vendee, dated September 17, 1904 and October 25, 1904, in respect to certain improvements in perforating machines, are hereby waived or extinguished.

And for the same consideration we, the said vendors, do hereby jointly and severally covenant with the said vendee, its successors and assigns, that we, the said Irving E. Booth and Quentin W. Booth, are the sole partners in the firm of Booth Brothers, above named, and that no other person, firm or corporation has any interest of any nature therein or in the business, property, assets and good-will thereof hereby conveyed; that we, the said vendors, are possessed of and have title, free from any and all incumbrances, to the plant and equipment hereby conveyed; that we have good right to convey the said plant and equipment and convey said business and the good-will thereof, free from any claims or incumbrances whatsoever to the said vendee; and that we will and our respective executors or administrators shall warrant and defend the same to the said vendee, its successors and assigns, against the lawful claims and demands of any and all persons, and protect, indemnify and hold harmless said vendee, its successors and assigns, from and against any liens or claims upon, to or against the same.

And for the same consideration we, the said vendors, do hereby jointly and severally agree to and with the said vendee, its suc-

cessors and assigns, that we and each of us will at any and all times hereafter, upon request of the vendee, or its attorney for the time being, execute or cause to be executed any and all deeds, instruments of assignment and other instruments, and will perform or cause to be performed, any and all acts which may be necessary or proper to fully and completely vest and confirm in the vendee, its successors or assigns, all the business, plant, equipment, patents, patent rights, stock in trade, goods, merchandise and other supplies, and good-will hereby conveyed or expressed to be conveyed, and to enable the said vendee, its successors and assigns, to secure and enjoy the full benefits and advantages thereof.

And for the same consideration we, the said vendors, do hereby jointly and severally covenant and agree to and with the said vendee, its successors and assigns, that during the period of fifteen (15) years beginning with the date hereof we will not and neither of us shall, directly or indirectly, in anywise enter into or be engaged or interested in manufacturing, selling or dealing in or with machinery or other articles connected with or relating to the manufacture of boots, shoes or other footwear, or any machinery, process, tool, mechanism or device for manufacturing the same, or in developing, selling, exploiting or dealing with any invention or Letters Patent relating to any such articles or the manufacture thereof, or relating to any such machinery, process, tool, mechanism or device, or in any business which consists in whole or in part of manufacturing or dealing in or with such articles or such machinery, tool, mechanism or device, or in making, developing or exploiting any such invention or Letters Patent; and that during said term we will not and neither of us shall, directly or indirectly, do any act or enter into or be engaged or interested in any business which will in anywise compete or interfere with or be in anywise prejudicial to or detract from the value of the business or good-will sold by us to the said vendee and herein described, or said business or any business of manufacturing or dealing in or with the articles above named, or any articles intended or adapted for any like or similar purpose, which is now or hereafter may be carried on by said vendee, its successors or assigns, or by any cor-

poration now or hereafter controlled by it, and that during said term we will not and neither of us shall, directly or indirectly, financially or otherwise encourage or assist or in any way influence or advise any other person, firm or corporation, in doing any of the above things, or engaging in any such business; but nothing herein contained shall be construed to prevent us or either of us from being or becoming an employee, officer or stockholder of said United Shoe Machinery Company or of any corporation now or hereafter owned or controlled by it, or from disposing of the invention covered by said application Serial Number 313,775 according to the terms of the option and agreement above mentioned concerning the same.

And we do hereby irrevocably constitute and appoint the said vendee to be our true and lawful attorney with power of substitution for us and each of us and in our name or names or the name of either of us, or otherwise, to take any action at law, in equity or otherwise, and to perform any and all acts which may be necessary or proper to secure, protect and enforce all or any part of the business, property, good-will, interests and rights of the said vendors hereby conveyed.

In Witness Whereof we, the said Irving E. Booth and the said Quentin W. Booth, have hereto set our hands and seals this first day of November, 1907.

IRVING E. BOOTH.
QUENTIN W. BOOTH.

Commonwealth of Massachusetts.

Suffolk, ss.

On this twelfth day of December, A. D. 1907, appeared Irving E. Booth and Quentin W. Booth, personally known to me and known to me to be the persons described in the foregoing instrument executed by them, and severally acknowledged that they executed the same as their free act and deed, before me

Frederick L. Edmands, Notary Public

PLAINTIFF'S EXHIBIT 122.

[Put in Evidence, page 572.]

This agreement made this first day of November 1907, by and between Irving E. Booth and Quentin W. Booth, both of Rochester in the State of New York, co-partners doing business under the firm name and style of "Booth Brothers", and the United Shoe Machinery Company, (hereinafter called the "United Company"), a corporation duly organized and existing under the laws of the State of New Jersey; Witnesseth:

That Whereas, said Irving E. Booth and Quentin W. Booth as co-partners as aforesaid, have, by an instrument in writing bearing even date herewith, conveyed to said United Company, the business, property, inventions, improvements, patents, patent rights and good will of said firm of Booth Brothers as set forth in said instrument; and have also by another instrument in writing bearing the same date and for the same consideration granted a license and given an option to said United Company and entered into covenants and agreements with said United Company all as therein set forth;

And Whereas the consideration for such conveyance, license, option, covenants and agreements stated in said first named instrument is "One Dollar ($1) and other valuable considerations";

And Whereas said parties desire to define the actual consideration therefor and to provide for the payment of such consideration;

Now, Therefore, it is hereby mutually covenanted and agreed:

First. That the actual consideration for the conveyance, license, option, covenants, and agreements aforesaid is the sum of seventy-one thousand two hundred eighty-four and 20/100 dollars ($71,284.20) in money.

Second. That of the said sum of seventy-one thousand two hundred eighty-four and 20/100 dollars ($71,284.20) the sum of thirty-five thousand six hundred forty-two and 10/100 dollars ($35,642.10) has this day been paid by said United Company to said Booth Brothers, and that the remainder of said sum of seventy-one thousand two hundred eighty-four and 20/100 dollars ($71,-

284.20) to wit, the sum of thirty-five thousand six hundred forty-two and 10/100 dollars ($35,642.10) is to be paid in instalments as follows: the sum of seventeen thousand eight hundred twenty-one and 5/100 dollars ($17,821.05) on the first day of November, 1908, and the sum of seventeen thousand eight hundred twenty-one and 5/100 dollars ($17,821.05) on the first day of November 1909; both of such payments to be without interest.

And the said United Company does further covenant and agree that it will promptly and punctually pay to said Booth Brothers when due each of said instalments.

Executed in duplicate the day and year first above written.

[SEAL] UNITED SHOE MACHINERY COMPANY
Edwd. P. Hurd, Assistant Treasurer.
IRVING E. BOOTH [SEAL]
QUENTIN W. BOOTH [SEAL]

PLAINTIFF'S EXHIBIT 123.

[Put in Evidence, page 573.]

Know all Men by these Presents.

That Whereas Irving E. Booth and Quentin W. Booth, both of Rochester in the State of New York, co-partners doing business under the firm name and style of "Booth Brothers" have on the day of the date hereof executed an instrument of conveyance conveying to the United Shoe Machinery Company, a corporation duly organized under the laws of the State of New Jersey (hereinafter called the "United Company"), the business, property and good will of said Booth Brothers and the inventions, improvements, Letters Patent of the United States of America and of other countries, and rights to and under such Letters Patent and applications therefor described in said instrument of conveyance which is to be delivered to said United Company simultaneously with this instrument and as part of the same transaction;

And Whereas the said Booth Brothers are the owners of an invention (the nature of which is now unknown to said United Company) described in an application for Letters Patent of the

United States, Serial Number 313,775, which invention was expressly excepted from the terms of said instrument of conveyance;

And Whereas as part of the transaction above mentioned and for the same consideration said Booth Brothers desire to grant the license and give the option and make the covenants and agreements hereinafter set forth, and the United Company desires to acquire such license and to secure said option and said covenants and agreements;

Now, Therefore, we, the said Irving E. Booth and Quentin W. Booth, both individually and as co-partners as aforesaid, for the consideration expressed in said instrument of conveyance and for the further sum of one dollar ($1.00) to each of us paid by said United Company, receipt whereof is hereby acknowledged, do hereby grant unto said United Company and its assigns for the period of twelve (12) months from the time when commercially operative machines shall be delivered and the nature of said invention shall be disclosed to said United Company as hereinafter provided, the sole and exclusive license to manufacture, use and license others to use both in the United States and in all other countries machines embodying the invention above named for the purpose of demonstrating the value in use of such invention but for no other purpose.

And we do also grant unto said United Company for the period of the license hereby granted the right to use any and all the machinery, tools, mechanisms, devices, jigs, drawings, patterns and other articles or things which have been or may hereafter be specially designed for use in connection with said invention.

And for the same consideration we do jointly and severally agree that within six (6) months from the date hereof we will deliver to said United Company two (2) commercially operative machines embodying said invention and will also fully disclose or cause to be fully disclosed to the President, a Vice President, the General Manager, Superintendent or Counsel of said United Company the nature of said invention and all and singular the methods and processes used in the manufacture thereof or in any way relating to or connected with said invention, and will repeat or cause to be

repeated such disclosures and fully explain the same or cause the same to be fully explained when and as often as may be requested by the said officers of the United Company or any of them; but such disclosures shall be made for the sole purpose of enabling said United Company, and its assigns, to manufacture, use and license others to use machines or other articles or things embodying said invention in accordance with the terms of the license hereby granted and said United Company shall make no other use of such disclosures.

And for the same consideration we do further jointly and severally agree that at any time within the period of the license hereby granted, we will upon request assign and transfer unto said United Company the full and exclusive right (both in the United States and in all foreign countries) to said invention as described in said application and to any and all improvements thereon, and will give to said United Company good title to any and all Letters Patent which may have been issued covering the same and to the machinery, tools, mechanisms, devices, jigs, drawings, patterns and other articles or things above mentioned upon the following terms:

Said United Company shall pay to us upon such assignment and transfer the sum of five thousand dollars ($5,000) and shall also agree with us as follows:

F. L. E.

(a) that it will pay to us ~~during the term of the Letters Patent of the United States which may be issued upon said application Serial Number 313,775~~, the sum of fifteen dollars ($15) for each and every machine or other article or thing embodying said invention which shall be sold or leased by it in the United States, and ten dollars ($10) for each and every such machine, article or thing which shall be sold or leased by it in any country other than the United States;

(b) that if the sums paid by it to us within the period of ten (10) years from the time when it makes said payment of five thousand dollars ($5,000) and takes said assignment, shall not amount to the total sum of ten thousand dollars ($10,000), exclusive of said sum of five thousand dollars ($5,000), and if requested by us

in writing before the expiration of said period of ten (10) years, it will pay to us on the day of the expiration of said period the amount if any by which the total amount actually paid by it during said period, exclusive of said sum of five thousand dollars ($5,000), is less than said sum of ten thousand dollars ($10,000), but on the condition that no further payments to us in respect to machines sold or leased by it shall thereafter be required until the sums which would otherwise have been payable to us, as herein stated, from the beginning of said period of ten (10) years, exclusive of said sum of five thousand dollars ($5,000), shall amount to the total sum of ten thousand dollars ($10,000), from which time payments shall again be made as herein stated; and

(c) that it will account to us and make the payments required in respect to machines sold or leased by it on or before February 15th and August 15th of each year for the period of six (6) months preceding January 1st and July 1st of each year respectively, and will continue to so account and to make such payments until the total amount paid by it, exclusive of the sum of five thousand dollars ($5,000) above mentioned, shall amount to the total sum of thirty-five thousand dollars ($35,000), and no longer,

but no payments shall be required after the expiration of the Letters Patent which may issue upon said application. F. L. E.

And for the same consideration we do hereby jointly and severally agree that in case said United Company shall not within the period above mentioned and after thirty (30) days' written notice to exercise the option above granted communicated by us to said United Company, request such assignment and transfer and pay to us said sum of five thousand dollars ($5,000) we may thereupon or at any time thereafter assign and transfer said invention and improvements and any and all Letters Patent which may have been issued covering the same to any other person or party, but we further jointly and severally agree that before making any such assignment and transfer, or any agreement therefor, we will promptly disclose to said United Company the terms upon which such other person or party desires to acquire said invention and improvements and that said United Company shall thereupon have

the right to acquire the same upon like terms, but only during such period of time after said disclosure is made as may be necessary to enable said United Company to communicate to us its acceptance of said terms.

And for the same consideration we do further jointly and severally agree that during the period of fifteen (15) years from the date hereof we will not and neither of us shall, except as an employee of said United Company or of a corporation owned or controlled by it, manufacture or deal in or with said invention or improvements otherwise than to completely dispose of the same to other persons or parties for cash, for royalty, or upon other terms in case said United Company does not desire to acquire the same under the provisions hereof, and to take such steps as may be necessary to secure, protect and enforce our rights to said invention or improvements whether under Letter Patents or otherwise; and that we will not and neither of us shall during said period of fifteen (15) years, directly or indirectly, financially or otherwise, encourage or assist any person, firm or corporation, other than said United Company, in manufacturing or dealing in or with said invention or improvements or articles embodying the same; but for the purpose of disposing of the same as herein provided we may, the provisions hereof notwithstanding, alter, improve, or add to said invention and make other and further application for Letters Patent covering the same or covering such alterations, improvements or additions.

Said United Company may by its own attorneys and at its own expense, but in the name of said Booth Brothers, file applications for and, if possible, obtain Letters Patent of countries other than the United States covering said invention, and if said United Company shall not exercise the option first hereinbefore provided for, then and in that case we will reimburse said United Company for all sums expended by it for services, fees and other expenses incurred in connection with filing such application or obtaining such patents.

In Witness Whereof we the said Irving E. Booth and Quentin

W. Booth have hereto set our hands and seals this first day of November 1907.

IRVING E. BOOTH. [SEAL]
QUENTIN W. BOOTH. [SEAL]

Commonwealth of Massachusetts,
Suffolk, ss.

On this twelfth day of December, A. D. 1907, before me personally appeared Irving E. Booth and Quentin W. Booth, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Frederick L. Edwards, Notary Public.

PLAINTIFF'S EXHIBIT 124.

[Put in Evidence, page 573.]

This Agreement, made this first day of November, A. D. 1907, by and between Irving E. Booth and Quentin W. Booth, both of Rochester in the State of New York, co-partners doing business under the firm name and style of "Booth Brothers" (hereinafter called "Booth Brothers"), and the United Shoe Machinery Company, a corporation duly established under the laws of the State of New Jersey (hereinafter called the "United Company") Witnesseth:

That Whereas by an instrument of conveyance dated November 1, 1907, said Booth Brothers have conveyed to said United Company the entire business, property, assets and good-will of said Booth Brothers as therein set forth, including all patents and patent rights, and have given full covenants of title thereto; and

Whereas by an assignment dated November 1, 1907, said Booth Brothers have assigned to said United Company certain patents and patent rights including all their right in or to an invention described in application for Letters Patent of the United States, Serial No. 211,794, filed June 9, 1904, for Improvement in Fudging Machines"; and have covenanted that they are the absolute owners of the same; and

Whereas said Booth Brothers have heretofore made an agree-

ment in writing, dated May 11, 1907, in respect to the invention above named with one Thomas G. Plant, of Boston, Massachusetts, a copy of which is hereto annexed;

Now, therefore, it is mutually agreed that the right of said Booth Brothers in said invention conveyed to the United Company as aforesaid is subject to the rights of said Thomas G. Plant under said agreement of May 11, 1907.

And for the consideration expressed in the instrument of conveyance above named and for the further consideration of one dollar ($1.00) to the said Booth Brothers paid by the said United Company and of the covenants on the part of said United Company hereinafter contained, said Irving E. Booth and Quentin W. Booth do individually and as co-partners as aforesaid hereby assign, transfer and set over unto the said United Company and its successors and assigns the said agreement with said Plant and all advantages to be derived therefrom; and the said United Company hereby agrees with said Booth Brothers that it will perform and observe the agreements on the part of the said Booth Brothers to be performed and observed, according to the terms of said agreement upon the following conditions:

1. Said United Company may prosecute by its own attorneys the interference mentioned in said agreement and shall not be held to make any payment to attorneys or solicitors or others heretofore employed by said Booth Brothers for services heretofore rendered or expenses heretofore incurred in connection with said interference, but said Booth Brothers may, at their own expense, employ counsel or attorneys to be associated with the attorneys of said United Company in prosecuting such interference.

2. Said United Company shall pay over to said Booth Brothers such sums and such sums only as it shall actually receive under the provisions of Article 3 of said agreement, but if any sums are at any time due and unpaid under the provisions of said Article 3 it shall if requested by said Booth Brothers, and at their expense, or it shall permit said Booth Brothers to bring such suit in its name.

3. In any case of infringement of the patent referred to in said agreement said United Company shall begin and prosecute suit to

suppress the same by its own attorneys, and the expense of such suit shall be apportioned between said United Company and said Booth Brothers according to their respective pecuniary interests in the result thereof, or said United Company shall permit said Booth Brothers to bring such suit in its name.

In Witness Whereof the said Irving E. Booth and Quentin W. Booth have hereto set their hands and seals; and the United Shoe Machinery Company has caused its corporate seal to be hereto affixed and these presents to be executed and delivered in its name and behalf by Edward P. Hurd its Asst. Treasurer, the day and year first above written.

IRVING E. BOOTH [SEAL]

QUENTIN W. BOOTH [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY

By Edwd. P. Hurd, Asst. Tres.

MEMORANDUM OF AGREEMENT

made this eleventh day of May, A. D. 1907, between Irving E. Booth, Quentin W. Booth, Copartners, doing business under the firm name of Booth Brothers, Rochester, New York, hereinafter referred to as "Booth Brothers", and Thomas G. Plant, of Boston, Massachusetts.

Witnesseth that said Booth Brothers are the owners of an Application for Letters Patent of the United States, Serial Number 211-794, filed June 9, 1904, for improvement in Fudging Machine, which application is at present involved in Interference #27259, entitled Heys *v.* Hadaway *v.* Krewson, and that said Plant is desirous of acquiring a license from said Booth Brothers, under the claims at issue in a Letters Patent to said Krewson or to his assignees, Booth Brothers;

Now Therefore, in consideration of the premises, the parties above referred to have hereby agreed as follows:

1. Said Booth Brothers agree to prosecute said Interference with due diligence and with an honest and sincere purpose to obtain a decision of priority therein in favor of said Krewson and to have a

patent issued to said Krewson at the earliest practicable date containing the claims at issue in said Interference.

2. Said Booth Brothers further agree to and do hereby grant unto the said Plant, and to his assigns, the right and license (but not exclusive) to make, use and sell machines containing the invention of said claims at issue to the full end of the term for which any Letters Patent may be granted to the said Krewson, or to said Booth Brothers, containing such claims, provided said Plant during such time complies with the conditions hereinafter stated, this license to become effective upon the granting of a patent containing such claims.

3. Said Plant agrees to pay to the said Booth Brothers, or to their order, Three Hundred (300) Dollars, annually, for said license, from and after the date of issuance of said Letters Patent and until the expiration thereof, the first payment to be made six (6) months from the date of issue of the Letters Patent referred to and upon the corresponding day and month each year thereafter during the life of said patent.

4. It is mutually agreed that should the said Letters Patent be declared to be invalid by any Court of Appeals, or should the claims at issue in said Interference be declared to be invalid in view of any evidence before such Court, then and in such event the obligation on the part of said Plant to pay, annually, said sum of Three Hundred (300) Dollars shall cease forthwith.

5. Said Plant agrees that he will not, either directly or indirectly, contest the validity of any Letters Patent issued to said Krewson or Booth Brothers containing the claims of said Interference.

6. It is agreed that if, during any year of the life of the patent herein referred to, any open infringement of the said patent, as to the claims involved in the Interference above mentioned, shall be called to the attention of said Booth Brothers and they fail to take prompt steps, by bringing and diligently prosecuting suit, to suppress such infringement, then, and in such event, the license fee herein agreed to be paid by said Plant for that year need not be paid, and that it need not be paid during any succeeding year or years in which the same or any other open infringement exists

without suit on the part of said Booth Brothers, after due notice by said Plant of such infringement or infringements, to suppress the same.

7. This agreement is binding upon the parties hereto and their respective Heirs, Executors, Administrators and Assigns.

8. Said Booth Brothers agree to permit said Plant to nominate associate counsel to assist so far as said Plant desires in the prosecution of the Krewson case, he to have necessary authority therefor from Booth Brothers.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above given.

PLAINTIFF'S EXHIBIT 125.

[Put in Evidence, page 577.]

This Indenture, made this first day of December, 1908, by and between William B. Rice and Harry L. Rice, both of Quincy, Massachusetts, and John H. Richardson, of Cliftondale, Massachusetts, (hereinafter called the "vendors") parties of the first part, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, (hereinafter called the "United Company") party of the second part, and the Richardson Shoe Machinery Company, a corporation organized and existing under the laws of the State of Maine (hereinafter called the "Richardson Company") party of the third part, Witnesseth:

That Whereas each of the said vendors is a stockholder, director and officer of the said Richardson Company which has been and is now engaged in developing and in dealing in and with certain machinery intended or adapted for use in the manufacture of footwear including especially sewing machines of the type known in the trade as "McKay Sewing Machines" and machinery intended or adapted for cutting or dieing out leather or other materials, including machines of the kind known in the trade as "Clicking Machines"; and the said vendors have represented to the United Company that they own or control all of the shares of the capital stock of said Richardson Company:

And Whereas the said vendors desire to sell and transfer to the said United Company all of the shares of the capital stock of said Richardson Company and the United Company desires to acquire the same together with the warranties and covenants on the part of the said vendors hereinafter set forth:

Now, Therefore, the parties hereto, each in consideration of the covenants and agreements on the part of the other herein contained, do hereby covenant and agree, each with the other, as follows:

1. The said vendors hereby covenant and agree that they will forthwith cause whatever steps may be necessary to be taken to convey to and vest in the said United Company, or such person or persons as the United Company shall designate to receive the same, the ownership, free from any claim or incumbrance, of all of the shares of the capital stock of the said Richardson Company, and will cause such shares to be transferred upon the books of the Richardson Company and new certificates to be issued therefor in the name of the said United Company or such person or persons as may be designated by the United Company therefor.

2. The said vendors hereby covenant and agree that they will as and when requested by the United Company cause all of the present officers and directors of the said Richardson Company to tender their resignations in writing to take effect upon acceptance by the directors, and as and when requested will cause all such actions to be taken by the directors and officers of the said Richardson Company as may be necessary or desired to transfer the control and management of the said Richardson Company to the said United Company or to such person or persons as the United Company may designate therefor, and to cause such persons as the United Company may designate to be chosen officers and directors of said Richardson Company. It is understood and agreed that the United Company shall as promptly as possible after execution of this indenture designate the persons to receive the stock and the persons to be elected directors and officers of the Richardson Company in order that the vendors may proceed at once to comply with the obligations of paragraphs 1 and 2 hereof.

3. The said vendors and each of them hereby covenant with and

warrant to the said United Company that the said Richardson Company is a corporation duly organized and existing under the laws of the State of Maine; that the total authorized capital stock of the said Richardson Company is the sum of sixty thousand dollars ($60,000) consisting of six hundred (600) shares of the par value of one hundred dollars ($100) each; that all of said shares of capital stock have been issued as fully paid; that of said six hundred (600) shares two hundred (200) shares of the par value of twenty thousand dollars ($20,000) are owned free from incumbrance by the Richardson Company itself and stand in the name of William B. Rice as Trustee for said Richardson Company; that all the rest of the authorized capital stock is owned or controlled by the vendors; that on the first day of December, 1908, said Richardson Company is free from all indebtedness and direct and contingent obligations excepting the indebtedness set forth in "Schedule A" hereto annexed, amounting to a total of thirty-two thousand one hundred fifty-eight dollars and fifty cents ($32,158.50) with certain interest thereon, and excepting the cost remaining unpaid of twenty (20) Richardson Sewing Machines and of certain jigs and parts ordered but not yet received or paid for, as set forth in paragraph 4 hereof; that on the first day of December, 1908, the factory equipment, patterns, jigs, etc., (including one set jigs, patterns, etc., in England) Richardson Sole Sewing Machines new, second-hand and rebuilt, machine parts and supplies, furniture and fixtures and raw materials on hand owned by the said Richardson Company is of the value at cost less depreciation of at least twenty-two thousand dollars ($22,000) and includes all of such property shown by inventory of September 1, 1908 with such additions thereto as have been made since that date, excepting so far as raw materials and supplies have been used and machines and machine parts have been disposed of in the ordinary course of business since said inventory of September 1, 1908. A brief summary of such property from said inventory of September 1, 1908 has been furnished by the said vendors and is hereto annexed, marked "Schedule B". The said vendors and each of them further covenant with and warrant to the said United Company that on this first day of December, 1908, the

said Richardson Company owns the machines mentioned in "Schedule C" hereto annexed which machines are in the possession of customers of the said Richardson Company upon loan under agreements for the payment of rental to the said Richardson Company and that the rental agreements covering all of said machines (unless the contrary is indicated in said "Schedule C") are in the possession of and owned by said Richardson Company; that on this first day of December, 1908, the Richardson Company is the owner of all the inventions, improvements and Letters Patent and interests therein formerly owned by the Steam Heated Horn Company, and is the owner of all the Letters Patent and applications for and interests in Letters Patent of the United States and other countries mentioned in "Schedule D" hereto annexed and the inventions covered thereby; that the property hereinbefore enumerated is not exclusive of other property of similar or different nature owned by the said Richardson Company; that all of the property herein or in said schedule hereto annexed, referred to as owned by the said Richardson Company, is free from any and all incumbrances; and that none of the property, interests or rights of any nature owned by the Richardson Company on September 1, 1908, have been transferred or disposed of otherwise than in the ordinary course of its business of manufacturing and dealing in machines, and that all of such property (excepting so far as used or disposed of in such ordinary course of business) and all of such interests and rights are still owned and possessed by the said Richardson Company.

4. The said vendors hereby jointly and severally covenant and agree to and with said United Company and to and with the said Richardson Company that they will promptly and at their own expense cause all indebtedness of said Richardson Company existing on this first day of December, 1908, or arising from dealings or transactions which have taken place prior to said date to be discharged and that they will at all times protect, indemnify and hold harmless the said Richardson Company from and against any and all indebtedness and obligations existing on said date or arising from dealings or transactions prior thereto and from all loss, cost, damage or expense arising therefrom, excepting alone however

that the vendors do not agree to pay or to indemnify against the amounts, not exceeding $90.00 per machine, remaining to be paid for twenty (20) Richardson sewing machines now being built for said Richardson Company by William Spiers, of Leicester, England, and the amounts, not exceeding $4,000.00, remaining to be paid for certain parts and jigs which have heretofore been ordered but have not yet been delivered to the said Richardson Company.

5. Each of the said vendors hereby sells, assigns, transfers, sets over and delivers to the said United Company all inventions, improvements, Letters Patent and interests and rights therein, thereunder or thereto which he has or to which he is in anywise entitled relating to any machinery of the kinds referred to in the preamble hereof or for the same or any similar purpose; and likewise sells, assigns, transfers and sets over to the said United Company any and all inventions, improvements, Letters Patent and interests and rights therein, thereunder or thereto which he may make, acquire, own or have any right to acquire or take over at any time within ten (10) years from the date hereof relating to any such machinery.

6. Each of the said vendors as a material part of this transaction and of the consideration for the agreement of the United Company to make the payment hereinafter provided for does hereby covenant and agree to and with the said United Company, and also to and with the said Richardson Company, that he will not at any time within ten (10) years from the date of these presents directly or indirectly, individually or in combination with others, as principal, agent, employee or representative, or as officer or stockholder of a corporation or otherwise, without the consent in writing of said United Company, enter into or be engaged or interested in or financially or otherwise assist any other person, firm or corporation in entering into, engaging in, developing or carrying on the manufacturing of or dealing in any machinery of the kinds referred to in the preamble hereof, or for the same or any similar purpose, or in any business which consists in whole or in part in manufacturing or dealing in such machinery or which will directly or

indirectly interfere or compete with the business of the said Richardson Company or of the said United Company in such machinery.

7. Each of the said vendors covenants and agrees that he will make all necessary disclosures and will at any and all times hereafter upon request execute any and all instruments and perform any and all acts which may be necessary or proper to carry out the full intent of this instrument and to enable the said United Company to secure, protect and enjoy the full benefits and advantages of all assignments and transfers herein provided for and of the covenants herein contained.

8. The said United Company as full consideration for the assignments and transfers herein made or provided for and for the covenants herein contained hereby agrees to pay to the said vendors the sum of eighty thousand dollars ($80,000). All parties hereby agree that said sum shall be paid to the said Harry L. Rice as agent for said vendors to receive the same and that the United Company shall be in no respect responsible for the application or distribution thereof. Such payment shall be made upon execution of papers and delivery of stock. It is distinctly understood that the said sum of eighty thousand dollars ($80,000) shall belong to the vendors individually and that no part of the said sum shall be paid or accounted for by the vendors or any of them to the Richardson Company or its successors or assigns on account of the said two hundred (200) shares held in trust by William B. Rice as Trustee for the Richardson Company as aforesaid; and the United Company covenants that neither the Richardson Company nor its successors or assigns, shall make or claim for any such payment or accounting.

9. Whereas the rental agreements covering machines put out on rental by the said Richardson Company provided for payment of rentals semi-annually, in advance; and whereas the Richardson Company, prior to December 1, 1908, has collected rentals covering periods of time in part subsequent to said December 1, 1908, and may hereafter collect overdue accounts for rental pertaining in part to periods of time prior to said December 1, 1908; now therefore it is agreed that the vendors shall cause to be turned over to the

United Company an amount equal to the rentals heretofore collected covering any periods of time subsequent to December 1, 1908, and the United Company shall cause to be turned over to the said vendors an amount equal to the rentals, if any, hereafter collected, which cover any periods of time prior to December 1, 1908; provided, however, that in figuring the rentals for the purpose of adjustment as aforesaid the same shall be figured on a basis of sixty-five dollars ($65.00) per year per machine (although the lease provides for seventy-five dollars ($75.00). In the adjustment between the vendors and the United Company to the date of December 1, 1908, (as of which date the transfer of the Richardson Company to the United Company is to take effect) debits and credits, in accordance with the foregoing provisions of this paragraph, with reference to rentals shall be made, and the vendors shall also be credited with an amount equal to the cash of the Richardson Company on hand at the close of business on the last day of November, 1908. There shall also be credited to the vendors an amount equal to any sums (less the expenses, if any, of making collections) which the Richardson Company shall collect on account of bills owing to the said Richardson Company on said first day of December, 1908, for goods theretofore sold and delivered by the said Richardson Company.

10. There are in the hands of the persons, firms and corporations hereinafter named certain stocks of parts of Richardson Sole Sewing Machines which have heretofore been supplied to said persons, firms or corporations by the said Richardson Company, viz: —

Stock in the hands of L. G. Freeman, of Cincinnati, Ohio, to the amount at catalogue selling prices of about one thousand dollars ($1,000).

Stock in the hands of Manufacturers' Supply Company, of St. Louis, Missouri, to the amount at catalogue selling prices of about one thousand dollars ($1,000).

Stock in the hands of Brooks & Company, of Auburn, Maine, to the amount at catalogue selling prices of about one hundred dollars ($100).

Stock in the hands of George William Hill & Company, of Leicester, England, to the amount at catalogue selling prices of about twelve hundred dollars ($1200).

Stock in the hands of Irving L. Keith, of Haverhill, Massachusetts, to the amount at catalogue selling prices of about two hundred and fifty dollars ($250).

Certain small stocks of parts in the hands of Nollesche Werke, of Weissenfels a/s Germany.

Certain small stocks of parts in the hands of the Boylston Manufacturing Company, at Leicester, England.

It is understood and agreed that the United Company shall cause the said Richardson Company to give an opportunity to the said L. G. Freeman, Manufacturers' Supply Company, Brooks & Company, George William Hill & Company and Irving L. Keith, and also, if the United Company shall see fit, to the said Nollesche Werke and the Boylston Manufacturing Company, to turn over and transfer to the said Richardson Company or to such persons as it may designate therefor the said stocks of parts at such prices as may be agreed upon between the said Richardson Company and the said respective persons, firms and corporations, not, however, exceeding the catalogue selling price thereof less the discounts therefrom which have been allowed said persons, firms or corporations in respect thereto, and if these stocks shall be so taken over by the said Richardson Company the said vendors agree to reimburse the said Richardson Company to the extent of all amounts paid by the said Richardson Company for said stocks in excess of the actual manufacturing cost of such parts to the Richardson Company which costs are estimated to be from thirty-three and one-third per cent. (33 1/3%) to fifty per cent. (50%) of the catalogue selling prices.

11. The original or copy of each of the following outstanding agreements of the Richardson Shoe Machinery Company has been furnished by the vendors to the said United Company, viz: —

Agreement, dated April 27, 1908, between the Richardson Shoe Machinery Company and the Essex Machine Company, of Lynn, Massachusetts.

Agreement, dated October 22, 1908, between the Richardson Shoe Machinery Company and Cushman-Hollis Company;

Agreement, expressed to terminate July 1, 1910, between the Richardson Shoe Machinery Company and the H. C. Godman Company;

Agreement, dated August 15, 1908, between the Richardson Shoe Machinery Company and R. E. Hood;

The rental agreements covering the machines enumerated in said Schedule C annexed (excepting when the contrary is indicated in said Schedule C);

and it is agreed that the United Company in taking over the Richardson Company as aforesaid shall take said Company subject to the obligations of the Richardson Company under said agreements required by said agreements to be performed after this first day of December, 1908, the said vendors paying or causing to be paid such indebtedness, if any, and discharging or causing to be discharged such obligations, if any, under or arising from said agreements as pertain to the period prior to said first day of December, 1908 or arise from transactions which took place under said agreements prior to said first day of December, 1908. The covenants of the vendors set forth in lines fifteen to twenty-four of paragraph 3 hereof and set forth in paragraph 4 hereof are hereby modified to such extent as is necessary to meet the requirements of this article 11 as to said agreements herein enumerated.

12. The term "United Company" wherever herein used shall include the said United Shoe Machinery Company, its successors and assigns. The Richardson Company joins in this agreement for the purpose of consenting to the transfer or conveyance as herein provided of the two hundred (200) shares which are stated in paragraph numbered 3 hereof to be owned by the Richardson Company and stand in the name of William B. Rice as trustee for said Richardson Company; and the Richardson Company hereby expressly authorizes and directs the said William B. Rice, Trustee as aforesaid, to transfer the said shares when and as the vendors may request.

In Witness Whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

WILLIAM B. RICE [SEAL]
HARRY L. RICE [SEAL]
JOHN H. RICHARDSON [SEAL]
RICHARDSON SHOE MACHINERY CO. [SEAL]
By W. B. Rice, President
UNITED SHOE MACHINERY COMPANY [SEAL]
Edwd. P. Hurd, Assistant Treasurer.

Commonwealth of Massachusetts.
County of Suffolk, ss. Boston, Jan. 19th, 1909.

Then personally appeared William B. Rice, to me personally known and known to me to be the William B. Rice described in and who executed the foregoing instrument, and acknowledged the same to be his free act and deed. Before me,

John D. Hardy, Notary Public [SEAL]

Commonwealth of Massachusetts.
County of Suffolk, ss. Boston, Jan. 19th, 1909.

Then personally appeared Harry L. Rice, to me personally known and known to me to be the Harry L. Rice described in and who executed the foregoing instrument, and acknowledged the same to be his free act and deed. Before me,

John D. Hardy, Notary Public [SEAL]

Commonwealth of Massachusetts.
County of Suffolk, ss. Boston, Jan. 19th, 1909.

Then personally appeared John H. Richardson, to me personally known and known to me to be the John H. Richardson described in and who executed the foregoing instrument, and acknowledged the same to be his free act and deed. Before me,

John D. Hardy, Notary Public [SEAL]

SCHEDULE A.

Total indebtedness as of December 1, 1908.

Notes payable	$28,000.00	
Bills payable	4,158.50	
		$32,158.50

SCHEDULE B.

Stock, Equipment, etc. on hand as per inventory of September, 1, 1908.

Furniture & Fixtures,	$490.75	
Factory Equipment (Machine Shop)	244.67	
Raw Material (drop forgings)	339.44	
Patterns, jigs, etc. (including one set in England)	7,195.96	
Richardson Sole Sewing Machines, new, Second-hand and rebuilt, Machine parts, supplies, etc.,	13,231.68	
		21,502.50

SCHEDULE D.

Patents (including applications and interests) of Richardson Company.

a. United States.

No. 467,878,	Jan. 26, 1892,	George R. Peare assignor of 1/2 to E. L. Sprague; Sewing Machine.
No. 511,357,	Dec. 26, 1893,	George R. Peare assignor to Steam Heated Horn Co.; mechanical movement.
No. 526,325,	Sep. 18, 1894,	George R. Peare Shoe Sewing Machine.
No. 556,159,	Mar. 10, 1896,	George R. Peare assignor to Steam Heated Horn Company; Shoe Sewing Machine.

No. 554,238, Feb. 11, 1896, Herbert H. Buffum assignor to Steam Heated Horn Company; Sewing Machine.

No. 570,902, Nov. 10, 1896, Herbert H. Buffum assignor to Steam Heated Horn Company; Sewing Machine.

No. 570,969, Nov. 10, 1896, Daniel W. Stevenson assignor of 1/2 to E. L. Sprague; Sewing Machine.

No. 577,397, Feb. 16, 1897. E. P. Richardson assignor to John H. Richardson, Trustee; Shoe Sewing Machine.

No. 599,253, Feb. 15, 1898, E. P. Richardson assignor to John H. Richardson, Trustee; Shoe Sewing Machine.

No. 648,528, May 1, 1900, John H. Richardson; Shoe Sewing Machine.

No. 663,100, Dec. 4, 1900, John H. Richardson; Sewing Machine Horn.

No. 710,612, Oct. 7, 1902, E. P. Richardson assignor to John H. Richardson, Trustee; Shoe Sewing Machine.

No. 710,613, Oct. 7, 1902, E. P. Richardson, Assignor to John H. Richardson, Trustee; Presser-Foot Mechanism for Shoe Sewing Machines.

No. 885,378, Apr. 21, 1908, E. P. Richardson Assignor to Richardson Shoe Machinery Company; Treadle Mechanism for Shoe Sewing Machines.

b. Great Britain.

No. 3791/98, Feb. 18, 1898, H. H. Lake on communication from Steam Heated Horn Co.; Boot Sole Stitching Machine. This patent is taken over subject to abandonment if the same

shall be found to have been abandoned.

No. 21,992/00, Dec. 4, 1900, Issued to Henry Harris Lake on communication from Steam Heated Horn Co.; Improvements in Sewing Machine Horns. This patent is taken over subject to abandonment if the same shall be found to have been abandoned.

No. 21,786/02, Oct. 7, 1902, Issued to Henry Harris Lake on communication from Steam Heated Horn Co. Assigned to Richardson Shoe Machinery Co.; Improvements on machines for Sewing Boots and Shoes.

c. France.

No. 374,644, Feb. 14, 1907, Richardson Shoe Machinery Co.; Treadle Mechanism for Shoe Sewing Machines.

d. Germany.

No. 112,699, Feb. 19, 1 98, Steam Heated Horn Co.; Looper or Whirl for Shoe Sewing Machines. This patent is taken over subject to abandonment if the same shall be found to have been abandoned.

No. 194,735, Feb. 20, 1907, Richardson Shoe Machinery Co.; Treadle Mechanism for Shoe Sewing Machines.

e. One-half interest in the machines, inventions therein and any Letters Patent that may be obtained therefor relating to Cutting Press or Clicking Machine referred to in Agreement (mentioned in Paragraph 11) dated April 27, '08, between Essex Machine Company and Richardson Shoe Machinery Company, subject to

and with the benefit of all agreements set forth in said agreement of April 27, '08.

SCHEDULE C.

Machines owned by Richardson Company in possession of Customers on Loan Agreement.

Richardson Sole Sewing Machines.		In the factory of	City or Town and State.
No.	1	Rice & Hutchins, Inc.	Marlboro, Mass.
"	2	"	"
"	4	"	"
"	5	"	"
"	7	"	"
"	8	"	"
"	20	"	"
"	23	A. F. Cox & Son	Portland, Me.
"	25	The Drew-Selby Co.	Portsmouth, O.
"	30	W. D. Brackett Co.	Nashua, N. H.
"	31	Krohn Fechheimer & Co.	Cincinnati, O.
"	32	Meldola & Coon	Rochester, N. Y.
"	33	Cushman Hollis Co.	Auburn, Maine.
"	41	Krohn Fechheimer & Co.	Cincinnati, O.
"	48	Rice & Hutchins, Inc.	Marlboro, Mass.
"	58	The Drew-Selby Co.	Portsmouth, O.
"	59	Meldola & Coon	Rochester, N. Y.
"	61	J. H. Winchell & Co.	Haverhill, Mass.
"	64	Newport Shoe Co.	Lowell, Mass.
"	65	Worcester Slipper Co.	Worcester, Mass.
"	68	John W. Russ Co.	Haverhill, Mass.
"	69	A. H. Berry Shoe Co.	Portland, Me.
"	72	Rice & Hutchins, Inc.	Marlboro, Mass.
"	73	The Scheipple Shoe Mfg. Co.	Cincinnati, O.
"	74	Houghton, Hibard & Warren	Somersworth, N. H.
"	75	Rice & Hutchins, Inc.	Marlboro, Mass.
"	79	Dingley Foss Shoe Co.	Auburn, Maine.
"	83	Rice & Hutchins, Inc.	Marlboro, Mass.
"	84	"	"

No. 97	Houghton, Hibard & Warren	Somersworth, N. H.
" 99	John W. Russ Co.	Haverhill, Mass.
" 106	Cushman Hollis Co.	Auburn, Me.
" 108	" "	"
" 110	Dingley-Foss Shoe Co.	Auburn, Me.
" 115	The Drew-Selby Co.	Portsmouth, O.
" 118	Hilliard & Tabor	Haverhill, Mass.
" 119	Woodbury Shoe Co.	Beverly, Mass.
" 120	Cushman Hollis Co.	Auburn, Me.
" 124	Houghton, Hibard & Warren	Somersworth, N. H.
" 131	Bartels, Thelen & Co.	Chelsea, Mass.
" 135	" "	"
" 140	Woodbury Shoe Co.	Beverly, Mass.
" 141	Dingley-Foss Shoe Co.	Auburn, Me.
" 143	Hilliard & Tabor	Haverhill, Mass.
" 144	Gale Shoe Mnfg. Co.	Portsmouth, N. H.
" 145	National Shoemakers	Auburn, Me.
" 146	Knipe Bros. Inc.	Ward Hill, Mass.
" 151	" " "	"
" 153	National Shoemakers	Auburn, Me.
" 157	The Selby Shoe Co.	Portsmouth, O.
" 158–176	The Craddock-Terry Co.	Lynchburg, Va.
" 160	National Shoemakers	Lewiston, Me.
" 161	Harrisburg Shoe Mfg. Co.	Harrisburg, Pa.
" 163	Millett Woodbury & Co.	Beverly, Mass.
" 183	Bartels, Thelen & Co.	Chelsea, Mass.
" 184	" " "	"
" 185	" " "	"
" 186	" " "	"
" 191	" " "	"
" 202	W. H. McElwain Company	Manchester, N. H.
" 204	" "	"
" 205	" "	"
" 206	" "	"
" 207	" "	"
" 208	" "	"

No. 209	Rice & Hutchins, Inc.	Marlboro, Mass.
" 210	W. H. McElwain Company	Manchester, N. H.
" 211	" "	"
" 212	" "	"
" 213	" "	"
" 214	" "	"
" 215	" "	"
" 216	Harrisburg Shoe Mfg. Co.	Harrisburg, Pa.
" 217	" "	"
" 218	Rice & Hutchins, Inc.	Marlboro, Mass.
" 219	Cushman Hollis Co.	Auburn, Me.
" 220	Newport Shoe Co.	Lowell, Mass.
" 221	Gale Shoe Mnfg. Co.	Portsmouth, N. H.
" 222	" " "	"
" 229	Bartels, Thelen & Co.	Chelsea, Mass.
" 230	" " "	"
" 260	" " "	"
" 261	" " "	"
" 264	" " "	"
" 265	Millett Woodbury & Co.	Beverly, Mass.
" 266	Bartels, Thelen & Co.	Chelsea, Mass.
" 270	C. M. Brett Co.	Hudson, Mass.
" 272	Bartels, Thelen & Co.	Chelsea, Mass.
" 288	J. L. Walker & Co.	Lynn, Mass.
" 296	" "	"
" 308	Watson-Plummer Shoe Co.	Dixon, Ill.
" 310	" " " "	"
" 322	A. M. Creighton,	Lynn, Mass.
" 326	Rice & Hutchins	South Braintree
" 329	D. Harry Chandler	Vineland, N. J.
" 332	Luddy & Currier	Dover, N. H.
" 353	Woodbury Shoe Co.	Beverly, Mass.
" 333	Watson-Plummer Shoe Co.	Dixon, Ill.
" 362	Luddy & Currier	Dover, N. H.
" 365	Luddy & Currier	Dover, N. H.

The rental agreements for the one hundred (100) machines above enumerated have been signed and are in the possession of the Richardson Company.

The following enumerated machines are out on trial and rental agreements have not as yet been executed.

No. 363	Sherwood Shoe Co.	Rochester, N. Y.
" 364	Badger State Shoe Co.	Madison, Wis.
One Machine	J. H. Winchell & Co.	Haverhill, Mass.

PLAINTIFF'S EXHIBIT 126.

[Put in Evidence, page 577.]

This agreement made this first day of December, A. D. 1908, by and between John H. Richardson, of Cliftondale, Massachusetts, and the United Shoe Machinery Company, a corporation duly organized under the laws of the State of New Jersey, (hereinafter called the "United Company"), Witnesseth:

That whereas the United Company is engaged throughout the United States of America and elsewhere in the business of manufacturing and dealing in and with machinery, tools, mechanisms, devices, findings, materials, supplies, methods, processes and things for use in the manufacture of footwear and for leather working, and

Whereas, the said Richardson desires to enter into the employment of the said United Company and the said United Company desires to secure the services and inventions of the said Richardson together with the covenants and agreements on the part of the said Richardson herein contained,

Now, Therefore, be it Known that the said Richardson in consideration of the covenants and agreements on the part of the United Company herein contained does hereby covenant and agree to and with the said United Company as hereinafter set forth, and does hereby make the transfers and assignments hereinafter contained and the said United Company in consideration of the covenants, agreements and assignments on the part of the said Richard-

son hereinafter contained does hereby covenant and agree to and with the said Richardson as hereinafter set forth.

1. The said Richardson hereby covenants and agrees to and with the said United Company that for a term of one year beginning with the date hereof he will render and give his time, services and skill exclusively to the said United Company for the accomplishment of such purposes and the performance of such duties as shall from time to time be assigned to him by the said United Company or such person as may be designated for such purpose by the said United Company, and that he will at all times faithfully and truly and to the best of his skill and ability, act diligently and loyally for the promotion of the interests of the said United Company.

2. The said Richardson has sold and does hereby sell, assign, transfer and set over unto the said United Company any and all inventions and improvements which he may at any time hereafter, prior to the expiration of said period of one year beginning with the date hereof or at any time within ten years from the expiration of said period of one year, make, either as sole inventor or as joint inventor with another or others, and whether made in or out of the ususal working hours or upon the premises of the said United Company or otherwise, in, relating to or designed or adapted for use in machinery, tools, mechanisms, devices, findings, materials, supplies, methods, processes or things designed or adapted for use in the manufacture of footwear or in the manipulation or working of leather or in or relating to or designed or adapted for use in the manufacture of any such machine or of such other articles or things or in or relating to or designed or adapted for use in any machinery, tools, mechanisms, devices, materials, supplies, processes or things designed or adapted for use in such manufacture of machinery or of such other articles or things or in, relating to or in any manner designed or adapted for use in any of the factories or in the business of said United Company or of any of the Companies now or hereafter owned or controlled by it, and has likewise sold and does hereby sell, assign, transfer and set over unto the said United Company all inventions, improvements, Letters Patent and Applications for Letters Patent (both of the United

States of America and of any and all other countries) and all right, title and interest therein, thereunder or thereto which the said Richardson now owns, controls or has any right by agreement or otherwise to acquire, take over, convey or cause to be conveyed, or which he may at any time during said term of one year or at any time with said period of ten years after the expiration of said term of one year, own, control or have any right by agreement or otherwise to acquire, take over, convey or cause to be conveyed, in, relating to or designed or adapted for use in any machinery, tools, mechanisms, devices, findings, materials, supplies, methods, processes or things of the kinds hereinbefore referred to in this article hereof, or in the manufacture thereof or in, relating to or designed or adapted for use in any machinery, methods, processes or other articles or things designed or adapted for use in such manufacture or in, relating to or in any manner designed or adapted for use in any of the factories or in the business of the said United Company or any Companies now or hereafter owned or controlled by it.

To Have and to Hold all of said inventions, improvements, Letters Patent, applications for Letters Patent, interests and rights to said United Company, its successors and assigns to its and their own use and behoof absolutely.

3. The said Richardson hereby covenants and agrees to and with the said United Company that he will promptly disclose to the President, General Manager, Superintendent or Counsel of said United Company all inventions, improvements, Letters Patent, applications for Letters Patent, interests and rights included within the terms of Article 2 hereof which he now has or has any right by agreement or otherwise to acquire, take over, convey or cause to be conveyed, and that upon making any invention or improvement, or acquiring any right, title or interest in, to or under or any right to acquire, take over, convey or cause to be conveyed any invention or improvement, Letters Patent or application for Letters Patent or interest or right therein included within the terms of Article 2 hereof, he will forthwith disclose the same to the President, General Manager, Superintentent or Counsel of said United Company;

that he will repeat such disclosures and fully explain the same when and as often as may be requested by said officers of the said United Company or any of them, and that he will, and his heirs, executors and administrators shall, at any and all times upon the request of the said officers of the said United Company or any of them, perform or cause to be performed all such acts, will execute or cause to be executed all such applications, specifications, powers of attorney or other instruments in such manner and form as the United Company or its counsel for the time being shall deem proper to obtain the grant of Letters Patent of the United States and of any and all other countries where it may be desired to obtain Letters Patent therefor covering the inventions and improvements under the terms of said Article 2 hereof conveyed or provided to be conveyed and to fully and completely vest and confirm in the said United Company or in such nominee or nominees as the said United Company shall designate to take title to the same so far as is within the power of the said Richardson, his heirs, executors or administrators to the full and complete right, title and interest in, to and under all such Letters Patent and the entire right, title and interest in, to and under all inventions, improvements, Letters Patent and applications for Letters Patent, interests and rights included within the terms of Article 2 hereof and thereby conveyed or provided to be conveyed and to enable the said United Company to secure and enjoy the full benefits and advantages thereof — all without further consideration than that hereinafter provided for but at the expense of the said United Company.

4. The said Richardson does hereby further covenant and agree to and with the said United Company that he will not at any time within said term of one year beginning with the date hereof, or at any time within ten years from the expiration of said period of one year, either directly or indirectly, individually or jointly with another or others or as partner, agent, contractor, employee or as officer or stockholder of a corporation or otherwise (excepting as an employee, officer or stockholder of the said United Company) enter into or be engaged or interested in inventing, exploit-

ing, manufacturing, selling, dealing in or developing any machinery, tools, mechanisms, devices, findings, materials, supplies, methods, processes or things designed or adapted to be employed in the manufacture of footwear or in the manipulation or working of leather or designed or adapted for use in the manufacture of any such machine or of any such other article or things or in exploiting, selling or dealing in or with any invention or Letters Patent relating to such machinery or any such other articles or things or to the manufacture thereof, or in any business so far as it consists in inventing, exploiting, manufacturing, selling, dealing in or developing any such machinery or such other articles or things, or in making, exploiting, selling, dealing in or developing any such invention or Letters Patent or in any business which will in any wise compete or interfere with the business of said United Company or of any corporation now or hereafter owned or controlled by it, and that he will not financially or otherwise encourage or assist any other person, firm or corporation in inventing, exploiting, manufacturing, selling, dealing in or developing any such machinery or such other articles or things or any inventions or Letters Patent relating thereto, or in entering into, developing or carrying on any such business.

5. The United Company, as consideration for the services of the said Richardson and for the assignments hereinbefore made or provided to be made and the covenants and agreements on the part of the said Richardson hereinbefore contained hereby covenants and agrees to and with the said Richardson to employ the said Richardson for the term of one year beginning with the date hereof and during said period to pay to said Richardson, provided the said Richardson shall continue faithfully to perform the duties of said employment and to faithfully keep and perform the covenants and agreements on his part herein contained, a salary at the rate of twenty-five hundred dollars per annum, payable in equal monthly installments of $208.33 Dollars each.

6. In case, upon the expiration of the said period of one year beginning with the date hereof, neither the said United Company nor the said Richardson shall notify the other of the termination of

said employment, then unless a new agreement in writing shall be made said employment shall continue upon the same terms and conditions as hereinbefore provided until such time as either party shall give to the other thirty days notice of the intention to terminate the same and if such employment shall continue beyond the expiration of said period of one year beginning with the date hereof the assignments, covenants and agreements contained or provided for in Article 2 hereof shall apply to all inventions, improvements, Letters Patent, applications for Letters Patent, interests and rights of the kinds referred to in said Article 2, made, owned or acquired by the said Richardson or which the said Richardson shall have the right to acquire, take over, convey or cause to be conveyed during the further continuance of said employment and during the period of ten years thereafter, and all the covenants and agreements on the part of the said Richardson in this instrument contained shall apply to the period during which the further employment of the said Richardson shall continue and for the period of ten years thereafter.

7. The term "United Company" as herein used shall be held to include said United Shoe Machinery Company and its successors and assigns and all covenants and agreements on the part of said Richardson herein contained shall run to and may be enforced by and for the benefit of said United Company, its successors and assigns.

In Witness Whereof the said John H. Richardson has hereunto set his hand and seal and the said United Shoe Machinery Company has caused these presents to be signed in its name and on its behalf by Edward P. Hurd, its Assistant Treasurer, and its corporate seal to be hereto affixed the day and year first above written.

JOHN H. RICHARDSON [SEAL]
UNITED SHOE MACHINERY COMPANY [SEAL]
By Edwd. P. Hurd, Asst. Tres.

Commonwealth of Massachusetts.

Suffolk, ss. Boston, Jan. 28, 1909.

On this twenty-eighth day of January, A. D. 1909, before me

personally appeared John H. Richardson to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

Harold Gregory Donham, Notary Public. [SEAL]

PLAINTIFF'S EXHIBIT 127.

[Put in Evidence, page 579.]

Know all Men by these Presents: That Whereas, the Carver Cotton Gin Company, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and having a usual place of business at East Bridgewater in said Commonwealth (hereinafter called the "Carver Company") has heretofore been engaged in connection with its general machinery business in a business of manufacturing and dealing in machinery, mechanisms, tools and devices for use in the manufacture of footwear, and is the owner of certain property relating thereto, and is desirous of disposing of the same to the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey (hereinafter called the "United Company");

And Whereas, Edward Hobart is the Treasurer and a substantial stockholder of the said Carver Company and is personally desirous that the purchase of said business and property by the said United Company from the said Carver Company shall be carried through, and has in behalf of the Carver Company conducted the negotiations for said purchase by the United Company;

Now, Therefore, in consideration of the sum of one dollar ($1.00) and other good and valuable considerations paid by the said United Company to the said Carver Company, the receipt whereof is hereby acknowledged, the said Carver Company does hereby make the sale, assignments and transfers hereinafter set forth, and enter into the warranties and covenants hereinafter contained; and the said Hobart personally in consideration of the making of said purchase by the said United Company and payment of said consideration does hereby enter into the covenants upon the part of the said Hobart hereinafter contained.

The Carver Company for the consideration aforesaid does hereby sell, assign, transfer, set over and deliver unto the said United Company, its successors and assigns, all that part of the business of the said Carver Company (excepting as hereinafter specifically provided) which consists of or relates to or is connected with manufacturing or dealing in machinery, tools, mechanisms or devices for use in the manufacture of footwear, together with the good-will thereof, and stock in trade and all other property, interests and rights relating thereto, including herein without prejudice to the generality of the foregoing all trade names, marks or brands (including the exclusive right so far as the said Carver Company is able to grant the same to the use either alone or in connection with other words or names (except the use of the Corporate name of the Carver Cotton Gin Company) of the name "Carver" as applied to machinery, mechanisms, tools or devices for use in the manufacture of footwear or business therein), all patterns, blue prints, drawings, jigs, special tools, mechanisms and devices pertaining to the business of manufacturing or dealing in such machinery, mechanisms, tools or devices; all inventions and Letters Patent of the United States and of any and all other countries which the said Carver Company now owns or has any right by agreement or otherwise to acquire or take over relating to machinery, mechanisms, tools or devices for use in the manufacture of footwear or to the manufacture thereof; all machines, mechanisms, tools, devices for use in the manufacture of footwear and all duplicate parts therefor on hand manufactured or in process of manufacture; and any and all other articles and things, interests and rights pertaining to said business.

To Have and to Hold all of said property, interests and rights of every name and nature to the said United Shoe Machinery Company, its successors and assigns, to its and their own use and behoof absolutely.

An inventory of the stock on hand of machinery, mechanisms, tools and devices and duplicate parts thereof for use in the manufacture of footwear on hand April 1, 1908 has been prepared by the said Carver Company and identified by the signature of the

said Hobart, Treasurer of the said Carver Company, and Edward P. Hurd, Assistant Treasurer of the said United Company, and a summary of the same is hereto attached; and the said Carver Company hereby warrants to the said United Company, its successors and assigns, that the property of that nature hereby conveyed includes all of the property set forth in said inventory excepting such as has been used in the regular course of business since said first day of April; that it has good title and right to convey all of the same to the said United Company free from any incumbrances, and will warrant and defend the same against the lawful claims and demands of all persons. The Carver Company also agrees to account to the United Company for any of said property which has been used since the first day of April, it being the understanding and agreement that the United Company shall have the benefits of all the said business in manufacturing or dealing in machinery, mechanisms, tools or devices for use in the manufacture of footwear done since said first day of April.

And for the consideration aforesaid the said Carver Company and the said Hobart personally do hereby covenant and agree to and with the said United Company, its successors and assigns, (the said Carver Company for itself and the said Hobart for himself but neither for the other) that they will not nor will either of them (without the consent in writing in each instance of the said United Company, its successors or assigns, and excepting in so far as the said Carver Company may be interested as a stockholder or the said Hobart as a stockholder, officer or otherwise in the said United Company, its successors or assigns) at any time within fifteen (15) years from the date of these presents directly or indirectly either jointly or severally, individually or in combination with others, as stockholder or officer in any corporation, or as owner, partner, principal, agent or otherwise enter into or be engaged or interested in or financially or otherwise assist any other person, firm or corporation in entering into, developing, engaging in or carrying on any business which relates or pertains in any way to manufacturing, selling or otherwise dealing in any machinery, tools, mechanisms or devices for use in the manufacture of footwear, or any

business which will in any way interfere or compete with the business of the said United Company, its successors or assigns, in manufacturing or dealing in or with machinery, mechanisms, tools or devices for use in the manufacture of footwear; excepting, however, that the said Carver Company reserves to itself and in no way includes as part of this transaction the business heretofore carried on by it of manufacturing the Lockett Crimping Machines, and also of manufacturing machines for grinding splitter knives other than grinders for knives for use in the manufacture of footwear; and, further, the said Carver Company reserves from the sale transfer hereby made its general machinery business (other than machinery, mechanisms, tools or devices for use in the manufacture of footwear) including the business of manufacturing, buying, selling and installing and otherwise dealing in general factory machinery such as shafting, engines, boilers, elevators and the like used by shoe manufacturers as well as others for the operation of their factories, but not including in this reservation any machinery, mechanisms, tools or devices for use in manufacturing or operating upon footwear or portions thereof or any business therein.

And for the same consideration the said Carver Company and the said Hobart, each for itself and himself but not for the other, do hereby covenant and agree to and with the said United Company, its successors and assigns, that they and either of them will at any time or times hereafter whenever requested by the United Company, its successors or assigns, its or their officers, attorneys or patent solicitors, execute and deliver or cause to be executed and delivered any and all instruments, and will do or cause to be done any and all acts which may be necessary or desired to fully vest and confirm in the said United Company, its successors and assigns, all the property, interests and rights of every name or nature hereby conveyed or intended so to be, and to carry out the full intent of this instrument.

The term "United Company" wherever herein used shall include the said United Shoe Machinery Company and its successors and assigns, and all covenants and agreements running to the said

United Company may be enforced by or for the benefit of the United Company or any successor or assignee.

In Witness Whereof the said Carver Cotton Gin Company has caused this instrument to be signed and its corporate seal to be hereto affixed by Edward Hobart, its Treasurer; and the said Edward Hobart has hereunto set his hand and seal this 30th day of April, A. D. 1908.

CARVER COTTON GIN COMPANY
By Edward Hobart, Treasurer.
EDWARD HOBART

Commonwealth of Massachusetts.
Suffolk, ss. Boston

On this 30th day of April 1908 before me appeared Edward Hobart, to me personally known, who being by me duly sworn did say that he is the Treasurer of the Carver Cotton Gin Company, a corporation organized and existing under the laws of the Commonwealth of Massachusetts; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Hobart acknowledged said instrument to be the free act and deed of said corporation.

Harold Gregory Donham, Notary Public.

SUMMARY OF INVENTORY SHOWING SHOE MACHINERY AND PARTS THEREFOR IN POSSESSION OF THE CARVER COTTON GIN COMPANY ON APRIL 1, 1908.

Gilmore Buffer	1780.59
Carver Heel Scourer	459.55
Carver Roller	298.76
Acme Leveler	1393.25
Gilmore Leveler	83.86
W. & H. Breaster	348.12
Carver Vamp Skiver	447.08
Davis Skiver	75.03

Smith Skiver	348.23
Tripp "	433.07
Stowe Splitter	624.86
Carver Cyl. Splitter	300.39
" 10" "	157.34
" 18" "	1012.09
" 26" "	364.97
" 32" "	237.55
Julian Rounder	275.25
Carver Top Piece Grinder	197.32
Adams " " Scourer	45.45
Carver Welt Cutter	55.85
" Edge Trimmer	134.85
" Counter Divider	30.28
Miscellaneous	1780.05
	$10883.79

PLAINTIFF'S EXHIBIT 128.

[Put in Evidence, page 582.]

This indenture, made this twentieth day of January 1909, by and between Harry L. Rice, of Quincy, Massachusetts, and Fred LaChapelle, of Lynn, Massachusetts, (hereinafter called the "vendors") of the one part, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, (hereinafter called the "United Company") of the other part, Witnesseth:

That Whereas, the said vendors prior to the date of this indenture have been engaged in developing and in dealing in and with certain methods and machinery, mechanisms and devices for forming chain stitches and chain stitch seams, and certain machinery, mechanisms, tools and devices intended or adapted for use in the manufacture of footwear including especially machines, mechanisms, tools and devices intended or adapted for use in attaching welts, outsoles or insoles of welted or turned footwear, and the said vendors have represented to the United Company that they

jointly or severally own certain inventions, improvements, Letters Patent and applications for Letters Patent, and certain machines, drawings, machine parts and other property relating to such methods and machinery, mechanisms, tools and devices, and to the business of developing and dealing therein and therewith;

And Whereas, the said vendors desire to sell and transfer to the said United Company all of such inventions, improvements, Letters Patent, applications for Letters Patent, and other property, and all interests and rights in and to such inventions, improvements, Letters Patent, applications for Letters Patent and property, and in and to all business heretofore carried on by the said vendors or either of them relating thereto and the good-will thereof; and the United Company desires to acquire the same together with the warranties and covenants on the part of the said vendors hereinafter set forth;

Now, Therefore, be it Known that the said vendors and each of them in consideration of the covenant and agreement on the part of the United Company to make the payment hereinafter provided for do hereby make the sales, transfers, covenants and agreements on their part hereinafter set forth; and the said United Company in consideration of said sales, transfers, covenants and agreements does hereby covenant and agree to make said payment hereinafter provided for.

1. The said vendors and each of them for the consideration aforesaid hereby sell, assign, transfer, set over and deliver to the said United Company all inventions, improvements, Letters Patent, applications for Letters Patent and interests and rights in, to and under inventions, improvements, Letters Patent and applications for Letters Patent of the United States and of any and all other countries which they own or either of them owns, or to which they are or either of them is in anywise entitled relating to methods for the formation of chain stitches or chain stitch seams intended or adapted for use in attaching the welts, outsoles or insoles of welted or turned footwear, or to machinery, mechanisms, tools or devices pertaining to such chain stitches or chain stitch seams or the formation thereof, or relating to machinery, mechanisms, tools or devices

intended or adapted in whole or in part for use in attaching in whole or in part the welts, outsoles or insoles of welted or turned footwear; and likewise for the same consideration to sell, assign, transfer and set over to the said United Company any and all inventions, improvements, Letters Patent, and interests and rights in, to and under inventions, improvements and Letters Patent which they or either of them may at any time within ten (10) years from the date hereof make, acquire, own or have any right by agreement or otherwise to acquire or take over relating to any methods, machinery, mechanisms, tools or devices intended or adapted for any such purpose or purposes.

2. And for the same consideration each of the said vendors does also hereby sell, assign, transfer, set over and deliver to the said United Company all machines, machine parts, drawings and other property which he has constructed or caused to be constructed, or which he owns or has any right by agreement or otherwise to acquire or take over relating to methods or to machinery, mechanisms, tools or devices of the kinds described in paragraph 1 hereof, or to the development or manufacture of the same, including herein any and all business and the good-will thereof heretofore carried on by him or by the vendors relating to any such methods, machinery, mechanisms, tools or devices.

To Have and to Hold all of the property, inventions, improvements, Letters Patent, applications for Letters Patent, interests and rights in paragraphs 1 and 2 hereof mentioned to the said United Company, its successors and assigns, to its and their own use and behoof absolutely.

3. And for the same consideration the said vendors do hereby jointly and severally (without prejudice to the generality of the foregoing assignments) covenant with and warrant to the said United Company that the inventions, improvements, Letters Patent and applications for Letters Patent relating to methods, machinery, mechanisms, tools and devices of the kinds enumerated in paragraph 1 hereof now owned by them or one of them and hereby conveyed include the entire right, title and interest free from any and all licenses, grants or encumbrances whatsoever in,

to and under the Letters Patent and applications for Letters Patent enumerated in the schedule hereto annexed and marked "Schedule A" and in, to and under the inventions and improvements covered thereby; that the property hereby conveyed includes the machines, drawings and other property enumerated in the schedule hereto annexed and marked "Schedule B"; and that the said property enumerated in "Schedule B" is free from any and all claims or encumbrances.

4. And for the same consideration each of the said vendors as a material part of this transaction and of the consideration for the agreement of the United Company to make the payment hereinafter provided for does hereby covenant and agree to and with the said United Company that he will not at any time within ten (10) years from the date of these presents directly or indirectly, individually or in combination with others, as principal, agent, employee or representative, or as officer or stockholder of a corporation or otherwise, without the consent in writing of said United Company, enter into or be engaged or interested in or financially or otherwise assist any other person, firm or corporation in entering into, engaging in, developing or carrying on the manufacturing of or dealing in any method, machinery, mechanism, tool or device of the kinds referred to in paragraph 1 hereof, or for the same or any similar purpose, or in any business which consists in whole or in part in manufacturing or dealing in any such method, machinery, mechanism, tool or device, or which will directly or indirectly interfere or compete with the business of the said United Company therein.

5. And for the same consideration each of the said vendors does hereby covenant and agree to and with the said United Company that without further or other consideration than that herein provided for he will make all necessary disclosures and will at any and all times hereafter upon request execute and cause to be executed any and all applications for Letters Patent, assignments, transfers, powers of attorney and other instruments, and will perform and cause to be performed any and all acts requested by the United Company which may be necessary or desired to fully and com-

pletely vest and confirm in the said United Company or its nominees all inventions, improvements, Letters Patent, applications for Letters Patent, property, interests and rights hereby conveyed or agreed or expressed to be conveyed, and to carry out the full intent of this instrument, and to enable the said United Company to secure, protect and enjoy the full benefits and advantages of all assignments and transfers herein made or provided for and of all covenants and agreements herein contained.

6. The said United Company as full consideration for the assignments and transfers herein made or provided for and for the covenants and agreements on the part of the vendors herein contained hereby agrees to pay to the said vendors the sum of ten thousand dollars ($10,000). All parties agree that said sum shall be paid to the said Harry L. Rice as agent for said vendors to receive the same, and that the United Company shall be in no respect responsible for the application or distribution thereof. Such payment shall be made upon the execution of papers.

7. The term "United Company" wherever herein used shall include the said United Shoe Machinery Company, its successors and assigns.

In Witness Whereof the parties have hereunto set their hands and seals the day and year first above written.

HARRY L. RICE [SEAL]
FRED LA CHAPELLE [SEAL]
UNITED SHOE MACHINERY COMPANY
Edward P. Hurd, Assistant Treasurer.

Commonwealth of Massachusetts.

County of Suffolk, ss. Boston, Jan. 20, 1909.

Then personally appeared Harry L. Rice, to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged the same to be his free act and deed, Before me

John D. Hardy, Notary Public.

Commonwealth of Massachusetts.

County of Suffolk, ss. Boston, Jan 20th 1909.

Then personally appeared Fred LaChapelle, to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged the same to be his free act and deed, Before me

John D. Hardy, Notary Public.

SCHEDULE A.

United States

Appl. Ser. No. 206,361, filed May 4, 1904 by Fred and Euclid La Chapelle for Chain-stitch Shoe Sewing Machine. This application is taken over subject to abandonment if the same shall be found to have been abandoned.

Appl. Ser. No. 261,956, filed May 24, 1905 by Fred La Chapelle for Lockstitch Shoe-sewing Machine.

Appl. Ser. No. 326,687, filed July 18, 1906 by Fred La Chapelle for Attachment for Chain-stitch Sewing Machines.

Appl. Ser. No. 332,970, filed Sept. 1, 1906 by Fred La Chapelle for Chain-stitch Seams and Methods of Making Chain Stitches.

Great Britain

Letters Patent No. 21,860/06, Oct. 3, 1906, Fred LaChapelle, Improvements in and Relating to Method of Making Stitches.

Letters Patent No. 21,870/06, Oct. 3, 1906, Fred LaChapelle, Improvements relating to Shoe Sewing Machines.

France

Letters Patent No. 370,044, Sept. 26, 1906, Fred La Chapelle, Chain-stitch Seams and Method of Making Chain Stitches.

Letters Patent No. 370,045, Sept. 26, 1906, Fred LaChapelle, Attachment for Chain-stitch Sewing Machines.

Germany

Appl. Ser. No. 14,986, filed Sept. 29, 1906, by Fred LaChapelle for Chain Stitch Seams and Methods of Making Chain-stitches.

Appl. Ser. No. 14,996, filed Oct. 3, 1906, by Fred LaChapelle for Attachment for Chain-stitch Sewing Machines.

Dominion of Canada

Letters Patent No. 101,910, Nov. 6, 1906, Fred LaChapelle, Improvements in Methods of Making Stitches.

Letters Patent No. 101,911, Nov. 6, 1906, Fred LaChapelle, Improvement in Extra Thread Attachments for Shoe Sewing Machines.

SCHEDULE B.

1 Outsole Stitching Machine located at 493 Union Street, Lynn, Massachusetts.

1 inseam Welting Machine located at Ashland, Massachusetts, in the factory of Ray Bros.

Certain patterns for said machines located at Ashland, Massachusetts, in the factory of Ray Bros.

Certain working sketches of the above machines.

PLAINTIFF'S EXHIBIT 129.

[Put in Evidence, page 584.]

This Agreement, made this first day of February in the year 1910, by and between W. Eugene Ellis, of Haverhill, in the County of Essex and Commonwealth of Massachusetts, and Everett D. Chadwick, of Winchester, in the County of Middlesex and said Commonwealth (hereinafter called the "vendors") of the one part, and the United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey (hereinafter called the "United Company") of the other part, Witnesseth:

That Whereas each of the vendors is a stockholder, officer and director of the Ellis Lacer Company, a corporation duly organized and existing under the laws of the State of Maine (hereinafter called the "Ellis Company") which has been and now is engaged in developing and dealing in and with machinery, mechanisms and devices intended or adapted for use in the manufacture of foot wear, including especially certain devices for temporarily securing together the tops of lace shoes while the same are being lasted, said device being known in the trade and hereinafter referred to as the "Ellis Lacer"; and the vendors have represented to the United Company that they own or control all of the shares of the capital stock of the Ellis Company;

And Whereas the vendors desire to sell and transfer to the United Company all of the shares of the capital stock of the Ellis Company and the United Company desires to acquire the same together with the warranties and covenants on the part of the vendors hereinafter set forth;

Now, Thereafter, said parties hereto, each in consideration of the covenants and agreements on the part of the other herein contained, do hereby covenant and agree, each with the other, as follows: —

1. The vendors hereby covenant and agree that they will forthwith cause whatever steps may be necessary to be taken to convey to and vest in the United Company, or such person or persons as

the United Company shall designate to receive the same, the ownership, free from any claim or incumbrance, of all of the shares of the capital stock of the Ellis Company, and will cause such shares to be transferred upon the books of the Ellis Company and new certificates to be issued therefor in the name of the United Company or such person or persons as may be designated by the United Company therefor.

2. The vendors hereby covenant and agree that they will, as and when requested by the United Company, cause all of the present officers and directors of the Ellis Company to tender their resignations in writing to take effect upon the acceptance thereof by the directors, and that as and when requested they will cause all such actions to be taken by the directors and officers of the Ellis Company as may be necessary or desired to transfer the control and management of the Ellis Company to the United Company or to such person or persons as the United Company may designate therefor, and to cause such persons as the United Company may designate to be legally chosen officers and directors of the Ellis Company.

3. The vendors hereby jointly and severally covenant with and warrant to the United Company that the Ellis Company is a corporation duly organized and existing under the laws of the State of Maine; that the total authorized capital stock of the Ellis Company is the sum of fifty thousand dollars ($50,000) consisting of five thousand (5000) shares of the par value of ten dollars ($10) each; that all of said shares of capital stock have been issued as fully paid; that the schedule hereto annexed and marked "Schedule A" contains a true, accurate and complete statement of the condition of the business of the Ellis Company at the close of business on the thirty-first day of January, 1910; that the schedule hereto annexed and marked "Schedule B" is a true and complete inventory of the machinery, tools, mechanisms and appliances mentioned in "Schedule A" and that the value thereof at cost, less depreciation, is at least equal to the amount set forth as the value thereof in said "Schedule A"; that the schedule hereto annexed and marked "Schedule C" is a true, accurate and complete list of

all Letters Patent and applications for Letters Patent of the United States of America owned or controlled by the Ellis Company or to which the Ellis Company is in any way entitled; and that the schedule hereto annexed and marked "Schedule D" is a true and complete list of all lease agreements for the use by others of Ellis Lacers heretofore entered into by or for the interest or account of the Ellis Company and now outstanding.

4. The vendors hereby jointly and severally covenant and agree to and with the United Company that on this first day of February, 1910, the Ellis Company is the owner, free from any and all grants, licenses or other incumbrances whatsoever, of the entire legal and equitable title and interest in, to and under the Letters Patent and application for Letters Patent enumerated in said "Schedule C" hereto annexed and each of them and of the inventions covered thereby, and that they and each of them will warrant and defend the same to the United Company, its successors and assigns; excepting, however, from the provisions of this paragraph all Letters Patent enumerated in said "Schedule C" not originally applied for by the vendors or either of them, and the vendors covenant and agree that said excepted Letters Patent are free from any grant, license or other incumbrance made or suffered by them or either of them or by the Ellis Company and that they will and each of them shall warrant and defend the same to the United Company against all persons claiming by, through or under them or either of them or by, through or under the Ellis Company.

5. The vendors hereby jointly and severally covenant and agree to and with the United Company that they will promptly and at their own expense cause all indebtedness of the Ellis Company existing on this first day of February 1910 or arising from dealings or transactions which have taken place prior to said date to be discharged, and that they will at all times protect, indemnify and hold harmless the Ellis Company from and against any and all indebtedness and obligations whatsoever (except the obligations of the lease agreements enumerated in said "Schedule D") existing on said date or arising from dealings or transactions prior thereto and from all loss, cost, damage or expense arising therefrom; not

including, however, cost, damage or expense arising out of any suit which may hereafter be brought by others against the Ellis Lacer Company for infringement of patents by or by reason of the manufacture or sale of Ellis Lacers.

6. Each of the vendors hereby sells, assigns, transfers, sets over and delivers to the United Company all inventions, improvements, Letters Patent of the United States of America and of all other countries and states of the Western Hemisphere, applications for such Letters Patent, and all interests and rights in, under or to such inventions, improvements, Letters Patent and applications for Letters Patent which he has or controls or to which he is in any way entitled or which at any time within five (5) years from the date of this agreement he shall make, own, acquire or have any right by agreement or otherwise to acquire or take over relating to machinery, mechanisms or devices useful for or adapted to the purpose for which Ellis Lacers are designed; and each of the vendors covenants and agrees that he will make all necessary disclosures and will at any and all times hereafter upon request execute or cause to be executed any and all assignments of or applications for Letters Patent and any and all other instruments, and perform and cause to be performed any and all acts which may be necessary or proper to carry out the full intent of this instrument and to enable the United Company to secure, protect, and enjoy the full benefits and advantages of all assignments and transfers herein provided for and of the covenants herein contained.

7. The vendors hereby jointly and severally covenant and agree to and with the United Company that they will not and that neither of them shall during the period of five (5) years beginning with the date of this agreement directly or indirectly, individually or in combination with others enter into or be engaged or interested in or financially or otherwsie encourage or assist any other person, firm or corporation, in entering into, developing or carrying on in the United States of America any business of manufacturing or dealing in machinery, mechanisms, devices or other articles or things useful for or adapted to the purpose for which Ellis Lacers are designed.

8. The United Company as full consideration for the assignments and transfers herein made or provided for and for the covenants herein contained hereby agrees to pay to the said vendors the sum of one hundred twenty-five thousand dollars ($125,000) said sum to be paid to W. E. Ellis as agent for said vendors to receive the same and such payment to be made on or before the fourth day of February, 1910.

9. The term "United Company" wherever herein used shall include the said United Shoe Machinery Company, its successors and assigns, and all covenants binding upon the vendors shall bind them and their respective heirs, executors, administrators and assigns.

In Witness Whereof the parties hereto have hereunto and to another instrument of like tenor set their hands and seals the day and year first above written.

W. Eugene Ellis
Everett D. Chadwick
United Shoe Machinery Company
By George W. Brown, Vice President.

United States of America.
Commonwealth of Massachusetts.
Suffolk, ss. Boston, February 4, 1910.

Then personally appeared the above named W. Eugene Ellis and Everett D. Chadwick, personally known to me and known to me to be the persons who executed the foregoing instrument, and severally acknowledged that they executed the same as their free act and deed. Before me

Emile H. Tardivel, Notary Public.

Schedule A.

Memorandum of Assets, February 1, 1910.

Wire.	Lbs.	Price Per Lb.	Total.
#055	33	.20	6.60
054	1045	.10	104.50
050	191½	10	19.15

048	1288	20	257.60	
041	2861	20	572.20	
033	1084	25	271.00	
Single Lace Wire				
026 x 6	181	07	12.67	
026 x 92	132	14	18.48	
In Process.				
048	24	20	4.80	
041	17	20	3.40	
033	37	25	9.25	
Defective, Returnable to Trenton Wire Co.				
054	130½	10	13.05	
048	262½	20	52.50	
041	126	20	25.20	
Defective in part, B. U. S. M. Co.				
050 (Cost 10)	500	05	25.00	
			$1,395.40	
		2%	27.91	
				$1,367.49
Japan, as per list attached,				80.60
Sundries, "				44.90
Lacers in Process,				
266 Gross, per Gross,		.50		133.00
Accounts Receivable.				
Customers', per List		$9,233.82		
Less H. E. Locke & Company		2,853.27		
		6,380.55		
Less Doubtful Accounts,		346.90		
		6,033.65		
Less 2%		120.67		
		5,912.98		
Less Customers' Payable,		263.00		
				5,649.98

Cash in Bank, per Cash-Book,		1,195.23
Certificate of Deposit, Haverhill Trust Company, Interest to Feb. 1st, 1910, included,		1,071.34
Finished Stock, as per List, 4421 gross,		4,421.00
Machinery, Tools, Jigs, etc., Valued at,		2,500.000
		16,463.54
Other Assets.		
H. E. Locke & Company, Account	2,853.27	
Note, H. F. Jorgarson	500.00	
One (1) Bond, Uncas Trust Co. and interest,	1,020.42	4,373.69
Total,		$20,837.23
Less the following Book Accounts not included in above Assets.		
Paradise Theatre	24.00	
Hiram Abram	41.60	
Pastum Theatre	69.17	
Common Sense Gear Co.	25.00	
Chas. F. Gilmore	18.83	
Lovers Leap Spring Water Co.	22.50	
Hub Bottling & Extract Co.	20.00	
Willow Transportation Co.	5.00	
Empire Ticket Co.	586.30	
		812.40
		$20,024.83

SCHEDULE B.

2 — Molding Presses with complete set of dies.
2 — .033 Power Adjustable Lacer Machines.
2 — .041 Power Adjustable Lacer Machines.
3 — Small Power Presses with complete set of dies.
1 — Tubbing Machine.
1 — Automatic Single Lacer Machine with complete set of forming dies.
1 — Foot Press with five changeable Parts.

1 — Automatic Forming Machine with Reel and Wire Straightener Machine combined. Complete set of shafts and plates.
1 — Wire Straightening and cutting machine with Reel.
2 — End Cutting Machines.
1 — .054 End Turning Power Machine.
1 — .048 " " " "
1 — .041 " " " "
3 — Women's Hand Forming Machine with complete set of back shafts and plates.
4 — Men's Hand Forming Machines with complete set of back shafts and plates.
1 set .048 Hand Adjustable Lacer Machine.
1 set .041 " " " "
1 set .033 " " " "
5 — Hand End Turning Machines.
1 — Label Stamping Device.
1 — Wire Shoe Lacing Machine (uncompleted).
1 — Die (chips).
Japan outfit with two ovens.
Lot of shafting, belting, hangers, etc., used in connection with above machines.

SCHEDULE C.

List of Letters Patent of the United States of America Owned by Ellis Lacer Company.

Name	Number	Date
Ellis, W. E.,	688,297	Dec. 10, 1901
" " "	704,451	July 8, 1902
" " "	729,300	May 26, 1903
" " "	774,659	Nov. 8, 1904
" " "	808,028	Dec. 19, 1905
" " "	825,710	July 10, 1906
" " "	915,755	Mar. 23, 1909
" " "	920,293	May 4, 1909
" " "	920,294	May 4, 1909
" " " & E. D. Chadwick	795,209	July 18, 1905

Pierce, Chas. S.,	615,894	Dec. 13, 1898
Baker, Andrew H.	624,287	May 2, 1899
Leonard, Curtis N.,	652,368	June 26, 1900 (two-thirds interest)
Harlow, Cushing C.,	653,929	July 17, 1900
Sweeney, W. E.,	715,316	Dec. 9, 1902
Whelan, T. F.,	936,691	Oct. 12, 1909

List of Applications for Letters Patent of the United States of America Owned by Ellis Lacer Company.

Ellis, W. E.	Serial No. 335,560	filed Sept. 21, 1906
" " "	" " 501,471	" June 11, 1909
" " "	" " 525,987	" Nov. 3, 1909

SCHEDULE D.

Agreement dated January 13, 1909 between the Ellis Lacer Company as lessor and Burley & Stevens, Inc., as lessee.

Agreement dated December 1, 1908 between H. E. Locke & Co. as lessor and J. Herman & Co. as lessee.

Agreement between H. E. Locke & Co. as lessor and Whitman & Keith as lessee.

PLAINTIFF'S EXHIBIT 130.

[Put in Evidence, page 586.]

This Agreement, made at Boston, Massachusetts, this 3rd day of February, 1910, by and between

Alexander H. Lewis of Glendale, Ohio
Alfred J. Becht of Cincinnati, Ohio
Morris McGrew of Cincinnati, Ohio
Samuel J. Wentworth of Newport, Kentucky
Pearl J. Wentworth of Newport, Kentucky
Jesse S. Wentworth of St. Louis, Mo.
Bayard L. Kilgour of Cincinnati, Ohio.

hereinafter called the vendors, parties of the first part, and the United Shoe Machinery Company, a corporation organized and

existing under the laws of the State of New Jersey (hereinafter called the United Company), party of the second part Witnesseth:

That Whereas each of the said vendors is a stockholder and director, and certain of the vendors are officers in and of The Wentworth Company, a corporation organized and existing under the laws of the State of Ohio, engaged in the business of inventing, developing, exploiting, manufacturing and dealing in certain machinery and devices designed or adapted for use in the manufacture of footwear, including especially machinery and devices of the kinds hereinafter in Article Five hereof referred to; and the said vendors have represented to the United Company that they are jointly or severally the owners of, or control and have the right to dispose of all of the shares of the capital stock of the said The Wentworth Company; and have agreed with the United Company as hereinafter set forth.

Now Therefore: the said vendors on the one part and the said United Company on the other part, each in consideration of the covenants and agreements on the part of the other, hereinafter contained, do hereby covenant and agree, each with the other, as hereinafter set forth, viz:

One. The said vendors, and each of them, hereby covenant and agree to and with the said United Company, that the vendors will forthwith cause all such votes to be passed, actions to be taken and instruments to be executed, by and on behalf of the said The Wentworth Company, as may be necessary or requested by the said United Company, to transfer to and vest in the United Company the entire property, assets, business and good will, interests and rights of the said The Wentworth Company, of whatsoever name and nature and wherever located (excepting such property, interests and rights, if any, as the United Company shall elect not to take over from The Wentworth Company).

Two. The said vendors, and each of them, do further covenant and agree to and with the said United Company that the vendors will forthwith, upon request after the execution of such instruments as may be called for by the United Company to carry out the transfers provided for in Article One hereof, cause all such steps to be

taken as may be necessary, or requested by the United Company, to replace the present directors and officers of The Wentworth Company by such persons as may be designated therefor by the United Company; and that the vendors will transfer to and cause to be transferred to and vested in such persons as may be designated by the said United Company therefor, the ownership of all of the shares of the capital stock of The Wentworth Company issued and outstanding.

Three. The said vendors, and each of them, hereby covenant with and warrant to the said United Company as follows, viz: —

1. That the said The Wentworth Company is a corporation organized and existing under the laws of the State of Ohio; that the total authorized capital stock of The Wentworth Company is the sum of one hundred and fifty thousand dollars ($150,000.00), divided into fifteen hundred (1500) shares of the par value of one hundred dollars ($100.00) each; that of said fifteen hundred (1500) shares three hundred (300) shares, of the total par value of thirty thousand dollars ($30,000), remain in the corporation unissued; and that the total capital stock of the said The Wentworth Company, issued and outstanding, consists of twelve hundred (1200) shares of the total par value of one hundred and twenty thousand dollars ($120,000.00).

2. That on the 9th day of December 1909 the condition of The Wentworth Company as to Assets and Liabilities was as is set forth in the "Statement of The Wentworth Company as of Dec. 9th, 1909" submitted by the vendors to the United Company and a copy of which is hereto attached marked Schedule A; and that since the said 9th day of December 1909 no change has been made, or prior to the actual transfer to the United Company will be made, in the condition of The Wentworth Company, Assets reduced or Liabilities increased, excepting such ordinary changes as have resulted or shall result from the carrying on of the commercial business of The Wentworth Company in ordinary course, since said date.

3. That the said The Wentworth Company is the owner of and

that the transfer herein provided to be made to the United Company shall include the following, viz: —

(a) The entire right, title and interest in, to and under each and all of the Letters Patent and applications for Letters Patent, of the United States and all other countries, which are enumerated in the schedule hereto annexed marked Schedule B, and all inventions covered thereby.

(b) All of the machinery, fixtures, tools, materials, merchandise, duplicate parts, supplies, drawings, patterns, blue prints, jigs, models, furniture, experimental machines and devices, records, files, books of entry and account and other property which were included in said "Statement of The Wentworth Company as of Dec. 9th, 1909"; were owned by The Wentworth Company or to which the said The Wentworth Company was entitled on said date or which since said date have been, or prior to the actual transfer to the United Company shall have been acquired by The Wentworth Company (subject however, in respect to stock, materials and supplies, to such changes as shall have resulted from the carrying on of the commercial business of The Wentworth Company in ordinary course between said December 9th and said actual transfer.)

(c) All of the machines on hand or elsewhere, not under lease, mentioned in the schedule hereto annexed marked Schedule C, and all of the machines on lease, mentioned in said Schedule C (subject, however, to the rights of the lessees under the leases thereof.)

(d) Current accounts, rental accounts and accrued rentals as set forth in said statement of December 9th, with such additions thereto as have occurred or resulted from business done since said date, and less such amounts thereof as have, since said December 9th, by payment thereof, been reduced to cash.

(e) Cash to the amount set forth in said statement of December 9th, to wit: four thousand eight hundred and seventy seven dollars and seventeen cents ($4,877.17); plus all collections made since said, and less such sums if any as have been expended since said date out of said cash on hand in payment for goods purchased since said date by The Wentworth Company in ordinary course

of business for the ordinary carrying on of the business of The Wentworth Company; in payment of the wages of the employees of The Wentworth Company dating from said December 9th, in the ordinary course of business and at the same rate as before said December 9th; in payment in ordinary course of the rental for premises becoming due after said December 9th; and less any payments of ordinary petty cash expenses of the carrying on of said commercial business since said date — but not deducting from the cash on hand December 9th or received since said date any amounts paid on account of any indebtedness of any nature existing prior to December 9th, or arising out of any transactions which took place prior to said date; and not deducting any payments whatsoever on account of any attorney's fees or legal expense whatsoever or on account of any matters, transactions or things other than those above expressly provided to be deducted. In case any deductions have been made from said cash on hand December 9th or received since said date other than the deductions above expressly provided to be made, the amount thereof shall be refunded by the said vendors.

Four. It is the agreement upon which the amount of the consideration herein provided to be paid is based, that all the property hereinbefore provided to be conveyed, shall be conveyed to and vested in the United Company free from debt claim or incumbrance, and that The Wentworth Company shall be turned over to the United Company as hereinbefore provided, free from indebtedness and direct or contingent obligations (excepting as hereinafter in this Article Four hereof expressly provided), and to that end the said vendors, and each of them, do hereby covenant with and warrant to the United Company that the vendors will forthwith, and at their own expense, cause to be discharged, all indebtedness and direct or contingent obligations of the said The Wentworth Company (excepting as hereinafter in this Article Four hereof expressly provided), and that they, the said vendors, will indemnify, protect and hold harmless the said The Wentworth Company, and the said property so agreed to be conveyed to the United Company from and against any and all claims, liability, indebtedness and obliga-

tions existing at the time of the transfer to the said United Company, or arising from any acts or transactions prior thereto. Excepting However, any indebtedness existing for goods purchased since said December 9th by The Wentworth Company for the ordinary carrying on of the business of The Wentworth Company since said date and any indebtedness to employees for wages in ordinary course and at the established rate dating from said December 9th and excepting the obligations, if any, of The Wentworth Company accruing after said transfer to the United Company under certain agreements of The Wentworth Company, the original or a copy of each of which has been furnished by the vendors to the United Company prior to the execution of this agreement and which are included in the list set forth in the schedule hereto annexed and marked Schedule D.

Five. Each of the said vendors for the protection of the good will and business herein provided to be conveyed to the United Company, does hereby covenant and agree to and with the said United Company that he will not individually or in combination with others, directly or indirectly, in any capacity, at any time within a period of ten (10) years from the date of this agreement, without the consent in writing of the United Company first obtained, enter into or be engaged or interested in originating, manufacturing, developing, exploiting or dealing in any machinery or devices of any kind heretofore dealt in, exploited, manufactured, or built (whether in the form of a model, experimental or commercial machine or device) or originated by or for the said The Wentworth Company — including machinery and devices as follows, viz:

Machines or devices for Beating or Pounding the bottom or sides of heel seats or toes of foot-wear.

Machines or devices for any of the purposes of the machine heretofore put out by The Wentworth Company, and known as the Wentworth Shank Machine; a circular concerning which is hereto attached, marked "E."

Machines or devices for assembling the portions of foot-wear over the last prior to or preparatory to the pulling-over and lasting operations.

Ironing devices like those, or for the same or a like purpose to those heretofore manufactured by or for The Wentworth Company.
or any machinery or devices intended or adapted for a like purpose, and that he will not compete or interfere with the business of the said United Company in machinery or devices of said kinds or for said purposes.

Six. Nothing herein contained shall be construed as a warrantee of the validity of any of the Letters Patent herein provided to be conveyed. Neither do the vendors warrant that the machines or devices heretofore constructed in accordance with the constructions covered by said Letters Patent, do not infringe other Letters Patent not owned or controlled, in whole or in part, by The Wentworth Company or by any of the vendors, but each of the vendors does hereby assign to the United Company any other inventions, Letters Patent, and applications for Letters Patent, and interests and rights in, to, or under inventions, Letters Patent or applications for Letters Patent (if there are any such), which he owns or controls which apply to the constructions or methods covered by said Letters Patent, or constructions like those heretofore put out by The Wentworth Company.

Seven. The United Company in consideration of the foregoing covenants, agreements and warranties on the part of the said vendors, does hereby covenant to and with the said vendors that upon the receipt by the United Company of the instruments which the United Company may call for to make the transfers provided for in Articles One and Two hereof, the United Company will pay to the said vendors the sum of Sixty Thousand (60,000) dollars.

It is agreed that such payment by the United Company may be made by check or draft to the order of Alfred J. Becht, one of the vendors, who shall receive the same as agent for the vendors, for application and distribution among the persons entitled thereto; and it is agreed that the United Company shall have no responsibility for the application or distribution of the amount so paid.

Seven. The term United Company as herein used includes the said United Shoe Machinery Company, its successors and assigns.

In Witness Whereof, said parties of the first part have hereunto, and to another instrument of even date and like tenor, set their hands and seals, and the United Company has executed this instrument in duplicate, the date and year first above written.

ALEXANDER H. LEWIS [SEAL]
ALFRED H. BECHT [SEAL]
MORRIS McGREW [SEAL]
SAMUEL J. WENTWORTH [SEAL]
PEARL J. WENTWORTH [SEAL]
JESSE S. WENTWORTH [SEAL]
BAYARD L. KILGOUR [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY
L. A. Coolidge, Treasurer.

State of Ohio, ss.
Hamilton County.

I, Wallace Burch, hereby certify that I am a duly constituted Notary Public in and for the State of Ohio, County of Hamilton, and that the above signatures to this instrument were subscribed in my presence and acknowledged before me to be their voluntary act and deed for the uses and purposes therein named.

Wallace Burch,
[SEAL] Notary Public in and for Hamilton County, Ohio.

"A"

Statement of The Wentworth Company as of Dec. 9th, 1909.

ASSETS.

Machinery, Fixtures & Tools, at cost	$2,564.17	
Less 10% depreciation for 4 mos	85.47	
		$2,478.70
Inventory, Machines finished, in process, and out on trial; also materials, merchandise, duplicate parts and supplies of all kinds, at Cincinnati, Boston and St. Louis, all taken at shop cost		6,093.16

Inventory, Finished Machines (Canadian-made) in Montreal, Canada, all taken at cost,	2,720.00	
Duplicate parts and supplies, in Montreal, all taken at cost	209.62	
		2,929.62
Inventory, Finished Machines (American-made) in Germany and France, all taken at shop cost		157.64
Inventory, One Ideal Lasting Machine (in dispute) at cost		475.00
Patents, Domestic Patents, at cost to us .		11,412.31
Foreign Patents, at cost to us .		1,183.04
Patterns, Domestic Patterns . . .		456.72
Foreign Patterns		343.75
Power Hammer, Consignment Account .		45.00
Electric Ironer & Hammer Account . .		88.75
Pounding Hammer Account . . .		78.85
Unexpired Insurance at Cinti., Boston and Canada		68.29
Current accounts due from customers to Dec. 9th, inclusive	1,975.26	
Rental accounts due from customers to Dec. 9th, inclusive	1,338.51	
		3,313.77
Accrued rentals to Dec. 9th, 1909, inclusive, not charged up	1,617.45	
		1,617.45
Petty Cash	12.50	
Cash in Bank	4,574.09	
Cash in hands of trav. men for expenses .	290.58	
Total cash on hand	4,877.17	
Total assets, exclusive of cash on hand .		30,742.05

A further asset is the value (at cost) of the machines now out on rental, as follows:

238 McKay machines at cost 39 Turn " " " 28 Welt " " "	. . . . 19,013.26
Book Value of all Patent Rights and Good Will	. 300,000.00
Grand Total of Net Assets . . .	$349,755.31

LIABILITIES.

None.

"A".

Approximate General Condition of The Wentworth Company.

Established in November, 1904. Organized in February, 1905.
Incorporated August 15th, 1906.

An Ohio Corporation:

Capital Stock Authorized 150,000.00 — Issued stock, fully paid up 120,000; Treasury Stock, not issued 30,000

Patents on Heel Seat Beater:
In United States
" Canada
" England
" Germany
" France
" Australia

Machines are being manufactured in England and Germany on a royalty for each machine.
In England we receive $38.88 (8 pounds Sterling) royalty for each machine manufactured.
In Germany we receive $60.00 royalty for each machine manufactured.

Foreign Agencies:

Canada — Can terminate on 6 months notice.
England " " " 6 " "
Germany " " " 6 " "
France — Agency not definitely established.
Australia — Have a 5 year agreement, expiring May 28th, 1912
Can probably be cancelled by an equitable arrangement with Australian Agents.

Machines Drawing Rental:

In United States and Canada 305

Machines on Trial:

In United States, demonstration completed and ready for acceptance, mostly in New England . .	19
Total	324

Machines Sold Outright:

In United States	24
In Canada	1
In England	44
In Switzerland	2
In Australia	42
In Germany	1
Total	114

Machines on Hand. At All Points:

	McKays		Turns		Welts		Power Hammers	
	Fin.	Unfin.	Fin.	Unfin.	Fin.	Unfin.	Fin.	Unfin.
At Works, Cincinnati	5	8	1	1	3	1	5	
In Boston	4		1					
In Canada	4	1	7		9			
In England (American-Made)								
In Germany " "	1				1			
In France " "	1		1					
Totals	15	9	10	1	13	1	5	

Condensed Summary:

305 Machines drawing rental @ $52.00 per year =	$15,860.00
19 Machines on trial, demonstration completed and ready for acceptance @ $52. per year =	488.00
324 Machines, Total Annual Rental . .	16,848.00
Additional Revenue, that would become effective upon placing machines on hand and on trial:	
Installation fee on above 49 machines on hand @ $150.00	7,350.00
Installation fee on above 19 machines on trial @ $150.00	2,850.00

Annual rental on above 49 machines on hand @ $52.00 . . . . . 2,548.00

Insurance carried:

On plant and stock at Cincinnati	$4,500.00
" Stock in Boston . . .	1,500.00
" Stock in Montreal . . .	2,000.00

Shop Lease:

We have a lease for our shop at Cincinnati for one year from May 1st, 1909, with privilege of renewal for one year

Outright Sales:

Machines sold outright in the United States from May 20th, 1909, to Dec. 9th, 1909 . 18

SCHEDULE "B" LETTERS PATENT OF THE UNITED STATES.

No. 844293 dated Feby. 12, 1907, issued to The Wentworth Company, assigned to Samuel J. Wentworth — Shoe Upper Pounding Machines.

No. 854320 dated May 21, 1907, issued to The Wentworth Company, assigned to Samuel J. Wentworth — Heel Seat Forming Machines.

No. 876249 dated Jany. 7th, 1908, issued to The Wentworth Company, assigned to Samuel J. Wentworth — Toe Ironers.

No. 896873 dated Aug. 25th, 1908, issued to Samuel J. Wentworth, assigned to The Wentworth Company — Heel Seat Forming Machines.

No. 929,178, dated July 27, 1909, issued to Samuel J. Wentworth, assigned to The Wentworth Company — Cement Heating and Distributing Apparatus.

Applications for Letters Patent in United States.

No. 266330 filed June 21, 1905, in the name of Samuel J. Wentworth, assigned to The Wentworth Company — Device for lasting shoes.

No. 257488 filed Apr. 26, 1905, in the name of Samuel J.

Wentworth, assigned to The Wentworth Company — Forming Heel Seats for boots and shoes.

Letters Patent of the Dominion of Canada.

No. 93956 dated July 4, 1905, issued to Samuel Joseph Wentworth, assigned to The Wentworth Company — Heel Seat Beaders and Finishers.

Letters Patent of Great Britain.

No. 12761 of 1905, dated June 20, 1905, issued to Henry Harris Lake upon communication from Samuel Joseph Wentworth, assigned to The Wentworth Company — Improvements relating to matters for making boots and shoes.

Letters Patent of the Republic of France.

No. 355595 dated Sept. 2, 1905, issued to Samuel Joseph Wentworth, assigned to The Wentworth Company — Machine for making shoes.

Letters Patent of Germany.

No. 172433 dated June 25, 1905, issued to Samuel Joseph Wentworth — Machine used in shoe factories for making shoes.

Letters Patent of the Commonwealth of Australia.

No. 6542 dated July 31, 1906, issued to Sam'l. Jos. Wentworth — Heel Seat Beader & Finisher.

SCHEDULE "C".

Machines on Hand at all Points January 31st, 1910.

	McKays		Turns		Welts		Power Hammers	
	Fin.	Unfin.	Fin.	Unfin.	Fin.	Unfin.	Fin.	Unfin.
At works, Cinti.	9	5	1	1	1	1	3	6
In Boston	3		1					
In Canada	4	1	7		9			
In England (Amer. made)								
In Germany (")					1			
In France (")	1		1					
	17	6	10	1	11	1	3	6

Machines on trial, leases not signed		14
8 McKays		
2 Welts		
4 Turns		
Machines drawing rental		299
Leases signed for	230	McKays
	38	Turns
	20	Welts
	288	
To this must be added machines drawing rental, but leases not signed:		
5 McKay		
6 Welt	11	
	299	Total

SCHEDULE D.

Agreement dated Feby. 13th, 1909, between The Wentworth Company and Nollesche-Werke.

Agreement dated May 18, 1908, between The Wentworth Company and Gimson & Co., Ltd.

Agreement dated May 28, 1908, between The Wentworth Company and John McEvoy & Sons of Sydney, N. S. W.

Agreement set forth in proposition dated Aug. 14, 1908, from The Wentworth Company to Kieffer Brothers of Montreal, and accepted by Kieffer Bros. Sept. 3, 1908.

Agreement of lease between The Wentworth Company and Richter & Co. dated April 22, 1909, granting to The Wentworth Company lease of premises 210–212–214 E. Ninth Street, for one year, from the 1st of May, 1909, at rental of $1044 per year.

Undertakings of The Wentworth Company as set forth in letters addressed to the following enumerated purchasers of Wentworth machines, each of said letters being in the following form:

"We hereby agree that in the event that you purchase outright

from us one or more of our Heel Seat Beader machines, this Company will protect you fully in the use of same.

In the event that any individual, company, or corporation, brings suit against you or attempts to enjoin you with the object of preventing you from using the said machine or machines, we will protect and defend you against any and all such action or actions brought against you, and we will assume all expenses of the defense and trial, the same as though you were using the machine or machines under lease.

We further agree to supply you with any duplicate parts of the machines, from time to time, as you may need them at catalogue prices."

The only exception being in letter to C. H. Aborn & Co. in which provision is made for the return of the purchase price under certain conditions.

Name.	Date of Letter.
Dunn & McCarthy	Dec. 6, 1909.
Reider-Fisher Shoe Co.	Aug. 21, 1909.
Roth Shoe Mnfg. Co.	Mar. 4, 1909.
Bradley & Metcalf Co.	Mar. 30, 1909.
Knights & Perry	Nov. 2, 1909.
Durgin Shoe Co.	Jany. 4, 1910.
Green-Wheeler Shoe Co.	Dec. 11, 1909.
Apex Shoe Facty.	Feby. 17, 1909.
Kalt-Zimmers Co.	May 7, 1909.
Miller Shoe Mfg. Co.	May 15, 1909.
V. Schoenecker Co.	May 25, 1909.
F. Mayer Boot & Shoe Co.	July 10, 1909.
Hillard & Tabor	July 29, 1909.
Walkin Shoe Co.	Sept. 8, 1909.
Rehr Shoe Co.	Aug. 20, 1909.
M. D. Wells Co.	Aug. 2, 1909.
Birdsboro Shoe Mfg. Co.	Dec. 10, 1909.
C. H. Aborn & Co.	Sep. 16, 1908.

PLAINTIFF'S EXHIBIT 131.

[Put in Evidence, page 588.]

Know all Men by these Presents: That the B. F. Sturtevant Company, a corporation organized and existing under the laws of the State of Massachusetts, in consideration of one dollar ($1.00) and other good and valuable considerations to it paid by the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, the receipt of which is hereby acknowledged, has sold and does hereby grant, sell, assign, transfer, set over and deliver to the said United Shoe Machinery Company the following property, interests and rights, viz: —

(a) The business as a going concern of the said B. F. Sturtevant Company in manufacturing and dealing in pegwood and wood shanks together with the good-will of such business, and the exclusive right in all countries in which pegwood or wood shanks are or shall hereafter be made, sold or used to the use of the names "Sturtevant" or "B. F. Sturtevant" in selling or dealing in pegwood or wood shanks.

(b) All of the real estate owned by the Sturtevant Company or by the trustees under the will of Benjamin F. Sturtevant, late of Boston, Massachusetts, located in the Town of Conway, New Hampshire, together with the leases of any and all premises in said Conway held under lease by the said Sturtevant Company and including in such property so conveyed the ownership of the mill site, the mill building, the storage buildings, and all other buildings in said Conway occupied by the Sturtevant Company and the ownership of all steam boilers, steam engines, dynamos and all fixtures in said buildings or upon said premises. A separate deed of the real estate included herein is to be duly executed by the Sturtevant Company and delivered to the said United Company.

(c) All pegwood and wood shanks manufactured or in process of manufacture owned by the Sturtevant Company including without prejudice to the generality hereof all of the pegwood and wood shanks manufactured or in process of manufacture now located upon the premises above referred to at Conway, New Hampshire,

or at the store of the Sturtevant Company at No. 34 Oliver Street, Boston, Massachusetts.

(d) All cases and half cases intended and adapted for use to box pegwood for shipment and all bags intended and adapted for use to ship wood shanks owned by the Sturtevant Company including without prejudice to the generality hereof all such cases, half cases and bags now located upon the said premises at Conway, New Hampshire, or at said No. 34 Oliver Street, Boston, Massachusetts.

(e) All cord wood intended and adapted for the manufacture of pegwood owned by the said Sturtevant Company and located upon the said premises at said Conway or at the railroad in said Conway including without prejudice to the generality hereof about fifty-six and eight tenths (56.8) cords of such wood, be the same more or less, now in or adjacent to the mill building above referred to, and about seventy-two and sixty-three hundredths (72.63) cords of such wood, be the same more or less, now at the freight yard at said Conway.

(f) All manufacturing equipment, machines, machinery, tools, patterns and other goods, chattels and property located in the buildings above mentioned or upon said premises or pertaining to said business of manufacturing and dealing in pegwood and wood shanks, excepting, however, the following property not pertaining to said business and located upon said premises, viz: — veneer for brush backs and fans and wood heels and lumber designed for the manufacture of wood heels, — and also excepting books of account, accounts and bills receivable and cash on hand on the twenty-first day of February, 1910.

To Have and to Hold all and singular the said property, interests and rights to the said United Shoe Machinery Company, its successors and assigns, to its and their own use and behoof absolutely.

And for the same consideration the said B. F. Sturtevant Company does hereby covenant with and warrant to the said United Shoe Machinery Company, without prejudice to the generality of the foregoing assignment and transfer, that the property hereby conveyed includes all of the property of every nature mentioned in the following schedule, viz: —

SCHEDULE.

All that lot of land with the buildings thereon situated in Conway in said County of Carroll, and bounded northerly on the road leading to the Portsmouth, Great Falls & Conway Railroad depot, one hundred fifty-two (152) feet; westerly on land now or late of C. W. Wilder; southerly on the mill pond one hundred fifty-two (152) feet and easterly on land now or late of Sarah E. Berrey; being a parcel of land one hundred fifty-two (152) feet wide running from said road to the mill pond, and being the same premises conveyed to Benjamin F. Sturtevant by three (3) deeds, all recorded with Carroll County deeds, — one from Leavitt H. Eastman, dated May 31, 1873, and recorded in Book 61, page 479, and two (2) from Sarah E. Berrey and Jacob H. Berrey dated respectively May 31, 1873 and September 19, 1873, and recorded with said Deeds in Book 61, page 482, and Book 62, page 248, together with all fixtures and appurtenances pertaining thereto.

Two (2) storage buildings located on land not owned by the B. F. Sturtevant Company.

52,805,825 wood shanks of merchantable kind, quality and finish in bags ready for shipment.

194,399 rolls of pegwood of merchantable kind, quality and finish in cases ready for shipment.

678 empty half cases made and adapted for use for shipping pegwood.

1371 empty bags designed and adapted for shipping wood shanks.

129.43 cords of white birch cord wood suitable for the manufacture of pegwood and located as follows, viz: —

Fifty-six and eight tenths (56.8) cords in or adjacent to the mill building above referred to.

Seventy-two and sixty-three hundredths (72.63) cords of such wood at the railway freight yard at said Conway.

Full equipment for conducting the business of manufacturing and dealing in pegwood and wood shanks including power and lighting equipment, engines, boilers, transmission, wiring, shafting, hangers, tools, patterns, machines, machinery and supplies, as set forth in the inventory thereof made as of the twenty-third day of

February, 1910, a copy of which has been exhibited to the said United Shoe Machinery Company.

And for the same consideration the said B. F. Sturtevant Company does hereby covenant with and warrant to the said United Shoe Machinery Company that the B. F. Sturtevant Company is the lawful owner of all the property, interests and rights hereby purported to be conveyed; that they are free from all incumbrances; that the said B. F. Sturtevant Company has good right to sell and assign the same as aforesaid and will warrant and defend the same against the lawful claims and demands of all persons.

In Witness Whereof the said B. F. Sturtevant Company has caused this instrument to be signed in its name and behalf by Eugene N. Foss, its Treasurer thereto duly authorized, and its corporate seal to be hereto affixed this twenty-third day of February, 1910.

[SEAL] B. F. STURTEVANT COMPANY
By E. N. Foss, Treasurer.

In the presence of
Harold G. Donham
Carlton E. Snow

PLAINTIFF'S EXHIBIT 132.

[Put in Evidence, page 590.]

Agreement made this twenty-third day of September, 1910, by and between Thomas G. Plant of Boston, Massachusetts, and the United Shoe Machinery Company (hereinafter called the "United Company"), a corporation organized under the laws of New Jersey, having its principal office at Paterson, in the State of New Jersey, and an office in Boston, Massachusetts, Witnesseth: That

Whereas, Thomas G. Plant has heretofore made and has acquired from others and now owns or controls various inventions, improvements, letters patent of the United States and of other countries and applications for letters patent covering shoe machinery and accessories thereto hereinafter more fully described in paragraph (A); and

Whereas, said Thomas G. Plant also owns or controls certain

shares of corporate stock, machinery, machines, tools, supplies and other personal property, hereinafter more full described in paragraph (B); and

Whereas, said Thomas G. Plant has heretofore entered into certain contracts and agreements hereinafter more fully described in paragraph (C); and

Whereas, various suits have been brought and claims mnde by United Company against said Plant, hereinafter more fully described in paragraph (D); and

Whereas, said United Company is engaged in the manufacture of shoe machinery and accessories thereto and owns and controls numerous patents and applications for patents relating thereto and believes that by the acquisition of the said inventions, improvements, letters patent and applications for letters patent owned or controlled by said Plant, it would be enabled by the use of the same in connection with the inventions, improvements and patents owned and controlled by it to perfect and improve the shoe machinery manufactured and leased by it, and would be able to manufacture and lease in certain respects more efficient machines, whereby it may furnish to manufacturers of boots and shoes machinery by the aid of which they will be enabled to make a better product and at less expense than at present, and the United Company, therefore, desires to purchase said inventions, improvements, letters patent and applications for letters patent from said Plant; and

Whereas, said Plant is unwilling to sell said inventions, improvements, letters patent, and applications for letters patent, unless the purchaser will also purchase all said shares of corporate stock, machinery and other personal property hereinabove referred to, and will also enter into certain undertakings and agreements in reference to the contracts and agreements of said Plant above referred to, and further, will compromise and settle all controversies and claims existing between the parties hereto by the dismissal of said suits as against said Plant and the execution of mutual general releases.

(A) Letters patent and applications for letters patent of the

United States covering various inventions in connection with shoe machinery described and identified in Exhibit "A" hereto attached.

Letters patent and applications therefor covering said inventions in various foreign countries described and identified in Exhibit "B" hereto attached.

(B) $1,500,000 par (15,000 shares) of the preferred stock and $750,000 par (7,500 shares) of the common stock of the Thomas G. Plant Company, a description of which, including a statement as to its assets, liabilities, and earnings, is hereto attached marked Exhibit "XX".

Certain machinery, machines, tools, supplies and other personal property, schedule of which is hereto annexed marked Exhibit "C".

(C) An agreement between Charles P. Stanbon, of Lynn, Massachusetts, and the Manufacturers' Machine Company, dated May 29th, 1905, a copy whereof is hereto annexed, marked Exhibit "D". (Said agreement has been extended until November 1, 1910.)

An agreement between the Keighley Company and said Thomas G. Plant, dated January 26th, 1910, a copy whereof is hereto annexed, marked Exhibit "E".

An agreement between said Thomas G. Plant and the Stanley Company, dated June 15th, 1910, a copy whereof is hereto annexed, marked Exhibit "F".

A contract between said Thomas G. Plant and the Stanley Manufacturing Company, dated June 15th, 1910, a copy whereof is hereto annexed, marked Exhibit "G".

A further contract between said Thomas G. Plant and the Stanley Manufacturing Company, dated June 15th, 1910, a copy whereof is hereto annexed, marked Exhibit "H".

A further contract between said Thomas G. Plant, and the Stanley Manufacturing Company, dated June 15th, 1910, a copy whereof is hereto annexed, marked Exhibit "I".

(D) Claims against said Plant to enforce certain leases or licenses so called, which claims are represented in a Bill in Equity now pending in the Supreme Judicial Court of Massachusetts.

Various claims of infringement of letters patent by said Plant,

which claims are represented in part by certain bills in equity which have heretofore been prepared and a portion of which have been brought and are now pending in the United States Circuit Court for the District of Massachusetts against said Plant.

A claim against the Stanley Manufacturing Company for breach of contract between said Stanley Manufacturing Company and said United Shoe Machinery Company, said contract being dated May 1st, 1901.

Now, Therefore, said parties mutually covenant and agree each with the other as follows: —

The said Plant will, on or before the thirtieth (30th) day of September, 1910, sell, assign, transfer and set over to said United Company, by instruments in proper form, all inventions, improvements, letters patent of the United States and other countries, applications for letters patent and interests and rights in, to and under inventions, improvements, letters patent and applications for letters patent which he now owns or controls, or which at any time hereafter within fifteen (15) years from the date hereof he shall make, own or acquire, relating to machinery, mechanisms, tools, devices, processes, methods or things intended or adapted for use in the manufacture of footwear or in the working or manipulation of leather, or relating to eyelets or to footwear findings of any descriptions whatsoever; together with any and all rights he now has or may within fifteen (15) years have by agreement or otherwise to acquire or take over such inventions, improvements, letters patent of the United States and other countries, applications for letters patent and interests and rights therein, thereunder or thereto; including herein without prejudice to generality of the foregoing description, the entire right, title and interest, free from any prior grant or other incumbrance whatsoever in, to and under all of the letters patent and applications for letters patent referred to in the schedules hereto annexed and marked "Exhibit A" and "Exhibit B", together with the inventions and improvements covered thereby, and the said Plant will likewise, on or before said thirtieth day of September, 1910, deliver to said United Company properly executed assignments and transfers of all the shares of

stock in corporations and the other personal property hereinabove set forth and will accept in full payment for all of the foregoing the sum of six million dollars ($6,000,000) to be paid to him by said United Company, of which sum one million dollars ($1,000,000) is to be paid upon the execution of this agreement, and the balance of five million dollars ($5,000,000) is to be paid on or before the thirtieth (30th) day of September, 1910, upon the delivery of the assignments and transfers above mentioned.

At the time of the final payment to be made by the United Company to said Plant and in connection therewith, the United Company will deliver to said Plant agreements in proper form providing for the dismissal or discontinuance so far as said Plant is concerned, without costs to either party, of the suit now pending in the Supreme Judicial Court of Massachusetts, and for the dismissal or discontinuance of the suits now pending in the United States Circuit Court against said Plant, and properly executed general releases, including any and all claims and demands against said Plant and properly executed releases of any and all claims and demands against said Stanley Manufacturing Company, and contemporaneously said Plant will deliver duly executed general releases of all claims and demands against said United Shoe Machinery Company.

Said Plant is to pay the rent of offices occupied by him at 60 Congress Street, Boston, to the date of this agreement; all the rent and other expenses in connection therewith to be paid by the United Shoe Machinery Company during the remainder of the term for which said Plant has obligated himself; and said Plant is to be held harmless and indemnified from all cost in connection therewith.

The United Company hereby agrees to assume all agreements, obligations and liabilities of said Plant and of said Manufacturers' Machine Company under said existing contracts between said Plant or said Manufacturers' Machine Company and Charles P. Stanbon, the Keighley Company, Stanley Company, the Stanley Manufacturing Company, copies whereof are hereinabove referred to and annexed to this agreement, or to hold the said Plant and the

said Manufacturers' Machine Company harmless and indemnified from all liability thereunder.

It is further agreed in connection with said contracts that said Plant is to pay for all labor performed and machinery, tools, parts, materials and supplies delivered prior to the date of this agreement.

The United Company shall pay for all labor performed on and after the date of this agreement in connection with shoe machinery work now being carried on by or on account of said Plant in the shops named in Exhibit "C", all of which work is subject to termination by said Plant and nine-tenths (9/10) of which is subject to immediate termination by said Plant.

All the cost of tools, machine tools, machinery, parts, materials and supplies for Thomas G. Plant, Bresnahan Shoe Machinery Company and the Stanley Company in connection with shoe machinery now contracted for and delivered on and after this date, which are used by said United Company, shall be paid by United Company.

One-half the cost of all such tools, machine tools, machinery, parts, materials and supplies not so used shall be paid by each party, but title to same shall vest in United Company.

Said Plant guarantees that the total amount of the cost of such tools, machine tools, machinery, parts, materials and supplies so not yet delivered does not exceed one hundred and fifty thousand dollars ($150,000). Said Plant will, if and when requested by said United Company, use his best endeavors to secure the cancellation of orders or contracts for such machine tools, etc.

The principal items so far as known to said Plant are shown on memorandum hereto annexed marked "X".

The cost of cancellation of contracts covering such machine tools, etc., shall be divided equally.

Said Plant hereby guarantees that the condition of the Plant Company as to assets and liabilities was and is as set forth in the statement hereto annexed, marked "X".

Said Plant further warrants to the said United Company that the said Plant is the owner of and that the agreement herein contained to convey to the United Company includes the entire right, title and interest, free from any and all incumbrances whatsoever, in,

to and under all the letters patent and applications for letters patent which are enumerated in the schedules hereto annexed, marked "A" and "B", and the inventions and improvements covered thereby.

Said Plant hereby covenants and agrees to and with the said United Company that at any and all times hereafter, upon request he will execute and cause to be executed any and all applications for letters patent of the United States and other countries, assignments, powers of attorney, and other instruments, and will perform and cause to be performed any and all further acts which may be necessary or desired by the United Company to fully and entirely vest and confirm in the said United Company or its nominees, all the inventions, improvements, letters patent, applications for letters patent, and other property, interests and rights hereby agreed to be conveyed; to enable the United Company to secure letters patent in all countries in which the United Company shall desire covering said inventions or any of them, and generally to carry out the full intent of this agreement — all without further consideration than that herein provided to be paid, but at the expense of the United Company.

The term United Shoe Machinery Company or United Company wherever herein used shall include said United Shoe Machinery Company, its successors and assigns.

All covenants and agreements on the part of said Plant herein contained shall be binding upon the said Plant and his personal representatives.

Papers shall be passed and balance of money paid over at First National Bank, Boston, September thirtieth, 1910, at noon.

THOS. G. PLANT. [SEAL]

[SEAL] UNITED SHOE MACHINERY CO.
By S. W. Winslow, President

Boston, September 23rd, 1910.

The receipt of one million dollars ($1,000,000) under the foregoing agreement is hereby acknowledged.

THOS. G. PLANT.

EXHIBIT A.

Name of Patentee	Pat. No.	Date Patented	Subject-Matter.
Plant, Thomas G.	958,302	May 17, 1910	Heeling Machine
Plant, Thomas G.	958,292	May 17, 1910	Heeling Machine
Plant, Thomas G.	940,053	Nov. 16, 1909	Sewing Machine
Plant, Thomas G.	958,293	May 17, 1910	Machines for Inserting Metallic Fastening
Plant, Thomas G.	940,054	Nov. 16, 1909	Sole Sewing Machine
Plant, Thomas G.	958,305	May 17, 1910	Work Holder for Heeling Machines
Plant, Thomas G.	940,055	Nov. 16, 1909	Sole Sewing Machine
Plant, Thomas G.	958,301	May 17, 1910	Shoe Jacks
Plant, Thomas G.	940,725	Nov. 23, 1909	Shoe Sewing Machine
Plant, Thomas G.	940,726	Nov. 23, 1909	Lock Stitch Sewing Machine
Plant, Thomas G.	958,278	May 17, 1910	Shoe Jacks
Plant, Thomas G.	958,294	May 17, 1910	Shoe Sewing Machine
Plant, Thomas G.	958,295	May 17, 1910	Stopping Mechanism
Plant, Thomas G.	946,825	Jan. 18, 1910	Machine for Inserting Fasteners in Leather
Plant, Thomas G.	958,279	May 17, 1910	Fastener Pullers
Plant, Thomas G.	958,296	May 17, 1910	Sewing Machines
Plant, Thomas G.	935,230	Sept. 28, 1909	Bobbin Winding Mechanism
Plant, Thomas G.	958,280	May 17, 1910	Lasting Machine
Plant, Thomas G.	958,297	May 17, 1910	Welt Holder for Sewing Machine
Plant, Thomas G.	958,298	May 17, 1910	Sewing Machine
Plant, Thomas G.	958,299	May 17, 1910	Shoe Sewing Machine

Plant, Thomas G.	958,281	May 17, 1910	Heeling Machine Attachments
Plant, Thomas G.	958,282	May 17, 1910	Heeling Machine
Plant, Thomas G.	958,283	May 17, 1910	Laying & Leveling Machine
Plant, Thomas G.	958,304	May 17, 1910	Ironing & Dressing Machine
Plant, Thomas G.	958,284	May 17, 1910	Canvas Cementer
Plant, Thomas G.	958,285	May 17, 1910	Shoe Sole Flexers
Plant, Thomas G.	958,286	May 17, 1910	Auxiliary Lasting Devices
Plant, Thomas G.	958,287	May 17, 1910	Ironing & Dressing Jacks for Boots & Shoes
Plant, Thomas G.	958,288	May 17, 1910	Boot & Shoe Buffing Machine
Plant, Thomas G.	958,289	May 17, 1910	Boot & Shoe Machines
Plant, Thomas G.	958,300	May 17, 1910	Work. Sup. for Heeling Machine
Plant, Thomas G.	958,303	May 17, 1910	Driving Shaft Controlling Means
Plant, Thomas G.	965,223	July 26, 1910	Dust Gatherer for Abrading Machines
Plant, Thomas G.	965,224	July 26, 1910	Sole Laying & Level. Machine
Bohr, N. C.	878,453	Feb. 4, 1908	Reinforcing Insole & Process for Making Same
Bohr, N. C.	958,083	May 17, 1910	Hold-Downs for Lasting Machines
Bohr, N. C.	883,445	Mar. 31, 1908	Heel Scourer Guards
Brennan, Wm. J.	909,143	Jan. 12, 1909	Work Rests

Condon, Geo. V.	924,967	June 15, 1909	Heel Band for Bed Lasting Machine and the like
Cummings, H. H.	883,862	Apr. 7, 1908	Nail Forming and Driving Machine
English, A. M.	871,987	Nov. 26, 1907	Sole Rounding and Channeling Machine
English, A. M.	878,478	Feb. 4, 1908	Rough Rounding Machine
Gelzenlichter, J.	871,990	Nov. 26, 1907	Buffing Machine
Glass, Perley R.	871,991	Nov. 26, 1907	Staple Tacker
Glass, Perley R.	957,949	May 17, 1910	Lasting Machine
Glass, Perley R.	888,485	May 26, 1908	Tack or Nail Driving Device
Glass, Perley R.	957,948	May 17, 1910	Loading Mechanism for Hand Tacker
Heys, John J.	905,311	Dec. 1, 1908	Sewing Machine
Heys, John J.	874,504	Dec. 24, 1907	Automatic Boot & Shoe Leveling Machine
Heys, John J.	874,505	Dec. 24, 1907	Sole Rounding Machine
Heys, John J.	860,376	July 16, 1907	Stitch Impression Machine
Heys, John J.	860,377	July 16, 1907	Stitch Impression Finishing Machine
Heys, John J.	957,955	May 17, 1910	Pulling Over Machine for Boots and Shoes
Heys, John J.	944,238	Dec. 21, 1909	Breaster Knife Grinding Machine
Hood, Chas. E.	957,958	May 17, 1910	Heel Burnishing Machine
Hooper, Wm. H.	861,178	July 23, 1907	Welt Marking Machine

Hooper, Wm. H.	861,179	July 23, 1907	Channel Flap Layer
Hooper, Wm. H.	889,375	June 2, 1908	Channel Moistening Device for Sole Sewing or Fasten. Mach.
Hooper, Wm. H.	957,964	May 17, 1910	Boot Treeing Machine
Hooper, Wm. H.	865,898	Sept. 10, 1907	Portable Power Channel Flap Layer
Hooper, Wm. H.	883,804	Apr. 7, 1908	Lasts
Hooper, Wm. H.	861,180	July 23, 1907	Method of Assembling Shoe Uppers and Soles
Hooper, Wm. H.	940,019	Nov. 16, 1909	Channel Lip Turning Machine
Hooper, Wm. H.	940,020	Nov. 16, 1909	Lip Turning Machine
Hooper, Wm. H.	940,691	Nov. 23, 1909	Channel Moistening Device for Sewing Machine
Hooper, Wm. H.	940,690	Nov. 23, 1909	Insole Reinforcing Machine
La Chapelle, Fred	957,972	May 17, 1910	Sewing Machine
La Chapelle, Fred	935,263	Sept. 28, 1909	Bobbin Winding Machine
Leavitt, John E.	871,942	Nov. 26, 1907	Buffing Machine
McLeod, Geo. T.	957,986	May 17, 1910	Heel Breasting Machine
Phelan, Merton D.	945,342	Jan. 4, 1910	Work Supports for Metallic Fastening Machine
Phelan, Merton D.	883,824	Apr. 7, 1908	Staple Tacker
Phelan, Merton D.	958,005	May 17, 1910	Machine for Breasting the Heels of Boots & Shoes

Phelan, Merton D.	958,002	May 17, 1910	Portable Power Tacker
Plant, Thomas G.	947,401	Jan. 25, 1910	Sewing Machine
Plant, Thomas G.	877,858	Jan. 28, 1908	Welt & Thread Cutting Means for Sewing Machines
Plant, Thomas G.	958,290	May 17, 1910	Starting & Stopping Mechanism for Sewing Machines
Plant, Thomas G.	958,291	May 17, 1910	Bed Lasting Machine
Plant, Thomas G.	877,859	Jan. 28, 1908	Welt Measuring Means for Sewing Machines
Plant, Thomas G.	940,724	Nov. 23, 1909	Sewing Machine
Plant, Thomas G.	958,306	May 17, 1910	Machine for Operating on the Bottoms of Boots & Shoes
Plant, Thomas G.	940,723	Nov. 23, 1909	Channeling Device for Sewing Machine
Plant, Thomas G.	940,722	Nov. 23, 1909	Jack for Boot & Shoe Lasts
Plant, Thomas G.	940,052	Nov. 16, 1909	Stopping Mechanism
Plant, Thomas G.	946,783	Jan. 18, 1910	Thread Controlling Mechanisms for Sewing Machine
Seely, Thomas H.	945,291	Jan. 4, 1910	Lasting Machine
Stanbon, Chas. P.	865,957	Sept. 10, 1907	Channeling Machine
Stanbon, Chas. P.	945,348	Jan. 4, 1910	Insole Reinforcing Machine
Stewart, Geo. F.	871,963	Nov. 26, 1907	Naumkeag Pad Cover & Machine and Method for Making Same

Stewart, Geo. F.	871,962	Nov. 26, 1907	Buffing Machine
Stewart, Geo. F.	871,964	Nov. 26, 1907	Buffing Machine & Disk Holder Therefor
Stewart, Geo. F.	885,099	Apr. 21, 1908	Welt Marking Machine
Stewart, Geo. F.	871,965	Nov. 26, 1907	Pad Cover
Stewart, Geo. F.	871,966	Nov. 26, 1907	Method for Making Pad Covers
Stewart, Wm. C.	871,967	Nov. 26, 1907	Insole Slashing Machine
Stewart, Wm. C.	958,028	May 17, 1910	Sole Marking Machine
Stewart, Wm. C.	871,968	Nov. 26, 1907	Boot & Shoe Soles
Stewart, Wm. C.	883,837	Apr. 7, 1908	Reinforced Insole Covering & Shaping Machine
Stewart, Wm. C.	871,969	Nov. 26, 1907	Insole Slashing Machine
Stewart, Wm. C.	940,745	Nov. 23, 1909	Work Supports
Stewart, Wm. C. and Hooper, Wm. H.	944,294	Dec. 28, 1909	Heel Beading Machine
Stewart, Wm. C.	958,036	May 17, 1910	Horn Controlling Mech. for Fastener Inserting Machines
Stewart, Wm. C.	958,037	May 17, 1910	Nail Assorting and Delivering Mechanism
Stewart, Wm. C.	944,389	Dec. 28, 1909	Heel and Top Lift Holder
Woodward, Erastus	947,366	Jan. 25, 1910	Heel Nailing Machine
Woodward, Erastus	958,058	May 17, 1910	Heel Nailing Machine

Woodward, Erastus	958,056	May 17, 1910	Heeling Machine
Woodward, Erastus	939,372	Nov. 9, 1909	Automatic Leveler
Woodward, Erastus	958,057	May 17, 1910	Sole Laying & Leveling Mach.
Brennan, Wm. J.	935,620	Sept. 28, 1909	Wax Thread Sewing Machine Attachments
Stewart, Geo. F.	947,510	Jan. 25, 1910	Nail Block Templets for Heeling Machines.
Stewart, Wm. C.	958,038	May 17, 1910	Work Holder for Heeling Machines
Hooper, Wm. H.	944,239	Dec. 21, 1909	Insole Reinforcing Machine
Stewart, Geo. F.	958,027	May 17, 1910	Boot & Shoe Channeling Machines
Seely, Thomas H.	958,187	May 17, 1910	Pincer or Gripper Mechanism for Lasting Machine
Hooper, Wm. H.	947,509	Jan. 25, 1910	Channel Lip Turning Machine
Stewart, Wm. C.	965,342	July 26, 1910	Insole Cover and Reinforcing Machine
Eaton, Clarence L.	965,379	July 26, 1910	Wax Thread Sew. Mach. Attachments
Hooper, Wm. H.	957,962	May 17, 1910	Treeing Devices
Stewart, Wm. C.	958,029	May 17, 1910	Machines for Slashing Soles of Boot and Shoes
Stanbon, Chas. P.	958,024	May 17, 1910	Sole Rounding Machine
Stewart, Wm. C.	958,039	May 17, 1910	Nail Assorting & Delivering Mechanisms

Seely, Thomas H.	958,017	May 17, 1910	Pincer Mechanism for Lasting Machine
Hooper, Wm. H.	957,963	May 17, 1910	Treeing Machine
Stewart, Wm. C.	958,041	May 17, 1910	Top Lift Holder for Heeling Machine
Stanbon, Chas. P.	944,386	Dec. 28, 1909	Knife Mounting for Sole Rounding Machine
Stewart, Wm. C.	958,042	May 17, 1910	Work Support for Boot and Shoe Machines
Hooper, Wm. H.	957,959	May 17, 1910	Machines for Treating Insoles of Boots & Shoes
Hooper, Wm. H.	944,365	Dec. 28, 1909	Boot & Shoe Trees and stretchers
Hooper, Wm. H.	957,961	May 17, 1910	Insole Tempering Machine
Ryan, Thomas J.	958,013	May 17, 1910	Insole for Boots & Shoes
McLeod, Geo. T.	957,993	May 17, 1910	Heel Edge Liners
Hooper, Wm. H.	957,960	May 17, 1910	Insole Edge Trimmers
Eno, F. F.	957,943	May 17, 1910	Counter Guard for Heel Shaving Machines
Stewart, Wm. C.	958,030	May 17, 1910	Knife Grinding Machine
Stewart, Wm. C.	958,031	May 17, 1910	Jack for Slugging and other Machines
McLeod, Geo. T.	957,992	May 17, 1910	Machines for Tempering Out-soles of Boots & Shoes

Stewart, Wm. C.	958,032	May 17, 1910	Knife Grinding & Sharpening Machine
Phelan, Merton D.	958,006	May 17, 1910	Heel Shaver
McLeod, Geo. T.	957,987	May 17, 1910	Welt Laying & Attaching Machines
Stewart, Geo. F.	958,026	May 17, 1910	Shoe Sole Edge Setters
Stewart, Wm. C.	958,033	May 17, 1910	Outsole Markers
Stewart, Wm. C.	958,034	May 17, 1910	Rotary Jacks
McLeod, Geo. T.	957,988	May 17, 1910	Shoe Supporting Rack
McLeod, Geo. T.	957,989	May 17, 1910	Brush Cleaner
Stewart, Wm. C.	958,035	May 17, 1910	Tack Pounder
McLeod, Geo. T.	957,991	May 17, 1910	Fabric Supporting Reel
McLeod, Geo. T.	957,990	May 17, 1910	Machine for Cutting & Slitting Insole Reinforcing Strips
Stewart, Wm. C.	958,040	May 17, 1910	Fastener Inserting Machines
Stanbon, Chas. P.	966,484	Aug. 9, 1910	Welt Preparing Machine
Stanbon, Chas. P.	966,485	Aug. 9, 1910	Machines for Compressing Top Lifts
Plant, Thomas G.	966,471	Aug. 9, 1910	Heel or Sole Edge Waxing Machine
Plant, Thomas G.	966,472	Aug. 9, 1910	Heel and Sole Edge Waxing Machine
Woodward, Erastus	966,506	Aug. 9, 1910	Jacks for Sole Laying and Leveling Machine
Heys, John J.	966,441	Aug. 9, 1910	Shoe Supporting Jacks

Mills, Francis A.	524,335	Aug. 14, 1894	Tension Device for Shoe Sewing Machines
Mills, Francis A.	551,987	Dec. 24, 1895	Needle Guide for Sewing Machine
Mills, Francis A.	551,988	Dec. 24, 1895	Thread Wax Device for Shoe Sewing Machine
Mills, Francis A.	623,100	Apr. 11, 1899	Shoe Sewing Machine
Mills, Francis A.	524,337	Aug. 14, 1894	Work Supporting & Feeding Device for Shoe Sew. Mach.
Mills, Francis A.	524,338	Aug. 14, 1894	Loop Forming Mechanism for Shoe Sewing Machines
Mills, Francis A.	524,340	Aug. 14, 1894	Wax Thread Heating Device for Sewing Machines
Mills, Francis A.	623,101	Apr. 11, 1899	Heating Device for Sewing Machine
Krippendorf	579,518	Mar. 23, 1897	Shoe Sole
Tyler, Abel D.	615,002	Nov. 29, 1898	Combined Boot or Shoe Tree and Top Stretcher
Riley, George	630,109	Aug. 1, 1899	Coverings for Buffing Wheels
Riley, George	630,110	Aug. 1, 1899	Elastic Fabrics
Cummings, H. H.	885,022	Apr. 21, 1908	Stitch Separating & Indenting Machine
Cummings, H. H.	945,306	Jan. 4, 1910	Boot Treeing Machine
Eno, F. F.	945,310	Jan. 4, 1910	Work Gage for Fasten. Insert. Machine

Gelzenlichter, John	957,946	May 17, 1910	Hand Tacker
Glass, Perley R.	938,474	Nov. 2, 1909	Automatic Clinch Nailer
Glass, Perley R.	935,492	Sept. 28, 1909	Slugging Machine for Boots & Shoes
Glass, Perley R.	957,950	May 17, 1910	Auto. Rotary Shoe Jack
Heys, John J.	901,446	Oct. 20, 1908	Welt Beater
Heys, John J.	940,015	Nov. 16, 1909	Buffing Machine
Heys, John J.	878,391	Feb. 4, 1908	Sole Laying Machine
Leavitt, John E.	957,975	May 17, 1910	Expansible Foot Lasts
Phelan, Merton D.	958,001	May 17, 1910	Heel Compressor
Phelan, Merton D.	938,508	Nov. 2, 1909	Portable Power Tacker
Phelan, Merton D.	958,003	May 17, 1910	Metallic Fastening Machine
Phelan, Merton D.	958,004	May 17, 1910	Starting & Stopping Mechanism
Plant, Thomas G.	945,045	Jan. 4, 1910	Method of Form. Chain Stitches
Phelan, Merton D.	944,275	Dec. 28, 1909	Mach. for Inserting Metallic Fastenings
Heys, John J.	521,793	June 26, 1894	Sole Cutting Machine
Heys, John J.	543,019	July 23, 1895	Beating Out Machine
Heys, John J.	555,864	Mar. 3, 1896	Sole Cutting Machine
Heys, John J.	581,662	Apr. 27, 1897	Beating Out Machine
Heys, John J.	607,370	July 12, 1898	Sole Moulding Machine
Heys, John J.	581,825	May 4, 1897	Beating Out Machine
Heys, John J.	543,342	July 23, 1895	Starting & Stopping Machine
Heys, John J.	677,132	June 25, 1901	Moulding Brake & Clutch

Heys, John J.	684,239	Oct. 8, 1901	Epicycle Leveling Machine
Heys, John J.	693,016	Feb. 11, 1902	Epicycle Leveling Machine
Heys, John J.	728,464	May 19, 1903	Monogram Machine
Heys, John J.	728,463	May 19, 1903	Monogram Machine
Heys, John J.	725,961	Apr. 21, 1903	Lock for Jack
Heys, John J.	707,414	Aug. 19, 1902	Roller Leveler Ma- Machine
Heys, John J.	703,204	June 24, 1902	Single Crank Machine
Heys, John J.	761,485	May 31, 1904	Heel Gouging Machine
Heys, John J.	844,128	Feb. 12, 1907	Leather Splitting Machine
Heys, John J.	784,263	Mar. 7, 1905	Impression Stitch Machine
Heys, John J.	810,940	Jan. 30, 1906	Sole Placing Attachment
Heys, John J.	957,954	May 17, 1910	Sewing Machine
Heys, John J.	902,880	Nov. 3, 1908	Chain Stitch Shoe Sew. Machine.

Applications

Name of Applicant	Serial No.	Date Filed	Subject Matter
Cummings, H. H.	293,047	Dec. 23, 1905	Loose Nailer
Heys, John J.	309,997	Apr. 5, 1906	Heel Seat Rough Rounder.
Stanbon, Chas. P.	309,109	Mar. 31, 1906	Welt Cutting Machine
Phelan, Merton D.	319,709	June 1, 1906	Automatic Heel Seat Rough Rounder
Phelan, Merton D.	529,313	Nov. 22, 1909	Lasting Machine
Woodward, Erastus	327,136	July 21, 1906	Leveling Machine Jack
Stewart, Wm. C.	343,458	Nov. 14, 1906	Pulling Over Machine

Phelan, Merton D.	353,211	Jan. 21, 1907	Horn Controlling Mechanism for Work Support
English, A. M.	333,062	Sept. 4, 1906	Heel Burnishing Mechanism
Plant, Thomas G.	412,391	Jan. 24, 1908	Machines for Treating Insoles
Plant, Thomas G.	454,082	Sept. 21, 1908	Laying and Leveling Machines
Plant, Thomas G.	501,448	June 11, 1909	Edge Protectors for Shoe Soles
Plant, Thomas G.	501,449	June 11, 1909	Heel Breasting Machines
Plant, Thomas G.	501,920	June 14, 1909	Connection Cutters
Stewart, Wm. C.	502,666	June 17, 1909	Knife Grinders
Plant, Thomas G.	508,436	July 19, 1909	Welt Shoe Preparing Machine
Plant, Thomas G.	518,690	Sept. 20, 1909	Lasting Pincers
Stewart, Wm. C.	522,596	Oct. 14, 1909	Machines for Brushing Edges of Boot and Shoe Soles
McLeod, Geo. T.	524,951	Oct. 27, 1909	Top Lift Scalloper or Concaver
McLeod, Geo. T.	524,952	Oct. 27, 1909	Shoemakers' Work Bench
Stewart, Wm. C.	526,760	Nov. 8, 1909	Leather Cutting Machine
Glass, Perley R.	536,169	Jan. 3, 1910	Lasting Machine
Plant, Thomas G.	555,294	Apr. 13, 1910	Shoe Supports
Plant, Thomas G.	555,295	Apr. 13, 1910	Work Supports
Plant, Thomas G.	558,915	May 2, 1910	Lasting Machine
Plant, Thomas G.	560,239	May 9, 1910	Heel Breasting Machine
Eaton, Clarence L.	560,174	May 9, 1910	Method of Waxing Thread
Woodward, E.	551,200	Mar. 24, 1910	Shoe Laying and Leveling Jack.

Exhibit B

British Patents.

Number	Date	Title
18968/06	Aug. 24, 1906	Improvements in Pads for Buffing Machines, particularly those for Boots and Shoes, and in the Manufacture of said Pads.
18969/06	Aug. 24, 1906	Improvements in Machines for forming and Driving Metallic Fasteners or Staples.
19262/06	Aug. 28, 1906	Improvements in Machines for Leveling or Beating Out the Outsoles of Boots and Shoes.
19631/06	Sept. 3, 1906	Improvements in Nail Forming and Driving Machines.
20215/06	Sept. 11, 1906	Improvements in Stitch Impressing or Impression Finishing Machines for Boots and Shoes.
20216/06	Sept. 11, 1906	Improvements in Machines for Trimming and otherwise Operating upon the Soles of Boots and Shoes.
20722/06	Sept. 18, 1906	Improvements in Heeling Machines for Boots and Shoes.
23396/06	Oct. 23, 1905	Improvements in Sole Rounding Machines.
26185/06	Nov. 19, 1906	Improvements in Sewing Machines.
27992/06	Dec. 9, 1905	Improvements in Tack or Nail Holding and Driving Devices.
92/07	Jan. 1, 1907	Improvements in and connected with Machines for Trimming or Rounding the Soles of Boots or Shoes.
197/07	June 3, 1907	Improvements in or relating to Boot and Shoe Breasting Machines.
411/07	Jan. 7, 1907	Improvements in or relating to Channel Flap Laying Machines for Boots and Shoes.

1269/07 Jan. 17, 1907 Improvements in Sole Leveling or like Machines for the Manufacture of Boots and Shoes.

1590/07 Jan. 21, 1907 Improvements in Boots and Shoes.

1591/07 Jan. 21, 1907 Improvements in Boots and Shoes.

2135/07 Jan. 28, 1907 Improvements in Welt or Strip Measuring Devices particularly applicable to the manufacture of Boots or Shoes.

4236/07 Aug. 20, 1907 Improvements in pulling Over Machines for Boots and Shoes.

7614/07 Mar. 31, 1906 Improvements in Channel Flap Laying Machines for use in the Manufacture of Boots and Shoes.

7893/07 Apr. 5, 1906 Improvements in Channeling Machines for use in the Manufacture of Boots and Shoes.

10809/07 May 10, 1906 Improvements in Insole Slashing Machines for Boots, Shoes and the like.

11883/07 May 22, 1907 Improvements in Lasting Machines for Boots and Shoes.

15162/07 July 2, 1906 Improvements in Boot Treeing Machines.

15445/07 July 4, 1907 Improvements in the Method of and Machines for Bottoming Boots and Shoes.

15870/07 July 11, 1906 Improvements in Buffing Machines.

17070/07 July 25, 1907 Improvements in the Pad Covers of Buffing Machines and in the Process or Method of Making same.

18492/07 Aug. 15, 1907 Improvements in Insole and like Slashing Machines for use in the Manufacture of Boots and Shoes.

21779/07 Oct. 2, 1907 Improvements in or relating to Machines for Molding Buffing Pad Covers.

21793/07 Oct. 2, 1907 Improvements in Machines for Marking or Notching Welts or other Parts of Boots and Shoes to Facilitate Bottoming.

27876/07 Dec. 18, 1907 Improvements in or relating to Machines for Reinforcing Insoles.

4229/08 Feb. 25, 1908 Improvements in or relating to Machines for Operating on the Bottoms of Boots and Shoes.

9983/08 Aug. 20, 1907 Improvements in Pulling Over Machines for Boots and Shoes.

9984/08 Aug. 20, 1907 Improvements in Pulling Over Machines for Boots and Shoes.

15739/08 Nov. 13, 1907 Improvements in or relating to Channel Lip Turning Machines.

15740/08 Dec. 2, 1907 Improvements in or relating to Channel Lip Turning Machines.

17857/08 Aug. 25, 1908 Improvements in or relating to Stop Mechanisms for Sewing-machines.

18235/08 Aug. 31, 1908 Improvements in or relating to Boot and Shoe Sewing Machines.

18423/08 Dec. 26, 1907 Improvements in or relating to Thread Controlling Mechanism for Sewing Machines.

18424/08 Jan. 29, 1908 Improvements in or relating to Sewing Machines.

18496/08 Feb. 4, 1908 Improvements in or relating to Sole Sewing Machines.

18761/08 Dec. 23, 1907 Improvements in or relating to Channel Moistening Devices for Sewing Machines or the like.

20356/08 Apr. 9, 1908 Improvements in or relating to Wax Thread Sewing Machine Attachments.

23025/08 Apr. 15, 1908 Improvements in or relating to Lock Stitch Sewing Machines.

23964/08 Nov. 9, 1909 Improvements in or relating to Insole Reinforcing Machines or the like.

24193/08 Nov. 11, 1908 Improvements in or relating to Jacks for Boot and Shoe Lasts.

24683/08 Nov. 20, 1907 Improvements in or relating to Heel Beading Machines.

24684/08 Nov. 20, 1907 Improvements in or relating to Work Supports.

2092/09 Jan. 28, 1909 Improvements in Welt or Strip Measuring Devices particularly applicable to the Manufacture of Boots or Shoes.

2093/09 Jan. 28, 1909 Improvements in or relating to Sewing Machines.

2094/09 Jan. 28, 1909 Improvements in or relating to Bobbin Winding Mechanism.

7481/09 Mar. 29, 1909 Improvements in or relating to Treeing Devices for Boots and Shoes.

8772/09 Apr. 13, 1909 Improvements in or relating to Horn Controlling Mechanism for Fastener Inserting Machines.

11119/09 May 11, 1909 Improvements in or relating to Nail Assorting and Delivering Mechanisms.

11711/09 May 18, 1909 Improvements in or relating to Heel and Toplift Holders.

12867/09 June 1, 1909 Improvements in or relating to Heeling Machines.

12892/09 June 1, 1909 Improvements in or relating to Work Holders for Heeling Machines.

13313/09 June 7, 1909 Improvements in or relating to Shoe Sewing Machines.

13314/09 June 7, 1909 Improvements in or relating to Machines for Sewing Boots and Shoes.

14306/09 June 18, 1909 Improvements in or relating to Nail Assorting and Delivering Mechanisms.

14307/09 June 18, 1909 Improvements in or relating to Boot and Shoe Channeling Machines.

14609/09 June 22, 1909 Improvements in or relating to Heeling Machines.

16212/09 July 12, 1909 Improvements in or relating to Machines for Inserting Fasteners in Leather.

16348/09 July 13, 1909 Improvements in or relating to Lasting Machines.

16349/09 July 13, 1909 Improvements in or relating to Lasting Machines.

16350/09 July 13, 1909 Improvements in or relating to Lasting Machines.

17191/09 July 23, 1909 Improvements in or relating to Machines for Inserting Metallic Fastenings in the Manufacture of Boots and Shoes.

17902/09 Aug. 3, 1909 Improvements in or relating to Insoles for Boots and Shoes.

17913/09 Aug. 3, 1909 Improvements in or relating to Work Supports for Boot and Shoe Machines.

27244/09 Nov. 23, 1909 Improvements in or relating to Jacks for Slugging and Other Machines.

28076/09 Dec. 1, 1909 Improvements in or relating to Welt Laying and Attaching Machines.

28488/09 Dec. 6, 1909 Improved Apparatus for applying adhesive to strips of canvas or the like.

9015/04 Apr. 19, 1904 Improvements in Sole Molding Machines.

19631/06 Sept. 3, 1906 Improvements in Nail Forming and Driving Machines.

20216/16 Sept. 11, 1906 Improvements in Machines for Trimming and otherwise Operating upon the Soles of Boots and Shoes.

British Applications.

Number	Date	Title
16347/09	July 13, 1909	Improvements in or relating to Lasting Machines.
18672/09	Aug. 13, 1909	Improvements in or relating to Heeling Machines.
19344/09	Aug. 23, 1909	Improvements in or relating to Insole Covering and Reinforcing Machines.
24626/09	Oct. 26, 1909	Improvements in or relating to Machines for Slashing Soles of Boots and Shoes.
26480/09	Nov. 15, 1909	Improvements in or relating to Sole Rounding Machines.

27761/09 Nov. 29, 1909 Improvements in or relating to Heel shaving Machines.

27762/09 Nov. 29, 1909 Improvements in or relating to Shoe Sole Edge Setters.

5666/10 Mar. 7, 1910 Improvements in or relating to Shoe Sole Flexers.

11480/10 May 9, 1910 Improvements in or relating to Laying and Leveling Machines.

11628/10 May 10, 1910 Improvements in Rotary Jacks.

11629/10 May 10, 1910 Improvements in or relating to Heeling Machines.

11841/10 May 12, 1910 Improvements in or relating to Laying and Leveling Machines.

12008/10 May 14, 1910 Improvements in or relating to Outsole Markers.

13395/10 Oct. 19, 1909 Improvements in Ironing and Dressing Jacks for Boots and Shoes.

13814/10 Mar. 26, 1910 Improvements in or relating to Sole Edge Waxing Machines.

14803/10 Dec. 22, 1909 Improvements in Driving Shaft Controlling Means.

20743/10 Sept. 6, 1910 Improvements in or relating to Heel Breasting Machines.

20744/10 Sept. 6, 1910 Improvements in or relating to Welt Shoe Preparing Machines.

27350/09 Nov. 24, 1909 Improvements in or relating to Shoe Jacks.

20753/10 Sept. 15, 1909 Improvements in or relating to Brush Cleaners.

20752/10 Oct. 27, 1909 Improvements in or relating to Machines for Compressing Toplifts.

French Patents.

Number	Date	Title
374,239	Oct. 22, 1906	Sole Rounding Machine
374,396	Dec. 8, 1906	Improvements in Tools for Driving Tacks or Nails.

378,788	Aug. 21, 1906	Improvements in Buffing Machines.
378,790	Aug. 21, 1906	Sole Leveling Machine.
379,001	Aug. 27, 1906	Improvements in Machines for making or for making and driving fasteners.
379,184	Aug. 31, 1906	Improvements in Machines for making or for finishing stitch impressions.
379,774	July 10, 1907	Improvements in finishing machines used in the manufacture of boots and shoes.
380,564	Oct. 10, 1906	Feeler mechanism for adjusting the work guide in rough rounder and channeling machines.
380,565	Oct. 10, 1906	Pattern mechanism for adjusting the cutter knife relatively to the guide in rough rounder machines.
380,566	Oct. 10, 1906	Feed mechanism and channeling knife for rough rounder machines.
381,563	Nov. 12, 1906	Improvements in heeling machines.
381,564	Nov. 12, 1906	Improvements in heeling machines
381,565	Nov. 12, 1906	Improvements in heeling machines.
381,794	May 8, 1907	Insole slashing machine.
8,505	Aug. 23, 1907	Patent of addition to Patent No. 381,794 for insole slashing machine.
382,028	July 1, 1907	Improvements in machines for finishing boot and shoe uppers. (Boot treeing machine.)
382,233	Sept. 26, 1907	Improvements in boot and shoe sewing machines.
10,860	Mar. 15, 1909	Patent of addition to Patent No. 382,233 for Improvements in boot and shoe sewing machines.
382,276	Mar. 30, 1907	Improvements in channel laying machines.
382,277	Apr. 4, 1907	Improvements in sole channeling machine.
384,584	Dec. 2, 1907	Improvements in welting machines or other machines for attaching a band of material.

10,669	Mar. 15, 1909	Patent of Addition to Patent No. 384,584 for Improvements in welting machines or other machines for attaching a band of material.
384,722	Aug. 23, 1907	Improved sole for boots and shoes.
385,787	Oct. 21, 1907	Improved insole and improved method for making same.
387,878	Mar. 6, 1908	Sole reinforcing and forming machine.
388,544	Mar. 27, 1908	Machine for marking the edge of uppers of boots and shoes.
389,978	July 16, 1907	Machine and method for facilitating the assembling of the sole and upper, in the manufacture of boots and shoes.
390,377	May 19, 1908	Improvements in pulling-over machines.
391,650	Mar. 28, 1908	Improvements in machines for operating upon the heel of boots and shoes.
391,788	Sept. 5, 1907	Improved pad covering for buffing machines used in the manufacture of boots and shoes, and method for making said covering.
392,681	Oct. 2, 1907	Machine for forming or moulding an improved covering for pads of buffing machines used in the manufacture of boots and shoes.
393,306	May 19, 1908	Improvements in pulling-over machines.
393,307	May 19, 1908	Improvements in pulling-over machines.
394,669	Dec. 3, 1907	Improvements in rough rounding machines.
392,732	July 27, 1908	Channel lip turning machine.
392,733	July 27, 1908	Channel lip turning machine.
393,132	Aug 4, 1908	Improvements in lasting machines.
394,013	Sept. 7, 1908	Improvements in sole channel moistening devices.
394,226	Sept. 12, 1908	Improvements in thread controlling mechanism for sewing machines.
394,376	Sept. 17, 1908	Improvements in boot and shoe sewing machines.

394,542 Sept. 22, 1908 Improvements in stop mechanism.

394,714 Sept. 26, 1908 Improvements in lock stitch shoe sewing machines.

394,715 Sept. 26, 1908 Improvements in boot and shoe sewing machines.

394,765 Sept. 29, 1908 Improvements in boot and shoe sewing machines.

395,292 Aug. 4, 1908 Improvements in lasting machines.

396,404 Nov. 17, 1908 Improvements in work supports for nailing, slugging or other similar machines used in the manufacture of boots and shoes.

396,411 Nov. 17, 1908 Improvements in heel seat finishing machines or similar machines used in the manufacture of boots and shoes.

396,939 Dec. 1, 1908 Improvements in work supports or jacks used in machines for the manufacture of boots and shoes.

398,582 Dec. 3, 1908 Improvements in machines for applying a reinforcing covering to insoles used in the manufacture of boots and shoes.

398,925 Jan. 29, 1909 Bobbin winder.

409,801 Nov. 30, 1909 Improvements in machines for attaching or applying a welt to the surface of a sole along its edge.

410,469 Dec. 21, 1909 Improvements in heel trimming machines.

410,946 Nov. 22, 1909 Improvements in jacks in sole leveling or sole laying machines.

411,560 Apr. 13, 1909 Improvements in boot treeing machines.

411,960 Jan. 27, 1910 Improvements in the jacks or work supports in toplift slugging or other nailing machines.

411,975 Apr. 21, 1909 Improvements in fastener driving machines used in the manufacture of boots and shoes.

411,961 Jan. 27, 1910 Improvements in apparatus for machines used in the manufacture of boots and shoes for applying cement to canvas for reinforcing insoles of boots and shoes.

412,778 May 10, 1909 Improvements in nail assorting and delivering mechanism used in machines for making boots and shoes.

413,140 May 19, 1909 Improvements in heel or toplift carriers for boot and shoe machines.

413,713 June 1, 1909 Improvements in machines for loading heels with nails for attaching the latter to the shoe.

413,750 June 2, 1909 Improvements in heel carriers used in boot and shoe machines and more particularly in heeling machines.

414,153 June 11, 1909 Improvements in sewing machines.

414,340 June 16, 1909 Improvements in sewing machines and more particularly in so-called welters used in the manufacture of boots and shoes.

414,447 June 18, 1909 Improvements in sole channeling machines.

414,589 June 22, 1909 Improvements in heeling machines.

414,737 June 25, 1909 Improvements in nail assorting and delivering mechanism used in machines for the manufacture of boots and shoes.

415,142 July 5, 1909 Improvements in lasting machines.

416,023 July 27, 1909 Improvements in machines for inserting metallic fasteners.

416,024 July 27, 1909 Improvements in machines for inserting fasteners.

416,272 Aug. 2, 1909 Improvements in insoles for boots and shoes.

415,972 May 14, 1910 Improvements in laying and leveling machines.

415,768 May 10, 1910 Improvements in rotary jacks.

416,009 May 17, 1910 Improvements in sole markers.

French Applications.

Ser. No.			
1,029	Sept.	9, 1909	Patent of Addition to Patent No. 387,878 for sole reinforcing and forming machine.
1,185	Oct.	26, 1909	Patent of Addition to Patent No. 381,794 for insole slashing machine.
7,906	Sept.	3, 1909	Improvements in heeling machines.
10,211	Nov.	13, 1909	Improvements in sole rounding machines.
16,909	May	13, 1909	Sole leveling and laying machine.
17,294	May	24, 1910	Heeling Machine.
17,726	June	4, 1910	Improvements in ironing and dressing jacks for boots and shoes.
17,959	June	11, 1910	Improvements in sole edge and heel finishing machines.
17,280	June	21, 1910	Improvements in machines for flexing soles.
18,464	June	25, 1910	Improvements in sole edge setting machines.
20,734	Sept.	5, 1910	Improvements in machines for operating on the bottoms of boots and shoes, and more particularly heels (Heel Breaster).
20,736	Sept.	5, 1910	Improvements in machines for preparing the shoe to receive the welt (welt shoe sewing machine).
20,735	Sept.	5, 1910	Improvements in brush cleaners.
20,737	Sept.	5, 1910	Improvements in machines for compressing toplifts.

German Patents.

Number		Date	Title
214,012	Nov.	10, 1908	Insole Reinforcing Machine.
218,943	Nov.	20, 1908	Machine for Operating upon Boots and Shoes.
221,688	July	14, 1909	Lasting Machine.
221,732	May	20, 1909	Nail Assorting and Delivering Machanism.
221,826	Sept.	8, 1908	Channel Moistening Device for Sole Fastening Machines, especially Shoe Sewing Machines.

223,043 Oct. 1, 1908 Sewing Machine for Boots and Shoes with an oscillatory welt guide and a back gauge movable toward and from the work.

223,192 Sept. 10, 1908 Presser-foot for Sewing Machines for Boots and Shoes.

223,193 Sept. 19, 1908 Sewing Machine for Boots and Shoes.

223,575 Jan. 31, 1909 Bobbin Winding Mechanism for Wax-Thread Sewing Machines.

223,877 Aug. 1, 1908 Lasting Machine for Boots and Shoes.

224,650 Sept. 15, 1908 Stopping Mechanism for Sewing and other Machines for Operating upon Boots and Shoes, with fast and loose Clutch Members provided on the Main Shaft.

225,323 Oct. 1, 1908 Back Gauge for Boot and Shoe Sewing Machines.

226,576 July 15, 1909 Machine for Inserting Fastenings.

225,693 July 16, 1909 Boot and Shoe Sewing Machine with welt guide.

200,553 Aug. 26, 1906 Pad for Sole Buffing Machines.

201,394 Nov. 29, 1906 Tack or Nail Driving Device.

201,985 Aug. 31, 1906 Machine for Making and Driving Staples.

201,986 Sept. 11, 1906 Machine for Rounding Soles or the like.

203,301 Aug. 27, 1907 Insole for Boots and Shoes with transverse slashes.

205,732 Oct. 31, 1906 Nail Delivering Device for Heeling Machines or the like.

205,733 Jan. 11, 1908 Insole Reinforcing Machine.

205,877 July 17, 1907 Method and Machine for Facilitating Assembling of Shoe Uppers and Soles.

206,129 Oct. 4, 1907 Machine for Making Pad Covers for Boot and Shoe Buffing Machines or the Like, in which a forming device acts upon a blank held by its edge.

207,800 Aug. 29, 1907 Process for Making Pad Covers for Shoe Bottom Buffing Machines.

207,801 Mar. 26, 1908 Machine for Marking the Edge of Uppers.
208,690 Sept. 7, 1906 Stitch Impression Machine.
209,630 Sept. 21, 1906 Sole Rounding Machine with a Work Holder and a Cutting Knife.
210,050 Oct. 20, 1907 Sewing Machine for Assembling a ribbon-shaped Stripe of Material with the work, especially the Welt of Boots and Shoes with the Upper.
210,186 Sept. 3, 1907 Welt Shoe Sewing Machine with a curved Needle and a Welt Guide.
211,020 Apr. 5, 1907 Machine for Operating upon Shoe Soles, with a feeding mechanism for the Work and a Sole Channeling Device
211,258 Aug. 26, 1906 Sole Leveling Machine with a Leveling Device acting upon the Tread Surface of the Sole.
212,373 July 12, 1907 Shoe Sole Buffing Machine.
214,992 July 2, 1907 Boot Treeing Machine
215,841 Feb. 4, 1909 Sewing Machine for Assembling a Ribbon-shape Stripe of Material with the Work, especially the Welt of Boots and Shoes with the Upper.
216,588 Oct. 22, 1907 Method for Making Insoles for Boots and Shoes, according to which a Channel with upturned Lip is put into the Surface of the Sole.
217,772 May 9, 1907 Sole Slashing Machine.
218,244 Aug. 27, 1907 Sole Slashing Machine.
219,981 Mar. 31, 1908 Heel Breasting Machine or the Like.
220,936 Mar. 31, 1907 Channel Flap Layer.
220,973 Mar. 31, 1908 Machine for Operating upon Boots and Shoes, especially for Breasting Heels.
225,468 Feb. 4, 1909 Welt Shoe Sewing Machine with a curved Needle and a Welt Guide.
226,578 Dec. 31, 1909 Jack for Boot and Shoe Machine.

German Patent Applications

Ser. No.	Date	Title
P. 22240	Nov. 14, 1908	Jack for Boot and Shoe Machines.
P. 22258	Nov. 19, 1908	Workholder or Jack for Boot and Shoe Machines.
P. 23032	Apr. 22, 1909	Machine for Inserting Fastenings.
P. 21842	Aug. 10, 1908	Channel Lip Turning Machine.
P. 21953	Sept. 4, 1908	Thread Controlling Mechanism for Sewing Machines.
P. 23213	June 8, 1909	Work Holder for Heeling Machines.
P. 23214	June 8, 1909	Heeling Machine.
P. 23447	July 23, 1909	Machine for Nailing Heels upon Boots and Shoes.
P. 23291	June 23, 1909	Heel Holding Device for Boot and Shoe Machines.
P. 23487	Aug. 2, 1909	Jack for Boot and Shoe Machines.
P. 24099	Nov. 30, 1909	Last Holder for Boot and Shoe Machines.
P. 22044	Sept. 28, 1908	Shuttle for Lock Stitch Shoe Sewing Machines.
P. 23399	July 14, 1909	Machine for Inserting Fastenings.
P. 23284	June 21, 1909	Sole Channeling Machine for Boots and Shoes.
P. 23393	July 13, 1909	Boot and Shoe Sewing Machine.
P. 24975	May 11, 1910	Sole Laying and Leveling Machine.
P. 23392	July 13, 1909	Lasting Machine for Boots and Shoes.
P. 23394	July 13, 1909	Lasting Machine.
P. 23396	July 13, 1909	Lasting Machine.
P. 24168	Dec. 11, 1909	Sole Slashing Machine.
P. 24081	Nov. 26, 1909	Sole Rounding Machine.
P. 23423	July 19, 1909	Nail Assorting and Delivering Mechanism
P. 22939	Apr. 3, 1909	Boot and Shoe Treeing Machine.
P. 24961	May 9, 1910	Heeling Machine.
P. 23433	July 21, 1909	Toplift Holder for Heeling Machines.
P. 23493	Aug. 3, 1909	Insole for Boots and Shoes.

P. 24976 May 11, 1910 Sole Laying and Leveling Machine.
P. 24269 Dec. 30, 1909 Jack for Boot and Shoe Machines.
P. 24270 Dec. 30, 1909 Cement Applying Machine.
P. 24268 Dec. 30, 1909 Heel Shaving Machine.
P. 24182 Dec. 13, 1909 Welt Laying Machine.
P. 24634 Mar. 9, 1910 Shoe Sole Flexing Machine
P. 24271 Dec. 30, 1909 Shoe Sole Edge Setter.
P. 24996 May 14, 1910 Outsole Marking Machine.
P. 24962 May 9, 1910 Workholder or Jack for Boots and Shoes.
P. 25068 June 1, 1910 Ironing and Breasting Jack for Boots and Shoes.
P. 25172 June 21, 1910 Driving Shaft Controlling Means.
P. 25112 June 8, 1910 Heel and Sole Edge Waxing Machine.
P. 25520 Aug. 18, 1910 Heel Breasting Machine.
P. 25521 Aug. 18, 1910 Preparatory Welt Shoe Sewing Machine.
P. 25564 Aug. 27, 1910 Brush Cleaner.
P. 1910 Machine for Compressing Toplifts for Boots and Shoes.
M. 33863 Dec. 14, 1907 Sole Rounding Machine with Feeding Device and a Rotatable Pattern.
M. 35059 May 18, 1908 Pulling Over Machine
M. 39565 Nov. 13, 1909 Pulling Over Machine.
M. 39566 Nov. 13, 1909 Pulling Over Machine
M. 38837 Aug. 23, 1909 Insole Reinforcing Machine.

Austrian Patents.

Number	Date	Title
42267	Dec. 1, 1909	Channel Moistening Device for Sole Sewing Machines.
44344	May 15, 1910	Lasting Machine.
44155	Apr. 15, 1910	Jack for Machines for Operating Upon Boots and Shoes.
44352	May 1, 1910	Machine for Operating on Boots and Shoes.
35618	Aug. 1, 1908	Machine for Making and Inserting Fastenings.
36259	Sept. 15, 1908	Sole Slashing Machine.

36748 Nov. 1, 1908 Buffing Machine for Boots and Shoes.
36926 Nov. 15, 1908 Machine for Rounding or Dieing Out Sole Ends.
37639 Jan. 1, 1909 Stitch Impression Machine.
37642 Jan. 1, 1909 Insole for Boots and Shoes.
38517 Apr. 1, 1909 Method and Device for Facilitating the Assembling of Sole and Upper.
38564 Apr. 1, 1909 Welt Measuring Device for Welt Sewing Machines.
39041 Apr. 1, 1909 Welt Sewing Machine.
39043 Apr. 15, 1909 Method for Making Insoles for Boots and Shoes.
39438 June 15, 1909 Sole Slashing Machine.
40316 July 15, 1909 Sole Rounding Machine
40317 July 1, 1909 Method for Shaping Pad Covers for Shoe Sole Buffing Machines or the like.
40352 July 15, 1909 Pad for Sole Buffing Machines.
40591 Aug. 15, 1909 Shoe Sole Channel Flap Layer.
40853 Sept. 1, 1909 Mechanism for Applying a Reinforcing Material to Insoles.
40906 Sept. 1, 1909 Machine for Marking the Edge of the Upper or the Welt attached to the same.
41146 Oct. 1, 1909 Boot Treeing Device.
42411 Jan. 15, 1910 Sole Channeling Machine.
43586 Apr. 1, 1910 Machine for Operating upon Boots and Shoes, especially for Breasting the Heel.
43594 Apr. 1, 1910 Heel Breasting Machine or the like.
44151 May 1, 1910 Machine for Rounding and Channeling Shoe Soles.

Austrian Patent Applications

Ser. No.	Date	Title
A 7332–08	Nov. 13, 1908	Jack for Boot and Shoe Machines.
A 3585–09	Apr. 29, 1909	Machine for Inserting Fastenings.
A 5924–08	Sept. 14, 1908	Stopping Device for Sewing Machines or the like.

A 7260–08 Nov. 10, 1908 Insole Reinforcing Machine.
A 4334–09 June 1, 1909 Nail Assorting and Delivering Device for Heeling Machines or the like.
A 5764–08 Sept. 4, 1908 Thread Controlling Device for Sewing Machines.
A 4722–09 June 15, 1909 Work Holder for Heeling Machines.
A 4723–09 June 15, 1909 Machine for Driving Nails into the Heels of Boots and Shoes.
A 5909–09 July 30, 1909 Heeling Machine for Boots and Shoes.
A 6324–08 Oct. 1, 1908 Sewing Machine for Boots and Shoes.
A 6325–08 Oct. 1, 1908 Sewing Machine for Boots and Shoes.
A 5612–09 July 17, 1909 Machine for Inserting Metallic Fastenings in Boot and Shoe Leather.
A 6344–08 Oct. 2, 1908 Sole Sewing Machine.
A 4959–09 June 24, 1909 Heel Holder for Machines for Driving Nails into the Heels of Boots and Shoes.
A 6276–08 Sept. 29, 1908 Waxing Device for Sewing Machines.
A 6277–08 Sept. 29, 1908 Shuttle for Sewing Machines.
A 5956–08 Sept. 15, 1908 Sewing Machine.
A 5618–09 July 18, 1909 Machine for Making Metallic Fastenings from Wire and Inserting them in Leather or the like.
A 4911–09 June 22, 1909 Sole Channeling Machine for Boots and Shoes.
A –09 July 16, 1909 Boot and Shoe Sewing Machine.
A 713–09 Jan. 30, 1909 Bobbin Winding Mechanism.
A –10 May 14, 1910 Sole Laying and Leveling Machine.
A 5476–09 July 13, 1909 Lasting Machine for Boots and Shoes.
A 6499–09 July 14, 1909 Lasting Machine for Boots and Shoes.
A 5498–09 July 14, 1909 Lasting Machine for Boots and Shoes.
A 5500–09 July 14, 1909 Lasting Machine for Boots and Shoes.
A –09 July 17, 1909 Welt Sewing Machine for Boots and Shoes.
A 9218–09 Dec. 9, 1909 Sole Slashing Machine.
A 8866–09 Nov. 26, 1909 Sole Rounding Machine.

A 5739–09 July 23, 1909 Nail Assorting and Delivering Device for Boot and Shoe Machines.
A 3096–09 Apr. 8, 1909 Boot Treeing Device.
A –10 May 13, 1910 Heeling Machine.
A 5740–09 July 23, 1909 Toplift Holder for Heeling Machines.
A 5972–09 Aug. 2, 1909 Jack for Boots and Shoes.
A 6002–09 Aug. 3, 1909 Insole for Boots and Shoes.
A –10 May 14, 1910 Sole Laying and Leveling Machine.
A 9764–09 Dec. 30, 1909 Jack.
A 9763–09 Dec. 30, 1909 Cement Applying Machine.
A 9765–09 Dec. 30, 1909 Heel Shaving Machine.
A 9360–09 Dec. 14, 1909 Welt Laying Machine.
A –10 Mar. 11, 1910 Sole Flexing Machine.
A 9766–09 Dec. 30, 1909 Machine for Polishing Shoe Sole Edges.
A –10 May 14, 1910 Outsole Marking Machine.
A –10 May 13, 1910 Workholder or Jack for Boots and Shoes.
A 5067–10 June 22, 1910 Driving Shaft Controlling Means.
A –10 June 2, 1910 Ironing and Dressing Jack for Boots and Shoes.
A 4737–10 June 10, 1910 Heel and Sole Edge Waxing Machine.
A 9014–09 Dec. 2, 1909 Jack for Boot and Shoe Machines.
A 6617–10 Aug. 19, 1910 Heel Breasting Machine.
A 6618–10 Aug. 19, 1910 Welt Shoe Sewing Machine.
A –10 Aug. 27, 1910 Brush Cleaner.
A –10 1910 Machine for Compressing Toplifts.
A 3339–08 May 19, 1908 Pulling Over Machine.
A 9035–09 Dec. 2, 1909 Pulling Over Machine.
A 9036–09 Dec. 2, 1909 Pulling Over Machine.
A 715–09 Jan. 30, 1909 Sewing Machine for Sewing a Ribbon-Shaped Stripe of Material to the Work, especially the Welt of Boots and Shoes to the Upper.
A 716–09 Jan. 30, 1909 Welt Sewing Machine.
A 6523–09 Aug. 24, 1909 Insole Reinforcing Machine.

Australian Patents

Number	Date	Title
8787/07 May	23, 1907	Improvements in or relating to automatic heel seat rough rounding or like machines used in the manufacture of Boots or Shoes.
8786/07 May	23, 1907	Improvement in sole rounding machines.
8945/07 June	12, 1907	Improvements in or relating to pulling-over or like machines used in the manufacture of Boots or Shoes.
9018/07 June	19, 1907	Improvement in Lasting Machines.
9105/07 July	2, 1907	Improvement in Channeling Machines.
9169/07 July	10, 1907	Improvement in Boot Treeing Machines.
9171/07 July	10, 1907	Improvement in Channel Flap Layer.
9172/07 July	10, 1907	Improvements in Machines for Forming and Driving Metallic Fasteners or Staples.
9173/07 July	10, 1907	Improvements in Buffing Machines, particularly those for boots and Shoes, in pads therefor, and in the manufacture of said pads.
9174/07 July	10, 1907	Improvement in Stitch Impression Finishing Machines.
9431/07 Aug.	7, 1907	Machine and Method for Facilitating the Assemblage of Shoe Uppers and Soles.
9532/07 Aug.	15, 1907	Improvements in or relating to buffing or like machines used in the manufacture of boots or shoes.
9619/07 Aug.	27, 1907	Pad Covers and Method for Making the Same.
9961/07 Oct.	8, 1907	Improvement in Insole Slashing Machines.
9962/07 Oct.	8, 1907	Improvements in or Relating to Reinforced Insole and Process for Making the Same.

9963/07 Oct. 8, 1907 Improvements in or Relating to Boot and Shoe Soles.

9964/07 Oct. 8, 1907 Improvements in or Relating to Welt and Thread Cutting Means for Sewing Machines or the like.

9965/07 Oct. 8, 1907 Improvements in or relating to Welt Measuring Means for Sewing Machines or the Like.

10374/07 Dec. 3, 1907 Improvements in and connected with machines for trimming or rounding the soles of boots or shoes.

10750/08 Jan. 31, 1908 Improvements in or relating to Boot and Shoe Machines.

11138/08 Mar. 25, 1908 Improvements in or relating to machines for operating on the bottoms of boots and shoes.

11338/08 Apr. 23, 1908 Welt Marking Machine.

12700/08 Oct. 6, 1908 Improvements in or relating to Stopping Mechanisms for Sewing Machines.

12750/08 Dec. 23, 1907 Improvements in or relating to Channel Moistening Devices for Sewing Machines or the Like.

12751/08 Dec. 26, 1907 Improvements in or relating to thread controlling mechanism for sewing machines.

12752/08 Oct. 12, 1908 Improvements in or relating to sewing machines.

12753/08 Feb. 4, 1908 Improvements in or relating to sole sewing machines.

12754/08 Oct. 12, 1908 Improvements in or relating to boot and shoe sewing machines.

12873/08 Apr. 15, 1908 Improvements in or relating to lock stitch sewing machines.

12874/08 Apr. 9, 1908 Improvements in or relating to wax thread sewing machine attachments.

13868/09 Feb. 26, 1909 Improvements in or relating to bobbin winding mechanism.

15104/09 July 14, 1909 Improvements in or relating to sewing machines.

15105/09 July 14, 1909 Improvements in or relating to Shoe Sewing Machines.

New Zealand Patents.

Number	Date	Title
22926 June	1, 1906	Improvements in or relating to automatic heel seat rough rounding or like machines used in the manufacture of boots or shoes.
22927 May	31, 1907	Improvement in sole rounding machines.
23055 July	2, 1906	Improvement in boot treeing machines.
23124 July	11, 1907	Improvement in channeling machines.
23157 July	18, 1907	Improvement in channel flap layer.
23158 July	18, 1907	Improvements in machines for forming and driving metallic fasteners or staples.
23159 July	18, 1907	Improvements in buffing machines, particularly those for boots and shoes, in pads therefor, and in the manufacture of said pads.
23160 July	18, 1907	Improvement in stitch impression finishing machines.
23304 Aug.	15, 1907	Machine and method for facilitating the assemblage of shoe uppers and soles.
23376 Aug.	28, 1908	Improvements in or relating to buffing or like machines or like machines used in the manufacture of boots and shoes.
23424 Sept.	5, 1907	Pad Covers and method for making the same.

EXHIBIT C.

Contents of machine-shop located in Pevear Building, 507 Washington Street, Lynn, Mass., fully equipped with large machine tools, small tools, machine-shop equipment, etc. (not including, however, shafting, pulleys, belts, etc., furnished by landlord):

two-thirds of the capital stock of the Bresnahan Shoe Machinery Company, incorporated under the laws of Maine, which is doing a machinery business at said Lynn manufacturing for said Plant, and whose assets are at its place of business in said Lynn and consist principally of machine tools, small tools, machine-shop equipment and machinery.

Patterns, tools, jigs, etc., built for the purpose of manufacturing the Wonder Worker Shoe Machinery in use at said place of business of said Bresnahan Shoe Machinery Company, at said machine-shop in Pevear Building, at the places of business of C. P. Stanbon & Company, Lynn, Mass., Taft-Peirce Manufacturing Company, Woonsocket, R. I., Stanley Manufacturing Company, Lawrence, Mass., National Machine & Tool Company, Boston, Mass., C. H. Cowdrey Machine Works, Fitchburg, Mass., and Lockwood Manufacturing Company, Boston, Mass.

Completed shoe machinery and machinery in process of manufacture, manufactured parts in stocks, parts in process of manufacture and materials located at Bismarck Street, Jamaica Plain, Boston, machine-shop No. 1, Bickford Street, Boston, Mass., at said places of business of said Bresnahan Shoe Machinery Company, C. P. Stanbon & Company, Taft-Peirce Manufacturing Company, National Machine & Tool Company, C. H. Cowdrey Machine Works and Lockwood Manufacturing Company.

Machine tools, small tools, jigs, patterns, machines in process of manufacture, fixtures, office furniture, etc., located at said place of business of said Stanley Manufacturing Company, Lawrence, Mass.

Also all other property which Thomas G. Plant owns and uses in connection with the manufacture of machinery.

EXHIBIT D.

Agreement, made this twenty-ninth day of May A. D. 1905, by and between Charles P. Stanbon, of Lynn, Massachusetts, doing business under the firm name and style of Charles P. Stanbon & Company of the first part, and Manufacturers Machine Company, a corporation duly organized and existing under and by virtue of the

laws of the State of New Jersey, party of the second part, Witnesseth:

That whereas the party of the first part is established in business at Lynn, Massachusetts, in the manufacture and sale of shoe machinery, parts thereof and accessories thereto, and is willing, upon receipt of the bond hereinafter described, to give the party of the second part an option for the purchase of the good-will of the business, the stock, machinery, tools and patents of the party of the first part;

And whereas the party of the second part is willing to give said bond;

Now therefore in consideration of the premises and the covenants and agreements hereinafter contained, and of one dollar each to the other paid, the receipt of which is hereby acknowledged, said parties have agreed as follows: —

1. Said party of the first part, in consideration of the bond of the party of the second part for five thousand dollars hereinafter described, hereby gives to the party of the second part the following described option, viz.: at any time on or before the first day of November, A. D. 1906, to enter into a contract to purchase the entire business, good-will, stock, machinery, parts, tools, patents, inventions, furniture, and everything else forming a part of, used in or accessory to the business of said party of the first part at an inventory value, said inventory to be taken at the time and in the manner herein set forth, to wit: said inventory shall be taken as soon as may be after notice in writing by the party of the second part given to the party of the first part of the desire of the party of the second part to purchase said property under this option, which notice shall constitute a contract for the purchase of the property which is the subject of this agreement; and said notice must be given, if at all, on or before November 1, 1906. Said inventory shall be made up and the purchase price shall be fixed by Harry I. Illingworth, Lynn, Mass., acting as an appraiser, unless some other person should be mutually agreed upon by the parties hereto. In case of the death of said Illingworth, or his refusal to act as an appraiser as aforesaid, and in case the parties hereto

shall fail within fourteen days after the giving of said notice, to agree upon an appraiser, said appraiser shall be selected by Perley R. Glass, Boston, Mass., and said selection shall be final and binding upon all of the parties hereto. The appraiser shall appraise all machinery at a value equivalent to the value thereof as second-hand machinery, sold by a willing seller to a willing purchaser under favorable conditions.

2. Said party of the first part agrees that the good-will, patents and inventions of or owned by said party of the first part, and also those of or owned by any other individual or individuals who may in part or wholly constitute the party of the first part, shall be inventoried at one dollar, it being the intent of said party of the first part to contribute the same at such nominal price to the party of the second part provided the latter avails of this option.

3. The party of the second part agrees, simultaneously with the execution of this agreement, to furnish the party of the first part with a bond with a good and sufficient surety or sureties, in the sum of five thousand dollars, to be paid by the party of the second part to the party of the first part on the first day of November A. D. 1906, or at the time of the transfer of the property which is the subject of this agreement if said transfer shall be made prior to the said first day of November 1906, or subsequent to the first day of November 1906 and following an acceptance in writing of this option. If this option is accepted and the property which is the subject of this agreement is transferred as herein provided, then said sum of five thousand dollars shall be reckoned, considered and taken as part payment on the purchase price of said property at said appraisal. If this option is not accepted, then said sum of five thousand dollars is to be paid over by the party of the second part to the party of the first part on the first day of November 1906 and is to be forfeited: that is to say, the party of the second part is to be considered as having received value to the extent of five thousand dollars by having the option aforesaid until and including the first day of November 1906. In case the option is availed of by the party of the second part the remainder of the purchase price as fixed by said appraisal shall be paid by the party of the second

part to the party of the first part within fourteen (14) days after the completion of said appraisal and its submission to the party of the second part.

4. The said Charles P. Stanbon, of the party of the first part, agrees that, should the party of the second part exercise the option herein given within the time stated and purchase the business of the party of the first part as herein provided for, then and in such event said party of the second part shall have the right and option to acquire the services of said Charles P. Stanbon for the whole or such part of five years next following the acquirement of the property which is the subject of this option and agreement as said services shall be satisfactory to the party of the second part, at the rate of five thousand (5,000) dollars per year, or a proportionate part thereof for a part of any year, as said party of the second part may elect.

5. In the event of the exercise of this option by the party of the second part hereto within the time mentioned, the party of the first part may at his election receive payment for the property referred to in Section 1 hereof at the appraised value in cash or in stock at par of said party of the second part.

In Witness Whereof, the parties hereto have hereunto set their hands and caused their seals to be affixed the day and year first above written.

Charles P. Stanbon [SEAL]

[SEAL] Manufacturers Machine Co.

F. H. Rowsom, Treasurer.

EXHIBIT E.

This agreement, made this 26th day of January, in the year 1910, between the Keighley Company, a corporation organized under the laws of the State of New Jersey and having its principal office and place of business in Vineland, New Jersey, U. S. A., of the first part, and Thomas G. Plant of Boston in the State of Massachusetts, U. S. A., of the second part, witnesseth: —

That the party of the first part, for and in consideration of One Dollar to it paid by the party of the second part, the receipt of

which is hereby acknowledged, and other valuable consideration hereinafter set forth, agrees to furnish to the party of the second part, his successors or assigns, its Rapid Inseam Trimming Machines in such quantities up to twenty-five per cent of its output as the party of the second part may desire from time to time, said machines to be subject to the lease of the party of the first part for a period of forty-nine years without the payment of rental or royalty.

The party of the second part hereby agrees, for himself, his successors or assigns, to pay to the party of the first part the sum of Five Hundred Dollars for each machine so furnished, within 30 days after receipt of same at place of destination, said machines to be delivered by the party of the first part F. O. B. cars at Vineland, New Jersey.

The party of the second part also agrees to pay to party of the first part the sum of Five Dollars per day and all traveling and hotel expenses for the services of a man to set up said machines at place of destination and teach operators to run same, provided the party of the second part desires such services.

The party of the second part also agrees that he will place said machines only in the factories of such shoe manufacturing concerns as equip their factories with his general line of machinery and that he will use his best efforts to induce all users of his machinery to use the said Rapid Inseam Trimming Machines of the party of the first part.

The party of the second part also agrees to purchase all parts, mechanisms and devices used on the machines furnished to him by the party of the first part from them at their regular prices established at the time of purchase less a discount of twenty-five per cent for payment in 30 days from date of shipment.

The party of the second part also agrees to take from the party of the first part thirty or more of said machines during the year 1910 and fifteen or more during each six months thereafter during the life of this agreement.

The party of the first part agrees to deliver to the party of the second part, thirty or more of its Rapid Inseam Trimming Machines

during the year 1910 and fifteen or more during each six months thereafter during the life of this agreement unless prevented by strikes, fire or other acts of Providence.

The party of the first part agrees that it will not sell its business or patents to anyone within one year from date hereof in such manner or to such effect as will interfere in any manner with the performance of this contract.

This agreement shall continue in force until January First 1911 and thereafter until annulled by six months written notice by either party to the other.

In witness whereof the parties hereto have affixed their signatures and seals this 26th day of January 1910.

Witness
William E. Hughes.

The Keighley Company.
By Chas. Keighley, President.
By C. P. Keighley, Secretary.

Witness
A. H. Handley.

Thomas G. Plant.

Vineland, N. J., January 26th, 1910.

This is to certify that we, the undersigned, are the owners collectively of a majority and controlling portion of the capital stock of the Keighley Company, a corporation of the State of New Jersey with its principal office and place of business at Vineland, New Jersey and we do hereby jointly and severally agree, for and in consideration of One Dollar to them paid by Thomas G. Plant of Boston, in the State of Massachusetts, the receipt of which is hereby acknowledged, not to sell, transfer or assign any portion of our holdings as aforesaid, to anyone within one year from the date hereof, in such manner or to such effect as will interfere in any manner with the performance of the contract made between The Keighley Company and Thomas G. Plant.

Chas. Keighley.
William B. Keighley.
C. Percy Keighley.

Witness
William E. Hughes.

EXHIBIT F.

This Agreement made this fifteenth day of June, 1910, by and between the Stanley Company, a corporation organized under the laws of the State of Massachusetts, party of the first part, and Thomas G. Plant, of Boston, party of the second part, Witnesseth as follows: —

The said party of the second part hereby covenants and agrees to manufacture in a good and workmanlike manner and of good material, at the machine shops in Lawrence, Massachusetts, that have been leased to him by the Stanley Manufacturing Company, all such gasoline motors and parts of the same as the said party of the first part may need to enable it to meet the demands of its business, and as the party of the second part may find it convenient to make, until this provision of this agreement shall be terminated as hereinafter provided; and he also agrees to keep in good and substantial repair, until the termination of this provision of this agreement, all patterns and special tools of the party of the first part used in the manufacture of such gasoline motors and parts of the same.

The foregoing provision of this agreement shall terminate at the expiration of three months after written notice of election to terminate the same is given at any time by either party hereto to the other.

And for the manufacture of such gasoline motors and parts for the same and for keeping in repair the said gasoline motors, the party of the first part covenants and agrees to pay the party of the second part as follows: —

1. The amount paid for labor;

2. The cost of materials used;

3. An expense account equal to eight cents for each hour of labor on such motors and parts;

and in addition thereto to pay a sum equal to 15% on the aggregate of the above three items — payment to be made by the said party of the first part to said party of the second part, for all such manufacturing and repair work, on or before the fifteenth day of

the next month following that in which the work is completed and is ready for delivery.

And the said party of the second part hereby covenants and agrees to purchase from the said party of the first part, at cost to the said party of the first part, all of the fuel and materials which the said party of the first part now has on hand in the factory of the said Stanley Manufacturing Company at Lawrence, Massachusetts, and which can be used in the manufacture of machinery, and to pay cash for the same on delivery; also to purchase from the said party of the first part all of the unfinished machinery which the said party of the first part now has in process of manufacture in said factory of the Stanley Manufacturing Company at Lawrence, at cost to the said party of the first part, together with a profit of 7 1/2% to be computed on the aggregate of the following items, to wit: —

1. The amount paid for labor;
2. The amount paid for materials entering into the work;
3. An expense account of 8c. for each hour of labor.

Said sum to be paid to the party of the first part by the party of the second part in cash at the time when the said party of the second part shall take possession of said factory at Lawrence, under the lease of said pre ises to him by the said Stanley Manufacturing Company. Also to purchase at cost to said party of the first part, all of the stationery now belonging to the party of the first part and now on hand at said factory of the Stanley Manufacturing Company and to pay for the same in cash at the time of his taking possession of said factory under aforesaid lease. Also to purchase from said party of the first part, at a fair appraisal by three appraisers, all of the office furniture of the party of the first part now in said factory of the Stanley Manufacturing Company and to pay cash for the same at the time when he enters upon his lease of said factory, it being understood and agreed that if the appraisal value of any article or articles of office furniture is not satisfactory to the said party of the first part, the said party of the first part may withdraw said article from said sale.

And inasmuch as the insurance premiums on said factory prop-

erty of the Stanley Manufacturing Company and also the premiums for the Employers' Liability Insurance at said factory have been advanced by the party of the first part for the present term of the existing policies of insurance on said property and for said liability insurance, and as the insurance premiums on the said property and for said liability insurance are to be hereafter paid by the said party of the second part, it is hereby further covenanted and agreed that all of the insurance premiums heretofore advanced by the said party of the first part for the aforesaid policies, shall be adjusted by the party of the second part now paying to the party of the first part for the unexpired term of all of said insurance, a pro rata part of the amount paid for the full term of such insurance, taking last year's adjustment of return premiums as a basis for determining the amount of the premium that will be returned on the present insurance; and at the expiration of the term of the said insurance policies, a final and accurate adjustment of insurance shall be made between the parties hereto and any excess, as now adjusted, which may then be in the hands of either party shall then be repaid to the other.

And it is further covenanted and agreed that for the use of certain machinery, tools and other articles which are the property of the said party of the first part and are now located in the said factory of the Stanley Manufacturing Company, a schedule of which is hereto annexed and marked "B", the said party of the second part shall pay to the said party of the first part a monthly rental equal to one per cent of the cost value, such rental sum to be credited to the party of the first part against any sums due from it to the party of the second part for manufacturing machinery and keeping up repairs, as hereinbefore provided.

And the said party of the second part further covenants and agrees that he will, upon demand by said party of the first part, peaceably and quietly surrender and yield up unto the said party of the first part all and singular the said machinery, tools and other articles enumerated in the aforesaid Schedule "B" and will at once, upon receiving such demand, allow the agents of the said party of the first part to enter and remove all of said personal prop-

erty from the leased premises and upon such removal being made, the said rental shall cease.

And the said party of the first part hereby covenants and agrees that he will, as soon as the amount can be determined, pay to the said party of the second part one-fourth the amount of the taxes assessed by said City of Lawrence upon the real and personal property of the said Stanley Manufacturing Company for the current tax year, said amount being a pro rata part of said taxes for the months of April, May and June in the year beginning April 1, 1910 — during which time, or the greater part thereof, the said party of the first part occupied said premises of the said Stanley Manufacturing Company.

And it is further agreed that covenants and agreements herein contained shall extend to and bind the successors and assigns of the said Stanley Company and the heirs, executors and administrators of the said Thomas G. Plant.

In Witness Whereof the said Stanley Company has caused its corporate name to be signed and its corporate seal to be affixed to this instrument and the said Thomas G. Plant has hereto set his hand and seal to this instrument, in duplicate, on the day and year first above written.

[SEAL]

The Stanley Company
By Frank F. Stanley, President
Lyman R. Stanley, Treasurer [SEAL]
Thomas G. Plant

SCHEDULE "B"

List of Machinery, Tools and Other Articles.

Item.		
1	One Steam Heating Glue Pot #26	$31.66
2	One Portable Crane & Hoist #612	104.70
3	One Chandler High Speed Planer #611	760.51
4	One Cleveland Automatic Screw Machine #613	864.62
5	One Fitchburg Engine Lathe 33″ x 16″, #620	779.55
6	One I. H. Hoist, size 12,000 lbs. 12 ft. #633	199.86
7	One Arbor Press Frame #632	8.76

8	One Power Hack Saw #618	32.75
9	One Power Hack Saw #619	32.75
10	One 4 Spindle Sensitive Drill #614 . . .	169.81
11	One 4 Spindle Sensitive Drill #615 . . .	169.82
12	One No. 24 Plain Landis Grinding Machine #616 .	1,073.19
13	One Automatic Screw Machine, size 1¼", #617 .	995.89
14	One No. 11 Plain Landis Grinding Machine #621 .	399.95
15	One No. 3 B Becker-Brainard Milling Machine #622	1,015.75
16	One No. 5 B Becker-Brainard Milling Machine #623	891.35
17	One Brown & Sharpe Surface Grinder #624 . .	214.96
18	One Universal Drafting Machine #625 . . .	34.26
19	One Brown & Sharpe Universal Milling Machine #626	395.70
20	One Calculating Machine (For Office Use) #419 .	310.00
21	One No. 4, Style G, Barr Drill #627 . . .	333.00
22	One No. 11 Hand Garvin Screw Machine #629 .	297.14
23	One No. 1 Band Filing Saw #631 . . .	50.25
24	One No. 11 Landis Plain Grinder #630 . .	533.32
25	One Rumbler #	4.68
26	One Drill Platen for Upright Drill # . .	34.66
27	One Drill Platen for Upright Drill # . .	33.12
28	One Soda Tank #	59.69
29	One Magnetic Chuck 1¼" Taper Base # . .	76.50
30	One No. 2 Rotary Magnetic Chuck, Washer Type, #	63.00
31	One No. 2 Landis Plain Grinding Machine # .	531.94
32	One No. 3 Cut-off 6" Machine # . . .	430.00
33	One 20" Saw Sharpener #	100.00
34	One Automatic Screw Machine, 7/8", #641 . .	888.91
35	One Stanley Sensitive Drill #645 . . .	38.06
36	One Whitney Water Tool Grinder #644 . .	83.99
37	One Double Head Traverse Drill #643 . . .	268.77
38	One Geared Oil Pump #1	6.25
39	One Countershaft for #4 Polishing Lathe #646 .	58.41
40	One 5 Spindle Reed Sensitive Drill #647 . .	220.97
41	One Turret Lathe (Pratt & Whitney) #648 . .	428.32
42	One Electric Testing Board	300.00

43	One Electric Dynamo (Testing Room) . . .	50.00
44	One Testing Tank (Testing Room) . . .	50.00
		$13,426.82

EXHIBIT G.

Whereas the Stanley Manufacturing Company, an unincorporated Association of which Frank F. Stanley is Principal Trustee, and George E. Gilbert as successor to Charles S. Randall, deceased, and Henry F. Tapley as successor to Amos P. Tapley, deceased, are Associate Trustees, has by Instrument dated this day entered into an Agreement with Thomas G. Plant, of Boston, Massachusetts, for the leasing and ultimate sale to said Thomas G. Plant of all its real estate and a large portion of its personal property, all situated in Lawrence, Massachusetts, which Agreement is hereby expressly referred to and made a part hereof; and,

Whereas a certain Agreement dated May 1, 1901, relative to the manufacture of shoe machinery, now exists between the said Stanley Manufacturing Company, unincorporated, and the United Shoe Machinery Company, a corporation established under the laws of the State of New Jersey, a copy of which Agreement is hereto annexed and marked "A".

Now, Therefore, in consideration of the premises and of the sum of one dollar by each of the parties hereto to the other in hand paid, the receipt of which is hereby acknowledged, the said Stanley Manufacturing Company, unincorporated, hereby assigns to the said Thomas G. Plant all its rights, title and interest in and under said agreement, and does hereby agree to turn over to the said Thomas G. Plant for him to execute, all orders for the manufacture and sale of machinery, received from the said United Shoe Machinery Company and all right to manufacture and sell shoe machinery under the terms of and pursuant to said Agreement of May 1, 1901.

And the said Thomas G. Plant, for himself, his heirs, executors and administrators hereby assumes all the liabilities and obligations of the said Stanley Manufacturing Company, unincorporated, under said contract, and covenants and agrees that he or they will, so long as said contract remains in force, accept when received,

and will suitably and promptly execute, all such orders received from said United Shoe Machinery Company, and will manufacture and deliver all machinery ordered under said contract by said United Shoe Machinery Company at the same price and on the same terms and of the same quality and character in all respects as provided for in said Agreement, and that he or they will in all respects be bound by, comply with, fulfil, and perform all the terms and provisions of said contract, which the said Stanley Manufacturing Company, unincorporated, is by said contract required to fulfil and perform, and that he or they will, from this date forward, forever save the said Stanley Manufacturing Company, unincorporated, harmless and indemnified from and against any and all claims of every nature and kind by the said United Shoe Machinery Company against the said Stanley Manufacturing Company, unincorporated, based on or in any way growing out of said contract of May 1, 1901, or of any breach thereof.

And the said Stanley Manufacturing Company, unincorporated, hereby covenants and agrees that it will at any time, upon request in writing of the said Thomas G. Plant, his heirs, executors or administrators, give notice in writing, as provided for in clause 8 of said Agreement of May 1, 1901, to the said United Shoe Machinery Company, of intention to terminate said Agreement; and does also hereby constitute and appoint the said Thomas G. Plant, its attorney in its name and stead and in its behalf, to give such notice in writing at any time hereafter, as provided for in said clause 8, if the said Stanley Manufacturing Company shall itself fail to give such notice within five days after request in writing made upon it by the said Thomas G. Plant so to do.

In Witness Whereof the said Stanley Manufacturing Company, unincorporated, has caused this Instrument to be duly executed, and the said Thomas G. Plant has set his hand and seal to this Instrument, in duplicate, on this fifteenth day of June, 1910.

Stanley Manufacturing Company
Frank F. Stanley, Principal Trustee [SEAL]
George E. Gilbert, Associate Trustee [SEAL]
Henry F. Tapley, Associate Trustee [SEAL]
Thomas G. Plant [SEAL]

"A"

This Agreement made this 1st day of May, 1901, by and between the United Shoe Machinery Company, a corporation under the laws of New Jersey, hereinafter called the United Company, and the Stanley Manufacturing Company, of Massachusetts, an unincorporated Association, of which Frank F. Stanley is Principal Trustee, hereinafter called the Stanley Company, Witnesseth: —

1. The Stanley Company will, for the term of three years from the date of this Agreement, manufacture exclusively for the United Company, and in sufficient quantity to meet the demands of the business to be carried on under this agreement, all of the Boot and Shoe Machinery, and parts for the same, named in the following list: —

List of Machines.

McKay Sewing Machine.
McKay Counter Shaft.
Stanley Horns.
McKay Channeler
Waukenphast Machine
Vrooman Featheredger.
Fisher Channel Flap Turner.
Impression Stitch Machines.
Beading Machines.
Heel Filing Machine.
Sole Rounding Machines.
Tripp Skiving Machine.
Tyler Skiving Machines.
Davis Skiving Machine.
Bottom Buffing Machines.
Forepart Trimming Machines.
Heel Scouring Machines.
Edge Setting Machines (except the Beaudry).
Shank Skiving Machines.
Counter Skiving Machines.
Leather Splitting Machines.
Welt Making Machines.
Pattern Binding Machine.
Corner Cutting Machine.
Zinc Shears.
Seam Pressing Machine.
Watson Skiving Machine.

and during said term will sell such Boot and Shoe Machinery and parts thereof, referred to in the foregoing list of machines, as it now has on hand, exclusively to the United Company.

2. The United Company shall, from time to time as the business shall warrant, order from the Stanley Company all Boot and Shoe Machinery referred to in the foregoing list of machines, and parts thereof, which shall be required to fill such orders as the United

Company shall receive, and which shall be required by the United Company to enable it to keep a supply of the same on hand ample to meet the demands of the business. Such orders shall be filled by the Stanley Company from machines and parts which it now has on hand, and if they cannot be so filled, the Stanley Company shall manufacture for the United Company to fill the same.

The Stanley Company shall keep the United Company informed of the condition of the stock of machines and parts on hand, and shall notify the United Company when the stock shall require replenishing, with machines or parts to amply meet the demands of the business.

3. The United Company shall pay the Stanley Company monthly for machinery and parts to be ordered as above provided (whether its orders are filled from stock on hand or by manufacturing) a price for each such machine and part which shall be the aggregate of the items following, viz. : —

(1) Cost to the Stanley Campany of materials for the same.

(2) Cost to the Stanley Company of labor employed on the same.

(3) Share of factory expense not to exceed 8 cents per hour for each man employed on the same.

(4) 15 per cent. of the sum of items (1), (2) and (3).

4. The United Company will employ the Stanley Company to manufacture, during the continuance of this agreement, such of the machines and parts above referred to as are not at the present time being manufactured in the factories of the United Company and such additional machines as may hereafter be agreed upon, provided, however, that the prices charged by the Stanley Company for such additional machines and parts thereof shall not be in excess of the cost of manufacture in the factories of the United Company, rent, power and taxes included, or the prices charged for the same machines, — workmanship and stock to be of equal excellence, — by other reputable concerns.

5. The United Company shall use its best endeavors to sell such machines and parts as are herein named, and will allow the Stanley Company, at its own expense, to advertise said machines and parts,

and also in all proper ways create a market demand for such machines and parts.

6. The United Company shall purchase from the Stanley Company all Merrick Eyeletting Machines and parts for the same which the Stanley Company has on hand, as fast as the same are required to fill orders received from Boot and Shoe Manufacturers, and pay for the same, — the price to be determined in the same way as for the other machines and parts herein referred to.

7. The United Company, during the continuance of this agreement, shall employ the Stanley Company, upon terms herein referred to, to manufacture such Merrick Eyeletting Machines and parts as the United Company shall have any demand for, to sell or put in use. If at any time after the expiration of this agreement the Stanley Company shall elect to discontinue the manufacture of Boot and Shoe Machinery exclusively for the United Company, then the United Company shall have the right to return any Merrick Eyeletting Machines, Merrick Sewing Machines, or Machines enumerated in the list of machines herein contained, and parts for said machines then on hand and purchased of the Stanley Company, and the Stanley Company shall pay therefor at the price paid to the Stanley Company by the United Company.

8. This agreement shall continue in force for three years from the date hereof and thereafter until one of the parties hereto shall give three months' notice in writing to the other of its intention to terminate the same.

In Witness Whereof the said United Shoe Machinery Company and the said Stanley Manufacturing Company have caused these presents to be duly executed on the day and year as above written.

United Shoe Machinery Co.
by S. W. Winslow, President.

[SEAL] Stanley Manufacturing Co.
F. F. Stanley, Principal Trustee.

EXHIBIT H.

This Indenture made this fifteenth day of June, in the year one thousand nine hundred and ten by and between the Stanley Manufacturing Company, an unincorporated Association, of which Frank F. Stanley is Principal Trustee, and George E. Gilbert as successor to Charles S. Randall, deceased, and Henry F. Tapley, as successor to Amos F. Tapley, deceased, are Associate Trustees, party of the first part, and Thomas G. Plant, of Boston, Massachusetts, party of the second part, Witnesseth:

That the party of the first part does hereby demise and lease unto the party of the second part two certain lots of land containing about forty-six thousand (46,000) square feet more or less with the buildings and improvements thereon situated in Lawrence, in the County of Middlesex in said Commonwealth of Massachusetts, and described as follows: —

First: A lot on the south side of Haverhill Street — the northeast corner thereof being the point of intersection of the south line of said street with the west line of West Street, and bounded northerly two hundred twenty-seven 29/100 feet by the south line of said Haverhill Street, easterly two hundred thirty 23/100 feet by the west line of West Street — southerly one hundred fifty-seven 59/100 feet by land formerly of J. Wiley Edmands — westerly two hundred fifty-one 26/100 feet by the east line of the Boston and Maine Railroad.

Second: A lot bounded as follows: Beginning at the northeasterly corner of the said lot by land of the grantor first above described at a driveway leading from Bradford Street, then running southerly sixty-five 65/100 feet by said driveway to land now or late of the Pacific Mills, thence running westerly at right angles forty-five 19/100 feet on land now or late of said Pacific Mills, thence running northwesterly sixty-eight 27/100 feet by land now or late of the Boston and Maine Railroad Company, thence running easterly sixty-three 89/100 feet by said land of the grantor first above described to the first bound. Being lot numbered ten on a plan of tenement lots of said Pacific Mills dated June 27th, 1884.

Also a right of way over and the right to lay and maintain drains and gas and water pipes under the several driveways and passageways shown on said plan, and the right conveyed by deed of the Pacific Mills to the Stanley Manufacturing Company of Massachusetts, dated July 29th, 1884, to the use of the pump in the driveway near said Bradford Street; all said rights to be exercised in common with other owners of lands shown on said plan.

Being the same premises conveyed to the said Frank F. Stanley, as Principal Trustee, and Amos P. Tapley and Charles S. Randall, as Associate Trustees, by deed dated March 29, 1892, and recorded with Northern District Essex Registry of Deeds, Book 118, Page 17.

Also all the following goods and chattels namely; All the patterns, special fixtures, jigs, and gauges, and all the tools, machinery and appliances of every kind, both common and special now owned by said Stanley Manufacturing Company and situated on the buildings on the above described real estate and itemized in the schedule which is hereto annexed and marked "Exhibit A," together with various other fixtures, tools, implements and small articles, and also sample machines belonging to said Stanley Manufacturing Company and situated in said buildings and not specifically enumerated in said schedule, the receipt of all of which said goods and chattels of every kind, whether or not enumerated in said schedule, is hereby acknowledged by said lessee. Also all the interest and good will of the said Stanley Manufacturing Company in the shoe machinery business; Excepting Only from this lease and Agreement to sell, all labelling and bottling and filling machines, and gasoline motors and all parts of all such machines, both finished and unfinished, and all patterns, jigs, gauges and special tools and implements used for manufacturing such labelling, bottling and filling machines and gasoline motors.

To Have and to Hold the said real estate and the said goods and chattels hereby leased unto the said Thomas G. Plant, his heirs, executors and administrators for the term of five years, beginning on the first day of July in the year one thousand nine hundred and ten; or until said leased real estate and personal property shall be

purchased by the said Thomas G. Plant as hereinafter provided, if that event shall first occur.

Yielding and paying therefor the yearly rental of seven thousand five hundred dollars (7500) during said term, by equal monthly payments of six hundred and twenty-five dollars ($625), the first payment to be made on the first of August, 1910, the same amount on the first day of September, 1910, and the same amount on the first day of each and every month thereafter during the continuance of this lease.

And the said Thomas G. Plant does hereby, for himself, his heirs, executors and administrators, covenant with the said Stanley Manufacturing Company, its successors and assigns, that he or they will during said term pay unto the said Stanley Manufacturing Company, its successors or assigns, the rent hereby reserved at the time herein provided (except only as hereinafter provided); and will pay all taxes, betterments, water rates, and assessments of every kind whatsoever which may be assessed or imposed upon or in respect of the leased premises and property, or any part thereof, during said term; and will also keep all and singular the leased premises and the leased personal property in such repair, order and condition as the same are in at the commencement of said term, or may be put in during the continuance thereof, reasonable wear and tear alone excepted, and will not make or suffer any strip or waste of the leased premises or property and will save the lessor harmless from all loss or damage or claim for damages arising from neglect in not removing snow or ice from the roof of the buildings, or from the side-walks bordering upon the leased premises; and that no unlawful, improper or offensive trade or business shall be carried on upon the leased premises; and that the lessor, its successors and assigns, at all reasonable times, may enter upon the leased premises to view the same; it being expressly understood and agreed, however, that the lessor shall not be bound to make any repairs or improvements or be liable for any damage to property on the leased premises; and that all repairs and improvements of whatever nature to the buildings on the demised premises, inside or outside, and to the personal property hereby leased, are to be

made by and at the expense of the said Thomas G. Plant, his heirs, executors and administrators.

And the said Thomas G. Plant for himself, his heirs, executors and administrators, does also covenant and agree that he or they will not assign this lease or underlet or sublet any part of said leased estate or personal property, without first obtaining the assent in writing of the said Stanley Manufacturing Company, its successors or assigns; and that he, his heirs, executors and administrators will at all times keep the buildings on said leased premises insured against loss by fire and other hazards in companies satisfactory to the lessor, its successors or assigns, by policies approved by and issued and payable to the said Stanley Manufacturing Company, its successors or assigns, but paid for by the said Thomas G. Plant, his heirs, executors or administrators, to the amount of one hundred thousand dollars; and will keep said leased goods and chattels and personal property of every kind insured against loss by fire and other hazards in companies satisfactory to the lessor, its successors or assigns, by policies approved by and issued and payable to it or them, but paid for by the said Thomas G. Plant, his heirs, executors or administrators to the amount of fifty thousand dollars ($50,000); and that, in case he or they do not procure such insurance, the said Stanley Manufacturing Company, its successors or assigns, may forthwith proceed to do so, and that he or they will, on demand, repay all sums paid as premiums for all such insurance by said Stanley Manufacturing Company, its successors and assigns.

And the said Thomas G. Plant does also covenant and agree for himself, his heirs, executors and administrators that on or before the expiration of the term of this lease, to wit, on or before the thirtieth day of June, in the year 1915, he or they will purchase from said Stanley Manufacturing Company, its successors or assigns, said real estate and said personal property hereinbefore described and hereby leased, and will pay therefor to said Stanley Manufacturing Company, its successors or assigns, the full sum of $150,000 in cash; or, in case of loss or damage by fire or other casualty to said leased real estate or said personal property, or to

both, he or they will, on or before said thirtieth day of June, 1915, purchase whatever shall remain of said leased real estate and personal property, and will pay therefor the full sum of $150,000 less such amount as the said Stanley Manufacturing Company, its successors or assigns shall then have received and retained as hereinafter provided, for insurance on the leased personal property so injured or destroyed.

And the said Thomas G. Plant, for himself, his heirs, executors and administrators does further covenant and agree that in case he or they shall, for any reason, at any time, during the continuance of this lease, fail to pay the rent as herein stipulated, or fail to keep said leased premises and leased personal property insured as herein provided for, or in case of any breach on the part of the said Thomas G. Plant, his heirs, executors or administrators, of any of the covenants or agreements contained in this Instrument by him or them to be kept, or performed, then upon written request of the said Stanley Manufacturing Company, made at any time after such breach and while the same continues, he or they will, within thirty days after such request in writing, if such breach shall not have been cured in the meantime, purchase said leased real estate and said personal property and will pay therefor the sum of $150,000 in cash; or in case of any loss or damage by fire or other casualty to the said leased real estate or personal property, or to both, he or they will purchase whatever shall remain of said leased real estate and personal property, and will pay therefor the full sum of $150,000, less such amount as the said Stanley Manufacturing Company, its successors or assigns shall then have received and retained as hereinafter provided, for insurance on the leased personal property so injured or destroyed.

And the said Thomas G. Plant, for himself, his heirs, executors and administrators does further covenant and agree that in case he or they shall, at any time during the continuance of this lease, to-wit, before the thirtieth day of June, 1915, sell his machinery business to the United Shoe Machinery Company, then he or they will forthwith purchase said leased real estate and said personal property and will pay therefor the sum of $150,000 in cash; or in

case of any loss or damage by fire or other casualty to the said leased real estate or personal property, or to both, he or they will purchase whatever shall remain of said leased real estate and personal property, and will pay therefor the full sum of $150,000, less such amount as the said Stanley Manufacturing Company, its successors or assigns shall then have received and retained as hereinafter provided, for insurance on the leased personal property so injured or destroyed.

And the said Stanley Manufacturing Company, for itself, its successors and assigns covenants that in any of the cases aforesaid it will, on the receipt from said Thomas G. Plant, his heirs, executors or administrators, of said sum of $150,000 in cash, as hereinbefore provided; or, in case of loss or damage by fire or other casualty as hereinafter provided, will, on the receipt from him or them of said sum of $150,000, less such amount, as it or its successors or assigns shall have received and retained from insurance, on said leased personal property as aforesaid, execute and deliver a good and sufficient Quitclaim Deed of all said leased real estate and Bill of Sale of said leased personal property, or such portion thereof as may then remain, with covenants of warranty against any and all incumbrances made or suffered by said Stanley Manufacturing Company, its successors or assigns, but against none other.

And it is hereby distinctly understood and agreed that in case any attachment or lien of any kind or nature shall be hereafter made or placed upon the real estate or the personal property hereby leased, in any suit or proceedings founded on or growing out of a certain Instrument, dated May 1, 1901, between the United Shoe Machinery Company and said Stanley Manufacturing Company, such attachment shall not be treated or considered as an incumbrance or lien made or suffered by the said Stanley Manufacturing Company, on said leased real estate and personal property within the meaning of the covenants herein contained regarding a conveyance of said leased real estate and personal property to the said Thomas G. Plant, but any such attachment or lien shall be construed and treated as an obligation to be assumed and discharged

by the said Thomas G. Plant, his heirs, executors or administrators under the covenants by him contained in an Instrument of even date herewith, in and by which said instrument he assumes all the liabilities and obligations of said Stanley Manufacturing Company under said Agreement dated May 1, 1901, and covenanted for himself, his heirs, executors and administrators that he and they will forever hereafter save the said Stanley Manufacturing Company, its successors and assigns, harmless and indemnified from and against any and all claims of every nature and kind by the said United Shoe Machinery Company against the said Stanley Manufacturing Company, based on or in any way growing out of aforesaid contract of May 1, 1901.

And it is hereby further distinctly understood and agreed that in case of any loss or damage by fire or otherwise to the buildings on said leased premises, or to the personal property hereby leased, or to both, during the term of this lease, the said Thomas G. Plant, his heirs, executors or administrators may, at his or their option, at any time within thirty days thereafter, in writing, notify the said Stanley Manufacturing Company, its successors or assigns of his or their election to purchase immediately said leased real estate and what may remain of said leased personal property, and to pay therefor the sum of $150,000 in cash, and upon the said Plant, his heirs, executors or administrators giving such notice and making such payment, he or they shall be entitled to receive from said Stanley Manufacturing Company, its successors or assigns, a Quitclaim Deed of said leased real estate and a Bill of Sale of said leased personal property, with covenants as hereinbefore provided, and also shall be entitled to receive and retain as his own any and all sums received as insurance on the property destroyed or injured, and upon such transfers being made this lease and agreement and all rights of the parties thereunder shall cease and be determined.

And if, in case of any such loss, the said Plant, his heirs, executors or administrators shall not notify the said Stanley Manufacturing Company, its successors or assigns, in writing, within thirty days as aforesaid, of his election at once to purchase all the leased property, both real and personal, and pay for the same as herein-

before provided, then the said Stanley Manufacturing Company, its successors or assigns may, at its election, notify the said Plant, in writing, within thirty days next following the expiration of the option of the said Plant, that it, the said Stanley Manufacturing Company, its successors or assigns, elects to retain all the money received by it for insurance on the property injured or destroyed and to terminate this lease and agreement and to retain, as its own, all the leased property, both real and personal, and thereupon this lease and agreement and all rights of the parties thereunder shall cease and be determined.

And if, in case of such loss or damage, neither the said Plant, his heirs, executors or administrators, nor the said Stanley Manufacturing Company, its successors or assigns, shall give notice to the other in writing as aforesaid of election to take the insurance money and property and to terminate this lease and Agreement as hereinbefore provided may be done, then the said Stanley Manufacturing Company, its successors or assigns shall retain and hold as its own any and all moneys received for insurance or personal property and shall apply the same on account of said sum of $150,000 to be paid as aforesaid and the annual rental of $7500, payable under this lease, shall thereafter be reduced by an amount equal to five per cent per annum on the sum so received and retained by said lessor for insurance on said leased personal property, and the said Thomas G. Plant, his heirs, executors or administrators shall be entitled to receive from said Stanley Manufacturing Company, its successors or assigns all moneys received for insurance on said leased buildings and real estate and shall, as promptly as may be, apply all moneys so received to the restoration and repairing of said leased buildings to their original condition as nearly as may be with such reasonable alterations and improvements therein as may be mutually agreed upon by said lessor and lessee; and except as to the reduction of rental as herein provided all the covenants, conditions and agreements in this instrument shall apply and be in force as to the leased property in all respects as before.

In case of any sale of the premises and property hereby leased being consumated and payment made as herein provided for at any

time before the expiration of said term of five years, this Instrument shall thereupon terminate and be of no further force or effect. And in case of any sale and purchase under any of the terms of this Instrument, as hereinbefore provided, the rental provided for hereunder shall continue to be paid by the said lessee to the lessor, and shall be paid pro rata for any unexpired term, until such sale shall be actually completed and the purchase money of $150,000 shall be paid as hereinbefore provided.

In Witness Whereof the said Stanley Manufacturing Company, unincorporated, has caused this Instrument to be duly executed, and the said Thomas G. Plant has set his hand and seal to this Instrument, in duplicate, on the day and year first above written.

Stanley Manufacturing Company
Frank F. Stanley, Principal Trustee [SEAL]
George E. Gilbert, Associate Trustee [SEAL]
Henry F. Tapley, Associate Trustee [SEAL]
Thomas G. Plant. [SEAL]

LIST OF TOOLS.

Factory No.	Kind of Machine.	Maker.
	Automatic Gear Cutter.	
157	Automatic Gear Cutter, 24″	Brainard.
319	Automatic Gear Cutter, Universal	Brown & Sharpe.
	Block, Riveting.	
477	Riveting Block	
478	Riveting Block.	
	Blowers.	
358	Blower on Bench	
468	Blower (Brazing).	
489	Boston Blower, 28″.	
586	Blower (Blacksmith Forges).	
587	Blower (Small size for Brazing).	Sturtevant.
	Boring Mills.	
5	Boring Mill, Vertical.	Bridgeport Mch. T. W.
127	Boring Mill, Traverse, 22″ x 6-1½	

512	Boring Mill, Horizontal, 60″.	Niles Tool Co.
546	Boring Mill.	

Cam Cutters.

147	Cam Cutter.	Brainard.
314	Cam Cutter.	Stanley Mfg. Co.
340	Cam Cutter (Double)	
376	Cam Cutter (Double)	Stanley Mfg. Co.
583	Cam Cutter (Double	Stanley Mfg. Co.

Countershafts.

481 Countershaft, B 3–3 f. (Not in use.)
483 Countershaft.
495 Countershaft.
501 Countershaft, B 6–3 f. (Not in use).
515 Countershaft, Flexible.
589 Countershaft.

Cranes.

480 Crane, Swinging.
484 Railway.
485 Crane, Traveling.
491 Crane, Traveling.
492 Crane, Traveling.
493 Crane.
494 Crane, Traveling.
497 Crane
498 Crane.
499 Crane, Traveling, for Drills.
502–511 Cranes, Traveling.
525 Railway Overhead.
526 Crane, Traveling.

Cutting Off Machines.

36	Cutting Off Machine, 5″.	Hurlburt & Rodgers.
363	Cutting Off Machine, 4″.	Pratt & Whitney.

Drills.

6	Drill, 44″.	Blaisdell.
7	Drill, 1 — 5 ft. Radial.	Prentice.
25	Drill, 4 Spindle.	E. C. Stacey.

30	Drill, 30″.	
31	Drill, 30″.	Blaisdell.
32	Drill, 3 Spindle.	Blaisdell.
46	Drill, 32″.	Prentice.
47	Drill, 44″.	Blaisdell.
48	Drill, 44″	Blaisdell.
95	Drill, 2 Spindle Drilling Device.	
96	Drill, Special Drilling Device.	
159	Drill, Traverse.	Davis & Furber.
169	Drill, 28″	Blaisdell.
171	Drill, 4 Spindle.	Stacey.
172	Drill, 4 Spindle.	Stacey.
173	Drill, 4 Spindle.	Stacey.
180	Drill, 3 Spindle.	
181	Drill, 3 Spindle.	
182	Drill, 4 Spindle.	
188	Drill, 28″.	
197	Drill, 1 Spindle.	
222	Drill, 28″.	J. E. Snyder.
224	Drill, Traverse, 8 ft.	Nickerson & Waterman.
228	Drill, 25″.	Blaisdell.
229	Drill, 28″.	Blaisdell.
247	Drill, 28″.	Blaisdell.
248	Drill, 2 Spindle.	Dwight S. M. Co.
252	Drill, 2 Spindle.	Sigourney T. Co.
253	Drill, 28″.	Blaisdell.
264	Drill, 3 Spindle.	Dwight S. M. Co.
270	Drill, 1 Spindle.	Dwight S. M. Co.
295	Drill, 30″.	Blaisdell.
296	Drill, 20″.	Prentice Bros.
310	Drill, 20″.	A. E. P. & Co.
311	Drill, 25″.	Prentice Bros.
321	Drill, Spindle.	Woodward & Rogers.
326	Drill, 4 Spindle.	
327	Drill, 26″.	Prentice.
328	Drill, 26″.	Blaisdell.

335 Drill, 4 Spindle.	Stacey.
339 Drill, 4 Spindle.	Woodward & Rogers.
357 Drill, 1 Spindle.	
362 Drill, 32″, Upright.	Blaisdell.
368 Drill, 4 Spindle.	Stacey.
369 Drill, Traverse, 8 ft.	Nickerson & Waterman.
372 Drill, 28″.	Blaisdell.
373 Drill, 21″.	Prentice.
374 Drill, 28″.	Blaisdell.
375 Drill, Traverse, 5 ft.	Nickerson & Waterman.
392 Drill.	Pratt & Whitney.
393 Drill.	Pratt & Whitney.
427 Drill.	Pratt & Whitney.
440 Drill, 23″.	J. E. Snyder.
539 Drill, 20″.	Prentice.
547 Drill, Traverse, 8 ft.	Ames.
548 Drill.	Stanley Mfg. Co.
549 Drill.	Stanley Mfg. Co.
550 Drill.	Stanley Mfg. Co.
558 Drill, 4 Spindle.	Barr.
559 Drill, 1 Spindle.	Stanley Mfg. Co.
560 Drill.	Stanley Mfg. Co.
566 Drill.	Pratt & Whitney.
571 Drill, 4 Spindle.	
573 Drill.	Pratt & Whitney.
575 Drill, 4 Spindle.	Barr.
576 Drill, 4 Spindle.	Barr.
581 Drill, 32″.	Barnes.
584 Drill, 4 Spindle.	Niles Tool Works.
597 Drill, Double End.	Woodward & Rogers.
607 Drill, No. 1, 7 ft. Radial.	Bickford.

Electric Machines.

653 Generator for Office Lights.

Internal Telephone System.

Emery Stands and Grindestones.

14	Grindstone.	
23	Emery Stand, Wheel & Countershaft.	
110	Grindstone.	
155	Grinder, 28″.	Brown & Sharpe.
190	Gear Cutter Grinder.	
202	Grinding Machine & Stand.	
203	Polishing Frame	
205	Grinder (Double).	Am. Twist Drill Co.
206	Grinder (Double).	Am. Twist Drill Co.
207	Grinder (Double).	Stanley Mfg. Co.
230	Grindstone.	
232	Grinder for Drills, "Yankee".	
233	Grinding Machine.	
234	Grinding Machine, Surface.	Brown & Sharpe.
235	Grinding Machine.	Norton Emery Wheel Co.
236	Grinding Machine, Universal.	Brown & Sharpe.
251	Grindstone.	Cummings.
265	Grinding Machine — Small Drills.	
300	Grinder	Brown & Sharpe.
320	Emery Wheel & Shaft.	
325	Grindstone.	
446	Grindstone.	
447	Grinder (Double).	Stanley Mfg. Co.
469	Grinder Stand.	
473	Grinder.	
482	Grinder, Tool.	Providence Tool Co.
522	Grinding Machine.	Landis.
551	Grinder.	Walker.
552	Grinding Machine.	Gardner.
574	Grinder & Press.	Gardner.
577	Cutter & Reamer.	Aut. Machine Co.
578	Grinding Machine.	Landis.
579	Polishing Jack.	Stanley Mfg. Co.
590	Grinder Emery Wheel.	Norton.
594	Tool Grinder.	Whitney.

595	Tool Grinder.	Whitney.
599	Grinder Stand.	

Hammers, Power.

41	Hammer, Power — No. 4	Beaudry.
42	Hammer, Power — No. 6	Beaudry.

Lathes, Engine.

9	Lathe, Engine 15″ x 30″ S. C.	Jones & Lamson.
12	Lathe, Engine 24″ x 72″ Comp. Rest,	Lodge & Davis.
13	Lathe, Engine 30″ x 60″ Comp. Rest,	D. W. Pond.
98	Lathe, Engine 12″ x 48″.	Putnam.
99	Lathe, Engine 16″ x 6′ Plain.	Blaisdell.
100	Lathe, Engine 16″ x 6′ S. C.	Blaisdell.
101	Lathe, Engine 16″ x 6′ S. C.	Blaisdell.
102	Lathe, Engine 16″ x 8′ S. C.	Blaisdell.
103	Lathe, Engine 16″ x 8′ S. C.	Blaisdell.
104	Lathe, Engine 16″ x 6′ Plain.	Blaisdell.
105	Lathe, Engine 16″ x 6′ Plain.	Blaisdell.
106	Lathe, Engine 18″ x 6′ S. C.	Blaisdell.
107	Lathe, Engine 16″ x 8′ S. C.	Blaisdell.
108	Lathe, Engine 16″ x 8′ S. C.	Blaisdell.
113	Lathe, Engine 14″ x 6′ S. C.	Putnam.
115	Lathe, Engine 15″ x 5′ S. C.	Lathe & Morse.
116	Lathe, Engine 15″ x 5′ S. C.	Lathe & Morse
117	Lathe, Engine 15″ x 5′	Lathe & Morse
120	Lathe, Engine 14″ x 6′	Putnam
121	Lathe, 16″ x 5′	Lathe & Morse
123	Lathe, Engine 13″ x 5′	Lathe & Morse
124	Lathe, Engine 13″ x 5′	Lathe & Morse
141	Lathe, Engine 14″ x 5′ S. C.	Blaisdell
142	Lathe, Engine 14″ x 5′ S. C.	Blaisdell
143	Lathe, Engine 14″ x 5′ S. C.	Blaisdell
144	Lathe, Engine 14″ x 5′ S. C.	Blaisdell
146	Lathe, Engine 15″ x 5′ S. C.	Blaisdell
149	Lathe, Engine 15″ x 6′ S. C.	Blaisdell
150	Lathe, Engine 14″ x 5′	Blaisdell

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151	Lathe, Engine 14″ x 5′	Blaisdell
152	Lathe, Engine 14″ x 5′	Blaisdell
154	Lathe, Engine 14″ x 4½′ S. C.	(Special Work)
196	Lathe, Engine 17″ x 6′ S. C.	Putnam
227	Lathe, Engine 16″ x 6′ S. C.	Blaisdell
242	Lathe, Engine 19″ x 8′ S. C. Comp. Rest	Putnam
243	Lathe, Engine 19″ x 8′ S. C. Comp. Rest	Putnam
244	Lathe, Engine 13″ x 5′ S. C.	Blaisdell
245	Lathe, Engine 18″ x 10′ S. C.	Blaisdell
246	Lathe, Engine 15″ x 6′ S. C.	Blaisdell
254	Lathe, Engine 14″ x 6′ S. C.	Blaisdell
255	Lathe, Engine 14″ x 6′ S. C.	Blaisdell
256	Lathe, Engine 14″ x 6′ S. C.	Blaisdell
257	Lathe, Engine 17″ x 6′ S. C. & Taper Turning	Blaisdell
258	Lathe, Engine 14″ x 6′	Blaisdell
259	Lathe, Engine 14″ x 6′ S. C.	Blaisdell
260	Lathe, Engine 14″ x 6′ S. C.	Blaisdell
261	Lathe, Engine 20″ x 10′ S. C.	Blaisdell
271	Lathe, Engine 15″ x 6′ S. C.	Lathe & Morse
272	Lathe, Engine 14″ x 6′	Blaisdell
273	Lathe, Engine 14″ x 6′ S. C. & Taper Turning	Blaisdell
274	Lathe, Engine 14″ x 6′ S. C. & Taper Turning	Blaisdell
276	Lathe, Engine 18″ x 8′ S. C. & Comp. Rest	Hendey Mch. Co.
277	Lathe, Engine 15″ x 6′ S. C.	Blaisdell
278	Lathe, Engine 14″ x 6′ S. C.	Blaisdell
279	Lathe, Engine 14″ x 6′ S. C.	Blaisdell
331	Lathe, Engine 14″ x 6′ S. C.	Blaisdell
332	Lathe, Engine 14″ x 6′ S. C.	Blaisdell
337	Lathe, Engine 16″ x 6′ S. C. & Taper Turning	Hendey Mch. Co.

345	Lathe, Engine 14″ x 6′	Blaisdell
346	Lathe, Engine 14″ x 6′ S. C.	Blaisdell
349	Lathe, Engine 12″ x 4′ S. C.	Lathe & Morse
351	Lathe, Engine 16″ x 6′ S. C. & Taper Turning	Hendey Mch. Co.
360	Lathe, Engine 22″ x 6′ S. C. & Comp. Rest	Lathe & Morse
391	Lathe, Engine 16″ x 6½′ S. C.	Hendey Mch. Co.
396	Lathe, Engine 17″ x 6′ S. C.	Putnam
401	Lathe, Engine 16″ x 6′ S. C.	Putnam
405	Lathe, Engine 14″ x 6′ S. C.	Blaisdell
406	Lathe, Engine 16″ x 6½′ S. C.	Hendey Mch. Co.
409	Lathe, Engine 15″ x 6′ S. C.	Lathe & Morse
410	Lathe, Engine 15″ x 6′ S. C.	Lathe & Morse
418	Lathe, Engine 15″ x 6′ S. C.	Lathe & Morse
420	Lathe, Engine 15″ x 6′ S. C.	Lathe & Morse
421	Lathe, Engine 17″ x 6′ S. C.	Blaisdell
422	Lathe, Engine 18″ x 8′ S. C.	Blaisdell
423	Lathe, Engine 18″ x 8′ S. C.	Blaisdell
425	Lathe, Engine 14″ x 5′ S. C.	Blaisdell
434	Lathe, Engine 14″ x 5′ S. C.	Blaisdell
437	Lathe, Engine 14″ x 6′ S. C.	Flather & Co.
442	Lathe, Engine 14″ x 6′ S. C.	Blaisdell
527	Lathe, Engine 20″ x 8′	Putnam
528	Lathe, Engine 20″ x 8′	Putnam
529	Lathe, Engine 16″ x 6′ S. C.	Putnam
530	Lathe, Engine 16″ x 6′ S. C.	Putnam
531	Lathe, Engine 16″ x 6′ S. C.	Putnam
532	Lathe, Engine 16″ x 6′ S. C.	Putnam
542	Lathe, Engine 15″ x 6′ S. C.	Blaisdell
543	Lathe, Engine 15″ x 6′ S. C.	Lathe & Morse.

Lathes, Hand.

24	Lathe, Hand 14″ x 36″	A. F. Prentice & Co.
26	Lathe, Hand 12″ x 36″	Putnam.
40	Lathe, Hand 12″ x 5′	Lathe & Morse

50	Lathe, Hand 12″ x 5′	
93	Lathe, Hand 20″ x 8′ (Bench Lathe).	
94	Lathe, Hand 20″ x 8′	
130	Lathe, Hand 12″ x 5′	Lathe & Morse
131	Lathe, Hand 12″ x 5′	Lathe & Morse
132	Lathe, Hand 9″ x 3½′	Prentice
134	Lathe, Hand 12″ x 5′	Putnam
135	Lathe, Hand 9″ x 24″	
136	Lathe, Hand 12″ x 5′	Putnam
137	Lathe, Hand 12″ x 5′	Putnam
138	Lathe, Hand 12″ x 7½′	Putnam
139	Lathe, Hand 12″ x 5′	Putnam
161	Lathe, Hand 12″ x 5′	Putnam
162	Lathe, Hand 12″ x 5′	Putnam
163	Lathe, Hand 12″ x 5′	Putnam
164	Lathe, Hand 12″ x 5′	Putnam
200	Lathe, Hand 7″ x 20′	
201	Lathe, Hand 20″ x 7′	
220	Lathe, Hand 12″ x 5′	Blaisdell
221	Lathe, Hand 10″ x 4′	Blaisdell
237	Lathe, Hand 12″ x 5′	Blaisdell
238	Lathe, Hand 12″ x 5′	Blaisdell
239	Lathe, Hand 12″ x 5′	Lathe & Morse
240	Lathe, Hand 20″ x 10″	Blaisdell
249	Lathe, Hand 15″ x 6′	Blaisdell
250	Lathe, Hand 13″ x 6′	Blaisdell
266	Lathe, Hand 12″ x 6′	Blaisdell
267	Lathe, Hand 12″ x 6′	Blaisdell
268	Lathe, Hand 12″ x 6′	Blaisdell
269	Lathe, Hand 10″ x 4′	Blaisdell
312	Lathe, Hand 14″ x 3′ (Taper Pin Turning)	
313	Lathe, Hand 10″ x 4′	Prentice Bros.
322	Lathe, Hand 12″ x 4½′	Lathe & Morse
323	Lathe, Hand 12″ x 4½′	Lathe & Morse
324	Lathe, Hand 12″ x 5′	
330	Lathe, Hand 10″ x 4′	Prentice

333	Lathe, Hand 10″ x 4′	Prentice
342	Lathe, Hand (Rivet).	
343	Lathe, Hand 10″ x 3½′	
347	Lathe, Hand 12″ x 5′	Hendey Mch. Co.
348	Lathe, Hand 14″ x 7′	Am. Tool & Mch. Co.
354	Lathe, Hand 10″ x 3½′	
378	Lathe, Hand 8″ x 3½′	
380	Lathe, Hand 12″ x 5′	
382	Lathe, Hand 12″ x 5′	
387	Lathe, Hand 12″ x 5′	
389	Lathe, Hand 12″ x 5′	
390	Lathe, Hand 12″ x 5′	
429	Lathe, Hand 12″ x 5′	Putnam
433	Lathe, Hand 12″ x 5′	Blaisdell
435	Lathe, Hand 10″ x 3½′	
438	Lathe, Hand 10″ x 3½′	
449	Lathe, Hand 12″ x 5′	Blaisdell
453	Lathe, Hand 10″ x 4′	Prentice Bros.
465	Lathe, Hand	
470	Lathe, Hand 7″ x 3′ (Bench)	Putnam
486	Lathe, Hand 20″ x 8′	Blaisdell
510	Lathe, Hand 12″ x 4½′	Lathe & Morse
541	Lathe, Hand 13″ x 5′	
545	Lathe, Hand 12″ x 5′	

Lathes, Turret.

454	Lathe, Turret 2″ x 24″	Jones & Lamson
455	Lathe, Turret 24″ x 6½′	
456	Lathe, Turret 24″ x 6½′	
596	Lathe, Turret	Gisholt

Milling Machines.

3	Milling Machine #20	Brainard
11	Milling Machine #5	Brainard
22	Milling Machine #3	Brainard
27	Milling Machine #3	Brainard
45	Milling Machine #1	Brainard
118	Milling Machine #3	Brainard

119	Milling Machine #3	Brainard
125	Milling Machine #3	Brainard
126	Milling Machine (Plain)	Brown & Sharpe
148	Milling Machine (Universal)	Brown & Sharpe
166	Milling Machine (Hand)	
174	Milling Machine (Plain)	
175	Milling Machine (Plain)	
176	Milling Machine (Plain)	
177	Milling Machine (Plain)	
178	Milling Machine (Plain)	
179	Milling Machine # 5	Brainard
183	Milling Machine (Plain)	
184	Milling Machine (Plain)	
185	Milling Machine (Plain)	
186	Milling Machine (Plain)	
193	Milling Machine #3	Brainard
194	Milling Machine #3	Brainard
211	Milling Machine #3	Brainard
212	Milling Machine #3	Brainard
213	Milling Machine #4	Brainard
214	Milling Machine	Stanley Co.
215	Milling Machine #3	Brainard
217	Milling Machine #3	Brainard
218	Milling Machine #3	Brainard
219	Milling Machine #4-½	Brainard
223	Milling Machine #3	Brainard
225	Milling Machine #4-½	Brainard
231	Milling Maching #3	Brainard
275	Milling Machine (Universal)	Brown & Sharpe
280	Milling Machine (Universal)	Brown & Sharpe
281	Milling Machine #4-½	Brainard
282	Milling Machine #4-½	Brainard
283	Milling Machine (Hand)	F. E. Reed
284	Milling Machine (Universal)	Brown & Sharpe
285	Milling Machine #3	Brainard
286	Milling Machine #3 (Old Style)	

287	Milling Machine (Plain)	Brown & Sharpe
288	Milling Machine #4-½	Brainard
289	Milling Machine #4-½	Brainard
297	Milling Machine #4-½	Brainard
298	Milling Machine #4-½	Brainard
299	Milling Machine (Hand)	Pratt & Whitney
301	Milling Machine #3	Brainard
302	Milling Machine #3	Brainard
303	Milling Machine #3	
304	Milling Machine #3	Brainard
305	Milling Machine #4-½	Brainard
306	Milling Machine #4-½	Brainard
315	Milling Machine #3	Brainard
316	Milling Machine #4-½	Brainard
317	Milling Machine #3	Brainard
353	Milling Machine #4 (Cam Cutting Attachment).	
356	Milling Machine	
383	Milling Machine #5	Brainard
394	Milling Machine #3	Brainard
399	Milling Machine #5	Brainard
413	Milling Machine (Universal)	Brown & Sharpe
439	Milling Machine (Universal)	Brown & Sharpe.
540	Milling Machine (Universal)	Brown & Sharpe
557	Milling Machine #4 (Vertical)	Becker-Brainard.
585	Milling Machine #4 (Vertical)	Becker-Brainard.

Miscellaneous.

	Anvils (6)	
	Couplings (2) ½ turn	Almond.
156	Belt Lacing Machine	Diamond M. Co.
160	Oil Separating Machine	
367	Binding Rolls for Boiler Sheets	
379	Centering Machine	
487	Wash Tank	
488	Glue Pot	
496	Brazing Furnace	

508 Printing Press for Blue Prints.
523 Stamping Machine (For Numbering Parts)
582 Hardening Furnace & Blower — Gas Chicago Flex. S. Co.
588 Power Hack Saw
598 Arbor Press Greenard.

Pattern Shop Machines.

457 Vertical Wood Turning Lathe
458 Wood Turning Lathe
459 Band Saw 36″ S. A. Woods
460 Adj. Saw Table
461 Buzz Wood Planer S. A. Woods
462 Wood Turning Lathe
463 Wood Turning Lathe S. & M. Co.
466 Wood Trimmer
561 Wood Trimmer — Bench Fox
562 Wood Trimmer — Bench Fox
563 Grinder — Bench (Drill)

Planers.

15 Planer, 36″ x 36″ x 120″ Putnam
16 Planer, 48″ x 48″ x 120″ Putnam
17 Planer, 36″ x 36″ x 120″ Putnam
38 Planer, 24″ x 36″ x 6′ Putnam
39 Shaper, (Used for top of McKay Sewing Mch. Frame)
51 Planer, Crank 15″ x 6′ x 15″
52 Planer, Crank 15″ x 6′ x 15″
53 Shaper, 30″ Putnam
54 Planer, 22″ x 22″ x 5′ Putnam
56 Planer, 22″ x 22″ x 5′ Putnam
59 Planer, 22″ x 22″ x 5′ Whitcomb
60 Planer, 22″ x 22″ x 5′ Whitcomb
62 Planer, 22″ x 22″ x 5′ Putnam
63 Planer, 22″ x 22″ x 5′ Putnam
64 Planer, 22″ x 22″ x 5′ Putnam
65 Planer, 22″ x 22″ x 5′ Putnam

66	Planer, 22″ x 22″ x 5′	Putnam
67	Planer, 22″ x 22″ x 5′	Putnam
68	Planer, 22″ x 22″ x 5′	Putnam
73	Planer, 22″ x 22″ x 5′	Whitcomb
74	Planer, 22″ x 22″ x 5′	Whitcomb
75	Shaper, Traverse — 11″ Crank	Barker & Co.
76	Planer, 22″ x 22″ x 5′	Whitcomb
77	Planer, 22″ x 22″ x 5′	Whitcomb
78	Planer, 22″ x 22″ x 5′	Putnam
79	Planer, 22″ x 22″ x 5′	Putnam
80	Planer, 22″ x 22″ x 5′	Putnam
82	Planer, 24″ x 24″ x 5′	Whitcomb
83	Planer, 24″ x 24″ x 5′	Whitcomb
84	Planer, 24″ x 24″ x 6′	Fitchburg Mch. Co.
85	Planer, 24″ x 24″ x 6′	Fitchburg Mch. Co.
86	Planer, 30″ x 30″ x 6′	Putnam
87	Planer, 30″ x 30″ x 6′	Putnam
88	Planer, 24″ x 25″ x 6′	Putnam
89	Planer, 24″ x 24″ x 6′	Putnam
226	Shaper, 15″	Hendey Mch. Co.
359	Planer, Crank 16″ x 16″ x 12″	Lathe & Morse

Profiling Machines

167	Profiling Machine	Ames
168	Profiling Machine, 2 Spindle	
209	Profiling Machine	
290	Profiling Machine	Ames Mch. Co.

Punches, Power.

189	Punch, Power	G. H. Eaton
210	Punch, Power	

Saws.

18	Saw, Splitting	
19	Saw, Circular	
464	Saw, Jig	

Screw Machines.

140	Screw Machine	Brown & Sharpe.
441	Screw Machine 3/8″–5/8″	Cleveland Aut. S. M. Co.

443	Screw Machine 5/8″ No. 2	Pratt & Whitney
444	Screw Machine 5/8″ No. 2	Pratt & Whitney
445	Screw Machine 5/8″ No. 2	Pratt & Whitney
448	Screw Machine 1″ No. 13	Pratt & Whitney
450	Screw Machine	Brainard
451	Screw Machine 1″ No. 13	Pratt & Whitney
452	Screw Machine 1″ No. 13	Pratt & Whitney
513	Screw Machine 7/8″	Cleveland Aut. S. M. Co.
514	Screw Machine No. 2	Cleveland Aut. S. M. Co.
553	Screw Machine 5/8″	Cleveland Aut. S. M. Co.
554	Screw Machine 3/8″	Brown & Sharpe
556	Screw Machine 3/8″–5/8″	Cleveland Aut. S. M. Co.
570	Screw Machine Hand 5/8″	Pratt & Whitney
572	Screw Machine 7/8″ (Slot Attch.)	Cleveland Aut. S. M. Co.
580	Screw Machine 1¼″	Cleveland Aut. S. M. Co.
592	Screw Machine 5/8″	Pratt & Whitney
608	Screw Machine No. 2	Cleveland Aut. S. M. Co.

Shears.

43	Shear, Power	
44	Shear, Hand	Pond.
187	Shear, Rotary	G. H. Eaton
191	Shear, Power	Rice & Whitcomb
192	Shear, Power, (Bigelow Frame)	
208	Shear, (Sheet Steel)	D. W. Pond
471	Shear, Hand (Bench)	
479	Shear, Bench	
520	Shear,	Pond
593	Shear, Hand	

Tapping Machines.

37	Tapping Machine	
128	Tapping Machine, 5½ ft. Bed	
129	Tapping Machine, 2½ ft. Bed	
334	Tapping Machine	H. F. Jenks

Vises.

Vises (258)

Whirl & Pinion Machines.

90 Whirl Cutter
91 Pinion Cutter
92 Grinder (Whirl Making Room)
516 Whirl Cutter
517 Drill Grinder (Whirl Making Room)
518 Pinion Trimmer
519 Rumbler
564 Whirl Cutter
565 Pinion Pointing & Cutting Off Machine
591 Stamping Machine

Workmen's Time Recording System.

All the Patterns, Special Fixtures, Jigs & Gauges for Manufacturing the Following Machines.

1. McKay Sewing Machine & Attachments.
2. " " Stanley A Horn Gas or Steam.
3. " " " B " " "
4. " " " C " " "
5. " " " D " " "
6. McKay Channeller
7. McKay Featheredger
8. Stanley Edge Setter
9. Stanley Heel Scourer
10. Stanley Heel Breast Scourer
11. Stanley Heel Filer
12. Stanley Sole Rounder
13. Stanley Naumkeag Buffing Machine
14. Stanley Edge Trimmer
15. Stanley Bottom Buffer.
16. Stanley Lap Scarfer
17. Stanley Welt Reel } For making welting.
18. Stanley Welt Press
19. Safford Splitting Machine 14" Style #2.
20. " " " 18" " #2.
21. " " " 18" " #1.

22. Safford Splitting Machine 24″ Style #1.
23. " " " 28″ " #1.
24. " " " 32″ " #1.
25. " " " 38″ " #1.
26. Tyler Skiver (Hand or Power).
27. Davis Skiver.
28. Improved Tripp Skiver.
29. N. C. Style Tripp Skiver.
30. Union Edge Setter.
31. Eyelet Machine for Foot Power.
32. Eyelet Machine for Steam Power.
33. Corner Cutter.
34. Pattern Binder.
35. Zinc Shears.
36. Stanley Counter Skiver with attachment for making { Box Toe Machine; Heel Beveller; Spring Heel Scarfer.

EXHIBIT I.

This Agreement made this fifteenth day of June, 1910, by and between the Stanley Manufacturing Company, an unincorporated Association, of Boston, Massachusetts, party of the first part, and Thomas G. Plant, of said Boston, party of the second part, Witnesseth, as follows:

1. The said party of the second part hereby covenants and agrees to manufacture in a good and workmanlike manner and of good material, for the party of the first part, at the factory in Lawrence, Massachusetts, that has been this day leased to him by the party of the first part, all such labelling, washing and filling machines and parts for the same, as the said party of the first part may hereafter need to enable it to meet the demands of its business and as the party of the second part may find it convenient to make. And the said party of the second part also covenants and agrees to keep in good and substantial repair, so far as he conveniently can, until the first day of January, 1911, all patterns and special tools

of the party of the first part, used in the manufacture of such labelling, washing and filling machines and parts for the same.

2. And for the manufacture of such labelling, washing and filling machines and parts for the same, and for keeping in repair the said patterns and special tools, the party of the first part covenants and agrees to pay to the party of the second part, as follows: (1) The amount paid for labor; (2) The cost of materials used, and (3) An expense account equal to eight cents for each hour of labor on such machines and parts; and in addition thereto to pay a sum equal to 15% on the aggregate of the above three items — payment to be made by the said party of the first part to said party of the second part, for all such manufacturing and repair work, on or before the fifteenth day of the month next following that in which the work is completed and is ready for delivery.

And it is agreed that the covenants and agreements herein contained shall extend to and bind the successors and assigns of the said Stanley Manufacturing Company and the heirs, executors and administrators of the said Thomas G. Plant.

In Witness Whereof the said Stanley Manufacturing Company, unincorporated, has caused this instrument to be duly executed, and the said Thomas G. Plant has set his hand to this Instrument, in duplicate, on the day and year first above written.

Stanley Manufacturing Company
Frank F. Stanley, Principal Trustee
George E. Gilbert, Associate Trustee
Henry F. Tapley, Associate Trustee
Thomas G. Plant

Exhibit XX.

Memorandum in Relation to Thomas G. Plant Company.

Thomas G. Plant Company is a corporation organized under the laws of New Jersey with an outstanding capital stock of $2,500,000. (25,000 shares) preferred stock and $1,250,000. (12,500 shares) common stock; par value of stock $100. per share.

Of the preferred stock, Thomas G. Plant owns 15,000 shares.

Of the common stock, Thomas G. Plant owns 7,500 shares.

Thomas G. Plant Company had as of November 24, 1909 assets and liabilities as per statement herewith attached and had a record of earnings as per schedule of same hereto attached.

Since November 24, 1909 the Company has purchased shoe machinery from Thomas G. Plant at a cost of not over $400,000. and has made expenditures from time to time in connection with running, maintaining and the up-keep of such machinery, and in connection with the same and rearrangement of factory, etc. in connection with the same, and has further made expenditures on account of special advertising and various other special expenses, legal and otherwise, all more or less directly connected with shoe machinery. Other than such expenditures and payments for additions to plant and improvement of plant and grounds, the affairs of the Company have proceeded in a normal manner and no substantial portion of its capital has been withdrawn or paid out other than the usual dividends. The net assets of the Company at this date, September 23, 1910, after payment of all liabilities are in excess of the net assets as shown on annexed statement as of November 24, 1909.

Thomas G. Plant Company Balance Sheet November 24, 1909.

ASSETS.		
Cash,		$280,458.79
Accounts and Notes Receivable,	$1,344.926.65	
Less Reserve,	29,333.43	1,315,593.22
Merchandise,		1,532,895.95
Investments,		70,105.92
Sundry Assets,		101,085.
Machinery, Tools, etc.		335,800.
Real Estate and Fixed Plant,		934,500.
Trademark and Good Will,		1,250,000.
		$5,820,438.88
LIABILITIES.		
Accounts Payable,		420,831.66
Notes Payable,		595,000.

Sundry Liabilities,	114,001.65
Personal Balances,	156,650.06
Capital Stock,	3,750,000.
Redemption Reserve,	175,000.
Surplus,	608,955.51
	$5,820,438.88

Written off past year:

Cost of repairs and renewals of buildings, machinery, etc.,	99,176.18
Depreciation of buildings, machinery, tools, etc.,	124,979.71
Total cost of Maintenance,	$224,155.89

I hereby certify the foregoing statement to be correct.

George , Public Accountant & Auditor.

Thomas G. Plant Company.

	Net Investment	Net Profit	Percent on Investment	Sales
June 16, 1898	$395,949.78	$135,231.09	34%	$1,792,569.
June 16, 1899	426,180.87	150,120.36	35	1,906,668.
July 1, 1900	595,801.23	315,476.36	53	2,966,497.
1901	879,277.59	439,756.37	50	3,335,880.
1902	1,250,000.	309,559.70	24	3,646,416.
1903	1,250,000.	332,817.09	27	4,477,952.
1904	1,250,000.	493,944.37	40	4,526,363.
1905	1,250,000.	314,582.46	25	4,515,415.
1906	1,250,000.	571,475.17	46	5,905,858.
Nov. 11, 1907	1,250,000.	501,677.33	40	8,307,632.
Oct. 24, 1908	1,250,000.	1,122,196.28	89	6,297,262.
Nov. 24, 1909	2,500,000.	760,204.42	30	7,111,305.
Total profit for 12 years in Boston,		$5,447,041.		$54,789,817.
Total profit for 6 years in Lynn,		400,230.20		6,158,602.
Total net profits since July 1, 1891,		$5,847,271.20		$60,948,419.

Capital with which business was started,		22,000.
		$5,869,271.20
Preferred stock,	2,500,000.	
Redemption Reserve,	175,000.	
Surplus, Nov. 24, 1909,	608,955.51	
		$3,283,955.51
Earnings distributed,		$2,585,315.69

EXHIBIT X

Supplies, tools, machine tools, etc. ordered by the parties named below, not delivered September 22, 1910, for which Mr. Plant is under obligation to pay.

Bresnahan	
Castings	$24.650.
Small tools	7,250.
Screws	16,000.
Punchings	800.
Miscellaneous supplies	2,200.
Springs	4,000.
	$54,900.
Stanley Company	
Miscellaneous supplies	$4,000.
Thomas G. Plant	
Wire	$37,500.
Tools, Machine	1,500.
	$97,900.

In addition are drop forgings and other things. The total will not exceed $150.000. (including said $97,900.)

PLAINTIFF'S EXHIBIT 133.

[Put in Evidence, page 591.]

Know all Men by these Presents that I the undersigned, Thomas G. Plant, of Boston, Massachusetts, in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to me in hand paid by the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer, set over and deliver unto said United Shoe Machinery Company, its successors and assigns, one million five hundred thousand dollars ($1,500,000) par (fifteen thousand (15,000) shares) of preferred stock and seven hundred and fifty thousand dollars ($750,000) par (seven thousand five hundred (7,500) shares) of the common stock of the Thomas G. Plant Company, a corporation organized and existing under the laws of said State of New Jersey, and having a usual place of business at Roxbury, Massachusetts, a description of which Company, including a statement concerning its assets, liabilities and earnings is hereto attached marked "XX".

And for the same consideration I the said Thomas G. Plant hereby covenant with and warrant to the said United Shoe Machinery Company, its successors and assigns, that the facts as set forth in said description and statement are true and that the said description and statement correctly show the condition of the said Thomas G. Plant Company as to assets and liabilities.

And for the same consideration I do hereby further covenant and agree to and with the said United Shoe Machinery Company that I will simultaneously with the execution hereof cause the certificates now outstanding representing said shares of stock above provided to be conveyed to be cancelled and new certificates therefor to be issued in the name of said United Shoe Machinery Company or of such persons or corporations as the President of the United Shoe Machinery Company shall designate to receive the same.

And for the same consideration I do hereby further covenant and agree that, inasmuch as I have long been identified as officer and

manager of the said Thomas G. Plant Company with the business of said Thomas G. Plant Company and that as the good will of said Thomas G. Plant Company is a very important asset which might be seriously affected should I hereafter engage in business in competition therewith, I will upon request enter into a covenant with said Thomas G. Plant Company or said United Shoe Machinery Company or with any persons or corporations to whom the said United Shoe Machinery Company shall transfer the above stock, or with any or all of them, that I will not at any time within the period of fifteen (15) years from the date hereof directly or indirectly, in any capacity, individually or in combination with others enter into or be engaged in any business of manufacturing shoes which will in any wise interfere or compete with the business of the said Thomas G. Plant Company, its successors or assigns.

In Witness Whereof I have hereunto set my hand and seal this thirtieth day of September, 1910.

THOMAS G. PLANT [SEAL]

[MEMO BY CLERK. Attached here to Plaintiff's Exhibit 133 is Exhibit XX, but same is not here reproduced as it will be found printed in this record pages 1013 to 1016, inclusive, as a part of Exhibit 132.]

PLAINTIFF'S EXHIBIT 134.

[Put in Evidence, page 591.]

Know all Men by these Presents that I, Thomas G. Plant, of Boston in the State of Massachusetts, in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to me paid by the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, receipt of which in full I hereby acknowledge, have sold and do hereby sell, assign, transfer, set over and deliver unto the said United Shoe Machinery Company, —

(a) All inventions, improvements, Letters Patent of the United States and of other countries, applications for Letters Patent and interests and rights in, to and under inventions, improvements,

Letters Patent and applications for Letters Patent which I the said Thomas G. Plant now own or control or which at any time hereafter within fifteen (15) years from the date hereof I shall make, own or acquire relating to the manufacture of footwear or to machinery, mechanisms, tools or devices, processes, methods or things intended or adapted for use in the manufacture of footwear or in the working or manipulation of leather, or relating to eyelets or to footwear findings of any description whatsoever, or to the manufacture thereof; also any and all rights I now have or may within said fifteen (15) years by agreement or otherwise have to acquire or take over any such inventions, improvements, Letters Patent of the United States and other countries, applications for Letters Patent and interests and rights therein, thereunder or thereto, including herein without prejudice to the generality hereof the entire right, title and interest, free from any and all prior license, grant or other incumbrance whatsoever, in, to and under each and every of the Letters Patent and applications for Letters Patent enumerated in the schedules hereto annexed and marked "Exhibit A" and "Exhibit B" together with the inventions and improvements covered thereby; and any and all trademarks, trade names, labels, marks or trade devices associated or used with or in reference to said inventions, or improvements or any of them or machinery embodying the same or any thereof;

(b) All rights, claims and demands, under agreement or otherwise, for the use of inventions or for infringement of Letters Patent;

(c) All beneficial interests, benefits, privileges, advantages and rights which I have or to which I am entitled under contracts or agreements or otherwise relating in any way to machinery, mechanisms, tools or devices, processes, methods or things intended or adapted for use in the manufacture of footwear or in the working or manipulation of leather, or relating to eyelets or to footwear findings of any description whatsoever or to the manufacture thereof;

(d) The entire contents of the machine shop located in the Pevear Building, 507 Washington Street, Lynn, Massachusetts,

including full equipment of large machine tools, small tools, machine shop equipment, etc., etc., (not including however shafting, pulleys, belts, etc., furnished by the landlord);

(e) All patterns, tools jigs, etc., built for the purpose of manufacturing the "Wonder Worker Shoe Machinery" so-called, including all such patterns, tools, jigs, etc., located at the place of business of the Bresnahan Shoe Machinery Company, in said Lynn, at said machine shop in said Pevear Building, in said Lynn, at the places of business of C. P. Stanbon & Company, Lynn, Massachusetts; Taft-Pierce Manufacturing Company, Woonsocket, Rhode Island; Stanley Manufacturing Company, Lawrence, Massachusetts; National Machine & Tool Company, Boston, Massachusetts; C. H. Cowdray Machine Works, Fitchburg, Massachusetts; and Lockwood Manufacturing Company, Boston, Massachusetts.

(f) All completed shoe machinery and machinery in process of manufacture, manufactured parts in stock, parts in process of manufacture and materials located at Bismarck Street, Jamaica Plain, Boston, Massachusetts; at Machine Shop No. 1, Bickford Street, Boston, Massachusetts; at said places of business of said Bresnahan Shoe Machinery Company, C. P. Stanbon & Company, Taft-Pierce Manufacturing Company, Stanley Manufacturing Company, National Machine & Tool Company, C. H. Cowdray Machine Works, and Lockwood Manufacturing Company;

(g) All machine tools, small tools, jigs, patterns, machines in process of manufacture, fixtures, office furniture, etc., located at said place of business of said Stanley Manufacturing Company, Lawrence, Massachusetts;

(h) And also all right, title and interest which I have or to which I am in anywise entitled in or to any and all other manufacturing equipment, machines, machine tools, tools, special tools, jigs, patterns, drawings, blue prints, fixtures, merchandise, supplies, mechanisms, devices, processes, methods, and other property useful or adapted or designed for use in the manufacture, or in connection with the manufacture, of footwear, or in the manufacture, working or manipulation of leather, eyelets, or footwear findings of any description whatsoever, or useful or designed or

adapted for use in the manufacture, or in connection with the manufacture of machinery, mechanisms, tools, devices, or other things intended or adapted for use in the manufacture, or in connection with the manufacture, of footwear, or the manufacture, working or manipulation of leather, eyelets, or footwear findings of any description whatsoever;

(i) All outstanding insurance relating to any of the foregoing;

To Have and to Hold all of the said inventions, improvements, Letters Patent, property, interests and rights to the said United Shoe Machinery Company, its successors and assigns, to its and their own use and behoof absolutely.

And for the same consideration I the said Thomas G. Plant do hereby covenant with and warrant to the said United Shoe Machinery Company that I am at the date of this instrument the absolute owner free from prior license, grant, claim or other incumbrance whatsoever of the entire right, title and interest in, to and under each of the Letters Patent and applications for Letters Patent mentioned in the schedules hereto annexed and marked "Exhibit A" and "Exhibit B" and the inventions covered thereby and of each and every of the items of property, inrerests and rights hereinbefore enumerated and expressed to be conveyed; that I have good right to sell, assign, transfer, set over and deliver the same as aforesaid and that I will warrant and defend the same against the lawful claims and demands of all persons.

And for the same consideration I the said Thomas G. Plant do hereby covenant and agree to and with the said United Shoe Machinery Company that I will at once promptly and fully disclose to the said United Shoe Machinery Company all inventions, improvements, Letters Patent, applications for Letters Patent and other property, interests and rights hereby conveyed or expressed or agreed to be conveyed that I now have and that I will promptly disclose all other such inventions, improvements, Letters Patent, applications for Letters Patent and other property, interests and rights as and when I acquire or have the same so that such disclosure is possible, will repeat such disclosures and make further disclosures if and when the same shall become necessary or shall

be requested; and that at any and all times hereafter upon request I will execute and cause to be executed any and all applications for Letters Patent, assignments, powers of attorney and other instruments and will perform and cause to be performed any and all other acts which may be necessary or desired by the said United Shoe Machinery Company to enable it to secure the grant to it or its nominees of Letters Patent of the United States and of any and all other countries where the said United Shoe Machinery Company may desire to obtain Letters Patent therefor, covering the inventions and improvements or any of them, now or hereafter owned or controlled by me and hereby conveyed or expressed or agreed to be conveyed, and to fully and completely vest and confirm the full and complete legal and equitable title thereto and to all the inventions, improvements, Letters Patent, applications for Letters Patent, property, interests and rights hereby conveyed or expressed or agreed to be conveyed in the said United Shoe Machinery Company or its nominees, its or their successors or assigns, and to enable the said United Shoe Machinery Company to secure, protect and enjoy the full benefits and advantages thereof — all without further consideration than that now paid and hereinbefore acknowledged, but at the expense of the said United Shoe Machinery Company.

And for the same consideration I the said Thomas G. Plant do hereby irrevocably constitute and appoint the said United Shoe Machinery Company my lawful attorney with power of substitution, with full authority and power in my name or in the name of the said United Shoe Machinery Company or otherwise, but at its or their own expense and cost, to institute, prosecute and defend any actions at law, in equity or otherwise, and to do any and all other acts which the said United Shoe Machinery Company may consider necessary or desirable to secure and to protect and enforce the full benefits and advantages of all the said inventions, improvements, Letters Patent, applications for Letters Patent, property, interests and rights now or hereafter owned, acquired or controlled by me and hereby conveyed or expressed or agreed to be conveyed.

The term "United Shoe Machinery Company" wherever herein

used shall include said United Shoe Machinery Company, its successors and assigns.

All covenants, agreements and warranties on the part of the said Thomas G. Plant herein contained shall be binding upon and enforceable against the said Thomas G. Plant and his personal representatives.

In Witness Whereof I, the said Thomas G. Plant, have hereunto set my hand and seal this thirtieth day of September, 1910.

THOS. G. PLANT [SEAL]

United States of America.
Commonwealth of Massachusetts.
County of Suffolk, ss.

At Boston, in said County and Commonwealth, on this thirtieth day of September, 1910, personally appeared Thomas G. Plant, of Boston, Massachusetts to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged the foregoing instrument to be his free act and deed, before me

[SEAL] Robert F. Herrick, Notary Public.

[MEMO BY CLERK. Attached here to Plaintiff's Exhibit 134 are Exhibits A and B, but same are not here reproduced as they will be found printed in this record, pages 938 to 971, inclusive, as a part of Exhibit 132.]

PLAINTIFF'S EXHIBIT 135.

[Put in Evidence, page 592.]

This Agreement made this thirtieth day of September, A. D. 1910, by and between the United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey (hereinafter called the "United Company") and Thomas G. Plant of Boston in the County of Suffolk and Commonwealth of Massachusetts: Witnesseth:

That the United Company in consideration of one dollar ($1.00) and other valuable considerations to it paid by the said Plant hereby covenants and agrees with the said Plant that it will indemnify and

save harmless the said Plant from any and all actions, claims, liabilities and demands whatsoever which may at any time arise or grow out of an agreement in writing dated January 26, 1910, made by and between said Plant and the Keighley Company, a corporation organized under the laws of the State of New Jersey, a copy of which agreement is hereto annexed and marked "Exhibit E" by reason or on account of any breach of the conditions of said agreement or of any matter or thing connected therewith, excepting liability for amounts due or by reason of any breach or non-fulfillment of said contract, if any, prior to the date hereof; and in consideration of said covenant the said Plant covenants and agrees with the United Company that he will at all times exercise the rights, powers and privileges secured to him by said agreement solely as the United Company shall direct, and that he will upon request and without further consideration execute and deliver to the United Company a written assignment of said contract and of all rights, privileges, benefits and advantages accruing to him thereunder and also that he will at any time hereafter upon the request of the United Company give to the said Keighley Company six months notice in writing to annul said agreement, as therein provided.

The United Company hereby agrees that upon receipt of notification of any action or suit which may be brought by the said Keighley Company against the said Plant for breach of said contract, the United Company will assume the defence of the same, and will pay and hold the said Plant harmless against any judgment which may be rendered against said Plant therein as well as paying the expense of such defence and any costs which may be taxed against said Plant. It is further agreed that the said Plant shall not be held liable hereunder for failure to perform any act in respect to said contract hereafter, unless he shall have been requested in writing by the United Company to perform such act and omitted to do so after such request.

In Witness Whereof the parties hereto have executed this instrument in duplicate the day and year first above written.

[SEAL] UNITED SHOE MACHINERY COMPANY
By S. W. Winslow, President
THOS. G. PLANT [SEAL]

[MEMO BY CLERK. Attached here to Plaintiff's Exhibit 135 is Exhibit E, but same is not here reproduced as it will be found printed in this record, pages 975 to 977, inclusive, as a part of Exhibit 132.]

PLAINTIFF'S EXHIBIT 136.

[Put in Evidence, page 592.]

DEPARTMENT OF THE INTERIOR

United States Patent Office.

Received and Recorded on the 14th day of November 1910 in Liber Z, 85, page 40 of Transfers of Patents.

In Testimony Whereof, I have caused the seal of the Patent Office to be hereunto affixed.

E. B. MOORE,
Commissioner of Patents.

[SEAL]

Know all Men by these Presents:

That Whereas I, Thomas G. Plant, of Boston, in the County of Suffolk and State of Massachusetts, am the owner of the following Letters Patent of the United States:

Name	Pat. No.	Date	Title
Plant, Thomas G.	958,302	May 17, 1910	Heeling Machine
" " "	958,292	May 17, 1910	Heeling Machine
" " "	940,053	Nov. 16, 1909	Sewing Machine
" " "	958,293	May 17, 1910	Machines for Inserting Metallic Fastenings
" " "	940,054	Nov. 16, 1909	Sole Sewing Machine
" " "	958,305	May 17, 1910	Work Holder for Heeling Machine
" " "	940,055	Nov. 16, 1909	Sole Sewing Machine
" " "	958,301	May 17, 1910	Shoe Jack
" " "	940,725	Nov. 23, 1909	Shoe Sewing Machine

Plant, Thomas G.		940,726	Nov. 23, 1909	Lock Stitch Sewing Machine
"	"	958,278	May 17, 1910	Shoe Jack
"	"	958,294	May 17, 1910	Shoe Sewing Machine
"	"	958,295	May 17, 1910	Stopping Mechanism
"	"	946,825	Jan. 18, 1910	Machine for Inserting Fasteners in Leather
"	"	958,279	May 17, 1910	Fastener Puller
"	"	958,296	May 17, 1910	Sewing Machine
"	"	935,230	Sept. 28, 1909	Bobbin Winding Mechanism
"	"	958,280	May 17, 1910	Lasting Machine
"	"	958,297	May 17, 1910	Welt Holder for Sewing Machines
"	"	958,298	May 17, 1910	Sewing Machine
"	"	958,299	May 17, 1910	Shoe Sewing Machine
"	"	958,281	May 17, 1910	Heeling Machine Attachment
"	"	958,282	May 17, 1910	Heeling Machine
"	"	958,283	May 17, 1910	Laying and Leveling Machine
"	"	958,304	May 17, 1910	Ironing and Dressing Machine
"	"	958,284	May 17, 1910	Canvas Cementer
"	"	958,285	May 17, 1910	Shoe Sole Flexer
"	"	958,286	May 17, 1910	Auxiliary Lasting Device
"	"	958,287	May 17, 1910	Ironing and Dressing Jack for Boots and Shoes
"	"	958,288	May 17, 1910	Boot and Shoe Buffing Machine
"	"	958,289	May 17, 1910	Boot and Shoe Machine

Plant, Thomas G.	958,300	May 17, 1910	Work Support for Heeling Machines
" " "	958,303	May 17, 1910	Driving Shaft Controlling Means
" " "	965,223	July 26, 1910	Dust Gatherer for Abrading Machines
" " "	965,224	July 26, 1910	Sole Laying and Leveling Machine
" " "	966,472	Aug. 9, 1910	Heel and Sole Edge Waxing Machine
" " "	966,471	Aug. 9, 1910	Heel or Sole Edge Waxing Machine
Bohr, N. C.	878,453	Feb. 4, 1908	Insole
" " "	958,083	May 17, 1910	Hold-Downs for Lasting Machines
" " "	883,445	Mar. 31, 1908	Heel Scourer Guards
Brennan, Wm. J.	909,143	Jan. 12, 1909	Work Rests
Condon, Geo. V.	924,967	June 15, 1909	Heel Band for Bed Lasting Machines and the like
Cummings, H. H.	883,862	Apr. 7, 1908	Nail Forming and Driving Machine
English, A. M.	871,987	Nov. 26, 1907	Sole Rounding and Channeling Machine
English, A. M.	878,478	Feb. 4, 1908	Rough Rounding Machine
Gelzenlichter, J.	871,990	Nov. 26, 1907	Buffing Machine
Glass, Perley R.	871,991	Nov. 26, 1907	Staple Tacker
" " "	957,949	May 17, 1910	Lasting Machine
" " "	888,485	May 26, 1908	Tack or Nail Driving Device
" " "	957,948	May 17, 1910	Loading Mechanism for Hand Tackers

Heys, John J.	905,311,	Dec. 1, 1908	Sewing Machine
" " "	874,504	Dec. 24, 1907	Automatic Boot & Shoe Leveling Machine
" " "	874,505	Dec. 24, 1907	Sole Rounding Machine
" " "	860,376	July 16, 1907	Stitch Impression Machine
" " "	860,377,	July 16, 1907	Stitch Impression Finishing Machine
" " "	957,955	May 17, 1910	Pulling Over Machine for Boots and Shoes
" " "	944,238	Dec. 21, 1909	Breaster Knife Grinding Machine
Hood, Charles E.	957,958	May 17, 1910	Heel Burnishing Machine
Hooper, Wm. H.	861,178	July 23, 1907	Welt Marking Machine
" " "	861,179	July 23, 1907	Channel Flap Layer
" " "	889,375	June 2, 1908	Channel Moistening Device for Sole Sewing or Fastening Machine
" " "	957,964	May 17, 1910	Boot Treeing Machine
" " "	865,898	Sept. 10, 1907	Portable Power Channel Flap Layer
" " "	883,804	Apr. 7, 1908	Last
" "	861,180	July 23, 1907	Method of Assembling Shoe Uppers and soles
" " "	940,019	Nov. 16, 1909	Channel Lip Turning Machine

Hooper, Wm. H.	940,020	Nov. 16, 1909	Lip Turning Machine
" " "	940,691	Nov. 23, 1909	Channel Moistening Device for Sewing Machines
" " "	940,690	Nov. 23, 1909	Insole Reinforcing Machine
La Chapelle, Fred	957,972	May 17, 1910	Sewing Machine
" "	935,263	Sept. 28, 1909	Bobbin Winding Machine
Leavitt, John E.	871,942	Nov. 26, 1907	Buffing Machine
McLeod, Geo. T.	957,986	May 17, 1910	Heel Breasting Machine
Phelan, Merton D.	945,342	Jan. 4, 1910	Work Support for Metallic Fastening Machines
" " "	883,824	Apr. 7, 1908	Staple Tacker
" " "	958,005	May 17, 1910	Machine for Breasting the Heels of Boots & Shoes
" " "	958,002	May 17, 1910	Portable Power Tacker
Heys, John J.	966,441	Aug. 9, 1910	Shoe Supporting Jack
Plant, Thomas G.	947,401	Jan. 25, 1910	Sewing Machine
" " "	877,858	Jan. 28, 1908	Welt & Thread Cutting Means for Sewing Machines
" " "	958,290	May 17, 1910	Starting & Stopping Mechanism
" " "	958,291	May 17, 1910	Bed Lasting Machine
" " "	877,859	Jan. 28, 1908	Welt Measuring Means for Sewing Machines
" " "	940,724	Nov. 23, 1909	Sewing Machine

Plant, Thomas G.	958,306	May 17, 1910	Machine for Operating on the Bottoms of Boots & Shoes
" " "	940,723	Nov. 23, 1909	Channeling Device for Sewing Machines
" " "	940,722	Nov. 23, 1909	Jack for Boot & Shoe Lasts
" " "	940,052	Nov. 16, 1909	Stopping Mechanism
" " "	946,783	Jan. 18, 1910	Thread Controlling Mechanisms for Sewing Machines
Seely, Thomas H.	945,291	Jan. 4, 1910	Lasting Machine
Stanbon, Charles P.	865,957	Sept. 10, 1907	Channeling Machine
" " "	945,348	Jan. 4, 1910	Insole Reinforcing Machine
Stewart, George F.	871,963	Nov. 26, 1907	Machine for Making Pad Covers
" " "	871,962	Nov. 26, 1907	Buffing Machine
" " "	871,964	Nov. 26, 1907	Buffing Machine and Disc Holder therefor
" " "	885,099	Apr. 21, 1908	Welt Marking Machine
" " "	871,965	Nov. 26, 1907	Pad Cover
" " "	871,966	Nov. 26, 1907	Method for Making Pad Covers
Stewart, Wm. C.	871,967	Nov. 26, 1907	Insole Slashing Machine
" " "	958,028	May 17, 1910	Sole Marking Machine
" " "	871,968	Nov. 26, 1907	Boot & Shoe Sole
" " "	883,837	Apr. 7, 1908	Reinforced Insole Covering and Shaping Machine

Stewart, Wm. C.	871,969	Nov. 26, 1907	Sole Slashing Machine
" " "	940,745	Nov. 23, 1909	Work Support
" " "	and		
Hooper, Wm. H.	944,294	Dec. 28, 1909	Heel Beading Machine
Stewart, Wm. C.	958,036	May 17, 1910	Horn Controlling Mechanism for Fastner Inserting Machines
" " "	958,037	May 17, 1910	Nail Assorting and Delivering Mechanism
" " "	944,389	Dec. 28, 1909	Heel and Top Lift Holder
Woodward, Erastus	947,366	Jan. 25, 1910	Heel Nailing Machine
" "	958,058	May 17, 1910	Heel Nailing Machine
" "	958,056	May 17, 1910	Heeling Machine
" "	939,372	Nov. 9, 1909	Automatic Leveler
" "	958,057	May 17, 1910	Sole Laying and Leveling Machine
" "	966,506	Aug. 9, 1910	Jacks for Sole Laying and Leveling Machines
Brennan, Wm. J.	935,620	Sept. 28, 1909	Wax Thread Sewing Machine Attachment
Stewart, Geo. F.	947,510	Jan. 25, 1910	Nail Block Templet for Heeling Machines.
Stewart, Wm. C.	958,038	May 17, 1910	Work Holder for Heeling Machines
Hooper, Wm. H.	944,239	Dec. 21, 1909	Insole Reinforcing Machine

Stewart, Geo. F.	958,027	May 17, 1910	Boot & Shoe Channeling Machine
Seely, Thomas H.	958,187	May 17, 1910	Pincer or Gripper Mechanism for Lasting Machines
Hooper, Wm. H.	947,509	Jan. 25, 1910	Channel Lip Turning Machine
Stewart, Wm. C.	965,342	July 26, 1910	Insole Covering and Reinforcing Machine
Eaton, Clarence L.	965,379	July 26, 1910	Wax Thread Sewing Machine Attachment
Stanbon, Charles P.	966,485	Aug. 9, 1910	Machines for Compressing Top Lifts
" " "	966,484	Aug. 9, 1910	Welt Preparing Machine
Hooper, Wm. H.	957,962	May 17, 1910	Treeing Machine
Stewart, Wm. C.	958,029	May 17, 1910	Machine for Slashing Soles of Boots and Shoes
Stanbon, Chas. P.	958,024	May 17, 1910	Sole Rounding Machine
Stewart, Wm. C.	958,039	May 17, 1910	Nail Assorting & Delivering Mechanism
Seely, Thomas H.	958,017	May 17, 1910	Pincer Mechanism for Lasting Machines
Hooper, Wm. H.	957,963	May 17, 1910	Treeing Machine
Stewart, Wm. C.	958,041	May 17, 1910	Top Lift Holder for Heeling Machines
Stanbon, Chas. P.	944,386	Dec. 28, 1909	Knife Mounting for Sole Rounding Machines

Stewart, Wm. C.	958,042	May 17, 1910	Work Support for Boot and Shoe Machines
Hooper, Wm. H.	957,959	May 17, 1910	Machine for Treating Insoles of Boots & Shoes
" " "	944,365	Dec. 28, 1909	Boot & Shoe Tree and stretcher
" " "	957,961	May 17, 1910	Insole Tempering Machine
Ryan, Thomas J.	958,013	May 17, 1910	Insole for Boots & Shoes
McLeod, Geo. T.	957,993	May 17, 1910	Heel Edge Liner
Hooper, Wm. H.	957,960	May 17, 1910	Insole Edge Trimmer
Eno, F. F.	957,943	May 17, 1910	Counter Guard for Heel Shaving Machines
Stewart, Wm. C.	958,030	May 17, 1910	Knife Grinding Machine
"	958,031	May 17, 1910	Jack for Slugging and other Machines
McLeod, Geo. T.	957,992	May 17, 1910	Machine for Tempering Out-soles of Boots & Shoes
Stewart, Wm. C.	958,032	May 17, 1910	Knife Grinding & Sharpening Machine
Phelan, Merton D.	958,006	May 17, 1910	Heel Shaver
McLeod, Geo. T.	957,987	May 17, 1910	Welt Laying and Attaching Machine
Stewart, Geo. F.	958,026	May 17, 1910	Shoe Sole Edge Setter
Stewart, Wm. C.	958,033	May 17, 1910	Outsole Marker
" " "	958,034	May 17, 1910	Rotary Jack

McLeod, Geo. T.	957,988	May 17, 1910	Shoe Supporting Rack
" " "	957,989	May 17, 1910	Brush Cleaner
Stewart, Wm. C.	958,035	May 17, 1910	Tack Pounder
McLeod, Geo. T.	957,991	May 17, 1910	Fabric Supporting Reel
" " "	957,990	May 17, 1910	Machine for Cutting & Slitting Insole Reinforcing Strips
Stewart, Wm. C.	958,040	May 17, 1910	Fastener Inserting Machine
Mills, Francis A.	524,335	Aug. 14, 1894	Tension Device for Shoe Sewing Machines
" " "	551,987	Dec. 24, 1895	Needle Guide for Sewing Machines
" " "	551,988	Dec. 24, 1895	Thread Waxing Device for Shoe Sewing Machines
" " "	623,100	Apr. 11, 1899	Shoe Sewing Machine
" " "	524,337	Aug. 14, 1894	Work Supporting and Feeding Device for Shoe Sewing Machines
" " "	524,338	Aug. 14, 1894	Loop Forming Mechanism for Shoe Sewing Machines
" " "	524,340	Aug. 14, 1894	Wax Thread Heating Device for Sewing Machines
" " "	623,101	Apr. 11, 1899	Heating Device for Sewing Machines
Krippendorf, C. H.	579,518	Mar. 23, 1897	Shoe Sole

Tyler, Abel D. Jr.	615,002	Nov. 29, 1898	Combined Boot or Shoe Tree and Top Stretcher
Riley, George	630,109	Aug. 1, 1899	Covering for Buffing Wheels
" "	630,110	Aug. 1, 1899	Elastic Fabric

And Whereas United Shoe Machinery Company, of Paterson, in the State of New Jersey, a corporation duly organized under the laws of said State of New Jersey, and having a place of business at 205 Lincoln Street, in said Boston, in the said State of Massachusetts, hereinafter called the United Company, is desirous of acquiring the entire right, title and interest in, to and under the said Letters Patent, together with any and all inventions therein shown or described and together with any and all reissues, renewals or extensions of the said Letters Patent which may be granted;

Now, Therefore, in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to me paid by the United Company, the receipt whereof is hereby acknowledged, I do hereby sell, assign, transfer and set over unto the United Company, its successors and assigns, the entire right, title and interest in, to and under the said Letters Patent and in and to all inventions therein shown or described, both for the United States and countries foreign thereto, together with any and all reissues, renewals or extensions of the said Letters Patent which may be granted;

To Have, to Hold and to Enjoy the said Letters Patent and the said inventions, reissues, renewals and extensions to said United Shoe Machinery Company, its successors and assigns, to its and their own use and behoof absolutely to the full end of the terms for which the said several Letters Patent and the said reissues, renewals and extensions are or may be granted;

And I do hereby, for myself and for my legal representatives, covenant and agree with the United Company, its successors and assigns, that I am the sole and exclusive owner of the said Letters Patent, that I have good right and title to sell and assign the same, and that I have not granted to others any license or licenses under

the said Letters Patent, except the unassignable right and license (but not exclusive), granted by me to Charles K. Fox, of Haverhill, Massachusetts, upon the twelfth day of February, Nineteen Hundred and Ten, to make and use last jacks embodying the invention or inventions described in claims 1 and 17 of Letters Patent of the United States, No. 958,278, for Shoe Jack, granted to me May 17, 1910, and to sell such jacks solely for use in connection with "Webster Sole Leveling Machines" or "Webster Machines."

And for the same consideration, I do hereby sell, assign, transfer and set over to the United Company, its successors and assigns, all claims and demands both at law and in equity which I have or may hereafter acquire on account of any infringement of the said Letters Patent, or any of them prior to the date hereof, and I do hereby authorize and empower the United Company, its successors and assigns, to sue for and collect the same, using my name if need be, to its and their own and absolute use.

For the same consideration I further sell, assign, transfer and set over unto the United Company any and all other Letters Patent of the United States and of any and all foreign countries and any and all other inventions, and all interests therein or thereunder, that I now own or to which I am or may be entitled, relating to footwear or parts thereof or to tools, machinery, or processes of manufacture for the making of footwear or parts thereof, with the view of vesting in the United Company all my right, title and interest in, to and under such Letters Patent and inventions, whether or not the same are specifically named in the above list.

And for the same consideration, I do hereby, for myself and for my legal representatives covenant and agree with the United Company, its successors and assigns, that I will and my legal representatives shall do all things and execute and deliver any and all application papers, assignments, and other instruments which in the opinion of counsel for the United Company may be necessary or convenient to carry out the terms and intent of this instrument, to secure reissues and renewals of said Letters Patent and to vest and confirm in the United Company, its successors and assigns, the full and complete legal and equitable title to the said Letters Patent

and to the said inventions, reissues, renewals and extensions without further consideration than now paid, but at the expense of the United Company, its successors or assigns.

In Witness Whereof, I the said Thomas G. Plant, have hereunto set my hand and affixed my seal this 27th day of September 1910.

THOMAS G. PLANT [SEAL]

United States of America.
State of Massachusetts.

County of Suffolk: ss. Boston, September 27, 1910.

Then personally appeared the above-named Thomas G. Plant, to me personally known, and known by me to be the person described in and who executed the foregoing instrument, and acknowledged the same to be his free act and deed. Before me,

[SEAL] Frederick L. Emery, Notary Public

PLAINTIFF'S EXHIBIT 137.

[Put in Evidence, page 592.]

Know all Men by these Presents that Whereas I, the undersigned, Thomas G. Plant, of Boston, Commonwealth of Massachusetts, have made certain claims against the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, and have planned to bring certain suits against said United Shoe Machinery Company;

Now Therefore in consideration of One Dollar and other good and valuable considerations, the receipt of which is hereby acknowledged, I, the said Thomas G. Plant, do hereby remise, release and forever discharge the said United Shoe Machinery Company, its successors and assigns, of and from all and all manner of actions and causes of action, suits, debts, dues, accounts, claims, liabilities, and demands of every name and nature in law or equity, which I ever had or may have or which my heirs, executors, administrators or assigns hereafter may have for or by reason of any cause, reason, matter or thing whatsoever arising prior to September 23rd, 1910, including any and all claims, demands or suits of any nature

held for me by others or in which I am entitled to the beneficial interest.

In Witness Whereof I have hereunto set my hand and seal this thirtieth day of September, 1910.

THOS. G. PLANT [SEAL]

PLAINTIFF'S EXHIBIT 138.

[Put in Evidence, page 598.]

This Agreement made this thirtieth day of September, 1910, by and between the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, party of the first part, and Thomas G. Plant, of Boston, party of the second part,

Whereas, the Manufacturers' Machine Company, a corporation duly organized and existing under the laws of the State of New Jersey, has entered into a certain agreement with Charles P. Stanbon, doing business under the firm name and style of Charles P. Stanbon & Company, dated May 29, 1905, a copy of which is hereto annexed marked "Exhibit D", providing, among other things, that said Manufacturers' Machine Company shall have an option to purchase the business, machinery, etc., of said Charles P. Stanbon at an inventory value, which agreement has been extended until November 1, 1910, and which agreement has been assigned and transferred by said Manufacturers' Machine Company, to said Plant, said transfer having been duly assented to by said Stanbon; and

Whereas, Manufacturers' Machine Company, as recited in said agreement, furnished the said Stanbon with a certain bond for five thousand dollars ($5,000), on which bond said Plant is responsible; and

Whereas, said Plant has this day notified said Stanbon of his intention to exercise the said option;

Now Therefore, it is agreed by and between the parties hereto as follows: —

1. Said Plant will at once assign to the United Shoe Machinery Company all his rights as assignee and all the rights of the said

Manufacturers' Machine Company of every name and nature under said contract with Charles P. Stanbon, expressly including the right to take the good will of the business of the said Charles P. Stanbon, stock, machinery, tools and patents and the right to require the services of said Charles P. Stanbon, all as provided in said agreement between said Manufacturers' Machine Company and Charles P. Stanbon.

2. United Shoe Machinery Company will assume all agreements, obligations and liabilities of said Plant under said contract with said Charles P. Stanbon and will save and indemnify said Manufacturers' Machine Company and said Plant harmless against the same, and particularly will procure the cancellation of the said bond and the release and discharge of all liability of the said Manufacturers' Machine Company and the said Thomas G. Plant thereon without cost or expense to the said Plant.

In Witness Whereof, the parties have hereunto set their hands and seals the day and year first above written.

THOS. G. PLANT [SEAL]

[SEAL] UNITED SHOE MACHINERY CO.

By S. W. Winslow, President.

[MEMO BY CLERK. — Attached here to Plaintiff's Exhibit 138 is Exhibit D, but same is not here reproduced as it will be found printed in this record, pages 972 to 975, inclusive, as a part of Exhibit 132.]

PLAINTIFF'S EXHIBIT 139.

[Put in Evidence, page 593.]

Know all Men by these Presents that whereas the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, has brought various suits and made various claims against Thomas G. Plant, of Boston, in the Commonwealth of Massachusetts;

Now Therefore in consideration of the sum of One Dollar and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said United Shoe Machinery Company

does hereby remise, release and forever discharge the said Thomas G. Plant, his heirs, executors and administrators of and from all and all manner of actions and causes of action, suits, debts, accounts, agreements, claims, liabilities and demands whatsoever in law or equity, which it ever had or which it, its successors or assigns or any of them hereafter may have for or by reason of any matter, cause or thing whatsoever arising prior to September 23rd, 1910, including any and all claims, demands or suits of any nature held for it by others or in which it may be entitled to the beneficial interest.

In Witness Whereof the United Shoe Machinery Company has hereunto set its hand and seal this thirtieth day of September, 1910.

UNITED SHOE MACHINERY CO. [SEAL]
by S. W. Winslow, President.

PLAINTIFF'S EXHIBIT 140.

[Put in Evidence, page 593.]

This Agreement, made this thirtieth day of September, 1910, by and between Thomas G. Plant, of Boston, Massachusetts, and the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, Witnesseth:

Whereas, by a certain agreement dated the fifteenth day of June 1910, by and between the said Thomas G. Plant and the Stanley Manufacturing Company, an unincorporated Association, in said agreement more fully described (a copy of which agreement is hereto attached marked "Exhibit H") a lease of certain property, real and personal, was made by the Stanley Manufacturing Company to the said Thomas G. Plant and certain agreements were entered into relating to the purchase by the said Thomas G. Plant from the said Stanley Manufacturing Company of said real estate and other property; and

Whereas, by a certain other agreement, dated said fifteenth day of June, 1910, by and between the said Thomas G. Plant and the said Stanley Manufacturing Company (a copy of which agreement is hereto attached marked "Exhibit G") the said Stanley Manu-

facturing Company purported to convey to the said Thomas G. Plant all its rights, title and interest in and under an agreement (a copy of which is thereto attached marked "A") dated the first day of May 1901, between the said Stanley Manufacturing Company and the said United Shoe Machinery Company, and the said Thomas G. Plant agreed to indemnify the said Stanley Manufacturing Company against certain obligations thereunder; and

Whereas, an agreement as hereinafter set forth has been made between the said Thomas G. Plant and the said United Shoe Machinery Company;

Now, Therefore, this Instrument Witnesseth: That the said Thomas G. Plant and said United Shoe Machinery Company, each in consideration of the covenants and agreements on the part of the other herein contained, do hereby covenant and agree each with the other as follows: —

(1) The said Plant hereby sells, assigns, transfers, and sets over unto the said United Shoe Machinery Company said agreements with said Stanley Manufacturing Company, a copy of each of which is hereto attached marked respectively "Exhibit G" and "Exhibit H", and all his rights, titles, benefits and interests thereunder.

(2) The said United Shoe Machinery Company hereby assumes said agreements (G and H) and agrees to hold the said Plant, his heirs, executors and administrators harmless from and against all liability to the said Stanley Manufacturing Company thereunder, excepting liability for amounts due or by reason of any breach or non-fulfillment of said contracts if any prior to the date hereof.

(3) The said Plant hereby constitutes and appoints the said United Shoe Machinery Company his lawful attorney with power of substitution in his name, or in the name of the United Shoe Machinery Company, or otherwise, but at the sole expense and cost of said United Company to take any actions and to do any things which may be necessary or desired by the said United Shoe Machinery Company to secure, protect, and enforce all of said benefits, advantages and rights and to defend against any and all claims arising under said contracts or either of them, and hereby agrees, if so requested, to co-operate with the said United Shoe Machinery

Company in adjusting or disposing, as the said United Shoe Machinery Company desire, of all interest, rights, claims, demands and liabilities under said contracts or either of them.

In Witness Whereof, the parties hereto have duly executed this instrument in duplicate the day and year first above written.

THOMAS G. PLANT [SEAL]
UNITED SHOE MACHINERY CO. [SEAL]
by S. W. Winslow President.

[MEMO BY CLERK. — Attached here to Plaintiff's Exhibit 140 are Exhibits G and H, but same are not here reproduced as they will be found printed in this record, pages 983 to 1012, inclusive, as a part of Exhibit 132.]

PLAINTIFF'S EXHIBIT 141.

[Put in Evidence, page 593.]

Know all Men by these Presents

Whereas, United Shoe Machinery Company has simultaneously with the delivery hereof delivered to me, Thomas G. Plant, a general release of all claims which it may have against me, arising prior to September 23, 1910, and

Whereas, said United Shoe Machinery Company has entered into various other contracts and agreements with me, the said Plant; and

Whereas, the Bresnahan Shoe Machinery Company has simultaneously herewith executed a transfer to the said United Shoe Machinery Company of all its property and assets of every name and nature, including its notes and accounts receivable and all other indebtedness due it; and

Whereas, I, the said Plant, am indebted to the said Bresnahan Shoe Machinery Company,

Now, Therefore, I the said Thomas G. Plant, hereby covenant and agree with the said United Shoe Machinery Company, its successors and assigns that nothing in said release delivered by said United Shoe Machinery Company to me, and nothing in any other

agreements or documents executed and delivered by said United Shoe Machinery Company to me, shall be deemed or held to be a release of any sums or indebtedness owing by me to said Bresnahan Shoe Machinery Company, or deemed to be a release of any other claims which said Bresnahan Shoe Machinery Company has against me, and which have been so assigned, or intended to be so assigned to said United Shoe Machinery Company, I hereby agreeing that I, the said Thomas G. Plant, will pay all claims or indebtedness so due by me in full.

In Witness Whereof, I have hereunto set my hand and seal this thirtieth day of September 1910.

THOMAS G. PLANT [SEAL]

PLAINTIFF'S EXHIBIT 142.

[Put in Evidence, page 593.]

This Agreement made this thirtieth day of September A. D. 1910, by and between Thomas G. Plant of Boston, County of Suffolk and Commonwealth of Massachusetts, and United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey (hereinafter called the "United Company"), Witnesseth:

That in consideration of one dollar ($1.00) and other valuable considerations to him paid by the United Company, the receipt whereof is hereby acknowledged, the said Plant does hereby assign, transfer and set over unto the United Company two (2) certain contracts both dated the fifteenth day of June, 1910, one made by and between the said Plant and The Stanley Company, a corporation organized under the laws of the State of Massachusetts and relating to the manufacture of gasoline motors and other matters and things as therein set forth, and the other made by and between said Plant and the Stanley Manufacturing Company, an unincorporated association and relating to the manufacture of labelling, washing and filling machines, and all interests, benefits, advantages and rights arising out of said contracts or either of them, or in any way accruing to the said Plant by reason thereof.

To Have and to Hold the same to the said United Company and its successors and assigns to their own use and behoof forever.

And in consideration of the foregoing assignment the United Company assumes the obligations of said Plant in said contracts and agrees to indemnify and save harmless the said Plant and his heirs, executors and administrators forever from any and all manner of actions, claims, liabilities and demands which may hereafter arise or grow out of said contracts or either of them, or the nonfulfilment or breach thereof except by reason of any breach in the performance or observance of said contracts or either of them by said Plant or those having his interest in the premises occurring prior hereto.

And for the same consideration the said Plant hereby covenants and agrees that all conditions, stipulations and agreements contained in said contracts by him to be observed and performed prior hereto have been fully and completely observed and performed and that all sums of money which by the terms of said first mentioned contract should have been paid by the said Plant to said The Stanley Company prior hereto have been fully paid and satisfied and that at the date of this instrument the said Plant is not in default under said contracts or either of them by reason or on account of any matter or thing whatsoever.

And for the same consideration the said Plant further covenants and agrees to and with the United Company that the two papers hereto annexed and marked respectively "Exhibit F" and "Exhibit I" are true and complete copies of said contracts of June 15, 1910, above referred to, and set forth the entire agreements of the parties thereto relative to the matters and things therein included and that neither of said contracts has been in any way extended or modified.

And for the same consideration the said Plant hereby irrevocably constitutes and appoints the United Company his attorney with power of substitution, in his name or otherwise but at its own cost to prosecute or defend any actions at law or in equity to execute and deliver all instruments in writing, and generally to perform all acts which may be necessary, proper or desirable to enable

the United Company or its assigns to secure, protect and enforce the interests, benefits, advantages and rights hereby transferred.

In Witness Whereof the said parties have executed this instrument in duplicate this day of September 1910.

THOMAS G. PLANT [SEAL]

[SEAL] UNITED SHOE MACHINERY COMPANY
by S. W. Winslow, President.

[MEMO BY CLERK.— Attached here to Plaintiff's Exhibit 142 is Exhibit F, but same is not here reproduced as it will be found printed in this record, pages 978 to 983, inclusive, as a part of Exhibit 132.]

EXHIBIT I.

This Agreement made this fifteenth day of June, 1910, by and between the Stanley Manufacturing Company, an unincorporated Association, of Boston, Massachusetts, party of the first part, and Thomas G. Plant, of said Boston, party of the second part, Witnesseth, as follows:

1. The said party of the second part hereby covenants and agrees to manufacture in a good and workmanlike manner and of good material, for the party of the first part, at the factory in Lawrence, Massachusetts, that has been this day leased to him by the party of the first part all such labelling, washing and filling machines and parts for the same, as the said party of the first part may hereafter need to enable it to meet the demands of its business and as the party of the second part may find it convenient to make. And the said party of the second part also covenants and agrees to keep in good and substantial repair, so far as he conveniently can, until the first day of January, 1911, all patterns and special tools of the party of the first part, used in the manufacture of such labelling, washing and filling machines and parts for the same.

2. And for the manufacture of such labelling, washing and filling machines and parts for the same, and for keeping in repair the said patterns and special tools, the party of the first part covenants

and agrees to pay to the party of the second part, as follows: (1) The amount paid for labor; (2) The cost of materials used, and (3) An expense account equal to eight cents for each hour of labor on such machines and parts; and in addition thereto to pay a sum equal to 15% on the aggregate of the above three items — payment to be made by the said party of the first part to said party of the second part, for all such manufacturing and repair work, on or before the fifteenth day of the month next following that in which the work is completed and is ready for delivery.

And it is agreed that the covenants and agreements herein contained shall extend to and bind the successors and assigns of the said Stanley Manufacturing Company and the heirs, executors and administrators of the said Thomas G. Plant.

In Witness Whereof the said Stanley Manufacturing Company, unincorporated, has caused this Instrument to be duly executed, and the said Thomas G. Plant has set his hand to this Instrument, in duplicate, on the day and year first above written.

Stanley Manufacturing Company
Frank F. Stanley, Principal Trustee [SEAL]
George E. Gilbert, Associate Trustee [SEAL]
Henry F. Tapley, Associate Trustee [SEAL]
Thomas G. Plant [SEAL]

PLAINTIFF'S EXHIBIT 143.

[Put in Evidence, page 594.]

This agreement made this twenty-second day of November, A. D. 1910, by and between Adam H. Prenzel of Halifax, Pennsylvania, United States of America, (hereinafter called the "vendor") and the United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey, (hereinafter called the "United Company"), Witnesseth:

That Whereas the vendor has represented to the United Company that he has heretofore invented new and useful improvements relating to footwear and to methods, machinery, mechanisms, processes and devices useful or adapted for use in the manufacture of

footwear and more particularly of that class of footwear known as "turned" footwear and that he is the owner free from encumbrances of certain Letters Patent of the United States of America and of certain applications for such Letters Patent, all as set forth in the Schedule hereto annexed and marked "Schedule A" and of the inventions and improvements covered thereby,

And Whereas the vendor has also represented to the United Company that he is the owner of the entire right, title and interest, free from encumbrances in Letters Patent of the United States, No. 965,656, dated July 26, 1910, and of a fractional interest in three (3) certain other Letters Patent of the United States, all as set forth in the Schedule hereto annexed and marked "Schedule B",

And Whereas the vendor desires to dispose of all said inventions and improvements, Letters Patent of the United States and applications for and fractional interest in Letters Patent, and also all the property, interest, benefits and rights hereinafter mentioned, and the United Company desires to acquire said inventions, improvements, Letters Patent, applications for and interests in Letters Patent, property, interests, benefits and rights, and also to secure the benefit of the covenants and agreements on the part of the vendor hereinafter contained.

Now, Therefore, the vendor, in consideration of the sum of eight thousand dollars ($8,000) to him in hand paid by the United Company, the receipt whereof is hereby acknowledged, and in further consideration of the covenants and agreements on the part of the United Company hereinafter contained, does hereby sell, assign, transfer, set over and convey to the United Company free from all prior grants, licenses or other encumbrances whatsoever, all the inventions and improvements above mentioned, all rights, benefits and interests in, to and under the Letters Patent of the United States of America and the applications for Letters Patent of the United States of America mentioned in "Schedule A" and the interests in the Letters Patent of the United States of America as mentioned in said "Schedule B", and does likewise sell, assign, transfer, set over and convey to the United Company, free from all prior grants, licenses or other encumbrances whatsoever any and

all other inventions, improvements, Letters Patent and applications for Letters Patent, both of the United States of America and of any and all other countries, and interests and rights in, to or under inventions, improvements, Letters Patent or applications for Letters Patent which may in any way relate to or be intended or adapted for use in or in connection with footwear or relate to or be intended or adapted for use in or in connection with machinery, tools, mechanisms, appliances, devices, findings, supplies, methods, processes or things relating or pertaining to or designed or adapted for use in or in the manufacture of footwear or the working or manipulation of leather which the vendor now owns or has any right, by agreement or otherwise, to take over or which the vendor shall make, own, acquire or have any right by agreement or otherwise to acquire or take over at any time prior to the expiration of the full term of the Letters Patent mentioned in said "Schedule A" or which may be obtained upon any applications for Letters Patent mentioned in said "Schedule A", which shall last expire, or the expiration of the full term of any extensions, re-issues or renewals thereof.

And for the same consideration the vendor hereby sells, and delivers unto the United Company all machinery, tools, mechanisms, devices, jigs, drawings, blueprints, patterns and other articles or things in his possession or control which are designed or adapted for use in or in connection with the inventions and improvements above mentioned, including all the machines and parts of machines embodying said inventions and improvements heretofore made or constructed or now in process of construction, and all material intended therefor, including especially, without prejudice to the generality of the foregoing conveyance, the machinery mentioned in the Schedule hereto annexed and marked "Schedule C."

To Have and to Hold all said inventions, improvements, Letters Patent, applications for and interests in Letters Patent, property, interests, benefits and rights to the said United Company and its successors and assigns to its and their own use and behoof forever.

1. And for the same consideration the vendor hereby covenants and agrees with the United Company that he is the owner, free

from any and all grants, licenses or other encumbrances, whatsoever, of the entire legal and equitable right, title and interest in, to and under the Letters Patent and applications for Letters Patent enumerated in said "Schedule A" and in the inventions covered thereby and of the interests in Letters Patent as set forth in said "Schedule B" and the inventions and improvements covered thereby, and that he will warrant and defend the same to the United Company against the lawful claims and demands of all persons whomsoever.

2. And for the same consideration the vendor hereby further covenants and agrees to and with the United Company that he will forthwith fully and completely disclose to the United Company and all such of its officers and patent solicitors as may be designated by the United Company therefor, all inventions, improvements, Letters Patent, applications for Letters Patent, interests and rights which are included within the terms of the foregoing assignment now owned by him or which he has any right by agreement or otherwise to acquire or take over, and that at any and all times hereafter, upon making, acquiring or owning or obtaining any right by agreement or otherwise to acquire or take over any invention, improvement, Letters Patent, applications for or interests in Letters Patent, interest or right, hereinbefore conveyed or expressed or agreed to be conveyed he will promptly disclose the same to the United Company, its officers and patent solicitors, that he will repeat such disclosures when and as often as may be requested and that at any and all times upon request he will execute and cause to be executed any and all preliminary statements, applications, powers of attorney, assignments and other instruments and will perform or cause to be performed any and all acts necessary or desired by the United Company to obtain Letters Patent of the United States and of any and all countries in which the United Company may desire to obtain Letters Patent covering in such form as the United Company may desire, the inventions and improvements or any of them by this instrument conveyed or expressed or agreed to be conveyed and to fully and completely vest and confirm in the United Company or its nominee all such Letters

Patent and all inventions, improvements, Letters Patent, applications for and interests in Letters Patent, property, interests, benefits and rights, whether heretofore or hereafter made or acquired by this instrument conveyed or expressed or agreed to be conveyed and to enable the United Company to enjoy the full benefits and advantages thereof, all without further consideration; but the United Company shall, however, assume and pay the entire expense of hereafter obtaining Letters Patent covering said inventions and improvements by this instrument conveyed or expressed or agreed to be conveyed.

3. Subject to the provisions herein contained the United Company hereby covenants and agrees with the vendor that, during the continuance in force and apparent validity of any of the Letters Patent mentioned in "Schedule A" hereto annexed or of any Letters Patent of the United States of America which may be obtained by the United Company by virtue hereof covering the inventions and improvements included in the applications for Letters Patent mentioned in "Schedule A" or any of them, of any extensions, re-issues or renewals thereof, the United Company will pay to the vendor one-fourth part of any rent or royalty received by the United Company for the use of said inventions or any of them from lessees holding under lease from it machines, mechanisms or devices embodying the inventions and improvements protected by such Letters Patent or any of them included in said "Schedule A" and leased by the United Company for use in the United States of America.

4. The United Company hereby agrees that whenever in any quarter year ending with the last day of December, March, June, or September in any year any payment shall have become due to the vendor under the provisions of the preceding paragraph hereof, the United Company will on or before the last day of the next succeeding calendar month render to the vendor a statement showing the amount so due and at the same time will accompany such statement with payment thereof.

5. In case and whenever at any time the total amounts paid to

the vendor by the United Company under the provisions of this agreement, including the sum of eight thousand dollars ($8,000) which is paid on the day of the execution hereof, have together reached the total amount of seventy-five thousand dollars ($75,000) all obligations of the United Company under this agreement shall immediately cease and determine and the vendor thereafter shall have no claim to the payment of any further sum or sums of money or otherwise ander this agreement or in respect to the inventions, improvements, Letters Patent, applications for Letters Patent, and interests in Letters Patent, property, interests, benefits and rights hereby conveyed or expressed or agreed to be conveyed.

6. The expense, if any, of defending the inventions purporting to be covered by the Letters Patent or any of them referred to in paragraph 3 hereof against claims of infringement, if any such claims shall be made, of Letters Patent owned by others, shall be borne by the vendor, including the satisfaction of judgments, if any, which may be obtained by reason thereof against the United Company or its licensees.

The expense, if any, of prosecuting claims by the United Company of infringement by others of the Letters Patent or any of them referred to in said paragraph 3 hereof, shall be divided between the United Company and the vendor in the proportion of three-fourths (¾) to the United Company and one-fourth (¼) to the vendor.

The United Company shall, if it so elects, take charge of any such litigation, either by or against it or its licensees, and may if it so elects pay all the expenses thereof in the first instance, and the vendor shall (to the extent above provided) reimburse the United Company therefor.

7. The expression "United Company" wherever herein used shall include the said United Shoe Machinery Company, its successors and assigns, and all agreements herein contained binding upon the vendor shall be binding upon him and his heirs, executors, administrators and assigns.

In Witness Whereof the parties have hereto and to another

instrument of like tenor set their hands and seals the day and year first above written.

ADAM H. PRENZEL [SEAL]

[SEAL] UNITED SHOE MACHINERY CO.

By L. A. Coolidge, Treasurer.

United States of America.

State of Penna,

County of Dauphin, ss.

On this twenty second day of November, 1910, before me personally appeared the above named Adam H. Prenzel, to me personally known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

[SEAL] G. W. Shultz, Notary Public.

SCHEDULE A.

Letters Patent of the United States of America issued to and owned by Adam A. Prenzel.

No. 959,256, issued May 24, 1910, for Shoe Machine.

No. 959,386, issued May 24, 1910, for Machine for Recessing Shoe Parts.

No. 960,234, issued May 31, 1910, for Process for Making Shoes.

No. 965,744, issued July 26, 1910, for Beveling Machine.

No. 967,053, issued August 9, 1910, for Shoe.

Applications of Adam H. Prenzel for Letters Patent of the United States.

Serial No. 575,801, filed August 5, 1910, Machine for Embossing Heels.

Serial No. 575,802, filed August 5, 1910, Process of Making Shoes.

Serial No. 575,803, filed August 5, 1910, Shoe.

SCHEDULE B.

List of Patents of the United States of America in which an interest as designated is owned by Adam H. Prenzel.

No. 589,908, issued September 14, 1897, to Adam H. Prenzel, for Shoe Sewing Machine (one-quarter interest).

No. 589,949, issued September 14, 1897, to Adam H. Prenzel, for Shoe Sewing Machine (one-quarter interest).

No. 594,754, issued November 30, 1897, to Adam H. Prenzel, for Edge Setting Machine (one-half interest).

No. 965,656, issued July 26, 1910, to Adam H. Prenzel, for adjustable Work Support and Gage for Channeling Machines (entire interest).

SCHEDULE C.

2 Bevelling Machines
2 Recessing Machines
1 Embossing Machine

PLAINTIFF'S EXHIBIT 144.

[Put in Evidence, page 597.]

This agreement, made this nineteenth day of December, A. D., 1910, by and between Maurice V. Bresnahan, William H. Bresnahan and John J. Donlan, all of Lynn in the County of Essex and Commonwealth of Massachusetts (hereinafter referred to as "the parties of the first part"), both individually and as they are copartners doing business in said Lynn and elsewhere under the firm name and style of "M. V. Bresnahan & Co.", and the United Shoe Machinery Company, a corporation duly organized and existing under the laws of the State of New Jersey, having a usual place of business in Boston in the County of Suffolk and Commonwealth of Massachusetts (hereinafter called the "United Company"), Witnesseth: —

That whereas said parties of the first part have heretofore been engaged, jointly or severally, in the business of developing and dealing in and with machinery, tools, mechanisms and devices, useful or intended or adapted for use in the manufacture of boots and shoes and are jointly or severally the owners of property relating to such business and desire to dispose of all said business with the good-will thereof and property as hereinafter set forth to the said

United Company and to enter into the warranties, covenants and agreements hereinafter set forth:

Now, therefore, the parties of the first part and each of them, in consideration of the payment hereinafter provided to be made and the covenants and agreements on the part of the said United Company hereinafter contained, and the said United Company in consideration of the sales, transfers and assignments hereinafter set forth and the warranties, covenants and agreements on the part of the said parties of the first part hereinafter contained, do hereby covenant and agree, each with the other, as follows:

1. The parties of the first part and each of them do hereby jointly and severally sell, assign, transfer, set over and deliver to the United Company any and all business heretofore carried on by them or any of them relating or pertaining in any way to manufacturing or dealing in machinery, mechanisms, tools or devices intended or adapted for use in the manufacture of boots and shoes, including herein without prejudice to the generality of the foregoing the said business heretofore carried on under the firm name and style of "M. V. Bresnahan & Co." together with the goodwill of all the business hereby conveyed and all property, interests and rights of every name and nature relating or pertaining thereto, whether owned or possessed by the parties to the first part jointly or severally, including herein without prejudice to the generality of the foregoing all trade names, marks and brands, inventions, improvements, Letters Patent and applications for Letters Patent of the United States and of any and all other countries and any and all interests and rights therein, thereunder or thereto, whether jointly or severally owned, all machinery, mechanisms, tools and devices intended or adapted for use in the manufacture of boots and shoes, all stock on hand, raw, wrought or in process of manufacture, all patterns, blue prints, drawings, jigs, tools, special tools, furniture, supplies, manufacturing machinery and equipment, relating or pertaining in any way to or used in any such business; excepting however, cash on hand or on deposit and bills and accounts receivable on account of business done prior to the date of this sale.

To Have and to Hold all of said property, interests and rights to said United Shoe Machinery Company, its successors and assigns, to its and their own use and behoof absolutely.

An inventory of property of the said M. V. Bresnahan & Co. has been prepared by the parties of the first part as of the first day of December, 1910, which is identified by the signatures of the parties of the first part and by the signature of Geo. H. Vose in behalf of the United Company and a summary of the same is hereto attached and marked "Schedule A"; and the parties of the first part do hereby jointly and severally covenant with and warrant to the said United Company, that the property hereby conveyed includes (together with other property, interests and rights) all of the property set forth in said inventory, excepting such as has been used by the said parties of the first part in the regular and useful course of business since the said first day of December, 1910; that they are the sole owners of the entire right, title and interest in all said property; that they have good right to convey the same as aforesaid; that said property is free from all incumbrances; and that they will and their heirs and executors shall warrant and defend the same to the United Company against the lawful claims and demands of all persons; and further that they will forthwith discharge or cause to be discharged all liabilities, direct or contingent, of said partnership or relating or pertaining in any way to any of the property, interests or rights hereby conveyed or expressed or agreed so to be.

2. The parties of the first part and each of them do hereby jointly and severally sell, assign, transfer and set over to the said United Company any and all inventions, improvements, Letters Patent of the United States and of any and all other countries and interests and rights in, to and under inventions, improvements, Letters Patent and applications for Letters Patent relating or pertaining in any way to boots or shoes or to machinery, methods, processes, mechanisms, tools or devices intended or adapted for use in the manufacture thereof, which they or either or any of them now have or have any right by agreement or otherwise to acquire or take over, or which they or either or any of them shall at any time

within ten (10) years from the date hereof or at any time during the continuance of the employment of them or any of them by the said United Company, or at any time within ten (10) years after the termination of any such employment, make (whether or not during regular working hours and whether upon the premises of the United Company or elsewhere), own, control or have any right by agreement or otherwise to acquire or take over.

3. The parties of the first part and each of them do hereby jointly and severally covenant and agree to and with the said United Company that they will forthwith disclose to the said United Company any and all inventions, improvements, Letters Patent, applications for Letters Patent, property, interests and rights now possessed by them or any of them or which they or any of them now have or have any right by agreement or otherwise to acquire or take over which are included in the terms of the foregoing assignments; and that at any and all times hereafter upon making any invention or improvement, or acquiring any invention, improvement, Letters Patent, application for Letters Patent, interest or right, included within the terms of the foregoing assignment they will forthwith disclose the same to the said United Company, its officers and patent solicitors; that they will repeat any and all such disclosures when and as often as requested, and that they will, upon request, execute and cause to be executed any and all proper applications for Letters Patent, assignments and other instruments, and will perform and cause to be performed any and all other proper acts which may be necessary or desired by the said United Company to enable the said United Company or its nominees to obtain Letters Patent for said inventions or any of them in whatever countries the United Company may so desire, and to fully and completely vest and confirm in the said United Company or its nominees all of the inventions, improvements, Letters Patent, property, interests and rights hereby conveyed or expressed or agreed so to be conveyed —all without further compensation but at the expense of the United Company.

4. It is hereby covenanted and agreed by and between the United Company and each of the parties of the first part that each of the

parties of the first part shall forthwith enter the employ of the United Company and shall be given employment by the United Company. Each of the parties of the first part does hereby covenant and agree to and with the United Company that during the continuance of his employment by the United Company he will well and faithfully serve the United Company and that he will during the continuance of such employment devote his time, services and skill exclusively to the accomplishment of such purposes and the performance of such duties as shall be assigned to him by the United Company.

The said Maurice V. Bresnahan is to be employed (during the continuance of his employment by the said United Company) by the said United Company for at least six (6) months in each year, or less at his option, and for such employment the said United Company are to pay the said Maurice V. Bresnahan at the rate of Ten Thousand Dollars ($10,000) per year, payment at such rate to be made for such portions of each year only as the said Maurice V. Bresnahan shall be engaged in active work for the said United Company.

The said William H. Bresnahan shall, during the continuance of his employment devote his entire time to the duties of his said employment under the direction of Charles H. Willson, now of the United Company, and shall receive compensation at the rate of not less than One Thousand Dollars ($1,000) per year.

The said John J. Donlan, during the continuance of his employment by the said United Company, shall devote his entire time to the duties of said employment in the United States unless otherwise mutually agreed and shall receive compensation for said employment at the rate of not less than Forty Dollars ($40.00) per week.

The employment of each of the respective parties of the first part by the United Company shall continue for the term of three (3) years from the respective dates at which they shall begin work for the said United Company and thereafter for such further period or periods as may be mutually desired until terminated by notice from either party to the other.

5. The parties of the first part and each of them do hereby covenant and agree to and with the said United Company that, excepting as employees of the United Company, they will not nor will either or any of them at any time within ten (10) years from the date hereof or at any time during the continuance of the employment of them or any of them by the said United Company or at any time within ten (10) years after the termination of any such employment, without the consent in writing of the United Company first obtained, directly or indirectly, in any capacity, individually or in combination with another or others, as officer or stockholder of a corporation, as owner, principal, agent, employee or otherwise, enter into or be engaged or interested in or financially or otherwise assist any person, firm or corporation, in entering into, developing or carrying on any business which relates or pertains in any way to manufacturing, selling or otherwise dealing in any machinery, tools, mechanisms, methods, devices or processes useful or adapted for use in the manufacture of boots or shoes, or inventions, improvements, or Letters Patent relating or pertaining thereto or in any business which will in any way interfere or compete with the business of the said United Company therein or in imitating or infringing any trade name, mark or brand or any Letters Patent owned by said United Company.

6. The parties of the first part and each of them do hereby remise, release and forever discharge the United Company and every corporation owned or controlled by the United Company, and its and their officers and agents, of and from all manner of actions, causes of action, suits, debts, accounts, agreements, bonds, liabilities, judgments, claims and demands whatsoever, at law or in equity, which they or any of them now have or have ever had or which they or any of them, their heirs, executors, administrators or assigns, hereafter may have for or by reason of any matter, cause or thing whatsoever arising prior to the date of this instrument, whether brought in their names or in the names of any of them, or in the name of the Bresnahan Shoe Machinery Company or in the name of M. V. Bresnahan & Co., or otherwise, including any and all claims, demands and suits of any nature held for them

or any of them by others or in which they or any of them may be entitled to the interest.

7. The United Company, as full consideration for the covenants, warranties and agreements on the part of the parties of the first part, and each of them herein contained, and for the transfers and assignments herein made or provided for, hereby covenants and agrees to pay to the parties of the first part immediately upon the execution hereof the sum of twenty-five thousand dollars ($25,000) which payment may be made to Maurice V. Bresnahan as representing the parties of the first part who is hereby authorized by said parties of the first part to receive and receipt for the same, and the United Company shall not be in any way responsible for the application or apportionment thereof among the parties of the first part.

8. The term "United Company" as herein used shall be held to include the said United Shoe Machinery Company and its successors and assigns, and all covenants, warranties and agreements binding upon the parties of the first part shall be binding on them and on ther legal representatives.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

M. V. BRESNAHAN & Co. [SEAL]
By Maurice V. Bresnahan
MAURICE V. BRESNAHAN [SEAL]
JOHN J. DONLAN [SEAL]
WILLIAM H. BRESNAHAN [SEAL]
[SEAL] UNITED SHOE MACHINERY COMPANY
By Edwd. P. Hurd, Asst. Tres.

Commonwealth of Massachusetts.

Suffolk, ss. Boston.

On this Nineteenth day of December, A. D. 1910, before me personally appeared the above named Maurice V. Bresnahan, William H. Bresnahan and John J. Donlan, known to me and known to me to be the persons described in and who executed the foregoing instrument and acknowledged that they and each of them exe-

cuted the same jointly and severally as their free act and deed and as the free act and deed of M. V. Bresnahan & Co.

[SEAL] William B. Sullivan, Notary Public.

SCHEDULE "A"

Inventory of Property of M. V. Bresnahan & Company, Lynn, December 19, 1910.

1 Emery Stand, 2 wheels, on frame.
1 Blaisdell Engine Lathe, 6 x 12, R. & F. rest, Hollow spindle
1 Blaisdell Lathe, 6 x 16, R. & F. rest, Power cross feed, hollow spindle.
1 15″ Hendy Shaper
1 Blaisdell Lathe, 16 x 10, R. & F. rest, Power cross feed, Hollow spindle
1 Speed Lathe, 8 x 3½, with hand rest.
1 Gerard Arbor Press No. 3
1 Pair Pattern Shears (Gallagher.)
1 Foot Power Pincer
1 Barnes 16″ drill, wheel and lever feed.
1 Washburn Sensitive Drill (1 spindle.)
1 Blaisdell Drill 28″ (old style.)
1 Lathe and Morris Planer 22 x 22 x 6.
1 Kempworth #1 Plain Miller
1 Corner Cutting Attachment for Miller
1 Grindstone and Frame.
1 Westhaven Mfg. Co. Power Hacksaw.
1 Pair Welted Shoes (W. L. Cressey.)
1 Speed Lathe 8″ x 3½′.
1 Flather Lathe 14″ x 6′.
1 Polishing Stand, Hersey & Cutler.
36 Polishing Wheels.
71 Reamers, assorted sizes.
125 drills, assorted sizes.
120 Tapers, assorted sizes.
12 Flat Drills " "

1 #3 Little Giant Chuck
1 Whitten Chuck 9″ 4 jaws, independent.
1 Jacobs Drill Chuck 1″
1 Jacobs " " $\frac{1}{2}$″
1 Little Giant Chuck, 1″
1 Jacobs Drill " $\frac{1}{2}$″
1 " " " $\frac{5}{16}$″
1 4 jawed Whitten Chuck 12″ independent.
1 Little Giant Chuck $\frac{1}{2}$″
1 Universal Chuck 6″ 3 jaw.
1 Circular Planer Shoe.
1 Milling Machine device.
1 Lot Planer Bolts, straps and parallels.
1 set Planers centres.
35 Forged Planer nuts.
Counter sinks and reamers for welt machine.
1 Drill jig for turning machine.
4 die stocks and 10 dies.
1 Tap Wrench.
14 Lathe Dogs
1 set steel letters $\frac{1}{2}$″
1 set steel figures.
8 bars cold rolled steel, assorted sizes.
75 lbs. G I B stock $\frac{3}{8}$ x $\frac{1}{16}$.
1 Splining bar and splining jig.
1 Breast Drill
1 Drill jig for Stitchers.
1 Hand Forge
1 Anvil.
1 Set Tongs
5 Iron Pulleys
1 wood Pulley
1 lot cams cutting attachment patterns.
1 Chest drawers on top floor containing several lots of finished parts for Unioned Edge Setter, etc.
Odds and ends of old screws, 3 drawers.

45 cap screws $\frac{5}{8}$ x $2\frac{1}{2}$ Hex.
30 " " $\frac{1}{2}$ x $2\frac{1}{2}$ Hex.
40 " " assorted sizes
2 drawers containing lot of bolts and nuts, assorted lengths and sizes.
85 Back Gauge spring studs #1063.
155 Shoulder Screws #S 2 1863.
93 Studs #434
104 S L #1862.
92 S L 395
91 S L 991
88 Cam Rolls #R. L. 286
73 " " " " 94
53 " " " " 356
49 " " " " 253
99 Shoulder Screws S 2 1078
89 Studs 361
89 Nuts #2 101
73 Screws S.L. 1076
49 Screws S.L.
87 Screws S.L. 383
45 Studs S.D.L. 357
86 Studs 407
57 Screws
46 Rock Plates
Lot of parts for turn sewing machine contained in set of drawers for that purpose.
1 Rapid Stitcher and Bobbin Winder.
1 Welter Turn Machine — Bresnahan.
1 Bresnahan Heel Finishing Machine.
2 roll top desks.
1 Flat top desk
2 Swivel chairs
3 office chairs
1 safe
1 clock, Bay State

1 McKay Turn Sewing Machine
1 Embossing Machine
1 Grinding Machine
2 Emerson Heel Finishing Machines
1 3 ft. Brush Finishing Shaft.
1 Partial Set of patterns for Rapid Stitcher.
1 complete " " " " Turn Sewing Machine
1 " " " " " Bed Lasting Machine
1 " " " " " Heel Finishing Machine
Lot of patterns for improved cam pattern attachment.
1 spiral monogram machine
1 Tripp Giant Leveler Heeling Machine
1 Bresnahan Leveler
1 set patterns for beating out lasts and forms, not complete
1 chest of drawers containing special screws for turn sewing machine, part of which is itemized on previous page.
3 Heel Finishing Machines, complete.
1 complete Bed Lasting Machine (latest model.)
1 experimental " " (incomplete.)
1 New Shank Tacking Machine, partly finished.
1 Boston Tacking Machine
1 Corrugated Tacker.
1 Loose Nailer, not complete.
1 Loose Nailer Post
1 Continental Lasting Machine
1 Lot shafting, hangers, belting and pulleys, not including jack shaft and electric motor.
1 lot bench vises
Lot small miscellaneous articles to be taken in detail being too small to count up at the present time.

PLAINTIFF'S EXHIBIT 145.

[Put in Evidence, page 599.]

[Letter-Head of C. P. Stanbon & Co.]

270 Broad Street, Lynn, Mass., April 22, 1911.

Received from United Shoe Machinery Company One Hundred Twenty two thousand Seven hundred and Thirty five and 82/100 ($122735.82) in full of purchase price for business property good-will as per instruments executed this day. Other instruments to be executed if called for. The bond for $5000 referred to in agreement of May 29, 1905 between the undersigned and Manufacturers Machine Co. is hereby cancelled and released.

CHAS. P. STANBON.

Know all Men by these Presents:

That I, Charles P. Stanbon, of Lynn, in the County of Essex and Commonwealth of Massachusetts, heretofore engaged in the business of manufacturing and dealing in and with machinery, tools, mechanisms, parts, devices, findings, supplies, and things for use in the manufacture of footwear (hereinafter referred to as "shoe machinery") under the firm name and style of Charles P. Stanbon & Company, in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations to me in hand paid by the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, and having a usual place of business in Boston, Massachusetts, (hereafter called the "United Company"), the receipt whereof is hereby acknowledged, have sold and do hereby sell, assign, transfer, set over, and deliver to the said United Company all my said business together with the good-will thereof and all stock on hand raw, wrought or in process of manufacture, machinery, tools, mechanisms, parts, devices, supplies, findings, and things, all manufacturing equipment, leases, contracts, and other agreements which I now have or in which I have any beneficial interest, office furniture and equipment, inventions, improvements, Letters Patent, application for Letters Patent (of the United States and other countries)

and all interests and rights therein, thereunder or thereto which I now own or which I have any right to acquire or take over, convey or cause to be conveyed in or relating to shoe machinery and any and all inventions, improvements, Letters Patent, applications for Letters Patent (both of the United States and other countries) interests and rights which I may at any time hereafter so long as in the employ of the United Company make, own, acquire or have any right by agreement or otherwise to take over, convey or cause to be conveyed in, relating or pertaining to shoe machinery, all jigs, tools, special tools, patterns, blue-prints and drawings, and any and all other property forming a part of, used in or accessory to, or in any way relating or pertaining to said business and particularly, all and singular the property referred to in an appraisal made by Harry I. Illingworth of said Lynn, copies of which are now in my possession and in the possession of the said United Company.

To have and to hold all and singular the property, interests and rights hereby conveyed to the said United Shoe Machinery Company, its successors and assigns to its and their own use and behoof forever.

And for the same consideration I do hereby covenant with and warrant to the said United Shoe Machinery Company that I am the true and lawful owner of all the property, interests and rights hereby conveyed; that I have good right to sell and assign the same as aforesaid; that the same are free from any and all encumbrances and that I will and my heirs, executors and administrators shall warrant and defend the same to the said United Shoe Machinery Company, its successors and assigns against the lawful claims and demands of all persons.

And for the same consideration I, the said Stanbon, do hereby covenant and agree to and with the said United Company that I will not at any time so long as in the employ of the United Co., directly or indirectly, individually or in combination with another or others, as principal, partner, agent, owner, manager, employee, or representative or as stockholder or officer of the corporation or otherwise, in any way whatsoever, enter into or be engaged or

interested in, or financially or otherwise assist any other person, firm or corporation in entering into, engaging in, dealing in, developing or carrying on any business which consists in whole or in part of, or relates or pertains in any way to manufacturing or dealing in shoe machinery, or which will in anywise compete or interfere with the business of the said United Company, its successors or assigns.

And for the same consideration I, the said Stanbon, do hereby covenant and agree to and with the said United Company, that I will promptly disclose to the said United Company, its officers, attorneys or patent solicitors, any and all inventions, improvements, Letters Patent, applications for Letters Patent, (of the United States and of all other countries) and interests or rights therein, thereuder or thereto, which I now own or control or have any right by agreement or otherwise to acquire, take over, convey or cause to be conveyed, in or relating or pertaining in any way to shoe machinery, will repeat such disclosures and fully explain the same as often as may be requested, and that I will and my heirs, executors and administrators shall perform or cause to be performed all such acts and will execute or cause to be executed any and all such applications, specifications, powers of attorney, assignments or other instruments in such manner and form as the said United Company or its counsel for the time being shall deem proper to obtain the grant of Letters Patent of the United States and of any and all other countries where it may be desired to obtain Letters Patent covering the inventions and improvements, or any of them, hereby conveyed or provided to be conveyed, and to fully and completely vest and confirm in the said United Company, its nominee or nominées, so far as is within my power or the power of my heirs, executors or administrators, full and complete right, title and interest in, to and under all such inventions, improvements, Letters Patent, applications for Letters Patent, property, interests and rights, hereby conveyed or provided so to be, and to enable the said United Company to secure and enjoy the full benefits and advantages thereof.

In Witness Whereof I, the said Charles P. Stanbon, have here-

unto set my hand and seal this twenty-second day of April, A. D. 1911.

CHAS. P. STANBON [SEAL]

Commonwealth of Massachusetts.

Essex, ss. Lynn, April 22, 1911.

Then personally appeared the above named Charles P. Stanbon, to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed. Before me,

[SEAL] Harold G. Donham, Notary Public

PLAINTIFF'S EXHIBIT 146.

[Put in Evidence, page 726.]

UNITED SHOE MACHINERY CO.
Albany Building
205 Lincoln Street
Boston, Mass.

To the Lessees of the United Shoe Machinery Company: —

When the United Shoe Machinery Company was organized in 1899, it adopted this comprehensive policy: "To furnish a better service and equipment year by year at a constantly diminishing expense to its lessees."

To this policy it has consistently adhered in spite of the fact that the world was then entering on a period of high prices which has lasted ever since. While the leather and labor which go into the making of a shoe have grown more and more costly, there has been a steady decline in the cost to manufacturers of the machinery and supplies which the Company has provided.

It has furnished its lessees with the very best equipment attainable.

It has substituted improved machines for those which have become out of date.

It has substantially done away with payments for installation of machines.

It has reduced its rentals and royalties, sometimes directly, sometimes indirectly by furnishing auxiliary machines without additional royalty charge.

It has increased the number of its branch offices and the extent and efficiency of the service and assistance rendered to its lessees by its experts.

In order promptly to meet the requirements of its lessees and so give them a better service, it has increased its factory facilities from year to year and has just begun to build an addition containing more than two acres of floor space.

By reason of its large expenditures and investments, far in excess of the ability of any small corporation to make, it is to-day serving its customers, and through them the public, more effectively than would have been thought possible at the time of its formation; yet with less expense to manufacturers than ever before in the history of the trade.

The organization of the Company in 1899 resulted almost immediately in the lowering of the average royalty per pair paid by manufacturers who prior to its organization would have leased the same number and kind of machines from the different constituent companies out of which the United Shoe Machinery Company was formed. In no instance since that time have the average rates of royalty been raised, although the Company has expended several million dollars in improving the machines with which its lessees have been supplied, and, without additional royalty charge, has placed in factories numerous auxiliary machines. The average royalty direct and indirect now received by the Company for all classes of shoes is less than $2\frac{3}{4}$ cents per pair; and, in fact, an average payment of $2\frac{3}{4}$ cents per pair will cover the entire cost to shoe manufacturers of the mechanical equipment furnished by the Company, including all charges for depreciation, for the constant employment by the Company of the best experts of the world in the care and maintenance of machines and the instruction of operators, and of a large corps of inventors exclusively engaged in developing and improving machines. The Company keeps the entire outfit of the manufacturer at the highest point of efficiency

daily and hourly and places at his disposal all its facilities for that purpose.

Every year since its formation the Company has expended from $300,000 to $750,000 in maintaining its corps of inventors in the Experimental Department, and in the purchase and development of new inventions.

Nearly one hundred new machines have been produced by the Company, all of them materially better than the machines formerly in use and sixteen of them performing operations which, before their introduction, required skilled hand workmen. By the use of these new machines and improved devices, manufacturers can save annually in cost of production an amount greater than the entire amount of royalties paid at the time the Company was organized. The "Ideal Clicking Machine" alone, which has recently been introduced and which does work hitherto done by hand, should enable the manufacturer using it to save a sum equal to the average royalty now paid for the use of all machines leased by him from the Company. The economies in labor resulting from the use of other new machines range from ten per cent to fifty per cent, and usually with a marked improvement in the quality of the work.

Immediately after its formation, the Company was confronted with a proposition to increase to its lessees the price of material used in the machines of the Metallic Department (the profit on which constitutes the rental and royalty received by the Company from the machines in this department) such an increase having been determined upon by one of its constituent companies which made and leased Metallic Machines and which, had it remained a separate organization, would have been compelled to resort to an increase in the price of wire and fastenings in order to meet a marked advance in the price of copper. The United Shoe Machinery Company, relying upon economies in other departments, was able to maintain the existing rates and assumed the increased cost of production without imposing any part of the increase upon its customers. The policy then adopted has been followed consistently ever since, regardless of the market price of materials, and in many individual instances the Company has found it possible to lower its charges.

In its General Department alone, for instance, there has been a reduction in the price of seven hundred and fifty-five commodities, comprising findings and shoemakers' supplies, averaging 25.6 per cent.

Thus the shoe manufacturers, and through them the public, have benefitted substantially from the magnitude and great diversity of the Company's business. The fact that several companies of limited scope, each confined in its work to a particular class of operations, were gathered into a single large company of ample range and abundant facilities capable of supplying to its customers a complete and perfect system of machinery, has been an unqualified advantage to the trade.

Initial charges for the installation of machines were almost universal prior to 1899. Such charges have been gradually abolished; to the obvious advantage of the manufacturer. For example: — Under the lease premium formerly in force, machines of the Goodyear Department, for making five hundred pairs of Goodyear Welt shoes per day, required an initial payment of $2,845.00 for installation. Under the loan lease now in force, this payment has been replaced by a yearly rental of only $106.00. There is a corresponding saving to the manufacturer in equipping his factory with machines of all other departments in which initial payments have been abolished. Substantially the last of these payments was removed recently, when the Company began to offer to its lessees machines of the General Department, on rental terms so low as merely to care for the items of depreciation and replacement, without yielding any return for its services in looking after the machines.

Benefits of a character similar to those enumerated have marked the course of the Company from the very beginning; but it has never been its purpose to confine within limits determined in advance, its ability to enhance the prosperity of the trade. Always recognizing that it has a common interest with its lessees and that its prosperity depends upon theirs, it has long had in contemplation the following plan, which, now that the elimination of initial charges has been effected, it is prepared to put into operation —

a plan which is in conformity with its established policy and which it believes will result in the expansion of its own business through the increased business of its customers.

Beginning with January 1, 1910, the Company will create a fund by investing each year, for three years, in the common stock of the United Shoe Machinery Corporation a percentage, increasing each year, of the amounts received from its lessees for the use of its Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States, and will add to that fund from time to time the dividends which shall have been paid in the meantime upon such stock, or shares of the common stock of the Corporation purchased with such dividends. At the end of three years from that date it will distribute the entire amount of stock held in the fund among those lessees who use the Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States and who shall have faithfully observed the covenants of their leases; each lessee of these classes of machines to receive a share of the entire fund proportionate to the amounts paid by him for the use of such machines.

The beneficial interest of each lessee in the stock held in the fund, while undistributed, shall not be assignable by his own act or by operation of law, or be subject to attachment on mesne process, execution, or any legal process, and in the distribution thereof the Company will only recognize the lessees and their executors and administrators as entitled to share therein.

In the determination of all questions which may arise concerning the said fund and the distribution thereof, the Company reserves to itself the right of final decision.

Of the amount received from the use of Goodyear Welters and Stitchers in the United States, during the year ending December 31, 1910, not less than fifteen per cent will be invested in accordance with the foregoing plan, and of the amount so received from the use of the Goodyear Turn Sewing Machines, not less than 10 per cent will be so invested.

By order of the Board of Directors,

S. W. WINSLOW, President.

Boston, Mass., June 10, 1910.

PLAINTIFF'S EXHIBIT 147.

[Put in Evidence, page 819.]

THE FOLLOWING STATEMENT BY CHARLES H. JONES APPEARED IN THE SHOE AND LEATHER REPORTER, MAY 24, 1906.

The policy of the United Shoe Machinery Co. has not changed since that time.

[From Shoe & Leather Reporter, May 24, 1906.]

Bill relating to Machinery Leases — Many Interesting Points brought out in the Interview with Charles H. Jones, President of the Commonwealth Shoe and Leather Company.

Charles H. Jones, President of the Commonwealth Shoe and Leather Company, of Boston, with factories at Whitman, Mass., and in Maine, in an interview concerning the bill now before the Massachusetts Legislature, numbered 1297, in relation to the lease of machinery, alleged to be directed against the United Shoe Machinery Company, said:

"My attention was called especially to this bill yesterday morning by a neighbor, whose factories are not in the State of Massachusetts, with the request that I read the bill carefully and see where it was going to place Massachusetts manufacturers. Previous to that time I had only heard through newspaper reports that such a bill had passed the House, and presuming that it would be in some ways a benefit to the trade, had given it no further attention, but on looking it over with care it was soon apparent that while it was probably directed against the United Shoe Machinery Co. it would prove in fact, if passed, a serious blow to Massachusetts shoe manufacturers."

Replies of Mr. Jones to Questions Submitted.

"Q. Would it not be an advantage to the manufacturers if they could obtain, by legislation, free competition in shoe machinery, instead of the practical monopoly that is now understood to exist? — A. Anything would undoubtedly be a benefit to the shoe trade of Massachusetts that enabled them to obtain their shoe machinery

cheaper, or on more favorable terms, and if this bill was calculated to produce this result, you may be sure it would have the warmest support of all shoe manufacturers. Its actual result in practice, however, would be exactly the opposite.

"Q. To anyone not acquainted with the shoe business, this last statement seems very surprising. Would you mind explaining how it would operate against the interests of manufacturers here? — A. I shall be very glad to explain it, as I think every manufacturer in Massachusetts should be fully aware of the risk he is running if this bill becomes a law. If you will read the bill, you will find in substance that it forbids the United Shoe Machinery Co. from trying to bind, either by lease or by the giving of discounts, manufacturers to use their machinery exclusively. If this means anything, it means that if the United Shoe Machinery Co. sell or lease their machinery at prices so low, or on terms so favorable that manufacturers are compelled by their own interest to buy all their machinery of them, then under this law competing machinery manufacturers may show that such prices and discounts are unreasonable and force the company to advance them. If competition was to be promoted by causing some dealers to sell us our machinery on better terms, shoe manufacturers would be very glad to assist in passing the bill; but if present conditions are to be changed by compelling the United Shoe Machinery Co. to ask as much for their machinery as competing manufacturers see fit to ask, it means simply that we should have to pay more for our shoe machinery than we now pay, and we do not wish to have the State of Massachusetts force us, by law, to do any such thing. Of course, the word 'unreasonable' as applied to discounts on machinery or royalties is one which I cannot apply with any exactness, and so, of course, do not know what discount would be considered unreasonable and what would be considered reasonable; but I wish to obtain, both on machinery and royalties, the greatest possible discount, and do not want my privilege to do this to be curtailed by any law of the State.

"Of course, the proposed law would have no effect outside of the State of Massachusetts, and, if it should pass, the United Shoe

Machinery Co. would be undoubtedly put to some inconvenience and trouble in readjusting their leases to comply with the change in the law. It is inconceivable, however, that in its readjustment the manufacturers of Massachusetts would be allowed by them to obtain an advantage over the manufacturers in other States. The practical effect of the law would undoubtedly be this. The policy of the Machinery Co. would remain unchanged the world over, except in the case of Massachusetts. In this State we would be put to some disadvantage; how great or how little it is impossible for anyone to foresee today, but it is clearly evident that whatever inconvenience and increased expense the machinery company was caused by this bill, we manufacturers should have to pay.

"If that would be the result of the bill to shoe manufacturers, can you tell what interest is back of the bill? Who originated it and who is backing it for passage? — A. Of that I can only speak from hearsay. It is obvious that the only parties benefited would be the manufacturers of machinery who desire to compete with the United Shoe Machinery Co. The terms which the Machinery Co. have recently offered their patrons on certain lines of machinery are so liberal that the outsiders cannot compete. They apparently wish the company to be forced by law to change these terms to their level, and as the parties who would derive the benefit are usually the ones who cause the legislation, I think it is fair to assume that the statements which are publicly made, that the outside shoe machinery interests are back of this bill, are correct. It is certain that the shoe manufacturers, either individually or as a body, are not back of it. I personally never heard of it until after it had passed the House of Representatives, and in conversation with other manufacturers, during the past two days, have not found a single man who had ever been consulted, or, in fact, had any knowledge whatever in regard to it.

"Q. Is it not a fact, as claimed by the advocates of this bill, that the Shoe Machinery Co. is very arbitrary in its dealings with the shoe manufacturers, and that its large earnings are a heavy tax on the industry? — A. There are, undoubtedly, some clauses in the different leases which manufacturers are required to sign with the

Machinery Co. that give the impression that the company desires to bind the manufacturers, and limit them in their business action to an unreasonable extent. At the time of the organization of the Machinery Co. I resented very deeply what seemed to me the extreme and unfair advantage that they were taking of the power which they undoubtedly held over shoe manufacturers; but in the six or seven years, during which they have been in operation, I must say that I have waited in vain for any unfair or arbitrary use of this power on the part of the company; in fact, their dealings with us have been marked by more consideration than was formerly shown us by many of the constituent companies. It is a fact that must not be overlooked, that if the company is a despotism, it has been, up to this time, of the most benevolent type. It has actually reduced the prices on many of its machines; it has placed others in our hands on a rental system that has saved us a very large investment of capital; it has certainly given more faithful care and attention to the running of the machines and keeping them in order; and in our country factories, where we employ a large proportion of inexperienced help, they have given us more constant and faithful attention in instructing new operators, and in the supervision of the machinery under trying conditions, than we ever obtained from any of the constituent companies.

"Q. Has the charge for such service as you describe been increased over what you formerly paid?—A. I cannot say that it has. As far as I recall them, the royalties demanded by the company are the same, exactly in amount, that we have always paid. It is only fair to add that they have supplied us with many additional machines to do the minor parts of the work, without any charge at all. These machines have been of considerable value to us, both in the saving of labor and increasing the uniformity of the goods, and are such machines as would undoubtedly have cost us a round sum if the United Shoe Machinery Co. had not been in position to furnish them to us gratis.

"Q. The newspaper reports of the hearings at the Legislature made quite prominent the statement that exorbitant prices have been charged by the company for supplies. The prices of tacks

and nails in the open market and the price charged by the Shoe Machinery Co. were compared. Do these statements show the facts as they actually exist?— A. I did not see the statements, and so cannot answer that question; but if you wish to know whether the company is charging us an unfair price for tacks and nails, will say that this is entirely untrue. The royalty on some of their machines is derived from the price of the tacks and nails used on them; consequently, the price which they charge for the tacks and nails is certainly greater than the same thing could be bought in the market, for use by hand; but, as a matter of fact, the Shoe Machinery Co. charges us no more for tacks to-day than they did many years ago, when tacks in the open market were much cheaper than to-day; in fact, my impression is that they have actually reduced the price of tacks between 25 and 30 per cent., while every one knows that the cost of tacks and nails in the open market has advanced.

"Also in regard to eyelets, which they now manufacture extensively, we are paying them from 10 to 20 per cent. less than we formerly paid, although it is perfectly well known that the copper and spelter from which they are manufactured have advanced in price nearly 50 per cent. since 1899.

"Q. You do not seem to be one of the manufacturers who regard this trust as one of the burdens on the industry?— A. I must say that that is not my view to-day. I am by no means convinced that all their methods are the best, or that their policies might not be changed to make them more liberal in some respects; but I am very glad to say that the expectations I had of what was to be the result of this combination when it was formed have not been borne out by our experience. Up to this time, I do not believe any manufacturer who has been honest and straightforward in his dealings with the company can show any clear grievance against the company, or can make out the slightest case of crowding or coercion. On the contrary, I can say for ourselves, that the question of royalties and machinery, which was formerly one of the most vexatious and exacting departments of our business, has ceased to give us any concern at all. We were formerly

obliged to examine new inventions, and were forced to make experiments with machines for months at a time, with the result that we obtained more or less bad work and were put to much useless expense, and the thought and attention of our best men was given to deciding between the merits of the old and new. We were obliged to dicker and trade with every different manufacturer of machinery all the time with the moral certainty that somebody who had more time and attention to give to it would get a better bargain than we were able to obtain; and with it all there was an enormous and perpetual shrinkage on account of the changes made necessary by the introduction and adoption of machinery that was not thoroughly and satisfactorily developed before being placed on the market. To-day this is all changed. If we want a machine, we simply notify the company. Their agent confers with our foreman. The best machine known for doing the work is installed with little or no expense to us. We are obliged to pay a rental in some cases, which would amount to about the same as the yearly shrinkage in value of the machine if we had had to buy it, but the capital which we would formerly have been called upon to invest is still in our possession for use in our regular business. We are confident that we are getting the machine on as favorable terms as any competitor, and we are enabled to employ our own time and ability in the legitimate branches of our business, and we have not, up to this time, been obliged to pay as much for this privilege as we formerly paid, for the very much less satisfactory condition. It may be true that the Shoe Machinery Co. suppresses inventions, but my own experience with outside manufacturers during the past five or six years has gone quite a way toward convincing me that the outside inventor gets all the consideration from the company to which he is entitled. We have encouraged a few of them that we thought had good things, only to be sold out by them as soon as they could made a satisfactory trade with the company.

"I think it quite likely that the company buys and pays a good price for all that is valuable in the way of invention that is offered to them, and they certainly stand between the manufacturer and the inventor of crude and incomplete machines, and guarantee to us

that whatever is put on the market is a complete mechanical contrivance, capable of doing what they recommend. I have heard it stated that one of the strongest advocates before the Legislature for the passage of this bill was a man who had failed to force the Machinery Co. to pay him a salary of $5,000 a year for services which were worth nothing like that amount. This is perhaps what they call suppressing invention.

"Q. In your opinion, would this bill be a serious blow to the Machinery Co. if passed? — A. It would certainly cause them some inconvenience, in readjusting their leases and royalties, to comply with the change in the law, but nothing can prevent a company which has machinery of such value as theirs from making arrangements with manufacturers who desire to use it, which will be profitable to them. This bill will certainly not prevent them from doing this. They will accomplish exactly what they accomplish now in another way, and the manufacturer will simply have to pay the cost of the change. If it should prove on the passage of this bill that manufacturers in other States were able to get their machinery on more favorable terms, we should certainly know of it, as we have two factories located in the State of Maine. The margin on shoes to-day is so small, that even a fraction of the royalty we pay would necessitate our removing our factories from Massachusetts to Maine, or some other State, and I can see no way in which such a result as this would be a benefit to Massachusetts or any of her people."

PART OF PLAINTIFF'S EXHIBIT 148.

[Put in Evidence, page 903.]

To the Boston Lasting Machine Co., 110 Lincoln Street.

Boston, Mass.

We hereby order and agree to accept Two of your Lasting Machines, and to pay One Hundred and Fifty Dollars each for the same in Thirty Days from the date of their delivery to us. We further agree to sign your Company's usual lease at the time of payment above stated.

If the above machines are reshipped from our factory to the Bos-

ton Lasting Machine Co. within thirty days from our receipt of the same, then this agreement shall be null and void.

PLAINTIFF'S EXHIBIT 148.

[Put in Evidence, page 903.]

License and Lease, No.

This Lease and Agreement made the *Fifteenth* day of *April* A. D. 18*89*, by and between the Boston Lasting Machine Company, a corporation incorporated under the laws of the State of Maine, Lessors, and parties of the first part, and *Selz Schwab & Co. doing business Cor. Superior & Larabe St, Chicago Ill.* Lessee and party of the second part, witnesseth that

Whereas, the Lessors are the owners of the following Letters Patent of the United States, viz: —

No. 246,437, August 30, 1881, to Erastus Woodward.
" 248,544, October 18, 1881, to Erastus Woodward.
" 248,553, October 18, 1881, to John O. Bond.
" 251,755, January 3, 1882, to Erastus Woodward.
" 251,756, January 3, 1882, to Erastus Woodward.
" 254,421, February 28, 1882, to Erastus Woodward.
" 254,621, March 7, 1882, to Joseph E. Crisp.
" 254,756, March 7, 1882, to Erastus Woodward.
" 264,247, September 12, 1882, to Joseph E. Crisp.
" 389,275, September 11, 1888, to Erastus Woodward.

And others.

And Whereas, The Lessees desire to use the hereinafter described machines belonging to the Lessors,

Now, Therefore, the Lessors, in consideration of One Dollar to them paid by the Lessee, the receipt whereof is hereby acknowledged, and in further consideration of the stipulations and conditions hereinafter contained on the part of the Lessees, to be kept and performed, do lease unto the Lessees, the machines designated by their numbers in the following schedule, the said machines embodying the foregoing named patents or some of them: —

Lasting Machine Number Fifty Two (52)
" " " *Thirty Five (35)*

And the Lessors do hereby license the Lessees, and operatives in *Our* employment, to use said patented machines upon the terms and conditions herein set forth; provided, however, and this lease is made and this license granted on the express condition that the Lessees shall faithfully keep and perform all the conditions and stipulations herein contained on *Our* part to be kept and performed, and upon breach of the same or either of them by the Lessees, the Lessors may, at their option, cancel and terminate this lease and license, and upon written notice thereof by the Lessors or either of them, to the Lessees, or to any one in the possession of the machines, this lease and license shall terminate, and possession of said machines shall revest in the Lessors.

The following are agreed to as terms and conditions of the lease and license of said machines: —

First. The Lessees are by this lease and license authorized to use said machines only by *us;* or operatives in *Our* direct employ, and only in *Our Factory at Chicago Ill.*

We shall not add to nor subtract from said machines any mechanism whatever, nor make, nor allow to be made, any change or alteration in the same, without the written consent of the Lessors, and shall at all times, at *Our* own expense, keep and maintain said machines in substantially as good working order as the same are now in, or may hereafter be put in, by the Lessors.

Second. The lessors and their agents may, at all reasonable times, have convenient access to the machines to examine and inspect the same.

Third. The Lessees agree to require each laster to keep, in books to be furnished by this Company, a daily record of all the boots and shoes lasted, in whole or in part, upon or by the aid of any of the machines belonging to this Company, herein leased, or which may be in the possession of the Lessee, and to make oath to the correctness of said record when required so to do; and to permit the representatives of this Company, at all reasonable times, to inspect such daily records.

Fourth. The Lessees agree to pay to the Lessors, as rent or royalty for the machines hereby leased, or any one or more of them, and for the use of the patents hereby licensed, the sum of one cent for each and every pair of boots or shoes lasted by the aid of said machines, or any of them; provided, however, that in all cases when the Lessee shall remit or pay to the Lessors on or before the fifteenth day of each month, one half of a cent for each and every pair of boots or shoes thus lasted during the month preceding the month when such payment is made, and shall also have transmitted within the first five days of each month a true and accurate statement of the number of pairs of boots or shoes thus lasted in the month preceding, and shall have complied with all other conditions and requirements of this lease, then such payment of one half of a cent for each and every pair of boots or shoes shall be accepted in lieu of the full royalty of one cent per pair of boots or shoes thus lasted. And it is expressly understood that this abated royalty will not be accepted, except upon the conditions herein expressed.

Fifth. Said machines cannot be transferred, and this lease and license is not assignable by the Lessees by *their* own act or by operation of law.

Sixth. A transfer or removal of said machines can only be made with the written consent of the Lessors.

Seventh. All the rights and interests which, under this instrument and by reason of the ownership of said machines and patents and patent-rights belong to the Lessors, shall be deemed to belong to and may be enforced by the Lessors, their representatives and assigns, and all the stipulations binding on the Lessees shall be binding on his or their representatives.

Eighth. It is agreed that in case of the termination of this lease by written notice to the Lessees, as herein-before provided, and the taking possession by the Lessors of the machines herein leased, for breach of the conditions herein, the Lessors shall pay the Lessee the price paid to the Lessors for the possession of the machines under this lease, deducting therefrom

1st. Twenty per cent. for deterioration.

2d. Whatever expenses the Lessors may have been to in setting up said machines in the factory of the Lessees, together with the cost of repairing such machines and putting them in good condition.

Ninth. This lease and license shall continue (provided the Lessees comply with the terms and conditions thereof) until the expiration of all the Letters Patent which the Lessees *are* hereby licensed to use or any extensions or renewals of the same, and upon the expiration thereof the Lessees shall deliver to the Lessors said machines in good order, natural wear and tear excepted, and the Lessees shall thereupon, if *they have* kept all the conditions of this lease, have the right to purchase said machines for the sum of One Dollar.

In witness whereof, the parties aforesaid have hereunto put their hands and seals the day and year first above written.

SELZ, SCHWAB & CO.
BOSTON LASTING MACHINE CO.
by G. H. P. Flagg, Treas.

[On back:]
Lessee, Selz, Schwab & Co.
Date April 15 1889
No. of Machines.
52 No. Fifty Two
35 No. Thirty Five
Boston Lasting Mach Co.

PLAINTIFF'S EXHIBIT 149.

[Put in Evidence, page 905.]

Goodyear Department. [Form M. G. A., 1–205.]

Lease and License Number *5053 "J"*.

Full Set.

This Lease and Agreement made at Boston, in the State of Massachusetts, this *fourth* day of *April* 1905, between the United Shoe Machinery Company, a corporation organized under the laws of the State of Maine, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *Selz, Schwab and*

Company of *Chicago* in the State of *Illinois*, hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use the machine or machines known as "Goodyear Department" machinery now or hereafter delivered to the lessee and designated by number or numbers in the following schedule, viz.: —

SCHEDULE OF MACHINES.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Bobbin Winder (Universal), No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Goodyear Bobbin Winder (Rapid), No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.
Goodyear Welt Grooving and Beveling Machine, No.
Goodyear Welt Splitting Machine, No.
Goodyear Channeler, { Turn / Insole / Outsole } No.
Goodyear Universal Welt Beater, No.
Goodyear Welt Beating and Slashing Machine, No.
Goodyear Universal Shank Skiving Machine, No.
Goodyear Universal Inseam Trimming Machine, No.
Goodyear Universal Rounding and Channeling Machine, No. *879*,
Goodyear Channel Opening Machine, No.
Goodyear Automatic Sole Leveling Machine, No.
Goodyear Rotary Sole Laying Machine, No.
Hadaway Stitch Separating Machine, No.
Goodyear Channel Laying Machine, No.
Goodyear Flexible Sole Machine, No.
Goodyear Moulding Machine, No.
Goodyear Turn Shoe Trimming Machine, No.

Goodyear Lip Turning Machine, No.
Goodyear Improved Sole Laying Machine, No.
Goodyear Shank Welt Skiving Machine, No.
Goodyear Forepart Turning Machine, No.
Goodyear Heel Turning Machine, No.

and any duplicate parts, extras, mechanisms and devices, relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor, (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at *Chicago*, in the State of *Illinois*. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the

result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit anyone to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor

such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear, known in the trade as "Goodyear Welts," which are or shall be welted and the soles stitched on welt sewing and stitching machines hereby, or by other instrument, heretofore or hereafter, leased to the lessee by the lessor or its assignor, or in the manufacture of boots, shoes or other footwear, known in the trade as "Goodyear Turns," the soles of which are or shall be attached to their uppers by turn sewing machines hereby, or by other instrument, heretofore or hereafter, leased to the lessee by the lessor or its assignor. The lessee shall use all Goodyear Welt and Turn Shoe Machines, Goodyear Universal Inseam Sewing Machines and Goodyear Outsole Rapid Lockstitch Machines hereby leased or held by him under other lease or license or agreement from the lessor, whether as the result of assignment to the lessor or otherwise, to their full capacity, limited only by the number of welted or turned boots, shoes and other footwear made by or for him.

Five. The lessee shall pay to the lessor immediately after the execution hereof, as a lease premium, the sum of *three hundred* Dollars and the lessee shall also pay to the lessor on the last day of each calendar month as rent or royalty the rental or royalty set forth in the following schedule for each pair of boots, shoes or other foot-

wear or portions thereof manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part by the aid of the leased machinery or any part thereof: —

SCHEDULE OF RENTS AND ROYALTIES FOR GOODYEAR WELTS AND TURNS.

	Sizes From No.	To No.	Welts.	Turns.
Children's	1	10½ inclusive.	3 cents.	1 cent.
Misses'	11	2 "	4 "	1½ cents.
Women's	2½	and over.	6 "	1½ "
Youths'	9	13½ inclusive.	4 "	1½ "
Boys'	1	5 "	6 "	1½ "
Men's	5½	and over.	8 "	1½ "

provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will, in consideration of such prompt payment, grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen the lessee shall immediately by writing notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or anyone in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the

lessor as rent or royalty, without the right to any discount, eight cents per pair for each pair of boots, shoes and other footwear, or portions thereof in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number and kind of boots, shoes, and other footwear or portions thereof in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, or other footwear, or portions thereof, made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep, upon blanks or blank books to be furnished by the lessor, accurate daily records of the number and kind of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and if requested so to do by the lessor, shall verify the same under oath and shall also furnish any further information called for by said blanks or blank-books; and the lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and, in case in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of the fact, on or before the fifth day of the next succeeding calendar month.

And that the following agreements, stipulations and provisions are agreed to: —

Seven. If at any time the lessee shall fail or cease to use exclusively welt sewing and outsole stitching machinery held by him under lease from the lessor, in the manufacture of all "welted" boots, shoes, or other footwear made by or for him, the welts or soles of which are sewed by the aid of machinery, or shall fail or

cease to use exclusively turn sewing machinery held by him under lease from the lessor in the manufacture of all "turn" boots, shoes or other footwear, the soles of which are sewed by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing this lease and license and any other lease or license of "Goodyear Department" machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all the leased machinery and all "Goodyear Department" machinery held by the lessee under lease or license from the lessor or its assignor shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein pro-

vided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery.

Nine. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the

leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

SELZ, SCHWAB & CO.,
Emanuel F. Selz, Third Vice Prest.
UNITED SHOE MACHINERY CO. [SEAL]
L. H. Baker, Secretary

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Ten herein.)

Number.	Date.	Number.	Date.
393,215	November 20, 1888.	579,205	March 23, 1897.
393,216	November 20, 1888.	579,206	March 23, 1897.
412,703	October 8, 1889.	579,207	March 23, 1897.
412,704	October 8, 1889.	579,231	March 23, 1897.

424,966	April 8, 1890.	580,746	April 13, 1897.
429,065	May 27, 1890.	580,773	April 13, 1897.
435,882	September 2, 1890.	582,510	May 11, 1897.
435,883	September 2, 1890.	583,522	June 1, 1897.
436,034	September 9, 1890.	583,968	June 8, 1897.
442,770	December 16, 1890.	584,038	June 8, 1897.
453,999	June 9, 1891.	584,039	June 8, 1897.
456,041	July 14, 1891.	590,597	September 28, 1897.
460,526	September 29, 1891.	590,831	September 28, 1897.
461,793	October 20, 1891.	594,810	November 30, 1897.
463,967	November 24, 1891.	595,764	December 21, 1897.
463,982	November 24, 1891.	598,727	February 8, 1898.
473,870	April 26, 1892.	599,602	February 22, 1898.
474,774	May 10, 1892.	600,883	March 22, 1898.
483,393	September 27, 1892.	607,404	July 12, 1898.
487,214	November 29, 1892.	609,100	August 16, 1898.
488,505	December 20, 1892.	610,314	September 6, 1898.
488,508	December 20, 1892.	610,315	September 6, 1898.
488,591	December 27, 1892.	620,205	February 28, 1899.
488,841	December 27, 1892.	622,460	April 4, 1899.
495,452	April 11, 1893.	625,633	May 23, 1899.
500,060	June 20, 1893.	627,034	June 13, 1899.
505,598	September 26, 1893.	627,035	June 13, 1899.
507,873	October 31, 1893.	630,338	August 30, 1899.
510,127	December 5, 1893.	633,836	September 26, 1899.
511,263	December 19, 1893.	635,015	October 17, 1899.
514,364	February 6, 1894.	635,772	October 31, 1899.
514,741	February 13, 1894.	637,225	November 21, 1899.
518,911	April 24, 1894.	638,010	November 28, 1899.
520,020	May 15, 1894.	640,063	December 26, 1899.
529,900	November 27, 1894.	644,571	March 6, 1900.
533,301	January 29, 1895.	644,654	March 6, 1900.
536,338	March 26, 1895.	651,406	June 12, 1900.
536,352	March 26, 1895.	652,908	July 3, 1900.
537,823	April 23, 1895.	653,227	July 10, 1900.
540,222	May 28, 1895.	653,236	July 10, 1900.

540,223	May 28, 1895.	664,405	December, 25, 1900.
540,438	June 4, 1895.	665,376	January 1, 1901.
540,616	June 4, 1895.	666,823	January 29, 1901.
541,988	July 2, 1895.	667,086	January 29, 1901.
542,813	July 16, 1895.	668,635	February 26, 1901.
543,012	July 23, 1895.	670,195	March 19, 1901.
546,211	September 10, 1895.	675,783	June 4, 1901.
546,851	September 24, 1895.	677,315	June 25, 1901.
546,852	September 24, 1895.	677,550	July 2, 1901.
548,309	October 22, 1895.	682,315	September 10, 1901.
549,125	November 5, 1895.	684,359	October 8, 1901.
549,126	November 5, 1895.	684,537	October 15, 1901.
549,471	November 5, 1895.	684,538	October 15, 1901.
553,948	February 4, 1896.	684,540	October 15, 1901.
553,949	February 4, 1896.	686,011	November 5, 1901.
555,547	March 3, 1896.	686,371	November 12, 1901.
555,548	March 3, 1896.	11,951	(Re.) Nov. 26, 1901.
557,744	April 7, 1896.	687,719	December 3, 1901.
558,379	April 14, 1896.	688,411	December 10, 1901.
558,380	April 14, 1896.	690,422	January 7, 1902.
558,381	April 14, 1896.	691,903	January 28, 1902.
558,382	April 14, 1896.	692,401	February 4, 1902.
558,888	April 21, 1896.	694,367	March 4, 1902.
559,314	April 28, 1896.	699,679	May 13, 1902.
11,538	(Reissue) May 12, 1896.	700,913	May 27, 1902.
560,705	May 26, 1896.	704,457	July 8, 1902.
560,976	May 26, 1896.	704,458	July 8, 1902.
561,386	June 2, 1896.	705,062	July 22, 1902.
563,471	July 7, 1896.	705,063	July 22, 1902.
563,472	July 7, 1896.	706,038	August 5, 1902.
564,379	July 21, 1896.	706,045	August 5, 1902.
564,883	July 28, 1896.	712,669	November 4, 1902.
11,578	(Re.) December 8, 1896.	718,199	January 13, 1903.
573,068	December 15, 1896.	719,584	February 3, 1903.
573,069	December 15, 1896.	732,729	July 7, 1903.
11,587	(Re.) February 2, 1897.	759,273	May 10, 1904.

576,114	February 2, 1897.	763,620	June 28, 1904.
579,146	March 23, 1897.	781,596	January 31, 1905.
563,487	July 7, 1896.	781,628	January 31, 1905.

[On back:]
United Shoe Machinery Company.
Goodyear Department.
(Lease Premium.)
Lease No. 5053 "J"
Selz, Schwab & Co. Lessee.
Date, April 4 1905.
Machines.
U. R. & C. 879.

PLAINTIFF'S EXHIBIT 150.

[Put in Evidence, page 922.]

[NOTE BY CLERK. This exhibit is a list of machinery in the three factories of the Commonwealth Shoe Company dated November 1, 1911, produced by Charles H. Jones, during his examination, but is not here printed as it has been withdrawn to be corrected.]

PLAINTIFF'S EXHIBIT 151.

[Put in Evidence, page 927.]

Boston, Massachusetts, February 15, 1899.

To the Stockholders of the McKay Shoe Machinery Company:

The undersigned, Directors of the McKay Shoe Machinery Company, have entered into an agreement with the United Shoe Machinery Company for the exchange of the stock of the McKay Shoe Machinery Company for shares of the United Shoe Machinery Company, upon the basis of $5.50 of the preferred stock and $5.50 of the common stock of the United Shoe Machinery Company for each share of the McKay Shoe Machinery Company, so that the stockholders of the McKay Company will receive $11 of the stock of the United Company (half common and half preferred) for each share of the capital stock of the McKay Company held by them.

The United Shoe Machinery Company has been organized under the laws of New Jersey with an authorized capital of 1,000,000

shares, one half six per cent preferred stock and one half common stock. The par value of both common and preferred shares is $25, and the common and preferred shares have equal voting power.

The United Company has contracted for the purchase of a majority of the stock or the purchase outright of the following companies: —

McKay Shoe Machinery Company; Consolididated & McKay Lasting Machine Company; Goodyear Shoe Machinery Company; International Goodyear Shoe Machinery Company; Goodyear Shoe Machinery Company of Canada; Eppler Welt Machine Company; International Eppler Welt Machinery Company; Davey Pegging Machine Company.

The entire floating debts of the above companies will be paid, and there will remain in the treasury of the new company, after acquiring the above-named companies, at least $500,000 in cash, and 150,000 shares of the preferred and 150,000 shares of the common stock.

Stockholders of the McKay Shoe Machinery Company who desire to exchange their stock in the McKay Company for stock in the United Company must assign at once to the United Shoe Machinery Company their certificate or certificates of shares in the McKay Shoe Machinery Company, and deliver said certificates to James W. Brooks, 76 Lincoln Street, Boston, Mass., and the proper amount of stock in the United Company will be returned in exchange for the shares thus assigned and delivered.

No certificates and no receipts will be issued for fractions of shares, but fractions of the stock in the United Company will be paid for in cash at par, and checks for such fractions of shares will be sent to shareholders with the new certificates.

The officers of the United Shoe Machinery Company are as follows: —

Sidney W. Winslow, President; John H. Hanan, Vice-President; Wallace F. Robinson, Vice-President; Orlando E. Lewis, Vice-President; George W. Brown, Treasurer and General Manager; Lewis H. Baker, Secretary.

Directors: Louis D. Brandeis, Josiah H. Clark, George E.

Keith, Orlando E. Lewis, Rudolph Matz, Gordon McKay, James J. Storrow, Wallace F. Robinson, George W. Brown, Sidney W. Winslow, William H. Coolidge, William S. Eaton, Edward P. Hurd, Samuel Weil, Frederick G. King, Charles H. Cole, John H. Hanan, William Barbour, Edwin H. Mathewson, Elmer P. Howe, Alfred R. Turner, Jr.

Executive Committee: William Barbour, George W. Brown, Elmer P. Howe, Edward P. Hurd, James J. Storrow, Sidney W. Winslow.

As the United Shoe Machinery Company expects to begin at once the payment of dividends at the rate of 6 per cent per annum on the preferred stock, and 8 per cent per annum on the common stock, it will be seen that the annual return upon the $11 of the new stock received for each share in the McKay Company will be 77 cents, instead of the 60 cents per share which is the present annual dividend paid upon each share of the McKay stock.

The undersigned have agreed to exchange all the stock in the McKay Company which they hold personally, and recommend the other stockholders in the McKay Shoe Machinery Company to also exchange their shares, for shares in the United Shoe Machinery Company, because they believe that not only will shareholders receive an increase in dividends, but that the dividends will be rendered more permanent and more secure in the future.

JAMES W. BROOKS.
LOUIS D. BRANDEIS.
JOSIAH H. CLARK.
GEORGE E. KEITH.
ORLANDO E. LEWIS.
RUDOLPH MATZ.
GORDON MCKAY.
F. F. RAYMOND, 2d.
JAMES J. STORROW.

PLAINTIFF'S EXHIBIT 152.

[Put in Evidence, page 928.]

Boston, Mass., February 8, 1899.

To the Stockholders of Goodyear Shoe Machinery Company:

The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most efficient types of shoe machinery, have been for several years recognized by the officers of the principal shoe-machinery companies. For more than a year your Directors and large shareholders have been in negotiation to accomplish this end.

After a thorough investigation of the financial condition and the business of the shoe-machinery companies named below, the organization of a corporation has been effected under the laws of the State of New Jersey, to be known as

United Shoe Machinery Company.

This corporation has an authorized capital stock of $25,000,000, divided into shares of the par value of $25 each. $12,500,000 of the capital stock will be preferred stock, entitled to cumulative quarterly dividends at the rate of 6 per cent. per annum.

The remaining $12,500,000 of the authorized capital stock will be common stock.

The shares of preferred and common stock will have equal voting power.

Application will be made to list the shares of the United Company on the Boston and New York Stock Exchanges.

Only $8,625,000 of preferred stock and $8,625,000 of common stock will be issued at present.

The United Shoe Machinery Company has already contracted for more than a majority of the capital stock of

Goodyear Shoe Machinery Company,
Consolidated & McKay Lasting Machine Company,
McKay Shoe Machinery Company,
Goodyear Shoe Machinery Company of Canada.
International Goodyear Shoe Machinery Company,
Eppler Welt Machine Company,

1091

International Eppler Welt Machine Company,
Davey Pegging Machine Company,

besides stocks in other shoe-machinery companies, letters patent and other property.

The United Company will also from time to time acquire other shoe-machinery properties, either by direct ownership or by purchase of shares of their stock.

A syndicate has been formed which will take common and preferred stock, in equal amounts, of the United Shoe Machinery Company, at par, sufficient to pay the floating debts of the corporations above mentioned, and leave at least $500,000 in cash as working capital in the new company. The syndicate will assume and pay all the expenses of the organization of the new company.

The United Company will issue for the acquisition of the entire capital stock of the corporations above named, for the payment of the floating debt of these corporations and providing a conservative working capital, and for the payment of expenses of organization and acquirement of said properties:

Cumulative preferred six per cent. stock . .	$8,625,000
Common stock	8,625,000
Total	$17,250,000
It will require to pay quarterly dividends at six per per cent. on the preferred stock . . .	$517,500
To pay eight per cent. dividends on the common stock	690,000
	$1,207,500

The net earnings of the above companies for 1898 were in excess of $1,600,000, and it is confidently believed that from the start the new company will, by reason of economies in administration alone, earn a much larger sum.

Arrangements have been made whereby the

American Loan and Trust Company,
53 State Street, Boston, Mass.

will issue in exchange for One Share of the stock of the Goodyear

Shoe Machinery Company, Eight Tenths (8/10) of a share of the fully-paid and non-assessable Preferred Stock of the United Company, and Eight Tenths (8/10) of a share of the fully-paid and non-assessable Common Stock of the United Company (or for 100 shares of Goodyear stock, 80 shares of preferred and 80 shares of common stock of the United Company), provided that certificates of said Goodyear stock are presented on or before March 1, 1899, to said Trust Company, duly endorsed or assigned to United Shoe Machinery Company, and with proper revenue stamps affixed and canceled.

Scrip will be issued for fractions of shares.

In the event of delay in issuing the engraved certificates of the United Company, temporary certificates will be issued, exchangeable for the engraved certificates when issued.

Fifty cents per share will be paid to those holders of Goodyear shares, who exchange for shares of the United Company, on or before February 18, 1899, to compensate them for the usual dividend of the Goodyear Company, payable February 23, 1899.

The United Company intends to declare regular quarterly dividends at 6 per cent. on its preferred stock and at least at 8 per cent. on its common stock, beginning April 1, 1899.

All the members of the present board of Goodyear Directors will be Directors in the United Company.

The undersigned, being all the Directors of Goodyear Shoe Machinery Company, believe that the United Shoe Machinery Company will show much larger net earnings than the aggregate net earnings of the several companies whose stock is to be acquired, by reason of increase in business, economies in administration and decrease in expenses, and cessation of litigation between the companies, which has been expensive to them and annoying to shoe manufacturers. They believe that these results can be attained without increase of cost to the users of machinery made by the Company and that better attention to the care of machines and assistance to the users can be afforded.

They confidently expect that the shares of the United Company will prove to be a more valuable and better-paying investment

than the stock in the Goodyear Company, and, having exchanged their stock in the Goodyear Company for stock in the United Company on the above-named basis, they recommend to Goodyear stockholders to likewise deposit and exchange their shares.

JOHN H. HANAN.
WILLIAM BARBOUR.
EDWIN H. MATHEWSON.
ELMER P. HOWE.
ALFRED R. TURNER, Jr.

PLAINTIFF'S EXHIBIT 153.

[Put in Evidence, page 929.]

Boston, Mass., February 18, 1899.

To the Stockholders of International Goodyear Shoe Machinery Company:

The organization of a corporation has been effected under the laws of the State of New Jersey, known as

United Shoe Machinery Company.

This corporation has an authorized capital stock of $25,000,000, divided into shares of the par value of $25 each. $12,500,000 of the capital stock will be preferred stock, entitled to cumulative quarterly dividends at the rate of 6 per cent per annum.

The remaining $12,500,000 of the authorized capital stock will be common stock.

The shares of preferred and common stock will have equal voting power.

Application will be made to list the shares of the United Company on the Boston and New York Stock Exchanges.

Only $8,625,000 of preferred stock and $8,625,000 of common stock will be issued at present.

The United Shoe Machinery Company has already contracted for more than a majority of the capital stock of

Goodyear Shoe Machinery Company,
Consolidated & McKay Lasting Machine Company,
McKay Shoe Machinery Company,

Goodyear Shoe Machinery Company of Canada,
International Goodyear Shoe Machinery Company,
Eppler Welt Machine Company,
International Eppler Welt Machine Company,
Davey Pegging Machine Company,

besides stocks in other shoe-machinery companies, letters patent and other property.

The United Company will also from time to time acquire other shoe-machinery properties, either by direct ownership or by purchase of shares of their stock.

A syndicate has taken common and preferred stock, in equal amounts, of the United Shoe Machinery Company, at par, sufficient to pay the floating debts of the corporations above mentioned and leave at least $500,000 in cash as working capital in the new company. The syndicate will assume and pay all the expenses of the organization of the new company.

The United Company will issue for the acquisition of the entire capital stock of the corporations above named, for the payment of the floating debt of these corporations and providing a conservative working capital, and for the payment of expenses of organization and acquirement of said properties:

Cumulative preferred six per cent stock . .	$8,625,000
Common stock	8,625,000
Total	$17,250,000
It will require to pay quarterly dividends at six per cent on the preferred stock . . .	$517,500
To pay eight per cent dividends on the common stock	690,000
	$1,207,500

The net earnings of the above companies for 1898 were in excess of $1,600,000, and it is confidently believed that from the start the new company will, by reason of economies in administration alone, earn a much larger sum.

Arrangements have been made whereby the

American Loan and Trust Company,
53 State Street, Boston, Mass.,

will issue in exchange for One Share of the stock of the International Goodyear Shoe Machinery Company, Eight Dollars and Seventy-five Cents ($8.75), at par, of the fully-paid and non-assessable Preferred Stock of the United Company, and Eight Dollars and Seventy-five Cents ($8.75), at par, of the fully-paid and non-assessable Common Stock of the United Company (or for 100 shares of International Goodyear Stock, 35 shares of preferred and 35 shares of common stock of the United Company), provided the certificates of said International Goodyear stock are presented on or before March 1, 1899, to said Trust Company, duly endorsed or assigned to United Shoe Machinery Company, and with proper revenue stamps affixed and canceled.

Scrip will be issued for fractions of shares.

In the event of delay in issuing the engraved certificates of the United Company, temporary certificates will be issued, exchangeable for the engraved certificates when issued.

The United Company intends to declare regular quarterly dividends at 6 per cent on its preferred stock, and at least at 8 per cent on its common stock, beginning April 1, 1899.

It will be seen that the annual return upon the $17.50 of the stock of the United Company received for each share in the International Goodyear Company will be $1.22, instead of the present dividends of the International Company which amount to $1.00 per year.

The officers of the United Shoe Machinery Company are as follows: —

Sidney W. Winslow, President; John H. Hanan, Vice President; Wallace F. Robinson, Vice President; Orlando E. Lewis, Vice President; George W. Brown, Treasurer and General Manager; Lewis H. Baker, Secretary.

Directors: Louis D. Brandeis, Josiah H. Clark, George E. Keith, Orlando E. Lewis, Rudolph Matz, Gordon McKay, James J. Storrow, Wallace F. Robinson, George W. Brown, Sidney W. Winslow, William H. Coolidge, William S. Eaton, Edward P. Hurd,

Samuel Weil, Frederick G. King, Charles H. Cole, John H. Hanan, William Barbour, Edwin H. Mathewson, Elmer P. Howe, Alfred R. Turner, Jr.

Executive Committee: William Barbour, George W. Brown, Elmer P. Howe, Edward P. Hurd, James J. Storrow, Sidney W. Winslow.

It is believed that the United Shoe Machinery Company will show much larger net earnings than the aggregate net earnings of the several companies whose stock is to be acquired, by reason of increase in business, economies in administration and decrease in expenses, and cessation of litigation between the companies, which has been expensive to them and annoying to shoe manufacturers, and that these results can be attained without increase of cost to the users of machinery made by the Company, and that better attention to the care of machines and assistance to the users can be afforded.

More than three-fourths
Many of the International Stockholders have already agreed to exchange their stock in the International Goodyear Company for stock in the United Company on the above named basis, and they recommend to other International Goodyear stockholders to likewise deposit and exchange their shares.

WILLIAM BARBOUR, President.

PLAINTIFF'S EXHIBIT 154.

[Put in Evidence, page 999.]

Lease premium leases ~~are to~~ should be written so ~~as to~~ that each lease will cover only the individual machine which is the subject of the lease and ~~are~~ should not to apply in any way to other machines or machinery which may be held by the lease.

Lessee ~~are to~~ should have the right to exchange existing leases for the type above referred to.

Lessees ~~shall not~~ should not be obligated in any way to use exclusively machines or machinery made ~~be~~, leased or sold by the ~~U. S.~~ United Shoe Machinery Company.

We recognize fully the great economic advantages possessed by you in the fact that you now enjoy practically a monopoly of the shoe machinery business — but we submit that your patrons should be permitted to share in these advantages, by you so modifying your charges for the service rendered, as to return only a fair amount on your invested capital.

PLAINTIFF'S EXHIBIT 155.

[Put in Evidence, page 1031.]

St. Louis, June 14, 1911.

United Shoe Machinery Co., Boston, Mass.

Attention Mr. S. W. Winslow.

Gentlemen:—In the personal conversation between you and the writer when I was last in Boston, I stated there was nothing more that we could do in Boston, but in a short while we would write you about any conclusion that might be reached.

The shoe manufacturers are contemplating another meeting very soon. To take up the matter intelligently, some additional information is necessary. The result of our meeting in Boston was that you submitted to us —

1st. A memorandum separating the entire system into seven independent units.

2nd. You submitted figures relating to the machines now in use by the Roberts, Johnson & Rand Shoe Co., which figures would apply if the machines were installed under your proposed plan.

Are we to consider that the memorandum (in connection with the figures tabulated under the terms of the memorandum) was a definite proposal from the United Shoe Machinery Company; if so, what change, if any, in present royalty was contemplated?

Kindly advise me regarding the above, and oblige

Yours truly,

F. C. Rand, Sec'y.

PLAINTIFF'S EXHIBIT 156.

[Put in Evidence, page 1031.]

Boston, Mass., June 19, 1911.

Mr. F. C. Rand, Sec'y., Shoe Mfgrs. Alliance, St. Louis, Mo.

Dear Sir: Replying to yours of the 14th inst I note your reference to the fact that when in Boston you stated that in a short while you would write me any conclusion which might have been reached, but that another meeting is contemplated very soon and that you desire further information.

You state that:

"the result of our meeting in Boston was that you submitted to us:
1st: a memorandum separating the entire system into seven independent units."

In order that there may be no misunderstanding, I understand this to mean:

1. Goodyear Machines, including auxiliaries;

2nd. Rex Pulling-Over System, including auxiliary machines.

3d. Lasting Machines

4th Metallic Machines;

5th Heeling Machines;

6th Clicking Machines;

7th General Department Machines.

In your letter you also state:

"2nd: you submitted figures relating to the machines now in use by the Roberts, Johnson & Rand Shoe Company which figures would apply if the machines were installed under your proposed plan."

And, you ask:

"Are we to consider that the memorandum (in connection with the figures tabulated under the terms of the memorandum) was a definite proposal from the United Company; if so, what change, if any, in the present royalty was contemplated?"

In reply to your question I would say that no change in the present royalty was or is contemplated (excepting as explained to you in the substitute form of memorandum in reference to the Rex

Pulling-Over System and as stated therein). This was stated very fully to your Committee while in Boston.

No definite proposal was made to Roberts, Johnson & Rand.

Should, however, the manufacturers who were present at the conference express their approval of the plan which was submitted, I think there should be no difficulty in our making equitable arrangements by which Roberts, Johnson & Rand, and such other manufacturers as may desire to have the Company adopt the plan referred to, may re-arrange their leases in accordance with the basis of the memorandum. Yours sincerely,

S. W. WINSLOW, Pres.

PLAINTIFF'S EXHIBIT 157.

[Put in Evidence, page 1198.]

AGREEMENT BETWEEN DREW, SELBY & COMPANY AND THE UNITED SHOE MACHINERY CO.

In consideration of the sum of two thousand (2,000) dollars, to be placed to the credit of Drew, Selby & Company, on the books of the United Shoe Machinery Company, the two Bay State Turn Sewing Machines, now in the factory of Drew, Selby & Company, become the property of the United Shoe Machinery Company.

If at any time Drew, Selby & Company desire to use the Bay State inseamers or machines for the same purpose other than ours they are to refund to the United Shoe Machinery Company the two thousand (2,000) dollars allowed them in consideration of this agreement, upon payment of which the title in the two Bay State Machines reverts to Drew, Selby & Company.

The rate of royalty to be paid by Drew, Selby & Company on Goodyear Turn Inseamers not to exceed three quarters (3/4) of a cent per pair and the rate of royalty to be paid by Drew, Selby & Company on Hand Method Welt Lasting Machines to be five-eighths (5/8) of a cent per pair (except on misses' and children's, which will be one-half (1/2) of a cent per pair) ~~this reduction in Lasting royalty to depend upon the use by Drew, Selby & Company of the welt system of the United Shoe Machinery Company~~.

If Drew, Selby & Company use the United Shoe Machinery

Company's machines exclusively, the United Shoe Machinery Company agrees to refund to Drew, Selby & Company at the end of every quarter, the amount paid in royalty by Drew, Selby & Company on the Gem Insole Machinery during the preceding quarter of three months.

March 13, 1900.

(25 words erased before execution)

United Shoe Machinery Co.
Geo. W. Brown, Treas.
Drew, Selby & Co.

PLAINTIFF'S EXHIBIT 158.

[Put in Evidence, page 1364.]

United Shoe Machinery Company
President's Office.
Lincoln and Kneeland Sts.
S. W. Winslow, President.

[In lead pencil:] 3-3-04 Duplicate forwarded to Brandeis, Dunbar & Nutter to be served 3-4-04. H. G. D.

Boston, Mass., March 3, 1904.

Messrs. Peter Tessier & Co., Haverhill, Mass.

Gentlemen: — You are hereby notified that in the exercise of our rights in the premises we have elected to terminate all leases and licenses which have heretofore been granted to you covering machinery belonging to us, including herein specifically the following leases and licenses, viz: —

Metallic Department Lease and License, No. 803, dated April 6, 1901;

Metallic Department Lease and License, No. 803A, dated January 4, 1904;

Goodyear Department Lease and License, No. 5486, dated December 18, 1902;

and to terminate all right and privilege to use any of the machines belonging to us which have heretofore been delivered into your possession.

The said leases and licenses and said rights and privileges are accordingly hereby terminated, revoked and annulled; and we hereby forbid you to use or to permit the use by any other person of said machines or any of them hereafter, or to further use any of the patented inventions embodied in said machines and which by said lease and licenses you were authorized to use.

And we do further hereby demand that you forthwith deliver to us at our factory in Boston, Massachusetts, in accordance with your undertaking and agreement, all of such machines, including therein specifically the machines designated by name and number as follows, viz:—

Grip Slugging Machine, No. 777
Universal Slugging Machine, No. 2022
Knife Grinder, No. 5571
Goodyear Welt and Turn Shoe Machine, No. 417
Goodyear Turn Channelers, No. 742–2125
Goodyear Moulding Machine, No. 293

Very truly yours,

UNITED SHOE MACHINERY COMPANY,
S. W. Winslow, President.

PLAINTIFF'S EXHIBIT A FOR IDENTIFICATION.

[Put in Evidence, page 1438.]

Know all Men by these Presents:

That Whereas, as, Charles K. Fox, Edwin A. Webster and Charles R. Towle, of Haverhill, Massachusetts, are now, jointly or severally, the owners of certain interests in inventions relating to machinery and devices for attaching the heels of boots, shoes or other footwear made or acquired by us or one or more of us, and desire to sell to the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, having a place of business at Boston, Massachusetts (hereafter called the "United Company") all present and further inventions heretofore or hereafter within a period of fifteen (15) years from the date hereof made, owned or acquired by us or by any of

us relating to heel attaching machinery and devices; and the said United Company desires to acquire the same and to secure the benefits of the covenants and agreements hereinafter set forth:—

Now, Therefore, this Instrument Witnesseth that in consideration of the sum of ten thousand dollars and other good and valuable considerations to us, the said Fox, Webster and Towle, and each of us, paid by the said United Company, the receipt of which we hereby acknowledge, we, the said Fox, Webster and Towle, and each of us, have sold and do hereby sell, assign, transfer and set over unto the said United Company, its successors and assigns, all inventions, improvements, Letters Patent, and applications for Letters Patent, of the United States and of any and all other countries, and all interests and rights in, to and under inventions, improvements, Letters Patent and applications for Letters Patent now had by us, or which we or any of us have any right by agreement or otherwise to acquire or take over, or which at any time hereafter within a period of fifteen (15) years from the date hereof we or any of us may make, own, acquire or have any right by agreement or otherwise to acquire or take over which consist of or relate to or are useful in machinery or devices for attaching the heels of boots, shoes or other footwear, including herein without prejudice to the generality hereof the following designated applications for Letters Patent of the United States, the inventions covered thereby, and any and all Letters Patent of the United States and of any and all foreign countries which have been or may be granted upon said applications or for the inventions covered thereby, or any of them, together with any and all reissues, renewals or extensions of the said Letters Patent, or any of them, which may be granted, viz:

Applications Serial Nos. 226,960 and 270,297, filed on or about October 3, 1904 and July 18, 1905, respectively, for inventions of Edwin A. Webster and Charles R. Towle in Cementing Attachments for Heel Nailing Machines;

Application Serial No. 226,959, Filed on or about October 3, 1904, for inventions of Edwin A. Webster in Heel Nailing Machines;

Application Serial No. 226,961, Filed on or about October

3, 1904, for inventions of Charles R. Towle in Heel Nailing Machines.

To Have and to Hold all of the foregoing inventions, improvements, Letters Patent, applications, interests and rights to the said United Shoe Machinery Company, its successors and assigns, to its and their own use and behoof absolutely.

And for the same Consideration we, the said Fox, Webster and Towle, and each of us, do hereby covenant and agree to and with the said United Company, its successors and assigns, that we and each of us will forthwith fully and completely disclose to the said United Company, its officers and patent solicitors, all inventions, improvements, Letters Patent, and applications for Letters Patent, of the United States and of any and all other countries, and interests and rights therein, now had by us or any of us, or which we or any of us have any right by agreement or otherwise to acquire or take over relating to heel attaching machinery or devices; and that hereafter at any and all times upon making, owning, acquiring or obtaining any right by agreement or otherwise to acquire or take over any invention, improvement, Letters Patent or application for Letters Patent, interest or right, included within the terms of the assignment hereinbefore contained, we and each of us will promptly disclose the same to the said United Company, its officers and patent solicitors; will repeat all such disclosures when and as often as requested; and at any and all times hereafter will execute and cause to be executed any and all applications, assignments and other instruments, and will perform and cause to be performed any and all acts which in the opinion of counsel for the said United Company, its successors or assigns, may be necessary or desirable to enable the said United Company, its successors, assigns or nominees, to obtain Letters Patent of the United States and of such other countries as the said United Company, its successors or assigns, may desire, covering in such form as shall be approved by counsel for the United Company, its successors or assigns, the inventions and improvements or any of them included within the terms of the foregoing assignment, and to fully and completely vest and confirm in the said United Company, its successors,

assigns or nominees, such Letters Patent and all inventions, improvements, Letters Patent, interests and rights included within the terms of the foregoing assignment, and to enable the said United Company, its successors and assigns, to secure and enjoy the full benefits and advantages thereof — all without further consideration than that already paid but the expense of obtaining such such Letters Patent to be borne by the said United Company, its successors or assigns.

In Witness Whereof we, the said Charles K. Fox, Edwin A. Webster and Charles R. Towle, have hereunto set our respective hands and seals this day of A. D. 1905.

Commonwealth of Massachusetts.

County of ss. 1905.

Then personally appeared the above named Charles K. Fox, and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Notary Public.

Whereas United Shoe Machinery Company, of Paterson, in the State of New Jersey, a corporation duly organized under the laws of said State of New Jersey, and having a place of business at 205 Lincoln Street, in Boston in said Commonwealth of Massachusetts, hereinafter called the United Company, is desirous of acquiring each and all of the said inventions, the said applications, and any and all Letters Patent of the United States and of all other countries which may be granted on the said applications or for the said inventions, or any of them, together with any and all reissues, renewals or extensions of said Letters Patent or any of them which may be granted.

Now, Therefore, in consideration of the sum of one dollar ($1.00) and other and good and valuable considerations to each of them paid by said United Company, the receipt whereof is hereby acknowledged, they, the said Webster, the said Towle and the said Fox, do hereby sell, assign, transfer and set over unto the said United Company the entire right, title and interest in and to each

of said inventions, said applications for United States Letters Patent, and any and all Letters Patent of the United States or of any foreign countries which may be granted for the said inventions or any of them, together with any and all reissues, renewals or extensions of the said Letters Patent or any of them which may be granted.

To Have, to Hold and to Enjoy the said inventions, applications, Letters Patent, reissues, renewals and extensions to said United Company, its successors and assigns, to its and their own use and behoof forever.

And the said Webster, the said Towle and the said Fox do hereby authorize and request the Commissioner of Patents of the United States to issue any United States Letters Patent which may be granted on the said applications or for the said inventions or on any divisional or renewal applications to said United Shoe Machinery Company, its successors and assigns, as assignee of the entire right, title and interest therein and thereto;

And for the same consideration the said Webster, the said Towle and the said Fox do hereby, jointly and severally, covenant and agree for themselves and for their legal representatives with said United Company, its successors and assigns, that they and each of them have granted no license to make, use or sell any of the said inventions, that their right, title and interest as aforesaid in the said inventions has not been encumbered, and that they have good right and title to sell and assign the same as aforesaid and that they will not execute any instrument in conflict herewith;

And the said Webster, the said Towle and the said Fox do hereby, jointly and severally, for themselves and for their legal representatives further covenant and agree with said United Company, its successors and assigns, that upon request they will, and their legal representatives shall, execute divisional, renewal or reissue applications, amended specifications or rightful oaths; communicate to said United Company, its successors and assigns, any facts known to them relating to the said inventions or the history thereof; execute preliminary statements and testify in any interference proceedings; execute and deliver any application

papers, assignments, or other instruments; and do all other acts which in the opinion of counsel for said United Company may be necessary or convenient to secure the grant of Letters Patent to said United Company in the United States and in all other countries where said United Company may desire to patent said inventions or any of them, with specifications and claims in such form as shall be approved by counsel for said United Company, and to vest and confirm in said United Company, its successors and assigns, the full and complete legal and equitable title to all such Letters Patent without further consideration than now paid but at the expense of said United Company, its successors and assigns.

In Witness Whereof the said Webster, the said Towle and the said Fox have hereunto set their respective hands and seals this day of August, 1905.

Commonwealth of Massachusetts.

ss. August 1905.

Then personally appeared the above-named Charles K. Fox, Edwin A. Webster and Charles R. Towle, to me personally known, and known by me to be the persons described in and who executed the foregoing instrument, and severally acknowledged the same to be their free act and deed. Before me,

Notary Public.

PLAINTIFF'S EXHIBIT 159.

[Put in Evidence, page 1589.]

LOOSE NAILER

Sold by Duplessis Co.,
1–E. Bottomly & Co., Haverhill, Mass. 1903
1–Dietrich & Kramer Brooklyn N. Y. 1904
1–J. S. Kelley Fall River Mass. 1904
1–Harley Shoe Co., St. Louis, Mo. 1905
C. E. Hilts St. Louis Mo. 1906
15–Framingham Shoe Co., So. Framingham, Mass. 1907
Sold by Hamel Shoe Machinery Co.,
1–Geo. M. Woodbury, Salem Depot N. H. 1912
1–Criterion Shoe Co., Beverly, Mass. 1912.

1–E. J. Goodwin Shoe Co., Haverhill, Mass. 1913
1–Mould Shoe Co., East Pepperell, Mass. 1912.

SLUGGER

Sold by The Duplessis Co.
1–F. Parshly Haverhill, Mass. 1903
1–Lyons & Moyniham Brockton, Mass. 1903
1–C. K. Fox Wolfboro, N. H. 1903
1–E. Bottomly Haverhill, Mass. 1903
1–Geo B. Leavitt & Co., Haverhill, Mass. 1903
1–H. E. Lewis, Haverhill, Mass. 1903
1–Tessier & Guilmond Haverhill, Mass. 1904
1–Coles & Watson, Brooklyn, N. Y. 1904
1–Harley Shoe Co., St. Louis, Mo. 1905
7–Framingham Shoe Co., So. Framingham, Mass. 1907
1–Witherell & Dobbins Haverhill, Mass. 1907
Sold by C. A. Hamel
1–Buffalo Shoe Co., East Pepperell, Mass. 1910
1–Lawrence I. McNamara, Haverhill, Mass. 1910
Sold by C. A. Hamel Co.,
1–Non-Royalty Shoe Co., 1912
Sold by Hamel Shoe Machinery Co.,
Criterion Shoe Co., Beverly, Mass. 1912
1–H. E. Guptill Haverhill, Mass. 1912

LOOSE TACKER

Sold by Duplessis Co.,
6–Framingham Shoe Co., So. Framingham, Mass. 1907

LEVELLER

Sold by Duplessis Co.,
1–Hoyt & Rowe Co., Lynn, Mass. 1904
4–Framingham Shoe Co., So. Framingham, Mass. 1907

SOLE LAYER

Sold by Duplessis Co.,
12–Framingham Shoe Co., So. Framingham, Mass. 1907
Sold by Hamel Shoe Machinery Co.,
1–Criterion Shoe Co., Beverly, Mass. 1913.

STITCHER

Sold by Duplessis Co.,
39–Framingham Shoe Co., So. Framingham, Mass.
1–W. W. Spalding Haverhill, Mass.
Sold by C. A. Hamel
1–Geo. M. Woodbury.

TURN STITCHER

Sold By Duplessis Co.,
1–C. K. Fox
2–F. J. Tompsom
1–E. Bottomly
1–Emery Marshall
2–Ira Webster
1–Deitrich & Kramer
1–Coles & Watson
3–Wm Heiber
2–S. Rollins G. S.
3–H. E. Guptill
2–W. W. Spalding
2–H. E. Lewis
1–A. L. Cronk
2–Witherell & Dobbins
1–F. W. Woodman
3–S. B. McNamara
1–Rollins Bros.
1–Worcester Slipper
1–J. S. Cushman
40–Framingham Shoe Co.,
Sold by C. A. Hamel
3–H. E. Guptill
2–S. B. McNamara & Co.,
1–Goe. M. Woodbury
Sold by Hamel Shoe Machinery Co.,
2–H. E. Guptill
4–F. E. Leavitt & Co.
1–A. D. Fisher

1–Taylor Shoe Co.,
1–F. E. Bragdon

	United States	Abroad
55 Loose Nailer	24	31
35 Slugger	22	13
6 Loose Tacker	6	
60 Leveller	5	55
7 Heel Compressor		7
19 Sole Layer	13	6
61 Rapid Stitcher	41	20
148 Turn	86	62
19 Rough Rounder		19
90 Insole Channeller	70	20
14 Outsole Channeller		14
68 Moulder	35	43

PLAINTIFF'S EXHIBIT 160.

[Put in Evidence, page 1668.]

SHOE MANUFACTURERS WHO WERE CUSTOMERS OF THE STANDARD SHOE MACHINERY CO. USING THE VARIOUS MACHINES INCLUDED IN THE HEELING, SEWING AND LASTING SYSTEMS OF THE STANDARD COMPANY.

B. F. Spinney & Co. and Spinney & Smith;
*T Drew, Selby & Co.
*W Thos. G. Plant Co. (mnfrs. "Queen Quality" Shoe), Boston;
" A. E. Little & Co. (mnfrs. "Sorosis" Shoe), Lynn;
T E. P. Reed & Co., Rochester;
" W. W. Spaulding & Co., Haverhill;
C Hamilton-Brown Shoe Co., St. Louis;
T Joseph Caunt & Co., Lynn;
" A. & A. D. Fisher, Lynn;
" J. A. Cook, Lynn;
" H. McDonald, Rochester;
" Chesley & Rugg, Haverhill;
" W. S. Chase & Sons, Haverhill;
W F. M. Shaw, So. Peabody;

W J. H. Winchell & Co., Haverhill;
" Kellam, Tilton & Co., Lynn;
W Brophy Bros. Shoe Co., Lynn;
" C. B. Lancaster Shoe Co., Keene, N. H.;
E. P. Dodge Mfg. Co., Newburyport;
G. W. Herrick & Co., Lynn;
F. W. Lord & Co., So. Peabody;
A. E. Smith & Co., Lynn;
Kimball Bros. Shoe Co., Manchester, N. H.;
Woodbury Bros., Beverly;
B. E. Cole & Co., Boston;
W John Pilling Shoe Co., Lowell;
Williams, Clark & Co., Lynn;
W Jos. Dickinson, Lynn;
A. P. Field Shoe Co., Salem;
T & W Thayer, Maguire & Field, Haverhill;
W Luddy & Currier, Lynn;
au T. D. Barry & Co., Brockton;
T Cerat & Bonin, Haverhill;
" Knipe Bros., Newport, N. H.
" W. H. Gould, Haverhill;
" L. S. Johnson & Co., Lynn;
" F. M. Hodgdon, Haverhill;
" John Kelly Co., Rochester;
" P. N. Wadleigh, Haverhill;
C. M. Collins, Danville, N. H.;
T L. K. Morse & Co., Haverhill;
" Geo. M. Coburn & Co., W. Medway, Mass.;
" Geo. L. Webster, Haverhill;
" Julian & Kokenge Co., Cincinnati, O.;
W Cross & Tucker, Lynn;
" David Cummings & Co., So. Berwick Me.;
" A. Garside & Sons, N. Y.;
" Brennan & White, Brooklyn;
" J. & T. Cousins, Brooklyn;
" Wichert & Gardiner, Brooklyn;

W Geo. Baker & Sons, Brooklyn;
" William Lane, Brooklyn;
C. W. Dodge & Co.
W E. G. Lane & Co., So. Berwick, Me.;
" C. W. Varney & Co., Lynn, Mass.;
" Chas. Keighley & Sons, Vineland, N. J.;
" B. F. Richardson & Co., Dubuque, Iowa;
" A. W. Rich Shoe Co., Milwaukee, Wis.;
T H. McDonald
" C. M. Collins

[*W is an abbreviation for Woodward, and T is an abbreviation for Turn.]

PLAINTIFF'S EXHIBIT 161.

[Put in Evidence, page 903.]

Past and Present Users of Machines of the Haverhill Shoe Mchy. Co.

GROUPE 1.

Past users of machines:—

Terms

1. Hilliard & Tabor, Haverhill, Mass.
1 Turn Sewer Installed Dec. 1910 No installation fee
1 Channeler Removed Aug. 1911 Royalty 1/3 per pr.
1 Heeler Installed Nov. 1910 Rental $15. per month
Removed Aug. 1911 Installation $15 per mo.

Used in connection with Turn and Welt machines of the U. S. M. Co.

2. Lynch & Sherman, Lynn, Mass.
1 Turn sewer Installed July 28, 1910
1 Channeler Removed Aug. 23, 1910 Nothing paid.

Used in connection with Turn machines & Clickers of U. S. M. Co.

3. W. S. Chase & Sons, Inc., Haverhill, Mass.
1 Turn sewer Installed June 1910
2 Channelers Removed March 1912 Royalty 1/3c per pair
1 Heeler Installed Jan. 1912
Removed March 1912 Nothing paid

Used in connection with Turn Sewing & Heeling Machines of U. S. M. Co.

4. Carleton & Hunt, Haverhill, Mass.
1 Turn Sewer Installed May 1910 Royalty 1/3c per pr.
1 Channeler Removed March 1912 No installation

Used in connection with Turn Sewers & Heeler of U. S. M. Co.

5. Geo. B. Leavitt & Co., Haverhill, Mass.
1 Turn Sewer Installed May 1911 Royalty 1/3c per pair
1 Channeler Removed July 1911

Used in connection with U. S. M. Co. Turn machines.

6. N. D. Dodge & Sons, Newburyport, Mass. [pr.
2 Turn Sewers Installed March & Sept. 1911 Royalty 1/3c per
2 Channelers Use discontinued Oct. or Nov. 1911
Removed early in 1912.

Used in connection with U. S. M. Co. Turn machines.

7. F. M. Hodgdon, Haverhill, Mass.
1 Turn Sewer Installed May 1910
1 Channeler Removed Sept. 1911 Royalty 1/3c per pair.

Used in connection with Turn machines of U. S. M. Co.

8. G. W. Herrick Shoe Co., Lynn, Mass.
1 Turn Sewer Installed May 1911
1 Channeler Removed June 1911 Nothing paid.
1 Heeler Installed June 1911 $350. installation paid
Removed Sept. 1912 $15 per month rental

Used in connection with Clicking, Turn and Welt machines of U. S. M. Co.

9. C. H. Aborn & Co., Lynn, Mass.
1 Heeler Installed March 1911 $900. paid
Use discontinued July 1912

Used in connection with Welt & Heeling machines of U. S. M. Co.

10. I. J. Webster, Haverhill, Mass.,
1 Heeler Installed Nov. 1910 $900. paid
Use discontinued 1912

GROUPE 2.

Present users of certain designated machines of Haverhill Shoe Machinery Co.

1. Griffen-White Shoe Co., Brooklyn, N. Y.
   2 Turn Sewers Installed May 1911 Royalty 1/3c per pr.
   2 Channelers
   1 Heeler Installed July 1911 Royalty 1/4c per pr.
   Also have Turn Sewers & Heelers of U. S. M. Co.

2. H. B. Goodrich & Co., Haverhill, Mass.
   1 Turn Sewer Installed May 1910 Royalty 1/3c per pr.
   1 Channeler
   Also have Turn & Welt machines of U. S. M. Co.

3. Chesley & Rugg, Haverhill, Mass. [pd
   4 Turn Sewers Installed July & Dec. 1911 Installation $250
   2 Channelers Royalty 1/4c per pair
   2 Heelers Installed Oct. & Dec. 1910 (Rental $15 per mo.
   1 Breaster sold. (Royalty $15 " "
   Also have Universal Channeler & Goodyear Turn machines and Heeling machines of U. S. M. Co.

4. A. W. Greeley, Haverhill, Mass.
   1 Turn sewer Installed Aug. 1910 $250 Installation
   1 Channeler 1/4c royalty
   Also has Universal Channeler & Goodyear Turn Sewing and Heeling machines of U. S. M. Co.

5. E. E. Sullivan & Co., Haverhill, Mass.
   1 Turn Sewer Installed Aug. 1912 Royalty 1/3c per pair
   1 channeler
   Also have turn sewers of U. S. M. Co.

6. Geo. A. Learned & Co., Newburyport, Mass.
   3 Turn Sewers Installed Jan., Apr. 1911 and Jan. 1913 Sold
   2 channelers Sold
   1 heeler Sold
   Also have turned sewers and heelers of U. S. M. Co.

7. Joseph A. Schreier, Rochester, N. Y.
   3 Turn sewers Installed Aug. & Oct. 1912 sold
   1 channeler sold
   Also has turn sewers of U. S. M. Co.
8. J. L. Walker & Co., Lynn, Mass.
   1 Turn sewer Installed May 1913 on trial
   1 channeler " rental
   Also have turn sewers of U. S. M. Co.
9. Knights & Allen, Haverhill, Mass.
   1 turn sewer Installed Apr. 1913 Royalty 1/3c per pr.
   1 channeler
   Also have turn sewers & heeling machines of U. S. M. Co.

GROUPE 3.

Present users of Haverhill Shoe Machinery Co.'s principal machines who use no principal machines of United Shoe Machinery Co., except instances especially mentioned.

1. C. K. Fox, Inc., Haverhill, Mass., Northwood, N. H. Wolfboro, N. H.
   13 Turn sewers Owned
   7 Channelers "
   Use slugger and loose nailer of U. S. M. Co. in independent lease
2. Abbott & West, Haverhill, Mass.,
   1 Sewer Installed March 1911. Royalty 1/3c per pair
   1 channeler
3. Elmer E. Battis, Haverhill, Mass.
   1 Sewer Installed Dec. 1910 Royalty 1/3c per pair
   1 Channeler
4. E. J. Goodwin & Co., Haverhill, Mass.
   1 Sewer Installed Jan. 1912. Royalty 1/3c per pair
   1 Channeler
5. Rollins & Colcord, Haverhill, Mass.
   2 Sewers Installed October 1911. Installation fee $250 and
   1 Channeler [royalty 1/4c per pair

6. Thos. H. Finney, Haverhill, Mass.
   1 Sewer Installed May 1912 Royalty 1/3c per pair
   1 Channeler
7. Frank Currier, Newton, N. H.
   1 Sewer Installed Jan. 1913 Royalty 1/3c per pair
   1 Channeler
8. M. D. Malbon, Haverhill, Mass.
   1 Sewer Installed Feb. 1913 Royalty 1/3c per pair
   1 Channeler
9. Wakefield Slipper Co., Sanbornville, N. H.
   1 Sewer Inst. Sept. 1912 Royalty 1/3c per pair
   1 Channeler
10. H. E. Lewis, Haverhill, Mass.
   2 Sewers Installed July 1910. Installation and 1/4c per pair
   2 channelers
   1 Heeler Installed March 1911 Rental and installation $30 mo.
11. Criterion Shoe Co., Beverly, Mass.
   1 Turn sewer Installed Apr. 1911 Sold
   1 Channeler " " "
   1 Breaster " " "
   A line of Welt machinery independent of U. S. M. Co. including Welter from Haverhill Co.
12. Wallace & Foster, Gloversville, N. Y.
   1 Sewer Installed Jan. 1911 Sold
   1 Channeler "
13. Chas. L. Clifford, Newton, N. H.
   2 Turn Sewers Installed Aug. 1912
   2 Channelers Use discontinued Oct. 1912. On royalty 1/3c
   Use resumed Dec. 1912 [per pr.
   Former lessee of turn sewers of U. S. M. Co. Machines of U. S. M. Co. removed in spring of 1912.
14. R. H. Long Mchy Co., Framingham, Mass.
   1 Welter Installed 1912 Sold
15. S. B. McNamara & Co., Haverhill, Mass.
   3 sewers Installed Jan. 1913 Sold
   2 Channelers "
   Use heelers of U. S. M. Co.

16. Tessier & Bowdoin, Haverhill, Mass.
    3 Sewers Installed Jan. 1912 Rental $2 per week
    Royalty 1/6c per pr. $250
    2 Channelers Inst. each sewer
    1 Heeler Installed Feb. 1911 $30. per month inst. & rental
17. H. E. Guptill, Haverhill, Mass.
    1 Sewer Installed Feb. 1911 Rental
    4 Channelers Royalty 1/6c per pr.
    1 Heeler " July 1912. Rental $15. Inst. $350.
18. Quaker Shoe Co., Milford, N. H.
    1 sewer Inst. Dec. 1912 Rental
    1 Channeler
    Use McKay machines of U. S. M. Co.
19. Martin Slipper Co., Haverhill, Mass.
    2 Turn Sewers Installed Aug. 1911 Sold
    2 Channelers On royalty
    1 Heeler Installed 1912 Royalty & Installation

GROUPE 4.

Users of auxiliary machines furnished by Haverhill Shoe Mchy Co. in connection with principal machines of United Shoe Mchy Co.

1. Dugan & Hudson, Rochester, N. Y.
    1 Channeler Royalty 1/6c per pair
2. Val Duttenhofer Sons, Cincinnati, Ohio.
    2 Channelers Royalty 1/6c per pr.
    1 heel breaster Sold
3. Utz & Dunn, Rochester, N. Y.
    1 Channeler Royalty 1/6c per pr.
4. Smaltz-Goodwin Co., Philadelphia, Pa.
    1 Channeler Royalty 1/6c per pr.
5. Rice & Hutchins, Inc. So. Braintree, Mass.
    1 Breaster Sold
    1 Channeler Royalty 1/6c per pr.
6. Barke-Gibbon Co., Philadelphia, Pa.
    1 Channeler Royalty 1/6c per pr.
7. Julian & Kokenge Co., Cincinnati, Ohio.
    1 Channeler Royalty 1/6c per pr.

8. Wolf Bros. Cincinnati, Ohio.
   1 Channeler Royalty 1/6c per pr.
9. J. Strootman Shoe Co. Buffalo, N. Y.
   1 Channeler Royalty 1/6c per pr.
10. Ebberts Shoe Co. Buffalo, N. Y.
   1 Channeler Royalty 1/6c per pair
11. John Kelly, Inc. Rochester, N. Y.
   1 Channeler Royalty 1/6c per pr.
12. Richard White Co., Philadelphia, Pa.
   1 Channeler Royalty 1/6c per pr.
13. A. D. Fisher, Lynn, Mass.
   1 Channeler Royalty 1/6c per pair
14. Thos. G. Plant Co., Boston, Mass.
   1 Channeler Owned
15. Selby Shoe Co. Portsmouth, Ohio.
   1 Heel breaster sold
16. Curtis & Jones, Reading, Pa.
   4 breasters sold
17. Bradley & Metcalf Milwaukee, Wis.
   1 breaster sold
18. Selz-Schwab & Co., Chicago, Ill.
   1 Breaster sold
19. Strong & Co., Milwaukee, Wis.
   1 Breaster sold.
20. I. J. Webster, Haverhill, Mass.
   1 breaster sold

GROUPE 5.

Users of principal machines of Haverhill Shoe Mchy Co., in connection with principal machines of U. S. M. Co.

1. Witherell & Dobbins, Haverhill, Mass.
   3 heelers, 1st machine installed Nov. 1910, others installed in 1912 rental & installation $30 per month each.
   Used in connection with turn and welt machines of U. S. M. Co.
2. J. J. Grover Sons Co., Lynn, Mass.
   1 heeler Installed Dec. 1910 $900 paid
   Used in connection with turn machines of U. S. M. Co.

3. Wingate Shoe Co., Haverhill, Mass.
1 Heeler Recently installed on trial

PLAINTIFF'S EXHIBIT 162.

[Put in Evidence, page 1756.]

[MEMO. By stipulation between counsel for the respective parties Plaintiff's Exhibit 162 — Record in the case of the United Shoe Machinery Company *v.* Thomas G. Plant Company *et al.* in the Supreme Judicial Court of Massachusetts — is not here printed; it is to be considered as a physical exhibit.]

PLAINTIFF'S EXHIBIT 163.

[Put in Evidence, page 1739.]

LIST OF MACHINES OUT MARCH 1, 1911, ON LEASES EXECUTED BEFORE AND SINCE FEBRUARY 7, 1899.

Goodyear Department:		
Turn Sewing Machines	584	
Welt Sewing Machines	1,943	
Stitching Machines	2,676	
Auxiliary Machines	15,540	
		20,743
Metallic Department:		
Standard Screw Machines	440	
Slugging Machines	1,878	
Loose Nailing Machines	1,835	
Tacking Machines	3,065	
Miscellaneous Metallic Dept. Machines	369	
Auxiliary Machines	1,701	
		9,288
Heeling Department:		
Heel Attaching Machines	2,019	
Auxiliary Machines	3,160	
		5,179
Lasting Department:		
Hand Method Lasting Machines	3,854	
Chase Lasting Machines	780	
McKay-Copeland Lasting Machines	300	
Ideal & Copeland Lasting Machines	482	

No. 5 Lasting Machines	2,080	
Tacking Machines	423	
Auxiliary Machines and Appliances	4,856	
		12,775
Pulling Over Department:		
Pulling Over Machines	1,635	
Auxiliary Machines	1,992	
		3,627
Other Machines, i.e.,		
Davey Pegging Machines	146	
Ensign Lacing Machines	633	
McKay Sewing Machines	898	
Ideal Clicking Machines	3,655	
Various Miscellaneous Machines	238	
		5,570
General Department:		28,622
Eyelet Department:		
Power Machines	2,435	
Miscellaneous Foot Power Machines	2,037	4,472
		90,276

PLAINTIFF'S EXHIBIT 164.

[Put in Evidence, page 1760.]

United Shoe Machinery Corporation

REPORT OF THE PRESIDENT TO THE ANNUAL MEETING OF STOCKHOLDERS 1908

United Shoe Machinery Corporation

Directors

Frank L. Babbott	Rudolph Matz
William Barbour	Robert Treat Paine, 2d
George W. Brown	Charles G. Rice
Edmund LeB. Gardner	Wallace F. Robinson
John H. Hanan	James J. Storrow
Elmer P. Howe	Alfred R. Turner
Edward P. Hurd	Sidney W. Winslow
Joseph C. Kilham	Samuel Weil

George E. Keith Frank Wood
William Woodward

Officers

Sidney W. Winslow . . .	President
William Barbour . . .	Vice President
Wallace F. Robinson . . .	" "
George W. Brown . . .	Treasurer
Edward P. Hurd . . .	Asst. Treasurer
Louis H. Baker . . .	Secretary

Stock Transfer Agents

American Trust Co., Boston
Paterson Safe Deposit & Trust Co., Paterson, N. J.

Registrar of Stock

City Trust Co., Boston

Report of the President to the Annual Meeting, 1908

To the Stockholders: —

Balance sheets showing the assets and liabilities of the Corporation and of the United Shoe Machinery Company are herewith submitted.

The earnings of the United Shoe Machinery Company and its subsidiary companies, from which the income of the Corporation is derived, have been satisfactory in view of the general depression in business. The volume of business, taking the entire business into account, is greater than for the last fiscal year.

The number of machines out on lease in this country, March 1, 1908, was 65,509, an increase for the year of 7,732.

The addition to the factory of the United Shoe Machinery Company, at Beverly, which was reported last year, is now occupied, and substantially all of the machinery manufacturing of the company in the United States is carried on at this plant. The foreign companies have largely increased their manufacturing capacity, and this fact, together with the lessened demand for machinery in this country, owing to the depression in the boot and shoe trade, has somewhat relieved the pressure of work at Beverly factory.

In carrying out the policy established at the date of its organization, and ever since continued, of supplying to its customers the most efficient machines obtainable without regard to the loss occasioned to it by the displacement of its existing machines, the United Shoe Machinery Company has taken advantage of the opportunity afforded by the conditions of its manufacturing business at Beverly to hasten the production of new machines, some of which will perform steps in the manufacture of boots and shoes heretofore carried out by hand, and others of which, by reason of greater rapidity and perfection of operation, will prove to be of great benefit to the trade.

By order of the Board of Directors.

S. W. WINSLOW, President.

Paterson, N. J., June 27, 1908.

United Shoe Machinery Company.

Financial Condition March 1, 1908

Assets			
Cash and Receivables		$6,477,487.41	
Stock Finished and in Process		5,993,687.25	
Real Estate		1,865,619.49	
Machinery		2,438,005.51	
Patent Rights		400,000.00	
Stocks and Bonds other Corporations and Leased Machinery		17,781,409.35	
Miscellaneous		6,573.86	
			$34,962,782.87
Liabilities			
Accounts Payable		$314,568.31	
Reserves		253,851.85	
Capital Stock:			
Common	$10,878,934.50		
Preferred	9,971,584.50	$20,850,519.00	
			$21,418,939.16
Surplus			$13,543,843.71
Surplus Account			
Balance March 1, 1907		$11,126,349.09	

Earnings for the year ending Feb. 29, 1908		4,664,616.27	
		$15,790,965.36	
Paid Dividends Cash		2,247,121.65	
Balance March 1, 1908			$13,543,843.71

United Shoe Machinery Corporation.

Financial Condition March 1, 1908

Assets			
Cash		$1,244,524.90	
* Stock in other Corporations		31,325,970.50	
			$32,570,495.40
Liabilities			
Accounts Payable		$6,402.74	
Capital Stock:			
Common	$22,387,643.75		
Preferred	9,411,350.00	$31,798,993.75	
			$31,805,396.49
Surplus			$765,098.91
Surplus Account			
Balance March 1, 1907		$5,195,730.35	
Earnings for the year ending Feb. 29, 1908		2,206,282.68	
		$7,402,013.03	
Paid Dividends			
In Stock July 15, 1907,	$4,464,468.75		
In Cash, April, July, October, 1907; January, 1908	2,172,445.37		
		$6,636,914.12	
Balance March 1, 1908			$765,098.91

*This amount represents the holdings of the Corporation in the Capital Stock of the United Shoe Machinery Company, which is carried on the books of the Corporation at the rate of $25 per share of Preferred Stock, and $50.45 per share of Common Stock.

PLAINTIFF'S EXHIBIT 165.

[Put in Evidence, page 1761.]

United Shoe Machinery Corporation

REPORT OF THE PRESIDENT TO THE ANNUAL MEETING OF STOCKHOLDERS 1909

United Shoe Machinery Corporation

Directors

Frank L. Babbott	Rudolph Matz
William Barbour	Robert Treat Paine, 2d
George W. Brown	Charles G. Rice
Edmund LeB. Gardner	Wallace F. Robinson
John H. Hanan	James J. Storrow
Elmer P. Howe	Alfred R. Turner
Edward P. Hurd	Sidney W. Winslow
Joseph C. Kilham	Samuel Weil
George E. Keith	Frank Wood

William Woodward

Officers

Sidney W. Winslow . . .	President
William Barbour . . .	Vice President
Wallace F. Robinson . .	Vice President
George W. Brown . . .	Treasurer
Edward P. Hurd . . .	Asst. Treasurer
Edwin P. Brown . . .	Asst. Treasurer
Louis H. Baker . . .	Secretary

Stock Transfer Agents

American Trust Co., Boston

Paterson Safe Deposit & Trust Co., Paterson, N. J.

Registrar of Stock

City Trust Co., Boston

Report of the President to the Annual Meeting, 1909.

To the Stockholders: —

Balance sheets are herewith submitted showing the assets and

liabilities of the Corporation and of the United Shoe Machinery Company on March 1, 1909.

The past fiscal year opened in the midst of general business depression, but the business of the company has shown a gradual improvement during the year, and owing to the introduction of new machines and the general extension of the business by the operating company, the total volume of business for the year was scarcely more than 1 per cent less than for the year previous, and the net earnings of the company exceeded those of the previous year.

The number of machines out on lease in this country March 1, 1909, was 70,353, an increase for the year of 4,844, or about 7½ per cent.

The business of the foreign companies in which your company is interested has been well maintained, and shows a satisfactory increase over the business of the previous year.

During the year several new machines have been brought out, and others are in process of construction. In this connection it is worthy of mention that the McKay Sewing Machine, one of the earliest successful machines used in the manufacture of boots and shoes, has been completely reconstructed by us and put into a form so different from the original, and even from the latest previous pattern, as to make it virtually a new machine.

The Ideal Clicking Machine for cutting uppers was introduced at the beginning of the past year and has already revolutionized the art of cutting shoes, an operation which was previously performed only by hand. The demand for this machine is probably unprecedented in the history of shoe machinery, and has taxed the capacity of this department of our manufacturing plant to the utmost. During the year covered by this report, more than 1,200 of these machines were installed in the factories of our lessees, and the demand is steadily increasing.

The machine is placed with our lessees without initial charge, and its use effects a saving of from one to four cents per pair in the cost of manufacture of shoes.

The factory at Beverly is running on full time, with upwards of 3,000 hands.

By order of the Board of Directors.

S. W. WINSLOW, President.

Paterson, N. J., June 12, 1909.

United Shoe Machinery Company

Financial Condition, March 1, 1909

Assets.			
Cash and Receivables		$8,391,713.36	
Stock Finished and in Process		6,175,674.96	
Real Estate		1,934,913.31	
Machinery		2,247,066.52	
Patent Rights		400,000.00	
Stocks and Bonds, other Corporations, and Leased Machinery		18,224,083.35	
Miscellaneous		15,071.73	
			$37,388,523.23
Liabilities			
Accounts Payable		$347,019.78	
Reserves		276,095.68	
Capital Stock:			
Common	$10,878,934.50		
Preferred	9,971,584.50		
		$20,850,529.00	
			$21,473,634.46
			$15,914,888.77
Surplus Account			
Balance March 1, 1908		$13,543,843.71	
Earnings for Year		4,796,971.66	
		$18,340,815.37	
Paid Dividends		$2,425,926.60	
Balance March 1, 1909			$15,914,888.77

United Shoe Machinery Corporation

Financial Condition March 1, 1909

Assets		
Cash	$1,305,352.44	
* Stock in other Corporations	36,181,884.10	
		$37,487,236.54

Liabilities			
Accounts Payable . . .		$366.61	
Capital Stock:			
Common	$22,388,318.75		
Preferred	9,433,575.00		
		$31,821,893.75	
			$31,822,260.36
			$5,664,976.18
Surplus Account			
Balance March 1, 1908 .		$765,098.91	
Earnings for year ending February 27, 1909, and increase in value of Stock of other Corporations . .		7,255,683.39	
		$8,020,782.30	
Paid Dividends			
In April, July, October, 1908, January, 1909 . .		$2,355,806.12	
Balance March 1, 1909 .			$5,664,976.18

* This amount represents the holdings of the Corporation in the Capital Stock of the United Shoe Machinery Company, which is carried on the books of the Corporation at the rate of $25.00 per share of Preferred Stock, and $61.57 per share of Common Stock.

PLAINTIFF'S EXHIBIT 166.

[Put in Evidence, page 1762.]

United Shoe Machinery Corporation

REPORT OF THE PRESIDENT TO THE ANNUAL MEETING OF STOCKHOLDERS 1910

United Shoe Machinery Corporation

Directors

Frank L. Babbott	Rudolph Matz
William Barbour	Robert Treat Paine, 2d
George W. Brown	Charles G. Rice
Louis A. Coolidge	Wallace F. Robinson

Edmund LeB. Gardner	Alfred R. Turner
John H. Hanan	Sidney W. Winslow
Elmer P. Howe	Samuel Weil
Edward P. Hurd	Charles H. Willson
Joseph C. Kilham	Frank Wood
George E. Keith	William Woodward

Officers

Sidney W. Winslow	President
William Barbour	Vice President
Wallace F. Robinson	Vice President
George W. Brown	Vice President
Edward P. Hurd	Vice President and Asst. Treasurer
Louis A. Coolidge	Treasurer
Edwin P. Brown	Asst. Treasurer
Louis H. Baker	Secretary

Stock Transfer Agents

American Trust Co., Boston

Paterson Safe Deposit & Trust Co., Paterson, N. J.

Registrar of Stock

Old Colony Trust Co., Boston

Report of the President to the Annual Meeting, 1910.

To the stockholders of the United Shoe Machinery Corporation:—

Balance sheets are herewith submitted, showing the assets and liabilities of the Corporation and of the United Shoe Machinery Company, on March 1, 1910.

The past fiscal year has been marked by an uninterrupted improvement in the business of the Company. Each succeeding month has shown an increase over the corresponding month of any preceding year in the amounts received from royalties, rentals and sales. The volume of business for the year was 14 per cent greater than that for the year preceding, and there was likewise a substantial increase in net earnings.

The number of machines out on lease in the United States on March 1, 1910, was 80,734, an increase for the year of 10,381, or 14⅞ per cent.

The business of the foreign companies, in which the Company is interested, shows a satisfactory increase over the business of the previous year.

The factory at Beverly is running on full time, and since May 1, 1910, has been obliged to run night shifts. More hands are now employed at the factory than at any previous time in the history of the Company. The demand upon the capacity of the factory has been so great that contracts have been made for the immediate construction of an addition containing 91,200 square feet of floor space.

The Company has continued its liberal expenditures for the improvement of existing machines and the development and purchase of new inventions. In the Goodyear Department important new machines are at present undergoing practical tests; the result of which, it is already evident, will justify the Company in offering them to the trade. These machines will greatly facilitate the operations upon Goodyear Welt Shoes, and will enable the manufacturers using them to keep fully abreast of the demands of the trade. The Ideal Clicking Machine continues to fulfill the expectations aroused by its introduction. During the year over 1,600 machines were installed in factories, more than doubling the number in use by the Company's lessees at the beginning of the year.

In view of the excellent condition of the Company and in conformity with its established policy, to furnish a better service and equipment year by year at less expense to its lessees, it has addressed to all lessees a letter announcing the Company's decision to put into operation a plan long in contemplation which, it believes, will result in the further expansion of its own business through the increased business and prosperity of its customers.

A copy of the letter announcing the adoption of the plan accompanies this report.

By order of the Board of Directors.

S. W. WINSLOW, President.

Paterson, New Jersey, June 11, 1910.

United Shoe Machinery Company

Financial Condition March 1, 1910

Assets			
Cash and Receivables		$10,438,771.03	
Stock Finished and in Process		6,126,065.71	
Real Estate		1,901,666.95	
Machinery		1,812,132.26	
Patent Rights		400,000.00	
Stocks and Bonds, other Corporations, and Leased Machinery		19,408,230.44	
Miscellaneous		5,160.09	
			$40,092,026.48
Liabilities			
Accounts Payable		$402,614.85	
Reserves		296,870.48	
Capital Stock:			
Common	$10,878,934.50		
Preferred	9,971,584.50		
		$20,850,519.00	
			$21,550,004.33
			$18,542,022.15
Surplus Account			
Balance March 1, 1909		$15,914,888.77	
Earnings for Year		5,640,521.85	
		$21,555,410.62	
Paid Dividends		$3,013,388.47	
Balance March 1, 1910			$18,542,022.15

United Shoe Machinery Corporation

Financial Condition March 1, 1910

Assets		
Cash	$1,379,280.46	
*Stock in other Corporations	38,871,112.40	
		$40,250,392.86

Liabilities			
Capital Stock:			
Common . . .		$24,635,588.75	
Preferred . . .		9,490,050.00	
			$34,125,638.75
			$6,124,754.11
Surplus Account			
Balance March 1, 1909 .		$5,664,976.18	
Earnings for year ending February 28, 1910, and increase in value of stock of other Corporations . . .		5,640,467.56	
		$11,305,443.74	
Paid Dividends			
In Cash, April, July, October, 1909, and January 1910	$2,941,444.63		
In Stock	2,239,245.00		
		$5,180,689.63	
			$6,124,754.11

*This amount represents the holdings of the Corporation in the Capital Stock of the United Shoe Machinery Company, which is carried on the books of the Corporation at the rate of $25.00 per share of Preferred Stock, and $67.60 per share of the Common Stock.

PLAINTIFF'S EXHIBIT 167.

[Put in Evidence, page 1762.]

United Shoe Machinery Corporation

REPORT OF THE PRESIDENT TO THE ANNUAL MEETING OF STOCKHOLDERS 1911

United Shoe Machinery Corporation

Directors

Frank L. Babbott	Joseph C. Kilham
William Barbour	George E. Keith
George W. Brown	Rudolph Matz

John H. Connor	Charles G. Rice
Louis A. Coolidge	Wallace F. Robinson
Henry B. Endicott	Alfred R. Turner
Edmund LeB. Gardner	Sidney W. Winslow
John H. Hanan	Samuel Weil
Elmer P. Howe	Frank Wood
Edward P. Hurd	William Woodward

Officers

Sidney W. Winslow	President
William Barbour	Vice-President
Wallace F. Robinson	Vice-President
George W. Brown	Vice-President
Edward P. Hurd	Vice-President and Asst. Treasurer
John H. Connor	Vice-President
Louis A. Coolidge	Treasurer
Edwin P. Brown	Asst. Treasurer
Louis H. Baker	Secretary

Stock Transfer Agents

American Trust Co., Boston
Paterson Safe Deposit & Trust Co., Paterson, N. J.

Registrar of Stock

Old Colony Trust Co., Boston

Report of the President to the Annual Meeting, 1911

To the Stockholders of the United Shoe Machinery Corporation: —

Balance sheets are herewith submitted, showing the assets and liabilities of the Corporation, and of the United Shoe Machinery Company on March 1, 1911.

The past fiscal year has shown a continued improvement in the business of the Company and of the foreign companies in which the Company is interested. The factory at Beverly has turned out a greater number of machines than during any other period of equal length in the Company's history. The number of machines on lease in the United States on March 1, 1911, was 90,276, an increase for the year of 11.82 per cent. During the year the Com-

pany brought in from shoe factories over four thousand of its machines which were broken up and thrown on the scrap heap in order that they might be replaced with machines embodying the latest improvements — an expense which the Company assumes under its present system of doing business, but which would otherwise have to be borne by the shoe manufacturers.

Since our last annual meeting contracts have been made for the construction of further additions to the factory. The Beverly plant with the additions constructed during the year and those now under contract will have a floor space of twenty-one acres as against seventeen acres a year ago. About five thousand hands are now employed at the factory, and the average weekly pay-roll is over $75,000.

The Company has continued its liberal expenditures for the improvement of existing machines and the development and purchase of new inventions so that it is now in a better position than ever before to furnish shoe manufacturers with the very latest and most improved machines. In pursuance of this policy it has acquired inventions and patents formerly controlled by Thomas G. Plant, some of which were found on examination to cover improvements which might with advantage to the shoe manufacturing industry be utilized in conjunction with inventions already in the Company's possession and with improvements in process of development so as to permit the construction of machines of a new type or of increased efficiency. In acquiring these patents it became necessary to purchase a majority of the stock of the Thomas G. Plant Company, manufacturers of shoes. The Corporation has purchased this stock which it intends to retain only until it can be disposed of advantageously.

In the Experimental Department of the Company the development has been greater than ever before. Machines which were undergoing practical tests a year ago have since then been placed at the disposal of the trade. The Company from the beginning has expended large sums of money in developing all types of machines in that department of shoe manufacturing to which it gives especial attention — confined chiefly to machines used in the "Bot-

toming Room." It has placed the perfected results of its experiments at the disposal of shoe manufacturers under terms which enable the manufacturer to equip his factory with a greater variety of the most advanced type of machines than was possible at the time of the organization of the Company, and at a smaller cost to him per pair of shoes than he was called upon to pay at that time for the use of fewer machines. The only important item of cost in the construction of a shoe which has not increased during the twelve years since the Company was formed is the item of machinery. The shoe manufacturer pays less per pair of shoes for his machinery equipment than ever before, although the cost of leather and labor and almost everything about a shoe which the Company does not provide is higher; and the Company itself in most instances pays more for what it has to buy.

The amounts paid per pair of shoes for the use of all the principal royalty machines furnished by this Company for the manufacture of different classes of shoes when accounts are paid within thirty days are substantially as follows:

Goodyear Welts, men's work	.05694
Goodyear Welts, women's work	.04694
Goodyear Turn Shoes, women's and misses'	.01972
Children's Goodyear Turn Shoes	.005
Men's and Women's McKay Shoes	.01746
Children's McKay Sewed Shoes	.01391

From the royalties for "Goodyear Welts" and "Goodyear Turns" should be deducted 6/10c per pair for men's Goodyear Welts; for women's Goodyear Welts, 45/100c; and for women's and misses' Goodyear Turns, 75/1000c; which is to be invested in stock of the Corporation and given to lessees under the terms of a circular letter of the Corporation to its lessees, dated June 10, 1910.

The foregoing royalties substantially cover everything which the Company receives for the use of its principal machines from those manufacturers who use its machines in making Goodyear Welt, Goodyear Turn or McKay sewed shoes. In return for the rentals and royalties which it receives, the Company assumes the whole cost

of invention, experimental work, development, manufacture and depreciation of machines; the cost of unremitting care of the machines to keep them at the highest point of efficiency through its force of over five hundred experts who devote their entire time to this service; the purchase of patents, and the cost of administration. That is to say, it assumes items of expense and risk which under any other system yet suggested the shoe manufacturer would be compelled to assume himself, thus subjecting his business to a higher machinery cost per pair of shoes than the average royalty he now pays. The Metallic Machines which insert slugs, nails and wire in heels or soles are placed in factories by the Company without charge to the shoe manufacturer and the only return to the Company is from the indirect royalty, averaging in the case of Goodyear Welts, Turns and McKays, less than one-half a cent per pair of shoes, which is included in the foregoing royalties and is calculated from the difference between the cost to the Company of the material used with the machines and the price which the manufacturer pays the Company for this material.

It has been repeatedly asserted that a shoe manufacturer cannot lease any of the Company's machines without agreeing to take all his machines from the Company, and that he is thus completely within the Company's control, so far as his machinery equipment is concerned. This statement is not true and it never was true. The Company now makes over three hundred different machines, some of which are leased to manufacturers, many of which are sold outright, and most of which can be either leased or purchased as the shoe manufacturer may prefer. In constructing a Goodyear Welt Shoe, which is the highest type of shoe now generally worn, the indispensable machines which the Company supplies exclusively are the Goodyear Welting Machine and the Goodyear Stitching Machine. These are the machines by which the sole and the upper are sewed together after the manner in which they would be sewed by hand. In signing a lease for the use of these two machines the shoe manufacturer does not agree to lease or buy any other machines from the Company, and he may obtain all the rest of his machinery equipment from other companies if he finds elsewhere machines which he likes.

In addition to the Goodyear Welting and Stitching Machines the Company has perfected a series of more than twenty auxiliary machines which have been especially designed to reduce the cost or improve the quality of operations in the manufacture of a Goodyear Welt Shoe and which a shoe manufacturer can use in connection with the Goodyear Welting and Stitching Machines without the payment of additional royalty, the only charge being a nominal annual rental which is no more than sufficient to reimburse the Company for the depreciation of these machines. In short, the Company furnishes the Goodyear Welter and Stitcher and over twenty auxiliary machines for a royalty of substantially four cents per pair of shoes in the manufacture of men's Goodyear Welts and three cents per pair in the manufacture of women's Goodyear Welts. In view of the fact that the Company receives no profit from the use of the auxiliary machines it of course expects the shoe manufacturer who takes them to use them only in conjunction with the Welter and Stitcher from which it receives its profit; but the shoe manufacturer is not obliged to take them and if he finds machines more to his liking anywhere for doing the work of the auxiliary machines he can get those machines wherever he chooses. The Company makes a great variety of machines for performing different operations in different kinds of shoes and any manufacturer can use the Company's most important machines without being obliged to use any other machine which the Company makes.

The Corporation now has 7106 individual stockholders, of whom 2789 are holders of Common Stock only, and 2803 are holders of Preferred Stock only, while 1514 are holders of both Preferred and Common Stock. The par value of the average holding in Common Stock is $6645. The par value of the average holding in Preferred Stock is $2206.

By order of the Board of Directors.

S. W. WINSLOW, President.

Paterson, New Jersey, June 17, 1911.

United Shoe Machinery Company

Financial Condition, March 1, 1911

Assets			
Cash and Receivables		$7,581,252.54	
Stock Finished and in Process		6,985,299.13	
Real Estate		2,025,184.73	
Machinery		2,032,415.73	
Patent Rights		400,000.00	
Stocks and Bonds of other corporations, and Leased Machinery		23,228,744.02	
Miscellaneous		5,133.09	
			$42,258,029.24
Liabilities			
Accounts Payable		$411,880.13	
Reserves		325,830.40	
Capital Stock:			
Common	$10,878,934.50		
Preferred	9,971,584.50		
		$20,850,519.00	
			$21,588,229.53
			$20,669,799.71
Surplus Account			
Balance, March 1, 1910		$18,542,022.15	
Earnings for Year		5,772,142.56	
		$24,314,164.71	
Paid Dividends		3,644,365.00	
Balance March 1, 1911			$20,669,799.71

United Shoe Machinery Corporation

Financial Condition, March 1, 1911

Assets			
Cash and Receivables		$1,374,977.72	
*Stock in other Corporations		44,027,452.50	
			$45,402,430.22

Liabilities			
Reserves		$1,500,000.00	
Capital Stock:			
Common		28,599,433.75	
Preferred		9,515,400.00	
			39,614,833.75
Surplus			$5,787,596.47
Surplus Account			
Balance March 1, 1910 . .		$6,124,754.11	
Earnings for Year ending February 28, 1911, and increase in value of stock of other Corporations		5,780,106.61	
		$11,904,860.72	
Paid Dividends			
In Cash, April, July, October, 1910, and January, 1911	$3,654,131.75		
In Stock . .	2,463,132.50		
		6,117,264.25	
Surplus, March 1, 1911 . .			$5,787,596.47

*The value of the holdings of the Corporation in the Capital Stock of the United Shoe Machinery Company is carried on the books of the Corporation at the rate of $25.00 per share of the Preferred Stock, and $72.50 of the Common Stock.

PLAINTIFF'S EXHIBIT 168.

[Put in Evidence, page 1764.]

Lasting Machine Department. [Form A. B. H. H., 1190.]

Lease and License Number .

Consolidated Hand Method Machine.

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the

State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Consolidated Hand Method Lasting Machin(s) No(s) ,

now, or hereafter delivered to the lessee and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or

assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor fee from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case any machine or machines hereby leased shall be destroyed by fire or

otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor the sum of Two Hundred Dollars ($200) for each machine so destroyed as partial reimbursement to the lessor for such destruction, and the lessee shall forthwith return whatever remains of the machinery so destroyed to the lessor at Beverly, Massachusetts. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, and other footwear made in his factory in the manufacture of which it can be used, except that the leased machinery shall not, nor shall any part thereof, be used in the manufacture of any welt boots, shoes, or other footwear which are or shall be welted, or the soles stitched on welt sewing or sole stitching machines not leased to the lessee by the lessor or its

assignor, or in the manufacture of any turn boots, shoes, or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines not leased to the lessee by the lessor or its assignor.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one (1) cent for each pair of misses' and children's and one and one quarter (1¼) cents for each pair of all other kinds of boots, shoes, or other footwear, or portions thereof, lasted or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.** The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount in each calendar year, ending December 31, to at least fifteen (15) dollars for each calendar month for each machine hereby leased, and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one twelfth for each such month that the factory thus remains wholly idle.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or

injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or anyone in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, one and one quarter (1¼) cents per pair for each pair of boots, shoes, or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of each kind of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, or other footwear or portions thereof made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of each kind of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operatives to sign such records, and if requested so to do by the lessor, shall verify the same under oath; the lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, any of the machines leased hereby has been entirely idle the lessee on or before the fifth day of the next

succeeding calendar month shall send to the office of the lessor in Boston the blank for said month for each such idle machine marked "not in use" and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And the following agreements, stipulations, and provisions are agreed to: —

Seven. If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him which are lasted by the aid of machinery or shall fail or cease to use exclusively tacking mechanisms and appliances held by him under lease from the lessor, for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may, at its option, terminate forthwith by notice in writing this lease and license and any other lease or license of lasting machines, lasting machinery, last mechanisms, or lasting devices then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all the leased machinery and all lasting machines, lasting machinery, lasting mechanisms, and lasting devices held by the lessee under lease or license from the lessor or its assignors shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith this lease and license, and also

if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor the sum of One Hundred and Fifty Dollars ($150) for each machine hereby leased as compensation for setting up the leased machinery in his factory, for instructing operators, and for deterioration of the leased machinery; and the lessee, for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power, and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery.

Nine. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor, or by any assignee of the lessor's rights hereunder and posted by pre-paid

letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company, and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender

of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Ten herein.)

No. 500,141, dated June 27, 1893.
No. 510,972, dated Dec. 19, 1893.
No. 510,973, dated Dec. 19, 1893.
No. 510,974, dated Dec. 19, 1893.
No. 510,975, dated Dec. 19, 1893.
No. 510,976, dated Dec. 19, 1893.
No. 510,977, dated Dec. 19, 1893.
No. 510,978, dated Dec. 19, 1893.
No. 518,933, dated April 24, 1894.
No. 523,939, dated July 31, 1894.
No. 533,394, dated Jan. 29, 1895.
No. 560,767, dated May 26, 1896.
No. 562,119, dated June 16, 1896.
No. 564,931, dated July 28, 1896.
No. 567,566, dated Sept. 8, 1896.
No. 581,066, dated April 20, 1897.
No. 584,741, dated June 15, 1897.
No. 584,742, dated June 15, 1897.
No. 584,743, dated June 15, 1897.
No. 584,744, dated June 15, 1897.
No. 597,321, dated Jan. 11, 1898.
No. 663,471, dated Dec. 11, 1900.
No. 663,777, dated Dec. 11, 1900.
No. 696,717, dated April 1, 1902.
No. 696,740, dated April 1, 1902.
Re No. 12,012, dated July 15, 1902.
No. 718,586, dated Jan. 13, 1903.
No. 726,087, dated April 21, 1903.
No. 751,128, dated Feb. 2, 1904.
No. 784,251, dated March 7, 1905.
No. 786,047, dated March 28, 1905.
No. 867,469, dated Oct. 1, 1907.
No. 873,018, dated Dec. 10, 1907.
No. 893,331, dated July 14, 1908.
No. 893,440, dated July 14, 1908.
No. 910,251, dated Jan. 19, 1909.
No. 929,869, dated Aug. 3, 1909.
No. 931,809, dated Aug. 24, 1909.
No. 933,738, dated Sept. 14, 1909.
No. 935,065, dated Sept. 28, 1909.
No. 935,090, dated Sept. 28, 1909.
No. 944,116, dated Dec. 21, 1909.
No. 946,620, dated Jan. 18, 1910.
No. 950,701, dated March 1, 1910.
No. 959,874, dated May 31, 1910.
No. 965,438, dated July 26, 1910.
No. 974,202, dated Nov. 1, 1910.
No. 978,297, dated Dec. 13, 1910.

[On back:]

United Shoe Machinery Company.
Lasting Machine Department.
Consolidated Hand Method Machine.
W. & T. 5-8. HH.
Lease No. , Lessee.
Date, 19
Machines.

PLAINTIFF'S EXHIBIT 169.

[Put in Evidence, page 1765.]

Lasting Machine Department.

Lease and License Agreement Number

This Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Boston Lasting Machine(s) No(s). ,

now or hereafter delivered to the lessee and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall

be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the

leased machinery without the consent in writing of the lessor nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case the same or any thereof shall be destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor upon demand the sum of Fifty Dollars ($50) for each machine so destroyed as partial reimbursement to the lessor for such destruction, and the lessee shall forthwith return whatever remains of all the machinery so destroyed to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed: provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of

said unapportioned tax or assessment after such deduction has been made.

Five. The leased machinery is delivered to the lessee for use other than for lasting boots, shoes or other footwear, and the leased machinery shall not nor shall any part thereof be used for lasting in whole or in part or for performing any operation in connection with the lasting of any boots, shoes or other footwear, nor shall the leased machinery be used in the manufacture of any welted boots, shoes or other footwear which have been or shall be welted or the soles stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor, or in the manufacture of any turned boots, shoes or other footwear the soles of which have been or shall be attached to their uppers by the aid of any turn sewing machinery not held by the lessee under lease from the lessor, or in the manufacture of any boots, shoes or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed, or otherwise partly made by the aid of any lasting or pegging or "Metallic" machinery or mechanisms not held by the lessee under lease from the lessor or in the manufacture of any boots, shoes or other footwear the heels of which have been or shall be compressed or prepared by the lessee in whole or in part or have been or shall be attached by the aid of any heeling machinery not held by the lessee under lease from the lessor.

Six. The lessee shall pay to the lessor as rent or royalty for the leased machinery the sum of dollars per year for each machine hereby leased for each and every year during the continuance of this lease and license, which sum shall be paid in equal monthly payments of dollars each for each machine hereby leased, made to the lessor at its office in Boston, Massachusetts, on or before the fifteenth day of each calendar month.

Seven. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with any such indicator or indicators.

And that the following stipulations and provisions are agreed to: —

Eight. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for the full term of this agreement; but, inasmuch as the leased machinery is supplied to the lessee without cash payment covering the cost of manufacture, the lessor may at any time cancel and terminate this lease and license by giving to the lessee sixty days' notice in writing of its intention so to do. If any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of the lease hereby granted or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this agreement or any other lease or license agreement from the

lessor or otherwise in any manner whatsoever, the lessee shall forthwith at his own expense deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee; and the lessee, for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power, and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same.

Nine. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the "Schedule of Pat-

ents" hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Eleven. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Ten herein.)

Number.	Dated.	Number.	Dated.
508,780	Nov. 14, 1893.	591,790	Oct. 12, 1897.
513,820	Jan. 30, 1984.	594,811	Nov. 30, 1897.
515,269	Feb. 20, 1894.	823,664	June 19, 1906.
533,733	Feb. 5, 1895.	919,533	April 27, 1909.
540,869	June 11, 1895.	929,869	Aug. 3, 1909.
555,595	March 3, 1896.	946,708	Jan. 18, 1910.
561,832	June 9, 1896.	947,818	Feb. 1, 1910.
561,833	June 9, 1896.		

[On back:]
United Shoe Machinery Company.
Lasting Machine Department.
Boston Lasting Machine.
Lease No. , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 170.

[Put in Evidence, page 1765.]

General Department. [Form A. H. H., 1113.]

Lease and License Number .

This Lease and Agreement made at Boston in the State of Massachusetts this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof to use

McKay Sewing Machine(s) (Model B), No(s). ,

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform:—

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay

therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The leased machinery shall not nor shall any part thereof be used in the manufacture of any boots, shoes, or other footwear which have been or shall be lasted by the aid of any machines or devices not held by the lessee under lease from the lessor.

Five. The lessee shall pay to the lessor immediately after the execution hereof, as a lease premium, the sum of one hundred dollars ($100) for each machine hereby leased. The lessee shall also pay to the lessor as rental or royalty for the leased machinery the fixed sum of five dollars ($5) per month for each machine hereby leased, payable on the fifteenth day of each calendar month in respect to the preceding calendar month.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. The lessee shall, if so requested by the lessor at any time, keep full and accurate accounts independently of any indicators that may be placed upon the leased machinery showing the number of boots, shoes and other footwear, or portions thereof, in the manufacture or preparation of which the leased machinery or any part thereof shall be used, and shall, upon request, allow the lessor at any and at all times, by its agents or attorneys, to examine and take copies of all such accounts and entries of the lessee as may aid in determining the number of boots, shoes and other footwear, or portions thereof, operated upon by the leased machinery or any part thereof; and the lessee shall produce all such accounts and entries upon request. The lessee shall, if so requested by the lessor at any time, render to the lessor such statements and furnish to the lessor such other information as may be called for with reference to the leased machinery or the use thereof.

And that the following agreements, stipulations, and provisions are agreed to: —

Seven. This lease and license shall continue, unless sooner ter-

minated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith this lease and license, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums or any part thereof which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery.

Eight. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor or

by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Nine. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery and also that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of said Letters Patent or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Ten. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender

of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

[On back:]
United Shoe Machinery Company.
General Department. H.
Lease No. , Lessee.
Date, 19 .
McKay Sewing Machine(s) (Model B) No(s).

PLAINTIFF'S EXHIBIT 171.

[Put in Evidence, page 1766.]

Lasting Machine Department. [1215.]

Lease and License Agreement Number .

Ensign Lacing Machine.

This Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Ensign Lacing Machine(s), No(s). ,

and any duplicate parts, extras, mechanisms and devices relating

thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, together with all duplicate parts, extras, mechanisms and devices held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of unless the lessor shall by an instrument in writing signed by its president, vice-president or treasurer authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated,

shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case any machine or machines hereby leased shall be destroyed by fire or otherwise before such expiration or termination and re-delivery, the lessee shall pay to the lessor upon demand in respect to each machine so destroyed the sum of One Hundred Fifty Dollars ($150) as partial reimbursement to the lessor for such destruction, and the lessee shall forthwith return whatever remains of the machinery so destroyed to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases,

licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The leased machinery shall be used only for inserting lacings in the uppers of boots, shoes and other footwear which have been or shall be lasted by the use of Lasting Machines held by the lessee under lease from the lessor, and the leased machinery shall not nor shall any part thereof be used in the manufacture or preparation of any welted boots, shoes or other footwear or portions thereof which have been or shall be welted or the soles stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor, or in the manufacture or preparation of any turned boots, shoes or other footwear or portions thereof the soles of which have been or shall be attached to their uppers by the aid of any turn sewing machinery not held by the lessee under lease from the lessor.

Six. The lessee as and by way of rent or royalty for the leased machinery shall pay to the lessor the fixed sum of one dollar and fifty cents ($1.50) per month for each machine hereby leased upon

the fifteenth day of each calendar month. Independently of and in addition to said fixed rent or royalty of one dollar and fifty cents ($1.50) per month for each machine hereby leased the lessee shall also pay to the lessor an additional rent or royalty of one-tenth of one cent per pair for each pair of boots, shoes or other footwear in the manufacture or preparation of which the leased machinery shall be used, such additional royalty to be due and payable on the last day of each calendar month in respect to all boots, shoes or other footwear in the manufacture or preparation of which the leased machinery shall have been used during the next preceding calendar month, **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month such additional rent or royalty in respect to all boots, shoes or other footwear operated upon by the leased machinery during the next preceding calendar month the lessor will, in consideration of such prompt payment, grant to the lessee a discount of fifty per cent. from such additional rent or royalty for such preceding calendar month.**

Seven. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or anyone in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor without the right to any discount, in lieu of the rental or

royalty of one-tenth of one cent per pair hereinbefore provided for the sum of one-eighth of one cent per pair for each pair of boots, shoes or other footwear, or portions thereof in the manufacture or preparation of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes, and other footwear, or portions thereof, in the manufacture or preparation of which the leased machinery or any part thereof has been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such boots, shoes and other footwear or portions thereof, made or prepared by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of boots, shoes, and other footwear, or portions thereof, in the making or preparation of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, any one or more of the machines hereby leased has been entirely idle, the lessee on or before the fifth day of the next succeeding calendar month shall send to the affice of the lessor in Boston the blank for each such idle machine marked "not in use," and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to: —

Eight. If at any time the lessee shall fail or cease to use exclu-

sively lacing machinery held by him under lease from the lessor for doing all work in the manufacture of all boots, shoes and other footwear made by or for him, which is of the kind which lacing machinery put out by the lessor is adapted to perform and which is done by or for the lessee by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases of or licenses to use lacing machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

Nine. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for the full term of this agreement. But if any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations, and provisions in this agreement contained, and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor,

upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of the lease hereby granted or any extension thereof, by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise in any manner whatsoever, the lessee shall forthwith at his own expense deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor without prejudice to any other rights or remedies of the lessor the sum of One Hundred Dollars ($100) for each machine hereby leased as partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators; and the lessee for himself, his heirs, executors and administrators, successors and assigns hereby grants to the lessor, its successors and assigns, full right power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment or offset of any sum or sums or any part thereof which shall have been paid in any wise in respect to this lease and license or the leased machinery.

Ten. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty

for the period prior to such termination and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Eleven. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Twelve. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Thirteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Eleven herein.)

740,938, October 6, 1903. 795,073, July 18, 1905.
767,844, August 16, 1904. 946,789, January 18, 1910.
779,008, January 3, 1905. 962,105, June 21, 1910.
Re. 12,638, April 23, 1907.

[On back:]

United Shoe Machinery Company.
Lasting Machine Department.
Ensign Lacing Machine.
Lease No. , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 172.

[Put in Evidence, page 1766.]

Eyeletting Department. [Form A. F. S., 1170.]

Lease and License Agreement Number .

This Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has a right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Duplex Eyeletting Machine(s) No(s).

now or hereafter delivered to the lessee, and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said desig-

nated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering,

repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The leased machinery shall at all times, until the expiration or termination of the lease thereof and license to use the same hereby granted and the re-delivery of the leased machinery into the possession of the lessor as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case the same or any thereof shall be destroyed by fire or otherwise before such expiration or termination and re delivery, the lessee shall pay to the lessor in respect to each machine so destroyed the sum of Two Hundred Dollars ($200) as partial reimbursement to the lessor for such destruction, and the lessee shall forthwith return whatever remains of the machinery so destroyed to the lessor at Beverly, Massachusetts.

Four. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed for the purposes of this article, to be assessed in respect to the machinery itself. In case at

any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Five. The lessee shall use the leased machinery to its full capacity on all boots, shoes, footwear and other articles made in his factory in the manufacture of which it can be used, but the leased machinery shall not nor shall any part thereof be used in the manufacture of any welted boots, shoes, or other footwear which have been or shall be welted or the soles stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor, or in the manufacture of any turn boots, shoes, or other footwear the soles of which have been or shall be attached to their uppers by the aid of any turn sewing machinery not held by the lessee under lease from the lessor or in the manufacture of any boots, shoes, or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed, or otherwise partly made by the aid of any lasting or pegging or "Metallic" machinery or mechanisms not held by the lessee under lease from the lessor or in the manufacture of any boots, shoes, or other footwear the heels of which have been or shall be compressed or prepared by the lessee in whole or in part, or have been or shall be

attached by the aid of any "heeling" machinery not held by the lessee under lease from the lessor.

Six. The lessee, as rent or royalty for the leased machinery, shall purchase exclusively of the lessor or its authorized agents, at the prices from time to time established by the lessor, all eyelets used by him in or in connection with the leased machinery, and shall pay therefor upon the regular terms established by the lessor therefor.

Seven. The lessor may attach to the leased machinery or any thereof an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes, footwear, and other articles, or portions thereof in the manufacture or preparation of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, fortwear, and other articles, or portions thereof, made or prepared or operated upon by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to: —

Eight. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to

use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for the full term of this agreement; but in case at any time the lessee shall discontinue or suspend the operation of said factory, or shall discontinue or suspend the manufacture in said factory in the regular course of business of articles in the manufacture of which the leased machinery can be used, or if at any time or for any reason the lessee shall fail or cease to make regular use of the leased machinery in the ordinary course of business, then the lessor shall have the right at its option, by notice in writing to the lessee, to terminate forthwith the lease and license hereby granted, and in case at any time any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of the lease hereby granted or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from

the lessor or otherwise, in any manner whatsoever, the lessee shall forthwith at his own expense deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, and in addition thereto the lessee shall also, without prejudice to any other rights or remedies of the lessor hereunder, pay to the lessor the sum of One Hundred Dollars ($100) for each machine hereby leased as compensation for setting up the leased machinery in his factory, for instructing operators, and for deterioration of the leased machinery; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Nine. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America owned by the lessor or under which it is licensed, any of

the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Eleven. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Ten herein.)

No. 603,023 Apr. 26, 1898.	No. 833,515 Oct. 16, 1906.
No. 605,574 June 14, 1898.	No. 874,669 Dec. 24, 1907.
No. 606,964 July 5, 1898.	No. 880,376 Feb. 25, 1908.
No. 636,175 Oct. 31, 1899.	No. 898,729 Sept. 15, 1908.

No. 638,994 Dec. 12, 1899.
No. 663,389 Dec. 4, 1900.
No. 672,056 Apr. 16, 1901.
No. 672,884 Apr. 30, 1901.
No. 683,488 Oct. 1, 1901.
No. 707,643 Aug. 26, 1902.
No. 707,644 Aug. 26, 1902.
No. 908,453 Jan. 5, 1909.
No. 915,996 Mar. 23, 1909.
No. 918,694 Apr. 20, 1909.
No. 921,648 May 11, 1909.
No. 926,903 July 6, 1909.
No. 934,066 Sept. 14, 1909.

[On back:]

United Shoe Machinery Company.
Duplex Eyeletting Department. S.
Lease No. , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 173.

[Put in Evidence, page 1766.]

Eyeletting Department. [Form A. F. R., 1164.]

Lease and License Agreement Number .

This Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Vulcan Foot Power Eyeletting Machine(s) No(s).

Duplex Eyeletting Machine(s) No(s).

now or hereafter delivered to the lessee, and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said

designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the posssession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation,

or of altering, repairing, improving or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purpose of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportionated tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount

thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, footwear and other articles made in his factory in the manufacture of which it can be used.

Five. The lessee shall pay to the lessor immediately after the execution hereof, as a lease premium, the sum of dollars for each machine hereby leased, and the lessee shall also, as rent or royalty for the leased machinery, purchase exclusively of the lessor or its authorized agents, at the prices from time to time established by the lessor, all eyelets used by him in or in connection with the leased machinery, and shall pay therefor upon the regular terms established by the lessor therefor.

Six. The lessor may attach to the leased machinery or any thereof an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened.

And that the following stipulations and provisions are agreed to : —

Seven. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise, as herein provided, for the full term of this agreement ; but in case at any time the lessee shall discontinue or suspend the operation of said factory, or shall discontinue or sus-

pend the manufacture in said factory in the regular course of business of articles in the manufacture of which the leased machinery can be used, or if at any time or for any reason the lessee shall fail or cease to make regular use of the leased machinery in the ordinary course of business, then the lessor shall have the right at its option, by notice in writing to the lessee, to terminate forthwith the lease and license hereby granted, and in case at any time any breach or default shall be made in the observance of any one or more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of the lease hereby granted or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the lessee shall forthwith at his own expense deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants

to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and the lessee in addition and without prejudice to any other rights or remedies of the lessor hereunder shall thereupon pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee.

Eight. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Nine. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or dis-

charge the lessee from the admissions and estoppels herein set forth.

Ten. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Nine herein.)

No. 603,023 Apr. 26, 1898.
No. 605,574 June 14, 1898.
No. 606,964 July 5, 1898.
No. 636,175 Oct. 31, 1899.
No. 638,994 Dec. 12, 1899.
No. 663,389 Dec. 4, 1900.
No. 672,056 Apr. 16, 1901.
No. 672,884 Apr. 30, 1901.
No. 683,488 Oct. 1, 1901.
No. 707,643 Aug. 26, 1902.
No. 707,644 Aug. 26, 1902.
No. 833,515 Oct. 16, 1906.
No. 874,669 Dec, 24, 1907.
No. 880,376 Feb. 25, 1908.
No. 898,729 Sept. 15, 1908.
No. 908,453 Jan. 5, 1909.
No. 915,996 Mar. 23, 1909.
No. 918,694 Apr. 20, 1909.
No. 921,648 May 11, 1909.
No. 926,903 July 6, 1909.
No. 934,066 Sept. 14, 1909.

[On back:]
United Shoe Machinery Company.
Eyeletting Department.
Duplex Eyeletting Machine.
Vulcan Foot Power Eyeletting Machine. R.
Lease No. , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 174.

[Put in Evidence, page 1767.]

Eyeletting Department. (1607)

Lease and License Agreement Number

This Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use

Vulcan Foot Power Eyeletting Machine(s) No(s).

now or hereafter delivered to the lessee and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform : —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct employ, and only in the factory now occupied by him at .in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither this agreement nor the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated, shall thereupon revest in the lessor free from all claims and demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor.

The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, footwear and other articles made in his factory in the manufacture of which it can be used.

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Five. The lessee shall pay to the lessor immediately after the execution hereof, as a lease premium, the sum of dollars for each machine hereby leased, and the lessee shall also as rent or royalty for the leased machinery purchase exclusively of the lessor or its authorized agents at the prices from time to time established by the lessor all eyelets used by him in or in connection with the leased machinery and shall pay therefor upon the regular terms established by the lessor therefor.

Six. The lessor may attach to the leased machinery or any thereof an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened.

And that the following stipulations and provisions are agreed to: —

Seven. The term of this agreement shall be seventeen years from the date hereof. The lease of the leased machinery and license to use the same hereby granted shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee or otherwise as herein provided, for the full term of this agreement; but in case at any time the lessee shall discontinue or suspend the operation of said factory, or shall discontinue or suspend the manufacture in said factory, in the regular course of business, of articles in the manufacture of which the leased machinery can be used, or if at any time or for any reason the lessee shall fail or cease to make regular use of the leased machinery in the ordinary course of business, then the lessor shall have the right at its option, by notice in writing to the lessee, to terminate forthwith the lease and license hereby granted, and in case at any time any breach or default shall be made in the observance of any one or

more of the conditions in this agreement contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by the lessor. If, upon the expiration of the full term of this agreement, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions in this agreement contained, and this agreement and the lease and license herein contained shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this agreement and the lease and license herein contained, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of the lease hereby granted or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise in any manner whatsoever, the lessee shall forthwith, at his own expense, deliver the leased machinery to the lessor at Beverly, Massachusetts, complete and in good order, reasonable wear and tear alone excepted; and the lessee, for himself, his heirs, executors, administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof and take away the same; and the lessee in addition and without prejudice to any other rights or remedies of the lessor hereunder shall thereupon pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee.

Eight. A notice in writing, signed by the president, a vice-president, the treasurer or an assistant treasurer of the lessor, or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this agreement or of the lease and license hereby granted shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right or use of patented inventions without license.

Nine. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof, or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Ten. None of the conditions, stipulations or provisions of this agreement shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the con-

ditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Nine herein.)

No. 603,023 Apr. 26, 1898.	No. 874,669 Dec. 24, 1907.
No. 605,574 June 14, 1898.	No. 880,376 Feb. 25, 1908.
No. 606,964 July 5, 1898.	No. 898,729 Sept. 15, 1908.
No. 636,175 Oct. 31, 1899.	No. 908,453 Jan. 5, 1909.
No. 638,994 Dec. 12, 1899.	No. 915,996 Mar. 23, 1909.
No. 663,389 Dec. 4, 1900.	No. 918,694 Apr. 20, 1909.
No. 672,056 Apr. 16, 1901.	No. 921,648 May 11, 1909.
No. 672,884 Apr. 30, 1901.	No. 926,903 July 6, 1909.
No. 683,488 Oct. 1, 1901.	No. 934,066 Sept. 14, 1909.
No. 707,643 Aug. 26, 1902.	No. 964,626 July 19, 1910.
No. 707,644 Aug. 26, 1902.	No. 989,058 Apr. 11, 1911.
No. 833,515 Oct. 16, 1906.	No. 1,006,011 Oct. 17, 1911.

[On back:]

United Shoe Machinery Company.
Eyeletting Department.
Vulcan Foot Power Eyeletting Machine.
Lease No. , Lessee.
Date, 19 .
Machines.

PLAINTIFF'S EXHIBIT 175.

[Put in Evidence, page 1774.]

Boston, Mass., February 11, 1899.

To the Stockholders of the Consolidated & McKay Lasting Machine Company: —

The United Shoe Machinery Company, organized under the laws of the State of New Jersey, with an authorized capital of 1,000,000 shares, one half six per cent preferred stock, one half common stock with equal voting power, each share of the par value of $25, has already contracted for the control of the property or stock of the following companies: —

Consolidated & McKay Lasting Machine Company,
Goodyear Shoe Machinery Company,
McKay Shoe Machinery Company,
International Goodyear Shoe Machinery Company,
Goodyear Shoe Machinery Company of Canada,
Eppler Welt Machine Company,
International Eppler Welt Machine Company,
Davey Pegging Machine Company,

The entire floating debt of the above companies will be paid, and there will remain in the treasury of the new company after acquiring the above-named companies at least $500,000 in cash, and at least 150,000 shares of the preferred stock, and 150,000 shares of the common stock.

For each share of Preferred Stock of the Consolidated & McKay Lasting Machine Company will be given one and two-thirds shares of the preferred stock of the United Company, and $1.00 in cash;

For each share of the Common Stock of the Consolidated & McKay Lasting Machine Company will be given one share of common stock, and one-half share of preferred stock of the United Company, and $4.50 cash;

Provided, that certificates of Consolidated & McKay Lasting Machine Company stock, duly endorsed and assigned to the United Shoe Machinery Company with proper revenue stamps affixed and canceled, are delivered on or before March 1, 1899, to the

American Loan and Trust Company,
No. 53 State Street, Boston.

Temporary certificates of the United Shoe Machinery Company will be issued until engraved certificates can be prepared, and scrip will be issued for fractions of shares.

The United Company will apply for the listing of its shares upon the Boston and New York Stock Exchanges, and expects to pay dividends at the rate of six per cent upon the preferred stock, and at the rate of at least eight per cent upon the common stock, the first dividend to be paid April 1, 1899.

The officers of the new company are: —

Sidney W. Winslow	President.
John H. Hanan, Wallace F. Robinson, Orlando E. Lewis, . .	Vice-Presidents.
George W. Brown .	Treasurer and General Manager.
Louis H. Baker	Secretary.

The undersigned Directors of the Consolidated & McKay Lasting Machine Company believe that the United Shoe Machinery Company will show much larger net earnings than the aggregate net earnings of the several companies whose stock is to be acquired, by reason of increase in business, economies in administration and decrease in expenses, and cessation of patent litigation between the companies, which has been expensive to them and annoying to shoe manufacturers; and believe that these results can be attained without increase of cost to the users of machinery made by the Company, and that better attention to the care of machines and greater assistance to the users can be afforded.

They confidently expect that the shares of the United Company will prove to be more valuable and a better paying investment than the stock of the Consolidated & McKay Lasting Machine Company, and, having exchanged their stock in the Consolidated & McKay Lasting Machine Company for stock in the United Company on the above-named basis, they recommend to Consolidated & McKay Lasting Machine Company stockholders likewise to deposit and exchange their shares.

WALLACE F. ROBINSON, President.
GEORGE W. BROWN, Treasurer.
SIDNEY W. WINSLOW.
WILLIAM H. COOLIDGE.
WILLIAM S. EATON.
EDWARD P. HURD.
SAMUEL WEIL.
FRANK WOOD.

PLAINTIFF'S EXHIBIT B FOR IDENTIFICATION.

[Put in Evidence, page 1835.]

Post-office address of Company in Massachusetts: Eppler Welt Machine C. 125 Kingston St Boston Mass.

[Acts of 1891, Chap. 341.]

Section 1. All corporations chartered or organized under the laws of another state or country and having a usual place of business in this Commonwealth, shall annually in the month of March make and file in the office of the secretary of the Commonwealth a certificate, signed and sworn to by its president, treasurer, and at least a majority of its directors, stating the amount of its capital stock as it then stands fixed by the corporation, the amount then paid up, and the assets and liabilities of the corporation, in such form as the commissioner of corporations shall require or approve. This section shall not apply to railroad companies, nor to mining and manufacturing companies actually conducting their mining and manufacturing operations wholly without the Commonwealth, nor to those foreign corporations which are required to make annual returns to other officers of the Commonwealth than the commissioner of corporations.

Section 2. Repealed.

Sections 3 and 4 provide for certificates of increase and decrease of capital stock.

Section 5. Every certificate required to be filed by this act shall, before filing, be submitted to the commissioner of corporations, who shall examine the same, and if it appears to him to be a suffi-

cient compliance with the requirements of this act he shall certify his approval thereof by endorsement upon the same.

Section 9. The fee to be paid by the corporation for filing the certificate of condition required by this act shall be five dollars, . . . [Approved May 16, 1891.]

[Acts of 1894, Chap. 541.]

Section 1. Every corporation which shall omit to file the annual statement required by section one of chapter three hundred and forty-one of the acts of the year eighteen hundred and ninety-one shall forfeit not less than five nor more than ten dollars for each and every day for fifteen days after the first day of April, and not less than ten nor more than two hundred dollars for each and every day thereafter while said omission continues, to be recovered by an information brought in the supreme judicial court in the name of the attorney-general, at the relation of the commissioner of corporations; and upon such information the court may issue an injunction restraining the further prosecution of the business of the corporation named therein until the sums so forfeited are paid with interest and costs, and until the returns required by this act are made.

See also Acts of 1895, Chaps. 157, 311, and Acts of 1896, Chap. 391.

We, Andrew Eppler Vice President, George Strong Treasurer, and Chas Curtis W F Halsall W H Stacy & H A Harrington being a majority of the Directors of[a] Eppler Welt Machine Co a Corporation organized under the laws of the State of Maine having a usual place of business in Boston in the Commonwealth of Massachusetts, in compliance with the provisions of chapter three hundred and forty-one of the Acts of 1891, do hereby certify, that the amount of capital stock as it stood fixed by said Corporation on the 1st day of March, A. D. 1896 was six hundred thousand dollars.

That the amount thereof then paid in was[b] $600,000.00 dollars.

That the assets and liabilities of the Corporation[c] at that date were as follows: —

Assets.		Liabilities.	
Real Estate, viz.:	$	Capital stock,	$600000.00
Land		Debts	20397.52
Buildings		Reserves,	
Machinery estimated,	4675.00	Balance Profit and Loss	
Other Assets, viz.:			
Cash and debts receivable	9200.78		
Manufactures, merchandise, material and stock in process estimated	4000.00		
Patent rights	558766.74		
Loans secured by mortgage			
Miscellaneous	43755.		
Balance Profit and Loss			
Total	620397.52	Total	620397.52

In Witness Whereof, we have hereto signed our names, this first day of April in the year eighteen hundred and ninety-six.

Andrew Eppler — Andrew Eppler Vice Pres
George Strong — George Strong Treas
Charles Curtis
W. F. Halsall
W. H. Stacy
H. A. Harrington
Directors

State of Massachusetts
County of Suffolk ss Boston, April first, 1896.

Then personally appeared the above-named George Strong Charles Curtis W. F. Halsall W H Stacy H A Harrington Andrew Eppler and severally made oath that the foregoing certificate, by them subscribed, is true to the best of their knowledge and belief. Before me, David L. Bowers Justice of the Peace.

If out of Massachusetts, oath before a Commissioner for Massachusetts or Notary Public; if within Massachusetts, before a Notary Public or Justice of the Peace.

Instructions.

This return must be filed in March, and the fee of five dollars for filing paid at that time.

a. Give correct Corporate name in full.

b. The amount of capital stock at par value issued and the amount paid in by assessment should be considered as paid in.

c. The amount of capital stock fixed or paid in should be of March. If the assets and liabilities are of a prior date, insert the date at which the figures apply.

d. Liability on account of capital stock is for the amount paid in as above specified. Shares never issued are not an asset or liability.

[On back:]

[Foreign Corporations.]

Eppler Welt Machine Company. Fee $5.00 paid.

Certificate of Condition.

Acts of 1891. Chap. 341; 1895, Chap. 311.

Filed in the office of the Secretary of the Commonwealth, April 2, 1896.

I hereby approve the within certificate, this Second day of April A. D. eighteen hundred and ninety-six

Chas Endicott Commissioner of Corporations.

Received Apr. 2 1896 Secretary's Office.

Commissioner of Corporations Apr 2 1896

THE COMMONWEALTH OF MASSACHUSETTS.

Office of the Secretary.

Boston, June 18, 1913.

A true copy.

Witness the Great Seal of the Commonwealth.

FRANK J. DONAHUE

[SEAL] Secretary of the Commonwealth.

PLAINTIFF'S EXHIBIT C FOR IDENTIFICATION.

[Put in Evidence, page 1835.]

Post-office address of Company in Massachusetts: Eppler Welt Machine Co., 125 Kingston St., Boston.

[Acts of 1891, Chap. 341.]

Section 1. All corporations chartered or organized under the laws of another state or country and having a usual place of business in this Commonwealth, shall annually in the month of March make and file in the office of the secretary of the Commonwealth a certificate, signed and sworn to by its president, treasurer, and at least a majority of its directors, stating the amount of its capital stock as it then stands fixed by the corporation, the amount then paid up, and the assets and liabilities of the corporation, in such form as the commissioner of corporations shall require or approve. This section shall not apply to railroad companies, nor to mining and manufacturing companies actually conducting their mining and manufacturing operations wholly without the Commonwealth, nor to those foreign corporations which are required to make annual returns to other officers of the Commonwealth than the commissioner of corporations.

Section 2. Repealed.

Sections 3 and 4 provide for certificates of increase and decrease of capital stock.

Section 5. Every certificate required to be filed by this act shall, before filing, be submitted to the commissioner of corporations, who shall examine the same, and if it appears to him to be a sufficient compliance with the requirements of this act he shall certify his approval thereof by endorsement upon the same.

Section 6. The fee to be paid by the corporation for filing the certificate of condition required by this act shall be five dollars, . . . [Approved May 16, 1891.]

[Acts of 1894, Chap. 541.]

Section 1. Every corporation which shall omit to file the annual statement required by section one of chapter three hundred and forty-one of the acts of the year eighteen hundred and ninety-one

shall forfeit not less than five nor more than ten dollars for each and every day for fifteen days after the first day of April, and not less than ten nor more than two hundred dollars for each and every day thereafter while said omission continues, to be recovered by an information brought in the supreme judicial court in the name of the attorney-general, at the relation of the commissioner of corporations; and upon such information the court may issue an injunction restraining the further prosecution of the business of the corporation named therein until the sums so forfeited are paid with interest and costs, and until the returns required by this act are made.

See also Acts of 1895, Chaps. 157, 311, and Acts of 1896, Chap. 391.

We, Andrew Eppler Vice President, Walter B. Trowbridge Treasurer, and W. F. Halsall, Wm. H. Stacy, Chas. Curtis, H. A. Harrington, H. E. Hibbard, being a majority of the Directors of [a] Eppler Welt Machine Co. a Corporation organized under the laws of the State of Maine having a usual place of business in Boston in the Commonwealth of Massachusetts, in compliance with the provisions of chapter three hundred and forty-one of the Acts of 1891, do hereby certify, that the amount of capital stock as it stood fixed by said Corporation on the first day of March, A. D. 1897 was Six hundred thousand 00/100 dollars.

That the amount thereof then paid in was[b] Six hundred thousand and 00/100 dollars.

That the assets and liabilities of the Corporation[c] at that date were as follows: —

Assets.	$	Liabilities.	$
Real Estate, viz.:		Capital stock[d] . .	600000.00
Land . . .		Debts . . .	13727.40
Buildings . .		Reserves,	
Machinery estimated	5125.00	Balance Profit and	
Other Assets, viz.:		Loss . .	
Cash and debts receivable . .	10339.87		

Manufactures, merchandise, material and stock in process estimated	34862.53		
Patent rights .	489200.00		
Loans secured by mortgage . .			
Miscellaneous .	74200.00		
Balance Profit and Loss . .			
Total . .	613727.40	Total . .	613727.40

In Witness Whereof, we have hereto signed our names, this 31st day of March in the year eighteen hundred and ninety-7

W. F. HALSALL
W. H. STACY
ANDREW EPPLER Vice Pres.
CHARLES CURTIS
HERBERT A. HARRINGTON
HERMAN E. HIBBARD
WALTER B. TROWBRIDGE Treas.

State of Massachusetts
Suffolk ss. March 31, 1897.

Then personally a peared the above-named Andrew Eppler, Walter B. Trowbridge, W. F. Halsall, W. H. Stacy, Charles Curtis Herbert A. Harrington and Herman E. Hibbard and severally made oath that the foregoing certificate, by them subscribed, is true to the best of their knowledge and belief. Before me,

[SEAL] William F. Bacon Notary Public

If out of Massachusetts, oath before a Commissioner or Notary Public; if within Massachusetts, before a Notary Public or Justice of the Peace.

Instructions.

This return must be filed in March, and the fee of five dollars for filing paid at that time.

a. Give correct Corporate name in full.

b. The amount of capital stock at par value issued and the amount paid in by assessment should be considered as paid in.

c. The amount of capital stock fixed or paid in should be of March. If the assets and liabilities are of a prior date, insert the date at which the figures apply.

d. Liability on account of capital stock is for the amount paid in as above specified. Shares never issued are not an asset or liability.

[On back:]

[Foreign Corporations.]

Eppler Welt Machine Company Fee $5.00 paid

Certificate of Condition.

Acts of 1891, Chap. 341; 1895, Chap. 311.

Filed in the office of the Secretary of the Commonwealth, March 31, 1897

I hereby approve the within certificate, this 31st day of March A. D. eighteen hundred and ninety-seven

Chas Endicott Commissioner of Corporations.

Received Mar 31 1897 Corporation Division, Secretary's Office.

Commissioner of Corporations Mar 31 1897

THE COMMONWEALTH OF MASSACHUSETTS.

Office of the Secretary.

Boston, June 18, 1913.

A true copy.

Witness the Great Seal of the Commonwealth.

FRANK J. DONAHUE

[SEAL] Secretary of the Commonwealth.

PLAINTIFF'S EXHIBIT D FOR IDENTIFICATION.

[Put in Evidence, page 1835.]

Post-office address of Company in Massachusetts: Eppler Welt Machine Co., 54 Lincoln St., Boston.

[Acts of 1891, Chap. 341.]

Section 1. All corporations chartered or organized under the laws of another state or country and having a usual place of business in this Commonwealth, shall annually in the month of March make and file in the office of the secretary of the Commonwealth a

certificate, signed and sworn to by its president, treasurer, and at least a majority of its directors, stating the amount of its capital stock as it then stands fixed by the corporation, the amount then paid up, and the assets and liabilities of the corporation, in such form as the commissioner of corporations shall require or approve. This section shall not apply to railroad companies, nor to mining and manufacturing companies actually conducting their mining and manufacturing operations wholly without the Commonwealth, nor to those foreign corporations which are required to make annual returns to other officers of the Commonwealth than the commissioner of corporations.

Section 2. Repealed.

Sections 3 and 4 provide for certificates of increase and decrease of capital stock.

Section 5. Every certificate required to be filed by this act shall, before filing, be submitted to the commissioner of corporations, who shall examine the same, and if it appears to him to be a sufficient compliance with the requirements of this act he shall certify his approval thereof by endorsement upon the same.

Section 6. The fee to be paid by the corporation for filing the certificate of condition required by this act shall be five dollars, . . . [Approved May 16, 1891.]

[Acts of 1894, Chap. 541.]

Section 1. Every corporation which shall omit to file the annual statement required by section one of chapter three hundred and forty-one of the acts of the year eighteen hundred and ninety-one shall forfeit not less than five nor more than ten dollars for each and every day for fifteen days after the first day of April, and not less than ten nor more than two hundred dollars for each and every day thereafter while said omission continues, to be recovered by an information brought in the supreme judicial court in the name of the attorney-general, at the relation of the commissioner of corporations; and upon such information the court may issue an injunction restraining the further prosecution of the business of the corporation named therein until the sums so forfeited are paid with

interest and costs, and until the returns required by this act are made.

See also Acts of 1895, Chaps. 157, 311, and Acts of 1896, Chap. 391.

We, Geo. E. Keith President, Walter S. Batchelder Acting Treasurer, and W. H. Stacy, Andrew Eppler, W. F. Halsall, George Strong, Charles Curtis being a majority of the Directors of[a] Eppler Welt Machine Co a Corporation organized under the laws of the State of Maine having a usual place of business in Boston in the Commonwealth of Massachusetts, in compliance with the provisions of chapter three hundred and forty-one of the Acts of 1891, do hereby certify, that the amount of capital stock as it stood fixed by said Corporation on the first day of March, A. D. 1898 was Six hundred thousand dollars.

That the amount thereof then paid was[b] Five hundred seventy-two thousand nine hundred ninety dollars.

That the assets and liabilities of the Corporation[c] at that date were as follows: —

Assets.	$	Liabilities.	$
Real Estate, viz.:		Capital stock[d]	572990.00
Land		Debts	5557.44
Buildings		Reserves	
Machinery	19977.03	Balance Profit and Loss	2428.35
Other Assets, viz.:			
Cash and debts receivable	10421.09		
Manufactures, merchandise, material and stock in process			
Patent rights	245853.61		
Machines in Factories	287010.90		

Loans secured by mortgage .			
Miscellaneous .	17713.16		
Balance Profit and Loss . .			
Total	580975.79	Total	580975.79

In Witness Whereof, we have hereto signed our names, this thirtieth day of March in the year eighteen hundred and ninety-eight.

GEO. E. KEITH President Eppler Welt Mach Co
WALTER S. BATCHELDER Acting Treasurer
W. H. STACY
ANDREW EPPLER
W. F. HALSALL
GEORGE STRONG
CHARLES CURTIS

State of Massachusetts

Suffolk County ss. Boston, March 30, 1898.

Then personally appeared the above-named George E. Keith Walter S. Batchelder, W. H. Stacy Andrew Eppler, W. F. Halsall George Strong and Charles Curtis and severally made oath that the foregoing certificate, by them subscribed, is true to the best of their knowledge and belief. Before me,

[SEAL] David L. Bowers Notary Public

If out of Massachusetts, oath before a Commissioner for Massachusetts or Notary Public; if within Massachusetts, before a Notary Public or Justice of the Peace.

Instructions.

This return must be filed in March, and the fee of five dollars for filing paid at that time.

a. Give correct Corporate name in full.

b. The amount of capital stock at par value issued and the amount paid in by assessment should be considered as paid in.

c. The amount of capital stock fixed or paid in should be of March. If the assets and liabilities are of a prior date, insert the date at which the figures apply.

d. Liability on account of capital stock is for the amount paid in as above specified. Shares never issued are not an asset or liability.

Boston Mch 30 1898

I, Edward Brown of Boston the duly selected Auditor of The Eppler Welt Machine Co a corporation duly established by law, hereby certify that I have this day completed the examination of the books of said corporation, and its certificate of condition as executed by its officers, to which this certificate is attached, and find that said certificate represents the true condition of the affairs of said corporation as disclosed by its books. This certificate is made by me in compliance with the provisions of chapter 492 of the Acts of the year 1897.

Edward Brown, Auditor.

Commonwealth of Massachusetts.

Suffolk, ss. Boston March 30 1898.

Then personally appeared the above-named Edward Brown and made oath that the above certificate by him subscribed is true.

Before me,

David L. Bowers Justice of the Peace.

[On back:]

[Foreign Corporations.]

Eppler Welt Machine Company. Fee $5.00 paid.

Certificate of Condition.

Acts of 1891, Chap. 341; 1895, Chap. 311.

Filed in the office of the Secretary of the Commonwealth, March 30, 1898.

I hereby approve the within certificate, this 30th day of March A. D. eighteen hundred and ninety-eight

Chas Endicott Commissioner of Corporations.

Commissioner of Corporations Mar 30 1898

Received Mar 30 1898 Corporation Division, Secretary's Office.

COMMONWEALTH OF MASSACHUSETTS.
Office of the Secretary.
Boston, June 18, 1913.

A true copy.
Witness the Great Seal of the Commonwealth.
FRANK J. DONAHUE
[SEAL] Secretary of the Commonwealth.

PLAINTIFF'S EXHIBIT 176.

[Put in Evidence, page 1899.]

Independent Lease.

Metallic Department. 301

Lease and License Number *1225*.

This Lease and Agreement made at Boston, in the State of Massachusetts, this *twenty fourth* day of January 19*02*, between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *Curtis, Jones and Company*, of *Reading Pennsylvania* hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use the machine or machines known as "Metallic Department" machinery now or hereafter delivered to the lessee and designated by number in the following schedule, viz.:—

SCHEDULE OF MACHINES.

Rapid Standard Screw Machine, No.
Old Style Standard Screw Machine, No.
Loose Nailing Machine, No. *212, 611, 625, 515, 702*
Universal Slugging Machine, No. *240*
Taper Nail Tacking Machine (D. H.), No. *1236* / *1237*
Taper Nail Tacking Machine (S. H.), No.
String Nail Tacking Machine, No. *589*

Power Welt Tacking Machine, No.
Cable Tacking Machine, No.
Universal Quilting Machine, No.
Heel Protector Driving Machine, No.
Grip Slugging Machine, No.
Grip Clinch Machine, No.
Grip Tacking Machine, No.
Lewis Nailing Machine, No.
Spatter Quilting Machine, No.
National Slugging Machine, No.
Simplex Slugging Machine, No.
Champion Heel Seat Nailing Machine, No.
Champion Slugging Machine, No.
Staple Fastening Machine, No.
Automatic Staple Nailing Machine, No.
Universal Double Clinch Machine, No.
Gordon Staple Tacking Machine, No.
Corrugated Wire Tacking Machine, No.

and any duplicate parts, extras, mechanisms and devices, relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform: —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself, or by operatives in his direct

employ, and only in the factory now occupied by him at *Reading* in the State of *Pennsylvania*. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust, or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any

addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery, or in respect to this lease and license or the right to payments hereunder, upon whomsoever assessed. The lessee shall at his own expense insure against loss by fire and keep insured to the full value thereof the leased machinery, and in case of loss shall pay forthwith to the lessor a sum equal to the full amount of the loss occasioned to the lessor.

Four. **The lessee, as rent and royalty for the leased machinery, shall purchase exclusively of the lessor all the fastening material by him in or in connection with the leased machinery, and shall pay the lessor in cash on delivery the regular and uniform prices therefor as established from time to time by the lessor, which shall not be more than ten (10) per cent. in excess of the prices to be established from time to time by the lessor for like fastening material to be used in its Metallic Department machinery by lessees who shall agree not to use the Metallic Department machinery leased to them in the manufacture of boots or shoes which are lasted on machines other than those leased from the lessor, or of welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or of turned shoes the soles of which are not attached by turn sewing machines leased from the lessor.**

Five. The lessor may attach to the leased machinery an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes and other footwear or portions thereof in the manufacture of which the leased machinery or any part thereof shall be used, and shall allow the lessor at all times by its agents or attorneys to examine and to take copies of such accounts and entries of the

lessee as may serve to indicate the total number of boots, shoes and other footwear or portions thereof made by the aid of the leased machinery or any part thereof and the lessee shall produce all such papers and books upon request.

And that the following agreements, stipulations and provisions are agreed to: —

Six. The lessee for a period of five years from the date of this lease and license shall use the leased machinery to its full capacity so far as the number and kind of boots and shoes made in his factory will permit, and his failure to use the leased machinery to its full capacity shall render him liable in damages to the lessor. During the remainder of the term of this lease and license after five years from the date hereof, the lessee shall continue to use the leased machinery to its full capacity so far as the number and kind of boots and shoes made in his factory will permit.

In case the lessee has more work of the kind which can be performed by any of the machines belonging to the Metallic Department of the lessor than the capacity of the Metallic Department machinery which he has under lease from the lessor will permit, then the lessee shall take from the lessor under a like lease and license sufficient additional Metallic Department machinery to perform the work, and the lessor shall lease such additional Metallic Department machinery to the lessee from time to time when required by the lessee, under a like lease and license if this lease and license is then in force, and if the lessee is not then in default in respect to any of the conditions, agreements, stipulations, and provisions in this lease and license contained.

Whenever for a period of three consecutive months the lessee shall fail to use all the leased machinery to an amount that will give to each machine at least three-fourths of a fair day's work during such period, the lessee from time to time and at all times upon the written request of the lessor, shall return to the lessor by delivery at its office or factory, such of the leased machinery as, in the opinion of the lessor, shall not be reasonably required by the lessee in the operation of his said factory, and shall pay to the lessor such

sums as may be necessary to put the machinery so returned in suitable order and condition to lease to another lessee.

The lessee hereby agrees that for each machine hereby leased the amount of fastening material used by him and purchased from the lessor in accordance with the terms hereof shall not be less than four hundred (400) pounds during each calendar year embraced by this lease, excepting that a reduction of thirty-three (33) pounds from the amount thus guaranteed for each machine shall be allowed at the end of the year for each calendar month during which the factory of the lessee has remained wholly idle. Upon any breach or default on the part of the lessee in the observance of the agreements, stipulations and provisions in this article "Six" contained, the lessor, although it may have waived or ignored prior breaches or defaults, may, at its option, terminate forthwith by notice in writing this lease and license and any other lease or license of Metallic Department machines, machinery or devices, like those or any of them mentioned in the foregoing Schedule of Machines, then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all Metallic Department machinery held by the lessee under lease or license from the lessor or its assignors shall thereupon revest in the lessor, free from all claims and demands whatsoever, and the lessee shall thereupon pay to the lessor such sum as shall be necessary to put all such machinery in suitable order and condition to lease to another lessee; but a breach or default on the part of the lessee in the observance of his agreements in respect to the extent of the use of the leased machinery and the amount of fastening material to be purchased by him in this article "Six" contained shall not entitle the lessor to any other remedy than the right to terminate this lease and license and any other lease or license of Metallic Department machinery as above provided, except the right to damages for breach of the first agreement, covering the term of five years, in this article "Six" contained and therein expressly given.

Seven. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the

lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith this lease and license, and also, if the lessor so elects, any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term, but thereafter either the lessee, or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease and license from the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted; and the lessee for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same; and the lessee, in addition and without prejudice to any other rights and remedies of the lessor hereunder, shall thereupon pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee.

Eight. Whenever the right to terminate this lease and license shall have accrued to the lessor, a notice in writing, signed by the president, a vice-president, or the treasurer of the lessor, or by any assignee of the lessor's rights hereunder and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Nine. The lessee admits the validity of each and every of the Letters Patent of the United States of America owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cesser of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth, so far as any act committed during the existence of this lease and license is concerned.

Ten. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Eleven. The term "lessor" shall include the said United Shoe Machinery Company, and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on

and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

Twelve. The lessee, if not in default in respect to any of the conditions, agreements, stipulations and provisions herein contained, upon giving six months' notice in writing to the lessor of his intention so to do, shall have the privilege of surrendering this lease and license, by executing such other form of lease and license agreement in respect to the leased machinery as the lessor shall have in use at the time of such surrender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

CURTIS JONES & Co.
F. W. Curtis
UNITED SHOE MACHINERY CO. [SEAL]
L. H. Baker, Secretary.

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Nine herein.)

Nos. 297,718, April 29, 1884, 319,127, June 2, 1885; 325,274, Sept. 1, 1885; 325,275, Sept. 1, 1885; 334,361, Jan. 12, 1886; 334,362, Jan. 12, 1886; 334,809, Jan. 26, 1886; 346,127, July 27, 1886; 346,128, July 27, 1886; 346,129, July 27, 1886; 346,-130, July 27, 1886; 354,051, Dec. 7, 1886; 354,052, Dec. 7, 1886; 364,776, June 14, 1887; 364,777, June 14, 1887; 364,778, June 14, 1887; 364,779, June 14, 1887; 380,662, April 3, 1888; 403,-081, May 7, 1889; 410,927, Sept. 10, 1889; 413,463, Oct. 22, 1889; 416,272, Dec. 3, 1889; 429,862, June 10, 1890; 431,339, July 1, 1890; 432,074, July 15, 1890; 440,723, Nov. 18, 1890; 447,[illegible], March 3, 1891; 447,359, March 3, 1891; 457,257, Aug. 4, 1891; 459,698, Sept. 15, 1891; 487,404, Dec. 6, 1892; 520,437, May 29, 1894; 525,066, Aug. 28, 1894; 554,200, Feb. 4, 1896; 554,931, Feb. 18, 1896; 555,314, Feb. 25, 1896; 560,968, May 26, 1896; 561,206, June 2, 1896; 562,597, June 23, 1896; 562,-

703, June 23, 1896; 578,696, March 9, 1897; 579,390, March 23, 1897; 582,579, May 11, 1897; 582,580, May 11, 1897; 591,658, Oct. 12, 1897; 601,255, March 29, 1898; 610,475, Sept. 6, 1898; 612,799, Oct. 18, 1898; 612,487, Oct. 18, 1898; 287,375, Oct. 23, 1883; 288,421, Nov. 13, 1883; 288,422, Nov. 13, 1883; 288,423, Nov. 13, 1883; 288,424, Nov. 13, 1883; 288,425, Nov. 13, 1883; 289,103, Nov. 27, 1883; 300,077, June 10, 1884; 301,114, July 1, 1884; 301,493, July 8, 1884; 310,816, Jan. 13, 1885; 310,817, Jan. 13, 1885; 329,031, Oct. 27, 1885; 329,449, Nov. 3, 1885; 331,925, Dec. 8, 1885; 331,926, Dec. 8, 1885; 351,372, Oct. 26, 1886; 356,107, Jan. 18, 1887; 360,428, April 5, 1887; 360,585, April 5, 1887; 370,135, Sept. 20, 1887; 370,136, Sept. 20, 1887; 373,234, Nov. 15, 1887; 373,549, Dec. 6, 1887; 383,455, May 29, 1888; 385,801, July 10, 1888; 385,802, July 10, 1888; 388,128, Aug. 21, 1888; 398,606, Feb. 26, 1889; 398,891, March 5, 1889; 403,835, May 21, 1889; 402,014, April 23, 1889; 429,527, June 3, 1890; 429,528, June 3, 1890; 440,805, Nov. 18, 1890; 443,077, Dec. 16, 1890; 451,001, April 21, 1891; 456,113, July 14, 1891; 472,638, April 12, 1892; 467,104, Jan. 12, 1892; 475,729, May 24, 1892; 475,868, May 31, 1892; 478,054, June 28, 1892; 478,055, June 28, 1892; 478,056, June 28, 1892; 490,621, Jan. 24, 1893; 490,622, Jan. 24, 1893; 490,623, Jan. 24, 1893; 490,624, Jan. 24, 1893; 490,625, Jan. 24, 1893; 493,910, March 21, 1893; 502,212, July 25, 1893; 245,487, Sept. 3, 1895; 552,903, Jan. 14, 1896; 556,501, March 17, 1896; 559,129, April 28, 1896; 559,130, April 28, 1896; 563,478, July 7, 1896; 565,073, Aug. 4, 1896; 565,074, Aug. 4. 1896; 568,248, Sept. 22, 1896; 577,235, Feb. 16, 1897; 581,458, April 27, 1897; 581,459, April 27, 1897; 584,775, June 22, 1897; 587,144, July 27, 1897; 602,184, April 12, 1898; 603,394, May 3, 1898; 606,045, June 21, 1898; 609,874, Aug. 30, 1898; 611,990, Oct. 4, 1898; 611,991, Oct. 4, 1898; 611,405, Sept. 27, 1898; 335,154, Feb. 2, 1886; 447,681, March 3, 1891; 521,369, June 12, 1894; 571,227, Nov. 10, 1896; 347,323, Aug. 17, 1886; 575,296, Jan. 12, 1897; 538,322, April 30, 1895; 610,320, Sept. 6, 1898; 280,267, June 26, 1883; 291,443, Jan. 1, 1884; 299,041, May 20, 1884; 301,-

464, July 1, 1884; 335,260, Feb. 2, 1886; 335,261, Feb. 2, 1886; 341,193, May 4, 1886; 426,274, April 22, 1890; 434,274, Aug. 12, 1890; 607,924, July 26, 1898; 615,481, Dec. 6, 1898; 548,-343, Oct. 22, 1895; 586,153, July 13, 1897; 586,154, July 13, 1897; 669,022, Feb. 26, 1901; 669,023, Feb. 26, 1901; 669,024, Feb. 26, 1901; 669,025, Feb. 26, 1901; 669,026, Feb. 26, 1901.

[On back:]
United Shoe Machinery Company.
Metallic Department.
Independent Lease.
Lease No. 1225 Curtis Jones & Co., Lessee.
Date, January 24, 1902.
Machines.
Duplicate under date 10/9–1902.

PLAINTIFF'S EXHIBIT 177.

[Put in Evidence, page 1902.]

THE COMMONWEALTH SHOE & LEATHER CO. BOSTON

April 5, 1911.

Mr. F. W. Merrick, Pres., 229 Marginal St., E. Boston, Mass.

Dear Sir:— Your favor of the 5th, offering to supply us with a Curved Needle Sole Stitcher, was duly received. I have seen your machine in operation and it looks like an exceedingly useful stitcher. Its simplicity appeals to me, and the proposition you make would interest us at once, if we were at liberty to use any machinery except that produced by the United Shoe Machinery Co. You know, their leases bind us absolutely to confine our operations wholly to machines produced by them.

I have long felt that these leases were illegal, and not, therefore, enforceable. We might, perhaps, consider the use of your machine in spite of the leases, except for the fact that we fear the power of the United Co. to destroy our business. They have bought out and closed up so many outside machinery manufacturers, that it would be impossible for us to supply ourselves with such other machinery as was needed, in case they saw fit to remove their machinery now in operation in our factory. This, you know,

they have a right to do under the rider attached to the leases issued in this state. It would clearly be possible for them to put us entirely out of business, if we should undertake to use your machine, and threats to this effect which they have frequently made in dealings with other concerns, indicate a hazard in doing business with you, far too serious for us to consider.

Regretting very much the existence of this condition, and hoping at some time to be relieved of this unreasonable restraint, we are

Yours very truly,

THE COMMWEALTH SHOE & LEATHER CO.
Chas. H. Jones, Pres.

PLAINTIFF'S EXHIBIT 178.

[Put in Evidence, page 1902.]

OFFICERS & DIRECTORS:
Henry W. Peters, President.
Fred W. Peters, Vice-President,
F. August Sudholt, Secretary.
H. Stuart Butler, Treasurer.
Chas. H. Peters,
Frank L. Osborne,
Francis H. Peters,
Fred'k W. Peters,
H. M. Zimmerman.

Ex. 86 — J. W. M.

PETERS SHOE CO.

Paid-up Capital,
Two Million Dollars.

Trade Mark.

Peters Shoe Co's
Diamond Brand
St. Louis.

ADVISORY COMMITTEE:
Henry C. Stribling, Chairman,
F. A. Brickenkamp,
Wm. Haiden Brooks,
Arthur W. Goodall,
John B. Howell.
Ed. Massengill,
Edwin H. Peters,
Wm. C. Shepherd,
Robert E. Smith,
John L. Taylor,
Charles E. Zelle.

St. Louis, 4/24/11.

F. W. Merrick, c/o Union Lock-Stitch Co., East Boston, Mass.

Dear Sir: — Replying to your favor of recent will say, we do not doubt in the least but what your curved needle out sole stitching machine is capable of doing all you say it can do, but at the present, however, we are not in position to consider your machine on account of the lease signed with the United Shoe Machinery Co. Perhaps we can come together at some future time.

Yours very truly,

PETERS SHOE CO.

#5 H. W. P.

Weatherbird Shoes for Boys and Girls.
If this letter needs a reply, kindly answer on this sheet.

PLAINTIFF'S EXHIBIT 179.

[Put in Evidence, page 1902.]

OFFICERS AND DIRECTORS:
J. Johnson, Prest.
J. C. Roberts, V-Prest.
O. Johnson, V-Prest.
F. C. Rand, 2nd V-Prest.
J. T. Pettus, 3rd V-Prest.
C. D. P. Hamilton, 4th V-Prest.
H. C. Wood, Secy.
D. C. Biggs, Treas.
R. N. Warmack
T. Moreno
H. Watkins
W. H. Moulton

Ex. 84 — J. W. M.

ROBERTS, JOHNSON & RAND SHOE CO.
Manufacturers.

1501-1509 Washington Ave.

Capital $5,000,000.00
Full Paid.

St. Louis, Mo., May 9, 1911.

Mr. C. E. Merrick, President, Union Lock Stitch Co., Boston, Mass.

Dear Sir: Sometime ago we received a circular letter, referring to a Curved Needle Stitcher which you were going to put on the market, which we would be very much interested in but for the fact that we hold leases of the Goodyear Machinery that the United Shoe Machinery own.

These leases you are no doubt very well conversant with and knowing the terms and conditions under which we operate, you of course are aware that we could not use your machine because of obligations in these leases that prevent our doing so. Whether or not these leases are binding is a question that has never yet been fully decided; however, we are loath for business reasons to contemplate a test of their legality.

We are somewhat of the opinion that it would be very difficult to introduce any other Stitcher in competition until the matter of the leases referred to is decided.

Owing to the situation just at this time we do not see any way to even consider the matter of putting in your machine.

Respectfully yours,

ROBERTS, JOHNSON & RAND SHOE CO.

JJH J. Johnson, President.

"P. S. — Star Brand Shoes are better.

PLAINTIFF'S EXHIBIT 180.

[Put in Evidence, page 1929.]

UNITED SHOE MACHINERY COMPANY

Financial Condition March 1, 1901.

Assets			
Cash and Receivables,		$1,676,907.34	
Stock Finished and in Process,		1,432,501.66	
Real Estate,		435,539.38	
Machinery,		1,125,534.67	
Patent Rights,		745,269.27	
Stocks and Bonds, other Corporations, and Leased Machinery,		14,505,624.19	
Miscellaneous,		328,109.02	
			$20,249,485.53
Liabilities			
Accounts Payable,		$351,353.26	
Bonds,		250,000.00	
Capital Stock:			
Common,	8,930,159.00		
Preferred,	9,362,059.00		
		18,292,218.00	
			18,893,571.26
			$1,355,914.27
Surplus Account			
Balance, March 1, 1900,		612,192.19	
Earnings for Year,		2,011,582.06	
		2,623,774.25	
Paid Dividends		1,267,859.98	
Balance March 1, 1901,			$1,355,914.27

PLAINTIFF'S EXHIBIT 181.

[Put in Evidence, page 1930.]

UNITED SHOE MACHINERY COMPANY

Financial Condition, March 1, 1902

Assets			
Cash and Receivables,		$3,588,876.18	
Stock Finished and in Process,		1,898,855.35	
Real Estate,		437,598.66	
Machinery,		1,131,172.89	
Patent Rights,		571,332.23	
Stocks and Bonds, other Corporations, and Leased Machinery,		15,859,669.14	
Miscellaneous,		155,821.37	
			$23,643,325.82
Liabilities			
Accounts Payable,		$226,479.41	
Bonds,		250,000.00	
Capital Stock:			
Common,	$10,720,809.50		
Preferred,	9,937,084.50		
		20,657,894.00	
			21,134,373.41
			$2,508,952.41
Surplus Account			
Balance March 1, 1901,		$1,355,914.27	
Earnings for Year,		2,554,759.26	
		$3,910,673.53	
Paid Dividends		1,401,721.12	
Balance March 1, 1902,			$2,508,952.41

PLAINTIFF'S EXHIBIT 182.

[Put in Evidence, page 1930.]

UNITED SHOE MACHINERY COMPANY

Financial Condition March 1, 1903.

Assets			
Cash and Receivables,		$3,667,279.53	
Stock Finished and in Process,		2,361,527.43	
Real Estate,		491,463.81	
Machinery,		1,242,852.67	
Patent Rights,		408,021.75	
Stocks and Bonds, other Corporations, and Leased Machinery,		16,682,927.45	
Miscellaneous,		6,925.65	
			$24,860,998.29
Liabilities			
Accounts Payable,		$175,659.64	
Bonds,		250,000.00	
Capital Stock:			
Common,	$10,720,809.50		
Preferred,	9,937,084.50		
		20,657,894.00	
			21,083,553.64
			$3,777,444.65
Surplus Account			
Balance March 1, 1902,		$2,508,952.41	
Earnings for Year,		2,722,301.49	
		$5,231,253.90	
Paid Dividends		1,453,809.25	
Balance March 1, 1903,			$3,777,444.65

PLAINTIFF'S EXHIBIT 183.

[Put in Evidence, page 1930.]

UNITED SHOE MACHINERY COMPANY

Financial Condition March 1, 1904.

Assets			
Cash and Receivables,		$4,349,968.13	
Stock Finished and in Process,		2,617,460.47	
Real Estate,		829,823.68	
Machinery,		1,159,777.97	
Patent Rights,		400,000.00	
Stocks and Bonds, other Corporations, and Leased Machinery,		16,778,526.32	
Miscellaneous,		29,553.59	
			$26,165,110.16
Liabilities			
Accounts Payable,		$198,816.62	
Bonds,		182,000.00	
Capital Stock:			
Common,	$10,720.809.50		
Preferred,	9,937,084.50		
		20,657,894.00	
			21,038,710.26
			$5,126,399.54
Surplus Account			
Balance, March 1, 1903,		$3,777,444.65	
Earnings for year,		2,802,772.89	
		6,580,217.54	
Paid Dividends		1,453,818.00	
Balance March 1, 1904,			5,126,399.54

PLAINTIFF'S EXHIBIT 184.

[Put in Evidence, page 1931.]

UNITED SHOE MACHINERY COMPANY

Financial Condition March 1, 1905.

Assets			
Cash and Receivables,		$5,021,055.41	
Stock Finished and in Process,		2,930,872.50	
Real Estate,		1,552,166.95	
Machinery,		1,122,270.28	
Patent Rights,		400,000.00	
Stocks and Bonds, other Corporations and Leased Machinery,		16,747,433.29	
Miscellaneous		5,000.00	
			$27,778,798.43
Liabilities			
Accounts Payable,		$298,990.36	
Bonds,		111,000.00	
Capital Stock:			
Common,	$10,720,809.50		
Preferred,	9,937,084.50		
		20,657,894.00	
			21,067,884.36
			$6,710.914.07
Surplus Account			
Balance, March 1, 1904,		$5,126,399.54	
Earnings for Year,		3,038,332.53	
		8,164,732.07	
Paid Dividends		1,453,818.00	
Balance to March 1, 1905,			$6,710,914.07

PLAINTIFF'S EXHIBIT 185.

[Put in Evidence, page 1931.]

UNITED SHOE MACHINERY COMPANY

Financial Condition Mar. 1, 1906.

Assets			
Cash and Receivables,		5,630,704.00	
Stock Finished and in Process,		3,341,918.38	
Real Estate,		1,717,239.66	
Machinery,		1,865,075.78	
Patent Rights,		400,000.00	
Stocks and Bonds, other Corporations, and Leased Machinery,		17,177,597.20	
Miscellaneous,		11,420.40	
			$30,143,955.42
Liabilities			
Accounts Payable,		374,236.90	
Reserves,		222,218.89	
Capital Stock:			
Common	$10,835,809.50		
Preferred	9,937,084.50		
		20,772,894.00	
			21,369,349.79
			$8,774,605.63
Surplus Account			
Balance March 1, 1905,		$6,710,914.07	
Earnings for Year,		3,522,137.93	
		10,233,052.00	
Paid Dividends		1,458,446.37	
Balance March 1, 1906			$8,774,605.63

PLAINTIFF'S EXHIBIT 186.

[Put in Evidence, page 1931.]

UNITED SHOE MACHINERY COMPANY

Financial Condition March 1, 1907

Assets			
Cash and Receivables		$5,602,680.43	
Stock Finished and in Process		4,996,718.35	
Real Estate		1,715,793.41	
Machinery		2,082,238.54	
Patent Rights		400,000.00	
Stocks and Bonds, other Corporations, and Leased Machinery		17,748,375.34	
Miscellaneous		20,241.06	
			$32,566,047.13
Liabilities			
Accounts Payable		$431,600.51	
Reserves		235,203.53	
Capital Stock:			
Common	$10,835,809.50		
Preferred	9,937,084.50		
		20,772,894.00	
			$21,439,698.04
			$11,126,349.09
Surplus Account			
Balance March 1, 1906,		8,774,605.63	
Earnings for Year,		4,183,220.51	
		12,957,826.14	
Paid Dividends		1,831,477.05	
Balance March 1, 1907,			$11,126,349.09

PLAINTIFF'S EXHIBIT 187.

[Put in Evidence, page 1933.]

BOOTH BROTHERS COMPANY. 1908

This corporation was formed under the laws of the State of New York.

Its authorized capital is $25,000, divided into 250 shares of the par value of $100.00 each, all of which is issued and owned by the United Shoe Machinery Company.

This was the incorporation of the business conducted by Irving E. and Quentin W. Booth as co-partners doing business under the name of Booth Brothers. It operates a manufacturing plant at Rochester, N. Y. Prior to the acquisition by the United Shoe Machinery Company of the Booth Brothers business, the British United Shoe Machinery Company, and other foreign companies, in which the United Shoe Machinery Company was interested, acted as agent for the Booth machines in certain foreign countries.

BOSTON BLACKING COMPANY. 1900

This is a corporation organized under the laws of the State of Maine. It is engaged in the business of manufacturing and dealing in cement, blackings and stains for shoes.

Its authorized capital stock is $600,000, divided into 6,000 shares of the par value of $100. each. The United Shoe Machinery Company owns slightly less than one-half of the stock.

BRITISH UNITED SHOE MACHINERY COMPANY, LTD. 1899

This corporation formed under the British Companies' Acts, was organized by the United Shoe Machinery Company to take over its existing agencies in Great Britain.

Its authorized capital stock is £400,000, divided into 400,000 shares of par value of £1 each. Of these 150,000 shares of par value of £150,000 are preference and 250,000 shares of the par value of £250,000 are ordinary shares. 103,494 preference shares and 250,000 ordinary shares have been issued.

The United Shoe Machinery Company owns a majority of the issued capital stock. The Company operates a manufacturing plant at Leicester, England.

CAMPBELL-BOSWORTH MACHINERY CO. 1898

This is a corporation organized under the laws of the State of Maine to engage in the business of manufacturing and dealing in harness making machinery.

Its authorized capital stock is $500,000, divided into 20,000 shares of the par value of $25. each. Of this authorized capital stock 4,000 shares of the par value of $100,000. are held in the treasury of the Company; the balance, 16,000 shares of the par value of $400,000. is issued and outstanding. The United Shoe Machinery Company owns 8,000 shares of the par value of $200,000.

It does not manufacture machines but has its machines built for it under contract.

W. W. CROSS & CO., INC. 1902

This corporation was formed under the laws of the State of Maine.

Its authorized capital stock is $200,000, divided into 2,000 shares of the par value of $100.00 each. Of these 2,000 shares 1,000 are preferred and 1,000 common shares. The entire 2,000 shares are issued and outstanding. The United Shoe Machinery Company owns a majority of this capital stock.

It operates a tack and nail manufacturing plant in the City of Brockton, Massachusetts, manufacturing for the United Shoe Machinery Company certain kinds of tacks and certain kinds of nails used in the manufacture of shoes. It sells practically its entire output to the United Shoe Machinery Company.

DEUTSCHE VEREINIGTE SCHUHMASCHINEN GESELLSCHAFT, G. m. b. H. 1900

The Deutsche Vereinigte Schuhmaschinen Gesellschaft, formed under the laws of Germany, was organized by the United Shoe Machinery Company to take over its agencies in Germany.

The United Shoe Machinery Company owns the entire interest in this business. The Company operates a manufacturing plant at Frankfurt a Main, Germany.

FAGUS G. m. b. H. 1911

Fagus g. m. b. H., formed under the laws of Germany, has been organized by the United Shoe Machinery Company to develop and carry on in Germany a business of manufacturing and dealing in lasts, shoe trees and dies.

A majority of the capital is owned by the United Shoe Machinery Company.

S. A. FELTON & SON COMPANY. 1902

This corporation was formed under the laws of the State of Maine to carry on the partnership business of S. A. Felton & Son.

Its authorized capital stock is $100,000, divided into 1,000 shares of a par value of $100. each. Of this authorized capital 400 shares, of the par value of $40,000, have been issued and are outstanding. The United Shoe Machinery Company owns 200 shares of the par value of $20,000.

It operates a brush manufacturing plant in the city of Manchester, N. H., for the manufacture of brushes used in making shoes. Its business is chiefly within the United States, but it has also some slight export business.

J. K. KRIEG COMPANY. 1903

This corporation was formed under the laws of the State of New York.

Its authorized capital stock is $50,000.00, divided into 500 shares of the par value of $100.00 each. The United Shoe Machinery Company owns the entire capital stock.

Prior to the formation of the United Shoe Machinery Company the partnership J. K. Krieg & Company had acted as agents in New York for the McKay Shoe Machinery Company and the Consolidated & McKay Company, and thereafter for the United Shoe Machinery Company. The corporation was formed to carry on this business and operates a store for the sale of findings and general merchandise in the City of New York.

O. A. MILLER TREEING MACHINE COMPANY. 1902.

This corporation, formed in the year 1902, under the laws of the State of Maine, was organized by the United Shoe Machinery

Company to conduct the business of O. A. Miller in manufacturing and dealing in Treeing Machines and shoe trees.

Its authorized capital stock is $500,000. divided into 5,000 shares of the par value of $100. each. Of this authorized capital 2,000 shares of the par value of $200,000 have been issued and are outstanding. The United Shoe Machinery Company owns the majority of the outstanding capital stock.

It operates a machine shop and turning factory in the City of Brockton, Massachusetts, for the manufacture of its Treeing Machines and shoe trees.

MILLS TRANSFER COMPANY. 1906

This corporation, formed under the laws of the State of Massachusetts, was organized by the United Shoe Machinery Company to engage in express or transfer business, chiefly for the purpose of transferring machinery, etc., between its factory and offices located at Lynn and Boston. Its business is entirely local.

The authorized capital stock is $10,000 divided into 100 shares of $100 each. The entire stock is owned by the United Shoe Machinery Company.

ROSS-MOYER MANUFACTURING COMPANY. 1889.

This corporation was organized under the laws of the State of Ohio.

Its authorized capital stock is $350,000, divided into 3,500 shares of the par value of $100. each. Of this authorized capital 1974 shares of the par value of $197,400 are issued and outstanding. The United Shoe Machinery Company owns the entire issued and outstanding capital stock.

Prior to the formation of the United Shoe Machinery Company the Ross-Moyer Manufacturing Company was the agent in Ohio of the McKay Shoe Machinery Company and the Consolidated McKay Company. After the formation of the United Shoe Machinery Company that Company purchased the entire outstanding capital stock of the Ross-Moyer Manufacturing Company and the Company now operates as an agent for the United Shoe Machinery Company. It also deals in various findings and manufacturing accessories.

J. C. RHODES & CO., INC. 1901

A corporation formed under the laws of the State of Maine engaged in the business of manufacturing and dealing in eyelets for shoes.

The authorized capital stock is $600,000 divided into 60,000 shares of the par value of $10 each; all of which is issued and owned by the United Shoe Machinery Company.

The United Shoe Machinery Company acquired from the firm of J. C. Rhodes & Co., in 1901, the manufacturing plant and business of that firm and incorporated the business under the above name, J. C. Rhodes & Co., Inc.

SCHWEIZ. VEREINIGTE SCHUHMASCHINEN A.-G. 1900

This Corporation, formed under the laws of Switzerland, was organized by the United Shoe Machinery Company to take over its agencies in Switzerland.

The authorized capital stock in 100,000 francs, all of which is issued and owned by the United Shoe Machinery Company.

SECURITY EYELET COMPANY. 1903

This corporation was formed under the laws of the State of Maine.

Its authorized capital stock is $2,500,000, divided into 25,000 shares of the par value of $100. each. Of this 25,000 shares 10,000 shares of the par value of $1,000,000 are preferred, and 15,000 shares of the par value of $1,500,000 are common stock. Of the authorized capital stock there are issued and outstanding 6,577 shares preferred stock of the par value of $657,700. and 8,083 shares of common stock of the par value of $808,300. The United Shoe Machinery Company owns or controls a majority of the issued capital.

The company has never done any business in the United States.

S. O. & C. CORPORATION. 1901

This corporation was formed under the laws of the State of Maine to engage in the business of manufacturing and dealing in certain kinds of eyelets.

Its authorized capital stock is $740,000 of which 1600 shares are first preferred, 800 second preferred and 5000 common, all of the par value of $100.00 each. The United Shoe Machinery Company owns a majority of the stock.

The corporation was formed to take over the business of the S. O. & C. Company, a Conn. Corporation, operating a manufacturing plant at Ansonia, Conn.

T. G. Plant Company. 1901

This is a corporation formed under the laws of the State of New Jersey for the manufacture of footwear.

Its capital stock is $3,750,000 made up of $2,500,000 (25,000 shares at a par value of $100. each) preferred stock, and $1,250,000 (12,500 shares at a par value of $100. each) common stock. The United Shoe Machinery Corporation is the owner of 15,000 shares, par value of $1,500,000 of preferred stock, and 7,500 shares at a par value of $750,000 of the common stock, having acquired said stock from Mr. Thomas G. Plant in September, 1910.

United Awl & Needle Company. 1902

This corporation was formed under the laws of the State of Maine. It is engaged in the business of manufacturing and dealing in certain kinds of needles, awls, drivers, used in making shoes, raw hide mallets and various articles of a similar nature.

The authorized capital stock was $200,000, divided into 2,000 shares of the par value of $100. each. Of these 2,000 shares 1,000 shares were preferred and 1,000 shares were common stock. Of this authorized stock there are issued and outstanding 137 shares of preferred stock of the par value of $13,700, and 424 shares of common stock of the par value of $42,400. The United Shoe Machinery Company owns a majority of the stock issued and outstanding.

It operates a factory in the town of West Medway, Massachusetts, for the manufacture of articles of the kinds above enumerated.

United Fast Color Eyelet Company. 1900

This corporation was organized in the year 1900 under the laws of the State of Maine. It is engaged in the business of manufac-

turing and selling certain patented eyelets and eyelets made by patented process coated with celluloid or other plastic material.

Its authorized capital stock is $1,500,000 divided into 15,000 shares of the par value of $100.00 each. Of these 15,000 shares 5,000 shares of the par value of $500,000.00 are preferred and 10,000 shares of the par value $1,000,000. are common shares. Of this authorized capital 4786 shares of the par value of $478,600 of the preferred stock and the entire common stock (10,000 shares of the par value of $1,000,000) are issued and outstanding. The United Shoe Machinery Company owns a majority of the stock.

The Company does not operate its own manufacturing plant but has its eyelets manufactured for it by manufacturing companies.

UNITED SHOE MACHINERY COMPANY OF CANADA 1893.

This is a corporation organized under the laws of the State of New Jersey carrying on the United Shoe Machinery Company's shoe machinery business in Canada.

It is necessary to manufacture in Canada to hold patents there.

Its authorized capital stock is $225,000 divided into 9,000 shares at a par value of $25. each, all of which is issued and owned by the United Shoe Machinery Company.

It operates a manufacturing plant at Montreal in the Province of Quebec.

UNITED SHOE MACHINERY COMPANY DE FRANCE 1900.

The United Shoe Machinery Company de France, formed under the laws of France, was organized by the United Shoe Machinery Company to take over its agencies in France and Belgium.

Its authorized capital stock is 3,736,000 francs divided into 7,472 shares of the par value of 500 francs each, all of which with the exception of a few shares is issued and owned by the United Shoe Machinery Company.

The Company operates a manufacturing plant at Ivry sur Seine, France.

UNITED SHOE MACHINERY COMPANY (MAINE) 1899.

This is a corporation organized under the laws of the State of Maine.

Its authorized capital stock is $3,000,000, divided into 120,000

shares at a par value of $25. each, all of which is issued and owned by the United Shoe Machinery Company. The Company operates as a branch of the United Shoe Machinery Company.

UNITED SHOE MACHINERY COMPANY OF MEXICO 1901.

This is a corporation organized under the laws of the State of Maine.

Its authorized capital stock is $10,000, divided into 1000 shares at a par value of $10.00 each; all of which is issued and owned by the United Shoe Machinery Company.

The Company was organized to conduct the business of the United Shoe Machinery Company in Mexico.

UNITED SHOE MACHINERY COMPANY OF SOUTH AMERICA 1902.

This corporation, formed under the laws of the State of Maine, was organized by the United Shoe Machinery Company as its agent, in South America.

The authorized capital stock is $5,000, divided into 50 shares at a par value of $100. each; all of which is issued and owned by the United Shoe Machinery Company.

UNITED SHOE REPAIRING MACHINE COMPANY 1908.

This corporation, formed under the laws of the State of Maine, was organized by the United Shoe Machinery Company to take over and carry on that part of the business of the United Shoe Machinery Company which consisted in supplying machines to "cobblers" and others for use in repairing shoes.

Its authorized capital stock is $50,000 divided into 500 shares of $100 each; all of which is issued and owned by the United Shoe Machinery Company.

UNITED-XPEDITE FINISHING COMPANY 1902.

This corporation was formed in the year 1902 under the laws of the State of Maine. It was a re-organization to take over the business of the Xpedite Machine Company, a Maine corporation formed some years before. The Xpedite Machine Company and its successor, the United-Xpedite Finishing Company, engaged in the business of manufacturing and dealing in the heel finishing machine known as the Xpedite Finishing Machine.

The authorized capital stock of the United-Xpedite Finishing Company is $1,000,000, divided into 200,000 shares of the par value of $5. each. This entire capital stock is issued and outstanding. The United Shoe Machinery Company owns 110,000 shares of the par value of $550,000.00.

The Company does not manufacture its machines but has them constructed for it under contract.

AKTIESELSKABET UNITED SHOE MACHINERY COMPANY OF COPENHAGEN 1909.

This corporation, formed under the laws of Denmark, was organized by the United Shoe Machinery Company to operate its local agencies in Norway, Sweden and Denmark.

Its authorized capital stock is 1,000,000 kroner, divided into 200 shares at a par value of 5,000 kroner each. This entire capital stock is issued and the United Shoe Machinery Company owns a majority.

PLAINTIFF'S EXHIBIT 188.

[Put in Evidence, page 1939.]

Booth Brothers Company.

Officers.

President,	Sidney W. Winslow
Vice-President,	Edward P. Hurd
Treasurer,	Louis A. Coolidge
Asst. Treas.	Edward P. Hurd
Secretary,	Edward N. Chase
Asst. Secty.	Irving E. Booth

Boston Blacking Company.

President	George D. Pike
Vice-Pres.	Frank N. Stackpole
Treasurer	J. R. Stuart, Jr.
Secretary	A. L. Favor
Clerk	Franklin C. Payson

Campbell Bosworth Machinery Company.

President	Sidney W. Winslow
Vice-Pres.	Louis A. Coolidge
2nd Vice-Pres.	Edward N. Chase
Treasurer	Newell Martin
Asst. Treas.	George Bird Grinnell
2nd Asst. Treas.	Louis D. Speir
Secretary	Newell Martin
Clerk	David W. Snow

W. W. Cross & Co., Inc.

President	Sidney W. Winslow
Vice-Pres.	William B. Cross
Treasurer	William B. Cross
Asst. Treas.	Louis A. Coolidge
Secretary	Edward N. Chase
Clerk	Harry P. Sweetser

Deutsche Vereinigte Schuhmaschinen Gesellschaft, G. m. b. H.

Limited partnership composed of

Sidney W. Winslow	Edward P. Hurd
George W. Brown	John H. Connor
United Shoe Machinery Company	

Managers

John H. Connor C. F. Gardner, Jr. Fred Cox

Fagus Gesellschaft, G. m. b. H.

Limited partnership composed of

United Shoe Machinery Company	Sidney W. Winslow
O. A. Miller Last Company	George W. Brown
C. F. Gardner, Jr.	John H. Connor
Fred Cox	Carl A. Benscheidt
J. Hooley	

Managers.

Carl A. Benscheidt, John H. Connor

S. A. Felton & Son Company.

President	Sidney W. Winslow
Vice-Pres.	Edward P. Hurd
Treasurer	Edward P. Hurd
Asst. Treas.	D. D. Felton
Secretary	Edward N. Chase
Clerk	Harry P. Sweetser

J. K. Krieg Company.

Officers.

President,	Sidney W. Winslow
Vice-President,	Edward P. Hurd
Treasurer,	Louis A. Coolidge
Asst. Treas.,	Edward P. Hurd
Secretary,	Meylert Bruner

O. A. Miller Treeing Machine Company.

President	Sidney W. Winslow
Treasurer	Louis A. Coolidge
Asst. Treas.	Edward P. Hurd
Secretary	Edward N. Chase
Asst. Secretary	Robert A. Blackwell
Clerk	Harry P. Sweetser

Mills Transfer Company.

Officers.

President,	Edward N. Chase
Treasurer,	Nelson B. Todd
Clerk,	Nelson B. Todd

Ross-Moyer Manufacturing Company.

Officers.

President,	Sidney W. Winslow
Vice-President,	Simon Ross
Treasurer,	William F. Harmon
Secretary,	William F. Harmon

J. C. Rhodes & Company, Inc.

President	Sidney W. Winslow
Vice-Pres.	Edward P. Hurd
Treasurer	Louis A. Coolidge
Asst. Treas.	J. B. Rhodes
Secretary	Edward N. Chase
Asst. Sec'y	Harold G. Donham
Clerk	Frederick Hale

Schweiz. Vereinigte Schuhmaschinen, A.-G.

President	John H. Connor
Vice-Pres.	William T. Coleman

Security Eyelet Company.

President	Sidney W. Winslow
Vice-Pres.	John H. Connor
Treasurer	Louis A. Coolidge
Asst. Treas.	Edward P. Hurd
Secretary	Louis A. Coolidge
Clerk	Harry P. Sweetser

S. O. & C. Corporation.

Officers.

President,	Sidney W. Winslow
Vice-President,	Edward P. Hurd
Treasurer,	Louis A. Coolidge
Secretary,	Edward N. Chase
Clerk,	Harry P. Sweetser

Thomas G. Plant Company.

Officers.

President,	William L. Ratcliffe
Vice-President,	Frank R. Maxwell
" "	William J. McGaffee
Treasurer,	Frank R. Briggs
Asst. Treas.,	William A. Mitchell
Secretary,	William A. Mitchell

United Awl & Needle Company.

President	Sidney W. Winslow
Vice-Pres.	Edward P. Hurd
Treasurer	Louis A. Coolidge
Asst. Treas.	Edward P. Hurd
Secretary	Edward N. Chase
Clerk	Harry P. Sweetser

United Fast Color Eyelet Company.

Officers.

President,	Sidney W. Winslow
Vice-President,	Edward P. Hurd
Treasurer,	Louis A. Coolidge
Asst. Treas.,	Welcome H. Longley
Secretary,	Edward N. Chase
Asst. Secty.,	Harold G. Donham
Clerk,	Franklin C. Payson

United Shoe Machinery Company of Canada.

President	Sidney W. Winslow
Vice-Pres.	Edward P. Hurd
Treasurer	Louis A. Coolidge
Asst. Treas.	Harold G. Donham
Secretary	Harold G. Donham

United Shoe Machinery Company de France.

President	John H. Connor
Vice-Pres.	William T. Coleman
Secretary	Ebenezer Pocock

United Shoe Machinery Company (Maine)

President — Sidney W. Winslow
Vice-President — Edward P. Hurd
Treasurer — Louis A. Coolidge
Asst. Treasurer — Edward P. Hurd, Edwin P. Brown.
Secretary — Edward N. Chase
Asst. Secretary — Robert A. Blackwell
Clerk — David W. Snow

United Shoe Machinery Company of Mexico.

President	Sidney W. Winslow
Vice-Pres.	Edward P. Hurd
Treasurer	Louis A. Coolidge
Asst. Treas.	Edward P. Hurd
Secretary	Edward N. Chase
Clerk	Franklin C. Payson

United Shoe Machinery Company of South America.

President	Sidney W. Winslow
Vice-Pres.	Edward P. Hurd
Treasurer	Louis A. Coolidge
Asst. Treas.	Edward P. Hurd
Secretary	Edward N. Chase
Clerk	Harry P. Sweetser

United Shoe Repairing Machine Company.

President	Sidney W. Winslow
Vice-Pres.	Edward P. Hurd
Treasurer	Welcome H. Longley
Secretary	Edward N. Chase
Asst. Secretary	Robert A. Blackwell
Clerk	Harry P. Sweetser

United-Xpedite Finishing Company.

President	Sidney W. Winslow
Treasurer	Edward P. Hurd
Asst. Treas.	Louis A. Coolidge
Secretary	Edward N. Chase
Asst. Sec'y	Robert A. Blackwell
Clerk	Harry P. Sweetser

Aktieselskaoet United Shoe Machinery Company of Copenhagen.

President John H. Connor

Booth Brothers Company.

Directors.

Sidney W. Winslow
Edward P. Hurd
Elmer P. Howe
Louis A. Coolidge
Irving E. Booth

Boston Blacking Company.

Directors.

George D. Pike
J. H. Ordway
J. R. Stuart, Jr.
F. N. Stackpole
Edward P. Hurd
Edwin P. Brown
Sidney W. Winslow
George W. Brown

British United Shoe Machinery Company, Limited.

Directors.

John Milne Barbour
William Barbour
Charles Bennion
George W. Brown
John H. Connor
Elmer P. Howe
Edward P. Hurd
Sir James Knox
Marshall H. Pearson
Robert A. Richardson
Frank E. Wheeler
Sidney W. Winslow

Campbell Bosworth Machinery Company.

Directors.

Sidney W. Winslow
Newell Martin
George Bird Grinnell
Louis A. Coolidge
(one vacancy)

W. W. Cross & Co., Inc.

Directors.

Sidney W. Winslow
Edward P. Hurd
Elmer P. Howe
William B. Cross
Edwin P. Brown
(two vacancies)

S. A. Felton & Son Company.

Directors.

Sidney W. Winslow — Elmer P. Howe
Edward P. Hurd — Edwin F. Jones
Edwin P. Brown

J. K. Krieg Company.

Directors.

Sidney W. Winslow — Richard N. Morton
Edward P. Hurd — Elmer P. Howe
Louis A. Coolidge — (two vacancies)

O. A. Miller Treeing Machine Company.

Directors.

Sidney W. Winslow — Edwin P. Brown
Edward P. Hurd — Louis A. Coolidge
Elmer P. Howe — (two vacancies)

Mills Transfer Company.

Directors.

Edwin N. Chase — Louis T. Howard
Nelson B. Todd

Ross-Moyer Manufacturing Company.

Directors.

Sidney W. Winslow — Simon Ross
Elmer P. Howe — William F. Harmon
S. G. Ross

J. C. Rhodes & Company, Inc.

Directors.

Sidney W. Winslow — Edward P. Hurd
Louis A. Coolidge — Edwin P. Brown
Elmer P. Howe — Harold G. Donham
Edward N. Chase

Schweiz. Vereinigte Schuhmaschinen, A.-G.

Directors.

John H. Connor
William T. Coleman
W. S. Ham

Security Eyelet Company

Directors.

Sidney W. Winslow
Edward P. Hurd
William Barbour
Louis A. Coolidge
Elmer P. Howe
John H. Connor
Meylert Bruner
Harold G. Donham
(three vacancies)

S. O. & C. Corporation.

Directors.

Sidney W. Winslow
Edward P. Hurd
Elmer P. Howe
Franklin R. Johnson
George O. Schneller

Thomas G. Plant Company.

Directors.

Guy Cunningham,
Albert M. Lyon,
Alfred B. White,
Jeremiah J. Mackin,
Clarence A. Barnes,
Frank E. Bradbury,
Phillips Ketchum,
Joseph O. Procter, Jr.,
Howard Stockton, Jr.,
Robert A. Blackwell,
Sidney R. Blackley,
Walter A. Brown,
Frank R. Briggs,
William H. Dudley,
Edwin R. Scheak,
William J. McGaffee,
Frank R. Maxwell,
William A. Mitchell,
George T. McLeod,
William F. Plant,
William L. Ratcliffe,
Robert F. Herrick,
Malcolm Donald.
(Two vacancies.)

United Awl & Needle Company.

Directors.

Sidney W. Winslow
Edwin P. Brown
Elmer P. Howe
Edward P. Hurd
Louis A. Coolidge
(two vacancies)

United Fast Color Eyelet Company.

Directors.

Sidney W. Winslow	Louis A. Coolidge
Edward P. Hurd	Harold G. Donham
Elmer P. Howe	Edward N. Chase
Marenus J. Goodenough	

United Shoe Machinery Company of Canada.

Directors.

Sidney W. Winslow	Elmer P. Howe
William Barbour	Louis A. Coolidge
Edward P. Hurd	(one vacancy)

United Shoe Machinery Company de France.

Directors.

John H. Connor	Ebenezer Pocock
William T. Coleman	Sidney W. Winslow
Joseph Becker	George W. Brown
C. F. Goddard	Elmer P. Howe

United Shoe Machinery Company (Maine).

Directors.

Sidney W. Winslow	Edward P. Hurd
William Barbour	Elmer P. Howe
Louis A. Coolidge	(two vacancies)

United Shoe Machinery Company of Mexico.

Directors.

Sidney W. Winslow	Louis A. Coolidge
Edward P. Hurd	Edwin P. Brown
Elmer P. Howe	(two vacancies)

United Shoe Machinery Company of South America.

Directors.

Sidney W. Winslow	Elmer P. Howe
Edward P. Hurd	John H. Connor
Louis A. Coolidge	

United Shoe Repairing Machine Company.

Directors.

Sidney W. Winslow	Elmer P. Howe
Louis A. Coolidge	William Barbour
Edward P. Hurd	Edwin P. Brown
	(one vacancy)

United-Xpedite Finishing Company.

Directors.

Sidney W. Winslow	Edward P. Hurd
Louis A. Coolidge	Elmer P. Howe
	Harold G. Donham

Aktieselskabet United Shoe Machinery Company of Copenhagen.

Directors.

John H. Connor	Fred Cox
C. F. Gardner, Jr.	Ernst Enna

PLAINTIFF'S EXHIBIT 189.

[Put in Evidence, page 1945.]

Agreement made this 11th day of September 1899 between United Shoe Machinery Company, a corporation organized and existing under the laws of the State of New Jersey, having an office in Boston, Massachusetts, hereinafter called the United Company, as party of the first part and Henry W. Peabody, of said Boston, together with Charles D. Barry, Frederick W. Lincoln and John R. Bradlee, of the City, County and State of New York, merchants and co-partners doing business under the firm name of Henry W. Peabody & Company, in said Boston, and in the City of New York, and at Sydney, New South Wales, and at Melbourne, Victoria.

Whereas, the United Company has acquired control of the boot and shoe and leather working machinery made by the following named corporations doing business in said Boston, namely:—

Goodyear Shoe Machinery Company,

Consolidated and McKay Lasting Machine Company,
McKay Shoe Machinery Company
Eppler Welt Machine Company
Goddu Metal Fastening Company,
Gordon Staple Lasting and Tacking Company,
Davey Pegging Machine Company,
Gem Flexible Insole Company,
Boot and Shoe Sole Laying Company,

and contemplates acquiring the control of other lines of boot and shoe and leather working machinery and boot and shoe findings except leather, linings, lasts and finished boots and shoes.

And Whereas, Messrs. Peabody & Company have been and are now engaged in introducing and dealing in boot and shoe machinery and findings in the several colonies of Australasia, and have in their employ in that department of their business, under a written contract, which expires on the day of May, 1902, Mr. C. H. B. Corbett.

And Whereas, the United Company, having established offices at Sydney and Melbourne aforesaid, and being about to extend its business throughout the several colonies of Australia desires to secure the co-operation of Messrs. Peabody & Company and the goodwill of the business which they have established as factors and dealers in boot and shoe and leather working machinery and boot and shoe findings in the colonies of Australasia;

Now it is Agreed as follows: —

1. Messrs. Peabody & Company, in consideration of the agreements of the United Company hereinafter contained, do hereby sell, assign and transfer to the United Company the goodwill of their business of dealing in boot and shoe findings, except leather, boot and shoe linings, lasts and finished boots and shoes, and agree that, while this instrument remains in force, they will not directly or indirectly engage or be engaged in manufacturing and dealing in boot and shoe or leather working machinery, or boot and shoe findings (except leather, boot and shoe linings, lasts and finished boots and shoes) except as brokers for the United Company to solicit and take orders for the same, and to transmit such orders to

the United Company at its offices in Sydney, New South Wales, or in Melbourne, Victoria, or in Boston, Massachusetts, U. S. A., and except also that Messrs. Peabody & Company reserve the right to purchase boot and shoe findings of other parties than the United Company, if they can make such purchase at a lower price or on better terms than the United Company will sell the same kind and quality of findings. And Messrs. Peabody & Company agree that, while this agreement remains in force, they will use their best efforts to secure for the United Company orders for the boot and shoe and leather working machinery, machines, appliances, and boot and shoe findings, dealt in or made by or for the corporations, individuals or firms controlled by it, and to that end do agree that said Corbett, until the expiration of his said contract, shall devote as much of his time and energy to obtaining such orders as he has heretofore given to the prosecution of the boot and shoe machinery and shoe findings business of Messrs. Peabody & Company. But Messrs. Peabody & Company are not to concern themselves about filling the orders which they shall secure and transmit, or about the instalment or supervision of the machinery or goods, or receiving or collecting the consideration to be paid by the vendees or lessees thereof.

2. The United Company in consideration of the premises agrees to pay Messrs. Peabody & Company the sum of Eighteen Hundred Dollars (1800), in each year during the unexpired term of the contract between Messrs. Peabody & Company and said Corbett in quarterly payments of Four Hundred and Fifty Dollars (450) each on the first days of January, April, July and October, the first of said payments to be made January 1st, 1900. It is agreed that this sum of Eighteen Hundred Dollars per year shall cover and satisfy the liability of the United Company to Messrs. Peabody & Company for the salary of said Corbett and for his personal and travelling expenses during the term of his said contract.

3. The United Company further agrees to pay to Messrs. Peabody & Company a sum equal to two and one-half (2½) per cent of the gross receipts of the United Company from leases, sales, or other disposition to customers or lessees in Australasia of

boot and shoe or leather working machinery, machines, or appliances, and boot and shoe findings.

4. The accounts between the parties hereto shall be made up on the first days of April and October every year, and the United Company agrees to keep accurate accounts of its gross receipts from leases, sales or other disposition to customers or lessees in Australasia of said machinery and findings, and to render a full statement of the same to Messrs. Peabody & Company in the month of August in each year, of such gross receipts in the half year ending on the first day of April next previous, and in the month of February in each year, of such gross receipts in the half year ending on the first day of October next previous and at the time of rendering each such account, to pay to Messrs. Peabody & Company a sum equal to two and one half per cent of such gross receipts; and in the account which shall be rendered in February 1901, if two and one half per cent on such gross receipts received by the United Company during the year ending on the first day of October, 1900, plus the amount paid in that year on account of the salary and expenses of said Corbett, does not aggregate Five Thousand Dollars, the United Company agrees in the settlement of the account to be rendered in February 1901 to pay to Messrs. Peabody & Company an amount necessary to make up the deficiency.

5. All contracts now in existence between Messrs. Peabody & Company and the Consolidated & McKay Lasting Machine Company or the companies mentioned in the preamble of this agreement shall be terminated on September 30, 1899.

6. This agreement shall take effect October 1st, 1899 and shall remain in force for a term of five years from that date.

7. It is understood and agreed that nothing in this contract shall debar Messrs. Henry W. Peabody & Company, as commission merchants, from dealing in, or executing such orders as may be placed with them for machinery or findings not controlled or handled by the United Company, which do not compete with the articles dealt in or made by the United Company; or from executing orders or findings of a special brand or manufacture, in cases where the

special brand or manufacture ordered by their customers is not handled by the United Company.

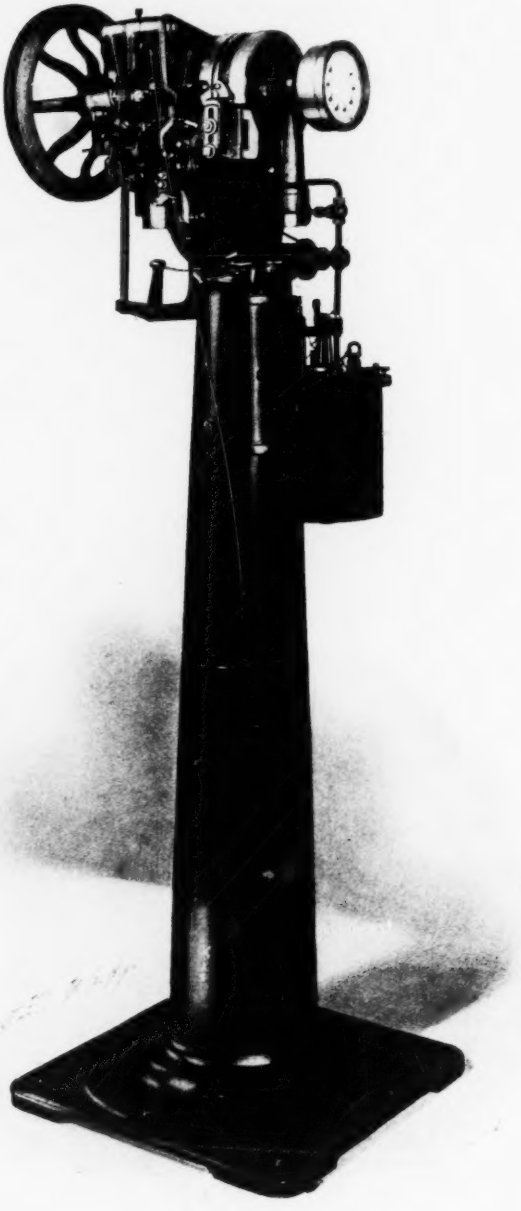
In Witness Whereof said United Shoe Machinery Company has caused these presents to be signed by its Treasurer and the parties of the second part have signed the same with their firm signature the day and year first above written.

Executed in duplicate.

[SEAL] UNITED SHOE MACHINERY COMPANY
By Geo. W. Brown, Treasurer
HENRY W. PEABODY & Co. [SEAL]

PLAINTIFF'S EXHIBIT 190.

[Put in Evidence, page 2016.]



PLAINTIFF'S EXHIBIT 190.

[Put in Evidence, page 2016.]

GOODYEAR WELT AND TURN SHOE MACHINE

This machine sews the welt on the shoe, fastening together with a chain-stitch the welt, upper and insole. It practically duplicates the work of the hand welt sewer. This machine is immensely popular and its use is constantly increasing. It has been improved and developed to the point of perfection. It measures the thread to the needle perfectly, thereby preventing all abrasion to the thread. After the needle has drawn the loop through the work, and has returned again through the stock, the take-up tightens the stitch by pulling on the supply end of the thread while the needle firmly supports the leather between stitches against the sawing action of the thread. This is the only method yet discovered for tightening the chain-stitch without destroying the "between substance." The chain of the stitch is placed on the outside of the welt, or, in the case of the turned shoe, on the outside of the lining of the upper (before turning). This method of forming and tightening stitches gives a perfect result, such as can be obtained in no other way.

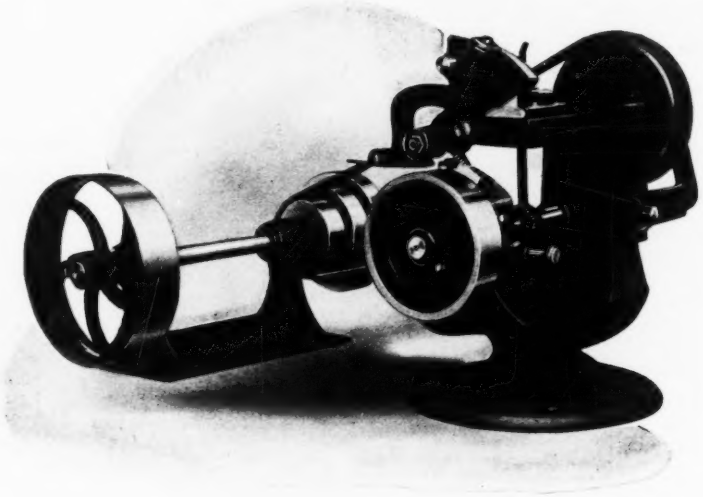
Receiving shaft runs	375 revolutions per minute
Pulley	8 x 2½ inches
10-inch friction runs machine	312 revolutions per minute
11-inch friction runs machine	345 revolutions per minute
12-inch friction runs machine	375 revolutions per minute
Net weight	297 pounds
Gross weight	340 pounds

MEASURES

Length	1 foot 10 inches
Width	1 foot 10 inches
Height	5 feet 10 inches

PLAINTIFF'S EXHIBIT 192.

[Put in Evidence, page 2036.]

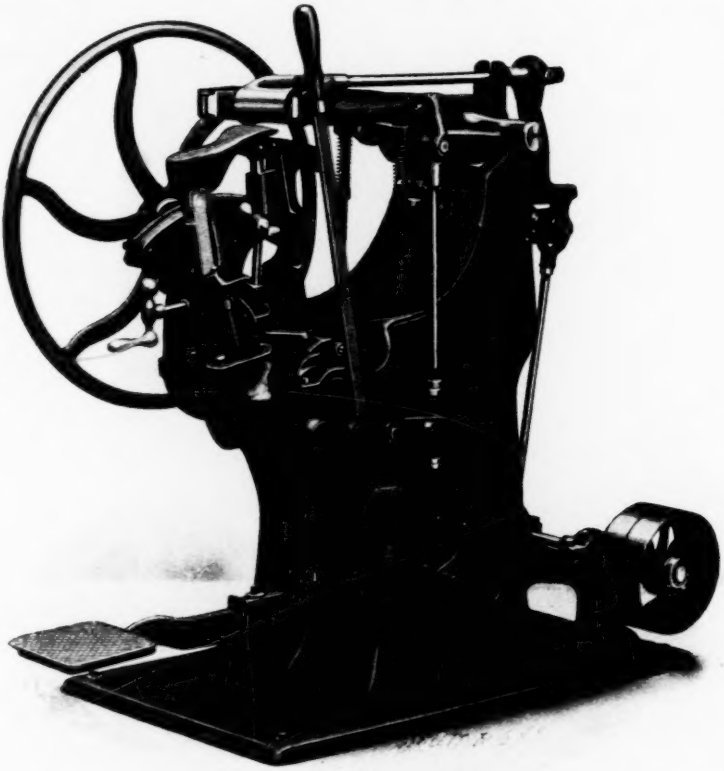


CARVER VAMP SKIVING MACHINE

This machine is used for skiving heavy vamps and box toes. On the lighter grades of work we would not recommend its use.

PLAINTIFF'S EXHIBIT 195.

[Put in Evidence, page 2055.]



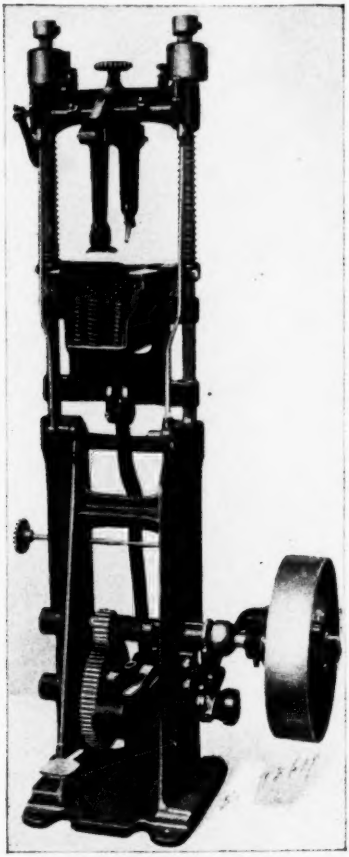
STAR LEVELING MACHINE

This machine is particularly adapted for leveling turn boots, shoes and slippers. The movements of the roll and the pressure are at all times under complete control of the operator. The roll is so adjusted that it leaves the toe of the shoe without injury to the last or sole.

Receiving shaft runs . . . 450 to 500 revolutions per minute
Pulleys . . . . . 10 x 2 inches, tight and loose
Belt . . . . . 2 inches, flat
Net weight . . . . . 850 pounds
Gross weight . . . . . 950 pounds
Measures: Length, 3 feet 11 inches; width, 2 feet 8 inches; height, 4 feet 1 inch

PLAINTIFF'S EXHIBIT 196.

[Put in Evidence, page 2055.]



GOODYEAR IMPROVED SOLE LAYING MACHINE

In laying soles with this machine, strong rubber cement is used under pressure. This does away with the use of the sole-laying nails, which on fine goods is considered objectionable. By using two of these machines side by side, the operator works continuously, one sole being under pressure while another one is being adjusted. In this way the double capacity is 1200 pairs per day.

Receiving shaft runs . . . . 150 revolutions per minute
Pulley . . . . . 14 x 3 inches (clutch)
Net weight . . . . . 380 pounds
Gross weight . . . . . 430 pounds
Measures: Length, 1 foot 8 inches; width, 2 feet 4 inches; height, 5 feet 3 inches

PLAINTIFF'S EXHIBIT 197.

[Put in Evidence, page 2061.]

PLAINTIFF'S EXHIBIT 197.

[Put in Evidence, page 2061.]

GOODYEAR UNIVERSAL ROUNDING AND CHANNELING MACHINE

After the outsole has been laid by the Sole Layer, this machine rounds and trims off the surplus welt and outsole stock, at the same time cutting the channel in the outsole, giving either a flat or English channel, as may be desired. Either blocked or died stock may be used. As the machine automatically shapes the sole and cuts the channel, gauging from the edge of the last, the Baltimore Extension, Scotch Edges, or any special shape desired may be accurately obtained. This is one of the most important machines in shoemaking, as the general style and character of the shoe is given in rounding. In one operation it simultaneously rounds, channels and automatically shapes the sole.

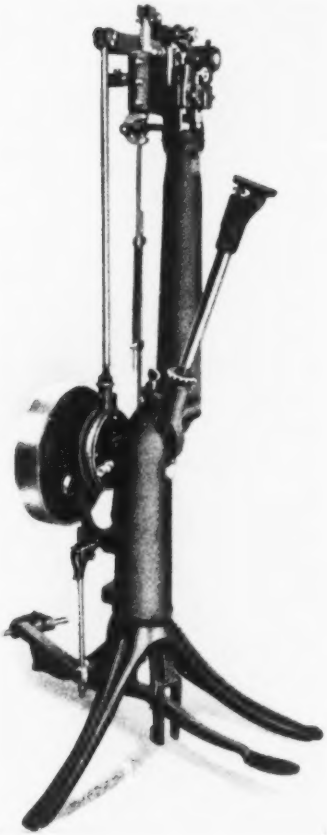
Receiving shaft runs	400 revolutions per minute
Pulley	8 x 2½ inches
Net weight	224 pounds
Gross weight	275 pounds

MEASURES.

Length	2 feet
Width	2 feet 1 inch
Height	5 feet 2 inches

PLAINTIFF'S EXHIBIT 198.

[Put in Evidence, page 2065.]



PLAINTIFF'S EXHIBIT 198.

[Put in Evidence, page 2065.]

POWER HEEL BREASTING MACHINE

This machine is a decided innovation in the breasting of heels, being a power machine and very rapid and accurate in its work. It can be quickly adjusted to breast any size shoe from the smallest sized children's to the largest sized men's, of all heights, and either straight or concave, doing the work with one smooth and accurate cut.

In operation, the shoe is held firmly in position by a leveling plate, fitted with adjustments which make it possible to breast on any angle either on or off the wooden last. The knife is very simple in construction, easily changed, and can be filed up handily.

There are also adjustments which regulate perfectly the depth of cut so that the possibility of cutting into the sole is reduced to the minimum.

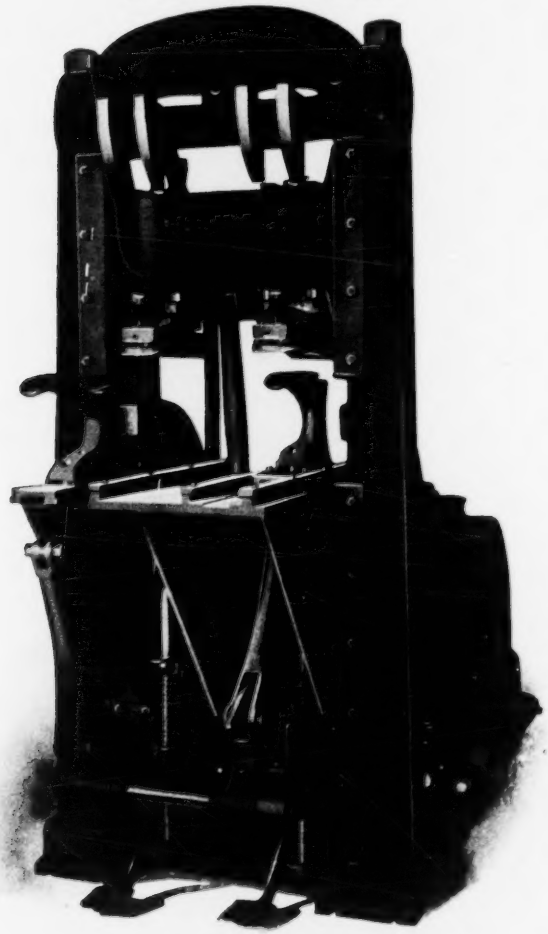
Receiving shaft runs	130 revolutions per minute
Pulley	15 x 2¼ inches
Belt	2 inches, flat
Net weight	265 pounds
Gross weight	300 pounds

MEASURES

Length	3 feet 7 inches
Width	2 feet 4 inches
Height	5 feet 2 inches

PLAINTIFF'S EXHIBIT 199.

[Put in Evidence, page 2068.]



ATLAS LEVELING MACHINE—MODEL A

This machine is designed for the purpose of leveling McKay Sewed Shoes. It is of the type known as a Direct Pressure machine. From the illustration it will be seen that it is a twin machine, one shoe being under pressure while the operator is getting another one ready for the other side. The varying thicknesses of soles in no way affects its work, as the pressure is always the same. It is a heavy and well constructed machine.

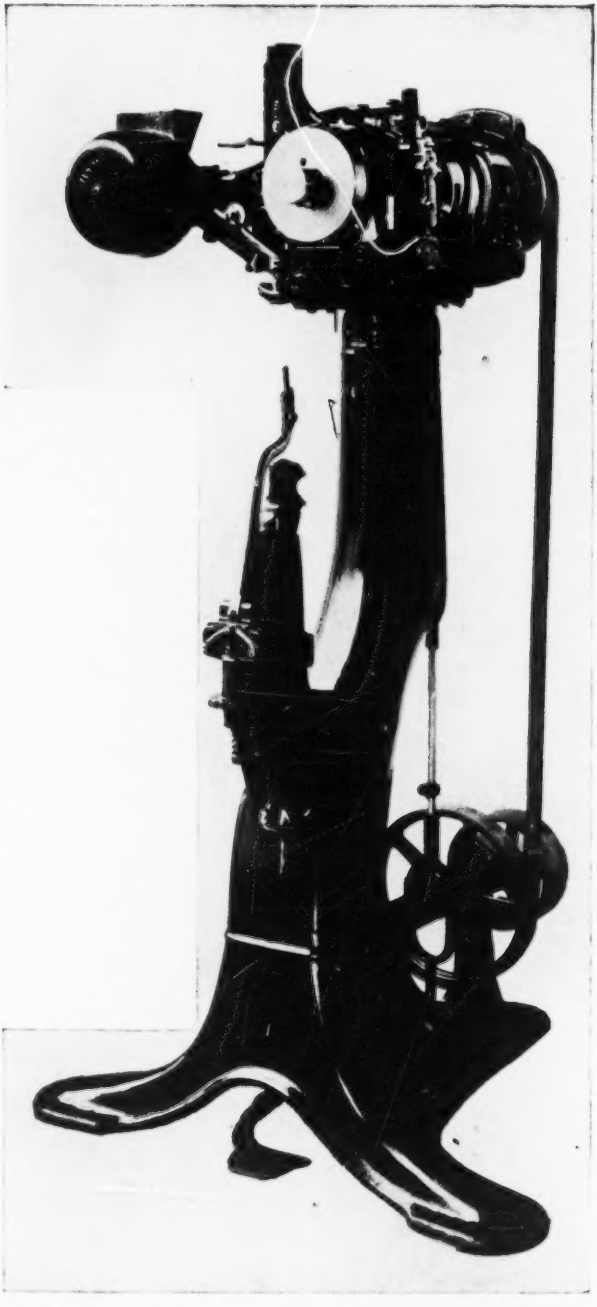
PLAINTIFF'S EXHIBIT 200.

[Put in Evidence, page 2078.]

GOODYEAR IMPROVED SOLE LAYING MACHINE.
(SYMBOL ISL.)

PLAINTIFF'S EXHIBIT 201.

[Put in Evidence, page 2090.]

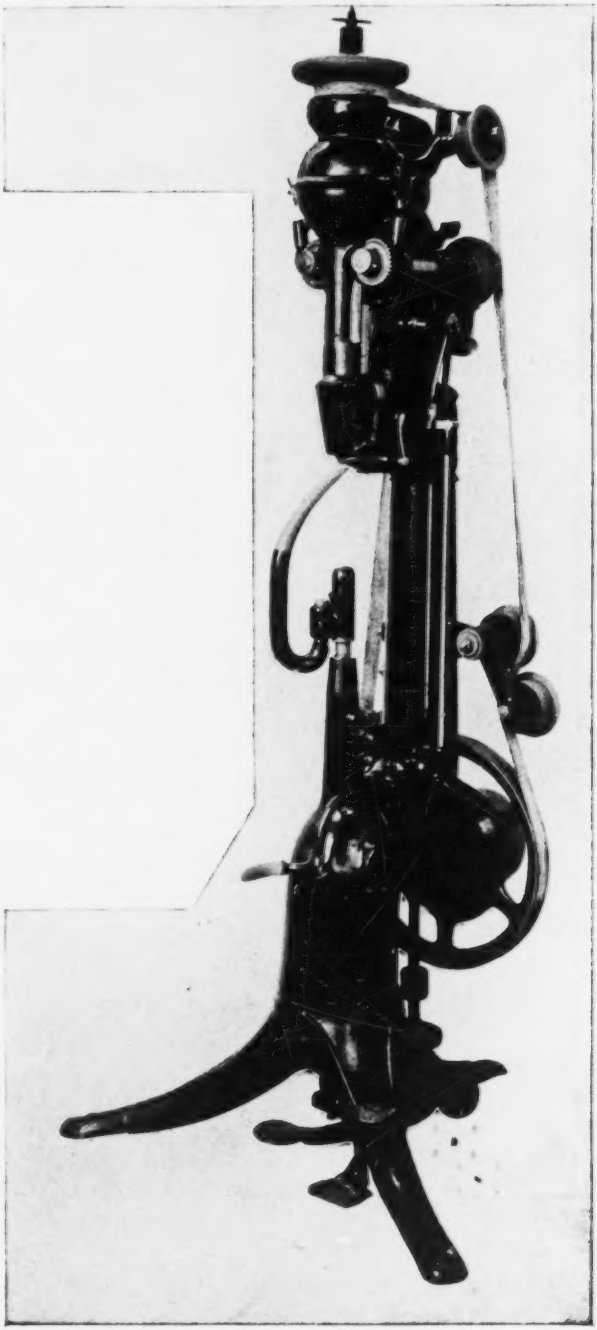


PLAINTIFF'S EXHIBIT 202.

[Put in Evidence, page 2090.]

PLAINTIFF'S EXHIBIT 203.

[Put in Evidence, page 2090.]

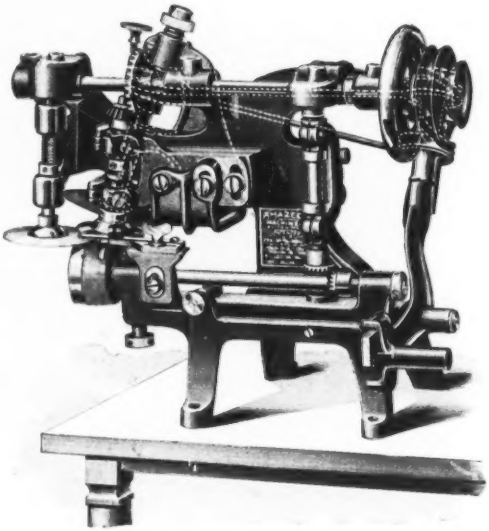


PLAINTIFF'S EXHIBIT 204.

[Put in Evidence, page 2091.]

AMAZEEN SKIVING MACHINE.

UNITED SHOE MACHINERY COMPANY.



MODEL No. 4.

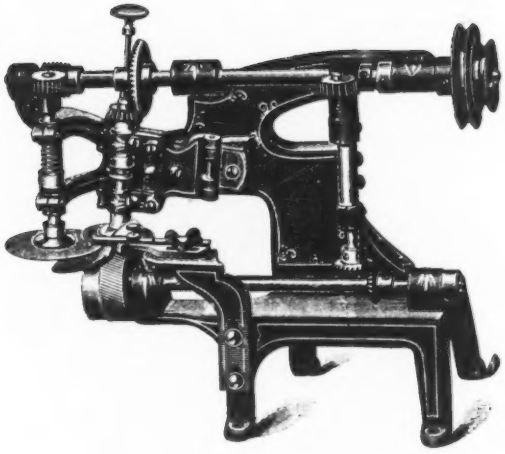
(Formerly known as "New Model.")

PLAINTIFF'S EXHIBIT 205.

[Put in Evidence, page 2091.]

AMAZEEN SKIVING MACHINE.

UNITED SHOE MACHINERY COMPANY.



MODEL No. 3.

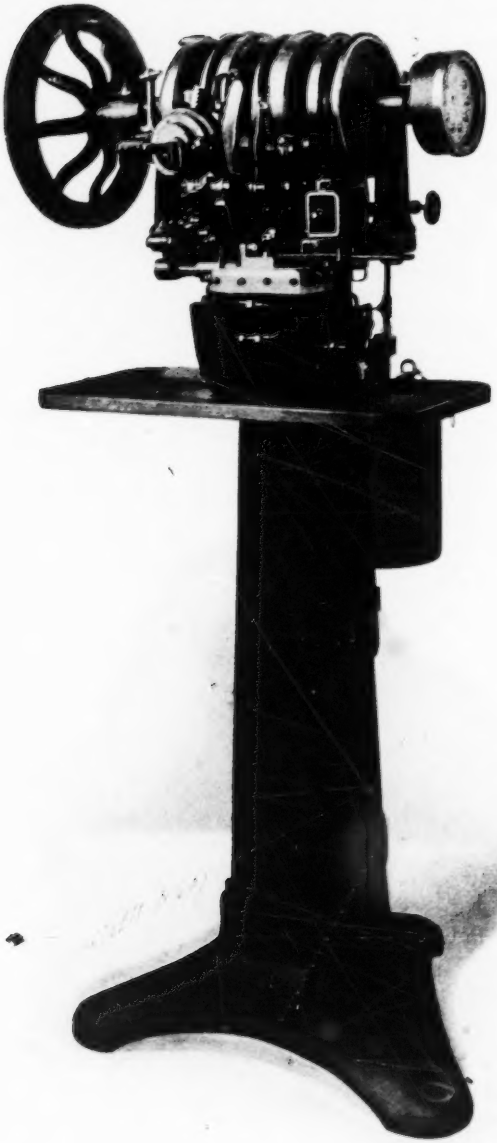
(Formerly known as "Old Pattern.")

PLAINTIFF'S EXHIBIT 206.

[Put in Evidence, page 2098.]

PLAINTIFF'S EXHIBIT 207.

[Put in Evidence, page 2127.]



PLAINTIFF'S EXHIBIT 207.

[Put in Evidence, page 2127.]

GOODYEAR OUTSOLE RAPID LOCKSTITCH MACHINE

This machine fastens the outsole to the welt with a lockstitch seam. It is the very latest lockstitch machine produced and in it are embodied all the best features of the sewing machine art.

The thread is accurately measured to the needle and there is no abrasion of the thread in the operation of drawing the loop through the stock. A sufficient amount of thread to form each stitch is accurately pulled from the wax pot, this being automatically controlled according to the amount of thread needed. The stitch is perfect and the regulation of the feed is under instant control of the operator. It will stitch the lightest or the heaviest sole with equal facility and there is plenty of room for the operator to manipulate the shoe.

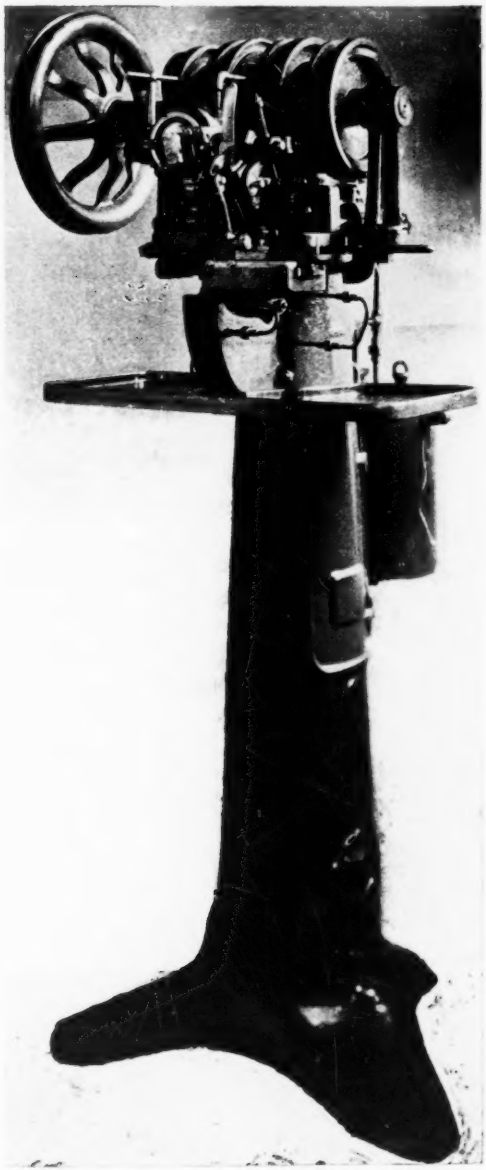
Receiving shaft runs	375 revolutions per minute
Pulley	8 x 2½ inches
10-inch friction runs machine	312 revolutions per minute
11-inch friction runs machine	345 revolutions per minute
12-inch friction runs machine	375 revolutions per minute
Net weight	278 pounds
Gross weight	318 pounds

MEASURES

Length	2 feet
Width	2 feet
Height	5 feet

PLAINTIFF'S EXHIBIT 208.

[Put in Evidence, page 2127.]



PLAINTIFF'S EXHIBIT 209.

[Put in Evidence, page 2129.]

PLAINTIFF'S EXHIBIT 219.

[Put in Evidence, page 2145.]

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1906.

No. 689.

UNITED SHOE MACHINERY COMPANY, COMPLAINANT, APPELLANT,

v.

DUPLESSIS SHOE MACHINERY COMPANY, DEFENDANT, APPELLEE.

Appeal from the Circuit Court of the United States for the District of Massachusetts, from Final Decree (Lowell, J.), July 10, 1906.

Before Colt, Putnam and Brown, JJ.

OPINION OF THE COURT.

AUGUST 2, 1907.

PUTNAM, J. This is a bill in equity based on an alleged infringement of Letters Patent No. 412,704, covering an invention for an alleged improvement in sewing machines, and issued to Zachary T. French and William C. Meyer on October 8, 1889, on an application filed on July 30, 1888. The bill was filed on December 21, 1903, and it alleged infringements on and after October 1, 1903. The decree below was for the respondent.

The only question we need consider is whether, under section 4887 of the Revised Statutes, with its various amendments, the patent in suit was terminated on September 17, 1902, by reason of the termination of a certain British patent on that day. The legal questions involved relating to the identity of the patenting were fully discussed by us in *Westinghouse Electric Co.* v. *Stanley Instrument Co.*, 138 Fed. Rep. 823, in an opinion passed down on June 14, 1905, and in *Thomson-Houston Electric Co.* v. *McLean*, in an opinion passed down on April 11, 1907. The learned judge of the Circuit Court correctly applied the principles stated in these opinions to the facts of this case. We have no occasion to reconsider anything said by him on that issue. This especially applies to his observation, not limited to any particular claim in either pat-

ent, but relating to the whole of each patent, to the effect as follows: "I can find in neither patent here in question evidence of 'an essential, novel and patentable improvement on what was claimed' in the other."

The complainant maintains that the British patent was taken out by an intermeddler. The position on this point is as follows: It is not questioned that Mr. Gregory, a patent solicitor, was authorized to represent the inventor in England, and that he sent instructions to Brooks, his correspondent there, the purpose of which was to secure simultaneous patenting. At some time, not named, a letter was discovered from one Munyon and one Goodyear to Brooks of September 14, 1888, directing Brooks to disregard Gregory's instructions, and to file the application in each country as soon as possible. There is a failure to directly prove any authority of Munyon and Goodyear to thus override Gregory. Nevertheless, the Circuit Court, and we on appeal, proceeding on a bill in equity of this character as finders of the facts, have as wide a range for drawing inferences as a jury. There is no evidence that the inventor, or whoever controlled the invention, ever repudiated the British patent until after this suit was commenced, or attempted to do so. As he, whoever he was, knew that there was to be an application for a British patent, and that there was a purpose to take it out, it is beyond reasonable probability to assume that he never informed himself as to the issue of such a patent. On the other hand, the Circuit Court, and we, are entitled to assume that he obtained knowledge of what was done and acquiesced therein. Any hypothesis which would reject the conclusion of the Circuit Court in this respect, to the effect that the British patent was properly taken out, would be unreasonable.

The only other topic which we need consider is covered by the proposition of the complainant based on a series of conventions, or treaties, for the "international protection of industrial property," by which is meant especially trademarks and patents. The first was signed at Paris on March 20, 1883, between various nations, to which ratification by the United States was completed on March 29, 1887. Articles III, IV and V of this treaty relate to patents

for inventions. A subsequent treaty, which is of no consequence in this connection, as it related only to some details, was signed at Madrid on April 15, 1891. The treaty in which we are particularly interested was signed at Brussels on December 14, 1900, and was proclaimed by the President of the United States on August 25, 1902. 32 Stat. 1936. By the agreement among the ratifying governments, this treaty which is ordinarily called "An Additional Act," went into effect on September 14, 1902, three days before the British patent in question here terminated. 32 Stat. 1943. Article 1, page 1939, reads as follows: —

"The international Convention of March 20, 1883, is modified as follows: —

"I. Article 3 of the Convention shall read as follows: —

"ART. 3. Are assimilated to the subjects or citizens of the contracting States, the subjects of citizens of States not forming part of the Union, who are domiciled or have *bona fide* industrial or commercial establishments upon the territory of one of the States of the Union.

"II. Article 4 shall read as follows: —

"ART. 4. Any one who shall have regularly deposited an application for a patent of invention, of an industrial model, or design, of a trade or commercial mark, in one of the contracting States shall enjoy for the purpose of making the deposit in the other States, and under reserve of the rights of third parties, a right of priority during the periods hereinafter mentioned.

"In consequence, the deposit subsequently made in one of the other States of the Union before the expiration of these periods cannot be invalidated by acts performed in the interval, especially by another deposit, by the publication of the invention or its working, by the sale of copies of the design or model, by the employment of the mark.

"The periods of priority above mentioned shall be twelve months for patents of invention, and four months for design or industrial models, as well as for trade or commercial marks.

"III. There is inserted in the Convention an Article 4 *bis*, as follows: —

"Art. 4 *bis*. Patents applied for in the different contracting States by persons admitted to the benefit of the Convention under the terms of Articles 2 and 3 shall be independent of the patents obtained for the same invention in the other States adherents or non-adherents to the Union.

"This provision shall apply to patents existing at the time of its going into effect.

"The same rule applies, in the case of adhesion of new States, to patents already existing on both sides at the time of the adhesion."

The complainant maintains that the first paragraph of article 4 *bis* relates specifically to the topic we have under consideration, and that the declaration of independency is intended to prohibit any result by virtue of which a patent granted by one nation for a specified statutory term should be abbreviated as to its term by reason of the expiration of any patent granted by another nation. The paragraph relied on is obscure, because there are so many different aspects in which a patent, or anything, may be independent of or dependent on something else.

There were several international conferences between 1883 and 1909 on the topic of patents and trademarks to which we need not refer, except the one at Brussels at which a convention was signed on December 14, 1897, never in force in the United States.

One question is the weight to be given to the article 4 *bis* under the Constitution of the United States. The Constitution speaks of treaties and statutes in the same breath; and they have always been practically put in the same class by the Supreme Court. More than one hundred years ago, in *United States* v. *The Schooner Peggy*, 1 Cranch, 103, 110, the court said: —

"But yet where a treaty is the law of the land, and as such affects the right of parties litigating in court, that treaty as much binds those rights and is as much to be regarded by the court as an act of Congress."

There never has been any doubt on this proposition. Consequently, it was said absolutely in *The Cherokee Tobacco*, 11 Wall. 616, 621: —

"The effect of treaties and acts of Congress, when in conflict, is not settled by the Constitution. But the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty."

This has been repeated many times, the last in *Hijo* v. *United States*, 194 U. S. 315, 324. Consequently, so far as judicial action is concerned, a later treaty has the same effect on a prior statute as

a later statute has; and, so far as the conventions pertinent here are concerned, the fact that the Constitution commits to Congress the power "to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries" is of no consequence, because all the powers of Congress are especially vested, either directly or indirectly, by the Constitution in similar manner; and to hold that a treaty could not abrogate a prior statute regarding patents because this particular legislative power is committed to Congress, could not be permitted so long as the general rule as to statutes superseding treaties, and *vice versa*, declared by the Supreme Court in the way we have pointed out exists. The rules which we have explained with reference to the relation of treaties to statutes, and as to treaties becoming immediately effective, are the necessary sequence of the decisions explained in *United States* v. *Lee Yen Tai*, 185 U. S. 213, 220, 221, 222.

But the respondent, now the appellee, maintains that article 4 *bis* of the Convention of 1900 was not effectual until enacted into a statute by Congress. An examination of the decisions of the Supreme Court on this topic will show there is no practical distinction whatever as between a statute and a treaty with regard to its becoming presently effective, without awaiting further legislation. A statute may be so framed as to make it apparent that it does not become practically effective until something further is done, either by Congress itself or by some officer or commission entrusted with certain powers with reference thereto. The same may be said with regard to a treaty. Both statutes and treaties become presently effective when their purposes are expressed as presently effective; and, on its face, article 4 *bis* of the convention in question is so expressed. A striking illustration of the rule that treaties become effective in the same manner as statutes is found in *United States* v. *The Schooner Peggy*, 1 Cranch. 103, already cited. This vessel was condemned in the Circuit Court on September 23, 1800. A treaty with France became effective on September 30, 1800; and, inasmuch as the judgment of the Circuit Court was

subject to a writ of error which was sued out on October 2, 1800, the Supreme Court held that the treaty annulled the condemnation.

Nevertheless, Congress has legislated on the topic since the treaty was ratified; and, under the rule which we have stated, that subsequent legislation, so far as it expressed any Congressional purpose inconsistent with any claimed construction of article 4 *bis*, or inconsistent with its becoming effective of its own force, that purpose controls; and the purpose of Congress in the act to which we will refer is so marked out by implication, although not stated in express terms, that what construction should be put on article 4 *bis*, and what rule should be applied as to its becoming effective, have become purely academical questions so far as this appeal is concerned. The act to which we refer is that of March 3, 1903, chap. 1019, 32 Stat. 1225, which preceded in time the filing of this bill and the infringements alleged therein.

It becomes necessary in this connection to turn back to Senate Document 331, Fifty-fifth Congress, 2d Session, being a report from the Committee on Foreign Relations, with accompanying papers. This concerns the convention signed at Brussels on December 14, 1897, which we have spoken of, never accepted by the United States. We refer to the report of the United States commissioners who took part in the conference at Brussels, dated December 15, 1897. That stated as follows: "A new article, entitled article 4 *bis*, provides for the mutual independence of patents applied for in the different states of the Union by persons entitled to the rights granted by the convention." It added that the delegates from the United States supported this proposed new article under instructions; but it then proceeded as follows:—

"In order to avoid any confusion in regard to the interpretation hereafter to be given to the second paragraph, which reads, 'This provision shall apply to all patents existing at the time of its entering into force,' we called attention to it in the regular meeting and found that it was the unanimous sense of the conference that the paragraph was not applicable to existing United States patents, but only to those patents whose terms might be shortened by the laws of those states of the Union in which provision is made for a shortening of the term on the lapsing of patents for the same inventions in other states.

"An existing United States patent cannot be affected by what may take place in regard to a patent for the same invention abroad. The limitation of the terms of the United States patents imposed by section 4887 was a determination at the moment of the grant of the patent of its term, and therefore the duration of the patent is unaffected by the subsequent expiration of a foreign patent for the same invention by reason of non-payment of taxes or non-working."

The article in the proposed convention to which these observations related reads as follows: —

"ART. 4 *bis*. Patents applied for in the different contracting states by persons admitted to the benefit of the Convention under the terms of Articles 2 and 3, shall be independent of the patents obtained for the same invention in the other states adhering or not to the Union.

"This provision shall apply to patents existing at the time of its going into effect.

"The same rule applied in the case of adhesion of new states as to patents already existing either in the Union or in the new adhering state at the time of the adhesion."

This language was literally the same as that now under discussion, found in the Convention of December 14, 1900, with the following exceptions: The first sentence now closes with the words, "adherents or non-adherents to the Union," instead of the words, "adhering or not to the Union"; and also the last sentence now ends with the words, "to patents already existing on both sides at the time of the adhesion," instead of the words, "to patents already existing either in the Union or in the new adhering state at the time of the adhesion." It is not possible that these merely literal changes can in any way affect any question which we have before us. It is especially to be noted that the commissioners reported that all the commissioners present were unanimous that this proposed phraseology of the Convention of 1897 would not effect the expiration of United States patents already issued. We have received, through the courtesy of the State Department, a copy of the report of the commissioners who negotiated the treaty of December 14, 1900, but it makes no reference to the topic we are discussing.

Thus the Convention of 1900 and the proposed convention of

1897 alike contained the provisions in reference to patents existing at the time the treaty went into effect, and relative to new adhering states, on which the complainant relies as saving its patent.

The act of 1903, to which we have referred, is entitled "An Act to effectuate the provisions of the additional act of the International Convention for the protection of industrial property." What is there called "the additional act" is the Convention of December 14, 1900. There is no express provision in the statute itself in line with the title; and it is rare that the title is effectual. We all know that Lord Coke said that it ought not be taken into consideration at all; but there are occasions when the language of an act is couched in such general terms that we must go to the title to find its limitations. The Supreme Court has reiterated Lord Coke's observation, but with the qualification which we state, to the effect that, when the mind labors to discover the design of the legislature, it seizes everything from which aid can be derived, and then the title will have its due share of consideration. *The Bark Eudora*, 190 U. S., 169, 172, 173. A very striking illustration of this with reference to the later statutes about aliens appears in the opinion of Judge Gray, in behalf of the Circuit Court of Appeals for the Third Circuit, in *Rodgers* v. *United States*, 152 Fed. Rep. 346, 350. The statutes there in issue use the broad word aliens, and yet the title was availed of by the court to limit them to aliens who were immigrants. We cannot doubt that the act of 1903 to which we refer is to be construed as passed for the purpose named in its title; and, inasmuch as it relates to the same topics involved here as the Convention of December 14, 1900, we can, also, have no doubt that it is to be regarded as covering the entire ground so far as it concerns us. This is the well-settled rule of construction applied under such circumstances to legislation which has the form of codification. The ruling of the Supreme Court in *Dallemagne* v. *Moisan*, 197 U. S. 169, 175, in regard to various treaties respecting consular jurisdiction over crews of vessels of foreign nations, and referring to a statute of the United States enacted in relation thereto, observed as follows:

"This statute having been passed by the United States for the

purpose of executing the treaties it had entered into with foreign governments, must be regarded as the only means proper to be adopted for that purpose."

That observation directly applies here, and fully supports the rule of construction which we have stated with regard to legislation which has the form of codification. Fairly paraphrasing the language of the Supreme Court cited, we may say that the statute of 1903, having been passed for the purpose of executing treaties, must be regarded as expressing the only effect which Congress intended they should have to the extent of the subject-matters to which the act relates. It re-enacts section 4887 in such form as Congress desired, faithfully omitting such parts of the Convention of 1900 as referred to patents existing at the time it went into effect, or as referred to newly adhering states. It is to be borne in mind that treaties with foreign nations have a liberal construction, even at variance with the apparent meaning of the mere letter when interpreted according to the rules of the common law. The purpose is to work out the common intention, including that of peoples who know nothing about the common law, and who use phraseology different from that to which we are accustomed. A noticeable declaration of this fact is found in *United States* v. *Winans*, 198 U. S. 371, 380, where the Supreme Court reiterated that it would sometimes go to the extent of construing a treaty with Indians as they understood it when it was made, rather than according to its letter. Certainly, it would not violate any just rules if either the Executive, the Judiciary or the Congress of the United States, should construe a treaty in accordance with what was clearly the common understanding of all the commissioners who negotiated it. The courts might safely do this; and, perhaps, they would be compelled to when there was a formal protocol of the proceedings of the negotiations expressing it. Under the circumstances here, Congress might well be justified in acting on the report of the commissioners who were concerned in the intended Convention of 1897, to the effect that all present were of the opinion that the proposed article then under consideration could not affect existing patents in the United States, in view of the fact that the same language was

carried forward into the treaty of 1900, without any contravening statement from any of the parties who negotiated it. This may well explain why it is that we find the act of 1903 in the form in which we do find it. At any rate, that act did omit the special provisions with reference to existing patents, and future adhering states, on which the complainant relies; and, for the reasons which we have stated, we must conclude that this was purposely done.

Whatever might have been the condition with reference to a bill in equity filed before the act of 1903, covering infringement prior thereto, we have here a statute passed before filing of the existing bill, and the infringements now alleged, which pronounces the construction we must give the convention of 1900, according to the legislative will declared since it was ratified. In any event, the courts would hesitate before giving a treaty an interpretation differing from that solemnly given it by the Executive or by Congress, even if they would ever do it. According to the law as it stood when the patent in suit issued, it expired with the British patent. To enable it to run its statutory term, retroactive legislation by statute or treaty was necessary. It is not impossible that the Convention of 1900 might have been regarded as retroactive and as reaching this patent; but, before any issue arose between the parties to this appeal, and, therefore, before any rights against the respondent could have vested in the complainant, Congress interposed and pronounced the legislative will, subsequently to the ratification of the convention, that it should not be regarded as retroactive. Consequently, we find no saving clause so far as the litigation here is concerned.

In *Sawyer Spindle Company* v. *Carpenter*, 143 Fed. Rep. 976, in which we passed down an opinion on February 23, 1906, that portion of the act of 1903 which re-enacted section 4887 of the Revised Statutes was held not to be retroactive so far as concerns patents which had then expired, and the general rule that statutes are not to be held retroactive was stated. While it is true that in *Sawyer Spindle Company* v. *Carpenter* the patentee did not rely on any International Convention, and brought none to our attention, yet it is also true that the result reached in that case was in

harmony with the ordinary rules of statutory construction. We are of the opinion that here the Circuit Court was correct, and that there is nothing in the treaties made by the United States, as controlled and construed by the later Federal statute, which saves the complainant.

The decree of the Circuit Court is affirmed; and the appellee recovers its costs of appeal.

A true copy:
Attest: FRANCIS M. FOGARTY, Clerk,
[SEAL] by Arthur T. Charron, Deputy Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1906.

No. 689.

UNITED SHOE MACHINERY COMPANY, COMPLAINANT, APPELLANT,

v.

DUPLESSIS SHOE MACHINERY COMPANY, DEFENDANT, APPELLEE.

FINAL DECREE.

AUGUST 2, 1907.

This cause came on to be heard April 25 and 26, 1907, upon the transcript of record of the Circuit Court of the United States for the District of Massachusetts, and was argued by counsel.

On consideration whereof, It is now, to wit, August 2, 1907, here ordered, adjudged and decreed as follows: The decree of the Circuit Court is affirmed; and the appellee recovers its costs of appeal.

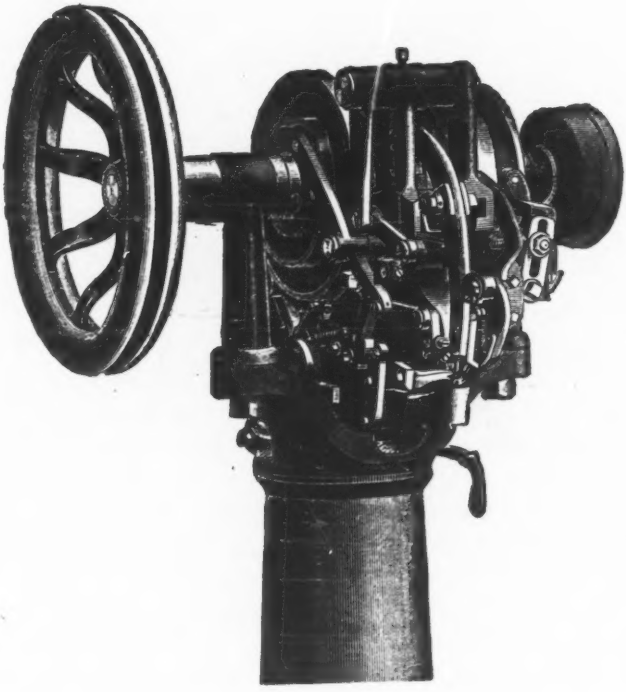
By the Court,
JOHN G. STETSON, Clerk.

A true copy:
[SEAL] Attest: FRANCIS M. FOGARTY, Clerk.

PLAINTIFF'S EXHIBIT 220.

[Put in Evidence, page 2160.]

WELT AND TURN MACHINE. 13



Welt and Turn Machine.

Base and Column.

List No.		
	Tension.	
1085	Tension (complete)	$5.00
1095	Bracket for tension	1.00
26	Screw to mount bracket	.06
161	Tension Wheel	.65
161*a*	Smooth Tension Wheel	.65
1096	Stud to mount tension wheel	.95
943	Steel Washer on tension wheel stud between felt washer and bracket	.05
72	Nut to mount stud in bracket	.08
938	Felt Washers (pair)	.05
1098	Iron Washer for tension wheel	.25
162	Spring for tension	.10
22	Hand-Nut (large)	.15
154	Hand-Nut (small)	.15
1099	Hand-Lever for tension	1.00
1100	Pin to mount hand-lever on bracket	.15
	Tension Release.	
39	Tension Release (complete)	6.00
1101	Arm on base for center-head to mount shaft for bell crank	1.00
1049	Bolt to mount arm on base for center-head	.15
1102	Shaft to mount bell crank (with bell crank)	.70

List No.		
1103	Bell Crank on shaft (not sold separately)	
1104	Chain to connect bell crank to hand-lever	$0.06
1105	Spring Cotter in chain	.02
1106	Adjusting-Rod in hand-lever for chain	.25
1107	Clamp-Nut on adjusting-rod	.40
112	Screw in clamp-nut	.08
1108	Clutch-Lever to operate bell crank	.65
1516	Pin to mount clutch-lever in bell crank	.10
1109	Clutch-Cam to operate clutch-lever	.85
1110	Set-Screw for clutch-cam	.08
1111	Buffer on clutch-cam	.02
1696	Screw to mount buffer on clutch-cam	.05
1112	Clamp-Piece to guide lever for clutch-cam	.50
1113	Clamp-Piece to mount guide-piece No. 1112	.20
121	Screw to mount clamp-pieces on cam-shaft stand	.10
1114	Spring on clamp-piece No. 1112 to return clutch-lever	.10
1696	Screw to mount spring No. 1114	.05
1115	Spring for bell crank shaft	.08
1116	Collar on shaft to mount spring No. 1115	.35
112	Set-Screw for collar No. 1116	.08

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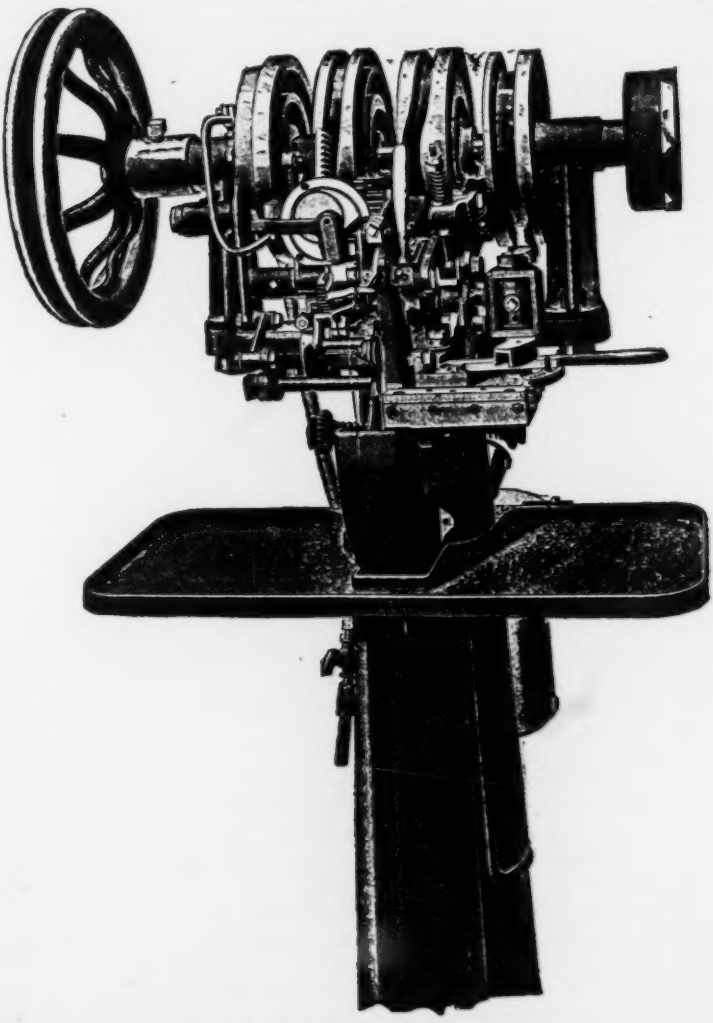
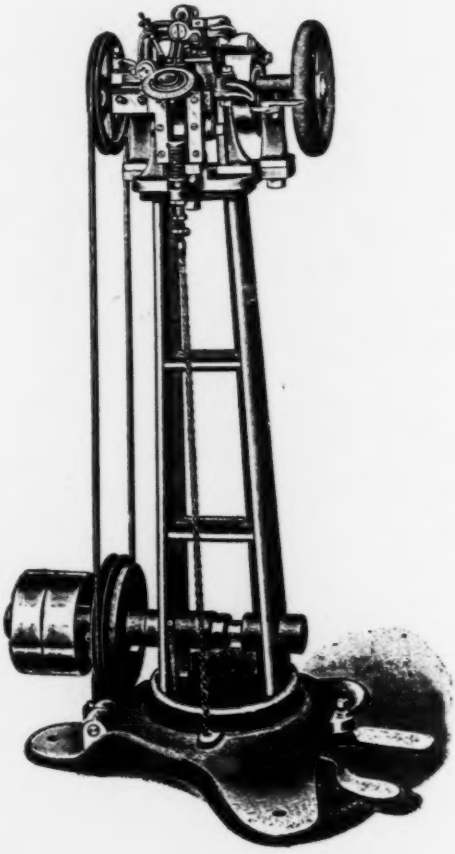


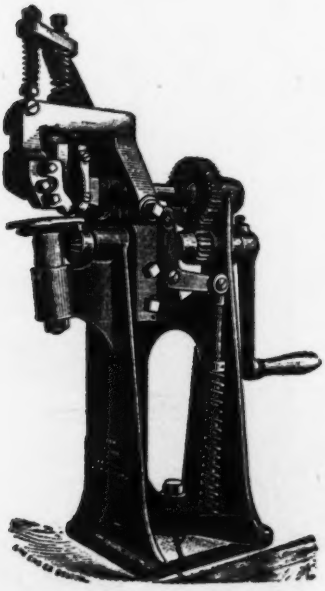
Rapid Outsole Stitcher.

Base and Column.



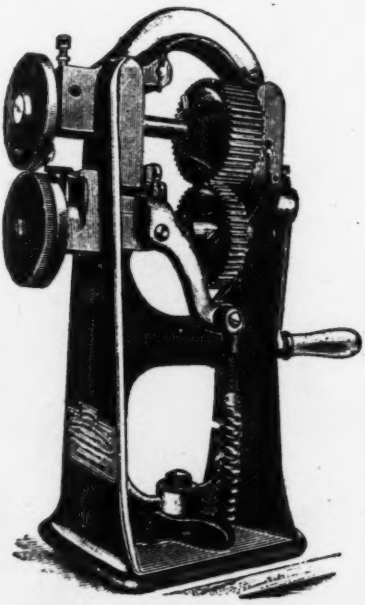
Hadaway Stitch Separator.

Base and Treadles.



Turn and Insole Channeling Machine.

Frame and Edge-Gauge Parts.



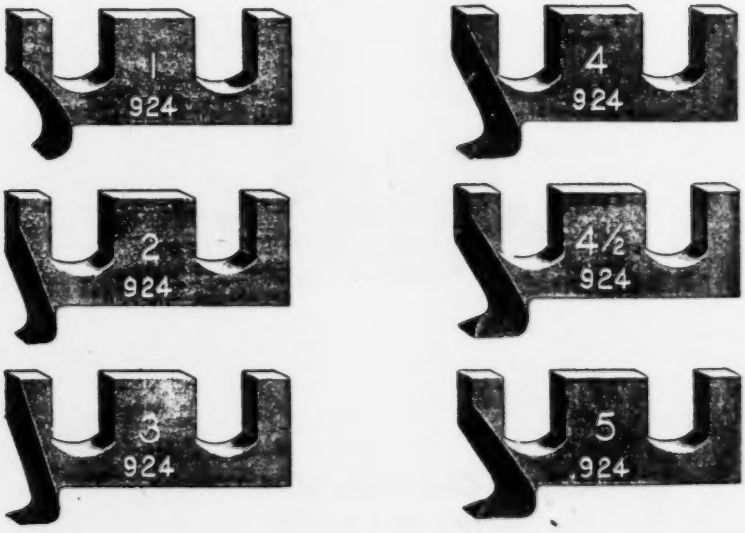
Outsole Channeling Machine.

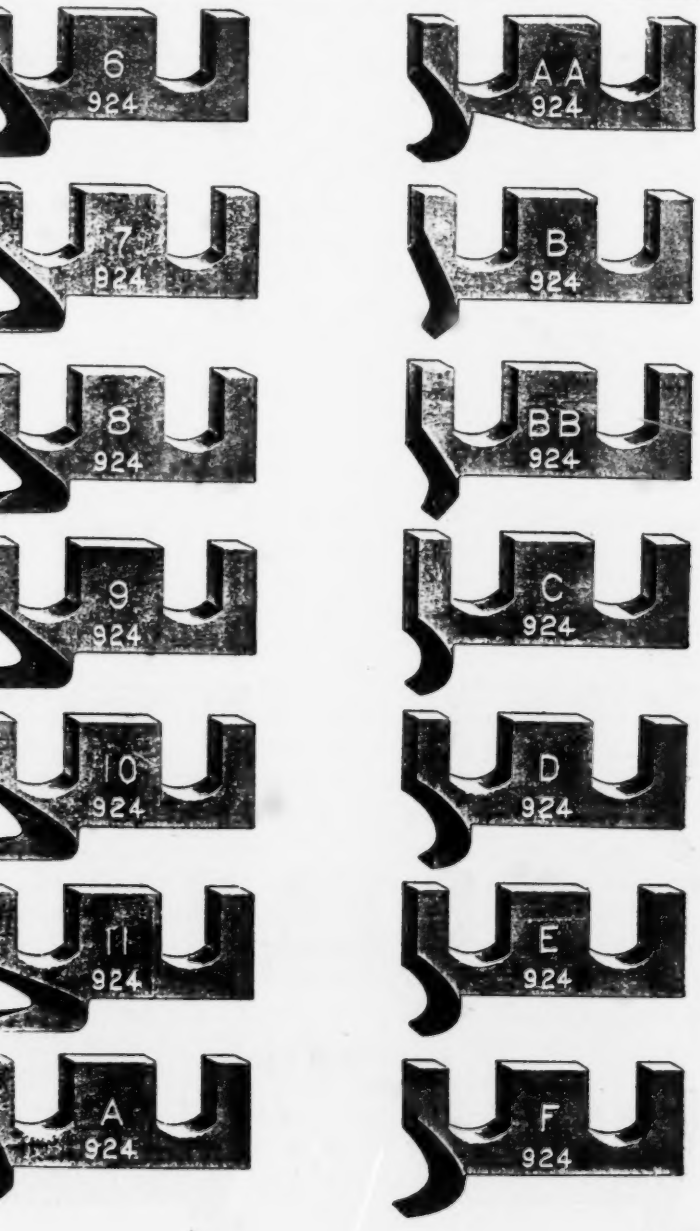
Frame and Lift-Lever.

110 OUTSOLE CHANNELING MACHINE.

Outsole Channel Knives.

Price, $0.30 each.

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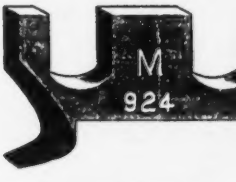
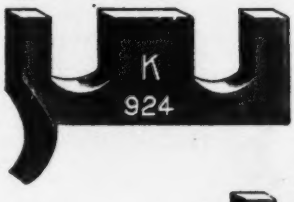




Square Heel Knives.

PLAINTIFF'S EXHIBIT 225.

[Put in Evidence, page 2190.]

DEPARTMENT OF THE INTERIOR,
United States Patent Office.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of an instrument of writing Recorded May 27, 1893, in Liber S-48, page 122. Said record has been carefully compared with the original and is a correct transcript of the whole thereof.

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington, this 21st day of August, in the year of our Lord one thousand nine hundred and thirteen and of the independence of the United States of America the one hundred and thirty-eighth.

[SEAL] THOMAS EWING Commissioner of Patents.

Liber S 48, Page 122.

Know all Men by these Presents that The Goodyear Shoe Machinery Company, a corporation established under the laws of the State of Connecticut, and located at the Town of Hartford in said State, party hereto of the first part, in consideration of the sum of one dollar and other valuable consideration to it paid by the Goodyear Shoe Machinery Company, a corporation established under the laws of the State of Maine, and located at Portland, in the County of Cumberland and State of Maine, party hereto of the second part, the receipt of which is hereby acknowledged, has sold, assigned, transferred and set over, and doth by these presents, sell, assign, transfer and set over unto said Goodyear Shoe Machinery Company, party hereto of the second part, all and every right, title and interest which it, the party hereto of the first part has in and to or under the several Letters Patent of the United States of America hereinafter described or referred to, namely:

Letters Patent No. 165,506, dated July 13, 1875, granted to

Everett P. Richardson for an Improvement in Machines for Sewing Turned Shoes.

Letters Patent No. 170,547, dated Nov. 30, 1875, granted to The Goodyear Boot and Shoe Sewing Machine Company for an Improvement in Machines for Sewing Boots and Shoes.

Letters Patent No. 190,709, dated May 15, 1877, granted to Christian Dancel for an Improvement in Machines for Sewing Boots and Shoes.

Letters Patent No. 191,387, dated May 29, 1877, granted to Joseph S. Turner for an Improvement in Manufacture of Boots and Shoes.

Letters Patent No. 196,809, dated Nov. 6, 1877, granted to Jeremiah Keith for an Improvement in Wax Thread Sewing Machines.

Letters Patent No. 199,802, dated Jan. 29, 1878, granted to Charles Goodyear, Jr. for an Improvement in Sewing Machines for Boots and Shoes.

Letters Patent No. 199,759, dated Jan. 29, 1878, granted to Joseph S. Turner for an Improvement in Throat Plates for Boot and Shoe Sewing Machines.

Letters Patent No. 200,232, dated Feb. 12, 1878, granted to Joseph S. Turner for an Improvement in Channelling Tools for Boot and Shoe Soles.

Letters Patent No. 213,712, dated Mar. 25, 1879, granted to Joseph S. Turner for an Improvement in Sole Marking Tools for Channelling.

Letters Patent No. 215,547, dated May 20, 1879, granted to Joseph S. Turner for an Improvement in Machines for Pricking and Trimming Soles.

Letters Patent No. 221,660, dated Nov. 18, 1879, granted to Mary A. C. Holmes for an Improvement in Machines for Channelling and Perforating the Soles of Boots and Shoes.

Letters Patent No. 232,382, dated Sept. 21, 1880, granted to Joseph S. Turner for an Improvement in Machines for Trimming and Channelling Boot and Shoe Soles.

Letters Patent No. 236,938, dated Jan. 25, 1881, granted to Michael A. Donovan for an Improvement in Sewing Machines.

Letters Patent No. 239,999, dated Apr. 12, 1881, granted to Joshua F. Ames for an Improvement in Sole Channelling Machines.

Letters Patent No. 240,307, dated Apr. 19, 1881, granted to The Goodyear and McKay Sewing Machine Company for an Improvement in Sole Sewing Machines.

Letters Patent No. 245,712, dated Aug. 16, 1881, granted to Charles W. Glidden for an Improvement in Sole Channelling and Shaping Machines.

Letters Patent No. 249,237, dated Nov. 8, 1881, granted to Charles W. Glidden for an Improvement in Machines for Pricking and Trimming Soles.

Letters Patent No. 249,279, dated Nov. 8, 1881, granted to James W. Brooks, Trustee, for an Improvement in Machines for Pricking, Trimming and Channelling Soles.

Letters Patent No. 251,240, dated Dec. 20, 1881, granted to Socrates Keats and Arthur Keats for an Improvement in Sewing Machines.

Letters Patent No. 254,594, dated Mar. 7, 1882, granted to The Goodyear and McKay Sewing Machine Company for an Improvement in the Method of Lasting and Uniting the Uppers and Soles of Boots and Shoes.

Letters Patent No. 258,696, dated May 30, 1882, granted to Eli Bertrand for an Improvement in Boot or Shoe Holding Jacks.

Letters Patent No. 260,990, dated July 7, 1882, granted to Alphonso Keats for an Improvement in Sewing Machines.

Letters Patent No. 267,798, dated Nov. 21, 1882, granted to Marshall H. Pearson for an Improvement in Boot and Shoe Sewing Machines.

Letters Patent No. 274,091, dated Mar. 13, 1883, granted to The Goodyear and McKay Sewing Machine Company for an Improvement in Lasting Jacks or Holders for Boots and Shoes.

Letters Patent No. 281,258, dated July 17, 1883, granted to The

Goodyear and McKay Sewing Machine Company for an Improvement in Lasting Jacks or Holders for Boots and Shoes.

Letters Patent No. 296,790, dated Apr. 15, 1884, granted to Earle H. Smith for an Improvement in Sewing Machine Shuttles.

Letters Patent No. 317,758, dated May 12, 1885, granted to The Goodyear and McKay Sewing Machine Company for an Improvement in Solo Sewing Machines.

Letters Patent No. 317,759, dated May 12, 1885, granted to The Goodyear and McKay Sewing Machine Company for an Improvement in Sole Sewing Machines.

Letters Patent No. 320,075, dated June 16, 1885, granted to The Goodyear and McKay Sewing Machine Company for an Improvement in Machines for Beating out Welts.

Letters Patent No. 330,928, dated Nov. 24, 1885, granted to James W. Brooks, as Trustee, for an Improvement in Machines for Channelling the Soles of Boots and Shoes.

Letters Patent No. 331,145, dated Nov. 24, 1885, granted to John S. Leavitt for an Improvement in Tools for Channelling Boot and Shoe Soles.

Letters Patent No. 331,214, dated Nov. 24, 1885, granted to James W. Brooks, as Trustee, for an Improvement in Tools for Channelling Soles of Boots and Shoes.

Letters Patent No. 366,935, dated July 19, 1887, granted to The Goodyear and McKay Sewing Machine Company for an Improvement in Sole Sewing Machines.

Letters Patent No. 369,563, dated Sept. 6, 1887, granted to The Goodyear and McKay Sewing Machine Company for an Improvement in Shoe Sole Sewing Machines.

Letters Patent No. 373,391, dated Nov. 15, 1887, granted to John C. Daggett and Charles H. Colburn for an Improvement in Sewing Machine Feed.

Letters Patent No. 412,703, dated Oct. 8, 1889, granted to The Goodyear Shoe Machinery Company for an Improvement in Sewing Machines.

Letters Patent No. 412,704, dated Oct. 8, 1889, granted to The

Goodyear Shoe Machinery Company for an Improvement in Shoe Sewing Machines.

Letters Patent No. 420,441, dated Feb. 4, 1890, granted to Jonathan Munyan for an Improvement in Mechanism for Winding Bobbins.

Letters Patent No. 424,966, dated Apr. 8, 1890, granted to Zachary Taylor French and William Christian Meyer for an Improvement in Shuttles for Sewing Machines.

Letters Patent No. 453,999, dated June 9, 1891, granted to The Goodyear Shoe Machinery Company for an Improvement in Channelling Machines.

Letters Patent No. 459,036, dated Sept. 8, 1891, granted to Christian Dancel for an Impaovement in Sewing Machines.

Letters Patent No. 461,793, dated Oct. 20, 1891, granted to The Goodyear Shoe Machinery Company for an Improvement in Methods of Forming Chain Stitches.

Letters Patent No. 463,967, dated Nov. 24, 1891, granted to The Goodyear Shoe Machinery Company for an Improvement in Rough Rounding and Channelling Machines.

Letters Patent No. 463,982, dated Nov. 24, 1891, granted to The Goodyear Shoe Machinery Company for an Improvement in Rough Rounding and Channelling Machines.

Letters Patent No. 473,870, dated Apr. 28, 1892, granted to The Goodyear Shoe Machinery Company for an Improvement in Sole Sewing Machines.

Letters Patent No. 474,774, dated May 10, 1892, granted to The Goodyear Shoe Machinery Company for an Improvement in Sole Sewing Machines.

Letters Patent No. 480,229, dated Aug. 2, 1892, granted to The Goodyear Shoe Machinery Campany for an Improvement in Sewing Machines.

Letters Patent No. 488,505, dated Dec. 20, 1892, granted to The Goodyear Shoe Machinery Company for an Improvement in Tension Devices for Sewing Machines.

Letters Patent No. 488,508, dated Dec. 20, 1892, granted to

The Goodyear Shoe Machinery Company for an Improvement in Tension Devices for Sewing Machines.

And the party hereto of the first part has sold, assigned and transferred and doth by these presents sell, assign and transfer unto the party of the second part, all rights, claims and demands both at law and in equity to or in respect of damages or profits which can or may be recovered from infringers of said Letters Patent or either or any of them, and doth hereby irrevocably constitute and appoint the party of the second part its attorney, with power of substitution, in its name to demand, sue for, recover and receive for the use of it, the party of the second part, any and all such damages or profits, but so that the party of the first part incurs no expense or liability in respect thereof.

All the said several Letters Patent and rights and interests therein and thereunder to be held and enjoyed by the party hereto of the second part for its own use and behoof, and for the use and behoof of its successors and assigns to the full end of the respective terms for which the said Letters Patent have been or shall hereafter be granted, as fully and entirely as the same would have been held and enjoyed by the party hereto of the first part, had this assignment and sale not been made.

In Witness Whereof, the said The Goodyear Shoe Machinery Company, party hereto of the first part, has caused its corporate seal to be hereto affixed and these presents to be signed in its name by Jonathan Munyan, its President, and Stephen V. A. Hunter, its Treasurer, this ninth day of March, A. D. 1893.

[SEAL] THE GOODYEAR SHOE MACHINERY COMPANY
Jonathan Munyan, President
S. V. A. Hunter, Treasurer

Recorded May 27, 1893.

PLAINTIFF'S EXHIBIT 227.

[Put in Evidence, page 2165.]

N. B. — When an order is sent for Spare Parts, without money, this Company reserves the right to send the pieces C. O. D. by Express, and to add the cost of collecting to the bill.

5 per cent. discount will be allowed on parts when the money accompanies the order.

Bill No. Boston, Feb. 14 1889

COMMONWEALTH S. L. Co. Marlboro

In account with THE GOODYEAR & McKAY SEWING MACHINE COMPANY,

No. 158 Summer Street.

Subject to all the terms and conditions of any agreement or licenses between the said parties.

For a Lease and License of the following Machinery:

One Goodyear Lock Stitch Mach.	#223
One Cap Winder	#181
One Outsole Channeler	#953
One 3 ft Countershaft	#350

Terms — Cash Apr 24/89

Shipped by Dart & Co. Ex.

PLAINTIFF'S EXHIBIT 228.

[Put in Evidence, page 2167.]

Lease No. 4282 Full Set. [Form 597.]

Transfer from *Warwick Shoe Co.* (*Univer. R. #27*) Lease No. *3923*

This Lease and Agreement, made at Boston, Massachusetts, this *5th* day of *April* A. D. 189*8*, by and between Goodyear Shoe Machinery Company, a corporation established under the laws of the State of Maine, Lessor, and party hereto of the first part, and *Commonwealth Shoe & Leather Co., doing business in Whitman, Mass.* Lessee, and party hereto of the second part, Witnesseth;

Whereas, the Lessor is the owner of or is licensed under the

several Letters Patent of the United States, recited in the schedule following, viz.:

SCHEDULE OF PATENTS.

No. 240,307, dated April 19, 1881.
No. 249,279, dated November 8, 1881.
No. 253,156, dated January 31, 1882.
No. 317,758, dated May 12, 1885.
No. 317,759, dated May 12, 1885.
No. 320,075, dated June 16, 1885.
No. 330,928, dated November 24, 1885.
No. 366,935, dated July 19, 1887.
No. 369,563, dated September 6, 1887.
No. 412,703, dated October 8, 1889.
No. 412,704, dated October 8, 1889.
No. 424,966, dated April 8, 1890.
No. 453,999, dated June 9, 1891.
No. 456,041, dated July 14, 1891.
No. 461,793, dated October 20, 1891.
No. 463,967, dated November 24, 1891.
No. 463,982, dated November 24, 1891.
No. 473,870, dated April 26, 1892.
No. 474,774, dated May 10, 1892.
No. 483,393, dated September 27, 1892.
No. 488,505, dated December 20, 1892.
No. 488,591, dated December 27, 1892.
No. 488,841, dated December 27, 1892.
No. 495,452, dated April 11, 1893.
No. 500,060, dated June 20, 1893.
No. 510,127, dated December 5, 1893.
No. 511,263, dated December 19, 1893.
No. 514,364, dated February 6, 1894.
No. 514,741, dated February 13, 1894.
No. 518,911, dated April 24, 1894.
No. 520,020, dated May 15, 1894.
No. 529,900, dated November 27, 1894.
No. 533,301, dated January 29, 1895.
No. 536,338, dated March 26, 1895.
No. 537,823, dated April 23, 1895.
No. 540,222, dated May 28, 1895.
No. 540,223, dated May 28, 1895.
No. 540,438, dated June 4, 1895.
No. 540,616, dated June 4, 1895.
No. 541,988, dated July 2, 1895.
No. 542,813, dated July 16, 1895.
No. 543,012, dated July 23, 1895.
No. 546,211, dated September 10, 1895.
No. 546,851, dated September 24, 1895.
No. 546,852, dated September 24, 1895.
No. 548,309, dated October 22, 1895.
No. 549,125, dated November 5, 1895.
No. 549,126, dated November 5, 1895.
No. 549,471, dated November 5, 1895.
No. 553,948, dated February 4, 1896.
No. 553,949, dated February 4, 1896.
No. 555,547, dated March 3, 1896.
No. 555,548, dated March 3, 1896.
No. 556,146, dated March 10, 1896.
No. 557,744, dated April 7, 1896.
No. 558,379, dated April 14, 1896.
No. 558,380, dated April 14, 1896.
No. 558,381, dated April 14, 1896.
No. 558,382, dated April 14, 1896.
No. 558,888, dated April 21, 1896.
No. 559,314, dated April 28, 1896.
No. 560,976, dated May 26, 1896.
No. 561,386, dated June 2, 1896.
No. 563,471, dated July 7, 1896.
No. 563,472, dated July 7, 1896.
No. 564,379, dated July 21, 1896.
No. 564,883, dated July 28, 1896.
No. 11,578, reissued December 8, 1896.
No. 573,068, dated December 15, 1896.
No. 573,069, dated December 15, 1896.
No. 573,144, dated December 15, 1896.
No. 11,587, reissued February 2, 1897.
No. 579,205, dated March 23, 1897.
No. 579,206, dated March 23, 1897.
No. 579,207, dated March 23, 1897.
No. 579,231, dated March 23, 1897.
No. 580,746, dated April 13, 1897.
No. 576,114, dated February 2, 1897.
No. 579,146, dated March 23, 1897.
No. 580,773, dated April 13, 1897.
No. 583,968, dated June 8, 1897.
No. 584,038, dated June 8, 1897.
No. 584,039, dated June 8, 1897.

And, Whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above-recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz.:

SCHEDULE OF MACHINES.

Goodyear Welt and Turn Shoe Machine , No.
Goodyear Outsole Stitcher (Lock Stitch "Rapid"), No. *942*
(Welt Bevelling Attachment, No.)
Goodyear Channeler (Insole), No.
Goodyear Channeler (Outsole), No.
Rounding and Channeling Machine , No.
Universal Rounding and Channeling Machine , No. *27*
Channel Lip Turner , No.
Goodyear Channel Opener , No.
Goodyear Welt Beater , No.
Goodyear Shank Skiver , No.
Universal Shank Skiver , No.
Goodyear Bobbin Winder , No.
Goodyear Welt Groover , No.
Goodyear Welt Splitter , No.
Goodyear Basting Machine , No.
Universal Inseam Trimmer , No.
Goodyear Sole Layer , No.
Goodyear Automatic Sole Leveller , No.
Hadaway Stitch Separator , No.

The said machines being the property of the Lessor:

Now, therefore, the Lessor, in consideration of one dollar and other valuable consideration to it paid by the Lessee, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said

machines, or either or any of them, but upon the agreements and conditions hereinafter set forth; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor, notwithstanding any express or implied waiver of any prior breach, may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to any one in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon re-vest in the Lessor;

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license:

First. The Lessee hereby agrees to use, and is hereby licensed to use, the machines hereby leased and the inventions patented as aforesaid only in his factory in *Whitman* in the State of *Massachusetts* and only in the manufacture of boots and shoes, and agrees to keep the said machines in working order at his own expense and to procure of the Lessor or its agents all parts for repairing the machines hereby leased, and agrees not to add to or subtract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, nor to remove or deface any dates, numbers or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to add improvements to the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions hereafter embodied therein,

with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The following is the schedule of rents and royalties hereinafter referred to, and which it is understood and agreed is to be paid by the Lessee for each pair of shoes or boots respectively made by the aid of the machines hereby leased, or either or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, viz.:

SCHEDULE OF RENTS AND ROYALTIES FOR GOODYEAR WELTS.

Children's	3 cents per pair.
Misses'	4 " "
Women's	6 " "
Youths'	4 " "
Boys'	6 " "
Men's	8 " "

Fourth. The Lessee hereby agrees to keep proper books of account, and make true and complete entries therein of all transactions relating to the manufacture and sale of all boots and shoes made by him, or by any other person for him or for others, by the aid of the machines hereby leased, or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, and to render an account thereof to the Lessor on or before the tenth day of each month, which account shall specify the number of pairs of boots and shoes made under this lease and license during the calendar month next preceding, and the class to which they belong according to the above schedule of rents and royalties; and the Lessee agrees that he will require the operator or operators on said machines to keep a daily account of all boots or shoes made by the aid of said machines upon the printed forms to be furnished by the Lessor, in duplicate, one copy of which, containing such reports for the calendar month next preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor, and, whenever required by the Lessor, to make oath to the correctness of said returns, and to allow the Lessor, by its agents or attorneys, to examine and take copies or extracts from the original book or

books of account of the Lessee and the accounts kept by the operator or operators as aforesaid; and the Lessee hereby agrees to send to the Lessor, on or before the tenth day of each month, in case the machines hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, marked across the face with the words "not running," or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor as rent for the machines hereby leased, and as royalty for the use of the inventions patented as aforesaid as hereby licensed, the rent and royalty specified in the schedule forming part of Section Third herein, for each pair of boots or shoes of the respective kinds mentioned or described in said schedule, made by the aid of the said machines, or either or any of them, or by the use of the said inventions, or either or any of them; the rents and royalties for all such boots and shoes, made as aforesaid during one calendar month, to be due and payable on the last day of the calendar month next following; but the Lessor hereby agrees that, **if the rents and royalties due on the last day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof grant a discount of fifty per cent. from the rents and royalties specified in the schedule aforesaid.**

Sixth. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots or shoes known in the trade as "Goodyear Welts," and that he will not use or permit the use of said machines, or either or any of them, upon boots or shoes in the manufacture of which any sole or welt sewing machine not leased to him by the Lessor is employed, or for any other purpose than the manufacture of Goodyear Welts, unless the consent in writing of the Lessor shall first have been obtained.

Seventh. The Lessee hereby agrees that he will not in any way violate or infringe, or contest the validity of, any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents, or either or any of them.

Eighth. This lease and license is not assignable by the Lessee, by his own act or by operation of law.

Ninth. The following are also agreed to by the parties to this instrument as conditions of this lease and license:

(a) That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machines embodying the patented inventions aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or either or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the Lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire, and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent and royalty under this instrument.

(b) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, its successors or assigns, notwithstanding any express or implied waiver of any prior breach, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon re-vest in the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successors or assigns, or its authorized agent or agents, may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license.

(c) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein contained) until the expiration of all and every the Letters Patent referred to in the foregoing Schedule of Patents, or any extensions or renewals of the same, and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

Tenth. In case any other machines than those hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the lessor, its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions or improvements, and shall govern the parties respectively to the same extent as if the said machines, inventions or improvements had been expressly included in this lease and license. The Lessor shall give written notice of its election as aforesaid after it shall have received written notice from the Lessee of the possession of such machines, but may give such notice without having received notice from the Lessee of the possession of such machines.

Eleventh. The Lessee agrees that he will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon the machines hereby leased.

Twelfth. All the rights and interests which, under this instrument, and by reason of the ownership of said machines and patents and patent rights, belong to the lessor, shall be deemed to belong to and may be enforced in the names of the Lessor and its successors and assigns, and all the agreements and conditions binding on the Lessee shall be binding on his legal representatives.

Thirteenth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and, in case the Lessee shall require more than one machine, it is

agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural, as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally hereto.

In witness whereof, the Lessor has caused these presents to be signed in its name, and its corporate seal to be affixed hereto by its Treasurer, and the Lessee has set his hand and seal hereto the day and year first above written.

Executed in Duplicate.

[SEAL] GOODYEAR SHOE MACHINERY COMPANY,
By Geo. W. Randall, Treasurer.

Lessee will please sign here. ☞ COMMONWEALTH SHOE & LEA CO [SEAL]
C. D. Reed, Treas

[On back:]
Lease No 4282 Full Set.
Goodyear Shoe Machinery Company, Lessor.
Commonwealth S. & L. Co. Lessee.
Dated April 5th 1898

PLAINTIFF'S EXHIBIT 229.

[Put in Evidence, page 2167.]

Lease No. *4721* Full Set. [Form 597.]

Transfer from Lease No.

This Lease and Agreement, made at Boston, Massachusetts, this *18th* day of *May* A. D. 189*9*, by and between Goodyear Shoe Machinery Company, a corporation established under the laws of the State of Maine, Lessor, and party hereto of the first part, and *Commonwealth Shoe & Leather Co., doing business in Whitman, Mass.* Lessee, and party hereto of the second part, Witnesseth;

Whereas, the Lessor is the owner of or is licensed under the several Letters Patent of the United States, recited in the schedule following, viz.:

SCHEDULE OF PATENTS.

No. 240,307, dated April 19, 1881.
No. 249,279, dated November 8, 1881.
No. 253,156, dated January 31, 1882.
No. 317,758, dated May 12, 1885.
No. 317,759, dated May 12, 1885.
No. 320,075, dated June 16, 1885.
No. 330,928, dated November 24, 1885.
No. 366,935, dated July 19, 1887.
No. 369,563, dated September 6, 1887.
No. 412,703, dated October 8, 1889.
No. 412,704, dated October 8, 1889.
No. 424,966, dated April 8, 1890.
No. 453,999, dated June 9, 1891.
No. 456,041, dated July 14, 1891.
No. 461,793, dated October 20, 1891.
No. 463,967, dated November 24, 1891.
No. 463,982, dated November 24, 1891.
No. 473,870, dated April 26, 1892.
No. 474,774, dated May 10, 1892.
No. 483,393, dated September 27, 1892.
No. 488,505, dated December 20, 1892.
No. 488,591, dated December 27, 1892.
No. 488,841, dated December 27, 1892.
No. 495,452, dated April 11, 1893.
No. 500,060, dated June 20, 1893.
No. 510,127, dated December 5, 1893.
No. 511,263, dated December 19, 1893.
No. 514,364, dated February 6, 1894.
No. 514,741, dated February 13, 1894.
No. 518,911, dated April 24, 1894.
No. 520,020, dated May 15, 1894.
No. 529,900, dated November 27, 1894.
No. 533,301, dated January 29, 1895.
No. 536,338, dated March 26, 1895.
No. 537,823, dated April 23, 1895.
No. 540,222, dated May 28, 1895.
No. 540,223, dated May 28, 1895.
No. 540,438, dated June 4, 1895.
No. 540,616, dated June 4, 1895.
No. 541,988, dated July 2, 1895.
No. 542,813, dated July 16, 1895.
No. 543,012, dated July 23, 1895.
No. 546,211, dated September 10, 1895.
No. 546,851, dated September 24, 1895.
No. 546,852, dated September 24, 1895.
No. 548,309, dated October 22, 1895.
No. 549,125, dated November 5, 1895.
No. 549,126, dated November 5, 1895.
No. 549,471, dated November 5, 1895.
No. 553,948, dated February 4, 1896.
No. 553,949, dated February 4, 1896.
No. 555,547, dated March 3, 1896.
No. 555,548, dated March 3, 1896.
No. 556,146, dated March 10, 1896.
No. 557,744, dated April 7, 1896.
No. 558,379, dated April 14, 1896.
No. 558,380, dated April 14, 1896.
No. 558,381, dated April 14, 1896.
No. 558,382, dated April 14, 1896.
No. 558,888, dated April 21, 1896.
No. 559,314, dated April 28, 1896.
No. 560,976, dated May 26, 1896.
No. 561,386, dated June 2, 1896.
No. 563,471, dated July 7, 1896.
No. 563,472, dated July 7, 1896.
No. 564,379, dated July 21, 1896.
No. 564,883, dated July 28, 1896.
No. 11,578, reissued December 15, 1896.
No. 573,068, dated December 15, 1896.
No. 573,069, dated December 15, 1896.
No. 573,144, dated December 15, 1896.
No. 11,587, reissued February 2, 1897.
No. 579,205, dated March 23, 1897.
No. 579,206, dated March 23, 1897.
No. 579,207, dated March 23, 1897.
No. 579,231, dated March 23, 1897.
No. 580,746, dated April 13, 1897.
No. 576,114, dated February 2, 1897.
No. 579,146, dated March 23, 1897.
No. 580,773, dated April 13, 1897.
No. 583,968, dated June 8, 1897.
No. 584,038, dated June 8, 1897.
No. 584,039, dated June 8, 1897.

And, whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above-recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz.:

SCHEDULE OF MACHINES.

Goodyear Welt and Turn Shoe Machine , No.
Goodyear Outsole Stitcher (Lock Stitch "Rapid"), No.
(Welt Bevelling Attachment, No.)
Goodyear Channeller (Insole), No.
Goodyear Channeller (Outsole), No.
Rounding and Channelling Machine , No.
Universal Rounding and Channelling Machine , No.
Channel Lip Turner , No.
Goodyear Channel Opener , No.
Goodyear Welt Beater , No.
Goodyear Shank Skiver , No.
Universal Shank Skiver , No.
Goodyear Bobbin Winder , No.
Goodyear Welt Groover , No.
Goodyear Welt Splitter , No.
Goodyear Basting Machine , No.
Universal Inseam Trimmer , No.
Goodyear Sole Layer , No. *116*
Goodyear Automatic Sole Leveller , No.
Hadaway Stitch Separator , No.

The said machines being the property of the Lessor:

Now, therefore, the Lessor, in consideration of one dollar and other valuable consideration to it paid by the Lessee, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said

machines, or either or any of them, but upon the agreements and conditions hereinafter set forth; and this lease and license is granted by the lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor, notwithstanding any express or implied waiver of any prior breach, may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to any one in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon re-vest in the lessor;

First. The Lessee hereby agrees to use, and is hereby licensed to use, the machines hereby leased and the inventions patented as aforesaid only in his factory in *Whitman* in the State of *Massachusetts* and only in the manufacture of boots and shoes, and agrees to keep the said machines in working order at his own expense and to procure of the Lessor or its agents all parts for repairing the machines hereby leased, and agrees not to add to or subtract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, nor to remove or deface any dates, numbers or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to add improvements to the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the lessor shall hereafter add to the machines, and to all patented inventions hereafter embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The following is the schedule of rents and royalties here-

inafter referred to, and which it is understood and agreed is to be paid by the Lessee for each pair of shoes or boots respectively made by the aid of the machines hereby leased, or either or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, viz.:

SCHEDULE OF RENTS AND ROYALTIES FOR GOODYEAR WELTS.

Children's	3 cents per pair
Misses'	4 " "
Women's	6 " "
Youths'	4 " "
Boys'	6 " "
Men's	8 " "

Fourth. The Lessee hereby agrees to keep proper books of account, and make true and complete entries therein of all transactions relating to the manufacture and sale of all boots and shoes made by him, or by any other person for him or for others, by the aid of the machines hereby leased, or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, and to render an account thereof to the Lessor on or before the tenth day of each month, which account shall specify the number of pairs of boots and shoes made under this lease and license during the calendar month next preceding, and the class to which they belong according to the above schedule of rents and royalties; and the Lessee agrees that he will require the operator or operators on said machines to keep a daily account of all boots or shoes made by the aid of said machines upon the printed forms to be furnished by the Lessor, in duplicate, one copy of which, containing such reports for the calendar month next preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor, and, whenever required by the Lessor, to make oath to the correctness of said returns, and to allow the Lessor, by its agents or attorneys, to examine and take copies or extracts from the original book or books of account of the Lessee and the accounts kept by the operator or operators as aforesaid; and the Lessee hereby agrees to send to the Lessor, on or before the tenth day of each

month, in case the machines hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, marked across the face with the words "not running," or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased, and as royalty for the use of the inventions patented as aforesaid as hereby licensed, the rent and royalty specified in the schedule forming part of Section Third herein, for each pair of boots or shoes of the respective kinds mentioned or described in said schedule, made by the aid of the said machines, or either or any of them, or by the use of the said inventions, or either or any of them; the rents and royalties for all such boots and shoes, made as aforesaid during one calendar month, to be due and payable on the last day of the calendar month next following; but the Lessor hereby agrees, that, **if the rents and royalties due on the last day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty per cent. from the rents and royalties specified in the schedule aforesaid.**

Sixth. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots or shoes known in the trade as "Goodyear Welts," and that he will not use or permit the use of said machines, or either or any of them, upon boots or shoes in the manufacture of which any sole or welt sewing machine not leased to him by the Lessor is employed, or for any other purpose than the manufacture of Goodyear Welts, unless the consent in writing of the Lessor shall first have been obtained.

Seventh. The Lessee hereby agrees that he will not in any way violate or infringe, or contest the validity of, any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors assigns, to said patents, or either or any of them.

Eighth. This lease and license is not assignable by the Lessee, by his own act or by operation of law.

Ninth. The following are also agreed to by the parties to this instrument as conditions of this lease and license:

(a) That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machines embodying the patented inventions aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or either or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire, and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent and royalty under this instrument.

(b) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, its successors or assigns, notwithstanding any express or implied waiver of any prior breach, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon re-vest in the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successors or assigns, or its authorized agent or agents, may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license.

(c) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein contained) until the expiration of all and every the Letters Patent referred to in the foregoing Schedule of Patents, or any extensions

or renewals of the same, and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

Tenth. In case any other machines than those hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor, its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions or improvements, and shall govern the parties respectively to the same extent as if the said machines, inventions or improvements had been expressly included in this lease and license. The Lessor shall give written notice of its election as aforesaid after it shall have received written notice from the Lessee of the possession of such machines, but may give such notice without having received notice from the Lessee of the possession of such machines.

Eleventh. The Lessee agrees that he will not disturb or interfere with, nor permit any one else to distrurb or interfere with, any indicator which now is or which may be hereafter placed upon the machines hereby leased.

Twelfth. All the rights and interests which, under this instrument, and by reason of the ownership of said machines and patents and patent rights, belong to the Lessor, shall be deemed to belong to and may be enforced in the names of the Lessor and its successors and assigns, and all the agreements and conditions binding on the Lessee shall be binding on his legal representatives.

Thirteenth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural, as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where

the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally hereto.

In witness whereof, the Lessor has caused these presents to be signed in its name, and its corporate seal to be affixed hereto by its Treasurer, and the Lessee has set his hand and seal hereto the day and year first above written.

Executed in Duplicate.

[SEAL] GOODYEAR SHOE MACHINERY COMPANY,
By Geo. W. Randall Treasurer.

Lessee will please sign here. ☞ COMMONWEALTH SHOE & LEA. CO. [SEAL]
C. H. Jones, Pres.

[On back:]

Lease No. 4721 Full Set.
Goodyear Shoe Machinery Company, Lessor.
Commonwealth S. & L. Co., Lessee.
Dated May 18, 1899.

PLAINTIFF'S EXHIBIT 230.

[Put in Evidence, page 2169.]

License and Rental Lease No. *2213*

This License and Rental Lease Agreement, made in duplicate the *24th* day of *March* A. D. 1*900*, by and between the

Consolidated & McKay Lasting Machine Company,

a corporation incorporated under the laws of the State of Maine, Licensor and party of the first part, and *Commonwealth Shoe and Leather Co.* of *Skowhegan, Maine*, Licensee and party of the second part, Witnesseth:

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting, to wit: No. 274,207, dated March 20,

1883, No. 281,306, dated July 17, 1883, No. 284,906, dated Sept. 11, 1883, No. 292,575, dated Jan. 29, 1884, No. 312,335, dated Feb. 17, 1885, No. 415,726, dated Nov. 26, 1889, No. 421,954, dated Feb. 25, 1890, No. 423,920, dated March 25, 1890, No. 423,921, dated March 25, 1890, No. 423,922, dated March 25, 1890, No. 423,937, dated March 25, 1890, No. 441,482, dated Nov. 25, 1890, No. 459,899, dated Sept. 22, 1891, No. 482,349, dated Sept. 13, 1892, No. 500,141, dated June 27, 1893, No. 510,972, dated Dec. 19, 1893, No. 510,973, dated Dec. 19, 1893, No. 510,974, dated Dec. 19, 1893, No. 510,975, dated Dec. 19, 1893, No. 510,976, dated Dec. 19, 1893, No. 510,977, dated Dec. 19, 1893, No. 510,-978, dated Dec. 19, 1893, No. 518,933, dated April 24, 1894, No. 523,939, dated July 31, 1894, No. 533,394, dated Jan. 29, 1895, No. 560,767, dated May 26, 1896, No. 562,119, dated June 16, 1896, No. 564,931, dated July 28, 1896, No. 567,566, dated Sept. 8, 1896, No. 584,741, dated June 15, 1897, No. 584,742, dated June 15, 1897, No. 584,743, dated June 15, 1897, No. 584,744, dated June 15, 1897, No. 597,321, dated January 11, 1898, and other patents applied for and now pending, and is, moreover, the owner of or Licensee under other patents not herein enumerated;

And, Whereas, the Licensee desires the right to use, under the terms of this License and Lease Agreement, the hereinafter described machine belonging to and owned by the Licensor, and also any improvements relating to the machine hereby licensed and leased for Rental, which may hereafter be acquired by the Licensor and attached to the machine hereby licensed and leased for Rental, or delivered to the Licensee to be used in connection therewith, and also any other machine, machinery, or device made by or for the Licensor, which may hereafter come into the possession of the Licensee:

Now, Therefore, the Licensor, in consideration of Three Hundred Dollars ($300.00) ~~to be~~ paid ~~for this License~~ by the *Bloomfield Shoe Co.* ~~Licensee~~, and of the stipulations, conditions and agreements herein contained, on the part of the Licensee to be kept and performed, does license unto the licensee, Lasting Machine No. *567*, property of the Licensor, but delivered f. o. b. cars

at Beverly, Mass., into the possession of the Licensee for lasting boots and shoes at the factory of the Licensee in *Skowhegan* State of *Maine* and nowhere else. Said machine is constructed in accordance with and embodies the invention or inventions or some part thereof described in said Letters Patent granted and to be granted, to which Letters Patent when granted this License and Lease agreement shall apply and the parties hereunto shall be bound relatively thereto, the same in all respects as if the patents had been granted and the numbers thereof specially enumerated in this License and Lease agreement before signing.

The Licensor does hereby license the Licensee and the operatives in his employ to use said patented machine upon the terms and conditions herein set forth, and the Licensor does hereby also license the Lecensee to use the inventions of all said patents above enumerated or referred to and all reissues, renewals and extensions of the same embodied in said machine; provided, however, and this License and Lease is granted on the express conditions that the Licensee shall at all times faithfully perform all and every condition herein contained upon his part to be kept and performed, and upon breach of said conditions or any of them by the Licensee, the Licensor at its option may cancel and terminate this License and Lease Agreement and upon written notice thereof to the Licensee or to any one in possession of or apparent control of the machine this License and Lease Agreement shall terminate and the possession of said machine may thereupon be taken by the Licensor or its duly authorized Agents.

And the following are conditions and agreements which the Licensee hereby agrees to keep and perform and upon condition of the faithful performance of which, this License and Lease agreement is granted.

First. — The Licensee agrees that the operator on this machine shall keep a daily account on blanks, furnished by the Licensor for that purpose, of the numbers of pairs of boots and shoes and the kinds thereof lasted on or by the use of said machine or by the use of any of the inventions of said patents or in the making of which any of the inventions of said patents were employed or the machine

performed a part, which account shall be signed by the operator (and verified and signed by the Licensee, if requested by the Licensor) and forwarded by the Licensee to the Licensor on or before the fifth day of each and every month in each and every year during the continuance of this License and Lease Agreement, for the month then next preceding, and on or before the fifth day thereafter the Licensee shall pay to the Licensor as rent for the use of said machine and the use of any of the inventions of said patents, a sum of lawful money equal to one-half (1-2) of one cent for each and every pair of boots and shoes lasted on or by the use of said machine or by the use of any of the inventions of said patents, or in the making of which said machine performed a part, during the month then next preceding, but seventy-two (72) pairs of Misses' and Children's shall be considered equivalent to sixty (60) pairs of other kinds.

Second. — If, for any cause, this machine shall not be in use during twelve (12) consecutive months to the extent of its earning for the said Licensor at the above mentioned rates an amount equal to or in excess of Seventy-five Dollars ($75.00), then said Licensor may by paying to the Licensee a sum of money equal to ~~one-third~~ (one half) (~~1-3~~ ½) of the amount paid by him for this License, cancel and terminate this License and Lease Agreement as hereinbefore specified, this option and condition to be independent of any other options and conditions contained in this License and Lease Agreement.

Third. — The Licensee hereby agrees that he will not in any way violate or infringe or contest the validity of any of the patents he is hereby licensed to use or the sufficiency of their specifications or the validity of the title of the Licensor to said patents or any of them.

Fourth. — This License and Lease Agreement is not assignable and shall not be assigned by the Licensee by his own act or by the operation of law.

Fifth. — The power conveyed by this License and Lease Agreement is only the right to use said machine herein enumerated and embodying any of the inventions of said patents, and not the right

to make, use or sell any other machine embodying any of the inventions of the patents aforesaid; the transfer or removal of the machine hereby licensed and leased can only be made with the consent of the Licensor; and if the Licensee is or becomes at any time insolvent or bankrupt, or a sale, transfer or removal of said machine shall be made or attempted by the Licensee or by the operation of law or by any legal officer, representative, or assigns as the property of the Licensee without the consent in writing of the Licensor, this License and Lease Agreement shall at the option of said Licensor terminate and expire, and said Licensor may take possession of said machine without the Licensee or his representative having any claim for repayment of any of the sum or sums which he may have paid as consideration for the delivery of this License or for rent or royalty under this instrument.

Sixth. — The Licensee agrees that he will allow the Licensor or its Agents at any time hereafter to attach an indicator or other mechanism to any machine embracing any of the inventions of the patents hereby licensed which now is or may hereafter come into the possession of the Licensee for the purpose of recording the number of revolutions of the driving-shaft of said machine, or of otherwise indicating the quantity of boots and shoes operated by said machine or the quantity of work done by said machine, and to examine, modify, repair or replace said indicator, and the Licensee will not disturb or interfere with, or permit anyone else to disturb or interfere with, any indicator which now is or may hereafter be placed upon a machine as aforesaid.

And the Licensee shall not add to or subtract from the machine any mechanism whatever now or hereafter organized or connected therewith by the Licensor, nor make nor allow to be made any change or alteration in the same without the consent thereto in writing of the Licensor, nor interfere with the proper operation of the machine or any mechanism forming a part thereof or attached thereto, or that may be hereafter attached thereto, and shall at all times at his own expense keep and maintain the machine in as good and efficient working order as the same now is or may hereafter be

put by the Licensor, and to obtain from the Licensor or its Agents all duplicate parts for said machine whenever any are needed.

The Licensor and its Agents may at all reasonable times have convenient access to the machine to examine and inspect the same, and the use thereof, and to repair and improve or add to the same so far as it may see fit; and all the covenants, stipulations, conditions and terms of this License and Lease Agreement shall apply to all improvements which the Licensor shall hereafter add to the machine, and to all patents therefor, with the same effect as if such additional patents were enumerated in the previous list herein set forth.

The Licensee hereby further agrees to pay all taxes assessed on said machine and accessories.

Seventh. — In case the Licensee refuses or neglects to perform, or violates any of the conditions of this License and Lease Agreement, the Licensor shall have the right to terminate this License and Lease Agreement, by giving written notice as aforesaid that it has elected so to do, and, upon the giving of such notice, this License and Lease Agreement shall terminate, and it shall be the duty of the Licensee forthwith to deliver the possession of said machine to the Licensor, in good condition, reasonable wear and tear excepted, and without prejudice to any other legal rights or remedies for violation of this contract, use of machine, or use of any of the inventions of said patents without license. The Licensor or its Agents may thereupon enter the premises wherein said machine may be, and take and remove the same, and the Licensee shall have no claim whatever on account of any sum or sums he may have paid for this License, or under this License and Lease Agreement.

Eighth. — This License and Lease Agreement shall continue (provided the Licensee keeps and performs the conditions thereof) until the expiration of all Letters Patent, or any extensions or renewals thereof, now or hereafter owned by the Licensor, or any inventions which are or shall be hereafter embodied in, or used in connection with, said machine; and, upon the expiration of all said Letters Patent, the Licensee shall, ~~upon demand, deliver to the~~

~~Licensor the machine hereby leased or rented, in good order and repair; and the Licensee shall have no claim whatsoever on account of any sum or sums that may have been paid for this License, or under this License and Lease Agreement.~~

have the right to purchase said machines for the sum of one dollar.

All the rights and interests which, under this instrument and by reason of the ownership of said machine and patents and patent rights, belong to the Licensor, shall be deemed to belong to, and may be enforced in its name or otherwise by the Licensor, its successors and assigns and its or their representatives or assigns; all the stipulations and agreements binding on the Licensee shall be binding upon their representatives, successors or assigns.

Ninth. — It is agreed that this instrument may be used for Licensees of the female sex, or for corporations, and in that case the masculine pronoun denoting the Licensee shall, whenever it occurs, be instead of, and indicate the feminine or neuter; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to said party shall be considered as plural or singular, as the case may require; and when said party of the second part so consists of several persons, and they sign this License and Lease Agreement, either individually or by their firm signature, such signature or signatures shall bind them, both jointly and severally, to the terms and agreements herein contained, and also that the number of the machine named in this License and Lease Agreement may be entered by the Licensor, after signing, and that as this instrument is designed and intended for use between the parties hereto, in case the Licensee shall require more than one machine, and it is entered in this License and Lease Agreement, it is agreed that the termination of the words relating to the machine shall be construed and considered as written in the singular or plural, as the number of machines entered in this License and Lease Agreement may require.

In witness whereof, the parties aforesaid have hereunto set their hands and seals, the said parties of the second part binding them-

selves, their legal representatives, and assigns, to all the foregoing agreements, both jointly and severally.

Fifty-five words erased and eighteeen words inserted before execution.

[SEAL] CONSOLIDATED & MCKAY LASTING MACHINE COMPANY,
by Geo. W. Brown, Treasurer.
COMMONWEALTH SHOE & LEA. CO. [SEAL]
by Chas. H. Jones, Pres

PLAINTIFF'S EXHIBIT 231.

[Put in Evidence, page 2171.]

Lease and License, No. *1731*

This Lease and Agreement, made this *17th* day of *December* A. D. *1897*, by and between James W. Brooks, Principal Trustee, and John Brooks, Associate Trustee, for the McKay-Bigelow Heeling Machine Association, Lessors, and *Commonwealth Shoe and Leather Company, Whitman, Massachusetts*, Lessee, witnesseth:

Whereas, The Lessors are engaged in the manufacture of shoe machinery, and devices to be used in connection therewith, and particularly machinery and devices useful in the manufacture of the heel portions of boots and shoes; and

Whereas, The Lessors, at great expense, have endeavored, and are constantly endeavoring to improve and render more useful, the machinery and devices manufactured by them, and are the owners of the following Letters Patent of the United States for improvements and inventions relating to machinery and devices for the manufacture of shoes, viz.: E. B. Allen, 310,488, Jan. 6, 1885; 314,411, March 24, 1885; 319,377, June 2, 1885; 332,032, Dec. 8, 1885; 332,984, Dec. 22, 1885; 348,091, Aug. 24, 1886; 348,-092, Aug. 24, 1886; 374,387, Dec. 6, 1887; 374,885, Dec. 13, 1887; 375,913, Jan. 3, 1888; 377,284, 377,285, Jan. 31, 1888; 378,859, March 6, 1888; 384,343, June 12, 1888; 384,734, June 19, 1888. C. H. Benjamin, 388,523, Aug. 28, 1888. H. Bond, 297,787, Feb. 5, 1884. E. Bourgeois, 277,207, May 8, 1883. C. H. Brown and A. B. McCoy, 477,098, June 14, 1892. C. W.

Chase, 212,190, Feb. 11, 1879. T. P. Coombs, 391,124, Oct. 16, 1888. J. H. Cunningham, 381,493, April 17, 1888. A. E. Ellis, 388,544, Aug. 28, 1888. A. D. Elliott, 374,892, Dec. 13, 1887. A. D. Elliott and J. E. Fellows, Nov. 19, 1889. A. D. Elliott, 446,383, Feb. 10, 1891; 510,012, Dec. 5, 1893. H. P. Fairfield, 224,005, Feb. 3, 1880; 388,547, 388,548, Aug. 28, 1888; 498,-745, May 30, 1893; 518,917, April 24, 1894. M. J. Ferren, 236,-148, Jan. 4, 1881. M. Fifield, 261,696, July 25, 1882. E. Fisher, 246,945, Sept. 13, 1881; 248,582, Oct. 25, 1881; 250,654, Dec. 13, 1881; 258,905, June 6, 1882. J. F. Freeman and C. W. Glidden, 443,434, Dec. 23, 1890. C. W. Glidden, 217,866, July 29, 1879; 217,867, July 29, 1871; 224,011, 224,012, Feb. 3, 1880; 278,426, May 29, 1883; 321,017, June 30, 1885; 347,482, Aug. 17, 1886; 350,051, Sept. 28, 1886; 374,894, Dec. 13, 1887; 377,-300, Jan. 31, 1888; 377,301, 377,302, Jan. 31, 1888; 382,762, May 15, 1888; 388,552, 388,578, Aug. 28, 1888; 393,103, 393,-104, Nov. 20, 1888; 399,607, 399,608, March 12, 1889; 402,435, April 30, 1889; 399,608, March 12, 1889; 402,435, April 30, 1889; 403,747, May 21, 1889; 408,173, July 3, 1889; 409,637, Aug. 20, 1889; 409,783, 410,086, 410,087, 410,088, 410,089, 410,090, Aug. 27, 1889; 410,358, Sept. 3, 1889; 411,655, Sept. 24, 1889; 414,040, Oct. 29, 1889; 427,308, May 6, 1890; 439,060, Oct. 21, 1890; 454,428, June 16, 1891; 457,462, Aug. 11, 1891; 459,348, Sept. 8, 1891; 464,196, Dec. 1, 1891; 498,429, 498,513, May 30, 1893; 500,486, June 27, 1893; 502,667, 502,668, 502,669, Aug. 1, 1893; 242,268, April 30, 1895. Glidden and Elliott, 457,462, Aug. 11, 1891. R. M. Harrison, 233,504, Oct. 19, 1880. M. P. Harrigan, 386,538, July 24, 1888; 406,582, July 9, 1889. Harrigan and Packard, 473,874, April 26, 1892. John J. Heys, 530,-046, Nov. 27, 1894. T. P. King and F. S. Strong, 267,544, Oct. 24, 1882. Horne and Henderson, 389,077, Sept. 4, 1888. W. Manley, 322,945, July 28, 1885; 336,332, Feb. 16, 1886; 342,-371, May 25, 1886; 374,416, 374,417, 374,418, 374,419, Dec. 6, 1887. J. F. McMullett, 266,298, Oct. 24, 1882; 373,409, Nov. 15, 1887. J. L. Packard, 388,578, Aug. 28, 1888; 413,959, Oct. 29, 1889; 473,478, April 19, 1892. M. D. Phelan, 400,788, April

2, 1889. D. C. Pillsbury, 417,833, Dec. 24, 1889. A. E. Stirckler, 212,116, Feb. 11, 1879. E. A. Tripp, 406,183, 406,184, July 2, 1889. C. K. Wead, 477,093, June 14, 1892. A. H. Webster, 468,279, Feb. 2, 1892; 483,293, Sept. 27, 1892; 504,854, 502,854, 505,074, Sept. 12, 1893. H. W. Winter, 401,619, 401,620, 401,622, April 16, 1889; 402,375, 402,376, April 30, 1889; 447,744, March 3, 1891; 448,310, March 17, 1891; 501,555, July 18, 1893; 505,043, Sept. 12, 1893. E. C. Wright, 340,690, April 27, 1886. Crocker, Sumner & Nash, 385,748, July 10, 1888; 388,535, Aug. 28, 1888. J. H. Pope, 399,631, March 12, 1889; 399,777, March 19, 1889; 411,835, Oct. 1, 1889; 446,885, Feb. 24, 1891. M. A. Tyler, 301,462, July 1, 1884; 305,723, Sept. 23, 1884. Tyler & Merritt, 321,401, June 30, 1885; 382,121, May 1, 1888. Tyler & Smith, 293,604, Feb. 12, 1884. A. K. Washburn, 389,994, Sept. 25, 1888. H. A. Henderson, 252,215, Jan. 10, 1882; 259,687, June 20, 1882; 316,894, April 28, 1885; 10,588, 10,589, April 28, 1885; 317,646, 317,647, May 12, 1885; 332,798, Dec. 22, 1885. F. F. Raymond, 2d, 271,117, 271,118, Jan. 23, 1883; 280,399, July 3, 1883; 287,472, Oct. 30, 1883; 289,857, 290,109, Dec. 11, 1883; 315,458, 315,069, 315,070, April 7, 1885; 316,177, April 21, 1885; 316,661, 316,836, 316,827, April 28, 1885; 317,199, May 5, 1885; 317,672, 317,851, May 12, 1885; 318,134, May 19, 1885; 319,124, June 2, 1885; 321,530, 321,756, July 7, 1885; 322,126, July 14, 1885; 322,560, July 21, 1885; 322,561, 322,562, July 21, 1885; 325,271, 325,272, Sept. 1, 1885; 326,150, Sept. 15, 1885; 326,779, 326,780, 326,781, 326,782, Sept. 22, 1885; 329,079, Oct. 27, 1885; 329,951, 329,952, Nov. 10, 1885; 331,441, Dec. 1, 1885; 382,001, Dec. 8, 1885; 335,241, 335,242, Feb. 2, 1886; 340,358, April 20, 1886; 341,169, May 4, 1886; 341,689, May 11, 1886; 342,039, May 18, 1886; 342,461, May 25, 1886; 342,929, June 1, 1886; 343,339, June 8, 1886; 343,728, June 15, 1886; 344,136, June 22, 1886; 344,499, June 29, 1886; 344,985, July 6, 1886; 345,449, July 12, 1886; 345,920, July 20, 1886; 346,124, 346,125, July 27, 1886; 346,607, Aug. 3, 1886; 347,061, 347,062, 347,063, Aug. 10, 1886; 347,514, Aug. 17, 1886; 347,960, Aug. 24, 1886; 348,689, Sept. 7,

1886; 353,883, Dec. 7, 1886; 354,227, Dec. 14, 1886; 354,655, Dec. 21, 1886; 355,027, Dec. 28, 1886; 355,556, Jan. 4, 1887; 355,839, 355,840, Jan. 11, 1886; 356,209, Jan. 18, 1887; 356,549, 356,550, 356,551, Jan. 25, 1887; 356,552, 356,553, 356,554, Jan. 25, 1887; 356,890, Feb. 1, 1887; 357,335, Feb. 8, 1887; 357,735, Feb. 15, 1887; 358,298, Feb. 22, 1887; 358,695, March 1, 1887; 368,006, Aug. 9, 1887; 376,208, Jan, 10, 1888; 376,754, 376,908, Jan. 24, 1888; 377,172, Jan. 1, 1888; 377,577, Feb. 7, 1888; 377,958, Feb. 14, 1888; 378,216, Feb. 21, 1888; 378,617, Feb. 28, 1888; 379,029, March 6, 1888; 379,330, March 13, 1888; 379,810, March 20, 1888; 380,133, March 27, 1888; 380,596, April 3, 1888; 380,818, April 10, 1888; 381,280, April 17, 1888; 383,911, June 5, 1888; 385,960, July 10, 1888; 386,656, July 24, 1888; 394,298, Dec. 11, 1888; 394,609, 394,610, Dec. 18, 1888; 398,846, March 5, 1889; 405,598, June 18, 1889; 408,895, Aug. 13, 1889; 409,372, Aug. 20, 1889; 410,194, 410,195, 410,196, Sept. 3, 1889; 410,675, 410,676, 410,677, Sept. 10, 1889; 412,414, Oct. , 1889; 412,896, Oct. 15, 1889; 413,553, 413,554, 413,555, Oct. 22, 1889; 413,963, 413,964, Oct. 26, 1889; 414,448, 414,582, Nov. 5, 1889; 414,952, Nov. 12, 1889; 415,559, Nov. 19, 1889; 415,560, Nov. 19, 1889; 461,448, 461,510, Oct. 20, 1891; 464,165, 464,255, Dec. 1, 1891; 464,991, 465,029, Dec. 15, 1891; 467,237, Jan. 19, 1892; 467,522, Jan. 26, 1892; 468,957, Jan. 16, 1892; 474,146, May 3, 1892; 474,407, 474,408, May 10, 1892; 475,001, 474,858, May 17, 1892; 475,417, May 24, 1892; 476,303, 476,307, June 7, 1892; 479,142, July 19, 1892; 480,415, Aug. 9, 1892; 480,741, Aug. 16, 1892; 528,805, Nov. 6, 1894; 531,644, 531,645, Jan. 1, 1895. Raymond & Wheeler, 280,861, July 10, 1883. G. T. Demary, 320,050, June 16, 1885; 321,696, July 7, 1885; 342,501, May 25, 1886; 343,703, June 15, 1886; 474,335, May 3, 1892. Towns & Raymond, 346,137, July 27, 1886. J. B. Gardner, 354,125, Dec. 4, 1886; 360,580, April 5, 1887. J. W. Soule, 368,248, April 16, 1887. C. C. Small, 375,209, Dec. 20, 1887; 376,049, Jan. 3, 1888; 413,973, Oct. 29, 1889; 461,853, Oct. 27, 1891; 467,242, Jan. 19, 1892. E. E. Orr, 375,458, Dec. 27, 1887. J. R. Prouty, 383,-

907, 383,908, 383,909, June 5, 1888; 515,175, Nov. 12, 1889. James W. Carver, 401,131, April 9, 1889. Benjamin & Simmons, 503,895, Aug. 22, 1893. S. A. Krewson, 514,852, Feb. 13, 1894; and also are the owners of other inventions relating to machinery and devices for the manufacture of boots and shoes, and intend to secure Letters Patent therefor, some of which inventions, patented or to be patented, are embodied in the machines, or some of them, leased to the Lessee hereunder;

And Whereas, The Lessee desires the right to use, under the terms of this lease and license, the hereinafter described machinery or devices belonging to the Lessors, and also other improvements relating to the machinery hereby leased, which may hereafter be acquired by the Lessors, and attached by or with the permission of the Lessors to the machinery hereby leased or delivered to the Lessee, to be used in connection therewith, and also any other machines, machinery or devices made by or for the Lessors, which may hereafter come into the possession of the Lessee;

Now, therefore, The Lessors, in consideration of one dollar paid by the Lessee, the receipt whereof is hereby acknowledged, and of the covenants and agreements of the Lessee hereinafter contained, do hereby lease unto the Lessee (provided the Lessee keeps and observes the covenants and conditions of this agreement) the machinery or devices described by name and number or numbers, following, and all other machines and machinery made by or for the lessors which may hereafter come into the possession of the lessees with the written consent of the lessors and which are not the subject of another lease between the parties hereto: —

McKay Pricking Machine
McKay Heel Compressing and Loading Machine
Fisher Compressing Machine *No. 79, No. 80.*
Bresnahan Compressing Machine
Heel Trimming and Randing Machine,
Heel Trimming and Randing (including Grinding) Machine,
No. 2 Automatic Heel Nailing and Trimming Machine,
1 Knox Moulder with American Attachment.
Rapid Nailing Machine

Union Heel Trimmer,
Spring Heel Trimmer,
American Lightning Nailing Machine *No. 133, No. 136, No. 138, No. 165, No. 178, No. 179, No. 193, No. 214, No. 232, No. 249, No. 284, No. 324,*
American Compressing Machine,
Columbia Compressing Machine,
Automatic Heel Loading and Compressing Machine
Improved National Nailing Machine
Columbia Nailing Machine,
Automatic Spring-heel Nailing Machine,
Standard Automatic Nailing Machine,
Standard Automatic Nailing Machine, without Pricking Attachment,
Standard Automatic Loading or Compressing and Loading Women's Work Machine,

And the Lessors do hereby license the Lessee to use such machines and devices, and any patented parts, mechanisms or devices connected therewith or relating thereto, whether on said machinery when the same is received, or which may be added thereto by the Lessors, and including such machines, devices and machinery as may hereafter come into the possession of the Lessee with the written consent of the Lessors, under the aforementioned patents or any patents, reissues of patents or renewals, which may hereafter be owned or acquired by the Lessors; the term of said license to be the full term of this lease; but this lease is made and this license is granted, on the express condition that the Lessee shall faithfully keep and observe each and all of the conditions and agreements herein contained, on his part to be kept and observed; and that upon a breach of the same or either of them by the Lessee, the Lessors may, at their option, cancel and terminate this lease and license, and upon written notice thereof by the Lessors to the Lessee, or to any one in the possession or apparent control of the said machines, devices or machinery, this lease and license shall terminate, and the possession of, and the full right to and control of the said

machines, devices and machinery shall thereupon revest in the Lessors.

The word "machinery" as hereinafter used shall be construed as designating any and all machines, devices, tools and machinery held by the Lessee under this lease and license whether now or hereafter delivered to or in the possession of the Lessee, and the covenants and conditions of this lease shall apply to all such machines, devices, tools and machinery.

And the following are agreed to as terms and conditions of the lease and license of the machines, devices, tools and machinery which the Lessee is hereby licensed to use; all of which together with those hereinbefore expressed, the Lessee agrees to keep and perform.

First. The Lessee is by this lease and license authorized to use the "machinery", hereby leased only by himself or operatives in his direct employ and only at his factory, situate at *Whitman, Massachusetts.*

He shall not add to the "machinery", nor subtract therefrom any part, mechanism or device whatsoever now or hereafter forming a part thereof or connected therewith by the Lessors; nor make, nor allow to be made any change or alteration in the said "machinery", without the consent in writing of the Lessors, nor interfere with the proper operation of the same or any mechanism forming a part thereof or attached thereto; nor remove nor deface any dates, numbers, or inscriptions, now or hereafter impressed thereon or affixed thereto by the Lessors; and shall at all times and at his own expense keep the "machinery" in good and efficient working order and condition.

And the Lessee further agrees that he will purchase from the Lessors exclusively at the regular prices from time to time established by the Lessors, all the spare parts, forms, plates, knives, moulds, extras, devices and mechanism of every sort and kind needed or used by him in repairing, renewing, changing the styles, form or nailing, or in operating the "machinery" hereby leased.

Second. The Lessors and their agents may at all reasonable times have convenient access to the "machinery" covered by this lease

to examine and inspect the same and the use thereof, and to repair and improve or add to the same so far as they may see fit; but they shall not be bound to make any repairs or improvements and the covenants, stipulations, conditions and terms of this lease shall apply to all improvements which the Lessors shall hereafter add to the same and to any patents which have been or may be issued thereon with the same effect as if the patents were included in this lease and license with the Letters Patent already referred to.

Third. The Lessee agrees to pay unto the Lessors on the fifteenth day of each month, as rent or royalty for the machinery hereby leased, the sum of one half cent for each and every pair of boot or shoe heels manufactured wholly or in part by the aid or use of any of the machines or machinery hereby leased, said rent or royalty to be paid each month for all boot or shoe heels made during the preceding calendar month, and it is hereby agreed between the parties hereto that said rental or royalty at one half cent per pair is a just, fair and correct value to the Lessee of the use of said machinery, and that the abated royalty hereinafter named is not the true value of the lease and license hereby granted, but is a concession and abatement of such value for and in consideration of the conditions thereto attached; and all agreements herein shall extend to all boot or shoe heels made by or for the Lessee; provided, however, that in all cases where the Lessee shall pay the Lessors on or before the fifteenth day of each month, as an abated royalty, the sum of one quarter of a cent per pair for each and every pair of heels made during the preceding calendar month, said payment so made shall be full payment and satisfaction of said rent or royalty. And it is agreed that in default of the payment of said abated royalty, when due, as aforesaid, the Lessee's right to an abatement of the full royalty of one half cent per pair shall thereby be forfeited, and full royalty shall be due for the same, not as a penalty, but as a liquidated, fixed and settled rental and license fee for the use of said machines or machinery.

And, as the machines leased hereby are supplied to the Lessee without cash payment covering the cost of manufacture, the Lessee hereby guarantees that, during the continuation of this lease, the

abated rent and royalty due and actually paid over to the Lessors under the terms hereof shall not in and for any period of three months be less than *375.00* three hundred and seventy-five dollars dollars. But it is agreed that if, at any time during the continuance of this lease, the Lessee shall pay to the Lessors a sum equal to the amount of insurance hereinafter named, the Lessee shall, provided he has not violated any of the terms of this lease, be freed from his guarantee to pay more than the rent and royalty hereinbefore stipulated for each pair of boot or shoe heels manufactured as aforesaid, all the other terms and conditions of this lease remaining in force as before. And the Lessee cannot avail himself of the provision set forth in this paragraph for anything less than all the machines hereby leased; and he shall not be allowed any diminution of the sum to be paid because of the wear and tear or destruction of any of the machinery hereby leased.

Fourth. It is understood that the Lessors may at any time attach to said "machinery" or any part thereof an indicator, for the purpose of registering the number of boots or shoes in the manufacture of which said "machinery" is utilized, or the number of revolutions or movements of the same or any thereof; and the Lessee agrees that in case an indicator shall be attached to said "machinery" or any part thereof by the Lessors, it shall not be disturbed or interfered with by any person, and that prompt notice will be given to said Lessors in case the same shall be disturbed or inaccurate or out of repair. And the Lessee agrees to keep a full and accurate account independently of any indicators that may be placed upon the "machinery" of all boots and shoes in the manufacture of which said "machinery" is used; and the Lessee further agrees to require each of its operators upon the "machinery" hereby leased to keep upon blanks or blank books to be furnished by the Lessors, accurate daily records of the number of pairs of boots or shoes in the making of which said "machinery" shall have been used, and to require his operator to furnish any further information called for by said blanks or blank books and to sign such daily records and to deliver them to the Lessee; and the Lessee agrees

to send to the office of the Lessors on or before the fifteenth day of each month, the original records for the preceding calendar month kept by his operators as above provided for. And the Lessee agrees to allow the Lessors or their agents to have access at all times to said records kept by his operators and to all accounts kept by him, of the shoes prepared or manufactured by him.

Fifth. The Lessee hereby agrees as an essential part of the consideration for this lease and license, that he will not in any way violate or infringe or contest the validity of any of the patents hereinbefore referred to as belonging to the Lessors or which may now or hereafter be owned by the Lessors, or any reissue or extension of the same, or the title of the Lessors to said patents or any of them.

Sixth. The "machinery" held under this lease cannot be transferred, and this lease and license is not assignable by the Lessee by his own act or by operation of law. The Lessee agrees at his own expense to pay all taxes levied on said "machinery" or on account of this lease and to insure against loss by fire and to keep so insured the "machinery" held by him at any time under this lease in a sum total equal to *Four thousand* dollars, and in case of loss or damage, the Lessee agrees to pay the full amount of the insurance to the Lessors.

Seventh. The power conveyed by this lease and license is only the right to use the said "machinery" and not the right to make or sell any "machinery" embodying the inventions of any of the patents aforesaid or any patent hereafter owned by the Lessors. And a removal of the "machinery" or any portion thereof from the factory of the Lessee can only be made with the written consent of the Lessors, and on conditions satisfactory to the Lessors; and if the Lessee is or becomes at any time insolvent or bankrupt, or if a sale, transfer, removal or lease of said "machinery" or any portion thereof shall be made or attempted without the written consent of the Lessors, then this lease and license and all rights of the Lessee thereunder shall forthwith, at the option of the Lessors, cease and determine, and the possession of said "machinery" shall

revest in the Lessors, and they may take possession of the same without the Lessee having any claim against the Lessors.

Eighth. This lease and license shall, unless cancelled by agreement of the parties hereto, continue, provided the Lessee faithfully keeps and performs the terms and conditions hereof, for seventeen years from the date hereof, and for such further time as may be covered by the term of any Letters Patent now or hereafter owned by the Lessors, and any inventions of which are contained in any of the "machinery" hereby leased or which shall be added to or embodied in said "machinery" or used in connection therewith. But inasmuch as the "machinery" has been delivered by the Lessors to the Lessee without any charge or payment representing its cost (excepting such payments as have been made on account of moulds, dies, forms, clamps, lasts, and other parts or devices used in connection with said "machinery"), it is understood and agreed that the Lessors may at any time, in case the Lessee refuses or neglects to perform or violates any of the conditions of this lease and license, or provides himself with any other machine to do any part of the work which any of said Lessors' machines are capable of doing, terminate this lease upon giving written notice to the Lessee of their election so to do. And immediately upon such notice, this lease and license and all the rights of the Lessee thereunder shall be terminated and the title to and right of possession of said "machinery" and all said moulds, dies, forms, clamps, lasts and other parts or devices used in connection with said "machinery" shall at once vest in the Lessors free and discharged of this lease and license. And the Lessee agrees forthwith to deliver the "machinery" hereby leased and licensed, together with all moulds, dies, forms, clamps, lasts, and other parts or devices used in connection therewith to the lessors, and to pay to the Lessors the sum of fifty dollars for each individual machine then leased to the Lessee, and to pay in addition the expense of transporting the "machinery" to such place of business of the Lessors as the Lessors shall direct, and without prejudice to any other legal rights or remedies for violation of contract, use of "machinery" without right, or use of patents without license, which the Lessors may have; and the

Lessors or their agents may forthwith enter the premises where said "machinery" or any part of it may be, and may take and remove the same, including all said moulds, dies, forms, clamps, lasts and other parts or devices used in connection therewith, and the Lessee shall have no claim whatever against the Lessors under this lease or otherwise.

In case this lease shall run for its full term, then immediately upon its expiration the Lessee shall deliver to the Lessors the "machinery" hereby leased, together with all moulds, dies, forms, clamps, lasts and other parts or devices used in connection with said "machinery", and the Lessee shall have no claim whatever to said "machinery" or to a continuation of his possession or use thereof.

Ninth. In case any other machines, devices, or machinery than those now hereby leased and licensed, embracing or to be used in connection with the inventions of any of the Letters Patent under which a license is hereby granted, or any other patents under which the Lessee may hereafter become licensed by the terms of this agreement, shall hereafter come into the possession of the Lessee without a written lease or license from the Lessors, then, in case the Lessors shall so elect, all the covenants and agreements herein contained, including the obligation to pay a monthly rental or royalty, shall apply to the same and shall govern the parties respectively to the same extent as if the same had been expressly included in this lease and license. The Lessors may write the numbers of any such "machinery" as shall hereafter come into the possession of the Lessors into this lease after the same is executed.

Tenth. All the rights and interests which under this agreement and by reason of the ownership of said "machinery" and patents and patent rights belong to the Lessors shall be deemed to belong to and may be enforced in their name or otherwise by the Lessors' successors and assigns and their representatives and assigns. All of the stipulations and agreements binding on the Lessee shall be binding on his or their representatives and assigns.

Eleventh. It is agreed that this instrument may be used for Lessees of the female sex or for corporations, and that in that case

the masculine pronoun denoting the Lessee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that this instrument may be used in cases where the Lessee shall consist of more than one person, and in that case the termination of the words relating to the Lessees shall be considered as plural or singular, as the sense may require; and that when the Lessees so consist of several persons and they sign this lease either individually or by the firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In Witness Whereof, the parties aforesaid have hereunto set their hands and seals and to another instrument of even date and like tenor, the principal Trustee being authorized to sign for himself and his associate trustee, and to do all acts hereunder, and said Lessee or Lessees under this agreement binding itself, himself, or themselves to all the foregoing agreements, both jointly and severally.

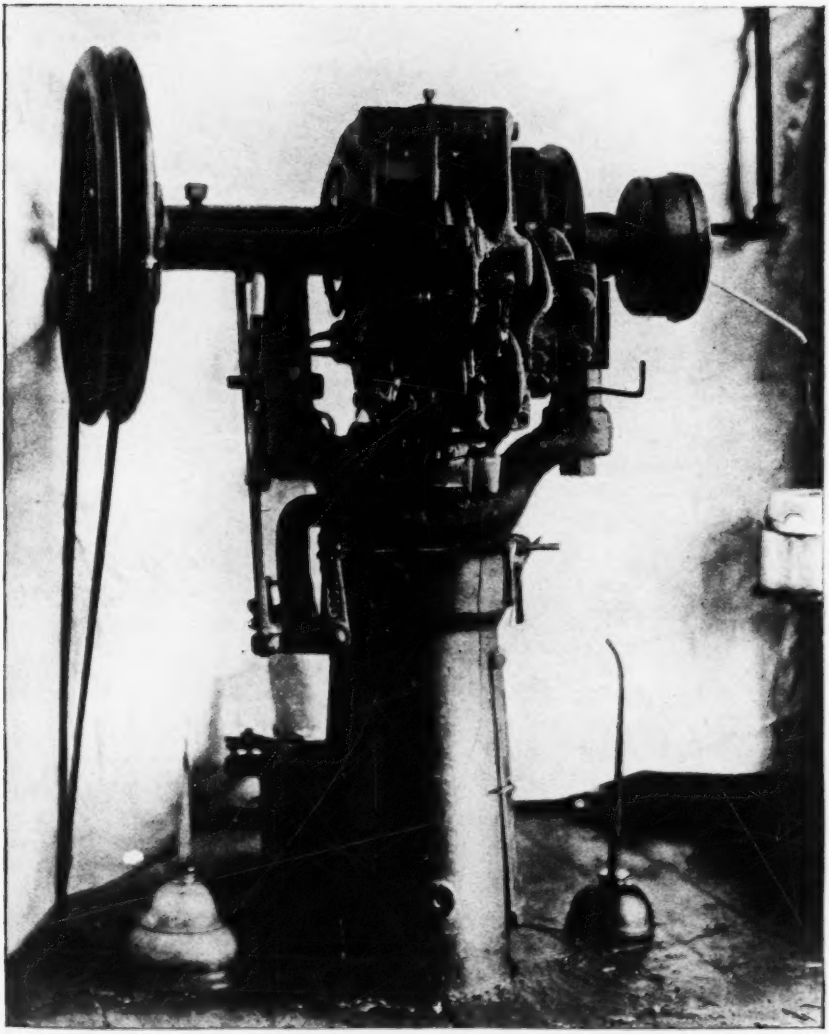
JAMES W. BROOKS, Principal Trustee. [SEAL]
J. Brooks, Atty.

Signatures of Lessees.

COMMONWEALTH SHOE & LEA. CO. [SEAL]
Charles H. Jones

PLAINTIFF'S EXHIBIT 232.

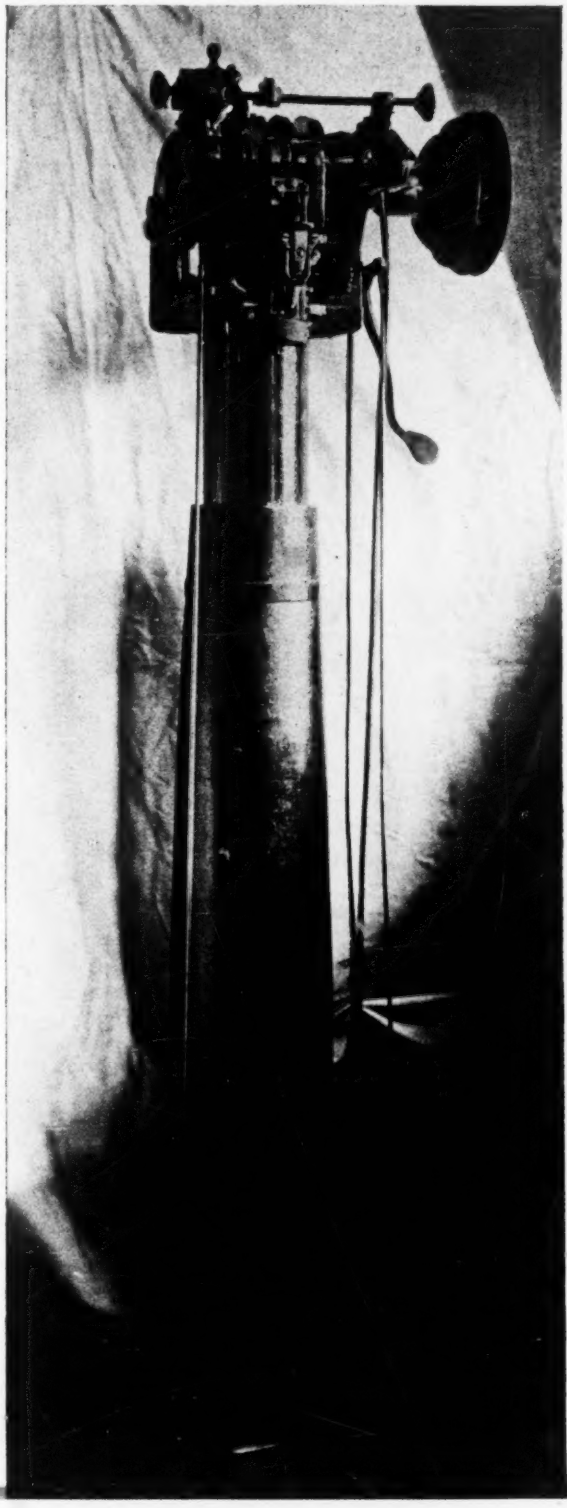
[Put in Evidence, page 2179.]



Welt Machine.

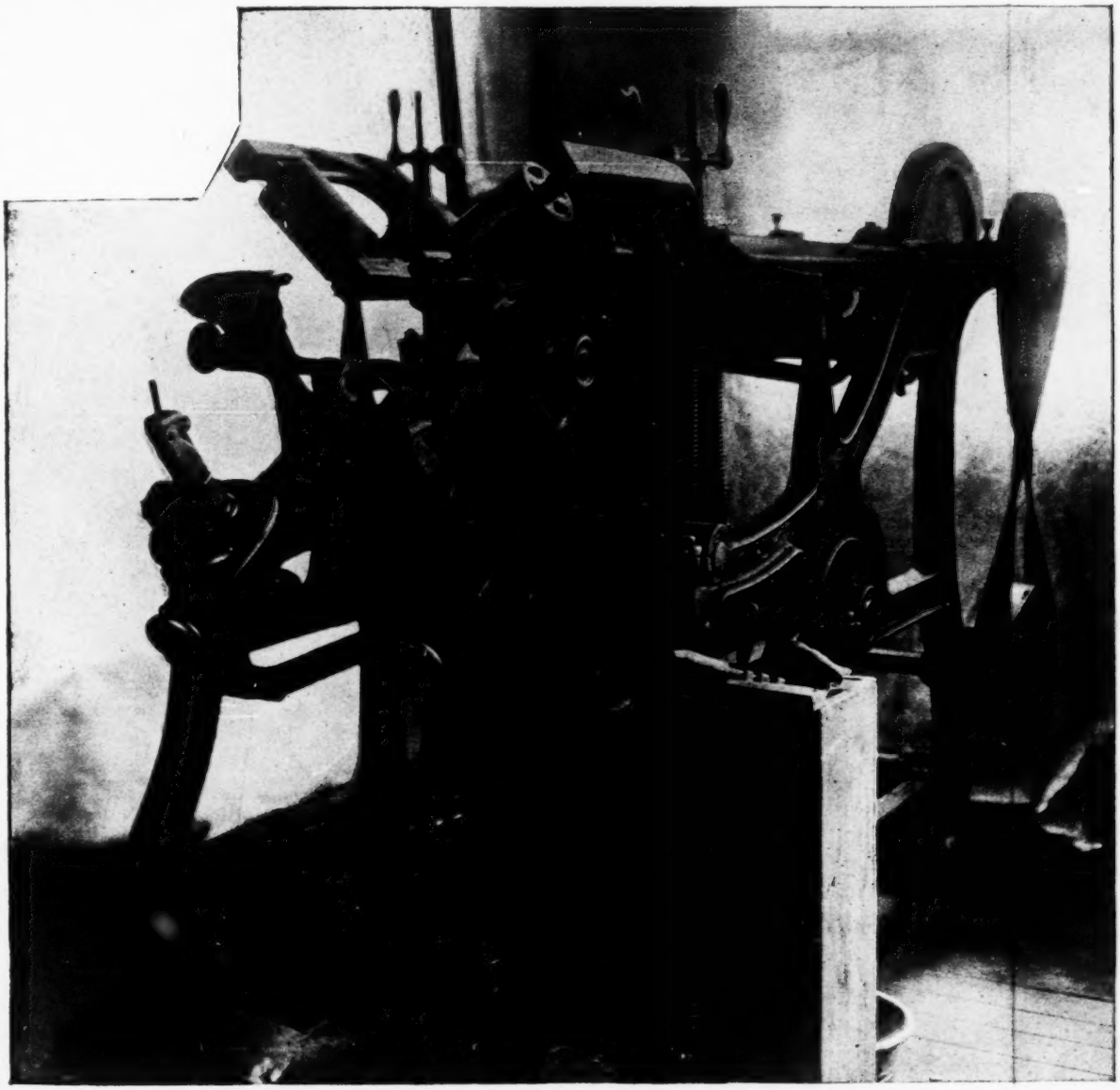
PLAINTIFF'S EXHIBIT 233.

[Put in Evidence, page 2180.]



PLAINTIFF'S EXHIBIT 234.

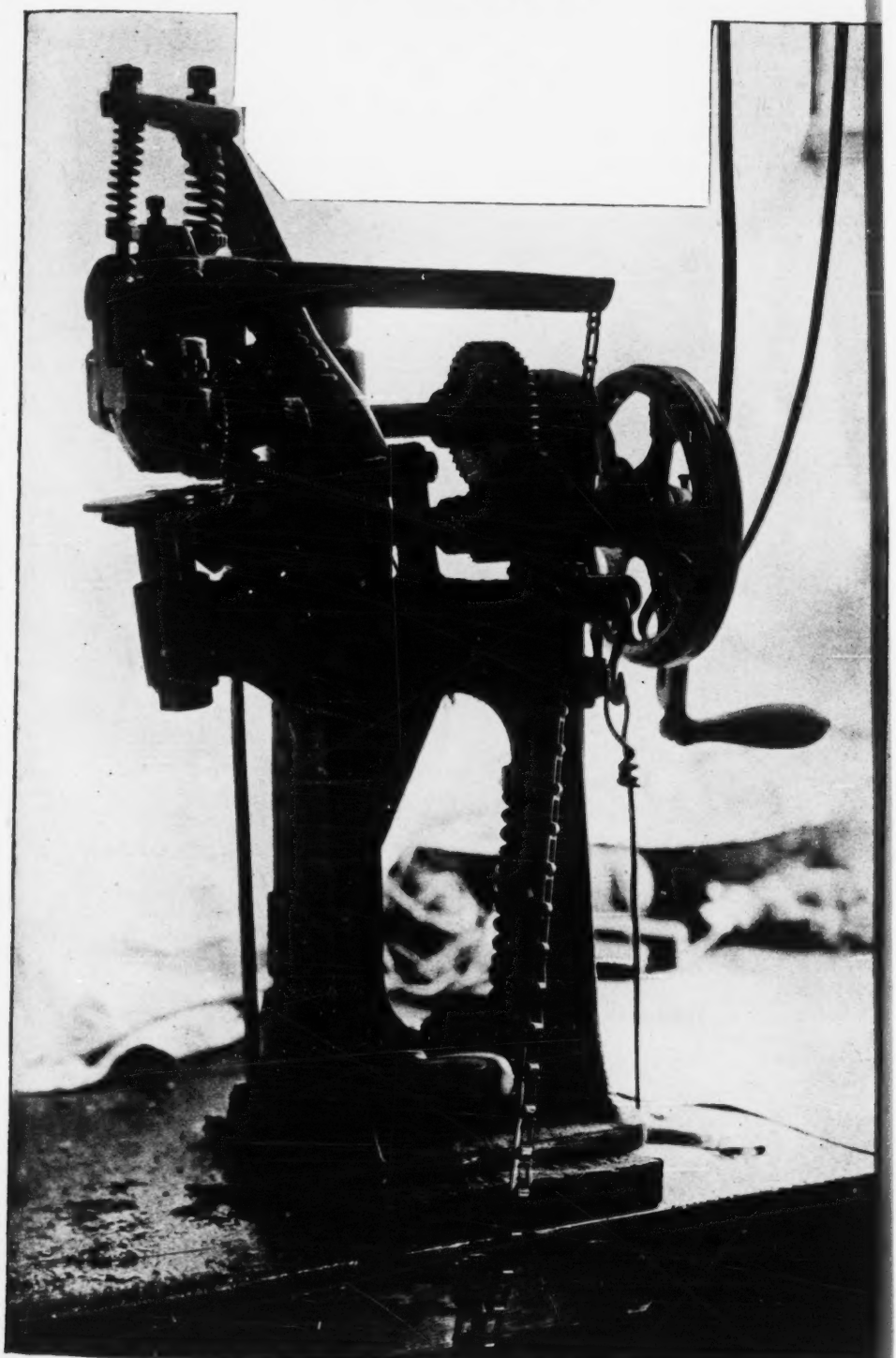
[Put in Evidence, page 2180.]



Automatic Leveler.

PLAINTIFF'S EXHIBIT 235.

[Put in Evidence, page 2180.]



Insole Channeling Machine

PLAINTIFF'S EXHIBIT 236.

[Put in Evidence, page 2186.]

Lease and License, No. *186*

This Lease and Agreement made this *10th* day of *Mar.* A. D. 18*99* by and between the Davey Pegging Machine Company, a corporation existing under the laws of Maine, Lessor, and *Selz, Schwab & Co., Joliet, Ill.* Lessee: Witnesseth:

Whereas, the Lessor is the owner of the following-described Letters Patent of the United States, viz.: —

No. 414501, November 5, 1889, to John F. Davey,

No. 504311, August 29, 1893, to John F. Davey,

No. 555434, February 25, 1896, to John F. Davey,

No. 559532, May 5, 1896, to William W. Kelly,

No. 581066, April 20, 1897, to J. F. Davey and S. W. Ladd,

and others, for improvements in pegging machines and of the inventions shown and described therein, and also is the owner of several other inventions relating to pegging machines, or to be used in connection therewith, and is constantly endeavoring to make improvements on such machines, and devices to be used therewith, and intends to secure Letters Patent therefor;

And Whereas, the Lessee desires the right to use under the terms of this lease and license the hereinafter-described pegging machine or machines belonging to the Lessor, and embodying or to be used in connection with the inventions of the above-mentioned Letters Patent, and also any other patented improvements relating to the machine or machines hereby leased, and which may hereafter be acquired by the Lessor and attached to the machine or machines hereby leased or delivered to the Lessee to be used in connection therewith, and also any other machines, machinery or devices made by or for the Lessor, which may hereafter come into the possession of the Lessee.

Now, Therefore, the Lessor, in consideration of one dollar paid by the Lessee, the receipt whereof is hereby acknowledged, and of the covenants and agreements of the Lessee hereinafter contained, does hereby lease unto the Lessee (provided the Lessee keeps and

observes the covenants and conditions of this agreement) the pegging machine or machines, described by number or numbers, as follows, namely: —

1 Davey Pegging Machine No. 217,
1 " " " " *384,*
1 " " " " *400,*

of which numbers those numbered *217—384—400* are delivered to the Lessee upon the execution of this lease, and also the Lessor does hereby lease all other machines, devices and machinery, made by or for the Lessor, which may hereafter come into the possession of the Lessee from or with the consent of the Lessor; and the Lessor doth hereby license said Lessee and parties in his employ to use only in the manufacture of boots or shoes, said pegging machines, devices and machinery, and any parts, mechanism, or devices connected therewith or relating thereto, whether on said machines and machinery when the same are received, or which may be added thereto by the Lessor for and during the term of this lease, and upon the terms and conditions herein contained, and provided, however, and this lease is made and this license is granted on the express condition that the Lessee shall faithfully keep and observe each and all of the conditions and agreements herein contained on his part to be kept and observed; and that upon a breach of the same, or either of them, by the Lessee, the Lessor may, at his option, cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee, or to any one in the possession or apparent control of the said machines, devices or machinery, this lease and license shall terminate, and the possession of and the full right to and control of the said machines, devices and machinery shall thereupon revest in the Lessor.

The word "Machine," as hereinafter used, shall be construed as designating any and all machines, devices and machinery held by the Lessee under this lease and license, whether now or hereafter delivered to the Lessee, and the covenants and conditions of this lease shall apply to all such devices, machines and machinery.

And the following are also agreed to as terms and conditions of the lease and license of the machines, devices and machinery which

the Lessee is hereby licensed to use; all of which, together with those hereinbefore expressed, the Lessee agrees to keep and perform: —

First. The Lessee is by this lease and license authorized to use the machine hereby leased only by himself or operatives in his direct employ, and only in his factory situate at *Joliet, Ill.*

He shall not add to the machine nor subtract therefrom any mechanism whatever, now or hereafter forming a part thereof or connected therewith by the Lessor; nor make nor allow to be made any change or alteration in the said machine without the consent, in writing, of the Lessor, nor interfere with the proper operation of the same, or any mechanism forming a part thereof or attached thereto; nor remove nor deface any dates, numbers, or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor; and shall, at all times and at his own expense, keep the machine in as good and efficient working order as the same now is or may hereafter be put by the Lessor, and shall purchase of the Lessor all spare parts used in repairing the machine.

Second. The Lessor and his agents may, at all reasonable times, have convenient access to the machine covered by this lease to examine and inspect the same and the use thereof, and to repair and improve or add to the same, so far as they may see fit; but he shall not be bound to make any repairs or improvements, and the covenants, stipulations, conditions, and terms of this lease shall apply to all improvements which the Lessor shall hereafter add to the same, and to any patents which have or may be issued thereon, with the same effect as if the patents were included in this lease and license with the Letters Patent already referred to.

Third. The Lessee agrees to pay unto the Lessor, on the fifteenth day of each month, as rent or royalty for the machine hereby leased the sum of two cents for each and every pair of boots or shoes, of any kind, pegged by the aid or use of said machine, or in the pegging or manufacture of which said machine is utilized, said rent or royalty above referred to to be paid on the fifteenth day of each month, for all boots or shoes in the making or manufacture of which said machine shall have been used during the preceding cal-

endar month; and it is hereby agreed between the parties hereto that said rental or royalty, of two cents per pair of boots or shoes, is a just, fair, and correct value to the Lessee of the use of the machine hereby leased to the Lessee, and that the abated royalty of one cent per pair, hereinafter named, is not the true value of the license hereby granted, but is a concession and abatement of such value for and in consideration of the conditions thereto attached; and this agreement and responsibility, and all others in this lease contained, shall extend to and in respect of all boots or shoes pegged by the aid of said machine, or in the making or manufacture of which said machine shall have been used, whether made by the Lessee or by other persons for him; provided, however, that in all cases where the Lessee shall pay the Lessor, on or before the fifteenth day of each month, one cent per pair for each and every pair of boots or shoes, of any kind, pegged in whole or in part, by the aid or use of said machine, or in the manufacture of which said machine shall have been utilized, said payment so duly made, shall be full payment and satisfaction of the rent or royalty for the use of the patents for such boots and shoes in respect to which said payments shall have been so duly made. And it is agreed that, in the default of the payment of said royalty when due, that is, on or before the fifteenth day of each month, the Lessee's right to an abatement of the full royalty of two cents per pair, as herein provided, shall thereby be forfeited; and it is agreed that, for each and every pair of boots or shoes pegged by the aid of said machine, or in the manufacture of which said machine shall have been used, and in respect to which there shall not have been paid the abated rent or royalty, in accordance with the terms hereinbefore set forth, the Lessee shall pay to the Lessor the sum of two cents, as liquidated, fixed, and settled damages. The Lessee hereby guarantees that the abated royalty, due and paid over to the Lessor under the terms herein, shall not be less than ten dollars for each machine, for each calendar month, and in case said abated royalty, in any month, shall be less than ten dollars for each machine, then the Lessee agrees to pay to the Lessor, at the time for the payment of the abated royalty, whatever addi-

tional sum may be necessary to bring the abated royalty for that month up to ten dollars for each machine.

Fourth. It is understood that the Lessor may, at any time, attach to said machine an indicator, for the purpose of registering the number of boots or shoes pegged upon said machine, or the number of revolutions or movements of said machine; and the Lessee agrees that in case an indicator shall be attached to said machine by the Lessor, it shall not be disturbed or interfered with by any person, and that prompt notice will be given to said Lessor in case the same shall be disturbed, or inaccurate, or out of repair. And the Lessee agrees to keep a full and accurate account, independently of any indicator that may be placed upon the machine, of all boots and shoes which shall be pegged upon said machine, or in the manufacture of which said machine shall have been used; and the Lessee further agrees to require each of its operators upon the machine hereby leased to keep upon blanks to be furnished by the Lessor, accurate accounts of the number of pairs of boots or shoes pegged by him each day upon said machine, or in the making of which said machine shall have been used, and tc require his operator to sign such daily records, and deliver them daily to the Lessee, and such account shall be verified by the oath of the operator, if the Lessor shall so require, and the Lessee also agrees to send to the office of the Lessor, on or before the tenth day of each month, a written report for the preceding calendar month of the number of pairs of boots or shoes pegged upon or with the aid of said machine, or in the pegging of which said machine shall have been used, together with the records kept by his operators as above provided for. And the Lessee agrees to allow the Lessor or his agents to have access, at all times, to said records kept by his operators, and to the accounts kept by him of the shoes pegged or manufactured on the machines leased hereby.

Fifth. The Lessee hereby agrees that he will do all the pegging of boots and shoes manufactured by him upon the said machines of the Lessor which are leased hereby, and that in case he has too much work for the machines hereby leased, he will take from the Lessor, under this lease or a similar lease containing the same

terms and provisions, sufficient additional machines to perform the work, which machines shall be in all respects subject to this lease and license as if at the date hereof delivered to the Lessor and named herein.

Sixth. The Lessee hereby agrees that he will not in any way violate or infringe or contest the validity of any of the patents hereinbefore referred to, or now or hereafter owned by the Lessor, or any reissue or extension of the same, or the title of the Lessor to said patents or any of them, and expressly admits the validity and sufficiency thereof, and that the claims are to be construed broadly.

Seventh. This machine cannot be transferred, and this lease and license is not assignable by the Lessee, by his own act or by operation of law. The Lessee agrees to insure and to keep insured each pegging machine held by him, at any time under this lease, in the sum of $200, and in case of loss or damage the Lessee agrees to pay the full amount of the insurance to the Lessor.

Eighth. The power conveyed by this lease and license is only the right to use the said machine, and not the right to make or sell any machine embodying the inventions of the patents aforesaid, or any patent hereafter owned by the Lessor. And a removal of the machine from the factory of the Lessee can only be made with the written consent of the Lessor, and on conditions satisfactory to the Lessor; and if the Lessee is or becomes at any time insolvent or bankrupt, or if a sale, transfer, or lease of said machine, devices or machinery shall be made or attempted without the written consent of the Lessor, then this lease and license, and all rights of the Lessee thereunder, shall forthwith, at the option of the Lessor, cease and determine, and the possession of said machine shall revest in the Lessor, and he may take possession of the same without the Lessee having any claim against the Lessor.

Ninth. In case the Lessee refuses or neglects to perform or violates any of the conditions of this lease and license, the Lessor shall have the right to terminate this lease and license by giving written notice that he has elected so to do; and immediately upon such notice this lease and license and all the rights of the Lessee

thereunder shall be terminated, and the possession of said machine shall thereupon revest in the Lessor, free and discharged of this lease and license. Upon the termination of this lease and license, by the non-performance or breach on the part of the Lessee of any condition or agreement to be kept or performed by the Lessee under the terms hereof, it shall be the duty of the Lessee forthwith to deliver the machine hereby leased and licensed to the Lessor, and to pay to the Lessor the sum of two hundred dollars for each machine hereby leased, and to pay in addition the expense of transporting the machine to such place of business of the Lessor as the Lessor shall direct, and without prejudice to any other legal rights or remedies for violation of contract, use of machine without right or use of patents without license; and the Lessor or his agents may forthwith enter the premises where said machine may be and may take and remove the same, and the Lessee shall have no claim whatever against the Lessor.

Tenth. This lease and license shall continue, provided the Lessee faithfully keeps and performs the terms and conditions thereof, until the expiration of the Letters Patent above referred to, and until the expiration of any extensions or renewals thereof, and the expiration of any Letters Patent now or hereafter owned by the Lessor, any inventions of which shall be added to or embodied in said machines, or used in connection therewith.

But, inasmuch as the machine has been delivered by the Lessor to the Lessee without any charge or payment representing its cost, it is understood and agreed that the Lessor may, at any time, terminate this lease upon giving thirty days' notice to the Lessee of his election so to do, and thereupon all the rights of the Lessee under this lease and license shall terminate, and the Lessor or his agents may forthwith enter the premises where said machine may be, and may take and remove the same, and the Lessee shall have no claim whatever against the Lessor; and it shall be the duty of the Lessee forthwith to deliver the machine hereby leased to the Lessor, but, in case this lease is terminated by the Lessor in pursuance of the provisions of this paragraph, the Lessee shall not be bound to pay any of the expense of transporting said machine from

the factory of the Lessee to the Lessor. The Lessee shall, however, pay to the Lessor whatever sums may be necessary to put the said machine in good repair, and such sums as may be due for royalties unpaid.

In case this lease shall run for its full term, then immediately upon its expiration the Lessee shall deliver to the Lessor the machine hereby leased, and the Lessee shall have no claim whatever to said machine or to a continuation of his possession or use thereof.

Eleventh. In case any other machines, devices or machinery than those now hereby leased and licensed, embracing or to be used in connection with the inventions of any of the Letters Patent under which a license is hereby granted, or any other patents under which the Lessee may hereafter become licensed by the terms of this agreement shall hereafter come into the possession of the Lessee without a written lease or license from the Lessor, then, in case the Lessor shall so elect, all the covenants and agreements herein contained, including the obligation to pay a monthly rental or royalty, shall apply to the same and shall govern the parties respectively to the same extent as if the same had been expressly included in this lease and license. The Lessor may write the numbers of any such machines as shall hereafter come into the possession of the Lessee into this lease, after same is executed.

Twelfth. All the rights and interests which, under this agreement and by reason of the ownership of said machines and patents and patent rights, belong to the Lessor, shall be deemed to belong to, and may be enforced, in his name or otherwise, by the Lessor's successors and assigns, and its or their representatives and assigns. All of the stipulations and agreements binding on the Lessee shall be binding on his or their representatives and assigns.

Thirteenth. It is agreed that this instrument may be used for Lessees of the female sex, or for corporations, and that in that case the masculine pronoun denoting the Lessee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that this instrument may be used in cases where the Lessee shall consist of more than one person, and in that case the pronouns and the termination of the words relating to the

Lessees shall be considered as plural or singular as the sense may require; and that when the Lessee so consists of several persons, and they sign this lease either individually or by the firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In Witness Whereof, the parties aforesaid have hereunto set their hands and seals and to another instrument of even date and like tenor, said Lessee or Lessees, under this agreement, binding itself, himself, or themselves to all the foregoing agreements, both jointly and severally.

SELZ, SCHWAB & Co., [SEAL]
J. Barney Selz, Second Vice Prest.

[SEAL] DAVEY PEGGING MACHINE CO.
Geo. W. Brown, Treas.

PLAINTIFF'S EXHIBIT 237.

[Put in Evidence, page 2188.]

1000-3-9-1898-C

License and Rental Lease No. *58G*

This License and Rental Lease Agreement, made in duplicate the *28* day of *Jany.* A. D. 18*99*, by and between the

Consolidated & McKay Lasting Machine Company,

a corporation incorporated under the laws of the State of Maine, Licensor and party of the first part, and *R. H. Long Shoe Mfg. Co.* of *Springfield, Mass.* Licensee and party of the second part, Witnesseth:

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting, to wit: No. 274,207, dated March 20, 1883, No. 281,306, dated July 17, 1883, No. 284,906, dated Sept. 11, 1883, No. 292,575, dated Jan. 29, 1884, No. 312,335, dated Feb. 17, 1885, No. 415,726, dated Nov. 26, 1889, No. 421,954, dated Feb. 25, 1890, No. 423,920, dated March 25, 1890, No. 423,921, dated March 25, 1890, No. 423,922, dated March 25, 1890, No. 423,937, dated March 25, 1890, No. 441,482, dated Nov. 25, 1890, No. 459,-899, dated Sept. 22, 1891, No. 482,349, dated Sept. 13, 1892, No.

500,141, dated June 27, 1893, No. 510,972, dated Dec. 19, 1893, No. 510,973, dated Dec. 19, 1893, No. 510,974, dated Dec. 19, 1893, No. 510,975, dated Dec. 19, 1893, No. 510,976, dated Dec. 19, 1893, No. 510,977, dated Dec. 19, 1893, No. 510,978, dated Dec. 19, 1893, No. 518,933, dated April 24, 1894, No. 523,939, dated July 31, 1894, No. 533,394, dated Jan. 29, 1895, No. 560,767, dated May 26, 1896, No. 562,119, dated June 16, 1896, No. 564,931, dated July 28, 1896, No. 567,566, dated Sept. 8, 1896, No. 584,741, dated June 15, 1897, No. 584,742, dated June 15, 1897, No. 584,743, dated June 15, 1897, No. 584,744, dated June 15, 1897, and other patents applied for and now pending, and is, moreover, the owner of or Licensee under other patents not herein enumerated;

And, whereas, the Licensee desires the right to use, under the terms of this License and Lease Agreement, the hereinafter described machine belonging to and owned by the Licensor, and also any improvements relating to the machine hereby licensed and leased for Rental, which may hereafter be acquired by the Licensor and attached to the machine hereby licensed and leased for Rental, or delivered to the Licensee to be used in connection therewith, and also any other machine, machinery, or device made by or for the Licensor, which may hereafter come into the possession of the Licensee.

Now, Therefore, the Licensor, in consideration of one dollar to it paid by the Licensee, the receipt whereof is hereby acknowledged, and of the agreements and conditions herein agreed upon, to be kept and performed by the Licensee, does hereby license and lease for Rental unto the Licensee the machine herein designated by its number, said machine embodying the inventions of some of the foregoing named patents: —

Lasting Machine No. *2295*.

And the Licensor does hereby license and lease the Licensee and operators in his employ to use said machine, but only upon the terms and conditions herein set forth; Provided, however, and this License and Lease is granted upon the express condition that the Licensee shall faithfully keep and perform all the conditions

and agreements herein contained on his part to be kept and performed; and upon breach of the same or either of them by the Licensee the Licensor may, at its option, cancel and terminate this License and Lease by giving written notice to the Licensee or to any one in possession or apparent control of the machine, that it has elected so to do, and upon the giving of such notice this License and Lease shall terminate, and upon the Licensor taking or demanding possession of this machine, as herein provided, or without concellation of this Agreement, then the possession of said machine shall thereupon revest in the Licensor. And inasmuch as the machine is only leased and rented by the Licensor, and the Licensee pays no purchase price whatsoever for the machine, therefore the said machine does and shall continue to belong exclusively to, and remain wholly the property of, and subject only to the control of the Licensor, and the Licensee acquires no right to buy or retain said machine except by written consent of the Licensor.

Upon the termination of this License and Lease for Rental by lapse of time, cancellation, breach of contract, non-use of machine, or otherwise, the Licensee shall forthwith deliver the machine, hereby licensed and leased, to the Licensor in good condition, reasonable wear and tear excepted, and also pay to the Licensor the sum of One Hundred and Fifty (150) Dollars, as compensation for setting up the machine at his factory, for instructing operators, and deterioration.

And the following terms and conditions of the License and Lease of the machine, together with those hereinbefore expressed, the Licensee hereby agrees to keep and perform:

First.—The Licensee is by this License and Lease for Rental authorized to use the machine herein described, only by himself or operators in his direct employ, and only in *Springfield Mass.* He shall not add to, nor subtract from, the machine any part or mechanism whatever, now or hereafter organized or connected therewith by the Licensor, nor make, nor allow to be made, any change or alteration in the same, without the consent thereto in writing of the Licensor, nor interfere with the proper operation of the machine, nor any mechanism forming a part thereof or attached

thereto, nor any device used in connection therewith, nor remove or deface any dates, numbers, or inscriptions, now or hereafter impressed thereon, or affixed thereto by the Licensor or by its direction, and the Licensee shall at times at his own expense keep and maintain the machine in as good and efficient working order as the same now is or may hereafter be put by the Licensor.

Second.— The Licensor and its agents shall at all reasonable times, have access to the machine to examine and inspect the same and the use thereof, and to repair and improve the same so far as it sees fit, and all covenants, stipulations, and conditions herein contained shall apply to all improvements which the Licensor shall hereafter add to the machine, and to any patents which have or may be issued thereon, with the same effect as if the patents were enumerated in this License and Lease with the Letters Patent previously herein enumerated.

Third.— The Licensee agrees to pay unto the Licensor, on the tenth day of each month, as Rental for the previous month for the machine hereby licensed and leased, and for the use of the inventions of the patents under which a License is hereby granted, a sum of lawful money equal to five-sixths (5-6) of one (1) cent for each and every pair of Misses' and Children's and one (1) cent for each and every pair of all other kinds of boots and shoes lasted by the aid of this machine, or by the use of the inventions of said patents, or any of them, or in the making of which any of the inventions of said patents shall be used; and should such Rental fall short of an average of Fifteen (15) Dollars per month, for any twelve (12) consecutive months (excepting months during the whole of which the factory is idle), then the Licensee agrees to pay, upon demand, such an amount as will make the average Fifteen (15) Dollars per mouth for such twelve (12) consecutive months.

Fourth.— The Licensee agrees that the operator on the machine hereby licensed and leased shall keep a daily account of the number of pairs of boots and shoes lasted by him, and the class to which they belong, which account shall be signed by the operator, and verified and signed by the Licensee, if so requested by the

Licensor, and delivered by the Licensee to the Licensor at Boston, Mass., not later than the fifth of each month, and Rental shall be paid by the Licensee on the basis of said account, and the Licensee agrees to give the Licensor, its successors or assigns, or its or their authorized agents, free access at all times to the premises where the machine hereby licensed and leased is located, for the purpose of verifying the operators' reports, and in case operators' reports shall not be made as provided above, it shall be the right of the Licensor to appoint a competent man to keep the accounts herein required; and all reasonable compensation for the services and expenses of such man, which shall not exceed $3 per day, shall be at the charge of the Licensee, and the Licensee hereby agrees to pay the same upon demand to the Licensor.

The Licensee agrees that he will allow the Licensor, its successors, or assigns, and its and their agents, at any time hereafter, to attach an indicator, or counter, to any machine embracing any of the patents under which a License is hereby granted, which now is or may hereafter come into possession of the Licensee, for the purpose of indicating the number of boots and shoes lasted, and to examine, modify, repair, or replace the said indicator, and that he, the Licensee, will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is or may hereafter be placed upon any machine as aforesaid.

Fifth.— The Licensee hereby agrees that he will not in any way violate, or infringe, or contest the validity of any of the patents, or any reissue, or extension of the same, under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Licensor, to said patents or any of them, and hereby expressly admits the validity and sufficiency thereof as an important part of the consideration for this License and Lease for Rental.

Sixth.— This machine shall not be transferred, and this License and Lease for Rental is not assignable by the Licensee by his own act or by operation of law.

Seventh.— The power conveyed by this License and Lease is only the right to use the said specific machine, and not the right to make, sell, or alter any machine embodying the inventions of the

patents aforesaid, or any of them; and a transfer or removal of the machine hereby licensed and leased shall only be made with the written consent of the Licensor, and if the Licensee is or becomes at any time insolvent or bankrupt, or if a sale, loan, transfer, or removal of said machine shall be made or attempted by the Licensee, or by the operation of law, or by any legal officer, representative, or assignee, as the property of the Licensee, or otherwise, without the written consent of the Licensor, the Licensor may cancel and terminate this License and Lease Agreement, and then the possession of said machine shall thereupon revest in the Licensor, and it may take possession of said machine without the Licensee having any claim for the repayment of any part of the sum or sums which he may have paid as Rent or License under this instrument.

Eighth.— In case any machine hereby licensed shall remain unused for the period of four consecutive months, the Licensor may at any time thereafter, while it remains unused, cancel this License and Lease Agreement, so far as relates to said unused machine, by giving written notice, as herein provided, that it has elected so to do; and upon giving such notice this License and Lease Agreement shall be terminated to the extent aforesaid, and possession of said unused machine shall thereupon revest in said Licensor.

Ninth.— This License and Lease Agreement shall continue until cancelled by the Licensor for breach of condition or otherwise, but in case the Licensee refuses or neglects to perform, or violates any condition of this License and Lease Agreement, the Licensor shall have the right to terminate this License and Lease Agreement by giving written notice, as aforesaid, that it has elected so to do; and upon the giving of such notice for any cause whatsoever, as herein provided for, this License and Lease Agreement shall then terminate, and the possession of said machine shall thereupon revest in the Licensor, free and discharged of this License and Lease. Upon the termination of this License and Lease by lapse of time, cancellation, breach of condition, non-use of machine, or otherwise, it shall be the duty of the Licensee forthwith to deliver the machine hereby licensed and leased to the Licensor in good

condition, reasonable wear and tear excepted, and to pay to the Licensor the sum of One Hundred and Fifty (150) Dollars for each machine so delivered; and upon such termination, and without prejudice to any other legal rights or remedies for violation of contract, use of machine without right, or infringement of patents, the Licensor, or its agents, may thereupon enter the premises where said machine may be and may take and remove the same, and the Licensee shall have no claim whatsoever, against the Licensor under this License and Lease Agreement.

Tenth.— The Licensee also covenants and agrees to keep this machine and accessories insured, for the benefit of the Consolidated & McKay Lasting Machine Company, to the amount of Two Hundred (200) Dollars, and to pay all taxes assessed on said machine. In case this machine is destroyed by fire, the Licensee agrees to pay to the Licensor the sum of Two Hundred (200) Dollars, as partial compensation for such destruction of machine.

Eleventh.— In case any other machine than that hereby licensed and leased, embracing the invention of any of the patents under which the License is hereby granted, shall hereafter come into the possession of the Licensee, without a written License and Lease from the Licensor, then, in case the Licensor shall so elect, all the covenants herein contained shall apply to such machine, and shall govern the parties respectively to the same extent as if the said machine had been expressly included in this License and Lease Agreement. The Licensor shall give written notice of its election, as aforesaid, within thirty (30) days after it shall have received written notice from the Licensee of the possession of such machine, but it may give such notice without having received such notice from the Licensee.

Twelfth.— It is declared and understood that it is the intention of the Licensee to use said machine herein licensed and leased for lasting all the boots and shoes made by him applicable to the said machine, and not to have it in his possession as a means of reducing the price of hand lasting or of controlling hand lasters, or of influencing a trade with any other lasting machine not controlled by the Licensor, or the list price thereon, and the Licensor enters

into this contract because of and by reason of such understanding and agreement on the part of the Licensee. It is therefore agreed that the Licensee shall use such machine hereby licensed and leased for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work.

Thirteenth.— It is agreed that the Licensee shall buy of the Licensor, or its authorized agents, and only of it or them, the spare parts for repairing the machine hereby licensed and leased, and shall and does hereby accept delivery of machine at Beverly, Mass., f. o. b. cars.

Fourteenth.— All the rights and interests which, under this instrument and by reason of the ownership of said machines and patents and patent rights, belong to the Licensor, shall be deemed to belong to, and may be enforced, in its name or otherwise, by the Licensor, its successors and assigns, and its or their representatives and assigns. All of the stipulations and agreements binding on the Licensee shall be binding on his or their representatives, successors, and assigns.

Fifteenth.— It is agreed that this instrument may be used for Licensees of the female sex, or for corporations, and in that case the masculine pronoun denoting the Licensee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that when the party of the second part shall consist of more than one person, the termination of the words relating to the said party shall be considered as singular or plural, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this License and Lease for Rental, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained, and also that the numbers of the machines named in or covered by this License and Lease may be entered herein by the Licensor after signing; and that as this instrument is designed and intended for continuous use between the parties hereto, in case the Licensee

shall have more than one machine, it is agreed that the termination of words relating to the machine shall be considered as written in the singular or plural, as the number of machines entered into this License and Lease Agreement may require.

In witness whereof, the parties aforesaid have hereunto set their hands and seals, the said parties of the second part binding themselves, their legal representatives, and assigns, to all the foregoing agreements, both jointly and severally.

[SEAL] CONSOLIDATED & MCKAY LASTING MACHINE COMPANY,
by Geo. W. Brown Treasurer.

R. H. LONG SHOE MFG. CO. [SEAL]
R. H. Long Pres.

PLAINTIFF'S EXHIBIT 238.

[Put in Evidence, page 2189.]

200-6-8-1898-CCC.

License and Rental Lease No.

Transfer from License No.

This License and Rental Lease Agreement, made in duplicate the *17th* day of *December*, A. D. 18*98*, by and between the

Consolidated & McKay Lasting Machine Company,
(Ch e Department)

a corporation incorporated under the laws of the State of Maine, Licensor and party of the first part, and *Selz, Schwab & Company* of *Chicago, Ill.*, Licensee and party of the second part, Witnesseth:

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting, to wit: No. 319,784, dated June 9, 1885; No. 337,662, dated March 9, 1886; No. 337,924, dated March 16, 1886; No. 337,925, dated March 16, 1886; No. 338,930, dated March 30, 1886; No. 340,860, dated April 27, 1886; No. 356,619, dated January 25, 1887; No. 356,620, dated January 25, 1887; No. 363,283, dated May 17, 1887; No. 364,088, dated May 31, 1887; No. 376,368, dated January 10, 1888; No. 391,688,

dated October 23, 1888; No. 477,788, dated June 28, 1892; No. 477,789, dated June 28, 1892; No. 478,501, dated July 5, 1892; No. 483,375, dated September 27, 1892; No. 545,052, dated August 27, 1895; No. 558,011, dated April 7, 1896; No. 561,189, dated June 2, 1896; No. 571,404, dated November 17, 1896; No. 569,590, dated October 13, 1896; No. 569,182, dated October 13, 1896; No. 569,231, dated October 13, 1896; No. 571,339, dated November 17, 1896; No. 571,429, dated November 17, 1896; No. 571,509, dated November 17, 1896; and other patents applied for and now pending, and is, moreover, the owner of other patents not herein enumerated;

And, whereas, the Licensee desires to use the hereinafter described machines belonging to the Licensor: —

Now, Therefore, the Licensor, in consideration of one dollar to it paid by the Licensee, the receipt whereof is hereby acknowledged, and of the stipulations and conditions hereinafter contained on the part of the Licensee to be kept and performed, doth loan unto the Licensee the machines designated by their numbers in the following schedule, the said machines embodying some of the foregoing named patents: —

Lasting Machine (Chase) No.

1 Hand Tacker (Chase Stop Motion) No. *747*.

And the Licensor does hereby license the Licensee, and operatives in his employment, to use said specified loaned or rented machines upon the terms and conditions herein set forth: Provided, however, and this loan is made and this license is granted on the expressed Condition, that the Licensee shall faithfully keep and perform all the conditions and stipulations herein contained on his part to be kept and performed, and upon breach of the same or either of them by the Licensee, the Licensor may, at its option, cancel and terminate this loan and license, and upon written notice thereof by the Licensor to the Licensee, or to anyone in the possession or apparent control of the machines, this loan and license shall terminate, and possession of said machines shall thereupon revest in the Licensor. It is also agreed that the Licensor may, at its option, upon breach of any condition herein contained, take

possession of said machines, or any of them, without termination of this agreement.

And the following are also agreed to as terms and conditions of the loan and license of the machines which the Licensee is hereby licensed to use, all of which, together with those hereinbefore expressed, the Licensee hereby agrees to keep and perform:—

First.— The Licensee is by this loan and license authorized to use the machines hereby loaned, only by himself or operatives in his direct employ, and only in *Chicago, Ill.*

He shall not add to nor subtract from the machines any mechanism whatever now or hereafter organized or connected therewith by the Licensor, nor make nor allow to be made any change or alteration in the same without the consent thereto in writing of the Licensor, nor interfere with the proper operation of the machines, nor any mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers or inscriptions, now or hereafter impressed thereon or affixed thereto by the Licensor, and shall at all times at his own expense, keep and maintain the machines in as good and efficient working order as the same now are or may hereafter be put by the Licensor. All risks and expense of transportation to and from the Licensee's factory shall be assumed by the Licensee. Inasmuch as the machines are only loaned by the Licensor, and the Licensee pays no purchase price for the machines, the said machines do and shall continue to belong exclusively to and remain wholly the property of, and subject to the control of the Licensor, and the Licensee acquires no right to buy or to retain said machines except by the written consent of the Licensor. The Licensee agrees to keep the Lasting Machines and accessories in first-class order and repair at his own expense. The Licensee also hereby covenants and agrees to keep the Lasting Machines and accessories insured by a policy satisfactory to the Chase Department of the Consolidated & McKay Lasting Machine Company for two hundred dollars each, and to pay all taxes assessed on said machines. In case any Lasting Machines are damaged by fire, directly or indirectly, the Licensee agrees to

pay to the Licensor the sum of two hundred dollars for each Lasting Machine, including its accessories, so damaged.

Second. The Licensor and its agents may, at all reasonable times, have convenient access to the machines to examine and inspect the same and the use thereof, and to repair and improve the same so far as it sees fit; and the covenants, stipulations and conditions herein contained shall apply to all improvements which the Licensor shall hereafter add to the machines and to all patents on said improvements, the right to use which shall be owned by the Licensor, with the same effect as if said patents were included in the list of patents hereinbefore set forth.

Third.— The Licensee agrees to pay unto the Licensor, on the fifteenth (15th) day of each month, as rent or royalty for the previous month for the machines hereby loaned, and for the use of the patents hereby licensed, for each and every pair of shoes or boots lasted by the aid of said machines or any of them, or by the use of said patents or any of them, or in the making of which any of said patents shall be used, the sum set forth in the classified schedule hereto annexed in the column headed "Royalty Value"; and said royalty is hereby agreed upon by and between the parties hereto as the just, fair, and correct value to the Licensee for rental of the machines and for use of the patents and inventions hereby licensed to the Licensee by the Licensor, and that the "abated rent or royalty" hereinafter named is not the true value of the license hereby granted, but is a concession and abatement of such value for and in consideration of the conditions hereto attached, and this agreement and responsibility, and all others in this license contained shall extend to and in respect of all shoes or boots made or lasted by the aid of said machines or on any machine embracing any of the patents which the Licensee is hereby licensed to use, whether made by the Licensee or by other persons for him; provided, however, that in all cases when the Licensee shall pay to the Licensor, on or before the fifteenth day of each month, the "abated rent or royalty" as hereinafter set forth, per pair for each and every pair of shoes or boots lasted in whole or in part by the use of said machines or patents, or any of them; said payments so duly made shall be

full payment and satisfaction of the rent or royalty for the use of said machines and of the license for the use of the patents, for such shoes or boots in respect to which said payments shall have been so duly made, and it is agreed that default of payment of said rent or royalty or of any indebtedness to the Licensor when due, that is, on or before the fifteenth (15th) of each month, shall forfeit the Licensee's right to any abatement of the full rent or royalty, as herein provided. And it is hereby agreed that for each and every pair of shoes and boots made or lasted by the aid of the machines hereby loaned, or made by or for the Licensee by the use of the patents hereby licensed, or any of them, and in respect of which there shall not have been paid the "abated rent or royalty" as hereinbefore set forth, the Licensee shall pay to the Licensor the rental or royalty value named in said classified schedule as liquidated, fixed, and settled damages. It is hereby agreed that the monthly rent or royalty returns shall be computed at "abated rent or royalty." In addition to these agreements relating to rent or royalty, and to the "abated rent or royalty" and to payments as liquidated damages of the full rental or royalty value, in case of neglect or default of or refusal to make payment when due, it is agreed by the Licensee that in case he becomes insolvent or makes an assignment for the benefit of creditors, or in case his property or business goes into the hands of a receiver, all rent or royalty due to the Licensor shall be at once computed at the full rent or royalty value, as expressed in the schedule of rentals or royalties herewith attached, and the Licensee expressly agrees to this computation of the rental or royalty value, and further agrees not to contest or dispute any claim for the said full rental or royalty value. It is agreed and covenanted by the Licensee that whenever requested, in writing, by the Licensor, he will pay not less than ten dollars per month, as a minimum amount of rental or royalty for the use of each Lasting Machine, except when his factory is not running. But until further notice, given in writing, it is agreed between the parties hereto that if the Licensee pays the rental or royalty on or before the fifteenth (15th) of the month following the month when the lasting was done, and otherwise keeps all the terms of this License,

there will be a discount made for such payment sufficient to reduce the cost of "abated rent or royalty" on all classes of shoes to one half cent per pair, excepting on long-legged boots, on which the abatement will be sufficient to reduce the cost to three fourths of a cent a pair, but it is specially agreed that this abatement ceases upon written notice given by the Licensor to the Licensee.

Fourth.—The Licensee agrees that the operator on each machine shall keep a daily account of the number of pairs of shoes and boots lasted by him and the class to which they belong; which account shall be signed by the operator and verified and signed by the Licensee and forwarded by the Licensee to the Licensor on the first day of each month, and rental or royalty shall be paid by the Licensee on the basis of said account. And the Licensee agrees to give the Licensor, its successors, or assigns, or its or their authorized agent or agents, free access at all times to the premises where the machines hereby loaned are stored or operated, for the purpose of verifying the operators' reports, and in case operators' reports shall not be made as above provided, it shall be the right of the Licensor to appoint a competent man to keep the accounts herein required; and all reasonable compensation for the services and expenses of such man, which shall not exceed three dollars per day, shall be at the charge of the Licensee, and the Licensee hereby agrees to pay the same.

The Licensee agrees that he will allow the Licensor, its successors, and assigns, and its and their agents at any time hereafter, to attach an indicator or counter to any machine embracing any of the patents hereby licensed, which now is or which may hereafter come into the possession of the Licensee, for the purpose of indicating the number of shoes or boots made, and to examine, modify, repair, or replace the said indicator, and that he, the Licensee, will not disturb or interfere with, nor permit anyone else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon any machine as aforesaid.

Fifth.—The Licensee hereby agrees that he will not in any way violate, or infringe, or contest, the validity of any of the patents, or any reissue or extension of the same, which he is hereby licensed

to use, or the sufficiency of their specifications, or the validity of the title of the Licensor to said patents, or any of them, and expressly admits the validity and sufficiency thereof.

Sixth.—The machines cannot be transferred, and this loan and license is not assignable by the Licensee, by his own act or by operation of law.

Seventh.—The power conveyed by this license is only the right to use the said specific machines, and not the right to make, sell, or alter any machines embodying the patents aforesaid, or any of them; and a transfer or removal of the machines hereby loaned can only be made with the written consent of the Licensor, and if the Licensee is or becomes at any time insolvent or bankrupt, or if a sale, lease, transfer, alteration, or removal of said machines shall be made or attempted by the Licensee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Licensee, without the written consent of the Licensor, the possession of said machines shall thereupon revest in the Licensor, and it may take possession of said machines without the Licensee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this license, or for rental or royalty under this instrument, nor shall he be released thereby from any of the conditions of this agreement.

Eighth.—In case any machine hereby loaned shall remain unused for the period of four consecutive months, the Licensor may, at any time thereafter, while it remains unused, cancel this loan and license so far as relates to said unused machines, by giving written notice, as herein provided, that it has elected so to do, and, upon giving such notice, this loan and license shall be terminated to the extent aforesaid, and the possession of said unused machines shall thereupon revest in said Licensor, but, in case of such cancellation and reclamation, the Licensee shall thereupon pay the Licensor the sum stated in article twelfth for deterioration of the machines by use or otherwise, and other expenses in reference to the same.

Ninth.—In case the Licensee refuses or neglects to perform, or violates any of the conditions of this license the Licensor shall have the right to terminate this license by giving written notice as

aforesaid that it has elected so to do; and upon the giving of such notice this license shall be terminated, or upon taking or demanding possession of the machines without cancellation of this agreement, the possession of said machines shall thereupon revest in the Licensor; and upon the termination of the loan and license by lapse of time, cancellation, breach of condition, or otherwise, it shall be the duty of the Licensee forthwith to deliver the machines hereby loaned and licensed, to the Licensor in good condition, reasonable wear and tear excepted; and upon such termination or taking or demanding possession of the machines by the Licensor, and without prejudice to any other legal rights or remedies for violation of contract, use of machines without right, or use of patents without license, the Licensor or its agents may thereupon enter the premises where said machines may be, and may take and remove the same, and the Licensee shall have no claim whatever on account of any sum or sums he may have paid under this license as rent or royalty or otherwise, nor shall he be released from his agreements contained herein regarding sum due for return of machines, repairs, instruction of operators, deterioration, etc., as mentioned in article twelfth.

Tenth.—This license shall continue (unless the Licensor shall cancel this license for breach of condition) until the expiration of all the Letters Patent which the Licensee is hereby licensed to use, and which are or may hereafter be embodied in the hereby loaned machines, and the other patents or improvements referred to shall be considered as included in this license the same as if entered in this license by date and number, or any extensions or renewals of the same; and upon the expiration thereof the Licensee shall deliver to the Licensor the machines and accessories hereby loaned in good order, natural wear and tear alone excepted.

Eleventh.—In case any other machines than those now hereby loaned and licensed, embracing any of the patents hereby licensed, shall hereafter be ordered by, or come into possession of, the Licensee then, in case the Licensor shall so elect, all the covenants herein contained shall apply to such machines, and shall govern the parties respectively to the same extent as if the said machines had

been expressly included in this loan and license. The Licensor shall give written notice of its election as aforesaid, and the entry into and under this License Agreement of all machines in possession of the Licensee is hereby specially agreed to by the Licensee, but this shall not take away the Licensor's right to refuse such entry in case of machines transferred without written consent of the Licensor.

Twelfth.— It is declared and understood that it is the intention of this Licensee to use said machines herein licensed for lasting all of the shoes and boots that shall be made by him applicable to the said machines, and not to have them in his possession as a means of reducing the price of hand-lasting, or of controlling hand-lasters, or of influencing a trade with the owners of any other Lasting Machines or of reducing the price thereof, or the prices for labor thereon, and the Licensor enters into this contract because of and by reason of such understanding and intention on the part of the Licensee. It is agreed that the Licensee shall use such machines hereby loaned for lasting all of his shoes and boots, to their full capacity, limited only by the demands of his business; and should the demands of his business require, he shall take and pay for the loan of such additional machines as may be required to do all his work; and in case any Lasting Machine in this agreement is returned to the Licensor, whether voluntarily or because of the Licensee's insolvency or the appointment of a Receiver for his business, or for non-compliance with this agreement, or otherwise, the Licensee or his assigns shall pay the Licensor one hundred (100) dollars as compensation for setting up each machine at his factory, for instructing operators and other expenses incurred, and he shall also pay, in addition thereto, the cost of putting the machine into good condition and repair, as well as freight expense of returning the same.

Thirteenth.— It is agreed that the Licensee shall buy of the Licensor, and only of it, all the fittings and all the spare parts for repairing the machines hereby licensed, and also all the string-nail, tack-strips, or other fastenings to be driven by any appliance for lasting the shoes or boots, whether lasted in whole or in part by

the aid of any of the machines hereby licensed, or by the use of any of the said patents, or in the making of any of which any of said patents shall be used; and that same shall be sold by the Licensor at the same prices to all Licensees for the time being. The prices and terms for the same to be fixed by the Licensor; and in all cases whenever the machines are returned to the possession of the Licensor all the accessories, which shall include all spare parts and fittings, shall be returned with the machines, free from any claim as to title, and all unused tack-strips remaining in the possession of the Licensee at the time of the return of the machines shall also be returned to the Licensor's possession free from any claim as to title, but credit for such tack-strips shall be given by the Licensor.

Fourteenth. — All the rights and interests which, under this instrument and by reason of the ownership of said machines and patents and patent rights belonging to the Licensor, shall be deemed to belong to and may be enforced by the Licensor, its representatives, and assigns, and all the stipulations binding on the Licensee shall be binding on his or their representatives or assigns.

Fifteenth.— It is agreed that this instrument may be used for Licensees of the female sex, or for corporations, and in that case the masculine pronoun denoting the Licensee shall, whenever it occurs, be instead of and indicate the feminine or neuter, as the case may be; and also that when the party of the second part shall consist of more than one person the termination of the words relating to the said party shall be considered as singular or plural, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this License and Lease for Rental, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained, and also that the numbers of the machines named in or covered by this License and Lease may be entered herein by the Licensor after signing; and that as this instrument is designed and intended for continuous use between the parties hereto, in case the Licensee shall have more than one machine, it is agreed that the termination of words relat-

ing to the machine shall be considered as written in the singular or plural, as the number of machines entered in this License and Lease Agreement may require.

SCHEDULE OF RENTALS OR ROYALTIES.
(Referred to in Article third.)

	Men's Shoes and Boots.					
	Plain.		Tips.		Tips & Boxes	
	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.
Buff and Grain . .	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	1c.
Flesh Split . . .	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	1c.
Calf, etc. . . .	2c.	$\frac{7}{10}$c.	3c.	$\frac{9}{10}$c.	3c.	1c.
Goodyear . . .	4c.	$1\frac{4}{10}$c.	4c.	$1\frac{4}{10}$c.	4c.	$1\frac{4}{10}$c.

	Boys' and Youth's Shoes.						Boots.		Women's.	
	Plain.		Tips.		Tips & Boxes.		Long Legs.			
	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value	Abated Value.
Buff and Grain,	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	$\frac{9}{10}$c.	3c.	1c.	2c.	$\frac{6}{10}$c.
Flesh Split .							3c.	1c.	2c.	$\frac{6}{10}$c.
Calf, etc. .							3c.	1c.	2c.	$\frac{6}{10}$c.
Goodyear .	3c.	1c.	3c.	1c.	3c.	1c.	4c.	1c.	4c.	1c.

In Witness Whereof, the parties aforesaid have hereunto set their hands and seals, the parties of the second part binding themselves, their legal representatives, and assigns, to all the foregoing agreements, both jointly and severally.

[SEAL] CONSOLIDATED & MCKAY LASTING MACHINE COMPANY,
by Geo. W. Brown, Treasurer.

SELZ, SCHWAB & CO.
Morris Selz, President [SEAL]

Cable Address, "Handmethod."

CONSOLIDATED & McKAY LASTING MACHINE COMPANY,
111 Lincoln Street.
Geo. W. Brown, Treasurer. Chase Department.

Boston, Mass., March 11th, 1899.

To Messrs. Selz, Schwab & Co., Chicago, Ill.

Gentlemen:— Enclosed please find your copies of the lease with signatures completed. Yours very truly,

CHASE DEPT. CONSOLIDATED & McKAY LASTING MCH. CO.
R.

Cable Address, "Handmethod."

CONSOLIDATED & McKAY LASTING MACHINE COMPANY,
111 Lincoln Street.
Geo. W. Brown, Treasurer. Chase Department.

Boston, Mass., Mar. 17th, 1899.

To Messrs. Selz, Schwab & Co., Chicago, Ill.

Gentlemen:— Enclosed please find your copy of the lease with signature completed. Yours very truly,

R. CHASE DEPT. CONSOLIDATED & McKAY LASTING MCH. CO.

PLAINTIFF'S EXHIBIT 240.

[Put in Evidence, page 1931.]

[The following is attached to Plaintiff's Exhibit 240:]

Office of the
McKAY SHOE MACHINERY COMPANY
No. 76 Lincoln Street.

Heeling Department. Boston, November 2nd, 1898.

Mess. Selz, Schwab & Co., Chicago, Ill.

Gentlemen:— Will you kindly number the lease sent you for the compressor #34 and Mayo rapid nailer #2555 at Joliet, which is now numbered #1593 to #1785, and greatly oblige?

Yours truly,

Dic. McKAY SHOE MACHINERY C[illegible].

Altered 10/4/98

1785 as per letter McK. Shoe Mach. Co. 10, 21, '98.

Lease and License, No. ~~1593~~

This Lease and Agreement, made this *21st* day of *March* A. D. *1898*, by and between James W. Brooks, Principal Trustee, and John Brooks, Associate Trustee, for the McKay-Bigelow Heeling Machine Association, Lessors, and *Selz, Schwab and Company, Joliet, Illinois*, Lessee, witnesseth:

Whereas, The Lessors are engaged in the manufacture of shoe machinery, and devices to be used in connection therewith, and particularly machinery and devices useful in the manufacture of the heel portions of boots and shoes; and

Whereas, The Lessors, at great expense, have endeavored, and are constantly endeavoring to improve and render more useful, the machinery and devices manufactured by them, and are the owners of the following Letters Patent of the United States for improvements and inventions relating to machinery and devices for the manufacture of shoes, viz.: E. B. Allen, 310,488, Jan. 6, 1885; 314,411, March 24, 1885; 319,377, June 2, 1885; 332,032, Dec. 8, 1885; 332,984, Dec. 22, 1885; 348,091, Aug. 24, 1886; 348,092, Aug. 24, 1886; 374,387, Dec. 6, 1887; 374,885, Dec. 13, 1887; 375,913, Jan. 3, 1888; 377,284, 377,285, Jan. 31, 1888; 378,859, March 6, 1888; 384,343, June 12, 1888; 384,734, June 19, 1888. C. H. Benjamin, 388,523, Aug. 28, 1888. H. Bond, 297,787, Feb. 5, 1884. E. Bourgeois, 277,207, May 8, 1883. C. H. Brown and A. B. McCoy, 477,098, June 14, 1892. C. W. Chase, 212,190, Feb. 11, 1879. T. P. Coombs, 391,124, Oct. 16, 1888. J. H. Cunningham, 381,493, April 17, 1888. A. E. Ellis, 388,544, Aug. 28, 1888. A. D. Elliott, 374,892, Dec. 13, 1887. A. D. Elliott and J. E. Fellows, Nov. 19, 1889. A. D. Elliott, 446,383, Feb. 10, 1891; 510,012, Dec. 5, 1893. H. P. Fairfield, 224,005, Feb. 3, 1880; 388,547, 388,548, Aug. 28, 1888; 498,745, May 30, 1893; 518,917, April 24, 1894. M. J. Ferren, 236,148, Jan. 4, 1881. M. Fifield, 261,696, July 25, 1882. E. Fisher, 246,945, Sept. 13, 1881; 248,582, Oct. 25, 1881; 250,654, Dec. 13, 1881; 258,905, June 6, 1882. J. F. Freeman and C. W. Glid-

den, 443,434, Dec. 23, 1890. C. W. Glidden, 217,866, July 29, 1879; 217,867, July 29, 1871; 224,011, 224,012, Feb. 3, 1880; 278,426, May 29, 1883; 321,017, June 30, 1885; 347,482, Aug. 17, 1886; 350,051, Sept. 28, 1886; 374,894, Dec. 13, 1887; 377,300, Jan. 31, 1888; 377,301, 377,302, Jan. 31, 1888; 382,762, May 15, 1888; 388,552, 388,578, Aug. 28, 1888; 393,103, 393,104, Nov. 20, 1888; 399,607, 399,608, March 12, 1889; 402,435, April 30, 1889; 399,608, March 12, 1889; 402,435, April 30, 1889; 403,747, May 21, 1889; 408,173, July 3, 1889; 409,637, Aug. 20, 1889; 409,783, 410,086, 410,087, 410,088, 410,089, 410,090, Aug. 27, 1889; 410,358, Sept. 3, 1889; 411,655, Sept. 24, 1889; 414,040, Oct. 29, 1889; 427,308, May 6, 1890; 439,060, Oct. 21, 1890; 454,428, June 16, 1891; 457,462, Aug. 11, 1891; 459,348, Sept. 8, 1891; 464,196, Dec. 1, 1891; 498,429, 498,513, May 30, 1893; 500,486, June 27, 1893; 502,667, 502,668, 502,669, Aug. 1, 1893; 242,268, April 30, 1895. Glidden and Elliott, 457,462, Aug. 11, 1891. R. M. Harrison, 233,504, Oct. 19, 1880. M. P. Harrigan, 386,538, July 24, 1888; 406,582, July 9, 1889. Harrigan and Packard, 473,874, April 26, 1892. John J. Heys, 530,046, Nov. 27, 1894. T. P. King and F. S. Strong, 267,544, Oct. 24, 1882. Horne and Henderson, 389,077, Sept. 4, 1888. W. Manley, 322,945, July 28, 1885; 336,332, Feb. 16, 1886; 342,371, May 25, 1886; 374,416, 374,417, 374,418, 374,419, Dec. 6, 1887. J. F. McMullett, 266,298, Oct. 24, 1882; 373,409, Nov. 15, 1887. J. L. Packard, 388,578, Aug. 28, 1888; 413,959, Oct. 29, 1889; 473,478, April 19, 1892. M. D. Phelan, 400,788, April 2, 1889. D. C. Pillsbury, 417,833, Dec. 24, 1889. A. E. Stirckler, 212,116, Feb. 11, 1879. E. A. Tripp, 406,183, 406,184, July 2, 1889. C. K. Wead, 477,093, June 14, 1892. A. H. Webster, 468,279, Feb. 2, 1892; 483,293, Sept. 27, 1892; 504,854, 502,854, 505,074, Sept. 12, 1893. H. W. Winter, 401,619, 401,620, 401,622, April 16, 1889; 402,375, 402,376, April 30, 1889; 447,744, March 3, 1891; 448,310, March 17, 1891; 501,555, July 18, 1893; 505,043, Sept. 12, 1893. E. C. Wright, 340,690, April 27, 1886. Crocker, Sumner & Nash, 385,748, July 10, 1888; 388,535, Aug. 28, 1888. J. H. Pope, 399,631, March 12, 1889; 399,-

777, March 19, 1889; 411,835, Oct. 1, 1889; 446,885, Feb. 24, 1891. M. A. Tyler, 301,462, July 1, 1884; 305,723, Sept. 23, 1884. Tyler & Merritt, 321,401, June 30, 1885; 382,121, May 1, 1888. Tyler & Smith, 293,604, Feb. 12, 1884. A. K. Washburn, 389,994, Sept. 25, 1888. H. A. Henderson, 252,215, Jan. 10, 1882; 259,687, June 20, 1882; 316,894, April 28, 1885; 10,588, 10,589, April 28, 1885; 317,646, 317,647, May 12, 1885; 332,798, Dec. 22, 1885. F. F. Raymond, 2d, 271,117, 271,118, Jan. 23, 1883; 280,399, July 3, 1883; 287,472, Oct. 30, 1883; 289,857, 290,109, Dec. 11, 1883; 315,458, 315,069, 315,070, April 7, 1885; 316,177, April 21, 1885; 316,661, 316,836, 316,827, April 28, 1885; 317,199, May 5, 1885; 317,672, 317,851, May 12, 1885; 318,134, May 19, 1885; 319,124, June 2, 1885; 321,530, 321,756, July 7, 1885; 322,126, July 14, 1885; 322,560, July 21, 1885; 322,561, 322,562, July 21, 1885; 325,271, 325,272, Sept. 1, 1885; 326,150, Sept. 15, 1885; 326,779, 326,780, 326,781, 326,782, Sept. 22, 1885; 329,079, Oct. 27, 1885; 329,951, 329,952, Nov. 10, 1885; 331,441, Dec. 1, 1885; 382,001, Dec. 8, 1885; 335,241, 335,242, Feb. 2, 1886; 340,358, April 20, 1886; 341,169, May 4, 1886; 341,689, May 11, 1886; 342,039, May 18, 1886; 342,461, May 25, 1886; 342,929, June 1, 1886; 343,339, June 8, 1886; 343,728, June 15, 1886; 344,136, June 22, 1886; 344,499, June 29, 1886; 344,985, July 6, 1886; 345,449, July 13, 1886; 345,920, July 20, 1886; 346,124, 346,125, July 27, 1886; 346,607, Aug. 3, 1886; 347,061, 347,062, 347,063, Aug. 10, 1886; 347,514, Aug. 17, 1886; 347,960, Aug. 24, 1886; 348,689, Sept. 7, 1886; 353,883, Dec. 7, 1886; 354,227, Dec. 14, 1886; 354,655, Dec. 21, 1886; 355,027, Dec. 28, 1886; 355,556, Jan. 4, 1887; 355,839, 355,840, Jan. 11, 1886; 356,209, Jan. 18, 1887; 356,549, 356,550, 356,551, Jan. 25, 1887; 356,552, 356,553, 356,554, Jan. 25, 1887; 356,890, Feb. 1, 1887; 357,335, Feb. 8, 1887; 357,735, Feb. 15, 1887; 358,298, Feb. 22, 1887; 358,695, March 1, 1887; 368,006, Aug. 9, 1887; 376,208, Jan. 10, 1888; 376,754, 376,908, Jan. 24, 1888; 377,172, Jan. 1, 1888; 377,577, Feb. 7, 1888; 377,958, Feb. 14, 1888; 378,216, Feb. 21, 1888; 378,617, Feb. 28, 1888; 379,029, March 6, 1888; 379,330, March

13, 1888; 379,810, March 20, 1888; 380,133, March 27, 1888; 380,596, April 3, 1888; 380,818, April 10, 1888; 381,280, April 17, 1888; 383,911, June 5, 1888; 385,960, July 10, 1888; 386,656, July 24, 1888; 394,298, Dec. 11, 1888; 394,609, 394,610, Dec. 18, 1888; 398,846, March 5, 1889; 405,598, June 18, 1889; 408,895, Aug. 13, 1889; 409,372, Aug. 20, 1889; 410,194, 410,195, 410,196, Sept. 3, 1889; 410,675, 410,676, 410,677, Sept. 10, 1889; 412,414, Oct. , 1889; 412,896, Oct. 15, 1889; 413,553, 413,554, 413,555, Oct. 22, 1889; 413,963, 413,964, Oct. 29, 1889; 414,448, 414,582, Nov. 5, 1889; 414,952, Nov. 12, 1889; 415,559, Nov. 19, 1889; 415,560, Nov. 19, 1889; 461,448, 461,510, Oct. 20, 1891; 464,165, 464,255, Dec. 1, 1891; 464,991, 465,029, Dec. 15, 1891; 467,237, Jan. 19, 1892; 467,522, Jan. 26, 1892; 468,957, Jan. 16, 1892; 474,146, May 3, 1892; 474,407, 474,408, May 10, 1892; 475,001, 474,858, May 17, 1892; 475,417, May 24, 1892; 476,303, 476,307, June 7, 1892; 479,142, July 19, 1892; 480,415, Aug. 9, 1892; 480,741, Aug. 16, 1892; 528,805, Nov. 6, 1894; 531,644, 531,645, Jan. 1, 1895. Raymond & Wheeler, 280,861, July 10, 1883. G. T. Demary, 320,050, June 16, 1885; 321,696, July 7, 1885; 342,501, May 25, 1886; 343,703, June 15, 1886; 474,335, May 3, 1892. Towns & Raymond, 346,137, July 27, 1886. J. B. Gardner, 354,125, Dec. 4, 1886; 360,580, April 5, 1887. J. W. Soule, 368,248, April 16, 1887. C. C. Small, 375,209, Dec. 20, 1887; 376,049, Jan. 3, 1888; 413,973, Oct. 29, 1889; 461,853, Oct. 27, 1891; 467,242, Jan. 19, 1892. E. E. Orr, 375,458, Dec. 27, 1887. J. R. Prouty, 383,907, 383,908, 383,909, June 5, 1888; 515,175, Nov. 12, 1889. James W. Carver, 401,131, April 9, 1889. Benjamin & Simmons, 503,895, Aug. 22, 1893. S. A. Krewson, 514,852, Feb. 13, 1894; and also are the owners of other inventions relating to machinery and devices for the manufacture of boots and shoes, and intend to secure Letters Patent therefor, some of which inventions, patented or to be patented, are embodied in the machines, or some of them, leased to the Lessee hereunder;

And Whereas, The Lessee desires the right to use, under the

terms of this lease and license, the hereinafter described machinery or devices belonging to the Lessors, and also any other improvements relating to the machinery hereby leased, which may hereafter be acquired by the Lessors, and attached by or with the permission of the Lessors to the machinery hereby leased or delivered to the Lessee, to be used in connection therewith, and also any other machines, machinery or devices made by or for the Lessors, which may hereafter come into the possession of the Lessee;

Now, therefore, The Lessors, in consideration of one dollar paid by the Lessee, the receipt whereof is hereby acknowledged, and of the covenants and agreements of the Lessee hereinafter contained, do hereby lease unto the Lessee (provided the Lessee keeps and observes the covenants and conditions of this agreement) the machinery or devices described by name and number or numbers, following, and all other machines and machinery made by or for the lessors which may hereafter come into the possession of the lessees with the written consent of the lessors and which are not the subject of another lease between the parties hereto: —

McKay Pricking Machine
1 McKay Heel Compressing and Loading Machine *No. 34*,
Fisher Compressing Machine
Bresnahan Compressing Machine
Heel Trimming and Randing Machine,
Heel Trimming and Randing (including Grinding) Machine,
No. 2 Automatic Heel Nailing and Trimming Machine,
1 Rapid Nailing Machine (*Mayo*) *No. 2555*,
Union Heel Trimmer,
Spring Heel Trimmer,
American Lightning Nailing Machine
American Compressing Machine,
Columbia Compressing Machine,
Automatic Heel Loading and Compressing Machine
Improved National Nailing Machine
Columbia Nailing Machine,
Automatic Spring-heel Nailing Machine,

Standard Automatic Nailing Machine,
Standard Automatic Nailing Machine, without Pricking Attachment,
Standard Automatic Loading or Compressing and Loading Women's Work Machine,

And the Lessors do hereby license the Lessee to use such machines and devices, and any patented parts, mechanisms or devices connected therewith or relating thereto, whether on said machinery when the same is received, or which may be added thereto by the Lessors, and including such machines, devices and machinery as may hereafter come into the possession of the Lessee with the written consent of the Lessors, under the aforementioned patents or any patents, reissues of patents or renewals, which may hereafter be owned or acquired by the Lessors; the term of said license to be the full term of this lease; but this lease is made and this license is granted, on the express condition that the Lessee shall faithfully keep and observe each and all of the conditions and agreements herein contained, on his part to be kept and observed; and that upon a breach of the same or either of them by the Lessee, the Lessors may, at their option, cancel and terminate this lease and license, and upon written notice thereof by the Lessors to the Lessee, or to any one in the possession or apparent control of the said machines, devices or machinery, this lease and license shall terminate, and the possession of, and the full right to and control of the said machines, devices and machinery shall thereupon revest in the Lessors.

The word "machinery" as hereinafter used shall be construed as designating any and all machines, devices, tools and machinery held by the Lessee under this lease and license whether now or hereafter delivered to or in the possession of the Lessee, and the covenants and conditions of this lease shall apply to all such machines, devices, tools and machinery.

And the following are agreed to as terms and conditions of the lease and license of the machines, devices, tools and machinery which the Lessee is hereby licensed to use; all of which together

with those hereinbefore expressed, the Lessee agrees to keep and perform.

First. The Lessee is by this lease and license authorized to use the "machinery", hereby leased only by himself or operatives in his direct employ and only at his factory, situate at *Joliet, Illinois.*

He shall not add to the "machinery", nor subtract therefrom any part, mechanism or device whatsoever now or hereafter forming a part thereof or connected therewith by the Lessors; nor make, nor allow to be made any change or alteration in the said "machinery", without the consent in writing of the Lessors, nor interfere with the proper operation of the same or any mechanism forming a part thereof or attached thereto; nor remove nor deface any dates, numbers, or inscriptions, now or hereafter impressed thereon or affixed thereto by the Lessors; and shall at all times and at his own expense keep the "machinery" in good and efficient working order and condition.

And the Lessee further agrees that he will purchase from the Lessors exclusively at the regular prices from time to time established by the Lessors, all the spare parts, forms, plates, knives, moulds, extras, devices and mechanism of every sort and kind needed or used by him in repairing, renewing, changing the styles, form or nailing, or in operating the "machinery" hereby leased.

Second. The Lessors and their agents may at all reasonable times have convenient access to the "machinery" covered by this lease to examine and inspect the same and the use thereof, and to repair and improve or add to the same so far as they may see fit; but they shall not be bound to make any repairs or improvements and the covenants, stipulations, conditions and terms of this lease shall apply to all improvements which the Lessors shall hereafter add to the same and to any patents which have been or may be issued thereon with the same effect as if the patents were included in this lease and license with the Letters Patent already referred to.

Third. The Lessee agrees to pay unto the Lessors on the fifteenth day of each month, as rent or royalty for the machinery hereby leased, the sum of one half cent for each and every pair of boot or

shoe heels manufactured wholly or in part by the aid or use of any of the machines or machinery hereby leased, said rent or royalty to be paid each month for all boot or shoe heels made during the preceding calendar month, and it is hereby agreed between the parties hereto that said rental or royalty at one half cent per pair is a just, fair and correct value to the Lessee of the use of said machinery, and that the abated royalty hereinafter named is not the true value of the lease and license hereby granted, but is a concession and abatement of such value for and in consideration of the conditions thereto attached; and all agreements herein shall extend to all boot or shoe heels made by or for the Lessee; provided, however, that in all cases where the Lessee shall pay the Lessors on or before the fifteenth day of each month, as an abated royalty, the sum of one quarter of a cent per pair for each and every pair of heels made during the preceding calendar month, said payment so made shall be full payment and satisfaction of said rent or royalty. And it is agreed that in default of the payment of said abated royalty, when due, as aforesaid, the Lessee's right to an abatement of the full royalty of one half cent per pair shall thereby be forfeited, and full royalty shall be due for the same, not as a penalty, but as a liquidated, fixed and settled rental and license fee for the use of said machines or machinery.

And, as the machines leased hereby are supplied to the Lessee without cash payment covering the cost of manufacture, the Lessee hereby guarantees that, during the continuation of this lease, the abated rent and royalty due and actually paid over to the Lessors under the terms hereof shall not in and for any period of three months be less than *125* (one hundred and twenty-five dollars) dollars. But it is agreed that if, at any time during the continuance of this lease, the Lessee shall pay to the Lessors a sum equal to the amount of insurance hereinafter named, the Lessee shall, provided he has not violated any of the terms of this lease, be freed from his guarantee to pay more than the rent and royalty hereinbefore stipulated for each pair of boot or shoe heels manufactured as aforesaid, all the other terms and conditions of this lease remaining in force as before. And the

Lessee cannot avail himself of the provision set forth in this paragraph for anything less than all the machines hereby leased; and he shall not be allowed any diminution of the sum to be paid because of the wear and tear or destruction of any of the machinery hereby leased.

Fourth. It is understood that the Lessors may at any time attach to said "machinery" or any part thereof an indicator, for the purpose of registering the number of boots or shoes in the manufacture of which said "machinery" is utilized, or the number of revolutions or movements of the same or any thereof; and the Lessee agrees that in case an indicator shall be attached to said "machinery" or any part thereof by the Lessors, it shall not be disturbed or interfered with by any person, and that prompt notice will be given to said Lessors in case the same shall be disturbed or inaccurate or out of repair. And the Lessee agrees to keep a full and accurate account independently of any indicators that may be placed upon the "machinery" of all boots and shoes in the manufacture of which said "machinery" is used; and the Lessee further agrees to require each of its operators upon the "machinery" hereby leased to keep upon blanks or blank books to be furnished by the Lessors, accurate daily records of the number of pairs of boots or shoes in the making of which said "machinery" shall have been used, and to require his operator to furnish any further information called for by said blanks or blank books and to sign such daily records and to deliver them to the Lessee; and the Lessee agrees to send to the office of the Lessors on or before the fifteenth day of each month, the original records for the preceding calendar month kept by his operators as above provided for. And the Lessee agrees to allow the Lessors or their agents to have access at all times to said records kept by his operators and to all accounts kept by him, of the shoes prepared or manufactured by him.

Fifth. The Lessee hereby agrees as an essential part of the consideration for this lease and license, that he will not in any way violate or infringe or contest the validity of any of the patents hereinbefore referred to as belonging to the Lessors or which may now or hereafter be owned by the Lessors, or any reissue or exten-

sion of the same, or the title of the Lessors to said patents or any of them.

Sixth. The "machinery" held under this lease cannot be transferred, and this lease and license is not assignable by the Lessee by his own act or by operation of law. The Lessee agrees at his own expense to pay all taxes levied on said "machinery" or on account of this lease and to insure against loss by fire and to keep so insured the "machinery" held by him at any time under this lease in a sum total equal to *Eleven Hundred* dollars, and in case of loss or damage, the Lessee agrees to pay the full amount of the insurance to the Lessors.

Seventh. The power conveyed by this lease and license is only the right to use the said "machinery" and not the right to make or sell any "machinery" embodying the inventions of any of the patents aforesaid or any patent hereafter owned by the Lessors. And a removal of the "machinery" or any portion thereof from the factory of the Lessee can only be made with the written consent of the Lessors, and on conditions satisfactory to the Lessors; and if the Lessee is or becomes at any time insolvent or bankrupt, or if a sale, transfer, removal or lease of said "machinery" or any portion thereof shall be made or attempted without the written consent of the Lessors, then this lease and license and all rights of the Lessee thereunder shall forthwith, at the option of the Lessors, cease and determine, and the possession of said "machinery" shall revest in the Lessors, and they may take possession of the same without the Lessee having any claim against the Lessors.

Eighth. This lease and license shall, unless cancelled by agreement of the parties hereto, continue, provided the Lessee faithfully keeps and performs the terms and conditions hereof, for seventeen years from the date hereof, and for such further time as may be covered by the term of any Letters Patent now or hereafter owned by the Lessors, and any inventions of which are contained in any of the "machinery" hereby leased or which shall be added to or embodied in said "machinery" or used in connection therewith. But inasmuch as the "machinery" has been delivered by the Lessors to the Lessee without any charge or payment representing its cost

(excepting such payments as have been made on account of moulds, dies, forms, clamps, lasts, and other parts or devices used in connection with said "machinery"), it is understood and agreed that the Lessors may at any time, in case the Lessee refuses or neglects to perform or violates any of the conditions of this lease and license, or provides himself with any other machine to do any part of the work which any of said Lessors' machines are capable of doing, terminate this lease upon giving written notice to the Lessee of their election so to do. And immediately upon such notice, this lease and license and all the rights of the Lessee thereunder shall be terminated and the title to and right of possession of said "machinery" and all said moulds, dies, forms, clamps, lasts and other parts or devices used in connection with said "machinery" shall at once vest in the Lessors free and discharged of this lease and license. And the Lessee agrees forthwith to deliver the "machinery" hereby leased and licensed, together with all moulds, dies, forms, clamps, lasts, and other parts or devices used in connection therewith to the lessors, and to pay to the Lessors the sum of fifty dollars for each individual machine then leased to the Lessee, and to pay in addition the expense of transporting the "machinery" to such place of business of the Lessors as the Lessors shall direct, and without prejudice to any other legal rights or remedies for violation of contract, use of "machinery" without right, or use of patents without license, which the Lessors may have; and the Lessors or their agents may forthwith enter the premises where said "machinery" or any part of it may be, and may take and remove the same, including all said moulds, dies, forms, clamps, lasts and other parts or devices used in connection therewith, and the Lessee shall have no claim whatever against the Lessors under this lease or otherwise.

In case this lease shall run for its full term, then immediately upon its expiration the Lessee shall deliver to the Lessors the "machinery" hereby leased, together with all moulds, dies, forms, clamps, lasts and other parts or devices used in connection with said "machinery", and the Lessee shall have no claim whatever to

said "machinery" or to a continuation of his possession or use thereof.

Ninth. In case any other machines, devices, or machinery than those now hereby leased and licensed, embracing or to be used in connection with the inventions of any of the Letters Patent under which a license is hereby granted, or any other patents under which the Lessee may hereafter become licensed by the terms of this agreement, shall hereafter come into the possession of the Lessee without a written lease or license from the Lessors, then, in case the Lessors shall so elect, all the covenants and agreements herein contained, including the obligation to pay a monthly rental or royalty, shall apply to the same and shall govern the parties respectively to the same extent as if the same had been expressly included in this lease and license. The Lessors may write the numbers of any such "machinery" as shall hereafter come into the possession of the Lessors into this lease after the same is executed.

Tenth. All the rights and interests which under this agreement and by reason of the ownership of said "machinery" and patents and patent rights belong to the Lessors shall be deemed to belong to and may be enforced in their name or otherwise by the Lessors' successors and assigns and their representatives and assigns. All of the stipulations and agreements binding on the Lessee shall be binding on his or their representatives and assigns.

Eleventh. It is agreed that this instrument may be used for Lessees of the female sex or for corporations, and that in that case the masculine pronoun denoting the Lessee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that this instrument may be used in cases where the Lessee shall consist of more than one person, and in that case the termination of the words relating to the Lessees shall be considered as plural or singular, as the sense may require; and that when the Lessees so consist of several persons and they sign this lease either individually or by the firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In Witness Whereof, the parties aforesaid have hereunto set their

hands and seals and to another instrument of even date and like tenor, the principal Trustee being authorized to sign for himself and his associate trustee, and to do all acts hereunder, and said Lessee or Lessees under this agreement binding itself, himself, or themselves to all the foregoing agreements, both jointly and severally.

JAMES W. BROOKS, Principal Trustee. [SEAL]
J. Brooks, Atty.

Signatures of Lessees.

SELZ, SCHWAB & Co., [SEAL]
J. Henry Selz, Second Vice Prest.

PLAINTIFF'S EXHIBIT 241.

[Put in Evidence, page 2192.]

[Duplicate. Form 1195.] Dated November 29th, 1897.

We hereby propose to take a lease of the machinery mentioned below, of the Goodyear Shoe Machinery Company, according to the form of lease adopted by the Company therefor, and we agree to pay, upon delivery of the said machinery, the sum of $300.00 as consideration for the delivery of said lease, for the expenses of setting up said machinery, and for possession under the lease of said machinery. Operator not to be sent to set up machinery until consideration is paid, as agreed above.

Goodyear Welt Shoe Machine , Chain Stitch, No.
Goodyear Turned Shoe Machine , Chain Stitch, No.
Goodyear Turned or Welt Shoe Machine , Lock Stitch No.
Goodyear Outsole Stitcher , (Lock Stitch, "Rapid"), No.
Welt Channeller , No.
Outsole Channeller , No.
Turn Channeller , No.
Channel Lip Turner , No.
One Universal Rounder and Channeller , No.
Sole Layer , No.
Hadaway Stitch Separating Machine , No.
Automatic Levelling Machine , No.

Welt Beater , No.
Bobbin Winder , No.
Welt Groover , No.
Welt Splitter , No.
Moulder , No.
Channel Opener , No.
Universal Shanking-Out Machine , No.

It is hereby understood and agreed that we have the option of returning Briggs Rough Rounder #234 for which we are to receive credit for $100.00 against the above consideration.

(Please Keep this Copy for Your Own Reference).

Please Answer these Questions. Answer here.

How will you heat Machines, by steam, gas, or lamps?
How will you heat Waxers, by steam, gas, or lamps?
How shall we ship, by freight or express?
What kind of goods do you make?

No title to the above mentioned machinery is acquired other than is given in the lease aforesaid.

A competent man is to be sent to set up said machinery at the expense of the said Company.

Freight and transportation charges on said machinery for Boston, Mass., shall be paid by the lessee.

Applicant sign here.

We accept the above proposition, and promise to deliver the lease and machinery as specified therein.

Boston, Nov. 30th, 1897.

GOODYEAR SHOE MACHINERY COMPANY,
By S. V. A. Hunter, Gen'l Manager.

[Duplicate. Form 1195.]

Dated Whitman, Mass., Mch. 27th, 1900.

We hereby propose to take a lease of the machinery mentioned below, of the Goodyear Shoe Machinery Company, according to the form of lease adopted by the Company therefor, and we agree to

pay, upon delivery of the said machinery, the sum of $325.00 as consideration for the delivery of said lease, for the expenses of setting up said machinery, and for possession under the lease of said machinery.

Goodyear Welt Shoe Machine , Chain Stitch No.
Goodyear Turned Shoe Machine , Chain Stitch, No.
Goodyear Turned or Welt Shoe Machine , Lock Stitch, No.
Goodyear Outsole Stitcher , (Lock Stitch, "Rapid"), No.
Welt Channeller , No.
Outsole Channeller , No.
Turn Channeller , No.
Channel Lip Turner , No.
One Universal Rounder and Channeller , No.
Sole Layer , No.
Hadaway Stitch Separating Machine , No.
Automatic Levelling Machine , No.
Welt Beater , No.
Bobbin Winder , No.
Welt Groover , No.
Welt Splitter , No.
Moulder , No.
One Channel Opener , No.
Universal Shanking-Out Machine , No.
Inseam Trimmer , No.

(Please Keep this Copy for Your Own Reference).

Please Answer these Questions. Answer here.
How will you heat Machines, by steam, gas, or lamps?
How will you heat Waxers, by steam, gas, or lamps?
How shall we ship, by freight or express? *Freight*
What kind of goods do you make?

No title to the above mentioned machinery is acquired other than is given in the lease aforesaid.

A competent man is to be sent to set up said machinery at the expense of the said Company.

Freight and transportation charges on said machinery from Boston, Mass., shall be paid by the lessee.

Applicant sign here.

We accept the above proposition, and promise to deliver the lease and machinery as specified therein.

Boston, Mch. 28th, 1900.

GOODYEAR SHOE MACHINERY COMPANY,
By Fred'k G. King, General Manager.

PLAINTIFF'S EXHIBIT 242.

[Put in Evidence, page 2194.]

OFFICE OF GOODYEAR SHOE MACHINERY COMPANY,

Boston, Mass., *Feb. 3d* 1898

Messrs. L. C. Bliss & Co. Whitman, Mass.

You are hereby notified that we have entered:

Goodyear Turned or Welt Shoe Machine , Chain Stitch, No.
Goodyear Turned or Welt Shoe Machine , Lock Stitch, No.
Goodyear Outsole Stitcher , (Lock Stitch, "Rapid"), No.
Welt Channeller , No.
Outsole Channeller , No.
Turn Channeller , No.
Channel Lip Turner , No.
Universal Rounder and Channeller , No. *182*
Automatic Leveller , No.
Sole Laying Machine , No.
Welt Beater , No.
Shank Skiver , No.
Turn Trimmer , No.
Bobbin Winder , No.
Welt Groover , No.
Welt Splitter , No.
Moulder , No.
Channel Opener , No.

Universal Shanking-out Machine , No.
Stitch Separator , No.

in our copy of your Lease and License No. *4015*.

Please enter the same in your copy, and oblige,

Yours respectfully,

GOODYEAR SHOE MACHINERY COMPANY,
By Geo. W. Randall, Treasurer.

PLAINTIFF'S EXHIBIT 243.

[Put in Evidence, page 2195.]

[Cover of Catalogue:]

McKAY & BIGELOW

HEELING MACHINE ASSOCIATION.

108 Summer Street.

BOSTON, MASS.

Description and Price-List

OF

SPARE PARTS.

BOSTON:
PRESS OF THE THORP & ADAMS MFG. CO.,
14 MILK STREET,
1890.

[MEMO. By direction of counsel this exhibit is not here printed, as it is to be considered as a physical exhibit.]

PLAINTIFF'S EXHIBIT 244.

[Put in Evidence, page 2195.]

[Cover of Catalogue:]

The Prices in this Catalogue Subject to Change Without Notice.

PRICE LIST

OF SPARE PARTS

FOR THE

CHASE LASTING MACHINE

AND

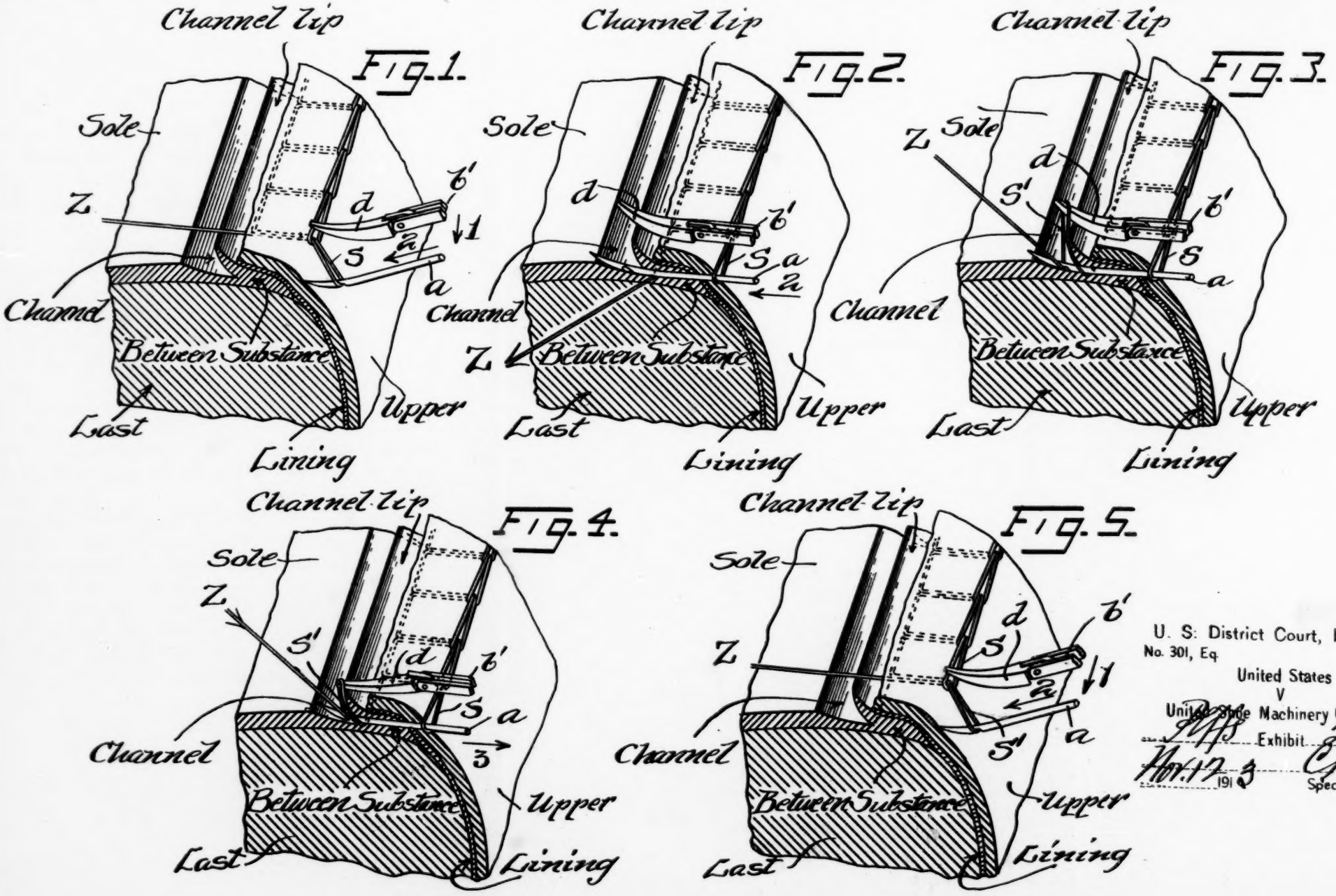
TACKING MACHINE.

Arranged Alphabetically and Numerically.

1896.

CHASE LASTING MACHINE CO.,
No. 108 Summer Street,
BOSTON, MASS.

[MEMO. By direction of counsel this exhibit is not here printed, as it is to be considered as a physical exhibit.]



U. S. District Court, Mass. Dist.
No. 301, Eq.
United States
V
United Shoe Machinery Co. et al.
Exhibit 263
Nov. 17 1913
Special Examiner,

PLAINTIFF'S EXHIBIT 267.

[Put in Evidence, page 3511.]

Boston, Mass., November 26, 1910.

Mr. C. H. Willson, General Manager, United Shoe Machinery Company, Boston, Massachusetts.

Dear Sir:— In accordance with your instructions, we have made a thorough examination of all of the Plant shoe machinery. We have used as a basis the catalogue of the Wonder Worker Shoe Machinery, and have made our report to cover each machine as shown in this catalogue, and compared each one, as far as possible, with machines which we use in place of them.

We have had the help and cooperation of all the men in our Company that we thought could be of assistance to us, and have had the assistance of the men at the Plant Factory who were familiar with the machines and the reasons for making them as they did.

In addition to comparing each machine and advising in regard to each, we submit with this report four lists: one being a list of machines some of which we think it advisable to adopt exactly as they are now built, and others with such minor changes as lead us to consider them in the same class; another list comprising such machines as we would advise discarding altogether: the third list comprising various devices or attachments on the Plant machines which we think should be embodied in our commercial machines or worked into machines of improved design with which we are now experimenting, and the fourth list containing machines and devices that we think should be experimented with and tried out to determine if they have any value.

Yours truly,

B. F. Mayo.

Geo. E. Warren.

GEW-FEM Enclosure.

Machines to Adopt.

Typewritten Page		Printed Page
4	Fair Stitch Welt Attachment	1400
45	Laster's Bench	1411
118	Heel Beader	1432
80	Channel Flap Layer	1422
115	Edge Trimmer Cutter Grinder	1431
108	Heel & Breast Knife Grinder	1429
11	Cloth Cement Pot & Drying Creel	1401
126	Shoe Dryer	1434
135	Shank and Forepart Burnisher	1437
132	Finisher and Brush Cleaner	1437
31	Insole Lip Wetter	1408
73	Channel Opener	1420
27	Innersole Flexor	1407
134	Heel Edge and Bottom Polisher	1437
147	Shoe Rack	1441
10	Outsole Flexor	1401
138	Stitch Indenter and Burnisher	1438
50	Welt Slasher and Groover	1412
71	Outsole Wetter	1420

Machines Not to Adopt.

Typewritten Page		Printed Page
84	Heel Seat Nailer	1423
43	Turn Heel Laster	1411
99	Wire Grip Heel Slugger	1427
32	Staple Tacker	1408
102	Sole Clincher	1428
1	Clicking Press	1399
104	Heel Shaver	1428
106	Heel Breaster	1429
34	Pulling-Over Machine	1409
116	Heel Burnisher	1432
39	Side Laster	1410

46	McKay Toe Cutter	1411
95	Heel Loader	1426
7	Shank Piece Tacker	1401
47	McKay Sewer	1412
41	Toe and Heel Laster	1410
93	Toplift Compressor	1426
91–7	Heeling Machine	1425–27
87	Loose Nailer	1424
3	Sole Rounder	1400
112	Toplift Scalloper	1430
114	Forepart Trimmer	1431
5	Outsole Marker	1400
59	Sole Layer	1415
58	Turn Shoe Trimmer	1415
57	Welt Beater	1415
123	Bottom Buffer	1433
9	Turn Shoe Moulder	1401
121	Edge Setter	1433
13	Innersole	1402
22	Lip Cutter	1407
23	Single Lip Channel Opener	1407
29	Double Lip Channel Opener	1408
26	Innersole Cloth Tucker	1407
139	Treeing Leg	1438
144–139	Treeing Machine	1440–38
51	Welter	1413
63	Outer Sole Channeler	1416
61–9	Rough Rounder	1416–20
75	Stitcher	1421
109	Heel Scourer	1429
136	Stitch Separator	1437
24	Lip Cutter & Marker	1407
127	Bottom Cleaner	1434

DEVICES TO ADOPT.

84 [1423] Heel Seat Nailer.
Driver Bar Adjustment.

32 [1408] Staple Tacker.
Principles of construction.

102 [1428] Sole Clincher.
Guard for three-nail slugging.

118 [1432] Heel Seat Beader.

106 [1429] Heal Breaster.
Guide for the knife,
Lock for the jack,
Spreading heel piece,
Means for taking care of the chips,
Extra pressure on heel.

116 [1432] Heel Burnisher.
Blower and steam-heated box for Irons.

41 [1410] Toe and Heel Laster.
Toe Head and Pad for McKay work,
Spreading Hold-down,
Retarder for toe,
Claw Device for heel,
Hand Lever for pressure on wipers,
Coupling for Tacker Raceway.

75 [1421] Stitcher.
Bobbin Winder.
Rest for sole.

51 [1413] Welter.
Welt Holder and Cutter.
Welt Reel.
Stop Motion.

109 [1429] Heel Scourer.
Device to finish corner of heel breast.
Connect Belt Shifter with damper in dust pipes on all machines with Blowers.

95 [1426] Heel Loader.
Awl Oiling Device.

91-97 [1425-1427] Heeler.
Guide for sole to determine swing.
Right and left movement in jack.
Spring to move jack.
Lock on jack.
Gluing Device for toplifts.
Gluing Device for heels.
Split Clamps for side of shoe.
Spring Finger to hold toplift.

MACHINES AND DEVICES TO EXPERIMENT WITH.

36 [1409] Hand Laster.

39 [1410] Side Laster.
Circular Moving Wiper.

95 [1426] Heeler.
Nail Loader, for collar nails.

112 [1430] Toplift Scalloper.
Automatic Positioning Devices.

104 [1428] Heel Shaver.
Rubber Guard.

34 [1409] Pulling-Over Machine.
Right and Left Adjustment on Toe Pincers.

48 [1412] Tack Puller and Baster.

61-9 [1416-20] Rough Rounder.

83 [1423] Leveler.

136 [1437] Stitch Separator.

21 Insole Cloth Placer.

21 Canvas Cutter.

89 [1425] Heel Seat Dinker.

61-7 [1416-19] Welt Marking Snippers.

CLICKING PRESS.

This machine has a treadle for starting the cutting arm. The

cutting arm automatically swings to the left after it has struck the die, and it has a hand wheel below the cutting block for adjusting same.

The treadle starting device is not as good or safe as ours, which is mounted on the cutting arm.

Our cutting arm automatically swings just clear of the die from any position over the cutting board. This is better than the Plant machine, which swings so far that the operator has to stop it, which makes a pull on his left arm after each cutting operation. Our adjustment for the cutting block is above the cutting arm.

We advise not to build the Plant machine.

Sole Rounder.

In this machine the pattern turns and the knife is stationary, the same as the Smith Rounder. Stripped stock cannot be rounded with it. It can be used only on blocked stock. It is not as good as the Planet Rounder.

We advise not to build it.

Fair Stitch Welt Attachment.

This machine is for attaching McKay Welts to the sole and cutting them off. It is a good machine and we advise adopting it.

Outsole Marker.

This machine is for marking the outsole, so that the operator will know when to commence and end when skiving a shank. The machine also marks the size and width on the heel.

This machine is, of course, only adapted for use on welt work, when the sole is died out before laying.

The system used in nearly all the factories is to lay blocked stock and shape the sole on the Rough Rounder. When making shoes by this system, the machine would be of no value to us. Under these conditions the machine would be of no use to us at present. It might be of some value if the manufacturer were to make shoes without using the Rough Rounding System.

We understand that only one or two of these machines was ever built.

We would advise doing nothing with this machine at present.

Shank Piece Tacker.

This machine is used for tacking shanks to soles and other work on which the Boston Tacker and Innersole Tackers are used.

It is started by a foot that contacts with the upper surface of the work. This foot is moved up by a foot treadle, acting on a table below the work, which moves the table and work up. It has a very steep raceway and a simple and effective separator for forcing the tack that is to be driven, under the driver. These, with the exception of the angle of the raceway, have been embodied in our Innersole Tacker. The Innersole Tacker has also been improved by applying a rotary tack pot.

While the steep raceway seems to work very well on ½-oz. tacks, the consensus of opinion is that it will not work as well as long ones, owing to the point end of the tack being heavy enough to make the head bind in the raceway.

We do not advise building the Plant Shank Tacker.

Turn Shoe Moulder.

This is exactly like the old type of machine used by us, and we would advise that it be discarded. We have a new type, shown above, which has some improvements.

Outsole Flexer.

This machine is for operating on the outsole to make it more flexible at the ball.

It differs from our machine in so much as it does not operate on the toe or shank portion of the sole. This is a good feature, and we would advise the adoption of this machine in place of ours.

The Cloth Cement Pot & Drying Creel.

These devices are for cementing the canvas and exposing it to the air so that it will become nearly dry before using.

We think this would be a handy device to use whenever a manufacturer wishes to cement his own canvas, but the tendency lately among manufacturers has been to abandon this system and use the

coated canvas; so that now there is a very limited demand for a device of this kind.

We would recommend that this device be adapted to use with wide canvas, which is used for the Gem Insole, and furnished to the manufacturer whenever desired.

Plant Innersole.

This sole as shown by the cut has an inside channel cut similar to the channel on all leather innersoles. A piece of canvas slit at the forepart and heel is then forced into this channel, the canvas being trimmed off after it is placed so that it will be even with the top of the channel flap. The canvas extends way across the sole at the shank. The outer edge, or feather, of the sole is trimmed away so that it will be thin at the edge and thicker where the welt and upper are stitched to it.

While this sole has one commendable feature we are firmly of the opinion that it is not so good a commercial article as either the "Gem" or the "Economy" insole. We found the average number of soles to the inch being used to make this sole was eleven. This is a good thickness of sole, and we use very many soles in both the Gem and Economy systems which are much thinner, but even with this weight of sole, which we found in use, the depth of cut necessary when channeling, to give the proper amount of between-substance for sewing, made the sole weak at the root of the channel, so that the inside of the finished shoe had a hollow or gutter all around the shoe, directly over the channel. This is a bad feature and one that the manufacturers are continually trying to guard against, it being a sign of good shoemaking to have a smooth innersole in the finished shoe.

We also criticise the Plant innersole because, there being no upturned lip on the outer edge of the sole, there is no backing for the welt when sewed on. Without this backing the welt can be pried away from the sole, and the seam will not be as tight as when a sole is used with a lip turned up as a backing for the welt. This has been demonstrated many times in an all-leather innersole. Leather innersoles were made for a long time with a shoulder edge instead

of cutting a lip and turning it up, but it was never as successful as the sole with a turned up lip; simply for the reason that the turned up lip gave it a defined shoulder to sew to and a backing for the welt.

We feel certain that these two features — the depth of the cut necessary for the channel, and the absence of the turned up lip on the outer edge — would condemn this innersole as a commercial proposition.

The commendable feature which the sole has is the angle of the channel to the bottom of the sole. This is more like the angle of the channel in the all-leather insole and gives the operator on the Welt Machine a better hold or support for the channel guide. In this respect it would be superior to both the Gem and the Economy Innersole, as in both of these soles the angle of the sewing lip or channel is about at right angles with the bottom of the innersole.

The Gem Insole which has the lip turned up from the outside has the defect that the inside of the sole where the needle comes through is higher than the outside of the sole where the needle enters. This has a tendency to cause the welt operator to sew high on the outside, or make the needle dig on the inside.

The Gem Insole has the advantage that the inside of the shoe is perfectly smooth, even when using a thin sole, owing to the fact that there is no inside channel to weaken the sole.

The Economy innersole we believe to be a better insole than the so-called "Plant" innersole. In the Economy insole it is not necessary to cut the channel as deep as on the Plant, since we turn up from both sides and it gives us the additional advantage of having a defined shoulder to sew to, and a backing for the welt. We believe that an innersole made by the Economy system is the best innersole that we know of.

COST.

We find on investigation at the Plant factory that the innersole in use there costs more than the Economy insole owing to the extra operations necessary in its manufacture, and the high cost of canvas.

Below are given the detailed cost prices — assuming that the cost

of the leather, the dieing-out, marking and many other operations up to the time of channeling, are the same in both cases. The figures below are the prices for 100 pairs: —

Plant Innersole.		Economy Innersole.	
Channeling,	$.250	Channeling & Turning	$.250
Wetting	.023	Wetting	.023
Lip Turning	.040	Putting on canvas	.085
Putting on Canvas	.100	Reinforcing	.140
Forming	.350		
Tucking	.040		
Randing	.120		
Cementing canvas	.032		
Cutting	.050		
Canvas & Cement	1.260	Canvas (Coated)	$1.5000
	$2.265		$1.998

We have not taken into account the fact that there is ½c. per pair royalty charged the manufacturer when using the Economy Insole, as we assume that there would be a similar charge if the Plant innersole was used.

The Plant innersole, by the above figures, costs $.267 per hundred more than the Economy Insole. While the canvas used on the Plant innersole is only half as wide as that used on the Economy innersole, you will see by the above figures that it costs more than half as much as the Economy Canvas. This is owing to the fact that it costs a great deal more to use canvas coated in the factory with rubber cement than it does to use the prepared canvas.

We believe that the sole and canvas both coated with cement — as is done in the Plant factory — makes a better innersole, as the canvas and cement are more firmly united than by the process of using a coated canvas. They inform us at the Plant factory that the coated canvas had not been used successfully by them.

We admit that it is more difficult to apply the coated split canvas to the sole and make it stick than it would be to cement the sole and canvas and then put it on, but we think it could be done suc-

cessfully, and, if so, the relative price of the Plant and Economy Innersoles would be as follows: —

Plant Innersole.		Economy Innersole.	
Channeling	$.250	Channeling & Turning	$.250
Wetting	.023	Wetting	.023
Lip Turning	.040	Putting on canvas	.085
Putting on canvas	.100	Reinforcing	.140
Forming	.350		
Tucking	.040		
Randing	.120		
Cementing canvas	.032		
Cutting	.050		
Canvas and Cement	.750	Canvas (coated)	1.500
	$1.755		$1.998

This shows a saving of .243 per hundred pairs in using the Plant Insole with a coated canvas, over the Economy Insole; but, owing to the defects which we think the Plant Insole has, we believe it would be better to make an Economy Insole with the Plant canvas coated. In this way we would use all the Economy machinery and, with that system, the Plant Insole Cloth Placer.

In addition to this we would have to provide some way for the operator on the Insole Cloth Placer to heat the coated canvas before placing it on the sole as it is necessary to apply this coated canvas hot. If we could do this it would show us some saving over the Economy Insole.

The Economy Insole would then cost us as follows:

Channeling and Turning		$.250
Wetting		.023
Splitting Canvas		.050
Putting on and Forming Canvas		.400
Reinforcing & Trimming		.140
Canvas Coated		.750
	total	1.613

The different soles would then cost us as follows:

Plant Insole—Cement Canvas	$2.265
Plant Insole—Coated Canvas	1.755
Economy Insole—Coated Canvas	1.998
Economy Insole—Narrow Canvas Coated	1.613

This shows that the Plant Insole, as it is, costs .267 more than the Economy; the Plant Insole with coated canvas .243 less than the Economy. The Economy Insole with narrow canvas .385 less than the Economy Insole with wide canvas.

We do not feel sure that the slit canvas, as used in the Plant Insole, gives as strong a sole, and will stay in place as well, as the canvas that goes completely across the sole; but we have no doubt it could be used successfully on a great many soles and will satisfy some manufacturers.

We might not be able to make all of the saving as shown above, owing to the fact that it might be necessary to staple the soles to the last in a little firmer manner when using the split canvas than when using a whole piece, as with the split canvas there is not the support in the sewing that there is with the canvas going all the way across where one side helps the other.

In the Plant factory they stapled the soles to the last much more firmly than the manufacturers who use either the Gem or the Economy, and while we have had no opportunity to find out whether this is absolutely necessary we consider it a good thing to do.

In view of the fact that the figures show a saving of about $.385 per hundred pairs when using the Plant coated canvas on the Economy Insole, we would advise making a trial of the narrow canvas in connection with the Economy Insole method, and using the Insole Cloth Placer and the Canvas Cutter with our Economy machinery.

We show below a cut of the Plant Insole Cloth Placer.

The following machines used in making the Plant Innersole we can find no use for, and recommend that they be discarded, unless

it is found desirable to make the Plant Innersole exactly as it is made now.

Lip Cutter.

This machine is used for cutting the sole so that the channel can be turned up.

Single Lip Channel Opener & Edge Compressor.

This machine is used for turning up the channel flap, and is supposed to compress the edge of the leather, but we are unable to find that it does any compressing.

Innersole Lip Cutter & Marker.

This machine is for marking the size and width, and cuts off the surplus length at the heel of the sole, and also cuts the heel end of the channel lip at exactly the right point. We have made several machines to do this work, but could not use them on account of patents which we do not own, and we believe the same objections would hold true with this machine. If the patent situation is clear, perhaps this machine could be used to better advantage than the ones we have designed, but it would require further consideration to determine which machine to use.

Innersole Cloth Tucker & Lip Trimmer.

This machine is for pushing the canvas into the channel on the insole and trimming off the surplus canvas. We would have no use for this unless we adopted the Plant Innersole.

Innersole Flexor.

This machine cuts into the surface of the innersole forepart, between the channel lips, so that each cut overlaps the next preceding cut, the cuts being carried to the channel lips in every case, no matter what size the sole is. That is done automatically, and we think this method of slashing is superior to the method used by us on the Gem Innersole. We have not had occasion yet to flex any innersoles made by the Economy process. We would recommend the use of this Insole Flexor in place of the Goodyear Insole Flexor.

Double Lip Channel Opener.

This machine is for operating on an all-leather inner sole, and turns up both the outside lip and the inside channel. It has not been the practice of manufacturers to turn up the channel on an all-leather inner sole, and most of the operators prefer not to have it turned up, letting the channel guide turn it up as they feed the shoe along. As this machine is arranged, the outside lip is turned up only at right angles with the sole. We do more than this in our Lip Turner, turning the lip down on the sole. With the Plant machine, where the lip is only turned up at right angles to the sole, there is a tendency for it to fall back again, and, during the lasting operation, the lip may be turned down under the upper. This makes a difficult shoe to sew the welt on to. We do not see how this machine would be of any value to us.

Plant Insole Lip Wetter.

We would recommend using this machine in place of the one which we are now using for the Economy Insole, as shown by the cuts above. This is a more simple machine, will do the work as well, and costs less to manufacture than our own.

Staple Tacker.

This machine is different from our machines in principle and design; is much simpler and is better than either the Model B or C. But there are some parts, such as badly designed levers, driver bar in two parts, short bearings, etc., that should be redesigned.

We are now putting out a Model D Machine which is better than the Model B or C, but more complicated than the Plant Tacker.

As the Staple Machine is superseding to a large extent the Taper Nail Tacker for laying McKay soles; the Cable Tacker for tacking rands and shanks; the String Nail Tacker for tacking rands, cobbling toes on McKay work and nailing toes on women's McKay work, and the Grip Tacker for slip taps, tacking heel seats, spring heels, nailing taps and tacking rands, we advise building a simple Staple Machine, like the Plant machine, which has good principles. Embodying these principles in it, and constructing it on the gene-

ral plan of the Plant machine with this difference: — The wire-cutting mechanism will move for changing the length of the staple and the driver and wire-feeding mechanism will remain stationary, which will make it simpler than the Plant machine.

We do not advise building the Plant machine as it is.

Pulling-Over Machine.

The shoe is inserted in the machine in a reverse position to ours, which makes it harder to place the upper in the pincers. The pincers wipe the upper over the innersole and hold it until the tacks are drawn. This is a good feature if the uppers are large enough, but if they are small, which is often the case, it is impractical. It has a tip measuring device which is moved into place automatically. A tip measure has been applied to our machine.

There is a right and left adjustment on the Plant machine that allows the toe pincers to always pull at the centre of the toe. This is a good feature and has already been applied to our Pulling-Over and Toe Lasting Machines.

We advise putting it on our Pulling-Over Machine if it can be done.

The Plant machine is experimental and has never been finished. We advise not be build it.

Hand Laster.

This is a jack which is turned by a foot-treadle to present either side of the shoe to the operator in a position most convenient to work on. It has a universal joint which allows the jack to be set at any angle, and is equipped with a pneumatic hand tacker.

The jack which turns by a foot treadle is necessary where the pneumatic tacker is used, because the operator holds his pincers in one hand and the tacker in the other. It is used to last the sides of shoes before the toe and heel have been lasted in a bed machine.

Side lasting costs Plant from $1.50 to $1.85 per 100 pairs on his Hand Laster. This work is done in Lynn by hand for $1.50 to $2.50 and on the Consolidated Hand Method Machine for $1.25. In Brockton, the union price is $1.50 by hand and $1.00 on the Consolidated Hand Method.

Plant.	Lynn. By Hand.	Brockton. By Hand.
Per 100 pairs $1.50 to $1.85	Per 100 pairs $1.50 to $2.50 H. M. Machine $1.25	Per 100 pairs $1.50 H. M. Machine $1.00

The Consolidated Hand Method Machine will do good work, lasting sides of shoes, especially on women's. The sides of heavy men's shoes have not been successfully lasted on this machine, compared with hand work. In Brockton, practically all the manufacturers are paying $1.50 per 100 pairs for hand side lasting as against $1.00 by the Consolidated Hand Method Machine. This is because they get better work and a hand-pulled shank. The Consolidated Hand Method will do light shoes and is much cheaper than hand work, but we have no machine to last sides on heavy work that can compete with hand lasting.

This operation on shoes should be covered by a machine and, as the Plant Machine is a hand-pulling and a machine tack-driving proposition, we advise putting some of these machines in shoe factories and developing them to take the place of hand lasting, which is almost universal. One hundred and seventy-nine Consolidated Hand Method Machines are now being used for lasting sides in this country.

Side Laster.

This is practically the old straight-draw Consolidated Laster with the wiper movement in the arc of a circle, and a separate pincer attachment, which is closed by a foot treadle, for pulling over the shanks and sides.

We advise not to build it.

The pincer attachment operated by foot we already have.

We advise trying out the circular movable wiper on the Consolidated Hand Method.

Toe and Heel Laster.

This machine is the Ideal Laster with the following additional features:

The toe wire is inserted under the wipers and fastened to a pin before the shoe is put in the machine.

Wipers that can be used either for right or left by turning them over.

A hold-down for the shoe, that spreads to fit all sizes of innersoles.

A retarder for the toe, that pulls at the side and not at the end of the toe. In combination with the wipers, this retarder forms pincers which exert an inward pull when the wipers are moved to wipe over the toe.

A claw device at the heel which engages the upper and moves with the heel wipers to help pull the upper over the last, and

A hand lever in combination with the treadle to apply pressure to the wipers.

The coupling for the tacker raceway is good, inasmuch as it does not spill tacks.

We advise not to build this machine, as it is not so heavy as the #5 Laster and it is not strong enough for men's heavy work. The toe-wiring device is already on the #5 Laster.

We advise fitting the #5 Laster with the Plant toe head and pad, for McKay work; the spreading hold-down; the retarder for the toe; the claw device for pulling in the heel; the hand lever for putting pressure on the wipers; the coupling for the tacker raceway, and the separator in the hand tacker.

Turn Heel Laster.

This is the Ideal Lasting Machine and is used for lasting the heel seats of turn shoes. It has the toe head taken off, and has a hold-down for holding back the outersole while the heel seat is being lasted by hand, which is now on the #5 Laster and can be put on the Ideal, and by taking the toe head off, the Ideal will have the same thing Plant has.

We advise not to build the Plant machine.

Laster's Bench.

We advise building this, with modifications to meet the requirements of the various systems used.

McKay Toe Cutter.

This machine is an emery wheel with a rest. It is used for

grinding off the uppers on McKay toes. The toe cutting device is practically the same as ours.

We advise not to build it.

McKay Sewer.

This machine has the regular McKay head, the Stanley Horn, a new column and base and the Plant stop motion.

We advise not to build it in view of the Richardson and Model "B" Machines.

Tack Puller and Baster.

This is a machine for pulling the tacks in a lasted shoe and basting the upper to the sole wherever the operator desires.

The basting mechanism is the ordinary chainstitch method, similar to that used in the "Seaver" process. The shoe is presented to the machine and one stitch taken at a time, wherever the operator desires. The shoe is then pushed along and another stitch taken.

The tack pulling arrangement is such that, whenever the operator desires, he can put his foot on a treadle and pull one tack. It requires a treadle operation for every tack.

This is not a commercial machine and has not been used to any extent at the Plant factory, and we could not see it in operation. It was not claimed to be a finished machine, but in the experimental stage; and we would advise that the machine be developed further to find out whether or not it has any value.

Welt Slasher and Groover.

This machine grooves and bevels the welt and slashes it its entire length with the cuts about ¼" apart; also winds it on a reel in a condition to be placed in the welter.

We believe this to be a good machine, and would advise its adoption.

Probably a great many manufacturers would not think it advisable to slash the welt its entire length, but in this case the slashing knife could be removed.

Plant Welter.

This machine is similar to the Goodyear Welt and Turn Machine in regard to the stitch handling devices.

It differs from the old machine in a feeding welt guide and the addition of a back gauge which is necessitated by the feeding welt guide.

The machine, as far as quality of work goes, should do as good work as the old Goodyear Welt and Turn Machine, but we think it is inferior to either our Model G or Model K Welters.

The mechanisms of this machine are light, and not as well designed and constructed as the mechanisms of our two new welters; but there are several important additions to this machine which make it very valuable to the manufacturer, and, while we are of the opinion that the Plant Welter as it stands should not be adopted in place of our new welters, we believe that these important devices referred to should be incorporated in our latest machine.

The new devices are as follows: —

A Welt and Thread Holding and Cutting Device.

By this device the operator, after he has finished welting the shoe, pulls the shoe toward his left hand and presses the foot treadle, thereby cutting off the thread and welt, and holding the welt and thread in position to take the first stitch in the next shoe. This operation makes a considerable saving in time to the operator, and is much neater, owing to the fact that the operator does not handle the waxed thread. It also saves welting as the operator always starts with the same amount of welting through the welt guide. In our old type of machine the operator has a varying amount of welting through the welt guide and more than is necessary for the shoe in order to hold the end with the fingers while taking first stitch. Our later machines have a welt-holding device that obviates this difficulty, if the operator will use it.

The Welt Receptacle is another convenient device for holding the roll of welting so that it remains in temper while the operator is using it.

Another important device is the Stop Motion which stops the

machine in such a position that when the machine is reversed automatically, the loop of thread which is on the needle is released from the barb.

This is very important as in the methods now in use on all of our machines the operator stops and reverses the machine by hand in order to throw the loop from the barb on the needle.

This stop motion has the disadvantage that the machine is not capable of running at any speed but the maximum. While this appeared to be running very successfully at the Plant factory, we know that in a great many places it would be necessary to run the machine slower on some parts of the shoe than on others.

We find that considerable trouble was experienced with this stop motion when first put on the machine, owing to the breakage of various parts, but we find that now, at a speed of about 400 revolutions per minute, the machine is working very well, although the jar to the mechanisms of the machine must be quite severe, and we should think that the machine would need repairs in a comparatively short time, owing to the wear and tear on the parts caused by the stop motion.

We believe that we should have a stop motion on our latest machines, and we have several inventors now working on the problem, which appears to be no easy one.

Meantime, we are having the Plant stopping device applied to a Model G Welter to see what the results are.

This welter has one other feature which worked very well, but which we have no occasion to use. We refer to the wax pot which is of the old type, but has the addition of a stirring paddle to keep the wax in motion so that it will not boil over. With our modern types of wax pots this would be of no use, and we would not recommend its adoption.

The ball of thread on this machine is mounted on a reel so that the ball revolves when the thread is pulled off.

This is likely to jerk the ball ahead and tangle or kink the thread, and we consider the method of holding the ball stationary in a suitable holder on the machine or bench much better.

In conclusion, we would not advise adopting the Plant Welter,

but we would advise the adoption of the Plant Welt and Thread Holding and Cutting Device, the Welt Measurer and the Welt Receptacle, and apply them to our latest welters in such forms as will fit the design of our machines.

We do not advise using the stop motion as it is, but advise using a stop motion on our machine that will overcome the objections to the Plant device as stated above.

Welt Beater.

This machine is like several of the older types of welt beaters which have been discarded by us, and we think that our latest type of welt beater, which has the slashing attachment, is far superior to this machine; and we would advise that the Plant Welt Beater be discarded.

Turn Shoe Trimmer.

The head of this machine is exactly like the one now used by us, with the exception that it is provided with a belt shifter. The machine is mounted on a column, which has some advantage.

We would not advise its adoption as we are making an improved type to take the place of the one now in use.

Sole Layer.

This machine operates under the principle of a combination of direct pressure and rolling.

The work done on this machine is very satisfactory, but we do not think it is any better than the work done on our Improved Sole Layer, and the capacity of the machine is only about 50% of the capacity of our Improved Sole Layer.

On account of the cost of moulds to do the different styles of shoes, the wear and tear that would come on such a machine as this, and the liability of breaking lasts, we do not think such a machine would be as good commercially as the one we now use, and we do not think it would work as well on block stock as it does on soles which are died out to size.

We would not advise its adoption.

ROUGH ROUNDING SYSTEM.

At the Plant factory we find that the outer soles for their welt shoes are died out in the Sole Leather Room to the exact shape of the sole desired on the finished shoe, the sole being $\frac{1}{32}$" larger all-round than the size when the shoe is finished. After the welt has been sewed, the inseam trimmed, and the welt beaten out, the shoe is taken to the Welt Nicking Machine, which makes three cuts in the welt; one at the toe of the shoe, and two on the inside ball. These marks are made a certain distance from the edge of the last, indicating the distance required for the edge of the sole on the finished shoe. This machine has an adjusting dial to make the cuts different distances from the edge of the last, depending upon the amount of extension desired for any particular style. The operator adjusts this according to a chart which is furnished him.

The shoe now goes to the Sole Layer and the died-out sole is placed on the shoe, the edge of the sole at the toe and inside ball on a line with these cuts made in the welt. This is for placing the sole on the shoe in its proper position.

After the sole is laid, the shoe goes to the Welt Beater, so that the welt will be stuck to the sole all the way around. There is now some surplus welt extending beyond the died-out sole and the next operation is to trim off this surplus welt on a Forepart Trimmer, using the outer sole as a guide.

For correcting any errors there may be in the sole laying, or if there is any other reason that the sole does not show the proper shape when on the shoe, it is trimmed or shaped on a Forepart Trimmer until the desired shape is obtained.

The shoe then goes to the Outsole Channeling Machine, which cuts the channel in the outersole, using the outside edge of the sole as a guide.

The shoe is then taken to the Channel Opener and then to the Stitcher.

Under the Rough Rounding System (used in nearly all the factories) the stock is not died out to size in the Sole Leather Room,

but comes to the Sole Layer either as blocked stock or died-out soles larger than the sole will be when finished.

After the sole is laid, the shoe goes to the Rough Rounder & Channeler directly, the shape of the outer sole being determined by this operation by the operator using patterns or cams on the machine to obtain the desired shape.

The shoe is then ready to go to the Channel Opener, and from there to the stitcher.

The cost of doing the operations referred to above is as follows:

Nicking the welts	.12 per hundred pair.
Beating " "	.10 " " "
Trimming " "	.17 " " "
Shaping	1.15 " " "
Channeling	.30 " " "
Total	1.84

The average price for doing the same grade of work by Rough Rounding — which covers all the above operations — is .75 per hundred paire. This shows a saving (by the Rough Rounding System) of $1.09 per hundred pairs. To this should be added some saving in the sole laying, because an operator can lay more soles where the shoes are to be rough rounded afterwards than he can if the sole is the exact size before laying, as some care must be taken to lay this died-out sole accurately; also to this should be added something for dieing out or rounding out the outsole. It was impossible for us to find out just how much to add for these two operations, but, from the best information that we could obtain, it would surely bring the total cost of the labor $1.50 per hundred pairs more by the Plant process than by the Rough Rounding process.

At the Plant Factory, the claim is made that this additional labor cost is offset by the saving in leather. Theoretically, there would be some saving in the leather, as, undoubtedly, more soles could be died out of a certain number of feet of sole leather if they were died the finished size than could be obtained if they were died out large enough to allow the same to be trimmed off by the Rough

Rounding process; but if the manufacturer cuts his own soles from the sides he will have a lot of leather that he cannot use to advantage. This would quite likely bring the cost of the soles up to the price he would have to pay for blocked soles. On the other hand, if he buys blocked stock and is making a large quantity of shoes, it would be impossible for him to find, at all times, the right sizes. In other words, when he attempts to die his soles from the blocked stock there would be almost as much waste as there would be in using the Rough Rounding System. It would require constant supervision and inspection in the Sole Leather Room in order to save this leather when using the blocked stock.

While watching them die-out soles from the blocked stock we noticed, a great many times, as much waste of leather as there would be in rough rounding, and we do not believe that even at the Plant Factory — where the system and conditions are as perfect as at any factory that we know of — any substantial saving in leather is made; that is to say, not enough saving to off-set the increase in the labor cost. If it could be proved that there was a saving at the Plant Factory, we do not believe that there are many manufacturers that would establish a system good enough to find out whether or not there was an actual saving.

The system used at the Plant Factory was the only way that the manufacturer had to make the welted shoe before the Rough Rounding System came into use. There is no question but that a good shoe can be made by this process, and we noticed at the Plant factory very uniform shapes on the bottom. In fact, with a good man to shape the sole, it is impossible to make a shoe in a more perfect manner, but owing to the fact that men's shoes vary so much from one another — even the same size and style of last — the manufacturer found out long ago that it was necessary to make quite an allowance in dieing-out the sole so that the sole would be large enough for these differences in sizes of the shoes, and this extra leather that was necessary and the extra labor were incentives for the manufacturer to gladly change to the Rough Rounding System.

It requires an expert operator to make shoes by the Rough

Rounding System, but manufacturers are now obtaining good results when using the Rough Rounder, and we do not believe that many of them would be willing to go back to the method used before this system came into use, on account of the extra cost in labor, the additional space required in the factory and the additional handlings of the shoe.

The machines used in the Plant factory for this work show no advantages over the machines that were used before the Rough Rounding System was introduced, with the following exception:—

The machine referred to is the Welt Nicking Machine. We think this is a valuable machine when using the Plant process, and might be of some value when using the Rough Rounding process, which we will explain later.

His Channeling Machine is a well-designed machine for doing this work, but we could not see that it would do any better work than the old Arnold Channeler, which was always used before the Rough Rounder was introduced. It is a power machine, and if such a system were to be used for making shoes, we would recommend the use of this Channeler, as it is better than anything that we have.

The Welt Nicking Machine, referred to above, we think might be used to some advantage in connection with our Sole Layer, as even when using blocked stock, and the stock is small, the operator is undecided just how to place the sole on the shoe.

If the welt were nicked, there would be well-defined marks on the toe and one side of the shoe to guide the operator in laying the sole, and it would probably increase the production of our Sole Layer.

We would advise trying this machine in connection with our Improved Sole Layer.

The system, as a whole, to be used in place of the Rough-Rounder, we would not favor as we do not believe that there is enough difference in the quality of the work obtained to offset the additional cost when using the Plant system.

We do not advise using any of the machines which he uses for

this work with the exception of the Nicking Machine, which we advise trying with our system.

Plant Rough Rounder.

This machine is still in the experimental stage, and, while a few shoes have been rounded on it, it was not considered to be a commercial machine.

It was not used very much at the Plant factory owing to the fact that, under the system of shoemaking employed in that factory, they had no use for the Rough Rounder.

There was only one machine made and this has been sent to the Beverly factory. We are having it examined by inventors and designers of our type of Rough Rounder to see if there are any features in this machine we wish to incorporate in ours.

Outsole Wetter.

This machine is for wetting the bottoms of shoes before the channel flap is turned up. The design of the rest or shelf for the shoe is good, and the tank for keeping the water at a fixed height is an advantage. The machine performs the same work as that done on our Outsole Wetter, but is neater in design.

Our machine has the advantage that we use a brass shaft so that the water will not become discolored by rust, and the inside of the tank portion of the machine we cover with porcelain for the same purpose. We would advise the adoption of this machine, using our brass shaft and lining the inside with porcelain.

Channel Opener.

This machine is for opening the channels of the outersole, preparatory to stitching.

The machine is better designed than ours, and is provided with tight and loose pulleys and belt shifter.

We are making an improved machine with a tool spindle so arranged that we can use two different shaped tools on the same spindle.

This is an advantage on some kinds of work, but we do not think it will become universal.

We would advise using the Plant machine whenever the ordinary type of machine is needed, the same as we have supplied to the manufacturers so far.

The Plant machine can, of course, be fitted to use either our form of tools or the form used on the Plant machine.

Plant Stitcher.

The Plant Stitcher is identical with the Goodyear Rapid Stitcher in regard to its thread handling devices, with the following exception.

The oscillation of the shuttle is so timed that during the taking up of the thread there is no slack shuttle thread; but we do not consider this of any great advantage as we have not noticed that the Rapid Stitcher was defective in its thread handling on this account. We cannot see that it is harmful in any way. Our new stitcher is the same as the Plant machine in this respect, and while we were obliged to do this we have not found it harmful.

The fudge knife arrangement was somewhat different from the one on the Rapid Stitcher, having a feeding movement like the awl, so that the welt is cut while the awl is making its return feed.

In the Rapid Stitcher the fudge knife does not feed, the knife is held stationary and the shoe is fed against the knife.

Both of these methods work very well; they have both been used by us, and we are of the opinion that the feeding fudge knife which we now use on our new stitcher is a little better than the one in use on the old stitcher; so that in this respect we think the Plant Stitcher is better than the old stitcher; but is the same as the new stitcher.

This machine is equipped with the same stop motion as the welter, and all the good features and criticisms would apply to the device used on the stitcher as when used on the welter; and the experiments which we are performing with the stop motion would apply equally as well to the stitcher as to the welter.

The machine is also equipped with a support that rests on the bottom of the sole while the shoe is being operated upon so that the operator cannot tip the shoe more than a certain angle, fixed by

this stop. We do not think this would be of any use to an operator with much experience on the machine, but for teaching new operators we believe this might be of some assistance, and we would recommend that we try a device of this kind on the new stitcher.

There is also a Bobbin Winder attached to every stitcher. This is a well-known type, that has been used many times, whereby the operator places the bobbin upon the winder spindle, starts the thread on it, and gives it no further attention, the winder stopping automotically when the bobbin is full. By this system the operator has two bobbins only in the machine, one on the bobbin winder and one in the machine. When the bobbin in the machine is emptied he removes it, takes the full one from the winder, places it in the machine and places the empty one on the winder and leaves the winder in operation while he goes on with the stitching.

We believe this to be a good device in factories where there are a few machines; but in factories where there are more than six or eight machines, we believe that a separate bobbin winder used in common by all the machines, and quite often operated by a boy, will show some saving to the manufacturer.

We have adapted a bobbin winder to a Rapid Stitcher many times where only one or more machines were to be used, but believe the Plant design is better than any we have made and would advise that we adopt the Plant Bobbin Winder adapted to the new stitcher, to be put out whenever occasion requires.

The Plant Stitcher was not provided with any Baltimore Edge Attachment. This was probably not put on this machine on account of the patent situation, but it is very essential for a stitcher, and is universally used on all of our machines.

In conclusion, we would not advise the adoption of the Plant Stitcher as a whole, but would apply the sole support and bobbin winder to our new stitcher.

Channel Flap Layer.

This machine is for laying the channel flap after the shoe has been stitched.

The machine is supplied with a double roll, one running in the

reverse direction from the other, so that when the sole of the shoe is applied to the roll the flap on both edges of the shoe is turned down and outward. It also has a flange at the outer end of each roll to protect the edge.

This machine is superior to our single roll machine, and we would advise its adoption.

Plant Leveler.

This machine is for leveling the bottoms of welt shoes, and performs the same work as our Goodyear Automatic Leveling Machine.

This machine is a combination of two systems of leveling; that is, the direct or form principle and the rolling system.

The work done on this machine at the Plant factory is very satisfactory, but it seems to be almost impossible for us to form any opinion as to its value on men's work.

Of all the machines which we examined, this was the most difficult one to make a satisfactory decision on.

The only thing we can say is that we do not know whether this machine, or the principle upon which it is made, should be adopted, but we advise that several of them be tried on various kinds of work so that we can see the results before passing any opinion.

Heel Seat Nailer.

This machine is a copy of our Grip Clinch Machine with the following changes:

A back and forward adjustment on the awl bar.

A forward and back and sidewise adjustment on the driver bar.

A gear guard.

A shoe feeding device of different design, and a clutch mechanism for starting and stopping the machine.

The adjustment on the driving bar is an improvement but it will require considerable change in the construction of our machine if we adopt it. The other changes do not seem necessary.

The Metallic Department advise us that "it is our policy to try to influence a manufacturer, when ordering a Grip Clinch Machine, to substitute the Loose Nailer, but if he still insists we have always accepted the order. Our records show that our orders for this

machine are steadily decreasing. There is no work being done to-day on the Grip Clinch that could not be done on the Loose Nailer, and with just as satisfactory results, but some Lynn manufacturers have always nailed heel seats on the Grip Clinch Machine and feel that they must always do so.

One hundred and eighty Grip Clinch Machines out, domestic, up to September 1, 1910. Twenty machines shipped in 1909, and only seven so far, Oct., 1910.

Grip Clinch Machines used abroad are greatly changed and remodeled from our type and only used for heel building purposes."

We do not advise building the Plant Heel Seat Nailer and do not advise applying the changes to our machine on account of the expense of building over parts of same. Our Mr. F. D. Locke has submitted a very simple and inexpensive forward-and-back and sidewise adjustment for the driver bar, which was suggested by the Plant machine. It also contains a better means for holding the driver.

We advise adopting this and putting it on all machines as it does not change the construction of the machine. The only parts that are changed are a stud and the driver bar. The driver bar is continually wearing out.

LOOSE NAILER.

This machine is used for nailing heel seats and for other work where our New Loose Nailer is used. The head of the machine is similar to our New Loose Nailer.

The horn release has a final release to make room for putting on and taking the work off the horn. Speed of machine the same as ours, 350 revolutions per minute. The head is so constructed that a 7½–8 nail cannot be used. The horn release will not release every time to allow for the feeding of the work, and the mechanism is more complicated than our Loose Nailer #2 (Loose Nailer #2 is our latest type, double or single raceway machine).

We advise not to build it, in view of Loose Nailer #2.

HEEL SEAT DINKER.

This machine is used for cutting off the surplus stock around the heel seat of the outersole.

The knife in this machine consists of a thin blade which automatically closes about the shoe at the heel seat and a wooden block descending cuts off all the unnecessary leather around the heel seat.

The operator takes a shoe in each hand, thereby doing two shoes at once.

There are four cutters used, giving two sizes for the large and small sized shoes. We have a machine provided with only one cutter, which acts on precisely the same principle as this machine, with the exception that the shoe is held the other side up.

We did dot see this machine in operation, as they had no use for it with a died-out outersole. The knife which is in this machine is much shorter than ours and we should think would be inferior on this account, as the clamp holding the knife would be liable to damage the upper of the shoe. The machine also lacked a gauge to regulate the amount of leather to be left at the rear of the heel.

This machine is superior to ours in that it has four cutting dies where ours has but one and an operator could do two shoes in about the same time that he could do one on ours. A machine of this kind, or the one we have made, would not become universal for this purpose, as there are many shoes with such full lasts at the side of the heel that the machine is unable to cut the sole close enough. We found this to be so some time ago and are designing a different type of machine for this purpose, although it will not be as rapid as either the Plant machine or ours.

We think there is a field for a type like the Plant machine and would advise that we adopt it as the foundation and change the knife holder to overcome the objections as stated above. We would not advise adopting the Plant machine as it now is.

HEELING SYSTEM.

Plant is using the old McKay method of pricking and loading heels in one machine, then taking them to another machine to be

attached to the shoe. Woodward and other inventors have used the same system. We abandoned it for the following reasons:

The liability to damage heels by having the wrong pricking in the loaded heels, which makes it necessary to pull out all the nails and prick and set the nails over with a larger or smaller pricking; if the first pricking is too large, the heel shaver will run into the nail holes which spoils the heel. After the loaded heels have been laying awhile the nails become rusted and a large number of nails cripple when they are driven, spoiling the heels. The nails become bent by handling and bothers the operator of the heeler. Thousands of pairs of loaded heels of various sizes and heights have to be kept in stock, and if there are no heels of one size the heeler is obliged to wait for them to be loaded.

We do not advise using this system.

Toplift Compressor.

This machine has no mechanism for side pressure. The moulds slide sidewise to receive and eject the toplift and must be made in pairs, which makes it expensive to fit up. The lift-ejecting mechanism is not good. There is a spring to relieve the pressure when a predetermined amount has been reached. This would be good if it could be arranged to resist pressure enough to condense the leather. We have tried various devices designed for this purpose, but so far have not been able to make anything good enough to use.

We advise not to build the Plant Compressor.

Heel Loader.

This machine is complicated and liable to break down. We do not consider it a commercial machine, and do not advise building it.

It has a device for oiling the awls which is good, and a good nail loader for handling collar nails. We advise putting the oiling device on the new heeler and fitting up our Improved Rapid Nailer with the collar nail handling mechanism, in order to be in a position to give shoe manufacturers a machine fitted to handle collar nails.

Our McKay Heel Compressing and Loading Machine compresses

the heel and loads it with cut nails. This machine is not used to any extent. There are not half a dozen in use.

Heeling Machine.

The capacity of the Plant machine, with a man and a boy, is about 800 pairs per day off the last and 700 pairs on the wood last. It is complicated and poorly designed in parts, which makes it liable to excessive breakage. We do not consider it a commercial machine as it is, and do not advise building it. The following devices which are on it are good:

Guides for the sole to determine the swing of the shoe.

Right and left movement in the jack for placing the toplift.

Spring to move jack.

Lock on jack.

Gluing device for toplifts.

Gluing device for heel seats.

Split movable clamps for sides of shoe.

Spring finger to hold toplift in holder.

We advise putting all of the above on the new Heeler, and the gluing devices, the spring finger and the heel seat clamp on the Improved Rapid Nailer, unless it is decided to use them exclusively on the new Heeler to make it more of an object for the shoe manufacturers to use it.

Wire Grip Heel Slugger.

This machine is a copy of our Wire Grip Slugger (speed the same as ours) with the following changes:

A device for taking out the grippers when they get plugged with wire.

A steel wedge for adjusting the grippers in place of bits of paper that are used in our machine.

A mutilated screw for putting the gripper mechanism together.

An adjusting device for positioning the gripper mechanism in line with the foot plate.

A hinged foot plate.

A new form of driving spring and adjustment for same.

A new grinding device.

These are useful improvements. There is also a clutch mechanism for stopping the machine.

The Metallic Department advise us that "it has been our policy, for the past few years, not to accept orders for Grip Slugging Machines, always substituting Universals; in fact, the writer has only had occasion once to refuse such an order and this one proved to be an error on the part of the agent in so ordering. It is our intention to replace the Grip Slugging Machines in operation to-day with Universals when the conditions warrant such an exchange.

Sixty-nine Grip Slugging Machines out, domestic, up to September 1, 1910. Have not shipped any for three or four years.

We have not shipped any of these abroad for a number of years and those that are used in foreign countries are undoubtedly owned by the manufacturers, having been sold outright a number of years ago."

We advise not to build the Plant Wire Grip Heel Slugger, and not to fit up the machines that are now out with the improvements.

Sole Clincher.

This machine is used in place of our Corrugated Tacker.

Owing to its poor construction and the bad feature of being obliged to take the driver bar out of the machine when a new driver is inserted, we advise not to build it.

On it there is a guard that is used for three nail slugging which we advise adopting with modifications and apply it to our machines that are used for this work.

Heel Shaver.

The dust hood on this machine is large and in the way of the operator, especially on large shoes. It has no blower, which would exclude its use in factories without a blower system.

The cutter head is complicated and parts of it fill up with dust, which prevents setting the cutters.

It has a rubber-covered heel seat guard which we advise trying out on our machine.

We advise not to build the Plant Heel Shaver.

Heel Breaster.

This is a power machine which automatically measures the stroke of the breasting knife. It has the following features: —

The knife is guided on the sides the whole length of its movement.

The cutting is done by a spring.

The jack is locked in position before the knife descends.

The heel piece spreads to fill the heel of the shoe.

It has a blower attachment for taking care of the chips.

A preliminary pressure is applied to the heel before the cutting takes place.

It is complicated.

The knife has to be taken out of the machine before the nicks can be stoned out.

The spring-cutting mechanism is sensitive to adjust.

A constant friction is applied to the shaft to correct the action of the knife-actuating spring.

We advise not to build it.

We advise fitting our machine with the guide for the knife; the lock for the jack; the spreading heel piece; means for taking care of the chips, and the extra pressure on the heel.

Heel and Breast Knife Grinder.

This is an ordinary type of emery grinder, but mounted on a base of good design, with counter shaft and belt shifter.

We would advise the adoption of this machine fitted with holders to hold the various kinds of machine knives that are to be ground.

The small grinder, shown above, we have no use for, as the one on the column can be adapted to do the work this was designed for.

Heel Scourer.

This is a well-designed and effective machine when used with a blower system installed as in the Plant factory, but there are many factories where such a heel scourer could not be used, owing to the fact that it would not be allowable in many buildings to run the

dust pipe from the bottom of the machine through the floor to the main dust pipe below. Some of the Plant machines have been fitted with the dust pipe coming from the side of column. This type could be used where it was not allowable to go through floor. Also, many factories have no blower system at all, and heel scourers must be provided with an independent blower for each machine.

We make many widths and diameters of scouring wheels, so that if we used a machine like the Plant machine the dust hood which surrounds the wheel would have to be made adjustable, or new hoods made for the different sizes.

We like the design of the machine, but do not see how it would be possible for us to adopt this machine to take the place of any one of the several designs which we now use; and our latest heel scourer has the improvement of an auxiliary air-jet striking on the sandpaper, which is claimed to show a great saving in sandpaper.

A question arises with us whether we should make a universal heel scourer or more than one type. We are not prepared to pass an opinion on this; but, if it should finally be decided that it is advisable to make more than one type of heel scourer, undoubtedly the Plant machine would be an excellent machine to adopt in factories equipped with blower systems.

Some of the Plant machines were equipped with a device for finishing the corner of the breast of the heel consisting of a disk of sandpaper so mounted with a protecting guard that the operator did fine work without any damage to other parts of the shoe. We would advise the adoption of this device.

Top Lift Scalloper.

This machine is similar to ours, but not so effective in operation. It is used for scalloping or making a concave cut in the corner of the breast edge of the toplift, using a cone-shaped cutter. There is no means for adjusting the angle of the cut and no means for adjusting the guiding fingers vertically, both of which are important; these adjustments are on our machine.

There is a device on the Plant machine by which the heel plate and guiding fingers are moved toward the large diameter of the

cutter automatically by the opening of the guiding fingers as the heel is passed between them. This positions the breast edge of the toplift at the right place on the cutter to make the proper concave cut for each size of toplift. (This is adjusted by hand on our machine.)

The bad feature about the Plant automatic device is that the operator, in forcing the heel between the guiding fingers, presses in a direction at an angle to, and against the movement of, the guide plate which makes the machine harder to operate and slower than ours. This automatic feature is good if it could be made to work easy. The Plant machine is better designed than ours.

We advise putting our guiding devices on the Plant machine or the Model D Forepart Trimmer and redesign the Plant positioning devices, making the automatic feature more practical, for future use.

We do not advise building the Plant machine as it is.

Edge Trimmer.

This is a heavy machine and it runs with very little vibration. The belt is inclosed in the frame in such a way that it makes it unhandy for the operator to remove or put on cutters. The frame casting is in two pieces, which makes it more expensive to machine, and it is not as good in design as our Model D Trimmer. The belt shifter is connected with a damper in the blower pipe.

We advise connecting the belt shipper with a damper in the blower pipe on our machine. With it, the blower pipe is opened when the belt is put on the tight pulley. This should be applied to all machines that have blowers.

We advise building Plant's Grinder for Forepart Trimmers, making two types, a bench machine and one that can be attached to the Forepart Trimmer. This grinder is better than anything we have.

We advise not to build the Plant Edge Trimmer in view of our new Model D Trimmer.

Heel Burnisher.

This machine has a felt wheel soaked in hot wax for applying the wax to the heel. This wheel is surrounded with a steam-heated box, in the top of which is a small receptacle for keeping the wheel supplied with wax. This wheel turns slowly and stops when the heel comes in contact with it, and then turns with the heel as the heel is turned. A small box is provided to catch the surplus wax. A steam-heated box keeps the wheels that are not in use hot. It has a brush and pad and a blower. It is not as fast as the Xpedite. (The Xpedite will finish and bead seventy dozen pairs per day.)

The Plant machine is a pad and brush shaft with a hot pad for applying the wax to the heel. It does not burnish the same as the Xpedite hot iron and does not make as good a finish.

We advise not to build it.

We advise putting the blower and the steam-heated box, for keeping the irons hot, on the new Xpedite.

Heel Beader.

This is a well designed and a good separate heel beading machine. It has a flexible face plate for the tread face of the heel, which applies a uniform pressure to the rand crease of the heel. There is a strap which engages the heel and puts a uniform pressure on the heel in a direction at a right angle to its surface, which makes a good impression of the heel key. It has a brush for brushing the heel after beading.

The Heeling Department advise us as follows:

"Following is a list of the New Method Heel Seat Beaders, Model 'G' shipped during 1910, and also showing which factories are equipped with Xpedite Machines.

Sherwood Shoe Co.,	Rochester, N.Y.	339	2–11–10
" " "	Xpedite Mch.	#512	
Maetrich, Eyre & Co.	Brooklyn, N.Y.	312	6–3–10
French, Shriner & Urner,	So. Boston, Mass.	314	6–16–10
Kenmore Shoe Co.	Williamsport, Pa.	318	7–13–10
	Xpedite Mch.	#1507	

John Strootman Shoe Co.,	Buffalo, N.Y.	310	7–29–10
Xpedite Mch.		#229	
"	"	#647	
Endicott, Johnson & Co.,	Endicott, N.Y.	319	9–9–10
Xpedite Mch.		#623	
"	"	#866	
"	"	#1077	
Hillsdale Shoe Co.	Hillsdale, Mich.	318	10–20–10
Rindge, Kalmbach, Logie & Co.,	Grand Rapids,		Unfilled.

One hundred and fifty New Method Heel Seat Beaders out commercially to date, Nov. 10, 1910."

If the policy of the Company is to put out a separate beader, we advise building this machine in place of the New Method Heel Beader.

We advise putting it on the new Xpedite Heel Finisher if it can be done without too much complication.

Edge Setter.

We cannot see that this machine has any advantages over the machines which we now have. It is claimed that it is superior to others as the tool moves in a straight line instead of an arc of a circle, but we have machines working under both of these principles. The Plant machine has a device for moving the finger hook out of the way of a shoe whenever the operator desires. Our commercial machine does not have this device, but our latest model is provided with it.

We would not advise the adoption of this machine or any part of it.

Bottom Buffing Machine.

This machine is like our old type of buffer with small diameter buffing rolls, and, in addition, has two larger rolls for top-lifts.

The machines which we now make have a larger top roll than is used in the Plant machine, or our old type of machine, having the advantage that there is more paper on the roll, therefore lasting longer.

On our machine the top-lifts are done on the same roll that the bottoms are done on. This is claimed at the Plant factory to be a disadvantage as the grinding of the top pieces on the bottom roll

is supposed to leave the paper in a poor condition for doing bottoms, owing to the fact that the slugs tear and damage the paper.

We have put out from time to time various machines for doing top pieces alone, but the majority of manufacturers still do the top pieces on the bottom roll, and claim they do not get any injurious effect as the operator confines the operation on top pieces to the ends of the roll, while he does the bottoms on the middle of the roll.

There is no objection to having the additional roll for doing top pieces, except the additional complication to the machine.

The top piece roll, as located on the Plant Machine, appeared to us to be in an awkward position, it being necessary for the operator to stoop considerably while using it.

The Plant machine is not provided with any blower as it is directly connected with the blower system.

On our latest machines we oscillate our buffing roll, which the manufacturers think is a distinct advantage as it gives a smoother bottom.

We could not adopt the Plant Buffer as a universal machine as there is no provision for attaching a blower, which is necessary when the factory has no blower system.

The machine could, of course, be used just as it is in a good many factories, but with our universal machine with the oscillating roll we think we would be in a better position to meet all the requirements of the trade. Therefore we would not advise the adoption of the Plant machine.

Shoe Drier.

This is an excellent device to be used in connection with the bottom buffer, and we would advise its adoption, with the addition of shelves for the sandpaper.

Bottom Cleaner.

This machine does the same work as the Naumkeag Sole Cleaning Machine. It is a twin machine with upright spindles rotated in a manner similar to the spindles on the Naumkeag Machine.

One of the spindles had a flat disc of paper, instead of the

moulded pad, so that the operator could get close to the heel breast.

The pad consists of a saucer-shaped piece of rubber with inturned lip. A pad of sponge rubber is placed inside this rubber piece, and over the pad the emery cloth covering is secured. The emery cloth covering is moulded to the shape of the sponge rubber pad and is held in place by gripping its edge over the top of the pad.

So far as its principle of operation is concerned, this machine is the same as the Naumkeag Machine, except that the yielding effect is obtained in the latter by inflating the rubber pad with air, while in the Plant device the piece of sponge rubber gives the yielding effect.

So far as quality is concerned, the work appeared to be satisfactory at the Plant factory.

We are of the opinion that the pneumatic pad is more flexible and would conform to inequalities in the work better than any pad which we know, and give a better surface; so that, everything else being equal, we should be in favor of using the pneumatic pad.

The Naumkeag Machine is more costly to build and to keep in repair, owing to the pneumatic arrangement, and, with the small margin of emery paper necessary to hold it on the pad on the Plant machine, we can see there would be quite a saving in the cost of the emery cloth on the Plant machine.

The Naumkeag machine has the advantage of being equipped with a blower, which makes it a universal machine. The Plant machine has no blower, and, unless rebuilt to accommodate one, could be used only where a blower system is installed.

We were informed at the Plant factory that moulded pads for their machine cost about 2c each, and the flat discs about 85c per hundred.

We were also told that the cost for pads when using the Naumkeag system was 9c per hundred pairs of shoes, and when using their machine it was 2½c per hundred pairs.

On the Plant machine they used the flat disc for roughing-out the shank, and used the moulded pad for finishing the whole bottom.

By this method, when the shoe comes to this machine the forepart has already been buffed. The shoe is then presented to the flat disc and the grain taken off, from the heel to the ball, using for this purpose the flat disc, which costs 85c per hundred. The entire bottom is then finished with the moulded pad, which costs 2c apiece.

By this process, of course, there are not so many of the 2c pads used as those that cost 85c per hundred pieces; but we are unable to see, even by this process, how there is such a saving as stated above when using this machine, because by their figures their process costs $2\frac{1}{2}/9$, or $\frac{5}{18}$, as much as the Naumkeag process, and if they paid, as they said they did, 3c apiece for Naumkeag pads their paper would cost them only $\frac{5}{18}$ of 3c, which would amount to $83\frac{1}{3}$c per hundred pieces for their pads, and this is less than their flat disc paper cost; so that some of their figures must be incorrect, even if they did all their work on the 85c pad; but as they used with these some of the pads which cost 2c apiece the showing is still worse.

A great many of the manufacturers are using a flat disc, such as Plant used, on our bottom buffers, or on a machine of their own construction.

There are two prices for these discs — 45c and 60c per hundred.

With these they rough-out, and usually finish, the shank, although in some cases the shank is Naumkeaged after this operation.

If we should adopt the Plant machine we do not see how it would be as good, either for us or the manufacturers, as it would be to use discs on the buffing machine as stated above, as the flat disc on the Plant machine would give no better results than the flat disc as used on the buffer, and the sponge rubber pad on the Plant machine would not be as good as the Naumkeag pad; so that if the manufacturer is to use the flat disc it would be better to do it as it is now done, and furnish the Naumkeag machine whenever better work is desired than can be obtained with the flat disc.

When a manufacturer desires a fine class of work we should furnish him with a Naumkeag machine, but if he is satisfied with the work obtained from the discs, such as are used on the Plant ma-

chine, we have machines already equipped with them, and under these conditions are able to meet all the demands of the manufacturer, and would have no use for the Plant machine.

We would, therefore, not advise building this machine.

Finisher and Brush Cleaner.

This machine is superior in many ways to anything that we now furnish. Such a machine is much better mounted on a base like this one than mounting it on a wooden bench as has been the practice heretofore.

The device for washing the brushes is also good, and we would advise the adoption of this machine with changes in the size of the shaft to conform to our standard size brushes; and also the adoption of the clutch pulley, which we are now using on some other machines, in place of the tight and loose pulley.

Heel, Edge and Bottom Polisher.

This is superior to our bottom polishers mounted on a wooden bench, and we would advise its adoption, with the shaft made to conform to the size of the holes in the brushes which we have adopted as a standard. Also, we would adopt our clutch pulley in place of the tight and loose.

Shank and Forepart Burnisher.

This machine is superior to the machine which we now furnish mounted on a wooden bench, or the one on the stand as shown, and we would advise its adoption, with the size of shaft made to conform to the size of brushes now adopted by us; also, if feasible, to make it a little more convenient to remove the brushes from the shaft, and substitute clutch pulley for tight and loose.

Stitch Separator.

This machine is well adapted for doing heavy work and coarse stitching.

The principle upon which the indenting tool is moved to and from the work is superior to that used on our machine, and we think will produce better work than ours.

The correcting devices for locating the stitches are inferior to the method used on our machine. They are not as sensitive, and would not locate the stitches as accurately on fine work as those employed by us.

As they did not do any fine stitch separating at the Plant Factory, we did not have an opportunity to see this tried.

We are about to re-design our machine, and would advise, in re-designing, that the Plant machine be taken as a foundation.

We would not advise adopting the Plant machine as it is.

Stitch Indenter & Burnisher.

This machine is superior in every respect to the one now made by us. It will do better work and is smoother running. We would recommend its adoption with our standard tools in place of the ones now in use on the Plant machine.

Plant Treeing Machines and Plant Cleaning and Treeing Leg.

The Plant system of treeing shoes differs entirely in principle from the system in use in nearly all shoe factories. Under the Plant system the shoe is cleaned or treed on the last on which the shoe was made. Under the Miller system, which is almost universal, the original last is removed from the shoe and a tree foot inserted upon which the shoe is treed. This foot is so constructed that it is contracted while the shoe is being removed. We believe the Plant system, or treeing the shoe on the original last, to be entirely wrong in principle, as we think it is impossible to remove the last from a finished shoe without breaking or distorting the shoe.

Under the system of treeing the shoe on the last, there are, of necessity, several operations to be performed on the shoe, after it is treed, before it is ready to be packed. The heel lining must be put in, the lacing, or any other trimming about the shoe, must also be done, which means that the shoe is handled several times after it has been treed. This is objectionable, as the treeing process was performed to give a certain shape and finish to the shoe. It

has always been a desire of the manufacturer to handle the shoe as little as possible after treeing. Under the Miller system all these finishing operations are done after the original last is pulled and before the shoe is treed so that, when the shoe is finally treed, there is no work to be done but to rag up the edge and heel.

We also believe it is a much more costly equipment for the manufacturer, when treeing on the original last, owing to the fact that a great many more last are required where they are allowed to remain in the shoe during the treeing. As the tree feet are used over and over for the one operation, it would not require nearly so many tree feet as it would extra lasts. Although the tree feet cost $5.00 per pair and the lasts $1.00 per pair, we are of the opinion that it would cost four times as much for an equipment of lasts as it would for an equipment of tree feet.

In discussing the matter with the people at the Plant factory they all admitted that the shoe would look better if treed on a split foot than if treed on the original last; but the point made by them in favor of the original last was that the operator of the treeing machine would, for various reasons, put the wrong sized tree foot into the shoe, thereby changing the shape of the shoe from its original shape as made on the last.

Another objection was that lasts of the same size and style were not all alike, and that one tree foot would not fit them all.

These objections have some weight, but we believe that the manufacturer would rather strive to overcome these objections than try to retain the shape of the shoe by treeing it on the original last and then removing it.

It also requires more care and a higher price to remove the last from the finished shoe by the Plant process than to remove it by the Miller process.

We examined a great many shoes at the Plant factory, and are of the opinion that the shoes did not look so well after they were finished as they do when finished on the Miller machine. This is especially true of shoes made from light stock.

Assuming that a shoe can be treed properly by the last process, it costs more to do the work by the last process than by the Miller

process. This is because of the fact that, while the work on the shoe is the same in both cases, it is a slower process to put the shoe with the last into the Plant machine than it is to put the shoe on the tree in the Miller machine.

The system of treeing on the last has been tried many times, and outfits for doing this work have been furnished by the Brockton Last Company, Woodward & Wright, Clark Treeing Machine Company, and Fitz Brothers Last Company. All these attempts were failures because it was found impossible to remove a finished shoe from a last without changing or breaking the shape of the shoe. The outfit made by the Clark Treeing Machine Company was as good as, or better, mechanically, than the one used by Plant, but the shoe manufacturer was not in favor of the principle.

Treeing Machine.

The Treeing machine, as shown by the cut above, is used at the Plant factory for McKay work. It has a double jack, revolving in a vertical plane, so that the operator has a shoe on one jack while operating on another.

In regard to the method of treeing the shoe, we think it is much inferior to the Miller method. By the Plant method the shoe is placed over the tree foot, and a metal plate (the size of the bottom of the tree foot, which was held close to the bottom of the foot, while the shoe was put on) is moved bodily away from the bottom of the foot, thereby stretching the shoe away from the top of the last. This we believe to be entirely wrong, as it is impossible to get good lines around the shoe, where the upper meets the sole, because there is one line to iron the shoe to, made by the iron plate, and another line, caused by the edge of the last, which is away from the metal plate, more or less, according to the amount the shoe is stretched.

We do not see how it is possible to produce work by the Plant Treeing Machine that would compare at all favorably with work done on the Miller Machine for the reasons stated above. We are not in favor of adopting either the Plant Cleaning and Treeing

Leg, or the Plant Treeing Machine, and we do not see any features in either machine which we wish to adopt into our system.

The Miller Twin Machine has two jacks, but the Plant people claim that their machine will take less floor space. We do not think this point is well taken, because they must be placed far enough apart to allow the operators to work on the sides of the jack without interfering with one another, and the amount of space required has been found to be not less than that allowed in placing the Miller Machines.

We therefore believe that both of these machines should be discarded.

SHOE RACK.

We believe this shoe rack to be the most convenient and easiest one to handle of any rack we have ever seen.

This rack, as now constructed, is not, however, capable of being taken apart without considerable difficulty, so that it would be an inconvenient rack to ship about the country; but a rack designed like this so that it could be packed for shipment would be the best one ever placed upon the market. It would probably cost more than any other rack, but we think that a great many of them could be marketed, and we would advise making such a rack.

PLAINTIFFS' EXHIBIT 269.

[Put in Evidence, page 4264.]

MACHINES USED BY J. BROWN & SONS, SALEM, MASS.

Capacity of Factory 7500 Pair of Women's, Misses' and Children's McKay Sewed Shoes.

CUTTING ROOM.

(United) 1 Improved Geared Sole Cutting Machine — Model CC (For Linings)

Home made 2 Foot Power Pricking Machines (For Marking Lap for Vamping)

STITCHING ROOM.

Amazeen Pluma	7 Skiving Machines
Paine	2 Hand Lining Marking Machines
T. S. Hart Co	2 Hart Snipping Machines
	1 Hart Tip Punching Machine
Singer Co	2 Singer Zigzag Stitching Machines
Un Spec Co	15 Union Special 1-needle Stitching Machines
Old. Think Lufkin Co	4 Lufkin Folding Machines
Un Spec Co	9 Union Special 2-needle Staying Machines
T. S. Hart Co	6 Hart Perforating Machines
Singer Co	25 Singer 1-needle Stitching Machine
or W & W	3 Wheeler & Wilson 1-needle Stitching Machines
Un Spec Co	3 Union Special 4-needle Tip Stitching Machines
Tub Rivet Stud	6 Hooking Machines
W & W	1 Wheeler & Wilson 2-needle Staying Machine
Un Spec Co	1 Union Special 2-needle Staying Machine
Almon Mfg Co	2 Glove Fastening Machines
W & G Co	6 Wilcox & Gibbs Closing Machines
Singer Co	2 Singer Cylinder Barber Trimming Machines
	6 Singer Chop Trimming Machines
Un Spec Co	3 Union Special Closing Machines
Goodell	4 Seam Rubbing Irons
(United)	7 Eyeletting Machines
Singer Co	8 Singer Cylinder 2-needle Machines
	4 Singer 2-needle Stitching Machines
or W & W	1 Wheeler & Wilson Side Staying Machine
	1 Singer 1-needle Cylinder Vamping Machine
Reece Mch Co	8 Reece Buttonhole Machines
	2 Reece Buttonhole Finishing Machines

Singer Co	14 Singer Undertrimming Machines
Booth Mfg Co	4 Booth Cording Machines
Singer Co	20 2-needle Vamping Machines
Un Spec Co	5 Union Special 4-needle Cylinder Stitching Machines
Reece Mch Co	4 Reece Button Attaching Machines
Singer Co	1 Singer Single Needle Repairing Machine
(United)	2 Ensign Lacing Machines #45–780
	191

SOLE LEATHER ROOM.

Knox	1 Graves Foot Power Stripping Machine
(United–1)	7 Rd. Block Sole Cutting Machines
Seelye Mfg. Co.	1 4′ Seelye Sole Cutting Machine
(United–1)	2 Rolling Machines
(United–3)	4 Splitting Machines
(United–3)	4 Channeling Machines
Boylston or Boston Mch. Co.	1 Julian Sole Rounding Machine
G. W. Emerson & Co.	1 Emerson Insole Slashing Machine
(United–1)	2 Feather Edge & Shank Reducing Machines
(United)	1 Apex Tap & Rand Splitting Machine, #52
Boston Mch. Co.	2 Cementing Machines
Cochituate Oil Co.	1 8 Section Veneer Press
(United)	1 Sole Tacking Machine #855
(United–1)	3 Tap & Sole Rounding Machines
(United)	1 Apex Spring Heel Trimming Machine #1128
Bresnahan Mch. Co.	1 Bresnahan Single Moulding Machine
(United–1)	2 Twin Sole Moulding Machines
(United)	4 Apex Channel Opening Machines #553, 401, 596, 473
	39

LASTING ROOM.

(United) 3 Pulling-Over Machines	2876A,	2340A,	1971A
(United) 24 Hand Method Lasting Mchs.	2539,	5395,	1629
	2142,	2530,	4920
	2528,	1968,	3949
	3853,	5895,	4800
	408,	2529,	4210
	2515,	2526,	2527
	224,	547,	2021
	2015,	2512,	218
(United) 6 Rotary Pounding Machines	698,	1004,	1027
	443,	1396,	1225
(United) 8 Staple Tacking Machines	2215D,	1659,	1759
	1761D,	1777,	1679
	1678,	1671	
(United) 1 Grinding Machine #3008			

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MAKING ROOM.

(United -3)	13 McKay Sewing Machines — Model S
Puritan Mch. Co.	2 Puritan Fairstitch Machine
(United)	3 Loose Nailing Machines #60, 521, 1336
(United)	5 Atlas Leveling Machines #479, 73, 387, 388, 389
(United)	5 Mayo Heeling Machines #3577, 3657, 3210, 2656, 3103
(United)	5 Universal Slugging Machines #1959, 789, 411, 3028, 1417
(United)	1 Grip Slugging Machine
(United)	1 Heel Protector Driving Machine #111
(United)	4 McKay Heel Trimming Machines #2648, 2614, 130[illegible], 1036
(United)	1 Spring Heel Trimming Machine #186
(United)	4 Imperial Heel Breasting Machines #1424, 736, 1181, 877
G. W. Emerson & Co.	6 Emerson Heel Scouring Machines

(United)	1 Heel Breast Scouring Machine #805
(United–5)	15 Post Edge Trimming Machines
(United)	7 Edge Setting Machines — Model R, 440, 698, 1276, 1246, 1288, 1296, 1243
(United)	2 Welt Indenting & Burnishing Machines #1093, 1100
(United)	5 Goodyear Fudge Edge Machines #314, 288, 292, 236, 229
(United)	1 Xpedite Heel Burnishing Machine #1329
Goodell,	5 3′ Finishing Shafts
(United)	2 Knife Grinding Machines
	87

FINISHING ROOM.

G. W. Emerson & Co	11 Buffing Machines
Naumkeag Buf Co	5 Naumkeag Buffing Machine
Gorden	9 Finishing Shafts
Webster Mch Co	1 Webster Cleaning Machine
Stand Tying Mch Co	2 Standard Tying Machines
Ellison Mch Co	2 Ellison Stamping Machines
(United)	3 Stitch & Upper Cleaning Machines #130, 345, 19
(United)	1 Nurling Machine #348
	34

PACKING ROOM.

Locke Bros.	3 Locke Bros. Bow Making Machines
(United)	3 Tip Scouring Machines — Mod. G. #54, 86, 354
Tub Rivet Stud Co	5 Tubular Rivet Bow Attaching Machines
Heaton Pen Co	3 Heaton Peninsular Button Sewing Machines
O. A. Miller	2 Miller Vamp Creasing Machines #2
Gorden	2 Finishing Shafts
O. A. Miller	10 Miller Twin Tree Machines
	28

SUMMARY.

	United	Miscellaneous	
Cutting Room	1	2	
Stitching "	6	185	
Sole Lea. "	18	21	
Lasting "	42	0	
Making "	54	33	
Finishing "	4	30	
Packing "	3	25	
	128	296	= Grand Total 424

SUMMARY AFTER TRANSFERRING GENERAL DEPARTMENT MACHINES TO MISCELLANEOUS.

	United	Miscellaneous	
Cutting Room	0	3	
Stitching "	1	190	
Sole Leather Room	1	38	
Lasting "	41	1	
Making "	21	66	
Finishing "	0	34	
Packing "	0	28	
	64	360	= Grand Total 424

PLAINTIFF'S EXHIBIT 270.

[Put in Evidence, page 4294.]

LIST OF SIXTEEN GOODYEAR AUXILIARY MACHINES REFERRED TO IN EXHIBIT No. 230, FURNISHED IN ANSWER TO MR. FOWLER'S REQUEST.

Goodyear Universal Channeling Machine
Goodyear Lip Turning Machine
Goodyear Upper Stapling Machine
Goodyear Power Welt Grooving & Beveling Machine
Goodyear Universal Inseam Trimming Machine
Goodyear Welt Beating & Slashing Machine
Goodyear Improved Sole Laying Machine

Goodyear Universal Rounding & Channeling Machine
Goodyear Channel Opening Machine
Goodyear Upper Tack Pulling Machine
Goodyear Channel Laying Machine
Goodyear Heel Seat Rounding Machine
Goodyear Automatic Sole Leveling Machine
Goodyear Welt Indenting & Burnishing Machine
Goodyear Impression Stitch Burnishing Machine
Goodyear Jointing Machine

PLAINTIFF'S EXHIBIT 271.

[Put in Evidence, page 4298.]

LESSEES HOLDING MACHINES OF THE GOODYEAR, LASTING, HEELING, OR METALLIC DEPARTMENTS OF THE UNITED SHOE MACHINERY COMPANY ON JANUARY 1, 1905, ON INDEPENDENT, UNRESTRICTED LEASES. TOTAL 1085.

Alexandria Shoe Co.,	Alexandria, Va.
Alden & Co., C. H.,	No. Abington, Mass.
Argus, Joseph,	Buffalo, N. Y.
Andrews, Joseph,	Burlington, N. J.
Albert, J.,	Brooklyn, N. Y.
Aldrich, C. E. & E.,	Farmington, N. H.
American Shoe Mfg. Co.,	Allentown, Penn.
Allen, J. S.,	Brockton, Mass.
Amazeen & Co.,	Milwaukee, Wis.
Allentown Shoe Mfg. Co.,	Allentown, Pa.
Andrews & Co.,	Everett, Mass.
Ackerman, R.,	Milwaukee, Wis.
Aborn & Co., C. H.,	Lynn, Mass.
Ashe, Noyes & Small Co.,	Auburn, Me.
Aldrich, N. E.,	St. Louis, Mo.
Arnold, M. N.,	No. Abington, Mass.
Alter & McCaffrey Co., The	Cincinnati, O.
Adams & Curtis Shoe Co.,	Batesville, Ind.
App Bros.,	Fort Wayne, Ind.
Atlanta Leather Co.,	Atlanta, Ga.

Altschul, Julius,	Brooklyn, N. Y.
Albright & Co., H. S.	Landinville, Pa.
Allen Shoe Co., J. H.,	Camden, N. J.
Allen & Co.,	Philadelphia, Pa.
Adams Shoe Co.,	Adamsdale, Pa.
Austin, Frank E.,	Newton, N. H.
Aaronson, B.,	Mt. Holly, N. J.
Armstrong & Co., D.,	Rochester, N. Y.
Abbott & West,	Haverhill, N. Y.
Alden, Walker & Wilde,	No. Weymouth, Mass.
Abrahams Shoe Mfg. Co.,	Brooklyn, N. Y.
Annar Shoe Co.,	Philadelphia, Pa.
Bay Shoe Company,	Harrisburg, Pa.
Bell, W. H.	Pleasantville, N. Y.
Barnard, Geo. & Co., Inc.	Brooklyn, N. Y.
Bartlett, Albion	Lynn, Mass.
Buhrendorf, J. C.	New York, N. Y.
Buek & Ebers,	Philadelphia, Pa.
Benedict & Co.,	New Canaan, Ct.
Boston Shoe Rep'g. Co.,	Boston, Mass.
Batchelder, C. I.	Beverly, Mass.
Bastian Shoe Mfg. Co.,	Burlington, N. J.
Ball & Son, A.	Syracuse, N. Y.
Bartels & Thelen Co.,	Chelsea, Mass.
Brackett, W. D. & Co.,	Nashua, N. H.
Barker, Brown & Co.,	Huntington, Ind.
Brigham, F., & Gregory Co.,	Hudson, Mass.
Brett, C. M. Co.,	Hudson, Mass.
Brown, H. H. & Co.,	Brookfield, No., Mass.
Brockton Rand Co.,	Brockton, Mass.
Buck, E. A. & Co.,	Bangor, Me.
Blum Shoe Co.,	Dansville, N. Y.
Burditt & Son, John	Rockland, Mass.
Brandau, Adam	Detroit, Mich.
Belmont Shoe Co.,	Barnesville, O.
Baumgarrtel, Emil	Buffalo, N. Y.

Bedford Shoe Co.,	Carlisle, Pa.
Barton Shoe Co.,	Newburyport, Mass.
Brown, Geo. E.	Boston, Mass.
Burt & Co., Inc., E. W.	Lynn, Mass.
Blyn, Isaac	New York, N. Y.
Bowker S. Mfg. Co., R. W.	Mt. Holly, N. J.
Brennan & White,	Brooklyn, N. Y.
Bell, Geo. W.	Pleasantville, N. Y.
Baldwin Mfg. Co.,	Milford, Ct.
Bennett & Taylor,	Lynn, Mass.
Belt, Chas. W.	Baltimore, Md.
Birdsboro Shoe Mfg. Co.,	Birdsboro, Pa.
Bragdon & Son, O.	Portsmouth, N. H.
Banks & Co., H. P.	Baltimore, Md.
Bertino, Ernest	Brockton, Mass.
Boyds Sons, James	New York, N. Y.
Ballau Co., F. E.	Providence, R. I,
Brophy Bros. Shoe Co.,	Lynn, Mass.
Barry Co., T. D.	Brockton, Mass.
Bernhard & Nelson,	Brooklyn, N. Y.
Brockton Co-op. B. & S. Co.,	Campello, Mass.
Bohr & Sons, N. C.	Waterville, N. Y.
Barker & Lord,	Lynn, Mass.
Barry & Co., J. M.	Farmington, N. H.
Brown Shoe Co.,	St. Louis, Mo.
Buckley Shoe Co.,	Houston, Texas.
Basso, Jos.	New Orleans, La.
Barton Brothers,	Kansas City, Mo.
Boulter, Louis	St. Louis, Mo.
Bering Shoe Company,	Cincinnati, Ohio.
Backhaus & Son, C. A.	New Orleans, La.
Boasberg, E.	Minneapolis, Minn.
Beals & Torrey Shoe Co.,	Watertown, Wis.
Borst, C. N.	Akron, Ohio.
Boston Shoe Rep'g. Co.	Kansas City, Mo.
Byers & Co., W. R.	Columbus, O.

Brandt Shoe Co., J. G.	St. Louis, Mo.
Bruns Shoe Mfg. Co., J. B.	Jefferson City, Mo.
Berry & Co., A. H.	Portland, Me.
Belonga Co., Geo. W.	Lynn, Mass.
Burt Co., E. C.	Brooklyn, N. Y.
Barke & Co.,	Philadelphia, Pa.
Burrows, Jno. A.	Lynn, Mass.
Blair & Kehrer,	Pawtucket, R. I.
Bartlett, J. E.	Lynn, Mass.
Balton Shoe Co.,	Rochester, N. Y.
Buchell Shoe Co.,	New Bedford, Mass.
Blyn, S.	New York, N. Y.
Brewer, Parker & Co.,	Lynn, Mass.
Brennan B. & S. Co.,	Natick, Mass.
Boyd & Corey B. & S. Mfg. Co.,	Marlboro, Mass.
Bridges Brothers,	Marblehead, Mass.
Blethen, Arthur A.	Lynn, Mass.
Bridges & Carroll,	Marblehead, Mass.
Breed Shoe Co.,	Rochester, N. H.
Budd Shoe Company, J. F.	Burlington, N. J.
Breed F. W.,	Marblehead, Mass.
Bay State Shoe & Lea. Co.,	Sing Sing, N. Y.
Burt & Co., Geo. H.	E. Brookfield & Avon, Mass.
Bacon & Co., J. E.	Spencer, Mass.
Bell Shoe Co.,	Chelsea, Vt.
Burlington Co. Shoe Co.,	Mt. Holly, N. J.
Brown & Co., A. E.	Orwigsburg, Pa.
Barrows, A.	Campello. Mass.
Brigham, H. E.	Westboro, Mass.
Bonin & Leonard,	Haverhill, Mass.
Bullard & Co., D.	Spencer, Mass.
Burley, Stevens & Co.,	Newburyport, Mass.
Baltimore B. & S. Co.,	Baltimore, Md.
Banister & Co., Jas. A.	Newark, N. J.
Buckingham & Hecht,	San Francisco, Cal.
Bielefield & Spahn,	New York, N. Y.

Byers S. Co., W. R.	Columbus, O.
Brown & Sons, J.	Salem, Mass.
Black, Chas.	New York, N. Y.
Bluff City Shoe Co.	Hannibal, Mo.
Bass & Co., Geo. W.	Milton, Maine.
Blake & Co., Chas. E.	Lynn, Mass.
Bradley & Metcalf Co.,	Milwaukee, Wis.
Butcher, William	Camden, N. J.
Bray, Stanley & Webber,	Beverly, Mass.
Brigham & Co., J. W.	Worcester, Mass.
Brigham's Sons, Geo. B.	Westboro, Mass.
Boyden Shoe Co.	Newark, N. J.
Baker & Co., J. H.	Beverly, Mass.
Bertsch, Jos., Shoe Co.,	Rochester, N. Y.
Badger State Shoe Co.,	Milwaukee, Wis.
Bates Co., A. J.	Webster, Mass.
Baker, Geo. & Son,	Brooklyn, N. Y.
Chick Brothers,	Haverhill, Mass.
Cerat & Bonin,	Haverhill, Mass.
Cobb, Charles H.,	Lynn, Mass.
Clark, W. J.,	Marblehead, Mass.
Century Shoe Mfg. Co.,	Macungie, Pa.
Cogan & Son, P.,	Stoneham, Mass.
Craddock-Terry Co.,	Lynchburg, Va.
Claus, George,	Pittsburg, Pa.
Cass & Daley,	Salem, Mass.
Connolly Co., J. J.,	Salem, Mass.
Clapp & Tapley,	Danvers, Mass.
Cushman Co., Ara,	Auburn, Me.
Chipman & Pratt,	Marblehead, Mass.
Chase, Chamberlain & Co.,	Raymond, N. H.
Crafts, G. P.,	Manchester, N. H.
Coggswell Shoe Co.,	Haverhill, Mass.
Cox Co., Edw. M.,	North Easton, Mass.
Crafts-Harrington & Co.,	Brockton, Mass.
Corcoran & Son, Thos.,	Lynn, Mass.

Columbia Counter Co.,	South Boston, Mass.
Cloutman & Co., J. F.,	Farmington, N. H.
Carruthers-Jones Shoe Co.,	St. Louis, Mo.
Crescent City Shoe Co.,	Evansville, Ind.
Cincinnati Heel Co.,	Batavia, Ohio.
C & E Shoe Co.,	Columbus, O.
Cone & Co., R. W.,	Bridgewater, Mass.
Comfort Shoe Co.,	Albany, N. Y.
Cook & Co., J. A.,	Lynn, Mass.
Cross, John H.,	Lynn, Mass.
Crossett, Inc., L. A.,	North Abington, Mass.
Clark, F. D.,	Newburyport, Mass.
Creighton & Son, G. A.,	Lynn, Mass.
Cramer Shoe Co., W. F.,	Catawissa, Pa.
Casavant, O. H. & C. J. White,	Boston, Mass.
Cushman & Hebert,	Lynn, Mass.
Chase-Merritt Co.,	Boston, Mass.
Churchill & Alden Co.,	Campello, Mass.
Cramer & Son, John,	Brooklyn, N. Y.
Colmary, A. H. & Co.,	Baltimore, Md.
Cohen & Frank,	Brooklyn, N. Y.
Cambridge Shoe Repair Co.,	Cambridge, Mass.
Cox, A. F. & Son,	Portland, Maine.
Clayman, J. W.,	Lancaster, Pa.
Cummings Co., The,	Worcester, Mass.
Copeland, Ellis F.,	Brockton, Mass.
Clarke Co., F. S.,	Lynn, Mass.
Coburn-Lewis Shoe Co.,	Boston, Mass.
Collins, L. W.,	E. Kingston, N. H.
Condon Bros. & Co.,	Brockton, Mass.
Casperson, Edward,	Camden, N. J.
Cushman & Cushman,	Lynn, Mass.
Carroll Shoe Co., Jno. A.,	Baltimore, Md.
Coburn, Gauss & Co.,	Wolfboro, N. H.
Cygolf Shoe Co.,	Brockton, Mass.
Cahill-Holters Co.,	Cincinnati, Ohio.

Courtney Shoe Co.,	St. Louis, Mo.
Carsey & Co., John M.,	Greenville, Texas.
C. H. Shoe Mfg. Co.,	Chicago, Ill.
Cole-Davis Co.,	Chicago, Ill.
Canton S. Mfg. & Rep. Co.,	Canton, Ohio.
Columbus New Method S. Rep. Co.,	Columbus, Ohio.
Carhart Shoe Mfg. Co.,	Atlanta, Ga.
Capital City S. Mfg. Co.,	Denver, Col.
Conrad Shoe Co.,	Louisville, Ky.
Clapp & Son, Edwin,	E. Weymouth, Mass.
Cousins, J. & T.,	Brooklyn, N. Y.
Cushman-Hollis Co.,	Auburn, Me.
Cort, Charles,	Newark, N. J.
Clement & Ball S. Mfg. Co.,	Baltimore, Md.
Commonwealth Shoe & Lea. Co.,	Gardiner & Skowhegan, Me. Whitman, Mass.
Case Shoe Co., Chas.,	Worcester, Mass.
Curtis, Jones & Co.,	Reading, Pa.
Cort, Thomas,	Newark, N. J.
Chadwick, J. H. P.,	Marblehead, Mass.
Collins, C. M.,	Danville, N. H.
Croxton, Wood & Co.,	Philadelphia, Pa.
Caunt, Morris S. Co.,	Lynn, Mass.
City of Boston,	Rainsford Island.
Chan, Nickelsburg & Co.,	San Francisco, Cal.
Canedy-Clarke S. Co.,	North Adams, Mass.
Carter Shoe Co., J. W.,	Beverly, Mass.
Chaplin & Co., Geo. W.,	Georgetown, Mass.
Copeland & Ryder Co.,	Jefferson, Wis.
Carter Co., J. W.,	Nashville, Tenn.
Columbia Shoe Co.,	Sheboygan, Wis.
Carlisle Shoe Co.,	Carlisle, Pa.
Cogswell, James,	Lynn, Mass.
Chesley & Rugg,	Haverhill, Mass.
Chase & Sons, W. S.,	Haverhill, Mass.
Caunt & Co., Joseph,	Lynn, Mass.

California Shoe Co.,	Petaluma, Cal.
Corbin & Son, B. A.,	Webster, Mass.
Capen Shoe Co.,	Oregon City, Ore.
Cummings Co., D.,	South Berwick, Me.
Cropley & Bro., J. M.,	Reading, Mass.
Cushman, John A.,	Weymouth, Mass.
Claflin & Thayer,	Milford, Mass.
Chambersburg Shoe Co.,	Chambersburg, Pa.
Dickenson, E. M.	Fitchburg, Mass.
DeWolfe & Hassell	Conway, Mass.
Day, R. B.	Haverhill, Mass.
Desnoyers Shoe Co.,	St. Louis, Mo.
Davis Boot & Shoe Co.,	Richmond, Va.
Dowd, Edward	Natick, Mass.
Donovan, James	Littleton, N. H.
Dolgeville Felt Shoe Co.,	Dolgeville, N. Y.
Duluth Shoe Co.,	Duluth, Minn.
Daum, Geo. M., Shoe Co.,	Ripley, Ohio.
Driscoll, C. J.	Milford, Mass.
Dean, E. N.	Worcester, Mass.
Donovan & Co., James	Everett, Mass.
Driesbach, Wm.	Philadelphia, Pa.
Dichert, N. H.	New Oxford, Pa.
Dugan & Hudson Co.,	Rochester, N. Y.
Dore & Co., Benj.	Lynn, Mass.
Donovan & Co., D. A.	Lynn, Mass.
Dix, Robert Shoe Mfg. Co.,	Brooklyn, N. Y.
Dunn & McCarthy,	Auburn, N. Y.
Dickerson & Horn	Burlington, N. J.
Dengler, J. B.	Pottsville, Pa.
Dalton Shoe Mfg. Co.	Dalton, Mass.
Dyer, A. L.	Manchester, N. H.
Dayton & Co.,	Williamsport, Pa.
Dodge Brothers,	Newburyport, Mass.
Dodge & Bliss Co., N. D.	Newburyport, Mass.
Divac, Sharp & Co.,	Philadelphia, Pa.

Dreyer & Co., J. H.	Baltimore, Md.
Dearborn Brothers,	E. Candia, N. H.
Dalmasse, E.	Brooklyn, N. Y.
Durland-Thompson Shoe Co.	Honesdale, Pa.
Drew & Co., W. E.	Richmond, Va.
Douglas Shoe Co., W. L.	Brockton, Mass.
Davis Co., H. E.	Freeport, Me.
Doven Muehle, H. F. & Son Co.,	Holland, Mich.
Dolge Shoe Mfg. Co., Alfred	Los Angeles, Cal.
Dausch, G.	New York, N. Y.
Dean & Co., Chas. H.	Cochituate, Mass.
Daniels, L. S.	West Medway, Mass.
Donovan, James	Boston, Mass.
Dickinson, Jos.	Lynn, Mass.
Dietz, F. W.	New York City
Drury, D. A.	Spencer, Mass.
Dyer, Edward E.	No. Weymouth, Mass.
Deming & Wiggin	Lynn, Mass.
Drew-Selby Co.,	Portsmouth, Ohio
Duttenhofer Sons Co., Val.	Cincinnati, Ohio
Drew Co., Irving,	Portsmouth, O.
Dittman Boot & Shoe Co., Geo.,	St. Louis, Mo.
Durgin & Son, J. H.	Haverhill, Mass.
Donovan, Jas. P.	Brockton, Mass.
Diggs-Vanneman Shoe Mfg. Co.,	Baltimore, Md.
Dixon-Bartlett Co.,	Baltimore, Md.
Dorsch & Sons S. Mfg. Co., Wm.,	Newark, N. J.
Delaware River S. Mfg. Co.,	Beverley, N. J.
Dingley-Foss Shoe Co.,	Auburn, Me.
Doyle, T. S.,	New York, N. Y.
Dizer, M. C. & Co.,	E. Weymouth, Mass.
Eckhardt & Donovan Shoe Co.,	Lynn, Mass.
Emmert, W. H.	New Oxford, Pa.
Ennis, John,	Brooklyn, N. Y.
Engel-Cone Shoe Co.,	Lynn, Mass.
Ellsworth Shoe Co.,	Ellsworth, Me.

Emerson, W. A. & Son,	Hampstead, N. H.
Eureka Shoe Co.,	Manchester, N. H.
Elkin Shoe Co.,	Elkin, N. C.
Essex County Shoe Co.,	Salem, Mass.
East Chattanooga B. & S. Co.,	Chattanooga, Tenn.
Excelsior Shoe & Slipper Co.,	Cedarburg, Wis.
Exeter Boot & Shoe Co.,	Exeter, N. H.
Eaton, C. A. Co.,	Brockton, Mass.
Ebberts, John, Shoe Co.,	Buffalo, N. Y.
Easton Boot & Shoe Co.,	Easton, Pa.
Estabrook-Anderson Shoe Co.,	Nashua, N. H.
Eady Shoe Co.,	Otsego, Mich.
Excelsior Shoe Co.,	Portsmouth, O.
Ellett-Kendall Shoe Co.,	Kansas City, Mo.
Eureka Rap. Shoe Rep. Co.,	Springfield, O.
Evans Shoe Co.,	Napa, Cal.
Enterprise Shoe Mfg. Co.,	Brooklyn, N. Y.
Eisenhuth & Co., T. H.	Selins Grove, Pa.
Eagle Shoe Co., Inc.,	Newport News, Va.
Eastwood Co., Wm. & Son,	Rochester, N. Y.
Edwards & Co., Jas.,	Camden, N. J.
Ellis Co., C. A.	Newburyport, Mass.
Enemark, H. J. P.	Portland, Me.
Elkins & Co., M.,	Philadelphia, Pa.
Electric Shoe Rep. Co.,	McKeesport, Pa.
Endicott, Johnson & Co.,	Endicott, N. Y.
Eby Shoe Co.,	Lititz, Pa.
Emery & Marshall,	Haverhill, Mass.
Evans, L. B. & Son,	Wakefield, Mass.
Emery, Chas. P.,	Haverhill, Mass.
Foster, A. J.	Haverhill, Mass.
Fairfield Shoe Co.,	Lancaster, Ohio.
Felter Bros. Co.,	Newark, N. J.
Ferris, Isaac, Jr. Co.,	Camden, N. J.
Frye, John A., S. Co.,	Marlboro, Mass.
Felch, W. L., & Co.,	Natick, Mass.

Freeport S. Mfg. Co.,	Freeport, Ill.
Frink, A. S., & Co.,	Elkhart, Ind.
Force, George	Camden, N. J.
Force, Chas. P.	St. Mary's, Pa.
Finn, Austin	Philadelphia, Pa.
Forbush S. Mfg. Co.,	Buffalo, N. Y.
Faunce & Spinney,	Lynn, Mass.
Foss, Packard & Co.,	Auburn, Me.
Ford & Co., C. P.	Rochester, N. Y.
Fayter, Henry	Philadelphia, Pa.
Fox, David	Wilmington, Del.
Force, R. B.	Burlington, N. J.
Fuhrer, Henry	Baltimore, Md.
Field Co., Fred F.	Brockton, Mass.
Fisher, A. D.	Lynn, Mass.
Fatzinger, Chas. E.	Philadelphia, Pa.
Felter & Co.,	Newark, N. J.
French, Shriner & Urner,	Rockland, Mass.
Field Shoe Co., P. A.	Salem, Mass.
Forbush Shoe Co.,	Grafton, Mass.
Fox, Chas. K.	Haverhill, Mass.
Fitzpatrick Shoe Co.,	Stoughton, Mass.
Furber, Dudley L.	Dover, N. H.
Floren & Pehl,	Lowell, Mass.
Foster, C. H.	New York
Fuller & Co., C. S.	Salem, Mass.
Field, D. W.	Brockton, Mass.
Fosters Sons, W. C.	Rowley, Mass.
Finch Shoe Co.,	Springfield, Ohio.
Friedman Bros. S. Co.,	St. Louis, Mo.
Farmington Shoe Co.,	Farmington, N. H.
Frankfort S. Mfg. Co.,	Frankfort, Ky.
Foster & Co., John	Beloit, Wis.
Foot, Schulze & Co.,	St. Paul, Minn.
Florsheim & Co., Inc.,	Chicago, Ill.
Freiburg B. & S. Mfg. Co.,	Quincy, Ill.

Fargo & Phelps,	Chicago, Ill.
Fiebrick-Fox-Hilker S. Co.,	Racine, Wis.
Famous Shoe Rep. Co., The	Detroit, Mich.
Fyfe & Co., R. N.	Detroit, Mich.
Field & Co., Marshall	Chicago, Ill.
Factory Shoe Store	Los Angeles, Cal.
Foster & Sons, J. D.	Avon, Mass.
Field Bros. & Gross Co.,	Auburn, Me.
Finegan Shoe Co., Jas.	Philadelphia, Pa.
Golden Sporting Goods Co.,	Brockton, Mass.
George Bros.,	Fitchburg, Mass.
Gibbon, C. S.	Philadelphia, Pa.
Grover & Co., R. B.	Campello, Mass.
Green & Co., C. E.	Manchester, N. H.
Guthrie, T. H.	Newark, N. J.
Gregory-Strootman Shoe Co.,	Franklinville, N. Y.
Grossman, J.	New York, N. Y.
Gibbs Shoe Co., O. A.	Dover, N. H.
Griffin-White Shoe Co.,	Brooklyn, N. Y.
Garden City Shoe Co.,	Beverly, Mass.
Gokey, Geo. F.	Jamestown, N. Y.
Godman & Co., H. C.	Columbus, O.
Getz Shoe Mfg. Co., A.	Lancaster, O.
Gale Shoe Mfg. Co.,	Portsmouth, N. H.
Gale Shoe Mfg. Co.,	Haverhill, Mass.
Georgetown Boot & Shoe Co.,	Georgetown, Mass.
Glover & Co., Daniel	Salem, Mass.
Guthman, Carpenter & Telling,	Holland, Mich.
Goodbar Shoe Co.	St. Louis, Mo.
Gale Bros., Inc.	Exeter, N. H.
Griffin & Cogswell,	Manchester, N. H.
Goodrich & Co., H. B.	Haverhill, Mass.
Gorman, N. F.	Haverhill, Mass.
Green & Co., Daniel	Dolgeville, N. Y.
Genesee Shoe Co.,	Rochester, N. Y.
Garber, G. H.	Schuylkill Haven, Pa.

Gotzien & Co., C.	St. Paul, Minn.
Godon, H.	Chickasha, Indian Ter.
Green-Wheeler Shoe Co.	Fort Dodge, Ia.
Giesecke Boot & Shoe Mfg. Co.,	Jefferson City, Wis.
Green Bay Shoe Repairing Co.,	Green Bay, Wis.
Gopher Shoe Repair Wks.,	Duluth, Minn.
Garber, Michael	Mt. Vernon, Ohio.
Greeley, A. W.	Haverhill, Mass.
Goodyear Shoe Repair Co.,	Worcester, Mass.
Gokey Shoe Co., N. W.	Jamestown, N. Y.
Garside & Son, A.	New York City
Gray's Sons, H. H.	Syracuse, N. Y.
Gibbs, C. B.	Mt. Holly, N. J.
Griffith Bros. & Co.,	Braddock, Pa.
Hagerty, P., Shoe Co.	Wash. C. H., O.
Herold, Bertsch Shoe Co.	Grand Rapids, Mich.
Hogan, McMorrow & Tieke Co.,	Aurora, Ind.
Hercules B. & S. Co.,	Berkeley, Cal.
Harrisburg Shoe Mfg. Co.	Harrisburg, Pa.
Hine & Lynch,	Poughkeepsie, N. Y.
Hoag & Walden,	Lynn, Mass.
Hilliard & Tabor,	Haverhill, Mass.
Hodgdon, F. M.	Haverhill, Mass.
Hoyt, F. M. Shoe Co.,	Manchester, N. H.
Hagel Bros.,	Philadelphia, Pa.
Hussey & Hodgdon,	Haverhill, Mass.
Howard, C. A.	Boston, Mass.
Hagerty & Sullivan,	Randolph, Mass.
Howe & Stocker,	Lynn, Mass.
Haverhill Shoe Rep. Co.	Haverhill, Mass.
Hopkins, J. T.,	Salem, Mass.
Hennessey & Thompson,	Lynn, Mass.
Hodgdon Mfg. Co.,	Yarmouth, Me.
Howe, S. H., Shoe Co.	Marlboro, Mass.
Hall, Loring B. Co.,	Marlboro, Mass.
Houghton, Hebard & Warren,	Somersworth, N. H.

Hurd, J. H. & Son,	Dover, N. H.
Hibbard & Perkins Shoe Co.,	Burlington, Vt.
Halifax Shoe Co.,	Halifax, Pa.
Honest Shoe M. Co.,	Allentown, Pa.
Holmes, E. A. & F. A.	Eastport, Me.
Hartman, H.,	Haverhill, Mass.
Hirth, Krause & Co.,	Rockford, Mich.
Herrick, G. W. Shoe Co.	Lynn, Mass.
Honesdale Shoe Co.	Honesdale, Pa.
Hammonton Shoe Co.,	Hammonton, N. J.
Holt, Jacob F.	E. Candia, N. H.
Hathaway, Soule & Harrington M. Co.	New Bedford, Mass.
Hanan & Son,	Brooklyn, N. Y.
Heywood B. & S. Co.,	Worcester, Mass.
Hess & Bro., N.	Baltimore, Md.
Hess, Joseph,	Wilmington, Del.
Henne & Co., Wm.	New York, N. Y.
Harding, Sons & Co.	Ogdensburg, N. Y.
Howard & Foster,	Brockton, Mass.
Humphrey & Paine,	Marblehead, Mass.
Hammond, M. A.	Pleasantville, N. Y.
Hoyt & Rowe Co.,	Lynn, Mass.
Hallahan & Sons,	Philadelphia, Pa.
Hurley Shoe Co.,	Rockland, Mass.
Howard, Briggs & Pray Co.,	Auburn, Me.
Hoyt, Frank,	Lowell, Mass.
Huckins, Temple & Wood,	Milford, Mass.
Herman, J. M. & Co.,	Millis, Mass.
Harney Bros.,	Lynn, Mass.
Homan, Thos.,	Camden, N. J.
Hummelstown Shoe Co.,	Hummelstown, Pa.
Hennessey S. Mfg. Co.,	Cincinnati, O.
Hawkins, L. P.,	Portland, Me.
Howard & Stadeker, H. R.	Rochester, N. Y.
Hutchinson, F. E.,	Haverhill, Mass.
Hudson Co. Catholic Protectory,	Arlington, N. J.

Holmes, C. M.,	Boston, Mass.
Harding, Jordan S. Co.,	New Sharon, Me.
Hunt-Hersey Co.,	Boston, Mass.
Huyett & Rhoades,	Birdsboro, Pa.
Hamlin, Horace H.	Augusta, Me.
Hamilton-Brown Shoe Co.,	St. Louis, Mo.
Huiskamp Bros. Co.,	Keokuk, Ia.
Heath, Chas. W.	Austin, Texas.
Helmers, Bettman Co.	Cincinnati, O.
Harnishfeger, F. W.,	Evansville, Ind.
Helming-McKenzie Co., The,	Cincinnati, O.
Hodgkins, S. G.	St. Louis, Mo.
Hogan Shoe Co., The	Cincinnati, O.
Holden, N. B.	Chicago, Ill.
Haynes-Webb Shoe Mfg. Co.,	Denver, Colo.
Hynds Mfg. Co., The J. G.	Nashville, Tenn.
Hagan & Johnson,	Fergus Falls, Minn.
Illinois Shoe Mfg. Co.,	Alton, Ill.
Ivory Shoe Co., The	Haverhill, Mass.
Ingalls, Wm. H.	Lynn, Mass.
Ireland & Grafton Co.,	Dover, N. H.
Jerseyville S. Mfg. Co.,	Jerseyville, Ill.
Jarchow, H. F.	Davenport, Iowa.
Jones, T. H. Shoe Co.,	Stoneham, Mass.
Johnston & Murphy,	Newark, N. J.
Jackman, A. H.	Nyack, N. Y.
Julian & Kokenge Co.,	Cincinnati, Ohio.
Jones S. Mfg. Co., D. M.	Columbus, O.
Johansen Bros. Shoe Co.,	St. Louis, Mo.
Johnson, H. C.	Chicago, Ill.
Jarvis, C. H.	St. Paul, Minn.
Jordan Shoe Co., The	Belleville, Ill.
Johnson & Co., L. S.	Lynn, Mass.
Jones, V. K. & A. H.	Lynn, Mass.
Johnson Bros. S. Mfg. Co.,	Hallowell, Me.
Jacobs, Whaley & Co.,	Brooklyn, N. Y.

Jacobs, H. & Sons,	New York, N. Y.
Joroleman Oliver Co.,	Rochester, N. Y.
Johnston & Baillie S. Co.,	Millersburg, Pa.
Jones, The Shoe Co.,	Columbus, Ohio.
Jones, E. & Co.,	Spencer, Mass.
Joslin, A. L.	Oxford, Mass.
Jefts, L. T. & Co.,	Hudson, Mass.
Johnson, C. W.	Natick, Mass.
Jenkins, J. W. Co.,	Rochester, N. Y.
Johnson, W. S. & Co.,	Putnam, Conn.
Johnson & Watson,	Greensboro, N. C.
Kenmore Shoe Co.,	Fredericksburg, Va.
Knapp, J. A.,	Brockton, Mass.
Killam-Goller Land Co.,	Lynn, Mass.
King, Mrs. A. R.,	Lynn, Mass.
Krieder Shoe Co., A. S.,	Anville & Palmyra, Pa.
Keith Shoe Co., P. B.,	Campello, Mass.
Kingman & Co., F. C.,	Brockton, Mass.
Kelley, Chas. F.,	Chelsea, Mass.
Kimball, Alfred W. Shoe Co.,	So. Lawrence, Mass.
Kreider Shoe Mfg. Co.,	Elizabethtown, Pa.
King, R. E.,	Nyack, N. Y.
Kullman Salz & Co.,	Benisia, Cal.
Kaiser, C. & Son,	Detroit, Mich.
Koeber, Batstone,	Milwaukee, Wis.
Kentucky S. Mfg. Co.,	Eddyville, Ky.
Keystone Shoe Mfg. Co.,	Kutztown, Pa.
Krippendorf-Dittmann Co.,	Cincinnati, Ohio.
Keighley & Sons, Chas.,	Vineland, N. J.
Kilpatrick, Frank E.,	New Brunswick, N. J.
Krohn-Fechheimer & Co.,	Cincinnati, Ohio.
Keiffer Bros.,	New Orleans, La.
Kalt, Zimmers Mfg. Co.,	Milwaukee, Wis.
Koplo Bros.,	St. Louis, Mo.
Krippendorf-O'Neal Co.,	Cincinnati, O.
Kirkendall, F. P. & Co.,	Omaha, Neb.

Koplo, H.,	St. Louis, Mo.
Kutz Shoe Co., G. M.,	San Francisco, Cal.
Kenney & Co., L. W.,	Lynn, Mass.
Knights, J. Geo.,	Haverhill, Mass.
Krieger & Narath Mfg. Co.,	Brooklyn, N. Y.
Kimball, W. & V. O.,	Haverhill.
Kelly, John, Inc.,	Rochester, N. Y.
Keith Co., Geo. E.,	Brockton, Mass.
Keystone Shoe Co.,	Philadelphia, Pa.
Kepner Scott & Co.,	Orwigsburg, Pa.
Kelly-Evans Co.,	Brockton, Mass.
Knipe Bros.,	Ward Hill, Mass.
Keith & Pratt,	No. Middleboro, Mass.
Lancaster Shoe Co.,	Lancaster, Ohio
Littlefield, L. G.	Avon, Mass.
Lancaster, C. B. Shoe Co.,	Keene, N. H.
Long S. Mfg. Co., R. H.	So. Framingham, Mass.
Lord & Cotter,	Lynn, Mass.
Lacey Shoe Co.,	Cairo, Mich.
Lestershire Mfg. Co.,	Lestershire, N. Y.
Little, Maxwell & Co.,	Lynn, Mass.
Lester-Whitney S. Co.,	Macon, Ga.
Lynn Shoe Co.,	Lynn, Mass.
Leh & Co., H.	Allentown, Pa.
Lititz Shoe Co.,	Lititz, Pa.
Ludekins, Emil	Rochester, N. Y.
Leech Brothers,	Riverside, N. J.
Lowell Shoe Repair Co.,	Lowell, Mass.
Lewis Bros. & Broxholm	Rochester, N. Y.
Latteman B. & S. Mfg. Co., J. J.	New York City
Lancy, John, Jr.	Marblehead, Mass.
Lit Brothers,	Philadelphia, Pa.
Lounsbury, Mathewson & Co.,	So. Norwalk, Conn.
Leonard, Shaw & Dean	Middleboro, Mass.
Lane, William, Inc.,	Brooklyn, N. Y.
Lounsbury & Soule,	Stamford, Conn.

Leech, Mrs. Sophia	Burlington, N. J.
Lindner Shoe Co.,	Carlisle, Pa.
Luddy & Currier,	Dover, N. H.
Livingston, E. C.	New Oxford, Pa.
Lavinthal, Sam'l	Trenton, N. J.
Lewis Shoe Co., W. C.	Haverhill, Mass.
Lehigh Valley Shoe Co.,	Allentown, Pa.
Lenox Shoe Co.,	Philadelphia, Pa.
Lumberton Shoe Co.,	Lumberton, N. J.
Lapham, Geo. H.	Boston, Mass.
Leonard Shoe Co.,	Lynn, Mass.
LaCrosse Shoe Mfg. Co.,	LaCrosse, Wis.
Littleton Shoe Co.,	Littleton, N. H.
Lynn Shoe Co., W. R.	Auburn, Maine
Little & Co., A. E.	Lynn, Mass.
Lynn Enterprise S. Co.,	Lynn, Mass.
Legg, C. E.	Pontiac, Ill.
Lefavour, Herbert	Marblehead, Mass.
Leas & McVitty,	Philadelphia, Pa.
Lindenberg, H.	New Orleans, La.
Levi Shoe Co.,	Chicago, Ill.
Lee, W. H.	Memphis, Tenn.
Lake City Rep. Co.	Chicago, Ill.
Lucchesi Brothers,	San Antonio, Texas
Louisiana Shoe Factory,	New Orleans, La.
Long, R. H.	Chicago, Ill.
Logan Shoe Co.,	Hannibal, Mo.
Long, James M.	Peoria, Ill.
Levin Tanning Co.,	Santa Rosa, Cal.
Landis Shoe Co., J.	Palmyra, Pa.
Leonard & Barrows,	Bridgewater, Mass. and Belfast, Maine
Lunn-Lynn Shoe Co.,	Auburn, Maine
Lefavour & Co., D. D.	Salem, Mass.
Lewis & Son, Inc., G. W.	Burlington, N. J.
Laird, Schober & Co.,	Philadelphia, Pa.

Lefavour & Co., C. P.	Beverly, Mass.
Millard & Co., N. L.	No. Adams, Mass.
Martin, Patrick	Haverhill, "
Munroe, Packard & Linscott,	Auburn, Me.
Morning Star Shoe Co.,	Lynn, Mass.
McIntosh, J. W.	Marblehead, Mass.
Middlesex Shoe Co.,	New Brunswick, N. J.
Merrill, Porter & Co.,	Lynn, Mass.
Moore-Shafer S. Mfg. Co.,	Brockport, N. Y.
Morse & Logan,	Lynn, Mass.
Mans, Geo. E.	New Oxford, Pa.
Moulton & Co., C. H.	Brookfield, Mass.
Marcy Bros. Co.	Hartford, Conn.
Munnich Bros.,	Port Jarvis, N. Y.
Miller, Hess & Co.,	Akron, Pa.
Marion Shoe M. Co.,	Marion, O.
Murphy, Edw. F.	Whitman, Mass.
Minnesota Shoe Co.,	St. Paul, Minn.
Mass. Reformatory,	Concord, Mass.
McNamara, S. B.	Haverhill, "
Menihan & Gilchrist,	Rochester, N. Y.
Murphy B. & S. Co.,	Natick, Mass.
Modern Shoe Co.,	Pontiac, Ill.
Marks & Co., L. V.	Augusta, Ky.
Menzies Shoe Co.,	Detroit, Mich.
Missouri Slipper Co.,	St. Louis, Mo.
Mass. State Prison,	Charlestown, Mass.
Madden-Curtis S. Co.,	Medway, Mass.
Mann & Co., A. E.	Windsor, Vt.
Merriam Shoe Co., H. W.	Newton, N. J.
Mascoma Shoe Co.,	Lebanon, N. H.
Meldola & Coon,	Rochester, N. Y.
Mooney & Co., N. J.	Lynn, Mass.
Mottler, G. L.	Louisville, Ky.
Maloney Bros. Co.,	Rochester, N. Y.
Meier Shoe Co., John	St. Louis, Mo.

Munroe, F. W. & I. M.	Marblehead, Mass.
Mudge Shoe Co.,	Danvers, Mass.
McElwain Co., W. H.	Brockton, Mass.
Martin, Jonas	New Orleans, La.
Manss Shoe Mfg. Co.,	Cincinnati, O.
McLaren & Musson S. Co.,	Eau Claire, Wis.
Metrailer, A.	Little Rock, Ark.
Marzluff Co., F. M.	Janesville, Wis.
Mayer B. & S. Co., F.	Milwaukee, Wis.
Miller, Kohlhepp, Giese & Co.,	Cincinnati, O.
Monteleone, A.	New Orleans, La.
Miller Co., J.	Racine, Wis.
McCord-Harlow Shoe Co.,	St. Joseph, Mo.
Munster, A.	Dallas, Texas.
Moloney Shoe Co., John	Ludlow, Ky.
McDonald & Kiley Co., The	Cincinnati, O.
Milwaukee Shoe Repair Co.,	Milwaukee, Wis.
McBroom, Rubin A.	Mobile, Ala.
Mills, N. A.	Pittsfield, Mass.
Marshall & Co., C. S.	Brockton, Mass.
Muller, Adam	Newark, N. J.
Middleton Shoe Co.,	Middleton, Mass.
Mundell Shoe Co.,	Philadelphia, Pa.
Moulton, Clarence H.	Lynnfield, Mass.
Maynard Shoe Co.,	Claremont, N. H.
Milford Shoe Co.,	Milford, Mass.
McAvoy, H. J.	Pittsburg, Pa.
Medlar & Holmes S. Co.,	Philadelphia, Pa.
Millersburg S. Co.,	Millersburg, Pa.
Millett, Woodbury & Co.,	Beverly, Mass.
Morrison Shoe Co.,	Concord, N. H.
Melanson & Currier,	Lynn, Mass.
Miller-Hapgood S. Co.,	Lynn, Mass.
McBrearty, John	Philadelphia, Pa.
Merrill Shoe Co., Geo. D.	Lynn, Mass.
Murray Shoe Co.,	Lynn, Mass.

Mayer & Co., Alfred	Philadelphia, Pa.
Mt. Holly Shoe Co.,	Mt. Holly, N. J.
Minor & Son, P. W.	Batavia, N. Y.
Nutter Heel Co.,	Farmington, N. H.
Northwestern Felt Shoe Co.,	Webster City, Ia.
Nelson & Sons Co., J. S.	Grafton, Mass.
New York Wood Heel Co.,	New York, N. Y.
Northwood Union Shoe Co.,	Northwood, N. H.
National Shoemakers,	Lewiston, Me.
Nute Bros. Co.,	Auburn, Me.
Norton, N.	Gainesville, Tex.
North Star Shoe Co.,	Minneapolis, Minn.
Neenah B. & S. Mfg. Co.,	Neenah, Wis.
Noyes-Norman S. Co.,	St. Joseph, Mo.
Nu-Baby S. Co.,	Lynn, Mass.
Nahm Bros.,	Philadelphia, Pa.
Norman & Bennett, Inc.,	Boston, Mass.
Nugent Shoe Co.,	Rochester, N. Y.
Novelty Knitting Co.,	Phoenix Mills, N. Y.
Nettleton, A. E.	Syracuse, N. Y.
Newton & Co., J. R.	Philadelphia, Pa.
Nyack Shoe Co-op. Corp.,	Nyack, N. Y.
Newman & Co., A.	Philadelphia, Pa.
Nesmith Shoe Co.,	Brockton, Mass.
Normandy Co., The	Providence, R. I.
North Shore Shoe Co.,	Salem, Mass.
Newport Shoe Co.,	Newport, N. H.
No. Lebanon Shoe Fy.,	Lebanon, Pa.
Noyes & Co. Corp., A. B.	Georgetown, Mass.
Nutt & Co., W. H.	Natick, Mass.
O'Donnell, J. M.	Campello, Mass.
Osner S. Mfg. Co., Wm.	Chicago, Ill.
Olson & Swedburg,	Kansas City, Mo.
O'Connor & Goldberg,	Chicago, Ill.
Oriental Shoe Mfg. Co.,	Portsmouth, O.
Okarma, E. I.	Savannah, Ga.

O'Brien Shoe Co., J. F.	Rochester, N. Y.
O'Neil, W. J.	Portland, Me.
Orne & Grover,	Lynn, Mass.
Ohio Shoe Co.,	Lancaster, O.
O'Connell Co., John	Marlboro, Mass.
O'Brien, W. S.	Abington, Mass.
Osgood & Co., C. F.	Hammonton, N. J.
Old Colony Rand Co.,	Brockton, Mass.
O'Keefe, John	Newark, N. J.
Prince, Collins & Marston Co.,	Danvers, Mass.
Penn Heel & Innersole Co.,	Hanover, Penn.
Pickenbrock Shoe Mfg. Co., E. B.	Dubuque, Iowa.
Putnam & Cross	Lynn, Mass.
Pinkham, L. N.	Lynn, Mass.
Pilgrim Shoe Co.,	Danvers, Mass.
Pinkham Shoe Co., H. E.	Lynn, Mass.
Piehler Shoe Co.,	Rochester, N. Y.
Posner, A.	Brooklyn, N. Y.
Packnard & Co., N. R.	Brockton, Mass.
Parsons & Co., Jas.	Brooklyn, N. Y.
Packard & Co., M. A.	Brockton, Mass.
Piusker & Son, A.	Brooklyn, N. Y.
Perfection Shoe Co.,	Rochester, N. Y.
Prenzel & Co., A. H.,	Halifax, Pa.
Perry & Wood,	Beverly, Mass.
Penn Shoe Manf. Co.,	Reading, Pa.
Isaac Prouty & Co., Inc.,	Spencer, Mass.
Paff Shoe Co., Inc.,	Alexandria, Va.
Phelan & Sons, James,	Lynn, Mass.
Putnam & Co., A. H.,	Danvers, Mass.
Pine State Shoe Co.,	Norway, Maine.
Parker & Peakes,	Bangor, Me.
Pratt Shoe Co.,	Natick, Mass.
Pilling Shoe Co., John	Lowell, Mass.
Page, John J.	Haverhill, Mass.
Poor, C. E.	Haverhill, Mass.

Perkins, Hardy & Co.,	Derry, N. H.
Pillsbury, N. S. & R. N.	Derry, N. H.
Pontiac Shoe Mfg. Co.,	Pontiac, Ill.
Pleiffer & Co., Wm. F.	So. Natick, Mass.
Priesmeyer Shoe Co., A.	Jefferson City, Mo.
Page Belting Co.,	Concord, N. H.
Pecker & Co., C. D.	Lynn, Mass.
Parker Shoe Co., L. S.	Jefferson City, Mo.
Price Shoe Co., L.	Rochester, Ind.
Pierce & Co., S. L.	Cleveland, O.
Pumilia, Jos.	New Orleans, La.
Pingree Co.,	Detroit, Mich.
Plant & Marks S. Mfg. Co.,	Cincinnati, O.
Putnam & Co., H. J.	Minneapolis, Minn.
Peters Shoe Co.,	St. Louis, Mo.
Palma Shoe Co.,	Wanpun, Wis.
Portsmouth Shoe Co., The	Portsmouth, O.
Potter, J. M.	Cincinnati, O.
Perry-Lee Co.,	Athol, Mass.
Parker & Co., F. A.	Marblehead, Mass.
Pepperell Bldg. & Mfg. Assn.,	Pepperell, Mass.
Pincus, Julius	New York City
Plant Co., Thos. G.	Jamaica Plain, Mass.
Perkins, Linscott & Co.,	Rochester, N. H.
Phelan, Jeremiah Sons,	Rochester, N. Y.
Porter & Sons, Wm.	Lynn, Mass.
Quast, J. H. & Son,	Louisville, Ky.
Reynolds, L. W.	Brockton, Mass.
Randall, J. F.	So. Easton, Mass.
Renton, J. B. & Co.,	Lynn, Mass.
Rockaway Shoe Mfg. Co.,	Rockaway, N. J.
Rogers, A. S. Shoe Co.,	Chelsea, Mass.
Riverside Shoe Mfg. Co.,	Beardstown, Ill.
Richardson Shoe Co.,	Menominee, Mich.
Reed & Co., E. P.,	Rochester, N. Y.
Rose Shoe Mfg. Co.,	Rochester, N. Y.

Rehr Shoe Co.,	Orwigsburg, Pa.
Rowe & Swett,	E. Candia, N. H.
Richards & Brennan Co.,	Randolph, Mass.
Randall, J. W.,	Providence, R. I.
Ryan & Son, Maurice,	Brooklyn, N. Y.
Reis & Newman,	New York City.
Reliable Shoe Repairing Co.,	Pittsburg, Pa.
Robertson & Sons,	New York, N. Y.
Russ Co., J. W.,	Haverhill, Mass.
Reid, Peter,	New York, N. Y.
Reynolds, B. F.	Brockton, Mass.
Red Star Shoe Mfg. Co.,	Baltimore, Md.
Reliable Shoe Co.,	Orwigsburg, Pa.
Robertson, A. D.,	Rochester, N. Y.
Russ, T. M.,	Salem, N. H.
Rudy Co., Wm. B.,	Jonestown, Pa.
Reynolds Drake & Gabell Co.,	Brockton, Mass.
Rendell Shoe Co.,	Trenton, N. J.
Reed & Co., H. B.,	Manchester, N. H.
Rubberhide Co.,	Randolph, Mass.
Ruddock & Sons, Thos. S.,	Haverhill, Mass.
Rock Oak Shoe Repair Co.,	Boston, Mass.
Randall, Adams Co.,	Lynn, Mass.
Rusche & Co.,	Cincinnati, Ohio.
Rice & Hutchins, Inc.,	Boston, Mass.
Richardson, J. W.,	Reading, Mass.
Ridgeway, A. & Son,	Delanco, N. J.
Rogers, J. W.,	Salem, Mass.
Ratterman, A. B. & Sons,	Cincinnati, Ohio.
Rindge, Kalmbach Logie & Co.,	Grand Rapids, Mich.
Regent Shoe Mfg. Co.,	Omaha, Neb.
Reimer Bros. Shoe Co.,	Green Bay, Wis.
Riley Barker Shoe Co.,	Columbus, Ohio.
Ruffert, Chas.,	Chicago, Ill.
Rich Shoe Co.,	Milwaukee, Wis.
Roberts, Johnson & Rand Shoe Co.,	St. Louis, Mo.

Rosenberg & Sons, B.,	New Orleans, La.
Ramsfelder Erlich Co.,	Cincinnati, O.
Rottman Bros.,	Milwaukee, Wis.
Racine Shoe Mfg. Co.,	Racine, Wis.
Rapid Shoe Repairing Co.,	Pueblo, Col.
Rapid Shoe Repairing Co.,	Youngstown, Ohio.
Robinson Bros. Co.,	Salt Lake City, Utah.
Rae, Alex.	Augusta, Ga.
Richardson-Joyce Shoe Co.,	Harnellsville, N. Y.
Richardson & Co., J.	Elmira, N. Y.
Regal Shoe Co., Inc.,	Whitman, Mass.
Roney & Berger Co.,	Allentown, Pa.
Seavey & Co., F. A.	Beverly, Mass.
Studebaker Bros. Mfg. Co.,	South Bend, Ind.
Shortell & Son, M.	Salem, Mass.
Seymour & Jackson,	Lynn, Mass.
Spinney & Co., B. F.	Norway, Me.
Sherwood Shoe Co.,	Rochester, N. Y.
Standard Shoe Co.,	Buffalo, N. Y.
Schneider, Philip	Allentown, Pa.
Schneider Bros. & Co.,	Natick, Mass.
Straw & Co., L. G.	Salem, Mass.
Sparks Co., N. A.	Danvers, Mass.
Snedicor & Hathaway Co.,	Detroit, Mich.
Skyrm & Co., M.	Cleveland, O.
Silver & Son, Geo.	New York, N. Y.
Stillson-Kellogg S. Co.,	Tacoma, Wash.
Shields Union Labor S. Co.,	Buffalo, N. Y.
Strong & Garfield,	E. Weymouth, Mass.
Sing Sing Prison,	Ossining, N. Y.
Smith, Geo. H.	Bridgeport, Conn.
Stafford Bros.,	Burlington, N. J.
Schener & Sons, S.	New York, N. Y.
Spaulding & Swett Corp.,	Lowell, Mass.
Smith Shoe Co., A. A.	Hampden, Me.
Stetson Shoe Co.,	So. Weymouth, Mass.

Smith Co., A. F.	Lynn, Mass.
Schreir, Jos. A.	Rochester, N. Y.
Stanley, C. F.	Providence, R. I.
Smith & Herrick Co.,	Albany, N. Y.
Spaulding & Co., W. W.	Haverhill, Mass.
Schmidt, John G.	Philadelphia, Pa.
Shaw & Co., A. W.	Freeport, Me.
Strootman Co., John S.	Buffalo, N. Y.
Stevens, O. T.	Newton, N. H.
Sylvester, S.	New York, N. Y.
Saucony S. Mfg. Co.,	Kutztown, Pa.
Schuler Bros.,	New Bedford, Mass.
Schwaber, Jos.	Baltimore, Md.
Shipper, C. D. W.	Putnam, Conn.
Schreier Co., W. H.	Rochester, N. Y.
Shivers Shoe Fy., E. V.	Baltimore, Md.
Strohbeck, C. W.	Brooklyn, N. Y.
St. Croix Shoe Co.,	Calais, Me.
Smith Shoe Co., The G. Edwin	Columbus, O.
Southern Shoe Mfg. Co.,	St. Louis, Mo.
Schoenecker B. & S. Co., V.	Milwaukee, Wis.
Smaltz-Goodwin Co.,	Philadelphia, Pa.
Solomon Bros.,	Salt Lake City, Utah.
Selz, Schwab & Co.,	Chicago, Ill.
Standard Heel & Counter Co.,	St. Louis, Mo.
Scheiffle Shoe Mfg. Co.,	Cincinnati, O.
So. Weymouth S. Co.,	So. Weymouth, Mass.
Schieren & Co., Chas. A.	New York, N. Y.
Star Shoe Co.,	Hannibal, Mo.
Sweet & Savory,	Marblehead, Mass.
Schoellkoffs Sons, J. F.	Buffalo, N. Y.
Simons & Homer,	Oil Mills, N. H.
Strum, N. F.	Jackson, Mich.
Shipley, Chas. P.	Kansas City, Mo.
Stern, Auer & Co.,	Cincinnati, O.
Shaft-Pierce S. Co.,	Faribault, Minn.

Sherburne, F. A.	Dennison, Texas.
Sachs Shoe Mfg. Co.,	Cincinnati, O.
Sharood Shoe Co.,	St. Paul, Minn.
Sullivan & Co., P.	Cincinnati, O.
Smith Shoe Co., J. P.	Chicago, Ill.
Smith, Jos.	Denver, Col.
Sorenson, S. T.	St. Paul, Minn.
Starner-Copeland Co., The	Columbus, O.
Sande, J. B.	Toledo, O.
Sapp, B. F.	Joplin, Mo.
Standard Shoe Repg. Co.,	Chicago, Ill.
Stouts Fy. Shoe Store,	Indianapolis, Ind.
Slien, Samuel	St. Louis, Mo.
Schneider, J. W.	Tacoma, Wash.
Siebe Shoe Co.,	San Francisco, Cal.
Stockton Shoe Mfg. Co.,	Stockton, Cal.
Schwind & Baner,	Portland, Ore.
Shubel, Fred	Lansing, Mich.
Slater & Morrill, Inc.,	So. Braintree, Mass.
Slorti, Frank	Providence, R. I.
Sarna, Abraham	Philadelphia, Pa.
Simmons & Hall,	Rockland, Mass.
Syracuse Shoe Mfg. Co.,	Syracuse, N. Y.
Standard Shoe Co.,	Mt. Holly, N. J.
Stover & Bean,	Lowell, Mass.
Soule Shoe School & Upper Co.,	Stoughton, Mass.
Stacy, Adams & Co.,	Brockton, Mass.
Sheppard & Myers Co.,	Hanover, Pa.
Senter, Walter	So. Kingston, N. H.
Snow Co., Geo. G.	Brockton, Mass.
Sorosis Shoe Co.,	Philadelphia, Pa.
Trimby Co's, Thos. W.,	Rochester, N. Y.
Tibbets, J. E.,	Campello, Mass.
Terhune & Co., J. W.,	Rockland, Mass.
Taylor, E. E. Co.,	Brockton, Mass.
Todd Co., Fred S.,	Rochester, N. Y.

Theriault-Noodus & Burnham,	Haverhill, Mass.
Thayer, Maguire & Field,	Haverhill, Mass.
Tillett, Thos., Jr.,	Beverly, N. J.
Toseau, Jas. E.,	Jamestown, N. Y.
Timson & Co.,	Lynn, Mass.
Travers & Co., T. F.,	Lynn, Mass.
Tennessee S. Mfg. Co.,	Nashville, Tenn.
Tappan Shoe Mfg. Co.,	Coldwater, Mich.
Thomas, J. B. & Tarr,	Lynn, Mass.
Thurell, Batchelder & Co.,	Lynn, Mass.
Tracey, Chas. L.,	Towanda, Pa.
Tufts & Friedman,	Lynn, Mass.
Tilden, A. W.,	Weymouth, Mass.
Trash Bros. & Co.,	Epping, N. H.
Tuttle, Walter H. Co.,	Lynn, Mass.
Torrey, J. H. & T. H.,	No. Weymouth, Mass.
Troy Shoe Co.,	Troy, Pa.
Tuskegee Normal & Ind. Inst.,	Tuskegee, Ala.
Tanner Shoe Mfg. Co.,	Cincinnati, O.
Tilt, J. E. Shoe Company,	Chicago, Ill.
Tennent Shoe Company,	St. Louis, Mo.
The Tremper Shoe Mfg. Co.,	Portsmouth, O.
Tilt-Kenney Shoe Co.,	Chicago, Ill.
Thayer & Co., Inc., N. B.,	Milton Mills, N. H.
Tibbetts, H. A.,	Lynn, Mass.
Tannatt, J. C. Shoe Co.,	Brockton, Mass.
Taft & Buker,	Salem, Mass.
Thompson, F. J.,	Haverhill, Mass.
Thomas & Co.,	Brooklyn, N. Y.
Thompson Bros.,	Campello, Mass.
Terkanian & Co.,	Worcester, Mass.
Thayer & Osborne S. Co.,	Alton, N. H.
Terrell Shoe Co.,	Baltimore, Md.
Taylor Shoe Co., H.,	Philadelphia, Pa.
Utz & Dunn,	Rochester, N. Y.
Union Shoe Mfg. Co.,	Chillicothe, O.

Union Belt Co.,	Fall River Mass.
Uttenweiler-Kohler Co.,	Battle Creek, Mich.
United Workingmen's B. & S. Co.,	San Francisco, Cal.
Ulrich, Michael,	Buffalo, N. Y.
United States Shoe Co.,	E. Whitman, Mass.
Upham Bros. Co.,	Stoughton, Mass.
Usher, W. R. & Son,	Springvale, Me.
Union Shoe Making Co.,	St. Louis, Mo.
Union Shoe Mfg. Co.,	Ellsworth, Me.
Union Shoe Works,	Rockford, Ill.
Venor & Montgomery,	Rochester, N. Y.
Vaughan-Monnig Shoe Co.,	Jefferson City, Mo.
Vogel & Co., E.,	New York, N. Y.
Vickery, W. P. & Co.,	Marblehead, Mass.
Vogel Bros. Shoe Co.,	Louisville, Ky.
Walton & Logan,	Lynn, Mass.
Woodward & Wright,	Campello, Mass.
Williams Shoe Co.,	Cochituate, Mass.
Welch-Atwood Co.,	South Easton, Mass.
Waterbury & Son Co., S.	New York, N. Y.
Worthley, W. J.	Lynn, Mass.
Warsetz & Co., F.	Buffalo, N. Y.
Wilson, J. T.	Baltimore, Md.
Wood & Neel Co.,	Rochester, N. Y.
Webb, E. M.	Hartford, Ct.
Winchell & Co., Inc., J. H.	Haverhill, Mass.
Winchester Shoe Co.,	Buffalo, N. Y.
Williams, E. W.	Winona, Minn.
Wesson, J. E.	Worcester, Mass.
Webster, Ira J.	Haverhill, Mass.
Woodbury & Co., F. P.	Salem, N. H.
White River Shoe Co.,	Bristol, N. H.
Walcott & Co., J. W.	Natick, Mass.
Whitcomb & Paine,	Holbrook, Mass.
Wood & Co., J. T.	Ware, Mass.
Witt Shoe Co., Geo. D.	Lynchburg, Va.

Worcester Slipper Co.,	Worcester, Mass.
White S. & L. Co., A. W.	Thomaston, Ga.
Wilder & Co.,	Chicago, Ill.
Walden Shoe Co.,	Grand Haven, Mich.
Waverly Shoe Co.,	Lynn, Mass.
Washington Shoe Mfg. Co.,	Seattle, Wash.
Watsontown Boot & Shoe Co.,	Watsontown, Pa.
Webster, Geo. L.	Haverhill, Mass.
Welch and Kelly,	Camden, N. J.
Wallace, E. G. & E.	Rochester, N. H.
Wells & Co., M. D.	DeKalb, Ill.
Weinbrenner, Albert H.	Milwaukee, Wis.
White, Wm. B.	Brookfield, Mass.
White Shoe Co., D. D.	Taunton, Mass.
Whittredge, M. H.	Lynn, Mass.
Whitman & Keith,	Campello, Mass.
Wertheimer-Swarts Shoe Co.,	St. Louis, Mo.
Witchell Sons & Co., Ltd.,	Detroit, Mich.
Western Shoe Co.,	Janesville, Wis.
Watson-Plummer Shoe Co.,	Dixon, Ill.
Wolf Bros. & Co.,	Cincinnati, Ohio.
Wenz, F. & Son,	St. Joseph, Mo.
Western Shoe Co.,	Stillwater, Minn.
Western Shoe Rep'g. Co.,	Chicago, Ill.
Wolfe Bros. Shoe Co.,	Columbus, O.
Wolfanger, Warthon & Co.,	Lincoln, Neb.
Weick, Ferdinand & Co.,	Cincinnati, Ohio.
Weyenburg Shoe Mfg. Co.,	Milwaukee, Wis.
Wilensky, M.	Savannah, Ga.
Wood & Co., R. T., Inc.,	Burlington, N. J.
Weil S. Co., Inc.,	Brooklyn, N. Y.
Walker, J. L.	Lynn, Mass.
Williams, Clark & Co.,	Lynn, Mass.
Wiggins & Son,	Marblehead, Mass.
Walsh & Co., W. E.	Lynn, Mass.
Waters Co., E. H.	Harrisburg, Pa.

Woodbury Shoe Co.,	Beverly, Mass.
Wright, Peters & Co.,	Rochester, N. Y.
Williams, Hoyt & Co.,	Rochester, N. Y.
Watson Shoe Co.,	Lynn, Mass.
Welch & Landregan,	Lynn, Mass.
Weber Bros.	No. Adams, Mass.
Wright, N. H.	Rochester, N. Y.
Wilson, Chas. E.	Lynn, Mass.
Wolfe Shoe Co.,	Allentown, Pa.
Wright, E. T. & Co.,	Rockland, Mass.
Walster, Geo. W.	Elmira, N. Y.
Williams, Kneeland & Co.,	So. Braintree, Mass.
Wise & Cooper,	Auburn, Maine.
White Dunham Shoe Co.,	Brockton, Mass.
Wickett and Gardiner,	Brooklyn, N. Y.
Xenia Shoe Mfg. Co.,	Xenia, Ohio.
York Shoe Mfg. Co.,	York, Pa.
Young, Frederick C.	Rochester, N. Y.
Zions Corp. Mer. Inst.,	Salt Lake City, Utah.
Ziegler Brothers,	Philadelphia, Pa.
Zulich & Co., J. S.	Orwigsburg, Pa.
Zimmerman Shoe Co.,	Pittsfield, Mass.

PLAINTIFF'S EXHIBIT 272.

[Put in Evidence, page 4298.]

SHOE MANUFACTURERS HOLDING MACHINES OF THE GOODYEAR, LASTING, HEELING, OR METALLIC DEPARTMENTS OF THE UNITED SHOE MACHINERY COMPANY ON JANUARY 1, 1905, ON INDEPENDENT, UNRESTRICTED LEASES. TOTAL 943.

Alexandria Shoe Co.,	Alexandria, Va.
Alden, C. H. & Co.,	No. Abington, Mass.
Argus, Joseph,	Buffalo, N. Y.
Andrews, Joseph,	Burlington, N. J.
Albert, J.	Brooklyn, N. Y.
Aldrich, C. E. & Co.,	Farmington, N. H.

American Shoe Mfg. Co.,	Allentown, Penn.
Allen, J. S.,	Brockton, Mass.
Amazeen & Co.,	Milwaukee, Wis.
Allentown Shoe Mfg. Co.,	Allentown, Pa.
Andrews & Co.,	Everett, Mass.
Ackerman, Robert	Milwaukee, Wis.
Aborn, C. H. & Co.,	Lynn, Mass.
Ashe, Noyes & Small Co.,	Auburn, Me.
Aldrich, N. E.	St. Louis, Mo.
Arnold, M. N.	No. Abington, Mass.
Allen & McCaffrey Co., The	Cincinnati, O.
Adams & Curtis Shoe Co.,	Batesville, Ind.
App Bros.,	Fort Wayne, Ind.
Atlanta Leather Co.,	Atlanta, Ga.
Altschul, Julius,	Brooklyn, N. Y.
Albright & Co., H. S.	Landingville, Pa.
Allen Shoe Co., J. H.	Camden, N. J.
Allen & Co.,	Philadelphia, Pa.
Adams Shoe Co.,	Adamsdale, Pa.
Aaronson, B.	Mt. Holly, N. J.
Austin, Frank E.	Newton, N. H.
Armstrong & Co., D.	Rochester, N. Y.
Abbott & West,	Haverhill, Mass.
Alden, Walker & Wilde,	No. Weymouth, Mass.
Abrahams Shoe Mfg. Co.,	Brooklyn, N. Y.
Annar Shoe Co.	Philadelphia, Pa.
Burrows, J. A.,	Lynn, Mass.
Bolton Shoe Co.	Rochester, N. Y.
Blyn, S.	New York, N. Y.
Brewer, Parker & Co.	Lynn, Mass.
Brennan B. & S. Co.	Natick, Mass.
Boyd & Corey B. & S. Mfg. Co.	Marlboro, Mass.
Bridges Bros.,	Marblehead, Mass.
Blethen, Arthur A.	Lynn, Mass.
Bridges & Carroll,	Marblehead, Mass.
Breed Shoe Co.,	Rochester, N. H.

Budd Shoe Co., J. F.	Burlington, N. J.
Breed, F. W.	Marblehead, Mass.
Bay State Shoe & Leather Co.,	Sing Sing, N. Y.
Burt & Co., Geo. H.	E. Brookfield, Mass.
	Avon, Mass.
Bacon & Co., J. E.	Spencer, Mass.
Bell Shoe Co.,	Chelsea, Vt.
Burlington County Shoe Co.,	Mt. Holly, N. J.
Baker, Geo. & Son,	Brooklyn, N. Y.
Brown & Co., A. E.	Orwigsburg, Pa.
Barrows, A.	Campello, Mass.
Brigham, H. E.	Westboro, Mass.
Bonin & Leonard,	Haverhill, Mass.
Bullard & Co., D.	Spencer, Mass.
Burley & Stevens Co.,	Newburyport, Mass.
Baltimore B. & S. Co.,	Baltimore, Md.
Banister, Jas. A. & Co.,	Newark, N. J.
Buckingham & Hecht,	San Francisco, Cal.
Bielefeld & Spahn,	New York, N. Y.
Byers, W. R. Shoe Co.,	Columbus, Ohio.
Brown, J. & Sons,	Salem, Mass.
Black, Chas.	New York, N. Y.
Bluff City Shoe Co.,	Hannibal, Mo.
Bass, Geo. W. & Co.,	Milton, Maine.
Blake, Chas. E. & Co..	Lynn, Mass.
Bradley, Metcalf Co.,	Milwaukee, Wis.
Butcher, William	Camden, N. J.
Bray, Stanley & Webber,	Beverly, Mass.
Brigham, J. W. & Co.,	Worcester, Mass.
Brigham's Sons, Geo. B.	Westboro, Mass.
Boyden Shoe Co.,	Newark, N. J.
Baker & Co., J. H.	Beverly, Mass.
Bertsch, Jos. Shoe Co.,	Rochester, N. Y.
Badger State Shoe Co.,	Milwaukee, Wis.
Bates & Co., A. J.	Webster, Mass.
Bay Shoe Co.,	Harrisburg, Pa.

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Bell, W. H.	Pleasantville, N. Y.
Barnard Geo. & Co., Inc.,	Brooklyn, N. Y.
Bartlett, Albion	Lynn, Mass.
Buhrendorf, J. C.	New York, N. Y.
Buek & Ebers,	Philadelphia, Pa.
Benedict & Co.,	New Canaan, Ct.
Batchelder, C. S.	Beverly, Mass.
Bastian Shoe Mfg. Co.,	Burlington, N. J.
Bartels, Thelan & Co.,	Chelsea, Mass.
Brackett, W. D. & Co.,	Nashua, N. H.
Barker, Brown & Co.,	Huntington, Ind.
Brigham, F. & Gregory Co.,	Hudson, Mass.
Brett, C. M. Co.,	Hudson, Mass.
Brown, H. H. & Co.,	No. Brookfield, Mass.
Buck, E. A. & Co.,	Bangor, Maine.
Blum Shoe Co.,	Dansville, N. Y.
Brandau, Adam,	Detroit, Mich.
Belmont Shoe Co.,	Barnsville, O.
Baumgartel, Emil	Buffalo, N. Y.
Bedford Shoe Co.,	Carlisle, Pa.
Barton Shoe Co.,	Newburyport, Mass.
Burt & Co., Inc., E. W.	Lynn, Mass.
Blyn, Isaac	New York City, N. Y.
Bowker Shoe Mfg. Co., R. W.	Mt. Holly, N. J.
Brennan & White,	Brooklyn, N. Y.
Bell, Geo. W.	Pleasantville, N. Y.
Baldwin Mfg. Co.,	Milford, Conn.
Bennett & Taylor,	Lynn, Mass.
Birdsboro Shoe Mfg. Co.,	Birdsboro, Pa.
Bragdon & Son, O.	Portsmouth, N. H.
Banks & Co., H. P.	Baltimore, Md.
Boyds Sons, James	New York, N. Y.
Brophy Bros. Shoe Co.,	Lynn, Mass.
Barry, T. D. Co.,	Brockton, Mass.
Bernhard & Nelson,	Brooklyn, N. Y.
Brockton Co-op B. & S. Co.,	Campello, Mass.

Bohr & Sons, N. C.	Waterville, N. Y.
Barker & Lord	Lynn, Mass.
Berry & Co., J. M.	Farmington, N. H.
Brown Shoe Co.,	St. Louis, Mo.
Buckley Shoe Co.,	Houston, Texas.
Basso, Jos.	New Orleans
Barton Bros.	Kansas City, Mo.
Boulter, Louis	St. Louis, Mo.
Bering Shoe Co.,	Cincinnati, Ohio.
Backhaus, C. A. Sons	New Orleans, La.
Beals & Torrey Shoe Co.,	Watertown, Wis.
Byers, W. R. & Co.,	Columbus, Ohio
Bruns, J. B. Shoe Mfg. Co.,	Jefferson City, Mo.
Berry & Co., A. H.	Portland, Maine.
Belonga Co., Geo. W.	Lynn, Mass.
Burt Co., E. C.	Brooklyn, N. Y.
Barke & Co.,	Philadelphia, Pa.
City of Boston,	Rainsford Island.
Cerat & Bowin,	Haverhill, Mass.
Cobb, Chas. H.	Lynn, Mass.
Clark, W. J.	Marblehead, Mass.
Century Shoe Mfg. Co.,	Macungie, Pa.
Cogan & Son, P.	Stoneham, Mass.
Craddock Terry Co.,	Lynchburg, Va.
Cass & Daley,	Salem, Mass.
Connolly Co., J. J.	Salem, Mass.
Clapp & Tapely,	Danvers, Mass.
Cushman Co., Ara,	Auburn, Maine.
Chipman & Pratt,	Marblehead, Mass.
Chase, Chamberlain & Co.,	Raymond, N. H.
Crafts, G. P.	Manchester, N. H.
Coggswell Shoe Co.,	Haverhill, Mass.
Cox, Edw. M. Co.,	W. Easton, Mass.
Crafts-Harrington & Co.,	Brockton, Mass.
Corcoran, Thos. & Son,	Lynn, Mass.
Cloutman, J. F. & Co.,	Farmington, N. H.

Carruthers-Jones Shoe Co.,	St. Louis, Mo.
Crescent City Shoe Co.,	Evansville, Ind.
C. & E. Shoe Co.,	Columbus, O.
Cone, R. W. & Co.,	Bridgewater, Mass.
Comfort Shoe Co.,	Albany, N. Y.
Cook & Co., J. A.	Lynn, Mass.
Cross, John H.,	Lynn, Mass.
Crossett & Co., Inc., L. A.,	No. Abington, Mass.
Clark, F. D.,	Newburyport, Mass.
Creighton, G. A. & Son,	Lynn, Mass.
Cramer Shoe Co., W. F.,	Catawissa, Pa.
Cushman & Hebert,	Lynn, Mass.
Chase-Merritt Co.,	Boston, Mass.
Churchill & Alden Co.,	Campello, Mass.
Cramer & Son, John	Brooklyn, N. Y.
Colmary, A. H. & Co.,	Baltimore, Md.
Cohen & Frank,	Brooklyn, N. Y.
Cox, A. T. & Son,	Portland, Me.
Cummings Co., The	Worcester, Mass.
Copeland, Ellis F.,	Brockton, Mass.
Clark, F. S. Co.,	Lynn, Mass.
Coburn Lewis Shoe Co.,	Boston, Mass.
Collins, L. W.	E. Kingston, N. H.
Casperson, Edward	Camden, N. J.
Cushman & Cushman,	Lynn, Mass.
Carroll Shoe Co., John A.	Baltimore, Md.
Coburn, Gauss & Co.,	Wolfboro, N. H.
Cygolf Shoe Co.,	Brockton, Mass.
Cahill Holters Co.,	Cincinnati, O.
Courtney Shoe Co.,	St. Louis, Mo.
Carsey & Co., John M.	Greenville, Texas.
C. & C. Shoe Mfg. Co.,	Chicago, Ill.
Cole, Davis Co.,	Chicago, Ill.
Carhart Shoe Mfg. Co.,	Atlanta, Ga.
Conrad Shoe Co.,	Louisville, Ky.
Clapp & Son, Edwin	E. Weymouth, Mass.

Cousins, J. & T.	Brooklyn, N. Y.
Cushman-Hollis Co.,	Auburn, Me.
Cort, Chas.	Newark, N. J.
Clement & Ball Shoe Mfg. Co.,	Baltimore, Md.
Commonwealth Shoe & Lea. Co.,	Gardiner, Me. and Skowhegan, Me.
Commonwealth Shoe & Lea. Co.,	Whitman, Mass.
Case, Chas. Shoe Co.,	Worcester, Mass.
Curtis, Jones & Co.,	Reading, Pa.
Cort, Thomas	Newark, N. J.
Chadwick, J. H. P.	Marblehead, Mass.
Collins, C. M.	Dannville, N. H.
Croxton, Wood & Co.,	Philadelphia, Pa.
Caunt, Morris Shoe Co.,	Lynn, Mass.
Cahn, Nickelsburg & Co.,	San Francisco, Cal.,
Canidy-Clarke Shoe Co.,	No. Adams, Mass.
Carter Shoe Co., J. W.	Beverly, Mass.
Chaplin & Co., Geo. W.	Georgetown, Mass.
Copeland & Ryder Co.,	Jefferson, Wis.
Carter Co., J. W.	Nashville, Tenn.
Columbia Shoe Co.,	Sheboygan, Wis.
Carlisle Shoe Co.,	Carlisle, Pa.
Cogswell, James	Lynn, Mass.
Chesley & Rugg,	Haverhill, Mass.
Chase & Sons, W. S.	Haverhill, Mass.
Caunt & Co., Joseph	Lynn, Mass.
California Shoe Co.,	Pitaluma, Cal.
Corbin & Son, B. A.	Webster, Mass.
Capen Shoe Co.,	Oregon City, Ore.
Cummings Co., D.	So. Berwick, Me.
Cropley, J. M. & Bro.,	Reading, Mass.
Cushman, John A.	Weymouth, Mass.
Calflin & Thayer,	Milford, Mass.
Chambersburg Shoe Co.,	Chambersburg, Pa.
Condon Bros. & Co.,	Brockton, Mass.
Chick Bros.,	Haverhill, Mass.

Dickenson, E. M.	Fitchburg, Mass.
DeWolfe & Hassell,	Conway, Mass.
Day, R. B.	Haverhill, Mass.
Desnoyers Shoe Co.,	St. Louis, Mo.
Davis Boot & Shoe Co.,	Richmond, Va.
Dowd, Edward	Natick, Mass.
Donovan, James,	Littleton, N. H.
Dolgeville Felt Shoe Co.,	Dolgeville, N. Y.
Duluth Shoe Co.,	Duluth, Minn.
Daum. Geo. M. Shoe Co.,	Ripley, Ohio.
Driscoll, C. J.	Milford, Mass.
Donovan & Co., James	Everett, Mass.
Driesbach, Wm.	Philadelphia, Pa.
Dichert, W. H.	New Oxford, Pa.
Dugan & Hudson Co.,	Rochester, N. Y.
Dore & Co., Benj.	Lynn, Mass.
Donovan, D. A. & Co.,	Lynn, Mass.
Dix, Robert Shoe Mfg. Co.,	Brooklyn, N. Y.
Dunn & McCarthy,	Auburn, Me.
Dickerson & Horn,	Burlington, N. J.
Dengler, J. B.	Pottsville, Pa.
Dalton Shoe Mfg. Co.,	Dalton, Mass.
Dayton, J. E. & Co.,	Williamsport, Pa.
Dodge Bros.,	Newburyport, Mass.
N. D. Dodge & Bliss Co.,	Newburyport, Mass.
Divac, Sharp & Co.,	Philadelphia, Pa.
Dreyer, J. H. & Co.,	Baltimore, Md.
Dearborn Bros.,	E. Candia, N. H.
Dalmasse, E.	Brooklyn, N. Y.
Durland, Thompson Shoe Co.,	Honesdale, Pa.
Drew & Co., W. E.	Richmond, Va.
Douglas Shoe Co., W. L.	Brockton, Mass.
Davis, H. E. Co.,	Freeport, Maine.
Dovenmuehle, H. F. & Son Co.,	Holland, Mich.
Dolge, Alfred Shoe Mfg. Co.,	Los Angeles, Cal.
Dean, Chas. W. & Co.,	Cochituate, Mass.

Daniels, L. S.	West Medway, Mass.
Donovan, James	Boston, Mass.
Dickinson, Jas.	Lynn, Mass.
Dutz, F. W.	New York, N. Y.
Drury, D. A.	Spencer, Mass.
Dyer, Edward E.	No. Weymouth, Mass.
Deming & Wiggin,	Lynn, Mass.
Drew Selby Co.,	Portsmouth, Ohio.
Duttenhofer, Val Sons Co.,	Cincinnati, Ohio.
Drew, Irving Co.,	Portsmouth, Ohio.
Dittman, Geo. F. Boot & Shoe Co.,	St. Louis, Mo.
Durgin & Son, J. H.	Haverhill, Mass.
Donovan, Jas. R.	Brockton, Mass.
Diggs-Vanneman Shoe Mfg. Co.,	Baltimore, Md.
Dixon-Bartlett Co.,	Baltimore, Md.
Darsch & Sons Shoe Mfg. Co., Wm.	Newark, N. J.
Delaware River Shoe Mfg. Co.,	Beverly, N. J.
Dingley-Foss Shoe Co.,	Auburn, Maine.
Dizer, M. C. & Co.,	E. Weymouth, Mass.
Eckhardt & Donovan Shoe Co.,	Lynn, Mass.
Emmert, N. H.	New Oxford, Pa.
Ennis, John	Brooklyn, N. Y.
Engel Cone Shoe Co.,	Lynn, Mass.
Ellsworth Shoe Co.,	Ellsworth, Me.
Ellis, C. A. & Co.,	Newburyport, Mass.
Emerson, W. A. & Son,	Hampstead, N. H.
Eureka Shoe Co.,	Manchester, N. H.
Elkin Shoe Co.,	Elkin, N. C.
Essex Shoe Co.,	Salem, Mass.
East Chattanooga Boot & Shoe Co.,	E. Chattanooga, Tenn.
Excelsior Shoe & Slipper Co.,	Cedarsburg, Wis.
Exeter Boot & Shoe Co.,	Exeter, N. H.
Eaton, Chas. A. Co.,	Brockton, Mass.
Ebberts Shoe Co., John	Buffalo, N. Y.
Easton Boot & Shoe Co.,	Easton, Pa.

Estabrook, Anderson Shoe Co.,	Nashua, N. H.
Eady Shoe Co.,	Otsego, Mich.
Excelsior Shoe Co.,	Portsmouth, Ohio.
Ellett, Kendall Shoe Co.,	Kansas City, Mo.
Evans Shoe Co.,	Napa, Cal.
Enterprise Shoe Mfg. Co.,	Brooklyn, N. Y.
Eisenhuth & Co., T. H.	Selins Grove, Pa.
Eagle Shoe Co., Inc.,	Newport News, Va.
Eastwood, Co., Wm. & Son,	Rochester, N. Y.
Edwards & Co., Jas.	Camden, N. J.
Elkins & Co., M.	Philadelphia, Pa.
Endicott, Johnson & Co.,	Endicott, N. Y.
Eby Shoe Co.,	Lititz, Pa.
Emery & Marshall,	Haverhill, Mass.
Evans, L. B. Son,	Wakefield, Mass.
Emery, Chas. P.	Haverhill, Mass.
Foster, A. J.	Haverhill, Mass.
Fairfield Shoe Co.,	Lancaster, Ohio.
Felter Bros. Co.,	Newark, N. J.
Ferris, Isaac, Jr., Co.,	Camden, N. J.
Frye, John A. Shoe Co.,	Marlboro, Mass.
Felch & Co.,	Natick, Mass.
Freeport Shoe Mfg. Co.,	Freeport, Ill.
Force, Geo.	Camden, N. J.
Force, Chas. P.	St. Mary'st Pa.
Forbush Shoe Mfg. Co.,	Buffalo, N. Y.
Faunce & Spinney,	Lynn, Mass.
Foss, Packard & Co.,	Auburn, Maine.
Ford & Co., C. B.	Rochester, N. Y.
Fox, David	Wilmington, Del.
Force, R. B.	Burlington, N. J.
Fuhner, Henry	Baltimore, Md.
Field Co., Fred F.	Brockton, Mass.
Fisher, A. D.	Lynn, Mass.
Fatzinger, Chas. E.	Philadelphia, Pa.
Felter & Co.,	Newark, N. J.

French, Shriner & Urner,	Rockland, Mass.
Field Shoe Co., P. A.	Salem, Mass.
Forbush Shoe Co.,	Grafton, Mass.
Fox, Chas. K.	Haverhill, Mass.
Fitzpatrick Shoe Co.,	Stoughton, Mass.
Furber, Dudley L.	Dover, N. H.
Fuller, C. S. & Co.,	Salem, Mass.
Field, D. W.	Brockton, Mass.
Foster's Sons, N. C.	Rawley, Mass.
Finch Shoe Co.,	Springfield, Ohio.
Freedman Bros. Shoe Co.,	St. Louis, Mo.
Farmington Shoe Co.,	Farmington, N. H.
Frankfort Shoe Mfg. Co.,	Frankfort, Ky.
Foster, John & Co.,	Beloit, Wis.
Foot, Schulze Co.,	St. Paul, Minn.
Florsheim & Co., Inc.,	Chicago, Ill.
Freiburg, B. & S. Mfg. Co.,	Quincy, Ill.
Fargo & Phelps,	Chicago, Ill.
Filbrick-Fox-Hilker Shoe Co.,	Racine, Wis.
Foster & Sons, J. A.	Avon, Mass.
Field Bros. & Gross Co.,	Auburn, Maine.
Finnegan Shoe Co., Jas.	Philadelphia, Pa.
Golden Sporting Goods Co.,	Brockton, Mass.
Gibbon, C. S.,	Philadelphia, Pa.
Grover & Co., R. B.	Campello, Mass.
C. E. Green & Co.,	Manchester, N. H.
Gregory Strootman Shoe Co.,	Franklinville, N. Y.
Grossman, J.	New York.
Gibbs Shoe Co., O. A.	Dover, N. H.
Griffin White Shoe Co.,	Brooklyn, N. Y.
Garden City Shoe Co.,	Beverly, Mass.
Gokey, Geo. F.	Jamestown, N. Y.
Godman, H. C. & Co.,	Columbus, O.
Getz, A., Shoe Mfg. Co.,	Lancaster, O.
Gale Shoe Mfg. Co.,	Portsmouth, N. H.
Gale Shoe Mfg. Co.,	Haverhill, Mass.

Georgetown Boot & Shoe Co.,	Georgetown, Mass.
Glover, Daniel & Co.,	Salem, Mass.
Guthman, Carpenter & Telling,	Holland, Mich.
Goodbar Shoe Co.,	St. Louis, Mo.
Gale Bros., Inc.,	Exeter, N. H.
Griffin & Cogswell,	Manchester, N. H.
H. B. Goodrich & Co.,	Haverhill, Mass.
N. F. Gorman,	Haverhill, Mass.
Green & Co., Daniel	Dolgeville, N. Y.
Genesee Shoe Co.,	Rochester, N. Y.
Gerber, G. H.	Schuylkill Haven, Pa.
C. Gotzian & Co.,	St. Paul, Minn.
F. H. Godon,	Chickasha, Ind. Ter.
Green Wheeler Shoe Co.,	Dodge, Ia.
Gieseeke Boot & Mfg. Co.,	Jefferson City, Mo.
Greely, A. W.	Haverhill, Mass.
Gokey Shoe Co., N. W.	Jamestown, N. Y.
Garside Son, A.	New York City.
Gray's Sons, H. H.	Syracuse, N. Y.
Gibbs, C. B.	Mt. Holly, N. J.
Hagerty, P. Shoe Co.,	Washington Court House, Ohio.
Herold, Bertsch Shoe Co.,	Grand Rapids, Mich.
Hogan, McMorrow & Tieke Co.,	Aurora, Ind.
Harrisburg Shoe Mfg. Co.,	Harrisburg, Pa.
Hine & Lynch,	Poughkeepsie, N. Y.
Hoag & Walden,	Lynn, Mass.
Hilliard & Tabor,	Haverhill, Mass.
Hodgdon, F. M.	Haverhill, Mass.
Hoyt, F. M. Shoe Co.,	Manchester, N. H.
Hagel Bros.,	Philadelphia, Pa.
Hussey & Hodgdon,	Haverhill, Mass.
Hodgdon Mfg. Co.,	Yarmouth, Maine.
Hagerty & Sullivan,	Randolph, Mass.
Howe & Stocker,	Lynn, Mass.
Hopkins, J. T.	Salem, Mass.
Hennessey & Thompson,	Lynn, Mass.

Howe, S. H. Shoe Co.,	Marlboro, Mass.
Hall, Loring B. Co.,	Marlboro, Mass.
Houghton, Hebard & Warren,	Somersworth, N. H.
Hurd, J. H. & Son,	Dover, N. H.
Hibbard & Perkins Shoe Co.,	Burlington, Vt.
Halifax Shoe Co.,	Halifax, Pa.
Honest Shoe Mfg. Co.,	Allentown, Pa.
Holmes, E. A. & F. A.	Eastport, Maine.
Hirth, Krause & Co.,	Rockford, Mich.
Herrick, G. W. Shoe Co.,	Lynn, Mass.
Honesdale Shoe Co.,	Honesdale, Pa.
Hammonton Shoe Co.,	Hammonton, N. J.
Holt, Jacob F.	East Candia, N. H.
Hathaway, Soule & Harrington, Inc.,	New Bedford, Mass.
Hanan & Son,	Brooklyn, N. Y.
Heywood Boot & Shoe Co.,	Worcester, Mass.
Hess, N. & Bro.,	Baltimore, Md.
Henne, William & Co.,	New York, N. Y.
Harding Sons & Co.,	Ogdensburg, N. Y.
Howard & Foster,	Brockton, Mass.
Humphrey & Paine,	Marblehead, Mass.
Hammond, M. F.	Pleasantville, N. Y.
Hoyt, Rowe & Co.,	Lynn, Mass.
Hallahan & Sons,	Philadelphia, Pa.
Hurley Shoe Co.,	Rockland, Mass.
Howard Briggs & Pray Co.,	Auburn, Maine.
Hoyt, Frank	Lowell, Mass.
Huckins, Temple & Wood,	Milford, Mass.
Herman, J. M. & Co.,	Millis, Mass.
Harney Bros.,	Lynn, Mass.
Hummelstown Shoe Co.,	Hummelstown, Pa.
Hennessey Shoe Mfg. Co.,	Cincinnati, Ohio.
Hawkins, L. P.	Portland, Maine.
Howard & Stadeker, H. R.	Rochester, N. Y.
Hutchinson, F. E.	Haverhill, Mass.
Hudson County Catholic Protectory,	Arlington, N. J.

Holmes, C. M.	Boston, Mass.
Harding, Jordan Shoe Co.,	New Sharon, Maine.
Huyett & Rhoades,	Birdsboro, Pa.
Hamilton, Brown Shoe Co.,	St. Louis, Mo.
Huiskamp Bros. Co.,	Keokuk, Iowa.
Helmers, Bettman & Co.,	Cincinnati, Ohio.
Harnishfeger, F. W.	Evansville, Ind.
Helming, McKenzie Shoe Co., The	Cincinnati, Ohio.
Hodgkins, S. G.	St. Louis, Mo.
Hogan Shoe Co., The	Cincinnati, Ohio.
Hynds, J. G. Shoe Mfg. Co.,	Nashville, Tenn.
Hercules Boot & Shoe Co.,	Berkley, Cal.
Illinois Shoe Mfg. Co.,	Alton, Ill.
Ivory Shoe Co., The	Haverhill, Mass.
Ingalls, Wm. H.	Lynn, Mass.
Ireland & Grafton Co.,	Dover, N. H.
Jones, T. H. Shoe Co.,	Stoneham, Mass.
Johnston & Murphy,	Newark, N. J.
Jackman, A. H.	Nyack, N. Y.
Julian & Kokenge Co.,	Cincinnati, Ohio.
Jones, D. M. Shoe Mfg. Co.,	Columbus, Ohio.
Johansen Bros. Shoe Co.,	St. Louis, Mo.
Jordan, H. Shoe Co.,	Belleville, Ill.
Johnson & Co., L. S.	Lynn, Mass.
Jones, V. K. & A. H.	Lynn, Mass.
Johnson Bros. Shoe Mfg. Co.,	Hallowell, Maine.
Jacobs, Whaley & Co.,	Brooklyn, N. Y.
Jacobs, H. & Sons,	New York City, N. Y.
Joroleman Oliver Co.,	Rochester, N. Y.
Johnston & Baillie Shoe Co.,	Millersburg, Pa.
Jones, The Shoe Co.,	Columbus, Ohio.
Jones, E. & Co.,	Spencer, Mass.
Joslin, A. L.	Oxford, Mass.
Jefts, L. T. & Co.,	Hudson, Mass.
Johnson, C. W.	Natick, Mass.
Jenkins, J. W. Co.,	Rochester, N. Y.

Johnson, W. S. & Co.,	Putnam, Conn.
Johnson & Watson,	Greensboro, N. C.
Jerseyville Shoe Mfg. Co.,	Jerseyville, Ill.
Jarchow, H. F.	Davenport, Iowa.
Kenmore Shoe Co.,	Fredericksburg, Va.
Knapp, J. A.	Brockton, Mass.
Kellam-Goller & Land Co.,	Lynn, Mass.
King, Mrs. A. R.	Lynn, Mass.
Kreider, A. S. Shoe Co.,	Annville & Palmyra, Pa.
Keith Shoe Co., Preston B.	Campello, Mass.
Kingman, F. C. & Co.,	Brockton, Mass.
Kelley, Chas. F.	Chelsea, Mass.
Kimball, Alfred W. Shoe Co.,	So. Lawrence, Mass.
Kreider Shoe Mfg. Co.,	Elizabethtown, Pa.
King, R. E.	Nyack, N. Y.
Kaiser, C. & Son,	Detroit, Mich.
Koeber, Batstone,	Milwaukee, Wis.
Kentucky Shoe Mfg. Co.,	Eddyville, Ky.
Keystone Shoe Mfg. Co.,	Kutztown, Pa.
Krippendorf-Dittmann Co.,	Cincinnati, Ohio.
Keighley & Sons, Chas.	Vineland, N. J.
Kilpatrick, Frank E.	New Brunswick, N. J.
Krohn, Fechheimer & Co.,	Cincinnati, Ohio.
Keiffer Bros.,	New Orleans, La.
Kolt, Zimmers Mfg. Co.,	Milwaukee, Wis.
Krippendorf, O'Neil Co.,	Cincinnati, Ohio.
Kirkendall, T. P. & Co.,	Omaha, Neb.
Kutz, G. M. Shoe Co.,	San Francisco, Cal.
Kenney & Co., L. W.	Lynn, Mass.
Knights, J. Geo.	Haverhill, Mass.
Krieger & Narath Mfg. Co.,	Brooklyn, N. Y.
Kimball, W. & V. O.	Haverhill. Mass.
Kelly, John, Inc.,	Rochester, N. Y.
Keith Co., Geo. E.	Brockton, Mass.
Keystone Shoe Co.,	Philadelphia, Pa.
Kepner, Scott & Co.,	Orwigsburg, Pa.

Kelly, Evans Co.,	Brockton, Mass.
Knipe Bros.,	Ward Hill, Mass.
Keith & Pratt,	No. Middleboro, Mass.
Lancaster Shoe Co.,	Lancaster, O.
Littlefield, L. G.	Avon, Mass.
Lancaster, C. B. Shoe Co.,	Keene, N. H.
R. H. Long Shoe Mfg. Co.,	So. Framingham, Mass.
Lord & Cotter,	Lynn, Mass.
Lacey Shoe Co.,	Cairo, Mich.
Lestershire Mfg. Co.,	Lestershire, N. Y.
Little, Maxwell & Co.,	Lynn, Mass.
Lynn Shoe Co.,	Lynn, Mass.
Leh & Co., H.	Allentown, Pa.
Lititz Shoe Co.,	Lititz, Pa.
Ludekins, Emil	Rochester, N. Y.
Leech Brothers,	Riverside, N. J.
Levis, Bros. & Broxholm	Rochester, N. Y.
Latteman B. & S. Mfg. Co., J. J.	New York City, N. Y.
Lancy, John, Jr.	Marblehead, Mass.
Lounsbury, Mathewson & Co.,	So. Norwalk, Conn.
Leonard, Shaw & Dean,	Middleboro, Mass.
Lane, William, Inc.,	Brooklyn, N. Y.
Lounsbury & Soule,	Stamford, Conn.
Leech, Mrs. Sophia	Burlington, N. J.
Lindner Shoe Co.,	Carlisle, Pa.
Luddy & Currier,	Dover, N. H.
Livingston, C. E.	New Oxford, Pa.
Lavinthal, Sam'l	Trenton, N. J.
Lewis Shoe Co., W. C.	Haverhill, Mass.
Lehigh Valley Shoe Co.,	Allentown, Pa.
Lenox Shoe Co.,	Philadelphia, Pa.
Lumberton Shoe Co.,	Lumberton, N. J.
Leonard Shoe Co.,	Lynn, Mass.
LaCrosse Shoe Mfg. Co.,	LaCrosse, Wis.
Littleton Shoe Co.,	Littleton, N. H.
Lynn Shoe Co., W. R.	Auburn, Maine.

Little & Co., A. E.	Lynn, Mass.
Lynn Enterprise Shoe Co.,	Lynn, Mass.
Legg, C. E.	Pontiac, Ill.
Lefavour, Herbert	Marblehead, Mass.
Leas & McVitty,	Phila., Pa.
Lindenberg, H.	New Orleans, La.
Levi Shoe Co.,	Chicago, Ill.
Lee, W. H.	Memphis, Tenn.
Lucchesi Brothers,	San Antonio, Texas.
Louisiana Shoe Factory,	New Orleans, La.
Levin Tanning Co.,	Santa Rosa, Cal.
Landis, J. Shoe Co.,	Palmyra, Pa.
Leonard & Barrows,	Belfast, Me., & Bridgewater, Mass.
Lunn-Lynn Shoe Co.,	Auburn, Maine.
Lefavour & Co., D. D.	Salem, Mass.
Lewis & Son, Inc., G. W.	Burlington, N. J.
Laird, Schober & Co.,	Phila., Pa.
Lefavour & Co., C. P.	Beverly, Mass.
Millard & Co., N. L.	No. Adams, Mass.
Munroe, Packard & Linscott,	Auburn, Maine.
Morning Star Shoe Co.,	Lynn, Mass.
McIntosh, J. W.	Marblehead, Mass.
Middlesex Shoe Co.,	New Brunswick, N. J.
Merrill, Porter & Co.,	Lynn, Mass.
Moore Shafer S. Mfg. Co.,	Brockport, N. Y.
Morse & Logan,	Lynn, Mass.
Mans, Geo. E.	New Oxford, Pa.
Moulton & Co., C. H.	Brookfield, Mass.
Marcy Bros. Co.,	Hartford, Ct.
Munnich Bros.,	Port Jarvis, N. Y.
Miller, Hess & Co.,	Akron, Pa.
Marion Shoe Mfg. Co.,	Marion, Ohio.
Murphy, Edw. F.	Whitman, Mass.
Minnesota Shoe Co.,	St. Paul, Minn.
Mass. Reformatory,	Concord, Mass.

McNamara, S. B.	Haverhill, Mass.
Menihan & Gilchrist,	Rochester, N. Y.
Murphy Boot & Shoe Co.,	Natick, Mass.
Modern Shoe Co.,	Pontiac, Ill.
Marks & Co., L. V.	Augusta, Ky.
Menzies Shoe Co.,	Detroit, Mich.
Missouri Slipper Co.,	St. Louis, Mo.
Mass. State Prison,	Charlestown, Mass.
Madden-Curtis S. Co.,	Medway, Mass.
Mann, A. E. & Co.	Windsor, Vt.
Merriam, H. W. Shoe Co.,	Newton, N. J.
Mascoma Shoe Co.,	Lebanon, N. H.
Meldola & Coon,	Rochester, N. Y.
Mooney & Co., N. J.	Lynn, Mass.
Mottler, G. L.	Louisville, Ky.
Moloney Bros. Co.,	Rochester, N. Y.
Meier Shoe Co., John	St. Louis, Mo.
Munroe, F. W. & I. M.	Marblehead, Mass.
Mudge Shoe Co.,	Danvers, Mass.
McElwain Co., W. H.	Brockton, Mass.
Martin, Jonas	New Orleans, La.
Mauss Shoe Mfg. Co.,	Cincinnati, Ohio.
McLaren & Musson S. Co.,	Eau Claire, Wis.
Metrailer, A.	Little Rock, Ark.
Marzluff, F. M. Co.,	Janesville, Wis.
Mayer Boot & Shoe Co., F.	Milwaukee, Wis.
Miller, Kohlhepp, Grise & Co.,	Cincinnati, Ohio.
Monteleone, A.	New Orleans, La.
Miller, J. Co.,	Racine, Wis.
McCord-Harlow Shoe Co.,	St. Joseph, Mo.
Munster, A.	Dallas, Texas.
Moloney Shoe Co., John	Ludlow, Ky.
McDonald & Kiley Co., The	Cincinnati, Ohio.
Mills, N. A.	Pittsfield, Mass.
Marshall, C. S. & Co.,	Brockton, Mass.
Muller, Adam	Newark, N. J.

Middleton Shoe Co.,	Middleton, Mass.
Mundell Shoe Co.,	Philadelphia, Pa.
Moulton, Clarence H.	Lynnfield, Mass.
Maynard Shoe Co.,	Claremont, N. H.
Milford Shoe Co.,	Milford, Mass.
Millersburg Shoe Co.,	Millersburg, Pa.
Medlar & Holmes S. Co.,	Philadelphia, Pa.
Millett, Woodbury & Co.,	Beverly, Mass.
Morrison Shoe Co.,	Concord, N. H.
Melanson & Currier,	Lynn, Mass.
Miller-Hapgood S. Co.,	Lynn, Mass.
McBrearty, John	Philadelphia, Pa.
Merrill Shoe Co., Geo. D.	Lynn, Mass.
Murray Shoe Co.,	Lynn, Mass.
Mayer, Alfred & Co.,	Philadelphia, Pa.
Mt. Holly Shoe Co.,	Mt. Holly, N. J.
Minor & Son, P. W.	Batavia, N. Y.
Northwestern Felt S. Co.,	Webster City, Iowa.
Nelson, J. S. Sons Co.,	Grafton, Mass.
Northwood Union Shoe Co.,	Northwood, N. H.
National Shoemakers,	Lewiston, Me.
Nute Bros. Co.,	Auburn, Me.
Norton, N.	Gainesville, Texas.
North Star Shoe Co.,	Minneapolis, Minn.
Neenah B. & S. Mfg. Co.,	Neenah, Wis.
Noyes, Norman Shoe Co.,	St. Joseph, Mo.
Nu-Baby Shoe Co.,	Lynn, Mass.
Nahm Bros.,	Philadelphia, Pa.
Norman & Bennett, Inc.,	Boston, Mass.
Nugent Shoe Co.,	Rochester, N. Y.
Novelty Knitting Co.,	Phoenix Mills, N. Y.
Nettleton, A. E.	Syracuse, N. Y.
Newton, J. R. & Co.,	Philadelphia, Pa.
Nyack Shoe Co-op. Corp.,	Nyack, N. Y.
Newman, A. & Co.,	Philadelphia, Pa.
Nesmith Shoe Co.,	Brockton, Mass.

Normandy Co., The	Providence, R. I.
North Shore Shoe Co.,	Salem, Mass.
Newport Shoe Co.,	Newport, N. H.
No. Lebanon Shoe Factory,	Lebanon, Penn.
Noyes, A. B. & Co., Corp.,	Georgetown, Mass.
Nutt, W. H. & Co.,	Natick, Mass.
O'Donnell, J. M.	Campello, Mass.
Osner, Wm. T. Mfg. Co.,	Chicago, Ill.
Oriental Shoe Mfg. Co.,	Portsmouth, O.
Okarma, E. I.	Savannah, Ga.
O'Brien Shoe Co., J. F.	Rochester, N. Y.
Orne & Grover,	Lynn, Mass.
Ohio Shoe Co.,	Lancaster, O.
O'Connell John Co.,	Marlboro, Mass.
Osgood, C. F. & Co.,	Hammonton, N. J.
Putnam & Cross,	Lynn, Mass.
Pinkham, L. N.	Lynn, Mass.
Pilgrim Shoe Co.,	Danvers, Mass.
Pinkham Shoe Co., H. E.	Lynn, Mass.
Piehler Shoe Co.,	Rochester, N. Y.
Posner, A.	Brooklyn, N. Y.
Packard & Co., N. R.	Brockton, Mass.
Parsons, Jas. & Co.,	Brooklyn, N. Y.
Packard & Co., M. A.	Brockton, Mass.
Pinsker, A. & Son,	Brooklyn, N. Y.
Perfection Shoe Co.,	Rochester, N. Y.
Prenzel & Co., A. H.,	Halifax, Pa.
Perry & Wood,	Beverly, Mass.
Penn Shoe Mfg. Co.,	Reading, Pa.
Prouty, Isaac & Co., Inc.,	Spencer, Mass.
Paff Shoe Co., Inc.,	Alexandria, Va.
Phelan & Sons, Jas.	Lynn, Mass.
Putnam & Co., A. H.	Danvers, Mass.
Pine State Shoe Co.,	Norway, Maine.
Parker & Peakes,	Bangor, Maine.
Pratt Shoe Co.,	Natick, Mass.

Pilling, John Shoe Co.,	Lowell, Mass.
Page, John J.	Haverhill, Mass.
Poor, C. E.	Haverhill, Mass.
Perkins, Hardy & Co.,	Derry, N. H.
Pillsbury, W. S. & R. W.	Derry, N. H.
Pontiac Shoe Co.,	Pontiac, Ill.
Pfeiffer, Wm. F. & Co.,	So. Natick, Mass.
Priesmeyer, A. Shoe Co.,	Jefferson City, Mo.
Pecker, C. D. & Co.,	Lynn, Mass.
Parker, L. S. Shoe Co.,	Jefferson City, Mo.
Price, L. Shoe Co.,	Rochester, Ind.
Pierce, S. L. & Co.,	Cleveland, Ohio.
Purmha, Jos.	New Orleans, La.
Pingree Co.,	Detroit, Mich.
Plaut & Marks Shoe Mfg. Co.,	Cincinnati, Ohio.
Putnam, H. J. & Co.,	Minneapolis, Minn.
Peters Shoe Co.,	St. Louis, Mo.
Palma Shoe Co.,	Waupun, Wis.
Portsmouth Shoe Co., The	Portsmouth, Ohio.
Perry-Lee Co.,	Athol, Mass.
Parker & Co., F. A.	Marblehead, Mass.
Pepperell Bldg. & Mfg. Assn.,	Pepperell, Mass.
Pincus, Julius	New York, N. Y.
Plant Co., Thos. G.	Jamaica Plain, Mass.
Perkins, Linscott & Co.,	Rochester, N. H.
Phelan, Jeremiah Sons,	Rochester, N. Y.
Porter, Wm. & Sons,	Lynn, Mass.
Prince, Collins & Marston Co.,	Danvers, Mass.
Piekenbrock, E. B. Shoe Mfg. Co.,	Dubuque, Iowa.
Quast, J. H. & Son,	Louisville, Ky.
Reynolds, L. W.	Brockton, Mass.
Rockaway Shoe Mfg. Co.,	Rockaway, N. J.
Rogers, A. S. Shoe Co.,	Chelsea, Mass.
Riverside Shoe Mfg. Co.,	Beardstown, Ill.
Richardson Shoe Co.,	Menominee, Mich.
Reed & Co., E. P.	Rochester, N. Y.

Rose Shoe Mfg. Co.,	Rochester, N. Y.
Rehr Shoe Co.,	Orwigsburg, Pa.
Rowe & Swett,	E. Candia, N. H.
Richards & Brennan Co.,	Randolph, Mass.
Randall, J. W.,	Providence, R. I.
Ryan & Son, Maurice,	Brooklyn, N. Y.
Reis & Newman,	New York, N. Y.
Russ, J. W.	Haverhill, Mass.
Reynolds, B. F.	Brockton, Mass.
Red Star Shoe Mfg. Co.,	Baltimore, Md.
Reliable Shoe Co.,	Orwigsburg, Pa.
Russ, T. M.	Salem, N. H.
Rudy Co., Wm. B.	Johnstown, Pa.
Reynolds Drake & Gabell Co.,	Brockton, Mass.
Rendell Shoe Co.,	Trenton, N. J.
Reed, H. B. & Co.,	Manchester, N. H.
Rubberhide Co.,	Randolph, Mass.
Ruddock, Thos. & Sons,	Haverhill, Mass.
Randall, Adams Co.,	Lynn, Mass.
Rusche & Co.,	Cincinnati, Ohio.
Rice & Hutchins, Inc.,	Boston, Mass.
Richardson, J. W.	Reading, Mass.
Ridgeway, A. & Son,	Delanco, N. J.
Rogers, J. W.	Salem, Mass.
Rindge, Kalmbach, Logie & Co.,	Grand Rapids, Mich.
Regent Shoe Mfg. Co.,	Omaha, Neb.
Reimer Bros. Shoe Co.,	Green Bay, Wis.
Riley, Barker Shoe Co.,	Columbus, Ohio.
Rich Shoe Co.,	Milwaukee, Wis.
Roberts, Johnson & Rand Shoe Co.,	St. Louis, Mo.
Rosenberg, B. & Sons,	New Orleans, La.
Ramsfelder, Erlich Co.,	Cincinnati, Ohio.
Racine Shoe Mfg. Co.,	Racine, Wis.
Robinson Bros. Co.,	Salt Lake City, Utah.
Rae, Alex.	Augusta, Ga.
Richardson-Joyce Shoe Co.,	Harnellsville, N. Y.

Richardson & Co., J.	Elmira, N. Y.
Regal Shoe Co., Inc.,	Whitman, Mass.
Roney & Berger Co.,	Allentown, Pa.
Seavey, F. A. & Co.,	Beverly, Mass.
Shortell, M. & Son,	Salem, Mass.
Seymour & Jackson,	Lynn, Mass.
Spinney, B. F. & Co.,	Norway, Maine.
Sherwood Shoe Co.,	Rochester, N. Y.
Standard Shoe Co.,	Buffalo, N. Y.
Schneider, Philip	Allentown, Pa.
Schneider Bros. & Co.,	Natick, Mass.
Straw, L. G. & Co.,	Salem, Mass.
Snedicor & Hathaway Co.,	Detroit, Mich.
Skyrm, M. & Co.,	Cleveland, O.
Silver & Son, Geo.	New York, N. Y.
Stillson, Kellogg Shoe Co.,	Tacoma, Wash.
Shields Union Labor Shoe Co.,	Buffalo, N. Y.
Strong & Garfield,	E. Weymouth, Mass.
Sing Sing Prison,	Ossining, N. Y.
Stafford Bros.,	Burlington, N. J.
Scheuer, S. & Sons,	New York, N. Y.
Spaulding & Swett Corp.,	Lowell, Mass.
Stetson Shoe Co.,	So. Weymouth, Mass.
Smith, A. F. Co.,	Lynn, Mass.
Schreir, Jos. A.	Rochester, N. Y.
Smith & Herrick Co.,	Albany, N. Y.
Spaulding & Co., W. W.	Haverhill, Mass.
Schmidt, John G.	Philadelphia, Pa.
Shaw, A. W. & Co.,	Freeport, Maine.
Strootman, John S. Co.,	Buffalo, N. Y.
Stevens, O. T.	Newton, N. H.
Saucony Shoe Mfg. Co.,	Kutztown, Pa.
Shipper, C. D. W.	Putnam, Conn.
Schreier Co., W. H.	Rochester, N. Y.
Strohbeck, C. W.	Brooklyn, N. Y.
St. Croix Shoe Co.,	Calais, Maine.

Smith Shoe Co., The G. Edwin	Columbus, Ohio.
Southern Shoe Mfg. Co.,	St. Louis, Mo.
Schoenecker, V. Boot & Shoe Co.,	Milwaukee, Wis.
Smaltz-Goodwin Co.,	Philadelphia, Pa.
Solomon Bros.,	Salt Lake City, Utah.
Selz, Schwab & Co.,	Chicago, Ill.
Scheiffle Shoe Mfg. Co.,	Cincinnati, Ohio.
So. Weymouth Shoe Co.,	So. Weymouth, Mass.
Star Shoe Co.,	Hannibal, Mo.
Sweet & Savory,	Marblehead, Mass.
Simons & Homer,	Oil Mills, N. H.
Stern, Auer & Co.,	Cincinnati, Ohio.
Shaft-Pierce Shoe Co.,	Faribault, Minn.
Sachs Shoe Mfg. Co.,	Cincinnati, Ohio.
Sharood Shoe Co.,	St. Paul, Minn.
Sullivan, P. & Co.,	Cincinnati, Ohio.
Smith Shoe Co., J. P.	Chicago, Ill.
Starner-Copeland Co., The	Columbus, Ohio.
Siebe Shoe Co.,	San Francisco, Cal.
Slater & Morrill, Inc.,	So. Braintree, Mass.
Simmons & Hall,	Rockland, Mass.
Syracuse Shoe Mfg. Co.,	Syracuse, N. Y.
Standard Shoe Co.,	Mt. Holly, N. J.
Stover & Bean,	Lowell, Mass.
Soule Shoe School & Upper Co.,	Stoughton, Mass.
Stacy, Adams & Co.,	Brockton, Mass.
Sheppard & Myers Co.,	Hanover, Pa.
Senter, Walter	So. Kingston, N. H.
Snow Co., Geo. G.	Brockton, Mass.
Trimby, Thos. W. & Co.,	Rochester, N. Y.
Tibbetts, J. E.	Campello, Mass.
Terhune & Co., J. W.	Rockland, Mass.
E. E. Taylor Co.,	Brockton, Mass.
Fred S. Todd Co.,	Rochester, N. Y.
Theriault-Noodus & Burnham,	Haverhill, Mass.
Thayer, Maguire & Field,	Haverhill, Mass.

Tillett, Thos., Jr.,	Beverly, N. J.
Timson & Co.,	Lynn, Mass.
Travers & Co., F. F.	Lynn, Mass.
Tennessee S. Mfg. Co.,	Nashville, Tenn.
Tappan Shoe Mfg. Co.,	Coldwater, Mich.
Thomas, J. B. & Tarr,	Lynn, Mass.
Tracey, Chas. L.	Tonawanda, N. Y.
Tufts & Friedman,	Lynn, Mass.
Tilder, A. W.,	Weymouth, Mass.
Trask Bros. & Co.,	Epping, N. H.
Tuttle, Walter H. Co.,	Lynn, Mass.
Torrey, J. H. & T. H.,	No. Weymouth, Mass.
Troy Shoe Co.,	Troy, Pa.
Tuskegee Normal & Ind. Inst.,	Tuskegee, Ala.
Tanner Shoe Mfg. Co.,	Cincinnati, O.
Tilt, J. E. Shoe Co.,	Chicago, Ill.
Tennent Shoe Co.,	St. Louis, Mo.
The Tremper Shoe Mfg. Co.,	Portsmouth, O.
Tilt-Kenney Shoe Co.,	Chicago, Ill.
Thayer & Co., Inc., N. B.	Milton Mills, N. H.
Tibbetts, H. A.	Lynn, Mass.
Tannatt, J. C. Shoe Co.,	Brockton, Mass.
Toft & Buker,	Salem, Mass.
Thompson, F. J.	Haverhill, Mass.
Thomas & Co.,	Brooklyn, N. Y.
Thompson Bros.,	Campello, Mass.
Thayer Osborne Shoe Co.,	Alton, N. H.
Taylor Shoe Co., H.	Philadelphia, Pa.
Thurell, Batchelder & Co.,	Lynn, Mass.
Utz & Dunn,	Rochester, N. Y.
Union Shoe Mfg. Co.,	Chillicothe, O.
United Workingmen's Boot & Shoe Co.,	San Francisco, Cal.
Ulrich, Michael	Buffalo, N. Y.
United States Shoe Co.,	E. Whitman, Mass.
Upham Bros. Co.,	Stoughton, Mass.

Usher, W. R. & Son,	Springvale, Me.
Union Shoe Making Co.,	St. Louis, Mo.
Union Shoe Mfg. Co.,	Ellsworth, Me.
Union Shoe Works,	Rockford, Ill.
Venor & Montgomery,	Rochester, N. Y.
Vaughan-Monnig Shoe Co.,	Jefferson City, Mo.
Vogel & Co., E.	New York City.
Vickery, M. & R. Co.,	Marblehead, Mass.
Vogel Bros. Shoe Co.,	Louisville, Ky.
Williams Shoe Co.,	Cochituate, Mass.
Welch-Atwood Co.,	So. Easton, Mass.
Waterbury & Son Co., S.	New York, N. Y.
Worthley, M. J.	Lynn, Mass.
Warsetz & Co., F.	Buffalo, N. Y.
Wilson, J. F.	Baltimore, Md.
Wood & Neel Co.,	Rochester, N. Y.
Winchell J. H. & Co., Inc.,	Haverhill, Mass.
Winchester Shoe Co.,	Buffalo, N. Y.
Williams, E. W.	Winona, Minn.
Wesson, J. E.	Worcester, Mass.
Webster, Ira J.	Haverhill, Mass.
Woodbury, F. P. & Co.,	Salem, N. H.
White River Shoe Co.,	Bristol, N. H.
Walcott, J. W. & Co.,	Natick, Mass.
Whitcomb & Paine,	Holbrook, Mass.
Wood, J. T. & Co.,	Ware, Mass.
Witt, Geo. D. Shoe Co.,	Lynchburg, Va.
Worcester Slipper Co.,	Worcester, Mass.
Walden Shoe Co.,	Grand Haven, Mich.
Waverly Shoe Co.,	Lynn, Mass.
Walton & Logan,	Lynn, Mass.
Washington Shoe Mfg. Co.,	Seattle, Wash.
Watsontown Boot & Shoe Co.,	Watsontown, Pa.
Webster, Geo. L.	Haverhill, Mass.
Wallace, E. G. & E.	Rochester, N. H.
Wells & Co., M. D.	DeKalb, Ill.

Weinbrenner, Albert H.	Milwaukee, Wis.
White, D. D. Shoe Co.,	Taunton, Mass.
Whittredge, M. H.	Lynn, Mass.
Whitman & Keith,	Campello, Mass.
Wertheimer-Swarts Shoe Co.,	St. Louis, Mo.
Witchell Sons & Co., Ltd.,	Detroit, Mich.
Western Shoe Co.,	Janesville, Wis.
Watson-Plummer Shoe Co.,	Dixon, Ill.
Wolf Bros. & Co.,	Cincinnati, Ohio.
Western Shoe Co.,	Stillwater, Minn.
Wolfe Bros. Shoe Co.,	Columbus, Ohio.
Weyenburg Shoe Mfg. Co.,	Milwaukee, Wis.
Wood & Co., R. T., Inc.,	Burlington, N. J.
Weil S. Co., Inc.,	Brooklyn, N. Y.
Walker, J. L.	Lynn, Mass.
Williams, Clark & Co.,	Lynn, Mass.
Wiggins & Son,	Marblehead, Mass.
Walsh & Co., W. E.	Lynn, Mass.
Waters Co., E. H.	Harrisburg, Pa.
Woodbury Shoe Co.,	Beverly, Mass.
Wright, Peters & Co.,	Rochester, N. Y.
Williams, Hoyt & Co.,	Rochester, N. Y.
Watson Shoe Co.,	Lynn, Mass.
Welch & Landregan,	Lynn, Mass.
Weber Bros.	No. Adams, Mass.
Wright, W. H.	Rochester, N. Y.
Wilson, Chas. E.	Lynn, Mass.
Wolfe Shoe Co.,	Allentown, Pa.
Wright, E. T. & Co.,	Rockland, Mass.
Williams, Kneeland & Co.,	So. Braintree, Mass.
Wise & Cooper,	Auburn, Maine.
White Dunham Shoe Co.,	Brockton, Mass.
Wichert & Gardiner,	Brooklyn, N. Y.
White, A. W., Shoe & Leather Co.,	Thomaston, Ga.
Xenia Shoe Mfg. Co.,	Xenia, Ohio.
York Shoe Mfg. Co.,	York, Pa.

Young, Frederick C.	Rochester, N. Y.
Zions Co-op. Merc. Inst.,	Salt Lake City, Utah.
Ziegler Bros.	Philadelphia, Pa.
Zulich, J. S. & Co.,	Orwigsburg, Pa.
Zimmerman Shoe Co.,	Pittsfield, Mass.

PLAINTIFF'S EXHIBIT 273.

[Put in Evidence, page 4298.]

SHOE MANUFACTURERS HOLDING MACHINES OF THE LASTING, HEELING, OR METALLIC DEPARTMENTS OF THE UNITED SHOE MACHINERY COMPANY ON JANUARY 1, 1905, ON INDEPENDENT, UNRESTRICTED LEASES. TOTAL 706.

Amazeen & Co.,	Milwaukee, Wis.
Allentown Shoe Mfg. Co.,	Allentown, Pa.
Andrews & Co.,	Everett, Mass.
Ackerman, R.	Milwaukee, Wis.
Aborn, C. H. & Co.,	Lynn, Mass.
Ashe, Noyes & Small Co.,	Auburn, Maine.
Aldrich, N. E.	St. Louis, Mo.
Arnold, M. N.	No. Abington, Mass.
Alter & McCaffrey Co., The	Cincinnati, Ohio.
Atlanta Leather Co.,	Atlanta, Ga.
Armstrong & Co., D.	Rochester, N. Y.
Alden, C. H. & Co.,	No. Abington, Mass.
Argus, Joseph,	Buffalo, N. Y.
Aldrich, C. E. & Co.,	Farmington, N. H.
American Shoe Mfg. Co.,	Allentown, Pa.
Allen, J. S.,	Brockton, Mass.
Allen & Co.,	Philadelphia, Pa.
Bay Shoe Co.,	Harrisburg, Pa.
Bartlett, Albion	Lynn, Mass.
Bartels, Thelan & Co.,	Chelsea, Mass.
Brackett, W. D. & Co.,	Nashua, N. H.
Barker, Brown & Co.,	Huntington, Ind.
Brigham, F. & Gregory Co.,	Hudson, Mass.

Brett, C. M. Co.,	Hudson, Mass.
Brown, H. H. & Co.,	No. Brookfield, Mass.
Buck, E. A. & Co.,	Bangor, Maine.
Blum Shoe Co.,	Dansville, N. Y.
Brandau, Adam	Detroit, Mich.
Belmont Shoe Co.,	Barnesville, Ohio.
Baumgartel, Emil	Buffalo, N. Y.
Blyn, Isaac	New York, N. Y.
Brennan & White,	Brooklyn, N. Y.
Boyds Sons, James	New York, N. Y.
Brophy Bros. Shoe Co.,	Lynn, Mass.
Brockton Co-op. Boot & Shoe Co.,	Campello, Mass.
Bohr & Sons, N. C.	Waterville, N. Y.
Brown Shoe Co.,	St. Louis, Mo.
Buckley Shoe Co.,	Houston, Texas.
Barton Bros.	Kansas City, Mo.
Bering Shoe Co.,	Cincinnati, Ohio.
Beals & Torrey Shoe Co.,	Watertown, Wis.
Bruns, J. B. Shoe Mfg. Co.,	Jefferson City, Mo.
Berry & Co., A. H.	Portland, Maine.
Burt Co., E. C.	Brooklyn, N. Y.
Barke & Co.,	Philadelphia, Pa.
Bartlett, J. E.	Lynn, Mass.
Bolton Shoe Co.	Rochester, N. Y.
Blyn, S.	New York, N. Y.
Brennan Boot & Shoe Co.	Natick, Mass.
Bay State Shoe & Leather Co.,	Sing Sing, N. Y.
Brewer, Parker & Co.	Lynn, Mass.
Boyd & Corey Boot & Shoe Mfg. Co.,	Marlboro, Mass.
Bridges Bros.,	Marblehead, Mass.
Blethen, Arthur A.	Lynn, Mass.
Bridges & Carroll,	Marblehead, Mass.
Breed Shoe Co.,	Rochester, N. H.
Budd Shoe Co., J. F.	Burlington, N. J.
Breed, F. W.	Marblehead, Mass.
Berry & Co., J. M.	Farmington, N. H.

Burt & Co., Geo. H.	E. Brookfield, Mass.
Burt & Co., Geo. H.	Avon, Mass.
Bacon & Co., J. E.	Spencer, Mass.
Bell Shoe Co.,	Chelsea, Vt.
Burlington County Shoe Co.,	Mt. Holly, N. J.
Baker, Geo. & Son,	Brooklyn, N. Y.
Brown & Co., A. E.	Orwigsburg, Pa.
Barrows, A.	Campello, Mass.
Brigham, H. E.	Westboro, Mass.
Bonin & Leonard,	Haverhill, Mass.
Bullard & Co., D.	Spencer, Mass.
Burley & Stevens Co.,	Newburyport, Mass.
Baltimore Boot & Shoe Co.,	Baltimore, Md.
Banister & Co., Jas. A.	Newark, N. J.
Buckingham & Hecht,	San Francisco, Cal.
Bielefeld & Spahn,	New York, N. Y.
Byers Shoe Co., N. R.	Columbus, Ohio.
Brown, J. & Sons,	Salem, Mass.
Black, Chas.	New York, N. Y.
Bluff City Shoe Co.,	Hannibal, Mo.
Bass & Co., Geo. W.	Wilton, Maine.
Blake & Co., Chas. E.	Lynn, Mass.
Bradley & Metcalf Co.,	Milwaukee, Wis.
Butcher, William	Camden, N. J.
Bray, Stanley & Webber,	Beverly, Mass.
Brigham & Co., J. W.	Worcester, Mass.
Brigham, Geo. B. Sons	Westboro, Mass.
Boyden Shoe Co.,	Newark, N. J.
Baker & Co., J. H.	Beverly, Mass.
Bertsch, Jos. Shoe Co.,	Rochester, N. Y.
Badger State Shoe Co.,	Milwaukee, Wis.
Bates & ., A. J.	Webster, Mass.
City of Boston,	Rainsford Island.
Cobb, Chas. H.	Lynn, Mass.
Cogan & Son, P.	Stoneham, Mass.
Craddock Terry Co.,	Lynchburg, Va.

Cass & Daley,	Salem, Mass.
Connolly, Co., J. J.	Salem, Mass.
Clapp & Tapley,	Danvers, Mass.
Chipman & Pratt,	Marblehead, Mass.
Chase, Chamberlain & Co.,	Raymond, N. H.
Crafts, G. P.	Manchester, N. H.
Coggswell Shoe Co.,	Haverhill, Mass.
Cox, Edw. M. Co.,	No. Easton, Mass.
Cushman, Ara Co.,	Auburn, Maine.
Crafts Harrington & Co.,	Brockton, Mass.
Corcoran, Thos. & Son,	Lynn, Mass.
Cloutman, J. F. & Co.,	Farmington, N. H.
Carruthers-Jones Shoe Co.,	St. Louis, Mo.
Crescent City Shoe Co.,	Evansville, Ind.
C. & E. Shoe Co.,	Columbus, O.
Cone, R. W. & Co.,	Bridgewater, Mass.
Comfort Shoe Co.,	Albany, N. Y.
Cross, John H.	Lynn, Mass.
Crossett & Co., Inc., L. A.	No. Abington, Mass.
Creighton, G. A. & Son,	Lynn, Mass.
Cramer Shoe Co., W. F.	Catawissa, Pa.
Cushman & Hebert,	Lynn, Mass.
Chase Merritt Co.,	Boston, Mass.
Churchill & Alden Co.,	Campello, Mass.
Cramer & Son, John	Brooklyn, N. Y.
Colemary, A. H. & Co.,	Baltimore, Md.
Cox, A. F. & Son,	Portland, Me.
Cummings Co., The	Worcester, Mass.
Clark, F. S. Co.,	Lynn, Mass.
Carroll Shoe Co., Jno A.	Baltimore, Md.
Coburn, Gauss & Co.,	Wolfboro, N. H.
Cygolf Shoe Co.,	Brockton, Mass.
Cahill Holters Co.,	Cincinnati, O.
Courtney Shoe Co.,	St. Louis, Mo.
Cole, Davis Co.,	Chicago, Ill.
Clapp & Son, Edwin	E. Weymouth, Mass.

Cousins, J. & T.	Brooklyn, N. Y.
Cushman-Hollis Co.,	Auburn, Me.
Clement & Ball Shoe Mfg. Co.,	Baltimore, Md.
Commonwealth Shoe & Lea. Co.,	Whitman, Mass.
Commonwealth Shoe & Lea. Co.,	Gardiner, Maine.
	Skowhegan, Maine.
Case, Chas. Shoe Co.,	Worcester, Mass.
Collins, C. M.	Dannville, N. H.
Croxton, Wood & Co.,	Philadelphia, Pa.
Cogswell, James	Lynn, Mass.
Carter, J. W. Shoe Co.,	Beverly, Mass.
Cahn, Nickelsburg & Co.,	San Francisco, Cal.
Canidy Clark Shoe Co.,	No. Adams, Mass.
Chaplin Geo. W. & Co.,	Georgetown, Mass.
Copeland & Ryder Co.,	Jefferson, Wis.
Columbia Shoe Co.,	Sheboygan, Wis.
Carlisle Shoe Co.,	Carlisle, Pa.
Chesley & Rugg,	Haverhill, Mass.
Chase & Sons, W. S.	Haverhill, Mass.
Caunt & Co., Jos.	Lynn, Mass.
California Shoe Co.,	Petaluma, Cal.
Corbin & Son, B. A.	Webster, Mass.
Capen Shoe Co.,	Oregon City, Ore.
Cummings Co., D.	So. Berwick, Maine.
Cropley, J. M. & Bro.,	Reading, Mass.
Cushman, John A.	Weymouth, Mass.
Claflin & Thayer,	Milford, Mass.
Chambersburg Shoe Co.,	Chambersburg, Pa.
Condon Bros. & Co.,	Brockton, Mass.
Chick Bros.,	Haverhill, Mass.
Dickenson, E. M.	Fitchburg, Mass.
DeWolfe & Hassell,	Conway, Mass.
Day, R. B.	Haverhill, Mass.
Desnoyers Shoe Co.,	St. Louis, Mo.
Davis Boot & Shoe Co.,	Richmond, Va.
Dowd, Edward	Natick, Mass.

Donovan, James	Littleton, N. H.
Dolgeville Felt Shoe Co.,	Dolgeville, N. Y.
Duluth Shoe Co.,	Duluth, Minn.
Daum, Geo. M. Shoe Co.,	Ripley, Ohio.
Driscoll, C. J.	Milford, Mass.
Donovan & Co., James	Everett, Mass.
Dugan & Hudson Co.,	Rochester, N. Y.
Donovan, D. A. & Co.,	Lynn, Mass.
Dix, Robert Shoe Mfg. Co.,	Brooklyn, N. Y.
Dunn & McCarthy,	Auburn, N. Y.
Dalton Shoe Mfg. Co.,	Dalton, Mass.
Dayton, J. E. & Co.,	Williamsport, Pa.
Dodge Bros.,	Newburyport, Mass.
Dodge, N. D. & Bliss Co.,	Newburyport, Mass.
Dreyer, J. H. & Co.,	Baltimore, Md.
Durland-Thompson Shoe Co.,	Honesdale, Pa.
Douglas, W. L. Shoe Co.,	Brockton, Mass.
Dovenmuehle, H. F. & Son Co.,	Holland, Mich.
Dolge, Alfred Shoe Mfg. Co.,	Los Angeles, Cal.
Dean, Chas. W. & Co.,	Cochituate, Mass.
Daniels, L. S.	West Medway, Mass.
Dickinson, Jas.	Lynn, Mass.
Dietz, F. W.	New York, N. Y.
Drury, D. A.	Spencer, Mass.
Dyer, Edward E.	No. Weymouth, Mass.
Deming & Wiggin,	Lynn, Mass.
Drew Selby Co.,	Portsmouth, Ohio.
Duttenhofer, Val Sons Co.,	Cincinnati, Ohio.
Drew, Irving Co.,	Portsmouth, Ohio.
Dittman, Geo. F. Boot & Shoe Co.,	St. Louis, Mo.
Durgin & Sons, J. H.	Haverhill, Mass.
Donovan, Jas. R.	Brockton, Mass.
Diggs, Vanneman Shoe Mfg. Co.,	Baltimore, Md.
Dixon Bartlett Co.,	Baltimore, Md.
Dorsch & Sons Shoe Mfg. Co., Wm.	Newark, N. J.
Dingley Foss Shoe Co.,	Auburn, Maine.

Dizer, M. C. & Co.,	E. Weymouth, Mass.
Ellsworth Shoe Co.,	Ellsworth, Me.
Ellis, C. A. & Co.,	Newburyport, Mass.
Emerson, W. A. & Son,	Hampstead, N. H.
Eureka Shoe Co.,	Manchester, N. H.
Elkin Shoe Co.,	Elkin, N. C.
Essex Shoe Co.,	Salem, Mass.
East Chattanooga Boot & Shoe Co.,	E. Chattanooga, Tenn.
Excelsior Shoe & Slipper Co.,	Cedarsburg, Wis.
Exeter Boot & Shoe Co.,	Exeter, N. H.
Eaton, Chas. A. Co.,	Brockton, Mass.
Ebberts, Shoe Co., John	Buffalo, N. Y.
Easton Boot & Shoe Co.,	Easton, Pa.
Estabrook, Anderson Shoe Co.,	Nashua, N. H.
Excelsior Shoe Co.,	Portsmouth, O.
Ellett, Kendall Shoe Co.,	Kansas City, Mo.
Evans Shoe Co.,	Napa, Cal.
Eisenhuth & Co., T. H.	Selins Grove, Pa.
Eagle Shoe Co., Inc.,	Newport News, Va.
Elkins & Co., M.	Philadelphia, Pa.
Endicott, Johnson & Co.,	Endicott, N. Y.
Evans Son, L. B.,	Wakefield, Mass.
Foster, A. J.	Haverhill, Mass.
Fairfield Shoe Co.,	Lancaster, O.
Felter Bros. Co.,	Newark, N. J.
Ferris, Isaac, Jr., Co.,	Camden, N. J.
Frye, John A. Shoe Co.,	Marlboro, Mass.
Felch & Co., W. L.	Natick, Mass.
Freeport Shoe Mfg. Co.,	Freeport, Ill.
Faunce & Spinney,	Lynn, Mass.
Foss, Packard & Co.,	Auburn, Me.
Ford & Co., C. P.	Rochester, N. Y.
Fox, David	Wilmington, Del.
Fuhrer, Henry	Baltimore, Md.
Field Co., Fred F.	Brockton, Mass.
Felter & Co.,	Newark, N. J.

French, Shriner & Urner,	Rockland, Mass.
Field Shoe Co., P. A.	Salem, Mass.
Forbush Shoe Co.,	Grafton, Mass.
Fox, Chas. K.	Haverhill, Mass.
Fitzpatrick Shoe Co.,	Stoughton, Mass.
Fuller, C. S. & Co.,	Salem, Mass.
Field, D. W.	Brockton, Mass.
Foster's Sons, W. C.	Rowley, Mass.
Finch Shoe Co.,	Springfield, Ohio.
Friedman Bros. Shoe Co.,	St. Louis, Mo.
Farmington Shoe Co.,	Farmington, N. H.
Frankfort Shoe Mfg. Co.,	Frankfort, Ky.
Foot, Schulze Co.,	St. Paul, Minn.
Florsheim & Co., Inc.,	Chicago, Ill.
Freiburg, B. & S. Mfg. Co.,	Quincy, Ill.
Fiebrich Fox Hilkes S. Co.,	Racine, Wis.
Field Bros. & Gross Co.,	Auburn, Me.
Gibbon, C. S.	Philadelphia, Pa.
Grover & Co., R. B.	Campello, Mass.
Green, C. E. & Co.,	Manchester, N. H.
Gregory, Strootman Shoe Co.,	Franklinville, N. Y.
Garden City Shoe Co.,	Beverly, Mass.
Gokey, Geo. F.	Jamestown, N. Y.
Godman, H. C. & Co.,	Columbus, O.
Getz, A., Shoe Mfg. Co.,	Lancaster, O.
Gale Shoe Mfg. Co.,	Portsmouth, N. H.
Gale Shoe Mfg. Co.,	Haverhill, Mass.
Georgetown Boot & Shoe Co.,	Georgetown, Mass.
Goodbar Shoe Co.,	St. Louis, Mo.
Gale Bros., Inc.,	Exeter, N. H.
Griffin & Cogswell,	Manchester, N. H.
Goodrich, H. B. & Co.,	Haverhill, Mass.
Gorman, N. F.	Haverhill, Mass.
Green & Co., Daniel	Dolgeville, N. Y.
Genesee Shoe Co.,	Rochester, N. Y.
Gerber, G. H.	Schuylkill Haven, Pa.

Gotzian, C. & Co.,	St. Paul, Minn.
Green Wheeler Shoe Co.,	Fort Dodge, Ia.
Giesecke Boot & Mfg. Co.,	Jefferson City, Mo.
Greeley, A. W.	Haverhill, Mass.
Garside & Son, A.	New York, N. Y.
Gray's Sons, H. H.	Syracuse, N. Y.
Glover, Daniel & Co.,	Salem, Mass.
Guthman, Carpenter & Telling,	Holland, Mich.
Hagerty, P. Shoe Co.,	Wash. C. H., Ohio.
Herold, Bertsch Shoe Co.,	Grand Rapids, Mich.
Hogan, McMorrow & Tieke Co.,	Aurora, Ind.
Hercules Boot & Shoe Co.,	Berkely, Cal.
Harrisburg Shoe Mfg. Co.,	Harrisburg, Pa.
Hine & Lynch,	Poughkeepsie, N. Y.
Hilliard & Tabor,	Haverhill, Mass.
Hodgsdon, F. M.	Haverhill, Mass.
Hoyt, F. M. Shoe Co.,	Manchester, N. H.
Hussey & Hodgdon,	Haverhill, Mass.
Hopkins, J. T.	Salem, Mass.
Hennessey & Thompson,	Lynn, Mass.
Hodgdon Mfg. Co.,	Yarmouth, Me.
Howe, S. H. Shoe Co.,	Marlboro, Mass.
Hall, Loring B. Co.,	Marlboro, Mass.
Houghton, Hebard & Warren,	Somersworth, N. H.
Hurd, J. H. & Son,	Dover, N. H.
Hibbard & Perkins Shoe Co.,	Burlington, Vt.
Halifax Shoe Co.,	Halifax, Pa.
Honest Shoe Mfg. Co.,	Allentown, Pa.
Holmes, E. A. & F. A.	Eastport, Me.
Hirth, Krause & Co.,	Rockford, Mich.
Herrick, G. W. Shoe Co.,	Lynn, Mass.
Honesdale Shoe Co.,	Honesdale, Pa.
Hathaway, Soule & Harrington, Inc.,	New Bedford, Mass.
Hanan & Son,	Brooklyn, N. Y.
Heywood Boot & Shoe Co.,	Worcester, Mass.
Hess & Bro., N.	Baltimore, Md.

Henne & Co., Wm.	New York, N. Y.
Harding Sons & Co.,	Ogdensburg, N. Y.
Howard & Foster,	Brockton, Mass.
Hallihan & Sons,	Phila, Pa.
Hurley Shoe Co.,	Rockland, Mass.
Howard Briggs & Pray Co.,	Auburn, Me.
Hoyt, Frank	Lowell, Mass.
Huckins, Temple & Wood,	Milford, Mass.
Herman, J. M. & Co.,	Millis, Mass.
Harney Bros.,	Lynn, Mass.
Hummelstown Shoe Co.,	Hummelstown, Pa.
Hennessey Shoe Mfg. Co.,	Cincinnati, O.
Hawkins, L. P.	Portland, Me.
Howard & Stadeker, H. R.	Rochester, N. Y.
Hudson Co. Catholic Proct'y,	Arlington, N. J.
Holmes, C. M.	Boston, Mass.
Harding, Jordan Shoe Co.,	New Sharon, Me.
Huyett & Rhoades,	Birdsboro, Pa.
Hamilton, Brown Shoe Co.,	St. Louis, Mo.
Huiskamp Bros. Co.,	Keokuk, Ia.
Helmers, Bettman & Co.,	Cincinnati, O.
Helming, McKenzie Shoe Co.,	Cincinnati, O.
Hogan Shoe Co.,	Cincinnati, O.
Hynds, J. G. Shoe Mfg. Co.,	Nashville, Tenn.
Ingalls, Wm. H.	Lynn, Mass.
Ireland & Grafton Co.,	Dover, N. H.
Jerseyville Shoe Mfg. Co.,	Jerseyville, Ill.
Jarchow, H. F.	Davenport, Iowa.
Jones Shoe Co., T. H.	Stoneham, Mass.
Johnston & Murphy,	Newark, N. J.
Jackman, A. H.	Nyack, N. Y.
Julian & Kokenge Co.,	Cincinnati, O.
Jones Shoe Mfg. Co., D. M.	Columbus, O.
Johansen Bros. Shoe Co.,	St. Louis, Mo.
Jordan Shoe Co., The	Belleville, Ill.
Johnson & Co., L. S.	Lynn, Mass.

Jones, V. K. & A. H.	Lynn, Mass.
Johnson Bros. Shoe Mfg. Co.,	Hallowell, Maine.
Jacobs, Whaley & Co.,	Brooklyn, N. Y.
Johnston & Baillie Shoe Co.,	Millersburg, Pa.
Jones Shoe Co., The	Columbus, O.
Jones, E. & Co.,	Spencer, Mass.
Joslin, A. L.	Oxford, Mass.
Jefts, L. T. & Co.,	Hudson, Mass.
Johnson, C. W.	Natick, Mass.
Jenkins, J. W. Co.,	Rochester, N. Y.
Johnson, W. S. & Co.	Putnam, Conn.
Johnson & Watson,	Greenboro, N. C.
Kenmore Shoe Co.,	Fredericksburg, Va.
Knapp, J. A.	Brockton, Mass.
Kellam Goller Land Co.,	Lynn, Mass.
Kreider, A. S. Shoe Co.,	Annville and Palmyra, Pa.
Keith Shoe Co., P. B.	Campello, Mass.
Kingman, F. C. & Co.,	Brockton, Mass.
Kelly, Chas. F.	Chelsea, Mass.
Kimball, Alfred W. Shoe Co.,	So. Lawrence, Mass.
Kreider Shoe Mfg. Co.,	Elizabethtown, Pa.
King, R. E.	Nyack, N. Y.
Kaiser, C. & Son,	Detroit, Mich.
Koeber, Batstone,	Milwaukee, Wis.
Kentucky S. Mfg. Co.,	Eddyville, Ky.
Keystone Shoe Mfg. Co.,	Kutztown, Pa.
Krippendorf-Dittmann Co.,	Cincinnati, O.
Keighley & Sons, Chas.	Vineland, N. J.
Kilpatrick, Frank E.	New Brunswick, N. J.
Krohn, Fechheimer & Co.,	Cincinnati, O.
Keiffer Bros.,	New Orleans, La.
Kalt, Zimmers Mfg. Co.,	Milwaukee, Wis.
Krippendorf, O'Neal Co.,	Cincinnati, O.
Kirkendall, F. P. & Co.,	Omaha, Neb.
Kutz, G. M. Shoe Co.,	San Francisco, Cal.
Knights, J. Geo.	Haverhill, Mass.

Kimball, W. & V. O.	Haverhill. Mass.
Keith Co., Geo. E.	Brockton, Mass.
Kelly, John, Inc.,	Rochester, N. Y.
Kelly-Evans Co.,	Brockton, Mass.
Knipe Bros.,	Ward Hill, Mass.
Keith & Pratt,	No. Middleboro, Mass.
Lancaster Shoe Co.,	Lancaster, O.
Littlefield, L. G.	Avon, Mass.
Lancaster, C. B. Shoe Co.,	Keene, N. H.
R. H. Long Shoe M. Co.,	So. Framingham, Mass.
Lord & Cotter,	Lynn, Mass.
Lacey Shoe Co.,	Cairo, Mich.
Lestershire Mfg. Co.,	Lestershire, N. Y.
Little, Maxwell & Co.,	Lynn, Mass.
Leh & Co., H.	Allentown, Pa.
Latteman B. & S. Mfg. Co., J. J.	New York City.
Lancy, John, Jr.	Marblehead, Mass.
Leonard, Shaw & Dean,	Middleboro, Mass.
Lane, William, Inc.,	Brooklyn, N. Y.
Lounsbury & Soule,	Stamford, Conn.
Lindner Shoe Co.,	Carlisle, Pa.
Luddy & Currier,	Dover, N. H.
Lewis Shoe Co., W. C.	Haverhill, Mass.
Lehigh Valley Shoe Co.,	Allentown, Pa.
Leonard Shoe Co.,	Lynn, Mass.
LaCrosse Shoe M. Co.,	LaCrosse, Wis.
Littleton Shoe Co.,	Littleton, N. H.
Lynn S. Co., W. R.	Auburn, Maine.
Little & Co., A. E.	Lynn, Mass.
Lynn Enterprise S. Co.,	Lynn, Mass.
Legg, C. E.	Pontiac, Ill.
Lefavour, Herbert	Marblehead, Mass.
Leas & McVitty,	Philadelphia, Pa.
Levie Shoe Co.,	Chicago, Ill.
Landis, J. Shoe Co.,	Palmyra, Pa.
Leonard & Barrows,	Bridgewater, Mass. & Belfast, Maine.

Lunn-Lynn Shoe Co.,	Auburn, Maine.
Lefavour & Co., D. D.	Salem, Mass.
Lewis & Son, Inc., G. W.	Burlington, N. J.
Laird, Schober & Co.,	Philadelphia, Pa.
Minor & Son, P. W.	Batavia, N. Y.
Millard, N. L. & Co.,	No. Adams, Mass.
Munroe-Packard & Linscott,	Auburn, Maine.
McIntosh, J. W.	Marblehead, Mass.
Middlesex Shoe Co.,	New Brunswick, N. J.
Moore Shafer Shoe Mfg. Co.,	Brockport, N. Y.
Moulton & Co., C. H.	Brookfield, Mass.
Marcy Bros. Co.,	Hartford, Conn.
Munnich Bros.,	Port Jarvis, N. Y.
Miller, Hess & Co.,	Akron, Pa.
Marion Shoe Mfg. Co.,	Marion, Ohio.
Murphy, Edw. F.	Whitman, Mass.
Minnesota Shoe Co.,	St. Paul, Minn.
Massachusetts Reformatory,	Concord, Mass.
McNamara, S. B.	Haverhill, Mass.
Menihan & Gilchrist,	Rochester, N. Y.
Murphy Boot & Shoe Co.,	Natick, Mass.
Modern Shoe Co.,	Pontiac, Ill.
Marks & Co., L. V.	Augusta, Ky.
Menzies Shoe Co.,	Detroit, Mich.
Missouri Slipper Co.,	St. Louis, Mo.
Massachusetts State Prison,	Charlestown, Mass.
Madden-Curtis Shoe Co.,	Medway, Mass.
Mann & Co., A. E.	Windsor, Vt.
Merriam, H. W. Shoe Co.,	Newton, N. J.
Mascoma Shoe Co.,	Lebanon, N. H.
Meldola & Coon,	Rochester, N. Y.
Mooney & Co., N. J.	Lynn, Mass.
Mottler, G. L.	Louisville, Ky.
Moloney Bros. Co.,	Rochester, N. Y.
Meier John Shoe Co.,	St. Louis, Mo.
Munroe, F. W. & I. M.	Marblehead, Mass.

Mudge Shoe Co.,	Danvers, Mass.
McElwain, W. H.	Brockton, Mass.
Martin, Jonas	New Orleans, La.
Manss Shoe Mfg. Co.,	Cincinnati, Ohio.
Marzluff Co., F. M.	Janesville, Wis.
Mayer, F., Boot & Shoe Co.,	Milwaukee, Wis.
Miller, Kohlheff, Grise & Co.,	Cincinnati, Ohio.
Monteleone, A.	New Orleans, La.
Miller, J. Co.,	Racine, Wis.
McCord-Harlow Shoe Co.,	St. Joseph, Mo.
Moloney Shoe Co., John	Ludlow, Ky.
McDonald & Kiley Co., The	Cincinnati, Ohio.
Mills, N. A.	Pittsfield, Mass.
Marshall, C. S. & Co.,	Brockton, Mass.
Maynard Shoe Co.,	Claremont, N. H.
Milford Shoe Co.,	Milford, Mass.
Medlar & Holmes Shoe Co.,	Philadelphia, Pa.
Morrison Shoe Co.,	Concord, N. H.
Melanson & Currier,	Lynn, Mass.
McBrearty, John	Philadelphia, Pa.
Mayer, Alfred & Co.,	Philadelphia, Pa.
Northwestern Felt S. Co.,	Webster City, Iowa.
Nelson & Sons, J. S.	Grafton, Mass.
Northwood Union Shoe Co.,	Northwood, N. H.
National Shoemakers,	Lewiston, Me.
Nute Bros. Co.,	Auburn, Me.
North Star Shoe Co.,	Minneapolis, Minn.
Noyes Norman Shoe Co.,	St. Joseph, Mo.
Nahm Bros.,	Philadelphia, Pa.
Norman & Bennett, Inc.,	Boston, Mass.
Nugent Shoe Co.,	Rochester, N. Y.
Nettleton, A. E.	Syracuse, N. Y.
Nyack Shoe Co-op. Corp.,	Nyack, N. Y.
Newman & Co., A.	Philadelphia, Pa.
Nesmith Shoe Co.,	Brockton, Mass.
North Shore Shoe Co.,	Salem, Mass.

Newport Shoe Co.,	Newport, N. H.
North Lebanon Shoe Factory,	Lebanon, Penn.
Noyes, A. B. & Co., Corp.,	Georgetown, Mass.
Nutt, W. H. & Co.,	Natick, Mass.
O'Donnell, J. M.	Campello, Mass.
Osuer, Wm. T. Mfg. Co.,	Chicago, Ill.
Orne & Grover,	Lynn, Mass.
Ohio Shoe Co.,	Lancaster, O.
O'Connell John Co.,	Marlboro, Mass.
Osgood, C. F. & Co.,	Hammonton, N. J.
Piehler Shoe Co.,	Rochester, N. Y.
Packard & Co., N. R.	Brockton, Mass.
Packard & Co., M. A.	Brockton, Mass.
Prouty, Isaac & Co., Inc.,	Spencer, Mass.
Phelan & Sons, Jas.	Lynn, Mass.
Parker & Peakes,	Bangor, Maine.
Pratt Shoe Co.,	Natick, Mass.
Pilling, John S. Co.,	Lowell, Mass.
Perkins, Hardy & Co.,	Derry, N. H.
Page, John J.	Haverhill, Mass.
Poor, C. E.	Haverhill, Mass.
Pillsbury, W. S. & R. W.	Derry, N. H.
Pontiac Shoe Co.,	Pontiac, Ill.
Pfeiffer & Co., Wm. F.	So. Natick, Mass.
Priesmeyer, A. Shoe Co.,	Jefferson City, Mo.
Pecker, C. D. & Co.,	Lynn, Mass.
Parker Shoe Co., L. S.	Jefferson City, Mo.
Price Shoe Co., L.	Rochester, Ind.
Pierce & Co., S. L.	Cleveland, O.
Pingree Co.,	Detroit, Mich.
Plaut & Marks Shoe Mfg. Co.,	Cincinnati, O.
Putnam & Co., H. J.	Minneapolis, Minn.
Peters Shoe Co.,	St. Louis, Mo.
Portsmouth Shoe Co., The	Portsmouth, O.
Perry-Lee Co.,	Athol, Mass.
Parker & Co., F. A.	Marblehead, Mass.

Plant Co., Thos. G.	Jamaica Plain, Mass.
Perkins, Linscott & Co.,	Rochester, N. H.
Porter, Wm. & Sons,	Lynn, Mass.
Prince, Collins & Marston Co.,	Danvers, Mass.
Piekenbrock, E. B. Shoe Mfg. Co.,	Dubuque, Iowa.
Quast, J. H. & Son,	Louisville, Ky.
Reynolds, L. W.	Brockton, Mass.
Rockaway Shoe Mfg. Co.,	Rockaway, N. J.
Rogers, A. S. Shoe Co.,	Chelsea, Mass.
Riverside Shoe Mfg. Co.,	Beardstown, Ill.
Richardson Shoe Co.,	Menominee, Mich.
Reed & Co., E. P.	Rochester, N. Y.
Rose Shoe Mfg. Co.,	Rochester, N. Y.
Richards & Brennan Co.,	Randolph, Mass.
Ryan & Son, Maurice	Brooklyn, N. Y.
Russ, J. W., Co.,	Haverhill, Mass.
Reynolds, B. F.	Brockton, Mass.
Russ, T. M.	Salem, N. H.
Reed, H. B. & Co.,	Manchester, N. H.
Rubberhide Co.,	Randolph, Mass.
Ruddock, Thos. S. Sons,	Haverhill, Mass.
Randall, Adams Co.,	Lynn, Mass.
Rusche & Co.,	Cincinnati, Ohio.
Rice & Hutchins, Inc.,	Boston, Mass.
Richardson, J. W.	Reading, Mass.
Rogers, J. W.	Salem, Mass.
Rindge, Kalmbach, Logie & Co.,	Grand Rapids, Mich.
Reimer Bros. Shoe Co.,	Green Bay, Wis.
Riley, Barker Shoe Co.,	Columbus, Ohio.
Rich Shoe Co.,	Milwaukee, Wis.
Roberts, Johnson & Rand Shoe Co.,	St. Louis, Mo.
Rosenberg, B. & Sons,	New Orleans, La.
Racine Shoe Mfg. Co.,	Racine, Wis.
Richardson-Joyce Shoe Co.,	Hornellsville, N. Y.
Richardson, J. & Co.,	Elmira, N. Y.
Regal Shoe Co., Inc.,	Whitman, Mass.

Shortell, M. & Son,	Salem, Mass.
Seymour & Jackson,	Lynn, Mass.
Spinney, B. F. & Co.,	Norway, Maine.
Sherwood Shoe Co.,	Rochester, N. Y.
Standard Shoe Co.,	Buffalo, N. Y.
Schneider, Philip	Allentown, Pa.
Schneider Bros. & Co.,	Natick, Mass.
Straw, L. G. & Co.,	Salem, Mass.
Snedicor & Hathaway Co.,	Detroit, Mich.
Skyrm, M. & Co.,	Cleveland, O.
Silver & Son, Geo.	New York, N. Y.
Stillson, Kellogg Shoe Co.,	Tacoma, Wash.
Shields Union Labor Shoe Co.,	Buffalo, N. Y.
Strong & Garfield,	E. Weymouth, Mass.
Spaulding & Swett Corp.,	Lowell, Mass.
Stetson Shoe Co.,	So. Weymouth, Mass.
Smith & Herrick Co.,	Albany, N. Y.
Spaulding & Co., W. W.	Haverhill, Mass.
Shaw, A. W. & Co.,	Freeport, Maine.
Strootman, John S. Co.,	Buffalo, N. Y.
St. Croix Shoe Co.,	Calais, Maine.
Smith, The G. Edwin Shoe Co.,	Columbus, Ohio.
Southern Shoe Mfg. Co.,	St. Louis, Mo.
Schoenecker, V. B. & S. Co.,	Milwaukee, Wis.
Smaltz-Goodwin Co.,	Philadelphia, Pa.
Solomon Bros.,	Salt Lake City, Utah.
Selz, Schwab & Co.,	Chicago, Ill.
Scheiffle Shoe Mfg. Co.,	Cincinnati, Ohio.
So. Weymouth Shoe Co.,	So. Weymouth, Mass.
Star Shoe Co.,	Hannibal, Mo.
Sweet & Savory,	Marblehead, Mass.
Simons & Homer,	Oil Mills, N. H.
Stern, Auer & Co.,	Cincinnati, Ohio.
Shaft-Pierce Shoe Co.,	Faribault, Minn.
Sachs Shoe Mfg. Co.,	Cincinnati, Ohio.
Sharood Shoe Co.,	St. Paul, Minn.

Sullivan, P. & Co.,	Cincinnati, Ohio.
Smith J. P., Shoe Co.,	Chicago, Ill.
Starner-Copeland, The Co.,	Columbus, Ohio.
Siebe Shoe Co.,	San Francisco, Cal.
Simmons & Hall,	Rockland, Mass.
Syracuse Shoe Mfg. Co.,	Syracuse, N. Y.
Stover & Bean,	Lowell, Mass.
Soule Shoe School & Upper Co.,	Stoughton, Mass.
Stacy, Adams & Co.,	Brockton, Mass.
Sheppard & Myers Co.,	Hanover, Pa.
Snow Co., Geo. G.	Brockton, Mass.
Trimby & Co., Thos. W.	Rochester, N. Y.
Tibbetts, J. E.	Campello, Mass.
Todd Co. Fred S.	Rochester, N. Y.
Thayer, Maguire & Field,	Haverhill, Mass.
Timson & Co.,	Lynn, Mass.
Tennessee Shoe Mfg. Co.,	Nashville, Tenn.
Tappan Shoe Mfg. Co.,	Coldwater, Mich.
Thomas, J. B. & Tarr,	Lynn, Mass.
Thurell, Batchelder & Co.,	Lynn, Mass.
Tracey, Chas. L.	Towanda, Pa.
Tufts & Friedman,	Lynn, Mass.
Tilden, A. W.	Weymouth, Mass.
Trask Bros. & Co.,	Epping, N. H.
Torrey, J. H. & T. H.	No. Weymouth, Mass.
Troy Shoe Co.,	Troy, Pa.
Tilt, J. E. Shoe Co.,	Chicago, Ill.
Tennent Shoe Co.,	St. Louis, Mo.
Tremper Shoe Mfg. Co., The	Portsmouth, O.
Tilt-Kenney Shoe Co.,	Chicago, Ill.
Thayer & Co., Inc., N. B.	Milton Mills, N. H.
Thomas & Co.,	Brooklyn, N. Y.
Thompson Bros.,	Campello, Mass.
Thayer & Osborne Shoe Co.,	Alton, N. H.
Taylor Shoe Co., H.	Philadelphia, Pa.
Utz & Dunn,	Rochester, N. Y.

Union Shoe Mfg. Co.,	Chillicothe, O.
United Workingmen's Boot & Shoe Co.,	San Francisco, Cal.
United States Shoe Co.,	E. Whitman, Mass.
Upham Bros. Co.,	Stoughton, Mass.
Usher, W. R. & Son,	Springvale, Me.
Union Shoe Making Co.,	St. Louis, Mo.
Union Shoe Mfg. Co.,	Ellsworth, Me.
Union Shoe Works,	Rockford, Ill.
Venor & Montgomery,	Rochester, N. Y.
Vickery, W. P. & Co.,	Marblehead, Mass.
Vogel Bros. Shoe Co.,	Louisville, Ky.
Williams Shoe Co.,	Cochituate, Mass.
Welch-Atwood Co.,	So. Easton, Mass.
Worthley, M. J.	Lynn, Mass.
Winchell, J. H. & Co., Inc.,	Haverhill, Mass.
Winchester Shoe Co.,	Buffalo, N. Y.
Williams, E. W.	Winona, Minn.
Wesson, J. E.	Worcester, Mass.
Webster, Ira J.	Haverhill, Mass.
Woodbury, F. P. & Co.,	Salem, N. H.
White River Shoe Co.,	Bristol, N. H.
Walcott, J. W. & Co.,	Natick, Mass.
Whitcomb & Paine,	Holbrook, Mass.
Wood, J. T. & Co.,	Ware, Mass.
Witt, Geo. D. Shoe Co.,	Lynchburg, Va.
Worcester Slipper Co.,	Worcester, Mass.
White, A. W., Shoe & Leather Co.,	Thomaston, Ga.
Walden S. Co.,	Grand Haven, Mich.
Waverly Shoe Co.,	Lynn, Mass.
Walton & Logan,	Lynn, Mass.
Washington Shoe Mfg. Co.,	Seattle, Wash.
Watsontown Boot & Shoe Co.,	Watsontown, Pa.
Webster, Geo. L.	Haverhill, Mass.
Wallace, E. G. & E.	Rochester, N. H.
Wells & Co., M. D.	DeKalb, Ill.

Weinbrenner, Albert H.	Milwaukee, Wis.
White, D. D. Shoe Co.,	Taunton, Mass.
Whittredge, M. H.	Lynn, Mass.
Whitman & Keith,	Campello, Mass.
Wertheimer-Swarts Shoe Co.,	St. Louis, Mo.
Witchell Sons & Co., Ltd.,	Detroit, Mich.
Western Shoe Co.,	Janesville, Wis.
Watson-Plummer Shoe Co.,	Dixon, Ill.
Wolf Bros. & Co.,	Cincinnati, Ohio.
Western Shoe Co.,	Stillwater, Minn.
Wolfe Bros. Shoe Co.,	Columbus, Ohio.
Weyenburg Shoe Mfg. Co.,	Milwaukee, Wis.
Wood & Co., R. T., Inc.,	Burlington, N. J.
Williams, Clark & Co.,	Lynn, Mass.
Walsh & Co., W. E.	Lynn, Mass.
Woodbury S. Co.,	Beverly, Mass.
Watson Shoe Co.,	Lynn, Mass.
Welch & Landregan,	Lynn, Mass.
Weber Bros.,	No. Adams, Mass.
Wolfe Shoe Co.,	Allentown, Pa.
Wright, E. T. & Co.,	Rockland, Mass.
Williams, Kneeland & Co.,	So. Braintree, Mass.
Wise & Cooper,	Auburn, Maine.
White, Dunham Shoe Co.,	Brockton, Mass.
Wichert & Gardiner,	Brooklyn, N. Y.
Xenia Shoe Mfg. Co.,	Xenia, Ohio.
York Shoe Mfg. Co.,	York, Pa.
Young, Frederick C.	Rochester, N. Y.
Zions Co-op. Merc. Inst.,	Salt Lake City, Utah.
Ziegler Bros.,	Phila., Pa.
Zimmerman Shoe Co.,.	Pittsfield, Mass.

PLAINTIFF'S EXHIBIT 274.

[Put in Evidence, page 4380.]

OFFICERS AND DIRECTORS OF UNITED SHOE MACHINERY COMPANY.

1899

President, Sidney W. Winslow,
Vice-Presidents, John H. Hanan,
Wallace F. Robinson,
Orlando E. Lewis,
Treasurer, George W. Brown,
Secretary, Louis H. Baker.

Directors: —

William Barbour,
Louis D. Brandeis,
George W. Brown,
Josiah H. Clarke,
Charles H. Cole,
William H. Coolidge,
William S. Eaton,
John H. Hanan,
Elmer P. Howe,
Edward P. Hurd,
George E. Keith,
Frederick G. King,
Orlando E. Lewis,
Edwin H. Mathewson,
Rudolph Matz,
Gordon McKay,
Wallace F. Robinson,
James J. Storrow,
Alfred R. Turner, Jr.,
Samuel Weil,
Sidney W. Winslow.

1900

President, Sidney W. Winslow,
Vice-Presidents, John H. Hanan,
Wallace F. Robinson,
Orlando E. Lewis,
Treasurer, George W. Brown,
Asst. Treasurer, Edward P. Hurd,
Secretary, Louis H. Baker.

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John H. Hanan,
Elmer P. Howe,
Edward P. Hurd,
George E. Keith,
Joseph C. Kilham,
Edwin H. Mathewson,
Rudolph Matz,
Wallace F. Robinson,
John Harsen Rhoades,
James J. Storrow,
Alfred R. Turner, Jr.,
Sidney W. Winslow,
Samuel Weil,
Frank Wood.

1901

President, Sidney W. Winslow,
Vice-Presidents, John H. Hanan,
Wallace F. Robinson,
Orlando E. Lewis,
Treasurer, George W. Brown,
Asst. Treasurer, Edward P. Hurd,
Secretary, Louis H. Baker.

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George W. Brown,
Louis D. Brandeis,
Josiah H. Clarke,
William S. Eaton,
Elmer P. Howe,
Edward P. Hurd,
John H. Hanan,
Joseph C. Kilham,
George E. Keith,
Orlando E. Lewis,
Edwin H. Mathewson,
Rudolph Matz,
Gordon McKay,
Wallace F. Robinson,
J. Harsen Rhoades,
James J. Storrow,
Alfred R. Turner, Jr.
Sidney W. Winslow,
Samuel Weil,
Frank Wood.

1902

President, Sidney W. Winslow,
Vice-Presidents, Wallace F. Robinson,
John H. Hanan,
Treasurer, George W. Brown,
Asst. Treasurer, Edward P. Hurd,
Secretary, Louis H. Baker,

Directors: —

William Barbour,
George W. Brown,
Louis D. Brandeis,
Josiah H. Clarke,
John H. Hanan,
Elmer P. Howe,
Edward P. Hurd,
Joseph C. Kilham,
George E. Keith,
Rudolph Matz,
Gordon McKay,
William A. Read,
J. Harsen Rhoades,
Wallace F. Robinson,
James J. Storrow,
Alfred R. Turner, Jr.,
Sidney W. Winslow,
Samuel Weil,
Frank Wood.

1903

President, Sidney W. Winslow,
Vice-Presidents, Wallace F. Robinson,
John H. Hanan,
Treasurer, George W. Brown,
Asst. Treasurer, Edward P. Hurd,
Secretary, Meylert Bruner.

Directors: —

William Barbour,
George W. Brown,
Louis D. Brandeis,
Josiah H. Clarke,
John H. Hanan,
Elmer P. Howe,
Edward P. Hurd,
Joseph C. Kilham,
George E. Keith,
Rudolph Matz,
Gordon McKay,
Robert Treat Paine, 2nd,
William A. Read,
J. Harsen Rhoades,
Wallace F. Robinson,
James J. Storrow,
Alfred R. Turner, Jr.
Sidney W. Winslow,
Samuel Weil,
Frank Wood.

1904

President, Sidney Winslow,
Vice-Presidents, Wallace F. Robinson,
John H. Hanan,
Treasurer, George W. Brown,
Asst. Treasurer, Edward P. Hurd,
Secretary, Louis H. Baker,

Directors: —

Frank L. Babbott,
William Barbour,
George W. Brown,
Louis D. Brandeis,
John H. Hanan,
Elmer P. Howe,
Edward P. Hurd,
Joseph C. Kilham,
George E. Keith,
Rudolph Matz,
Robert Treat Paine, 2nd,
William A. Read,
J. Harsen Rhoades,
Wallace F. Robinson,
James J. Storrow,
Alfred R. Turner, Jr.
Sidney W. Winslow,
Samuel Weil,
Frank Wood.

1905

President, Sidney W. Winslow,
Vice-Presidents, Wallace F. Robinson,
John H. Hanan,
Treasurer, George W. Brown,
Asst. Treasurer, Edward P. Hurd,
Secretary, Louis H. Baker,

Directors: —

Frank L. Babbott,
William Barbour,
Louis D. Brandeis,
George W. Brown,
John H. Hanan,
Elmer P. Howe,
Edward P. Hurd,
Joseph C. Kilham,
George E. Keith,
Rudolph Matz,
Robert Treat Paine, 2nd,
J. Harsen Rhoades,
Wallace F. Robinson,
James J. Storrow,
Alfred R. Turner, Jr.,
Sidney W. Winslow,
Samuel Weil,
Frank Wood.

1906

President, Sidney W. Winslow,
Vice-Presidents, Wallace F. Robinson,
John H. Hanan,
Treasurer, George W. Brown,
Asst. Treasurer, Edward P. Hurd,
Secretary, Louis H. Baker,

Directors: —

William Barbour,
Frank L. Babbott,
Louis D. Brandeis,
George W. Brown,
John H. Hanan,
Elmer P. Howe,
Edward P. Hurd,
Joseph C. Kilham,
George E. Keith,
Rudolph Matz,
Robert Treat Paine, 2nd,
J. Harsen Rhoades,
Wallace F. Robinson,
James J. Storrow,
Alfred R. Turner, Jr.,
Sidney W. Winslow,
Samuel Weil,
Frank Wood.

1907

President, Sidney W. Winslow,
Vice-Presidents, Wallace F. Robinson,
William Barbour,
Treasurer, George W. Brown,
Asst. Treasurer, Edward P. Hurd,
Secretary, Louis H. Baker,

Directors: —

William Barbour,
Frank L. Babbott,
George W. Brown,
John H. Hanan,
Elmer P. Howe,
Edward P. Hurd,
Joseph C. Kilham,
George E. Keith,
Rudolph Matz,
Robert Treat Paine, 2nd,
Wallace F. Robinson,
James J. Storrow,
Alfred R. Turner, Jr.,
Sidney W. Winslow,
Samuel Weil,
Frank Wood,
William Woodward.

PLAINTIFF'S EXHIBIT 275.

[Put in Evidence, page 4649.]

Memorandum of Agreement, made this the twenty-first day of September, A. D. 1912, by and between The Keighley Company, Inc., a corporation duly organized and existing under the laws of the State of New Jersey, one of the United States of America, (hereinafter called the "Keighley Company"), and William Bottomley Keighley, Charles Percy Keighley, and Charles Keighley, all of Vineland, in the State of New Jersey, the said Keighleys being the officers and owners of all the capital stock of the "Keighley Company", parties of the first part, and the United Shoe Machinery Company, a corporation duly organized and existing under the laws of said State of New Jersey, (hereinafter called the "United Company"), party of the second part.

1. The parties of the first part hereby grant unto the United Company the exclusive right or license, during the continuance of this agreement, as provided in paragraph 11, to put out on lease, (but not to sell, the right to sell, subject to the conditions hereinafter contained, being expressly reserved to the parties of the first part), machines embodying inventions and improvements relating to or intended or adapted for use in or in connection with Inseam Trimming Machines which the parties of the first part, or any of them, now own or control, or which the said parties of the first part, or any of them, may hereafter make, own, acquire, or have any right, by agreement or otherwise, to acquire or take over. And the United Company hereby grants to the parties of the first part the right to manufacture and sell in the United States of America (but not to lease) Rapid Inseam Trimming Machines of the type now put out by the Keighley Company in so far as there are embodied in said machines inventions and improvements covered by Letters Patent of the United States of America No. 961,200 granted June 14, 1910, to Orrell Ashton, Assignor to United Shoe Machinery Company, for Vamp Trimming Machine, and No. 968,555 granted August 30, 1910, to John B. Hadaway, Assignor to United Shoe Machinery Company, for Vamp Trimming Machine.

2. The parties of the first part, and each of them, hereby covenant and agree to and with the United Company to fully and completely disclose to the United Company forthwith, and to such of its officers and patent solicitors as may be designated by the United Company therefor, all inventions and improvements, Letters Patent and applications for Letters Patent, interests and rights which are included within the terms of this agreement, and at any and all times hereafter, upon making, acquiring, owning or obtaining any right, by agreement or otherwise, to acquire or take over any invention, improvement, Letters Patent, application for Letters Patent, interest or right covered by this agreement, to promptly disclose the same to the United Company, its officers and patent solicitors, and to repeat such disclosures when and as often as the same may be requested, and at any time and all times, upon request, to execute or cause to be executed any and all licenses, powers of attorney, and other instruments, and to do or cause to be done any and all acts necessary or desired by the United Company to fully and completely vest and confirm in the United Company the right and license hereby granted, and to enable the United Company to enjoy the full benefits and advantages thereof.

3. The parties of the first part hereby agree, jointly and severally with the United Company that they will not, and that neither of them shall, during the period of this agreement, directly or indirectly, individually or in combination with others, enter into or be engaged or interested in, or financially or otherwise encourage or assist any other person, firm or corporation in entering into, developing or carrying on any business of manufacturing or dealing in Inseam Trimming Machines, except in accordance with the terms of this agreement.

4. The United Company agrees that no machine shall be put out by it or by its authority, in accordance with the right or license hereby granted, upon a lease which does nor reqûire the payment of a lease premium or installation fee, and that such lease premium, or installation fee, shall in no case exceed the sum of One Hundred Dollars ($100.) or be less than Fifty Dollars ($50.00) United States currency, or its equivalent in the currency of the country where

such machine is put out; and that in all such leases a minimum rent or royalty shall be provided for which shall not exceed One Hundred Dollars ($100.) or be less than Fifty Dollars ($50.) per annum in United States currency, or its equivalent in the currency of the country where such machine is put out. And the parties of the first part agree that they will not sell, or offer or expose for sale, or permit to be sold, offered or exposed for sale, any Rapid Inseam Trimming Machines of the type now manufactured by them, or of a type which may be hereafter put out on lease by the United Company in accordance with the right and license hereby granted, for a price less than Six Hundred and Fifty Dollars ($650.) United States currency, or its equivalent in the currency of the country where such machines is sold, offered or exposed for sale.

5. The United Company shall sem-annually on the thirtieth day of November and the thirty-first day of May in each year, render to the parties of the first part, or to any one of them as agent for the others, an account showing the number of machines, if any, put out by or by the authority of the United Company in accordance with the right and license hereby granted, during the period of six months ending with the last day of the preceding October or April and showing, also, the total amount received by the United Company by way of installation fee or lease premium and by way of rental or royalty for each such machine, and at the same time shall pay to the parties of the first part, or to any one of them as agent for the others, in respect to each such machine, an amount equal to forty per cent. (40%) of the amount so received for said machine, but the United Company shall not be required, under the provisions of this paragraph, to pay, in respect to any one machine, more than Two hundred and fifty Dollars ($250.) and when said amount has been paid in respect to any machine or machines all obligations of the United Company under this paragraph in respect to such machine or machines shall immediately cease and determine.

6. The parties of the first part shall semi-annually on the thirtieth day of November and the thirty-first day of May in each year render to the United Company an account, showing the number of Rapid Inseam Trimming Machines, of the type now put out by the

Keighley Company, or of the type which may hereafter be put out on lease by the United Company in accordance with the right and license hereby granted, sold by the parties of the first part, or by any of them, during the period of six months ending with the last day of the preceding October or April and at the same time shall pay to the United Company, in respect to each machine so sold, the sum of Two Hundred Dollars ($200.)

7. The United Company shall have the exclusive right to manufacture machines, to be put out upon lease in accordance with the right and license hereby granted, and the parties of the first part shall supply to the United Company, upon request and without expense other than the actual cost of making duplicates where duplicates are necessary, all blue prints, drawings, patterns and designs necessary or useful in such manufacture and in the possession or control of the parties of the first part, and the United Company will, upon request, manufacture for the parties of the first part, machines which the parties of the first part may desire for sale, under the terms of this agreement, at a reasonable price to cover the cost of such manufacture. But the United Company agrees that before putting out in the United States of America such machines of its own manufacture, it will purchase from the Keighley Company, for the purpose of leasing the same, thirty-four machines, which have already been manufactured by the Keighley Company or are in the process of manufacture for delivery under the terms of an agreement entered into by the Keighley Company with one Thomas G. Plant, dated January 26, 1910, the purchase price of each of said machines to be One Hundred Dollars ($100.) net cash f. o. b. Vineland, N. J., plus cost of shipping cases. And the Keighley Company agrees to manufacture such other machines as may be desired by the United Company to put out on lease, in accordance with the right and license hereby granted, at a reasonable price to cover the manufacturing cost thereof but not to exceed for the first seventy-five machines ordered (not including the thirty-four machines already mentioned) One Hundred Dollars ($100.) net cash f. o. b. Vineland, per machine, to which is to be added the actual cost of making cases for shipment. But the Keighley Com-

pany shall not be required under the provisions of this paragraph to furnish machines in excess of the capacity of its present plant which is understood to be not more than five machines per week.

8. The Keighley Company agrees that it will not enforce, or attempt to enforce, said agreement with said Thomas G. Plant, and that as soon as the thirty-four machines mentioned in the preceding paragraph have been taken by the United Company, it will execute or cause to be executed such a release or assignment to the United Company thereof as the United Company may desire.

9. The United Company agrees to withdraw forthwith three (3) suits for the infringement of its Letters Patent brought by it against the George H. Snow Company of Brockton, Massachusetts, on account of the use by the said Company of Inseam Trimming Machines heretofore put out by the Keighley Company, and proper entries are to be made in the record of the District Court of the United States for the District of Massachusetts where said suits are pending to effectually dispose of the same, without costs to either party.

10. The United Company agrees that it will faithfully endeavor to promote the business of leasing Inseam Trimming Machines embodying the inventions and improvements of the parties of the first part, but shall refer to the Keighley Company all requests for the purchase of such machines from persons who do not desire or are not willing to lease the same.

11. This agreement shall apply, territorially, to all countries of the world where the inventions and improvements of the parties of the first part, described in the first paragraph hereof, or any of them, are protected by Letters Patent except in so far as said inventions and improvements are covered by an agreement, dated October 13, 1911, between the Keighley Company and Gimson & Company of Leicester, England, and by an agency contract between the Keighley Company and D. Heinsohn, of Oberursel by Frankfort au Main, Germany, while said agreements remain in force and binding on the Keighley Company, the last named contract to be terminated immediately by the Keighley Company in accordance with the right of termination therein reserved, and shall

continue in each of such countries, during the continuance in force and apparent validity of Letters Patent of that country, covering said inventions and improvements of the parties of the first part, or any of them. The United Company expressly reserves the right to proceed against Gimson & Company and against users of Inseam Trimming Machines put out by Gimson & Company for infringement of Letters Patent owned by the United Company or any of its allied or subsidiary companies.

12. The Keighley Company hereby assigns, transfers and sets over unto the United Company all contracts of lease other than its "forty-nine year" lease contracts, so-called, covering Inseam Trimming Machines heretofore put out by the Keighley Company, the machines covered by said contracts and all benefits and advantages to be derived therefrom and the United Company agrees to assume and perform all the obligations of the Keighley Company under said leases and to pay the Keighley Company in respect to each such machine a sum equal to forty per cent (40%) of the total amount of the rental or royalty received by the United Company for the use thereof until the total amount so paid in respect to such machine is equal to One Hundred and Fifty Dollars ($150) United States currency, at which time all further payments in respect to such machine shall cease. Accounts shall be rendered and payments made under the provisions of this paragraph at the times and for the periods provided in paragraph 5 in respect to accounts and payments covering machines put out on lease by the United Company.

13. The Keighley Company hereby sells and delivers to the United Company four Inseam Trimming Machines now in the possession of the above mentioned D. Heinsohn, and also two machines in the possession of Gimson & Company at their agency in Paris, France, if said machines are not covered by the provisions of the preceding paragraph or have not been otherwise finally disposed of for the account of the Keighley Company, and the United Company agrees to pay to the Keighley Company for each of such machines the sum of One Hundred ($100.) in United States currency, plus the freight and duty which has heretofore been paid in respect to

the same by the Keighley Company, but such payment is not to be made in respect to any of said machines until the same has been put out on lease by the United Company in accordance with the right and license hereby granted. The Keighley Company agrees to supply gratis all necessary parts and attachments to complete said machines or alter them to the type of machine now being put out by the Keighley Company.

14. The Keighley Company shall continue to enjoy the benefits of all agreements for the sale or lease, under its "forty-nine year" lease contract, so-called, of Rapid Inseam Trimming Machines heretofore entered into by said company and shall have the exclusive privilege of furnishing duplicate parts, extras, mechanisms, devices and supplies for use in or in connection therewith. The parties of the first part shall also have the exclusive privilege of furnishing duplicate parts, extras, mechanisms, devices and supplies for use in or in connection with machines sold by the Keighley Company in accordance with this agreement, but they shall not, nor shall any of them, knowingly, furnish duplicate parts, extras, mechanisms, devices or supplies for use in or in connection with machines leased by the United Company in accordance with the right and license hereby granted. The United Company, however, agrees, upon the request of the parties of the first part, or any of them, to supply to old customers of the Keighley Company and to vendees of the parties of the first part, duplicate parts, extras, mechanisms, devices and supplies at the same prices charged to lessees of the United Company.

15. The payment of Two Hundred Dollars ($200.) required to be made by the parties of the first part under the provisions of Article 6 of this agreement in respect to machines sold by the parties of the first part or any of them, shall not be required to be made in respect to Inseam Trimming Machines of the type now put out by the Keighley Company, or of said type as the same may hereafter be altered or improved by reason of inventions of the said Keighleys, or any of them, while such machines are used solely in the manufacture of footwear made by or for the said

Keighleys, or a corporation controlled by them, at their factory at Vineland, N. J.

16. The expression "United Company" wherever herein used, shall include the United Shoe Machinery Company and its allied or subsidiary companies, and its and their respective successors, nominees and assigns, and all agreements binding upon the parties of the first part shall be binding upon and enforceable against their respective representatives and assigns.

Executed in duplicate the day and year first above written.

THE KEIGHLEY COMPANY, INC.
C. P. Keighley, Sec'y.
W. B. Keighley
Chas. Keighley
C. Percy Keighley.
UNITED SHOE MACHINERY COMPANY
Edwd. P. Hurd, Assistant Treasurer.

PLAINTIFF'S EXHIBIT 276.

[Put in Evidence, page 4865.]

THE COMMONWEALTH OF MASSACHUSETTS.
EXECUTIVE DEPARTMENT.

BOSTON, February 5, 1914.

I, David I. Walsh, Governor of the Commonwealth, do hereby certify that Frank J. Donahue, whose genuine signature appears to the annexed certificates of authentication, is now, and was at the date of said certificates, Secretary of the Commonwealth, duly elected and qualified; that as such he is the lawful custodian of the Great Seal of the Commonwealth; that all his official acts as such are entitled to full faith and credit; that his said certificates are in due form of law; and that the Great Seal thereto attached is the genuine Great Seal of the Commonwealth.

Given under my hand at Boston this fifth day of February in the year 1914.

DAVID I. WALSH,
Governor.

THE COMMONWEALTH OF MASSACHUSETTS.
OFFICE OF THE SECRETARY.

BOSTON, February 5, 1914.

I, Frank J. Donahue, Secretary of the Commonwealth, do hereby certify that David I. Walsh, whose genuine signature appears to the foregoing certificate of attestation, is now, and was at the date of said certificate, the Governor of The Commonwealth of Massachusetts, duly elected by lawful authority and legally qualified thereto.

In testimony of which I have hereunto affixed the Great Seal of the Commonwealth, in my official custody and possession.

FRANK J. DONAHUE,
[SEAL] *Secretary of the Commonwealth.*

Post-office address of Company in Massachusetts: United Shoe Machinery Company, 205 Lincoln Street, Boston, Mass.

[Acts of 1909, Chap. 490, Part III.]

Section 54. Every foreign corporation (of the classes enumerated in section 58, Chapter 437, Acts of 1903) shall annually, within thirty days after the date fixed for its annual meeting, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, prepare and file in the office of the secretary of the commonwealth, upon payment of the fee provided in section ninety-one of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three, a certificate signed and sworn to by its president, treasurer, and by a majority of its board of directors, showing the amount of its authorized capital stock, and its assets and liabilities as of a date not more than ninety days prior to said annual meeting, in such form as is required of domestic business corporations under the provisions of section forty-five of said chapter, and the change or changes, if any, in the other particulars included in the certificate required by section sixty of said chapter, made since the filing of said certificate or of the last annual report.

Section 55. A certificate which is required to be filed by the pre-

ceding section shall be accompanied by a written statement under oath by an auditor, as provided in section forty-seven of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three, except that such auditor shall in all cases be chosen by the board of directors. Before it is filed it shall be submitted to the commissioner of corporations, who shall examine said certificate and shall as tax commissioner assess upon the corporation an excise tax in accordance with the provisions of the following section. If he finds that the certificate is in compliance with the requirements of the preceding section, he shall indorse his approval thereon; but no certificate shall be filed until he has indorsed his approval thereon, and until the excise tax required by the following section has been paid to the treasurer and receiver general.

Section 56. Every foreign corporation shall, in each year, at the time of filing its annual certificate of condition, pay to the treasurer and receiver general, for the use of the commonwealth, an excise tax to be assessed by the tax commissioner of one fiftieth of one per cent of the par value of its authorized capital stock as stated in its annual certificate of condition; but the amount of such excise tax shall not in any one year exceed the sum of two thousand dollars.

Acts of 1903, Chap. 437, Section 90. The fee for filing this certificate is $5.00, and should accompany the certificate. Check should be made payable to the Secretary of the Commonwealth.

Payment of Excise Tax should also accompany this certificate. Check should be made payable to the Treasurer of the Commonwealth.

We, Sidney W. Winslow President, Louis A. Coolidge Treasurer, and Edward P. Hurd, Charles H. Willson, Elmer P. Howe, Charles G. Rice, Wallace F. Robinson, George W. Brown, William Barbour, Alfred R. Turner, Robert T. Paine, 2nd, being a majority of the Directors of United Shoe Machinery Company a Corporation organized under the laws of the State of New Jersey having a usual place of business in Boston in the Commonwealth of Massa-

chusetts, in compliance with the provisions of chapter 490, Part III, Sec. 54, of the Acts of 1909, do hereby certify, that the amount of its authorized capital stock on the twenty-eighth day of February 1910, was Twenty-five million (25,000,000) dollars.

That the amount thereof then paid in was 20,850,519 dollars.

That the assets and liabilities of the Corporation on the above date were as follows: —

Note. — This should be of a date not more than ninety days prior to the annual meeting.

Assets.		Liabilities.	
Real Estate,	1,901,666 95	Capital stock,	20,850,519 00
Machinery,	1,812,132 26	Accounts payable,	408,278 02
Merchandise:		Funded indebtedness,	
Manufactures, merchandise, material and stock in process, estimated	6,126,065 71	Floating indebtedness, Reserve	296,870 48
Cash and debts receivable,	10,444,434 20	Surplus,	
Patent rights,	400,000	Profit and loss,	18,542,022 15
Stocks and Bonds of other corporations			
Leased machinery	19,408,230 44		
Miscellaneous	5,160 09		
Total,	40,097,689 65	Total,	40,097,689 65

The names and addresses of the president, treasurer, clerk or secretary, and directors are:

Name.	Address.	
President,		
Treasurer,		
Clerk or Secretary,		
Directors,		
Frank L. Babott,	346 Broadway,	New York, N.Y.
William Barbour,	96 Franklin St.,	New York, N.Y.
	(Residence — Bergen County, N. J.)	
George W. Brown,	205 Lincoln St.,	Boston, Mass.
Louis A. Coolidge,	205 Lincoln St.,	Boston, Mass.
Edmund LeB. Gardner,		Passaic, N. J.
John H. Hanan,	Bridge & Front Sts.,	Brooklyn, N.Y.

Elmer P. Howe,	53 State St.,	Boston, Mass.
Edward P. Hurd,	205 Lincoln St.,	Boston, Mass.
Joseph C. Kilham,		Beverly, Mass.
George E. Keith,		Campello, Mass.
Rudolph Matz,	55 Portland Block,	Chicago, Ill.
Robert Treat Paine, 2d,	60 State St.,	Boston, Mass.
Charles G. Rice,	c/o N. W. Rice Co., 683 Atlantic Ave.,	Boston, Mass.
Wallace F. Robinson,	205 Lincoln St.,	Boston, Mass.
Alfred R. Turner,	96 Franklin St.,	New York, N.Y.
Sidney W. Winslow,	205 Lincoln St.,	Boston, Mass.
Charles H. Willson,	205 Lincoln St.,	Boston, Mass.
Samuel Weil,	196 Franklin St.,	New York, N.Y.
Frank Wood,	352 Washington St.,	Boston, Mass.
William Woodward,	Hanover National Bank, Cor. Pine St.,	11 Nassau St., New York, N.Y.
Henry B. Endicott,	76 Lincoln St.,	Boston, Mass.

State here the change, or changes, if any, since the filing of the certificate required by section 60, chapter 437, Acts of 1903, or since the filing of the last annual report, in the following particulars:

The name of the corporation.

The location of its principal office.

The date of annual meeting for election of officers

The amount of capital stock authorized is dollars.

The amount of capital stock issued is dollars.

the amount paid in thereon to the treasurer is Preferred, dollars. Common, dollars.

the number of its authorized shares is Preferred, Common,

the par value of its shares is Preferred, dollars. Common, dollars.

the amount of such payment made otherwise than in money is as follows: —

Paid in property, viz.: [State here the number of shares issued on each item.]

	Preferred.	Common.
Real estate: location, area,		
Machinery,		
Merchandise,		
Bills receivable,		
Stocks and securities,		
Patent rights,		
Trade-marks,		
Copyrights,		
Good will,		
Services,		
Expenses,		

[State the nature of such services and expenses.]

The Board of Directors of this Corporation, which has an outstanding capital stock of $100,000 or more, at a meeting held at Boston on the eighth day of September, A. D. 1909, have employed Amos D. Albee of Boston, as Auditor, pursuant to the provisions of section 55, of chapter 490, Part III, of the Acts of 1909, and of chapter 326, Acts of 1909.

President, Treasurer and majority of Directors should sign in space below.

(This applies to every corporation, with or without auditor's appointment.)

In Witness Whereof, we have hereunto signed our names, this twenty-second day of July in the year 1910.

SIDNEY W. WINSLOW, President
LOUIS A. COOLIDGE, Treasurer
EDWARD P. HURD
CHARLES H. WILLSON
ELMER P. HOWE
CHARLES G. RICE
WALLACE F. ROBINSON
GEORGE W. BROWN
WILLIAM BARBOUR
ALFRED R. TURNER
ROBERT T. PAINE 2d

State of Massachusetts,

County of Suffolk, ss., Boston, August 15, 1910.

Then personally appeared the above-named Elmer P. Howe, and made oath that the foregoing certificate, by him subscribed, is true to the best of his knowledge and belief.

Before me,

(L S) Nelson B. Todd, Notary Public.

State of Massachusetts,

County of Suffolk, ss., Boston

On this twenty-second day of July, A. D. 1910, before me personally appeared the above named Louis A. Coolidge and on the twenty-sixth day of July, 1910, before me personally appeared the above named Sidney W. Winslow and Edward P. Hurd, and on the twenty-seventh day of July, 1910, before me personally appeared the above named Charles H. Willson, and on the fourth day of August, 1910, before me personally appeared the above named Charles G. Rice, and on the fifth day of August, 1910, before me personally appeared the above named Wallace F. Robinson, and on the eighth day of August before me personally appeared the above named George W. Brown, and on the sixteenth day of August, 1910, before me personally appeared the above named Robert T. Paine, 2d, and severally made oath that the foregoing certificate by them subscribed is true to the best of their knowledge and belief,

(L S) Nelson B. Todd, Notary Public.

State of New York,

County of New York, August 15, 1910.

Then personally appeared the above named William Barbour and Alfred R. Turner, and severally made oath that the foregoing certificate by them subscribed is true to the best of their knowledge and belief.

Before me,

(L S) Edwin C. Gibson,

Notary Public for Kings County No. 24.

Certificate Filed in New York County. My Commission Expires March 30, 1911.

AUDITOR'S CERTIFICATE.

(This certificate is to be used only by corporations having a paid-in capital of $100,000, or over.)

August 16, 1910.

I, Amos D. Albee of the firm of Amos D. Albee, Son & Co., Boston, Public Accountants and Auditors, the duly selected Auditor of United Shoe Machinery Company, a corporation duly established by law, hereby certify that I have completed the examination of the books of said Corporation, and its certificate of condition as executed by its officers, to which this certificate is attached, and find that said certificate represents the true condition of the affairs of said Corporation, as disclosed by its books. This certificate is made by me in compliance with the provisions of section 55 of chapter 490, Part III, of the Acts of 1909.

Amos D. Albee C P A Auditor
of the firm of Amos D. Albee, Son & Co.
Public Accountants and Auditors

The Commonwealth of Massachusetts.

Suffolk ss. Boston, August 16, 1910.

Then personally appeared the above-named Amos D. Albee and made oath that the above certificate by him subscribed is true.

Before me,

(L S) Nelson B. Todd Notary Public.

* If out of Massachusetts, oath before a commissioner for Massachusetts or notary public; if within Massachusetts, before a notary public or justice of the peace.

[On back:]

[Foreign Corporations.]

United Shoe Machinery Co. Fee $5.00 paid.

Certificate of Condition.

[Acts of 1909, Chap. 490, Part III, Sect. 54.]

The treasurer and receiver general hereby certifies that the tax provided in section 56, chapter 490, Part III, of the Acts of 1909, has been paid.

Date Oct 4 1910

Elmer A. Stevens Treasurer and Receiver General.

2000.— by Mary Cutler

Filed in the office of the Secretary of the Commonwealth, Oct. 5 1910.

I hereby approve the within certificate, this 5th day of October A. D. nineteen hundred and ten.

William D. T. Trefry,
Commissioner of Corporations.

Commissioner of Corporations Oct 4 1910
Received Oct 4 1910
Corporation Division, Secretary's Office.

THE COMMONWEALTH OF MASSACHUSETTS.
Office of the Secretary.
Boston, Feb. 5, 1914.

A true copy.
Witness the Great Seal of the Commonwealth.

FRANK J. DONAHUE,
[SEAL] *Secretary of the Commonwealth.*

PLAINTIFF'S EXHIBIT 277.

[Put in Evidence, page 4865.]

Post-office address of Company in Massachusetts: United Shoe Machinery Company 205 Lincoln Street, Boston, Mass.

[Acts of 1909, Chap. 490, Part III.]

Section 54. Every foreign corporation (of the classes enumerated in section 58, Chapter 437, Acts of 1903) shall annually, within thirty days after the date fixed for its annual meeting, or within thirty days after the final adjournment of said meeting, but not more than three months after the date so fixed for said meeting, prepare and file in the office of the secretary of the commonwealth, upon payment of the fee provided in section ninety-one of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three, a certificate signed and sworn to by its president, treasurer, and by a majority of its board of directors, showing the amount of its authorized capital stock, and its assets and liabilities as of a date not more than ninety days prior to said annual meeting, in such form as is required of domestic business

corporations under the provisions of section forty-five of said chapter, and the change or changes, if any, in the other particulars included in the certificate required by section sixty of said chapter, made since the filing of said certificate or of the last annual report.

Section 55. A certificate which is required to be filed by the preceding section shall be accompanied by a written statement under oath by an auditor, as provided in section forty-seven of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three, except that such auditor shall in all cases be chosen by the board of directors. Before it is filed it shall be submitted to the commissioner of corporations, who shall examine said certificate and shall as tax commissioner assess upon the corporation an excise tax in accordance with the provisions of the following section. If he finds that the certificate is in compliance with the requirements of the preceding section, he shall indorse his approval thereon; but no certificate shall be filed until he has indorsed his approval thereon, and until the excise tax required by the following section has been paid to the treasurer and receiver general.

Section 56. Every foreign corporation shall, in each year, at the time of filing its annual certificate of condition, pay to the treasurer and receiver general, for the use of the commonwealth, an excise tax to be assessed by the tax commissioner of one fiftieth of one per cent of the par value of its authorized capital stock as stated in its annual certificate of condition; but the amount of such excise tax shall not in any one year exceed the sum of two thousand dollars.

Acts of 1903, Chap, 437, Section 90. The fee for filing this certificate is $5.00, and should accompany the certificate. Check should be made payable to the Secretary of the Commonwealth.

Payment of Excise Tax should also accompany this certificate. Check should be made payable to the Treasurer of the Commonwealth.

We, Sidney W. Winslow, President, Louis A. Coolidge, Treasurer, and Wallace F. Robinson, Edward P. Hurd, J. H. Connor, Elmer P. Howe, A. R. Turner, Joseph C. Kilham, Frank Wood,

John H. Hanan, William Woodward and C. G. Rice being a majority of the Directors of United Shoe Machinery Company a Corporation organized under the laws of the State of New Jersey, having a usual place of business in Boston in the Commonwealth of Massachusetts, in compliance with the provisions of chapter 490, Part III, Sec. 54, of the Acts of 1909, do hereby certify, that the amount of its authorized capital stock on the First day of March, 1911, was Twenty-five million 00/100 (25,000,000) dollars.

That the amount thereof then paid in was 20,850,519 dollars.

That the assets and liabilities of the Corporation on the above date as shown by its books were as follows: —

Note.—This should be of a date not more than ninety days prior to the annual meeting.

Assets.		Liabilities.	
Real Estate, ...	2047301 35	Capital stock, ...	20850519 00
Machinery, ...	2225266 05	Accounts payable, . . .	421602 26
Merchandise:		Reserve, ...	325830 40
Manufactures, merchandise, material and stock in process, ...	6770332 19	Floating indebtedness, . Surplus, ...	20669799 71
Cash and debts receivable	7590974 67	Profit and loss, ...	
Patent rights, ...	400000 00		
Trade-marks, Miscellaneous	5133 09		
Stocks & Bonds of other corporations and leased machy, ...	23228744 02		
Total, ...	42267751 37	Total, ...	42267751 37

The names and addresses of the president, treasurer, clerk or secretary, and directors are:

Name.	Address.
President,	
Treasurer,	
Clerk or Secretary,	
Directors,	
Frank L. Babbott	New York, N. Y.
William Barbour	New York, N. Y.
George W. Brown	Boston, Mass.
John H. Connor	Boston, Mass.

Louis A. Coolidge	Boston, Mass.
Henry H. Endicott	Boston, Mass.
Edmund LeB. Gardner	Passaic, N.J.
John H. Hanan	New York, N.Y.
Elmer P. Howe	Boston, Mass.
Edward P. Hurd	Boston, Mass.
George E. Keith	Brockton, Mass.
Joseph C. Kilham	Beverly, Mass.
Rudolph Matz	Chicago, Ill.
Charles G. Rice	Boston, Mass.
Wallace F. Robinson	Boston, Mass.
Arthur R. Turner	New York, N.Y.
Samuel Weil	New York, N.Y.
Sidney W. Winslow	Boston, Mass.
Frank Wood	Boston, Mass.
William Woodward	New York, N.Y.

State here the change, or changes, if any, since the filing of the certificate required by section 60, chapter 437, Acts of 1903, or since the filing of the last annual report, in the following particulars:

The name of the corporation.

The location of its principal office.

The date of annual meeting for election of officers

The amount of capital stock authorized is dollars.

The amount of capital stock issued is dollars.

the amount paid in thereon to the treasurer is

Preferred, dollars. Common, dollars.

the number of its authorized shares is Preferred,

Common,

the par value of its shares is Preferred, dollars. Common, dollars.

the amount of such payment made otherwise than in money is as follows: —

Paid in property, viz: [State here the number of shares issued on each item.]

	Preferred.	Common.
Real estate:		
location, ...		
area, ...		
Machinery, ...		
Merchandise, ...		
Bills receivable		
Stocks and securities, ...		
Patent rights, ...		
Trade-marks, ...		
Copyrights, ...		
Good will, ...		
Services, ...		
Expenses, ...		

[State the nature of such services and expenses.]

The Board of Directors of this Corporation, which has an outstanding capital stock of $100,000 or more, at a meeting held at Boston on the 14th day of September, A. D. 1910, have employed Amos D. Albee, Son & Company of Boston as Auditor, pursuant to the provisions of section 55, of chapter 490, Part III, of the Acts of 1909, and of chapter 326, Acts of 1909.

President, Treasurer and majority of Directors should sign in space below.

(This applies to every corporation, with or without auditor's appointment.)

In Witness Whereof, we have hereunto signed our names, this 23d day of August in the year nineteen hundred and eleven.

SIDNEY W. WINSLOW President
LOUIS A. COOLIDGE Treasurer
WALLACE F. ROBINSON
EDWARD P. HURD
J. H. CONNOR
ELMER P. HOWE
A. R. TURNER
JOSEPH C. KILHAM
FRANK WOOD
JOHN H. HANAN
WILLIAM WOODWARD
C. G. RICE

State of Mass.

Suffolk ss. Boston August 23, 1911.

Then personally appeared the above-named Sidney W. Winslow, Wallace F. Robinson & Louis A. Coolidge and on the 29th August personally appeared John H. Connor, Edward P. Hurd and Elmer P. Howe and on the 13th September personally appeared Joseph C. Kilham, Frank Wood, John H. Hanan, William Woodward, Charles G. Rice and Alfred R. Turner and severally made oath that the foregoing certificate, by them subscribed, is true to the best of their knowledge and belief. * Before me,

(L S) Nelson B. Todd, Notary Public

AUDITOR'S CERTIFICATE.

(This certificate is to be used only by corporations having a paid-in capital of $100,000, or over.)

Sept. 22, 1911.

I, Herbert H. Albee of the firm of Amos D. Albee Son & Co. the duly selected auditors of United Shoe Machinery Company a corporation duly established by law, hereby certify that I have completed the examination of the books of said corporation, and its certificate of condition as executed by its officers, to which this certificate is attached, and find that said certificate represents the true condition of the affairs of said Corporation, as disclosed by its books. This certificate is made by me in compliance with the provisions of section 55 of chapter 490, Part III, of the Acts of 1909.

Amos D. Albee Son & Co.
by Herbert H. Albee C. P. A. Auditor.

The Commonwealth of Massachusetts.

Suffolk ss. Sept. 22, 1911.

Then personally appeared the above-named Herbert H. Albee and made oath that the above certificate by him subscribed is true.

Before me,
Edward N. Chase Justice of the Peace.

* If out of Massachusetts, oath before a commissioner for Massachusetts or notary public; if within Massachusetts, before a notary public or justice of the peace.

[On back:]

[Foreign Corporations.]
United Shoe Machinery Co.
Fee $5.00 pd.

Certificate of Condition.
[Acts of 1909, Chap. 490, Part III, Sect. 54.]

The treasurer and receiver general hereby certifies that the tax provided in section 56, chapter 490, Part III, of the Acts of 1909, has been paid.

Date Sep 25 1911.

Elmer A. Stevens, Treasurer and Receiver General.
$2000. by J. C. Bond

Filed in the office of the Secretary of the Commonwealth, Sept. 26, 1911.

I hereby approve the within certificate, this 26th day of September A. D. nineteen hundred and eleven.

William D. T. Trefry,
Commissioner of Corporations.

Commissioner of Corporations Sep 25 1911
Received Sep 25 1911
Corporation Division, Secretary's Office.

THE COMMONWEALTH OF MASSACHUSETTS.

Office of the Secretary.

Boston Feb. 5, 1914.

A true copy.

Witness the Great Seal of the Commonwealth.

FRANK J. DONAHUE,
[SEAL] *Secretary of the Commonwealth.*

PLAINTIFF'S EXHIBIT 278.

[Put in Evidence, page 4866.]

Post-office address of Company in Massachusetts: United Shoe Machinery Company, 205 Lincoln Street, Boston, Mass.

[Acts of 1909, Chap. 490, Part III.]

Section 54. Every foreign corporation (of the classes enumerated in section 58, Chapter 437, Acts 1903) shall annually, within thirty days after the date fixed for its annual meeting, or within thirty days after the final adjournment of said meeting, but not

more than three months after the date so fixed for said meeting, prepare and file in the office of the secretary of the commonwealth, upon payment of the fee provided in section ninety-one of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three, a certificate signed and sworn to by its president, treasurer, and by a majority of its board of directors, showing the amount of its authorized capital stock, and its assets and liabilities as of a date not more than ninety days prior to said annual meeting, in such form as is required of domestic business corporations under the provisions of section forty-five of said chapter, and the change or changes, if any, in the other particulars included in the certificate required by section sixty of said chapter, made since the filing of said certificate or of the last annual report.

Section 55. A certificate which is required to be filed by the preceding section shall be accompanied by a written statement under oath by an auditor, as provided in section forty-seven of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three, except that such auditor shall in all cases be chosen by the board of directors. Before it is filed it shall be submitted to the commissioner of corporations, who shall examine said certificate and shall as tax commissioner assess upon the corporation an excise tax in accordance with the provisions of the following section. If he finds that the certificate is in compliance with the requirements of the preceding section, he shall indorse his approval thereon; but no certificate shall be filed until he has indorsed his approval thereon, and until the excise tax required by the following section has been paid to the treasurer and receiver general.

Section 56. Every foreign corporation shall, in each year, at the time of filing its annual certificate of condition, pay to the treasurer and receiver general, for the use of the commonwealth, an excise tax to be assessed by the tax commissioner of one fiftieth of one per cent of the par value of its authorized capital stock as stated in its annual certificate of condition; but the amount of such excise tax shall not in any one year exceed the sum of two thousand dollars.

Acts of 1903, Chap. 437, Section 90. The fee for filing this cer-

tificate is $5.00, and should accompany the certificate. Check should be made payable to the Secretary of the Commonwealth.

Payment of Excise Tax should also accompany this certificate. Check should be made payable to the Treasurer of the Commonwealth.

We, Sidney W. Winslow President, Louis A. Coolidge, Treasurer, and J. H. Connor, Elmer P. Howe, Edwin P. Brown, Edward P. Hurd, Wallace F. Robinson, William Barbour, Samuel Weil, Charles G. Rice, William Woodward being a majority of the Directors of United Shoe Machinery Company a Corporation organized under the laws of the State of New Jersey having a usual place of business in Boston in the Commonwealth of Massachusetts, in compliance with the provisions of chapter 490, Part III, Sec. 54, of the Acts of 1909, do hereby certify, that the amount of its authorized capital stock on the First day of March, 1912, was Twenty-five million 00/100 (25,000,000) dollars.

That the amount thereof then paid in was 20,850,519.00/100 dollars.

That the assets and liabilities of the Corporation on the above date as shown by its books were as follows:—

Note.—This should be of a date not more than ninety days prior to the annual meeting.

Assets.		Liabilities.	
Real estate	2295354.73	Capital stock	20850519.00
Machinery	2164284.80	Accounts payable	408560.41
Merchandise:	7137023.85	Reserves	320039.10
Manufactures, merchandise, material and stock in process		Floating indebtedness	
Cash and debts receivable,	9148176.33	Surplus	23838806.79
Patent rights	400000.00	Profit and loss	
Miscellaneous	6799.61		
Stocks and bonds of other corporations and leased machy	24266285.98		
Total	45417925.30	Total	45417925.30

The names and addresses of the president, treasurer, clerk or secretary, and directors are:

	Name.	Address.
President,		
Treasurer,		
Secretary,	Harold G. Donham	Boston, Mass.
Directors,		
	William Barbour,	New York, N. Y.
	George W. Brown,	Boston, Mass.
	Edwin P. Brown,	Boston, Mass.
	John H. Connor,	Boston, Mass.
	Louis A. Coolidge,	Boston, Mass.
	Henry B. Endicott,	Boston, Mass.
	Edmund LeB. Gardner,	Passaic, N. J.
	John H. Hanan,	Brooklyn, N. Y.
	Elmer P. Howe,	Boston, Mass.
	Edward P. Hurd,	Boston, Mass.
	Joseph C. Kilham,	Beverly, Mass.
	George E. Keith,	Campello, Mass.
	Rudolph Matz,	Chicago, Ill.
	Charles G. Rice,	Boston, Mass.
	Wallace F. Robinson,	Boston, Mass.
	Alfred R. Turner,	New York, N. Y.
	S. W. Winslow,	Boston, Mass.
	Samuel Weil,	New York, N. Y.
	Frank Wood,	Boston, Mass.
	William Woodward,	New York, N. Y.

State here the change, or changes, if any, since the filing of the certificate required by section 60, chapter 437, Acts of 1903, or since the filing of the last annual report, in the following particulars:

The name of the corporation.

The location of its principal office.

The date of annual meeting for election of officers Saturday after third Wednesday in May.

The amount of capital stock authorized is dollars.

The amount of capital stock issued is dollars.

the amount paid in thereon to the treasurer is
Preferred, dollars. Common, dollars.
the number of its authorized shares is Preferred, Common,
the par value of its shares is Preferred, dollars. Common, dollars.
the amount of such payment made otherwise than in money is as follows: —

Paid in property, viz.: [State here the number of shares issued on each item.]

	Preferred.	Common.
Real estate:		
location,		
area,		
Machinery, ...		
Merchandise, ...		
Bills receivable, ...		
Stocks and securities, ...		
Patent rights, ...		
Trade-marks, ...		
Copyrights, ...		
Good will, ...		
Services, ...		
Expenses, ...		

[State the nature of such services and expenses.]

The Board of Directors of this Corporation, which has an outstanding capital stock of $100,000 or more, at a meeting held at Boston on the thirteenth day of September, A. D. 1911, have employed Amos D. Albee Son & Co. of Boston as Auditor, pursuant to the provisions of section 55, of chapter 490, Part III, of the Acts of 1909, and of chapter 326, Acts of 1909.

President, Treasurer and majority of Directors should sign in space below.

(This applies to every corporation, with or without auditor's appointment.)

In Witness whereof, we have hereunto signed our names, this first day of June in the year nineteen hundred and twelve.

SIDNEY W. WINSLOW, President.	EDWARD P. HURD
LOUIS A. COOLIDGE, Treasurer.	WALLACE F. ROBINSON
C. G. RICE	WILLIAM BARBOUR
J. H. CONNOR	SAMUEL WEIL
EDWIN P. BROWN	WILLIAM WOODWARD
	ELMER P. HOWE

State of New York County of New York ss. July 2nd, 1912.

Then personally appeared the above-named William Barbour, Samuel Weil, William Woodward, and severally made oath that the foregoing certificate, by them subscribed, is true to the best of their knowledge and belief. * Before me,

(L S) Edwin C. Gibson,

Notary Public for Kings County No. 97.

Certificate Filed in New York County,
My Commission Expires March 30, 1913.

Commonwealth of Massachusetts.

County of Suffolk, ss. Boston, July 24, 1912.

Then personally appeared the above-named Elmer P. Howe and made oath that the foregoing certificate by him subscribed is true, to the best of his knowledge and belief.

Before me,

(L S) Carlton E. Snow, Notary Public.

State of Massachusetts.

County of Suffolk, ss. Boston, June 25, 1912.

Then personally appeared the above named Sidney W. Winslow and Louis A. Coolidge and John H. Connor, and on the 26th day of June personally appeared the above named Edwin P. Brown, Edward P. Hurd and Wallace F. Robinson, and on the 19th day of July personally appeared the above named Charles G. Rice and severally made oath that the foregoing certificate by them subscribed is true, to the best of their knowledge and belief.

Before me,

(L S) Nelson B. Todd, Notary Public.

AUDITOR'S CERTIFICATE.

(This certificate is to be used only by corporations having a paid-in capital of $100,000, or over.)

Boston, Mass. July 25, 1912.

I, Amos D. Albee of the firm of Amos D. Albee Son & Co. Boston Certified Public Accountants the duly selected Auditor of United Shoe Machinery Co. of New Jersey a corporation duly established by law, hereby certify that I have completed the examination of the books of said Corporation, and its certificate of condition as executed by its officers, to which this certificate is attached, and find that said certificate represents the true condition of the affairs of said Corporation, as disclosed by its books. This certificate is made by me in compliance with the provisions of section 55 of chapter 490, Part III, of the Acts of 1909.

Amos D. Albee, Auditor.

The Commonwealth of Massachusetts.

Suffolk ss. Boston, July 26, 1912

Then personally appeared the above-named Amos D. Albee and made oath that the above certificate by him subscribed is true.

Before me,

Frederick W. Notman, Justice of the Peace.

* If out of Massachusetts, oath before a commissioner for Massachusetts or notary public; if within Massachusetts, before a notary public or justice of the peace.

[On back:]

[Foreign Corporations.]

United Shoe Machinery Co. Fee $5.00 pd.

Certificate of Condition.

[Acts of 1909, Chap. 490, Part III, Sect. 54.]

The treasurer and receiver general hereby certifies that the tax provided in section 56, chapter 490, Part III, of the Acts of 1909, has been paid.

Date July 31, 1912.

Elmer A. Stevens, Treasurer and Receiver General.

2000 by J. C. Bond.

Filed in the office of the Secretary of the Commonwealth, July 31, 1912.

I hereby approve the within certificate, this 31st day of July, A. D. nineteen hundred and twelve.

William D. T. Trefry,
Commissioner of Corporations.

Commissioner of Corporations Jul. 31, 1912, with fee of $5 ck.
Received Jul. 31, 1912.
Corporation Division, Secretary's Office.
Commissioner of Corporations Jul. 30, 1912.

THE COMMONWEALTH OF MASSACHUSETTS.
Office of the Secretary.
Boston, Feb. 5, 1914.

A true copy.
Witness the Great Seal of the Commonwealth.

FRANK J. DONAHUE,
[SEAL] *Secretary of the Commonwealth.*

PLAINTIFF'S EXHIBIT 279.

[Put in Evidence, page 4872.]

LIST OF MACHINERY IN USE AT ALL FACTORIES OF THE COMMONWEALTH SHOE & LEATHER CO.

CUTTING ROOM.

		USM	Outside
Upper Leather Measuring Machine			1
Gilding Machine			1
Amazeen Skivers			21
Vamp Size Markers			4
Tip Presses			4
Tip Beveler			1
Longley Splitter			1
Carver Splitter	Carver Cotton Gin Co.		1
Lockett Crimpers			6
Jameson "			3
Fortuna Skivers			2
Carver Skiver	Carver Cotton Gin Co.		1
Lining Markers			3
Parsons 6 ft. Die Press			1
Seelye 66 in. Die Press			1

	USM	Outside
Hawkins 66 in. Die Press		1
Embossing Machines		2
Pinking Machines		3
Snipper		1
Flat-bed Singer		1
Ideal Clickers	8	
Eagle Sole and Upper Stampers	3	
Fitting Room		
Single Needle Cylinder Machines		49
Singer two Needle Cylinders		28
Single needle flat		156
Double flat		29
Undertrimmers		28
Union Special Machines		20
Arm Machines		3
Post Machines		11
Barring and Zig-Zagging Machines		14
Seaming and Closing Machines		7
Buttonhole Machines		8
Buttonhole Finishers		3
Heavy Sail Machine		1
Repairing Machine		1
Perforating Machines		5
Lining Markers		2
Bobbin Winder		1
National Siders		3
Puritan Closers		2
Puritan two needle		1
Saddle Stay Machine		1
Merrick Side Machine		1
Two Needle Puritan Machine		1
Pinking Machine		1
Folding Machines		6
Amazeen Skivers		2
Fortuna Skiver		1

		USM	Outside
Carver Skiver			1
Snipping Machines			4
Doubling Machines			2
Button Fastening Machines			4
Tip Markers			2
Automatic Hooking Machines			4
Peerless Eyelet Punching Machine			1
Knife			1
Foot-Power Eyeletter			1
Foot-Power Hookers			4
Peerless Rapid Eyeletters			6
Peerless Gang Eyeletters			4
Duplex Eyeletters		2	
Perfection Eyeletters		2	
Universal Eyeletter		1	
Strap Papering and Printing Machine			1
Foot-Power Eyelet Row Markers			2
Tip Folder			1
Lining Power Folder			1
Williams Folders			3
Bonny Folder			1
Folding Machines			2
Lining Power Marker			2
Peerless Cementing Machines			2
Knipe Cementers			3
Vamp Marker			1
Foot-Power Gore Markers			2
Rogers Vamp Markers			3
Foot-Power Punch			1
Crown Tip Punch		1	
Stanbon Perforators	(C. P. Stanbon)		5
Hart Perforator			1
Knight Tip Die Presses	(Knight & Norris)		2
Tip Marker and Toe Skiver			1
Seam Rubbers			2

		USM	Outside
Columbia Beaders			2
Ensign Lacers		2	
Bottoming Room			
Rex Pulling Over Machines		11	
Rex Pounding Machine		1	
#5 Lasters		64	
Chase Lasters		4	
Chase Tackers		9	
Welt Laster		1	
Insole Tackers		2	
Hand Tackers		64	
Power Welt Groover and Beveler		2	
Goodyear Welt and Turn Machines	6 leased of Goodyr S. M. Co.	24	
Welt Trimmer and Stitch Rubber		1	
Upper Trimmer		1	
Welt Beaters and Slashers		7	
Universal Inseam Trimmers		2	
Tack Pulling and Re-setting Machine		1	
Sole Layers		7	
Universal Rounders	5 leased of Goodyr S. M. Co.	16	
Channel Openers	3 " " " " " "	5	
Rapid Stitchers	14 " " " " " "	34	
Bobbin Winders	3 " " " " " "	9	
Extension Edge Attachments		36	
Puritan Fair Stitch Machine			1
McKay Sewers	(Stanley Mfg. Co.)		3
Richardson Fair Stitch Machines	(Richardson Shoe Mchy. Co.)		2
Davie Pegger	(John F. Davie, Marlboro)		1
Rapid Rotary Cementers		4	
Star Channel Cementers		3	
Star Channel Cementer			1
Bottom Cementer		1	
Automatic Levelers		6	

	USM	Outside
Acme Levelers (Carver Cotton Gin Co.)		3
Hercules Leveler	1	
S. H. Taper Nail Tacker	4	
Rapid Standard	3	
Loose Nailers	9	
Grip Tackers	3	
Staple Tackers	4	
Universal Sluggers	14	
Grip Slugger	1	
Clinch Machines	4	
Universal Double Clinch Machines	4	
Knife Grinders	10	
Rotary Grinders	2	
Grinder	1	
Heel Seat Rough Rounders	5	
Lightning Heelers	12	
Automatic Heel Loader & Attacher	1	
Premier Heel Pricker	1	
Ultima Heel Trimmers	7	
McKay Heel Trimmer	1	
New Method Heel Seat Beader	1	
Edge Trimmers	53	
Imperial Heel Breasters	3	
Heel Breast Scourers	4	
Top Piece Scallopers	3	
Improved Heel Breaster Knife Grinder	1	
Imperial Knife Grinder	1	
Stitch Separators 4 leased of Goodyear S. M. Co.	9	
Welt Indenter & Burnisher	3	
Goodyear Jointing Machines	4	
O. S. Welt Beveling Attachment	5	
McKay Feather Edger	1	
Besto Heaters		2
Channel Closers		3
Wax Edge Setters		1

		USM	Out
Union Edge Setters			
Booth Burnishers	(Booth & Co)		
Booth Wheeler	"		
Foot-Power Heel Breaster			
FINISHING ROOM			
Tip Scourer		1	
Regent Stampers		2	
Heel Scouring Machines	(Carver Cotton Gin Co.)		1
Forepart Buffing Machines	" " " "		1
Naumkeag Machines			
Top Piece Scourers	(Carver Cotton Gin Co)		
Heel Breast Scourers		2	
Bottom Wheeling Machine			
Hand Power Welt Indenter			
Fifield Bottom Stamper	(C. S. Fifield)		
Star Bottom Stamper			
Twin Union Edge Setters			
Copeland Heel Stoner			
Nurling Machine			
Xpedite Finishing Machine	(U. X. Co.)	1 9	
TREEING ROOM			
Shoe Treeing Machines	(O. A. Miller)		49
Boot Treeing Machines			8
Vamp Creasers	(O. A. Miller)		3
Tip Scourers			2
Tip Scourer		1	
Gilding Machine			1
SOLE LEATHER ROOM			
Apex Channeller		1	
Planet Sole Rounder		1	
Welt Groover	1 leased of Goodyr. S. M. Co.	5	
Insole Channellers	2 " " " " " "	6	
Gem Flexible Insole Machines		4	
Gem Lip Turners		5	
Lip Turner		1	

Outside		USM	Outside
9	Gem Cementers	5	
2	Apex Feather Edge and Shank Reducer	1	
1	Apex Tap and Sole Rounder	1	
1	Centennial Splitter	1	
	Summit Splitter	3	
	Economy Insole Stitcher	1	
	Economy Reinforcing Machine	1	
13	Economy Channeller	1	
16	Outsole Channellers	3	
4	Hand Flexible Sole Machines	1	
1	Shin Leveler and Flexer	1	
	Star Channel Cementer	1	
1	Improved Gearless Sole Cutters	6	
1	Apex Flesher	1	
1	Centennial Splitter	1	
1	Universal Channellers	2	
4	Julian Rounders		5
1	Smith Rounders (C. S. Fifield)		2
	Bresnahan Molder (M. V. Bresnahan)		2
	Bresnahan Splitter		1
	Featheredge Machines		3
49	Insole Stamper & Cutter		3
8	Channel Opener		1
3	Bevel Edge Machines (Knight & Norris)		1
2	Tap Trimmer		1
	Tap Cementer		1
1	Sole Groover		1
	Welt Groover		1
	Carver Splitter (Carver Cotton Gin Co)		1
	Stowe Splitter		1
	Clifton Canvas Laying Machine		1
	Hawkins Die Presses		13
	Parsons 8′ Die Presses		2
	Stanbon Die Press (C. P. Stanbon)		1
	Baby Splitters (C. S. Fifield Shoe Mchy. Co.)		4

		USM	Outside
Lacene Graders			2
18″ Stowe Splitters			-
30″ Carver Splitters	(Carver Cotton Gin Co.)		1
18″ Common-sense Splitter			2
30″ Stowe Roller			1
36″ Rollers			2
Acme Tap Buffer			2
Carver Tap Butter	(Carver Cotton Gin Co.)		3
Julian Cementer			5
Stanbon Rounder	(C. P. Stanbon)		1
McKay Lip Turner			1
Stanbon Welt Slashers	(C. P. Stanbon)		2

HEEL ROOM

Lift Beveler			1
#4 Compressors			
30 in. Roller			1
30 in. Splitter			1
6 ft. Seelye Die Press			1
4 ft. Seelye Die Press			1
2 ft. Parsons Die Press			2
Heel Builder			1
Rand Skiver			1
Baby Splitter	(C. S. Fifield Shoe Mchy. Co.)		1
Young Lift Gouger			1
Rand Scarfer			1
Pyramid Heel Builder		1	

207 R.F. 5 1,4

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917

No. 207

THE UNITED STATES, APPELLANT,

vs.

UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

VOLUME 5.

DEFENDANTS' EXHIBITS.

FILED JULY 1, 1918.

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RECORD IN DISTRICT COURT

(IN TWELVE VOLUMES)

District Court of the United States,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 301

THE UNITED STATES OF AMERICA

vs.

UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, AND OTHERS.

VOLUME XII—DEFENDANTS' EXHIBITS.

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District Court of the United States,

DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 301 (C. C. 911).

UNITED STATES OF AMERICA

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.

EXHIBITS FOR DEFENDANTS.

DEFENDANTS' EXHIBIT 10.

[Put in Evidence, page 450.]

Heeling Machine Department. (1305)

Lease and License Number .

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use the machine or machines of the Heeling Machine

Department of the lessor now or hereafter delivered to the lessee and designated by number or numbers in the following schedule, viz. : —

SCHEDULE OF MACHINES.

Automatic Heel Compressing Machine (No. 4, Model), No.
McKay Rapid Nailing Machine, No.
McKay Automatic Heel Loading and Attaching Machine, No.
American Lightning Nailing Machine, No.
Improved National Nailing Machine, No.
McKay Heel Trimming and Randing Machine, No.
McKay Knife Grinding Machine, No.
Smith Heel Trimming Machine, No.
Bussel Heel Trimming Machine, No.
Ultima Heel Trimming Machine, No.

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines, or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform : —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of . The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the

lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale, mortgage, lease or removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of or licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the leases or licenses of which are so terminated shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same.

Three. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license upon whomsoever assessed. All taxes or assessments in respect to leases,

licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this article, to be assessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part but not wholly to machinery of the lessor in the possession of the lessee the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed: provided, however, that if such unapportioned tax or assessment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

Four. The lessee shall use the leased machinery to its full capacity for doing all work in manufacturing, preparing and attaching all heels and top-lifts and in manufacturing and preparing all soles and taps made or prepared or attached in his factory in the manufacture or preparation or attaching of which it can be used, and the leased machinery shall be used for no other purpose.

Five. The lessee shall pay to the lessor immediately upon the execution hereof as a lease premium the sum of dollars and the lessee shall also pay to the lessor on the last day of each calendar month as rent or royalty the sum of one-half of one cent for each pair of heels manufactured or prepared or attached during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof: **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for**

the next preceding calendar month the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.

Six. In case any Compressing Machine (or Machines) hereby leased shall be used for compressing or otherwise operating upon top-lifts, soles or taps the lessee shall pay to the lessor independently of and in addition to the rental or royalty provided for in Article Five hereof a rental or royalty of one-quarter of one cent for each pair of top-lifts, soles or taps so compressed or operated upon. Such royalty shall be paid at the same time and in the same manner as the royalty provided for in said Article Five and shall be subject to discount for prompt cash payment, as in said Article Five provided.

Seven. The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount to at least dollars during each year embraced by this lease and at the end of each year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle.

Eight. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed,

broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, one-half of one cent per pair for each pair of heels, top-lifts, soles or taps, in the manufacture or preparation or attaching of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of heels, top-lifts, soles and taps, in the manufacture or preparation or attaching of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such heels, top-lifts, soles and taps, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of heels, top-lifts, soles or taps, in the manufacture or preparation or attaching of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations and provisions are agreed to: —

Nine. If at any time the lessee shall fail or cease to use exclu-

sively heel attaching machinery held by him under lease from the lessor, for attaching the heels of all boots, shoes and other footwear made by or for the lessee the heels of which are attached by the aid of machinery, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases of or licenses to use machinery of any or all the kinds mentioned by name in said schedule then existing between the lessor and the lessee (whether as the result of assignment to the lessor or otherwise) and the possession of and full right to and control of all machinery, the lease of which is so terminated, shall thereupon revest in the lessor, free from all claims and demands whatsoever.

Ten. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration of this lease and license or any extension thereof or its termination by notice or by reason of any default

on the part of the lessee as to the terms of this lease and license or any other lease and license from the lessor, or otherwise in any manner whatsoever, the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted; and without prejudice to any other rights or remedies of the lessor hereunder, shall pay to the lessor upon demand such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee; and the lessee for himself, his heirs, executors, and administrators, hereby grants to the lessor, its successors and assigns, full right, power and authority to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

Eleven. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor, or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Twelve. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed

in the grant thereof or of any extension or renewal thereof, of any of the Letters Patent referred to in the Schedule of Patents hereto annexed or the title of the lessor thereto. The expiration of this agreement or any extension thereof or the termination or cesser of the lease and license hereby granted shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admissions and estoppels herein set forth.

Thirteen. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president or the treasurer of the lessor.

Fourteen. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

by

by

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Twelve herein.)

Nos. 520,768, June 5, 1894; 528,805, Nov. 6, 1894; 530,046, Nov. 27, 1894; 531,644, Jan. 1, 1895; 531,645, Jan. 1, 1895; design 24,268, April 30, 1895; 541,481, June 25, 1895; 542,205, July 2, 1895; 542,616, July 9, 1895; 543,349, July 23, 1895; 543,647, July 30, 1895; 543,682, July 30, 1895; 543,732, July 30, 1895; 543,804, July 30, 1895; 544,771, Aug. 20, 1895; 548,-438, Oct. 22, 1895; 548,528, Oct. 22, 1895; 555,240, Feb. 25,

1896; 555,241, Feb. 25, 1896; 559,554, May 5, 1896; 559,789, May 5, 1896; 561,607, June 9, 1896; 561,608, June 9, 1896; 561,609, June 9, 1896; 561,610, June 9, 1896; 561,611, June 9, 1896; 565,467, Aug. 11, 1896; 569,055, Oct. 6, 1896; 569,517, Oct. 13, 1896; 569,518, Oct. 13, 1896; 570,437, Oct. 27, 1896; 570,648, Nov. 3, 1896; 571,087, Nov. 10, 1896; 571,499, Nov. 17, 1896; 571,931, Nov. 24, 1896; 575,040, Jan. 12, 1897; 577,-212, Feb. 16, 1897; 577,213, Feb. 16, 1897; 577,241, Feb. 16, 1897; 581,039, April 20, 1897; 581,408, April 27, 1897; 583,093, May 25, 1897; 584,601, June 15, 1897; 584,602, June 15, 1897; 584,752, June 15, 1897; 588,936, Aug. 24, 1897; 589,396, Aug. 31, 1897; 589,501, Sept. 7, 1897; 595,707, Dec. 21, 1897; 596,-064, Dec. 28, 1897; 596,305, Dec. 28, 1897; 598,256, Feb. 1, 1898; 599,012, Feb. 15, 1898; 599,627, Feb. 22, 1898; 605,647, June 14, 1898; 607,939, July 26, 1898; 607,940, July 26, 1898; 607,941, July 26, 1898; 607,942, July 26, 1898; 609,519, Aug. 23, 1898; 619,707, Feb. 14, 1899; 624,538, May 9, 1899; 624,539, May 9, 1899; 625,728, May 23, 1899; 629,441, July 25, 1899; 631,029, Aug. 15, 1899; 635,196, Oct. 17, 1899; 637,216, Nov. 14, 1899; 638,664, Dec. 5, 1899; 641,226, Jan. 9, 1900; 650,420, May 29, 1900; 651,447, June 12, 1900; 652,371, June 26, 1900; 681,344, Aug. 27, 1901; 684,588, Oct. 15, 1901; 694,656, March 4, 1902; 694,665, March 4, 1902; 699,113, April 29, 1902; 707,-136, Aug. 19, 1902; 707,137, Aug. 19, 1902; 707,138, Aug. 19, 1902; 707,139, Aug. 19, 1902; 707,140, Aug. 19, 1902; 707,141, Aug. 19, 1902; 707,142, Aug. 19, 1902; 707,143, Aug. 19, 1902; 707,144, Aug. 19, 1902; 734,584, July 28, 1903; 735,546, Aug. 4, 1903; 745,971, Dec. 1, 1903; 764,668, July 12, 1904; 764,-696, July 12, 1904; 767,520, Aug. 16, 1904; 767,521, Aug. 16, 1904; 772,840, Oct. 18, 1904; 776,787, Dec. 6, 1904; 776,823, Dec. 6, 1904; 776,832, Dec. 6, 1904; 776,860, Dec. 6, 1904; 776,-875, Dec. 6, 1904; 781,236, Jan. 31, 1905; 784,340, March 7, 1905; 799,768, Sept. 19, 1905; 823,582, June 19, 1906; 834,085, Oct. 23, 1906; 860,692, July 23, 1907; 874,921, Dec. 31, 1907; 876,626, Jan. 14, 1908; 880,583, March 3, 1908; 880,898, March 3, 1908; 884,513, April 14, 1908; 884,524, April 14, 1908; 887,-

870, May 19, 1908; 889,383, June 2, 1908; 890,434, June 9, 1908; 891,192, June 16, 1908; 891,513, June 23, 1908; 900,244, Oct. 6, 1908; 911,120, Feb. 2, 1909; 919,678, April 27, 1909; 929,830, Aug. 3, 1909; 938,118, Oct. 26, 1909; 939,302, Nov. 9, 1909; 943,723, Dec. 21, 1909; 958,896, May 24, 1910; 959,869, May 31, 1910; 961,752, June 21, 1910; 974,405, Nov. 1, 1910; 982,550, Jan. 24, 1911; 996,656, July 4, 1911.

[On back:]
United Shoe Machinery Company.
Heeling Machine Department.
(Lease Premium)
Lease No. , Lessee.
Date, 19 .
Machines.

DEFENDANTS' EXHIBIT 33.

[Put in Evidence, page 974.]

Lease and License No. *L149*

Transfer from *Florsheim & Co.* Lease No. *124*

This Lease and License, made at Boston, Massachusetts, this *Seventh* day of *January* A. D. 1897, by and between Goodyear Shoe Machinery Company, a corporation incorporated under the laws of the State of Maine, and having an office in said Boston, Lessor, and party hereto of the first part, and *Florsheim & Co.* doing business in *Chicago, Ill.* Lessee, and party hereto of the second part, witnesseth,

That, Whereas, the Lessor is the owner of or is licensed under the several Letters Patent of the United States, recited in the schedule following, viz.: —

SCHEDULE OF PATENTS.

No. 211,612, dated January 21, 1879.	No. 343,689, dated June 15, 1886.
No. 212,131, dated February 11, 1879.	No. 354,462, dated December 14, 1886.
No. 214,754, dated April 29, 1879.	No. 360,147, dated March 29, 1887.
No. 215,438, dated May 20, 1879.	No. 365,497, dated June 28, 1887.
No. 216,926, dated June 24, 1879.	No. 365,504, dated June 28, 1887.
No. 218,354, dated August 5, 1879.	No. 365,505, dated June 28, 1887.
No. 219,224, dated September 2, 1879.	No. 365,731, dated June 28, 1887.

No. 224,516, dated February 17, 1880.
No. 226,817, dated April 20, 1880.
No. 226,818, dated April 20, 1880.
No. 230,386, dated July 20, 1880.
No. 234,854, dated November 30, 1880.
No. 247,143, dated September 13, 1881.
No. 248,398, dated October 18, 1881.
No. 253,250, dated February 7, 1882.
No. 312,691, dated February 24, 1885.
No. 329,280, dated October 27, 1885.
No. 329,282, dated October 27, 1885.
No. 329,283, dated October 27, 1885.
No. 329,366, dated October 27, 1885.
No. 329,367, dated October 27, 1885.
No. 333,709, dated January 5, 1886.
No. 336,539, dated February 16, 1886.
No. 385,747, dated July 10, 1888.
No. 420,268, dated January 28, 1890.
No. 422,734, dated March 4, 1890.
No. 439,051, dated October 21, 1890.
No. 446,631, dated February 17, 1891.
No. 455,174, dated June 30, 1891.
No. 465,073, dated December 15, 1891.
No. 500,225, dated June 27, 1893.
No. 500,319, dated June 27, 1893.
No. 501,872, dated July 18, 1893.
No. 501,873, dated July 18, 1893.
No. 513,384, dated January 23, 1894.
No. 521,954, dated June 26, 1894.
No. 521,975, dated June 26, 1894.
No. 517,947, dated April 10, 1894.

And, Whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above-recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz. : —

SCHEDULE OF MACHINES.

Ideal Lasting Machines.	No. , No. , No. , No. , No.
Rapid Lasting Machines (foot power)	No. , No. , No. , No. , No.
Rapid Lasting Machines (foot power)	No. , No. , No. , No. , No.
3 Rapid Power Lasting Machines,	No. *51*, No. *55*, No. *56*, No. , No.
Rapid Loose Tackers, with Hoppers,	No. , No. , No. , No. , No.
6 Rapid Loose Tackers, with Hoppers, No. *411-412*.	No. *405*, No. *406*, No. *399*, No. *400*,
Nicking Machines,	No. , No. , No. , No. , No.

The said machines being the property of the Lessor.

Now, Therefore, the Lessor, in consideration of one dollar and other valuable consideration to it paid by the Lessee, in full for rental and royalty hereunder, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said machines, or

either or any of them, but upon the agreements and conditions hereinafter set forth; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor, notwithstanding any express or implied waiver of any prior breach, may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to any one in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon re-vest in the Lessor;

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license: —

First. The Lessee hereby agrees to use, and is hereby licensed to use, the machines hereby leased and the inventions patented as aforesaid only in his factory in *Chicago*, in the State of *Illinois*, and agrees to keep the said machines in working order at his own expense, and to purchase of the Lessor or its agents all parts for repairing the machines hereby leased, and all tacks to be used in the loose tackers and hoppers hereby leased, and agrees not to add to or subtract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, except by an authorized agent or employee of the Lessor, nor to remove or deface any dates, numbers, or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient access to the machines, to examine and inspect the same and the use thereof, and to add improvements to or alter the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions here-

after embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The Lessee agrees that he will not use or permit the use of the machines hereby leased, or either or any of them, on boots or shoes which are to be partially or wholly completed by the aid of any sole- or welt-sewing machine not leased to him by the Lessor (except that they may be used in lasting boots and shoes known in the trade as "McKay Sewed"), and that he will not use or permit the use of any of the tackers hereby leased on boots or shoes which have been partially or wholly lasted by the aid of any lasting machine not leased to him by the Lessor.

Fourth. This lease and license is not assignable by the Lessee by his own act or by operation of law; and all the rights and interests which under this instrument, and by reason of the ownership of said machines and patents and patent rights belong to the Lessor, shall be deemed to belong to and may be enforced in the names of the successors and assigns of the Lessor, and all the agreements and conditions binding on the Lessee shall be binding on his executors or administrators.

Fifth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessee after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

Sixth. The Lessee agrees that he will not in any way violate or infringe or contest the validity of any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or

the validity of the title of the Lessor to said patents, or any of them.

Seventh. The following are also agreed to by the parties as conditions of this lease and license: —

(a) That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machine embodying the inventions patented as aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or either or any of them, can only be made with the consent of the Lessor; and that if the Lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer, or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, this lease and license shall thereupon terminate and expire, and the Lessor may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for lease and royalty under this instrument.

(b) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, notwithstanding any express or implied waiver of any prior breach, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon revest in the Lessor free and discharged of this lease and license; and the Lessor, or its authorized agent or agents, may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease and license.

(c) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein con-

tained) until the expiration of all and every the Letters Patent referred to in the foregoing Schedule of Patents, or any extensions or renewals of the same; and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

In witness whereof, the Lessor has caused these presents to be signed and its corporate seal to be affixed hereto by its *Treasurer*, and the Lessee has set his hand and seal hereto the day and year first above written.

[SEAL] GOODYEAR SHOE MACHINERY COMPANY,
by Geo. W. Randall, Treas.

Lessee will please sign here. ☞ FLORSHEIM & COMPANY [SEAL]
Milton J. Florsheim, Pres.

[Attached to Defendants' Exhibit 33.]

REQUEST.

To the Goodyear Shoe Machinery Company, No. 158 Summer Street, Boston, Mass.

The undersigned, Lessee under Lease No. *124*, granted by the Copeland Rapid Laster Manufacturing Company, dated *June 2*, 189*4*, hereby requests you to terminate said lease, and to grant him a new lease [Form 595] of the lasting and other machines referred to in said Copeland lease, upon the terms mentioned in your circular letter dated May, 1895.

And the undersigned herewith returns his said Copeland lease for cancellation, and sends a check for *$300.* as consideration for the grant of said new lease.

Dat this *seventh* day of *January*, 1897.

[Address] FLORSHEIM & COMPANY
Milton J. Florsheim, Pres.

DEFENDANTS' EXHIBIT 34.

[Put in Evidence, page 974.]

[Stamped :]
From Goodyear Shoe Mach'y Co.
51–53 Franklin St. Chicago,— Illinois.
George E. Milner.

[Duplicate Form 1291.] *Chicago, Ills.* Dated *June 25, 1894*

We hereby propose to take a lease of the machinery mentioned below, of the Copeland Rapid Laster Manufacturing Company, according to the form of lease adopted by the Company therefor, and *we* agree to pay upon delivery of the said machinery, the sum of *$300.* as consideration for the delivery of said lease, for the expenses of setting up said machinery, and for possession under the lease of said machinery.

One Power Lasting Machines. *#55 July 3/94*
Lasting Machines.
Two Loose Tackers. *#399, 400.* "

No title to the above mentioned machinery is acquired other than is given in the lease aforesaid.

A competent man is to be sent to set up said machinery at the expense of the said Company.

Freight and transportation charges on said machinery from Boston, Mass., shall be paid by the lessee.

How shall we ship, by freight or express? *"Blue Line".*

Applicant sign here. FLORSHEIM & Co.

Send us pattern of the innersole of the largest and widest of each style men's shoe you make. This is necessary before the machine can be shipped, as the toe wipers are made from these patterns.

We accept the above proposition, and promise to deliver the lease and machinery as specified therein.

Boston, July 2 1894

COPELAND RAPID LASTER MANUFACTURING COMPANY,
By S. V. A. Hunter Treasurer.

[Duplicate Form 1291.] *Chicago, Ills.* Dated *June 25, 1894*

We hereby propose to take a lease of the machinery mentioned below, of the Copeland Rapid Laster Manufacturing Company, according to the form of lease adopted by the Company therefor, and *we* agree to pay upon upon delivery of the said machinery, the sum of *$300.* as consideration for the delivery of said lease, for the expenses of setting up said machinery, and for possession under the lease of said machinery.

One Power Lasting Machines. *#56 July 3/74*
Lasting Machines
Two Loose Tackers. *411, 412.* "
Hand Tackers.

No title to the above mentioned machinery is acquired other than is given in the lease aforesaid.

A competent man is to be sent to set up said machinery at the expense of the said Company.

Freight and transportation charges on said machinery from Boston, Mass., shall be paid by the lessee.

How shall we ship, by freight or express? *"Blue Line".*

Applicant sign here. FLORSHEIM & Co.

Send us pattern of the innersole of the largest and widest of each style men's shoe you make. This is necessary before the machine can be shipped, as the toe wipers are made from these patterns.

We accept the above proposition, and promise to deliver the lease and machinery as specified therein.

Boston, July 2 1904

COPELAND RAPID LASTER MANUFACTURING COMPANY,
By S. V. A. Hunter Treasurer.

[Duplicate Form 1291.] *Chicago, Ills.* Dated *May 21, 1894.*

We hereby propose to take a lease of the machinery mentioned below, of the Copeland Rapid Laster Manufacturing Company, according to the form of lease adopted by the Company therefor and *we* agree to pay, upon delivery of the said machinery, the

sum of *$300.* as consideration for the delivery of said lease, for the expenses of setting up said machinery, and for the possession under the lease of said machinery.

One Power Lasting Machines. *#51 June 2/94.*
Lasting Machines.
Two Loose Tackers. *405, 406.*
Hand Tackers.
Hand Pegger.
Nicking Machines.
Shank Pullers.

It being understood and agreed that we are to have a trial of the above machines for a period of sixty days from date of delivery of same to us; at the expiration of which time we hereby agree either to return the same to the Copeland Rapid Laster Mfg. Co. or send check to cover the above consideration. It is also understood and agreed that if we decide to return the machines we are to pay for the wipers furnished.

No title to the above mentioned machinery is acquired other than is given in the lease aforesaid.

A competent man is to be sent to set up said machinery at the expense of the said Company.

Freight and transportation charges on said machinery from Boston, Mass., shall be paid by the lessee.

How shall we ship, by freight or express? *Blue Line.*

Applicant sign here. FLORSHEIM & Co.

Send us pattern of innersole of the largest and widest of each style men's shoe you make. This is necessary before the machine can be shipped, as the toe wipers are made from these patterns.

We accept the above proposition, and promise to deliver the lease and machinery as specified therein.

Boston, May 26 1894.

COPELAND RAPID LASTER MANUFACTURING COMPANY,
By S. V. A. Hunter Treas.

Lease and License No. *124*.

Transfer from Lease No. [Form 1094.]

This Lease and License, made at Boston, Massachusetts, this *2nd* day of *June* A. D. 189*4*, by and between Copeland Rapid Laster Manufacturing Company, a corporation incorporated under the laws of the State of Maine, and having an office in said Boston, Lessor, and party hereto of the first part, and *Florsheim & Co.* doing business in *Chicago, Ill.* Lessee, and party hereto of the second part, witnesseth,

That, Whereas, the Lessor is the owner of or is licensed under the several Letters Patent of the United States, recited in the schedule following, viz. : —

SCHEDULE OF PATENTS.

No. 211,612, dated January 21, 1879.	No. 333,709, dated January 5, 1886.
No. 212,131, dated February 11, 1879.	No. 336,539, dated February 16, 1886.
No. 214,754, dated April 29, 1879.	No. 343,689, dated June 15, 1886.
No. 215,438, dated May 20, 1879.	No. 354,462, dated December 14, 1886.
No. 216,926, dated June 24, 1879.	No. 360,147, dated March 29, 1887.
No. 218,354, dated August 5, 1879.	No. 365,497, dated June 28, 1887.
No. 219,224, dated September 2, 1879.	No. 365,504, dated June 28, 1887.
No. 224,516, dated February 17, 1880.	No. 365,505, dated June 28, 1887.
No. 226,817, dated April 20, 1880.	No. 365,731, dated June 28, 1887.
No. 226,818, dated April 20, 1880.	No. 385,747, dated July 10, 1888.
No. 230,386, dated July 20, 1880.	No. 420,268, dated January 28, 1890.
No. 234,854, dated November 30, 1880.	No. 422,734, dated March 4, 1890.
No. 247,143, dated September 13, 1881.	No. 439,051, dated October 21, 1890.
No. 248,398, dated October 18, 1881.	No. 446,631, dated February 17, 1891.
No. 253,250, dated February 7, 1882.	No. 455,174, dated June 30, 1891.
No. 312,691, dated February 24, 1885.	No. 465,073, dated December 15, 1891.
No. 329,280, dated October 27, 1885.	No. 500,225, dated June 27, 1893.
No. 329,282, dated October 27, 1885.	No. 500,319, dated June 27, 1893.
No. 329,283, dated October 27, 1885.	No. 501,872, dated July 18, 1893.
No. 329,366, dated October 27, 1885.	No. 501,873, dated July 18, 1893.
No. 329,367, dated October 27, 1885.	No. 513,384, dated January 23, 1894.

And, Whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above-recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz. : —

SCHEDULE OF MACHINES.

Rapid Lasting Machines,	No. , No. , No. , No. , No.
Rapid Power Lasting Machines,	No. *51*, No. *55*, No. *56*, No. , No.
Rapid Loose Tackers, with Hoppers,	No. , No. , No. , No. , No.
Rapid Loose Tackers, with Hoppers, No. *411–412*.	No. *405*, No. *406*, No. *399*, No. *400*,
Nicking Machines,	No. , No. , No. , No. , No.
Paper Strip Tackers,	No. , No. , No. , No. , No.

The said machines being the property of the Lessor.

Now, therefore, the Lessor, in consideration of one dollar and other valuable consideration to it paid by the Lessee, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said machines, or either or any of them, but upon the agreements and conditions hereinafter set forth; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor, notwithstanding any express or implied waiver of any prior breach, may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to anyone in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon revest in the Lessor;

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license: —

First. The Lessee hereby agrees to use, and is hereby licensed to use, the machines hereby leased and the inventions patented as aforesaid only in his factory in *Chicago*, in the State of *Illinois*, and agrees to keep the said machines in working order at his own expense, and to purchase of the Lessor or its agents all parts for repairing the machines hereby leased, and all the tack strips to be

used in the hand tackers hereby leased, and all tacks to be used in the loose tackers and hoppers hereby leased, and agrees not to add to or subtract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, except by an authorized agent or employee of the Lessor, nor to remove or deface any dates, numbers, or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to add improvements to or alter the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions hereafter embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The Lessee agrees to keep proper books of account and to make true and complete entries therein, showing the number of pairs of boots or shoes which are lasted, in whole or in part, upon or by the aid of the machines hereby leased, or either or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, and to render an account thereof to the Lessor on or before the tenth day of each month, which account shall specify the number of pairs of boots and shoes so lasted, in whole or in part, as aforesaid; and the Lessee agrees to require each operator on said lasting machines to keep in duplicate in books or on printed forms to be furnished by the Lessor, a daily record of all the boots or shoes lasted, in whole or in part, upon or by the aid of the said machines, one copy of which, containing the record for the calendar month next preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor, and, whenever requested by the Lessor, to make oath to the correctness of said record, and to allow the Lessor, by its agents and attorneys,

to examine and take copies or extracts from the original book or books of account of the Lessee and the record kept by the operator or operators as aforesaid; and the Lessee hereby agrees to send to the Lessor, on or before the tenth day of each month, on a form to be furnished by the Lessor, the number of movements or revolutions of the shaft of each lasting machine hereby leased, as registered by the indicator thereon on the last day of the calendar month next preceding; and the Lessee heaeby agrees to send to the Lessor, on or before the tenth day of each month, in case the machines hereby leased have not been run during the month preceding one of the aforesaid books or forms furnished by the Lessor, marked across the face with the words, "not running", or "not in use".

Fourth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased and as royalty for the use of the inventions patented as aforesaid as hereby licensed, the sum of one cent for each and every pair of boots or shoes lasted, in whole or in part, upon or by the aid of the machines hereby leased, or either or any of them, or by the use of the said inventions, or either or any of them, the rents and royalties for all such boots and shoes lasted as aforesaid during one calendar month to be due and payable on the last day of the calendar month next following; but the Lessor hereby agrees that if the rents and royalties due on the last day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty per cent. from the rents and royalties above specified.

Fifth. The Lessee agrees that he will not in any way violate or infringe or contest the validity of any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Lessor to said patents, or any of them.

Sixth. The following are also agreed to by the parties as conditions of this lease and license: —

(a) That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machine embodying the inventions patented as aforesaid, or any of them; and that a transfer or removal of the machines hereby

leased, or either or any of them, can only be made with the consent of the Lessor; and that if the Lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, this lease and license shall thereupon terminate and expire; and the Lessor may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent and royalty under this instrument.

(b) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, notwithstanding any express or implied waiver of any prior breach, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon revest in the Lessor free and discharged of this lease and license; and the Lessor, or its authorized agent or agents, may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease and license.

(c) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein contained) until the expiration of all and every the Letters Patent referred to in the foregoing Schedule of Patents, or any extensions or renewals of the same; and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

Seventh. The Lessee hereby agrees that if the indicator attached to any lasting machine hereby leased shall cease to register or indi-

cate correctly the number of movements or revolutions of the shaft to which it is connected, or if the glass covering of the face of the indicator shall be broken, he will not use the said lasting machine, or allow it to be used, until the indicator thereon shall have been repaired or replaced by the Lessor; and agrees that if the glass covering of the indicator shall become broken, or if, for any reason, the indicator shall cease to indicate or register correctly, he will forthwith notify the Lessor in writing thereof; and the Lessee agrees that he will not, nor will he allow anyone, except an authorized agent or employee of the Lessor, to remove the indicator from the said lasting machine, or injure, alter, or in any way tamper therewith, or permit any such alteration, injury, or tampering to take place.

Eighth. This lease and license is not assignable by the Lessee by his own act or by operation of law; and all the rights and interests which under this instrument, and by reason of the ownership of said machines and patents and patent rights belong to the Lessor, shall be deemed to belong to and may be enforced in the names of the successors and assigns of the Lessor, and all the agreements and conditions binding on the Lessee shall be binding on his executors or administrators.

Ninth. It is agreed that the number of the machines named in this lease may be entered herein by the Lessor after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In witness whereof, the Lessor has caused these presents to be

signed and its corporate seal to be affixed hereto by its Treasurer, and the Lessee has set his hand and seal hereto the day and year first above written.

Executed in Duplicate.

[SEAL] COPELAND RAPID LASTER MANUFACTURING COMPANY,
By S. V. A. Hunter, Treasurer.

Lessee will please sign here. ☞ FLORSHEIM & COMPANY, INCORPORATED, [SEAL]
Per Milton S. Florsheim, Pres.

DEFENDANTS' EXHIBIT 35.

[Put in Evidence. page 976.]

This Instrument Witnesseth that the United Shoe Machinery Company (hereinafter called the "United Company") the lessor or assignee of the lessor named in seventy-seven (77) several leases heretofore granted to Florsheim & Company, a corporation organized and existing under the laws of the State of Illinois, as lessee, covering certain machinery of the United Company all as set forth in the Schedule hereto attached and marked "Schedule A", said machinery being now in the possession of said Florsheim & Company as such lessee at its factory in Chicago, Illinois, does hereby consent and agree that said Florsheim & Company may permit The Florsheim Shoe Company, a corporation organized and existing under the laws of the State of West Virginia, to use in the factory above mentioned said machinery or any thereof; subject, however, to all the conditions, stipulations, provisions and agreements contained in said leases which shall be binding upon The Florsheim Shoe Company and during the continuance in force of this agreement shall have the same force and effect as if The Florsheim Shoe Company were named in said leases as a joint lessee thereunder with said Florsheim & Company; and that in consideration thereof the said Florsheim & Company and said The Florsheim Shoe Company do hereby jointly and severally covenant and agree to and with the United Company that said The Florsheim Shoe Company will faithfully observe and perform all said conditions, stipulations, provisions and agreements.

It is further agreed that during the continuance in force of this agreement or until the United Company has been notified that The Florsheim Shoe Company has ceased entirely the use of said machinery, all statements and accounts for moneys due or to become due to the United Company from either Florsheim & Company or The Florsheim Shoe Company in respect to said machinery, whether for rental or royalty for the use thereof or for parts or materials supplied for use in connection therewith or otherwise or by virtue of said leases may be rendered to The Florsheim Shoe Company.

Except as herein expressly set forth none of the conditions, stipulations, provisions or agreements contained in the leases above mentioned is hereby in any wise waived or modified, and this agreement may be cancelled and the consent hereby given withdrawn at any time by the United Company by notice in writing addressed to Florsheim & Company at Chicago, Illinois.

Executed in duplicate this 23rd day of April 1910.

[SEAL] FLORSHEIM & COMPANY,
By Milton S. Florsheim, Pres.

[SEAL] THE FLORSHEIM SHOE COMPANY
By Milton S. Florsheim, Pres.

UNITED SHOE MACHINERY COMPANY [SEAL]
By L. A. Coolidge, Treasurer.

SCHEDULE A.

I. Leases from the United Shoe Machinery Company, lessor.

a. Eyeletting Department.

Lease No.	Date	Machine	Number
874	July 13, 1903	Power Eyeletting Machine	583
875	July 13, 1903	" " "	500
876	July 13, 1903	" " "	512
3138	July 29, 1905	Duplex Eyeletting Machine	122
3139	April 11, 1906	" " "	373
4378	August 20, 1907	" " "	337

b. General Department.

188	Jan. 23, 1902	Ross Twin Edge Setter	600
188A	November 18, 1902.	Heel Seat Rough Rounding Mach.	51
		New Method Heel Seat Beading Mach.	861
		18 inch. Sole Evening Mach.	2499
		Post Trimming Machine	1777
		Heel Scouring Machine	234
188 B	May 19 1903	Ross Heel Breaster	392
		Power Heel Breaster	139
188 C	December 9, 1903	Feather Edge & Stitch Rubbing Mach.	30
188 D	January 24, 1905	Miller Treeing & Ironing Mach.	3937
		Right Tree Leg	14334
		Left Tree Leg	14250
188 E	January 14, 1905	Post Trimming Machine	4147
188 F	July 25, 1905	Heel Breast Scouring Machine	106
188 G	December 20, 1905	Heel Scouring Machine	451
		Heel Breast Scouring Machine	318
		Plain Split Roll Buffing Machine	121
		Feather Edge & Stitch Rubbing Mach.	44
		New Method Heel Seat Beading Mach.	204
188 H	November 1, 1905	Miller Treeing & Ironing Mach.	4176
		Right Tree Leg	14725
		Left Tree Leg	14867
188 I	November 1, 1905	Miller Treeing & Ironing Mach.	4771
		Right Tree Leg	14742
		Left Tree Leg	14868
188 J	November 1, 1905	Post Trimmer	4659
		" "	4660
		High Stand Tip Scouring Mach.	40
		Ross Twin Edge Setting Mach.	330
		" " " " "	541

		9 ft. Gearless Sole Cutting Mach.	1252
188 K	November 7, 1905	28 in. Summit Sole Leather Splitting Machine	79
		Heel Scouring Machine	469
188 M	December 2, 1905	Miller Treeing & Ironing Mach.	4219
		Right Tree Leg	15177
		Left Tree Leg	15185
188 N	December 2, 1905	Miller Treeing & Ironing Machine	4224
		Right Tree Leg	15141
		Left Tree Leg	15183
188 L	January 11, 1906	9 ft. Gearless Sole Cutting Machine	1312
188 O	March 26, 1906	Edge Trimming Machine	2214
188 P	May 3, 1906	Miller Treeing & Ironing Machine	4434
		Right Tree Leg	15708
		Left Tree Leg	15754
188 Q	May 3, 1906	Miller Treeing & Ironing Machine	4435
		Right Tree Leg	15709
		Left Tree Leg	15710
188 R	May 5, 1906	7½ inch. Summit Splitting Machine	608
188 S	" 7, 1906	Buffing Machine	271
188 T	" 31, 1906	Edge Trimming Machine	5253
188 U	June 2, 1906	Miller Treeing & Ironing Machine	4504
		Right Tree Leg	15738
		Left Tree Leg	15813
188 V	July 6, 1906	Apex Tap & Sole Rounding Machine	1246
188 W	March 7, 1907	Top Piece Scalloping Machine	37
188 X	April 11, 1907	Tip Scouring Machine	83
188 Y	May 8, 1907	Victor Rolling Machine	279

c. Goodyear Department.

5060	September 27, 1901	Goodyear Welt & Turn Shoe Machine	1336
		Goodyear Outsole Rapid Lockstitch Machine	1098
		Goodyear Outsole Rapid Lockstitch Machine	1260
		Goodyear Universal Welt Beating Machine	122
		Goodyear Universal Rounding & Channeling Machine	403
		Goodyear Universal Rounding & Channeling Machine	456
		Goodyear Automatic Sole Leveling Machine	160
		Goodyear Rotary Sole Laying Machine	147
		Goodyear Lip Turning Machine	56
		Goodyear Universal Shank Skiving Machine	61
		Extension Edge Attachment "A"	535
5060 A	December 23, 1901	Goodyear Welt & Turn Shoe Machine	1080
		~~Goodyear Outsole Rapid Lockstitch Machine . ret.~~	
		Goodyear Bobbin Winding Machine	709
5060 B	November 19, 1902	Goodyear Universal Welt Beating Machine	353
		Goodyear Universal Rounding & Channeling Machine	600
		Goodyear Moulding Machine	928
5060 C	July 17, 1903	Goodyear Turn Channeling Machine	2634

5060 D	January 15, 1904	Goodyear Lip Turning Machine 276
5060 E	August 4, 1904	Extension Edge Attachment "A" 1143
5060 F	September 1, 1904	Hadaway Stitch Separating Mach. 403
		Goodyear Channel Laying Mach. 176
5060 G	January 2, 1905	Goodyear Welt Beating & Slashing Mach. 43
		Goodyear Shank Welt Skiving Mach. 114
5060 H	January 2, 1905	Goodyear Outsole Rapid Lockstitch Mach. 371
		Extension Edge Attachment "A" 1214
5060 I	May 25, 1905	Goodyear Lip Turning Mach. 370
5060 J	October 24, 1905	Goodyear Welt & Turn Shoe Mach. 1951
		Goodyear Outsole Rapid Lockstitch Mach. 2168
		Goodyear Outsole Rapid Lockstitch Mach. 2179
		Extension Edge Attachment "A" 1643
		Extension Edge Attachment "A" 1652
5060 K	December 2, 1905	Goodyear Outsole Rapid Lockstitch Machine 2213
		Extension Edge Attachment "A" 1690
5060 L	November 21, 1905	Goodyear Welt & Turn Shoe Mach. 1960
5060 M	October 24, 1905	Goodyear Welt Beating & Slashing Mach. 263
		Goodyear Universal Rounding & Channeling Mach. 964

		Goodyear Automatic Sole Leveling Machine	427
		Goodyear Rotary Sole Laying Mach.	18
		Goodyear Channel Laying Machine	246
5060 N	May 17, 1906	Goodyear Universal Rounding & Chan. Mach.	963
5060 O	June 17, 1906	Goodyear Rotary Sole Laying Mach.	75
5060 P	May 22, 1906	Goodyear Welt Grooving & Beveling Mach.	1032
		Goodyear Insole Channeling Mach.	2799
		Goodyear Welt Beating & Slashing Mach.	446
5060 Q	February 20, 1908	Goodyear Power Welt Grooving & Beveling Machine	138

d. Heeling Department.

408	September 27, 1901	American Lightning Nailing Mach.	415
		American Lightning Nailing Mach.	648
		Bussell Heel Trimming Machine	869
408 A	November 18, 1902	American Lightning Nailing Mach.	850
		Bussell Heel Trimming Machine	593
408 B	February 19, 1904	" " " "	1076
408 C	January 30, 1905	" " " "	888
408 D	October 19, 1905	" " " "	1115
408 E	August 25, 1905	Automatic Heel Compressing Mach.	575
408 F	May 18, 1906	American Lightning Nailing Mach.	1671
408 G	December 28, 1906	American Lightning Nailing Mach.	1803

e. Metallic Department.

1128	September 27, 1901	Taper Nail Tacking Machine	933
1128 A	November 18, 1902	Universal Slugging Machine	1702
		" " "	1807
		" " "	1862
		Taper Nail Tacking Machine	994
		Knife Grinding Machine	5196
1128 B	February 26, 1904	Loose Nailing Machine	1854
		" " "	1855
1128 C	June 13, 1905	Taper Nail Tacking Machine	886
1128 D	October 20, 1905	Universal Slugging Machine	1474
		Taper Nail Tacking Machine	2863
		" " " "	2864
1128 E	January 15, 1907	Loose Nailing Machine	2372

f. Lasting Machine Department.

168	May 13, 1904	Chase Lasting Machine	446
		Hand Tacker	2079
168 A	October 30, 1905	Chase Lasting Machine	1109
		" " "	1186
168 B	November 24, 1905	Chase Lasting Machine	46
		" " "	966
		Hand Tacker	391
		" "	890
168 C	January 30, 1906	Chase Lasting Machine	381
		Hand Tacker	486
168 D	May 15, 1909	Chase Lasting Machine	1190
		Hand Tacker	154

II. Leases from the Goodyear Shoe Machinery Co.

3170	December 18, 1894	Goodyear Welt & Turn Shoe Mach.	733
		Goodyear Welt & Turn Shoe Mach.	711
		Goodyear Rapid Outsole Lock-stitch Machine	501

		Goodyear Rapid Outsole Lockstitch Machine	908
		Goodyear Channeling Machine	1491
		Goodyear Channel Lip Turning Machine	66
		Goodyear Channel Opening Machine	18
		Goodyear Welt Beating Mach.	392
		Goodyear Bobbin Winding "	418
		Goodyear Welt Grooving "	451
		Goodyear Welt Splitting "	431
3554	December 6, 1895	Hadaway Stitch Separating Mach.	39
3882	December 30, 1896	Goodyear Outsole Rapid Lockstitch Machine	262
L. 149	January 7, 1897	Rapid Power Lasting Machine	51
		" " " "	55
		" " " "	56
		" Loose Tacker "	405
		" " "	406
		" " "	399
		" " "	400
		" " "	411
		" " "	412

III. Leases from the Consolidated & McKay Lasting Machine Company.

A. A. A. 102	December 1, 1899	Chase Lasting Machine	1246
		" " "	1314
		Hand Tacker	2147
		" "	2148
A. A. A. 121	January 12, 1900	Chase Lasting Machine	941
		Hand Tacker	51
		" "	1528
A. A. A. 146	March 21, 1900	Chase Lasting Machine	106
		Hand Tacker	1247
		" "	1249

IV. Leases from the Chase Lasting Machine Company.

79	April 8, 1897	Chase Lasting Machine	7
		" " "	114
		" " "	861
		" " "	1144
		Hand Tacker	1000
		" "	1003
		" "	1498
		" "	1499
		" "	1753
		" "	1879

DEFENDANTS' EXHIBIT 36.

[Put in Evidence, page 977.]

[Stamped:]
E. N. C. May 2 1918
May 2 1913 N. B. T.

THE FLORSHEIM SHOE COMPANY

The Florsheim Shoe Milton S. Florsheim, President.

Private Office Chicago, U. S. A. April 30, 1913

Attention of Mr. Chase:

United Shoe Machinery Co., Boston, Mass.

Gentlemen: Referring to your communication of the 28th inst., in regard to enclosed drafts which you state were apparently prepared by our attorney in Chicago, transferring to The Florsheim Shoe Company the right to use the Goodyear Shoe Machinery Company's machines.

Would kindly ask you to return them to us for our files as we would like to look them over.

We believe we originally sent you two copies executed by ourselves.

Under the three year bonus proposition has your company as yet made any allotment of the certificates? We understood said dis-

tribution was to be made in January but up to this writing we have heard nothing further in regard to the same.

Yours very respectfully,

THE FLORSHEIM SHOE COMPANY,

MSF)W By Milton S. Florsheim President

DEFENDANTS' EXHIBIT 37.

[Put in Evidence, page 977.]

Whereas by Lease and License Agreement L 149, dated January 7, 1897, the Goodyear Shoe Machinery Company, as lessor, did lease to Florsheim & Company, a corporation, as lessee, and did license the said Florsheim & Company to use, in accordance with the terms and conditions in said lease and license Agreement set forth, certain Lasting Machinery, in said Lease and License described, and

Whereas the said machinery, the said Lease and Agreement, and all title and rights of the said lessor therein and thereunder, have, since the said 7th of January, 1897, been transferred to and are now vested in the United Shoe Machinery Company, a corporation organized and existing under the laws of the State of Maine, and

Whereas the said corporation last above mentioned has requested that the rights of the said corporation, under said Lease and Agreement, to use the said machines, shall be transferred to The Florsheim Shoe Company, a corporation organized and existing under the laws of the State of Illinois.

Now, therefore, in compliance with said request the said United Shoe Machinery Company does hereby consent to the delivery of said machines to the said The Florsheim Shoe Company and does hereby transfer to the said The Florsheim Shoe Company the right to use in its factory at Chicago, Illinois, for the unexpired term of said Lease and Agreement the said machines designated by their numbers in the Schedule of machines contained in said Lease and Agreement, subject to all the conditions and agreements made incumbent upon the lessee by said Lease and Agreement, and does hereby accept the said The Florsheim Shoe Company as lessee of

said machines under said Lease and Agreement, in lieu of the said Florsheim & Company. The said The Florsheim Shoe Company, in consideration of the premises and the right hereby granted to it, does hereby covenant and agree with the United Shoe Machinery Company to keep and perform all of the conditions and agreements made incumbent upon the lessee in said Lease and Agreement contained.

In Witness Whereof the said United Shoe Machinery Company as lessor has caused its corporate seal to be hereto affixed and has caused these presents to be signed by its , and the said The Florsheim Shoe Company, as lessee, has caused its corporate seal to be hereto affixed and has caused these presents to be signed by its President, this 23rd day of April, 1908.

[SEAL] UNITED SHOE MACHINERY COMPANY
By

THE FLORSHEIM SHOE COMPANY
[SEAL] By Milton S. Florsheim, Pres.

DEFENDANTS' EXHIBIT 38.

[Put in Evidence, page 989.]

[Stamped:]
Received Apr 20 1900 F. G. K.

[Duplicate Form 1195.] Dated *Chicago, Ill., April 6th*, 1900.

We hereby propose to take a lease of the machinery mentioned below, of the Goodyear Shoe Machinery Company, according to the form of lease adopted by the Company therefor, and *we* agree to pay, upon delivery of the said machinery, the sum of *$1835.00* as consideration for the delivery of said lease, for the expenses of setting up said machinery, and for possession under the lease of said machinery.

One Goodyear Welt Shoe Machine , Chain Stitch, No. *1336*
Goodyear Turned Shoe Machine , Chain Stitch, No.
Goodyear Turned or Welt Shoe Machine , Lock Stitch, No.
One Goodyear Outsole Stitcher , (Lock Stitch, "Rapid"), No. *1098*
Welt Channeller , No.

Outsole Channeller , No.
Turn Channeller , No.
Channel Lip Turner , No.
One Universal Rounder and Channeller , No. *403*
One Sole Layer , No. *147*
Hadaway Stitch Separating Machine , No.
One Automatic Levelling Machine , No. *112*
One Welt Beater , No. *122* Universal
Bobbin Winder , No.
Welt Groover , No.
Welt Splitter , No.
Moulder , No
Channel Opener , No.
Universal Shanking-Out Machine , No.
Inseam Trimmer , No.

It being understood that we agree to send our check for above amount 30 days after machines are installed. It is further understood and agreed that we will return to the Goodyear S. M. Co. the following machines:

Eppler Welter #155
" *Stitcher 161*
" *Insole Chaneler 6*
" *Welt Splitter 90*
Eppler Welt Beater #92
" *Groover & Beveler 105*
" *Bobbin Winder 91*
Eppler Rounder 63
" *Grinder #53*
" *Pricker 58*
" *Channel Opener 4*
Briggs Rough Rounder #—
1 Set B. & S. S. L. Mchs

Upon receipt in Boston of said machines the Gdyr. S. M. Co. agrees to send to us their check for $1835., same being consideration in full for above machines and for any and all claims we have against the United S. M. Co., or any of its departments.

July 17/00 R. R. 76 rec'd 100.
Cr. Dec. 26/00 Eppler 1735.

Please answer these questions.	Answer here.
How will you heat Machines, by steam, gas, or lamps?	*Steam*
How will you heat Waxers, by steam, gas, or lamps?	*Steam*

How shall we ship, by freight or express? *Freight*
What kind of goods do you make? *Mens fine shoes*

No title to the above mentioned machinery is acquired other than is given in the lease aforesaid.

A competent man is to be sent to set up said machinery at the expense of the said Company.

Freight and transportation charges on said machinery from Boston, Mass., shall be paid by the lessee.

Applicant sign here. FLORSHEIM & COMPANY
1/4/13 per Louis Florsheim, Sec

We accept the above proposition, and promise to deliver the lease and machinery as specified therein.

GOODYEAR SHOE MACHINERY COMPANY,
By Fred G. King, General Manager.

Boston, *Apl 20th* 1900.

DEFENDANTS' EXHIBIT 39.

[Put in Evidence, page 991.]

FLORSHEIM & COMPANY, Incorporated.
Manufacturers Men's Fine Shoes,
278–286 Madison St.

[Stamped: Jun 29 1899]

Ans July 6/99

Chicago, June 27, 1899.

Goodyear Shoe Machinery Co. Boston, Mass.

Gentlemen: — We have had more or less correspondence with you regarding a royalty on your Company's machines. We have also had considerable difficulty in finding operators for these machines. If you will refer to previous correspondence, you will note that we have special arrangements with the Eppler Machinery Co., which entitle us to certain priviledges. Now we make this proposition, in order to adjust the matter; if you will agree to trade us Goodyear machines for the Eppler, that we now have, we will agree to sign all contracts, and also to pay you 4 cents per pair royalty. When your Mr. Lewis was here we spoke about the

matter to him, and he said he would advise us when he returned home.

We shall await your reply. Yours truly,

FLORSHEIM & COMPANY.

DEFENDANTS' EXHIBIT 40.

[Put in Evidence, page 1040.]

GOODYEAR WELT AND TURN SHOE MACHINE
AND
GOODYEAR OUTSOLE RAPID LOCKSTITCH MACHINE.

There is nothing in the leases of these machiness which requires the lessee to take from the Company any other machine or machines for any purpose whatsoever other than the welt sewing and outsole stitching of welt shoes and and the sole sewing of turn shoes, or which precludes the lessee from obtaining from any other source whatsoever any and all other machines which he may require for any and all operations whatsoever other than the welt sewing and outsole stitching of welt shoes and the sole sewing of turn shoes, or which precludes the lessee from using such other machines so obtained in conjunction with the leased Welt and Turn Sewing and Outsole Stitching Machines.

GOODYEAR AUXILIARY MACHINES.

There is nothing in any of the Company's leases which requires a lessee of any one or more of the Company's machines whatsoever to obtain from the Company any one or more of these Auxiliary Machines or which precludes a lessee of any one or more of the Company's machines from obtaining corresponding auxiliary machines from others or from using such machines so obtained in conjunction with any or all of the Company's machines, including the Company's Welting, Turn Sewing and Outsole Stitching Machines.

When obtained from the Company these machines are not in any way bound to or limited to use with Pulling Over, Lasting, Metallic, Heeling, General Department, or any other machinery obtained from the Company, excepting alone that they are limited to use on "Goodyear Welts and Turns" and in conjunction with the Good-

year Welt and Turn Shoe Machine and the Goodyear Stitcher, the two principal machines of the Goodyear System which together with the auxiliary machines form the system.

There is nothing in the leases of these auxiliary machines which requires the lessee to take from the Company or which precludes the lessee from obtaining from any other source whatsoever any and all auxiliary and other machines which he may require for any and all operations other than the welt sewing and outsole stitching of welt shoes and the sole sewing of turn shoes, or which precludes the lessee from using such other machines so obtained in conjunction with the leased Goodyear System Machines.

Rex Pulling Over Machine.

Rex Pulling Over Machines may be obtained from the Company on an Initial Payment form of lease under which the machines are not in any way bound to or limited to use with Pulling Over Auxiliary Machines, Welting, Stitching, Lasting, Metallic, Heeling, General Department or any other machinery obtained from the Company for any other operation upon the shoe; and there is nothing in this form of lease for these machines which requires the lessee to take from the Company, or which precludes the lessee from obtaining from any other source whatsoever any and all other kinds of machines which he may require for any and all operations whatsoever other than Pulling-over or from using such other machines so obtained in conjunction with the leased Pulling Over Machines held under this form of lease.

Rex Pulling Over System. — Auxiliary Machines.

If a lessee of the Company's Rex Pulling Over Machines under the above form of lease desires to obtain from the Company for use in conjunction with them one or more of the Auxiliary Machines of the Pulling Over System of the Company (which under this form of lease for the Pulling Over Machine he is under no obligation whatever to do) any or all of these Auxiliary Machines may be obtained by him on an Initial Payment form of lease under which the machines are not in any way bound to or limited to use with any other Pulling Over Auxiliary Machines, Welting, Stitching,

Lasting, Metallic, Heeling, General Department, or any other machinery, obtained from the Company for any other operation upon the shoe, excepting alone that such Pulling Over Auxiliary Machines leased on this form of lease are limited to use on shoes pulled over by the Rex Pulling Over Machine or machines held under lease from the Company under the above form of Initial Payment lease.

There is nothing in the above forms of lease for either the Pulling Over Machines or the Pulling Over Auxiliary Machines which requires the lessee to take from the Company or which precludes the lessee from obtaining from any other source whatsoever any and all Auxiliary and other machines which he may require for any and all operations other than Pulling Over, or which precludes the lessee from using such other machines so obtained in conjunction with the leased Pulling Over System Machines of the Company.

The royalty for Pulling Over System Machines held under the above form of lease is 1 cent (subject to 50% discount) for each pair of shoes operated upon by the Pulling Over Machines.

There is no additional royalty for the Auxiliary Machines.

CONSOLIDATED HAND METHOD LASTING MACHINE. — U. S. M. Co. LASTING MACHINE, No. 5.

Either or both of these machines may be obtained from the Company on an Initial Payment Lease under which the machines are not in any way bound to or limited to use with Welting, Stitching, Pulling Over, Metallic, Heeling, General Department, or any other machinery obtained from the Company for any purpose other than lasting, and there is nothing in this form of lease of these machines which requires the lessee to take from the Company any other machine or machines for any other purpose whatsoever or which precludes the lessee from obtaining from any other source whatsoever any and all other machines which he may require for any and all other operations, or from using such other machines so obtained in conjunction with the Company's lasting machines.

METALLIC MACHINES.

Any or all of these machines may be obtained from the Company on an initial payment lease under which the machines are not in

any way bound to or limited to use with Welting, Stitching, Pulling Over, Lasting, Heeling, General Department, or any other machinery obtained from the Company excepting Metallic machinery.

There is nothing in this form of lease for these machines which requires the lessee to take from the Company or which precludes the lessee from obtaining from any other source whatsoever any and all machines other than Metallic which he may require for any and all other operations or from using such other machines so obtained in conjunction with the Company's Metallic Machines.

HEELING MACHINES.

Any or all of these machines may be obtained from the Company on an Initial Payment Lease under which the machines are not in any way bound to or limited to use with Welting, Stitching, Pulling Over, Lasting, Metallic, General Department, or any other machinery obtained from the Company for any other operation upon the shoe, excepting alone those operations performed by the machines of the Heeling Department.

There is nothing in this form of lease for these machines which requires the lessee to take from the Company or which precludes the lessee from obtaining from any other source whatsoever any and all other machines which he may require for any and all operations whatsoever, other than the operations of the machines of the Heeling Department, or from using such other machines so obtained in conjuction with the Company's Heeling Machines.

CLICKING MACHINES.

There is nothing in any of the Company's leases for other machines which requires a lessee of any one or more of the other machines of the Company to obtain Clicking Machines from the Company, or which prevents a lessee of any one or more of the other machines of the Company from obtaining Clicking Machines from others or from using them in conjunction with any of the Company's other machines.

When obtained from the Company these machines are not bound to or limited to use with Welting, Stitching, Pulling Over, Lasting,

Metallic, Heeling, General Department, or any other machinery obtained from the Company, and there is nothing in the lease covering them which requires the lessee to take from the Company any other machine or machines for any other purpose whatsoever, or which precludes the lessee from obtaining from any other source whatsoever any and all other machines which he may require for any and all other operations or from using such other machines so obtained in conjunction with the Clicking Machines obtained from the Company.

GENERAL DEPARTMENT MACHINERY.

There is nothing in any of the Company's leases which requires a lessee of any one or more of the Company's machines whatsoever to obtain any of these machines from the Company, either by purchase or lease, or which requires a lessee having one or more of these machines to take others, or which prevents a lessee of any one or more of the machines of the Company from obtaining machines corresponding to these from others or from using such machines so obtained in conjunction with any of the Company's machines.

These machines are offered on outright sale to anyone desiring to use them.

The terms upon which they are put out on lease are available to those only who are users only of certain of the principal royalty machines of the Company and when leased they are limited to use with such principal royalty machines.

DEFENDANTS' EXHIBIT 41.

[Put in Evidence, page 1040.]

FOR WELTS AND TURNS.

	Initial Payment.
Goodyear Welt and Turn Shoe Machine	300.
Goodyear Outsole Rapid Lockstitch Machine	300.

AUXILIARY MACHINES.

Goodyear Power Welt Grooving and Beveling Machine	100.
Goodyear Flexible Sole Machine	100.

Goodyear Universal Channeling Machine	300.
Goodyear Tack Pulling and Resetting Machine	250.
Goodyear Insole Tack Pulling Machine	100.
Goodyear Universal Inseam Trimming Machine	300.
Goodyear Welt Beating and Slashing Machine	200.
Goodyear Shank Welt Skiving Machine	50.
Goodyear Improved Sole Laying Machine	300.
Goodyear Heel Seat Rounding Machine	200.
Goodyear Universal Rounding and Channeling Machine	300.
Goodyear Channel Opening Machine	25.
Goodyear Channel Laying Machine	35.
Goodyear Welt Indenting and Burnishing Machine	35.
Goodyear Automatic Sole Leveling Machine	500.
Hadaway Stitch Separating Machine	300.
Goodyear Impression Stitch Burnishing Machine, No. 2	75.
Goodyear Lip Turning Machine	50.
Goodyear Welt Splitting Machine	10.
Goodyear Fudge Edge Machine	125.
Goodyear Welt Edge Turning Machine	100.
Goodyear Outsole Stitch Rubbing Machine	50.
Goodyear Jointing Machine	125.
Goodyear Insole Heel Seat Trimming Machine	150.
Goodyear Upper Stapling Machine	
Goodyear Turn Leveling Machine	350.
Goodyear Power Moulding Machine	50.
Goodyear Turn Shoe Trimming Machine	40.
Goodyear Forepart Turning Machine	75.
Goodyear Heel Turning Machine	75.

PULLING OVER DEPARTMENT.

	Initial Payment.
Rex Pulling Over Machine	$750
Rex Pulling Over Machine (New Model)	1000
Rex Assembling Machine	200
Rex Assembling Machine (New Model)	400
Rex Toe Gumming Machine	150
Rex Rotary Pounding and Trimming Machine	300

Rex Upper Trimming Machine	200

LASTING MACHINE DEPARTMENT.

Consolidated Hand Method Lasting Machine	300
U. S. M. Co. Lasting Machine, No. 5	300

METALLIC DEPARTMENT.

	Initial Payment.
Loose Nailing Machine (old model single raceway)	$250
Loose Nailing Machine (new model single raceway)	300
Loose Nailing Machine (new model double raceway)	400
Universal Slugging Machine	250
Taper Nail Tacking Machine (D.H.)	150
Staple Fastening Machine	150
String Nail Tacking Machine	75

HEELING MACHINE DEPARTMENT.

Automatic Heel Compressing Machine, No. 4 Model	500
McKay Automatic Heel Loading and Attaching Mch.	400
McKay Automatic Heel Loading and Attaching Machine (new model)	750
McKay Heel Trimming and Randing Machine	150
Ultima Heel Trimming Machine	150

GENERAL DEPARTMENT. FOR WELTS AND TURNS.

	Outright Sale
Improved Gearless Sole Cutter, F.	$375
Victor Roller, E.	250
Splitting Machine, M.	75
Splitting Machine, P.	225
Stripping Machine, F.	125
Planet Sole Rounder, B.	250
Apex Feather Edger & Shank Reducer, B.	45
Rotary Cementer, J.	100
Eagle Sole & Upper Stamper, C.	150
Centennial Splitter, A.	125
Champion Heel Lift Skiver	150
Heel Press, S.	25

Royal Punching Machine, A.	75
Royal Perforating Machine, A.	90
Amazeen Skiver, No. 7	135
Pulma Skiver, C.	135
Eagle Sole & Upper Stamper, C.	150
Rapid Seam Rubber	60
Improved Vamp Marker, C.	60
Universal Cementer	85
Star Channel Cementer, C.	85
Imperial Heel Breaster	200
Heel Scourer, G.	65
Heel Breast Scourer, N.	100
Top Lift Scalloper, P.	75
Edge Trimmer, A.	55
Twin Edge Setter, R.	150
Heel Scourer, G.	65
Crest Heel Blacker	250
Buffer, G.	100
Climax Brush Shaft, C.	12
Stitch & Upper Cleaner	60
Tip Scourer, E.	100
Regent Bottom Stamper, C.	200
Miller Twin Shoe Treeing Machine	110
Splitting Machine, N.	150
Improved Gearless Sole Cutter, B.	200
Improved Cutter, P.	160
Improved Gearless Machine, A.	150
Improved Gearless Sole Cutter, K.	425
New Method Heel Seat Beader	150
Top Piece Sander	75
American Twin Sole Moulder, B.	450

DEFENDANTS' EXHIBIT 42.

[Put in Evidence, page 1118.]

SALE OF NON-ROYALTY SHOE MACHINERY.

Monday, June 2, 1913, at 10 A. M.

NON-ROYALTY SHOE MACHINERY.

Cutting Room Machinery

1 Lockett Crimping Machine		$350 00
1 Grind Stone and Frame		16 00

Fitting Room Machinery

2 Peerless Universal Skivers	each,	135 00
1 Fortuna Skiver		185 00
1 Universal 12 Wheel Lining Marker		125 00
1 Peerless Economy Fold Cementer		175 00
1 Peerless Gang Tip Press		100 00
1 Peerless Auto Tip Perforator		135 00
1 Union Special Zig Zag Closer, style 14700		205 00
1 Union Special 1/32 ga. 2 needle Back Strapper, style 12200		155 00
1 Union Special 2 needle 3/32 ga. Staying Machine, style 12200		155 00
1 Union Special 2 needle 3/32 ga. Staying Machine, style 7200		155 00
1 Union Special 3 needle Side Rower, class 8800		140 00
4 Singer style 61-W-30 Machines	each,	30 00
3 Singer style 44-30 Machines	each,	25 00
4 Singer style 22-W-41 Machines	each,	60 00
1 Singer style 29-W-6 Machine		32 50
2 Singer style 44-30 Machines	each,	25 00
1 Singer style 29-4 Machine		37 50
4 Singer style 29-W-15 Machines	each,	40 00
1 Singer style 23-W-8 Machine		27 50
2 Singer style 18-15 Machines	each,	13 50
1 Singer style 69-14 Machine		200 00
2 Singer style 52-W-8 Machines	each,	85 00

1 Singer style 52-W-7 Machine - - -		85 00
3 Singer style 51-W-19 Machines - - -	each,	70 00
1 Singer style 45-W-8 Machine - - -		60 00
2 Booth Power Folders - - - - -	each,	180 00
1 Booth Columbia Beader - - - -		55 00
1 Foot Power Eyeletter - - - - -		22 00
1 Hand Seam Rubber - - - - -		3 00
1 Small Emery Wheel Frame, one Vise and one Seam Opener - - - - - -		5 00
Lasting and Welt Room Machinery		
1 Freeman Insole Tacker - - - -		$150 00
3 Standard Rotary Lasting Machines -	each,	570 50
1 Freeman V Shaped Iron - - - -		15 00
1 Haverhill Welt Groover - - - -		35 00
1 Haverhill Welter - - - - - -		800 00
1 Universal Welter - - - - -		500 00
1 Freeman Insole and Side Tack Puller - -		125 00
1 Keighley Inseam Trimmer - - - -		500 00
1 Hamel Welt Beater - - - - -		35 00
1 Standard Rotary Sole Layer - - -		548 43
1 Universal String Nailer - - - -		225 00
2 Standard Rotary Rounders - - - -	each,	570 38
1 Standard Rotary Stitcher - - - -		658 13
2 Universal Stitchers - - - - -	each,	560 00
1 Stanbon Channel Cementer - - - -		75 00
1 Standard Rotary Channel Layer or closer -		31 79
1 Freeman Stitch Cleaning and Feathering Edge Machine - - - - - - -		55 00
1 Booth Fudge Wheeling Machine - - -		75 00
1 Standard Rotary Stitch Separator - - -		175 50
1 Standard Rotary Leveller - - - -		548 43
Machine Shop Machinery		
1 Colcord-Wright Lathe - - - - -		$253 00
1 Colcord-Wright Grinder - - - - -		19 60
1 Colcord-Wright Drill - - - - -		60 00

1 Forge, Anvil, Stand and Fan - - -		19 80
Bottoming and Finishing Room Machinery		
1 Haverhill Heeler - - - - - -		$900 00
1 Freeman Heel Seat Rounder - - -		100 00
1 Hamel Slugger - - - - - -		750 00
1 Haverhill Heel Trimmer - - - -		250 00
1 Rowan Heel Trimmer (Smith Shaver) - -		75 00
1 Haverhill Breaster - - - - -		225 00
1 Briggs-Belmer Edge Trimmer - - -		50 00
1 Haverhill Edge Trimmer - - - -		85 00
2 Rowen Heel Scourers - - - - -	each,	75 00
1 Rowen Edge Setter - - - - -		170 00
1 Booth Wheeler - - - - - -		125 00
1 Universal Loose Nailer - - - -		225 00
1 Matson Bros. Heel Burnisher - - -		150 00
1 Boylston Heel Finisher - - - -		100 00
2 Rowen Bottom Sanders - - - -	each,	75 00
4 Finishing Shafts and Rolls - - - -	each,	16 10
1 Gas Stove - - - - - - -		5 00
1 Edge Brusher and Edge Scourer - - -		27 00
1 Markem Embossing Machine - - -		275 00
2 Drier Frames - - - - - -	each,	8 00
Packing Room Machinery		
5 Copeland Treeing Machines - - - -	each,	$35 00
1 Miller Creasing Machine - - - -		200 00
1 Shaft Brush - - - - - -		16 10
Markem Carton Marker on Stand - - -		200 00
5 pr. Copeland Tree Legs - - - -	per pair,	60 00
1 Queen Tip Buffer - - - - -		40 00
1 110-Volt Electrical Tool Heater - - -		6 75
5 Electric Treeing Irons - - - - -	each,	12 00
Sole Leather and Heel Making Room Machinery		
1 102″ Geerless Sole Cutter (Seelye Mfg. Co.)		$350 00
1 46″ Geerless Sole Cutter (Seelye Mfg. Co.)		275 00
1 24″ Geerless Sole Cutter (Seelye Mfg. Co.) -		175 00

1 Splitting Machine (Seelye Mfg. Co.) - -		150 00
1 Rolling Machine (Seelye Mfg. Co.) - -		140 00
1 Peerless Tap Scourer - - - - -		200 00
1 Champion Power Tap Skiver on Stand - -		35 00
1 Rowen Twin Sole Moulder - - - -		225 00
1 Julian Power Cementer - - - -		125 00
1 Standard Rotary Sole Skiver - - -		21 90
1 Haverhill Lip Turner - - - - -		75 00
1 Hamel Insole Welt Channeller - - -		65 00
1 Haverhill Welt Channeller - - - -		65 00
1 Bresnahan Splitter - - - - -		6 00
1 Heel Gauge - - - - - -		2 00
1 Young's Heel Gauge - - - - -		135 00
1 Young's Wedge Stripper - - - -		125 00
1 Young's Heel Compresser - - - -		500 00
1 Julian Sole Rounder - - - - -		175 00
1 Rand Cutting Machine - - - -		35 00
1 Hand Heel Press - - - - -		20 00
Miscellaneous		
1 Chair, office - - - - - -		$2 50
2 Benches, office - - - - - -	each,	5 00
1 Stool, office - - - - - -		5 00
1 Typewriter Desk, office - - - -		35 00
2 Flat Top Desks, office - - - -	each,	30 00
1 Sample Case, office - - - - -		40 00
1 Cabinet, for machine parts - - - -		36 00
1 Table, office - - - - - -		15 00
2 Ceiling Fans, office - - - - -	each,	27 75
1 Safe, office - - - - - - -		75 00
1 Adding Machine, office - - - -		90 00
3 2-H. P. Motors - - - - - -	each,	60 35
3 5-H. P. Motor - - - - - -	each,	61 20
1 7½-H. P. Motors - - - - -	each,	144 50
1 10-H. P. Motor - - - - - -	each,	170 65
1 15-H. P. Motor - - - - - -	each,	201 25

Shafting, hangers, pulleys, couplings, drip pans, etc. (approximate) - - - - -		410 00
Tables and used lumber (approximate) - -		197 00
32 spaces double trough Sewing Machine Tables	per space,	4 50
50 Shoe Racks (Whitman Agricultural Co.) -	each,	5 75
50 Shoe Racks (W. F. Goessling Box Co.) -	each,	5 25
130 Shoe Racks (Second Hand) - - -	each,	0 50
About 3700 pr. various Welt Lasts - -	per pair,	1 37

DEFENDANTS' EXHIBIT 43.

[Put in Evidence, page 1242.]

[Stamped:]
Received Feb 2 1913 F. G. K.

THE EXCELSIOR SHOE COMPANY
Manufacturers of Men's, Boys Youths and Little Gents Fine Shoes.

Branch Offices, Berlin, Germany, New York, Philadelphia, Pittsburgh, Cincinnati, Chicago, St. Louis.

Cable Address "Excelsior"

D. C. Davies, Prest. W. G. Williams, Treas.
J. E. Williams, V. Prest. & Gen. Mgr. J. W. Bannon, Jr., Secy.

Portsmouth, Ohio, Feb. 25, 1913.

Colonel King, United Shoe Machinery Co., Boston, Mass.

Dear Sir: — Your Mr. Ross, Jr. of Cincinnati was here, and we spent the most of a day in going over our proposition for the new factory, and he stated the conditions on which the Company would allow us to equip our new factory with any machinery that we desired in same.

We find upon taking the cost of your machines and what royalty we would pay and the rate of interest and depreciation, that even if we could save on the royalty, it would be a question whether there was any profit, and as far as we can figure, there would possibly be about $1,000.00 to our advantage in a year, or perhaps a little over. We do not feel that this is interesting enough as a business proposition, and told your Mr. Ross that we would go

ahead equipping the factory with your machinery, but the writer thinks that this would be an ideal plant, as we believe we are really organizing economically in any line that would show a saving, as we believe in the next rear or two all American shoes will come in severe competition with English and German made shoes, as the tendency at Washington is to take off the tariff.

As this plant is to make only two or three shoes in a Mock Welt, and is particularly adapted to Boys' shoes and nothing but this one style shoe will be made there, and as we expect to equip fully with your machinery, why would it not be in line to take this plant and your Company use it as an experiment towards a new relation of royalty. For instance, if the Excelsior Shoe Co. makes just a certain shoe in style and grade under certain conditions, and does not branch out into all styles and different constructions in this factory, why should we not be entitled to a plan something like the following, — that we should be given a flat rate for the making of shoes under this head and conditions, probably showing a saving of say half a cent a pair over the old basis.

We feel that with some encouragement on this line that the general income of your machinery in that plant will average more than the general plant in running this plain simple line, and everything being done to produce quantity easily so that what machinery was there would even yield more income than machines in the plant, where all styles and the general line of work is done.

We feel that in doing this you would show an interest, as you have always professed in the manufacturer, and would also encourage a line of goods that would always keep the American shoes, even with Free Trade competition, possibly on the fighting line.

There is no fear of a precedent in considering this question, as we do not think there is another plant like it at present in the country, and we could almost assure you that the aggregate of the machinery in this plant even with a reduced flat rate would yield more than the average equipment that you have in another plant running a regular line.

We presented this matter to Mr. Ross, and he thought it was interesting, as I showed him in a way what we expected to do

there, and as you have always stated that the Company wished to do something to show that they were interested in the manufacturer in keeping costs down when they could feel they were safe in doing so, we felt that in presenting this proposition, we have really opened up a way for the Company to co-operate.

Trusting to hear from you at an early date, as we will soon be ready to start, we remain, Yours very truly,

THE EXCELSIOR SHOE CO.

Dict. — JEWGC. Jno. E. Williams, G. M.

DEFENDANTS' EXHIBIT 44.

[Put in Evidence, page 1319.]

Lease No. *227*

Transfer from Lease No.

This Lease and Agreement, made the *30th* day of *September* A. D. 189*8*, by and between the Eppler Welt Machine Company, a corporation existing under the laws of the State of Maine, having a place of business at Boston, Massachusetts, Lessor, the party of the first part, and *R. H. Long Shoe Mfg. Co. doing business at Springfield, Mass.* Lessee, the party of the second part, witnesseth:

Whereas, the Lessor is now the owner of the following Letters Patent of the United States, viz.: —

No. 325,063, dated Aug. 25, 1885;
No. 387,059, dated July 31, 1888;
No. 487,011, dated Nov. 29, 1892;
No. 409,281, dated Aug. 20, 1889;
No. 507,873, dated Oct. 31, 1893.
No. 387,058, dated July 31, 1888;
No. 447,872, dated March 10, 1891;
No. 487,214, dated Nov. 29, 1892;
No. 498,017, dated May 23, 1893.

And whereas the Lessee desires to use the hereinafter described machines belonging to the Lessor;

Now, therefore, the Lessor, in consideration of one dollar to it paid by the said Lessee, the receipt whereof is hereby acknowledged, and of the stipulations and conditions hereinafter contained on the part of the Lessee to be kept and performed, doth lease unto the said party of the second part the machines designated by their numbers in the following schedule: —

Two Eppler Inseam Sewing Machine , Nos. *77, 151*

Three Eppler Outsole Lock Stitch Machine , Nos. *72, 145, 156*

One Eppler Insole Channeler , No. *103*

Eppler Outsole Channeler , No.

One Eppler Welt Groover and Beveler , No. *103*

One Eppler Welt Splitter , No. *88*

One Eppler Welt Beater , No. *89*

Eppler Channel Lip Turner , No.

Eppler Shank Skiver , No.

One Eppler Bobbin Winder , No. *87*

It is understood that said machines are and shall remain the property of said Eppler Welt Machine Company, and subject to the conditions of this lease and agreement.

And the Lessor doth hereby license the Lessee, and operatives in his employment, to use said machines, upon the terms and conditions hereinafter set forth; provided, however, and this lease is made and this license is granted on the express condition, that the Lessee shall faithfully keep and perform all the conditions and stipulations herein contained on his part to be kept and performed; and upon breach of the same or of any of them by the Lessee, the Lessor, its successors or assigns, may, at their option, cancel and terminate this lease and license; and upon written notice thereof by the Lessor, its successors or assigns, to the Lessee, or to any one in the possession or apparent control of the said machines, or any of them, this lease and license shall terminate, and possession of said machines shall thereupon be transferred to said Lessor, its successors or assigns. And the said party of the second part hereby agrees to keep and perform all the following conditions of this lease and license:—

First. The Lessee is by this lease and license authorized to use the machines hereby leased only in said *Springfield, Mass.* he shall not add to nor subtract from the said machines any mechanism whatever now or hereafter organized or connected therewith by the Lessor, nor make, nor allow to be made, any change or alteration in the same, without the consent thereto in writing by the Lessor, nor interfere with the proper operation of the machines, or any

mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers, or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. It shall be lawful for the Lessor, or its duly authorized agent, at all reasonable times to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to improve the machines, and to affix indicators thereto, as it may see fit; and the covenants, stipulations, and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, to indicators now or hereafter affixed thereto, and to all patents hereafter embodied therein, with the same effect as if said patents were included in the list herein set forth.

Third. The following is the schedule of rents or royalties hereinafter referred to, and which it is understood and agreed is to be paid on each pair of shoes or boots respectively made by the aid of these machines or any of them, or by the use of the said patents or any of them, viz.: —

SCHEDULE OF RENTS AND ROYALTIES.

Children's	3 cents.
Misses'	4 "
Women's	6 "
Youth's	4 "
Boys'	6 "
Men's	8 "

Fourth. The Lessee hereby agrees to keep an account of all boots and shoes sewed by him, or by any other person for him or for others, by the aid of the machines hereby leased, or by the use of the patents aforesaid and to render an account thereof to the Lessor, its successors or assigns, on or before the tenth day of each month; which account shall specify the number of pairs of boots and shoes, made under this lease and license during the calendar month next preceding, and the class to which they belong according to the above schedule; and the said Lessee agrees that he will require the operator or operators on said machines to keep a daily

account of all boots and shoes sewed on said machines, upon the printed forms to be furnished by the Lessor, in duplicate; one copy of which, containing such reports for the calendar month preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor; and whenever required by the Lessor, its successors or assigns, to make oath to the correctness of said returns; and to allow the Lessor, its successors, assigns, or authorized agents to examine the original books and accounts of the Lessee, in order to verify the returns aforesaid, and the Lessee agrees to send to the Lessor, on or before the tenth day of each month, in case the machines, or any of them, hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, for each such machine, signed by the Lessee, and marked across the face with the words "not running" or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased, the rent or royalty specified in the schedule forming part of Section Third herein, on each pair of boots or shoes of the respective kinds mentioned or described in said schedule made by the aid of the said machines or of any of them, or by the use of the said patents or any of them; the rents and royalties for all such boots and shoes made as aforesaid during one calendar month, to be due on the first day of the calendar month next following, and to be paid within three months from that day; but the Lessor hereby agrees that **if the rents and royalties due on the first day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty** and twenty-five **per cent. from the rents and royalties specified in the schedule aforesaid; and the Lessee further agrees to pay, while he shall retain possession of the machines hereby leased, all taxes thereon, to whomsoever laid or assessed.** The Lessee hereby further agrees that the rents or royalties actually paid by the Lessee for each sewing or stitching machine herein leased shall, in each and every year, during the continuance of this lease, amount in the aggregate to at least one hundred dollars. The

Lessee shall also pay the expense of transportation of the machines herein leased from and to the Lessor's premises, and also the expense of keeping said machines in repair; and shall keep said machines and all of them fully insured in the amounts hereinafter mentioned against loss by fire, and in case of loss or damage to said machines or any of them shall pay to the Lessor or its order upon demand the full amount of such insurance. The insurance upon said machines shall be in the following amounts, to wit: —

Eppler Inseam Sewing Machine	$250.00
Eppler Outsole Lock Stitch	190.00
Eppler Insole Channeler	50.00
Eppler Outsole Channeler	50.00
Eppler Welt Groover and Beveler	15.00
Eppler Welt Splitter	10.00
Eppler Welt Beater	25.00
Eppler Channel Lip Turner	25.00
Eppler Shank Skiver	35.00
Eppler Bobbin Winder	25.00

Sixth. The Lessee hereby agrees that he will not in any way violate, or infringe, or contest the validity of any of the patents he is hereby licensed to use, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents or any of them.

Seventh. This lease and license is not assignable by the Lessee, by his own act or by operation of law.

Eighth. The following are also agreed to by the parties to this instrument as the terms of lease and license of the machines which the Lessee is hereby licensed to use: —

1st. That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machine embodying the patents aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the Lessee is, or becomes at any time, insolvent or bankrupt, or makes an assignment for the benefit of creditors, or if a sale, lease, transfer, or removal of said ma-

chines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire; and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent or license under this instrument.

2d. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots and shoes known in the trade as "Eppler Welts," and that he will not use or permit the use of said machines, or either or any of them, upon boots or shoes in the manufacture of which any sole or welt sewing machine not leased to him by the Lessor is employed, or for any other purpose, unless the consent in writing of the Lessor shall first have been obtained.

3d. That in case the Lessee refuses or neglects to perform, or violates any of the terms or conditions of this lease and license, the Lessor, its successors or assigns, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon be transferred to the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successors or assigns, or its authorized agent or agents, may thereupon enter the premises where said machines may be, and may take and remove the same without being deemed guilty of any trespass; and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license.

4th. That this lease and license shall continue (provided the Lessee complies with the terms and conditions thereof) until the expiration of all the Letters Patent which the Lessee is hereunder licensed to use, or any extensions or renewals of the same, or addi-

tional patents; and upon the expiration thereof, the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased, in good order; natural wear and tear alone excepted.

Ninth. In case any other machines than these hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor, its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions or improvements; and shall govern the parties respectively to the same extent as if the said machines, inventions or improvements had been expressly included in this lease and license. The Lessor shall give written notice of its election as aforesaid within thirty days after it shall have received written notice from the Lessee of the possession of such machines; but may give such notice without having received notice from the Lessee of the possession of such machines.

Tenth. The Lessee agrees that he will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is, or which may be hereafter, placed upon the machines as aforesaid.

Eleventh. All the rights and interests which under this instrument and by reason of the ownership of said machines and patents and patent rights belonging to the Lessor shall be deemed to belong to, and may be enforced in, the names of the Lessor and its successors and assigns, and all the stipulations binding on the Lessee shall be binding on his executors or administrators.

Twelfth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and in case the Lessee shall require more than one machine, it is agreed that the termination to words relating to the machines shall be construed and considered as written in the single or plural, as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party

of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In Witness whereof, the parties aforesaid have hereunto put their hands and seals: the said parties of the second part binding themselves to all the foregoing agreements, both jointly and severally.

[SEAL] EPPLER WELT MACHINE COMPANY,
By Walter B. Trowbridge, Treas.

[SEAL] R. H. LONG SHOE MFG CO.
R. H. Long Pres.

[On back:]

No. 227 Name R. H. Long Shoe Mfg. Co.
Address Springfield, Mass. Date Sept. 30, 1899.

Machine.	No.	Page.
Inseam Sewing Machine	77, 151	
Outsole Lock Stitch	72, 145, 156	
Insole Channeler	103	
Outsole Channeler		
Welt Groover and Beveler	103	
Welt Splitter	88	
Welt Beater	89	
Channel Lip Turner		
Shank Skiver		
Bobbin Winder	87	

[Attached to Defendants' Exhibit 44.]

Lease No. *56*.

This Agreement, made this *30th* day of *September, 1898*, by and between the Eppler Welt Machine Company, a corporation existing under the laws of the State of Maine, having a place of business in Boston, in the Commonwealth of Massachusetts, party of the first part, and *R. H. Long Shoe Mfg. Co.*, party of the second part.

Witnesseth: That said party of the first part agrees to the use

and the second party of the second part agrees to lease a certain machine manufactured and lease by said party of the first part called the *Stitch Separator*, for which said machine said party of the second part is to buy the privilege of using machines of the party of the first part for Two Hundred Dollars, provided, however, that said party of the second part is to have trial of said machine for Thirty Days from the date of receipt thereof, and if accepted or retained by said party of the second part after the said period of trial, then said purchase money, Two Hundred Dollars, shall then become due and payable, and said party of the second part agrees to keep said machine insured during the said period of thirty days in and the sum of two Hundred Dollars for the party of the second part, and not to injure or depreciate the value of said machine during the said period of trial, reasonable use and wear thereof excepted. And said party of the second part further agrees as a part of the consideration of said sale and purchase, that *they* will not during said period of trial and any time thereafter when title to said machine has vested in said party of the second part, use or employ said machine except in connection with the Eppler Welt Machine System in the manufacture of boots and shoes, and that *they* will not lease said machine without the consent in writing of said party of the first part.

In witness whereof, said parties have hereto interchangeably set their hands and seals by their officers duly empowered thereto, and their own act, in the day and year first above written.

EPPLER WELT MACHINE COMPANY.
By Walter B. Trowbridge, Treas [SEAL]
R. H. LONG SHOE MFG. CO.
R. H. Long, Pres [SEAL]

[On back:]
S. S. No. 56
Eppler Welt Machine Co. to R. H. Long Shoe Mfg. Co.
Springfield, Mass., September 30, 1898

[Attached to Defendants' Exhibit 44.]

Lease No. *61.*

This Agreement, made this *30th* day of *September, 1898*, by and between the Eppler Welt Machine Company, a corporation existing under the laws of the State of Maine, having a place of business in Boston, in the Commonwealth of Massachusetts, party of the first part, and *R. H. Long Shoe Mfg. Co.* party of the second part.

Witnesseth: That said party of the first part agrees to the use and the second party of the second part agrees to lease a certain machine manufactured and lease by said party of the first part called the *Rough Rounder*, for which said machine said party of the second part is to buy the privilege of using machines of the party of the first part for Two Hundred Dollars, provided, however, that said party of the second part is to have trial of said machine for Thirty Days from the date of receipt thereof, and if accepted or retained by said party of the second part after the said period of trial, then said purchase money, Two Hundred Dollars, shall then become due and payable, and said party of the second part agrees to keep said machine insured during the said period of thirty days in and the sum of Two Hundred Dollars for the party of the second part, and not to injure or depreciate the value of said machine during the said period of trial, reasonable use and wear thereof excepted. And said party of the second part further agrees as a part of the consideration of said sale and purchase, that *they* will not during said period of trial and any time thereafter when title to said machine has vested in said party of the second part, use or employ said machine except in connection with the Eppler Welt Machine System in the manufacture of boots and shoes, and that *they* will not lease said machine without the consent in writing of said party of the first part.

In witness whereof, said parties have hereto interchangeably set their hands and seals by their officers duly empowered thereto, and their own act, in the day and year first above written.

EPPLER WELT MACHINE COMPANY

By Walter B. Trowbridge Treas [SEAL]

R. H. Long Shoe Mfg. Co.

R. H. Long Pres [SEAL]

[On back:]

R. R. No. 61

Eppler Welt Machine Co. to R. H. Long Shoe Mfg. Co.
Springfield, Mass., Sept. 30, 1898.

DEFENDANTS' EXHIBIT 45.

[Put in Evidence, page 1319.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass., July 31 1899

Eppler Welt Mch Co. Boston

Gentlemen Enclosed Chk

Royalty Fee	194.76
Parts	25.18
	219.94

Please send us man at once to teach operator on Welter. We also need agent to fix up stitcher at once. We dont expect to do anything in Belchertown at present owing to certain circumstances. Will call on you when next in Boston. Yours truly

R. H. Long

DEFENDANTS' EXHIBIT 46.

[Put in Evidence, page 1320.]

[Stamped:]

Eppler Welt Machine Co., May 24 1899
Opened by Batchelder Answered May 24 1899

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. May 17, 1899

Eppler Welt Mch Co. Brockton Mass.

Gentlemen Enclosed find check for royalty to May 1 less 50%

	305.66
Parts a/c 30.78 — 5% 1.54	29.24
	334.90

We pay this royalty without deducting the 25% although we took the machines with royalty at 3c net. If other lessees only pay 3c we shall expect refund of the extra 1c Yours truly

R. H. Long

DEFENDANTS' EXHIBIT 47.

[Put in Evidence, page 1320.]

[Stamped :]

Eppler Welt Machine Co., Dec 19 1899
Opened by Batchelder Answered

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. Dec 19, 1899.

Eppler Welt Mch Co. Boston Mass.

Gentlemen Your letter at hand. We will pay you October royalty this week and November royalty next week Hoping this will be satisfactory, I am Yours truly

R. H. Long

If they do not pay as agreed write to them again. Wait until 26 inst for Oct ck. F. E. K.

DEFENDANTS' EXHIBIT 48.

[Put in Evidence, page 1322.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. Feb 13 1899

Eppler Welt Mach. Co. Boston.

Gentlemen, Please send us 6 awls for Eppler welter for use with No. 41 needles; also 4 needle guards for No. 41 needles.

Yours truly

R. H. Long Shoe Mfg Co.

Telephoned factory Feb. 15, 1899 W. S. B. F.

DEFENDANTS' EXHIBIT 49.

[Put in Evidence, page 1322.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 2/17 1899

Eppler Welt Mch Co.

Gentlemen Please send at once, One set of knives for Rounding Mch

50 No 47 needles for stitcher

50 " 41 " " welter

Resp Yours

R. H. LONG SHOE MFG CO.

Telephoned factory Feb 17, 1899 W. S. B.

DEFENDANTS' EXHIBIT 50.

[Put in Evidence, page 1322.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 2/2 1899

Eppler Welt Mch Co.

Gentlemen The springs you sent were not the ones wanted.

We want the spring that keeps the bobbin from turning too far around and thereby leaving slack thread

Resp Yours

R. H. LONG SHOE MFG CO.

Telephoned factory Feb 23, 1899 W. S. B.

DEFENDANTS' EXHIBIT 51.

[Put in Evidence, page 1323.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 2/22 1899

Eppler Welt Mch Co.

Gentlemen The number of the parts sent for were 543–544 Please send two of each at once Resp Yours

R. H. Long Shoe Mfg Co.

Telephoned factory Feb. 23, 1899 W. S. B.

DEFENDANTS' EXHIBIT 52.

[Put in Evidence, page 1323.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 2/28 1899

Eppler Welt Mch Co.

Gentlemen Please send by return mail 25 No 47 awls

50 " 41 welt needles

50 47 stitching needles

Resp Yours

R. H. Long Shoe Mfg Co.

DEFENDANTS' EXHIBIT 53.

[Put in Evidence, page 1323.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 3/1 1899

Eppler Welt Mch Co.

Gentlemen Please send by return mail 6 Gib Ring screws No 413 N S

Resp yours

R. H. Long Shoe Mfg Co.

Telephoned factory March 2, 1899 W. S. B.

DEFENDANTS' EXHIBIT 54.

[Put in Evidence, page 1323.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 3/13 1899

Eppler Welt Mch Co.

Gentlemen Please send by return mail

50 No 47 stitching needles

50 No. 41 Welt "

Resp yours

R. H. LONG SHOE MFG CO.

Telephoned Factory 3–14–99

DEFENDANTS' EXHIBIT 55.

[Put in Evidence, page 1323.]

[Stamped:] Mar 20 1899

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 3/18 1899

Goodyear Shoe Mch Co.

Gentlemen Please send us by return mail (6) six gem channelling knives No 7 for Eppler channeler Resp yours

R. H. LONG SHOE MFG CO

Telephoned factory March 29, 1899 W. S. B.

DEFENDANTS' EXHIBIT 56.

[Put in Evidence, page 1323.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 189

Eppler Welt Mch Co.

Gentlemen Please send by return mail 100 No. 41 welt needles

Resp yours

R. H. LONG SHOE MFG CO.

Telephoned factory April 7, 1899.

DEFENDANTS' EXHIBIT 57.

[Put in Evidence, page 1325.]

[Stamped:]
Apr 13 1899

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. April 12, 1899

Goodyear Shoe Mch Co. Boston Mass.

Gentlemen: Please send us an agent to be here Monday and teach operator on the Eppler Welter. Would like to have him stay three or four days. Please send us 2 Gib or Jib rings for Eppler Stitcher Machines at once. Yours truly

R. H. Long.

Telephoned factory 4/13/99 W. S. B.
Advised Brockton by letter April 13/99 W. S. B.

DEFENDANTS' EXHIBIT 58.

[Put in Evidence, page 1325.]

[Stamped:]
Apr 14 1899

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. April 14 1899

Goodyear Shoe Mch Co. Boston Mass.

Gentlemen Please send to us

1 Belt for rough rounder.
6 Knives " " " as head
(for Eppler Machine)

We need this at once Please rush Yours truly

R. H. Long Pres

Telephoned factory April 14/99 W. S. B.

DEFENDANTS' EXHIBIT 59.

[Put in Evidence, page 1326.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 4/15 1899

Eppler Welt Mch Co.

Gentlemen Enclosed find channel knives. The knives wanted are for Rough Rounder. Resp yours

R. H. LONG SHOE MFG CO.

Telephoned factory W. S. B.

DEFENDANTS' EXHIBIT 60.

[Put in Evidence, page 1326.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 4/22 1899

Eppler Welt Mch Co

Gentlemen Please send us by return mail (12) twelve gem channeling knives Resp yours

R. H. LONG SHOE MFG CO.

Telephoned factory April 24, 1899 W. S. B.

DEFENDANTS' EXHIBIT 61.

[Put in Evidence, page 1326.]

[Stamped:]

Eppler Welt Machine Co., Apr 26 1899

Opened by W. S. B. Answered Telephoned factory

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 189

Eppler Welt Mch Co.

Gentlemen Please send by return mail 100 No 47 stitching needles Resp yours

R. H. LONG SHOE MFG CO.

DEFENDANTS' EXHIBIT 62.

[Put in Evidence, page 1326.]

[Stamped:]

Eppler Welt Machine Co., May 3, 1899
Opened by W. S. B. Answered Telephoned factory

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. 5/2, 1899.

Eppler Welt Mch Co.

Gentlemen Please send by return mail 200 No. 41 welt needles. Part No 466 for stitcher Resp Yours

R. H. Long Shoe Mfg Co.

DEFENDANTS' EXHIBIT 63.

[Put in Evidence, page 1327.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. 10/28 1899.

Eppler Welt Mch Co.

Gentlemen Please send three screws. Do not know number. The screw that holds shield and welt spring to welt guide.

Resp yours

R. H. Long Shoe Mfg Co.

DEFENDANTS' EXHIBIT 64.

[Put in Evidence, page 1327.]

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.
Makers of Fine Shoes.

Springfield, Mass. Nov 3 1899

Eppler Welt Machine Co. Boston Mass.

Messrs. Kindly send us 6 each #0 and #7 Channelling Knives for Innersole machine.

A little while ago you sent us 2 Belts for Rough Rounder. Now

one is much shorter than the other, and the long one is all right but cannot use the short one.

Shall we send it back to you or give it to your man when he comes

Awaiting your reply I remain

Respectfully yours

R. H. Long Shoe Mch Co.

M

DEFENDANTS' EXHIBIT 65.

[Put in Evidence, page 1327.]

[Stamped:]

Eppler Welt Machine Co., Nov 23 1899
Opened by Batchelder Answered Telephoned factory
Confirmed Nov 23 1899

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. Nov 22 1899

Eppler Welt Co. Boston Mass.

Messrs: Kindly send us 6 Awls for Eppler Welt to run with 41 needle.

Your promptness will greatly oblige, Yours respy

R. H. Long M

DEFENDANTS' EXHIBIT 66.

[Put in Evidence, page 1327.]

[Stamped:]

Eppler Welt Machine Co., Nov 24 1899
Opened by Batchelder Answered Telephoned factory
Confirmed Nov 24 1899

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. Nov 23 1899

Eppler Welt Mch Co. 64 Lincoln St.

Messrs: Kindly send us 6 K. Channelling Knives like sample enclosed Respy yours

R. H. Long Shoe Mfg Co. M

DEFENDANTS' EXHIBIT 67.

[Put in Evidence, page 1330.]

[Stamped:]

Received Jun 5, 1900 — W. S. B.—
Received Jun 5, 1900 F. G. K.

R. H. Long, Prest. J. M. Clough, Treas.

Office of R. H. Long Shoe Manufacturing Co.

Makers of Fine Shoes.

Springfield, Mass. 6/4 1900

Eppler Welt Mch Co. Lincoln St.

Gentlemen Please send agent to fix Stitcher. This is machine we have had so much trouble with It has broken (4) four gears No 418 in a week. If you send agent from Brockton would prefer Mr. Torrey unless you think somebody else is better. Send (2) two gears No. 418 by return mail. Would like this machine fixed as soon as possible as we are very busy

Resp Yours

R. H. Long Shoe Mfg Co.

DEFENDANTS' EXHIBIT 68.

[Put in Evidence, page 1333.]

Lasting Machine Department.

Lease and License Number *142*.

Chase Lasting Machine.

This Lease and Agreement made at Boston in the State of Massachusetts this *sixteenth* day of *January* 190*4* between the United Shoe Machinery Company, a corporation organized under the laws of the State of New Jersey having an office in said Boston, hereinafter referred to as the lessor, of the one part, and *R. H. Long Shoe Manufacturing Company, South Framingham*, in the State of *Massachusetts*, hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under its patents to use the

machine or machines of the Lasting Machine Department of the lessor now or hereafter delivered to the lessee, and designated by number as follows, viz. : —

Chase Lasting Machine No. *42*, *275*, *561*, *572*, *1223*, *1259*.

Chase Hand Tacker (Stop Motion) No. *955*, *1557*, *1640*, *1652*, *1662*, *2306*,

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto with the consent of the lessor (the whole of which machine or machines, duplicate parts, extras, mechanisms and devices, held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee, is hereinafter referred to as the "leased machinery"), subject to the conditions hereinafter contained.

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform : —

One. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at *South Framingham* in the State of *Massachusetts*. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or executes any bill of sale, deed of trust or assignment for the benefit of his creditors, or if a sale or lease or removal of the leased machinery, or any part thereof, without the consent in writing of the lessor, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case this lease and license and any

other lease or license then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all the leased machinery, and any machinery held by the lessee under any other lease or license from the lessor, whether as the result of assignment to the lessor or otherwise, shall thereupon revest in the lessor free from all claims or demands whatsoever. The lessor and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

Two. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction, or alteration to, from, or in the leased machinery without the consent in writing of the lessor, nor interfere with the proper operation of the same. The lessee shall also purchase from the lessor exclusively at the prices from time to time established by the lessor all supplies, including string nail, tack strips, and other fastening material used in connection with the leased machinery.

Three. The lessee shall at his own expense insure the leased machinery against loss by fire, and keep the same insured to the amount of Two Hundred (200) Dollars for each Chase Lasting Machine hereby leased, and in case the same is lost or destroyed by fire, or otherwise before the expiration or termination of this

lease, then the lessee shall pay to the lessor upon demand the sum of Two Hundred (200) Dollars for each Chase Lasting Machine and accessories as partial compensation for such loss or destruction. The lessee shall pay all taxes and assessments which shall be levied in respect to the leased machinery or in respect to this lease and license, or the right to payments hereunder upon whomsoever assessed.

Four. The lessee shall use the leased machinery to its full capacity on all boots, shoes, and other footwear made in his factory in the manufacture of which it can be used, but the leased machinery shall not nor shall any part thereof be used in the manufacture of any boots, shoes, or other footwear which are or shall be welted or the soles stitched on welt sewing or sole stitching machines not leased to the lessee by the lessor or its assignor or in the manufacture of any turn boots, shoes, or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any boots, shoes, or other footwear which have been or shall be slugged, heel seat nailed, or otherwise partly made by the aid of any "metallic" machinery not leased to the lessee by the lessor or its assignors.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one and one half (1½) cents for each pair of long-legged boots and of one (1) cent for each pair of all other kinds of boots, shoes, or other footwear, or portions thereof, lasted or manufactured or prepared during the next preceding calendar month in any way, whether wholly or in part, by the aid of the leased machinery or any part thereof; **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month.** The lessee guarantees that for each Chase Lasting Machine hereby leased the rent or royalty herein provided (less all abatements)

shall amount in each calendar year, ending December 31, to at least (10) dollars for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle.

Six. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then, and as often as the same shall happen, the lessee shall immediately, by writing, notify the lessor, and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor hereunder, the lessee shall pay the lessor as rent or royalty, without the right to any discount, one and one-half (1½) cents per pair for each pair of boots, shoes, or other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently of any indicators that may be placed upon the leased machinery, showing the number of each kind of boots, shoes, and other footwear, or portions thereof, in the manufacture of which the leased machinery or any part thereof shall have been used, and shall allow the lessor at all times, by its agents or attorneys, to examine and

to take copies of such accounts and entries of the lessee as may serve to determine the total number of boots, shoes, or other footwear or portions thereof made by the aid of the leased machinery or any part thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the leased machinery or any part thereof to keep upon blanks or blank books to be furnished by the lessor accurate daily records of the number of each kind of boots, shoes, and other footwear, or portions thereof, in the making of which he has used the leased machinery or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month the original records for the next preceding calendar month kept by his operators as above provided for; and in case, in any calendar month, none of the leased machinery has been used, the lessee shall notify the lessor in writing of that fact, on or before the fifth day of the next succeeding calendar month. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following agreements, stipulations, and provisions are agreed to:—

Seven. If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use exclusively tacking mechanisms and appliances held by him under lease from the lessor, for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing this lease and license and any other lease or license of lasting machines, lasting machinery, lasting mechanisms, or lasting devices then existing between the lessor and the lessee, whether as the result of assignment to the lessor or

otherwise; and the possession of and full right to and control of all the leased machinery and all lasting machines, lasting machinery, lasting mechanisms, and lasting devices held by the lessee under lease or license from the lessor or its assignors shall thereupon revest in the lessor free from all claims and demands whatsoever.

Eight. This lease and license shall continue, unless sooner terminated by the lessor because of breach thereof on the part of the lessee, or otherwise as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and expressed to be obligatory upon the lessee, the lessor shall have the right, by notice in writing to the lessee, to terminate forthwith this lease and license, and also if the lessor so elects any other lease or license agreements then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof by notice or by reason of any default on the part of the lessee as to the terms of this lease and license or any other lease or license from the lessor, or otherwise as herein provided, the lessee shall forthwith deliver the leased machinery to the lessor at its office or factory in good order, reasonable wear and tear alone excepted; and shall thereupon pay to the lessor the sum of

One Hundred (100) Dollars for each Chase Lasting Machine and its accessories as compensation for setting up the leased machinery in his factory, for instructing operators, and for deterioration of the leased machinery, and the lessee, for himself, his heirs, executors and administrators, hereby grants to the lessor, its successors and assigns, full right, power, and authority to enter upon the premises and into any factory, room, or any place where the leased machinery or any part thereof may be, and take possession thereof, and take away the same; and the lessee shall have no claim for the repayment of any sum or sums, or any part thereof, which he shall have paid as consideration for the grant of this lease and license or for rent or royalty, or otherwise in respect to the leased machinery. The lessee shall also without prejudice to any other rights and remedies of the lessor hereunder pay to the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee as well as pay the freight expense of returning the same.

Nine. A notice in writing, signed by the president, a vice-president, or the treasurer of the lessor, or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is determined or shall be determined at the expiration of a certain period, shall be a sufficient determination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall not release the lessee from his obligation to pay rent or royalty for the period prior to such termination, and shall be without prejudice to any other rights or remedies which the lessor may have for violation of contract, use of machines without right, or use of patented inventions without license.

Ten. The lessee admits the validity of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or

contest the validity of, or the title of the lessor to, any of the patents referred to in the "Schedule of Patents" hereto annexed. The termination or cesser of this lease and license from any cause whatever shall not in any way affect the provisions of this clause, or release or discharge the lessee from the admission and estoppel herein set forth.

Eleven. None of the terms or conditions of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by an instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

Twelve. The term "lessor" shall include the said United Shoe Company and its successors and assigns. All the conditions and agreements binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In witness whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

[SEAL] UNITED SHOE MACHINERY CO.
Meylert Bruner, Secretary.
R. H. LONG SHOE MFG. CO.
R. H. Long, Treas. [SEAL]

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.
(Referred to in Article Ten herein.)

Number.	Dated.	Number.	Dated.
302,885	August 5, 1884.	524,446	August 14, 1894.
306,671	October 14, 1884.	524,447	August 14, 1894.
309,519	December 23, 1884.	536,780	April 2, 1895.
312,550	February 17, 1885.	537,269	April 9, 1895.
312,962	February 24, 1885.	537,270	April 9, 1895.
319,784	June 9, 1885.	539,065	May 14, 1895.
337,662	March 9, 1886.	545,052	August 27, 1895.
337,924	March 16, 1886.	548,671	October 29, 1895.

337,925	March 16, 1886.	548,862	October 29, 1895.
338,930	March 30, 1886.	558,011	April 7, 1896.
340,860	April 27, 1886.	561,189	June 2, 1896.
352,851	November 16, 1886.	566,831	September 1, 1896.
356,619	January 25, 1887.	569,182	October 13, 1896.
256,620	January 25, 1887.	569,231	October 13, 1896.
363,283	May 17, 1887.	569,590	October 13, 1896.
364,088	May 31, 1887.	571,339	November 17, 1896.
371,816	October 18, 1887.	571,404	November 17, 1896.
376,368	January 10, 1888.	571,429	November 17, 1896.
391,688	October 23, 1888.	571,509	November 17, 1896.
444,792	January 13, 1891.	601,933	April 5, 1898.
458,000	August 18, 1891.	601,934	April 5, 1898.
458,001	August 18, 1891.	601,935	April 5, 1898.
473,873	April 26, 1892.	601,936	April 5, 1898.
477,788	June 28, 1892.	601,937	April 5, 1898.
477,789	June 28, 1892.	601,938	April 5, 1898.
478,501	July 5, 1892.	601,939	April 5, 1898.
483,375	September 27, 1892.	601,940	April 5, 1898.
507,551	October 31, 1893.	601,941	April 5, 1898.
516,074	March 6, 1894.	601,942	April 5, 1898.
524,445	August 14, 1894.		

[On back:]

United Shoe Machinery Company.
Lasting Machine Department.
Chase Lasting Machine. Lease No. 142.
R. H. Long Mfg. Co. Lessee.
Date, Jan. 16, 1904.

Chase Lasting Machine No. 42, 275, 561, 572, 1223, 1259.
Chase Hand Tacker No. 955, 1557, 1640, 1652, 1662, 2306.

DEFENDANTS' EXHIBIT 69.

[Put in Evidence, page 1334.]

[Stamped:]
Received Aug. 8, 1903, A. H.
Filing Department, Aug. 13, 1903, A. M.

Office of R. H. Long Shoe Manufacturing Co.,
Makers of Fine Shoes.

South Framingham, Mass., Aug 7 1903

United Shoe Machinery Co. Boston Mass.

Gentlemen Your favors of 1st and 6th at hand. Mr. John E. Long has charge of all the work in the factory and he has no desire to use the Chase machines on work that can be done well on the Consolidated. The price for lasting is less on the Consolidated than on the Chase and Mr. John E. Long and the writer are trying at all times to keep down cost of labor and will use the Consolidated machines so far as possible.

I believe we have six machines (Consolidated) four of them set up and have been running until yesterday one operator left, and we have a man to take his place tomorrow or Monday. I think the operators are satisfied and have been earning good pay. I think we will be able to run all the Consolidated machines we have to their full capacity as well as some of our Chase machines and reports that have come to you saying we did not wish to use the Consolidated machines are not true. We are now advertising for cutters and stitchers and when we get under way on the fall trade we expect to start the other two machines, which would have been running now if we had enough help in cutting and stitching room.

Yours truly,

R. H. Long.

The Consolidated operators have been earning about 3.00 for 9 hours work.

DEFENDANTS' EXHIBIT 70a.

[Put in Evidence, page 1337.]

License and Rental Lease No.

Transfer from License No.

This License and Rental Lease Agreement, made in duplicate the *twelfth* day of *January* A. D. 1*900*, by and between the Consolidated & McKay Lasting Machine Company (Chase Department), a corporation incorporated under the laws of the State of Maine, Licensor and party of the first part, and *R. H. Long Shoe Mfg. Co.* of *Springfield*, *Mass.*, Licensee and party of the second part. Witnesseth:

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting, to wit: No. 319,784, dated June 9, 1885; No. 337,662, dated March 9, 1886; No. 337,924, dated March 16, 1886; No. 337,925, dated March 16, 1886; No. 338,930, dated March 30, 1886; No. 340,860, dated April 27, 1886; No. 356,619, dated January 25, 1887; No. 356,620, dated January 25, 1887; No. 363,283, dated May 17, 1887; No. 364,088, dated May 31, 1887; No. 376,368, dated January 10, 1888; No. 391,688, dated October 23, 1888; No. 477,788, dated June 28, 1892; No. 477,789, dated June 28, 1892; No. 478,501, dated July 5, 1892; No. 483,375, dated September 27, 1892; No. 545,052, dated August 27, 1895; No. 558,011, dated April 7, 1896; No. 561,189, dated June 2, 1896; No. 566,831, dated September 1, 1896; No. 571,404, dated November 17, 1896; No. 569,590, dated October 13, 1896; No. 569,182, dated October 13, 1896; No. 569,231, dated October 13, 1896; No. 571,339, dated November 17, 1896; No. 571,429, dated November 17, 1896; No. 571,509, dated November 17, 1896; and other patents applied for and now pending, and is, moreover, the owner of other patents not herein enumerated;

And, whereas, the Licensee desires to use the hereinafter described machines belonging to the Licensor: —

Now, Therefore, the Licensor, in consideration of one dollar to

it paid by the Licensee, the receipt whereof is hereby acknowledged, and of the stipulations and conditions hereinafter contained on the part of the Licensee to be kept and performed, doth loan unto the Licensee the machines designated by their numbers in the following schedule, the said machines embodying some of the foregoing named patents: —

1 Lasting Machine (Chase) No. *1140*.

2 Hand Tackers (Chase Stop Motion) Nos. *323*, *1537*.

And the Licensor does hereby license the Licensee, and operatives in his employment, to use said specified loaned or rented machines upon the terms and conditions herein set forth; Provided, however, and this loan is made and this license is granted on the expressed Condition, that the Licensee shall faithfully keep and perform all the conditions and stipulations herein contained on his part to be kept and performed, and upon breach of the same, or either of them by the Licensee, the Licensor may, at its option, cancel and terminate this loan and license, and upon written notice thereof by the Licensor to the Licensee, or to any one in the possession or apparent control of the machines, this loan and license shall terminate, and possession of said machines shall thereupon revest in the Licensor. It is also agreed that the Licensor may, at its option, upon breach of any condition herein contained, take possession of said machines, or any of them, without termination of this agreement.

And the following are also agreed to as terms and conditions of the loan and license of the machines which the Licensee is hereby licensed to use, all of which, together with those hereinbefore expressed, the Licensee hereby agrees to keep and perform: —

First. — The Licensee is by this loan and license authorized to use the machines hereby loaned, only by himself or operatives in his direct employ, and only in *Springfield*, *Mass.*

He shall not add to nor subtract from the machines any mechanism whatever now or hereafter organized or connected therewith by the Licensor, nor make nor allow to be made any change or alteration in the same, without the consent thereto in writing of the Licensor, nor interfere with the proper operation of the ma-

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chines, nor any mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers or inscriptions, now or hereafter impressed thereon or affixed thereto by the Licensor, and shall at all times, at his own expense, keep and maintain the machines in as good and efficient working order as the same now are or may hereafter be put by the Licensor. All risks and expense of transportation to and from the Licensee's factory shall be assumed by the Licensee. Inasmuch as the machines are only loaned by the Licensor, and the Licensee pays no purchase price for the machines, the said machines do and shall continue to belong exclusively to and remain wholly the property of, and subject to the control of the Licensor, and the Licensee acquires no right to buy or to retain said machines except by the written consent of the Licensor. The Licensee agrees to keep the Lasting Machines and accessories in first-class order and repair at his own expense. The Licensee also hereby covenants and agrees to keep the Lasting Machines and accessories insured by a policy satisfactory to the Chase Department of the Consolidated & McKay Lasting Machine Company for two hundred dollars each, and to pay all taxes assessed on said machines. In case any Lasting Machines are damaged by fire, directly or indirectly, the Licensee agrees to pay to the Licensor the sum of two hundred dollars for each Lasting Machine, including its accessories, so damaged.

Second. — The Licensor and its agents may, at all reasonable times, have convenient access to the machines to examine and inspect the same and the use thereof, and to repair and improve the same so far as it sees fit; and the covenants, stipulations and conditions herein contained shall apply to all improvements which the Licensor shall hereafter add to the machines and to all patents on said improvements, the right to use which shall be owned by the Licensor, with the same effect as if said patents were included in the list of patents hereinbefore set forth.

Third. — The Licensee agrees to pay unto the Licensor, on the fifteenth (15th) day of each month, as rent or royalty for the previous month for the machines hereby loaned, and for the use of the patents hereby licensed, for each and every pair of shoes or boots

lasted by the aid of said machines or any of them, or by the use of said patents or any of them, or in the making of which any of said patents shall be used, the sum set forth in the classified schedule hereto annexed in the column headed "Royalty Value"; and said royalty is hereby agreed upon by and between the parties hereto as the just, fair, and correct value to the Licensee for rental of the machines and for use of the patents and inventions hereby licensed to the Licensee by the Licensor, and that the "abated rent or royalty" hereinafter named is not the true value of the license hereby granted, but is a concession and abatement of such value for and in consideration of the conditions hereto attached, and this agreement and responsibility, and all others in this license contained shall extend to and in respect of all shoes or boots made or lasted by the aid of said machines or on any machine embracing any of the patents which the Licensee is hereby licensed to use, whether made by the Licensee or by other persons for him; provided, however, that in all cases when the Licensee shall pay to the Licensor, on or before the fifteenth day of each month, the "abated rent or royalty" as hereinafter set forth, per pair for each and every pair of shoes or boots lasted in whole or in part by the use of said machines or patents, or any of them; said payments so duly made shall be full payment and satisfaction of the rent or royalty for the use of said machines and of the license for the use of the patents, for such shoes or boots in respect to which said payments shall have been so duly made, and it is agreed that default of payment of said rent or royalty or of any indebtedness to the Licensor when due, that is, on or before the fifteenth (15th) of each month, shall forfeit the Licensee's right to any abatement of the full rent or royalty, as herein provided. And it is hereby agreed that for each and every pair of shoes and boots made or lasted by the aid of the machines hereby loaned, or made by or for the Licensee by the use of the patents hereby licensed, or any of them, and in respect of which there shall not have been paid the "abated rent or royalty" as hereinbefore set forth, the Licensee shall pay to the Licensor the rental or royalty value named in said classified schedule as liquidated, fixed, and settled damages. It is hereby agreed that

the monthly rent or royalty returns shall be computed at "abated rent or royalty." In addition to these agreements relating to rent or royalty, and to the "abated rent or royalty" and to payments as liquidated damages of the full rental or royalty value, in case of neglect or default of or refusal to make payment when due, it is agreed by the Licensee that in case he becomes insolvent or makes an assignment for the benefit of creditors, or in case his property or business goes into the hands of a receiver, all rent or royalty due to the Licensor shall be at once computed at the full rent or royalty value, as expressed in the schedule of rentals or royalties herewith attached, and the Licensee expressly agrees to this computation of the rental or royalty value, and further agrees not to contest or dispute any claim for the said full rental or royalty value. It is agreed and covenanted by the Licensee that whenever requested, in writing, by the Licensor, he will pay not less than ten dollars per month, as a minimum amount of rental or royalty for the use of each Lasting Machine, except when his factory is not running. But until further notice, given in writing, it is agreed between the parties hereto that if the Licensee pays the rental or royalty on or before the fifteenth (15th) of the month following the month when the lasting was done, and otherwise keeps all the terms of this License, there will be a discount made for such payment sufficient to reduce the cost of "abated rent or royalty" on all classes of shoes to one half cent per pair, excepting on long-legged boots, on which the abatement will be sufficient to reduce the cost to three fourths of a cent a pair, but it is specially agreed that this abatement ceases upon written notice given by the Licensor to the Licensee.

Fourth. — The Licensee agrees that the operator on each machine shall keep a daily account of the number of pairs of shoes and boots lasted by him and the class to which they belong; which account shall be signed by the operator and verified and signed by the Licensee and forwarded by the Licensee to the Licensor on the first day of each month, and rental or royalty shall be paid by the Licensee on the basis of said account. And the Licensee agrees to give the Licensor, its successors, or assigns, or its or their

authorized agent or agents, free access at all times to the premises where the machines hereby loaned are stored or operated, for the purpose of verifying the operators' reports, and in case operators' reports shall not be made as above provided, it shall be the right of the Licensor to appoint a competent man to keep the accounts herein required; and all reasonable compensation for the services and expenses of such man, which shall not exceed three dollars per day, shall be at the charge of the Licensee, and the Licensee hereby agrees to pay the same.

The Licensee agrees that he will allow the Licensor, its successors and assigns, and its and their agents at any time hereafter, to attach an indicator or counter to any machine embracing any of the patents hereby licensed, which now is or which may hereafter come into the possession of the Licensee, for the purpose of indicating the number of shoes or boots made, and to examine, modify, repair, or replace the said indicator, and that he, the Licensee, will not disturb or interfere with, nor permit any anyone else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon any machine as aforesaid.

Fifth. — The Licensee hereby agrees that he will not in any way violate, or infringe, or contest, the validity of any of the patents, or any reissue or extension of the same, which he is hereby licensed to use, or the sufficiency of their specifications, or the validity of the title of the Licensor to said patents, or any of them, and expressly admits the validity and sufficiency thereof.

Sixth. — The machines cannot be transferred, and this loan and license is not assignable by the Licensee, by his own act or by operation of law.

Seventh. — The power conveyed by this license is only the right to use the said specific machines, and not the right to make, sell, or alter any machines embodying the patents aforesaid, or any of them; and a transfer or removal of the machines hereby loaned can only be made with the written consent of the Licensor; and if the Licensee is or becomes at any time insolvent or bankrupt, or if a sale, lease, transfer, alteration, or removal of said machines shall be made or attempted by the Licensee, or by operation of law, or

by any legal officer, representative, or assignee, as the property of the Licensee, without the written consent of the Licensor, the possession of said machines shall thereupon revest in the Licensor, and it may take possession of said machines without the Licensee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this license, or for rental or royalty under this instrument, nor shall he be released thereby from any of the conditions of this agreement.

Eighth. — In case any machine hereby loaned shall remain unused for the period of four consecutive months, the Licensor may, at any time thereafter, while it remains unused, cancel this loan and license so far as relates to said unused machines, by giving written notice, as herein provided, that it has elected so to do, and, upon giving such notice, this loan and license shall be terminated to the extent aforesaid, and the possession of said unused machines shall thereupon revest in said Licensor, but, in case of such cancellation and reclamation, the Licensee shall thereupon pay the Licensor the sum stated in article twelfth for deterioration of the machines by use or otherwise, and other expenses in reference to the same.

Ninth. — In case the Licensee refuses or neglects to perform, or violates any of the conditions of this license, the Licensor shall have the right to terminate this license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this license shall be terminated, or upon taking or demanding possession of the machines without cancellation of this agreement, the possession of said machines shall thereupon revest in the Licensor; and upon the termination of the loan and license by lapse of time, cancellation, breach of condition, or otherwise, it shall be the duty of the Licensee forthwith to deliver the machines hereby loaned and licensed, to the Licensor in good condition, reasonable wear and tear excepted; and upon such termination or taking or demanding possession of the machines by the Licensor, and without prejudice to any other legal rights or remedies for violation of contract, use of machines without right, or use of patents without license, the Licensor or its agents may thereupo

enter the premises where said machines may be, and may take and remove the same, and the Licensee shall have no claim whatever on account of any sum or sums he may have paid under this license as rent or royalty or otherwise, nor shall he be released from his agreements contained herein regarding sum due for return of machines, repairs, instruction of operators, deterioration, etc., as mentioned in article twelfth.

Tenth. — This license shall continue (unless the Licensor shall cancel this license for breach of condition) until the expiration of all the Letters Patent which the Licensee is hereby licensed to use, and which are or may hereafter be embodied in the hereby loaned machines, and the other patents or improvements referred to shall be considered as included in this license the same as if entered in this license by date and number, or any extensions or renewals of the same; and upon the expiration thereof the Licensee shall deliver to the Licensor the machines and accessories hereby loaned in good order, natural wear and tear alone excepted.

Eleventh. — In case any other machines than those now hereby loaned and licensed, embracing any of the patents hereby licensed, shall hereafter be ordered by, or come into the possession of, the Licensee then, in case the Licensor shall so elect, all the covenants herein contained shall apply to such machines, and shall govern the parties respectively to the same extent as if the said machines had been expressly included in this loan and license. The Licensor shall give written notice of its election as aforesaid, and the entry into and under this License Agreement of all machines in possession of the Licensee is hereby specially agreed to by the Licensee, but this shall not take away the Licensor's right to refuse such entry in case of machines transferred without written consent of the Licensor.

Twelfth. — It is declared and understood that it is the intention of the Licensee to use said machines herein licensed for lasting all of the shoes and boots that shall be made by him applicable to the said machines, and not to have them in his possession as a means of reducing the price of hand lasting, or of controlling hand-lasters, or of influencing a trade with the owners of any other Lasting

Machines or of reducing the price thereof, or the prices for labor thereon, and the Licensor enters into this contract because of and by reason of such understanding and intention on the part of the Licensee. It is agreed that the Licensee shall use such machines hereby loaned for lasting all of his shoes and boots, to their full capacity, limited only by the demands of his business; and should the demands of his business require, he shall take and pay for the loan of such additional machines as may be required to do all his work; and in case any Lasting Machine in this agreement is returned to the Licensor, whether voluntarily or because of the Licensee's insolvency or the appointment of a Receiver for his business, or for non-compliance with this agreement, or otherwise, the Licensee or his assigns shall pay the Licensor one hundred (100) dollars as compensation for setting up each machine at his factory, for instructing operators, and other expenses incurred, and he shall also pay, in addition thereto, the cost of putting the machine into good condition and repair, as well as freight expense of returning the same.

Thirteenth. — It is agreed that the Licensee shall buy of the Licensor, and only of it, all the fittings and all the spare parts for repairing the machines hereby licensed, and also all the string-nail, tack-strips, or other fastenings to be driven by any appliance for lasting the shoes or boots, whether lasted in whole or in part by the aid of any of the machines hereby licensed, or by the use of any of the said patents, or in the making of any of which any of said patents shall be used; and that the same shall be sold by the Licensor at the same prices to all Licensees for the time being. The prices and terms for the same to be fixed by the Licensor; and in all cases whenever the machines are returned to the possession of the Licensor all the accessories, which shall include all spare parts and fittings, shall be returned with the machines, free from any claim as to title, and all unused tack-strips remaining in the possession of the Licensee at the time of the return of the machines shall also be returned to the Licensor's possession free from any claim as to title, but credit for such tack-strips shall be given by the Licensor.

Fourteenth. — All the rights and interests which, under this

instrument and by reason of the ownership of said machines and patents and patent rights belonging to the Licensor, shall be deemed to belong to and may be enforced by the Licensor, its representatives, and assigns, and all the stipulations binding on the Licensee shall be binding on his or their representatives or assigns.

Fifteenth. — It is agreed that this instrument may be used for Licensees of the female sex, or for corporations, and in that case the masculine pronoun denoting the Licensee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that when the party of the second part shall consist of more than one person the termination of the words relating to the said party shall be considered as singular or plural, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this License and Lease for Rental, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained, and also that the numbers of the machines named in or covered by this License and Lease may be entered herein by the Licensor after signing; and that as this instrument is designed and intended for continuous use between the parties hereto, in case the Licensee shall have more than one machine, it is agreed that the termination of words relating to the machine shall be considered as written in the singular or plural, as the number of machines entered in this License and Lease Agreement may require.

Schedule of Rentals or Royalties.

(Referred to in Article third.)

	Men's Shoes and Boots.					
	Plain.		Tips.		Tips & Boxes	
	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.
Buff and Grain . .	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	1c.
Flesh Split . . .	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	1c.
Calf, etc. . . .	2c.	$\frac{7}{10}$c.	3c.	$\frac{9}{10}$c.	3c.	1c.
Goodyear . . .	4c.	$1\frac{4}{10}$c.	4c.	$1\frac{4}{10}$c.	4c.	$1\frac{4}{10}$c.

	Boys' and Youths' Shoes.						Boots.		Women's.	
	Plain.		Tips.		Tips & Boxes.		Long Legs.			
	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value	Abated Royalty.
Buff and Grain,	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	$\frac{9}{10}$c.	3c.	1c.	2c.	$\frac{6}{10}$c.
Flesh Split .							3c.	1c.	2c.	$\frac{6}{10}$c.
Calf, etc. .							3c.	1c.	2c.	$\frac{6}{10}$c.
Goodyear .	3c.	1c.	3c.	1c.	3c.	1c.	4c.	1c.	4c.	1c.

In Witness Whereof, the parties aforesaid have hereunto set their hands and seals, the said parties of the second part binding themselves, their legal representatives, and assigns, to all the foregoing agreements, both jointly and severally.

[SEAL] CONSOLIDATED & MCKAY LASTING MACHINE COMPANY,
by Geo. W. Brown, Treasurer.

R. H. LONG SHOE MFG. CO., [SEAL]
R. H. Long, Pres.

[On back:]
"AAA" License No. *128*
Lasting Machines Nos. *1140*
Hand Tackers Nos. *323, 1537.*
R. H. Long Mfg. Co., Licensee.
Dated *January 12, 1900.*

DEFENDANTS' EXHIBIT 70b.

[Put in Evidence, page 1337.]

License and Rental Lease No.

Transfer from License No.

This License and Rental Lease Agreement, made in duplicate the *twenty third* day of *July* A. D. *1900*, by and between the United Shoe Machinery Co.

~~Consolidated & McKay Lasting Machine Company~~,

(Chase Department)

a corporation incorporated under the laws of the State of ~~Maine~~ New Jersey,

Licensor and party of the first part, and *R. H. Long Shoe Mfg. Co. of Springfield, Mass.* Licensee and party of the second part.

Witnesseth:

Whereas, the Licensor is now the owner of the following Letters Patent of the United States relating to Lasting Machines or auxiliary machines for lasting, to wit: No. 319,784, dated June 9, 1885; No. 337,662, dated March 9, 1886; No. 337,924, dated March 16, 1886; No. 337,925, dated March 16, 1886; No. 338,930, dated March 30, 1886; No. 340,860, dated April 27, 1886; No. 356,619, dated January 25, 1887; No. 356,620, dated January 25, 1887; No. 363,283, dated May 17, 1887; No. 364,088, dated May 31, 1887; No. 376,368, dated January 10, 1888; No. 391,688, dated October 23, 1888; No. 477,788, dated June 28, 1892; No. 477,789, dated June 28, 1892; No. 478,501, dated July 5, 1892; No. 483,375, dated September 27, 1892; No. 545,052, dated August 27, 1895; No. 558,011, dated April 7, 1896; No. 561,189, dated June 2, 1896; No. 566,831, dated September 1, 1896; No. 571,404, dated November 17, 1896; No. 569,590, dated October 13, 1896; No. 569,182, dated October 13, 1896; No. 569,231, dated October 13, 1896; No. 571,339, dated November 17, 1896; No. 571,429, dated November 17, 1896; No. 571,509, dated November 17, 1896; and other patents applied for and now pending, and is, moreover, the owner of other patents not herein enumerated:

And, whereas, the Licensee desires to use the hereinafter described machines belonging to the Licensor: —

Now, therefore, the Licensor, in consideration of one dollar to it paid by the Licensee, the receipt whereof is hereby acknowledged, and of the stipulations and conditions hereinafter contained on the part of the Licensee to be kept and performed, doth loan unto the Licensee the machines designated by their numbers in the following schedule, the said machines embodying some of the foregoing named patents: —

4 Lasting Machines (Chase) Nos *158, 323, 437, 774.*

8 Hand Tackers (Chase Stop Motion) Nos. *305, 307, 1094, 1150, 1456, 1767, 1914, 1980.*

And the Licensor does hereby license the Licensee, and opera-

tives in his employment, to use said specified loaned or rented machines upon the terms and conditions herein set forth; Provided, however, and this loan is made and this license is granted on the expressed Condition, that the Licensee shall faithfully keep and perform all the conditions and stipulations herein contained on his part to be kept and performed, and upon breach of the same or either of them by the Licensee, the Licensor may, at its option, cancel and terminate this loan and license, and upon written notice thereof by the Licensor to the Licensee, or to anyone in the possession or apparent control of the machines, this loan and license shall terminate, and possession of said machines shall thereupon revest in the Licensor. It is also agreed that the Licensor may, at its option, upon breach of any condition herein contained, take possession of said machines or any of them, without termination of this agreement.

And the following are also agreed to as terms and conditions of the loan and license of the machines which the Licensee is hereby licensed to use, all of which, together with those hereinbefore expressed, the Licensee hereby agrees to keep and perform: —

First. — The Licensee is by this loan and license authorized to use the machines hereby loaned, only by himself or operatives in his direct employ and only in *Springfield, Mass.*

He shall not add to nor subtract from the machines any mechanism whatever now or hereafter organized or connected therewith by the Licensor, nor make nor allow to be made any change or alteration in the same, without the consent thereto in writing of the Licensor, nor interfere with the proper operation of the machines, nor any mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers or inscriptions, now or hereafter impressed thereon or affixed thereto by the Licensor, and shall at all times at his own expense, keep and maintain the machines in as good and efficient working order as the same now are or may hereafter be put by the Licensor. All risks and expense of transportation to and from the Licensee's factory shall be assumed by the Licensee. Inasmuch as the machines are only loaned by the Licensor, and the Licensee pays no purchase

price for the machines, the said machines do and shall continue to belong exclusively to and remain wholly the property of, and subject to the control of the Licensor, and the Licensee acquires no right to buy or to retain said machines except by the written consent of the Licensor. The Licensee agrees to keep the Lasting Machines and accessories in first-class order and repair at his own expense. The Licensee also hereby covenants and agrees to keep the Lasting Machines and accessories insured by a policy satisfactory to the ~~Chase Department of the Consolidated & McKay Lasting Machine Company~~ United Shoe Machinery Co for two hundred dollars each, and to pay all taxes assessed on said machines. In case any Lasting Machines are damaged by fire, directly or indirectly, the Licensee agrees to pay to the Licensor the sum of two hundred dollars for each Lasting Machine, including its accessories, so damaged.

Second. — The Licensor and its agents may, at all reasonable times, have convenient access to the machines to examine and inspect the same and the use thereof, and to repair and improve the same so far as it sees fit; and the covenants, stipulations and conditions herein contained shall apply to all improvements which the Licensor shall hereafter add to the machines and to all patents on said improvements, the right to use which shall be owned by the Licensor, with the same effect as if said patents were included in the list of patents hereinbefore set forth.

Third. — The Licensee agrees to pay unto the Licensor, on the fifteenth (15th) day of each month, as rent or royalty for the previous month for the machines hereby loaned, and for the use of the patents hereby licensed, for each and every pair of shoes or boots lasted by the aid of said machines or any of them, or by the use of said patents or any of them, or in the making of which any of said patents shall be used, the sum set forth in the classified schedule hereto annexed in the column headed "Royalty Value;" and said royalty is hereby agreed upon by and between the parties hereto as the just, fair and correct value to the Licensee for rental of the machines and for use of the patents and inventions hereby licensed to the Licensee by the Licensor, and that the "abated rent or

royalty" hereinafter named is not the true value of the license hereby granted, but is a concession and abatement of such value for and in consideration of the conditions hereto attached, and this agreement and responsibility, and all others in this license contained shall extend to and in respect of all shoes or boots made or lasted by the aid of said machines or on any machine embracing any of the patents which the Licensee is hereby licensed to use, whether made by the Licensee, or by other persons for him; provided, however, that in all cases when the Licensee shall pay to the Licensor, on or before the fifteenth day of each month, the "abated rent or royalty" as hereinafter set forth, per pair for each and every pair of shoes or boots lasted in whole or in part by the use of said machines or patents, or any of them; said payments so duly made shall be full payment and satisfaction of the rent or royalty for the use of said machines and of the license for the use of the patents, for such shoes or boots in respect to which said payments shall have been so duly made, and it is agreed that default of payment of said rent or royalty or of any indebtedness to the Licensor when due, that is, on or before the fifteenth (15th) of each month, shall forfeit the Licensee's right to any abatement of the full rent or royalty, as herein provided. And it is hereby agreed that for each and every pair of shoes and boots made or lasted by the aid of the machines hereby loaned, or made by or for the Licensee by the use of the patents hereby licensed, or any of them, and in respect of which there shall not have been paid the "abated rent or royalty" as hereinbefore set forth, the Licensee shall pay to the Licensor the rental or royalty value named in said classified schedule as liquidated, fixed, and settled damages. It is hereby agreed that the monthly rent or royalty returns shall be computed at "abated rent or royalty". In addition to these agreements relating to rent or royalty, and to the "abated rent or royalty" and to payments as liquidated damages of the full rental or royalty value, in case of neglect or default of or refusal to make payment when due, it is agreed by the Licensee that in case he becomes insolvent or makes an assignment for the benefit of creditors, or in case his property or business goes into the hands of a

receiver, all rent or royalty due to the Licensor shall be at once computed at the full rent or royalty value, as expressed in the schedule of rentals or royalties herewith attached, and the Licensee expressly agrees to this computation of the rental or royalty value, and further agrees not to contest or dispute any claim for the said full rental or royalty value. It is agreed and covenanted by the Licensee that whenever requested, in writing, by the Licensor, he will pay not less than ten dollars per month, as a minimum amount of rental or royalty for the use of each Lasting Machine, except when his factory is not running. But until further notice, given in writing, it is agreed between the parties hereto that if the Licensee pays rental or royalty on or before the fifteenth (15th) of the month following the month when the lasting was done, and otherwise keeps all the terms of this License, there will be a discount made for such payment sufficient to reduce the cost of "abated rent or royalty" on all classes of shoes to one-half cent per pair, excepting on long-legged boots, on which the abatement will be sufficient to reduce the cost to three-fourths of a cent a pair, but it is specially agreed that this abatement ceases upon written notice given by the Licensor to the Licensee.

Fourth.— The Licensee agrees that the operator on each machine shall keep a daily account of the number of pairs of shoes and boots lasted by him and the class to which they belong; which account shall be signed by the operator and verified and signed by the Licensee and forwarded by the Licensee to the Licensor on the first day of each month, and rental or royalty shall be paid by the Licensee on the basis of said account. And the Licensee agrees to give the Licensor, its successors, or assigns, or its or their authorized agent or agents, free access at all times to the premises where the machines hereby loaned are stored or operated, for the purpose of verifying the operators' reports, and in case operators' reports shall not be made as above provided, it shall be the right of the Licensor to appoint a competent man to keep the accounts herein required; and all reasonable compensation for the services and expenses of such man, which shall not exceed three dollars per day,

shall be at the charge of the Licensee, and the Licensee hereby agrees to pay the same.

The Licensee agrees that he will allow the Licensor, its successors, and assigns, and its and their agents at any time hereafter, to attach an indicator or counter to any machine embracing any of the patents hereby licensed, which now is or which may hereafter come into the possession of the Licensee, for the purpose of indicating the number of shoes or boots made, and to examine, modify, repair, or replace the said indicator, and that he, the Licensee, will not disturb or interfere with, nor permit anyone else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon any machine as aforesaid.

Fifth. The Licensee hereby agrees that he will not in any way violate, or infringe, or contest, the validity of any of the patents, or any reissue or extension of the same, which he is hereby licensed to use, or the sufficiency of their specifications, or the validity of the title of the Licensor to said patents, or any of them, and expressly admits the validity and sufficiency thereof.

Sixth. The machines cannot be transferred, and this loan and license is not assignable by the Licensee, by his own act or by operation of law.

Seventh. The power conveyed by this license is only the right to use the said specific machines, and not the right to make, sell, or alter any machines embodying the patents aforesaid, or any of them; and a transfer or removal of the machines hereby loaned can only be made with the written consent of the Licensor; and if the Licensee is or becomes at any time insolvent or bankrupt, or if a sale, lease, transfer, alteration, or removal of said machines shall be made or attempted by the Licensee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Licensee, without the written consent of the Licensor, the possession of said machines shall thereupon revest in the Licensor, and it may take possession of said machines without the Licensee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this license,

or for rental or royalty under this instrument, nor shall he be released thereby from any of the conditions of this agreement.

Eighth. In case any machine hereby loaned shall remain unused for the period of four consecutive months, the Licensor may, at any time thereafter, while it remains unused, cancel this loan and license so far as relates to said unused machines, by giving written notice, as herein provided, that it has elected so to do, and, upon giving such notice, this loan and license shall be terminated to the extent aforesaid, and the possession of said unused machines shall thereupon revest in said Licensor, but in case of such cancellation and reclamation, the Licensee shall thereupon pay the Licensor the sum stated in article twelfth for deterioration of the machines by use or otherwise, and other expenses in reference to the same.

Ninth. In case the Licensee refuses or neglects to perform, or violates any of the conditions of this license, the Licensor shall have the right to terminate this license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this license shall be terminated, or upon taking or demanding possession of the machines without cancellation of this agreement, the possession of said machines shall thereupon revest in the Licensor; and upon the termination of the loan and license by lapse of time, cancellation, breach of condition, or otherwise, it shall be the duty of the Licensee forthwith to deliver the machines hereby loaned and licensed, to the Licensor in good condition, reasonable wear and tear excepted; and upon such termination or taking or demanding possession of the machines by the Licensor, and without prejudice to any other legal rights or remedies for violation of contract, use of machines without right, or use of patents without license, the Licensor or its agents may thereupon enter the premises where said machines may be, and may take and remove the same, and the Licensee shall have no claim whatever on account of any sum or sums he may have paid under this license as rent or royalty or otherwise, nor shall he be released from his agreements contained herein regarding sum due for return of machines, repairs, instruction of operators, deterioration, etc., as mentioned in article twelfth.

Tenth. This license shall continue (unless the Licensor shall cancel this license for breach of condition) until the expiration of all the Letters Patent which the Licensee is hereby licensed to use, and which are or may hereafter be embodied in the hereby loaned machines, and the other patents or improvements referred to shall be considered as included in this license the same as if entered in this license by date and number, or any extensions or renewals of the same; and upon the expiration thereof the Licensee shall deliver to the Licensor the machines and accessories hereby loaned in good order, natural wear and tear alone excepted.

Eleventh. — In case any other machines than those now hereby loaned and licensed, embracing any of the patents hereby licensed, shall hereafter be ordered by, or come into the possession of, the Licensee, then, in case the Licensor shall so elect, all the covenants herein contained shall apply to such machines, and shall govern the parties respectively to the same extent as if the said machines had been expressly included in this loan and license. The Licensor shall give written notice of its election as aforesaid, and the entry into and under this License Agreement of all machines in possession of the Licensee is hereby specially agreed to by the Licensee, but this shall not take away the Licensor's right to refuse such entry in case of machines transferred without the written consent of the Licensor.

Twelfth. — It is declared and understood that it is the intention of the Licensee to use said machines herein licensed for lasting all of the shoes and boots that shall be made by him applicable to the said machines, and not to have them in his possession as the means of reducing the price of hand-lasting, or of controlling hand-lasters, or of influencing a trade with the owners of any other Lasting Machines or of reducing the price thereof, or the prices for labor thereon, and the Licensor enters into this contract because of and by reason of such understanding and intention on the part of the Licensee. It is agreed that the Licensee shall use such machines hereby loaned for lasting all of his shoes and boots, to their full capacity, limited only by the demands of his business; and should the demands of his business require, he shall take and pay for the

loan of such additional machines as may be required to do all his work; and in case any Lasting Machine in this agreement is returned to the Licensor, whether voluntarily or because of the Licensee's insolvency or the appointment of a Receiver for his business, or for non-compliance with this agreement, or otherwise, the Licensee or his assigns shall pay the Licensor one hundred (100) dollars as compensation for setting up each machine at his factory, for instructing operators, and other expenses incurred, and he shall also pay, in addition thereto, the cost of putting the machine into good condition and repair, as well as freight expense of returning the same.

Thirteenth. — It is agreed that the Licensee shall buy of the Licensor, and only of it, all the fittings and all the spare parts for repairing the machines hereby licensed, and also all the string-nail, tack-strips, or other fastenings to be driven by any appliance for lasting the shoes or boots, whether lasted in whole or in part by the aid of any of the machines hereby licensed, or by the use of any of the said patents, or in the making of any of which any of said patents shall be used; and that the same shall be sold by the Licensor at the same prices to all Licensees for the time being. The prices and terms for the same to be fixed by the Licensor; and in all cases whenever the machines are returned to the possession of the Licensor all the accessories, which shall include all spare parts and fittings, shall be returned with the machines, free from any claim as to title, and all unused tack-strips remaining in the possession of the Licensee at the time of the return of the machines shall also be returned to the Licensor's possession free from any claim as to title, but credit for such tack-strips shall be given by the Licensor.

Fourteenth. — All the rights and interests which, under this instrument and by reason of the ownership of said machines and patents and patent rights belonging to the Licensor, shall be deemed to belong to and may be enforced by the Licensor, its representatives, and assigns, and all the stipulations binding on the Licensee shall be binding on his or their representatives or assigns.

Fifteenth. — It is agreed that this instrument may be used for

Licensees of the female sex, or for corporations, and in that case the masculine pronoun denoting the Licensee shall, whenever it occurs, be instead of and indicate the feminine, or neuter, as the case may be; and also that when the party of the second part shall consist of more than one person the termination of the words relating to the said party shall be considered as singular or plural, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this License and Lease for Rental, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained, and also that the numbers of the machines named in or covered by this License and Lease may be entered herein by the Licensor after signing; and that as this instrument is designed and intended for continuous use between the parties hereto, in case the Licensee shall have more than one machine, it is agreed that the termination of words relating to the machine shall be considered as written in the singular or plural, as the number of machines entered in this License and Lease Agreement may require.

Schedule of Rentals or Royalties.

(Referred to in Article third.)

	Men's Shoes and Boots.					
	Plain.		Tips.		Tips & Boxes.	
	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.
Buff and Grain . .	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	1c.
Flesh Split . . .	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	1c.
Calf, etc. . . .	2c.	$\frac{7}{10}$c.	3c.	$\frac{9}{10}$c.	3c.	1c.
Goodyear . . .	4c.	$1\frac{4}{10}$c.	4c.	$1\frac{4}{10}$c.	4c.	$1\frac{4}{10}$c.

	Boys' and Youths' Shoes. Plain.		Tips.		Tips & Boxes.		Boots. Long Legs.		Women's.	
	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value.	Abated Royalty.	Royalty Value	Abated Value.
Buff and Grain,	2c.	$\frac{6}{10}$c.	3c.	$\frac{8}{10}$c.	3c.	$\frac{9}{10}$c.	3c.	1c.	2c.	$\frac{6}{10}$c.
Flesh Split .							3c.	1c.	2c.	$\frac{6}{10}$c.
Calf, etc. .							3c.	1c.	2c.	$\frac{6}{10}$c.
Goodyear .	3c.	1c.	3c.	1c.	3c.	1c.	4c.	1c.	4c.	1c.

In Witness Whereof, the parties aforesaid have hereunto set their hands and seals, the said parties of the second part binding themselves, their legal representatives, and assigns, to all the foregoing agreements, both jointly and severally.

~~Consolidated & McKay Lasting Machine Company,~~

[SEAL] United Shoe Machinery Co.
by L. H. Baker, Secretary.

R. H. Long Shoe Mfg. Co., [SEAL]
R. H. Long, Pres.

[On back:]
"AAA" License No. *158.*
Lasting Machines Nos. *158, 323, 437, 774.*
Hand Tackers Nos. *305, 307, 1094, 1150, 1456, 1767, 1914, 1980.*
R. H. Long Mfg. Co. Licensee. Dated *July 23d 1900*

DEFENDANTS' EXHIBIT 70c.

[Put in Evidence, page 1337.]

[Stamped:]
Received Jun 10 1913 F. G. K.

Chase Lasting Machines Leased to R. H. Long Shoe Mfg. Co.

Machine No.	Shipped	
300	2.13.93	Returned 3.14.99
368	10.15.94	Returned 3.8.00
763	9.24.94	Returned 5.12.99
520	2.18.95	Transferred 1.17.96

1237	12.7.97	Returned 3.14.99
154	10.12.98	Returned 3.14.99
336	10.12.98	Returned 3.14.99
893	10.12.98	Returned 3.14.99
1026	10.12.98	Returned 3.14.99
1140	11.29.99	Still out
158	5.19.00	Still out
275	10.25.00	Still out
323	5.1.00	Still out
437	5.14.00	Still out
774	5.14.00	Still out
42	3.22.02	Still out
561	3.22.02	Still out
572	9.6.02	Still out
1259	7.31.02	Still out
1223	9.5.02	Still out

20 machines.

DEFENDANTS' EXHIBIT 71.

[Put in Evidence, page 1339.]

CIRCUIT COURT OF THE UNITED STATES.
District of Massachusetts.

In Equity No. 426.

United Shoe Machinery Company
v.
R. H. Long Shoe Manufacturing Company and Richard H. Long.

COMPLAINANT'S EXHIBIT, LONG ADVERTISEMENT.

Grand Rally in Concert Hall Natick Monday Eve. Nov. 5 1906 in the interest of James H. Vahey

The speakers will be Mr. Richard H. Long of South Framingham, Mr. James H. Vahey, Mr. David C. Ahearn of South Framingham, Mr. J. H. O'Brien of Clinton, Mr. Martin C. Hall of Natick and Ex-Sen. A. H. Ray of Ashland.

The Framingham friends of Mr. Vahey will leave on special cars at 7.15 P. M.

Vote for the Interest of Your Town.

VOTE FOR VAHEY

The election of Senator in this district is most important to the business interests of the towns of Framingham, Natick, Ashland, Holliston, Hopkinton and Sherborn.

The Framingham Shoe Company that is controlled by me has begun manufacturing shoe machinery. **I have also become a director of the Duplessis Independent Shoe Machinery Co., a Canadian company**, with a capital of $2,500,000, and **I will finance and control that company.** I am assured of all the money necessary to carry on the business of both companies named above in addition to the shoe factory now running and the new factory now being built.

With all these industries Framingham should grow very fast, and the value of real estate in Framingham and the surrounding towns should increase largely.

Good conditions for the workingmen will be provided in these new industries.

Workingmen whose homes are in Framingham and the towns nearby, who are now working away from their families, may find employment here at good wages.

Ask the workmen in our factory if they are well treated. Ask them if the conditions have improved as our business has grown.

Owing to the ironclad leases that the shoe machinery trust has forced on the shoe manufacturers our companies cannot sell machines to the shoe factories in this state.

McManus owes his nomination to the influence of the counsel of the shoe machinery trust. The trust favors his election.

Vahey will oppose the shoe machinery trust.

Vahey will work for a Bill in the Massachusetts Senate to give our companies the right to sell machines.

Will you help us and help your town by Voting for

JAMES H. VAHEY

Candidate of the Independent Republicans and the Democrats

RICHARD H. LONG

DEFENDANTS' EXHIBIT 72.

[Put in Evidence, page 1344.]

[MEMO. By direction of counsel this exhibit — catalogue of The R. H. Long Machinery Company entitled "Shoe Machinery and Needles" — is not here printed as it is to be considered as a physical exhibit.]

DEFENDANTS' EXHIBIT 73.

[Put in Evidence, page 1345.]

[MEMO. By direction of counsel this exhibit — catalogue of The R. H. Long Machinery Company entitled "Waldorf Rapid Lockstitch and Repair Machines" — is not here printed as it is to be considered as a physical exhibit.]

DEFENDANTS' EXHIBIT 74.

[Put in Evidence, page 1386.]

E. BOTTOMLEY & Co.

Manufacturers of Misses', Children's, Boys' and Youths' Low Cuts

Boston Office: 18 Lincoln Street.

Haverhill, Mass., Jan 25 1904

United Shoe Machinery Co.

Gentlemen, We have carefully considered the matter about which your Mr. King was in to see us about the 21st inst and have concluded to continue using the Duplessis Sewing Machine. We also give notice that we shall not pay any royalty for shoes sewn on Machines leased to Eldridge & Demeritt hereafter as we have discontinued using the same. Respectfully yours

E. BOTTOMLEY & Co.

E. B.

DEFENDANTS' EXHIBIT 75.

[Put in Evidence, page 1441.]

A COMPLETE LINE FOR TURNS

We have a complete line of bottoming machinery for turned shoes, which we can install at short notice.

Haverhill, Mass., is the greatest center for the manu-

facture of turned shoes in the world, and about 50% of the turns made in Haverhill and vicinity, including a large portion of the finest shoes made in the world, are now being sewed on our Sewing Machine.

[Electro here of Turn Sewer and Welter]

The Haverhill (or Fox) Turn Sewer has been on the market for nearly three years and has been brought to a high state of perfection after ten years of experimental work under practical conditions in a large shoe factory. It forms a very smooth, uniformly tight, flat seam, (which will not rip or unravel,) when run at any speed, and to do this requires only a light tension, so that thread breakage is small. 1020 pairs of woman's fine turns, sewed heel seats, have been sewed on it in 8 hours when run at ordinary speed, and at 725 revolutions, at which speed it is sometimes run, it sews at a considerably faster rate. It runs with but slight vibration, the upkeep is small, and it is much easier to operate than any other machine. If the best is wanted, get this machine.

The Haverhill (or Fox) Turn-Sole Channeler, avoids injury to the between substance, does much better work and is twice as rapid as any other channeler. We have had this machine on the market for over five years and is too well known to almost every manufacturer of turned shoes to require description.

We also furnish a full line of Auxiliary Machines for Turn Shoes.

Our machines are put out on rental, or royalty, or are sold. We do not require tying clauses in our leases, as we believe these clauses to be invalid, in view of recent decisions of the courts.

HAVERHILL SHOE MACHINERY COMPANY, Haverhill, Mass.

—The Weekly Bulletin Supplement March 22, 1913

DEFENDANTS' EXHIBIT 76.

[Put in Evidence, page 1463.]

[MEMO. By direction of counsel this exhibit — catalogue of The Boylston Manufacturing Company entitled "Shoe Machinery" — is not here printed as it is to be considered as a physical exhibit.]

DEFENDANTS' EXHIBIT 77.

[Put in Evidence, page 1526.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes Newburyport, Mass.

Trade Mark Registered "Popular as the Sun".

Boston Office 137 Lincoln Street Telephone, 323 Oxford

July 29, 1911

Mr. Sidney W. Winslow, United Shoe Mach. Co., Boston, Mass.

Dear Sir:— The Boston News Bureau in its issue of July 26th prints a statement purporting to come from you stating that "The United Shoe Mach. Co., has consistently pursued the policy of giving the same treatment to large and small manufacturers alike."

If this is a fact why is it that we cannot get a line of Welt machinery put in our factory on the same terms that our competitors are having same installed by your company?

Your representative has told us that because we are running two Turn Sole Stitching machines made by a competing company to yours that it will be impossible for us to get our Welt machinery on the same basis as people who do not run these Turn Sole Stitching machines; and this notwithstanding the fact that our royalties on your Goodyear Turn Sole Stitcher so far this year have amounted to $815.73.

Up to this time we have always felt very well pleased with the treatment accorded us by your company, but in view of the above facts we feel that we are unjustly discriminated against.

We would be very glad to have you advise us what we would have to do in order to get a line of Welt machinery in on the same basis you are furnishing our competitors who use nothing but your machines.

Awaiting with interest your reply, we are,

Yours very truly,

Dict. G. A. L. GEO. A. LEARNED CO.

DEFENDANTS' EXHIBIT 78.

[Put in Evidence, page 1527.]

UNITED SHOE MACHINERY COMPANY,
President's Office, Lincoln and Kneeland Sts.
S. W. Winslow, President.

Boston, Mass. August 3, 1911.

George A. Learned Company, Newburyport, Mass.

Gentlemen: Replying to your favor of the 29th of July, in which you quote the following statement from the Boston News Bureau made by me:

"The United Shoe Machinery Company has consistently pursued the policy of giving the same treatment to large and small manufacturers alike."

and you ask:

"If this is a fact why is it that we cannot get a line of Welt machinery put in our factory on the same terms that our competitors are having same installed by your company?"

In reply to your inquiry I desire to say that there is no reason whatever why you cannot get a line of Welt machinery put into your factory upon exactly the same terms as any of your competitors, provided you are ready and willing to respect the contracts already existing between your company and this company, and the contracts that would be signed by you in relation to the line of Welt machinery if put into your factory.

In reference to your statement that you have paid us this year $815.73 royalty on our Goodyear Turn Sewing Machines, would say that you must be misinformed regarding the facts, because our records show that for the use of these machines (of which there are three) you have paid us $296.96 from January, 1911, up to the present time; the last payment being 45 cents for the month of June.

I should be very glad to arrange for an interview with you regarding this whole situation, and if you are violating your existing contracts with us from inadvertence or misunderstanding of

the facts, we shall be very glad to adjust it with you in an equitable manner.

Awaiting your reply, I remain Very truly yours,
SWW–NW S. W. WINSLOW President.

DEFENDANTS' EXHIBIT 79.

[Put in Evidence, page 1528.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes Newburyport, Mass.

Trade Mark Registered "Popular as the Sun"

Boston Office 137 Lincoln Street Telephone, 323 Oxford

Aug. 3, 1911.

Mr. Sidney W. Wilson, United Shoe Mach. Co. Boston, Mass.

Dear Sir:—On July 27th your Mr. Gray, connected with the Haverhill office, called on us in connection with a line of Welt machinery that we had considered putting in and which we had asked for a list of different machines together with the terms they are put in on. He informed us that you had two prices for putting these in, a wholesale and a retail price. On the wholesale basis the machines were installed practically free the only charge being on royalties. On the retail basis which was the one we would have to come under owing to the fact that we used the Haverhill Turn Sole Stitchers, the charge for installing a Welt line would be $3000.00. In addition to this the royalty on the Gem Innersoling which is rebated to other manufacturers who use your machines exclusively would not be rebated to us.

In the course of conversation he informed us that a previous agreement which we had made verbally for a price as a return charge on the Goodyear Stitchers would not hold and that it would cost between $400.00 and $500.00 to send back the two machines which we had ordered returned six weeks or two months ago at a return charge of $20.00 a piece.

On July 29th we wrote you asking what we would have to do to get a line of Welt machinery on the same basis that you are furnishing our competitors who use nothing but your machines.

We are very anxious to get this matter straightened out as we have a large new factory under construction which we will be shortly occupying and must plan our output for.

Trusting that you will favor us with the information required, we are, Yours very truly,

Dict. by G. A. L.

DEFENDANTS' EXHIBIT 80.

[Put in Evidence, page 1530.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes Newburyport, Mass.

Trade Mark Registered "Popular as the Sun"

Boston Office 137 Lincoln Street Telephone, 323 Oxford

Aug. 4, 1911

Mr. Sidney W. Winslow, United Shoe Mach. Co., Boston, Mass.

Dear Sir: — We are in receipt of your favor of the 3rd inst and note with pleasure your willingness to furnish us a line of Welt Machinery on the same terms that other manufacturers enjoy from you.

We would be pleased to interview you personally as you suggest, but the writer is leaving town today for two or three weeks. Allow us please to state briefly our position and then perhaps you can write us exactly what we will have to do to meet your requirements for the Welt line.

In the first place we never have run but two of your Goodyear Turn Stitchers. The third one was a new model sent us in exchange for one of our old Briggs Machines and your representative said he would have this old machine sent back and we would not have to bother with it at all. We have repeatedly asked him to have this done and he never has attended to it.

We later requested the return of the other Briggs machines at the return charge of $20.00 as agreed upon. This your representative agreed to do a long time ago but has not attended to same up to the present time. Under these conditions we are responsible for only one Goodyear machine.

The reason our Royalties have dropped off with you is because our business is a one season business and we never do much in the summer months. Our operator on the Goodyear Machine got through because there was not enough work to keep him busy. We can, of course, return this one machine if you so desire and run only the Fox Stitchers, but we had intended as soon as business starts up in the fall to get it going again.

We have not knowingly violated any contract with you and are of course entirely ignorant of what your Welt contracts call for.

Regarding the matter of royalties if you will refer to our letter of July 29th, we did not make the statement that we had paid you $815.73 but that our royalties had amounted to that. We quote herewith your bills: —

Jan. 2, 1911	221.76
Feb. 1, 1911	183.85
Mar. 1, 1911	95.85
Apr. 1, 1911	133.05
May 1, 1911	151.39
June 1, 1911	28.93
July 1, 1911	.90
Total	815.73

on which there is a discount of 50% if paid by the 15th of the month, which of course we took advantage of.

Will you please write us pointing out just where we are in error and what we will have to do to get the Welt Machinery on the same terms as our competitors.

Yours very truly,

Dict. by G. A. L. GEO. A. LEARNED Co.

DEFENDANTS' EXHIBIT 81.

[Put in Evidence, page 1530.]

UNITED SHOE MACHINERY COMPANY,

President's Office, Lincoln and Kneeland Sts.

S. W. Winslow, President.

Boston, Mass. August 4, 1911.

Geo. A. Learned Company, Newburyport, Mass.

Gentlemen: I beg to acknowledge receipt of letter under date of August 3d, unsigned but apparently dictated by "G. A. L."

I wrote you yesterday (August 3rd) in reply to yours of July 29th, and in reply to yours of the 3rd would say that I shall be very glad to arrange for an interview with you regarding this whole situation as previously stated.

I shall be away to-morrow, but shall be here from Monday noon, and if you communicate with me, by 'phone or otherwise, will arrange an appointment with you.

Yours very truly,

S. W. WINSLOW, President.

SWW-NW N. W.

DEFENDANTS' EXHIBIT 82.

[Put in Evidence, page 1530.]

UNITED SHOE MACHINERY COMPANY

President's Office, Lincoln and Kneeland Sts.

S. W. Winslow, President.

Boston, Mass. August 8, 1911.

Mr. George A. Learned, George A. Learned Company, Newburyport, Mass.

Dear Sir: Replying to your favor of August 4th, in which you state:

"We have not knowingly violated any contract with you, and are, of course, entirely ignorant of what your Welt contracts call for."

we call your attention to Clause 6 in your Goodyear Department Lease & License Agreement No. 6327, under date of the 29th day of January, 1907, and to Clause 4 in your General Department Lease & License No. 1456, under date of the 29th day of January, 1907.

In view of the statement made in your letter of August 4th, and quoted above, will suggest that, upon your return at the end of two or three weeks, you call upon the writer to the end that this whole subject may receive proper consideration and adjustment for the past and future operation of such machines as you may now have, or desire to have, from this Company.

Yours very truly,

SWW-NW S. W. WINSLOW President.

DEFENDANTS' EXHIBIT 83.

[Put in Evidence, page 1531.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes Newburyport, Mass.

Trade Mark Registered "Popular as the Sun"

Boston Office 137 Lincoln Street Telephone, 323 Oxford

Aug. 14, 1911

Mr. Sidney W. Winslow, Boston, Mass.

Dear Sir: — Your letter of Aug. 8th is before us. In view of the fact that our Mr. Learned expects to leave on a Western business trip almost immediately upon returning from his vacation we believe it would simplify matters if you would write us as per our request of Aug. 4th just what we must do, under the circumstances outlined so fully there, in order to obtain your Machinery for making Welts.

Trusting that you will give us this information, we are,

Yours very truly,

GEO. A. LEARNED CO.

DEFENDANTS' EXHIBIT 84.

[Put in Evidence, page 1532.]

UNITED SHOE MACHINERY COMPANY,

President's Office, Lincoln and Kneeland Sts.

S. W. Winslow, President.

Boston, Mass. August 15, 1911.

George A. Learned Company, Newburyport, Mass.

Gentlemen: Your favor of the 14th inst. at hand, in which you state:

"It would simplify matters if you would write us, as per our request of August 4th, just what we must do under the circumstances outlined so fully there, in order to obtain your machinery for making welts."

In reply to same I refer you to the following statement contained in my letter to Mr. Learned, under date of August 3rd:

"In reply to your inquiry I desire to say that there is no reason whatever why you cannot get a line of Welt machinery put into your factory upon exactly the same terms as any of your competitors, provided you are ready and willing to respect the contracts already existing between your company and this company, and the contracts that would be signed by you in relation to the line of Welt machinery if put into your factory."

and would say that we should be very glad to arrange for an interview if Mr. Learned desires any further information than that which is already contained in the correspondence between us.

We wish to state that if the George A. Learned Company desire to respect the contracts that already exist, we think such an interview would be very desirable, and, as we stated in our letter of August 3rd, we shall be very glad to adjust any differences that now exist in an equitable manner. We believe that this can only be done at a personal interview.

Very sincerely yours,

S. W. WINSLOW

SWW-NW

President.

DEFENDANTS' EXHIBIT 85.

[Put in Evidence, Page 1532.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes Newburyport, Mass.

Trade Mark Registered "Popular as the Sun"

Boston Office 137 Lincoln Street Telephone, 323 Oxford

August 21, 1911.

Mr. S. W. Winslow Boston Mass.

Dear Sir. — I have just returned from my trip, and if agreeable to you would like to make an appointment with you for some day, other than Saturday, this week.

It will give me pleasure to meet you any time at your convenience. Awaiting your reply I am Very truly yours

GEO. A. LEARNED.

DEFENDANTS' EXHIBIT 86.

[Put in Evidence, page 1535.]

UNITED SHOE MACHINERY COMPANY

Albany Building Boston, Mass.

E. P. Brown, General Manager Boston, August 28, 1911.

Mr. George A. Learned, George A. Learned Company, Newburyport, Mass.

Dear Sir: In accordance with promise made you in our interview of the 24th inst., I am attaching hereto a list of machines now in your possession under lease from us, with initial payments opposite each should you desire to change to the "Departmental" lease basis, and the General Department Machines now in your possession on "Loan" and "Lease Premium" leases, with outright sale prices opposite each.

I have not included the amounts now due under the Goodyear leases, or the charge for cancelation of same should you decide that you wish to discontinue the use of the Goodyear Turn Sewing Machine and Auxiliaries now in your possession, and I have not included the interest at 6% that we should charge you, or the credits for such initial payments as you may have made on your General Department Machines.

I also understand that our Mr. Meyer visited your factory on the 25th inst., and is to send one of our experts to thoroughly test the Model G Turn Sewing Machine immediately you resume work after stock taking, which I assume will be on Tuesday, September 5th.

Yours very truly,

EPB-NW E. P. BROWN, General Manager.

Dictated not read by Mr. E. P. Brown. N. W.

List of Machines Showing Initial Payment on the Departmental Undependent Lease, and Sale Prices on General Department Machines in the Factory of George A. Learned Company, Newburyport, Mass.

Machine name.	No.	Initial Payment.
Perfection Eyeleter	#1797	$100,00
McKay Heel Loading & Attaching Mch.	#3413	400.00
McKay Knife Grinder	#1266	25.00

Premier Heel Pricker	#202	150.00
McKay Heel Trimming & Randing Mch.	#2242	150.00
Ensign Lacing Machine	#100	250.00
Universal Slugging Machine	#149	250.00
Stamping Machine — Model R	#307	25.00
7½" Summit Splitting Machine — Model M	#698	75.00
Split Roll Buffing Machine — Model G	#348	75.00
Heel Scouring Machine — Model R	#631	65.00
Planet Sole Rounding Machine — Model C	#726	250.00
Imperial Heel Breasting Mach. — Model B	#832	200.00
Edge Trimming Machine — Model A	#5480	55.00
Tip Scouring Machine — Model G	#78	100.00
Twin Edge Setting Machine — Model R	#1192	150.00
Heel Breast Souring Machine — Model H	#461	50.00
Miller Twin Shoe Treeing Mach. — Model H	#6101	110.00
Empire Splitting Machine — Model C	#179	100.00
Heel Breast Scouring Mach. — " R	#1503	65.00
Telescope Hub	#2032	1.50

DEFENDANTS' EXHIBIT 87.

[Put in Evidence, page 1536.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes, Newburyport, Mass.

Trade Mark Registered "Popular as the Sun"

Boston Office, 137 Lincoln Street Telephone, 323 Oxford

Dec. 6, 1911

Mr. Sidney W. Winslow, Boston, Mass.

Dear Sir: — Mr. Endicott told me last evening that he thought you would appreciate my writing you saying how pleased I was to learn that you did not intend, in our interview of last August, to give me the impression that I went away with; viz that you would drive me out of business if I did not throw out the machines competing with yours.

As I now understand the situation it puts a better light on matters and I will try to overcome as best I can the impression I have been laboring under. Yours very truly,

GEO. A. LEARNED.

DEFENDANTS' EXHIBIT 88.

[Put in Evidence, page 1537.]

UNITED SHOE MACHINERY COMPANY,
President's Office, Lincoln and Kneeland Sts.
S. W. Winslow, President.

Boston, Mass., December 18, 1911.

Mr. George A. Learned, c/o George A. Learned Company, Newburyport, Mass.

Dear Sir: At your interview with me on December 5th (at which there were present Mr. H. B. Endicott and Mr. E. P. Brown, General Manager of our Company) you acknowledged that the statement which you made to Mr. Harriman, to Mr. Endicott's nephew, and others, to the effect that I had said to you, at our interview last August,

"that I would drive you out of business if you did not throw out the machines competing with ours"

was untrue, and that you had no foundation whatever for making such a statement.

You expressed a desire to, and intention of correcting the false statements that you had made to such parties as you had talked with on this subject. Under these circumstances I had expected to receive a frank apology from you. Your letter, therefore, of December 6th, is not such a letter as I had a right to expect to receive.

Very sincerely yours,

S. W. WINSLOW.

DEFENDANTS' EXHIBIT 89.

[Put in Evidence, page 1538.]

Geo. A. Learned A. E. Haines

GEO. A. LEARNED CO.

Manufacturers Hand Turned Shoes, Newburyport, Mass.
Trade Mark Registered "Popular as the Sun"
Boston Office 137 Lincoln Street Telephone, 323 Oxford

Dec. 20, 1911.

Mr. Sidney W. Winslow, United Shoe Mach. Co., Boston, Mass.

Dear Sir:—I am amazed at the statement contained in your letter of the 18th inst.

Not only did I not acknowledge that what I had said about our interview of last August was untrue, but I made it perfectly plain that I recalled substantially your exact words which were what I have always stated them to be.

Not only was my recollection correct, but you know that it was correct and your attempt to put me in the position of a self confessed liar failed absolutely.

My letter of Dec. 6th is exactly in accordance with my statements in the interview of Dec. 5th.

Yours very truly,

GEO. A. LEARNED.

DEFENDANTS' EXHIBIT 90.

[Put in Evidence, page 1678.]

16 SUPERINTENDENT AND FOREMAN Nov. 29, 1911.

Mr. Alex Stone representing Atlas Werke, Leipsic, Germany, is now in Boston.

This firm manufactures a complete line of —

Complete Line for McKay Shoes

SHOE MACHINERY

Complete Line for Welt Shoes

for welted and McKay Shoes — that can be bought outright.

If you wish to throw off the royalty yoke and be the owner of your own factory send your inquiry to

Mr. Alex Stone
537 Massachusetts Ave.
Tel. Trem. 876–R
Boston, Mass.

Machine spare parts will be carried in stock in Boston.

DEFENDANTS' EXHIBIT 91.

[Put in Evidence, page 1684.]

UNITED STATES HOTEL,
Tilly Haynes, Proprietor.

Boston, Febr. 24th, 1912.

Mr. John H. Connor Frankfurt a/M.

Dear Sir: As I am to sail for England on the 29th inst., and thence for Leipzig, Ger; where I expect to stay for about six weeks, would respectfully request you to send me any information you may have, concerning my own self and the German United in Frankfurt.

I should be very thankful to you if through your kindness would not have to come back to the U. S. to settle down for a certain number of years.

Awaiting your kind answer and oblige, yours truly,

ALEX STONE,
Leipzig R. Lipsius str. 1.

DEFENDANTS' EXHIBIT 92.

[Put in Evidence, page 1684.]

New York, 19th May 1912.

Mr. John H. Connor Boston, Mass.

Dear Sir:—Referring to my last call upon you I beg to give you my present address below.

Thanking you beforehand for your kind introduction and reply, I beg to remark that am prepared to start for Boston on call at any time. Very truly yours

ALEX STONE,
#1191 Boston Road, Bronx, New York.

DEFENDANTS' EXHIBIT 93.

[Put in Evidence, page 1685.]

UNITED STATES HOTEL,
Tilly Haynes, Proprietor.

Boston, Sept. 7th 1912.

Mr. John H. Connor c/o U. S. M. C. Boston, Mass.

Dear Sir: Referring to my last call upon you I beg to give you my New York address below.

Believe me sir I am real sorry to disturb you so often, knowing that your time is valuable. But thinking that I deserve your good will through the honest work I have done in Europe in the interest of the Consolidated Lasting Machine Co., induces me to take the liberty again to ask you for a suitable position with your Company.

You may rest assured that in return for your kindness I shall do my duty only.

Thanking beforehand, I remain, Yours truly

ALEX STONE,
c/o Ostrom
226 E. 53rd. str. New York.

DEFENDANTS' EXHIBIT 94.

[Put in Evidence, page 1685.]

37 Prospect str. Greenwich Conn. Sept. 17 1912.

Mr. John H. Connor Boston, Mass.

Dear Sir: Not having the luck to get a suitable position with your Company, I am trying to get one outside the shoe machinery trade.

As you have known me for the past 14 years, I have taken the liberty to give your address amongst others, to a concern in Detroit, Mich. as reference concerning my ability and character. I am to be engaged there to manage the European sale.

I would beg of you to say a few good words concerning my past record, for wich I shall allways be thankfull to you.

It is my intention to publish my opinion and expirience in the

Superintendent & Foreman regarding the existing shoe machinery question in Europe and will mention all the hardships shoe manufacturers are having with the so called non-royalty machines, as soon as I have succeeded to get the above mentioned position.

Under no circumstances will I represent the Atlas Works any longer than I can help it.

Thanking you for your kindness beforehand

I remain respectfully yours

ALEX STONE.

DEFENDANTS' EXHIBIT 95.

[Put in Evidence, page 1818.]

MEMORANDUM OF NET EARNINGS, DIVIDENDS PAID AND AMOUNTS CARRIED TO SURPLUS FOR YEARS ENDING MARCH 1, 1906 TO 1911 INCLUSIVE—UNITED SHOE MACHINERY COMPANY AND UNITED SHOE MACHINERY CORPORATION TOGETHER WITH THE NET ASSETS OF BOTH COMPANIES AT MARCH 1, 1905 TO 1910.

	Earnings Company	Earnings Corporation	Total Earnings	Cash Dividends Paid During Year	Balance Carried to Surplus	Net Assets Company & Corporation at March 1st of Previous Year	Rate Per Cent Total Earnings to Net Assets	Rate Per Cent Cash Dividends to Net Assets
1906	3322137 93	11912 87	3334050.80	1343666 99	2190383 81	27368808.07	12 91	4.91
1907	4183220.51	*16591.46	4166629.05	1929471.69	2237157.36	29716596 38	14.02	6.49
1908	4064616.27	* 3656 01	4060960 26	2209628 33	2451331 93	33100684 44	14.08	6.67
1909	4796971.66	33066 35	4830038 01	2392115 68	2437922.33	35632484.87	13 55	6.71
1910	5640521.85	37378.13	5678099.98	2974616 97	2703483.01	38070380.60	14.91	7.81
1911	5772142.56	37332.46	5809675.02	*3685891.30	2123783.72	40771821.61	14.25	9.04
		*Indicates Loss		*Includes extra Dividend				
Totals	28579610.78	99842.34	28679453.12	14535330 96	14144062.16			
Average Year	4763268 46	16640 39	4779908.85	2422565.16		34110631 49	14.01	7.10

Company's Surplus 3-1-05		6710914.07
Totals		20854976.23
Stock issued to capitalize portion of undivided surplus as follows:		
July, 1907	4464468.75	
April, 1909	2239245.00	
July, 1910	2463132.50	
		9166846.25
Balance not distributed or capitalized		11688129.98
Viz.—		
Company	5900533.51	
Corporation	5787596 47	
		11688129.98

DEFENDANTS' EXHIBIT 96.

[Put in Evidence, page 1864.]

Lease No. *1808* Turn Set. [Form 292.]

Transfer from *J. L. Morgan & Co.* Lease No. *1137*

This Lease and Agreement made at Boston, Massachusetts, this *3d* day of *June* A. D. 189*2*, by and between The Goodyear Shoe Machinery Company, a corporation established under the laws of the State of Connecticut, Lessor, and party hereto of the first part, and *Curtis Jones & Co., doing business in Reading, Penn.* Lessee, and party hereto of the second part, witnesseth:—

Whereas, the Lessor is the owner of or is licensed under the several Letters Patent of the United States, recited in the schedule following, viz.:—

SCHEDULE OF PATENTS.

No. 190,709, dated May 15, 1877.	No. 317,759, dated May 12, 1885.
No. 199,802, dated January 29, 1878.	No. 320,075, dated June 16, 1885.
No. 236,938, dated January 25, 1881.	No. 366,935, dated July 19, 1887.
No. 251,240, dated December 20, 1881.	No. 369,563, dated September 6, 1887.
No. 240,307, dated April 19, 1881.	No. 412,703, dated October 8, 1889.
No. 253,156, dated January 31, 1882.	No. 412,704, dated October 8, 1889.
No. 258,696, dated May 30, 1882.	No. 424,966, dated April 8, 1890.
No. 260,990, dated July 7, 1882.	No. 453,999, dated June 9, 1891.
No. 267,798, dated November 21, 1882.	No. 461,793, dated October 20, 1891.
No. 274,091, dated March 13, 1883.	No. 463,967, dated November 24, 1891.
No. 281,258, dated July 17, 1883.	No. 463,982, dated November 24, 1891.
No. 317,758, dated May 12, 1885.	

And, whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz.:—

SHEDULE OF MACHINES.

Goodyear Turn Machine , No. *529*
Turn Channeler , No.
Moulder , No.

The said machines being the property of the Lessor.

Now, therefore, the Lessor, in consideration of one dollar and

other valuable consideration to it paid by the Lessee, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said machines, or either or any of them, but upon the agreements and conditions hereinafter set forth ; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to any one in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon re-vest in the Lessor ;

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license : —

First. The Lessee hereby agrees to use, and is hereby licensed to use the machines hereby leased and the inventions patented as aforesaid only in his factory in *Reading* in the State of *Pennsylvania* and only in the manufacture of boots and shoes, and agrees to keep the said machines in working order at his own expense, and to purchase of the Lessor or its agents all parts for repairing the machines hereby leased, and agrees not to add to or subtract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, nor to remove or deface any dates, numbers, or inscriptions now or hereafter impressed thereon, or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient

access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to add improvements to the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions hereafter embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The following is the schedule of rents and royalties hereinafter referred to, and which it is understood and agreed is to be paid by the Lessee for each pair of shoes or boots respectively made by the aid of the machines hereby leased, or either or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, viz.:

SCHEDULE OF RENTS AND ROYALTIES FOR GOODYEAR TURNED WORK.

Children's	2	cents per pair.
Misses'	2	" "
Women's	3	" "
Youths'	3	" "
Boys'	3	" "
Men's	3	" "

Fourth. The Lessee hereby agrees to keep proper books of account, and make true and complete entries therein of all transactions relating to the manufacture and sale of all boots and shoes made by him, or by any other person for him or for others, by the aid of the machines hereby leased, or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, and to render an account thereof to the Lessor on or before the tenth day of each month, which account shall specify the number of pairs of boots and shoes made under this lease and license during the calendar month next preceding, and the class to which they belong according to the above schedule; and the Lessee agrees that he will require the operator or operators on said machines to keep a daily account of all boots and shoes made by the aid of said

machines upon the printed forms to be furnished by the Lessor, in duplicate, one copy of which, containing such reports for the calendar month next preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor, and, whenever required by the Lessor, to make oath to the correctness of said returns, and to allow the Lessor, by its agents or attorneys, to examine and take copies or extracts from the original book or books of account of the Lessee, and the accounts kept by the operator or operators as aforesaid; and the Lessee hereby agrees to send to the Lessor, on or before the tenth day of each month, in case the machines hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, marked across the face with the words, "not running" or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased, and as royalty for the use of the inventions patented as aforesaid as hereby licensed, the rent and royalty specified in the schedule forming part of Section Third herein, on each pair of boots or shoes of the respective kinds mentioned or described in said schedule, made by the aid of the said machines, or either or any of them, or by the use of the said inventions, or either or any of them, the rents and royalties for all such boots and shoes, made as aforesaid during one calendar month, to be due and payable on the first day of the calendar month next following, and to be paid within one month from that day; but the Lessor hereby agrees that **if the rents and royalties due on the first day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty per cent. from the rents and royalties specified in the schedule aforesaid.**

Sixth. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots or shoes known in the trade as "turns" or "turned work," and that he will not use, or permit the use of said machines, or either or any of them, upon boots or shoes of any other class, or for any other purpose, unless the consent in writing of the Lessor shall first have been obtained.

Seventh. The Lessee hereby agrees that he will not in any way violate or infringe, or contest the validity of any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents, or either or any of them.

Eighth. This lease and license is not assignable by the Lessee, by his own act or by operation at law.

Ninth. The following are also agreed to by the parties to this instrument as conditions of this lease and license: —

(*a*) That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machine embodying the patents aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or either or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the Lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer, or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire; and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent and royalty under this instrument.

(*b*) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, its successors or assigns, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon revest in the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successors or assigns, or its authorized agent or agents,

may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease and license.

(*c*) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein contained), until the expiration of all and every the Letters Patent referred to in the foregoing schedule of patents, or any extensions or renewals of the same; and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

Tenth. In case any other machines than these hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor, its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions, or improvements, and shall govern the parties respectively to the same extent as if the said machines, inventions, or improvements had been expressly included in this lease and license. The Lessor shall give written notice of its election as aforesaid after it shall have received written notice from the Lessee of the possession of such machines, but may give such notice without having received notice from the Lessee of the possession of such machines.

Eleventh. The Lessee agrees that he will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon the machines as aforesaid.

Twelfth. All the rights and interests which under this instrument, and by reason of the ownership of said machines and patents and patent rights belong to the Lessor, shall be deemed to belong to and may be enforced in the names of the Lessor and its succes-

sors and assigns, and all the agreements and conditions binding on the Lessee, shall be binding on his executors or administrators.

Thirteenth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural, as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally hereto.

In witness whereof the Lessor has caused these presents to be signed in its name, and its corporate seal to be affixed hereto by its Treasurer, and the Lessee has set his hand and seal hereto the day and year first above written.

[SEAL] GOODYEAR SHOE MACHINERY COMPANY,
By S. V. A. Hunter, Treasurer.
Lessee will please sign here. ☞ CURTIS JONES & Co. [SEAL]
Executed in duplicate.

DEFENDANTS' EXHIBIT 97.

[Put in Evidence, page 1865.]

[Attached to Defendants' Exhibit 97.]

1808

Lease No. *4152*, Turn Set, made between the Goodyear Shoe Machinery Company as lessor, and *Curtis Jones & Co. of Reading, Pa.* as lessee, dated *June 3d* 1892, is hereby amended as follows:—

Oct 16th 1897

The lessor hereby agrees that the rent and royalty to be paid by the lessee for Children's Turned Shoes, made after January 1, 1897, shall be 1 cent per pair, instead of 2 cents per pair as provided in

the Schedule of Section Third of said lease, on condition, however, that the lessee, while he retains possession of any machine leased to him by the lessor, shall not, without the consent in writing of the lessor, use, or allow to be used in his factory any sewing machine for uniting the soles of turned shoes to their uppers which is not leased to him by the lessor.

Executed in duplicate, *Oct 7th* 1897.

GOODYEAR SHOE MACHINERY COMPANY
by Geo. W. Randall Treasurer.

Lessee will sign here CURTIS JONES & Co.

Lease No. *4152* Turn Set.
Transfer from *Thomas H. Shinn* Lease No. *677*

This Lease and Agreement, made at Boston, Massachusstts, this *16th* day of *October* A. D. 1897, by and between Goodyear Shoe Machinery Company, a corporation established under the laws of the State of Maine, Lessor, and party hereto of the first part, and *Curtis, Jones & Co., doing business in Reading, Pa.* Lessee, and party hereto of the second part, Witnesseth: —

Whereas, the Lessor is the owner of or is licensed under the several Letters Patent of the United States, recited in the schedule following, viz.: —

SCHEDULE OF PATENTS.

No. 240,307, dated April 19, 1881.	No. 461,793, dated October 20, 1891.
No. 253,156, dated January 31, 1882.	No. 463,967, dated November 24, 1891.
No. 260,990, dated July 7, 1882.	No. 488,505, dated December 20, 1892.
No. 267,798, dated November 21, 1882.	No. 495,452, dated April 11, 1893.
No. 317,758. dated May 12, 1885.	No. 518,911, dated April 24, 1894.
No. 317,759, dated May 12, 1885.	No. 533,301, dated January 29, 1895.
No. 412,704, dated October 8, 1889.	No. 540,438, dated June 4, 1895.
No. 453,999, dated June 9, 1891.	No. 561,386, dated June 2, 1896.

And, whereas, the Lessee desires a license to use the inventions, or some of them, which are patented in and by the above-recited Letters Patent, and also desires a lease of the machines which are designated by their numbers in the schedule of machines following, viz.: —

SCHEDULE OF MACHINES.

Goodyear Turn Machine, No. *537*
Turn Channeler, No. *676*
Moulder, No. *389*
Turn Shoe Trimmer, No.

The said machines being the property of the Lessor: —

Now, therefore, the Lessor, in consideration of one dollar and other valuable consideration to it paid by the Lessee, the receipt of which is hereby acknowledged, and in further consideration of the agreements and conditions hereinafter contained, on the part of the Lessee to be kept and performed, doth lease unto the Lessee the machines designated by their numbers in the foregoing Schedule of Machines, and doth license the Lessee and the operatives in his employment to use the machines hereby leased, and also such of the inventions patented as aforesaid as are embodied in the said machines, or either or any of them, but upon the agreements and conditions hereinafter set forth; and this lease and license is granted by the Lessor and accepted by the Lessee on the express condition that the Lessee shall faithfully keep and perform all the agreements and conditions herein contained on his part to be kept and performed, and upon breach of the same, or either or any of them, by the Lessee, the Lessor, notwithstanding any express or implied waiver of any prior breach, may at its option cancel and terminate this lease and license, and upon written notice thereof by the Lessor to the Lessee or to any one in the possession or apparent control of the machines hereby leased, or either or any of them, this lease and license shall terminate, and possession of the said machines shall thereupon re-vest in the Lessor;

And the Lessee hereby agrees to keep and perform all the following conditions of this lease and license: —

First. The Lessee hereby agrees to use, and is hereby licensed to use, the machines hereby leased and the inventions patented as aforesaid only in his factory in *Reading* in the State of *Pennsylvania* and only in the manufacture of boots and shoes, and agrees to keep the said machines in working order at his own expense and to procure of the Lessor or its agents all parts for repairing the

machines hereby leased, and agrees not to add to or substract from the said machines any part or mechanism whatever, now or hereafter organized or connected therewith by the Lessor, nor to make nor allow to be made any change or alteration in the same, nor to remove or deface any dates, numbers or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. The Lessee hereby agrees to permit the agents and inspectors of the Lessor, at all reasonable times, to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to add improvements to the machines as the Lessor may see fit; and the agreements and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, and to all patented inventions hereafter embodied therein, with the same effect as if the patents therefor were included in the foregoing schedule of patents.

Third. The following is the schedule of rents and royalties hereinafter referred to, and which it is understood and agreed is to be paid by the Lessee for each pair of shoes or boots respectively made by the aid of the machines hereby leased, or either or any of them, or by the use of the inventions patented as aforesaid, or either or any of them, viz.: —

SCHEDULE OF RENTS AND ROYALTIES FOR GOODYEAR TURNED WORK.

Children's . . .	2 cents per pair.
Misses'	2 " "
Women's . . .	3 " "
Youths' . . .	3 " "
Boys'	3 " "
Men's	3 " "

Fourth. The Lessee hereby agrees to keep proper books of account, and make true and complete entries therein of all transactions relating to the manufacture and sale of all boots and shoes made by him, or by any other person for him or for others, by the aid of the machines hereby leased, or any of them, or by the use of

the inventions patented as aforesaid, or either or any of them, and to render an account thereof to the Lessor on or before the tenth day of each month, which account shall specify the number of pairs of boots and shoes made under this lease and license during the calendar month next preceding, and the class to which they belong according to the above schedule of rents and royalties; and the Lessee agrees that he will require the operator or operators on said machines to keep a daily account of all boots or shoes made by the aid of said machines upon the printed forms to be furnished by the Lessor, in duplicate, one copy of which, containing such reports for the calendar month next preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor, and, whenever required by the Lessor, to make oath to the correctness of said returns, and to allow the Lessor, by its agents or attorneys, to examine and take copies or extracts from the original book or books of account of the Lessee and the accounts kept by the operator or operators as aforesaid; and the Lessee hereby agrees to send to the Lessor, on or before the tenth day of each month, in case the machines hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, marked across the face with the words "not running", or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased, and as royalty for the use of the inventions patented as aforesaid as hereby licensed, the rent and royalty specified in the schedule forming part of Section Third herein, for each pair of boots or shoes of the respective kinds mentioned or described in said schedule, made by the aid of the said machines, or either or any of them, or by the use of the said inventions, or either or any of them; the rents and royalties for all such boots and shoes, made as aforesaid during one calendar month, to be due and payable on the last day of the calendar month next following; but the Lessor hereby agrees that, **if the rents and royalties due on the last day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a dis-**

count of fifty per cent. from the rents and royalties specified in the schedule aforesaid.

Sixth. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots or shoes known in the trade as "turns" or "turned work," and that he will not use or permit the use of said machines, or either or any of them, upon boots or shoes of any other class, or for any other purpose, unless the consent in writing of the Lessor shall first have been obtained, and that he will not use, or permit the use, in his factory, of any sewing machine for uniting the soles of turn shoes to their uppers which is not leased to him by the Lessor, unless the consent in writing of the Lessor shall first have been obtained.

Seventh. The Lessee hereby agrees that he will not in any way violate or infringe, or contest the validity of, any of the patents under which he is hereby licensed, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents, or either or any of them.

Eighth. This lease and license is not assignable by the Lessee, by his own act or by operation of law.

Ninth. The following are also agreed to by the parties to this instrument as conditions of this lease and license: —

(a) That the power conveyed by this lease is only the right to use the said machines, and not the right to make or sell any machines embodying the patented inventions aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or either or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the Lessee is or becomes at any time insolvent or bankrupt, or shall make an assignment for the benefit of his creditors, or if a sale, lease, transfer or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire, and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repay-

ment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent and royalty under this instrument.

(b) That in case the Lessee refuses or neglects to perform, or violates, any of the conditions in this lease and license contained, the Lessor, its successors or assigns, notwithstanding any express or implied waiver of any prior breach, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon revest in the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successors or assigns, or its authorized agent or agents, may thereupon enter any premises where said machines may be, and may take and remove them, and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license.

(c) That this lease and license shall continue (provided the Lessee complies with the agreements and conditions herein contained) until the expiration of all and every the Letters Patent referred to in the foregoing Schedule of Patents, or any extensions or renewals of the same, and upon the expiration thereof the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased in good order, natural wear and tear alone excepted.

Tenth. In case any other machines than those hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor, its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions or improvements and shall govern the parties respectively to the same extent as if the said machines, inventions or improvements had been expressly included in this lease and license. The Lessor shall give written notice of

its election as aforesaid after it shall have received written notice from the Lessee of the possession of such machines, but may give such notice without having received notice from the Lessee of the possession of such machines.

Eleventh. The Lessee agrees that he will not disturb or interfere with, nor permit anyone else to disturb or interfere with, any indicator which now is or which may be hereafter placed upon the machines as aforesaid.

Twelfth. All the rights and interests which, under this instrument, and by reason of the ownership of said machines and patents and patent rights, belong to the Lessor, shall be deemed to belong to and may be enforced in the names of the Lessor and its successors and assigns, and all the agreements and conditions binding on the Lessee shall be binding on his legal representatives.

Thirteenth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and, in case the Lessee shall require more than one machine, it is agreed that the termination of words relating to the machines shall be construed and considered as written in the singular or plural as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally hereto.

In witness whereof, the Lessor has caused these presents to be signed in its name, and its corporate seal to be affixed hereto by its Treasurer, and the Lessee has set his hand and seal hereto the day and year first above written.

GOODYEAR SHOE MACHINERY COMPANY,

[SEAL] by Geo. W. Randall, Treasurer.

Lessee will sign here. ☞ CURTIS JONES & Co.

Executed in Duplicate.

DEFENDANTS' EXHIBIT 98.

[Put in Evidence, page 1866.]

CURTIS, JONES & Co.

Manufacturers of Infants' and Children's Turned Shoes

Fred W. Curtis Fred S. Jones

Fat Baby Factory No. 1, Reading, Pa.

Our [electro] Shoe Factory No. 2, Hamburg, Pa.

Boston Office, 66 Lincoln St.

Reading, Pa., Jan. 17th 1902

United Shoe Mch. Co., Albany Bldg. Boston Mass.

Gentlemen: — Please change all our leases to the modified lease as per arrangement made with manufacturers committee some months ago, and oblige Yours truly,

C. J. & Co.

Per Shinn.

DEFENDANTS' EXHIBIT 99.

[Put in Evidence, page 1867.]

Jan. 23, 1902.

Messrs. Curtis, Jones & Co., Reading, Pa.

Gentlemen: — Replying to your letter of January 17th, in which you ask us to change your leases of the Metallic department to the Independent lease, I will quote as follows from the Rider, which we agree, upon request, to attach to the United form of lease which you now hold.

"The lessee, if not in default in any respect with any of the conditions, agreements, stipulations, and provisions in the lease No. granted by the undersigned for certain Metallic department machinery, upon giving at least thirty days notice in writing of his intention so to do, shall have the privilege of surrendering this United lease and license at any time before February 1st, 1902, by executing the Independent form of lease and license agreement in respect to the leased machinery."

You will see from this that the time for changing from the United to the Independent form of lease has really passed, but we are willing that you should make the change now if you desire to,

and we enclose you herewith copy of the Independent form of lease for your signature. Yours truly,

UNITED SHOE MACHINERY COMPANY,

CHW-J Enclosure. Asst. Gen. Mgr.

DEFENDANTS' EXHIBIT 101.

[Put in Evidence, page 2088.]

CIRCUIT COURT OF THE UNITED STATES,
DISTRICT OF MASSACHUSETTS.

IN EQUITY.

JAMES W. BROOKS and FRANK F. STANLEY, Trustees of the McKay Metallic Fastening Association,

v.

ALBERT VAN WAGENEN, LOUIS GODDU, LOUIS H. GODDU, NAPOLEON GODDU, GEORGE GODDU, WILLIAM GODDU, ELOIE GODDU, the GODDU SONS METAL FASTENING COMPANY, and GEORGE N. SMALLEY.

BILL OF COMPLAINT.

To the Honorable the Judges of the Circuit Court of the United States in and for the District of Massachusetts:

James W. Brooks of Petersham in the state of Massachusetts, and Frank F. Stanley of Swampscott in said state of Massachusetts, trustees of the McKay Metallic Fastening Association, under a declaration of trust dated the 9th day of June, 1877, both being citizens of the said state and of the United States, bring this bill of complaint against Louis Goddu, Louis H. Goddu, Napoleon Goddu, George Goddu, William Goddu, Eloie Goddu, all of Winchester in said state, and against Albert Van Wagenen of Newton in said state, and George N. Smalley of Westboro in said state, all of said defendants being inhabitants of said state and the district aforesaid; and also against the Goddu Sons Metal Fastening Company, a corporation duly organized under the laws of the state of Maine, said corporation having committed acts of infringement in the said state of Massachusetts and district of Massachusetts, and having a regular and established place of business in said state of Massachusetts and district of Massachusetts.

And thereupon your orators complain and say, on information and belief, —

That on and prior to the twenty-sixth day of September A. D. 1882, Louis Goddu of Winchester in the commonwealth of Massachusetts was the original and first inventor of a certain new and useful improvement in machines for driving sole-fastenings, not in public use or on sale for more than two years prior to his application for a patent next hereinafter mentioned, and not known or used by others in this country or patented or described in any printed publication in this or any foreign country before his invention thereof, and not abandoned; and that, being such original and first inventor, the said Louis Goddu, before the said twenty-sixth day of September A. D. 1882, made application in due form of law to the Commissioner of Patents of the United States for Letters Patent for the said invention, and duly swore to the specification thereof, and the said Louis Goddu, by an assignment in writing, duly executed on the first day of June A. D. 1882, and recorded in the United States Patent Office on the second day of October A. D. 1882, assigned said application, the invention therein contained, and the Letters Patent which might be granted therefor, to Gordon McKay, then of Newport in the state of Rhode Island, and James W. Brooks, then of Cambridge in the commonwealth of Massachusetts, respectively, principal and associate trustees of the McKay Metallic Fastening Association of Boston, their successors and assigns, and requested the Commissioner of Patents to issue the Letters Patent that might be granted for the said invention to the said McKay and Brooks, as said trustees. And such proceedings were had that, on the said twenty-sixth day of September A. D. 1882, Letters Patent of the United States numbered 265,227 were granted on the said application for the said invention therein described and claimed, to the said Louis Goddu, his heirs or assigns, in conformity with the requirements of the statutes in such case made and provided; and the said Letters Patent in their terms granted to the said Goddu, his heirs or assigns, for the term of seventeen years from the said twenty-sixth day of September A. D. 1882, the exclusive right to make, use, and vend throughout the

United States and the territories thereof the invention therein described and claimed, referring to the specification for further particulars thereof; and your orators bring here into court a duly authenticated copy of said Letters Patent, and pray that the same may be taken as a part of this bill.

And your orators further aver on information and belief that, under and in accordance with the terms of the said declaration of trust dated the ninth day of June A. D. 1877, they are the true and lawful successors of the said McKay and Brooks, trustees, and that by virtue of the said assignment the said McKay and Brooks then became, on said twenty-sixth day of September A. D. 1882, and your orators, as successors in the said trust of the said McKay and Brooks, subsequently thereto, but prior to the infringement hereinafter complained of, became, and your orators ever since have been and are now, entitled to and possessed of the full and exclusive right and liberty to make, construct, use, and vend to others to be used, the aforesaid invention within and throughout the United States and the territories thereof, as in and by said assignment, or a certified copy thereof here in court to be produced, will more fully appear.

And your orators further aver on information and belief that on and prior to the 29th day of May A. D. 1888, Louis Goddu of Winchester in the commonwealth of Massachusetts was the original and first inventor of a certain new and useful improvement in nailing-machines, not in public use or on sale for more than two years prior to his application for a patent next hereinafter mentioned, and not known or used by others in this country, or patented or described in any printed publication in this or any foreign country before his invention thereof, and not abandoned; and that, being such original and first inventor, the said Louis Goddu, before the said 29th day of May A. D. 1888, made application in due form of law to the Commissioner of Patents of the United States for Letters Patent for his said invention, and duly swore to the specification thereof, and assigned said invention and application, and the Letters Patent that should be granted on said application, to James W. Brooks, then of Cambridge in the commonwealth of Massachusetts,

in trust for the McKay Metallic Fastening Association of Boston in said commonwealth, and requested the Commissioner of Patents to issue the Letters Patent that should be granted on said application to the said James W. Brooks, trustee as aforesaid. Whereupon such proceedings were had that, on the said 29th day of May A. D. 1888, Letters Patent of the United States numbered 383,455 were granted on the said application for the invention therein described and claimed, to the said James W. Brooks, as trustee as aforesaid, as assignee of the said Louis Goddu, in conformity with the requirements of the statutes in such case made and provided; and the said Letters Patent in their terms granted to the said James W. Brooks as trustee, his successors and assigns, for the term of seventeen years from said last-mentioned day, the exclusive right to make, use, and vend the invention therein described and claimed throughout the United States and the territories thereof, referring to the specification for the particulars thereof; and your orators bring here into court a duly authenticated copy of said Letters Patent, and pray that the same may be taken as a part of this bill.

And your orators further aver on information and belief that by a valid assignment duly recorded in the office of the Commissioner of Patents of the United States, all the right, title, and interest of the said James W. Brooks as trustee in and to the said Letters Patent, and in and to the invention secured by said Letters Patent, became vested in your orators, and your orators then became, and ever since have been, and now are, entitled to and possessed of the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the aforesaid invention within and throughout the United States and the territories thereof; and that by the said assignment all claims and demands, either at law or in equity, which the said James W. Brooks as trustee had at the date of the said assignment, or might thereafter acquire, on account of any infringement of the said Letters Patent prior to the date of the said assignment, were duly assigned and secured to your orators, as in and by the said assignment, or a certified copy thereof, here in court to be produced, will more fully appear.

And your orators further aver on information and belief that on

and prior to the tenth day of July A. D. 1888, Louis Goddu of Winchester in the commonwealth of Massachusetts was the original and first inventor of a certain new and useful improvement in boot and shoe nailing machines, not in public use or on sale for more than two years prior to his application for a patent next hereinafter mentioned, and not known or used by others in this country or patented or described in any printed publication in this or any foreign country before his invention thereof, and not abandoned; and that, being such original and first inventor, the said Louis Goddu, before the said tenth day of July A. D. 1888, made application in due form of law to the Commissioner of Patents of the United States for Letters Patent for his said invention, and duly swore to the specification thereof, and assigned said invention and application, and the Letters Patent which should be granted on said application, to your orators, the said James W. Brooks, then of Cambridge in the commonwealth of Massachusetts, as trustee, and the said Frank F. Stanley of Swampscott in said commonwealth, as associate trustee, of the McKay Metallic Fastening Association of Boston in said commonwealth, and requested the Commissioner of Patents to issue the Letters Patent that should be granted on said application to your orators as trustees as aforesaid. Whereupon such proceedings were had that, on the said tenth day of July A. D. 1888, Letters Patent of the United States numbered 385,802 were granted on the said application for the invention therein described and claimed, to your orators, the said James W. Brooks, trustee, and the said Frank F. Stanley, associate trustee, as assignees of the said Louis Goddu, in conformity with the requirements of the statutes in such case made and provided; and the said Letters Patent in their terms granted to your orators, the said James W. Brooks, trustee, and the said Frank F. Stanley, associate trustee, their successors or assigns, for the term of seventeen years from the said tenth day of July A. D. 1888, the exclusive right to make, use and vend throughout the United States and the territories thereof, the invention therein described and claimed, referring to the specification for the particulars thereof; and your orators bring here into court a duly authen-

ticated copy of said Letters Patent, and pray that the same may be taken as a part of this bill.

And your orators further aver on information and belief that ever since the issue of said Letters Patent, they have been, and now are, entitled to and possessed of the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the aforesaid invention within and throughout the United States and the territories thereof.

And your orators further aver on information and belief that on and prior to the twenty-seventh day of November A. D. 1883, William P. Hopkins, then of Lawrence in the commonwealth of Massachusetts, was the original and first inventor of a certain new and useful improvement in nailing-machines, not in public use or on sale for more than two years prior to his application for a patent next hereinafter mentioned, and not known or used by others in this country, or patented or described in any printed publication in this or any foreign country before his invention thereof, and not abandoned; that, being such original and first inventor, the said William P. Hopkins, before the said twenty-seventh day of November A. D. 1883, made application in due form of law to the Commissioner of Patents of the United States for Letters Patent for his said invention, and duly swore to the specification thereof, and assigned his said invention and application, and the Letters Patent that should be granted on said application, to Gordon McKay, then of Newport in the state of Rhode Island, and James W. Brooks, then of Cambridge in the commonwealth of Massachusetts, trustees of the McKay Metallic Fastening Association, and requested the Commissioner of Patents to issue the Letters Patent that should be granted on said application to the said McKay and Brooks, trustees. Whereupon such proceedings were had that, on the said twenty-seventh day of November A. D. 1883, Letters Patent of the United States numbered 289,103 were granted on the said application for the invention therein described and claimed, to the said McKay and Brooks, trustees, as assignees of the said William P. Hopkins, in conformity with the requirements of the statutes in such case made and provided; and the said Letters Patent in their

terms granted to the said McKay and Brooks, as trustees, their successors or assigns, for the term of seventeen years from the said twenty-seventh day of November A. D. 1883, the exclusive right to make, use, and vend throughout the United States and the territories thereof the invention therein described and claimed, referring to the specification for the particulars thereof; and your orators bring here into court a duly authenticated copy of the said Letters Patent, and pray that the same may be taken as a part of this bill.

And your orators further aver on information and belief that they are the true and lawful successors as aforesaid of the said McKay and Brooks, trustees, and that by reason of being such successors they became, prior to the infringement hereinafter complained of, and ever since have been, and now are, entitled to and possessed of the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the aforesaid invention within and throughout the United States and the territories thereof.

And your orators further aver on information and belief that, prior to the eighteenth day of January A. D. 1887, Henry Dunham, then of Abington in the commonwealth of Massachusetts, was the original and first inventor of a certain new and useful improvement in boot or shoe nailing machines, not in public use or on sale for more than two years prior to his application for a patent next hereinafter mentioned, and not known or used by others in this country, or patented or described in any printed publication in this or any foreign country before his invention thereof, and not abandoned; and that, being such original and first inventor, the said Henry Dunham, before the said eighteenth day of January A. D. 1887, made application in due form of law to the Commissioner of Patents of the United States for Letters Patent for his said invention, and duly swore to the specification thereof; and thereafter, but before Letters Patent issued on his said application, he, the said Henry Dunham, died; and thereafter his administratrix, Ella B. Dunham, assigned his said invention and application, and the Letters Patent that should be granted on said application, to Henry S. Jenkins of Boston in the commonwealth of Massachusetts, trustee

for the Clinching Screw Company. Whereupon such proceedings were had that, on the said eighteenth day of January A. D. 1887, Letters Patent of the United States numbered 356,107 were granted on the said application for the invention therein described and claimed to the said Henry S. Jenkins, trustee, as assignee of the said Ella B. Dunham, administratrix, in conformity with the requirements of the statutes in such case made and provided; and the said Letters Patent in their terms granted to the said Henry S. Jenkins, trustee, his successors or assigns, for the term of seventeen years from the said eighteenth day of January A. D. 1887, the exclusive right to make, use, and vend the invention therein described and claimed throughout the United States and the territories thereof, referring to the specification for the particulars thereof; and your orators bring here into court a duly authenticated copy of said Letters Patent, and pray that the same may be taken as a part of this bill.

And your orators further aver on information and belief that, by valid assignments duly recorded in the office of the Commissioner of Patents of the United States, all the right, title, and interest of the said Henry S. Jenkins, trustee, and of the said Clinching Screw Company, for which the said Henry S. Jenkins held the said Letters Patent in trust, in and to the said Letters Patent and in and to the invention secured by said Letters Patent, became vested in your orators prior to the infringement herein complained of, and your orators then became, and ever since have been, and now are, entitled to and possessed of the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the aforesaid invention within and throughout the United States and the territories thereof, as in and by said assignments, or certified copies thereof here in court to be produced, will more fully appear.

And your orators further aver on information and belief that the said several inventions for which the said several Letters Patent were granted are capable of conjoint use in one and the same machine, and that all of said inventions have been so conjointly used

in the machines constructed, used, or sold by the defendants, as hereinafter complained of.

Your orators further show on information and belief that they and their predecessors in title have invested and expended large sums of money, and have been to great trouble and expense in and about the said several inventions and in the manufacture of machines embodying the several inventions described and claimed in the said several Letters Patent; that the said several inventions have been and are of great benefit and advantage to the public, and that the public generally have acquiesced in the rights of your orators and their predecessors in title, as secured by the said several Letters Patent, except for the infringement hereinafter set forth, and that the said several inventions have been of great profit to your orators; and that your orators are engaged in making and leasing to shoe manufacturers, or otherwise disposing of machines constructed according to and embodying the several inventions shown and described in the said several Letters Patent, and are able to make and fill all demands for such machines on the part of the public and persons desiring to use the same, throughout the United States and the territories thereof; and your orators will continue to make and to lease and otherwise dispose of large numbers of such machines, and realize great profits therefrom unless interfered with by the unlawful acts of the said defendants, as hereinafter set forth; and that the infringement by the defendants hereinafter set forth has done and still is doing, great and irreparable damage to your orators, and deprives your orators of great gains and profits to which they are justly entitled under the law, and which they would surely receive except for the unlawful acts of the said defendants, and encourages other persons to use the said several inventions in infringement of your orators' rights under the said several Letters Patent, to the great and irreparable detriment of your orators.

Yet that the said several defendants, well knowing the premises, and the rights and privileges as aforesaid secured to your orators by the said several Letters Patent, but contriving to injure your orators and deprive them of the profits, benefits, and advantages which might and otherwise would have accrued to them from the

said several Letters Patent, have since the first day of October 1895, within the said district of Massachusetts, and elsewhere within the United States and territories thereof, unlawfully, wrongfully, and without license of your orators made, constructed, used, sold, or leased, and are still making, constructing, using, selling, leasing, and intending to make, use, and sell or otherwise dispose of to shoe manufacturers, machines constructed according to and containing the said several inventions patented in and by the said several Letters Patent, in violation and infringement of the aforesaid rights and privileges of your orators, but how many of the infringing machines the defendants have so made, constructed, used, or sold, or are now making, constructing, using, or selling, your orators are ignorant and cannot set forth, but they aver that the said defendants have derived and received and are still deriving and receiving, from the said construction, use, or sale, great gains and profits, but to what amount your orators are ignorant and cannot set forth, and your orators pray that the said defendants may be required to make a disclosure of all such gains and profits.

And your orators aver that the defendants are prepared and ready to continue such infringement, and threaten so to do; and will do so unless they are restrained from so doing by this honorable court, and your orators will suffer great and irreparable damage from the said unlawful acts of the said defendants.

And your orators aver that they and their predecessors in title, and all persons making or vending the machines or mechanisms patented by the said several Letters Patent for or under your orators or their predecessors in title, have given sufficient notice to the public that all articles made, used, or vended, or otherwise disposed of by your orators or their said predecessors in title, or made, or sold for or under your orators or their said predecessors in title, and patented in and by the said several Letters Patent, are patented by fixing thereon the word "Patented", together with the days and years on which the said several Letters Patent were granted respectively, or when, from the character or the article, this could not be done, by affixing to it or to the package wherein one or more of said articles were enclosed, a label containing the like notice.

And your orators further aver that the said defendants were duly notified of the said infringement herein complained of, and that the defendants have continued after such notice to make, use, and vend or otherwise dispose of machines infringing each of said several Letters Patent.

Your orators further complain and say that the McKay Metallic Fastening Association was formed on the 9th day of June, 1877, by the execution of a trust deed or declaration, and that under said trust deed Gordon McKay became the principal trustee and your orator James W. Brooks the associate trustee, and in accordance with the terms of said trust deed the principal trustee was vested with authority to transact the business of the Association under the direction of an executive committee composed of five shareholders of the Association, and also by the terms of said instrument the principal trustee was given authority to sign the name of the associate trustee to all transfers of patents, licenses, leases, and instruments whatsoever.

Thereafter, on the 13th day of July, 1884, the said Gordon McKay resigned as principal trustee, and your orator James W. Brooks became principal trustee in his place, and your orator Frank F. Stanley became associate trustee, and from and ever since the said last-mentioned date your orator James W. Brooks has been the principal trustee of the Association, having the executive control and management of the business, and your orator Frank F. Stanley has been the associate trustee.

Your orators further say that the said McKay Metallic Fastening Association was formed for the purpose of developing certain inventions and machines of the defendant Louis Goddu for inserting screws into the soles of boots and shoes, and also to develop certain tacking machines of the defendant Goddu which were adapted to drive a fastening for holding or securing together certain parts of a boot or shoe.

Your orators further aver that prior to the formation of said McKay Metallic Fastening Association the defendant Louis Goddu had made a number of inventions relating to machines for inserting metallic fastenings, and taken out Letters Patent of the United

States therefor, and had constructed or caused to be constructed machines embodying his inventions, including machines for inserting screws in the soles of boots and shoes, and also including cable-wire tacking machines for fastening the outer soles of boots and shoes to the uppers and inner soles, and for other kindred uses in the manufacture of boots and shoes.

These inventions and machines, embodying the inventions of the said defendant Louis Goddu, had been assigned by the said Louis Goddu to a corporation named the American Cable Screw Wire Company. On the 9th day of June, 1877, the said Gordon McKay, as the principal trustee of the McKay Metallic Fastening Association, and your orator the said James W. Brooks, as the associate trustee of said Association, bought from the said American Cable Screw Wire Company all the inventions, patents, and machines of the said defendant Goddu which had been assigned by him as aforesaid to the American Cable Screw Wire Company and also took over from the American Cable Screw Wire Company certain inventions and patents of the defendant Van Wagenen which had been assigned by the defendant Van Wagenen to the American Cable Screw Wire Company.

Your orators further aver that the said defendant Louis Goddu had shown rare inventive genius in inventing, originating, and developing these metallic-fastening machines, and that it was essential, if the said McKay Metallic Fastening Association was to carry on the business of developing and pefecting the said defendant Louis Goddu's machinery, that it should have the said Louis Goddu's future inventions relating to machines for driving metallic fastenings, and should secure his services as inventor to perfect his machines. Accordingly the said McKay and your orator the said Brooks, as trustees of the said Association, on the 9th day of June, 1877, purchased from the said defendant Louis Goddu personally, all future inventions which he should make for seventeen years relating to metallic fastenings or metallic-fastening machinery. Since the said 9th day of June, 1877, your orators have purchased from the said Louis Goddu all the metallic-fastening inventions made by him during his life, so that your orators are now, and

have been ever since the formation of the said Association, entitled to all inventions relating to metallic fastenings or metallic-fastening machines made by the said Louis Goddu. Besides thus purchasing the future metallic-fastening inventions of the defendant Louis Goddu, the trustees of the McKay Metallic Fastening Association also entered into a contract with Louis Goddu to secure his services as inventor to develop and perfect his machines acquired by the Association as aforesaid. By this contract, dated the 18th day of August, 1877, the defendant Louis Goddu promised to work for the McKay Metallic Fastening Association as inventor, and to use his best endeavors, faithfully, properly, economically, and in a good and workmanlike manner, to invent, devise, and construct metallic-fastening machinery. The said Louis Goddu has been paid by the Association for his services as inventor, large amounts of money in each year, and the total sum thus paid Louis Goddu by your orators as trustees for the Association exceeds two hundred and fifty thousand dollars.

Your orators further say that the plan of business adopted by the said McKay Metallic Fastening Association was to lease its patented machinery to shoe manufacturers in the United Stated and Canada, and to sell its machinery in other foreign countries. In the leases for all machines leased and licensed for use in the United States and Canada, shoe manufacturers have always agreed to purchase from the Association the fastening material used in the machines thus leased by the Association, and as it is agreed in the lease and license that the fastening material thus purchased by the licensees of the Association shall be sold by the Association at prices considerably above the cost of the fastening material, the Association in this way has obtained from the manufacturers a license fee or royalty for the use of its leased patented machinery.

Your orators further aver that, as the said Goddu machines originally taken over by the Association as aforesaid from the American Cable Screw Wire Company have continued to be developed and improved by the embodiment therein of further inventions of the said Louis Goddu, and as the Association has begun to lease to shoe manufacturers additional machines subsequently invented and devel-

oped by the said Louis Goddu, the business of the Association has steadily increased in size until, at the present time, the Association has over five thousand machines out under lease and license to shoe manufacturers in the United States and Canada, and is making sales of metallic-fastening material to its licensees at the rate of over three million pounds per year, and the gross receipts from the business of the Association exceed a million dollars per year.

Your orators further aver that simultaneously with the numerous inventions which have been made from time to time by the defendant Louis Goddu relating to machines for driving metallic fastenings, the said Louis Goddu, as the inventor of the Association, has made many inventions relating to new and improved metallic fastenings, and the said Louis Goddu, as the inventor of the Association, has made also many inventions relating to machinery for the production of the metallic fastenings sold by the Association to shoe manufacturers for use in the machines of the Association leased and licensed to them.

Your orators further say that upon the purchase of the Goddu and Van Wagenen inventions and patents from the American Cable Screw Wire Company, as above described, the defendant, the said Albert Van Wagenen, entered the employ of the Association and for some years previous to October 1, 1895, when Van Wagenen voluntarily left the employ of your orators, he occupied a position of confidence in the Association, — one of his especial duties being to see that the various inventions which the said Louis Goddu made from time to time as the inventor of the Association were duly patented. In this way the said Van Wagenen obtained a complete and thorough knowledge of the metallic-fastening art, and especially a knowledge of the large number of patents belonging to your orators, and the validity and scope of the claims thereof. And your orators further aver that it was customary for the defendant Van Wagenen, acting in this confidential capacity, to keep himself constantly informed as to just what improvements were being devised and invented by the said Louis Goddu, and to make it a part of his duty always to accompany the defendant Louis Goddu to the patent solicitor of the Association for the purpose of aiding the said Goddu

in expressing his ideas and in preparing his applications for Letters Patent. And your orators aver that because he thus served the Association in this confidential capacity, the defendant Van Wagenen succeeded in maintaining the most intimate relationship between himself and the said Louis Goddu, and at the same time obtained a detailed knowledge of the large number of patents belonging to the Metallic Association, and of the meaning and scope of the claims therein, and of the state of the patented art, which was and is today more extensive than the knowledge of any other person in the employ of the Association.

Your orators further aver that as the five sons of the defendant Louis Goddu grew up one by one, they were, at the request of their father, taken into the employ of the Association, and these five sons, who are the defendants Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu, and George Goddu, were almost entirely engaged, while thus employed by the Association, in assisting their father, first, to embody his inventions in the wooden patterns which he was accustomed to make, and then to aid him in assembling and getting into running order the first experimental machine made from these patterns, so as to reduce the inventions of their father to practice and to make a machine perfect in design and detail so that its manufacture could be readily undertaken in large quantities.

Your orators further aver that during all the years that these five sons of the defendant Louis Goddu were in the employ of the Association, although they were working nearly all the time in the inventive department of the business, and most of the time in the very room where their father was making his inventions, and were thus placed under the most favorable conditions possible, and moreover had the strongest pecuniary incentives to make inventions in the metallic-fastening line, yet in fact, as your orators are informed and believe, the said five sons never did make any inventions whatever, but proved that, although they were good mechanics and experimenters, they did not have inventive ability.

Your orators further aver that about the beginning of the year 1895 the defendant Louis Goddu became very angry with your ora-

tor the said Brooks, as the principal trustee of the Association, and with the executive committee of the Association, because it was not deemed proper that he, as the inventor of the Association, should interfere with the management of the factory of the Association and the duties of the superintendent regularly employed by the Association for the purpose of managing the said factory, and the said Louis Goddu used language to your orators, the said Brooks and other members of the executive committee of the Association, which was, and was clearly intended to be, a threat that unless he were given his way he would in future take out patents for his metallic-fastening inventions in the names of his sons. At about this same time the defendant Van Wagenen also made the same threat to your orator the said Brooks, as the principal trustee of the Association, that the said Louis Goddu would in future take out patents for his metallic-fastening inventions in the names of his sons.

Your orators further aver that at the time when the defendant Louis Goddu thus became angry because he was not allowed to interfere with the management of the factory of the Association, and at about the time when the said threats were made to your orator the said James W. Brooks, and to other officers of the Association, by the defendant Louis Goddu and the defendant Albert Van Wagenen, the said Louis Goddu and the said Albert Van Wagenen conspired together and agreed with each other that the said Louis Goddu should invent and design a full line of metallic-fastening machinery for the purpose of performing the work accomplished by the machinery already invented by the said Goddu and belonging to the Association, and it was agreed between the said Louis Goddu and the said Van Wagenen that when the said machines had been invented by the said Louis Goddu the patents therefor should be falsely and fraudulently taken out in the names of the different sons of the said Goddu, so as to attempt to defeat the right of the said Association to the inventions of the said Louis Goddu and prevent the said Association from obtaining patents for the said inventions in the name of the said Louis Goddu to which the said Association was lawfully entitled under its existing agree-

ment with the said Louis Goddu. Your orators further aver that the said plan for having the said Louis Goddu invent and devise the said machines, and then fraudulently cause patents to be taken out therefor in the names of the said sons of the said Louis Goddu, was divulged by the said Van Wagenen and the said Louis Goddu to the said five sons of the said Louis Goddu, namely, the defendants Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu, and George Goddu, and it was agreed between the said Van Wagenen and the said Louis Goddu and his said five sons that this plan for defrauding the McKay Company should be put into effect; and in pursuance of this scheme it was agreed between the said Van Wagenen and the said Louis Goddu and his five sons that the said Louis Goddu should continue to receive his pay as inventor for the Association, but that he would invent and develop the new metallic-fastening machines at a small shop belonging to him and located on his house lot next to his house at the said Winchester, where in the past, to suit his convenience, he had been accustomed to carry on much of his inventive work for the Association. It was also agreed that his said five sons should leave the employ of the Association from time to time as they should be needed by their father to assist him — just as they had previously assisted him when in the employ of the Association — in the work, first, of making the wooden patterns for, and then embodying in metal, the new metallic-fastening inventions which he was thus to make. It was further agreed that while these machines were being invented by the said Louis Goddu, and his sons were assisting him in making the wooden patterns and putting together the first machines, he, the said Louis Goddu, would pay his three married sons regular daily wages, and also support his two unmarried sons, and also pay such other sums as might be needed for additional help and for tools and for castings and material, and for taking out the proposed patents, and all other various expenses that might be incurred in connection with the enterprise.

In accordance with this plan, your orators aver that on or about October 1, 1895, the invention of this line of machines was begun by the said Louis Goddu, and in order that he might assist in pro-

moting the enterprise the said Van Wagenen, of his own accord, left the employ of the Association October 1, 1895; and furthermore, that they might assist in making the wooden patterns and doing the other work essential tc the embodiment of their father's new inventions, three of the sons of the defendant Louis Goddu, namely, Napoleon Goddu, Louis H. Goddu, and George Goddu, within a few days of the same time that Van Wagenen left, also voluntarily left the employ of the Association and went to work for their father in his said shop next his house; and also William L. Goff, an employee of the Association who had long been employed by the Association, not as an inventor, but in a confidential capacity to aid the said Louis Goddu to embody his inventive ideas, was persuaded by the said Louis Goddu and the said Van Wagenen to leave the employ of the Association, and accordingly he also, of his own accord, left the employ of the Association and went to work for the said Louis Goddu for daily wages paid by the said Louis Goddu in the said shop next Goddu's house. In 1896 the two remaining sons of the defendant Louis Goddu, namely, William Goddu and Eloie Goddu, also voluntarily left the employ of the Association for the sake of aiding their father, as they had previously done when in the employ of the Association, in embodying his inventions. In this manner the defendant Louis Goddu, with the aid and assistance of Albert Van Wagenen and his five sons, carried out his plan of making a large number of inventions relating to metallic fastenings, and then fraudulently taking out patents for these inventions in the names of his sons, and the work was continued until the said Louis Goddu had invented a complete line of metallic-fastening machinery for doing precisely the same work accomplished by the machines he had previously invented for the Association. In accordance with the original plan of the said Louis Goddu and his five sons and Van Wagenen, patents were fraudulently taken out for the said inventions of the said Louis Goddu in the names of his sons, Louis H. Goddu, William Goddu, and George Goddu.

Your orators aver that some time not long prior to May, 1897, as your orators are informed and believe, the defendant George N.

Smalley was informed of the plan to defraud your orators, and was invited to enter into the scheme, and to help it forward by investing money therein, and the said Smalley, though aware of the contract of the said Louis Goddu with your orator, and well knowing the fraudulent character of the enterprise, nevertheless became a party thereto and took an interest therein, and began to advance money, and in other ways to aid and promote the enterprise.

Your orators further aver that in May, 1897, the defendant Van Wagenen, and the defendants Louis Goddu, Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu, George Goddu, and the defendant George N. Smalley, formed or caused to be formed, under the laws of the State of Maine, the defendant corporation, the Goddu Sons Metal Fastening Company, and caused to be issued to the said defendants Van Wagenen, Louis Goddu, Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu, George Goddu, and George N. Smalley, stock for their respective interests in the said enterprise.

Your orator avers that since the formation of the said corporation the said Louis Goddu has continued to advance all, or substantially all, the money needed to carry on the enterprise, and is still, with the aid of his five sons and of the defendant Van Wagenen, and of the defendant Smalley, directing and managing the enterprise and supplying the money for carrying it on and making from time to time additional inventions, for which he is fraudulently causing patents to be applied for and taken out by his sons.

And your orators further aver on information and belief that the defendant George N. Smalley is the president of the defendant corporation; that the defendant Albert Van Wagenen is its treasurer; that the defendants George N. Smalley, Albert Van Wagenen, Louis H. Goddu, and George Goddu are directors thereof; and that these said defendants are managers of the defendant corporation, and direct and control the machinery and the methods of manufacture used and employed by the defendant corporation, and direct and control the sale of machines manufactured by the defendant corporation, and that they have authorized and directed the construction, use, and sale of machines which each embody the

inventions shown and described in the aforesaid several Letters Patent, and have thereby infringed the rights of your orators under the aforesaid several Letters Patent.

And your orators further aver on information and belief, that each of the defendants, other than the defendant corporation, is a stockholder in the defendant corporation, and that each of the said defendants is personally interested in the infringements herein complained of, and has actively and personally assisted in the construction of the said infringing machines, and has otherwise actively and personally participated in the said infringements.

And your orators further aver on information and belief that the defendant Louis Goddu is the inventor and designer of the said infringing machines constructed, used, and sold by the said defendant corporation, and has superintended and assisted in the construction of the said infringing machines.

And your orators further aver on information and belief that neither singly nor together are the defendants financially able to indemnify your orators for the loss and damage suffered by your orators on account of the infringements committed by the defendants and herein complained of.

Your orators further aver that the said Louis Goddu and the other defendants, Albert Van Wagenen, Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu, George Goddu, and George N. Smalley, who have all well known the contract relations of the defendant Louis Goddu with your orators, and the fraudulent character of his enterprise, and who have constantly consulted with the said Louis Goddu in regard to his plans, and who have been constantly aiding him to carry out his fraudulent scheme, and who have been expecting to profit largely by the enterprise, are all estopped from denying the validity of any of the patents in suit belonging to your orators or issued to your orators as assignees of the said Louis Goddu.

Your orators further aver that the said defendant corporation, the Goddu Sons Metal Fastening Company, was created solely for the purpose of serving as a means to carry out the fraudulent plan hereinbefore set forth, and was formed wholly by these defendants and

by their solicitor, James H. Churchill, who had formerly been employed in the office of the solicitor who took out the patents of the said Louis Goddu for the Association, and who is therefore estopped from denying the validity of any of the patents belonging to your orators, and especially of the patents upon which this suit is brought which were taken out by the said Louis Goddu and assigned by the said Goddu to the Association.

And your orators further pray that said defendants may be compelled, by a decree of this court, to account for and pay over to your orators all such gains and profits as have accrued to or been received by them, and all such gains and profits as they may be entitled to by reason of the aforesaid construction, use, or sale or lease of said metal-fastening machinery and the sale of materials or fastenings sold to be used therein, and all such gains and profits as your orators would have received but for the unlawful acts of the said several defendants, and the damages which your orators have sustained by the said unlawful acts of the said several defendants: and that the said several defendants, their clerks, attorneys, agents, servants, and workmen may be perpetually enjoined and restrained by the decree and injunction of this court from directly or indirectly making, constructing, using, or vending to others to be used, metal-fastening machinery containing or embodying the inventions described and patented in said several Letters Patent or any of them, and that they may be decreed to pay the costs of this suit, and that they may be also enjoined and restrained as aforesaid, during the pendency of this suit, and that your orators may have such other and further relief as the equity of the case may require, and to this court may seem meet.

To the end, therefore, that the said several defendants may, if they can, show cause why your orators should not have the relief hereby prayed, and may full, true, direct, and perfect answer make (but not under oath, which is hereby expressly waived) to the several matters hereinbefore stated and charged, as fully and particularly as if the same were here repeated and the several defendants especially interrogated in reference thereto; and especially that they may set forth whether, since said first day of October, 1895, they

have made, constructed, used, or sold, or are now making, constructing, using, or selling, or causing or permitting to be made, used, or sold, within the district aforesaid or elsewhere in the United States, any metal-fastening machinery containing or embodying the inventions aforesaid, and how many they have so made, constructed, used, or sold, or caused or permitted to be made, used, or sold and whether they claim so to make, construct, use, or sell the said articles, or cause or permit the same to be made, used, or sold under any pretended grant or license held by them or by others under any of said several Letters Patent:

May it please your Honors to grant unto your orators not only writs of injunction conformable to the prayer of this bill, but also a writ or writs of *subpoena ad respondendum* issuing out of and under the seal of this honorable court, directed to the said defendants Louis Goddu, Albert Van Wagenen, Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu, George Goddu, the Goddu Sons Metal Fastening Company, and George N. Smalley, commanding them to appear and make answer to this bill of complaint, and to perform and abide by such order and decree herein as to this court may seem required by the principles of equity and good conscience.

And your orators as in duty bound will ever pray.

JAMES W. BROOKS,
Principal Trustee of
McKay Metallic Fastening Association.

FRANK F. STANLEY,
Associate Trustee of
McKay Metallic Fastening Association.

Fish, Richardson & Storrow,
Solicitors and of Counsel.

AFFIDAVIT OF JAMES W. BROOKS.

James W. Brooks, being duly sworn, doth depose and say as follows: —

I am sixty-five years of age, and live at Petersham in the state of

Massachusetts. I have been one of the trustees of the McKay Metallic Fastening Association since the formation of the Association, June 9, 1877. The Association carries on its business under a declaration of trust dated June 9, 1877. By this trust deed the title to all the property stands in the name of two trustees, one of whom is called the principal trustee and the other the associate trustee. The principal trustee has authority to transact the business of the Association under the direction of an executive committee composed of five shareholders of the Association, and the principal trustee can also, at any time, sign the name of the associate trustee to any assignments of patents, licenses, or other instruments or contracts relating to the business of the Association, When the Association was first formed, on June 9, 1877, Gordon McKay, then of Cambridge, Massachusetts, became the principal trustee, and I was the associate trustee. On July 30, 1884, Gordon McKay resigned as principal trustee, and I took his place as principal trustee, and Frank F. Stanley of Swampscott, Massachusetts, became associate trustee. From that date until the present time, I have continued as principal trustee, having the executive control and management of the business, and Frank F. Stanley has remained as associate trustee.

The McKay Metallic Fastening Association was created chiefly to develop certain inventions and machines of the defendant, Louis Goddu, for inserting screws into the soles of boots and shoes so as to serve as a fastening for holding together the outer sole, the inner sole, and the upper; and also to develop certain tacking machines of Goddu used for driving a fastening to hold the outer sole and inner sole together during the shoe-making process, as a step preparatory to the insertion of the standard screws, or whatever other fastening may be finally employed for attaching the outer sole to the upper and the inner sole. These tacking machines are also used for tacking on the rand or narrow strip of leather which comes between the heel and the sole and serves to level up the somewhat rounded surface of the heel end of the sole, so as to afford a flat surface for the reception of the heel.

Before the formation of the McKay Metallic Fastening Associa-

tion the defendant Louis Goddu had invented a machine for inserting these screws through the outer sole, inner sole, and upper of shoes, and the defendant Albert Van Wagenen had also made some inventions relating to this class of shoe machinery, and these inventions had been transferred by Goddu and by Van Wagenen to a corporation known as the American Cable Screw Wire Company. On June 9, 1877, Gordon McKay as the principal trustee, and I as the associate trustee, of the McKay Metallic Fastening Association, acquired these patents and inventions of the defendants Louis Goddu and Albert Van Wagenen from the American Cable Screw Wire Company, and we also acquired from others certain other patents and inventions relating to metallic fastenings in order that the Metallic Fastening Association might carry on the metallic-fastening business.

The defendant Louis Goddu, besides being the principal inventor of the standard screw machine, and of the tacking machine which the Association took over from the American Cable Screw Wire Company, had made also certain other inventions relating to another metallic-fastening machine called the cable screw machine, and another metallic machine for inserting short nails in the soles of shoes, called a quilter. As Goddu had shown rare genius in inventing these metallic-fastening machines, it was essential to the Association, if it was to carry on the business of perfecting and putting into use these Goddu machines, that Goddu's future inventions in this line should belong to the Association. The trustees, therefore, at the same time that they bought these Goddu patents and inventions from the American Cable Screw Wire Company, also bought from Goddu himself all his future inventions relating to "fastening together the soles and uppers of boots and shoes with metallic fastenings" for the period of seventeen years. This purchase of Goddu's future inventions was effected by a contract entered into by the defendant Louis Goddu and the trustees of the Association on the 9th of June, 1877, and the trustees, as the consideration for these future Goddu inventions, bound the Association to pay to Louis Goddu a sum equal to one and one half per cent of all dividends or profits declared or paid from time to time

by the Association to its shareholders; the payments thus provided for were to continue for so long as any of the Goddu Letters Patent purchased by the Association from the American Cable Screw Wire Company should continue in force, and also for such longer time as the patents for any of Goddu's future inventions thereafter assigned to the Association should remain in force.

Furthermore, as this contract of June 9, 1877, only provided for the assignment of such metallic inventions as Louis Goddu might happen to make, but did not bind him to give his time and services as inventor to the Association, and as the officers of the Association knew that if the Association was to carry on the business of improving and developing Goddu's machines, it must have not merely such future inventions as Goddu might happen to make, but must secure his services as inventor to improve and perfect his machines, therefore, on the 18th day of August, 1877, the Association made an additional contract with Goddu for his services as inventor. In this contract Goddu agreed to work for the trustees —

"in the capacity of inventor and as master mechanic, in constructing such machines as the said Trustees or the Agent of the Association shall require and to use his best endeavors to faithfully, properly, economically and in a good and workmanlike manner, devise and construct said machinery and devise all such machinery and improvements in machinery processes and instrumentalities relating to or in furtherance of the business of said Association, as may be useful or profitable for it, it being understood that 'by an agreement already made said Trustees are to own all such inventions and improvements'."

In order to thus secure Goddu's services as inventor, to perfect his machines, the trustees bound the Association by this contract to pay Goddu four thousand dollars a year, and besides this salary to give him a still further percentage of its dividends, in addition to the one and one half per cent already provided for in the contract of June 9, 1877. This additional percentage was to be one and one quarter per cent of the first seventy-five thousand dollars declared in dividends by the Association, with a varying per cent for such additional sums as might be paid out as dividends in each year.

The plan of business adopted by the Association from the beginning was to lease its patented machines to shoe manufacturers in the United States and Canada, and for the most part to sell them outright in all other countries. In the lease and license agreements covering the machines put out in the United States and Canada, the shoe manufacturers have always agreed to purchase from the Association all screw wire, tacker wire, and other metallic fastenings used in the operation of the machines, and it is expressly provided in these leases that the wire thus purchased from the Association shall be sold at a price considerably above the cost of the wire to the Association. In this way, a royalty or license fee has been obtained by the Association for the use of its patented machinery, and this royalty, inasmuch as it is based directly upon the amount of metallic fastenings driven by the machines, is proportioned exactly to the extent to which any particular machine is used, and at the same time the royalty to different manufacturers is always uniform for any given shoe.

During the first year of the business of the Association there were sold in this way to shoe manufacturers in the United States about 60,000 pounds of screw wire for the Goddu standard screw machine, and more than 200,000 pounds of cable fastening and cable tacker wire for the Goddu cable wire machine and the Goddu tackers. The cable wire machine was used both as a tacker and also for the purpose of permanently uniting soles to uppers, but its use as a machine for driving a permanent fastening was gradually abandoned in favor of the standard screw machine. The sale of standard screw wire increased rapidly, until in 1884 the sale of this wire amounted to nearly 325,000 pounds, and the sale of cable tacker wire amounted to over 100,000 pounds. It is to be noticed that the sale of tacker wire, owing to the substitution of standard screw wire therefor, fell off, but in much less proportion than the increase in the standard screw wire.

Since 1884 the sale of screw wire has more than trebled, so that during the present calendar year the sales of standard screw wire have been at the rate of more 1,000,000 pounds per annum and since 1884 the sale of tacker wire has increased fivefold, so that

sales of tacker wire are now going on at the rate of more than half a million pounds per annum.

In the year 1887 the Association began to put out a new patented machine for driving loose nails. This machine was invented by Goddu as the inventor of the Association, and uses nails supplied in mass to the hopper of the machine, as distinguished from fastenings fed to the machine from a spool or coil. The use of this loose nailer has rapidly increased from sales of 15,000 pounds of nails in 1887 to more than half a million pounds of nails in the year 1897, and the sale of nails has been going on in the present year at the rate of nearly three quarters of a million pounds per annum.

In the year 1896 the Association began to lease to the shoe manufacturers a new patented slugging machine, also invented by Louis Goddu as the inventor of the Association. This slugger uses a continuous wire, and drives a series of metallic slugs or short nails chiefly in the heels of shoes, though occasionally in the soles of some of the coarser shoes. These slugs are intended not for a fastening, but to resist wear, and also for ornament. Goddu had begun to invent his slugging machine about 1889 or 1890. The slugger, however, took Goddu more time than he usually spent on his inventions, and continued to be in the experimental stage until about 1895, although a few of the machines were put out from 1890 on, and the Association sold from 3000 to 7000 pounds of slug wire in each year from 1890 to 1895. By 1896 the machine had been perfected, so the Association began to put out these Goddu slugging machines in large numbers, selling about 33,000 pounds of wire in that year. In 1897 over 214,000 pounds of wire were sold, and in the first nine months of the present year sales have been going on at the rate of nearly 900,000 pounds per annum.

It will thus be seen that the business of the Association was originally founded upon two machines invented and patented by the defendant, Louis Goddu, and that the enormous growth of the business has been based upon these two original machines (the standard screw machine and the tacker) as further developed by the many subsequent inventions which Louis Goddu has made as the inventor of the Association, and also upon the two new machines (the loose

nailer and the slugger) invented and patented by Goddu as the inventor of the Association, and which the Association began to put out in 1887 and 1896, respectively.

The number of these patented machines licensed to shoe manufacturers in the United States and Canada has been steadily and rapidly increasing as the constantly increasing sales of metallic fastenings by the Association indicate, until at the present time the Association has licensed, and in use in the United States and Canada, more than five thousand of these different patented Goddu machines, and the total receipts of the Association from its sale of fastening material and spare parts for these machines are going at the present time at the rate of more than a million dollars per annum.

It should also be stated in this connection that, hand in hand with the numerous inventions made by Louis Goddu in improving and developing these four machines, he also carried on as the inventor of the Association the invention and perfection of a complete line of machinery for producing economically and in large quantities the standard screw wire and the tacker wire or string nail, and also some other fastenings supplied by the Association to its licensees. For example, Goddu first produced a machine for cutting the screw thread on the wire used in the standard screw machines, and more than two hundred of these machines were built by the Association, and kept running to supply the wire sold by the Association to the users of its standard screw machines. Later, in 1884 or 1885, Goddu invented a new and much more effective machine for making this screw-threaded wire by a rolling instead of a cutting process, and machines for doing the work in this way were built and put into use by the Association. Later, in 1887, when Goddu had very much increased the speed and efficiency of the standard screw machines by inventing the double-thread screw wire, Goddu perfected a third set of screw-wire making machinery for the new double-threaded screw wire. Goddu also at different times has produced a number of different machines for making tacker wire.

During all these years, from the formation of the American Cable Screw Wire Company to the formation of the McKay Metallic

Fastening Association in 1877, and thence down to the present time, Louis Goddu has shown, whenever he has felt well disposed, an inventive skill in this peculiar line of machinery which can hardly be called less than marvellous. He has taken out more than sixty patents for metallic-fastening inventions, and there has never been any one else in the world who could compare with Louis Goddu in the fecundity and originality of his inventions in the metallic-fastening field. It has apparently only been necessary for him to get implanted in his mind the desire to invent a machine for doing a particular line of metallic-fastening work in order to conceive the invention or inventions necessary to solve the problem. He certainly has been endowed with a special genius for dealing with wire-manipulating machinery. He is not a man who has received scientific education — he is not even a good draughtsman, as is the case with most inventors. Although the Association has at all times been ready to aid him by permitting him to call upon its expert draughtsmen for assistance, yet he rarely works out his conceptions by the aid of a mechanical drawing. He seems to work out his inventions in his mind in a complete, or nearly complete, form, and the first expression of his conception is in the form of the wooden patterns used for casting or shaping the parts. He is himself a fair pattern maker, and sometimes whittles out these wooden patterns for parts of his machines with his own hands, though generally he avails himself of the services of one or more expert pattern makers for this purpose. These pattern makers work, under his supervision and direction, generally with only an oral description or the merest pencil outline to aid them. Thus the whole new machine is first expressed by Goddu in wood, though I think the machine is never put together by him as a wooden model, for as fast as the wooden patterns are finished they are sent away to be cast or made from metal, and as these pieces of metal are made they are put together, so that the machine is gradually assembled in this way. After the first machine is thus assembled it almost always goes through a period of testing, changing, and experimenting. This experimenting is in part done by Goddu with his own hands, but in much

larger part, as in the case of the first wooden patterns, it is performed by mechanics under his general direction.

While Goddu has been in the employ of the Association he has, whenever engaged in inventing a new or an improved machine, had working under his control and direction in the manner I have indicated one or more pattern makers to first express his conceptions in wood, and also one or more mechanics to serve as experimenters when the new machines are first assembled.

The relations of Louis Goddu to the Association have been attended with much vexation and trouble. He is a French Canadian, and of an excitable and irritable disposition. The Association has always treated him with the greatest consideration, and he has constantly received larger pay than his contract called for, and larger than any inventor I know of, but he has many times expressed the greatest ill-will and animosity towards the trustees and the members of the executive committee. He has a number of times stated that if his pay were only increased to a certain point he would then give himself heart-whole to his inventive work for the Association. The Association has repeatedly met his demands for increased pay in the hope of satisfying him and persuading him to carry on his inventive work, but only to find that in every instance he has before long again become dissatisfied, and again begun to neglect his work and to assume an attitude of hostility towards the trustees and the executive committee of the Association, and particularly to scheme in some way to get from the Association bigger pay.

It will be recognized that no contract, no matter how faithfully observed by the Association, and no matter how faithfully Louis Goddu promised therein to devote himself as inventor to the interests of the Association, can be enforced by the Association so as to compel Goddu to live up to his agreement. The moment Goddu has felt disposed not to invent, the Association has had no legal remedy to compel him to honestly carry out his agreement.

As I have stated, in June, 1877, the Association purchased from Goddu for a percentage of its dividends all of his future metallic-fastening inventions for the period of seventeen years. On August 18 of that same year the Association also entered into an agreement

with Goddu (already referred to on page 3 [printed page of this record 164]) in which Goddu promised —

"to use his best endeavors to faithfully, properly, economically and in a good and workmanlike manner, devise and construct said machinery and devise all such machinery and improvements in machinery processes and instrumentalities relating to, or in furtherance of, the business of said Association, as may be useful or profitable for it."

In return for this promise on the part of Goddu, the Association bound itself to pay him a salary of $4000, and a still further percentage of its earnings, as stated *supra*, page 4 [printed page of this record 164].

However, on January 1, 1880, within less than three years from the date of the purchase by the Association of Goddu's future inventions, and although Goddu was still absolutely bound by his contract to convey to the Association all his inventions relating to metallic fastenings for the further period of fourteen years, yet, in the hope of satisfying Goddu, the Association agreed, by a new contract dated January 1, 1880, to give him a sum equal to two and one-half per cent of all dividends declared by the Association from the profits derived from his inventions in the United States, instead of the one and one-half per cent which had been the sum agreed to by Goddu in his contract of June 9, 1877. The Association also by this new contract of January 1, 1880, bound itself to give Goddu a sum equal to twenty per cent of all dividends derived from his inventions in foreign countries. Goddu, in return for these additional obligations assumed by the Association, sold to the Association all his future inventions relating to metallic fastenings.

Less than three years after this, on May 26, 1883, the Association felt obliged to agree to pay Goddu 5 per cent of the net earnings from the "new automatic nailing machine", although this machine was then built, and, by Goddu's contract of June 9, 1877, would have been absolutely the property of the Association in return for one and one-half per cent of the net earnings of the Association, and was in fact, by Goddu's contract of January 1, 1880, the property of the Association in return for two and one-half per cent of the earnings plus a percentage running from one

and one-half to one-half of one per cent given to Goddu by the contract of August 18, 1877. It was also agreed at this time (May 26, 1883) that Goddu's salary of $4000 per annum should continue, and also that his other percentage already mentioned running from one and one-quarter per cent to one-half of one per cent should still be paid by the Association. Goddu in return for this concession entered into a fresh agreement, in writing, to

"work and do all I can for the interests of the McKay Metallic Fastening Association."

Within only a little more than a year from this time, namely, in July, 1884, when I became, as I have stated, the principal trustee of the Association and assumed its active management, I found that although by the agreement of May 26, 1883, Goddu's salary had been fixed for three years, and the pay he was to receive for his inventions had been raised, yet he had again become dissatisfied and discontented. I knew that the Association was powerless to compel Goddu to carry out his agreement, because if he did not want to invent no court would be able to compel him to do so. I therefore talked the matter over with Goddu, and he assured me that if he could obtain from the Association a sum equal to an all-round 5 per cent of the dividends declared by the Association, in addition to his regular salary of $4000, he would then be fully satisfied with this as his total compensation, and would go to work as the inventor of the Association in good faith and without reserve. Accordingly I decided to meet Goddu's demands, and made an oral agreement with Goddu on behalf of the Association, which fixed the compensation he was to receive from the Association at a sum equal to 5 per cent on the entire dividends of the Association, in addition to his salary of $4000.

In 1889, but a few years after this time, I found that Goddu was once more failing to really devote his inventive skill to the Association, and that he and the defendant Albert Van Wagenen, who had been paid a salary by the Association ever since it started and was still in its employ, had undertaken a scheme to make money for themselves by organizing and starting a corporation named the Goddu Improvement Company. This corporation was

organized by Goddu and Van Wagenen under the laws of Maine with a capital stock of $40,000, Goddu and Van Wagenen holding a majority of the capital stock. Goddu, although he was the inventor of the Association, was at work for this Goddu Improvement Company, developing a machine which he had then invented for making wire nails, and which he had assigned to that Company. Goddu was at this time being paid by the Association a large annual sum, amounting for several years to $14,000 in each year, and in 1889 to $16,500, —

"to work and do all I can for the interests of the McKay Metallic Fastening Association," —

and Van Wagenen was also being paid a salary to work for the interest of the Association, and yet I found they were both very much more interested in having Goddu devote his inventive genius to the perfection of this wire-nail making machine for the Goddu Improvement Company rather than to the machines of the Association. I knew that so long as this state of affairs lasted I could not compel Goddu to keep his mind on the machines of the Association instead of the machines of the Goddu Improvement Company, so I decided to make another effort to persuade Goddu to devote his inventive skill to the Association. Goddu this time by contract dated June 10, 1889, agreed that if the Association would pay him $15,000 in cash for his shares in the Goddu Improvement Company, he would give the Association the exclusive right, not only to his inventions relating to metallic fastenings, but to his future inventions of every kind, and that thereafter he would devote himself exclusively to the affairs of the Association. As part of the same trade, and in order to be sure to get the inventive services of Goddu, I also paid Van Wagenen $15,000 for his stock in the Goddu Improvement Company. For Van Wagenen was the chief originator of the scheme, and he exercised such control over Goddu that I knew Goddu would be influenced by Van Wagenen not to devote himself to the inventive work of the Association so long as Van Wagenen continued to hold such a large interest in another machinery company.

The Association, as part of this fresh trade with Goddu, also

agreed to pay him a sum equal to 14 per cent of all dividends which should be declared from time to time out of profits derived from any invention of his not relating to metallic fastenings, and in case the dividends from these outside inventions amounted to more than $75,000 in any year, then an additional 5 per cent of the excess. And as part of the consideration necessary to buy out Van Wagenen's interest, the Association also bound itself to give Van Wagenen 10 per cent of the dividends declared from these other Goddu inventions. I find that, including this $15,000, the Association paid to Goddu in the year 1899 the sum of $31,500. I ought, perhaps, to add that the Association never obtained any profit or income whatever from the Goddu Improvement Company. The company was purchased because it was felt that the Association was helpless so far as compelling Goddu to live up in good faith to his contract to invent was concerned, and that the only alternative was to pay this additional sum of $30,000 demanded by Goddu and Van Wagenen for the purchase of Goddu's and Van Wagenen's stock in the Goddu Improvement Company, and in this way remove from Goddu the temptation to invent for his Goddu Improvement Company rather than for the Association, and also to remove from Van Wagenen, who to a large extent controlled Goddu, all inducement for urging Goddu to devote himself to the enhancement of Van Wagenen's investment in the Goddu Improvement Company rather than to his inventive work for the Association in accordance with his contract with the Association.

The defendant Albert Van Wagenen had been employed originally, as I have stated, by the American Cable Screw Wire Company. When the Metallic Fastening Association bought the Goddu inventions and also some of Van Wagenen's inventions from the American Cable Screw Wire Company, Van Wagenen was taken into the employ of the Metallic Fastening Association at a salary of $3000 per year. So long as Van Wagenen remained in the employ of the Association he was always given a good deal of latitude, and occupied a confidential position. He was in charge for some years of the advertising, which at first was very important, and upon which the Association spent a great many thousands of dollars.

Later he made it his especial business to keep a close watch on Goddu's inventive work, and also to aid the patent solicitors of the Association in taking out Goddu's patents. I think Goddu rarely, if ever, went to the office of our patent solicitor without being accompanied by Van Wagenen to aid him in explaining his invention and expressing his ideas. In this way Van Wagenen gradually became closely associated with Goddu and intimately acquainted with his inventions. In fact, I think that for many years before Van Wagenen left the employ of the Association he had been on more intimate terms with Goddu than any one else connected with the Association, and at the same time Van Wagenen in his confidential position acquired a complete and extensive knowledge of the patents owned by the Association, and also a knowledge of what forms of mechanism were controlled by the numerous patents of the Association or the patents of others still in force, and what forms of mechanism were free to public use. Van Wagenen continued in the employ of the Association until the friction between the Association and Goddu over the control of the new factory to which I shall refer hereafter, came to a head, and then Goddu and Van Wagenen together, as I believe, formulated a plan for getting up a line of metallic-fastening machinery for the purpose of compelling the McKay Metallic Fastening Association to buy them out in order to avoid a threatened cut in the price of its metallic fastenings and disaster to its business. In any event, Van Wagenen left the employ of the Association October 1, 1895, just as the first three sons of Louis Goddu were voluntarily leaving the employ of the Association to go to work in their father's shop to aid their father as I believe in getting up the infringing machines here in dispute.

About the year 1884, before I became principal trustee of the Association, the defendant Louis Goddu built a small machine and pattern shop immediately adjoining his house at Winchester, and since the completion of this small shop next to his house Goddu has there carried on the chief part of the pattern and experimental work connected with the embodiment of his inventions and the completion of his first machines. It has been the custom of the McKay

Association to permit Goddu to employ in this shop, under his own direction and control, but at the expense of the Association, such pattern makers as he might desire for the purpose of embodying his inventions in the manner I have indicated, and also one or more machinists for the purpose of experimenting with his new machines when they have been assembled.

As the defendants in this suit Louis H. Goddu, William Goddu, Napoleon Goddu, Eloie Goddu and George Goddu, all sons of the defendant Louis Goddu, have grown up from time to time, they have been taken into the employ of the Association, and Goddu, senior, has been permitted to employ them in this shop adjoining his house. Some of his sons have been brought up as pattern makers in order to embody his inventions in the first wooden patterns, in the manner I have described, and others as mechanics to experiment on his first machines after they have been assembled for the first time.

All of his sons have received, I believe, the whole, or substantially the whole, of their mechanical education and experience while in the employ of the Association, and up to the time they left the Association, about three years ago, they had practically never worked for any other company or concern.

Goddu bought, a good many years ago, quite a large tract of land adjoining his house, and somewhat separated from the other houses in Winchester, and as his children have grown up and become married he has built for each of them a house near his own, so that there has been for some years quite a Goddu colony, consisting of four or five houses situated rather by themselves in this part of the town. Three of the married sons and one married daughter thus live in houses built and given them by their father, and adjoining their father's house, while the two unmarried sons and one daughter live with their father in his own house. All five of the sons, up to the time they left the employ of the Association, two or three years ago, were in the pay of the Metallic Association, mainly under the control and direction of their father, and working almost wholly on machinery of his invention. After this experimental shop was built by Goddu next to his house, his sons spent but a small pro-

portion of their time in the factory at Lawrence, where the manufacturing of the Association was carried on until the Association built its new factory at Winchester, and the experimental department was then transferred from Goddu's shop next his house to the factory of the Association, a mile or more from Goddu's house, and the sons were asked to carry on their pattern and experimental work at the factory. This continued only for a very short time, however, for as I shall explain later, almost as soon as the new factory was completed Goddu again became dissatisfied and discontented, this time chiefly because he was not allowed to assume the control of the new factory, or at least to interfere with the authority of the superintendent as the executive head of the shop.

Goddu's oldest son, Louis H. Goddu, who is now thirty-five years of age, began working for the Association, as an experimenter under his father's control, nearly seventeen years ago, and, with the exception of a short time, when he was on the road looking after machines of the Association, he continued to work as a mechanic in the experimental department under his father, and, especially during the seven or eight years prior to October, 1895 (when he left the employ of the Association), he worked steadily in the shop next his father's house as an experimenter to aid his father in embodying his new inventions. During all of this time, although Louis H. was placed under circumstances where he had the best possible opportunity to invent, if he had the inventive capacity, he made no inventions whatever, so far as I know. He knew, as all his brothers knew, that the Association had been paying his father large sums of money annually for many years because of his value as an inventor; but although Louis H. was thus placed where he had the most inviting surroundings and the fullest opportunity, and the strongest pecuniary inducement, to invent, I believe he never, during the seventeen years that he was in the employ of the Association, succeeded in making a single invention, and he never earned from the Association more than mechanic's pay, although the officers of the Association would gladly have raised his wages, as they have that of others, if he had in any way proved himself to be of value as an

inventor instead of merely serving as a mechanic to aid his father as an experimenter.

Louis Goddu's son, the defendant William Goddu, went to work for the Association about 1883, and he also, with the exception of less than a single year, when he was at work in connection with the construction of the new factory of the Association at Winchester, was at work under his father's control and direction in the experimental department as an experimenter on his father's machines. He spent practically all of his time in the experimental shop adjoining his father's house, until the new factory of the Association was completed in the fall of 1894, when the experimental department was moved to the factory, and he went to work at the factory, though only for a short time, because, as I have stated, shortly after the factory was built friction began to develop between the officers of the Association and his father, and then the sons went back again to their father's experimental shop adjoining their father's house, to aid their father, as I believe, in getting up the line of infringing machines here complained of. During all these years Goddu's son William, though surrounded by the same favorable circumstances as his brother Louis H. Goddu, and having the same opportunity and inducement to invent, never, so far I know, succeeded in earning more than mechanic's wages or making any invention.

Goddu's son, the defendant Napoleon Goddu, went to work for the Association, I believe, about 1890, and also began work in this small experimental shop adjoining his father's house, and during the whole, or substantially the whole, of his working career he continued to work in his father's shop as a pattern maker, assisting his father to embody his inventions in wooden patterns in the manner I have described. When the factory of the Association was completed at Winchester in the fall of 1894, he went to work at the factory for a short time, but, as in the case of his brothers, after the friction developed between his father and the Association, he returned to work again in his father's experimental shop in the Goddu settlement for the purpose as I believe of assisting his father, just as he had always assisted him, in getting up the line of machines here in dispute, and thus he continued to work for his father in precisely the

same way, and in exactly the same place, that he had always worked for him. He never, while working for the Association, made any inventions, so far as I know, or showed himself entitled to more than mechanic's pay.

In the same way Goddu's son, the defendant Eloie Goddu, began to work, I believe, for the Association in the experimental shop of his father. He worked as a pattern maker, and was thus employed by the Association to embody his father's ideas in wooden patterns in the manner I have described, and he continued to carry on this work until after the factory of the Association was built at Winchester, when he went to work at the factory for a short time, and then again returned to his father's shop to aid, as I believe, his father in embodying his inventions which form the subject matter of this controversy, just as he had previously aided his father while working in the employ of the Association. Eloie never, so far as I know, made an invention while in the employ of the Association, and never earned or showed in any way that he ought to be paid more than ordinary mechanic's wages while in the employ of the Association.

Goddu's youngest son, the defendant George Goddu, went to work for the Association about 1890, and, as in the case of his brothers, he first went to work for the Association in the experimental shop adjoining his father's house to aid his father as an experimenter on new machines. George Goddu continued to work as an experimenter in this way for the Association under his father's direction until the new factory was built at Winchester, when he went to the factory to work, and worked there for a short time, and then with his brothers returned to work again in his father's experimental shop to aid his father, as I believe, just as he had aided his father before the invention of these infringing machines began. So far as I am aware George never made any inventions while in the employ of the Association, and never earned or showed himself entitled to more than ordinary mechanic's wages.

Prior to the year 1893 the Metallic Fastening Association had always carried on the manufacture of its machinery at the factory of the Stanley Manufacturing Company at Lawrence, Mass.; but in the year 1893, as I have already indicated, the executive com-

mittee of the shareholders decided that the Association ought to build its own factory and assume a more complete control of the manufacture of its machinery. Goddu himself was at this time one of the strongest objectors to the system of carrying on the manufacture of the machinery of the Association in the factory of the Stanley Manufacturing Company, and repeatedly urged upon the members of the executive committee that the Association should build its own factory, and thus more completely control the manufacture of its machinery. Goddu was also desirous that the new factory should be built in his home town of Winchester. In the year 1893 the Association decided to begin the construction of a factory, and in accordance with the wishes of Goddu, Winchester was selected as the place for the factory.

The fear was expressed to Goddu at that time by several members of the executive committee that when the factory was completed Goddu would be tempted to spend his time in trying to run the factory, for which work neither his temperament nor his experience fitted him, and for which task an experienced man could easily be found, instead of devoting himself to inventing, in which field he had shown himself pre-eminently successful, and in which class of work the Association could find no man to take his place if he abandoned or neglected it. But Goddu repeatedly stated to the officers of the Association that he realized that he was better fitted for the work of inventing than of running a factory, and he assured the members of the executive committee that if the factory were built he would not interfere in any way with the management of the factory, or permit the factory to divert his attention from his inventive work.

The factory was built, and the Association, after careful inquiry, selected as its superintendent Mr. S. D. Leland, whom the executive committee after careful inquiry believed to be the best man that could possibly be found for the situation. Mr. Leland, prior to his selection as superintendent for the new factory, was unknown to the officers of the Association, and his appointment was not prejudiced in any way whatever by any personal friendship for him by any officers of the Association. He was appointed simply because,

of the available candidates, he seemed to be the best fitted for the task. He was a mechanical engineer educated at the Worcester Polytechnic Institute, and he had also gained a very considerable shop experience in one of the best machine shops of the country, and he had also acquired experience in the position of superintendent, and he came with the highest commendation from those connected with the Worcester Polytechnic Institute and the shops where he had worked. The executive committee found, however, that no sooner was the factory completed than Goddu began to show a desire, instead of devoting himself to his inventive work, to interfere with the executive management of the shop. Mr. Leland was instructed to treat him with the utmost courtesy and consideration in every way possible, but to retain the actual management and executive control of the shop in his own hands. It was soon found that Goddu became more and more disposed to interfere with Mr. Leland in his management of the men and the control of the shop, and became more and more discontented because Leland, while as I believe always treating him courteously in accordance with his instructions from the Association, at the same time insisted upon retaining the control of the factory and the management of the men in his own hands as the superintendent of the factory. When the factory was constructed, a large, light, and attractive room was built at the top of the building for the express purpose of providing Goddu with an experimental room to which he could always have access, and which should be always under his own control, without interference from any one. The superintendent of the factory rarely visited this room, and no one else except Goddu's own experimenters and pattern makers had authority to do so.

Goddu, however, became more and more dissatisfied with the fact that he was not given more authority in the management of the shop, and by the early part of the year 1895, only a few months after the completion of the factory, he had become very bitter towards the Association and its officers.

I should perhaps here state that the Metallic Fastening Association has brought suit against Louis Goddu and his five sons, and the Goddu Sons Metal Fastening Company, and Albert Van Wage-

nen under the contract which the Association has with Louis Goddu, senior, for his metallic-fastening inventions, and that the Association is asking the court to enjoin the defendants from making, using, selling, or putting out the infringing machinery here in dispute on the ground that the inventions embodied therein are, in fact, the inventions of Louis Goddu, which belong to the Association under his contract with the Association, and are not, as the defendants allege, the inventions of his sons. The hearings in this litigation are now going on from day to day, and some of the facts to which I have already referred, and many of the facts to which I shall refer hereafter in my affidavit, are established by the admissions of Louis Goddu, senior, of Albert Van Wagenen, and of the five Goddu sons who have testified in this litigation.

In the testimony given in this other suit it is admitted by Goddu, senior, and one or more of his sons, that they were dissatisfied with the new shop of the Association, and had some talk together and decided early in 1895 that the sons should leave the employ of the Metallic Fastening Association and go to work getting up a line of competing machinery.

Soon after the time these sons admit in their testimony that they had made up their mind to leave the employ of the Association, and I think early in the spring of 1895, Louis Goddu, senior, came before some of the members of the executive committee of the Metallic Association, including myself, and, after expressing the greatest ill-will towards the Association, said to the members of the executive committee, in substance, "I am through inventing, but I have some boys; they can invent." He also said, "My boys can begin where I have left off". He further stated that he would in no case take directions from me as the managing trustee and agent of the Metallic Fastening Association. He further said during this interview or about this time that he would spend his last dollar, if it was necessary, to injure the Association, and he also stated to me at another interview about this time that he intended to get his "revenge", using, as I clearly remember, the word "revenge."

The members of the executive committee and myself formed at that time the opinion, from Goddu's manner and his statements to us,

that he was at least thinking, if not intending, to try to break his contract with the Association by taking out patents in the names of his sons, and immediately upon Goddu's withdrawal from the room the fact that this was what Goddu had in mind, and what he would probably attempt to do, was spoken of and discussed by the executive committee.

At an interview which took place between myself and the defendant Van Wagenen, the precise date of which I cannot fix, but which took place in the year 1895, and not long after this interview with Goddu, Van Wagenen stated to me in substance, "Goddu can, if he chooses, invent in the name of some one else", although Van Wagenen went on to say, "but Goddu is not that kind of a man". What Van Wagenen said to me made it perfectly clear to me at that time that Goddu and Van Wagenen were considering the possibility of trying to deprive the Association of Goddu's future inventions by applying for patents in the names of his boys instead of in his own name, and I can conceive of no reason why he should have said this to me except that he then wished me to understand it as a threat.

At an interview, which took place before October 1, 1895, Van Wagenen also stated to the executive committee, in substance, that he had worked long enough for the Association, and that he proposed to work for himself, and that the Association would find that their business would be destroyed, or words to this effect, and I remember that he also made the remark that if it were known that Goddu was not with the Association the stock would go "to ten dollars within twenty-four hours", the price of the stock then being in the neighborhood of twenty dollars. Van Wagenen also told the members of the executive committee that he was going to leave the employ of the Association on the 1st of October, 1895.

When the 1st of October came, Van Wagenen voluntarily left the employ of the Association.

A few days before October, 1895, Louis Goddu's youngest son, George, also left the Association of his own accord, and went to work for his father in the shop next his father's house.

Also a few days after the 1st of October, Louis Goddu's oldest son, Louis H., voluntarily left the employ of the Association, and went to work in the experimental shop adjoining his father's house.

In October, 1895, Napoleon Goddu also of his own accord left the employ of the Association and went to work in his father's experimental shop.

In October, 1895, William L. Goff, who had long been in the employ of the Association, and whose work for the Association had been chiefly to assist Louis Goddu, senior, in embodying his inventions, also voluntarily left the employ of the Association and went to work in Louis Goddu's shop adjoining his house.

In April, 1896, William Goddu voluntarily left the employ of the Association and he too went to work in his father's shop.

In December, 1896, the last son, Eloie Goddu, voluntarily left the employ of the Association and also went to work in his father's experimental shop adjoining his father's house.

It has now appeared from the admissions of Louis Goddu, senior, and of his sons, and of Van Wagenen, in the pending litigation to which I have referred, that from the date when the first son left us in the latter part of September, 1895, Louis Goddu, senior, has been present in the same room in his experimental shop adjoining his house where his sons have been working at least a portion of practically every working day from that date down to the present time.

The evidence of Louis Goddu, senior, and the evidence of his sons, and of Van Wagenen also shows that Louis Goddu, senior, besides supplying his shop and the machinery therein for the development of these infringing machines, also bought and paid for with his own money out of his own pocket the necessary materials, including the wood out of which the patterns were made, and the iron out of which the first of these infringing machines were built. Louis Goddu, senior, also paid, prior to the organization of the Goddu Sons Company, and until his death, daily wages to the William L. Goff to whom I have referred. He also paid Louis H. Goddu regular wages at the rate of $2 per day. He also paid his son William $2 per day, and he also paid his son Napoleon $2 per day. His sons Eloie and George, who were unmarried and living with him, but who had been earning wages from the Association, and supporting themselves, Louis Goddu, senior, at first entered

into an agreement to support while these infringing machines were being constructed, and later he paid them regular daily wages as in the case of his other three sons.

It is also admitted by George Goddu and Louis Goddu, senior, in their evidence in the litigation to which I have referred, that Louis Goddu, senior, besides working in the same room, and within speaking distance of his sons, where these machines were being made, also whittled with his own hands at least some of the patterns for these infringing machines.

After the work of inventing and building these infringing machines had been going on for some time in the shop of Goddu, senior, and at the expense of Goddu, senior, and in the presence of Goddu, senior, and, as these defendants have admitted, with at least some direct physical aid in whittling patterns from Goddu, senior, patents for new inventions relating to a standard screw machine, a loose nailer, a slugger, and a tacker were applied for in the names of several of these sons, and these patents have been issued by the Patent Office, and are referred to in the affidavits of Joseph P. Livermore and Franklin O. Tobey, which accompany this motion.

It appears further from the evidence to which I have referred that James H. Churchill, the solicitor employed to take out the majority of these patents, had been formerly employed in the office of the solicitor whom the Association had always employed for the purpose of taking out Goddu's patents. It also appears from this evidence that Louis Goddu himself and Albert Van Wagenen made repeated visits to the office of this solicitor while these applications for patents purporting to be granted for the inventions of the Goddu sons were being prepared, and it will be remembered in this connection that Louis Goddu's custom when taking out patents through our solicitor had been to take Van Wagenen with him, and it is also a significant fact in this connection that Louis Goddu admits by his evidence in this suit that his visits to the office of this solicitor, James H. Churchill, were sometimes made when not in company with any son, and it is also clear from his testimony that these visits which he made without any son did not relate to any other matter except these then pending applications.

This enterprise continued to develop in the shop of Louis Goddu, senior, at the expense of Louis Goddu, senior, and in the presence of Louis Goddu, senior, until finally the first machines were completed and apparantly ready for manufacture. The evidence of Louis Goddu and his sons, and Van Wagenen, shows that there have now been built about a hundred of the infringing tackers at the machine shop of Nutter & Barnes in Boston, Mass., and a lesser number of each of the other machines.

The evidence of Van Wagenen, of Goddu, senior, and of his sons in this other suit also shows that while these machines were being built, Louis Goddu, senior, repeatedly visited the firm of Nutter & Barnes for the sake of instructing that firm in regard to the manufacture of these tackers.

It also appears that Louis Goddu, senior, repeatedly visited some of the foundries where the castings were being made from the wooden patterns for the first of these infringing machines built in the experimental shop next to his house, and that he, in fact, himself was in the habit of carrying the patterns from his shop and delivering them at the foundry, and giving instructions to the foundrymen in regard to the nature or quality of the work which he desired, and that he paid for these castings, as he did other bills, out of his own pocket.

In May, 1897, a corporation with a capital of $500,000 was formed under the laws of Maine, as I believe at the instigation of Goddu, senior, and Van Wagenen and as a part of their plan. The incorporators and directors of this company were the defendant Van Wagenen, the defendants Louis H. Goddu and George Goddu, and the defendant George N. Smalley (who is a personal friend of Van Wagenen), and J. H. Churchill, who has acted as the solicitor in taking out these patents issued for the alleged inventions of the Goddu sons. Albert Van Wagenen became the treasurer of the company and Louis H. Goddu became the president, though Louis H. has since been succeeded as president by George N. Smalley, but the directors have continued to be the same as at the original incorporation.

The evidence in this other suit also shows that, at the time this

Goddu Sons Metal Fastening Company was formed, Goddu, senior, had paid out of his own pocket, (*a*) in wages to his sons, (*b*) for the purchase of material, (*c*) for buying tools, (*d*) for castings, (*e*) for patent soliciting, and (*f*) for building these machines at the machine shop of Nutter & Barnes, and various other expenses relating to the enterprise, substantially $15,000. When the company was formed Goddu took in his own name $30,000 of the par value of the stock, and stock to the par value of $60,000 was given to each of his five sons, and $60,000 at par value of the stock was also given to Van Wagenen. I believe that in fact the greater part of this stock thus issued to his sons belongs to Goddu, senior, though I cannot state this positively, but it has appeared from the testimony in the litigation to which I have referred that the certificate originally issued to Goddu's son Eloie Goddu was sometime after the formation of the company, assigned by Eloie on the back, and by him delivered to his father, who now holds the certificate in his safe, and also that the certificate of at least one other son is locked up in the safe of Goddu, senior. It also appears that the stock standing directly in the name of Goddu, senior, has now increased from $30,000 to about $70,000.

Since the Goddu Sons Metal Fastening Company was formed, some stock in the company has been disposed of, it appearing from the evidence of one or more of these defendants in their evidence given in the litigation to which I have referred, and also from the evidence of these defendants brought out in an interference in the Patent Office between Herbert H. Buffum and the defendant George Goddu, that the daughter of Louis Goddu, senior, has taken or been given by her father a thousand dollars at par value of the stock, paying therefor $500 in cash, and that a son-in-law of Louis Goddu, senior, has also taken or been given by Louis Goddu, senior, some stock, and also that another daughter has taken or been given by her father some stock, and also a granddaughter, and also that the domestic servant in the family of Louis Goddu, senior, has been sold $500 at par value of the stock, paying therefor $250, and furthermore that Joseph H. Taylor, a friend of Louis Goddu, senior, and who had been working under Goddu's direction upon the Goddu

sewing machine to which I refer below, also took or was given some stock, and that some stock has been sold or given to a few other parties, though the amount disposed of to these other parties, and the sums paid therefor, has not yet appeared in the evidence, in the other litigation to which I have referred, because the treasurer, Van Wagenen, has refused to produce the stock book of the company.

Much the greater part of the stock of the company, however, is still held by Goddu, senior, and his sons, and it also appears from the evidence in this pending litigation that whatever money has been needed for the enterprise, and has not been supplied since the company was formed by these sales of the stock, has been advanced from time to time by Goddu, senior; it appears that as late as October 15, 1898, Goddu, senior, made an advance of $2000 towards the expense of carrying on this enterprise, and I have no doubt that since that date Goddu, senior, has made additional advances. The total money paid by Louis Goddu, senior, out of his own pocket up to October 15, 1898, amounted to about $40,000, and since that date I am sure he has advanced additional sums.

I should add, as bearing on this matter, that Louis Goddu is in sound health, and that he has stated in my presence on more than one occasion since this enterprise began that he never felt in better mental condition, or more able in his life to make valuable inventions. These statements have been generally made by him when discussing the sewing-machine matters. Goddu has substantially a third interest in the Goddu Sewing Machine Company, of which the Association owns a little more than half the stock, and during the last eighteen months Goddu, with the consent of the Association, has been under contract to devote his time to the invention of and improvement of a sewing machine and a line of auxiliary machines intended to be used in connection therewith. Goddu has apparently been disposed to give a part of his time to this inventive work for the Sewing Machine Company, because of his large interest in the company, and in this work he has made a number of brilliant inventions showing clearly that his inventive faculties are to-day at their best. I have no doubt whatever that Goddu is at

the present time capable of doing the most valuable and brilliant work for the Association, but as a matter of fact, since January, 1895, he has done practically nothing for the Association.

Louis Goddu, senior, also stated to me, before the final break came and his boys had begun to leave the Association, that he felt he could very much lessen the number of the parts in the machines of the Association without in any way decreasing their efficiency, and he also stated to me then, as an idea which he thought would be of value to the Association, that, besides thus lessening the parts and simplifying the metallic-fastening machinery of the Association, he could design a single base or style of base which would do for all of the machines of the Association, instead of the several bases now used for the machines of the Association, which are different for the different machines.

I annex to my affidavit a pamphlet issued by the defendant corporation, the Goddu Sons Metal Fastening Company, signed by the defendant, Albert Van Wagenen, treasurer. It will be seen that the bases of these infringing Goddu machines have been made all of the same pattern so as to embody the idea which Goddu expressed to me before his final break with the Association, and before the enterprise of building these infringing machines was undertaken. It will also be noticed that the special claim of this catalogue is not so much for the increased efficiency of the machines as that the machines have been simplified, and the number of parts much lessened, as compared with the machinery of the Association, which is the only other machinery of this class in use.

The total amount paid Louis Goddu personally by the Association since he entered its employ is over two hundred and fifty thousand dollars, and besides this the Association, at his request, took into its employ his brother, and also one or two others of his relatives or connections, and paid them all good wages. Moreover, as each one of his five sons grew up, the Association, at their father's request, furnished them all with employment at good wages, and it was only when these sons, at the instigation of their father, and of their own accord, left the employ of the Association that their names ceased to appear on the pay roll of the Association. After the sons thus

left the employ of the Association and went to work in their father's shop for daily wages paid by their father, to aid him in getting up the infringing machines, Goddu, senior, still continued to draw pay from the Association. It is only within a few months of the present time, and only after the Association had obtained conclusive proofs that Goddu, senior, had been for more more than two years using the very money he drew from the Association to carry on in secret in the shop next his house his plan for ruining the Association, that the Association refused to permit Goddu, senior, to draw any more money.

During all the time that the sons of Louis Goddu have been employed by their father in building these infringing machines, — in fact, before the enterprise started, — all the sons knew well that their father had sold his future metallic-fastening inventions to the McKay Metallic Fastening Association, and the defendant Albert Van Wagenen also knew this fact; and I am sure that the defendant George N. Smalley was also informed of this fact before he took any interest in the enterprise, or became an incorporator in the Goddu Sons Metal Fastening Company, and the only remaining director of the company, James H. Churchill, was also well aware of Goddu's contract relations with the Association. The defendant corporation, the Goddu Sons Metal Fastening Company, was formed, as I believe, by the said Louis Goddu and the said Albert Van Wagenen as a mere convenient tool for carrying on the wrongful acts herein complained of. Van Wagenen, two of Louis Goddu's sons, their patent solicitor Churchill, and Van Wagenen's friend George N. Smalley were the original incorporators, and then constituted, and have constituted ever since, the board of directors and all the officers of the company. The said Louis Goddu and the said Albert Van Wagenen have directed every act of the company since the day it was formed. The defendant Louis Goddu has continued as before to supply to the company practically all the money needed to carry on the enterprise, and I believe that no person has taken any stock in the company who has not known of the contract relations between Louis Goddu and the Association, and that the com-

pany was formed for the purpose of aiding Louis Goddu to cheat the McKay Association out of its rights.

As I have stated, I have read the affidavits of Joseph P. Livermore and Franklin O. Tobey accompanying this motion for a preliminary injunction, but I should perhaps add that I believe the affidavits to be strictly true. I do not claim to have knowledge as to those portions of the affidavits which are purely mechanical and technical. No one of the patents upon which these suits are based has ever been infringed, so far as I am aware, by any one prior to the infringement here complained of, but on the contrary they have all been acquiesced in by the public and by rival manufacturers of shoe machinery ever since they were originally issued. There have been several times within the last few years when rival manufacturers have endeavored to put out competing machines, and when they would have been very glad indeed to infringe the patents which these defendants have begun to infringe, but these rival manufacturers have not felt that they could take the inventions of the Association, or infringe the patents here involved, and in consequence these rival manufacturers have been at a serious disadvantage in competing with the Association.

The infringing machines now built and belonging to the Goddu Sons Metal Fastening Company consist of twenty-one screw machines of the kind referred to as the defendants' screw machines in the affidavits of Franklin O. Tobey and Joseph P. Livermore; twenty-five slugging machines of the kind referred to in said affidavits, and eleven loose nailers, and one hundred and one tackers of the kind referred to in the affidavits of Messrs. Tobey and Livermore. The Goddu Sons Company have also on hand the jigs and special tools required to build these machines rapidly in large quantities.

So far, none of these machines have been put out, but the machines have been offered to shoe manufacturers, as appears from the catalogue to which I have already referred, and which is annexed to my affidavit, and as also appears from the copy of a circular which I annex to my affidavit directed to Isaac Prouty & Company, and bearing the name of the "Goddu Sons Metal Fastening Com-

pany, A. Van Wagenen, Treasurer", at the bottom. This circular, offering the machines of the Goddu Sons Company, has been sent, I am informed and believe, to quite a large number of the biggest shoe manufacturers in the country. I have all along felt that Goddu and Van Wagenen were getting up these infringing machines largely for the purpose of threatening the Association, and that very probably when they found their threats did not work, they would not seriously undertake the task of putting out their infringing machines, but I have recently been informed and believe that the defendants Louis Goddu and Albert Van Wagenen have within a few days made up their minds to begin to put out the machines now on hand and to at once manufacture more, and that all of the defendants, acting together, are just on the point of doing this; and I have also been informed and believe that the said Van Wagenen and Louis Goddu intend to offer the metallic fastenings intended for use in their machines, and which will go into immediate and direct competition with our metallic fastenings, at a very large reduction in price from the prices which have been established throughout the United States by the Association for its various fastenings.

The machines of the McKay Metallic Fastening Association put out in the United States and Canada are all owned by the Association. And all the machines thus put by the Association for some years, amounting to much the larger part of the machinery now in use, have been put out without any initial payment whatever from the manufacturer representing the cost of building the machines or the cost to the Association of installing them in the factories. The amount of money which the Association has thus invested in machinery in the hands of shoe manufacturers in the United States is very large indeed, and vital and irreparable injury will be done to the business of the Association if the defendants are permitted to offer their infringing machines to the licensees of the Association, and especially if the defendants, as they are threatening to do, should cut the prices established by the Association for the sale of its fastenings, because it is only by the sale of its fastenings, as I have pointed out, that the Association gets any rental or royalty

for the nearly five thousand machines under lease in the United States, and for which the Association has obtained no initial price to cover the cost of making the machines or the cost of installing them in the factories. Moreover, as the defendants well know, the Association has agreed in its leases that it will charge the same price for its fastenings to every manufacturer, and therefore, if the defendants offer the fastenings intended for use in their machines at a reduction in price, the Association will be obliged, at the very outset, in meeting this cut in price, to suffer enormous loss, because the first cut in the price of its fastening materials made by the Association to a single manufacturer will involve a corresponding reduction to every other licensee of the Association. Furthermore, if such a cut is once made by the Association, as will have to be done to meet the competition of the defendants if they are allowed to manufacture and put out their infringing machinery while this litigation is in progress, it will be practically impossible to afterwards restore the prices if the Association should eventually be successful in this litigation, because long experience has taught the officers of the Association that, while rentals and prices of parts can easily be lowered, they never can be advanced without raising among the manufacturers such a storm of objection and criticism, and causing so much ill-will and bad feeling, as to render the attempt to raise a rental once reduced extremely impolitic and practically impossible.

Affidavit of Franklin O. Tobey.

Franklin O. Tobey, being duly sworn, doth depose and say as follows: —

I am fifty-four years old, and live at Somerville, Massachusetts, and am a machinist by trade. I first began to work as a machinist in 1863 at Worcester, Massachusetts, and continued to work as a machinist in a number of different machine shops until about 1869, when I entered the machine shop of Elmer Townsend on Sudbury street, Boston. Townsend, at that time, was engaged in the business of building and selling wax-thread sewing machines, a pegging machine called the "New Era", and one or two metallic fas-

tening machines. During my first year in Townsend's machine shop I did quite a good deal of work on a new cable-wire tacker which had been invented by Louis Goddu, one of the defendants in these suits, who was then in Townsend's employ. After that I was chiefly occupied for some time as an experimenter to assist Goddu, who was then constantly making inventions and getting up new machines relating to metallic fastenings. When not engaged in helping Goddu I spent my time making special tools for the factory.

Soon after I entered Townsend's employ the American Cable Screw Wire Company was formed, and I continued in the employ of that company until the formation of the McKay Metallic Fastening Association in 1877, and I have been in the employ of that association ever since. I continued doing experimental work under Goddu and making special tools up to the year 1875, when I began to inspect and look after the Goddu machines of the American Cable Screw Wire Company in the different shoe factories, and after I began to work for the McKay Metallic Fastening Association I continued this work of starting and inspecting the Goddu machines put out under lease by the McKay Metallic Fastening Association.

In June and July of this present year 1898, I went to the experimental shop of the defendant Louis Goddu, adjoining his house in Winchester, and spent more than ten days in making a thorough examination of the loose-nail machine, the standard screw machine, the slugger and the string-nail tacker of the Goddu Sons' Metal Fastening Company. The machines were in running order, with power applied, and besides studying them carefully, I saw them operated repeatedly by the different members of the Goddu family, and also operated them myself.

During the ten or more days that I was at this experimental shop belonging to the defendant Louis Goddu, senior, I saw all of the Goddu boys,— Louis H. Goddu, Napoleon Goddu, Eloie Goddu, William Goddu, and George Goddu. They were at work assembling loose nailers, and also constructing machines for making standard screw wire, and doing other work preparatory to putting

these loose nailers, standard screw machines, tackers, and sluggers on the market. I also repeateedly saw Louis Goddu, senior, in the shop, meeting him there every day, or every day but one. The shop immediately adjoins his house, being distant not more than forty feet. The basement floor of the shop has no shafting or machinery, and is used as a store room, and no work is done there. There is a little blacksmith's forge at the back of the shop where hardening parts or other small forging can be done. All the work, except the little forging required from time to time, is carried on in a single room about forty feet by eighteen or twenty feet, which occupies the floor above the basement. The room is fitted up with work benches and shafting, and in this room are all the special tools and machines used in whatever work may be going on. A little gasoline engine placed at one end of the shop supplies the power for the machinery in this room. No work is done on the third or top floor, as it has no power or machinery or shafting, but is used as a place to store special tools, jigs, patterns, parts, and other things of that sort. There is also a small room which leads out of the machinery room which was apparently originally intended to be an office. It has no machinery, tools, or work benches, but has several desks and tables, and is now chiefly used as a store room. All the work done in the shop by any one, except such work as may be done occasionally at the little blacksmith's forge, is carried on within plain sight and within speaking distance, because the work room is entirely open without any dividing partitions, and, as I have stated, is only forty by eighteen or twenty feet.

There has been prepared, with my assistance, a set of drawings illustrating the loose nailer, the standard screw machine, the slugger and the string nail tacker of the Goddu Sons' Metal Fastening Company which I saw and examined, as I have stated, at this experimental shop adjoining the house of Louis Goddu, senior. I have written my initials on each of these drawings, and I will now refer to them in detail, taking up first the drawings relating to the loose nailer.

Defendants' Loose Nailer.

The drawing marked "Defendants' Loose Nailer" is a general

representation of the loose nailer of the Goddu Sons' Metal Fastening Company which I saw and examined at Louis Goddu's shop adjoining his house. I will, hereafter, for the sake of brevity, call this loose nailer the "Defendants' Loose Nailer". This drawing is made to show the machine from the right-hand side, and is an accurate representation of the machine except for the slight, and, so far as the operation or mode of operation of the machine is concerned, immaterial difference that the gear or teeth for revolving the nail pot *c*-17 are indicated in this drawing near the middle of the pot, while in the machine I saw at Winchester they were placed near the top of the pot.

The drawing marked "Defendants' Loose Nailer Awl Stroke Controlling Mechanism" is a detail drawing of the mechanisms used in the defendants' loose nailer for regulating the stroke of the awl according to the position of the horn, the position of the horn depending upon the thickness of the stock against which it is pressed.

The drawing "Defendants' Loose Nailer Detail Awl Actuating Mechanism" is an accurate representation of the mechanism used in the defendants' loose nailer for actuating the awl bar. The drawings "Defendants' Loose Nailer, Horn Depressing Mechanism" show in detail the mechanism employed in the defendants' loose nailer for depressing the horn to allow the work to be fed after each nail is driven.

The drawing "Defendants' Loose Nailer, Nail Feeding Mechanism" shows the roadway for the nails and the striker or clearer which in the operation of the machine is reciprocated to free the roadway from such nails as may be improperly lodged in it.

The drawing "Defendants' Clutch Mechanism" is a good representation of the clutch and brake mechanism used on the defendants' loose nailer. There is in the machine a suitable spring for depressing the end of the lever *d*-9 which carries the brake *d*-8 in order to apply the brake when the lever *d*-3 is allowed to drop.

I also carefully compared the loose nailer of the Goddu Sons' Metal Fastening Company, which I saw in Louis Goddu, senior's, experimental shop at Winchester, with the drawings and with the

description of United States Patent No. 583,044, issued to George Goddu of Winchester, Massachusetts, May 25, 1897. I found that this patent accurately represented and described the defendants' loose nailer except as to some few points in construction which do not affect the general character of the machine. In the defendants' loose nailer which I saw at Winchester instead of the slot shown in the drawings of the patent in the end of arm a^{33} of the awl-actuating mechanism, in which is fitted the block a^{35}, pivoted on the awl bar a^{36}, there has been substituted in the present defendants' loose nailer, a rack on the side of the awl bar, shown as a^{35a} in the drawing "Defendants' Loose Nailer Detail Awl Actuating Mechanism", with which engages a toothed sector on the arm a^{33}, shown in the said drawing as a^{34a}.

Again, in the horn-depressing mechanism, instead of longitudinal serrations on the end of lever a^{53}, as shown in the patent, with which co-operates a dog, a^{47}, which has corresponding longitudinal serrations, I found that in the defendants' loose nailer the end of the lever a^{53} was serrated transversely, and for the dog a^{47} there had been substituted a pawl adapted to engage the teeth formed by the transverse serrations on the end of lever a^{53}.

The lever which carries the pawl, corresponding to the lever shown in the patent as a^{42}, instead of being under the main shaft a^{23}, as shown in the patent, has in the defendants' loose nailer been carried over said shaft. This change from the construction of the patent is illustrated in drawing "Defendants' Loose Nailer, Horn Depressing Mechanism", where the pawl-carrying lever is shown as a^{42a}. This drawing also shows the transverse serrations on the end of lever a^{53} and the pawl-carrying lever a^{42a} carrying the pawl a^{47a}, adapted to engage the teeth on the end of lever a^{53}.

As I have stated before, there is no "clearer" or "striker" shown in the drawings of patent No. 583,044. There was, however, such a "striker" on the defendants' loose nailer which I examined at Louis Goddu's experimental shop, and this "striker" is shown in drawing "Defendants' Loose Nailer, Nail Feeding Mechanism".

I should also add that the gear on the revolving hopper, instead

of being around the middle portion of the conical-shaped hopper as shown in the drawings of patent No. 583,044, is, in the defendants' machine, around the upper end or base of the conical hopper. Of course there is a corresponding change in the pinion which engages this gear, and through it rotates the hopper.

In the defendants' loose nailer the feed bar c^{80} is given a reciprocating motion from right to left as one faces the machine. In the patent it is stated that this feed lever is given what is known as the four-motion feed, that is, in addition to the back-and-forth motion from right to left, it is shown as having additional movements toward and from the work. The effect of this change from the construction of the patent made slight modifications necessary in the feed-operating lever and cam.

Some other slight changes have been made in the defendants' loose nailer from the construction shown in the patent. Thus, the lever a^{42}, which operates to move the edge gauge toward or from the work is placed on the right side of the defendants' nailer instead of on the left, as shown in the patent. Also the spring a^{76}, which operates to move the vibrating head against the action of the cam a^{77} has been placed on the lower right-hand side of the vibrating head (viewing the front of the machine) instead of on the upper left hand, as shown in the drawings of the patent.

Except such changes as I have indicated above, the loose nailer of the Goddu Sons' Metal Fastening Company, which I examined at the shop of Louis Goddu, is, I believe, accurately represented by the drawings of said patent No. 583,044, and is built in accordance with the specification of that patent.

Defendants' Screw Machine.

Taking up next the standard screw machine of the Goddu Sons' Metal Fastening Company, which I saw at the experimental shop of Louis Goddu, senior, and which I will hereafter call defendants' screw machine, the drawing marked "Defendants' Screw Machine Wire Feed Mechanism" is an accurate representation of the mechanism employed in the defendants' machine for feeding the wire and for varying the amount of wire fed, according to the thickness of the stock, by means of connections between the feeding sleeve

and the horn. This drawing also shows the device used on defendants' screw machine for stopping the feeding of the wire, consisting of the arm h, carrying a latch plate, h^4, which is adapted to be swung under the lug or block h^5 on the sleeve-actuating lever b^1 when the sleeve is at its lowest point, to hold the sleeve at its lowest position against the action of the spring b^5.

This drawing, "Defendants' Screw Machine Wire Feed Mechanism", also shows the enlarged lower end of the spindle of the defendants' screw-thread machine with the enclosed feed rolls.

The horn-depressing mechanism on the defendants' screw machine is substantially the same as the mechanism illustrated in the drawing "Defendants' Loose Nailer Horn Depressing Mechanism", except that the lever which carries the pawl (shown as a-580 in said drawing) goes under the main shaft a-23 instead of over it.

I also compared the defendants' screw machine with the drawings and description of United States Letters Patent No. 583,045, issued to Louis H. Goddu May 25, 1897, and found that there was no substantial difference between the defendants' screw machine and the screw machine shown and described in that patent. In fact, except for some slight changes in the forms of some of the springs, the defendants' machine is, I think, built strictly in accordance with this patent No. 583,045.

Defendants' Slugger.

The feed roll and wire passage in the slugging machine of the Goddu Sons' Metal Fastening Company which I examined at Winchester are accurately illustrated in the drawing marked "Defendants' Slugging Machine." As shown in that drawing, the wire passage is formed entirely in the block a-16, which is secured by a bolt to the lever which carries the feed roll.

The clutch and brake mechanism which was on the defendants' slugging machine which I saw at Winchester is substantially the same as the corresponding mechanism on the loose nailer, and is well represented in drawing "Defendants' Clutch Mechanism".

I also carefully compared the defendants' slugging machine with the slugging machine shown and described in the United States Letters Patent No. 583,046, issued to the defendant Louis H.

Goddu May 25, 1897, and entitled "An Invention relating to Nailing Machines", but referred to in the specifications as a "nailing machine adapted for the insertion of nails or slugs".

As I remember, the clutch mechanism on the machine differed somewhat from the clutch mechanism shown in the patent on the machine No. 583,046. In the machine of the patent, the pin or rod *e* (see fig. 2 of patent) was not attached to the yoke *d'*, but merely rested upon it. As I remember the machine, this lever, shown as *e* in the patent, was securely attached to the yoke as shown in the drawing "Defendants' Clutch Mechanism", where the lever shown as *e* in the patent is marked *d*-21, and the wedge is shown as *d*.

The patent on this machine No. 583,046 shows an edge feed having a four-motion feed similar to that already described as shown in the loose nailer patent. The machine which I saw, however, had only a two-motion feed like the loose nailer which I saw, and, as in the case of the loose nailer, there were some changes, in the levers and in the cam which operate the feed bar, from the construction shown in the patent.

Except for these few changes, there is, so far as I was able to discover, no change in the slugging machine which I saw at Winchester from the machine shown and described in patent No. 583,046.

Defendants' Tacker.

The string-nail tacker of the Goddu Sons' Metal Fastening Company which I saw at the shop of Louis Goddu, senior, at Winchester is built substantially in accordance with patent No. 584,735 to William Goddu, dated June 15, 1897. In examining the machine, I noticed no deviation from the construction shown and described in that patent.

The work-supporting device of this string-nail tacker of the defendants which I examined at Winchester is accurately shown in the drawing "Defendants' String Nailer."

I have been asked to state to what extent the inventions pointed out by the several claims of the different patents here in suit, and which Mr. Livermore says in his affidavit are infringed by the

defendants, have been used by the McKay Metallic Fastening Association and its licensees.

The awl-actuating mechanism described in claim 1 of patent to Louis Goddu, No. 383,455, dated May 29, 1888 (which Mr. Livermore says is used in the defendants' loose nailer), has been used by the McKay Metallic Fastening Association in its loose nailers ever since that invention was made by Louis Goddu, now more than ten years ago, and the Association has in use to-day in the United States alone, in about 510 different factories, more than 780 of these loose nailers embodying the invention pointed out by this first claim of this patent. The Association has also used the awl-actuating mechanism of this first claim in all of its slugging machines, this construction having been first embodied by Louis Goddu in the slugging machine of the Association in 1894. There are to-day in use in the shoe factories of the United States about 660 of these slugging machines embodying this invention put out by the Association in about 367 different shoe factories. The mechanism pointed out in this claim for actuating the awl bar is much more practical and satisfactory than any other mechanism that has ever been invented for this purpose, so far as I have ever seen or known.

The horn-depressing mechanism referred to in claims 17 and 18 of the Louis Goddu patent in suit No. 265,227, dated September 26, 1882 (which Mr. Livermore says has been embodied in the defendants' loose nailer and the defendants' standard screw machine), has been used by the Metallic Association in its loose nailers ever since the mechanism pointed out by these claims was invented by Louis Goddu. It was first applied to the loose nailer some sixteen years ago, and has been in constant use in that machine ever since, there being, as I have stated, some 780 of these machines under lease in about 510 different shoe factories in the United States alone. This same horn-depressing mechanism pointed out by these claims 17 and 18 has also been applied to the rapid standard screw machine of the Association, and the Association now has 500 rapid standard machines under lease in about 294 different factories. The mechanism of these claims 17 and 18 was also applied by Louis Goddu, senior, to the old standard screw machines of the Association, though

in the case of the old standard screw machine there was a simple reversal of the motion, so that the head moved instead of the horn. This horn-depressing mechanism described in this Goddu patent, and pointed out by these claims 17 and 18, has proved entirely satisfactory for depressing the horn to allow the work to be fed, and it is the only mechanism which has ever been successfully used by any one, so far as I know, for this purpose.

The nail-feeding improvement pointed out by claim 3 of the Louis Goddu patent No. 265,227, was, so far as I know, the first device that ever went into practical use on a loose-nailing machine to throw off from the roadway nails improperly lodged in the roadway. This invention has been used in the loose nailers of the Metallic Association ever since the date of this patent, some sixteen years ago. There have been from time to time changes made by the Association in the specific form in which this invention has been applied to its loose nailer, but in one or another of these forms it has been in continuous use by the Association for upwards of sixteen years, and is now in use on more than 780 loose nailers of the Association under lease in shoe factories all over the United States.

As regards the mechanism of claim 1 of the patent in suit to Hopkins, No. 289,103, which consists of a reciprocating clearer in combination with a stationary roadway, the Association does not use this form of construction, because in the loose nailers of the Association the *raceway* is reciprocated instead of the clearer, so that the Association has used for its loose nailer a somewhat different construction covered by another one of its patents instead of the construction set forth in its Hopkins patent.

Taking up now the clinching mechanism described in claims 1, 2, 3, 5 and 6 of the Dunham patent No. 356,107, dated January 18, 1887, the construction referred to in these claims has been embodied in all the loose nailers put out by the Association since it first began to build and lease loose nailers in the year 1882. This Dunham invention — for which the application was pending in 1882, when the Association put out its first loose nailers — did not at that time belong to the McKay Metallic Fastening Association, but the Association soon found that it could not get along

without the use of the Dunham invention, and in 1887 the Association bought out the company controlling this patent, paying therefor a very large sum. The sum paid, which amounted to $125,000, was not paid wholly on account of this patent, but the patent was a large factor in determining this price, as the Association considered that in order to have a successful loose nailer it must use this Dunham invention. It is absolutely essential to a successful loose nailer that the nails, which are all of one length, but which are driven into leather of varying thicknesses, should be clinched on the inside of the shoe, and these Dunham claims cover the only practical mechanism, so far as I am aware, for properly clinching a nail.

The invention pointed out by claims 7 and 8 of the Louis Goddu patent No. 383,455 (which invention Mr. Livermore says is embodied in the defendants' loose nailer and the defendants' string-nail tacker and in the defendants' slugger) have been used by the Association in all loose nailers built by the Association since the invention pointed out by these claims was made by Louis Goddu, and to-day it is in use on every loose nailer of the Association under lease in the United States, amounting, as I have stated, to more than 780 loose nailers under lease in about 510 different factories distributed all over the United States. This invention pointed out by these claims 7 and 8 has also been embodied in the slugging machines of the Association which, as I have stated, are out under lease in large numbers in many shoe factories in different parts of the United States.

The invention pointed out by claim 7 of the Louis Goddu patent No. 385,802, which is an improvement upon the construction to which I have just referred as being pointed out by claims 7 and 8 of the prior Goddu patent 383,455, has also been embodied by the Association in all of its loose nailers and all of its slugging machines, so that it has been in use by the Association for a period of about ten years, and has now been applied to more than 780 loose nailers and 660 sluggers of the Association out under lease in the United States.

The wire-feed mechanism for the standard screw machine re-

ferred to in claims 10, 11 and 12 of Louis Goddu patent 403,835 (and which Mr. Livermore says has been put into the defendants' screw machine) has been used on the rapid standard screw machine of the Metallic Fastening Association ever since that machine was first put out by the Association in 1888 or 1889, and is in use to-day on all the rapid standard screw machines of the Association in more than 290 different factories in the United States. In the old standard screw machines of the Association manufactured prior to 1888 or 1889, the Association had employed a feed sleeve which was actuated by a lever connected to only one side of a collar surrounding the feed sleeve, and on account of the friction and binding between the sleeve and the collar which actuated it the speed of the machine was limited so that it was possible to insert only 100 screws a minute. After the adoption of the double-threaded wire with steeper pitch and the substitution of the yoke construction pointed out by these three claims for actuating the feed sleeve, instead of the old construction previously used, the machine was able to insert 240 screws a minute instead of 100. A large proportion of this increased speed was due directly to the adoption of this mechanism of claims 10, 11 and 12 of the patent in suit, 403,835. Claim 26 of this patent in suit 403,835 (which Mr. Livermore says is also infringed by the defendants' screw machine), covers the enlarged lower end of the spindle having the feed wheels and gears to drive them entirely enclosed within it. So far as I can see the defendants can only obtain a high speed for their machine by either adopting this construction pointed out by claim 26 of this Goddu patent in suit belonging to the Association, or else by adopting the construction set forth in the Goddu patent 490,622, also belonging to the Association. The defendants apparently have chosen the former of these two patented constructions belonging to the Association, and the Association in its own machines has used the latter of its two patented constructions.

The mechanism for stopping the feed of the screw wire set forth in claim 18 of the Louis Goddu patent in suit 403,835 (which Mr. Livermore in his affidavit says has been embodied by the defendants in their screw machine) has been in use by the Association in all of

its standard screw machines ever since the patent was taken out some ten years ago. In the standard screw machine of the Metallic Association the feed of the screw wire is produced by the up-and-down movement of the feed sleeve on the spindle, and this sleeve is operated by a lever which is moved positively downward to feed the wire and is moved upward by a spring. In order to stop the feed of the wire it is only necessary to interpose an obstruction to arrest the upward movement of the feed sleeve, and the mechanism referred to in this eighteenth claim of the Goddu patent in suit, 403,835, for accomplishing this result, consists of a pivoted lever or block which is adapted to be swung in and out of the path of movement of a lug on the lever which actuates the feed sleeve. This stopping mechanism of this eighteenth claim was at once applied, as I have said, to the rapid standard screw machine of the Metallic Association, and has been used in that machine ever since. It is by far the most efficient and most satisfactory device for this purpose which has ever been used on the standard screw machine of the Association.

The wire guideway referred to in claim 4 of patent to Louis Goddu, No. 563,478, dated July 7, 1896 (which Mr. Livermore says is embodied in the defendants' slugger), has been used on the slugging machines of the Association ever since that machine began to be put out in 1894 or 1895, so that it is in use here to-day on about 660 slugging machines leased by the Association to more than 360 shoe manufacturers distributed over all parts of the United States.

Affidavit of Joseph P. Livermore.

Joseph P. Livermore, being duly sworn, deposes and says as follows: —

I am forty-three years old; reside at Cambridge, Mass., and am a solicitor of patents and mechanical expert. I am a graduate of Harvard College, and of the Lawrence Scientific School, where I received the degree of civil engineer. For the past ten years or more I have been occupied as a mechanical expert, frequently testifying in patent cases, and making examinations and reports as to

the nature and scope of patented inventions. I have also been practising as a solicitor of patents since 1879, and in my work as patent solicitor and expert have been constantly employed in examining machinery and apparatus of various kinds, and descriptions and drawings thereof, and in making comparisons as to substantial resemblances and differences in the construction and mode of operation of the contrivances therein embodied or represented.

I have examined the drawing marked "Defendants' Loose Nailer" and identified by F. O. Tobey, which is a side elevation of the machine shown in patent to George Goddu, No. 583,044, dated May 25, 1897, with the exception of certain details or modifications which I will hereinafter describe, and I have also examined the drawings marked "Defendants' Loose Nailer Awl Stroke Controlling Mechanism", "Defendants' Loose Nailer Detail Awl Actuating Mechanism," "Defendants' Loose Nailer Horn Depressing Mechanism", "Defendants' Loose Nailer Nail Feeding Mechanism", "Defendants' Clutch Mechanism", for the purpose of ascertaining whether not in my opinion a machine constructed and operated like the machine shown and described in said drawing and said patent, which machine I will hereafter call "Defendants' Loose Nailer", embodies inventions forming the subject of claims in Letters Patent No. 383,455, dated May 29, 1888, to Louis Goddu, assignor to James W. Brooks, trustee; Letters Patent No. 265,227, dated September 26, 1882, to Louis Goddu; Letters Patent No. 493,910, dated March 21, 1893, to Cummings & Coupal, assignors to Stephen Moore, trustee; Letters Patent No. 356,107, dated January 18, 1887, to Henry Dunham, Ella B. Dunham, administratrix, assignor to Henry S. Jenkins, trustee; Letters Patent No. 385,802, dated July 10, 1888, to Louis Goddu; and Letters Patent No. 289,-103, dated November 27, 1883, to William P. Hopkins, assignor to Gordon McKay and James W. Brooks, trustee.

Loose Nailer.

The machine shown in said drawing, and shown and described in said patent to George Goddu, No. 583,044, is a nailing machine of the kind commonly employed for driving nails into the soles of boots and shoes for the purpose of fastening together the outsole,

upper, and insole of which the shoe is made. The machine is of the class commonly known as loose nailers, being one in which separate nails are supplied in mass, and are driven, one at a time, into the leather, as distinguished from those in which each nail or fastening is cut or separated from a wire or strip of indefinite length by the machine before or after being driven. The main working elements of the machine comprise a horn or work support adapted to extend up inside of the boot or shoe so as to afford a support for the insole directly under the point at which the nail is to be driven; a nose or guideway having a throat or passage through which the nail is driven into the leather; an awl which passes through the said throat and punctures the leather so as to make it easier for the nail to penetrate; a driver bar which works in the throat after the awl has been withdrawn therefrom, to drive the nail which has been introduced into said throat or guideway below the driver after the awl has been withdrawn; and feed mechanism which advances the material between successive driving operations so that the consecutive nails are driven at regular distances from one another around the edge of the sole, or along whatever path may be required for the line of fastenings in the finished work.

The nose containing the throat or guide passage through which the awl and nail driver operate is rigidly supported upon the framework of the machine directly over the upper end of the horn, and the latter has an up-and-down movement with relation to said nose, so that it can be withdrawn therefrom to permit a boot or shoe to be placed thereon, and so that it may rise to the proper height to clamp the leather or material between the upper end of the horn and the lower end of the nose, whatever may be the thickness of the said material. The horn is normally pressed upward by a spring (*b*-23, fig. 5 of the patent) so as to firmly clamp the material, and afford a solid wall or support for the material to resist the pressure of the awl and nail in penetrating it. In order that the feed of the material may take place between the successive nail-driving operations, the horn is depressed at the proper time so as to relax the clamping hold upon the material which it maintained during the nail-driving operation, in which operation is included

the penetration of the awl as well as the driving of the nail into the awl hole after the awl is withdrawn. It is obvious that the horn must stand at different heights with relation to the nose when the material is clamped, as the material varies widely in thickness in different parts of a given boot or shoe, as well as in the different boots or shoes which are operated upon in the use of the machine, and consequently the horn must be depressed, to provide for each feed operation, from whatever height it may be standing at the time when the given feed operation is to take place.

The nails, in a confused mass, are contained in a hopper or receptacle somewhat remote from the nose or throat through which each nail is driven into the material, and from said hopper there is an inclined chute or roadway leading to the throat, and means are provided for operating upon the confused mass of nails so that they are continually being deposited in the upper part of the roadway, which thus becomes filled, and contains a single row or column of nails resting one against the next, and all standing head up and point down, and tending to descend by gravity from the upper end of the roadway at the hopper to the lower end at the throat through which each nail is to be driven. The column of nails is arrested at the lower end of the guideway by a separator, which at the proper time is withdrawn and permits the lowermost nail to pass into the throat under the driver and then enters between said lowermost nail and the one next to it so as to hold back the remainder of the column while the nail thus separated therefrom is being driven, and until the proper time for the next nail to be supplied to the throat.

I will now describe more in detail certain of the above-named elements and the mechanism by which they are operated, and compare the same with the corresponding elements and mechanism forming the subject of certain prior patents which will be considered in connection therewith; and first I will take the awl and its actuating mechanism.

Awl, and Actuating Mechanism Therefor.

The awl is shown at *a* in the drawings of the George Goddu patent No. 583,044, and it is moved up and down to cause it to pene-

trate and be withdrawn from the material by a mechanism best shown in fig. 1 of said patent, comprising a lever, *a*-30, pivoted at *a*-32 and actuated by a cam, *a*-37, on the main driving-shaft *a*-23 of the machine, which shaft operates all the working elements of the machine at the proper time in relation to each other, performing a complete cycle of operations necessary for driving one nail and feeding the material to receive the next at each single rotation of said main shaft. As shown in the drawings of said patent, one arm, *a*-33, of the said lever *a*-30 is provided with a fork or slot, *a*-34, engaging a pivoted block, *a*-35, connected to one side of the awl-carrying bar *a*-2. I am requested, however, to consider a machine having substituted for this connection between the lever *a*-30 and the awl bar *a*-2 a connection such as shown in the drawing marked "Defendants' Loose Nailer", and also in the detail drawings marked "Defendants' Loose Nailer Awl Stroke Controlling Mechanism" and "Defendants' Loose Nailer Detail Awl Actuating Mechanism".

As shown in these drawings, the awl-actuating lever *a*-30 has a segmental gear, or curved toothed end, *a*-340, and the awl bar *a*-2 has a toothed portion or rack, *a*-350, meshing with the toothed end *a*-340, so that as the lever *a*-30 is vibrated on its pivot or fulcrum *a*-32 by the action of the cam *a*-37 on a cam roll, *a*-38, connected with the other arm *a*-39 of said lever, the said awl bar is moved up or down, the downward movement being effected by a stout spring, *a*-40, and the upward movement being positively produced by the cam.

The extent of vibration of the awl-actuating lever *a*-30 is not uniform at all times, but is automatically governed so as to give a varying awl stroke proportionate to the thickness of the material at the point to be penetrated. It is desirable that the awl should not fully penetrate the material, but should leave a portion below the point to be penetrated by the nail, so that the end of the nail will take firmer hold than it would if merely passed through a hole prepared for it by the awl. It is furthermore desirable that the thickness that is left by the awl to be penetrated by the nail should be substantially the same at all times, or, in other words, that the awl should always

penetrate to within a certain definite distance from the lower surface of the material being penetrated. If, therefore, for example, it is to enter to within $\frac{1}{8}$ of an inch of the lower surface, so as to leave a thickness of $\frac{1}{8}$ of an inch to be penetrated by the nail, the awl should enter to a depth of $\frac{1}{8}$ of an inch only, in material that is $\frac{1}{4}$ of an inch thick, but should enter to a depth of $\frac{1}{4}$ of an inch in material that is $\frac{3}{8}$ of an inch thick, and to a depth of $\frac{3}{8}$ of an inch in material that is $\frac{1}{2}$ an inch thick, and so on. This result is automatically accomplished by regulating the extent of the down stroke of the awl bar in accordance with the position of the horn, by connections from the horn to the awl-actuating mechanism, the result being that the awl always penetrates to within a certain definite distance from the end of the horn, whatever may be the position at which the horn stands at the time when the awl operates. In the specific construction shown in the drawings above referred to and in the George Goddu patent No. 583,044 this result is attained by a variable stop, *a*-51 (see fig. 1 of the patent), which arrests and thus determines the limit of movement of the awl-actuating lever and of the awl bar actuated thereby. The said stop is automatically shifted to arrest the movement of the awl bar at a higher or lower point according as the horn stands at a higher or lower point by connections from said stop to the horn, which are shown in drawing "Defendants' Loose Nailer Awl Stroke Controlling Mechanism", and are as follows: —

The stop *a*-51 is carried by a lever, *a*-53, pivoted at *a*-54 (see fig. 16 of the patent), and connected by a link, *b*-19, with one arm of a lever, *b*-6 (see fig. 5). The other arm of the lever *b*-6 is connected by rod *b*-13 with the horn post *b*-3 and horn *b*. This depression of the horn raises the stop *a*-51, or moves it further away from the coacting part *a*-50 on the awl-operating lever, giving a longer stroke to the awl, while the rising of the horn to a higher position lowers the stop *a*-51, bringing it nearer to the part *a*-50, and thus causing the awl to be arrested at a higher point.

I am of opinion that the appliances above described for automatically varying the depth of penetration of the awl in accordance with the thickness of the material, by mechanism connected with the horn and governed by the changes of position of the horn, embody

substantially the invention shown and described in patent to Cummings & Coupal, No. 493,910, and referred to in claim 2 thereof, which is as follows: —

"2. In a machine for driving metallic fastenings, the combination of a vertically movable work-supporting horn having an upward yielding movement, a perforating awl located over the horn, awl-operating mechanism substantially as described adapted to impart a varying depth of movement to the awl, and connections between said awl operating mechanism and the horn whereby the depth of movement of the awl is determined by the position of the horn, as set forth."

In specific construction the awl-operating mechanism of the Cummings & Coupal patent is somewhat different from that of the George Goddu patent No. 583,044 just described by me, but there is nothing in the specification or claim of said Cummings & Coupal patent which indicates that the invention is limited to specific construction of said mechanism; and in the absence of such limitation it is clear that the mechanism of the Goddu patent is substantially equivalent to that of the Cummings & Coupal patent, as it comprises the same essential elements, viz., the vertically movable upwardly spring-pressed horn, the awl, and awl-operating mechanism, and connections between said awl-operating mechanism and the horn whereby the awl is given a varying depth of movement determined by the position of the horn, these being the elements referred to in said claim 2 of the Cummings & Coupal patent. The specific construction of the connections between the horn and the awl-operating lever of the machine of the Cummings & Coupal patent is shown for convenience separate from the remainder of the machine in the drawing marked "Awl Stroke Controlling Mechanism, Cummings & Coupal in Suit No. 493,910", and is as follows: —

The horn *c* (see fig. 1 of the patent) is carried by post c^1, supported at its lower end upon one arm of a lever, *c*-3, fulcrumed at *c*-4. The other arm of this lever *c*-3 is connected by a rod, *c*-6, with one arm of a lever, *c*-7, fulcrumed (as best shown in fig. 3 of the patent) at *c*-8 upon one arm of a vibrating lever, *c*-9, fulcrumed at *c*-10, the other arm *c*-60 of which is actuated by a cam, *c*-61, on the driving shaft *b*. The forward end of the lever *c*-7 is connected

by a link, c-12, with the awl bar c-13 (see fig. 2) carrying a pair of awls, c-16. Looking at fig. 3 of the patent it will be seen that so long as the horn c remains stationary, the point c-70 of connection between lever c-7 and the rod c-6 remains stationary, and serves as a fulcrum or pivot for said lever c-7, which is then vibrated up and down on said pivot by the lever c-9, c-60, and cam c-61 at each rotation of the main shaft, giving the awl a uniform movement, and causing it always to descend or penetrate to the same level. If, however, the horn is depressed, it will raise the fulcrum c-70, the effect of which may be recognized by considering the connection c-8 as a fulcrum, so that raising the rear end c-70 of the lever serves to depress the front end of the lever and the awl bar c-13 connected therewith, so that the path of vibration of the awl bar will now extend to a lower point than before, corresponding to the distance to which the horn has been depressed. Similarly, if the horn were raised, the downward movement of the awl would terminate at a higher point. The only difference in effect between this connecting mechanism and that of the George Goddu patent 583,044 is that the Cummings & Coupal mechanism retains the length of stroke of the awl constant, but varies the location of the said stroke so that its lower terminus stands at a higher or lower point, depending on the position of the horn, and is substantially at the same distance from the horn, whatever its position may be. In the George Goddu machine, however, the length of stroke is variable, the awl always rising to the same point, but descending different distances therefrom according to the position of the horn. As the exact position of the awl at the end of the up stroke is immaterial, this difference in the mode of operation is of no material consequence, and it is to be borne in mind that the sole purpose of the mechanism of the Cummings & Coupal patent is to automatically regulate the extent of the downward movement of the awl, and it is only the effect of the mechanism in controlling the *downward* movement of the awl that is referred to in the claim, and the mechanism of the Goddu patent accomplishes precisely the same purpose in substantially the same way. The machine of the Cummings & Coupal patent is designed especially to operate with staples instead of with single

nails, and for this reason the awl bar is shown as provided with two awls, one for each leg of the staple. This difference in the character of the fastenings used, however, is immaterial so far as the purpose, mode of operation and result of regulating the depth of penetration of the awl is concerned, and the Cummings & Coupal patent clearly points out in the paragraph beginning at line 32, page 7, that these portions of the invention are not limited to —

"machines in which the fastening device is a staple, as several of the important features of our invention may be used in connection with machines . . . for making and driving single nails not of staple form."

For the above reasons I am of opinion that the machine shown and described in the George Goddu patent No. 583,044 either in the specific construction there shown, or modified as to the toothed connection between the awl bar and actuating lever shown in the drawings above referred to, clearly embodies the combination shown and described in the Cummings & Coupal patent, and referred to in claim 2 thereof. As possibly bearing upon the question whether or not claim 2 of the Cummings & Coupal patent is limited to the specific connecting mechanism between the horn and the awl bar, it is to be observed that claims 3 and 4 are otherwise for the same subject-matter as claim 2, but specify more definitely the mechanism of the connections from the horn to the awl-operating mechanism as including a lever having a shifting fulcrum, while claim 2 contains no limitation as to the details of construction of the "connections between said awl-operating mechanism and the horn".

I am also of opinion that a machine otherwise like that shown and described in the George Goddu patent No. 583,044, but having the toothed connection between the awl bar and its actuating lever as shown in the drawings "Defendants' Loose Nailer" and "Defendants' Loose Nailer Awl Stroke Controlling Mechanism" and "Defendants' Loose Nailer Detail Awl Actuating Mechanism", embodies the combination shown and described in patent to Louis Goddu No. 383,455, and referred to in claim 1 thereof. The said claim is as follows: —

"In a nailing-machine, a vibrating head, a driver-bar, and awl-

carrier therein, the latter provided at one side with teeth, and a toothed sector to move it, combined with a horn to support the work, substantially as described."

This claim refers specifically to the construction in which the awl bar is provided with teeth and actuated by a toothed sector, and is precisely the connection between the awl bar and lever shown in the said drawings "Defendants' Loose Nailer" and "Defendants' Loose Nailer Awl Stroke Controlling Mechanism" and "Defendants' Loose Nailer Detail Awl Actuating Mechanism". The mechanism forming the subject of this claim is shown in the drawing marked "Awl Actuating Mechanism Goddu Patent in Suit No. 383,455".

The elements of claim 1 of patent 383,455, other than the toothed awl bar and toothed sector to move it, are the vibrating head and the nail-driver bar and awl bar which reciprocate therein. The head has a vibrating movement by which the awl is brought, at the proper time, to the position at which the material is to be penetrated, and the driver is also brought at the proper time to the position where the nail is to be driven. In the machine of George Goddu patent No. 583,044, the awl bar *a*-2 and the driver bar *a*-3 are likewise guided in a vibrating head *a*-4 which vibrates on the pivot *a*-5 to alternately bring the awl and driver at the point where the material is to be penetrated and the nail to be driven. It is perfectly clear, therefore, that the machine of George Goddu patent 583,044, modified so as to embody the toothed connection between awl bar and its actuating lever, as illustrated in drawings "Defendants' Loose Nailer" and "Defendants' Loose Nailer Awl Stroke Controlling Mechanism" and "Defendants' Loose Nailer Detail Awl Actuating Mechanism", embodies all of the elements of the combination shown and described in Goddu patent No. 383,455, and referred to in claim 1 thereof. The identity of the specific connecting mechanism between the awl bar and the lever for moving it, which is the feature wherein the novelty of the combination of claim 1 of said patent No. 383,455 resides, is apparent upon inspection of the drawings "Defendants' Loose Nailer Detail Awl Actuating Mechanism" and "Awl Actuating Mechanism Goddu Patent in Suit, No. 383,455".

I will next take up the mechanism for depressing the horn to release the material for the feed operation.

Horn Depressing Mechanism.

As explained in my general preliminary description of the machine of George Goddu patent 583,044, the horn is depressed to provide for each feed operation, by means of mechanism adapted to lower the horn from whatever position it happens to occupy, this position of the horn depending upon the thickness of material which is clamped by it at the time when it has to be so moved. The specific mechanism for depressing the horn is shown in drawing "Defendants' Loose Nailer Horn Depressing Mechanism", and, as shown and described in George Goddu patent 583,044, the horn *b* (see fig. 5 of the patent) is constantly pressed upward by a spring, *b*-23, and this spring, unless the horn is otherwise controlled, will always hold it pressed against the under surface of the material, and thus clamp the material against the end of the nose through which the nails are driven. As before explained, the said horn is connected by rod *b*-13, lever *b*-6, and rod *b*-19 with the lever *a*-53 (see fig. 16 of the patent) in the head of the machine near the main shaft *a*-23. Thus said lever *a*-53 is moved up and down to correspond with the movement of the horn, moving up when the horn moves down, and down when the horn moves up, and any instrumentality which will positively lift the lever *a*-43 will correspondingly depress the horn. It is necessary, therefore, to provide mechanism which will lift the lever *a*-53 each time that the feed is to take place so as to depress the horn sufficiently to unclamp the material, and the means for thus lifting the lever *a*-53 must be able to take it from whatever position it happens to stand in, and, furthermore, must disengage or release it after the feed movement is finished so that the spring *b*-23 can press the horn up against the material to clamp it until the next feed operation. In said George Goddu patent the lever *a*-53 is thus engaged and actuated through the intervention of a friction dog, *a*-67, carried by arm *a*-62 of the lever *a*-56, the other arm *a*-58 of which has a cam roller, *a*-59, operated by a cam groove, *a*-60, in a disk, *a*-61, carried by the main shaft *a*-23 of the machine, so that said friction dog *a*-67 is vibrated up and down, once at each

rotation of the main shaft, and at the times when the horn is to be depressed, and again released. Near the end of the downward movement of the dog *a*-67 it is tripped so as to cease to take hold of the end of the lever *a*-53 by a trip arm, *a*-71, which engages a trip block or projection, *a*-72. Thus, towards the end of the downward movement of the dog-carrying arm *a*-62, which permits the horn to rise, the said dog is tripped and the lever *a*-53 thus wholly released and the horn left to continue its rising movement or to be pressed upward by the spring *b*-23 wholly independently of the horn-depressing mechanism. On the other hand, when the arm *a*-62 rises, the trip arm *a*-71 first leaves the trip block, and the dog *a*-67 then engages the lever *a*-53 (at whatever height it may happen to stand) and lifts the said lever, and correspondingly depresses the horn in the remainder of the upward movement of the dog-carrying arm *a*-62. Defendants' loose nailer is a machine having a horn-depressing mechanism otherwise like that of George Goddu patent 583,044, except that, instead of a friction dog, *a*-67, co-operating with a curved friction surface at the end of the lever *a*-53, it has a pawl co-operating with a ratchet-toothed surface on the end of the lever *a*-53, as shown in drawing "Defendants' Loose Nailer Horn Depressing Mechanism", on which the pawl is marked *a*-670, and the co-operating ratchet-toothed surface *a*-690, said drawing also showing a part marked *a*-580, which takes the place of the part designated in said patent by the letter *a*-62, the only difference being that in the patent the part *a*-62 is extended under the shaft *a*-23, while in the machine shown in said drawing the part *a*-580 is extended above said shaft, the remaining parts being designated by the same references as employed for the same parts in the drawing of said George Goddu patent 583,044. The operation of this mechanism is the same as that above described, except that the pawl takes a positive hold of the ratchet teeth instead of a frictional hold as is taken by the dog shown in the drawings of the patent, thus insuring a more certain depression of the horn, and a definite predetermined dowward movement from the position in which the horn is standing at each operation of the depressing mechanism. It will be recognized that if the friction dog should slip or fail to move the horn would not be de-

pressed at all, and if it slipped during a portion of its movement the horn would not be depressed the proper amount. I am of opinion that the horn-depressing mechanism above described of defendants' loose nailer (being the same as that of the George Goddu patent 583,044, except that it has a ratchet and pawl instead of a friction dog) embodies the combination shown and described in patent to Louis Goddu 265,227, and referred to in claims 17 and 18 thereof. Said claims are as follows: —

"17. The horn, its depressing lever, and connected rack-bar, combined with the pawl-carrier, its pawl, and means to lift the pawl-carrier preparatory to moving the stock over the horn, substantially as described.

"18. The horn, its depressing lever, its connected rack-bar, and the pawl-carrier and pawl and means to operate the pawl-carrier, combined with the stop to disengage the said pawl from the teeth of the toothed bar as the carrier descends, substantially as described."

The horn-depressing mechanism of the Louis Goddu patent, 265,227, referred to in the above claims, is substantially identical with that of the machine defendants' loose nailer, above described, except that, instead of having the ratchet-toothed portion and the pawl connected with levers, so as to have an oscillating movement, said ratchet is on a straight bar and the pawl is vibrated in a straight path. This difference is, in my opinion, wholly immaterial, as the effect of the curved ratchet *a*-690, and of the vibration of the lever *a*-53 produced thereby, in defendants' loose nailer, is merely to give an up-and-down movement to the connecting rod *b*-19, and through the connections therefrom to correspondingly move the horn in the reverse direction. Precisely the same effect would be produced if a straight ratchet were employed upon the rod *b*-19, as is done in the machine of Louis Goddu patent 265,227.

The levers *a*-53 and *a*-62 of defendants' loose nailer serve merely to properly guide the ratchet *a*-690 and the pawl *a*-670, the latter moving in a short arc of a relatively large circle, so that the movement does not differ substantially from a rectilinear movement, and does not differ at all, so far as the practical effect upon the horn is concerned.

The drawing "Horn Depressing Mechanism Goddu Patent in Suit No. 265,227" shows the horn-depressing mechanism of patent to Louis Goddu, 265,227, apart from the remaining mechanism of the machine, so that it can be readily compared with the corresponding mechanism of the machine of the George Goddu patent No. 583,044, modified as shown on drawing "Defendants' Loose Nailer Horn Depressing Mechanism". Except that in one case the ratchet and pawl are guided in a rectilinear path by a straight guideway, and in the other case in a curved path by pivoted levers, the mechanism is identical throughout. In both cases the horn is supported on one arm of a lever, the other arm of which is connected with a lifting rod, in turn having connected with it a ratchet-toothed rack bar. In both machines there is a pawl carrier and pawl, and means for lifting the pawl at a predetermined time at each rotation of the main shaft,— said means being a cam on the main shaft and a lever actuated thereby,— to depress the horn preparatory to making the feed movement of the material over the horn; the above being the elements referred to in claim 17 of the Louis Goddu patent No. 265,227. In both machines, furthermore, there is, in combination with the above-named elements, a stop to disengage the pawl from the teeth on the ratchet-toothed bar as the pawl carrier descends, so as to free the horn from the horn-depressing mechanism, in order that it may be pressed against the material, whatever may be its thickness, the said combination including the said pawl-disengaging stop, comprising the elements referred to in claim 18 of said Louis Goddu patent, No. 265,227. There is nothing in said claims which in any way refers to the specific manner in which the ratchet-toothed bar and pawl carrier are guided in their working movement, and there is no difference in the mode of operation or result due to the slight variation in detail of the mechanical construction of the two machines in this respect. For the above reasons I am of the opinion that the machine of the George Goddu patent No. 583,044, modified as stated, clearly embodies the combinations shown and described in Louis Goddu patent No. 265,227, and referred to in claims 17 and 18 thereof.

Nail Feeding Mechanism.

I will next take up the mechanism of defendants' loose nailer for properly supplying the nails from the hopper in which they are contained in a confused mass to the roadway in which they are placed in a single row, heads up and points down, so that they may be properly supplied one at a time to the driver.

The loose nails, which are in a confused mass, are placed in the hopper or receptacle B, of conical shape, rotating on an axis about on a line with the roadway leading to the nose through which the nails are driven. The apex of the cone is downward, and the hopper is rotated while the machine is running, and is provided on its inside with lifting arms or buckets *c*-20 which lift the nails and then drop them upon the upper part of the roadway which extends through the conical hopper from its apex to its base. More or less of the nails thus falling off drop with their points entering the roadway in a proper position to be fed down the same, while the remainder will fall off and be operated upon again by the lifting buckets in a similar manner. There is nothing shown or described in the George Goddu patent No. 583,044 to prevent the clogging of the nails thus deposited in the roadway, or to prevent one overriding another so as to become wedged, but I have been requested to consider a machine otherwise like that shown in the patent, but having above the roadway a clearing device which vibrates just above the tops of the nails in the roadway so that if a nail has been caught by the roadway, but improperly received therein, so that its head stands above the proper position for properly feeding down the roadway, or if a nail has been cross-lodged on the roadway between other nails, such improperly positioned nail will be engaged by the said clearer and either caused to assume the proper position in the roadway or will be thrown off from the roadway so as not to interfere with and clog the nails that are properly presented. The construction of roadway and clearer, which I have been requested to consider, is illustrated in the drawing "Defendants' Loose Nailer Nail Feeding Mechanism". I am of the opinion that a machine containing a roadway and clearer such as illustrated in the drawing referred to embodies the combination shown and

described in the Louis Goddu patent 265,227, and referred to in claim 3 thereof. In the construction shown in this patent, and illustrated in drawing "Nail Feeding Mechanism Goddu Patent in Suit No. 265,227", the loose nails are placed in a receptacle or hopper in the form of a rotating drum which is provided with internal buckets that raise the nails as the drum rotates and drops them upon the roadway which extends through the drum. There is also a clearer or knocking-off device *n*-4, which knocks off those fastenings which are improperly presented or override one another. As shown in the said Louis Goddu patent No. 265,227, the roadway itself has a slight longitudinal vibration, and the knocking-off finger *n*-4 stands still, the result being that the improperly presented nails are hit by the end of the knocking-off finger *n*-4, and thus dislodged from the shoe. The same relative movement and effect are produced in the machine shown in the George Goddu patent No. 583,044, having the clearing device represented in the drawing "Defendants' Loose Nailer Nail Feeding Mechanism", by the vibration of the clearer with relation to the stationary roadway. I am therefore of opinion that the last-named machine embodies the combination forming the subject of claim 3 of Goddu patent 265,227, which is as follows:—

"3. The rotating drum provided with buckets and the chute into which the nails or fastenings are dropped, combined with the knocking-off device a^4 [n^4], with its free end located just above the chute, to throw from the heads of the nails in the chute nails which are lodged therein and not in the chute, substantially as described."

It will be observed that the relative vibration of the roadway and the knocking-off device is not specifically referred to in the said claim, which does not suggest any limitation that would exclude the construction of the machine shown in patent 583,044 provided with a knocking-off device or clearer to dislodge the improperly presented nails.

Patent to Hopkins, No. 289,103, shows and describes specifically a construction by which a similar result to that above described may be attained when there is no vibration of the roadway, or its vibration is insufficient to properly dislodge the nails. As shown in the

Hopkins patent, and in drawing "Nail Feeding Mechanism Hopkins Patent in Suit No. 289,103", the roadway has combined with it a reciprocating clearer or striker, and means to vibrate it so as to cause it to strike against and move backward such headed nails as are not properly lodged in the roadway. I am of opinion that the machine of the George Goddu patent 583,044, provided with a vibrating nail-striker or clearer, such as shown in the drawing "Defendants' Loose Nailer, Nail Feeding Mechanism", embodies the combination recited in claim 1 of said Hopkins patent, which is as follows: —

"1. The roadway combined with a reciprocating striker, to strike against and move upward toward the receiving end of the roadway such headed nails as are not properly lodged in the said roadway, substantially as described."

Anvil or Horn Tip.

I will next take up the consideration of the anvil or tip of the horn which supports the material, and against which the nails are driven.

The horn of the machine shown in patent 583,044 is described in said patent (p. 3, line 65) as "provided at its upper end with a suitable tip or cup *b-x*", and I am requested to consider that the construction and form of said tip is as represented in the drawing "Defendants' Loose Nailer".

The concavity in the upper surface of the said tip serves to cause the end or point of the nail driven through the material to curl backward so as to imbed itself in the material and thus clinch the fastener, and at the same time remove the objectionable pointed projection from the inner surface of the material. I am of opinion that the machine containing such tip or anvil embodies the construction shown and described in patent to Dunham, No. 356,107, dated January 18, 1887, and referred to in claims 1, 2, 3, 5, and 6 thereof, which are as follows: —

"1. In a machine for uniting the soles and uppers of boots or shoes, a work-supporting horn having in its upper extremity a concavity for turning the points of the nails back into the stock, in combination with an awl, substantially as described.

"2. In a boot or shoe nailing machine for feeding and driving

loose nails, substantially as above described, the nail-tube Q, the awl S, and the driver P, in combination with a work-supporting horn having a concavity for clinching the nail, as set forth.

"3. In a boot and shoe nailing machine, guideways adapted to support the nails by the heads, a nail-tube through which the nails are driven into the shoe and mechanism to separate the nails one at a time, an awl, a driver, and a work-supporting horn having a concavity for clinching the nail, as set forth, in combination, substantially as described. . . .

"5. In a nailing machine, in combination, a work-supporting device having on its upper extremity a concavity and awl, substantially as and for the purpose specified.

"6. In a machine for uniting the soles and uppers of boots and shoes, the awl for making the holes for the nails, in combination with a horn having a concavity for clinching the nail, as set forth."

Each of the above claims refers to a combination including certain of the essential elements of a nailing machine for which corresponding elements are embodied in the machine of the George Goddu patent 583,044, in combination with a horn having a concavity for turning the points of the nails back into the stock so as to clinch the nails. It is obvious that the machine of the Goddu patent 583,044, when provided with a horn tip or cup of the form shown in the drawing "Defendants' Loose Nailer", embodies the subject matter of each of the above-named claims of the Dunham patent.

For convenience in comparison the mechanism of the machine of the Dunham patent forming the subject of the above-quoted claims is shown on drawing "Nailing Mechanism Dunham Patent in Suit, No. 356,107", the tip of the horn being shown in section to illustrate the construction which is described in the specification of the patent, as follows (line 78, page 1, to line 14, page 2):—

"W is a work-supporting horn, which has a concavity, *a*, in its upper extremity, the shape of which is adapted to turn the point of the nail into the stock in the form of a circle. This concavity, operating in combination with the awl, is an element of vital importance in my invention. I have found in practice that the use of an awl with the concavity in the horn is essential to good work. The peculiar clinch caused by the concavity is due to the point of the fastening striking the inclined part of the concavity, forming its curvature, and then turning back into the work. It is therefore

necessary that the fastening be directed to the inclined part of the concavity. If it should strike the bottom first, the fastening would be liable to be crippled. The degree of curve in the clinch of the fastening is determined by the distance from the bottom of the concavity at which the fastening strikes. I provide an awl for this purpose which is so operated and adjusted that it makes the holes in the shoe-sole so that the nails driven therein will strike the incline in the concavity, thereby making a perfect curved clinch. Without this relation of the awl and concavity the nails would be driven without any regularity whatever, sometimes not striking the horn at all, and not even penetrating the shoe sole. The combination of the awl and the horn is adapted as well to other shoe-nailing machines as to the class in which loose nails are driven. It is adapted to machines in which a fastening is driven which has any kind of a clinching point."

Clutch Mechanism.

I will next take up the clutch mechanism by which the starting and stopping of the machine is properly controlled.

It is necessary in nailing machines of the kind forming the subject of the Goddu patent No. 583,044 that the operator may quickly start and stop the machine, and that when stopped it should always come to rest at a predetermined point in the cycle of operations just after the nail has been driven, and thus stop in position to enable the finished boot or shoe to be removed and another to be placed on the horn, so that when started a machine will perform all the operations necessary to insert the first fastener, and as many more in succession as may be required. This operation is provided for by the clutch mechanism, which is shown for the most part in fig. 1 of the patent, and described in the matter beginning at line 40, page 6, of the specification. For convenience this mechanism is shown detached from the remainder of the machine in drawing entitled "Defendants' Clutch Mechanism". The machine is actuated by a constantly running pulley *d*-4, which is loose upon the main shaft, and therefore does not cause the same to rotate until a locking engagement is effected therewith. Said pulley is provided with a friction surface, which operates with a corresponding friction surface on a pulley or disk, *d*-5, which is fixed upon the main shaft, so that when said pulley *d*-4 is pressed against the disk *d*-5 their friction surfaces will interlock, and the disk *d*-5 and the main

shaft of the machine will be then driven by the power applied to the pulley *d*-4. When it is desired, therefore, to start the machine, the said pulley *d*-4 is pressed against the pulley *d*-5, this being done by a wedge block, *d'*, co-operating with a wedge, *d*, so that upward movement of the wedge *d* crowds the wedge *d'* against the pulley *d*-4 and presses it frictionally against the disk *d*-5. The wedge *d* is thus operated by a treadle, *d*-2, connected therewith by a rod, *d*-3. Thus, when the operator presses down on the treadle *d*-2 with his foot, the clutch members *d*-4 and *d*-5 are engaged and the machine is started; in order to control the stopping of the machine the said wedge *d* is connected by rod *d*-21 with a controlling lever, *d*-9, having a roller, *d*-13, which co-operates with the periphery of the disk *d*-5, which is provided with a depression, *d*-14, on a portion of its periphery, into which the roller *d*-13 may drop when the wedge *d* is to be dropped for the purpose of disengaging the clutch and stopping the machine. When, however, the machine is started as has been described, by the operator depressing the treadle *d*-2, the lever *d*-9 and its roll *d*-13 are raised, and in the rotation of the disk *d*-5 its unrecessed part comes under said roll and thus holds the lever up, and the clutch in engagement, during the greater part of each rotation of the shaft. Of course the said lever will be held up by the operator as long as he desires the machine to run, but just as he reaches the last fastening to be driven he releases the treadle, and the lever *d*-9 and wedge *d* will then remain supported by the disk *d*-5 until its recessed part *d*-14 arrives at roll *d*-13, when the lever *d*-9 will be permitted to drop, and will thus drop the wedge *d* and disengage the clutch, thus permitting the machine to stop only at the time in its cycle of operations when the recess *d*-14 arrives at the roller *d*-13. In order to insure prompt stopping of the machine when the clutch is thus disengaged, the lever *d*-9 is also provided with a brake, *d*-8, which, when the lever *d*-9 drops by the roll *d*-13 entering *d*-14, bears frictionally in the groove *d*-7, in the disk *d*-5, and this quickly arrests the rotation of the said disk on the main shaft of the machine. The said lever is described as pressed down so as to disengage the

clutch and apply the brake when permitted by the operator by a spring not shown in the drawings of George Goddu patent 583,044.

I am of opinion that said clutch mechanism of defendants' loose nailer, shown in the George Goddu patent No. 583,044, embodies substantially the combination shown and described in patent to Louis Goddu, No. 383,455, dated May 29, 1888, and referred to in claims 7 and 8 thereof, which are as follows: —

"7. The loose pulley, the shaft A^5, and the balance-wheel, provided with the cam-surface 2, combined with the yoke, and the roller A^{13}, to co-operate with the said cam-surface, substantially as described.

"8. The loose pulley, the shaft A^5, and the balance-wheel fast on it, combined with the pivoted yoke, and friction device carried by it to act on the balance-wheel, substantially as described."

For convenience, the construction forming the subject of the above claims in this Louis Goddu patent is shown detached from the remainder of the machine in drawing "Clutch Mechanism Goddu Patent in Suit No. 383,455". In the Goddu patent 383,455, as shown in this sketch, a constantly running belt pulley, A^{10}, is provided with a friction clutch surface adapted to co-operate with a corresponding clutch surface upon the balance wheel A^{12}, which is fixed upon the main shaft A^5, these parts thus corresponding to the pulley d^4 and disk d^5 of the machine of the Goddu patent No. 583,044. The said clutch members are pressed together by a lever, A^4, called in the patent "a yoke", fulcrumed or pivoted at A^3 on the frame-work, and operated by a rod, C^4, and treadle, C^5, these parts thus corresponding directly to the treadle d^1, connecting-rod d^2, and lever d^3 of the machine of the George Goddu patent No. 583,044, except that an arm of said lever A^4 operates directly to press the clutch members together instead of employing wedge blocks connected with said lever. The lever A^4 of Louis Goddu patent No. 383,455 is provided with a roll, A^{13}, which co-operates with a cam surface, 2, on the side of the balance wheel A^{12}, said cam surface having a recess, 3, at one point which permits the roll A^{13} to enter and the lever A^4 to drop so as to disengage the clutch. These parts thus correspond exactly to the roll d^{13} and cam surface d^6, having recess d^{14} in the clutch mechanism of the George Goddu

patent No. 583,044. The lever A^6 is also provided with a friction brake, A^{16}, A^{17}, which, when the roll A^{13} enters the recess 3, presses against the edge of the balance wheel A^{11}, and thus operates as a brake to quickly stop its movement, precisely like the brake d^7, co-operating with the disk d^5 in the machine of the George Goddu patent 583,044. The mode of operation and result is precisely the same in both machines. When the operator depresses the treadle, the clutch members are forced together, the brake is released, the machine starts, and the cam surface thereon then prevents the clutch from being disengaged and the machine stopped except at a definite place in the rotation of the main shaft; and the machine remains running so long as the operator retains the treadle depressed. When the operator releases the treadle, the machine continues running for the balance of a rotation, until the depression in the controlling cam arrives at the roll that supports the controlling lever, and said lever drops, and thereby permits the clutch members to separate, and also applies the brake. Except for slight differences in the terms used, the claims of the patent 383,455 are equally applicable to the clutch mechanism of patent 583,044, and the mechanisms themselves are substantially the same in construction, purpose, and mode of operation. The only difference, as above explained, is that, in the mechanism of patent 383,455, the clutch members are forced together by an arm of the lever directly, while in the mechanism of patent 583,044, *i. e.*, in defendants' loose nailer, they are forced together by a wedge connected with and controlled by said lever, the closing movement of the clutch in both cases being produced by the operator, but maintained by the lever, and the opening movement being in both cases produced by the lever after it has been released by the operator, and at the time determined by the cam carried by the main shaft. The specific device of a wedge to directly actuate the clutch members, as in the defendants' loose nailer (patent 583,044), is shown and described in patent to Louis Goddu, No. 385,802 (see figs. 2 and 3), and also, for convenience, shown in drawing "Clutch Mechanism Goddu Patent in Suit No. 385,802", where the wedge is shown at a' and is operated from a treadle by the connecting rod A^5 and

is controlled directly by a roll, a^7, governed by a cam, A^6, so that the wedge can only be depressed to separate the clutch members during a predetermined part of the rotation of the main shaft. This specific construction is referred to in claim 7 of patent 385,802, which is as follows: —

"7. In a nailing-machine, the main shaft, the clutch or friction pulleys thereon, and a wedge to operate the said pulleys, combined with a cam on the main shaft to control the operation or the wedge, to operate substantially as described."

The mechanism of the above claim is distinguished from that of 383,455 by the specific construction of the element for operating the friction clutch members, said device being a wedge, and the said specific construction is embodied in the clutch mechanism of defendants' loose nailer (patent 583,044).

I should add that I have read the affidavit of Franklin O. Tobey, entitled in these suits, and in dealing with the George Goddu patent 583,044 I have considered that this patent of George Goddu shows and describes the same machine illustrated by the several drawings "Defendants' Loose Nailer", "Defendants' Loose Nailer Awl Stroke Controlling Mechanism", "Defendants' Loose Nailer Detail Awl Actuating Mechanism", "Defendants' Loose Nailer Horn Depressing Mechanism", "Defendants' Loose Nailer Nail Feeding Mechanism", and "Defendants' Clutch Mechanism", except for the differences pointed out by Mr. Tobey in his affidavit. In dealing, as I shall hereafter, with the machines of the Louis H. Goddu patent No. 583,045, Louis H. Goddu patent No. 583,046, and the William Goddu patent No. 584,735, I will also bear in mind any differences pointed out by Mr. Tobey between the machines shown and described in these patents and the special drawings illustrating the defendants' construction to which I shall refer.

Screw Wire Machine.

I have examined the Letters Patent to Louis H. Goddu, No. 583,045, dated May 25, 1897, and the drawing marked "Defendants' Screw Machine, Wire Feed Mechanism", for the purpose of ascertaining whether or not in my opinoin the machine shown and described in said patent and drawing (which I will henceforth call

defendants' screw-wire machine) embodies inventions forming the subjects of prior patents to which my attention has been directed, viz., No. 265,227 to Louis Goddu, dated September 26, 1882; and No. 403,835 to Louis Goddu, assignor to James W. Brooks, principal trustee, and Frank F. Stanley, associate trustee, dated May 21, 1889. The machine of the said Louis H. Goddu patent is of the kind known as a screw-wire machine, in which the fastenings are cut immediately after insertion into the leather from a wire of indefinite length with which the machine is supplied. These machines, like the loose nailer previously described, are employed for uniting the soles and uppers of boots and shoes, and the wire from which the fastenings are cut is screw-threaded throughout its entire length, so that the short portions cut therefrom form screws by which the several layers of leather are united. The supply of wire, carried on a suitable reel or spool, is supported on a spindle which rotates rapidly as the machine is running, and said spindle has a longitudinal bore or passage through its axis, through which the wire passes, said spindle terminating at its lower end in a nose which rests directly over the leather, and from which the screw-threaded wire issues as it enters the leather. The rotation of the wire with the spindle tends to cause the wire to screw into the leather just as an ordinary wood screw is screwed into the wood when turned by a screwdriver; but in order to facilitate the entrance of the screw wire into leather, the wire is fed or pressed downward through the spindle and out of nose with a rate of movement properly proportioned to its speed of rotation to advance the wire into the material just in proportion as it tends to advance by the engagement of the screw threads on the wire with the material. These screw-wire machines do not require to have a hole prepared for them in the material, and consequently the machine has no awl; and furthermore, the means for rotating and pressing forward or feeding the wire serves the purpose of the driver in a loose-nailer machine, such as previously described. The screw-wire machine, therefore, generally comprises, as essential elements, a horn or work support to enter within the shoe, and means for rotating and feeding the wire, and means for cutting off the wire just above or

even with the surface of the leather after a sufficient length has been screwed into the leather to serve as a fastening, and means for feeding the material between the successive operations of inserting and cutting off the fastening.

Horn Depressing Mechanism.

In the defendants' screw-wire machine (Louis H. Goddu patent No. 583,045) means are provided for depressing the horn or work support at each feed operation, so as to unclamp the material which was held clamped while the fastening was being inserted. This operation of clamping the material by the horn when the fastening is being inserted, and unclamping it when the feed of the material is to take place, is of the same nature as has been explained in connection with the loose-nailer machine; and in the defendants' screw-wire machine of Louis H. Goddu patent No. 583,045, the horn-depressing mechanism is substantially the same as that employed in the loose-nailer machine previously explained by me, and therefore need not again be explained in detail.

In fig. 14 of the Louis H. Goddu patent No. 583,045 will be seen the curved ratchet-toothed arm or lever d^8 fulcrumed d^7 on the framework, and connected by rod d^9 with the treadle lever d^5 (see fig. 2), pivoted at d^{10} and having its other arm connected by d^{11} with the horn post and horn, all substantially as in the mechanism of the loose-nailer patent. The said curved ratchet-toothed end c is operated by the pawl c^3, which is vibrated up and down by a pawl-carrying lever, c^4, also pivoted at d^7, and operated by a cam groove, c^7, in a cam on the shaft b^{19} that rotates once for each cycle of operations by which a single fastening is inserted. The pawl c^3 thus engages the ratchet wherever it may stand, and lifts the arm d^8 a predetermined distance, correspondingly depressing the horn. When the pawl-carrying arm descends, the pawl is tripped out of engagement with the ratchet by a trip plate, c^{13} (see fig. 3), engaging an arm, c^{14}, connected with the pawl, thus leaving the horn free to be pressed up by its spring d^{10} (see fig. 2), the same as described in connection with the loose-nailer machine.

The construction by which the pawl is tripped does not appear clearly in fig. 14, but it is clearly described in the matter between

line 133, page 5, and line 81, page 6, of the Louis H. Goddu patent No. 583,045.

This horn-depressing mechanism of defendants' screw-wire machine (Louis H. Goddu patent No. 583,045) clearly embodies substantially the combinations shown and described in patent to Louis Goddu, No. 265,227, and referred to in claims 17 and 18 thereof, for reasons hereinbefore fully explained by me in comparing the horn-depressing mechanism of the loose-nailer machine of George Goddu patent No. 583,044 with the mechanism referred to in claims 17 and 18 of Louis Goddu patent No. 265,227.

Wire Feed Mechanism.

As already stated in connection with the general description of the defendants' screw-wire machine, the screw-threaded wire is rotated, and is also pressed forward or feed lengthwise, so as to cause it to penetrate the material by the lengthwise pressure as well as by the feed of the screw threads due to rotary motion. The longitudinal feed movement of the wire is intermittent, ceasing at the time when the inserted fastener is cut off from the wire and while the feeding of the material takes place, and beginning again directly after the material has been fed and clamped in position to receive the next fastening. The length of feed movement, furthermore, is variable, so that each fastener may be caused to pass wholly through, or to approach within any desired distance less than wholly through, the material, whatever the thickness of the material may be. The operation of the wire-feeding devices is automatically controlled by mechanism connected with the horn in such a manner as to limit the extent of feed movement in accordance with the position of the horn, so as to render the feed movement always equal to the thickness of the material at the point where the fastener is being inserted. The mechanism for feeding the wire in the defendants' screw-wire machine (Louis H. Goddu patent No. 583,045) is best shown in figs. 4, 5, and 6 of said patent, which show the construction of the spindle and elements of the feed mechanism directly connected therewith; in figs. 1 and 3, which show the mechanism actuated by the main cam shaft, that is combined with said elements carried by the spindle. For convenience, this mechanism is shown detached from the

remainder of the machine, and, on a larger scale, in drawing "Defendants' Screw Machine, Wire Feed Mechanism".

The spindle a^4 is rotated by a pulley, a^{12} (see fig. 4 of the patent), and carries above the pulley a reel, g, which sustains the supply of screw-threaded wire which passes from said reel down through the central bore or passage in the spindle.

About midway of the length of the spindle, it is provided with a worm, a^7, meshing with a worm gear, b^{22}, on the main cam shaft b^{19}, thus causing said cam shaft to rotate, and produce the necessary cycle of movements in the various parts of the machine in harmony with the rotary movement of the spindle. The lower end of the spindle is provided with a head or frame block, a^8, rigidly connected with it, and containing in suitable bearings a pair of feed rolls, a^{25}, a^{26}, which are grooved to receive the wire between them, and are toothed or serrated in the bottoms of the grooves to engage with the screw threads on the wire, so that as the said feed rolls are rotated in opposite directions they will positively advance the wire through the nose a^{10}. Said feed rolls are provided with gear teeth or pinions meshing together, so that if either one is rotated the other one will be correspondingly rotated in the other direction. One of said feed rolls, a^{25}, also meshes with a driving gear, a^{31}, which is connected with a ratchet, a^{32} (see fig. 10), which receives an intermittent rotary movement from a pawl, a^{33}, carried by an oscillating pawl carrier, a^{34}. Said pawl carrier a^{34} is fixed upon a sleeve, a^{30}, passing through the ratchet a^{32} and gear wheel a^{31}, and provided with a pinion, a^{27}, which meshes with a rack, a^{43} (see fig. 5), on a slide, a^{44}, projecting downward from a sleeve, a^{15}, mounted upon the spindle a^4 above the head a^8 that contains the feed rolls, said sleeve being free to slide up and down on said spindle. When the sleeve is caused to slide up and down, it rotates the pinion a^{27} first in one direction and then in the opposite direction, and in the downward movement of the rack bar a^{43} the pinion a^{27} oscillates the pawl carrier a^{34} in the direction to cause the pawl a^{33} to engage the ratchet a^{32}, and thus rotate the pinion a^{31}, which in turn rotates the pair of feed rolls to advance the wire down through the nose a^{10}. When the sleeve a^{15} and the rack a^{44} are moved upward, the pinion

a^{27} and pawl carrier a^{24} are rotated in the opposite direction, and the pawl slips over the teeth of the ratchet a^{22}, which is not rotated, and consequently the feed rolls receive no movement during this upward movement of the sleeve a^{15}.

The sleeve a^{15} derives its up-and-down movement from a ring, a^{18}, engaged with the said sleeve above and below, and provided with oppositely projecting arms a^{19}, a^{20}, which are engaged by the two branches b, b^1 (see figs. 1 and 3), of one arm of a lever fulcrumed at b^2; the other arm, b^3, of which (see fig. 3) is operated in one direction by a cam, b^{17}, on the main cam shaft b^{18}, which acts against a roller stud, b^5, on said arm, and in the other direction by a spring, b^9. The ring a^{18} (or collar, as it is called in the patent) thus forms a yoke to connect the two branches b, b^1, of the lever, so that the force of the lever is transmitted equally to both sides of the axis of the sleeve a^{15}, and thus has the same effect as if applied directly to the axis. If such connecting yoke were omitted, and the lever acted only at one side of the sleeve, it would tend to cause the sleeve to tip and bind in its up-and-down movement on the spindle, and would thus involve a greater expenditure of power, and more wear on the parts, than when the branched lever-and-yoke construction is employed.

As just above explained, the upward movement of the feed sleeve is effected by the spring b^9 when permitted by the cam, and said upward movement is arrested by a stop, d^{30}, engaging with a stop plate d^{31}, on the arm b^3 of the lever, as best shown in figure 3. The position of said stop d^{30} is variable, it being carried by the arm d^{28} of the horn-depressing mechanism above explained, which arm and stop d^{30} move up and down in accordance with the downward and upward movement of the horn. The higher the stop d^{30} stands, the greater movement will be permitted to the lever b^3, and consequently the greater will be the feed movement imparted therefrom to the wire, and the lower the stop d^{30} stands, the less will be the feed movement imparted to the wire; or, in other words, the feed movement will be greater or less according as the horn stands at a lower or higher point, dependent upon the greater or less thickness of the material. The spring b^9 that causes the return or idle

movement of the wire-feed sleeve a^{15} has a coiled portion connected with a roll or hub, b^{10}, b^{13} (see figure 11), adapted to be turned to tighten or adjust the tension of the spring, and to be locked by a bolt, b^{12}, to retain the spring at the desired adjustment.

In general principle of construction and mode of operation, the wire-feeding mechanism of defendants' screw-wire machine (L. H. Goddu patent No. 583,045), above described, is similar to that employed in the machine shown and described in the Louis Goddu patent No. 171,610, dated December 28, 1875, and now expired. The feeding mechanism of L. H. Goddu patent No. 583,045 is, however, referred to in said patent as being "of novel construction", and the main features of novelty, as compared with the mechanism of said expired patent No. 171,610, consist in the construction of the actuating lever and its connection by a yoke with the feed sleeve so that the moving force is applied equally at both sides of the axis of the feed sleeve, and in the construction of the head containing the feed rolls by which the gearing that actuates the feed rolls is all enclosed in the head instead of being at the outside and exposed as in the old machine of the Louis Goddu patent of 1875.

I am of opinion that the defendants' screw-wire machine of L. H. Goddu patent No. 583,045 embodies the combinations shown and described in patent to Louis Goddu, No. 403,835, dated May 21, 1889, and referred to in claims 10, 11, and 12 thereof, the said combinations constituting or embodying improvements on the old machine of the expired patent No. 171,610 just referred to. For convenience, the parts of the machine of said Goddu patent to be now considered are shown detached in drawing marked "Screw Machine, Wire Feed Mechanism, Goddu Patent in Suit, No. 403,-835".

In said patent to Louis Goddu, No. 403,835, the general construction and arrangement of the rotating spindle is best shown in fig. 3, and is substantially the same as that of the spindle of L. H. Goddu patent No. 583,045 above described, said spindle A^{10} being rotated by pulley A^{9} near the upper end, and carrying the reel a^{10}, containing the supply of threaded wire which passes down through

the bore in the axis of the spindle to the wire-feed mechanism, comprising feed rolls connected by gears and actuated by gearing operated by the downward movement of a sleeve, *c*, longitudinally movable on the spindle above the head containing the feed rollers. The connection from said sleeve to the feed rollers is somewhat different in specific construction from that employed in the machine of L. H. Goddu patent No. 583,045, and is as follows:—

Said sleeve *c* has a spirally threaded portion, e^1, which enters a corresponding threaded portion in a surrounding tube or sleeve, *e*, which is capable of rotation on and relative to the spindle, but has no longitudinal movement thereon.

The feed-actuating sleeve *c* has a longitudinally grooved connection with the spindle, so that it can move only lengthwise of said spindle, without rotation relative thereto. Thus, by reason of the spirally threaded connection between the sleeve *c* and the sleeve *e*, the latter is rotated back and forth with relation to the shaft as the former is moved up and down lengthwise of the shaft. At the lower end, the sleeve *e* is connected by a ratchet-clutch cennection with a bevel-toothed gear, *d*, encircling the spindle just above the head containing the feed rolls, and by reason of the ratchet-clutch connections said gear *d* is rotated when the sleeve *e* is turned in one direction (*i.e.*, by the downward movement of the sleeve *c*), but is not rotated when the sleeve *e* is turned in the opposite direction (by the upward movement of sleeve *c*). Said gear or toothed ring *d* meshes with a gear, c^5, in the head at the lower end of the spindle; said gear c^5 having a pinion, c^6, which meshes with the pinion c^{20} on one end of the feed roll b^4. On the other end of the feed roll b^4 there is a pinion, c^7, which engages a pinion, c^8, on the end of the other feed roll b^3. The sleeve *c* is engaged by a yoke, D^{13}, which is actuated to reciprocate the sleeve on the spindle, said yoke deriving its movement from the branched arm of a lever, D^{14}, having on its other arm a roller-stud, D^{16}, which is actuated, as in the L. H. Goddu patent, by one side of a face cam, D^{17}, said lever lifting said yoke at both sides, so that the force of the lever D^{14} is transmitted equally at both sides of the axis of rotation of the sleeve *c*, as in said L. H. Goddu patent No. 583,045. The result of this

connection is that the feed rolls are rotated intermittently, turning when the feed-actuating sleeve *c* is moved downward, and standing still when said sleeve is moved upward, precisely the same as in the feed mechanism of the Louis H. Goddu patent No. 583,045 above described, the said operation being produced by substantially the same elements, but with a somewhat different mechanical arrangement. In place of the vibrating rack bar connected by a ratchet and pawl with a pinion meshing with the feed rolls, there is the toothed ring *d* meshing with the feed rolls, and having the ratchet connection between it and the vibrating sleeve.

Claim 10 of the Louis Goddu patent No. 403,835 is as follows:—

"The wire-carrying spindle, the feeding-sleeve and the yoke to support the said sleeve, combined with a lever reciprocating the said yoke and with a cam to actuate the said lever, substantially as described."

This refers to the construction in which a yoke is employed as a connection between the branched lever arm and the feed sleeve in the wire-feeding mechanism, and said construction is clearly embodied in the machine of the Louis H. Goddu patent No. 583,045, wherein the spindle a^4 is the wire-carrying spindle, the sleeve a^{15} is the feeding sleeve; the ring a^{18} with its trunnions a^{19}, a^{20}, is the yoke to support the feed sleeve; the lever with its branched arm *b*, b^1 is the lever for reciprocating said yoke; and the cam b^{17} is the cam for actuating the lever. It will be observed that in claim 10 the connections from the feeding sleeve to the wire are not specifically referred to, and, so far as the coaction with the elements referred to in said claim is concerned, the mechanism from the sleeve a^{15} to the wire in the Louis H. Goddu patent No. 583,045 is a substantial equivalent for the mechanism from the feed sleeve *c* to the wire in the Louis Goddu patent No. 403,835.

Claim 11 of said patent No. 403,835 is as follows:—

"The wire-carrying spindle, the feeding sleeve, and the yoke to support the said sleeve, combined with a lever reciprocating the said yoke, and with a cam to actuate the said lever, and with an upwardly-pressed horn, a measuring-leg connected with the said lever, and intermediate connections between the said leg and horn, substantially as described."

This claims refers to the same elements as claim 10 (characterized by the yoke and branched lever for operating the feed sleeve), and in combination therewith, the horn and the measuring leg connected with the lever, and intermediate connections between the leg and the horn. The latter elements constitute the mechanism by which the length of the feed movement is governed in accordance with the position of the horn, and consequently in accordance with the thickness of the material, and are an equivalent for the corresponding mechanism of the machine of the Louis H. Goddu patent No. 583,045 before explained, wherein the stop projection d^{31} constitutes the measuring leg connected with the feed-sleeve actuating lever, and the connection from the said measuring leg to the upwardly pressed horn comprises the stop d^{30} on the arm d^{8}, the link d^{9}, lever d^{7}, and rod d^{18}.

The purpose and mode of operation of these connections are precisely the same as those of the connections of the machine shown in the Louis Goddu patent No. 403,835 referred to as an element in claim 11, and which consist specifically of the rigid arm G connected with the horn and a rod, G^{1}, extending upward therefrom so as to form a variable stop for the "measuring leg G^{2}", which is merely a long stop projection connected with the actuating lever D^{14} that directly operates the feed sleeve. In both machines the feed-sleeve actuating lever is moved positively by a cam in the direction to produce the feed, and in the reverse direction by a spring, and its reverse or idle movement is limited by the stop, the position of which varies as the height at which the horn stands varies, and therefore controls the length of the next feed movement of the wire in accordance with the thickness of the material. In the machine of the Louis Goddu patent No. 403,835 the lever, as has been stated, is actuated by a spring shown as a spiral spring, 14 (see fig. 1), the force of which, exerted to move the lever, is regulated by an adjusting nut, 16, said spring being coiled around a rod, 12, which retains it in place, and enables its adjustment to be effective.

Claim 12 of said Louis Goddu patent No. 403,835 is as follows:—

"The wire-carrying spindle, the feeding sleeve, and the yoke to

support the said sleeve, combined with a lever reciprocating the said yoke, and with a cam to actuate the said lever, and with the rod 12, spring 14, and adjusting-nut 16, to operate substantially as described."

This claim refers to the same elements as claim 10 (for which, as has been above explained, there are full equivalents in the machine of the Louis H. Goddu patent No. 583,045) in combination with the spring, its supporting rod, and adjusting nut. Substantial equivalents for these latter elements are found in the spring b^9, supporting hub b^{10}, b^{11}, and clamping bolt b^{12} (see fig. 11) of the Louis H. Goddu patent No. 583,045.

Claim 26 of the Louis Goddu patent No. 403,835 is as follows: —

"In a machine for uniting soles to uppers, the wire-carrying spindle having the enlarged lower end, combined with feed-rolls geared together and driven by a gear located wholly within the said enlarged lower end, substantially as described."

The above claim refers especially to the construction wherein the gear which drives the feed rolls is enclosed or located wholly within the head or enlargement at the lower end of the spindle, instead of being outside and exposed, as in the earlier machines of this type. As has been previously explained, the feed rolls in the machine of L. H. Goddu patent No. 583,045, and the gear a^{31} which drives them, are located wholly within the head or enlargement at the lower end of the spindle, and for this reason I am of the opinion that the said machine of L. H. Goddu patent No. 583,045 embodies the construction forming the subject of claim 26 of the Louis Goddu patent No. 403,835.

Claim 18 of said Goddu patent No. 403,835 is as follows: —

"The lever D^{14}, its attached measuring-leg having a collar, 40, the oscillating rod 22, and the block 25, attached thereto, combined with a stop, substantially as described, actuated by the said block to prevent the descent of the said measuring-leg when it is desired to arrest the feed of the wire, substantially as described."

The above claim refers somewhat specifically to the combination of the elements by which the effective operation of the machine is stopped. It will be recognized that in machines of this type the

spindle and other parts may remain running while the operator depresses the horn to remove the shoe and supply another one, provided that the wire-feeding mechanism is prevented from operating, since the rotation of the spindle (and the movement of the device that feeds the material when the machine is in operation) does no harm if the wire is not advanced from the nose. As has already been explained, the feed of the wire is produced by the up-and-down vibration of a feed sleeve on the spindle, and said sleeve is operated by a lever which is moved positively in the direction to feed the wire, and by a spring in the opposite direction. It is necessary, therefore, in order to prevent the spring-actuated return movement, and thus wholly stop the wire feed, only to interpose or place an obstruction to arrest the movement of the lever *b* of the L. H. Goddu machine, or the lever D'' of the Louis Goddu machine. Such stopping of the return movement of the feed sleeve is effected in the machine of the Louis Goddu patent No. 403,835 by a stop block or obstruction, 27, co-operating with a projection or collar, 40, on the measuring leg G', which, as has been explained, normally operates to limit the return movement of the feed sleeve in accordance with the thickness of the material. (See figs. 1 and 17 of patent 403,835, and see also drawing "Screw Machine Wire Feed Mechanism Goddu Patent in Suit No. 403,835".) Said stop block 27 is shifted so as to engage with the collar 40 when it is desired to stop the wire feed, or so as to be out of the path of the collar 40 when it is desired to permit the wire feed to go on, such shifting being effected by a block, 25, and a rock shaft, 22, operated by the operator through the intervention of a knee lever H'. In the macnine of the L. H. Goddu patent No. 583,045 the wire feed is stopped for the same purpose, in substantially the same manner, and by substantially equivalent mechanism. In the machine of this patent the measuring leg which determines the extent of the wire feed is not a separate rod connected with the feed-sleeve actuating lever, but is a projection of the lever itself. Said lever has a second projection, *h'* (see fig. 3, patent No. 583,045, and also drawing "Defendants' Screw Machine Wire Feed Mechanism"), corresponding to the collar 40 of the mechanism recited in claim 18

of patent No. 403,835; an oscillating hub pivoted on a pin or stud, h^3, said hub corresponding to the oscillating rod 22 of said claim; a block enlargement of said hub, and a stop, h^4, actuated by it to engage with the projection h^2 on the feed-sleeve actuating lever so as to prevent its descent, and consequently to prevent the operation of the feed sleeve when it is not desired to feed the wire. This mechanism, although differing somewhat in the details of mechanical construction and arrangement, and in being operated by a handle instead of a knee lever, corresponds in purpose and mode of operation with the wire-feed stop mechanism shown and described in said patent to Louis Goddu, No. 403,835, and referred to in claim 18 thereof, and operates in substantially the same manner, for the same purpose and with the same result.

Slugging Machine.

I have also examined patent No. 583,046 to L. H. Goddu, dated May 25, 1897, and the drawings "Defendants' Slugging Machine" and "Defendants' Clutch Mechanism" for the purpose of comparing the machine therein shown, which I will hereinafter call "defendants' slugging machine", with certain prior patents to which my attention has been directed, viz., No. 383,455 to Louis Goddu, dated May 28, 1888, and No. 563,478 to Louis Goddu, dated July 7, 1896. Said defendants' slugging machine is a nailing machine of the class commonly known as a "slugging" machine. Such machines are commonly employed for driving one or more rows of nails into the heel of a boot or shoe, mainly for the purpose of improving the appearance of the heel and increasing its capacity to resist wear. Such nails are not primarily for the purpose of fastening the heel to the upper, and it therefore is not necessary that they should penetrate wholly through, or to within a definite distance from, the insole of the boot. It is, however, desirable that the nails should be of some definite shape in cross section, and that different sizes of nails should be used in different classes of work. The nails are cut from a continuous strip of wire of the required sectional shape, said wire being of uniform section throughout, so that there is no enlargement — or head, properly speaking — for the individual nails cut therefrom. Defendants' slugging machine

contains a clutch mechanism operated by a treadle for starting the machine, with a device to stop the machine only at a definite point in the rotation of the main shaft. Said clutch mechanism is of substantially the same construction and mode of operation as that embodied in the loose nailer before described, except that the wedge that forces the clutch members together (as shown in the patent) is not linked to the lever that controls the brake in such manner that said lever may also control the movement of the wedge that permits the separation of the clutch members to take place. The wedge does, however, control the lever, so that when the wedge is moved to close the clutch, it lifts the lever, which thus removes the brake, and thereafter the lever and brake remain under the control of the cam on the main shaft. Thus, when the operator releases the treadle, the clutch members are permitted to separate, and the power is thus taken off from the driving shaft, which runs for the balance of a rotation by momentum until the controlling cam permits the controlling lever to drop and thus apply the brake and stop the machine at the desired point.

I am of the opinion that the clutch mechanism of defendants' slugging machine (shown in patent No. 583,046; see, also, drawing "Defendants' Clutch Mechanism") embodies the combination shown and described in the patent to Louis Goddu, No. 383,455, and recited in claims 7, 8, and 9 thereof, for the reasons given in comparing the clutch mechanism of the defendants' loose nailer with the subject matter of said claims, as the difference between the clutch mechanism of the defendants' slugging machine and that of the loose nailer is immaterial so far as the subject matter of the claims is concerned.

Wire Passage.

The wire from which the nails are cut passes through a passage, a^{15}, properly shaped to fit the sectional shape of wire desired, said passage being formed in a block, a^{16}, which is secured by a bolt, a^{17}, on the side of the lever a^{8}. (See drawing "Defendants' Slugging Machine".) There is thus formed a tubular passage, which entirely surrounds the wire, and said passage is produced by making the groove a^{15} in the block a^{16} of sufficient size to wholly imbed the wire,

so that the lever a^3 merely covers the side of the said groove, and does not itself have to be grooved to produce the desired wire passage. This is of importance where frequent changes are required in the size or sectional shape of the wire, as it is necessary only to remove one piece, namely, the grooved block a^{16}, when a change of wire is to be made, while if the wire passage were formed partly in each of two blocks, both would have to be changed when a different-sized passage was required. This construction of wire passage in defendants' slugging machine, in my opinion, embodies the invention shown and described in the patent to Louis Goddu, No. 563,478, dated July 7, 1896, and referred to in claim 4 thereof, which is as follows: —

"4. In a nailing machine for forming nails from a continuous length of wire, the following instrumentalities, viz: a wire-guideway composed of two pieces b, b^1, one of said pieces being grooved to receive the wire, the other piece presenting a plane or ungrooved face to the wire, feeding mechanism to feed the wire through said guideway, and cutting mechanism to sever the said wire into nail lengths, the provision of making the wire-receiving groove wholly in one-half the guideway enabling said half to be readily changed to adapt the machine to the use of wires of different cross-sections, substantially as described."

The mechanism referred to in the above claim is shown in drawing "Slugging Machine Goddu Patent in Suit, No. 563,478", and is characterized by the wire guide composed of two pieces, b, b^1, one only, b, of which is grooved to receive the wire, while the other covers the said groove by a plain or ungrooved face. With reference to the remaining elements of the said claim, viz., a feeding mechanism to feed the wire through the guideway and a cutting mechanism to sever the wire, there is no limitation in the claim to the specific construction of said elements, and the slugging machine of patent to Louis H. Goddu, No. 583,046, contains corresponding wire feeding and severing elements.

String Nailer.

I have also examined patent to William Goddu, No. 584,735, dated June 15, 1897, and the drawing marked "Defendants' String Nailer", for the purpose of comparing the machine therein shown

and described, which I shall hereinafter call "defendants' string nailer", with the subject matter of certain patents to which my attention has been directed, viz., No. 490,625, dated January 24, 1893, to Louis Goddu, assignor to James W. Brooks and Frank F. Stanley, trustees; No. 383,455, dated May 29, 1888, to Louis Goddu, assignor to James W. Brooks, trustee; and No. 385,802, dated July 10, 1888, to Louis Goddu, assignor to James W. Brooks and Frank F. Stanley, trustees. Said patent No. 584,735 shows and describes a nailing machine of the kind known as a "string nailer", on which a series of partially formed nails are made from wire which is kept continuous, but is shaped so as to provide portions of a definite length, each of which when separated from the wire, will form a nail having a point at one end and a head at the other end. Such machines are employed for various nailing operations other than that of uniting the soles and uppers, and consequently require, or are provided with, a different kind of anvil or work support from the horn employed in machines that are used to unite soles and uppers. As shown in said patent 584,735, the work support d^{15} is mounted on a rod or spindle, d^{8}, which is spring-supported in a swinging arm, D, having a shank which is pivotally supported in a socket in a lug, d, on the post A^{2} of the machine, so that the said arm D can be swung around out of the way when it is desired to afford free access to the driveway of the nailing machine. The work support is retained in a proper position under the driver passage by a locking device, shown as a set-screw, d^{3}. When the set-screw is loosened, the arm D carrying the work support can be swung around out from under the nail driver, as when it is desired to present, by hand, material to be nailed.

I am of opinion that the work support of this string-nailer machine embodies the construction shown and described in patent to Louis Goddu, No. 490,625, and referred to in claims 12 and 13 thereof, which are as follows: —

"12. A driver-bar having a driver, combined with a supporting column, work-support and a swing-frame for such support pivoted to said column out of line with the driver and adapted to be swung from the column to bring the work-support in line with the driver and a locking device to retain it in such position, and also adapted

to be swung toward and be arrested by the column to move the work-support out of line with the driver, substantially as described.

"13. A driver bar having a driver; an arm as A^3 pivoted at one side of the line of movement of the driver—a locking device to retain it in operative position, combined with a spring-sustained shank, a work-support secured thereto, and an adjusting device to control the effective strength of the said spring, and means to determine the position to which the work-supporting surface may rise, substantially as described."

The work support A^4 in said Louis Goddu patent No. 490,625 is supported by a swinging arm, A^3, pivoted to the framework, and free to be turned aside from or under the nose or driver passage of the machine, substantially the same as the work support of the defendants' string-nailer machine (shown and described in William Goddu patent No. 584,735).

In both defendants' string nailer and the machine of the Louis Goddu patent No. 490,625 there is a locking device for retaining the work-supporting arm in position in alignment with the nose or nail passage of the machine, and in both of said machines the work support proper (in the end of said arm) is spring-supported, and has an adjusting device to control the effective strength of the supporting spring, and means to determine the position to which this work-supporting surface may rise. The substantial identity in construction of this work-supporting mechanism in said machines is obvious upon inspection of drawings "Defendants' String Nailer" and "String Nailer Goddu Patent in Suit, No. 490,625", wherein said mechanisms are respectively represented.

Defendants' string nailer contains a clutch mechanism adapted to be operated to start the machine by a treadle actuated by the operator, and controlled, as to the point at which the clutch is disengaged and the machine stopped, by a cam and brake.

This clutch mechanism is substantially the same in construction and mode of operation as that embodied in Defendants' loose nailer, and in my opinion embodies substantially the combinations shown and described in patent to Louis Goddu No. 383,455, dated May 29, 1888, and referred to in claims 7 and 8 thereof, and also embodies substantially the combination shown and described in

patent to Louis Goddu No. 385,802, dated July 10, 1888, and referred to in claim 7 thereof, for the reasons given by me in discussing the clutch mechanism of Defendants' Loose Nailer.

DEFENDANTS' EXHIBIT 104.

[Put in Evidence, page 2090.]

CIRCUIT COURT OF THE UNITED STATES,
DISTRICT OF MASSACHUSETTS.

IN EQUITY.

No. 985.

JAMES W. BROOKS ET AL.
v.
GODDU SONS METAL FASTENING COMPANY ET AL.

BILL OF COMPLAINT.
(Filed Feb. 2, 1898.)

To the Honorable the Judges of the Circuit Court of the United States for the District of Massachusetts:

James W. Brooks of Petersham in the County of Worcester and Commonwealth of Massachusetts, and Frank F. Stanley of Boston in the County of Suffolk and Commonwealth aforesaid, Plaintiffs, bring this their Bill of Complaint against Goddu Sons Metal Fastening Company, a corporation duly organized under the laws of the State of Maine, and having its principal place of business at said Boston, Louis Goddu, Louis H. Goddu, William Goddu, Napoleon Goddu, Elmer Goddu, and George Goddu, all of Winchester in the County of Middlesex and Commonwealth aforesaid, and Albert Van Wagenen of Newton in the County of Middlesex and Commonwealth aforesaid, Defendants.

And thereupon the plaintiffs complain and say as follows:

First. The plaintiffs are trustees of a voluntary association known as the McKay Metallic Fastening Association, under a declaration of trust hereinafter referred to and are engaged as such trustees in carrying on the business of manufacturing and leasing machines for inserting metallic fastenings in boots and shoes. The machines used by the plaintiffs include so-called standard screw

machines, by which screw-threaded wire is inserted in boots and shoes to fasten the soles together and to fasten the uppers to the soles; so-called tacking machines by which various kinds of metallic fastenings are inserted in the soles of boots and shoes; loose nailing machines so-called, by which headed nails fed into the machine are driven into the soles of boots and shoes; and so-called slugging machines, by which metallic fastenings are driven into the soles and heels of boots and shoes for the purpose of ornament or to increase the durability of the wearing surface. The standard screw machines, some variety of the tacking machines, loose nailing machines and slugging machines above referred to make a set used frequently in conjunction upon the same shoe, and manufacturers who desire to use metallic fastenings in the soles of boots and shoes or to insert so called slugs in the soles or heels, often require machines for all these kinds.

Second. About or prior to the year 1875 the defendant Louis Goddu invented a screw machine, or the essential parts thereof, of the general character of the standard screw machine above referred to and designed for the same purpose, and also invented a tacking machine. One Albert Van Wagenen and others had also invented appliances for use in connection with and less important parts of said standard screw machine and tacking machine. None of the other machines above referred to had at this time been invented. Said Louis Goddu and said Albert Van Wagenen prior to 1877 transferred their said inventions to a corporation known as the American Cable Screw Wire Company, and in 1877 said corporation held patents for said inventions. On or about June 9, 1877 one Gordon McKay and the plaintiff James W. Brooks acquired all said patents from said American Cable Screw Wire Company and also acquired other patents relating to metallic fastenings from other persons, in order to hold the same as principal trustee and associate trustee respectively under said declaration of trust for the benefit of said voluntary association known as the McKay Metallic Fastening Association, which was then first organized, and to engage in and carry on the business above described for the benefit of such association; and said McKay and Brooks upon the transfer to them

of said letters patent executed a declaration of trust; the same hereinbefore referred to, for the benefit of said voluntary association. A copy of said declaration of trust is hereto annexed and marked Exhibit A and is hereby made a part of this bill.

Third: Said McKay and said Brooks, as trustees as aforesaid, deemed it important to secure the services of said Louis Goddu as being the principal inventor of said standard screw machine and said tacking machine in order to get the benefit of his ingenuity and inventive skill in improving and perfecting said machines and in devising and inventing other machines and appliances, and said McKay and Brooks as such trustees accordingly entered into a contract with said Louis Goddu on or about June 9th, 1877, for this purpose, whereby for seventeen years they should enjoy the exclusive right and benefit of all inventions thereafter made by him relating to fastening together the soles and uppers of boots and shoes with metallic fastenings.

Fourth: Thereafter, to wit, on or about January 1, 1880, said McKay and said Brooks, being respectively the principal trustee and associate trustee of said Association, as trustees as aforesaid in order more effectually to secure the services of said Louis Goddu and the exclusive benefit of his ingenuity and inventive skill and of all inventions thereafter made by him relating to the use of metallic fastenings as aforesaid, entered into a contract in writing and under seal with said Louis Goddu, in substitution for said contract dated June 9, 1877. Said contract so made on or about January 1, 1880, recited that said trustees were desirous of obtaining and securing for said McKay Metallic Fastening Association, further results and benefits from the ingenuity and inventive skill of said Goddu, in the origination and contrivance of other inventions and improvements, relating to metallic fastenings for boots and shoes, or the insertion of metal in soles for any purpose, except for the purpose of lasting boots and shoes. By said contract said Louis Goddu for the considerations therein set forth covenanted and agreed with said trustees that they and the survivor of them as joint tenants and not as tenants in common, the successor or successors to their trust and his or their legal representatives or assigns,

should at all times exercise and enjoy the entire and exclusive right, title and interest, in and to any and all inventions and improvements, not already assigned, which the said Goddu has made or might thereafter make, contrive or originate in the construction or mode of operation of any machine, mechanism, mechanical appliance or instrumentality, relating to metallic fastenings for soles of boots and shoes, or to the insertion of metal in soles for any purpose, except for lasting boots and shoes, to the fullest extent to which the said Goddu, as the inventor or discoverer thereof, would have been entitled to possess, exercise and enjoy the same, within and for the United States and all other countries. And said Louis Goddu thereby for the considerations therein set forth further covenanted and agreed that in order to secure to the said trustees the entire and exclusive benefit and advantage to be derived from said inventions and improvements, he would at their request, and without charge to them but at their expense, make, sign and execute any and all proper documents and written instruments requisite and proper to apply for and obtain the grant, reissue or extension of letters patent in the United States, and such other countries as said Trustees might elect, and to protect therein the exclusive rights to any of said inventions and improvements, and would also make, sign, execute and deliver any and all assignments, transfers and conveyances necessary or proper to vest in said trustees, their successors, legal representatives and assigns, the entire and exclusive right, title and interest in and to each and all of such letters patent, reissues and extensions when granted, as fully as he could exercise and enjoy the same. A copy of said contract is hereto annexed and marked "Exhibit B" and is hereby made a part of this bill.

Fifth. Thereafter, to wit on or about July 30, 1884, said Gordon McKay resigned as such principal trustee and ceased to be a trustee under said declaration of trust, and on said date said Brooks was duly chosen and appointed principal trustee, and the plaintiff Stanley was duly chosen and appointed associate trustee of said McKay Metallic Fastening Association, pursuant to the provisions of said declaration of trust. And said McKay and said Brooks

duly assigned all the patents, contracts, choses in action and other property then held by them as such trustees to said Brooks and Stanley as trustees as aforesaid, pursuant to the terms of said declaration of trust. And said Brooks and Stanley thereupon became and were and since then continuously have been and now are, the principal trustee and associate trustee respectively of said Association, and said Brooks and Stanley as such trustees as aforesaid became and were and now are the owners of all patents and patent rights and inventions and all interests therein and all contracts and choses in action and other property then held or owned for the benefit of said Association under said declaration of trust, and entitled to the benefit of and to enforce as such trustees and for the benefit of said Association pursuant to said declaration of trust, all rights, contracts and agreements and choses in action theretofore acquired or held by the former trustees under said declaration of trust, and became and were and are entitled to the benefit of and to enforce as such trustees said contract with said Louis Goddu dated January 1, 1880 as aforesaid.

Sixth. Subsequent to January 1, 1880 and prior to June 10, 1889 said Louis Goddu made divers inventions not relating to inserting metallic fastenings in the soles of boots and shoes, and assigned the same to a corporation organized by him and by said Albert Van Wagenen, known as the Goddu Improvement Company. Said Brooks and said Stanley being respectively the principal trustee and associate trustee under said declaration of trust as aforesaid and being desirous to secure the entire and undivided services of said Louis Goddu as an inventor for the benefit of said Association, on or about June 10, 1889 entered into a further contract in writing and under seal with said Louis Goddu, whereby they agreed to pay and thereafter they did pay to said Louis Goddu and to said Van Wagenen large sums of money for the stock owned by them respectively in said Goddu Improvement Company, to wit, to said Louis Goddu the sum of seven thousand five hundred (7,500) dollars, and agreed to pay said Louis Goddu fourteen (14) per cent. of all net profits derived from the inventions owned by said Goddu Improvement Company. And said

Louis Goddu thereby, among other things covenanted and agreed that said Brooks as such principal trustee and said Stanley as such associate trustee, their successors and assigns, should at all times have, exercise and enjoy the entire and exclusive right, title and interest in and to any and all inventions, improvements and discoveries which he the said Louis Goddu had made, contrived or originated, and had not already assigned, and which during the term or terms of any patent or patents theretofore assigned by him to the Goddu Improvement Company or thereafter to be assigned by him to the Trustees of the said McKay Metallic Fastening Association under this present agreement, he, the said Louis Goddu might thereafter make, contrive or originate in any industrial art, machine, manufacture or composition of matter, (excepting only such inventions and improvements as were already the subject of other existing contracts between him, the said Louis Goddu and the trustees of the said McKay Metallic Fastening Association) to the fullest extent which he, as the inventor or discoverer thereof would otherwise have been entitled to possess, exercise and enjoy such entire and exclusive right, title and interest within the United States and all other patent granting countries.

And said Louis Goddu thereby further covenanted and agreed for the considerations therein set forth, with said Brooks and Stanley as trustees as aforesaid, that in order to secure to said trustees the entire and exclusive benefit and advantage to be derived from his said inventions, improvements and discoveries, he would, at the request of such Trustees, or either of them, and without personal charge, but at their expense, make, sign and execute, any and all papers, documents and written instruments requisite and proper to apply for and obtain the grant of letters patent in the United States, and any foreign country, and any reissue or extension thereof, to protect therein, the exclusive privileges of constructing, employing and vending, the said inventions, improvements and discoveries, or either or any of them; and would also make, sign, execute and deliver, any and all assignments, transfers and conveyances necessary or proper to vest in the said James W. Brooks, as Principal Trustee, and the said Frank F.

Stanley as Associate Trustee, of the said McKay Metallic Fastening Association, their successors and assigns, the entire and exclusive right, title and interest, in, to and under, each and all of such letters patent, and any reissue or extension thereof, when granted, and the franchise and privileges secured thereby. And said Louis Goddu by said contract further for the considerations therein set forth sold, assigned and transferred to said Brooks and Stanley as trustees as aforesaid, any and all patterns, models and drawings, which he might then or thereafter own, embody, illustrating or representing, either or any of the inventions, improvements or discoveries, which, by the terms of this present agreement, were to belong, or by assignment from the Goddu Improvement Company might belong, to the said trustees of the said Association. A copy of said contract is hereto annexed marked Exhibit C and is made a part of this bill.

Seventh. After the organization of said voluntary Association in 1877, and during the period from then until the present time, the business so conducted by said trustees has largely developed and increased, and through the exertions of said trustees and by the ingenuity and inventive skill of said Louis Goddu, the machines used have been improved and other machines have been devised and invented, and letters patent of the United States issued which are the property of said trustees. About 1884 said Louis Goddu invented and developed a loose nailing machine, for which, together with improvements subsequently devised therein by said Louis Goddu divers letters patent of the United States were duly issued which are the property of said trustees. About 1895 said Louis Goddu invented a slugging machine for which letters patent of the United States were duly issued which are the property of said trustees.

Improvements in all of said machines, herein and in paragraph second referred to, have from time to time heretofore during said period since 1880 been invented by said Louis Goddu and divers letters patent of the United States issued therefor which are the property of said trustees, and during said period divers other machines of the kinds referred to in paragraph first above, and im-

provements therein, have been invented by said Louis Goddu for which divers letters patent of the United States have been duly issued, which are the property of said trustees. All of said machines as improved from time to time as aforesaid, and all letters patent of the United States issued therefor, have been and now are the property of said trustees in accordance with said contracts, and all such machines have been and now are largely used by said trustees in carrying on their said business, and all said machines and the improvements therein and the appliances connected therewith are chiefly the result of the ingenuity and inventive skill of said Louis Goddu. Throughout all of said period from 1877 said Louis Goddu has been closely and intimately acquainted with the business done by the plaintiffs and by their predecessors as such trustees, and has filled a position of confidence towards said trustees and has acquired and now has an exact and exhaustive knowledge of the condition of the business carried on by the plaintiffs, so far as relates to the manufacture and operation of the machines and appliances used by said trustees, and as the principal inventor of said machines and improvements therein and appliances, and by reason of his continuous employment by them and by their predecessors in the trust, he has an accurate knowledge of the merits and the defects of the plaintiffs' said machines and appliances. Said McKay and Brooks as trustees entered into said contract dated January 1, 1880, with said Louis Goddu, and said plaintiffs as trustees entered into said contract dated June 10, 1889 with said Louis Goddu, because of the great importance of maintaining the high quality and standard of their said machines, and in order to secure the exclusive services of said Louis Goddu as an expert inventor for that purpose, and in order to prevent any competitor from securing the services of said Louis Goddu and the benefit of his intimate knowledge of the machines made and used by said trustees. And it is of great importance to said trustees that said Louis Goddu should continue to devote himself to them and that they should have exclusive benefit of his ingenuity and inventive skill, and especially that he should not permit any other person or persons and especially any rival in business of said trustees, to

have the benefit directly or indirectly of his ingenuity and inventive skill or of any conceptions or ideas of his relating to machines or improvements therein or appliances intended for the purposes aforesaid, or any of them, for which the machines now owned by said trustees are used; and that said Louis Goddu should faithfully perform and comply with all the terms and requirements of said contracts dated January 1, 1880 and June 10, 1889, and each of them.

Eighth. Said McKay and said Brooks as long as they were the trustees under said declaration, performed, and said Brooks and said Stanley since they have been such trustees and up to the present time, have performed and are ready and willing for the future to perform all things by said contract dated January 1, 1880, required to be performed by them respectively or by the trustees for the time being of said McKay Metallic Fastening Association; and said Brooks and Stanley as such trustees have since said contract dated June 10, 1889 was made, and up to the present time, performed and are ready and willing for the future to perform all things thereby required to be performed by them. Since 1880 the trustees for the time being under said declaration of trust have in each and every year paid to said Louis Goddu according to the terms of said contract dated January 1, 1880; and since June 10, 1889, said trustees have paid to said Louis Goddu in each and every year in accordance with the terms of said contract dated June 10, 1889, very large sums of money as compensation for his services and for his said inventions, as provided in said contracts respectively, and throughout the entire period from 1877 to the present time the trustees of said Association for the time being have paid to said Louis Goddu in each year a further sum of four thousand (4,000) dollars together with a percentage of the net earnings of said Association, as salary for the services of said Louis Goddu as inventor and master mechanic. The aggregate of the sums so paid to said Louis Goddu during said period by said trustees amounts to more than two hundred thousand (200,000) dollars.

Ninth. Said Brooks and said Stanley upon their appointment as principal trustee and associate trustee respectively, became and

were and since then continuously have been and now are entitled by virtue of said contract dated January 1, 1880, to the sole and exclusive benefit of all inventions and improvements that said Louis Goddu might make, contrive or originate in the construction or mode of operation of any machine, mechanism, mechanical appliance or instrumentality relating to metallic fastenings for soles of boots and shoes or to the insertion of metal in soles for any purpose except for lasting boots and shoes, and since June 10, 1889, by virtue of said contract dated June 10, 1889, to the sole and exclusive benefit of all inventions, improvements and discoveries which said Louis Goddu should make, contrive or originate in any industrial art, machine, manufacture or composition of matter, and to the full benefit of and to all results derived from the ingenuity and inventive skill of said Louis Goddu, and by virtue of each of said contracts to have the ingenuity and inventive skill of said Louis Goddu devoted exclusively to the interests of the trustees for the time being of said McKay Metallic Fastening Association.

Tenth. In the latter part of the year 1895 and early part of the year 1896 said Louis Goddu, notwithstanding the fact that said Brooks and Stanley as trustees as aforesaid had up to that time fully performed and were ready and willing thereafter and for the future to perform all things required to be performed by them under said several contracts and each of them, without just cause and in violation by his covenants and agreements in said several contracts and each of them contained declared his intention to give to said Brooks and Stanley as trustees as aforesaid no further benefit or result of his ingenuity and inventive skill, and since then has wholly neglected and failed and refused to communicate to said trustees or to any one in their behalf, any invention or improvement relating to metallic fastenings for boots and shoes, or in any way to give them any benefit or result of his ingenuity or inventive skill.

Eleventh: From 1877 until October, 1895, said Albert Van Wagenen, who prior to 1877 had made some inventions relating to metallic fastenings for boots and shoes which were acquired by said McKay and Brooks in 1877 as aforesaid, was employed continuously by the trustees for the time being of said McKay Metal-

lic Fastening Association and was paid a large salary. And throughout that time said Van Wagenen had an intimate and confidential knowledge of the business carried on by said trustees and of the patents and inventions used therein and from time to time acquired by said trustees. Prior to September, 1895, there were also employed by said plaintiffs as trustees in said business five sons of said Louis Goddu, to wit, Louis H. Goddu who had been continuously so employed as a machinist for about fourteen years, Elmer Goddu who had been continuously so employed as a machinist and as a pattern maker for about nine years, Napoleon Goddu who had been continuously so employed as a machinist and as a pattern maker for about eight years, William Goddu who had been continuously so employed as a machinist for six years, and George Goddu who had been continuously employed as a machinist for about five years. Said George Goddu left the employ of said trustees on or about September 16, 1895, said Louis H. and Napoleon Goddu left in or about October, 1895, said William Goddu left in or about March, 1896, and said Elmer Goddu left in or about December, 1896. Each of said sons of said Louis Goddu respectively received during the time of his employment by said plaintiffs the wages ordinarily paid machinists and mechanics and no one of them had at any time during such employment devised or invented any new or patentable improvement or invention or given any sign of inventive skill. In or about January 1895 said five sons of Louis Goddu, being then in the employ of said plaintiffs as aforesaid, conspired with said Louis Goddu and with said Albert Van Wagenen, who was also then in the plaintiffs' employ as aforesaid, to produce a set of machines for use in fastening together the parts of boots and shoes with metallic fastenings, comprising a screw nail machine, a loose nailing machine, a slugging machine, tacking machines, and nailing machines for driving string nails so-called, that should be able to perform the same work done by the machines manufactured and leased by said trustees as aforesaid and compete with them successfully; and for this purpose to have said Louis Goddu invent such machines or improvements, which should not infringe the letters patent held by the plaintiffs, and communicate such inventions to

his said sons and instruct them in perfecting and manufacturing machines in conformity therewith, and permit them or some one of them to apply for letters patent upon each of said several machines, and transfer such letters patent when issued to a corporation to be organized for the purpose of manufacturing and leasing said machines.

Twelfth: At some time prior to August 24, 1895, said Louis Goddu conceived the idea of an alleged improvement in the tacking machines, so called, then used by the plaintiffs as aforesaid. Such improved machine was designed and intended to take the place of and do the same work as machines then manufactured by the plaintiffs according to earlier inventions made by said Louis Goddu for the essential parts thereof and improvements therein, for which divers letters patent of the United States had been duly issued which were then owned by the plaintiffs as trustees as aforesaid. Said Louis Goddu, notwithstanding his covenants and agreements contained in said contracts dated January 1, 1880 and June 10, 1889, respectively, did not give to said plaintiffs the benefit and results of his said idea and invention for such alleged improvement, but, disregarding his said obligations and duties under said contracts, pursuant to the conspiracy aforesaid, communicated said idea to his said son William Goddu, and perfected said alleged improvement and completed the invention therein embodied, and instructed and directed said William Goddu and his brothers in relation thereto, and in constructing a machine in accordance therewith and assisted and permitted said William Goddu to apply in the name of said William as the original inventor thereof for letters patent of the United States therefor. And said William, pursuant to said conspiracy, made such application and on or about October 6, 1896, letters patent of the United States numbered 569,152 were issued to said William Goddu upon his said application for said alleged improvement and invention. A copy of the specification forming part of said letters patent is annexed hereto and marked Exhibit D and is hereby made a part of this bill.

Thirteenth. At some time prior to May 20, 1896, said Louis Goddu conceived the idea of an alleged improvement in the ma-

chines for driving screw threaded wire, commonly called screw nail machines, then used by the plaintiffs as aforesaid. Such improved machine was designed and intended to take the place of and do the same work as machines then manufactured by the plaintiffs according to earlier inventions made by said Louis Goddu for the essential parts thereof and improvements therein, for which divers letters patent of the United States had been duly issued which were then owned by the plaintiffs as trustees as aforesaid. Said Louis Goddu, notwithstanding his covenants and agreements contained in said contracts dated January 1, 1880 and June 10, 1889 respectively, did not give to said plaintiffs the benefit and results of his said idea and invention for such alleged improvements, but, disregarding his said obligations and duties under said contracts, pursuant to the conspiracy aforesaid, communicated said idea to his said son Louis H. Goddu, and perfected said alleged improvement and completed the invention therein embodied, and instructed and directed said Louis H. Goddu and his brothers in relation thereto, and in constructing a machine in accordance therewith and assisted and permitted said Louis H. Goddu to apply in the name of said Louis H. as the original inventor thereof for letters patent of the United States therefor. And said Louis H., pursuant to said conspiracy, made such application, and on or about May 25, 1897, letters patent of the United States numbered 583,045 were issued to said Louis H. Goddu upon his said application for said alleged improvement and invention. A copy of the specification forming part of said letters patent is annexed hereto and marked Exhibit E and is hereby made a part of this bill.

Fourteenth. At some time prior to July 6, 1896, said Louis Goddu conceived the idea of an alleged improvement in the slugging machines, so called, then used by the plaintiffs as aforesaid. Such improved machine was designed and intended to take the place of and do the same work as machines then manufactured by the plaintiffs according to earlier inventions made by said Louis Goddu for the essential parts thereof and improvements therein, for which divers letters patent of the United States had been duly issued which were then owned by the plaintiffs as trustees as aforesaid.

Said Louis Goddu, notwithstanding his covenants and agreements contained is said contracts dated January 1, 1880 and June 10, 1889 respectively, did not give to said plaintiffs the benefit and results of his said idea and invention for such alleged improvement, but disregarding his said obligations and duties under said contracts, pursuant to the conspiracy aforesaid, communicated said idea to his said son Louis H. Goddu, and perfected said alleged improvement and completed the invention therein embodied, and instructed and directed said Louis H. Goddu and his brothers in relation thereto, and in constructing a machine in accordance therewith and assisted and permitted said Louis H. Goddu to apply in the name of said Louis H. as the original inventor thereof for letters patent of the United States therefor. And said Louis H., pursuant to said conspiracy, made such application and on or about May 25, 1897, letters patent of the United States numbered 583,-046 were issued to said Louis H. Goddu upon his said application for said alleged improvement and invention. A copy of the specification forming part of said letters patent is annexed hereto and marked Exhibit F and is hereby made a part of this bill.

Fifteenth. At some time prior to August 25, 1896, said Louis Goddu conceived the idea of an alleged improvement in the loose nailing machines, so called, then used by the plaintiff as aforesaid. Such improvement was designed and intended to take the place of and do the same work as machines then manufactured by the plaintiffs according to earlier inventions made by said Louis Goddu for the essential parts thereof and improvements therein, for which divers letters patent of the United States had been duly issued which were then owned by the plaintiffs as trustees as aforesaid. Said Louis Goddu, notwithstanding his covenants and agreements contained in said contracts dated January 1, 1880 and June 10, 1889 respectively, did not give to said plaintiffs the benefit and results of his said idea and invention for such alleged improvement, but, disregarding his said obligations and duties under said contracts, pursuant to the conspiracy aforesaid, communicated said idea to his said son George Goddu, and perfected said alleged improvement and completed the invention therein embodied, and

instructed and directed said George Goddu and his brothers in relation thereto, and in constructing a machine in accordance therewith and assisted and permitted said George Goddu to apply in the name of said George Goddu as the original inventor thereof for letters patent of the United States therefor. And said George pursuant to said conspiracy, made such application, and on or about May 25, 1897, letters patent of the United States numbered 583,044, were issued to said George Goddu upon his said application for said alleged improvement and invention. A copy of the specification forming a part of said letters patent is annexed hereto and marked Exhibit G and is hereby made a part of this bill.

Sixteenth. At some time prior to September 19, 1896, said Louis Goddu conceived the idea of an alleged improvement in the string nail-tacking machines, so called, then used by the plaintiffs as aforesaid. Such improved machine was designed and intended to take the place of and do the same work as machines then manufactured by the plaintiffs according to earlier inventions made by said Louis Goddu for the essential parts thereof and improvements therein, for which divers letters patent of the United States had been duly issued which were then owned by the plaintiffs as trustees as aforesaid. Said Louis Goddu, notwithstanding his covenants and agreements contained in said contracts dated January 1, 1880 and June 10, 1889 respectively, did not give to said plaintiffs the benefit and results of his said idea and invention for such alleged improvement, but disregarding his said obligations and duties under said contracts, pursuant to the conspiracy aforesaid, communicated said idea to his said son William Goddu, and perfected said alleged improvement and completed the invention therein embodied, and instructed and directed said William Goddu and his brothers in relation thereto, and in constructing a machine in accordance therewith and assisted and permitted said William Goddu to apply in the name of said William as the original inventor thereof, for letters patent of the United States therefor. And said William pursuant to said conspiracy, made such application and on or about May 25, 1897, letters patent of the United States numbered 583,048 were issued to said William

Goddu upon his said application for said alleged improvement and invention. A copy of the specification forming part of the said letters patent is annexed hereto and marked Exhibit H and is hereby made a part of this bill.

Seventeenth. At some time prior to January 15, 1897 said Louis Goddu conceived the idea of an alleged improvement in string nail tacking machines so called, then used by the plaintiffs as aforesaid. Such improved machine was designed and intended to take the place of and do the same work as machines then manufactured by the plaintiffs according to earlier inventions made by said Louis Goddu for the essential parts thereof and improvements therein, for which divers letters patent of the United States had been duly issued which were then owned by the plaintiffs as trustees as aforesaid. Said Louis Goddu, notwithstanding his covenants and agreements contained in said contracts dated January 1, 1880 and June 10, 1889, respectively, did not give the said plaintiffs the results of his said idea and invention for such alleged improvement, but disregarding his said obligations and duties under said contracts, pursuant to the conspiracy aforesaid, communicated said idea of his son William Goddu, and perfected said alleged improvement and completed the invention therein embodied and instructed and directed said William Goddu and his brothers in relation thereto, and in constructing a machine in accordance therewith and assisted and permitted said William Goddu to apply in the name of said William as the original inventor thereof for letters patent of the United States therefor. And said William, pursuant to said conspiracy, made such application, and on or about June 15, 1897 letters patent of the United States numbered 584,735 were issued to said William Goddu upon his said application for said alleged improvement and invention. A copy of the specification forming part of said letters patent is annexed hereto and marked Exhibit I and is hereby made a part of this bill.

Eighteenth. Each of the inventions specified in the six preceding paragraphs numbered Twelfth to Seventeenth both inclusive is intended and designed as an improvement on machines now owned and used by said plaintiffs, manufactured under letters patent of

the United States heretofore issued for inventions of said Louis Goddu and now owned by said plaintiffs, pursuant to the terms of said several contracts; and each of the machines embodying said inventions specified in said paragraphs Twelfth to Seventeenth is intended to be used for the same purpose for which the plaintiffs' said machines are used and to be an improvement thereon, and to be used in competition therewith. Said Louis Goddu, in pursuance of the conspiracy aforesaid, aided and assisted his said sons in constructing the machines in said paragraphs numbered Twelfth to Seventeenth referred to, and furnished them for this purpose the use, free of expense, of a machine shop owned by him, and hired and paid a machinist to assist them in the mechanical work to be done by them and furnished and paid for all the supplies to be used in said shop in carrying on said work, and supported his said sons and the families of such of them as had families, after they respectively left the employ of the plaintiffs as aforesaid, and paid all the expenses of applying for and obtaining each of said letters patent, and expended large sums of money for the purposes aforesaid.

Nineteenth. Each of said letters patent so issued, as in paragraphs numbered twelfth to seventeenth both inclusive above set forth, is for an invention of said Louis Goddu. Louis Goddu was and is in fact the first and original inventor of the alleged improvements for which each of said letters patent was granted. Each of said inventions was and is the fruit and result of said Louis Goddu's ingenuity and inventive skill. Said Louis Goddu communicated each of his said conceptions and inventions to his said sons and to each of them, and directed and caused his said sons to construct a machine embodying said invention, and permitted his said sons William, Louis H., and George respectively as above set forth, to apply for and obtain letters patent for said respective machines in order to defeat the right of plaintiffs to the sole benefit of the results of the ingenuity and inventive skill of said Louis Goddu. Each of the said sons of said Louis Goddu was aware of at the time said Louis Goddu so communicated to him each of said conceptions and inventions, and at all times thereafter well knew the duties and obligations of said Louis Goddu to the plaintiffs

under and by virtue of said contracts, and well knew the rights of the plaintiffs to the exclusive benefit of and to the results of the ingenuity and inventive skill of said Louis Goddu; and each of said sons of said Louis Goddu and said Albert Van Wagenen wilfully and fraudulently conspired with said Louis Goddu to defeat the rights of the plaintiffs aforesaid, and for this purpose assisted said Louis Goddu in the development of said improvements; and each of them who applied for letters patent in his own name as above set forth did so well knowing that said Louis Goddu was the true and original inventor of the alleged improvements and inventions for which said patent was sought; and that the plaintiffs as trustees as aforesaid were by virtue of said contracts and of each of them, entitled to the sole and exclusive use and benefit thereof. And each of said alleged improvements and inventions in fact belonged to and in equity was the property of said plaintiffs as soon as made, conceived, or originated by said Louis Goddu, and all the acts done in relation thereto pursuant to said conspiracy as above set forth, were done in wilful violation of and in fraud of the plaintiff's rights.

Twentieth. On or about May 29, 1897, a corporation known as the Goddu Sons Metal Fastening Company was organized under the laws of Maine, with a capital of $500,000 divided into 5000 shares of the par value of $10.00 each. The ostensible purposes for which said corporation was organized as set forth in its certificate of incorporation were the carrying on the business of manufacturing, buying, selling, leasing, and operating machinery, tools, and appliances relating to the manufacture of boots and shoes, obtaining, leasing, operating under and disposing of letters patent, including letters patent relating to the manufacture of boots and shoes, and machinery, tools, and appliances used in such manufacture, and for other purposes. Among the original incorporators and directors of said corporation named in its articles of incorporation were said George Goddu, Louis H. Goddu, and Albert Van Wagenen, and one James H. Churchill, the solicitor of patents employed by said Louis Goddu. The plaintiffs are informed and believe, and therefore charge, that said corporation was organized

pursuant to said conspiracy above set forth, in order that said letters patent issued to said several sons of Louis Goddu respectively as aforesaid might be assigned to and held and used by it; that said Louis Goddu assisted in promoting and advanced all the money for the expenses of organizing said corporation, and has lent money to it; that said Van Wagenen and all said sons of said Louis Goddu were parties to said conspiracy, and joined in the organization of said corporation, well knowing the rights of said plaintiffs to all inventions of said Louis Goddu, and well knowing that the inventions for which said letters patent had issued which were to be assigned to said corporation were inventions made by said Louis Goddu; that said Louis Goddu received and still holds 3000 shares of the capital stock of said corporation; that said Van Wagenen and each of said five sons of said Louis Goddu received and still holds 6,000 shares of said capital stock; that said shares were issued to said Louis Goddu and to said Van Wagenen and to said several sons of said Louis Goddu for no consideration except the part taken by each in forming and carrying out said conspiracy and the assignment pursuant to said conspiracy of said several letters patent specified in paragraphs twelfth to seventeenth both inclusive to said corporation.

Twenty-first. Thereafter said William Goddu, George Goddu and Louis H. Goddu assigned to said Goddu Sons Metal Fastening Company, pursuant to said conspiracy, all said letters patent issued to them respectively as in paragraphs Twelfth to Seventeenth both inclusive above set forth to wit: letters patent numbered 569,152, 583,048 and 584,735 issued to said William Goddu, 583,045 and 583,046 issued to said Louis H. Goddu, and 583,044 issued to said George Goddu, in so far as, in view of the invalidity thereof, the same were capable of assignment; and said corporation has since that date purported and now purports to be, and so far as the same are capable of ownership for the reason aforesaid, now is the owner of said letters patent. At the time each of such purported assignments, and at the time of the payment of any consideration therefor, if any consideration was in fact paid, said corporation well knew that said letters patent and all of them were

granted for inventions originally conceived and made by said Louis Goddu, and that said Louis Goddu was the true and original inventor of the alleged improvements for which said letters patent were respectively granted; that said plaintiffs as trustees as aforesaid were entitled to the sole and exclusive benefit of said invention; and that said William Goddu, Louis H. Goddu and George Goddu respectively, and each of them, well knowing the plaintiffs' said rights, had conspired with said Louis Goddu as above set forth in assisting to develop said inventions and in applying for letters patent therefor, in order to defraud the plaintiffs by depriving them of the benefit of said inventions and results of said Louis Goddu's ingenuity and inventive skill.

Twenty-second. Said Goddu Sons Metal Fastening Company is about to engage in business in competition with the business carried on by the plaintiffs as trustees as aforesaid. Said several inventions for which said letters patent purported to be issued as aforesaid are for alleged improvements in machines of which the plaintiffs in carrying on said business lease large numbers to manufacturers of boots and shoes. The use of any of said inventions by said defendant corporation in competition with said plaintiffs will cause said plaintiffs great and irreparable injury. Said defendant corporation has begun or is preparing to manufacture and to lease to manufacturers of boots and shoes in competition with the plaintiffs, machines manufactured in accordance with said several alleged improvements and inventions as set forth in the specifications forming part of said several letters patent, and as the plaintiffs are informed and believe, threaten to and will unless restrained by the action of this Honorable Court, continue so to do, and will by every means endeavor to induce manufacturers of boots and shoes to hire said machines from from them instead of hiring machines for the same purposes from said plaintiffs, and will seriously injure the plaintiffs' said business, to wit, to an amount greatly exceeding in value, exclusive of interest and costs the sum of two thousand (2,000) dollars.

Wherefore and forasmuch as the plaintiffs have no adequate remedy at law for the matters herein complained of, and to the

end that the defendants may if they can show why your orators should not have the relief hereby prayed, and may make a full disclosure and discovery of all the matters aforesaid, and according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated but not under oath, an answer under oath being hereby expressly waived, the plaintiffs pray : —

1. That the defendants and each of them and their respective agents, servants and employees, be perpetually restrained, from making, leasing, selling or using in any way any machine embracing, and from in any way using any of said alleged improvements and inventions or any substantial part thereof, set forth and described in the specifications forming a part of said several letters patent numbered respectively 569,152, 583,044, 583,045, 583,046, 583,048 and 584,735, and that all such machines now in the possession or custody of the defendants or any of them, or their or any of their servants, agents or employees, may be delivered up to the plaintiffs or be destroyed.

2. That the defendants and each of them be ordered to account to the plaintiffs for all profits made by them respectively from the making, leasing, selling or in any way using any machine or machines embracing said alleged improvements and inventions or any of them or any substantial part of any of them or in any way arising or accruing therefrom.

3. That a preliminary injunction issue, restraining the defendants and each of them and their respective agents or employees during the pendency of this suit, from making, leasing, selling or using in any way any machine embracing, and from in any way using any of said alleged improvements and inventions or any substantial part thereof set forth and described in the specifications forming a part of said several letters patent numbered respectively 569,152, 583,044, 583,045, 583,046, 583,048 and 584,735.

4. For such other relief as to this honorable Court shall seem meet.

And it may please your Honors to grant unto the plaintiffs a writ of subpoena ad respondendum directed to said several defend-

ants, The Goddu Sons Metal Fastening Company, Louis Goddu, Louis H. Goddu, William Goddu, Napoleon Goddu, Elmer Goddu, George Goddu and Albert Van Wagenen, and commanding them and each of them to be and appear in this Honorable Court on a day certain therein to be named, to answer this bill of complaint, and to abide by and perform such order or decree as may be made therein.

And the plaintiffs, as in duty bound, will ever pray.

JAMES W. BROOKS,
FRANK F. STANLEY,
By their Solicitors,
Brandeis, Dunbar & Nutter.

LOUIS D. BRANDEIS,
of Counsel.

(Exhibit A, referred to herein, is here inserted in the original Bill of Complaint.)

EXHIBIT B.

This agreement made the first day of January, 1880, by and between Gordon McKay and James W. Brooks, both of Cambridge, Massachusetts, as they are trustees of the McKay Metallic Fastening Association, said McKay being Principal Trustee and said Brooks Associate Trustee, parties of the first part; and Louis Goddu, of Winchester, Massachusetts, party of the second part: Witnesseth:

Whereas, said Trustees are the owners of certain patents of the United States granted for the inventions of said Goddu relating to metallic fastenings for boots and shoes, and are desirous of obtaining and securing for said McKay Metallic Fastening Association, further results and benefits from the ingenuity and inventive skill of said Goddu, in the origination and continuance of other inventions and improvements, relating to metallic fastenings for boots and shoes, or the insertion of metal in soles for any purpose, except for the purpose of lasting boots and shoes.

Now, in consideration of the promises and stipulations on the part of the said Trustees, hereinafter recited and contained, the

said Goddu does hereby covenant and agree that the said Trustees, and the survivor of them, as joint tenants, and not as tenants in common, the successor or successors to their trust, and his or their legal representatives or assigns, shall at all times exercise and enjoy the entire and exclusive right, title, and interest, in and to any and all inventions and improvements not already assigned which the said Goddu has made or may hereafter make, contrive, or originate in the construction or mode of operation of any machine, mechanism, mechanical appliance, or instrumentality relating to metallic fastenings for soles of boots and shoes or to the insertion of metal in soles for any purpose, except for lasting boots and shoes, to the fullest extent to which the said Goddu as the inventor or discoverer thereof, would have been entitled to possess, exercise, and enjoy the same within and for the United States and all other countries.

And the said Goddu hereby further agrees that in order to secure to the said trustees the entire and exclusive benefit and advantage to be derived from said inventions and improvements, he will at their request, and without charge to them, but at their expense, make, sign, and execute, any and all proper documents, and written instruments, requisite and proper to apply for and obtain the grant, reissue, or extension of Letters Patent in the United States, and such other countries as said trustees may elect, and to protect therein the exclusive rights to any of said inventions and improvements and will also make, sign, execute, and deliver any and all assignments, transfers, and conveyances necessary or proper to vest in said trustees, their successors, legal representatives, and assigns, the entire and exclusive right, title and interest, in and to each and all of such Letters Patent, reissues and extensions when granted, as fully as he could exercise and enjoy the same.

And in consideration of the premises, the said trustees for the McKay Metallic Fastening Association, for themselves, their successors, legal representatives, and assigns, agree that they will pay to said Goddu, his executors, administrators, or assigns, in successive payments, a sum equal to two and one half per cent (2½%) of all dividends declared and paid out of profits derived from the

use by them of any of his inventions in the United States, and twenty per cent. (20%) of all dividends declared and paid out of profits derived from the use of any such inventions in any other country, such percentages to continue so long as the patents or extensions thereof for said inventions run; such percentages to be paid to said Goddu when and as often as said dividends shall be paid.

And the said trustees hereby covenant and agree for themselves, the survivor of them and the successors to their trust, that in case they shall ever sell and assign either or any of the said Letters Patent for the inventions of said Goddu whether now or hereafter vested in them to any person or corporation free and discharged of their trust, and of the obligation to pay a percentage as aforesaid; they will within ten days after such sale and assignment pay to said Goddu, his executors, administrators, or assigns, the above percentages of two and one half per cent. (2½%) for the United States patent, and twenty per cent. (20%) for the foreign patents, of the entire consideration whether of money or other equivalents of value received by them for such sale and assignment.

It is, however, expressly understood and agreed that neither of said trustees nor any of their successors in the trust, nor any member of said association, shall be answerable hereunder out of his or their individual and private estates, but only out of and to the extent of the trust estate.

This agreement is made in lieu of and as a substitute for the agreement made between the same parties June 9, 1877, which is hereby terminated at the date of this agreement.

In witness whereof the said parties have hereunto set their hands and seals at Boston, Massachusetts, United States of America.

(Executed in duplicate)

GORDON MCKAY AND J. W. BROOKS, Trustees,
by Gordon McKay, Principal Trustee. [SEAL.]
LOUIS GODDU. [SEAL.]

EXHIBIT C.

This agreement made by and between Louis Goddu of Winchester, Massachusetts, party of the first part, and James W. Brooks, as Principal Trustee, and Frank F. Stanley, as Associate Trustee, of the McKay Metallic Fastening Association, parties of the second part, Witnesseth:

That whereas the said Louis Goddu owns twelve hundred and fifty shares, more or less, of the capital stock of the Goddu Improvement Company, a corporation established under the laws of the State of Maine:

And whereas the said Goddu Improvement Company has sold, assigned, and transferred, all its patents and inventions unto the said trustee of the said association;

Now, therefore, in consideration of seven thousand five hundred dollars, by the said James W. Brooks, as Principal Trustee, and the said Frank F. Stanley, as Associate Trustee, of the said McKay Metallic Fastening Association, paid to the said Louis Goddu, the receipt whereof he acknowledges, and in further consideration of the stipulations and covenants of the said James W. Brooks, as Principal Trustee, and the said Frank F. Stanley, as Associate Trustee, of the said McKay Metallic Fastening Association, hereinafter recited and contained, and of the payments from time to time hereafter to be made to him by them, their successors and assigns, as hereinafter specified, the said Louis Goddu makes the following sale and assignment, and promises, covenants, and agrees as follows:

The said Louis Goddu hereby sells, assigns, and transfers unto the said James W. Brooks as Principal Trustee and the said Frank F. Stanley as Associate Trustee, of the said McKay Metallic Fastening Association all shares in the capital stock of the said Goddu Improvement Company now owned by him, the said Louis Goddu, and all his right, title and interest whatsoever in the business and property of the said Goddu Improvement Company, including such patents for inventions as he has been under obligations to assign to it, but may not as yet have assigned.

And the said Louis Goddu hereby promises, covenants, and agrees that the said James W. Brooks as Principal Trustee and the said Frank F. Stanley as Associate Trustee of the said McKay Metallic Fastening Association, their successors and assigns, shall at all times have, exercise, and enjoy the entire and exclusive right, title and interest in and to any and all inventions, improvements, and discoveries, which he the said Louis Goddu, has made, contrived, or originated, and has not already assigned, and which during the term or terms of any patent or patents heretofore assigned by him to the Trustee of the said McKay Metallic Fastening Association under this present agreement, he the said Louis Goddu may hereafter make, contrive, or originate in any industrial art, machine, manufacture, or composition of matter (excepting only such inventions and improvements as are already the subject of other existing contracts between him the said Louis Goddu, and the Trustees of the said McKay Metallic Fastening Association, to the fullest extent to which he, as the inventor or discoverer thereof, would otherwise have been entitled to possess, exercise, and enjoy such entire and exclusive right, title and interest, within the United States, and all other patent granting countries.

And the said Louis Goddu hereby further promises and agrees that in order to secure to the trustees of the said McKay Metallic Fastening Association the entire and exclusive benefit and advantage to be devived from his said inventions, improvements, and discoveries, he will at the request of such trustees, or either of them, and without personal charge, but at their expense, make, sign, and execute, any and all papers, documents, and written instruments requisite and proper to apply for and obtain the grant of Letters Patent in the United States, and any foreign country, and any reissue or extension thereof, to protect therein, the exclusive privileges of constructing, employing, and vending the said inventions, improvements, and discoveries, or either or any of them, and will also make, sign, execute, and deliver any and all assignments, transfers, and conveyances necessary or proper to vest in the said James W. Brooks, as Principal Trustee, and the said Frank F. Stanley as Associate Trustee of the said McKay

Metallic Fastening Association, their successors and assigns, the entire and exclusive right, title, and interest in, to, and under, each and all of such Letters Patent, and any reissue or extension thereof, when granted, and the franchise and privileges secured thereby.

And the said Louis Goddu hereby sells, assigns, and transfers unto the said James W. Brooks as Principal Trustee and the said Frank F. Stanley as Associate Trustee of the said McKay Metallic Fastening Association, any and all patterns, models, and drawings which he may now or hereafter own, embodying, illustrating, or representing, either or any of the inventions, improvements, or discoveries, which by the terms of this present agreement are to belong, or by assignment from the said Goddu Improvement Company may belong, to the said Trustees of the said association.

And in consideration of the premises, the said James W. Brooks as Principal Trustee, and the said Frank F. Stanley as Associate Trustee, of the said McKay Metallic Fastening Association, for themselves, their successors, and assigns, hereby promise, covenant, and agree that they will pay to the said Louis Goddu, fourteen per centum of all dividends which shall be declared, from time to time, of the net profits arising or accruing from the practice or employment of the inventions, improvements, or discoveries, or either or any of them, claimed and secured in and by the patents granted, or to be granted, which have been assigned to the said trustees of the said association, by the said Goddu Improvement Company, and in and by such other patents hereafter to be granted, as are to become the property of the said trustees of the said association by virtue of this present agreement; and also of the net profits arising or accruing from the manufacture and sale of things embracing and embodying the said inventions, improvements, or discoveries, so patented, or either or any of them; and also of the net profits arising or accruing from the sale of the said patents or either or any of them, or from the grant of any right, license, or privilege thereunder.

And the said James W. Brooks, as Principal Trustee, and the said Frank F. Stanley as Associate Trustee, of the said McKay

Metallic Fastening Association, for themselves, their successors and assigns, hereby further promise, covenant, and agree that they will keep all the transactions and business done and carried on under and in respect to the patents and inventions derived by assignment from the said Goddu Improvement Company, and by virtue hereof from the said Louis Goddu, as aforesaid, and all accounts in relation thereto, separate and distinct from other transactions and business done and carried on and other accounts kept by the said trustee of the said association; that such expenses and disbursements as shall be incurred and made incidentally or unavoidably in connection with the entire business carried on by the said trustees of the said association, as for instance, salaries, rent, office expenditure, and so forth, shall be apportioned between the business provided for by this present agreement, and the remaining business done by the said trustees of the said association in direct ratio to the net earnings of each; and that dividends shall be declared and paid as often as once in every six months of the net profits which shall have arisen or accrued from the business provided for and contemplated in and by this present agreement.

And the said James W. Brooks as Principal Trustee, and the said Frank F. Stanley as Associate Trustee, of the said McKay Metallic Fastening Association, for themselves, their successors, and assigns, hereby further promise, covenant, and agree that if the net profits arising or accruing from the business provided for and contemplated in and by this present agreement shall during any fiscal year amount to more than seventy five thousand dollars, then, and in that event, they the said trustees of the said association will pay to the said Louis Goddu, in addition to the fourteen per centum of all dividends which shall be declared of the said net profits five per centum more upon all excess of the aggregate of such dividends for that year, over and above the said sum of seventy five thousand dollars.

And the said James W. Brooks as Principal Trustee, and the said Frank F. Stanley as Associate Trustee, of the said McKay Metallic Fastening Association, for themselves, their successors, and assigns, hereby further promise, covenant, and agree that they

will at all times keep and cause to be kept, regular books of account in which shall be entered any and all financial transactions belonging to or connected with the business provided for and contemplated in and by this present agreement, and which shall at all reasonable times be open to the inspection and examination of the said Louis Goddu or of his legal representatives.

And it is hereby expressly stipulated, agreed, and understood by and between the said parties hereto that if hereafter at any time while this present agreement continues in force, the said Louis Goddu shall make any invention which the said trustees of the said association, their successors, or assigns shall refuse to patent, upon tender of the same to them in writing for that purpose, then the said Louis Goddu upon such refusal may, at his own expense, patent the invention so refused, and may thereafter have, exercise, and enjoy the full and exclusive right, title, and interest in and to the same.

And it is also hereby stipulated, agreed, and understood by and between the said parties hereto that if the said trustees of the said association, their successors or assigns, shall at any time wilfully neglect, or refuse, to keep or perform any of their promises, covenants, or agreements herein recited and contained, then the said Louis Goddu shall thenceforth be released from further obligation in respect to any invention which he may make thereafter, but shall, nevertheless, be entitled to receive, recover, and collect, any and all dividends which shall be declared, of the net profits arising or accruing from the business done under such patents and inventions as have been derived by assignment from the said Goddu Improvement Company, and as shall theretofore have been derived from the said Louis Goddu, by virtue of this present agreement.

In testimony whereof the said Louis Goddu and the said James W. Brooks, as Principal Trustee, and the said Frank F. Stanley as Associate Trustee, of the said McKay Metallic Fastening Association, have hereunto set their respective hands and seals this tenth day of June, in the year eighteen hundred and eighty nine.

LOUIS GODDU

JAMES W. BROOKS as Principal Trustee of the McKay Metallic Fastening Association.

The word "twelve" being erased in two places and the word "fourteen" substituted therefor in each case, and the word "four" being erased and the word "five" being substituted therefor before signing, in the presence of

GEO. L. ROBERTS.

DEFENDANTS' EXHIBIT 105.

[Put in Evidence, page 2112.]

[MEMO. This exhibit comprising list of patents on inventions embodied in machines, inquired of by counsel for the United States, between February, 1899, and the present time, is not here printed as it is already printed on pages 2113 to 2125, inclusive, of the evidence before the Examiner.]

DEFENDANTS' EXHIBIT 126.

[Put in Evidence, page 2350.]

Old Davey Pegging Machine equipped with horn of patent No. 555,434, February 25, 1896.

DEFENDANTS' EXHIBIT 127.

[Put in Evidence, page 2350.]

Old Davey Pegging Machine equipped with No. 8 Jack of patent No. 919,424, April 27, 1909.

DEFENDANTS' EXHIBIT 128.

[Put in Evidence, page 2351.]

Commercial Davey Pegging Machine shown on page 76 of United Company's Catalog of 1902.

DEFENDANTS' EXHIBIT 204.

[Put in Evidence, page 3888.]

UNITED SHOE MACHINERY CO.

B

Commonwealth S & L Co.

OPERATOR'S DAILY REPORT FOR

WELTED OR TURNED WORK

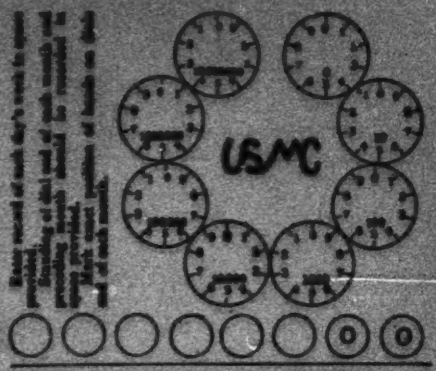
July, 1911

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE

NO. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	3 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	5½	and over



Dial end of month 24818623

Previous Record 23758142

Increase 555481

TO BE stitched allowance on Goodyear Machine

Size	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1					
2				140	
3				8	
4					
5					
6					
7					
8					
9					
10				8	
11				191	
12				198	
13				251	
14				218	
15				258	
16				222	
17				8	
18				282	
19				306	
20				240	
21				245	
22				188	
23				198	
24				8	
25				202	
26				166	
27				167	
28				194	
29				177	
30				182	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

Chil
Mus
Wo
You
Boy
Me

Sun
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
Total

WELTED OR TURNED WORK

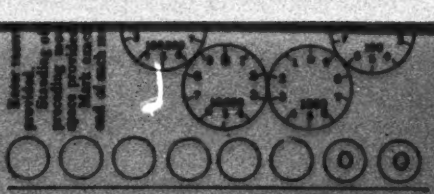
July, 1911

DO NOT CHECK ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE

No. 2217 L. P.

SIZES	From No.	To No.
Children's	1	5 inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	12½ inclusive
Boys'	1	5 "
Men's	6½	and over



Dial end of month 24818628

Previous Record 23788142

Increase 556481

TO BE stitched afterwards on Goodyear Welter

Sole	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				140	
2				8	
3					
4					
5					
6					
7					
8					
9				8	
10				191	
11				198	
12				221	
13				218	
14				255	
15				228	
16				8	
17				202	
18				206	
19				240	
20				246	
21				188	
22				198	
23				8	
24				202	
25				160	
26				167	
27				194	
28				177	
29				182	
30				8	
31				170	
Total				3974	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

OPERATOR'S SIGNATURE L. Hamilton A

It is hereby certified that this report is a true and correct account of the number of pairs done daily on this machine.

EMPLOYER'S SIGNATURE Commonwealth Shoe & Leather Co.

DEFENDANTS' EXHIBIT 305.

[Put in Evidence, page 3886.]

UNITED SHOE MACHINERY CO.

B

Commonwealth S & L Co.

OPERATOR'S DAILY REPORT FOR

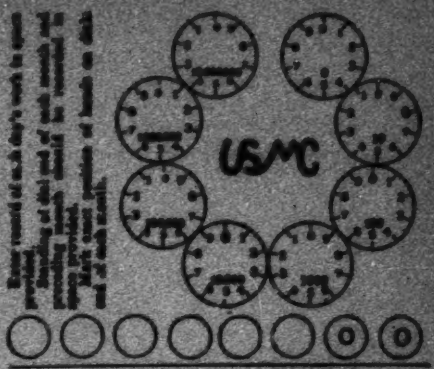
WELTED OR TURNED WORK

April, 1911

DO NOT ENTER ON THIS SLIP ANY WORK REPORT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE NO. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	5½	and over



Dial end of month	32198062
Previous Record	31634946
Increase	563,116

TO BE stitched afterwards on Goodyear Machine

Sets	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				262	
2				8	
3				230	
4				251	
5				268	
6				267	
7				208	
8				215	
9				8	
10				247	
11				228	
12				211	
13				202	
14				220	
15				106	
16				8	
17					
18					
19					
20				190	
21				196	
22				244	
23				8	
24				236	
25				262	
26				220	
27				175	
28				91	
29				105	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

WELTED OR TURNED WORK

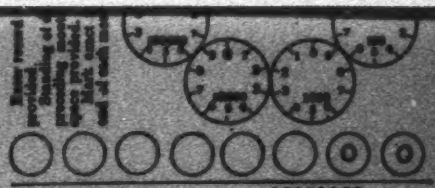
April, 1911

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE

No. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	6½	and over



Dial end of month 32190062

Previous Record 31524946

Increase 665,116

TO BE stitched afterwards on Sculptor Machine

Size	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				262	
2				S	
3				220	
4				251	
5				202	
6				267	
7				262	
8				215	
9				S	
10				247	
11				226	
12				211	
13				202	
14				229	
15				106	
16				S	
17					
18					
19					
20				190	
21				196	
22				244	
23				S	
24				226	
25				242	
26				220	
27				175	
28				91	
29				105	
30				S	
31					
Total				4781	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

OPERATOR'S SIGNATURE L. Bannister T

It is hereby certified that this report is a true and correct account of the number of pairs done daily on this machine.

The Commonwealth Shoe & Leather Co.,

LESSEE'S SIGNATURE Whitman, Mass.

UNITED SHOE MACHINERY CO.

OPERATOR'S DAILY REPORT FOR

WELTED OR TURNED WORK

DEFENDANTS' EXHIBIT 236.
[Put in Evidence, page 2854.]

UNITED SHOE MACHINERY CO.

B

Commonwealth S & L Co.

OPERATOR'S DAILY REPORT FOR
WELTED OR TURNED WORK

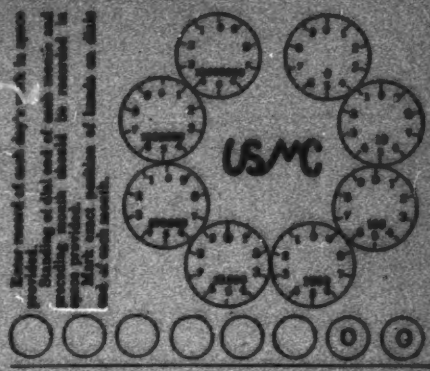
September, 1911

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE

No. 3217 L. P.

SIZES	From No.	To No.
Children's.....	1	10½ inclusive
Misses'.....	11	2 "
Women's.....	2½	and over
Youths'.....	9	13½ inclusive
Boys'.....	1	5 "
Men's.....	5½	and over



Dial end of month 35710895

Previous Record 35114629

Increase 596266

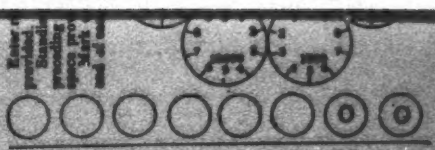
No.	TO BE stitched afterwards on Goodyear Welters					TURNS			
	Children's	Misses' and Youths'	Women's and Boys'	Men's		Children's	Misses' and Youths'	Women's and Boys'	Men's
1				222					
2				155					
3				8					
4									
5				189					
6				188					
7				188					
8				186					
9				155					
10				8					
11				161					
12				170					
13				168					
14				191					
15				172					
16				189					
17				8					
18				150					
19				144					
20				172					
21				169					
22				165					
23				191					
24				8					
25				198					
26				187					
27				189					
28				152					

September, 1911

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SOLE MACHINE NO. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	6 "
Men's	5½	and over



Dial end of month 35710895

Previous Record 35114629

Increase 596266

TO BE stitched afterwards on Goodyear Machine

Date	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				222	
2				155	
3				S	
4					
5				159	
6				188	
7				182	
8				186	
9				155	
10				S	
11				161	
12				170	
13				169	
14				191	
15				172	
16				189	
17				S	
18				150	
19				144	
20				172	
21				189	
22				165	
23				191	
24				S	
25				198	
26				187	
27				189	
28				152	
29				200	
30				200	
31					
Total				4339	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

OPERATOR'S SIGNATURE L. Bannion A

It is hereby certified that this report is a true and correct account of the number of pairs done daily on this machine.

LESSEE'S SIGNATURE Commonwealth Shoe & Lea. Co.

DEFENDANTS' EXHIBIT 397.

[Put in Evidence, page 3884.]

UNITED SHOE MACHINERY CO.

B

Commonwealth S. & L. Co.

OPERATOR'S DAILY REPORT FOR

WELTED OR TURNED WORK

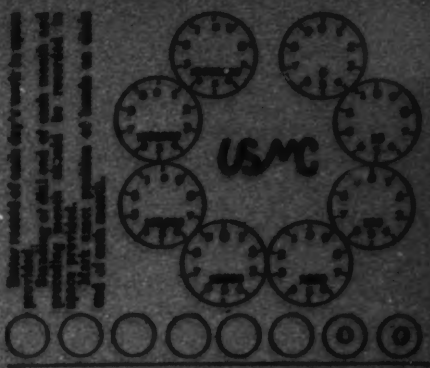
January, 1912

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE

No. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ Inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ Inclusive
Boys'	1	5 "
Men's	5½	and over



Dial end of month _____

Previous Record 45614614

Increase _____

TO BE etched alternate on Goodyear Machine

Size	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				101	
2				103	
3				312	
4				305	
5				X	
6				181	
7				302	
8				301	
9				180	
10				166	
11				199	
12				X	
13				304	
14				178	
15				164	
16				168	
17				170	
18				198	
19				X	
20				186	
21				190	
22				182	
23				185	
24				304	
25				196	
26				X	
27				307	
28				317	
29				325	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

HOSIERY WELT AND TUBE SEWING MACHINE

No. 2217 L P

SIZES	From No.	To No.
Children's.....	1	10½ inclusive
Misses'.....	11	3 "
Women's.....	3½	and over
Youths'.....	9	13½ inclusive
Boys'.....	1	5 "
Men's.....	5½	and over

Dial end of month .....

Previous Record 45014014

Increase .....

TO BE added afterwards on Sculptor Machine

TOTAL

Size	Children's	Misses' and Youths'	Women's and Boys'	Men's		Children's	Misses' and Youths'	Women's and Boys'	Men's
1				104					
2				101					
3				212					
4				285					
5				X					
6				181					
7				282					
8				201					
9				188					
10				186					
11				190					
12				X					
13				228					
14				178					
15				184					
16				188					
17				179					
18				168					
19				X					
20				152					
21				189					
22				182					
23				185					
24				204					
25				198					
26				X					
27				227					
28				217					
29				205					
30				188					
31				202					
Total				4004					

OPERATOR'S SIGNATURE L Rennison A

It is hereby certified that the report is a true and correct account of the number of pairs done daily on this machine.

LEADER'S SIGNATURE .....

DEFENDANTS' EXHIBIT 306.

[Put in Evidence, page 3094.]

UNITED SHOE MACHINERY CO.

B

Commonwealth S. & L. Co.

OPERATOR'S DAILY REPORT FOR

WELTED OR TURNED WORK

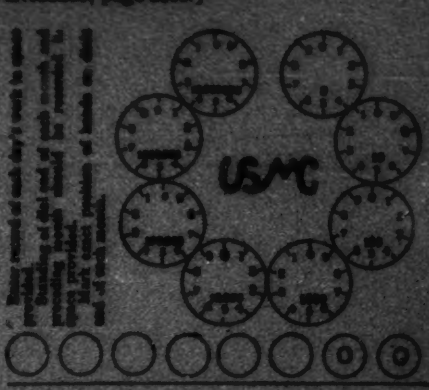
April, 1918

[illegible] ON THIS DAILY REPORT SHOULD CORRECTLY REPORT WORK ON

GOODYEAR WELT AND TURN SHOE MACHINE

NO. 2817 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	5½	and over



Dial end of month _____

Previous Record _____

Increase _____

TO BE [illegible] on Goodyear Section

Size	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				171	
2				178	
3				178	
4				197	
5				196	
6				X	
7				210	
8				211	
9				206	
10				244	
11				236	
12				161	
13				X	
14				205	
15				222	
16				244	
17				228	
18				169	
19					
20				X	
21					
22					
23					
24				205	
25				191	
26				219	
27				X	
28				184	

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

DO NOT REFUSE ORDERS FOR THESE BELT LEFT HANDED CORSET THAT WORK ON

AMERICAN BELT AND TUBE SIDE SEAMING MC. 2217 L. P.

SIZES	From No.	To No.
Children's.....	1	10½ inclusive
Misses'	11	2 "
Women's...	2½	and over
Youths'	9	13½ inclusive
Boys'	1	6 "
Men's.....	6½	and over

Dial end of month .....

Previous Record .....

Increase .....

TO BE added allowance on Gauges Needles

TUBES

Nos	Children's	Misses' and Youths'	Women's and Boys'	Men's		Children's	Misses' and Youths'	Women's and Boys'	Men's
1				171					
2				178					
3				178					
4				197					
5				195					
6				X					
7				210					
8				211					
9				205					
10				244					
11				226					
12				161					
13				X					
14				205					
15				223					
16				244					
17				209					
18				169					
19									
20				X					
21									
22									
23									
24				206					
25				191					
26				216					
27				X					
28				184					
29				199					
30				189					
31									
Total				4428					

Operator's signature L. Bannion

It is hereby certified that this record is a true and correct account of the number of gales made on this machine.

Mechanic's signature Commonwealth Shoe & Leather Co.

DEFENDANTS' EXHIBIT 560.

[Put in Evidence, page 2084.]

UNITED SHOE MACHINERY CO.

to

Commonwealth S. & L. Co.

OPERATOR'S DAILY REPORT FOR WELTED OR TURNED WORK

April, 1912

NO ENTRY SHOULD BE MADE FOR ANY WORK EXCEPT THAT DONE ON

NEWMAN WELT AND TURN SHOE MACHINE

No. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	3 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	5½	and over

Dial end of month	40808116
Previous Record	40278606
Increase	529510

TO BE stitched (Shoes or Uppers Stitched)

No.	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				260	
2				209	
3				199	
4				163	
5				147	
6				109	
7				8	
8				135	
9				195	
10				245	
11				256	
12				215	
13				266	
14				6	
15					
16					
17					
18					
19					
20					
21				X	
22				144	
23				230	
24				246	
25				211	
26				215	
27				149	
28					

TURNS

Children's	Misses' and Youths'	Women's and Boys'	Men's

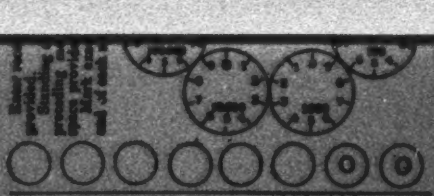
April, 1912

DO NOT LEAVE ON THIS CLOCK ANY WORK EXCEPT THAT DONE ON

[illegible] BELT AND TURN SOLE MACHINE

NO. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	5½	and over



Dial end of month 40808116

Previous Record 40278606

Increase 529510

TO BE stitched channels on Goodyear Welter

Size	Children's	Misses' and Women's	Youths' and Boys'	Men's
1				260
2				299
3				199
4				198
5				147
6				169
7				8
8				126
9				196
10				245
11				236
12				215
13				208
14				8
15				
16				
17				
18				
19				
20				
21				X
22				144
23				220
24				246
25				211
26				215
27				149
28				
29				90
30				140
31				
Total				3997

TURNS

Children's	Misses' and Women's	Youths' and Boys'	Men's

OPERATOR'S SIGNATURE L. Bennion A

It is hereby certified that this report is a true and correct account of the number of pairs done daily on this machine.

Commonwealth Shoe & Leather Co.

FOREMAN'S SIGNATURE

DEFENDANTS' EXHIBIT 216.

[Put in Evidence, page 2695.]

UNITED SHOE MACHINERY CO.

B

Commonwealth S. & L. Co.

OPERATOR'S DAILY REPORT FOR

WELTED OR TURNED WORK

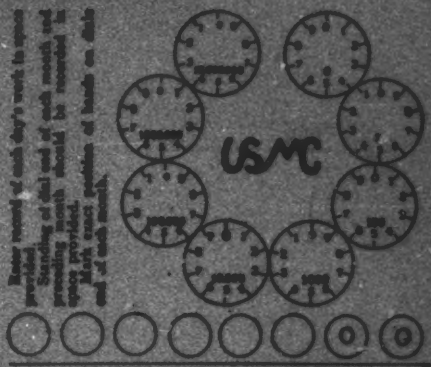
August, 1912

DO NOT ENTER ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SHOE MACHINE

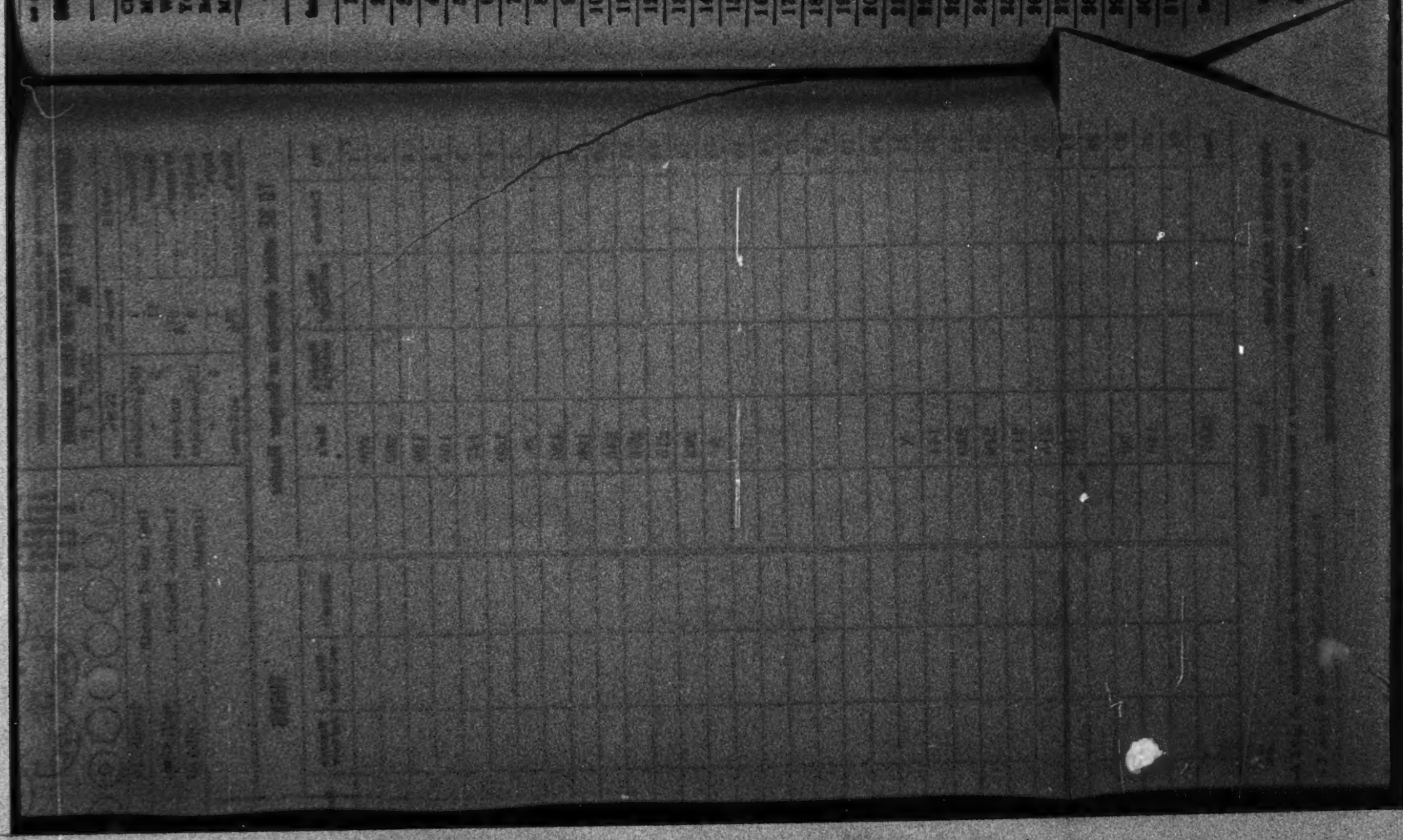
NO. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ inclusive
Misses'	11	2 "
Women's	3½	and over
Youths'	9	13½ inclusive
Boys'	1	5 "
Men's	5½	and over



Dial end of month	48809864
Previous Record	48013181
Increase	796,183

TO BE stitched afterwards on Goodyear Machine					TURNS			
Size	Children's	Misses' and Youths'	Women's and Boys'	Men's	Children's	Misses' and Youths'	Women's and Boys'	Men's
1				216				
2				204				
3				222				
4				8				
5				198				
6				200				
7				222				
8				202				
9				251				
10				227				
11				8				
12				204				
13				197				
14				160				
15				194				
16				181				
17				188				
18								
19				211				
20				210				
21				239				
22				250				
23				241				
24				238				
25				X				
26				217				
27				204				
28				224				
29				224				



DO NOT WRITE ON THIS SLIP ANY WORK EXCEPT THAT DONE ON

GOODYEAR WELT AND TURN SOLE MACHINE

NO. 2217 L. P.

SIZES	From No.	To No.
Children's	1	10½ Inclusive
Misses'	11	2 "
Women's	2½	and over
Youths'	9	13½ Inclusive
Boys'	1	5 "
Men's	5½	and over

Dial end of month 42909864

Previous Record 42818181

Increase 796.183

TO BE added afterwards on Budget Machine

Date	Children's	Misses' and Youths'	Women's and Boys'	Men's	
1				215	
2				284	
3				286	
4				8	
5				198	
6				300	
7				298	
8				268	
9				251	
10				287	
11				8	
12				284	
13				197	
14				169	
15				194	
16				181	
17				188	
18					
19				211	
20				210	
21				239	
22				259	
23				241	
24				238	
25				X	
26				217	
27				204	
28				224	
29				224	
30				223	
31				217	
Total				5790	

TOTAL

Children's	Misses' and Youths'	Women's and Boys'	Men's

OPERATOR'S SIGNATURE L. Bennion A

It is hereby certified that this report is a true and correct account of the number of pairs done daily on this machine.

LESSEE'S SIGNATURE Commonwealth Shoe & Lea. Co.

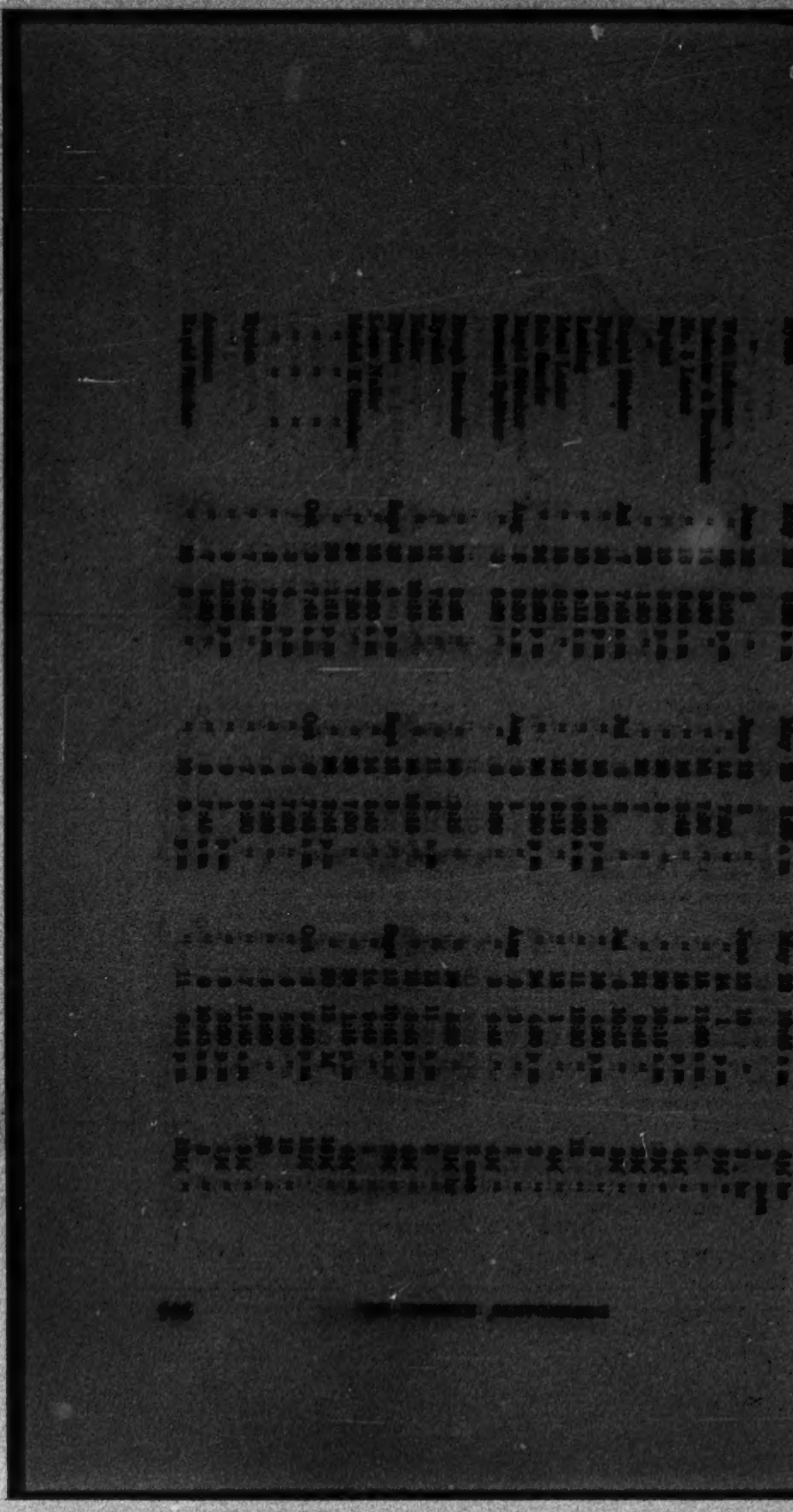
DEFENDANT'S EXHIBIT ON BEHALF OF U.S.

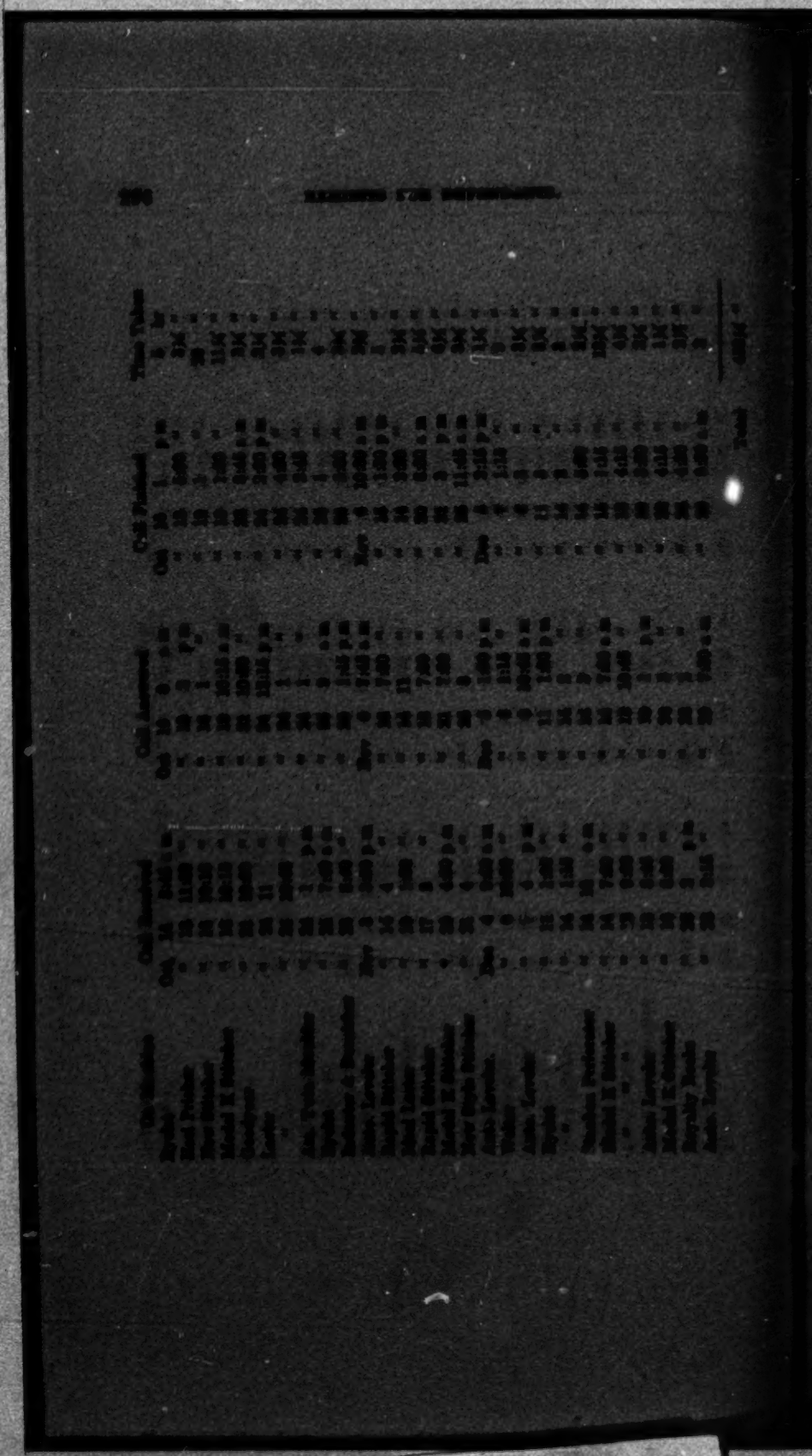
[Put in Evidence, page [illegible].]

EMPLOYED BY UNITED SHOE MACHINERY COMPANY ON OR ABOUT MARCH 1st.

	Boston	Other Traveling Men including Salesmen	Branch Office Managers & Assistants	Total
1899	227	7	18	256
1900	249	7	19	275
1901	269	9	13	291
1902	290	14	13	317
1903	302	22	15	339
1904	305	26	15	346
1905	344	27	16	387
1906	392	33	18	443
1907	444	34	18	496
1908	455	34	19	518
1909	505	30	30	564
1910	538	47	31	607
1911	604	45	25	674
1912	631	55	20	705
1913	689	63	31	783

[redacted]





Machines at Factory of E. W. Burr & Co., Lynn, Mass., Held Under Lease.

Goodyear Dept.

1 Welt Machine — Model
2 Outsole Stitcher — Model K
1 Rubber Welder
1 Welt Splitter
1 Channeling Machine
1 Shank Welt Skiver
1 Universal Welt Skiver
1 Universal Rounder
1 Universal Channel Opener
1 Automatic Sole Leveler
1 Stitch Separator
1 Channel Layer
1 Moulder
1 Lip Turner
1 Welt Beater & Blacker
1 Welt Inserter & Burnisher
1 Power Groover & Beveler
1 Welt Beater
1 Impression Stitch Remover

Miscellaneous Dept.

1 Universal Stayer
1 Lasting Machine
2 Knife Grinders

Finishing Dept.

1 Edge Setting Machine
1 Universal Edge Trimmer

Lasting Dept.

1 Heel Laster
1 No. 5 Laster
2 Lasting Tackers

Sewing Machine Dept.

2 Power Eyeletters
1 Vamp Eyeletter

Cement Dept.

1 American Twin Sole Machine — C
1 Apex Top Skiver — Model A
2 Edge Trimmers — Model A
1 Heel Seat Rough Rounder — Model B
1 Heel Scouring Machine — Model G
1 Heel Breast Scouring Mch — Model H
1 Repeat Stamping Machine — Model C
1 Stitch & Upper Cleaner — Model N
1 Sewing Machine — Model M
1 Twin Edge Setter — Model R
1 Welt Trimmer & Stitch Rubber — R

Sewing Mach at E. W. Burr & Co.— Dunne 1911.

January	3080
February	1838
March	2527
April	2600
May	3128
June	3326
July	3041
August	3264
September	3469
October	3769
November	4492
December	3940
Total	38624 pairs during 1911

Service: 123 pairs per day during 1911
102 calls (talk
456 hours or
87 days

E. W. Burr & Co.—Lynn, Mass. 12 Months Service—1912.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls	Hrs
Geelpwr	2	1	0	1	2	5	1	2	3	11	6	10	46	
	6	1	0	4	15	16	5	4	16	120	21	28		236
Metallic	2	0		0	0	0	0	0	1	0	0		3	
	0	0		0	0	0	0	0	1	0	0			1
Ending	0	0		1	0	0	0	1	0	1	0		3	
	0	0		2	0	0	0	5	0	4	0			11
Lasting	0	0		0	1	1	2	0	0	2	0		6	
	0	0		0	7	4	17	0	0	0	0			28
Pull'Over	0	0		0	0		0	0	0		0		0	
	0	0		0	0		0	0	0		0			0
Eyelet and Quick	0	0	0	1	2	2	2	2	2	0	1	0	20	
	0	25	25	2	12	7	5	6	6	15	1	10		165
													102	465
Calls	4	20	0	5	20	8	6	5	4	27	7	14		
Hours	6	27	25	11	39	23	25	14	25	135	27	38		
									Total Calls				102	
									Total Hours				465	

Add 25 per cent to 465 hours for lost time.

DEFENDANTS' EXHIBIT 815 (CURRENT).

(Put in Evidence, page 6904.)

L. A. CROMETTY, INC.—BROCKTON, MASS.

L. A. Cromwell, Inc.—Calls—July 1, 1911 to January 1, 1912.

L. A. Cromwell, Inc. Christmas Discussion.

July 1, 1911, to Jan. 1, 1912.

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Stitch Separator	July 10	7:	July 10	8:15	July 10	2:30
Stitcher	" 10	12:	" 11	7:45	" 12	4:15
Stitcher	" 14	8:40	" 14	8:45	" 14	1:
Stitcher	" 15	7:20	" 15	7:45	" 15	1:
Stitcher	" 14	6:25	" 15	7:45	" 15	1:
Welter Stitcher	" 15	7:20	" 15	7:45	" 15	11:45

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
I. Trimmer	July 18	7:20	July 18	8:15	July 18	8:
Stitcher	" 20	9:40	" 20	11:	" 20	4:
Binder	" 20	10:20	" 20	11:	" 20	4:
Web Grover & Border	" 22	7:40	" 22	8:	" 22	2:
Stitch Separator	" 24	11:	" 24	11:10	" 24	4:40
Stitcher	" 26	7:20	" 26	8:	" 26	12:
Stitch Separator	" 26	1:45	" 27	7:45	" 27	12:20
Weber	" 30	7:	" 30	7:45	" 30	2:15
Inserter & Burnisher	" 31	8:40	" 31	1:30	" 31	4:50
Weber	Aug. 2	8:	Aug. 2	8:15	Aug. 2	1:15
Web Border & Binder	" 7	8:15	" 7	1:50	" 7	4:45
Web Binder & Binder	" 8	8:15	" 8	1:15	" 8	2:15
Binder	" 9	8:	" 9	2:45	" 9	1:45
Stitch Separator	" 9	8:	" 10	8:35	" 10	1:15
Weber						
I. Trimmer	" 11	7:	" 11	7:35	" 11	4:30
I. Trimmer	" 16	8:25	" 16	10:20	" 16	2:45
Weber	" 16	7:20	" 16	8:15	" 16	1:45
Inserter & Burnisher	" 18	8:	" 18	8:15	" 18	4:25
I. Trimmer	" 21	8:	" 21	8:	" 21	4:30
Weber						
Binder	" 22	4:20	" 22	7:45	" 22	4:30
Binder						
Weber	" 28	8:	" 28	8:	" 28	4:
Stitcher	" 24	7:20	" 25	7:45	" 24	1:20
Stitch Separator	" 25	7:35	" 25	8:20	" 25	2:20
H. S. Rounder	" 26	7:	" 26	7:45	" 26	2:45
I. Trimmer	" 30	8:	" 30	8:	" 30	2:35
Stitcher	" 31	11:15	" 31	11:15	" 31	2:45
Stitch Separator	Sept. 6	8:	Sept. 6	9:40	Sept. 6	4:45
Weber	" 6	4:35	" 6	7:20	" 6	10:20
I. Trimmer	" 8	9:35	" 8	1:	" 8	4:
Stitcher						
Weber	" 9	11:30	" 11	8:15	" 11	2:
Stitcher	" 12	11:30	" 12	2:	" 12	1:30
I. Trimmer	" 15	7:	" 15	7:45	" 15	12:45
Stitcher	" 12	1:25	" 15	2:	" 15	11:
Stitcher	" 15	11:30	" 16	8:15	" 16	11:15
Stitcher	" 20	7:	" 20	12:15	" 20	4:25
I. Trimmer	" 20	7:35	" 20	8:	" 20	2:45
I. Trimmer	" 20	1:30	" 20	2:15	" 20	11:25
Stitcher						
Weber	Oct. 2	8:	Oct. 2	12:	Oct. 2	2:30
Model H Rounder	" 2	8:	" 2	12:	" 2	11:30
Weber	" 11	7:30	" 11	7:45	" 11	2:25
Weber	" 13	7:30	" 13	7:45	" 13	2:
Stitch Separator No. 2	" 14	8:	" 14	8:15	" 14	4:45

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Ask Leader	Oct. 14	10:45	Oct. 15	8:15	Oct. 16	2:15
Rounder	" 15	11:	" 15	1:15	" 15	5:
Runaway	" 15	10:	" 15	10:45	" 15	1:45
Ask Leader	" 15	10:	" 15	10:45	" 15	1:15
Walker	" 17	3:30	" 19	8:	" 19	3:45
I. Trimmer	" 20	8:10	" 20	12:45	" 20	4:45
Walker						
Imp. Stitch Rounder No. 2	" 21	8:	" 21	8:15	" 21	4:10
I. Trimmer	" 21	7:	" 21	7:15	" 21	12:
I. Trimmer	" 23	7:	" 23	7:45	" 23	5:15
Gum Lip Turner	" 24	10:	" 24	10:15	" 24	12:15
Stitcher	" 25	1:	" 25	1:15	" 25	4:20
Stitcher	" 27	8:	" 27	8:	" 27	2:20
Walker	" 30	2:20	" 31	8:	" 31	2:
Sole Layer	Nov. 1	8:	Nov. 1	9:45	Nov. 1	2:20
Walker	" 1	8:	" 1	8:	" 1	12:
Stitcher	" 3	8:	" 3	8:15	" 3	4:40
Ask Leader	" 4	7:20	" 6	8:15	" 6	10:20
Sole Layer	" 5	7:	" 6	8:15	" 6	12:15
Stitcher	" 8	8:	" 8	10:15	" 8	2:15
Runaway	" 9	8:	" 9	8:10	" 9	1:45
Sole Layer	" 10	8:45	" 12	8:15	" 12	11:15
I. Trimmer	" 14	7:	" 14	8:15	" 14	4:15
Sole Layer	" 14	7:	" 14	7:45	" 14	11:15
Stitch Squeezer	" 14	9:25	" 16	8:	" 16	10:20
Rounder	" 17	8:	" 17	8:15	" 17	8:15
H. S. Rounder	" 18	11:	" 18	11:20	" 19	3:20
I. Trimmer	" 21	7:	" 21	7:45	" 21	2:45
Stitcher	" 20	11:20	" 21	8:20	" 21	2:
Stitch Squeezer	" 23	8:45	" 23	9:	" 23	2:
Stitcher	" 24	8:45	" 24	8:45	" 24	2:
Walker	" 27	7:	" 27	7:45	" 27	12:45
Runaway Reinforcer	" 27	12:	" 27	12:45	" 27	5:20
Runaway Channeler						
I. Trimmer	" 28	12:25	" 28	12:30	" 28	4:25
Imp. Stitch Rounder No. 2	" 29	8:	" 29	8:15	" 29	2:15
Walker	Dec. 4	8:15	Dec. 5	8:	Dec. 5	5:15
Sole Layer	" 4	2:45	" 5	7:45	" 5	11:45
Walker	" 5	8:10	" 6	8:	" 6	4:
Stitcher						
Model G Welter	" 7	7:	" 7	7:15	" 7	12:40
Welter	" 7	7:	" 7	7:15	" 7	12:
Rounder						
Stitch Squeezer	" 7	9:20	" 7	12:35	" 7	1:15
Welter	" 7	4:20	" 8	7:40	" 8	12:40

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Ant. Leveler	Dec. 8	10:10	Dec. 8	1:15	Dec. 8	3:15
Welt Beater / Rounder	" 11	8:20	" 11	8:20	" 11	12:20
L Trimmer / Stitcher	" 12	7:	" 12	7:15	" 12	9:45
Universal Channeler	" 13	11:	" 13	12:45	" 13	3:
H. S. Rounder	" 14	8:	" 14	8:	" 14	12:
Stitcher	" 16	8:	" 16	9:20	" 16	4:20
Stitcher	" 16	11:25	" 16	7:45	" 16	1:15
Welter	" 19	5:	" 19	7:15	" 19	1:
Sole Layer	" 20	9:10	" 20	9:45	" 20	1:15
Welt Beater	" 20	5:20	" 21	8:20	" 21	1:15
Stitcher	" 21	11:25	" 21	1:10	" 21	4:20
Stitcher	" 21	11:25	" 22	7:20	" 22	11:40
Welter	" 22	5:	" 22	5:	" 22	5:
L Trimmer	" 23	4:20	" 23	7:20	" 23	12:
L Trimmer	" 26	7:	" 26	7:20	" 26	12:45
Economy Channeler	" 26	2:	" 26	7:15	" 30	1:15
Model G Welter	" 29	9:	" 29	9:	" 29	12:45

L. A. Channeler, Inv. Mitchell Department.
July 1, 1911 to Jan. 1, 1912.

Universal Skiver	Aug. 2	8:45	Aug. 2	10:15	Aug. 2	1:20
" "	" 12	8:45	" 12	10:20	" 12	1:20
N Loose Nailer	" 15	8:20	" 15	7:20	" 15	11:20
Univ Skiver	" 22	8:45 / 2:35	" 22	11:20	" 22	4:20
" "	" 22	7:20	" 23	1:20	" 23	4:20
" "	" 24	2:45	" 25	7:20	" 25	4:20
Staple Fastener	Sept. 5	10:15	Sept. 6	10:20	Sept. 6	3:20
Universal Skiver	" 13	12:20	" 14	7:20	" 14	2:20
N Loose Nailer	" 15	10:20	" 15	9:20	" 15	1:20
Univ Skiver	" 19	1:10	" 19	1:10	" 19	3:20
" "	" 20	3:15	" 20	3:15	" 20	5:20
Staple Fastener	" 25	3:15	" 25	7:20	" 25	10:35
Univ Skiver	Oct. 9	1:20	Oct. 9	7:20	Oct. 9	9:20
" "	" 11	11:20	" 13	7:20	" 13	4:45
N Loose Nailer	" 28	11:20	" 28	11:20	" 28	4:20
" " "	" 30	1:45	" 31	7:20	" 31	2:20
Univ Skiver	Nov. 1	1:20	Nov. 2	11:15	Nov. 2	5:20
Staple Fastener	" 8	8:20	" 8	8:25	" 8	12:20
Univ Skiver	" 13	1:35	" 14	7:20	" 14	3:20
N Loose Nailer	" 13	1:35	" 14	3:20	" 14	5:20
Univ Skiver	" 15	7:20	" 15	7:20	" 15	3:20
" "	" 16	7:20	" 16	7:20	" 16	5:20
" "	" 17	7:20	" 17	7:20	" 17	12:20

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Univ Shagger	Nov. 29	11:30	Dec. 1	10:20	Dec. 1	1:15
L Nailer & Univ Shagger	Dec. 5	3:15	" 6	7:20	" 6	6:00
N A Nailer & Univ Shagger	" 7	7:20	" 7	7:20	" 7	5:00
" " " " " "	" 8	7:20	" 8	7:20	" 8	12:00
Staple Fastener	" 11	1:15	" 8	1:15	" 11	5:00

L. A. Carpenter, Inv. Hangers Department.
July 1, 1911, to Jan. 1, 1912.

L. Hasher	July 22	7:20	July 23	10:15	July 26	1:45
" "	" 24	1:15	" 24	1:15	" 24	4:00
U. Hasl Trimmer	Aug. 3	7:00	Aug. 3	7:00	Aug. 3	12:40
L. Hasher	" 4	2:15	" 5	7:00	" 5	9:20
" "	" 7	7:55	" 7	7:55	" 7	11:00
" "	" 8	7:00	" 8	7:20	" 8	1:00
" "	" 15	1:40	" 15	1:40	" 15	4:20
" "	" 28	8:00	" 28	9:00	" 28	12:00
" "	" 28	12:05	" 28	1:02	" 28	3:00
" "	" 28	1:00	" 28	3:20	" 28	4:30
" "	" 29	2:30	" 29	7:20	" 30	9:20
L. Hasher & No. 4 Compressor	Sept. 11	9:00	Sept. 12	9:00	Sept. 12	8:45
L. Hasher	" 15	11:45	" 16	7:20	" 16	10:20
" "	" 18	7:20	" 19	7:20	" 19	12:00
" "	" 25	8:20	" 25	8:20	" 25	12:45
L. Hasher	Oct. 5	7:20	Oct. 9	10:20	Oct. 9	1:20
" "	" 19	12:40	" 20	7:15	" 20	8:00
" " & No. 4 Compressor	" 31	7:20	" 31	7:45	" 31	4:20
No. 4 Compressor	Nov. 17	8:20	Nov. 17	8:20	Nov. 17	9:20
L. Hasher	" 28	11:30	Dec. 1	7:20	Dec. 1	10:20
" "	Dec. 4	3:45	" 5	7:20	" 5	10:00
" " & Hasl Finisher	" 6	7:20	" 6	7:20	" 6	10:00
" "	" 7	7:20	" 7	7:20	" 7	9:00
No. 4 Compressor	" 11	7:45	" 11	7:20	" 11	10:20
L. Hasher	" 13	8:20	" 13	11:20	" 13	3:20
" "	" 21	2:20	" 21	7:20	" 21	12:15
" "	" 22	12:00	" 22	1:00	" 22	4:20
" "	" 23	8:45	" 26	3:15	" 26	4:45
" "	" 26	7:20	" 26	3:45	" 26	4:45
" "	" 30	1:20	" 30	7:20	" 30	9:20

L. A. Carpenter, Inv. Hangers Department.
July 1, 1911, to Jan. 1, 1912.

No. 5 Lasher	July 1	1:20	July 1	7:20	July 1	9:00
" "	" 14	7:15	" 14	7:15	" 14	9:15
" "	" 17	7:20	" 17	7:20	" 17	11:00

DEFENDANTS' EXHIBIT 215. 309

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Chain Lasher	July 19	7:20	July 19	7:45	July 19	10:45
# 5 Lasher	" 20	7:15	" 20	7:15	" 20	12:00
Chain Lasher	" 20	8:20	" 20	9:45	" 20	1:45
# 5 Lasher	" 22	7:20	" 22	7:20	" 22	10:00
" "	" 25	7:20	" 25	7:20	" 25	12:00
" "	" 26	7:20	" 26	7:20	" 26	12:00
" "	" 27	7:20	" 27	7:20	" 27	12:00
# 5 Lasher	Aug. 16	7:15	Aug. 16	7:15	Aug. 16	12:00
Chain Lasher	" 17	9:20	" 17	10:15	" 17	4:15
# 5 Lasher	" 17	7:20	" 17	7:20	" 17	12:00
" "	" 18	7:20	" 18	7:20	" 18	12:00
" "	" 21	7:15	" 21	7:15	" 21	12:00
" "	" 22	7:20	" 22	7:20	" 22	12:00
" "	" 23	7:20	" 23	7:20	" 23	12:00
" "	" 24	7:20	" 24	7:20	" 24	12:00
" "	" 25	7:25	" 25	7:25	" 25	12:00
" "	" 29	9:20	" 29	9:45	" 29	12:00
" "	" 30	7:20	" 30	9:30	" 30	11:30
Chain Lasher	Sept. 5	8:00	Sept. 5	8:45	Sept. 5	11:15
# 5 Lasher	" 5	7:20	" 5	7:45	" 5	12:00
" "	" 6	7:20	" 6	7:20	" 6	12:00
Chain Lasher	" 6	7:20	" 6	7:45	" 6	2:15
# 5 Lasher	" 7	7:20	" 7	7:20	" 7	11:20
" "	" 8	7:20	" 8	8:45	" 8	12:00
" "	" 9	7:20	" 9	7:20	" 9	10:00
" "	" 13	7:20	" 13	8:15	" 13	12:00
Inside Timber	" 13	2:00	" 14	7:45	" 14	10:15
# 5 Lasher	" 18	7:20	" 18	7:20	" 18	12:00
" "	" 20	7:20	" 20	7:20	" 20	12:00
" "	" 21	7:20	" 21	7:20	" 21	12:00
" "	Oct. 2	7:15	Oct. 2	7:15	Oct. 2	12:00
# 5 Lasher	" 16	9:25	" 16	7:45	" 16	11:45
" "	" 17	7:15	" 17	7:15	" 17	10:15
" "	" 19	8:40	" 19	8:45	" 19	10:45
" "	" 15	9:30	" 15	9:30	" 15	10:45
" "	" 20	7:20	" 20	7:20	" 20	10:20
" "	" 21	11:45	" 21	11:45	" 21	2:45
" "	" 23	7:15	" 23	7:15	" 23	9:20
" "	" 24	7:20	" 24	9:20	" 24	2:00
" "	" 25	7:15	" 25	7:15	" 25	2:45
" "	" 26	10:45	" 26	10:45	" 26	2:45
Chain Lasher	" 28	8:20	" 28	9:15	" 28	1:20
" "	" 30	8:30	" 30	9:15	" 30	2:15
# 5 Lasher	Nov. 1	7:20	Nov. 1	7:45	Nov. 1	2:45
Chain Lasher	" 1	11:15	" 1	11:15	" 1	4:15
" "	" 2	8:15	" 2	8:45	" 2	1:45
Inside Timber	" 2	4:20	" 2	9:20	" 2	4:40

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
§5 Looker	Nov. 6	8:20	Nov. 6	8:45	Nov. 6	10:45
" "	" 23	1:20	" 23	1:20	" 23	2:20

L. A. Cheesery, Inc. Looker Department.

§5 Looker	Dec.	1	11:20	Dec.	1	11:20	Dec.	1 1:20
" "	"	8	8:20	"	8	8:45	"	8 5:20
" "	"	9	7:20	"	9	7:20	"	9 12:45
" "	"	11	7:20	"	11	7:20	"	11 5:20
Inside Tinker	"	12	11:15	"	12	1:20	"	12 2:20
§5 Looker	"	12	7:40	"	12	7:45	"	12 5:20
" "	"	13	7:20	"	12	7:45	"	13 5:20
" "	"	20	9:20	"	20	9:20	"	20 11:20
Chees Looker	"	20	11:20	"	20	1:45	"	20 5:20
" "	"	21	8:20	"	21	9:45	"	21 4:15
§5 Looker	"	22	10:25	"	22	1:15	"	22 4:45
Chees Looker	"	26	8:20	"	26	9:45	"	26 2:15
§5 Looker	"	28	7:20	"	28	7:20	"	28 5:20
" "	"	28	8:20	"	28	8:20	"	28 11:20
" "	"	29	7:20	"	29	7:20	"	29 11:20
" "	"	30	8:20	"	30	8:20	"	30 11:20

L. A. Cheesery, Inc. Pulling Oven Department.
July 1, 1911, to Jan. 1, 1912.

Puller Over	July	1	7:20	July	1	8:20	July	1 9:20
" "	"	1	7:20	"	1	7:20	"	1 9:20
" "	"	10	7:20	"	10	7:20	"	10 4:45
" "	"	10	10:20	"	10	10:45	"	10 4:45
" "	"	11	7:20	"	11	7:20	"	11 12:20
" "	"	11	7:20	"	11	7:20	"	11 1:15
" "	"	11	7:20	"	11	7:20	"	11 9:20
" "	"	12	7:20	"	12	7:20	"	12 1:45
" "	"	13	7:20	"	13	7:20	"	13 4:45
" "	"	13	7:20	"	13	7:20	"	13 4:45
" "	"	14	7:15	"	14	9:15	"	14 11:20
" "	"	14	7:20	"	14	7:20	"	14 4:45
" "	"	15	7:20	"	15	7:45	"	15 10:20
" "	"	15	7:20	"	15	7:20	"	15 12:20
" "	"	17	7:20	"	17	12:20	"	17 4:20
" "	"	18	7:20	"	18	7:20	"	18 4:20
" "	"	19	7:20	"	19	7:20	"	19 4:45
" "	"	20	7:15	"	20	1:20	"	20 4:45
" "	"	21	7:20	"	21	7:20	"	21 4:45
" "	"	22	7:20	"	22	10:20	"	22 12:20
" "	"	24	7:20	"	24	7:20	"	24 4:45
" "	"	25	7:20	"	25	7:20	"	25 4:45
" "	"	26	7:20	"	26	1:20	"	26 4:45
" "	"	27	7:20	"	27	10:20	"	27 4:45

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Poller Over	July 28	7:20	July 28	1:00	July 28	4:45
" "	" 29	7:20	" 29	8:15	" 29	12:45
" "	" 31	7:20	" 31	1:00	" 31	4:45
" "	Aug. 1	7:20	Aug. 1	12:00	Aug. 1	4:45
" "	" 2	7:20	" 2	1:00	" 2	8:20
" "	" 3	7:15	" 3	7:15	" 3	4:45
" "	" 4	7:15	" 4	7:15	" 4	4:45
" "	" 5	7:15	" 5	7:15	" 5	12:15
" "	" 7	7:15	" 7	7:15	" 7	4:45
" "	" 8	7:10	" 8	7:15	" 8	4:45
" "	" 9	7:20	" 9	7:15	" 9	4:45
" "	" 10	7:15	" 10	7:15	" 10	4:45
" "	" 14	7:20	" 14	7:15	" 14	4:45
" "	" 15	7:20	" 15	7:15	" 15	4:45
" "	" 16	7:15	" 16	1:00	" 16	4:45
" "	" 17	7:20	" 17	1:00	" 17	4:45
" "	" 18	7:20	" 18	1:00	" 18	4:45
" "	" 19	7:20	" 19	7:20	" 19	11:20
" "	" 21	7:15	" 21	1:00	" 21	5:20
" "	" 22	7:20	" 22	1:00	" 22	4:45
" "	" 23	7:20	" 23	1:00	" 23	4:45
" "	" 24	7:20	" 24	1:00	" 24	4:45
" "	" 25	7:25	" 25	1:00	" 25	4:45
" "	" 28	7:20	" 28	8:10	" 28	4:45
" "	" 29	8:20	" 29	1:00	" 29	8:20
" "	" 30	7:20	" 30	11:20	" 30	1:20
" "	" 31	7:20	" 31	7:20	" 31	2:20
" "	Sept. 5	7:20	Sept. 5	1:00	Sept. 5	4:45
" "	" 6	7:20	" 6	1:00	" 6	4:45
" "	" 7	7:20	" 7	12:20	" 7	2:20
" "	" 8	7:20	" 8	1:00	" 8	4:45
" "	" 9	7:20	" 9	10:00	" 9	12:20
" "	" 9	8:20	" 11	7:15	" 11	10:20
" "	" 11	4:20	" 12	11:00	" 12	5:15
" "	" 13	7:20	" 13	1:00	" 13	8:45
" "	" 18	7:20	" 18	1:20	" 18	4:45
" "	" 19	7:20	" 19	7:45	" 19	4:45
" "	" 20	7:20	" 20	1:00	" 20	4:45
" "	" 21	7:20	" 21	1:00	" 21	4:45
" "	" 22	7:20	" 22	11:20	" 22	4:45
" "	" 30	8:45	" 30	7:20	" 30	11:45
" "	Oct. 2	7:45	Oct. 2	9:15	Oct. 2	4:45
" "	" 3	7:15	" 3	1:00	" 3	4:20
" "	" 9	7:20	" 9	7:45	" 9	4:45
" "	" 10	10:40	" 10	10:45	" 10	4:45
" "	" 11	7:20	" 11	1:20	" 11	4:45
" "	" 13	9:20	" 13	9:45	" 13	5:45

Station	Date Off Work	Time Off Work	Date On Duty	Time On Duty	Late On Duty	Why Late
Fuller Cross	Oct. 15	1.15	Oct. 15	1.15	Oct. 15	1.30
" "	" 16	7.15	" 16	7.15	" 16	7.30
" "	" 16	9.25	" 16	9.45	" 16	9.55
" "	" 17	7.15	" 17	10.15	" 17	6.45
" "	" 18	8.50	" 18	10.45	" 18	1.30
" "	" 18	9.20	" 18	10.45	" 18	11.00
" "	" 20	7.20	" 20	10.20	" 20	6.45
" "	" 21	11.45	" 21	2.55	" 21	6.45
" "	" 22	7.15	" 22	9.25	" 22	10.00
" "	" 24	7.20	" 24	2.50	" 24	6.45
" "	" 25	7.15	" 25	2.55	" 25	6.45
" "	" 26	10.15	" 26	2.45	" 26	6.45
" "	" 29	7.15	" 29	7.15	" 29	10.00
" "	Nov. 6	9.20	Nov. 6	10.55	Nov. 6	11.05
" "	" 8	9.15	" 8	12.20	" 8	6.45
" "	" 9	7.20	" 9	2.45	" 9	6.45
" "	" 12	7.20	" 12	2.50	" 12	6.45
" "	" 17	1.20	" 17	2.15	" 17	6.45
" "	" 18	1.20	" 18	7.20	" 18	11.00
" "	" 23	11.20	" 23	1.20	" 23	6.45
" "	" 23	1.20	" 23	1.20	" 23	6.45
" "	" 23	1.20	" 23	2.40	" 23	6.45
" "	" 24	2.20	" 24	7.20	" 24	6.45
" "	" 25	8.45	" 25	11.20	" 25	2.30
" "	" 29	10.20	" 29	2.20	" 29	2.30
" "	Dec. 1	11.20	Dec. 1	1.20	Dec. 1	2.30
" "	" 2	1.20	" 2	1.20	" 2	2.30
" "	" 4	1.20	" 4	1.20	" 4	6.45
" "	" 4	1.20	" 4	1.20	" 4	6.45
" "	" 10	8.20	" 10	9.20	" 10	6.45
" "	" 14	1.20	" 14	1.20	" 14	6.45
" "	" 15	1.20	" 15	1.20	" 15	6.45
" "	" 16	10.20	" 16	10.20	" 16	2.30
" "	" 21	11.20	" 21	11.20	" 21	2.30
" "	" 15	1.20	" 15	1.20	" 15	6.45
" "	" 22	9.20	" 22	11.20	" 22	2.30
" "	" 21	7.20	" 21	7.20	" 21	10.00
" "	" 23	1.20	" 23	1.20	" 23	2.30
" "	" 25	8.20	" 25	8.20	" 25	12.00
" "	" 26	9.20	" 26	9.20	" 26	2.30
" "	" 27	7.20	" 27	7.20	" 27	6.45
" "	" 28	8.20	" 28	8.20	" 28	2.30
" "	" 29	7.20	" 29	11.20	" 29	2.30
" "	" 30	8.20	" 30	11.20	" 30	2.30

L. A. Cushman, Inc., Cushman, Nebraska.
July 1, 1911, to Jan. 1, 1912.

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Fin.	Time Fin.
Adder	July 1	7:20	July 1	7:25	July 1	10:45
Big Three Lift Cutter	" 5	1:20	" 10	8:15	" 10	9:55
Roller	" 8	4:40	" 10	7:45	" 10	6:45
Roller	" 11	7:20	" 11	7:35	" 11	1:25
Roller	" 12	6:	" 12	8:15	" 12	4:55
Adder	" 13	7:20	" 13	12:	" 13	4:45
Roller	" 15	7:20	" 15	7:40	" 15	11:55
Power Reel Runner	" 17	1:20	" 17	8:	" 17	1:20
Roller	" 24	7:45	" 24	8:15	" 24	6:55
Roller	" 25	8:	" 25	9:15	" 25	2:45
Adder	Aug. 3	10:20	Aug. 3	10:25	Aug. 3	12:
Ball Edge Setter	" 4	4:20	" 4	12:	" 4	1:
Adder	" 4	12:	" 4	1:20	" 4	2:20
Yoke Edge Setter	" 8	10:20	" 9	8:15	" 9	1:25
Miller	" 10	8:15	" 10	8:15	" 10	10:
20" Corner Splitter	" 14	8:20	" 14	9:45	" 14	8:
Adder	" 15	10:	" 15	12:20	" 15	2:
Round Sharper	" 15	12:	" 15	1:15	" 15	4:40
Corner Splitter	" 16	7:20	" 16	7:35	" 16	2:
Puller	" 17	7:20	" 17	8:15	" 17	11:
Council Machinery	" 21	1:20	" 21	1:20	" 21	2:40
Adder	" 22	4:20	" 22	2:45	" 22	11:
Power Runner	" 23	8:	" 23	11:	" 23	2:
Adder	" 24	7:20	" 24	8:15	" 24	4:20
Power Shoulder	" 27	7:20	" 27	8:15	" 27	2:
Edge Trimmer	" 28	4:	" 28	1:	" 28	2:
Adder	" 29	7:20	" 29	10:15	" 29	4:45
Adder	" 30	7:20	" 30	8:15	" 30	4:40
Big Three Scallops	" 31	7:20	" 31	8:	" 31	12:45
Round Sharper	" 31	11:	" 31	11:20	" 31	2:45
Adder	" 31	2:	" 31	2:40	" 31	4:25
Round Sharper	" 31	10:	" 31	2:	" 31	10:45
Bar Counter	" 31	4:20	" 31	10:25	" 31	1:
Mad Cutter	" 31	1:20	" 31	1:	" 31	2:
Mad Cutter	" 31	7:20	" 31	7:40	" 31	4:20
Goldrick Adder	" 31	7:20	" 31	2:15	" 31	2:
Goldrick Adder	" 31	2:	" 31	7:40	" 31	2:
Mad Cutter	" 31	11:20	" 31	1:	" 31	4:25
Mad Cutter	" 31	2:15	" 31	10:	" 31	2:
Adder	" 31	7:20	" 31	8:45	" 31	4:20
Mad Cutter	" 31	11:25	" 31	1:15	" 31	4:20
Adder	" 31	7:20	" 31	8:15	" 31	2:
Adder	" 31	2:	" 31	10:	" 31	4:45

Stockfish	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Eagle Upper Stemper	Aug. 30	4:45	Aug. 31	7:45	Aug. 31	11:15
Eagle Upper Stemper	" 31	7:15	" 31	7:15	" 31	11:15
Ideal Clicker	" 30	11:30	" 31	11:15	" 31	4:45
Jobber	Sept. 1	7:30	Sept. 1	8:15	Sept. 1	8:
Ideal Clicker	Aug. 30	11:30	" 1	7:15	" 1	4:45
Jobber	Sept. 2	7:30	" 2	7:45	" 2	1:45
Union Ridge Setter	Aug. 31	4:	" 2	8:	" 2	12:30
Ideal Clicker	" 30	11:30	" 3	7:15	" 3	12:30
Jobber	Sept. 5	7:30	" 5	8:15	" 5	10:
Ideal Clicker	Aug. 30	11:30	Sept. 5	7:15	Sept. 5	4:45
Ideal Clicker	" 30	11:30	" 6	7:15	" 6	4:45
Ideal Clicker	" 30	11:30	" 7	7:15	" 7	4:45
Jobber	Sept. 7	7:30	" 7	8:15	" 7	10:
Ideal Clicker	Aug. 30	11:30	" 8	7:15	" 8	4:45
Pier Counter	Sept. 7	10:	" 8	7:30	" 8	12:
Ideal Clicker	Aug. 30	11:30	" 9	8:15	" 9	4:45
Ideal Clicker	" 30	11:30	" 11	7:15	" 11	4:45
Ideal Clicker	" 30	11:30	" 12	7:15	" 12	4:45
Ideal Clicker	" 30	11:30	" 13	7:15	" 13	4:45
Ideal Clicker	" 30	11:30	" 14	7:15	" 14	4:45
Jobber	Sept. 12	10:15	" 11	8:15	" 11	8:
Jobber	" 14	7:45	" 14	7:45	" 14	8:15
Jobber	" 15	7:30	" 15	8:15	" 15	8:
Ideal Clicker	Aug. 30	11:30	" 15	7:15	" 15	4:45
Ridge Setter	Sept. 14	6:	" 15	7:45	" 15	10:30
Jobber	" 16	6:	" 16	8:45	" 16	2:30
Ideal Clicker	Aug. 30	11:30	" 16	7:45	" 16	12:15
Jobber	Sept. 15	7:30	" 12	8:45	" 13	4:30
Jobber	" 18	7:30	" 19	8:45	" 19	4:30
Jobber	" 21	7:30	" 21	8:15	" 21	4:45
Roller	" 20	9:30	" 20	9:45	" 20	1:45
Roller	Sept. 20	12:	Oct. 3	12:	Oct. 3	4:45
Eagle Upper Stemper	Oct. 9	11:	" 9	11:15	" 9	2:
Gilmore Roller	" 9	9:	" 9	9:15	" 9	2:15
Gilmore Roller	" 12	7:45	" 12	10:30	" 12	3:15
Union Twin Ridge Setter	" 12	8:30	" 17	7:30	" 17	12:
Jobber	" 17	4:30	" 19	7:30	" 19	1:45
Jobber	" 20	7:30	" 20	7:30	" 20	1:45
Pier Channel Counter	" 23	6:	" 23	7:45	" 23	1:45
Jobber	" 24	6:	" 24	8:30	" 24	1:15
Jobber	Nov. 2	2:	Nov. 2	2:45	Nov. 2	4:45
Pier Counter	" 10	1:	" 11	11:45	" 11	2:15
Gilmore Roller	" 12	11:15	" 12	11:15	" 12	2:30
Pier Counter	" 15	11:30	" 15	7:30	" 15	1:45
Ridge Trimmer	" 17	7:30	" 17	7:30	" 17	2:30
Ideal Clicker	" 2	5:	" 23	7:15	" 23	2:45
Jobber	" 21	10:	" 23	7:30	" 23	4:45

Machine	Date Call Rec'd	Time Call Rec'd	Date Call Taken	Time Call Taken	Date Call Fin.	Time Call Fin.
Buffer	Nov. 23	11:20	Nov. 23	11:20	Nov. 23	2:
Edge Setter	" 23	9:	" 23	7:20	" 23	4:20
Jointer	" 23	7:20	" 23	7:20	" 23	4:45
Jointer	" 24	7:20	" 24	7:20	" 24	4:45
Toe Softener	" 2	1:	" 25	7:20	" 25	9:20
Jointer	" 25	7:20	" 25	7:20	" 25	4:45
Edge Setter	" 27	12:45	" 27	12:45	" 27	2:20
Jointer	" 27	7:20	" 27	7:20	" 27	4:45
Jointer	" 28	7:20	" 28	7:20	" 28	4:45
Jointer	" 29	7:20	" 29	7:20	" 29	4:45
Jointer	Dec. 1	7:20	Dec. 1	7:20	Dec. 1	4:45
Edge Setter	" 2	7:20	" 2	7:20	" 2	3:45
Jointer	" 4	1:	" 4	1:45	" 4	5:45
Jointer	" 5	7:20	" 5	7:20	" 5	9:15
Edge Concaver	" 6	8:	" 6	10:20	" 6	4:15
Buffer	" 8	7:45	" 8	1:15	" 8	3:45
Repeat Stamper	" 8	11:20	" 8	1:45	" 8	3:
Repeat Stamper	" 8	5:	" 8	7:20	" 9	11:15
Repeat Stamper	" 9	11:	" 11	7:20	" 11	11:45
Gimmers Buffer	" 12	11:20	" 12	11:20	" 12	3:45
Edge Setter	" 14	1:	" 14	1:	" 14	4:15
U. R. Buffer	" 18	8:	" 18	8:	" 18	1:20
Heel Choker	" 18	1:20	" 19	2:	" 19	5:
Jointer	" 19	10:20	" 19	11:15	" 19	4:15

Machines at Factory of L. A. Crossett, Inc., Brockton, Mass. Held Under Lease.

Goodyear Dept.

23 Welt Machines	5 Goodyear Jointers
24 Outsole Stitchers	3 Impression Stitch Burnishers
4 Bobbin Winders	1 Rapid Rotary Cementer
3 Welt Grooversr	2 Economy Insole Stitchers
2 Channeling Machines	1 Univ. Rounding Mch.— Model 2
3 Universal Channeling Mchs.	2 Gem Lip Turners
3 Universal Welt Beaters	2 Assrt. Two-Form Sole Layers
10 Universal Rounders	2 Economy Re-inforcing Mchs.
3 Universal Channel Openers	2 Economy Channeling Mchs.
5 Automatic Sole Levelers	177
9 Stitch Separators	
2 Lip Turning Machines	Metallic Dept.
5 Improved Sole Laying Mchs.	2 Rapid Standard Screw Mchs.
4 Welt Beaters & Hammers	3 Universal Slugging Mchs.
7 Welt Indent. & Burnish.	5 Loose Nailers
6 Universal Inseam Trimmers	3 Staple Tackers
2 Heel Seat Rounders	2 Knife Grinders
3 Power Welt Groover & Beveler	15

Heeling Dept.	
3 Lightning Heeling Mch.	
3 No. 4 Heel Compressors	
2 Heel Trimmers — Burnell	
6 Heel Trimmers — Ultima	
1 Pneuter Heel Pricker	
20	

Lasting Dept.	
20 No. 5 Lasting Machines	
3 Inside Tacking Machines	
5 Chain Lasting Machines	
20 Loose Tackers	
7 Chain Tackers	
4 Rasps Loose	
97	

Eyelet Dept.	
2 Duplex Eyeletters	
3 Universal Eyeletters	
3 Perfection Eyeletters	
2 Vulcan Eyeletters	
1 Power Eyeletter	
15	

General Dept.	
26 Ideal Clicking Machines	
1 Apex Reader — Model A	
1 Buffer — Model C	
1 Champion Heel Lift Shver — A	
1 Crest Heel Blacker — Model A	
1 Channel Layer	
26 Edge Trimmers — Model A	
1 Eagle Sole & Upper Stamper — B	
1 Heel Securing Mch — Model R	
2 Heel Breast Securers — Model H	
4 Imperial Heel Breasters — B	
1 Embossing Machine — R	
1 Eagle Upper Stamper — C	
2 New Method Heel Seat Beader — G	
2 Regent Stampers — B	
1 Victor Roller — Model S	
1 Regent Stamper — C	
3 Star Channel Cementers — A	
3 Gummits Splitters — M	
1 Tip Securer — Model G	
2 Twin Edge Setters — R	
2 Twin Edge Setters — Union — S	
1 Top Piece Scalloper	
2 Welt Trimmers & Stitch Rubbers — R	
1 Star Channel Cementer — C	

Pulling-Over Dept.	
8 Rex Pulling-Over Mchs — Model A	
1 Rex Pulling-Over Mchs — Model C	
12 Rex Assembling Mchs — Model R	
21	

Machines Sold to L. A. Crossett, Inc., Brockton, Mass.

General Dept.	
2 Apex Grinders — Model G	
7 Edge Trimmers — Model A	
1 Field Channel Layer	
1 Peerless Bottom Stamper	
5 Edge Setters — Union Twin — Model S	
2 Toe Stiffeners — Model C	
1 Heath Gem-C Wheeling Machine	
5 Amazeen Shivers — No. 7	
2 Amazeen Shivers — old style	
1 Patent Tip Securer	
1 Norris Piece Heel Builder	
1 Bench Emery Grinder	
2 Bench Shafts	
2 Globe Heel Securers	
2 Paragon Vamp Markers — Model B	
2 Paragon Vamp Markers — Model C	
7 72-inch 2-bearing Finishing Shafts	
1 Bench Shaft	

Shoes Made by L. A. Crossett, Inc.,— During 1911.

January	113191
February	109476
March	59612
April	26516

May	84956
June	96121
July	71310
August	102066
September	96328
October	52078
November	101751
December	98706
Total	967835 pairs during 1911

L. A. Cronkhite, Inc.—12 Months Service—1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls	Hrs.
Goodyear	20	17	13	26	26	21	17	13	11	20	21	26	232	
	120	102	72	156	156	126	102	106	66	120	126	144		1368
Metallic	9	6	1	11	5	1	0	10	8	5	9	9	74	
	27	24	4	45	20	4	0	41	32	20	46	46		310
Reading	9	2	4	4	7	16	2	10	5	5	1	11	77	
	36	12	16	16	28	64	8	40	20	20	4	44		308
Lansing	10	24	29	31	34	21	11	11	12	15	7	16	219	
	62	120	181	186	212	131	69	69	75	81	43	100		1368
Pull Over	15	24	27	25	27	25	25	24	14	19	12		236	
	60	96	108	100	108	104	100	96	56	76	48	108		1064
Eyelet & General	26	9	15	30	24	36	10	30	32	11	30	36	291	
	113	36	60	186	156	144	40	186	128	44	60	72		1164
Total	91	82	88	126	123	121	65	112	82	78	71	95	1130	
Total	427	420	441	695	660	573	319	510	378	361	381	514		5620

DEFENDANTS' EXHIBIT 214 (DIRECT).

[Put in Evidence, page 2905.]

TOTAL CALLS AND TIME—1911. TOTAL OPERATORS TAUGHT AND TIME—1911.

Total Calls and Time—1911.

	Calls	Hours
Total Goodyear Calls—1911	44916	321880
Total Metallic Calls—1911	22376	91628
Total Reading Calls—1911	19492	109703
Total Lansing Calls—1911	27653	175626
Total Pulling-Over Calls—1911	20970	126035
Total Eyelet & General Calls—1911	57235	295123
Total Calls	192324	
Total time in hours used on calls		1119995

Operators Taught.

Total Goodyear operators taught	2309	6479
Total Metallic operators taught	958	20659
Total Hosiery operators taught	1009	33202
Total Lasting operators taught	1369	44268
Total Pulling-Over operators taught	956	31162
Total Eyelet & General operators taught	7418	79924
Total operators taught	6999	
Total time in hours teaching same		256791
Grand Total Service	201418	
Grand Total Hours		1282284

Help Attached to Offices during 1911

Agents and Assistants	17	
Department Heads	21	
Accountants	37	
	—	75
Goodyear Readers	149	
Metallic Readers	86	
Hosiery Readers	47	
Lasting Readers	95	
Pulling-Over Readers	61	
Eyelet & General	120	523
Total Help		598

Auburn Office — Calls for Road Service During 1911 by Months and Depts.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	182	200	109	160	152	283	126	200	240	200	181	208	2411
Metallic	80	90	86	89	95	110	95	111	85	91	100	113	1145
Hosiery	73	85	69	89	74	27	50	56	46	62	44	76	772
Lasting	76	120	[illegible]	75	80	167	105	120	147	160	100	146	1323
Pulling	65	115	[illegible]	87	70	103	82	117	100	103	80	93	1040
Eyelet & General	271	322	265	[illegible]	[illegible]	289	320	226	245	202	195	202	3126
Total Calls	727	910	649	720	731	899	790	1030	873	874	698	905	
											Total Calls		10010
											Total Hours		71819

6-7/12	Goodyear	men	—	2411 calls	took	10073 hours	or	6 h. 40 m.	per call
3	Metallic	men	—	1145 "	"	7199 "	"	6 h. 15 m.	" "
2	Hosiery	men	—	772 "	"	4792 "	"	6 h. 10 m.	" "
5-1/12	Lasting	men	—	1323 "	"	12075 "	"	8 h. 30 m.	" "
8-3/12	Pulling	men	—	1040 "	"	8221 "	"	7 h. 45 m.	" "
6-1/12	General	men	—	3126 "	"	22339 "	"	7 h. 15 m.	" "
29	Total	men	—	10010 "	"	71819 "	"	7 h. 0 m.	" "

AUBURN OFFICE—OPERATORS TAUGHT—DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Taught	Man Hrs.
Goodyear	8	10	8	8	8	13	10	15	12	10	9	11	122	8785
Metallic	4	5	4	5	5	6	5	6	4	5	5	6	60	1800
Heeling	4	4	5	4	4	1	3	3	3	3	2	4	40	1200
Lasting	4	6	4	4	4	8	6	10	7	6	4	7	75	2205
Pull-Over	3	5	3	3	4	5	3	6	5	5	4	5	51	1681
Eyelet & General	14	15	15	15	17	17	11	14	12	15	6	13	185	6826
Total Calls	37	45	40	37	37	44	43	54	43	44	31	46		

Total operators taught 504

Total hours to teach same 18042

BROCKTON OFFICE—CALLS FOR ROAD SERVICE DURING 1911 BY MONTHS AND DEPTS.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	476	492	540	449	495	600	575	640	574	565	658	780	6847
Metallic	230	215	253	171	218	255	217	223	226	170	249	249	2715
Heeling	205	225	200	224	227	255	205	241	211	211	252	201	2811
Lasting	370	472	382	360	410	420	380	471	385	371	360	397	4726
Pull-Over	280	280	270	250	270	252	237	252	220	260	303	235	3109
Eyelet & General	676	606	705	583	679	696	645	601	554	653	776	780	7958
Total Calls	2237	2444	2397	2045	2300	2467	2170	2429	2220	2219	2658	2726	

Total Calls 28601

Total Hours 183326

26¼	Goodyear	men	—	6847 calls	took	52751 hours	or	7 h. 45 m. per call
5-1/6	Metallic	men	—	2715 "	"	8112 "	"	3 h. 0 m. " "
4-11/12	Heeling	men	—	2811 "	"	7360 "	"	2 h. 40 m. " "
15½	Lasting	men	—	4726 "	"	29667 "	"	6 h. 15 m. " "
9-1/12	Puller	men	—	3109 "	"	16209 "	"	4 h. 40 m. " "
21-7/12	General	men	—	7958 "	"	30196 "	"	4 h. 50 m. " "
82-½	Total	men	—	28601 "	"	183326 "	"	5 h. 30 m. " "

48 hours per week.

BROCKTON OFFICE—OPERATORS TAUGHT—DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Taught	Man Hrs.
Goodyear	24	26	27	22	24	24	27	22	20	26	22	37	363	10633
Metallic	12	11	13	9	11	13	11	13	11	9	12	12	127	4347
Heeling	12	12	13	11	11	12	10	12	11	11	13	13	141	4371
Lasting	19	24	19	20	21	21	19	24	17	19	18	13	229	7450
Pull-Over	12	17	19	13	14	12	11	14	16	12	16	13	178	5518

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Eyelet & General	26	26	26	27	24	24	26	20	26	23	20	20	401	12031
Total Calls	113	124	120	103	113	127	105	125	117	113	123	127		
							Total operators taught						1439	
							Total time to teach same							44609

Chicago Office—Calls for Road Service During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	222	225	199	200	215	205	200	257	244	247	226	250	2650
Metallic	60	42	39	60	75	55	42	116	45	64	55	44	717
Hosiery	154	155	120	146	182	160	141	89	141	170	127	147	1712
Lasting	95	100	123	123	214	145	144	147	98	126	102	90	1504
Full-Over	75	88	80	105	111	93	90	75	63	84	75	70	1017
Eyelet & General	220	191	176	146	240	225	201	115	130	220	215	201	2536
Total Calls	825	774	737	800	1137	949	938	899	726	860	900	901	10546
									Total Calls					10546
									Total Hours					32150

11 Goodyear	men	—	2650	calls	took	24320	hours	or	9 h. 5 m.	per call
8 Metallic	"	—	717	"	"	6694	"	"	9 h. 15 m.	" "
7 Hosiery	men	—	1712	"	"	15585	"	"	9 h. 0 m.	" "
7 Lasting	men	—	1504	"	"	15005	"	"	10 h. 0 m.	" "
3 Full-Over	men	—	1017	"	"	6342	"	"	6 h. 10 m.	" "
11 Eyelet & General	men	—	2536	"	"	24570	"	"	9 h. 35 m.	" "
43 Total	men	—	10546	"	"	98150	"	"	9 h. 40 m.	" "

Chicago Office—Operators Taught — During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Taught	Hrs.
Goodyear	11	11	9	13	15	18	13	13	12	12	13	13	162	4535
Metallic	2	2	3	3	4	2	2	0	2	2	3	2	29	1115
Hosiery	6	5	6	6	9	8	7	8	7	6	7	7	86	2295
Lasting	5	5	6	7	8	6	7	7	5	6	5	5	72	2222
Full-Over	3	3	3	5	6	4	4	6	3	4	4	4	47	1407
Eyelet & General	11	10	9	7	11	11	13	6	7	14	16	15	130	4060
Total Calls	41	36	36	41	52	45	46	41	36	46	48	46	515	15634
							Total operators taught						515	
							Total hours to teach same							15634

Cincinnati Office — Calls for Road Service During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	444	380	357	322	375	282	217	445	280	226	416	302	4146
Metallic	178	147	194	146	111	129	78	143	118	165	149	195	1742
Hosling	176	132	101	70	113	109	100	204	120	125	121	127	1569
Lasting	350	245	294	294	282	211	192	429	251	405	208	267	3740
Pull-Over	155	126	149	190	188	175	144	151	177	191	167	179	1906
Eyelet & General	370	429	227	401	526	415	322	464	427	271	424	378	4703
Total Calls	1670	1539	1442	1445	1401	1273	1054	1929	1405	1594	1575	1580	17833
										Total Calls			17833
										Total Hours			72040

15 Goodyear	men	—	4195 calls	took	22621	hours	or	7 h. 45 m.	per call
3 Metallic	men	—	1742 "	"	5165	"	"	2 h. 55 m.	" "
3 Hosling	men	—	1569 "	"	5220	"	"	3 h. 20 m.	" "
6 Lasting	men	—	3740 "	"	9903	"	"	2 h. 20 m.	" "
3 Pull-Over	men	—	1906 "	"	5902	"	"	3 h. 0 m.	" "
7 General	men	—	4702 "	"	13409	"	"	2 h. 45 m.	" "
37 Total	men	—	17833 "	"	72040	"	"	3 h. 30 m.	" "

Cincinnati Office — Operators Taught — During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Taught	Hrs.
Goodyear	23	16	18	17	19	12	13	22	14	17	21	13	209	6479
Metallic	9	7	10	7	6	7	4	7	6	8	8	5	84	2604
Hosling	9	7	5	4	0	6	5	13	7	8	6	6	80	2480
Lasting	18	17	16	15	14	11	10	23	13	20	12	18	187	5797
Pull-Over	5	6	7	10	10	9	7	5	9	10	5	9	101	3131
Eyelet & General	10	21	16	20	15	21	14	25	22	19	23	19	235	7285
Total Calls	35	76	72	73	71	66	53	97	71	80	78	73	896	27776
										Total operators taught			896	
										Total hours to teach same				27776

Haverhill Office — Calls for Road Service During 1911 by Months and Depts.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	463	513	590	473	530	633	559	767	608	635	672	702	7272
Metallic	217	224	323	203	213	283	290	304	281	322	440	395	3450
Hosling	255	233	245	264	270	321	260	229	308	283	267	407	3612
Lasting	273	375	360	243	295	535	326	242	245	242	302	254	3691
Pull-Over	207	219	295	247	185	307	263	341	341	327	297	325	3501
Eyelet & General	721	616	653	697	690	781	639	727	726	757	799	677	8683
Total Calls	2136	2180	2467	2127	2220	2460	2087	2710	2616	2614	2677	2760	
										Total Calls			29318
										Total Hours			120779

23 Goodyear	men	—	7273	calls	took	42854	hours	or	6 h.	10 m.	per	call
7 Metallic	men	—	3420	"	"	12956	"	"	3 h.	40 m.	"	"
12 Heeling	men	—	3512	"	"	26051	"	"	7 h.	6 m.	"	"
10 Lasting	men	—	2601	"	"	20269	"	"	5 h.	20 m.	"	"
9 Pull-Over	men	—	2291	"	"	18278	"	"	5 h.	30 m.	"	"
23 Eyelet & General	men	—	3502	"	"	42350	"	"	5 h.	5 m.	"	"
72 Total	men	—	28618	"	"	166679	"	"	6 h.	30 m.	"	"

Haverhill Office — Operators Taught — During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	23	26	20	24	27	23	20	26	20	23	24	40	306	11340
Metallic	11	11	16	10	11	12	16	15	13	16	20	19	172	5332
Heeling	12	12	13	13	14	16	13	17	15	17	17	20	179	5549
Lasting	14	20	16	17	17	17	12	13	12	12	15	11	181	5611
Pull-Over	10	11	15	12	8	10	12	17	17	14	16	16	169	5129
Eyelet & General	36	31	28	29	35	28	34	35	26	36	40	44	431	13361
Total Calls	107	110	132	105	112	126	122	135	124	121	147	160		

Total operators taught 1491
Total hours to teach same 46221

Lynn Office — Calls for Road Service During 1911 by Months and Depts.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	576	562	660	642	652	661	556	715	660	691	649	592	7701
Metallic	334	356	320	321	301	291	294	328	309	314	318	291	3981
Heeling	296	305	408	345	395	427	365	507	423	379	318	422	3985
Lasting	371	323	376	337	334	320	298	402	337	379	301	268	4236
Pull-Over	249	263	277	231	249	288	283	361	420	425	366	420	3868
Eyelet & General	1092	894	971	982	912	907	827	1139	1047	1083	1019	1065	12026
Total Calls	2868	2727	3127	2917	2864	2894	2734	3444	3296	3261	2988	3158	37125

Total Calls 37125
Total Hours 142000

18 Goodyear	men	—	7701	calls	took	42842	hours	or	3 hrs.	15 m.	per	call
6 Metallic	men	—	3461	"	"	10709	"	"	1 h.	55 m.	"	"
11 Heeling	men	—	3985	"	"	21929	"	"	5 h.	35 m.	"	"
8 Lasting	men	—	4236	"	"	17681	"	"	4 h.	15 m.	"	"
12 Pull-Over	men	—	3868	"	"	20088	"	"	5 h.	15 m.	"	"
20 General	men	—	11926	"	"	28753	"	"	2 h.	5 m.	"	"
75 Total	men	—	37125	"	"	142002	"	"	3 h.	50 m.	"	"

Lynn Office—Operators Taught—During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	20	23	25	23	23	24	20	25	24	25	23	20	257	11997
Metallic	17	15	17	16	15	16	13	16	15	20	15	15	195	8736
Heeling	20	20	25	25	25	23	20	25	24	24	26	24	284	8804
Lasting	19	16	19	17	17	16	15	20	15	19	20	20	210	6300
Pull-Over	12	13	14	12	13	14	14	16	22	22	20	20	194	6014
Eyelet & General	38	44	49	47	46	45	45	57	52	53	51	56	587	19007
Total Taught	130	136	149	132	140	139	127	173	165	169	165	169		
								Total operators taught					1964	
								Total hours to teach same						67754

Marlboro Office—Calls for Road Service During 1911 by Months and Depts.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	227	255	310	266	295	181	134	183	249	209	228	244	2981
Metallic	244	184	266	160	225	161	132	161	185	294	242	261	2865
Heeling	130	149	115	130	143	77	126	100	118	129	175	169	1570
Lasting	219	210	227	226	215	127	70	115	135	189	269	194	2174
Pull-Over	123	89	135	125	128	102	77	129	112	130	185	164	1499
Eyelet & General	275	223	282	269	289	266	230	264	215	255	280	275	3267
Total Calls	1327	1089	1336	1146	1270	925	770	1032	1114	1076	1637	1340		
									Total Calls					13776
									Total Hours					68205

12-5/6	Goodyear	men	—	2981 calls	took	21255 hours	or	7 h. 25 m. per call
7-1/6	Metallic	men	—	2865 "	"	18220 "	"	6 h. 30 m. " "
3	Heeling	men	—	1570 "	"	4677 "	"	3 h. 0 m. " "
8	Lasting	men	—	2174 "	"	15757 "	"	7 h. 15 m. " "
5-7/12	Pulling	men	—	1499 "	"	11128 "	"	7 h. 25 m. " "
10	General	men	—	3267 "	"	19091 "	"	5 h. 50 m. " "
62-7/12	Total	men	—	13776 "	"	68205 "	"	6 h. 15 m. " "

46 Hours per week.

Marlboro Office—Operators Taught—During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	12	13	16	13	14	9	7	9	13	10	16	13	145	4495
Metallic	13	8	16	8	11	8	7	8	9	10	12	13	124	3844
Heeling	7	8	6	7	7	4	6	8	8	6	9	6	79	2449
Lasting	11	11	11	11	11	8	4	6	7	9	13	13	109	3270
Pulling-Over	7	4	6	6	6	5	4	6	5	6	9	8	72	2232

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Eyelet & General	9	11	15	13	15	13	11	14	15	13	15	14	159	4220
Total Calls	55	55	73	57	69	45	39	51	55	53	77	62		

Total operators taught 666
Total hours to teach same 21220

NEW ORLEANS OFFICE — CALLS FOR ROAD SERVICE DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear Metallic Lasting Hooking Full-Over Eyelet & General	50	54	48	55	55	60	42	54	55	56	113	60	720

3 men 720 calls took 5917 hours or h. m. per call
3 " " exhibiting 736 "
3 " " teaching 1147 "

Total hours 7800

NEW ORLEANS OFFICE OPERATORS TAUGHT DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Taught	Hrs.
Goodyear Metallic Hooking Lasting Full-Over Eyelet & General	4	2	2	3	3	4	2	2	3	1	6	4	37	1147

Total operators taught 37
Total hours to teach same 1147

NEW YORK OFFICE — CALLS FOR ROAD SERVICE DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	154	143	154	122	201	151	152	145	139	142	126	192	1855
Metallic	49	47	50	75	53	45	46	55	52	49	59	36	613
Hooking	51	52	50	14	60	45	42	51	53	49	55	64	627
Lasting	45	45	53	45	42	40	26	54	49	36	30	46	507
Pulling	24	29	27	31	26	24	31	26	29	26	19	21	337
Eyelet & General	210	220	212	209	190	155	195	205	235	206	205	141	2401
Total Calls	537	536	551	497	551	462	492	542	563	510	503	590	

Total Calls 5490
Total Hours 16647

8	Goodyear	men	—	1955 calls	took	18806 hours	or	9 h. 39 m.	per call
2	Metallic	men	—	613 "	"	3657 "	"	5 h. 55 m.	" "
2	Healing	men	—	627 "	"	3626 "	"	5 h. 49 m.	" "
3¼	Lasting	men	—	867 "	"	6709 "	"	11 h. 45 m.	" "
1	Pull-Over	men	—	337 "	"	2803 "	"	25 h. 5 m.	" "
1"	Eyelet & General	men	—	2491 "	"	15047 "	"	6 h. 25 m.	" "
27¼	Total	men	—	6490 "	"	54647 "	"	10 h. 49 m.	" "

New York Office — Operators Taught — During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	8	7	8	6	10	8	8	7	8	7	7	10	94	2914
Metallic	3	2	3	3	3	2	2	3	3	3	3	3	33	1023
Healing	3	3	3	3	3	2	2	3	3	3	3	3	34	1054
Lasting	3	3	3	2	2	3	3	3	3	2	2	2	29	899
Pull-Over	2	3	3	3	1	1	3	1	3	1	1	1	18	558
Eyelet & General	11	11	11	10	10	9	10	10	11	10	10	11	126	3944
Total Calls	30	29	30	27	29	24	28	27	30	26	26	30		

Total operators taught 333

Total hours to teach same 10330

Philadelphia Office — Calls for Road Service During 1911 by Months and Depts.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	273	203	242	237	285	265	221	270	213	254	224	223	2920
Metallic	97	89	78	81	87	68	81	93	74	89	86	77	1017
Healing	68	72	73	78	62	65	49	51	49	46	85	52	746
Lasting	112	92	97	78	104	125	84	95	121	95	109	93	1205
Pull-Over	60	54	97	73	84	109	75	81	72	76	71	71	925
Eyelet & General	451	341	305	362	394	373	303	323	342	345	331	279	4350
Total Calls	1060	850	892	894	1035	1005	813	913	871	905	876	800	

Total Calls 11325

Total Hours 102577

14¼	Goodyear	men	—	2920 calls	took	23928 hours	or	11 h. 19 m.	per call
3	Metallic	men	—	1017 "	"	7249 "	"	7 h. 10 m.	" "
2¼	Healer	men	—	746 "	"	5415 "	"	7 h. 15 m.	" "
3	Laster	men	—	1205 "	"	10377 "	"	7 h. 50 m.	" "
1	Pull-Over	men	—	925 "	"	12212 "	"	10 h. 0 m.	" "
11¼	General	men	—	4219 "	"	27007 "	"	6 h. 20 m.	" "
55¼	Total	men	—	11325 "	"	102577 "	"	7 h. 25 m.	" "

50 hours per week.

PHILADELPHIA OFFICE — OPERATORS TAUGHT — DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	17	15	13	14	16	17	13	12	12	14	12	12	167	5177
Metallic	2	2	1	1	2	2	2	1	1	1	2	1	18	558
Heeling	2	4	1	6	3	2	4	3	2	1	3	1	32	1000
Lasting	11	9	12	12	14	13	8	7	14	12	15	8	135	4185
Pull-Over	7	5	4	6	8	7	8	6	5	7	6	6	77	2387
Tyer & General	6	5	5	4	9	5	6	5	5	5	4	3	68	2108
Total Calls	45	38	36	43	52	46	41	34	39	40	42	31		

Total operators taught 498
Total hours to teach same 15415

ROCHESTER OFFICE — CALLS FOR ROAD SERVICE DURING 1911 BY MONTHS AND DEPTS.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	200	204	205	203	244	215	215	223	192	227	225	209	2617
Metallic	163	168	139	137	146	152	143	214	164	206	178	174	2023
Heeling	111	104	141	114	110	116	101	110	107	105	110	120	1411
Lasting	222	169	210	205	194	161	169	146	215	205	207	244	2354
Pulling	153	152	177	146	171	168	198	145	200	196	222	208	2135
Tyght & General	441	428	410	421	491	486	441	437	436	436	371	410	5208
Total Calls	1290	1225	1282	1226	1365	1298	1267	1274	1274	1375	1313	1367	

Total Calls 15756
Total Hours 94536

10-5/8 Goodyear	men	—	2617 calls	took	15702	hours	or	6 h. 0 m.	per call
4 Metallic	men	—	2023 "	"	8092	"	"	4 h. 0 m.	" "
2-1/2 Heeling	men	—	1411 "	"	5644	"	"	4 h. 0 m.	" "
4-8/4 Lasting	men	—	2354 "	"	9827	"	"	4 h. 25 m.	" "
3-1/4 Pulling	men	—	2135 "	"	7705	"	"	3 h. 36 m.	" "
10-1/2 General	men	—	5208 "	"	25160	"	"	4 h. 48 m.	" "
33-5/8 Total	men	—	17756 "	"	94536	"	"	5 h. 0 m.	" "

33 Hours per week.

ROCHESTER OFFICE — OPERATORS TAUGHT — DURING 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	10	10	12	15	5	5	12	6	12	12	7		126	3906
Metallic	2	2	1	2	3	2	1	4	3	2	2	2	30	930
Heeling	1	2	5	2	1	3	6	5	1	5	2	1	36	1116
Lasting	12	12	6	10	11	10	5	3	4	6	3	3	97	3007

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Pull-Over	7	2	9	6	2	2	2	1	1	8	2	2	25	1625
Hyslet & General	20	7	6	21	8	7	9	10	7	3	3	4	285	2282
Total Calls	46	41	36	39	42	22	31	26	26	21	16	20		

Total operators taught 427
Total hours to fourth mens 19287

St. Louis Office — Calls for Road Service During 1911 by Months and Depts.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Calls
Goodyear	160	152	160	171	155	160	172	168	144	157	139	162	2016
Metallic	142	134	114	148	130	131	126	123	120	147	112	132	1610
Reading	80	75	90	96	85	88	82	97	75	67	80	85	904
Lansing	165	150	162	178	140	167	151	140	194	165	153	195	1920
Pulling	110	120	105	145	107	111	132	130	101	142	96	99	1278
Hyslet & General	241	252	209	229	220	214	208	216	276	205	250	229	2745
Total Calls	898	883	851	885	837	869	871	874	910	884	851	907	

Total Calls 10519
Total Hours 68369

20½	Goodyear	men	—	2016 calls	took	22954 hours	or	10 h. 50 m.	per call
4	Metallic	men	—	1610 "	"	6754 "	"	4 h. 25 m.	" "
4	Reading	men	—	904 "	"	3045 "	"	3 h. 22 m.	" "
9½	Lansing	men	—	1920 "	"	19045 "	"	10 h. 26 m.	" "
5	Pull-Over	men	—	1278 "	"	9071 "	"	7 h. 0 m.	" "
32½	General	men	—	2745 "	"	17549 "	"	6 h. 8 m.	" "
815	Total	men	—	10519 "	"	82369 "	"	7 h. 50 m.	" "

48 Hours per week.

St. Louis Office — Operators Taught — During 1911.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Men Taught	Hrs.
Goodyear	9	9	8	9	8	9	9	8	7	9	8	9	102	3162
Metallic	7	6	6	5	7	7	7	6	7	7	6	7	78	2418
Reading	4	4	5	5	4	5	4	5	4	3	5	3	49	1519
Lansing	5	5	5	6	5	7	5	5	20	4	4	2	68	2720
Pull-Over	7	6	5	6	5	5	6	7	5	7	5	5	69	2230
Hyslet & General	15	15	15	13	14	13	15	11	14	13	15	11	164	4774
Total Calls	47	45	45	44	43	46	47	42	47	43	41	37		

Total operators taught 511
Total hours to fourth mens 15771

DEFENDANTS' EXHIBIT 215 (DIRECT).

[Put in Evidence, page 2003.]

NUMBER OF SHOES MADE IN

	1899	1904	1910
Turns	18,272,000	25,960,000	33,966,000
Welts	22,700,000	47,950,000	86,231,000
Hand Welts	197,000	669,000	1,188,000
Stitch Downs			1,510,000
McKay Welts	111,000	56,000	582,000
Fair Stitched	805,000	478,000	1,066,000
Pegged	7,475,000	9,157,000	3,202,000
Standard Screw	25,802,000	21,627,000	19,004,000
Loose Nailed	2,567,000	3,123,000	6,469,000
McKay Sewed	82,457,000	94,606,000	105,698,000
Misc. Shoes & Slippers	12,400,000	15,733,000	20,000,000
	172,786,000	219,363,000	278,916,000

DEFENDANTS' EXHIBIT 216.

[Put in Evidence, page 2074.]

AMOUNTS EXPENDED FOR EXPERIMENTAL ACCOUNT.

During the years

1907	$364,326.41
1908	380,477.45
1909	333,605.75
1910	537,183.78
1911	602,359.31
Total	$2,267,954.70
Average per year	$453,590.94

DEFENDANTS' EXHIBIT 217.

[Put in Evidence, page 3776.]

Beverly, Mass., Nov. 20, 1911.

Mr. S. Winslow, Boston Office.

Dear Sir: The following is the list of experimental machines in the various departments.

The following list was sent to Messrs. King & Fraher:

Order	Name	For the month of October	Previous	Total
K 35791	Automatic Stitcher. Redesign machine. Drawings, patterns and machine work			
	E. E. Winkley	$39.10	$1640.55	$2179.65
K 112127	Goodyear Welt & Turn Sewing Mch. Make & apply to above machine one adjustable channel guide. Drawings, patterns and machine work.			
	E. E. Winkley	105.25	1095.29	1200.54
K 121228	Sole Layer. Changes on Progressive Pressure Principle Machine. Drawings, patterns and machine work.			
	B. F. Mayo	9.74	4934.07	4943.81
K 121244	Goodyear Inseam Trimming Mch. Make one new machine Drawings, patterns and machine work.			
	W. C. Meyer	11.14	5959.01	5970.15
K 123755	Goodyear Imp. Sole Layer. Make & apply to machine Welt Supporting Device. Drawings, patterns and machine work.			
	E. E. Foster	7.34	1272.53	1270.87
K 123843	Goodyear Insole Flexing Mch. Make one machine. Drawings, patterns and machine work.			
	J. B. Hadaway	8.59	3162.96	3171.55

Order	Name	For the month of October	Previous	Total
K 137201	Goodyear Flexible Insole Mch. Make Roll Feed for Feeding Wedge Stock. Drawings, patterns and machine work.			
	J. B. [illegible]way	199.59	1586.17	1785.76
K 123684	Thread Fastening & Tack Pulling Mch. Make machine for Fastening Upper to Insole & Pulling Lasting Tack. Drawings, patterns and machine work.			
	Jas. A. Brogan	284.16	4543.12	4827.28
K 135509	Heel Seat Rounding Machine. Make new design of machine. Drawings, patterns and machine work.			
	Wm. Meyer & W. C. Baxter	196.84	3623.24	3819.18
K 135617	Heel & Forepart Turning Mch. Redesign Gardner Machine. Drawings, patterns and machine work.			
	Eppler & Erickson	105.30	4887.29	4992.59
K 135537	Inseam Trimming Machine. Make Model of an Inseam Trimming machine, also construct one machine. Drawings, patterns and machine work.			
	Andrew Eppler	185.81	2626.27	2812.08
K 146706	Welt & Turn Sewing Machine. Finish work started in June 1909 on Shoe Holder for above machine for supporting, guiding & feeding the shoe. Drawings, patterns and machine work.			
	B. F. Mayo	Cr. 3.41	703.85	700.44

Order	Name	For the month of October	Previous	Total
K 148712	Goodyear Turn Shoe Moulder. Apply to above machine Inking Device. Drawings, patterns and machine work.			
	Ralph Simmons	17.88	594.99	612.87
K 152806	Goodyear Automatic Leveller. Redesign Boot Jack Frame & such other parts as appear weak in construction. Drawings, patterns and machine work.			
	W. C. Baxter	1306.16	6682.20	7988.36
K 160788	Canvas Setting & Feather Moulding Mch. Equip same with Cutting Device.			
	A. E. Johnson	21.37	2275.68	2297.05
K 165015	Goodyear Shank Welt Skiving Mch. Changes to Skive and Rub the welt upon the upper surface. Drawings, patterns and machine work.			
	F. B. Freeman	61.00	246.93	307.93
K 165025	Goodyear Insole Tack Puller. Redesign above machine. Drawings, patterns and machine work.			
	J. B. Hadaway	89.93	740.19	830.12
K 165260	Goodyear Improved Sole Layer. Make Shoe Locating Device for above machine.			
	B. F. Mayo	115.04	838.91	953.95
K 165028	Welt & Turn Sewing "G" Automatic Machine Stopping Mechanism with means for reversing the machine a predetermined amount. Drawings, patterns and machine work.			
	A. Latham	227.62	10659.83	10887.45

Order	Name	For the month of October	Previous	Total
K 165020	Welt & Turn Sewing "G" Apply Welt Cutting & Feeding attachment to Model G. Drawings, patterns and machine work. A. Latham	471.54	5812.33	6283.87
K 165036	Canvas Setting & Feather Edge Moulding. Canvas forming device for above Drawings, patterns and machine work. A. E. Johnson	92.95	267.83	360.78
K 169681	Goodyear Welt & Turn K. Apply Welt Holding & Cutting Device, also Thread Cutting Device, also stop Device. Drawings, patterns and machine work. Wm. C. Meyer	748.94	11538.61	12287.55
K 174607	Goodyear Improved Sole Layer. Apply Wentworth Shank Moulding Principal to above machine. Drawing patterns and machine work. H. H. Eaton	21.47	2345.06	2366.53
K 180255	W. W. Insole Flexer. Changes for adoption. Drawings, patterns and machine work. Thos. Seeley & W. C. Stewart	245.98	3319.88	3565.86
K 180257	W. W. Stitch Indenting & Burnishing. Prepare for adoption. Drawings, patterns and machine work. Stewart & Seeley	24.20	[illegible]	679.72
K 180258	W. W. Welt Slashing Grooving & Bevelling. Changes for adoption. Drawings,			

Order	Name	For the month of October	Previous	Total
	patterns and machine work.			
	Thos. Seeley	320.80	813.16	1134.05
K 180259	W. W. Outsole Flexing. Changes preparatory to adoption. Drawings, patterns and machine work.			
	W. C. Stewart	27.83	1198.14	1225.97
K 180261	Goodyear Stitch Separator. Make a new design of machine. Drawings, patterns and machine work.			
	J. E. Hadaway	.43	394.84	395.27
K 180263	Goodyear Welt Beater & Slasher. Apply the "Littlefield" Hammer to W B. & S. Drawings, patterns and machine work.			
	H. F. Mayo	17.19	606.58	623.77
K 184046	Shoe Filling. Make one complete machine. Drawings, patterns and machine work.			
	F. E. Bertrand	19.19	———	19.19
K 184049	Goodyear Power Moulding Mch. Redesign Machine. Drawings, patterns and machine work.			
	Wm. Meyer	61.29	1362.90	1424.19
K 186841	Goodyear Rapid Outsole Stitcher. Make changes in connection with drawing welt and sole together.			
	F. E. Beckman	7.77	264.64	272.41
K 186847	Goodyear Universal Channeler. Changes for operating the channel knife in the manner recently proposed by Prentel. Draw-			

Order	Name	For the month of October	Previous	Total
	ings, patterns and machine work.			
	F. E. Bertrand	15.94	449.98	465.92
K 187974	Goodyear Sole Laying Mch. 6 — LaChappelle Lining protectors. Drawings, patterns and machine work. Order closed 10/20/11.			
	H. H. Eaton	28.85	175.66	204.51
K 187994	Goodyear Improved Sole Laying Mch. Apply adjustable Toe Piece. Drawings, patterns and machine work.			
	W. C. Baxter	41.02	599.04	640.06
K 187995	Goodyear Jointing Mch. Make one machine with Rotary Cutter.			
	W. C. Stewart	115.81	93.18	208.99
K 190045	Goodyear Grooving & Bevelling. Changes for cutting full length of welt.			
	Thos. Seely	90.74	599.10	689.84
K 193194	Economy Channelling. Make Lip Setting attachment.			
	A. E. Johnson	.09	337.38	337.47
K 193198	Universal Rounding & Channeling "E". New Driving mechanism for pattern roll eliminating the friction except when the correcting device is to be used.			
	F. H. Perry	78.61	358.49	337.10
K 194756	Power Welt Grooving & Bevelling. Welt Winding Reel. X 2992.			
	A. Eppler	31.03	266.05	297.08
K 194762	Economy Channeler. Apply Mechanism for lifting			

Order	Name	For the month of October	Previous	Total
	Knife from stock. X2998. Order closed 10-20-11			
	A. E. Johnson	27.41	178.53	205.94
K 194764	Double "Lip Turner X" Special Table & drive mechanisms. X3000 Order closed 10-20-11			
	W. H. Hooper	.01	184.24	184.25
K 199480	Goodyear Universal Rounding & Channeling Mch. E. Automatic Channelling Knife operating mechanism. X2013			
	F. H. Perry	135.39	243.27	378.66
K 199481	Goodyear Universal Rounding & Channeling E. Make one Channel Knife Block. X2014.			
	Harmon	21.69	340.19	361.88
K 199490	Goodyear Upper Stapling. Redesign Insole Stapling Machine. X3032.			
	Erickson & Cosgrove	1161.08	1339.49	2500.57
K 202301	Insole Tack Pulling Mch. Make one complete machine. X3043			
	W. C. Stewart	255.09	377.50	632.59
K 202302	Goodyear Improved Sole Layer. Improved Treadle Mechanisms. X3045.			
	H. A. Davenport	36.56	——	36.56
K 202303	Goodyear Imp. Sole Layer "B". Apply Shank Moulds to above. X3046. Order closed 10-20-11			
	E. N. Preble	40.40	240.66	281.06
K 202316	Goodyear Turn Sewing Mch. Apply Channel Lip Controlling Finger to keep			

Order	Name	For the month of October	Previous	Total
	down lip when shoe is sewed.			
	F. Chateauneuf	808.62	737.74	1546.36
K 202328	Relasting Machine. Make drawings and construct one machine consisting of pincers to grip & pull the upper drawn on the last while the seat is being pounded, and other improvements. X2076			
	O. Ashton	11.11	81.45	92.56
K 209207	Jointing Machine. Make drawings of new machine with Chopping Knife operating at breast of Heel only. X3100			
	F. H. Perry	172.90	101.52	274.42
K 209221	Staple Side Lasting. Make experiments on Goodyear Upper Stapling for above. X3118.	213.55	—	213.55
K 209226	Goodyear Outsole Rapid Lockstitch. New presser Foot Mechanism. X3123.	662.83	—	662.83
K 209235	Wax Pot. Apply Friction Heat for Heating Wax Pot. X3132.			
	A. Eppler	24.42	—	24.42
K 209245	Goodyear Tack Pulling & Resetting Machine. Improvements in Tack Gearing Device.			
	F. L. McKenzie	29.86	—	29.86
		9675.66	129801.14	139476.77

The following list was sent to Mr. C. H. Bayley:

Order	Name	For the month of October	Previous	Total
		9575.63	123901.14	133476.77
K 189192	Amaseen Skiver. Make one "Courser" Work Guide as per sketch furnished. (Drawing first) Drawings, patterns and machine work.	1.20	64.68	65.88
K 193187	Skiving Machine. Make one new type of Skiving Machine. Davenport & Alexander	158.15	2385.27	2543.42
K 199440	Plume Skiver. Changes to Skive stitch down insoles. X3029. S. J. Wentworth	53.93	21.26	75.19
K 202338	Plume Skiver. Special grooving gage for the above machine. X3089. E. F. Davenport	15.46	18.45	33.91
K 200182	Plume Skiver "D". Strengthen Feed Roll Driving Shaft. Sabin & Warren	286.34	23.62	309.96
		10090.71	126414.42	136505.13

The following list was sent to Mr. H. C. Nickerson

		10090.71	126414.42	136505.13
K 190043	Heel Cutting Off. Make one Heel Cutting Off Machine for repair work. Drawings, patterns and machine work. J. B. Hadaway	15.10	642.58	657.68
K 202322	Shoe Dryer. Shoe & Sole Dryer for Repair Work.			

Order	Name	For the month of October	Previous	Total
	X3070. Order closed 10-20-11			
	Fred Hooper	5.96	60.42	[illegible]30
		10111.77	127126.43	137238.20

The following list was sent to Mr. Walter Shaw:

		10111.77	127126.43	137238.20
K 148720	Grommet & Washer Setting Machine. Redesign machine as shown in B. O. Drawings dated May 1909. Drawings, patterns and machine work.			
	Walter Shaw	867.26	3357.53	4224.79
K 152609	Duplex Eyelette Machine. Drawings of one machine. Order closed Oct. 30, 1911.			
	John Davey	48.04	1840.90	1888.94
K 193185	Cameo Eyelette. Apply Power Attachment to Cameo Eyelette.			
	John Davey	3.58	9.90	13.48
K 193191	Duplex Eyelette. Rearrange Machine for Corset Work			
	Fred Rumney	3.02	507.36	510.38
K 193192	Duplex Eyelette Punch & Set adjustment.			
	John Davey	491.34	536.07	1027.41
K 202234	Heavy Punch Eyeletting. Fit the above with a 2" spacing & change over 2 machines.			
	Walter Shaw	135.76	18.72	154.48
K 202335	Perfection Eyeletting. Change one machine in a manner to set lacing hooks. X3086			
		69.41	42.54	111.95

Order	Name	For the month of October	Previous	Total
K 209184	Duplex Eyelette Mch. Change method of bushing K341A Punch & Set Head.	238.16	36.02	274.18
		11968.24	133475.47	145443.31

The following list was sent to Mr. John Morton:

		11968.24	133475.47	145443.31
K 115341	Shoe Buttoning Machine. Make machine. Drawings, patterns and machine work. Enslein	197.51	5867.43	6064.94
K 202321	Knot Tying Machine. Knot tying Machine for tying the ends of thread, holding Button. X3069. Enslein	34.60	41.91	76.51
		12200.45	139384.81	151585.26

The following list was sent to Mr. Geo. Covell:

		12200.45	139384.81	151585.26
K 105408	Rex Pulling Over Machine. Make & apply to combination Laster & Puller at Victor Shoe, Salem, Automatic Wiring Device, Drawings, patterns and machine work. R. F. McFeeley.	9.29	2812.45	2821.74
K 165014	Rex Assembling Machine. Clamp for holding straight counters & locating back seam sketch dated Oct. 21, 1910, also changes for using Loose Tack. Drawings, patterns and machine work. O. Ashton	115.07	6406.56	6521.63

Order	Name	For the month of October	Previous	Total
K 188000	Shellac & Box Toe Gum Mch. Make one combination machine. Drawings, patterns and machine work. F. M. Furber	244.52	1159.26	1403.80
K 194787	Pulling Over Mch. Pincer Controlling Device to assist the wiper. X2007. O. Ashton.	8.06	138.68	146.76
K 202304	Rex Pulling Over. Improvements on Tip Measuring Device. X3047. Coombs	12.96	——	12.96
K 209230	Pulling Over Machine. Tip Measuring Device. X 3117. E. A. Galloway	97.25	——	97.25
K 209237	Turn Shoe Assembling Mch. Changes in Pincer Mechanism. O. Ashton	40.37	——	40.37
K 209238	Rex Pulling Over "C". Transverse movement of Pincer & Driver Mechanism. See X2135. R. F. McFeeley	114.73	——	114.73
		12842.77	149901.78	162744.55

The following list was sent to Mr. E. L. Keyes:

		12842.77	149901.78	162744.55
K 160793	Bed Lasting Machine. 3 Part Heel Wiper for above machines. Drawings, patterns and machine work Brock.	139.88	1126.59	1266.47
K 165010	# 5 Lasting Machine. Make a Revolving Toe Head for			

Order	Name	For the month of October	Previous	Total
	Right & Left Toes in same head.			
	Brook.	159.53	836.12	995.65
K 186836	Lasting Pincers. Spreading Pincers. (Closed Oct. 31, 1911)			
	Arthur McLeod	37.21	185.08	222.29
K 193188	H. M. Lasting Machine. Rotary Wiper to rotate in both directions.			
	R. F. McFeeley.	.86	1.16	2.02
K 194753	Lasting Machine §5. Mak- special set of wipers. X 2999.			
	Geo. N. Gordon	29.84	22.86	52.72
K 199426	§ 5 Lasting Machine. Apply Toe Rest Segmental Swing & change Toe Sliding Rod (Weinburg Type)			
	Arthur McLeod.	27.91	155.12	183.03
K 202305	Welt Butting Machine. Changes in machine made under X1304.			
	E. L. Keyes	66.25	90.52	167.77
K 202307	§ 5 Lasting Machine. Make one Rocking Sole Presser with two spring arms for Supporting Sole Plate.			
	M. Brook.	49.80	164.80	214.58
K 202325	Consolidated Hand Method Lasting Machine. Apply Mechanism for driving Staples horizontally and clinching on insole rib. X 3073.			
	Stiggins.	23.06	93.71	116.77
K 202216	Gdyr. Insole Heel Seat Trimming Machine. Ap-			

Order	Name	For the month of October	Previous	Total
	ply Rowe Insole Gauge Attachment.			
	L. M. Brown	79.31	37.56	116.87
K 209222	Bed Lasting Machine. Apply Improved Toe Mechanism with new side pressure			
	M. Brock	33.20	——	33.20
K 209224	Bed Lasting Machine. Apply Forms for Moulding Heel Band of a predetermined shape of Belata Gum.			
	M. Brock.	16.02	——	16.02
K 209228	Toe Moulding Machine. Make layout of machine for moulding toes preparatory to the lasting operation. X3125.			
	M. Brock.	60.84	——	60.84
K 209231	Tack Bending Device (Bench) Make one device for bending tacks after side lasting. X3128.			
	L. M. Brown & E. L. Keyes.	22.41	——	22.41
K 209232	Bed Lasting Machine. Apply to 3 part wiper Heel Mechanism a device to shift the Heel Band & Holder Transversly to the center line of the wiper movement. X3129.			
	Brock	76.37	——	76.37
		12667.25	152624.41	166291.66

The following list was sent to Mr. W. R. Sampson:

		12667.25	152624.41	166291.66
K 105417	Ideal Clicking Machine. Experimental work on			

Order	Name	For the month of October	Previous	Total
	cutting base material. Drawings, patterns and machine work.			
	M. B. Kaven.	5.87	2093.23	2099.10
K 108936	Hercules Leveller. Make & apply to above Machine Safety Device. Drawings, patterns and machine work.			
	E. N. Preble.	351.33	1524.46	1875.79
K 112112	Channel Flap Turning Machine. Make one machine for moulded work. Drawings, patterns and machine work.			
	E. N. Preble	49.54	708.10	757.64
K 117071	Hercules Leveller. Make Tests on British Shoe Holding Mechanism. Drawings, patterns and machine work.			
	Mayo & Simmons. Cr.	300.00	1262.41	962.41
K 128858	Upper Cementing Machine. Redesign the Brogan Machine. Drawings, patterns and machine work.			
	M. F. Br[illegible]an.	2.34	1515.88	1518.22
K 135507	Tip Repairing Machine. Make drawings & preliminary Experiments for applying enamel to Patent Leather Tips & make one new machine. Drawings, patterns and machine work.			
	F. M. Furber.	186.06	2889.19	3075.25
K 135521	Improved Edge Setter. Redesign Furber Machine made under X 1471 with a view to manufacturing.			

Order	Name	For the month of October	Previous	Total
	Drawings, patterns and machine work.			
	F. M. Furber.	15.77	2862.53	2878.30
K 148727	Sole Evening Machine. Changes in Sole Evening Machine developed under K 7813 and fitted with Grading Device. Drawings, patterns and machine work.			
	B. F. Mayo.	9.02	479.70	488.72
K 152302	Atlas Leveller. Make pressure Indicating Device. Drawings, patterns and machine work.			
	E. N. Preble.	39.22	1086.81	1126.03
K 154909	Fletcher Ironing Machine. Redesign Fletcher Ironing Machine. Drawings, patterns and machine work.			
	H. H. Eaton.	27.32	946.58	973.91
K 157393	Stitch & Upper Cleaner. Redesign Experimental Machine developed under X 1242. Drawings, patterns and machine work.			
	John Richardson.	82.60	1711.40	1794.00
K 165049	Fletcher Ironing Apply Improved Device for Ironing shoes interposing a paper between the iron and material to prevent soiling of material. Drawings, patterns and machine work.			
	P. J. Wentworth.	5.35	99.42	104.77
K 169680	McKay Sewing. Make one new type of machine to include an Automatic			

Order	Name	For the month of October	Previous	Total
	Stop & Thread Cutting Attachment. Drawings, patterns and machine work.			
	W. C. Meyer	762.79	5358.82	6121.61
K 169683	Planet Sole Rounder. Make new Knife Arm with Safety Block to prevent breaking of Knife. Drawings, patterns and machine work.			
	G. Julian.	13.28	393.62	407.00
K 174692	Imperial Heel Breasting Machine. Apply features of Wonder Worker Machine to U. S. M. Co's. Drawings, patterns and machine work.			
	Ralph Simmons.	448.57	1314.40	1762.97
K 182190	Shoe Cleaning Roll. Make one roll with guard to prevent the end of the Roll from coming in contact with the shoe. Drawings, patterns and machine work.			
	J. A. Brogan.	10.44	396.37	406.81
K 182199	Richardson Sole Sewing Drawings of New Needle Moving Mechanism. (Closed Oct. 20, 1911)			
	John Richardson.	1.01	359.32	360.33
K 186838	Victor Rolling Machine. Stationary Table & New Guard on Victor Rolling Machine. Drawings, patterns and machine work.			
	H. H. Eaton	2.52	91.36	93.88
K 186843	Sole Embossing Machine, (X2900). Make two			

Order	Name	For the month of October	Previous	Total
	machines containing automatic means to determine the thickness of the sole and impart a predetermined indentation. Drawings, patterns and machine work.			
	J. J. Heys.	636.04	2885.30	3521.34
K 186846	Gearless Sole Cutter, 3 ft. Equip machine with adjustable die for cutting to form the heel and shank portion of outsoles, stamping size numbers and trade mark on same ball & heel breast marks.			
		1.24	70.26	71.50
K 187987	Hercules Levelling Machine. Interchangeable Form Holder. (X2921) Drawings, patterns and machine work.			
	John Baer.	10.05	87.43	97.48
K 193181	Toe Softening Re-design Keyes Machine. (X 2943)			
	L. M. Brown	3.83	552.85	556.68
K 194754	Pyrographical Case & Stock Lining Marker. Make one complete machine. Drawing first.			
	H. W. Winter.	210.19	560.90	771.09
K 202314	American Twin Sole Moulding, "C". Device for Moulding Entire Spring Heels — from drawings dated Nov. 24, 1910. X3061.			
	E. N. Preble.	68.16	62.25	130.41

Order	Name	For the month of October	Previous	Total
K 202317	Edge Setting Machine. Apply Electric Heating Device, also device for Heating Spare Irons. Drawings only. M. F. Wallace & E. N. Preble.	52.69	251.74	304.43
K 202331	Heel Breast Scouring Machine. Device for scouring the breast of concave heels. W. R. Mudd.	76.28	15.01	91.29
K 202336	Cement Pot. Make drawings of a Cement Pot for holding cement & build one pot. W. C. Stewart	58.45	107.35	165.80
K 209206	Top Lift Scolloping Grading Attachment.	148.39	51.20	199.59
K 209208	Outsole Shank Flexing Fit up one machine with dies to cut serrations in the shank portion of soles. X3096 F. M. Furber.	129.02	6912.	198.14
K 209210	Heel Breast Lining Up Machine. Redesign above machine (Fletcher Type)	281.82	62.16	343.98
K 209211	Embossing Machine. Make one rotary embossing machine to emboss vamps by means of a wheel. W. A. Smith.	185.32	11.48	196.80
K 209214	Knurling Machine. Universal Jack Post for above X3103	37.74	29.82	67.56
K 209215	Furber Dispensing Can. Changes in above to			

Order	Name	For the month of October	Previous	Total
	conform to Fire Underwriters suggestions. F. M. Furber.	12.07	1.65	13.72
K 209217	Empire Splitting, "C". Change in Knife Carrier to raise Knife Gauge at a predetermined point. F. M. Furber.	55.25	——	55.25
K 209233	Goodyear Jointing Machine. Improvements in Cutting Mechanism. John H. Richardson.	45.61	——	45.61
		17302.54	182536.53	199929.07

The following list was sent to Mr. W. C. Willson.

		17302.54	182536.53	199929.07
K 99078	Block Leather Board Heels. Make experiment on making of above. J. Glidden, Winkley, Pope	38.68	702.37	741.05
K 102254	Davey Pegger. Apply Goddu Nailer Horn Release to Pegging Machine. Drawings, patterns and machine work. Geo. Goddu.	.99	495.86	496.85
K 102258	Zis Slugging Machine. Make Aotumatic Double Feeding Jack for Z. S. Drawings, patterns and machine work. L. A. Casgrain.	118.88	7639.30	7758.18
K 135505	Heel Attaching Machine. Make drawings of one new machine. B. F. Mayo	140.58	2180.40	2320.98
K 148731	Rand Tacking Machine. Make changes on machine]			

Order	Name	For the month of October	Previous	Total
	developed by Mr. Bond under X 1516. Drawings, patterns and machine work.			
	M. F. Brogan.	51.76	3210.29	3262.05
K 157374	Loose Nailer # 2. Make Automatic Jack and apply to above machine. Drawings, patterns and machine work.			
	Geo. Goddu.	1.87	2407.18	2409.05
K 180252	Automatic Heel Loading & Attaching Machine, B. Apply Pricking Attachment. Drawings, patterns and machine work.			
	Lester Glidden	126.80	3393.04	3520.84
K 186327	Xpedite Heel Finishing Machine (X2942) Apply Electric Heat to above.			
	Lee	23.80	225.28	249.08
K 186633	Loose Nailing # 2. Apply new Clutch Tripping and Locking Device. Drawings, patterns and machine work.			
	Geo. Goddu.	161.95	527.07	689.02
K 187996	Automatic Heel Loading & Attaching Mch. (X2928) Change Preliminary Pressure Device. Drawings, patterns and machine work.			
	Thos. Lund	488.48	1344.19	2332.67
K 194751	Nail Distributor. Changes for handling 2 lengths of nails to consist of Double Drum & 2 Sets of raceways.			
	B. F. Mayo	182.06	2064.38	2266.44

Order	Name	For the month of October	Previous	Total
K 194761	4 Compressor. Automatic Top Lift Feeding Mechanism to above. Thos. Lund	283.74	394.43	678.17
K 199482	Loose Nailing Machine # 2. Apply Heel Seat Trimming Attachment (Borden Type) Goddu & McKenzie	403.96	1076.71	1480.67
K 199487	Automatic Heel Loading & Attaching, "B". Changes to handle collar nails. B. F. Mayo.	166.54	451.15	617.69
K 199488	Loose Nailing Change # 8 Jack to make horn adjustable to different heights of Heel — as per sketch June 26 — 11. (X3027) Geo. Goddu.	2.63	50.66	53.29
K 199495	Universal Slugging Machine. Make one Jack as per sketch submitted by William Collette.	4.95	—	4.95
K 202306	McKay Rotary Trimmer. Redesign above to allow use of 4" cutters. John Standish.	11.88	428.07	439.95
K 202328	Monarch Counter Skiver. Side Gauges & Table. E. E. Lane	52.61	163.74	216.35
K 202333	Loose Nailer # 2. Adjustable Horn Yoke for Double Raceway. Geo. Goddu	8.16	157.35	165.51
K 202327	Staple Fastening Mch. "D". Equip one machine with special feed table mechanism. Jas. Brogan.	338.29	118.61	456.90

Order	Name	For the month of October	Previous	Total
K 202329	Velvet Box Toe Buffer. Make special dust guides for the above machine. (Order closed 10-3-11)			
	E. E. Lane.	13.36	102.48	115.84
K 202339	Premier Heel Pricking Construct one device for preventing heels from tipping. (Order closed 10-20-11)			
	Bliss & Lund	5.25	21.22	26.47
K 209202	Loose Nailing Machine. Guard Plate for protecting the soles of shoes.			
	Chas. Miner.	7.87	50.10	57.97
K 209209	Zig Slugger. Wire controlling Device.			
	L. A. Casgrain.	380.42	299.54	679.96
K 209212	Nail Trimming Machine, (Hyslop) Make improvements in the trimming mechanism.			
	Geo. Goddu.	35.20	——	35.20
K 209227	Loose Nailing Machine, # 2. Improved separator slide to be mounted on throat slide and run free from friction of head.			
	McKenzie & Goddu.	53.17	——	53.17
K 209234	Automatic Heel Loading, "B". Pneumatic Stop for Die Bed Spindle.			
	John Standish.	53.00	——	53.00
K 209236	Bresnahan Cam Levelling Machine. Changes for moulding box toes.			
	J. Brogan & T. Lund.	27.87	——	27.87
		20579.29	210567.95	231147.24

MISCELLANEOUS

Order	Name	For the month of October	Previous	Total
		20579.29	210567.95	231147.24
K 84	This order covers work for Patent Dept. consisting of making blueprint on any prints.	27.11	2103.04	2130.15
K 109934	Welt Butting & Tacking chine. Make one Welt Butting Machine fitted with Tacking mechanism & embodying the mechanism disclosed in the Winkley & Keyes Designs. Drawings, patterns and machine work.	774.26	13377.46	14151.72
K 141794	Campbell Cyclone Lock-stitch Mach. Rotary Thread Measuring Device for above machine. Drawing dated March 16, 1910			
	Topham	7.32	890.66	897.98
K 148726	Button Hole Sewing Machine. Make drawings of one machine, and preliminary changes.			
	G. S. Hill	1277.16	10002.13	11279.29
K 157387	Last Pulling Machine. Make one complete machine. Drawings, patterns and machine work.			
	B. F. Mayo	41.47	2813.60	2855.07
K 157389	Belt Shifting Device. Equip all machines with Belt Shifting Device. Drawings, patterns and machine work.			
	H. H. Eaton	80.20	3963.73	4043.93

Order	Name	For the month of October	Previous	Total
K 160782	Corner Counter Moulding Machine. Make drawings of a machine for moulding corners of counters to conform to the insole rib. Order closed Oct. 20, 1911.			
	M. Brock	1.62	282.92	284.54
K 165047	Tip Crimping. Make model of one machine, 1st model started Nov. 2, 1910. Drawings, patterns and machine work.			
	P. J. Wentworth.	136.10	923.84	1059.94
K 169682	Cam Developing. Drawings of one Cam Developing Machine using original Sketch & construct one Device.			
	E. E. Foster	222.67	2089.08	2311.75
K 169695	Automatic Stop Device. Make one complete to be used on various machines. See X2549. Drawings, patterns and machine work. Order closed 6-2-11.			
	L. E. Topham	141.88	12402.93	12544.81
K 174661	Pulling Over Machine. Preliminary Sketches of proposed changes of various parts of U.S.M.Co. P.O. & make assembly of same.			
	W. G. Stewart	17.03	2106.51	2123.54
K 174663	Imperial Heel Breasting. Make one adjustable Last Spindle for P.H.B. for Goodyear Work. Drawings, patterns and machine work.			
	L. A. Casgrain	191.70	379.91	571.70

Order	Name	For the month of October	Previous	Total
K 174678	Measuring. Drawings of 2 machines for measuring Irregular Areas & build one.			
	John J. Heys	480.83	2715.85	3196.68
K 174680	Heel Shaping Machine. Machine for shaping Heel of upper previous to assembling. Drawings, patterns and machine work.			
	M. Brock	200.27	1215.25	1415.52
K 174684	Insole. New method of making Heel Seats of Insoles. Drawings, patterns and machine work.			
	Jas. Brogan	82.91	250.83	333.74
K 174690	Wonder Worker Grinder. Modify present construction to provide for different U.S.M.Co. fixtures. Drawings, patterns and machine work.			
	G. F. Stewart	78.72	1744.49	1823.21
K 180268	Pieced Stay Machine. Make one machine. Drawings, patterns and machine work.			
	Frederick Anderson	174.73	4018.93	4193.66
K 184047	Lasting Machine. Make Toe Lasting Mechanism embodying a 3 part Clamping Device & a movable Jack. Drawings, patterns and machine work. Order closed 10/20/11			
	Eli Brothers	545.38	2081.46	2626.84
K 190041	Lubricating. Work on lubricating of various machines.			
	M. D. Phelan	66.42	1758.58	1825.00

Order	Name	For the month of October	Previous	Total
K 190042	Speed Balancing. Make machine for balancing machines at various speeds.			
	M. D. Phelan	46.70	686.26	732.96
K 193182	Royal Perforator. Changes for Embossing. Order closed 10/3/11.			
	W. A. Smith	113.20	499.54	612.74
K 193183	Shoe Rack. Make one Shoe Rack. Order closed 10/20/11			
	James Roach.	.83	256.43	257.26
K 193195	IVI Trade Marking. Make Improved Device for Marking IVI on D. T. Wire.			
	F. H. Perry	52.28	1586.89	1639.17
K 194750	Hand Pinking Mch. Equip machine with wheel for embossing Vamps. Order closed 10/3/11			
	W. A. Smith	.20	399.57	399.77
K 194765	Ideal Clicking Machine. Work on Cast Iron Die, also 6 sp. Dies for Clicking Mch. same to have converted edge. X3001.			
	Lynch.	101.68	348.41	450.09
K 194772	Button & Button Hole Locating Mch. Drawings of one machine. X3019.			
	Enslin	231.82	714.08	945.90
K 199485	Hand Lasting Pincers. Equip Pincers with Blade to gather the stock as the jaws are closed for Lasting pur-			

Order	Name	For the month of October	Previous	Total
	poses. X3020. Order closed 10-20-11.			
	M. Brock	1.66	61.80	63.46
K 202310	Stanborn Folding Mch. Apply work gage. X3054.			
	Joe Leary	9.88	15.39	25.27
K 202313	Cincinnati Milling Machine. Quick action chuck for holding cutter shank to spindle. X3058.	51.16	116.31	167.47
K 202318	Shoe Rack. Model of a Shoe Rack X3066			
	Jas. Brogan	90.37	39.35	129.72
K 202320	Toe Lasting Machine. Make 2nd design of Toe Lasting. 1st design made on X2869 X3068.			
	Eli Brothers	645.82	442.58	1088.40
K 202337	Alexander Oiler. Make technical tests & devise such means as may be necessary to gain the information sought. X3088.			
	Joe Reid	389.28	215.63	604.91
K 209192	Heel Scouring Machine. Make tests on grinding moulded boxes with Grafer & Emery Wheel.			
	O. Ashton	39.74	——	39.74
K 209219	Slug Cleaning Mch. Make a temporary device for testing the feasibility of making a machine which will properly clean slugs. X3109.			
	H. H. Eaton	9.00	——	9.00

Order	Name	For the month of October	Previous	Total
K 209243	Ultima Heel Trimmer & Cutter Grinder. Grinder for Grinding U. H. T. Cutters.			
	T. Lund & R. Simmons	3.31	——	3.31
		26914.09	281071.39	307985.48

Yours truly

UNITED SHOE MACHINERY COMPANY,

Experimental Department by Jas. Cavanaugh

DEFENDANTS' EXHIBIT 218.

[Put in Evidence, page 2979.]

COMPARISON OF EFFICIENCY OF LASTING DEPARTMENT MACHINES.

Machines under Lease:	Lasting Machines	Auxiliaries
March 1, 1900	4512	4503
March 1, 1911	7276	5499
Increased Percentage of Machines:		
1911 over 1900	61.2	35.6
Average Number of Pairs Operated upon per Machine in Calendar Year of		
1899	24,741	
1910	30,703	
Percentage of Increased Efficiency per Machine in Calendar Year of		
1910 over 1900	24	

COMPARISON OF EFFICIENCY OF HEELING DEPARTMENT MACHINES.

Machines under Lease:	Attaching Machines	Auxiliaries
March 1, 1900	1382	1180
March 1, 1911	2019	3160
Increased Percentage of Machines:		
1911 over 1900	46	167.8

Average Number of Pairs Operated upon per Machine in Calendar Year of	
1899	67,214
1910	109,142
Percentage of Increased Efficiency per Machine in Calendar Year of	
1910 over 1900	62.3

COMPARISON OF EFFICIENCY OF GOODYEAR DEPARTMENT MACHINES OF WELT SYSTEM.

Machines under Lease:	Welt Sewing	Outsole Stitching	Auxiliaries
March 1, 1900	853	1193	5561
March 1, 1911	1943	2676	13001
Increased Percentage of Machines:			
1911 over 1900	127.7	124.3	133.7
Average Number of Pairs Operated upon per Machine in Calendar Year of			
1899	26,612	19,960	
1910	44,380	33,847	
Percentage of Increased Efficiency per Machine in Calendar Year of			
1910 over 1900	66.7	69.5	

COMPARISON OF EFFICIENCY OF GOODYEAR DEPARTMENT MACHINES OF TURN SYSTEM.

Machines under Lease:	Sewing	Auxiliaries
March 1, 1900	485	1050
March 1, 1911	584	2539
Increased Percentage of Machines:		
1911 over 1900	20.4	141.8
Average Number of Pairs Operated upon per Machine in Calendar Year of		
1899	37,674	
1910	58,161	

Percentage of Increased Efficiency per Machine in Calendar Year of
1910 over 1900 54.3

DEFENDANTS' EXHIBIT 219.

[Put in Evidence, page 2006.]

A LIST OF THE VARIOUS STYLES OF MEN'S, WOMEN'S, MISSES', BOYS', YOUTHS', CHILDREN'S, LITTLE GENTS' AND INFANTS' SHOES.

A man's shoe may be manufactured in any one of the following styles:

Button — Whole Vamp or Seamless
" — Straight Fox & Vamps
" — Circular " " "
" — English Back Stay & Vamps
" — Circular Vamps
" — Oxford — Whole Vamps or Seamless
" " — Straight Foxing & Vamps
" " — Circular " " "
" " — " Vamps

Bal — Seamless Vamps
" — Straight Foxing & Vamp
" — Circular " " "
" — English Back Stay & Vamp
" — Circular Vamp

Oxford Lace — Seamless Vamps
" " — Straight Foxing & Vamps
" " — Circular " " "
" " — " Vamps

Blucher — Full Quarter & Vamps
" — Seamless Vamps
" — Straight Foxing & Vamps
" — Circular " " "

Blucher Oxford — Quarter and Vamp
" " — Seamless "
" " — Straight Foxing & Vamp
" " — Circular " " "

Congress — Seamless Vamps
" — Foxed Vamps
Creole — One Piece
" — Back & Front
Slipper — Vamp & Quarter
Pumps — One Piece
Boot — Front & Back (Long legged
Brogan — Vamp & Quarter
Outing Shoe — (Laced to tip of shoe)
Bare Foot Sandal
Bootee — Low Cut Boot
Napoleon — Boot
Cavalry — "
Cow Boy — "
Opera — "
Hunting Boot — (High Cut Blucher, Bellows tongue)
Marshall Congress
Romeo
Running Shoe
Golf Shoe
Skating Shoe

A woman's shoe may be manufactured in any one of the following styles:

Women's Ankle Ties — 2 Strap, 3 Strap } Quarters & Vamps
Women's Pumps — Full Seamless
Women's Oxford Lace Shoe — Seamless Vamp
Straight Foxing & Vamp
Circular Vamp
Women's Button Shoes — Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
Circular Vamp
Women's Blucher Shoe — Full Quarter & Vamp
Seamless Vamp

¾ Seamless Vamp
Straight Foxing & Vamp
Circular " " "

Women's Polish Shoe — Full Quarters & Vamps
Sandals — 1 to 12 Straps made to button High Cut
Felt Juliets
Felt Slippers
Knitted Top House Slippers
Buskins
Cloth Top Congress
Cavalier
Button Oxfords — Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
Circular Vamp

A misses' shoe may be manufactured in any one of the following styles:

Misses' Ankle Ties — 2 Strap — Quarters & Vamps
3 " — " " "
" Pumps — Full Seamless
" Oxford Button Shoe — Seamless Vamp
Straight Foxing & Vamp
Circular Vamp
¾ Seamless Vamp
" Oxford Lace Shoe — Seamless Vamp
Straight Foxing & Vamp
Circular " " "
" Blucher Shoe — Full Quarter & Vamp
Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
" Button Shoe — Seamless Vamp
¾ " "
Straight Foxing & Vamp

Circular Straight Foxing & Vamp
Circular Vamp
Sandals with 1 to 12 Straps made to button High Cut
Felt Juliets
Felt Slippers
Knitted Top House Slippers
Buskins
Cloth Top Congress
Cavalier

A boy's shoe may be manufactured in any one of the following styles:

Boy's Bal Shoe — Seamless Vamp
Straight Foxing & Vamp
Circular " " "
" Vamp
English Back Stay & Vamp

Boy's Button Shoe — Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
English Back Stay & Vamp
Circular Vamp

Boy's Blucher Shoe — Full Quarter & Vamp
Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "

Boy's High Cut Blucher Shoe — Full Quarter & Vamp
Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "

Boy's Lace Oxford Shoe — Seamless Vamp
Straight Foxing & Vamp
Circular " " "

Boy's Blu. Oxford Shoe — Quarters & Vamps

Outing Shoe — Laces to Tip of Shoe
Bare Foot Sandals — Full Vamp
Boys' & Youths' — Congress Shoe
Pump
Protection Cong. Buckle Fastening
Marshall Congress
Romeo
Bicycle Shoe
Running "
Golf "
Skating "
Long-Legged Boots (Copper toes)

A youth's shoe may be manufactured in any one of the following styles:

Bal — Seamless Vamp
Straight Foxing & Vamp
Circular " " "
Circular Vamp
English Back Stay & Vamp

Button — Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
English Back Stay & Vamp
Circular Vamp

Blucher — Full Qrtrs. & Vamps
Seamless Vamp
¾ Seamless Vamp
Straight Foxing & Vamp
Circular " " "

Lace Oxford — Seamless Vamp
Straight Foxing & Vamp
Circular " " "

Blucher Oxford — Qrtrs. & Vamps

Oxford — Seamless Vamp
Straight Foxing & Vamp

Circular Foxing & Vamp
Circular Vamp

Boy's Button Oxford Shoe — Seamless Vamp
Straight Foxing & Vamp
Circular " " "
" Vamp

Boy's Outing Shoe — Laces to tip of shoe
Boy's Bare-Foot Sandals — Full Vamp
Boys' & Youths' — Congress Shoe
Pump
Protection Cong., Buckle Fastening.
Marshall Congress
Romeo
Bicycle Shoe
Running "
Golf "
Skating "
Long-Legged Boot (Copper Toes)

Children's shoes may be manufactured in any one of the following styles:

Children's Polish Shoe — Full Quarter & Vamp
" Button Shoe — Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
Circular Vamp
" Blucher Shoe — Full Quarter & Vamp
Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
" Tie — 2 Strap } Full Qtr. & Vamp
3 Strap }

Children's Tie — 1 Strap Tie, Full Vamp
" Sandal — Bare Foot Sandals

Little gents' shoes may be manufactured in any one of the following styles:

Polish Shoe — Full Quarter & Vamp
Button " — Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " " "
Circular Vamp
Blucher " Full Quarter & Vamp
Seamless Vamp
¾ " "
Straight Foxing & Vamp
Circular " "
Tie 2 Strap, 3 Strap } Full Qtr. & Vamp
" 1 Strap Tie, Full Vamp
Sandal Bare Foot Sandal

An infant's shoe may be manufactured in any one of the following styles:

Lace — Seamless Vamp
" — Three-quarters Seamless Vamp
" — Straight Foxing & Vamp
" — Circular " " "
" — " Vamp
Button — Seamless Vamp
" — Three-quarters Seamless Vamp
" — Straight Fox & Vamp
" — Curved " " "
" — Circular Vamp

Ties
1-strap, 2- " , 3- " } Seamless Vamp Quarters & Vamp " " "

DEFENDANTS' EXHIBIT 220.

[Put in Evidence, page 2994.]

MEN'S SHOES ARE MADE:

Goodyear single sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart-channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

Goodyear one-half double sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart — channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

Goodyear full double sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart — channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

McKay sewed with
- One-half double sole.
- One-half double sole Fairstitched.
- Full double sole.
- Full double sole Fairstitched.
- Single sole.
- (All of above sometimes made pegged heel seats.)

McKay or mock welt with
- Single sole and welt — channeled outsole.
- Double sole and welt — channeled outsole.
- Single sole and welt — stitched aloft.
- Double sole and welt — stitched aloft.
- (All of above sometimes made pegged heel seats.)

Standard Screw
  Surface nailed.
  Channel nailed.
  Channel nailed — Fairstitched.
  (All of above sometimes made pegged heel seats.)
Pegged with
  2 and 3 — rows pegging.
  One-half double and full double sole.
Staple lasted stitchdown with
  Nailed heel seats.
  Sewed heel seats.
Stitchdown with
  Nailed heel seat.
  Sewed heel seat.
Turned with
  Nailed heel seat.
  Sewed heel seat.
Loose-nailed with
  Surface nailed.
  Channel nailed.
  Channel nailed — Fairstitched.

BOYS' SHOES ARE MADE:

Goodyear single sole and welt with
  Outsole stitched aloft all around.
  Outsole stitched aloft on forepart — channeled shank.
  Outsole stitched aloft on forepart and outside shank — inside shank channeled.
  Outsole channeled heel to heel.
Goodyear one-half double sole and welt with
  Outsole stitched aloft all around.
  Outsole stitched aloft on forepart — channeled shank.
  Outsole stitched aloft on forepart and outside shank — inside shank channeled.
  Outsole channeled heel to heel.

Goodyear full double sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart — channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

McKay sewed with
- One-half double sole.
- One-half double sole Fairstitched.
- Full double sole.
- Full double sole Fairstitched.
- Single sole.
- (All of above sometimes made pegged heel seats.)

McKay or mock welt with
- Single sole and welt — channeled outsole.
- Double sole and welt — channeled outsole.
- Single sole and welt — stitched aloft.
- Double sole and welt — stitched aloft.
- (All of above sometimes made pegged heel seats.)

Standard Screw
- Surface nailed.
- Channel nailed.
- Channel nailed — Fairstitched.
- (All of above sometimes made pegged heel seats.)

Pegged with
- 2 and 3-rows pegging.
- One-half double and full double sole.

Staple lasted stitchdown with
- Nailed heel seat.
- Sewed heel seat.

Stitchdown with
- Nailed heel seat.
- Sewed heel seat.

Turned with
- Nailed heel seat.
- Sewed heel seat.

Loose-nailed with
Surface nailed.
Channel nailed.
Channel nailed — Fairstitched.

YOUTHS' SHOES ARE MADE:

Goodyear single sole and welt with
Outsole stitched aloft all around.
Outsole stitched aloft on forepart — channeled shank.
Outsole stitched aloft on forepart and outside shank — inside shank channeled.
Outsole channeled heel to heel.
Goodyear one-half double sole and welt with
Outsole stitched aloft all around.
Outsole stitched aloft on forepart — channeled shank.
Outsole stitched aloft on forepart and outside shank — inside shank channeled.
Outsole channeled heel to heel.
Goodyear full double sole and welt with
Outsole stitched aloft all around.
Outsole stitched aloft on forepart — channeled shank.
Outsole stitched aloft on forepart and outside shank — inside shank channeled.
Outsole channeled heel to heel.
McKay sewed with
One-half double sole.
One-half double sole Fairstitched.
Full double sole.
Full double sole Fairstiched.
Single sole.
(All of above sometimes pegged heel seats.)
McKay or mock welt with
Single sole and welt — channeled outsole.
Double sole and welt — channeled outsole.
Double sole and welt — channeled outsole.
Single sole and welt — stitched aloft.

Double sole and welt — stitched aloft.
(All of above sometimes pegged heel seats.)
Standard Screw
Surface nailed.
Channel nailed.
Channel nailed — Fairstitched.
(All of above sometimes pegged heel seats.)
Pegged with
2- and 3- rows pegging.
One-half double and full double sole.
Staple lasted stitchdown with
Nailed heel seat.
Sewed heel seat.
Stitchdown with
Nailed heel seat.
Sewed heel seat.
Turned with
Nailed heel seat.
Sewed heel seat.
Loose-nailed with
Surface nailed.
Channel nailed.
Channel nailed — Fairstitched.

WOMEN'S SHOES ARE MADE:

Goodyear Single sole and welt with
Outsole stitched aloft all around.
Outsole stitched aloft on forepart — channeled shank.
Outsole stitched aloft on forepart and outside shank — inside shank channeled.
Outsole channeled heel to heel.
Goodyear one-half double sole and welt with
Outsole stitched aloft all around.
Outsole stitched aloft on forepart — channeled shank.
Outsole stitched aloft on forepart and outside shank — inside shank channeled.

Outsole channeled heel to heel.
Goodyear full double sole and welt with
Outsole stitched aloft all around.
Outsole stitched aloft on forepart — channeled shank.
Outsole stitched aloft on forepart and outside shank — inside shank channeled.
Outsole channeled heel to heel.
McKay sewed with
One-half double sole.
One-half double sole Fairstitched.
Full double sole.
Full double sole Fairstitched.
Single sole.
McKay or mock welt with
Single sole and welt — channeled outsole.
Double sole and welt — channeled outsole.
Single sole and welt — stitched aloft.
Double sole and welt — stitched aloft.
Standard screw
Surface nailed.
Channel nailed.
Channel nailed — Fairstitched.
Pegged with
2- and 3-rows pegging.
One-half double and full double sole.
Turned with
Full edge.
Thin edge.
Nailed seat.
Sewed seat.
Wood heels.
Stitchdown with
Nailed heel seat.
Sewed heel seat.

MISSES' SHOES ARE MADE:

Goodyear single sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart — channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

Goodyear one-half double sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart — channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

Goodyear full double sole and welt with
- Outsole stitched aloft all around.
- Outsole stitched aloft on forepart — channeled shank.
- Outsole stitched aloft on forepart and outside shank — inside shank channeled.
- Outsole channeled heel to heel.

McKay sewed with
- One-half double sole.
- One-half double sole Fairstitched.
- Full double sole.
- Full double sole Fairstitched.
- Single sole.

McKay or mock welt with
- Single sole and welt — channeled outsole.
- Double sole and welt — channeled outsole.
- Single sole and welt — stitched aloft.
- Double sole and welt — stitched aloft.

Standard screw
- Surface nailed.
- Channel nailed.
- Channel nailed — Fairstitched.

Pegged with

2- and 3-rows pegging.
One-half double and full double sole.
Turned with
Full edge.
Thin edge.
Nailed seat.
Sewed seat.
Wood heels.
Stitchdown with
Nailed heel seat.
Sewed heel seat.

CHILDREN'S SHOES ARE MADE:

Goodyear single sole and welt with
Spring heel — channel stitched.
Outside heel — aloft stitched.
McKay sewed with
One-half double sole.
Double sole — Fairstitched.
Turned with
Spring Heel.
Extension edge.
Underwedge.
Stitchdown with
Nailed heel seat.
Sewed heel seat.

DEFENDANTS' EXHIBIT 221.

[Put in Evidence, page 2996.]

MACHINERY, FINDINGS, AND SUPPLY DEALERS, ADVERTISING IN TRADE PAPERS, YEARS 1899, 1900, 1901 AND 1902 WHICH WE DID NOT PURCHASE.

American Electrical Heater Company, Detroit, Michigan — Tools
Arabol Manufacturing Company, New York — Cement Paste
Arnold, Wm. B., No. Abington, Mass.— Lasts
Atlas Tack Company, Taunton, Mass.— Findings
Baeder Adamson & Company, New York & Boston

Bartlett, Edwin E., Boston — Shoe Machinery
Beaudry, J. T., Marlboro, Mass.— Dies
Behrens, C., Alfeld a. d. Leine, Germany — Lasts
Belcher, Geo. E., Stoughton, Mass.— Lasts
Blake Pattern Company, Haverhill —
Brockton Folding Machine Company — Shoe Machinery
Brockton Last Company, Brockton —
Brockton Mallet Company, Brockton —
Buckley, Wm. C., New York — Goodyear Welting Manufacturers
Buzzell, & Company, J. G., Boston — Shoe Machinery
Carborundum Company, The, Niagara Falls, Boston — Carborundum
Dancel, C., New York — Shoe Machinery
Dow, F. Irving, Boston — Shoe Machinery
Dunbar & Company, W. L., Brockton — Patterns
Fallon, W. J., Boston — Findings
Farnsworth, Hoyt & Company, Boston — Eyelets
Flagg Mfg. Company, Boston — Shoe Machinery
Gale Bros., Quebec, Canada — Findings
Gardner, Thos. W., Lynn — Lasts
Gayner, I. P., Brockton, Mass.—Folded Leather Seam Stay, Piping and Binding
Globe Buffer Company, Boston — Shoe Machinery
Golbert, R. L., Worcester, Mass.— Lasts
Grey & Earle, Brockton, Mass.— Shoe Patterns
Haverhill Last Company — Lasts, Dies & Patterns
Hauthaway & Sons, C. L., Boston — Paste Cement
Hawkins, J. B., Boston, Mass.— Shoe Machinery
Holmes, Benj. E., Swampscott, Mass.— Knives
Holt & Co., J. S., Boston — Rebuilt Shoe Machinery
Ideal Flexible Insole Company, Boston —
Jones, Benj. R., Lynn — Needles
Kent & Smyth, Lynn — Dressings & Blackings
Knight & Co., Geo., Brockton, Mass.— Shoe Machinery
Libby, Justin P., Lynn, Mass.— Dressings & Blackings
Libby & Estes, Lynn, Mass.— Dressings & Blackings

Livingston & Doughty, Leicester, England — Shoe Machinery & Findings
Lockett Crimping Machine Company, Brockton
Loring Coes & Co., Worcester, Mass.— Splitting & Skiving Knives
Lufkin, R. H., Boston, Mass.— Shoe Machinery
Lynn Blacking Company, Lynn —
Magic Stain Company, Boston —
Mawhinney Last Company, Brockton, Mass.—
McCarter, J. G., Boston — Welting
Merriam, M. H., Boston — Welting
Merrick Sewing Machine Company, Boston —
Miller Company, Frank — New York — Dressing
Montgomery Last Company, The, Newark, N. J.
Morley Button Sewing Machine Company, Boston, Philadelphia & New York
National Shoe Finishing Company, Lynn, Mass.—
New England Blacking Company, Boston —
Paul's Sons, P. P., Philadelphia, Rochester, N. Y.— Shoe Patterns and Lasts
Peckham & Co., J. E., Boston — Wax
Peerless Laster Company, Boston, Mass.— Shoe Machinery
Peerless Machine Company, Boston, Mass.— Shoe Machinery
Perkins, Charles S., Brockton — Amazeen Knives
Pierce, C. S., Brockton —
Pope & Co., Arthur W., Boston, Findings
Puritan Mfg. Company, Boston — Shoe Machinery
Reece Buttonhole Machine Co., Boston —
Roarty, J. A., Boston & E. Weymouth — Findings
Rockland, Welting Company Rockland, Mass.— Welting
Sewing Machine Supplies Co., Boston —"Baby" Checking Crayons
Shoe Mfgrs' Supplies Company, New York — Shoe Covers
Smith & Dove Mfg. Co., Andover, Mass.— Findings
Standard Shoe Machinery Company, Boston —
Standard Shoe Tying Machine Company, Boston —
Stewart Bros., Lynn — Shoe Machinery
Stewart, W. C., Lynn — Shoe Machinery

Stevens, & Company, F. M., Boston — Blades, Cutters, etc.
Tackless Shoe Machinery Co., Boston, Mass.
Thurber & Wade, Brockton, Mass.— Dressing, Inks
Tripp Giant Leveler Company, Lynn — Shoe Machinery
Union Edge Setter Company, Boston, Mass.— Shoe Machinery
Union Special Sewing Machine, Chicago, New York, Boston & Philadelphia
Western Stain & Dressing Co., Elgin, Ill.— Dressings & Blackings
Wheeler & Cummings, Boston — Shoe Patterns
Wheeler & Wilson Mfg. Co., Bridgeport, Ct.— Shoe Machinery
Whitcher & Company, Frank W., Boston — Laces, Hooks, Eyelets
Worcester Pattern Company, Worcester, Mass.
Young & Sons, John D., Boston — Shoe Mfrs. Goods
Young, W. J., Lynn, Mass.— Shoe Machinery

DEFENDANTS' EXHIBIT 222.

[Put in Evidence, page 2998]

"A" VOLUME — EXPERIMENTAL.

Mr. S. W. Winslow:

IDEAS, SUGGESTIONS AND INVENTIONS SUBMITTED TO THE EXPERIMENTAL DEPARTMENT OF THE UNITED SHOE MACHINERY COMPANY FROM JUNE 23, 1904, TO DECEMBER 12, 1911, BY PERSONS OTHER THAN THOSE EMPLOYED BY THE UNITED COMPANY AS INVENTORS, WHICH IDEAS, SUGGESTIONS AND INVENTIONS HAVE NOT BEEN PURCHASED OR ACQUIRED BY THE UNITED COMPANY.

From June 23, 1904, to December 12, 1911, there was submitted to the Experimental Department of the United Shoe Machinery Company by persons other than inventors employed by the United Company, 493 suggestions and inventions which were not purchased or acquired by the United Company. Of the 493 cases 378 were submitted by persons not employed by the Company in any capacity; 115 were submitted by persons in the employ of the United Company, but not employed as inventors.

These ideas, suggestions and inventions have been submitted to us without solicitation on our part. They cover a very wide range

DEFENDANTS' EXHIBIT 221 A.

[Put in Evidence, page .]

MACHINERY, FINDINGS AND SUPPLY DEALERS, ADVERTISING IN TRADE PAPERS, YEARS 1899, 1900, 1901 AND 1902 WHICH WE DID NOT PURCHASE.

American Electrical Heater Company, Detroit, Michigan — Tools (in business)

Arabol Manufacturing Company, New York — Cement Paste (in business)

Arnold, Wm. B., No. Abington, Mass.— Lasts (in business)

Atlas Tack Company, Taunton, Mass.— Findings

Baeder, Adamson & Company, New York and Boston

Bartlett, Edwin E., Boston — Shoe Machinery (not in business)

Beaudry, J. T., Marlboro, Mass.— Dies (in business)

Behrens, C., Alfeld a.d. Leine, Germany — Lasts (in business)

Belcher, Geo. E., Stoughton, Mass.— Lasts (in business)

Blake Pattern Company, Haverhill (not in business)

Brockton Folding Machine Company — Shoe Machinery (not in business)

Brockton Last Company, Brockton (in business)

Brockton Mallet Company, Brockton (in business)

Buckley, Wm. C., New York — Goodyear Welting Manufacturers (in business)

Buzzell & Company, J. G., Boston — Shoe Machinery

Carborundum Company, The, Niagara Falls, Boston — Carborundum

Dancel, C., New York — Shoe Machinery (not in business)

Dow, F. Irving, Boston — Shoe Machinery (not in business)

Dunbar & Company, W. L., Brockton — Patterns (in business)

Fallon, W. J., Boston — Findings (in business)

Farnsworth, Hoyt & Company, Boston — Eyelets (in business)

Flagg Mfg. Company, Boston — Shoe Machinery

Gale Bros., Quebec, Canada — Findings (in business)

Gardner, Thos. W., Lynn — Lasts (in business)

Gayner, I. P., Brockton, Mass.— Folded Leather Seam Stay, Piping and Binding (not in business)

Globe Buffer Company, Boston — Shoe Machinery

Golbert, R. L., Worcester, Mass.— Lasts (in business as Golbert Last Co.)

Grey & Earle, Brockton, Mass.— Shoe Patterns (in business as Earle Pat. Co.)

Haverhill Last Company — Lasts, Dies & Patterns (not in business)

Hauthaway & Sons, C. L., Boston — Paste Cement

Hawkins, J. B., Boston, Mass.— Shoe Machinery (not in business)

Holmes, Benj. E., Swampscott, Mass.— Knives (in business)

Holt & Co., J. S., Boston — Rebuilt Shoe Machinery (in business)

Ideal Flexible Insole Company, Boston — (not in business)

Jones, Benj. R., Lynn — Needles (not in business)

Kent & Smyth, Lynn — Dressings & Blackings (in business)

Knight & Co., Geo., Brockton, Mass.— Shoe Machinery

Libby, Justin P., Lynn, Mass.— Dressings & Blackings (not in business)

Libby & Estes, Lynn, Mass.— Dressings & Blackings (not in business)

Livingston & Doughty, Leicester, England — Shoe Machinery & Findings (in business)

Lockett Crimping Machine Company, Brockton

Loring Coes & Co., Worcester, Mass.— Splitting & Skiving Knives (in business)

Lufkin, R. H., Boston, Mass.— Shoe Machinery (in business)

Lynn Blacking Company, Lynn (in business)

Magic Stain Company, Boston (not in business)

Mawhinney Last Company, Brockton, Mass.— (in business)

McCarter, J. G., Boston — Welting (in business)

Merriam, M. H., Boston — Welting (in business)

Merrick Sewing Machine Company — Boston

Miller Company, Frank, New York — Dressing (in business)

Montgomery Last Company, The, Newark, N. J. (not in business)

Morley Button Sewing Machine Company, Boston, Philadelphia & New York

National Shoe Finishing Company, Lynn, Mass. (in business)

New England Blacking Company, Boston (in business)

Paul's Sons, P. P., Philadelphia, Rochester, N. Y.— Shoe Patterns and Lasts (in business)

Peckham & Co., J. E., Boston — Wax (in business)
Peerless Laster Company, Boston, Mass.— Shoe Machinery (not in business)
Peerless Machine Company, Boston, Mass.— Shoe Machinery
Perkins, Charles S., Brockton — Amazeen Knives (in business)
Pierce, C. S., Brockton (in business)
Pope & Co., Arthur W., Boston — Findings (in bankruptcy)
Puritan Mfg. Co., Boston — Shoe Machinery
Reece Buttonhole Machine Co., Boston
Roarty, J. A., Boston & E. Weymouth — Findings (in business)
Rockland Welting Company, Rockland, Mass.— Welting (in business)
Sewing Machine Supplies Company, Boston —"Baby" Checking Crayons (in business)
Shoe Mfrs. Supplies Company, New York — Shoe Covers (in business)
Smith & Dove Mfg. Co., Andover, Mass.— Findings (in business)
Standard Shoe Machinery Company, Boston (not in business)
Standard Shoe Tying Machine Co., Boston (in business)
Stewart Bros., Lynn — Shoe Machinery (in business)
Stewart, W. C., Lynn — Shoe Machinery (not in business)
Stevens & Co., F. M., Boston — Blades, Cutters, etc. (not in business)
Tackless Shoe Machinery Company, Boston, Mass. (not in business)
Thurber & Wade, Brockton, Mass.— Dressings, Inks (in business)
Tripp Giant Leveler Company, Lynn — Shoe Machinery
Union Edge Setter Company, Boston, Mass.— Shoe Machinery
Union Special Sewing Machine, Chicago, New York, Boston & Philadelphia (in business)
Western Stain & Dressing Co., Elgin, Ill.— Dressings & Blackings (in business)
Wheeler & Cummings, Boston — Shoe Patterns (in business)
Wheeler & Wilson Mfg. Co., Bridgeport, Ct.— Shoe Machinery
Whitcher & Company, Frank W., Boston — Laces, Hooks, Eyelets (in business)
Worcester Pattern Company, Worcester, Mass. (not in business)
Young & Sons, John D., Boston — Shoe Mfrs. Goods (in business)
Young, W. J., Lynn, Mass.— Shoe Machinery

from the simplest device to intricate and complex mechanisms of automatic machinery. They have been submitted in the shape of verbal suggestions, sketches, models, and in some cases completed machines. Each case has had careful investigation by the Experimental Department. A very large percentage of the ideas have been submitted to the Patent Department of the United Shoe Machinery Company for their opinion, and very many have been gone over in conference by the Experimental Department, the Patent Department, and the Commercial Department which each particular idea, suggestion or invention would affect.

EXPERIMENTAL DEPARTMENT,
By JAS. CAVANAGH.

JC-JM

Name	Address	Date	Device
Gilman, Dan'l	Exeter, N. H.	Apr. 27, 1905	Auto. Heel Trimming & Burnishing Machine
Beadle, G. W.	450 Summer St., W. Lynn, Mass.	Sept. 1, 1905	Elec. Heated Welt and Turn Mach.
Borden, Wm. H.	Winchester, Mass.	Apr. 18, 1905	Springs — for Loose Nailer
Tower Bros.		May 12, 1905	Heel Finishing Mch.
Lindenberg, M. F.	Sweden	Aug. 2, 1904	
Houghtaling, Mr.		Oct. 21, 1904	Friction Clutch Mod.
Delaney, H. J.	22 Cedar St., Nashua, N. H.	Jan. 18, 1905	Lasting Machine
Wilbur, H. J.		Sept. 14, 1905	Spindles on Rapid Standard Screw Mch.
Eldridge, Henry	Rochester	Apr. 21, 1905	Heel Building Mch.
Kenney, Mr.	Brockton Office	July 17, 1905	Twin Sole Moulder
Clark		Sept. 16, 1905	Channeling Rounding & Leveling Machine
Leahy, Mr.	Neptune St., W. Lynn, Mass.	Mar. 16, 1905	Electrical Heating Device for Gdyr. Machine
Whitcomb	Haverhill, Mass.	May 16, 1905	
Welch & Landregan	Lynn	Mar. 17, 1905	Insole
Bond, Mr.		July 27, 1904	Feeding Device
Ball, Mr.	So. Braintree	Jan. 28, 1905	Tripping Device
Hanan, Mr.	Lynnfield	Oct. 17, 1909	Two Thread ?
Jarvis, Mr.	Boston	Aug. 22, 1904	Foot Power Machine to Cut Rands
Kelley, Supt.	Milford S. Fy.	Nov. 17, 1904	Device for Drawing out Tacks, which holds the Insole to Last on Gdyr. Welt Shoes while being sewed.

Name	Address	Date	Device
Siers, Tony	Marsluff S. Co.	Oct. 25, 1904	Thread Fingers for Welt & Turn Machine
Fulcher's, W. H.		Oct. 17, 1904	Clutch
Operator	C. H. Moulton's Fy., Lynnfield, Mass.	Sept. 15, 1904	Device to carry two threads to the Turn Shoe Sewing Mch.
Larket, Mr.		June 23, 1904	
Pease, Mr.		Aug. 24, 1904	Special Self-Adjust Spring Heel Rest
Pope, I. H.	Winchester, Mass.	Jan. 27, 1905	Combination Tap Trimming & Impression Stitch Device
Pinkham, Mr.		Aug. 30, 1905	Bench Turning Mach. for Turning Turned Shoes.
C. K. Fox's Fcty.	Haverhill, Mass.	Oct. 17, 1904	Heeling Machine
Tapley, R. P.	Haverhill, Mass.	Sept. 23, 1905	Self-Locking Nut to a Bolt
Frost, Mr.	Lynn, Mass.	Sept. 23, 1905	Condensing of Top Pieces
Williams, Mr.		Sept. 20, 1905	Feed Rolls Skiving Machine
Machinist (Timothy McKinney)	Newport Shoe	Aug. 8, 1905	Gauge to Lay Soles
Perri, A.	10 Myrtle St., Haverhill, Mass.	Dec. 9, 1904	Machine for Heeling and Slugging
Hayden, J. C.	Brockton	July 29, 1905	Heel Building, Pasting, Gouging, Stacking, Distributing and Delivering Mach.
Cavanagh, J., Jr.	Boston, Mass.	May 9, 1907	Pneumatic Buffing Roll
LaChapelle, E.		Nov. 8, 1906	Shoe Repairing Method or Process Relating to the Welt Outsole Stitching Operation, in the Repairing of Boots and Shoes
Brogan, M. F.	Beverly	Apr. 13, 1907	False Welt Attachment for Gdyr. Rapid Stitcher (Docket No. X-1179)
Lamkin, J. A.	Lynn	Oct. 27, 1906	Tack Saving Mach.
Alley, F.	Boston	Sept 21, 1907	Device for Welter
Harlow, Mr.	Hudson	Nov. 9, 1904	Device for Heeling Machine for Getting Nails Quicker
Raymond, Mr.	Brockton, Mass.	May 11, 1905	Lining Cementing Mach.
Howe, Elmer P.	?	Aug. 23, 1904	Cementing Mach.
Gordon, Mr.	Lynn Office	Aug. 23, 1904	Cementing Mach.
?	?	June 23, 1904	Toe Tip Measure
De Varney, H. J.	22 Cedar St.	Jan. 17, 1905	Spring Adjusting Device for the Hand Method Lasting Machine

Name	Address	Date	Device
Sinclair, Mr.	?	Oct. 7, 1904	Gear on the Planet Sole Rounder
Homan, A. B.	Lynnfield, Mass.	Oct. 21, 1904	Two Thread Attachment for Welt Machine
Harlow, Mr.	c/o Knott & Pope Co., Hudson, Mass.	Nov. 2, 1904	Device for Heeling Machine
Eppler, Henry	?	Aug. 4, 1904	Looper for Eppler Welt & Turn Machine
Operator	C. H. Moulton's	Sept. 23, 1904	Two Tension Device
?	?	Oct. 1, 1904	Clutch Mechanism
Bowen, Mr.	?	Nov. 14, 1907	?
Small, C. C.	?	Nov. 3, 1904	Counter Moulding Machine
Howe, Mr.	Auburn, Me.	Oct. 7, 1907	New Hinge Last; also Thimble for same
Esselen, H.	Boston	Dec. 8, 1905	Nail Swaging and Heading Machine
Howe, Henry E.	Auburn	Oct. 30, 1907	Last Hinge & Bushing
William, H. A.	?	Nov. 3, 1904	Machine for Making Steel Balls
Winkley, E. E.		May 10, 1906	Baltimore Edge Attachment for Rapid Stitcher
Crapeau, Mr.	Haverhill	Jan. 23, 1905	Machine for Making Pieced Taps
Bazzoni, L. Z.	Swampscott	Sept. 7, 1907	Heel Rounder
Bond, W. A.	Beverly	Apr. 6, 1906	Shoe Feeding Device
Winchester, J. D. and Greenlaw, C. W.	?	Apr. 2, 1906	Last
Willis, Martin	Geo. E. Keith, Brockton	July 22, 1907	Ground Cork Mixture used for filling the bottom of Goodyear Welt Shoes
Lane, E. E.	?	July 29, 1907	Machine for Nicking Shoulder of Innersoles
?	?	Oct. 13, 1904	Spindle Adjusting and Locking Device for the Hercules Leveler
Prindel, Edw. J.		Sept. 13, 1905	Chain Stitch Sewing Machine
Kourian	?	Nov. 27, 1907	Combination Hand Pincers and Pinking Device
Lane, E. E.	?	Oct. 18, 1907	Improved Form of Sectional Feed Roll for use on Skiving Machine
Lane, E. E.	?	Oct. 18, 1907	Tandem Counter Skiving Machine
Lane, E. E.	?	Oct. 18, 1907	Leather Splitting & Grading Machine

Name	Address	Date	Device
Daniels, Dan		Apr. 29, 1907	Improvements in Leather Skiving Machine
LaChapelle, Mr.		Dec. 17, 1906	Tack Pot for Hand Method Lasting Machine
Wolfe, Geo.		Dec. 7, 1906	Edge Gage for Goodyear Channeler
Beadle		Apr. 25, 1906	Electro-Magnetic Sole Pressing Machine
Small, W. E.	Garside Factory, New York, N. Y.	July 22, 1907	Rounding and Channeling Machine
Smith, F. J.	Brockton	Feb. 9, 1905	Improvements on the No. 4 Compressor
Cavanagh, Mr.	Boston	July 3, 1907	Supporting Slide and Driving Bar Stop Device
Schutx, C. F.	Milwaukee, Wis.	Sept. 15, 1904	Leveling Machines
Brown, A. H.	Lynn	Sept 19, 1907	Hook for Lace Shoes
Lane, E. E.	Stoughton	Nov. 30, 1907	Three Point Outer Sole Splitter
Whitcomb, H. L.	Nashua	May 29, 1907	?
Brewer, A. G.	?	July 19, 1906	Welt Slashing Machine
Gillespie	Boston	Sept. 17, 1909	Ball Twin Direct Pressure Sole Leveler
Gordon, Wm.	Boston	Aug. 22, 1904	Device on Consolidated Lasting Machine
LaChapelle		May 15, 1907	Turn Shoe Leveling Machine
Small, W. E. & R. Campbell	?	Mar. 6, 1907	Shoe Sole Trimming & Channeling Machine
Reilly, John W.	?	Jan. 9, 1907	Inseam Trimming Machine
Riel, Geo.	?	Oct. 16, 1906	Welt Sewing Attachment for the Puritan Sewing Machine
Gillespie	Boston	Sept. 19, 1906	Heel Clamp for the Hercules Leveler
Fish, Mr.	?	June 28, 1906	Improvements in Sewing Machines
Reilly, J. J.	Stoneham	Dec. 27, 1906	Inseam Trimming Machine
Easelen, H. M.	Boston	July 20, 1906	Nail Marking Machine
Beck, Wm.	St. Paul	May 17, 1906	Shoe Construction
Bevinie, D. W.?	New York	Feb. 15, 1906	Machine for Sorting Toplifts
Collyer, Wm. C.	Reading, Mass.	Aug. 29, 1906	Leveling Machine
Morse, Mr.	Cincinnati Office	Nov. 21, 1905	Spring Pins
Dow, J. L.	Haverhill Office	Sept. 14, 1905	Welt Pulling Device
Merrithew, L. A.	Milford, Mass.	Feb. 19, 1906	Feed Wheel for Rand Turning Machine

Name	Address	Date	Device
Murphy, Mr.	c/o John O'Connell & Sons Co., Marlboro, Mass.	Mar. 17, 1906	Device for McKay Sewing Machine
Whiting, J. N.	659 Liberty St., Rockland, Mass.	Oct. 12, 1906	Shank Marking Device
Stewart, Wm.	?	June 16, 1906	Auto. Counter Moulding Machine
Krohn, Mr.	c/o Krohn, Fechheimer & Co.	June 16, 1906	Several Devices see letter from Mr. W.C.W. to Mr. B.F.M.
Brewer, A. G.	Natick, Mass.	Mar. 2, 1906	Welt Slasher
Stewart	Lancaster	June 7, 1906	Moulding Machine
Shaw, Linus	?	May 15, 1906	Glue
Operator	Regal Shoe Co.	Mar. 17, 1906	Pasting Device
Hooker	Cincinnati	Mar. 21, 1906	?
Haverhill Office		Feb. 9, 1906	Improvement in the Cover for the Wax Pot upon the Goodyear Bobbin Winder
Pinkham	Haverhill	July 27, 1905	Turning Iron
Parkin ,James	?	Oct. 31, 1905	Sole Cutting Machine
Ashton	Boston Office	Apr. 13, 1909	Clicking Press
Adams, W. E.	14 Hardy St., Salem, Mass.	Jan. 29, 1910	Direct Pressure Leveler
Adams, George H.	19 Broad St. Pl., Lynn, Mass.	Dec. 31, 1910	Device to Punch out Paste and Fold Composition Heels
Ashman, Walter	#3 Sampson St., Spencer, Mass.	Feb. 21, 1911	Planing Device for Clicking Press Block
Adams, Geo. H.	19 Broad St. Pl., Lynn, Mass.	Apr. 19, 1911	Mach. to Form Heels from Leatherboard Stock
Bobstetter, H. A.	Portsmouth, O.	Feb. 14, 1908	Edge Setting Iron
Brogan, James	Boston Office	June 23, 1908	Automatic Swing of Arm
Barton	c/o Marston & Brooks, Danvers, Mass.	July 28, 1908	Tack Stopping Device — C.H.M. Laster
Bond	Beverly Office	Sept. 4, 1908	Stitched-Down Laster
Bond, Mr.	Beverly Office	Oct. 10, 1908	Continuous Welt
Brogan, James	Boston Office	Oct. 10, 1908	Device on Welter to Support Insole Shoulder
Baldwin, W. E.	Chicago, Ill.	Nov. 16, 1908	Shoe Creasing Machine
Beckman, F. E.	Haverhill, Mass.	Mar. 16, 1909	Welt Beater and Inseam Trimmer
Brogan, M. F.	Boston Office	Dec. 29, 1908	Tag Holder Clicking Pres
Burns, Robert	Brockton Office	Dec. 30, 1908	Scraper for Ideal Clicking Machine Block
Beckman, Frank		Mar. 19, 1909	Channel Guide Lever
Bergstron		Apr. 5, 1909	Pulling back the Welt in the Gdyr. Welter

Name	Address	Date	Device
Brogan, M. F.	20 Avon St., Lawrence, Mass.	Oct. 16, 1909	Horn Release
Bassett, Chas. E.	Wethersfield, Ct.	May 24, 1910	Means for Holding Insole Tacks
Bush, Charles		June 15, 1910	Cement Receptacle
Buchanan, B. G.	Ashland, Wis.	Oct. 20, 1910	Device for Shoe Laces
Batterson, Arthur B.	87 E. 18th St., Portsmouth, O.	Oct. 27, 1910	Clicking Press Planing Device
Brogan, M. F.	Boston, Mass.	Dec. 20, 1910	Clamp for Temporarily Holding Wood Heels
Brumett, H. H.	14 Maple St., Natick, Mass.	Jan. 10, 1911	No-Slip Pulley Cement
Barton,	c/o Packard, Marston & Brooks, Danvers, Mass.	Mar. 13, 1911	Stopping Device for Consolidated Lasting
Bowe, D. W.	Van Wirt, O.	Mar. 11, 1911	Lacing Device
Boynton, Jos. J.	Bartow, Fla.	Mar. 23, 1911	Shoe Fastener
Boswell, F. G.	Boston, Mass.	Apr. 12, 1911	Waxing Device for Sewing Machines
Cheesman, G. R.	Auburn, N. Y.	Feb. 12, 1908	Welt Machine
Champine, F. L.		June 23, 1908	Edge Trimming Machine
Corrow, Thomas	Lynn, Mass.	Aug. 28, 1908	Feeding Mechanism for Rounder & Channeler
Clark, J. H.	No. Marshfield, Mass.	Oct. 5, 1908	Heeling Machine
Condon, Mr.	Brockton, Mass.	Mar. 3, 1909	Goodyear Insole
Canty, Michael		Sept. 14, 1909	Counter Skiving Machine
Clark, Geo. H.	Allston, Mass.	Jan. 11, 1910	Stitchdown Shoe
Charpentier, Philip	Auburn, Me.	Jan. 15, 1910	Heel Scouring Machine
Curry, C. I.	Lock Box 834, Otsego, Mich.	May 16, 1910	Shoe Lace Device
Clark, J. H.		May 17, 1910	Lacing Stud
Cook, Irving A.	Lancaster, O.	June 20, 1910	Shoe Last
Coudreau, Mr.	France	July 1, 1910	Innersole
Carle,	58 Tree St., Portland, Me.	July 13, 1910	Guard for Rapid Outsole Stitcher
Cloutier, Sam	174 Lincoln St., Auburn, Me.	Aug. 3, 1910	Metallic Lacing Device
Ciccone, R. P.	Lancaster, Pa.	Sept. 12, 1910	Cobblers' Repair Last
Collins, J. E.	298 Cabot St., Beverly, Mass.	Dec. 28, 1910	Oiling Device; also Pneumatic Tire Protection
Clark, H. E.	Accord, Mass.	Jan., 1911	Shoe Upper Spreading Device
Cummings, H. H.	Boston, Mass.	Mar. 6, 1911	Nailing Machine
Collins, A. A.		Mar. 27, 1911	Preparing Spring Heel Soles
Dennison, Wm.	826 Canal St., New Orleans, La.	Dec. 7, 1908	Beveling Shank Machine

Name	Address	Date	Device
Deizile,	P. O. Box 55, Stillwater, Minn.	July 12, 1909	Bed Lasting Machine
Dennison, Wm.	Canal St., New Orleans, La.	Oct. 20, 1909	Tap Scarfing Machine
Durette, Frank	c/o J. B. Reed & Co., Manchester,	June 16, 1910 N. H.	Fudge Knife Attachment
Daggett, James	Wyman St., Stoughton	Oct. 28, 1910	Adhesive for Canvas Coating Material
Dufour, Chas.	25 Washington St., Boston, Mass.	Nov. 27, 1910	Hide Washing Machine
Damon, Walter H.	68 Park Rd., Brockton, Mass.	Jan. 3, 1911	Edge Trimmer
Duncan, Wm. J.	Wardner, Idaho	Mar. 28, 1911	Ventilated Shoe
Dahlhaus, E. A.	c/o A.M. Capen Sons, 60 Pearl St., New York City	Apr. 22, 1911	Shoe Fastening Device
Engelking, Otto C.	Glenrock, Wyo.	Nov. 16, 1909	Steel Heel Plate
Elliot, Hugh		Jan. 29, 1910	Scrap Saving apron
Fletcher, Ira	Brockton, Mass.	June 20, 1908	Jointing Mach.
Fish, Chas. H.	65 Johnson St., Lynn, Mass.	Sept. 30, 1908	Attachment for Channeling Mch.
Frederick, S. B.		Jan. 26, 1909	Needle Clamp, Rapid Outsole Stitcher
Fowle, H. J.	Ferry Rd., Newburyport, Mass.	Mar. 25, 1909	Sole Splitting Machine
Foley & Crowley,		Oct. 12, 1909	Shoe Vamp Protecting Guard
Felix, Robert L.	135 Mechanic St., Marlboro, Mass.	Dec. 19, 1910	Top Trimming & Power Snipping Machine
Ferron, M. L.	Marlboro Office	Feb. 13, 1911	Shuttle Case
Frost, James R.		Mar. 16, 1911	Buttonhole Stay
Gilbert, Chas.	Haverhill, Mass.	Dec. 17, 1907	Attachment on Duplessis Turn Sewing Machine
Goodell, John	114 W. Newton St.	July 10, 1908	Gauge Eyeleting Machine
Gordon, Mr. Wm.		Aug. 11, 1908	Friction Drive Heel Scourer
Gifford, Harry E.	Box 672, Providence, R. I.	Oct. 15, 1908	Block Planing Device
Guyral, B.	Box 386, Rayne, La.	Mar. 25, 1910	Metallic Toe Protector
Gregoire, G.	Southbridge, Mass.	Oct. 6, 1910	Channeling Machine
Gorsuch, George	Rochester, N. Y.	Feb. 5, 1911	Tack Pulling Machine
Henderson, A. F.	Middletown, Mass.	June 9, 1908	Hinged Lasts
Holtze, John L.	Elmira, Ont.	Nov. 27, 1908	Guard for Heel Scouring Wheel
Hutchinson, R.	258 Chestnut Ave., Kingston, Pa.	June 9, 1909	Metallic Tip for Shoes

Name	Address	Date	Device
Hellwig, A. C. H.	24 Hancock St., Boston, Mass.	Aug. 10, 1909	Adjustable Press
Haag,		Jan. 6, 1910	Rubber Heel Cushion
Hanson, W. F.	16 School St., Lynn, Mass.	Feb. 1, 1910	Button Finishing Machine
Haley, J. W.	Milford, Me.	May 3, 1910	Lacing Hook
Hopkins, A. B.	980 Main St., Melrose Hlds., Mass.	May 10, 1910	Forepart Trimming Machine
Hakes, A. W.	Milbury, Mass.	May 17, 1910	Wire Heddle
Harriman, Jr., J. E.		Nov. 18, 1910	Edge Setting & Edge Blocking
Hardesty, J. W.	1565 E. 52nd St., Los Angeles, Cal.	Dec. 19, 1910	Expanding Gusset
Hasbrouck, R. V.	41 Chestnut St., Rochester, N. Y.	Jan. 22, 1911	Clicking Press Block & Planer
Hopkins, A. B.	786 Main St., Melrose Hlds., Mass.	Jan. 23, 1911	Steam Fitter's Vise
Harris, Sam'l B.	Myton, Utah	Mar. 17, 1911	Shoe Fastener
Jones,	Salem, Mass.	Sept. 12, 1908	Upper Leather Cutting Machine
Joynt,	St. Louis, Mo.	Jan.26, 1909	Pneumatic Tacker
Johnson, Albert	Boston, Mass.	July 5, 1910	Economy Channelers with Heating Device
Jordan, J. J.	Lynn, Mass.	Feb. 20, 1911	Lacing Hook
Jackson, James E.	Lynn, Mass.	Mar. 6, 1911	String Puller Channeling Machine
Kirk, B. F.	Lenox Shoe Co., Philadelphia, Pa.	Apr. 24, 1909	Universal Turn Channeling Machine
Kennedy, Chas. T.	Brockton, Mass.	Jan. 18, 1910	Oscillating Motion Ironing Machine
Keefe, J. T.	Bellows Falls, Vt.	Apr. 8, 1910	Imp. on Stitching Machine
Krange, John L.	1884 Farnham St., Omaha, Neb.	Feb. 9, 1911	Staple Making and Setting Machine
Kerns, F. A.	Rochester, N. Y.	Apr. 15, 1911	Groover & Beveler
LaChappelle, E. I.		Jan. 6, 1908	Insole Flexible Machine
LaChappelle, E. I.	45 Roundy St., Beverly, Mass.	Oct. 27, 1908	Automatic Locking Device
Labelle, Phil.	c/o H. H. Gray's Sons, Syracuse, N. Y.	Apr. 10, 1909	Apron to Protect Shank of Shoe — also Fudge Knife
Larouche,		Sept. 27, 1909	Bobbin Case for R. O. S.
Leslie, B. S.		Nov. 16, 1909	Horn Release
Lacourt, Peter		Nov. 10, 1910	Edge Blocker and Trimming Machine
Leechman, J. A.	LaFayette, Ind.	Dec. 16, 1910	Shoe Lacing Device
Lochman, E. R.	St. Paul, Minn.	Feb. 2, 1911	Cutting & Carving Machine

Name	Address	Date	Device
McFarland, W. J.		Jan. 1, 1908	Filling Insoles Reinforced with Canvas
Morrisey, Wm. A.	19 Averill St., Lynn, Mass.	May 27, 1908	Last
McIsaacs,	Weymouth	Dec. 9, 1908	Welt Guide
Musso, C. W.		Jan. 1, 1909	Sole Rounding Machine
McFarland, Mr.	Boston Office	Jan. 28, 1909	Single Face Clicking Press Block
Miller, H. B.	Boston Office	Apr. 30, 1909	Clutch Device
Merrick, C. H.	127 High St., Haverhill, Mass.	Dec. 11, 1909	Hand Pincer Knife Clamping Device
Moore, Wm.	Brooklyn, N. Y.	Jan. 4, 1910	Edge Burnishing Machine
McIntyre, A. A.	816 Broadway, Camden, N. J.	Feb. 9, 1910	Rolling Machine for Soles
Moraney, Jos. M.	2120 Walnut St., St. Josepb, Mo.	Mar. 30, 1910	Insole Wetting Machine
Milliken, Frank	Auburn, N. Y.	June 6, 1910	Marking & Spacing Buttonhole Device
Mills & Scott,		Sept. 23, 1910	Hand Pincers with Tack Driving Devices
Millican, J. A.	21 East St., Stoneham, Mass.	Dec. 5, 1910	Pieced Stay
McGeary, J. L.	415 Alder St., Anaconda, Mont.	Jan. 2, 1911	Welt Innersole
McIntyre, J. A.	923 Fifth St., Camden, N. J.	Jan. 3, 1911	Machines for Shaping Shanks of Shoes
McDonald, Mr.	W. Warren, Mass.	Feb. 7, 1911	Fibre Board for Clicking Press Block
Montague, S. B.	508 Market St., St. Louis, Mo.	Feb. 20, 1911	Reinforcement for Buttonholes
McClure, Robert F.	Hannibal, Mo.	Mar. 22, 1911	Improvement on Hercules Leveler
Mahler, U.	304 Fifth Ave., San Francisco, Cal.	Mar. 25, 1911	Ball Bearing Rotary Section Heel
Moorefield, J. C.	609 San Felipe St., Houston, Tex.	Mar. 30, 1911	Counter Supporting Device
Moore, H. F.	Ventura, Cal.	Apr. 12, 1911	Straight Needle Sewing Machine
Martin Bros.	Athens, Ga.	Apr. 17, 1911	Tools for Cutting off Heels
McP Cook, J.	c/o Thacher & Co., Richmond, Va.	Apr. 20, 1911	Buttonhole Marking Device
Nehring, A. H.	240 Campbell Ave., Revere, Mass.	Nov. 19, 1908	Stay & Lining Cutting Machine
Nugent, C. H.	46 E. Water St., Rockland, Mass.	Apr. 20, 1911	Hold-Down Finger
Newton, A.		Apr. 18, 1911	Slugging Machine
Operator,	c/o J. H. Winchell & Co., Haverhill, Mass.		Tag & Flag Holder

Name	Address	Date	Device
Orr, Edward	Brockton, Mass.	Dec. 15, 1910	Welt Guide
Pettingill,		Jan. 28, 1909	Heeling Machine
Proctor, A. L.	86 E. Broadway, Derry, N. H.	June 25, 1909	Ideal Clicking Press Block Plane
Peer, R. W.	57 Belmont St., Rochester, N. Y.	May 14, 1910	Tackless Method of Lasting
Phillips, Herbert H.	Toronto, Ont.	June 1, 1910	Cement Holder
Park, John W.	82 Lexington St., Lynn, Mass.	Sept. 13, 1910	Detachable Heel
Patterson, S. M.	c/o W. H. McElwain Co.	Nov. 1, 1910	Improvements on Machinery
Pool, J. Eugene	Newport News, Va.	Jan. 6, 1911	Device for Unbuttoning Shoes
Pierce, F. M.	Stratford, N. Y.	Apr. 10, 1911	Imp. on Channeling Machine for McKay Work
Pavelic, F. G.	St. Louis, Mo.	May 22, 1911	Awl Attachment for Cutting Knife
Ruhland, John	c/o John Ebberts S. Co., Buffalo, New York	June 26, 1908	Awl Holding Device
Rodeman,	c/o Isaac Prouty & Co.	Jan. 2, 1909	Tack Saving Device
Reed,		Mar. 2, 1909	Pincer Twist & Ball Connection — C.H.M. Lasting Machine
Russell, A. L.	Patent Dept.	May 26, 1909	Assembling & Heel Seat Lasting Machine
Ruskowsky, Herman	611½ So. Main St., Elkhart, Ind.	Mar. 9, 1910	Edge Trimmer — Also Stitching Machine
Regester, R. A.	602 Saratoga St., Baltimore, Md.	Feb. 15, 1911	Acme Heel & Sole Protectors
Ryan, D. E.	555 Temple Court, Minneapolis, Minn.	Feb. 15, 1911	Channel Cutter
Riddock, Chas. M.	Box 647, Andover, Mass.	Feb. 20, 1911	Imitation Leather
Riddock, Chas. M.	Box 647, Andover, Mass.	Feb. 24, 1911	Leather Heel Substitute
Rowe Calf Co.	Hartford, Conn.	Mar. 27, 1911	Shoe Lacing Hook
Ryan, D. E.	555 Temple Court, Minneapolis, Minn.	Mar. 29, 1911	Channeling & Stitching Device
Roach, James F.	Boston, Mass.	Apr. 17, 1911	Shoe Rack
Rollins, George	Bridgewater, Mass.	Apr. 24, 1911	Innersoles
Regan, Richard	161 Western Ave., Lynn, Mass.	Nov. 21, 1911	Shoe Upper & Cleaning Machine
Stow Mfg. Co.		Aug. 29, 1908	Flexible Shaft
Silver, F. W.	Auburn, Me.	Apr. 13, 1909	Scrap Saving Device
Saclowe, John		Nov. 20, 1909	Heel Seat
Sullivan, E. E.	Plainview, La.	Dec. 13, 1909	Shoe Tree
Shawmut Machine Company	Boston, Mass.	Feb. 23, 1910	Seam Rubbing Machine

Name	Address	Date	Device
Sullivan, E. E.	Plainview, La.	Mar. 28, 1910	Heel Cushion
Stamm, L. B.		Apr. 18, 1910	Lasting Machine
Stein, Peter	Chicago, Ill.	June 15, 1910	Stein Trimming & Stripping Machine
Shawban, J. E.	Kenton, Okla.	Aug. 20, 1910	Shoe Lace Fastener
Shorten, Wm. J.	Marianna, Ark.	Oct. 20, 1910	Shoe Fastener
Stierheim, Julius	443 E. 86th St., New York	Jan. 16, 1911	Detachable Heel
Sussman, Mr.	Rice & Hutchins, So. Braintree, Mass.	Jan. 30, 1911	Turn Shoe Ironing Machine
Steelman, Geo.	Vineland, N. J.	Feb. 11, 1911	Bobbin for Holding Large Quantities of Thread
Sullivan, E. E.	Plainview, La.	Feb. 25, 1911	Leather Measuring Gauge
Sharwood, C. K.	St. Paul, Minn.	Mar. 11, 1911	Two-Piece Last
Stockman, Jos.	c/o Houghton-Warren Co., Somersworth, N. H.	Mar. 13, 1911	Toe Moistening
Sharwood, C. K.	St. Paul, Minn.	Mar. 20, 1911	Last with Detachable Heel Portion.
Schneider, Louis	c/o Union Shoe Co. Natick, Mass.	Mar. 24, 1911	Steel Shoe Tip
Swanson, F. W.	Chicago, Ill.	Apr. 12, 1911	Foot Clamp and Table for Welt and Turn Machine
Sims, H. A.	118 Logan St., Atlanta, Ga.	Apr. 15, 1911	Guide for Royal Perforator.
Seymour, A. F.	167 Perkins Ave., Campello, Mass.	Apr. 25, 1911	Last with Detachable Heel
Seymour, A. F.	167 Perkins Ave., Campello, Mass.	May 15, 1911	Heel Compressing, Gouging & Leveling Machine
Sullivan, M. H.	72 Belmont St., Carbondale, Pa.		Rotary Channel Device
Thibodeau, Leon W.	Boston, Mass.	Dec. 17, 1908	Mechanical Castoff Straight Needle Sewing Machine
Thibodeau, Leon W.	Boston, Mass.	Feb. 16, 1909	Presserfoot, Mod. B Sewing Machine
Thomas, Geo. F.	67 Maple St., Bristol, Conn.	Dec. 16, 1909	Finishing Machine for Repair Work
Taylor, A. D.	807 Princeton Ave., Camden, N. J.	Dec. 31, 1909	Goodyear Stitcher Without Bobbin
Thompson, S.	81 West St., Milford, Mass.	Nov. 8, 1910	Method of Starting Clicking Press
Tenny, Geo. S.	E. Walpole, Mass.	Mar. 24, 1911	Imp. Buffing Machine
Universal Tel. Co.	Baltimore, Md.	Apr. 13, 1911	Shoe Clip Patent
Van Orden,		Mar. 30, 1909	Tension Device for McKay Sewing Machine
Weigand, A. Alfred	311 C. St., C. E. Washington, D. C.	June 30, 1908	Lacing Hook

Name	Address	Date	Device
Ward, Mr.		Mar. 30, 1990	Edge Setting Machine
White,	Haverhill, Mass.	July 12, 1909	Stitch-Down Lasting Machine
White, L. G.		Jan. 6, 1910	Inseam Trimming Machine
Wetter-Up Co.,	Philadelphia, Pa.	Mar. 16, 1910	Channel Guide with Wetting Device
Wheeler, Mr.	c/o Churchill & Alden	Mar. 30, 1910	Upper Leather Cementing Machine
Wilson, Sarah B.	2391 Niagara St., Buffalo, N. Y.	Apr. 1, 1910	Thread Guard
Wentworth, P. J.	Cincinnati, O.	Nov. 7, 1910	Device for Forward Pull
Young, John A.	28 Kneeland St., Boston	Apr. 7, 1911	Improvement on Keighley Inseam Trimming Machine
Young, D. C.	Milwaukee, Wis.	Apr. 10, 1911	Looper Lever
Azzara, Thomas	1247 Willoughby Ave., Brooklyn, N. Y.	May 29, 1911	Mod. G. Sewing Machine
Arnold, Herbert		Sept. 29, 1911	Outsole Indenting Tool — G.U.R. & C.
Adams, Geo. H.	78 Stoughton St., Dorchester, Mass. c/o Mrs. Roper	Oct. 31, 1911	Leatherboard Heel Building Machine
Brothers, Eli		July 22, 1911	Insole with Turned Up Edges, without Channeling.
Boynton, James J.	Bartow, Florida	May 2, 1911	Shoe Lacing Device
Braga, M. J.	c/o E. E. Taylor Co., Campello, Mass.	May 24, 1911	Rapid Outsole Stitcher Looper
Burrier, Charles	c/o Smaltz-Goodwin Co., Philadelphia, Pa.	May 27, 1911	Upper Trimming Machine
Brogan, J. A.		May 29, 1911	Sole & Welt Corrugations
Bazzoni, L. J.		May 29, 1911	Auto. Jack for Welting Machine
Bunker, G. E.	Auburn Office	May 29, 1911	Vamp Moistening Machine
Burrier,	c/o Smaltz-Goodwin Co.	June 12, 1911	Hold Down Attachment
Barton, J. M.	Danvers, Mass.	June 7, 1911	Stop Motion — C.H.M. Laster
Burrier [illegible]as.	c/o Smaltz-Goodwin Co., Philadelphia, Pa.	June 26, 1911	Tip Measuring Machine. P. O. Machine
Basile, Carmine	25 Penn St., Quincy, Mass.	June 20, 1911	Tack Pulling Device
Brennan, W. J.	Beverly Factory	June 15, 1911	Collapsible Shoe Rack
Buchanan-Lawrence Company	Joliet, Ill.	June 29, 1911	Soles
	Brockton Office	June 28, 1911	Shanks

Name	Address	Date	Device
Bliss, Mr.	Haverhill Office	June 28, 1911	Device for Preventing Heels from Tipping over on the Premier Heel Pricking Machine
Brogan, M. F.		July 31, 1911	Method of Making Welt
Bergquist, J. U.	13 Jane St., Manchester, N. H.	Aug. 1, 1911	Vamp Holder
Bolin, Nils	Brockton, Mass.	Aug. 28, 1911	Method of Making Wire Toe Fasteners
Brigham, G. W.	Marlboro Office	Sept. 15, 1911	Atlas Leveler — Part 0-2139
	Brockton Office	Sept. 23, 1911	Box Toe Stiffening Preparation
Berry, Mr.	Brockton Office	Sept. 22, 1911	Ensign Lacing Mch. Part #355
Boyden, William		Sept. 22, 1911	Tack Saving Devices C. H.M. Laster
Borden, Mr.		Oct. 11, 1911	Jack for Nailing or Slugging on the Last.
Brown, Karl		Oct. 10, 1911	Lasting Wire Device
Borden, W. H.		Oct. 30, 1911	Adjustable Jack Last Pin and Holder
Bryant		Nov. 11, 1911	Swing Piece for #4 Compressor
Buteau, Mr.	Beverly Factory	Dec. 11, 1911	Method of Re-Leasing Clicking Press and Dinking Machine Brake
Chamberland, Frank	141 Franklin St., Lynn, Mass.	May 23, 1911	Heel Filling Machine
Cramer, Sam		June 7, 1911	Hammer Block for Pounding Up Machine
Cleveland, Mrs.	c/o Cass & Daley	June 20, 1911	Device for Holding Parts of Shoe Upper together during their manufacture
Clark, H. E.		June 26, 1911	Work Support with Shoe Upper Spreader Device
Collette, W. E.	Marlboro, Mass.	June 20, 1911	Wire Retainer — Rapid Standard Screw Machine
Collette, W. E.	Marlboro, Mass.	June 29, 1911	Jack for Universal Slugging Machine
Corrow, Thomas	Williams & Clark, S. Co., Lynn, Mass.	June 29, 1911	Feed Mechanism for Univ. Rdr. & Chan. E.
Coombs, Mr.	Philadelphia Office	July 13, 1911	Turn Over Fudge Machine
Corey, Mr. George	111 Point St., Providence, R. I.	July 17, 1911	Self Tightening Mandrel for Lathe Heads
Contois, G.	26 Northern Ave., Lynn, Mass.	Aug. 17, 1911	Presser Foot to prevent Needle breaking

Name	Address	Date	Device
Cline, George	Dolgeville, N. Y.	June 27, 1911	Combination Edge Setting Iron
Carpenter, J. P.		July 31, 1911	Combined Heel Breast Scouring, Heel Scouring & Heel Cross Scouring Machine
	Cincinnati Office	Sept. 15, 1911	Welt Indenting Tool & Holder
Coleman, Geo.	33 Averill St.	Sept. 19, 1911	Welt Insole
Cook, J. McP		Oct. 4, 1911	Button Hole Marking Device
Cassanno, M.	Box 260, Brockton, Mass.	Oct. 9, 1911	Toe Spreading Device
Chicago Office,	Chicago, Ill.	May 23, 1911	Welt Guide, Mod. G. Machine
Cantara, Geo. T.	Biddeford, Me.	Aug. 16, 1911	Combination Tool Vise & Sharpening Gage
Dahlhaus, E. A.	New York, N. Y.	Apr. 25, 1911	Method of Lacing Shoes
Dumont, Edward E.	455 Cranston St., Providence, R. I.	May 30, 1911	Sole Wetting Machine
Donlon, John	Boston Office	June 26, 1911	Spraying Device for Spraying Edges of Soles
Donlon, John	Boston Office	June 29, 1911	Curved Needle with Groove for Breaking Strands of Gem Insole Cloth
Donlon, John	Boston Office	June 29, 1911	Heel Finishing Machine
Dow, John	Goodyear Department		Fudge Knife
Dow, John	Goodyear Department	Nov. 8, 1911	Toe Pad, Gdyr. Imp. Sole Laying Machine
Davis, F. E.	46 Warren St., Providence, R. I.	Nov. 26, 1911	Automatic Wire Machine
Emerson, F. L.	c/o Dunn & McCarthy, Auburn, N. Y.	Apr. 11, 1911	Indenting & Burnishing Mch. with Inking Attachment
Ewell, Frank	Brockton Office	June 12, 1911	Lightning Heeler Heel and Toplift Clamps
Eastman, Mr. Foreman	Cohas Fy., W. H. McElwain Co., Manchester, N. H.	Aug. 1, 1911	Device for Oiling Cutters and other Parts on the Gem Insole Reinforcing Machine
Farrell, Mr.		June 28, 1911	Balancing Device for Heel Trimmer
Fisher, Fred W.	Endicott, N. Y.	Aug. 23, 1911	Improvements on Stanbon Perforator
Forth, Charles	Boston, Mass.	Sept. 11, 1911	Shoe Lacing Hook
Frascola, A. D.	El Reno, Okla.	Nov. 11, 1911	Edge Trimming & Burnishing Tool
Fife, James	195 Court St., Brockton, Mass.	Dec. 11, 1911	Gem Trimming Machine

Name	Address	Date	Device
Goldsmith, C. W.	Dingman's Ferry, Pa.	May 17, 1911	Elastic Spring Heel & Copper Sheathed Toe for Shoes
Glynn, Thomas	Auburn Office	June 8, 1911	Hand Lasting Pincers with Toe Measuring Device
Gorsuch, George	Rochester, N. Y.	Apr. 26, 1911	Tack Pulling Mechanism
Gooding, C. S.	Boston, Mass.	June 24, 1911	Counter Skiving Machine
Giroux, C. T.	42 Harbor St., Salem, Mass.	July 12, 1911	Ventilated Collapsible Barrel
Gifford, Mr.	Philadelphia Office	July 17, 1911	Gdyr. Turn Leveler
Giles, C. B.	38 State St., Manchester, N. H.	Aug. 12, 1911	Machine for Covering Rolls
Gordon, Mr.	Brockton Office	Sept. 7, 1911	Velvet Box Toe & Counter Buffer
Gifford, Mr.	Philadelphia Office	Oct. 11, 1911	Stripper Cup, Mod. K. Stitcher
Gifford, Mr.	Philadelphia Office	Oct. 11, 1911	Presserfoot, Universal Insole Channeling Mach.
Goldstone, Max	9 Center St., New Haven, Conn.	Oct. 27, 1911	
Grimes, Harry	St. Louis Office	Nov. 9, 1911	A-1602, Mod. G. Welt & Turn Machine
Guerra, A.		Nov. 8, 1911	Rapid Outsole Stitcher
Gordon, Mr.	Brockton Office	Nov. 21, 1911	Box Toe Wetting Device
Herrick, F. A.	Toledo, O. 625 Oakwood Ave.	Aug., 1910	Shoe Hook
Harris, Dr. S. B.	Myton, Utah	Apr. 28, 1911	Universal Fastener
Harmon, F. L.	Brockton, Mass.	Mar. 24, 1911	Skiving, Cementing & Folding Machine
Hansom, James	107 Elm St., Marlboro, Mass.	Aug. 15, 1911	Quick Threading Shuttle for Rapid Stitcher
Harmon, F. L.		Aug. 14, 1911	Method of Fastening Shoe Buttons
Haupenthal, Jos. R.	186 Riverside Drive, Binghamton, N. Y.	Sept. 6, 1911	Planer for Clicking Press Block
Harmon, F. L.	Beverly, Mass.	Sept. 28, 1911	Method of Fastening Shoe Buttons
Ikomond, Colt E.	411 Elm St., Wallace, Idaho	May 25, 1911	Shoe Lace Protector
Josselyn, J. E.	35 Riverview St., Campello, Mass.	May 24, 1911	Heel Building, Compressing, Gouging and Leveling Machine Model
Johnson, Albin	Middleboro, Mass.	July 24, 1911	Device for Gauging or Truing Tips
Jepperson, Jeppe	421 So. Third St., East, Salt Lake City, Utah	Aug. 31, 1911	Separable Shoe Fastener

Name	Address	Date	Device
Jacobs, Mr.	Haverhill Office	Sept. 15, 1911	Toplist Rest — Ultima Heel Trimming Machine
Jackman, Chas. C. & A. E. West	1017 Oakland Ave., Portsmouth, O.	Oct. 9, 1911	Automatic Shoe or Edge Setter
Jacob, Chas. W. & Allison	18 Cedar St., New York, N. Y.	Oct. 19, 1911	Detachable Heel
Kelly, W. J.	c/o Curtis & Jones Co., Reading, Pa.	May 17, 1911	Welt Table for Rapid Stitcher for Stitchdowns
Kennedy, John L.	St. Louis, Mo.	Oct. 6, 1911	Lift Cutting Machine
Klein, A. H.	c/o Curtis & Jones, Reading, Pa.	Dec. 12, 1911	Sole Rest — Turn P. O. Machine
LaBorde, John & Peter K. Williams	Columbus, O.	July 14, 1911	Buttonhole Marking Machine
LaBate, James		Aug. 5, 1911	Machine for applying Cement to Tape
Lund, Mr.	Auburn Office	Sept. 9, 1911	Jack for #2 Loose Nailing Machine
LaBorde & Williams		Sept. 22, 1911	Shoe Gumming Machine
Lundholm, Chas. G.	Los Angeles, Cal.	Oct. 19, 1911	Locking Set Screw
Leech, L. D.	301 W. Union St., Burlington, N. J.	Dec. 9, 1911	Welt & Turn Sewing Machine
Littlefield, A. F.	Lynn Office	Dec. 2, 1911	Edge Trimming Machine
Locke, E. D.		Dec. 2, 1911	Gauge for Toplift Condensing
McGeary, John Luke	Malden St., Anaconda, Mont.	June 5, 1911	Welt Innersole
Muiato, Longhair I.	Plano, Ida	May 27, 1911	Shoe Polishing Machine
McCarthy, Michael	Brockton, Mass.	June 12, 1911	Brushes
McDonald, C.		May 17, 1911	Power Nurling Machine Jack
Moore, Louis	20 Rock Avenue, Swampscott, Mass.	June 23, 1911	Method of Making Smooth Insole Heel Seat
Mayo, Chas.	278 W. Water St., Milwaukee, Wis.	Aug. 14, 1911	Fibre Pulp Shoe
Cann, Mr.	Marlboro Office	Aug. 28, 1911	Experimental Part #77, Loose Nailing Machine
McElwain Co., W. H.		Aug. 29, 1911	Reinforced Insoles
Miner, Mr.	Brockton Office	Sept. 12, 1911	Loose Nailing Machine, Guard Plate #296
Manning, John E.		Sept. 24, 1911	Clamp for Holding Cloth for Corset Cutting
Mica, John	36 Glenwood St., Binghamton, N. Y.	Sept. 26, 1911	Friction for Cast-off Bar — McKay Sewing Machine
Mangan, J. C.	Lynn, Mass.	Oct. 3, 1911	Heel Breast Scouring Device
McCallum, Chas. J.	Warren, Me.	Oct. 2, 1911	Cutter Grinder

Name	Address	Date	Device
Miller,	Miller Loop & Tying Machine Co.	Oct. 10, 1911	Lacing Hook
McLean,	Brockton, Mass.	Oct. 17, 1911	Heel Scouring Cone
Mills, E. F.	New York, N. Y.	Oct. 20, 1911	Improvements on Mod. G. Welt & Turn Mach.
McElwain Co., W. H.		Nov. 20, 1911	Staple Fastening Machine for Special Work
	Marlboro Office	Nov. 21, 1911	Rapid Rotary Cementing Valve
Murphy, J. E.	Frankfort, Ky.	Dec. 11, 1911	String Puller — McKay Channeler
McNalley, A. H.	110 Johnson St., Brooklyn, N. Y.	Aug. 14, 1911	Heel Breast Scouring Machine
Neubert, Wm. B.	10 Friend St., Lynn, Mass.	July 31, 1911	Wax Pot — McKay Sewing Machine
Norden, C. S.		June 21, 1911	Gauge for Determining Position of Wedge Heels on Shoes
Neal, W. V.	5 Newton St., Brighton, Mass.	Oct. 9, 1911	Bobbin Winder
Noon, W. J.	Lynn, Mass.	Oct. 11, 1911	Counter Guard
Northrop, H. N.	Whitman St., W. Somerville, Mass.	Nov. 20, 1911	Self Locking Heel
Olson, A.		June 2, 1911	Welt Edge Turning Machine
Prenzel, A. H.	Halifax, Pa.	May 23, 1911	Shoe Bows
Pavelic, F. G.	St. Louis, Mo.	May 22, 1911	Awl Attachment for Shoe Cutting Tools
Pellitier,	Marlboro, Mass.	July 31, 1911	Welt Guide for Rapid Outsole Stitcher
Pierce Wrapping Machine Co.	569 Van Buren St., Chicago, Ill.	Aug. 23, 1911	Bull Dog Fastener
Powell, W. H.	2446 No. Carolina Ave., Chicago, Ill.	Nov. 2, 1911	Shoe Fastening
Prime, E. J.		Nov. 17, 1911	Shoe Rack
Parks, Mr.	Brennan Tannery & Shoe Mfg. Co., Upland, Cal.	Oct. 20, 1911	Device for Planing Clicking Press Blocks
Poitras,	Montreal, Can.	Nov. 25, 1911	Bow Attaching Machine
	Phila. Office	Oct. 11, 1911	Presserfoot
Reed, Walter W.	29 Munroe St., Rockland, Mass.	May 20, 1911	Toe Moistening Device
Robinson, R. C.	404 Pine St., Providence, R. I.	May 16, 1911	Shoe Lace Holding Device
Rockwood, C. G.	31 Highland St., So. Framingham, Mass.	July 18, 1911	Lacing Device
Rowe, Atwood	Haverhill, Mass.	Aug. 2, 1911	Guard for Amazeen Skiver
Roche, James		Aug. 8, 1911	Shoe Rack

Name	Address	Date	Device
Rockwood, C. G.	31 Highland St., So. Framingham, Mass.	July 18, 1911	Device for Cutting off Heels for Repair Work
Ranney, Arthur	Auburn Office	Oct. 19, 1911	Drip Pan and Guard for Xpedite Finishing Machine
Regan, Richard	161 Western Ave., Lynn, Mass.	Nov. 21, 1911	Shoe & Upper Cleaning Device
Reed,		Nov. 21, 1911	Buttonhole Sewing Machine
Ryeberg, John	Brockton, Mass.	Nov. 29, 1911	Rolling Toe Rest Model —#5 Lasting Machine
Rainey, J. N.	Mound City Plant Brown Shoe Co., St. Louis, Mo.	Nov. 22, 1911	Cementing Machine
Richardson, J. J.	Marlboro Office	Nov. 21, 1911	Shank Cutting Machine
Ruff, P. W.	Butler, Pa.	Nov. 14, 1911	Nail with Head in Centre and Point on either end
Reutinger, N. C.	Xenia, Ohio	Dec. 11, 1911	Cutter's Knife Handle
Smith, Chas. I.	Oklahoma City, Okla.	Apr. 25, 1911	Shoe Fastening Device
Sims, H. A.		June 7, 1911	Guide for Royal Perforator
Sullivan, E. E.	Plainview, La.	June 1, 1911	Shoe Lacing Stud
Sturtevant, Lloyd E.	Beverly Factory	June 1911	Detachable Handle for Lining Dies
Stockton, G. T.		Aug. 18, 1911	Insole Cutting & Pasting Machine
Sullivan, E. E.	Magnolia, La.	Sept. 1, 1911	Shoe Tree with Vamp Stretcher Device
Sullivan, E. E.	Magnolia, La.	Oct. 12, 1911	Adjustable Wooden Shoe Stretcher
Spurling, R. G.	Cleveland, Tenn.	Oct. 17, 1911	Lacing Device
Shinnock, T. J.	Exeter, N. H.	Oct. 23, 1911	Trimming tool for use with Clicking Press
Shaw, Walter	Eyelet Dept., Boston Office	Nov. 14, 1911	Punch & Sett Hammer Lever, Duplex Eyeletter
Stalker, F. C.	Brockton Office	Nov. 17, 1911	Improved Parts on Rapid Loader & Attaching Machine
Success Jack Mfg. Co.	2941 Cass Ave., St. Louis, Mo.	Nov. 21, 1911	Shoe Repairing Jack
Searle, H. C.	Auburn Office	Dec. 2, 1911	Clicking Press Planing Device
Sullivan, E. E.	c/o Capt. Sanders, Angola, La.	Nov. 26, 1911	Metal Ventilating Shoe Trees
Starratt, W. H.	Haverhill Office	Dec. 8, 1911	Combined Bench Bracket and Presser Cam, Roll Stud Support H.L.A.

Name	Address	Date	Device
Tenney, Geo. S.	E. Walpole, Mass.	Mar. 25, 1911	Buffing Wheel
Turner, Chester	Nashua, N. H.	June 21, 1911	Smoothing Device — Gdyr. Universal Rouning & Channeling
Tweedie, Chas.	Jefferson City, Mo.	July 29, 1911	Tool for use in Lasting Button Shoes
Turner, H. B.	Phila. Office	Sept. 2, 1911	Goodyear Improved Sole Laying Machine
Tirrell, A. R.	Weymouth, Mass.	Nov. 17, 1911	Method of making Reinforced Insoles
Tilton, Mr.	c/o B. F. Reynolds	Nov. 23, 1911	Outsole Heel Seat Moulding
United Shoe Repairing Machine Company	Boston	July 25, 1911	Guard for Model M Impression Stitch Machine
Vogt, Wm.	245 E. 77th St., New York, N.Y.	Aug. 14, 1911	
Wade, G. E.	c/o A. E. Little & Co., Brockton, Mass.	May 17, 1911	Crimping Machine
Woodbury, Mr.	Columbus, O.	May 29, 1911	Reinforced Insole with Toe Portion Sewed
Wiltse, Sarah E.	W. Roxbury, Mass.	June 1, 1911	Dust Moccasin
Wade, Geo. E.	Brockton, Mass.	June 14, 1911	Buttonhole Marking Device
Williams, Peter K. & John Laborde	Columbus, O.	July 14, 1911	Buttonhole Marking Machine
Wald, Frank	Dalmatia, Pa.	Aug. 14, 1911	Universal Rounder & Channeler — Thickness Indicating Device
West, A. E. & Chas. C. Jackman	1710 Oakland Ave., Portsmouth, O.	Oct. 9, 1911	Auto. Shoe or Edge Setter
Warham, R. F.	Pinewood Retreat, Applegate, Cal.	Oct. 23, 1911	Shoe Lace Retainer
Wolfe, Mr. Wm.	St. Louis, Mo.	Oct. 3, 1911	Heel Building Machine
Willis, M.	Geo. E. Keith, Fy. #3	Nov. 17, 1911	Ironing Device
Whitworth, J. H.	The Irving Drew Co., Portsmouth, O.	Nov. 16, 1911	Buttonhole Marking
Weigand, A.	133 Martin St., Milwaukee, Wis.	Dec. 2, 1911	Shoe Lacing Hook
White, J.		Dec. 4, 1911	Tack Pulling Machine

DEFENDANTS' EXHIBIT 223.

[Put in Evidence, page 3023.]

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS FROM MARCH 1, 1900, TO DECEMBER 31, 1911.

	New Firms	New Firms Succeeding Old Firms	Total
1900	70	36	106
1901	97	59	156
1902	55	40	95
1903	55	46	101
1904	54	37	91
1905	47	3	50
1906	44	8	52
1907	60	4	64
1908	51	10	61
1909	68	1	69
1910	72	21	93
1911	73	5	78
	746	270	1016

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1900 AS SHOWN BY OUR RECORDS.

Name	Successor to
Alberts, Henry	
Alburtis Shoe Mfg. Co.	
Alden, Walker & Wilde	
Alter & McCaffrey	Manss, Bruning Shoe Mfg. Co.
American Shoe Mfg. Co.	F. G. Maurer Shoe Co.
Baldwin Mfg. Co.	
Barton Bros.	
Bastian, William S.	Carpenter Bros.
Battles, A. W.	Dart & Smith
Baumgaertel, E.	
Belleville Shoe Mfg. Co.	
Belonga, Geo. W. & Co.	Belonga & Leonard

Name	Successor to
Blake-Allen Company	
Bluff City Shoe Co.	
Bowers & Shaw	Shaw, F. M. & Co.
Brown, Henry	Duerk, John
Bruns, J. B. Shoe Mfg. Co.	
Budd & Blakeney	Electric Shoe Co.
C. & E. Shoe Co.	
Clifford & Clancey	
Cohen, H. & Eldridge	
Colburn, Edw. S.	
Collins, John	
Cook County Shoe Mfg. Co.	
Darling & Stetson	
Dart & Smith	
Deckert & Stough	
Divac, I.	
Donovan, Thos. J.	
Eastport Shoe Co.	
Farmington Shoe Co.	Barre Shoe Co.
Fayter, Henry	
Felch, C. H.	
Field Bros. & Gross	
Fiske & Olde	W. F. Fiske
Franklin Shoe Mfg. Co.	
Freeport Shoe Mfg. Co.	
Fuhrer, Henry	
Glickman, D.	
Goodfellow Shoe Co.	
Grant, F. S. Shoe Co.	Trimby & Brewster Shoe Co.
Green, Dan'l, Felt Shoe Co.	Green, Dan'l, & Co.
Griffin & Cogswell	
Hennessey Shoe Mfg. Co.	
Hall & Moses	Hinkley, J. H. & Co.
Illinois Shoe Mfg. Co.	O'Connell & Co.
Jordan, W. B. & W. G.	Union Shoe & Leather Co.

Name	Successor to
Kalt-Zimmers Mfg. Co.	
Kirkendall & Co., F. P.	
Kenney, Arthur	Peerless Shoe Co.
Lambert, E. T.	Lambert, F. B. & Co.
Law, Henry	American Slipper Co.
Leavitt & Co.	
Leech, Mrs. Sophia	
Leonard & Anglin	Crawford Shoemakers
Leve, Louis	Hahn, Barthold
Lines & Co.	
Loeffer-Guenther Shoe Co.	
Long & Eberling	
Long, R. H. Shoe Mfg. Co.	
Lord, W. E.	
Luddy & Currier	
Marr & Stevens Shoe Co.	Stevens, Herbert J.
Marsh, Zena	Marsh, J. P.
Munster, A.	Watson, Geo. M.
Nelson, Bernard	
Nesmith, W. F. Shoe Co.	Nesmith Co., The
New Freedom Shoe Mfg. Co.	
New Jersey Shoe Mfg. Co.	Hoagland, Woodington & Forster
New Ulm Boot & Shoe Co.	
Nugent Shoe Co.	Nugent, J. C. & Co.
O'Connell & Co.	O'Connell, John
O'Donnell, J. M. & Co.	Lane, C. E.
Ohio Shoe Co.	
Pfeiffer, W. F. & Co.	
Pioneer Shoe Co.	People's Co-op. Shoe Mfg. Co.
Prince-Collins Co.	
Prior, Fred F.	
Ramsey, Jos. P. Shoe Co.	
Reed, H. M. & Co.	
Reid, Peter	
Reimer, Bros. Shoe Co.	Reimer, A. H. & Co.

Name	Successor to
Richardson-Burkenmaier Co.	Burkenmaier Shoe Mfg. Co.
Rae, Alex	
Scheiffele Shoe Mfg. Co	
Sedalia Shoe Co	
Shillaber Shoe Co	
Smaltz-Goodwin Co	Hayss-Partridge Shoe Co.
Sprague, W. D.	
Shaw & Tannant Co.	
Stockton Shoe Mfg. Co.	
Stoenner Shoe Co.	
Stone, E. M. & Co.	
Spinks Shoe Mfg. Co.	
Stover & Bean	J. H. Stover
Tiger Shoe Co.	
Tufts & Friedman	
Tuttle, W. H.	Durgin & Tuttle
Tripp-Lincoln Shoe Co.	
Van Eaton, Fogg & Co.	Tacoma Shoe & Leather Co.
Walsh-Decker Shoe Co.	
Witchell Sons & Co., Ltd.	Witchell Sons & Gibson, Ltd.
Witham, Walter S.	
Woodbury Shoe Co.	
Wrensch, B. F.	
Weinbrenner & Co., A. H.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1901 AS SHOWN BY OUR RECORDS.

Name	Successor to
Andrews, Joseph	
Adamson & Newhall	
Ashland Boot & Shoe Co.	
Abbott & West	Leavitt & Co.
Auburn Shoe Mfg. Co.	Maine Custom Shoe Co.
Blucher Bros.	
Brandhurst, E. T. & Co.	
Budd, Reilly & Co.	Budd & Blakeney

Name	Successor to
Buckeye Shoe Co.	
Bainsville Shoe Co.	
Beck, Rasbe & Asher	F. S. Stein
Bastian Shoe Mfg. Co.	W. S. Bastian & Firth, Ltd.
Bailey Shoe Co.	
Buck, E. A. & Co.	
Blum Shoe Co.	
Bartlett Bros.	Albion Bartlett
Bay State Shoe & Leather Co.	Old Colony Boot & Shoe Co.
Bent & Evans	
Crown Shoe Co.	
Co-operative Shoe Co.	
C. & C. Shoe Mfg. Co.	Cowen-Eldridge & Cohen
Colmary, A. H. & Co.	Clark, Colmary & Co.
Century Shoe Mfg. Co.	
Cook, J. A. & Co.	Cook & Hart
Cross, John H.	Cross & Tucker
Caunt, Jos. & Co.	
Cushman & Cushman	Howe, Cushman & Stocker
Collyer & Woodman	
Clark, W. J.	Richard Bessom
Case, Chas. Shoe Co.	Walker & Brown
Calkins, Clarence L.	
Chase, Chamberlain & Co.	
Craddock Terry Co.	
Deckert, W. H. & Co.	Deckert & Stough
Dreyer, J. H. & Co.	Allnutt, Moody & Co.
Duling Shoe Co.	Duling & Stack Shoe Co.
Drehr Shoe Co.	
Davis, H. E. Co.	
Demeritt & Smith	E. A. Jennings Co.
Ennis, John	
Edwards-Stanwood Shoe Co.	Dearborn Shoe Co.
Ell & See Shoe Co.	Luddy & Currier
Eisenhuth & Co., T. H.	

Name	Successor to
Fort Smith Shoe Mfg. Co.	
Fairfield Shoe Co.	Denton Shoe Co.
Feuss & Prather	Magruder, Feuss & Co.
Fonda, Kellogg & Snow	Fonda, Kelly & Snow, Inc.
Ford, H. R. & Co.	
Fletcher Shoe Co.	Joyce & Fletcher Co.
Fitzpatrick Shoe Co.	
Finney, Thos. H.	
Flint, E.	H. S. Jacobs & Co.
Finch Shoe Co.	
Giesecke-D'Oench-Hays Shoe Co.	Giesecke Boot & Shoe Co.
Gibson Shoe Mfg. Co.	
Gloyd, Arthur E.	
Godon, F. H.	
Green, C. E. & Co.	
Guthman, Carpenter & Telling	
Hallahan & Sons	P. T. Hallahan
Heer Shoe Co.	
Harding & Sons Co.	Harding, Sons & Johnson
Howe & Stocker	
Hurley Shoe Co.	The Rockland Co.
Hoyt, H. H. Shoe Co.	
Johnson & Watson	
January Shoe Co.	Hufuegel-January Shoe Co.
Kentucky Shoe Mfg. Co.	
Kingman & Worbass	
Krause Shoe Co.	
Kueher & Nickel Boot & Shoe Co.	F. Kueher Boot & Shoe Co.
Keighley-Mullen Co.	
Keystone Boot & Shoe Co.	
Kenney & Fitzpatrick	Arthur Kenney
Kimball, W. & V. O.	
Knights, J. George	
Kearsarge Shoe Co.	
Kimball, Alfred Shoe Co.	Kimball Bros.

Name	Successor to
Kreider Shoe Mfg. Co.	
Lindenberg, H.	Suhren & Lindenberg
London Shoe Mfg. Co.	
Livingston, E. C.	
Lumberton Shoe Co.	
Levis Bros. & Broxholm	Levis & Pifer
Leonard & Hollis	
Lane, William Jr.	Wm. Lane, c/o New York City Shoe Co.
Lang, Edwin F. & Co.	Lang & Roberts
Lang, Edwin F.	Edwin T. Lang & Co.
LaPrelle Williams Shoe Co.	
Metrailer, A.	
Missouri Slipper Co.	
Marietta Shoe Mfg. Co.	
Marks, L. V. & Co.	
Miller Shoe Mfg. Co.	
Miller, Hess & Co., Ltd.	
Moloney, E. D. & Bro. Co.	Maher & O'Connor
Morris-Caunt Shoe Co.	Baby Shoe Co.
Morrison Shoe Co.	
Milton Shoe Co., Inc.	
MacDonald, Hirsch & Co.	H. B. Thoms
McNamara, S. B. & Co.	
Miama Shoe Co.	
McIntosh, J. W.	
Normandy Shoe Co.	
Nesmith-Roarty Shoe Co.	W. F. Nesmith Shoe Co.
North Shore Shoe Co.	
Osner Shoe Mfg. Co.	
Piekenbrock Shoe Mfg. Co., E. B.	
Peteler Shoe Mfg. Co.	Southern Shoe Co.
P. & F. Mfg. Co.	
Posner, A.	
Potapsco Shoe Mfg. Co.	

Name	Successor to
Pilling, John Shoe Co.	
Portia Shoe Mfg. Co.	Louis Leve
Pratt Shoe Co.	
Queen City Shoe Co.	Sedalia Shoe Mfg. Co.
Riley-Barker Shoe Co.	Frank Barker
Reed, Dr. Cushion Shoe Co.	Marr & Stevens Co.
Randolph Shoe Co.	
Rowe & Swett	
Read, H. M.	
St. Pierie Dorn Shoe Co.	
Southern Industrial Inst., Ltd.	Chinchuba Deaf Mute Inst.
Scudder-Lessburg Shoe Co.	
Shaft-Pierce Shoe Co.	R. W. Smith
Stein, F. L.	S. Freehling & Son
Sheppard & Myers Shoe Co.	Chas. Heiser Shoe Co.
Schreider & Fitz	
Schreider, W. H. Co.	Schreider & Fitz
Salom, Chris.	
Schaefer Bros.	
Stevens, E. E.	
Slim, Howard F.	
Southern Shoe Mfg. Co.	
Tennent Shoe Co.	Tennent-Stribling Shoe Co.
Tanner Shoe Mfg. Co.	Richardson-Birkenmaier
Thale & Co.	
Toronto Shoe Co.	
Twohig & Adams	Greenan, Twohig & Adams
Tillett, Thos. Jr.	Tillett & Kramer
Timson, C. O. & Co.	
Tuttle Shoe Co.	W. E. Tuttle
Thompson, F. J.	
Vickery, P. W. & Co.	
Weber, J. H.	
Watson-Plummer Shoe Co.	
Williams & Cox	

Name	Successor to
Walden Shoe Co.	
Weyenberg Shoe Mfg. Co.	
Weiner, Wright & Watkins	Lenox Shoe Co.
Witt, Geo. D. Shoe Co.	
Wood, Lawrence & Neal Co.	
Wright & Aldoes	Cropley Shoe Co.
Webb & Jones	
Weyenberg Shoe Mfg. Co.	
Young, R. T. & Co.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1902 AS SHOWN BY OUR RECORDS.

Name	Successor to
Adams & Lawton	
Albert, J.	
Alton Shoe Co.	
Annar Shoe Co.	Preset Shoe Co.
Burke, Erwin A.	
Bell & France	Phoenix Shoe Co.
Badger State Shoe Co.	
Becker, A. G.	
Berkley Boot & Shoe Co.	
Blood, J. C.	
Boston Carpet Slipper Co.	
Bottomley & Co., E.	
Cole, E. M.	Schwab Bros.
Casperson, Edward	
Drew, W. E. & Co.	
Dearborn Bros.	
Daum Shoe Co., Geo. M.	
Eastern Shoe Mfg. Co.	M. Green
Eckhardt & Donovan Shoe Co.	Donovan, T. J.
Eberling, Charles	
Flint Shoe Co.	Flint, E.
Faunce-Jordan Shoe Co.	
Forbush Shoe Co.	Forbush, S. A.

Name	Successor to
Federation Shoe Co.	Pray & Small
Factory Shoe Store	Pacific Shoe Mfg. Co.
Forbush Shoe Mfg. Co.	Geo. J. Winter
Hennessey & Thomson	Hennessey Shoe Mfg. Co.
Hogan Shoe Co.	
Howard Briggs & Pray Co.	
Holmes, E. A. & F. A.	
Hessbery, Felix	
Hoyt, Frank	
Hilliard & Tabor	Wadleigh, P. W.
Ireland-Grafton Co.	J. H. Ireland & Co.
Irving Drew Co.	Star Shoe Co.
Kelly Evans & Co.	Pioneer Shoe Co.
Kellam-Coller Land Co.	
Koeber & Batstone Co.	
Louisiana Shoe Factory	Simon Mozse
Levie Shoe Co.	Levie France Shoe Co.
Lenox Shoe Co.	Weiner, Wright & Watkins
Leonard & Bullock	Leonard & Hollins
Lang & Bertsch	E. T. Lang
Lacey Shoe Co.	
Moloney Shoe Co., John	Moloney, Craven & Oppenheimer
Macdonald & Kiley Co.	Macdonald, Hirsch & Co.
Manistee Shoe Mfg. Co.	
Modern Shoe Co.	
Morning Star Shoe Co.	
Merrill Porter & Co.	
Magnetic Shoe Co.	
Miller & Ricker	
Marcy Bros. Co., The	
Norton, N.	Blucher Bros.
Northwestern Felt Shoe Co.	
Nolan Shoe Factory	J. C. Nolan
Nutt & Co., W. H.	
Oliver Co., Jas. O.	

Name	Successor to
Potter, J. M.	
Price Shoe Co., L.	Price & Wolff
The Pingree Co.	Pingree & Smith
Peaslee, John, Shoe Co.	Roch. Island Shoe Co.
Portland Shoe Mfg. Co.	
Preset Shoe Co.	J. S. Parker & Co.
Parker & Co., J. S.	
Paff Shoe Co., Inc.	Paff & Co.
Perfection Shoe Co.	
Perkins Shoe Co.	E. & L. C. Keith
Rockaway Shoe Mfg. Co.	
Racine Shoe Mfg. Co.	Jones Earl Shoe Co.
Rudy, William B.	
Rubberhide Co.	
Rehfische, Paul	
Straw & Co., L. G.	
Spech, Edmand	Fraher Bros.
Starner Copeland Co.	
Sharood Shoe Co.	Sharood & Crooks
Scates & Euker	
Sunshine Shoe Mfg. Co.	
Snyder & Beilby	
Smith & Watkins Shoe Mfg. Co.	
Seal & Smith Co.	F. W. Moore
Stillman, W. B. M.	Normandy Shoe Co.
Senter, Walter	
Tessier, Peter & Co.	
Taylor, Robert B.	J. H. Webber
Thornton Jordan Shoe Co.	Faunce Jordon Shoe Co.
Travers & Tibbets	Leonard & Bullock
Union Shoe Making Co.	
Worbass Shoe Co.	Kingman & Worbass
Wills, Samuel R.	
Wagener Bros. Shoe Co.	
Webster, Ira	

Name	Successor to
Weill Mfg. Co.	
Zimmerman Shoe Co.	Cheshire Shoe Co.

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1903, AS SHOWN BY OUR RECORDS.

Name	Successor to
Berst, C. H.	Kashner & Berst
Belmont Shoe Co.	Barnesville Shoe Co.
Barker, Brown & Company, Inc.	
Brandau, Adam	
Bohr & Sons, N. C.	Buell & Son
Baby Shoe Co.	
Burrows, J. A.	
Bartlett, J. E.	
Bray, Stanley & Webber	Curtis & Lee
Bragdon, Oren & Son	Kearsarge Shoe Co.
Courtney Shoe Co.	Desnoyers-Courtney Shoe Co.
Carruthers-Jones Shoe Co.	
Crown Shoe Mfg. Co.	
Conrad-Rawls Shoe Co.	Witherspoon Bros. & Co.
Cole-Davis Co.	E. M. Cole
Carroll Shoe Co., J. A.	Feuss & Prather Co.
Coburn-Lewis Shoe Co.	G. M. Coburn & Co.
Cohan & Co., Geo. I.	W. J. Clark
Cummings Co., The	D. Cummings & Co.
Cort, Charles	
Cohen, Frank & Co.	S. Cohen & Brother
Comfort Shoe Co.	
Dolgeville Felt Shoe Co.	
Ellett-Kendall Shoe Co.	Bond Shoe Co.
Eady Shoe Co.	The Flint Shoe Co.
Ellsworth Shoe Co.	
Endicott-Johnson Co.	Lestershire Mfg. Co.
Eckhardt & Son	Eckhardt & Donovan Shoe Co.
Engle Shoe Co.	
Eastman, H. B.	

Name	Successor to
Fiebrich-Fox-Hilker Shoe Co.	Kambach-Fiebrich Shoe Co.
Ford & Co., E. W.	
Frye & Co., C. L.	
Fuller & Co.	
Field Co., F. F.	Field-Hazzard Co.
Forbes, A. H.	H. H. Hoyt Shoe Co.
Gordon Co., Wm.	Watertown Shoe Co.
Guarantee Shoe Mfg. Co.	
Gibbs Shoe Co., O. A.	
Holden, N. B.	
Hirth, Krause & Co.	
Hercules Boot & Shoe Co.	
Ivory Shoe Co.	J. C. Ivory
Jerseyville Shoe Mfg. Co.	
Jordan Shoe Co.	Thornton-Jordan Shoe Co.
Johnson, M.	
Janison, Wm. R.	Highstown Shoe Co.
Jorolemon-Oliver Co.	A. H. Oliver Co.
Krippendorf-O'Neal Co.	Budd-Reilly & Co.
Kashner & Berst	
Kaiser & Son, C.	
Kelley, John A.	
Kenney & Co., L. W.	
Kiley & Co., T. J.	
Knott & Pope Co.	
Knapp, J. A.	Knapp, J. B.
Kavinski, Isreal	
Kreiger-Narath Mfg. Co.	
Logan Shoe Co.	
Lord & Bowers	F. W. Lord
Lester, Whitney Shoe Co.	
Miles & Crone	T. P. Haldy & Co.
Medina Cushion Shoe Co.	D. W. Wright Co.
Middleton Shoe Co.	
Marsters & Co., J. A.	

Name	Successor to
Muller Adams	
Mills, N. A.	
Mortimer Shoe Co.	
McBrown, Rubin A.	
Nicholas & Olson	R. T. Finley
Newhall, B. H.	
O'Brien Shoe Co., J. F.	
Oriental Slipper Mfg. Co.	
Pontiac Shoe Mfg. Co.	John Plaslee Shoe Co.
A. M. Legg Factory	John Plaslee Shoe Co.
Penn Shoe Mfg. Co.	P. & F. Mfg. Co.
Pine State Shoe Co.	E. E. Millett & Co.
Pincus, Julius	
Pepperell Bldg. & Mfg. Assoc.	
Riverside Shoe Mfg. Co.	
Richardson-Joyce Shoe Co.	
Richardson, E. B.	Richardson & Newcomb
Regal Shoe Co.	L. C. Bliss & Co.
Rogers, A. G. Shoe Co.	
Shodwell Shoe Co.	
Shively, F. J.	
Schreier, Jos. A.	Snyder & Beilby
Sterling Slipper Co.	Pierce & Sibley
Sprague & Hathaway Shoe Co.	
Stanton, John	
Thale-Kues & Co.	Thale & Company
Tilt-Kenney Shoe Co.	
Todd Co., F. S.	Todd-Bancroft & Co.
Travers & Co., T. F.	Travers & Tibbets
Union Shoe Works	
Vogel Brothers Shoe Co.	
Wolfe Bros. Shoe Co.	The Annex Shoe Co.
Western Shoe Co.	Kuelen-Nickle Shoe Co.
Worthley, M. J.	C. W. Varney & Co.
Worcester Slipper Co.	

Name	Successor to
White-Dunham Shoe Co.	E. T. White Co.
York Shoe Mfg. Co.	Chas. Heiser Shoe Mfg. Co.

FIRMS STARTING IN THE SHOE BUSINESS IN THE YEAR 1904, AS SHOWN BY OUR RECORDS.

Name	Successor to
Atlanta Leather Co.	
Alley, A. S. Co.	
Austin, Frank E.	
Abraham Shoe Mfg. Co.	
Brandt, J. G. Shoe Co.	
Bering Shoe Co.	Bering & Company
Briggs, Thos. Shoe Co.	
Buek & Ebers	Buek & Co.
Bartlett, Albion	Bartlett Bros.
Brown, C. A. & Co.	
Barton Shoe Co.	
Boynton Shoe Co.	
Bennett & Taylor	
Cresent City Shoe Co.	
Conrad Shoe Co.	Conrad Rawls Shoe Co.
Clark, W. J.	Cohan & Co., Geo. J.
Cobb, Chas. H.	Sterling Slipper Co.
Cohen & Frank	Cohen, Frank & Co.
Comfort Slipper Co.	
Cox, Edw. M. Co.	
Clark, F. D.	
Dovennuehle & Son, H. F. C.	Scowden & Blanchard
Dolge, Alfred Mfg. Co.	
Daniels, Geo. F. Co.	
Eby Shoe Co.	
Engel Cone Shoe Co.	Eagle Shoe Co.
Essex County Shoe Co.	D. Brady
Emery, Chas. P.	Forbes & Colbath
Freiberg, A. M. J. & A.	Freiberg B. & S. Co.
Fargo Shoe Mfg. Co.	Cook County Shoe Mfg. Co.

Name	Successor to
Force, Chas. P.	
Finn, Austin (Filbert St.)	Burnet & Hager
Forbes & Colbath	Forbes, A. H.
Gregory-Shootman Shoe Co.	Shootman, John
Glover, Daniel & Co.	
Griffin White Shoe Co.	B. Cohen & Son
Garden City Shoe Co.	
Germandson, J. F.	
Harrisburg Shoe Mfg. Co.	Harrisburg B. & S. Co. Ltd.
Hammonton Shoe Co.	Osgood & Co., C. F.
Hodsdon Mfg. Co.	
Hall, Loring B. Co.	
Jarchow, N. F. Co.	
Kreider, A. S. Shoe Co.	W. S. Kreider
Krens-Leesberg Shoe Co.	Scudder-Leesberg Shoe Co.
Long-Wilson Co.	
Levin Tanning Co.	Rosenthal-Feder & Co.
Lititz Shoe Co.	
Lynn Shoe Co.	Smith Shoe Co., F. S.
Ludekins, Emil	Ludekins & Thomson
Marion Shoe Mfg. Co.	
Meyer Shoe Co.	
Merrill, Geo. D. Shoe Co.	
Mason, M.	
McLaren & Musson Shoe Co.	Harshman Shoe Mfg. Co.
Normandy Co., The	Normandy Shoe Mfg. Co.
Nyack Shoe Coop. Corp.	Tuttle Shoe Co.
Olson & Swedburg	Nickolas & Olson
Oriental Shoe Mfg. Co.	
Palma Shoe Co.	Ackerman, R.
Putnam & Cross	Putnam, A. S.
Pilgrim Shoe Co.	
Regent Shoe Mfg. Co.	Richardson, Geo.
Ramsfelder-Erlick Co.	Gerstle & Co.
Rodgers Bros.	

Name	Successor to
Robinson Bros. Co.	
Reid & Hertsche Co.	Reid Buenke Shoe Co.
Roth, A.	
Rose Shoe Mfg. Co.	Whitman Co., M. J.
Rieker, Eugene T.	Gloyd S. Co., A. E.
Stilson-Kellog Shoe Co.	
Soule Shoe School & Upper Co.	
Stockton Shoe Mfg. Co.	
Slein, Samuel	Shodwell Shoe Co.
Trimble Bros. & Co.	
Taft & Baker	
Thurell, Batchelder & Co.	
Theriault, Woodus & Burnham	
Uttenweiler-Kohler Co.	
United Workingman's B. & S. Co.	
Waters, E. H. Co.	
Wieck, Ferdinand & Co.	
Wentworth Shoe & Leather Co.	
Warsetz, F. & Co.	
Wood & Neel Co.	Wood, Lawerence & Neel Co.
Winchester Shoe Co.	
Walsh, W. E.	
Watson Shoe Co.	
Wright, W. H.	
Willis, F. E.	
Welch & Atwood Co.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1905, AS SHOWN BY OUR RECORDS.

Name	Successor to
Adams, Fred B. & Co.	
Belleville Shoe Company	
Barker, Frank & Co.	
Baker Shoe Company	
Bennett Shoe Company	
Bennett, C. W. & Co., Inc.	Bennett Shoe Company

Name	Successor to
Burton Shoe Company	
Belonga, G. W. & Co.	
Beardsley, Warren	
Connolly Shoe Co.	
Davis Shoe Co.	
Effar Shoe Co.	
Emerson Shoe Co.	Simmons & Hall Shoe Co.
Emerson Bros.	
Grosz Bros.	
Good Shoe Co.	
Griffin, Chas. D., Shoe Co.	
Garfield Shoe Co.	
Goodhue-Jones Co.	
Green, Harry L.	
Hodous, J. S.	
Hawkes, G. A. Co.	
Harney Brothers	
Holmes, F. B.	
Hilgert Curative Foot Gear Institution	
John & Beck Shoe Co.	
Killian & Kreps	
Kelley, Martin Co.	Martin Kelley & Co.
Lloyd-Adams Co.	
Lynch & Sherman	
Libbey, E. D.	
Lewis Shoe Co.	
Levine Brothers	
Leach Shoe Co.	
Monarch Shoe Co.	
Milton Shoe Co.	
Melanson, J. I.	
Marston, C. S., Jr.	
Nicholson, R. A. & Co.	
Obear, J. L.	
Orne Shoe Co.	

Name	Successor to
Red Wing Shoe Co.	
Rohrer, John M.	
Reed & Shappell	
Royal Shoe Co.	
Roberts, C. A.	
Reardon, Jeremiah	
Weaver, C. B.	
Watson-Mason Shoe Co.	
Wright Brothers	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1906, AS SHOWN BY OUR RECORDS.

Name	Successor to
Ackerman, R.	
Allentown Shoe Mfg. Co.	
Auburn Shoe Co.	
Archibald Bros.	
Andrews & Co.	Andrews-Wasgatt Co.
Adams, Fred B.	
Beeman Shoe Co.	
Battreall-Whittinghill Shoe Co.	
Bradford Shoe Co., The	
Bailey, A. F.	
Burnham, C. A.	
Barber, Frank Co.	
Beal, F. A. & Co.	
Bates, C. S.	
Clifford & Lutz	
Crescent Shoe Co.	
Denver Shoe Co.	
Economy Shoe Co., Inc., The	
Fontins Shoe Co.	
Fargo & Phelps Shoe Co.	
Federal Shoe Co.	H. H. Mawhinney Co.
Fleming & Towers	
Greeman Clark Shoe Co.	Greeman, C. E.

Name	Successor to
Harsh & Smith	
Heinsins, J.	
Hunkins, W. O. & Co.	
Indiana Reformatory	
Kreiger Shoe Co.	Kreiger & Narath Mfg. Co.
Learned, G. A. Co.	
Marion Shoe Co.	
Merrill, Geo. D. Shoe Co.	Merall & Cooper
Morrison, E. G. Shoe Co.	
Morris Bros. Shoe Co.	
Novick Bros.	
Ordway, A. A.	
Plainwell Shoe Co.	
Poor, C. H.	
Purrington, J. W.	
Richardson Bros. Shoe Co.	
Robertson & Sons	
Schultz-Ruck-Delfs Shoe Co.	
Sterling Shoe Co.	
Snow-Hazzard Co.	
Shinbourn, P. & Son	
Sherry Shoe Co.	P. P. Sherry
Supple Shoe Co.	Dearborn Bros.
Sullivan, E. E.	
Thayer, N. B. & Co., Inc.	
Union Shoe Mfg. Co.	Alexandria Shoe Mfg. Co.
Whitney, J. H.	
Wolnicar & Fusfield	
Winslow Shoe Co.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1907, AS SHOWN BY OUR RECORDS.

Name	Successor to
Arkansas Shoe Mfg. Co.	
Adams, Besse Company	
Beatty Felting Co.	

Name	Successor to
Bentley & Olmsted Co.	
Bultman Brothers	
Bellaire Shoe Co.	
Brown, Edward	
Borchardt, S. & Co.	
Brockton Ideal Shoe Co.	
Burke, J. F.	
Callahan & Myers	Wm. C. Callahan
Charter Oak Shoe Co.	
Crotty, James A.	
Curtis, S. R.	
Currier & Doucette	
D. C. Clark Shoe Co.	Greenman-Clark Shoe Co.
Dodge, Arthur F.	
Derby, Silas W.	
Elwell Shoe Co.	
Eldridge, Wm. Z.	
French, Finch & Henry	
Ferndale Shoe Co.	
Friend Shoe Mfg. Co.	
Finnigan Shoe Co., Inc.	
Foster, Moulton Shoe Co.	
Graham, Bumgarner Co.	
Greenberg, I. & Co., Inc.	
Industrial Shoe Co.	
Jenkins Bros. Shoe Co.	
Joel-Stern Co.	
Kelly, James S.	
Lord, A. & Co.	
Leavitt, Geo. B.	
Lovenstein, Gust.	
Mayer-Bannister Shoe Co.	
Manier, Dunbar & Co.	
Marietta Shoe Co.	
Mishawaka Woolen Mfg. Co.	

Name	Successor to
Mullen, J. D. & Son	
Marston, A. F. Co.	
Millar & Wolfer	
Morgan Shoe Co.	
Morrison & Goodwin	
Merrill, A. J.	
New York Shoe Mfg. Co.	
Orr, J. K. Shoe Co.	
Packard, H. M. & Co.	
Paine Shoe Company	Orne & Paine
Parke, John H.	
Plaistow Shoe Co.	
Rickard, Gregory Shoe Co.	
Smith-Briscoe Shoe Co., Inc.	
Sawyer Boot & Shoe Co.	
Stevens, W. H.	
Strout & Stritter	
Stonebach, C. H.	
Timson & Company	
Venice Shoe Co.	
Williams Shoe Co., The	
Wayne Shoe Mfg. Co.	
Werner Shoe Co.	Reed & Shr ppell
Wolf, J. L. Shoe Co.	
Woodburn & Currier	
Wiswell, Alvah L.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1908, AS SHOWN BY OUR RECORDS.

Name	Successor to
Anatomik Footwear Co.	
B. & E. Shoe Co.	
Baker, Sanford A.	
Belwood Shoe Co.	
Brackett, W. D. Co.	W. D. Brackett & Co.

Name	Successor to
Colby & Bushway	
Conlin, F. J. & Co.	Acme Shoe Mfg. Co.
Continental Shoe Co.	
Currier, T. J.	
Dodge, Nathan D. Shoe Co.	
Dougherty-Meara Shoe Co.	
Eastman Shoe Co.	
Feldner, P. Shoe Co.	
Feman, Morris	
Fitzpatrick, Frank A.	
Friend-Nunnally Shoe Mfg. Co.	Friend Shoe Mfg. Co., Inc.
Gage & Morse	
Goldberg, S. & Co.	
Goodwin & Gosselin	
Green Shoe Co.	
Greenberg-Miller Co.	Twentieth Century Legging Co.
Griffin, N. C.	
Hand Made Shoe Co.	
Hammer & Hungerford	
Harbor Grace Boot & Shoe Mfg. Co.	
Hendrick, L. M. & Co.	
Hillsdale Shoe Co.	Dovenmuehle, F. C. & Sons Co.
Holters-Cravin Co.	
How, George C.	
Johanson-Huxley Shoe Co.	
Kentucky Shoe Mfg. Co.	
Lefkowitz, Jacob	Lefkowitz & Knopping
Logan, Thomas H. Co.	
Lowery, O. E. Co.	
Miller & Day	
Moody, V. H. Shoe Co.	Pillsbury, W. S. & R. W.
Morr Shoe Mfg. Co.	
Mortimer, Dyer	Merrill, George D. Shoe Co.
Murray, Elmer	
Newberry Shoe Co.	

Name	Successor to
Newton Shoe Co.	
Orne, W. P. & Co.	E. B. Richardson
Quimby, Hiram P.	
Reider-Fisher Shoe Co., Ltd.	
Richardson, B. F.	
Rosenwasser Bros.	
Saunders Shoe Co.	
Smallwood, Fred	
Springvale Shoe Co.	
Sterling Shoe Mfg. Co.	
Strickler & Brehm Shoe Mfg. Co.	Hummelstown Shoe Co.
Thompson & Scott	
United Iowa Shoe Co.	
Walker, Arthur W.	
Weill, J. C.	
Well-Worth Shoe Co.	
Williams, A. A. Shoe Co.	
Wolf & Wolfson	
Woodburn & Jaquer	
Wright Co., The	
Yost, C. E. & Bro.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1909, AS SHOWN BY OUR RECORDS.

Name	Successor to
Athletic Shoe Co.	
Brockton National Shoe Co.	
Benson & Holden	
Barry Shoe Co., W. J.	
Beaumont & Traub	
Chippewa Shoe Mfg. Co.	
Davis Brothers	
Dovell & Son, Wm. H.	
Dooley Shoe Mfg. Co., M. J.	
Davis, Luther A.	

Name	Successor to
Dessner & Co., J.	
Emerson Shoe Co., C. S.	
Foot Ease Shoe Co.	
Franco-American Shoe Mfg. Co.	
Goodwin, W. C.	
Gosselin, F.	
Greeley & Towle	
Hayden & Collins	
Harlow & Keene	
Hurley Shoe Mfg. Co.	
Haskins Shoe Mfg. Co.	
Honesdale Footwear Co.	
Herrmann, Jandorf & Oxberry Co.	
Imperial Shoe Mfg. Co.	
Kreider Shoe Co.	
Kreider & Sons Mfg. Co., W. L.	
Kenmore Shoe Co.	
Kaufman Dryfoot Co.	
Lucas & Lee Co.	
Luddy Shoe Co., James	Luddy & Currier
Leibowitz & Son, A.	
Luscomb & Kadel Co.	
L. W. Shoe Co.	
Montgomery & Company	
Mason Shoe Mfg. Co.	
Milton Shoe Co.	
Marston Shoe Co.	
Marvel Shoe Co.	
Mutual Shoemakers #1	
Marlboro Shoe Co.	
McNaghten, S. D.	
McBrearty, John	
New England Shoe Mfg. Co.	
O'Donnell Shoe Co.	
Olive Branch Shoe Corp.	

Name	Successor to
Pecker & Co., Everett W.	
Plaut Butler Company	
Pittsfield Shoe Co.	
Parker & Munroe	
Queen Shoe Co.	
Reynolds & Stetson Co.	
Randall, Perley H.	
Red Star Shoe Co.	
Star Shoe Co.	
Sheboygan Shoe Co.	
Stern Co., Arthur C.	
Sweet, F. F.	
Simons & Sons, Geo.	
Sheridan Brothers	
Senter & Gordon	
Swain & Bellows Shoe Co.	
Scott, Randall M.	
Smith & Son, M. A.	
Sprague Shoe Co.	
Troy Shoe Co.	
Three K Shoe Co.	
Wear Well Shoe & Repair Co.	
Warranty Shoe Mfg. Co.	
West Lynn Shoe Mfg. Co.	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1910, AS SHOWN BY OUR RECORDS.

Name	Successor to
Albert, J. & Son	
American Specialty Shoe Co.	
Arnold, R. O.	
Ashby Shoe Co.	
Asher, L.	
Bangor Shoe Co.	
Battles, A. W.	

Name	Successor to
Bell Bros. Co.	
Birgman Shoe Mfg. Co., The	
Bonin, M.	
Clark, D. C.	
Clark, D. C. Shoe Co.	D. C. Clark
Clifford, Chas. L.	Quimby, Hiram P.
Columbia Shoe Co.	
Currier, C. D.	Currier, W.
Cushion Heel Shoe Co.	
Derry Shoe Co.	
Desmond-Hayden Shoe Co.	
Devine & Yungel Shoe Mfg. Co.	Devine & Yungel
Dodd, Jos. M.	
Dowd, C. & T.	Dowd, Edward
Eagle Wood Heel Co.	
Everwear Shoe Co.	
Fenerty, Cossaboom & Mays	
Field-Holmes Co.	
Filsinger-Boette Shoe Co.	
Flexo Shoe Co.	
Foot, S. B. & Co.	
Fuller, Chandler & Patton	
Gage & Russ	Gage & Morse
Gerber, F. C. Shoe Co.	
Goodyear Shoe Co., Inc., The	
Green, F. L. W.	
Gregory, F. E. Co.	Pecker, Everett W. & Co.
Greilich, Wm.	
Harding Custom Shoe Co.	
Harney, Peter J. & Sons	
Hazzard, R. P. Co.	Snow-Hazzard Co.
Hedlund Shoe Co.	
Hennessey, Maxwell & Harrigan S. Co.	
Honesdale Union Stamp Shoe Co.	
Jacobs & Burrows	Burrows, J. A. & Co.

Name	Successor to
Kimball-Knight Shoe Co.	Adams-Besse Shoe Co.
Koerner-Marsh Shoe Co.	
Krieger & Co.	
Lange & Janke Mfg. Co.	
Larson, C. P. Shoe Co.	
Leavitt, F. E. & Co.	
Leger, W. A.	Goodwin, John F.
McNamara, L. F. & Co.	
Martin Slipper Co.	
Merrill, A. J. & Co.	Merrill, A. J.
Minor-Pullen Co.	Felter Bros. Co.
Moody-Emerson Shoe Co.	
M. S. & P. Shoe Co.	
Newbury Shoe Co.	
Niagara Shoe Co.	Venor & Co.
Northland Shoe Co.	
North Star Shoe Co., The	Heffelfinger Shoe Mfg. Co.
O'Keefe, C. J. & Co.	
Perfect Shoe Mfg. Co.	
Perry-Malcolm Co.	
Pincus & Tobias	Pincus, J.
Redman Shoe Co., The	
Rench & Haslach	
Rice-Hurlbert Shoe Co.	
Rood, D. C. Shoe Mfg. Co.	
Rowe & Connor	Murray, Elmer
Salem Shoe Mfg. Co.	
San Diego Shoe Mfg. Co.	
Santa Rosa Shoe Mfg. Co.	
Scott, R. M.	Scott & Quiner
Scott & Quiner	Scott, R. M.
Simonds & Webster	
Smart, H. A.	
Solomon, J. Co.	
Speigelman & Gluckman	

Name	Successor to
Stanley Shoe Co.	
Sterner, Harry S.	
Straw, L. G. & Dunham	Straw, L. G. Shoe Co.
Strong & Co.	
Stahler, C. F. Shoe Co.	
Teitzel, J. C.	
Trevett & Berry	
Turner, H. B. & Co.	
Twig, Otto L.	
Unique Shoe Mfg. Co.	
Webster-Webber Shoe Co.	
Wildowsky, M.	
Winona Shoe Mfg. Co.	
Witherell & Dobbins	
Woodbury, Edwin S. Co.	Lefavour D. D. Co.
Wright & McAdams	

FIRMS STARTING IN THE SHOE MANUFACTURING BUSINESS IN THE YEAR 1911, AS SHOWN BY OUR RECORDS.

Name	Successor to
Beaver Shoe Co.	
Burkley Shoe Co.	J. F. Foster & Sons
Brockton People's Shoe Co.	
Bickley Shoe Mfg. Co.	
Butcher, W. A.	
Borek, John	
Bedford-Pittman Co.	
Burrier & Farra	
Bentley, Mrs. B.	
Bohr Bros. Co.	Bohr Shoe Co.
Bender Shoe Co.	
Belovsky Bros.	
Brooklyn Shoe Mfg. Co.	
Beacon Falls Rubber Co.	
Columbia Shoe Mfg. Co.	Hennessey Shoe Mfg. Co.

Name	Successor to
Chicago Theatrical Shoe Co.	
Carleton, Geo. F. & Co.	
Collins, H. S.	
Collins, T. P. F. & Co.	
Consolidated Shoe Co.	
Doherty Bros.	
Day-Emerson Shoe Co.	
Danebrook, Ernst	
Dudley, Mears & Stevens, Inc.	
Essex Shoe Mfg. Co.	
Frolicher Helmers Co., The	
Gray & Snyder	
Gordon Shoe Co.	
Grand Shoe Co.	
Goldberg Co. I. Inc.	
Grasso, Salvatore	
Hoar, W. J. Shoe Mfg. Co.	
Hubler & Earnshaw Co.	
Hagerstown Legging Co.	
Hitchcock-Stockbridge Co.	
Heath, Fred B.	
Hoskins, R. H. Co.	
Ideal Shoe Mfg. Co.	
Ideal Baby Shoe Co.	A. H. Putnam & Co.
Jacobs & Thatcher Co.	
Kirk-Dunning Co.	
Kyng B Shoe Co.	
Knights-Allen Co.	
Kelley, James S.	
Kaufman, Emil Co.	
Lay-Waterson Shoe Co.	
Luedke-Schaefer-Buttles Co.	
McGregor, W. R.	
Marston & Brooks Co.	
Myron, W. H. Shoe Co.	

Name	Successor to
Majestic Shoe Co.	
Miller, I.	
Mears, Feely & Adams	
Powers & Dundas	Sawyer & Murdock
Patterson Co., The	
Pitman Shoe Co.	
Quinn, Gilbert F. Co.	
Red Bud Shoe Co.	
Russell, W. C. Moccasin Co.	
Rhodes-Dooin Co.	
Robinson & Farrell Shoe Co.	
Ruddock Shoe Co.	
Rickard Shoe Co., The	
Richardson, Charles H.	
Raines, L. H. & Co.	
Rogers, Forrest L. Co.	
Schroeder Shoe Co.	
Superior Shoe Mfg. Co.	
Sargent & Kelliher	
Usher-Stoughton Shoe Co.	
Valley Shoe Co.	
Wisconsin Shoe Co.	
Welch & Kelly	
Welch Shoe Co.	
Whitney, H. T.	
Whittridge Bag Co., Inc.	
Yeager, R. E. Shoe Co.	
York Shoe Mfg. Co.	

DEFENDANTS' EXHIBIT 224.

[Put in Evidence, page 3026.]

CLASSIFIED PRODUCTION AT FACTORY OF JOHN STROOTMAN SHOE COMPANY, BUFFALO, N.Y., YEAR ENDING DECEMBER 31, 1911.

1911	Women's Stitched (2 Mchs.)	Misses' Stitched	Children's Stitched	Women's & Misses' Turns (1 Mach.)	Children's Turns
Jan.	3643	12	24	1795	744
Feb.	3454	42	35	1615	717
Mar.	3845	0	0	1202	875
Apr.	2234	135	69	687	424
May	749	0	0	224	29
June	3601	0	0	1204	526
July	4164	0	100	962	1043
Aug.	4964	55	78	914	1049
Sept.	5492	12	23	1036	883
Oct.	2031	0	0	695	642
Nov.	3414	120	72	873	262
Dec.	4380	226	3	1002	412
	41971	602	404	12209	7606
Capacity	210000			172500	
%Use to Capacity	19.9%			11.4%	

1911	Turn Toe Lasting (1 Mach.) (8 Mos.)	H.M. 5/12c (4 Mchs.)	McKay 1/2c (4 Mchs.)	H.M. 1/2c (2 Mchs.) (8 Mos.)	Welt 5/8c (2 Mchs.) (8 Mos.)	No. 5 Lasting (1 Mch. (8 Mos.)
Jan.		2845	7596	49	5467	
Feb.		2585	6388	86	5055	
Mar.		1428	6927	21	4882	
Apr.		378	2626	230	2779	
May	224	137	1882	0	0	830
June	1155	2152	6715	0	0	3698
July	962	3223	6516	41	4174	4215
Aug.	914	3700	8913	0	0	5225
Sept.	1036	3090	7197	0	0	5338

Oct.	695	831	5599	0	0	2143
Nov.	873	2233	5565	0	0	3651
Dec.	1002	3488	7058	0	0	4738
	6861	26090	72982	427	22357	29838
Capacity	120000	300000		40000	50000	
% Use to Capacity	5.7%	33%		56.9%	59.7%	

1911	No. Machs.	Ensign Lacer	Pulling O. Welt	Pulling O. McKay (1 Mach)	McKay Pounding (1 Mach)	Heeling (2 Machs)
Jan.	2	7015		10535	10578	17045
Feb.	2	6849		8574	8862	13278
Mar.	2	5847		8693	8683	14357
Apr.	2	3373		2683	3002	7023
May	2	3700	195	2156	2187	252
June	3	12967	578	9001	9043	14440
July	3	15157	0	9550	9962	15622
Aug.	3	15435	3016	12435	12624	17235
Sept.	3	16102	4576	10359	10187	17501
Oct.	3	6020	2042	6370	6575	10113
Nov.	3	8974	3261	7758	6534	11590
Dec.	3	9441	4722	10623	10527	16062
		110880	18390	98737	98764	154518
Capacity		1395000	90000	135000	270000	
% Use to Capacity		7.9%	20.4%	73.1%	36.5%	

SUMMARY

Process	Number Pairs
Welting & Stitching	42,977
Turn Sewing	19,815
Pulling Over	117,127
Heeling	154,518
Lacing	110,880
Lasting	158,555

DEFENDANTS' EXHIBIT 225.

[Put in Evidence, page 3044.]

LIST OF PRINCIPAL AND AUXILIARY MACHINES OF THE GOODYEAR METALLIC HEELING AND LASTING DEPARTMENTS OUT JANUARY 1, 1905, ON UNTIED LEASES.

	Principal Machines	Auxiliary Machines	Total
Welt & Turn Sewing Machines Outsole Stitching Machines	1,798 1,817	9,078	12,693
Metallic Fastening Machines	603		603
Heel Attaching Machines	1,500	1,950	3,450
Lasting Machines	1,956		1,956
	7,674	11,028	18,702

MACHINES OF THE GOODYEAR, METALLIC, HEELING & LASTING DEPARTMENTS OUT MARCH 1, 1911, ON UNTIED LEASES.

Goodyear — Principal Machines	5,203
" — Auxiliary Machines	15,540
Metallic — Principal Machines	225
Heeling — Attaching Machines	415
" — Auxiliary Machines	514
Lasting	1,506
	23,403

DEFENDANTS' EXHIBIT 226.
[Put in Evidence, page 3044.]

LEASED MACHINERY AS OF RECORD MARCH 1 OF EACH YEAR FOLLOWING:

	1900	1901	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913
Goodyear Department.														
Welts & Turns	1338	1387	1513	1650	1724	1851	2011	2157	2268	2338	2471	2527	2599	2613
Stitchers	1193	1279	1473	1601	1690	1871	2159	2366	2597	2468	2604	2676	2855	2973
Metallic Department.														
Standard Screw Machines	826	778	744	683	658	629	628	639	671	613	580	440	406	379
Slugging Machines	1723	1793	1869	1862	1866	1870	1871	1913	1983	1894	1933	1878	1845	1838
Tacking Machines	3752	3700	3772	3600	3606	3383	3394	3461	3528	3317	3214	3065	2956	2852
Loose Nailing Machines	860	944	1078	1129	1191	1247	1313	1414	1561	1615	1753	1835	1913	1967
Heeling Department.														
Attaching Machines	1382	1447	1535	1545	1597	1652	1727	1847	1964	1964	2030	2019	2102	2111
Lasting Department.														
Hand Method Machines	2036	2303	2669	2861	2971	3153	3392	3696	3881	3886	3936	3854	3865	3782
Bed Lasters:														
Chase, Copeland, McKay-Copeland & Ideal	2171	2153	2087	2094	2122	2136	1881	1993	2123	2129	1952	1562	837	744
No. 5										196	1040	2080	3274	3716
Pulling-Over Department.														
Pulling Over Machines				20	106	268	566	887	1011	1162	1394	1635	1960	2211
Auxiliaries, General Department, Eyelet Department and Miscellaneous Machines	8862	9821	11703	17060	19944	24079	29958	37404	43922	48771	57827	66705	72469	73330
Grand Total	24143	25605	28443	34105	37475	42138	48900	57777	65509	70353	80734	90276	97081	98516

DEFENDANTS' EXHIBIT 227.

[Put in Evidence, page 3048.]

LIST OF GENERAL DEPARTMENT MACHINES SOLD OR LEASED BY THE UNITED COMPANY DECEMBER, 1911.

Beading Machine: Columbia
Beading Machine: N. M. Heel Seat — Model G.
Beveling Machine: Champion Strip — Model B.
Blacking Machine: Crest Heel — Model B.
Breasting Machine: Imperial Heel — Model B.
Breasting Machine: Heel — Model R.
Breasting Machine: Heel — Model W.
Buffing Machine — Model G.
Building Machine: Heel — Model R.
Building Machine: Pyramid Heel — Model D.
Carburetter and Pump: Improved — Model C.
Cementing Machine: Star Channel — Model C.
Cementing Machine: Star Channel — Model D.
Cementing Machine: Hub Lining — Model F.
Cementing Machine: Rapid Rotary — Model J.
Channeling Machine: Apex — Model B.
Channeling Machine — Model G.
Cleaning Machine: Booth Shaping &
Cleaning Machine: Stitch & Upper — Model M.
Cleaning Machine: Upper — Model R.
Creasing Machine: Improved Vamp
Cutting Machine: Eclipse Welt — Model G.
Cutting Machine: Eclipse Welt — Model H.
Cutting Machine: Heel Wedge — Model A.
Cutting Machine: Improved Baby Sole — Model P.
Cutting Machine: Improved Geared Sole — Model CC.
Cutting Machine: Imp. Gearless Sole — Model A.
Cutting Machine: Imp. Gearless Sole — Model B.
Cutting Machine: Imp. Gearless Sole — Model C.
Cutting Machine: Imp. Gearless Sole — Model E.
Cutting Machine: Imp. Gearless Sole — Model F.

Cutting Machine: Imp. Gearless Sole — Model H.
Cutting Machine: Imp. Gearless Sole — Model J.
Cutting Machine: Imp. Gearless Sole — Model K.
Cutting Machine: Imp. Gearless Sole — Model M.
Cutting Machine: Tap — Model S.
Cutting Machine: Welt — Model F.
Cutting Machine: Welt — Model N.
Cutting & Scoring Machine — Model D: Insole Lip.
Cutting & Scoring Machine — Model E: Insole Lip.
Dividing Machine: Carver Counter.
Edge Machine: Apex Thin — Model A.
Embossing Machine: Royal — Model A.
Embossing Machine — Model B.
Embossing Machine — Model R.
Finishing Shaft, High Stand — Model R.
Finishing Shaft, High Stand — Model S.
Finishing Shaft, Climax — Model A.
Finishing Shaft, Climax — Model B.
Finishing Shaft, Climax — Model C.
Finishing Shaft, Climax — Model D.
Finishing Shaft, Climax Sectional — Model K.
Fleshing or Randing Machine: Apex — Model A.
Fleshing or Randing Machine: Apex — Model B.
Flexing Machine: Insole — Model R.
Gauging Machine: Sole — Model R.
Gauging Machine: Sole — Model T.
Gouging Machine: Crescent Toe — Model C.
Grinding Machine: Apex — Model G.
Grinding Machine: Apex Knife — Model A.
Grinding Machine: American Slug — Model P.
Grinding Machine: Imperial — Model H.
Grinding Machine: Planet — Model A.
Hammer, New Power — Model B.
Laying Mch.: Channel — Model W.
Laying Mch.: Apex Welt — Model A.
Leveling Mch.: Acme.

Leveling Mch.: New Giant.
Leveling & Flexing Mch.: Shin — Model N.
Leveling Mch.: Atlas — Model A.
Leveling Mch.: Hercules — Model A.
Leveling Mch.: Hercules — Model B.
Leveling Mch.: Star — Model S.
Marking Mch.: Paragon Vamp — Model C.
Moulding Mch.: American Twin Sole — Model C.
Moulding Mch.: Single Sole — Model S.
Opening Mch.: Apex Channel — Model C.
Perforating Mch.: Royal — Model B.
Pinking Mch.— Model R.
Polishing Mch.: Vamp — Model R.
Press, Heel — Model F.
Press, Heel — Model S.
Press, Handy Heel — Model P.
Press, Welt — Model S.
Press, Booth Upper.
Punching Mch.: Crown Tip — Model P.
Punching Mch.: Tip — Model S.
Punching Mch.: Royal Tip — Model A.
Reducing Mch.: Apex Feather Edge & Shank — Model A.
Reducing Mch.: Apex Feather Edge & Shank — Model B.
Reducing Mch.: Rotary Feather Edge & Shank — Model H.
Reducing Mch.: Feather Edge & Shank — Model M.
Reel, Welt — Model P.
Rolling Mch.— Model F.
Rolling Mch.— Model H.
Rolling Mch.— Model R.
Rolling Mch.: Improved — Model S.
Rolling Mch.: Improved — Model EE
Rolling Mch.: Victor — Model E.
Rounding Mch.: Apex Tap & Sole — Model A.
Rounding Mch.: Heel Seat Rough — Model B.
Rounding Mch.: Planet Sole — Model D.
Rubbing Mch.: Rapid Seam — Model F.

Sanding Mch.: Top Piece — Model G.
Scarfing Mch.: Boss Spring Heel — Model B.
Scarfing Mch.: Lap — Model H.
Scarfing Mch.: Spring Heel — Model S.
Scarfing Mch.: Turn Sole — Model A.
Scolloping Mch.: Button Fly — Model R.
Scolloping Mch.: Button Fly — Model S.
Scolloping Mch.: Top Piece — Model B.
Scouring Mch.: Heel — Model R.
Scouring Mch.: Carver Heel.
Scouring Mch.: Heel Breast — Model H.
Scouring Mch.: Heel Breast — Model N.
Scouring Mch.: Tip — Model G.
Setting Mch.: Rotary Edge — Model K.
Setting Mch.: Single Edge — Model M.
Setting Mch.: Twin Edge — Model R.
Setting Mch.: Union Twin Edge — Model S.
Sewing Mch.: McKay — Sole.
Shears: Improved Pattern — Model R.
Skiving Mch.: Amazeen — Model #7.
Skiving Mch.: Counter — Model W.
Skiving Mch.: Pluma — Model D.
Skiving Mch.: Carver Vamp.
Skiving Mch.: Champion Heel Lift — Model A.
Skiving Mch.: Champion Shank — Model A.
Skiving Mch.: Counter — Model D.
Skiving Mch.: Counter — Model F.
Skiving Mch.: Counter — Model S.
Skiving Mch.: Leatherboard — Model C.
Skiving or Rand Splitting Mch.: Apex Tap — Model C.
Snipping Mch.: Booth Sandal.
Softening Mch.: Toe — Model C.
Softening Mch.: Toe — Model D.
Softening Mch.: Toe — Model E.
Splitting Mch.: Improved Rand — Model S.
Splitting Mch.: Rand — Model T.

Splitting Mch.: Centennial — Model A.
Splitting Mch.: Centennial — Model B.
Splitting Mch.: Centennial — Model D.
Splitting Mch.: Centennial — Model E.
Splitting Mch.: Centennial — Model F.
Splitting Mch.: Centennial — Model G.
Splitting Mch.: Centennial — Model H.
Splitting Mch.: Centennial — Model J.
Splitting Mch.: Summit — Model M.
Splitting Mch.: Summit — Model N.
Splitting Mch.: Summit — Model P.
Splitting Mch.: Empire — Model C.
Splitting Mch.: Cylinder — Model R.
Stamping Mch.: Eagle Sole — Model C.
Stamping Mch.: Eagle Upper — Model C.
Stamping Mch.: Regent — Model C.
Stamping Mch.— Model R.
Stand: Climax Bench.
Sticking Mch.: Shank Piece — Model B.
Stitch Mch.: Impression — Model H.
Stitch Mch.: Waukenphast Imitation — Model T.
Stripping Mch.: Improved — Model F.
Stripping Mch.: Improved — Model S.
Thin Edge Mch.: Apex — Model A.
Trimming & Stitch Rubbing Mch.: Welt — Model R.
Trimming Mch.: Apex Spring Heel — Model A.
Trimming Mch.: Edge — Model A.
Trimming Mch.: Edge — Model B.
Trimming Mch.: Edge — Model E.
Turning & Beading Mch.: Model R.
Turning Mch.: Star Rand — Model S.
Wetting Mch.: Crest Sole — Model A.
Wheeling Mch.: Booth Geared

DEFENDANTS' EXHIBIT 228.

[Put in Evidence, page 3049.]

SUMMARY OF LEASED MACHINES AS OF MARCH 1, 1911.

Heeling Department	5,408
Metallic Department	9,434
Lasting Department	12,775
Pulling-Over Department	3,627
Ensign Lacing Department	633
Eyelet Department — Power Machines	2,435
Eyelet Department — Foot Power & Miscellaneous	2,037
General Department	33,184
Goodyear Department	20,743
Total	90,276

HEELING DEPARTMENT

Bigelow Attaching Machine	14
Wood Heel Attaching	9
Velvet Box Toe Buffing	47
#4 Automatic Heel Compressing	605
Bresnahan Heel Compressing	14
Fisher Heel Compressing	3
Knox Heel Compressing	1
Compressing & Loading	7
McKay Knife Grinding	613
Monarch Skiver Knife Grinder	22
National Heeling	10
American Lightning Nailing	978
McKay Automatic Heel Loading & Attaching	943
" " " " " " "B"	5
Rapid Nailing & Automatic No. 1 and 2	60
Premier Heel Pricking	225
McKay Heel Pricking	24
Eros Rand Making	20
Monarch Counter Skiver & Finisher	58
Smith Heel Trimming	18

Busell Heel Trimming	148
King Heel Trimming	7
Spring Heel Trimming	92
McKay Heel Breast Trimming	6
Ultima Heel Trimming	482
McKay Heel Trimming & Randing	966
Tape Winding	20
Trip Rand Moulding	1
Tap & Sole Sanding	10
Total	5,408

METALLIC DEPARTMENT

Staple Belt Machine	4
Grip Clinch	173
Universal Double Clinch	103
Heel Protector Driving	40
Staple Fastening "A" " " "B" " " "C" " " "D"	887
Nurling	3
Loose Nailing	1,783
Loose Nailing No. 2.	52
Automatic Staple Nailing	1
Davey Pegging	146
Spatter Quilting	44
Ziz Slugging	3
Universal Slugging	1,789
Grip Slugging	69
Simplex Slugging	6
Champion Slugging	11
Rapid Standard Screw	398
Old Standard Screw	42
Power Welt Tacking	251
S. H. Taper Nail Tacking / D. H. Taper Nail Tacking	928

String Nail Tacking	260
Cable Tacking	281
Grip Tacking "A"	454
" " "B"	4
Grip Quilting	1
Knife Grinders	1,701
Total	9,434

LASTING DEPARTMENT

Hand Method McKay Laster	2,646
Turn Heel Seats	62
Hand Method Welt Lasting Side Lasting	1,103
Turn Toe Lasting	43
McKay-Copeland Lasting	300
McKay-Copeland Tackers	335
McKay-Copeland Pinkers	318
McKay-Copeland Peggers	23
Chase Lasting	780
Chase Tackers	1,231
Boston Lasting	226
Copeland Power Lasting — Non Royalty	8
Copeland Foot Power Lasting—Royalty	11
" " " " —Non Royalty	27
Ideal Lasting—Royalty	353
" " —Non Royalty	83
Loose Tacking & Insole Tacking No. 1	3,118
Beacon Heel Seat Beating	28
U. S. M. C. Lasting No. 5.	2,080
Total	12,775

PULLING OVER DEPARTMENT

Wentworth Heel Seat Beading	213
Rex Pulling Over 5-Pincer Swivel McKay 40 Deg Machine 3-Pincer 40 Deg Machine 5-Pincer	1,632

Rex Pulling Over "B"	3
Rex Rotary Pounding	1
Rex Pounding "E"	83
Rex Rotary Pounding & Trimming "A" "B"	556
Rex Toe Trimming	4
Rex Upper Trimming	143
Rex Toe Gumming	9
Rex Tacking	21
Rex Assembling	854
Rex Assembling Spindle	20
Rex Trimmer Grinders	88
Total	3,627

ENSIGN LACING DEPARTMENT.

Ensign Lacing "A" " " "B"	633

EYELET DEPARTMENT — POWER MACHINES.

Duplex Eyeletting	817
Merrick Power Eyeletting	116
Perfection Eyeletting Universal Eyeletting	1,502
Total	2,435

EYELET DEPARTMENT — FOOT POWER AND MISCELLANEOUS MACHINES.

Domino Grommet Setting	1
Cameo Foot Power Eyeletting	11
Merrick Foot Power Eyeletting	1
Vulcan Foot Power Eyeletting	1,939
Vulcan Foot Power Eyeletting (Power Attachment)	76
Wunderhoox	5
Vulcan Punch	3
Vulcan Punch Fitted for Eye.	1
Total	2,037

GENERAL DEPARTMENT.

New Method Heel Seat Beading — Model G	137
Champion Strip Beveling — Model A	1
" " " — Model B	55
Crest Heel Blacking — Model A	132
#1 Heel Seat Beading	3
Plain Heel Seat Beading	1
Buffing Machine — Model G	1,112
" " Model H	1
" " Model D	2
" " Model S	99
Emerson Buffing (Heavy)	7
" " (Plain)	5
Bottom Shank Roll Buffing	1
Webster Buffing	3
Split Roll Buffing (Naum. Att.)	10
Plain Ross Buffing	1
Heel Building — Model R	13
#2 Heel Building — Model R	3
Pyramid Heel Building — Model B	38
Heel Breasting — Model R	76
" " Model W	36
Imperial Heel Breasting — Model B	954
#8 Heel Burnishing	1
Star Channel Cementing — Model A	233
" " " Model C	186
Rapid Rotary Cementing — Model J	125
Vamp & Lining Cementing — Model S	12
Economy Cementing — Model X	74
Hub Lining Cementing — Model E	82
Apex Channeling — Model A " " Model B	658
Hand Power Channeling — Model Z	6
Hand or Power Channeling — Model A	5
Hand Belt Power Channeling — Model Z	4

Norris Rand Chopping	1
Stitch & Upper Cleaning — Model M	267
Upper Cleaning — Model R	4
Ideal Clicking — Model C	3,655
Crimping	1
46" Ex. Heavy Geared Lining Cutting	3
Improved Baby Sole Cutting — Model P	78
Improved Geared Sole Cutting — Model CC	36
Improved Gearless Sole Cutting — Model A	237
" " " " Model B	130
" " " " Model C	655
" " " " Model E	66
" " " " Model F	451
" " " " Model H	18
" " " " Model J	63
" " " " Model K	7
" " " " Model M	10
Tap Cutting — Model S	17
Beam Cutting	1
Bresnahan Rd. Block Dinking	1
Union Twin Edge Setting — Model S	86
Twin Edge Setting — Model R	1,300
Single Edge Setting — Model M	55
Rotary Edge Setting — Model C	133
Beaudry Edge Setting	1
Apex Thin Edge — Model A	122
Embossing — Model R	55
" Model W	12
Puritan Fairstitching	8
Power Fleshing — Model H	1
Apex Fleshing or Ranging — Model A	221
" " " " Model B	28
Insole Flexing — Model R	50
" " Model E	2
Crescent Toe Gouging — Model A	8
" " " Model B	5
" " " Model C	131

American Slug Grinding — Model P	4
Imperial Grinding — Model H	175
Planet Grinding — Model A	20
Fletcher Ironing	9
Apex Welt Laying — Model A	20
Channel Laying — Model W	138
" " (S. & F.)	5
Shin Leveling & Flexing — Model N	55
Last Leveling (Swain & Fuller)	2
Atlas Leveling — Model A	354
Hercules Leveling — Model A	402
" " Model B	89
Star Leveling — Model S	5
Giant Leveling	7
Acme Leveling	54
Bresnahan Cam Leveling	5
American Twin Sole Moulding — Model B	303
" " " " Model C	20
Bresnahan Twin Sole Moulding	2
C. & J. Twin Sole Moulding	1
Single Sole Moulding — Model S	44
Nurling	278
Apex Channel Opening — Model A	18
" " " Model B	39
" " " Model C	544
Vamp Polishing — Model R	6
Handy Heel Press — Model P	122
Improved Veneer Press "E" 8 Section	2
" " " "E" 10 "	14
Crown Tip Punching — Model P	271
Apex Feather Edge & Shank Reducing — Model A	279
" " " " " " Model B	281
Feather Edge & Shank Reducing — Model M (Hand)	2
" " " " " Model M (Power)	5
Rotary Feather Edge & Shank Reducing — Model H	14
Power Shank Reducing	2

Rolling — Model E	304
" (S. & F. Type)	19
" Model F	31
" Model R	16
" Model EE	10
Improved Rolling — Model S	15
Tap & Sole Roughing — Model A (Old & New Styles)	13
Apex Tap & Sole Rounding — Model A (H. P.)	29
" " " " " Model A (H. B. P.)	390
Heel Seat Rough Rounding — Model B	384
Planet Sole Rounding — Model C	444
" " " Model D	623
Improved Sole Rounding — Model H	13
Stanley Rounding — Model S	3
Vrooman Tap Rounding	3
Top Piece Sanding — Model G	46
Boss Spring Heel Scarfing — Model B	21
Hand Spring Heel Scarfing	1
Spring Heel Scarfing — Model S	4
Tap Scarfing — Model N	3
Button Fly Scalloping — Model R	5
" " " Model S	12
Top Piece Scalloping — Model B	185
Carver Heel Scouring	28
Heel Scouring — Model E	4
Heel Scouring — Models R & T	997
Heel Scouring — Model G	28
Heel Breast Scouring — Model H	373
" " " Model N	137
Tip Scouring — Model E	4
" " Model G	327
Improved Tip Scouring	2
McKay Sewing — Model S	251
" " Model B	551
Richardson Sole Sewing	96
Improved Pattern Shears — Model R	20

Hartford Pattern Shears — Model H	1
#7 Amazeen Skiving	1
Counter Skiving — Model D	7
" " Model S	53
" " Model F	5
Champion Heel Lift Skiving — Model A	119
Power Shank Skiving	1
Champion Shank Skiving — Model A	16
Apex Tap Skiving or Rand Splitting — Model A " " " " " " Model B	267
" " " " " " Model C	292
Centennial Splitting — Model A	190
" " Model B	80
" " Model C	4
" " Model D	3
" " Model E	8
" " Model F	1
" " Model G	5
" " Model J	2
Improved Rand Splitting — Model S	20
Rand Splitting — Model T	1
Summit Splitting — Model L	157
" " Model M	782
" " Model N	126
" " Model P	245
Empire Splitting — Model C	70
Cylinder Splitting — Model R	8
" " Model SS	4
Stamping — Model R	74
Regent Stamping — Model A	2
" " Model B	112
" " Model C	503
Eagle Sole & Upper Stamping — Model A	6
" " " " " Model B	21
Eagle Sole Stamping — Model C	14
Eagle Upper Stamping — Model C	66

Impression Stitch — Model H	20
Waukenphast Imitation Stitch — Model T	20
Improved Stripping — Model F	17
" " Model S	61
Miller Tables	1,630
Miller Legs	3,621
Welt Trimmer & Stitch Rubbing — Model R	156
Apex Spring Heel Trimming — Model A	116
Edge Trimming — Model A \	
" " Model B /	3,064
" " Model D	10
" " Model H	1
Turning & Beading — Model R	2
Star Rand Turning — Model S	51
McKay Channel Turning	1
Crest Sole Wetting — Model A	169
Bench — 12 Foot	1
Total	33,184

GOODYEAR DEPARTMENT.

Welt & Turn Shoe Regular	1,605
Welt & Turn Shoe — Model G	709
Welt & Turn Shoe — Type E	180
Eppler Welt & Turn Shoe	6
McKay Turn	14
Outsole Rapid Lockstitch, Regular	2,573
Outsole Rapid Lockstitch — Model K	86
Campbell Stitching	16
Universal Inseam Sewing or Lockstitch Welting	7
Eppler & Adams Sewing	6
Universal Welt Beating	181
Goodyear Welt Beating	107
Rapid & Universal Bobbin Winding	348
Welt Beating & Slashing	673
Welt Indenting & Burnishing	1,239
Impression Stitch Burnishing #2	375

Universal Rounding & Channeling	1,191
Universal Rounding & Channeling "E"	14
Welt & Turn Channeling	1,603
Outsole Channeling	126
Arnold Channeling	2
Outsole Channel Shank Reducing	52
Channel Laying	389
Channel Opening	611
Eppler Stitching	1
Gem Flexible Insole	390
Hand Flexible Insole	21
Power Flexible Insole	89
Ziegler Flexible Insole — Model A	46
Ziegler Flexible Insole — Model B	25
Fudge Edge Machine	127
Power Welt Grooving & Beveling	371
Welt Grooving & Beveling	563
Insole Tack Pulling	93
Goodyear Lip Turning (N. S.)	600
O. S. Lip Turning (Howland)	54
Welt & Turn Leveling	152
Automatic Sole Leveling	685
Automatic Sole Leveling — Model B	2
Moulding	674
Power Moulding	64
Relasting	10
Heel Seat Rounding	28
Outsole Stitch Rubbing	14
Improved Sole Laying — Model B	1
Rotary Sole Laying	62
Improved Single Sole Laying	193
Improved Double Sole Laying	507
American 2-Form Sole Laying	39
Rebuilt Gem Sole Laying	1
Hadaway Stitch Separating	727
Shank Welt Skiving	156

Welt Splitting	429
Turn Shoe Trimming	247
Universal Inseam Trimming	304
Paneling	1
Forepart Turning	70
Heel Turning	38
Welt Edge Turning	16
Universal Channeling	700
Jointing	21
Tack Pulling & Resetting	3
Underwedge Scarfing	1
Heel Embossing	1
Insole Heel Seat Trimming	11
Briggs Rounding	2
Universal Shank Skiving	2
Gem Lip Turners	317
Gem Cementers	272
Total	20,743

DEFENDANTS' EXHIBIT 229.

[Put in Evidence, page 3054.]

AVERAGE DAILY PRODUCTION OF LESSEES OF UNITED COMPANY.

Average Daily Production	Calendar Year					
	1898	1899	1904	1905	1910	1911
0 — 100	383	411	291	233	262	274
100 — 200	173	180	130	107	74	123
200 — 300	111	113	95	102	90	98
300 — 400	79	66	68	80	64	72
400 — 500	53	58	52	60	69	69
500 — 600	22	46	50	49	46	52
600 — 700	29	30	47	33	46	40
700 — 800	33	37	34	35	43	38
800 — 900	19	19	30	26	29	44
900 — 1000	15	23	24	20	31	34
1000 — 1500	40	58	76	97	95	97

1500 — 2000	32	33	42	42	52	52
2000 — 2500	21	18	34	29	42	43
2500 — 3500	18	17	26	39	36	37
3500 — 5000	7	10	12	12	17	21
5000 — 7500	2	6	11	13	15	14
7500 — 10000	2	1	5	3	3	1
10000 — 15000	0	0	1	2	0	1
Idle & Unknown	40	23	16	65	11	40
	1079	1149	1089	1047	1025	1150
Goodyear Work only	499	391	391	445	528	527
Other Kinds only	379	413	327	323	226	312
Both Kinds	201	345	371	279	271	311
	1079	1149	1089	1047	1025	1150
Number of Firms Producing the Above	1060	1122	1026	1009	933	1033

DEFENDANTS' EXHIBIT 230.

[Put in Evidence, page 3055.]

MEMORANDUM OF THE PULLING OVER, LASTING, HEELING, METALLIC AND GOODYEAR DEPARTMENTS, AND GOODYEAR AUXILIARY MACHINES REQUIRED BY FACTORIES HAVING A

Daily Production in Pairs	Pulling Over	#5 Lasters	Welters	Stitchers	Heelers	Sluggers	Loose Nailers	Auxiliaries	Total Number Such Machines per Factory
100	1	1	1	1	1	1	1	16	23
150	1	2	1	1	1	1	1	16	24
250	1	2	1	1	1	1	1	16	24
350	1	3	1	1	1	1	1	16	25
450	1	4	2	2	1	1	1	16	28

DEFENDANTS' EXHIBIT 230 A.

[Put in Evidence, page .]

LIST OF SIXTEEN GOODYEAR AUXILIARY MACHINES REFERRED TO IN EXHIBIT NO. 230. FURNISHED IN ANSWER TO MR. FOWLER'S REQUEST.

	Annual Rental	or Initial Payment Lease.
Goodyear Universal Channeling Machine	$15.00	$300.00
Goodyear Lip Turning Machine	5.00	75.00
Goodyear Upper Stapling Machine	90.00	500.00
Goodyear Power Welt Grooving & Beveling Machine	5.00	100.00
Goodyear Universal Inseam Trimming Machine	15.00	300.00
Goodyear Welt Beating & Slashing Machine	10.00	200.00
Goodyear Improved Sole Laying Machine	15.00	300.00
Goodyear Universal Rounding & Channeling Machine	15.00	400.00
Goodyear Channel Opening Machine	1.00	35.00
Goodyear Upper Tack Pulling Machine	25.00	250.00
Goodyear Channel Laying Machine	3.00	35.00
Goodyear Heel Seat Rounding Machine	15.00	250.00
Goodyear Automatic Sole Leveling Machine, Model A	35.00	500.00
Goodyear Welt Indenting & Burnishing Machine	3.00	35.00
Goodyear Impression Stitch Burnishing Machine	15.00	35.00
Goodyear Jointing Machine, Model C	25.00	250.00

DEFENDANTS' EXHIBIT 231.

[Put in Evidence, page 3074.]

ACQUISITIONS BY UNITED SHOE MACHINERY COMPANY, 1899–1910.

INDEX.

		Typewritten Page	Printed Page
A			
	American Sole Laying Company	50	475
	American Glue Company	32	464
	Arnold Machine Company	39	469
B			
	Bay State International Shoe Mach. Co.	5	448
	Boot & Shoe Sole Laying Co.	8	449
	Booth Bros. Co.	19	456
	Bresnahan, Timothy A.	25	460
	Boston Shoe Tool Co.	25	460
	Boston Blacking Co.	26	460
	Boston Fast Color Eyelet Co.	27	461
	Breach Mfg. Co.	36	467
	Brewer, A. G.	37	467
	Booth Brothers (1904 contract)	40	469
	Beaudry	40	469
	Brockton Supply Co.	53	476
	Branch Offices	11–12–13–14	452
C			
	Corrugated Wire Fastening Co.	50	474
	Carver Cotton Gin Co.	20	457
	Cross, W. W. Co.	30	463
	Curtis, Joseph P.	39	468
	Corteau, Leopold J.	40	469
	Coupal, Peter A.	45	472
	Classes — definition	1–2	446
D			
E			
	Emerson, George W. Co.	16	455
	Enamel Eyelet Co.	27	461
	Ellis Lacer Co.	34	466
F			
	Felton S. A. & Son Co.	29	462
	Farnham, F. G. Brush Mfg. Co.	31	463
	Freeman, E. T.	36	467
	French, Zachary T.	43	471
	Freeman, George W.	46	472
G			
	Goddu Sons Metal Fastening Co.	3	447
	Globe Sewing Machine Co.	5	448
	Globe Shoe Tool Co.	25	460

		Typewritten Page	Printed Page
	Gordon, William	45	472
	General Dept. Machines — list of competing	22–23–24	458
H			
I			
J			
K			
	Krieg, J. K. Company	11	451
	Kimball & Hadley	32	464
L			
	LaChappelle, Fred	41	470
	Lincoln Sewing Machine Co.	42	470
	Leary, Joseph W.	48	473
M			
	Morley Button Mfg. Co.	28	462
	Marlboro Awl & Needle Co.	29	462
	Metallic Heel & Counter Co.	33	465
	Miller, Oliver A.	52	476
N			
	Norris, T. A. Machine Co.	17	456
O			
P			
	Perry, Fred H.	47	473
	Pearson & Bennion, Ltd.	9	450
Q			
R			
	Ross-Moyer Mfg. Co. (Class 2)	10	451
	Ross-Moyer Mfg .Co. (Class 3)	15	454
	Rhodes, J. C. & Co.	27	461
	Rice, Harry L.	41	470
	Richardson Shoe Machinery Co.	55	478
	Richardson, John H.	48	474
	Ritchie, John	51	475
	Ritchie, The John Co.	51	475
S			
	Seaver Process Lasting Co.	4	447
	Smith, George A. Machinery Co.	10	451
	Swain-Fuller Mfg. Co.	16	454
	Sturtevant, B. F. Co.	35	450, 466
	Stanley Mfg. Co.	9–1/2	450
	Smith Lacing Machine Co.	54	477
T–V			
WU			
	Winkley & Phillips	37	467
	Wentworth Machine Co.	6	449
Y			
	Young, W. J.	38	468

Referring to the statement on page 28 of the Government Petition that:

> "Among the individuals, partnerships, and corporations who were competitors of defendants and whose businesses have been so acquired and absorbed by them are the following:"

we have divided these acquisitions into certain classes showing their relative importance and bearing and the reasons which governed their purchase, as follows:

Class 1. See page 3.

Purchases made after the formation of the United Company in February, 1899, and during the years 1899, 1900, and 1901 for the purpose of settling existing litigation; one in February, 1910, for the same reason; and one to avoid infringement of patents.

Class 2. See page 9.

This class includes the purchase of the whole or a portion of the business conducted by four corporations and one partnership that had acted as agents for one or more of the three companies that went into the original organization.

Class 3. See page 15.

This class includes purchases and contracts which extended the scope of the business to include the manufacture and sale of machines of the class that have been termed "General Department" Machines. None of these machines were in competition with the business of the original organization. See page 15.

Class 4. See page 25.

Purchases which extended the scope of the business to the manufacture of "findings" and "supplies" used by its customers.

Class 5. See page 36.

Patents and Royalty Contracts to manufacture under patents.

Class 6. See page 42.

Payments made to commute obligations existing prior to 1899 under Royalty Contracts for right to manufacture under patents, and to cancel the obligation between the Goodyear Company and the Lincoln Sewing Machine Company.

Class 7. See page 45.

Employment Contracts.

Class 8. See page 50.

Miscellaneous — contracts which do not come strictly under any of the foregoing classes.

Class I.

GODDU SONS METAL FASTENING COMPANY.

At the earnest solicitation of the elder Goddu and his sons, the United Company purchased in 1899 the Goddu Sons Metal Fastening Company and the inventions owned by the Goddus individually, for the sum of $150,000; paying therefor one-half in preferred stock of the United Company at $30 per share and one-half in the common stock of the United Shoe Machinery Company at $35 per share.

This purchase was made in order to settle the long-standing litigation between the Goddus, the Goddu Metal Fastening Company, and the McKay Company.

The officers of the McKay Company claimed, and the management of the United Shoe Machinery Company believed, that such inventions as had been transferred to the Goddu Company and those owned by the Goddus, in reality belonged to the McKay Company.

The Goddu Company had no factory of its own and had done no business, but had had some machines built by outside parties.

SEAVER PROCESS LASTING COMPANY.

Purchased in 1900 at the earnest solicitation of Mr. Seaver for $38,000.

The Seaver Company was making no money and was in debt to Mr. Seaver for more than the above sum.

The principal reason for the purchase was to settle the existing litigation and because the Seaver Company had patents, or applications for patents, which it was believed stood in the way of the development of the Pulling-Over Machine upon which the United Company had been at work for some time.

The Lasting Machines of the Seaver Company infringed patents which had been issued to the Consolidated Lasting Machine Company in 1895 and 1898. Two suits had been brought for infringement of these patents and were pending at the time of the purchase.

The Seaver Company owned no real estate; leased a room at 118

South Street, Boston; had six employees. Company was insolvent at time of purchase — see Exhibit 75.

The amount paid was dependent entirely upon the royalties earned in certain factories.

GLOBE SEWING MACHINE COMPANY.

At the earnest solicitation of Mellen Bray, the United Company purchased in 1901 $599,210 worth (a control) of the issued capital stock; paying therefor $20,000 in preferred stock of the United Company.

Mr. Bray had spent a great deal of money on this enterprise; the Globe Company owed him a large sum of money, and he did not want to continue the business any further.

Suit for infringement of patents had been brought against the Globe Company by the Goodyear Company and a motion for preliminary injunction was pending at the time of the purchase.

Owned no real estate and did no manufacturing. Contracted with outside parties for such machines as it had built.

BAY STATE INTERNATIONAL SHOE MACHINERY COMPANY.

This company was purchased in 1901, at the earnest solicitation of the owners, for $25,000 preferred stock of the United Company.

Purchase was made for the account of the British and French Companies and the Bay State Machines infringed patents owned by the British Company.

The reason for the purchase was that it was believed to be the cheapest way to settle and dispose of the litigation.

The Bay State Company owned no real estate and did no manufacturing. This was a purchase of foreign patents.

As will be seen, the total purchases for the purpose of settling existing litigation prior to 1910 involved the expenditure of only $233,000, as follows:

In 1899	$150,000
In 1900	38,000
In 1901	45,000
	$233,000

For the purpose of settling existing litigation in 1910:

WENTWORTH MACHINE COMPANY.

Purchased February, 1910; amount paid $60,000.

Owned no real estate. Leased floor space in a building in Cincinnati, Ohio, and employed about twelve men.

Substantially the only machine made by the Wentworth Company was a "Heel Seat Forming Machine."

After long litigation in the Patent Office between the United Shoe Machinery Company and the Wentworth Company, and in the Courts between the United Xpedite Company and one of the users of the Wentworth Heel Seat Forming Machine, judgment was rendered in favor of the United Xpedite Company. A second suit was pending between the United Shoe Machinery Company and the Wentworth Company on another patent.

Prior to the decision of the Courts in the litigation above referred to, the Wentworth Company had many times approached the United Company to dispose of their business, and immediately after the decision they asked to open the negotiations with the United Company, which finally resulted in the purchase.

The manufacturing of the machines was removed to the Beverly Factory, from which factory the machines and parts have been supplied by the United Company.

Reason for purchase:

A great many of the machines put out by the Wentworth Company had been leased by manufacturers who were the customers of the United Company, and it was deemed much better to settle all the claims for infringement which would have resulted between the United Company and the customers of the Wentworth Company (who were also customers of the United Company) by acquiring the patents and business of the Wentworth Company, and thereby settle all the pending litigation. To avoid infringement of patents acquired the

BOOT & SHOE SOLE LAYING COMPANY

Purchased in 1899 for $45,000 cash.

This purchase was made to enable the United Company to put out a Sole Laying Machine which would be free from infringement of patents, and to obtain a type of machine that was much better

adapted for small factories than the rotary machine of the Goodyear Company, which was only adapted for large factories.

Owned no real estate. Contracted with outside parties for such machines as it had built.

After the acquisition by the United Company in 1901, the United Company continued to have machines built for it at the same outside factory for three years, since which time the machines have been built at Beverly.

CLASS 2.

This class includes the purchase of the whole or a portion of the business conducted by four corporations and one partnership that had acted as agents for one or more of the three companies that went into the original orgazination.

These purchases were made as follows:

PEARSON & BENNION, LIMITED.

Agreement of June 8, 1899, with Messrs. M. H. Pearson and Charles Bennion, of Leicester, England.

Pearson & Bennion, Limited, of England, had been for many years the agents for the Consolidated McKay Lasting Machine Company. The Shoe machinery business, other than as agents for the Lasting Machine Company, conducted by Pearson & Bennion was not in competition with the business conducted by any of the companies which entered into the original organization, or with the business of the United Company.

The agreement of 1899 with Pearson & Bennion was in reality a consolidation of the foreign business of the United Company in England with Pearson & Bennion's business, and not a purchase.

STANLEY MANUFACTURING COMPANY.

No manufacturing plant was acquired.

The United Company purchased in March, 1900, for $86,500 in preferred stock of the United Company, the store and stock of machines, parts, and supplies on hand at Frankfurt, Germany.

The Stanley Manufacturing Company was really a part of the McKay Shoe Machinery interests, and its principal business was the manufacture and sale of McKay Sewing Machines and Centennial Splitting Machines.

The store in Germany acted as the agent for the McKay Shoe Machinery Company in handling its McKay Heeling and Metallic Machines and parts, and this purchase amounted only to the acquirement of the selling agency for the goods manufactured by the Stanley Company in the United States.

No competition existed between the United Company and the Stanley Company.

The reason for the purchase was that the United Company was establishing its own German Company and the local manager for the Stanley Company's business in Germany was sick, or had just died, and the Stanley Company desired to have the United Company take over its store and stock of goods and act as agents for the Stanley Company, if the United Company was going to do its own business in Germany.

The contract, therefore, amounted simply to an agency contract, and that in itself necessitated the purchasing of the stock that the Stanley Company had in Frankfurt.

ROSS-MOYER COMPANY.

Stores in Chicago and Cincinnati.

Purchased in September, 1900, for $86,580 preferred stock of the United Shoe Machinery Company.

Manufactured General Department Machines — see Class 3.

GEORGE A. SMITH MACHINERY COMPANY.

Store in Philadelphia

Purchased in November, 1902, for $38,790.79 (inventory value).

Owned no real estate and did no manufacturing; employed one man repairing second-hand machinery.

The few special Heel Scarfing Machines sold by them were manufactured in outside machine shops.

J. K. KRIEG COMPANY.

Store in New York.

Purchased from the J. K. Krieg estate in 1903 for $97,056.52 that portion of the business of the J. K. Krieg Company with shoe manufacturers.

No competition existed between Krieg and Smith and Ross-Moyer or the United Shoe Machinery Company.

Owned no real estate. Had small machine shop above their store in New York, where they employed four men and one boy — principally in rebuilding old shoe machinery and repairing machines used in other lines of manufacturing, but when these men were not so employed they were used in building a few new machines.

REASON FOR PURCHASES:

The United Shoe Machinery Company desired to establish its own stores and offices in each one of the shoe manufacturing centers, for the purpose of furnishing a better service in connection with its machines than had heretofore been possible by each of the separate companies, and to carry a proper supply of spare parts and material used in its machines.

In order to understand the reasons governing this action a statement regarding the conditions as they existed at the date of the formation of the United Company follows:

The Goodyear Company (one of the companies forming the original organization) had its own offices and men in each of the following places:

Auburn, Maine.
Lynn, Mass.
Haverhill, Mass.
Brockton, Mass.
Worcester, Mass.
New York, N. Y.
Philadelphia, Pa.
Burlington, N. J.
Cincinnati, Ohio.
Chicago, Ill.
St. Louis, Mo.
New Orleans, La.
Rochester, N. Y.

While the McKay Company and the Lasting Machine Company (two of the three companies of the original organization) had no stores or offices of their own, the Ross-Moyer Manufacturing Company at Chicago and Cincinnati acted as agents for these two companies, carried a stock of spare parts for the Heeling, Metallic, and

Lasting Machines, and the wire used in the Metallic Machines, and such roadmen of the McKay and Lasting Machine Companies as were in these territories called at Ross-Moyer's for their mail.

These same conditions existed with:

George A. Smith Machinery Company in Philadelphia
and J. K. Krieg Company, New York, N. Y.

In Brockton, Heeling and Metallic parts were carried by the Brockton Stay Company and the Lasting Machine parts were carried by the T. A. Norris Machine Company.

In Haverhill, Heeling was with C. P. Bullen, and Metallic and Lasting were with J. W. White.

In Lynn, Heeling and Metallic and Lasting with H. W. Colbath.

None of the business done by either Ross-Moyer, Smith, or Krieg was in competition with the business of the United Shoe Machinery Company, and as the United Company decided to establish its own stores, these concerns would necessarily lose the business which they had done acting as agents for the various companies, and it formed such a large portion of their whole business that they desired to have the United Company take over all their business relating to shoe machinery, or supplies, when the United Company was ready to establish its own offices.

With the purchase of the Ross-Moyer Mfg. Co. the United Company first acquired any interest in so-called "General Department Machines"— see Class 3.

An additional reason for the purchase of Ross-Moyer was to secure the services of Mr. Samuel Ross, who had been long associated with the McKay Company and was an experienced shoe machinery man and well liked by the trade. The United Company desired to secure his services to represent their interests throughout the middle west.

The United Company now have their own stores and offices where they carry spare parts and supplies and maintain a corps of experts to furnish service in connection with their machines, at the following places in the United States:

Auburn, Maine.
Haverhill, Mass.
Manchester, N. H.

Lynn, Mass.
Brockton, Mass.
Marlboro, Mass.
New York, N. Y.
Philadelphia, Pa.
Harrisburg, Pa.
Rochester, N. Y.
Lestershire, N. Y.
Cincinnati, Ohio.
Chicago, Ill.
Milwaukee, Wis.
St. Paul, Minn.
New Orleans, La.
St. Louis, Mo.
San Francisco, Cal.

CLASS 3.

This class includes purchases and contracts which extended the scope of the business to include the manufacture and sale of machines of the class that have been termed "General Department" Machines. None of these machines were in competition with the business of the original organization.

The following list of purchases and contracts belong in this class:

ROSS-MOYER MANUFACTURING COMPANY (see also Class 2).

As stated in Class 2, this company was acquired by the United Company in September, 1900, and, as stated therein, with this purchase the United Company first acquired any interest in so-called "General Department" Machines, consisting of Edge Setters, Edge Trimmers, Heel Scourers, Buffing Machines, Rolling Machines, etc.

Owned no real estate. Leased floor space in Cincinnati, Ohio, where it employed thirty-five men. Business was continued for a number of years and then removed to the factory of the United Company at Beverly.

None of the machines manufactured by this company were in competition with any machines made by the United Company.

SWAIN-FULLER MANUFACTURING COMPANY.

This property was acquired at the solicitation of Mr. Fuller, who

was the principal owner and desired to go out of shoe machinery business.

Purchased in February, 1901, for $13,201.92, of which $2,576.92 was cash and $10,625 preferred stock of the United Shoe Machinery Company.

Owned no real estate. Leased small amount of floor space in Boston; employed less than ten men.

After the purchase the United Company transferred the manufacturing to its own factory and continued the manufacture and marketing of its machines.

By this purchase the United Company secured the "Single Sole Moulding" Machine and the "Star Leveling" Machine. The "Star Leveling" Machine was covered by patents and was a hand controlled machine adapted for leveling welt or turned work, and was especially adapted for use in small factories where the Goodyear Automatic Leveler was too large and expensive.

Neither of these machines was in competition with any machines then being made by the United Company.

GEORGE W. EMERSON COMPANY (Partnership).

This property was acquired at the earnest solicitation of George W. Emerson, who was interested in a trout farm on Cape Cod and desired to retire from the shoe machinery business.

Purchased in December, 1902, for $41,500. This amount was based upon the inventory of the Emerson Company.

The United Company desired to obtain the services of William R. Sampson, who was familiar with the business of manufacturing Leveling Machine forms and moulds. Certain litigation was pending between the Xpedite Company and the Emerson Company for infringement of the Xpedite patents. Under these circumstances the United Company entered into the negotiations which led to the purchase at the suggestion of Mr. Emerson of the Emerson Company.

Owned no real estate. Leased two floors in a factory building in Lynn and employed about thirty-five men.

After the purchase the United Company transferred the manu-

facturing to its own factory and continued the manufacture and marketing of its machines.

The greater part of the business of the Emerson Company consisted in the manufacture of lasts and forms and dealing in second-hand machines, repairing machines, and millwright work.

T. A. NORRIS MACHINE COMPANY.

Owned no real estate but operated a small machine shop employing about ten men, in which it did general machine shop work, repairing shoe machinery, and also built a few minor machines. This machine shop was located in a building at 74 Commercial Street, Brockton, owned by T. A. Norris personally, in which building the United Company then had its Brockton headquarters and repair shop under lease from T. A. Norris.

Purchased in 1902 upon the basis of inventory — $11,526.78 — at solicitation of Mr. Norris, who was heavily interested in real estate. The United Company desired to increase the amount of space leased from Norris and he desired to close out his business, as he had gone quite heavily into real estate and was owing considerable money in connection therewith.

As a matter of fact, this purchase only amounted to the buying of a lot of second-hand machines.

After the purchase the United Company continued to operate the machine shop so long as the United Company continued to have its headquarters in the Norris building.

Later, when the United Company moved its headquarters to its new location in Brockton, the machine shop was moved to the new location and is still operated as a repair shop.

The United Company continued the manufacture of the various small machines which had been made by the Norris Company, although most of the manufacturing of the new machines has been moved to the Beverly Factory.

BOOTH BROTHERS COMPANY.

Partnership composed of Quentin W. Booth and Irving E. Booth.

Owned no real estate. Leased floor space in Rochester, N. Y., and employed twenty-two men.

Purchased in 1907 for $71,284.20.

This business was acquired at the solicitation of Booth Brothers. The reason given by them for soliciting the United Company to purchase their business was that Quentin W. Booth wished to retire from business and Irving E. Booth did not care to attempt to run the business alone, but did not wish to retire.

The Booth Company manufactured the "Victor" and "Columbia Beading" Machines (both patented machines) and the United Company had acted as agents in selling many of them. The two other principal machines made by them were the "Fudge Edge" Machine and "Impression Stitch Burnishing" Machine.

The United Company felt that it could add the manufacture of these machines to its line to advantage, and therefore were persuaded to make this purchase, and a corporation was formed of which Irving E. Booth was made the manager and the manufacture was continued in Rochester, and through the Booth Company the United Company continued to put out all the machines that were previously manufactured by Booth Brothers.

The average number of employees the last three or four years has been about twenty.

CARVER COTTON GIN COMPANY.

Purchased in 1908 for $16,883.79.

The United Company acquired no real estate or manufacturing plant with this purchase, which consisted entirely of patents, stock in trade, patterns, jigs, etc.

This property was acquired at the solicitation of Mr. Hobart, Treasurer of the Carver Cotton Gin Company. The shoe machinery business done by the Carver Cotton Gin Company was a small side line to their regular "Cotton Gin" business, and Mr. Hobart stated that they had been drawn into the manufacture of shoe machinery inadvertently; that their main business was increasing to such an extent that they were getting short of factory room and did not want to add to their factory to take care of it.

The principal machines made by the Carver Cotton Gin Company were the "Gilmore Buffer," "Acme Leveler," and "Cylinder Splitting Machines."

The principal reason on the part of the United Shoe Machinery Company for making the purchase was to obtain the special tools and patterns for manufacturing these machines. The United Company had always been on friendly terms with the Carver Cotton Gin Company and had sold such machines as they made when desired by the trade, and the price paid above the inventory value for the machines on hand was less than it could have duplicated the patterns, tools, etc., which the Carver Cotton Gin Company desired to sell.

The United Company continued the manufacture of the machines acquired from the Carver Cotton Gin Company at its Beverly Factory.

The United Company did not seek to make any of the foregoing purchases in this class. They were all made at the solicitation of the various parties and for the reasons given in each case.

A list of competitive manufacturers of the principal "General Department" Machines is attached hereto, and while there are many machines that perform minor operations in the manufacture of shoes which are included in the "General Department" of the United Company, and many competitive manufacturers, only the list covering the principal "General Department" Machines is given.

THE PRINCIPAL "GENERAL DEPARTMENT" MACHINES.

SOLE CUTTING MACHINE

Parsons Machine Company
Seelye Manufacturing Company
Tower Brothers
Quarmby & Hilliker

SOLE ROUNDING MACHINES

Boylston Manufacturing Company
Rotary Rounder Company
Wellman Machine Company

SOLE MOULDING

Quarmby & Hilliker
Boylston Manufacturing Company
Seelye Manufacturing Company

ROLLING

Quarmby & Hilliker

James Busfield
Seelye Manufacturing Company

SPLITTING

American Worsted Machinery Company
W. J. Young Machinery Company
James Busfield
Turner Tanning Machine Company
American Tool & Machinery Company

LEVELING MACHINE

Boylston Manufacturing Company
C. K. Fox
R. H. Long
Duplessis Machinery Company

HEEL BREASTING

C. K. Fox
T. F. Rowan

EDGE TRIMMING

Donnelly Machine Company
T. F. Rowan
Briggs-Belmer Company
Tower Brothers

HEEL SCOURING

T. F. Rowan
J. G. Buzzell
Boylston Mfg. Co.
Tower Bros.

EDGE SETTING

L. G. Freeman
Boylston Mfg. Co.
Beaudry Machine Co.
Quarmby & Hilliker

BUFFING

Donnelly Machinery Company
Tower Brothers
J. G. Buzzell

T. F. Rowan
Boylston Mfg. Co.
Seelye Mfg. Co.

CLASS 4.

This class includes purchases and contracts which extended the scope of the business to include the manufacture of certain findings and supplies used by its customers. The following list are included therein:

TIMOTHY A. BRESNAHAN
BOSTON SHOE TOOL COMPANY

Purchased in 1899 for $72,019.50. The business was the manufacture of forepart cutters and edge irons. The United Company manufactured none of these tools.

The Boston Shoe Tool Company (which was owned by T. A. Bresnahan) owned its factory, which was located in South Boston, and which employed about ninety men.

The United Company acquired this property and the business was continued at the same plant for a considerable period of time. Subsequently, for convenience and economy of manufacture, the business was transferred to the Beverly Factory, where the United Company has ever since continued and increased the business.

GLOBE SHOE TOOL COMPANY.

Purchased in 1899 for $30,000 cash. Did a business similar to the Boston Shoe Tool Company and was acquired at the earnest solicitation of parties interested and because we desired to obtain the services of Mr. Loomer as the head of the department for manufacturing these goods.

Owned no real estate. Carried on its business in floor space which it leased in Boston; employed about twenty-eight men.

Soon after its acquisition the business was transferred to the factory of the Boston Shoe Tool Company in South Boston.

BOSTON BLACKING COMPANY.

One-half interest purchased in 1900 for $280,000 (preferred stock of the United Company).

The business was the manufacture of stains, blackings and cement. The United Shoe Machinery Company did no business in this line.

The reason for purchase was that the owners of the Boston Blacking Company desired to enlist the cooperation of the United Shoe Machinery Company, and the men that it employed, to help in distributing their goods.

BOSTON FAST COLOR EYELET COMPANY }
ENAMEL EYELET COMPANY }

Purchased in 1900 for $230,000 worth of preferred stock in the United Fast Color Eyelet Company, and $35,000 in cash.

Owned no real estate and did no manufacturing; contracted with outside parties to manufacture its eyelets.

The Boston Fast Color Eyelet Company manufactured celluloid eyelets.

The Enamel Eyelet Company were really doing no business; they had on hand a small amount of eyelets and owned some patents.

The division of the preferred stock, as stated in the Bill filed by the Government, in payment for these two companies was purely an arbitrary one and at the request of the vendors, Messrs. Kempshall, King, and Tolman.

The United Shoe Machinery Company was not interested in the manufacture of eyelets at the time that this purchase was made.

J. C. RHODES & COMPANY.

Purchased in 1901 for $200,000 cash and $575,000 in preferred stock of the United Shoe Machinery Company.

Owned its own real estate and factory at New Bedford, Mass., employing about one hundred and sixteen men.

Since the purchase of the business the United Company has increased the factory facilities by building a large new factory.

This company was an old, established eyelet-making concern and manufactured an enamel eyelet called the "Perfection" eyelet, and a medium grade eyelet.

The Boston Fast Color Eyelet Company and J. C. Rhodes & Company gave the United Company a line of shoe eyelets to supply the various manufacturers who manufacture high-class shoes and medium shoes.

(It should be understood in this connection that there were many other manufacturers of eyelets, including the Atlas Company of

Fairhaven, and that the "Fast Color" eyelets and the "Perfection" eyelets were manufactured under patents.)

THE MORLEY BUTTON MANUFACTURING COMPANY.

The United Company acquired no real estate or manufacturing plant with this purchase.

The purchase price for the eyelet business of the Morley Button Manufacturing Company was $31,000. This purchase was made in 1901 as the best method of settling the litigation then existing between the J. C. Rhodes Company and the Morley Company for infringement of patents owned by the Rhodes Company, and was believed to be a fair and equitable settlement of the existing situation, and by it the Rhodes Company acquired certain patents on eyelets which were valuable to it.

The principal business of the Morley Button Manufacturing Company was the manufacturing of buttons, which business it has continued ever since; the eyelet business was a very small part of its total business.

MARLBORO AWL & NEEDLE COMPANY.

Owned no real estate. Leased floor space in Marlboro, where it employed twelve men.

Purchased in 1902. (Paid $16,300 in preferred stock of the United Awl & Needle Co.)

This company manufactured awls for Pegging Machines, hand awls, McKay needles, and rawhide mallets, none of which articles were manufactured by the United Company. The business was purchased and a small company was formed called "The United Awl & Needle Company," and the business was transferred to a factory owned by the company in West Medway, where the business has been continued ever since and has employed twenty-eight or thirty men.

S. A. FELTON & SON COMPANY.

The United Shoe Machinery Company purchased a half interest in this business in 1902 for $39,000.

At the time of this purchase (of one-half interest in this company) the S. A. Felton & Son Company owned no real estate, but occupied

a factory located at Manchester, N. H., which they leased. Employed at that time about forty men.

Business has been continued at Manchester, N. H., and very much enlarged; at present employs about two hundred and ten men. The Feltons still continue to manage the business.

Prior to the purchase of one-half of the business the United Company had been acting as agents in the sale of the Felton brushes, and the Feltons desired to interest the United Company in the manufacture of the brushes, as well as the sale, and this led to the arrangement stated above.

W. W. CROSS COMPANY.

This company was formed in 1902 as an incorporation of the business of W. W. Cross & Company — a privately owned business of Mr. W. B. Cross, who owned the factory in Brockton, and employed at that time about forty men.

Mr. W. B. Cross, the manager of the W. W. Cross Company, had been manufacturing for many years substantially all of the tacks that were sold by the Consolidated and McKay Lasting Machine Companies and continued to manufacture for the United Company; in fact, although there was no contract between the parties, this business had been considered a part of the United Shoe Machinery Company's business, as the United Company sold practically the entire output of the factories.

The formation in 1902 of the W. W. Cross Company was simply for the purpose of enabling the Cross Company to extend their business and fix permanently the relations between the company and W. B. Cross, the manager of the manufacturing end of the business, and because more capital was needed in the business. The United Company contributed $50,000 new capital at this time.

The new corporation formed took over the real estate and factory, and the business has grown very much since that date; number of employees at the present time being about three hundred and seventeen.

F. G. FARNHAM BRUSH MANUFACTURING COMPANY.

Owned no real estate. Leased floor space in a small factory in Honesdale, Pa.; employed six men.

Purchased in 1904 for $25,915.32.

This company manufactured chiefly a tampico brush for the cut glass trade, but it also put out a few brushes for the shoe trade. The amount of business done by this company was so small — owing apparently to its geographical location — that it desired to dispose of its business. It was the owner of various patents which were believed by the United Company to be valuable in the art of brush making that should enable the owners to manufacture a better brush than the United Company were then furnishing to the trade as manufactured by the Felton Company. Being anxious to obtain the best possible brush for the trade that it supplied, it purchased this business at the earnest solicitation of the officials of the Farnham Company and transferred the property to the Felton Company.

Business was continued at Honesdale for nearly a year and was then removed to the factory of S. A. Felton & Son Company, where the business has been continued.

In this connection it should be understood that the total brush business done by the Felton Company, or the United Company, is very small compared with the total brush business of the United States, although it is true that the Felton Company does manufacture a very large proportion of brushes for the shoe trade.

AMERICAN GLUE COMPANY.

This was merely a contract entered into in 1904 (terminable upon three months' notice by either party) for the exclusive agency of certain products of the American Glue Company. The United Company made no goods of a similar character, but has marketed a large amount of goods for the American Glue Company under this contract.

The United Company has no interest whatever in the American Glue Company.

KIMBALL & HADLEY.

Purchased in 1904 for $4,750.

Owned no real estate. Leased small floor space in a building on Central Avenue, Lynn; employed two men and two boys.

Kimball and Hadley were partners manufacturing principally

Goodyear needles and awls. This purchase was made at the earnest solicitation of Hadley, and its principal value would appear to be to enable the Company to furnish the particular kind of needles, etc., that were made by Kimball & Hadley.

After the purchase the United Company continued to manufacture the goods produced by Kimball & Hadley (and to supply them at the same prices that had been charged by Kimball & Hadley) until the machinery was moved to another factory and the United Company has continued to supply the demand for these goods.

METALLIC HEEL & COUNTER COMPANY.

Manufactured metallic heels and counters.

Owned no real estate. Leased floor space on Purchase Street, Boston; employed about seventy men.

Purchased in 1906 for $52,320.24 cash and $67,500 in the royalties payable on account of the Ensign (Smith) Lacing Machine.

The purchase of the Metallic Heel & Counter Company was made in connection with the purchase of the Smith Lacing Machine Company. The Metallic Heel & Counter Company owned a part of the Smith Lacing Machine Company and it was impossible to purchase the Smith Lacing Machine Company without acquiring this business. There would, however, appear to be no reason why the United Company should not purchase it, as they were not making any articles which were in competition with it.

A very substantial reason for acquiring this company and the Smith Lacing Machine Company was to secure the undivided services of George Warren, J. B. Hadaway, and William Gordon, who were already in the employ of the United Company in other matters. Messrs. Warren and Hadaway are members of the United Company's Experimental Committee.

Business was continued at Purchase Street location about one and a half years after the purchase, and then for economy of manufacture the machinery was moved to the Beverly factory of the United Company, where the company has continued to manufacture all the goods previously manufactured by this company.

ELLIS LACER COMPANY.

Purchased in 1910 for $125,000.

Owned no real estate. Leased floor space at 4 Walnut Street, Haverhill, Mass. ; employed about twenty men.

The Ellis Lacer Company were manufacturing, and had been for many years, wire laces for temporarily securing together the eyeletted edges of the uppers of laced boots while being lasted. The United Company were not making any wire laces at the time this company was acquired, but it had owned the patent issued in 1900, which was infringed by the lacers put out by the Ellis Lacer Company.

The Ellis Company upon being notified that they were infringing patents owned by the United Company, entered into negotiations with the United Company to purchase their business. In view of the fact that the Ellis Company had built up a substantial business, it was deemed fair by the United Company to purchase the business rather than enter into litigation with the Ellis Company.

Some time after the purchase, for convenience and economy in operation, the manufcturing was removed to the Beverly Factory and the manufacture of the goods has continued up to the present time.

B. F. STURTEVANT COMPANY.

Purchased in 1910 for $52,185.94; this price being based upon the inventory.

Owned real estate at Conway, N. H., where it operated a factory for the manufacture of pegwood and wood shanks. Number of men employed about twelve.

Business has been continued by the United Company at the same place and number of men employed remains substantially the same.

The United Shoe Machinery Company was not manufacturing either pegwood or wood shanks at the time it made this purchase, or prior thereto.

Class 5.

This class includes Patents and Royalty Contracts to manufacture under patents.

None of these parties owned real estate; no manufacturing plant

of any kind was acquired from them, and each contract related entirely to patents.

BREACH MANUFACTURING COMPANY.

The United Company entered into the contract with Breach in 1899, paying him $10,000, in the hope that a machine to cut the uppers of shoes could be developed under the patents owned by the Breach Company. In this endeavor the United Company expended about $30,000 and then gave up the attempt.

The United Company had no machine that competed with Breach.

No manufacturing plant of any kind was acquired.

E. T. FREEMAN.

Patents on Slugging Machines purchased in 1899; paid $11,000 and agreed to pay $4,000 in annual payments of $500 each.

The reasons leading to the purchase of these patents were to enable the United Company to improve its Slugging Machine, to avoid infringement of the Freeman patents, and to dispose of the question as to who was the real inventor of the invention claimed under Ser. No. 670,377 (filed February 15, 1898), whether Casgrain (one of the United Shoe Company's inventors) or Freeman.

No manufacturing plant of any kind was acquired.

A. G. BREWER.

Application for patent issued as No. 645,994 — improvement in Power Heel Breasting Machines.

Agreement 1899. Paid $250 cash and royalty of $5 on each machine embodying invention. Total royalties paid to Brewer $3,495.

This patent enabled the United Company to manufacture a commercially successful Power Heel Breasting Machine.

While this patent enabled the United Company to make a successful machine, Brewer could not have put his invention on the market without infringing patents owned by the United Company.

No manufacturing plant of any kind was acquired.

WINKLEY AND PHILLIPS.

By the agreement entered into March, 1900, between the United Company and Winkley and Phillips, the United Company exercised the option which had previously existed between the Goodyear

Company and Winkley and Phillips to take the exclusive right to the use of certain patents which had been transferred by Winkley and Phillips in 1898 to the Goodyear Company.

Winkley and Phillips under certain rights reserved to them for this purpose in 1898, had been embodying these patents in a Leveling Machine, with the full understanding with the Goodyear Company that, if a commercially successful machine was produced, the Goodyear Company were to have the exclusive right to use same upon proper compensations being paid to Winkley and Phillips; the amount of this compensation to be mutually agreed upon if such machine was produced.

The contract of March, 1900, was the result of this arrangement.

The United Company agreed to pay the vendors $20 for each machine put out by the Company.

No manufacturing plant of any kind was acquired.

W. J. YOUNG.

Purchased in 1902, for the British United Company and the German Company, Young's foreign patents and patent rights covering a Heel Compressing Machine.

Prior to the purchase those companies had been acting as agents for Young, but under the German law it was necessary that the machine should be made in Germany, and as the machines made by Young were not well made, customers had complained regarding their quality.

No manufacturing plant of any kind was acquired.

The William J. Young Machinery Company is in active competition in the United States and always has been.

JOSEPH P. CURTIS.

Purchased in 1903 patents covering Vamp and Lining Cementing Machine. Paid $500 cash and a royalty of $10 on each machine embodying the inventions.

The United Company had no machine of the kind at this time.

The United Company built ten or more of the machines, but they were not commercially successful.

The Peerless Machine Company, under patents owned by them,

were able to produce a better machine and have done the larger part of this business.

No manufacturing plant of any kind was acquired.

ARNOLD MACHINE COMPANY.

Patents for a machine for coating innersoles with cement. Purchased in 1904 for $500 and royalties to be paid on machines when put out.

This investment was unprofitable because a prepared canvas, manufactured and supplied by the Clifton Manufacturing Company and others, made the use of such a machine unnecessary.

No manufacturing plant of any kind was acquired.

LEOPOLD J. CORTEAU.

Patent No. 891,912, covering means for cementing lingings to uppers prior to the stitching operation. Agreement in 1904 to pay royalty of 10 per cent of the selling price until $1000 had been paid.

An experimental machine was built, which proved to be unsuccessful and Corteau was unable to make it commercially successful, although his suggestions were all tried out by the Company.

No manufacturing plant of any kind was acquired.

BOOTH BROTHERS (1904 contract)

Purchased in 1904 patents relating to Perforating Machines. Paid $2400 cash and royalty of $15 United States and $10 Canada.

United Company had no machines for doing this work.

No manufacturing plant of any kind was acquired.

BEAUDRY.

Patents relating to Heel Finishing Machines. Purchased in 1906 for $12,500 for account of, and assigned to, the United Xpedite Finishing Machine Company.

Reason for purchase was that it was believed at the time that it would enable the United Xpedite Company to improve its machines very materially. Beaudry had been the original inventor of the machine put out by the Xpedite Company.

As a result of a great many experiments made after the purchase of the patents, this money was wasted.

No manufacturing plant of any kind was acquired.

HARRY L. RICE AND FRED LACHAPPELLE.

Purchased in 1909 for $11,500.

This transaction comprised the purchase from Rice and LaChappelle of inventions embodying means for "working an additional thread into the usual chain stitch" employed in a Welt Sewing Machine, and also the following patents:

Des.	33,014	July 24, 1900	Design for a Welt Strip
	734,819	July 28, 1903	Sole Leather Cutting Machine
	734,820	July 28, 1903	Welt Support
	749,719	Jan. 19, 1904	Machine for Feeding Welts

Reason for purchase:

Mr. Rice made it a condition of the purchase of the Richardson Machine that the United Company should take over his rights in these inventions at a reasonable price because "he wanted to get out of the shoe machinery business entirely."

See Howard's statement, especially in regard to misstatement by Government regarding the covenant of the vendors regarding future inventions and patents.

No manufacturing plant of any kind was acquired.

CLASS 6.

Payments made to commute obligations existing prior to 1899 under Royalty Contracts for right to manufacture under patents and to cancel the obligation between the Goodyear Company and the Lincoln Sewing Machine Company.

LINCOLN SEWING MACHINE COMPANY.

Owned no real estate and no manufacturing plant of any kind was acquired.

Under date of April 6, 1900, the United Company paid to the Lincoln Sewing Machine Company $2,450 and 1225 shares of Common Stock in cancelation of all rights to payments of any sort or kind under the terms of an agreement entered into between the Goodyear Company and the Lincoln Company, under date of November, 1897.

This contract required the Goodyear Company, and therefore the United Company, to pay a sum of money to the Lincoln Com-

pany, which amount varied from 3% to a possible 7% per annum for forty-nine years, on $60,000.

Payment based upon the amount of dividends paid, or to be paid, by the Goodyear Company.

Reason for cancelation was to avoid the necessity for maintaining the Goodyear Company as a separate organization and to transfer the Goodyear Company's property to the United Company.

The United Company acquired no business whatever from the Lincoln Company. It simply paid for the cancelation of a contract existing between it and the Goodyear Company.

Note: This is entirely contrary to the statement in the Government Petition.

ZACHARY T. FRENCH.

Owned no real estate and no manufacturing plant was acquired in connection with this contract.

By contract dated January 1, 1904, (executed June, 1904) the United Company agreed to pay French $15,000, payable in ten annual payments of $1500 each, in full payment of royalties due him under royalty agreements, dated December 19, 1893, December 19, 1895, and January 2, 1899, between said French and the Goodyear Company.

French had no business of his own, but had been for thirty years in the employ of the Goodyear Company, or its predecessors. At the time this contract was made French was in the employ of the United Company as superintendent of its Goodyear Department Factory, Albany Street, Boston.

Reason for agreement to assign future inventions and not to compete with the United Company for ten years, was because French desired to leave the Company's employ and to have his royalty contracts (which were entirely dependent upon the number of machines that might be put out) placed upon a definite basis of annual payment.

Reason for French's leaving the Company's employ was because he did not care to leave Boston and go to the new factory at Beverly.

Class 7.

Employment Contracts.

PETER A. COUPAL AND WILLIAM GORDON.

In August, 1899, the United Company purchased the business of Gordon, Coupal and Company (a partnership), paying therefor the sum of $10,799.25, the value of their inventory — see Government Exhibit No. 66.

The business of the partnership was "repairing and building machinery and jobbing."

Owned no real estate, but leased floor space at 19 Columbia Street, Boston, and employed about twenty men.

Soon after the purchase the machinery was removed to one of the United Company's factories and the business was continued in conjunction with the other business of the company.

Reason for the purchase:

Both Gordon and Coupal were in the employ of the Goodyear Company prior to, and at the time of, the organization of the United Company and the United Company desired to obtain all their time free from outside matters.

Gordon remained in the Company's service until his death, February 16, 1912.

Coupal only remained in the Company's service a few months

The payment above referred to was for the equipment of the machine shop and for certain patents. (See Howard's statement.)

GEORGE W. FREEMAN.

Owned no real estate, did no manufacturing, and employed no men.

George W. Freeman is the son of Edwin T. Freeman, from whom certain patents were purchased in October, 1899. As this transaction left the son, George W., without a job, his father asked the Company to take the son into its employ for at least one year at a compensation of $800.

Freeman has remained continuously in the employ of the Company as a roadman and now receives $1200 per year. He has never made or assigned any inventions to the Company.

It was undoubtedly in view of the fact that he had been associated

with his father in experimental work, and on account of the possibility of his setting up some claim to the inventions assigned by his father, that the covenants in regard to competition and future inventions were made a part of the contract for employment of George W. Freeman.

The statement in the Petition of the Government that the United Company acquired any interests relating to shoe machinery, are erroneous.

FRED H. PERRY.

Owned no real estate, did no manufacturing, and employed no men.

Contract January, 1904.

Mr. Perry entered the employ of the United Company in February, 1900, as a machinist.

In July, 1902, Perry was made a foreman of machinists in the Experimental Department.

He resigned this position May 1, 1903, and made application to be employed as an inventor.

He had shown some ability in this direction, and after careful consideration, because of the expense that would be involved in trying out some of his ideas, Mr. Perry was given a chance at $30 a week for the first eighteen months of his employment. July 1, 1905, his salary was advanced to $2,000 per year; January 1, 1906, to $3,000; January 1, 1910, to $3500; and January 1, 1911, to $4,000.

Mr. Perry has developed into a very successful inventor.

Reason for contract:

In view of the many thousands of dollars that are spent annually by the Company on experiments which prove unsuccessful, there would appear to be no occasion for explaining the necessity for a contract with a man employed as an inventor.

JOSEPH W. LEARY.

Owned no real estate, did no manufacturing, and employed no men.

Employment Contract January, 1904.

Joseph W. Leary was carrying on a small sale business, principally in supplies, cements, blackings, stains, and second-hand machinery

used in the Stitching Room, and acted as agent for the Amazeen Skiving Machine which was being sold by the United Company.

Mr. Leary had proved himself to be a first-class salesman and the United Company desired to employ him to give his time especially to the sale of this particular machine, as he was an expert as a Skiving Machine man.

Mr. Leary stated that he would like to enter the employ of the United Company if the Company would buy his stock of cement and second-hand machinery, and the Company paid him $3052 for the small stock that he had on hand.

JOHN H. RICHARDSON.

Owned no real estate, did no manufacturing, and employed no men.

In December, 1908, John H. Richardson entered the employ of the United Shoe Machinery Company for a period of one year at a salary of $2500; is still in its employ.

Mr. Richardson had been the general manager of the Richardson Company and was not satisfied with his position, or the business done by that company, and had been influential in bringing about the sale of that company to the United, for the reason that the business was so small that it would hardly make more than a bare living for him.

He is at present in charge of the General Department of the United Company and his salary has been repeatedly raised.

Reason for making contract was because Richardson was an inventor having executive ability, and it was expected that he would be advanced to a very important position with the Company.

In view of these facts, it seemed proper to safeguard the Company if it expected to gradually promote Mr. Richardson to an important position in its executive forces.

Class 8.

Miscellaneous — Contracts which do not come strictly under any of the foregoing classes.

CORRUGATED WIRE FASTENING COMPANY.

Purchased in 1899 for $12,750.

This company was purchased at the earnest solicitation of the owners; the business of the Company having become unprofitable, and at the price paid it was believed a small profit would result before the business entirely disappeared.

Owned no real estate. Leased a small room on South Street, Boston, where it employed two or three men.

Such small business as it did was transferred to the factory of the United Company.

AMERICAN SOLE LAYING COMPANY.

Purchased in 1902 for $5,200.

This company was purchased at the solicitation of Mr. Fuller, who was the principal owner and desired to spend his time in the South, and because the United Company desired to secure rights under patent #384,893, in order to develop the Atlas Leveling Machine, and also because it was feared that the new pad for the Improved Sole Laying Machine would infringe patent #376,406.

Owned no real estate and did no manufacturing. Contracted with outside parties for such machines as it had built.

JOHN RITCHIE
THE JOHN RITCHIE COMPANY

November, 1899, the United Company acquired from John Ritchie and the John Ritchie Company certain Metallic Fastening Machines and also machines for manufacturing standard screw wire, and then leased back to the Ritchie Company the Metallic Fastening Machines, and John Ritchie and the Ritchie Company contracted with the United Company that they would not manufacture any wire fastening machines, or machines for manufacturing wire fastenings.

The reason for this contract and purchase was to prevent manufacturers who held Metallic Machinery under lease from the United Company (and who had agreed to purchase their metallic fastening material from the United Company), violating their leases and contracts by purchasing material from Ritchie.

Ritchie was not manufacturing, dealing in, or selling Metallic Fastening Machines, or shoe machinery of any kind, but he was assisting certain lessees of the United Company to violate their

leases. No existing competition, or business, was inteferred with by this contract.

The United Company agreed to pay the John Ritchie Company the sum of $750 per annum; being at the rate of 5% upon the principal sum of $15,000, with the right on the part of the United Company to pay the principal sum of $15,000 at any time and cancel the annual payment.

No real estate acquired; only help employed two or three boys.

OLIVER A. MILLER.

Owned factory located in Brockton; employed about sixty-five men.

February, 1902, the United Company purchased from Oliver A. Miller, for $160,000 in cash, his business and patents relating to Treeing Machines, forming the O. A. Miller Treeing Machine Company.

The United Company was not in competition in any manner whatsoever with the Miller Company and the purchase was made entirely for the purpose of extending its business.

Reason for the purchase was that in 1901 Miller became involved in financial difficulties and needed money and he gave an option to one Frank Hannigan, who had managed this business for several years.

Mr. Hannigan was personally acquainted with most of the officers of the United Company and opened negotiations with them with a view to effecting a sale of the business.

Mr. Hannigan has 10% interest in the business and has continued as manager of it.

Factory has been largely extended and at the present time it employs approximately 125 men.

Business is largely the manufacture and sale of tree feet.

BROCKTON SUPPLY COMPANY (Partnership).

Purchased November, 1905, a certain part of the assets and patents of the Brockton Supply Company.

Amount paid $21,724.

Owned no real estate; leased floor space on Franklin Street, Brockton, Mass.; employed about four men.

The business of the Brockton Supply Company consisted largely in millwright work, dealing in second-hand lathes, planers, and other machine tools, leather and various supplies, and the manufacture in a small way of a Tack Pulling machine (under patents issued 1904 and 1905 to one Lyon) and a Vamp Folding Machine.

The United Company had no Tack Pulling Machine, but was endeavoring to develop one. Mr. Hadaway was the principal inventor employed on this work by the United Company.

Business was continued at the same place for a number of years. Reason for purchase:

Some time prior to November, 1905, Mr. Nichols and his partner, Mr. Campbell, had had a serious disagreement and Nichols had suggested that they liquidate their business and separate, and they had sold a portion of their business (the Vamp folding Machine) to the Boston Machine Works. Campbell had suggested to Nichols that he (Nichols) see if they could not sell the rest of their business to the United Company, which Nichols did, and as the United Company had not been able up to that time to produce a Tack Pulling Machine, they were willing to purchase the tangible assets of the firm and the patents that they owned relating to Tack Pulling Machines.

SMITH LACING MACHINE COMPANY.

Owned no real estate and did no manufacturing; contracted with the Metallic Heel & Counter Company to build its machines, but had placed none upon the market.

Purchased in 1906 the entire assets, including patents covering a machine for lacing shoes prior to the lasting operation; paying therefor $50,000 in cash and a royalty of $75 (or $50 if leased in a foreign country) on each machine until $67,500 additional had been paid. This payment was completed within three years.

The United Company owned the application for a patent issued June 4, 1907, which contained broad claims dominating the Smith Machine.

The Smith Company had, however, produced a machine which was believed to be, and proved to be, a commercially successful machine.

Neither the United Company nor the Smith Company had done

any business in Lacing Machines and there was no competition between them; in fact, there was no machine for doing this work upon the market.

There would have been long and expensive litigation between the parties, and in view of this fact the Smith Company desired to sell, and the United Company desired to purchase and furnish to their customers a machine which would do work that had heretofore been done by hand.

The Smith Company had intended to charge an initial payment and royalty for the use of the machine. The United Company furnished these machines to their customers without initial payment and at one-half the royalty that the Smith Company had intended to charge.

After the purchase by the United Company the business was moved to the Beverly Factory and machines have been furnished to the trade ever since.

RICHARDSON SHOE MACHINERY COMPANY.

Purchased December, 1908; amount paid $80,000.

Owned no real estate; operated no factory. Contracted with outside parties to build its machines.

The Richardson Company manufactured an improved McKay Sewing Machine known in the trade as the "Richardson Machine" and owned some twelve or more patents relating to same.

The United Company had been endeavoring for some time to produce a new and improved McKay Sewing Machine and the result of such work was its so-called "Model B" Sewing Machine.

Although the United Company had endeavored to avoid the infringement of all patents owned by the Richardson Company, this machine still infringed broad Claim 16 of Patent No. 710,613.

The largest stockholders of the Richardson Company were William B. Ri and Harry L. Rice, of the firm of Rice & Hutchins, Inc., shoe manufacturers who were large lessees of other machinery manufactured by the United Company. The relations between the parties was of the pleasantest character, and in 1908 Mr. John H. Richardson, the manager of the Richardson Company, approached our General Manager, Mr. C. H. Willson, to see if the British United Company

would not take the agency for England, and perhaps throughout Europe.

After careful examination by our experts, it was decided that the Richardson Machine was a better machine for European work than the United Company's "Model B" Machine. A conclusion was also reached that a better machine than either could be built if the Richardson patents and our own could be combined in a new machine.

Mr. Richardson suggested that the United Company should purchase the Richardson Company, or at least the foreign patents. Mr. Richardson stated that he realized that with only this machine as a business, the Richardson Company would not be able to make much of a success of its business and that he himself would like to come with the United Company.

After the purchase by the United Company the manufacturing of machines was transferred to the Beverly Factory.

The United Company has continued to supply such machines as desired by the trade and has built a new and improved machine embodying the inventions owned by the Richardson Company and the United Company.

Reason for purchase:

In view of the fact that it was believed a better machine than either of the two could be constructed by the use of patents owned by both parties, that the United Company's "Model B" Machine infringed one of the Richardson Company's patents, and the further fact that the Rices were customers and on very friendly relations, the United Company entered into the negotiations, which were finally concluded by the purchase.

The Clicking Machines referred to in the Government Petition were not being manufactured by the Richardson Company. It had a half interest in an experimental machine (and any inventions that might result therefrom) being constructed by the Essex Machine Company.

DEFENDANTS' EXHIBIT 232.

[Put in Evidence, page 3079.]

MACHINE OPERATIONS PERFORMED IN THE MANUFACTURE OF ALL KINDS OF BOOTS AND SHOES AND MACHINES OFFERED BY MACHINERY MANUFACTURERS FOR PERFORMING THOSE OPERATIONS.

Cutting Room	Page	1	Printed Page	480
Stitching Room	"	3	" "	481
Sole Leather Room	"	30	" "	496
Lasting Room	"	54	" "	509
Bottoming Room	"	59	" "	512
Finishing Room	"	79	" "	524
Treeing Room	"	82	" "	526
Packing Room	"	83	" "	526

(Machines offered by United Shoe Machinery Company are designated by "(United)".)

Cutting Room.

Cutting Vamps, Tops, Foxings, Tongues, and Trimmings.

(United) Ideal Clicking Machine
Parsons — Parsons Machinery Company
Seelye — Seelye Manufacturing Company

Splitting Upper Leather.

(United) Cylinder Splitting Machine
(United) Centennial Splitting Machine
Belt Knife — The American Tool & Machine Co.
Vaughn Belt Knife — The Turner Tanning Machinery Co.

Cutting Cloth Linings, Doublings, and Box Toe Material.

(A Doubler is a cloth reinforcement cemented to light parts of Upper.)

(United) Ideal Clicking Machine
(United) Improved Gearless Sole Cutting Machine
(United) Improved Geared Sole Cutting Machine
Eclipse — Parsons Machinery Company
Seelye — Seelye Manufacturing Company

Tower — Tower Brothers
Knox — Quamby & Hilliker

Crimping Vamps.

Lockett — Lockett Crimping Machine Company

Marking Sizes and Case Numbers on Lining.

Power Lining Marking Machine — Markem Machine Co.

Stamping Parts of the Upper for Matching and Sizing.

(United) Eagle Upper Stamping Machine
Upper Leather Marking Machine — Markem Machine Co.
Eureka Match Marking Machine — Boston Machine Works Co.
Eureka Upper Marking Machine — Boston Machine Works Co.
Perfection Size Marking Machine — Coburn & Lawrence Co.

STITCHING ROOM.

Skiving Parts of Uppers.

(Beveling Edges preparatory to Folding.)

(United) Amazeen Skiving Machine
(United) Pluma Skiving Machine
Universal — Peerless Machinery Company
Fortuna — Fortuna Machine Company
Pierce — C. S. Pierce
Amazeen Type — A. Johnson & Sons
Amazeen Type — Donnelly Machine Co.

Snipping, preparatory to Folding.

(United) Booth Sandal Snipping Machine
Hart — Hamel Shoe Machinery Company
Boston — Boston Machine Works Company
(6 Foot Power Types)
Power — Boston Machine Works Company
Snipping & Cementing Machine — Boston Machine Works Company

Cementing Skived Edges of Upper.

Economy Cementing Machine — Peerless Machinery Company
Duplex — " " "

New York — Boston Machine Works Company
Snipping & Cementing Machine — " " " "

Folding Skived Edges of Upper.

New Vamp — Boston Machine Works Company
Foot Power — Boston Machine Works Company
Boston — Boston Machine Works Company
Booth — Boston Machine Works Company
Rapid Hand Method — Perley R. Glass Company
Straight Edge — American Worsted Machinery Company
Lufkin — R. H. Lufkin
New Cylinder — Perley R. Glass Company

Pounding Seams.

(United) New Power Hammer
Shawmut Power Hammer — Shawmut Machinery Co.
Hart — Hamel Shoe Machinery Company
Little Giant — American Worsted Machinery Company

Marking Vamps for Tips and Vamp Centres for Position of Tips.
(These marks enable the operator to place Vamp and Tip in the correct position on Shoe.)

(United) Paragon Vamp Marking Machine
Rogers — Coburn & Lawrence Company

Perforating Tips and Vamps.

(United) Royal Perforating Machine
(United) Stanbon Perforating Machine
Hart #6 — Hamel Shoe Machinery Company
Hart (Model A) — Hamel Shoe Machinery Company
Barber — L. L. Barber & Co.
American — American Worsted Machinery Company
Peerless — Peerless Machinery Company
Punch Feed — Hamel Shoe Machinery Company
Johnson — A. Johnson & Sons

Punching Tips.

(United) Crown Tip Punching Machine
(United) Stanbon Tip Punching Machine

(United) Royal Tip Punching Machine
Stimson — Edwin B. Stimson & Company
Peerless Improved #2 — Peerless Machinery Company
Model E — Geo. Knight & Company
Model F — Geo. Knight & Company
Model G — Geo. Knight & Company
Power — Geo. Knight & Company
Foot Power — Geo. Knight & Company
Hand — Geo. Knight & Company
Barber Power — L. L. Barber & Company
Barber Foot Power — L. L. Barber & Company
Donnelly — Donnelly Machine Company
Hand Tip Press — L. L. Barber & Company

Pasting Tape.

(Applying Paste to Tape which is to be used for backing Perforations.)

Wheeler — Brockton Stay Company.

Pinking Tip.

(United) Pinking Machine
(Hand) — American Worsted Machinery Company
(Geared) — American Worsted Machinery Company
Pinking & Perforating Machine — Edwin B. Stimson & Co.
(Hand Power) — Edwin B. Stimson & Company

Scalloping Button-Fly.

(Largely done by hand; to some extent on clicking machine.)

(United) Button-Fly Scalloping Machine

Cementing Cloth Doubler Lining to Light Uppers.

(A Doubler is a Cloth Reinforcement cemented to light parts of upper.)

(United) Hub Lining Cementing Machine
K. & K.— George Knight & Company
Peerless — Peerless Machinery Company
Mathey — Coburn & Lawrence Company
Weber — J. H. Nangle
Hand Power — Shawmut Machinery Company

Foot Power — Shawmut Machinery Company
Simplex Cloth Backing Machine — Boston Last Company
"Davis" Electric Taping Machine — The Davis Sewing Machine Company

Seaming Linings in Back.
(Joining the two Quarters of the Lining.)

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching Eyelet Stays to Lining.

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Pricking Linings for Placing Facings.

Boston Power Lining Pricking Machine — Boston Machine Works Company

Stitching Button Stay to Lining.

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Wheeler & Wilson — Singer Sewing Machine Company
Davis — The Davis Sewing Machine Company

Stitching Button-Fly Lining to Lining of Shoe.

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Staying Back Seam of Lining.
(Reinforcing Seam with Tape.)
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Stitching Inside Back Stay to Lining.
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching Top Facing to Lining.
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching Label to Lining.
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company

Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Embossing Top Facings.

(United) Embossing Machine (Power)
(United) Embossing Machine (Foot Power)
Simplex — Boston Last Company
Silver King — Markem Machine Company
Freeman — The Louis G. Freeman Company
Perkins — Perkins Machine Company

Stitching Tongue to Side of Lining.

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching Counter Lining to Quarter.
(Forming a Pocket for the Counter.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Puritan — Puritan Manufacturing Company
Davis — The Davis Sewing Machine Company

Stitching in Counters on an Unlined Shoe.

Puritan — Puritan Manufacturing Company
No. 3 — Union Lockstitch Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company

Seaming Quarters or Tops in Back.
(Joining the two Quarters of the Upper.)

Puritan — Puritan Manufacturing Company
No. 3 — Union Lockstitch Company
Singer — Singer Sewing Machine Company

Wheeler & Wilson — Singer Sewing Machine Company
Union Special — Union Special Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Seaming tops in back Zig-Zag Stitch.

(Jointing the two Tops.)

Singer — Singer Sewing Machine Company
Wheeler — Singer Sewing Machine Company
Union Special — Union Special Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.

Seaming Outside of Button-Fly to Top.

Union Special — Union Special Sewing Machine Co.
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Staying Button-Fly Seam.

(Reinforcing with Tape.)

Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Davis — The Davis Sewing Machine Company

Staying Top Back Seam.

(Reinforcing Seam.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Stitching Back Stay and Strap above Vamp.

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company

Stitching Outside Heel Stay

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Union Special — Union Special Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching around Top of Shoe.

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Staying Back Seam of Oxford Quarters.

Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Puritan — Puritan Manufacturing Company
No. 3 — Union Lockstitch Company
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Over-Edging Tongue

(Over-Stitching around Edge of Tongue, including its Cloth Lining.)

Singer — Singer Sewing Machine Company
Union Special — Union Special Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.

Stitching Lining to Tongue.

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching Bellows Tongue between Vamp and Vamp Lining.

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Stitching Side Stays and Bellows Tongue to Top.

(Edge of Tongue placed under Eyelet Stays, Stitching through Eyelet Stay, Tongue and Quarter.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.

Stitching Strap in Pocket.

(End of Strap drawn over Top of Shoe, inserted in a Slit, and Stitched.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company

Fancy Stitching.

(Stitching various Fancy Designs.)

Union Special — Union Special Sewing Machine Co.
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Bonaz — Lintz & Eckhardt

Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching French Cord on Fancy Upper.
(Ornamental Work.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Bonaz — Lintz & Eckhardt
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Binding Top Edge of Pump Slipper.

Singer — Singer Sewing Machine Company
Davis — The Davis Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company

Attaching Bows.

Simplex — C. E. Hardenbrook Company
Elliott — Elliott Manufacturing Company
Tubular Rivet — Tubular Rivet & Stud Company

Punching Holes for Hooks and Eyelets.

(United) Vulcan Foot Power Punch
Automatic Hook Hole — Boston Machine Works Co.
Foot Power Punch — American Worsted Machinery Co.

Seam Rubbing.

(United) Rapid Seam Rubbing Machine
Champion — Coburn & Lawrence Company
Boston — Boston Machine Works Company
Hand Method — Shawmut Machinery Company
Union — Boston Machine Works Company

Hooking with Stay Reinforcement.
(Attacking Hooks to Men's Shoes.)

Tubular Rivet — Tubular Rivet & Stud Company
American — American Lacing & Hook Company

Foot Power — American Worsted Machinery Company
Halkyard — Halkyard Manufacturing Company

Seaming Foxings at Heel.

(Joining Foxings.)

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Metropolitan — The Metropolitan Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Staying Foxings at Heel.

(Reinforcing Seam with Tape.)

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Davis — The Davis Sewing Machine Company

Stitching Foxings to Quarters.

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
No. 3 — Union Lockstitch Company
Puritan — Puritan Ma ufacturing Company
Davis — The Davis Sewing Machine Company

Seaming Vamp in Back.

(Joining two ends of Vamp.)

No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Staying Inside of Vamp Seam.
(Reinforcing with Tape.)

Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Butting Felt Box to Vamp.
(Zig-Zag Stitching Felt Box to Cut-Off Vamp.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Union Special — Union Special Sewing Machine Co.
Standard — The Standard Sewing Machine Company

Stitching Tip to Vamp.

Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Standard — The Standard Sewing Machine Company
Davis — The Davis Sewing Machine Company

Stitching Eyelet Row on Quarters or Tops.
(Ornamental Stitching Parallel to Eyelets.)

Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Union Special — Union Special Sewing Machine Company

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Stitching Linings to Tops, Back to Back.

Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Turning and Beading.

(Upper and Lining seamed back to back, turned, and beaded.)

(United) Columbia Beading Machine
(United) Victor Beading Machine
(United) Turning and Beading Machine
Monarch — Boston Machine Works Company
Hart — Hamel Shoe Machinery Company
Nangle — J. H. Nangle
Boston — Boston Machine Works Company

Stitching Lining to Top and Undertrimming.

(Stitching Lining to Top, including stitching Front Fold and trimming off Surplus Facing.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.

Marking for Buttonholes.

Adams — Adams Manufacturing Company
Buttonhole Marking — Shoe Manufacturers' Supply Co.

Making Buttonholes.

(United) Buttonhole Making Machine
Reece — The Reece Buttonhole Machine Company

Finishing Buttonholes.

(Stitching a Cord on under side of Button-Fly for Reinforcement of Worked Buttonhole.)

(United) Buttonhole Finishing Machine
Reece — The Reece Buttonhole Machine Company
Singer — Singer Sewing Machine Company

Cording Buttonholes.

(Stitching a heavy Cord around Buttonhole instead of Working Buttonhole on Machine — On Cheap Work.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company

Attaching Buttons.

Morley — Singer Sewing Machine Company
R. & M.— Peerless Machinery Company
Singer — Singer Sewing Machine Company
Universal — Elliott Manufacturing Company
Elliott — Elliott Manufacturing Company
Heaton-Peninsula — Elliott Manufacturing Company
Reece — The Reece Buttonhole Machine Company

Eyeletting.

(United) Duplex Eyeletting Machine
(United) Perfection Eyeletting Machine
(United) Universal Power Eyeletting Machine
(United) Merrick Power Eyeletting Machine
(United) Samson Eyeletting Machine
(United) Power Eyeletting Machine
(United) Cameo Foot Power Eyeletting Machine
(United) Vulcan Foot Power Eyeletting Machine
Power — George Knight & Company
Foot Power Gang — George Knight & Company
Peerless Rapid — Peerless Machinery Company
Pereless Gang — Peerless Machinery Company
"A" Machine — American Worsted Machinery Company
"B" Machine — American Worsted Machinery Company

Monitor — American Worsted Machinery Company
Eureka — American Worsted Machinery Company

Barring.

(Reinforcing Fly to Upper at Bottom of Fly.)

Singer — Singer Sewing Machine Company

Seaming Toe of Lining.

(Joining the two portions of the Lining at the Toe.)

Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Standard — The Standard Sewing Machine Company
Metropolitan — The Metropolitan Sewing Machine Co.
Davis — The Davis Sewing Machine Company

Seaming Vamp with Welt.

(Joining, with a narrow piece of leather or canvas welting between the two ends of the Vamp.)

No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Union Special — Union Special Sewing Machine Company
Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company

Vamping.

(Stitching Vamp to Top of Shoe.)

Union Special — Union Special Sewing Machine Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company
Standard — The Standard Sewing Machine Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Davis — The Davis Sewing Machine Company

Lacing Uppers.

(Inserting Thread through Eyelet Holes, to temporarily hold Uppers in Place.)

(United) Ensign Lacing Machine
Rochester Lacer — Boston Machine Works Company

Stitching In Counters. Boot Work.

No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company

Siding Boots.

Campbell — Campbell-Bosworth Machinery Company
No. 3 — Union Lockstitch Company
Puritan — Puritan Manufacturing Company

Staying Side Seam.

Puritan — Puritan Manufacturing Company
No. 3 — Union Lockstitch Company
Singer — Singer Sewing Machine Company
Wheeler & Wilson — Singer Sewing Machine Company

Riveting Outside Counters.

Riveting Machine — Tubular Rivet & Stud Company

SOLE LEATHER ROOM

Cutting Outersole, Innersole, Heel Lifts, Half-Sole, Toplift, Counter, Box Toe, Turn Shank Pieces, Leather and Leather-board, Doublers, and Forepart Fillers.

(United) Improved Gearless Sole Cutting Machines
(United) Improved Baby Sole Cutting Machine — Model P
Eclipse — Parsons Machinery Company
Seelye — Seelye Manufacturing Company
Tower — Tower Bros.
Knox — Quarmby & Hilliker

Preparing Bellies, Shoulders, and Remnants for Cutter. (Rolling, Splitting.)

(United) Summit Splitting Machine
Knox — Quarmby & Hilliker
Hawkins — Seelye Manufacturing Company

Baby — J. S. Wheeler & Company
(United) Victor Rolling Machine
(United) Improved Rolling Machine
Seelye — Seelye Manufacturing Company
Knox — Quarmby & Hilliker
Busfield — James Busfield

Finishing Counter Stock.

(Instead of the leather passing between two rolls under pressure, as in the regular Rolling Operation, a rapidly vibrating brass roll smooths out the wrinkles, and finishes the surface.

Whiting — Gardiner & Beardsell
Holmes — Charles Holmes Leather Working Machinery Company

Stripping and Beveling Stock for Wedge Lifts.

(United) Champion Strip Beveling Machine
Young — W. J. Young Machinery Company

Cutting Wedge Lifts.

(United) Wedge Lift Cutting Machine
Young Wedge Lift Cutting Machine — W. J. Young Machinery Company

Evening Heel Lifts.

(United) Summit Splitting Machine
(United) Centennial Splitting Machine
Hawkins — Seelye Manufacturing Company
Knox — Quarmby & Hilliker
Baby — J. S. Wheeler & Company

Gouging Heel Lifts

(United) Champion Heel Lift Skiving Machine
Young — W. J. Young Machinery Company
Bostock — Thomas Bostock & Sons

Building Heels.

(United) Pyramid Heel Building Machine
(United) Heel Building Machine — Model R
Young Foot Power — W. J. Young Machinery Company

Grover — W. J. Young Machinery Company
White — F. H. White & Company
Bostock — Thomas Bostock & Sons
Bosworth — W. T. Bosworth
Fortuna — Fortuna Machine Company
Knight — George Knight & Co.
Pieced Heel — Parsons Machinery Company

Pressing Heels.

(United) Handy Heel Press
Seelye — Seelye Manufacturing Company

Compressing Heels.

(United) Automatic Heel Compressing Machine #4
(United) Automatic Heel Compressing Machine #5
Heel Compressing Machine — W. J. Young Machinery Company
Heel Compressing Machine — Gimson & Company, Ltd.
Knox Compressing Machine — Quarmby & Hilliker
Heel Compressing Machine — Nolle's Works

Condensing Toplifts.

(United) Automatic Heel Compressing Machine #4

Veneering Insole.

(United) Veneer Press
Busfield — James Busfield

Flexing Insole.

(United) Insole Flexing Machine — Model R (McKay Work Only)
(United) Goodyear Flexible Sole Machine — Model B (Ziegler)
(United) Goodyear Flexible Sole Machine — Model XB
(United) Goodyear Flexible Sole Machine — Power
Wheeler — J. S. Wheeler & Company (McKay Work Only)
Spencer — Edw. E. Spencer, Jr. (McKay Work Only)
Stimson — Edwin B. Stimson Company (McKay Work Only)

Fleshing Insole Stock.

(United) Centennial Splitting Machine

Rounding Insole.

(United) Planet Sole Rounding Machine
Julian — The Boylston Manufacturing Company
Improved Loewer — Consolidated Rotary Rounder Co.
Ross — Consolidated Rotary Rounder Company

Channeling Insole.

(Welt Work Only)

(United) Goodyear Universal Channeling Machine
(Fitted for Gem Insoles, Goodyear Insoles, and Turn Soles)

(United) Goodyear Channeling Machine
(Hand Belt Power)
Channeling Machine — The R. R. Long Machinery Company, Inc.
Haverhill Turn Channeling Machine — Haverhill Shoe Machinery Company
Channeling Machine — Hamel Shoe Machinery Company

Stamping Size on Insole.

(Welt Work Only)

(United) Insole Lip Cutting, Scoring and Sizing Machine
(United) Eagle Sole Stamping Machine
Nichols Grading Machine — Lacene Manufacturing Co.

Stamping Size on Outsole.

(United) Eagle Sole Stamping Machine
Nichols Grading Machine — Lacene Manufacturing Co.

Cutting Lip of Insole and Scoring.

(Welt Work Only)

(United) Insole Lip Cutting, Scoring and Sizing Machine
Flap Slashing Machine — Boston Machine Works Co.

Snipping Lip of Insole at Toe.

(Welt Work Only)

(United) Goodyear Insole Toe Snipping Machine
Insole Snipping and Pinking Machine #7 — Boston Machine Works Company

Turning Lip of Insole.

(Welt Work Only)

(United) Goodyear Lip Turning Machine — Model X

(United) Goodyear Lip Turning Machine

(United) Goodyear Lip Turning and Slashing Machine

American — American Worsted Machinery Company

Knight — George Knight & Company

Duplessis — Hamel Shoe Machinery Company

Haverhill — Haverhill Shoe Machinery Company

Long — The R. H. Long Machinery Company, Inc.

Turning Lip of Gem Insole.

(Welt Work Only)

(United) Gem Lip Turning Machine

(United) Goodyear Lip Turning & Slashing Machine

Lip Turning Machine — Haverhill Shoe Machinery Company

American — American Worsted Machinery Company

Knight — George Knight & Company

Duplessis — Hamel Shoe Machinery Company

Haverhill — Haverhill Shoe Machinery Company

Long — The R. H. Long Machinery Company, Inc.

Cementing Gem Insoles and Gem Canvas.

(Welt Work Only)

(United) Gem Cementing Machine (Cementing Canvas)

(United) Rapid Rotary Cementing Machine (Cementing Gem Insoles)

Haverhill — Universal Supply Company (Cementing Insole)

Hazel-Brown — Hazen-Brown Company (Cementing Insole)

Julian — Boston Machine Works Company (Cementing Insole)

Forming and Trimming Gem Canvas to Shoulder.

(Welt Work Only)

(United) Gem Flexible Insole Machine

Hardening Shoulder.

(Welt Work Only)

Rib Tightening or Hardening Machine — The Plymouth Rubber Company

Rib Tightening or Hardening Machine — Walpole Shoe Supply Company

Wetting Economy Insole.

(Welt Work Only)

(United) Economy Insole Wetting Machine — Model X

(United) Rapid Rotary Cementing Machine — Model J (Water Roll instead of Cement)

Channeling Economy Insole.

(Welt Work Only)

(United) Economy Insole Channeling Machine

Cementing Economy Insole.

(Welt Work Only)

(United) Rapid Rotary Cementing Machine — Model J

Julian — Boston Machine Works Company

Brown — Hazen-Brown Company

Haverhill — Universal Supply Company

Reinforcing Economy Insole.

(Welt Work Only)

(United) Economy Insole Reinforcing Machine

Stripping Outsole Stock.

(United) Improved Stripping Machine — Foot Power

(United) Improved Stripping Machine — Power

Parsons — Parsons Machinery Company

Seelye — Seelye Manufacturing Company

Knox — Quarmby & Hilliker

Tower — Tower Brothers

Blocking Outsole.

Knox Power Blocking Machine — Quarmby & Hilliker (Heavy)

Knox Power Blocking Machine — Quarmby & Hilliker (Light)

Evening Outsole.

(United) Summit Splitting Machine
Hawkins — Seelye Manufacturing Company
Nichols — Lacene Manufacturing Company
Baby — J. S. Wheeler & Company
Knox — Quarmby & Hilliker

Improving Soles.

(Condensing Outsole)

(United) U.S.M.C. Tap and Sole Improving Machine

Rolling Outsole.

(United) Victor Rolling Machine
(United) Improved Rolling Machine
Knox — Quarmby & Hilliker
Busfield — James Busfield
Seelye — Seelye Manufacturing Company

Rounding McKay and Turn Outsole.

(United) Planet Sole Rounding Machine
Improved Loewer — Consolidated Rotary Rounder Co.
Ross — Consolidated Rotary Rounder Company
Julian — The Boylston Manufacturing Company

Grading Outsole.

Nichols Grading Machine — Lacene Manufacturing Co.

Quilting Outsole.

(Driving Wire Slugs to form certain designs on bottom or top of shoe.)

(United) Spatter Quilting Machine
(United) Universal Slugging Machine (With Quilting Attachment)

Flexing Outsole.

(United) Goodyear Flexible Sole Machine (Ziegler) — Model B

Channeling Turn Sole.

(Turn Work Only)

(United) Goodyear Turn and Insole Channeling Machine
(United) Goodyear Universal Channeling Machine (Turn)

Channeling Machine — The R. H. Long Machinery Company, Inc.
Haverhill Turn Channeling Machine — Haverhill Shoe Machinery Company
Channeling Machine — Hamel Shoe Machinery Company
Channeling McKay and Standard Screw Outsole.
(United) Apex Channeling Machine
(United) McKay Channeling Machine — Model Z
McKay — Walter Pearson
McKay — American Worsted Machinery Company
McKay — George Knight & Company

Thin Edging Outsole.
(McKay Work Only)
(United) Apex Thin Edge Machine
Rapid — Theo. Ringenbach

Shank Reducing and Feather Edging Outsole.
(United) Goodyear Turn and Insole Channeling Machine (Turn Work Only)
(United) Goodyear Outsole Channel Shank Reducing Machine (Welt Work Only)
(United) Apex Feather Edge and Shank Reducing Machine
(United) Rotary Feather Edge and Shank Reducing Machine
Knight — George Knight & Company
Rapid — Theo. Ringenbach
American — American Worsted Machinery Company

Fleshing or Randing Outsole or Heel Seat of Outsole.
(United) Apex Fleshing or Randing Machine
(United) Empire Splitting Machine (Fleshing Heel Seats)

Splitting Heel of Turn Sole for Louis Heel.
(Turn Work Only)
(United) Krieg Hand Power
(United) Empire Splitting Machine
Busfield — James Busfield

Moulding Down Edge of Sole.
(Turn Work Only)

(United) Goodyear Moulding Machine
(United) Goodyear Power Moulding Machine
Turn Moulder — Haverhill Shoe Machinery Company
Turn Moulder — Hamel Shoe Machinery Company

Scarfing Turn Sole at Heel.
(Turn Work Only)

(United) Turn Sole Scarfing Machine — Model A

Skiving Shank Piece.
(Turn Work Only)

(United) Champion Shank Skiving Machine
Young — W. J. Young Machinery Company

Roughing Tap and Sole.

(United) Velvet Box Toe and Counter Buffing Machine
Peerless Tap Scouring Machine — Peerless Machinery Company

Cutting Taps for Rights and Lefts.

(United) Tap Cutting Machine — Model S
Bostock — Thomas Bostock & Sons

Skiving Butt of Tap and Skiving Leather and Leatherboard Doublers.

(United) Apex Tap Skiving or Rand Splitting Machine
(United) Counter Skiving Machine — Model W
N.O.S.— American Worsted Machinery Company
Improved Tripp — American Worsted Machinery Co.
Busfield — James Busfield
American — Victor Shoe Machinery Company

Cementing Tap and Outsole.

(United) Rapid Rotary Cementing Machine — Model J
Julian — Boston Machine Works Company
Haverhill — Universal Supply Company
Brown — Hazen-Brown Company

Tacking Tap to Outsole.

(United) Wire Grip Tacking Machine
(United) Staple Fastening Machine

(United) Cable Tacking Machine
(United) Taper Nail Tacking Machine
Universal Sole Clinch Machine — Universal Shoe Machinery Company
Duplessis — Hamel Shoe Machinery Company
Victor — Victor Shoe Machinery Company
Fairstitching Tap or Welt to Outsole.
(United) Goodyear Rapid Stitcher
Puritan — Puritan Manufacturing Company
Union — Union Lockstitch Company
Campbell — Campbell-Bosworth Machinery Company
Landis — Landis Machine Company
Randall — The J. D. Randall Company
O'Flaherty — The John O'Flaherty Company
Simplex — James Clark Leather Company
Leger — C. V. Engstrom & Company

Rounding Tap to Outsole.

(United) Apex Tap and Sole Rounding Machine
Severance — American Worsted Machinery Company

Scarfing Spring Heel.

(United) Boss Spring Heel Scarfing Machine
Young — W. J. Young Machinery Company
Bostock — Thomas Bostock & Sons
Bowden — Thos. J. Bowden & Son

Tacking Spring Heel to Sole.

(United) Grip Tacking Machine
(United) Cable Tacking Machine
(United) String Nail Tacking Machine
(United) Staple Fastening Machine
Duplessis Tacking Machine — Hamel Shoe Machinery Co.
Universal Sole Clinch Machine — Universal Shoe Machinery Company
Victor — Victor Shoe Machinery Company

Trimming Spring Heel.

(United) Apex Spring Heel Trimming Machine — Model A

Tacking on Shank.

(United) Boston Tacking Machine
(United) Wire Grip Tacking Machine
(United) String Nail Tacking Machine
(United) Cable Fastening Machine
(United) Staple Fastening Machine
Freeman Insole Tacker — Louis G. Freeman Co.
Victor — Victor Shoe Machinery Company
Tacking Machine — A. Johnson & Sons
Duplessis Tacking Machine — Hamel Shoe Machinery Company

Doubling shanks of Outsole if light with Leather or Leatherboard.

(United) Rapid Rotary Cementing Machine
Julian — Boston Machine Works Company
Haverhill — Universal Supply Company
Brown — Hazen-Brown Company

Moulding Outsole.

(United) American Twin Sole Moulding Machine
(United) Single Sole Moulding Machine
Knox — Quarmby & Hilliker
C. & J. — The Boylston Manufacturing Company
Hawkins — Seelye Manufacturing Company

Toe Gouging.

(Gouging Forepart of Sole)

(United) Crescent Toe Gouging Machine

Opening McKay and Standard Screw Channel

(United) Apex Channel Opening Machine
Fischer — American Worsted Machinery Company
Fischer — George Knight & Company

Slashing McKay Welts.

(United) Welt Slashing Machine
Knipe — William Knipe
Brewer — A. G. Brewer
Bostock — Thomas Bostock & Sons

Combination Welt Splitting & Slashing Mch.— Jas. Busfield

Cementing McKay Welt.

(United) Rapid Rotary Cementing Machine — Model J
Brown — Hazen-Brown Company
Haverhill — Universal Supply Company
Julian — Boston Machine Works Company

Laying McKay Welt to Outsole.

(United) Apex Welt Laying Machine — Model A
(United) Apex Welt Laying Machine — Model X
Welt Laying Machine — Kimball Brothers & Sprague

Tacking on McKay Welt to Outsole.

(United) Power Welt Tacking Machine (May be fitted for Slashing and Tacking Welt)

(McKay welting is generally attached by cementing or fair stitching)

Attaching Forepart Fillers.

(United) Boston Tacking Machine
(United) Cable Wire Tacking Machine
(United) Wire Grip Tacking Machine
(United) Staple Fastening Machine
Tacking Machine — A. Johnson & Sons
Victor — Victor Shoe Machinery Company
Hamel Tacking Machine — Hamel Shoe Machinery Co.

Splitting Heel Rands.

(United) Apex Tap Skiving or Rand Splitting Machine
(United) Improved Rand Splitting Machine — Model S
Tripp — American Worsted Machinery Company
N.O.S.— " " " "
Busfield — James Busfield
Young — W. J. Young Mchy. Company

Turning Heel Rands.

(United) Star Rand Turning Machine
Bostock — Thomas Bostock & Sons
Busfield — James Busfield
American — American Worsted Machinery Company

Tacking on Heel Rands.

(United) Staple Fastening Machine
(United) String Nail Tacking Machine
(United) Boston Tacking Machine
(United) Wire Grip Tacking Machine
(United) Cable Tacking Machine
(United) Power Welt Tacking Machine
(United) Taper Nail Tacking Machine
Victor — Victor Shoe Machinery Company
Duplessis Tacking Machine — Hamel Shoe Machinery Company

Cutting Off Heel Rands.

(United) Rand Cutting Machine — Model A
Bostock — Thomas Bostock & Sons
Busfield — James Busfield

Wetting Counter.

Stewart — Stewart Brothers

Skiving Edges of Counter.

(United) Monarch Box Toe & Counter Skiving Machine
(United) Counter Skiving Machine — Model W
(United) Counter Skiving Machine — Model S
Stewart — Stewart Brothers
Young — W. J. Young Machinery Company
Hartwell — L. L. Hartwell
Moenus Revolver Skiving Machine — Moenus Machine Works, Frankfurt. Germany

Finishing Ends of Counter.

Thurston — W. J. Young Machinery Company
Stewart — Stewart Brothers
Moenus — Moenus Machine Works

Buffing Counter.

(United) Velvet Box Toe Buffing Machine
Perfection — W. J. Young Machinery Company

Waxing and Rolling Counter.

Stewart — Stewart Brothers
Young — W. J. Young Machinery Company

Moulding Counter.

Young — W. J. Young Machinery Company
Stewart — Stewart Brothers

Skiving Box Toe.

(United) Amazeen Skiving Machine
(United) Pluma Skiving Machine
(United) Monarch Box Toe & Counter Skiving Machine
Young — W. J. Young Machinery Company
Fortuna — Fortuna Company

Buffing Box Toe.

(United) Velvet Box Toe Buffing Machine
Perfection — W. J. Young Machinery Company

LASTING ROOM.

Tacking Insole to Last.

(United) Staple Tacking Machine
(United) U.S.M.C. Insole Tacking Machine #1
Freeman Insole Tacker — The Louis G. Freeman Company

Rounding Heel Seat of Insole.

(Welt Work only)
(United) Goodyear Insole Heel Seat Trimming Machine — Model B

Assembling.

(Inserting Counter Preparing Box Toe Placing Upper on Last and Tacking and Lining-up by Machine)
(United) Rex Assembling Machine

Gumming Box Toe.

(Usually done by hand)
(United) Rex Toe Gumming Machine

Toe Softening.

(Steaming and Softening the Box Toe to facilitate the operation of Pulling-Over and Lasting.)

(United) Toe Softening Machine — Model C
(United) Toe Softening Machine — Model D
Carlson — Carlson Brothers
Bostock — Thomas Bostock & Sons
Beckwith — Beckwith Box Toe Company

Pulling-Over.

(Pulling the upper over the last at the Toe, Tacking with 5 or 7 Tacks.)

(United) Rex Pulling-Over Machine — Model A
(United) Rex Pulling-Over Machine — Model B
(United) Rex Pulling-Over Machine — Model C
Atlas — Atlas-Werke Pohler & Company
Victor — Nolle's Works
Moenus — Moenus Machine Works
Pulling-Over Machine — Ward & Gent

Lasting.

(United) Consolidated Hand Method Lasting Machine (McKay Work)
(United) Consolidated Hand Method Lasting Machine (Welt Work)
(United) Consolidated Hand Method Lasting Machine (Side Lasting)
(United) Consolidated Hand Method Lasting Machine (Turn Heel)
(United) Consolidated Hand Method Lasting Machine (Turn Toe)
(United) U. S. M. C. #5 Lasting Machine (Lasting Heel & Toe) Welts
(United) Ideal Lasting Machine (Lasting Heel & Toe) Welts
(United) Chase Lasting Machine
(United) McKay-Copeland (Heavy Work-McKay) Standard Screw and Pegged
(United) Boston Lasters (Cheap Slippers)
(United) Stitch-Down Staple Lasting Machine
Standard Rotary Rapid Lasting Machine — Standard Rotary Machine Co., Ltd.
Bed Type Lasting Machine — Atlas-Werke Pohler & Co.

Welt & McKay Consolidated Type — The Standard Engineering Company
Welt Lasting Machine — Gimson & Company, Ltd.
Bed Type — Gimson & Company, Ltd.
Bed Type — R. H. Long Machinery Company, Inc.
Victor Lasting Machine — Nolle's Works
Boston Lasting — A. Johnson & Sons
Bed Type — Standard Rotary Machine Company, Ltd.
Freeman Toe — The Louis G. Freeman Company
Freeman Heel Seat — The Louis G. Freeman Company
Lasting Machine — Ward & Gent
Consolidated Type — Atlas-Werke-Pohler & Company
Bed Type — The Boylston Manufacturing Company

Pounding & Trimming.

(McKay Work Only)
(United) Wentworth Heel Seat Beating & Finishing Machine
(United) Rex Rotary Pounding & Trimming Machine

Pounding Heel Seats.

(United) Wentworth Heel Seat Beating & Finishing Machine
(United) Rex Hammer Pounding Machine — Model F
(United) Rex Rotary Pounding & Beating-Up Machine (Turn Work)
(United) Rex Rotary Pounding Machine — Model C

Trimming Uppers.

(Welt work only)
(United) Rex Upper Trimming Machine — Model H

Trim.

(United) Goodyear Turn Shoe Trimming Machine

Turning Shoe.

(Turn Work only. Usually done by hand.)
(United) Goodyear Forepart Turning Machine
(United) Goodyear Heel Turning Machine

Ironing Toe of Uppers.

(Goodyear work only)
(United) Ironing Machine — Model B

Post Ironing Machine — Boston Last Company
Electric Toe Iron — The Louis G. Freeman Company

Laying McKay Soles.

(United) Wire Grip Tacking Machine
(United) Staple Fastening Machine
(United) Taper Nail Tacking Machine
Universal Sole Clinching Mach.— Universal Shoe Machinery Company

Drying Box Toes.

Savoday Rack — Savoday Rack Company
Vulcan Rack — Savoday Rack Company

Bottoming Room.

Upper Stapling.

(Welt Work Only)
(United) Goodyear Upper Stapling Machine

Pulling and Resetting Upper Tacks.

(Welt Work Only)
(United) Goodyear Tack Pulling and Resetting Machine
(United) Goodyear Upper Tack Pulling Machine
(United) Rapid Tack Pulling Machine
Krentler-Pym Tack Puller and Lifter — The L. G. Freeman Company

Grooving and Beveling Welting.

(United) Goodyear Power Welt Grooving and Beveling Machine
Haverhill — Haverhill Shoe Machinery Company
Long — The R H. Long Machinery Company, Inc.
Hamel — Hamel Shoe Machinery Company

Welt Sewing.

(Welt Work Only)
(United) Goodyear Welt and Turn Shoe Machine
(United) Goodyear Welt and Turn Shoe Machine — Model G
(United) Goodyear Welt and Turn Shoe Machine — Model K
(United) Goodyear Universal Machine

Haverhill Turn Sewing and Welting Machine — Haverhill Shoe Machinery Company
Duplessis Welt and Turn Sewing Machine — Hamel Shoe Machinery Company
Universal Welter — Universal Shoe Machinery Company
Welt and Turn Sewing Machine — The R. H. Long Machinery Company, Inc.
Welt and Turn Sewing Machine — A. Johnson & Sons
Welt and Turn Sewing Machine — Ward & Gent
Welt Sewing Machine — The Standard Engineering Co.
Welt Sewing Machine — The Boylston Manufacturing Company

Inseam Trimming.

(Welt Work Only)
(United) Goodyear Universal Inseam Trimming Machine
(United) Inseam Trimming Machine — Model K (Lease)
Keighley Rapid Inseam Trimming Machine — The Keighley Company, Inc. (Sale)
Inseam Trimming Machine — A. Johnson & Sons

Pulling Insole Tacks.

(United) Goodyear Insole Tack Pulling Machine
Combination Insole and Side Tack Pulling Machine — The Louis G. Freeman Company

Beating and Slashing Welt.

(Welt Work Only)
(United) Goodyear Welt Beating and Slashing Machine
(United) Goodyear Universal Welt Beating Machine (Beating Only)
Beating Machine — Standard Rotary Machine Company, Ltd. (Beating Only)
Beating Machine — The R. H. Long Machinery Company, Inc. (Beating Only)
Duplessis Beating Machine — Hamel Shoe Machinery Company
Boylston Machine — Boylston Manufacturing Company
Haverhill — Haverhill Shoe Machinery Company

Reducing Shanks of Welt.

(Welt Work Only)

(United) Goodyear Shank Welt Skiving Machine

Rapid — Theo. Ringenbach

Filling Bottoms.

(Welt Work Only)

Besto Filling Machine — North American Chemical Co.

Attaching Shanks.

(United) Boston Tacking Machine

(United) Taper Nail Tacking Machine — Single Head

(United) Staple Fastening Machine

(United) Shank Piece Sticking Machine

Freeman Insole Tacking Machine — The Louis G. Freeman Company

Tacking Machine — A. Johnson & Sons

Victor Machine — Victor Shoe Machinery Company

Cementing Bottom Filling and Welts.

(Welt Work Only)

(United) Star Channel Cementing Machine —

Union — The Boylston Manufacturing Company

Victor — Nolle's Works

Laying Soles.

(Welt Work Only)

(United) Goodyear Improved Twin Sole Laying Machine

(United) Goodyear Improved Sole Laying Machine — Model C

Atlas (2 types) — Atlas-Werke Pohler & Co.

Long Machine — The R. H. Long Machinery Co.

Gimson — Gimson & Co., Ltd.

Standard Rotary — Standard Rotary Mach. Co., Ltd.

Standard Engineering — The Standard Engineering Co.

Nailing Heel Seats.

(United) Grip Clinch Machine

(United) Loose Nailing Machine

(United) Loose Nailing Machine #2

Long Loose Nailing Machine — The R. H. Long Machinery Company, Inc.

Duplessis Loose Nailing Machine — Hamel Shoe Machinery Co.

Universal Loose Nailing Machine — Universal Shoe Machinery Company

Universal Sole Clinching Machine — Universal Shoe Machinery Company

Victor Machine — Victor Shoe Machinery Company

Rounding Heel Seats.

(Welt Work Only)

(United) Goodyear Heel Seat Rounding Machine

(United) Heel Seat Rough Rounding Machine — Model B

(United) Goodyear Rounding and Randing Machine

Freeman Heel Seat Rounding Machine — The Louis G. Freeman Company

Rough Rounding and Channeling Outsoles.

(Welt Work Only)

(United) Goodyear Universal Rounding & Channeling Machine

(United) Goodyear Universal Rounding & Channeling Machine — Model E

National Automatic Rounder — Standard Rotary Machine Company, Ltd.

National Rough Rounding Machine — The R. H. Long Machinery Company, Inc., (Rounds only)

Victor Rough Rounding and Channeling Machine — Victor Shoe Machinery Company

Rough Rounding & Channeling Machine — Haverhill Shoe Machinery Company

Arnold Channeling Machine (Channeling Only) — The R. H. Long Machinery Company, Inc.

Opening Channels.

(Welt Work Only)

(United) Goodyear Channel Opening Machine

(United) Goodyear Channel Opening Machine — Model X

Channel Opening Machine — Standard Rotary Machine Company, Ltd.

Stitching Sole to Welt.

(Welt Work Only)

(United) Goodyear Outsole Rapid Lockstitch Machine

(United) Goodyear Outsole Rapid Lockstitch Machine — Model K

(United) Goodyear Outsole Rapid Lockstitch Machine — Model M

Waldorf Lockstitch Machine — The R. H. Long Machinery Company, Inc.

Universal Stitching Machine — Universal Shoe Machinery Company

Union High Speed Stitching Machine — Union Lockstitch Company

Standard Lockstitch Machine — Standard Rotary Machine Company, Ltd.

Boylston Lockstitch Machine — The Boylston Manufacturing Co.

Duplessis Lockstitch Machine — Hamel Shoe Machinery Co.

Victor Improved Rapid Stitcher — Victor Shoe Machinery Company

Fleming Machine — Landis Machine Company

Larsen Machine — Larsen Machinery Company

Simplex Machine — James Clark Leather Company

Leger — C. V. Engstrom Company

Atlas — Atlas-Werke Pohler & Company

High Speed — The Standard Engineering Company

Johnson — A. Johnson & Sons

Rubbing Stitches.

(United) Goodyear Outsole Stitch Rubbing Machine

Stitch Rubbing and Welt Trimming.

(United) Welt Trimming and Stitch Rubbing Machine

Sewing Turn Shoes.

(United) Goodyear Welt and Turn Shoe Machine — Model G

(United) Goodyear Welt and Turn Shoe Machine — Model K

(United) McKay Turn Shoe Sewing Machine
Haverhill Turn Sewer and Welter — Haverhill Shoe Machinery Company
Duplessis Welt and Turn Shoe Machine — Hamel Shoe Machinery Company
Universal Welting Machine — Universal Shoe Machinery Company
Welt and Turn Sewing Machine — The R. H. Long Machinery Company, Inc.
Little McKay Straight Needle Turn Sewing Machine — George Hobbs
Welt and Turn Sewing Machine — Ward & Gent
Welt and Turn Sewing Machine — The Boylston Manufacturing Co.
Welt Sewing Machine — The Standard Engineering Co.

Wetting Soles.

(United) Crest Sole Wetting Machine

McKay Sewing.

(United) McKay Sewing Machine — Model S
(United) McKay Sewing Machine — Model B
(United) Richardson Sole Sewing Machine
McKay Machine — Walter Pearson
McKay Machine — American Worsted Machinery Co.
McKay Machine — A. Johnson & Sons
Victor Machine — Nolle's Works

Standard Screwing Sole to Upper.

(United) Rapid Standard Screw Machine

Nailing Sole to Upper.

(United) Loose Nailing Machine #2
Universal Loose Nailer — Universal Shoe Machinery Co.
Long Loose Nailing Machine — The R. H. Long Machinery Company, Inc.
Duplessis Loose Nailing Machine — Hamel Shoe Machinery Company

Universal Sole Clincher — Universal Shoe Machinery Company
Victor Machine — Victor Shoe Machinery Company

Pegging Sole to Upper.

(United) Davey Pegging Machine

Reinforcing Shank.

(United) Loose Nailing Machine
(United) Standard Screw Machine
(United) Universal Double Clinch Machine
(United) Loose Nailing Machine #2
(United) Staple Fastening Machine (Reinforcing Stitchdown Shoes)
Universal Loose Nailer — Universal Shoe Machinery Co.
Long Loose Nailing Machine — The R. H. Long Machinery Co., Inc.
Duplessis Loose Nailing Machine — Hamel Shoe Machinery Co.
Universal Sole Clincher — Universal Shoe Machinery Co.
Victor Machine — Victor Shoe Machinery Company

Hungarian Nailing.

(Inserting Large Conical Head Nails in the Forepart of a Shoe.)
(United) Hungarian Nailing Machine

Channel Shank Reducing.

(Welt Work Only)
(United) Goodyear Outsole Shank-Reducing Machine
Rapid — Theo. Ringenbach

Cementing Channels.

(United) Star Channel Cementing Machine
Union Machine — The Boylston Manufacturing Company

Laying Channels.

(United) Goodyear Channel Laying Machine
(United) Channel Laying Machine — Model W
(United) Channel Laying Machine — Model X
Channel Laying Machine — Standard Rotary Machine Co.

American — American Worsted Machinery Company
Standard — The Standard Engineering Company
Knight — George Knight & Company

Welt Indenting.

(United) Goodyear Welt Indenting & Burnishing Machine—Model X
(United) Booth Geared Wheeling Machine
(United) Goodyear Welt Indenting and Burnishing Machine
American Welt Fudging Machine — Victor Shoe Mchy. Co.
Wheeler — E. L. Wheeler
Holt — J. S. Holt & Company, Inc.
Donnelly — Donnelly Machine Company
Haverhill — Haverhill Shoe Machinery Company
Long (Hand Stitch) — The R. H. Long Machine Company, Inc.

Leveling.

(United) Goodyear Automatic Sole Leveling Machine
(United) Goodyear Welt and Turn Leveling Machine
(United) Hercules Leveling Machine
(United) Atlas Leveling Machine
(United) Acme Leveling Machine
(United) Star Leveling Machine
New Giant — The Boylston Manufacturing Company
Giant — The Boylston Manufacturing Company
C. & J.— The Boylston Manufacturing Company
Automatic Twin Leveling Machine — Standard Rotary Machine Company
Webster Welt & Turn — Haverhill Shoe Machinery Co.
Eclipse — The R. H. Long Machinery Company, Inc.
Leveling Machine — Ward & Gent
Leveling Machine — Hamel Shoe Machinery Company

Separating Stitches.

(United) Hadaway Stitch Separating Machine
Long Stitch Separating Machine — The R. H. Long Machinery Company, Inc.

Standard Rotary Stitch Separating Machine — Standard Rotary Machine Company, Ltd.

Haverhill — Haverhill Shoe Machinery Company

Heeling.

(United) American Lightning Nailing Machine

(United) McKay Automatic Heel Loading and Attaching Machine

(United) McKay Automatic Heel Loading and Attaching Machine— Model B

(United) Premier Heel Pricking Machine (Pricking before Nailing High Heels)

Pettengill Heeling Machine — Pricking Attachment — Haverhill Shoe Machinery Company

Heel Attaching Machine — A. Johnson & Sons

Heel Attaching Machine — Nolle's Works

Heeling Machine — Ward & Gent

National — The R. H. Long Machinery Company, Inc.

Nailing Spring Heels to Sole.

(United) Loose Nailing Machine

(United) Loose Nailing Machine #2

Long Loose Nailing Machine — The R. H. Long Machinery Company, Inc.

Duplessis Loose Nailing Machine — Hamel Shoe Machinery

Universal Loose Nailing Machine — Universal Shoe Machinery Co.

Universal Sole Clinching Machine — Universal Shoe Machinery Co.

Victor — Victor Shoe Machinery Company

Nailing Wood Heels to soles.

(Turn work only)

(United) Alpha Wood Heel Nailing Machine

Slugging Heels.

(United) Universal Slugging Machine

Long Slugging Machine (Rebuilt Duplessis) — The R. H. Long Machinery Company, Inc.
Duplessis Slugging Machine — Hamel Shoe Machinery Co.
Boylston — The Boylston Manufacturing Company

Driving Heel Protectors.

(United) Heel Protector Driving Machine

Trimming and Randing Heels.

(United) McKay Heel Trimming and Randing Machine
(United) Ultima Heel Trimming Machine
(United) Busell Heel Trimming Machine
(United) Spring Heel Trimming Machine
Heel Trimming Machine — Haverhill Shoe Machinery Co.
McDowell Trimming Machine — McDowell Shoe Machinery Co.
Heel Trimming Machine — A. Johnson & Sons
Long Heel Trimming Machine — The R. H. Long Machinery Company, Inc.
Tower Heel Trimming Machine — Tower Brothers

Trimming Wood Heel Toplifts.

Busfield — James Busfield
Haverhill — Beckett & Hammond

Scouring Heels

(United) Heel Scouring Machine — Model X
(United) Heel Scouring Machine — Model R
(United) Heel Scouring Machine — Carver
Rowan — Hamel Shoe Machinery Company
Buzzell — J. G. Buzzell & Company
Globe — The Boylston Manufacturing Company
Tower — Tower Brothers
Heel Scouring Machine — A. Johnson & Sons
Carver Heel Scouring Machine — Donnelly Machine Co.

Breasting Heels.

(United) Heel Breasting Machine — Model R
(United) Heel Breasting Machine — Model W

(United) Imperial Heel Breasting Machine
(United) Louis Heel Breast Trimming Machine
Haverhill — Haverhill Shoe Machinery Company
Rowan — Hamel Shoe Machinery Company
Buzzell Louis Heel — J. G. Buzzell & Company
N. & H. Heel Breasting Machine — Donnelly Machine Co.

Scouring Heel Breasts.

(United) Heel Breast Scouring Machine — Model H
(United) Heel Breast Scouring Machine — Model N
Dougherty — Frank B. Dougherty
Buzzell — J. G. Buzzell & Company
Donnelly — Donnelly Machine Company
Freeman — The Louis G. Freeman Company
Rowan — Hamel Shoe Machinery Company
Bendix — Haverhill Shoe Machinery Company

Sanding Top Piece.

(This operation is usually performed by buffing machine during the operation of Buffing Bottoms — see Finishing Room. A very few manufacturers use the following machine.)
(United) Top Piece Sanding Machine

Scalloping Toplifts.

(United) Top Piece Scalloping Machine
Buzzell — J. G. Buzzell & Company

Trimming Edges.

(United) Edge Trimming Machine — Model A
(United) Edge Trimming Machine — Model B
(United) Edge Trimming Machine — Model E
Donnelly — Donnelly Machine Company
Rowan — Hamel Shoe Machinery Company
Briggs-Belmar — Briggs-Belmar Company
Tower — Tower Brothers
Long — The R. H. Long Machinery Company, Inc.
Haverhill — Haverhill Shoe Machinery Company

Jointing.

(Trimming that portion of the Edge from the Shank to the Line of the Heel Breast which is not reached by the Edge Cutter.)

(United) Goodyear Jointing Machine

Turning Welt Edge.

(Welt Work Only)

(United) Goodyear Welt Edge Turning Machine

Setting Edges.

(United) Rotary Edge Setting Machine — Model C

(United) Rotary Edge Setting Machine — Model K

(United) Twin Edge Setting Machine

(United) Single Edge Setting Machine

Freeman — The Louis G. Freeman Company

Union Single — The Boylston Manufacturing Company

Beaudry — Beaudry Machine Company

Union Twin — The Boylston Manufacturing Company

Vici Edge Setting Machine — Independent Shoe Machinery Company

Rotary — Donnelly Machine Company

Edge Setting Machine — A. Johnson & Sons

Rotary — Tower Brothers

Impression Stitch Finishing.

(United) Goodyear Welt Indenting and Burnishing Machine

(United) Goodyear Impression Stitch Burnishing Machine #2

(United) Goodyear Fudge Edge Machine (Setting and Wheeling Light Edges Only)

American — Victor Shoe Machinery Company

Wheeler — E. L. Wheeler

Holt — J. S. Holt & Company, Inc.

Donnelly — Donnelly Machine Company

Haverhill — Haverhill Shoe Machinery Company

Blacking Heels.

(United) Crest Heel Blacking Machine — Model A

(United) Crest Heel Blacking Machine — Model B

Boylston — The Boylston Manufacturing Company
Star — Worcester Machinery Company

Finishing Heels.

(United) Xpedite Heel Finishing Machine — Leased by United-Xpedite Finishing Company; not put out directly by United Company.
Harlow Heel Finishing Machine — Harlow Shoe Finishing Machine Company
Boylston (or Copeland) — The Boylston Manufacturing Company
Apex — Worcester Machinery Company
Matson — Matson-Hoyt Machine Company
Beckman — Beckman Machine Company
Keyco Universal Finishing Machine — The Keighly Company, Inc.

Beading Heel Seat.

(United) Xpedite Heel Burnishing Machine — leased by United-Xpedite Finishing Company; not put out directly by United Company
(United) New Method Heel Seat Beading Machine — Model G
(United) Heel Seat Beading Machine — Model X
Boylston — The Boylston Manufacturing Company
Apex — Worcester Machinery Company
Harlow — Harlow Shoe Finishing Machine Company
Donnelly — Donnelly Machine Company
Beckman — A. Beckman
McDowell — McDowell Machinery Company

Beading Heel Breast.

Heel Breast Beading Machine — Haverhill Shoe Machinery Company

Finishing Room.

Buffing Bottoms.

(United) Buffing Machine — Model S
(United) Buffing Machine — Model G

Donnelly — Donnelly Machine Company
Tower — Tower Brothers
Buzzell — J. G. Buzzell & Company
Rowan — Hamel Shoe Machinery Company
Giant — The Boylston Manufacturing Company
Webster — The Boylston Manufacturing Company
Hawkins — Seelye Manufacturing Company

Naumkeag Cleaning.

Naumkeag Buffing Machine (Single Head) — Naumkeag Buffing Machine Company
Naumkeag Buffing Machine (Double Head) — Neaumkeag Buffing Machine Company
Pine — J. A. Pine
Naumkeag Buffing Machine (Single Head) — A. Johnson & Sons

Polishing Foreparts, Toplifts, and Shanks.

(United) Climax Finishing Shaft
(United) Climax Polishing Machine — Model X
(United) Climax Finishing Machine — Model X
(United) Climax Finishing and Brush Cleaning Machine—Model X
Finishing Shaft - Johnson & Sons
Finishing Shaft — Progressive Shoe Machinery Company
Finishing Shaft — Champion Shoe Machinery Company
Finishing Shaft — Landis Machine Company
Finishing Shaft — Specialty Shoe Machinery & Tool Co.
Finishing Shaft — The R. H. Long Machinery Company, Inc.
Finishing Shaft — Victor Shoe Machinery Company
Finishing Shaft — Donnelly Machine Company
Finishing Shaft — American Worsted Machinery Company
Finishing Shaft — The Keighley Company, Inc.
Finishing Shaft — The American Tool & Machine Co.
Finishing Shaft — Universal Shoe Machinery Company
Finishing Shaft — The Special Machinery & Tool Co.

Nurling Bottoms.

(United) Nurling Machine
Wheeler — E. L. Wheeler

Cleaning and Shaping Uppers.

(United) Stitch & Upper Cleaning Machine
(United) Booth Shaping & Cleaning Machine
Webster — The Boylston Manufacturing Company
Keighley Rotary Cleaning Machine — The Keighley Company, Inc.
Keighley Rotary Polishing Machine — The Keighley Company, Inc.

Stamping Forepart and Shank.

(United) Stamping Machine — Model E
(United) Regent Stamping Machine
Star — O. D. Wheeler
Ellison — J. Ellison
Holt — J. S. Holt & Company
Tower — Tower Brothers

Treeing Room.

Treeing Uppers.

(United) Miller Treeing Machine — Formerly, but not now, leased (never sold) by United Company
Miller Treeing Machine — Sold by O. A. Miller Treeing Machine Company
Copeland — The Boylston Manufacturing Company
Improved Flexor — Boston Last Company
Improved Flexor (8-arm) — Boston Last Company
Pneumatic Treeing Machine — W. J. Young Machinery Company (German)
Treeing Machine — A. Johnson & Sons
Mobbs & Lewis — Mobbs & Lewis, Ltd.

Packing Room.

Pounding Button Fly Seam.

(United) Power Hammer

Hart Power Hammer — Hamel Shoe Machinery Company
Shawmut — Shawmut Machinery Company

Vamp Creasing.

(United) Improved Vamp Creasing Machine
Power Creasing Machine #3 — O. A. Miller Treeing Machine Company
Knight — George Knight & Company

Scouring Tip.

(United) Tip Scouring Machine
Buzzell — J. G. Buzzell
Hart — Hamel Shoe Machinery Company
Freeman — The Louis G. Freeman Company
Shawmut — Shawmut Machinery Company
Boston — Boston Machine Works Company

Repairing Tip.

(United) Patent Leather Repairing Machine

DEFENDANTS' EXHIBIT 233.

[Put in Evidence, page 3103.]

A PARTIAL LIST OF CONCERNS ENGAGED IN SHOE MACHINERY OR RELATED LINES OF BUSINESS WHICH HAVE BEEN OFFERED, EITHER DIRECTLY OR INDIRECTLY, FOR SALE TO THE UNITED COMPANY BUT NONE OF WHICH HAS BEEN ACQUIRED BY THE UNITED COMPANY.

Acme Heel Protector Manufacturing Company
Alliance Shoe Machinery Company
American Glue Company (Moulded sandpaper)
American Shoe Machinery & Tool Company
Automatic Wetter-up Company
Atlas Tack Company
American Shoe Finding Company
Beach, R. S.
Beaudry, Zotique

Boston Last Company
Britton, H. E.
Brockton Mallet Company
Bresnahan Levelling Machine Company
Boylston Manufacturing Company
Callahan
Campello Shank Company
Canadian Shoe Machinery Company
Champion Shoe Machinery Company
Clark, George H.
Colburn, F. W.
Coldbath, Henry
Cummings, David and W. D. Brackett
Denslinger, A. & Co.
Dunbar, E. L.
Duplessis Shoe Machinery Company
Eaton & Holbrook Heel Burnishing Machine Company
Empire Sole Laying Machine Company
Essex Machine Company
Excelsior Slugger & Tacker Company
Flagg Manufacturing Company
Forsyth, W. R. & Co.
Fox, Charles K.
Frame, William E.
Frechette Pegging Machine Company
Globe Buffer Company
Hargraves Hook Machinery & Eyelet Company
Harlow Heel Finishing Machine Company
Hart, T. F.
Holt, J. S. & Company
Haverhill Shoe Machinery Company
Haverhill Channeling Machine Company
Improved Welt Machine Company
Keith, Irving L.
Krentler-Pym Lasting Machine Company
Keighley Company, Inc.

Lacene Manufacturing Company
Larsen Machine Company
Long, R. H. Machinery Company
McDowell Shoe Machinery Company
Morley Button Sewing Machine Company
McNalley & Dougherty
Merrick Company
North America Chemical Company
Parsons, Henry
Peck Lacing Hook Company
Peckham Manufacturing Company, J. E.
Peterboro Shank Company
Pettingill Heeling Machine Business
Potter Shank Company
Shawmut Machinery Company
Shipman, George
Specialty Shoe Machinery & Tool Company
Standard Button Works
Stevens, George H. Shank Company
Stimpson, Edward B.
Stanley Manufacturing Company
Tenney
Tyler Shank Company
Tripp Giant Levelling Company
Union Shank Company
Vose Machinery Company
Webster, H. A.
Wheeler & Wilson Company
Wheeler, H. A.
Wolfe Heel Building Machines

DEFENDANTS' EXHIBIT 234.

[Put in Evidence, page 3105.]

EYELET MANUFACTURERS IN 1913.

	Shoe Eyelets	Other Eyelets
Hughes Eyelet Co., Taunton	20	
Caseley-Nelmes, Taunton		60
Scoville Manufacturing Co., Taunton	2	80
Atlas Tack Co., Fairhaven	200	
R. N. Bassett & Co., Derby, Conn.		60
Waterbury Brass Co., Waterbury	5	75
Waterbury Manufacturing Co., Waterbury		10
American Ring Co., Waterbury		10
Rome Brass Works, Rome, N. Y.		25
Schwarze & Hahne, Haan, Germany, importers		
	227	320
S. O. & C. Co., Ansonia	200	125
J. C. Rhodes Co., New Bedford	200	20
Rimmon Eyelet Co., Seymour, Conn.	5	60
United Fast Color Eyelet Co.	30	2
	435	207

NOTE.— Output is given in millions per month.

EYELET MANUFACTURERS IN 1901.

	Shoe Eyelets	Other Eyelets
Excelsior Needle Co., Torrington	20	
Scoville Manufacturing Co., Waterbury	10	40
Waterbury Brass Co., Waterbury	10	40
American Ring Co., Waterbury	10	5
Rome Brass Works, Rome, N. Y.		5
Marley Button Co., Portsmouth, N. H.	20	
Rimmon Eyelet Co., Seymour, Conn.	30	30
Southington Eyelet Co., Waterbury		
Brook Co., Waterbury	20	50
Precision Eyelet Co., Bridgewater	5	
	125	170

	Shoe Eylets	Other Eylets
S. O. & C. Co. Ansonia	125	150
J. C. Rhodes	175	15
United Fast Color Eyelet Co.	40	
	340	165

NOTE.— Output is given in millions per month.

DEFENDANTS' EXHIBIT 235.

[Put in Evidence, page 3107.]

OPERATIONS PERFORMED IN TYPICAL FACTORIES IN THE MANUFACTURE OF THE FOLLOWING CLASSES OF SHOES.

SURFACE STANDARD SCREWED
CHANNEL STANDARD SCREWED
MEN'S LOOSE NAILED
MEN'S McKAY SEWED
WOMEN'S McKAY SEWED
MEN'S WELTS
WOMEN'S WELTS
WOMEN'S TURNS

MEN'S SURFACE STANDARD SCREWED WHEELED TOP EDGE, SLIP TAP, GUN METAL BLUCHER CUT-OFF TOE.

Cutting Room

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues.	Parsons'— Parsons Machinery Co.
	2. Sorting (Hand Work)	Seelye — Seelye Manufacturing Co.
None	2a. Crimping Vamps	Lockett — Lockett Crimping Machine Co.
Improved Gearless Sole Cutting Machine	3. Cutting Doublings for Light Uppers.	Eclipse — Parsons Machinery Co.
		Seelye — Seelye Manufacturing Co.
Ideal Clicking Mch.		Tower — Tower Bros.
Improved Geared Sole Cutting Machine		Knox — Quarmby & Hilliker
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co.
		Peerless — Peerless Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Foot Power — Shawmut Mchy. Co. Hand Power — Shawmut Mchy. Co. Simplex Cloth Backing Mach.— Boston Last Company. "Davis" Electric Taping Mach.— The Davis Sewing Machine Co.
	5. Casing (Dividing sizes to match Tags) (Hand Work)	
Improved Gearless Sole Cutting Machine Ideal Clicking Mach. Improved Geared Sole Cutting Machine	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker.
Improved Gearless Sole Cutting Machine—Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine—Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker.
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	Stitching Room	
	11. Checking work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine Pluma Skiving Machine	13. Skiving Parts of Uppers.	Universal — Peerless Machinery Company Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce. Amazeen Type — A. Johnson & Sons. Amazeen Type — Donnelly Machine Company.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Snipping Machine: Booth Sandal	13a. Snipping Preparatory to Folding	Hart — Hamel Shoe Machinery Co. Boston (6) Foot Power Types — Boston Machine Works Co. Power — Boston Machine Works Co. Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mach. Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Duplex — Peerless Machinery Co. Economy — " " " New York — Boston Machine Wks. Company. Snipping & Cementing Mch. — Boston Machine Works Co.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Works Co. Foot Power — Boston Machine Works Co. Boston — Boston Machine Wks. Co. Booth — " " " " Dunn — " " " " Rapid Hand Method — Perley R. Glass Co. New Cylinder — Perley R. Glass Company. Straight Edge — American Worsted Machinery Co.
None	16. Closing Tops	Lufkin — R. H. Lufkin. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mch. Co. W. & W. " " " " Union Special — Union Special Sewing Machine Co. #3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mch. Co.
Rapid Seam	16a. Seam Rubbing	Hand Method — Shawmut Mchy. Co.

Machines of U. S. M. Co. Rubbing Machine	Operations	Machines of other Dealers
		Champion — Coburn & Lawrence Co. Boston — Boston Mach. Wks. Co. Union — " " " "
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Machine Co. W. & W. " " " " Union Special — Union Special Sewing Machine Co. #3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Company Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Company Davis — The Davis Sewing Machine Company
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Machine Company. W. & W. — Singer Sewing Machine Co. Union Special — Union Special Sewing Machine Co. #3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Company. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Co.
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W " " " " #3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mch. Co.
None	20. Stamping sizes and Case Number on Cloth Linings	Power Lining Marking Machine — Markem Machine Co. Various Hand Devices.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Mach. Company.
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mch. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metaopolitan Sewing Machine Co. Davis — The Davis Sewing Machine Company.
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Machine Company.
Embossing Machine Power Embossing Machine foot Power	23a. Embossing Top Faces	Simplex — Boston Last Co. Universal — Markem Machine Co. Silver King — " " " Freeman — The Louis G. Freeman Company Perkins — Perkins Machine Co.
None	24. Hooking with Stay Reinforcements	Tubular Rivet — Tubular Rivet & Stud Co. American — American Lacing & Hook Company.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Foot Power — American Worsted Machinery Co.
		Halkyard — Halkyard Mfg. Co.
None	25. Closing Linings to Top, Back to Back, holding in Back Straps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Machine Co.
	26. Cementing Tops (Hand Work)	
Columbia Beading Machine Victor Beading Machine	27. Turning Edges on Beading Machine	Monarch — Boston Machine Wks. Co. Boston — " " " " Hart — Hamel Shoe Machinery Co. Nangle — J. H. Nangle
None	28. Undertrimming, Stitching Around Top from Nose to Nose, Trimming off Surplus Facings, Staying Back Pull Straps at same time	Singer — Singer Sewing Machine Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Machine Co.
None	29. Blacking Front of Tops, if raw edges	Coburn — Coburn & Lawrence Co. Peerless — Peerless Machinery Co.
Duplex Eyeletting Mach. Perfection Eyeletting Mach. Universal Power Eyeletting Mach. Merrick Power Eyeletting Mach. Samcon Eyelet-Machine Power Eyeletting Mach. Cameo Foot Power Eyeletting Mach. Vulcan Foot	30. Eyeletting	Peerless Rapid — Peerless Mchy. Co. Peerless Gang — " " " Power — Geo. Knight & Co. Foot Power Gang — Geo. Knight & Company. A Mach. — Am. Worsted Mchy. Co. B " — " " " " Monitor — " " " " Eureka — " " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	31. Marking Vamps for Box Toes (Hand Work)	
None	32. Stitching Box Toes and Waterproof Material to Vamps	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co.
Royal Perforating Mach. Mod. B Stanbon—Perforating Mod. M	33. Perforating Tips	Hart #6 — Hamel Shoe Mchy. Co. Hart Mod. A — " " " " Barber — L. L. Barber & Co. Johnson — A. Johnson & Sons. American — Am. Worsted Mchy. Co. Peerless — Peerless Machinery Co. Punch Feed — Hamel Shoe Machinery Company.
None	34. Stitching Tips to Vamps	Singer — Singer Sewing Mach. Co. W & W " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Manufacturing Company #3 — Union Lockstitch Co. Davis — The Davis Sewing Machine Company.
None	35. Stitching Tongues between Vamps and Vamp Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company.
None	36. Vamping	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. #3 — Union Lockstitch Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers.
		Puritan — Puritan Manufacturing Co.
		Davis — The Davis Sewing Mch. Co.
None	37. Bracing Tops to Vamps	Singer — Singer Sewing Mach. Co.
Ensign Lacing Machine Ellis Wire Lacer	38. Lacing Uppers	Rochester Lacer — Boston Machine Works Co.
	39. Casing Uppers (Hand Work)	
	40. Inspecting Uppers (Hand Work)	
	Sole Leather Room	
	41. Moistening Sole Leather in Sides (Hand Work)	
Imp. Gearless Sole Cutting Machines	42. Cutting Outersoles, Innersoles, Half Soles and Toplifts	Eclipse — Parsons Machinery Co.
		Seelye — Seelye Manufacturing Co.
		Tower — Tower Bros.
Imp. Baby Sole Cutting Machine		Knox — Quarmby & Hilliker.
Veneer Press	42a. Veneering Insoles	Busfield — Jas. Busfield
Victor Rolling Machine	43. Preparing Bellies, Shoulders, and Remnants for Cutters; (Rolling, Splitting, Flexing.)	Seelye — Seelye Manufacturing Co.
		Knox — Quarmby & Hilliker
Improved Rolling Machine		Busfield — Jas. Busfield
Summit Splitting Machine		Knox — Quarmby & Hilliker
		Hawkins — Seelye Manufacturing Co.
		Baby — J. S. Wheeler & Co.
Improved Gearless Sole Cutting Machines	44. Cutting Heel Lifts	Eclipse — Parsons Machinery Co.
		Seelye — Seelye Manufacturing Co.
		Tower — Tower Bros.
Wedge Lift Cutting Machine		Knox — Quarmby & Hilliker
		Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Summit Splitting Machines Mods. M & N.	45. Evening Heel Lifts	Knox — Quarmby & Hilliker
		Hawkins — Seelye Manufacturing Co.
Centennial Splitting Mch.		Baby — J. S. Wheeler & Co.
Champion Heel Lift Skiving Machine	45a. Gouging Heel Lifts	Young — W. J. Young Mchy. Co.
		Bostock — Thos. Bostock & Sons
Pyramid Heel Building Mach.	46. Building Heels	Young (Foot Power) — W. J. Young Machinery Co.
Heel Building Machine Mod. R		Grover — W. J. Young Machinery Co.
		White — F. N. White & Co.
		Bostock — Thos. Bostock & Sons
		Bosworth — W. T. Bosworth

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Fortuna — Fortuna Machine Co. Knight — Geo. Knight & Co. Pieced Heel — Parsons Machinery Company.
Handy Heel Press	46a. Pressing Heels	Seelye — Seelye Manufacturing Co.
Automatic Heel Compressing Machine, Mod. #4	47. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co.
Automatic Heel Compressing Machine, Mod. #5		Heel Compressing Machine — Gimson & Co., Ltd. Knox — Quarmby & Hilliker. Heel Compressing Machine — Nolle's Works
	48. Placing Heels in Boxes for use (Hand Work)	
Summit Splitting Machines	49. Evening Outersoles	Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Baby — J. S. Wheeler & Co. Nichols — Lacene Mfg. Co.
Victor Rolling Machine	50. Rolling Outersoles	Knox — Quarmby & Hilliker
Improved Rolling Machine		Busfield — Jas. Busfield Seelye — Seelye Manufacturing Co.
	51. Sorting Outersoles (Hand Work)	
Apex Tap Skiving or Rand Splitting Mach.	52. Skiving Butts of Taps	N O S — American Worsted Mchy. Co Busfield — Jas. Busfield Imp. Tripp — American Worsted Machinery Co. American — Victor Shoe Mchy. Co.
	53. Matching Cut Stock with Tags (Hand Work)	
Eagle Sole Stamping Mach. Mod. C.	54. Stamping Sizes on Soles	Nichols Grading Machine — Lacene Manufacturing Co. Various Hand Devices
	55. Casing Soles in Sizes and Pairs (Hand Work)	
	56. Stamping Case Numbers on Top Soles (Hand Work)	
	57. Wetting Outersoles (Hand Work)	
	58. Wetting Taps (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers.
Rapid Rotary Cementing Machine	59. Doubling Shanks of Outersoles (if light)	Brown-— Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	60. Cementing Foreparts of Outersoles	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Mach. Wks. Co.
Rapid Rotary Cementing Machine	61. Cementing Taps	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	62. Applying Taps to Outersole (Tack & Cement)	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Taper Nail Tacking Machine Wire Grip Tacking Machine Staple Tacking Machine		Universal Sole Clinch Machine — Universal Shoe Machinery Co. Duplessis — Hamel Shoe Machinery Company Victor — Victor Shoe Machinery Co.
Goodyear Welt Indenting & Burnishing Machine	63. Indenting Top Edges of Foreparts Blacking (Hand Work)	Wheeler — E. L. Wheeler. Holt — J. S. Holt & Co., Inc. Donnelly — Donnelly Machine Co.
Boston Tacking Machine Cable Tacking Machine Staple Fastening Machine Wire Grip Tacking Machine Strip Nail Tacking Machine	64. Tacking on Shanks	Freeman Insole Tacker — The Louis G. Freeman Co. Tacking Machine — A. Johnson & Sons Duplessis Tacker — Hamel Shoe Machinery Co. Victor — Victor Shoe Mchy. Co.
Apex Tap & Sole Rounding Mach., Mod. A	65. Rounding Tap to Outersole	Severence — American Worsted Machinery Co.
American Twin Sole Moulding Machine Single Sole Moulding Machine	65a. Moulding Outersoles	Knox — Quarmby & Hilliker C. & J.— The Boylston Mfg. Co. Hawkins — Seelye Mfg. Co.
Crescent Toe Gouging Mch.	65b. Toe Gouging (if necessary) 66. Tying in Cases (Hand Work) 67. Packing Sole Leather and Counters in boxes ready for Lasters (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	68. Matching Sole Leather with Uppers (Hand Work)	
	Lasting Room.	
	69. Putting up Lasts on Racks (Hand Work)	
	70. Tacking Insole to Last (Hand Work, if done; usually not done.)	
	71. Assembling (Hand Work)	
	72. Pulling over Upper (Hand Work)	
McKay & Copeland Lasting Machine Consolidated Hand Method Lasting Machine (with or without Toe cutter) Chase Lasting Machine	73. Lasting	Victor Con. Type — Nolle's Works. Lasting Machine — Ward & Gent. Consolidated — Atlas Werke Pohler Co. Standard Rotary Rapid Lasting Machine — Standard Rotary Machine Co., Ltd. Consolidated Type — Gimson & Co., Ltd. Consolidated Type — The Standard Engineering Co.
Rex Rotary Pounding & Trimming Machine Wentworth Heel Seat Beating & Finishing Machine	74. Pounding and Trimming	
Goodyear Insole Tack Pulling Machine	74a. Pulling insole Tacks	Freeman Combination Insole & Side Tack Pulling Machine — The Louis G. Freeman Co.
Wire Grip Tacking Machine Taper Nail Tacking Machine Staple Fastening Machine	75. Tacking on Soles	Universal Sole Clinch Machine — Universal Shoe Machinery Co.
	76. Pulling Lasts and Cut or Remove Lacers (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	77. Inspecting Lasting (Hand Work)	
	Bottoming Room	
Rapid Standard Screw Mch.	78. Standard Screw Nailing	
Hercules Leveling Machine	79. Leveling	New Giant — The Boylston Mfg. Co. Giant — The Boylston Mfg. Co.
McKay Automatic Heel Loading and Attaching Machine	80. Heeling	Pettengill Heeling Machine — Haverhill Shoe Mahinery Co. National — The R. H. Long Mchy. Co., Inc.
Universal Slugging Machine	81. Slugging	Long Slugger — The R. H. Long Machinery Co., Inc. Duplessis Slugger — Hamel Shoe Machinery Co.
McKay Heel Trimming & Randing	82. Heel Trimming	Boylston — The Boylston Mfg. Co. Heel Trimming Machine — A. Johnson & Sons. Heel Trimming Machine — McDowell Shoe Machinery Co. Heel Trimming Machine — Haverhill Shoe Machinery Co. Long Heel Trimming Machine — The R. H. Long Mchy. Co., Inc. Tower Heel Trimming Mach.— Tower Bros.
Imperial Heel Breasting Machine, Mod. B. Heel Breasting Machine, Mod. R. & W.	83. Breasting Heels	Haverhill — Haverhill Shoe Mchy. Company. Rowan — Hamel Shoe Mchy. Co. W & H — Donnelly Machine Co.
Edge Trimming Mach. Mod. A Edge Trimming Mach. Mod. B Edge Trimming Mach. Mod. E	84. Trimming Foreparts	Donnelly — Donnelly Machine Co. Rowan — Hamel Shoe Machinery Co. Briggs-Belmar — Briggs-Belmar Co. Tower — Tower Bros. Long — The R. H. Long Machy. Co. Inc. Haverhill — Haverhill Shoe Machy. Company
Heel Scouring Machine Mod. R. Heel Scouring Mach. Mod. X Heel Scouring Mach. Carver	85. Scouring Heels (Heels filled at this point if necessary)	Rowan — Hamel Shoe Machinery Co. Buzzell — J. G. Buzzell & Co. Globe — The Boylston Mfg. Co. Tower — Tower Bros. Johnson — A. Johnson & Sons. Carver — Donnelly Machine Co.
Heel Breast Scouring Machine Mod. H.	86. Scouring Heel Breasts	Buzzell — J. G. Buzzell & Co. Donnelly — Donnelly Machine Co. Freeman — The Louis G. Freeman Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Heel Breast Scouring Machine Mod. N.		Rowan — Hamel Shoe Machinery Co. Dougherty — Frank B. Dougherty
	87. Blacking Edges (Hand Work)	
Rotary Edge Setting Mach. Mod. C. Rotary Edge Setting Mach. Mod. K. Twin Edge Setting Mach. Mod. R. Single Edge Setting Mach. Mod. N.	88. Setting Edges	Freeman — The Louis G. Freeman Co. Union — The Boylston Mfg. Co. Rotary — Tower Bros. Beaudry — Beaudry Machine Co. Union (Single) — The Boylston Mfg. Co. Vici — Independent Shoe Mchy. Co. Rotary — Donnelly Machine Co. Johnson — A. Johnson & Sons
Crest Heel Blacking Machine Mod. A & B	89. Blacking Heel Edges	Boylston — The Boylston Mfg. Company Star — Worcester Machinery Co.
None (Xpedite Finishing Machine put out by United Xpedite Finishing Co.)	90. Heel Burnishing	Harlow Heel Burnishing Machine — Harlow Shoe Finishing Mchy. Co. Boylston (or Copeland) — The Boylston Manufacturing Co. Apex — Worcester Machinery Co. Matson — Matson-Hoyt Machine Co. Beckman — A. Beckman Keyco — The Keighly Co., Inc.
	91. Inspecting and Crowning (Hand Work)	
	Finishing Room	
Buffing Machine Mod. S Buffing Machine Mod. G	92. Buffing Bottoms	Donnelly — Donnelly Machine Co. Tower — Tower Bros. Buzzell — J. G. Buzzell & Co. Rowan — Hamel Shoe Machinery Co. Giant — The Boylston Manufacturing Company. Webster — The Boylston Manufacturing Co. Hawkins — Seelye Mfg. Co.
	93. Staining Forepart and Shank (Hand Work)	
Climax Finishing Shafts Climax Finishing Machine X Climax Polishing Machine Mod. X	94. Polishing Forepart and Shank	Universal — Universal Shoe Mchy. Co. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Machy. Company. Landis — Landis Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Climax Finishing & Brush Cleaning Machine, Mod. X		Specialty — Specialty Shoe Mchy. & Tool Co. Special — The Special Machy. & Tool Co. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machy Company. American — The American Tool & Machine Company. Victor — Victor Shoe Machinery Co. Johnson — A. Johnson & Sons. Keighley — The Keighly Co., Inc.
Nurling Machine Mod. A.	95. Wheeling Forepart and Shank (Nurling)	Wheeler — E. L. Wheeler
Regent Stamping Machine Mod. C Stamping Machine, Mod. R	96. Stamping Forepart	Star — O. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
	Treeing Room	
	97. Inserting Heel Pod (Hand Work)	
Miller Treeing Machine formerly but not now leased by the United Co.	98. Treeing	Copeland — The Boylston Mfg. Co. Improved Flexor — Boston Last Co. Miller — Sold by O. A. Miller Treeing Machine Co. Imp. Flexor (8 arm) — Boston Last Company Pneumatic — W. J. Young Mchy. Co Johnson — A. Johnson & Sons. Mobbs & Lewis — Mobbs & Lewis, Ltd.
	99. Lacing Shoes (Hand Work)	
Climax Finishing Shafts	100. Brushing Edges	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Machy. Company. Landis — Landis Machine Co. Specialty — Specialty Shoe Machy. & Tool Co. Long — The R. H. Long Machinery Co., Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Victor — Victor Shoe Machy. Co. Johnson — A. Johnson & Sons. Keighly — The Keighly Co., Inc. American Tool — The Am. Tool & Machinery Co. Special — The Special Machinery & Tool Company. Universal — Universal Shoe Machy. Company.
	101. Inspecting and Crowning (Hand Work)	
	Packing Room.	
	102. Labeling Cartons (Hand Work)	
None	103. Marking Cartons	Markem — Markem Machine Co.
	104. Matching Cartons, Wood Cases and Shoes (Hand Work)	
	105. Packing Shoes in Cartons (Hand Work)	
	106. Boxing (Hand Work)	
	107. Stenciling Cases (Hand Work)	
	107a. Numbering Cases (Hand Work)	
	108. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room.

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Machy. Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Machine	3. Skiving Counters	Young — W. J. Young Mach. Co. Stewart — Stewart Bros.
Counter Skiving Mch. Mod. W		Hartwell — L. L. Hartwell Moenus — Moenus Mch. Works

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Counter Skiving Mch. Mod. S		
None	4. End Finishing Counters	Thurston — W. J. Young Mchy. Co. Stewart — Stewart Bros. Moenus — Moenus Mch. Works
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Machinery Co.

Channel Standard Screwed Fairstitched Slip Tap, Gun Metal Blucher, Cut-off Toe, March 31, 1913.

Cutting Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Taps, Foxings & Tongues.	Parsons'— Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	2. Sorting (Hand Work)	
None	2a. Crimping Vamps	Lockett — Lockett Crimping Machine Co.
Ideal Clicking Machine	3. Cutting Doublings for Light Uppers.	Eclipse — Parsons Machinery Co.
Improved Gearless Sole Cutting Machine		Seelye — Seelye Manufacturing Co.
		Tower — Tower Bros.
Imp. Geared Sole Cutting Machine.		Knox — Quarmby & Hilliker.
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Mchinery Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Hand Power — Shawmut Mchy. Co. Simplex Cloth Backing Mach., Boston Last Company "Davis" Electric Taping Mach.— The Davis Sewing Machine Co. Foot Power — Shawmut Mchy. Co.
	5. Casing (Dividing Sizes to match Tags) (Hand Work)	
Ideal Clicking Mach.	6. Cutting Cloth Linings and Doublers.	Eclipse — Parsons Machinery Company
Improved Gearless Sole Cutting Machine		Seelye — Seelye Manufacturing Company.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Improved Geared Sole Cutting Machine		Tower — Tower Bros. Knox — Quarmby & Hilliker.
Improved Gearless Sole Cutting Machine — Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine — Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	Stitching Room	
	11. Checking work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine Pluma Skiving Machine	13. Skiving Parts of Uppers	Universal — Peerless Machinery Co. Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce Amazeen Type — A. Johnson & Sons " " Donnelly Mch. Co.
Snipping Machine: Booth Sandal	13a. Snipping Preparatory to Folding.	Power — Boston Mach. Wks. Co. Hart — Hamel Shoe Machinery Co. Boston — Boston Machine Works Co. (6 Ft. Power Type.) Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Machine Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan —The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Economy — Peerless Machinery Co. Duplex — " " " New York — Boston Machine Works Co. Snipping & Cementing Machine — Boston Machine Works Co.

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Machines of U. S. M. Co.	Operations	Machines of other Dealers.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Works Co. Foot Power — Boston Mch. Wks. Co. Boston — Boston Machine Works Co. Booth — " " " " Dunn — " " " " Rapid Hand Method — Perley R. Glass Co. New Cylinder — Perley R. Glass Co. Straight Edge — American Worsted Machinery Co. Lufkin — R. H. Lufkin.
None	16. Closing tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Machine Co. Wheeler & Wilson — Singer Sewing Machine Co. Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Company Met.— Met. Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company.
Rapid Seam Rubbing Machine	16a. Seam Rubbing	Hand Method — Shawmut Machinery Co. Champion — Coburn & Lawrence Co. Boston — Boston Machine Works Co. Union — Boston " " "
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Machine Co. W & W " " " " Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Co.
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Singer — Singer Sewing Machine Co. W & W " " " " Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Co. Met.— The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W " " " " No. 3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company.
None	20. Stamping Sizes and case Number on Cloth Linings	Power Lining Marking Machine — Markem Machine Co. Various Hand Devices.
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Machine Co. W & W " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Machine Company.
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mach. Co. W & W " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	23. Stitching top Facings to Linings	Davis — The Davis Sewing Mach. Co. Singer — Singer Sewing Machine Co. W & W " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Mach. Company.
Embossing Machine: Power Embossing Machine: Ft. Power	23a. Embossing top Faces	Simplex— Boston Last Co. Universal — Markem Machine Co. Silver King — " " "
		Freeman — The Louis G. Freeman Co. Perkins — Perkins Machine Co.
None	24. Hooking with Stay Reinforcements.	Tubular Rivet — Tubular Rivet & Stud Co. American — American Lacing & Hook Company. Ft. Power — American Worsted Machinery Co. Halkyard — Halkyard Mfg. Company
None	25. Closing Linings to Top, Back to Back, Holding in Back Straps	Singer — Singer Sewing Machine Co. W & W " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Machine Company.
	26. Cementing Tops. (Hand Work)	
Columbia Beading Machine	27. Turning Edges on Beading Machine	Monarch — Boston Mach. Wks. Co. Boston — " " " " Hart — Hamel Shoe Machy. Co.
Victor Beading Machine		Nangle — J. H. Nangle
None	28. Undertrimming, Stitching Around Top	Singer — Singer Sewing Mach. Co. W & W — " " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	from Nose to Nose, Trimming off surplus facings, Staying Back Pull Straps at same Time	Metropolitan — The Met. Sewing Machine Company.
None	29. Blacking Front of Tops, if raw edges	Coburn — Coburn & Lawrence Co. Peerless — Peerless Machinery Co.
Duplex Eyeletting Machine Perfection Eyeletting Machine Universal Power Eyeletting Machine Merrick Power Eyeletting Machine Samson Eyeletting Machine. Power Eyeletting Machine Cameo Ft. Power Eyeletting Machine Vulcan Ft. Power Eyeletting Machine	30. Eyeletting.	Peerless Rapid — Peerless Machy. Company Power — Geo. Knight & Co. Ft. Power Gang — Geo. Knight & Co. Peerless Gang — Peerless Machy. Co. "A" Machine — American Worsted Machinery Company. "B" Machine — American Worsted Machinery Company. Monitor — American Worsted Machy. Company Eureka — American Worsted Machy. Company
	31. Marking Vamps for Box Toes. (Hand Work)	
None	32. Stitching Box Toes and Waterproof Material to Vamps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co.
Royal Perforating Machine Modl. B Stanbon Perforating Mch. Mod. M	33. Perforating Tips	Hart #6 — Hamel Shoe Mchy. Co. " Mod. A — " " " " Barber — L. L. Barber & Co. American — American Worsted Machinery Co. Peerless — Peerless Mchy. Co. Punch Feed — Hamel Shoe Machinery Company Johnson — A. Johnson & Sons
None	34. Stitching Tips to Vamps	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. No. 3 — Union Lockstitch Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Davis — The Davis Sewing Mach. Co.
None	35. Stitching Tongues between Vamps and Vamp Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company.
None	36. Vamping	Singer — Singer Sewing Mach. Co. W & W " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. No. 3 — Union Lockstitch.Co. Puritan — Puritan Manufacturing Co. Davis — The Davis Sewing Mach. Co.
None	37. Bracing Tops to Vamps	Singer — Singer Sewing Machine Co.
Ensign Lacing Machine Ellis Wire Lacer	38. Lacing uppers	Rochester Lacer — Boston Machine Works Co.
	39. Casing Uppers (Hand Work)	
	40. Inspecting Uppers (Hand Work)	
	Sole Leather Room	
	41. Moistening Sole Leather in Sides (Hand Work)	
Imp. Gearless Sole Cutting Machine	42. Cutting Outersoles.	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
Imp. Baby Sole Cutting Machine	Innersoles, Half Soles and Toplifts	Tower — Tower Bros. Knox — Quarmby & Hilliker
Veneer Press	42a. Veneering Insoles	Busfield — Jas. Busfield
Victor Rolling Machine	43. Preparing Bellies, Shoulders, and Remnants for Cutters; (Rolling, Splitting, Flexing.)	Seelye — Seelye Manufacturing Co. Knox — Quarmby & Hilliker
Improved Rolling Machine		Busfield — Jas. Busfield
Summit Splitting Machine		Knox — Quarmby & Hilliker Hawkins — Seelye Manufacturing Co. Baby — J. S. Wheeler & Co.
Improved Gearless Sole Cutting Machines	44. Cutting Heel Lifts	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Wedge Lift Cutting Machine		Knox — Quarmby & Hilliker Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Centennial Splitting Machine Summit Splitting Machine	45. Evening Heel Lifts	Knox — Quarmby & Hilliker Hawkins — Seelye Manufacturing Co. Baby — J. S. Wheeler & Co.
Champion Heel Lift Skiving Machine	45a. Gouging Heel Lifts	Young — W. J. Young Machinery Co. Bostock — Thos. Bostock & Sons
Pyramid Heel Building Machine Heel Building Machine Mod. R.	46. Building Heels	Young (Foot Power) — W. J. Young Machinery Co. Grover — W. J. Young Machinery Co. White — F. N. White & Co. Bostock — Thos. Bostock & Sons Bosworth — W. T. Bosworth. Fortuna — Fortuna Machine Co. Knight — Geo. Knight & Co. Pieced Heel — Parsons Machinery Company
Handy Heel Press	46a. Pressing Heels	Seelye — Seelye Manufacturing Co.
Automatic Heel Compressing Machine, Mod. #4	47. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co.
Automatic Heel Compressing Machine, Mod. #5		Heel Compressing Machine — Gimson & Co., Ltd. Knox — Quarmby & Hilliker Heel Compressing Machine — Nolle's Works
	48 Placing Heels in boxes for use. (Hand Work)	
Summit Splitting Machines	49. Evening Outersoles	Knox — Quarmby & Hilliker Hawkins — Seelye Manufacturing Co. Nichols — Lacene Manufacturing Co. Baby — J. S. Wheeler & Co.
Victor Rolling Machine Improved Rolling Machine	50. Rolling Outersoles	Knox — Quarmby & Hilliker Busfield — Jas. Busfield Seelye — Seelye Manufacturing Co.
	51. Sorting Outersoles (Hand Work)	
Apex Tap Skiving or Hand Splitting Machine	52. Skiving Butt of Taps	N O S — American Worsted Machinery Co. Busfield — Jas. Busfield Impr. Tripp — American Worsted Machinery Co. American — Victor Shoe Mchy. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	53. Matching Cut Stock with tags (Hand Work)	
Eagle Sole Stamping Machine	54. Stamping Sizes on Soles	Nichols Grading Machine — Lacene Manufacturing Co. Various Hand Devices
	55. Casing Soles in Sizes and Pairs (Hand Work)	
	56. Stamping Case Number on Top Soles (Hand Work)	
	57. Wetting Outsoles and Taps (Hand Work)	
Apex Channeling Machine McKay Channeling Machine Mod. Z	58. Channeling Outersoles	McKay — Geo. Knight & Co. McKay — Walter Pearson McKay — American Worsted Machinery Co.
Rapid Rotary Cementing Machine	59. Doubling Shank of Outersoles (if light)	Haverhill — Universal Supply Co. Brown — Hazen-Brown Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	60. Cementing Forepart of Outersoles	Brown — Hazen-Brown Co. Julian — Boston Machine Wks. Co. Haverhill — Universal Supply Co.
Rapid Rotary Cementing Machine	61. Cementing Taps	Brown — Hazen-Brown Co. Julian — Boston Machine Wks. Co. Haverhill — Universal Supply Co.
Rapid Rotary Cementing Machine	62. Applying Taps to Outersole (Tack and Cementing)	Brown — Hazen-Brown Co. Julian — Boston Machine Wks. Co. Haverhill — Universal Supply Co
Taper Nail Tacking Machine Cable Tacking Machine Wire Grip Tacking Machine Staple Fastening Machine		Universal Sole Clinch Machine — Universal Shoe Machinery Co. Duplessis — Hamel Shoe Mchy. Co. Victor — Victor Shoe Mchy. Co.
Boston Tacking Machine Cable Tacking Machine Staple Fastening Machine Wire Grip Tacking Mach.	63. Tacking on Shanks	Freeman Insole Tacker — The Louis G. Freeman Co. Tacking Machine — A. Johnson & Sons Duplessis Tacker — Hamel Shoe Machinery Co. Victor — Victor Shoe Machy. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
String Nail Tacking Mach.		
Apex Tap & Sole Rounding Machine	63a. Rounding Tap to Outersole	Severance — American Worsted Machinery Co.
American Twin Sole Moulding Machine	64. Moulding Soles	Knox — Quarmby & Hilliker
Single Sole Moulding Machine		C. & J.— The Boylston Mfg. Co.
		Hawkins — Seelye Mfg. Co.
Crescent Toe Gouging Machines	64a. Toe Gouging	
Apex Channel Opening Machine	65. Opening Channels	Fischer — American Worsted Machinery Co.
		Fischer — Geo. Knight & Co.
	66. Tying in Cases (Hand Work)	
	67. Placing Soles and Counters in box ready for Lasters (Hand Work)	
	68. Matching Sole Leather With Uppers (Hand Work)	
	Lasting Room.	
	69. Putting up Lasts on Racks (Hand Work)	
	70. Tacking Innersoles to Lasts. (Hand Work if done; usually not done)	
	71. Assembling (Hand Work)	
	72. Pulling Over Uppers (Hand Work)	
McKay & Copeland Lasting Machine	73. Lasting	Victor Cons. Type — Nolle's Wks.
Consolidated Hand Method Lasting Machine (with or without Toe Cutter)		Lasting Machine — Ward & Gent
		Cons. Atlas Werke Pohler & Co.
		Standard Rotary Rapid Lasting Machine — Standard Rotary Machine Co. Ltd.
Chase Lasting Machine		Consolidated Type — The Standard Engineering Co.
		Consolidated Type — Gimson & Co. Ltd.
Wentworth Heel Seat Beating and Finishing Mach.	74. Pounding and Trimming	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Rex Rotary Pounding & Trimming Machine		
	74a. Pulling Insole Tacks (Chiefly Hand Work)	
Wire Grip Tacking Mach. Taper Nail Tacking Mach. Staple Fastening Mach.	75. Tacking on soles	Universal Sole Clinch Mach. — Universal Shoe Mch. Co.
	76. Pulling Lasts and cutting or removing Lacers (Hand Work)	
	77. Inspecting Lasting (Hand Work)	
	Bottoming Room.	
Rapid Standard Screw Machine	78. Standard Screw Nailing	
Goodyear Rapid Stitcher	79. Fairstitching (Sometimes done in Stock Room)	Campbell — Campbell-Bosworth Mchy. Company Landis — Landis Machine Co. Randall — The J. D. Randall Co. Union — Union Lockstitch Co. Puritan — Puritan Manufacturing Company O'Flaherty — The John O'Flaherty Company Simplex — Jas. Clark Leather Co. Leger — C. V. Engstrom Co.
Grip Clinch Machine Loose Nailing Machine Loose Nailing Machine #2	80. Nailing Heel Seats	Universal Sole Clinch Mach.— Universal Shoe Machinery Co. Universal Loose Nailer — Universal Shoe Machinery Co. Long Loose Nailer — The R. H. Long Machinery Co., Inc. Duplessis Loose Nailer — Hamel Shoe Machinery Co. Victor — Victor Shoe Mchy. Co.
Star Channel Cementing Machine	81. Cementing Channels and Lips	Union — The Boylston Mfg. Co.
Channel Laying Machine — Mod. M.	82. Laying Channels. If Edge is indented, operation is performed at this point	American — American Worsted Machinery Co. Channel Laying Machine — Standard Rotary Mach. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Standard — The Standard Engineering Company.
		Knight — Geo. Knight & Co.
Hercules Leveling Machine	83. Leveling	New Giant — The Boylston Mfg. Co.
		Giant — The Boylston Mfg. Co.
McKay Automatic Heel Loading and Attaching Machine	84. Heeling	Pettingill Heeling Machine — Haverhill Shoe Machinery Co.
		National — The R. H. Long Mchy. Company, Inc.
Universal Slugging Machine	85. Slugging	Long — The R. H. Long Machinery Company, Inc.
		Duplessis — Hamel Shoe Machy. Co.
		Boylston — The Boylston Mfg. Co.
McKay Heel Trimming & Randing Machine	86. Heel Trimming	Heel Trimming Machine — A. Johnson & Sons
		Heel Trimming Machine — McDowell Shoe Machinery Co.
		Heel Trimming Machine — Haverhill Shoe Machinery Co.
		Long Heel Trimming Machine — The R. H. Long Machy. Co., Inc.
		Tower Heel Trimming Machine — Tower Bros.
Imperial Heel Breasting Machine — Mod. B	87. Breasting Heels	Haverhill — Haverhill Shoe Machinery Co.
		W & H — Donnelly Machine Co.
Heel Breasting Machines — Mods. R & W		Rowan — Hamel Shoe Machinery Co.
Edge Trimming Mach. Mod. A	88. Trimming Forepart	Donnelly — Donnelly Machine Co.
		Rowan — Hamel Shoe Machinery Co.
Edge Trimming Mach. Mod. B		Briggs-Belmar — Briggs Belmar Co.
		Tower — Tower Bros.
Edge Trimming Mach. Mod. E		Long — The R. H. Long Mchy. Co., Inc.
		Haverhill — Haverhill Shoe Mchy. Company.
Heel Scouring Machine Mod. R	89. Scouring Heels (Heels Filled at this point if necessary)	Rowan —Hamel Shoe Machinery Company
Heel Sewing Machine Mod. X		Buzzell — J. G. Buzzell & Co.
		Globe — The Boylston Manufacturing Company
Heel Sewing Machine Carver		Tower — Tower Bros.
		Johnson — A. Johnson & Sons
		Carver — Donnelly Mach. Co.
Heel Breast Scouring Machine Mod. H	90. Breast Scouring	Buzzell — J. G. Buzzell & Co.
		Donnelly — Donnelly Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Freeman — The Louis G. Freeman Company
Heel Breast Scouring Machine Mod. N		Rowan — Hamel Shoe Machy. Co.
		Dougherty — Frank B. Dougherty
	91. Blacking Edges (Hand Work)	
Rotary Edge Setting Mach. Mod. C.	92. Setting Edges.	Freeman — The Loius G. Freeman Co.
Rotary Edge Setting Mach. Mod. K.		Union Twin — The Boylston Manufacturing Co.
Twin Edge Setting Mach. Mod. R.		Beaudry — Beaudry Machine Co.
Single Edge Setting Mach. Mod. N.		Union (Single) — The Boylston Manufacturing Co.
		Vici — Independent Shoe Mchy. Co.
		Rotary — Donnelly Mach. Co.
		Johnson — A. Johnson & Sons
		Rotary — Tower Bros.
Crest Heel Blacking Machine Mod. A	93. Blacking Heel Edges	Boylston — The Boylston Mfg. Company
Crest Heel Blacking Machine Mod. B		Star — Worcester Machinery Co.
None (Xpedtie Finishing Machine put out by United Expedite Finishing Co.)	94. Heel Burnishing	Harlow Heel Finishing Machine — Harlow Shoe Finishing Machy. Company
		Boylston (or Copeland) — The Boylston Manufacturing Co.
		Apex — Worcester Machinery Co.
		Matson — Matson-Hoyt Mach. Co.
		Beckman — A. Beckman.
		Keyco — The Keighly Co., Inc.
	95. Inspecting and Crowning (Hand Work)	
	Finishing Room.	
Buffing Machine Mod. S	96. Buffing Bottoms	Donnelly — Donnelly Machine Co.
Buffing Machine Mod. G		Tower — Tower Bros.
		Buzzell — J. G. Buzzell & Co
		Rowan — Hamel Shoe Machinery Co.
		Giant — The Boylston Mfg. Co.
		Webster — The Boylston Mfg. Company
		Hawkins — Seelye Mfg. Co.
None	97. Naumkeaging Shanks (Buffing)	Naumkeag Single Head — Naumkeag Buffing Machine Co.
		Naumkeag Double Head — Naumkeag Buffing Machine Co.
		Pine — J. A. Pine
		Naumkeag (Single Head) — A. Johnson & Sons.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	98. Marking Shanks (Hand Work) 99. Staining Forepart (Hand Work) 100. Blacking Shanks & Toplifts (Hand Work)	
Climax Finishing Shafts Climax Polishing Mach. Mod. X Climax Finishing Mach. Mod. X Climax Finishing & Brush Cleaning Machine, Mod. X	101. Polishing Foreparts	Universal — Universal Shoe Machy. Company Special — The Special Mchy. & Tool Company American Tool — The American Tool and Machine Co. Keighly — The Keighly Co., Inc. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Company Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Mch. Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mch. Co. Johnson — A. Johnson & Sons
Climax Finishing Shafts Climax Polishing Machine Mod. X Climax Finishing Machine Mod. X Climax Finishing and Brush Cleaning Machine Mod. X	102. Polishing Shanks and Top-Lifts	Universal — Universal Shoe Machy. Company Special — The Special Mchy. & Tool Company American Tool — The American Tool and Machine Co. Keighly — The Keighly Co., Inc. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Company. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Mch. Co. American — Am. Worsted Machy. Co. Victor — Victor Shoe Mchy Co. Johnson — A. Johnson & Sons

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	103. Wheeling Shanks (Hand Work)	
Regent Stamping Machine Mod. C Stamping Machine Mod. R	104. Stamping Foreparts	Star — O. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
	Treeing Room.	
	105. Placing Sock Linings and Detecting Tacks (Hand Work)	
Miller Treeing Machine formerly but not now leased by United Company	106. Treeing	Copeland — The Boylston Manufacturing Co. Improved Flexor — Boston Last Company Miller — Sold by O. A. Miller Treeing Machine Co. Improved Flexor (8 arm) — Boston Last Co. Pneumatic — W. J. Young Mchy. Co. Johnson — A. Johnson & Sons Hobbs & Lewis — Hobbs & Lewis, Ltd.
	107. Lacing Shoes (Hand Work)	
Climax Finishing Shafts	108. Brush Edges	Universal — Universal Shoe Machy. Company. Special — The Special Mchy. & Tool Company. American Tool — The Americay Tool and Machine Co. Keighly — The Keighly Co. Inc. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Company. Long — The R. H. Long Mchy. Co., Inc. Donnelly — Donnelly Mch. Co. American — Am. Worsted & Mchy. Co. Victor — Victor Shoe Mchy. Co. Johnson — A. Johnson & Sons
	109. Inspecting and Crowning (Hand Work)	

Packing Room

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	110. Labeling Cartons. (Hand Work)	
None	111. Marking Cartons	Markem — Markem Machine Co.
	112. Matching Cartons, Wood Cases and Shoes (Hand Work)	
	113. Packing Shoes in Cartons (Hand Work)	
	114. Boxing (Hand Work)	
	115. Stenciling Cases (Hand Work)	
	116. Numbering Cases (Hand Work)	
	117. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room :

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros' Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Machine Counter Skiving Mach. Mod. W Counter Skiving Mach. Mod. S	3. Skiving Counters	Stewart — Stewart Bros. Young — W. J. Young Machinery Co. Hartwell — L. L. Hartwell Moenus — Moenus Mach. Wks.
None	4. End Finishing Counters	Thurston — W. J. Young Mchy. Co. Stewart — Stewart Bros. Moenus — Moenus Mach. Wks.
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Machierny Co.
None	6. Rolling and Waxing Counters	Stewart — Stewart Bros. Young — W. J. Young Machinery Company
None	7. Moulding Counters	Young — W. J. Young Machinery Co. Stewart — Stewart Bros.

MEN'S LOOSE NAILED, WHEELED TOP EDGE, SLIP TAP, GUN METAL, BLUCHER, CUT OFF TOE, MARCH 31, 1913.

Cutting Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues.	Parsons'— Parsons Machinery Co. Seelye — Seelye Mfg. Co.
	2. Sorting (Hand Work)	
None	2a. Crimping Vamps	Lockett — Lockett Crimping Machine Co.
Improved Gearless Sole Cutting Machine Ideal Clicking Machine Imp. Geared Sole Cutting Machine	3. Cutting Doublings for Light Uppers.	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Machinery Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Foot Power — Shawmut Mchy. Co. Hand " " " " Simplex Cloth Backing Mch.— Boston Last Co. Davis Electric Tape Mch.— The Davis Sewing Mach. Co.
	5. Casing (Dividing Sizes to match Tags) (Hand Work)	
Improved Gearless Sole Cutting Machine Ideal Clicking Machine Imp. Geared Sole Cutting Mch.	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Mchy. Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine — Mods. J. & K.	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine — Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	Stitching Room	
	11. Checking work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine Pluma Skiving Machine	13. Skiving Parts of Uppers	Universal — Peerless Machinery Co. Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce Amazeen Type — A. Johnson & Sons " " — Donnelly " " Mch. Co.
Snipping Machine: Booth Sandal	13a. Snipping Preparatory to Folding	Snipping & Cementing — Boston Mch. Works Co. Hart — Hamel S. M. Co. Boston (6) Foot Power Types — Boston Machine Works Co. Power — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mch. Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Duplex — Peerless Machinery Co. Economy — " " " New York — Boston Machine Works Co. Snipping & Cementing Machine — Boston Machine Works Co.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Works Co. Foot Power — Boston Machine Works Co. Boston — Boston Machine Works Co. Booth " " " " Dunn " " " " Rapid Hand Method — Perley R. Glass Co. New Cylinder — Perley R. Glass Co. Straight Edge — American Worsted Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Lufkin — R. H. Lufkin
None	16. Closing Tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Manufacturing Co.
		Met.— The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mch. Co.
Rapid Seam Rubbing Mch.	16a.	Hand Method — Shawmut Mchy. Co.
		Champion — Coburn & Lawrence Co.
		Boston — Boston Machine Works Co.
		Union — Boston Machine Works Co.
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Manufacturing Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — Davis Sewing Mach. Co.
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mch. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Manufacturing Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Machine Co.
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		W & W — Singer Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Manufacturing Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mch. Co.
None.	20. Stamping sizes and Case Number on Cloth Linings	Power Lining Marking Mch.— Markem Machine Co.
		Various Hand Devices.
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Machine Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Met.— The Met. Sewing Mch. Co.
		Davis — The Davis " " "
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Machine Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Met.— The Met. Sewing Mch. Co.
		Davis — The Davis " " "
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Machine Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Met.— Met. Sewing Mch. Co.
		Davis — The Davis Sewing Mch. Co.
Embossing Machine Power	23a. Embossing top Faces	Simplex — Boston Last Co.
		Universal — Markem Machine Co.
Embossing Machine Foot Power		Silver King — " " "
		Freeman — The Louis G. Freeman Co.
		Perkins — Perkins Machine Co.
None	24. Hooking with Stay Reinforcements	Tubular Rivet — Tubular Rivet & Stud Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		American — Am. Lacing & Hood Co.
		Foot Power — Am. Worsted Mchy. Co.
		Halkyard — Halkyard Mfg. Co.
None	25. Closing Linings to Top, Back to Back, holding in Back Straps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Met.— The Metropolitan Sewing Mch. Co. Davis — The Davis Sewing Mch. Co.
	26. Cementing Tops (Hand Work)	
Columbia Beading Machine Victor Beading Machine	27. Turning Edges on Beading Machine	Monarch — Boston Machine Works Co. Boston — Boston Machine Works Co. Hart — Hamel Shoe Mchy. Co. Nangle — J. H. Nangle
None	28. Undertrimming, Stitching around Top from Nose to Nose, Trimming off surplus Facings, Staying Back Pull Straps at same time	Singer — Singer Sewing Mach. Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Mch. Co.
None	29. Blacking Front of Tops, if raw edges	Coburn — Coburn & Lawrence Co. Peerless — Peerless Mchy. Co.
Duplex Eyeletting Machine Perfection Eyeletting Machine Universal Power Eyeletting Machine Merrick Power Eyeletting Mch. Samson Eyeletting Machine Power Eyeletting Machine Cameo Foot Power Eyeletting Machine Vulcan Foot Power Eyeletting Machine	30. Eyeletting	Peerless — Rapid-Peerless Mchy. Co. Peerless Gang " " " Power — George Knight & Co. Foot Power Gand — Geo. Knight & Company A Mch — Am. Worsted Mchy. Co. B " — " " " " Monitor — " " " " Eureka — " " " "
	31. Marking Vamps for Box Toes (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	32. Stitching Box Toes and Water-proof Material to Vamps	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co.
Royal Perforating Machine Mod. B Stanbon Perforating Mch. Mod. M	33. Perforating Tips	Hart #6 — Hamel Shoe Mchy. Co. Hart Mod. A— Hamel Shoe Mchy. Co. Barber — L. L. Barber & Co. Johnson — A. Johnson & Sons American — American Worsted Machinery Co. Peerless — Peerless Machinery Co. Punch Feed — Hamel Shoe Machinery Company.
None	34. Stitching Tips to Vamps	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Manufacturing Co. No. 3 — Union Lockstitch Co. Davis — The Davis Sewing Mach. Co.
None	35. Stitching Tongues between Vamps and Vamp Linings	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	36. Vamping	Singer — Singer Sewing Machine Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard— The Standard Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Manufacturing Co. Davis — The Davis Sewing Mch. Co.
None	37. Bracing Tops to Vamps	Singer — Singer Sewing Machine Co.
Ensign Lacing Machine Ellis Wire Lacer	38. Lacing Uppers	Rochester Lacer — Boston Machine Works Co.
	39. Casing Uppers (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	40. Inspecting Uppers (Hand Work)	
	Sole Leather Room	
	41. Moistening Sole Leather in Sides (Hand Work)	
Imp. Gearless Sole Cutting Machines Imp. Baby Sole Cutting Mch.	42. Cutting Outersoles, Innersoles, Half Soles and Toplifts	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Veneer Press	42a. Veneering Insoles	Busfield — Jas. Busfield
Victor Rolling Machine Improved Rolling Machine Summit Splitting Machine	43. Preparing Bellies, Shoulders, and Remnants for Cutters; (Rolling, Splitting, Flexing)	Seelye — Seelye Manufacturing Co. Knox — Quarmby & Hilliker Busfield — Jas. Busfield Knox — Quarmby & Hilliker Hawkins — Seelye Manufacturing Co.
Improved Gearless Sole Cutting Machines Wedge Lift Cutting	44. Cutting Heel Lifts	Baby — J. S. Wheeler & Co. Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Summit Splitting Machines Mods. M & N Centennial Splitting Mch.	45. Evening Heel Lifts	Knox — Quarmby & Hilliker Hawkins — Seelye Manufacturing Co. Baby — J. S. Wheeler & Co.
Champion Heel Lift Skiving Machine	45a. Gouging Heel Lifts	Young — W. J. Young Machinery Co. Bostock — Thos. Bostock & Sons
Heel Building Machine Mod. R. Pyramid Heel Building Machine	46. Building Heels	Young Foot Power — W. J. Young Machinery Co. Grover — W. J. Young Machinery Co. White — F. H. White & Co. Bostock — Thos. Bostock & Sons Bosworth — W. T. Bosworth Fortuna — Fortuna Machine Co. Knight — Geo. Knight & Co. Pieced Heel — Parsons Mchy. Co.
Handy Heel Press	46a. Pressing Heels	Seelye — Seelye Manufacturing Co.
Automatic Heel Compressing Machine, Mod. #4 Automatic Heel Compressing Machine #5	47. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co. Heel Compressing Machine — Gimson & Co., Ltd. Knox — Quarmby & Hilliker Heel Compressing Mch. — Nolle's Works.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	48. Placing Heels in boxes for use (Hand Work)	
Summit Splitting Machines	49. Evening Outersoles	Knox — Quarmby & Hilliker Hawkins — Seelye Manufacturing Co. Baby — J. S. Wheeler & Co. Nichols — Lacene Mfg. Co.
Victor Rolling Machine Improved Rolling Machine	50. Rolling Outersoles	Knox — Quarmby & Hilliker Busfield — Jas. Busfield Seelye — Seelye Manufacturing Co.
Apex Tap Skiving or Rand Splitting Machine	51. Beveling Butts of Taps	Buffum — American Worsted Mchy. Co. Busfield — Jas. Busfield Imp. Tripp — Am. Worsted Mchy. Co. American — Victor Shoe Mchy. Co.
	52. Sorting Outersoles (Hand Work)	
	53. Matching Cut Stock with Tags (Hand Work)	
Eagle Sole Stamping Machine Mod. C	54. Stamping Sizes on Soles	Nichols Grading Machine — Lacene Mfg. Co.
	54a. Stamping Case Number on Top Sole (Hand Work)	Various Hand Devices
	55. Wetting Taps and Outersoles. (Hand Work)	
Rapid Rotary Cementing Machine	56. Doubling Shanks of Outersoles if light	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Works Co.
Rapid Rotary Cementing Machine	57. Cementing Foreparts of Soles	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Works Co.
Rapid Rotary Cementing Machine	58. Cementing Half Soles	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Works Co.
Rapid Rotary Cementing Mch. Taper Nail Tack. Mch. Wire Grip Tack. Mch. Staple Tack. Mch.	59. Applying Tap to Outersole (Tack & Cement)	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Works Co. Universal Sole Clinch Mch.— Universal Shoe Mchy. Co. Duplessis — Hamel Shoe Mchy. Co. Victor — Victor " " "
Boston Tacking Mch. Cable Tacking Mch.	60. Tacking in Shanks	Freeman Insole Tacker — The Louis G. Freeman Co. The Tacking Mch.—A. Johnson & Sons

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Staple Fastening Mch.		Dupessis Tacker — Hamel Shoe Machinery Co.
Wire Grip Tacking Mch.		Victor — Victor Shoe Machy. Co.
String Nail Tacking Mch.		
Apex Tap & Sole Rounding Machine Mod. A	60a. Rounding Tap to Outersole	Severance — American Worsted Machinery Co.
American Twin Sole Moulding Machine	61. Moulding Outersoles	Knox — Quarmby & Hilliker
Single Sole Moulding Machine		C. & J. — The Boylston Mfg. Co.
		Hawkins — Seelye Mfg. Co.
	61a. Blacking Top Edge (Hand Work)	
Crescent Toe Gouging Machine	61b. Toe Gouging if necessary	
Goodyear Welt Indenting & Burnishing Machine	62. Indenting Top Edge Foreparts	Wheeler — E. L. Wheeler
		Holt — J. S. Holt & Co., Inc.
		Donnelly — Donnelly Machine Co.
	63. Casing Soles in Sizes and Pairs (Hand Work)	
	64. Stamping Case Number on Top Soles (Hand Work)	
	65. Tying in Cases (Hand Work)	
	66. Packing Sole Leather and Counters in boxes ready for Lasters (Hand Work)	
	67. Matching Sole Leather with Uppers (Hand Work)	
	68. Putting up Lasts on Racks (Hand Work)	
	69. Tacking Insoles to Lasts (Hand Work if done; usually not done)	
	70. Assembling (Hand Work on this class of shoes)	
	71. Pulling over Uppers (Hand Work on this class of Shoes)	

Lasting Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
McKay & Copeland Lasting Machines Consolidated Hand Method Lasting Machine (with or without Toe cutter) Chase Lasting Machine	72. Lasting	Victor Con. Type — Nolle's Works Lasting Mch.— Ward & Gent Consolidated — Atlas Works, Pohler & Co. Standard Rotary Rapid Lasting Machine — Standard Rotary Mch. Co. Consolidated Type — Gimson & Co., Ltd. Consolidated Type — The Standard Engineering Co.
Rex Rotary Pounding & Trimming Machine Wentworth Heel Seat Beating & Finishing Machine	73. Pounding and Trimming	
Goodyear Insole Tack Pulling Machine	73a. Pulling Insole Tacks	Freeman Combination Insole & Side Tack Pulling Machine — The Louis G. Freeman Co.
Wire Grip Tacking Mch. Taper Nail Tacking Mch. Staple Fastening Mch.	74. Tacking on Soles	Universal Sole Clinch Mch.— Universal Shoe Mchy. Co.
	75. Pulling Lasts and Cutting or removing Lacers (Hand Work) 76. Inspecting Lasting (Hand Work)	

Bottoming Room.

Loose Nailing Machine Loose Nailing Machine No. 2	77. Loose Nailing	Universal Loose Nailer — Universal Shoe Machinery Co. Long Loose Nailer — R. H. Long Machinery Co., Inc. Duplessis Loose Nailer — Hamel Shoe Machinery Co.
Hercules Leveling Machine	78. Leveling	New Giant — The Boylston Mfg. Co. Giant — The Boylston Mfg. Co.
McKay Automatic Heel Loading and Attaching Machine	79. Heeling	Pettengill — Haverhill Shoe Mchy. Co. National — The R. H. Long Mchy. Company, Inc.
Universal Slugging Machine	80. Slugging	Long Slugger — The R. H. Long Machinery Co., Inc. Duplessis Slugger — Hamel Shoe Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Boylston — The Boylston Mfg. Co.
McKay Heel Trimming & Randing Machine	81. Heel Trimming	Heel Trimming Mch.— A. Johnson & Sons
		Heel Trimming Machine — McDowell Shoe Machinery Co.
		Heel Trimming Machine — Haverhill Shoe Machinery Co.
		Long Heel Trimming Machine — The R. H. Long Mchy. Co., Inc.
		Tower Heel Trimming Mch.— Tower Bros.
Imperial Heel Breasting Machine Mod. B	82. Breasting Heels	Haverhill — Haverhill Shoe Mchy. Co.
Heel Breasting Mchs. Mod. R & W		Rowan — Hamel Shoe Machinery Co.
		W & H — Donnelly Machine Co.
Edge Trimming Mch. Mod. A	83. Trimming Foreparts	Donnelly — Donnelly Machine Co.
Edge Trimming Mch. Mod. B		Rowan — Hamel Shoe Machinery Co.
Edge Trimming Mch. Mod. E		Briggs-Belmar — Briggs Belmar Co.
		Tower — Tower Bros.
		Long — The R. H. Long Mchy. Co., Inc.
		Haverhill — Haverhill Shoe Mchy. Co.
Heel Scouring Mch. Mod. R	84. Scouring Heels	Rowan — Hamel Shoe Machinery Co.
Heel Scouring Mch. Mod. X	(If heels are filled at this point it is a hand operation)	Buzzell — J. G. Buzzell & Co.
Carver Heel Scouring Mch.		Globe — The Boylston Mfg. Co.
		Tower — Tower Bros.
		Johnson — A. Johnson & Sons
		Carver — Donnelly Machine Co.
Heel Breast Scouring Machine Mod. H.	85. Scouring Heel Breasts	Buzzell — J. G. Buzzell & Co.
Heel Breast Scouring Machine Mod. N.		Donnelly — Donnelly Machine Co.
		Freeman — The Louis G. Freeman Co.
		Rowan — Hamel Shoe Machinery Co.
		Dougherty — Frank B. Dougherty
	86. Blacking Forepart Edges (Hand Work)	
Rotary Edge Setting Mch. Mod. C	87. Setting Edges	Freeman — The Louis G. Freeman Co.
Rotary Edge Setting Mch. Mod. R		Union — The Boylston Mfg. Co.
Twin Edge Setting Mch. Mod. K		Rotary — Tower Bros.
		Beaudry — Beaudry Machine Co.
Single Edge Setting Mch. Mod. N.		Union (Single) — The Boylston Manufacturing Co.
		Vici — Independent Shoe Mchy. Co.
		Rotary — Donnelly Machine Co.
		Johnson — A. Johnson & Sons
Crest Heel Blacking	88. Blacking Heel Edges	Boylston — The Boylston Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Machine Mod. A & B		Star — Worcester Machinery Co.
None	89. Heel Burnishing	Harlow Heel Burnishing Machine — Harlow Shoe Finishing Mchy. Co.
(Xpedite Finishing Machine put out by United-Xpedite Finishing Co.)		Boylston (or Copeland) — The Boylston Manufacturing Co.
		Apex — Worcester Shoe Machinery Co.
		Matson — Matson-Hoyt Machine Co.
		Beckman — A. Beckman.
		Keyco — Keighley Co., Inc.
	90. Inspecting and Crowning (Hand Work)	
	Finishing Room	
Buffing Machine Mod. S	91. Buffing Bottoms	Donnelly — Donnelly Machine Co.
Buffing Machine Mod. G		Tower — Tower Bros.
		Buzzell — J. G. Buzzell & Co.
		Rowan — Hamel Shoe Machinery Co.
		Giant — The Boylston Mfg. Co.
		Webster — The " " "
		Hawkins — Seelye Mfg. Co.
	92. Staining Foreparts and Shanks (Hand Work)	
Climax Finishing Shafts	93. Polishing Foreparts and Shanks	Universal — Universal Shoe Mchy. Company
Climax Polishing Mch. Mod. X		Progressive — Progressive Shoe Machinery Co.
Climax Finishing Mch. Mod. X		Champion — Champion Shoe Mchy. Co.
Climax Finishing and Brush Cleaning Mach. Mod. X		Landis — Landis Machine Co.
		Specialty — Specialty Shoe Mchy. & Tool Company.
		Long — The R. H. Long Machinery Co., Inc.
		Donnelly — Donnelly Machine Co.
		Am.— American Worsted Machinery Co.
		Am.— The American Tool and Mch. Co.
		Special — The Special Mchy. Co.
		Victor — Victor Shoe Machinery Co.
		Johnson — A. Johnson & Sons.
		Keighley — The Keighley Co., Inc.
Nurling Machine Mod. A.	94. Wheeling Foreparts and Shanks	Wheeler — E. L. Wheeler

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Regent Stamping Machine Mod. C Stamping Machine Mod. R	95. Stamping Foreparts	Star — O. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
	Treeing Room.	
	96. Inserting Heel Pads (Hand Work)	
Miller Treeing Machine, formerly but not now leased by United Co.	97. Treeing	Copeland — The Boylston Mfg. Co. Improved Flexor — Boston Last Co. Miller — Sold by O. A. Miller Treeing Machine Co. Improved Flexor (8 Arm) — Boston Last Co. Pneumatic — W. J. Young Mchy. Co. Johnson — A. Johnson & Sons. Hobbs & Lewis — Hobbs & Lewis, Ltd.
	98. Lacing Shoes (Hand Work)	
Climax Finishing Shafts	99. Brushing Edges	Progressive — Progressive Shoe Mchy. Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. Tool Co. Long — The R. H. Long Shoe Mchy. Co., Inc. Donnelly — Donnelly Machine Co. Am.— American Worsted Mchy. Co. Victor — Victor Shoe Mchy. Co. Johnson — A. Johnson & Sons Keighley — The Keighley Co., Inc. American — The American Tool & Mchy Co. Special — The Special Mchy. & Tool Co. Universal — Universal Shoe Mchy. Co.
	100. Inspecting and Crowning (Hand Work)	
	Packing Room	
	101. Labeling Cartons (Hand Work)	
None	102. Marking Cartons	Markem — Markem Machine Co.
	103. Matching Cartons, Wood Cases and Shoes (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	104. Packing Shoes in Cartons (Hand Work)	
	105. Boxing (Hand Work)	
	106. Stenciling Cases (Hand Work)	
	107. Numbering Cases (Hand Work)	
	108. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room:

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Mchy. Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Machine Counter Skiving Mch. Mod. W Counter Skiving Mch. Mod. S	3. Skiving Counters	Young — W. J. Young Mchy. Co. Stewart — Stewart Bros. Hartwell — L. L. Hartwell Moenus — Moenus Mch. Works
None	4. End Finishing Counters	Thurston — W. J. Young Machinery Co. Stewart — Stewart Bros. Moenus — Moenus Mch. Works
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Machinery Co.
None	6. Rolling and Waxing Counters	Stewart — Stewart Bros. Young — W. J. Young Mchy. Co.
None	7. Moulding Counters	Young — W. J. Young Mchy. Co. Stewart — Stewart Bros.

MEN'S MCKAY SEWED FAIRSTITCHED SLIP TAP, GUN METAL, FOX BLUCHER, CUT-OFF TOE MARCH 31, 1913.

Cutting Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues	Parsons'— Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	2. Sorting (Hand Work)	
None	2a. Crimping Vamps	Lockett — Lockett Crimping Machine Company.
Improved Gearless Sole Cutting Machine Imp. Geared Sole Cutting Machine Ideal Clicking Machine	3. Cutting Doublings for Light Uppers	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Machinery Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Hand Power — Shawmut Machinery Co. Simplex Cloth Backing Machine — Boston Last Co. "Davis" Electric Taping Machine — The Davis Sewing Machine Co. Foot Power — Shawmut Mchy. Co.
	5. Casing (Dividing Sizes to match Tags) (Hand Work)	
Ideal Clicking Machine Improved Gearless Sole Cutting Machine Improved Geared Sole Cutting Machine	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker.
Improved Gearless Sole Cutting Machine Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	Stitching Room.	
	11. Checking work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine Pluma Skiving Machine	13. Skiving Parts of Uppers	Universal — Peerless Machinery Co. Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce. Amazeen Type — A. Johnson & Sons " " — Donnelly Mach. Co.
Machines of U. S. M. Co.	Operations	Machines of other Dealers
Snipping Machine, Booth Sandal	13a. Snipping Preparatory to Folding	Power — Boston Mach. Wks. Co. Hart — Hamel Shoe Machinery Co. Boston (6 Ft. Power Types) — Boston Machine Works Co. Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mach. Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Economy — Peerless Machinery Co. Duplex — Peerless " " New York — Boston Machine Works Company Snipping & Cementing Machine — Boston Machine Works Co.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Wks. Co. Foot Power — Boston Machine Wks. Co. Boston — Boston Machine Wks. Co. Booth — " " " " Dunn — " " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Rapid Hand Method — Perley R. Glass Company
		New Cylinder — Perley R. Glass Company
		Straight Edge — American Worsted Machinery Co.
		Lufkin — R. H. Lufkin.
None	16. Closing Tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Met.— The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
Rapid Seam Rubbing Machine	16a. Seam Rubbing	Hand Method — Shawmut Mchy. Co.
		Champion — Coburn & Lawrence Co.
		Boston — Boston Machine Wks. Co.
		Union — " " " "
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Manufacturing Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Machine Co.
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Company
		W & W — Singer Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Machine Co.
None	20. Stamping sizes and Case Number on Cloth Linings	Power Lining Marking Machine — Markem Machine Co.
		Various Hand Devices
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Machine Company.
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company.
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company.
Embossing Machine: Power	23a. Embossing Top Faces	Simplex — Boston Last Co.
		Universal — Markem Machine Co.
Embossing Machine: Ft. Power		Silver King — " " "
		Freeman — The Louis G. Freeman Co.
		Perkins — Perkins Machine Co.
None	24. Hooking with Stay Reinforcements	Tubular Rivet — Tubular Rivet & Stud Co.
		American — American Lacing & Hook Co.
		Ft. Power — Am. Worsted Mchy. Co.
		Halkyard — Halkyard Mfg. Co.
None	25. Closing Linings to Top, Back to Back, holding in Back Straps	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mach. Co.
	26. Cementing Tops (Hand Work)	
Columbia Beading Machine	27. Turning Edges on Beading Machine	Monarch — Boston Machine Wks. Co.
Victor Beading Machine		Boston — " " " "
		Hart — Hamel Shoe Machinery Co.
		Nangle — J. H. Nangle.
None	28. Undertrimming, Stitching around Top from Nose to Nose, Trimming off surplus Facings, Staying Back Pull Straps at same time	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Metropolitan — The Met. Sewing Machine Co.
None	29. Blacking Front of Tops, if raw edges	Coburn — Coburn & Lawrence Co.
		Peerless — Peerless Machinery Co.
Duplex Eyeletting Mach.	30. Eyeletting	Peerless Rapid — Peerless Mchy. Co.
		Peerless Gang — " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Perfection Eyeletting Mach. Universal Power Eyeletting Mach. Merrick Power Eyeletting Mach. Samson Eyeletting Mach. Power Eyeletting Mach. Cameo Ft. Power Eyeletting Mach. Vulcan Power Eyeletting Mach.		Power — Geo. Knight & Co. Ft. " Gang — " " " "A" Machine — American Worsted Machinery Co. "B" Machine — American Worsted Machinery Co. Monitor — American Worsted Mchy. Co. Eureka — " " " Co.
	31. Marking Vamps for Box Toes (Hand Work)	
None	32. Stitching Box Toes and Water-proof Material to Vamps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co.
Royal Perforating Machine Model B Stanbon Perforating Machine ModelM	33. Perforating Tips	Hart #6 — Hamel Shoe Machy. Co. Hart Mod. A — " " " " Barber — L. L. Barber & Co. American — American Worsted Machinery Co. Peerless — Peerless Machinery Co. Punch Feed — Hamel Shoe Mchy. Co. Johnson — A. Johnson & Sons.
None	34. Stitching Tips to Vamps	Singer — Singer Sewing Mch. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. No. 3 — Union Lockstitch Co. Davis — The Davis Sewing Mch. Co.
None	35. Stitching Tongues between Vamps and Vamp Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Davis — The Davis Sewing Machine Company
None	36. Vamping	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Machine Company.
None	37. Bracing Tops to Vamps	Singer — Singer Sewing Mach. Co.
Ensign Lacing Machine Ellis Wire Lacer	38. Lacing Uppers	Rochester Lacer — Boston Machine Works Co.
	39. Casing Uppers (Hand Work)	
	40. Inspecting Uppers (Hand Work)	
	Sole Leather Room.	
	41. Moistening Sole Leather in Sides (Hand Work)	
Improved Gearless Sole Cutting Machines Improved Baby Sole Cutting Machine	42. Cutting Outersoles, Innersoles, Half Soles and Toplifts	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Veneer Press	42a. Veneering Insoles	Busfield — Jas. Busfield
Victor Rolling Machine	43. Preparing Bellies, Shoulders, and Remnants for Cutters; (Rolling, Splitting, Flexing)	Seelye — Seelye Manufacturing Co. Knox — Quarmby & Hilliker
Improved Rolling Machine		Busfield — Jas. Busfield
Summit Splitting Machine		Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Baby — J. S. Wheeler & Co.
Improved Gearless Sole Cutting Machines Wedge Lift Cutting Machine	44. Cutting Heel Lifts	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Centennial Splitting Mach. Summit Splitting Mach.	45. Evening Heel Lifts	Knox — Quarmby & Hilliker. Hawkins — Seelye Mfg. Co. Baby — J. S. Wheeler & Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Champion Heel Lifts Skiving Machine	45a. Gouging Heel Lifts	Young — W. J. Young Mchy. Co. Bostock — Thos. Bostock & Sons.
Pyramid Heel Building Machine	46. Building Heels	Young — Foot Power — W. J. Young Machinery Co.
Heel Building Machine Mod. R		Grover — W. J. Young Mchy. Co. White — F. H. White & Co. Bostock — Thos. Bostock & Sons Bosworth — W. T. Bosworth Fortuna — Fortuna Machine Co. Knight — Geo. Knight & Co. Pieced Heel — Parsons Mchy. Co.
Handy Heel Press	46a. Pressing Heels	Seelye — Seelye Manufacturing Co.
Automatic Heel Compressing Machine, Mod. #4	47. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co.
Automatic Heel Compressing Machine #5		Heel Compressing Machine — Gimson & Co., Ltd. Knox — Quarmby & Hilliker Heel Compressing Mach. — Nolle's Works
	48. Placing Heels in Boxes for use (Hand Work)	
Summit Splitting Machines	49. Evening Outersoles	Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Nichols — Lacene Mfg. Co. Baby — J. S. Wheeler & Co.
Victor Rolling Machine	50. Rolling Outersoles	Knox — Quarmby & Hilliker
Improved Rolling Machine		Busfield — Jas. Busfield Seelye — Seelye Mfg. Co.
Apex Tap Skiving or Rand Splitting Machine	51. Beveling Butts of Taps	N O S — American Worsted Mchy. Company. Busfield — Jas. Busfield Imp. Tripp — American Worsted Machinery Co. American — Victor Shoe Mchy. Co.
	52. Sorting Outersoles (Hand Work)	
	53. Matching Cut Stock with Tags (Hand Work)	
Eagle Sole Stamping Machine	54. Stamping Sizes on Soles	Nichols Grading Machine — Lacene Mfg. Co. Various Hand Devices
	54a. Stamping Case Number on Top Sole (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	55. Casing Soles in Sizes and Pairs (Hand Work)	
	56. Stamping Case Number on Top Sole (Hand Work)	
	57. Wetting Outersole and Tap (Hand Work)	
Apex Channelling Machine McKay Channelling Machine Mod. Z	58. Channelling Outersole	McKay — Geo. Knight & Co. McKay — Am. Worsted Mchy. Co. McKay — Walter Pearson
Rapid Rotary Cementing	59. Doubling Shank of Outersoles (if light)	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	60. Cementing Forepart of Outersole	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	61. Cementing Tap	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine Taper Nail Tacking Mach. Cable Tacking Mach. Wire Grip Tacking Mach. Staple Fastening Mach.	62. Applying Tap to Outersole (Tack and Cement)	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co. Universal Sole Clinch Mach.— Universal Shoe Mchy. Co. Duplessis — Hamel Shoe Mchy. Co. Victor — Victor Shoe Mchy. Co.
Boston Tacking Machine Cable Tacking Machine Staple Fastening Machine Wire Grip Tacking Machine String Nail Tack-Machine	63. Tacking in Shanks	Freeman Insole Tacker — The Louis G. Freeman Co. Tacking Machine—A. Johnson & Sons Duplessis Tacker — Hamel Shoe Machinery Co. Victor — Victor Shoe Mchy. Co.
Apex Tap & Sole Rounding Machine	63a. Rounding Tap to Outersole	Severance — American Worsted Machinery Company.
American Twin Sole Moulding Machine Single Sole Moulding Machine	64. Moulding Soles	Knox — Quarmby & Hilliker C. & J.— The Boylston Mfg. Company Hawkins — Seelye Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Crescent Toe Gouging Machine	64a. Toe Gouging (If necessary on Crescent Toe Gouging Machine)	
Apex Channel Opening Machine	65. Opening Channels	Fischer — American Worsted Machinery Co. Fischer — Geo. Knight & Co.
	66. Tying in cases (Hand Work)	
	67. Placing Soles and Counters in box ready for Lasters (Hand Work)	
	68. Matching Sole Leather with Uppers (Hand Work)	
	Lasting Room	
	69. Putting up Lasts on Racks (Hand Work)	
USMC Insole Tacking Machine No. 1 is available for the work. (Most manufacturers do not tack on innersoles)	70. Tacking Innersoles to Lasts	Freeman Innersole Tacker — The Louis C. Freeman Co.
Rex Assembling Machine, Mod. B Many manufacturers still assemble by hand work aided by Crispin Lasting Jack (Sold by USMC and others)	71. Assembling	Crispin Lasting Jack is used by hand workman; is sold by many concerns including F. W. Whitcher & Co., Albany Bldg., Boston.
Rex Pulling-Over Machine, Mod. A	72. Pulling-Over Uppers	Moenus — Moenus Mach. Works Victor — Nolle's Works Ward & Gent — Ward & Gent Pulling-Over Machine — Alex. Stone, U. S. Hotel, Boston, Mass., Agent for Atlas-Werke Pohler & Co., Leipsig
Consolidated Hand Method Lasting McKay Machine Chase Lasting Machine	73. Lasting	Consolidated Type — Standard Rotary Mach. Co., Ltd. Consolidated Type — The Standard Engineering Co. Consolidated Type — Gimson & Co., Ltd.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Consolidated Type — Atlas-Werke Pohler & Co., Leipsig. Victor Consolidated — Nolle's Works Lasting Machine — Ward & Gent
Wentworth Heel Seat Beating and Finishing Machine Rex Rotary Pounding and Trimming Machine	74. Pounding and Trimming	
	74a. Pulling Insole Tacks (Chiefly Hand Work)	
Taper Nail Tacking Machine Wire Grip Tacking Machine Staple Fastening Machine	75. Tacking on Soles	Universal Sole Clincher — Universal Shoe Machinery Co.
	76. Pulling Lasts and Cut or Remove Lacers (Hand Work)	
	77. Inspecting Lasting (Hand Work)	
	Bottoming Room.	
McKay Sewing Mach. Mod. B McKay Sewing Mach. Mod. S Richardson Sole Sewing Machine	78. McKay Sewing (Moisten if Necessary)	McKay — Walter Pearson " — A. Johnson & Sons " — American Worsted Mach. Company Victor — Nolle's Works.
Goodyear Rapid Stitcher.	79. Fairstitching. (Sometimes done in Stock Room)	Randall — The J. D. Randall Co. Puritan — Puritan Mfg. Co. Landis — Landis Machine Co. Union — Union Lockstitch Co. O'Flaherty — The John O'Flaherty Company Simplex — Jas. Clark Leather Co. Campbell — Campbell-Bosworth Machinery Co. Leger — C. V. Engstrom Co.
Loose Nailing Mach. Loose Nailing Mach. No. 2. Grip Clinch Mach.	80. Nailing Heel Seats	Long Loose Nailer — The R. H. Long Machinery Co., Inc. Duplessis Loose Nailer — Hamel Shoe Machinery Co. Victor — Victor Shoe Mchy. Co. Universal Loose Nailing Machine Universal Sole Clincher

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Universal Shoe Machinery Co.
Star Channel Cementing Machine	81. Cementing Channel and Lip	Union — The Boylston Mfg. Co.
Channel Laying Machine — Mod. W	82. Laying Channel. (If Top Edge is indented, operation performed at this point)	American — American Worsted Machinery Co. Channel Laying Machine — Standard Rotary Machine Co. Knight — Geo. Knight & Co. Standard — The Standard Engineering Co.
Hercules Leveling Machine	83. Leveling	New Giant — The Boylston Mfg. Co. Giant — The Boylston Mfg. Co.
McKay Automatic Heel Loading & Attaching Machine	84. Heeling	Pettengill — Heeling Machine — Haverhill Shoe Machinery Co. National — The R. H. Long Machinery Co., Inc.
Universal Slugging Machine	85. Slugging	Long — The R. H. Long Mchy. Co., Inc. Duplessis Slugging Machine — Hamel Shoe Machinery Co. Boylston — The Boylston Mfg. Company
Trimming & Randing Machine McKay Heel	86. Heel Trmiming	Heel Trimming Mach. — Haverhill Shoe Machinery Co. McDowell Heel Trimming Mach. — McDowell Shoe Machinery Co. Johnson — A. Johnson & Sons Long — The R. H. Long Mchy. Co., Inc. Tower — Tower Bros.
Imperial Heel Breasting Machine Mod. B Heel Breasting Machines Mods. R & W	87. Breasting Heels	Haverhill — Haverhill Shoe Machinery Co. Rowan — Hamel Shoe Mchy. Co. W & H — Donnelly Machine Co.
Edge Trimming Machines Mod. A Edge Trimming Machines Mod. B Edge Trimming Machines Mod. E	88. Trimming Forepart	Donnelly — Donnelly Machine Co. Rowan — Hamel Shoe Machinery Co. Briggs-Belmar — Briggs-Belmar Company Tower — Tower Bros. Long — The R. H. Long Machinery Co., Inc. Haverhill — Haverhill Shoe Mchy. Company
Heel Scouring Machine Mod. R Heel Scouring Machine Mod. X	89. Scouring Heels (If heels are filled at this point it is a hand operation)	Rowan — Hamel Shoe Mchy. Co. Buzzell — J. G. Buzzell & Co. Globe — The Boylston Mfg. Co. Tower — Tower Bros.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Heel Scouring Machine Carver		Johnson — A. Johnson & Sons Carver — Donnelly Mach. Co.
Heel Breast Scouring Machine Mod. H Heel Breast Scouring Machine Mod. N.	90. Scouring Heel Breasts	Buzzell — J. G. Buzzell & Co. Donnelly — Donnelly Machine Co. Freeman — The Louis G. Freeman Company Rowan — Hamel Shoe Machinery Company. Dougherty — Frank B. Dougherty.
	91. Blacking Edges (Hand Work)	
Rotary Edge Setting Mach. Mod. C Rotary Edge Setting Mach. Mod. K Twin Edge Setting Machine Mod. R Single Edge Setting Mach. Mod. N	92. Setting Edges	Freeman — The Louis G. Freeman & Co Union (Twin) — The Boylston Mfg. Co. Beaudry — Beaudry Machine Co. Union (Single) — The Boylston Mfg. Co. Vici — Independent Shoe Mchy. Company Rotary — Donnelly Machine Co. Johnson — A. Johnson & Sons. Rotary — Tower Bros.
Crest Heel Blacking Machine Mod. A Crest Heel Blacking Machine Mod. B	93. Blacking Heels	Boylston — The Boylston Mfg. Co. Star — Worcester Mchy. Co.
None (Xpedite Finishing Machine put out by United Xpedite Finishing Co.)	94. Heel Burnishing	Harlow Heel Finishing Machine — Harlow Shoe Finishing Mchy. Co. Boylston (or Copeland) — Boylston Mfg. Co. Apex — Worcester Mchy. Co. Matson — Matson-Hoyt Machine Company Beckman — A. Beckman Keyco — The Keighly Co., Inc.
	95. Inspecting and Crowning (Hand Work)	
	Finishing Room	
Buffing Machine Mod. G Buffing Machine Mod. S	96. Buffing Bottoms	Donnelly — Donnelly Machine Co. Tower — Tower Bros. Buzzell — J. G. Buzzell & Co. Rowan — Hamel Shoe Mchy. Co. Giant — The Boylston Mfg. Co. Webster — The " " " Hawkins — Seelye Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	97. Naumkeaging Shanks (Buffing)	Naumkeag (Single Head) — Naumkeag Buffing Machine Co. Pine — J. A. Pine Naumkeag Buffing Machine (Double Head) — Naumkeag Buffing Machine Co. Naumkeag (Single Head) — A. Johnson & Sons.
	98. Marking Shanks (Hand Work) 99. Staining Forepart (Hand Work) 100. Blacking Shanks and Toplifts (Hand Work)	
Climax Finishing Shafts Climax Polishing Mach. Mod. X Climax Finishing Mach. Mod. X Climax Finishing & Brush Cleaning Mach. Mod. X	101. Polishing Foreparts	Universal — Universal Shoe Mchy. Co. Special — The Special Mchy. & Tool Co. American — The American Tool & Machine Co. Keighly — The Keighly Co., Inc. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Mchy. Co., Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mchy. Co. Johnson — A. Johnson & Sons.
Climax Finishing Shafts Climax Polishing Machine Mod. X Climax Finishing Machine Mod. X Climax Finishing & Brush Cleaning Machine Mod. X	102. Polishing Shanks and Toplifts	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Machinery Co Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mchy. Co. Universal — Universal Shoe Mchy. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		American — American Tool & Machine Co. Special — Special Machinery & Tool Company Johnson — A. Johnson & Sons. Keighly — The Keighly Co.
	103. Wheeling Shanks (Hand Work)	
Regent Stamping Machine Mod. C Stamping Machine Mod. R	104. Stamping Foreparts	Star — O. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
Stitch & Upper Cleaning Machine Booth Shaping & Cleaning Machine	104a. Cleaning Uppers	Webster — The Boylston Mfg. Co. Keighly — The Keighly Co., Inc.
	Treeing Room.	
	105. Placing Sock Linings and Detecting Tacks (Hand Work)	
Miller Treeing Machine formerly but not now leased (never sold) by United Co.	106. Treeing	Miller — Sold by O. A. Miller Treeing Machine Co. Copeland — The Boylston Mfg. Co. Improved Flexor — Boston Last Co. Improved " (8 Arm) — Boston Last Company. Pneumatic (German) — W. J. Young Machinery Co. Johnson — A. Johnson & Sons. Mobbs & Lewis — Mobbs & Lewis, Ltd.
	107. Lacing Shoes (Hand Work)	
Climax Finishing Shafts	108. Brushing Edges	Universal — Universal Shoe Mchy. Company Special — The Special Mchy. & Tool Company American — The American Tool & Machine Co. Keighly — The Keighly Co., Inc. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Company Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Company

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Long — The R. H. Long Mchy. Co., Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mchy. Co. Johnson — A. Johnson & Sons
	109. Inspecting and Crowning (Hand Work)	
	Packing Room.	
	110. Labelling Cartons (Hand Work)	
None	111. Marking Cartons	Markem — Markem Machinery Co.
	112. Matching Cartons, Wood Cases, and Shoes (Hand Work)	
	113. Packing Shoes in Cartons (Hand Work)	
	114. Boxing (Hand Work)	
	115. Stenciling Cases (Hand Work)	
	116. Numbering Cases (Hand Work)	
	117. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room:

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Mchy. Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Machine Counter Skiving Machine Mod. W Counter Skiving Machine Mod. S	3. Skiving Counters	Stewart — Stewart Bros. Young — W. J. Young Mchy. Co. Hartwell — L. L. Hartwell Moenus — Moenus Mach. Wks.
None	4. End Finishing Counters	Thurston — W. J. Young Mchy. Co.

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
		Stewart — Stewart Bros. Moenus — Moenus Machine Works.
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Mchy. Company
None	6. Rolling and Waxing Counters	Stewart — Stewart Bros. Young — W. J. Young Mchy. Co.
None	7. Moulding Counters	Young — W. J. Young Machinery Company Stewart — Stewart Bros.

For Button Shoes the following operations should be added in the Stitching Room:

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
None	1. Closing outside of Fly to top	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Machine Company. W & W — Singer Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Puritan — Puritan Mfg. Co. No. 3 — Union Lockstitch Co. Davis — The Davis Sewing Machine Company.
Rapid Seam Rubbing Machine	2. Rubbing Button-fly Seam	Champion —Coburn & Lawrence Co. Boston — Boston Machine Wks. Co. Union — " " " " Hand Method — Shawmut Mchy. Co.
None	3. Staying Button-fly Seam	Union Special — Unipn Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — Davis Sewing Mach. Company.
None	4. Cementing in Button-fly Stay	Wheeler — Brockton Stay Co.
None	5. Closing Fly Lining to cloth lining	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
		Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	6. Closing Fly, outside and lining back to back	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company.
Columbia Beading Machine Victor Beading Mach. Turning & Beading Mach.	7. Turning and Beading Button Fly	Monarch — Boston Machine Wks. Co. Boston — " " " " Hart — Hamel Shoe Mchy. Co. Nangle — J. H. Nangle
None	8. Stitching first row around fly	Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	8a. Marking for Buttonholes	Adams — Adams Manufacturing Co. Button Marking Machine — Shoe Manufacturers' Supply Co.
Buttonhole Making Machine	9. Making Buttonholes	Reece — The Reece Buttonhole Machine Co.
Buttonhole Finishing Machine	10. Finishing Buttonholes.	Reece — The Reece Buttonhole Machine Co. Singer — Singer Sewing Mach. Company
None	11. Barring Button Fly at Bottom 12. Marking Top for Buttons (Hand Work)	Singer — Singer Sewing Machine Company
None	13. Attaching Buttons	Morley — Singer Sewing Mach. Co. R. & M.— Peerless Machinery Co. Singer — Singer Sewing Mach. Co. Universal — Elliott Mfg. Co. Elliott — Elliott Mfg. Co.

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
		Heaton — Peninsular — Elliott Manufacturing Co. Reece — The Reece Buttonhole Machine Company

Women's McKay Sewed and Fairstitched Slip Tap, Gun Metal, Cut-off Toe, Fox Blucher.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues	Parsons'— Parsons Machinery Co. Seelye — Seelye Mfg. Co.
	2. Sorting (Hand Work)	
None	2a. Crimping Vamps	Lockett — Lockett Crimping Mach. Company
Improved Gearless Sole Cutting Machine Ideal Clicking Machine Improved Geared Sole Cutting Machine	3. Cutting Doublings for Light Uppers	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Machinery Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Foot Power — Shawmut Machinery Co. Hand Power — Shawmut Machinery Co. Simplex Cloth Backing Machine — Boston Last Company. Davis Electric Taping Machine — The Davis Sewing Machine Co.
	5. Casing (Dividing Sizes to match Tags) (Hand Work)	
Improved Gearless Sole Cutting Machine Ideal Clicking Machine Improved Geared Sole Cutting Machine	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker

Cutting Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Improved Gearless Sole Cutting Machine Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine Mod. C.	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.

Stitching Room.

	11. Checking Work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine Mod. #7 Pluma Skiving Machine Mod. D	13. Skiving Parts of Uppers	Universal — Peerless Machinery Company. Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce. Amazeen Type — A. Johnson & Sons " " — Donnelly Machine Company.
Snipping Machine: Booth Sandal	13a. Snipping preparatory to Folding	Hart — Hamel Shoe Mchy. Co. Boston (6 Ft. Power Types) — Boston Machine Works Co. Power — Power Machine Wks. Co. Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mch. Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Duplex — Peerless Machinery Co. Economy — " " " New York — Boston Machine Wks. Company.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Snipping & Cementing Machine — Boston Machine Works.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Wks. Co.
		Foot Power — Boston Machine Wks. Co.
		Boston — Boston Machine Wks. Co.
		Booth — " " " "
		Dunn — " " " "
		Rapid Hand Method — Perley R. Glass Co.
		New Cylinder — Perley R. Glass Company.
		Straight Edge — American Worsted Machinery Co.
		Lufkin — R. H. Lufkin.
None	16. Closing Tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Machine Company
Rapid Seam Rubbing Mch.	16a. Seam Rubbing	Hand Method — Shawmut Mchy. Co.
		Champion — Coburn & Lawrence Co.
		Boston — Boston Machine Wks. Co.
		Union — " " " "
None	17. Stitching outside stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Machine Company

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Machine Company W & W — Singer Sewing Machine Co. Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Machine Company Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Singer — Singer Sewing Machine Company W & W — Singer Sewing Machine Co.
None	20. Stamping sizes and case numbers on cloth linings	Power Lining Marking Machine — Markem Machine Company Various Hand Devices
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Machine Co.
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Machine Company
Embossing Machine Power	23a. Embossing Top Faces	Simplex — Boston Last Co.
		Universal — Markem Machine Co.
Embossing Machine Ft. Power		Silver King — " " "
		Freeman — The Louis G. Freeman Company
		Perkins — Perkins Machinery Co.
None	24. Closing Linings to Top, Back, to Back	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
	25. Cementing Top (Hand Work)	
Columbia Beading Machine	26. Turning Edge on Beading Machine	Monarch — Boston Mach. Wks. Co.
Victor Beading Machine		Boston — " " " "
		Hart — Hamel Shoe Mchy. Co.
		Nangle — J. H. Nangle.
None	27. Undertrimming, Stitching around Top from Nose to Nose, and	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Metropolitan — The Metropolitan

Machines of U. S. M. Co.	Operations	Machines of other Dealers Sewing Machine Co.
	trimming off Surplus Facings	
Duplex Eyeletting Mach.	28. Eyeletting	Peerless Rapid — Peerless Mchy. Co.
Perfection Eyeletting Mach.		Peerless Gang — " " "
Universal Power Eyeletting Mach.		Power — Geo. Knight & Co.
Merrick Power Eyeletting Mach.		Foot Pwr. Gang — Geo. Knight & Co.
Samson Eyeletting Mach.		A. Mach.— American Worsted Machinery Co.
Power Eyeletting Mach.		B. Mach.— American Worsted Machinery Co.
Cameo Ft. Pwr. Eyeletting Mach.		Monitor — Am. Worsted Mchy. Co.
Vulcan Ft. Pwr. Eyeletting Mach.		Eureka — " " " "
	29. Marking Vamp for Toe Stiffening (Hand Work)	
None	30. Stitching Toe Stiffening and Water-proof Material to Toe of Vamp	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Standard — The Standard Sewing Ma- Machine Co.
Royal Perforating Mach. Mod. B	31. Perforating Tip	Hart #6 — Hamel Shoe Mchy. Co.
Stanbon Perforating Mach. Mod. M		Hart Mod. A—Hamel Shoe Mchy. Co.
		Barber — L. L. Barber & Co.
		Johnson — A. Johnson & Sons
		American — American Worsted Machinery Co.
		Peerless — Peerless Machinery Co.
		Punch Feed — Hamel Shoe Machy. Co.
None	32. Stitching Tip to Vamp	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Puritan — Puritan Mfg. Co.
		No. 3 — Union Lockstitch Co.
		Davis — The Davis Sewing Mach. Co.
None	33. Stitching Tongue between Vamp and Vamp	Singer — Singer Sewing Mach. Co.
		W & W — " " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	Lining	Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
None	34. Vamping	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Puritan — Puritan Mfg. Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company #3 — Union Lockstitch Co.
None	35. Bracing Corner of Top to Vamp	Singer — Singer Sewing Machine Company
Ensign Lacing Machine Ellis Wire Lacer	36. Lacing Upper	Rochester Lacer — Boston Machine Works Co.
	37. Casing Uppers (Hand Work)	
	38. Inspecting Uppers (Hand Work)	
	Sole Leather Room	
	39. Moistening Sole Leather in Sides (Hand Work)	
Imp. Gearless Sole Cutting Machines Imp. Baby Sole Cutting Machine	40. Cutting Outersoles, Innersoles, Half-Soles and Toplifts	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Veneer Press	40a. Veneering Insoles	Busfield — Jas. Busfield
Victor Rolling Mach. Improved Rolling Mach. Summit Splitting Mach.	41. Preparing Bellies, Shoulders and Remnants for Cutter; (Rolling, Splitting, Flexing)	Seelye — Seelye Mfg. Co. Knox — Quarmby & Hilliker Busfield — Jas. Busfield Knox — Quarmby & Hilliker Baby — J. S. Wheeler & Co. Hawkins — Seelye Mfg. Co.
Improved Gearless Sole Cutting Machines	42. Cutting Heel Lifts	Eclipse — Parsons Mchy. Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Wedge Lift Cutting Machine		Knox — Quarmby & Hilliker Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Summit Splitting Machines Centennial Splitting Mach.	43. Evening Heel Lifts	Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Baby — J. S. Wheeler & Co.
Champion Heel Lift Skiving Machine	43a. Gouging Heel Lifts	Young — W. J. Young Mchy. Co. Bostock — Thos. Bostock & Sons
Pyramid Heel Building Machine Heel Building Machine Mod. R	44. Building Heels	Young (Foot Power) — W. J. Young Machinery Co. Grover — W. J. Young Mchy. Co. White — F. H. White & Co. Bostock — Thos. Bostock & Sons Bosworth — W. T. Bosworth Fortuna — Fortuna Machine Co. Knight — Geo. Knight & Co. Pieced Heel — Parsons Mchy. Co.
Handy Heel Press	44a. Press Heels	Seelye — Seelye Manufacturing Co.
Automatic Heel Compressing Machine Mod. #4 Automatic Heel Compressing Machine 5	45. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co. Heel Compressing Machine — Gimson & Co., Ltd. Knox — Quarmby & Hilliker Heel Compressing Machine — Nolle's Works
	46. Placing Heels in Boxes for use (Hand Work)	
Summit Splitting Machines	47. Evening Outersoles	Hawkins — Seelye Mfg. Co. Knox — Quarmby & Hilliker. Nichols — Lacene Manufacturing Company Baby — J. S. Wheeler & Co.
Victor Rolling Mach. Improved Rolling Mach.	48. Rolling Outersoles	Knox — Quarmby & Hilliker. Busfield — Jas. Busfield
Apex Tap Skiving or Rand Splitting Mach.	49. Skiving Butt of Tap	Seelye — Seelye Manufacturing Co. N O S — American Worsted Machinery Co. Busfield — Jas. Busfield Imp. Tripp — American Worsted Machinery Co.
	50. Sorting Outersoles (Hand Work)	American — Victor Shoe Mchy. Co.
	51. Matching Cut Stock with Tags (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Eagle Sole Stamping Machine	52. Stamping Sizes on Soles	Nichols Grading Machine — Lacene Mfg. Co. Various Hand Devices
	53. Casing Soles in Sizes and Pairs (Hand Work)	
	54. Stamping Case Number on Top Sole (Hand Work)	
	55. Wetting Outersoles and Taps (Hand Work)	
Apex Channeling Mach. McKay Channeling Mch. Mod. Z	56. Channeling Outersoles	McKay — Geo. Knight & Co. McKay — American Worsted Mchy Co. McKay — Walter Pearson
Rapid Rotary Cementing Machine	57. Doubling Shanks of Outersoles (if light)	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	58. Cementing Foreparts of Outersoles	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine	59. Cementing Taps	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
Rapid Rotary Cementing Machine Taper Nail Tacking Machine Cable Tacking Machine Wire Grip Tacking Machine Staple Tacking	60. Applying Taps to Outersole (Tack and Cement)	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Works Co. Universal Sole Clinch Machine — Universal Shoe Machinery Co. Duplessis — Hamel Shoe Machinery Company Victor — Victor Shoe Machinery Co.
Boston Tacking Machine Cable Tacking Machine Staple Fastening Mach. Wire Grip Tacking Mach. String Nail Tacking Mach.	61. Tacking in Shanks (Also Hand Work)	Freeman Insole Tacker — The Louis G. Freeman Co. Tacking Machine — A. Johnson & Sons. Duplessis Tacker — Hamel Shoe Machinery Co. Victor — Victor Shoe Mchy. Co.
Apex Tap & Sole Rounding Machine	61a. Rounding Tap to Outersole	Severance — American Worsted Machinery Co.
American Twin Sole Moulding Machine	62. Moulding Soles	Knox — Quarmby & Hilliker C. & J. — The Boylston Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Single Sole Moulding Machine		Hawkins — Seelye Mfg. Co.
Crescent Toe Gouging Machine	62a. Toe Gouging if necessary	
Apex Channel Opening Machine	63. Opening Channels	Fischer — American Worsted Machinery Co. Fischer — Geo. Knight & Co.
	64. Tying in Cases (Hand Work)	
	65. Placing Soles and Counters in Boxes ready for Lasters (Hand Work)	
	66. Matching Sole Leather with Uppers (Hand Work)	
	Lasting Room	
	67. Putting up Lasts on Racks (Hand Work)	
USMC Insole Tacking Machine No. 1 is available for this work (Most manufacturers do not tack on innersoles)	68. Tacking Insoles to Lasts	Freeman Innersole Tacker — The Louis G. Freeman Co.
Rex Assembling Machine Mod. E. Many Manufacturers still assemble by hand work aided by Crispin Lasting Jack (Sold by U.S. M. Co. and others)	69. Assembling (Many Manufacturers assemble by hand work)	Crispin Lasting Jack is used by hand workmen. Is sold by many concerns including F. W. Whitcher Co., Albany Building, Boston
Rex Pulling Over Machine Mod. A	70. Pulling over Uppers	Moenus — Moenus Machine Wks. Victor — Nolle's Works Ward & Gent — Ward & Gent "Pulling Over Machine"— Alex. Stone, U. S. Hotel, Boston, Mass., Agent for Atlas-Werke Pohler & Co.
Consolidated Hand Method Lasting Machine (McKay Machine) Chase Lasting Machine.	71. Lasting	Consolidated Type — Standard Rotary Machine Co. Consolidated Type — Atlas-Werke Pohler & Co., Ltd. Consolidated Type — Gimson & Company, Ltd.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		"Consolidated Type Lasting Machine"— The Standard Engineering Co.
		Victor Con. Type — Nolle's Wks.
		Lasting Machine — Ward & Gent.
Rex Rotary Pounding and Trimming Machine Wentworth Heel Seat Beating and Finishing Mach.	72. Pounding and Trimming	
	72a. Pulling Insole Tacks. (Chiefly Hand Work)	
Wire Grip Tacking Mach. Taper Nail Tacking Mach. Staple Fastening Mach.	73. Tacking on Soles	Universal Sole Clinch Machine — Universal Shoe Machinery Co.
	74. Pulling Lasts and Cut or Remove Lacers (Hand Work)	
	75. Inspecting Lasting (Hand Work)	
	Bottoming Room.	
McKay Sewing Machine Mod. B. McKay Sewing Machine Mod. S. Richardson Sole Sewing Machine	76. McKay Sewing (Moisten if necessary)	McKay — American Worsted Mchy. Co. McKay — Walter Pearson " — A. Johnson & Sons Victor — Nolle's Works
Goodyear Rapid Stitcher	77. Fairstitching (Sometimes done in Stock Room)	Randall — The J. D. Randall Co. Puritan — Puritan Mfg. Co. Landis — Landis Machine Co. Union — Union Lockstitch Co. O'Flaherty — The John O'Flaherty Company Leger — James Clark Leather Co. Campbell — Campbell Bosworth Machine Co.
Loose Nailing Machine Loose Nailing Machine No. 2 Grip Clinch Machine	78. Nailing Heel Seats	Long Loose Nailer — The R. H. Long Machinery Co., Inc. Duplessis Loose Nailer — Hamel Shoe Machinery Company Universal Loose Nailing Machine — Universal Shoe Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Universal Sole Clincher — Universal Shoe Machinery Co. Victor — Victor Shoe Machinery Company
Star Channel Cementing Machine	79. Cementing Channels and Lips	Union — The Boylston Mfg. Co.
Channel Laying Machine Mod. W	80. Laying Channels (If Top Edge is indented, operation performed at this point)	American — American Worsted Machinery Co. Channel Laying Machine — Standard Rotary Machine Co. Knight — Geo. Knight & Co. Standard — The Standard Engineering Company
Atlas Leveling Machine	81. Leveling	C. & J.— The Boylston Mfg. Co.
McKay Automatic Heel Loading and Attaching Machine.	82. Heeling	Pettengill Heeling Machine — Haverhill Shoe Machinery Co. National — The R. H. Long Machinery Co., Inc.
Universal Slugging Machine	83. Slugging	Long — The R. H. Long Machinery Company, Inc. Duplessis Slugging Machine — Hamel Shoe Machinery Co. Boylston — The Boylston Mfg. Co.
Trimming and Randing Machine, McKay Heel	84. Heel Trimming	Heel Trimming Machine — Haverhill Shoe Machinery Co. McDowell Heel Trimming Machine — McDowell S. Machinery Co. Heel Trimming Machine — A. Johnson & Sons. Long Heel Trimming Mach.— The R. H. Long Machinery Co., Inc. Tower Heel Trimming Mach.— Tower Bros.
Imperial Heel Breasting Machine Mod. B. Heel Breasting Machines Mod. R & W	85. Breasting Heels	Haverhill — Haverhill Shoe Machinery Co. Rowan — Hamel Shoe Machinery Company W & H — Donnelly Machine Co.
Edge Trimming Mach. A Edge Trimming Mach. B Edge Trimming Mach. E	86. Trimming Foreparts	Donnelly — Donnelly Machine Co. Rowan — Hamel Shoe Machinery Co. Briggs-Belmar — Briggs-Belmar Company Tower — Tower Bros. Long — The R. H. Long Machinery Company, Inc.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Haverhill — Haverhill Shoe Mchy. Company
Heel Scouring Machine Mod. R	87. Scouring Heels (Heels filled at this point if necessary by hand operation)	Rowan — Hamel Shoe Machinery Co.
		Buzzell — J. G. Buzzell & Co.
Heel Scouring Machine Mod. X		Globe — The Boylston Mfg. Co.
		Tower — Tower Bros.
Heel Scouring Machine Carver		Johnson — A. Johnson & Sons
		Carver — Donnelly Machine Co.
Heel Breast Scouring Machine Mod. H	88. Scouring Heel Breasts	Buzzell — J. G. Buzzell & Co.
		Donnelly — Donnelly Machine Co.
		Freeman — The Louis G. Freeman Co.
Heel Breast Scouring Mach. Mod. N.		Rowan — Hamel Shoe Machinery Co.
		Dougherty — Frank B. Dougherty
	89. Blacking Edges (Hand Work)	
Rotary Edge Setting Machine Mod. C.	90. Setting Edges	Freeman — The Louis G. Freeman Co.
		Union — The Boylston Mfg. Co.
		Rotary — Tower Bros.
Rotary Edge Setting Mach. Mod. K.		Beaudry — Beaudry Machine Co.
Twin Edge Setting Mach. Mod. R.		Union (Single) — The Boylston Mfg. Co.
		Vici — Independent Shoe Mchy. Co.
Single Edge Setting Mach. Mod. N.		Rotary — Donnelly Machine Co.
		Johnson — A. Johnson & Sons.
Crest Heel Blacking Machine Mod. A & B	91. Blacking Heels	Boylston — The Boylston Mfg. Co.
		Star — Worcester Machinery Co.
None (Xpedite Finishing Machine put out by United Xpedite Finishing Co.)	92. Heel Burnishing	Harlow Heel Finishing Machine — Harlow Shoe Finishing Mchy. Co.
		Boylston (or Copeland) — The Boylston Mfg. Co.
		Apex — Worcester Machinery Co.
		Matson — Matson-Hoyt Machine Co.
		Beckman — A. Beckman
		Keyco — The Keighly Co., Inc.
	93. Inspecting and Crowning (Hand Work)	
	Finishing Room.	
Buffing Mach. Mod. S	94. Buffing Bottoms	Donnelly — Donnelly Mach. Co.
		Tower — Tower Bros.
Buffing Mach. Mod. G		Buzzell — J. G. Buzzell & Co.
		Rowan — Hamel Shoe Machinery Co.
		Giant — The Boylston Mfg. Co.
		Webster — " " " "
		Hawkins — Seelye Mfg. Co.
None	95. Naumkeaging Shanks (Buffing)	Naumkeag (Single Head) — Naumkeag Buffing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Pine — J. A. Pine Naumkeag (Double Head) — Naumkeag Buffing Machine Co. Naumkeag (Single Head) — A. Johnson & Sons
	96. Marking Shanks (Hand Work)) 97. Staining Foreparts (Hand Work) 98. Blacking Shanks and Top Lifts (Hand Work)	
Climax Finishing Shafts Climax Polishing Mch. Mod. X Climax Finishing Mch. Mod. X Climax Finishing & Brush Cleaning Machine Mod. X	99. Polishing Foreparts	American — The American Tool & Machine Co. Special — The Special Shoe Mchy. Co. Universal — Universal Shoe Mchy. Co. Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Mch. Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Machine Co. American — American Worsted Mchy. Company Victor — Victor Shoe Mchy. Co. Johnson — A. Johnson & Sons. Keighly — The Keighly Co., Inc.
Climax Finishing Shafts Climax Polishing Mch. Mod. X Climax Finishing Mch. Mod. X Climax Finishing & Brush Cleaning Machine Mod. X	100. Polishing Shanks and Toplifts	Special — The Special Mchy. & Tool Co. American — The American Tool & Machine Co. Universal — Universal Shoe Mchy. Company Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		American — American Worsted Machinery Co. Victor — Victor Shoe Machinery Co Johnson — A. Johnson & Sons Keighley — The Keighley Co., Inc.
	101. Wheeling Shanks (Hand Work)	
Regent Stamping Mach. Mod. C Stamping Machine Mod. R.	102 Stamping Foreparts	Star — O. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
Stitch and Upper Cleaning Machine Booth Shaping & Cleaning Machine	102a. Cleaning Uppers	Webster — The Boylston Mfg. Co. Keighley — The Keighley Co., Inc.
	Treeing Room.	
	103. Placing Sock Linings and Detecting Tacks (Hand Work)	
Miller Treeing Mach., formerly but not now, leased by United Co.	104. Treeing	Copeland — The Boylston Mfg. Co. Imp. Flexor — Boston Last Co. Miller — Sold by O. A. Miller Treeing Machine Co. Imp. Flexor (8 Arm) — Boston Last Company Pneumatic — W. J. Young Mchy. Co. Johnson — A. Johnson & Sons Mobbs & Lewis — Mobbs & Lewis, Ltd.
	105. Lacing Shoes (Hand Work)	
	106. Inspecting and Crowning (Hand Work)	
	Packing Room	
	107. Labeling Cartons (Hand Work)	
None	108. Marking Cartons	Markem — Markem Machine Co.
	109. Matching Cartons, Wood Cases and Shoes (Hand Work)	
	110. Packing Shoes in Cartons (Hand Work)	
	111. Boxing (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	112. Stenciling Cases (Hand Work)	
	113. Numbering Cases (Hand Work)	
	114. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room:

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Machine Counter Skiving Mch. Mod. W Counter Skiving Mch. Mod. S	3. Skiving Counters	Young — W. J. Young Machinery Co. Stewart — Stewart Bros. Hartwell — L. L. Hartwell Moenus — Moenus Machine Wks.
None	4. End Finishing Counters	Thurston — W. J. Young Mchy. Co. Stewart — Stewart Bros. Moenus — Moenus Mch. Works
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Mchy. Company
None	6. Rolling and Waxing Counters	Stewart — Stewart Bros. Young — W. J. Young Machinery Co.
None	7. Moulding Counters	Young — W. J. Young Mchy. Co. Stewart — Stewart Bros.

For Button Shoes the following operations should be added in the Stitching Room:

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
None	1. Closing outside of Fly to Top	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Machine Co. #3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co.

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
		Davis — The Davis Sewing Machine Company
Rapid Seam Rubbing Mch.	2. Rubbing Button-fly Seam	Champion — Coburn & Lawrence Co. Boston — Boston Machine Wks. Co. Union — " " " " Hand Method — Shawmut Machinery Company
None	3. Staying Button-fly Seam	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Machine Co. W & W — " " " " #3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Machine Company
None	4. Cementing in Button-fly Stay	Wheeler — Brockton Stay Co.
None	5. Closing Fly Lining to cloth lining.	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mch. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mch. Company
None	6. Closing Fly, outside and lining, back to back	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
Columbia Beading Mach. Victor Beading Mach. Turning & Beading Mach.	7. Turning and Beading Button-fly	Monarch — Boston Machine Wks. Co. Boston — " " " " Hart — Hamel Shoe Machinery Co. Nangle — J. H. Nangle

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
None	8. Stitching first row around Fly	Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	8a. Marking for Buttonholes	Adams — Adams Mfg. Co. Button Hole Marking Mach.— Shoe Mfgs. Supply Co.
Buttonhole Making Machine	9. Making Buttonholes	Reece — The Reece Buttonhole Machine Co.
Buttonhole Finishing Machine	10. Finishing Buttonholes	Reece — The Reece Buttonhole Machine Co. Singer — Singer Sewing Mach. Company
None	11. Barring Button Fly at bottom 12. Marking Top for Buttons (Hand Work)	Singer — Singer Sewing Mach. Company
None	13. Attaching Buttons	Morley — Singer Sewing Machine Company R. & M.— Peerless Machinery Co. Singer — Singer Sewing Mach. Co. Universal — Elliott Mfg. Co. Elliott — Elliott Mfg. Co. Heaton-Peninsular — Elliott Mfg. Co. Reece — The Reece Buttonhole Machine Co.

Men's Goodyear Welt, Gun Metal, Cut-off Toe, Fox Blucher, March 31, 1913.

Cutting Room

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues 2. Sorting (Hand Work)	Parsons'— Parsons Machinery Co. Seelye — Seelye Mfg. Co.
None	2a. Crimping Vamps	Lockett — Lockett Crimping Mch. Company
Improved Gearless Sole Cutting Machine	3. Cutting Doublings for Light Uppers	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine Imp. Geared Sole Cutting Machine		Knox — Quarmby & Hilliker.
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Machinery Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Foot Power — Shawmut Mchy. Co. Hand " " " " Simplex Cloth Backing Machine — Boston Last Co. Davis Electric Taping Machine — The Davis Sewing Machine Co.
	5. Casing (Dividing Sizes to Match Tags) (Hand Work)	
Improved Gearless Sole Cutting Machine Ideal Clicking Machine Imp. Geared Sole Cutting Machine	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine — Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine — Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	Stitching Room.	
	11. Checking work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine	13. Skiving Parts of Uppers	Universal — Peerless Machinery Co. Fortuna — Fortuna Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Pluma Skiving Machine		Pierce — C. S. Pierce
		Amazeen Type — A. Johnson & Sons
		Amazeen Type — Donnelly Mch. Co.
Snipping Machine: Booth Sandal	13a. Snipping Preparatory to Folding	Hart — Hamel Shoe Mchy. Co., Inc.
		Boston (6) Foot Power Types — Boston Machine Works Co.
		Power — " " " "
		Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mach. Co.
		Union Special — Union Special Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Duplex — Peerless Machinery Co.
		Economy — " " "
		New York — Boston Mach. Wks. Co.
		Snipping & Cementing Machine — Boston Machine Wks. Co.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Works Co.
		Foot Power — Boston Mach. Wks. Company
		Boston — Boston Mach. Wks. Co.
		Booth — " " " "
		Dunn — " " " "
		Rapid Hand Method — Perley R. Glass Co.
		New Cylinder — Perley R. Glass Co.
		Straight Edge — American Worsted Machinery Co.
		Lufkin — R. H. Lufkin Co.
None	16. Closing Tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		#3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Davis — The Davis Sewing Machine Company
Rapid Seam Rubbing Machine	16a. Seam Rubbing	Hand Method — Shawmut Machinery Company
		Champion — Coburn & Lawrence Co.
		Boston — Boston Mach. Wks. Co.
		Union — Boston Mach. Wks. Co.
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mch. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		#3 — Union Lockstitch Co.
		Puritan—Puritan Manufacturing Company
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		#3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Co.
		W & W — " " " "
		#3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Machine Company

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	20. Stamping Sizes and Case Number on Cloth Linings	Power Lining Marking Machine — Markem Machine Co. Various Hand Devices
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
Embossing Machine Model B Embossing Machine Model R	23a. Embossing Top Faces	Simplex — Boston Last Co. Universal — Markem Machine Co. Silver King — " " " Freeman — The Louis C. Freeman Company Perkins — Perkins Machine Co.
None	24. Hooking with Stay Reinforcements	Tubular Rivet — Tubular Rivet & Stud Company American — American Lacing & Hook Company Foot Power — American Worsted Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Halkyard — Halkyard Mfg. Co.
None	25. Closing Linings to Top, Back to Back, holding in Back Straps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Company Davis — The Davis Sewing Mach. Co.
	26. Cementing Tops (Hand Work)	
Columbia Beading Machine Victor Beading Mach.	27. Turning Edges on Beading Machine	Monarch — Boston Machine Wks. Co. Boston — " " " " Hart — Hamel Shoe Machinery Co. Nangle — J. H. Nangle
None	28. Undertrimming, Stitching around Top from Nose to Nose, Trimming off surplus Facings, Staying Back Pull Straps at same time	Singer — Singer Sewing Mach. Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Machine Co.
None	29. Blacking Front of Tops, if raw edges	Coburn — Coburn & Lawrence Co. Peerless — The Peerless Mchy. Co.
Duplex Eyeletting Mach. Perfection Eyeletting Mach. Universal Pwr. Eyeletting Mach. Merrick Pwr. Eyeletting Mach. Samson Eyeletting Mach. Power Eyeletting Mach. Cameo Ft. Pwr. Eyeletting Mach. Vulcan Ft. Pwr. Eyeletting Mach.	30. Eyeletting	Peerless Rapid — Peerless Mchy. Company Peerless Gang — Peerless Mchy. Co. Power — Geo. Knight & Co. Ft. Power Gang — Geo. Knight & Co. A. Machine — Am Worsted Mchy. Co. B. " — " " " " Monitor — " " " " Eureka — " " " "
	31. Marking Vamps for Box Toes (Hand Work)	
None	32. Stitching Box Toes and Water-proof Material to Vamps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Standard — The Standard Sewing Machine Co.
Royal Perforating Machine Model B Stanborn Perforating Machine, Mod. M.	33. Perforating Tips	Hart #6 — Hamel Shoe Machy. Co. Hart Mod. A " " " " Barber — L. L. Barber & Co. Johnson — A. Johnson & Sons American — American Worsted Machinery Co. Peerless — Peerless Machinery Co. Punch Feed — Hamel Shoe Mchy. Co.
None	34. Stitching Tips to Vamps	Singer — Singer Sewing Mch. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. No. 3 — Union Lockstitch Co. Davis — The Davis Sewing Mach. Company
None	35. Stitching Tongues between Vamps and Vamp Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
None	36. Vamping	Singer — Singer Sewing Mch. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Mch. Co.
None	37. Bracing	Singer — Singer Sewing Mach. Co.
Ensign Lacing Machine Ellis Wire Lacer	38. Lacing Uppers	Rochester Lacer — Boston Machine Works Co.
	39. Casing Uppers (Hand Work)	
	40. Inspecting Uppers (Hand Work)	

Sole Leather Room

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	41. Moistening Sole Leather in Sides (Hand Work)	
Improved Gearless Sole Cutting Machines Improved Baby Sole Cutting Machine	42. Cutting Outersoles, Innersoles, Half Soles and Toplifts	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker.
Victor Rolling Machine Improved Rolling Machine Summit Splitting Machine	43. Preparing Bellies, Shoulders, and Remnants for Cutters; (Rolling, Splitting, Flexing)	Seelye — Seelye Mfg. Co. Knox — Quarmby & Hilliker Busfield — Jas. Busfield Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Baby — J. S. Wheeler & Co.
Improved Gearless Sole Cutting Machines Wedge Lift Cutting Machine	44. Cutting Heel Lifts	Eclipse — Parsons Mchy. Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Summit Splitting Machines Centennial Splitting chines	45. Evening Heel Lifts	Hawkins — Seelye Mfg. Co. Knox — Quarmby & Hilliker Baby — J. S. Wheeler & Co.
Champion Heel Lift Skiving Machine	45a. Gouging Heel Lifts	Young — W. J. Young Machy. Co. Bostock — Thos. Bostock & Sons.
Heel Buildng Machine Mod. R. Pyramid Heel Building Machine	46. Building Heels	Young (Foot Power) — W. J. Young Machinery Co. Grover — W. J. Young Machy. Co. White — F. H. White & Co. Bostock — Thos. Bostock & Sons. Bosworth — W. T. Bosworth Fortuna — Fortuna Machine Co. Knight — Geo. Knight & Co. Pieced Heel — Parsons Mchy. Co.
Handy Heel Press	46a. Pressing Heels	Seelye — Seelye Manufacturing Co.
Automatic Heel Compressing Machine Mod. #4 Automatic Heel Compressing Machine #5	47. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co. Heel Compressing Machine — Gimson & Co. Ltd. Knox — Quarmby & Hilliker Heel Compressing Machine — Nolle's Works
	48. Placing Heels in Boxes for use. (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Summit Splitting Machines	49. Evening Outersoles	Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Nichols — Lacene Mfg. Co. Baby — J. S. Wheeler & Co.
Victor Rolling Machine	50. Rolling Outersoles	Knox — Quarmby & Hilliker Busfield — Jas. Busfield
Improved Rolling Machine	51. Sorting Outersoles (Hand Work)	Seelye — Seelye Mfg. Co.
	52. Matching Cut Stock with Tags (Hand Work)	
Eagle Sole Stamping Machine	53. Stamping Sizes on Sole	Nichols Grading Machine — Lacene Manufacturing Co. Various Hand Devices
	54. Casing Soles for sizes and pairs (Hand Work)	
	55. Stamping Case Number on Top Soles (Hand Work)	
Goodyear Outsole Channel Shank Reducing Machine Apex Feather Edge & Shank Reducing Machine Rotary Feather Edge & Shank Reducing Machine	56. Reducing Shanks	Rapid — Theo. Ringenbach Knight — Geo. Knight & Co. American — Am. Worsted Mchy. Co.
American Twin Sole Moulding Machine Single Sole Moulding Machine	57. Moulding Outersoles	Knox — Quarmby & Hilliker C. & J.— The Boylston Mfg. Co. Hawkins — Seelye Mfg. Co.
	58. Sorting Innersoles (Hand Work)	
	59. Matching Innersoles with Tag (Hand Work)	
Planet Sole Rounding Machine	60. Rounding Innersoles	Julian — The Boylston Mfg. Co. Improved Lower — Consolidated Rotary Rounder Co. Ross — Consolidated Rotary Rounder Co.
Insole Lip Cutting, Scoring, and Sizing Machine Eagle Sole Stamping Machine	61. Stamping Size on Innersole	Nichols Grading Machine — Lacene Manufacturing Co. Hand Devices

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	62. Casing Innersoles (Hand Work)	
Goodyear Channeling Machine Channeling Machine: Goodyear Universal	63. Channeling Innersoles	Channeling Machine — The R. H. Long Machinery Co., Inc. Haverhill Turn Channeler — Haverhill Shoe Machinery Co. Hamel — Hamel Shoe Machy. Co.
Goodyear Insole Toe Snipping Machine Insole Lip Cutting, Scoring and Sizing Mach.	64. Cutting Channel of Innersole for Turning (largely done by hand)	Flap Slashing Machine — Boston Machine Works Co. Insole Snipping & Pinking Mach.— Boston Machine Works Co.
Goodyear Flexible Sole Mach. (Zeigler) Goodyear Power Flexible Innersole Machine Model XB Goodyear Flexible Sole Machine (Power)	65. Flexing Insoles (if necessary)	
	66. Wetting Insoles (Hand Work)	
Goodyear Lip Turning Mach. Goodyear Lip Turning Mach. Mod. X Goodyear Lip Turning & Slashing Machine	67. Turning Channels	Lip Turning Machine — Haverhill Shoe Machinery Co. American — American Worsted Mchy. Company Knight — Geo. Knight & Co. Duplessis — Hamel Shoe Mchy. Co. Long — The R. H. Long Mchy. Co., Inc.
	68. Finishing Channel Shoulders (Hand Work) 69. Inspecting Channels (Hand Work) 70. Packing Innersoles in Boxes with Counters ready for Laster (Hand Work) 71. Matching Innersoles and Counters with Uppers (Hand Work)	
Goodyear Power Welt Grooving & Beveling Machine	72. Grooving and Beveling Welting	Haverhill — Haverhill Shoe Machinery Co. Long — The R. H. Long Mchy. Co., Inc. Hamel — Hamel Shoe Machinery Company

IF REINFORCED INNERSOLES.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Channeling Mach. Goodyear Universal Channeling Machine (Gem) Economy Innersole Channeling Machine	72a. Channeling Economy & Gem Innersoles.	Various shoe manufacturers, e. g. W. H. McElwain & Co. and A. H. Berry Shoe Co., make special types of reinforced innersoles and have machines of their own for the purpose. Channeling Mach.— The R. H. Long Machinery Co., Inc. (Gem) Haverhill — Haverhill Shoe Mchy. Company (Gem) Hamel — Hamel Shoe Machy. Co. (Gem)
At toe — Goodyear Insole Toe Snipping Machine At shank — Hand Work until recently (but see Operation 72d below) Insole Lip Cutting, Scoring & Sizing Machine	72b. Cutting Flap of Innersoles for Turning	See note above under 72a. Flap Slashing Mach.— Boston Machine Works Co. Insole Snipping & Pinking Machine — Boston Machine Works Company.
Economy Insole Wetting Machine Mod. X	72c. Wetting Insoles (Until recently done by hand)	See note above under 72a.
Gem Lip Turning Machine Goodyear Lip Turning & Slashing Machine. (This machine also cuts the flap — Operations 72 b) Goodyear Lip Turning Mach. Mod. X	72d. Turning Lips of Innersoles	Lip Turner — Haverhill Shoe Machinery Co. American — Am. Worsted Mchy. Co. Knight — Geo. Knight Co. Duplessis — Hamel Shoe Mchy. Co. Long — The R. H. Long Machinery Co., Inc.
None	72e. Heating and Placing Canvas	The various rubber companies which supply coated or prepared canvas, viz: The Clifton Manufacturing Co., the Plymouth Rubber Co., and the Walpole Shoe Supply Co., furnish the machines used for these operations.
Gem Flexible Innersole Machine Economy Reinforcing Machine	72f. Forming and Trimming Canvas to Shoulder of Innersoles	See note above under 72a.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None		Rib Tighteners or Hardeners — Plymouth Rubber Co. Walpole Shoe Supply Co. (These machines complete the reinforcing operation)
	Lasting Room.	
	73. Putting up Lasts on Racks (Hand Work)	
Staple Fastening Mach. USMC Insole Tacking Machine, No. 1	74. Tacking Innersoles to Lasts	Freeman Innersole Tacker — The Louis G. Freeman Co.
Rex Assembling Machine Model E	75. Assembling	
Rex Pulling-Over Mch. Mod. A. Rex Pulling-Over Mch. Mod. C.	76. Pulling-over Uppers	Atlas — Atlas-Werke Pohler & Co. Victor — Nolle's Works. Moenus — Moenus Machine Works. Pulling-Over Machine — Ward & Gent
Consolidated Hand Method Lasting Machine, Welt Side	77. Lasting sides	Welt Lasting Machine — Gimsen & Company, Ltd. Consolidated Type — Standard Engineering Co. Consolidated Type — Atlas-Werke Pohler & Co.
No. 5 USMC Lasting Mach. Consolidated Hand Method Lasting Machine, Welt Ideal Lasting Machine Chase Lasting Machine	78. Lasting	"Standard Rotary Rapid Lasting Machine"— Standard Rotary Machine Co., Ltd. Lasting Machine (Bed Type) — Atlas-Werke Pohler & Co. Lasting Machine (Bed Type) — The R. H. Long Mchy. Co., Inc. Welt & McKay Consolidated Type — The Standard Engineering Co. Welt Lasting Mach.— Gimson & Co. Ltd. Bed Type — Gimson & Co., Ltd. Victor — Nolle's Works. Boston Lasting Machine — A. Johnson & Sons. Bed Type — Standard Rotary Mch. Co., Ltd. Freeman Toe — The Louis G. Freeman Co. Freeman Heel Seat — The Louis G. Freeman Co. Lasting Machine — Ward & Gent Bed Type — The Boylston Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers Consolidated Type — Atlas-Werke Pohler & Co.
	79. Inspecting and Crowning Lasting (Hand Work)	
Rex Upper Trimming Machine Mod. H.	80. Upper Trimming (Done by hand in many factories)	
	Bottoming Room.	
Goodyear Tack Pulling & Resetting Machine Goodyear Upper Tack Pulling Machine, Pulling only Rapid Tack Pulling Machine Goodyear Upper Tack, Pulling only Rapid Tack Pulling Machine	81. Pulling Tacks and Resetting Tacks	The K. P. (Krentler-Pym) Tack Puller & Lifter — The Louis G. Freeman Co.
Goodyear Welt & Turn Shoe Machine Goodyear Welt & Turn Shoe Machine Mod. G. Goodyear Welt & Turn Shoe Machine Mod. K Goodyear Universal Machine	82. Welting	Haverhill Turn Sewer & Welter — Haverhill Shoe Machinery Co. Welt & Turn Sewer — Hamel Shoe Machinery Co. Universal Welter — Universal Shoe Machinery Co. Welt & Turn Sewer — The R. H. Long Machinery Co., Inc. Welt & Turn Sewing Machine — A. Johnson & Sons Welt & Turn Sewing Machine — Ward & Gent Welt Sewing Machine — The Standard Engineering Co. Welt Sewing Machine — The Boylston Manufacturing Co.
Goodyear Universal Inseam Trimming Machine	83. Inseam Trimming	Keighley Rapid Inseam Trimmer — The Keighley Co. Inc. (Sale)
Rapid Inseam Trimmer (Mod. K lease)		Johnson — A. Johnson & Sons
Keighley Rapid Inseam Trimmer (lease)	84. Trimming and Butting Welt Ends	Keighl y Rapid Inseam Trimmer — The Keighley Co., Inc. (sale)
Goodyear Insole Tack Pulling Machine	85. Pulling Insole Tacks	The Combination Insole & Side Tack Puller — The Louis G. Freman Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Welt Beating & Slashing Machine Goodyear Universal Welt Beating Machine (Beating Only)	86. Beating and Slashing Welts	Beating Machine — Standard Rotary Machine Co., Ltd. (Beating only) Long — The R. H. Long Mchy. Co., Inc. (Beating only) Duplessis — Hamel Shoe Mchy. Co. (Beating only) Boylston — The Boylston Mfg. Co. Haverhill — Haverhill Shoe Mchy. Company
Boston Tacking Machine Taper Nail Tacking Machine (S. H.) Staple Fastening Machine Shank Piece Sticking Machine	87. Tacking in Shanks (Usually hand work)	Freeman Insole Tacker — The Louis C. Freeman Co. Tacking Machine — A. Johnson & Sons Victor — Victor Shoe Mchy. Co.
	88. Filling foreparts	Besto Filling Machine — North American Chemical Co.
Rapid Rotary Cementing Machine	89. Cementing Soles	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Works Company
	90. Wetting Soles (Hand Work)	
Star Channel Cementing Machine (Fitted for Cementing Bottoms)	91. Cementing Welts and Filling	Union — The Boylston Mfg. Co. Victor — Nolle's Works
Goodyear Imp. Twin Sole Laying Machine Goodyear Imp. Twin Sole Laying Machine Mod. C	92. Laying Soles	Sole Layer — Long — The R. H. Long Machinery Co., Inc. Sole Layer — Standard Rotary Machine Co., Ltd. Atlas (2 Types)—Atlas—Werke Pohler & Co. Gimson — Gimson & Co., Ltd. Standard — The Standard Engineering Company
Grip Clinch Mach. Loose Nailing Mach. No. 2 Loose Nailing Mach.	93. Nailing Heel Seats	Long — The R. H. Long Machy. Co. Duplessis Loose Nailer — Hamel Shoe Machinery Co. Universal Loose Nailing Machine — Universal Shoe Machinery Co. Universal Sole Clinching Mach.— Universal Shoe Machinery Co. Victor — Victor Shoe Mchy. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Universal Rounding & Channeling Machine Mod. E Goodyear Universal Rounding & Channeling Machine	94. Rough Rounding and Channeling	"National" Automatic Rounder — Standard Rotary Machine Co., Ltd. Long National (does not channel)— The R. H. Long Mchy. Co., Inc. Victor — Victor Shoe Machy. Co. Haverhill — Haverhill Shoe Mchy. Company Arnold (Channel Only) — The R. H. Long Machinery Co., Inc.
Goodyear Channel Opening Machine Goodyear Channel Opening Machine Mod. X	95. Opening Channels	Opening Machine — Standard Rotary Machine Co., Ltd.
Goodyear Outsole Rapid Lockstitch Machine Goodyear Outsole Rapid Lockstitch Machine Mod. M Goodyear Outsole Rapid Lockstitch Mach. Mod. K.	96. Stitching	"Waldorf"— The R. H. Long Machinery Co., Inc. Universal Stitching Mach.— Universal Shoe Machy. Co. Union High-Speed Stitching Machine — Union Lockstitch Co. Standard — Standard Rotard Machine Co., Ltd. Hamel — Hamel Shoe Mchy. Co. Boylston — The Boylston Mfg. Co. Victor Imp.— Victor Shoe Mchy. Co. Fleming — Landis Machine Co. Larsen — Larsen Machinery Co. Simplex — Jas. Clark Lea. Co. Leger — C. V. Engstrom Co. Atlas — Atlas Werke Pohler & Co. High-Speed — The Standard Engineering Co. Johnson — A. Johnson & Sons
Star Channel Cementing Machine	97. Cementing Channels	Union — The Boylston Mfg. Co.
Goodyear Channel Laying Machine Goodyear Channel Laying Machine Mod. X	97a. Laying Channels	Laying Machine: Channel — Standard Rotary Mach. Co., Ltd. Knight — Geo. Knight & Co. American — American Worsted Mchy. Company Standard — The Standard Engineering Co.
Goodyear Automatic Sole Leveling Machine Goodyear Automatic Sole Leveling Mach. Mod. C	98. Leveling	Automatic Twin Leveler — Standard Rotary Mch. Co., Ltd. Webster Welt & Turn — Haverhill Shoe Machinery Co. Eclipse — The R. H. Long Mchy. Co., Inc.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Welt & Turn Leveling Machine		Ward & Gent — Ward & Gent. Hamel — Hamel Shoe Machinery Company
Welt Trimming & Stitch Rubbing Machine Goodyear Outsole Stitch Rubbing Machine	98a. Welt Trimming and Stitch Rubbing, (if desired)	None
Hadaway Stitch Separating Machine	99. Separating Stitches	Long Stitch Separator — The R. H. Long Machinery Co., Inc. Stitch Separator — Standard Rotary Machine Co., Ltd. Haverhill — Haverhill Shoe Machinery Co.
Goodyear Heel Seat Rounding Machine Heel Seat Rough Rounding Machine Mod. B Goodyear Rounding & Randing Machine	100. Rough Rounding Heel Seats	"Freeman Heel Seat Rounder" (Krentler Heel Seat Machine) — The Louis G. Freeman Co.
McKay Automatic Heel Loading and Attaching Machine Mod. B American Lightning Nailing Machine	101. Heeling	Pettengill Heeling Machine — Haverhill Shoe Machinery Co. Johnson — A. Johnson & Sons Nolle — Nolle's Works Ward & Gent — Ward & Gent National — The R. H. Long Mchy. Company, Inc.
Universal Slugging Mach.	102. Slugging	Long — The R. H. Long Machinery Company, Inc. Duplessis Slugging Machine — Hamel Shoe Machinery Co. Boylston — The Boylston Mfg. Co.
Ultima Heel Trimming Machine Busell Heel Trimming Machine McKay Heel Trimming & Randing Machine	103. Heel Trimming	Heel Trimming Machine — Haverhill Shoe Machinery Co. McDowell Heel Trimming Machine — McDowell Shoe Machinery Co. Johnson — A. Johnson & Sons Long — The R. H. Long Mchy. Co., Inc. Tower — Tower Bros.
Heel Breasting Mach. Mod. R Imperial Heel Breasting Machine Mod. B Heel Breasting Machine Mod. W	104. Breasting Heels	Haverhill — Haverhill Shoe Machinery Co. Rowan — Hamel Shoe Mchy. Co W & H — Donnelly Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Edge Trimming Mach. Mod. A Edge Trimming Mach. Mod. B Edge Trimming Mach. Mod. E	105. Trimming Foreparts	Donnelly — Donnelly Mach. Co. Rowan — Hamel Shoe Machinery Co. Briggs-Belmar — Briggs-Belmar Company Tower — Tower Bros. Long — The R. H. Long Mchy. Co., Inc. Haverhill — Haverhill Shoe Mchy. Co.
Goodyear Jointing Machine	106. Jointing (Heels filled at this point if needed) Some manufacturers prefer to have this operation performed by hand as was done universally until recently	
Heel Scouring Mach. Mod. R Heel Scouring Mach. Mod. K Heel Scouring Mach. Mod. Carver.	107. Scouring Heels (Two Scourings) (If heels are filled at this point it is a hand operation)	Rowan — Hamel Shoe Mchy. Co. Buzzell — J. G Buzzell & Co Globe — The Boylston Mfg. Co. Tower — Tower Bros. Heel-Scouring Mach.— A. Johnson & Sons Carver Heel Scouring Mach.— Donnelly Mach. Co.
Heel Breast Scouring Machine Mod. H Heel Breast Scouring Machine N	108. Scouring Breasts	Buzzell — J. G. Buzzell & Co. Donnelly — Donnelly Machine Co. Freeman — The Louis G. Freeman Co. Rowan — Hamel Shoe Machinery Company
	109. Blacking Forepart Edges (Hand Work)	Dougherty — Frank B. Dougherty Bendix — Geo. Bendix.
Rotary Edge Setting Machine Mod. C Rotary Edge Setting Mach. Mod. K Twin Edge Setting Mach. Mod. R Single Edge Setting Mach. Mod. M	110. Setting Edges (Two Settings)	Freeman — The Louis G. Freeman Co Union — The Boylston Mfg. Co. Beaudry — Beaudry Mach. Co. Union (Single) — The Boylston Manufacturing Co. Vici Edge Setting Machine — Independent Shoe Machinery Co. Rotary Edge Setting Mach.— Donnelly Machine Co. Edge Setting Machine — A. Johnson & Sons Rotary — Tower Bros.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Crest Heel Blacking Machine	111. Blacking Heel Edges	Boylston — The Boylston Mfg. Co. Star — Worcester Machinery Co.
None (Xpedite Finishing Mach. put out by United Xpedite Finishing Co.)	112. Heel Burnishing	Harlow Heel Burnishing Mach.— Harlow Shoe Finishing Mach. Co. Boylston (or Copeland) — The Boylston Mfg. Co. Apex — Worcester Machinery Co. Matson — Matson-Hoyt Machine Co. Beckman — A. Beckman Keyco Universal Finishing Machine — The Keighley Co., Inc.
	113. Inspecting and Crowning (Hand Work)	
	Finishing Room	
Buffing Machine Mod. S Buffing Machine Mod. G	114. Buffing Bottoms	Donnelly — Donnelly Machine Co. Tower — Tower Bros. Buzzell — J. G. Buzzell & Co. Rowan — Hamel Shoe Machinery Co. Giant — The Boylston Mfg. Co. Webster — The Boylston Mfg. Co. Hawkins — Seelye Mfg. Co.
	115. Pulling Lasts and Cutting Lacing (Hand Work)	
	116. Naumkeaging Shanks (Buffing)	Naumkeag (Single Head) — Naumkeag Buffing Machine Co. Naumkeag (Double Head) — Naumkeag Buffing Machine Co. Pine — J. A. Pine Naumkeag (Single Head) — A. Johnson & Sons
	117. Marking Shanks (Hand Work)	
	118. Staining Foreparts (Hand Work)	
	119. Blacking Shanks and Toplifts (Hand Work)	
Climax Finishing Shafts Climax Polishing Mch. Mod. X Climax Finishing Mch. Mod. X Climax Finishing & Brush Cleaning Mch. Mod. X	120. Polishing Foreparts	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Mchy. Co., Inc.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Donnelly — Donnelly Machine Co.
		American — American Worsted Machinery Co.
		Special — The Special Mchy. & Tool Co.
		Victor — Victor Shoe Mchy. Co.
		Johnson — A. Johnson & Sons
		Keighley — The Keighley Co., Inc.
		American — The American Tool & Machine Co.
		Universal — Universal Shoe Mchy. Company
Climax Finishing Shafts	121. Polishing Shanks and Toplifts	Progressive — Progressive Shoe Machinery Co.
Climax Finishing Mch. Mod. X		Champion — Champion Shoe Mchy. Co.
Climax Polishing Mch. Mod. X		Landis — Landis Machine Co.
Climax Finishing & Brush Cleaning Mch. Mod. X		Specialty — Specialty Shoe Mchy. & Tool Co.
		Long — The R. H. Long Mchy. Co., Inc.
		Donnelly — Donnelly Machine Co.
		American — American Worsted Machinery Co.
		Special — The Special Machinery & Tool Co.
		Victor — Victor Shoe Mchy. Co.
		Johnson — A. Johnson & Sons
		Keighley — The Keighley Co., Inc.
		American — The American Tool & Machine Co.
		Universal — Universal Shoe Mchy. Co.
	122. Wheeling Shanks (Hand Work)	
Regent Stamping Machine	123. Stamping Foreparts	Star — C. D. Wheeler
Stamping Machine Mod. R		Ellison — J. Ellison
		Holt — J. S. Holt & Co., Inc.
		Tower — Tower Bros.
Stitch & Upper Cleaning Machine	123a. Cleaning Uppers	Webster — The Boylston Mfg. Co.
Booth Shaping & Cleaning Machine		Keighley — The Keighley Co., Inc.
	Treeing Room.	
	124. Placing Heel Pods and Tack Detecting (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Miller Twin Treeing Mach., formerly, but not now, leased by United Co.	125. Treeing	Copeland — The Boylston Mfg. Co. Improved Flexor — Boston Last Co. Improved Flexor 8 Arm —Boston Last Co. Pneumatic — W. J. Young Mach. Co. Treeing Machine — A. Johnson & Sons Hobbs & Lewis — Hobbs & Lewis, Ltd.
	126. Lacing Shoes (Hand Work)	
Climax Finishing Shafts		Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Co. Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. Co. Long — The R. H Long Mchy. Co., Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. Special — The Special Mach. & Tool Co. Victor — Victor Shoe Mchy. Co. Johnson — A. Johnson & Sons Keighley — The Keighley Co., Inc. American — The American Tool & Machine Co. Universal — Universal Shoe Mchy. Company
	129. Inspecting and Crowning (Hand Work)	
	Packing Room.	
	130. Labeling Cartons (Hand Work)	
None	131. Marking Cartons	Markem — Markem Machine Co.
	132. Matching Cartons, Wood Cases and Shoes (Hand Work)	
	133. Packing Shoes in Cartons (Hand Work)	
	134. Boxing (Hand Work)	
	135. Stenciling Cases (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	136. Numbering Cases (Hand Work)	
	137. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room:

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Machine Counter Skiving Machine Mod. W & S	3. Skiving Counters	Young — W. J. Young Machy. Co. Hartwell — L. L. Hartwell Stewart — Stewart Bros. Moenus — Moenus Machine Wks.
None	4. End Finishing Counters	Thurston — W. J. Young Machy. Co. Stewart — Stewart Bros. Moenus — Moenus Machine Wks.
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Mchy. Co.
None	6. Rolling and Waxing Counters	Stewart — Stewart Bros. Young — W. J. Young Mchy. Co.
None	7. Moulding Counters	Young — W. J. Young Machinery Co. Stewart — Stewart Bros.

MEN'S GOODYEAR WELT.

For Button Shoes the following operations should be added in the Stitching Room:

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machine of other Dealers
None	1. Closing Outside of Fly to Top	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Machine Co. Puritan — Puritan Mfg. Co. #3 — Union Lockstitch Co.

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
		Davis — The Davis Sewing Mach. Company
Rapd Seam Rubbing Machine	2. Rubbing Button-fly Seam	Champion — Coburn & Lawrence Company Boston — Boston Mach. Works Company Union — " " " " Hand Method — Shawmut Machinery Company
None	3. Staying Button-fly Seam	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Company W & W — " " " " #3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Machine Company
None	4. Cementing in Button-fly Stay	Wheeler — Brockton Stay Co.
None	5. Closing Fly Lining to cloth lining	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Company W & W " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
None	6. Closing Fly outside and lining back to back	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Company W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company

U. S. M. Co. Machines of	Additional Operations for Button Shoes	Machines of other Dealers
Columbia Beading Mach. Victor Beading Mach. Turning & Beading Mach.	7. Turning and Cording Button Fly	Monarch — Boston Machine Wks. Co. Boston — Boston Machine Wks. Co. Hart — Hamel Shoe Machinery Co. Nangle — J. H. Nangle
None	8. Stitching First row around Fly	Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mch. Co.
None	8a. Marking for Buttonholes	Adams — Adams Mfg. Co. Button Marking Machine — Shoe Manufacturers Supply Co.
Buttonhole Making Machine	9. Making Buttonholes	Reece — The Reece Buttonhole Machine Co.
Buttonhole Finishing Machine	10. Finishing Buttonholes	Reece — The Reece Buttonhole Machine Co. Singer — Singer Sewing Mach. Co.
None	11. Barring Button Fly at Bottom 12. Marking Top for Buttons (Hand Work)	Singer — Singer Sewing Mach. Co.
None	13. Attaching Buttons	Morley — Singer Sewing Mach. Co. R & M — Peerless Machinery Co. Singer — Singer Sewing Mach. Co. Universal — Elliott Mfg. Co. Elliott — Elliott Mfg. Co. Heaton Peninsular — Elliott Manufacturing Co. Reece — The Reece Buttonhole Machine Co.

Women's Goodyear Welt Gun Metal, Cut-off Toe, Fox Blucher.

Cutting Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues 2. Sorting (Hand Work)	Parsons'— Parsons Mchy. Co. Seelye — Seelye Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	2a. Crimping Vamps	Lockett — Lockett Crimping Machine Co.
Ideal Clicking Mach. Improved Gearless Sole Cutting Machine Imp. Geared Sole Cutting Machine	3. Cutting Doublings for Light Uppers	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Mchy. Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Hand Power — Shawmut Mchy. Co. Simplex Cloth Backing Mach.— Boston Last Co. Davis Electric Taping Machine — The Davis Sewing Machine Co. Ft. Power — Shawmut Machinery Co.
	5. Casing (Dividing Sizes to match Tags) (Hand Work)	
Ideal Clicking Machine Improved Gearless Sole Cutting Machine Improved Geared Sole Cutting Machine	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Mfg. Co.
	Stitching Room.	
	11. Checking work into room (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine Pluma Skiving Machine	13. Skiving Parts of Uppers	Universal — Peerless Machinery Company Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce Amazeen Type — A. Johnson & Sons " " — Donnelly Machine Company
Snipping Machine: Booth Sandal	13a. Snipping Preparatory to Folding	Power — Boston Machine Wks. Co. Hart — Hamel Shoe Mchy. Co. Boston (6 ft. Power Types) — Boston Machine Works Co. Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mach. Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Economy — Peerless Mchy. Co. Duplex — Peerless Mchy. Co. New York — Boston Machine Wks. Company Snipping & Cementing Machine — Boston Machine Works Co.
None	15. Folding Front Edges of Tops	New Vamp — Boston Machine Wks. Co. Foot Power — Boston Machine Wks. Co. Boston — Boston Machine Wks. Co. Booth " " " " Dunn — " " " " Rapid Hand Method — Perley R. Glass Co. Straight Edge — American Worsted Machinery Co. Lufkin — R. H. Lufkin New Cylinder — Perley R. Glass Company
None	16. Closing Tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
Rapid Seam Rubbing Machine	16a. Seam Rubbing	Hand Method — Shawmut Mchy. Co. Champion — Coburn & Lawrence Co. Boston — Boston Machine Wks. Co. Union — " " " "
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Metropolitan — The Metropolitan Sewing Machine Company Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
None	20. Stamping sizes and Case Number on Cloth Linings	Power Lining Marking Machine — Markem Machine Co.
		Various Hand Devices
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mch. Co.
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Machine Company
Embossing Machine Model B	23a. Embossing Top Faces	Simplex — Boston Last Co.
		Universal — Markem Machine Co.
Embossing Machine		Silver King — " " "

Machines of U. S. M. Co. Model R	Operations	Machines of other Dealers
		Freeman — The Louis G. Freeman Company
None	24. Closing Linings to Top, Back to Back	Perkins — Perkins Machinery Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Mach. Company
	25. Cementing Tops (Hand Work)	
Columbia Beading Machine	26. Turning Edge on Beading Machine	Monarch — Boston Mach. Wks. Co. Boston — " " " "
Victor Beading		Hart — Hamel Shoe Mchy. Co.
None	27. Undertrimming, Stitching around Top from Nose to Nose, and Trimming off Surplus Facings	Nangle — J. H. Nangle Singer — Singer Sewing Mach. Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Machine Co.
	27a. Blacking Front of Tops if raw edges	
None		Coburn — Coburn & Lawrence Co. Peerless — Peerless Machinery Co.
Duplex Eyeletting Mach. Perfection Eyeletting Mach. Universal Pwr. Eyeletting Mach. Merrick Pwr. Eyeletting Mach. Samson Pwr. Eyeletting Mach. Power Eyeletting Mach. Cameo Ft. Pwr. Eyeletting Mach. Vulcan Ft. Pwr. Eyeletting Mach.	28. Eyeletting	Peerless Rapid — Peerless Mchy. Company Power — Geo. Knight & Co. Ft. Power Gang — Geo. Knight & Co. Peerless Gang — Peerless Mchy. Co. "A" Machine — Am. Worsted Mchy. Co. "B" Machine — Am. Worsted Mchy. Co. Monitor — Am. Worsted Mchy. Co. Eureka — " " " "
	29. Marking Vamp for Toe Stiffening (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	30. Stitching Toe Stiffening and Water-proof Material to Toe of Vamp	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co.
Royal Perforating Mach. Model B Stanbon Perforating Mach. Model M	31. Perforating Tip	Hart #6 — Hamel Shoe Mchy. Co. Hart Mod. A.—Hamel Shoe Mchy. Co. Barber — L. L. Barber & Co. American — Am. Worsted Mchy. Co. Peerless — Peerless Mchy. Co. Punch Feed — Hamel Shoe Mchy. Co. Johnson — A. Johnson & Sons
None	32. Stitching Tip to Vamp	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. No. 3 — Union Lockstitch Co. Davis — The Davis Sewing Mch. Co.
None	33. Stitching Tongue between Vamp and Vamp Lining	Singer — Singer Sewing Mch. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
None	34. Vamping	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Mach. Company
None	35. Bracing Corner of Top to Vamp	Singer — Singer Sewing Mach. Co.
Ensign Lacing Machine Ellis Wire Lacer	36. Lacing Uppers	Rochester Lacer — Boston Machine Works Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	37. Casing Uppers (Hand Work)	
	38. Inspecting Uppers. (Hand Work)	
	Sole Leather Room.	
	39. Moistening Leather in sides (Hand Work)	
Imp. Gearless Sole Cutting Machines	40. Cutting Outersoles, Innersoles, Half Soles, Counters and Toplifts	Eclipse — Parsons Machinery Co.
Imp. Baby Sole Cutting Machine		Seelye — Seelye Mfg. Co.
		Tower — Tower Bros.
		Knox — Quarmby & Hilliker
Victor Rolling Machine	41. Preparing Bellies, Shoulders and Remnants for Cutter; (rolling, splitting and flexing)	Seelye — Seelye Mfg. Co.
Improved Rolling Machine		Knox — Quarmby & Hilliker
		Busfield — Jas. Busfield
Summit Splitting Mach.		Knox — Quarmby & Hilliker
		Hawkins — Seelye Mfg. Co.
		Baby — J. S. Wheeler & Co.
Improved Gearless Sole Cutting Machines	42. Cutting Heel Lifts	Eclipse — Parsons Machy. Co.
		Seelye — Seelye Mfg. Co.
		Tower — Tower Bros.
Wedge Lift Cutting Machine		Knox — Quarmby & Hilliker
		Young Wedge Lift Cutting Machine — W. J. Young Machinery Co.
Centennial Splitting Machines	43. Evening Heel Lifts	Knox — Quarmby & Hilliker
		Hawkins — Seelye Mfg. Co.
Summit Splitting Machines		Baby — J. S. Wheeler & Co.
Champion Heel Lift Skiving Machine	43a. Gouging Heel Lifts	Young — W. J. Young Mchy. Co.
		Bostock — Thos. Bostock & Sons
Pyramid Heel Building Machine	44. Building Heels	Young (Foot Power) — W. J. Young Machinery Co.
Heel Building Mach. Mod. R		Grover — W. J. Young Machy. Co.
		White — F. H. White & Co.
		Bostock — Thos. Bostock & Sons
		Bosworth — W. T. Bosworth
		Fortuna — Fortuna Machine Co.
		Knight — Geo. Knight & Co.
		Pieced Heel — Parsons Mchy. Co.
Handy Heel Press	44a. Pressing Heels	Seelye — Seelye Machy. Co.
Automatic Heel Compressing Machine Mod. #4	45. Compressing Heels	Heel Compressing Machine — W. J. Young Machinery Co.
		Heel Compressing Machine — Gimson & Co., Ltd.
Automatic Heel Compressing Ma-		Knox — Quarmby & Hilliker

Machines of U. S. M. Co. chine Mod. #5	Operations	Machines of other Dealers
		Heel Compressing Mach.— Nolle's Works
	46. Placing Heels in Boxes ready for use (Hand Work)	
Summit Splitting Machs.	47. Evening Outersoles	Knox — Quarmby & Hilliker Hawkins — Seelye Mfg. Co. Nichols — Lacene Mfg. Co. Baby — J. S. Wheeler & Co.
Victor Rolling Machine	48. Rolling Outersoles	Knox — Quarmby & Hilliker
Improved Rolling Machine		Busfield — Jas. Busfield Seelye — Seelye Mfg. Co.
	49. Sorting Outersoles (Hand Work)	
	50. Matching Cut Stock with Tags (Hand Work)	
Eagle Sole Stamping Machine	51. Stamping Sizes on Soles	Nichols Grading Machine — Lacene Manufacturing Co. Various Hand Devices
	52. Casing Soles for Sizes and Pairs (Hand Work)	
	53. Stamping Case Number on Top Soles (Hand Work)	
Apex Feather Edge & Shank Reducing Machine Goodyear Outsole Channel Shank Reducing Machine Rotary Feather Edge & Shank Reducing Machine	54. Reducing Shanks	Rapid — Theo. Ringerbach Knight — Geo. Knight & Co. American — American Worsted Machinery Co.
American Twin Sole Moulding Machine Single Sole Moulding Machine	55. Moulding Outsoles (if desired)	Knox — Quarmby & Hilliker C & J — The Boylston Mfg. Co. Hawkins — Seelye Mfg. Co.
	56. Sorting Innersoles (Hand Work)	
	57. Matching Innersoles with Tags (Hand Work)	
Planet Sole Rounding Machine	58. Rounding Innersoles	Julian — The Boylston Mfg. Co. Improved Loewer — Consolidated Rotary Rounder Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Ross — Consolidated Rotary Rounder Co.
Insole Lip Cutting, Scoring & Sizing Mach. Eagle Sole Stamping Mch.	59. Stamping Sizes on Innersoles	Nichols Grading Machine — Lacene Manufacturing Co.
		Hand Devices
	60. Casing Innersoles (Hand Work)	
Goodyear Channeling Mch. Goodyear Universal Channeling Machines	61. Channeling Innersoles	Channeling Machine (Duplessis) — The R. H. Long Mchy. Co., Inc. Haverhill — Turn Channeler — Haverhill Shoe Mchy. Co. Hamel — Hamel Shoe Mchy. Co.
Goodyear Insole Toe Snipping Machine	62. Cutting Channel of Innersoles for Turning	Flap Slashing Mach.— Boston Machine Works Co.
Insole Lip Cutting, Scoring & Sizing Mach.	(Largely done by hand)	Insole Snipping & Pinking Mach.— Boston Machine Works Co.
Goodyear Flexible Sole Mch. (Zeigler) Goodyear Power Flexible Innersole Mach. Mod. XB Goodyear Flexible Sole Machine (Power)	63. Flexing Innersoles (if Necessary)	
	64. Wetting Innersoles (Hand Work)	
Goodyear Lip Turning Machine Goodyear Lip Turning Machine Mod. X Goodyear Lip Turning & Slashing Machine	65. Turning Channels	Lip Turning Machine — Haverhill Shoe Machinery Co. American — American Worsted Machinery Co. Knight — Geo. Knight & Co. Duplessis — Hamel Shoe Machinery Company Long — The R. H. Long Machinery Company, Inc.
	66. Finishing Channel Shoulders (Hand Work)	
	67. Inspecting Channels (Hand Work)	
	68. Packing Innersoles in Boxes with counters ready for Laster (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	69. Matching Innersoles and Counters with Uppers (Hand Work)	
Goodyear Power Welt Grooving & Beveling Machine	70. Grooving & Beveling Welting	Haverhill — Haverhill Shoe Machinery Co. Long — The R. H. Long Mchy. Co., Inc. Hamel — Hamel Shoe Machinery Company

IF REINFORCED INNERSOLES.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Channeling Mach. Goodyear Universal Channeling Machine (Gem) Economy Insole Channeling Machine	70a. Channeling Economy & Gem Innersole	Various shoe manufacturers, e. g., W. H. McElwain & Co. and A. H. Berry Shoe Co., make special types of reinforced innersoles and have machine of their own for the purpose Channeling Machine — The R. H. Long Mchy. Co., Inc. (Gem) Haverhill — Haverhill Shoe Mchy. Co. (Gem) Hamel — Hamel Shoe Machy. Co. (Gem)
At toe — Goodyear Insole Toe Snipping Machine At shank — Hand work until recently (But see Operation 70d below) Insole Lip Cutting, Scoring, Sizing Mach	70b. Cutting Flap of Gem Innersole for Turning	See Note above under 70a. Flap Slashing Mach.— Boston Mch. Works Co. Insole Snipping & Pinking Mach.— Boston Machine Wks. Co.
Economy Insole Wetting Machine Mod. X	70c. Wetting Innersole (Until recently done by hand)	See note above under 70a.
Gem Lip Turning Mach. Goodyear Lip Turning & Slashing Machine (This machine also cuts the flap — Operation 70b) Goodyear Lip Turning Mch. Mod. X	70d. Turning Lip of Innersole	Lip Turner — Haverhill Shoe Machinery Co. American — Am. Worsted Mchy. Co., Knight — Geo. Knight & Co. Duplessis — Hamel Shoe Mchy. Co. Duplessis — Hamel Shoe Mchy. Co. Long — The R. H. Long Mchy. Co. Inc.

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Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	70e. Heating and Placing Gem Canvas	The various rubber companies which supply coated or prepared canvas, viz, The Clifton Manufacturing Co., The Plymouth Rubber Co., and the Walpole Shoe Supply Co., furnish the machine used for these operations
Gem Flexible Innersole Machine	70f. Forming and Trimming Canvas to Shoulder of Innersole	See note above under 70n.
Economy Reinforcing Machine		
None		Rib Tighteners or Hardeners — Plymouth Rubber Co. Walpole Shoe Supply Co. (These machines complete the reinforcing operation)
	Lasting Room.	
	71. Putting up Lasts on Racks (Hand Work)	
Staple Tacking Mch.	72. Tacking Innersoles to Lasts	Freeman Insole Tacker — The Louis G. Freeman Co.
USMC Innersole Tacking Machine No. 1.		
Rex Assembling Mach. Mod. E	73. Assembling (Many Manufacturers assemble by hand work)	
Rex Pulling Over Mach. Mods. A & C	74. Pulling over Uppers	Atlas — Atlas-Werke Pohler & Co. Victor — Nolle's Works Moenus — Moenus Machine Wks. Pulling-over — Ward & Gent
Consolidated Hand Method Lasting Machine, Welt, Side.	75. Lasting Sides of Shoes	Welt Lasting Mach.— Gimson & Co. Consolidated Type — Standard Engineering Co. Consolidated Type — Atlas-Werke Pohler & Co.
No. 5 USMC Lasting Mach. Ideal Lasting Machine Chase Lasting Machine Consolidated Hand Method Laster (Welt Machine)	76. Lasting	"Standard Rotary Rapid Lasting Machine"— Standard Rotary Machine Co., Ltd. Lasting Machine (Bed Type) — Atlas-Werke Pohler & Co. Lasting (Bed Type) Machine — The R. H Long Mchy. Co., Inc. Consolidated Type Laster for Welt & McKay Work — The Standard Engineering Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Welt Lasting Mch.— Gimson & Co., Ltd. "Bed Type"— Gimson & Co., Ltd. Victor — Nolle's Works Boston Lasting Mach.— A. Johnson & Sons "Bed Type"— Standard Rotary Machine Co., Ltd. Freeman Toe — The Louis G. Freeman Co. Freeman Heel Seat — The Louis G. Freeman Company Lasting Machine — Ward & Gent Bed Type — The Boylston Mfg. Co. Consolidated Type — Atlas-Werke Pohler & Co.
	77. Inspecting and Crowning (Hand Work)	
Rex Upper Trimming Machine Mod. H.	78. Upper Trimming (Done by hand in many factories)	
	Bottoming Room	
Goodyear Tack Pulling & Resetting Machine Goodyear Upper Tack Pulling Machine (Pulling only) Rapid Tack Pulling Mach.	79. Pulling Tacks & Resetting Tacks (Many manufacturers prefer to perform the setting and some the pulling also by hand)	The K. P. (Krentler-Pym) Tack Puller & Lifter — The Louis G. Freeman Co.
Goodyear Welt & Turn Shoe Machine Goodyear Welt & Turn Shoe Machine Mod. G Goodyear Welt & Turn Mach. Mod. K Goodyear Universal Machine	80. Welting	Haverhill Turn Sewer & Welter — Haverhill Shoe Machy. Co. Welt & Turn Sewer — Hamel Shoe Machinery Co. Universal Welter — Universal Shoe Machinery Co. Welt & Turn Sewing Mach.— Ward & Gent Welt & Turn Sewer — The R. H. Long Machinery Co., Inc. Welt & Turn Sewing Mach.— A. Johnson & Sons Welt Sewing Mach.— The Standard Engineering Co. Welt Sewing Machine — The Boylston Manufacturing Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Universal Inseam Trimming Machine Rapid Inseam Trimmer (lease) Mod. K	81. Inseam Trimming (in many factories manufacturers prefer to have this operation performed by hand)	Keighley Rapid Inseam Trimmer — The Keighley Co., Inc. (sale) Johnson — A. Johnson & Sons
Keighley Rapid Inseam Trimmer (Lease)	82. Trimming and Butting Welt Ends (In most factories manufacturers prefer to have this operation performed by hand)	Keighley Rapid Inseam Trimmer — The Keighley Co., Inc. (sale)
Goodyear Insole Tack Pulling Machine	83. Pulling Insole Tacks	The Combination Insole & Side Tack Puller — The Louis G. Freeman Co.
Goodyear Welt Beating & Slashing Machine Goodyear Universal Welt Beating Machine (Beating Only)	84. Beating and Slashing Welts	Beating Machine — The Standard Rotary Machine Co., Ltd. (Beating Only) Long — The R. H. Long Machy. Co., Inc. (Beating only) Duplessis (Beating only) — Hamel Shoe Machinery Co. Boylston — The Boylston Manufacturing Co. Haverhill — Haverhill Shoe Mchy. Company
Boston Tacking Mach. Taper Nail Tacking Mach. (S. H.) Staple Fastening Mach. Shank Piece Sticking Mach.	85. Tacking in Shanks (usually hand work)	Freeman Insole Tacker — The Louis G. Freeman Co. Tacking Mach.— A. Johnson & Sons Victor — Victor Shoe Mchy. Co.
None	86. Filling Forepart (In some factories manufacturers have preferred to perform this operation by hand)	Besto Filling Machine — North American Chemical Co.
Rapid Rotary Cementing Machine	87. Cementing Soles	Brown — Hazen-Brown Co. Haverhill — Universal Supply Co. Julian — Boston Machine Wks. Co.
	88. Wetting Soles (Hand Work)	
Star Channel Cementing Machine (Fitted for Cementing Bottoms)	89. Cementing, Filling and Welts	Union — The Boylston Mfg. Co. Victor — Nolle's Works
Goodyear Improved Turn Sole Laying	90. Laying Soles	Long — The R. H. Long Mchy. Co., Inc.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Machine Mod. C. Goodyear Improved Sole Laying Machine		Sole Layer — Standard Rotary Machine Co., Ltd. Atlas (2 Types) — Atlas-Werke Pohler & Co. Gimson — Gimson & Co., Ltd. Standard — The Standard Engineering Company
Grip Clinch Machine Loose Nailing Mach. No. 2 Loose Nailing Mach.	91. Nailing Heel Seats	Long — The R .H. Long Mchy. Co., Inc. Duplessis Loose Nailer — Hamel Shoe Machinery Co. Universal Loose Nailing Mach.— Universal Shoe Machinery Co. Universal Sole Clinching — Universal Shoe Machinery Co. Victor — Victor Shoe Machy. Co.
Goodyear Universal Rounding & Channeling Mach. Mod. E Goodyear Universal Rounding & Channeling Mach.	92. Rough Rounding and Channeling	"National" Automatic Rounder — Standard Rotary Mach. Co., Ltd. Long National (does not channel)— The R. H. Long Mchy. Co., Inc. Victor — Victor Shoe Mchy. Co. Haverhill — Haverhill Shoe Mchy. Company Arnold (Channel only) — The R. H Long Machinery Co., Inc.
Goodyear Channel Opening Machine Goodyear Channel Opening Machine Mod. X	93. Opening Channels	Opening Mch.— Standard Rotary Machine Co., Inc.
Goodyear Outsole Rapid Lockstitch Machine Mod. M Goodyear Outsole Rapid Lockstitch Machine Goodyear Outsole Rapid Lockstitch Machine Mod. K	94. Stitching	Waldorf —The R. H. Long Mchy. Co., Inc. Universal Stitching Mch.— Universal Shoe Mchy. Co. Union High-Speed Stitching Machine — Union Lockstitch Co. Standard — Standard Rotary Mch. Co., Ltd. Hamel — Hamel Shoe Mchy. Co. Boylston — The Boylston Mfg. Co. Victor Imp.— Victor Shoe Mchy. Company Fleming — Landis Mch. Co. Larsen — Larsen Mchy. Co. Simplex — James Clark Lea. Co. Leger — C. V. Engstrom Co. Atlas — Atlas-Werke Pohler & Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		High Speed — The Standard Engineering Company
		Johnson — A. Johnson & Sons
Star Channel Cementing Machine	95. Cementing Channels	Union — The Boylston Manufacturing Company
Goodyear Channel Laying Machine	95a. Laying Channels	Channel Laying Machine — Standard Rotary Machine Co., Ltd.
Goodyear Channel Laying Machine Mod. X		Standard — The Standard Engineering Co.
		Knight — Geo. Knight & Co.
		American — American Worsted Machinery Co.
Goodyear Automatic Sole Leveling Machine	96. Leveling	Automatic Twin Leveler — Standard Rotary Machine Co., Ltd.
		Webster Welt & Turn — Haverhill Shoe Machinery Co.
Goodyear Automatic Sole Leveling Machine Mod. C		Eclipse — The R. H. Long Mchy. Co., Inc.
Goodyear Welt & Turn Leveling Machine		Ward & Gent — Ward & Gent
		Hamel — Hamel Shoe Mchy. Co.
Welt Trimming & Stitch Rubbing Machine	96a. Stitch Rubbing and welt trimming (if desired)	None
Goodyear Outsole Stitch Rubbing Machine		
Hadaway Stitch Separating Machine	97. Separating Stitches	Long Stitch Separator — The R. H. Long Machinery Co., Inc.
		Stitch Separator — Standard Rotary Mach. Co., Ltd.
		Haverhill — Haverhill Shoe Mchy. Company
Goodyear Heel Seat Rounding Machine	98. Rough Rounding Heel Seats	"Freeman Heel Seat Rounder" (Krentler Heel Seat Machine) — The Louis G. Freeman Co.
Heel Seat Rough Rounding Machine Mod. B		
Goodyear Rounding & Randing Machine		
American Lightning Nailing Machine	99. Heeling	Pettengill Heeling Machine — Haverhill Shoe Machinery Co.
McKay Automatic Heel, Loading & Attaching Machine Mod. B		Johnson — A. Johnson & Sons
		Nolle — Nolle's Works.
		Ward & Gent — Ward & Gent
		National — The R. H. Long Machinery Co., Inc.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Universal Slugging Mach.	100. Slugging	Long — The R. H. Long Machinery Company, Inc. Duplessis Slugging Machine — Hamel Shoe Machinery Co. Boylston — The Boylston Mfg. Co.
Ultima Heel Trimming Machine Busell Heel Trimming Machine McKay Heel Trimming & Randing Machine	101. Heel Trimming	Heel Trimming Machine — Haverhill Shoe Machinery Co. McDowell Heel Trimming Machine — McDowell's Machinery Co. Johnson — A. Johnson & Sons Long — The R. H. Long Machinery Company, Inc. Tower — Tower Bros.
Heel Breasting Mach. Mod. R Imperial Heel Breasting Machine Mod. B Heel Breasting Machine Mod. W	102. Breasting Heels	Haverhill — Haverhill Shoe Machinery Co. Rowan — Hamel Shoe Machinery Co. W & H — Donnelly Machine Co.
Edge Trimming Mach. Mod. A Edge Trimming Mach, Mod. B Edge Trimming Mach. Mod. E	103. Trimming Foreparts	Donnelly — Donnelly Machine Co. Rowan — Hamel Shoe Machinery Co. Briggs-Belmar — Briggs-Belmar Co. Tower — Tower Bros. Long — The R. H. Long Mchy. Co., Inc. Haverhill — Haverhill Shoe Mchy. Company
Goodyear Jointing Machine	104. Jointing (Heels filled at this point if necessary.) Some Manufacturers prefer to have this operation performed by hand as was done universally until recently (If heels are filled at this point it is a hand operation)	
Heel Scouring Mach. Mod. R Heel Scouring Mach. Mod. X Heel Scouring Mach. Carver	105. Scouring Heels (two scourings)	Rowan — Hamel Shoe Machinery Co. Buzzell — J. G. Buzzell & Co. Globe — The Boylston Mfg. Co. Tower — Tower Bros. Heel Scouring Machine — A. Johnson & Sons Carver Heel Scouring Machine — Donnelly Machine Co.
Heel Breast Scouring Mch. H	106. Scouring Heel Breasts	Buzzell — J. G. Buzzell & Co. Donnelly — Donnelly Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Heel Breast Scouring Mch. N		Freeman — The Louis G. Freeman Co. Rowan — Hamel Shoe Machinery Co. Dougherty — Frank B. Dougherty Bendix — George Bendix
	107. Blacking Forepart Edges. (Hand Work)	
Rotary Edge Setting Mach. Mod. C. Rotary Edge Setting Mach. Mod. K Twin Edge Setting Mach. Mod. R Single Edge Setting Mach. Mod. M	108. Setting Edges (2 Settings)	Freeman — The Louis G. Freeman Company Union — The Boylston Mfg. Co. Beaudry — Beaudry Machine Co. Union (Single) — The Boylston Mfg. Co. Vici Edge Setting Mach.— Independent Shoe Machy. Co. Rotary Edge Setting Mach. — Donnelly Machine Co. Edge Setting Mach.— A. Johnson & Sons Rotary — Tower Bros.
Crest Heel Blacking Machine	109. Blacking Heel Edges	Boylston — Boylston Mfg. Co. Star— Worcester Mchy. Co.
None (Xpedite Finish-Machine put out by United Xpedite Finishing Co.)	110. Heel Burnishing	Harlow Heel Burnishing Mach.— Harlow Shoe Finishing Mach. Co. Boylston (or Copeland) — The Boylston Mfg. Co. Apex — Worcester Mchy. Company Matson — Matson-Hoyt Mach. Co. Beckman — A. Beckman Keyco Universal Finishing Mach.— The Keighley Co., Inc.
	111. Inspecting and Crowning (Hand Work)	
	Finishing Room.	
Buffing Machine Mod. S Buffing Machine Mod. G	112. Buffing Bottoms	Donnelly — Donnelly Mach. Co. Tower — Tower Bros. Buzzell — J. G. Buzzell & Co. Rowan — Hamel Shoe Mchy. Co. Giant — The Boylston Mfg. Co. Webster — The Boylston Mfg. Co. Hawkins — Seelye Manufacturing Company
	113. Pulling Lasts (Hand Work)	
None	114. Naumkeaging Shanks (Buffing)	Naumkeag (Single Head) — Naumkeag Buffing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Naumkeag (Twin Head) — Naumkeag Buffing Machine Co. Pine — J. A. Pine Naumkeag (Single Head) — A. Johnson & Sons
	115. Marking Shanks (Hand Work) 116. Staining Foreparts (Hand Work) 117. Blacking Shanks and Toplifts (Hand Work)	
Climax Finishing Shafts Climax Polishing Mch. Mod. X Climax Finishing Mch. Mod. X Climax Finishing & Brush Cleaning Mch. Mod. X	118. Polishing Foreparts	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Company Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mchy. Co. Special — The Special Mchy. & Tool Co. Johnson — A. Johnson & Sons. Keighley — The Keighley Co., Inc. American — The American Tool & Machine Co. Universal — Universal Shoe Mchy. Company
Climax Finishing Shafts Climax Finishing Mch. X Climax Polishing Mch. Mod. X Climax Finishing & Brush Cleaning Mch., Mod. X	119. Polishing Shanks and Toplifts	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Company Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mchy. Co. Special — The Special Mchy. & Tool Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Johnson — A. Johnson & Sons Keighley — The Keighley Co., Inc. American — The American Tool & Machine Co. Universal — Universal Shoe Mchy. Company
	120. Wheeling Shanks (Hand Work)	
Regent Stamping Machine Stamping Machine Mod. R	121. Stamping Foreparts	Star — O. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
Stitch & Upper Cleaning Machine Booth Shaping & Cleaning Machine	121a. Cleaning Uppers	Webster — The Boylston Mfg. Co Keighley — The Keighley Co., Inc.
	Treeing Room.	
	122. Placing Heel Pods and Tack Detecting (Hand Work)	
Miller Twin Treeing Machine Formerly but not now leased by United Co.	123. Treeing	Copeland — Boylston Mfg. Co. Improved Flexor — Boston Last Co. " " (S Arm) " " " Pneumatic — W. J. Young Mchy. Co. Treeing Mch.— A. Johnson & Sons Hobbs & Lewis — Hobbs & Lewis, Ltd. Hobbs & Lewis — Hobbs & Lewis, Ltd.
	124. Lacing Shoes (Hand Work)	
	125. Dressing Shoes (Hand Work)	
Climax Finishing Shafts	126. Brushing Edges	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Company Landis — Landis Machine Co. Specialty — Specialty Shoe Mchy. & Tool Co. Long — The R. H. Long Machinery Company, Inc. Donnelly — Donnelly Mach. Co. American — American Worsted Machinery Co. Victor — Victor Shoe Mchy. Co. Special — The Special Mchy. & Tool Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Johnson — A. Johnson & Sons. Keighley — The Keighley Co., Inc. American — The American Tool & Machine Co. Universal — Universal Shoe Mchy. Company
	127. Inspecting and Crowning (Hand Work)	
	Packing Room.	
	128. Labeling Cartons (Hand Work)	
None	129. Marking Cartons	Markem — Markem Machy. Co.
	130. Matching Cartons, Wood Cases and Shoes (Hand Work)	
	131. Packing Shoes in Cartons (Hand Work)	
	132. Boxing (Hand Work)	
	133. Stenciling Cases (Hand Work)	
	134. Numbering Cases (Hand Work)	
	135. Nailing Covers to Cases (Hand Work)	

ADDITIONAL OPERATIONS.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room:

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Parsons'— Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Mach. Counter Skiving Mach. Mod. W & S	3. Skiving Counters	Stewart — Stewart Bros. Young — W. J. Young Mchy. Co. Hartwell — L. L. Hartwell Moenus — Moenus Mch. Works

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
None	4. End Finishing Counters	Thurston — W. J. Young Mchy. Co. Stewart — Stewart Bros. Moenus — Moenus Mach. Works
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Mchy. Co.
None	6. Rolling and Waxing Counters	Stewart — Stewart Bros. Young — W. J. Young Machinery Company
None	7. Moulding Counters	Young — W. J. Young Mchy. Co. Stewart — Stewart Bros.

WOMEN'S GOODYEAR WELT.

For Button Shoes the following operations should be added in the Stitching Room:

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
None	1. Closing outside of Fly to top	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Machine Co. W & W — " " " " Metropolitan — The Metropolitan Sewing Machine Co. Puritan — Puritan Mfg. Co. No. 3 — Union Lockstitch Co. Davis — The Davis Sewing Machine Company
Rapid Seam Rubbing Machine	2. Rubbing Button-fly Seam	Champion — Coburn & Lawrence Co. Boston — Boston Mach. Works Co. Union — " " " " Hand Method — Shawmut Machinery Company
None	3. Staying Button-fly Seam	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Mach. Company
None	4. Cementing in Button-fly Stay	Wheeler — Brockton Stay Co.
None	5. Closing Fly Lining to cloth lining	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " "

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
None	6. Closing Fly outside and lining back to back	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mch. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Co.
Columbia Beading Mach. Victor Beading Mach. Turning & Beading Mach.	7. Turning and Cording Button Fly	Monarch — Boston Mach. Wks. Co. Boston — " " " " Hart — Hamel Shoe Machinery Co. Nangle — J. H. Nangle
None	8. Stitching first row around Fly	Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
None	8a. Marking for Buttonholes	Adams — Adams Manufacturing Co. Button Making Machine — Shoe Manufacturers' Supply Co.
Buttonhole Making Machine	9. Making Buttonholes	Reece — The Reece Buttonhole Machine Co.
Buttonhole Finishing Machine (New machine, none yet leased)	10. Finishing Buttonholes	Reece — The Reece Buttonhole Machine Company Singer — Singer Sewing Mach. Company
None	11. Barring Button Fly at bottom 12. Marking Top for Buttons (Hand Work)	Singer — Singer Sewing Mach. Company

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
None	13. Attaching Buttons	Morley — Singer Sewing Mach. Company R. & M.— Peerless Machinery Co. Singer — Singer Sewing Machine Company Universal — Elliott Mfg. Co. Elliott — Elliott Manufacturing Company Heaton-Peninsular — Elliott Manufacturing Co. Reece — The Reece Buttonhole Machine Co.

Women's Turn Gun Metal, Cut-off, Toe, Fox Blucher.

Cutting Room

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Ideal Clicking Machine	1. Cutting Vamps, Tops, Foxings & Tongues.	Parsons'— Parsons Machinery Co. Seelye — Seelye Mfg. Co.
	2. Sorting (Hand Work)	
None	2a. Crimping Vamps	Lockett — Lockett Crimping Machine Co.
Improved Gearless Sole Cutting Machine Ideal Clicking Machine Imp. Geared Sole Cutting Machine	3. Cutting Doublings for Light Uppers.	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Hub Lining Cementing Machine	4. Doubling	K & K — Geo. Knight & Co. Peerless — Peerless Mchy. Co. Mathey — Coburn & Lawrence Co. Weber — J. H. Nangle Foot Power — Shawmut Mchy. Co. Hand " — " " " " Simplex Cloth Backing Machine — Boston Last Co. Davis Electric Taping Machine — The Davis Sewing Machine Co.
	5. Casing (Dividing Sizes to match Tags) (Hand Work)	
Improved Gearless Sole Cutting Ma-	6. Cutting Cloth Linings and Doublers	Eclipse — Parsons Machinery Co. Seelye — Seelye Mfg. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
chine		Tower — Tower Bros.
Ideal Clicking Machine		Knox — Quarmby & Hilliker
Imp. Geared Sole Cutting Machine		
Improved Gearless Sole Cutting Machine Mods. J & K	7. Cutting Box Toe Material	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
Improved Gearless Sole Cutting Machine Mods. J & K	8. Cutting Reinforcement and Water-proof Material for Box Toe	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
	9. Assembling Cut Stock for Stitching Room (Hand Work)	
Ideal Clicking Machine	10. Cutting Heel Stays, Facings and Hook Stays	Parsons — Parsons Machinery Co. Seelye — Seelye Manufacturing Co.
	Stitching Room.	
	11. Checking work into room (Hand Work)	
	12. Checking Day Sheet and Division of Leather Parts for Skivers (Hand Work)	
Amazeen Skiving Machine	13. Skiving Parts of Uppers	Universal — Peerless Machinery Co.
Pluma Skiving Machine		Fortuna — Fortuna Machine Co. Pierce — C. S. Pierce Amazeen Type — A. Johnson & Sons " " — Donnelly Machine Company
Snipping Machine Booth Sandal	13a. Snipping Preparatory to Folding	Hart — Hamel Shoe Mchy. Co. Boston (6) Foot Power Types — Boston Machine Works Co. Power — Boston Mach. Wks. Co. Snipping & Cementing Machine — Boston Machine Works Co.
None	14. Stitching Eyelet Rows	Singer — Singer Sewing Mach. Co. Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Met. Sewing Machine Co.
None	14a. Cementing Edges of Uppers	Duplex — Peerless Machy. Co. Economy — " " "

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		New York — Boston Mach. Wks. Co.
		Snipping & Cementing Machine — Boston Machine Wks. Co.
None	15. Folding Front Edges of Tops	New Vamp — Boston Mach. Wks. Co.
		Foot Power — " " " "
		Boston — " " " "
		Booth — " " " "
		Dunn — " " " "
		Rapid Hand Method — Perley R. Glass Co.
		New Cylinder — Perley R. Glass Company
		Straight Edge — American Worsted Machinery Co.
		Lufkin — E. H. Lufkin
None	16. Closing Tops	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Company
		W & W — Singer Sewing Machine Company
		Union Special — Union Special Sewing Machine Co.
		No. 3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Davis — The Davis Sewing Mach. Company
Rapid Seam Rubbing Machine	16a. Seam Rubbing	Hand Method — Shawmut Mchy. Co.
		Champion — Coburn & Lawrence
		Boston — Boston Machine Wks. Co.
		Union — Boston Mach. Wks. Co.
None	17. Stitching Outside Stays	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Singer — Singer Sewing Machine Company
		W & W — Singer Sewing Machine Co.
		Union Special — Union Special Sewing Machine Co.
		#3 — Union Lockstitch Co.
		Puritan — Puritan Mfg. Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Davis — The Davis Sewing Machine Company
None	18. Closing Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Machine Company W & W — Singer Sewing Machine Co. Union Special — Union Special Sewing Machine Co. #3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	19. Stitching Foxings	Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company.
None	20. Stamping Sizes and Case Number on Cloth Linings	Power Lining Marking Machine — Markem Machine Co. Various Hand Devices
None	21. Stitching Eyelet Stays	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	22. Stitching Heel Stays and Closing Linings	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Machine Company
None	23. Stitching Top Facings to Linings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Machine Company
Embossing Machine Model B	23a. Embossing Top Faces	Simplex — Boston Last Co.
		Universal — Markem Machine Co.
Embossing Machine Model B		Silver King — " " "
		Freeman — The Louis G. Freeman Company
		Perkins — Perkins Machine Co.
None	24. Closing Linings to Top, Back to Back.	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Union Special — Union Special Sewing Machine Co.
		Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co.
		Standard — The Standard Sewing Machine Co.
		Metropolitan — The Metropolitan Sewing Machine Co.
		Davis — The Davis Sewing Mach. Co.
	25. Cementing Tops (Hand Work)	
Columbia Beading Machine	26. Turning Edges on Beading Machs.	Monarch — Boston Machine Wks. Co.
		Boston — " " " "
		Hart — Hamel Shoe Mchy. Co.
		Nangle — J. H. Nangle
None	27. Undertrimming, Stitching around Tops from Nose to Nose, and Trimming off Surplus facings	Singer — Singer Sewing Mach. Co.
		W & W — " " " "
		Metropolitan — The Met. Sewing Machine Company

Machines of U. S. M. Co.	Operations	Machines of other Dealers
None	27a. Blacking Front of Tops; if raw edges	Coburn — Coburn & Lawrence Co. Peerless — Peerless Mchy. Co.
Duplex Eyeletting Mach. Perfection Eyeletting Mach. Universal Pwr. Eyeletting Mach. Merrick Eyeletting Mach. Samson Eyeletting Mach. Power Eyeletting Mach. Cameo Ft. Pwr. Eyeletting Mach. Vulcan Ft. Pwr. Eyeletting Mach.	28. Eyeletting	Peerless Rapid — Peerless Mchy. Co. Peerless Gang — " " " Power — Geo. Knight & Co. Ft. Power Gang — Geo. Knight & Co. A. Mach.— Am. Worsted Mchy. Co. B. " " " " " Monitor — " " " " Eureka — " " " "
	29. Marking Vamps for Toe Stiffening (Hand Work)	
None	30. Stitching Toe Stiffening and Water-proof Material to Toes of Vamps	Singer — Singer Sewing Mach. Co. W & W — " " " " Union Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co.
Royal Perforating Machine Stanbon Perforating Machine	31. Perforating Tips	Hart #6 — Hamel Shoe Mchy. Co. " Mod. A — " " " Barber — L. L. Barber & Co. Johnson — A. Johnson & Sons American — American Worsted Machinery Co. Peerless — Peerless Mchy. Co. Punch Feed — Hamel Shoe Machy. Company
None	32. Stitching Tips to Vamps	Singer — Singer Sewing Mach. Co. W & W — " " " " Uuion Special — Union Special Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. #3 — Union Lockstitch Co. Davis — The Davis Sewing Machine Machine Co.
None	33. Stitching Tongues be-	Singer — Singer Sewing Mach. Co.

Machines of U. S. N. Co.	Operations	Machines of other Dealers
	tween Vamps and Vamp Linings	W & W — " " " " Union Special — Union Special Sewing Machine Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	34. Vamping	Singer — Singer Sewing Mach. Co. W & W — " " " " Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Mach. Company Union Special — Union Special Sewing Machine Co. No. 3 — Union Lockstitch Co.
None	35. Bracing corners of Tops to Vamps	Singer — Singer Sewing Machine Company
Ensign Lacing Mach. Ellis Wire Lacer	36. Lacing Uppers	Rochester Lacer — Boston Mach. Works Co.
	37. Casing Uppers (Hand Work)	
	38. Inspecting Uppers (Hand Work)	
	Sole Leather Room	
	39. Tempering Block Stock (Wetting) (Hand Work)	
Centennial Splitting Machine	40. Evening or Fleshing Block Stock	Hawkins — Seelye Mfg. Co.
Summit Splitting Machine		Nichols — Lacene Mfg. Co. Baby — J. S. Wheeler & Co. Knox — Quarmby & Hilliker
Planet Sole Rounding Machine	41. Rounding Outersoles	Julian — The Boylston Mfg. Co. Improved Loewer Rounding Mach. — Consolidated Rotary Rounder Company Ross — Consolidated Rotary Rounder Co.
Eagle Sole Stamping Machine	42. Stamping sizes on Outersoles	Nichols Grading Machine — Lacene Mfg. Co. Various Hand Devices
Krieg Splitting Mach. (Hand Power) Empire Splitting Mach.	42a. Splitting Heel of Outer sole for Louis Heel	Busfield — Jas. Busfield

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Channeling Mach.: Goodyear Turn & Insole Channeling Machines: Goodyear Universal	43. Channeling Outersoles	Channeling Mach.— The R. H. Long Machinery Co., Inc. Haverhill Turn Channeling Machine — Haverhill Shoe Machinery Co. Hamel — Hamel Shoe Machinery Company
Goodyear Turn & Insole Channeling Machine	44. Shank Reducing	Rapid — Theo. Ringenbach American — American Worsted Machinery Co. Knight — Geo. Knight & Co.
Goodyear Moulding Machine Goodyear Power Moulding Machine	45. Moulding down Edges of Outersoles	Turn Moulder — Haverhill Shoe Machinery Co. Turn Moulder — Hamel Shoe Machinery Co.
	46. Casing Stock (Hand Work)	
	47. Assembling Sole Leather Counters and uppers (Hand Work)	
	Lasting Room	
	48. Putting up Lasts on Racks (Hand Work)	
USMC Innersole Tacking Machine	49. Tacking Soles to Lasts	Freeman Insole Tacker — The Louis G. Freeman Co.
Assembling Machine Turn Shoe	50. Assembling and Lasting	
Goodyear Welt & Turn Shoe Machine Mod. C Goodyear Welt & Turn Shoe Mod. K McKay Turn Sewing Mach.	51. Stitching.	Haverhill Turn Sewer & Welter — Haverhill Shoe Machinery Co. Welt & Turn Sewer (Duplessis) — Hamel Shoe Machinery Co. Universal Welter — Universal Shoe Machinery Co. Welt & Turn Sewer — The R. H. Long Machinery Co., Inc. Welt & Turn Mch.— A. Johnson & Sons Welt & Turn Mach.— Ward & Gent " " " Sewing Mch.— The Standard Engineering Co. Turn Sewing (Little McKay)— George Hobbs Welt Sewing Mch.— The Boylston Mfg. Co.
	52. Pulling Tacks (Hand Work)	
Goodyear Turn	53. Uppers Trimming	

Machines of U. S. M. Co.	Operations (Hand work to some Extent)	Machines of other Dealers
Shoe Trimming Machine		
Goodyear Insole Tack Pulling Machine	53a. Pulling Sole Tacks	Freeman Combination Insole & Side Tack Pulling Machine — The Louis G. Freeman Co.
	54. Pulling Lasts (Hand Work)	
Heel Turning Machine Forepart Turning Mach.	55. Turning Shoes (Largely Hand Work)	
	56. Filling Shanks and Foreparts (Hand Work)	
Goodyear Re-Lasting Machine Consolidated Hand Method Turn Heel Seat Lasting Machine	57. Re-Lasting & lasting Heel Seats (Largely Hand Work)	Freeman Heel Seat Lasting Machine — The Louis G. Freeman Company
Loose Nailing Machine #2	58. Nailing Heel Seats	Long Loose Nailer — The R. H. Long Machinery Co., Inc. Duplessis Loose Nailer — Hamel Shoe Machinery Co. Universal Loose Nailing Machine — Universal Shoe Machinery Co. Universal Sole Clincher — Universal Shoe Machinery Co. Victor — Victor Shoe Machinery Company
Goodyear Welt & Turn Leveling Machine Star Leveling Machine Acme Leveling Machine	59. Leveling	Eclipse — The R. H. Long Mchy. Company, Inc. Ward & Gent — Ward & Gent Hamel — Hamel Shoe Mchy. Co. Webster Machine — Haverhill Shoe Machinery Company
	Bottoming Room.	
Edge Trimming Mach. A Edge Trimming Mach. B Edge Trimming Mach. E	60. Trimming Edges	Donnelly — Donnelly Machine Co. Rowan — Hamel Shoe Mchy. Co. Briggs-Belmar — Briggs-Belmar Co. Haverhill — Haverhill Shoe Mchy. Company Tower — Tower Bros. Long — The R. H. Long Mchy. Co., Inc.
	61. Blacking Edges (Hand Work)	

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Fudge Edge Machine	62. Setting Edges and Wheeling Top Edges	Two operations: (a) Wheeling Wheeler — E. L. Wheeler Holt — J. S. Holt & Co., Inc. Donnelly — Donnelly Mch. Co. (b) Edge Setting Freeman — The Louis G. Freeman Co. Union — The Boylston Mfg. Co. Beaudry — Beaudry Mch. Co.
Buffing Machine S Buffing Machine G	63. Buffing Shanks and Foreparts	Donnelly — Donnelly Machine Co. Tower — Tower Bros. Buzzell — J. G. Buzzell & Co. Rowan — Hamel Shoe Mchy. Co. Giant — The Boylston Mfg. Co. Webster — The " " " Hawkins — Seelye Mfg. Co.
None	63a. Buffing Shanks	Naumkeag (Double Head) — Naumkeag Buffing Machine Co. Naumkeag (Single Head) — Naumkeag Buffing Machine Co. Pine — J. A. Pine Naumkeag (Single Head) — A. Johnson & Sons
	64. Pulling Lasts and Cutting Lacers. (Hand Work)	
Premier Heel Pricking Mach. (Pricking before nailing high heel) American Lightning Nailing Machine McKay Automatic Heel Loading & Attaching Mach. Mod. B	65. Heeling	Pettengill Heeling Machine — Haverhill Shoe Machinery Co. Johnson — A. Johnson & Sons Nolle's — Nolle's Works Ward & Gent — Ward & Gent National — The R. H. Long Mchy. Co., Inc.
Alpha Wood Heel Nailing Machine (for wood heels)	(If wood heels, frequently attached by hand)	
Universal Slugging Mach.	66. Slugging	Long — The R. H. Long Mchy. Co., Inc. Duplessis — Hamel Shoe Mchy. Co. Boylston — The Boylston Mfg. Co.
Ultima Heel Trimming Machine McKay Heel Trimming & Randing Machine	67. Trimming Heels	Heel Trimming Machine — Haverhill Shoe Machinery Co. McDowell Heel Trimming Machine — McDowell Shoe Machinery Co. Johnson — A. Johnson & Sons

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Busell Heel Trimming Machine		Long — The R. H. Long Mchy. Co., Inc. Tower — Tower Bros.
Imperial Heel Breasting Machine Mod. B Heel Breasting Machines Mods. R & W	68. Breasting Heels	Haverhill — Haverhill Shoe Machinery Co. Rowan — Hamel Shoe Machinery Co. W & H — Donnelly Machine Co. Buzzell — J. G. Buzzell & Co.
	Finishing Room.	
	69. Applying Filling to Heels (Hand Work)	
Heel Scouring Machine Mod. R & X Carver Heel Scouring Machine	70. Scouring Heels (If heels are filled at this point, it is a hand operation)	Rowan — Hamel Shoe Machinery Co. Buzzell — J. G. Buzzell & Co. Globe — The Boylston Manufacturing Company Tower — Tower Bros. Johnson — A. Johnson & Sons Carver — Donnelly Machine Company
Heel Breast Scouring Machine Mods. H & N	71. Scouring Heel Breasts	Buzzell — J. G. Buzzell & Co. Donnelly — Donnelly Machine Co. Freeman — The Louis G. Freeman Company Rowan — Hamel Shoe Machinery Co. Dougherty — Frank B. Dougherty. Bendix — Geo. Bendix
Crest Heel Blacking Machine	72. Blacking Heels	Boylston — The Boylston Mfg. Co. Star — Worcester Machinery Co.
None (Xpedite Finishing Mach. put out by United Xpedite Finishing Co.)	73. Burnishing Heels	Harlow Heel Burnishing Machine — Harlow Shoe Finishing Machine Company Boylston (or Copeland) — The Boylston Mfg. Co. Apex — Worcester Machinery Co. Matson — Matson-Hoyt Machine Co. Beckman — A. Beckman Keyco Universal Finishing Mach.— The Keighly Co., Inc.
	74. Staining Foreparts (Hand Work)	
	75. Blacking Shanks and Toplifts (Hand Work)	
Climax Finishing Shafts Climax Polishing Mch. Mod. X	76. Polishing Foreparts	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Company

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Climax Finishing Mch. Mod. X Climax Finishing Brush & Cleaning Mch. Mod. X		Landis — Landis Machine Co. Specialty — Specialty Shoe Machinery & Tool Co. Long — The R. H. Long Shoe Machinery Co., Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. American — The American Tool & Machine Co. Victor — Victor Shoe Machinery Company Special — The Special Machy. & Tool Company Johnson — A. Johnson & Sons Keighley — The Keighley Co., Inc. Universal — Universal Shoe Mchy. Company
Climax Finishing Shafts	77. Polishing Shanks and Toplifts	Progressive — Progressive Shoe Machinery Co. Champion — Champion Shoe Mchy. Company Landis — Landis Machine Co. Specialty — Specialty Shoe Machinery & Tool Co. Long — The R. H. Long Shoe Machinery Co., Inc. Donnelly — Donnelly Machine Co. American — American Worsted Machinery Co. American — The American Tool & Machine Co. Victor — Victor Shoe Machinery Company Special — The Special Machy. & Tool Company Johnson — A. Johnson & Sons. Keighley — The Keighley Co., Inc. Universal — Universal Shoe Machy. Company
Regent Stamping Mach. Stamping Mach. Mod. B	78. Stamping Foreparts	Star — C. D. Wheeler Ellison — J. Ellison Holt — J. S. Holt & Co., Inc. Tower — Tower Bros.
Stitch & Upper Cleaning Machine Booth Shaping & Cleaning Machine	78a. Cleaning Uppers	Webster — The Boylston Mfg. Co. Keighley — The Keighley Co., Inc.

Treeing Room.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
	79. Sock Linings inserted (Hand Work)	
Miller Twin Treeing Machine, formerly but not now leased by the United Co.	80. Treeing	Copeland — The Boylston Mfg. Co. Imp. Flexor — Boston Last Co. " " (8 arm) " " " Pneumatic — W. J. Young Mchy. Co. Johnson — A. Johnson & Sons Hobbs & Lewis — Hobbs & Lewis, Ltd.
	81. Dressing (Hand Work)	
	82. Lacing (Hand Work)	
	83. Inspecting and Crowning (Hand Work)	
	Packing Room	
	84. Labeling Cartons (Hand Work)	
	85. Packing Shoes in Cartons (Hand Work)	
None	86. Marking Cartons	Markem — Markem Machine Co.
	87. Stenciling Cases (Hand Work)	
	88. Numbering Cases (Hand Work)	
	89. Nailing Covers (Hand Work)	

Additional Operations.

If Shoe Manufacturers prepare counters themselves the following operations should be added in the Sole Leather Room:

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
Gearless Sole Cutting Machines	1. Dieing out Counters	Eclipse — Parsons Machinery Co. Seelye — Seelye Manufacturing Co. Tower — Tower Bros. Knox — Quarmby & Hilliker
None	2. Wetting Counters	Stewart — Stewart Bros.
Monarch Box Toe & Counter Skiving Mach.	3. Skiving Counters	Young — W. J. Young Machinery Co.
Counter Skiving Machines Mods. W & S		Thurston — W. J. Young Machinery Co. Hartwell — L. L. Hartwell Stewart — Stewart Bros. Moenus — Moenus Machine Works

Machines of U. S. M. Co.	Additional Operations for Counter Making	Machines of other Dealers
None	4. End Finishing Counters	Thurston — W. J. Young Machinery Co. Stewart — Stewart Bros. Moenus — Moenus Machine Works
Velvet Box Toe Buffing Machine	5. Buffing Counters	Perfection — W. J. Young Machinery Co.
None	6. Rolling and Waxing Counters	Seewart — Stewart Bros. Young — W. J. Young Mchy. Co.
None	7. Moulding Counters	Young — W. J. Young Machinery Company Stewart — Stewart Bros.

WOMEN'S TURN.

For Button Shoes the following operations should be added in the Stitching Room:

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
None	1. Closing outside of Fly to top	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. No. 3 — Union Lockstitch Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Machine Company
Rapid Seam Rubbing Mach.	2. Rubbing Button-fly Seam	Champion — Coburn & Lawrence Co. Boston — Boston Mach. Wks. Co. Union — " " " " Shawmut — Shawmut Machinery Co.
None	3. Staying Button-fly Seam	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Machine Company W & W — Singer Sewing Machine Company No. 3 — Union Lockstitch Co. Puritan — Puritan Mfg. Co. Davis — The Davis Sewing Mach. Co.
None	4. Cementing in Button-fly Stay	Wheeler — Brockton Stay Co.

Machines of U. S. M. Co.	Additional Operation for Button Shoes	Machines of other Dealers
None	5. Closing Fly Lining to cloth lining	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Co, W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Metropolitan — The Metropolitan Sewing Machine Company Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Company
None	6. Closing Fly outside and lining back to back	Union Special — Union Special Sewing Machine Co. Singer — Singer Sewing Mach. Company W & W — Singer Sewing Mach. Co. Wilcox & Gibbs — Wilcox & Gibbs Sewing Mach. Co. Metropolitan — The Metropolitan Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Mach. Company
Columbia Beading Machine Victor Beading Mach. Turning & " "	7. Turning and Cording Button Fly	Monarch — Boston Machine Wks. Co. Boston — " " " " Hart — Hamel Shoe Machinery Co. Nangle — J. H. Nangle
None	8. Stitching nrst row around Fly	Singer — Singer Sewing Mach. Co. W & W — " " " " Wilcox & Gibbs — Wilcox & Gibbs Sewing Machine Co. Standard — The Standard Sewing Machine Co. Davis — The Davis Sewing Machine Co.
Non	8a. Marking for Buttonholes	Adams — Adams Manufacturing Company Button Marking Machine — Shoe Manufacturers' Supply Company
Buttonhole Making Machine (New machine, none yet leased)	9. Making Buttonholes	Reece — The Reece Buttonhole Machine Co.
Buttonhole Finish-Machine	10. Finishing Buttonholes.	Reece — The Reece Buttonhole Machine Co.

Machines of U. S. M. Co.	Additional Operations for Button Shoes	Machines of other Dealers
		Singer — Singer Sewing Mach. Company
None	11. Barring Button Fly at bottom	Singer — Singer Sewing Mach. Company
	12. Marking Top for Buttons (Hand Work)	
None	13. Attaching Buttons	Morley — Singer Sewing Mach. Company R & M — Peerless Mchy. Co. Singer — Singer Sewing Mach. Company Universal — Elliott Manufacturing Co. Elliott — Elliott Mfg. Co. Heaton-Peninsular — Elliott Mfg. Co. Reece — The Reece Buttonholes Machine Co.

DEFENDANTS' EXHIBIT 236.

[Put in Evidence, page 3109.]

MACHINES USED BY J. BROWN & SONS, SALEM, MASS.

CAPACITY OF FACTORY 7500 PAIR OF WOMEN'S, MISSES' AND CHILDREN'S MCKAY SEWED SHOES.

Cutting Room.

(United) 1 Improved Geared Sole Cutting Machine — Model CC (For Linings)

2 Foot Power Pricking Machines (For Marking Lap for Vamping)

—

3

Stitching Room.

7 Skiving Machines
2 Hand Lining Marking Machines
2 Hart Snipping Machines
1 Hart Tip Punching Machine
2 Singer Zigzag Stitching Machines
15 Union Special 1-needle Stitching Machines
4 Lufkin Folding Machines
9 Union Special 2-needle Staying Machines

6 Hart Perforating Machines
25 Singer 1-needle Stitching Machines
3 Wheeler & Wilson 1-needle Stitching Machines
3 Union Special 4-needle Tip Stitching Machines
6 Hooking Machines
1 Wheeler & Wilson 2-needle Staying Machine
1 Union Special 2-needle Staying Machine
2 Glove Fastening Machines
6 Wilcox & Gibbs Closing Machines
2 Singer Cylinder Barber Trimming Machines
6 Singer Chop Trimming Machines
3 Union Special Closing Machines
4 Seam Rubbing Irons
(United) 7 Eyeletting Machines
8 Singer Cylinder 2-needle Machines
4 Singer 2-needle Stitching Machines
1 Wheeler & Wilson Side Staying Machine
1 Singer 1-needle Cylinder Vamping Machine
8 Reece Buttonhole Machines
2 Reece Buttonhole Finishing Machines
14 Singer Undertrimming Machines
4 Booth Cording Machines
20 2-needle Vamping Machines
5 Union Special 4-needle Cylinder Stitching Machines
4 Reece Button Attaching Machines
1 Singer Single Needle Repairing Machine
(United) 2 Ensign Lacing Machines #45-780

191

Sole Leather Room.

1 Graves Foot Power Stripping Machine
(United–1) 7 Rd. Block Sole Cutting Machines
1 4′ Seelye Sole Cutting Machine
(United–1) 2 Rolling Machines
(United–3) 4 Splitting Machines
(United–3) 4 Channeling Machines

	1 Julian Sole Rounding Machine	
	1 Emerson Insole Slashing Machine	
(United–1)	2 Feather Edge & Shank Reducing Machines	
(United)	1 Apex Tap & Rand Splitting Machine #52	
	2 Cementing Machines	
	1 8 Section Veneer Press	
(United)	1 Sole Tacking Machine #855	
(United–1)	3 Tap & Sole Rounding Machines	
(United)	1 Apex Spring Heel Trimming Machine #1128	
	1 Bresnahan Single Moulding Machine	
(United–1)	2 Twin Sole Moulding Machines	
(United)	4 Apex Channel Opening Machines #553, 401, 596, 473	
	39	
	Lasting Room.	
(United)	3 Pulling-Over Machines	2876A, 2340A, 1971A
(United)	24 Hand Method Lasting Mchs.	2539, 5395, 1629
		2142, 2530 4920
		2528, 1968, 3949
		3853, 5895, 4800
		408, 2529, 4210
		2515, 2526, 2527
		224, 547, 2021
		2015, 2512, 218
(United)	6 Rotary Pounding Machines	698, 1004, 1027
		443, 1396, 1225
(United)	8 Staple Tacking Machines	2215D, 1659, 1759
		1761D, 1777, 1679
		1678, 1671
(United)	1 Grinding Machine #3008	
	42	
	Making Room.	
(United–3)	13 McKay Sewing Machines — Model S	
	1 Puritan Fairstitch Machine	
(United)	3 Loose Nailing Machines #60, 521, 1336	
(United)	5 Atlas Leveling Machines #479, 73, 387, 388, 389	

(United) 5 Mayo Heeling Machines #3577, 3657, 3210, 2656, 3103
(United) 5 Universal Slugging Machines #1959, 789, 411, 3028, 1417
(United) 1 Grip Slugging Machine
(United) 1 Heel Protector Driving Machine #111
(United) 4 McKay Heel Trimming Machines #2648, 2614, 1304, 1036
(United) 1 Spring Heel Trimming Machine #186
(United) 4 Imperial Heel Breasting Machines #1424, 736, 1181, 877
6 Emerson Heel Scouring Machines
(United) 1 Heel Breast Scouring Machine #805
(United–5) 15 Post Edge Trimming Machines
(United) 7 Edge Setting Machines — Model R, 440, 698, 1276, 1246, 1288, 1296, 1243
(United) 2 Welt Indenting & Burnishing Machines #1093, 1100
(United) 5 Goodyear Fudge Edge Machines #314, 288, 292, 236, 229
(United) 1 Xpedite Heel Burnishing Machine #1329
5 3′ Finishing Shafts
(United) 2 Knife Grinding Machines

87

Finishing Room.

11 Buffing Machines
5 Naumkeag Buffing Machines
9 Finishing Shafts
1 Webster Cleaning Machine
2 Standard Tying Machines
2 Ellison Stamping Machines
(United) 3 Stitch & Upper Cleaning Machines #130, 345, 19
(United) 1 Nurling Machine #348

34

Packing Room.

3 Locke Bros. Bow Making Machines
(United) 3 Tip Scouring Machines — Mod. G, #54, 86, 354
5 Tubular Rivet Bow Attaching Machines

3 Heaton Peninsular Button Sewing Machines
2 Miller Vamp Creasing Machines #2
2 Finishing Shafts
10 Miller Twin Treeing Machines

28

Summary.

	(United)	(Miscellaneous)
Cutting Room	1	2
Stitching "	6	185
Sole Lea. "	18	21
Lasting "	42	0
Making "	54	33
Finishing "	4	30
Packing "	3	25
	128	296—Grand Total 424

Summary. After Transferring General Dept. Machines to Miscellaneous.

	(United)	(Miscellaneous)
Cutting Room	0	3
Stitching "	1	190
Sole Lea. "	1	38
Lasting "	41	1
Making "	21	66
Finishing "	0	34
Packing "	0	28
	64	360—Grand Total 424

DEFENDANTS' EXHIBIT 237.

[Put in Evidence, page 3110.]

GOODYEAR WELT AND TURN SHOE MACHINES:

Total Outstanding March 1, 1905.

Regular	1577
Type E	140

3.1.05 to 3.1.06	Shipments	264	Returns	105
3.1.06 to 3.1.07	"	222	"	118
3.1.07 to 3.1.08	"	220	"	131
3.1.08 to 3.1.09	"	227	"	152
3.1.09 to 3.1.10	"	144	"	218
3.1.10 to 3.1.11	"	66	"	333
		1143		1057

Outstanding 3.1.11 1663

Model E Machines

3.1.05 to 3.1.06	Shipments	75	Returns	40
3.1.06 to 3.1.07	"	83	"	40
3.1.07 to 3.1.08	"	76	"	42
3.1.08 to 3.1.09	"	64	"	39
3.1.09 to 3.1.10	"	30	"	64
3.1.10 to 3.1.11	"	0	"	84
		328		309

Outstanding 3.1.11 159

Model G Machines

3.1.08.to 3.1.09	Shipments	6	Returns	0
3.1.09 to 3.1.10	"	253	"	2
3.1.10 to 3.1.11	"	464	"	19
		723		21

Outstanding 3.1.11 702

Total number of Welt & Turn Shoe Machines outstanding 2524

Total Shipments and Returns for all Three Models.

3.1.05 to 3.1.06	Shipments	339	Returns	145
3.1.06 to 3.1.07	"	305	"	158
3.1.07 to 3.1.08	"	296	"	173
3.1.08 to 3.1.09	"	297	"	191
3.1.09 to 3.1.10	"	427	"	284
3.1.10 to 3.1.11	"	530	"	436
		2194		1387

DEFENDANTS' EXHIBIT 238.

[Put in Evidence, page 3112.]

CONSOLIDATED HAND METHOD McKAY LASTING MACHINES PUT OUT ON THE UNTIED INITIAL CHARGE LEASE FROM 3/1/99 to 6/1/13.

March 1, 1899 to December 31, 1899	185
January 1, 1900 to December 31, 1900	65
January 1, 1901 to December 31, 1901	143
January 1, 1902 to December 31, 1902	115
January 1, 1903 to December 31, 1903	72
January 1, 1904 to December 31, 1904	87
January 1, 1905 to December 31, 1905	54
January 1, 1906 to December 31, 1906	59
January 1, 1907 to December 31, 1907	36
January 1, 1908 to December 31, 1908	47
January 1, 1909 to December 31, 1909	54
January 1, 1910 to December 31, 1910	21
January 1, 1911 to December 31, 1911	18
January 1, 1912 to December 31, 1912	40
January 1, 1913 to May 31, 1913	10
	1,006

[Stamped:]
Received H. E. Abbey
June 18, 1913, referred to Mr. S. W. W.

CONSOLIDATED HAND METHOD McKAY LASTING MACHINES PUT OUT ON LOAN FORM OF LEASE FROM 3/1/99 TO 6/1/13.

March 1, 1899 to December 31, 1899	250
January 1, 1900 to " " 1900	283
" " 1901 " " " 1901	415
" " 1902 " " " 1902	425
" " 1903 " " " 1903	385
" " 1904 " " " 1904	348
" " 1905 " " " 1905	233
" " 1906 " " " 1906	293

January 1, 1907	to	December 31,	1907	247	
" " 1908	"	" "	1908	159	
" " 1909	"	" "	1909	169	
" " 1910	"	" "	1910	200	
" " 1911	"	" "	1911	243	
					3,650

H. E. A. 12/1/13

DEFENDANTS' EXHIBIT 239.

[Put in Evidence, page 3113.]

SELLING PRICES OF HEEL AND FOREPART CUTTERS.

HEEL CUTTERS.

Price, January '99.	We reduced price March 1, 1900, to:
Complete Set, with Heel Cutter: $3.25	Complete Set of Blades and Heel Seat Cutter: $2.25
Set of Blades only: $2.00	Set of Blades only: $1.00

FOREPART AND SHANK CUTTERS.

Price, January '99.	Price reduced March 1, 1900.
$ .35	$ .25

EDGE IRONS.

Old Price	Price — March 1, 1900.
$ .50	$ .25

NOTE: When we took over the Boston Shoe Tool Company, the price of Forepart Cutters was 35c each, or $25.00 per 100. We reduced this price to 25c each — in any quantity.

Forepart and Shank Cutters have always sold at the same price.

MEMORANDUM. RE MR. E. W. WARREN, SOMERSWORTH, N. H.

Boston, Mass., Dec. 2, 1913.

Mr. E. A. Smith, of our Haverhill Office, reported to me this morning over the telephone that upon my request he had Mr. Locke, of

our Haverhill Office (who is personally acquainted with Mr. E. W. Warren), telephone him yesterday afternoon about four o'clock, in reference to the saving of 3c per dozen that Mr. Warren is making in the cost of welting on our Model K Machine over and above the price that he paid on the regular Welt & Turn Machine; namely — that he formerly paid 15c per dozen and is now paying 12c.

Mr. Warren said that he would be glad to have us use the information if it would do us any good, and that he would also be perfectly willing to be interviewed by our counsel and give such information as he could that might be of advantage and service to us.

F. G. KING.

	Price per Doz. Pairs.
Welt & Turn	.15
Welt & Turn — Mod. K	.12
Saving of Model K over Old 3c per doz. prs.	

DEFENDANTS' EXHIBIT 240 FOR IDENTIFICATION.

[Put in Evidence, page 3168.]

MEMORANDUM.

Boston, Mass., Dec. 1, 1913.

Talked with A. E. C. Hall, of our Auburn Office, with the result that he saw the representatives mentioned below, who said they would be very glad to have us use the information in reference to labor cost and production ont he Welt & Turn Shoe Machine, and that the prices as mentioned on the memoranda which we have are correct.

F. G. KING.

	Price per Doz.
Foss, Packard & Co., Auburn, Me., Mr. Briggs, Supt. & Gen. Mgr.	
Welt & Turn	.16
Welt & Turn — Model K	.14
Saving of Model K over Old 2c per doz.	
Howard, Briggs & Pray Co., Auburn, Me., Mr. Sprague.	
Welt & Turn	.15
Welt & Turn — Model G	.15

Welt & Turn — Model K	.14

Saving of Model K over Model G and Old 1c per Doz.

Dingley-Foss Shoe Co., Auburn, Me., Mr. Traston, Treas.

Welt & Turn	.10	.14	.18
Welt & Turn — Model G	.10	.14	.18
Welt & Turn — Model K	.08	.10	.13

Saving of Model K over Model G and Old 2c, 4c, 5c per Doz.

Field Bros. & Gross Co., Auburn, Me., Mr. Mason, Gen. Mgr.

Welt & Turn	.14
Welt & Turn — Model G	.10
Welt & Turn — Model K	.10

Saving of Models G & K over Old 4c per doz.

MEMORANDUM. C. A. EATON COMPANY, AUGUSTA, MAINE. 12/1/13.

Talked over the telephone with Chester Eaton, of Brockton, who said that we may use any information that is authentic in reference to prices for labor in connection with their factories which we may wish to do, and which will help us.

He says the price paid by them at their Augusta, Maine, Factory for welting on the old machine was 16c per dozen, and on the Model G Machine, 15c per dozen.

When the Model K Machine was installed in the Augusta, Maine, Factory, all but two of their men agreed to take a lower rate, and they tried to establish the price at 14c per dozen, but it has not been definitely adjusted and they are still paying the 15c rate.

F. G. KING.

	Price per Doz.
Welt & Turn	.16
Welt & Turn — Mod. G	.15
Welt & Turn — Mod. K	.15

Saving of Mod. K and Mod. G over Old 1c per doz.

MEMORANDUM. STETSON SHOE COMPANY, SOUTH WEYMOUTH, MASS. 12/1/13.

Talked over the' phone with Mr. Heald, of the above concern, who says they are entirely willing that we use the information in

reference to cost of labor and savings on Welt Machines in operation in their factory, if we desire to do so.

F. G. KING.

	Wage per Week	Price per Doz.
Welt & Turn		.18
Welt & Turn — Models G & K	$25.00	
Required to do 2400 pairs.		
Operators are paid 1 1¼c per pair for all over 2400 prs.		
Averages per doz.		.12½
Saving of Models G & K over Old 5½c per doz.		

DEFENDANTS' EXHIBIT 242.

[Put in Evidence, page 3168.]

GOODYEAR AUXILIARY MACHINES SUPPLIED IN FEBRUARY, 1899. USED IN MANUFACTURE OF GOODYEAR WELT SHOES.

Beating Machine: Goodyear Universal Welt
Channeling Machine: Goodyear Insole
Flexible Sole Machine: Goodyear Power
Laying Machine: Goodyear Channel
Layer: Rotary Sole
Leveling Machine — Model A: Goodyear Automatic Sole
Opening Machine: Goodyear Channel
Rounding & Channeling Machine: Goodyear Universal
Separating Machine: Hadaway Stitch
Skiving Machine: Goodyear Universal Shank
Trimming Machine: Goodyear Universal Inseam
Turning Machine: Goodyear Lip
Winding Machine: Goodyear Rapid Bobbin

DEFENDANTS' EXHIBIT 243.

[Put in Evidence, page 3168.]

GOODYEAR AUXILIARY MACHINES SUPPLIED DECEMBER 12, 1911. USED IN MANUFACTURE OF GOODYEAR WELT SHOES.

Beating & Slashing Machine: Goodyear Welt
Burnishing Machine, No. 2: Goodyear Impression Stitch

Channeling Machine: Goodyear (Insole)
Channeling Machine: Goodyear Universal (Welt)
Flexible Innersole Machine — Model X: Goodyear
Flexible Sole Machine — Model B: (Zeigler)
Flexible Sole Machine: Goodyear Power
Fudge Edge Machine: Goodyear
Grooving & Beveling Machine: Goodyear Welt
Grooving & Beveling Machine: Goodyear Power Welt
Indenting & Burnishing Machine: Goodyear Welt
Indenting & Burnishing Machine — Model X: Goodyear Welt
Jointing Machine — Model A: Goodyear
Laying Machine: Goodyear Channel
Laying Machine — Model X: Goodyear Channel
Laying Machine — Model B: Goodyear Improved Sole
Leveling Machine: Goodyear Automatic Sole
Leveling Machine: Goodyear Welt & Turn (Welt work)
Opening Machine: Goodyear Channel
Pulling Machine: Goodyear Insole Tack
Pulling & Resetting Machine: Goodyear Tack
Reducing Machine: Goodyear Outsole Channel Shank
Rounding Machine: Goodyear Heel Seat
Rounding & Channeling Machine — Model E: Goodyear Universal
Rubbing Machine: Goodyear Outsole Stitch
Separating Machine: Hadaway Stitch (Goodyear)
Skiving Machine: Goodyear Shank Welt
Snipping Machine: Goodyear Insole Toe
Splitting Machine: Goodyear Welt
Stapling Machine: Goodyear Upper
Trimming Machine — Model A: Goodyear Insole Heel Seat
Trimming Machine: Goodyear Universal Inseam
Turning Machine: Goodyear Lip
Turning Machine: Goodyear Welt Edge
Winding Machine: Goodyear Rapid Bobbin

DEFENDANTS' EXHIBIT 244.

[Put in Evidence, page 3168.]

GOODYEAR AUXILIARY MACHINES SUPPLIED IN FEBRUARY, 1899.
USED IN MANUFACTURE OF GOODYEAR TURN SHOES.

Channeling Machine: Goodyear (Turn)
Molding Machine: Goodyear Turn
Trimming Machine: Goodyear Shoe

DEFENDANTS' EXHIBIT 245.

[Put in Evidence, page 3168.]

GOODYEAR AUXILIARY MACHINES SUPPLIED DECEMBER 12, 1911.
USED IN MANUFACTURE OF GOODYEAR TURN SHOES.

Channeling Machine: Goodyear (Turn)
Channeling Machine: Goodyear Universal (Turn)
Leveling Machine: Goodyear Welt & Turn (Turn work)
Molding Machine: Goodyear Turn
Molding Machine: Goodyear Power
Pulling & Trimming Machine: Insole Tack & Turn Shoe
Trimming Machine: Goodyear Turn Shoe
Turning Machine: Goodyear Forepart
Turning Machine: Goodyear Heel

DEFENDANTS' EXHIBIT 246.

[Put in Evidence, page 3170.]

NEW MACHINES PUT OUT BY UNITED SHOE MACHINERY COMPANY
SINCE ITS ORGANIZATION, FEBRUARY 7, 1899.
DECEMBER 1, 1913.

	Department.	Adopted or first put out by U.S.M. Co.	
Assembling Machine: Rex	Pulling-Over	Sept.	1905
Assembling Machine — Model E: Rex	" "	Aug.	1910
Assembling Machine: Rex Turn Shoe	" "	Feb.	1912
Assembling Spindle	" "	Sept.	1904

	Department	Adopted or first put out by U.S.M. Co
Beading Machine — Model G: New Method Heel Seat	General	Mar. 1901
Beating Machine: Beacon Heel Seat	Lasting	Dec. 1906
Beating & Slashing Machine: Goodyear Welt	Goodyear	Nov. 1904
Bevelling Machine — Model B: Champion Strip	General	Nov. 1909
Blacking Machine — Model A: Crest Heel	"	Sept. 1908
Blacking Machine — Model B: Crest Heel	"	May 1911
Buffing Machine — Model G	"	Oct. 1901
Buffing Machine: Velvet Box Toe	Heeling	Jan. 1904
Building Machine — Models B, C & D: Pyramid Heel	General	June 1909
Cementing Machine — Models E & F: Hub Lining	"	May 1908
Cementing Machine — Models A, C & D: Star Channel	"	Oct. 1906
Channeling Machine — Model A:	"	Mar. 1904
Channeling Machine—Models B & C: Apex	"	Nov. 1905
Channeling Machine: Economy Insole	Goodyear	May 1905
Channeling Machine: Goodyear Universal (Turn Work)	"	Nov. 1908
Channeling Machine: Goodyear Universal (Welt Work)	"	Sept. 1907
Cleaning Machine — Model M: Stitch & Upper	General	Apr. 1902
Clicking Machine — Model C: Ideal	"	Mar. 1908
Clinch Machine: Universal Double	Metallic	Nov. 1899
Compressing Machine — Model No. 4: Automatic Heel	Heeling	Sept. 1900
Cutting Machine — Model P: Improved Baby Sole	General	Jan. 1903
Cutting Machine — Model CC: Improved Geared	"	Aug. 1905
Cutting Machine: Improved Gearless Sole	"	Oct. 1904

	Department.	Adopted or first put out by U.S.M. Co.
Cutting Machine — Model A: Rand	"	Apr. 1911
Cutting Machine — Model A: Heel Wedge	"	Aug. 1912
Driving Machine — Models A & B: Heel Protector	Metallic	Dec. 1899
Embossing Machine — Model B:	General	Jan. 1911
Eyeletting Machine: Cameo Foot Power	Eyeletting	Apr. 1910
Eyeletting Machine:— Duplex	"	July 1902
Eyeletting Machine: Sampson	"	May 1912
Eyeletting Machine: Vulcan Foot Power (Improved Foot Power)	"	Aug. 1902
Finishing Machine: U. S. M. C. Buttonhole	Fitting Room	Jan. 1913
Finishing Shaft — Model K: Climax Sectional	General	June 1910
Fleshing or Randing Machine — Models A & B: Apex	"	Mar. 1905
Flexible Sole Machine — Models A & B: (Zeigler) (Goodyear)	Goodyear	Aug. 1899
Generator: Goodyear Steam	"	Nov. 1909
Generating Machine: Goodyear Pattern	"	Mar. 1911
Gouging Machine — Model C: Crescent Toe	General	Aug. 1908
Grooving & Beveling Machine: Goodyear Power Welt	Goodyear	July 1906
Gumming Machine: Rex Toe	Pull Over	Oct. 1904
Hammer — Model B: New Power	General	Aug. 1905
Heel Breasting Machine — Model B: Imperial	"	July 1902
Improving Machine: U. S. M. C. Tap & Sole	Heeling	Jan. 1913
Impression Stitch Machine — Model M: Hand	General	Apr. 1911
Ironing Machine — Model B:	"	Sept. 1913
Indenting & Burnishing Machine: Goodyear Welt	Goodyear	July 1905
Jointing Machine — Model C: Goodyear	"	July 1913

	Department.	Adopted or first put out by U.S.M. Co.
Lacing Machine — Models A & B: Ensign	Fitting Room	Feb. 1906
Lasting Machine: No. 5 U.S.M.C.	Lasting	Jan. 1908
Lasting Machine: Staple	"	Feb. 1912
Laying Machine — Model A: Apex Welt	General	Feb. 1910
Laying Machine — Model W: Channel	General	Dec. 1901
Laying Machine — Models B & C: Goodyear Improved Sole	Goodyear	Dec. 1910
Laying & Tacking Machine: Sole	"	Sept. 1910
Leveling Machine — Model A: Atlas	General	Sept. 1903
Leveling Machine: Goodyear Welt & Turn (Turn Work)	Goodyear	June 1906
Leveling Machine: Goodyear Welt & Turn (Welt Work)	"	June 1906
Leveling Machine — Models A & B: Hercules	General	April 1903
Leveling & Flexing Machine — Model N: Shin	"	Feb. 1906
Loading & Attaching Machine — Model B: McKay Automatic Heel	Heeling	Nov. 1910
Lockstitch Machine — Model K: Goodyear Outsole Rapid	Goodyear	May 1910
Lockstitch Machine — Model M: Goodyear Outsole Rapid	Goodyear	Jan. 1912
Making Machine: USMC Buttonhole	Fitting Room	Jan. 1913
Marking Machine — Model C: Paragon Vamp	General	May 1906
Molding Machine — Models B & C: American Twin Sole	"	May 1907
Molding Machine — Model B: Goodyear Power	Goodyear	May 1912
Molding Machine: Stitch Down Upper	General	Nov. 1907
Nailing Machine: Alpha Wood Heel	Heeling	Sept. 1907
Nailing Machine: Automatic Staple	Metallic	Aug. 1899
Nailing Machine: No. 2 Loose	"	June 1909

	Department.	Adopted or first put out by U.S.M. Co.
Nurling Machine — Model A	"	July 1901
Opening Machine: Apex Channel — Models B & C	General	Feb. 1906
Pincer: USMC Bench	"	Aug. 1911
Pounding Machine — Model E: Rex	Pulling-over	Jan. 1904
Pounding Machine — Model C: Rex Rotary	" "	Mar. 1912
Pounding & Beating-up Machine — Model A: Rex Rotary	" "	Mar. 1912
Pounding & Trimming Machine — Model B: Rex Rotary	" "	July 1908
Press: Handy Heel — Model B	General	July 1913
Pricking Machine: Premier Heel	Heeling	July 1903
Pulling Machine: Goodyear Insole Tack	Goodyear	Feb. 1909
Pulling Machine: Goodyear Upper Tack	"	Nov. 1912
Pulling & Resetting Machine: Goodyear Tack	"	Nov. 1910
Pulling & Turn Shoe Trimming Machine: Goodyear Insole Tack	"	Dec. 1911
Pulling-Over Machine: Models A & C — Rex	Pulling-Over	Sept. 1899
Pulling-Over Machine — Model B: Rex	" "	July 1910
Punch: Improved Foot Power (Vulcan Foot Power)	Eyeletting	Aug. 1902
Punching Machine — Model P: Crown Tip	General	Dec. 1903
Punching Machine — Model A: Royal Tip	"	May 1911
Reducing Machine: Models A & B — Apex Feather Edge & Shank	"	Jan. 1904
Reducing Machine: Goodyear Outsole Channel Shank	Goodyear	Apr. 1909
Reinforcing Machine: Economy Insole	"	Sept. 1904
Repairing Machine — Model A: Patent Leather	General	Aug. 1911
Rounding Machine: Goodyear Heel Seat	Goodyear	Aug. 1909
Rounding Machine: Mod. A — Apex Tap and Sole	General	Mar. 1905

	Department	Adopted or first put out by U.S.M. Co.
Rounding Machine: Models C & D — Planet Sole	General	Nov. 1901
Rounding & Channeling Machine — Model E: Goodyear Universal	Goodyear	Sept. 1910
Rounding & Randing Machine: Goodyear Heel Seat	"	Jan. 1913
Rubbing Machine: Goodyear Outsole Stitch	"	Apr. 1910
Sanding Machine: Model A — Tap and Sole	Heeling	June 1908
Sanding Machine: Model G — Top Piece	General	Dec. 1905
Scarfing Machine — Model N: Tap	"	Sept. 1910
Scarfing Machine: Model A — Turn Sole	"	Jan. 1911
Scarfing Machine: Model P — Spring Heel	"	Dec. 1901
Scalloping Machine — Model B: Top Piece	"	May 1905
Scouring Machine — Model G: Tip	"	Jan. 1904
Sewing Machine: Goodyear Universal Inseam	Goodyear	June 1899
Sewing Machine: Model B — McKay	General	June 1908
Shellacing Machine: Rex Box Toe	Pulling-Over	Mar. 1909
Shoe Machine — Model E: Goodyear Welt & Turn	Goodyear	July 1902
Shoe Machine — Model G: Goodyear Welt & Turn	"	Oct. 1908
Shoe Machine — Model K: Goodyear Welt & Turn	"	June 1911
Skiving Machine — Model A: Champion Heel Lift	General	Sept. 1907
Skiving Machine — Model A: Champion Shank	"	Jan. 1909
Skiving Machine — Eros Rand	Heeling	Aug. 1906
Skiving Machine: Goodyear Shank Welt	Goodyear	Jan. 1904
Skiving Machine — Models C & D: Pluma	General	Apr. 1909
Skiving & Finishing Machine: Monarch Counter & Box Toe	Heeling	Jan. 1903
Skiving or Rand Splitting Machine —		

	Department.	Adopted or first put out by U.S.M. Co.
Models A & C: Apex Tap	General	Aug. 1905
Slugging Machine — No. 5	Metallic	Nov. 1912
Snipping Machine: Goodyear Insole Toe	Goodyear	May 1911
Softening Machine — Models C, D & E: Toe	General	Dec. 1911
Splitting Machine — Models C & D: Empire	"	Sept. 1908
Splitting Machine: Summit		Apr. 1903
Stamping Machine — Model C: Eagle Sole	General	Mar. 1910
Stamping Machine — Model C: Eagle Upper	"	Mar. 1910
Stamping Machine — Models B & C: Regent	"	May 1903
Stapling Machine — Model B: Goodyear Upper	Goodyear	Aug. 1912
Sticking Machine — Model B: Shank Piece	General	Sept. 1911
Stitching Machine: Economy Insole	Goodyear	Oct. 1909
Tacking Machine No. 1 U.S.M.C.: Insole	Lasting	Jan. 1910
Tempering Machine: Double Clinch Stock	Metallic	Feb. 1902
Thin Edge Machine — Models A & C: Apex	General	Oct. 1905
Trimming Machine — Model A: Apex Spring Heel	"	May 1905
Trimming Machine — Models D & E: Edge	"	Dec. 1910
Trimming Machine — Model B: Goodyear Insole Heel Seat	Goodyear	Oct. 1912
Trimming Machine: McKay Heel Breast	Heeling	Apr. 1900
Trimming Machine: Rex Toe — Model B	Pulling-Over	Oct. 1904
Trimming Machine — Model A: Rex Upper	" "	Dec. 1905
Trimming Machine — Model H: Rex Upper	" "	June 1908
Trimming Machine: Ultima Heel	Heeling	Dec. 1904
Turning Machine: Goodyear Forepart	Goodyear	May 1899
Turning Machine: Goodyear Heel	"	Apr. 1901
Turning Machine: Goodyear Welt Edge	"	Dec. 1909
Turning & Slashing Machine: Goodyear Lip	"	Jan. 1912
Wetting Machine: Crest Sole — Model A	General	July 1909
Winding Machine: Goodyear Universal Bobbin	Goodyear	June 1899

DEFENDANTS' EXHIBIT 247.

[Put in Evidence, page 3172.]

MACHINES PUT OUT BY UNITED SHOE MACHINERY COMPANY WHICH DO WORK ALWAYS DONE BY HAND IN 1899 OR NOT DONE AT ALL EITHER BY HAND OR BY MACHINE IN 1899.

October 25, 1913.

	Department	First put out by U.S.M. Co.
Assembling Machine: Rex	Pulling-Over	Sept. 1905
Beating & Slashing Machine: Goodyear Welt	Goodyear	Nov. 1904
Beveling Machine: Goodyear Underwedge	Goodyear	Early 1911
Blacking Machine: Crest Heel	General	Sept. 1908
Buffing Machine: Velvet Box Toe	Heeling	Jan. 1904
Clicking Machine: Ideal	General	Mar. 1908
Clinch Machine: Universal Double	Metallic	Nov. 1899
Eyeletting Machine: Duplex (First machine to set two eyelets on opposite sides of upper simultaneously)	Eyeletting	July 1902
Embossing Machine: Goodyear Heel	Goodyear	1910
Gumming Machine: Rex Toe (Superseded by Shellacking Machine: Rex Box Toe)	Pulling-Over	Oct. 1904
Jointing Machine: Goodyear	Goodyear	Nov. 1910
Lacing Machine: Ensign	Fitting Room	Feb. 1906
Lasting Machine: Consolidated Hand Method (Turn Heel Seat)	Lasting	Apr. 1906
Lasting Machine: Consolidated Hand Method (Turn Toe)	Lasting	Apr. 1906
Lasting Machine: Staple	Lasting	1912
Molding Machine: Stitch Down Upper	General	Nov. 1907
Nailing Machine: Alpha Wood Heel	Heeling	Sept. 1907
Pounding Machine: Rex (Superseded by Pounding Mach.—Mod. E: Rex)	Pulling-Over	1904

	Department.	First put out by U. S. M. Co.
Pincer: USMC Bench	General	Aug. 1911
Pounding & Beating Up Machine — Model A: Rex Rotary	Pulling-Over	Mar. 1912
Pulling Machine: Goodyear Insole Tack	Goodyear	Feb. 1909
Pulling-Over Machine: Rex	Pulling-Over	Sept. 1899
Pulling-Over — Model B: Rex	Pulling-Over	July 1910
Pulling & Resetting Machine: Goodyear Tack	Goodyear	Nov. 1910
Pulling & Trimming Machine: Insole Tack & Turn Shoe	Goodyear	Dec. 1911
Recessing Machine: Goodyear Underwedge	Goodyear	1910
Reducing Machine: Goodyear Outsole Channel Shank	Goodyear	Apr. 1909
Repairing Machine: Patent Leather	General	Aug. 1911
Skiving Machine: Eros Rand	Heeling	Aug. 1906
Skiving Machine: Goodyear Shank Welt	Goodyear	Jan. 1904
Softening Machine: Toe	General	Aug. 1911
Stapling Machine: Goodyear Upper	Goodyear	Oct. 1910
Stitching Machine: Economy Insole	Goodyear	Oct. 1909
Trimming Machine: Goodyear Insole Heel Seat	Goodyear	Jan. 1911
Trimming Machine: Rex Toe (Superseded by Pounding & Trimming Mach.: Rex Rotary)	Pulling-Over	Oct. 1904
Trimming Machine: Rex Upper	Pulling-Over	Dec. 1905
Turning Machine: Goodyear Forepart	Goodyear	Apr. 1901
Turning Machine: Goodyear Heel	Goodyear	Apr. 1901
Turning Machine: Goodyear Welt Edge	Goodyear	Dec. 1909

DEFENDANTS' EXHIBIT 248.

[Put in Evidence, page 3180.]

LIST OF MACHINES OUT JANUARY 1, 1905, ON LEASES EXECUTED BEFORE AND AFTER FEBRUARY 9, 1899.

	Total	With Tie Restricted	Without Tie Independent	
Goodyear Dept:				
Welts & Turns	1,798			
Stitchers	1,817			
Auxiliaries	9,078			
	12,693		12,693	
Metallic Dept:				
Standard Screw	632	572	60	
Slugging	1,817	1,700	117	
Loose Nailing	1,233	1,153	80	
Tacking	3,372	3,079	293	
Miscellaneous	683	630	53	
Auxiliaries	1,541			1,541
	9,278	7,134	603	
Heeling Dept:				
Attaching	1,642	142	1,500	
Auxiliaries	2,168	218	1,950	
	3,810	360	3,450	
Lasting Dept:				
Hand Method	3,110	1,527	1,583	
Chase	999	893	106	
McKay-Copeland	250	30	220	
Ideal & Copeland	855	808	47	
No. 5	0	0	0	
Tacking	175			175
Auxiliaries	3,310			3,310
	8,699	3,258	1,956	
Pulling Over Dept:				
Pulling Over	243	243		
Auxiliaries	0			
Totals	34,723	10,995	18,702	5,026

DEFENDANTS' EXHIBIT 249.

[Put in Evidence, page 3181.]

PRINCIPAL MACHINES NECESSARY FOR MAKING 100, 200, 300, 600, 1200, 2400, AND 4800 PAIRS GOODYEAR TURN SHOES PER DAY.

	No. of Machines for Daily Production						
Machines	100 pairs	200 pairs	300 pairs	600 pairs	1200 pairs	2400 pairs	4800 pairs
Goodyear Welt & Turn Machine — K	1	1	1	2	3	5	9
Loose Nailer #2	1	1	1	1	1	2	3
Universal Slugger	1	1	1	1	1	2	4
McKay Auto. Heeling Mch.— B	1	1	1	1	2	3	6
Premier Heel Pricking Mch.	1	1	1	1	1	1	1

DEFENDANTS' EXHIBIT 250.

[Put in Evidence, page 3182.]

SUMMARY OF GENERAL DEPARTMENT MACHINES UNDER LEASE MARCH 1, 1911.

	Kinds	Models	Number of Machines
30	Less than 100	45	759
9	More than 100 and less than 200	11	1294
7	More than 200 and less than 300	23	1765
4	More than 300 and less than 400	15	1482
1	More than 400 and less than 500	2	419
17	More than 500	86	22751
4	Miscellaneous	7	161
Totals 72		189	28631

LIST OF DIFFERENT KINDS OF GENERAL DEPARTMENT MACHINES OF WHICH LESS THAN ONE HUNDRED WERE ON LEASE MARCH 1, 1911.

Name of Machine	No. of Models	No. of Machines
Strip Beveling	2	56
Heel Seat Beading	2	4
Heel Building	3	54
Heel Burnishing	1	1
Rand Chopping	1	1
Crimping	1	1
Tap & Beam	2	18
Embossing	2	67
Puritan Fair Stitch	1	8
Insole Flexing	2	52
Power Fleshing	1	1
American Slug Grinding	1	4
Planet Grinding	1	20
Fletcher Ironing	1	9
Apex Welt Laying	1	20
Shin Leveling & Flexing	1	55
Vamp Polishing	1	6
Tap & Sole Roughing	1	13
Improved Sole Rounding	1	13
Stanley Rounding	1	3
Vrooman Tap Rounding	1	3
Top Piece Sanding	1	46
Spring Heel & Tap Scarfing	4	29
Rand Splitting	2	21
Empire Splitting	1	70
Cylinder Splitting	2	12
Impression Stitch	1	20
Stripping	2	78
Turning & Beading	3	54
Waukenphast Imitation Stitch	1	20
30 Kinds	45	759

LIST OF DIFFERENT KINDS OF GENERAL DEPARTMENT MACHINES OF WHICH THERE WERE MORE THAN ONE HUNDRED AND LESS THAN TWO HUNDRED UNDER LEASE MARCH 1, 1911.

Name of Machine	No. of Models	No. of Machines
New Method Heel Seat Beading	1	137
Crest Heel Blacking	1	132
Thin Edge	1	122
Toe Gouging	3	144
Imperial Grinding	1	175
Channel Laying	1	143
Crest Sole Wetting	1	169
Welt Trimming & Stitch Rubbing	1	156
Spring Heel Trimming	1	116
9 Kinds	11	1294

LIST OF DIFFERENT KINDS OF GENERAL DEPARTMENT MACHINES OF WHICH THERE WERE MORE THAN TWO HUNDRED AND LESS THAN THREE HUNDRED UNDER LEASE MARCH 1, 1911.

Name of Machine	No. of Models	No. of Machines
Stitch & Upper Cleaning	2	271
Fleshing & Randing	2	249
Nurling	1	278
Crown Tip Punch	1	271
Scalloping	3	202
Counter, Heel Lift & Shank Skiving	6	201
Centennial Splitting	8	293
7 Kinds	23	1765

LIST OF DIFFERENT KINDS OF GENERAL DEPARTMENT MACHINES OF WHICH THERE WERE MORE THAN THREE HUNDRED AND LESS THAN FOUR HUNDRED UNDER LEASE MARCH 1, 1911.

Kind of Machine	No. of Models	No. of Machines
Sole Moulding	5	370
Rolling	6	395

	No. of Modols	No. of Machines
Tip Scouring	3	333
Heel Seat Rough Rounding	1	384
4 Kinds	15	1482

LIST OF DIFFERENT KINDS OF GENERAL DEPARTMENT MACHINES OF WHICH THERE WERE MORE THAN FOUR HUNDRED AND LESS THAN FIVE HUNDRED UNDER LEASE MARCH 1, 1911.

Name of Machine	No.of Models	No.of Machines
Tap & Sole Rounding	2	419

LIST OF DIFFERENT KINDS OF GENERAL DEPARTMENT MACHINES OF WHICH THERE WERE MORE THAN FIVE HUNDRED UNDER LEASE MARCH 1, 1911.

Name of Machine	No. of Models	No. of Machines
Buffing	10	1241
Heel Breasting	3	1066
Cementing	6	712
Channeling	5	673
Sole & Lining Cutting	13	1755
Edge Setting	5	1575
Leveling	8	918
Channel Opening	3	601
Feather Edge & Shank Reducing	6	583
Planet Rounding	2	1067
Heel Scouring	4	1057
Heel Breast Scouring	2	510
Tap Skiving & Rand Splitting	2	559
Summit Splitting	4	1310
Stamping	8	798
Treeing Table & Legs	1	5251
Edge Trimming	4	3075
17 Kinds	86	22751

LIST OF MISCELLANEOUS GENERAL DEPARTMENT MACHINES UNDER LEASE MARCH 1, 1911.

Name of Machine	No. of Model	No. of Machine
Heel & Veneer Presses	3	138
Pattern Shears	2	21
Amazeen Skiving Machines	1	1
12-Ft. Bench	1	1
4 Kinds	7	161

DEFENDANTS' EXHIBIT 251.

[Put in Evidence, page 3194.]

Officers and Executive Committee:
J. Johnson, Pres't.
C. H. Krippendorf, V.-Pres't.
A. D. Brown, V.-Pres't.
M. S. Florsheim, Treas.
F. C. Rand, Sec.
G. W. Brown
J. B. Howarth
H. W. Peters
E. P. Reed
Geo. D. Selby
E. F. Selz

SHOE MANUFACTURERS ALLIANCE
1507 Washington Avenue

St. Louis, Mo., Dec. 29, 1910.

Mr. S. W. Winslow, President, United Shoe Machinery Co., Albany Bldg., Boston, Mass.

My dear Sir: At a recent meeting of the Shoe Manufacturers' Alliance I was requested to extend to you and to Mr. Geo. W. Brown, together with such other officials of your Company as you desire, an invitation to meet with the Executive Committee of the Shoe Manufacturers' Alliance at St. Louis, Chicago or Cincinnati at any date convenient to you between Jan. 5th and 20th.

The object of this conference is to discuss with you matters of mutual interest to your company and the Shoe Manufacturers associated together. Upon indication of the date and place agreeable to you, I will notify the Executive Committee of your pleasure in the matter.

Very truly yours,

F. C. RAND, Secretary.

DEFENDANTS' EXHIBIT 252.

[Put in Evidence, page 3194.]

January 2, 1911.

Mr. F. C. Rand, Sec'y, Shoe Manufacturers' Alliance, 1507 Washington Ave., St. Louis, Mo.

Dear Sir: Yours of the 29th of December at hand, inviting Mr. George W. Brown and myself, together with such other officials of the Company as I may desire, to meet your Executive Committee at St. Louis, Chicago, or Cincinnati, at a date convenient to us between January 5th and 20th. It is impossible for me at this time to name a date, within the dates that you have mentioned, when it will be convenient for me to accept your invitation. I will endeavor, however, to name a date as soon as possible.

You state that the object of this conference is to discuss with you "matters of mutual interest to your Company and the shoe manufacturers associated together."

I should be very glad to discuss any matters of mutual importance, but in order that the interview may be of practical benefit, I would suggest that you inform me specifically as to the matters of mutual interest which your Committee has in mind to discuss.

Awaiting your reply, I remain

SWW–NW

Very truly yours,

DEFENDANTS' EXHIBIT 253.

[Put in Evidence, page 3195.]

Officers and Executive Committee:
J. Johnson, Pres't.
C. H. Krippendorf, V.-Pres't.
A. D. Brown, V.-Pres't.
M. S. Florsheim, Treas.
F. C. Rand, Sec.
G. W. Brown
J. B. Howarth
H. W. Peters
E. P. Reed
Geo. D. Selby
E. F. Sels

SHOE MANUFACTURERS ALLIANCE
1507 Washington Avenue

St. Louis, Mo., Jan. 4th, 1911.

Mr. S. W. Winslow, Pres., United Shoe Machinery Co., Lincoln & Kneeland Sts., Boston.

Dear Sir: I wish to acknowledge receipt of your favor of Jan. 2d,

stating that you cannot meet us between Jan. 5th and 20th but will advise as soon as possible just when it will be convenient for you to meet with the Executive Committee of the Shoe Manufacturers' Alliance.

In answer to your request that we state specifically what we wish to discuss — will state that the shoe manufacturers are looking for improved conditions under which to make shoes. The only specific points of mutual interest between you and the shoe manufacturers are the sale, rental and royalty of machines by you, together with the charges made thereon, and a general discussion of this subject, which is of great significance to all parties concerned, is desired.

Upon receipt of information from you fixing the date of meeting, I will advise the Executive Committee.

Yours truly,

F. C. RAND, Secretary.

Ans. by personal interview Feb. 14, 1910 with the Ex. Com.

S. W. W.

DEFENDANTS' EXHIBIT 254.

[Put in Evidence, page 3217.]

Dec. 27, 1911.

Mr. George A. Learned, George A. Learned Company, Newburyport, Mass.

Dear Sir: While I have no desire to continue a correspondence with you in which, as shown by your letter of December 20th, you so incorrectly record your spoken words to me in the presence of others, I cannot permit your letter of that date to close it.

Our conversation was as I stated it in my letter to you of December 18th, and if you now disavow that retraction of the untrue statements you have been spreading, I shall, both for myself and my Company, hold you strictly responsible for all the consequences that may follow.

I never made to you any statement that "I would drive you out of business if you did not throw out the machines competing with ours"— either in words or substance — or any statement like it. On the contrary, at our first interview — August 24th — I told you

we would give you independent department leases of all machines except Goodyear Department Machines (which you did not care to use) and sell you all General Department Machines, and this you acknowledged at our interview of December 5th, and if you allow this untrue report to remain uncontradicted, or seek to further spread it, you will do so at your peril.

Very truly yours,

S. W. WINSLOW.

DEFENDANTS' EXHIBIT 258.

[Put in Evidence, page 3566.]

UNITED SHOE MACHINERY CO. No. 73767.

Boston, Mass., Sept. 22, 1910.

To the First National Bank,

Pay to the order of Robert F. Herrick $500,000.00

Five hundred thousand 0/000 Dollars.

UNITED SHOE MACHINERY CO.

W. H. Longley Cashier. L. A. Coolidge Treasurer.

UNITED SHOE MACHINERY CO.

[On back:]

Robert F. Herrick

(Stamped) Check Teller. Sept. 22, A. M.

First National Bank Boston

DEFENDANTS' EXHIBIT 259.

[Put in Evidence, page 3617.]

Taken up by Mr. Howe, E. P. H. File.

Boston, January 16, 1901.

Moorfield Storey, Esq.,

Dear Sir: I have reported to the Executive Committee of the United Shoe Machinery Company that, as a result of the conferences between the Committee representing the Shoe Manufacturers, on the one side, and the President of the United Shoe Machinery Company on the other side, and as the outcome of our meeting to-day as counsel for the respective interests, a form of lease of the United Company's metallic department machinery, for those lessees who wish

a lease to use such machinery independently of the lasting machinery and sole sewing machinery leased by the United Company, has been agreed to. This form of lease may be called for convenience of reference the "Independent" lease.

In order that the present and prospective lessees of the United Company may clearly understand the differences between this Independent lease and the lease of metallic department machinery at present in use by the United Company (which I will call the "United" lease) a reasonable time should be afforded for each lessee to judge which form is best for his interest. The "Independent" lease by its terms can be exchanged for a "United" lease at any time, when the lessee is not in default, on written notice to the lessor, and the United Company now proposes, if the Committee whom you represent so approve and recommend to its constituents, to allow any lessee who has signed, or who shall forthwith on request sign, a "United" lease, the right, at any time before February 1st, 1902, if he is not in default, to surrender such "United" lease by accepting and executing an "Independent" lease of the same metallic department machinery. At our interview to-day, you suggested that a period of two years should be allowed for lessees who sign the "United" leases to exchange them for "Independent" leases. It has been assumed by the Executive Committee of the United Company, until I reported your suggestion to them, that three months would give sufficient time for a lessee to make up his mind which form of lease he wished to take, but in view of your suggestion, and with the desire to meet the wishes of the shoe manufacturers as nearly as is practicable, it has been decided, if recommended by your Committee, that such exchange may be made at any time within one year, that is, on or before February 1, 1902, which would seem to afford the most doubtful lessee ample opportunity to acquire information and decide whether it is for his interest to retain the "United" lease.

The proposed "Independent" lease and the privilege, until February 1, 1902, to those lessees, who have signed or shall sign "United' leases, to exchange them for "Independent" leases, are submitted upon the understanding that the Committee, whom you represent, are satisfied with and will recommend the same, and that they appre-

ciate and will report that the officers of the United Company have given careful consideration to all the requests and suggestions of the Committee, and have manifested a sincere desire to accede to the same, so far as consistent with the policy of the Company toward those lessees who wish to use its machinery in all departments of their respective factories. Very truly yours,

ELMER P. HOWE.

The original of the above letter was delivered to Mr. Storey this day upon his assurance that he would recommend the Independent lease and the foregoing offer of the United Company for approval and acceptance by his clients, and that if his clients — the Committee — do not endorse and recommend the same to the N. E. Ass'n the proposition and this letter shall be withdrawn.

E. P. H. Jan. 16/01.

DEFENDANTS' EXHIBIT 260.

[Put in Evidence, page 3619.]

E. P. Howe file.

STOREY THORNDIKE & PALMER, 735 Exchange Building
Counsellors-at-Law

Moorfield Storey
John L. Thorndike
Henry Ware

Bradley W. Palmer
Ezra R. Thayer
Reginald H. Johnson

All letters to be addressed to the firm.

Boston, 21st January, 1901.

Elmer P. Howe, Esq., 53 State Street, Boston, Mass.

Dear Sir: I hand you herewith the draft of the independent lease which you enclosed in your letter of the 16th. The provisions of the 7th article as it seems to me are not in entire accord with our understanding and the point escaped my notice at our previous conferences. According to the structure of the independent lease the agreements which are contained in ss. 1, 2, 3, 4, and 5 are styled conditions, those in 6 are called agreements. Article 7 provides that "if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor or the lessee, whether as a result of the assignment to the lessor or otherwise and expressed to be obligatory on the lessee, etc." You

will observe that this makes the rights of the lessee depend not merely on the provisions of this lease but on the provisions of every other lease that he holds. I have had before me leases in a great variety of forms and in some of them things which you call agreements in the independent lease may be called conditions, and a violation therefore of something that neither of us have in mind may give your company the right to terminate every lease which the lessee holds. I do not think this was contemplated. I said that my committee was content if the lessee did not keep the conditions of this lease, that he should lose this lease and all his other leases, but I think you will see that your clause 7 goes further. I would suggest the elimination of the words which I have enclosed in pencil brackets in clause 7, being the words which begin "or contained in any other lease" and end with "upon the lessee." To this I fancy there can be no objection.

The committee have carefully considered the lease and desire only a slight variation. They would like the privilege of changing from the iron clad lease to this lease for two years, that is to say until the 1st of February 1903, and they would like also some guaranty or assurance that the modified lease will continue to be offered to the trade for say five years. If these concessions are made they will recommend the lease to the trade.

I think that there is no very substantial difference between these requests and what you have been willing to concede. It was the purpose of your company as you told me to continue to offer the modified lease for an indefinite time and if this is so five years is not very long time to fix. And as I told you at our discussion, I think the difference between giving the right to change for one year and for two years for you cannot be very material while I think it will make your relations with the trade cordial and enable you to begin business with the feeling that the difficulties between you have been ended. I trust that your committee will adopt this view and thus bring these discussions to a mutually satisfactory end.

A single further suggestion. Mr. Goddard has suggested, and I think very properly, that clause 6 would be improved if the words in the last line but one "covering the term of five years" are inserted

after the word agreement as has been done in the copy which I send. This is merely a description and makes a little more certain what we are referring to.

Yours very truly,

MOORFIELD STOREY.

DEFENDANTS' EXHIBIT 261.

[Put in Evidence, page 3620.]

Taken up by Mr. Howe Jan. 23, 1901, E. P. H. File.

January 22, 1901.

Moorfield Storey, Esq.,

Dear Sir: I have your letter of this date with which you return the "Independent" Lease I submitted to you on the 16th instant. The terms of this lease were settled as you will remember, after an extended conference on the 14th instant between your Committee and Mr. Winslow, at which both you and Mr. Goddard were present, when, as Mr. Winslow and I supposed, all the clauses in the lease which were in dispute, and the letter, dated January 2nd, 1901, from the Committee to the Company refering to such clauses, were discussed, and an agreement reached as to what changes in the lease should be made, except that no definite right was accorded to a lessee under the present United Lease of Metallic Department machinery to change it for an Independent Lease of the same. At our interview on the 15th instant we settled upon the phraseology to express the conclusions reached at the conference on the 14th, and we then agreed that the only question left open for discussion was what length of time should reasonably be given by the Company to its present and prospective lessees of Metallic Department machinery to decide whether to take and retain the United leases, and that was the only question to be considered when Mr. Storrow was called in. Consequently, immediately after our interview on the 15th, I reported to the Executive Committee of the United Shoe Machinery Company that the Independent lease met your approval, but that you suggested that a period of two years should be allowed for lessees who sign the United lease to exchange them for Independent leases, and I assured our Executive Committee that, if your suggestion could be adopted, the Independent lease would be recommended by your Com-

mittee. I therefore urged our Executive Committee to concede a longer period for such exchange of leases than they had intended to offer, and longer than they deemed necessary for any lessee to judge of the relative advantages or disadvantages of the two leases. On my assurance that the Independent lease met your approval, and would be undoubtedly approved by your clients, inasmuch as substantially all the changes suggested by them in their letter of the 2nd instant had been incorporated in it, our Executive Committee finally authorized me to propose that one year from February 1st next should be allowed for such change of leases.

I am therefore disappointed that, in your letter of to-day, the discussion is not confined to the length of time to be afforded for such exchange of leases; and that other points, which have been debated at length and disposed of, are revived. The Company is unwilling to re-open these questions, and declines to accede to the changes suggested in your letter, except that the insertion of the words "covering the term of five years" in Article Six, is unobjectionable.

The Executive Committee have re-considered the request of your Committee that the period for exchange from the United to the Independent lease be extended to February 1, 1903; but for the reasons given in my letter to you of the 16th instant, they adhere to their decision that one year will afford ample time to the trade for the purpose, especially as it should be kept in mind that a lessee by taking an Independent lease can have the entire term of seventeen years to decide whether he wishes to avail of the lower royalty afforded by the United lease.

The Company has been, and will be at all times desirous of continuing the cordial relations with its lessees which have hitherto been maintained, and to that end its executive officers have carefully considered and have endeavored to accede to all the requests and suggestions made by your Committee during the past three months, so far as is consistent with carrying on the business of the Company on a basis which shall insure not only a safe investment for its stockholders, with fair returns thereon, but also, what is equally important to it, the welfare and prosperity of the shoe manufacturers.

Yours very truly,

ELMER P. HOWE.

DEFENDANTS' EXHIBIT 262.

[Put in Evidence, page 3646.]

MACHINES USED BY R. P. HAZZARD COMPANY, GARDINER, MAINE, IN THE MANUFACTURE OF MEN'S GOODYEAR WELT SHOES.

CUTTING ROOM.

(United) 40 Ideal Clicking Machines #3999–507–3474–3614–3613–3682–5294–5299–8297–5295–5296–882–881–5225–5226–5232–5229–5228–5227–172–4793–4794–1508–2089–2086–2093–4034–1642–2720–5496–5298–398–1048–400–1096–5298–5495–5497–5492–5494

(United–1) 2 Gearless Sole Cutting Machines #1735–

(United–4) 8 Eagle Upper Stamping Machines #144–49–183–47–

3 Power Lining Marking Machines

1 Crimping Machine

1 Grindstone

1 6′ Leather Measuring Machine

56

STITCHING ROOM.

10 Skiving Machines

8 Folding Machines

2 Strap Cutting & Folding Machines

2 Pinking Machines

1 Rogers Vamp Marking Machine

9 Perforating Machines

1 Simplex Embossing Machine

123 Single Needle Stitching Machines

18 2 Needle Stitching Machines

3 Seam Rubbing Machines

10 4 Needle Stitching Machines

(United) 2 Hub Lining Cementing Machines

1 Punching Machine

4 Hooking Machines

(United–2) 7 Eyeletting Machines #411–796–

30 2 Needle Cylinder Stitching Machines
7 Reece Buttonhole Machines
3 Buttonhole Finishing Machines
3 Button Fastening Machines
5 Barring Machines
(United) 4 Ensign Lacing Machines #480–445–1268–1072
5 Bobbin Winding Machines

258

SOLE LEATHER ROOM.

(United–6) 13 Sole Cutting Machines #3184–3185–1391–1400–2573–23
(United–6) 9 Splitting Machines #114–595–173–597–596–2789
(United) 1 Rolling Machine #205
1 Peerless Buffing Machine
3 Tap Skiving or Rand Splitting Machines
(United) 2 Rapid Rotary Cementing Machines #317–126
(United) 3 Boston Lasting Machines #1422–348–630
(United) 1 American Twin Sole Moulding Machine #39
(United–2) 4 Planet Sole Rounding Machines #1090–1503
(United) 2 Gdyr. Universal Channeling Machines #344–852
(United) 3 Gdyr. Lip Turning Machines #112–47–100
2 Insole Lip Cutting & Scoring Machines
(United) 2 Economy Insole Channeling Machines #23–38
(United) 2 " " Reinforcing Machines #25–38
(United) 4 " " Stitching Machines #13–29–39–38
7 Heel Building Machines
1 Heel Measuring Machine
2 Veneer Presses
(United) 3 Automatic Heel Compressing Machines #1379–679–1329
2 Grinding Machines
2 Shellac Mixing Barrels
1 Daniels Planing Machine
1 Shank Boring Machine

71

LASTING ROOM.

(United) 4 USMC #1 Insole Tacking Machines #277–259–67–610
(United) 15 Rex Assembling Machines #1231–1780–1216–1201–350–380–351–381–1175–1204–51–1009–562–1176–1092
(United) 14 Rex Pulling-Over Machines #936–725–717–153–235–281–166–193–268–236–205–646–645–615
21 Toe Softening Machines
(United) 48 Lasting Machines #1759–2326–1981–2276–2435–3660–1850–2025–1876–1750–4072–4078–2322–3937–3923–3936–2436–3823–837–4093–579–4074–2239–5742–5932–5079–2438–3810–3066–5244–859–453–1910–3922–4252–4173–4196–4141–4142–4134–4126–1756–1749–3926–1776–2024–1748–1869
(United) 3 Rex Upper Trimming Machines #101–78–182
(United–1) 2 Grinding Machines #19

107

MAKING ROOM

(United–5) 6 Tack Pulling Machines #323–306–36–272–31
(United) 4 Gdyr. Upper Stapling Machines #14–71–18–85
(United) 2 " Power Welt Grooving & Beveling Machines #72–451
(United) 13 " Welt & Turn Sewing Machines #717–724–6–126–9–117–194–164–718–113–868–887–1117
(United) 5 " Universal Inseam Trimming Machines #96–104–768–16–273
(United) 3 " Welt Beating & Slashing Machines #414–669–107
(United) 2 " Shank Welt Skiving Machines #259–327
6 Besto Bottom Filling Machines
(United) 4 Gdyr. Improved Sole Laying Machines #2518–1849–1896–165
(United) 5 Loose Nailing Machines #3449–2192–3004–219–418
(United) 3 Heel Seat Rounding Machines #10–391–385
(United) 8 Gdyr. Universal Rounding & Channeling Machines #770–374–76–160–366–759–801–776

(United) 1 Gdyr. Channel Opening Machine #630
(United) 2 " Bobbin Winding Machines #1400–530
(United) 16 " Outsole Rapid Lockstitch Machines #594–591–325–510–515–530–552–567–691–206–743–474–441–925–1034–1087–
(United) 1 " Outsole Stitch Rubbing Machine #22
(United) 3 Cementing Machines #212–126–154
(United) 1 Gdyr. Channel Laying Machine #263
(United) 2 " Welt Indenting & Burnishing Machines #735–736
(United) 6 " Automatic Leveling Machines #529–630–681–680–281–481
(United) 3 Hadaway Stitch Separating Machines #1162–865–873
(United) 5 Heeling Machines #1657–1173–2286–288–246
(United) 5 Universal Slugging Machines #978–2446–464–112–2448
(United) 5 Heel Trimming Machines #1668–2049–982–949–850
(United) 1 McKay Knife Grinding Machine #526
(United–5) 8 Heel Scouring Machines #1574–811–547–1734–554
(United–2) 4 Heel Breasting Machines #1078–737
(United–1) 2 Heel Breast Scouring Machines #140
(United–1) 2 Top Piece Scolloping Machines #230
(United–11) 21 Edge Trimming Machines #5069–3192–1881–4418–3107–4418–5390–4050–6546–7288–3669
(United) 4 Gdyr. Jointing Machines #45–48–9–46
(United–5) 9 Edge Setting Machines #359–1236–188–2039–2130
(United–1) 2 Impression Stitch Burnishing Machines #138
(United) 1 Crest Heel Blacking Machine #145
(United) 6 Xpedite Heel Finishing Machines #1538–1731–1796–1279–1987–859
1 Grinding Machine
1 Grindstone & Frame

173

FINISHING ROOM.

2 Shank Buffing Machines
(United–6) 10 Buffing Machines #1277–1426–1280–890–937–930
30 Climax Finishing Shafts

(United–1) 3 Regent Stamping Machines #180
1 Universal Embossing Machine

46

PACKING ROOM.

(United) 2 Nurling Machines #377–166
23 Copeland Finishing Machines
(United) 1 Tip Scouring Machine #62
1 Simplex Bow Attaching Machine
4 Vamp Creasing Machines
2 Box Nurling Machines
1 Stencil Cutting Machine
1 Power Tag Marking Machine

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SUMMARY.

	United	Miscellaneous	
Cutting Room	45	11	
Stitching "	8	250	
Sole Leather Room	37	34	
Lasting Room	85	22	
Making Room	142	31	
Finishing Room	7	39	
Packing Room	3	32	
	327	419	= Grand Total 746

SUMMARY, INCLUDING THOSE GENERAL DEPARTMENT MACHINES WITH AN OUTRIGHT SALE PRICE AS MISCELLANEOUS.

	United	Miscellaneous	
Cutting Room	40	16	
Stitching "	6	252	
Sole Leather Room	52	19	
Lasting Room	85	22	
Making "	111	62	
Finishing "	0	46	
Packing "	2	33	
	296	450	= Grand Total 746

DEFENDANTS' EXHIBIT 263.

[Put in Evidence, page 3691.]

NEW ENGLAND SHOE AND LEATHER ASSOCIATION.

President, Andrew G. Webster

1st Vice-President, Elisha W. Cobb — 2d Vice-President, Robert Batcheller

Secretary, Geo. C. Houghton — Treasurer, Geo. McConnell

Directors.

William H. Allen	James W. Hitchings	Edward Moll
Harry H. Baldwin	George C. Houghton	I. Henry Porter
Robert Bacheller	George Hutchinson	Henry H. Proctor
Edwin W. Baxter	Charles H. Jones	William B. Rice
Frank J. Bradley	George E. Keith	Edwin L. Sprague
George W. Brown	Preston B. Keith	Arthur M. Stone
Elisha W. Cobb	John S. Kent	Edward D. Van Tassel
George M. Coburn	Joseph R. Leeson	John L. Walker
George F. Daniels	Charles A. Locke	Andrew G. Webster
Walter G. Garritt	Maxwell J. Lowry	Edwin S. Woodbury
A. Pierce Green	George H. Maddock	James A. Woolson
Charles P. Hall	George McConnell	

116 and 126 Bedford Street, Shoe and Leather Building.

Notary Public, Justice of the Peace.

Long Distance Telephone "Oxford" 96.

Boston, Mass., Jan. 29th, 1901.

S. W. Winslow, President, United Shoe Machinery Co., Albany Building, Boston.

Dear Sir: I am directed to inform you that the Committee have voted to accept the draft of lease as submitted by Mr. Howe to Mr. Storey and I herewith enclose a copy of a report which they have prepared to give to the press.

I am, Respectfully yours,

GEO. C. HOUGHTON, Secretary.

Dic. G.C.H. Enclosure.

Shirley Reporter City Editor 1–15

A settlement of the lease controversy has been reached between the United Shoe Machinery Company and a Committee of the New England Shoe & Leather Association together with a Committee of the National Association of Boot & Shoe Manufacturers, by which the Shoe Machinery Company offer to Shoe Manufacturers a choice between the lease as originally drawn, or a modified lease which contains among the several important concessions the right to use metallic fastening machines in connection with lasting, welt sewing or other machines other than those owned and leased by the United Shoe

Machinery Company. To such users the Company may charge, not exceeding 10% more for metallic fastening, than to those who use the entire system of the United Shoe Machinery Company.

The option of selection of either of above leases will not expire until Feb. 1st, 1902, after which there can be no change from the original to the modified lease, except by agreement; but the holder of the modified lease may change to the original at any time, by giving six months notice in writing.

The Committee will at an early date prepare and issue to the trade a detailed report.

Sent to the Press at same time it was sent to us.

H.

DEFENDANTS' EXHIBIT 264.

[Put in Evidence, page 3691.]

E. P. H. File.

STOREY THORNDIKE & PALMER, 735 EXCHANGE BUILDING
Counsellors-at-Law

Moorfield Storey
John L. Thorndike
Henry Ware

Bradley W. Palmer
Ezra R. Thayer
Reginald H. Johnson

All letters to be addressed to the firm.

Boston, 29th January 1901

E. P. Howe, Esq., Exchange Building.

Dear Sir: The Committee of the New England Shoe Manufacturers' Association instructs me to notify you that they will accept the last draft of the Independent lease which you have submitted to them, upon the understanding, at which I think we have arrived, that the persons who have taken your Iron Clad lease pending these negotiations may if they see fit take the Independent lease, and that there shall be attached to the Iron Clad lease a rider authorizing the holder to surrender it and take the Independent lease at any time up to the first day of February 1902. I understand moreover that it is your purpose to offer both leases for an indefinite time thereafter unless something in the business situation leads your company to change its policy.

Please let me hear from you that I have correctly stated our understanding, and oblige, Yours very truly,

Del'd C 30 MOORFIELD STOREY.

DEFENDANTS' EXHIBIT 265.

[Put in Evidence, page 3692.]

Copy to Mr. Winslow. E. P. H. File.

Boston, Mass., January 29, 1901.

Moorfield Storey, Esq.,

My dear Sir: I beg to acknowledge your favor of this date informing me of the action of the Committee of the New England Shoe Manufacturers' Association concerning the Independent lease offered by the United Shoe Machinery Company. I confirm what I have heretofore stated to you, namely:

1. That any lessee, who pending the negotiations with your Committee, has signed the United lease of Metallic Department machinery (which you refer to as the Iron Clad lease) or any lessee who shall hereafter sign such United lease may, at any time up to February 1st, 1902, upon giving thirty days written notice to the Company, surrender it, if he is not in default thereunder, by executing an Independent lease of the same machinery, and that the United Company upon the request of any such lessee under the United lease will attach a rider to his United lease expressly granting to him the right to exchange it for an Independent lease. A form of such rider is sent herewith.

2. That the United Company intends to offer both the United and the Independent lease for an indefinite time after February 1, 1902.

The Independent lease has been sent to the printer, and as soon as I have a corrected proof, I would like to submit it to you.

Enclosure. Very truly yours,

RIDER FOR "UNITED" METALLIC LEASE.

The lessee, if not in default in respect to any of the conditions, agreements, stipulations and provisions in Lease No.
granted by the undersigned for certain Metallic Department machinery, upon giving at least thirty days notice in writing of his intention so to do, shall have the privilege of surrendering this "United" lease and license at any time before February 1, 1902, by executing the

"Independent" form of lease and license agreement in respect to the leased machinery.

Dated, Boston, Mass., 190

UNITED SHOE MACHINERY COMPANY.

_____ By

DEFENDANTS' EXHIBIT 266.

[Put in Evidence, page 2785.]

November 13, 1912.

J. E. Williams, Esq., Vice President and General Manager, Excelsior Shoe Company, Portsmouth, Ohio.

Dear Sir: In reply to your inquiry we beg to say that the use of our machines in the manner which you have indicated to us, in the manufacture of McKay welts, is not in accordance with the conditions under which the machines have been supplied to you. Should you desire to make a change in the conditions on which you hold our machines so as to warrant their use in the manner indicated, we will be glad to take the matter up with you further.

Very truly yours,

UNITED SHOE MACHINERY COMPANY

_____ By

DEFENDANTS' EXHIBIT 267.

[Put in Evidence, page 2785.]

Portsmouth, Ohio, Nov. 18, 1912.

Fred G. King, Boston, Mass., United Shoe Machinery Co., Goodyear Dept.

Dear Sir: For the benefit of your files, since the question has been raised as to the use of a certain machine in our Ironton Scout plant, would say that immediately upon returning, the writer had the machine withdrawn from operation, and all the work is being done on your machine. If we should decide at any time in the future to change the plan of making these shoes, we will take the question up with you, but at present we are working on a line as per your interpretation of the lease. Yours very truly,

THE EXCELSIOR SHOE CO.

Dict.—JEW—C. Jno. E. Williams

DEFENDANTS' EXHIBIT 269.

[Put in Evidence, page 4107.]

Lease No. *183*

Transfer from Lease No.

This Lease and Agreement, made the *eighteenth* day of *March* A. D. 1897, by and between the Eppler Welt Machine Company, a corporation existing under the laws of the State of Maine, having a place of business at Boston, Massachusetts, Lessor, the party of the first part, and *Geo. H. Burt & Co., doing business at Lynn, Mass.*, Lessee, the party of the second part, witnesseth:

Whereas, the Lessor is now the owner of the following Letters Patent of the United States, viz.:—

No. 325,063, dated Aug. 25, 1885;
No. 387,058, dated July 31, 1888;
No. 387,059, dated July 31, 1888;
No. 417,872, dated March 10, 1891;
No. 487,011, dated Nov. 29, 1892;
No. 487,214, dated Nov. 29, 1892;
No. 409,281, dated Aug. 20, 1889;
No. 498,017, dated May 23, 1893.
No. 507,873, dated Oct. 31, 1893.

And whereas the Lessee desires to use the hereinafter described machines belonging to the Lessor;

Now, therefore, the Lessor, in consideration of one dollar to it paid by the said Lessee, the receipt whereof is hereby acknowledged, and of the stipulations and conditions hereinafter contained on the part of the Lessee to be kept and performed, doth lease unto the said party of the second part the machines designated by their numbers in the following schedule:—

One Eppler Inseam Sewing Machine , No. *112*
One Eppler Outsole Lock Stitch Machine , No. *80*
One Eppler Insole Channeler , No. *67*
Eppler Outsole Channeler , No.
One Eppler Welt Groover and Beveler , No. *84*
One Eppler Welt Splitter , No. *57*
One Eppler Welt Beater , No. *61*
Eppler Channel Lip Turner , No.
Eppler Shank Skiver , No.
One Eppler Bobbin Winder , No. *65*

It is understood that said machines are and shall remain the property of said Eppler Welt Machine Company, and subject to the conditions of this lease and agreement.

And the Lessor doth hereby license the Lessee, and operatives in his employment, to use said machines, upon the terms and conditions hereinafter set forth; provided, however, and this lease is made and this license is granted on the express condition, that the Lessee shall faithfully keep and perform all the conditions and stipulations herein contained on his part to be kept and performed; and upon breach of the same or of any of them by the Lessee, the Lessor, its successors or assigns, may, at their option, cancel and terminate this lease and license; and upon written notice thereof by the Lessor, its successors or assigns, to the Lessee, or to any one in the possession or apparent control of the said machines or any of them, this lease and license shall terminate, and possession of said machines shall thereupon be transferred to said Lessor, its successors or assigns. And the said party of the second part hereby agrees to keep and perform all the following conditions of this lease and license:—

First. The Lessee is by this lease and license authorized to use the machines hereby leased only in said *Lynn, Mass.*, he shall not add to nor substract from the said machines any mechanism whatever now or hereafter organized or connected therewith by the Lessor, nor make, nor allow to be made, any change or alteration in the same, without the consent thereto in writing by the Lessor, nor interfere with the proper operation of the machines, or any mechanism forming a part thereof, or attached thereto, nor remove nor deface any dates, numbers, or inscriptions now or hereafter impressed thereon or affixed thereto by the Lessor.

Second. It shall be lawful for the Lessor, or its duly authorized agent, at all reasonable times to have convenient access to the machines, to examine and inspect the same and the use thereof, and to verify the operator's reports, and to improve the machines, and to affix indicators thereto, as it may see fit; and the covenants, stipulations, and conditions herein contained shall apply to all improvements which the Lessor shall hereafter add to the machines, to indicators now or hereafter affixed thereto, and to all patents hereafter embodied

therein, with the same effect as if said patents were included in the list herein set forth.

Third. The following is the schedule of rents or royalties hereinafter referred to, and which it is understood and agreed is to be paid on each pair of shoes or boots respectively made by the aid of these machines or any of them, or by the use of the said patents or any of them, viz.:—

SCHEDULE OF RENTS AND ROYALTIES.

Children's	3 cents.
Misses'	4 "
Women's	6 "
Youths'	4 "
Boys'	6 "
Men's	8 "

Fourth. The Lessee hereby agrees to keep an account of all boots and shoes sewed by him, or by any other person for him or for others, by the aid of the machines hereby leased, or by the use of the patents aforesaid and to render an account thereof to the Lessor, its successors or assigns, on or before the tenth day of each month; which account shall specify the number of pairs of boots and shoes, made under this lease and license during the calendar month next preceding, and the class to which they belong according to the above schedule; and the said Lessee agrees that he will require the operator or operators on said machines to keep a daily account of all boots and shoes sewed on said machines, upon the printed forms to be furnished by the Lessor, in duplicate; one copy of which, containing such reports for the calendar month preceding, the Lessee agrees to send, on or before the tenth day of each month, to the Lessor; and whenever required by the Lessor, its successors or assigns, to make oath to the correctness of said returns; and to allow the Lessor, its successors, assigns, or authorized agents to examine the original books and accounts of the Lessee, in order to verify the returns aforesaid, and the Lessee agrees to send to the Lessor, on or before the tenth day of each month, in case the machines, or any of them, hereby leased have not been run during the month next preceding, one of the aforesaid printed forms furnished by the Lessor, for each such

machine, signed by the Lessee, and marked across the face with the words "not running" or "not in use."

Fifth. The Lessee agrees to pay unto the Lessor, as rent for the machines hereby leased, the rent or royalty specified in the schedule forming part of Section Third herein, on each pair of boots or shoes of the respective kinds mentioned or described in said schedule made by the aid of the said machines or of any of them, or by the use of the said patents or of any of them; the rents and royalties for all such boots and shoes made as aforesaid during one calendar month, to be due on the first day of the calendar month next following, and to be paid within three months from that day; but the Lessor hereby agrees that **if the rents and royalties due on the first day of any month shall be paid on or before the fifteenth day of that month, it will, in consideration thereof, grant a discount of fifty per cent. from the rents and royalties specified in the schedule aforesaid; and the Lessee further agrees to pay, while he shall retain possession of the machines hereby leased, all taxes thereon, to whomsoever laid or assessed.** The Lessee hereby further agrees that the rents or royalties actually paid by the Lessee for each sewing or stitching machine herein leased shall, in each and every year, during the continuance of this lease, amount in the aggregate to at least one hundred dollars. The Lessee shall also pay the expense of transportation of the machines herein leased from and to the Lessor's premises, and also the expense of keeping said machines in repair; and shall keep said machines and all of them fully insured in the amounts hereinafter mentioned against loss by fire, and in case of loss of or damage to said machines or any of them shall pay to the Lessor or its order upon demand the full amount of such insurance. The insurance upon said machines shall be in the following amounts, to wit:—

Eppler Inseam Sewing Machine . .	$ 250.00
Eppler Outsole Lock Stitch . .	190.00
Eppler Insole Channeler . . .	50.00
Eppler Outsole Channeler . . .	50.00
Eppler Welt Groover and Beveler .	15.00

Eppler Welt Splitter	10.00
Eppler Welt Beater	25.00
Eppler Channel Lip Turner . .	25.00
Eppler Shank Skiver . . .	35.00
Eppler Bobbin Winder . . .	25.00

Sixth. The Lessee hereby agrees that he will not in any way violate, or infringe, or contest the validity of any of the patents he is hereby licensed to use, or the sufficiency of their specifications, or the validity of the title of the Lessor, or of its successors or assigns, to said patents or any of them.

Seventh. This lease and license is not assignable by the Lessee, by his own act or by operation of law.

Eighth. The following are also agreed to by the parties to this instrument as the terms of lease and license of the machines which the Lessee is hereby licensed to use:—

1st. That the power conveyed by this lease and license is only the right to use the said machines, and not the right to make or sell any machine embodying the patents aforesaid, or any of them; and that a transfer or removal of the machines hereby leased, or any of them, can only be made with the consent of the Lessor, its successors or assigns; and that if the Lessee is or becomes at any time, insolvent or bankrupt, or makes an assignment for the benefit of creditors, or if a sale, lease, transfer, or removal of said machines, or any of them, shall be made or attempted by the Lessee, or by operation of law, or by any legal officer, representative, or assignee, as the property of the Lessee, without the written consent of the Lessor, or its successors or assigns, this lease and license shall thereupon terminate and expire; and the Lessor, its successors or assigns, may take possession of said machines without the Lessee having any claim for the repayment of any part of the sum or sums which he may have paid as consideration for the delivery of this lease and license, or for rent or license under this instrument.

2d. The Lessee agrees that the machines hereby leased shall be used only in the manufacture of boots and shoes known in the trade as "Eppler Welts," and that he will not use or permit the use of

said machines, or either or any of them, upon boots or shoes in the manufacture of which any sole or welt sewing machine not leased to him by the Lessor is employed, or for any other purpose, unless the consent in writing of the Lessor shall first have been obtained.

3d. That in case the Lessee refuses or neglects to perform, or violates any of the terms or conditions of this lease and license, the Lessor, its successors or assigns, shall have the right to terminate this lease and license by giving written notice as aforesaid that it has elected so to do; and upon the giving of such notice this lease and license shall be terminated, and the possession of said machines shall thereupon be transferred to the Lessor, its successors or assigns, free and discharged of this lease and license; and the Lessor, its successors or assigns, or its authorized agent or agents, may thereupon enter the premises where said machines may be, and may take and remove the same without being deemed guilty of any trespass; and the Lessee shall have no claim whatever on account of any sum or sums he may have paid for or under this lease or license

4th. That this lease and license shall continue (provided the Lessee complies with the terms and conditions thereof) until the expiration of all the Letters Patent which the Lessee is hereunder licensed to use, or any extensions or renewals of the same, or additional patents; and upon the expiration thereof, the Lessee shall deliver to the Lessor, its successors or assigns, the machines hereby leased, in good order; natural wear and tear alone excepted.

Ninth. In case any other machines than these hereby leased and licensed, embracing any of the inventions patented in the aforesaid Letters Patent, or any of them, or any inventions or improvements for which Letters Patent shall be granted or assigned to the Lessor, shall hereafter come into possession of the Lessee, by exchange or otherwise, without lease or license from the Lessor, its successors or assigns, then in case the Lessor, its successors or assigns, shall so elect, all the covenants herein contained shall apply to such machines, inventions or improvements; and shall govern the parties respective y to the same extent as if the said machines, inventions or improvements had been expressly included in this lease and license. The Lessor

shall give written notice of its election as aforesaid within thirty days after it shall have received written notice from the Lessee of the possession of such machines; but may give such notice without having received notice from the Lessee of the possession of such machines.

Tenth. The Lessee agrees that he will not disturb or interfere with, nor permit any one else to disturb or interfere with, any indicator which now is, or which may be hereafter, placed upon the machines as aforesaid.

Eleventh. All the rights and interests which under this instrument and by reason of the ownership of said machines and patents and patent rights belonging to the Lessor shall be deemed to belong to, and may be enforced in, the names of the Lessor and its successors and assigns, and all the stipulations binding on the Lessee shall be binding on his executors or administrators.

Twelfth. It is agreed that the numbers of the machines named in this lease may be entered herein by the Lessor after signing; and in case the Lessee shall require more than one machine, it is agreed that the termination to words relating to the machines shall be construed and considered as written in the singular or plural, as the number of machines entered in the lease and license may require; and also that this instrument may be used in cases where the party of the second part shall consist of more than one person, and in that case the termination of the words relating to the said party shall be considered as plural or singular, as the sense may require; and that when the party of the second part so consists of several persons, and they sign this lease, either individually or by their firm signature, such signature or signatures shall bind them both jointly and severally to the terms and agreements herein contained.

In Witness whereof, the parties aforesaid have hereunto put their hands and seals; the said parties of the second part binding themselves to all the foregoing agreements, both jointly and severally.

EPPLER WELT MACHINE COMPANY.

By Walter B. Trowbridge, Treas. [SEAL]

GEO. H. BURT & CO. [SEAL]

[On back:]

No. *183*

Name, *Geo. H. Burt & Co.*
Address, *Lynn, Mass.*
Date, *March 18,* 1897

Machine	No.
Inseam Sewing Machine	*112*
Outsole Lock Stitch	*80*
Insole Channeler	*67*
Outsole Channeler	
Welt Groover and Beveler	*84*
Welt Splitter	*57*
Welt Beater	*61*
Channel Lip Turner	
Shank Skiver	
Bobbin Winder	*65*

DEFENDANTS' EXHIBIT 270.

[Put in Evidence, page 4217.]

INFRINGEMENT SUITS WHICH HAD BEEN BEGUN AGAINST THOMAS G. PLANT AND AGAINST THOMAS G. PLANT COMPANY.

Suits Against Thomas G. Plant

Eq. Nos.	Patents.		Infringing Machines	Bills Filed
749	Grandy	No. 552,834	Toe and Heel Laster	July 28, 1910
751	Pettengill	No. 596,305	Heel Attacher	July 28, 1910
753	Winkley	No. 700,279	Welter	July 28, 1910
764	Lombard	No. 524,446	Toe and Heel Laster	Aug. 11, 1910
766	Bates	No. 921,503 No. 950,986	Clicking Machine	Aug. 13, 1910
768	Cutter	No. 582,579	Loose Nailer	Aug. 13, 1910
775	Arnold	No. 946,591	Stitcher	Sept. 3, 1910
777	Hadaway	No. 963,761	Stitcher	Sept. 3, 1910

Suits Against Thomas G. Plant Company

A. Suits on same patents and same machines as suits listed above.

750	Grandy	No. 552,834	Toe and Heel Laster	July 28, 1910
752	Pettengill	No. 596,305	Heel Attacher	July 28, 1910
754	Winkley	No. 700,279	Welter	July 28, 1910

763	Lombard	No. 524,446	Toe and Heel Laster	Aug. 11, 1910
767	Bates	No. 921,503	Clicking Machine	Aug. 13, 1910
		No. 950,986		
769	Cutter	No. 582,579	Loose Nailer	Aug. 13, 1910
774	Arnold	No. 946,591	Stitcher	Sept. 3, 1910
776	Hadaway	No. 963,761	Stitcher	Sept. 3, 1910
B	Additional suits.			
755	Hadaway	No. 725,077	Welting produced by Welt Slasher & Groover	July 28, 1910
765	Taylor	No. 834,085	Heel produced by Heel Attacher	Aug. 11, 1910

DEFENDANTS' EXHIBIT 271.

[Put in Evidence, page 4219.]

PATENTS OF THE UNITED COMPANY INFRINGED BY THE PLANT MACHINES.

UPPER CLICKING MACHINE

No.	date	Inventor	Date of Application
921,503	May 11, 1909	Bates	
950,986	Mar. 1, 1910	Bates	
1,006,453	Oct. 24, 1911	Ashworth	June 12, 1908
1,010,476	Dec. 5, 1911	Buckminster	June 13, 1908
1,081,751	Dec. 16, 1913	Keats	Mar. 1, 1909
1,004,757	Oct. 3, 1911	Eaton	Mar. 2, 1910

DOUBLE LIP CHANNEL OPENER

No.	date	Inventor
818,774	Apr. 24, 1906	Mitchell

SINGLE LIP CHANNEL OPENER AND EDGE COMPRESSOR

No.	date	Inventor
818,774	Apr. 24, 1906	Mitchell

INNERSOLE FLEXOR

No.	date	Inventor
685,991	Nov. 5, 1901	Knipe
885,244	Apr. 21, 1908	Hadaway
963,708	July 5, 1910	Hadaway

INNERSOLE CLOTH TUCKER AND LIP TRIMMER

No.	date	Inventor	
609,103	Aug. 16, 1898	Keith	
638,010	Nov. 28, 1899	Hadaway	
1,028,982	June 11, 1912	Winkley	May 24, 1906

SOLE ROUNDER

No.	date	Inventor
589,409	Sept. 7, 1897	Breach

GRINDER

No.	date	Inventor	
1,056,419	Mar. 18, 1913	Howe	Mar. 29, 1905

TOP LIFT COMPRESSOR

No.	date	Inventor
781,236	Jan. 31, 1905	Small

PULLER OVER AND TIP MEASURER

No.	date	Inventor	
663,777	Dec. 11, 1900	McFeely	
950,701	Mar. 1, 1910	McFeely	Oct. 31, 1901
1,007,053	Oct. 31, 1911	Bayard	May 17, 1906
1,029,387	June 11, 1912	McFeely	Mar. 28, 1903
597,321	Jan. 11, 1898	Ladd	

RAPID SIDE LASTER

No.	date	Inventor	Date of Application
1,005,234	Oct. 10, 1911	Ladd & Stiggins	Oct. 13, 1902
1,012,742	Dec. 26, 1911	Stiggins	Jan. 28, 1905
1,005,929	Oct. 17, 1911	Bond	Feb. 25, 1907
597,321	Jan. 11, 1898	Ladd	

TOE AND HEEL LASTER

No.	date	Inventor	
524,446	Aug. 14, 1894	Lombard	
552,834	Jan. 7, 1896	Grandy	
935,065	Sept. 28, 1909	Stiggins	
1,030,564	June 25, 1912	Brock	July 19, 1898
1,022,420	Apr. 9, 1912	Jerram	Sept. 26, 1904

Re.13,292	Sept. 19, 1911	Snow	
(Original patent 946,708, Jan. 19, 1910)			
1,002,818	Sept. 12, 1911	Brock	Mar. 19, 1910
571,429	Nov. 17, 1896	Chase	
569,231	Oct. 13, 1896	Ray	

TURN HEEL LASTER

No.	date	Inventor	
552,834	Jan. 7, 1896	Grandy	
935,065	Sept. 28, 1909	Stiggins	
1,030,564	June 25, 1912	Brock	July 19, 1898
1,022,420	Apr. 9, 1912	Jerram	Sept. 26, 1904
Re. 13,292	Sept. 19, 1911	Snow	
(Original patent 946,708, Jan. 19, 1910)			
1,002,818	Sept. 12, 1911	Brock	Mar. 19, 1910

STAPLE TACKER

No.	date	Inventor	
765,650	July 19, 1904	Casgrain	
1,016,930	Feb. 13, 1912	Borden	Jan. 16, 1905

HEEL SEAT NAILER

No.	date	Inventor
765,650	July 19, 1904	Casgrain

WELT SLASHER AND GROOVER

No.	date	Inventor	
885,244	Apr. 21, 1908	Hadaway	
963,708	July 5, 1910	Hadaway	
725,077	Apr. 14, 1903	Hadaway	
1,026,306	May 14, 1912	Eppler	July 20, 1906
1,020,346	Mar. 12, 1912	Eppler	June 20, 1908
Appln. Ser. No. 309,109 filed Mar. 31, 1906, Stanbon			

TACK PULLER & BASTER

No.	date	Inventor
864,532	Aug. 27, 1907	Hadaway
777,795	Dec. 20, 1904	Lyon
545,625	Sept 3, 1895	Fowler & Warren

WELTER

No.	date	Inventor	
700,279	May 20, 1902	Winkley	
993,490	May 30, 1911	Winkley	Mar. 26, 1897

Appln. Ser. No. 247,117 filed Feb. 24, 1905, Eppler

CUSTOM SOLE LAYER

No.	date	Inventor
580,746	Apr. 13, 1897	Winkley
610,314	Sept. 6, 1898	Winkley
935,212	Sept. 28, 1909	Manent
557,744	Apr. 7, 1896	Winkley

ROUGH ROUNDER

No.	date	Inventor
599,602	Feb. 22, 1898	French & Meyer
682,679	Sept. 17, 1901	Fowler

HEEL SEAT DINKER

No.	date	Inventor
613,228	Nov. 1, 1898	Barbour

SHOE CHANNELER

No.	date	Inventor
707,576	Aug. 26, 1902	Fowler
600,883	Mar. 22, 1898	Meyer & French

STITCHER

No.	date	Inventor	
710,613	Oct. 7, 1902	Richardson	
971,014	Sept. 20, 1910	Winkley	Jan. 14, 1905
946,591	Jan. 18, 1910	Arnold	
963,761	July 12, 1910	Hadaway	
704,458	July 8, 1902	Hadaway	

Appln. Ser. No. 321,958 filed June 16, 1906, Nash

LOOSE NAILER

No.	date	Inventor
582,579	May 11, 1897	Cutter
582,580	May 11, 1897	Cutter

1,054,173	Feb. 25, 1913	Casgrain	Sept. 5, 1907
1,053,479	Feb. 18, 1913	Casgrain	Sept. 12, 1908

LEVELER

No.	date	Inventor
540,222	May 28, 1895	Winkley & Phillips
540,223	May 28, 1895	Winkley & Phillips
557,744	Apr. 7, 1896	Winkley
580,746	Apr. 13, 1897	Winkley
610,314	Sept. 6, 1898	Winkley
861,746	July 30, 1907	Mayo
935,212	Sept. 28 1909	Manent

HEEL LOADER

No.	date	Inventor	Date of Application
1,000,957	Aug. 15, 1911	Bates	Aug. 15, 1903
694,656	Mar. 4, 1902	Mayo	
571,931	Nov. 24, 1896	Raymond & Fogg	
662,898	Nov. 27, 1900	Grandy	
663,777	Dec. 11, 1900	McFeely	
566,337	Aug. 25, 1896	Raymond	
596,053	Dec. 28, 1897	Crisp	
1,054,032	Feb. 25, 1913	Raymond	Feb. 20, 1892
1,002,836	Sept. 12, 1911	Gouldbourn	Oct. 13, 1906
776,787	Dec. 6, 1904	Leland	

HEELER

No.	date	Inventor	
884,524	Apr. 14, 1908	Pope	
943,723	Dec. 21, 1909	Webster & Towle	
1,000,957	Aug. 15, 1911	Bates	Aug. 15, 1903
1,009,710	Nov. 21, 1911	Raymond	Feb. 20, 1892
1,054,032	Feb. 25, 1913	Raymond	Feb. 20, 1892
982,550	Jan. 24, 1911	Towle	Oct. 3, 1904
1,019,398	Mar. 5, 1912	Woodward	June 6, 1901
1,000,119	Aug. 8, 1911	Pope & Elliott	May 26, 1898
1,030,654	June 25, 1912	Elliott	Mar. 13, 1902
1,081,917	Dec. 16, 1913	Tripp	Aug. 1, 1907
834,085	Oct. 23, 1906	Taylor	

HEEL ATTACHER ON WOOD LASTS

No.	date	Inventor	
884,524	Apr. 14, 1908	Pope	
943,723	Dec. 21, 1909	Webster & Towle	
1,000,957	Aug. 15, 1911	Bates	Aug. 15, 1903
1,009,710	Nov. 21, 1911	Raymond	Feb. 20, 1892
1,054,032	Feb. 25, 1913	Raymond	Feb. 20, 1892
982,550	Jan. 24, 1911	Towle	Oct. 3, 1904
1,019,398	Mar. 5, 1912	Woodward	June 6, 1901
1,000,119	Aug. 8, 1911	Pope & Elliott	May 26, 1898
1,081,917	Dec. 16, 1913	Tripp	Aug. 1, 1907
834,085	Oct. 23, 1906	Taylor	
596,305	Dec. 28, 1897	Pettengill	
1,030,654	June 25, 1912	Elliott	Mar. 13, 1902

HEEL SLUGGER

No.	date	Inventor	Date of Application
765,650	July 19, 1904	Casgrain	
1,056,419	Mar. 18, 1913	Howe	Mar. 29, 1905

HEEL BREASTER

No.	date	Inventor
636,990	Nov. 14, 1899	Heys

STITCH INDENTER & BURNISHER

No.	date	Inventor	
894,332	July 28, 1908	Krewson	
690,422	Jan. 7, 1902	Hadaway	
855,401	May 28, 1907	Hadaway	
934,434	Sept. 21, 1909	Flynt	
999,161	July 25, 1911	Hadaway	May 17, 1905

STITCH SEPARATOR

No.	date	Inventor
Re. 11,538	May 12, 1896	Hadaway
(Original patent 521,978 June 26, 1894)		

TOP LIFT SCALLOPER

No.	date	Inventor	
1,030,567	June 25, 1912	Busell	Aug. 8, 1906

HEEL WAXER AND BURNISHER

No.	date	Inventor
699,476	May 6, 1902	Beckwith & Pease
743,988	Nov. 10, 1903	Pease
Appln. Ser. No. 320,622 filed June 7, 1906		Pease

SEAT BEADER

No.	date	Inventor	Date of Application
687,225	Nov. 26, 1901	Gordon and Gould	

TREEING MAHINE

No.	date	Inventor	
1,030,810	June 25, 1912	Hansen	Sept. 16, 1902
1,081,907	Dec. 16, 1913	Hansen	Feb. 1, 1905

BRESNAHAN AUTOMATIC SOLE MOLDING MACHINE

No.	date	Inventor
627,122	June 20, 1899	Keighley

KEIGHLEY INSEAM TRIMMER

No.	Date	Inventor
961,200	June 14, 1910	Ashton
968,555	Aug. 30, 1910	Hadaway

DEFENDANTS' EXHIBIT 272.

[Put in Evidence, page 4219.]

INTERFERENCES IN THE PATENT OFFICE BETWEEN APPLICATIONS OWNED BY PLANT AND APPLICATIONS OF UNITED SHOE MACHINERY COMPANY.

(Applications owned by United Company are designated "(United)".)
(" " " Plant " " " "(Plant)".)

Olson	Se. No. 316,304 (United) (patent No. 1,040,393, Oct. 8, 1912)	Interference No. 28127
	v.	Declared Oct. 22, 1907
Heys	Patent No. 860,377 (Plant)	Impression Stitch Machine
Eppler	Se. No .439,487 (United) (patent No. 1,020,346, Mar. 12, 1912)	Interference No. 31306
	v.	Declared Jan. 11, 1910
Stanbon	Se. No. 309,109 (Plant)	Welt Preparing Machine

Allen	Se. No. 450,042 (United) (patent No. 1,027,638, May 28, 1912)	Interference No. 31422 Declared Feb. 1, 1910 Heel Seat Rounding Machine
	v.	
Heys	Se. No. 309,997 (Plant) (patent No. 1,005,545, Oct. 10, 1911)	
Allen	Se. No. 450,042 (United) (patent No. 1,027,638, May 28, 1912)	Interference No. 31657 Declared Mar. 22, 1910 Heel Seat Rounding Machine
	v.	
Phelan	Se. No. 319,709 (Plant) (patent, No. 1,005,573, Oct. 10, 1911)	
Winkley	Se. No. 43,592 (United) (patent No. 961,747, June 14, 1910)	Interference No. 31005 Declared Nov. 2, 1909 Leveling Jack
	v.	
Woodward	Se. No. 327,136 (Plant) (patent No. 1,076,618, Oct. 21, 1913)	
Ladd & Stiggins	Se. No. 127,083 (United) (patent No. 1,005,234, Oct. 10, 1911)	Interference No. 29382 Declared Oct. 6, 1908 Grippers for Lasting Machines
	v.	
Seely	Se. No. 450,941 (Plant) (patent No. 958,187, May 17, 1910)	
Busell	Se. No. 329,732 (United) (patent No. 1,030,567, June 25, 1912)	Interference No. 32078 Declared June 21, 1910 Machine for Concaving Heels
	v.	
McLeod	Se. No. 524,951 (Plant)	
Keats	Se. No. 480,561 (United) (patent No. 1,081,751, Dec. 16, 1913)	Interference No. 31965 Declared June 7, 1910 Presses (Clicking Machine)
	v.	
Stewart	Se. No. 526,760 (Plant) (patent No. 1,030,621, June 25, 1912)	
Ashworth	Se. No. 438,137 (United) (patent No. 1,006,453, Oct. 24, 1911)	Interference No. 31966 Declared June 7, 1910 Presses (Clicking Machine)
	v.	
Stewart	Se. No. 526,760 (Plant) (patent No. 1,030,621, June 25, 1912)	
Engberg	Se. No. 464,137 (United) (patent No. 1,023,826, Apr. 23, 1912)	Interference No. 30644 Declared July 22, 1909 Measure (Tip Measurer for Pulling-Over Machine)
	v.	
Perri	Se. No. 490,216 (United) (patent No. 1,024,019, Apr. 23, 1912)	
	v.	
Heys	(Plant)	
Heys	Patent No. 860,377 (Plant)	Interferences Nos. 26952, Jan. 2, 1907 27259, Mar. 12, 1907
	v.	
Hadaway	Se. No. 224,660 (United) (patent No. 1,003,451, Sept. 19, 1911)	
	v.	
Krewson	Se. No. 211,794 (patent No. 894,332, July 28, 1908)	Impression Stitch Machine

Hadaway	Se. No. 251,383 (United)	Interferences Nos. 26016, 26018 May 8, 1906
	(patent No. 1,003,452, Sept. 19, 1911)	
	v.	
Flynt	Se. No. 231,133 (United)	
	(patent No. 845,939, Mar. 5, 1907)	
	v.	Impression Stitch Machine
Heys	Se. No. 261,490 (Plant)	
Brock	Se. No. 686,319 (United)	Interference No. 31802 Declared Apr. 26, 1910 Lasting Machine
	(patent No. 1,030,564, June 25, 1912)	
	v.	
Phelan	Se. No. 529,313 (Plant)	
Brock	Se. No. 512,907 (United)	Interference No. 31347 Declared Jan. 18, 1910 Lasting Machine
	(patent No. 1,066,375, July 1, 1913)	
	v.	
Phelan	Se. No. 529,313 (Plant)	
Cavanagh	Se. No. 384,511 (United)	Interference No. 29751 Declared Jan. 19, 1909 Machines for Operating on Insoles
	v.	
Plant	(Plant)	
	v.	
Cook		
Hadaway	Se. No. 362,632 (United)	Interference No. 31525 Declared Feb. 23, 1910 Trimming Machine (Shank Trimmer)
	v.	
Moody		
	v.	
Plant	(Plant)	
	v.	
Colber		
Hadaway	Se. No. 362,632 (United)	Interference No. 31854, May 11, 1910 Trimming Machine (Shank Trimmer)
	v.	
Plant	(Plant)	
Hadaway	Se. No. 362,632 (United)	Interference No. 28636 Declared Mar. 3, 1908 Trimming Machine (Shank Trimmer)
	v.	
Perry	Se No. 395,194 (United)	
	(patent No. 1,047,283, Dec. 17, 1912)	
	v.	
Colber		
	v.	
Moody		
	v.	
Plant	(Plant)	
McFeely	Se. No. 372,055 (United)	Interference No. 32056 Pulling-Over Machine Declared June 15, 1910
	v.	
Stewart	Se. No. 343,458 (Plant)	
Towle	Se. No. 226,961 (United)	Interference No. 32021 Declared June 14, 1910 Heel Nailing Machines
	(patent No. 982,550, Jan. 24, 1911)	
	v.	
Stewart	Se. No. 409,142 (Plant)	
	(patent No. 944,389, Dec. 28, 1909)	

Buckminster	Se. No. 438,345 (United) (patent No. 1,010,476, Dec. 5, 1911)	Interference No. 32201 Declared July 19, 1910
	v.	
Keats	Se. No. 480,561 (United) (patent No. 1,081,751, Dec. 16, 1913)	Presses (Clicking Machine)
	v.	
Stewart	Se. No. 526,760 (Plant) (patent No. 1,030,621, June 25, 1912)	

DEFENDANTS' EXHIBIT 273.

[Put in Evidence, page 4220.]

INFRINGEMENT BY PLANT MACHINES OF PATENTS AND APPLICATIONS OF THE UNITED SHOE MACHINERY COMPANY.

DETAILED DISCUSSION.

101 UPPER CLICKING MACHINE (Plant catalog page 14)

The general organization of this machine infringed 17 claims (7, 8, 11, 15, 16, 33, 49, 51, 52, 59, 60, 61, 62, 65, 66, 70 and 71) of patent

921,503 May 11, 1909 Bates

The mechanism (the trough) at the back of the bed to receive and protect the part of the skin not on the bed infringed 7 claims (1, 3, 4, 5, 6, 8 and 9) of patent

950,986 March 1, 1910 Bates

The mechanism of this machine for automatically moving the pressure-applying member laterally after the pressure-applying movement infringed 7 claims (1, 2, 3, 4, 5, 6 and 43) of patent

1,006,453 Oct. 24, 1911 Ashworth (Appln. filed June 12, 1908) (Ashworth was in interference with Stewart application owned by Plant — Ashworth won)

The mechanism in this machine for automatically moving the pressure-applying member laterally to inoperative position and permitting free movement to operative position infringed 6 claims (52, 53, 54, 55, 56 and 57) of patent

1,010,476 Dec. 5, 1911 Buckminster (Appln. filed June 13, 1908) (Buckminster was in interference with Stewart application owned by Plant — Buckminster won)

The specific construction of this machine comprising means oper-

ating independently of the regular operating mechanism of the machine infringed 2 claims (10 and 11) of patent

1,081,751 Dec. 16, 1913 Keats (Appln. filed Mar. 1, 1909) (Keats was in interference with Stewart application owned by Plant and Keats won).

The spring-actuated mechanism in this machine permitting free movement of the pressure-applying member to selected position over the bed and acting to swing it to inoperative position at one side of the bed infringed 5 claims (32, 33, 35, 36 and 37) of patent

1,004,757 Oct. 3, 1911 Eaton (Appln. filed Mar. 2, 1910)

In the aggregate 44 claims were infringed by this machine.

102 DOUBLE LIP CHANNEL OPENER (Plant catalog page 20)

The table and feed wheel mechanism of this machine infringed 2 claims (7 and 8) of patent

818,774 Apr. 24, 1906 Mitchell

103 SINGLE LIP CHANNEL OPENER AND EDGE COMPRESSOR (Plant catalog page 22)

The table and feed wheel mechanism of this machine infringed 2 claims (7 and 8) of patent

818,774 Apr. 24, 1906 Mitchell

104 INNERSOLE FLEXOR (Plant catalog page 26)

The reciprocating knife and intermittently-operated feed wheel of this machine infringed claim 5 of patent

685,991 Nov. 5, 1901 Knipe

The slashing mechanism of this machine for making slits partially through and across the leather infringed 5 claims (5, 10, 16, 17 and 19) of patent

885,244 Apr. 21, 1908 Hadaway

The cutting mechanism making transverse cuts in one side of less depth than the thickness of the leather of this machine infringed 10 claims (1, 2, 4, 9, 10, 11, 12, 13, 14 and 15) of patent

963,708 July 5, 1910 Hadaway

In the aggregate 16 claims were infringed by this machine.

105 INNERSOLE CLOTH TUCKER AND LIP TRIMMER (Plant catalog page 36)

The general organization of this machine infringed 4 claims (1, 4, 5 and 9) of patent

609,103 Aug. 16, 1898 Keith

The canvas tucking mechanism of this machine infringed 4 claims (1, 2, 3 and 5) of patent

638,010 Nov. 28, 1899 Hadaway.

The means for ensuring proper presentation of the work in this machine infringed 11 claims (1, 2, 3, 4, 8, 9, 10, 11, 12, 13 and 14) of patent

1,028,982 June 11, 1912 Winkley (Appln. filed May 24, 1906)

In the aggregate 19 claims were infringed by this machine.

106 SOLE ROUNDER (Plant catalog page 38)

The mechanism acting to clamp the blank and start the rounding operation of this machine infringed claim 10 of patent

589,409 Sept. 7, 1897 Breach

107 GRINDER (Plant catalog page 44)

The work guiding mechanism of this machine for presenting the knife to the grinding wheel infringed 10 claims (1, 5, 16, 17, 18, 19, 20, 22, 24 and 25) of patent

1,056,419 Mar. 18, 1913 Howe (Appln. filed Mar. 29, 1905)

108 TOP LIFT COMPRESSOR (Plant catalog page 52)

The product of this machine infringed all the 8 claims of patent

781,236 Jan. 31, 1905 Small

109 PULLER OVER AND TIP MEASURER (Plant catalog page 56)

The general organization of this machine infringed 15 claims (1, 14, 29, 54, 55, 56, 57, 58, 59, 60, 112, 122, 124, 126 and 154) of patent

663,777 Dec. 11, 1900 McFeely

This machine was so organized that the upper could be adjusted on the last while it was held under strain by the grippers and the machine would undoubtedly have been operated in this manner in commercial use. When so operated it would infringe 16 other claims of this patent (9, 10, 11, 12, 13, 15, 16, 17, 20, 42, 47, 170, 173, 174, 179, 183).

The mechanism of this machine for longitudinally and trans-

versely stretching the upper infringed 8 claims (69, 73, 74, 75, 76, 78, 79, 94) of patent

950,701 Mar. 1, 1910 McFeely (Appln. filed Oct. 31, 1901)

The mechanism for longitudinally stretching the upper and the tip measuring mechanism of this machine infringed 9 claims (1, 4, 8, 15, 27, 28, 31, 34, 35) of patent

1,007,053 Oct. 31, 1911 Bayard (Appln. filed May 17, 1906)

When operated to adjust the upper on the last to straighten the tip seam, the machine would also infringe 5 additional claims (36, 37, 39, 40, 44) of this patent

1,007,053 Oct. 31, 1911 Bayard (appln. filed May 17, 1906)

The heel rest mechanism in this machine infringed 16 claims (23, 25, 54, 97, 99, 100, 101, 104, 106, 107, 108, 110, 111, 112, 113, 114) of patent

1,029,387 June 11, 1912 McFeely (Appln. filed Mar. 28, 1903)

The mechanism of this machine for effecting the oblique drive of the single fasteners infringed 7 claims (4, 5, 6, 7, 21, 40 and 41) of patent

597,321 Jan. 11, 1898 Ladd

In the aggregate, 76 claims were infringed by this machine.

110 RAPID SIDE LASTER (Plant catalog page 61)

The pincer-actuating mechanism of this machine infringed 2 claims (1 and 15) of patent

1,005,234 Oct. 10, 1911 Ladd & Stiggins (Appln. filed Oct. 13, 1902)

The specific construction of the pincer mechanism also infringed Claim 27 of patent

1,012,742 Dec. 26, 1911 Stiggins (Appln. filed Jan. 28, 1905)

The pincer jaw closing and updraw lever mechanism of this machine infringed 8 claims (1, 2, 3, 4, 5, 6, 7 and 9) of patent

1,005,929 Oct. 17, 1911 Bond (Appln. filed Feb. 25, 1907)

The work presser mechanism of this machine infringed 6 claims (8, 11, 15, 16, 17 and 20) of patent

597,321 Jan. 11, 1898 Ladd

In the aggregate 17 claims were infringed by this machine.

111 TOE AND HEEL LASTER (Plant catalog page 66)

The gripper mechanism on this machine infringed 3 claims (6, 9 and 10) of patent

524,446 Aug. 14, 1894 Lombard (expired Aug. 14, 1911)

The mechanism in this machine for tipping the toe lasting head and heel lasting head laterally infringed Claim 1 of patent

552,834 Jan. 7, 1896 Grandy

The specific construction of the lateral tilting mechanism for the lasting head infringed 4 claims (7, 8, 9 and 12) of patent

935,065 Sept. 28, 1909 Stiggins

The equalizing mechanism of this machine for insuring uniform operation of the end band on right and left shoes infringed 2 claims (68 and 69) of patent

1,030,564 June 25, 1912 Brock (Appln. filed July 19, 1898)

The end band supporting and operating mechanism of this machine infringed 7 claims (26, 27, 28, 82, 83, 84 and 89) of patent

1,022,420 April 9, 1912 Jerram (Appln. filed Sept. 26, 1904)

The wedge-controlled equalizing mechanism of this machine infringed 8 claims (11, 12, 13, 14, 16, 17, 18 and 19) of patent

Reissue 13,292 Sept. 19, 1911 Snow

(Original patent 946,708 Jan. 19, 1910)

This mechanism having a transversely movable equalizer also infringed 20 claims (1, 8, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32) of patent

1,002,818 September 12, 1911 Brock (Appln. filed Mar. 19, 1910)

The toe rest on this machine, arranged to move with the shoe lengthwise of the shoe to avoid injuring the upper, infringed Claim 26 of patent

571,429 Nov. 17, 1896 Chase

The mechanism of this machine for holding the pad and chain in co-operative relation infringed 3 claims (1, 2 and 5) of patent

569,231 Oct. 13, 1896 Ray

In the aggregate, 49 claims were infringed by this machine.

112 TURN HEEL LASTER (Plant catalog page 70)

The mechanism in this machine for laterally tipping the heel lasting head infringed Claim 1 of patent

552,834 Jan. 7, 1896 Grandy

The mechanism in this machine for tipping the heel lasting head about an axis extending longitudinally of the last bottom infringed 4 claims (7, 8, 9 and 12) of patent

935,065 Sept. 28, 1909 Stiggins

The same equalizing mechanism for the heel band in this machine infringed 2 claims (68 and 69) of patent

1,030,564 June 25, 1912 Brock (Appln. filed July 19, 1898)

The heel band supporting and operating mechanism of this machine infringed 7 claims (26, 27, 28, 82, 83, 84 and 89) of patent

1,022,420 April 9, 1912 Jerram (Appln. filed Sept. 26, 1904)

The wedge-controlled heel band equalizing mechanism of this machine infringed 8 claims (11, 12, 13, 14, 16, 17, 18 and 19) of patent

Reissue 13,292 Sept. 19, 1911 Snow

(Original patent 946,708)

The heel band equalizer mechanism movable transversely of this machine to swing the slide bars, infringed 19 claims (1, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32) of patent

1,002,818 Sept. 12, 1911 Brock (Appln. filed Mar. 19, 1910)

In the aggregate 41 claims were infringed by this machine.

113 Staple Tacker (Plant catalog page 72)

The reel used on this machine infringed all the 9 claims of patent

765,650 July 19, 1904 Casgrain.

The staple-forming mechanism infringed Claim 5 of patent

1,016,930 Feb. 13, 1912 Borden (Appln. filed Jan. 16, 1905)

In the aggregate, 10 claims were infringed by this machine.

114 Heel Seat Nailer (Plant catalog page 78)

The reel used on this machine infringed all the 9 claims of patent

765,650 July 19, 1904 Casgrain

115 Welt Slasher and Groover (Plant catalog page 82)

In this machine the mechanism for slitting the welt through and partially across the welt infringed 4 claims (5, 16, 17 and 19) of patent

885,244 Apr. 21, 1908 Hadaway

The same mechanism also infringed 11 claims (1, 2, 3, 4 and 9 to 15) of patent

963,708 July 5, 1910 Hadaway

[Take sample] The product of this machine, that is, the slashed welt strip produced by it, infringed the 3 claims of patent

725,077 April 14, 1903 Hadaway

In this machine, the general organization for feeding, guiding and slitting the welt infringed 2 claims (1 and 5) of patent

1,026,306 May 14, 1912 Eppler (Appln. filed July 20, 1906)

The mechanism for guiding varying widths of welts in this machine infringed 10 claims (2, 3, 4, 5, 6, 9, 10, 11, 12 and 13) of patent

1,020,346 Mar. 12, 1912 Eppler (Appln. filed June 20, 1908)

These two Eppler cases were in interference with an application

309,109 Mar. 31, 1906 Stanbon

owned by Plant, but this interference was terminated November 28, 1910, by a concession of priority by Stanbon to Eppler, who was clearly ahead of Stanbon.

In the aggregate, 30 claims were infringed by this machine.

116 TACK PULLER & BASTER (Plant catalog page 84)

The tack-pulling and channel-moistening mechanism of this machine infringed 2 claims (27 and 28) of patent

864,532 Aug. 27, 1907 Hadaway

The tack-pulling mechanism of this machine infringed 2 claims (1 and 4) of patent

777,795 Dec. 20, 1904 Lyon

The feeding mechanism of this machine infringed 1 claim of patent

545,625 Sept. 3, 1895 Fowler & Warren

In the aggregate, this machine infringed 5 claims.

117 WELTER (Plant catalog page 86)

The welt-holding and cutting mechanism of this machine infringed 2 claims (1 and 6) of patent

700,279 May 20, 1902 Winkley.

This infringing mechanism was one of the valuable features of the Plant Welter, as has been fully explained in Mr. Winslow's testimony. This mechanism was greatly improved upon by the United Company's inventors and the improved mechanism as now embodied in the United Company's standard Model K Welt and Turn Machine, embodies, first, this broad Winkley invention which had not been developed to a point of commercial success, second, the valuable

Plant inventions constituting the first commercially successful mechanism for accomplishing this purpose and, third, valuable improvements on the Plant mechanism made by the United Company's inventors.

The thread arm of this machine infringed claim 24 of patent
993,490 May 30, 1911 Winkley (Appln. filed Mar. 26, 1897)

The eccentric mounting of the welt guide, awl and needle of this machine infringes allowed claim 11 of application
247,117 Feb. 24, 1905 Eppler

In the aggregate, 4 claims were infringed by this machine.

118 CUSTOM SOLE LAYER (Plant catalog page 96)

The jack and toe rest of this machine infringed claim 2 of patent
580,746 Apr. 13, 1897 Winkley

The mechanism in this machine for regulating the pressure of the levelling form on the shoe infringed 2 claims (1 and 2) of patent
610,314 Sept. 6, 1898 Winkley

The mechanism in this mechane for securing the form to the form carrier infringed claim 1 of patent
935,212 Sept. 28, 1909 Manent

The mechanism in this machine for proportionately moving the toe and heel supports to properly locate the shank of the shoe infringed 2 claims (3 and 23) of patent
557,744 Apr. 7, 1896 Winkley

In the aggregate, 6 claims were infringed by this machine.

119 ROUGH ROUNDER (Plant catalog page 100)

The means for automatically operating the mechanism for securing the desired contour for the sole infringed Claim 17 of patent
599,602 Feb. 22, 1898 French & Meyer

The pattern mechanism for determining the contour to be given to the edge of the sole infringed Claim 6 of patent
682,679 Sept. 17, 1901 Fowler

120 HEEL SEAT DINKER (Plant catalog page 102)

The general organization of this machine which enables the knife to conform to the heel seat infringed Claim 2 of patent
613,228 Nov. 1, 1898 Barbour

This claim goes to the essence of the machine.

121 SHOE CHANNELER (Plant catalog page 106)

The feed wheel and edge guide of this machine infringed Claim 8 of patent

707,576 Aug. 26, 1902 Fowler

The mechanism in this machine for positioning the channeling knife nearer to or farther from the sole edge infringed Claim 9 of patent

600,883 Mar. 22, 1898 Meyer & French

In the aggregate, 2 claims were infringed by this machine.

122 STITCHER (Plant catalog page 112)

The presser foot mechanism of this machine infringed Claim 16 of patent

710,613 Oct. 7, 1902 Richardson

This mechanism also infringed 3 claims (1, 2 and 6) of patent

971,014 Sept. 20, 1910 Winkley (Appln. filed Jan. 14, 1905)

This presser foot mechanism also infringes 5 claims (allowed claims 3, 5, 7, 10 and 12) of application

321,958 June 16, 1906 Nash

The fudge stitch mechanism of this machine infringed 2 claims (1 and 4) of patent

946,591 Jan. 18, 1910 Arnold

This fudge stitch mechanism also infringed 3 claims (1, 2 and 3) of patent

963,761 July 12, 1910 Hadaway

The gage mechanism in this machine, movable with the feed, infringed Claim 10 of patent

704,458 July 8, 1902 Hadaway

In the aggregate 15 claims were infringed by this machine.

123 LOOSE NAILER (Plant Catalog page 118)

The horn operating mechanism of this machine infringed 2 claims (22 and 23) of patent

582,579 May 11, 1897 Cutter

The horn controlling mechanism also infringed Claim 1 of patent

582,580 May 11, 1897 Cutter

This horn controlling mechanism also infringed 8 claims (40, 41, 42, 43, 44, 45, 46 and 47) of patent

1,054,173 Feb. 25, 1913 Casgrain (Appln. filed Sept. 5, 1907)

This horn controlling mechanism also infringed 17 claims (186 to 202 inclusive) of patent

1,053,479 Feb. 18, 1913 Casgrain (Appln. filed Sept. 12, 1908)

In the aggregate, 28 claims were infringed by this machine.

124 LEVELLER (Plant catalog page 120)

The general organization of this machine infringed 3 claims (1, 2 and 4) of patent

540,222 May 28, 1895 Winkley & Phillips

The twin jack presenting mechanism of this machine also infringed Claim 1 of patent

540,223 May 28, 1895 Winkley & Phillips

The proportional movements of heel and toe rest in this machine infringed 2 claims (3 and 23) of patent

557,744 Apr. 7, 1896 Winkley

The jack and toe rest of this machine infringed Claim 2 of patent

580,746 Apr. 13, 1897 Winkley

The pressure-regulating mechanism of this machine infringed 2 claims (1 and 2) of patent

610,314 Sept. 6, 1898 Winkley

The machine infringed 2 claims (3 and 4) of patent

861,746 July 30, 1907 Mayo

The devices for securing the form to the form carrier in this machine infringed Claim 1 of patent

935,212 Sept. 28, 1909 Manent

In the aggregate 12 claims were infringed by this machine.

125 HEEL LOADER (Plant catalog page 122)

The general construction and organization of this machine for driving nails obliquely into the heel infringed 9 claims (31, 32, 33, 43, 44, 45, 46, 47 and 48) of patent

1,000,957 Aug. 15, 1911 Bates (Appln. filed Aug. 15, 1903)

The general organization and nail supplying mechanism of this machine infringed 4 claims (9, 43, 44 and 50) of patent

694,656 Mar. 4, 1902 Mayo

The general organization of nail-supplying mechanism of this

machine infringed 10 claims (16, 19, 48, 49, 50, 51, 52, 55, 57 and 58) of patent

571,931 Nov. 24, 1896 Raymond & Fogg

The nail clearer and striker of this machine infringed Claim 5 of patent

662,898 Nov. 27, 1900 Grandy

The nail separator mechanism of this machine infringed Claim 166 of patent

663,777 Dec. 11, 1900 McFeely

The general organization of the nail-distributing mechanism of this machine infringed Claim 6 of patent

566,337 Aug. 25, 1896 Raymond

This nail-distributing mechanism also infringed 6 claims (1 to 6) of patent

596,053 Dec. 28, 1897 Crisp

The blank holder on this machine infringed 4 claims (10, 11, 12, and 14) of patent

1,054,032 Feb. 25, 1913 Raymond (Carr executor of the will of Raymond) (Division of application filed in 1892)

The rotatable three-arm heel holder of this machine infringed 12 claims (16, 17, 18, 19, 20 21, 22, 24, 25, 26, 27 and 28 of patent)

1,002,836 Sept. 12, 1911 Gouldbourn (Appln. filed Oct. 13, 1906)

The heel feeding and ejecting mechanism infringed Claim 5 of patent

776,787 Dec. 6, 1904 Leland

In the aggregate, 49 claims were infringed by this machine.

127 HEELER (Plant catalog page 126)

This was Plant's machine for attaching heels on McKay sewed shoes.

The top-lift holder used on these machines infringed 5 claims (4, 7, 11, 13 and 15) of patent

884,524 Apr. 14, 1908 Pope

The top-lift cementing attachment on these machines infringed 3 claims (10, 20 and 23) of patent

943,723 Dec. 21, 1909 Webster & Towle

The nailing mechanism arranged to drive nails inclined rearwardly infringed 17 claims (26, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 45 and 46) of patent

1,000,957 Aug. 15, 1911 Bates (granted on an application filed as a division of an application which was filed in 1903)

The top-lift holder as a whole in this machine infringed 12 claims (13 to 24) of patent

1,009,710 Nov. 21, 1911 Raymond (Appln. filed Feb. 20, 1892)

The specific construction of gages on the top-lift holder in this machine infringed 6 claims (9, 10, 11, 12, 13 and 14) of patent

1,054,032 Feb. 25, 1913 Raymond (Carr executor of will of Raymond application 422,320 filed Feb. 20, 1892)

The specific construction of back gages on the toplift holder infringed 2 claims (33 and 34) of patent

982,550 Jan. 24, 1911 Towle

The Towle application was in interference with a Stewart application owned by Plant and Towle won the interference.

The organization in this machine, by which the top-lift holder engaged a flat abutment on the head for the spanking operation infringed 7 claims (27, 31, 32, 33, 35, 36 and 38) of patent

1,019,398 Mar. 5, 1912 Woodward (Appln. filed June 6, 1901)

The mechanism for imparting positive pressure to the heel and the separate trains of mechanism for applying pressure and for actuating the drivers infringed 16 claims (1, 6, 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27) of patent

1,000,119 Aug. 8, 1911 Pope & Elliott (Appln. filed May 26, 1898)

The mechanism in this machine for attaching a heel and top-lift to a shoe and regulating the pressure for the top-lift attaching operation infringed 4 claims (1, 31, 45, and 46) of patent

1,030,654 June 25, 1912 Elliott (Appln. filed Mar. 13, 1902)

The stop in this machine for preventing displacement of the heel toward the rear while the nails are being driven infringed 7 claims (11, 12, 13, 14, 15, 16 and 17) of patent

1,081,917 Dec. 16, 1913 Tripp (Appln. filed Aug. 1, 1907)

In the aggregate, the Plant Heeling Machines infringed 79 claims.

Also all shoes made on Plant's Heeling Machines infringed the 3 claims of patent

834,085 Oct. 23, 1906 Taylor

126 HEEL ATTACHER ON WOOD LASTS (Plant catalog page 125)

This machine was designed by Plant and was used in the Thomas G. Plant factory for attaching the heels of welt shoes The machine was a reorganization of the "Heeler" to produce a machine adapted for attaching the heels of shoes while still on the last and comprised elaborate mechanism to enable the machine to attach the heels of welt shoes without breaking lasts.

The Heel Attacher on Wood Lasts infringed the same patents which were infringed by the Heeler, as follows:

The top-lift holder used on these machines infringed 5 claims (4, 7, 11, 13 and 15) of patent

884,524 Apr. 14, 1908 Pope

The top-lift cementing attachment on these machines infringed 3 claims (10, 20 and 23) of patent

943,723 Dec. 21, 1909 Webster & Towle

The nailing mechanism arranged to drive nails inclined rearwardly infringed 17 claims (26, 27, 28, 29, 30, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42, 45 and 46) of patent

1,000,957 Aug. 15, 1911 Bates (granted on an application filed as a division of an application which was filed in 1903)

The top-lift holder as a whole in this machine infringed 12 claims (13 to 24) of patent

1,009,710 Nov. 21, 1911 Raymond (Appln. filed Feb. 20, 1892)

The specific construction of gages on the top-lift holder in this machine infringed 6 claims (9, 10, 11, 12, 13 and 14) of patent

1,054,032 Feb. 25, 1913 Raymond (Carr executor of the Will of Raymond) (Division of Raymond application 422,320 filed Feb. 20, 1892)

The specific construction of back gage on the top-lift holder infringed 2 claims (33 and 34) of patent

982,550 Jan. 24, 1911 Towle (Appln. filed Oct. 3, 1904)

The Towle application was in interference with a Stewart application owned by Plant and Towle won the interference.

The organization in this machine, by which the top-lift holder engaged a flat abutment on the head for the spanking operation infringed 7 claims (27, 31, 32, 33, 35, 36 and 38) of patent

1,019,398 Mar. 5, 1912 Woodward (Appln. filed June 6, 1901)

The mechanism for impart ng positive pressure to the heel and the separate trains of mechanism for applying pressure and for actuating the drivers infringed 16 claims (1, 6, 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27) of patent

1,000,119 Aug. 8, 1911 Pope & Elliott (Appln. filed May 26, 1898)

The stop in this machine for preventing displacement of the heel toward the rear while the nails are being driven infringed 7 claims (11, 12, 13, 14, 15, 16 and 17) of patent

1,081,917 Dec. 16, 1913 Tripp (Appln. filed Aug. 1, 1907)

Also all shoes made on Plant's Heel Attacher on Wood Lasts infringed the 3 claims of patent

834,085 Oct. 23, 1906 Taylor

In addition to the infringem nts noted above, the Heel Attacher on Wood Lasts also infringed other patents owned by the United Company, as follows:

The last support used on these machines infringed 5 claims (1, 3, 4, 8 and 10) of patent

596,305 Dec. 28, 1897 Pettengill

The pressure controlling and heel measuring mechanism infringed 10 claims (1, 28, 31, 45, 46, 50, 51, 52, 53 and 54) of patent

1,030,654 June 25, 1912 Elliott (Appln. filed Mar. 13, 1902)

In the aggregate 90 claims were infringed by this machine.

The patents infringed by the Plant Heeler and the Plant Heel Attacher on Wood Lasts covered both these machines so thoroughly that by no possibliity could they have been changed to avoid infringement. Plant's only course would have been to junk the machines and begin over again.

128 HEEL SLUGGER (Plant catalog page 128)

The reel used on this machine infringed all the 9 claims of patent

765,650 July 19, 1904 Casgrain

The knife grinding mechanism of this machine infringed 4 claims (1, 11, 16 and 17) of patent

1,056,419 March 18, 1913 Howe (Appln. filed March 29, 1905)

In the aggregate 13 claims were infringed by this machine.

129 HEEL BREASTER (Plant catalog page 130)

The mechanism in this machine for automatically varying the knife movement in accordance with the thickness of the sole infringed 2 claims (14 and 21) of patent

636,990 Nov. 14, 1899 Heys

130 STITCH INDENTER & BURNISHER (Plant catalog page 140)

The organization of the work-indenting tool with relation to the work support and tool movement of this machine infringed 5 claims (9 to 13) of patent

894,332 July 28, 1908 Krewson

There was an interference between the application for the Krewson patent (then owned by Booth Brothers) and a Heys application owned by Plant. A settlement of this interference was effected in accordance with which a license was given to Plant under and limited to the issues of the interference. Claims 9 to 13 were none of them issues of the interference and are directed to different subject-matter.

The mechanism in this machine for varying the angle of tool action on the work infringed Claim 4 of patent

690,422 Jan. 7, 1902 Hadaway

The general organization of this machine for rolling the tool back and forth while in contact with the work infringed 2 claims (3 and 11) of patent

855,401 May 28, 1907 Hadaway

The same general organization including the movement of the tool in a direction approaching the work in the line of feed infringed 4 claims (1, 2, 7 and 8) of patent

934,434 Sept. 21, 1909 Flynt

The mechanism in this machine for indenting the work by repeated blows infringed 5 claims (1, 2, 5, 9 and 10) of patent

999,161 July 25, 1911 Hadaway (Appln. filed May 17, 1905)

In the aggregate, 17 claims were infringed by this machine.

131 STITCH SEPARATOR (Plant catalog page 142)

The automatic action of the indenting tool in locating the stitches in this machine infringed 4 claims (2, 10, 13 and 14) of reissued patent

Reissue 11,538 May 12, 1896 Hadaway
(Original patent 521,978 June 26, 1894)

132 Top Lift Scalloper (Plant catalog page 148)

The mechanism in this machine for locating the heel with relation to the knife infringed 7 claims (1, 2, 3, 10, 13, 15 and 16) of patent

1,030,567 June 25, 1912 Busell (Appln. filed Aug. 8, 1906)

Claims 1, 10 and 15 were the issues of an interference between the Busell application and the McLeod application, owned by Plant, which interference was won by Busell.

133 Heel Waxer and Burnisher (Plant catalog page 152)

The general organization of this machine for heating, applying and spreading the wax upon the wheel infringed 6 claims (1, 9, 11, 16, 20 and 21) of patent

699,476 May 6, 1902 Beckwith & Pease

This waxing mechanism also infringed Claim 7 of patent

743,988 Nov. 10, 1903 Pease

These two patents may be regarded as pioneer patents on the modern method of finishing heels.

This machine also infringes allowed Claim 5 of application

320,622 June 7, 1906 Pease

In the aggregate, 8 claims were infringed by this machine.

134 Seat Beader (Plant catalog page 154)

The general organization in this machine of beading tool and work support to position the heel and cause the tool to travel around the heel infringed 2 claims (1 and 9) of patent

687,225 Nov. 26, 1901 Gordon & Gould

135 Treeing Machine (Plant catalog page 160)

The general mechanical organization of this machine for bringing the trees into operative position infringed 10 claims (1, 4, 41, 42, 43, 44, 45, 46, 47, 48) of patent

1,030,810 June 25, 1912 Hansen (Appln. filed Sept. 16, 1902)

The machine also infringed Claim 66 of patent

1,081,907 Dec. 16, 1913 Hansen (Appln. filed Feb. 1, 1905)

In the aggregate, 11 claims were infringed by this machine.

136 BRESNAHAN AUTOMATIC SOLE MOLDING MACHINE

All the sole molding in the Thomas G. Plant factory was being done on Bresnahan Automatic Sole Molding Machines which were manufactured and put out by the Bresnahan Shoe Machinery Company, two-thirds of the stock of which was owned by Thomas G. Plant. This machine infringed Claim 2 of patent

627,122 June 20, 1899 Keighley

which was owned by the United Shoe Machinery Company. The United Company had brought suit against the Bresnahan Shoe Machinery Company on this patent

Equity No. 1772, United Shoe Machinery Company v. Bresnahan Shoe Machinery Company, et al.

137 KEIGHLEY INSEAM TRIMMER

While this machine is not shown in the Plant Catalog, there were about ten of these machines being used in the shoe factory of the Thomas G. Plant Company, and as Plant had made a contract subject to cancellation on six months' notice by either party, with the Keighley Company, Inc., for the purchase by Plant of thirty of these machines per year, it is fair to consider that by this contract Plant had made the Keighley machine one of his own.

The machine infringed Claims 1 and 2 of patent

961,200 June 14, 1910 Ashton

and Claims 12 to 19, inclusive, of patent

968,555 Aug. 30, 1910 Hadaway

Suits were brought by the United Company on these patents against the George H. Snow Company of Brockton, Massachusetts, a user of the Keighley Inseam Trimmer, as follows—:

Equity No. 795, bill filed Oct. 18, 1910, Ashton patent No. 961,200

Equity No. 796, bill filed Oct. 18, 1910, Hadaway patent No. 968,555

After the filing of these suits, and several months after the acquisition of the Plant patents by the United Company, Keighley changed all of his machines including those in the Plant factory, in an attempt to avoid the infringement. The substituted construction clearly infringed claims 1 and 2 of patent

961,200 June 14, 1910 Ashton

and another suit for infringement of that patent by the changed machine was brought against the George H. Snow Company:

Equity No. 311 Bill filed Feb. 3, 1912

Including the two machines last discussed, the Bresnahan Automatic Sole Molding Machine and the Keighley Inseam Trimmer, which it seems fair to consider that Plant had adopted as his own, the first through his stock control of the Bresnahan Shoe Machinery Company and the second through his contract with The Keighley Company, then the aggregate of infringements will be increased so that thirty-seven Plant machines, including practically all of his important machines, infringed 539 claims in ninety-nine patents and 7 claims allowed in three pending applications, amounting in the aggregate to 546 claims in 102 patents and pending applications. If, as before, each patent and each claim be counted for each machine which infringed it, the aggregate would be 708 claims of 132 patents and applications.

DEFENDANTS' EXHIBIT 274.

[Put in Evidence, page 4220.]

INFRINGEMENT OF PLANT PATENTS BY COMMERCIAL AND EXPERIMENTAL MACHINES OF THE UNITED COMPANY.

The United Company's machines infringed Plant patents as follows:

141 Lockstitch Machine — Model K: Goodyear Outsole Rapid

This machine was adopted in May 1910 as the United Company's standard outsole stitcher.

The fudge stitch mechanism of this machine infringed 5 claims (1, 2, 4, 5 and 9) of patent

940,723 Nov. 23, 1909 Plant

and 2 claims (9 and 10) of patent

940,725 Nov. 23, 1909 Plant

The means for protecting the upper from injury by the stitch forming mechanism, as originally designed for this machine, infringed patent

940,055 Nov. 16, 1909 Plant

The construction of the machine was changed to avoid this infringement. After the acquisition of the Plant patents, the original construction was re-adopted and has been used ever since.

142 LASTING MACHINE: No. 5 U. S. M. Co.

The automatic unlocking device for the jack post elevating hand wheel of the No. 5 Lasting Machine infringed 5 claims (13, 14, 15, 16 and 18) of patent

957,949 May 17, 1910 Glass

and claim 52 of patent

958,280 May 17, 1910 Plant

The heel band equalizing means of the No. 5 Lasting Machine is a direct infringement of 4 claims (46, 47, 48 and 50) of said patent

958,280 May 17, 1910 Plant

although the validity of those claims is questionable.

In 1908 the United Company found it necessary to make an improvement in the No. 5 Lasting Machine as it was then being put out in order to enable the machine to do its work properly. A construction accomplishing the desired results was devised and embodied in an experimental machine which was put out for a shoe factory test. Our validity search disclosed a British patent, application for which was filed by Plant in 1906, through which we became aware that a similar improvement had been made by one of Plant's inventors. In view of the probability that a United States application was pending we abandoned our construction and conducted further experiments. Two unsatisfactory constructions were devised before we succeeded in producing a commercially successful construction which we believed did not embody the Plant invention.

An experimental hold-down applied by us to the No. 5 Lasting Machine in Brockton infringed claim 24 of patent

957,949 May 17, 1910 Glass

and claim 51 of patent

958,280 May 17, 1910 Plant.

We were obliged to change our construction to avoid the infringement.

143 LOADING & ATTACHING MACHINE — MODEL B: MCKAY AUTOMATIC HEEL

This machine infringed 2 claims (10 and 11) of patent

958,282 May 17, 1910 Plant.

144 NAILING MACHINE: AMERICAN LIGHTNING

In January 1910, our inventor, J.H. Pope, began the construction

of an improved form of nailing mechanism for the Lightning Heeling Machine. After the mechanism had been constructed it was found to infringe 2 claims (15 and 16) of patent

958,302 May 17, 1910 Plant

and the Patent Department advised that manufacture of this improvement could not be authorized.

On September 29, 1910, after the acquisition of the Plant patents, the Patent Department advised that there was no longer any objection to putting out this mechanism and since then a large number of machines have been put out which embody this mechanism, which is a distinct improvement on the machine.

145 ROUNDING & CHANNELING MACHINE — MODEL E: GOODYEAR UNIVERSAL

This machine infringed 4 claims (51–54) of Plant's patent

878,478 Feb. 4, 1908 English

Two of these claims were directed to vital features of the machine.

As first designed this machine infringed 3 claims (18, 20 and 21) of Plant's patent

878,478 Feb. 4, 1908 English

A validity search on these claims was made which indicated that they were valid. A great deal of difficulty and much expense was incurred in changing the machine to avoid these claims.

146 ROUNDING MACHINE: GOODYEAR HEEL SEAT

On February 1, 1910, interferences were declared involving two applications of J. V. Allen, who invented the United Company's Goodyear Heel Seat Rounder, and two applications on the Plant Heel Seat Dinker

309,997 Apr. 5, 1906 Heys (Patent 1,005,545, Oct. 10, 1911)

319,709 June 1, 1906 Phelan (" 1,005,573, Oct. 10, 1911)

The interference proceedings showed that Heys and Phelan were clearly entitled to claims covering broadly mechanism which was vital to our machine and that undoubtedly Plant would eventually obtain patents dominating our machines. Vigorous efforts were made to redesign the machine so as to avoid the claims allowed in the Heys and Phelan applications but in no way could the broad claims

be avoided and as this mechanism was indispensable, it was decided to discontinue the machine and to withdraw as soon as possible the machines already out.

As noted elsewhere, the Plant Heel Seat Dinker infringed our patent

613,228 Nov. 1, 1898 Barbour

and suit would have been brought on that patent.

The result of this situation was of course a complete deadlock and if the interests had not combined, shoe manufacturers would not have been supplied with this machine. After the Plant patents were acquired the Goodyear Heel Seat Rounder was again adopted and put into extensive commercial use.

147 INDENTING & BURNISHING MACHINE: GOODYEAR WELT

The work supporting mechanism of this machine infringed 3 claims (1, 2 and 6) of patent

860,377 July 16, 1907 Heys.

148 GROOVING & BEVELING MACHINE: GOODYEAR POWER WELT

This machine prima facie infringed claim 3 of Plant's patent

966,484 Aug. 9, 1910 Stanbon

but it is believed that that claim is invalid.

149 MOLDING MACHINE: STITCHDOWN UPPER

This machine infringed 4 claims (4, 7, 28 and 37) of patent

871,963 Nov. 26, 1907 Stewart

and infringed 3 claims (1, 2 and 4) of patent

871,966 Nov. 26, 1907 Stewart.

150 CHANNELING MACHINE: GOODYEAR UNIVERSAL (TURN WORK)

The mechanism which was known as the Wald tension release and which was supplied for this machine on special order for turn work infringed the terms of claim 58 of patent

878,478 Feb. 4, 1908 English

151 PULLING OVER MACHINE — MODEL B: REX

This machine is a combined pulling over and lasting machine for turn work. We were very anxious to put on this machine a tip measuring device for which there was insistent demand from the trade, but this could not be done because such a device would infringe claim 55 of Plant's patent

957,955 May 17, 1910 Heys

Immediately upon acquisition of the Plant patents this device was adopted and put out commercially.

152 PULLING OVER & LASTING MACHINE FOR WELT WORK

The transversely adjustable toe gripper mechanism which has been used for several years on the experimental welt pulling over and lasting machine which we were in 1910 and still are developing and which we considered indispensable in that machine, infringed a large number of allowed claims in a pending application owned by Plant

343,458 Nov. 14, 1906 Stewart.

We became aware of this application through an interference in the Patent Office which was declared between it and one of our applications. We should have been prevented from further developing this machine and from putting it out commercially if we had not acquired the Plant patents.

We are now developing another pulling over and lasting machine of entirely different design which is intended for lasting McKay sewed as well as welt shoes and this Plant toe gripper mechanism is also incorporated in this new machine.

153 SHOE MACHINE — MODEL M: GOODYEAR WELT & TURN

This is an experimental welting machine upon which one of the Company's inventors has been at work for many years and it is expected that it will be a much faster machine than any welting machine heretofore produced. This machine, however, prima facie infringed 3 claims (48, 49 and 53) of patent

947,401 Jan. 25, 1910 Plant

There is also a prima facie infringement by the looper mechanism of this machine of 2 claims (9 and 11) of Plant's patent

524,338 Aug. 14, 1894 Mills.

Two of the United Company's machines infringed patents owned by the Bresnahan Shoe Machinery Company which Plant controlled through ownership of two-thirds of the stock of that company.

154 WHEELING MACHINE NO. 2: GOODYEAR IMPRESSION STITCH

This machine infringed 2 claims (2 and 5) of a patent owned by the Bresnahan Shoe Machinery Company

784,263 Mar. 7, 1905 Heys.

155 LEVELING MACHINE — MODEL B: HERCULES

This machine infringed 3 claims (10, 11, and 13) of a patent owned by the Bresnahan Shoe Machinery Company

684,239 Oct. 8, 1901 Heys

It also infringed claim 11 of another patent owned by the Bresnahan Shoe Machinery Company

707,414 Aug. 19, 1902 Heys

The Bresnahan Shoe Machinery Company had brought suit for infringement by the Hercules Leveling Machine of this patent, as follows:

Eq. No.	Patent	Infringing Machine	Bill Filed
286	Heys No. 707,414	Leveling Machine	Aug. 9, 1906

DEFENDANTS' EXHIBIT 275.

[Put in Evidence, page 4222.]

GODDU SONS METAL FASTENING COMPANY

In addition to the pending suit which had been brought under Louis Goddu's contracts by the trustees of the McKay Metallic Fastening Association against Louis Goddu, his sons, Albert Van Wagenen and the Goddu Sons Metal Fastening Company,

Equity No. 985 James W. Brooks, et al.

v.

Goddu Sons Metal Fastening Company, et al.

the McKay Shoe Machinery Company had caused to be prepared bil's of complaint and affidavits to accompany motions for preliminary injunctions in suits for infringements of its patents by all of the machines of the Goddu Sons Metal Fastening Company Affidavits of James W. Brooks, Franklin O. Tobey and Joseph P. Livermore, covering all of the machines, and the b ll of complaint in the proposed suit against the Goddu Sons' Loose Nailer, had been printed prior to the formation of the United Company and printed copies constitute Defendant's Exhibit No. 101.

According to Mr. Livermore's affidavit the infringements were as follows:

(1) Goddu Sons' Loose Nailer infringed the following patents of McKay Metallic Fastening Association:

383,455 May 29, 1888 L.Goddu (cls. 1, 7 & 8)

265,227 Sept. 26, 1882 L. Goddu (cls. 3, 17 & 18)

493,910 Mar. 21, 1893 Cummings & Coupal (cl. 2)

356,107 Jan. 18, 1887 Dunham (cls. 1, 2, 3, 5 & 6)

385,802 July 10, 1888 L. Goddu (cl. 7)

289,103 Nov. 27, 1883 Hopkins (cl. 1)

(2) Goddu Sons' Screw Machine infringed the following patents:

265,227 Sept. 26, 1882 L. Goddu (cls. 17 & 18)

403,835 May 21, 1889 L. Goddu (cls. 10, 11, 12, 18 & 26)

(3) Goddu Sons' Slugging Machine infringed the following patents:

383,455 May 29, 1888 L. Goddu (cls. 7, 8 & 9)

563,478 July 7, 1896 L. Goddu (cl. 4)

(4) Goddu Sons' String Nailer infringed the following patents:

490,625 Jan. 24, 1893 L. Goddu (cls. 12 & 13)

383,455 May 29, 1888 L. Goddu (cls. 7 & 8)

385,802 July 10, 1888 L. Goddu (cl. 7)

All of the patents enumerated above were owned by the trustees of the McKay Metallic Fastening Association, one of the predecessors in business of the McKay Shoe Machinery Company.

In addition to the infringements above discussed, after the purchase from Louis Goddu and his sons of their stock in the Goddu Sons' Metal Fastening Company and of the patents and applications which were owned by the sons individually, machines of the Goddu Sons' Company further infringed patents and applications which had been owned by the sons individually and had been acquired from them by the United Company, as follows:

The Goddu Sons' String Nail Tacker infringed all of the 12 claims, except claim 8, of patent

584,735 June 15, 1897 W. Goddu

This machine also infringed all 4 claims of patent

614,460 Nov. 22, 1898 L. H. Goddu

The string nail wire which was intended and adapted for use on this machine infringed all 3 claims of patent

641,099 Jan. 9, 1900 G. Goddu

The Goddu Sons' Loose Nailer infringed all 4 claims of patent
614,460 Nov. 22, 1898 L. H. Goddu
The Goddu Sons' Slugging Machine infringed all 4 claims of patent
614,460 Nov. 22, 1898 L. H. Goddu
The machine which had been constructed for making the screw threaded wire to be used on the Goddu Sons' Screw Machine infringed all of the 11 claims of patent
655,223 Aug. 7, 1900 G. Goddu

PETER A. COUPAL & WILLIAM GORDON

The "Basting Machine" for pulling lasting tacks, trimming the upper and securing the upper temporarily for the welting operation by means of a basting stitch, of which Coupal and Gordon had built several experimental machines and in which the Goodyear Company had been interested to the extent of trying out some of the machines experimentally, prior to the formation of the United Company, infringed 3 claims (1, 2, 5) of patent
520,775 June 5, 1894 Fowler & Warren

EDWIN T. FREEMAN INFRINGEMENT OF UNITED COMPANY'S PATENTS BY FREEMAN MACHINE

The Freeman experimental Slugging Machine, constructed substantially as shown in patent
714,572 Nov. 25, 1902 Freeman
but embodying the broad invention of patent
618,082 Jan. 24, 1899 Freeman
infringed claims 6 and 7 of patent
582,579 May 11, 1897 Cutter
After January 21, 1902, the Freeman machine would have infringed 5 claims (1, 5, 17, 42 and 43) of patent
691,354 Jan. 21, 1902 Casgrain
To avoid these infringements it would have been necessary to reconstruct entirely the Freeman machine and omit from it valuable inventions on account of which the United Company purchased the Freeman patents.
Freeman had not organized his experimental machine with mechan-

ism for giving the work support a final depression when the machine stopped to facilitate removal of the work, although such mechanism is shown in his patents, because such mechanism is broadly covered in the United Company's patents

582,579 May 11, 1897 Cutter

582,580 May 11, 1897 Cutter

Freeman's machine could not have been a commercial success without such mechanism.

INFRINGEMENT OF FREEMAN PATENTS BY UNITED COMPANY

At the time of the acquisition of the Freeman patents the United Company was developing an improved standard screw machine which later became Screw Machine — Model B: Rapid Standard. This experimental machine infringed claims 1 and 2 of Freeman patent

618,082 Jan. 24, 1899 Freeman

PATENT OFFICE INTERFERENCE

There was an interference in the Patent Office between an application owned by the United Company and an application for reissue of Freeman patent No. 618,082, Jan. 24, 1899, as follows:

Casgrain	Se. No. 670,337 (Patent No. 691,354, Jan. 21, 1902)	Interference No. 21528
v.		
Freeman	Se. No. 12, 948 (Patent Re. 11,962, Jan. 21, 1902)	

Priority on the 19 issues of this interference was awarded to Casgrain and those 19 claims are now in United Company's patent No. 691,354, Jan. 21, 1902, Casgrain.

ALBERT G. BREWER

The Brewer experimental machine infringed 14 claims (1–5, 7, 8, 9, 11–16) of United Company's patent

636,990 Nov. 14, 1899 Heys

This Heys patent was the pioneer patent on the Power Heel Breasting Machine and in my opinion Brewer could not have built a power heel breasting machine without infringing that patent.

On the other hand the United Company's experimental machine never became a commercial success until the invention of the Brewer

patent was incorporated in it. 698 Power Heel Breasting Machines, embodying the Brewer inventions, were made and put out by the United Company.

GLOBE SHOE TOOL COMPANY

This company was infringing the one claim of patent

452,540 May 19, 1891 Bresnahan

and the first claim of patent

528,467 Oct. 30, 1894 Emery

SEAVER PROCESS LASTING COMPANY.

The Seaver lasting machine infringed claim 8 of the United Company's patent

548,671 October 29, 1895 Stirckler

and claim 7 of patent

601,934 April 5, 1898 Brock.

Suits had been brought on these patents as follows

Equity No. 1168 Consolidated & McKay Lasting Machine Company

v.

Seaver Process Lasting Company;

Equity No. 1167 Consolidated & McKay Lasting Machine Company

v.

Seaver Process Lasting Company.

When, after these suits were brought, the infringing construction was removed from the machines the Seaver business fell to pieces.

The most important reason, however, for the acquisition of the Seaver patents by the United Company was that the Seaver Company's experimental pulling-over machine, which was being tried out in a Brockton shoe factory, was provided with means for adjusting the upper on the last while the upper was under strain. The experimental pulling-over machine which the United Company was then developing also embodied such means, which is probably indispensable for a successful pulling-over machine. If it had proved that the Seaver Company's inventors had been the first to provide such means for a pulling-over machine and the Seaver Company had obtained a patent for this important and indispensable invention, the United

Company, after its expenditure of hundreds of thousands of dollars in developing this pulling-over machine would not have been able to put that machine into commercial use without infringing the Seaver Company's patent; and the United Company had no means of ascertaining whether its inventor or the Seaver Company's inventor had been the first to produce such mechanism.

After the acquisition of the Seaver Company's patents a thorough and extended investigation satisfied the United Company that its inventor, McFeely, was the first inventor and many broad claims to this invention are embodied in United Company's patent No.

663,777 December 11, 1900 McFeely.

This invention has been embodied in every pulling-over machine which has been put out by the United Company.

Boston Fast Color Eyelet Company

While there were no infringements between the United Company and the Boston Fast Color Eyelet Company, it should be noted that the United Company could not extend its field to include the manufacturing and marketing of fast color eyelets without acquiring the broad patents owned by the Boston Fast Color Eyelet Company which dominated that field.

Enamel Eyelet Company

While this Company was controlled by the same people who controlled the Boston Fast Color Eyelet Company and the acquisition of the stock of the Enamel Company was a part of the same transaction by which the stock of the Boston Fast Color Eyelet Company was acquired, it should be noted that had it not acquired control of the Enamel Company the United Company could not have entered the enamel eyelet field without subjecting itself to liability of suit under the Enamel Company's design patent

24,867 Nov. 12, 1895 Kempshall

The Enamel Company had brought and vigorously prosecuted suit on that patent against John C. Rhodes as follows:

Equity No. 1013 Enamel Eyelet Co. v. John C. Rhodes

BAY STATE INTERNATIONAL SHOE MACHINERY COMPANY

This company's outsole stitcher infringed the United Company's British patents as follows:

No. 10,102/87 July 19, 1887 Reed (claims 1, 2, 3, 10 & 16)
13,365/88 Sept. 17, 1888 French & Meyer (claim 2)

The United Company owned other foreign patents corresponding to British patent No. 10,102/87 as follows:

French	No. 184,880	July 19, 1887
German	44,439	July 19, 1887
Belgian	78,260	July 19, 1887

The United Company owned other foreign patents corresponding to British patent No. 13,365/88 as follows:

French	No. 193,080	Sept. 20, 1888
German	54,678	Sept. 20, 1888
Belgian	83,338	Sept. 20, 1888
Canadian	33,081	Dec. 7, 1889

SWAIN FULLER MANUFACTURING COMPANY

The United Company had produced and desired to use the sole pressing form for sole laying machines shown and described ln patent
694,367 Mar. 4, 1902 Gifford
but this pad infringed claims 12 and 14 of patent
376,406 Jan. 10, 1888 Coy
which was owned by the Swain Fuller Manufacturing Company.

It should be noted that another important reason for this acquisit on was the desire of the United Company to obtain a leveling machine adapted for leveling turn shoes. The United Company did not then have any leveling machine adapted for turn work. The Star Leveling Machine of the Swain Fuller Manufacturing Company was adapted for leveling turn shoes and after this acquisition was the United Company's standard machine for turn shoe leveling until it was superseded in 1907 by the United Company's greatly improved machine known as Leveling Machine: Goodyear Welt & Turn.

GLOBE SEWING MACHINE COMPANY

The welting machine which was being put out by the Globe Company at the time of the acquisition infringed United Company's patent

461,793 Oct. 20, 1891 Briggs

There was a pending suit against the Globe Company on this patent as follows:

Equity No. 1284 Goodyear Shoe Machinery Company
v.
Globe Sewing Machine Company

A motion for preliminary injunction in this suit had been argued but had not been decided at the time of the purchase of the stock of the Globe Company by the United Company.

There were also pending five suits against users of this machine as follows:

Equity No. 1246	Goodyear	Shoe	Machinery	Company	v. Bartlett
Equity No. 1247	"	"	"	"	v. Morrison
Equity No. 1248	"	"	"	"	v. Smith
Equity No. 1249	"	"	"	"	v. Belonga
Equity No. 1250	"	"	"	"	v. Fox

After March 19, 1901, this machine would also have infringed all three claims of the United Company's patent

670,195 Mar. 19, 1901 Chadbourn (application filed Nov. 11, 1898)

The Globe Company's outsole stitcher infringed claims 3, 6, of the United Company's patent

366,935 July 19, 1887 Dancel

The Globe Company had built one experimental "rounder" which had never been put out. That machine infringed United Company's patents

546,852 Sept. 24, 1895 French & Meyer (claim 8)
630,339 Aug. 8, 1899 " " " (claims 1 and 4)

The Globe Company had also constructed one experimental rounding and channeling machine which infringed the 8th claim of United Company patent

546,852 Sept. 24, 1895 French & Meyer.

Boot and Shoe Sole Laying Company

The United Company produced and desired to use the pressing form for sole laying machines shown and described in its patent

694,367 Mar. 4, 1902 Gifford (application filed Apr. 20, 1900)

but this pressing form infringed claims 1 and 2 of patent

304,416 Sept. 2, 1884 Eppler

which was owned by the Boot and Shoe Sole Laying Company.

Another important reason for the acquisition of the patents of the Boot and Shoe Sole Laying Company was the fact that the United Company did not have a satisfactory sole laying machine. The only machine which it had was the "Rotary Sole Layer" which it had acquired from the Goodyear Company and which was very unsatisfactory because it was continually breaking down, particularly on men's shoes. After the acquisition of a majority of the stock of the Boot and Shoe Sole Laying Company in June, 1899, the United Company discarded the Rotary Sole Layer and adopted as its standard commercial machine the sole layer of the Boot and Shoe Laying Machine Company, using on that machine the pressing form of Gifford patent No. 694,367. This machine, combining the best features of the rotary machine and the machine of the Boot and Shoe Sole Laying Company, has been much improved by a number of inventions made from time to time, and in the various stages of its development it has ever since been and is to-day the standard sole laying machine of the United Company.

J. C. Rhodes & Company

As previously explained, when the United Company entered the fast color eyelet field by its acquisition of the business of the Boston Fast Color Eyelet Company it acquired from the same parties and as a part of the same transaction the stock of the Enamel Eyelet Company. It has also been explained that the Enamel Eyelet Company had brought and was vigorously prosecuting a suit against John C. Rhodes for infringement of design patent

24,867 Nov. 12, 1895 Kempshall viz.

Equity No. 1013 Enamel Eyelet Company v. John C. Rhodes

J. C. Rhodes & Company owned a patent containing broad claims to an enamel eyelet so constructed as to prevent breaking of the enamel coating by the pressure exerted in the eyelet setting operation. This patent was

565,091 Aug. 4, 1896 Rhodes

A suit had been brought by J. C. Rhodes & Company against users of eyelets supplied by the Enamel Company for infringement of that patent

565,091 Aug. 4, 1896 Rhodes.

This suit was

Equity No. 1285 John C. Rhodes and John B. Rhodes (doing business as J. C. Rhodes & Company)

v.

Marcus Beebe, Decius Beebe, Junius Beebe, Lucius Beebe & Sons.

Besides clearing up this complicated situation the United Company accomplished two important objects by the acquisition of the Rhodes business:

1. It was able to produce a commercially satisfactory enamel eyelet. As explained in previous testimony, the eyelet made by the Enamel Eyelet Company was not satisfactory and the United Company was not able to get rid of the stock which it secured from the Enamel Company and finally had to junk most of those eyelets.

2. The United Company was able for the first time to produce satisfactory metal blanks for its fast color eyelets. Prior to that time those blanks, which had been procured from different sources had not been satisfactory.

Morley Button Manufacturing Co.

The eyelets manufactured by the Morley Button Manufacturing Co. infringed patents owned by J. C. Rhodes & Co. Incorporated and on October 29, 1901, a suit was brought for infringement of claim 2 of patent

565,091, August 4, 1896 Rhodes

Equity No. 1543 J. C. Rhodes & Co. Incorporated v. Morley Button Manufacturing Co.

On October 30, 1901, a suit was begun for infringement of design patent

24,876, Nov. 12, 1895 Kempshall

Equity No. 1544 J. C. Rhodes & Co. Incorporated v. Morley Button Manufacturing Co.

Among the considerations stated in the agreement between the United Company and the Morley Company (Pltff's. Ex. 92) were a covenant by the United Company to cause the bills of complaint in the two suits against the Morley Company to be dismissed without costs or damages, and a further covenant that the Morley Company should be licensed under patents 565,091, and Design 24,867 to manufacture eyelets in process to fill the orders which the Morley Company had on hand.

American Sole Laying Machine Company

This company was supplying a double or "two-form" sole laying machine which was twice as fast as a single machine because while a sole was being laid by one form the operator could be removing a shoe from and presenting another shoe to the other form. The standard commercial machine of the United Company at that time was the machine which it had acquired from the Boot and Shoe Sole Laying Company with improvements which the United Company had made, but that was a one-form or single machine. The United Company desired to develop that machine into a double machine but such a machine would infringe the much litigated patent

384,893 June 19, 1888 Cutcheon

which had been sustained by the Court of Appeals in the First Circuit. The American Sole Laying Machine Company had a license under that Cutcheon patent and the acquisition of that license, with the right to build a two-form machine without infringement of the Cutcheon patent, was the object of this transaction. The United Company immediately proceeded to develop a double or two-form machine and the new machine, known as Laying Machine (Twin): Goodyear Improved Sole, was first put out in July, 1903, broadly speaking a combination of the two machines. This twin machine, incorporating important later improvements, is now known as Laying

Machine — Model C: Goodyear Improved Sole, and is the present standard machine.

G. W. EMERSON & COMPANY

The Emerson Heel Finishing Machine infringed 3 claims (3, 10 & 11) of patent

699,476 May 6, 1902 Beckwith & Pease

which was owned by the United-Xpedite Finishing Company. At the time of this acquisition there was still pending the application for patent

743,988 Nov. 10, 1903 Pease

which shows and describes the commercial Xpedite Heel Finishing Machine and is one of the most important patents on that machine. The Emerson machine infringed 8 claims (1, 2, 7, 8, 17, 20, 21 & 22) of that patent. The members of the Emerson concern were advised of these infringements and suits would have been brought if the Emerson business had not been acquired.

BOOTH BROTHERS

BOOTH BROTHERS COMPANY

At the time of this acquisition Booth Brothers had a machine for forming impression stitches on the upper face of the welt of a welt shoe. This machine, known as the Booth Geared Wheeler, had recently superseded a machine known as Booth Impression Stitch Wheeling Machine. Both of these machines infringed claim 4 of the United Company's patent

690,422 Jan. 7, 1902 Hadaway

The Booth Geared Wheeler also infringed several allowed claims of an application owned by the United Company. These infringed claims are numbered 1, 2 and 3 in the United Company's patent, which was granted on that application,

906,705 Dec. 15, 1908 Hadaway

For burnishing the impression stitches made by the machines above mentioned Booth Brothers were putting out a machine known as Booth Impression Stitch Burnishing Machine. That machine infringed several claims of an application owned by the United Com-

pany, which claims are numbered 1, 2 and 3 in the patent which was granted on that application,

906,705 Dec. 15, 1908 Hadaway

BROCKTON SUPPLY COMPANY

When these patents were acquired the United Company was developing a tack pulling machine which infringed two claims (1 and 2) of patent

777,795 Dec. 20, 1904 Lyon

which was owned by the Brockton Supply Company.

On the other hand the "Rapid Tack Puller" which was being put out by the Brockton Supply Company infringed claims of an application filed November 6, 1899, owned by the United Company, on which was granted patent

864,532 Aug. 27, 1907 Hadaway

The claims infringed are numbered 24 and 25 in that patent.

The Brockton Supply Company's machine also infringed claims of a pending application filed September 9, 1905, owned by the United Company, on which was subsequently granted patent

1,011,773 Dec. 12, 1911 Hadaway.

Claims infringed are numbered 1, 2, 17, 18, and 20 in that patent.

SMITH LACING MACHINE COMPANY

The Smith Lacing Machine infringed many allowed claims in a pending application filed August 29, 1902, controlled by the United Company, on which was granted patent

855,969 June 4, 1907 Paine & Winkley

11 claims of that patent are infringed (34, 35, 36 and 38 to 45, inc.).

The machine of this Paine & Winkley patent, however, was only experimental and was never used commercially. It was provided with only one needle so that it could lace only one pair of eyelets. A commercially successful lacing machine must be adapted to lace a plurality of pairs of eyelets and a machine so organized was broadly covered by the claims of a patent owned by the Smith Company, which also owned other patents containing broad claims to many features of the machine which were found indispensable for a com-

mercially successful machine, as is fully explained in that portion of my testimony before the Examiner in regard to Lacing Machine — Model A: Ensign, beginning on page 2599 of the record. This situation resulted in a deadlock since neither the United Company nor the Smith Lacing Machine Company was able to put out a commercial lacing machine without infringing a patent or patents owned by the other.

ZOTIQUE BEAUDRY

Beaudry's experimental Heel Burnishing Machine, which had not been even tried out in any shoe factory, infringed 9 claims (2, 9, 10, 11, 12, 13, 14, 15, 16) of a patent owned by the United Xpedite Finishing Company

805,763 Nov. 28, 1905 Tuttle (appln. filed May 20, 1902)

The United Shoe Machinery Company owned the majority of the capital stock of the United Xpedite Finishing Company.

RICHARDSON SHOE MACHINERY COMPANY

The United Company's McKay Sewing Machine — Model B infringed claim 16 of the Richardson Shoe Machinery Company's patent

710,613 Oct. 7, 1902 Richardson

The United Company's present commercial Outsole Stitching Machine, known officially as Lockstitch Machine — Model M: Goodyear Outsole Rapid, which was adopted January 6, 1912, embodies the mechanism defined in claim 16 of the Richardson Company's patent

710,613 Oct. 7, 1902 Richardson

and embodies mechanism defined in 3 claims (29, 33, 35) of the Richardson Company's patent

710,612 Oct. 7, 1902 Richardson

The mechanisms of the Model M Outsole Stitcher, which embody the inventions defined in the claims of these two Richardson patents, constitute important and valuable improvements, as is fully explained in my deposition before the Examiner regarding this machine. Had the Richardson Company's patents not been acquired by the United Company, these important improvements could not have been incorporated in the Model M Outsole Stitcher without infringement.

It should further be noted that immediately after the acquisition of the Richardson Company's patents the United Company undertook the development of a new McKay Sewing Machine which should embody the best features of both the United Company's Model B machine and the Richardson machine. After several years continuous experimental work such a machine was produced and was first put out for shoe factory trial in September, 1912. During the period since that date it has been tried out in several different shoe factories and has been gradually perfected until it is now nearly ready for adoption and manufacture in large numbers for commercial use. While, as originally intended, the machine embodies the best features of both the Model B machine and the Richardson machine, in its organization and in its appearance it more nearly resembles the Richardson machine than it does the Model B. In this new machine many valuable improvements have been made by the United Company's inventors which could not have been embodied in a commercial machine and made available to shoe manufacturers had there not been common ownership of the United Company's patents and the Richardson Company's patents.

The experimental Clicking Machine in which the Richardson Shoe Machinery Company and the Essex Machine Company were jointly interested infringed at least 37 claims (1–6, 9, 10, 12, 13, 14, 18, 20, 21, 22, 24–32, 35–43, 46, 56, 57, 58) of patent

921,503 May 11, 1909 Bates

This machine also infringed 3 claims of a pending application owned by the United Company, which claims are numbered 30, 32, and 33 in United Company's patent

1,070,729 Aug. 19, 1913 Prime & Ashton

The machine also infringed 10 claims of a pending application owned by the United Company which are the 10 claims of patent

1,075,064 Oct. 7, 1913 Prime

There has been an interference in the Patent Office between the application for Prime patent No. 1,075,064 and a Reed application on the experimental clicking machine in which the Richardson Com-

pany and the Essex Machine Company were jointly interested. This interference which was declared on March 1, 1910, was as follows:

Prime	Se. No. 393,195 (Patent No. 1,075,064, Oct. 7, 1913)	Interference No. 31,544
v.		
Reed	Se. No. 435,260	

In this interference priority was awarded to Prime on 9 counts of the interference and priority was awarded to Reed on 2 counts of the interference.

Another interference was declared March 1, 1910, between the Gordon application owned by the United Company and the Reed application, as follows:

Gordon	Se. No. 454,738 (Patent 1,082,628, Dec. 30, 1913	Interference No. 31,545
v.		
Reed	Se. No. 435,260	

In this interference priority on all the counts was awarded to Reed.

Ellis Lacer Company

The Victoria Self Lacing Company, which had been controlled by the Consolidated & McKay Lasting Machine Company and which has been controlled by the United Shoe Machinery Company since its organization, had, prior to 1899, attempted to put upon the market a lacing device for temporarily securing together the eyeletted edges of uppers during the lasting operation. This device had not been successful and attempts to market it had been discontinued before 1899 so that after 1899 and up to the time of the Ellis Company acquisition neither the Victoria Company nor the United Shoe Machinery Company had been putting out any form of wire lacer. The Victoria Company's inventors, however, had made considerable progress in experimenting along the lines of the Ellis Lacer. Although these experimental lacers were not developed to the point of commercial success, patent applications had been filed upon them and on those applications patents were eventually granted which were infringed by the Ellis Lacers as follows:

627,441 June 20, 1899 Peck

930,426 Aug. 10, 1909 Smith

930,485 Aug. 10, 1909 Leonard

The Ellis Lacers infringed 7 claims (2–8) of the Victoria Company's patent

627,441 June 20, 1899 Peck.

In addition to these 7 claims the Adjustable Ellis Lacer also infringed claim 1 of that patent

627,441 June 20, 1899 Peck.

The Ellis Lacers also infringed 8 claims (1, 3, 8, 9, 11, 12, 14, and 15) of Victoria Company's patent

930,426 Aug. 10, 1909 Smith (application filed April 3, 1899)

The Ellis Lacer which was designed especially for Blucher shoes also infringed 7 claims (4, 5, 6, 7, 11, 13, and 14) of the Victoria Company's patent

930,485 Aug. 10, 1909 Leonard (application filed Mar. 20, 1899).

The claims of the Smith and Leonard patents were broad and after these patents were granted they were submitted to counsel with a view to bringing suit upon them as well as upon the Peck patent against the Ellis Lacer Company. The Ellis Company was promptly notified of the infringement of these patents and opened negotiations with officials of the United Shoe Machinery Company which resulted in the acquisition of the Ellis Company's stock by the United Company.

While the patents of the Victoria Self Lacing Company completely dominated the Ellis Lacers, the Victoria Company's devices were not satisfactory commercial lacers and the essential features of a satisfactory commercial lacer were the subject-matter of broad claims in patents owned by the Ellis Lacer Company. As a result each company's patents if held valid and sustained would have prevented the other company from putting out lacers for commercial use.

The Wentworth Company

The Wentworth Heel Seat Beating Machine of The Wentworth Company infringed 23 claims (1–6, 8–11, 13–17, 21, 23–29) of a patent owned by the United-Xpedite Finishing Company (a majority of

the stock of which was owned by the United Shoe Machinery Company) —

616,432 Dec. 20, 1898 Beaudry.

A suit for infringement of this patent was brought in April, 1908, in this District against a user of the Wentworth machine as follows:

Equity No. 470 United-Xpedite Finishing Company

v.

Reinhard E. Bartels et al.

This suit was prosecuted to final hearing and on December 1, 1909, the claims were held to be valid and infringed. This machine further infringed 13 claims (1, 2, 3, 4, 6, 12, 16, 19, 20, 21, 22, 23, and 25) of United Shoe Machinery Company's patent

768,560 Aug. 23, 1904 Casgrain

and in March, 1909, a suit for infringement of this patent was brought in the Southern District of Ohio as follows:

Equity No. 515 United Shoe Machinery Company

v.

The Wentworth Company

This suit was uncontested and final decree was entered for complainant.

The patents upon which these two suits were brought covered indispensable features of the Wentworth machine and The Wentworth Company could no longer put out their Heel Seat Beating Machine.

The Wentworth Shank Sticker, for attaching shank stiffeners to shoes by hot pitch instead of cementing or tacking them, infringed 3 claims (34, 35, and 36) of the United Company's patent

940,419 Nov. 16, 1909 Ashton.

ADAM H. PRENZEL

The machine for beveling the upper face of the margin of the heel seat piece, which Prenzel was using in the manufacture of his improved turn shoe, infringed two allowed claims of an application owned by the United Company filed November 22, 1906, those claims being 2 and 6 of the United Company's patent granted on that application

1,003,981 Sept. 26, 1911 Busell.

It should further be noted that the work support which Prenzel had constructed for use in channeling the sole of his improved turn shoe

had been applied by him and was being used by him on the United Company's Channeling Machine: Goodyear Universal (Turn work) which was the subject-matter of several patents owned by the United Company.

M. V. BRESNAHAN & Co.

The Bresnahan Heel Burnishing Machine as it was first put out infringed several patents owned by the United-Xpedite Finishing Company (of which the United Shoe Machinery Company owns a controlling stock interest). It infringed 8 claims (1, 20–26) of the United-Xpedite Company's patent

743,988 Nov. 10, 1903 Pease.

This machine also infringed 7 claims (8, 9, 10, 13, 15, 17, and 18) of United-Xpedite Company's patent

743,993 Nov. 10, 1903 Thomson.

It also infringed 2 claims (3 and 7) of United-Xpedite Company's patent

743,994 Nov. 10, 1903 Thomson.

About 10 of these machines had been put into use in shoe factories when users of the machine were notified of the infringement by the United-Xpedite Company. Thereupon the Bresnahan firm discontinued manufacture of these machines and developed another heel burnishing machine of entirely different type. This new machine also infringed 2 patents of the United-Xpedite Company. It infringed 6 claims (3, 9, 10, 16, 20 and 21) of patent

699,476 May 6, 1902 Beckwith & Pease.

It also infringed claim 7 of patent

743,988 Nov. 10, 1903 Pease.

Only a few of the later type of machines had been put out by the Bresnahan firm before negotiations were opened which led to the acquisition of the Bresnahan firm by the United Company.

In addition to the infringements above noted there was a large amount of litigation pending in the state courts between the United Company and the Bresnahan Shoe Machinery Company. When Bresnahan sold his interest in the Bresnahan Shoe Machinery Company to Thomas G. Plant in January, 1906, the Bresnahan Company transferred to Bresnahan and Heys, who together owned all

the stock of the Bresnahan Company, all interests under this litigation in the state courts between the United Company and the Bresnahan Company. These suits were as follows:

Four actions of replevin had been brought in the Superior Court for Essex County as follows:

Docket No. 3582 United Shoe Machinery Company v. Bresnahan Shoe Machinery Company. Writ dated Jan. 2, 1904.

Docket No. 3583 United Shoe Machinery Company v. Bresnahan Shoe Machinery Company. Writ dated Dec. 30, 1903.

Docket No. 3584 United Shoe Machinery Company v. Bresnahan Shoe Machinery Company. Writ dated Jan. 1, 1904.

Docket No. 3585 United Shoe Machinery Company v. Bresnahan Shoe Machinery Company. Writ dated Jan. 1, 1904.

There were verdicts for the defendant in each of these actions. These cases went to the Massachusetts Supreme Court on exceptions and the exceptions were overruled, the decision of the court being reported in 197 Mass., 206.

At the date of the acquisition of the Bresnahan business by the United Company there were also pending four suits which had been brought in the Superior Court for Suffolk County as folllows:

Docket No. 44259 Bresnahan Shoe Machinery Company v. United Shoe Machinery Company. Suit begun Nov. 4, 1907.

Docket No. 44260 Maurice V. Bresnahan v. United Shoe Machinery Company. Suit begun Nov. 4, 1907.

Docket No. 44079 Maurice V. Bresnahan v. United Shoe Machinery Company. Suit begun May 4, 1908.

Docket No. 47080 Maurice V. Bresnahan v. United Shoe Machinery Company. Suit begun May 4, 1908.

C. P. STANBON & COMPANY

INFRINGEMENTS

The later type of Stanbon Channel Opening Machine (Stanbon patent No. 898,016, Sept. 8, 1908) infringed 6 claims (1, 2, 3, 5, 6, 10) of United Company's patent

809,332 Jan. 9, 1906 Smith

This machine also infringed 2 claims (3 & 4) of United Company's patent

818,774 Apr. 24, 1906 Mitchell

Stanbon's Channel Cementing Machine infringed claim 8 of United Company's patent

1,030,623 June 25, 1912 Warren (appln. filed July 29, 1905)

Stanbon had an experimental Channel Cementing Machine (Stanbon patent No. 1,004,098, Sept. 26, 1911) which he did not put into commercial use because it infringed 2 claims (1 & 2) of United Company's patent

743,929 Nov. 10, 1903 Rollins

In April, 1908, United Company was notified by counsel for Stanbon that its Apex Channeling Machine infringed Stanbon's patents

500,438 June 27, 1893

607,140 July 12, 1898

No suits, however, had been brought on these patents up to the time of the acquisition of the Stanbon business by the United Company.

PATENT OFFICE INTERFERENCES

CHANNEL CEMENTING MACHINE

In 1904 the United Company and Stanbon each put upon the market a new and greatly improved type of channel cementing machine. The distinguishing characteristic of each machine was a device which may be conveniently designated the "Lip Lifting Finger." Three patent applications filed by Furber, Howe and Warren and owned by the United Company were put into interference in the Patent Office with a Stanbon application. In all, 6 interferences involving these applications were declared, these interferences being numbered

25,427

25,428

25,429

25,431
25,433
26,519

All these interferences were either consolidated with or made by stipulation to depend upon the outcome of the first one above listed, No. 25,427. After decisions both ways by the lower tribunals of the Patent Office, the Court of Appeals of the District of Columbia finally decided the interferences in favor of Stanbon on February 23, 1910, so that it was impossible for the United Company to use this improvement until it acquired the Stanbon patents. It should be noted, however, that the Stanbon application which was involved in interferences disclosed an oscillating type of brush which was not a successful commercial construction, and the Stanbon commercial machine employed a rotary brush. United Company's Warren application which was involved in these interferences and on which was granted patent

1,030,623 June 25, 1912

disclosed and claimed a combination including a rotary brush and the Stanbon commercial machine, as has already been noted, infringed claim 8 of that patent. Accordingly, if both the United Company and the Stanbon patents had been sustained in litigation, there would have been a deadlock which would have prevented commercial use of this improved machine.

FOLDING MACHINE

Prior to the Stanbon acquisition, both the United Company and Stanbon had been developing an improved folding machine of a radically new character. Both machines incorporated substantially the same improvements and two interferences involving United Company's Smith application and one of the Stanbon applications were declared. The question of priority was a very close one and the issues were so broad that the party that won the interference could undoubtedly prevent the other party from putting out any machine of this character.

The United Company had no folding machine of any description and since the Stanbon acquisition has put out in large numbers folding machines embodying the Stanbon inventions.

CHANNEL OPENING MACHINE

The applications for the United Company's Smith patent

809,332 Jan. 9, 1906 Smith

and United Company's Mitchell patent

818,774 Apr. 24, 1906 Mitchell

which, as already explained, were infringed by the later type of Stanbon's Channel Opening Machine, were in interference in the Patent Office with the application for Stanbon's patent on that machine

898,016 Sept. 8, 1908 Stanbon

These interferences were as follows:

No. 24,132 Smith v. Stanbon, declared Dec. 13, 1904.

No. 25,147 Mitchell v. Stanbon, declared Aug. 26, 1905.

Both of these interferences were decided adversely to Stanbon.

DEFENDANTS' EXHIBIT 278.

[Put in Evidence, page 4234.]

The provisions of Section Four of Goodyear Department Lease and License "No. Full Set", dated the day of , 19 , are hereby waived to the extent that permission is given to the lessee to use the thereby leased for on "Fair Stitch McKay Sewed" boots and shoes and other footwear, on condition that the lessee shall pay to the lessor on the last day of each calendar month, as rent and royalty for the use of said the sum of for each pair of McKay sewed boots, shoes or other footwear or portions thereof operated on during the next preceding calendar month in any way whether wholly or in part by the aid of said or any part thereof, provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of said for the next preceding calendar month, the lessor will, in consideration of such prompt payment, grant a discount of fifty per cent from such rent or royalty due for such preceding calendar month.

Dated the day of 19 .

UNITED SHOE MACHINERY COMPANY

By President.

DEFENDANTS' EXHIBIT 279.

[Put in Evidence, page 4234.]

AUXILIARY MACHINES

Permission is hereby given to , of , lessee under Goodyear Department Auxiliary Machines Lease and License Agreement No. , dated , granted by the United Shoe Machinery Company as lessor, to use the Auxiliary Machines thereby leased in the manufacture of women's welted boots, shoes or other footwear, the inseams of which have been or are to be sewed by the use of Goodyear Welt & Turn Shoe Machine, No. , held by said lessee under Lease and License Agreement from said lessor, No. , dated , and the outsoles of which are to be attached by hand sewing in accordance with the provisions of a rider dated , attached to said last mentioned Lease and License Agreement, and providing for the use of said designated Goodyear Welt & Turn Shoe Machine in the manufacture of such footwear upon the terms and conditions in said rider set forth.

The permission hereby given does not include the use of any machine or machines other than Goodyear Auxiliary Machines specifically designated by number in said Lease and License Agreement first above mentioned; and except as herein expressly provided none of the conditions, stipulations or provisions in said Lease and License Agreement contained is hereby in any manner waived or modified.

Dated this day of 19 .

UNITED SHOE MACHINERY COMPANY.

DEFENDANTS' EXHIBIT 280.

[Put in Evidence, page 4235.]

, of , lessee under Goodyear Department Lease and License Agreement No. dated , granted by the United Shoe Machinery Company as lessor, is hereby given permission to use

GOODYEAR WELT & TURN SHOE MACHINE

thereby leased for sewing the inseams of women's welted boots, shoes or other footwear, the outsoles of which have been or are to

be attached by hand sewing, and for such use only of said Goodyear Welt & Turn Shoe Machine shall pay to the lessor in respect to each pair of such footwear, the inseams of which have been in whole or in part sewed by the use of said Goodyear Welt & Turn Shoe Machine, the sum of four cents per pair. Said payments shall be made at the same time and in the same manner and shall be subject to discount for prompt cash payment as in Article Six of said Lease and License Agreement provided.

Said footwear shall not, nor shall the boxes nor cartons containing the same, be stamped or marked with the word "Goodyear" nor advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The permission hereby given does not include the use of any machine or machines other than said Goodyear Welt & Turn Shoe Machine hereinbefore specifically designated by number, and except to the extent herein expressly provided, none of the conditions, stipulations or provisions in said Lease and License Agreement contained are in any manner waived or modified.

Dated this day of 19 .

UNITED SHOE MACHINERY CO.

_____ By

DEFENDANTS' EXHIBIT 281.

[Put in Evidence, page 4237.]

The , of , the lessee named in Goodyear Department Lease and License Agreement No , dated , granted by the United Shoe Machinery Company as lessor, is hereby given permission to use

Goodyear Outsole Rapid Lockstitch Machine, No. and

Goodyear Rapid Bobbin Winding Machine, No.

for attaching the outsoles of children's shoes (sizes one to ten and one-half inclusive) having an upper, insole and welt, all of sheepskin, fastened together by the aid of a dry thread Sewing or Stitching Machine and for such use only of said Goodyear Outsole Rapid Lockstitch Machine and Goodyear Rapid Bobbin Winding Machine the lessee shall pay to the lessor in respect to each pair of such children's

shoes whose outsoles are attached by the aid of said Goodyear Outsole Rapid Lockstitch Machine the sum of two cents (2c) in lieu of the amount specified in the "Schedule of Payments per pair" contained in Article Six of said Lease and License Agreement,

Said shoes shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear" or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said Lease and License Agreement with reference to time for payments, records and accounts are hereby extended to apply to shoes operated upon in accordance with permission hereby given,

The provisions contained in this instrument shall have the same force and effect as though included in said Lease and License Agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine and said Goodyear Rapid Bobbin Winding Machine hereinbefore specifically designated by number and excepting to the extent herein expressly provided none of the conditions, stipulations or provisions in said Lease and License Agreement contained is hereby, in any manner, waived or modified.

Dated this

UNITED SHOE MACHINERY COMPANY,

_____ By

DEFENDANTS' EXHIBIT 282.

[Put in Evidence, page 4238.]

Gentlemen:— We hereby consent to the removal by you of the following designated machine:—
held by you under Lease and License Agreement No , dated , from your factory in , to your factory in , upon the understanding and agreement that said machine is to be held and used by you at said factory under all the agreements, conditions, stipulations and provisions in said Lease and License Agreement contained, with the same force and effect as if said machine

had been originally leased to you by said Lease and License Agreement for use in said factory in place of said factory

Yours truly,

UNITED SHOE MACHINERY COMPANY,

By

DEFENDANTS' EXHIBIT 283.

[Put in Evidence, page 4238.]

The following modifications are hereby made in Goodyear Department Lease and License Agreement, No , dated , between the United Shoe Machinery Company, lessor, and , of , lessee, covering one (1) Goodyear Outsole Rapid Lockstitch Machine, No , and one (1) Goodyear Bobbin Winding Machine (Rapid), No , viz;

1. The lessee may use said Goodyear Outsole Rapid Lockstitch Machine, No. , in repair work for sewing on new outsoles to boots, shoes or other footwear not manufactured by the lessee, and for each pair of boots, shoes or other footwear upon which said machine shall be used shall pay to the lessor for such use of said machine in accordance with the following schedule:

Schedule of Payments for Use of Goodyear Outsole Rapid Lockstitch Machine, No. for Repair Work.

Children's, misses', youths' and women's footwear four cents per pair
Boys' and men's footwear . . . . six cents per pair

in lieu of the amounts specified in the "Schedule of Rents and Royalties for Goodyear Welts and Turns" in Article Five of said lease and license agreement contained. The payments in accordance with the Schedule above set forth shall be made at the same time and in the same manner and shall be subject to discount under the same circumstances as is provided in said Article Five.

II. The monthly guarantee of ten dollars per month provided in said lease and license agreement shall be due and payable on the fifteenth day of each calendar month for the preceding month unless the rental or royalty for the use of said machine during such preceding month (less all abatements) as shown by the lessee's return to the

lessor for said preceding month shall equal or exceed said guaranteed amount.

III. The provisions of Article Six of said lease and license agreement with reference to accounts to be kept by the lessee and return to be made to the lessor are hereby extended to cover the use of the said machinery made by the lessee in accordance with this instrument.

IV. Excepting to the extent herein provided none of the conditions, agreements, stipulations or provisions of said lease and license agreement are hereby in any manner waived or modified.

UNITED SHOE MACHINERY COMPANY,

By _____

DEFENDANTS' EXHIBIT 284.

[Put in Evidence, page 4238.]

HAND-SEWED WELTS (Form JM–79–409–Ln)

Goodyear Outsole Rapid Lockstitch Machine

of lessee under Goodyear Department Lease and License Agreement, No. , dated , 19 , granted by the United Shoe Machinery Company as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. , thereby leased for stitching on the outsoles of that class of welted footwear known in the trade as "Hand-sewed Welts," the inseams of which have been sewed by hand, and for such use only of said Goodyear Outsole Rapid Lockstitch Machine, shall pay to the lessor in respect to each pair of such "Hand-sewed Welts," the outsoles of which have been in whole or in part stitched by the use of said Goodyear Outsole Rapid Lockstitch Machine, the amount specified in the "Schedule of Payments — Handsewed Welts — Per Pair" hereinafter contained, in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six of said lease and license agreement contained.

Schedule of Payments — Hand-sewed Welts — Per Pair.

	Sizes. From No.	To No.	
Children's	1	10½ inclusive	2 cents
Misses'	11	2 "	2 cents

	Sizes From No.	to No.	
Women's	2½	and over	4 cents
Youths'	9	13½ inclusive	2 cents
Boys'	1	5 "	4 cents
Men's	5½	and over	6 cents

Said "Hand-sewed Welts" shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear," or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said lease and license agreement with reference to time for payment, record and accounts, are hereby extended to apply to "Hand-sewed Welts."

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine hereinbefore specifically designated by number, and excepting to the extent herein expressly provided none of the conditions, stipulations or provisions in said lease and license agreement contained is hereby in any manner waived or modified.

Dated this day of , 19 .

By

By

DEFENDANTS' EXHIBIT 285.

[Put in Evidence, page 4239.]

STITCH DOWNS (Form JM-28-306)

Goodyear Outsole Rapid Lockstitch Machine

, of , lessee under Goodyear Department Lease and License Agreement No. dated , granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. thereby leased, for stitching on the soles of that class of boots, shoes or other footwear

known in the trade as "Stitch Downs," the uppers of which are turned outwardly upon their outsoles and sewed to their outsoles by a single seam only passing through the upper and outsole, or through a mock welt laid upon the out-turned portion of the upper, the upper, and the outsole; and for any such use only of said Goodyear Outsole Rapid Lockstitch Machine shall pay to the lessor in respect to each pair of such "Stitch Downs" in the manufacture of which the said designated machine has been used as aforesaid the amount specified in the "Schedule of Payments — Stitch Downs — Per Pair", hereinafter contained, in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six in said lease and license agreement contained.

Schedule of Payments — Stitch Downs — Per Pair.

	Sizes.		
	From No.	To No.	
Children's	1	10½ inc.	2 cents
Misses'	11	2 "	2 cents
Women's	2½	and over	4 cents
Youths'	9	13½ inc.	2 cents
Boys'	1	5 "	4 cents
Men's	5½	and over	6 cents

Said "Stitch Downs" shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear", or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said lease and license agreement with reference to time for payments, records and accounts are hereby extended to apply to "Stitch Downs" made in accordance with the permission hereby given.

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine hereinbefore specifically designated by number, and excepting to the extent herein expressly provided, none of the conditions, stipu-

lations or provisions in said lease and license agreement contained are in any manner waived or modified, but the same are and shall remain in full force and effect.

Dated this day of 19 .

UNITED SHOE MACHINERY CO.

[SEAL] By

[SEAL] By

DEFENDANTS' EXHIBIT 286.

[Put in Evidence, page 4239.]

"FAIR STITCHING" (Form JM–44–306–Ln.)

Goodyear Outsole Rapid Lockstitch Machine

, of , lessee under Goodyear Department Lease and License Agreement No. , dated , granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine No. thereby leased, for "fair stitching" for ornamentation only the outsoles of boots, shoes or other footwear the soles of which have been attached to their uppers by the use of Metallic Fastening Machines held by said lessee under lease from said lessor, or have been attached by McKay Sewing Machines, and for the use of said Goodyear Outsole Rapid Lockstitch Machine for such "fairstitching" only shall pay to the lessor in respect to each pair of such "fairstitched" boots, shoes, or other footwear the sum of two cents in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six in said lease and license agreement contained.

Said "fairstitched" boots, shoes or other footwear shall not be nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear," or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said lease and license agreement with reference to time for payments, records and accounts are hereby extended to apply to "fairstitched" boots, shoes or other footwear made in accordance with the permission hereby given.

The provisions in this instrument contained shall have the same

force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine hereinbefore specifically designated by number, and excepting to the extent herein expressly provided, none of the conditions, stipulations or provisions of said lease and license agreement contained are in any manner waived or modified, but the same are and shall remain in full force and effect.

Dated this day of 19 .

UNITED SHOE MACHINERY CO.
By
By

DEFENDANTS' EXHIBIT 287.

[Put in Evidence, page 4240.]

FAIR STITCHING. (Form JM–44–306–Ln.)

Goodyear Outsole Rapid Lockstitch Machine

of lessee under Goodyear Department Lease and License Agreement, No. , dated , 19 , granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. thereby leased for "fair stitching" for ornamentation only the outsoles of boots, shoes or other footwear the soles of which have been attached to their uppers by the use of Metallic Fastening Machines held by said lessee under lease from said lessor, or have been attached by McKay Sewing Machines, and for the use of said Goodyear Outsole Rapid Lockstitch Machine for such "fair stitching" only shall pay to the lessor in respect to each pair of such "fair stitched" boots, shoes or other footwear, the sum of two cents in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six in said lease and license agreement contained.

Said "fair stitched" boots, shoes or other footwear shall not nor shall the boxes or cartons containing the same be stamped or marked

with the word "Goodyear," or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns".

The requirements of said lease and license agreement with reference to time for payments, records and accounts are hereby extended to apply to "fair stitched" boots, shoes or other footwear made in accordance with the permission hereby given.

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said "Goodyear Outsole Rapid Lockstitch Machine" hereinbefore specifically designated by number, and excepting to the extent herein expressly provided, none of the terms, conditions, stipulations or provisions of said lease and license agreement is hereby in any manner waived or modified.

Dated this day of 19 .

By

By

DEFENDANTS' EXHIBIT 288.

[Put in Evidence, page 4240.]

MOCK WELTS. (Form JM–46–506–Ln.)

Goodyear Outsole Rapid Lockstitch Machine

of lessee under Goodyear Department Lease and License Agreement, No. , dated , 19 , granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. thereby leased for stitching on the outsoles of that class of boots, shoes or other footwear known in the trade as "Mock Welts," the insoles of which have been attached to welts or slip soles by the aid of pegging, wiring, nailing, screwing or stapling machines held by the lessee under lease from the lessor, or of McKay Sewing Machines, and for such use only of said Goodyear Outsole Rapid Lockstitch Machine, shall pay to the lessor in respect to each pair of such "Mock Welts" the outsoles of which shall have been in whole or in part stitched by

the use of said Goodyear Outsole Rapid Lockstitch Machine the amount specified in the "Schedule of Payments — Mock Welts — Per Pair" hereinafter contained, in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six of said lease and license agreement contained.

Schedule of Payments — Mock Welts — Per Pair.

	Sizes. From No.	To No.	
Children's	1	10½ inc.	2 cents
Misses'	11	2 "	2 cents
Women's	2½	and over	3 cents
Youths'	9	13½ inc.	2 cents
Boys'	1	5 "	3 cents
Men's	5½	and over	4 cents

Said "Mock Welts" shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear," or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said lease and license agreement with reference to time for payment, records and accounts are hereby extended to apply to "Mock Welts."

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine hereinbefore specifically designated by number, and excepting to the extent herein expressly provided none of the conditions, stipulations or provisions in said lease and license agreement contained is hereby in any manner waived or modified.

Dated this day of 19 .

By

By

DEFENDANTS' EXHIBIT 289.

[Put in Evidence, page 4240.]

AUXILIARY MACHINES. (Form JM–41–306)

Permission is hereby given to of , lessee under Goodyear Department Lease and License Agreement, No. dated granted by the United Shoe Machinery Company, as lessor, to use the "Auxiliary Machines" thereby leased in the manufacture of that class of boots, shoes or other footwear known in the trade as which have been made by the use of Goodyear Outsole Rapid Lockstitch Machine, No. held by said lessee under lease and license agreement from said lessor, dated No. in accordance with the provisions of Rider, dated attached to said last mentioned lease and license agreement, and providing for the use of said designated Goodyear Outsole Rapid Lockstitch Machine in the manufacture of said class of boots, shoes or other footwear upon the terms and conditions in said Rider set forth.

The permission hereby given does not include the use of any machine or machines other than the "Auxiliary Machines" specifically designated by number in said lease and license agreement first above mentioned, and excepting to the extent herein expressly provided none of the terms, conditions, stipulations or provisions of said lease and license agreement is hereby in any manner waived or modified.

Dated this day of 19 .

By

By

DEFENDANTS' EXHIBIT 290.

[Put in Evidence, page 4241.]

Goodyear Department A (Form C—31—1105)

This Instrument Witnesseth that the United Shoe Machinery Company of Canada, the lessor named in Goodyear Department Lease and License Agreement No. , dated , between said Company and , of , as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof for the termination of the lease and license thereby granted, and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then neither the payment provided for in Article Nine of said lease and license agreement No. to be thereupon made by the lessee, of such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, nor the payment provided for in Article Ten of said lease and license agreement to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall be required to be made, and in such case the lessor shall thereupon, in addition, credit to the account of the lessee the sum of Dollars in respect to each Goodyear Welt and Turn Shoe Machine and Goodyear Outsole Rapid Lockstitch Machine designated in the foregoing schedule.

UNITED SHOE MACHINERY COMPANY OF CANADA.

By

Montreal, P. Q. , 190 .

DEFENDANTS' EXHIBIT 291.

[Put in Evidence, page 4241.]

Goodyear Department B (Form JM–32–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. , dated, between said Company and , of , as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then neither the payment provided for in Article Nine of said lease and license agreement No. to be thereupon made by the lessee, of such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, nor the payment provided for in Article Ten of said lease and license agreement to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall be required to be made.

UNITED SHOE MACHINERY COMPANY,
By

Boston, Mass., , 190 .

DEFENDANTS' EXHIBIT 292.

[Put in Evidence, page 4241.]

Goodyear Department C (Form JM–33–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. , dated , between said Company and , of , as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then the payment provided for in Article Ten of said lease and license agreement No. to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall not be required to be made, and in such case the lessor shall thereupon, in addition, credit to the account of the lessee the sum of Dollars in respect to each Goodyear Welt and Turn Shoe Machine, Goodyear Universal Inseam Sewing Machine and Goodyear Outsole Rapid Lockstitch Machine designated in the foregoing schedule.

UNITED SHOE MACHINERY COMPANY,

By

Boston, Mass., , 190 .

DEFENDANTS' EXHIBIT 293.

[Put in Evidence, page 4241.]

Goodyear Department D (Form JM–34–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. , dated , between said Company and , of , as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof, or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, the lessor will accept the sum of Dollars in respect to each Goodyear Welt and Turn Shoe Machine, Goodyear Universal Inseam Sewing Machine and Goodyear Outsole Rapid Lockstitch Machine designated by number in the foregoing schedule in lieu of the sum provided in Article Ten of said lease and license agreement to be thereupon paid by the lessee of One Hundred and Fifty Dollars ($150.00) in respect to each such designated machine.

UNITED SHOE MACHINERY COMPANY,

By

Boston, Mass., , 191 .

DEFENDANTS' EXHIBIT 294.

[Put in Evidence, page 4241.]

Goodyear Dapertment E (Form JM–36–305.)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. , dated , between said Company and , of , as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then the payment provided for in Article Ten of said lease and license agreement No. to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall not be required to be made.

UNITED SHOE MACHINERY COMPANY,
By

Boston, Mass., , 19 .

DEFENDANTS' EXHIBIT 295.

[Put in vidence, page 4242.]

Goodyear Department M (Form JM–35–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. , dated , between said Company and , of , as lessee, and covering the machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Bobbin Winder (Universal) No.
Goodyear Bobbin Winder (Rapid) No.
Goodyear Welt Grooving and Beveling Machine No.
Goodyear Welt Splitting Machine No.
Goodyear Channeler { Turn No. / Insole No. / Outsole No.
Goodyear Universal Welt Beater No.
Goodyear Welt Beating and Slashing Machine No.
Goodyear Universal Shank Skiving Machine No.
Goodyear Universal Inseam Trimming Machine No.
Goodyear Universal Rounding and Channeling Machine No.
Goodyear Channel Opening Machine No.
Goodyear Automatic Sole Leveling Machine No.
Goodyear Rotary Sole Laying Machine No.
Hadaway Stitch Separating Machine No.
Goodyear Channel Laying Machine No.
Goodyear Flexible Sole Machine No.
Goodyear Moulding Machine No.
Goodyear Turn Shoe Trimming Machine No.
Goodyear Lip Turning Machine No.
Goodyear Improved Sole Laying Machine No.
Goodyear Shank Welt Skiving Machine No.
Goodyear Forepart Turning Machine No.
Goodyear Heel Turning Machine No.

hereby waives payment by the lessee of the amounts called for by

Article Seven of said lease and license agreement in respect to each of said designated machines in respect to the year

Excepting as herein expressly provided none of the conditions, stipulations, or provisions of said lease and license agreement are in anywise waived or modified.

UNITED SHOE MACHINERY COMPANY,
By

Boston, Mass., , 190 .

DEFENDANTS' EXHIBIT 296.

[Put in Evidence, page 4242.]

[Form J. M. 83.]

The following modifications are hereby made in Lasting Machine Department Lease and License Agreement No. , dated , between the United Shoe Machinery Company, lessor, and of , lessee, covering

Consolidated Hand Method Lasting Machine, No.

viz.:

1. Article Four of said Lease and License Agreement is hereby changed to read as follows:

Four. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear made by the lessee known in the trade as "Goodyear Welts" which are welted wholly by "Goodyear Welt and Turn Shoe Machines" or "Goodyear Universal Inseam Sewing Machines" held by the lessee under lease from the lessor and the soles of which are attached to their welts wholly by "Goodyear Outsole Rapid Lockstitch Machines" held by the lessee under lease from the lessor, and shall be used for no other purpose than for lasting the sides of such boots, shoes and other footwear which have been pulled over by "Rex Pulling Over Machines" held by the lessee under lease from the lessor, and which shall be otherwise lasted by "U. S. M. Co. Lasting Machines, No. 5," held by the lessee under lease from the lessor.

2. The lessor hereby waives payment by the lessee of any rental or royalty on account of the use by the lessee of the leased machinery

as specified in said Article Four of said Lease and License Agreement as hereby changed.

Except as herein expressly provided none of the conditions, agreements, stipulations or provisions in said Lease and License Agreement contained is hereby in any manner waived or modified.

Dated this day of 19 .

By

By

DEFENDANTS' EXHIBIT 297.

[Put in Evidence, page 4243.]

[Form J. M. 84.]

The following modifications are hereby made in Lasting Machine Department Lease and License Agreement No. , dated , between the United Shoe Machinery Company, lessor, and of , lessee, covering

Consolidated Hand Method Lasting Machine, No.

viz.:

1. Article Four of said Lease and License Agreement is hereby changed to read as follows:

Four. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear made by the lessee known in the trade as "Goodyear Welts" which are welted wholly by "Goodyear Welt and Turn Shoe Machines" or "Goodyear Universal Inseam Sewing Machines" held by the lessee under lease from the lessor and the soles of which are attached to their welts wholly by "Goodyear Outsole Rapid Lockstitch Machines" held by the lessee under lease from the lessor, and shall be used for no other purpose than for lasting the sides of such boots, shoes and other footwear which have been pulled over by "Rex Pulling Over Machines" held by the lessee under lease from the lessor, and which shall be otherwise lasted by "U. S. M. Co. Lasting Machines, No. 5" held by the lessee under lease from the lessor.

2. The lessor hereby waives payment by the lessee of any rental or royalty on account of the use by the lessee of the leased machinery

as specified in said Article Four of said Lease and License Agreement as hereby changed.

Except as herein expressly provided none of the conditions, agreements, stipulations or provisions in said Lease and License Agreement contained is hereby in any manner waived or modified.

Lasting Machine Department Lease and License Agreement No. , dated , heretofore granted by the said United Shoe Machinery Company to said covering the machine herein referred to is hereby cancelled and superseded by Lasting Machine Department Lease and License Agreement, No. to which this rider is attached.

Dated this day of 19 .

By

By

DEFENDANTS' EXHIBIT 298.

[Put in Evidence, page 4243.]

[Form J. M. 55–806]

This instrument witnesseth that the following changes are hereby made in the conditions of Lasting Machine Department Lease and License, No. , dated , between the United Shoe Machinery Company, lessor, and , of lessee, and covering

Consolidated Hand Method Lasting Machine, No.

viz.—

Articles Four and Five are hereby changed to read as follows:

Four. The leased machinery shall be used for no other purpose than for lasting the heel portions of turned shoes or other footwear the soles of which shall be attached to their uppers by Turn Sewing Machines held by the lessee under lease from the lessor, and for that purpose the leased machinery shall be used to its full capacity, limited only by the number of such shoes or other footwear made by or for the lessee.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one-half of one cent for each pair of shoes or other footwear in the manufacture or preparation of which the leased machinery shall be used during the next preceding

calendar month, provided, however, that in the computation of such rental or royalty upon children's shoes seventy-two (72) pairs of such shoes shall be considered as the equivalent of sixty (60) pairs of all other kinds, and further provided, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month. The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount in each calendar year, ending December thirty-first, to at least ten dollars ($10.00) for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than ten (10) out of twelve (12) consecutive calendar months.

Excepting as herein expressly provided, none of the conditions, agreements, stipulations or provisions of said lease and license are in any manner waived or modified, but the same are and shall remain in full force and effect.

Dated at Boston, Massachusetts, this , day of , 190 .

By

UNITED SHOE MACHINERY COMPANY

By President.

DEFENDANTS' EXHIBIT 299.

[Put in Evidence, page 4243.]

[Form J. M. 54–806]

This instrument witnesseth that the following changes are hereby made in the conditions of Lasting Machine Department Lease and License, No. , dated , between the United Shoe Machinery Company, lessor, and of , lessee, and covering

Consolidated Hand Method Lasting Machine, No.

viz.—

Articles Four and Five are hereby changed to read as follows:

Four. The leased machinery shall be used for no other purpose than for wiring the toes of turned shoes or other footwear the soles of which shall be attached to their uppers by Turn Sewing Machines held by the lessee under lease from the lessor, and for that purpose the leased machinery shall be used to its full capacity, limited only by the number of such shoes or other footwear made by or for the lessee.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one-half of one cent for each pair of shoes or other footwear in the manufacture or preparation of which the leased machinery shall be used during the next preceding calendar month, provided, however, that in the computation of such rental or royalty upon children's shoes seventy-two (72) pairs of such shoes shall be considered as the equivalent of sixty (60) pairs of all other kinds, and further provided, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month. The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount in each calendar year, ending December thirty-first, to at least ten dollars ($10.00) for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee

remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than ten (10) out of twelve (12) consecutive calendar months.

Excepting as herein expressly provided, none of the conditions, agreements, stipulations or provisions of said lease and license are in any manner waived or modified, but the same are and shall remain in full force and effect.

Dated at Boston, Massachusetts, this , day of , 190 .

By

UNITED SHOE MACHINERY COMPANY

By President.

DEFENDANTS' EXHIBIT 300.

[Put in Evidence, page 4244.]

The following provision contained in Article Three of Metallic Department Lease and License No. , dated , 19 , granted by the United Shoe Machinery Company, as lessor, to of , as lessee, covering is hereby stricken out, namely:

"except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines or by the aid of lasting or tacking mechanisms other than those leased from the lessor or any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor."

Excepting as herein expressly provided none of the conditions, agreements, stipulations or provisions contained in said Lease and License is hereby in any wise waived or modified.

Dated this day of , 19 .

UNITED SHOE MACHINERY CO.

By

DEFENDANTS' EXHIBIT 301.

[Put in Evidence, page 4244.]

[Form J. M. 85]

The following modifications are hereby made in Metallic Department Lease and License Agreement, No. dated , between the United Shoe Machinery Company, as lessor, and of , as lessee, covering the machine designated by name and number in the following

Schedule of Machines.

Rapid Standard Screw Machine, No.
Loose Nailing Machine, No.
Universal Slugging Machine, No.
Taper Nail Tacking Machine, No.
Grip Tacking Machine, No.
Staple Fastening Machine, No.
Knife Grinder, No.

1. The lessee agrees to pay to the lessor immediately upon the execution of said Lease and License Agreement, as a lease premium for said machine, the sum of Dollars.

2. The following provision contained in Article Three of said Lease and License Agreement is hereby stricken out, namely:—
"except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines or by the aid of lasting or tacking mechanisms other than those leased from the lessor or any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor."

Except as herein expressly stated, none of the conditions, stipulations, or provisions contained in said Lease and License Agreement is hereby in any wise waived or modified.

Dated this day of , 19 .

By

By

DEFENDANTS' EXHIBIT 302.

[Put in Evidence, page 4245.]

[Form J. M. 65.]

It is hereby made a condition of Metallic Department Lease and License, No. , dated between the United Shoe Machinery Company, lessor, and of , lessee, and covering No. , with the same force and effect as though printed therein before execution, that the lessee independently of and in addition to all other obligations under said Lease and License Agreement shall pay to the lessor on the fifteenth day of each calendar month during the continuance of said Lease and License the sum of dollars ($) per month. And the lessor hereby waives the guarantee provided in said Lease and License Agreement of four hundred (400) pounds of fastening material per year.

Excepting to the extent herein expressly provided none of the terms or conditions of said Lease and License are hereby, in any manner, waived or modified.

Dated this day of 1907.

By

By

DEFENDANTS' EXHIBIT 303.

[Put in Evidence, page 4245.]

Dear Sirs:—

Referring to that clause contained in Article Three of our Metallic Department Lease and License No. to you, dated , and covering Machines, Nos. , which provides that the said machinery shall not be used on any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor, we beg to state in accordance with your request that said clause in said lease shall not be held to prevent the use of said designated machines by you upon "hand sewed welts" made by or for you by reason of the fact that the same are not welted on welt sewing machines held under lease

from us, or upon "hand turns" made by or for you by reason of the fact that the soles of the same are not attached by turn sewing machines held by you under lease from us.

Very truly yours,

UNITED SHOE MACHINERY COMPANY

By _____

DEFENDANTS' EXHIBIT 304.

[Put in Evidence, page 4246.]

The conditions and provisions contained in Heeling Department Lease and License, No. , dated , granted by the United Shoe Machinery Company as lessor, to , as lessee, and covering , are hereby modified to the extent hereinafter stated but not otherwise.

1. Article numbered in said Lease and License is hereby stricken out, and in lieu thereof it is provided and agreed as follows, with the same force and effect as if the following article were printed in said Lease and License as one of the conditions thereof:—

. The lessee shall use the leased machinery for no other purpose than for compressing heels for boots, shoes and other footwear. The leased machinery shall not nor shall any part thereof be used for compressing or in anywise operating upon toplifts, soles or taps.

2. Articles numbered in said Lease and License are hereby stricken out, and in lieu thereof it is provided and agreed as follows, with the same force and effect as if the following article were printed in said Lease and License as one of the conditions thereof:—

. The lessee shall pay to the lessor as rental or royalty for the term of one year herein provided for the sum of three hundred dollars ($300.00), payable in equal monthly payments of twenty-five dollars ($25.00) each. Said payments of twenty-five dollars ($25.00) each shall be made to the lessor at its office in Boston, Massachusetts, on or before the fifth day of each calendar month.

3. The first sentence in article numbered in said Lease and License, beginning with the words "This lease and license" and ending with the words "date hereof" is hereby stricken out, and

in lieu thereof the following sentence is substituted with the same force and effect as if so printed in said lease and license.

This lease and license shall continue, unless sooner terminated by the lessor by notice, or because of breach thereof on the part of the lessee, or otherwise as herein provided, for one year from the date hereof.

Excepting as herein expressly provided none of the conditions, agreements, stipulations or provisions of said Lease and License are in anywise waived or modified, but the same are and shall remain in full force and effect.

In Witness Whereof the parties hereto have duly executed this instrument in duplicate this day of .

UNITED SHOE MACHINERY COMPANY
By

DEFENDANTS' EXHIBIT 305.

[Put in Evidence, page 4246.]

UNITED SHOE MACHINERY COMPANY
Albany Building, Boston, Mass.

We beg to advise you that we have received the following named machines heretofore held by you as lessee of this Company under Department Lease and License Agreement, No. dated, viz:

Yours respectfully

UNITED SHOE MACHINERY COMPANY.
By

DEFENDANTS' EXHIBIT 306.

[Put in Evidence, page 4246.]

Article Five of Pulling Over System Lease and License Agreement, No. , dated , granted by the United Shoe Machinery Company, as lessor, to of as lessee, covering is hereby changed to read as follows:

"Five. The machinery hereby leased or held by the lessee under other lease or license agreement from the lessor shall be used only

in the manufacture or preparation of boots, shoes or other footwear made by or for the lessee and shall be used for no other purpose than for performing the work for which it is designed and leased. The machinery of the Pulling Over System of the lessor hereby leased or held by the lessee under other lease or license agreement from the lessor shall not nor shall any thereof be used in the manufacture of any boots, shoes or other footwear upon which any operation for which any of the machines of the lessor mentioned by name in the foregoing schedule of machines are designed, has been or is to be performed by machinery not held by the lessee under lease from the lessor. Subject to the foregoing limitations, the lessee shall use all Rex Pulling Over Machines held by him under lease from the lessor to their full capacity upon all boots, shoes or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machines are capable of being used and shall use all other machinery of the Pulling Over System of the lessor held by him under lease from the lessor to its full capacity upon all work in the manufacture or preparation of boots, shoes and other footwear, or portions thereof, which is done by or for the lessee by the aid of machinery and which is of a kind which such machinery is designed to perform."

Except as herein expressly provided none of the conditions, stipulations or provisions contained in said lease and license agreement is hereby in any way waived or modified.

Dated this day of, 19 .

By _____

DEFENDANTS' EXHIBIT 307.

[Put in Evidence, page 4247.]

Dear Sirs:—

Referring to our Pulling Over lease to you , covering Rex Pulling Over Machines Nos. , together with other machines of the Pulling Over System referred to in said lease and auxiliary to said Pulling Over Machines we beg to say that it is understood and agreed that nothing contained in said lease shall be construed to pre-

vent the lessee from pulling over by hand such portion of the footwear manufactured by or for the lessee as is in excess of the capacity of the machinery leased for use in the factory in which said footwear is pulled over.

Very truly yours,

UNITED SHOE MACHINERY COMPANY

By _____

DEFENDANTS' EXHIBIT 308.

[Put in Evidence, page 4247.]

The following provision contained in Article Five of Heeling Machine Department Lease and License No. , dated , 19 , granted by the United Shoe Machinery Company, as lessor, to of , as lessee, covering is hereby stricken out, namely:

"The leased machinery shall not however nor shall any part thereof be used for manufacturing, preparing or attaching heels, top-lifts, soles or taps for any boots, shoes or other footwear which have been or shall be welted or the soles stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor, or for any turn boots, shoes or other footwear the soles of which have been or shall be attached by the aid of any turn sewing machinery not held by the lessee under lease from the lessor, or for any boots, shoes or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed or otherwise partly made by the aid of any lasting, pegging or metallic machinery not held by the lessee under lease from the lessor."

Excepting as herein expressly provided none of the conditions, agreements, stipulations or provisions contained in said Lease and License is hereby in any wise waived or modified.

Dated this day of , 19 .

UNITED SHOE MACHINERY CO.

By

DEFENDANTS' EXHIBIT 309.

[Put in Evidence, page 4248.]

[Form J. M. 86]

The following modifications are hereby made in Heeling Machine Department Lease and License Agreement No. , dated , between the United Shoe Machinery Company, as lessor, and of , as lessee, covering the machine designated by name and number in the following

Schedule of Machines.

Automatic Heel Compressing Machine (No. 4 Model), No.
McKay Rapid Nailing Machine, No.
McKay Automatic Heel Loading & Attaching Machine, No.
American Lightning Nailing Machine, No.
Improved National Nailing Machine, No.
McKay Heel Trimming and Randing Machine, No.
McKay Knife Grinding Machine, No.
Smith Heel Trimming Machine, No.
Busell Heel Trimming Machine, No.
Ultima Heel Trimming Machine, No.

1. The lessee agrees to pay to the lessor immediately upon the execution of said Lease and License Agreement as a lease premium for said machine the sum of Dollars.

2. Clause 3 of said Lease and License Agreement is hereby stricken out.

3. The following provision, contained in Article 5 of said Lease and License Agreement, is hereby stricken out, viz.:—

"The leased machinery shall not however nor shall any part thereof be used for manufacturing, preparing or attaching heels, toplifts, soles or taps for any boots, shoes or other footwear which have been or shall be welted or the soles stitched by the aid of any welt sewing or sole stitching machinery not held by the lessee under lease from the lessor, or for any turn boots, shoes or other footwear the soles of which have been or shall be attached by the aid of any turn sewing machinery not held by the lessee under lease from the lessor, or for any boots, shoes or other footwear which have been or shall be lasted, pegged, slugged, heel seat nailed or otherwise partly made by the aid

of any lasting, pegging or metallic machinery not held by the lessee under lease from the lessor."

Except as herein expressly stated, none of the conditions, stipulations, or provisions contained in said Lease and License Agreement is hereby in any wise waived or modified.

Dated this day of , 19 .

By

By

DEFENDANTS' EXHIBIT 310.

[Put in Evidence, page 4248.]

March 23, 1910.

W. H. McElwain Company, 348 Congress Street, Boston, Mass.

Gentlemen:— We hereby consent to the removal by you of the following designated machine:—

Goodyear Welt Splitting Machine, No. 802

held by you under Lease and License Agreement No. 5884A., dated October 28, 1904, from your Cohas factory in Manchester, New Hampshire, to your Eastside factory in said Manchester, upon the understanding and agreement that said machine is to be held and used by you at said Eastside factory under all the agreements, conditions, stipulations and provisions in said Lease and License Agreement contained, with the same force and effect as if said machine had been originally leased to you by said Lease and License Agreement for use in said Eastside factory in place of said Cohas factory.

Yours truly,

UNITED SHOE MACHINERY COMPANY,

By Vice-President.

The following modifications are hereby made in Goodyear Department Lease and License Agreement, No. 5301 "A", dated July 23, 1907, between the United Shoe Machinery Company, lessor, and Robertson & Sons, of New York, N. Y., lessee, covering one (1) Goodyear Outsole Rapid Lockstitch Machine, No. 2633, and one (1) Goodyear Bobbin Winding Machine (Rapid), No. 1393, viz:

I. The lessee may use said Goodyear Outsole Rapid Lockstitch Machine, No. 2633, in repair work for sewing on new outsoles to boots, shoes or other footwear not manufactured by the lessee, and for each pair of boots, shoes or other footwear upon which said machine shall be so used shall pay to the lessor for such use of said machine in accordance with the following schedule:

Schedule of Payments for Use of Goodyear Outsole Rapid Lockstitch Machine, No. 2633 for Repair Work.

Children's, misses', youths' and women's footwear four cents per pair
Boys' and men's footwear . . . . . six cents per pair

in lieu of the amounts specified in the "Schedule of Rents and Royalties for Goodyear Welts and Turns" in Article Five of said lease and license agreement contained. The payments in accordance with the Schedule above set forth shall be made at the same time and in the same manner and shall be subject to discount under the same circumstances as is provided in said Article Five.

II. The monthly guarantee of ten dollars per month provided for in said lease and license agreement shall be due and payable on the fifteenth day of each calendar month for the preceding month unless the rental or royalty for the use of said machine during such preceding month (less all abatements) as shown by the lessee's return to the lessor for said preceding month shall equal or exceed said guaranteed amount.

III. The provisions of Article Six of said lease and license agreement with reference to accounts to be kept by the lessee and return to be made to the lessor are hereby extended to cover the use of the said machinery made by the lessee in accordance with this instrument.

IV. Excepting to the extent herein provided none of the conditions, agreements, stipulations or provisions of said lease and license agreement are hereby in any manner waived or modified.

UNITED SHOE MACHINERY COMPANY

(CORPORATE SEAL) By Wallace F. Robinson, Vice President.
By R. A. Blackwell, Asst. Secretary.

ROBERTSON & SONS

By James Robertson

The Kyng B. Shoe Company, of Rochester, N. Y., the lessee named in Goodyear Department Lease and License Agreement, No. 7071 "A", dated February sixth, 1911, granted by the United Shoe Machinery Company as lessor, is hereby given permission to use

Goodyear Outsole Rapid Lockstitch Machine, No. 4302 and
Goodyear Rapid Bobbin Winding Machine, No.

for attaching the outsoles of children's shoes (sizes one to ten and one-half inclusive) having an upper, insole and welt, all of sheepskin, fastened together by the aid of a dry thread Sewing or Stitching Machine and for such use only of said Goodyear Outsole Rapid Lockstitch Machine and Goodyear Rapid Bobbin Winding Machine the lessee shall pay to the lessor in respect to each pair of such children's shoes whose outsoles are attached by the aid of said Goodyear Outsole Rapid Lockstitch Machine the sum of two (2) cents in lieu of the amount specified in the "Schedule of Payments per pair" contained in Article Six of said Lease and License Agreement.

Said shoes shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear" or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said Lease and License Agreement with reference to time for payments, records and accounts are hereby extended to apply to shoes operated upon in accordance with permission hereby given.

The provisions contained in this instrument shall have the same force and effect as though included in said Lease and License Agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine and said Goodyear Rapid Bobbin Winding Machine hereinbefore specifically designated by number and excepting to the extent herein expressly provided none of the conditions, stipulations or provisions in said Lease and License Agreement contained is hereby, in any manner, waived or modified.

Dated this sixth day of February, 1911.

UNITED SHOE MACHINERY COMPANY

(CORPORATE SEAL) By L. A. Coolidge, Treasurer.
R. A. Blackwell, Assistant Treasurer.

KYNG B. SHOE COMPANY,

(CORPORATE SEAL) Per John B. Snell, Treas.

L. A. Stiles & Company, Incorporated, of Brooklyn, N. Y., lessee under Goodyear Department Lease and License Agreement No. 7105 B, dated October 4, 1911, granted by the United Shoe Machinery Company as lessor, is hereby given permission to use

Goodyear Welt & Turn Shoe Machine, Model G, 883

thereby leased for sewing the inseams of women's welted boots, shoes or other footwear, the outsoles of which have been or are to be attached by hand sewing, and for such use only of said Goodyear Welt & Turn Shoe Machine shall pay to the lessor in respect to each pair of such footwear, the inseams of which have been in whole or in part sewed by the use of said Goodyear Welt & Turn Shoe Machine, the sum of four cents per pair. Said payments shall be made at the same time and in the same manner and shall be subject to discount for prompt cash payment as in Article Six of said Lease and License Agreement provided.

Said footwear shall not, nor shall the boxes nor cartons containing the same, be stamped or marked with the word "Goodyear" nor advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The permission hereby given does not include the use of any machine or machines other than said Goodyear Welt & Turn Shoe Machine hereinbefore specifically designated by number, and except to the extent herein expressly provided, none of the conditions, stipulations or provisions in said Lease and License Agreement contained are in any manner waived or modified.

Dated this day of 19 .

UNITED SHOE MACHINERY CO.

(CORPORATE SEAL) By L. A. Coolidge, Treasurer.
R. A. Blackwell, Asisstant Secretary.

AUXILIARY MACHINES.

Permission is hereby given to L. A. Stiles & Company, Incorporated, of Brooklyn, N. Y., lessee, under Goodyear Department Auxiliary Machines Lease and License Agreement No. 7105 "C" dated October fourth, 1911, granted by the United Shoe Machinery Company as lessor, to use the Auxiliary Machines thereby leased in the manufacture of women's welted boots, shoes or other footwear, the inseams of which have been or are to be sewed by the use of Goodyear Welt & Turn Shoe Machine, Model G, No. 883 held by said lessee under Lease and License Agreement from said lessor, No. 7105 "B" dated October 4, 1911, and the outsoles of which are to be attached by hand sewing in accordance with the provisions of a rider dated October fourth, 1911, attached to said last mentioned Lease and License Agreement, and providing for the use of said designated Goodyear Welt & Turn Shoe Machine in the manufacture of such footwear upon the terms and conditions in said rider set forth.

The permission hereby given does not include the use of any machine or machines other than Goodyear Auxiliary Machines specifically designated by number in said Lease and License Agreement first above mentioned; and except as herein expressly provided none of the conditions, stipulations or provisions in said Lease and License Agreement contained is hereby in any manner waived or modified.

Dated this day of 19 .

UNITED SHOE MACHINERY CO.

(SEAL) L. A. Coolidge, Treasurer.

R. A. Blackwell, Assistant Secretary.

The provisions of Section Four of Goodyear Department Lease and License "No. 5930 Full Set", dated the 30th day of December, 1904, are hereby waived to the extent that permission is given to the lessee to use the Hadaway Stitch Separating Machine hereby leased for separating or indenting the stitches on "Fair Stitch McKay Sewed" boots and shoes and other footwear, on condition that the lessee shall pay to the lessor on the last day of each calendar month, as rent and royalty for the use of said Stitch Separating Machine,

the sum of One Cent for each pair of McKay sewed boots, shoes or other footwear or portions thereof operated on during the next preceding calendar month in any way whether wholly or in part by the aid of said Stitch Separating Machine or any part thereof, provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of said Stitch Separating Machine for the next preceding calendar month, the lessor will, in consideration of such prompt payment, grant a discount of fifty per cent from such rent or royalty due for such preceding calendar month.

Dated the eighth day of February, 1905.

UNITED SHOE MACHINERY COMPANY,

(CORPORATE SEAL) By S. W. Winslow, President. (SEAL)

HAND-SEWED WELTS. (Form JM–79–409–Ln.)

Goodyear Outsole Rapid Lockstitch Machine.

Quaker City Shoe Company of Philadelphia, Pennsylvania, lesser under Goodyear Department Lease and License Agreement, No. 6624 "A", dated June twelfth, 1908, granted by the United Shoe Machinery Company as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. 2940, thereby leased for stitching on the outsoles of that class of welted footwear known in the trade as "Hand-Sewed Welts", the inseams of which have been sewed by hand, and for such use only of said Goodyear Outsole Rapid Lockstitch Machine, shall pay to the lessor in respect to each pair of such "Hand-Sewed Welts", the outsoles of which have been in whole or in part stitched by the use of said Goodyear Outsole Rapid Lockstitch Machine, the amount specified in the "Schedule of Payments — Hand Sewed Welts — Per Pair" hereinafter contained, in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six of said lease and license agreement contained.

Schedule of Payments — Hand-Sewed Welts — Per Pair.

	Sizes.		
	From No.	To No.	
Children's	1	10½ inclusive	2 cents
Misses'	11	2 "	2 cents

	Sizes From No.	to No.	
Women's	2½	and over	4 cents
Youths'	9	13½ inclusive	2 cents
Boys'	1	5 "	4 cents
Men's	5½	and over	6 cents

Said "Hand-Sewed Welts" shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear", or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns".

The requirements of said lease and license agreement with reference to time for payment, record and accounts, are hereby extended to apply to "Hand-Sewed Welts".

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine hereinbefore specifically designated by number, and excepting to the extent herein expressly provided none of the conditions, stipulations or provisions in said lease and license agreement contained is hereby in any manner waived or modified.

Dated this 25th day of Jan., 1910.

UNITED SHOE MACHINERY CO.
By L. A. Coolidge, Treasurer.
QUAKER CITY SHOE CO.
By A. W. Down, Mgr.

(CORPORATE SEAL)

EST. OF JOHN G. SCHMIDT
Chas. E. Schmidt, Ex.

Goodyear Department E (Form JM–36–305.)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. 6624 "A", dated June twelfth, 1908, between said Company and Quaker City Shoe Company, of Philadelphia, Pennsylvania, as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No. 2940
Extension Edge Attachment (A), No. 2524
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then the payment provided for in Article Ten of said lease and license agreement No. to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall not be required to be made.

UNITED SHOE MACHINERY COMPANY,
(CORPORATE SEAL) By Geo. W. Brown, Treasurer
R. A. Blackwell, Asst. Secretary.

Paterson, New Jersey, June 12th, 1908

"STITCH DOWNS." (Form JM 28-306)

Goodyear Outsole Rapid Lockstitch Machines.

Albina A. Hedlund, doing business as Hedlund Shoe Company of Lynn, Massachusetts, Lessee under Goodyear Department Lease and License Agreement, No. 6557 "A" dated April third, 1908, granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machines, Nos. 1850, 1697, 655 thereby leased, for stitching on the soles or that class of boots, shoes or other footwear known in the trade as "Stitch

Downs", the uppers of which are turned outwardly upon their outsoles and sewed to their outsoles by a single seam only passing through the upper and outsole, or through a mock welt laid upon the out-turned portion of the upper, the upper and the outsole; and for such use only of said Goodyear Outsole Rapid Lockstitch Machines shall pay to the lessor in respect to each pair of such "Stitch Downs" in the manufacture of which the said designated machines have been used as aforesaid the amount specified in the "Schedule of Payments — Stitch Downs — Per Pair", hereinafter contained, in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six in said lease and license agreement contained.

Schedule of Payments — Stitch Downs — Per Pair.

	Sizes		
	From No.	To No.	
Children's	1	10½ inclusive	2 cents
Misses'	11	2 "	2 "
Women's	2½	and over	4 "
Youths'	9	13½ inclusive	2 "
Boys'	1	5 "	4 "
Men's	5½	and over	6 "

Said "Stitch Downs" shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear", or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns".

The requirements of said lease and license agreement with reference to time for payments, records and accounts are hereby extended to apply to "Stitch Downs" made in accordance with the permission hereby given.

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machines hereinbefore specifically designated by number, and excepting to the extent herein expressly provided none of the terms,

conditions, stipulations, or provisions of said lease and license agreement are hereby in any manner waived or modified.

Dated this third day of April, 1908.

UNITED SHOE MACHINERY CO.

(CORPORATE SEAL) By Geo. W. Brown, Treasurer.

HEDLUND SHOE CO.

By Albina A. Hedlund

"FAIRSTITCHING." (Form JM–44–306–Ln.)

Goodyear Outsole Rapid Lockstitch Machine.

The Fuller Shoe Company of Salem, Massachusetts, lessee under Goodyear Department Lease and License Agreement No. 6627 dated April twenty-second 1908 granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. 546 thereby leased, for "fair stitching" for ornamentation only the outsoles of boots, shoes or other footwear the soles of which have been attached to their uppers by the use of Metallic Fastening Machines held by said lessee under lease from said lessor, or have been attached by McKay Sewing Machines, and for the use of said Goodyear Outsole Rapid Lockstitch Machine for such "fair stitching" only shall pay to the lessor in respect to each pair of such "fair stitched" boots, shoes or other footwear the sum of two cents in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six in said lease and license agreement contained.

Said "fair stitched" boots, shoes or other footwear shall not, nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear" or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said lease and license agreement with reference to time for payments, records and accounts are hereby extended to apply to "fair stitched" boots, shoes or other footwear made in accordance with the permission hereby given.

The provisions in this instrument contained shall have the same

force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said "Goodyear Outsole Rapid Lockstitch Machine" hereinbefore specifically designated by number, and excepting to the extent herein expressly provided none of the terms, conditions, stipulations or provisions of said lease and license agreement are hereby in any manner waived or modified.

Dated this twenty-second day of April, 1908.

[SEAL] UNITED SHOE MACHINERY CO.
By Wallace F. Robinson, Vice-Pres.

[SEAL] THE FULLER SHOE CO.
By Fred P. Fuller, Treas.

MOCK WELTS. (Form JM–46–506–Ln.)

Goodyear Outsole Rapid Lockstitch Machine.

Marlboro Shoe Company of Marlboro, Massachusetts, lessee under Goodyear Department Lease and License Agreement, No. 6745 "B", dated March First, 1909, granted by the United Shoe Machinery Company, as lessor, is hereby given permission to use Goodyear Outsole Rapid Lockstitch Machine, No. 1548 thereby leased for stitching on the outsoles of that class of boots, shoes or other footwear known in the trade as "Mock Welts", the insoles of which have been attached to welts or slip soles by the aid of pegging, wiring, nailing, screwing or stapling machines held by the lessee, under lease from the lessor, or of McKay Sewing Machines, and for such use only of said Goodyear Outsole Rapid Lockstitch Machine, shall pay to the lessor in respect to each pair of such "Mock Welts" the outsoles of which shall have been in whole or in part stitched by the use of said Goodyear Outsole Rapid Lockstitch Machine the amount specified in the "Schedule of Payments — Mock Welts — Per Pair" hereinafter contained, in lieu of the amount specified in the "Schedule of Payments Per Pair" in Article Six of said lease and license agreement contained.

Schedule of Payments — Mock Welts — Per Pair.

	Sizes. From No.	To No.	
Children's	1	10½ inc.	2 cents
Misses'	11	2 "	2 cents
Women's	2½	and over	3 cents
Youths'	9	13½ inc.	2 cents
Boys'	1	5 "	3 cents
Men's	5½	and over	4 cents

Said "Mock Welts" shall not nor shall the boxes or cartons containing the same be stamped or marked with the word "Goodyear," or advertised, represented or sold as "Goodyear Welts" or "Goodyear Turns."

The requirements of said lease and license agreement with reference to time for payment, records and accounts are hereby extended to apply to "Mock Welts".

The provisions in this instrument contained shall have the same force and effect as though included in said lease and license agreement as conditions thereof.

The permission hereby given does not include the use of any machine or machines other than said Goodyear Outsole Rapid Lockstitch Machine hereinbefore specifically designated by number, and excepting to the extent herein expressly provided none of the conditions, stipulations or provisions in said lease and license agreement contained is hereby in any manner waived or modified.

Dated this seventh day of September, 1909.

UNITED SHOE MACHINERY CO.

(CORPORATE SEAL) By Geo. W. Brown, Treasurer.

MARLBORO SHOE CO.

(CORPORATE SEAL) By H. L. Tinkham, Treas.

AUXILIARY MACHINES. (Form JM 41–306)

Permission is hereby given to The Foster-Williams Shoe Company of Lynn, Massachusetts, lessee under Goodyear Department Lease and License Agreement, No. 6753 "B" dated May eleventh, 1909,

granted by the United Shoe Machinery Company, as lessor, to use the "Auxiliary Machines" thereby leased in the manufacture of that class of boots, shoes or other footwear known in the trade as Fair Stitched and Mock Welts which have been made by the use of Goodyear Outsole Rapid Lockstitch Machine, No. 2805 held by said lessee under lease and license agreement from said lessor, dated January twentieth, 1908, No. 6753 in accordance with the provisions of Rider, dated January twentieth, 1908, attached to said last mentioned lease and license agreement, and providing for the use of said designated Goodyear Outsole Rapid Lockstitch Machine in the manufacture of said class of boots, shoes or other footwear upon the terms and conditions in said Rider set forth.

The permission hereby given does not include the use of any machine or machines other than the "Auxiliary Machines" specifically designated by number in said lease and license agreement first above mentioned, and excepting to the extent herein expressly provided none of the terms, conditions, stipulations or provisions of said lease and license agreement is hereby in any manner waived or modified.

Dated this 11th day of May, 1909.

UNITED SHOE MACHINERY CO.

[SEAL] By Wallace F. Robinson, Vice-President

THE FOSTER-WILLIAMS SHOE CO.

[SEAL] Per C. P. Williams, Pres.

By

Goodyear Department A (Form JM–31–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. 6865, dated December twentieth 1909, between said Company and Reed B. Force, of Burlington, New Jersey, as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No. 1111

Goodyear Universal Inseam Sewing Machine, No.

Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then neither the payment provided for in Article Nine of said lease and license agreement No. 6865 to be thereupon made by the lessee, of such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, nor the payment provided for in Article Ten of said lease and license agreement to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall be required to be made, and in such case the lessor shall thereupon, in addition, credit to the account of the lessee the sum of One Hundred Dollars in respect to each Goodyear Welt and Turn Shoe Machine, Goodyear Universal Inseam Sewing Machine and Goodyear Outsole Rapid Lockstitch Machine designated in the foregoing schedule.

UNITED SHOE MACHINERY COMPANY,
(CORPORATE SEAL) By L. A. Coolidge, Treasurer.
Paterson, New Jersey R. A. Blackwell, Assistant Secretary.
December 20th, 1909.

Goodyear Department B (Form JM–32–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. 6243 "I", dated February fifth, 1908, between said Company and A. M. Creighton, of Lynn, Massachusetts, as

lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No.
Goodyear Universal Inseam Sewing Machine, No.
3 Goodyear Outsole Rapid Lockstitch Machines, Nos. 1700–1658–1741
3 Extension Edge Attachments (A), Nos. 2097–2109–2108
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then neither the payment provided for in Article Nine of said lease and license agreement No. 6243 "I" to be thereupon made by the lessee, of such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, nor the payment provided for in Article Ten of said lease and license agreement to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall be required to be made.

(CORPORATE SEAL) UNITED SHOE MACHINERY COMPANY,
Boston, Mass., February fifth, 1908. By Geo. W. Brown, Treas.

Goodyear Department C (Form JM–33–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. 6779 "C", dated June Fifteenth 1909, between said Company and D. Armstrong & Company, of Rochester, New York,

as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No. (Model "E") Nos. 62–63–134–125

Goodyear Universal Inseam Sewing Machine, No.

Goodyear Outsole Rapid Lockstitch Machine, No.

Extension Edge Attachment (A), No.

Extension Edge Attachment (B), No.

Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, then the payment provided for in Article Ten of said lease and license agreement No. 6779 "C" to be thereupon made by the lessee, of the sum of One Hundred and Fifty Dollars ($150.00) in respect to each welting or stitching or sewing machine thereby leased, shall not be required to be made, and in such case the lessor shall thereupon, in addition, credit to the account of the lessee the sum of Seventy-five Dollars in respect to each Goodyear Welt and Turn Shoe Machine, Goodyear Universal Inseam Sewing Machine and Goodyear Outsole Rapid Lockstitch Machine designated in the foregoing schedule.

UNITED SHOE MACHINERY COMPANY, [SEAL]

Paterson, New Jersey, By Geo. W. Brown Treasurer

June 15th, 1909. R. A. Blackwell, Assistant Secretary.

Goodyear Department D (Form JM–34–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and Li-

cense Agreement No. 6352E, dated June twelfth, 1908, between said Company and Beal and Hanscom, of Haverhill, Massachusetts, as lessee, and covering the machine or machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Welt and Turn Shoe Machine, No. 287 "E"
Goodyear Universal Inseam Sewing Machine, No.
Goodyear Outsole Rapid Lockstitch Machine, No.
Extension Edge Attachment (A), No.
Extension Edge Attachment (B), No.
Welt Beveling Attachment, No.

hereby agrees that in case at all times prior to the expiration of said agreement or any extension thereof, or the termination of the lease and license thereby granted and the return to the lessor of the machinery thereby leased the lessee shall have faithfully kept and performed all conditions, terms, stipulations and provisions of said lease and license agreement and of all other leases and licenses and agreements between the lessor and the lessee, and upon such expiration or termination is not in default as to any of the payments thereunder or otherwise, the lessor will accept the sum of One Hundred Dollars in respect to each Goodyear Welt and Turn Shoe Machine, Goodyear Universal Inseam Sewing Machine and Goodyear Outsole Rapid Lockstitch Machine designated by number in the foregoing schedule in lieu of the sum provided in Article Ten of said lease and license agreement to be thereupon paid by the lessee of One Hundred and Fifty Dollars ($150.00) in respect to each such designated machine.

UNITED SHOE MACHINERY COMPANY,

(CORPORATE SEAL) By Geo. W. Brown, Treasurer.

Boston, Mass., June twelfth, 1908.

Goodyear Department M (Form JM–35–105)

This Instrument Witnesseth that the United Shoe Machinery Company, the lessor named in Goodyear Department Lease and License Agreement No. 6551 "A", dated April twenty-first, 1908,

between said Company and F. A. Parker and Company, of Marblehead, Massachusetts, as lessee, and covering the machines designated by number in the following schedule, viz.:—

Schedule of Machines.

Goodyear Bobbin Winder (Universal) No..
Goodyear Bobbin Winder (Rapid) No.
Goodyear Welt Grooving and Beveling Machine No.
Goodyear Welt Splitting Machine No.
1 Goodyear Channeler { Turn No. 3130 / Insole No. / Outsole No.
Goodyear Universal Welt Beater No.
Goodyear Welt Beating and Slashing Machine No.
Goodyear Universal Shank Skiving Machine No.
Goodyear Universal Inseam Trimming Machine No.
Goodyear Universal Rounding and Channeling Machine No.
Goodyear Channel Opening Machine No.
Goodyear Automatic Sole Leveling Machine No.
Goodyear Rotary Sole Laying Machine No.
Hadaway Stitch Separating Machine No.
Goodyear Channel Laying Machine No.
Goodyear Flexible Sole Machine No.
1 Goodyear Moulding Machine No. 1042
Goodyear Turn Shoe Trimming Machine No.
Goodyear Lip Turning Machine No.
Goodyear Improved Sole Laying Machine No.
Goodyear Shank Welt Skiving Machine No.
Goodyear Forepart Turning Machine No.
Goodyear Heel Turning Machine No.

hereby waives payment by the lessee of the amounts called for by Article Seven of said lease and license agreement in respect to each of said designated machines in respect to the year 1908–1909–1910–1911 and 10/12 of said amounts in respect to the year 1912.

Excepting as herein expressly provided none of the conditions,

stipulations, or provisions of said lease and license agreement are in anywise waived or modified.

UNITED SHOE MACHINERY COMPANY,
[CORPORATE SEAL] By Wallace F. Robinson, Vice-President.
Boston, Mass., April 21st, 1908.

(Form J. M. 83.)

The following modifications are hereby made in Lasting Machine Department Lease and License Agreement No. 6197 "I", dated December eleventh, 1911, between the United Shoe Machinery Company, lessor, and B. F. Spinney and Company of Norway, Maine, lessee, covering

CONSOLIDATED HAND METHOD LASTING MACHINE, No. 4882
viz.:

1. Article Four of said Lease and License Agreement is hereby changed to read as follows:

Four. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear made by the lessee known in the trade as "Goodyear Welts" which are welted wholly by "Goodyear Welt and Turn Shoe Machines" or "Goodyear Universal Inseam Sewing Machine" held by the lesssee under lease from the lessor and the soles of which are attached to their welts wholly by "Goodyear Outsole Rapid Lockstitch Machines" held by the lessee under lease from the lessor, and shall be used for no other purpose than for lasting the sides of such boots, shoes and other footwear which have been pulled over by "Rex Pulling Over Machines" held by the lessee under lease from the lessor, and which shall be otherwise lasted by "U. S. M. Co. Lasting Machines, No. 5," held by the lessee under lease from the lessor.

2. The lessor hereby waives payment by the lessee of any rental or royalty on account of the use by the lessee of the leased machinery as specified in said Article Four of said Lease and License Agreement as hereby changed.

Except as herein expressly provided none of the conditions, agree-

ments, stipulations or provisions in said Lease and License Agreement contained is hereby in any manner waived or modified.

Dated this eleventh day of December, 1911.

UNITED SHOE MACHINERY COMPANY,

(CORPORATE SEAL) By Edw. P. Hurd, Vice-President.

By

(Form J. M. 84.)

The following modifications are hereby made in Lasting Machine Department Lease and License Agreement No. 6597, dated June first, 1911, between the United Shoe Machinery Company, lessor, and Thomson Crooker Shoe Company of Lynn, Massachusetts, lessee, covering

CONSOLIDATED HAND METHOD LASTING MACHINE, NO. 5530

viz.:

1. Article Four of said Lease and License Agreement is hereby changed to read as follows:

Four. The leased machinery shall be used only in the manufacture of boots, shoes and other footwear made by the lessee known in the trade as "Goodyear Welts" which are welted wholly by "Goodyear Welt and Turn Shoe Machines" or "Goodyear Universal Inseam Sewing Machines" held by the lessee under lease from the lessor and the soles of which are attached to their welts wholly by "Goodyear Outsole Rapid Lockstitch Machines" held by the lessee under lease from the lessor, and shall be used for no other purpose than for lasting the sides of such boots, shoes and other footwear which have been pulled over by "Rex Pulling Over Machines" held by the lessee under lease from the lessor, and which shall be otherwise lasted by "U. S. M. Co. Lasting Machines, No. 5" held by the lessee under lease from the lessor.

2. The lessor hereby waives payment by the lessee of any rental or royalty on account of the use by the lessee of the leased machinery as specified in said Article Four of said Lease and License Agreement as hereby changed.

Except as herein expressly provided none of the conditions, agreements, stipulations or provisions in said Lease and License Agreement contained is hereby in any manner waived or modified.

Lasting Machine Department Lease and License Agreement No. 6282 H, dated October 25th, 1910, heretofore granted by the said United Shoe Machinery Company to said Thomson Crooker Shoe Company covering the machine herein referred to is hereby cancelled and superseded by Lasting Machine Department Lease and License Agreement, No. 6597 to which this rider is attached.

Dated this first day of June, 1911.

THOMSON CROOKER SHOE CO.
[CORPORATE SEAL] By H. E. Crooker, Treas.

UNITED SHOE MACHINERY CO.
[CORPORATE SEAL] By L. A. Coolidge, Treasurer.

(Form J. M. 54–806)

This instrument witnesseth that the following changes are hereby made in the conditions of Lasting Machine Department Lease and License, No. 6164 "A", dated November twentieth, 1909, between the United Shoe Machinery Company, lessor, and Curtis and Jones Company of Reading, Pennsylvania, lessee, and covering

CONSOLIDATED HAND METHOD LASTING MACHINE, No. 5243.

viz.—

Articles Four and Five are hereby changed to read as follows:

Four. The leased machinery shall be used for no other purpose than for wiring the toes of turned shoes or other footwear the soles of which shall be attached to their uppers by Turn Sewing Machines held by the lessee under lease from the lessor, and for that purpose the leased machinery shall be used to its full capacity, limited only by the number of such shoes or other footwear made by or for the lessee.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one-half of one cent for each pair of shoes or other footwear in the manufacture or preparation of which the leased machinery shall be used during the next preceding

calendar month, provided, however, that in the computation of such rental or royalty upon children's shoes seventy-two (72) pairs of such shoes shall be considered as the equivalent of sixty (60) pairs of all other kinds, and further provided, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month. The lessee guarantees that the rent or royalty herein provided (less all abatements) snall amount in each calendar year, ending December thirty-first, to at least ten dollars ($10.00) for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than ten (10) out of twelve (12) consecutive calendar months.

Excepting as herein expressly provided, none of the conditions, agreements, stipulations or provisions of said lease and license are in any manner waived or modified, but the same are and shall remain in full force and effect.

Dated at Paterson, New Jersey, this twentieth day of November, 1909.

CURTIS & JONES CO.

[CORPORATE SEAL] By Fred S. Jones, Treas.

UNITED SHOE MACHINERY COMPANY

By Geo. W. Brown, Treasurer.

[CORPORATE SEAL] R. A. Blackwell, Assistant Secretary

[Form J. M. 55–806]

This instrument witnesseth that the following changes are hereby made in the conditions of Lasting Machine Department Lease and

License, No. 1792 "G", dated August twenty-second, 1906, between the United Shoe Machinery Company, lessor, and Moore-Shafer Shoe Manufacturing Company of Brockport, New York, lessee, and covering

CONSOLIDATED HAND METHOD LASTING MACHINE, No. 5416

viz.—

Articles Four and Five are hereby changed to read as follows:

Four. The leased machinery shall be used for no other purpose than for lasting the heel portions of turned shoes or other footwear the soles of which shall be attached to their uppers by Turn Sewing Machines held by the lessee under lease from the lessor, and for that purpose the leased machinery shall be used to its full capacity, limited only by the number of such shoes or other footwear made by or for the lessee.

Five. The lessee shall pay to the lessor on the last day of each calendar month as rent or royalty the sum of one-half of one cent for each pair of shoes or other footwear in the manufacture or preparation of which the leased machinery shall be used during the next preceding calendar month, provided, however, that in the computation of such rental or royalty upon children's shoes seventy-two (72) pairs of such shoes shall be considered as the equivalent of sixty (60) pairs of all other kinds, and further provided, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the rent or royalty due for the use of the leased machinery for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from such rent or royalty due for such preceding calendar month. The lessee guarantees that the rent or royalty herein provided (less all abatements) shall amount in each calendar year, ending December thirty-first, to at least ten dollars ($10.00) for each calendar month and at the end of each such calendar year the lessee shall pay to the lessor the amount, if any, by which the rent or royalty paid for said year is less than such guaranteed rent or royalty; provided, however, that if in any calendar year the factory of the lessee remains wholly

idle for any entire calendar month, then the amount of rent or royalty guaranteed for that year shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than ten (10) out of twelve (12) consecutive calendar months.

Excepting as herein expressly provided, none of the conditions, agreements, stipulations or provisions of said lease and license are in any manner waived or modified, but the same are and shall remain in full force and effect.

Dated at Boston, Massachusetts, this 22nd day of August, 1906.

MOORE-SHAFER SHOE MFG. CO.
By C. P. Lane, Secy.

[SEAL[UNITED SHOE MACHINERY COMPANY
By Wallace F. Robinson, Vice-President.

(A)

The following provision contained in Article Three of Metallic Department Leasee and License No. 3011, dated September 10th, 1910, granted by the United Shoe Machinery Company as lessor to F. E. Leavitt and Company of Haverhill, Massachusetts, as lessee, covering

One (1) Loose Nailing Machine, No. 872
One (1) Universal Slugging Machine, No. 148
One (1) Staple Fastening Machine, No. 1385
Two (2) Knife Grinding Machines, Nos. 4608–4392

is hereby stricken out, namely:

"except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines or by the aid of lasting or tacking mechanisms other than those leased from the lessor or any welted boots or shoes which are not welted or stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor."

Excepting as herein expressly provided none of the conditions

agreements, stipulations or provisions contained in said Lease and License is hereby in any wise waived or modified.

Dated this tenth day of September, 1910.

UNITED SHOE MACHINERY CO.

[CORPORATE SEAL] L. A. Coolidge, Treasurer.

F. E. LEAVITT & CO.

F. E. Leavitt

[Form J. M. 65.]

It is hereby made a condition of Metallic Department Lease and License, No. 2614, dated August twentieth, 1908, between the United Shoe Machinery Company, lessor, and The Hartley-Rose Belting Company, of Pittsburg, Pennsylvania, lessee, and covering Standard Screw Machine No. 92, with the same force and effect as though printed therein before execution, that the lessee independently of and in addition to all other obligations under said Lease and License Agreement shall pay to the lessor on the fifteenth day of each calendar month during the continuance of said Lease and License the sum of five dollars ($5.00) per month. And the lessor hereby waives the guarantee provided in said Lease and License Agreement of four hundred (400) pounds of fastening material per year.

Excepting to the extent herein expressly provided none of the terms or conditions of said Lease and License are hereby, in any manner, waived or modified.

Dated this Twentieth day of August, 1908.

UNITED SHOE MACHINERY CO.

[CORPORATE SEAL] Geo. W. Brown, Treasurer.

By R. A. Blackwell, Assistant Secretary.

THE HARTLEY ROSE BELTING CO.

By W. G. Nicholson, Pres.

[Form J. M. 85]

The following modifications are hereby made in Metallic Department Lease and License Agreement No. , dated , between the United Shoe Machinery Company, as lessor, and of , as

lessee, covering the machine designated by name and number in the following

Schedule of Machines.

Rapid Standard Screw Machine, No.
Loose Nailing Machine, No.
Universal Slugging Machine, No.
Taper Nail Tacking Machine, No.
Grip Tacking Machine, No.
Staple Fastening Machine, No.
Knife Grinder, No.

1. The lessee agrees to pay to the lessor immediately upon the execution of said Lease and License Agreement, as a lease premium for said machine, the sum of Dollars.

2. The following provision contained in Article Three of said Lease and License Agreement is hereby stricken out, namely:—

"except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines or by the aid of lasting or tacking mechanisms other than those leased from the lessor or any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor."

Except as herein expressly stated, none of the conditions, stipulations, or provisions contained in said Lease and License Agreement is hereby in any wise waived or modified.

Dated this day of , 19 .

By

By

Sept. 25, 1908.

Messrs. A. E. Little & Company, Lynn, Massachusetts.

Dear Sirs:— Referring to that clause contained in Article Three of our Metallic Department Lease and License No. 1271 "A" to you, dated September 25, 1908, and covering Universal Slugging Machines Nos. 3004 and 3005, Knife Grinding Machines Nos. 5576 and 5710,

and Loose Nailing Machines Nos. 125 and 142, which provides that the said machinery shall not be used on any welted boots or shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or turn shoes the soles of which are not attached by turn sewing machines leased from the lessor, we beg to state in accordance with your request that said clause in said lease shall not be held to prevent the use of said designated machines by you upon "hand sewed welts" made by or for you by reason of the fact that the same are not welted on welt sewing machines held under lease from us, or upon "hand turns" made by or for you by reason of the fact that the soles of the same are not attached by turn sewing machines held by you under lease from us.

Very truly yours,

[SEAL] UNITED SHOE MACHINERY COMPANY,
By S. W. Winslow, President.

The conditions and provisions contained in Heeling Department Lease and License, No. 1242, dated March first, 1905, granted by the United Shoe Machinery Company as lessor, to the Houghton Heel & Leather Company as lessee, and covering Automatic Heel Compressing Machine (No. 4 Model) No. 209 are hereby modified to the extent hereinafter stated but not otherwise.

1. Article numbered Four in said lease and license is hereby stricken out, and in lieu thereof it is provided and agreed as follows, with the same force and effect as if the following article were printed in said lease and license as one of the conditions thereof:—

Four. The lessee shall use the leased machinery for no other purpose than for compressing heels for boots, shoes and other footwear. The leased machinery shall not nor shall any part thereof be used for compressing or in anywise operating upon toplifts, soles or taps.

2. Articles numbered Five, Six and Seven in said lease and license are hereby stricken out, and in lieu thereof it is provided and agreed as follows, with the same force and effect as if the following article were printed in said lease and license as one of the conditions thereof:—

Five. The lessee shall pay to the lessor as rental or royalty for the term of one year herein provided for the sum of three hundred dollars

8355

($300.00), payable in equal monthly payments of twenty-five dollars ($25.00) each. Said payments of twenty-five dollars ($25.00) each shall be made to the lessor at its office in Boston, Massachusetts, on or before the fifth day of each calendar month.

3. The first sentence in article numbered Ten in said lease and license, beginning with the words, "This lease and license" and ending with the words "date hereof" is hereby stricken out, and in lieu thereof the following sentence is substituted with the same force and effect as if so printed in said lease and license:

This lease and license shall continue, unless sooner terminated by the lessor by notice or because of breach thereof on the part of the lessee, or otherwise as herein provided, for one year from the date hereof.

Excepting as herein expressly provided none of the conditions, agreements, stipulations or provisions of said lease and license are in anywise waived or modified, but the same are and shall remain in full force and effect.

In witness whereof the parties hereto have duly executed this instrument in duplicate this first day of March, A. D. 1905.

UNITED SHOE MACHINERY COMPANY

[CORPORATE SEAL] By S. W. Winslow, President.

HOUGHTON HEEL & LEATHER COMPANY

By Henry C. Attwill, Treas.

Article Five of Pulling Over System Lease and License Agreement, No. 1972, dated February Twenty-seventh, 1911, granted by the United Shoe Machinery Company, as lessor, to A. Garside & Sons, of New York, N. Y., as lessee, covering

One Rex Pulling Over Machine No. 2644

is hereby changed to read as follows:

"Five. The machinery hereby leased or held by the lessee under other lease or license agreement from the lessor shall be used only in the manufacture or preparation of boots, shoes or other footwear made by or for the lessee and shall be used for no other purpose than for performing the work for which it is designed and leased. The machin-

ery of the Pulling Over System of the lessor hereby leased or held by the lessee under other lease or license agreement from the lessor shall not nor shall any thereof be used in the manufacture of any boots, shoes or other footwear upon which any operation for which any of the machines of the lessor mentioned by name in the foregoing schedule of machines are designed, has been or is to be performed by machinery not held by the lessee under lease from the lessor. Subject to the foregoing limitations, the lessee shall use all Rex Pulling Over Machines held by him under lease from the lessor to their full capacity upon all boots, shoes or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machines are capable of being used and shall use all other machinery of the Pulling Over System of the lessor held by him under lease from the lessor to its full capacity upon all work in the manufacture or preparation of boots, shoes and other footwear, or portions thereof, which is done by or for the lessee by the aid of machinery and which is of a kind which such machinery is designed to perform."

Except as herein expressly provided none of the conditions, stipulations or provisions contained in said Lease and License Agreement is hereby in any way waived or modified.

Dated this Twenty-seventh day of February, 1911.

A. GARSIDE & SONS

[SEAL] By John R. Garside, Pres.

UNITED SHOE MACHINERY CO.

[SEAL] By L. A. Coolidge, Treas.

R. A. Blackwell, Assistant Secretary.

June 14, 1909.

Davis Boot & Shoe Co., Richmond, Va.

Dear Sirs:— Referring to our Pulling Over lease to you (Form A. E. E. 1095) covering Rex Pulling Over Machines Nos. 393, 2016, 2029, 2046, 2047, and 2062, together with other machines of the Pulling Over System referred to in said lease and auxiliary to said Pulling Over Machines, we beg to say that it is understood and agreed that nothing contained in said lease shall be construed to prevent the lessee from pulling over by hand such portion of the footwear

manufactured by or for the lessee as is in excess of the capacity of the machinery leased for use in the factory in which said footwear is pulled over.

Very truly yours,

UNITED SHOE MACHINERY COMPANY,
By Wallace F. Robinson, Vice-President.

DEFENDANTS' EXHIBIT 331.

[Put in Evidence, page 4360.]

MEMORANDUM OF WELT AND TURN SHOE MACHINES AND OUTSOLE STITCHING MACHINES OFFERED TO SHOE MANUFACTURERS.

1899 TO 1911, INCLUSIVE. PURITAN STITCHING MACHINE — FOR FAIRSTITCHING, AND THE NATIONAL STITCHING MACHINE — FOR THE SAME WORK, AS WELL AS THE McKAY SEWING MACHINES COULD BE PROCURED AT ANY TIME DURING THE ABOVE PERIOD FROM MANUFACTURERS OF SAME, OR SECOND-HAND DEALERS.

1899

Mills Turned Shoe Machine. Stanley Manufacturing Company, 117 Lincoln Street, Boston, Mass.

The above machine was advertised in the "Superintendent & Foreman" on March 7, 1899, (Page 2) and also on dates prior and subsequent; and it was stated in the advertisement, "Sold without royalty".

1900 also 1901, 1902 and 1903.

Loop-Lock Turn Shoe Machine. Loop-Lock Machine Company, 100 Purchase Street, Boston, Mass.

The above concern advertised their machines in "Superintendent & Foreman", issue of December 25, 1900, and throughout the entire year of 1901; and I believe they were offered prior to that date. They were also offering their machines to the trade in 1902 and 1903, and during the latter year tried to sell their machines to us.

They installed their machines in several factories in different districts, including Hervey E. Guptill, Haverhill; C. K. Fox, Haverhill; Morrison Shoe Company, Concord, N. H.; H. E. Davis Company,

Freeport, Maine; H. B. Eastman, Hampstead, N. H.; Best Ever Shoe Company, Lynn, Mass.

1903 also 1904 to 1911 inclusive.

Champion Outsole Stitching Machine.

Champion Shoe Machinery Company,
St. Louis, Mo.

This company supplied machines principally for shoe repairing, but in 1905 our Mr. Hadaway saw one of these machines in use at one of the shoe factories in the States Prison at Jefferson City, Mo., stitching foreparts of shoes.

1903 also 1904 to 1910, inclusive.

Welt and Turn Sets. Duplessis Shoe Machinery Company,
Haverhill, Mass.

The above concern had nine or more Turn Shoe Machines installed in and about Haverhill, Mass., before January 1, 1904 (with such concerns as Parsley & Brown, S. B. McNamara, C. K. Fox, George B. Leavitt — all of Haverhill — and others).

Mr. Frank Chauteauneuf (who is now in our employ) was with the above concern from 1902 (when they were in Canada and before coming to Haverhill, to which place they moved in January, 1903, and commenced to put out machines at about April of the same year) to 1910 inclusive, and he informs me that they continued to offer machines to the trade up to early in 1910.

1904 also 1905, 1906 and 1910.

Heys Turn Shoe Machines. Bresnahan Shoe Machinery Company,
Lynn, Mass.

Machines were supplied by the above company to the Criterion Shoe Company, Beverly, Mass., about November, 1904, and they were used by this concern up to the fall of 1908 and possibly longer. Our Lynn Office believes this concern has some Duplessis Welt and Turn Shoe Machines and R. H. Long Outsole Stitching Machines. They say we do not have ready access to this factory, but they will try to have this statement verified.

The Bresnahan Company also installed machines in Lynn and Salem, and Connecticut.

I am informed by Mr. Donlon that the Bresnahan Shoe Machinery Company offered the Heys Turn Shoe Sewing Machine up to and including 1906, after which time Mr. Bresnahan went with T. G. Plant, and discontinued offering machines to the trade until 1910, when he organized the firm of M. V. Bresnahan & Company — of which Mr. Donlon was a partner; and Welt and Turn Shoe Machines and Outsole Stitching Machines were offered to the trade during 1910.

1907 (?) (Probably earlier than this)

Also 1908 to 1911, inclusive.

Outsole Stitching Machines. Union Lockstitch Machine Company, Boston, Mass.

Straight Needle Machines have been supplied regularly to the trade; and in the "Superintendent & Foreman", issue of July 26, 1911, Page 17, the above company, under address of #299 Marginal Street, East Boston, Mass., advertised a Union Curved Needle High Speed Stitcher, and stated "Designed to stitch outsoles and also welted or inseam work."

1908 or 1909 (About January 1)

Welt Sewing and Outsole Stitching Machines.

Larsen Machines Company,
100 Covert Street, Brooklyn, N. Y.
Afterwards 291 Broadway, New York City.

About January 1, 1909, the above concern opened an office and show room at 100 Covert Street, Brooklyn, N. Y., when they offered to shoe manufacturers in the New York district their Welt Sewing and Outsole Stitching Machines. (Prior to the above date they tried to sell their enterprise to us, and the machines were examined by Mr. William C. Meyer, Mr. George E. Warren, Mr. George F. Wolfe and Mr. F. G. King; and it was recommended that they not be purchased by us).

The office of the Larsen Machines Company is now located at 291 Broadway, New York City, where it has been for some time.

1910 also 1911

Fox Turn Shoe Sewing Machine.

The first machine of this type of which we have any record was

installed in the factory of F. M. Hodgson, Haverhill, under date of May 1, 1910.

Advertisement appeared in "Superintendent & Foreman", issue of January 25, 1911, Page 39, referring to machine as follows:

Webster Turn Shoe Sewing Machine

Haverhill Channeling Machine Company,
601 Kimball Building, Boston, Mass.

Also advertisement in same paper, issues of March 15, 1911, Page 47, and May 31, 1911, Page 25; together with reading notice by Haverhill Shoe Machinery Company, Haverhill, Mass., offering machines "Supplied at a fixed sale price, per pair royalty, or rental basis".

1910 also 1911

Welt and Turn Sets. Hamel Shoe Machinery Company,
Haverhill, Mass.

The above concern took over the business of the Duplessis Company and offered the same line of machines from early in 1910 up to the present time (January, 1914). I understand some changes in construction of machines have been made.

1910 also 1911

Welt Set Machinery. R. H. Long Shoe Machinery Company,
So. Framingham, Mass.

In the fall of 1910 A. M. Creighton, Lynn, together with his superintendent, Mr. Connor, visited the factory of the R. H. Long Shoe Machinery Company, and the above line of machines was offered to them to be installed in their factory in Lynn, for making welt shoes.

A Welter and a Stitcher manufactured by the above Machinery Company were installed in the factory of the Buffalo Shoe Company, Pepperell, Mass., during the spring of 1911 — or about that time — and, I understand, have been offered to the trade generally.

1910 also 1911

Welt Set Machinery. Universal Shoe Machinery Company,
St. Louis, Mo.

I understand this company was organized by Mr. Dobyne, principal owner of the Champion Shoe Machinery Company, and others, in

1910; and a line of machinery was exhibited in operation, and offered to the trade, at the Mechanics' Fair Building in Boston during the summer of 1911. Some machines were later supplied to the Non-Royalty Shoe Company, St. Louis, Mo.

1910

Foreign Makes of Welt and Turn Sets of Machinery were advertised in several issues of the "Superintendent & Foreman" by the following:

Nollesche Werke, Weisenfels, Germany.

A. H. Johnson, Leicester, England.

Gimson Company, Leicester, England.

1911

John Callahan, Lynn, Mass.

Reading notice in "Superintendent & Foreman" April 12, 1911, Page 31, in reference to Welt Machine a statement is made —"If Plant's machinery is worth $7,000,000, mine is worth $15,000,000".

1911

Foreign Makes of Welt and Turn Sets of Machinery were advertised in several issues of the "Superintendent & Foreman" by the following:

Atlas-Werke-Pohler & Company, Leipsic, Germany. "Welting machinery exactly like any Goodyear."

A. H. Johnson, Leicester, England. "Complete welting plant."

The Standard Engineering Company, Leicester, England. "High Speed Stitcher, Welt Sewers, with all accessory machines."

The Standard Rotary Machine Company, Rushden, Northampton, England. "Are revolutionizing the welting trade." "Complete sets supplied."

Nollesche Werke, Weisenfels, Germany. "Shoe machinery for all departments of manufacture."

Moenus Machine Works, Frankfurt, Germany. "Complete Outfits."

Gimson Company, Leicester, England. "Machines for every operation."

Universal Shoe Machinery Company, Ltd., Northampton, England. "For high-grade welting."

1911

Welt Set Machinery. Boylston Shoe Machinery Company, Boston, Mass.

A delegation of St. Louis shoe manufacturers examined the above machinery during January, 1911, and a Turn Shoe Machine was sent to Hervey E. Guptill, Haverhill, Mass., during the spring of 1911; and a Welt Shoe Machine was sent to the Buffalo Shoe Company, Pepperell, Mass., some time about the spring of 1911, and an introduction of the machines to the trade generally was solicited during that year and since then.

DEFENDANTS' EXHIBIT 332.

[Put in Evidence, page 4363.]

LIST SHOWING GOODYEAR AUXILIARY MACHINES AND THOSE OFFERED BY OTHER MACHINERY MANUFACTURERS FOR PERFORMING THESE OPERATIONS.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Universal Channeling Machine — (fitted for Gem Insoles, Goodyear insoles and turn soles) Goodyear Channeling Machine — (Hand Belt Power)	Channeling Insoles (Welt Work only)	Channeling Machine — The R. H. Long Machinery Co., Inc. Haverhill Turn Channeling Machine — Haverhill Shoe Machinery Company Channeling Machine — Hamel Shoe Machy. Co.
Goodyear Insole Toe Snipping Machine	Snipping Lip of Insole at toe (Welt work only)	Insole Snipping and Pinking Machine, No. 7 — Boston Machine Works Co.
Goodyear Lip Turning Machine, Model X Goodyear Lip Turning Machine Goodyear Lip Turning & Slashing Machine	Turning Lip of Insole (Welt work only)	American — American Worsted Machy Co. Knight — Geo. Knight & Co. Duplessis — Hamel Shoe Machinery Company Haverhill — Haverhill Shoe Machinery Company Long — The R. H. Long Machinery Co., Inc.
Gem Lip Turning Machine	Turning Lip of Gem Insole (Welt work only)	Lip Turning Machine — Haverhill Shoe Machy. Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Lip Turning & Slashing Machine		American — American Worsted Machy Co. Knight — Geo. Knight & Co. Duplessis — Hamel Shoe Machinery Company Haverhill — Haverhill Shoe Machy. Co. Long — The R. H. Long Machy. Co., Inc.
Gem Cementing Machine — (Cementing canvas) Rapid Rotary Cementing Machine— (Cementing Gem Insoles)	Cementing Gem Insoles & Gem Canvas (Welt work only)	Haverhill — Universal Supply Co. (Cementing insoles) Hazen-Brown — Hazen-Brown Co. (Cementing insoles) Julian — Boston Machine Works Co. (Cementing insoles).
Rapid Rotary Cementing Machine, Model J	Cementing Economy Insole (Welt work only)	Julian — Boston Machine Works Company Brown — Hazen-Brown Co. Haverhill — Universal Supply Company
Goodyear Turn & Insole Channeling Machine Goodyear Universal Channeling Machine (turn)	Channeling Turn Soles (Turn work only)	Channeling Machine — The R. H. Long Machy. Co., Inc. Haverhill Turn Channeling Machine— Haverhill Shoe Machinery Company Channeling Machine — Hamel Shoe Machinery Company
Goodyear Turn & Insole Channeling Machine — (turn work only) Goodyear Outsole Channel Shank Reducing Machine — (welt work only)	Shank Reducing & Feather Edging Outsole	Knight — Geo. Knight & Co. Rapid — Theo. Ringenbach American — American Worsted Machinery Company
Goodyear Moulding Machine Goodyear Power Moulding Machine	Moulding Down Edge of Sole (Turn work only)	Turn Moulder — Haverhill Shoe Machinery Company Turn Moulder — Hamel Shoe Machinery Company
Goodyear Tack Pulling and Resetting Machine Goodyear Upper Tack Pulling Machine	Pulling and Resetting Upper Tacks (Welt Work only)	Krentler-Pym Tack Puller and Relifter — L. G. Freeman Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Goodyear Power Welt Grooving and Beveling Machine	Grooving and beveling Welting	Haverhill — Haverhill Shoe Machinery Company Long — R. H. Long Machinery Company, Inc. Hamel — Hamel Shoe Machinery Company
Goodyear Universal Inseam Trimming Machine Inseam Trimming Machine — Model K — (Lease)	Inseam Trimming (Welt Work only)	Keighley Rapid Inseam Trimming Machine — The Keighley Company, Inc. Inseam Trimming Machine — A. Johnson & Son
Goodyear Insole Tack Pulling Machine	Pulling Insole Tacks	Combination Insole and Side Tack Pulling Machine — Louis G. Freeman Co.
Goodyear Welt Beating and Slashing Machine Goodyear Universal Welt Beating Machine (Beating only)	Beating and Slashing Welt (Welt Work only)	Beating Machine — Standard Rotary Machine Co., Ltd. (Beating only) Beating Machine — R. H. Long Machinery Co., Inc. (Beating only) Duplessis Beating Machine — Hamel Shoe Machinery Co. Boylston — Boylston Mfg. Co. Haverhill — Haverhill Shoe Machinery Co.
Goodyear Shank Welt Skiving Machine	Reducing Shanks of Welts (Welt Work only)	Rapid — Theo. Ringenbach
Goodyear Improved Sole Laying Machine Goodyear Improved Sole Laying Machine — Model C	Laying Soles (Welt Work only)	Atlas (2 types) — Atlas-Werke Pohler Company Long — The R. H. Long Machinery Co., Inc. Gimson — Gimson & Son, Ltd. Standard Rotary — Standard Rotary Machine Co., Ltd. Standard Engineering — Standard Engineering Company
Goodyear Heel Seat Rounding Machine Goodyear Rounding & Randing Machine	Rounding Heel Seats (Welt Work only)	Freeman Heel Seat Rounding Machine — Louis G. Freeman Co.
Goodyear Universal Rounding and	Rough Rounding & Channeling Outsole	National Automatic Rounder — Standard Rotary Machine Co., Ltd.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Channeling Machine Goodyear Universal Rounding and Channeling Machine — Model E.	(Welt Work only)	National Rough Rounding Machine — The R. H. Long Machy. Co., Inc. (Rounds only) Victor Rough Rounding and Channeling Machine — Victor Shoe Machinery Company Rough Rounding and Channeling Machine — Haverhill Shoe Machinery Company Arnold Channeling Machine — The R. H. Long Machinery Co., Inc. (Channeling only)
Goodyear Channel Opening Machine Goodyear Channel Opening Machine — Model X	Opening Channels (Welt Work Only)	Channel Opening Machine — Standard Rotary Machine Co., Ltd.
Goodyear Outsole Shank Reducing Machine	Channel Shank Reducing (Welt Work Only)	Rapid — Theo. Ringenbach
Goodyear Channel Laying Machine Channel Laying Machine — Model X	Laying Channels	Channel Laying Machine — Standard Rotary Machine Co. American — American Worsted Machinery Co. Standard — Standard Engineering Co. Knight — George Knight & Co.
Goodyear Welt Indenting and Burnishing Machine — Model X Goodyear Welt Indenting and Burnishing Machine	Welt Indenting	American Welt Fudging Mch.—Victor Shoe Machinery Co. Wheeler — E. L. Wheeler Holt — J. S. Holt & Co. Donnelly — Donnelly Machine Co. Haverhill — Haverhill Shoe Machinery Co. Long — R. H. Long Machinery Co., Inc.
Goodyear Automatic Sole Leveling Machine Goodyear Welt and Turn Leveling Machine	Leveling	Automatic Twin Leveling Machine — Standard Rotary Machine Co. Webster Welt & Turn — Haverhill Shoe Machinery Co. Eclipse — R. H. Long Machinery Co., Inc. Leveling Machine — Ward & Gent Leveling Machine — Hamel Shoe Machinery Co.

Machines of U. S. M. Co.	Operations	Machines of other Dealers
Hadaway Stitch Separating Machine	Separating Stitches	Long Stitch Separating Machine — R. H. Long Machinery Co., Inc. Standard Rotary Stitch Separating Machine — Standard Rotary Machine Co., Ltd. Haverhill — Haverhill Shoe Machinery Co.
Goodyear Welt Indenting and Burnishing Machine Goodyear Impression Stitch Burnishing Machine No. 2 Goodyear Fudge Edge Machine (Settinig and Wheeling Light Edges Only)	Impression Stitch Finishing	American — Victor Shoe Machinery Co. Wheeler — E. L. Wheeler Holt — J. S. Holt & Co., Inc. Donnelly — Donnelly Machine Co. Haverhill — Haverhill Shoe Machinery Co.

DEFENDANTS' EXHIBIT 333.

[Put in Evidence, page 4364.]

January 3, 1912.

Gentlemen: We are in receipt of orders from you for one or more machines of our Goodyear, Pulling-Over, Lasting, Metallic, or Heeling Departments.

In ordering these machines you have requested the Company to lease them to you under the form of lease "where the lessee does not pay in advance a 'lease premium' ".

We assume that you are fully acquainted with the fact that machines in any of these departments may be had from this Company under "initial payment" department form of leases, which leases do not contain those clauses which restrict the use of machines of one department to work that has been done on machines of one, or more, of the other departments. We shall be very glad to furnish you the machines which you have ordered under the "initial payment" form of lease if you prefer. We call this matter to your attention at the present time in order to avoid the possibility of any question of fact regarding this subject in the future.

Kindly notify us promptly of your decision, and with kindest regards, I remain

Very truly yours,

General Manager.

DEFENDANTS' EXHIBIT 334.

[Put in Evidence, page 4381.]

September 2, 1910.

F. E. Leavitt, Esq., Haverhill, Mass.

Dear Sir: We have been requested by you through our Mr. Smith to quote terms for the installation in your factory of the machines hereinafter mentioned upon conditions which will not preclude the use of the same by you in conjunction with certain machinery now in your possession. Complying therewith we beg to say that we will install the following machines under lease at the lease premium indicated — rents and royalties to be at usual rates:

LASTING MACHINE DEPARTMENT.

	Lease Premium
1 Consolidated Hand Method McKay Lasting Machine	$300.00

METALLIC DEPARTMENT.

1 Staple Fastening Machine	100.00
1 Universal Slugging Machine	250.00
1 Loose Nailing Machine	250.00
1 String Nail Tacking Machine	75.00
1 Taper Nail Tacking Machine	75.00

HEELING DEPARTMENT.

1 McKay Automatic Heel Loading & Attaching Machine	400.00
1 McKay Heel Trimming & Randing Machine	150.00
1 Spring Heel Trimming Machine	100.00

GENERAL DEPARTMENT.

1 McKay Sewing Machine	100.00

And that we will sell to you outright the following machines at the prices indicated:

	Price
1 Atlas Leveling Machine, Model A	$500.000
1 Heel Scouring Machine	65.0
1 Twin Edge Setting Machine	150.00
1 Heel Breast Scouring Machine	50.00

		Price
2	Finishing Shafts, 72″ at $12.00 each	24.00
1	Victor Rolling Machine, Model E	250.00
1	Improved Gearless Sole Cutting Machine, Model C	225.00
1	Improved Veneer Press (6 sections)	18.00
1	American Twin Sole Moulding Machine	450.00
1	Apex Channeling Machine	65.00
1	Apex Feather Edge & Shank Reducing Machine, Model A	35.00
1	Apex Channel Opening Machine, Model C	45.00
1	Apex Tap Skiving or Rand Splitting Machine, Model C	50.00
1	Apex Tap & Sole Rounding Machine, Model A	35.00
1	Crescent Toe Gouging Machine, Model C	125.00

Yours very truly,

UNITED SHOE MACHINERY COMPANY

By

DEFENDANTS' EXHIBIT 336.

[Put in Evidence, page 4392.]

LIST OF MACHINES OFFERED BY SHOE MACHINERY MANUFACTURERS AND DEALERS OTHER THAN UNITED SHOE MACHINERY COMPANY NAMED IN

DEFENDANTS' EXHIBIT 311 (FOLIO OF CATALOGS).

DEFENDANTS' EXHIBITS 312, 313, 314, 315, 316, 317, 318, 319 AND 320 (CATALOGS).

DEFENDANTS' EXHIBIT 321 (LETTERS, ADVERTISEMENTS AND CATALOGS).

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Adams Manufacturing Co., The Portsmouth, Ohio.			
Marking Machine: Buttonhole	76		
American Tool & Machine Co., The Boston, Mass.			
Splitting Machine	51		
American Lacing & Hook Co., Waltham, Mass.			
Hooking Machine	162B		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
American Shoe Machinery & Tool Co., St. Louis, Mo.			
Finishing Shaft	124		Ex. 316; p. 166
American Worsted Machinery Co., Abington, Mass.			
Channeling Machine: McKay		2A	
Eyeletting Machine — Mod. A		2K	
" " " B		2B	
" " Monitor		2D	
" " Eureka		2C	
Finishing Shaft		1C	
Folding Machine: Straight Edge		1B	
Hammer: Little Giant Power		1E	
Hooking Machine: Foot Power		2E	
Laying Machine: Channel		1D	
Opening Machine: Fischer Channel		1J	
Perforating Machine		1G	
Pinking Machine: Geared		2H	
Pinking Machine: Hand		2I	
Punching Machine: Hook Hole		2F	
Rounding Machine: Severance Tap		1A	
Reducing Machine: Feather Edge & Shank		1F	
Skiving Machine: N. O. S.		2J	
" " Improved Tripp Tap		2G	
Sewing Machine: McKay		1K	
Turning Machine: Lip		1I	
" " Rand		1H	
Atlas-Werke Pohler & Co., Leipsic, Germany.			Exh. #319: p. 4
Pattern Shears			" #319; p. 5
Pattern Binding Machine			" #319; p. 5
Small Upper Clicking Press			" #319; p. 6
Large Upper Clicking Press			" #319; p. 7
Lining Cutting Machine			" #319; p. 8
"Fortuna" Upper Skiver			" #319; p. 9
Power Stamping Machine for Lining			" #319; p. 10
Perforating and Pinking Mach. "Stanbon"			" #319; p. 11
Upper Cementing Machine			" #319; p. 12
Upper Folding Machine "Lufkin"			" #319; p. 13
Upper Folding Machine			" #319; p. 14
Upper Beading Machine With Seam Hammer			
Punching and Automatic Eyeletting Mchs. for Foot Power			" #319; p. 15

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Punching and Eyeletting Machine with Automatic Eyelet Supply		Exh.	#319; p. 16
Automatic Hook Setter		"	#319; p. 17
Heavy Leather Rolling Machine		"	#319; p. 19
Lift Dinking Machine		"	#319; p. 20
Dinking Machine, Accessible from 3 sides		"	#319; p. 21
Dinking Machine (open on 3 sides) with long Stroke		"	#319; p. 22
Beam Cutting Machine		"	#319; p. 23
Beam Cutting Machine with Guide above the Bed		"	#319; p. 24
Beam Cutting Machine for Whole Hides		"	#319; p. 25
Dies		"	#319; p. 26
Cutting Block		"	#319; p.
Sole Rounding Machine		"	319; p. 27
Sole Leather Splitting Machine		"	319; p. 28
Sole Stamping and Numbering Machine		"	319; p. 29
Insole Skiving Machine		"	319; p. 30
Heelpart Splitting Machine		"	319; p. 31
Counter Skiving and Rand Splitting Machine		"	319; p. 32
Counter Skiving and Evening Machine		"	319; p. 33
Counter and Shank Skiving Machine		"	319; p. 34
"Fortuna" Counter Skiving Machine		"	319; p. 35
Automatic Counter Skiving Machine		"	319; p. 36
Counter Pinking Machine		"	319; p. 37
Rand Bending Machine		"	319; p. 38
Leather Remnants Skiving and Tacking Machine		"	319; p. 39
Welt and Rand Tacker		"	319; p. 40
Heel Building and Tacking Machine		"	319; p. 41
Power Heel Building and Tacking Machine		"	319; p. 42
Hand Heel Press		"	319; p. 43
Automatic Heel Press		"	319; p. 44
"Atlas Welt" Insole Channeling Machine		"	319; p. 45
Lip Turning Machine with Cement Pot		"	319; p. 46
Insole Reinforcing and Trimming Machine		"	319; p. 47
Sole Channeling Machine		"	319; p. 48
McKay Channel Opener		"	319; p. 49
"Crispin" Pulling-Over and Lasting Jack		"	319; p. 51
Jacks		"	319; p. 52
Rotary Lasting Tack Holders		"	319; p.
Lasting, Finishing and Heel Building Jacks		"	319; p. 53
Insole Tacking Machine for Welt Work		"	319; p. 54
Insole Tacking Machine for McKay Work		"	319; p. 55
Pulling-Over Machine with Automatic Tack Supply for McKay and Welt Work	71	"	

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Toe Lasting and Binding Apparatus		Exh.	#319; p. 56
"Ideal" Toe Lasting and Binding Machine	138B	"	319; p. 57
Welt Lasting Machine "Atlas"		"	319; p. 58
"Atlas" Lasting Machine		"	319; p. 59
"Atlas Rapid" Laster	191	"	319; p. 60
Pounding and Ironing Machine		"	319; p. 61
Toe Trimming Machine		"	319; p. 62
Light Sole Molding Machine		"	319; p. 63
Heavy Sole Molding Machine		"	319; p. 64
Single Head Sole Tacking Machine		"	319; p. 65
Double Head Sole Tacking Machine		"	319; p. 66
McKay Chain Stitch Sewing Machine		"	319; p. 68
Original Chain Stitch Sewing Machine "Lipsia" for Felt and Leather		"	319; p. 69
Friction Outfit		"	319; p. 70
Waxing and Winding Apparatus		"	319; p.
Lockstitch McKay Sewing Machine		"	319; p. 71
Standard Sole Screwing Machine		"	319; p. 72
Loose Nailer		"	319; p. 73
Pegging Machine		"	319; p. 74
High Speed Pegging Machine		"	319; p. 75
Pegging Machine — Model H		"	319; p. 76
Peg Rasping Machine		"	319; p. 77
Edge Molding Machine		"	319; p. 78
"Atlas Welt" Inseam Sewing Machine		"	319; p. 79
"Atlas" Rapid Inseam and Turn Sewing Machine		"	319; p. 80
Shoe Turning Devices		"	319; p. 81
Heel Turner		"	319; p.
"Atlas" Welt Beater		"	319; p. 82
Atlas Welt Channeling Machine		"	319; p. 83
Atlas Welt Evening Machine		"	319; p. 83K
Rapid Shank Skiving Machine for Welt Work		"	319; p. 84
Quadruple Sole Laying Machine	129A	"	319; p. 86
"Atlas Welt" Rough Rounding and Channeling Machine		"	319; p. 87
"Rapid" Rough Rounding and Channeling Machine		"	319; p. 88
"Atlas Welt" Grinding Machine		"	319; p. 89
"Atlas Welt" Channel Opener		"	319; p. 90
"Atlas Welt" Stitcher (Welt Outsole)		"	319; p. 91
Newest "Rapid" Stitcher with Chamfering Device	189	"	319; p. 92
Upper Leather Edge Trimming Machine for Sandals		"	319; p. 93
Cementing Apparatus for Channels and Soles		"	319; p. 94

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Atlas Welt Channel Closer		Exh.	#319; p. 95
Last Inserting Machine		"	319; p. 96
Sole Leveling Machine		"	319; p. 97
Automatic Twin Sole Leveling Machine		"	319; p. 98
Heel Part Edge Trimmer		"	319; p. 99
Heavy Edge and Shank Trimming Machine		"	319; p. 101
Heel Nailing Machine		"	319; p. 102
"Lightning" Heel Nailing Machine		"	319; 0. 103
Heel Breasting Machine — Model B		"	319; p. 104
Heel Breasting Machine		"	319; p. 105
New Wood Heel Nailing Machine		"	319; p. 106
Heel Breast Trimmer for Loose Heels		"	319; p. 107
Apparatus for Use in Covering Heel Breasts		"	319; p. 108
Heel Breast Trimmer for Attached Heels		"	319; p. 109
Heel Breast Scouring Machine		"	319; p. 110
Universal Top Lift Slugger — Model A		"	319; p. 111
"Universal" Top Lift Slugger — Model B		"	319; p. 112
Slug Grinding Machine		"	319; p. 113
Top Lift Scouring Machine		"	319; p. 114
Heavy Heel Trimming Machine		"	319; p. 115
Trimming Cutter Grinding Machine		"	319; p. 116
Sole Buffing Machine with Buffing Belts		"	319; p. 117
Single Sole Buffing Machine		"	319; p. 118
Bottom Cleaning Machine — System "Naumkeag"		"	319; p. 119
Heel Scouring Machine		"	319; p. 120
Twin Heel Scouring Machine		"	319; p. 121
Twin Edge Setting Machine		"	319; p. 122
Rolls		"	319; p. 123
Leather Polishing Disks		"	319; p.
Finishing Shaft		"	319; p. 123K
"Atlas Welt" Stitch Separating Machine		"	319; p. 124
"Atlas" Stitch Burnishing Machine		"	319; p. 125
"Atlas" Stitch Polishing Machine		"	319; p. 126
Bottom Coloring and Brushing Machine		"	319; p. 127
Heel Beading and Brushing Machine		"	319; p. 128
Edge Setter		"	319; p. 129
Sole Stamping Machine		"	319; p. 130
"Gasoline" Gas Generator		"	319; p. 131
Central Exhaust Installation with Dust Collector		"	319; p. 132
Vamp Creaser		"	319; p. 134
Vamp Creaser		"	319; p. 135
Upper Cleaning Machine		"	319; p. 136
Treeing Machine		"	319; p. 137
Shoe Box Wiring Machine		"	319; p. 138

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Shoe Box Wiring Machine to Reinforce Corners		Exh.	#319; p. 139
Sole Rounding Roller		"	319; p. 141
Small Parallel Roller		"	319; p. 142
Light Leather Roller		"	319; p. 143
Hand Operated Press		"	319; p. 144
Finishing Machine		"	319; p. 145
Combined Trimming and Finishing Machine		"	319; p. 146
Combined Finishing and Trimming Machine		"	319; p. 147
Combined Trimming and Finishing Machine		"	319; p. 148
Combination Finishing Outfit		"	319; p. 149
Small Stitch Wheeling Machine		"	319; p. 151
Stitch Wheeling Machine		"	319; p. 152
Adrian & Busch, Oberursel near Frankfort on the Main, Germany.			
Germania Welt & Turn Sewing Machine		Cat.	#23; p. B
Germania Welt Outsole Stitcher		"	23; p. A
These two pages A & B illustrate the Germania Welt & Turn Sewing Machine and the Germania Welt Outsole Stitcher of the Complete Germania Welt System for the manufacture of Goodyear Welt Shoes.			
Barber & Co., L. L., Boston, Mass.			
Punch: Foot Power Tip	102D		
" Power Tip	102B		
" Hand Tip	102C		
Perforating Machine	102A		
Beaudry Machine Co., Lynn, Mass.			
Setting Machine: Edge	156		
Beckett & Hammond, Haverhill, Mass.			
Trimming Machine: Wood Heel Top Lift	175		
Beckman, A., Lynn, Mass.			
Finishing Machine: Heel	111		
Beading Machine: Heel Seat	111		
Beckwith Box Toe Co., Boston, Mass.			
Softening Machine: Toe	25		
Bendix, Geo., Brooklyn, N. Y.			
Scouring Machine: Heel Breast	154–155		
Bostock & Sons, Thomas, Brockton, Mass.			
Building Machine: Heel	21F		
Cutting Machine: Rand	21G		
" " Tap	21C		
Gouging Machine: Heel Lift	21B		
Slashing Machine: McKay Welt	21G		
Scarfing Machine: Spring Heel	21D		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Softening Machine: Toe	21A		
Turning Machine: Rand	21E		
Boston Last Company, Boston, Mass.			
Backing Machine: Simplex Cloth	64		
Embossing Machine: Simplex	45A		
Ironing Machine: Post	45 (Cat. p. 15)		
Treeing Machine: Imp. Flexor	45 (" p. 26)		
Treeing Machine: Imp. Flexor (8 arm)	45 (" p. 27)		
Boston Machine Works Co., Lynn, Mass.			
Beading Machine: Monarch	49) " p. 12)		
Beading Machine: Boston	49 (" p. 13)		
Cementing Machine: New York	49 (" p. 20A)		
Cementing Machine: Julian	95X–49 (" p. 34)		
Folding Machine: Booth	49 (" p. 5)		
Folding Machine: Boston	49 (" p. 4)		
Folding Machine: Foot Power	48B–49 (" p. 3)		
Folding Machine: New Vamp	49 (" p. 6)		
Lacing Machine: Rochester	49 (" p. 20)		
Marking Machine: Eureka Match	49 (" p. 20D)		
Marking Machine: Eureka Upper	49 (" p. 16–17)		
Pricking Machine: Lining	49 (" p. 15)		
Snipping Machine: (6 types)	48C–49 (" p. 7–8–9)		
Snipping Machine: Power	49 (" p. 20C)		
Snipping & Cementing Machine	49 (" p. 20B)		
Scouring Machine: Tip	49 (" p. 38)		
Snipping & Pinking Machine: Insole	49 (" p. 33)		
Slashing Machine: Flap	49 (" p. 32)		
Auto. Hook Hole Punch	49 (" p. 14)		
Rubbing Machine: Union Seam	49 (" p. 11)		
Rubbing Machine: Boston	48A–49 (" p. 10)		
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Brockton Stay Co., Brockton, Mass.			
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Davis Sewing Machine Co., The Dayton, Ohio.			
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Double Sole Laying Mach.		" #20; p. 16	
Rough Rounding and Channeling Machine		" #20; p. 16	
Stitch Separating Machine		" #20; p. 16	
"Hercules" Stitching Machine (System Goodyear) (Welt Outsole)		" #20; p. 16	
"Victor" Inner-rand Cutting Machine		" #20; p. 16	
Gem Innersole Drawing-over and Cutting Machine		" #20; p. 16	
Heel Splitting Machine		" #20; p. 16	
Rand Marking Machine		" #20; p. 16	
Victor Sole Buffing Machine		" #20; p. 17	
Heel Trimming Machine "Ideal"		" #20; p. 18	
Heel Trimming Machine "Triumph"		" #20; p 18	
Heel Breast Trimming Machine		" #20; p. 18	
Heel Breast Buffing Machine		" #20; p. 18	
Top Lift Pin Grinding Machine		" #20; p. 18	
Sole Edge and Waist Trimming Machine "Meteor"		" #20; p. 18	
Sole Edge and Waist Trimming Machine "Victor" with ventilator		" #20; p. 18	
Combined Heel and Sole Edge Trimming Machine		" #20; p. 19	
Top Ironing Machine "Ideal"		" #20; p. 19	
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Quadruple Sole Edge Setting Machine		Cat. #2p; p. 19	
Heel Edge Setting Machine		" #20; p. 19	
Combined Finishing Machine "Ideal" for foot drive		" #20; p. 19	
"Harlow" Heel Burnishing Machine		" #20; p. 19	
Top Lift Trimming Machine "Victor"		" #20; p. 20	
Combined Bottom Scouring and Buffing Machine		" #20; p 20	
Bottom Buffing Machine "Ideal"		" #20; p. 20	
Bottom Buffing Machine "National"		" #20; p. 20	
Northampton Machinery Co., Ltd., Northampton, England.			
Improved Heel Assembler		" #1; p. 1	
Heel Compressor		" #1; p. 2	
Top Piece Compressor		" #1; p. 3	
Heel Attaching Machine		" #1; p. 4	
Heel Slugging Machine		" #1; p. 5	
Rand Cutting Machine		" #1; p. 6	
Rand Turning Machine		" #1; p. 6	
Heel Breasting Machine		" #1; p. 7	
Spring Heel Scarfing Mach.		" #1; p. 8	
Channel Cementing Machine		" #1; p. 9	
Sole Cementing Machine		" #1; p. 10	
Cement Pot		" #1; p. 11	
Sole Wetting Machine		" #1; p. 12	
Vamp Creasing Machine		" #1; p. 13	
Lasting Machine		" #1; p. 14	
Lasting Jack		" #1; p. 16	
Lip Taping Machine (For Goodyear Insoles)		" #1; p. 17	
Lip Turner		" #1; p. 18	
Lip Cutting Machine		" #1; p. 19	
Edge Beating Machine		" #1; p. 20	
Cutting Press		" #17; p. 31	
North American Chemical Co.: Boston, Mass.			
Filling Machine: Besto Bottom	147		
O'Flaherty Co., The John, Rouses Point, N. Y.			
Lockstitch Machine	58		
Parsons Machinery Co.: Marlboro, Mass.			
Building Machine: Pieced Heel	12C		
Clicking Machine	12B		
Cutting Machine: Sole	12A		
Stripping Machine	13		
Pearson, Walter: Whitman, Mass.			
Channeling Machine: McKay	23B		

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Sewing Machine: McKay	23A		
Peerless Machinery Co.: Boston, Mass.			
Attaching Machine: R. & M. Button	67G		
Cementing Machine: Duplex	67H		
" " Economy	67D		
" " Lining	67E		
Eyeletting Machine: Gang	67F		
" " Rapid	67A		
Punching Machine: Imp. Tip	67I		
Perforating Machine	67B		
Scouring Machine: Tap	67J		
Skiving Machine: Universal	67C		
Perkins Machine Co.: Warren, Mass.			
Embossing Machine	104		
Pierce, C. S.: Brockton, Mass.			
Skiving Machine	127		
Pine, J. A.: Marlboro, Mass.			
Buffing Machine, Naumkeag	103		
Plymouth Rubber Co., The, Canton, Mass.			
Tightening or Hardening Machine: Rib	81		
Progressive Shoe Machinery Co.: Minneapolis, Minn.			
Finishing Shaft	96		Ex. 316–p. 169
Puritan Mfg. Co., Boston, Mass.			
Fairstitch Machine	73E		
Staying Machine: Back Seam	73B		
Stitching Machine: Boot Counter	73F		
Seaming Machine: Button Fly	73A		
Staying Machine: " "	73A		
Stitching Machine: Counter	73F		
" " " Lining	73F		
Seaming Machine: Foxing	73A		
Staying Machine: "	73B		
Stitching Machine: Foxing	73C		
" " Pocket Strap	73B		
Seaming Machine: Quarter	73A		
Staying Machine: Side	73D		
Siding Machine	73D		
Stitching Machine: Strap & Stay	73B		
" " Tip	73C		
Seaming Machine: Vamp	73A		
Staying Machine: "	73A		
Seaming Machine: " Welt	73A		
Vamping Machine	73C		

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Quarmby & Hilliker: Lynn, Mass.			
Blocking Machine: Knox Power (heavy)	11A		
" " Knox Power (Light)	11B		
Compressing Machine: Knox Heel	10A		
Cutting Machine: Sole	10B		
Moulding Machine: Knox Sole	10D		
Rolling Machine: Knox	10E		
Stripping Machine	10C		
Splitting Machine: Knox	10F		
Ralphs, A. T., Leeds & Norwich, England.			
Eyeletting, Hooking & Punching Machine		Loose Leaf 15	
Heeling Machine: Boss		" " 15	
Lockstitch Machine: Boss (Welt Outsole)		" " 14	
Lasting Machine: Boss		" " 14	
Slugging Machine: Boss High Speed		" " 14	
Trimming Machine: Boss Upper		" " 14	
Randall Co., The J. D.: Cincinnati, O.			
Lockstitch Machine	57		Defts. Ex. 313
Reece Buttonhole Machine Co., The Boston, Mass.			
Attaching Machine: Button	69		
Finishing Machine: Buttonhole	141B		
Making Machine: Buttonhole	141A		
Ringenbach, Theo.: Cincinnati, O.			
Edge Machine: Thin	126		
Seelye Mfg. Co., Boston, Mass.			
Buffing Mch.: Hawkins	91A		
Clicking Mch.:	182		
Cutting Mch.: Sole	92–93–94–95U		
Moulding Mc.: Hawkins Sole	91F		
Heel Press	91B		
Rolling Mch.	91D–95W		
Splitting Mch.: Hawkins	91C–95V		
Stripping Mch.:	91E		
Shoe Mfrs. Supply Co., Newark, N. J.			
Marking Mch.: Buttonhole	187		
Shawmut Machinery Co., Boston, Mass.			
Cementing Mch.: Foot Power Lining	68E		
Cementing Mch.: Hand Lining	68D		
Power Hammer	68C		
Scouring Mch.: Tip	68B		
Rubbing Mch. Hand Method Seam	68A		
Singer Sewing Mch. Co., New York, N. Y.			
Attaching Mch.: Button	99		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Attaching Mch.: Morley	153D		
Barring Mch.: Button Fly	99		
Binding Mch.: Edge	99		
" " "	99		
Butting Mch.: Zigzag	99		
" " " W. & W.	99		
Cording Mch.: Buttonhole	99		
" " " W. & W.	99		
Finishing Mch. Buttonhole	99		
Overedging Mch.	99		
" " W. & W.	99		
Staying Mch.: Back Seam	99		
" " " " W. & W.	99		
Stitching Mch. Bellows Tongue	99		
Stitching Mch., Bellows Tongue, W. & W.	99		
Stitching Mch.: Boot Counter	99		
" " " " W. & W.	99		
" " Button Fly Lining, W. Wheeler & Wilson	99		
Stitching Mch.: Button Fly Lining	99		
Seaming Mch.: Button Fly	99		
" " " " W. & W.	99		
Stitching Mch.: Button Stay	99		
" " " " W. Wheeler & Wilson	99		
Staying Mch.: Button Fly	99		
" " " " W. & W.	99		
Stitching Mch.: Counter Lining	99		
Stitching Mch.: Counter Lining, W. & W.	99		
Stitching Mch.: Counter	99		
" " " W. & W.	99		
" " Eyelet Row	99		
" " " " W. & W.	99		
" " " Stay	99		
" " " " Wheeler & Wilson	99		
Stitching Mch.: Fancy	99		
" " " W. & W.	99		
Seaming Mch.: Foxing	99		
" " " W. & W.	99		
Staying Mch. "	99		
" " " W. & W.	99		
Stitching Mch.: "	99		
" " " W. & W.	99		
" " French Cord	99		
" " " "	99		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
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" " " W. & W.	99		
Seaming Mch.: Lining	99		
" " "	99		
Wheeler & Wilson	99		
Seaming Mch.: Lining	99		
" " " W. & W.	99		
Stitching Mch.: Lining Stay	99		
" " " " Wheeler & Wilson	99		
Stitching Mch.: Back Stay	99		
" " " " W. & W.	99		
" " Lining & Tongue	99		
" " " " " W. & W.	99		
" " " & Top	99		
" " " & " W. & W.	99		
" " Outside Heel Stay	99		
" " " " " W. & W.	99		
" " Pocket Strap	99		
" " " " W. & W.	99		
Seaming Mch.: Quarter	99		
" " " W. & W.	99		
Stitching Mch.: Side Stay & Tongue	99		
Stitching Mch.: Side Stay & Tongue, W. & W.	99		
Staying Mch.: Side	99		
" " " W. & W.	99		
Stitching Mch.: Strap & Stay	99		
" " " & "	99		
" " Tip	99		
Stitching Mch.: Tip, W. & W.	99		
" " Tongue	99		
" " " W. & W.	99		
" " Top Facing	99		
" " " " W. & W.	99		
Staying Mch.: Top	99		
Stitching Mch.: "	99		
" " W. & W.	99		
Seaming Mch.: Vamp	99		
" " W. & W.	99		
Staying Mch.: Vamp	99		
" " " W. & W.	99		
Seaming Mch.: Vamp Welt	99		
" " " " W. & W.	99		
" " Zigzag Top	99		
" " " " W. & W.	99		
Undertrimming Mch.:	99		

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Undertrimming Mch.: W. & W.	99		
Vamping Mch.:	99		
" " W. & W.	99		
Special Machinery & Tool Co., The New Haven, Conn.			
Finishing Shaft	163		
Specialty Shoe Mchy. & Tool Co., St. Joseph, Mo.			
Finishing Shaft	164 (Cat. pp. 10–11)		
Spencer, Edw. E., Jr., New York, N. Y.			
Flexing Mch., Insole	26		Defts. Ex. 312
Standard Engineering Co., Leicester, England.			
Standard Combined Finishing Machine (No. 1 Treadle) (For finishing bottoms of shoes)		Cat. #9; p. 14	
Treadle Combined Finishing Machine (No. 2, Foot Power)		" #9; p. 16	
Standard Combined Finishing Machine (No. 2 Power) (Including Naumkeag Attachment)		" #9; p. 18	
No. 2 B Combined Finisher (Bottom Scouring & Finishing)		" #9; p. 20	
No. 2 C Standard Combined Finishing Machine (Bottom Finishing & Edge Setting)		" #9; p. 22	
Standard Combined No. 2 D (Power) (Bottom Finishing, Heel Finishing, Edge Trimming, Etc.)		" #9; p. 24	
Standard Combined Finisher No. 2 D With Stitcher (Bottom Finishing & Outsole Stitching)		" #9; p. 25	
Standard Combined Finisher No. 3 (Power) (Bottom & Edge Finishing)		" #9; p. 26	
Standard Combined Finisher No. 4 (Power) (Large Mch. for Bottomand Edge Finishing)		" #9; p. 28	
Standard Combined Finisher No. 5 (Power) (Very large machine for Bottom and Edge Finishing)		" #9; p. 30	
Standard Combined Finisher for Power, Smal. Bench Type		" #9; p. 32	
Sectional Table (No. 6) Combined Finishing Machine (Insert with page 32) (All operations of Finishing. Built in sections.)			
McKay Chan. Mch.		" #9; p. 34	
Improved Power McKay Sole Sewing Mch.—with Stanley Horn		" #9; p. 35	
Improved Treadle McKay Sole Sewing Machine with Stanley Horn		" #9; p. 36	

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All-round Feed A 1 Repairing Machine (For shoe repairing)		Cat. #9; p. 37	
Standard Extra Heavy Patching Machine (For shoe repairing)		" #9; p. 38	
"Stanlock" New Model High-Speed Outsole Stitcher (For Welt Outsoles)	50 B	" #9; p. 39	
Standard Single Open-Ended Press (Sole Cutting or Dinking Mch.)		" #9; p. 43	
Standard Single Open-Ended Press (Small Sole Cutting or Dinking Mch.)		" #9; p. 44	
Roller — Skiver, (Rolling and Skiving Shanks, Counters, etc.)		" #9; p. 45	
Skiving Mch. with Fly Wheel (Skiving Counters, etc.)		" #9; p. 45	
New Patent Rolling Mch. for Leather Soles		" #9; p. 46	
Machine for rolling large ranges of Leather		" #9; p. 47	
Riveting Machine (For attachingsoles, etc.)		" #9; p. 49	
Power Loose Nailer No. 9		" #9; p. 51	
Standard No. 2 Treadle Combined Finishing Machine — 1908 Model (Post Type of Bottom Finishing Machine)		" #10; p. 12	
Standard Combined Fairstitching & Patching Machine (For Shoe Repair Work)		" #10; p. 31	
Standard No. 2 Sole Stitching Machine (Straight Needle Type)		" #10; p. 33	
Eccentric Cutting Press — for Treadle or Power (For dieing out small pieces)		" #10; p. 37	
Standard Lightning Cutting Press		" #10; p. 38	
Leather Clump Sole Skiving Machine		" #10; p. 40	
"Stanlock" Bed Laster with Side Pincers		" #10A; p. 4	
"Stanlock" Automatic Twin Tack Filler — (For filling Hand Tackers)		" #10A; p. 5	
"Stanlock" New Model Welt & Turn Sewing Machine	50 C	" #10 A; p. 6	
Krentler-Pym Insole Tack Puller		" #10 A; p. 7	
Insole Channeling Machine		" #10 A; p. 8	
Welt Grooving & Beveling Machine		" #10 A; p. 8	
Welt Ranging Machine (For stripping leather into welting)		" #10 A; p. 8	
Sole Channeler — For Welt or McKay Sewed Work		" #10A; p. 9	
Welt Hammer		" #10A; p. 9	
Lip Turner		" #10A; p. 9	
Shank Skiving Machine (Hand Power)		" #10A; p. 10	
Shank Skiving Machine (Power)		" #10A; p. 11	
Channel Opening Machine		" #10A; p. 11	

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Rough Rounding and Channeling Machine		Cat.	#10A; p. 12	
Channel Closing Machine	86 A	"	#10A; p. 14	
"Stanlock" Stitch Indenting Machine		"	#10A; p. 15	
Automatic Twin Leveler		"	#10A; p. 16	
"Webster" Turn Shoe Leveling Machine		"	#10A; p. 17	
"Stanlock" Laster (Consolidated Type)	86	"	#10A; p. 18	
Tacking, Pulling Over and Lasting Machine		"	#10A; p. 19	
"Stanlock" Rand Tacker (For tacking rands on Heels)		"	#10A; p. 21	
Double Open-Ended Cutting Press (Sole Cutter)		"	#10B; p. 4	
Revolution Cutting Press (Sole Cutter)		"	#10B; p. 5	
Standard Fitting Cutting Press (For cutting small pieces of Upper Leather)		"	#10B; p. 8	
"Julian" Sole Rounding Machine		"	#10B; p. 9	
Power Ranging or Stripping Machine		"	#10B; p. 10	
Power Bench Ranging Machine		"	#10B; p. 11	
"Commonsense" Leather Splitting Machine		"	#10B; p. 12	
Baby Splitting Machine		"	#10B; p. 13	
Bench Power Pricking Machine		"	#10B; p. 13	
Treadle Sole Stamping Machine		"	#10B; p. 14	
Power Sole Stamping Machine		"	#10B; p. 14	
Power Heeling Machine (For attaching heels)		"	#10B; p. 15	
Improved Power Heel Attaching Machine		"	#10B; p. 16	
Power Outside Heel Attaching Machine		"	#10B; p. 17	
Standard Patent Power Breasting Machine		"	#10B; p. 18	
Treadle Heel Breasting Machine		"	#10B; p. 19	
Bench Heel Breasting Machine		"	#10B; p. 20	
Shank Splitting and Ranging Machine		"	#10B; p. 20	
Leather Stiffener Skiving Machine		"	#10B; p. 21	
Improved Leatherboard Stiffener Skiving Machine		"	#10B; p. 21	
Tandem Stiffener Skiving Machine		"	#10B; p. 22	
Stiffener Moulding Machine		"	#10B; p. 23	
Twin Stiffener Moulding Machine		"	#10B; p. 24	
Stiffener Rolling Machine		"	#10B; p. 25	
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Puff Toe Moulding Machine		"	#10B; p. 26	
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Bench Power Feathering Machine (Sole Edge Beveling)		"	#10B; p. 28	
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Loop Lock Turn Shoe Sewing Machine		" #10B; p. 40	
Loop Lock Channeling Machine		" #10B; p. 41	
Waist and Breast Scouring Machine		" #10B; p. 42	
Standard Heel Filing Machine (Smoothing flat surface of heels).		" #10B; p. 43	
Improved Patent Heel Paring Machine (Heel trimming)		" #10B; p. 44	
Improved Forepart Paring Machine (Forepart Edge Trim.)		" #10B; p. 45	
Patent Heel & Breast Scouring Machine		" #10B; p. 46	
Seat Wheel & Heel Polishing Machine		" #10B; p. 47	
Patent Twin Edge Setting Machine		" #10B; p. 48	
Rotary Edge Setting Machine		" #10B; p. 49	
Improved Patent Bottom Scouring & Naumkeag Machine		" #10B; p. 50	
Breasting Machine		" #10B; p. 53	
The Standard Patent Top Iron Machine — (For ironing tops of shoes)		" #10B; p. 54	
Premier Piece Sole Skiving Machine (Tap Skiving)		" #10B; p. 56	
Stitch Separtaing and Welt Indenting Mach.		" #10B; p. 56	
Champion Seam Rubbing Machine (Back Seam)		" #10B; p. 59	
Union Seam Finisher (Back Seam)		" #10B; p. 59	
Power Toe Cap Perforating Machine		" #10B; p. 60	
Hand Toe Cap Perforator		" #10B; p. 61	
Eureka Self-Feeding Eyeletting Machine		" #10B; p. 61	
Gold Embossing Machine (For top facings, etc.)		" #10B; p. 62	
Improved Power Embossing Machine		" #10B; p. 63	
Patent Boot Treeing Machine		" #10B; p. 64	
Inseam Trimming Machine		" #17; p. 25	
Standard Twin Bottom Scouring Machine		" #17; p. 25	
Stanlock Knocking Up Machine (Rotary Pounding and Trimming Machine)		" #17; p. 10 (also loose leaf No. 5).	
Laying Machine: Sole	50 A		
Standard Rotary Machine Co., Rushden and Northampton, England.			
Rapid Lasting Machine	5X	Ex. 320; p. 1	
Chain Welt & Turn Sewer		" 320; p. 2	
Welt Insole Channeler		" 320; p. 3	
Welt Beater		" 320; p. 4	
Welt Splitter, Beveler and Groover		" 320; p. 4	
Welt Feather Edge and Sole Skiving Machine		" 320; p. 4A	
Welt Preparer (Cutting off, splitting, grooving and beveling welting)		" 320; p. 4 B	

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Automatic Rounder	7I–5K–95J	"	320; p. 5A
Rounder and Channeler		"	320; p. 6
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Outsole Stitcher (Welt Outsole)	7K–95K	"	320; p. 8
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Wire Tacking Machine		"	320; p. 11
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Stapling Machine		"	320; p. 14A
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McKay Sewing Machine		"	320; p. 16
Loose Nailer		"	320; p. 17
Trimming Machine (Heel Seat Trimmer)		"	320; p. 18
Rapid Heel Attacher		"	320; p. 19
Inside Heel Attacher		"	320; p. 20
High Speed Slugging Machine		"	320; p. 21
Sole Moulding Machine (Turn Sole Moulde)		"	320; p. 22
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Revolution Press (Sole Cutting Machine)		"	320; p. 26
Double Open Ended Press (Sole Cutting Machine)		"	320; p. 27
Single Open Ended Press (Sole Cutting Machine)		"	320; p. 27A
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Sole Rounding Machine		"	320; p. 29
Rapid Noiseless Splitter		"	320; p. 30
Splitting Machine		"	320; p. 30A
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Stiffener and Box Toe Skiver (Counter and Box Toe Skiving Machine)		"	320; p. 31A
Skiving Machine (Tap Skiving Machine)		"	320; p. 32
Improved Channeler (Apex Channeling Machine)		"	320; p. 33
Channel Opening Machine (Apex Channel Opening Machine		"	320; p. 35
Heel Building Machine		"	320; p. 37
Heel Compressor		"	320; p. 38
Heel Breasting Machine (foot power)		"	320; p. 40
Heel Breasting Machine (power)		"	320; p. 40A
Heel Trimmer		"	320; p. 41
Edge Trimmer		"	320; p. 42
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Bottom Buffing Machine (Shank wheel, shanking out device and brush)			" 320; p. 46
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Edge Setter			" 320; p. 47
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Seat Wheeling and Heel Burnishing Machine			" 320; p. 49
Polishing Machine (High Stand Finishing Shaft)			" 320; p. 51
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British Treeing Machine (Revolving)			" 320; p. 55A
New Power Grading and Cutting Machine			" 320; p. 55B
Perforating, Punching and Scolloping Machine			" 320; p. 56
Hook Setting Machine			" 320; p. 56A
Punching and Eyeletting Machine			" 320; p. 56B
Eclipse Clicking Press (Clicking Machine)			" 320; p. 57
Repairs Finishing Machine (Repairing Outfit)			" 320; p. 57A
Mixing Machine (for bottom filling)			" 320; p. 57B
Roller Skiver (Combined skiving and rolling machine)		Cat. 11; p. 8	
Channeling Machine (McKay)		" 11; p. 9	
Standard Sewing Machine Co., The, Cleveland, O.			
Butting Machine: Zigzag	100		
Staying Machine: Back Seam	100		
Stitching Machine: Bellows Tongue	100		
Stitching Machine: Button Fly Lining	100		
Stitching Machine: Button Stay	100		
Stitching Machine: Eyelet Row	100		
Stitching Machine: Eyelet Stay	100		
Stitching Machine: Fancy	100		
Seaming Machine: Foxing	100		
Stitching Machine: Foxing	100		
Stitching Machine: French Cord	100		
Stitching Machine: Label	100		
Seaming Machine: Lining	100		
Seaming Machine: Lining	100		
Stitching Machine: Lining Stay	100		
Stitching Machine: Lining Back Stay	100		
Stitching Machine: Lining to Tongue	100		
Stitching Machine: Lining & Top	100		
Stitching Machine: Pocket Strap	100		
Seaming Machine: Quarter	100		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Stitching Machine: Side Stay & Tongue	100		
Stitching Machine: Tip	100		
Stitching Machine: Tongue	100		
Stitching Machine: Top Facing	100		
Staying Machine: Top	100		
Stitching Machine: Top	100		
Seaming Machine: Vamp Welt	100		
Seaming Machine: Zigzag Top	100		
Vamping Machine:	100		
Stewart Bros., Lynn, Mass.			
Finishing Machine: Counter End	52C		
Moulding Machine: Counter	52A		
Skiving Machine: Counter	52B		
Waxing & Rolling Machine: Counter	52D–53A		
Wetting Machine: Counter	52E		
Stimpson Co., Edwin B., New York, N. Y.			
Flexing Machine: Insole	118		
Pinking Machine: Hand Power	118		Defts. Ex. 314 p. 37
Perforating & Pinking Machine	118		Defts. Ex. 314 p. 97 (Insert)
Punching Machine: Tip	118		Defts. Ex. 314 p. 152
Summers & Sons, Wellinborough, England.			
Vamp Crimping Machine (Vamp Creasing Machine)		Cat. #17; p. 35	
John Thacker, Leicester & Northampton, Eng.			
Famous Skiving Machine (Tap Skiving Machine)		" #17; p. 41	
Finishing Shaft		" #17; p. 41	
Timson, Bullock & Barber Kettering, England.			
Heel Attaching Machine (Inside and out)		" #5; p. 1	
Heel Compressor		" #5; p. 2	
Lasting Machine		" #5; p. 9	
Welt Tacker		" #5; p. 11	
Heel Assembling Machine		" #5; p. 15	
Rand Tacker		" #5; p. 19	
Heel Slugging Machine		" #5; p. 28	
Power Breasting Machine		" #5; p. 25	
Heeling Machine (Lightning)		Loose Leaf; p. 17	
Rapid Lift Cutting Press		" " p. 17	
Cutting Press		" " p. 17	
Stapling Machine (With or without Horn)		Cat. #17; p. 21	

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to In Miscellaneous Individual Catalogues
Tower Bros., Hudson Mass.			
Buffing Machine	3A		
Cutting Machine: Sole	3F		
Scouring Machine: Heel	3C		
Stamping Machine	3D		
Stripping Machine	3E		
Setting Machine: Rotary Edge	3G		
Trimming Machine: Edge	3B		
Trimming Machine: Heel	3H		
Tubular Rivet & Stud Co., Boston, Mass.			
Hooking Machine:	162A		
Attaching Machine: Bow	157		
Riveting Machine:	131		
Turner Tanning Machinery Co., The, Peabody, Mass.			
Splitting Machine: Vaughan	119		
Union Lockstitch Co., E. Boston, Mass.			
Lockstitch Machine: High Speed (Welt Outsole)	5J–44B		
Staying Machine: Back Seam	44A		
Stitching Machine: Boot Counter	44A		
Siding Mach ne: Boot	44A		
Seaming Machine: Button Fly	44A		
Staying Machine: Button Fly	44A		
Stitching Machine: Counter	44A		
Seaming Machine: Foxing	44A		
Staying Machine: Foxing	44A		
Stitching Machine: Foxing	44A		
Seaming Machine: Quarter	44A		
Stitching Machine: Pocket Strap	44A		
Staying Machine: Side	44A		
Stitching Machine: Strap & Stay	44A		
Stitching Machine: Tip	44A		
Seaming Machine: Vamp	44A		
Staying Machine: Vamp	44A		
Seaming Machine: Vamp Welt	44A		
Vamping Machine	44A		
Union Special Sewing Machine Co., Boston, Mass.			
Butting Machine: Zigzag	101		
Overedging Machine	101		
Staying Machine: Back Seam	101		
Stitching Machine: Button Fly Lining	101		
Seaming Machine: Button Fly	101		
Staying Machine: Button Fly	101		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Stitching Machine: Button Stay	101		
Stitching Machine: Eyelet Row	101		
Stitching Machine: Eyelet Stay	101		
Stitching Machine: Fancy	101		
Seaming Machine: Foxing	101		
Staying Machine: Foxing	101		
Stitching Machine: Label	101		
Seaming Machine: Lining	101		
Stitching Machine: Lining Stay	101		
Stitching Machine: Lining Back Stay	101		
Stitching Machine: Lining & Top	101		
Stitching Machine: Outside Heel Stay	101		
Seaming Machine: Quarter	101		
Stitching Machine: Tip	101		
Stitching Machine: Tongue	101		
Stitching Machine: Top Facing	101		
Seaming Machine: Vamp	101		
Staying Machine: Vamp	101		
Seaming Machine: Vamp Welt	101		
Seaming Machine: Zigzag Top	101		
Vamping Machine	101		
Universal Shoe Machinery Co., St.Louis, Mo.			
Clinch Machine: Sole	88–95I		
Finishing Shaft			Defts. Ex. 316 p. 163–164
Lockstitch Machine (Welt Outsole)	7L–95L		
Nailing Machine: Loose	7H–95P		
Sewing Machine: Welt & Turn	7D–95D		
Universal Shoe Machinery Co., Ltd., Northampton, England.			
Universal New Julian Sole Rounding Machine (Sole Rounding Machine)		Cat. #2; p. 7	
Universal Sole Rounding Machine (Sole Rounding Machine)		" #2; p. 8	
Universal Revolution Press (Sole Cutting Machine)		" #2; p. 9	
Universal Improved Double Open-ended Press (Sole Cutting Machine)		" #2; p. 10	
Universal Single Open-ended Press (Sole Cutting Machine)		" #2; p. 11	
Universal 7" Splitting Machine 1A Sole Splitter		" #2; p. 12	
Universal Louis Heel Skiving Machine (Splitting Machine for turned Soles)		" #2; p. 13	
Universal Leather Splitting Machine		" #2; p. 14	
Universal Leather Splitting Machine		" #2; p. 15	
Universal Power Sole Stamping Machine		" #2; p. 16	

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Improved Circular Knife Machine for cutting leather (Stripping Mch.)		Cat. #2; p. 17	
Universal Automatic Punching & Eyeletting Machine		" #2; p. 28	
Universal Lasting Machine		" #2; p. 35	
Universal High-Speed Chain-Stitch Welt and Turn Shoe Sewing Machine		" #2; p. 36	
Universal Lockstitch Welt & Turn Shoe Sewing Machine		" #2; p. 38	
Universal Welt Beater		" #2; p. 40	
Universal Lever Cement Cans		" #2; p. 41	
Universal Revo ution Sole Laying Machine		" #2; p. 42	
Ideal Rough Rounding & Channeling Machine		" #2; p. 44	
Universal Channel Opening Machine		" #2; p. 46	
Universal High-Speed Lockstitch Outsole St tching Machine		" #2; p. 47	
Universal Waxing & Wind ng Apparatus (Bobbin Winding Machine)		" #2; p. 48	
Universal Twin Channel Closing Machine (Channel Laying Machine)		" #2; p. 49	
Universal Automatic Twin Leveling Machine		" #2; p. 50	
Universal Stitch Separating Machine (No. 1)		" #2; p. 51	
Universal Stitch Separating Machine (No. 2)		" #2; p. 52	
Universal Rand Tacking Machine		" #2; p. 60	
Universal Heel Building Tacker		" #2; p. 61	
Universal Heel & Top Piece Compressing Machine		" #2; p. 62	
Universal Heel Machine (Heeling Machine)		" #2; p. 63	
Brittania Slugging Machine (on or off the last)		" #2; p. 65	
Universal Pulling-Over & Lasting Machine		" #2; p. 70	
Universal Piece Sole Skiving Machine		" #2; p. 71	
Universal Channel Opening Machine		" #2; p. 71	
Tacking-On Machine — machine sewn work (Sole Tacker)		" #2; p. 72	
Universal Improved Sole Sewing Machine (McKay Sewer)		" #2; p. 73	
Universal Chopping-Up & Bunking Machine (Nurling Machine)		" #2; p. 74	
Universal Loose Nailing Machine		" #2; p. 80	
Universal Patent Wire Screwing Machine (Standard Screw Machine)		" #2; p. 81	
Universal Heel Trimming Machine		" #2; p. 85	
Universal Edge Trimming Machine		" #2; p. 86	
Universal Heel Scouring Machine		" #2; p. 87	
Universal Edge Setter	" #2; p. 88		
Universal Seat Wheeling & Heel Burnishing Machine		" #2; p. 89	

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Universal Improved Bottom Buffing Machine		Cat. #2; p. 90	
Universal Naumkeag Buffing Machine		" #2; p. 92	
Universal Polishing Machine (Bottom Finishing Machine)		" #2; p. 93	
Universal Brushing Machine (High Stand Finishing Machine)		" #2; p. 94	
Universal Supply Co., Haverhill, Mass.			
Cementing Machine	160		
Velocity Machs. Co., Ltd., London, England.			
Finishing Machine: Little Victor #3		Loose Leaf 25	
Finishing Machine: Little Victor #4		Cat. #17; p. 42	
Victor Shoe Machinery Co., Boston, Mass.			
Finishing Shart	174E		
Indenting Machine	190		
Lockstitch Machine (Welt Outsole)	174D		
Skiving Machine: Am. Tap	174C		
Tacking Machine	174A		
Rounding & Channeling Mch.: Victor Rough Rounding	174B		
Ward & Gent, Northampton, England.			
Heeling Machine	188E		
Lasting Machine	188B		
Leveling Machine	188D		
Pulling-Over Machine	188A		
Sewing Machine: Welt & Turn	188C		
Walpole Shoe Supply Co., Boston, Mass.			
Rib Tightening or Hardening Machine	80		
Wheeler, E. L., Marlboro, Mass.			
Indenting Machine: Welt	115		
Knurling Machine	114		
Wheeler & Co., J. S., Boston, Mass.			
Flexing Machine: Insole	65X		
Splitting Machine: Baby	41A		
Wheeler, O. D., Marlboro, Mass.			
Stamping Machine: Star	112		
White & Co., F. H., So. Easton, Mass.			
Building Machine: Heel	46A		
Whitehead & Co., Dukinfield, England.			
Finishing Shaft		Cat. #17; p. 41	
Wilcox & Gibbs Sewing Machine Co., Boston, Mass.			
Stitching Machine: Bellows Tongue	135		
Stitching Machine: Button Fly Lining	135		

	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Stitching Machine: Button Stay	135		
Stitching Machine: Eyelet Row	135		
Stitching Machine: Eyelet Stay	135		
Seaming Machine: Foxing	135		
Staying Machine: Foxing	135		
Stitching Machine: Foxing	135		
Stitching Machine: French Cord	135		
Stitching Machine: Label	135		
Seaming Machine: Lining	135		
Seaming Machine: Lining	135		
Stitching Machine: Lining Stay	135		
Stitching Machine: Lining Back Stay	135		
Stitching Machine: Lining to Tongue	135		
Stitching Machine: Lining & Top	135		
Stitching Machine: Outside Heel Stay	135		
Stitching Machine: Pocket Strap	135		
Stitching Machine: Side Stay & Tongue	135		
Stitching Machine: Top Facing	135		
Stitching Machine: Tongue	135		
Staying Machine: Top	135		
Stitching Machine: Top	135		
Seaming Machine: Vamp	135		
Staying Machine: Vamp	135		
Seaming Machine: Vamp Welt	135		
Worcester Machinery Co., Worcester, Mass.			
Blacking Machine: Star Heel	116		
Finishing Machine: Apex Heel	117		
Beading Machine: Heel	117		
W. J. Young Machinery Co., Lynn, Mass.			
Building Machine: Foot Power Heel	150		
Building Machine: Grover Heel	62F		
Buffing Machine: Perfection Box Toe	61D		
Buffing Machine: Perfection Counter	61D		
Beveling Machine: Strip	62I		
Compressing Machine: Heel	62G		
Cutting Machine: Wedge Lift	62J		
Finishing Machine: Counter End	61E		
Gouging Machine: Heel Lift	62K		
Moulding Machine: Counter	61C		
Skiving Machine: Box Toe	61B		
Skiving Machine: Counter	61B		
Skiving Machine: Shank Piece	62K		
Splitting Machine: Rand	185		
Treeing Machine: Pneumatic	166		
Waxing & Rolling Machine: Counter	61A		

DEFENDANTS' EXHIBIT 337.

[Put in Evidence, page 4392.]

LIST OF MACHINES OFFERED BY SHOE MACHINERY MANUFACTURERS AND DEALERS OTHER THAN UNITED SHOE MACHINERY COMPANY FOR PREPARING AND ATTACHING THE BOTTOMS TO THE UPPERS OF SHOES, EYELETTING MACHINES, DIEING-OUT MACHINES AND CLICKING MACHINES. NAMED IN

DEFENDANT'S EXHIBIT 311 (FOLIO OF CATALOGS).
DEFENDANT'S EXHIBIT 312, 313, 314, 315, 316, 317, 318, 319 and 320 (CATALOGS).
DEFENDANT'S EXHIBIT 321 (LETTERS, ADVERTISEMENTS AND CATALOGS).

BEATING MACHINE—WELT

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
The Boylston Mfg. Co., Boston, Mass.	192D		
Hamel Shoe Mchy. Co., Lynn and Haverhill, Mass.	95G		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	5T		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56E		
Standard Rot. Mch. Co., Ltd., Rushden and Northampton, England.	7G		
Type 1			Ex. 320; P. 4
" 2			" 320; P. 4C
Gimson & Co., Ltd., Leicester, England.			
Type 1		Cat. 6; P. 35J	
" 2		" 7; P. 10	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; P. 82
Universal Shoe Mchy. Co., Ltd., Northampton, England.		Cat. 2; P. 40	
Standard Engineering Co., Leicester, England.		Cat. 10A; P. 9	
Northampton Mchy. Co., Northampton, England.		Cat. 1; P. 20	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; P. 139
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. 318; P. 100
" 2		Cat. 14A; P. 8	
Keats Mchy. Co., Frankfurt a. Main, Germany.		Cat. 24; P. 82	

BLOCKING MACHINE — OUTSOLE (Cutting Outsoles)

Quarmby & Hilliker (2 Types) Lynn, Mass.	11A & 11B

BUILDING MACHINE — HEEL

Manufacturer's Name and Location	Defts. Exhibit No. 121 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
W. T. Bosworth, Brockton, Mass.	43A		
Thos. Bostock & Sons, Brockton, Mass.	21F		
Fortuna Mch. Co., New York, N. Y.	79		
W. J. Young Mchy. Co., Lynn, Mass. (2 Types)	62F & 150		
Geo. Knight & Co., Brockton, Mass.	9H		
Parsons Mchy. Co., Marlboro, Mass.	12C		
F. H. White & Co., So. Easton, Mass.	46A		
Gimson & Co., Ltd., Leicester, Eng.			
Type 1.		Cat. 6; p. 45	
Type 2.		" 6; p. 53	
Atlas-Werke Pohler & Co., Leipsic, Germany.			
Type 1.			Exh. #319; p.41
Type 2.			" #319; p. 42
Northampton Machinery Co., Ltd., Northampton, Eng.		" #1; p. 1	
Universal Shoe Machinery Co., Northampton, Eng.		" #2; p. 61	
Standard Rotary Machine Co., Rushden & Northampton, England.			" #320; p. 37
Moenus Machine Works, Frankfurt, Germany.			
Type 1.			" #318; p.134
Type 2.		" #14A; p. 3	
A. Johnson et Ses Fils, Paris, France.			" #317; p.163
Timson, Bullock & Barber, Kettering, Eng.		" #5; p. 15	
Nolle's Works, Weissenfels, a S., Germany		" #18; p. 15	
Nolle's Works, Weissenfels, a S., Germany.		" #18; p. 16	
		" #18; p. 17	
		" #18; p. 23	
Keats Machy. Co., Frankfurt a Main, Germany.		" #21; p. 94	
		" #24; p. 48	
		" #24; p. 48	
		" #24; p. 48	
		" #24; p. 48	
		" #24; p. 96	

CEMENTING MACHINES (Cementing Taps or Soles).

Universal Supply Co., Haverhill, Mass.	160
Hazen-Brown Co., Brockton, Mass.	158
Boston Mch. Works Co., Lynn, Mass.	95X–49 (Cat. p. 34)
Nolle's Works, Weisenfels, Germany	70

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Northampton Mchy. Co., Northampton, England		Cat. #1; p. 9 & 10	
Atlas-Werke, Pohler & Co., Leipsic, Germany			Ex. 319; p. 94
A. Johnson et Ses Fils, Paris, France			Ex. 317; p. 147
			Ex. 317; p. 141
Keats Mchy. Co., Frankfurt, a M. Germany.		Cat. #22; p. 3	
Nolle's Works, Weisenfels, a S. Germany		Cat. #18; p. 48	
Nolle's Works, Weisenfels, a S. Germany		Cat. #20; p. 3	
Keats Mchy. Co., Frankfurt, a M. Germany		Cat. #24; p. 76	
Keats Mchy. Co., Frankfurt, a M. Germany		Cat. #24; p. 82	

Channeling Machine (Insoles and Outsoles).

The R. H. Long Mchy. Co., (2 Types) So. Framingham, Mass.	56W–56D		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	95A–Welt–5B		
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	8Y–95Z		
Walter Pearson, Whitman, Mass.	23B		
Amer. Worsted Mchy. Co., Abington, Mass.	2A		
Geo. Knight & Co., Brockton, Mass.	9I		
Gimson & Co., Ltd., Leicester, England.			
Type 1		Cat. 6; p. 35I	
Type 2		" 6; p. 35K	
Type 3		" 7; p. 11	
Atlas-Werke-Pohler & Co., Ltd., Leipsic, Germany.			
Type 1			Exh. 319; p. 48
Type 2			" 319; p. 83
Type 3			" 319; p. 45
Keats & Bexon, Ltd., Stafford, England		" 4; p. 16	
Standard Rotary Machine Co., Rushden & Northampton, Eng.			
Type 1			" 320; p. 3
Type 2			" 320; p. 33
Type 3		" 11; p. 9	
Job Lee Premier Works, Kettering, England.		" 16; p. 3	
Standard Engineering Co., Leicester, England.			
Type 1		" 9; p. 24	
Type 2		" 10A; p. 8	
Type 3		" 10A; p. 9	
Type 4		" 10B; p. 41	
A. Johnson et Ses Fils, Paris, France.			
Type 1			" 317; p. 85
Type 2			" 317; p. 89
Type 3			" 317; p. 90

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Exh. 318; p. 39
Type 2			" 318; p. Insert 41A
Type 3			" 318; p. 41
Type 4			" 318; p. 43
Type 5			" 318; p. 100
Type 6	Cat.	#14A; p. 7	
Keats Machinery Co., Frankfurt a Main, Germany	"	#24; p. 46	
	"	#24; p. 79	
	"	#24; p. 88	
Nolle's Works, Weissenfels a S., Germany	"	#20; p. 15	
	"	#20; p. 15	

Clicking Machine.

Parsons Mchy. Co., Marlboro, Mass.	12B		
Seelye Mfg. Co., Boston, Mass.	182		
Gimson & Co., Leicester, Eng.			
Type 1		Cat. 6; p. 2	
Type 2		" 6; p. 3	
Type 3		" 6; p. 4	
Type 4		" 6; p. 5	
Atlas-Werke, Pohler & Co., Leipsic, Ger.			
Type 1			Ex. 319; p. 5
Type 2			Ex. 319; p. 6
Standard Rotary Mach. Co., Rushden & Northampton, Eng.			Ex. 320; p. 57
Dilley & Sons, Northampton, Eng.		Cat. 17; p. 24	
A. Johnson et Ses Fils, Paris, France			Ex. 317; p 15
Keats Mchy. Co., Frankfurt, Ger.		Cat. 23; p. 26	
Nolle's Works, Weissenfels, Ger.			
Type 1		Cat. 20; p. 2	
Type 2		" 20; p. 3	
Type 3		" 20; p. 7	
Type 4		" 18; p. 47	

Clinching Machine (Attaching Outsoles).

Universal S. M. Co., St. Louis, Mo.	88	
Standard Rotary Mach. Co., Rushden and Northampton, England.		Ex. 320; p. 11

Compressing Machine (Compressing Heels).

Gimson & Co., Leicester, Eng.	87A
Knox, Quarmby & Hilliker, Lynn, Mass.	10A

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Nolle's Works, Weisenfels, Germany.	74A		
W. J. Young Mchy. Co., Lynn, Mass.	62G		
Gimson & Company, Ltd., Leicester, Eng.		Cat. 6; p. 46	
Atlas-Werke Pohler & Co., Leipsic, Germany.		Cat. 319; p. 44	
Northampton Machinery Co., Ltd., Northampton, Eng.		" 1; p. 2 & 3	
Universal Shoe Machinery Co., Northampton, Eng.		" 2; p. 62	
Timson, Bullock & Barber, Kettering, Eng.		" 5; p. 2	
Job Lee Premier Works, Kettering, Eng.		" 16; p. 17	
Standard Rotary Machine Co., Rushden & Northampton, Eng.			Ex. 320; p. 38
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 164
Moenus Machine Works, Frankfort, Germany.		" 14A; p. 2	
Keats Machinery Co., Frankfort a Main, Germany.		" 22; p. 5	
Nolle's Works, Weissenfels, a. S., Germany.			
Type 1	74A	" 18; p. 18	
Type 2		" 18; p. 19	
Type 3		" 18; p. 20	
Keats Machinery Company, Frankfort a Main, Germany.		" 24; p. 97	

Leather Cutting Machines (Including Dieing-out Machines).

Thos. Bostock & Sons, Brockton, Mass. (2 Types)	21H–21C	
Jas. Busfield, Haverhill, Mass.	6H	
Parsons Mchy. Co., Marlboro, Mass.	12A	
Boston Mch. Works Co., Lynn, Mass.	49 (Cat. P. 32)	
Quarmby & Hilliker, Lynn, Mass.	10B	
Seelye Mfg. Co., Boston, Mass.	92–93–94–95U	
Tower Bros. Co., Hudson, Mass.	3F	
W. J. Young Mchy. Co., Lynn, Mass.	62J	
Gimson & Co., Ltd., Leicester, England.		
Type 1		Cat. 6; p. 87A
" 2		" 6; P. 87B
" 3		" 6; P. 87
" 4		" 6; P. 89
" 5		" 6; P. 91
" 6		" 6; P. 93
" 7		" 6; P. 94
" 8		" 6; P. 94
" 10		" 8; P. 2
" 11		" 8; P. 12
" 12		" 8; P. 2

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Atlas-Werke-Pohler & Co., Leipsic, Germany.			
Type 1			Ex. 319; P. 7
" 2			" 319; P. 20
" 3			" 319; P. 21
" 4			" 319; P. 22
" 5			" 319; P. 23
" 6			" 319; P. 24
" 7			" 319; P. 25
Northampton Mchy. Co., Northampton, England.			
Type 1		Cat. 1; P. 6	
" 2		" 17; P. 31	
Universal Shoe Mchy. Co., Northampton, England.			
Type 1		Cat. 2; P. 9	
" 2		" 2; P. 10	
" 3		" 2; P. 11	
Keats & Bexon, Stafford, England.			
Type 1		Cat. 4; P. 17	
" 2		" 4; P. 18	
Timson, Bullock & Barber, Kettering, England.			
Type 1		Loose Leaf P. 17	
" 2		" " P. 17	
Standard Rotary Mch. Co., Northampton, England.			
Type 1			Ex. 320; P. 26
" 2			" 320; P. 27
" 3			" 320; P. 27A
" 4			" 320; P. 28
Standard Engineering Co., Leicester, England.			
Type 1		Cat. 9; P. 43	
" 2		" 9; P. 44	
" 3		" 10; P. 37	
" 4		" 10; P. 38	
" 5		" 10B; P. 4	
" 6		" 10B; P. 5	
" 7		" 10B; P. 8	
A. Johnson et Ses Fils, Paris, France.			
Type 1			Ex. 317; P. 73
" 2			" 317; P. 74
" 3			" 317; P. 76
" 4			" 317; P. 161
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. 318; P. 16
" 2			" 318; P. 18
" 3			" 318; P. 22

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Type 4			Cat. 318; P. 24
" 5			" 318; P. 26
" 6			" 318; P. 28
" 7			" 318; P. 30
" 8			" 318; P. 245
Keats Mchy. Co., Frankfurt a Main, Germany.			
Type 1		Cat. 22; P. 26	
" 2		" 24; P. 35	
" 3		" 24; P. 36	
" 4		" 24; P. 36	
" 5		" 24; P. 36	
" 6		" 24; P. 37	
" 7		" 24; P. 35	
" 8		" 24; P. 38	
" 9		" 24; P. 38	
" 10		" 24; P. 26	
Nolle's Works, Weissenfels a S., Germany.			
Type 1		Cat. 18; P. 43	
" 2		" 18; P. 44	
" 3		" 18; P. 45	
" 4		" 18; P. 46	
" 5		" 20; P. 5	
" 6		" 20; P. 6	
" 7		" 20; P. 6	
" 8		" 20; P. 7	
" 9		" 20; P. 7	
" 10		" 20; P. 7	

Evening Machine; Heel Lifts.

Quarmby & Hilliker, Lynn, Mass.	10F		
Seelye Mfg. Co., Boston, Mass.	91C–95V		
J. S. Wheeler & Co., Boston, Mass.	41A		
Gimson & Co., Ltd., Leicester, England.		Cat. 6; p. 5	
Atlas–Werke, Pohler & Co., Leipsic, Germany.			
Type 1			Ex. 319; p. 28
" 2			" 319; p. 31
Universal Shoe Mchy. Co., Northampton, Eng.		Cat. 2; p. 12	
		" 2; p. 14	
		" 2; p. 16	
Job Lee Premier Works, Kettering, Eng.		" 16; p. 12	
Standard Rotary Mach. Co., Rushden & Northampton, Eng.			Ex. 320; p. 30
			" 320; p. 30A
			" 320; p. 30B
E. Mills & Co., Kettering, Eng.		Cat. 17; p. 4	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Standard Engineering Co., Leicester, Eng.		Cat. 9; p. 45	
		" 10B; p. 12, 13	
Moenus Machine Works, Frankfurt a Main, Ger.			
Type 1		" 14A; p. 5	Ex. 318; p. 37
" 2			" 318; p. 59
A. Johnson et Ses Fils, Paris, France.			" 317; p. 80
			" 317; p. 81
Keats Mchy. Co., Frankfurt a M., Germany.		" 22; p. 4	
		" 24; p. 40	
		" 24; p. 40	
		" 24; p. 41	
		" 24; p. 41	
		" 24; p. 41	
		" 24; p. 43	
		" 24; p. 89	
Nolle's Works, Weissenfels, a S., Germany.		" 20; p 6	
		" 20; p. 16	

Eyeletting Machine.

American Worsted Mchy. Co., Abington, Mass.			
(4 Types)	2K–2B–2C–2D		
Geo. Knight & Co., Brockton, Mass.			
(Automatic Gang) (Gang-Double Raceway)			
(The United Co. have never had a Gang Eyeletting Machine or Eyeletting Machines of the Gang type.)	9G		
Peerless Machinery Co., Boston, Mass.			
(Rapid Gang Type)			
(The United Co. have never had a Gang Eyeletting Machine or Eyeletting Machines of the Gang type.)	67F–67A		
Gimson & Co., Leicester, England.			
Type 1		Cat. #6; p. 16A	
Type 2		" #6; p. 17	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. #319; p. 16
Universal Shoe Mchy. Co., Northampton, Eng.		" #2; p. 28	
Keats & Bexon, Ltd., Stafford, Eng.			
Type 1		" #4; p. 21	
Type 2		" #4; p. 21	
Job Lee Premier Works, Kettering, Eng.		" #16; p. 2	
Standard Rotary Mach. Co., Rushden & Northampton, England.			Ex. #320; p. 56B

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Dilley & Sons, Northampton, England.		Loose Leaf 15	
Standard Engineering Co., Leicester, Eng.		Cat. #10B; p. 61	
A. Johnson et Ses Fils, Paris, France.			
Type 1			Ex. #317; p. 57
Type 2			" #317; p. 58
Type 3			" #317; p. 59
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. #318; p. 235
Type 2			" #318; p. 236
Type 3			" #318; p. 238
Type 4			" #318; p. 240
Nolle's Works, Weissenfels, a S , Germany.			
Type 1		Cat. #18; p. 35	
Type 2		" #20; p. 4	
Type 3		" #20; p. 4	
Type 4		" #20; p. 4	
Keats Machinery Co., Frankfurt a M., Germany.			
Type 1		" #20; p. 15	
Type 2		" #20; p. 16	
Type 3		" #24; p. 17	
Type 4		" #24; p. 18	
Type 5		" #24; p. 19	

FAIRSTITCHING MACHINE.

Landis Mch. Co., St. Louis, Mo.			Ex. 316; p. 161
Larsen Mchy. Co., Brooklyn, N. Y.			Ex. 316; p. 159
C V. Engstrom Co., Peoria, Ill.			Ex. 316; p. 161A
The John O'Flaherty Co., Rouses Point, N. Y.	58		
Puritan Mfg. Co., Boston, Mass	73E		
The J. D. Randall Co , Cincinnati, O	57		Ex. 313;
Jas. Clark Lea. Co., St. Louis, Mo.	161 (Cat. p. 68–69–70)		
Union Lockstitch Co., E. Boston, Mass.	44B–5J		
Victor S. M. Co., Boston, Mass.	174D		
Gimson & Company, Ltd., Leicester, England.			
Type 1		Cat. 6; p. 35C	
" 2		" 6; p. 36A	
" 3		" 7; p. 7	
Atlas-Werke, Pohler & Co., Leipsic, Germany	189		Ex. 319; p. 91
			Ex. 319; p. 92
Universal S. Mchy. Co., Northampton, England,			
Type 1		Cat. 2; p. 47	
Keats & Bexon, Ltd., Stafford, England.			
Type 1		" 4; p. 3	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Type 2		Ex. 4; p. 4	
" 3		" 4; p. 5	
" 4		" 4; p. 13	
" 5		" 3; p. 12	
Standard Rotary Mch. Co., Northampton, England.	7K–95K		Ex. 320; p. 8
Standard Eng. Co., Leicester, Eng.	50B	Cat. 9; p. 39	
		" 10; p. 31	
		" 10; p. 33	
A. Johnsen et Ses Fils, Paris, France	66L		Ex. 317; p. 145
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. 318; p. 80
" 2			Ex. 318; p. 82
" 3			Ex. 318; p. 86
" 4			Ex. 318; p. 96
" 5			Ex. 318; p. 100
" 6		Cat. 14A; p. 1 & 9	
" 7		" 14A; p. 6	

Filling Machine — Bottom.

No. American Chemical Co., Boston, Mass.	147		
Standard Rotary Mach. Co., Rushden & Northampton, England.			Ex. 320; p. 57B
Keats Mchianery Co., Frankfurt, Germany.		24; p. 92	

Flexing Machine: McKay Insole.

Edw. E. Spencer, Jr., New York, N. Y.	26	Ex. 312
Edwin B. Stimson Co., New York, N. Y.	118	Ex. 314
J. S. Wheeler & Co., Boston, Mass.	65X	

Gouging Machine: Heel Lifts.

Thos. Bostock & Sons, Brockton, Mass.	21B	
W. J. Young Mchy. Co., Lynn, Mass.	62K	
A. Johnson et Ses Fils		Ex. 317, P. 160

Grading Machine (Gauging Thickness of Soles)

Lacene Mfg. Co., Manchester, N. H.	77	
Standard Rotary Machine Company, Northampton, Eng.		Ex. 320; p. 55B
Moenus Machine Works, Frankfurt, Germany.	Cat. 14A; p. 4	
Keats Machinery Company, Frankfurt a Main, Ger.		
Type 1	Cat. 24; p. 8	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Type 2		Cat. 24; p. 80	
" 3		Cat. 24; p. 38	

Grooving & Beveling Machine — Welt.

Hamel Shoe Mchy. Co., Lynn and Haverhill, Mass.	178B		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	5U		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56M		
Standard Rotary Mach. Co., Rushden & Northampton, Eng.			
(Type 1)			Ex. 320; p. 4
(" 2)			" 320; p. 4B
Standard Engineering Co., Leicester, Eng.		Cat. 10A; p. 8	
Moneus Machine Works, Frankfurt, Germany.		" 14A; p. 6	
Nolle's Works, Weissenfels a. S., Germany.		" 20; p. 15	
A. Johnson & Son, Paris, France.			

Hardening Shoulder Machine (For Gem Insoles).

The Plymouth Rubber Co., Canton, Mass.	81
Walpole Shoe Supply Co., Boston, Mass.	80

Heeling Machine (Attaching Heels)

The R. H. Long Mchy. Co., S. Framingham, Mass.	56Q		
Hav. Shoe Mchy. Co., Haverhill, Mass.	8P–5N		
Ward & Gent, Northampton, Eng.	188–E		
Gimson & Co., Ltd., Leicester, England.			
(Type 1)		Cat. 6; p. 49–50	
(" 2)		" 6; p. 49A	
(" 3)		" 6; p. 51	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
(Type 1)			Ex. 319; p. 102
(" 2)			" 319; p. 103
(" 3)			" 319; p. 106
Universal S. Mch. Co., Northampton, Eng.		" 2; p. 63	
Timson, Bullock & Barber Co., Kettering, Eng.			
(Type 1)		" 5; p. 1	
(" 2)		Loose Leaf p. 17	
Job LeePremier Works, Kettering, Eng.		Cat. 16; p. 5	
Standard Rot. Mch. Co., Northampton, Eng.			
(Type 1)			Ex. 320; p. 19
(" 2)			" 320; p. 20

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Standard Engineering Co., Leicester, Eng.			
(Type 1)		Cat. 10B; p. 15	
(" 2)		" 10B; p. 16	
(" 3)		" 10B; p. 17	
A. Johnson et Ses Fils, Paris, France.			
(Type 1)			Ex. 317; p. 169
(Type 2)			" 317; p. 170
(Type 3)	66K		" 317; p. 171
Moenus Machine Works, Frankfurt, Germany.			
(Type 1)			" #318; p. 141
(" 2)			" #318; p. 136
(" 3)			" #318; p. 143
(" 4)			" #318; p. 145
(" 5)		Cat. #14A; p. 11	
Northampton Mchy. Co., Northampton, Eng.		" #1; p. 4	
H. Keeper, London, Eng.		Loose Leaf p. 22	
Timson, Bullock & Barber Co., Kettering, Eng.		Cat. #1; p. 17	
A. T. Ralphs Co., Leeds, Eng.		Loose Leaf; p. 15	
Nolle's Works	74B	Cat. #19; p. 22	
Ward & Gent, Northampton, Eng.	188E		
Keats Mchy. Co., Frankfurt, Germany.		Cat. #24; p. 98	
Type 2.		" #24; p. 102	
" 3.		" #24; p. 89	
" 4.		" #24; p. 101	

Lasting Machine.

Atlas-Werke, Pohler & Co., Leipsic, Germany. (2 Types)	138B–191		
Gimson & Co., Ltd., Leicester, England. (2 Types)	5F–165		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	5E–56C		
Stand. Rot. Mch. Co., Ltd., Rushden & Northampton, Eng. (2 Types)	5X–95B		
A. Johnson & Sons, Paris, France.	66A		
The Boylston Mfg. Co., Boston, Mass.	192A		
The Louis G. Freeman Co., Cincinnati, O. (2 Types)	7A1–7A2		
Ward & Gent, Northampton, England.	188B		
Nolle's Works, Weisenfels, Germany.	139		
The Stand. Eng. Co., Leicester, England.	86		
Gimson & Co., Ltd., Leicester, England.		Cat. #6; p. 25	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 56 to 59

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Northampton Mchy. Co., Northampton, England.		Cat. #1; p. 14	
Universal Shoe Mchy. Co., Northampton, England.		Cat #2; p. 35	
Timson, Bullock & Barber, Kettering, England.		Cat. #5; p. 9	
Standard Rot. Mach. Co., Rushden & Northampton, England.			Ex. 320; p. 1
Standard Rot. Mach. Co., Rushden & Northampton, England.			Ex. 320, p. 12B
Standard Engineering Co., Leicester, England.		Cat. #10A; p. 4 " #10A; p. 5 " #10A; p. 18, 19, 21.	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 122 123, 124
Moenus Machine Works, Frankfurt, Germany.		Cat. #14A; p. 3	Ex. 318; Insert–63A Ex. 318; p. 66 and 68.
A. T. Ralphs, Leeds & Norwich, England.		Loose Leaf 14	
Nolle's Works, Weissenfels, a S. Germany.			
Type 1		Cat. #18; p. 3	
Type 2		Cat. #18; p. 4	
Type 3		Cat. #20; p. 11	
Keats Shoe Mchy. Co., Frankfurt a Main. Germany.			
Type 1		Cat. #22; p. 10	
Type 2		Cat. #22; p. 12	
Type 3		Cat. #24; p. 61	
Type 4		Cat. #24; p 89	
Nolle's Works, Weissenfels, a S., Germany.			
Type 4		Cat. #20; p. 11	
Type 5		Cat. #20; p. 11	
Ward & Gent, Northampton, Eng.	188B		

Laying Machine: Channel.

Amer. Worsted Mchy. Co., Abington, Mass.	1D		
Geo. Knight & Co., Brockton, Mass.	9J		
Stand. Rot. Mch. Co., Ltd., Rushden and Northampton, England.	7M–95L		Ex. 320; p. 9
Gimson & Co., Ltd., Leicester, Enlgand. (Type #1)		Cat. #6; p. 35L	
Gimson & Co., Ltd., Leicester, England. (Type #2)		Cat. #6; p. 41	
Gimson & Co., Ltd., Leicester, England. (Type #2)		Cat. #6; p. 42	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 95
Universal Shoe Mchy. Co., Ltd., Northampton, England.		Cat. #2; p. 49	
Job Lee Premier Works, Kettering, England.		Cat. #16; p. 5	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 148
Moenus Machine Works, Frankfurt, Germany. (Type #1)			Ex. 318; p. 106
Moenus Machine Works, Frankfurt, Germany. (Type #2)			Ex. 318; p. 124
Moenus Machine Works, Frankfurt, Germany. (Type #3)		Cat. #14A; p. 10	
Moneus Machine Works, Frankfurt, Germany.			Ex. 318; p. 65
Keats Machinery Co., Frankfurt, Germany. (Type #1)		Cat. #24; p. 75	
(Type #2)		Cat. #24; p. 84	
Nolle's Works, Weissenfels, Germany.		Cat. #18; p. 33	
Standard Eng. Co., Leicester, England.	86A	Cat. #10A; p. 14	

Laying Machine: McKay Welt.

Kimball Bros. & Sprague, Brockton, Mass.	36		
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 40

Laying Machine: Sole.

The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	5H–56F		
The Standard Eng. Co., Leicester, England.	50A		
Gimson & Co., Leicester, England.	5S	Cat. 6; p. 35E	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 141
Moenus Machine Works, Frankfurt, Germany.			Ex. 318; p. 76
Atlas-Werke, Pohler & Co., Leipsic, Germany.	129A–186		Ex. 319; p. 87
Standard Rotary Mch. Co., Rushden & Northampton, Eng.	5Y–95H		Ex. 320; p. 5
Universal Shoe Mchy. Co., Northampton, England.		Cat. 2; p. 42	
Nolle's Works, Weisenfels, Germany. Type 2		" 18; p. 8	
		" 20; p. 16	
Keats Machinery Co., Frankfurt, Germany. Type 2		" 24; p. 82	
		" 24; p. 83	
Standard Engineering Co., Leicester, England.	50A	" 17; p. 10	
		Loose Leaf #5	

Leveling Machine.

The Boylston Mfg. Co., Boston, Mass. (3 Types)	109–179–108		

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	193A		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56I		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	5M		
Ward & Gent, Northampton, Eng.	188D		
Gimson & Co., Ltd., Leicester, Eng.			
Type 1.		Cat. #6; p. 43	
Type 2.		" #6; p. 44	
Type 3.		" #7; p. 14	
Universal Shoe Mchy. Co., Northampton, Eng.		" #2; p. 50	
Standard Rotary Mch. Co., Northampton, Eng.	7N–95N		Ex. #320; p. 9A
Standard Engineering Co., Leicester, England.			
Type 1.		" #10A; p. 16	
Type 2.		" #10A; p. 17	
Type 3.		" #10B; p. 39	
A. Johnson et Ses Fils, Paris, France.		"	#317; p. 151
Moenus Machine Works, Frankfurt, Germany.			
Type 1.		"	#318; p. 126
Type 2		"	#318; p. 128
Type 3		" #14A; p. 10	
Atlas-Werke, Pohler Co., Leipsic, Germany.			
Type 1.		"	#319; p. 97
Type 2.		"	#319; p. 98
Standard Engineering Co., Leicester, England.		1 #10B; p. 39	
Keats Machinery Co., Frankfurt a Main, Germany.		Cat. #23; p. 69	
		" #23; p. 69	
		" #23; p. 70	
		" #23; p. 70	
		" #24; p. 75	
		" #24; p. 76	
		" #24; p. 91	
		" #22; p. 21	
Nolle's Works, Weissenfels a S., Germany.		" #18; p. 26	
Ward & Gent, Northampton, Eng.	188D		

Welt Outsole Stitcher.

The Boylston Mfg. Co., Boston, Mass.	192B		
Landis Mach. Co., St. Louis, Mo.	170 (Cat. p. 27)		Ex. 316; p. 161
Larsen Mchy. Co., Brooklyn, N. Y.			Ex. 316; p. 159
C. V. Engstrom Co., Peoria, Ill.			Ex. 316; p. 161A
Jas. Clark Lea. Co., St. Louis, Mo.	161		

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
		(Cat. p. 68–69–70)	
Union Lockstitch Co., E. Boston, Mass.	5J–44B		
Universal S. M. Co., St. Louis, Mo.	7L–95L		
Victor S. M. Co., Boston, Mass.	174D		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	5I–56A		
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	193C		
Gimson & Co., Ltd., Leicester, England, Type 1		Cat. 6; p. 35C	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type 1	189		Ex. 319; p. 91
" 2			Ex. 319; p. 92
Universal Shoe Mchy. Co., Northampton, Eng., Type 1		Cat. 2; p. 47	
Keats & Bexon, Ltd , Stafford, England.			
Type 1		Cat. 4; p. 3	
" 2		" 4; p. 4	
" 3		" 3; p. 12	
Standard Rot. Mch. Co., Northampton, England.	7K–95K		Ex. 320; p. 8
Standard Eng. Co., Leicester, Eng.			
Type 1		Cat. 9; p. 25	
" 2	50B	" 9; p. 39	
" 3		" 10; p. 33	
A. Johnson et Ses Fils, Paris, France.	66L		Ex. 317; p. 145
Moenus Machine Works, Frankfurt a Main, Germany.			
Type 1			Ex. 318; p. 96
" 2			Ex. 318; p. 100
" 3		Cat. 14A; p. 2–7	
" 4		" 14A; p. 6	
Job Lee Premier Works, Kettering, England.		Cat. 16; p. 10	
A. T. Ralphs, Leeds & Norwich, England.		Loose Leaf p. 15	
Adrian & Busch, Oberursel, Germany. (This concern offers a complete German Welt System for the manufacture of Goodyear Welt Shoes)		Cat. 23; p. A	
Nolle's Works, Weisenfels, Germany			
Type 1		Cat. 18; p. 7	
Type 2		Cat. 20; p. 16	
Keats Mchy. Co., Frankfurt a Main, Germany			
Type 1		Cat. 22; p. 15	
" 2		" 22; p. 16	
" 3		" 22; p. 17	
" 4		" 23; p. 65	
" 5		" 24; p. 72	
" 6		" 24; p. 73	

MOULDING MACHINE (For Outsoles and Turn Soles)

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
The Boylston Mfg. Co., Boston, Mass.	110		
Seelye Mfg. Co., Boston, Mass.	91F		
Quarmby & Hilliker, Lynn, Mass.	10D		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	5D		
Hamel S. Mchy. Co., Lynn & Haverhill, Mass.	159		
Gimson & Co., Leicester, England.			
Type #1		Cat. #7; p. 19	
Type #2		Cat. #6; p. 24	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type #1			Ex. 319; p. 63
Type #2			Ex. 319; p. 64
Type #3			Ex. 319; p. 78
Moneus Machine Works, Frankfurt, Germany.			
Type #1			Ex. 318; p. 45
Type #2			Ex. 318; p. 47
Moenus Machine Works, Frankfurt, Germany.			Ex. 318; p. 89
Standard Rotary Mach. Co., Rushden, Northampton, England.			Ex. 320; p. 22
Standard Eng. Co., Leicester, England.		Cat. #10B; p. 32	
Nolle's Works, Weissenfels, a S., Germany.		Cat. #18; p. 9	
Keats Mchy. Co., Frankfurt, a Main, Germany.		Cat. #23; p. 45	
Keats Mchy. Co., Frankfurt, a Main, Germany.		Cat. #24; p. 50	
Keats Mchy. Co., Frankfurt, a Main, Germany.		Cat. #24; p. 51	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 136

NAILING MACHINE: LOOSE.

Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	172A		
The R. H. Long Mchy. Co., So. Framingham, Mass.	56J		
Universal Shoe Mchy. Co., St. Louis, Mo.	7H–95P		
Victor Shoe Mchy. Co., Boston, Mass.	174A		
Gimson & Co., Leicester, Eng.			
Type 1		Cat. 6; p. 35N	
Type 2		Cat. 6; p. 36	
Standard Engineering Co., Leicester, Eng.			
Type 1		" 9; p. 51	
Type 2		" 9; p. 49	
A. Johnson et Ses Fils, Paris, France.			
Type 1			Ex. 317; p. 130
Type 2			Ex. 317; p. 172
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 73

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. 318; p. 198
Type 2		Cat. 14A; p. 10	
Type 3			Ex. 318; p. 120
Standard Rotary Machine Co., Rushden & Northampton, Eng.			Ex. 320; p. 17
Keats Machinery Co., Frankfurt, Germany.			
Type 1		" 24; p. 74	
Type 2		" 24; p. 110	
Nolle's Works, Frankfurt, Germany.		" 20; p. 14	
Universal Shoe Machinery Co., Northampton, Eng.		" 2; p. 80	

Opening Machine — Channel.

Amer. Worsted Mchy. Co., Abington, Mass.	1J		
Geo. Knight & Co., Brockton, Mass.	9K		
Gimson & Co., Ltd., Leicester, England.		Cat. 6; P. 35M & 107	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type 1			Ex. 319; P. 49
" 2			" 319; P. 90
Universal Shoe Mchy. Co., Northampton, England.		Cat. 2; p. 46	
		" 2; p. 71	
Job Lee Premier Works, Kettering, England.		Cat. 16; P. 8	
Standard Rotary Mch. Co., Rushden & Northampton, England.	7J		Ex. 320; P. 7 & 35
Standard Engineering Co., Ltd., Leicester, England.		Cat. 10A; P. 11	
		" 10B; P. 34	
A. Johnson et Ses Fils, Paris, France.			
Type 1			Ex. 317; P. 96
" 2			" 317; P. 144
Moenus Machine Works, Frankfurt, Germany.		Cat. 14A; P. 9	Ex. 318; P. 103
Nolle's Works, Weissenfels a S., Germany.			
Type 1		Cat. 18; P. 33	
" 2		" 20; P. 15	
Keats Mchy. Co., Frankfurt, Germany.			
Type 1		Cat. 24; P. 26	
" 2		" 24; P. 84	
" 3		" 24; P. 51	

Press — Veneer (For pressing Cemented Soles and Taps).

Jas. Busfield, Haverhill, Mass.	6E		
Keats Machinery Co., Frankfurt a M., Germany.			
Type 1		Cat. 24; p. 46	

PRESSING MACHINE: HEEL.

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Seelye Mfg. Co., Boston, Mass.	91B		
Atlas-Werke, Pohler & Co. Leipsic, Germany.			Ex. #319; p. 44
Nolle's Works, Weissenfels, a. S , Germany.		Cat. #18; p. 21	
Keats Machinery Co., Frankfurt a Main, Germany.		Cat. #24; p. 99	

PULLING MACHINE: TACK.

The Louis G. Freeman Co., Cincinnati, O. (2 Types)	78F–78A		
Standard Engineering Co., Leicester, England.		Cat. 10A; p. 7	
Nolle's Works, Weissenfels a S., Germany.		" 20; p. 12	

PULLING-OVER MACHINE.

Atlas-Werke, Pohler & Co., Leipsic, Germany.	71		Ex. 319; p. 55
Moenus Mch. Works, Frankfurt, Germany.	151	Cat. 14A; p. 1	
Ward & Gent, Northampton, England.	188A		
Gimson & Co., Ltd., Leicester, England.		Cat. 6; p. 27	
Universal Shoe Mchy. Co., Ltd., Northampton, England.		Cat. 2; p. 70	
Standard Rotary Mch. Co., Rushden & Northampton, England.			Ex. 320; p. 13
Standard Engineering Co., Leicester, England.		Cat. 10A; p. 19	
Nolle's Works, Weisenfels, Germany.	168	Cat. 18; pp. 1	
Keats Mchy. Co., Frankfurt a Main, Germany.		Cat. 22; p. 9	

PULLING & RESETTING MACHINE: TACK.

The Louis G. Freeman Co., Cincinnati, Ohio.	7B		
Standard Engineering Co., Leicester, England.		Cat. #10A; p. 7	
Nolle's Works, Weissenfels, a S., Germany.		" #20; p. 12	

REDUCING MACHINE.

Amer. Worsted Mchy. Co., Abington, Mass.	1F		
Geo. Knight & Co., Brockton, Mass.	9D		
Theo. Ringerbach, (3 Types) Cincinnati, Ohio.	126		
Standard Engineering Co., Leicester, England.			
Type 1		Cat. 10A; P. 10	
" 2		" 10A; P. 11	
A. Johnson et Ses Fils, Paris, France.			
Type 1			Ex. 317; P. 91
" 2			" 317; P. 140

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; P. 84
Job Lee Premier Works, Kettering, England.		Cat. 16; P. 11	
Moenus Machine Works, Frankfurt, Germany.			Ex. 318; P. 58
Keats Mchy. Co., Frankfurt a Main, Germany.			
Type 1		Cat. 24; P. 80	
" 2		" 23; P. 73	

Rolling Machine.

James Busfield, Haverhill, Mass.	6D		
Quarmby & Hilliker, Lynn, Mass.	10E		
Seelye Mfg. Co., Boston, Mass.	91D–95W		
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. 318; p. 12
Type 2			Ex. 318; p. 14
Gimson & Company, Leicester, England.			
Type 1		Cat. 6; p. 81	
Type 2		Cat. 6; p. 84	
Type 3		Cat. 6; p. 85	
Type 4		Cat. 6; p. 86	
Type 5		Cat. 6; p. 86	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type 1			Ex. 319; p. 141
Type 2			Ex. 319; p. 142
Type 3			Ex. 319; p. 143
Standard Engineering Co., Leicester, England.			
Type 1		Cat. 9; p. 46	
Type 2		Cat. 9; p. 47	
Keats & Bexon, Ltd., Stafford, England.			
Type 1		Cat. 4; p. 15	
Type 2		Cat. 4; p. 15	
Type 3		Cat. 4; p. 18	
Type 4		Cat. 4; p. 19	
Type 5		Cat. 3; p. 17	
Nolle's Works, Weissenfels, a S., Ger.			
Type 1		Cat. 18; p. 41	
Type 2		Cat. 20; p. 6	
Type 3		Cat. 20; p. 6	
Keats Machinery Company, Frankfurt a M., Germany.			
Type 1		Cat. 24; p. 39	
Type 2		Cat. 24; p. 39	
Standard Rotary Machine Co., Rushden & Northampton, England.			Ex. 320; p. 25

ROUGHING MACHINE: TAP.

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Peerless Machinery Co., Boston, Mass.	67J		
Keats Machinery Company, Frankfurt a M., Germany		Cat. 24; p. 51	

ROUGH ROUNDING & CHANNELING MACHINE.

Stand. Rot. Mch. Co., Ltd., Rushden and Northampton, Eng.	71–5K–95J		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56G		
Victor Shoe Mchy. Co., Boston, Mass.	174B		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	5V		
Moenus Machine Works, Frankfurt, Germany.			Ex. 318; p. 41
Type 2			" 318; p. 35
" 3			" 318; p. 101
Gimson & Co., Leicester, Eng.		Cat. 6; p. 35G	
Type 2		" 7; p. 12	
Standard Rotary Mch. Co., Rushden & Northampton, Eng.	71–5K–95J		" 320; p. 6
Type 2			" 320; p. 29
Atlas-Werke, Pohler & Co., Leipsic, Germany.			" 319; p. 87
			" 319; p. 88
Standard Engineering Co., Leicester, England.		Cat. 10A; p. 12	
Universal Shoe Mchy. Co., Northampton, England.		" 2; p. 44	
A. Johnson et Ses Fils, Paris, France.			" 317; p. 143
Moenus Machine Works, Frankfurt, Germany.		" 14A; p. 9	
Nolle's Works, Weissenfels, Germany.		" 20; p. 16	
Keats Machinery Co., Frankfurt, Germany.		" 24; p. 34	

ROUNDING MACHINE (Rounding Soles, Heel Seats and Taps)

The Louis G. Freeman Co., Cincinnati, Ohio.	8T–78D		
Cons. Rot. Rdr. Co., Cincinnati, Ohio			
Type 1	128A		
Type 2	128A		
The Boylston Mfg. Co., Boston, Mass.	8X–5A–95B2		
Amer. Worsted Mchy. Co., Abington, Mass.	1A		
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 27
Stephen Lucking, Chester, England.		Cat. 17; p. 13	
Universal Shoe Mchy. Co., Northampton, Eng.			
Type 1		" 2; p. 7	
Type 2		" 2; p. 8	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Standard Engineering Co., Leicester, Eng.		Cat. 10B; p. 9	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 78
Nolle's Works, Weissenfels, Germany.		" 18; p. 42	
Keats Mchy. Co., Frankfurt, Germany.		" 24; p. 38	
Gimson & Co., Ltd., Leicester, England.			
Type 1		" 6; p. 34	
" 2		" 7; p. 15	

Scarfing Machine: Spring Heel.

Thos. Bostock & Sons, Brockton, Mass.	21D	
Thos. J. Bowden & Son, Marblehead, Mass.	28	
W. J. Young Mchy. Co., Lynn, Mass.	152K	
Northampton Mchy. Co., Northampton, England.		Cat. #1; p. 8

Sewing Machine: Little McKay Turn.

George Hobbs, Boston, Mass.	177	

Sewing Machine: McKay.

Shawmut Machinery Co., Boston, Mass.		
Haverhill Supply Co., Haverhill, Mass.		
Louis G. Freeman, Cincinnati, Ohio.		
E. E. Spencer & Co., New York, N. Y.		
Manufacturers' Supply Co., St. Louis, Mo.		
J. W. White & Co., Haverhill, Mass.		
Lynn Supply Co., Lynn, Mass.		
Amer. Worsted Mchy. Co., Abington, Mass.	1K	
Walter Pearson, Whitman, Mass.	23A	
Standard Rotary Mach. Co., Rushden & Northampton, England.		Ex. #320; p. 16
Gimson & Co., Leicester, England.		Cat. 6; p. 38
Standard Engineering Co., Leicester, England.		
Type 1		" #9; p. 35
Type 2		" #9; p. 36
Atlas-Werke, Pohler & Co., Leipsic, Germany.		
Type 1		Ex. #319; p. 68
Type 2		" #319; p. 69
Type 3		" #319; p. 71
Type 4		" #319; p. 69
A. Johnson et Ses Fils, Paris, France.	66B	" #317; p. 131
Job Lee Premier Works, Kettering, Eng.		Cat. #16; p. 15
Keats & Bexon, Ltd., Stafford, England.		
Type 1		" #4; p. 2
Type 2		" #4; p. 3

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Keats Mchy. Co., Frankfurt a M., Germany.			
Type 1		Cat. #24; pp. 69–71	
Type 2		" #22; p. 23	
Nolle's Works, Weissenfels, Germany.			
Type 1	130A	" #18; p. 13	
Type 2		" #18; p. 14	
Universal Shoe Mchy. Co., Northampton, Eng.		" #2; p. 73	
Moenus Machine Works, Frankfurt a M., Germany.			Ex. #318; p. 78

Sewing Machine — Welt & Turn.

Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	178C		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	7C–5A–95C		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56B		
Universal Shoe Mchy. Co., St. Louis, Mo.	7D–95D		
Boylston Mfg. Co., Boston, Mass.	192–E		
Gimson & Co., Ltd., Leicester, England.			
Type 1		Cat. #6; p. 35A	
Type 2		Cat. #7; p. 6	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type 1			Ex. #319; p. 79
Type 2			Ex. #319; p. 80
Universal Shoe Mchy. Co., Northampton, England.			
Type 1		Cat. #2; p. 36	
Type 2		Cat. #2; p. 38	
Adrian & Busch, Oberursel, near Frankfurt, Germany. (This concern offers a complete German Welt System for the manufacture of Goodyear Welt Shoes.)		Cat. #23; p. B	
Standard Engineering Co., Leicester, England.			
Type 1	50C	Cat. #10A; p. 6	
Type 2		Cat. #10B; p. 40	
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. #318; p. 88
Type 2			Ex. #318; p. 94
Type 3		Cat. #14A; p. 2 and 7.	
Standard Rot. Mach. Co., Northampton, England.			Ex. #320; p. 2
A. Johnson et Ses Fils, Paris, France.	66D		Ex. #317; p. 138
Keats Machinery Co., Frankfurt a Main, Ger.			
Type 1		Cat. #22; p. 13	
Type 2		Cat. #22; p. 14	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Nolle's Works, Weissenfels, a S., Germany.			
Type 1		Cat. #18; p. 5	
Type 2		Cat. #20; p. 15	
Ward & Gent, Northampton, England.	188C		

Skiving Machine (Tap Skiving, Welt and Rand Splitting).

Victor Shoe Mchy. Co., Boston, Mass.	174C		
James Busfield, Haverhill, Mass.	6F		
Amer. Worsted Mchy. Co., Abington, Mass. (2 Types)	2G–2J		
Gimson & Company, Ltd., Leicester, England.		Cat. 6; p. 100	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 30
Universal Shoe Mchy. Co., Northampton, England.			
Type 1		Cat. 2; p. 13	
Type 2		Cat. 2; p. 71	
Keats & Bexon Company, Stafford, England.			
Type 1		Cat. 4; p. 15	
Type 2		Cat. 4; p. 16	
Type 3		Cat. 3; p. 17	
Job Lee Premier Works, Kettering, England.		Cat. 16; p. 7	
Standard Rotary Machine Co., Northampton, England.			
Type 1			Ex. 320; p. 49
Type 2			Ex. 320; p. 32
Type 3		Cat. 11; p. 8	
Standard Engineering Company, Leicester, England.			
Type 1		Cat. 10; p. 40	
Type 2		Cat. 10B; p. 56	
Moenus Machine Works, Frankfurt, Germany.			Ex. 318; p. 100
Nolle's Works, Weissenfels, a S., Ger.		Cat. 18; p. 34	
Keats Machinery Company, Frankfurt a M., Germany			
Type 1		Cat. 24; p. 47	
Type 2		Cat. 24; p. 47	
Type 3		Cat. 24; p. 49	
Type 4		Cat. 24; p. 52	
Type 5		Cat. 24; p. 89	

Slashing Machine: McKay Welt.

Thos. Bostock & Sons, Brockton, Mass.	21G
A. G. Brewer, Natick, Mass.	105
William Knipe, Ward Hill, Mass.	167

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
James Busfield, Haverhill, Mass.	6G		
Nolle's Works, Weissenfels, Ger.		Cat. 20; p. 6	

Slugging Machine: Heel.

The Boylston Mfg. Co., Boston, Mass.	192C		
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	8Q–95N2		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56K		
Gimson & Co., Ltd., Leicester, England.			
Type 1		Cat. #6; p. 50A	
Type 2		" #7; p. 17	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type 1			Ex. 319; p. 111
Type 2			" 319; p. 112
Northampton Mchy. Co., Ltd., Northampton, England.		" #1; p. 5	
Universal Shoe Mchy. Co., Ltd., Northampton, England.		" #2; p. 65	
Timson, Bullock & Barber, Kettering, England.		" #5; p. 23	
Standard Rotary Machine Co., Rushden & Northampton, Eng.			Ex. 320; p. 21
A. T. Ralphs, Leeds & Norwich, Eng.		Loose Leaf 14	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 173
Moenus Machine Works, Frankfurt, Germany.			
Type 1			Ex. 318; p. 147
Type 2			" 318; p. 149
Type 3		Cat. 14A; p. 13	
Nolle's Works, Weissenfels, Germany.			
Type 1		" 18; p. 24	
Type 2		" 18; p. 25	
Keats Machinery Co., Frankfurt, Germany.		" 24; p. 98	

Splitting Machine.

The American Tool & Mch. Co., Boston, Mass.	5A
James Busfield, Haverhill, Mass. (2 Types)	6A–6F
J. S. Wheeler & Co., Boston, Mass.	41A
Seelye Mfg. Co., Boston, Mass.	91C–95V
Quarmby & Hilliker, Lynn, Mass.	10F
American Worsted Mchy. Co., Abington, Mass. (2 Types)	2G
Lacene Mfg. Co., Manchester, N. H.	77

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
The Turner Tanning Mchy. Co., Peabody, Mass.	119		
W. J. Young Mchy. Co., Lynn, Mass.	185		
Gimson & Company, Ltd., Leicester, Eng.		Cat. 6; p. 6 & 95	
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 28–31
Universal Shoe Machinery Co., Ltd., Northampton, Eng.		" 2; p. 12 p. 14 p. 15	
Keats & Bexon, Ltd., Stafford, Eng.		" 4; p. 16	
Job Lee Premier Works, Kettering, Eng.		" 16; p. 12	
Standard Rotary Machine Co., Rushden & Northampton, Eng.			Ex. 320; p. 3A p. 30B p. 30
E. Mills & Co., Ltd., Kettering, Eng.		" 17; p. 4	
Standard Engineering Co., Leicester, Eng.		" 9; p. 45	
		" 10B; p. 12 & 13	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 80 & 81
Moenus Machine Works, Frankfurt, Germany.		" 318; p. 37	
		" 14A; p. 5	
Keats Machinery Company, Frankfurt a Main, Germany.		" 22; p. 4	
Keats Machinery Co., Frankfurt a Main, Germany.		" 24; p. 40	
Keats Machinery Co., Frankfurt a Main, Germany.		" 24; p. 40	
Type 4		" 24; p. 41	
Type 5		" 24; p. 41	
Type 6		" 24; p. 41	
Type 7		" 24; p. 41	
Type 8		" 24; p. 42	
Type 9		" 24; p. 43	
Type 10		" 24; p. 88	
Nolle's Works, Weissenfels, a S., Germany.		" 20; p. 6	
Nolle's Works, Weissenfels, a S., Germany.		" 20; p. 8	

STRIPPING MACHINE (Cutting Leather or Leatherboard into Strips).

Quarmby & Hilliker, Lynn, Mass.	10C		
Parsons Mch. Co., Marlboro, Mass.	13		
Seelye Mfg. Co., Boston, Mass.	91E		
Tower Bros., Hudson, Mass.	3E		
W. J. Young Mchy. Co., Lynn, Mass.	62I		
Gimson & Co., Ltd., Leicester, England.		Cat. 6; p. 92	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Standard Engineering Co., Ltd., Leicester, England.		Cat. 10A; p. 8	
Standard Engineering Co., Leicester, Eng.		" 10B; p. 10	
		" 10B; p. 11	
Moenus Machine Works, Frankfurt, Germany.			Ex. 18; p. 10
Nolle's Works, Weissenfels a S. Germany.		" 20; p. 6	

TACKING MACHINE (Tacking Soles and Heel Rands).

Universal Shoe Mchy. Co., St. Louis, Mo.	88–95I		
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	193B		
The Louis G. Freeman Co., Cincinnati, Ohio.	7A–95A		
Victor Shoe Mchy. Co., Boston, Mass.	174A		
Gimson & Co., Leicester, Eng.		Cat. #6; P. 28	
Moenus Machine Works, Frankfurt, Ger.			
Type 1			Ex. 318; p. 70
Type 2			Ex. 318; p. 72
Type 3			Ex. 318; p. 74
Standard Rotary Mch. Co., Rushden & Northampton, Eng.			
Type 1			Ex. 320; p. 11
Type 2			Ex. 320; p. 14
Type 3			Ex. 320; p. 14A
Atlas-Werke, Pohler & Co., Leipsic, Ger.			
Type 1			Ex. 319; p. 53
Type 2			Ex. 319; p. 54
Type 3			Ex. 319; p. 65
Type 4			Ex. 319; p. 66
Standard Engineering Co., Leicester, Eng.		Cat. 10A; p. 21	
A. Johnson et Ses Fils, Paris, France			
Type 1	66A		Ex. 317; p. 126
Type 2	66A		Ex. 317; p. 127
Moenus Machine Works, Frankfurt, Ger.		Cat. 14A; p. 12	
Universal Shoe Mchy. Co., Northampton, Eng.			
Type 1		" 2; p. 60	
Type 2		" 2; p. 61	
		" 2; p. 72	
Timson, Bullock & Barber, Kettering, England.			
Type 1		" 5; p. 11	
Type 2		" 17; p. 21	
Nolle's Works, Weissenfels, Ger.			
Type 1		" 18; p. 10	
Type 2		" 18; p. 11	
Type 3		" 18; p. 12	
Type 4		" 20; p. 10	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Type 5		Cat. 20; p. 10	
Type 6		" 20; p. 12	
Type 7		" 20; p. 14	
Type 8		" 20; p. 14	
Keats Mchy. Co., Frankfurt, Ger.			
Type 1		" 24; p. 48	
Type 2		" 24; p. 61	
Type 3		" 24; p. 63	
Type 4		" 24; p. 64	
Type 5		" 24; p. 85	

Thin Edge Machine.

Theo. Ringenbach, Cincinnati, O.	126		

Trimming Machine: Inseam.

A. Johnson & Sons, Paris, France	66C		
The Keighley Co., Inc., Vineland, N. J.	7F–95F		
Standard Engineering Co., Leicester, England.		Cat. #17; p. 25	

Turning Machine: Heel Rand.

Thos. Bostock & Sons, Brockton, Mass.	21E		
Amer. Worsted Mchy. Co., Abington, Mass.	1H		
James Busfield, Haverhill, Mass.	6B		
Gimson & Co., Leicester, England.		Cat. 6; p. 101	
Atlas-Werke, Pohler & Co., Leipsic, Germany			Ex. 319; p. 38
Northampton Machinery Co., Northampton, Eng.		" 1; p. 6	
Timson, Bullock & Barber, Kettering, England		" 5; p. 19	
A. Johnson et Ses Fils, Paris, France.			Ex. 317; p. 162
Nolle's Works, Weissenfels a S., Germany.		" 20; p. 16	

Turning Machine: Lip of Insole.

American Worsted Mchy. Co., Abington, Mass.	1I		
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	178A		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	8Z–5C–95Y		
George Knight & Co., Brockton, Mass.	9F		
The R. H. Long Mchy. Co., Inc., So. Framingham, Mass.	56L		
Northampton Shoe Mchy. Co., Ltd., Northampton, Eng.		Cat. #1 p 18	
Nolle's Works, Weisenfels a S. Germany		" #20; p. 15	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Keats Mchy. Co., Frankfurt, a M., Germany		Cat. #24; p. 88	
Standard Engineering Co., Leicester, Eng.		" #10A; p. 9	

Turning Machine: Lip Gem Insole.

American Worsted Mchy. Co., Abington, Mass.	1I		
Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.	178A		
Haverhill Shoe Mchy. Co., Haverhill, Mass.	8Z–5C–95Y		
George Knight & Co., Brockton, Mass.	9F		
The R. H. Long Machy. Co., Inc., So. Framingham, Mass.	56L		
Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. 319; p. 46
Nolle's Works, Weissenfels a S., Ger.		Cat. 20; p. 16	

Insole Reinforcing Machine.

Atlas-Werke, Pohler & Co., Leipsic, Germany.			Ex. #319; p. 47
Moenus Machine Works, Frankfurt, a M., Germany.		Cat. #14A; p. 3	

Pegging Machine.

Atlas-Werke, Pohler & Co., Leipsic, Germany.			
Type 1.			Ex. #319; p. 74
Type 2.			" #319; p. 75
Type 3.			" #319; p. 76
Moenus Machine Works, Frankfurt, Germany.		Cat. #14A; p. 6	" #318; p. 116
Gimson & Co., Leicester, Eng.		" #6; p. 47	
Nolle's Works, Weissenfels, Germany.		" #18; p. 49	
Keats Mfg. Co., Frankfurt, Germany.			
Type 1.		" #22; p. 24–25	
Type 2.		" #23; p. 67	
Type 3.		" #24; p. 64–74	

Pounding & Trimming Machine.

Gimson & Co., Ltd., Leicester, England.		
Type 1	Cat. #6; p. 27A	
Type 2	" #6; p. 27B	
Standard Engineering Co., Leicester, England.		
Type 1	Loose Leaf; p. 6	
Type 2	" " ; p. 5	
	Cat. #17; p. 10	
Atlas-Werke, Pohler & Co., Leipsic, Germany.	" #13; p. 61	

Manufacturer's Name and Location	Defts. Exhibit No. 321 (Letters, Booklets, etc.) Page	Defts. Exhibit No. 311 (Catalogues) Number and page of Catalogue	Referred to in Miscellaneous Individual Catalogues
Moenus Machine Works, Frankfurt, a M., Germany.		Cat. #14A; p. 4A	
Keats Machine Co., Frankfurt, a M., Germany.		" #22; p. 22	

Screwing Machine: Standard.

Gimson & Co., Leicester, England.		Cat. #6; p. 39	
Nolle's Works, Weissenfels, Germany.		" #20; p. 15	
Standard Rotary Mach. Co., Rushden & Northampton, England.		" #12; p. 15	Ex. #320; p. 15
Keats Mchy. Co., Frankfurt, a M., Germany.		" #24; p. 73	
Universal Shoe Mchy. Co., Northampton, England.		" #2; p. 81	
Moenus Machine Works, Frankfurt a M., Germany		" #14A; p. 11A	
Atlas-Werke, Pohler & Co., Leipsic, Germany.		" #13; p. 72	
Moenus Machine Works, Frankfurt a M., Germany.		" #14A; p. 11	

U. S. District Court, Mass. Dist.
No 301, Eq.
United States
v.
United Shoe Machinery Co. et al.
Deft Exhibit 338
Nov. 4, 1914 [illegible] Special Examiner.

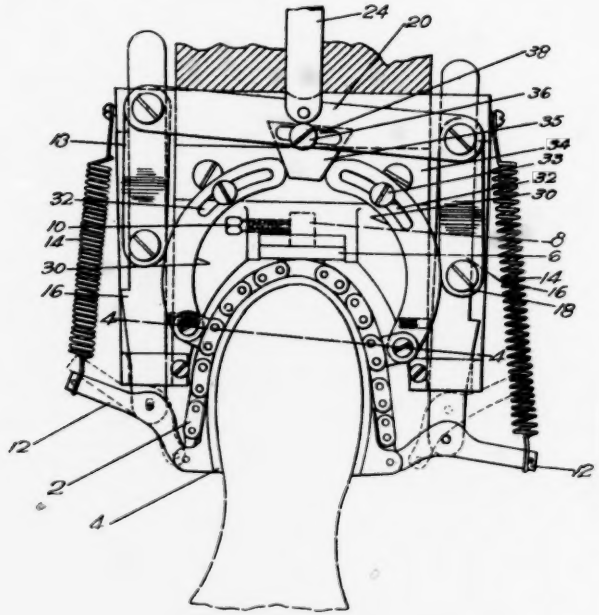
937

S. SNOW.
LASTING MACHINE.
APPLICATION FILED SEPT. 5, 1908.

946,708.

Patented Jan. 18, 1910.
3 SHEETS—SHEET 2.

Fig. 3.



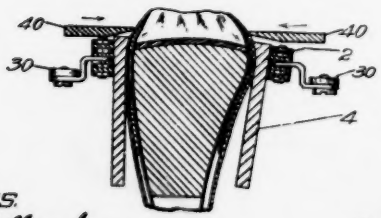


Fig. 4

WITNESSES.
Edith C. Holbrook
Bertha M. Hutchinson.

INVENTOR.
Stephen Snow
by Fish Attorney,
Nelson W. Howard

U. S. District Court, Mass. Dist.
No. 301 Eq.
United States
v.
United Shoe Machinery Co. et al.
Exhibit 339
Dec. 4, 1911

939

E. F. HEFFERNAN.

HOLDDOWN ATTACHMENT FOR LASTING MACHINES.

APPLICATION FILED MAY 18, 1909.

947,818. Patented Feb. 1, 1910.

Fig. 1.

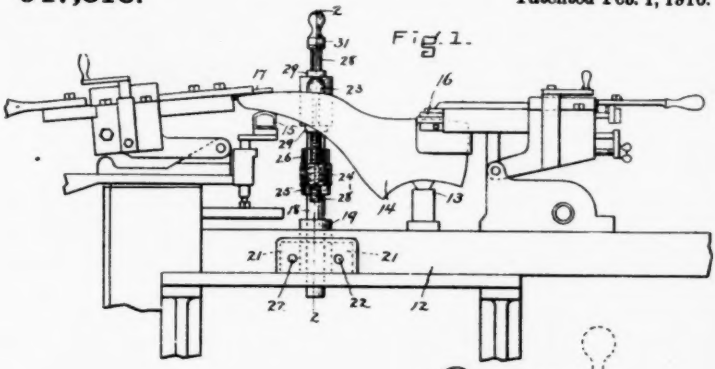
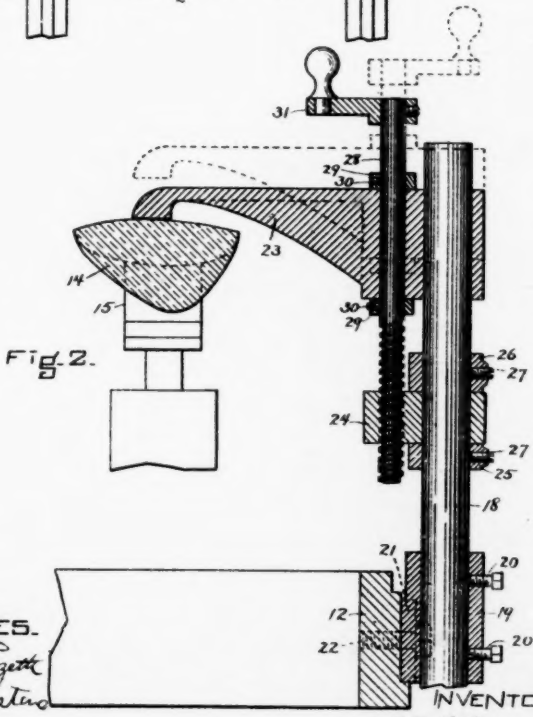


Fig. 2.



WITNESSES.
P. H. Fogarty
F. R. Pinkerton

INVENTOR.
E. F. Heffernan
by Wright Brown Quinby & May
Attys.

DEFENDANTS' EXHIBIT 341.

[Put in Evidence, page 4944.]

PLANT U. S. PATENTS CLAIMING INVENTIONS EMBODIED IN PLANT MACHINES.

UPPER CLICKING MACHINE (Plant catalog page 14)

1,030,621 June 25, 1912 — Stewart. General organization.

LIP CUTTER (Plant catalog page 16)

957,959 May 17, 1910 — Hooper. Cutting diagonal slit in channel lip.

INNERSOLE LIP WETTER (Plant catalog page 18)

957,961 May 17, 1910 — Hooper. Concaved grooved tempering roll.

DOUBLE LIP CHANNEL OPENER (Plant catalog page 20)

940,019 Nov. 16, 1909 — Hooper. Particular structure.

SINGLE LIP INNERSOLE CHANNEL OPENER & EDGE COMPRESSOR (Plant catalog page 22)

940,020 Nov. 16, 1909 — Hooper. Edge compression wheel and lip turning tool.

INNERSOLE LIP CUTTER & MARKER (Plant catalog page 24)

958,028 May 17, 1910 — Stewart. General construction for marking the sole to determine commencement and ending of work.

Appln. Ser. No. 412,391 Jan. 24, 1908 — Plant. Cuts channel lip transversely at heel seat, contours heel seat and marks size.

INNERSOLE FLEXOR (Plant catalog page 26)

871,967 Nov. 26, 1907 — Stewart. General organization.

958,029 May 17, 1910 — Stewart. Commercial form of machine.

871,969 Nov. 26, 1907 — Stewart. General construction including the knife for making transverse and longitudinal slashes.

CLOTH CEMENTING POT & DRYING CREEL (Plant catalog page 28)

957,990 May 17, 1910 — McLeod. Cutting and slitting insole reinforcing strips.

958,284 May 17, 1910 — Plant. Canvas cementer.

WELT INNERSOLE (Plant catalog page 30)

958,013 May 17, 1910 — Ryan. Innersole reinforced by slit canvas.

878,453 Feb. 4, 1908 — Bohr. Consolidated edge.

871,968 Nov. 26, 1907 — Stewart. Sole with transverse incisions oblique to the surface.

INNERSOLE CLOTH PLACER (Plant catalog page 34)

883,837 Apr. 7, 1908 — Stewart. General construction.

965,342 July 26, 1910 — Stewart. Commercial form.

INNERSOLE CLOTH TUCKER & LIP TRIMMER (Plant catalog page 36)

945,348 Jan. 4, 1910 — Stanbon. General construction for tucking reinforcing material into the channel by vibrating tucking tool.

940,690 Nov. 23, 1909 — Hooper. Particular construction.

944,239 Dec. 21, 1909 — Hooper. Guides for controlling movement of work.

SOLE ROUNDER (Plant catalog page 38)

874,505 Dec. 24, 1907 — Heys. Knife movement.

958,024 May 17, 1910 — Stanbon. General construction.

944,386 Dec. 28, 1909 — Stanbon. Knife mounting.

OUTSOLE MARKER (Plant catalog page 40)

958,028 May 17, 1910 — Stewart. General construction.

958,033 May 17, 1910 — Stewart. Commercial form.

OUTSOLE FLEXOR (Plant catalog page 42)

958,285 May 17, 1910 — Plant. General organization.

GRINDER (Plant catalog page 44)

958,030 May 17, 1910 — Stewart. Particular construction.

TACKER (Plant catalog page 48)

957,948 May 17, 1910 — Glass. Two-part raceway.

FAIR STITCH WELT ATTACHER (Plant catalog page 50)

957,987 May 17, 1910 — McLeod. Mechanical construction.

TOP LIFT COMPRESSOR (Plant catalog page 52)

966,485 Aug. 9, 1910 — Stanbon. Top lift compressing and ejecting mechanism.

LASTING BENCH (Plant catalog page 54)

Appln. Ser. No. 524,952 Oct. 27, 1909 — McLeod.

PULLER OVER & TIP MEASURER (Plant catalog page 56)

957,955 May 17, 1910 — Heys. Tip measurer.

Appln. Ser. No. 343,458 Nov. 14, 1906 — Stewart. General organization.

RAPID SIDE LASTER (Plant catalog page 60)

945,291 Jan. 4, 1910 — Seely. General organization.

958,017 May 17, 1910 — Seely. Pincer jaws.

958,286 May 17, 1910 — Plant. Auxiliary lasting devices.

SPEED HAND LASTER (Plant catalog page 62)

958,034 May 17, 1910 — Stewart. Rotary jack.

957,948 May 17, 1910 — Glass. Two-part raceway.

958,002 May 17, 1910 — Phelan. Pneumatic tacker.

TOE & HEEL LASTER (Plant catalog page 66)

958,291 May 17, 1910 — Plant. General organization of grippers (Reissue 13,507, Jan. 7, 1913)

958,280 May 17, 1910 — Plant. General construction.

957,949 May 17, 1910 — Glass. General construction.

957,948 May 17, 1910 — Glass. Two-part raceway.

958,083 May 17, 1910 — Bohr. Hold-down.

888,485 May 26, 1908 — Glass. Hand tacker.

Appln. Ser. No. 529,313 July 5, 1906 — Phelan.

TURN HEEL LASTER (Plant catalog page 70)

958,291 May 17, 1910 — Plant.

(Reissue No. 13,507 Jan. 7, 1913) General organization.

958,280 May 17, 1910 — Plant. General construction.

957,949 May 17, 1910 — Glass. General construction.

957,948 May 17, 1910 — Glass. Two-part raceway.

888,485 May 26, 1908 — Glass. Hand tacker.

924,967 June 15, 1909 — Condon. Heel pad.

STAPLE TACKER (Plant catalog page 72)

883,824 Apr. 7, 1908 — Phelan. Staple forming and driving means.

871,991 Nov. 26, 1907 — Glass. Staple forming and driving means.

McKay Stitcher (Plant catalog page 76)

940,052 Nov. 16, 1909 — Plant. Stopping by reversing.

Heel Seat Nailer (Plant catalog page 78)

958,293 May 17, 1910 — Plant. Mechanical construction.

958,303 May 17, 1910 — Plant. Safety device.

Welt Slasher & Groover (Plant catalog page 82)

966,484 Aug. 9, 1910 — Stanbon. General construction.

Appln. Ser. No. 309,109 Mar. 31, 1906 — Stanbon. Welt guiding.

Tack Puller & Baster (Plant catalog page 84)

940,052 Nov. 16, 1909 — Plant. Stopping by reversing.

958,295 May 17, 1910 — Plant. Mechanism for hand control.

940,691 Nov. 23, 1909 — Hooper. Channel-moistening device.

Appln. Ser. No. 508,436 July 13, 1909 — Plant. General construction.

Welter (Plant catalog page 86)

947,401 Jan. 25, 1910 — Plant. Welt guide.
(Reissue 13,374 Jan. 25, 1912)

946,783 Jan. 18, 1910 — Plant. Thread controller.

958,295 May 17, 1910 — Plant. Hand control.

958,297 May 17, 1910 — Plant. Welt holder.

958,298 May 17, 1910 — Plant. Welt cutting and measuring.

877,858 Jan. 28, 1908 — Plant. Welt and thread cutting mechanism.

877,859 Jan. 28, 1908 — Plant. Welt measuring mechanism.

958,299 May 17, 1910 — Plant. Diagonally moving welt guide.

965,379 July 26, 1910 — Eaton. Wax pot.

940,724 Nov. 28, 1909 — Plant. Feeler back gage.

940,052 Nov. 16, 1909 — Plant. Stopping by reversing.

940,053 Nov. 16, 1909 — Plant. Welt guide and feeler back gage.

1,018,130 Feb. 20, 1912 — Plant. Loop casting.

Welt Beater (Plant catalog page 90)

901,446 Oct. 20, 1908 — Heys. The particulars of structure.

WELT MARKING SNIPPERS (Plant catalog page 92)

885,099 Apr. 21, 1908 — Stewart. General organization.
861,178 July 23, 1907 — Hooper, Welt edge notching.
861,180 July 23, 1907 — Hooper. Method of notching welt.

CUSTOM SOLE LAYER (Plant catalog page 96)

939,372 Nov. 9, 1909 — Woodward. General organization.
966,506 Aug. 9, 1910 — Woodward. General character of jack.
958,057 May 17, 1910 — Woodward. General construction for direct and progressive pressure.
958,301 May 17, 1910 — Plant. Sliding jack support.
958,278 May 17, 1910 — Plant. Jack.
1,041,668 Oct. 15, 1912 — Plant. General organization.
958,283 May 17, 1910 — Plant. General organization.
965,224 July 26, 1910 — Plant. Detachable form.

ROUGH ROUNDER (Plant catalog page 100)

878,478 Feb. 4, 1908 — English. General organization.
871,987 Nov. 26, 1909 — English. General construction.

HEEL SEAT DINKER (Plant catalog page 102)

1,005,545 Oct. 10, 1911 — Heys. Conforming knife to heel seat.
1,005,573 Oct. 10, 1911 — Phelan. Conforming knife to heel seat.

SHOE CHANNELER (Plant catalog page 106)

865,957 Sept. 10, 1907 — Stanbon. General organization.
958,027 May 17, 1910 — Stewart. General construction.

LIP TURNER (Plant catalog page 108)

947,509 Jan. 25, 1910 — Hooper. Tool.

OUTSOLE WETTER (Plant catalog page 110)

957,992 May 17, 1910 — McLeod. Details of structure.

STITCHER (Plant catalog page 112)

940,052 Nov. 16, 1909 — Plant. Stopping by reversing.
940,054 Nov. 16, 1909 — Plant. Presser foot release.
940,055 Nov. 16, 1909 — Plant. Looper guard.
940,725 Nov. 23, 1909 — Plant. Fudge stitch.
940,726 Nov. 23, 1909 — Plant. Stitch set.

958,294 May 17, 1910 — Plant. Fudge stitch.
958,295 May 17, 1910 — Plant. Hand control.
958,296 May 17, 1910 — Plant. Tilt preventer.
940,723 Nov. 23, 1909 — Plant. Fudge stitch.
935,230 Sept. 28, 1909 — Plant. Bobbin winder.
935,263 Sept. 28, 1909 — LaChapelle. Bobbin winder.

REVERSIBLE ROLL CHANNEL LAYER (Plant catalog page 116)
861,179 July 23, 1909 — Hooper. Channel flap layer.

LOOSE NAILER (Plant catalog page 118)
996,065 June 27, 1911 — Cummings. Nail feed.
940,745 Nov. 23, 1909 — Stewart. Jack post.
958,036 May 17, 1910 — Stewart. General organization.
958,040 May 17, 1910 — Stewart. Horn control.

LEVELLER (Plant catalog page 120)
874,504 Dec. 24, 1907 — Heys. Vibrating levelling roll.
939,372 Nov. 9, 1909 — Woodward. General organization.
966,506 Aug. 9, 1910 — Woodward. General character of jack.
958,057 May 17, 1910 — Woodward. General construction for direct and progressive pressure.
958,301 May 17, 1910 — Plant. Sliding jack support.
958,278 May 17, 1910 — Plant. Jack.
1,041,668 Oct. 15, 1912 — Plant. General organization.
958,283 May 17, 1910 — Plant. General organization.
965,224 July 26, 1910 — Plant. Detachable form.

HEEL LOADER (Plant catalog page 122)
947,366 Jan. 25, 1910 — Woodward. Roller raceway.
958,302 May 17, 1910 — Plant. General organization.
958,037 May 17, 1910 — Stewart. Nail assorting and delivering mechanism.
944,389 Dec. 28, 1909 — Stewart. Heel holder.
958,305 May 17, 1910 — Plant. Heel carrier.
958,039 May 17, 1910 — Stewart. Nail assorting and delivering mechanism.
958,289 May 17, 1910 — Plant. Oiling mechanism.
958,058 May 17, 1910 — Woodward. Raceway.

HEEL ATTACHER ON WOOD LASTS (Plant catalog page 125)

958,292 May 17, 1910 — Plant. General organization.
958,281 May 17, 1910 — Plant. Gluing attachment.
958,282 May 17, 1910 — Plant. General organization.
958,041 May 17, 1910 — Stewart. Top lift holder.
958,300 May 17, 1910 — Plant. Commercial form.
958,005 May 17, 1910 — Phelan. Forepart gages.
957,986 May 17, 1910 — McLeod. Gage.
958,306 May 17, 1910 — Plant. Forepart gages.
944,389 Dec. 28, 1909 — Stewart. Centering gage.
958,042 May 17, 1910 — Stewart. Jack.
940,722 Nov. 23, 1909 — Plant. Jack.

HEELER (Plant catalog page 124)

958,292 May 17, 1910 — Plant. General organization.
958,281 May 17, 1910 — Plant. Gluing attachment.
958,282 May 17, 1910 — Plant. General organization.
958,041 May 17, 1910 — Stewart. Top lift holder.
958,300 May 17, 1910 — Plant. Commercial form.
958,005 May 17, 1910 — Phelan. Forepart gages.
957,986 May 17, 1910 — McLeod. Gage.
958,306 May 17, 1910 — Plant. Forepart gages.
944,389 Dec. 28, 1909 — Stewart. Centering gage.

HEEL SLUGGER (Plant catalog page 128)

946,825 Jan. 18, 1910 — Plant. Particulars of structure.
958,303 May 17, 1910 — Plant. Hand control.
958,032 May 17, 1910 — Stewart. Grinder.

HEEL BREASTER (Plant catalog page 130)

958,005 May 17, 1910 — Phelan. Knife arresting means, broadly.
958,306 May 17, 1910 — Plant. Knife arresting means.
Appln. Ser. No. 501,449 June 11, 1909 — Plant General construction.
Appln. Ser. No. 560,239 May 9, 1910 — Plant. Wedge stop for knife.

HEEL SHAVER (Plant catalog page 132)

957,943 May 17, 1910 — Eno. Counter guard.
958,006 May 17, 1910 — Phelan. Knife adjustment.

HEEL SCOURER (Plant catalog page 136)

957,993 May 17, 1910 — McLeod. Heel edge liner.

883,445 Mar. 31, 1908 — Bohr. Heel scourer guard.

EDGE TRIMMER (Plant catalog page 138)

957,960 May 17, 1910 — Hooper. Knife mounting.

965,223 July 26, 1910 — Plant. Dust gatherer.

STITCH INDENTER & BURNISHER (Plant catalog page 140)

860,376 July 16, 1907 — Heys. Stitch impression means.

860,377 July 16, 1907 — Heys. General construction.

EDGE SETTER (Plant catalog page 144)

958,026 May 17, 1910 — Stewart. Particulars of structure.

BOTTOM BUFFING MACHINE (Plant catalog page 146)

958,288 May 17, 1910 — Plant. Dust gatherer.

TOP LIFT SCALLOPER (Plant catalog page 148)

Appln. Ser. No. 524,951 Oct. 27, 1909 — McLeod. General construction.

TWIN BOTTOM CLEANER (Plant catalog page 150)

871,942 Nov. 26, 1907 — Leavitt. Pad.

871,990 Nov. 26, 1907 — Gelzenlichter. Cover applying.

871,964 Nov. 26, 1907 — Stewart. Disk holder.

871,965 Nov. 26, 1907 — Stewart. Pad cover.

871,962 Nov. 26, 1907 — Stewart. Suction valve operated by starting and stopping.

HEEL WAXER & BURNISHER (Plant catalog page 152)

966,471 Aug. 9, 1910 — Plant. Particulars of waxing devices.

966,472 Aug. 9, 1910 — Plant. Particular construction.

SEAT BEADER (Plant catalog page 154)

944,294 Dec. 28, 1909 — Stewart & Hooper. Flexible work presser.

HARD FINISHER & BRUSH CLEANER (Plant catalog page 156)

957,989 May 17, 1910 — McLeod. Brush cleaning means.

TREEING MACHINE (Plant catalog page 160)

957,962 May 17, 1910 — Hooper. General organization.

957,963 May 17, 1910 — Hooper. Particular structure.

957,964 May 17, 1910 — Hooper. Tree foot-piece and operating means.

944,365 Dec. 28, 1909 — Hooper. Stretcher for the upper.

CLEANING AND TREEING LEG (Plant catalog page 162)

958,287 May 17, 1910 — Plant. General organization.

958,304 May 17, 1910 — Plant. Improved construction.

HEEL, EDGE AND BOTTOM POLISHER (Plant catalog page 164)

958,288 May 17, 1910 — Plant. Dust gatherer and trunk.

SHOE RACK (Plant catalog page 166)

957,988 May 17, 1910 — McLeod. Shoe supporting rack construction.

DEFENDANTS' EXHIBIT 342.

[Put in Evidence, page 4944.]

UNITED STATES PATENTS ACQUIRED IN THE PLANT ACQUISITION, THE INVENTIONS OF WHICH HAVE BEEN INCORPORATED IN MACHINES OF THE UNITED SHOE MACHINERY COMPANY.

January 30, 1914.

BEADING MACHINE — MODEL X: HEEL SEAT

944,294 Dec. 28, 1909 Stewart & Hooper

FINISHING & BRUSH CLEANING MACHINE — MODEL X: CLIMAX

957,989 May 17, 1910 McLeod

FLEXIBLE INNERSOLE MACHINE — MODLL X: GOODYEAR

871,967 Nov. 26, 1907 Stewart

871,968 Nov. 26, 1907 Stewart

871,969 Nov. 26, 1907 Stewart

958,029 May 17, 1910 Stewart

GRINDING MACHINE — MODEL H: IMPERIAL

944,238 Dec. 21, 1909 Heys

GROOVING & BEVELING MACHINE — MODEL X: GOODYEAR WELT

966,484 Aug. 9, 1910 Stanbon

INDENTING & BURNISHING MACHINE — MODEL X: GOODYEAR WELT

860,377 July 16, 1907 Heys

Se. No. 631,395 June 5, 1911 Heys & McClure

LASTING BENCH — MODEL X
Se. No. 524,952 Oct. 27, 1909 McLeod Application

LASTING MACHINE: No. 5 U. S. M. Co.
957,949 May 17, 1910 Glass
(Re. 13,505, Jan. 7, 1913)
958,280 May 17, 1910 Plant

LAYING MACHINE — MOD. X: APEX WELT
957,987 May 17, 1910 McLeod

LAYING MACHINE — MODEL X: GOODYEAR CHANNEL
861,179 July 23, 1907 Hooper

LEVELING MACHINE — MODEL B: HERCULES
684,239 Oct. 8, 1901 Heys
707,414 Aug. 19, 1902 Heys

LOADING & ATTACHING MACHINE — MODEL B: MCKAY AUTOMATIC HEEL
958,281 May 17, 1910 Plant
958,282 May 17, 1910 Plant

LOCKSTITCH MACHINE — MODELS K & M: GOODYEAR OUTSOLE RAPID
940,055 Nov. 16, 1909 Plant
940,723 Nov. 23, 1909 Plant
940,725 Nov. 23, 1909 Plant

MOLDING MACHINE: STITCHDOWN UPPER
871,963 Nov. 26, 1907 Stewart
871,966 Nov. 26, 1907 Stewart

NAILING MACHINE: AMERICAN LIGHTNING
958,302 May 17, 1910 Plant
958,282 May 17, 1910 Plant

OPENING MACHINE — MODEL X: GOODYEAR CHANNEL
947,509 Jan. 25, 1910 Hooper

POLISHING MACHINE — MODEL X: CLIMAX
958,288 May 17, 1910 Plant
965,223 July 26, 1910 Plant

PULLING-OVER MACHINE — MODEL B: REX
957,955 May 17, 1910 Heys

ROUNDING MACHINE: GOODYEAR HEEL SEAT

1,005,545 Oct. 10, 1911 Heys (application assigned)

1,005,573 Oct. 10, 1911 Phelan (" ")

ROUNDING & CHANNELING MACHINE — MODEL E: GOODYEAR UNIVERSAL

878,478 Feb. 4, 1908 English

SCOURING MACHINE — MODEL X: HEEL

883,445 Mar. 31, 1908 Bohr

957,993 May 17, 1910 McLeod

SHOE MACHINE — MODEL K: GOODYEAR WELT & TURN

877,858 Jan. 28, 1908 Plant

877,859 Jan. 28, 1908 Plant

958,298 May 17, 1910 Plant

Re. 13,374 Feb. 27, 1912 Plant

1,018,130 Feb. 20, 1912 Plant

SPLITTING MACHINE: RAPID NOISELESS WONDER

844,128 Feb. 12, 1907 Heys

TREEING MACHINE — MODEL H: MILLER TWIN

944,365 Dec. 28, 1909 Hooper

WETTING MACHINE — MODEL X: CREST SOLE

957,992 May 17, 1910 McLeod

WETTING MACHINE — MODEL X ECONOMY INSOLE

957,961 May 17, 1910 Hooper

Total number of patents 43.

DEFENDANTS' EXHIBIT 343.

[Put in Evidence, page 4958.]

Boston, Mass., Nov. 25, 1913.

MEMORANDUM FOR MR. S. W. WINSLOW

Included in the list of machinery in use at the factories of the Commonwealth Shoe & Leather Company, in the column of machines as obtained from the U. S. M. Co., there have been included 114

Auxiliary Devices and Attachments (which should not be listed as machines), and should be deducted from 584, listed as from the United Company, leaving the total 470. These Devices and Machines are as follows:

73 Tackers (9 Chase Tackers, 64 Hand Tackers)
36 Extension Edge Attachments
5 O. S. Welt Beveling Attachments.

In this remaining list of 470, there are 119 machines, which although now sold by the Company, similar machines could have been purchased from several outside machine manufacturers. If these 119 are deducted and transferred to outside machines, it would make the sum total of outside machines 846 and U. S. M. Co. machines 351. Following is the list of 119 machines:

3 Sole & Upper Stampers
1 Tip Punch
4 Rotary Cementers
3 Channel Cementers
1 Bottom Cementer
1 Leveler
5 Heel Seat Rough Rounders
7 Heel Trimmers
1 McKay Heel Trimmer
1 Heel Seat Beader
53 Edge Trimmers
3 Heel Breasters
4 Heel Breast Scourers
3 Top Piece Scallopers
1 McKay Feather Edger
1 Tip Scourer
2 Stampers
2 Heel Breast Scourers
1 Tip Scourer
1 Channeler
1 Sole Rounder
1 Feather Edge & Shank Reducer

1 Tap & Sole Rounder
1 Splitter
3 Splitters
3 Outsole Channelers
1 Hand Flexible Sole Machine
1 Leveling & Flexing Machine
1 Channel Cementer
6 Improved Gearless Sole Cutters
1 Splitter
1 Heel Builder

W. R. SAMPSON.

DEFENDANTS' EXHIBIT 344.

[Put in Evidence, page 4966.]

CHOATE, HALL & STEWART.

Charles F. Choate, Jr.
John L. Hall
Ralph A. Stewart
Frederick H. Nash
Frank W. Knowlton
Joseph Wentworth
Arthur J. Young

Rooms 1017–1031
60 State Street

Branch Exchange Main 6160

Boston, Mass., Feb. 7, 1913.

Hon. George W. Wickersham, Attorney General, Department of Justice, Washington, D. C.

My dear Mr. Wickersham: In 1910 the United Shoe Machinery Company advised its lessees that it proposed to put in effect a plan by which a certain proportion of the royalties should be invested in stock of the corporation, and at the end of a fixed term be distributed to lessees of the Goodyear welting and stitching and turn-sewing machines, who had in all respects observed the obligations of their leases. The period covered by this plan expired December 31, 1912, and the company proposes to make a distribution on or about March 1st, as it is bound to do by its agreement with the customers.

This plan was, I think, fully called to the attention of Mr. Gregg while he was here examining the affairs of the company and as I read the bill in equity filed by the United States against the company, it does not seem that any complaint is made upon this ground. Under

these circumstances, the Company proposes to make the distribution provided for in that plan on the first day of March, or as soon as possible thereafter; and has desired me to call the matter to your attention that the plan may not be carried out without the knowledge of your department.

I send you herewith a copy of the circular of June 10th, 1910, which describes the plan.

Very truly yours,

CHAS. F. CHOATE, JR.

UNITED SHOE MACHINERY CO.
Albany Building, 205 Lincoln Street,
Boston, Mass.

To the Lessees of the United Shoe Machinery Company:—

When the United Shoe Machinery Company was organized in 1899, it adopted this comprehensive policy: "To furnish a better service and equipment year by year at a constantly diminishing expense to its lessees."

To this policy it has consistently adhered in spite of the fact that the world was then entering on a period of high prices which has lasted ever since. While the leather and labor which go into the making of a shoe have grown more and more costly, there has been a steady decline in the cost to manufacturers of the machinery and supplies which the Company has provided.

It has furnished its lessees with the very best equipment attainable.

It has substituted improved machines for those which have become out of date.

It has substantially done away with payments for installation of machines.

It has reduced its rentals and royalties, sometimes directly, sometimes indirectly by furnishing auxiliary machines without additional royalty charge.

It has increased the number of its branch offices and the extent and efficiency of the service and assistance rendered to its lessees by its experts.

In order promptly to meet the requirements of its lessees and so

give them a better service, it has increased its factory facilities from year to year and has just begun to build an addition containing more than two acres of floor space.

By reason of its large expenditures and investments, far in excess of the ability of any small corporation to make, it is to-day serving its customers, and through them the public, more effectively than would have been thought possible at the time of its formation; yet with less expense to manufacturers than ever before in the history of the trade.

The organization of the Company in 1899 resulted almost immediately in the lowering of the average royalty per pair paid by manufacturers who prior to its organization would have leased the same number and kind of machines from the different constituent companies out of which the United Shoe Machinery Company was formed. In no instance since that time have the average rates of royalty been raised, although the Company has expended several million dollars in improving the machines with which its lessees have been supplied and, without additional royalty charge, has placed in factories numerous auxiliary machines. The average royalty direct and indirect now received by the Company for all classes of shoes is less than $2\frac{2}{3}$ cents per pair; and, in fact, an average payment of $2\frac{2}{3}$ cents per pair will cover the entire cost to shoe manufacturers of the mechanical equipment furnished by the Company, including all charges for depreciation, for the constant employment by the Company of the best experts of the world in the care and maintenance of machines and the instruction of operators, and of a large corps of inventors exclusively engaged in developing and improving machines. The Company keeps the entire outfit of the manufacturer at the highest point of efficiency daily and hourly and places at his disposal all its facilities for that purpose.

Every year since its formation the Company has expended from $300,000 to $750,000 in maintaining its corps of inventors in the Experimental Department, and in the purchase and development of new inventions.

Nearly one hundred new machines have been produced by the Company, all of them materially better than the machines formerly

in use and sixteen of them performing operations which, before their introduction, required skilled hand workmen. By the use of these new machines and improved devices, manufacturers can save annually in cost of production an amount greater than the entire amount of royalties paid at the time the Company was organized. The "Ideal Clicking Machine" alone, which has recently been introduced and which does work hitherto done by hand, should enable the manufacturer using it to save a sum equal to the average royalty now paid for the use of all machines leased by him from the Company. The economies in labor resulting from the use of other new machines range from ten per cent to fifty per cent, and usually with a marked improvement in the quality of the work.

Immediately after its formation, the Company was confronted with a proposition to increase to its lessees the price of material used in the machines of the Metallic Department (the profit on which constitutes the rental and royalty received by the Company from the machines in this department) such an increase having been determined upon by one of its constituent companies which made and leased Metallic Machines and which, had it remained a separate organization, would have been compelled to resort to an increase in the price of wire and fastenings in order to meet a marked advance in the price of copper. The United Shoe Machinery Company, relying upon economies in other departments, was able to maintain the existing rates and assumed the increased cost of production without imposing any part of the increase upon its customers. The policy then adopted has been followed consistently ever since, regardless of the market price of materials, and in many individual instances the Company has found it possible to lower its charges. In its General Department alone, for instance, there has been a reduction in the price of seven hundred and fifty-five commodities, comprising findings and shoemakers' supplies, averaging 25.6 per cent.

Thus the shoe manufacturers, and through them the public, have benefitted substantially from the magnitude and great diversity of the Company's business. The fact that several companies of limited scope, each confined in its work to a particular class of operations, were gathered into a single large company of ample range and abundant

facilities capable of supplying to its customers a complete and perfect system of machinery, has been an unqualified advantage to the trade.

Initial charges for the installation of machines were almost universal prior to 1899. Such charges have been gradually abolished; to the obvious advantage of the manufacturer. For example:— Under the lease premium formerly in force, machines of the Goodyear Department, for making five hundred pairs of Goodyear Welt shoes per day, required an initial payment of $2,845.00 for installation. Under the loan lease now in force, this payment has been replaced by a yearly rental of only $106.00. There is a corresponding saving to the manufacturer in equipping his factory with machines of all other departments in which initial payments have been abolished. Substantially the last of these payments was removed recently, when the Company began to offer to its lessees machines of the General Department on rental terms so low as merely to care for the items of depreciation and replacement, without yielding, any return for its services in looking after the machines.

Benefits of a character similar to those enumerated have marked the course of the Company from the very beginning; but it has never been its purpose to confine within limits determined in advance, its ability to enhance the prosperity of the trade. Always recognizning that it has a common interest with its lessees and that its prosperity depends upon theirs, it has long had in contemplation the following plan, which, now that the elimination of initial charges has been effected, it is prepared to put into operation — a plan which is in conformity with its established policy and which it believes will result in the expansion of its own business through the increased business of its customers.

Beginning with January 1, 1910, the Company will create a fund by investing each year, for three years, in the common stock of the United Shoe Machinery Corporation a percentage, increasing each year, of the amounts received from its lessees for the use of its Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States, and will add to that fund from time to time the dividends which shall have been paid in the meantime

upon such stock, or shares of the common stock of the Corporation purchased with such dividends. At the end of three years from that date it will distribute the entire amount of stock held in the fund among those lessees who use the Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States and who shall have faithfully observed the covenants of their leases; each lessee of these classes of machines to receive a share of the entire fund proportionate to the amounts paid by him for the use of such machines.

The beneficial interest of each lessee in the stock held in the fund, while undistributed, shall not be assignable by his own act or by operation of law, or be subject to attachment on mesne process, execution, or any legal process, and in the distribution thereof the Company will only recognize the lessees and their executors and administrators as entitled to share therein.

In the determination of all questions which may arise concerning the said fund and the distribution thereof, the Company reserves to itself the right of final decision.

Of the amount received from the use of Goodyear Welters and Stitchers in the United States, during the year ending December 31, 1910, not less than 15 per cent will be invested in accordance with the foregoing plan, and of the amount so received from the use of the Goodyear Turn Sewing Machines, not less than 10 per cent will be so invested.

By order of the Board of Directors,

S. W. WINSLOW,
President.

Boston, Mass., June 10, 1910

DEFENDANTS' EXHIBIT 345.

[Put in Evidence, page 4968.]

Pulling Over System [Form A. E. A., 1028.]

LEASE AND LICENSE NUMBER

Pulling Over System

This Lease and Agreement made at Boston, in the State of Massachusetts, this day of 19 , between the United Shoe Ma-

chinery Company, a corporation organized under the laws of the State of New Jersey, having an office in said Boston, hereinafter referred to as the lessor, of the one part, and of in the State of , hereinafter referred to as the lessee, of the other part:

Witnesseth, that the lessor, in consideration of the covenants and agreements on the part of the lessee herein contained, does hereby lease to and license the lessee under any letters patent belonging to the lessor or under which the lessor has the right to grant such license affecting any inventions which are now or hereafter shall be embodied therein or employed in the operation thereof, to use, subject to the conditions, stipulations and provisions hereinafter contained, the machine or machines designated by number or numbers in the following schedule, viz.:—

SCHEDULE OF MACHINES.

	I.
Class A.	
Rex Pulling Over Machine, No.	$300.
Class B.	
Rex Pounding Machine, No.	125.
Rex Assembling Machine, No.	100.
Rex Toe Gumming Machine, No.	75.
Rex Toe Trimming Machine, No.	50.
Rex Upper Trimming Machine, No.	50.
Rex Upper Trimmer Knife Grinding Machine, No.	25.

and any duplicate parts, extras, mechanisms and devices relating thereto, or used in connection therewith, now attached to or delivered with the said designated machine or machines or which may at any time hereafter be obtained from the lessor, or be added thereto by or with the consent of the lessor.

The term the "principal machinery hereby leased" wherever used herein shall be construed to include the whole of the machine or machines hereby leased included in Class A in the foregoing schedule, together with all duplicate parts, extras, mechanisms and devices relating thereto held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee.

The term the "auxiliary machinery hereby leased" wherever used

herein shall be construed to include the whole of the machine or machines hereby leased included in Class B in the foregoing schedule, together with all duplicate parts, extras, mechanisms and devices relating thereto held by the lessee under these presents, whether now or hereafter delivered to or in the possession of the lessee.

The term the "leased machinery" wherever used herein shall be construed to include both the "principal machinery hereby leased" and the "auxiliary machinery hereby leased."

And that the following are agreed to as conditions of the lease and license of the leased machinery, all of which the lessee covenants and agrees to keep and perform:—

ONE. The leased machinery shall at all times remain and be the sole and exclusive property of the lessor, and the lessee shall have no right of property therein, but only the right to use the same, upon the conditions herein contained. The leased machinery shall be used only by the lessee himself or by operatives in his direct employ, and only in the factory now occupied by him at in the State of unless the lessor shall by an instrument in writing signed by its president, vice-president or treasurer authorize the lessee to remove the leased machinery and to use the same elsewhere. The leased machinery shall not be transferred or delivered or sublet to any other person or corporation, and neither the lease nor the license hereby granted can be assigned by the lessee by his own act or by operation of law. If the lessee becomes insolvent or bankrupt, or has a receiving order made against him, or makes or exceutes any bill of sale, deed of trust or assignement for the benefit of his creditors, or if a sale, mortgage, lease or unauthorized removal of the leased machinery, or any part thereof, be made or attempted, or if any distress or execution or attachment be levied thereon, then and in each such case any or all leases of and licenses to use machinery then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, shall at the option of the lessor cease and determine, and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor fee from all claims and demands whatsoever. The lessor and its agents and employees shall at all times

be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use, and the lessee shall afford all reasonable facilities therefor.

TWO. The lessee shall at all times and at his own expense keep the leased machinery in good and efficient working order and condition, and shall not permit any one to injure or deface or remove any plate, or dates, numbers, or other inscriptions now or hereafter impressed on or affixed to the leased machinery by the lessor. The lessee shall obtain from the lessor exclusively, and shall pay therefor at the regular prices from time to time established by the lessor, all the duplicate parts, extras, mechanisms and devices of every kind needed or used in operating, repairing, or renewing the leased machinery, and the same shall form part of released machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery, nor interfere with the proper operation of the same.

THREE. The leased machinery shall at all times until the expiration or termination of this lease and license and the redelivery of the leased machinery into the possession of the lessor, as hereinafter provided, be held at the sole risk of the lessee from injury, loss or destruction, and in case any machine or machines hereby leased shall be lost or destroyed by fire or otherwise before such expiration or termination and redelivery, the lessee as partial reimbursement to the lessor for such loss or destruction, shall pay to the lessor in respect to each machine so lost or destroyed the sum set opposite the name of such machine in the column numbered "I" in the schedule of machines hereinbefore contained, and shall forthwith return whatever remains of the machinery so lost or destroyed to the lessor, at Beverly, Massachusetts.

FOUR. The lessee shall pay all taxes and assessments which shall be assessed in respect to the leased machinery or other machinery of the lessor held by the lessee under lease or license, upon whomsoever assessed. All taxes or assessments in respect to leases, licenses or agreements covering machinery, or the rights to payments thereunder, shall be construed, for the purposes of this Article, to be as-

sessed in respect to the machinery itself. In case at any time any unapportioned tax or assessment shall be assessed to the lessor in respect in part, but not wholly, to machinery of the lessor in the possession of the lessee, the lessee shall pay to the lessor such proportionate part of the total amount of said unapportioned tax or assessment as the fair valuation, to be determined by the lessor, of said machinery of the lessor in the possession of the lessee bears to the fair valuation, to be determined by the lessor, of all machinery (excepting machinery, if any, in the lessor's own possession) in respect to which the unapportioned tax or assessment has been assessed; provided, however, that if such unapportioned tax or assesssment includes any tax or assessment in respect to tangible property in the lessor's own possession the amount thereof, based, at the established rate, upon the fair valuation, to be determined by the lessor, of such property, shall first be deducted and the lessee shall pay his proportionate part as aforesaid of the balance only of said unapportioned tax or assessment after such deduction has been made.

FIVE. The lessee shall use the principal machinery hereby leased to its full capacity upon all boots, shoes, and other footwear or portions thereof made by him in the manufacture of which it is capable of being used, except that the leased machinery shall not nor shall any thereof be used in the manufacture of any welted boots, shoes or other footwear which have been or shall be welted in whole or in part or the soles of which have been or shall be in whole or in part stitched or attached by the aid of any welting or sewing or stitching machinery not held by the lessee under lease from the lessor; or in the manufacture of any turned boots, shoes or other footwear the soles of which have been or shall be in whole or in part attached by the aid of any sewing or attaching machinery not held by the lessee under lease from the lessor; or in the manufacture of any boots, shoes or other footwear which have been or shall be lasted otherwise than by Consolidated Hand Method Lasting Machines held by the lessee under lease from the lessor; or which have been or shall be pegged, slugged, heel seat nailed or otherwise partly made by the aid of any pegging or metallic machinery not held by the lessee under lease from the lessor, or the heels of which have been or shall be compressed

or prepared by the lessee in whole or in part or shall be attached by the aid of any heeling machinery not held by the lessee under lease from the lessor.

SIX. The auxiliary machinery hereby leased shall be used only in the manufacture of boots, shoes or other footwear which have been or shall be pulled over by Pulling Over Machines held by the lessee under lease from the lessor.

SEVEN. The lessee shall pay to the lessor the sum of one (1) cent in respect to each pair of boots, shoes or other footwear or portions thereof made by or for him during the continuance of this lease and license of the kind upon which it is provided in Article Five hereof the principal machinery hereby leased shall be used. Payment as herein provided shall be made on the last day of each calendar month in respect to all such boots, shoes or other footwear or portions thereof made by or for the lessee during the next preceding calendar month: **provided, however, that in all cases when the lessee shall pay to the lessor on or before the fifteenth day of the calendar month the amount due in accordance with this Article hereof for the next preceding calendar month, the lessor will in consideration of such prompt payment grant a discount of fifty per cent. from the amount so due for such preceding calendar month.** All payments in this agreement provided for are independent of and in addition to all payments provided for in any other leases or licenses or agreements between the lessor and the lessee, excepting, however, that in case at the date of these presents the lessee has under other Pulling Over System lease and license agreements from the lessor one or more "Rex Pulling Over" Machines in addition to the "Rex Pulling Over" Machine or Machines hereby leased, then payment under and in accordance with this Article hereof in respect to any pair of boots, shoes or other footwear shall relieve the lessee from his obligation to make like payment in respect to that pair of boots, shoes or other footwear under the Article of such other Pulling Over System lease and license agreement or agreements corresponding to this Article hereof. The lessee, however, guarantees that the payments made by him in accordance with the terms of this Article hereof or of like terms contained in other Pulling

Over System lease and license agreements between the lessor and the lessee based upon the number of boots, shoes or other footwear of the kind referred to in Article Five hereof made by or for him shall amount, in each calendar year (after deducting all abatements), to at least Twenty Dollars ($20) for each calendar month for each "Rex Pulling Over" Machine held by the lessee under lease from the lessor and at the end of each calendar year the lessee shall pay to the lessor the amount, if any, by which the total of such payments for said year have been less than such guaranteed amount: provided, however, that if in any calendar year the factory of the lessee remains wholly idle for any entire calendar month, then the amount guaranteed for that year hereunder shall be reduced by one-twelfth for each such month that the factory thus remains wholly idle, but such reduction shall not be made in respect to more than ten (10) months out of any twelve (12) consecutive calendar months.

EIGHTH. The lessor may attach to the leased machinery, or any thereof, an indicator or indicators to register the number of revolutions or movements of any part or parts thereof, and the lessee shall not allow any person (other than the lessor or its agents) to disturb or interfere with such indicator or indicators. In case any indicator thus attached shall from any cause cease to correctly indicate or register, or shall be disturbed or out of repair, or if the glass covering any such indicator shall be removed or broken or injured, then and as often as the same shall happen the lessee shall immediately by writing notify the lessor and at the same time explain the circumstances under which the same has happened. In case any such indicator ceases to indicate, or becomes or remains inaccurate, or the glass covering becomes or remains removed, broken, or injured, because of any fault of the lessee or any one in his employ, or because of the failure of the lessee to give promptly the notice hereinbefore provided for, then, without prejudice to any other rights of the lessor, the lessee shall pay the lessor (without the right to any discount) the sum of two cents per pair for each pair of boots, shoes or other footwear or portions thereof in the manufacture of which the leased machinery or any part thereof shall have been used. The lessee shall keep full and accurate accounts, independently

of any indicators that may be placed upon the leased machinery, showing the number of boots, shoes and other footwear, or portions thereof, made by or for him of the kind upon which the principal machinery hereby leased is capable of being used, and shall allow the lessor at all times, by its agents or attorneys, to examine and to take copies of such accounts and entries of the lessee as may serve to determine the total number of such boots, shoes or other footwear, or portions thereof, and the lessee shall produce all such accounts and entries upon request. The lessee shall require each of his operators upon the principal machinery hereby leased (and also if so requested by the lessor upon the auxiliary machinery hereby leased), or any part thereof, to keep upon blanks or blank-books to be furnished by the lessor accurate daily records of the number of boots, shoes and other footwear, or portions thereof, in the manufacture of which he has used said machinery, or any part thereof, and shall require his operators to sign such records, and, if requested so to do by the lessor, shall verify the same under oath. The lessee shall send to the office of the lessor in Boston, on or before the fifth day of each calendar month, the original records for the next preceding calendar month kept by his operators as above provided for, and in case, in any calendar month, any one or more of the machines hereby leased has been entirely idle, the lessee, on or before the fifth day of the next succeeding calendar month, shall send to the office of the lessor in Boston the blank for such machine or machines for said month marked "not in use" and signed by the lessee. The lessee shall also furnish any further information which may be called for in relation to the leased machinery or the use thereof.

And that the following stipulations and provisions are agreed to:—

NINE. If at any time the lessee shall fail or cease to use exclusively pulling over machinery held by him under lease from the lessor for pulling over all boots, shoes or other footwear made by or for him, which are pulled over by the aid of machinery or which are of the kind upon which the principal machinery hereby leased is capable of being used, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses

of Pulling Over System machinery, then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

TEN. This lease and license shall continue, unless sooner terminated by the lessor as herein provided, for seventeen years from the date hereof. But if any breach or default shall be made in the observance of any one or more of the conditions, stipulations or provisions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. If, upon the expiration of the full term of this lease and license, the lessor does not request the return of the leased machinery, then the leased machinery shall continue to be held and used under and in accordance with the conditions, stipulations and provisions of this lease and license, which shall thereupon be extended indefinitely as to term; but thereafter either the lessee or the lessor, upon sixty days' notice in writing to the other, may terminate this lease and license, whereupon the leased machinery shall be delivered forthwith to the lessor, as herein provided. Upon the expiration or termination of this lease and license or any extension thereof the lessee shall forthwith deliver the leased machinery to the lessor at Beverly, Massachusetts, in good order, reasonable wear and tear alone excepted, and shall thereupon pay to the lessor without prejudice to any other rights or remedies of the lessor such sum as may be necessary to put the leased machinery in suitable order and condition to lease to another lessee, includiug the cost of all parts replaced at the regular prices established by the lessor therefor. The lessee for himself, his heirs, executors, and administrators, successors and assigns hereby

grants to the lessor, its successors and assigns, full right, power and authority without prejudice to any other rights or remedies of the lessor to enter upon the premises and into any factory, room, or any place where the leased machinery, or any part thereof, may be, and take possession thereof, and take away the same.

ELEVEN. Upon the expiration or termination of this lease and license or any extension thereof the lessee, in addition to all other payments in this lease and license agreement provided for and without prejudice to any other rights or remedies of the lessor, shall pay to the lessor in respect to each "Rex Pulling Over" Machine hereby leased the sum of two hundred dollars ($200) as partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators.

TWELVE. In case the lessee, at any time, shall have in his factory more machines adapted for doing the same work as any auxiliary machine or machines hereby leased than in the opinion of the lessor are sufficient for performing the work which the lessee has in his factory, based upon the capacity of such machines and the number and kind of boots, shoes and other footwear made by the lessee for any period of twelve (12) consecutive months next preceding, the lessor may, at its option, upon thirty (30) days' notice in writing to the lessee, terminate the lease and license herein contained in respect to such of the said auxiliary machines hereby leased as in the opinion of the lessor are unnecessary. The termination under the provisions of this Article of the lease of or license to use any one or more of the machines hereby leased shall not affect the lease or license herein contained in respect to any other machine or machines.

THIRTEEN. In case at any time any of the leased machinery shall not, in the opinion of the lessor, be in good and efficient working order and condition, the lessor without prejudice to any other of its rights or remedies may give written notice to the lessee to put such machinery in good and efficient working order and condition and to replace all broken or missing parts; and in case the lessee does not within (15) fifteen days from the date of such notice comply with the requirements thereof, as herein set forth, the lessor may cause

such machinery to be put in such good and efficient working order and condition, and may supply such broken or missing parts, and the lessee shall forthwith pay to the lessor the expense of making such repairs and the cost at the regular prices established by the lessor therefor of all parts so supplied.

FOURTEEN. A notice in writing, signed by the president, a vice-president, the treasurer or the assistant treasurer of the lessor or by any assignee of the lessor's rights hereunder, and posted by prepaid letter, addressed to the lessee or delivered at his usual or last known place of abode or business, that the lease and license hereby granted is terminated or shall be terminated at the expiration of a certain period, shall be a sufficient termination of the lease and license from the time of posting or delivering such notice, or from the expiration of the period therein mentioned, as the case may be. Any termination of this lease and license shall be without prejudice to any rights or remedies which the lessor may have for violation of contract, use of machines without right, use of patented inventions without license or otherwise.

FIFTEEN. The lessee admits the validity for the full term expressed in the grant thereof (and every extension and renewal thereof) of each and every of the Letters Patent of the United States of America, owned by the lessor or under which it is licensed, any of the inventions of which are or hereafter may be embodied in the leased machinery. The lessee also agrees that he will not directly or indirectly infringe or contest the validity for the full term expressed in the grant thereof or of any extension or renewal thereof of any of the Letters Patent referred to in the "Schedule of Patents" hereto annexed or any of the inventions of which are now or shall hereafter be embodied in the leased machinery or the title of the lessor thereto. The termination or cesser of this lease and license or any extension thereof shall not in any way affect the provisions of this Article, or release or discharge the lessee from the admissions and estoppels herein set forth.

SIXTEEN. None of the conditions, stipulations or provisions, of this lease and license shall be held to have been waived by any act or knowledge of the lessor, its agents or employees, but only by

instrument in writing, signed by the president, a vice-president, or the treasurer of the lessor.

SEVENTEEN. The term "lessor" shall include the said United Shoe Machinery Company and its successors and assigns. All the conditions, stipulations and provisions binding on the lessee shall be binding on and enforceable against his legal representatives. In the construction of this instrument, words relating to the number and gender of the parties shall be read according to their real number and gender.

In Witness Whereof, the parties hereto have duly executed this instrument in duplicate, the day and year first above written.

By

By

☞ If lessee is a corporation, add corporate seal.

SCHEDULE OF PATENTS.

(Referred to in Article Fifteen herein.)

429,065	May 27, 1890	701,052	May 27, 1902
483,375	September 27, 1892	731,168	June 16, 1903
569,590	October 13, 1896	791,986	June 6, 1905
663,777	December 11, 1900	855,831	June 4 1907
666,282	January 22, 1901		

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1917.

No. 545.

THE UNITED STATES, APPELLANT,
v.
UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

MOTION TO ADVANCE.

Now come the appellees above named by their counsel, Charles F. Choate, Jr., and move that this cause be advanced upon the docket of this court and set down for hearing upon some early date to be fixed by this court, upon the following grounds: —

(1) This is a suit in equity brought by the United States, petitioner, against the United Shoe Machinery Company, of New Jersey, and others, under the Act of Congress entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890. The petition was filed on December 12, 1911. On May 20, 1912, the Attorney General filed with the clerk of the United States District Court for the District of Massachusetts, in which court the petition in this case was then pending, a "Certificate for

Speedy Hearing under the Act of Congress of February 11, 1903", stating "that said suit is in my opinion a case of general public importance", and requesting "that the said case shall be given precedence over other cases in said court and be assigned for hearing at the earliest practicable date before not less than three judges of said circuit, as is provided by the said Act of February 11, 1903". The trial upon the merits was begun May 20, 1913, and was concluded June 5, 1914; the three judges who heard the case filed opinions on March 18, 1915; final decree dismissing the petition was entered May 14, 1915; and this appeal was docketed in this court on or shortly before July 1, 1916.

(2) This cause is one of general public interest and importance, involving the application of the Sherman Anti-Trust Law of July 2, 1890, to the business of manufacturing and dealing in shoe machinery and supplies as carried on for many years and to the relations of shoe machinery makers to their customers and the public throughout the United States.

It affects property and rights of the appellees amounting to over $40,000,000 and established business relations of many years standing between the appellees and over 1,000 shoe manufacturers making over 275,000,000 pairs of shoes a year.

The appellant's contentions raise questions not heretofore decided by this court or presented in any cases now pending before this court, including the right to lease machinery patented and unpatented, and define the terms on which it may be used and the right of an owner of patents to acquire other patents and other important questions.

This cause was on motion of the appellees advanced for argument by order of the court and was argued on March 16th to 20th, inclusive, 1917, and by order of the court on May 21, 1917, was ordered to be reargued.

It is of great importance to the appellees, to shoe manufacturers generally, and to others engaged in the business of

dealing in and using machinery that these questions be decided at an early date if possible.

As the petition attacks the character of the agreements under which the appellees lease their machines, the appellees are and will be greatly embarrassed as to their methods of conducting their business until this suit is determined.

Dated September 25, 1917.

CHAS. F. CHOATE, JR.,
Counsel for Appellees.

The appellant above named consents to this application.

Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 545.

THE UNITED STATES, APPELLANT,

v.

UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET ALS.

BRIEF OF THE APPELLEES IN SUPPORT OF APPELLEES' MOTION TO ADVANCE.

The reasons suggested by the United Stated in opposition to the motion to advance, the appellees respectfully submit, are not sound, and the result of requiring the appellees to wait the event of the second suit brought by the United States would be quite unfair and very oppressive to the appellees for the following reasons: The case at bar was brought in the District Court for the District of Massachusetts, in which State the appellees have their home office, their books and records and the headquarters of all their officers. This suit had for its primary object the dissolution of the corporation.

The attack upon its methods of doing business was incidental to the main purpose of that suit to dissolve the corporation. The Attorney-General of the United States filed an expediting certificate upon the ground that the case was of public importance and was entitled to preced-

ence. The case was thereupon given precedence and was tried and the trial completed before the passage of the Clayton Act. A very large portion of the time between the date of the appeal of the United States and the docketing of the record in this Court was occupied in reducing the mass of testimony to abstract form as required by the Equity Rules and there was certainly no avoidable delay.

A year after the passage of the Clayton Act the United States began a new suit against the appellees, based upon the third section of the Clayton Act, in the District Court for the Eastern District of Missouri, fifteen hundred miles from the home office and headquarters of the appellees. In that case the parties have not even begun to take testimony; indeed, various important preliminary questions now pending before that court must be argued and determined before it is practicable for the parties to begin taking testimony, and when that point is reached testimony must be taken in many places in various parts of the United States, which the respondents estimate will occupy certainly not less than six months and probably more than a year. The case will then be argued and submitted for decision in the District Court. When such decision has been received there remains the long and difficult task of preparing the record for this Court. No certificate has been filed by the Attorney-General in that case certifying that it is a case of public importance or requesting its expedition under the Expediting Act.

In short, the case at bar is a case aimed at the very life and existence of the appellees' companies. The case pending in the Eastern District of Missouri relates only to certain business practices. The case at bar relates to the original organization of the appellees' corporations and their business and conduct through a period of years from 1899 to the date of the filing of the bill in Decem-

ber, 1911. The case pending in the Eastern District of Missouri arises solely out of a new statute which we respectfully contend is not retroactive in its operation and affects only transactions entered upon after its passage.

To delay the case at bar, which is the original and vastly more important case, to wait the result of the trial of a wholly different and subordinate issue which may be two years in reaching this Court would be, we respectfully submit, a great injustice to these appellees.

With respect to the suggestion of the United States that other cases under the Anti-Trust Act have been docketed earlier than the case at bar, we respectfully reply: With the exception of the Harvester case and the United States Steel Corporation case, we are informed and believe that none were earlier originated than the case at bar and that none have yet been advanced for early hearing except the Harvester case and the Steel Corporation case; that the case at bar affects the interest not only of the appellees but over one thousand shoe manufacturers throughout the United States and through them affects the purchasers of their product.

By their Solicitor,

CHAS. F. CHOATE, JR.

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

THE UNITED STATES, APPELLANT,
v.
UNITED SHOE MACHINERY COMPANY OF New Jersey et al. } No. 545.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

SUGGESTIONS OF THE UNITED STATES RELATIVE TO APPELLEES' MOTION TO ADVANCE.

The United States can not concur in appellees' motion to advance this case for argument at a date to be now fixed, for the following reasons:

1. In one of its principal aspects, this case involves the legality under the Anti-Trust Act of July 2, 1890, 26 Stat. 209, of a system of contracts whereby patented machines are leased to manufacturers of shoes upon the condition, amongst others, that the lessees shall use exclusively the machines, supplies, and other commodities of the lessor. In addition to this suit there is now pending in the United States District Court for the Eastern District of Missouri another proceeding (No. 4489) between the same parties involving the legality of the same contracts

under section 3 of the Clayton Act, 38 Stat. 730, 731, reading as follows:

> SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Although the two cases involve largely the same state of facts, a decision in the case under the Anti-Trust Act would not be conclusive of the case under the Clayton Act. Counsel for the Government in the case under the Clayton Act expect that it will be finally disposed of in the lower court within the next three months, and if their expectations are realized the case could be appealed to this court in time for hearing either during the latter part of the

present or the beginning of the next term. It is respectfully suggested, therefore, that the convenience of the court and of counsel would be served by postponing the argument in the present case until the case under the Clayton Act has reached this court, in order that they may be heard together.

2. There are now pending in this court six cases under the Anti-Trust Act which by reason of priority in docketing are entitled to precedence over the instant case,[1] including the cases against the International Harvester Company and the United States Steel Corporation, which have been set down for hearing on February 26 next, and the case against the Motion Picture Patents Company, which the court is to-day being asked to advance for hearing on the first Monday in April. There appears to be no sufficient reason for giving this case precedence over other cases of like character standing ahead of it on the docket.

JOHN W. DAVIS,
Solicitor General.

DECEMBER, 1916.

---

[1] No. 56, *International Harvester Co.* v. *United States*, docketed January 4, 1915; No. 301, *United States* v. *Great Lakes Towing Co.*, docketed November 30, 1915; No. 370, *Chicago Board of Trade* v. *United States*, docketed February 1, 1916; No. 461, *Motion Picture Patents Co.* v. *United States*, docketed April 22, 1916; No. 481, *United States* v. *United States Steel Corporation*, docketed May 12, 1916; No. 482, *Eastman Kodak Co.* v. *United States*, docketed May 15, 1916.

The instant case was not docketed until June 30, 1916.

○

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 207.

UNITED STATES OF AMERICA, APPELLANT,

v.

UNITED SHOE MACHINERY COMPANY ET AL.

MEMORANDUM SUBMITTED BY DEFENDANTS IN OPPOSITION TO MOTION OF THE ATTORNEY-GENERAL TO CONTINUE ARGUMENT TO NEXT TERM OF COURT.

The United Shoe Machinery Company vigorously opposes the continuance of this cause for argument to the next term of court. Its officers and directors can conceive of no situation that will arise, even if dissolution were decreed, where the financing the company could possibly interfere with the financial operations of the United States. The company has no outstanding bonds or mortgage on its property and has an abundance of quick assets to care for any emergency. Its capital stock is quite small (only $50,000,000) as compared with the capital of the other defendants in anti-trust cases, and its stock is largely held locally, principally where it does business, and is not widely scattered; its credit is good; its customers to whom it leases machines number less than 1100 concerns. Even if dissolution were decreed,

the Court could satisfactorily deal with the situation when the exigency arose, if ever.

The cause is one which was expedited for trial under a certificate of the Attorney-General and was tried before three judges in open court. The entire testimony of all the witnesses and the evidence and all the exhibits were presented in open court to these judges, with the exception of certain technical testimony upon patents which was taken before an examiner. The decision of the Court thus constituted after a trial of this character was in favor of the defendant and all controverted issues of fact were decided in favor of the defendant, particularly controverted issues of fact with reference to the interpretation and effect of its leases with respect to competition of other manufacturers and restraint of trade. The pending appeal is therefore the appeal of the United States.

Shortly after the decision was rendered, namely, in October, 1915, the United States initiated another suit against the defendant in the District Court for the Eastern District of Missouri, claiming that under the provisions of the Clayton Act, so called, certain clauses of leases of the defendant were contrary to the provisions of that law. Whether the clauses of the defendant's leases violate the Clayton Act depends in large measure upon their interpretation and the effect which as a matter of fact they may be found to have upon the trade in shoe machinery.

It is obvious that the decision of this Court in this case wil' be of importance as to many issues in the Clayton Act case, and both court and counsel in that case will be at a great disadvantage in a trial of that case unless they have a decision of this Court upon the issues raised in this case.

Moreover, it is of very vital importance to the defendant to learn authoritatively whether its organization and methods of doing business are open to criticism. It is the owner of about $35,000,000 worth of machinery, which is

in the hands of lessees under the leases which are attacked in this litigation; the royalties paid for the use thereof constitute its principal source of income.

The company in the regular course of business is almost daily called on to furnish machines to its customers and supply new manufacturers; in filling this demand under the lease system it regards certain clauses of its leases objected to by the Government as essential to its reasonable protection. The Government asks in this suit that the company be enjoined from enforcing these clauses but that the machines be left in the hands of lessees, without the protection these clauses afford. The company is in consequence greatly embarrassed in conducting its business, and feels that in fairness its rights should be determined as speedily as possible.

While this litigation is pending, the company and its customers and the trade in general continue in a state of uncertainty as to what the defendant may lawfully do.

The leasing system is one of historical growth and is complicated by many circumstances, and if any change is found by this Court to be required by law, such change will require careful analysis of the conditions and considerable time to work out.

This litigation was begun by a bill in equity filed in December, 1911; the trial of the case began in May, 1913, and was concluded in June, 1914; decision was rendered in March, 1915, and the decree dismissing the Government's bill here appealed from was entered in May, 1915. The preparation of the record, involving the reduction to narrative form of several volumes of testimony in order to comply with the equity rules, involved much time and labor, but the case was docketed in this Court on or about July 1, 1916; was advanced for argument on motion and was first argued in March, 1917. The defendant was advised of the Court's order that the case be reargued in May, 1917; on October 1, 1917, a

motion was presented to the Court that the cause be again advanced for reargument, *which motion the Government did not oppose* though the reasons now presented by the Attorney-General for delay were quite as valid then as now, and the Court assigned the case for argument January 7th. The defendant is ready and desires to submit the case to the Court at that time.

FREDERICK P. FISH,
CHAS. F. CHOATE, JR.,
MALCOLM DONALD,
of Counsel.

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, SS. DECEMBER 31, 1917.

I, E. P. Brown, being duly sworn, on oath depose and say, that I am president of the United Shoe Machinery Company; that I have read the foregoing memorandum subscribed by counsel for the company, and to the best of my knowledge and belief the facts therein stated are true, and I further depose and say that the United Shoe Machinery Company, as stated in said memorandum, has no outstanding bonds or mortgage on its property; that its stock is largely held in Massachusetts; that it is in possession of a substantial amount of quick assets and its credit is good, and that I can foresee no situation in its financial affairs where, even in the event of dissolution by order of this Court, the carrying out of a decree to that effect would interfere with the Government's financial operations.

E. P. BROWN.

Subscribed and sworn to before me this thirty-first day of December, A. D. 1917.

CHAS. F. CHOATE, JR.,
Justice of the Peace.

MAR 15 1917
JAMES D. MAHER
Clerk

Supreme Court of the United States

OCTOBER TERM, 1916

No. 207

THE UNITED STATES,
Appellant,

v.

UNITED SHOE MACHINERY COMPANY OF NEW JERSEY, ET AL.,
Appellees.

SUPPLEMENTAL BRIEF FOR UNITED SHOE MACHINERY COMPANY ET AL. IN REPLY TO BRIEF OF THE UNITED STATES

FREDERICK P. FISH
CHARLES F. CHOATE, Jr.
MALCOLM DONALD
Counsel for Appellees.

BOSTON
Press of Geo. H. Ellis Co.
1917

Supreme Court of the United States

OCTOBER TERM, 1916

No. 545

THE UNITED STATES,

Appellant,

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.,

Appellees.

SUPPLEMENTAL BRIEF FOR UNITED SHOE MACHINERY COMPANY ET AL. IN REPLY TO BRIEF OF THE UNITED STATES

FREDERICK P. FISH
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Counsel for Appellees.

BOSTON
PRESS OF GEO. H. ELLIS CO.
1917

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Supreme Court of the United States

OCTOBER TERM, 1916

No. 545

THE UNITED STATES,
Appellant,
v.
UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.,
Appellees.

SUPPLEMENTAL BRIEF FOR UNITED SHOE MACHINERY COMPANY ET AL. IN REPLY TO BRIEF OF THE UNITED STATES.

GENERAL CONSIDERATIONS APPLICABLE TO BRIEF OF THE UNITED STATES.

1. The Brief of the United States seriously misstates and misconstrues the evidence. This is especially true in respect to the leases. In the discussion of their character and effect there is hardly a comment or illustration which does not contain some misstatement of fact or unwarranted assumption.

The result is that the argument of the United States is founded upon conclusions and assumptions which have no foundation in the record.

The attorneys for the United States on this appeal did not try the case in the District Court and they are, there-

fore, not as familiar with the evidence as though they had presented it. This may account for the misstatements on which their argument is founded.

2. The Brief of the United States does not discuss at all the questions which stand at the threshold of this case on appeal, viz., whether or not there is evidence to support the findings of the District Court, and if there is such evidence and the findings of the District Court are, therefore, accepted, whether on the basis of these facts the decree of the District Court should be reversed.

3. The Brief of the United States fails to state the issue made by the petition in this case or to consider whether or not the evidence relates to this issue and supports the charges of the United States.

It contains no specification of errors relied upon, nor does it present any precise statement of the questions involved and the manner in which they are raised.

The charge made by the petition is definite and limited. It charges that the defendants planned to extend unlawfully the lawful patent monopolies held by the constituent companies, and to obtain a complete monopoly of shoe machinery, and that for the accomplishment of this purpose they conceived the idea of acquiring the ownership or control of all concerns engaged in the manufacturing of shoe machinery and then to refuse to sell or lease any shoe machinery of the classes defined as essential machines, unless the shoe manufacturer took practically all other machinery from the defendants and that they carried out this plan and thereby acquired a monopoly. (See main brief, p. 10.)

The Brief of the United States nowhere states this issue or discusses the relation of the evidence to this alleged plan.

In fact it is somewhat difficult to determine from the Brief of the United States just what it contends is the issue before this Court.

The United States does not deny that the United Company's machines are patented, nor does it seriously contend that they are not the best machines in the market, and that they are therefore the machines most desired by shoe manufacturers. It contends that the constituent companies in 1899 were manufacturing these machines under patents and did practically all the business of the country in the machines which they furnished which comprise the principal machines as to which it now claims a monopoly.

It further does not deny that the other machines not manufactured by the constituent companies as to which a monopoly is charged, such as, pulling-over, eyeletting and clicking machines, have been developed and invented by the United Company since its formation.

Accepting these admissions on the part of the United States, it would seem that its contention must be reduced to this, viz., (1) That the alleged competition between the Goodyear Company and the Eppler Company in welt machines, and between the Goodyear Company and the Consolidated Company in lasting machines, made the original formation of the United Company illegal; and (2) that competitors of the United Company in some way would have invented machines superior to or as good as the United Company's machines and would have furnished them upon terms and conditions as satisfactory to shoe manufacturers as those offered by the United Company, and, therefore, would have acquired a larger proportion of the business than they now have, had it not been for the United Company's methods of conducting its business.

The record shows how utterly the United States failed to substantiate these issues. But apart from this they are not the issues in the case. The issue in the case is whether the defendants acting through the United Company planned to acquire a monopoly by acquiring all concerns engaged in the shoe machinery industry and then refusing to lease essential machines unless all other machinery was taken, and whether they carried out this purpose and thereby acquired a monopoly. Even had there been competition between the constituent companies, the consolidation of these companies would not have shown an intent to acquire all concerns engaged in the shoe machinery business, and the leases of the United Company, as the District Court found, certainly do not compel a shoe manufacturer taking one kind of machine to take practically all.

COMMENTS UPON THE PORTION OF THE BRIEF OF THE UNITED STATES TREATING OF THE LEASES.

The United States asserts that irrespective of whether the original formation of the United Company or the subsequent acquisitions by that Company were legal or illegal the defendants have adopted and are enforcing a system of leasing which is unlawful in that it directly and inevitably interferes with the free flow of trade in interstate commerce. (See Brief of the United States, p. 146.)

This is not the charge made by the petition. The petition charges that the clauses in the leases objected to by the petitioner were adopted as part of an unlawful plan, of which the formation of the United Company was a part, and that they constituted only a step in carrying out such unlawful plan, the plan being to obtain a monopoly by acquiring all concerns engaged in the shoe machinery industry and refusing to lease essential machines unless the lessee also took practically all other machines.

Furthermore, the United States does not attempt to limit itself to the specific charges made in the petition as to the leases. The allegations of the petition in respect to the leases are (see main brief, pp. 240–242) that the United Company discontinued selling machines and adopted arbitrary and oppressive leases, which were illegal in that they

(1) Required the lessee to covenant to use the United Company's machines, both of the kind leased and of all other kinds exclusively;

(2) Permitted the United Company to cancel its leases of all machines if these covenants were broken; and

(3) Required the lessee to use the leased machinery for seventeen years.

But further than this the entire argument of the United States is based upon inaccurate statements of fact, half-truths and unwarranted inferences, unfounded and misleading illustrations, and a limited and partial reference to the evidence.

There is scarcely a page of the section relating to the leases which does not contain some inaccurate statement of fact or some unwarranted assumption.

These misstatements show a fundamental misconception or misconstruction on the part of the attorneys for the United States of the character and effect of the leases in respect to basic matters. For example:—

1. They show such misconception or misconstruction in respect to the existence or extent of use of the clauses complained of.

2. They show such misconception or misconstruction in respect to the effect of the clauses (*i.e.*, they do not have the inclusive effect attributed to them).

3. They show such misconception or misconstruction in respect to the inter-relation of the clauses (*i.e.*, their cumulative effect).

4. They fail to analyze the leases or the clauses complained of, they omit to state the purpose of the clauses, and they misconstrue their scope and effect.

The conclusions of the United States as to the effect and character of the leases are, therefore, utterly opposed to the facts. The result is that there is no basis stated in the Brief of the United States for a common argument.

For example, the argument of the United States is based on wholly unwarranted conclusions, such as the following:—

> (p. 254) "The United Company is a 'strong manufacturer'—a giant. It refuses to deal with shoe manufacturers who use independent machines."
>
> (p. 125) "No one may use a United lasting machine upon any shoe which has been operated upon by a machine not procured from the United Company, . . ."
>
> (p. 161) "The exclusive use clause, for example, obviously limits the freedom of choice of every lessee as to all his future needs for machines of the kind leased and clearly prevents access to him, as a possible customer for any such machines, of all who seek to compete with defendants as to those machines."

These conclusions, like many others in the Brief of the United States, are utterly without foundation.

In the chart attached to the Brief of the United States as Appendix A, and in Appendices C and D, the petitioner undertakes to set forth in detail the clauses in the various leases. We comment on these in Appendices I, II and III of this supplemental brief. In the brief proper the petitioner confines itself to general statements intended to show the general effect of the leases, which statements it attempts to support by a few illustrations. Practically all of these general statements are unfounded or inaccurate and the illustrations used to support them either do not support them at all or are provisions used in a few leases and do not justify a general statement applicable to all the leases.

The result is that the general statements on which the petitioner bases its argument are unfounded and unjustified.

PETITIONER'S STATEMENTS AS TO EXTENT OF USE OF THE CLAUSES.

The leases of the United Company, as we have shown in our main brief, have been developed gradually from the very beginning of the shoe machinery industry. They, therefore, represent an historical growth. The machines of the different departments, such as Goodyear machines, lasting machines, metallic machines, heeling machines, eyeletting machines, pulling-over machines, insole machines, and General Department machines, are leased on different forms of lease and there are likewise different forms used in each department. The leases are adapted to the different kinds of machines to which they relate, to the particular work which such machines do and to the particular conditions on which the machines are leased. The leases for the different classes of machines were developed by the different constituent companies. Thus, the Goodyear machine leases were originally developed by the Goodyear Company, the lasting machine leases by the Consolidated & McKay Lasting Machine Company, the heeling and metallic machine leases by the Heeling and Metallic companies owned by the McKay Company. At the time of the formation of the United Company the leases of each of these companies differed somewhat in their terms and provisions. The United Company, as we have shown in our main brief, continued these leases for more than a year without any change whatsoever and afterwards it made modifications only from time to time as conditions seemed to require it. The United Company, therefore, never adopted a new system of leases, and its modifications on the whole have been comparatively slight and have

not changed the fundamental basis of the leases. The leases which the United Company has from time to time drawn up for new machines invented by it have necessarily been made consistent with the existing leases so far as possible, and their character has necessarily been determined in large part by the existing lease system. The United Company, as the various forms of leases have for some reason been reprinted, has made certain slight changes to make the lease system consistent, such, for example, as making all the terms of the leases seventeen years instead of having them run for the life of the machine leased, or indefinitely during the life of the patents on the machines or on any improvements thereafter placed on the machines, as in most of the constituent company leases. But it has at no time undertaken to formulate a new system of leases.

The result is that the leases of different machines differ in their terms and character. Because a clause is contained in one lease it does not necessarily follow that it is contained in another. General statements based upon a single lease or the effect of a single lease are, therefore, very misleading.

The petitioner's brief gives the impression that the various clauses are contained in most or all of the leases.

Thus it states (p. 149):—

> "The leases are characterized by the inclusion in them of the tying clauses to which reference has been made. They are called 'tying' clauses because they tie the use of the machine leased to the use of machines not covered by the particular lease."

After giving an illustration the brief continues (pp. 149–150):—

"In addition to these clauses there are certain other clauses which make the tying clauses more effective and give to them their maximum effect as destroyers of the possibility of competition with the defendants.

"Examples of the various tying clauses and other clauses which together give the defendants' leasing system its illegal character are set out below."

There then follow in the brief nine separate headings designated as follows:—

1. The seventeen-year term.
2. The "additional machines" clause.
3. The exclusive use clause.
4. The prohibitive clause.
5. The "right to terminate all leases" clause.
6. The "full capacity" clause.
7. The return charge.
8. "Royalty" charges on work not done on defendants' machines.
9. Discriminatory royalty charges where competitors' machines are used by the lessee.

On page 160 it is stated that all the defendants' leases provide for a seventeen-year term and all contain the "right to terminate all leases" clause and that the varying use of the other clauses noted above appears from the summaries to be found in Appendices C and D. However, the impression left is that all those clauses are contained in all the leases, or at least that they are typical of all the leases, and further in respect to several of the clauses a direct and erroneous statement is made as to their use.

For example, the brief states (p. 163):—

> "This latter field however is closed by the exclusive use clause. *Every lease* has that clause or an equivalent" (italics theirs).

In other words the petitioner's brief states that every lease contains the exclusive use clause or an equivalent clause.

That this is not true is shown by a cursory examination of the leases and by an examination of Appendix D attached to the petitioner's brief.

The purpose of the exclusive use clause is to give the lessor an option to withdraw its machines on which the royalty is based on the use of the machine, if owing to the use by the shoe manufacturer of other machines of the same kind, the lessor finds that its machines are used only occasionally or only on slow or difficult work, or that proper reports of the amount of work done on its machines are not made by the lessee so that the lessor does not receive or has reason to believe that it is not receiving a fair return on its investment. (See main brief, pp. 311–318.)

The clause is, therefore, used only in leases of machines on which a royalty based on the use of the machine is charged. It is not used in the lease of the McKay sewing machine (P.'s Ex. 170, R. Vol. 4, p. 1161). It is applied to leases of Goodyear welters and stitchers, because these are machines on which the royalty for the Goodyear set is based, but it is not applied to the forty-three Goodyear auxiliary machines, because no separate royalty is charged for their use. It is not applied to the leases of General Department machines, because a fixed annual payment or an initial payment and not a royalty based on use is charged for such machines (P.'s Exs. 40, 41, R. Vol. 3, pp. 373–387).

Out of 90,276 machines leased by the United Company on March 1, 1911, over 53,000 were Goodyear auxiliary and General Department machines, as to which the exclusive use cancellation clause was not applicable, nor was any equivalent clause applicable. (See main brief, p. 316.)

The statement in the petitioner's brief that every lease contains this clause is, therefore, grossly inaccurate.

In respect to certain of the other clauses referred to, the following limitations on their use should be noted:—

1. The full capacity clause (referred to in petitioner's brief at page 154), like the exclusive use clause, is intended to protect the lessor in respect to machines leased for a royalty dependent on the use of the machine. (See main brief, pp. 306–311.) Where a machine is leased to be paid for only to the extent it is used, it is obvious that the lessor must require the lessee to agree to use it when the lessee has work which the machine can perform. Where an annual rental or an initial payment and no royalty based on use is charged for the machine the full capacity clause is not necessary, as the lessor will get the same return whether or not the machine is used. For this reason the full capacity clause is not used in leases of General Department machines, in the lease of the McKay sewing machine, or in respect to the Goodyear auxiliary machines. (See main brief, p. 307.)

The result is that it is not used in respect to more than half in number of the machines held under lease.

2. The clause described by the petitioner as the "prohibitive" or "tying" clause (referred to at page 152 of the petitioner's brief) differs very much in the different leases.

In the clause quoted at page 152 the restrictions are that the machine shall not be used except on shoes on which

the United Company's Goodyear welter and stitcher and turn sewer (which is the same machine as the Goodyear welter), its pulling-over and metallic machines are used. Many if not most of the restricted clauses are less inclusive than this. For example, the hand method welt machine is restricted only to use with the Goodyear welter and stitcher.

Furthermore, of course, this clause is employed (except in the case of certain auxiliary machines) only in alternative forms of lease. Thus lessees can obtain the machines of any department on leases which do not restrict them to use with machines of other departments, except in the case of General Department machines, in respect to which the lessee can purchase them outright without any restrictions whatsoever.

3. The clause quoted at pages 150–151 of the petitioner's brief as an example of the "additional machines clause" does not require the lessee to take additional machines at all. It merely provides that if the lessee has additional work *he shall either take additional machines from the lessor* or the *lessor may if it so elects cancel its leases of metallic machinery*. The lessee is free to use a competitor's metallic machinery and is not required to take additional machines from the lessor. The clause merely provides that if the lessee prefers a competitor's machines, the lessor may at its option withdraw its own machines. In other words, the clause quoted has exactly the same effect as the exclusive use clause and does not obligate the lessee to do anything.

This clause quoted at pages 150–151 was contained in only a few of the forms of the leases of the United Company, most of which are now obsolete.

The additional machinery clause used by the Consoli-

dated & McKay Company in many of its leases and by the Goodyear Company in its lease for turn sewing machines, prior to the formation of the United Company, actually required the lessee to take additional machines and thus required an exclusive use of these machines.

The additional machinery clause was continued only to a limited extent by the United Company after its formation, and abandoned in all leases put out after 1907. (See main brief, pp. 323–326.)

4. The clause requiring the lessee to pay a return charge (referred to in petitioner's brief at page 154) is used only in those leases in which an initial payment is not required. If a machine were leased without an initial payment, and for some reason the lease was terminated or the machine returned shortly afterwards, the lessor would have been put to considerable expense for which it would have received no return or no substantial return. This return payment is expressly stated in the clause quoted at pages 154–155 of the petitioner's brief to be,

> "partial reimbursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators."

5. The clause referred to in the petitioner's brief (p. 155) as royalty charges on work not done on defendants' machines is taken from a lease of Goodyear machines in which the machines are leased without initial payment.

This is only an alternative form of lease. Any lessee can obtain the Goodyear machines on a lease not containing this clause by paying the initial payments required of all lessees prior to 1905 (R. Vol. 1, p. 442, lines 4–12). It is used in no other leases except certain leases of pulling-over machines.

6. Under the heading "Discriminatory Royalty Charges Where Competitors' Machines Are Used By The Lessee" (p. 157), the United States quotes a clause from the United Company's clicking machine lease, under which lease no direct royalty is charged if the machine is used in connection with the United Company's Goodyear welter and stitcher and the United Company's lasting machines, the United Company in such a case getting its return indirectly from the royalties paid for those machines, but a direct royalty is charged where the clicking machine is used with other welters, stitchers, and lasting machines, as otherwise the United Company would get no return for its clicking machine. (For a discussion of this clause, see *infra*, pp. 46–47.)

This clause is employed only in the lease of the clicking machine and in no other lease.

The petitioner's brief, after characterizing the clause, states (p. 158):—

"An example of such a clause is the following,—"

The effect is to give the impression that this clause is employed generally in the United Company's leases.

PETITIONER'S MISSTATEMENTS AS TO THE SCOPE AND EFFECT OF THE RESTRICTED USE CLAUSE.

The petitioner's brief gives a wholly erroneous view of the effect of the restricted use clause and makes statements in respect to it which are utterly without foundation.

The actual effect of the restricted use clause is extremely limited, as we have shown in our main brief. (See main brief, pp. 366–373.)

We shall consider below a few of the misstatements in the petitioner's brief in respect to this clause.

At page 125 of its brief, the petitioner says:—

> "No one may use a United lasting machine upon any shoe which has been operated upon by a machine not procured from the United Company, therefore not upon a shoe operated on by a McKay machine procured outside of the United Company. The lasting machine is virtually, if not absolutely controlled by the United Company. Practically, every shoe manufacturer in the United States must have it. Therefore, every such manufacturer must also procure his McKay machines from the United Company.
>
> "In consequence, the United Company by procuring control of the McKay sewing machine completed its monopoly of every important machine used in bottoming shoes."

The statement made by the petitioner, in other words, is:—

(1) The United Company absolutely controls the lasting machine. Every shoe manufacturer must obtain his lasting machines from the United Company.

(2) Under the United Company's leases lasting machines cannot be used on shoes on which any machines obtained from competitors are operated. If, therefore, a shoe manufacturer uses the United Company's lasting machines, he cannot use any other machines of any kind obtained from competitors.

(3) Lasting machines obtained from the United Company, therefore, cannot be used on shoes on which a McKay machine obtained from a competitor is used.

The petitioner's conclusion, therefore, is that all shoe manufacturers must use and do use the United Company's McKay sewing machines.

Each one of these statements is untrue and the conclusion is likewise untrue.

In the first place, lasting machines can be obtained from other persons than the United Company. (See *infra*, pp. 155–157.)

In the second place, any lessee may obtain lasting machines from the United Company on unrestricted leases which do not restrict their use to use with any machines of any other kind whatsoever.

For example, he may obtain the hand method McKay lasting machine without any restrictions by paying an initial payment of $300. Furthermore, under this lease he is required to pay only ½ of a cent royalty per pair of shoes, while under the restricted lease the royalty is ⅝ of a cent per pair. (See main brief, pp. 288–289.)

He may obtain the hand method welt lasting machine without any restriction as to use with other machines by making an initial payment of $300. Under this lease he pays the same royalty per pair as under the restricted lease. (See main brief, p. 289.)

He may obtain the No. 5 lasting machine, a new type of lasting machine invented and developed by the United Company and first put out about 1908, without any restriction as to use with other machines by making an initial payment of $300. (See P.'s Ex. 22, R. Vol. 3, p. 193, par. Five.) The royalty will be the same as under the restricted lease.

The above-mentioned lasting machines are the machines now in general commercial use, the other types having become practically obsolete.

Even if he does not desire to make an initial payment and therefore takes his lasting machine or machines under

restricted leases, such restricted leases have no such effect as the petitioner states.

The restricted lease of the hand method McKay machine restricts its use only in connection with the Goodyear welter and stitcher and the United Company's metallic machines. As the machine is only adapted for use on McKay shoes, on which the welter and stitcher are never used, the restriction runs only to use with the United Company's metallic machines.

Thus a shoe manufacturer of McKay shoes can take the hand method McKay lasting machine under the restricted lease and use with it any competitor's machines he may desire except metallic fastening machines. In other words, he may use in connection with a competitor's heeling machines, eyeletting machines, pulling-over machines, lacing machines, McKay sewing machines, and General Department machines (of which there are one hundred and seventy different types), button-hole machines, or with any machines not manufactured by the United Company such as machines for sewing the uppers of shoes.

The restricted lease of the hand method welt lasting machine restricts it to use only with the United Company's welter and stitcher, that is, to two machines out of over three hundred manufactured by the United Company. (See main brief, p. 289.)

In other words, a shoe manufacturer making welt shoes can take the hand method welt laster and may use it in connection with any machines whatsoever obtained from a competitor except the welter and stitcher. He may use it with any one of forty-three Goodyear auxiliary machines obtained from a competitor, or with a competitor's pulling-

over, metallic, eyeletting, heeling, lacing, insole and General Department machines, button-hole machines, or machines not manufactured by the United Company such as machines for sewing the uppers of shoes.

The No. 5 lasting machine under the restricted form of lease is restricted to use with the United Company's welter and stitcher, pulling-over and metallic machines.

A lessee taking this machine under the restricted lease may therefore use it in connection with a competitor's Goodyear auxiliary machines (of which there are forty-three), heeling machines, McKay sewing machines, eyeletting machines, lacing machines, insole machines, General Department machines, button-hole machines, and other machines not manufactured by the United Company, such as machines for sewing the uppers.

It will thus be seen how utterly without foundation is the petitioner's statement that

> "No one may use a United lasting machine upon any shoe which has been operated upon by a machine not procured from the United Company. . . . ."

And also its further statement (p. 125),—

> " . . . therefore not upon a shoe operated on by a McKay machine procured outside of the United Company."

It will be noted that not one of these restricted leases of lasting machines restricts the use of the machine to use in connection with the United Company's McKay sewing machines. A shoe manufacturer is absolutely free to take any form of lasting machine put out by the United Company under a restricted lease and use it in connection with McKay machines obtained from competitors.

Therefore, the petitioner's conclusion that shoe manufacturers taking the United Company's lasting machines must necessarily use the United Company's McKay sewing machine is absolutely untrue.

This is shown not only by the leases themselves which we have examined above, but also by the facts in respect to the use of competitors' McKay sewing machines.

For example, in 1909 there were in the principal shoe manufacturing districts 1,488 McKay sewing machines, of which only 308 had been supplied by the United Company and 1,180 had been supplied by others. In the Lynn district there were 59 McKay sewing machines supplied by the United Company and 367 supplied by others (R. Vol. 1, p. 977, lines 16–31; see also main brief, p. 563).

Mr. Jonathan Brown, Jr., a large manufacturer of McKay shoes who used the United Company's lasting machines (Defs.' Ex. 236), testified that he had thirteen McKay sewing machines, of which he owned ten and obtained three from the United Company on lease.

> "The United Company has never caused us any difficulty or interfered with us in connection with our buying McKay sewing machines while we have their leased McKay sewing machines in our factory. We have done as we wanted to absolutely without any interference" (R. Vol. 1, p. 730, lines 25–30).

It is difficult to see how the petitioner can justify itself in making such statements as the foregoing, each one of which is absolutely without foundation.

The foregoing facts also show the utter lack of foundation for the charge made by the petition. That charge is that the United Company used its so-called essential machines,

namely, the Goodyear welter and stitcher, lasting, metallic, and heeling machines, which the constituent companies manufactured, to compel the use by lessees of other machines. One of the most important of such other machines is the McKay sewing machine. The McKay sewing machine was the first important shoe machine ever invented (R. Vol. 1, p. 521, lines 15–17). It was used in uniting the soles to the uppers of nearly forty per cent. of the shoes made in 1910 (Defs.' Ex. 215, R. Vol. 1, p. 424). It was not manufactured by the constituent companies, and when the United Company started to manufacture it, it would obviously, had it had the purpose ascribed to it by the petitioner, have required lessees of some one or more of its so-called essential machines to use them only in connection with its McKay sewing machine. But it has never restricted any of its machines to use with its McKay sewing machine (notwithstanding the statement in the petitioner's brief to the contrary), thus absolutely disproving the contention of the United States.

The assumption (without any foundation in fact) that the restricted use or "tying clauses" restrict the use of each machine or of certain so-called essential machines, to use with all other machines runs all through the petitioner's discussion of the leases.

Examples of other misstatements as to this clause are given below.

For a discussion of its actual scope and effect see our main brief, pages 346–373.

PETITIONER'S ERRONEOUS STATEMENTS AS TO THE UNRESTRICTED OR INDEPENDENT LEASES AND THEIR EFFECT.

As stated in our main brief, the United Company offers not only certain restricted leases, but also offers the machines of each department on unrestricted leases which do not restrict them to use with machines of any other department. (See main brief, pp. 357–364.)

A shoe manufacturer who does not wish to use a team of the United Company's machines, but wishes to use only its machines of certain departments and to use competitors' machines from other departments, can, if the clauses in the restricted leases for the machines he wishes to take from the United Company stand in the way, take unrestricted leases of those machines.

Of course this right absolutely refutes the contention of the United States that shoe manufacturers taking machines of one department are compelled to use machines of any or all other departments.

The petitioner, however, contends that these unrestricted leases are furnished only on prohibitive terms which cannot be accepted by the lessee and that they, therefore, do not constitute a real alternative.

Of this attempt to prove that the charges for the unrestricted or independent leases are exorbitant the District Court said (R. Vol. 1, p. 1166): —

> "But surely, if the argument is made that there is coercion through an excessive price, such an argument can have no weight whatever for any purpose legal or ethical unless the fact that it is excessive affirmatively appears. From such evidence as is presented

in this case as to the amount of initial charges upon independent leases we can draw no support for the charge of coercion through excessive charges."

In practically all of the independent leases the royalty per pair of shoes is the same as that charged for the restricted leases. The only difference is that an initial payment is required under the independent leases. In the case of the independent lease of the hand method McKay lasting machine the royalty is, moreover, less under the restricted form. (See main brief, p. 288.) In the case of the metallic machines, on which the royalty is received by the purchase of material used in the machines, there is an alternative initial payment form of unrestricted lease, under which the charge for material used is the same as under the restricted form, and also an alternative unrestricted form of lease, in which no initial payment is required, but ten per cent. more is charged for the material used than under the restricted form. (See main brief, p. 291.)

The petitioner in making its contention that the initial payment leases are prohibitive is met at the outset by the fact that the initial payments charged by the United Company are no higher than those charged by the constituent companies at the time of the organization of the United Company. A lessee to-day can get a set of machines on independent leases for less cost than he could in 1899, when the United Company was formed. (See main brief, pp. 358–359.) In addition, he gets much improved machines having a far greater capacity than the machines of 1899; he gets more auxiliary machines; and he gets far better service with his machines.

The truth is that the United Company's rates for ma-

chines at retail, that is, on independent or unrestricted leases, have not been increased although its machines and service have been much improved. The distinction between the price for unrestricted leases, under which machines are taken to be used at retail, and the prices for restricted leases, under which the machines are taken to be used at wholesale, has grown up, not by adopting higher prices for machines leased for use at retail, but by adopting reduced rates from time to time in respect to certain machines when taken to be used under restricted leases, *i.e.*, at wholesale.

The petitioner's brief says (p. 179):—

> "Therefore, Winslow has deliberately formulated two classes of leases, and has so framed the so-called 'independent' class that in his judgment it is more beneficial to the lessee to adopt the other class, which ties him hand and foot to the United Company."

The insinuation in this statement that prices for the independent leases have been deliberately formulated to prevent lessees taking machines on such leases is absolutely without foundation. The charges for these leases have merely continued the same in practically all instances.

The attempt of the petitioner to prove that the price or prices charged for the unrestricted leases are prohibitive is based upon misstatements as to the effect and scope of the restricted leases and upon a misconstruction of other evidence.

On page 176 the petitioner's brief says:—

> ". . . a manufacturer must take the independent lease as to every class of machines, in order to be relieved from the restrictions. For illustration, suppose one entering upon the manufacture of welt shoes should

take restricted leases for lasting and metallic fastening machines, but an independent lease for heeling machines. His independent heeling machine lease would avail him nothing, because his lasting machine and metallic fastening machine leases would prohibit the use of such machines in connection with a heeling machine not owned by the United Company. So, if he were to take independent leases for all machines other than lasting machines, *that one lease* would prohibit the use of the lasting machines in connection with either of the *other classes* of machinery. Hence, the manufacturer must take the *entire* independent system to obtain any freedom whatever" (italics theirs).

Let us see if the foregoing statement is true.

It refers to a lessee who takes from the United Company lasting, metallic and heeling machines.

The petitioner first states that if such a lessee takes restricted leases of lasting and metallic machines these leases (p. 176)

> "would prohibit the use of such machines in connection with a heeling machine not owned by the United Company."

There is no foundation whatsoever for this statement.

None of the United Company's lasting machines which are to-day taken by lessees is restricted to use with its heeling machines. The only lasting machine which was ever so restricted is the McKay & Copeland machine, which was used only for heavy brogans and which is now practically obsolete. None of the United Company's metallic machines has ever been restricted to use with its heeling machines.

The result, therefore, is that a lessee can take both

lasting machines and metallic machines from the United Company on restricted leases without initial payment and use them with a competitor's heeling machine.

A shoe manufacturer desiring to use a competitor's heeling machine would of course not take the United Company's heeling machine, as the petitioner apparently assumes he would do. He would therefore not be required to pay an initial payment for such machine to the United Company. The result is that, without its costing him a cent of additional royalty or initial payment, a lessee can use a competitor's heeling machine with the United Company's lasting and metallic machines. So much for the petitioner's first illustration.

The second illustration used by the petitioner is as follows: Its brief states that if a shoe manufacturer took an independent lease of all his machines other than the lasting machines (p. 176)

> "*that one lease* would prohibit the use of the lasting machines in connection with either of the *other classes* of machinery" (italics theirs),

that is, with his heeling and metallic machines, which are the other classes referred to.

We have shown above that the hand method welt lasting machine is restricted to use only with the Goodyear welter and stitcher. A shoe manufacturer, therefore, making welt shoes can take a restricted lease of a hand method welt laster and can use it in connection with a competitor's metallic and heeling machines.

The hand method McKay lasting machine is restricted to use with the United Company's metallic machines. A shoe manufacturer, therefore, can take a restricted lease of this lasting machine and use it with a competitor's heeling machine.

The No. 5 lasting machine is restricted to use with the United Company's welter and stitcher, pulling-over machines and metallic machines. A lessee of this machine can therefore use it in connection with a competitor's heeling machine.

The petitioner's illustration is therefore entirely untrue as respects the use of the hand method welt lasting machine for use on welt shoes, and is only half true in respect to the hand method McKay machine and the No. 5 machine.

Furthermore, the implication in this statement is obviously unsound. It states not only that the United Company's lasting machine is in all cases restricted to use with its metallic and heeling machines, which as shown above is not so, but it implies that a shoe manufacturer desiring to use the United Company's lasting machine with a competitor's metallic and heeling machines must take from the United Company not only lasting machines, but also metallic and heeling machines on independent leases, and therefore make initial payments for all three classes of machines. Of course this is not so. The shoe manufacturer desiring to use a competitor's heeling and metallic machines would not take such machines from the United Company. Even, therefore, if the United Company's lasting machines were restricted to use with both the metallic and heeling machines (which they are not), the shoe manufacturer would be required to take an independent lease only of the lasting machine, the initial payment for which is only $300.

Surely, this is a small charge to pay for the privilege of using the United Company's lasting machine alone. In such case the cost of service for the machine is much greater

to the United Company and the royalty received from the machine when so used with other machines not especially adapted for use with it is smaller.

Only two lasting machines are required to make 250 pairs of shoes a day (Defs.' Ex. 230). Out of 1,150 factories in 1911, 495 made less than 300 pairs of shoes a day (R. Vol. 1, p. 455). In other words, nearly half the shoe manufacturers in the country would be required to pay only $600 to obtain their lasting machines on independent leases.

The writer of the petitioner's brief carefully refrains from going to the leases to support his statement, which we have analyzed above, but in support of it quotes a remark of Mr. Winslow in which Mr. Winslow failed fully to qualify his statement and the writer sets forth that statement apart from its context and apart from the rest of the record as establishing facts which the record, as shown above, clearly shows to be untrue. Mr. Winslow is quoted as saying (p. 176):—

> "Then he could return our heeling machines, place his machines in the other departments upon the independent forms of leases, and continue to use the heeling machines of others."

Mr. Winslow did not mean to say that all the restricted leases of the United Company's machines, or of its principal machines, restricted such machines to use with the United Company's heeling machines. He obviously meant if the lessee did have any machines of the United Company which were restricted to use with the heeling machines of the United Company, those machines could be transferred to the independent form of lease if the lessee desired to use them with heeling machines not obtained from the United Company.

The only case to which this would apply would be in the case of a lessee, happening to have a McKay & Copeland machine (which machine is now practically obsolete) on the lease form set out in Plaintiff's Exhibit 20, pulling-over machines held upon a restricted form of lease, or eyeletting machines held upon such restricted form of lease.

After establishing to his apparent satisfaction the utterly false conclusion arrived at as the result of the statement analyzed above, the writer of the brief says (p. 177):—

> "This means that the shoe manufacturer would have first to find Pettingill heelers enough to satisfy his wants for heelers, and having done this he would then have to place *all his machines* 'in the other departments upon the independent forms of leases'" (italics theirs),

a statement which as we have shown is absolutely contrary to the fact. And he closes oratorically:—

> "He could not be half slave and half free."

After making the foregoing statements, the brief proceeds deliberately to misconstrue and misapply the testimony of Mr. Winslow on pages 432 to 433 of the record in an endeavor to show that it would cost a shoe manufacturer making a thousand pairs of welt shoes per day $8,833.00 "for the privilege of using the Pettingill heeler."

Mr. Winslow in his testimony was comparing the "savings" in the cost of machines used to manufacture Goodyear welt shoes both as to royalty (R. Vol. 1, p. 430, line 3) and initial cost. He uses as an illustration the cost of installing in a lessee's factory in 1899 and in 1911 machinery for making 300 pairs of welt shoes per day (R. Vol. 1, p. 432, lines 23–31) and for making 1,000 pairs of welt shoes per day (R. Vol. 1, p. 432, lines 44–45, and p. 433, lines

1–12). He showed that for a 1,000-pair factory the cost in 1899 was $11,300.50 and in 1911 $2,467.50, a difference of $8,833. He was not, however, comparing the difference in prices charged for restricted and unrestricted leases in 1911. His figures include not only initial payments, but also the purchase price of certain General Department machines which the lessee was required to purchase in 1899 and which he could obtain on lease in 1911 from the United Company and the rentals charged for the first year for General Department and auxiliary machines. The statement was intended to show to what extent the United Company had lowered the cost of installing machines for making welt shoes and thus encouraged their manufacture. It affords no foundation whatsoever for a comparison of the difference in the prices charged for restricted and unrestricted leases.

Furthermore, even if it did afford a basis for such comparison, the conclusion drawn from it by the United States is absolutely without foundation.

Mr. Winslow refers in his statement to the cost of installing the following machines, viz.: Goodyear machines, lasting machines, metallic machines, heeling machines, and General Department machines (R. Vol. 1, p. 432, lines 23–31). Not a single one of these machines (unless the shoe manufacturer wished to use the McKay & Copeland lasting machine, which was used only for heavy brogans and is now practically obsolete) is restricted under any of the United Company's leases to use with the United Company's heeling machines. The shoe manufacturer can therefore take all of the machines referred to by Mr. Winslow on restricted leases and use them in connection with a competitor's heeling ma-

chine. He would not have to pay a cent more for the machines obtained from the United Company than he would if he also used the United Company's heeling machine in connection with them. The statement in the petitioner's brief therefore (p. 177),—

> "In other words, the owner of such a factory would have to pay at the time Mr. Winslow testified about $8,833.00 for the privilege of using the Pettingill heeler,"

is absolutely without foundation.

Furthermore, the greater part of the difference in cost between the price charged in 1899 for installing this machinery and the price charged in 1911 came from the elimination of initial payments on Goodyear machines. The Goodyear machines are not restricted to use with machines of any other department and therefore, no matter what machines of competitors in other departments he desired to use, the shoe manufacturer could take the Goodyear machines without paying an initial payment on them and use them with such competitor's machines.

Finally, the statement assumes that the lessee would be required to take all his machines from the United Company on independent leases. Even if under the restricted leases all machines were restricted to use with all others (which the brief writer assumes, and which is not the fact), the lessee would obviously not take from the United Company those machines which he preferred to take from a competitor. He would therefore be obliged, at most, to take on initial payment leases only such of the United Company's machines as he desired to use and the restrictions on which in the restricted leases forbade their use with such competitor's machines as he wished to use.

Taking the machines of the departments mentioned by Mr. Winslow in the statement referred to by the brief writer, the following illustrations will show the unfounded character of the assumption that a lessee using a competitor's machine of one department must take unrestricted leases of machines of all departments, and therefore pay the initial premiums on all the United Company's machines of all these departments.

(1) If the lessee wishes to use the United Company's Goodyear machines and a competitor's lasting, metallic, heeling, and General Department machines, he can take his Goodyear machines on the non-initial payment basis and use them in connection with the competitor's lasting, metallic, heeling, and General Department machines, without paying a cent more to the United Company for his Goodyear machines than he would pay for them if he used all the United Company's machines exclusively.

(2) If the lessee wishes to use the United Company's Goodyear and lasting machines and a competitor's metallic, heeling, and General Department machines, he can use the hand method welt laster on the non-initial payment restricted lease (which restricts its use only to use with the Goodyear welter and stitcher) and he can use such Goodyear and lasting machines in connection with a competitor's metallic, heeling, and General Department machines, without paying a cent more to the United Company for them than he would pay if he used all of its machines exclusively.

(3) If the lessee wishes to use the United Company's Goodyear, lasting, and metallic machines and a competitor's heeling machines and General Department machines, he can take his Goodyear machines on the non-initial payment basis and his lasting and metallic machines on non-initial

payment restricted leases and use them in connection with a competitor's heeling and General Department machines without paying a cent more to the United Company for his machines taken from them than he would pay if he used the United Company's machines exclusively.

(4) If the lessee wishes to use the United Company's Goodyear, lasting, metallic, and heeling machines and a competitor's General Department machines, he can take his Goodyear machines on the non-initial payment form of lease and his lasting, metallic, and heeling machines on non-initial payment restricted leases and use them in connection with a competitor's General Department machines and not pay a cent more for them than he would pay if he used also the United Company's General Department machines.

In other words, the above illustrations show that there are many combinations in which the lessee can use the United Company's machines of certain departments and competitors' machines of other departments without paying a cent more to the United Company for the use of its machines than if he used the United Company's machines of all departments exclusively.

In other combinations the lessee may have to take certain machines from the United Company on initial payment leases. (See our main brief, pp. 370–372.)

The foregoing will show the utter absurdity of the petitioner's contention

(1) that to use a single machine of a competitor all other machines must be taken from the United Company on initial payment leases, and

(2) that the lessee must pay the full initial payment for

all the United Company's machines, both those he desires to use and those he does not desire to use.

The foregoing will also show that each combination or situation must be regarded and considered separately. No general rule applicable to all the leases, or all combinations of machines is possible. This is due to the fact that the leases were not adopted at one time, nor were the restrictions adopted at one time, but they are the result of an historical growth. The restrictions, for example, have been employed from time to time to meet special conditions.

For instance, the restriction in the metallic lease was adopted in 1900 because the cost of material had advanced and the United Company did not want to advance the price of material to its lessees. By restricting the machines to use with its Goodyear welter and stitcher and its lasting machines the United Company felt it could lease the metallic machines to be used with such other machines as a set without increasing the price of material. (See our main brief, pp. 276–278.) The restriction in the heeling machine leases was adopted late in 1904 as partial compensation for the removal of the initial payments on the Goodyear machines. (See our main brief, pp. 278–279.)

Underlying these modifications, made from time to time, however, was the principle that when the machines were used together as a set the United Company received a greater royalty from each machine of the set and could care for the machines at less cost per machine, and that, therefore, when so used a reduced or wholesale price was proper. (See our main brief, pp. 333–342.)

The brief writer having made the utterly unfounded statement analyzed above (at p. 177), to the effect that it would cost the shoe manufacturer making 1,000

pairs of welt shoes a day $8,833 to install the Pettingill heeler, proceeds to cite instances of what he refers to as "heavy initial premiums." It does not appear that these amounts are unfair or unreasonable. On the contrary, the evidence shows that Leavitt, one of the persons to whom the brief states leases carrying these high premiums were offered, accepted them (R. Vol. 1, p. 873, lines 10–17), thus showing conclusively that he did not consider the terms prohibitive.

In respect to the statement that the cost to the International Shoe Company of putting all its machines on independent leases would be $250,000, the brief fails to state that the International Shoe Company is one of the largest shoe manufacturers in the world, having $25,000,000 capital, that it has twenty different factories, and that the sum of $250,000 would include the purchase outright of all the General Department machines used by the International Shoe Company. (See our main brief, pp. 361–362.)

Petitioner's brief then proceeds (p. 178):—

> "In this regard, it must not be forgotten that after the shoe manufacturer had paid for the privilege of using an independent machine he was required to pay to the United Company the same royalty, for that machine as if he had taken it upon a 'restricted' lease. And in addition he must pay increased royalties upon certain other United machines—clicking, lasting, and metallic fastening machines, . . . Of course, no shoe manufacturer could afford the luxury of an independent lease under such circumstances."

It is not true that the shoe manufacturer under any form of independent lease would be required to pay an increased royalty on his lasting machine. On the contrary,

on the hand method McKay lasting machine he would pay less. (See our main brief, p. 288.)

It is not true that after he had "paid for the privilege of using an independent machine," by which the writer presumably means after making an initial payment for an independent lease, the lessee would be required to pay an increased royalty for his metallic fastening machines. Under the initial payment form of independent metallic lease the royalty is the same as under the restricted form. Only under the non-initial-payment independent form under which no initial payment is made is the royalty ten per cent. more. (See our main brief, pp. 291–292.)

The statement with respect to the clicking machine is also misleading. No direct royalty is charged for this machine when it is used in connection with the United Company's welter, stitcher and lasting machine. Only when it is not so used is a royalty charged. (See *infra*, p. 46.)

Passing over various other inaccuracies, we find on page 180 of the petitioner's brief the following statement:—

> "Apart from losing the rebates and bonuses given by the defendants to obedient manufacturers, a lessee using machines of competitors under the 'independent lease' would not only have to pay the initial premiums but his premiums for pulling over machines would be nearly tripled and his clicking machines would cost him an additional and discriminatory royalty of from one to three cents a pair. On top of all this, he would have to pay ten per cent. extra for any of the defendants' metallic machines which he might have to use."

The "rebates and bonuses" referred to consist of an offer made in 1910 by the United Company to pay to its lessees

of Goodyear machines in stock of the United Company a certain percentage of the royalties received from them on their Goodyear machines provided they "faithfully observed the covenants of their leases." This was not a rebate or bonus in any sense. It was merely a method of reducing the royalty charged on these machines, such reduction being represented in stock instead of by a cash reduction. It applied equally to all lessees. There is absolutely nothing in the record or in fact to suggest that a lessee of the machines under "independent leases" was not equally eligible with the lessee holding machines under restricted leases, or a lessee holding some machines under each of the two ways, to share the benefits. Furthermore, a shoe manufacturer using the United Company's Goodyear machines and a competitor's lasting, heeling, metallic, General Department and pulling-over machines was as fully entitled to this reduction as a manufacturer using all of the United Company's machines. A reading of the offer (P.'s Ex. 146, R. Vol. 5, p. 1067) shows this clearly. (See also our main brief, p. 551.)

The statement "but his premiums for pulling-over machines would be nearly tripled" is absolutely unfounded in fact, and there is not a word in the evidence or in the exhibits which justifies any such statement.

The statement "and his clicking machines would cost him an additional and discriminatory royalty of from one to three cents a pair" is discussed *infra*, page 51.

The brief continues at the bottom of page 180 by assuming a difference of four cents a pair between manufacturing shoes on independent leases and manufacturing shoes on restricted leases and shows a corresponding aggregate amount. The brief might equally well have assumed two

cents and shown half the aggregate amount or eight cents and shown double the amount. In either case it would be of as little value as the assumption made in the brief itself, for it is an assumption contrary to fact and an assumption of fact as a general basis of argument, which would vary constantly and as to which each new case would depend upon a multitude of circumstances.

THE PETITIONER'S MISCONSTRUCTION OF THE EXCLUSIVE USE CLAUSE.

The petitioner's brief lays great stress on the exclusive use cancellation clause and its entire argument is founded upon a misstatement of the clause and its effect.

The brief states:—

(1) That the exclusive use clause forbids the lessee to use machines obtained from others of the kind leased; and

(2) That if the lessee does use such other machines, not only will he violate the lease but the lessor may cancel its leases not only of that particular kind but of machines of all kinds held by him.

Both of these statements are absolutely untrue.

The following quotations from the brief contain the foregoing statements:—

> (p. 161) "The exclusive use clause, for example, obviously limits the freedom of choice of every lessee as to all his future needs for machines of the kind leased and clearly prevents access to him, as a possible customer for any such machines, of all who seek to compete with the defendants as to those machines."
>
> (p. 163) "Without going further, it is apparent that no field of competition is left open except the equipment of entirely new manufacturers and the satis-

faction of new or additional requirements of old manufacturers.

"This latter field however is closed by the exclusive use clause. *Every lease* has that clause or an equivalent. No new demand by an existing lessee of the United Company can be satisfied by a competitor of the defendants without a violation of this clause. The consequences of such a violation need not be repeated. They are the same as those which follow the violation of the full capacity clause. It is enough to say that 'as a practical question' no manufacturer can afford to incur them" (italics theirs).

The brief just previously had stated that upon a violation of the full capacity clause the lessee subjects himself to having all his leases cancelled and all his machinery withdrawn (p. 162). The brief, therefore, clearly states that a violation of the exclusive use clause permits the lessor to cancel the defendants' leases of machines of all kinds.

Before discussing this clause further one word of explanation as to the scope of the clause may be advisable. The exclusive use cancellation clause applies only to the machines of a particular department. Thus as used in a lease of heeling machines the clause permits the lessor to cancel leases of heeling machines held by the lessee if the lessee uses heeling machines obtained from others. It does not permit the lessor to cancel its leases of any other machines, except heeling machines, and it does not permit the lessor to cancel its leases of heeling machines unless machines of the same kind, that is, other heeling machines are used.

The statement in the petitioner's brief that the exclusive use cancellation clause forbids the lessee to use a competitor's machines of the kind leased has no justification. The exclusive use cancellation clause imposes no obligation

whatsoever upon the lessee either to use the United Company's machines or not to use competitor's machines. It merely reserves to the lessor an option to cancel its leases of the machines of a particular department if the lessee wishes to use and does use machines of the same kind obtained from others.

There is all the difference in the world between a clause requiring the lessee to obligate himself to use the United Company's machines of a particular department exclusively and a clause reserving an option to the United Company to withdraw its own machines of that particular department if its machines of that particular kind are not used exclusively.

Under the first provision the lessee is bound absolutely not to use the machines of competitors. Under the second provision no obligation at all is imposed upon the lessee; his right to use the machines of others is recognized; the lessee in no way violates the lease by using such other machines and it is merely provided that the lessor in such case may withdraw its own machines of the same kind if it desires.

The first provision, namely, the provision which the petitioner claims is used, would prevent the use of competitors' machines of the particular kind leased entirely. The second provision, which is the provision actually used, permits the lessee to use competitors' machines as much as he pleases.

The first provision closes the door to competition. The second provision leaves the door open to competitors.

In fact the second provision, namely, the provision actually used, provides a means whereby, if the lessee prefers a competitor's machines of a particular kind, he may be able to escape from any obligation whatsoever to the

United Company in respect to its machines of this kind. As the District Court pointed out (R. Vol. 1, p. 1177):—

> "The cancellation clauses, however, provide a practical means of escape for those who consider the term too long. They may install other machinery and run the chance, and if the machinery so installed is satisfactory they may use it for their full equipment when the machines of the defendants are removed."

The attempt of the petitioner to convey the impression that the exclusive use cancellation clause used by the United Company imposes an obligation on the lessee not to use the machines of others is difficult to understand. Not only does a reading of the clause show its actual effect, but the District Court pointed out the distinction in its opinion, saying (R. Vol. 1, p. 1169):—

> "The legal effect of it [*i.e.*, the exclusive use clause] is merely reservation of a right to cancel the lease in case the lessee should fail or cease to use the defendants' machines exclusively for work of a particular kind. It does not have the legal effect of a contract by the lessee not to use the machines of others. It is merely a limitation imposed by a patentee upon the right to use.
>
> "The reiteration by the United States of the statement that the lessee must use, or is required to use, defendants' machines exclusively is misleading. The distinction between a contract requiring a lessee not to take other machines and a limitation of the right to use the leased machines is very material."

Not only, then, does the exclusive use clause not obligate the lessee to use the United Company's machines of a particular kind exclusively, but it was not inserted in the leases for the purpose of excluding competitors' machines

and there is not the slightest evidence that it has ever been exercised for this purpose.

The right of a lessor to withdraw his own machines because the lessee prefers to use other machines of the same kind is not a right which is adapted to prevent the use of competitors' machines, nor is it a right which could be so exercised as to accomplish that end. By exercising this right the lessor would leave the field open to competitors. A clause which permits the lessor to withdraw its machines is obviously not designed to require that they be used. As the District Court said (R. Vol. 1, p. 1167):—

> "As it is not the purpose of the defendants to take their machines out of factories, but rather to put them in, we must consider those clauses which are designed to induce their installation, rather than those clauses that are designed to prevent a breach of contract, or which reserve a right to terminate the leases upon an infringement of patent rights."

The exclusive use clause was adopted for legitimate business reasons which are fully stated in our main brief (pp. 311–319).

Not only does the exclusive use clause not require that the lessee shall not use a competitor's machines, but if he does use a competitor's machines he is not liable to the consequences stated in the petitioner's brief. When he uses other machines of a certain department, the United Company under the exclusive use clause may withdraw its own machines of that particular kind. It cannot, however, under the exclusive use clause, withdraw machines of any other kind.

Nor can it withdraw its machines of other kinds under the cancellation for breach clause, as the petitioner states.

As the exclusive use clause imposes no obligation upon the lessee, the use by the lessee of other machines does not constitute a violation of any condition or agreement obligatory upon the lessee. The cancellation for breach clause, which permits the cancellation of all leases, can be exercised only where a condition or agreement obligatory upon the lessee has been violated. (See main brief, pp. 329–330.)

PETITIONER'S STATEMENT AS TO CLAUSE REQUIRING PAYMENT OF ROYALTY BASED ON THE TOTAL OUTPUT OF THE LESSEE.

At pages 155–156 the petitioner quotes a clause from one of the United Company's Goodyear leases (P.'s Ex. 24) under which the lessee agrees to pay the lessor for the use of the leased machinery a royalty based on the total number of shoes welted or stitched by machinery whether or not so welted or stitched on the United Company's machines.

The petitioner's brief gives the impression that this clause is a typical clause. We have stated above that it occurs only in certain Goodyear leases and certain pulling-over leases.

The brief designates this clause as a "Royalty Charge on Work not Done on its Machines." It says that if a shoe manufacturer makes 1,000 pairs of shoes of which 500 are sewed on defendants' machines, and 500 on a machine of a competitor, the shoe manufacturer must pay to the defendants royalties both on the 500 pairs made on the defendants' machines and also on the 500 pairs made on the competing machine (p. 156). In other words, it gives the impression that a charge is made by the United Company for shoes sewed on a competitor's machines. This is an unjustified construction.

The charge is made solely for the right to use the United Company's machines. The clause merely provides that where the lessee takes the United Company's Goodyear welter and stitcher without making any initial payment, he shall pay for the use of the patented inventions a price based on his output. A fixed annual payment for the right to use the United Company's Goodyear machines on any shoes the lessee wished to use them on would certainly be beyond criticism. So equally must be this clause which, instead of requiring a fixed payment for such right, requires a payment based on the actual number of shoes on which the lessee is privileged to use the machines. Such a provision is fairer to the lessee than a fixed payment as the amount of royalty depends on the amount of the lessee's business and he is not burdened with a large payment if his business permanently or temporarily falls off.

If the lessee does not wish to be bound by this clause, he can, by paying the same initial payment which was charged all lessees prior to 1905, take a lease of Goodyear machines which does not contain this clause (R. Vol. 1, p. 442, lines 4–12). The petitioner's brief fails to mention this alternative lease.

The District Court said of this clause:—

> "A royalty which has regard both to the capacity of the machines which the lessor furnishes and to the amount of work which the lessee may have to do upon machines embodying the patented inventions, seems beyond reasonable criticism" (R. Vol. 1, p. 1172).

The brief also refers, under this heading, to a provision that if payment of royalty is made in respect to a given pair of shoes under one Goodyear Department lease it need not be duplicated under a second Goodyear Department

lease even though it happens that part of the Goodyear machines used upon that pair of shoes are held under one lease and part under another. This is obviously a provision merely for avoiding duplication of payment.

As to this the brief says (p. 157):—

> "This means that the United Company charges in the first instance for *each* machine what it deems an adequate compensation for *all* the machines of the group described" (italics theirs).

The purpose of the clause, as is amply shown by the record, is simply this: A lessee may have all of his Goodyear Department machines under a single lease instrument or it may so happen that he has taken his machines at different times, and therefore holds various machines of the Goodyear set under different lease instruments. Each royalty lease must, of course, provide properly for its royalty payment. If the lessee has all of the machines which he holds of this set under a single instrument, there is, of course, no complication, but if he holds some of the machines of this set under one lease and others under another and uses machines held under each lease upon the same pair of shoes, there would, in the absence of some such clause, appear to be on the face of the lease an obligation to pay the stipulated royalty twice.

The clause in question is inserted simply to avoid such duplication of payment. It is no more than to say that, if a manufacturer has agreed under two separate agreements to pay a certain sum of money, payment of that sum under one agreement will relieve him from duplicating the same payment under the other agreement.

PETITIONER'S STATEMENT AS TO THE CLICKING MACHINE LEASES.

At pages 157 to 158 of its brief the United States treats of the royalty clause in the clicking machine lease.

It entitles the section under which it treats of this clause "Discriminatory Royalty Charges where Competitors' Machines are used by the Lessee."

It states:—

> ". . . the defendants in many cases make higher demands for compensation where the lessee uses machines of defendants' competitors than where he refrains from such use. . . .
>
> "An example of such a clause is the following, taken from plaintiff's exhibit 44. . . ."

The brief then quotes the royalty provisions in the clicking machine lease.

The clicking machine is treated substantially as an auxiliary machine when used with the United Company's welter, stitcher, and lasting machines. In such case no direct royalty is charged for the machine, but the United Company gets its return indirectly from the royalties received from the use of the welter, stitcher, and lasting machines. The charge for dies used in the machine is not intended to provide an adequate royalty for the use of the machine.

The lease of the clicking machine, however, differs from the lease of the ordinary auxiliary machine in that a lessee is permitted to use it with welters, stitchers, and lasting machines obtained from others. It is provided, however, that if the lessee does use it with such other machines not

obtained from the United Company, he must pay a royalty of 1/2 of a cent net if the machine is used in connection with other lasting machines, 7/8 of a cent net if used with other welt machines on turn shoes, and 3 cents net if used with other welters and stitchers on welt shoes. If these amounts were not charged where the machine is not used with the United Company's welter, stitcher, and lasting machine, the United Company would get no fair return from the use of its clicking machine, either directly on account of the use of the machine, or indirectly from the royalties received from other machines.

The United Company makes no charge for its Goodyear auxiliary machines except a small rental, but restricts their use to use with the Goodyear welter and stitcher, on which it receives a royalty. The petitioner complains because the United Company does not also lease these auxiliary machines for a separate royalty to be used with a competitor's welter and stitcher.

In the clicking machine leases the United Company does just what the petitioner wishes it to do in respect to the Goodyear auxiliaries. It leases the machine without royalty charge where used with its Goodyear welter and stitcher and lasting machines, and if the lessee wishes to use it on shoes operated upon by welters, stitchers, and lasting machines obtained from others he is permitted to do so by paying a separate royalty for the clicking machine. This is the full effect of the clause.

The clicking machine was invented by the United Company and first put out about 1909. (See main brief, p. 575.) It is a very remarkable machine but it is not as yet used by all lessees.

The brief writer says that clauses of this kind are used

"in many cases." This is not true. The clicking machine lease is the only lease put out by the United Company which contains such a clause.

The metallic machine lease (P.'s Ex. 31), which the petitioner's brief (pp. 158–159) also refers to as containing a clause of the same character, is merely an instance of an unrestricted or retail lease. Under this lease no initial payment is charged, but instead ten per cent. more is charged for materials used in the machine, than is charged under the restricted or wholesale lease.

ARGUMENT OF PETITIONER BASED UPON ITS MISCONSTRUCTION OF THE LEASE CLAUSES.

Under the heading "The Effect of the Restrictive Clauses" (at pages 161–166) the writer of the petitioner's brief attempts to show the effect of the clauses upon a shoe manufacturer.

The conclusion reached by the writer is based upon a misconstruction of the various clauses, especially upon a misconstruction of the exclusive use clause and of the restricted use clause.

The writer at page 161 first begins by stating that the various clauses cannot be regarded separately as they have a cumulative effect. As an example of this he gives the following illustration (pp. 161–163):—

If it be assumed, he says, that the full capacity clause standing alone is reasonable and not unduly restrictive, it must be considered in its relation to the other clauses. A lessee having taken a particular machine and agreed to use it to capacity, so far as he has work for it to do, is unable to replace that machine with a competitor's machine; in

other words, having agreed to use this machine he must use it. We admit that this is the intent and purpose of the full capacity clause.

But the writer adds, if he, the lessee, violates this agreement to use the United Company's machine which he has taken he

> "subjects himself to the penalty of cancellation of *all* his leases and the loss of *all* his leased machinery" (italics theirs) (p. 162).

He adds (p. 162),—

> "The practical operation, then, of this clause which to outward seeming is perhaps the most reasonable of all the restrictive clauses is to prevent the displacement by competitors of any of the defendants' machines."

Of course this broad generalization is not true, because, as we have shown, the full capacity clause is employed in respect to less than half of the machines under lease by the United Company (*supra*, p. 12).

But apart from this, the argument of the petitioner apparently is that while it is proper to make the lessee agree to use the leased machine, it is not proper to subject him to a penalty if he violates his agreement.

Can it be seriously contended that the United Company should not have a right to sever its relations with a lessee and withdraw all its machines if such lessee wilfully violates the full capacity clause in one of its leases and thus deprives the United Company of the royalty which it is entitled to on account of such machine?

The brief then proceeds to state that the full capacity clause closes the field of competition except for

> "the equipment of entirely new manufacturers and the satisfaction of new or additional requirements of old manufacturers" (p. 163).

It is somewhat difficult to see just why competitors coming into the field should expect that lessees already holding machines under leases under the terms of which they have agreed to use the leased machines should have a right to violate their leases and discard such leased machinery.

The brief then proceeds (p. 163):—

> "This latter field [that is, the supplying of new manufacturers or additional equipment to existing manufacturers] however is closed by the exclusive use clause. *Every lease* has that clause or an equivalent. No new demand by an existing lessee of the United Company can be satisfied by a competitor of the defendants without a violation of this clause" (italics theirs).

As we have shown above (*supra*, pp. 38–43), the exclusive clause does not forbid a lessee to take machines from a competitor and a lessee does not violate his lease by so doing. It is untrue, therefore, that the exclusive use clause prevents a lessee from obtaining new or additional machines from competitors or even machines to replace the machines of the United Company which he holds.

The brief then proceeds to state that the consequences of violating the exclusive use clause are the same as those which follow a violation of the full capacity clause.

As we have shown (*supra*, p. 40), the exclusive use clause does not constitute an agreement by the lessee, but is merely the reservation of an option to the lessor.

The clause, therefore, is not violated by the lessee when he takes competitors' machines, and the United Company, therefore, in such case acquires no right to cancel all the leases held by the lessee.

The brief writer, having thus, without any foundation in fact, shown to his satisfaction that existing lessees cannot take competitors' machines either to replace their existing machines or for new and additional work, proceeds to endeavor to show that the restricted use clause or, as he terms it, the "prohibitive" or "tying" clause prevents even new shoe manufacturers just entering the field from obtaining any machines from competitors.

The writer says (p. 164) that such a new manufacturer must go to the United Company for his lasting machines. This is not true (see *infra*, pp. 155–157), but even if it were true it does not sustain the writer's conclusion.

The writer then proceeds to state (p. 165) that even if this new manufacturer could obtain lasting machines from others, his payments for pulling-over machines taken from the United Company would be nearly trebled and his payments for clicking machines taken from the United Company would be increased by a "penalty royalty of from one to three cents a pair." As we have stated above, the statement that his pulling-over machine royalty would be nearly trebled is absolutely without foundation. If he desired to use the United Company's clicking machine, his royalty for the use of the clicking machine when used on shoes operated on by a lasting machine not obtained from the United Company would be one-half a cent, not "one to three cents."

The writer then states that this new shoe manufacturer,

having obtained his lasting machines from the United Company, is by reason of the exclusive use clause (p. 165)

> "committed to the defendants for all of his present and future demands for any kind of lasting machine or device."

This is of course not the effect of the exclusive use clause, as we have shown above.

The writer then states (p. 165) that this new shoe manufacturer will not take the independent form of lasting machine lease. As we have shown (*supra*, pp. 22–36), there is no reason why he should not take it.

The writer then states that, having accepted a restricted lease of lasting machines, the lessee cannot use in connection with it a competitor's Goodyear welter, stitcher, pulling-over or metallic machine (p. 166). This, as we have shown (*supra*, pp. 18–19), is true only as to the No. 5 lasting machine. The other lasting machines, which operate on the same kinds of shoes as the No. 5 lasting machines, and which are preferred by some shoe manufacturers, have fewer restrictions.

Even if we accept the conclusion that the writer at this point reaches (which, as we have shown, is not a correct conclusion), it appears that the shoe manufacturer is only restricted to this extent, viz., that if he uses the United Company's lasting machine, it must be used in connection with its Goodyear welter, stitcher, pulling-over and metallic machines. He is free to use in connection with it any other machines obtained from competitors, viz., any Goodyear auxiliaries (of which there are forty-three different kinds), any heeling machines, any McKay sewing machines, any General Department machines (of which there are over one hundred and seventy-two different kinds),

any lacing machines, any button-hole machines, any insole machines, any machines for sewing the uppers of shoes (which constitute nearly one-half the total machines used in a shoe factory) and any other types of machines which he may desire to use.

It is quite evident that most of the different kinds of shoe machinery, he can still take from competitors and use in connection with the United Company's lasting machine. The result, therefore, even on the erroneous assumptions made by the writer hardly seem to justify the following statement with which he winds up this analysis of the effect of the leases (pp. 166–167):—

> " . . . defendants have brought about a situation in which competition with them either as to the existing or the future needs for machinery of existing or future shoe manufacturers has become entirely impossible. The United Company is not merely 'a formidable competitor.' It is absolute monarch of the industry. No competitor can exist unless for its own pleasure or policy it withholds its destroying hand."

Again, at pages 247–248 of the brief, the writer attempts to show that the fact that leases are executed at different times gives them some additional restrictive effect. He says:—

> "All leases made by the United Company run for a period of 17 years. New leases are made from time to time by every shoe manufacturer who deals with the United Company. Each lease is tied to all the earlier leases. It would be hard to imagine a time when a lessee would be free from all such leases in the ordinary course of business. Therefore there is no time when he is at liberty to procure his bottoming, clicking or

> eyeletting machinery where he wills. . . . It may be well said of that system that he who enters it 'leaves all hope behind.'"

The writer then continues as follows:—

> "A system of leases or contracts producing such a situation must be illegal."

Fortunately for the effect of his argument, the writer does not attempt to analyze the situation to which he refers. He is referring, of course, to the effect of the restricted leases. Let us see if there is any truth in his statement.

Let us take the restricted lease of metallic machinery. Under such a lease the machines are restricted to use with the United Company's Goodyear welter and stitcher and lasting machines. (See our main brief, pp. 290–291.) The lessee can only use this machine if he has shoes which have been or are to be operated on by the United Company's Goodyear welter, stitcher, and lasting machines; *i.e.*, if these operations are to be performed and are to be performed by machinery. Assume that the lessee's leases of Goodyear machines and lasting machines expire and he is left with his lease of a metallic machine. Unless he renews his lease of the Goodyear machines and the lasting machines taken from the United Company or obtains new machines of the same kind from the United Company, he will not be entitled to use his metallic machines held by him on restricted lease. He will be under no obligation whatsoever to obtain other Goodyear machines and lasting machines from the United Company.

The fact that his lease of the metallic machines runs longer than his leases of the Goodyear and lasting machines,

therefore, not only does not oblige him to continue to use the United Company's Goodyear and lasting machines, but, unless he voluntarily does renew his leases of those machines, he is actually freed from any obligation to use his metallic machines, since he is not allowed to use them except in connection with these other machines obtained from the United Company.

The effect, then, of his Goodyear and lasting machine leases expiring before his metallic lease expires is, not to oblige him to continue his relations with the United Company, as the United States charges, but, on the contrary, the effect is to relieve him of further liability to use his metallic machines still under lease.

PETITIONER'S ATTEMPT TO PROVE THAT EXORBITANT ROYALTIES ARE CHARGED.

At pages 173 to 175 of the petitioner's brief the writer attempts to show that the royalties charged by the United Company are excessive.

There was no evidence in the record as to the cash value of the machines which the United Company leases and does not sell, nor could there well be as they are patented machines which are unique and which have never been sold in the market.

The writer of the brief, however, finds that under plaintiff's exhibit No. 21, a lease of a No. 5 lasting machine, the lessee is required to pay the lessor $225 if the machine is destroyed by fire. From this he assumes that the machine is worth only $225. Even if $225 would compensate the United Company for the loss of the physical materials in the machine, which does not appear, this would be no

test whatsoever of the value of the machine, which is very valuable because of the patented inventions which it incorporates.

For example, each new model K welter probably saves $800 a year over the previous model. (See main brief, p. 510.) The previous model was the best machine in the market. To assume, as the writer of the brief does, that such a machine may be worth only the cost of its physical materials is on its face absurd.

The pulling-over machine cost $1,000,000 to develop before it was made a commercial success. (See main brief, p. 574.) The cost of this development must be added to the price of the machines in order to enable the United Company to get back even its expenses.

In spite of this, however, the brief writer assumes that the cost of all machines is doubtless $225 apiece (p. 175). He then takes a small factory making the character of shoe which uses the greatest number of defendants' machines and which returns to the defendants its greatest royalty returns (though the brief does not point this out) and states that for the size and character of factory assumed there would be leased "nine principal machines." He omits auxiliary machines and says nothing about the use of patented inventions or service in caring for the machines. He then proceeds to say with reference to the nine machines (p. 175):—

> "Assuming their value to average $225, the defendants have here an investment of $2025."

What could be more absurd than an assumption based upon premises such as these addressed to this court? Yet the brief continues, based upon these premises:—

> "They receive *annually* a return of over 120 per cent. on this investment" (italics theirs);

and then, apparently realizing the absurd nature of the illustration, continues:—

> "This calculation omits both the auxiliary machines, whose value ranges from a small figure to a large one, and the rentals paid by the manufacturers for them";

and having thus built up a situation to his liking, the brief writer continues:—

> "No self-respecting business man would enter into stipulations so offensive and destructive of his liberty unless he was coerced by the circumstances surrounding him."

PETITIONER'S CHARGES OF UNFAIR CONDUCT TOWARD LESSEES.

Under the title "Punitive Action Against Disobedient Lessees" at pages 188 to 198 of the brief, the United States refers to certain transactions which it claims show that the defendants attempted to enforce the restrictive provisions of their leases so as to compel shoe manufacturers to deal with them.

The brief writer relies upon partial statements in an attempt to support his charge.

We have not space to comment on all of these various transactions, but respectfully refer the Court to the finding of the District Court which completely exonerated the defendants, and to the statements in respect to these transactions at pages 88 to 131 of the appendix to our brief, and pages 543-552 of the main brief, where these transactions are taken up together with other alleged

unfair acts specified in the petitioner's bill of particulars.

To show the extent to which the petitioner in treating of these transactions has disregarded all statements favorable to the defendant sand thereby given a wholly false impression, we shall consider briefly the case of *Kimball & Hadley*.

At page 198 of the petitioner's brief the writer refers to this transaction as follows:—

> "Kimball & Hadley, of Lynn, Mass., were making needles and awls. Beginning about January, 1904, they found that they could not sell Universal Slugging Machine awls. Five firms told Hadley personally that the reason they would not purchase was that the use of their needles and awls was in violation of the lease of the United Company; and if they continued to use their needles and awls, the United Company would take its machines away from them" (Hadley, R. Vol. 1, p. 308, line 11).

It is true that Hadley did testify that he could sell no awls and few needles to the factories of the E. E. Taylor, G. D. Barry & Company, Churchill & Alden, and Rice & Hutchins (R. Vol. 1, p. 308, lines 28–31), and that he testified that these concerns stated orally that the use of his needles and awls was in violation of the terms or condition of their leases and if the manufacturers continued to use his awls and needles the United Company would take their machines out of the factories. The defendants' evidence showed, however, that this statement was self-evidently false.

In the first place, all the leases of the United Company have been introduced in evidence and there is not a single lease which requires the lessee to purchase awls and needles

from the United Company. Therefore, on its face it could hardly be true that these concerns made this statement, or that Hadley, who was acquainted with the shoe trade, credited the statement.

In the second place, representatives of these concerns were called as witnesses and absolutely denied making any such statements to Hadley.

In the third place, it appeared that Hadley had sold out his business of making Goodyear needles and awls to the United Company. At the time of the purchase the United Company was not making any Goodyear needles. The purchase price was $4,750. As part of the transaction Hadley covenanted not to engage in the business for fifteen years. He broke this covenant and in a suit brought by the United Company against him to enforce its rights the covenant was held valid and Hadley was enjoined from engaging in the business during the term of the covenant. (*United Shoe Machinery Company* v. *Hadley*, 193 Mass. 351.) The record shows beyond question that Hadley, on account of this litigation, was prejudiced and biased and determined to injure the United Company if he could and that his statements were wholly unreliable. (See Appendix, pp. 111–113; pp. 54–55.)

PETITIONER'S REFERENCE TO OTHER CLAUSES IN THE LEASES WHICH IT IS NOT EXPRESSLY CONTENDED BY THE PETITIONER ARE ILLEGAL.

At pages 146 to 147 of the petitioner's brief the writer refers to certain other clauses in the leases. The purpose apparently is to show either that these clauses are also oppressive, and, therefore, to show the oppressive character in general of the leases, or to insinuate that because these

clauses are in the leases the other clauses objected to by the petitioner as illegal are unnecessary.

The first clause considered is the minimum payment clause.

The brief states (p. 146):—

> "These leases . . . contain every ordinary provision to protect the interests of a lessor. Among these is a clause *which appears in every lease* requiring the payment of a fixed minimum royalty" (italics ours).

And again (p. 147):—

> "And whether the machine is put out on a rental or a royalty basis he [the lessee] is obligated to guarantee a minimum monthly return."

The slightest study of the leases set forth in the exhibits shows that this general statement is not warranted by the facts. Of the forty-nine leases set forth as exhibits a minimum guarantee clause in some form occurs in thirty-one leases. It does not occur at all in eighteen leases. Even in those cases where it does occur it is, in practically every instance, accompanied by a qualification (to which the brief makes no reference) that such minimum guarantee does not apply in respect to any month in which the factory of the lessee is idle.

Such minimum guarantee clause is not used in general in respect to machines installed under leases which require an initial payment. It does not occur in the leases of General Department machines under which 170 different types of machine are supplied. It does not occur in respect to auxiliary machines of the Goodyear Department. It does not occur in respect to clicking machines. It does not occur in respect to eyeletting machines. Defendants'

Exhibit 226, R. Vol. 5, page 424, shows the total number of defendants' leased machines outstanding March 1, 1913, as 98,516. Of these machines more than 73,000 were Goodyear auxiliaries, General Department, eyeletting machines, etc., the leases of which as appear from the Exhibits contain no minimum royalty. 744 were lasting machines whose leases contain no minimum royalty. And as appears from the record, any of the 5,586 Goodyear machines, 3,782 Consolidated lasting machines, 3,716 No. 5 lasting machines, might have been taken on forms of lease which do not contain a minimum royalty clause.

The purpose of the writer in referring to this minimum payment clause apparently is to show that, since the leases contain this clause, no other provisions are needed to protect the United Company in respect to the amount of return it receives, such as the full capacity clause and the exclusive use cancellation clause.

We have shown in our main brief (p. 310) the unsoundness of this contention. If the minimum clause provided for a fair return, it would necessarily be equivalent to a fair rental for the machine; but one of the virtues of the lease system is that the lessee is not required to pay except according to use. The minimum clause in the present leases originated many years ago. It has no relation to a reasonable return on the machines, and, as Mr. Winslow testified, it has never been enforced except for the purpose of making a manufacturer return surplus machines not required by him. (Main brief, pp. 310–311.)

The brief then states (p. 147):—

"The machine is held at the sole risk of the lessee."

And again (p. 147):—

> "If the machinery be destroyed by fire, he [the lessee] must pay for it a sum fixed in the lease."

This is not true as a general statement in the form in which it is made. This provision does not occur in the leases of General Department machines or in general in those leases where the lessee makes an initial payment at the time of the installation of the machines.

In other words, this clause is inserted only in those leases when the machines are installed without any initial payment on the part of the lessee. In such a case if the machine were destroyed by fire, especially if it were destroyed shortly after it was installed, the United Company would get no payment at all for its machine.

The brief continues (p. 147):—

> "Plaintiff's Exhibit 21 (R. III, 182) is in these and other respects a fair sample of the defendants' leases."

It is to be noted that the lease selected as the "fair sample" is one of the two alternative forms of lease for a new type of lasting machine not adopted or put out by the United Company until the year 1908, nine years after the formation of the Company. The alternative form of lease for this very machine, which appears as Plaintiff's Exhibit 22 (R. Vol. 3, p. 193), does not contain either the fixed minimum royalty clause or the sole risk clause or the agreement to pay if the machine is destroyed by fire, which the brief sets forth as contained in every lease, nor any restrictive lease clause, and the Exhibit 21 which the brief sets out as a "fair sample" of the defendants' leases differs from any other lease put out by the defendants (including various

other leases for lasting machines) in that it includes clauses not contained in many of the other leases, and also differs in respect to the scope of the so-called tying clause from such clauses in other restricted leases where they occur to which the Brief of the United States subsequently refers.

Again, at page 172 under the title of "Other Oppressive Provisions of Defendants' Leases" the brief writer refers to the following clauses as "extremely burdensome."

The first clause is a clause forbidding the lessee, without permission from the lessor, to remove a machine from one of his factories.

The machines belong to the United Company. It naturally must know where they are located so that it can see if they are properly cared for and so that, in respect to the machines on which a royalty based on use is paid, it can examine the machines to see if proper payments are being made. The provision that the United Company's own machines shall not be removed from the factories in which they are installed without its permission can hardly be called burdensome without a stretch of the imagination.

The next clause considered by the writer is the clause permitting the lessor at all times to have access to the leased machinery (p. 172),—

> "for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use."

Obviously the United Company must have a right to look at the machinery in order to see if it is properly cared for and to see to what extent it is used so that it may be sure it has been paid its proper royalties. The brief

writer construes this into a right on the part of the United Company to

> "enter the factory of the lessee at any time they please, and put themselves in a position to learn any manufacturing secret the lessee may have."

The brief then proceeds to say (p. 173):—

> "Further, he [the lessee] is required 'at his own expense' to keep the machinery 'in good and efficient working order,' although the machinery belongs to the lessor and the lessee is bound to pay for its use."

Could any argument be more absurd? The petitioner seriously charges that a clause requiring a lessee of machinery to keep it in efficient working order is an improper burden. The writer, of course, omits to state that this work is actually done by the United Company, and that the clause is not enforced. (See main brief, pp. 186–188.)

The writer then refers to the clause requiring the lessee to obtain from the lessor the parts needed for repairs. (See main brief, pp. 298, 301.)

He then refers to a clause requiring the lessee to pay a stated sum in case the machine is destroyed by fire. It is difficult to see how this clause can be burdensome. It may be noted that the clause does not appear in the initial payment leases put out by the United Company which the writer omits to mention.

The writer of the brief then refers to the return charge, which, it is to be noted, occurs in only certain of the leases, and then proceeds to assume a certain cost for the machines and on this assumption to contend that an exorbitant price is charged for the machines. This last contention we have considered *supra*, page 14.

THE RELIEF ASKED FOR BY THE PETITIONER IN RESPECT TO THE LEASES SHOWS THE PETITIONER'S FAILURE TO UNDERSTAND THEIR CHARACTER AND EFFECT.

The petition itself prays that the Court declare the lease and license agreements objected to "illegal and void" (R. Vol. 1, p. 1029), and that the defendants be enjoined from enforcing or attempting to enforce any of the provisions objected to.

In the petitioner's brief the petitioner contends that relief as to the existing leases can be given without making the lessees themselves parties, on the ground that the enforcement of the alleged illegal provisions can be enjoined without depriving the lessees of any rights, and that such action, on the contrary, will only relieve them of burdensome provisions.

On page 259 the brief writer says:—

> "As we have said before, the Government does not attack the leases, but only certain clauses of them. These clauses are, we say, illegal. They impose obligations upon the lessees and are made for the sole benefit of the defendants. The relief sought is a prohibition against the defendants enforcing them. We do not seek in any wise to control the action of the lessees. What we ask would not in the least impinge their rights. Neither would it impose any obligation upon them. On the contrary, it is designed to relieve them from an oppressive and wholly illegal burden."

This statement, we submit, is based upon a wholly erroneous view of the nature and character of the lease provisions.

For example, take the seventeen-year term, which is one of the clauses objected to by the United States. If the United Company is enjoined from enforcing this clause, it means that the United Company cannot compel a lessee to retain its machines for the period of seventeen years, but that the lessee may return them at any time. But if the United Company is so enjoined it must be because the clause is illegal. If so, it clearly follows that the lessee also cannot enforce the clause. The result would be that the United Company could withdraw from its lessees at once all the machines they hold under lease, and either refuse to return them to the lessees or require the lessees to purchase them, or pay large initial payments or fixed rentals. This is not a fanciful suggestion. If the United Company is enjoined from providing for its reasonable protection by means of the clauses it now employs, it would, as we have shown in our main brief (pp. 420–422), be required to sell its machines outright, or charge large initial payments, or fixed royalties, that is, to charge its lessees less favorable terms than at present.

In other words, it is impossible to enjoin the United Company from enforcing this seventeen-year clause except on the ground that it is illegal, and if so, the leases become terminated or terminable at any time at the option of either party. It is therefore clear that the lessees are vitally interested in the decision of this suit and that their rights would be seriously affected if the United Company were enjoined from enforcing the lease provisions, as prayed for by the petitioner.

Again, take the auxiliary restricted use clause. The United Company has thousands of patented Goodyear auxiliary machines on lease. No royalty is charged for the

use of these machines, but they are restricted to use with the Goodyear welter and stitcher and the United Company receives its return indirectly from the royalties received from the welter and stitcher.

But is it possible that the Court could enjoin the United Company from enforcing this restriction, and at the same time hold that the lessee had a right to continue to hold the machines under his lease and use them in connection with any machines he pleased? The result would be that the lessee would continue to hold and use the United Company's machines, without making any royalty payment direct or indirect for them, that is on terms entirely contrary to those agreed upon by the parties.

The auxiliary machines are patented machines. The lease and license agreements under which they are furnished to lessees constitute leases of the physical materials which compose the machines, and also licenses under patents to use the inventions embodied in the machines.

As the United Company owns these patents embodied in the machines, the lessee has no right to use the leased machines unless he holds a license from the United Company to do so. The only license to use the machines which the lessee has is the restricted license contained in the leases authorizing the lessee to use the machines only on certain shoes. The United States contends that this license, that is, the restricted use clause, is unlawful and therefore that its enforcement should be enjoined. But if the license is unlawful, then it necessarily follows that the lessee has no license at all to use the machines. If a patent suit is brought against him by the United Company for an infringement by the use of the machines, the lessee can defend only by

setting up a license, and, of course, it cannot set up an unlawful license.

A patent suit brought by the United Company against the lessee for the use of these machines would not constitute an enforcement of the lease. It would constitute merely an enforcement of the United Company's patents, which give it the right to exclude all other persons from the use of the patented inventions. The United Company in such a suit would not rely upon any agreement by the lessee but solely on its patent, and, as we have stated above, the lessee, if using the machines in connection with a welter or stitcher obtained from some one else, could not set up the license granted by the lease as a defence, first, because such license would not cover the use which he was making of the machines, and second, because such license would necessarily have been held to be illegal if the relief prayed for by the petitioner is granted.

This same result is true in respect to all the other machines leased under restricted leases.

The result is that the restricted use clauses could not be held unlawful, and the United Company enjoined from enforcing them without necessarily depriving the lessees of their right to use at all machines held by them under such restricted licenses.

There is, therefore, no foundation for the statement (p. 259) in the petitioner's brief that:—

> "What we ask would not in the least impinge their [the lessees'] rights."

Again, take the full capacity clause objected to by the petitioner. The machines held under leases containing this clause were leased on an understanding that they

should be used as contemplated by the full capacity clause. If they are not so used, the United Company may get no return, as the royalty is dependent on the use of the machines. This clause goes to the very essence of the contract. If it is held illegal, the whole lease must be illegal, and therefore the lessee can no longer have the right to hold the machines for the term of the lease. To hold otherwise would be to hold that the Court can decree that machines, owned by the United Company, shall be held by a shoe manufacturer on terms not contemplated or agreed to by either party. In other words, it would be to hold that the Court, by its decree, can create a new contract, between the parties which would be totally unfair to one of them, and might deprive it of practically its entire return on its investment.

Consider again the clause contained in some of the Goodyear leases requiring the lessee to pay a royalty for the use of the machines determined by the total output of the lessee. The petitioner strenuously objects to this clause and asks that the United Company be enjoined from enforcing it. This is the only clause in the lease requiring the lessee to pay any royalty to the United Company (except a small minimum payment). This clause goes to the very essence of the contract. If the United Company cannot enforce it, it cannot obtain any compensation for its machines. If it is held illegal, it necessarily follows that the entire lease must be illegal.

APPENDICES "A," "C," AND "D" TO THE PETITIONER'S BRIEF.

Appendix "A" to the petitioner's brief is a chart purporting to show the effect of the exclusive use and "tying" clauses. This chart does not correctly represent the situation, but is inaccurate and misleading. We comment on it in Appendix I to this Supplemental Brief (*infra*, pp. 159–166).

Appendix "C" to petitioner's brief purports to give a synopsis of the lease forms showing the tying clauses contained in each. This also contains ambiguities and various misleading statements. We comment on it in Appendix II to this Supplemental Brief (*infra*, pp. 167–177).

Appendix "D" to the petitioner's brief purports to give a résumé of leases in which the various objectionable clauses appear. We comment on this in Appendix III to this Supplemental Brief (*infra*, pp. 178–179).

REPLY TO THE DISCUSSION IN THE BRIEF FOR THE UNITED STATES OF ALLEGED LASTING MACHINE COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE CONSOLIDATED & McKAY LASTING MACHINE COMPANY.

The Court will find nothing in the Brief for the United States which will raise any question as to the soundness of the findings of the District Court on the facts bearing on this issue. Accordingly, we should not burden the Court with any further discussion of this issue than is contained in the Brief for Appellees (pp. 119–151), were it not for the fact that the Brief for the United States abounds in inaccurate and misleading statements of the evidence, directly at variance with the overwhelming weight of the evidence and frequently at variance with the testimony of the United States' own witnesses, and persistently ignores directly contradictory evidence of defendants' witnesses.

1. PRELIMINARY STATEMENT.

At the very outset the Brief for the United States (p. 18) makes a misstatement which demands immediate correction. It states that "there were on the market, according to Winslow," the Ideal lasting machine and the Copeland rapid lasting machine, both owned by the Goodyear Company. This is to the effect that in 1899 the Goodyear Company was putting out *both* of these machines. *Mr. Winslow made no such statement.* At the point in the record which the United States cites in support of its

statement, he did not even mention the Copeland (R. Vol. 1, p. 399, lines 13–21).

As is explained in the Brief for Appellees (pp. 129–131), the Copeland rapid lasting machine was an old machine formerly put out by the Goodyear Company but which had become out of date with the revolutionary changes in the styles and shapes of lasts about 1895. After that time the Goodyear Company put out the Ideal lasting machine (R. Vol. 1, p. 521, lines 39–40; p. 626, lines 39–43).

This misstatement by the United States is particularly open to criticism in view of the fact that it is introduced (p. 17) by the statement: "*There is no dispute* with reference to the various kinds of lasting machines which were being produced at the time the United Company was formed" (italics ours). Moreover, this misstatement by the United States is inconsistent with its statement (p. 20) that "the Goodyear Company's lasting machine was, as has been said, the Ideal machine, which was a development of its Copeland-Rapid machine."

The United States does not appear to question that, as explained on pages 119–120 of the Brief for Appellees, the following lasting machines being put out by the Consolidated Company in 1899, viz.: the McKay & Copeland, the Chase, and the hand method McKay, were each designed and chiefly used for a particular kind of work, each different from the other; and that the Ideal machine of the Goodyear Company was also designed and chiefly used for still another and distinctly different kind of work.

The United States contends:—

(1) That the experimental hand method welt lasting machine of the Consolidated Company competed with the

Ideal machine of the Goodyear Company in the field of the Ideal, that is, in lasting *women's welt shoes.*

(2) That the Ideal machine of the Goodyear Company competed with the hand method McKay machine of the Consolidated Company in the field of the hand method McKay, that is, in lasting *McKay sewed shoes.* This is a new contention.

(3) That the Ideal machine of the Goodyear Company competed with the Chase machine of the Consolidated Company in the field of the Chase, that is, in lasting *men's welt shoes.*

(4) That the Chase machine of the Consolidated Company competed with the Ideal machine of the Goodyear Company in the field of the Ideal machine, that is, in lasting *women's welt shoes.*

2. THE CONTENTION OF THE UNITED STATES THAT THE EXPERIMENTAL HAND METHOD WELT LASTING MACHINE OF THE CONSOLIDATED COMPANY COMPETED WITH THE IDEAL MACHINE OF THE GOODYEAR COMPANY IN THE FIELD OF THE IDEAL, IN LASTING WOMEN'S WELT SHOES.

The Brief for the United States contends (p. 19) that the problem of adapting the hand method lasting machine for the lasting of welt shoes was "in the way of solution in the fall of 1898"; and that in December, 1898, the Consolidated Company was "offering to the trade the hand method machine as a satisfactory machine for the lasting of welt shoes."

The evidence which the United States relies upon in support of this contention is, first, Mr. Winslow's testimony that, as it is stated by the United States (p. 19), "some

machines were already in shoe factories," that "it was the intention of the Consolidated & McKay Company to perfect the machine so as to make it an efficient welt lasting machine," that it became successful *in 1900*, and that *now* women's welt shoes are lasted very largely upon this machine.

It is upon these statements by Mr. Winslow that the United States bases its assertion (p. 19) that the Consolidated Company "was putting out lasting machines which covered the entire ground." But the United States ignores Mr. Winslow's testimony that

> ". . . while it is true that we had machines out it is true that they were not being accepted by the manufacturers and they were being sent out and coming back. We were trying all the time to keep them going. . . . We were trying to hold them in the field, but *we knew that they were not commercially successful*" (italics ours) (R. Vol. 1, p. 978, lines 2–5, 11–13).

Mr. Winslow's testimony was emphatically corroborated by Mr. Howard (R. Vol. 1, p. 969, lines 4–6).

The practical reasons why the experimental hand method welt lasting machine was not successful until a new invention was incorporated in it in 1900 are fully explained in the Brief for Appellees (pp. 140–144).

The United States further relies (pp. 19, 32) upon advertisements published by the Consolidated Company in December, 1898. But the United States goes too far; it asserts (p. 32) that the advertisements "*claimed the machine would last welt shoes without distinction*" (italics ours), and obviously aims to give the impression that the advertisements claimed that the machine would last any and

all kinds of welt shoes, necessarily including women's welt shoes. This is not justified by the record, which merely states that the advertisements advertised "the Consolidated hand-method lasting machine for lasting welt shoes" (R. Vol. 1, p. 960, lines 27–28). But apart from this the advertisements merely show an attempt by the Consolidated Company to introduce the machine and in no way refute the testimony discussed in the Brief for Appellees (pp. 140–144) proving conclusively that this attempt had failed and that the machine was not commercially successful. Accordingly, there is no warrant for the argument of the United States (p. 33) that "these contemporaneous advertisements should overcome anything which Mr. Winslow and his witnesses said in this law suit, twelve years afterwards." This contention is obviously absurd.

The United States also attempts to support its contention that prior to 1899 the experimental hand method welt lasting machine was offering competition in the field of the Ideal lasting machine, in lasting women's welt shoes, by the testimony of Selz, Welch, Strootman, and Eaton (pp. 28–29). None of these witnesses testified to any use of the hand method welt lasting machine on *women's welt shoes* prior to 1899, and only one, Eaton, testified to *any use* of that machine on any kind of shoes prior to 1899.

Selz's testimony does not bear on the issue. In the summary of his testimony in the Brief for the United States (p. 28) women's *welt* shoes are not even mentioned.

Welch's testimony does not bear upon the issue of lasting machine competition in 1899, despite the attempt of the United States (pp. 28–29) to give the impression that it does (see first paragraph, p. 29). Welch did not

manufacture welt shoes until "along *in 1906*," *seven years after the United Company was formed* (italics ours), and prior to that time had manufactured McKay shoes exclusively (R. Vol. 1, p. 711, lines 19–20, 34).

Strootman did not testify, and the Brief for the United States does not claim (p. 29), either that he was making women's welt shoes prior to 1899 or that he used the Consolidated hand method lasting machine prior to 1899. Accordingly his testimony is irrelevant to this issue.

On the face of the résumé of Eaton's testimony in the Brief for the United States (p. 29), his testimony does not relate to this issue because, as the United States says, before 1899 "he was making men's welt shoes exclusively."

The United States has not called attention to any testimony whatever which could lead this Court to doubt the correctness of the finding of the District Court; on the contrary, it appears that all the testimony was consistent with that finding, which was as follows:—

> "With still another laster [the hand method welt machine] with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed" (Dodge, J., R. Vol. 1, p. 1130).

3. THE CONTENTION OF THE UNITED STATES THAT THE IDEAL MACHINE OF THE GOODYEAR COMPANY COMPETED WITH THE HAND METHOD MCKAY MACHINE OF THE CONSOLIDATED COMPANY IN THE FIELD OF THE HAND METHOD MCKAY, IN LASTING MCKAY SEWED SHOES.

For the first time since this suit was begun the contention is made by the United States (p. 20) that the Ideal machine was used in the field of the hand method McKay machine in lasting McKay sewed shoes.

In support of that contention the United States relies upon the testimony of only one witness, Mr. Howe. But the United States does not correctly state Mr. Howe's testimony. It says (p. 20) that Mr. Howe testified that "it would frequently happen that McKay shoes would be lasted upon the Ideal machine." What Mr. Howe actually said was:—

> "It would happen sometimes in a shoe factory whose principal work was the manufacture of women's welts that the concern might be making a few McKay sewed shoes, but not enough to have an appropriate lasting machine for them. In that case frequently *they would strain a point* and last their McKay shoes on an Ideal laster, *for which it really was not adapted*" (italics ours) (R. Vol. 1, p. 627, lines 25–31).

So far from being an admission on Mr. Howe's part of competitive use of the Ideal lasting machine in the field of the hand method McKay lasting machine, this testimony merely reinforces the fact abundantly established by the record that uses of the lasting machines outside of their own fields were exceptional and sporadic and in spite of structural inadaptability.

This feeble contention obviously requires no further discussion.

4. THE CONTENTION OF THE UNITED STATES THAT THE IDEAL MACHINE OF THE GOODYEAR COMPANY WAS COMPETING WITH THE CHASE MACHINE OF THE CONSOLIDATED COMPANY IN THE FIELD OF THE CHASE, IN LASTING MEN'S WELT SHOES.

A. Much of the Evidence Relied upon by the United States to show Use of the Ideal Machine on Men's Welt Shoes does not Relate to Use of the Ideal at all but Relates to the Copeland Rapid Laster, a Radically Different Machine which was Practically Obsolete in 1899.

Much of the testimony which is discussed by the United States and which is relied upon to show use of the Ideal machine on men's welt shoes does not relate to the Ideal lasting machine at all, but has to do with the Copeland rapid laster.

In order to justify its reliance upon testimony relating only to the Copeland machine the United States first undertakes to show that the Copeland and Ideal machines were substantially identical (pp. 18, 21). It characterizes the Copeland machine as "the same machine as the Ideal machine except that it was operated by the foot of the workman rather than by power" (p. 21).

But it is shown conclusively by the testimony of both witnesses for the United States and defendants' witnesses (see Brief for Appellees, pp. 129–131), which the United States ignores, that the Copeland machine was *radically different* from the Ideal and was *practically obsolete* in 1899.

Accordingly the testimony of Florsheim and McElroy (Brief for the United States, p. 21), which relates only to

the Copeland rapid laster and does not mention the Ideal machine, is irrelevant.

Likewise, so much of the testimony of Worsencroft (pp. 22–23) and Jordan (p. 25) as relates to the Rapid machine should be disregarded.

B. Evidence as to Alleged Use of the Ideal Machine on Men's Welt Shoes after 1899, largely relied upon in the Brief for the United States, is not Relevant to this Issue.

In reviewing the evidence as to the use of the Ideal machine in the manufacture of men's welt shoes the Brief for the United States fails to distinguish between use *before 1899* and use *after 1899*. As is shown in the Brief for Appellees (pp. 132–136), the slightly increased use of the Ideal machine on men's welt shoes *after 1899* was due to the introduction of a new shape of last and to inventions which made it possible for the Ideal machine to last men's welt shoes made on that last (and see *infra*, pp. 80–82).

It cannot be assumed that defendants in February, 1899, could anticipate either that change in the styles of shoes or the making of those inventions.

Accordingly, a considerable amount of the testimony which is relied upon in the Brief for the United States is irrelevant. For example, Snow (p. 22) testified *entirely* to conditions *after 1899* (R. Vol. 1, p. 896, lines 21–23). The testimony of O'Keefe (p. 26) in regard to use of the Ideal machine related only to conditions *after 1899*. The testimony of Jordan referred to by the United States (p. 25) regarding use of the Ideal in the Douglas and Keith factories related only to conditions *after 1899*. The record does not show whether Murphy was testifying about conditions before or after 1899, so that his testimony (p. 26) has no

probative value. The greater part of the testimony of Heffernan (p. 24) related to use of the Ideal machine *after 1899;* so did much of the testimony of Fletcher (p. 27).

Selz did not testify to any *use* of the Ideal machine. The testimony relied upon by the United States (p. 28) was a mere expression of opinion and the value of that opinion may be judged from the fact that Selz made the ridiculous statement that the machines which he had mentioned—and he had included the *McKay-Copeland* machine, admittedly used only on heavy, nailed shoes such as brogans—could *all* be used in lasting *women's shoes* (R. Vol. 1, p. 142, lines 10–18).

C. The Attempt of the United States to Minimize the Importance of the Improvements which were Made in the Ideal Machine after 1899.

On pages 132–136 of Brief for Appellees, testimony is reviewed which shows that inventions were made *after 1899* which improved the mode of operation of the Ideal machine, although not overcoming the structural defects which made it unadapted for men's welt shoes. The Brief for the United States endeavors to minimize the value of one of those improvements, the "hold-down attachment."

In its summary of Snow's testimony (p. 22) the United States endeavors to give the impression that he testified that the Ideal machine, even before he invented the hold-down attachment, was successful for lasting men's shoes except "men's *heavy* boots, meaning long-legged boots, brogans, and miners' shoes" (italics theirs), and also that after he invented the hold-down it was successful "even for men's *heavy* boots" (italics theirs). On the contrary, Snow testified that "*nothing* could handle those shoes

except the McKay-Copeland machines" (italics ours) and said that before he made his invention the Ideal would not successfully last *even patent leather shoes* (R. Vol. 1, p. 899, lines 38–42; p. 900, lines 17–18). That the statement of Snow's testimony by the United States is entirely unfair is further shown by the quotations from his testimony on pages 129, 133, 135 of the Brief for Appellees. Snow testified that it was the two improvements which he made, one of which was the hold-down, "that changed the machine from an unsuccessful machine into a successful one," and that without those improvements the Ideal would not last men's shoes successfully even if the operation were repeated two or three times (R. Vol. 1, p. 898, lines 35–40; p. 899, lines 38–42; p. 900, lines 12–13).

The United States further endeavors to give a wrong impression in its statement that Snow testified that "the Ideal machines were used *without* the attachment for making the shoes made by the Douglas and Keith Companies" (italics theirs) (p. 22). As to the Douglas factory it is true that Snow testified that during the time he was there and before he put on the hold-downs "the Ideal machines were being used constantly in lasting men's welt shoes"; but he *also* testified that after he went to the Douglas factory:—

> "I put them on as quickly as I could get them on. I don't suppose it was 6 months before I put them on" (R. Vol. 1, p. 900, lines 2–7).

As to the Keith factory Snow testified that he knew nothing about how long Keith had been lasting men's welt shoes on Ideal machines before he went there, that he was there from the spring of 1901 to the spring of 1902, and that while he was there he invented the hold-down and put hold-downs

on all of Keith's machines (R. Vol. 1, p. 896, line 23; p. 897, lines 11–13; p. 899, lines 16–18).

In its discussion of the testimony of Heffernan the United States endeavors to give the impression that Heffernan lasted men's welt shoes successfully for twelve years upon the Ideal machine without any hold-down appliance, but testimony of Heffernan to which the United States does not refer, but which is reviewed on pp. 134–135 of Brief for Appellees, shows that before the hold-down was applied the work of the machine was not satisfactory and that his use of it could not be regarded as successful use.

D. The Use of the Ideal Machine in the Field of the Chase before 1899, on the Showing Made by the United States, was Absolutely Trivial and Insignificant.

The contention of the United States that the Ideal machine of the Goodyear Company was used on men's welt shoes *before 1899* in competition with the Chase machine of the Consolidated Company is supported by the testimony of only five witnesses, showing such use in only three factories. These witnesses were Worsencroft (p. 22), Whitman (p. 23), Heffernan (p. 24), Jordan (p. 25), and Fletcher (p. 27), and the testimony of Whitman, Heffernan, and Jordan, so far as they testified to use before 1899, related to one factory only, the Whitman & Keith factory. The aggregate number of machines, to the use of which these witnesses testified, is eighteen at the most. The Brief for the United States would give the impression (p. 27) that Fletcher said that Cushman had twelve machines before 1899, but he did not so testify (R. Vol. 1, p.

938, lines 28–29, 32–33). Cushman in fact had only six before 1899 (R. Vol. 1, p. 972, line 12).

It is shown by evidence referred to on page 136 of the Brief for Appellees that the total number of lasting machines of all kinds out on January 1, 1899, was between 4,200 and 4,300. The Goodyear Company had put out only 248 Ideal lasting machines altogether, and of that number eighteen at the most, on the United States' own showing, were doing work which could be done by any machine which the Consolidated Company was putting out. That is certainly a meager showing in support of the contention of the United States that the Goodyear Company was competing with the Consolidated Company, particularly in view of the fact that the Goodyear Company had been putting out the Ideal machine for nearly four years. Clearly this trivial overlapping use of the Ideal machine was entirely insignificant and of no importance.

That the Ideal machine also did not offer any potential competition to the Chase machine is proved by the testimony reviewed in the Brief for Appellees (pp. 128–129), where it is shown that the Ideal machine was structurally not adapted for lasting men's shoes.

5. THE CONTENTION OF THE UNITED STATES THAT THE CHASE MACHINE OF THE CONSOLIDATED COMPANY COMPETED WITH THE IDEAL MACHINE OF THE GOODYEAR COMPANY IN THE FIELD OF THE IDEAL MACHINE, THAT IS, IN LASTING WOMEN'S WELT SHOES.

In its efforts to show that the Chase and the Ideal machines competed, the United States apparently contends that the Chase machine was also used in the field of the Ideal for lasting women's welt shoes. But there is no evidence whatever that the Chase machine was ever used in a single instance for lasting women's welt shoes. None of the four witnesses relied upon by the United States, O'Keefe (p. 26), Lemay (p. 27), Springer (p. 27), and Selz (p. 28), testified to any such use, and only two of them, Lemay and Springer, expressed so much as an opinion that the Chase machine could be so used, as is shown on pages 124–125 of the Brief for Appellees.

As to the statement by the United States (p. 26) that O'Keefe said that "the Chase could last successfully *any kind* of shoes except the high toed models which had come into vogue the last three or four years" (italics theirs), O'Keefe did not so testify. He said:—

> "It was just as good as *any other kind of machine* I know of for *regular work*" (italics ours).

The context shows that he meant regular *men's work* (R. Vol. 1, p. 934, lines 41–44).

Selz's testimony does not even mention women's welt shoes, nor does the Brief for the United States in its summary of his testimony. His testimony is therefore irrelevant to this issue.

But not only does the record fail to show that the Chase machine was ever used in competition with the Ideal, in lasting women's welt shoes, but evidence entirely uncontradicted proves, first, that it was never used in lasting women's welt shoes and, second, that it was structurally not adapted for such use. This evidence is reviewed in the Brief for Appellees (pp. 125–126).

The United States relies (p. 33) upon an advertisement of the Chase machine "advertising that machine for the purpose of lasting women's shoes" (R. Vol. 1, p. 960, lines 28–31). But it should be noted that the advertisement did not purport to offer the Chase machine for lasting women's *welt* shoes. Presumably the advertisement had reference to women's McKay shoes on which the record shows a slight use of the Chase machine (Brief for Appellees, pp. 124–125). That use, however, was in the field of the hand method McKay machine of the Consolidated Company and evidence regarding it is not relevant to any issue in this case. But if it be assumed that the advertisement intended to offer the machine for women's welt shoes, it merely shows an attempt to introduce the machine in that field and the complete failure of the attempt confirms the defendants' testimony that the machine was structurally unfitted for such use.

6. THE UNITED STATES HAS CALLED ATTENTION TO NO EVIDENCE WHICH IS INCONSISTENT WITH THE FINDING OF THE DISTRICT COURT AS TO THE ALLEGED COMPETITION BETWEEN THE IDEAL AND CHASE MACHINES.

The District Court, whose discussion of the evidence on this issue is quoted in the Brief for Appellees (p. 139), held, after summarizing the evidence:—

> "I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines" (Dodge, J., R. Vol. 1, p. 1130).

So far from establishing that the finding by the District Court is manifestly wrong, the United States has not shown the facts to be otherwise in any respect than was found by the District Court.

REPLY TO ASSERTIONS IN THE BRIEF FOR THE UNITED STATES REGARDING THE ACQUISITION OF THE EPPLER WELT MACHINE COMPANY.

The discussion of the Eppler acquisition in the Brief for the United States (p. 34 *et seq.*) contains serious misstatements of the evidence as well as numerous exaggerated and unfair statements, implications, and half-truths. While the evidence which contradicts those statements has been reviewed in the discussion of the Eppler acquisition in the Brief for Appellees (pp. 152–170), some of the statements made by the United States are so incorrect and misleading that they call for specific answer at this time.

THE CONTENTION OF THE UNITED STATES THAT THE EPPLER COMPANY WAS AN ABLE AND PROSPECTIVELY A VERY DANGEROUS COMPETITOR.

1. The Record does not Support the Claim of the United States that the Difference between the Eppler Welt Shoe and the Goodyear Welt Shoe was a Difference only in Name, and the Record Shows that there was a very Limited Field for the Eppler Welt Machines.

While it is admitted by the United States—as all of the witnesses on both sides testified—that the Eppler machines could not make a Goodyear welt shoe, yet the Brief for the United States gives (p. 34), as the *only* reason, the fact that "'Goodyear welt' was a trade-mark name."

On the contrary, as set forth upon pages 152, 158–159 of Brief for Appellees, the absolutely uncontradicted evidence shows that the difference between the Eppler welt

shoe and the Goodyear welt shoe was not in *name* merely but rather in the actual *structure* of the shoe. As Mr. Howe explained, the Goodyear welt shoe

> "was the hand-sewed shoe, sewed by machinery. The Eppler welt shoe was a shoe made in a different way, different from what a hand workman would make it" (R. Vol. 1, p. 678, lines 25–28).

In the Eppler shoe, the bulky double thread of the inseam lay in a channel in the insole beneath the foot, while in the Goodyear shoe it is laid on the welt outside the surface on which the foot rests.

This bulky double thread in the insole of the Eppler shoe under the bearing surface of the foot had a tendency to raise a ridge on the insole which would cause discomfort to the wearer. This defect in the Eppler shoe, most serious in thinner soles, made it impossible to use the Eppler welt machine for women's welt shoes or for turn shoes. For the same reason the Eppler machines could not be used to make shoes with reinforced insoles, either men's or women's; and about forty per cent. of all welt shoes are made with reinforced insoles (R. Vol. 1, p. 415, lines 41–43; Vol. 2, p. 2494).

On this evidence, entirely ignored in the Brief for the United States, it was found by the District Court that

> "The Eppler machines were adapted to produce men's thick-soled welt shoes only" (Dodge, J., R. Vol. 1, p. 1131).

Accordingly the statement in the Brief for the United States (p. 34) "that there was open to the Eppler Company *a wide field* of possible competition" (italics ours) is contrary to the record. It follows that the statement that

the Eppler Company "was successfully entering that field" (p. 34) is also not supported by the record.

We shall later show (*infra*, pp. 94–95) that the Eppler Company was not successful in the limited field which it was attempting to enter.

2. The Contention of the United States that the Eppler Machines did as Good Work and could be Used for the Same Purposes as the Goodyear Machines.

The testimony of Jones, Selz, McElroy, Florsheim, and Long, witnesses for the United States (four of whom admitted that they were identified with competing shoe machinery concerns), to the effect that the Goodyear and Eppler machines "were used for the same grade of work" (Brief for the United States, pp. 35–40), was contradicted not only by numerous witnesses for the defendants but also by *six witnesses for the United States* whose testimony the United States purports to summarize on the same pages, ignoring, however, testimony of each of those witnesses which is unfavorable to its contention.

Little weight should be given to Long's testimony. His cross-examination (R. Vol. 1, pp. 246–276), including testimony regarding Eppler machines, shows that he was not a credible witness. Reference is made to some of his misstatements on pages 164–165 of Brief for Appellees.

As to the testimony of Smith, a witness for the United States, the Brief for the United States says (p. 36) that he testified that the Eppler machines "could be and were used for the same purposes as the Goodyear welt sewing machine." But Smith *also* testified that he believed that the Goodyear welter was superior to the Eppler because the chain stitch of the Eppler machine was likely to leave

a ridge around the inside of the shoe which would come against the foot and cause discomfort to the wearer (R. Vol. 1, p. 353, lines 4–20).

As to the testimony of Whitman, a witness for the United States, the Brief for the United States says (p. 36) that he testified that the work done by the Eppler welt machine was satisfactory. Mr. Whitman made no such statement. He did say:—

> "I consider the Goodyear welt system the best system; it did better work on the shoe" (R. Vol. 1, p. 916, lines 15–16).

He also testified that his company never had more than one Eppler machine, which they obtained before the United Company was formed and which three or four years later they exchanged for a Goodyear machine (R. Vol. 1, p. 916, lines 11–18).

As to the testimony of Field, a witness for the United States, the Brief for the United States says (p. 37) that Field testified that his company "put in the Eppler machines because they regarded them as the better of the two." But Field also testified:—

> "The Eppler machine sewed a somewhat *looser and weaker seam* than the Goodyear" (italics ours) (R. Vol. 1, p. 931, lines 16–17).

Elsewhere in the record it is clearly shown that a *tight* seam "is indispensable in the inseam of a welt shoe" (R. Vol. 2, p. 2251). The United States also says (p. 37) that Field testified that it was his judgment "that the Eppler machine sewed a flatter seam than the old Goodyear." But this opinion was wrong, as is shown by abundant evidence and specifically by the testimony of Strong, a

witness for the United States, that "you get a flatter seam on the Goodyear welter" (R. Vol. 1, p. 932, line 25).

Other important statements by Field, not referred to by the United States, were that his company had the benefit of the United Company's service, that they had only Eppler welters and used Goodyear stitchers, not Eppler stitchers, and that they had no Eppler auxiliaries. He said:—

> "That is, we had five Eppler welting machines which were assisted and helped out by the Goodyear machines that completed the operation of uniting the sole of a welt shoe to the upper" (R. Vol. 1, p. 931, lines 7–10, 13–14, 23–27, 39–40).

Accordingly Field's testimony relates to *only* the Eppler welter, whereas the proper basis of comparison on this issue is between the Eppler system of machines and the Goodyear system of machines.

As to the testimony of Strong, a witness for the United States, the Brief for the United States says (p. 38) that he testified that "he thinks that the Goodyear welter is a little better than the Eppler welter was" and the United States further states that the United Company's stitcher and welter for which he exchanged his Eppler machines "were developed after the formation of the United Company." Both statements are incorrect. First, Strong did not say "*a little* better" (italics ours). He said:—

> "I think the Goodyear machines do better work than the Eppler machines. Of course, I think the Goodyear welter is better than the Eppler welter was" (R. Vol. 1, p. 932, lines 21–24).

Second, it is not true that machines "for which the exchange was made were developed after the formation of the United

Company" (p. 38). In 1900 the United Company was putting out the same welter and stitcher that the Goodyear Company had been putting out.

As to the testimony of Cunningham, a witness for the United States, the Brief for the United States says (p. 39) that he testified that the Eppler welter was satisfactory, but it does not refer to his statement that he thought "*everything about the Goodyear was better*" (italics ours) (R. Vol. 1, p. 289, line 19). The United States also says that Cunningham testified that the Eppler outsole stitcher "*did not do as good work* as the Goodyear" (italics ours). What Cunningham did say was that the outsole stitcher was *not satisfactory* (R. Vol. 1, p. 290, line 3).

As to the testimony of Fletcher, a witness for the United States, the Brief for the United States says (p. 40) that Fletcher "made no comparison between the Eppler and Goodyear *welter* further than to say that they ran side by side in the same factory" (italics theirs). On the contrary Fletcher testified that

> "with the Eppler machine there was trouble with the loose seam. When you beat out the shoe there would be more or less looseness, which caused a weak seam. It would make a bad shoe" (R. Vol. 1, p. 939, lines 16–19).

As to the testimony of McElroy, a witness for the United States, that the Eppler welter "could have been used on women's shoes" (Brief for the United States, p. 36), the context shows (R. Vol. 1, p. 188) that he meant that it was possible to sew a woman's shoe on the Eppler machine, purely as a mechanical operation, but that he did not mean to express any opinion as to the quality or sala-

bility of the shoe thus sewed. Moreover, McElroy had previously testified:—

> "*Q.* Do you know whether or not it could be used on women's shoes?
>
> "*A.* I do not" (R. Vol. 1, p. 188, lines 2–22).

No other witness even went so far as to express an opinion that the Eppler machine could be used on women's shoes, and for the reasons we have already stated (*supra*, p. 88) it never was used on women's shoes. Furthermore, it appears that the effort to get McElroy to take Eppler machines was unsuccessful (R. Vol. 1, p. 187, lines 33–34).

3. The Contention of the United States that the Eppler Company had a Substantially Complete Line of Auxiliary Machines.

The Brief for the United States says (pp. 38–39) that Mr. Keith, formerly president of the Eppler Company, testified that the Eppler Company "had *a line* of machines for making welt shoes, *except* a rough rounder, and were trying to perfect that" (italics ours). It is plain that the United States intends to give the impression that the Eppler Company had a substantially complete line of auxiliaries, except a rough rounder. Accordingly this statement is absolutely unfair and misleading. Mr. Keith testified that the Eppler Company did *not* have "a full set" and named *only two auxiliaries*, the stitch separator and the rough rounder, stating that the rough rounder was not satisfactory and had never been perfected, and that the stitch separator was not satisfactory (R. Vol. 1, p. 389, lines 19–25; p. 390, lines 37–43; p. 391, lines 39–41).

On the other hand, uncontradicted evidence shows that

the Goodyear Company had thirteen important auxiliary machines for welt work in 1899, including a successful rounding and channeling machine ("rough rounder"). Mr. Warren testified:—

> "The invention of the rounding and channeling machine revolutionized the method of attaching the outer sole" (R. Vol. 1, p. 793, lines 23–24).

4. The Feeble Attempt of the United States to Show that the Eppler Company was Successful.

The United States contends (p. 40) that the fact that the Eppler Company had been in business "some seven years before the consolidation" proves that it was successful, and it also states that the Eppler Company was pressing its business and was advertising "up to the moment of its acquisition by the United Company" and (p. 39) that they had five agents in the field.

But all this goes to prove, not that the Eppler Company was successful, but quite the contrary. The fact that, despite the long time that the Eppler Company had been in business and the efforts it had been making to put its machines into factories, it had succeeded in installing only between thirty and forty welters—of which one-third were in the factory of the president of the company and others in the factories of directors of the company—and a less number of stitchers (R. Vol. 1, p. 288, lines 31 *et seq.;* p. 388, lines 35–39; p. 389, lines 8–11; p. 931, lines 43 *et seq.*), is certainly strong evidence both that the machines were unsatisfactory and that the company's business was not successful. That the Eppler Company had made no money is shown by Mr. Keith's testimony:—

"*Q.* Up to the time of the sale of the Eppler Company to the United Company was the Eppler machine or set of machines commercially successful?

"*A.* Not as a profit maker" (R. Vol. 1, p. 392, lines 9–12).

This evidence also completely answers the arguments of the United States that the Eppler Company offered potential competition (pp. 34–35, 45). Disregarding the bearing upon possible future competition of the facts that the Eppler machines infringed the Goodyear Company's patents and that eight infringement suits had been brought, the evidence that the company after seven years of strenuous efforts had not succeeded in doing more than an insignificant amount of business and had not made any money proves that it did not offer even potential competition. For surely there had been ample time for the development of all the possibilities of competition that existed.

The conclusion is certainly justified that the United States has not shown any ground for questioning the finding of the District Court as to competition, existing or threatened, which was offered by the Eppler Company. That finding was as follows:—

"The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful" (Dodge, J., R. Vol. 1, p. 1131).

THE ARGUMENT OF THE UNITED STATES AS TO THE PRICE PAID FOR THE EPPLER COMPANY.

Although, as pointed out in the Brief for Appellees (p. 167), the report of the Eppler Company to the Commissioner of Corporations of Massachusetts, which is quoted in part in the Brief for the United States (p. 41), was properly excluded by the District Court, it does not appear that, even if it were admissible as urged by the United States (p. 41), it would support any contention that the United States is now making.

This report was obviously made up in such manner that its assets should balance its capital stock and liabilities. Patent rights are carried at $245,853.61, and its machines placed at a figure sufficient to equalize the total liabilities. It does not in any way disprove the testimony of the President of the company that only between thirty and forty welters were outstanding and a smaller number of stitchers, nor is it any test of what the assets of the company were actually worth if sold, or what the stock of this company, admittedly not a "profit maker," was worth, or what was paid for it by the United Company.

The United States lays much stress upon the fact that the officers of the United Company were unable to state the exact amount paid for the Eppler Company, but, as explained in the Brief for Appellees (p. 166) and as set forth in the record (Vol. 1, p. 32, lines 1–13; p. 33, lines 6–17), the amount paid, whatever it was, came out of a fund provided by a syndicate which was used to pay the expenses of the organization of the United Company and the floating debts of all the old companies, and to purchase the stock of the Eppler Company, the International Eppler

Company and the Goodyear Shoe Machinery Company of Canada, and to make the cash payments on the stock of the Consolidated & McKay Company, besides providing $500,000 as working capital for the United Company. It is not surprising that witnesses could not recall, more than fourteen years later, the exact amount of a particular one of these various items.

While the exact amount paid does not seem material, it should be pointed out that there is no warrant whatever in the record for the statement that the price paid was "in the neighborhood of $600,000" (Brief for the United States, p. 45). There is no justification for assuming that much over $100,000 was paid. But even if as much as $350,000 (p. 43) was paid it cannot be regarded as an exorbitant price and justify an inference of unlawful intent since this purchase (1) enabled the United Company to start free from the most extensive litigation that it had inherited from its constituent companies, (2) made it possible to furnish to its customers machines for making a different kind of welt shoe, should a demand for that kind of shoe continue, and (3) secured for the United Company patents which proved to be of substantial value in the development of new machines when combined with its own patents (Brief for Appellees, pp. 165–166).

ERRONEOUS AND MISLEADING STATEMENTS IN THE BRIEF FOR THE UNITED STATES REGARDING THE PENDING PATENT LITIGATION AGAINST THE EPPLER MACHINES.

In its discussion of the infringement litigation pending between the Goodyear Company and the Eppler Company the Brief for the United States (pp. 43–45) is particularly

inaccurate and unfair. The statement that "of the group of cases brought, only one involved a principal machine" and the statement, after referring to Case 248, that "the other cases related to patent infringements in auxiliary machines," are both contradicted by the quotation from Mr. Howe's testimony on the same page of the Brief for the United States (p. 44). As set forth in the Brief for the Appellees (pp. 154–156) there were pending eight suits for infringement, involving *both* the Eppler principal machines, viz., the welter and the stitcher, and also the Eppler auxiliary machines, viz., rounding and channeling machine, stitch separator and welt beating machine.

The statements by the United States regarding the infringement of the Briggs method patent by the Eppler welter are exceedingly misleading. The proposition (p. 44) that "even the Eppler welter, therefore, was not seriously involved" is based upon the following distorted statement (p. 44) of Mr. Howe's testimony: "He further said that if the Goodyear Company had succeeded in the pending patent litigation it would have compelled alterations in the Eppler machines '*except the welt* sewing machine'" (italics theirs). What Mr. Howe actually said was:—

> "It is my opinion that the infringing devices were very material in the construction of the Eppler Company's machines, except the welt-sewing machine, and that the litigation would have compelled alterations, especially in their stitcher and auxiliary machines" (R. Vol. 1, p. 623, lines 31–35).

It is evident that the United States lost sight of the fact that Mr. Howe was testifying specifically about "the infringing devices"; this testimony obviously has no bearing

at all upon the infringement by the Eppler welter of the Briggs *method* patent, which infringement was not by *devices* but resulted from the operation of the machine. What Mr. Howe had to say about that infringement is as follows:—

> "The Eppler welter infringed the Briggs method patent on an invention *which accomplished the sewing of a tight seam.* That method patent and a machine patent *revolutionized* the Goodyear Company's business about 1890, and *rendered the old Goodyear machines out of date. Everybody wanted the new machine embodying the invention of the Briggs patent*" (italics ours) (R. Vol. 1, p. 678, lines 5–10).

As to the effect of the litigation upon the Eppler Company's business the Brief for the United States says (p. 44): "Had the litigation been wholly successful its result might have affected temporarily the Eppler Company's position as a compe itor of the Goodyear Company (Howe, R. Vol. 1, p. 623, lines 29–38) *although this is admitted to have been speculative* (Howe, *ibid.*)" (italics ours). Mr. Howe did not so testify. But he did say, in the very lines of the record cited by the United States to support the statement just quoted from its brief, that the litigation

> "would have temporarily put the company out of business. It is of course *a matter of speculation whether they could have succeeded in making those alterations* and in getting around such decrees as we were likely to obtain" (italics ours) (R. Vol. 1, p. 623, lines 35–38).

That is, Mr. Howe did not say that it was a matter of speculation whether the litigation would have affected temporarily the Eppler Company's position as a competitor, but he said that it was "a matter of speculation" whether the

Eppler Company *could have succeeded in avoiding infringement by alterations;* and said *without qualification* that the litigation, if successful, "would have temporarily put the company out of business."

In a further attempt to minimize the importance of the litigation against the Eppler machines the Brief for the United States refers (p. 45) to Mr. Howe's testimony that the litigation did not "relate to the fundamental patents," but the United States neglects to mention Mr. Howe's explanation:—

> "I meant by that indirect use of the word 'fundamental' that they were not the first patents that were taken out on that class of machines. I think I explained that the old Goodyear patents had expired long ago. And then we obtained fresh patents on *very valuable improvements*" (italics ours) (R. Vol. 1, p. 686, lines 25–29).

One of these was the Briggs method patent which, as we have pointed out (*supra*, p. 99), "revolutionized the Goodyear Company's business about 1890" (R. Vol. 1, p. 678, lines 7–8).

THE CONTENTION OF THE UNITED STATES THAT THE EPPLER ROYALTY WAS LOWER AND THAT IT WAS RAISED AFTER THE ACQUISITION.

The Brief for the United States says (p. 45) that while the royalty for the Goodyear machines was four cents a pair for men's shoes, "its competitor, the Eppler Company, charged only three cents." On the contrary, of the three executed leases of the Eppler machines which are in evidence, two (P.'s Ex. 59, R. Vol. 3, pp. 507, 509, 510 and Defs.' Ex. 269, R. Vol. 5, pp. 716, 718, 719) provided for a royalty

of *four cents* per pair for men's shoes, while the third lease (Defs.' Ex. 44, R. Vol. 5, p. 54, a lease to the R. H. Long Manufacturing Company), as printed, provided (pp. 56–57) for a royalty of four cents, and the provision for the discount was written into the lease in red ink (R. Vol. 1, p. 250, lines 30–35). In the face of this documentary evidence it certainly cannot be successfully contended that the Eppler royalty was lower than the Goodyear royalty. And the testimony is to the same effect.

Mr. Winslow testified:—

> "The regular rate of royalties charged by the Eppler Company prior to 1899 was four cents net for men's shoes and three cents net for women's shoes. I don't remember the others but they were the same as the Goodyear net royalties. There were *sporadic instances* of special rebates given by the Eppler Company, *but their regular rate was the same as the Goodyear*" (italics ours) (R. Vol. 1, p. 417, lines 29–35).

Mr. Howe confirmed this (R. Vol. 1, p. 470, lines 24-29).

By the statement "the United Company after the consolidation raised the royalty on the Eppler machines to four cents" (p. 46) the United States plainly intends to give the impression that after the acquisition the United Company demanded a four cent royalty from all lessees then using Eppler machines. This is not the fact, as is shown by the testimony of Mr. Winslow which the United States cites in support of its statement (p. 46). Mr. Winslow said:—

> "Where the contract with the lessee was a special rate like that, we endeavored to have him adopt the full rate where we felt that it could be done *without violating any absolute agreement of the Eppler Company.*

> Notably Mr. Keith himself, who was a large manufacturer, voluntarily agreed to that. In fact, he changed over his machines very soon after that. That was to make the rate uniform among all users and *gives no special advantages to anybody*" (italics ours) (R. Vol. 1, p. 417, lines 38–45).

Mr. Winslow had previously testified:—

> "We did not disturb anybody who was using Eppler machines or who had a lease of Eppler machines existing prior to 1899" (R. Vol. 1, p. 417, lines 26–27).

That the United Company did not suppress the Eppler machine but continued to put them out at the regular Eppler royalty of four cents per pair is shown by testimony referred to by the United States (pp. 37, 46).

CONCLUSION AS TO THE EPPLER ACQUISITION.

The Brief for the United States concludes its discussion of the acquisition of the Eppler Company by the statement (p. 48) "there can be no doubt as to the real reason why the Eppler Company was absorbed. It was for the purpose of monopolization."

We submit that for the following reasons the Court cannot find that the Eppler acquisition was for the purpose of monopolization:—

(1) We have called attention in the Brief for Appellees (pp. 81–87) to a long line of decisions, concluding with *Adamson* v. *Gilliland*, U. S. Adv. Ops. 1916, p. 169, establishing "the practical rule" that when in the case of conflicting testimony there is any testimony consistent with the finding of the judge who saw the witnesses that finding "must be treated as unassailable" (*Adamson* v. *Gilliland*,

supra). It is clear that the United States has not referred to any evidence which should lead this Court to question the finding of the District Court, after reviewing the evidence, that

> "The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful" (Dodge, J., R. Vol. 1, p. 1131).

(2) But, further, as is shown in the discussion of the Eppler acquisition in the Brief for Appellees (pp. 152–170), the record positively establishes that the Eppler shoe was inferior to the Goodyear shoe; that the Eppler machines were decidedly inferior to the Goodyear machines; that the Eppler Company did not have any satisfactory auxiliary machines; that the Eppler Company in seven years had placed an insignificant number of machines and was commercially unsuccessful; and that if there was competition between the Goodyear and Eppler Companies it was wholly negligible and did not make this acquisition inherently unlawful.

(3) The record further establishes that the acquisition was made for normal and legitimate reasons and that there is no feature of the transaction upon which any inference of unlawful purpose or intent to monopolize can be based.

ATTEMPT BY THE UNITED STATES TO SHOW A WRONGFUL PURPOSE AT THE TIME OF THE FORMATION OF THE UNITED COMPANY.

At page 51 the petitioner's brief lays great stress on a statement by Mr. Howe to the effect that he was opposed to the plan of having a harmonious agreement, a sort of working agreement between the Lasting Machine Company (the Consolidated & McKay Company) and the Goodyear Company, "because I had a sort of indefinite idea that it might be deemed to be a combination in restraint of trade" (R. Vol. 1, p. 629, lines 20–24).

The United States attempts to construe this statement into an admission on Mr. Howe's part of unlawful purpose. It is insinuated that Mr. Howe recognized that the combination of the constituent companies "*would suppress competition* and restrain trade" (italics theirs) (petitioner's brief, p. 52), but that he erroneously believed that a combination in corporate form would avoid the penalties of the Sherman Act.

This construction of Mr. Howe's testimony is entirely unjustified. Mr. Howe explained his meaning further, saying:—

> "By my previous reference to something being in restraint of trade I meant that I had an indefinite fear that if the two companies remained separate but, for instance, had a joint factory and joint branch offices, there might be something in the way of restraint of trade. I insisted for that reason that there should be a complete merger and consolidation.

> "No agreements whatever were entered into either between the Goodyear and the Consolidated Companies, or between any of the individuals connected with them, with reference to limiting or restraining their action or activities" (R. Vol. 1, p. 630, lines 3–12).

Mr. Howe at this point in his testimony was referring to an arrangement between the Goodyear and the Consolidated & McKay Companies which it was first proposed should be consolidated. What he obviously meant by his statement was not that he feared that the end sought to be accomplished, namely, the manufacture of the machines of both companies in a single factory and the furnishing of service by a single organization was unlawful or a restraint of trade, but that an agreement between the two companies whereby they agreed and obligated themselves to conduct their businesses in these ways, even though they were entirely lawful ways, might be held unlawful on the ground that it would restrain the two companies from exercising an independent judgment in the future as to the best method of prosecuting their businesses. For example, a company dealing in locomotive wheels and a company dealing in locomotive bodies can lawfully consolidate, but Mr. Howe had a vague idea that there might be some question whether contracts between them, under which they remained separate and yet obligated themselves to act as though consolidated, might not impose restrictions which independent concerns should not incur.

There is no suggestion in Mr. Howe's testimony that he thought the consolidation of the two companies would eliminate competition or restrain commerce. On the contrary, he testified that there was no actual competition between them.

One of the principal purposes for the formation of the United Company was to have the service for the different machines furnished by a single organization and to have the machines manufactured at a single plant and the various parts of the machines standardized. The petitioner might have argued that this could have been accomplished by agreement between the parties without an actual consolidation. Mr. Howe's testimony was obviously merely intended to show one reason why he thought it inadvisable to attempt to accomplish this result by agreement without consolidation.

The attempt to construe this explanation into an admission of wrongful purpose has no foundation in fact.

At page 53 of its brief the petitioner attempts to insinuate that there must have been wrongful purpose in acquring the McKay Company (which was admittedly non-competing) because the United Company paid eleven dollars in par value of its own stock for each share of McKay Company stock which had been selling in the market for eight or nine dollars a share.

The insinuation of unlawful purpose would obviously not be justified even if it were true that stock of the United Company of a par value slightly in excess of the market value of the McKay Company stock were issued for it.

But the truth is that the stock of the McKay Company was worth eleven dollars a share, the price paid for it. There had been few sales of McKay Company stock. The price of the stock had been eight or nine dollars in the market, but it had advanced shortly before the Company was taken in (R. Vol. 1, p. 533, lines 36–38). The McKay stock "was worth more than the market price" (Winslow, R. Vol. 1, p. 534, line 4). The McKay Company "suc-

ceeded in showing that their business and prospects were worth eleven dollars a share, and accordingly the United Company offered them that amount" (Winslow, R. Vol. 1, p. 633, lines 42–44).

At page 59 of its brief the petitioner lays great stress on a recital of an agency contract made with Peabody & Company of Australia, dated September 11, 1899, under which Peabody & Company were appointed brokers or commission agents in Australia for the United Company (P.'s Ex. 189, R. Vol. 4, p. 1250). This contract in its preamble clause recites that the United Company had acquired control of certain companies therein named, and adds that the United Company "contemplates acquiring the control of other lines of boot and shoe and leather working machinery and boot and shoe findings . . . " The contract was signed by George W. Brown, Treasurer of the United Company.

The petitioner's brief says (pp. 59–60):—

> "That contract was signed by George W. Brown, Treasurer of the United Company. And after Winslow had stated that he was in constant communication with Brown about the various matters affecting the company and its policy, he was asked whether Mr. Brown was correct in the recitals just quoted. He answered with a significant evasion."

The insinuation is that this recital shows an intent on the part of the United Company to acquire competing concerns, and that Mr. Winslow was acquainted with the meaning which the person who drafted this clause had in mind, and, being questioned as to its meaning, evaded an answer.

As a matter of fact Mr. Winslow testified that he was

abroad at the time this contract was made and had been abroad for two or three months. He testified on cross-examination in respect to it as follows (R. Vol. 1, p. 536, lines 5–7, 15–24):—

> "I do not know what Mr. Brown referred to by the recitations in the agreement dated September 11, 1899, between the United Company and Henry W. Peabody & Company.
>
> . . . . . .
>
> "I never saw that contract until long afterwards. I think we were negotiating then for one of the eyelet making companies. I could not say whether eyelets were the only line of shoe machinery or findings that the company contemplated acquiring at that time. I was abroad at the time that contract was made and had been abroad for two or three months. I have no doubt that there was some other concern that they were negotiating with then as to which that language perhaps applied, but I knew nothing about the language or the contract until long after it was made."

This is hardly an evasive answer. Furthermore, Mr. Howe, who drew the contract, testified on direct examination as follows (R. Vol. 1, pp. 672–673, lines 21–22, 35–45, 1–13):—

> "I drew the Peabody contract for an agency in Australia, Plaintiff's Exhibit 189.
>
> . . . . . .
>
> "It should be understood that Peabody & Company were commission merchants in shoe machinery and in shoe findings in Australia, and they wanted an assurance that we should give them enough business to warrant their entering into a contract. It was therefore recited herein, what was true, that we had

acquired control of the business of the corporations therein named. Peabody & Company recognized these corporations, or the manufactures in which they were engaged, by their names. We had then in mind the purchase of some other lines of shoe machinery and findings, and this would tend to increase the business of Peabody & Company in Australia.

"*Q.* What other lines had you in mind?

"*A.* I had in mind especially blackings, cements, and stains which Peabody & Company had previously had difficulty in supplying themselves with.

"*Q.* That recital is understood by the United States to mean that you had in mind the acquiring of all shoe machinery and findings and supplies, or substantially all?

"*A.* There was no such intention.

"That paper was not drafted in accordance with directions of the directors or president of the United Company, and that recital was simply my own draft in connection with Mr. Peabody and one or two of our experts or department managers, whom I don't remember."

The acquisition of additional lines of supplies, which was what the United Company had in mind, or of additional machines, which the United Company did not put out, was wholly proper and lawful. It was additional lines of supplies of machines which Peabody & Company were obviously interested in. They desired to know whether the United Company might furnish such additional supplies which, as Mr. Howe testified, they had previously had difficulty in supplying themselves with. They were not interested in knowing whether the United Company contemplated acquiring competing concerns.

The attempt of the petitioner to construe this recital into an admission of an unlawful purpose to acquire competing concerns merely shows the lack of evidence it found to support its contentions.

REPLY TO THE DISCUSSION IN THE BRIEF FOR THE UNITED STATES OF "ACQUISITIONS OTHER THAN THE PLANT PURCHASE."

Under this heading on pages 60–95 the Brief for the United States discusses thirty-six of the fifty-eight so-called "acquisitions." In respect to no one of these thirty-six transactions does the United States make an adequate statement of the facts established by the record. Specifically, it either ignores much important testimony favorable to the defendants or, when any reference is made to that testimony, the United States either omits any mention of testimony unfavorable to its contentions or fails to state it fairly.

At the start the United States misrepresents the general character of these transactions. It states that "the United Company acquired the *shoe machinery business* and assets of fifty-six individuals, partnerships, and corporations . . ." (italics ours) and that "the result of these acquisitions was to remove certain remains of competition. . . ." (Brief for the United States, p. 60).

Both of these statements are contrary to the record.

As has been shown in the Brief for Appellees (pp. 437–443), by nine of the transactions the United Company did not acquire any tangible property or any business of any kind, and by fifteen other transactions the United Company acquired nothing more than supplies of various kinds which are used by shoe manufacturers; so that by twenty-four transactions it did not acquire any shoe machinery at all. And further, eight other concerns, from whom shoe ma-

chinery was acquired, were doing no business whatever; their machines were only experimental and were far from being adapted for commercial use.

The fact is, then, that instead of acquiring the "shoe machinery business" of fifty-six concerns the United Company did not acquire *any shoe machinery business from thirty-two of those concerns.*

As to the statement by the United States (p. 61) that "covenants were exacted from the vendors," where they were inventors, which "required assignment to the United Company of all inventions made during a period of years" and which were "designed to prevent future competition with the United Company," the District Court found that the covenants actually taken were no broader than necessary, and the necessity for covenants of the character actually used is pointed out on pages 466–469 of Brief for Appellees, and the decisions holding that such covenants are normal and lawful are discussed on pages 470–475.

Following its belated admission (p. 61) that "in some cases what was purchased was patent rights and inventions and not machines," the United States says, "A prospective competitor is none the less such because he has only proceeded to the point of acquiring a valid patent under which to pursue competition at the time he is removed from the field by acquisition."

Of course the assumption that the inventor of an improvement in shoe machinery, who may be and often is a shoe operative or mechanic, is a "prospective competitor" is entirely unwarranted. He is no more a "prospective competitor" than many thousands of his fellow-workers.

On pages 62–94 the United States discusses specifically thirty-six of the "acquisitions."

Throughout its discussion of these transactions the United States follows its usual practice of ignoring entirely the evidence unfavorable to its contentions, which shows that every one of the transactions was a normal and reasonable step in the development of the United Company's business. Particularly in cases where the United Company had a machine of the same name as an acquired machine the United States fails to make any reference to testimony showing that the acquired machine was adapted to do a kind of work which no machine of the United Company could do, or that the United Company's machine was only experimental and needed the acquired inventions in order to make it commercially successful, or that the acquired concern had patents which the United Company infringed or which barred the way to needed improvements in its machines. All such testimony is of course essential to a fair presentation of the facts regarding these acquisitions.

In Appendix IV (*infra*, pp. 180–222) will be found comments on the specific statements which the United States has made regarding these thirty-six transactions. Those comments show that the statements by the United States give a wholly erroneous impression. By ignoring testimony unfavorable to its contentions, by stating half-truths or by making positive misstatements the United States has entirely misrepresented the character of these transactions.

In considering these transactions it should be kept in mind that throughout the entire period, during which from time to time these acquisitions were being made, the United Company was engaged in a remarkable development of the art of shoe machinery. It has improved

practically all its machines by embodying new inventions in them. It is now putting out 172 different General Department machines which it has either developed or acquired since its formation in 1899. It has developed 150 entirely new machines, including 39 machines which perform work previously done by hand or not at all. Nearly all of these machines embody more than one patent; many embody a dozen or more patents on different parts of the machine. The inventions of 421 patents are embodied in the 150 entirely new machines which the United Company has developed.

The patents and machines acquired by the acquisitions were used in building up and perfecting this great number of new and improved machines and in improving patented machines which the United Company already had. Many of the so-called acquisitions involved only the purchase of a single patented invention to be used with a number of other patented inventions produced by the United Company in perfecting some one machine. The acquired machines and patents were of insignificant importance compared with the machines developed and the inventions made by the United Company itself.

REPLY TO THE DISCUSSION OF THE PLANT ACQUISITION IN THE BRIEF FOR THE UNITED STATES.

In its discussion of the Plant purchase (pp. 97–126) the United States fails to show the facts to be otherwise than as found by the District Court. Throughout this discussion, however, as it has been done generally throughout its brief, the United States has quoted or referred only to the testimony favorable to its contentions and has in the main ignored testimony which is unfavorable to its contentions. It has also made many incorrect and misleading statements and has drawn many unwarranted conclusions. It is important that these misstatements be called to the attention of the court.

The Contention of the United States that Plant had a Complete Line of Shoe Machinery.

It is alleged in the Brief for the United States (p. 97) that Plant had "developed a complete line of shoe machinery for manufacturing welt, turn, and McKay shoes."

McElroy, whose testimony is referred to by the United States in support of this allegation, does not mention turn shoes in connection with the Plant machinery. There is no testimony which shows that Plant had developed any machinery for making turn shoes, or that turn shoes were made by the Thomas G. Plant Company, the shoe manufacturing concern.

Moreover, in McElroy's testimony, quoted on page 105 of the Brief for the United States, his statement that

Plant's machinery was "a full line" is qualified by the statement "consisting of lasting, welting, stitching and leveling machines." He further admits in effect that he examined only "the essential bottoming room machinery."

And further, McElroy's testimony is discredited by Plant's own statement to McGaffee that

> "he didn't have any rough rounding machine" (R. Vol. 1, p. 781, lines 2–3).

Warren testified:—

> "The invention of the rounding and channeling machine [rough rounder] revolutionized the method of attaching the outer sole" (R. Vol. 1, p. 793, lines 23–24);

and that

> "Every manufacturer that I know of is using . . . the rounding and channeling machine" (R. Vol. 1, p. 793, lines 30–31).

And again, Plant had produced no pulling-over machine (R. Vol. 1, p. 792, lines 10–11), another of the "machines for preparing and attaching the bottoms to the uppers of shoes," the class of machines to which the United States has limited its charge of monopoly.

Eight other Plant machines, including important machines such as the heel seat dinker, stitch separator, and side laster, were either unfinished or regarded by Plant himself as experimental and the Plant shoe company was getting along in one way or another as best it could without these machines (R. Vol. 1, p. 791, lines 34–45; p. 792, lines 1–33; p. 814, lines 1–7. See also Brief for Appellees, pp. 484–486.)

The Contention of the United States that Plant was Successfully Operating his Machines.

It is alleged in the Brief for the United States (p. 97) that Plant "was successfully operating his machines at the factory of Thomas G. Plant Company."

This allegation is entirely unsupported by the record. On the contrary, the record establishes beyond a doubt that the Plant machines were not successfully operating in the Plant shoe factory. In the Brief for Appellees (pp. 486–490) testimony is quoted and referred to that the machines in that factory were crude and really only experimental; that they were constantly breaking down; that they broke a great number of lasts; that it was necessary to employ a large number of men to repair shoes that were defective on account of the poor work of the machines; that it cost three and a quarter cents per pair more to make shoes on them than it cost on the United Company machines; that the profits of the Plant shoe business after the Plant machines were installed were one-half less than they had been when the United Company machines were used; that the machines could not be used for manufacturing shoes according to the methods universally followed by other shoe manufacturers; and that after the purchase the managers of the shoe factory, Plant's former associates, found it impracticable to continue the manufacture of shoes with Plant's machines and of their own volition discontinued the use of those machines and substituted United Company machines.

Typical of this testimony is that of McGaffee, vice-president and general manager of the Plant Shoe Company, who for seventeen years had charge of all the manufacturing

part of the business and looking after the machine end of the business (R. Vol. 1, p. 773, lines 6–9), as follows:—

> "There was a force of machinists taking care of the machinery all the time" (R. Vol. 1, p. 773, lines 32–34). "I was absolutely satisfied that the Wonder Workers wouldn't stand up . . . the longer they ran the weaker they got . . . I was not able to get out the work . . . *I couldn't make the shoes with the Wonder Worker*" (italics ours) (R. Vol. 1, p. 774, lines 15–16, 23–24, 40–41).

McGaffee further stated that the lack of an extension edge organization on the Plant stitcher "was a great hindrance to the quality made on that machine" and that *it resulted in the shoes ripping* (R. Vol. 1, p. 775, lines 34–35, 43–45).

The testimony referred to above and that reviewed on pages 486–490 of the Brief for Appellees is also a complete answer to the argument made in the Brief for the United States (p. 103) with reference to the use of the Plant machines in the Plant shoe factory.

The Contention of the United States that Plant had Contracts with Factories where his Machines could be Made in Large Quantities.

It is alleged in the Brief for the United States (p. 97) that "Plant also had contracts with factories where such machines could be made in large quantities," and an allegation to the same effect is made on page 102.

The evidence fails to show that Plant had contracts with any factory for building any complete machine. He had merely made arrangements with a number of scattered machine shops for building parts of his machines.

As stated by Mr. McGaffee:—

> "The parts were built in about every city where there was a machine shop, because *Plant did not have any factory big enough to build his own parts . . .*" (italics ours) (R. Vol. 1, p. 773, lines 25–27).

The Contention of the United States that Plant was Offering to Equip Other Manufacturers.

It is alleged in the Brief for the United States (p. 104) that Plant had offered to install his machines in the factories of the Commonwealth Shoe & Leather Company, the W. H. McElwain Company, and the Endicott-Johnson Company and "was prepared to furnish his machines to shoe manufacturers generally."

As shown in the Brief for Appellees (p. 481) Plant's offer to install his machines in the factories of the Endicott-Johnson Company and the Commonwealth Shoe & Leather Company was made with the ulterior motive of forcing the United Company to buy him out, and it was so found by the District Court, which held (Dodge, J., R. Vol. 1, p. 1142):—

> "There is uncontradicted evidence of declarations by Plant in 1909 that his intention was to equip these two other factories and his own with his new machines and then sell out to the United Company. That the effecting of such a sale, and not any actual competition in the market with machines then in use, was his real purpose, is hardly left doubtful by the history of his subsequent negotiations with the defendants."

There is no proof of an offer of machines to the W. H. McElwain Company.

Plant would not even permit Hazzard, a large shoe manufacturer, to look at his machines. (See Brief for Appellees, p. 482.)

The Contention of the United States that the Plant Machines were "Efficient Competitors of the United Machines in the Opinion of Experts."

In support of its allegation (p. 104) that in the opinion of experts the Plant machines were "efficient competitors of the United machines," the United States relies first upon the testimony of McElroy, Florsheim, Selz, and Jones, and then upon an unfair statement of the testimony of Warren and Howe.

But the testimony of McElroy, quoted by the United States (p. 105), and its summary of Florsheim's testimony show that both of those witnesses testified as to the quality of the *shoes* operated upon by Plant's machines and that neither of them testified that the *machines* were efficient. The Brief for the United States says (p. 106) that Selz expressed the opinion "that the machines were capable of being used in the manufacture of men's welt shoes" and that Jones testified that Plant's machines were adapted for the manufacture of men's shoes as well as women's.

But on cross-examination Selz testified that he questioned the strength of the Plant machines for making men's shoes and that he had never seen them used for men's shoes (R. Vol. 1, p. 155, lines 33–45; p. 156, lines 1–3). And McElroy on cross-examination testified:—

> "To the best of my information those machines had never made any men's shoes for the market. I questioned the strength of those machines for making men's shoes. . . . If his machines had been used commercially on men's shoes the frames should have been stronger" (R. Vol. 1, p. 193, lines 16–18, 22–24).

Jones' testimony is discredited by the testimony of Reed, the treasurer of Jones' Company, who has charge of the manufacturing of the shoes. He testified that he thoroughly examined the Plant machines in 1910, considered the question of equipping his factories with the machines and decided not to take them. He said:—

> "We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking" (R. Vol. 1, p. 720, lines 12–13).

Furthermore, Florsheim was a member of the Shoe Manufacturers' Alliance, and Selz and Jones were both stockholders in the Boylston Company, a competing shoe machinery concern. Testimony showing in detail their prejudices is reviewed in the Brief for Appellees (pp. 494–496).

Moreover, it is established by overwhelming evidence which is reviewed in detail in the Brief for Appellees (pp. 484–492), some of which we have already referred to (supra, pp. 116–118), that Plant's machines made shoes by obsolete methods and could not be used for making shoes according to the methods universally followed by other shoe manufacturers; that even for making shoes according to Plant's obsolete methods the machines were not commercially satisfactory in his own factory where women's shoes only were made; and that Plant's machines could not have been used on men's shoes.

The United States quotes (p. 107) the testimony of Mr. Warren and Mr. Howe in support of this contention that the Plant machines were "efficient competitors of the United machines."

The quoted testimony of these experts on its face related to the value of the Plant *inventions*, not the Plant machines.

Warren testified:—

> "Generally speaking they were of such construction that they would break and get out of order" (R. Vol. 1, p. 794, lines 17–18).
>
> "And in looking over all these Plant machines we found by a careful examination that they were *faulty in construction, light in weight in places, and badly designed*" (italics ours) (R. Vol. 1, p. 790, lines 28–31).
>
> "These machines of Mr. Plant's, built as they were, in my opinion *would not have been commercially successful* to do work under the varying conditions under which machines have to be supplied to shoe manufacturers" (italics ours) (R. Vol. 1, p. 790, lines 15–18).

Mr. Howe testified that the Plant machines were

> "too light to stand commercial use for making men's work . . . were not strong enough for continuous use, in my judgment, on his own manufacture, women's welts" (R. Vol. 1, p. 688, line 44; p. 689, lines 8–9).

The conclusion is certainly justified that the United States has not shown any ground for questioning the finding of the District Court as to the character and capacity of the Plant machines. This finding also specifically answers the allegation of the United States (p. 232) that

> "the record clearly shows that the Plant machines were right at the threshhold of extended competition with the United Company's machines."

That finding was as follows:—

> "Whatever the merit of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially

successful in September, 1910, or to have been capable of such success in their then stage of development. They are shown to have been lightly built, not adapted to produce men's shoes, and by no means satisfactory in making women's shoes, the kind of work to which the Plant factory was devoted. The evidence is uncontradicted that, while operated there, they fell behind the United Company's machines, which they had supplanted, in efficiency—that breaking down and defective work was more frequent with them—and the cost per pair of making shoes with them distinctly greater. Though some of them, as later developed and improved by the United Company, proved to have merit, the most that can be fairly said of them in 1910, on the evidence, is that they were more or less promising experimental machines. There was no complete set of them for combined operation; for that purpose several important machines were yet to be developed. In the state in which the United Company took them over, they were not found capable of profitable use. *Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshhold of extensive competition with the United Company'*" (italics ours) (Dodge, J., R. Vol. 1, p. 1143).

The Contention of the United States that the Defects in Plant's Machines could have been Easily Remedied.

It is alleged by the United States (p. 108) that "There is, however, nothing in the record to indicate that the defects [in the Plant machinery] were of such character as not to be easily remedied by the alterations and adjustments common in the practical working out of a project like Plant's."

There is no evidence in this record to support this asser-

tion, but, on the contrary, there is a great deal of evidence, which is reviewed in the Brief for Appellees (pp. 496–500), which shows what a tremendous undertaking it is to transform experimental machines into successful, commercial machines.

The Contention of the United States that the Subject of Negotiation was Plant's Entire Line of Machinery rather than his Inventions.

In the Brief for the United States it is alleged (p. 108) that "during the entire negotiations nothing was talked of but the buying of Plant's *entire* line of machinery," as distinguished from the particular inventions.

There is no evidence in the record in support of this assertion and it is specifically contradicted by Mr. Winslow, who testified:—

> "During these negotiations nothing except Plant's *inventions and patents* was the subject of discussion" (italics ours) (R. Vol. 1, p. 481, lines 12–13).

If the United States is endeavoring on page 108 of its brief to argue that the United Company should have bought only the inventions which it knew would be of value, it should be borne in mind, first, that particular improvements could not have been singled out *during the negotiations* for the reason stated by Mr. Winslow:—

> "As to whether anything was said in our negotiations with reference to the purchase of those particular improvements, I didn't know what his improvements consisted of, as I have already stated. *I didn't know what he had or the value of his inventions* until I went up and examined them in September and had my experts examine them" (italics ours) (R. Vol. 1, p. 559, lines 28–33);

and, second, that the United States loses sight of the fact that the *United Company could only buy what Plant wished to sell.* It is quite obvious that Plant wished to sell all, and not a part only, of his inventions (R. Vol. 1, p. 486, lines 2–6; p. 487, lines 11–16).

The Contention of the United States that Negotiations with Plant were Affected by Western Manufacturers.

The United States alleges (p. 112) that "it is fair to conclude that Winslow and his associates were well aware that negotiations were going on between Plant and the shoe manufacturers, and that unless the United people were prompt in closing the bargain the shoe manufacturers would obtain the Plant machines and establish a vigorous rival of the United Company."

The United States points out (p. 111) that Endicott knew "as far back as June, 1910," that the Western manufacturers were coming to examine Plant's machines and that as "a leading figure in the defendants' negotiations, [he] must have informed Mr. Winslow" (p. 112). This evidence merely shows that Endicott knew in June, 1910, that these Western manufacturers proposed to or might examine Plant's machines. It does not show that there were any negotiations pending between the Western manufacturers and Plant for the purchase of his machines and, as a matter of fact, no such negotiations were pending. It shows at most that Plant had arranged or hoped to arrange to have these shoe manufacturers look at his machines, whether for the purpose of inducing them to use some or all of them, or for the purpose of selling them his patents, or for the purpose of getting their advice or criticism does not appear.

The evidence further shows that no attention was paid to the Western manufacturers, because the unquestioned evidence shows that after "Endicott knew" that they might examine the machines, Mr. Winslow, on four separate occasions, broke off negotiations which had been initiated by Plant, viz.: on June 23rd (R. Vol. 1, p. 577, lines 12–14), on June 27th (R. Vol. 1, p. 483, lines 11–12), on July 5th (R. Vol. 1, p. 484, lines 16–21) and on September 16th (R. Vol. 1, p. 486, lines 1–44).

Mr. Winslow testified:—

> "Mr. Plant had told me, I think on the evening of the 20th, that he was expecting the Western people in Boston. . . . I did not pay much attention to it because it did not affect me one way or the other" (R. Vol. 1, p. 488, lines 18–23).

This was the evening on which the Plant purchase was practically agreed upon, not the day prior as stated by the United States (p. 111). So far as appears this was the first information Mr. Winslow had that the Western manufacturers intended to examine the Plant machines. There is not the slightest intimation, however, that Plant then told Winslow that any negotiations were pending for a sale to the Western manufacturers, and as a matter of fact none were pending. Plant had not made any offer to them, so far as appears. His first proposition to them to sell was made after he had agreed to sell to the United Company, when he made them a proposition which he knew they could not accept. If they came to Boston for the purpose of purchasing the Plant patents, it was for the purpose of examining the machines, and opening negotiations, not for the purpose of closing any pending negotiations.

The United States has not shown any ground for questioning the finding of the District Court that the Western Manufacturers had no effect upon the negotiations. That finding was as follows:—

> "It [the evidence] does not charge the defendants with any knowledge, at the time they came to terms with Plant, of any negotiations between him and the manufacturers referred to. No reference appears to have been made to them or their doings during the defendants' negotiations with Plant, and no reason is found to believe that apprehension lest he might conclude some arrangement with them induced in any degree the defendants' final agreement with him. Were it important, it might be added that so far as the evidence can be said to show anything regarding Plant's intentions toward them it shows that he never really meant to enter into any arrangement with others if he could get the defendants to take off his hands everything which he desired to sell; and no purchase so extensive as this appears to have been at any time contemplated by the manufacturers mentioned in the petition" (Dodge, J., R. Vol. 1, p. 1144).

The Attempt of the United States to Discredit Endicott's Testimony.

Under the heading "Endicott's Strange Story" (p. 114) counsel for the United States discusses the participation of Mr. Endicott in the negotiations of Plant with the United Company and asserts "Endicott's maneuvers are difficult to understand. His story excites curiosity and suspicion."

That the United Company was much pleased to welcome to its board of directors a man whose ability had created the greatest shoe manufacturing business in the world was

perfectly natural. The insinuations which the United States makes against a man of Mr. Endicott's standing are not creditable to the United States. They need no answer, but they are answered by Mr. Endicott's testimony, which is clear and straightforward throughout and which is corroborated by Mr. Winslow (R. Vol. 1, pp. 479–487), Mr. Herrick (R. Vol. 1, pp. 602–615), and Mr. Howe (R. Vol. 1, p. 683, lines 9 *et seq.;* p. 686, lines 34 *et seq.*).

The Contention of the United States that Defendants Showed Anxiety to Secure the Plant Machines.

The United States alleges (p. 113) that "the whole history of the transaction shows that the defendants were keenly alive to the importance of removing from their path so dangerous a competitor and were exceedingly anxious" to secure Plant's machines.

The record proves the contrary to be the fact. The evidence clearly shows that throughout the negotiations Mr. Winslow never made any offer to Plant, but that the negotiations were begun by Plant and renewed by him several times after Winslow had definitely broken them off (R. Vol. 1, p. 559, lines 16–18). The negotiations are reviewed in the Brief for Appellees (pp. 525–534).

All the evidence on the history of the negotiations proves conclusively, not that Winslow was exceedingly anxious to get Plant's machines, but that Plant was exceedingly anxious to have Mr. Winslow get them.

In support of its contention the United States alleges (p. 114) that "defendants hastened to give Mr. Plant a check for $500,000," and finds significance in the fact that at the time the check was delivered "not a document

had been drawn." The evidence shows that, as Mr. Winslow testified:—

> "It was a part of the arrangement with Mr. Plant that if we accepted his proposition he was to be paid $500,000 and then the papers would be drawn" (R. Vol. 1, p. 488, lines 2–4).

Mr. Herrick testified,—

> "On the morning of the 22d a check for $500,000 payable to my order was given to me, and a couple of hours later I handed my check for $500,000 to Mr. Carr, Mr. Plant's attorney. This payment was made because Mr. Plant insisted that there ought to be something paid on account, and Mr. Carr, as I remember it, named the figure" (R. Vol. 1, p. 607, lines 5–10).

The Contention of the United States that Suits were Brought to Compel Plant to Sell.

The United States says (p. 117), referring to the suits brought by the United Company against Plant and the Thomas G. Plant Company (P.'s Ex. 162), that "These suits, no doubt, were intended in part at least as spurs to induce Plant to sell and hence certainly tend to show that the United Company believed Plant to be a dangerous competitor."

There is no ground for this conclusion. By reference to Plaintiff's Exhibit 162, a physical exhibit not reproduced, it will be seen that the prayers of the bill were in substance that injunctions be issued restraining the Plant Company from using machinery in violation of its lease and license agreements with the United Company and that Plant, the individual, be enjoined from supplying the Plant Company during the terms of said agreements with shoe

machinery "in substitution for" the United Company's machines leased on said agreements. In other words, this suit was brought merely for the purpose of enforcing certain contracts that the Plant Company, the shoe manufacturing concern, had made with the United Company.

The infringement suits were brought for the purpose of restraining infringement of the United Company's patents. This was a proper and normal step for the owner of patents to take in the enforcement of rights under the patents.

It would appear, however, that if defendants had been anxious to continue negotiations with Plant they would not have risked interrupting them by these suits.

The Contention of the United States that the Plant Improvements were of Little Use to the United Company.

The United States alleges (p. 118) that "defendants' own witnesses show that however valuable the Plant improvements were to him as a present and prospective competitor of the defendants, they were of little use to the United Company."

There is absolutely no evidence from defendants' witnesses, or any other witnesses for that matter, to the effect that the Plant improvements were of little use to the United Company. The evidence is all to the contrary. For example, Mr. Warren testified:—

> "I later told Mr. Winslow that the improvements on the welter and stitcher were worth all he gave for the entire property, and that was my opinion" (R. Vol. 1, p. 788, lines 8-10; p. 813, lines 6–9).

Appellees' Brief (pp. 506–513) contains a full statement of the evidence of practical shoemakers as to the value

of the stitcher and welter improvements. It is there shown conclusively that these improvements resulted in machines which operate faster, turn out more work, do work of better quality, are more economical for the shoe manufacturer, and enable the operator to earn higher wages.

The United States quotes (p. 119) Mr. Howard's testimony with reference to the stopping mechanism of the Plant stitcher as follows:—

> "... five different inventors employed by the United Company were put to work upon the *problem* of providing a *commercially satisfactory* stopping mechanism. ..."

What Mr. Howard really said is this:—

> " ... five different inventors employed by the United Company were put to work upon the problem of providing a commercially satisfactory stopping mechanism which could be incorporated in the organization of the model K out-sole stitcher, which was then the standard commercial machine of the United Company" (R. Vol. II, p. 2297).

The United States concludes, from the fact the United Company put a large number of inventors at work in order to remedy the defects in the mechanical constructions in which Plant had embodied his valuable inventions and to adapt the welter and stitcher improvements to the United Company's machines, that these improvements, in themselves, were not of great value.

Possibly the explanation of this curious argument by the United States is that it may have been prepared by counsel not familiar with inventions and patents. Of

course the fact that the particular mechanical constructions in which Plant had embodied his extremely valuable inventions were crude and defective has not the slightest bearing upon the value of his inventions. But the commercial advantages of those inventions could not be realized until they had been embodied in satisfactory commercial form. That was one of the problems with which the United Company's inventors had to deal. The other problem was the development of mechanical organizations which would fit the United Company's own machines. That in doing this work the United Company's inventors should make still further improvements was natural and to be expected.

The extended use which the United Company has made of the Plant inventions and their great value to the United Company are shown by the evidence reviewed in the Brief for Appellees (pp. 500–514).

The United States has not called attention to any evidence which should lead the Court to question the finding of the District Court as to the value of the Plant inventions, which was:—

> "The agreement to take the patents and inventions was not made until after a careful examination and report as to their merits. The belief thereon founded that, used as above, they would be worth acquiring upon the terms proposed, is shown to have been justified by the result, and the acquisition cannot be criticised so far as it was occasioned by that belief. As developed and added to its own machines by the United Company, some of the inventions acquired have proved to be of a value such as fairly justifies their claim that the patents acquired were the controlling feature of the purchase" (Dodge, J., R. Vol. 1, p. 1145).

The Argument of the United States that the Shoe Machinery Art would have been Advanced by the Sale of Plant's Machinery to a Group of Manufacturers.

The United States contends (p. 118) that all that was necessary in order that the shoe machinery art might be benefited by the Plant improvements was "to permit the shoe manufacturers who were ready and anxious to purchase an interest in Plant's machinery to carry through their design."

There is uncontradicted evidence that there were 708 distinct cases of infringement of the United Company's patents of 37 Plant machines (Defs.' Ex. 273, R. Vol. 5, p. 733).

The sale of an interest to the shoe manufacturers mentioned would have in no way avoided such infringements. Furthermore it would not have permitted the combination of the United Company's patents with the Plant patents, and the consequent advance in the art of shoe machinery which was the object and the result of the acquisition.

The Contention of the United States that the Avoidance of Litigation was not a Motive in the Plant Purchase.

In the Brief for United States it is alleged (p. 120) "that the avoidance of litigation was in fact an actuating factor in the transaction does not appear. In no part of the negotiations was it suggested that the defendants should buy out Plant in order to avoid litigation."

On the contrary, that both parties had in mind the avoidance of litigation and that it was a factor in the negotiations is shown by the fact that *formal releases were exacted by both parties.* On September 23, 1910, the United Company agreed to deliver to Plant releases "providing

for the dismissal or discontinuance . . . without costs . . . of the suit now pending in the Supreme Judicial Court of Massachusetts . . . and suits now pending in the United States Circuit Court against said Plant . . . and . . . general releases including any and all claims . . ." (P.'s Ex. 132, R. Vol. 4, p. 935).

On the other hand on September 30, 1910, Plant executed a formal release to the United Company of all claims, referring specifically to "certain suits" which he had planned to bring against the United Company (P.'s Ex. 137, R. Vol. 4, p. 1037).

The allegations of the United States are directly contradicted by the testimony of Mr. Howe and Mr. Winslow. Mr. Howe testified:—

> "Then another consideration for the purchase was this avoidance of litigation, either by ourselves against him [Plant], which would have cost a great deal of money and would have annoyed the trade very much, the shoe manufacturers, and also the cost and annoyance of having to be sued by Plant" (R. Vol. 1, p. 877, lines 41 *et seq.*).

Mr. Winslow testified:—

> "The confusion and conflict in the patent situation of my own company and of Mr. Plant, the chaos which might result from conflicting claims and constant litigation, was a substantial consideration in my mind . . . and when Mr. Plant offered to me the patents at a price which to my mind was less than their value . . . it might be said to be a controlling factor" (R. Vol. 1, p. 862, lines 24–31).

The United States finds it significant that (p. 117) "Defendants' witnesses talk of counter infringements by their machines. ***But no litigation was begun by Plant.***"

It cannot be doubted that if Plant had kept on he would have enforced his rights under his patents and would have brought suits on account of infringement by the United Company's machines; indeed, as we have just stated, his intention to bring suits is asserted over his signature in a release signed by Plant on September 30, 1910:—

> "I . . . have made certain claims against the United Shoe Machinery Company . . . and have planned to bring certain suits against said United Shoe Machinery Company" (P.'s Ex. 137, R. Vol. 4, p. 1037).

Mr. Winslow and Mr. Howe fully expected that Plant would bring suits against the infringing machines of the United Company (R. Vol. 1, p. 862, lines 25–26; p. 877, lines 27–30; p. 878, lines 1–2).

Another important fact is that Plant had already defeated the United Company in six interferences. Twenty-three interferences had been declared in the Patent Office between patent applications owned by Plant and applications owned by the United Company. In six of these Plant had secured favorable decisions (R. Vol. 1, p. 846, lines 14–17; Defs.' Ex. 272, R. Vol. 5, p. 730).

The United States alleges (p. 121) with reference to infringement suits against Plant that "it does not appear that if any or all of them had been sustained it would have been fatal to the line of machinery owned by him."

A complete answer to this allegation is found in the 708 distinct instances of infringement of United Company patents by 37 Plant machines, as set forth by Mr. Howard in Defs.' Ex. 273 (R. Vol. 5, p. 733). No testimony was introduced by the petitioner to refute these instances of infringement (R. Vol. 1, p. 394, lines 40–43).

That these instances of infringement were serious is apparent from the fact that it was the *general organization* of at least six Plant machines which infringed the patents of the United Company and in respect to two other machines Mr. Howard testified:—

> "The patents infringed by the Plant Heeler and the Plant Heel Attacher on Wood Lasts covered both these machines so thoroughly that by no possibility could they have been changed to avoid infringement. Plant's only course would have been to junk the machines and begin over again" (R. Vol. 5, p. 746, lines 27–31).

The conclusion is certainly justified that the United States has not shown any ground for questioning the finding of the District Court that the purchase resulted in relieving the United Company of a burden of litigation threatening interminable controversy. That finding was as follows:—

> "The evidence shows also, without serious contradiction, that one result of the bargain made with Plant was to relieve the United Company from an amount of litigation, then pending or in prospect, which would otherwise have burdened and hindered it . . . And between Plant or concerns wherewith he was identified and the United Company there were pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents, so numerous, complicated, and important as to threaten interminable controversy" (Dodge, J., R. Vol. 1, p. 1145).

The Contention of the United States that the Plant Stock was of Comparatively Little Value in the Transaction.

It is alleged (p. 123) that "the evidence does not show that the stock of the Plant Company was specially valuable."

The evidence shows that the earnings of the Plant Company for the four years preceding its acquisition had averaged $738,000 annually. Plant owned and sold sixty per cent. interest in the stock of the company. It is shown in the Brief for Appellees (pp. 523–524) that sixty per cent. of the average earnings for the past four years amounted to $442,800 annually and that capitalized at ten per cent. this would show a value of $4,428,000 for the stock.

In addition to this the balance sheet showed net quick assets amounting to ~~$2,183,227.22~~ 3,128,947.96 and a factory and equipment valued at ~~$2,184,500.~~ 1,270,380. these items alone giving to the sixty per cent. stock an equity of ~~$2,820,631.33~~ 2,639,398.78 (P.'s Ex. 132, R. Vol. 4, pp. 1014–1015). That the good-will and trade-marks, including the trade-mark "Queen Quality," were of great value cannot be doubted.

The District Court held (Dodge, J., R. Vol. 1, p. 1144):—

> "That it was of great value is shown beyond question by the dividends then and afterward paid on the stock acquired by the United Company."

The Contention of the United States that by the Plant Acquisition Control of Welters and Stitchers was Secured.

The United States alleges (p. 124) that by the Plant acquisition the United Company "again acquired substantial control of welters and stitchers."

The evidence relied upon in support of this contention of the United States proves that on the contrary a number of other concerns were actually engaged in putting out welters and stitchers, all of which were in business in 1910. These concerns are named in the Brief for Appellees (pp. 564–565).

The Contention of the United States that the United Company Secured Control of the McKay Sewing Machine by this Transaction.

The United States alleges (pp. 124–125) that by the acquisition of the Stanley Company through the Plant transaction the United Company secured complete control of the McKay sewing machine, further alleging that Winslow "was wholly unable to name any other concerns which manufacture it in competition with the United Company." This is not a fair statement of Mr. Winslow's testimony. He said that he could not "remember them off hand" and referred to a list which had already been filed (R. Vol. 1, p. 564, lines 29–31).

That many manufacturers and dealers are prepared to furnish McKay sewing machines is shown in Brief for Appellees (p. 563).

The United States alleges (p. 125) that "no one may use a United lasting machine upon any shoe which has been operated upon by a machine not procured from the United Company, therefore not upon a shoe operated on by a McKay machine procured outside of the United Company." This statement, and therefore the conclusions drawn from it, are totally untrue, as we have shown *supra* (pp. 16–20).

CONCLUSION AS TO PLANT PURCHASE.

It is submitted that the United States has called attention to no evidence which should lead the Court to question the findings of the District Court on the facts of the Plant purchase (Dodge, J., R. Vol. 1, pp. 1142–1146). In its extended discussion of the evidence relating to the Plant purchase the District Court found that the defendants' "claim that the patents acquired were the controlling feature of the purchase" was fairly justified, and that the settlement of the

> "pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents, so numerous, complicated and important as to threaten interminable controversy,"

was "a further normal, natural and powerful inducement to the agreement made with him," and then held:—

> "The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter in the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition. No such competition or prospect of competition at the time is proved as would justify such a conclusion" (Dodge, J., R. Vol. 1, pp. 1145–1146).

PETITIONER'S CONTENTIONS AS TO MONOPOLY AND AS TO THE NUMBER OF MACHINES PUT OUT BY SHOE MACHINERY MANUFACTURERS OTHER THAN THE UNITED COMPANY.

The petitioner contends that the United Company furnishes practically all of certain types of machines used in bottoming shoes.

The petitioner nowhere in its brief contends that the United Company's machines are not patented or that they are not the best machines made. Nor does it anywhere contend that any other machinery manufacturer furnishes service of the character furnished by the United Company.

There is not the slightest evidence that shoe manufacturers desire to obtain machines of these types as to which a monopoly is claimed from other shoe machinery manufacturers who are offering better machines and are prevented from doing so by the United Company.

There is therefore not the slightest evidence to dispute the following finding of the District Court:—

> "That the degree of success obtained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the *superior efficiency* it has developed in its *patented machines* for work in combination with each other together with the superior facilities it affords as above for their most efficient use, must be regarded *as shown beyond question*. It is not disputed that

> when the petition was filed, its machines represented in number and amount, *the highest development ever reached in the art* to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason" (R. Vol. 1, p. 1137) (italics ours).

It, therefore, seems immaterial whether the United Company furnishes all or only a small portion of the types of machines in which it specializes.

Furthermore, the petitioner itself contends that the constituent companies which composed the United Company did at least as large a business in the kinds of machines which they manufactured as the United Company does today. It is admitted, therefore, that the United Company has not acquired a monopoly in these machines, except by taking over the business of the constituent companies, which, since they were essentially non-competing, the United Company was entitled to do as held in *United States* v. *Winslow*, 227 U. S. 202.

As to the other machines put out by the United Company since its formation, such as the pulling-over machines, clicking machines, eyeletting machines, and various new Goodyear auxiliary machines, it is not denied that they are machines created and developed by the United Company under patents, and that these machines have been in existence only a very short time. Whatever business the United Company has in these machines is presumably due to the fact that the United Company has created these machines and no one else has invented machines equally good. We submit that there is nothing in the evidence to refute this presumption that the business done by the

United Company in these machines has been acquired lawfully.

While, therefore, the comparative amount of business done by the United Company and its competitors would seem to be immaterial, as we have stated, nevertheless, the petitioner's contention that the United Company does practically all the business in machines of these various types, and the facts on which it attempts to justify this contention are in many cases so erroneous and unwarranted that we wish to call them to the Court's attention.

The petitioner has attempted to prove its contention in three ways:—

1. By showing the total number of shoe manufacturers in the country and the number of such shoe manufacturers with whom the United Company does business.

2. By the testimony of certain shoe manufacturers who testified that they use some or all of the United Company's machines and by assuming that those shoe manufacturers are typical of all shoe manufacturers.

3. By the testimony of certain shoe manufacturers as to their knowledge of the machinery market, and the testimony of a number of shoe machinery manufacturers as to the kinds of machines which they manufacture and as to the number of machines which they have put out.

The petitioner seems to have assumed that it was for the United Company to prove that it did not have a monopoly of all machines. The United Company introduced in evidence certain exhibits consisting of catalogues and correspondence with various shoe machinery manufacturers showing what machines they manufactured and lists drawn from such catalogues and correspondence and other sources

showing the kinds of machines which other shoe machinery manufacturers furnish. These lists did not purport to be exhaustive.

The United States in rebuttal called the representatives of a number, but by no means all, of the shoe machinery manufacturers mentioned in these lists. It had also called a few shoe machinery manufacturers in presenting its direct case. From statements made by these witnesses as to the number of machines they had put out, the petitioner has attempted to draw up a schedule purporting to show the total number of machines of certain kinds put out by the United Company compared with the total machines put out by its competitors. (See page 142 of Petitioner's Brief.) Not only is this schedule made up from the evidence of only a portion of the shoe machinery manufacturers referred to by the United Company, but it further contains many inaccurate statements which the record itself refutes. We shall comment on this schedule below.

The Attempt of the Petitioner to Prove that the United Company Deals with Most of the Shoe Manufacturers in the Country.

The writer of the brief says at page 132, after referring to the testimony of certain shoe manufacturers, that they used certain machines of the United Company:—

> "Evidence of this kind might have been indefinitely multiplied but even the foregoing was hardly necessary in view of the defendants' admission that they are in business relations with 1,033 shoe manufacturers in the United States (Donham, R. I, 26, 1. 39). When the testimony in this case was closed in 1914, there were, according to the census figures in all 1,090 such

> manufacturers. The census of 1910 showed that in 1909, there were in the neighborhood of 1,300 manufacturers."

Later in the brief the writer calmly assumes that the fact is proved that the United Company does business with 1,033 out of 1,090 shoe manufacturers in the country. For example, at page 227 the writer says:—

> "Not only this, but they occupy such a position that every shoe manufacturer of consequence in the United States must deal with them. Out of 1,090, big and little, they do business with more than 1,033. . . . Those with whom they do not have business relations must be insignificant."

The actual facts are as follows:—

The petition states that there are "about 1,300" concerns manufacturing boots and shoes by machinery (R. Vol. 1, p. 991). The evidence showed that the United Company in 1911 did business with 1,033 lessees who were shoe manufacturers (R. Vol. 1, p. 26, lines 38–40). As to the number of shoe manufacturers in the United States the only evidence was the testimony of Mr. Donham as follows:—

> "As to how many shoe manufacturers there were in the United States at that time, [viz. 1911] I don't find that any two calculations agree or that any one of them agree with the census. From what data I have I should say there were somewhere between 1,300 and 1,500. I haven't the figure of the census of 1910 with me. It was somewhere in the neighborhood of 1,300 as I recall it" (R. Vol. I, pp. 26, 27, lines 41–2).

The foregoing evidence, being the only evidence in the record, would entirely refute the contention of the petitioner that every shoe manufacturer must deal with the United Company for it would clearly show that there are between 267 and 467 shoe manufacturers in the country with whom the United Company does no business at all. The writer of the brief, therefore, calmly goes to the census for 1914, states that by that census it is shown that there were 1,090 shoe manufacturers in the country in 1914 and compares this figure with the number of lessees which the United Company had in 1911, three years previously.

These census figures for 1914, of course, were not in evidence and were not prepared until after the evidence was closed in the lower court. Furthermore, the census does not purport to give the total number of shoe manufacturers in the country. It only purports to give the list of establishments from which "returns were received." *Non constat* there may be hundreds who did not make returns and it is most likely that there were a great many who did not make returns.

We pass over the question of whether a census report of this kind can be referred to when not introduced in evidence and also whether such a report can be used as evidence of such a fact as that here in question.

But we must call to the attention of the Court that the petitioner has misquoted the census for 1914. Instead of stating that there were 1,090 shoe manufacturers in the country, it actually states that "returns were received from 1,355 establishments in 1914." (See Census Bureau's Summary concerning the manufacture of footwear for 1914.) Using, therefore, the method employed by the

United States for determining the number of shoe manufacturers who do not deal with the United Company, we find that there are 322 such shoe manufacturers.

Petitioner's Table Purporting to Show the Number of Machines of Certain Classes put out by the United Company and the Number of Machines of the Same Kinds put out by Competitors.

Upon page 142 of the petitioner's Brief appears a tabulation purporting to indicate

> "the number of principal bottoming machines together with eyeletting and clicking machines which the United Company had out March 1, 1911, and the number which all other concerns had out at that time."

It is stated that this is a summarization of Appendix B, Part 1, of the Government Brief, aided by Defendants' Exhibit 228.

It is attempted to use this summary as a basis for the assertion that the United Company controls all the clicking, all the pulling-over, all the pegging, and all the standard screw machines, and about ninety-six per cent. of the total number of bottoming machines in use, upon which to predicate the conclusion that the defendants now monopolize the fie'd which they "have pre-empted by combination and acquisition."

The summary is not justified by the record, and the conclusion attempted to be deduced is erroneous. While the statement of the number of machines put out by the defendants is substantially correct (because of the use made of the Defendants' Exhibits), it does not appear from any affirmative testimony in the record that the number

of machines put out by all other concerns on March 1, 1911, is as therein stated. The impression is sought to be conveyed that Appendix B, Part 1, is a condensed statement drawn from uncontradicted testimony and undisputed sources indicating positively the number of machines put out by other concerns. But the witnesses whose "uncontradicted evidence" is referred to were, as stated in the Government's Brief on page 134, representatives only of a number of manufacturers advertising machines in competition with the defendants' machines, and testified only as to the actual character and amount of business of their principals. In other words, the United States produced as witnesses representatives of *some* of the concerns referred to by the defendants, who testified as to the output of their respective businesses and nothing more, and the aggregate of the machines so testified to is asserted by the summary to be the total amount of machines put out by *all* other concerns. Whatever may be the total of the machines actually put out by all other concerns, it certainly cannot be demonstrated by showing the number of machines put out by a part only of such concerns.

But the inferences and conclusion sought to be deduced from the summary are still more misleading.

The intimation, for example, is that the defendants have a monopoly of the clicking machines, which they have secured by "combination and acquisition."

There is, however, no suggestion that this clicking machine is itself the development of the United Company, and a very remarkable invention which probably saves more money for the shoe manufacturers than any other machine ever produced and which was not put into use until 1908 or 1909 (R. Vol. 1, pp. 425–426). It is a pat-

ented machine embodying thirteen patents and under these patents the United Company has the exclusive right of making, vending, and using. And it is *this* machine which is asserted by the United States to be a part of the field which the defendants have unlawfully "pre-empted by combination and acquisition."

Again, the pulling-over machine, of which it would appear from the summary the defendants have a monopoly is an invention of the United Company's, developed at vast expense, doing operations previously done by hand exclusively, and first put out in 1902. This machine is protected by nineteen patents (R. Vol. 2, pp. 2542 *et seq.*).

It is suggested by the summary that the defendants have a monopoly of the standard screw machines, of which there appear to be put out by the United Company 409. No reference is made to the fact, however, which appears in the Defendants' Exhibit 226, that the number of standard screw machines which the United Company had out on lease was 826 in 1900 but dwindled to a few more than 400 in 1911. This means, of course, that the manufacture of standard screw shoes had fallen off, and the steadily diminishing market for such machines would naturally not be very attractive to competitors.

The same observations can be made in regard to pegging machines, and to the conclusion sought to be suggested by the summary.

The dependability of the summary as a basis for any just conclusion as to the monopolization of the field by the defendants is well tested by consideration of the figures as to eyeletting machines and McKay sewing machines.

The summary indicates that the United Company had out 4,472 eyeletting machines and all other concerns 150.

Defendants' Exhibit 228 shows of the total 4,472, 2,435 are power machines and the balance are foot power eyeletters and miscellaneous machines of Eyelet Department.

It appears clearly in the testimony of Mr. Winslow (R. Vol. 1, p. 451, lines 38 *et seq.*) that the defendants lease eyeletting machines to harness makers, trunk makers, corset manufacturers, and others, and this total includes machines so leased as well as machines leased to shoe manufacturers.

The total of 150 eyeletting machines asserted by the summary to be the number of eyeletting machines put out by all other concerns is simply the number testified to by the witness Hall, called by the Government as representative of the American Worsted Company, as the number of machines put out by his concern (R. Vol. 1, p. 953).

Muther, representative of the Peerless Manufacturing Company, one of the concerns referred to, was called by the Government, and his testimony is disposed of in the Appendix thus: "Output not stated but we may assume that if it was large enough to be significant it would have been stated, by the defendants," and the number of machines put out by his concern is represented in the Appendix as zero. Muther testified that his concern manufactured eyelet setting machines, skiving machines, hook setting machines, etc.

> "We sell our eyeletting machines outright or loan them without charge to people who buy eyelets from us. . . . Our eyeletting machine is the Peerless rapid eyelet machine. It will insert any kind of eyelets in shoes. They are put out on loan leases and we ask customers to buy all their eyelets from us—but they don't. . . . We supply six or eight different kinds of

> eyelets, mostly japanned, which we buy and resell. We buy our japanned eyelets from the United Company and the Atlas Tack Company. . . . We can buy and sell all we want—all our customers require. . . . We sell more Atlas than United eyelets and our customers are altogether shoe manufacturers. . . . Our machines are sold to shoe manufacturers who use other machines obtained from the United Company. . . . Our machines and theirs are sometimes used side by side in the same factory. Manufacturers use either they want—or both" (R. Vol. 1, pp. 303–304, lines 13–14).

The output of eyeletting machines thus described is designated by the United States as "None."

In the summary the number of McKay sewing machines put out by the defendants is set at 898 and the number put out by all other concerns is stated to be 8.

The surprising inaccuracy of this statement is illustrated by the fact that in 1909 in the principal shoe manufacturing districts there was a total of 1,488 machines outstanding, of which only 308 had been supplied by the United Company. In the Lynn district there were 59 McKay sewing machines supplied by the United Company, and 367 supplied by others. See main brief, p. 563.

And yet in the face of this evidence the Petitioner's table shows only 8 McKay machines supplied by others than the United Company, because the only machinery manufacturer who testified that he manufactured these machines said he had put out 8.

These considerations would seem to indicate the absolute worthlessness of the summary as a statement of fact and to demonstrate the unsoundness of the reasoning premised upon it.

One further fact is noticeable with respect to this table which the petitioner uses to show monopoly. It refers to only 13 types of machines out of the hundreds of different types manufactured by the United Company.

The Petitioner's Table at Page 142 of its Brief Disproves the Petitioner's Own Contention.

However, even assuming that the table given at page 142 of the petitioner's Brief, showing the number of machines furnished by the United Company as compared with the number of machines furnished by all other shoe manufacturers, were correct, it would disprove the petitioner's own contention.

The petitioner's contention cannot be that the United Company is an unlawful monopoly merely because its patented machines are generally or even universally used by all shoe manufacturers.

The contention of the United States must be that the United Company has acquired such proportion of the business as it holds either by buying up competitors and thus suppressing competition or by the restrictive provisions in its leases.

But looking at the table at page 142 it clearly appears that as to certain of these machines, in respect to which it is alleged that the United Company has a complete monopoly, it cannot be contended either that the United Company has bought up competitors making these machines or that its leases have compelled shoe manufacturers to take them. For instance, take the eyeletting machines. The United Company did not acquire, nor has it maintained its business in eyeletting machines by buying out competitors. Furthermore, the United Company does

not put out a single lease which restricts the use of any of the more than three hundred machines which it puts out to use with its eyeletting machines. In other words, a shoe manufacturer can take any one or all of the machines which the United Company puts out and use a competitor's eyeletting machine in connection with them. Self-evidently, therefore, even accepting the petitioner's view as to the unlawful character of the lease provisions, they cannot either compel or induce a shoe manufacturer to take eyeletting machines from the United Company. Yet the table shows that the United Company has furnished substantially as large a proportion of the total eyeletting machines in use as it has of any other class of machines, and that it furnishes a much larger proportion of such machines than it does either of welt sewing or outsole stitching machines.

Take the clicking machine. The United Company did not acquire, nor has it maintained its business in clicking machines by acquiring competitors who manufactured this machine. It invented that machine itself and first put it out about 1909. The United Company does not require a lessee of any of its machines to use them in connection with its clicking machine. It, therefore, cannot in any way by its leases induce or compel lessees to take its clicking machine. There is absolutely nothing in the record even to suggest that the United Company has acquired its business in clicking machines for any reason except the merits of the machine. Yet, according to the petitioner's contention, the United Company does the entire business in clicking machines. It must be self-evident that the machine is used because it is a patented machine, because it is useful to shoe manufacturers, and

because no other person furnishes an equally valuable machine.

Take also the pulling-over machine. As to this, the petitioner's table also alleges that the United Company has a complete monopoly and that competitors furnish no machines whatsoever. Yet it has not acquired this business by buying up competitors who were putting out the machine, and not a single machine which the United Company furnishes is restricted to use with the pulling-over machine, except the No. 5 lasting machine, which was particularly designed for use with the pulling-over machine. The fact that this particular type of lasting machine is restricted to use with the pulling-over machine cannot compel shoe manufacturers to take the pulling-over machine, because a shoe manufacturer can obtain either the hand method welt machine or the hand method McKay machine, both excellent machines, preferred by some shoe manufacturers to do work which the No. 5 machine would normally do.

It, therefore, is self-evident that the leases of the United Company do not induce or compel lessees to take the United Company's pulling-over machine. Its success in supplying pulling-over machines must be due solely to the fact that its pulling-over machine is a useful patented machine which lessees desire in their factories and that no other machinery manufacturer produces an equally useful machine.

As to the United Company's success in furnishing three of the machines as to which monopoly is charged, the record, therefore, shows that neither the restrictive clauses in the United Company's leases nor its purchases of competing concerns had the slightest effect. This being true,

it is only fair to assume that the same is true of the ten other machines referred to in the petitioner's table at page 142. As regards all the machines shown in the table, the United Company is putting out improved patented machines and each is just as useful in its field as the eyeletting machine is in its field, or the clicking or pulling over machines in their fields.

The Petitioner Admits that there is a Large Field of Shoe Machinery not Occupied by the United Company at all or in which there are Competitors Actively Engaged in the Business.

In the first place, the petitioner does not deny that the United Company does not manufacture at all machines for sewing the uppers to shoes. It does not deny that the United Company furnishes only from thirty to fifty per cent. of the number of machines used in the ordinary shoe factory. (See our main brief, pp. 557–560.)

Thus in Hazzard's factory where most of the machines furnished by the United Company and suited for his work are used, out of a total of 746 machines in the factory only 327 were obtained from the United Company, or less than forty-four per cent., and, deducting General Department machines which may be bought outright, only 296 machines, or less than forty per cent. In Jonathan Brown & Son's factory, a typical McKay shoe factory, in which United Company machines are used, out of a total of 424 machines only 128, or thirty per cent., were obtained from the United Company, and, excluding General Department machines, which may be bought outright and as to most of which the United States does not claim a monopoly, only 64 machines, or fifteen per cent. of the total, were obtained from the

United Company (see main brief, p. 558). Furthermore, the petitioner does not deny that in the classes of machines which are furnished by the United Company there are a very large number of competitors.

The petitioner's own brief states at page 134 that

> "85 representatives of a number of these manufacturers were, however, called by the Government (R. I, 882–960 and elsewhere) and testified as to the actual character and amount of the business of these companies."

At pages 132 to 156 of the Appendix to our brief is summarized the testimony of about *fifty competing shoe machinery manufacturers* who were called by the United States. Their testimony establishes that they do a business which taken altogether is substantial and which cannot be dismissed as insignificant.

A number of these manufacturers are prepared to furnish complete lines of shoe machinery for manufacturing all kinds of shoes. Thus Hamel testified that he has a complete set of machines for making turn shoes and a complete set of machines for making welt shoes. (See main brief, p. 564.) J. J. Doidge, manager of the R. H. Long Machinery Company, testified that his company is ready to supply a full line of machinery for welt or turn shoes. (See main brief, pp. 564–565.) Edwin A. Webster, a director of the Haverhill Shoe Machinery Company, testified that his company undertakes to fill the requirements of a manufacturer whatever they are:—

> "We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs or anything else" (R. Vol. 1, p. 301, lines 5–9; see also our main brief, p. 565).

The foregoing, being the admitted evidence, it would seem that the brief writer was indulging in exaggeration when he said (p. 167):—

> "It [the United Company] is absolute monarch of the industry. No competitor can exist unless for its own pleasure or policy it withholds its destroying hand."

Shoe Manufacturers may Obtain a Complete Set of Machines without taking any from the United Company. If they take the United Company's Machines it is because they prefer them.

Machines can be obtained by any shoe manufacturer from competitors of the United Company. While, as stated above, the record does not show the number of machines of various kinds furnished by all the competitors of the United Company, it does affirmatively show that a complete set of machines may be obtained by any shoe manufacturer from a number of different shoe machinery manufacturers and that no shoe manufacturer is obliged to come to the United Company for any of his machines.

Thus, as we have stated above, C. A. Hamel, the R. H. Long Machinery Company, and the Haverhill Shoe Machinery Company each offer a complete line of machines. (See main brief, pp. 564–565.)

The petitioner's brief founds a number of its arguments on the contention that practically every shoe manufacturer must come to the United Company for his lasting machines (Petitioner's Brief, pp. 125–164). Apparently the petitioner admits that shoe manufacturers can get their other machines from other shoe machinery manufacturers.

But they can also get their lasting machines. Thus the manager of the R. H. Long Machinery Company testified that the Company was ready to furnish the trade with twenty-five lasting machines (R. Vol. 1, p. 345, lines 41–42). The Company would, of course, build more as fast as they were needed. The Haverhill Company is ready to furnish lasting machines manufactured by Gimson & Co. and the Standard Rotary Co. of England (R. Vol. 1, p. 300, lines 40–42). Mr. Webster of that Company testified:—

> "It takes about 20 to 25 days to get them from England. I am in hopes to improve on that" (R. Vol. 1, pp. 300–301, lines 45, 1–2).

Any machine shop can build for any shoe manufacturer who desires them lasting machines of the character put out in 1899 when the United Company was formed on which the patents have expired. One of the reasons that it is difficult, as shown by the record, to check up the exact number of machines placed on the market by competitors and also the exact number of competitors, is because almost any small machine shop can turn out shoe machinery which it is possible to use on shoes. No large plant or factory is required and the ordinary machine tools are practically all that is necessary.

In addition to the American companies furnishing machines there are a considerable number of foreign companies which furnish full lines of machines. (See main brief, p. 565.) The petitioner endeavors to belittle these foreign concerns because it says that they have not done business in this country to any appreciable extent (Petitioner's Brief, p. 135). The petitioner, however, does not and cannot refute the fact that there are large foreign

manufacturers who do furnish complete lines of machines, that they would be glad to furnish their machines to any shoe manufacturer in this country who desired to use them, and that any shoe manufacturer in this country can order machines from them if he wishes.

The record shows that an average of sixty-two new shoe manufacturers engage in business each year and that an average of twenty-two new firms succeed old firms. (See Defs.' Ex. 223, R. Vol. 5, p. 390.) These shoe manufacturers are not in any way under obligations to the United Company. They are free to obtain their machines from Long, from the Haverhill Company, or from Hamel, who are all, as they testified, anxious to furnish them with full lines of machines. They can obtain their machines from any one of several large shoe machinery manufacturers abroad. If they do not choose to do so, it is clearly because they want the best machines on the best terms and with the best service, and, therefore, prefer to take their machines from the United Company.

Respectfully submitted,

FREDERICK P. FISH,
CHARLES F. CHOATE, JR.,
MALCOLM DONALD,

Counsel for Appellees.

APPENDIX I.

COMMENTS ON APPENDIX A TO PETITIONER'S BRIEF BEING A CHART PURPORTING TO SHOW THE EFFECT OF THE EXCLUSIVE USE AND "TYING" CLAUSES.

The Brief for the United States, at page 166, states:—

> "A chart illustrative of the practical effect of the tying clauses in these restrictive leases is submitted herewith as Appendix A. This chart has been criticised by the defendants, but all the criticisms are trivial and none of them is based upon fact. It will be observed that this chart relates to provisions in 'restrictive' leases and not to leases generally, and it will be found that every statement made in it is supported by the provisions of the leases to which reference is made therein."

Notwithstanding the statements of the United States, the chart does not correctly represent the situation, but is inaccurate and misleading. As a graphic it does not correctly set forth the situation, and a great many of the statements made therein are not supported by the provisions of the leases to which reference is made. The chart, upon its face, purports to cover only what counsel for the United States are pleased to call the restrictive forms of leases. It, therefore, admittedly sets forth but a part of the whole story, and even as to that part presents a picture which is not substantiated by the leases themselves. Appendix A

is an exact copy of the chart in the Brief for the United States filed in the District Court, and is substantially a copy of Exhibit 23 attached to the petition, which it was agreed should be disregarded, as the United States did not claim to have proved it.

Some of the respects in which the chart is inaccurate and misleading are as follows:—

1. It attempts to combine in the one chart machines used in the manufacture of different kinds of shoes, *e.g.*, welts, turns, McKays, metallic fastened, pegged; and where such machines are adapted to be used upon different kinds of footwear, and the leases accordingly being general forms contain some restrictions which apply to one class of footwear and other restrictions which apply to other classes of footwear, the chart by indicating all of these ties in the one graphic has the effect of indicating a multiplication of tying which would never exist in any factory as a practical matter. For example, the heeling machines are shown as tied to the Pegging Machine Department and to the Goodyear Department where as a matter of fact this tie would simply be to the Pegging Machine Department upon pegged shoes and to two machines of the Goodyear Department upon welt shoes, and to but one machine of the Goodyear Department upon turn shoes.

2. The chart indicates a requirement in many instances that the lessee "must use exclusively lessor's machines for certain operations," whereas the requirement is not in any such positive form, but is simply a reservation of the right to the lessor, if the lessee does not elect so to use the lessor's machines for all of his work of that kind, to have the option to terminate its leases of machines of that particular kind.

3. The effect of the tying is made to appear greater than it really is by combining in various of the tables various machines for performing the same or similar operation only one of which would be used in any one particular case, or in showing in the same table different forms of lease for the same machine. For example, in Table 6, there is the enumeration of several different types of lasting machine; in Table 2 the list includes several forms of heel attaching machines and several forms of heel trimmers; in Table 3 there are two kinds of eyeletting machine listed; in Table 4 there are different forms of lease for the same machines of the General Department; in Table 8 there are different forms of lease for the same Goodyear machines. The arrows in the chart would appear to indicate that all the machines in one group are tied to all of the machines in another group, whereas the tie would actually exist, as a practical matter, only between certain se'ected machines of one group and certain selected machines of the other group.

The following are some of the instances of inaccurate or misleading indications in the various tables:—

Table 1. Pulling-over System.

1. The arrow indicates a tie to the machines of the Pulling-Over System from Table 6 (Lasting Machine Department). This Lasting Machine Department Table 6 shows seven sub-divisions and only one of these sub-divisions, *i.e.*, the No. 5 laster, has any tie whatever to the Pulling-Over System and that to the pulling-over machine only.

2. This table indicates "must use exclusively lessor's machines." The lease contains no such provision.

3. A tie is shown from this table to the machines of Table 6 (Lasting Machine Department). Table 6 includes not only several forms of lasting machine, but also includes tacking machines and the Ensign lacing machine, to which there is no tie.

4. A tie is shown from this table to the machines in Table 8 (Goodyear Department). Such tie, so far as it exists, is to the Goodyear welting and stitching machines only. Table 8 shows leases not only for the welting and stitching machines, but also includes the Goodyear auxiliary machines and the Economy insole reinforcing set and the Gem insole set. There is no tie from the Pulling-Over System under any form of lease or from any other department to either the Goodyear auxiliary machines or to the Economy set or the Gem set.

Table 2. Heeling Machine Department.

1. A tie is shown from this table to Table 6 (Lasting Machine Department). Such tie as exists is for the lasting operation only, while Table 6 includes not only several forms of lasting machines, but also includes tacking machines and Ensign lacing machines, to which there is no tie.

2. A tie is shown from this table to Table 8 (Goodyear Department). Such tie as exists is to the welting and stitching machines only, while Table 8 includes leases which cover not only the welter and stitcher, but also Goodyear auxiliary machines, Economy and Gem machines, to which there is no tie.

3. This table states that the lessee "must use exclusively lessor's machines" for certain work. There is no such provision.

Table 3. Eyeletting Department.

1. This table also shows a tie to Table 6 (Lasting Machine Department). Such tie as exists is to the lasting operation only, while Table 6 includes machines for other operations to which there is no tie.

2. A tie is shown from this table to Table 8 (Goodyear Department). Such tie as exists is for the welting and stitching machines only, while the table includes leases not only for these machines, but for other machines as well to which there is no tie. (See above.)

Table 4. General Department.

1. This table indicates two forms of lease for General Department machines, a lease for McKay sewing machines, a lease for Ideal clicking machines, and a lease for the Miller twin shoe treeing machine. The arrows indicate a tie to Table 5 (Pegging Machine Department), Table 6 (Lasting Machine Department), Table 7 (Metallic Department), and Table 8 (Goodyear Department). Only the first two of the leases set forth in Table 4 (which are alternative forms) and the lease for the Miller treeing machine tie in this way, and the indicated ties to Table 6 (Lasting Machine Department) and Table 8 (Goodyear Department) are open to the same criticisms as above indicated in respect to Tables 1, 2, and 3.

2. This table indicates that the lessor's clicking machines are to be used exclusively. There is no such requirement.

3. This table indicates that royalty is to be paid "for using dies not furnished by lessor." This is not true. The royalty is paid for the use of the machine.

Table 5. Pegging Machine Department.

1. The arrows from the Pulling-Over, Heeling, Eyeletting and General Departments indicate ties to the Pegging Machine Department, also ties to the Goodyear Department. Of course the tie to the Pegging Machine Department would apply only to pegged shoes, and to the Goodyear Department only to two machines for welts and one machine for turns.

2. A tie is indicated by the arrow from the Pegging Machine Department to Table 6 (Lasting Machine Department). Such tie as exists is to the lasting operation only, whereas Table 6 includes other operations, as indicated above.

3. Table 5 indicates that the lessee "must use exclusively lessor's pegging machines." There is no such provision.

Table 6. Lasting Machine Department.

1. A tie is shown from this table to Table 1 (Pulling-Over System). As a matter of fact, only one of the several machines included in Table 6 is under any form of lease tied to *any* machines of the Pulling-Over System. That one is No. 5 lasting machine on the restricted form of lease only, and is tied to the pulling-over machine alone and not to any other machines of the Pulling-Over Department.

2. Various ties are shown to this table from other tables which misrepresent the actual conditions as set forth in various other tables. (See comments on other tables.)

3. A tie is shown from this department to Table 8 (Goodyear Department). Such ties as exist are to the welting and stitching machines only,—not to the other machines set forth in Table 8.

4. A tie is shown from this department to Table 7 (Metallic Department). Such tie exists only as to certain (not all) of the machines included in Table 6, and then only under certain alternative forms of lease.

5. A tie is shown from this department to Table 2 (Heeling Department). As a matter of fact only one lasting machine (and that an old and obsolete machine, several years ago superseded by later and improved machines) ties to the heeling machine.

6. The statement that the lessee "must use exclusively lessor's lasting machinery and tacking mechanisms" is not correct. There is no such provision.

7. The Boston lasting machine is not a lasting machine at all, but merely, as appears from the record, a *tacking* device for tacking on rands and similar parts, and the machine is specifically leased for use "other than for lasting."

Table 7. Metallic Department.

1. The form of lease set forth in Exhibit 30 is an early form, and the "Schedule of Machines" contains different types of machines for performing the same operations. There were really only five or six distinct operations and the current form of metallic lease enumerates only the current forms of machines—some six machines. Ties are shown to this Table 7 (Metallic Department) from various other departments, and it appears, upon the face of the table, as though the tie was to a large number of machines of the Metallic Department. As a matter of fact, no lessee would have anything like that number of different types of metallic machines.

2. A tie is shown from this machinery to Table 6 (Lasting Machine Department) and to Table 8 (Goodyear Department). The ties are only to the lasting and to the welting and stitching operations, not to the other machines referred to either in Table 6 or Table 8.

3. Table 7 states that the lessee "must use exclusively lessor's metallic machines." That is not a correct statement.

Table 8. Goodyear Department.

1. This table includes two forms of lease for the Goodyear welting and stitching machines, and also a lease for the auxiliary machines of the Goodyear Department. This table also includes Economy insole set and Gem set. Although various other tables are shown as tied to Table 8, it is the fact that no lease of the United Company ties to any of the auxiliary machines of the Goodyear Department, to the Economy set or to the Gem set.

2. This table states that the lessee "must use exclusively lessor's machines" for certain operations. There is no such provision in the leases.

APPENDIX II.

COMMENT ON APPENDIX C TO PETITIONER'S BRIEF PURPORTING TO GIVE A SYNOPSIS OF THE LEASES SHOWING TYING CLAUSES.

The ambiguities and half-truths which cloud the brief throughout extend also to Appendix C. For example—note the title to the Appendix, the contents, and the statement to be found on page 160 of the Brief for the United States.

Furthermore, in summarizing the several leases enumerated in Appendix C the United States has deemed it advisable, as to some leases, to refer to clauses which same clauses, as to other leases, it has apparently considered of no importance and has therefore omitted.

Leases have been summarized which, as appears from the record, have long since ceased to be active, either because the machines covered thereby have been superseded by other and improved types, as in the case of Chase, Ideal, and McKay & Copeland lasting machines, or by later leases, as in the case of the heeling machines, Goodyear full set and other leases.

Inaccuracies and misstatements occur throughout so that so far as serving any useful purpose Appendix C might well have been dispensed with, and it is respectfully suggested that the Court will save time and obtain an accurate knowledge of the provisions of the leases only by a careful examination of the instruments themselves.

The following are some of the instances of inaccurate and misleading statements:—

1. Lasting Machines.

(*a*) Consolidated Hand Method.

i. Non-Initial Payment.

Attention is not called to the fact that Exhibit 16 is for a lease covering the machine for use in the manufacture of McKay sewed or metallic fastened footwear; that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

ii. Attention is not called to the fact that Exhibit 14 is for a machine adapted for lasting McKay sewed footwear; that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee; that there is no obligation on the part of the lessee to pay any amount of "minimum royalty"; that the provision in the lease is that if the machine does not earn in any calendar year royalty amounting to $75 per annum the lessor may terminate, but only upon repaying to the lessee a part of the lease premium theretofore paid. It is not obligatory upon the lessor to exercise this right nor can the lessor exercise its right without first making payment.

(*b*) Chase Lasting Machine.

It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee; that the minimum royalty is abated in respect to each month the lessee's factory is idle.

(*c*) McKay & Copeland Machine.

It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee; it is a misstatement to say that there is a minimum royalty of $125 per annum. There is no obligation on the part of the lessee to make this

payment. The provision is merely a reservation to the lessor that if the machine shall not earn $125 per annum the lessor may terminate the lease, but must first repay to the lessee one-third of the lease premium theretofore paid. There is no requirement that the lessor exercise this option.

(*d*) Ideal Lasting Machine.

It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee; it is a misstatement to say that there is a minimum royalty of $75 per annum. There is no such obligation on the part of the lessee. The provision is the same as in the McKay and Copeland lease *supra*.

(*e*) No. 5 Lasting Machine.

i. It misstates the date the lease was adopted. The record shows that the lease was adopted "six or seven" years prior to 1914, the time of Mr. Donham's testimony, which would make the adoption date 1907 or 1908. It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

ii. It omits to state the adoption date which appears from the record was the same as in the case of *i supra*. It fails to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

2. Welt and Turn Sewing Machines and Outsole Stitching Machines and Auxiliaries.

i. It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee. It misstates the machines to which it says the exclusive use clause applies. There is no such machine as the "welt stitching machine." Undoubtedly what is meant is welt-

ing and outsole stitching machines. It fails to make clear the extent claimed for the prohibitive clause. It states that the clause applies "to the same machines," but it leaves it open to argument that the word "same" includes not only welt and turn sewing and outsole stitching machines, but also the auxiliaries. The note is inaccurate and misleading in its statement that the lease provides for royalties to the defendants "upon shoes made upon machines supplied by competitors of the defendants." There is no such provision.

In referring to Exhibit 25, the lease for the Goodyear auxiliary machines only, it omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

There is no reference in the clause to inseaming machinery.

The statement with reference to the prohibitive clause is open to the same criticism as stated above. It is inaccurate in the statement that the lease provides for an annual rental amounting to about $184 per annum. The lease covers many different machines and several machines for the same operations. In no factory would a lessee have all of the machines. The amount stated was apparently determined by adding Column II of the Schedule of Machines. The annual rental is the amount set opposite each machine varying from $1 to $35 per annum, according to the machine leased.

The note conveys a wrong impression. There is no restriction in the lease to the use of the auxiliaries upon welted footwear operated upon by independent welt lasting or other machines used in the manufacture of welt shoes. The only restriction is to footwear operated upon by the United Company's welt sewing, sole stitching, and turn sewing machines.

ii. It omits as to Exhibit 23 to call attention to the fact that the exclusive use clause is merely a reservation of a

right to the lessor and not an obligation on the part of the lessee.

The prohibitive clause is open to the same criticism as stated above, and the same statements apply to Exhibit 26.

The note is inaccurate in the statement that the lessee "must agree" that he will not use "at any time" in his factory independent welt sewing or outsole stitching machines. There is no such provision in the lease.

3. Heeling Machines.

i. Although Appendix D states that Exhibit 27 contains both full capacity and additional machinery clauses, no reference to the same is made therein. It inaccurately states the minimum royalty. The lease does provide for the payment of minimum royalty to the lessor dependent upon the number and kinds of machines leased. The particular executed lease, of which Exhibit 27 is a copy, contained machines calling for a minimum royalty of $230 per annum. This is not the minimum royalty for any one machine as is the inference to be drawn from the statement in Appendix C.

With reference to Exhibit 28 the Appendix omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

The statement in the note is inaccurate and misleading and the occasion for the preparation of Exhibit 28 was fully and accurately stated by Mr. Winslow (R. Vol. 1, p. 546, lines 26 *et seq.*).

4. Metallic Fastening Machines.

i. Although it has been considered of importance to state the royalty with reference to Exhibit 30, apparently the same importance was not attached to Exhibit 29, as the synopsis contains no reference thereto.

It inaccurately states, with reference to Exhibit 30,

that the royalty is the purchase of not less than four hundred pounds of material per annum in that it omits to call attention to the fact that the lease provides for a deduction of thirty-three pounds for every month the lessee's factory may be idle.

With reference to Exhibit 31 it is misleading in the statement that the lease contains a clause permitting the removal of machines deemed by the lessor unnecessary for the lessee's business. This is not a correct statement. The provision is that, in case in any period of three *consecutive* months the lessee shall fail to use the machinery to at least three-quarters of a fair day's work, the lessee shall return the machinery not needed.

The provision for payment for material is not correctly quoted. The word "the" has been omitted before the word "prices" in the second line, the word "required" has been substituted for "established" in the same line, and in the sixth and eighth lines the word "or" has been changed to "and." Other dissimilarities of a minor character will also be noted.

The statement as to provision for minimum use of four hundred pounds of material per annum is inaccurate in that it omits to make any reference to the deduction of thirty-three pounds for every month that the lessee's factory is idle.

With reference to Exhibits 32, 33, 34, and 35, criticisms herein made with respect to other metallic fastening machine leases apply in so far as the United States alleges that such Exhibits are similar to the other metallic fastening machine Exhibits.

5. Pegging Machine.

i. It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee. It is misleading in the statement that the minimum royalty is $10

per month in that it omits to state that there is no minimum royalty for each month that the factory remains idle.

ii. It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

6. Pulling-over Machines.

i. It is misleading in the statement that the minimum royalty is $15 per month in that it omits to call attention to the fact that there is no minimum royalty for any month in respect to which the factory of the lessee is idle.

In respect to Exhibit 37 it omits to call attention to the fact that this lease has long been superseded by a later form.

It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

It is inaccurate in its statement with reference to the additional machines clause. The clause does not have the effect stated in the appendix.

It inaccurately states the minimum royalty in that it fails to call attention to the fact that there is no minimum royalty in any month in which the lessee's factory may be wholly idle but not more than ten months in any twelve consecutive months. The same criticisms apply to Defendants' Exhibit 345.

With respect to Exhibit 38 it omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

ii. It omits to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

It inaccurately states the minimum royalty in that it fails to call attention to the fact that in any month in which

the lessee's factory may be idle no minimum royalty is required to be paid, but that such reduction shall not be made in respect to more than ten months out of any twelve consecutive months.

The note confuses Exhibit 38 and 39. It is not correct that the lease calls for a further payment of one-quarter cent for the use of each of the six or eight auxiliary machines. No lease would cover all these machines. Some are for use on one type of shoe and some on another and some duplicate the operation of others. At the most, but two or three of the auxiliaries would be used, so that in no case would the total payment be two cents, as stated in the Appendix.

The provision of the lease is not that the royalty shall not be more than three-quarters cent per pair. The provision is that the lessee shall pay one-half cent gross (one-quarter cent net) with respect to each pair of shoes pulled over plus one-quarter cent for each auxiliary machine which may be used (one-eighth cent net—having in mind that but two or three auxiliaries can be used) with the proviso that under certain conditions the maximum royalty shall not exceed three-quarters cent gross (three-eighths cent net) upon *all* shoes *lasted; i.e.,* factory output. It may very well be that the lessee would prefer to pay according to the one-quarter and one-eighth cent provisions rather than according to the three-eighths cent provision; as, for example, the lessee might last many more shoes than he would pull over by machinery.

The note is inaccurate in the statement that "their price for it is three-quarter cent a pair to those who aid them to obtain a monopoly in lasting machines and two cents a pair to those who do not." This is not the fact. The royalty is set forth in the lease and is as just stated. The lessee has the option, under certain conditions, as to which rate he will pay.

The note is further inaccurate in the statement that the

lessee could not have in his factory a competing pulling-over machine. There is no such obligation on the part of the lessee. He may have any and as many other pulling-over machines as he desires.

The note, with reference to Exhibits 39, is inaccurate in stating that the lessee must pay an initial payment amounting to "about the value of the machine." There is no evidence in the record as to the value of these machines and the United States has no ground upon which it can base its assumption that the initial payment in any way represents the value of the machine.

The note is further inaccurate in saying that the royalty is one cent a pair straight. The royalty is one cent per pair gross (one-half cent net) for the use of all the machines of the Pulling-Over System. The statement "The net result is for lasting and pulling over under Exhibit 39, the so-called Independent lease, the lessee has to pay one cent a pair while under Exhibit 38 he pays only three-eighths cent a pair" is grossly inaccurate and misleading. In the first place, the comparison is between a gross royalty and a net royalty and in the second place, it clearly appears from an examination of the leases that the three-eighths cent provision under Exhibit 38 is three-eighths cent *in excess* of the *total* lasting royalty.

7. General Department Machines.

The statement with reference to Exhibit 40 that the lease contains the "right to terminate all leases clause" is inaccurate. There is no such clause in the lease.

The statement in the note to the effect that the only charge made is payment of the lease premium except that the lessee was bound to purchase repair parts, creates the inference that the provision as to repair parts is peculiar to this lease and Exhibit 41 only, and that it is inserted for the purpose of obtaining additional revenue. Such is not

the fact. The duplicate parts clause in the General Department leases is, as in the other leases, merely a protection to the lessor, the owner of the machinery, in order that the machinery may not become out of order or be permitted to deteriorate by reason of the insertion of improper or poorly-made duplicate parts. Furthermore, it is not true that this lease was used as an inducement to manufacturers to take other machines. The lessee had the option to take his machines on lease or to purchase them outright, and he exercised his option according as his business judgment indicated.

The same criticism applies to Exhibit 41 as to Exhibit 40.

8. Eyeletting Machines.

i. Although Appendix D includes Exhibit 43 as one of the forms of lease containing the full capacity clause, the United States has omitted to enumerate the clause in the Appendix C. This is inaccurate.

ii. This Exhibit, like Exhibit 43, contains a full capacity clause and the exhibit is referred to in Appendix D as containing the full capacity clause. The omission of the clause from Appendix C is inaccurate.

The note that the purchase of eyelets is *further* compensation is inaccurate. An examination of the leases clearly indicates that it is the sole means of compensation for the use of the machine.

9. Clicking Machines.

The United States has omitted to call attention to the fact that the exclusive use clause is merely a reservation of a right to the lessor and not an obligation on the part of the lessee.

The note is inaccurate and misleading throughout. For example, it states that "it also provides that one cent per pair is to be paid for footwear lasted on lessor's ma-

chines." There is no such provision in the lease. The machine having been developed by the United Company there was, of course, no obligation on the part of the United Company to put the machine out other than upon a revenue producing basis. It was considered that if the machine were used in the manufacture of footwear subsequently operated upon by lasting machines of the United Company and in respect to which the United Company received its lasting machine royalty (or subsequently operated upon by its welting or sole stitching machinery in respect to which it was receiving a royalty) the United Company could, as a business proposition, accept the compensation from the sale of dies—otherwise it would receive its compensation direct.

The note is inaccurate in stating that the lessee who uses independent lasting or welting or stitching machines is penalized. The royalty provided is a charge for the use of the machine and it is not correct to state that its true purpose and effect is as a destroyer of competition.

APPENDIX III.

COMMENT ON APPENDIX D TO PETITIONER'S BRIEF PURPORTING TO GIVE A RÉSUMÉ OF THE LEASES IN WHICH THE VARIOUS CLAUSES OBJECTED TO APPEAR.

The inconsistency as to the purpose of Appendix C persists in Appendix D. In neither the title nor in the brief is there agreement as to the contents and purpose of the Appendix. See page 160 (third and sixth sentences of the first paragraph) and page 351.

Appendix D is almost word for word a copy of the table appearing at pages 134 to 146, both inclusive, in the Brief for the United States in the District Court and was therefore before the Judges of that Court.

It is inaccurate and misleading and should not be relied upon even should this Court be able to determine just what it is intended to show.

Some of the inaccuracies and misstatements are the following:—

In "Second" the statement "all the leases contain the 'right to terminate all leases' clause" is inaccurate.

In "Third" (16), Exhibit 31 is not equivalent to an initial payment lease for metallic machines, and it is inaccurate to so state. The lease does not call for any initial payment.

"Fourth" is inaccurate in that it fails to make clear that the Exhibits were not active current leases, but is intended to create the inference to the contrary. It does not call

ıtion to the uncontradicted evidence that the additional
ıines clause had been abandoned as early as 1907.

Fifth" is inaccurate and misleading in that it fails to
that the exclusive use clause is merely a reservation
right to the lessor and not an obligation on the part of
lessee.

ıe article contains inaccurate statements in divisions
1, 12 and 13 referring to Exhibits 23, 24, 26 and 25 re-
tively, in that the statement occurs that the clause
uires" the exclusive use of certain lessor's machines or
the clause "excludes" use of all but certain lessor's
hines.

Sixth" is misleading in that it fails to call attention
ıe fact that the machines referred to are for operation
different kinds of shoes and creates the wrong infer-
that the clause has a much broader effect than it
d, as a matter of fact, have in any given factory.

(7), Exhibit 23, of the same article, the statement is
e that "this lease does not tie the leased machines to
r than Goodyear machines." It might be inferred
this that there was a tie to *all* Goodyear machines, and
ıerefore misleading. In so far as the lease covers aux-
y machines, the use of such machines is only restricted
Goodyear welt sewing and sole stitching machines on
footwear and to turn sewing machines on turn foot-
r. The auxiliaries are not restricted to use with each
r or with any machines in any other department. In
ar as the lease covers Goodyear turn sewing machines
e is no restriction as to the use, and in so far as the lease
ers Goodyear welt sewing and sole stitching machines
restriction is only to Goodyear sole stitching or Good-
welt sewing machines respectively.

APPENDIX IV.

COMMENTS ON STATEMENTS BY UNITED STATES AS TO THE VARIOUS ACQUISITIONS.

Goddu Sons Metal Fastening Company (Brief for the United States, pp. 62–65).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 3–7.)*

The Brief for the United States says (p. 62) that "The Goddu Company was engaged in *perfecting and manufacturing* nailing machines, slugging machines, tacking machines and standard screw machines—all important metallic fastening machines" (italics ours). This statement is not supported by the record. There is no testimony even suggesting that the Goddu Company was either "perfecting" or "manufacturing" any machines whatever.

The United States further says (p. 62) that the United Company "was putting out machines for doing the work for which the Goddu machines were *adapted*" (italics ours); and in support of the statement Mr. Howard's testimony is cited (R. Vol. 1, p. 42, line 1). What Mr. Howard actually said was:—

> "The United Company was putting out *commercial machines* for doing the work for which the Goddu

(* NOTE.—The record references for the statements made in the following discussions, where not given, will be found in the statements in the Appendix to Brief for Appellees, to which reference is made in connection with each discussion.)

> Company machines were *intended*" (italics ours) (R. Vol. 1, p. 42, lines 1–3).

The record clearly shows that the Goddu machines were in fact not practically *adapted* for doing any work.

After quoting (inaccurately) a portion of the finding of the District Court, the Brief for the United States (pp. 62–63) makes the statement: "In any event, it appeared that the very thing the Goddus were doing was the perfection by all necessary reconstruction of their machines."

There is not the slightest evidence that the Goddu Company was making any effort whatever to perfect or to reconstruct its machines.

The Brief for the United States says (p. 62) that "the Goddu machines, according to Winslow, were not yet in a condition to be placed in the hands of manufacturers for continuous operation 'but they were in a state of development where some of them could have been, without extensive changes, made operative.'"

The context gives an entirely different impression from that which the United States aims to give. Mr. Winslow testified:—

> "Their machines were in a state of development and *none* of them, to the best of my judgment, was in condition to be placed in the hands of manufacturers for continuous operation. As I knew the situation, they were in a state of development where *some* none?] of them could have been, without extensive changes, made operative" (italics ours) (R. Vol. 1, p. 436, lines 28–33).

This quotation is copied verbatim from the District Court record. In the light of the first sentence it seems

obvious that in the second sentence, quoted in part by the United States (p. 62), the reporter substituted *some* for *none*, the word which Mr. Winslow used in the preceding sentence.

The Brief for the United States entirely ignores the uncontroverted testimony of defendants' patent expert, Mr. Howard, who qualified also as a practical expert (R. Vol. 2, pp. 2239–2241) and who spent a week in 1898 in examining the machines of the Goddu Company, to the effect that the Goddu machines were "entirely impracticable." Mr. Howard stated in detail the reasons for his conclusions, and testified that remedying the defects

> "would have involved *entire reconstruction* of the machines, and *the machines so reconstructed would have been entirely different* from the machines as actually built by the Goddu Company" (italics ours) (R. Vol. 2, p. 2099).

It is submitted that the District Court was entirely justified in the finding, characterized in the Brief for the United States (p. 62) as "the *contention* of one of the judges below" (italics ours) which (correctly quoted) reads:—

> "nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

The District Court's finding is quoted in full in the Appendix to main brief (p. 6).

The Brief for the United States says (p. 63) that the reason given by Mr. Winslow for this acquisition "was

the disposal of patent litigation to which the United Company had succeeded as *plaintiffs*" (italics theirs). The United States ignores the testimony (Appendix to main brief, p. 4) showing that some time before the United Company was formed a suit had been brought by the McKay Company on Louis Goddu's contracts against Louis Goddu, his sons, and Albert Van Wagenen to compel a transfer of the Goddu Sons' patents to the McKay Company.

Louis Goddu, father of the "Goddu sons," had been employed as an inventor for many years by predecessors of the McKay Shoe Machinery Company; he had invented practically all of the metallic machines of that company and had been paid continuously for his exclusive services. Several years before the United Company was formed Louis Goddu, all his sons, and Albert Van Wagenen all left the employ of the McKay Company and started the Goddu Sons enterprise, and the pending suit charged that they conspired to have Louis Goddu invent metallic machines, communicate such inventions to his sons, permit them to apply for patents and transfer those patents to the Goddu Sons Company. That suit had been vigorously contested and the claims of the McKay Company had been developed and substantiated before the acquisition. The Brief for the United States ignores this litigation and refers only to the infringement litigation. It asserts (p. 63): "The disposal of such litigation could hardly be worth $150,000 to the defendants. The removal of an able competitor might well have been worth that amount." In view, however, of the large amount of litigation shown to have been both existing and prospective, and the very great expense which would undoubtedly have been involved as well as the great amount of time

which would have been required of Mr. Winslow and his associates during the period when the United Company was just getting started, it is submitted that the consideration, for the objects stated, was not unreasonable. Winslow testified that he appreciated the time which would be required and the difficulties which would be encountered in establishing by the pending suit that the Goddu Sons' patents belonged to the United Company. He said he "had had considerable experience in that sort of litigation" and that

> "That arrangement was entered into on my part because of the fact that I very much desired to start the United Company free from all serious litigation" (R. Vol. 1, p. 435, lines 39–41; p. 437, lines 3–7).

The United States lays great stress (pp. 63–64) upon the testimony of Mrs. Converse, the daughter of Albert Van Wagenen (R. Vol. 1, p. 311, lines 32–40; p. 312, lines 1–13), who was associated with Louis Goddu and his sons in the Goddu Sons enterprise and who was one of the defendants in the pending suit which charged a conspiracy, as above explained (*supra*, p. 183).

It should be noted, however, that in the statement which Mrs. Converse testified that Mr. Winslow made he said that the Goddu Company "had no business and no machines . . . they couldn't raise money to go on with the business, and no manufacturers to take them" (Brief for the United States, p. 64).

Mrs. Converse also testified:—

> "He said to me that they hadn't anything, they weren't doing any business, they weren't a factor at all" (R. Vol. 1, p. 312, lines 40–42).

Obviously inconsistent with these statements is Mrs. Converse's testimony that Mr. Winslow said that he bought the Goddu Company to get rid of competition. And Mr. Winslow in his testimony specifically denied that he made the purchase to get rid of any competition, and also expressly denied that he made such a statement to Mrs. Converse. He testified:—

> "*Q.* Did you acquire the Goddu Sons Company for the sake of getting rid of any competition?
>
> "*A.* I did not.
>
> "I never stated to Mrs. Converse that we acquired the Goddu Sons Company for the sake of getting rid of competition" (R. Vol. 1, p. 437, lines 8–12).

With reference to the statement by the United States that Mrs. Converse's testimony was "supported by a copy of a contemporaneous memorandum" (p. 64), she testified that the memorandum was made "*about 1900 or 1901, I think*" (italics ours), and she also testified:—

> "I made memoranda of my conversation with Mr. Winslow while he was out of the room, *which I afterwards destroyed*" (italics ours) (R. Vol. 1, p. 312, lines 30–32; p. 313, lines 13–14).

It is submitted that in the light of Mrs. Converse's complete testimony her statement as to the remark of Mr. Winslow in regard to the purpose of eliminating competition is entitled to no weight; and, as pointed out, Mr. Winslow emphatically denied both that he made any such statement and that he had any such purpose.

The statements in the Brief for the United States (p. 64) that "the Goddu Company ceased to do business" and

that "by this initial acquisition the prospective opportunity of shoe manufacturers to obtain metallic machines elsewhere than from the defendants was removed" (p. 64) are not supported or justified by the record. The Goddu Company did not *cease* to do business because they were not doing any and never had done any. "The prospective opportunity of shoe manufacturers to obtain metallic machines elsewhere than from the defendants" was not removed because there was no such prospective opportunity. The uncontroverted evidence which we have reviewed and which is set forth in more detail in the Appendix (pp. 3–7) shows conclusively that the Goddu machines were entirely unfit for commercial use and that to have adapted them for commercial use would have required entire reconstruction, so radical that if it had been effected the machines would have been entirely different.

We respectfully submit, therefore, that no reason has been shown why this Court should not accept as conclusive the finding of the District Court:—

> "the metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

Winkley and Phillips (Brief for the United States, p. 65).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 20–21.)

The Brief for the United States says (p. 65) that the United Company acquired from Winkley and Phillips "their inventions and improvements relating to 'sole leveling machines,'" and further says that defendants' witness Howard "testified that at the time of acquiring the above inventions or improvements the United Company was engaged in putting out sole-leveling machines, but that they were not of the same type as those covered by the inventions and improvements acquired."

The United States aims to give the impression that the only difference between the acquired machine and that which the United Company had before was that they were "*not of the same type*" (italics ours); that, however, they could be used for the same work; and that accordingly the United Company by this transaction acquired a potentially competing machine. With this purpose it has distorted Mr. Howard's testimony.

What Mr. Howard actually said was:—

> "Prior to the acquisition of these patents from Winkley and Phillips the United Company *was not engaged in putting out sole leveling machines for McKay work. It was putting out leveling machines for Goodyear shoes*, known among the trade as the Goodyear automatic sole leveling machine" (italics ours) (R. Vol. 1, p. 48, lines 9–13).

The United States also ignores the testimony which explains the practical reasons why McKay shoes and Good-

year shoes require entirely different kinds of leveling machines, as set forth in the Appendix to main brief (p. 21).

The foregoing, in connection with other facts set forth in the Appendix to main brief (pp. 20–21), shows that by this transaction the United Company was acquiring, not a competing machine, but a machine for performing work which could not be performed by the machine which the United Company had.

Swain-Fuller Manufacturing Company (Brief for the United States, p. 66).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 29–30.)

The Brief for the United States says (p. 66) that Mr. Howard testified that the "Star leveling machine" acquired in this transaction was "used *practically* exclusively on turn shoes" (italics ours) and that "the United Company was manufacturing and putting out a leveling machine, but *he claimed* that the United Company's machine was not adapted for leveling turn shoes" (italics ours). The United States apparently desires to give the impression that the Star leveling machine could be used on other work than turn shoes and also that Mr. Howard merely made a claim that the United Company's machine was not adapted for doing the work of the acquired machine.

What Mr. Howard said was that the Swain-Fuller Company was putting out "the Star leveling machine for turn shoes," that

> "the Star machine *could not be used* with success or with commercial profit on other work" (italics ours) (R. Vol. 1, p. 53, lines 14–16, 21–23),

and that

"At this time the United Company was not putting out turn leveling machines, and *it would be impossible to use any machine that the United Company then had on turn shoes*" (italics ours) (R. Vol. 1, p. 53, lines 19–21).

The United States ignores other testimony to the same effect, for example:—

"The Star machine was a very light machine and was *adapted and used only for leveling turn shoes*, which, owing to the fact that they have but one sole, require and will stand a less degree of pressure than other types of shoes" (italics ours) (Howard, R. Vol. 2, p. 2063, Int. 1533).

Again, the United States refers (p. 66) to Mr. Winslow's testimony that by this transaction the United Company also acquired a "Single sole-molding" machine, but it neglects to quote Mr. Winslow's statement in the next paragraph and on the same page of the record that

"Neither of these machines was in competition with any machines then being made by the United Company" (Defs.' Ex. 231, R. Vol. 5, p. 455).

Carver Cotton Gin Company (Brief for the United States, pp. 66–67).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 68–71.)

The United States says (p. 67) that "Howard testified that among the machines obtained from the Carver Cotton Gin Company were the Acme leveling machine, a vamp skiving machine, and a machine known as the Davis leather-board skiver," and that at the same time "the United

Company was putting out the Goodyear automatic leveler and the Emerson skiving machines, but that the acquired machine did not do the work *in the same way.* Even though this be admitted *the result accomplished was the same"* (italics ours).

The United States clearly intends to have it understood that at the time of this acquisition the United Company had machines which, while they did not do the work in the same way, would accomplish the same results.

This is entirely contrary to the facts. Mr. Howard testified that the United Company had no machines for performing the operations performed by any of these Carver machines.

Accordingly, instead of acquiring competing machines which would accomplish the same results although not in the same way, as alleged by the United States, by this acquisition the United Company was merely extending its line by adding machines which performed operations for which it previously had no machines.

At the end of its discussion of the acquisition of the Carver Cotton Gin Company the United States says (p. 67):—

> "By these three acquisitions, the defendants acquired control of a machine needed in manufacturing all kinds of shoes. The leveling machine used in welt shoes is *now* put out only as an auxiliary machine. (Dft.'s Ex. 231, V, 457.) It can not be obtained for use with welt machinery supplied by any competitor of the defendants. (R. I, 468, l. 34; 544, l. 10.)" (Italics ours.)

The obvious purpose of the United States is to have it understood that by these three acquisitions the defendants ac-

quired control of all the leveling machines and that as a result of these acquisitions the United Company is "now" following the practice of putting out its leveling machine for welt shoes "only as an auxiliary machine."

This is entirely unfair. The leveling machines acquired by these three transactions were all put out by the United Company through its General Department (Defs.' Ex. 228, R. Vol. 5, p. 436) and, therefore, have at all times been offered for sale, although until recently they could also be taken on lease if the manufacturer desired; and the leveling machine for welt shoes has always been put out by the United Company in the same manner that it was always put out by the Goodyear Company, except that the United Company discontinued the initial payments. It should further be noted that the dates of these transactions were, respectively, March 16, 1900, February 2, 1901, and April 30, 1908.

That the United Company did not acquire any monopoly of leveling machines by these three transactions is shown by the lists of machines of competitors furnished for leveling McKay, welt, and turn shoes, which will be found in Defendants' Exhibit 235 (R. Vol. 5, pp. 587, 625, 664).

Seaver Process Lasting Company (Brief for the United States, p. 68).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 19–20.)

The United States alleges (p. 68) that the United Company acquired the business and assets, including Letters Patent, of the Seaver Process Lasting Company "engaged in manufacturing *lasting* machines and *pulling-over*

machines" (italics theirs), and that the Seaver Company was then insolvent. The United States further alleges that "The Seaver Company was the only company putting out lasting machines in 1899, except the Goodyear and Consolidated Companies," that "It had also a pulling over machine; as had the United Company," and that no other pulling-over machine except the United Company's pulling-over machine is now offered by any American manufacturer.

The United States concludes (p. 68): "The result of this acquisition, then, was to remove the final vestige of competition in lasting machines, and to shake off the possibility of competition in pulling over machines."

The United States ignores the testimony showing that the Seaver Company's pulling-over machine was experimental and unsuccessful, but that it embodied inventions indispensable to a successful pulling-over machine and which have always since been embodied in the United Company's pulling-over machines; that the Seaver patents barred the way to further development of the United Company's experimental pulling-over machine upon which hundreds of thousands of dollars had already been spent; and that that was the reason for the purchase.

The Seaver Company's lasting machine infringed two of the United Company's patents, and suits were pending. It was "unable to continue its business or to pay its debts" (P.'s Ex. 75, R. Vol. 3, p. 591). In all respects the machine was inferior to the United Company's lasting machines. Obviously, any competition which the Seaver lasting machine offered or promised was entirely negligible.

The only important fact is that the United Company acquired the valuable inventions which prevented further development of its experimental pulling-over machine.

Corrugated Wire Fastening Company (Brief for the United States, pp. 68–69).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 9–10.)

The United States alleges (p. 69) that the United Company acquired a majority of the capital stock of the Corrugated Wire Fastening Company "engaged in the manufacture and sale of a tacking machine and corrugated wire." It further states that "Howard testified that the United Company had a machine for performing the *same* character of work as the one obtained from the Corrugated Company," but that "the machine was 'out of date'" (italics theirs). The United States says that this is discredited by Howard's further statement that the United Company continued to supply wire and parts for those machines and have parts in stock to-day. In other words, the United States aims to give the impression that the Corrugated Company was competing with the United Company.

But the United States does not fairly state the evidence. Mr. Howard testified that the Corrugated Company had formerly put out a tacking machine, but

> "had not put out any of the machines for some years because it was completely out of date,"

and that

> "there was no longer any demand for the machines, so that no business was done and no business could be done with that machine";

and further that

> "the only business that was left when the Corrugated Company was acquired was the supplying of wire and spare parts for the machine" (R. Vol. 1, p. 42, lines 15–16, 28–33).

The fact that the United Company was still keeping in stock parts for that old machine was simply due to their practice of keeping spare parts on hand for old machines so long as there is one of them in use anywhere.

The business of the Corrugated Company was characterized by the District Court as "making wire and spare parts for use in an obsolete metallic-fastening machine" (Dodge, J., R. Vol. 1, p. 1138).

Globe Sewing Machine Company (Brief for the United States, pp. 69–70).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 30–31.)

The United States says (pp. 69–70) that the Globe Company was manufacturing a welting machine, an outsole stitching machine and an experimental rough rounding machine, and that "by this acquisition a possible competitor in welt method machines was removed." The United States also refers to the fact that the absence of a rough rounder is claimed by defendants to have been a weakness in Plant's line of machines.

The facts were that the Globe Company's machines were not successful; that they all infringed United Company's patents; that infringement suits were pending and that the Globe Company was in debt to an amount over $90,000. The United States omits to mention any of these facts.

The United States also ignores the evidence that the purposes of this transaction were to acquire control of patents which prevented development of one of the United Company's machines, to settle the existing patent litigation and to avoid further patent litigation.

The United States says that Mr. Howard testified that the Globe Company was *manufacturing* its machines. The record shows that that company was not doing any manufacturing and that such machines as they had put out had been built by others under contract. It is entirely clear from the record that the business of the Globe Company was negligible and that its unsuccessful machines did not offer even potential competition.

Ross-Moyer Manufacturing Company (Brief for the United States, pp. 70–71).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 25–28.)

The United States aims to give the impression that the United Company was putting out machines for performing the same operations as the machines of the Ross-Moyer Company and that the Ross-Moyer Company was a competitor.

The fact is that with a single exception the United Company had no machines for doing the same work as the nineteen machines acquired from the Ross-Moyer Company.

The United States omits any reference to evidence showing that the nineteen machines acquired from the Ross-Moyer Company were the foundation of the United Company's General Department and enabled the United Company for the first time to put out machines for performing the work done by the Ross-Moyer machines.

The United States also omits any reference to the evidence showing that an important reason for this transaction was the desire of the United Company, in extending its service

and establishing its own agencies, to do the fair thing by the Ross-Moyer Company which had formerly been agent for the United Company and its predecessor companies in Cincinnati and Chicago. Instead of taking that business away from the Ross-Moyer Company the United Company acquired that company and established its agencies in the Ross-Moyer offices.

The record also shows that an additional reason for this acquisition was to secure for the United Company the services of Mr. Ross to represent its interests in the middle west. After the acquisition Mr. Ross became the company's general agent in the West.

Edwin Theophilus Freeman (Brief for the United States, pp. 71–72).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 13–14.)

The United States obviously desires to have it understood that Freeman was engaged in the business of manufacturing and putting out nailing machines, in competition with the United Company.

The facts are that Freeman had constructed an experimental machine known as a "slugging machine" which "was intended to insert the slugs or ornamental fastenings which are driven around the edge of a top lift of a heel for ornamental and wear resisting purposes" (R. Vol. 1, p. 44, lines 26–29); that Freeman had not put out any machines, had no factory and was doing no business.

One of the United Company's machines infringed one of Freeman's patents, and there was an interference in the Patent Office between applications owned by the respective

parties, while, on the other hand, the Freeman machine infringed the United Company's patents.

The purpose of the acquisition was to clear up these serious patent complications and to enable the United Company to improve its machines without infringing Freeman's patents. Freeman's inventions have since been embodied in three different machines put out by the United Company.

Albert G. Brewer (Brief for the United States, p. 72).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 15–16.)

While in its statement about this transaction the United States sets forth that Brewer's machine was only experimental, that the United Company had an experimental machine which was not commercial, and that Brewer's inventions were subsequently embodied in the United Company's machine, it omits to mention the evidence that the United Company's experimental machine was not successful until after the Brewer invention had been embodied in it and that the Brewer mechanism was much superior to that which the United Company was using before.

That no potential competition was offered by the Brewer machine is shown by the fact that Brewer's experimental machine infringed fourteen claims of a broad patent owned by the United Company.

American Sole Laying Machine Company (Brief for the United States, pp. 73–74).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 38–40.)

This transaction took place after that with the Boot & Shoe Sole Laying Company, although the United States discusses it first.

The United States sets forth (pp. 73–74) that the American Company was engaged in putting out sole laying machines and that Howard testified that "the United Company was engaged in manufacturing and putting out machines for laying the soles of boots and shoes, although he claims that the United Company's machines were inferior to those of the American Sole Laying Company."

The United States evidently wishes it to be understood that the object of this transaction was to remove competition.

The United States omits any reference to the evidence that the United Company was then putting out a sole laying machine which operated upon only one shoe at a time, while the American machine was a double form machine which operated upon two shoes, rights and lefts, at the same time, and that the American Company had patent rights which prevented the United Company from making a double machine which would be twice as fast as the machine it then had.

The American Company's patents also prevented the United Company from adopting a satisfactory pad for its sole laying machine and further prevented necessary development of the Atlas leveling machine.

Immediately after this acquisition the United Company combined its sole laying machine and the American machine, making a better machine than either, which operates twice as fast as its old machine.

Boot & Shoe Sole Laying Company (Brief for the United States, p. 74).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 8–9.)

This transaction preceded the American Company transaction last discussed and it took place in June, 1899, not in May, 1901, as stated by the United States.

The United States sets forth (p. 74) that the Boot & Shoe Sole Laying Company was engaged in manufacturing and putting out a sole laying machine and says (p. 74) that Howard testified that "the United Company was then engaged in putting out a machine for doing *similar* work, although he claims that the United's machine was inferior to the machine acquired" (italics theirs). Apparently the United States would give the impression that there was competition between the sole laying machines of these companies and that the object of this transaction was to remove that competition.

The facts are that the United Company's machine, which was of a different type, was very unsatisfactory because it was continually breaking down and because it was only adapted for large factories. It was discarded after this acquisition, and the machine of the Boot & Shoe Sole Laying Company was thereafter put out by the United Company as its standard commercial machine.

A further reason for this acquisition was that the United Company wished to use a pressing form which it had produced, but that form infringed a patent owned by the Boot & Shoe Sole Laying Company. After the acquisition it used that form in connection with the acquired machine.

The record further shows that the business of the Boot &

Shoe Sole Laying Company was very small, and that such machines as it put out were manufactured for it by others.

Accordingly it is clear that the United Company made this acquisition to obtain a machine for performing an operation for which it did not have a satisfactory machine and to enable it to use an improved mechanism without infringement,—and for no other purpose.

J. K. Krieg & Company (Brief for the United States, pp. 74-75).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 46–48.)

The United States says (p. 75) that "Howard testified that the Krieg Company was engaged in putting out a heel-seat rounding machine, a Louis heel-scarfing machine, and two or three types of embossing machines; that the United Company at that time was putting out a heel-seat rounder and a scarfing machine *of different types;* that the United Company was also engaged in putting out embossing machines" (italics ours). The United States adds that Winslow testified "that the Krieg Company had also been agent for some of the old companies that became a part of the United."

This statement by the United States is misleading in its plain implication that the principal business of the Krieg Company was putting out the three machines named and in its characterization of the United Company's machines as merely "of different types."

The facts are that J. K. Krieg & Company had been local agents for parts and supplies for the United Company's machines except the Goodyear machines, having previously been agents for the Consolidated and the McKay Companies, and their business in the two or three machines

which they had was very small and merely incidental to their business as agents for the United Company.

The important reason for this transaction was that in following its policy of greatly improving its service the United Company desired to establish its own agency in New York and in so doing to treat the Krieg Company fairly. This is explained in the discussion of the Ross-Moyer Company (*supra*, pp. 195–196) and more fully in the Appendix to main brief, pages 26–27.

As to the heel seat rounder and scarfing machine "of different types," which the United States says the United Company was putting out, the heel seat rounder was merely an edge trimmer with a larger cutter, which wasted leather. The Krieg machine, specially designed for heel seat rounding, saved the pieces of leather which it removed and thus effected a considerable economy. The United Company "had no machine of that kind before" (R. Vol. 1, p. 93, lines 7–8).

The Louis heel scarfing machine of the Krieg Company and the spring-heel scarfing machine of the United Company were specially constructed for entirely different uses, and neither could possibly be used for the work of the other (R. Vol. 1, p. 60, lines 35–41; p. 93, lines 11–21).

The Krieg embossing machines were simple machines for ornamenting upper stock or stamping the inside of the upper of a shoe. They were of no importance, and the real effect of this transaction, as regards the merely incidental acquisition of machines, was clearly the acquiring of machines for doing work for which the United Company had no machines.

Joseph P. Curtis (Brief for the United States, pp. 75–76).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 48–49.)

The United States sets forth that by this transaction the United Company acquired the business of Curtis relating to cementing machines and says that Howard testified that the United Company was putting out a cementing machine, but for performing an entirely different operation.

The facts are that Curtis was not engaged in business, and that the United Company acquired from him nothing but certain patent rights relating to a machine for cementing a piece of fabric to an upper. The United Company had no machine which could be used for that work, nor could the Curtis machine be used for the same work as that performed by any machine of the United Company.

The George A. Smith Machinery Company (Brief for the United States, p. 76).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 42–43.)

The United States says (p. 76) that "Howard testified that the Smith Company at the time of its acquisition was putting out a spring-heel scarfing machine, and that at the time the United Company was not putting out a machine for doing similar work. He further testified that the Smith Company had also been acting as agent prior to 1899, for certain of the companies that made up the United Company."

This statement alone shows that this transaction was perfectly normal and lawful, but even at that the state-

ment does not give a correct picture of the transaction. The Smith Company had a store in Philadelphia; it employed one man repairing second-hand machinery; and the one machine which it put out, the Boss spring-heel scarfing machine, was manufactured for it in outside machine shops. The United Company had no machine for doing the work which that machine of the Smith Company would do.

Also Smith, like the Ross-Moyer and Krieg Companies, had formerly been agent for the United Company, and the real purpose of the transaction was to make a fair arrangement with him in connection with extending the United Company's service and establishing its own agency in Philadelphia, as is fully explained in the Appendix to main brief, pages 42–43. The acquisition of the one machine was merely incidental to that arrangement.

Arnold Machine & Supply Company (William B. Arnold (Brief for the United States, p. 77).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 55–56.)

The United States sets forth (p. 77) that the Arnold Company was manufacturing and putting out cementing machines and says that Howard testified that "the United Company was engaged in putting out *cementing* machines, but he claimed that they were not adapted for work similar to that of the Arnold machine" (italics theirs). This statement is inadequate and is obviously intended to give a wrong impression. Mr. Howard testified that the Arnold machine had to be specially constructed for its particular use and that it was not useful for any other

operation, while the United Company had no machine which could possibly be used for performing the operation of the Arnold machine (R. Vol. 1, p. 64, lines 43–46; p. 65, lines 7–14).

By this transaction, accordingly, the United Company was merely entering a new field.

The United States says (p. 77) that Arnold made a covenant that he would convey to the United Company "any inventions relating to shoe machinery he might make." This is a gross misstatement. The covenant was limited to "cementing machinery or devices," that is, the subject-matter of the transaction, and it was also limited to a period of fifteen years (P.'s Ex. 113, R. Vol. 4, pp. 816, 817).

Booth Brothers (Brief for the United States, pp. 77–79).

(The facts of these transactions are set forth in the Appendix to main brief, pp. 57–58, 63–65.)

The United States has discussed under this heading two separate transactions which are set forth in the petition (R. Vol. 1, pp. 1015, 1016) as separate transactions.

(1) The United States sets forth that in October, 1904, the United Company acquired the business of Booth Brothers relating to perforating machines. (The consideration is stated (p. 77) as $24,000 and a royalty; in fact, it was $2,400 and a royalty.)

The United States says (p. 78) that "Howard testified that the United Company was engaged in putting out a *perforating* machine which could be used for the same operation as the Booth machines, although he claimed that it was not *intended* for the same operation" (italics

theirs). This is a distorted statement of Mr. Howard's testimony. He said that the United Company's machine was a gang machine adapted for perforating tips and that it could not be used to do the work done by the Booth machine, which was a single-tool, step-by-step machine, adapted and used for perforating the edges of vamps (R. Vol. 1, p. 65, lines 26–42).

It cannot be questioned that by this transaction the United Company was merely entering an entirely new field by acquiring a machine for performing an operation for which it had no machine before.

(2) The United States sets forth that in November, 1907, the United Company acquired the entire remaining business of Booth Brothers and says (pp. 78–79) that Howard testified that the United Company then acquired "a fudge edge-making machine, a *wheeling* machine, a stitch burnishing machine, an upper-shaping machine and a *beating* machine" (italics theirs), and that "he further testified that the United Company at that time had a *wheeling* machine and an upper-beating [beading] machine" (italics theirs).

This statement is obviously intended to convey the impression that the United Company was competing with Booth Brothers in respect to two of the four machines acquired, namely, wheeling machine and upper beading machine. But the United States has told only a part of the story. Mr. Howard testified that the Booth wheeling machine was used on Goodyear work and that the United Company's machine was adapted only for use on McKay sewed shoes with a mock welt (R. Vol. 1, p. 84, lines 24–29). Mr. Howard further testified that the United Company's upper beading machine "was satisfactory on heavy work,

but not for light or medium work," and that the Booth Brothers machine "was a much better machine for light work" (R. Vol. 1, p. 69, lines 12–13; p. 84, lines 42–44). Mr. Howard also testified that the United Company had no machines for doing the work of the other two Booth machines (R. Vol. 1, p. 69, lines 13–14).

Accordingly by this transaction the United Company merely entered a new field by acquiring machines for performing operations for which it previously had no machines.

Fred H. Perry (Brief for the United States, p. 79).

(The facts of this transaction are set forth in the Appendix to main brief, p. 49.)

The United States sets forth (p. 79) that Perry made an agreement by which he "agreed to convey to that company all inventions which he should make relating to shoe machinery for a period of five years from the termination of his employment by the United Company."

The United States fails to explain that Perry had previously been employed by the United Company as a machinist, that at his own request he was given the opportunity to enter the inventive department of the company, and that the agreement made with him was merely an employment contract with an inventor.

That covenants to assign future inventions in contracts employing inventors are normal and legal is established by the decisions discussed on pages 472–474 of the Brief for Appellees.

Boston Shoe Tool Company (Brief for the United States, pp. 79–80).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 12–13.)

The United States alleges (p. 79) that the United Company acquired the business of Timothy A. Bresnahan, "engaged in manufacturing and putting out machines, tools, and appliances used in the manufacture of shoes, together with the entire capital stock of the Boston Shoe Tool Company."

The failure of the United States to indicate the nature of the business in which the Boston Shoe Tool Company was engaged is significant. It was, in fact, manufacturing and selling an edge trimming machine and an edge setter, both machines of General Department type, and it was making and selling cutters for use on the edge trimming machine and edge setting irons for use on the edge setter. At this time the United Company was not manufacturing any edge cutters or any edge setting irons, and it had no machines for doing the work of either machine acquired from the Boston Shoe Tool Company.

It is plain that by this acquisition the United Company was merely enlarging its field.

Globe Shoe Tool Company (Brief for the United States, pp. 80–81).

(The facts of this transaction are set forth in the Appendix to main brief, p. 17).

The United States sets forth (p. 80) that the Globe Company was "engaged in manufacturing and putting out edge cutters and irons used in the manufacture of shoes."

It is true, as stated by the United States, that the Boston Shoe Tool Company, previously acquired, was also putting out "edge cutters and irons."

But the United States does not refer to other important testimony regarding this transaction. The record shows that this concern was acquired at the earnest solicitation of the partners and because the United Company desired to obtain the services of one of the partners, Mr. Loomer, as the head of its department for manufacturing such tools. Plaintiff's Exhibit 72 (R. Vol. 3, p. 581) recites that employment by Loomer had been agreed upon "as an inducement to the United Company to take over said business and to purchase the property and assets of said partnership."

Also, the Globe Company was infringing two of the United Company's patents.

It is further important to note that after this acquisition very large reductions were made by the United Company in the prices of tools such as the Globe Company was making. Details are stated on page 17 of the Appendix to main brief.

In respect to the covenants in the agreements with Loomer and Perkins which the United States sets forth, it is important to note that *both* Loomer and Perkins entered the United Company's employ, and that *no covenants* were taken from the other three partners, who did not enter the employ of the United Company.

John Ritchie, and John Ritchie Company (Brief for the United States, pp. 81–82).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 18–19.)

The United States alleges (p. 81) that the United Company acquired "all the business of John Ritchie, and John Ritchie Company, a corporation, relating to the manufacture of standard screw machines, slugging machines, tacking machines," etc.

It is obviously the intention of the United States to give the impression that John Ritchie and John Ritchie Company were engaged in the *manufacture* of metallic fastening machines. That is not the fact.

The facts shown by the record are: The Ritchie Company was not engaged in *manufacturing machines* but was engaged in the manufacture of *boots and shoes*. It had one machine for the manufacture of *wire*. The metallic fastening machines which are referred to in the agreement relating to this transaction were being *used* by the Ritchie Company, and they were immediately leased back to them by the United Company (R. Vol. 1, p. 46, lines 15–30; P.'s. Ex. 74, Vol. 3, pp. 586, 587, 589, 590; Defs.' Ex. 231, Vol. 5, p. 475).

Again, the United States alleges (pp. 81–82) that "the purpose of defendants to force shoe manufacturers to deal exclusively with the United Company" is well illustrated by Mr. Winslow in Defendants' Exhibit 231 (R Vol. 5, p. 475) where it states that the reason for this transaction "was to prevent manufacturers who held Metallic Machinery under lease from the United Company (and who had agreed to purchase their metallic fastening material from the United Company), violating their leases and contracts by purchasing material from Ritchie."

The United States does not refer to the evidence that the John Ritchie Company had one machine for making standard screw wire and that they were selling wire to

lessees of the United Company's metallic machines who had agreed to buy fastening material from the United Company in payment of royalty for the use of the machines; that in such cases of course the United Company got no return for the use of its machine; and that the purpose of the transaction was to remove that dishonest situation.

It should further be noted that the United States has not raised any question in this suit as to the propriety or legality of the provisions of the metallic leases providing for payment for use of the machines through purchase of fastening material.

Stanley Manufacturing Company (Brief for the United States, pp. 82–83).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 21–23.)

On the face of the statement by the United States, the United Company simply acquired certain machines, parts and supplies which the Stanley Company, engaged in business at Lawrence, Massachusetts, had on hand at Frankfurt, Germany.

The United States omits any reference to testimony showing that the United Company had no machines for doing the work of any one of the miscellaneous General Department machines which the Stanley Company was putting out and that the agreement amounted simply to an agency contract.

The United States quotes at length the covenant made by the Stanley Company not to compete in foreign countries, but it omits to refer to the covenants in the same agreement (P.'s Ex. 78, R. Vol. 3, pp. 621–622) which provided:—

(1) "that the said United Company shall use its best endeavors to sell in foreign countries, machines made by the said Stanley Company . . .;"

(2) that in case the United Company should discontinue the purchase from the Stanley Company and sale

> "of any of the machines, parts or supplies made by the said Stanley Company . . . the said Stanley Company may then and thereafter sell such machines, parts or supplies thus discontinued to any and all persons without respect to the country to which they are to be sent;"

and

(3) "That the said Stanley Company may advertise and create and maintain in all proper business ways a demand for its machines in any and all countries in the world."

The United States (p. 83) characterizes as "a somewhat similar transaction" the agreement with W. J. Young. This transaction was similar only in the respect that it related solely to business in foreign countries. The facts of the Young transaction are set forth in full on pages 40–42 of the Appendix to main brief.

Bay State International Shoe Machinery Company (Brief for the United States, p. 83).

(The facts of this transaction are set forth in the Appendix to main brief, p. 28.)

The United States sets forth that the United Company acquired for its French and German companies "the property and good will for the Continent of Europe of the Bay

State International Shoe Machinery Company" for $25,000 in preferred stock of the United Company. It further states that Howard testified that the Bay State Company "'had a welter and stitcher and I think *a rough rounder*' but that he did not know whether it 'was shipping machinery from the United States to foreign countries'" (italics theirs).

The United States omits to state that after further investigation Mr. Howard testified that the machines of the Bay State Company were manufactured in Montreal, Canada; none whatever in this country. Other important facts, as shown by the record, which the United States does not mention, are that the machines of the Bay State Company were very different in construction from and distinctly inferior to the United Company's machines; that it had done business only in England and had put out only ten sets of its machines in England; that its machines infringed the United Company's English patents; and that the purchase was made at the earnest solicitation of the people interested in the company, who were also customers of the United Company, as the cheapest way to dispose of the litigation.

George W. Emerson & Company (Brief for the United States, pp. 83–84).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 43–45.)

The United States says (p. 84) that Howard testified that the United Company acquired from the Emerson Company a power spring-heel scarfer and a heel burnishing machine and that at that time the United Company

was "putting out a heel-burnishing machine but of a different type from that put out by the Emerson Company, and that the United Company was also putting out a spring-heel scarfing machine to be operated by hand."

The United States omits to make any reference to the following important facts:—

The principal business of the Emerson Company was manufacturing and supplying lasts and forms to be used for sole leveling machines of the "Giant" type, and the United Company was developing a leveling machine on which lasts and forms were used.

The Emerson Company had a tip scourer used in repairing the tips of patent leather shoes. The United Company had no tip scourer (R. Vol. 1, p. 58, lines 24–25; p. 95, lines 1–3).

The Emerson heel burnishing machine was of a different type and performed its operation in an entirely different way from the United Company's machine. Some manufacturers insisted upon one type of machine and others upon the other type. The Emerson Company's machine infringed numerous important claims in two patents controlled by the United Company.

An important object of the transaction was to obtain the services of William R. Sampson, the active man in the Emerson concern.

Another object was to settle the pending litigation.

Joseph W. Leary (Brief for the United States, pp. 84–85).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 49–50.)

The United States sets forth that the United Company ac-

quired from Joseph W. Leary, of Lynn, Massachusetts, "his business of manufacturing and dealing in shoe machinery."

This statement is very misleading. Leary was doing no manufacturing of any kind. He employed no men and had no factory. He was principally engaged in retailing cements and blackings, and he also dealt in a very small way in second-hand sewing machines for sewing together the parts of shoe uppers.

Leary was also local agent for the United Company's Amazeen skiving machine. He was extremely capable and successful as salesman, and the United Company desired to obtain his services in a wider field. He stated that he would enter its employ if the company would buy his stock of cement and second-hand machinery, and he was paid $3,052 for the small stock that he had.

The United States alleges (p. 85) that Leary "agreed to convey to the United Company all improvements which he should make within 10 years from the date of the termination of his employment with the United Company."

In fact, Leary made no covenant whatever to assign any future improvements. On the contrary, the Leary agreement (P.'s Ex. 108, R. Vol. 4, p. 768) specifically provided that Leary should "not be required to disclose his secret formulæ for making cements, blackings or stains."

Zachary Taylor French (Brief for the United States, pp. 85–86).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 53–54.)

The United States alleges that the United Company "acquired the business of Zachary Taylor French, Boston,

Mass., engaged in the development of machines designed and used in the manufacture of boots and shoes."

The testimony to which the United States then refers shows that the United Company did not acquire any "*business*" from French but that the transaction was merely an agreement commuting obligations to pay royalties which would become due under various existing contracts.

The United States omits to explain that these contracts had all been made with the Goodyear Company prior to 1899 and that the agreement was made because French desired to have his royalty contracts placed upon a definite basis of annual payment.

Kimball & Hadley (Brief for the United States, pp. 86–88).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 54–55.)

The United States sets forth that Kimball & Hadley were "engaged in manufacturing and marketing *awls*, *needles*, drivers, supplies, etc." (italics theirs) and states (p. 86) that Howard testified that "the United Company was engaged in manufacturing and putting out *awls and needles*, except curved needles for the Goodyear sewing machine, and that the United Company was making awls for the use of its own machines" (italics theirs).

This statement by the United States is inaccurate and misleading. Howard did not testify that the United Company was putting out needles. He explained that the awls that it was making were for its metallic machines and were "straight awls, which make a straight hole for a nail, and bear no resemblance to the curved awl used in a welter or stitcher" (R. Vol. 1, p. 64, lines 18–20).

The United States further alleges that Kimball & Hadley were forced to sell out by reason of the United Company's leasing system and that its lessees were obliged by the terms of their leases to take needles from the United Company. Neither of these statements is supported by the record and both are untrue.

(1) In the suit brought by the United Company to enforce the covenants made by Kimball & Hadley not to engage in similar business within fifteen years the Supreme Court of Massachusetts approved the finding of the lower court "that they made the sale voluntarily" (*United Shoe Machinery Co.* v. *Kimball et al.*, 193 Mass. 351, 354, 357).

(2) Lessees of the United Company's Goodyear machines are *not* required by the terms of their leases to take the needles from the United Company. Needles are not machine parts.

Hadley's testimony as to statements made to him by shoe manufacturers that they could not buy his needles because if they did the United Company would take out its machines was specifically denied by all the manufacturers or employees in the factories which Hadley named who had anything to do with buying needles, as is fully set forth in the Appendix to main brief (pp. 111–113).

In its statement that Kimball & Hadley again engaged in the awl and needle business and that "the United Company brought suit to enjoin them, upon the ground that they were violating their agreement of June 11, 1904," the United States neglects to state that the Supreme Court of Massachusetts held that the covenant was reasonable and valid and approved the granting of an injunction enforcing it (*United Shoe Machinery Co.* v. *Kimball et al.*, supra).

Leopold J. Courteau (Brief for the United States, pp. 88–89).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 56–57.)

On the face of it the statement by the United States (p. 88) that the United Company acquired from Courteau "all his inventions and devices, including letters patent, relating to machines and mechanisms for holding the linings of shoes during the process of pasting the outer leather to the lining" shows that that transaction is of no importance in this suit.

It should, however, be pointed out, first, that the statement is erroneous in saying that the United Company acquired "devices." The United Company did not acquire any devices; it acquired merely an invention. Second, the United States omits to refer to the testimony showing that the United Company had no machine for performing this operation.

Brockton Supply Company (Brief for the United States, p. 89).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 58–59.)

In its statement regarding the tack pulling machine which was acquired from this concern the United States says (p. 89) that "Howard testified that at the time of acquiring the business of the Brockton Supply Company the United Company was engaged in developing a machine for pulling lasting tacks, but that none had been put out."

The United States omits to refer to testimony showing that the United Company's experimental machine infringed a patent of the Brockton Supply Company and that the

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Brockton Company's machine infringed the United Company's patent applications.

Zotique Beaudry (Brief for the United States, pp. 89–90).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 62–63.)

The United States sets forth (pp. 89–90) that the United Company acquired from Beaudry his inventions and improvements relating to machines for burnishing and finishing the heels of shoes and that Howard testified that at this time "the United Company *had* a heel burnishing machine" (italics theirs).

The United States omits to refer to testimony showing that Beaudry's business was not acquired and that all the United Company did acquire was his experimental heel burnishing machine and the patents on that machine; that the acquisition was made because it was believed that the Beaudry inventions, which embodied an entirely new idea, would greatly improve the United Company's machines; and that Beaudry's machine infringed many claims of one of the United Company's patents.

The statement by the United States (p. 89) that Beaudry made a covenant "that all inventions which he should thereafter make should be disclosed" is not supported by the record. That covenant was specifically limited to "heel finishing machinery, methods or devices," the subject-matter of the transaction (P.'s Ex. 120, R. Vol. 4, pp. 850, 853, 854).

Richardson Shoe Machinery Company (Brief for the United States, pp. 90–91).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 65–68.)

The United States sets forth that the Richardson Company was manufacturing and putting out McKay sewing machines and clicking machines and it says that Howard testified that the United Company was then manufacturing and putting out McKay sewing machines.

The United States omits to refer to testimony showing that a very important feature of the United Company's McKay sewing machine infringed one of the Richardson Company's patents; that the Richardson machine was a great deal better than the United Company's; that it was believed, and it eventually proved, that a better machine than either could be constructed by using inventions owned by both companies; and that improvements broadly claimed in two Richardson patents are embodied in the United Company's new Model M outsole stitcher.

The allegation of the United States that the Richardson Company was also manufacturing and putting out clicking machines is not supported by the record.

Harry L. Rice and Fred LaChapelle (Brief for the United States, pp. 91–92).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 71–72.)

The United States omits to refer to any testimony showing that the Rice and LaChapelle welting machine, embodying the inventions which were acquired, was only experi-

mental and far from being commercial, and that it was believed that these improvements would not only strengthen the inseam of a welt shoe, but would effect substantial economies.

In the statement by the United States of the covenant not to compete, which was made by Rice and LaChapelle, the United States omits to state that the covenant was limited to a period of ten years.

The Wentworth Company (Brief for the United States, pp. 92–93).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 73–75.)

The United States sets forth that by this transaction the United Company acquired a machine for beating heel seats and a shank sticking machine. It says (p. 93) that Howard testified "that the United Company at that time was manufacturing a machine for beating heel seats, and that the United was experimenting with the shank sticking machine."

The United States omits to refer to testimony showing that the United Company's machine for beating heel seats was similar only in name, that the two machines operated in entirely different ways; that the United Company's machine was discarded after this acquisition; that the patent on the Wentworth shank sticking machine prevented the United Company from developing a machine; and that the Wentworth shank sticking machine infringed one of the United Company's patents.

That the Wentworth heel seat beating machine could not possibly offer any competition is shown by the fact that it infringed many claims of two of the United Com-

pany's patents; that those claims had been held to be valid and infringed; and that they covered indispensable features of the Wentworth machine so that the Wentworth Company could no longer put out the machine.

Adam H. Prenzel (Brief for the United States, pp. 93–94).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 75–76.)

The United States sets forth (p. 93) that the United Company acquired from Prenzel his inventions and patents "relating to certain machines used in the manufacture of turn shoes."

Important facts to which the United States fails to refer are that Prenzel, who was a shoe manufacturer, had made valuable inventions relating to turn shoes and special machines for making them and that the United Company had no such machines.

M. V. Bresnahan & Company (Brief for the United States, pp. 94–95).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 77–78.)

The United States says that the testimony shows that by this purchase the United Company acquired an experimental lasting machine and a heel burnishing machine and that the United Company was then putting out lasting machines and heel burnishing machines.

The United States does not refer to testimony showing that the United Company's machines would not accomplish the same results as the Bresnahan machines and that there was a great amount of pending litigation, largely infringement suits, between Bresnahan and the United Company in

some of which Bresnahan was defendant and in others the United Company. The agreement for purchase specifically discharged the United Company from all claims and demands covered by the suits which had been brought against it (P.'s Ex. 144, R. Vol. 4, p. 1058).

With reference to the statement by the United States (p. 95) that the schedule attached to the agreement "gives a list of many different machines together with supplies acquired from the Bresnahan Company," it should be noted that the machines are nearly all machine-shop machines and that the few shoe machines named, one or two of a kind, are obviously second-hand machines such as dealers in shoe machinery usually have on hand.

Charles P. Stanbon & Company (Brief for the United States, p. 95).

(The facts of this transaction are set forth in the Appendix to main brief, pp. 78–81.)

The United States says (p. 95) that Howard testified that the United Company acquired from Stanbon "a channel-cementing machine, a folding machine, perforating machine and a channel-opening machine, and that the United Company at that time *was* putting out an inferior channel-cementing machine and a perforating machine" (italics theirs).

The United States omits to refer to testimony showing that the United Company's channel cementing machine was inferior *because* the United Company had been obliged to take off improvements which infringed Stanbon's patents; that the United Company's perforating machine and the Stanbon machine are used in distinct and different fields, and that the Stanbon machine would do work which the United Company's machine could not do.

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

UNITED STATES OF AMERICA, APPELLANT,
v.
UNITED SHOE MACHINERY COMPANY ET AL. } No. 545.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

MEMORANDUM.

A more thorough examination of appellee's supplemental brief, a document of 222 pages, discloses that substantially all the criticisms made therein fall under two heads: (*a*) our interpretation of the tying clauses of the leases, and (*b*) our construction of the testimony. Our brief is supported by detailed references to the record. It is almost impossible to aid the court further in that regard without disobeying its admonition to avoid any further argument.

For example: The defendants challenge the statement that the United Company will not permit a lessee to have a part of his machines on "independent leases" and part of them on "restricted leases." (Our brief, p. 176, Dfts. Supp. Brief, pp. 28, 29.) Our statement is predicated upon the direct testimony of Mr. Winslow (I, 443, line 2), and defendants,

though contending that Mr. Winslow did not mean what he said, point to no explanation or qualification of his testimony as it appears in the record. They attempt to support their contention by an intricate statement of what the defendants could do within the limits of their leasing system.

The question, however, is not what they could do, but what they actually do. As to that, Mr. Winslow's statement is perfectly clear. And the position taken by him appears to be in complete harmony with what the record shows as to the practice of defendants in this respect. (Record I, 180, 181, 217, 873.)

The validity of some of the specific criticisms of defendants may, however, be easily determined.

On page 126 of their brief they assert that we were wrong in saying that Plant told Winslow on the day prior to the purchase of his property that he expected the western manufacturers in Boston; and follow it with a statement that "there is not the slightest intimation, however, that Plant then told Winslow that any negotiations were pending for a sale to the western manufacturers." But in their quotation from Winslow's testimony on the same page the defendants replace with asterisks the words which show we were right and they are wrong; also that the trial judge, whose decision is quoted by the defendants on their page 127, was wrong. (See I, 488, lines 18–23.)

On pages 111–114 it is suggested that we have suppressed the fact that some of the machines acquired after the combination did not compete with machines of the defendants, and that we do not call attention

to certain claims as to patent infringements. We invite the Court's attention to page 96 of our brief where these matters are discussed.

On page 117 the defendants say, without referring to the record, that after the installation of the Plant machines, the Plant Shoe Company's profits were reduced one-half. They do not point out that the record (I, 778, lines 6–23) shows that this was said only of the year immediately following that installation, and that in that year $400,000 was paid for machinery, apparently out of earnings, as there was no surplus account to which the payment was charged. (I, 778, line 22.)

Defendants restate on page 150 certain figures as to McKay sewing machines. These are figures of 1909. It has been made clear that our statement (brief, pp. 124, 125) is that they acquired control of this machine in 1910. As to the alleged competition in 1911, we have elsewhere called attention to the testimony of Maloy (I, 301, lines 26–30), Bulmer (I, 908, line 28), Hall (I, 953, lines 21, 32–34), Spencer (I, 884, line 41) and others as to the facts with respect to this alleged competition by the concerns named in their list. See also our brief, pages 301, 302.

In this connection reference was made by us in passing to the effect of the defendants' leasing system in strengthening the defendants' control of this machine. (Our brief, p. 125.) This incidental reference is severely criticized by the defendants. The statement of what we believe to be its justification would require too elaborate an analysis of various

clauses of defendants' leases to be attempted here under the restrictions placed upon us by the court. But even if this criticism were valid, it would be immaterial so far as the merits of this case are concerned, in view of the demonstrated fact that the McKay machine is controlled by the United Company.

Defendants repeat (p. 179) the statement of their main brief that the additional machines clause had been abandoned as early as 1907. We call attention to Exhibit 34, which Donham testified (I, 11, lines 24–28) is the *current* form of lease for metallic machines. In paragraph 3 (III, p. 317) will be found the additional machines clause word for word as it appears in our brief at page 150.

It is obviously impossible to deal with all the criticisms of the defendants without expanding this statement nearly to the limits of our original brief and without disregarding the expressed desire of the court. But we venture to think that the table which we print below will be of assistance to the court in finding in the different leases therein referred to the tying clauses which are the subject of discussion, and that examination of these clauses will settle any questions which may arise as to the proper interpretation and effect of the challenged provisions of the defendants' leasing system.

Table giving paragraphs in which the tying clauses appear in the lease specimens referred to in Appendix C of our brief; also in Exhibit 170.

Lease form.	Exhibit.	Additional machinery clause.	Paragraph.	Exclusive-use clause.	Paragraph.	Prohibitive clause.	Paragraph.	Right to terminate clause.	Paragraph.	Full-capacity clause.	Paragraph.	Remarks.
Lasting	14			Yes	7			Yes	8	Yes	4	
Lasting	15			Yes	7	Yes	4	Yes	8	Yes	4	
Lasting, McKay	16			Yes	7	Yes	4	Yes	8	Yes	4	
Lasting	17			Yes	7			Yes	8	Yes	4	
Lasting, Ideal	18			Yes	7	Yes	4	Yes	8	Yes	4	
Lasting, Chase	19			Yes	7	Yes	4	Yes	8	Yes	4	
Lasting, McKay-Copeland	20			Yes	7	Yes	4	Yes	8	Yes	4	
Lasting, No. 5	21			Yes	8	Yes	5	Yes	9	Yes	5	
Lasting, No. 5	22			Yes	7			Yes	8	Yes	4	
Goodyear	23			Yes	7	Yes	4	Yes	8			
Goodyear	24			Yes	8	Yes	5	Yes	9	Yes	5	
Auxiliaries	25			Yes	9	Yes	5	Yes	10			
Full set, init. pay	26			Yes	7	Yes	4	Yes	8			
Heeling	27	Yes	3					Yes	6	Yes	3	
Heeling	28			Yes	10	Yes	5	Yes	11	Yes	5	
Metallic	29	Yes	3					Yes	6	Yes	3	
Metallic	30	Yes	3			Yes	3	Yes	6	Yes	3	
Metallic	31	Yes	6					Yes	7	Yes	6	
Metallic	32	Yes	3					Yes	7	Yes	3	
Metallic	33	Yes	3					Yes	6	Yes	3	
Metallic	34	Yes	3			Yes	3	Yes	7	Yes	3	Current form.
Standard screw	35	Yes	3			Yes	2	Yes	7	Yes	2	
Pulling over	36	Yes	4			Yes	4	Yes	7	Yes	4	

Table giving paragraphs in which the tying clauses appear in the lease specimens referred to in Appendix C of our brief; also in Exhibit 170—Continued.

Lease form.	Exhibit.	Additional machinery clause.	Paragraph.	Exclusive-use clause.	Paragraph.	Prohibitive clause.	Paragraph.	Right to terminate clause.	Paragraph.	Full-capacity clause.	Paragraph.	Remarks.
Pulling over	37	Yes	5	Yes	9	Yes	6	Yes	10	Yes	5	
Pulling over	38			Yes	8	Yes	5	Yes	9	Yes	5	
Pulling over	39			Yes	8	Yes	5	Yes	9	Yes	4	
Gen'l dept	40					Yes	4	Yes	7			See note.
Gen'l dept	41					Yes	5	Yes	9			
Eyeletting	42							Yes	7	Yes	4	
Eyeletting	43					Yes	5	Yes	8	Yes	5	
Clicking	44			Yes	9			Yes	10	Yes	5	Extra charge.
Pegging	45			Yes	8	Yes	5	Yes	8	Yes	5	
Pegging	46			Yes	8			Yes	9	Yes	5	
McKay	170					Yes	4	Yes	7			
Total	34	10		20		23		34		28		

NOTE.—Exclusive use or additional machinery clause in all leases of *bottoming* machines except McKay sewing machines (Ex. 170).
Donham describes the character of the various leases and the differences between them (I, 5–15).
Leases without prohibitive clauses are the so-called "independent" leases.

Our general contention with respect to the leases is:

That the United Company, having, lawfully or unlawfully, it matters not, acquired by combination, development, and subsequent acquisition control of all clicking machines, all eyeleting machines, all pulling-over machines, and about 96 per cent of all bottoming machines, has adopted a system of leases which, whether entirely original with them or not, excludes other shoe machinery manufacturers from the trade by compelling, or inducing as defendants say, substantially all shoe manufacturers, as a condition of obtaining necessary machines of defendants, to agree—for such is the necessary effect and manifest purpose of the tying clauses, no matter what defendants contend—that they will not use the machinery of competitors of defendants.

The fact, if fact it be, that there are patents upon certain features of defendants' machines gives them no right to enter into a combination to destroy competition between their machines and other machines, patented or unpatented, and thereby to restrain trade. The owners of competing patented machines have no more right to form combinations in restraint of trade than the owners of unpatented machines.

Finally, the defendants and the shoe manufacturers have, through the leases, brought into existence a combination (in which the latter enter, we say, under coercion) which in effect is as much a boycott of independent shoe machinery dealers as was the

boycott of Loewe by the Danbury hatters. (See our brief, pp. 244 to 249.)

Respectfully submitted.

T. W. GREGORY,
Attorney General.
JOHN W. DAVIS,
Solicitor General.
G. CARROLL TODD,
Assistant to the Attorney General.
CONSTANTINE J. SMYTH,
H. LA RUE BROWN,
Special Assistants to the Attorney General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 545.

THE UNITED STATES,
Appellant,

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL.,
Appellees.

REPLY TO MEMORANDUM FILED BY THE UNITED STATES AFTER ARGUMENT.

The petitioner's Reply Memorandum * purports to be a reply to our Supplemental Brief. It utterly fails to answer our criticisms or to show that we are in error in pointing out the respects in which the petitioner's brief has ignored important testimony and made statements and assumptions which are without foundation. It only attempts to answer a few of our criticisms, and most of the matters to which it refers have little bearing on the material issues of this case.

1. The Reply Memorandum first attempts to substantiate a statement made in the petitioner's main brief as

* NOTE.—The petitioner's Reply Memorandum was served on us Wednesday, March 28, 1917.

to the effect of the restricted leases. At pages 176–177 of its main brief the petitioner said that a shoe manufacturer "must take the independent lease as to every class of machines, in order to be relieved from the restrictions."

As an illustration the petitioner said that if a shoe manufacturer took restricted leases for lasting and metallic machines,—

> "his lasting machine and metallic fastening machine leases would prohibit the use of such machines in connection with a heeling machine not owned by the United Company" (p. 176).

Referring to the effect of the restricted leases upon a shoe manufacturer desiring to use a Pettingill heeler put out by a competing company the petitioner said (p. 177):—

> "This means that the shoe manufacturer would have first to find Pettingill heelers enough to satisfy his wants for heelers, and having done this he would then have to place *all his machines* 'in the other departments upon the independent forms of leases.'"

The foregoing statements, as we have shown in our supplemental brief (pp. 24–29), are absolutely without foundation.

There are no restrictions in any lease put out by the United Company restricting the use of the leased machines to use with the United Company's heeling machines, except the lease of the McKay & Copeland lasting machine, which machine is now practically obsolete (R. Vol. 1, p. 454, lines 8–9), the leases of the pulling-over machines, and the leases of the eyeletting machines.

The result is that a shoe manufacturer may take on any lease the United Company puts out and use in connection

with a competitor's heeling machine the United Company's welter and stitcher, its 43 Goodyear auxiliaries, its No. 5, hand-method welt, and hand-method McKay lasting machines, its McKay sewing machines, its metallic machines, its insole machines, its clicking machines, its 172 General Department machines, and any other machines it puts out, except the machines above mentioned, viz., the McKay & Copeland lasting machine (now practically obsolete), the pulling-over and eyeletting machines, which three kinds of machines, if they are to be used with a competitor's heeling machine, must be taken on the independent lease.

The petitioner's statement, therefore, in its main brief (p. 177) that a lessee must place "*all his machines*" in other departments on unrestricted leases in order to use them with a competitor's heeling machine, is without foundation. (See our supplemental brief, pp. 24–29.)

The petitioner in its Reply Memorandum (pp. 1–2) undertakes to substantiate the above statement made in its main brief by a reference to Mr. Winslow's testimony quoted in its main brief (p. 176) to the effect that a shoe manufacturer desiring to use a Pettingill heeler,—

> "could return our heeling machines, place his machines in the other departments upon the independent forms of leases, and continue to use the heeling machines of others" (R. Vol. 1, p. 443, lines 5–8).

As pointed out in our supplemental brief (pp. 28–29) Mr. Winslow obviously meant that if the shoe manufacturer had any machines under restricted leases which prevented their use with the Pettingill heeler he could place such machines on independent leases. He obviously did not mean and could not have meant, in view of the leases which speak

for themselves, that the shoe manufacturer must place all his machines on independent leases, even though there was no restriction in the leases of such machines, preventing their use with the Pettingill heeler.

The petitioner's Reply Memorandum (p. 2) says that the question is not what lessees could do, but what they actually do. In other words, it implies that lessees do take independent leases of all machines if they wish to use a competitor's heeling machine, even though they are not required to do so. There is no foundation for this statement and no evidence that the United Company imposes any restrictions other than those set forth in its leases.

2. On page 111 of its main brief petitioner said:—

> "Winslow states that on the evening of September 20th, the day *prior* to the meeting when Winslow practically agreed to buy the Plant property, Plant advised him that he was expecting the 'western people,' and that if he traded with Winslow, he would have to put up a proposition to the western people that they could not accept, or words to that effect."

We pointed out in our supplemental brief (p. 126) that the evening of the 20th, when Plant told Winslow that he was expecting the western people, was not "the day *prior* to the meeting when Winslow practically agreed to buy the Plant property," but that it was on that very evening of September 20 that Winslow practically agreed to make the purchase.

Petitioner's discussion of this issue on page 2 of its Reply Memorandum is somewhat confused, but apparently it takes the position that the statement in our supplemental brief was wrong. The issue, accordingly, is what the record

shows. (See R. Vol. 1, p. 487, lines 1–44; p. 581, lines 38–45; p. 605, lines 34–44; p. 606, lines 1–33.)

Petitioner also takes issue (p. 2) with the statement in our supplemental brief (p. 126):—

> "There is not the slightest intimation, however, that Plant then told Winslow that any negotiations were pending for a sale to the Western manufacturers."

The petitioner states that in our quotation of Mr. Winslow's testimony (p. 126 of our supplemental brief) we replaced with asterisks words which showed that the petitioner was right and that we and the court below were wrong. These omitted words were correctly paraphrased by the petitioner at page 111 of its main brief in the sentence which we were answering and which naturally was to be read in connection with our criticism. The petitioner's paraphrase was as follows:—

> "and that if he traded with Winslow, he would have to put up a proposition to the western people that they could not accept, or words to that effect."

But in that statement there is no proof that any negotiations were pending for a sale to the western manufacturers, or that Plant had made any offer to them (see also our main brief, p. 535).

The testimony reviewed on page 535 of our main brief and on pages 125–126 of our supplemental brief supports completely the finding of the District Court as to the facts regarding the western manufacturers (R. Vol. 1, p. 1144).

3. To our criticisms (supplemental brief, pp. 111–114, 180–222) of the inadequate and unfair statements regard-

ing the acquisitions which are contained in petitioner's main brief (pp. 60–95), the only reply which the petitioner makes is the following (pp. 2–3):—

> "On pages 111–114 it is suggested that we have suppressed the fact that *some* of the machines acquired after the combination did not compete with machines of the defendants, and that we do not call attention to certain claims as to patent infringements. We invite the Court's attention to page 96 of our brief where these matters are discussed" (italics ours).

It should first be noted that this statement contains an unfair implication that only a small proportion of the acquired machines "did not compete with machines of the defendants."

This statement is evidently made with reference to one sentence only on page 113 of our supplemental brief, which is as follows:—

> "Particularly in cases where the United Company had a machine of the same name as an acquired machine the United States fails to make any reference to testimony showing that the acquired machine was adapted to do a kind of work which no machine of the United Company could do, or that the United Company's machine was only experimental and needed the acquired inventions in order to make it commercially successful, or that the acquired concern had patents which the United Company infringed or which barred the way to needed improvements in its machines."

These criticisms were plainly directed specifically to the few transactions "where the United Company had a machine of the same name as an acquired machine." We

suggest that in order to determine whether our criticisms were justified the Court examine our comparison of the statements in petitioner's main brief with the facts shown by the record in respect to the following transactions (references are to pages in our supplemental brief): Winkley and Phillips (p. 187); Carver Cotton Gin Company (p. 189); Seaver Process Lasting Company (p. 191); Albert G. Brewer (p. 197); American Sole Laying Machine Company (p. 197); Boot & Shoe Sole Laying Company (p. 199); Booth Brothers (p. 204); Brockton Supply Company (p. 217); Richardson Shoe Machinery Company (p. 219); The Wentworth Company (p. 220); Charles P. Stanbon & Company (p. 222).

It is submitted that there is nothing on page 96 of petitioner's main brief which answers our criticisms or which justifies or mitigates petitioner's inadequate and unfair statements of the facts regarding the transactions above named or, indeed, any of the other transactions.

In this connection we ask permission to refer briefly to the discussion of the infringements by the acquired concerns, including the Eppler Company and Plant, which is contained on pages 280–286 and is referred to on page 96 of petitioner's main brief. Petitioner said with reference to the appellees' testimony regarding such infringements:—

> "The defendants have attempted to prove such infringements. We deny that this may be done in an action under the Anti-Trust Act, because it would constitute a collateral attack upon the novelty and utility of the patent. Every patent issued is *prima facie* valid" (petitioner's brief, p. 280).

In these statements and in the discussion which follows petitioner has confused the question of the *validity* of the

patents owned by the vendors and the question of *infringement* of the United Company's patents *by* the vendors' machines. This confusion and the irrelevancy of petitioner's discussion seemed so obvious that we did not refer to that section of petitioner's brief in our supplemental brief. Since, however, petitioner's counsel repeated these statements in oral argument we desire to point out that appellees, in proving that the United Company's patents were infringed, were in no way attacking the validity of the vendors' patents. On the contrary, the United Company admitted that the vendors' patents were valid and wanted those patents because they were valuable.

Of course it is unnecessary to explain to this Court that the validity of the patents owned by the vendors and the infringement of the United Company's patents by the vendors' machines are two distinct and unrelated issues and that the validity of the vendors' patents is in no way involved in or inconsistent with claims that the vendors' machines infringed. Accordingly, it is submitted that the entire discussion on pages 280–286 of petitioner's main brief is irrelevant.

4. Petitioner undertakes to criticise (p. 3) one statement only in our summary of the testimony showing that the statement in petitioner's main brief (p. 97) that Plant "was successfully operating his machines in the factory of Thomas G. Plant Company," was entirely unsupported by the record (supplemental brief, p. 117). This is the statement

> "that the profits of the Plant shoe business after the Plant machines were installed were one-half less than they had been when the United Company machines were used."

Petitioner asserts (p. 3) that the record shows that

> "this was said only of the year immediately following that installation, and that in that year $400,000 was paid for machinery, apparently out of earnings, as there was no surplus account to which the payment was charged."

Petitioner's implication is answered by Mr. McGaffee, general manager of the Plant Shoe Company, who, after testifying that the profits for the first year after the Plant machines were installed were reduced one-half, said:—

> "*That was not due to the purchase of the Plant machines;* it was due to the great amount of bother and trouble we had with the Wonder Worker [Plant] machines" (italics ours) (R. Vol. 1, p. 778, lines 10–12).

See also Mr. McGaffee's comparison of the cost of making shoes on the Plant machines during the last year of their use with the cost of making shoes on the United Company's machines which were substituted for them (R. Vol. 1, p. 775, lines 7–16; p. 776, lines 17–22; p. 778, lines 38–41).

5. At page 142 of its main brief the petitioner gives a table purporting to show the number of machines of certain classes "which the United Company had out March 1, 1911, and the number which all other concerns had out at that time" (petitioner's brief, p. 141).

We pointed out in our supplemental brief that this table was not a correct representation of the facts, as the record contained no evidence showing all the machines which were outstanding in the hands of shoe manufacturers on that date. (See our supplemental brief, pp. 146–147.)

To illustrate the inaccuracy of the table we pointed out (see our supplemental brief, p. 150) that the record showed that in 1909 there were outstanding in the principal shoe manufacturing districts 1,488 McKay sewing machines, of which the United Company had supplied only 308, and that in spite of this evidence (which was the only evidence showing the number of McKay machines outstanding) the petitioner's table showed only 8 McKay sewing machines which other manufacturers had out.

In its Reply Memorandum (p. 3) the petitioner in answer to our criticism does not deny the facts stated in our supplemental brief, but merely says that it has made clear in another portion of its brief that the United Company acquired control of the McKay sewing machine in 1910.

Even if it were true that all machines sold or leased after 1910 came from the United Company, this would not justify the inaccurate statement in the table as to the number of machines outstanding on March 1, 1911, but furthermore, the record abundantly shows that the United Company does not control the McKay sewing machine. There are always plenty of these machines in the market and any one can manufacture them (Winslow, R. Vol. 1, pp. 858–859, lines 39–21; pp. 564–565, lines 25–15; Howe, R. Vol. 1, p. 680, lines 21–35; Brown, R. Vol. 1, p. 757, lines 17–29; Bulmer, R. Vol. 1, p. 908, lines 38–41).

6. The petitioner's main brief at page 125, after stating (erroneously, as we have shown above) that the United Company acquired "complete control" of the McKay sewing machine, attempted to show that on account of the United Company's leases no competitor can sell or lease McKay machines to shoe manufacturers. The brief said (p. 125) erroneously (see our supplemental brief, p. 157)

that the United Company virtually, if not absolutely, controls the lasting machine, and said:—

> "No one may use a United lasting machine upon any shoe which has been operated upon by a machine not procured from the United Company, therefore not upon a shoe operated on by a McKay machine procured outside of the United Company."

At pages 15–21 of our supplemental brief we showed that this statement is absolutely without foundation since (*a*) any shoe manufacturer may take an unrestricted lease of lasting machines; (*b*) not a single one of the United Company's leases of lasting machines restricts their use to use with all other machines put out by the United Company; and (*c*) no lease of lasting machines restricts their use to use with the McKay sewing machine, nor is any other machine put out by the United Company restricted to use with the McKay sewing machine.

In other words, the petitioner's argument that our leases of other machines compel a use of the McKay machine is based on a statement which has no foundation whatever.

In its Reply Memorandum the petitioner says (pp. 3–4) (1) that it would take an elaborate analysis to substantiate its statement; and (2) that the statement is immaterial anyway since the United Company controls the McKay machine.

If any lease of the United Company restricts its lasting machine or any other machine to use with its McKay sewing machine this fact can be shown by a simple reference to the lease. But there is no such lease. Furthermore, as shown (*supra*, p. 10), the United Company does not control the McKay machine.

In passing, we should like to correct a statement made in the course of argument. In answer to a question of the Court, petitioner's counsel said that all of the United Company's machines were patented except the McKay sewing machine. While most of the McKay machines in use are not patented, the United Company puts out a patented type (R. Vol. 1, p. 83, lines 9–15; P.'s Ex. 170, Vol. 4, p. 1161). The United Company sells its McKay machines outright if the shoe manufacturer prefers to purchase them (R. Vol. 1, p. 29, lines 25–35).

7. The petitioner's Reply Memorandum (p. 4) again asserts that the "additional machines clause" is still in use in one lease. This is a question of what is meant by the "additional machines clause."

A number of the leases of the constituent companies (prior to the formation of the United Company) contained a clause obligating the lessee to take and use additional machines (see our main brief, pp. 323–324). This is the clause referred to in our main brief as the "Additional Machinery Clause." As pointed out in our supplemental brief (pp. 13–14) and in our main brief (pp. 323–326) the United Company continued this clause so used by the constituent companies only to a limited extent and eliminated it from its leases entirely in 1907. In order to avoid misunderstanding we pointed out in our supplemental brief (pp. 13–14) that the clause referred to in the petitioner's main brief (pp. 150–151) as the "Additional Machines Clause," and which, as stated in the petitioner's Reply Memorandum, is still contained in *one form of lease of metallic machines*, does not obligate the lessee to take additional machines but merely provides that if he does not take them the United Company may cancel its leases

of machines of that particular kind or department. In other words, it imposes no binding obligation on the lessee to take additional machines, as did the "Additional Machinery Clause" used by the constituent companies and eliminated in 1907.

8. The table on pages 5–6 of the petitioner's Reply Memorandum merely refers to certain paragraphs of certain leases. To understand the clauses and their effect the leases themselves must be examined.

We merely wish to point out here that this table includes reference to a number of leases which have been superseded, and furthermore that unless the leases themselves are referred to the table may be misleading. For instance, the lease of the Goodyear auxiliaries (Exhibit No. 25) is referred to as containing the Exclusive Use Clause. This clause, however, permits cancellation of the lease of the Goodyear auxiliaries only if the United Company's welter and stitcher are not used exclusively. It does not permit such cancellation if auxiliary machines obtained from others are used.

9. The record shows that in 1911 the United Company did business with 1,033 shoe manufacturers operating 1,150 different factories (R. Vol. 1, p. 454, lines 45–46; p. 455; p. 26, lines 38–40). The only evidence as to the total number of shoe manufacturers in the country in 1911, or at any other time, was Mr. Donham's testimony that he should say there were in 1911 between 1,300 and 1,500 and that the Census for 1910 showed in the neighborhood of 1,300 as he recalled it (R. Vol. 1, pp. 26–27, lines 41–2).

In its main brief the petitioner stated (p. 132) that the Census for 1914 showed a total of 1,090 shoe manufacturers and the petitioner used this figure to prove that the United

Company did business with 1,033 out of 1,090 shoe manufacturers in the country.

In our supplemental brief we pointed out that the Census for 1914 was not in evidence; that the number of shoe manufacturers in 1914 could not properly be compared with the number of shoe manufacturers with whom the United Company did business in 1911; and further that the petitioner had misquoted the Census for 1914, which showed 1,355 shoe manufacturing establishments which reported to the Census Bureau, and not 1,090 shoe manufacturers. (See our supplemental brief, pp. 143–146; see also Census of Manufactures for 1914, p. 8, and also Census Bureau Publication entitled "Manufacture of Footwear. Census Bureau's Summary Concerning the Industry for 1914.")

At the argument before the Court the petitioner produced a mimeographed (not printed) sheet issued by the Census Bureau entitled "Census of Manufactures, 1914. Preliminary Statement on the Manufacture of Boots and Shoes, including Cut Stock and Findings." This statement read in part as follows:—

	Boots and Shoes
Number of establishments	1,355
Persons engaged in the manufacture . .	210,348
Proprietors and firm members	1,090
Salaried employees	17,703
Wage-earners (average number)	191,555

The petitioner contended that the title "Proprietors and Firm Members," the number of which was given as 1,090, meant the total number of concerns engaged in shoe manufacture in 1914.

In case the Court should deem this question material, we wish to point out that counsel for the petitioner were incorrect in their contention.

On its face the phrase "Proprietors and Firm Members" means only the number of individual proprietors or owners and members of unincorporated firms who were engaged in the industry. It does not include corporations or the officers of corporations, the latter being included under the next title, viz., "Salaried Employees."

Inquiry at the Census Office confirms this interpretation and shows that the expression "Proprietors and Firm Members" does not include or refer to 686 establishments operated by corporations or their employees.

As a rule the term "establishment" as used in the Census Reports means a separate factory, but where two or more factories operated under a common ownership are situated in one city they are counted as a single establishment. (See Census of Manufactures. General Totals for the United States by Geographic Divisions, States and Industries, p. 2.) Thus the Census Report shows that there were more than 1,355 separate shoe factories doing business in 1914. It does not show the exact number of different concerns which owned these factories.

Thus it appears that more than 1,355 factories were doing business in 1914, while the United Company at the last available date, viz., 1911, did business with only 1,150 factories operated by 1,033 lessees. The record further shows that it did not furnish a complete line even of its principal machines to all of the lessees with whom it did do business. For example, see the testimony of Webster, a witness for petitioner (R. Vol. 1, p. 299, lines 4–45).

10. The petitioner's argument, at page 7 of its Reply Memorandum, that the United Company's leases compel or induce substantially all shoe manufacturers, as a condition of obtaining necessary machines, to agree that they will not use the machinery of competitors, is fully answered by the facts found in respect to the leases by the District Court (see our main brief, pp. 62–65, 77–80) and by the statement in our main brief in respect to the leases and their effect (see our main brief, pp. 298–422).

11. The petitioner's misconception of the United Company's lease system is shown by its comparison (p. 7) of this lease system with the conspiracy held unlawful in *Lawlor* v. *Loewe*, 187 Fed. 522; 235 U. S. 522.

In *Lawlor* v. *Loewe* there was a conspiracy or agreement for the direct purpose of intimidating Loewe's customers by threats of boycott and forcing them to cease dealing with Loewe. In the case at bar we find leases voluntarily entered into by shoe manufacturers containing provisions which, as the District Court found as a fact (R. Vol. 1, pp. 1159–1160) were not designed to exclude competitors, but which were designed to enable the lessor to offer remarkably favorable terms to lessees and at the same time afford the lessor reasonable protection in respect to the compensation for and care of the leased machines.

12. The petitioner's Reply Memorandum ignores most of the statements made in our supplemental brief as to the erroneous statements and assumptions contained in the petitioner's main brief, and, as we have shown above, fails to answer the few to which it does refer.

We desire to call the Court's attention especially to the erroneous statements or assumptions in the petitioner's main brief which are referred to in the following portions of our supplemental brief:—

(1) Misstatements in petitioner's brief as to the scope and effect of the Restricted Use Clause. (See our supplemental brief, pp. 15–21.)

(2) Petitioner's erroneous statements as to the unrestricted or independent leases and their effect. (See our supplemental brief, pp. 22–38.)

(3) Petitioner's misconstruction of the Exclusive Use Clause. (See our supplemental brief, pp. 38–43.)

(4) Petitioner's argument based upon its misconstruction of the lease clauses. (See our supplemental brief, pp. 48–55.)

(5) Petitioner's contentions as to monopoly. (See our supplemental brief, pp. 140–158.)

We also call the Court's attention to the misconception of the leases shown by the relief asked for by the petitioner. (See our supplemental brief, pp. 65–69.)

Respectfully submitted,

FREDERICK P. FISH,
CHARLES F. CHOATE, JR.,
MALCOLM DONALD,
Counsel for Appellees.

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 545.

UNITED STATES OF AMERICA, APPELLANT,

v.

UNITED SHOE MACHINERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE UNITED STATES.

INTRODUCTORY STATEMENT.

This is an appeal from a decree of the District Court for the District of Massachusetts, dismissing a suit brought by the United States under the Sherman Act against the United Shoe Machinery Company of New Jersey, certain affiliated or subsidiary corporations and certain individuals who were officers or directors of the corporate defendants.

The petitioner protested against an order providing for a private hearing before an examiner.

(R. I, 1062.) The Court overruled the protest and directed that—

> The examiner will not, without the consent of both parties, allow the attendance of persons other than those mentioned in Rule 67. (R. I, 1070.)

Later, the Attorney General having previously filed an expediting certificate under the statute (32 Stat., 823; 36 Stat., 854), the order was vacated and the case set down for trial before two circuit judges and a district judge.

THE PLEADINGS AND THE SUBJECT MATTER.

I. THE NATURE OF THE PROCEEDING.

The object of the suit is to forbid and prevent the defendants further making, maintaining or engaging in certain unlawful combinations, contracts and agreements hereafter described, and from continuing to monopolize a part of the interstate and foreign commerce of the United States in machines used for the manufacture of shoes, as hereafter defined.

The relief sought is a decree adjudging the corporate defendants to be combinations in restraint of trade and to have acquired and to be maintaining and extending a monopoly of the commerce in question and enjoining the further continuance of such illegal combinations and such monopolization; and, especially, forbidding the continued making or enforcement of certain provisions of certain leases or contracts under which the defendants have put out and are putting out machines.

The defendants, other than certain corporations as to whom at the opening (R. I, 1061) a discontinuance was entered, are—

United Shoe Machinery Company of New Jersey.
United Shoe Machinery Corporation.
United Shoe Machinery Company of Maine.
United Xpedite Finishing Company.
O. A. Miller Treeing Machine Company.
W. W. Cross & Company.
Ross-Moyer Manufacturing Company.
J. K. Krieg & Company.
Booth Brothers Company.
Ellis Lacer Company.
United Shoe Repairing Company.
Sidney W. Winslow, and twenty-one other individuals all of whom were officers or directors of the corporate defendants above named or of some of them.

The answers of the various defendants are not identical, but the answer of the United Shoe Machinery Company of New Jersey embraces substantially all the defenses set up by them. A brief outline of it is, therefore, sufficient.

It denies every allegation of the petition not specifically admitted; admits that it acquired the business, assets, and letters patent of the companies named in the petition (R. I, 1043); claims that those companies were non-competing at the time of their acquisition; that the machinery owned by each was covered by letters patent of the United States; and that the acquisitions were made with the

expectation of economies in administration and cessation of patent litigation between the companies purchased. It also alleges that the greater part of its business consists in the manufacture under letters patent of shoe machines and in the leasing of those machines to shoe manufacturers under the letters patent. It denies that it restrains or monopolizes interstate or foreign trade and commerce or ever attempted so to do, but alleges that if it has any such monopoly it is valid and legal as derived under the letters patent owned by it. It also sets up the statute of limitations. (R. I, 1042–1046.)

Replications were filed to the answers. (R. I, 1058).

II. DESCRIPTION OF THE DEFENDANTS.

The United Shoe Machinery Company of New Jersey is a corporation of that State. It was organized February 7, 1899, (R. I, 1, l. 32; 633, l. 4)[1] and was a consolidation of the business and properties of the following competing companies which were taken over as going concerns:

Goodyear Shoe Machinery Company.
International Goodyear Shoe Machinery Company.
Consolidated & McKay Lasting Machine Company.
McKay Shoe Machinery Company.
Davey Pegging Machine Company.
Eppler Welt Machine Company.

[1] References to the record are by volume, page, and line. Thus the reference (R. I, l. 32; 633, l. 4) is to the Record, volume I, page 1, line 32, and page 633, line 4.

International Eppler Welt Machine Company.

(Answer, R. I, 1043.)

Many of the principal owners and managers of these companies became officers and directors of the new company. Its main factory is in Beverly, Massachusetts. (R. I, 35, 423, l. 41.) In addition it maintains stations "throughout the country covering all the principal shoe manufacturing centers." (R. I, 553, l. 34.) It has been engaged, ever since its formation, in manufacturing at its Beverly plant, and in selling, leasing, and shipping to shoe manufacturers all over the United States shoe machines, supplies, and related things. (R. I, 35; l. 32; 423.)

The authorized capital of the United Shoe Machinery Company of New Jersey is $25,000,000.

United Shoe Machinery *Corporation* was organized in 1905. It also is a corporation of New Jersey. Its business appears merely to be that of a holding company. (Plff's Exs. 164–7, R. IV, 1126–37.) Upon its organization, it acquired "substantially all of the capital stock of the United Shoe Machinery Company of New Jersey." (Morton, R. I, 358, l. 28.)

Assuming that the stock issued at the organization of the United Shoe Machinery Company represented no more than the fair value of the properties acquired, the defendants in twelve years, as shown by dividends and surplus, have earned in excess of $50,000,000 upon a total investment in cash or its equivalent of about $20,000,000. (Morton R. I, 358–360.)

The United Shoe Machinery Company of Maine is, since a change in 1902, the present name of the old Goodyear Shoe Machinery Company. All its stock—$3,000,000—is owned by the United Company which acquired it when that company was organized. Its present business is the leasing of machines manufactured by the United Company of which it is merely a department. (Donham, R. I, 34, l. 40.)

The other corporate defendants do not require particular description.

The combined activities of the various corporate and individual defendants so far as they relate to the subject matter of the present action are commonly referred to in the record and are here referred to as those of the "United Company" except where clearness requires a more specific designation.

Of the individual defendants, Sidney W. Winslow is the president of all the corporate defendants and is their chief executive officer. He was the principal witness for the defence. The other individual defendants are, or were at the time when the bill was filed, directors or officers of the United Shoe Machinery Company or of the United Shoe Machinery Corporation. In most cases they were connected with both these companies as well as with others of the corporate defendants. (Plff's Exs. 186, 167, R. IV, 1231, 1137.)

III. DESCRIPTION OF THE SUBJECT MATTER OF THE ACTION.

A. IN GENERAL.

The end which avowedly was sought by the organizers of the United Company was "the control in one corporation, both in the United States and in foreign countries of the efficient types of shoe machinery." (Statement to the Stockholders of the Goodyear Shoe Machinery Company, February 8, 1899. Plff's Ex. 152, R. I, 140.) The business in which the defendants are engaged is that of supplying machines used in the manufacture of shoes. The interstate and foreign trade in certain, though not all, of such machines (*infra*, p. 13) is that which defendants are charged with having restrained and monopolized. The subject matter of the action, therefore, is the effect of the things done by the defendants upon the trade between manufacturers of machines used in the manufacture of shoes and the manufacturers of shoes.

B. THE BUSINESS OF SHOE MANUFACTURING.

To understand, therefore, the nature and importance of the questions presented by this case, it is necessary to have in mind certain facts regarding the manufacture of shoes and the relations thereto of the use of machinery and its supply.

According to the Census of Manufactures, issued by the Department of Commerce, 1090 American firms, individuals and corporations were engaged in 1914 in manufacturing shoes. In 1909, the latest year

for which figures are available, 285,000,000 pairs of shoes, in round numbers, were made in this country, as against 175,000,000 in 1899. (Winslow, R. 414, l. 38.) Shoes are made in practically every State in the Union. It is obvious that supplying machines for an industry of this size and geographical distribution must be an exceedingly important part of the interstate trade and commerce of the United States.

C. EXTENT OF THE USE OF MACHINES IN THE MANUFACTURE OF SHOES.

The making of shoes was almost wholly a handicraft until about 1860. At about that time the first practical machine for performing an important shoe making operation began to attain wide use. Other machines followed.

When this suit was brought, and indeed at the formation of the United Company in 1899, the industry had become almost wholly a machine industry. Of the 175,000,000 pairs of shoes produced in this country in that year, according to defendants' figures, (Dfs.' Ex. 215, R. I, 424) only 197,000 are described as hand made, and Mr. Winslow testified, (R. 869, l. 37–39) that 110,000,000 were of kinds which never had been made by hand and could not be so made. The record shows that to-day hand work has been superseded by machine work even as to the simplest and least expensive operations. (R. I, 91, ls. 26–30.) For the most part it persists only for incidental work in connection with the use of machines. (e. g. R. I, 497.) No shoe manufacturer attempting to do business on any considerable scale can to-day exist in

competition with other manufacturers without having in his factory a substantially complete line of machines. In order to compete with any hope of success he must obtain his machinery upon a basis of cost not substantially above that upon which his competitors obtain their equipment.

D. THE MANUFACTURE OF SHOES BY MACHINERY, METHODS AND MACHINES.

The mysteries of the shoemaker's art and the variations between different methods of making shoes are not within the knowledge of the ordinary purchaser nor do they enlist his interest. To him shoes are shoes, except as they differ in appearance, comfort, wearing qualities and price. For his approval all shoes which approximate his size may be said to compete and the factors which govern that competition are those noted rather than the details of their manufacture.

In the industry, however, shoes are classified according to the manner in which the outsole, what we call the sole, is attached to the upper, and this classification is helpful in understanding the application and importance of various facts which will be brought to the attention of the Court.

Shoes, then, are divided into welt shoes, turn shoes, stitch-downs, McKay sewed shoes, McKay welts, fairstitched shoes, pegged shoes, standard screw shoes, loose nailed shoes. (Dfts. Ex. 215, R. I, 424.) In all but the last three varieties the bottom is attached to the upper by a seam of thread. Pegged

shoes are shoes in which the sole is attached to the upper by means of wooden pegs. In standard screw and loose nailed shoes the sole is attached by wire slugs or nails. Such shoes are therefore sometimes called "metallic fastened" and the machines which insert the fastenings are among those classified in the trade and by the defendants as "metallic machines." (R. I, 5, l. 5.)

Welt shoes derive their name from a narrow strip of leather known as the "welt" which is first sewed to the upper and insole by a machine called a "welt sewing machine" or "welter" and is then sewed to the outsole by a machine known as an "outsole stitcher" thus attaching the upper and bottom together, the welt serving as a kind of link. Welt sewing, outsole stitching, and certain other machines used in making welt shoes are hereinafter sometimes called welt method machines.

The sole of the turn shoe is sewed to the upper by the welt sewing machine, adapted for the purpose by the removal of an attachment. Turn shoes are lighter, as a rule, than those made in other ways. They derive their name from the fact that the upper is turned inside out during the process of attaching the sole.

The bottom of the "McKay sewed" shoe is attached to the upper by a seam passing directly through the outsole, insole, and upper. A "McKay sewing machine" is used for this operation.

As was said, the pegged shoe is a shoe in which the sole is attached by wooden pegs. These are inserted by a "pegging machine."

The sole of the "standard screw" shoe is attached by slugs of wire. These are inserted by a "standard screw machine."

The sole of the nailed shoe is attached to the upper by nails made for the purpose. A "loose nailing machine" is used. This machine also is used in the manufacture of substantially all kinds of shoes for attaching to the upper that part of the shoe to which the heel is in turn attached. That is to say, in shoes which are sewed, as distinguished from shoes in which the sole is "metallic fastened," only the part of the sole forward of the shank is attached by the seam of thread. The heel part of the sole, the "heel seat," is nailed on by the loose nailing machine.

McKay welts, fairstitched and stitch-down shoes, mentioned above, are all produced in such relatively small numbers as to be unimportant in comparison with the great classes of welt, turn, McKay sewed and metallic fastened shoes which have just been described. (Dfts. Ex. 215, R. I, 424.)

Despite these radical differences as to the particular manner in which the bottoms of various kinds of shoes are attached, the general process of manufacture of all shoes is substantially the same. In every case, the parts of the uppers must be cut out and assembled, the linings fitted, the upper, counter and insole assembled, the shoe "lasted," i. e., the upper stretched and shaped over the last, the out-

sole shaped and attached, the sole "leveled" or made to conform to the bottom of the last, the heel prepared and attached and the shoe "finished" by polishing, smoothing, and burnishing the edges and bottom of the sole and heel. It follows that "according to general usage, certain names are given by shoe manufacturers to certain parts of their factories in which certain work is done." These are the cutting room where the uppers and linings are cut out, the stitching or fitting room where the uppers, linings and trimmings are assembled and stitched together, the lasting room, the bottoming room, the finishing room, and the sole leather room. (Winslow, R. I, 859, l. 39 et seq.)

In all the foregoing rooms in every factory machines are used. Besides the machines used for the major operations of attaching the sole to the upper, there are used in the bottoming of McKay shoes thirty-two different types of machines. (Dfts. Ex. 236, R. V, 671.) A shoe manufacturer possessing only a McKay sewing machine would therefore be a long way from the necessary equipment for that one department of his factory. For bottoming welt shoes, a larger number of different types of machines is required. (Plffs. Ex. 279, R. IV, 1557.)

E. THE PART OF THE INTERSTATE AND FOREIGN COMMERCE OF THE UNITED STATES IN MACHINES USED IN THE MANUFACTURE OF SHOES WHICH DEFENDANTS HAVE RESTRAINED AND MONOPOLIZED.

When the petition was filed, the defendants did not manufacture machines used in the fitting room, above mentioned, in which the previously cut and prepared

parts of the uppers and linings are assembled. As to certain other machines necessary to the manufacture of shoes, the defendants had not at that time acquired a monopoly. At the trial, therefore, the claim of the United States as to the part of the trade in machines used in the manufacture of shoes which the defendants *actually* had restrained and monopolized was defined as the business of supplying—

> all the [principal and auxiliary] machines used for preparing and attaching the bottoms of shoes to the uppers, and clicking and eyeletting machines. (R. I, 837–839, *passim*. R. I, 192, l. 15–19, R. I, 414, l. 21.)

"Principal machines" and "auxiliary machines" are phrases taken from the practice of the defendants in leasing machines. The defendants class as "principal" the welting, lasting, pulling over, slugging, heeling, standard screw and loose nailing machines. (Winslow, R. I, 537, l. 12 et seq.) A number of other machines are called "auxiliary" machines. This is justified in a measure because in one sense some of the auxiliary machines "prepare the work" for the operation of some of the machines called "principal." (R. I, 537, l. 12 et seq.) In the main, however, the reason for the distinction is rather arbitrary. Mr. Winslow says:

> We call [them] principal machines because they perform operations which are treated as measuring operations for the entire set of machines and because their operations preceded in most cases the development of the auxiliary machines. The auxiliary machines in many

> instances did work that had been done by hand and their development succeeded the development of what have been termed the principal machines. (R. I, 537, l. 14 et seq.)

A list of auxiliary machines, including only the machines classed by the defendants as "Goodyear auxiliaries," i. e., auxiliaries used in the manufacture of welt shoes is to be found in Plffs. Ex. 270 (R. IV, 1446). Inspection of it will show something of the number and variety of the "auxiliary" machines. *These machines are, however, in no sense mere attachments to the principal machines. The operations performed by them are wholly independent.* "That is true with reference to every one of the auxiliary machines. There are no two that operate on the same shoe at the same time. The operations are as separate and distinct as the lasting operation and the welting operation, only they are not so far removed from each other." (Winslow, R. I, 537, l. 7 et seq.)

The uses of some of these "principal" machines, namely, the welting, standard screw machines, and loose nailing machines have already been noted. (*Supra*, pp. 10, 11.) Pulling over machines stretch the upper over the last, preliminary to the process of shaping it or lasting it. Lasting machines shape the upper over the last and secure it there temporarily or permanently according to the process of manufacture which is to follow. Heeling machines attach the heel to the shoe. Slugging machines which are included in the foregoing list of principal machines are used for inserting slugs or nails around the perimeter

of the heel. Clicking machines are used for cutting out the parts of the upper. Eyeletting machines insert eyelets in the uppers.

In the record (I, 495–502) is an enumeration of some of the machines used in the bottoming of welt shoes, with a description of their functions. The nature of the relations between "principal" and "auxiliary" machines, *supra*, appears from what is there said. The distinction, while convenient for the understanding of certain leases of the defendants, *infra*, pp. 145–213, is of no real importance in the Government's view of this case.

F. THE IMPORTANCE, AS A MATTER OF SHOE MANUFACTURING, OF THE MACHINES, THE TRADE IN WHICH DEFENDANTS HAVE RESTRAINED AND MONOPOLIZED.

The processes of lasting, of preparing the bottom and the heel, of attaching them to the upper are necessary processes in the making of every shoe and constitute the "bottoming" of the shoe. The use of machines in these processes is universal. Shoes can not as a commercial proposition be made without them. This is, perhaps, sufficiently established by what has already been said. It may, however, be added that nearly two score shoe manufacturers testified in the case as witnesses either for the Government or for the defendants. These manufacturers represented concerns whose output ranged from 500 pairs daily (Burt, R. I, 739, l. 4) to well over forty thousand pairs (Johnson, R. I, 170, l. 33, Endicott, R. I, 575, l. 31). Their product comprised all varieties of shoes. Every one

of them used machines for the processes named. In substantially every case, for reasons which will be noted, they used the machines of the defendants exclusively.

The process of cutting out uppers, for which the clicking machine was designed, was at the time of filing the petition still performed by hand in a considerable but decreasing number of factories. The clicking machine had been on the market only since 1908, and therefore had only been out about three years at the time when the petition was filed—the time to which testimony was limited by the Court (R. I, 201, l. 42). The importance of this machine and its practical necessity to shoe manufacturers is indicated by Mr. Winslow's appreciative remarks about it. In his opinion (R. I, 426, l. 19), according to his experience in the shoe art, "no machine has accomplished so much for the art as the clicking machine." The saving by its use is estimated at as much as three cents a pair *in leather alone* (R. I, 431, l. 22), aside from the advantages of machine over hand operation with respect to the cost of labor, speed, etc. The familiar effect of the introduction of such machinery upon the supply of hand operators also is to be considered. The importance to a shoe manufacturer of possessing such a machine is obvious. The manner in which the defendants use their control of it to extend their monopoly of other machines is noted. (*Infra*, pp. 158, 165.)

THE FACTS IN THE CASE STATED AND ARGUED.

I. CONDITIONS IN THE SHOE MACHINERY INDUSTRY AT THE FORMATION OF THE UNITED COMPANY.

The principal companies which were combined in the organization of the United Company were, as heretofore observed, the Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, and Eppler Welt Machine Company. (*Supra*, p. 4.)

A. THERE WAS EXISTING AND POTENTIAL COMPETITION BETWEEN THE GOODYEAR AND THE CONSOLIDATED & McKAY COMPANIES IN LASTING MACHINES.

Before the organization of the United Company, lasting machines of the following types had been at some time in use, namely, the McKay and Copeland, Chase, Copeland-Rapid, Consolidated Hand Method, Seaver, Sinning, and Ideal lasting machines. There may have been others. (Jones, R. I, 106, ls. 23–30; Selz, R. I, 141, l. 43.) In addition there were the Continental and Boston machines which, however, are described by Mr. Winslow as "tacking machines" rather than lasting machines. (R. I, 521, l. 32.) Some of these machines had apparently disappeared prior to the organization of the United Company.

There is no dispute with reference to the various kinds of lasting machines which were being produced at the time the United Company was formed.

At that time there were on the market, according to Winslow, the following:

McKay & Copeland, Chase, Consolidated hand method	Owned by Consolidated & McKay Co.
Ideal, Copeland-Rapid	Owned by Goodyear Co. (R. I, 399, l. 13.)

The Ideal lasting machine was a development of the Copeland-Rapid laster. (R. I, 107, l. 38; 526, l. 45; 914, l. 3.) The only substantial difference between these two machines was that the latter was operated by the foot of the workman while the former was operated by power. (R. I, 914, l. 3; l. 918, l. 3.)

Mr. Winslow testified (R. I, 526, l. 36) that at the time of the formation of the United Company the Consolidated & McKay Company and the Goodyear Company were the only companies putting out lasting machines except the Seaver Company, as to which he stated that it was putting out some machines but was not doing a successful business. (R. I, 526, ls. 28–34.) It was acquired by the United Company less than a year after the formation of that company in 1899. (R. I, 526, l. 33.) It had no plant, and only one witness testified to any use of the Seaver machine. (R. I, 289, l. 25.)

There is no dispute that the McKay & Copeland laster was used chiefly upon heavy shoes. The Chase machine, according to Mr. Winslow, was used chiefly for lasting men's welt shoes but it was offered by its makers as a machine for lasting women's shoes as well. (R. I, 960, ls. 29–30.)

The Consolidated hand method machine as originally designed was adapted principally for lasting McKay sewed, pegged, and metallic fastened shoes. These types of shoes are lasted in the same manner. At first it could not be used successfully for lasting welt shoes, but the problem of adapting it for such use was in the way of solution in the fall of 1898. In December, 1898, the Consolidated & McKay Lasting Machine Company was offering to the trade the hand method machine as a satisfactory machine for the lasting of welt shoes. (R. I, 960, l. 27.)

Mr. Winslow was not willing to testify that the machine was completely successful for that purpose, despite the fact of his company's offering the machine to the trade, but admitted that some machines were already in shoe factories. (R. I, 524, l. 7, 8.) He also admitted that it was the intention of the Consolidated & McKay Company to perfect the machine so as to make it an efficient welt lasting machine, and that in 1900, about a year after the formation of the United Company, it had become, even in his present opinion, a commercially successful machine. (R. I, 524, l. 28.) He added (R. I, 526, l. 11) that women's welt shoes are now lasted very largely upon this hand method machine.

It appears, then, upon Mr. Winslow's testimony, that the Consolidated & McKay Company was putting out lasting machines which covered the entire ground. Taking at face value his statements as to the kind of work for which the various machines were peculiarly fit, the McKay-Copeland covered the heavy

field, the Chase, men's welt shoes, and the hand-method machine, all McKay shoes, and in its improved form, women's welt shoes.

The Goodyear Company's lasting machine was, as has been said, the Ideal machine, which was a development of its Copeland-Rapid machine. It was said by Mr. Winslow (R. I, 527, l. 3) that it was used practically altogether on women's welt shoes, that is to say, in the field in which the hand-method machine owned by the Consolidated & McKay Company before the organization of the United Company has now been so successful. Mr. Winslow declined to attempt to state any reasons why the Ideal machine could not last men's welt shoes as well as women's welt shoes, thus bringing it into direct competition with the Chase lasting machine, put out by the Consolidated & McKay Company. In response to the question whether the Ideal could have easily been developed into a machine which would have lasted men's welts, successfully, he stated that he did not know anything about it. (R. I, 527, l. 24.)

Mr. Howe, testified (R. I, 627, l. 29) that while each machine had a fairly well defined field, it would frequently happen that McKay shoes would be lasted upon the Ideal machine.

Even if the work of the Ideal machine had been confined to women's welt shoes, that was the field which the Consolidated and McKay Company was entering with its adapted hand-method machine.

In addition, however, to the testimony of Mr. Howe as to the use of the Ideal machine for lasting McKay *lasted* shoes (which include standard screw and loose-nailed shoes as well as McKay *sewed* shoes) there is abundant testimony as to the possibility of the use, and as to the actual use of the Ideal machine owned by the Goodyear Company, for lasting men's shoes in direct competition with the Chase machine owned by the Consolidated & McKay Company. The testimony shows also that the Ideal was in direct competition with the latter company's hand-method machine.

Milton J. Florsheim testified that his company was engaged at the time of the formation of the United Company in the manufacture of men's welt shoes, and at the time they were using three Copeland-Rapid lasters (the same machine as the Ideal machine except that it was operated by the foot of the workman rather than by power, *supra*) and several Chase machines; that the Chase and Rapid (Copeland-Rapid) machines did the same class of work, and that "when the shoe was done, you could not tell on which machine it was lasted;" that there was no difference in the quality of the work, and if there was any difference in the rapidity, the advantage was with the Rapid. (R. I, 158, 159, l. 32.)

Warren F. McElroy also testified that the Hamilton-Brown Company, of St. Louis, made men's shoes on the Rapid machine in 1899, and continued to use them until they were exchanged for the new machine brought out by the United Company after its formation. (R. I, 187, l. 15, 189 l. 26 et seq.)

Stephen Snow testified that he was employed by the William L. Douglas Company which made about ten thousand pairs of shoes a day, and that company, which made only men's shoes, both McKays and welts, used only the Consolidated Hand Method and Ideal lasting machines; that he, the witness, had charge of the Ideal machines, of which there were more than a dozen, and the company had no other types of lasters than those mentioned, and did its work upon them; (R. I, 895, 896) that he had previously worked for George E. Keith Company, which also made men's McKay and welt shoes, with an output of about ten thousand pairs daily, and that company had no lasting machines except the Ideal machines, and that there were "about a dozen of them." (R. I, 896, l. 11.) Mr. Snow spoke of difficulty in using the Ideal machine on men's *heavy* boots, meaning long-legged boots, brogans, and miners' shoes (R. I, 900, l. 15) but stated that he had invented an attachment which held the last down, and that with that attachment added it was successful, even for men's *heavy* boots, (R. I, 899 l. 7) but that the Ideal machines were used *without* the attachment for making the shoes made by the Douglas and Keith Companies which was "about a four dollar shoe which was as heavy as they generally make in those factories." (R. I, 896, l. 16.)

Thomas Worsencroft testified that in 1890 he was employed to instruct men to operate the Rapid lasting machine; (I., 913) that the only difference between the Rapid and the Ideal was that the Rapid worked

by foot power and the Ideal by steam power; (R. I, 914, l. 3) that he was employed from 1897 to 1901 by the Duquesne Shoe Company, of Pittsburgh, Pa., which made men's welt shoes; that that company used five Ideal lasting machines for lasting those shoes, and no other lasting machines; that, previously, he had worked for S. A. Crooks Company of Hopkinton, Mass., where the Rapid machine was used on men's McKay shoes, and, in 1891 and 1892, in the factory of John Hanan & Sons of New York City where high priced welt shoes were lasted on the Rapid machines, and at George Snow's factory at Brockton in 1893 where welt shoes were made both on the Rapid and the Chase machines. (R. I, 914, l. 33.) He thought that the Ideal machine did better work on men's welt than the Chase machine and was equally rapid. (R. I, 914, l. 23.)

William P. Whitman testified that he had been manufacturing shoes since 1883, and that he had obtained Ideal machines from the Goodyear Company, and was still using six or seven of them at the time of his testimony; that he made men's welt shoes and never had made any other kind. (R. I, 915, 916.) That he has also now some Number 5 lasting machines [the latest development by the United Company, R. I, 397, l. 38, now offered as the successor of the Chase machine, R. I, 453, l. 25] but he sees very little difference in quality or rapidity between the work of the Number 5 machine and that of the Ideal. (R. I, 916, ls. 4–10.) Referring to the necessity of the hold-down attachment for the Ideal machine he said it

became necessary when the high toed shoe began to come in "which was about ten or twelve years ago." (R. I, 916, l. 38.) He was testifying in 1914 and therefore the date referred to was two or three years after the formation of the United Company.

Edward F. Heffernan testified that he had been employed in the factory of the witness just mentioned for seventeen or eighteen years, and for six years had had charge of the lasting department (R. I, 917, ls. 38–43) and he had operated an Ideal machine for twelve or fourteen years; that there was no substantial difference between it and the Rapid machine; (R. I, 918, l. 3) that he lasted men's welt shoes for twelve years upon Ideal machines without any hold-down appliance; that he had invented such an appliance which improves the operation of the Ideal, and that anything which is lasted on a Number Five [the United Company's successor to the Chase machine, (R. I, 453, l. 25)] can be lasted on an Ideal; (R. I, 918, ls. 30, 31). That the Whitman firm is still using seven Ideal machines; that they have also been using the Number 5 lasting machine for three years and he has observed its operation; that the same operator will get as much work off the Ideal as he can off the Number 5 and, in his opinion, probably a little more; that he can run both machines himself, and considers the Ideal is a little faster; that the character of the work depends on the operator, a good operator being able to do equally as good work on one machine as on the other; and as to whether or not heavy

welt shoes can be successfully lasted on the Ideal machine, everything that can be lasted on the Number 5 can be lasted on the Ideal just the same—they make no distinction; that while the Number 5 is a heavier, stronger machine, yet there is no reason why the Ideal could not be made just as strong, and that by a stronger construction it could last any kind of shoes. (R. I, 918, ls. 1–33.) He said that about four years ago he was given his choice between the Number 5 and the Ideal and took two Ideals. (R. I, 919, l. 41.)

It will be remembered that Whitman & Keith were manufacturers of *men's* welt shoes. Therefore, it is demonstrated in practice that the Ideal without the Snow attachment or any other attachment but as it was in 1899 was capable of lasting men's welts as well as women's, and therefore was a competitor of the Chase machine.

John Jordan testified (R. I, 932, l. 31) that he had been a laster for 25 years and he had lasted *men's* high-grade welt shoes on the Chase machine for two years, on the Rapid for three or four years, and on the Ideal for about ten years; that in his opinion the Ideal did better work than the Chase; that the Ideals at the time he worked on them did not have the hold-down attachment referred to by the other witnesses (R. I, 933, l. 18, 19); that the Ideal was used at the W. E. Douglas factory for lasting *men's* shoes without any hold-down attachment (R. I, 933, l. 30); that such an attach-

ment was put on but was taken off after a short time.

John N. Murphy testified that he had been an operator on lasting machines for about twenty-three years; he testified further that he also operated an Ideal machine both at Whitman & Keith's factory and at Douglas's factory upon *men's* high-grade welt shoes. (R. I, 933, l. 43, 934, l. 5.)

He said he had also operated the Number 5; that the quality of the work of the Ideal was about the same and that the Ideal was a little faster. (R. I, 933, l. 13, 15.)

Francis O'Keefe testified that he was now foreman of the lasting room of Stacy-Adams Company and had been engaged in lasting shoes for about eighteen years. He testified further (R. I. 934, l. 20 et seq.) that James A. Banister & Company, makers of *men's* fine welt shoes, were lasting such shoes on six Ideal machines, and that the Chase and Ideals did about the same amount of work. He also testified that that company was at the same time using Chase machines for work of like character. On cross-examination he testified that L. Boyden & Company by whom he was first employed in 1896 successfully used the Chase machine for lasting women's shoes. (R. I, 935, l. 20.) He added that the Chase could last successfully *any kind* of shoes except the high toed models which had come into vogue the last three or four years.

The Chase owned by the Consolidated & McKay Company and the Ideal owned by the Goodyear

Company were, therefore, competitive machines when the United Company was formed.

Ira Fletcher testified that he was superintendent of F. M. Hoyt Shoe Company of Manchester, New Hampshire, that he was employed by W. L. Douglas from 1902 to 1910, and that during that period the Douglas Company which was making *men's* welt shoes only was lasting them on Ideal lasting machines, of which, in 1902, 54 were in use. (R. I. 938, l. 11); that Douglas preferred the Ideal to the Chase (ibid, l. 36). He further testified that he had been previously employed between 1894 and 1901 by Cushman & Company of Auburn, Maine; that that company made *men's* welt shoes and lasted them upon Ideals, of which they had twelve; that they had no other kinds of lasting machines in the room in which he was working.

Joshua LeMay testified that he is foreman of Rice & Hutchins' lasting department, and that in that factory the Chase machine was used on both welt and McKay work, indiscriminately, and that in 1897 or 1898 women's McKay shoes were lasted upon the Chase machine. He stated that he had worked on the Chase machine for eight years and that he knew of no reason why the Chase machine could not be used on women's welt shoes, the same as men's. (R. I, 947, ls. 23–37.)

Walter C. Springer (R. I, 947, l. 43) testified that he has worked for Rice & Hutchins about twenty-one years, and was, when his evidence was given, assistant superintendent of the Curtis factory, and at times

had partial charge of the lasting room. Before the "No. 5" came out they used the Chase machine, on men's, boys', and youths' McKay and welt shoes. They also used it successfully on *women's* shoes, and he knows of no reason why it can not be used on women's welt shoes, the same as on men's. He had never heard of anything wrong with the lasting of the women's shoes done on the Chase machine. (R. I, 949, l. 29.)

Emanuel F. Selz, general manager of the manufacturing department of Selz, Schwab & Company for more than twenty years, testified that his company's factories had a capacity of fifteen thousand pairs of shoes per day (R. I, 141, l. 16); that just before the establishment of the United Company the Rapid, the Chase, the Consolidated hand-method, Ideal and Boston machines were in use. They could *all* last *men's* and *women's* shoes (R. I, 142, ls. 14–19); that he got the Chase in 1891 and used it up to a few years ago and that his company still has the Boston and some of the Consolidated hand method machines (R. I, 148, ls. 22, 32); that they have lasted both men's and women's shoes on the Chase and on the Consolidated (R. I, 148, l. 40); that they now use the Consolidated laster principally for *women's* shoes and men's McKay shoes (R. I, 149, l. 5).

Martin E. Welch, a man of forty-seven years experience as a shoe manufacturer, twenty-five of which were spent in business for himself, testified that "when we started the welts we began with the Consolidated hand method machines and we are still

lasting all our welt shoes on that machine. We make women's shoes altogether and have never made any men's welt shoes." (R. I, 712, ls. 2–7.)

The foregoing testimony shows that the Consolidated hand method machine, owned by the Consolidated & McKay Company, was in competition with the Ideal, owned by the Goodyear Company, in the lasting of women's shoes at the time the combination was formed.

John Strootman (R. I, 742, l. 41) testified that he was engaged in manufacturing *women's* shoes, one half of which were McKays and the other half turns and welts. He said, "We lasted by hand until we got the Consolidated hand method machine and we are still using improved machines of that type. Formerly we lasted our shoes *entirely* on that machine, but now we last the toes on the Number 5 machine and the sides on the Consolidated hand method." (R. I, 744, l. 28.)

Charles A. Eaton, (R. I, 751, l. 18) engaged exclusively in the manufacture of men's welt shoes, except a few ladies' and boys' shoes, testified that he had been in the manufacturing business since 1879; that between 1892 and 1899 he was making men's welt shoes exclusively (R. I, 755, l. 6) that he used the Consolidated hand method, the Chase and the Seaver machines, replacing the Chase by the Seaver on the better grade of work, and doing the cheaper work on the hand-method machine (R. I, 755, ls. 2–7); that the Seaver was put out by the Seaver Lasting Machine Company acquired by the United Company soon after

its organization. (*Supra*, p. 18.) The Seaver, owned by one company, and the Chase, and Consolidated Hand Method machines, owned by another, were therefore in competition at the time the United was formed.

The defendants made no effort to meet the foregoing testimony directly, but while contending that each type of lasting machine was better on some kinds of work than others, conceded that there was "some overlapping." (Winslow, R. I, 527, ls. 1–27, Howe, 627, ls. 18, 19.)

Mr. Howard, the patent attorney for the Company, gave certain technical testimony (R. I, 966–973) which is intended to show by reference to patent drawings the unsatisfactory character of the Ideal lasting machine for men's work. *He admitted that he had never lasted a pair of shoes* and does not pretend to any knowledge qualifying him to contradict the direct statements of the witnesses as to the actual use of these machines.

He stated that his testimony must be taken "as technical information" only (R. I, 971, l. 32). He admitted that "it is pretty hard to identify the Ideal machines used before 1899 because the records of the Goodyear Company (the owner of the Ideal) were not nearly as complete as those of the Lasting Machine Company owner of the Chase and other machines. (R. I, 973, l. 35.) His testimony is therefore of little value when confronted with the foregoing testimony of practical and disinterested witnesses.

The same may be said of the testimony of Mr. Winslow (R. I, 975, l. 42) relative to the number of Ideal machines out January 1, 1899, and the work done upon them. This, too, can be based only upon the records, which Mr. Howard tells us "were not nearly as complete as those of the Lasting Machine Company." Besides, the relative number of machines in use would have little if any tendency to prove whether or not they were competitive. The greater number in use of the one might be due to better management, more capital, or any one of a number of causes having nothing to do with the competitive character of the machines.

It appears also from the testimony of Mr. Winslow that prior to 1898 the Goodyear Company was accustomed to put out the Ideal machines "on a large initial payment and no royalty." (R. I, 978, l. 24.) This being so, the company would have no record of the number of shoes operated upon by the Ideal.

In addition to the foregoing facts, as to the active competition existing between the lasting machines put out by the Goodyear Company on the one hand and those controlled by the Consolidated & McKay Company on the other and as to the prospect of increasingly sharp competition between those machines, some one of which was necessary to the making of every shoe, it is further to be noted that the Goodyear Company, though possessing only a single type of lasting machine, had the great advantage of being able to offer also welt sewing and outsole

stitching machines and auxiliaries to those machines. It was able therefore to make its lasting machine help its welt machine, and *vice versa*. At the same time, the Consolidated Company was retaliating by requiring the use of its lasting machines to full capacity and insisting upon the requirement that if the lessor should have work for lasting machines requiring additional machines, such machines should be taken from the Consolidated & McKay Company. (Plffs. Exs. 6–10, R. III, 45–82.)

This is in effect an admission that Mr. Winslow's Company, the Consolidated & McKay Company, believed that its own laster was capable of lasting men's and women's shoes, and was, therefore, in direct competition with the Ideal machine as to both classes of shoes.

The Government's testimony on this point is strongly sustained by certain advertisements which appeared in the Hide & Leather Reporter, a trade paper. On December 3, 17, and 31, 1898, about two months before the combination was formed, the Consolidated & McKay Lasting Machine Company published an advertisement stating that the Consolidated hand method lasting machine was adapted to the lasting of "welt shoes" and offered it to the trade for that purpose. The advertisements made no distinction between men's and women's welt shoes but claimed the machine would last welt shoes without distinction. (R. I, 960, l. 24.)

On December 22, 1897,[1] about a year and two months before the consolidation, the Chase laster, also put out by the Consolidated & McKay Company, of which Mr. Winslow was the chief managing officer (R. I, 522, l. 21, et seq.), was advertised in the same paper as a machine "for lasting women's shoes." (R. I, 960, ls. 29–30.)

The evidence afforded by these contemporaneous advertisements should overcome anything which Mr. Winslow and his witnesses said in this law suit, twelve years afterwards. If the advertisements were warranted, and of course they were, the Consolidated hand method and the Chase, both owned by the Consolidated & McKay Company prior to the organization of the United Company in 1899, were adapted to the lasting of *women's* welt shoes, as well as men's, and therefore as to these shoes also were competitors of the Ideal laster, owned by the Goodyear Company, which is conceded by all hands to have been thoroughly fitted for the lasting of *women's* welt shoes.

The foregoing testimony clearly shows that the purchase of the Consolidated & McKay Company and of the Goodyear Company by the United Company, February 7, 1899, destroyed an existing and vigorous competition between lasting machines.

That with the development of the industry this existing competition between powerful corporations must have become increasingly sharp is, it is respectfully submitted, not open to doubt.

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[1] The date is stated in the record as 1907, an obvious misprint.

B. THERE WAS EXISTING AND POTENTIAL COMPETITION BETWEEN THE GOODYEAR AND EPPLER COMPANIES IN WELT SEWING AND OUTSOLE STITCHING MACHINES AND AUXILIARIES.

The characteristic feature of the welt method of making shoes is, as has already been said (*supra*, p. 10) the use of a strip of leather called the welt which is employed as a connective between the upper and the outsole, both of which are sewed to it. Before the consolidation the Eppler Welt Machine Company and the Goodyear Shoe Machinery Company were each putting out machines for performing the operations involved. They laid the stitch of the seam which attached the welt to the upper in different ways. Each also put out outsole stitchers and the two companies were therefore in competition as to these machines also. (Howe, R. I, 469, l. 36.) Undoubtedly many more machines had been put out by the Goodyear Company which had twenty years priority in the field. The statement made in the lower court that the Eppler machines could not produce "Goodyear welt" shoes is, however, only warranted when understood literally, and when so understood is of absolutely no significance. Eppler machines could not produce "Goodyear welt" shoes because "Goodyear welt" was a trade-mark name for shoes produced on Goodyear machines. (R. I, 22, l. 3, 625, l. 44.) But Eppler machines could and did produce merchantable shoes made by the welt method and the shoes so produced possessed the advantages of that process. (*Infra*, pp. 35–40.) That there was open to the Eppler Company a wide field of possible competition, that it was successfully entering that field

and that in all human probability it must have become at least a dangerous and annoying competitor of the Goodyear Company are circumstances which, if true, are not lessened in significance by the contention of the defendants that the competition when ended by the illegal combination had not yet threatened the dominance of the Goodyear Company. Neither are they affected by the *belief* on the part of some, even if such a belief were warranted, that after all was over, the Goodyear machines would have demonstrated a superiority which the Eppler interests could not have offset either by improvement of their machine or by concessions of price. That the Eppler Company was in fact an able and a prospectively very dangerous competitor is shown by the following evidence:

C. H. Jones testified (R. I, 108, l. 42) that when the United Company was formed the Goodyear Company and the Eppler Company were both putting out welting, sewing, and outsole stitching machines, and he knows of his own personal knowledge that the welters and outsole stitchers produced by the Goodyear and Eppler companies were used for the same grade of work (R. I, 111, l. 16).

E. F. Selz testified that immediately before the United Company was organized there were on the market the Goodyear and the Eppler stitchers and inseam sewing machines (inseam machine is the same as welting machine) and that they were doing exactly the same work, the only difference between the Eppler and the Goodyear being in the formation

of the stitch, but so far as he knew, and he had used both machines, there was no difference in the rapidity with which the work was done. (R. I, 143, l. 22 et seq.)

Warren F. McElroy, an expert of wide experience, (*infra*, pp. 104, 136) testified that in 1897 or 1898 the company with which he was working was solicited by an agent of the Eppler Machine Company, and that the witness went to a factory and looked at the machines and the class of work they were doing. They were working on men's medium and fine grade welt shoes, and from his observation it appeared that the work of the Eppler was equally as good as the work done by the Goodyear machine and that it could have been used on women's shoes. (R. I, 187, l. 32 et seq.)

Charles S. Smith testified that the Eppler Company began business in 1893, and put out the welting machine, and began putting out the outsole stitching machine in 1893 or 1895. The witness had sewed shoes on the Eppler machines as an expert (R. I, 352, l. 43) and they could be and were used for the same purposes as the Goodyear welt sewing machine (R. I, 352, l. 20).

William P. Whitman testified that he installed an Eppler welt machine before the formation of the United Company and operated it for several years. The work done by the machine was satisfactory. (R. I, 916, l. 11.)

Fred F. Field testified that he was President of the Fred F. Field Company, of Brockton, and vice pres-

ident of Field Brothers & Gross, of Auburn, Maine. The Fred F. Field Company, of which he has immediate charge, manufactures men's welt shoes, and they at one time had in their Brockton factory as many as *eight* Eppler welt machines. At the same time they had *two* Goodyear welters. He thinks they obtained the first Epplers probably in 1902 or 1903, and kept five or six of the machines until about a year ago (This witness testified February 5, 1914). During that entire time he was using both Eppler and Goodyear welters, and it was the witness' judgment that the Eppler machine sewed a flatter seam than the old Goodyear, hence the shoe did not require so much filling in the bottom, which he regarded as some advantage, and he does not think there was much difference between the old Goodyear and the Eppler as to the amount of work which could be done. They put in the Eppler machines because they regarded them as the better of the two, and kept them until the United put out its Model K. (R. I, 930, l. 15, 24 et seq.)

George Strong testified (R. I, 931, l. 42) that he has been making men's welt shoes for thirty years; that he began the use of the Eppler outsole stitcher about 1892, when they were then sewing the inner seam by hand, and they got along with the stitcher very well. About 1895, they took two Eppler welt machines and used them until about 1900, when they made a trade with the United Company and took Goodyear machines. They did this because their Eppler machines were "practically gone" and they

had a chance to turn them in to the United Company for the new rapid stitchers and welters, and he thinks that the Goodyear welter is a little better than the Eppler welter was. (R. I, 932, l. 23.) It may be added that the *new* machines for which the exchange was made were developed after the formation of the United Company.

Milton S. Florsheim testified that when the United Company was formed, he had Goodyear welters and stitchers, and had installed one line of Eppler welters, stitchers and rounders (R. I, 159, l. 7); that the Epplers were being used by others and he wanted to find out whether he could not use them and thus save one cent per pair royalty, the Eppler people charging that much less than the Goodyear (Ibid., 169, l. 22). And he said that in his opinion the work performed by the Eppler welters, stitchers and auxiliaries was as well done as that performed by the Goodyear machines, and that the best shoes made at that time, or as good as any made, were made on the Eppler machines. His company then made a high-grade shoe, but they were not as high priced as the shoes it is now making, which retail from $4 to $6 per pair. (R. I, 935, l. 30 et seq.)

George E. Keith, formerly president of the Eppler Company, and now a director of the United Company (R. 385, l. 21) admits that the Eppler Company had put out about thirty or forty welters, but not so many stitchers; that they had been attempting to install welters after 1892, and stitchers after 1894 or 1895, and that they had a line of machines for making welt

shoes, except a rough rounder, and were trying to perfect that, and had put five agents in the field (R. I, 389, l. 6 and 26).

R. H. Long (R. I, 224, l. 31) testified that he engaged in shoe manufacturing for himself in 1886 and was so employed at the time the United Company was formed; that his factory had a capacity of six thousand pairs a day; that at the time the United Company was formed he was engaged exclusively in the manufacturing of welt shoes, and was using the Eppler welt machine principally (R. I, 225, l. 10) and that he continued to use that machine long after the formation of the United Company; (R. I, 226, l. 3) that finally he surrendered the Eppler and took the Goodyear, which performs exactly the same class of work (R. I, 227, l. 41). There is considerable testimony as to why he made the surrender, but that is immaterial. We are only concerned with the fact that he had successfully used the Eppler for many years.

James H. Cunningham (R. I., 288, l. 31) testified that he had been superintendent of Stacy Adams Company for 30 years, which company has a daily capacity of about 1,200 pairs, welt shoes, exclusively; that his company commenced the use of the Eppler welter about 1892 and continued it until two or three years after the United Company was formed; that it was used for performing the same kind of work as the Goodyear machine; and that the *welter* was satisfactory, but the outsole stitcher did not do as good work as the Goodyear (R. I, 290, l. 3).

Ira E. Fletcher (R. I, 937, l. 36 et seq.) superintendent of F. M. Hoyt Shoe Company, said that he worked for W. L. Douglas from 1902 to 1910; that Mr. Douglas used the Eppler and Goodyear welt machines, had about *twelve* of the former and *eight* of the latter; *that the two classes of machines ran side by side in the same factory.* The shoes made on the Eppler and Goodyear machines were both put on the market *as welted shoes.* Douglas was using the Eppler stitcher as well as the welter, he said. The witness considered the Goodyear *stitcher* better than the Eppler, but he made no comparison between the Eppler and Goodyear *welter* further than to say that they ran side by side in the same factory.

Mr. Keith, just mentioned, testified that the Eppler welter was put out in 1892 and the stitcher in 1894 or 1895; (R. I, 389, l. 11). The Eppler company, then, was in business some seven years before the consolidation. This proves that it was a successful competitor or else it could not have lived that length of time.

It was shown that the Eppler Company was pressing its business and was advertising its product up to the moment of its acquisition by the United Company. (R. I, 361, l. 37.) It was a valuable property. In the Court below, the Government sought to prove its value by reports of the Company made as required by statute to the Commissioner of Corporations for Massachusetts covering the years 1896, 1897, and 1898. Copies of these reports, duly certi-

fied by the Secretary of the Commonwealth, were rejected by the Court on the ground of incompetence. (R. I, 362, l. 5, 388, l. 45.) Mr. Keith, president of the Eppler Company at the time it was absorbed, and a director of the United Company when he testified swore to the originals of the reports, in one case before a notary who duly attested the fact under his seal according to the certified copies. Asked whether he knew of the reports at the time they were made, Keith said, "I suppose I must have had knowledge of that." And further answered, when asked if the reports contained a correct copy of the assets owned by the company at the times covered by them, "I suppose it must have been. It must have been reported that way," but insisted that he had no present recollection of it. (R. I, 386, l. 42, 387, l. 41.)

The reports were sworn to and filed in pursuance of law. Hence properly certified copies of them were, under the circumstances, at least *prima facie* evidence of what they purported to disclose, and should have been admitted.

The report made March 30, 1898, less than a year before the United Company was formed, shows:

Machinery	$19,977.03
Cash and debts receivable	10,421.09
Patent rights	245,853.61
Machines in factories	287,010.09
Miscellaneous	17,713.16

and the admitted testimony shows, despite an extraordinary and unexplained reticence, ignorance, and forgetfulness upon the part of the former officers

of the Eppler Company and upon the part of the officers of the United Company (Winslow, R. I, 531, l. 37, 842, l. 20 et seq., Keith, R. I, 385–7, Howe, 675, l. 42, 676, l. 1–39), that there was paid for the stock of the Eppler Company some $6.00 (Arnold, R. I, 952, l. 24) or $6.50 (Brackett, R. I, 949, l. 40) a share. The par of the stock was $10.00 and its issued capital stock was $600,000. At this rate there was paid in the interests of the United Company from $360,000 to $390,000 for the business of this Company which, according to the defendants' evidence then had only thirty or forty machines out in shoe factories, and these largely in the factory of its president. (*Supra*, p. 38.) Mr. Howe was certain that the Eppler people would not take $100,000, but as to whether they got as much as $500,000 he did not know. (R. I, 676, l. 27.) Although the officers of the United Company, when asked to do so by the United States, could find no records showing what was paid for the Eppler Company they were able to find without any apparent difficulty a letter which passed between R. H. Long and the Eppler Company and a lease executed by that company and him before the consolidation. (R. I, 32, l. 33; 251, l. 6.)

The value placed upon the Eppler Company by the purchase shows that in the opinion of the defendants, the Eppler Company was a real and dangerous competitor.

The testimony above quoted as to the actual use of the Eppler machines and their possibilities of competition with the Goodyear machines is substan-

tially corroborated by Mr. Winslow himself. He said that both machines were being used in the manufacture of welt shoes, and that the machines were intended to perform the same operation but they did it in distinct and different ways. (R. I, 530, l. 37, et seq.; 531, l. 14.) And he added,

> It is true that in obtaining the Eppler Company we did not broaden our field, because it was embraced in the Goodyear Company's machines.
>
> Q. I believe you claim the Eppler machine was not hardly as good as the Goodyear welting machine?
>
> A. It wouldn't make as good a shoe; no.
>
> Q. But it was being put on the market?
>
> A. It was in use.
>
> Q. At that time, in the same territory in which the Goodyear machine was being put on the market?
>
> A. It was in use at that time and they were manufacturing Eppler welt shoes with it. (R. I, 531, l. 22–33.)

There should here be noticed the reason given for this acquisition made secretly through Henry B. Endicott, (who will again appear in connection with an even more important acquisition) at a cost of over $350,000. (Winslow, R. I, 530, l. 4.) The reason according to Mr. Winslow was to get rid of existing litigation. He insists there was no other purpose. (R. I, 531, l. 34.) This litigation the Goodyear Company which was going into the United Company was confident of winning (Howe, R. I, 470, l. 21) and it

was all litigation brought *by* the Goodyear Company, not against it. It was, moreover, litigation in which the plaintiff was apparently not very keenly interested. Of the group of cases brought, only one (Case 248, *Goodyear Shoe Machinery Company* v. *Eppler Welt Machine Company*) involved a principal machine. (Howe, R. I, 471, l. 27, 673, l. 34.) Mr. Howe says, "Excepting the suit under the Briggs patent on the *welting* machine and three suits on the *outsole stitcher* on the improvement in *shuttles*, all these suits related to auxiliary machines." (R. I, 674, l. 33.) He further said that if the Goodyear Company had succeeded in the pending patent litigation it would have compelled alterations in the Eppler machines "*except the welt* sewing machine." (R. I, 623, l. 29.) Even the Eppler welter, therefore, was not seriously involved.

Case 248 was brought in April, 1892. When the United Company was formed in 1899, the evidence, if any had been taken, had never been turned into court and no hearing had been had. (R. I, 470, l. 16, 472, l. 1.) The other cases related to patent infringements in auxiliary machines. (Howe, R. I, 471.) All were pending when the United Company was formed. Had the litigation been wholly successful its result might have affected temporarily the Eppler Company's position as a competitor of the Goodyear Company (Howe, R. I, 623, l. 29–38) although this is admitted to have been speculative (Howe, ibid), and as pointed out above, the chief machine, the

welter, of the Eppler Company was not seriously involved. Nor did the litigation, according to Howe (R. I, 679, l. 15) relate to the fundamental patents.

The only advantage which defendants suggest that the United Company could obtain by "getting rid" of this inactive litigation brought by one of its constituent companies against a competitor was that it escaped controversy with customers of the Eppler Company who were customers also of constituent companies of the United Company other than the Goodyear Company. Brief consideration will suggest the number of ways in which this might have been accomplished other than by the purchase of the competitor, without spending in the neighborhood of $600,000.

The question whether the purchase was legal even if it were assumed that the real purpose was merely to end this litigation is later discussed. (*Infra* p. 242.)

Other facts of importance in their bearing upon the position of the Eppler Company as an actual and prospective competitor and the purpose behind its acquisition are these:

The Goodyear Company asked and received a royalty of four cents a pair for each pair of men's shoes made on its machine. Its competitor, the Eppler Company, charged only three cents (Florsheim, R. I, 159, l. 24–27, Long, 249, l. 43, Advertisement, Eppler Welt Machine Company, R. I, 960, l. 31–35.) This very usual competitive situation is

to be borne in mind when one is asked to consider the competitive disadvantages of the Eppler machines with respect to the number of auxiliary machines, etc.

The United Company after the consolidation raised the royalty on the Eppler machines to four cents. (Winslow, R. I, 417, l. 36–45.) It refused to give Eppler machines at three cents to Florsheim who testified that some time after the United was formed, "I desired to trade in my Goodyear machines on which I was paying four cents a pair royalty for Eppler machines, for which, under my understanding with the Eppler Company, I would have had to pay only three cents a pair. Mr. Wilson [an officer of the United Company] would not make the trade." (R. I, 159, l. 24–28.) None the less, a demand for the Eppler machine continued, even after the consolidation.

Frederick G. King (R. I, 696, l. 30) called by the defendants testified that he was manager of the Goodyear Department of the United Company; that since the United Company was formed it had put out more than *forty* Eppler welters and more than *twenty* Eppler stitchers, but that he did not recollect that any auxiliary machines were put out; also that the last Eppler machines were received back by the United Company about December, *1912*. (Ibid. 702, ls. 9–15.)

After all the preponderant cause is found in the following:

There was a circular letter sent by the directors of the Goodyear Company to the stockholders of that

company announcing the organization of the United Company and inviting their participation. That statement (Plff's Ex. 152, R. I, 140) was drawn by defendant witness Howe (R. I, 630, l. 18). It contained the following:

> The great advantages to be secured by the control in one corporation, both in the United States and foreign countries, of the most efficient types of shoe machinery have been for several years recognized by the officers of the principal shoe machinery companies. For more than a year your directors and large stockholders have been in negotiations to accomplish this end.
>
> The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock.

When asked about the meaning of the paragraph first quoted above, Howe said (R. I, 630, l. 18 et seq.):

> I drew the circular letter to the stockholders of the Goodyear Company, which is Plaintiff's Exhibit 152. As to what I had in mind in making the statement in the first sentence in that circular, when this circular was issued, we had acquired the Eppler Welt Machine Company. * * * Therefore we had then the most efficient types of shoe machinery—perhaps I should have said protected by patents—in that we had the Goodyear welt and turn sewing machines and a long line of auxiliaries, which were the only system or set of machines which would make the Goodyear

> welts. * * * If any manufacturer wanted to make Eppler welts, we had the only system that would make them. Therefore, that seemed to my mind at that time—the United Shoe Machinery Company did—to represent the control in one corporation of the most efficient types of shoe machinery.

and he added:

> We didn't know whether the manufacturers would prefer, if there were no litigation at all between the two companies, whether the trade would prefer Eppler welts or whether they would prefer Goodyear welts. (R. I, 630, l. 43, 631, l. 1–3.)

This statement of the chief managing officer of the Goodyear Company (R. I. 466, l. 34 et seq.) that those concerned in the organization of the United Company did not know "whether or not the trade" eventually "would prefer the Eppler" machines to the Goodyear machines demonstrates that the Eppler Company was an important actual and even more important potential competitor of the Goodyear Company with which it was combined in the organization of the United Company. Taking this fact in conjunction with his explanation that the purpose of himself and associates was to place in the control of one corporation "the most efficient types of shoe machinery," there can be no doubt as to the real reason why the Eppler Company was absorbed. It was for the purpose of monopolization.

C. THE CONSOLIDATED & McKAY COMPANY HAD A MONOPOLY IN PEGGING MACHINES.

Formerly at least three types of pegging machines had been in use. (R. I, 534, l. 34–39.) At the time of the organization of the United Company, however, only the Davey Pegging Machine Company then owned by the Consolidated & McKay Company was putting out such machines. Pegged shoes had become an increasingly negligible factor in the industry. Of the 173,000 pairs of shoes made in 1899, only 7,475,000 were pegged. Of the 279,000,000 pairs made in 1910, only 3,000,000 were pegged. (Dfts. Ex. 215, R. I, 424.)

D. THE McKAY SHOE MACHINERY COMPANY HAD A SUBSTANTIAL MONOPOLY IN METALLIC AND HEELING MACHINES.

At the time of the formation of the United Company in 1899, the McKay Shoe Machinery Company was not a competitor of either the Eppler, the Goodyear, or the Consolidated & McKay Company. It did not produce either a welter, laster, or outsole stitcher. But it had a substantial monopoly of the more important metallic machines.

Mr. Winslow said, referring to metallic machines,

> As regards different kinds or makes of machines there were not a great many in 1899 and practically all were being made by the McKay Company which was putting out a large number of those machines. My best information is that the McKay Company was putting out all the heel attaching machines that were being put out in 1899, and that no

> other company had put out any heel attaching machines for quite a number of years prior to 1899. When I speak of a heeling machine, I mean a heel attaching machine always. (R. I, 851, l. 23, et seq.)

As to metallic fastening machines other than heeling machines, Mr. Winslow said,

> I think the Metallic Association * * * the stock of which was owned by the McKay Company were putting out nearly all the metallic fastening machines that were being made in the United States. (R. I, 532, l. 6, et seq.)

The acquisition of this company by the United Company did not, in itself, destroy existing competition. It did, however, remove the possibility that this powerful corporation engaged in a cognate line of business might some day become a competitor of the United Company. The acquisition, moreover, had a much more important result. As will appear, it completed the defendants' fabric of monopoly in important bottoming machinery and made fully effective the system of leasing which will be set out. (*Infra*, pp. 145–213.)

II. THE ORGANIZATION OF THE UNITED SHOE MACHINERY COMPANY IN 1899.

It has already been stated that the United Shoe Machinery Company of New Jersey was incorporated February 7, 1899. The circumstances which led up to its formation were related in considerable detail both by Mr. Winslow and Mr. Howe who appear to

have been the prime movers of the project. (Winslow, R. I, 406, l. 35, Howe, R. I, 627, l. 44, 8, l. 1, 2.)

Mr. Winslow was the principal man in the Consolidated & McKay Company. (R. I, 406, l. 25, 522, l. 20.) That company, as has been noted, put out a line of lasting machines which substantially covered the field, and it owned the Davey Company, which was the only company then putting out pegging machines. Mr. Howe was the principal executive officer of the Goodyear Company (R. I, 466, l. 34) which had a large business in welt method machines, and a considerable business in lasting machines. The competition betweea these two companies has been noted above. (*Supra*, pp. 17–34.)

The discussions between Mr. Winslow and Mr. Howe covered several months. The date was 1898. Mr. Howe was a lawyer of wide experience in patent and corporation law, having come to the bar in 1878. (R. I, 466, l. 28.) Mr. Winslow was not a lawyer. Mr. Howe was "opposed to the plan of having a harmonious agreement, a sort of working agreement between the Lasting Machine Company [the Consolidated & McKay Co.] and the Goodyear Company because (he) had a sort of indefinite idea that it might be deemed a combination in restraint of trade." (R. I, 629, l. 20.) He evidently thought, however, as did a good many other lawyers at that chronological stage of the interpretation of the Sherman Law, that it was enough to escape the penalties of the statute to give the combination a corporate form. He insisted, therefore, "that there should be a complete

merger and consolidation." (R. I, 630, l. 7.) This idea "led to the formation of the United Company instead of carrying out the matter in the other way." (Howe, R. I, 675, l. 13.) Mr. Howe added, "I think it was under my advice." (Ibid.) Mr. Winslow says he was in accord with the general policy outlined by Mr. Howe upon this point. (R. I, 535, l. 14.)

In addition to being a lawyer, Mr. Howe was a practical business man, for he says that the management of the Goodyear Company "fell very largely upon" him. (R. I, 466, l. 34.) He knew whether or not the welter, stitcher and auxiliaries which his company was putting out competed with the welter, stitcher and auxiliaries of the Eppler company and he knew whether the lasting machines put out by the Consolidated & McKay Company were competitors of the lasting machine put out by his company. Because of what he knew, he also knew that the *combination of the companies would suppress competition* and restrain trade. His error, not then uncommon, in supposing that a *combination in corporate form* could suppress competition and escape the penalties of the Sherman law, is discussed *infra*, pp. 214–221.

The plan was thereafter expanded to include the McKay Shoe Machinery Company which had a monopoly of its particular field, and had not yet extended its activities to the point of competition with the Consolidated & McKay or the Goodyear Companies, *supra*. The only reason given by Mr. Howe for the inclusion of the McKay Shoe Machinery Company was the opportunity to consolidate its agencies with

those of the Goodyear Company. (R. I, 633, l. 27.) Mr. Winslow, however (R. I, 409, l. 29), apparently did not think very highly of the agencies of the McKay Company. He suggests as a reason for the inclusion of the McKay Company that its managing director, Mr. Brooks, was an old man, and wanted to retire, (R. I, 406, l. 41) and his final statement was that he believed that by adding the metallic and heeling machines to the lasting and welt method machines they could give better service, get a better product from the machines, and get better results to the manufacturers and themselves. (Winslow, R. I, 529, l. 27 et seq.) This is the customary justification for monopoly. And he must have had a belief approaching certainty that a far reaching monopoly would result. Whatever the reason, the fact was that the McKay Company was acquired at a price of eleven dollars a share for stock which was selling on the market at eight or nine dollars (R. I, 533, l. 40) and the original offer was raised from nine to eleven dollars in order to get it. (Howe, R. I, 633, l. 41.) There is no ambiguity about the monopolistic result. (*Infra*, p. 54.)

It was decided also to acquire the business of the Eppler Welt Machine Company. The business of that company in welt machinery has been described. (*Supra*, pp. 34–49.) It is insisted that this company was taken in only to avoid the litigation above described. (Winslow, 531, l. 34.) The facts as to this litigation have been noticed. (*Supra*, pp. 43–45.) For some reason best known to the parties concerned, this

stock was treated differently from that of the other companies. Instead of an offer to exchange the stock of the United Company for the stock of the Eppler Company, the stock of the latter company was purchased quietly by Mr. Endicott and later turned over to a syndicate which took it for the United Company and turned it over to that company. (Winslow, R. I, 528, l. 42; 529, l. 1–3; 530, l. 1 et seq.)

III. CONSEQUENCES OF THE FORMATION OF THE UNITED COMPANY AND THE SUPPRESSION OF PRESENT AND POTENTIAL COMPETITION.

The formation of the United Company brought under a single control every company actively putting out or planning to put out lasting, pegging, welt sewing and outsole stitching, heeling and the more important metallic fastening machines in the United States. (Jones, I, 112, l. 22; Selz, I, 142–145; Winslow, I, 537, l. 32, 851, l. 19 et seq.; Howe, I, 630, l. 24 et seq.)

The immediate results were:

(1) The suppression of the actual and of the potential competition in lasting machines theretofore existing between the Consolidated & McKay Company and the Goodyear Shoe Machinery Company. (*Supra*, pp. 17–34.) It created a monopoly in lasting machines.

(2) The suppression of the actual and of the potential competition between the Goodyear Shoe Machinery Company and the Eppler Welt Machine Company. (*Supra*, pp. 34–49.) It created a monopoly of welting and outsole stitching machinery.

(3) The absolute prevention of future competition between the McKay Shoe Machinery Company, the Goodyear Shoe Machinery Company, the Eppler Welt Machine Company, and the Consolidated & McKay Company.

(4) The creation of an absolute and complete monopoly in lasting, pegging, welting, outsole stitching, heeling and metallic fastening machines.

(5) The creation of an organization with vast resources whose control of many different types of machines necessary to the shoe manufacturing industry gave it a power to extend and intrench its monopoly which none of its constituent companies, however successful, could approach.

A simple illustration makes this clear. Before the consolidation, the McKay Company had a monopoly of metallic machines. (*Supra*, p. 49.) But a shoe manufacturer, though obliged to go to it for such machines, was free to choose welt machinery where he could find it. The leases of each of the constituent companies dealt only with the machines made by it. In the case put, therefore, a competitor of the Goodyear Company would not be affected by the McKay Company's monopoly. After the consolidation, however, it became possible for the United Company to say to a manufacturer seeking metallic machines that he could have them on acceptable terms only if he used also United Company's welt machinery, lasting machinery, and so on through the list.

From the formation of the United Company, therefore, it became possible to that company to destroy any competitor who had only one or two types of machines to offer, no matter what the excellence of those machines. It acquired the power, by using an appropriate leasing system, to eliminate and forever exclude all competitors and to maintain a monopoly of all the lines of machines made by it.

The manner in which exactly this was accomplished under the system of leases devised and enforced by the United Company to transform into fact the possibilities of monopoly afforded by the circumstances of its organization appears *infra*, pp. 145–213.

The effect of the consolidation of those companies was precisely the same as if they had remained *separate* but had entered into a written agreement vesting in Winslow and the other persons who became officers of the United Company the power to refuse the machines of one company to any shoe manufacturer who would not agree to operate them only in connection with the machines of the other companies.

Even Mr. Howe recognized the illegality of such a plan. The device of corporate organization was accordingly resorted to. (*Supra*, p. 51.) Such an artifice is not a way of escape from the prohibition of the Sherman Law. (*Infra*, pp. 214–221.)

Control of the McKay Shoe Machinery Company was necessary to the success of a design to exclude competition in the manner just outlined. That is,

as was suggested, a sufficient and, it is submitted, the true reason for taking in that company.

(6) The creation of a corporation so powerful that it could raise royalties, e. g. by increasing the royalty on welt machines established by the Eppler Company at three cents to four cents (*supra*, p. 46); bring about a manufacturer's giving up machines to which he had title, and substituting machines for whose mere use he must pay royalties by refusing to supply repair parts (McElroy, R. I, 189, l. 39); compel an association of manufacturers to accept leases to whose terms they made earnest objection (*infra*, p. 198); and generally to become an overlord of the industry.

IV. THE EXPRESSED PURPOSE OF THE CONSOLIDATION.

The evidence establishes that it was the purpose of the combiners to create and perpetuate a monoply in the lines of shoe machinery then put out by the companies entering the combination and to extend it to other lines.

This purpose was expressed. When the organization of the United Company had been determined upon the directors of each of the constituent companies sent out as we have shown an address to its stockholders; and in the first paragraph of the address to the stockholders of the Goodyear Shoe Machinery Company, dated February 8, 1899, it was said:

> The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most

> efficient types of shoe machinery have been for several years recognized by the officers of the principal shoe machinery companies. For more than a year your directors and large shareholders have been in negotiation to accomplish this end. * * *
>
> The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock. (Plff's Ex. 152, R. I, 140.)

Mr. Winslow was confronted (R. I, 535, l. 22) with this statement of which Mr. Howe admitted authorship (R. I, 630, l. 18). He did not deny that the original purpose of the United Company was that set forth in the above quotation. And it is very significant with respect to the purpose actuating the combination that 20 days after its organization, the United Company bought out the Goddu Company, a competitor. (*Infra*, pp. 62–64.)

Speaking of that acquisition, Mrs. Converse, formerly Miss Van Wagennen, daughter of the treasurer of that company, testified to a conversation with Mr. Winslow on February 3, 1900, about the purchase of the stock of that company in which he said, "Miss Van Wagennen, I bought them out to get rid of them, to have no more trouble or *competition* with them." (R. I, 311, l. 32; also 312, l. 11.)

Mr. Winslow at first denied this, although he admitted the conversation with her, and then said, "I do not remember any talk about competition." (R. I, 437, l. 17.) But Mrs. Converse supported her

statement by producing a copy of a memorandum of the conversation made at the time. (R. I, 313, l. 13.)

Other instances showing that it was Winslow's purpose to suppress competition by the purchase of competing companies appear later on. (*Infra*, pp. 60–126.)

A contract entered into on September 11, 1899, between the United Company and Henry W. Peabody & Company wherein Peabody & Company were made agents of the United Company in Australia, contains the following:

> Whereas the United Company have acquired control of the boot and shoe and leather working machinery made by the following named corporations doing business in said Boston, namely:
>
> Goodyear Shoe Machinery Company,
> Consolidated & McKay Lasting Machine Company,
> McKay Shoe Machine Company,
> Eppler Welt Machine Company,
> Goddu Metal Fastening Company,
> Gordon Staple Lasting and Tacking Co.,
> Davey Pegging Machine Company,
> Gem Flexible Insole Company,
> Boot & Shoe Sole Laying Company,
>
> and contemplates acquiring the control of other lines of boot and shoe and leather working machinery and boot and shoe findings, except leather, linings, lasts, and finished boots and shoes. (Plff's Ex. 189, R. IV, 1250.)

That contract was signed by George W. Brown, Treasurer of the United Company. And after Winslow had stated that he was in constant communica-

tion with Brown about the various matters affecting the company and its policy, he was asked whether Mr. Brown was correct in the recitals just quoted. He answered with a significant evasion. (R. I, 536, l. 3.)

There is no doubt that the organization of the United Company accomplished exactly the purpose of combining "in one corporation the most efficient types of shoe machinery" most of which before the combination were competitive. (Plff's Ex. 152, *supra*.) The recitals of the contract quoted above show that the United Company contemplated exactly the expansion of that company which in fact took place. The inevitable results upon interstate commerce have been noted and will be the subject of further comment. In the face of these facts, literal denials of specific intent to restrain trade are of no significance.

V. SUBSEQUENT ACQUISITIONS MADE BY UNITED COMPANY FOR PURPOSE OF DESTROYING COMPETITION AND EXTENDING ITS MONOPOLY.

A. ACQUISITIONS OTHER THAN THE PLANT PURCHASE.

In the record (pp. 37–105) are set out contracts of purchase and bills of sale under which the United Company acquired the shoe machinery business and assets of fifty-six individuals, partnerships, and corporations, not including the properties of Thomas G. Plant, which are dealt with separately hereafter. The result of these acquisitions was to remove certain remains of competition, to give the United Company control of a number of machines used in the manu-

facture of shoes previously freely obtainable in the open market, and so to intensify the possibilities of domination already noted as an effect of the original consolidation. They emphasize and make clear the intent to monopolize which underlay defendants' course of action. In many instances covenants were exacted from the vendors designed to prevent future competition with the United Company where the vendors were inventors. These covenants required assignment to the United Company of all inventions made during a period of years.

The general attitude of the defendants with respect to these acquisitions is vividly exemplified by the testimony of C. H. Krippendorf. The witness was a director of the National Boot & Shoe Manufacturers' Association. Testifying with regard to Mr. Winslow's statements at a conference with a committee of that body, Krippendorf said:

> After discussion, he said, in substance, "We in order to prevent competition, have to buy out competing machines, and we have endeavored to create a condition under which we don't have to pay more money for those machines than they are worth." (R. I, 214, ls. 35–39.)

It is also a fact that in some cases what was purchased was patent rights and inventions and not machines. This difference would seem to be of no importance. A prospective competitor is none the less such because he has only proceeded to the point of acquiring a valid patent under which to pursue

competition at the time he is removed from the field by acquisition.

For example, the first of the acquisitions proved was that of the Goddu Company. This was consummated less than a month after the organization of the United Company and was deemed by defendants of sufficient importance to warrant inclusion in the recitals of the Henry W. Peabody contract. (*Supra*, p. 59.) The Goddu Company was engaged in perfecting and manufacturing nailing machines, slugging machines, tacking machines and standard screw machines—all important metallic fastening machines. No other concern except the United Company was engaged in this field. The United Company, as successor to the McKay Company was putting out machines for doing the work for which the Goddu machines were adapted. (R. I, 42, l. 1.) The Goddu machines, according to Winslow, were not yet in a condition to be placed in the hands of manufacturers for continuous operation "but they were in a state of development where some of them could have been, without extensive changes, made operative." (R. I, 436, l. 28.)

In view of this testimony there would seem to be no warrant for the contention of one of the judges below that "the evidence is not sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines." In any event, it appeared that the very thing the Goddus

were doing was the perfection by all necessary reconstruction of their machines. The contention referred to is made as a basis for the proposition that, if a competitor is likely to become so important that his removal after his competition had become actual would be illegal, illegality is escaped by removing him before he develops to that point. This is ingenious, but it is not the law. (*Infra*, p. 231–234.)

In the particular case the reason given by Mr. Winslow for the acquisition, at a cost of about $150,000 (Plff's Ex. 60, R. III, 514), was the disposal of patent litigation to which the United Company had succeeded as *plaintiffs*. Howard testified that all the alleged infringements were on the part of the Goddus. (R. I, 849, l. 4.) The disposal of such litigation could hardly be worth $150,000 to the defendants. The removal of an able competitor might well have been worth that amount. The testimony of Mrs. Converse, previously referred to, shows this reason to be the true one. Her father had been a stockholder and was treasurer of the Goddu Company from its organization in 1897. (It had been in existence less than two years when acquired.) The actual purchase by the defendants was of the stock belonging to the Goddus, who possessed inventive ability (R. I, 436, l. 42) as the witness's father apparently did not. When the Goddus sold out they left her father and others in (R. I, 312, l. 25). Mrs. Converse testified to a subsequent conversation with Mr. Winslow to which reference has previously been made

and which was supported by a copy of a contemporaneous memorandum. She said:

> We had discussed a long while. I said to Mr. Winslow, "If you say what is true, that they had no business and no machines and no money in the treasury and no money—they couldn't raise money to go on with the business, and no manufacturers to take them—they couldn't put them on the market then," I said, "Mr. Winslow, why did you buy them out—because they would have gone to the wall—they would have had to if you say what is true—they could never have competed with you, a rich, powerful trust; why didn't you leave them alone and let them die a natural death, which they would have done? Why did you buy them out?" And he said: "Miss Van Waggenen, I bought them out to get rid of them, to have no more trouble or competition with them." (R. I, 312, l. 1.)

The Goddu Company ceased to do business. The Goddus under the contract agreed to assign any and all inventions which they should thereafter make within a period of ten years and agreed that thereafter they would not during a period of ten years engage directly or indirectly in the business of making or selling any invention relating in *any* way to machinery useful in the manufacture of boots and shoes. (Plff's Ex. 60, R. III, 518, par. 1.)

Thus, by this initial acquisition the prospective opportunity of shoe manufacturers to obtain metallic machines elsewhere than from the defendants was removed, and the defendants were enabled to say to

a shoe manufacturer in need of such machines, "You may have metallic machines on acceptable terms only if you are willing to use them upon shoes upon which other operations are performed by our lasting and other machines."

It is unnecessary to review in detail all of the fifty-six acquisitions set out in the testimony. Some may, however, be noted as having special significance in the aspects already shown.

Among these are the following transactions:

1. WINKLEY AND PHILLIPS.

On March 16, 1900, the United Company acquired from Erastus E. Winkley and Benjamin Phillips their inventions and improvements relating to "sole leveling machines," agreeing to pay to Winkley and Phillips a royalty of $20 for each made or sold, leased or otherwise disposed of. (Plff's Ex. 77, R. III, 615, par. 3.)

It took covenants from Winkley and Phillips that all inventions or improvements in sole-leveling machines or sole-pressing machines which they should *thereafter* make or acquire should be conveyed to the United Company. (Plff's Ex. 77, R. III, 615, par. 7.)

Howard, defendant's patent attorney and expert (R. I, 41, l. 27), testified that at the time of acquiring the above inventions or improvements the United Company was engaged in putting out sole-leveling machines, but that they were not of the same type as those covered by the inventions and improvements acquired (R. I, 48, l. 11).

2. SWAIN-FULLER MANUFACTURING COMPANY.

On February 2, 1911, United Company acquired the business and assets, including the letters patent, of Swain-Fuller Manufacturing Company, Boston, Mass., a Maine corporation engaged in manufacturing shoe machines, paying therefor $13,201.98, part in cash and part in preferred stock of the United Company. (Plff's Ex. 88, III, 660, par. 1; Dft's Ex. 231, V, 454.)

Howard testified that the Swain-Fuller Company was manufacturing and putting out, among others, a machine known as the "Star leveling machine," used practically exclusively on turn shoes, and that the United Company was manufacturing and putting out a leveling machine, but he claimed that the United Company's machine was not adapted for leveling turn shoes. (Howard R. I, 53, l. 20.)

Winslow testified that by this purchase they also acquired a "Single sole-molding" machine. (R. I, 459, l. 28. Dft's Ex. 231, V, 455.)

3. CARVER COTTON GIN COMPANY.

On April 30, 1908, the United Company acquired for $16,883, cash, the shoe machinery business of the Carver Cotton Gin Company, a corporation engaged in the business of manufacturing and putting out machines and devices used in the manufacture of shoes. (Plff's Ex. 127, IV, 893.)

The United Company took from the vendors covenants that they would not within 15 years directly or indirectly enter into or assist any other

concern in entering into or carrying on any business relating to manufacturing or dealing in any machinery or devices used in the manufacture of shoes, or any other business which would *in any way interfere* or *compete* with the business of the United Company with respect to such machines or devices. (Plff's Ex. 127, IV, 895.)

Howard testified that among the machines obtained from the Carver Cotton Gin Company were the Acme leveling machine, a vamp skiving machine, and a machine known as the Davis leather-board skiver. (R. I, 71, l. 1.)

He further testified that at the time of this agreement, the United Company was putting out the Goodyear automatic leveler and the Emerson skiving machines, but that the acquired machine did not do the work in the same way. (R. I, 70, l. 37.) Even though this be admitted the result accomplished was the same.

Since the acquisition of its shoe machinery business, the Carver Cotton Gin Company has continued with its cotton gin business.

By these three acquisitions, the defendants acquired control of a machine needed in manufacturing all kinds of shoes. The leveling machine used in welt shoes is now put out only as an auxiliary machine. (Dft's Ex. 231, V, 457.) It can not be obtained for use with welt machinery supplied by any competitor of the defendants. (R. I, 468, l. 34; 544, l. 10.)

4. THE SEAVER PROCESS LASTING COMPANY.

On January 30, 1900, the United Company acquired for $38,000 (Capital stock $600,000) the business and assets, including all letters patent of the Seaver Process Lasting Company, a corporation engaged in manufacturing *lasting* machines and *pulling-over* machines used in the manufacture of shoes. (Plff's Ex. 75, R. III, 591.) The Seaver Company was then insolvent. (R. I, Winslow, 456, l. 30.)

Suits had been brought by the Consolidated & McKay Company against the Seaver Company. The record does not show that the suits were ever prosecuted to a final determination.

The Seaver Company was the only company putting out lasting machines in 1899, except the Goodyear and Consolidated Companies. (*Supra*, p. 18.) It had also a pulling over machine; as had the United Company. (Howard, R. I, 47, l. 8.) The development of the latter machine was continued. It is now put out by the United Company and is a successful machine. No other pulling over machine is now offered by any American manufacturer of shoe machinery. (Dft's Ex. 235, V, 585 [72].)

The result of this acquisition, then, was to remove the final vestige of competition in lasting machines, and to shake off the possibility of competition in pulling over machines.

5. CORRUGATED WIRE FASTENING COMPANY.

On June 30, 1899, defendant Hurd, in behalf of the United Company acquired for $12,750 from Silas

Pierce and John M. Kingsbury, a majority of the capital stock of the Corrugated Wire Fastening Company, Boston, a corporation, engaged in the manufacture and sale of a tacking machine and corrugated wire used in the manufacture of boots and shoes. (Plff's Ex. 62, R. III, 530–531; Donham, I, 37, l. 43; 38, l. 1; Dfts. Ex. 231, V, 474.)

Howard testified that the United Company had a machine for performing the *same* character of work as the one obtained from the Corrugated Company. (R. I, 42, l. 17.) He says, the machine was "out of date," (R. I, 42, l. 16) but this is discredited by the further statement which he makes, viz: "The United Company continued to supply wire and parts for those machines. They have parts in stock today." (R. I, 42, l. 34.)

The Corrugated Company was discontinued as a going concern and its business transferred to the factory of the United Company. (Dft's Ex. 231, R. V, 475.)

6. GLOBE SEWING MACHINE COMPANY.

On February 15, 1901, the United Company acquired control of the stock of the Globe Sewing Machine Company, Boston, a corporation engaged in putting out sewing machines used in the manufacture of shoes, paying therefor $20,000. (Plff's Ex. 89, R. III, 662.)

Howard testified that at the time of acquiring stock control of the Globe Company that company was engaged in manufacturing a *welting* machine, an *outsole stitching machine*, and an experimental *rough*

rounding machine. The business of the Globe Sewing Machine Company was discontinued. (Howard, R. I, 53, l. 36.)

By this acquisition a possible competitor in welt method machines was removed. It is noteworthy that the Globe Company had an experimental rough rounder. The absence of such a machine is said by defendants' witnesses to have been a weakness in Mr. Plant's effort to produce a complete line of independent shoe machinery. (R. I, 776, l. 29.)

7. ROSS-MOYER MANUFACTURING COMPANY.

On September 20, 1900, the United Company acquired for $86,580 all the business of the Ross-Moyer Manufacturing Company, Cincinnati, engaged in manufacturing and putting out *edge setters, edge trimmers,* heel scourers, buffing machines, rolling machines, etc., used in the manufacture of shoes. (Dft's Ex. 231, R. V, 451, 454.)

On the same day an employment agreement was made by the United Company with Simon Ross, under the terms of which he contracted that in consideration of the purchase of the Ross-Moyer Company, and the agreement to employ him, he would not during a period of *ten* years engage in the manufacture of, or deal in, machines, tools, or appliances in *competition* with said United Company and would convey to the United Company any invention relating to shoe machinery which he then owned, or which he should thereafter, during the period of ten years, invent. (Plff's Ex. 87, R. III, 658.)

Howard testified that at the time of the acquisition of the Ross-Moyer Company, the United Company was engaged in putting out *edge-setters* and *edge-trimmers*. (R. I, 52, l. 44.)

The Ross-Moyer Company (issued capital stock $197,400—all owned by the United Company) now acts as agent for the United Company. (Plff's Ex. 187, R. IV, 1235.)

Defendant Winslow is also president of the Ross-Moyer Company (Plff's Ex. 188, R. IV, 1242) and he and Howe are on its board of directors (Plff's Ex. 188, R. IV, 1247).

8. EDWIN THEOPHILUS FREEMAN.

On October 9, 1899, the United Company acquired from Edwin Theophilus Freeman, Boston, all of his business, including machinery and letters patent of the United States, relating to nailing machines used in the manufacture of shoes, for $11,000, $500 in cash and $10,500 in preferred stock of the United Company, and in addition thereto $500 per year as royalties for a period of eight years. (Plff's Ex. 68, R. III, 568.)

The United Company took from Freeman, for the same consideration, covenants that he would not *thereafter* engage in the manufacture of, or deal in, or directly or indirectly aid, assist, or encourage anyone to engage in the manufacture of, or to deal in boot and shoe or leather-working machinery, in *competition* with said United Company, or the corporations owned or controlled by it and an additional covenant from

Freeman that he would "convey to said United Company any and all improvements or inventions in or relating to shoe machinery, which he has made, nor which he shall hereafter make." (Plff's Ex. 68, R. III, 570, par. 3.)

Howard testified that when the above agreement was entered into with Freeman the United Company already had a nailing machine for performing operations *similar* to the operations performed by the Freeman machine. (R. I, 44, l. 37.)

It is claimed by the defendants that there were cross infringements of the United's machines by Freeman and of the Freeman patents by a machine that the United Company was developing, although no infringement suits had been brought (Dfts. Ex. 275, V, 757.)

9. ALBERT G. BREWER.

On October 11, 1899, the United Company acquired from Albert G. Brewer, Hopkinton, all of his inventions and improvements in machines used in the manufacture of boots and shoes known to the trade as "heel-breasting machines" for $250 in cash and $5 royalty on each machine thereafter marketed by the United Company. (Plff's Ex. 70, R. III, 576.)

It took also from Brewer an assignment of "all inventions which he may hereafter make relating to machines for breasting heels on the last."

Howard testified that Brewer had built an experimental heel-breasting machine, and that the United Company, prior to the acquisition of Brewer's machines, had been experimenting with a machine for

performing *similar* operations, but that it was not upon the market as a commercial machine; that Brewer's inventions were subsequently embodied in the United's machines. (R. I, 45 l. 14.)

The defendants claimed that Brewer's machine infringed one of the United's patents, but there is no evidence that the United's machine infringed Brewer's patents.

Six hundred and ninety-eight power heel-breasting machines alleged to have embodied the Brewer inventions, were subsequently made and put out by the United Company. (Dft's Ex. 275, R. V, 759.)

10. AMERICAN SOLE LAYING MACHINE COMPANY.

On September 25, 1902, the United Company acquired for $5,200 from Arthur Fuller, all the property and assets, including letters patent of the American Sole Laying Machine Company, Boston, a corporation, engaged in manufacturing and putting out machines designed and used for laying or leveling shoes. (Plff's Ex. 98, R. IV, 705.)

The United Company took from Fuller covenants that he would not become interested, directly or indirectly, for a period of ten years in the business of manufacturing machines adapted for use in the operation of laying or leveling the soles of boots and shoes. (Plff's Ex. 98, IV, 708, par. 9.)

Howard testified that at the time of the acquisition of the business of the American Sole Laying Machine Company, the United Company was engaged in manufacturing and putting out machines for laying

the soles of boots and shoes, although he claims that the United Company's machines were inferior to those of the American Sole Laying Company. (R. I, 56, l. 19.)

11. BOOT AND SHOE SOLE LAYING COMPANY.

On May 25, 1901, the United Company acquired for $45,000 cash, the property and business of the Boot & Shoe Sole Laying Company, Boston, a corporation, engaged in manufacturing and putting out machines designed and used for laying the soles of boots and shoes. (Plff's Ex. 90, R. III, 666.)

Howard testified that, at the time, this Company was engaged in manufacturing and putting out a sole-laying machine known as the "Boston sole layer," and that the United Company was then engaged in putting out a machine for doing *similar* work, although he claims that the United's machine was inferior to the machine acquired. The acquired company was discontinued as a going concern and its business taken over by the United Company. (R. I, 54, l. 20 et seq.)

12. J. K. KRIEG & COMPANY.

On May 6, 1903, the United Company acquired for $97,056.52 the property and assets of J. K. Krieg & Company, New York, engaged in manufacturing and dealing in shoe machinery, etc. (Plff's Ex. 104, R. IV, p. 746, also Ex. 105, R. IV, 752.) The United Company took from the vendors covenants that they would not engage for a period of 15 years except as employees of said United Company or some one of its controlled corporations, in any business relating

in any way to the manufacture of or dealing in shoe machinery, or in any business which would in any way interfere with or *compete* with said United Company. (Plff's Ex. 104, R. IV, 750, par. 8.)

Howard testified that the Krieg Company was engaged in putting out a heel-seat rounding machine, a Louis heel-scarfing machine, and two or three types of embossing machines; that the United Company at that time was putting out a heel-seat rounder and a scarfing machine of different types; that the United Company was also engaged in putting out embossing machines. (R. I, 60, l. 28.)

Winslow testified that the Krieg Company had also been agent for some of the old companies that became a part of the United. (R. I, 419, l. 31.)

13. JOSEPH P. CURTIS.

On October 20, 1903, the United Company acquired from Joseph P. Curtis, Everett, Mass., all of his business, including letters patent and applications relating to cementing machines for $500 in cash and the balance in royalties until the total should amount to $5,000. (Plff's Ex. 106, R. IV, 756.)

The United Company took from Curtis conveyances of all inventions and improvements which he should *at any time thereafter* make relating to cementing machines, and all letters patent and interest therein. (Plff's Ex. 106, R. IV, 755.)

Howard testified that at the time of entering into the above agreement with Curtis, the United Company was engaged in putting out a cementing ma-

chine, but for performing an entirely different operation from that performed by the Curtis machine. (Howard, R. I., 61, l. 12.)

14. GEORGE A. SMITH MACHINERY COMPANY.

On November 20, 1902, the United Company acquired for $38,790.79 from George A. Smith all the assets and business of the George A. Smith Machinery Company, a corporation "engaged in the business of manufacturing devices and supplies used by manufacturers and dealers in boots and shoes, and by others." (Plff's Ex. 100, R. IV, p. 721, 2nd par.)

The United Company took from the vendor covenants that he would not at any time within 10 years enter into or be engaged in or assist any other person in entering or carrying on any business relating to the manufacture or sale of any machinery intended or adapted for use in the manufacture of boots or shoes, or *compete* or interfere with any business carried on by said United Company, or by any company of which it is the owner of the majority of the capital stock. (Plff's Ex. 100, IV, 723, par. 4.)

Howard testified that the Smith Company at the time of its acquisition was putting out a spring-heel scarfing machine, and that at the time the United Company was not putting out a machine for doing similar work. (R. I, 58, l. 3.) He further testified that the Smith Company had also been acting as agent prior to 1899, for certain of the companies that made up the United Company. (R. I, 57, l. 42.)

15. ARNOLD MACHINE & SUPPLY COMPANY (WILLIAM B. ARNOLD).

On June 28, 1904, the United Company acquired all the business and assets of the Arnold Machine and Supply Company, Boston, a corporation engaged in manufacturing and putting out cementing machines used in the manufacture of boots and shoes, for $500 cash, and the royalties to be paid on each machine thereafter manufactured by the United Company during the life of the patents transferred. (Plff's Ex. 113, R. IV, 820.)

The United Company for the same consideration required and took from Arnold restrictive covenants similar to the others already noted providing that he would not engage in a like business within 15 years, and would convey to it any inventions relating to show machinery he might make. (Plff's Ex. 113, R. IV, 818.)

Howard testified that at the time of entering into the above agreement the United Company was engaging in putting out *cementing* machines, but he claimed that they were not adapted for work similar to that of the Arnold machine. (R. I, 64, l. 39 et seq.)

16. BOOTH BROTHERS.

On October 25, 1904, the United Company acquired from Booth Brothers, Rochester, N. Y., an assignment of their business in the United States and Canada relating to *perforating* machines, for $24,000 and a royalty of $15 to be paid for each machine thereafter sold by the United Company in the United States and $10 for each machine sold by it in Canada;

the said royalties to be continued until they should aggregate $7,600, whereupon all interest of said Booth Brothers in the said inventions should cease. (Plff's Ex. 114, R. IV, 823, par. 2.)

The United Company took covenants from the vendors that neither of them would engage in the manufacture or sale of any perforating machines, or become interested in any manner whatsoever in any such machines during the terms of the patents assigned to the United Company. (Plff's Ex. 114, R. IV, 825, par. 8.)

Howard testified that the United Company was engaged in putting out a *perforating* machine which could be used for the same operation as the Booth machines, although he claimed that it was not *intended* for the same operation. (R. I., 65, l. 28.)

On November 1, 1907, the United Company acquired for $71,284 the entire remaining business of Booth Brothers of manufacturing and putting out machinery, tools, mechanisms, devices, findings, materials, and supplies used in the manufacture of boots and shoes. (Plff's Exs. 121–124, R. IV, 856–871.) The United Company took from the vendors elaborate restrictive covenants, excluding the vendors from having any interest in any shoe machinery business or any business or patents relating to the manufacture of shoes for a term of 15 years. (Plff's Ex. 121, R. IV, 859.)

Howard testified that the United Company through the above agreement acquired from Booth Brothers a fudge edge-making machine, a *wheeling* machine,

a stitch burnishing machine, an upper-shaping machine and a *beating* machine. He further testified that the United Company at that time had a *wheeling* machine and an upper-*beating* machine. (R. I, 69, l. 9.)

Having acquired Booth Brothers' business, a corporation was formed under the laws of New York, with a capital of $25,000 all of which is issued and owned by the United Company. It operates a manufacturing plant at Rochester, N. Y. Winslow is president of the Company and is also a director, as well as defendants Hurd, Howe, and Coolidge. (Plff's Exs. 187, R. IV, 1232, 188, R. IV, 1240, 1246.)

17. FRED H. PERRY.

On January 1, 1904, Fred H. Perry entered into an agreement with the United Company wherein he agreed to convey to that company all inventions which he should make relating to shoe machinery for a period of five years from the termination of his employment by the United Company. (R. I, 61, l. 19, et seq.)

18. BOSTON SHOE TOOL COMPANY.

On August 16, 1899, the United Company acquired the business of Timothy A. Bresnahan, Boston, engaged in manufacturing and putting out machines, tools, and appliances used in the manufacture of shoes, together with the entire capital stock of the Boston Shoe Tool Company for approximately $72,000, paid in cash and preferred stock of the United Company. (R. I, 38, l. 33; Plff's Ex. 67, R. III, 563 et seq.; Dft's Ex. 231, R. V, 460.)

The business of the Boston Shoe Tool Company as a going concern was discontinued and the business transferred to the Beverly factory of the United Company. (Dft's Ex. 231, R. V, 460.)

Bresnahan agreed to enter the employ of the Boston Shoe Tool Company, as manager, for a period of two years. United Company took from him covenants that he would not *thereafter* engage in nor directly or indirectly aid, assist, or encourage any other person to engage in the manufacture of heel-trimming, edge-trimming, or edge-cutting machines and tools, cutters or irons for heel or edge trimming, for edge setting, or of any of the machines, tools, and products formerly made by the Boston Shoe Tool Company. (Plff's Ex. 67, R. III, 565.)

D. GLOBE SHOE TOOL COMPANY.

On October 24, 1899, the United Company, acquired the business of James H. Reed, and others, copartners, trading under the name of Globe Shoe Tool Company, Boston, engaged in manufacturing and putting out edge cutters and irons used in the manufacture of shoes. The purchase price was $30,000, which was paid part in cash and part in preferred stock of the United Company. (Plff's Ex. 71, R. III, 577.)

Loomer and Perkins, part owners of the Globe Shoe Tool Company, each agreed to enter the employ of the United Company at a compensation of $25 per week, for a period of one year, and furthermore agreed that they would not *thereafter* engage, either

directly or indirectly, or assist or encourage any other person so to do, in the manufacture of shoe machinery in competition with the United Company; and for the same consideration, each of them further agreed that they would convey to the United Company all improvements or inventions relating to shoe machinery, which they should *thereafter* make. (Plff's Ex. 72–73, R. III, 581, 582, 583, 584.)

The machines and business of the Globe Shoe Tool Company was along the *same* line as that of the Boston Shoe Tool Company *previously* acquired by the United Company. (R. I, 46, l. 1; Dfts. Ex. 231, V, 460.)

20. JOHN RITCHIE, AND JOHN RITCHIE COMPANY.

On November 18, 1899, the United Company acquired all the business of John Ritchie, and John Ritchie Company, a corporation, relating to the manufacture of standard screw machines, slugging machines, tacking machines, and machines, mechanisms, and appliances for manufacturing and inserting metallic fastenings, including standard screw wire, slugger wire, and tacker wire, used in the manufacture of boots and shoes. The purchase price was not to exceed $15,000 (R. I, 40, l. 11; Plff's Ex. 74, R. III, 585, 588.)

The vendors agreed that they would not *thereafter* manufacture, or sell, or become, directly or indirectly, interested in any wire-fastening shoe machinery like that which they had sold.

The purpose of defendants to force shoe manufacturers to deal exclusively with the United Company

is well illustrated in Dfts. Ex. 231, R. V, 444. It is there stated, with respect to the contract with John Ritchie, and the John Ritchie Company—"the reason for this contract and purchase was to prevent manufacturers who held metallic machinery under lease from the United Company (and who had agreed to purchase their metallic fastening material from the United Company) violating their leases and contracts by purchasing material from Ritchie." (R. I, 46, l. 31 et seq.)

21. STANLEY MANUFACTURING COMPANY.

On March 19, 1900, the United Company acquired the stock of machines, parts, and supplies, on hand at Frankfurt, Germany, of the Stanley Manufacturing Company, a Maine corporation, with its principal place of business at Lawrence, Mass., engaged in the manufacture of McKay sewing machines and other machines, paying therefor $86,500 in preferred stock of the United Company. (R. I, 40, l. 35; Plff's Ex. 78, R. III, 620.)

The United Company took from the Stanley Company a covenant that "the said Stanley Company will at once give up its branch office in Germany, so far as relates to the sale or disposal of shoe machinery or shoe manufacturers' supplies, and that the Stanley Company will not in the future establish an office, or maintain an agent or representative of any kind to solicit orders for the sale of such machinery and supplies, outside of the United States of America, and will not *export* or sell, or dispose of to others for export, any boot or shoe machinery or

supplies therefor, outside of the United States, except through the United Company." (Plff's Ex. 78, R. III, 621.)

A somewhat similar transaction in respect of a shoe machinery company engaged in foreign commerce is that with W. J. Young. (Plff's Ex. 99, R. IV, 713.)

22. BAY STATE INTERNATIONAL SHOE MACHINERY COMPANY.

On January 30, 1901, United Company, acquired for the United Shoe Machinery Company de France and for Deutsche Vereinigte Schuhmaschinen Gesellschaft G. m. b. H. the property and good will for the Continent of Europe of the Bay State International Shoe Machinery Company, Boston, Mass., paying therefor approximately $25,000 in preferred stock of the United Company. (Plff's Ex. 86, R. III, 655; Dfts. Ex. 231, R. V, 448.)

Howard said that the acquired company "had a welter and stitcher and I think *a rough rounder*" but that he did not know whether it "was shipping machinery from the United States to foreign countries. (R. I, 52, l. 20.) It was free to do so if it saw fit, and therefore it was a potential if not an actual competitor.

23. GEORGE W. EMERSON & COMPANY.

On December 18, 1902, the United Company acquired for $41,500 the business of George W. Emerson and William R. Sampson, copartners, trading under the name of George W. Emerson & Company, Lynn, Mass., engaged in manufacturing and putting out machinery, appliances, devices, and

supplies used in the manufacture of boots and shoes. (Plff's Ex. 101, R. IV, 725.)

The United Company, for the same consideration, took from the vendors covenants that they would not engage in competition with the United Company for a period of 15 years, and that all inventions which they should make relating to machinery for use in the manufacture of shoes at any time within said period should be forthwith disclosed to the United Company. (Plff's Ex. 101, R. IV, 729, 730, 731; pars. 5, 6, and 7.)

Howard testified that the Emerson Company at the time of its acquisition was engaged in manufacturing a power-spring heel scarfer, and a heel-burnishing machine, and that the United Company was at that time putting out a heel-burnishing machine but of a different type from that put out by the Emerson Company, and that the United Company was also putting out a spring heel-scarfing machine to be operated by hand. (R. I, 58, l. 21, 39; 59, l. 5.)

The business of the Emerson Company as a going concern was discontinued and its business transferred to the United Company. (R. I, 59, l. 11.)

Sampson has remained in the employ of the United Company. (R. I, 95, l. 12.)

34. JOSEPH W. LEARY.

On January 1, 1904, the United Company acquired, for $3,052, from Joseph W. Leary, Lynn, Mass., his business of manufacturing and dealing in shoe machinery. (Plff's Ex. 108, R. IV, 765.)

The vendor agreed to enter the employ of the United Company for a period of 5 years at a compensation of $40 per week, and for the same consideration, agreed to convey to the United Company all improvements which he should make within 10 years from the date of the termination of his employment with the United Company, and that within the same period he would not engage, directly or indirectly, in any business which *competed* or interfered with the United Company. (Plff's Ex. 108, R. IV, 767, par. 3.)

25. ZACHARY TAYLOR FRENCH.

On January 1, 1904, the United Company and United Shoe Machinery Company, of Maine, acquired the business of Zachary Taylor French, Boston, Mass., engaged in the development of machines designed and used in the manufacture of boots and shoes, agreeing to pay therefor $15,000 in annual installments of $1,500 each. (R. I, 63, l. 22; Plff's Ex. 111, R. IV, 803.)

The United Company took from the vendor, for the same consideration, covenants that he would assign all inventions which he should make or acquire within 10 years relating to machines useful in the manufacture of boots and shoes, and that he would not engage in competition with the United Company, for the same period, in the United States or in any foreign country. (Plff's Ex. 111, R. IV, 807, pars. 5 and 6.)

Howard testified that French had been in the employ of the United Company and previously in the

employ of the Goodyear Company, as an inventor, and was later superintendent of the Goodyear factory at Boston; that the above agreement was entered into as a settlement of the royalties that would become due under various existing contracts, as French desired to leave the employ of the United Company. (R. I, 63, l. 30.)

26. KIMBALL & HADLEY.

On June 11, 1904, the United Company acquired, for $4,750 cash, the business of Herbert L. Kimball and Irving A. Hadley, copartners, doing business under the firm name of Kimball & Hadley, Lynn, Mass., engaged in manufacturing and marketing *awls, needles,* drivers, supplies, etc., used in the manufacture of boots and shoes. (Plff's Ex. 112, R. IV, 814.)

The United Company, for the same consideration, took from the vendors *covenants* that neither of them would, within a period of 15 years, become interested in, developing, or carrying on any business which related to manufacturing or dealing in awls, needles, or drivers. (Plff's Ex. 112, R. IV, 815, par. 2.)

Howard testified that at the time of acquiring the business of Kimball & Hadley the United Company was engaged in manufacturing and putting out *awls, and needles,* except curved needles for the Goodyear sewing machine, and that the United Company was making awls for the use of its own machines; that the United Company purchased Goodyear needles from others, including Kimball & Hadley. (R. I, 64, l. 16.)

Howard's testimony that the United Company bought Goodyear needles from Kimball & Hadley is specifically denied by Hadley, who testified as follows:

> Q. Now, do you know whether the United Company, before it obtained your needles, manufactured any needles for its Goodyear machines?
>
> A. It did not, to my knowledge.
>
> Q. Did it buy Goodyear needles of you?
>
> A. Never.
>
> Q. Did you supply Goodyear needles for its machines?
>
> A. Not to the United Shoe Machinery Company. (R. I, 310, l. 20.)

The fact is that Kimball and Hadley were forced to sell out their business to the United Company by reason of the latter's leasing system, discussed *infra*, pp. 145–213. That company was buying its awls and needles from persons other than Kimball & Hadley and supplying them to its lessees, who were obliged by the terms of their leases to take the needles from the United Company. Consequently when Kimball & Hadley approached the lessees for the purpose of selling their needles, "They stated orally that the using of our needles and awls was in violation of the terms and conditions of the leases and if the manufacturer continued to use our awls and needles the United Company would take their machines out of the factories." (R. I, 308, l. 31.) Finding it difficult to place the output of their factory, Hadley had a conversation with Mr. Bailey, one of the managing

officers of the United Company, with respect to the sale of the Kimball & Hadley Company. They were not able to agree upon a price. He said to Mr. Bailey, "We can manufacture needles and sell them as cheap as the United Shoe Machinery Company," to which the latter replied, "Oh, no, you can't; we can give them away if necessary. You know Mr. Winslow is a man that once having made up his mind to get something, he will get it." (R. I, 309, l. 16 et seq.) Realizing the impossibility of competing with the United Company and impressed by the truth of what Mr. Bailey said with respect to Mr. Winslow's disposition, Kimball & Hadley sold out; but the sale was not voluntary; it was coerced.

Kimball & Hadley, several years after they had sold out their partnership business to the United Company again engaged in the awl and needle business and the United Company brought suit to enjoin them, upon the ground that they were violating their agreement of June 11, 1904. (R. I, 311, l. 15.)

27. LEOPOLD J. COURTEAU.

On October 1, 1904, the United Company acquired from Leopold J. Courteau, Brockton, an assignment of all his inventions and devices, including letters patent, relating to machines and mechanisms for holding the linings of shoes during the process of pasting the outer leather to the lining. (Plff's Ex. 115, R. IV, 826–831.)

The United Company, for the same consideration, took from Courteau covenants that he would convey

to it all inventions which he should at any time thereafter, within 15 years, own or possess or in which he should have any interest whatsoever, relating to mechanisms or devices for handling or holding linings. (Plff's Ex. 115, R. IV, 830, 1st par.)

28. BROCKTON SUPPLY COMPANY.

On November 1, 1905, United Shoe Machinery Company of New Jersey, acquired, for $21,724, the business of Oscar A. Campbell and Samuel H. Nichols, copartners, trading under the name of Brockton Supply Company, Brockton, Mass., engaged in manufacturing and putting out machines for pulling lasting tacks. (Plff's Ex. 116, R. IV, 831–834.)

Howard testified that at the time of acquiring the business of the Brockton Supply Company the United Company was engaged in developing a machine for pulling lasting tacks, but that none had been put out. (R. I, 66, l. 24.)

29. ZOTIQUE BEAUDRY.

On September 4, 1906, the United Xpedite Finishing Company, a corporation controlled by the United Company acquired for $12,500 cash, from Zotique Beaudry, Lynn, his inventions and improvements relating to machines, and parts thereof, for burnishing and finishing the heels of shoes. The United Xpedite Finishing Company for the same consideration took from vendor covenants that all inventions which he should thereafter make should be disclosed to the United Xpedite Finishing Company, and that the vendor would not within a period

of 15 years engage in making, developing, or exploiting any improvements in heel burnishing machinery or carrying on any business of manufacturing mechanisms for finishing or burnishing the heels of shoes without the consent in writing of said United Xpedite Finishing Company. (Plff's Ex. 120, R. IV, 850–855.)

Howard testified that at the time of entering into the agreement wiith Beaudry, the United Company *had* a heel burnishing machine. (R. I, 68, l. 9.)

30. RICHARDSON SHOE MACHINERY COMPANY.

On December 1, 1908, the United Shoe Machinery Company acquired, for $80,000, from William B. Rice and others, all the property and business of Richardson Shoe Machinery Company, Lynn, Mass., engaged in manufacturing and putting out *McKay* sewing machines and machines designed and used for cutting or dieing out leather and other materials used in the manufacture of boots and shoes, including machines known to the trade as "*clicking* machines." (Plff's Exs. 125–126, R. IV, 871–893.)

United Company took from the vendors, and each of them, covenants that they would not for a period of 10 years engage in the manufacture of any machinery which should compete with the business of said Richardson Company in such machinery. (Plff's Ex. 125, R. IV, 875, par. 6; also Plff's Ex. 126, R. IV, 889, par. 3.)

Howard testified that at the time of the acquisition of the Richardson Company, United Company

was also engaged in manufacturing and putting out *McKay* sewing machines. (R. I, 70, l. 10 et seq.)

31. HARRY L. RICE—FRED LA CHAPELLE.

On January 20, 1909, the United Company acquired for $11,500 cash from Harry L. Rice and Fred La Chapelle, of Lynn, their inventions and improvements relating to machinery for forming chain stitches and chain-stitch seams, and machines used for attaching the welts of boots and shoes. (Plff's Ex. 128, R. IV, 898–904.)

The vendors for the consideration aforesaid in effect agreed to sell to the United Company all inventions which they owned relating to methods for the formation of chain stitches adapted to use in attaching the welts to shoes, etc., and likewise to transfer to the United Company all inventions which either of them within 10 years thereafter might make or acquire relating to any shoe machinery intended for the purposes described in the agreement.

They further agreed that they would not, without the consent in writing of the United Company enter into or become interested financially or otherwise or assist any person in carrying on the manufacturing of or dealing in the machinery described in the agreement in any manner which would directly or indirectly *compete* with the business of the United Company therein. (Plff's Ex. 128, R. IV, 899, 901, pars. 1 & 4.)

Howard testified that the United Company acquired by this purchase a welting machine which was

equipped "to put an extra thread on to the single thread side of the chain stitch formed by the machine" and that the United Company was then engaged in manufacturing and putting out welting machines, minus the improvement on the Rice and La Chapelle machine. (R. I, 71, l. 32.)

Howard further testified that the United Company has not yet put out the machine acquired from Rice and La Chapelle, but "we are still experimenting with it." (R. I, 72, l. 1.)

32. THE WENTWORTH COMPANY.

On February 3, 1910, the United Company acquired for $60,000 cash all of the capital stock and business of the Wentworth Company of Cincinnati, a corporation engaged in manufacturing and putting out machines used in the manufacture of boots and shoes. (Plff's Ex. 130, R. IV, 913.)

The United Company took from each of the vendors (seven individuals) covenants which in effect provided that none of them would at any time within a period of 10 years without the consent in writing of the United Company engage in manufacturing, developing or dealing in certain shoe machinery described therein and would not compete or interfere with the business of the United Company in the aforementioned machinery. (Plff's Ex. 130, R. IV, 918, par. 5.)

Howard testified that through this acquisition they acquired a "machine for beating heel seats; * * * This operation was to prepare the heel end of the shoe for the sole." That they also acquired "a shank

sticking machine." He further testified that the United Company at that time was manufacturing a machine for beating heel seats, and that the United was experimenting with the shank sticking machine. (R. I, 73, ls. 6, 18, 29.)

Winslow testified that the Wentworth Company was acquired for the purpose of settling infringement litigation.

33. ADAM H. PRENZEL.

On November 22, 1910, the United Company acquired from Adam H. Prenzel, of Halifax, Pa., all his inventions and letters patent of the United States and of other countries, relating to certain machines used in the manufacture of turn shoes, for $8,000 cash and 25 per cent of all royalties on machines thereafter manufactured by the United Company under the letters patent acquired until they shall have aggregated $75,000. (Plff's Ex. 143, R. IV, 1046.)

The United Company for the same consideration took from the vendor covenants which in effect provided that he would convey to the United Company all inventions, etc., adapted for use in connection with footwear or for use in connection with machinery adapted for use in the manufacture of footwear which the vendor should make or acquire at any time prior to the expiration of certain letters patent. (Plff's Ex. 143, R. IV, 1048.)

This like other similar covenants, tends to show suppression of competition so far as it puts restrictions upon the use of any inventions which the

vendor might make respecting the art of shoe machinery.

M. V. BRESNAHAN & COMPANY.

On December 19, 1910, the United Company acquired for $25,000 cash the business of Maurice V. Bresnahan, William H. Bresnahan, and John J. Dolan, trading under the name of M. V. Bresnahan & Company, of Lynn, engaged in manufacturing and putting out machines used in the manufacture of boots and shoes. The vendors each agreed to enter the employ of the United Company. (Plff's Ex. 144, R. IV, 1054, 1057.)

The United Company took from the vendors covenants that neither of them should, directly or indirectly, within 10 years *after* the termination of their employment by the United Company engage in any business relating to manufacturing machinery adapted for use in the manufacture of boots and shoes, or in any business which would in any way compete with the business of said United Company; and each of them further agreed to convey to the United Company for the same consideration all inventions which they should make or acquire at any time within 10 years after the termination of said employment agreement relating to shoe machinery. (Plff's Ex. 144, R. IV, 1055, 1058, pars. 2 & 5.)

Howard testified that by this purchase they acquired an experimental *lasting* machine and a *heel burnishing* machine and that the United Company at that time was manufacturing and putting out *lasting* machines and *heel-burnishing* machines. (R. I, 77, l. 1, 18.)

"Schedule A" attached to Plaintiff's Exhibit 144 gives a list of many different machines together with supplies acquired from the Bresnahan Company.

33. CHARLES P. STANBON & COMPANY.

On April 2, 1911, the United Company acquired for approxiamtely $122,735 cash the business of Charles P. Stanbon, doing business under the name of Charles P. Stanbon & Company of Lynn, engaged in manufacturing and putting out machines, tools, mechanisms and devices used in the manufacture of shoes. The vendor agreed to enter the employ of the United Company. (Plff's Ex. 145, R. IV, 1064.)

Howard testified that the United Company acquired from the Stanbon Company a channel-cementing machine, a folding machine, perforating machine, and a channel-opening machine, and that the United Company at that time *was* putting out an inferior channel-cementing machine and a perforating machine. (R. I, 78, l. 15.)

The foregoing evidence shows a series of restrictive covenants imposed upon the vendors which greatly restrained trade. They were forbidden to engage in *competition* with the United Company for a stated period of years and were required during a like period, where they were inventors, and most of them were, to assign to the United Company all discoveries made by them. This had the effect of chilling the genius of invention and of removing all incentives to serious work in that field of discovery. Not

only that, but it withheld any inventions the vendor should make from the hands of men who might become competitors of the United Company.

The claim that any or all of these acquisitions were made for the purpose of avoiding litigation relative to patent infringements will not do, because the purpose real or fancied is immaterial when the natural and necessary effect, as here, is undue restraint of trade. (*Infra*, pp. 242–244, 280.) This end never justifies the means, defendants to the contrary notwithstanding.

Moreover, if the machines acquired were infringing any machines owned by the United Company, the parties owning them could have been prevented by injunction from manufacturing or operating them, but suits for infringement would not prevent the defendants therein from inventing or acquiring other constructions which would accomplish the same purpose and avoid infringement. Hence to bring about the desired result, namely, the destruction of competition, it became necessary not only to buy out the inventors but to tie them by covenants which would prevent future competition. Accordingly there are here constantly recurring stipulations binding competitors and inventors who might become competitors not to compete in the future. Whether such covenants isolately viewed are illegal need not be discussed. Such a series of such covenants is forbidden by the Anti-Trust Law. (*Infra*, p. 234.)

The fact that some of the machines obtained by the defendants in the foregoing acquisitions were not at the time actually competing with machines put

out by the United Company does not alter the illegal character of the transaction. It must always be remembered that these machines were taken over by a great corporation which had a monopoly of certain machines which no shoe manufacturer could be without (*supra*, p. 15), and therefore could compel every shoe manufacturer to come to it for those machines. Every acquisition which gave to the defendants control of a machine formerly freely obtainable in the open market increased the power of the defendants to exclude competition as to other machines by refusing to let shoe manufacturers have on acceptable terms machines of which defendants were the only source of supply unless such manufacturers took also from the defendants machines in which competition existed or threatened. How the defendants availed themselves of this power is shown. (*Infra*, pp. 145–213.)

B. THE PLANT ACQUISITION.

1. INTRODUCTORY.

During several years prior to September, 1910, Thomas G. Plant had, at great trouble and expense, developed a complete line of shoe machinery for manufacturing welt, turn, and McKay shoes. (R. I, 189, l. 19.) Plant also had contracts with factories where such machines could be made in large quantities, and had equipped and was successfully operating his machines in the factory of Thomas G. Plant Company, a corporation, engaged in the shoe manufacturing business at Boston, Mass. (daily capacity approxi-

mately 17,000 pairs). He had thus demonstrated his ability to become immediately an active and effective competitor of the United Company, when that company, after extended negotiations, purchased all his assets, including machines and patents relating to shoe machinery, together with a majority of the capital stock of the Thomas G. Plant Company. Clearness requires the statement that this latter company is a *shoe manufacturing* corporation of whose stock Plant owned 60 per cent. It must not be confounded with the *shoe machinery* interest of Thomas G. Plant of which he was the sole owner.

On September 23, 1910, at four o'clock in the morning, the purchase was consummated. (R. I, 590, l. 1.)

2. WHAT PLANT HAD.

The properties and contracts acquired from Plant were as follows:

(a) Two hundred and six United States patents.

(b) Twenty-eight applications for United States patents.

(c) Seventy-four British patents.

(d) Twenty-one applications for British patents.

(e) Seventy-three French patents.

(f) Fourteen applications for French patents.

(g) Forty-two German patents.

(h) Forty-seven applications for German patents.

(i) Twenty-six Austrian patents.

(j) Fifty-eight applications for Austrian patents.

(k) Thirty-three Australian and eleven New Zealand patents.

(l) Fifteen thousand shares of the preferred and seven thousand five hundred shares of the common stock of the Thomas G. Plant Company. This company, which was engaged in *shoe manufacturing* exclusively, had outstanding twenty-five thousand shares of preferred stock and twelve thousand five hundred shares of common stock. The par value of each share of preferred and common stock was $100.

(m) The contents of a machine shop located in the Pevear Building in Lynn, Mass., and two-thirds of the capital stock of the Bresnahan Shoe Machinery Company, which was manufacturing for Plant; also patterns, tools, jigs, etc., built for the purpose of manufacturing the "Wonder Worker" shoe machinery (Plant's machinery). These patterns, etc., were in use at the place of business of the Bresnahan Shoe Machinery Company, at the machine shop in the Pevear Building, at the place of business of C. P. Stanbon & Company, Lynn, Mass., Taft-Pierce Manufacturing Company, Woonsocket, Rhode Island; Stanley Manufacturing Company, Lawrence, Mass., National Machine & Tool Company, Boston. Certain machines and parts were also included. (R. I, 563, l. 9.)

(n) There were also assigned the following agreements:

i. Between Charles P. Stanbon & Company and the Manufacturers' Machine Company, which latter was controlled by Plant, under which the Stanbon Company gave to the Manufacturers' Company an option to purchase on or before November 1, 1906, the busi-

ness of the Stanbon Company. (Plff's Ex. 132, R. IV, 931.) By a separate contract the United Company assumed all obligations and liabilities of Plant under the Stanbon contract. (Plff's Ex. 138, R. IV, 1038.)

ii. Between the Keighley Company and Thomas G. Plant, dated January 26, 1910, whereby the Keighley Company agreed to furnish to Plant its rapid inseam trimming machines in such quantities, up to twenty-five per cent of its output, as Plant might desire, said machines to be subject to a lease of forty-nine years without the payment of royalty. Plant agreed that he would place said machines only in the factories of such shoe manufacturing concerns as equip their factories with his general line of machinery; that he would use his best efforts to induce the users of his machines to use the Keighley rapid inseam trimming machines; Plant further agreed that he would take thirty or more of said machines during the year 1910 and fifteen or more during each six months thereafter during the life of the agreement; and the Keighley Company agreed that it would not sell its business or patents to any one within one year in such manner or to such effect as would interfere with the performance of its contract with Plant. (Plff's Ex. 132, R. IV, 975.)

By separate contract, the United Company covenanted with Plant that it would indemnify and save him harmless from all actions, claims, and liabilities, which might at any time arise under the contract with the Keighley Company, and Plant agreed that he

would exercise the rights secured to him by said agreement *solely* as the United Company should direct. (Plff's Ex. 135, R. IV, 1023.)

iii. Between Plant and the Stanley Company, dated June 15, 1910, wherein Plant obtained the right to use certain machinery belonging to the Stanley Company. (Plff's Ex. 132, R. IV, 931.)

iv. Between Plant and the Stanley Company of the same date, which assigned to Plant the rights held by the Stanley Company under a contract it had made with the United Company on May 1, 1901. (Plff's Ex. 132, R. IV, 983.)

v. Between Plant and the Stanley Manufacturing Company whereby the latter leased to Plant certain real estate also a lot of machinery, by which Plant also agreed that on or before the termination of the lease, to wit, June 30, 1915, he would purchase the property described for $150,000 cash. (Plff's Ex. 132, R. IV, 988, 991.)

vi. Between Plant and the Stanley Manufacturing Company, whereby Plant agreed to manufacture for that Company so many of certain machines as the Stanley Company might thereafter need, and as Plant might find it convenient to make. (Plff's Ex. 132, R. IV, 1012.)

In connection with the several contracts above referred to, the United Company entered into special contracts to protect Plant against all liability that might arise therefrom. (Plff's Ex. 140, 142, R. IV, 1040–43.)

It was also agreed that claims against Plant to enforce certain leases for the use of United Company's machines, which were set forth in a bill of equity then pending in the Supreme Judicial Court of Massachusetts, and claims for infringement of letters patent by Plant would be abandoned.

We invite attention to the large number of important obligations assumed by the United Company for the purpose, defendants say, of procuring a few patents owned by Plant.

The United Company took from Plant covenants that he would assign to it all inventions, etc., which he might make or otherwise acquire within 15 years thereafter, relating to the manufacture of shoes or to machinery, devices, etc., used in such manufacture.

Thus the several contracts executed between Plant and the United Company show within themselves that Plant was the owner of numerous patents upon shoe machinery, that he had obtained the ownership or control of or was in contract relations with a number of factories for the manufacture of shoe machinery located in different parts of the country, and that he was fully equipped to enter upon active and extensive competition with the United Company.

3. THE PURCHASE BY THE DEFENDANTS.

In June, 1910, negotiations were entered upon between the United Company and Plant with a view to purchasing the Plant machinery interests just described. At first they were without success. They

were renewed from time to time until September 23rd when they were closed, according to Howe, after an all-night session, at 4.30 a. m. (R. I., 688, l. 21.) The money consideration was $6,000,000; according to the defendants' testimony, $500,000 had been paid the day before when not so much as a scrap of paper had been drafted or signed. (R. I., 487, ls. 28 to 44; 488, l. 1.)

This covered the Plant machinery, 60 per cent of the capital stock of the Plant shoe manufacturing company, and the other Plant interests described under the previous head. (R. I., 486, ls. 1 to 11.)

The story of the negotiations eventuating in the purchase is told by Winslow (R. I., 558, l. 6 *et seq.*); Endicott (R. I., 578, l. 10 *et seq.*); Howe (R. I., 668, l. 35 *et seq.*) and Herrick (R. I., 602, l. 6 *et seq.*). We do not think it necessary further to abstract it here.

4. PLANT WAS A SERIOUS COMPETITOR OF THE DEFENDANTS.

a. He Had Already Completely Equipped a Large Shoe Factory.

As stated, *supra*, Plant had equipped with his machines the shoe factory of The Thomas G. Plant Company, Boston, which had a daily capacity approximating 17,000 pairs. The Thomas G. Plant Company conducted its entire business for several years with this machinery. It continued to use it even after the purchase by the United Company. Substantially all the machines were continued in use until December, 1912 (McGaffee, R. I, 774, l. 36), and some of them were in operation at the time when the testimony was taken [Jan. 7, 1914] (McGaffee, R. I, 781, l. 42).

b. He Was Offering to Equip Other Manufacturers and Was Ready to Do So.

Plant also had contracts with factories where his machines could be made in large quantities. (*Supra*, pp. 99–101.) He had offered to install them in the factories of the Commonwealth Shoe and Leather Company, the W. H. McElwain Company, and Endicott-Johnson & Company. (Jones, R. I, 114, l. 31; also Endicott, R. I, 576, l. 27.) He had issued an elaborate catalog (Plff's Ex. 266) and was prepared to furnish his machines to shoe manufacturers generally if the opportunity was presented.

Representatives of large shoe factories located in the west had caused his machines to be inspected and as will appear came to Boston immediately prior to the sale to the United Company and made a further inspection with a view to purchasing an interest in the business. (*Infra*, pp. 99–111.)

c. His Machines Were Efficient Competitors of the United Machines in the Opinion of Experts.

Apart from actual success in the Plant shoe factory, there was the following direct testimony as to the capabilities of Plant's machines:

Warren F. McElroy, from 1890 to 1911, superintendent of the manufacturing department of the Hamilton-Brown Shoe Company, later president of the Non-Royalty Shoe Company, and still later in the employ of Burrow, Jones & Dyer Shoe Company, St. Louis, Mo., testified that he went through Plant's factory in May, 1910, at the request of Mr. Brown, president of the Hamilton-Brown Shoe Company.

The shoe manufacturers just mentioned as contemplating acquiring an interest in Plant's shoe machinery had also sent McElroy as an expert to examine the machines.

Mr. McElroy testified:

> The machines were doing women's McKay and welt work of good workmanship and high grade. I spent practically two days going over the machinery. I can not state the number of machines in operation, but it was a full line, consisting of lasting, welting, stitching and leveling machines. The essential bottoming room machinery was the machinery I examined. The work done was equally as good as that done by our United Company machines (the Hamilton-Brown Company, his employer, had the United Company's machines) and I felt they were doing about the same number of pairs. They were actually at work on women's shoes. I saw men's shoes there which were made upon them. (R. I, 189, l. 15, et seq.)

Milton S. Florsheim, president of the Florsheim Shoe Company, of Chicago, Illinois, testified that he went through Plant's factory in 1910, and found that Plant's machines were doing very satisfactory work, and that Plant had a line of machines which were making welt shoes and also McKay sewed shoes. (Florsheim, R. I, 160, l. 37 et seq.)

E. F. Selz, general manager of the manufacturing department of Selz, Schwab & Company, Chicago, Illinois, engaged in the manufacture of men's and

women's shoes, testified that he spent a half day examining Plant's machinery which was in operation in Plant's shoe factory and that the machines were making women's welts and McKay sewed shoes, and that Plant had a full line of machinery for making such shoes; that the machines were doing equally as good work, as far as he could observe, as the United Company's machines in his own factory, and with as much rapidity; that the machines were capable of being used in the manufacture of men's welt shoes. (R. I, 145, l. 40, 146, l. 1 et seq.)

Charles H. Jones, president of the Commonwealth Shoe and Leather Company, with factories at Whitman, Mass., and at Gardiner and Skowhegan, Maine, testified that he spent one entire day in June, 1910, examining Plant's machines; that his examining the machines was with a view to arranging for their use in his own factory; that Plant offered him the complete line of machinery which included every machine that was then in use in the Jones factories belonging to the United Shoe Machinery Company, offering in all, somewhere between 125 and 150 machines; that the price named by Plant was somewhere between $125,000 and $150,000 for the complete line; that the proposition was rejected principally on account of the tying clauses of the United Company's leases; (*infra*, pp. 145–213) that Plant's machines were adapted for the manufacture of men's shoes as well as women's although witness never saw the machines manufacturing men's shoes. (Jones, R. I. 114, l, 26 et seq., 124, l. 16, et seq., 125, l. 31.)

George E. Warren, an expert in the employ of the United Company, testified that, in conjunction with a Mr. Phillips, he had made an examination of the Plant factory in September, 1910, at the instance of the United Company. (R. I, 808, l. 29.) He said there were "sixty-nine machines in the Plant catalogue, and we saw them all, but not all in operation. It was a very large factory and had a capacity of ten thousand pairs a day or more, and was in full operation at that time." (R. I, 809, l. 6.) "I found a welter which was welting shoes and doing the work rapidly. They were running it at different speeds, some of them as fast as we run ours. The work on the shoe looked very well." (R. I, 809, l. 21.) "I regard the United Company welter as mechanically superior, and, taken as a whole, to some extent a superior machine to the Plant machine." (Ibid, l. 35.) "These Plant improvements on the welter were the things which especially impressed me." (R. I, 813, l. 5.)

This, we may add, is high praise from a representative of the United Company.

Elmer P. Howe, director and expert of the United Company, said that he had examined the Plant machines with Winslow prior to the purchase (R. I, 668, l. 35), and that in the main the machines "were improvements on old machines" upon which the patents had expired (R. I, 787, l. 6, 669, l. 16). With respect to the Plant *welting* machines, he said that Plant had added certain improvements which constituted a very valuable feature. (R. I, 669, l. 21–30.)

The defendants introduced considerable evidence with reference to this transaction, designed to show that Plant's machines as they were in September, 1910, were not yet fully satisfactory for shoe making processes; that the purchase was intended merely to acquire certain inventions which the United Company believed that *it*, but inferentially not Plant, could develop so as to be of great value, and to relieve the United Company of litigation.

It appears, however, that after the report of Mr. Warren and his associate experts was made to Winslow, there was no suggestion whatever upon Winslow's part that the particular inventions mentioned by them should be singled out and purchased, but during the entire negotiations nothing was talked of but the buying of Plant's *entire* line of machinery. (R. I, 559, l. 19 et seq.) This is important.

The machines were new, and to a certain extent experimental, and, as was to be expected, certain weaknesses and defects developed under the test of actual operation. Much is made of this circumstance by the defendants. There is, however, nothing in the record to indicate that the defects were of such character as not to be easily remedied by the alterations and adjustments common in the practical working out of a project like Plant's and the evidence does show conclusively that Plant and his assistants were possessed of a very high grade of inventive genius which already had been shown in the production of a number of inventions admitted by the defendants to be very valuable.

d. Shoe Manufacturers Believed the Plant Machines to be Efficient and Were Eager to Purchase an Interest in Them.

In September, 1910, a group of shoe manufacturers had been for some time in negotiations with Plant with a view to acquiring an interest in his shoe machinery business for the purpose of obtaining a source of supply of machinery other than the United Company and to secure relief from what they regarded as oppressive and arbitrary methods of the United Company. These manufacturers were Jackson Johnson, representing the Roberts Johnson & Rand Shoe Company, with a capacity of over 30,000 pairs of shoes daily, A. C. Brown, representing the Hamilton-Brown Company of St. Louis, with a capacity of 25,000 pairs of shoes daily, George Brown, representing the Brown Shoe Company of St. Louis, Henry W. Peters, representing the Peters Shoe Company of St. Louis, Milton S. Florsheim, representing the Florsheim Shoe Company of Chicago, with a capacity of 4,000 pairs of shoes daily, E. F. Selz, representing the Selz, Schwab Company of Chicago, with a capacity of over 15,000 pairs of shoes daily, and Charles H. Jones of the Commonwealth Shoe and Leather Company of Boston, with a capacity of 6,000 to 7,000 pairs of shoes daily. (Rand, R. I, 178, l. 24; Florsheim, R. I, 158, l. 13; Selz, R. I, 141, l. 16; Jones, R. I, 105, l. 20; Brown, R. I, 617, l. 10.)

A further idea of the importance of these manufacturers may be gathered from the fact that they paid to the United Company royalties ranging from

$79,000 (Jones, R. I, 117, l. 23) to $600,000 per annum (Rand, R. I, 186, l. 40).

These gentlemen met in Boston on September 22, 1910. Plant made them an offer to sell an undivided *one-half* of the *shoe machinery* business for $1,600,000. They asked for specifications as to what he owned. He was then unable to give them, but insisted that it was unnecessary as they had seen the machinery in operation, and he assured them that he had the facilities to manufacture the machines in large quantities. This was true. (*Supra*, pp. 99–101.) That was between eight and nine o'clock on the evening of September 22d. The purchase was not effected that night because they were unable to raise before Plant left them the very large sum required. The following morning, before they heard anything further from Plant, they succeeded in procuring subscriptions for $1,100,000, and Wade, treasurer of the North American Company of St. Louis, and Campbell, president of the Mercantile Trust Company of St. Louis, men abundantly able to supply the money, undertook to underwrite the purchase. That occurred about nine or ten o'clock in the morning of September 23d, but when the shoe manufacturers heard from Plant on that morning, they learned that about three or four o'clock on the previous night, after Plant had left them, he had gone to the office of counsel for the United Company and had sold all his interests to that company for $6,000,000. (Jones, R. I, 114, l. 39 *et seq.;* 115, l. 1 *et seq.;* Selz, R. I,

147, l. 7 *et seq.;* Florsheim, R. I, 160, l. 30 *et seq.;* 161, l. 1 *et seq.*)

The fact that the shoe manufacturers who had examined the machinery were willing to purchase a half interest in Plant's shoe machinery business, and pay therefor $1,600,000, is very persuasive that they regarded the machinery as capable of doing well the same work as that done by the United Company's product.

e. Winslow Knew of Their Desire.

Winslow states that on the evening of September 20th, the day *prior* to the meeting when Winslow practically agreed to buy the Plant property, Plant advised him that he was expecting the "western people," and that if he traded with Winslow, he would have to put up a proposition to the western people that they could not accept, or words to that effect. (R. I, 488, l. 18–23.) Mr. Endicott who became a director of the United Company "to carry through the deal for the Plant machinery" (R. I, 587, l. 33) also knew that the western shoe manufacturers were interested and were coming to examine Plant's machines (R. I, 589, l. 25). He knew this at least as far back as June, 1010. (R. I, 589, l. 27.)

He also testified that Plant had told him the day *before* the papers closing the purchase were signed that the western manufacturers *were in town and that he was going to take them out that day to show them his factory,* but that he, Endicott, didn't "think" that he knew of their presence in Boston until *then.* (R. I, 589, l. 30.)

Mr. Endicott, a leading figure in the defendants' negotiations, must have informed Mr. Winslow and Mr. Herrick of the presence of the western manufacturers in the town and the object of their mission. No other hypothesis is reasonable.

From this testimony it is fair to conclude that Winslow and his associates were well aware that negotiations were going on between Plant and the shoe manufacturers, and that unless the United people were prompt in closing the bargain the shoe manufacturers would obtain the Plant machines and establish a vigorous rival of the United Company. The result was the all-night session ending in closing the deal at 4.30 a. m. (R. I, 688, l. 9.)

f. Defendants Knew That Other Capitalists Contemplated the Purchase of the Plant Machines.

Herrick, attorney for the United Company who took an important part in the Plant negotiations (R. I, 602, l. 6 et seq.) stated that on September 1, 1910, while the Plant purchase was under consideration by the United people, he was called to New York by Wiggin, President of the Chase National Bank, who said to him that Evans of the North American Insurance Company desired to see him; that when he asked what Evans wanted to see him about, he was told by Wiggin to call upon Wallace, president of the Central Trust Company, New York; that he did so and Wallace, after talking for a while about other matters, said in effect that a large concern with international banking connections was considering buying into the Plant machinery, and

that he, Wallace, was planning to have an expert, together with a patent lawyer, go to Boston for the purpose of seeing what Plant had and that if this concern which he was speaking about took over the Plant machinery it would undoubtedly establish a strong and prosperous business; (R. I, 613, l. 28 et seq.) that he also saw Woodward of the Hanover National Bank, a director of the United Company, who told him that he had heard "Plant owed the City Bank (of New York) some money and that the City Bank and a hide man, whose name he would not tell me, had some plan for buying Plant's business" (R. I, 614, l. 14).

g. Winslow was Exceedingly Anxious to Get Plant's Machines.

The whole history of the transaction shows that the defendant's were keenly alive to the importance of removing from their path so dangerous a competitor and were exceedingly anxious to accomplish that end. The negotiations were continuous from their inception in June, 1910, until their consummation in September. When they were not proceeding between Plant and Winslow, through Endicott, they were going on between Herrick and Plant, at the instance of one Smith. Herrick was reporting to Winslow after every interview. (R. I, 602, l. 17; 604, l. 10; 605, l. 18; 608, l. 43; 609, l. 1 et seq., 610, l. 4, 20.)

One very significant circumstance shows this anxiety in sharp relief. When the negotiations had once reached the semblance of agreement although none of the intricate details had been worked out the

defendants hastened to give Mr. Plant a check for $500,000. (R. I, 488.) When this check was delivered not a document had been drawn.

Other facts indicate this imperative anxiety even more strongly.

1. Endicott's Strange Story.

Henry B. Endicott, of Endicott-Johnson Shoe Company, Endicott, New York (daily capacity about 40,000 pairs) testified that in 1909 Plant had told him that he would give to him $250,000 if he would complete or help to complete the sale of Plant's machinery to the United people; (R. I, 576, l. 40) and that thereupon Endicott arranged for a meeting between Winslow and Plant at his house; (R. I, 577, l. 1) that, after he had failed as the representative of Plant, he then sought Winslow, and made to him a remarkable proposition. Here is the way he tells it:

> "I am going to make a proposition to you, Mr. Winslow, and you may laugh at it, but you shall be the only man that will laugh at it, because you must promise me, if you don't accept it, never to reveal it," which of course he did promise. I said, "Hanan and Keith refuse to take the responsibility of this recommendation" (to examine the Plant machines and report on the advisability of the purchase.) "I have been thinking that if I had been director in your company I would have been wil'ing to take that responsibility; if you care to elect me as a director in your company, I will do my share toward taking that responsibility." Mr. Winslow said he would not laugh at that;

(of course not) that he liked the idea of it; and he asked me if I would go and see Mr. Howe, which we did—took a motor and went to Mr. Howe's residence, I think to Marblehead. (R. I, 578, l. 22.)

Asked why he thus pledged Mr. Winslow to secrecy, Mr. Endicott said, "I am not in the habit of offering myself as a director."

Q. Why did you offer yourself as a director in this case?

A. Because I wanted to make a success of what I had started in on.

Q. In other words, you wanted to be elected a director of the United Shoe Machinery Company to carry through this deal to acquire the plant machinery; is that right?

A. As far as I was concerned; yes, sir; and because I believed, of course, as I have stated here, that there was value there. (R. I, 587, l. 30.)

That night he informed Plant that he had changed his allegiance (R. I, 579, l. 4), went with Winslow to New York, where they met others of the directors, and was elected to the Board, although he did not own a dollar's worth of stock in the company (R. I, 587, l. 43). He then continued his efforts to forward the purchase. (R. I, 579, l. 11.) But, according to his story, he had, simply for the sake of accomplishing that end, exchanged a position where $250,000 was to reward his success for one where he could profit not a penny.

It will be remembered in this connection that this was not the first time Mr. Endicott was so used to serve the ends of the United Company. When Mr. Winslow desired to secure control of the Eppler Company, he did not go about it directly, but employed Mr. Endicott as the man to accomplish the result. (R. I, 530, l. 4.)

Here we find Mr. Endicott appearing as the most active agent in the purchase of a much more important competitor. He was made a director expressly to carry forward those negotiations. When it was decided that he assume that position he had not yet renounced his character as agent for Plant. As agent he had acquired information about the machinery. It had been examined by his experts. (R. I, 576, l. 12.) He knew of the desire of the western men to buy it. (*Supra*, p. 111.) When he became a director of the defendants he knew better than any other how likely Plant was to become a powerful competitor of the defendants.

Endicott's maneuvers are difficult to understand. His story excites curiosity and suspicion. We doubt that it has a parallel in the history of great business transactions. But, however that may be, it shows the deep anxiety of Mr. Winslow and his associates to acquire the Plant machinery and their willingness to adopt any means necessary to accomplish the result.

There was a cause for this anxiety. It rested in the fact that the Plant machinery was seriously competitive and that men capable of making that

machinery a vigorous antagonist of the United Company were on the spot or near at hand ready to purchase it.

ii. Suits by United Company to Compel Him to Sell.

On July 5, 1910 a committee appointed by Winslow to examine the Plant machinery made an adverse report. (R. I, 484, l. 16 et seq.) On that day the United Company commenced a suit against Plant and the Thomas G. Plant Company to enjoin the latter company from using the machines which had been supplied to it by Plant; to enjoin Plant from supplying to the Plant Company other machines in place of those leased by the United Company, and for other purposes. (Pff's. Ex. 162.) Soon thereafter a number of patent infringement suits were instituted against Plant and others made ready for filing. (R. I, 480, l. 19, 484 l. 38; Dft's Ex. 270, R. V, 723.) Defendants' witnesses talk of counter infringements by their machines. (R. I, 820, l. 17; Dft's Ex. 277.) *But no litigation was begun by Plant.* These suits, no doubt, were intended in part at least as spurs to induce Plant to sell and hence certainly tend to show that the United Company believed Plant to be a dangerous competitor.

5. DEFENDANTS' ALLEGED REASONS FOR MAKING THE PURCHASE ARE INSUFFICIENT TO CONCEAL THEIR FEAR OF PLANT AS A COMPETITOR.

Defendants say that the purchase was made to obtain Plant's improvements so that they might advance the art of shoe machinery for the benefit of shoe manufacturers.

This altruistic motive might have been satisfied without the expenditure of $6,000,000. All that was necessary was to permit the shoe manufacturers who were ready and anxious to purchase an interest in Plant's machinery to carry through their design. They were ready to interest themselves in the machinery to which the improvements had already been successfully applied.

And the facts demonstrate that the United Company which is directed by pretty efficient business minds hardly could have invested $6,000,000 for the purpose of getting control of a few improvements.

In the first place no effort was made to acquire the improvements or any of them or any right to use them without at the same time acquiring all of Plant's interests in shoe machinery. In the second place, the defendants' own witnesses show that however valuable the Plant improvements were to him as a present and prospective competitor of the defendants, they were of little use to the United Company. For the following testimony shows what, according to the defendants, the improvements were and what they did with them.

Warren, an expert of the United Company, said:

> These Plant improvements on the welter were the things which especially impressed me. (R. I, 813, l. 5.)

Howe said that Plant had added a certain improvement to his welting machine which constituted a valuable feature. (R. I, 669, l. 20 to 30.)

From Howard we learn that these improvements were an automatic stopping mechanism on an outsole stitcher and a welt measurer and cutter attached to the welting machine. (R. II, 2259–2263, *passim.*)

With respect to the stopping mechanism, Howard said:

> The Plant mechanism was far from satisfactory as it was not a good mechanical arrangement and occasioned much trouble from breakage. After the acquisition of the Plant patents by the United Company in September, 1910, *five* different inventors employed by the United Company were put to work upon the *problem* of providing a *commercially satisfactory stopping* mechanism. * * * The mechanism finally produced by the joint work of these five inventors was that which I have described and *was entirely different in structure and mode of operation from the Plant mechanism.* (R. II, 2297.)

Concerning the welt measurer and cutter, he said:

> Some four or *five* inventors were put to work by the United Company to adapt [it] to the United Company's Model G. welter. * * * The United Company's inventors made *important improvements* upon them so that, as finally incorporated in the Model G. machine embodying these improvements and others to which I shall refer, became known as Model K. machine, improvements were made which represent almost as *important advances* in the industry as did the Plant improvements. In

> operating the Plant welt holder and cutter, it was necessary for the operator to step on a treadle at the time when he desired to sever the welt. In the Model K. machine it is only necessary for the operator to move the shoe slightly to the left. (R. II, 2260–2261.)

It appears, then, that none of the improvements purchased from Plant at enormous cost were used without radical and far reaching change by the United Company.

Plant's machines were efficient and were of great value *to him as a competitor of the defendants.* But the United Company already had machines, of different design, which it believed efficient. All that it could get from Plant in the way of machinery of value to it was improvements which it could add to its own machines. The foregoing testimony shows that Plant's improvements could not be added to its machines without being so changed that they were *entirely different* in structure and mode of operation. New invention was required. What was of immediate value to the defendants in the Plant acquisition was the removal of Plant's competition. This is what they bought and it was for this that they paid their millions.

It is suggested by the defendants also that the purchase was inspired by a desire to avoid litigation. This would not be a defense for an otherwise illegal purchase. (*Infra*, p. 242.) But that the avoidance of litigation was in fact an actuating factor in the transaction does not appear. In no part of the negotia-

tions was it suggested that the defendants should buy out Plant in order to avoid litigation. And no litigation *against* the United Company had been bought or threatened.

It is true that a number of infringement suits had been instituted against Plant, as above noted. But it does not appear that if any or all of them had been sustained it would have been fatal to the line of machinery owned by him. His improvements, so far as his two principal machines were concerned were made upon machines previously put out by the United Company. (R. I, 787, l. 6.) The patents on these machines had expired, by limitation.

Nor will it do to say that Plant had developed his line of machines with the design to force the United Company to purchase them and that the purchase was made at his instance. He did not have to sell to the United Company. The western manufacturers and the people of whom Herrick was told in New York (*supra*, pp. 112, 113), were ready to go in with him. He had two courses open, one to sell to the United Company and restore the complete monopoly in his lines of machinery which existed before he came into the field, and the other to sell to the others and thus perpetuate the active competition in those lines. He chose the former and no doubt was moved thereto by the fact that the United Company was willing to buy out his entire interest in both his shoe machinery and his shoe manufacturing business and permit him to retire to enjoy his mountain in New

Hampshire. (R. I, 488, l. 24.) But whether the initiative came from the defendants or from Plant, the result was the same. A powerful existing and potential competitor was purchased. That is the significant fact.

The purchase of the shoe factory is in itself enlightening. The United Company had never been in the shoe manufacturing business and, so far as this record shows, had never intended to go into that business. (R. I, 580, l. 42.) Yet, in order to obtain Plant's machines, it took sixty per cent of the stock of the Thomas G. Plant Shoe Company, *whose factory was equipped with Plant's machines*, at a price which Winslow says was $3,500,000. (R. I, 499, l. 35.)

Furthermore Winslow says that this stock was not purchased because he wanted it. It was because Plant made it a condition of his proposition. (R. I, 562, l. 12.) It is inconceivable that such an expensive piece of property which was not desired and in which the United Company had never manifested any interest was purchased for no other reason than to obtain inventions which defendants say had to be entirely worked over before they could be adjusted to the United Company's machines, machines which defendants insist were already better machines than those made by Plant.

In addition, the magnitude of the consideration paid clearly shows that the value of the purchase did not consist alone in the machines and improvements obtained. In the original organization the stockholders of the Consolidated & McKay Lasting

Machine Company received $4,599,840 of stock, preferred and common, and $432,000 in cash, or a total of $5,031,840, or $968,160 less than was paid Plant. (R. I, 568, l. 21.) The Goodyear stockholders received $4,800,000 in stock, or $1,200,000 less than was paid Plant. (R. I, 569, l. 3.) The McKay Shoe Machinery Company stockholders received $5,500,000, or a half a million dollars less than was paid Plant. (R. I, 569, l. 8.) Furthermore, it is difficult to conceive how Winslow could value 60 per cent of the stock of T. G. Plant Company at $3,500,000. The total capitalization of that company was $3,750,000, of which $2,500,000 was preferred and $1,250,000 was common stock. Plant owned and the United Company received by this purchase only $1,500,000 preferred and $750,000 common, or a total of $2,250,000 (R. I, 486, l. 8 et seq.), and the statement furnished the company by Plant showed that the Plant Company had a net investment at that time of only $2,500,000 (Plffs. Ex. 132, IV, 1015), 60 per cent of which was $1,500,000. Moreover, the evidence does not show that the stock of the Plant Company was specially valuable.

Besides the amount paid Plant, the United Company also paid under the several contracts which Plant had, $122,000 to Stanbon (R. I, 558, l. 33 et seq.) $150,000 to the Stanley Company and also considerable sums to other concerns which were taken over; but Winslow says that these purchases were regarded as mere incidents.

4. RESULT OF THE ACQUISITION OF THE PLANT PROPERTIES.

a. The United Company Again Acquired Substantial Control of Welters and Stitchers.

In order to fully comprehend the effect of this purchase, the conditions then existing must be kept in mind. The only concern at that time engaged in putting out welters and stitchers to any material extent was the United Company. Winslow named the Haverhill Company, R. H. Long, and the Boylston and Duplessis Companies as being engaged in manufacturing welting machines but the evidence of representatives of each of those companies is in the record and shows that when the Plant purchase was made no one of them was manufacturing welting machines to any material extent. (R. I, Webster, I, 290, l. 26; 291, l. 42; 292, l. 8; Doidge, I, 344, l. 17 and 26; Maloy, I, 301, l. 26; Hamel, I, 326, l. 9, 36, 37.)

b. The United Company Secured Control of the McKay Sewing Machine.

The Richardson Shoe Machinery Company manufactured an improved McKay sewing machine, but its factory was obtained by the United Company through the purchase of all its assets in 1908. (R. I, 69, l. 20 et seq.)

Since that time the United Company had been putting out the McKay machine either by absolute sale or, more recently, by lease; but the Stanley Company was manufacturing the original McKay machine (R. I, 564, l. 22). Its properties were pro-

cured at a consideration of $150,000 in accordance with the terms of the Plant acquisition. This gave the United Company complete control of that machine.

Winslow testified that the machine could be obtained elsewhere, but he was wholly unable to name any other concerns which manufacture it in competition with the United Company. (R. I, 564, l. 25.) Possibly second-hand machines can be obtained from dealers, but when that supply is exhausted it will be necessary for every manufacturer to equip his factory with McKay machines held by the United Company. Not only that, but the McKay machines are all tied to the lasting machines of the United Company by its system of leasing. (*Infra*, pp. 145–213.) No one may use a United lasting machine upon any shoe which has been operated upon by a machine not procured from the United Company, therefore not upon a shoe operated on by a McKay machine procured outside of the United Company. The lasting machine is virtually, if not absolutely controlled by the United Company. (*Infra*, p. 164.) Practically, every shoe manufacturer in the United States must have it. Therefore, every such manufacturer must also procure his McKay machines from the United Company.

In consequence, the United Company by procuring control of the McKay sewing machine completed its monopoly of every important machine used in bottoming shoes.

c. It Removed the One Formidable Competitor of the Defendants.

Mr. Johnson of the International Shoe Company, one of the largest practical shoe manufacturers of the country, truly said of the Plant purchase that—

> it showed either that somebody was able to make a superior line of shoe machinery to what the United Company had, or else they wanted to retain an absolute monopoly of the shoe machinery business. (R. I, 161, l. 26.)

There is no pretense that any competitor of the defendants except Plant has ever undertaken to place upon the market anything approaching a complete and successful line of machinery for the manufacture of welt or McKay shoes. The fact is that the purchase removed the one really formidable competitor which had appeared since the organization of the United Company.

VI. THE POSITION OF THE UNITED COMPANY AT THE TIME WHEN THIS ACTION WAS BEGUN.

A. IT WAS OVERWHELMINGLY PREPONDERANT.

Facts already reviewed show that upon its formation the United Company acquired every company then actively putting out or planning to put out lasting, pegging, welt sewing, outsole stitching, heeling and metallic fastening machines. (*Supra*, p. 54.) In the twelve years before the bringing of this action no substantial change took place but rather the monopoly so acquired was in some respects extended and in many respects strengthened and intrenched. In 1911 the United Company was putting out a complete line of machinery in the field which it then

had entered. It was offering machines for every operation performed by machinery in the bottoming of shoes, clicking and eyeletting machines. (Dfts.' Ex. 232, R. V, 480.) As to many of these machines, it appears from exhibit 232 that the defendants admit that they have no competition. No company in this country except the United Company offers such a full line of machines. (Jones, R. I, 115, l. 31; Long, R. I, 231, l. 17; Dfts.' Ex. 232, R. V, 480.) The testimony of the many shoe manufacturers who appeared as witnesses either for the United States or for the defendants shows that substantially every machine used for these operations by shoe manufacturers in the United States is a machine put out by the defendants.

Charles H. Jones, president of the Commonwealth Shoe & Leather Company, of Boston, Mass.—capacity 6,000 to 7,000 pairs per day—testified that his company does not use any welting, outsole stitching, lasting, heeling, or metallic fastening machines other than those of the United Company. (R. I, 114, l. 22.)

E. F. Selz, of Selz, Schwab & Co., Chicago, Illinois—daily capacity about 15,000 pairs—testified that his company has obtained all its welting, stitching, lasting, heeling, and metallic fastening machines under lease from the United Company. (R. I, 144, l. 15.)

Milton S. Florsheim, president of the Florsheim Company, Chicago—daily capacity about 4,000 pairs—testified that his company leases all of its welting and stitching, lasting and heeling machines from the United Company, except a few machines which

had been obtained previous to the consolidation from companies which became a part thereof. All royalties are paid to the United Company, except royalties for the use of the Xpedite finishing machine, which is paid direct to the Xpedite Company, a subsidiary of the United. (R. I, 159, l. 44; 160, l. 1 et seq.)

Frank C. Rand, vice president of the International Shoe Company, of St. Louis, Mo.—daily capacity about 50,000 pairs—testified that his company leases all of its lasting, heeling, welting, stitching, and metallic fastening machines, etc., from the United Company. (R. I, 178, l. 37 et seq.)

George R. Harsh, president and general manager of Harsh-Edmands Shoe Company, Milwaukee, Wisconsin, testified that his company did not use in the bottoming department any machines other than those obtained from the United Company, except one stitching machine of the Union Lock Stitch Company for ornamental work. (R. I, 195, l. 14.)

Pearl E. Selby, of the Selby Shoe Company, Portsmouth, Ohio—daily capacity about 6,000 pairs—testified that his company uses the United Company's welters and stitchers exclusively for welt work, but for fair stitching, viz. inserting an ornamental stitch in, the McKay shoe they have used a Puritan machine for about fifteen years, and were trying out the Union lock-stitch machine (R. I, 210, l. 38; 213, l. 11 et seq.) and that the company uses exclusively lasting, heeling and metallic fastening machines of the United Company (R. I, 212, l. 33).

John E. Williams, with factories at Portsmouth and Ironton, Ohio, testified that he used exclusively the United's bottoming machines (R. I, 216, l. 37.)

William A. Hogan, treasurer of T. D. Barry Company, Brockton, Mass.—daily capacity from 3,000 to 3,500 pairs—testified his company uses exclusively the United Company's welters, stitchers, heeling, lasting, and metallic fastening machines. (R. I, 222, l. 10; 224, l. 14.)

Frank R. Hilliard, Haverhill, Mass., manufacturer of women's welt and turn shoes—daily capacity about 4,000 pairs, uses the United Company's machines exclusively. (R. I, 282, l. 42; 283, l. 4.)

Ernest Bottomley, Haverhill, Mass., manufacturer of McKay shoes—daily capacity about 700 pairs—testified that with the exception of two old McKay sewing machines he uses exclusively bottoming machines of the United Company. (R. I, 285, l. 2, 24; 287, l. 18.)

James H. Cunningham, general superintendent of the Stacy-Adams Company, Brockton, Mass.—daily capacity about 1,200 pairs of welt shoes—testified that his company uses exclusively the United Company's welting and outsole stitching, lasting, heeling, metallic fastening and eyeletting machines. (R. I, 288, l. 35; 289, l. 29.)

Ira J. Webster, Haverhill, Mass., shoe manufacturer, testified that he uses exclusively bottoming machinery of the United Company. (R. I, 362, l. 20.)

Thomas H. Shinn, superintendent for the Curtis & Jones Company, Reading, Pa.—daily capacity

about 10,000 pairs—testified that his company uses the United Company's bottoming machinery exclusively. (R. I, 366, l. 35, 37.)

Alanson C. Brown, president of Hamilton-Brown Shoe Company, St. Louis, Mo., manufacturers of welts, turns and McKays, with a daily capacity of about 25,000 pairs, testified that practically all of the machinery used in his factories was obtained from the United Company. (R. I, 617, l. 10 and 26.)

Robert P. Hazzard, of the R. P. Hazzard Company, Gardiner, Maine, manufacturers of men's welt shoes, with a daily capacity of about 5,000 pairs, testified that his company "got from the United Company all the machinery they could supply." (R. I, 651, l. 10, 26.)

Martin E. Welch of the Welch Shoe Company of Lynn, Mass., testified that every machine used by that company in the bottoming room with the exception of two or three machines are United machines. (R. I, 710, l. 25.)

Frederick Allen, of the Allen, Foster, Willett Company of Lynn, Mass., manufacturers of welts, turns, and McKays with a daily capacity of about 6,000 pairs testified that his concern uses the United Company's bottoming machines exclusively, with the exception of the Puritan fair stitching machines. They also used defendants' eyeletting and clicking machines. (R. I, 723, l. 37.)

Jonathan Brown, Jr., manufacturers of women's, misses', and children's McKay-sewed and standard screw shoes, with an output of about 7,500 pairs per

day testified that he uses practically all of the United's bottoming machines in his factory. (R. I, 730, l. 15, 31; Plff's Ex. 269, R. IV, 1441.)

James W. Hitchings, of Luther S. Johnson & Co., Lynn, Mass., manufacturers of slippers, testified that all of the bottoming machines used by his company belonged to the United Company. (R. I, 738, l. 6.)

Edward W. Burt, of E. W. Burt & Co., (Inc.) of Lynn, Mass., manufacturers of men's, women's, misses', boys' and children's welt shoes, with a daily capacity of about 500 pairs testified that he was using the United Company's machines. (R. I, 739, l. 4.)

Charles A. Eaton, of the Charles A. Eaton Company, Brockton, Mass., manufacturers of men's welt shoes, with a daily capacity of about 2,400 pairs, testified that he had not made any attempt to obtain bottoming machines from any other source than the United Company. (R. I, 751, l. 20, 27; 755, l. 25 et seq.)

C. Willis Bennett, Fitchburg, Mass., manufacturer of women's, misses', and children's McKay-sewed shoes, with a daily capacity of from 800 to 1,400 pairs, testified that, with the exception of machines for fair stitching, all of his sewing, heeling, lasting, and metallic fastening machines were obtained from the United Company. (R. I, 757, l. 42; 760. l. 1.)

Frederick J. Gross, of Field Bros. & Gross Company, Auburn, Maine, shoe manufacturers, with a capacity of 7,200 pairs per day, testified that at the time of his examination his company was using no bottoming

machines except those of the United Company. (R. I, 806, l. 21; 808, l. 1.)

Evidence of this kind might have been indefinitely multiplied but even the foregoing was hardly necessary in view of the defendants' admission that they are in business relations with 1,033 shoe manufacturers in the United States. (Donham, R. I, 26, l. 39.) When the testimony in this case was closed in 1914, there were, according to the census figures in all 1,090 such manufacturers. The census of 1910 showed that in 1909, there were in the neighborhood of 1,300 manufacturers.

B. EXISTING COMPETITION WAS NEGLIGIBLE IN EXTENT.

1. IN GENERAL.

The foregoing testimony in itself shows that the defendants had in the American market no competition worthy of the name as to any of the more important machines used for operations lying within the field to which the Government's charge of monopolization applies. In the course of the testimony of Mr. Winslow and of other officers of the United Company, various manufacturers are named as offering to the trade machines which competed with the United Company's machines of these departments, and a number of exhibits containing lists of such names were introduced. The claims of the defendants, however, were summed up in a final exhibit. (Dfts. Ex. 337, R. V, 906.) This was chronologically the last of the series of these exhibits to be produced and therefore may fairly be taken as stating

the defendants' case on this point in the way in which they desired to leave it and the heading of the exhibit itself indicates this. It is headed: "List of Machines Offered by Shoe Machinery Manufacturers and Dealers Other Than United Shoe Machinery Company for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeleting Machines, Dieing-Out Machines and Clicking Machines. Named in Defendants' Exhibit 311 (Folio of Catalogs), Defendants' Exhibits 312, 313, 314, 315, 316, 317, 318, 319, and 320 (Catalogs), Defendants' Exhibit 321 (Letters, Advertisements and Catalogs)."

Analysis of this exhibit (Dfts. Ex. 337, R. V, 906) in the light of certain testimony in the record discloses the unsoundness of any claim that the defendants have any substantial competition in the field which they have undertaken to preempt.

The basis of the exhibit as is shown by its descriptive heading was a number of catalogs, letters and advertisements which defendants were permitted to introduce. The circumstances under which this material was received appear in the examination of the witness Sampson. (R. I, 836–837, 879–881.) He was permitted to put in, as Dfts. Ex. 311, what he described as

> catalogs of machines which I have not seen specifically advertised within a few years, but which were generally known to be those of manufacturers who have these machines for sale as a matter of general trade knowledge. (R. I, 836, l. 43; 837, l. 1–3.)

Other catalogs were gathered by solicitation. As to the actual putting out of machines by the concerns whose catalogs he had collected, the witness testified in substance that he had no way of knowing, and he explained:

> As to how I know that these various concerns that have catalogs are holding themselves out to the trade as furnishing these various machines, I know it from the advertisements and catalogs which they issue and from general trade knowledge. I have not undertaken to buy anything from them * * I do not know how many they are selling. (R. I, 880, l. 43; 881, l. 1–5.)

In view of the care and labor expended by the defendants in collecting these catalogs, in writing letters to the concerns, many of them mere machine shops (R. I, 837, l. 6 et seq.), asking them for quotations on machines which the concerns had described themselves as ready to furnish upon order, and in utilizing the "general trade knowledge" of the witness, it is very significant that neither he nor any witness called by the defendants informed the Court of any appreciable use of the machines furnished by this cloud of alleged competitors. Eighty-five representatives of a number of these manufacturers were, however, called by the Government (R. I, 882–960 and elsewhere) and testified as to the actual character and amount of the business of these companies.

2. THE FOREIGN COMPANIES.

Before reviewing that testimony, however, it is convenient to dispose of the eleven foreign companies which are mentioned by the defendants in connection with a large number of the machines enumerated in Defendants' Exhibit 337. A number of companies in France, England and Germany are named by the defendants as manufacturing one or more of the more important machines used for bottoming operations and it is contended by the defendants that these companies compete with them in this country. The defendants did not show the use of a single foreign machine in the United States, offered no evidence of any attempt to introduce such machines and contented themselves with producing catalogs bearing the names of the companies in question which they were allowed to introduce as evidence of something.

On the other hand, the United States produced witnesses Stone, McElroy and Cavanaugh who testified specifically on the matter and supplied the full story of foreign machines in this country. This evidence was in addition to the testimony of the shoe manufacturers as to their exclusive use of the defendants' machines which has been noted *supra*. The testimony shows that these foreign companies had not attempted marketing their machines in the United States in competition with the United Company.

Cavanaugh (R. I, 954, l. 31 et seq.; 955, l. 1 et seq.) testified that as a salesman of shoe machinery he had visited shoe factories all over this country. He was acquainted with nearly all the foreign companies mentioned, and testified that he knew of no business in shoe machinery having been done in the United States by any of the foreign companies mentioned.

McElroy was especially qualified to testify on this point because of his experience in attempting to fit up a factory to manufacture welt shoes without using any of the machinery supplied by the United Company. (R. I, 190, l. 1 et seq.) In his effort to do so, he "looked over all the available markets." (R. I, 190, l. 18.) He did obtain in England certain machines, to wit: sole molding, stitching, indenting, rough rounding, leveling and lasting machines "because we could only get them from the United Company in this country." (R. I, 190, l. 43.) These are the only foreign machines which the record shows ever to have been used in this country. To obtain these machines, he was compelled to make a journey to England (R. I, 190, l. 20, 45; 191, l. 1 et seq.) and then was unable to secure a machine without waiting for it to be constructed. It took him in all seven months to get together machinery (R. I, 922, l. 2) sufficient to equip *one* factory with a capacity of six hundred to one thousand pairs of shoes a day. (R. I, 194, l. 18.) On page 923, this witness reviewed the foreign concerns named in defendants' list. The only one which he knew of as having done any business in this country was the Standard Rotary Machine Com-

pany of England, and in connection with it he refers *only* to the machinery which he himself had obtained. He testified that it had no machinery in this country at the time when he resorted to it for his machinery. (R. I, 190, l. 35.)

Stone, who was called by the United States (R. I, 339, l. 41), testified to all that the record shows as to the making of any efforts by any foreign company to market machines in this country. Representing the Atlas Works of Leipsic, Germany, he spent six weeks in this country. In that time he succeeded in selling two machines for nailing wooden heels on turn shoes to two small manufacturers. (R. I, 341, l. 21.) He placed no important machines and did no business with any manufacturers of any considerable size.

Why he was unable to do any more business is graphically illustrated by the reception he got from Mr. Jackson Johnson, of the Roberts, Johnson & Rand Company of St. Louis. Mr. Johnson said:

> My boy, I know all about it, about the machines you are producing in Germany, and what kind of machines can be made in Germany or in Europe; but, as it is, you know, if you bring over a machine which is constructed in such a way that we drive a cow into it, and on one side ready made shoes come out and on the other side ready made sausages and you want to sell it to us for ten cents, then we are not allowed to install it or make use of it.

and added (R. I, 340; l. 13) that this situation arose from the leases of the United Shoe Machinery

Company which are discussed *infra*. Other large manufacturers gave him the same reason. (R. I, 340, l. 29; 341, ls. 12, 16.)

This witness who was the only person ever connected with any foreign company who testified, was asked as to the capacity of the Atlas Works. He answered that his proposition to the American shoe manufacturers was that if they would put at his company's disposal the capital that they would pay in one year in royalties they "might be able *to enlarge* their plant and furnish them machinery but as it was *they were equipped only for European business.*" (R. I, 344, l. 4.) He stated that he had given up his employment "automatically" being unable to do anything for his employers. (R. I, 343, l. 28.) It will be noticed that he was not even permitted to show his wares. In fact he had no wares in the shape of actual machines to show.

Nothing on the record goes further than to show that these foreign companies are doing business in the countries in which they are respectively situated, and issue catalogs of which the United Company had been able to procure copies.

With respect to the Plant transaction, the United Company contended that Mr. Plant was not in competition with them, although he had issued an elaborate catalog, and announced that he stood ready to supply shoe manufacturers with all of the machinery therein named. The Government, however, supported its contention as to Mr. Plant with the concrete evidence of ability to supply

machines which has heretofore been reviewed. The United Company made no such effort as to the foreign or indeed as to most of the domestic concerns whose catalogs were introduced and referred to in Defendants' Exhibit 337.

It is submitted, therefore, that the alleged foreign competition may be dismissed without further notice.

3. AMERICAN COMPANIES.

It has just been noted that Warren F. McElroy testified that in the year 1911 he attempted to equip, as a demonstration, a factory to manufacture welt shoes having a capacity of from 600 to 1,000 pairs a day from sources independent of the United Company. (*Supra*, p. 136.) He searched all over the United States, picking up machines here and there. But he could not get in this country, and was compelled to go to England to obtain many essential machines which he desired. (*Supra*, p. 136.) Certain machines such as heeling machines he found he could obtain in this country with the exercise of sufficient patience "but it took two months to get the first one." (R. I, 191, l. 6.) He could not get a full line of welt machines in this country (R. I, 190, l. 45; 191, l. 1–2), although he did get two welt machines for trial from *two* American manufacturers. After his return from England he found that the Krentler Company of Detroit had a crude lasting machine which they were ready to instal on trial. That machine was not a commercial proposition at the time. (R. I, 190, l. 22.) The record shows that

Krentler's entire output was two machines, both of which were installed in this demonstration factory. (R. I, 190, l. 29.) Winslow testified that the Krentler property had been offered to the United Company. It had not been accepted at the time the suit was brought. (R. I, 570, l. 25.) Under the rule of the Court limiting the introduction of evidence, the subsequent history of this company could not, of course, appear in the record.

McElroy also spoke of the circumstance that from the organization of the United Company he observed the discontinuance of calls from agents for different shoe machines which had been customary before. (R. I, 188, l. 35, 189, l. 2.)

Winslow also testified that while other machines for dieing out heavy stock were offered, he knew "of no clicking machine that is being used in this country in the manufacture of light grades of shoes except ours." (R. I, 592, l. 38.)

The foregoing testimony in itself tends to show the situation with respect to the dominance of the United Company, already disclosed by the evidence of the shoe manufacturers and otherwise. (*Supra*, pp. 126–132.) It did appear that certain companies were preparing to enter the field, provided a reasonable opportunity of successful competition presented itself. Representatives of practically every one of these factories testified with reference to the machines which they had put out, the supply of machinery which they had on hand and the capacity and re-

sources of their factories. It is to be presumed that they made the best possible showing for their respective companies. Their evidence showed that these companies are at present wholly inadequate to supply any appreciable part of the American demand. (Merrick, R. I, 199, l. 8; Long, R. I, 232, l. 4, and 233, l. 11; Malloy, R. I, 301, l. 23, 302, l. 2; Webster, R. I, 298, l. 1; Doidge, R. I, 344, l. 14.)

Charles H. Jones of the Commonwealth Shoe Manufacturing Company testified that from his knowledge of the shoe machinery business no one outside of the United Company could, on December 12, 1911, furnish machines for the purpose of fitting out a factory for the manufacture of welt and turn shoes. (R. I, 115, l. 31.)

Long testified to the same effect. (R. I, 231, l. 17.).

Appendix B, parts 1 and 2, attached hereto is a condensed statement drawn from the uncontradicted evidence of the eighty-four witnesses referred to with respect to the catalogues, etc., and from other undisputed sources indicated therein showing in part 1, the number of principal bottoming machines together with eyeletting and clicking machines which the United Company had out March 1, 1911, and the number which all other concerns had out at that time. The appendix, part 1, does not give the number of pulling over, standard screw, or pegging machines in use at that time, but they are found in Defendants' Exhibit 228. A summariza-

tion of the appendix aided by Defendants' Exhibit 228, as just indicated, is as follows:

Machines.	By defendants.	By all others.
Clicking machine	3,655	None.
Eyeletting machine	4,472	150
Pulling-over machine	1,632	None.
Lasting machine	7,496	7
Standard screw machine	409	None.
Pegging machine	146	None.
Tacking machine	3,488	6
McKay sewing machine	898	8
Welt sewing machine	2,527	142
Outsole stitching machine	2,676	758
Loose-nailing machine	1,835	24
Heeling machine	2,019	17
Slugging machine	1,876	23

According to this summary, the United Company controls all the clicking, all the pulling over, all the pegging and all the standard screw machines, and about 96 per cent of the total number of bottoming machines in use (clicking and eyeletting machines are not bottoming machines).

It should also be noted that welt sewing and outsole stitching machines are used in repair work and many of the independent machines of these classes are used for that work and not for making new shoes. Doidge, general manager of the R. H. Long Machinery Company said:

> We have sold 285 outsole stitching machines of which 3 went to shoe manufacturers and the others to cobblers. (R. I, 344, l. 25).

Remarkable as this showing is, it finds ample support in the testimony of Mr. Winslow. He said "that a large proportion, to wit, more than

90 per cent of all the welt and turn shoes made in this country are sewed upon such machines" (meaning the machines of the United) (R. I, 597, l. 10) also, "I know of no clicking machine that is being used in this country in the manufacture of light grades of shoes except ours" (R. I, 592, l. 38).

The evidence therefore demonstrates conclusively that there is now no substantial competition with the defendants in the field which they have preempted by combination and acquisition.

To this the defendants made no answer other than to introduce the catalogs, letters, and advertisements already referred to and discussed unless certain testimony of Mr. Winslow based upon lists made up for him (R. I, 575 l, 4. *et seq.*), can be said to supplement them. The defendants did not call any *independent* maker of machinery *or any shoe manufacturer* to testify *to the use* of such *independent* machinery. In view of the evidence offered by the Government the reason for their so doing is obvious.

Two other claims of the defendants with respect to the question of their monopoly may be here noted. The defendants suggest that they are not to be charged with monopolizing because a number of ideas and inventions had been offered to the company which it had not bought. And because a number of concerns manufacturing or dealing in certain kinds of shoe machinery had been offered to the United Company but rejected. But Mr. Winslow was asked to name a single one of the rejected ideas or inventions which had developed into a machine of

any value. His reply was that he should "hope [he] could not mention a single one," but [he had] not looked through the list to see." (R. I, 574, l. 25.) He was asked whether any one of the concerns which had been offered to the United Company and rejected by it was in existence on December 12, 1911, and was doing a substantial business in competition with the United Company. His answer (R. I, 575, l. 14) was that he should have to study the list before he could state.

A further example of the value of Mr. Winslow's elaborate testimony as to the existence of competition, testimony based on lists which were worked up laboriously by clerks who were not called, (R. 575, l. 4 et seq.) appears in what he says regarding the acquisition of the Stanley Company, the last independent manufacturer of the McKay sewing machine. He referred to a list previously filed which shows Walter Pearson, A. Johnson & Sons, the American Worsted Machine Company and the Nolle Works as manufacturers of or dealers in the McKay machine. But he was unable to state who Walter Pearson was, or anything about A. Johnson & Sons, except that they were probably somewhere in France. He did not know what the American Worsted Machine Company was putting out. He did know that the Nolle Works were in Germany. (R. I, 565, l. 29.)

It is respectfully submitted that Mr. Winslow would not need to make any particular research to remember the names of substantial competitors. The fact is that the United Company is now the only company

in this country making and putting out the McKay sewing machine. That circumstance is unaffected by the fact that second-hand machines may be had, if one wants second-hand machinery, or that the old types of McKay machines are unaffected by patent control, and therefore *could* be manufactured by others than the United Company.

A final reason why no one else *will* manufacture such machines will appear when the leases of the United Company are considered.

Winslow also filed a list showing the increase in welt machines, lasting machines, and certain other shoe machines from 1900 to 1911. He admits, however, that the entire increase in welt machines and in lasting machines was in machines put out by his company.

The evidence is wholly convincing and indeed substantially uncontradicted that the United Company which had a complete monopoly of the field which it entered at its organization in 1899 retained that monopoly down to the institution of this suit, and that in 1911 it had no substantial competition.

VII. CLAUSES IN DEFENDANTS' LEASES UNDULY INTERFERE WITH INTERSTATE COMMERCE.

A. IN GENERAL.

Irrespective of whether the original formation of the United Company or the subsequent acquisitions by that company were legal or illegal the defendants have adopted and are enforcing a system of leasing which is unlawful in that it directly and inevitably interferes with the free flow of trade in the channels of interstate commerce.

The United States raises no objection to the fact that the United Company leases but refuses to sell its more important machines. The illegality to which it directs the attention of the Court lies in the insertion in the defendants' leases of certain specific clauses "framed to accomplish exactly what they seemed to be intended to accomplish" (Choate, R. I, 113, l. 31) whose necessary effect is the restraint described.

These leases themselves are in every respect carefully and skillfully drawn and contain every ordinary provision to protect the interests of a lessor. Among these is a clause which appears in every lease requiring the payment of a fixed minimum royalty. In many leases there is a clause authorizing the lessor to take back all machines not needed for the business requirements of the lessee. The lessee is bound at his own expense to keep the machinery in good and efficient working order; to procure from the lessor exclusively the parts which he may need to replace defective ones and to pay therefor "the regular prices from time to time *established by*

the lessor." The machine is held at the sole risk of the lessee, who is bound to pay all taxes and assessments upon it, and when the term of the lease has expired he must return the machine to Beverly, Mass., and pay the freight on it. If the machinery be destroyed by fire, he must pay for it a sum fixed in the lease; and whether the machine is put out on a rental or a royalty basis he is obligated to guarantee a minimum monthly return. Plaintiff's Exhibit 21 (R. III, 182) is in these and other respects a fair sample of the defendants' leases.

But in addition to these provisions there are clauses in general use in defendants' system of leases which are sometimes called "tying clauses." These restrict the freedom of choice of the lessee between the defendants' machines and those of their competitors not merely as to the particular need for machinery whose satisfaction was the occasion for the making of the particular lease but also as to his future desires both for machinery of the kind leased and for shoe machines of different but important and necessary kinds. Correlatively they limit and prevent the possibility of access to the shoe manufacturers—the only market possible to defendants and their competitors—of all competitors of the defendants not only as to the immediate transaction closed by the particular lease but as to all future transactions, including the replacement of existing equipment with superior or cheaper machinery.

The objectionable clauses are inter-related and operate together with cumulative effect. They are unlawful both as integral and effective parts of an unlawful whole, and, for the most part, in and of

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themselves. It is, however, in their combined effect as a system of leasing used and insisted upon by a powerful corporation that the full extent of their illegality is to be perceived.

B. THE LEASE FORMS.

Plaintiff's Exhibits 14 to 49, inclusive (R. III, 121–435), 149, 168 to 174, 176 (R. IV, 1082, 1144–1197, 1212) are leases made by the United Company or controlled companies subsequent to the organization of the United Company. Defendants' Exhibits 278 to 308 are riders attached by the defendants at different times to their leases. The testimony as to the circumstances and frequency of their use is in the record (832 to 835). The exhibits first referred to cover samples of all the United Company leases of lasting machines (Exhibits 14 to 22, R. III, 121–203), welt sewing and outsole stitching machines (Exhibits 23 to 26, R. III, 204–254), heeling machines (Exhibits 27, 28, R. III, 254–272), metallic machines, including slugging, nailing, standard screw, and all the remaining machines classified by the defendants as metallic machines (Exhibits 29 to 35, R. III, pp. 272–331), pulling over machines and auxiliaries (Exhibits 36, 39, R. III, 331–373), general department machines (Exhibits 40, 41, R. III, 373–387), eyeletting machines (Exhibits 42, 43, R. III, 387–401), clicking machines (Exhibit 44, R. III, 402), and pegging machines (Exhibits 45, 46, R. III, 413–430). Order forms used by the United Company are Exhibits 47 to 49 (R. III, 430–435). Leases used by companies

controlled by the United Company are Exhibits 50 to 59 (R. III, 436–514).

The foregoing leases are forms of all the leases used by the United Company. (Donham, I, 5–17, *passim*.) The riders referred to are all the riders ever used by the defendants, (Donham, I. 822, l. 12) and together the exhibits cover the entire body of leases in force and exemplify both what the defendants call their restricted system and their "independent" system.

C. THE "TYING" CLAUSES.

The leases are characterized by the inclusion in them of the tying clauses to which reference has been made. They are called "tying" clauses because they tie the use of the machine leased to the use of machines not covered by the particular lease. Their result is to make it in effect a condition of the lease that the lessee shall not use the machines of competitors either to supply a need for additional machines of the kind leased or for machines of other important though wholly different types. For example, a welting machine may not be used upon any shoe operated upon by a sole stitching machine procured from another than the lessor. This necessitates taking the sole stitching machine from the United Company, and thus the use of the welter and the sole stitcher are *tied* together. (Plff's Ex. 21, par. 9, R. III, 182.) As it is in the case of the welting machine, so it is with respect to the other machines used in the bottoming of shoes.

In addition to these clauses there are certain other clauses which make the tying clauses more effective

and give to them their maximum effect as destroyers of the possibility of competition with the defendants.

Examples of the various tying clauses and other clauses which together give the defendants' leasing system its illegal character are set out below. The names given to them are adopted purely for convenience.

1. THE SEVENTEEN YEAR TERM.

All leases made by the defendants are made for a uniform term of seventeen years. The result is of course that during that long period no replacement of a machine so leased and no avoidance of any of the requirements of the lease is open to the lessee except with the defendants' consent and upon their terms. The particular application of this provision in the general situation is noticed later (p. 162).

2. THE "ADDITIONAL MACHINES CLAUSE."

This clause appears in many leases. It is said by the defendants (R. I, 444, l. 17) to have been abandoned in 1907, but the defendants have called in no leases containing this clause, (Donham, R. I, 981, l. 2, 16 et seq.) and therefore have now in full force many leases in which it appears. A typical form is that of Plaintiff's Exhibit 30, Lease for Metallic Department machines (R. III, 281, par. 3)—covering in one lease twenty-six machines. The clause reads:

> In case the lessee has more work of the kind which can be performed by any of the machines belonging to the Metallic Department of the lessor than the capacity of the Metallic machinery which he has under lease from the lessor will permit, then the lessee *shall either take from the lessor*, under a like lease and

agreement sufficient *additional machinery* to perform the work, *or* in case the lessee does not thus lease additional Metallic machinery from the lessor, then *the lessor may*, if it so elects, *cancel* forthwith this lease *and any other* lease of Metallic machinery then in force between the lessor and the lessee. [Italics ours.]

The extent of the use of this clause and any material modifications which have been made in its phraseology are noted in Appendices C & D. This is true of all the clauses here set out.

3. THE EXCLUSIVE USE CLAUSE.

This clause as it appears in Plaintiff's Exhibit 21 (R. III, 187, par. 8) lease of No. 5 lasting machine, reads as follows:

> If at any time the lessee shall fail or *cease to use exclusively* lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use *exclusively* tacking mechanisms and appliances held by him under lease from the lessor, for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, *the lessor*, although it may have waived or ignored prior instances of such failure or cessation, *may* at its option *terminate forthwith* by notice in writing *any or all leases* or licenses of lasting machines, lasting machinery, lasting mechanisms, or lasting devices, then existing between the lessor and the lessee, whether as the result

of assignment to the lessor or otherwise; and the possession of and full right to and control of all lasting machines, lasting machinery, lasting mechisms, and lasting devices, the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

4. THE PROHIBITIVE CLAUSE.

This clause as it appears in the lease last referred to, Exhibit 21 (R. III, 185, par. 5), is as follows:

> The leased machinery *shall not* nor shall any part thereof *be used in the manufacture* or preparation *of any* welted boots, shoes, or other footwear or portions thereof *which* have been or *shall be welted in whole or in part*, or the soles in whole or in part stitched by the aid of any welt-sewing or sole-stitching machinery not held by the lessee under lease from the lessor, or in the manufacture or preparation of any turned boots, shoes, or other footwear or portions thereof, the soles of which have been or shall be in whole or in part attached to their uppers by the aid of any turn-sewing machinery not held by the lessee under lease from the lessor, *or in the manufacture of any boots, shoes, or other footwear which have been or shall be in whole or in part pulled over, slugged, heel seat nailed, or otherwise partly made by the aid of any pulling-over or "metallic" machinery not held by the lessee under lease from the lessor.* [Italics ours.]

5. THE "RIGHT TO TERMINATE ALL LEASE" CLAUSE.

This clause as it also appears in Plaintiff's Exhibit 21 (R. III, 188, par. 9) is as follows:

> But if any breach or default shall be made in the observance of *any one or more* of the conditions in *this* agreement contained or contained *in any other* lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, *the lessor shall have the right* by notice in writing to the lessee *to terminate* forthwith *any or all leases* of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. * * * Upon the expiration or termination of this agreement or any extension thereof, or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the *lessee shall forthwith deliver* the leased machinery to the lessor at *Beverly, Massachusetts, complete* and *in good order*, reasonable wear and tear alone excepted. [Italics ours.]

6. THE "FULL CAPACITY" CLAUSE.

This clause as it appears in Plaintiff's Exhibit 21 (R. III, 185, par. 5) reads as follows:

> The lessee shall use the leased machinery to its full capacity upon all boots, shoes, or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machinery is capable of being used.

7. THE RETURN CHARGE.

Where machines are installed by the defendants under certain of their restricted leases no charge is made at the time of installation. Many of these leases, however, provide for what is called a "return charge." The provision for the charge as it appears in Plaintiff's Exhibit 21 (R. III, 189, par. 9), previously referred to, reads as follows:

> Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the *lessee shall forthwith deliver* the leased machinery to the lessor *at Beverly*, Massachusetts, complete and *in good order*, reasonable wear and tear alone excepted; *and shall thereupon pay* to the lessor without prejudice to any other rights or remedies of the lessor the sum of *One Hundred and Fifty Dollars* ($150) in respect to each lasting machine hereby leased as partial reimbursement to the lessor

> for deterioration of the leased machinery, expenses in connection with the installation thereof and instruction of operators.

The figure above set out is significant upon the question of the value of the machine when considered in connection with the fire insurance demanded of $225.00.

8. "ROYALTY" CHARGES ON WORK NOT DONE ON DEFENDANTS' MACHINES.

A clause which is not strictly a "tying" clause in the sense in which that phrase is ordinarily used, but which operates to support and extend the monopoly of the defendants, appears in several leases and especially in leases of welt machinery which the defendants contend are "unrestricted" and classify as such in tabulations introduced as exhibits. Plaintiff's Exhibit 24 (R. III, 214) is an example of such a lease. In addition, to the exclusive use, full capacity, and right to terminate all leases clauses it provides (par. 6, p. 218) that

> The lessee shall pay to the lessor throughout the full term of this agreement the respective amounts set forth in the following schedule in respect to each pair of welted boots, shoes, or other footwear, or portions thereof, manufactured or prepared by or for the lessee, which shall have been welted in whole or in part or the soles of which shall have been in whole *or in part* attached to welts by the use of *any welting* or stitching or sewing *machinery*, and in respect to each pair of "turned" boots, shoes, or other footwear, or portions

> thereof, manufactured or prepared by or for the lessee, the soles of which shall have been sewed or attached to their uppers in whole or in part by the use of *any* sewing or stitching machinery, viz: * * * [Here follows a schedule of prices.]

It will be noted that if a shoe manufacturer made 1,000 pairs of shoes of which 500 were sewed on defendants' machines *used to their full capacity* and 500 on a machine of a competitor he would nevertheless have to pay to defendants royalties both on the 500 pairs made on their machines *and on the 500 pairs made on the competing machine.* In addition, he would, of course, have to pay for the competing machine. The likelihood of a shoe manufacturer's taking a welt machine of a competitor of defendants under such circumstances need not be enlarged upon.

The lease proceeds (p. 219):

> All payments and the guarantee in this agreement provided for are independent of and in addition to all payments and guarantees provided for in any other leases or licenses or agreements between the lessor and the lessee, provided, however, that (excepting in so far as is required by the guarantees herein contained or contained in other lease and license agreements between the lessor and the lessee) in case under any other "Goodyear Department" lease and license agreement between the lessor and the lessee and covering one or more Goodyear Welt and Turn Shoe Machines, Goodyear Universal Inseam Sewing Machines or Goodyear Outsole Rapid Lockstitch Machines,

> the lessee shall have paid to the lessor the amount set forth in the Schedule of Payments in such lease and license agreement contained in respect to any pair of boots, shoes, or other footwear, then the lessee shall be relieved from said payment hereunder in respect to that pair of boots, shoes, or other footwear.

This means that the United Company charges in the first instance for *each* machine what it deems an adequate compensation for *all* the machines of the group described. When, therefore, the lessee pays for one, he has paid for all, and is relieved by the provision quoted from further payment for the use of any of the others. That is to say, he is obliged to pay as much *for one machine* as *for all* in the group. The evident purpose and result of this provision is to prevent a manufacturer who leases one of the machines, without which he can not get along, e. g. under the prohibitive clauses in his leases of lasting and other machines, from taking an independent machine. For if he did he would have to pay not only for it, but also royalties to the defendant in the same amount as though the work were done on their machines. It is a cunning and effective provision.

9. DISCRIMINATORY ROYALTY CHARGES WHERE COMPETITORS' MACHINES ARE USED BY THE LESSEE.

Apart from the "initial premiums" which characterize the so-called "independent" leases, which are discussed *infra*, the defendants in many cases make higher demands for compensation where the lessee uses machines of defendant's competitors than where he refrains from such use. These demands are made

although the use of competitors' machines be for purposes for which the machine covered by the particular lease is not designed.

An example of such a clause is the following, taken from Plaintiff's Exhibit 44 (R. III, 405, par. 6), lease of a clicking machine, a machine used for cutting out the parts of uppers, whose importance is indicated *supra*, p. 16:

> The lessee shall pay to the lessor on the last day of each calendar month the amount or amounts set forth in the following schedule of payments in respect to each pair of footwear of a kind or kinds therein specified cut during the preceding calendar month in whole or in part by the aid of any clicking machine or machines held by the lessee under lease from the lessor or by the aid of any Clicking Machine dies of the lessor:
>
> *Schedule of Payments.*
>
> | | Per pair. |
> |---|---|
> | For all footwear which is lasted by machinery *not* held by the lessee under lease *from* the *lessor* | 1 cent |
> | For all welted footwear which is welted or stitched by machinery *not* held by the lessee under lease *from* the *lessor* | 6 cents. |
> | For all turned footwear the soles of which are sewed to their uppers by machinery *not* held by the lessee under lease *from* the *lessor* | 1¾ cents. |
>
> (Italics ours.)
>
> (NOTE.—The lease provides for a discount of fifty per cent for prompt payment.)

It will be noted that the royalties above stated are cumulative.

The same principle in another form appears in a lease for metallic machines. As to these machines, comprising a large and important group, it appears

that the defendants' compensation is derived from payments for material used in the machines, the lease requiring all such material to be bought of the lessor.

Exhibit 31 is a lease for metallic machines. It may cover a number of machines or only one, e. g. a standard screw machine. (R. I, 11, l. 20.) It contains the full capacity clause, additional machines clause, applying not only to machines of the kind leased but to *all* metallic machines, and the right to to terminate all leases clause. It provides for the return to the lessor of any machines which the *lessor* thinks the lessee does not need for the requirements of his business and for the payment on such return of such sums as may be necessary to put the machine into condition to be leased to another lessee. It provides for the purchase of a minimum amount of material. It does not contain the prohibitive clause and therefore apparently permits the use of the machines leased upon shoes operated upon by machines, other than metallic machines, supplied by competitors of the defendants. In return for this apparent grant of freedom, wholly illusory as will be shown (*infra*, p. 175), the lease contains this clause:

> The lessee, as rent and royalty for the leased machinery shall purchase exclusively of the lessor all the fastening material used by him in or in connection with the leased machinery, and shall pay the lessor in cash on delivery the regular and uniform prices therefor as established *from time to time by the lessor*, which shall not be more than *ten* per cent *in excess*

of the prices to be established from time to time by the lessor for like fastening material to be used in its metallic department machinery by lessees who shall *agree not* to use the metallic department machinery leased to them in the manufacture of boots or shoes which are lasted on machines *other* than those leased from the lessor, or of welted boots or shoes which are *not* welted and stitched on welt-sewing and sole-stitching machines leased from the lessor, or of turned shoes the soles of which are *not* attached by turn sewing machines leased from the lessor. (Plff's Ex. 31, R. III, 290 par. 4.)

D. THE USE OF THE RESTRICTIVE CLAUSES IN LEASES OF DEFENDANTS' MACHINES.

All of defendants' leases as we have seen provide for a seventeen years' term. All contain the "right to terminate all leases" clause. The varying use of the other clauses noted above appears from the summaries which are to be found in appendices C and D. These appendices contain all the forms of lease used by the defendants for the machines mentioned, whether such leases are in the "noninitial payment" form or in the "initial payment" form in which in some cases though not in all the prohibitive clause is replaced by the demand for an installation charge. Appendix C is a brief statement of the clauses contained in each lease of the defendants. Appendix D shows as to each of the various clauses set out, the leases in which it is to be found.

E. THE EFFECT OF THE RESTRICTIVE CLAUSES.

Certain of the foregoing clauses clearly restrain the freedom of trade of buyers and sellers of shoe machinery even when considered separately and not as parts of a greater whole. The exclusive use clause, for example, obviously limits the freedom of choice of every lessee as to all his future needs for machines of the kind leased and clearly prevents access to him, as a possible customer for any such machines, of all who seek to compete with defendants as to those machines.

Some other clauses considered separately and without regard to the circumstance that in practice they are combined with the other clauses as units in an interrelated system used by a dominant monopoly might be argued to be unexceptionable. Such an argument, for example, has been made regarding the full capacity clause taken by itself. Similarly the seventeen-year term alone might be said to be no more restrictive than an outright sale. But even these clauses can not be considered separately and it is a grave misconception of the situation to endeavor to so dispose of them. Were all the clauses, considered separately, legal enough, which we deny, their combined and cumulative effect constitutes a clearly illegal restraint of trade.

For example, if it be assumed that the full capacity clause standing alone is a reasonable and not unduly restrictive condition where machinery is leased, here it is not alone. A manufacturer is not only forbidden by it even to try out a competing machine by doing

upon it work which could be done on the leased machine, but he is bound for seventeen years. During all that long period he is legally unable to replace that machine with that of a competitor. Should he take the one method open to him of obtaining freedom, that of violating his lease and permitting the defendants to exercise the right of cancellation, he finds—under a lease like Exhibit 24, paragraphs 9 and 10 (R. III, 222–3) for example—that he must pay not only the cost of putting the machine into condition to be leased to another, but in addition a return charge amounting practically to the value of the machine. Nor is this heavy payment all. He also, under the right to cancel all leases clause, subjects himself to the penalty of cancellation of *all* his leases and the loss of *all* his leased machinery. And this though he may conceivably have made heavy payments for "initial premiums" in order to obtain machines under the so-called "independent" leases. The result, then, of an attempt to replace a machine of sufficient capacity to do his work may be not only to cost him a prohibitive sum of money but also to take away from him machines necessary to his business which he can not obtain elsewhere, e. g. lasting machines. (*Infra*, p. 164.) The practical operation, then, of this clause which to outward seeming is perhaps the most reasonable of all the restrictive clauses is to prevent the displacement by competitors of any of the defendants' machines. Without looking beyond it and those which have just been mentioned as giving it its peculiar effect

the United Company is, indeed, as Brown, J., says in a phrase not marked by exaggeration, "a very formidable competitor." Without going further, it is apparent that no field of competition is left open except the equipment of entirely new manufacturers and the satisfaction of new or additional requirements of old manufacturers.

This latter field however is closed by the exclusive use clause. *Every lease* has that clause or an equivalent. No new demand by an existing lessee of the United Company can be satisfied by a competitor of the defendants without a violation of this clause. The consequences of such a violation need not be repeated. They are the same as those which follow the violation of the full capacity clause. It is enough to say that "as a practical question" no manufacturer can afford to incur them.

Nor is this enough for the defendants. Even the opportunity to do business with new manufacturers is closed by the all-embracing system of defendants' leases. Here the "prohibitive clause" is peculiarly effective. It is the "tying clause" *par excellence*. The defendants term leases which do not contain it "independent" leases. How complete a misnomer the term "independent" is as applied to these leases and how fictitious the pretended choice offered to the shoe manufacturer really is will appear when those leases are examined, as shortly they will be. (*Infra*, p. 175.)

What is important here is the fact that a shoe manufacturer about to enter the field who finds,

as he will find, himself compelled by business necessity to take one important machine from the defendants under a lease which contains a "prohibitive clause" is thereby removed as a possible customer for competitors of the defendant not only as to machines of the particular type leased but also as to machines of all other important types used in the bottoming of shoes. This can, perhaps, best be made clear by stating a specific case, based on the facts as they were at the filing of the petition.

One of the necessary machines for bottoming shoes is the lasting machine (*supra*, pp. 11, 15). A manufacturer in need of lasting machines finds in the first place that except the United Company which has out 7,496 such machines, only one American company is professing to put them out (Appendix B.) That company, the R. H. Long Machinery Company, has out in all only four and it does not appear that it is able to supply any lasting machines for standard screw shoes, loose nailed shoes, McKay sewed shoes, or turn shoes. (Dfts. Ex. 235, V, 531.) It has no machine for lasting the sides of welt shoes (Dfts. Ex. 235, V, 531), no pulling over or assembling machines, and no lasting machine auxiliaries (Dfts. Ex. 235, V, 531). These circumstances, in themselves compelling of resort to the defendants for lasting machines, are reinforced by the further circumstances that if he should do any of his lasting on machines supplied by any concern other than the United Company, his payments for pulling over machines as to which the United Com-

pany has no American competition (Dfts. Ex. 235, V, 531) would be nearly tripled (Pffs. Ex. 38 III, 350, par. 6, appendix C *infra*), and his payments for clicking machines as to which also the United Company has no American competition (Winslow, R. I, 592, l. 38) would be increased by a penalty royalty of from one to three cents a pair (*supra*, p. 158).

Obviously such a manufacturer must go to the defendants for the kinds of lasting machines which no other American manufacturer even professes to be able to supply. Practically, he must go to them for all, for the defendants offer no form of lease for lasting machines which does not contain an "exclusive use clause" under which he can use in his factory only lasting machines and devices supplied by the defendants. The manufacturer is thus committed to the defendants for all of his present and future demands for any kind of lasting machine or device. He is presented with the form of lease for lasting machines which the defendants assure him (Winslow, R. 594, l. 6) is most favorable to him. It contains the "prohibitive clause." He may learn of another form without this clause. But he will also learn of certain conditions attached thereto which make the choice of the alleged alternative commercially impossible. These will be discussed. (*Infra*, p. 175.) Accordingly he accepts the lease containing the prohibitive clause.

At once the possibilities of competition with the defendants in respect of future needs of that manu-

ufacturer, already closed as to lasting machines, are closed as to welting, sole stitching, turn sewing, pulling over, slugging, nailing, and all "metallic" machines. For under the prohibitive clause, he can not use any machine of any competitor of the defendants for any of those operations upon any shoe lasted in any part on the defendants' lasting machine. And for the reasons already given he can have in his factory no lasting machine not the defendants'.

A chart illustrative of the practical effect of the tying clauses in these restrictive leases is submitted herewith as Appendix A. This chart has been criticised by the defendants, but all the criticisms are trivial and none of them is based upon fact. It will be observed that this chart relates to provisions in "restrictive" leases and not to leases generally, and it will be found that every statement made in it is supported by the provisions of the leases to which reference is made therein.

It follows, therefore, that by the cumulative and interrelated operation of the various parts of the defendants' leasing system coupled with the circumstance that, as to certain machines necessary in the bottoming of shoes the defendants admit a virtual monopoly (Dfts. Ex. 235, R. V, 531) the defendants have brought about a situation in which competition with them either as to the existing or the future needs for machinery of existing or future shoe manufacturers has become entirely impossible. The United Company is not merely "a formidable com-

petitor." It is absolute monarch of the industry. No competitor can exist unless for its own pleasure or policy it withholds its destroying hand.

It remains only to notice certain special features in regard to the leases of certain machines.

1. GOODYEAR MACHINES.

Much is made by the defendants of the circumstance that the leases of their principal welt method machines while tying them to each other do not forbid the use of competitors' machines other than welt method machines on shoes on which defendants' welt method machines are used. This might be important were it not that the prohibitive clauses in leases of the other indispensable machines as above indicated make the use of such competing machines impossible.

The defendants also call attention to the circumstance that they permit the use of their principal welt method machines with auxiliary machines supplied by other manufacturers. This would be more important were there such machines to be had. But Winslow testified that a great many of these machines were manufactured only by the defendants. (R. I, 545, l. 31 et seq.; 546, l. 3; and Dfts. Ex. 235, R. V, 531.)

(For the definition of "principal" and "auxiliary" in this connection, see *supra*, p. 13.)

A much more important circumstance is the fact that the defendants do *not* permit their "auxiliary" machines to be used with principal welt method machines supplied by other manufacturers. (R. I,

544, l. 8.) The operations performed by these auxiliary machines are necessary to the making of welt shoes. The effect of the defendants' refusal to permit the auxiliary machines of which they have an admitted monopoly to be used with principal welt method machines supplied by their competitors upon the possibility of competition is too obvious to require elaboration. Winslow was questioned regarding this practice of the defendants. Attention is invited to the evasive character of his answers. (R. I, 867, l. 17.) The upshot of his testimony is that the defendants have not departed from the practice just noted because no competitor has yet produced welt method machines which, in their opinion, are the equal of their own machines. But he suggests that when the happy day arrives on which a competing welt method machine is produced which the defendants recognize as equal to their own, then the company will establish prices for its auxiliary machines. The prospect which this position holds out to competitors of the defendants is also too obvious to warrant elaboration.

It may be said, however, that if no welter or stitcher made by any competitor of the defendants is in fact equal to those of the defendants, the defendants who offer increased economy and efficiency of manufacturing as the justification of their combination need fear no competition even if they made it possible by relaxing the rigors of their practices as regards these auxiliary machines. Nor can the practice in any way redound to their advantage except by

extending their monopoly of principal welt method machines and intrenching it by keeping out competitors.

It is apparent that these machines are tied together and are tied to the principal welt method machines of the defendants in order to hold for the United Company the monopoly in such machines which it acquired at its organization.

2. HEELING MACHINES.

It will be observed (Appendix C.) that from 1900 to 1904 the only form of lease for heeling machines which had been adopted by the United Company was Exhibit 27. In 1904, Exhibit 28 was adopted. This superseding lease contained in addition to the "right to terminate all leases" clause which had appeared in Exhibit 27, the full capacity, exclusive use, and prohibitive clauses.

Winslow testified that the prohibitive clause was inserted in the lease of Exhibit 28 because it had been decided to get out a lease for welt method machines without requiring an initial payment and it was decided "to have the manufacturer use our heeling machines or [to be] entitled to limit it to use with the welter or stitcher." (R. I, 546, l. 29.) He said that compensation for ceasing to charge the initial premium was not to be obtained by requiring manufacturers to put in more heeling machines but by getting a greater volume of business in a given factory. (R. I, 546, l. 34.) Pressed for further explanation, he said, that since the productive capacity

of a series of machines depends on regularity of operation, the breaking down of a heeling machine obtained from a competitor might stop defendants' machines (R. I, 547, l. 1), and added that "What we wanted to bring about was the productivity of the machines that were in use." (R. I, 547, l. 25.)

The machines whose breakdowns are in Mr. Winslow's apprehension to stop the flow of work are machines of competitors of the defendants. Productivity was to be increased by replacing them with defendant's machines. In other words, the defendants proposed to increase productivity by so designing their system of leasing as to produce monopoly. The probabilities as to increase of productivity depend upon whether the Court is willing to believe that no other manufacturer could produce a machine as effective as that of the defendants. But there was nothing problematical about the effect of the defendants' efforts in respect of their monopoly. The tie created between the welt method and the heeling departments rendered doubly secure the monopoly already enjoyed as to each.

3. METALLIC FASTENING MACHINES.

The prohibitive clause was applied to metallic machines upon the adoption of Exhibit 30 in June, 1900. The defendants attempt to justify it as an offset to the rising cost of copper. They say that instead of increasing the price of the material sold by them (Winslow, R. I, 548, l. 5) they adopted the

policy of limiting the use of these metallic machines to work that had been done on machines of other departments (*ibid*). But while it was practical and desirable in the opinion of the defendants to tie the metallic machines to the other machines when the price of copper rose it was "not a practical proposition" to untie them when it fell. (Winslow, R. I, 548, l. 29.)

The obvious effect of the tying was to protect the defendants' control of machines. That this was the object is consistent with their having found it impracticable to give up the tie when the conditions which they say justified it disappeared. That such was the purpose is substantially admitted. Mr. Winslow testified that at the time this lease was adopted the United Company "was about the only one that had any metallic machines or any welting or stitching machines in the factories in this country." (R. I, 550, l. 20.) In other words, it had a monopoly. The purpose of the tying as expressed by Mr. Winslow was to lessen the cost of service by placing two sets of defendants' machinery in a given factory where without the tying there might be only one. (R. I, 549, l. 29.) But when asked how in view of the circumstance that his company had at the time a virtual monopoly of the business that result could follow, his only answer was "The best way I can answer is to ask why didn't we raise the price." (R. I, 550, l. 25.) Mr. Winslow was a resourceful witness, and such an answer is extremely suggestive. The real reason is indicated by Mr. Winslow's testi-

mony, as far as it can be understood, at the bottom of page 549. The increased revenue was to be obtained by "treating the metallic machines in the broad sense like auxiliary machines." How the defendants treat auxiliary machines has just been shown. The change of the form of lease could not change the location of a single machine or add a penny to any royalty. But it could and did operate to prevent future competition with the defendants in the machines to which the metallic machines were tied. And it could have been intended for no other purpose.

F. OTHER OPPRESSIVE PROVISIONS OF DEFENDANTS' LEASES

In addition to the tying and rebate clauses there are other clauses which are extremely burdensome. Brief reference has been made to these, *supra*, but a more extended statement is warranted at this point.

Take for example the provisions of Exhibit 21. (R. III, 182, par. 1.)

The lessee can not without permission from the lessor remove a machine from one of his factories to another.

The lessor "and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use." The representatives of the United Company may enter the factory of the lessee at any time they please, and put themselves in a position to learn

any manufacturing secret the lessee may have. They have the power to determine when repairs are needed and the extent thereof. (Par. 11.) If a lessee should refuse he violates his lease and the lessor acquires the right to cancel every lease on machines in his factory. (Par. 8.)

Further, he is required "at his own expense" to keep the machinery "in good and efficient working order," although the machinery belongs to the lessor and the lessee is bound to pay for its use. He is also required to obtain from the "lessor exclusively" the parts needed for repairs and to pay therefor the prices "from time to time established by the lessor;" no matter how unreasonable. (Plffs. Ex. 21, par. 2.)

The machinery must be held by the lessee at his risk and in case of its destruction by fire he is required to pay a stated sum (where it is a lasting machine, $225), and must return whatever remains of it to the defendants. (Plffs. Ex. 21, par. 3.)

Where the machine has not been lost, he must return it at the end of the term for which it has been leased, to Beverly, Mass., and pay a return charge of $150, in the case of a laster "as partial reimbursement to the lessor for deterioration," etc.

If the value of the machine is $225 as we may infer from the amount which the lessee is required to pay in case of destruction, payment of this return charge is exorbitant. In other words, after paying for the use of the machine for 17 years, paying for all repairs necessary and all taxes and assessments upon

it during that period and the freight from Beverly to the lessee's factory, and the freight from the latter place to Beverly at the end of the term (par. 9), he is compelled to pay the lessor almost the value of the machine while the lessor takes the machine. Could there be anything more extortionate?

He must also pay a *minimum* charge of ten dollars a month for seventeen years, or $2040 for the use of a machine, valued as we have just said, at $225. (Par. 6.)

He is obligated to keep accurate accounts showing the number of boots and shoes or other footwear operated upon, to submit these accounts to the defendants or their representatives, and to "furnish any further information which may be called for in relation to the leased machinery or the use thereof." (Par. 7.)

He gives to the lessor the full right, power, and authority to enter upon his premises and take possession of the machine and remove it in case of "any default on the part of the lessee as to the terms of this agreement or of any other lease," and he agrees that he will not have any claim for the repayment of any sum which shall have been paid upon the machine. (Par. 9.)

For the use of machinery under these conditions he pays an extraordinary price. Assuming a small factory with a daily production of 350 pairs, making all the deductions for which defendants contend (R. I, 444, ls. 41–43) its actual annual production will be over 41,000 pairs. At 6 cents per pair the royalty

fixed for machines making welt shoes (I, 503, l. 32) the defendants would receive annual royalties of $2,460. For this they lease nine principal machines. Assuming their value to average $225, the defendants have here an investment of $2,025. They receive *annually* a return of over 120 per cent on this investment. This calculation omits both the auxiliary machines, whose value ranges from a small figure to a large one, and the rentals paid by the manufacturers for them.

No self-respecting business man would enter into stipulations so offensive and destructive of his liberty unless he was coerced by the circumstances surrounding him. This is additional evidence that all competition in bottoming shoe machinery is substantially dead, and that by reason of the tying clauses the defendants hold all shoe manufacturers in a steel-like grip from which escape is impossible save through a decree of this court.

G. THE SO-CALLED "INDEPENDENT" LEASES.

The defendants also offer what they call "independent" leases. The difference between them and the "restricted" leases lies in the fact that they do not contain the "prohibitive" clause. But these leases do contain the exclusive use, full capacity, and right to terminate all leases, clauses, and other burdensome and restrictive provisions. The defendants grant these leases only upon terms which, as a practical matter prohibit their acceptance and coerce the manufacturer into taking the restricted form.

In the first place they are granted only on the payment of heavy initial premiums.

In the second place, a manufacturer must take the independent lease as to every class of machines, in order to be relieved from the restrictions. For illustration, suppose one entering upon the manufacture of welt shoes should take restricted leases for lasting and metallic fastening machines, but an independent lease for heeling machines. His independent heeling machine lease would avail him nothing, because his lasting machine and metallic fastening machine leases would prohibit the use of such machines in connection with a heeling machine not owned by the United Company. So, if he were to take independent leases for all machines other than lasting machines, *that one lease* would prohibit the use of the lasting machines in connection with either of the *other classes* of machinery. Hence, the manufacturer must take the *entire* independent system to obtain any freedom whatever.

Mr. Winslow makes this very clear. He testified:

> For example, if a manufacturer wished to use Pettingill heelers, which are not built by our company, in the place of our heeling machine, we asked him to respect his leases up to the time when he made that decision. Then he could return our heeling machines, place his machines in the other departments upon the independent forms of leases, and continue to use the heeling machines of others. (R. I, 443, l. 2.)

This means that the shoe manufacturer would have first to find Pettingill heelers enough to satisfy his wants for heelers, and having done this he would then have to place *all his machines* "in the other departments upon the independent forms of leases." In other words, to enjoy the privilege of using an "independent" set of heelers, he would have to take over other classes of machines upon so-called "independent" leases and pay initial premiums for all of them. He could not be half slave and half free.

Now let us see what it would cost him in "initial premiums" to get the Pettingill heeler under these circumstances. Winslow says that in 1899 when his company was operating under the so-called independent form of lease it cost $11,350 to equip a factory with sufficient machinery to manufacture a thousand pairs of welts per day, while in 1911, under the restricted form of lease, it would cost only $2,467.50 to equip the same kind of a factory, a difference of $8,833.00. In other words, the owner of such a factory would have to pay at the time Mr. Winslow testified about $8,833.00 for the privilege of using a Pettingill heeler.

Williams, a shoe manufacturer of Portsmouth, Ohio, testified that the United people proposed to charge him $3,675.00 for equipping his factory, having a capacity of less than 600 pairs per day, with machines under the "independent" leases. (R. I, 217, l. 28, also 218, l. 20.)

George A. Learned was told by Matthew Gray, a representative of the United Company, that it would

cost him $3,000 to secure the machines which he desired from the United Company under the "independent" leases. (R. I, 313, l. 35.)

Rand of the International Shoe Company obtained from Winslow a careful estimate of what it would cost his company to change from the restricted to the "independent" leases, and it amounted to about $250,000. (R. I. 180, l. 42.)

Winslow made a proposition to F. E. Leavitt to install certain machines under "independent" leases (Dfts. Ex. 334, R. V, 848; R. I, 873, l. 22 et seq.) Leavitt's factory was a small one, as there was but one McKay and one lasting machine included in the list. However, the total charge for the privilege of installing one "independent" machine would be $1,800.

In this regard, it must not be forgotten that after the shoe manufacturer had paid for the privilege of using an independent machine he was required to pay to the United Company the same royalty, for that machine as if he had taken it upon a "restricted" lease. And in addition he must pay increased royalties upon certain other United machines—clicking, lasting, and metallic fastening machines, *supra*, pp. 159, 165. Of course, no shoe manufacturer could afford the luxury of an independent lease under such circumstances. He could not compete with the shoe manufacturer who took his machines under the restricted system. Consequently the privilege of taking the so-called independent leases may not be used by shoe manufacturers, and they are as

a result compelled to take their machines under the restricted leases or not at all. But as we have heretofore shown, even after the shoe manufacturer has obtained the independent lease he has gained but little freedom, because every such lease contains the "exclusive use" clause as well as the "right to terminate all leases" clause. (Appendix D, p. 351.)

In fact, it is not claimed by the defendants that the shoe manufacturers can obtain any benefits by taking the independent leases. Touching this question, Winslow says: "I believe a manufacturer is better off if he uses all our machines in series." (R. I, 550, l. 39.) Again: "I do not think it is any advantage for a manufacturer to take metallic machines on the independent lease; I never have thought so." (R. I, 551, l. 26.)

Therefore, Winslow has deliberately formulated two classes of leases, and has so framed the so-called "independent" class that in his judgment it is more beneficial to the lessee to adopt the other class, which ties him hand and foot to the United Company.

No shoe manufacturer testified that under the present conditions there are any advantages in operating under the United's so-called "independent" leases. Many of the large manufacturers who are the most strongly opposed to the present system equip their factories under the restricted leases.

The competitive disadvantage which they otherwise would suffer is a sufficient explanation. This disadvantage results not only from the heavy initial premiums which have been noticed but from other con-

ditions of the defendants' system. It should not be forgotten that this is an industry where pennies in machinery charges may make the difference between success and bankruptcy. One cent a pair sounds trifling. But one cent a pair means many dollars to a manufacturer making thousands of pairs a day. Florsheim came to Boston to beg for Eppler machines which cost 3 c. a pair instead of the four cents charged for Goodyear machines. (*Supra*, p. 46.) Herrick did not dare to keep a Haverhill machine because under his leases with defendants it meant an increase of royalties of 1½ cents a pair. (R. I, 293, l. 2 et seq.; 318, l. 6.)

Apart from losing the rebates and bonuses given by the defendants to obedient manufacturers (*infra*, p. 185), a lessee using machines of competitors under the "independent lease" would not only have to pay the initial premiums but his premiums for pulling over machines would be nearly tripled and his clicking machines would cost him an additional and discriminatory royalty of from one to three cents a pair. (*Supra*, p. 165.) On top of all this, he would have to pay ten per cent extra for any of the defendants' metallic machines which he might have to use. (*Supra*, p. 159.)

Assuming for convenience that these cumulative disadvantages to the manufacturer who tried the "independent" lease amounted only to four cents a pair it would mean to a manufacturer like Selby, a small manufacturer as compared with many mentioned in the record (R. I, 210–214), $72,000 in a

working year of 306 days. It is no wonder that Selby gave up an attempt to use independent machines upon welt shoes but acquired an interest in the Boylston Manufacturing Company "to get independence" (I. 212, l. 44). It would cost the International Shoe Company (R. I, 170) $600,000 a year. The difference in the clicking machine royalties (*supra*, p. 158) is alone sufficient "as a matter of dollars and cents" to compel the choice of the restricted leases.

The natural result of the system appears in the relative number of manufacturers who held restricted and those who held unrestricted leases in the years 1905 and 1911. (Winslow, R. I, 448, l. 42 et seq.)

In 1905 the United Company had under lease 8,129 metallic machines of which 603, or 7.4 per cent, were under independent leases.

In 1911, it had out 7,587 metallic machines, of which 225, or 3 per cent, were under independent leases. (R. I, 449, l. 17.)

In 1905 it had out 1,652 heeling machines, of which 1,500, or 90.8 per cent, were under independent leases. (R. I, 448, l. 44.)

In 1911 it had out 2,019 heeling machines, of which 415, or 20.5 per cent, were under independent leases.

In 1905 it had out 5,289 lasting machines, of which 1,956, or 37 per cent, were under the independent leases (R. I, 449, l. 3, 23) while in 1911 it had out 7,819, of which 1,506, or 19.3 per cent, were under independent leases.

That is, from 1905 to 1911 there had been a decrease in the number of machines held under inde-

pendent leases, of metallic machines, 3.4 per cent; heeling machines, 70.3 per cent; and lasting machines, 18.7 per cent. These figures not only show that a very large proportion of the principal machines are now held under the restricted forms of leases, but that there is an increasing tendency among shoe manufacturers to take the restricted form in preference to the so-called "independent" leases; and that the result of the system in actual operation is to destroy such independence upon the part of the shoe manufacturers as heretofore existed, to tie them more strongly to the United Company, and thus to prevent the development of any competition with the defendants. Nothing could demonstrate more clearly the actual workings of the system than these figures presented by Winslow.

The defendants attempt to offset these figures by presenting Exhibit 225 (R. I, 450), which purports to show that of 90,296 machines out on lease (Pffs. Ex. 163, R. IV, 1125) 23,403 are on independent leases. But of these 23,403, 5,203 are Goodyear principal machines and 16,054 are auxiliary machines of various kinds. How far these are "independent" is noted *supra*. It follows, then, that on defendants' own figures only 2,146 machines, or 2.3 per cent of their leased machines, are out on the leases pretended to be independent. In view of the conditions attending these leases, there is no cause for wonder.

H. ALLEGED MODIFICATIONS OF THE RESTRICTIVE LEASES.

The defendants insist that the leases do not represent the policy of the company because of certain "riders" by which their leases are modified upon occasion. (Winslow, R. I, 546, l. 16 et seq.) Donham, however, produced (R. I, 822, l. 12 et seq.) all riders of which he had any knowledge. They are Exhibits 278 to 310. (R. V, 777–809.) Winslow produced no others.

On account of the large number of these exhibits, no special analysis will here be attempted, but a glance at them will show that the modifications were either an elimination of the "prohibitive" clause, merely changing a restricted lease to one of the so-called "independent" form which has just been discussed, or the giving of permission to a lessee to use some particular machine upon a certain kind of work, as, for instance, an outsole stitcher upon shoes welted by hand, or upon McKay shoes, for fair-stitching. In no instance does any modification indicate the least deviation from the general policy or effect of the lease system.

There is certainly no material proof otherwise than from the officers of the company that any liberality of spirit along this line was shown.

The legality of the lease system must be determined independent of occasional concessions to particular individuals for the special use of a machine. There is certainly nothing in any lease which obligates the company to make such concessions.

If they are made it is by favor of the company and not as a matter of right to the lessees.

I. EFFECT OF THE LEASING SYSTEM UPON COMPETITION WHICH WOULD OTHERWISE EXIST BETWEEN SHOE MANUFACTURERS.

Mr. Winslow testified upon this point:

> We have never granted concessions of any sort. * * * Our royalties have been the same to all, whether they used a thousand machines or one; they are charged by the pair and the service is exactly the same. (R. I, 439, l. 43; 440, l. 2 et seq.)

This testimony is not quite correct, for the record shows that the United Company granted rebates in the form of stock donations. (R. I, 351, l. 43.) But it is generally true and characteristic of the United Company's system.

The general effect of it is to place shoe manufacturers upon a common plane—to which we do not object (*infra*, p. 258)—and to eliminate all opportunity of competition as to a very important element embraced in the manufacture of footwear, namely, machinery.

Manufacturers may compete in the purchase of hides and other material for the manufacture of shoes, in the location of their factories with regard to shipping and manufacturing convenience, in the construction and arrangement of the factory and in marketing the finished product. But the skillful manufacturer is denied the privilege of exercising a choice as to machines or to exercise his judgment as to the terms on which he will take them or the manner of keeping them in proper efficiency. Un-

doubtedly the cost of a shoe must depend to a very material extent upon the kind and cost of the machinery used in its manufacture. But from the time the shoe is presented to the pulling-over machine until it emerges from the final bottoming machine, the possibility of competition in this respect to any material extent is entirely cut off; and the cost of preparing and attaching the sole of every shoe of a given kind must be exactly the same to every lessee of the United Shoe Machinery Company, which comprises substantially all the shoe manufacturers of the United States.

Any scheme which is enforced by contracts, and which has the effect of making absolutely uniform one element of cost of practically all the shoes which enter into interstate commerce, must be violative of the Sherman Act.

J. ENFORCEMENT BY THE UNITED COMPANY OF THE RESTRICTIVE PROVISIONS OF ITS LEASES.

The United Company in administering its leasing system and its consequent control of the shoe manufacturing industry has adopted a system of rewards for those who assist its program of monopoly and of punishment for those who do not comply with its requirements.

1. REBATES GRANTED TO OBEDIENT LESSEES.

As a part of its plan for monopolizing the shoe machinery business, the United Company has granted rebates and special inducements to its lessees upon

condition that they should use its machines exclusively and faithfully observe the covenants of the leases.

On June 10, 1910, the United Shoe Machinery Company of New Jersey by its president, Sidney W. Winslow, addressed a circular letter "To the Lessees of the United Shoe Machinery Company" in which it was provided that beginning with January 1, 1910, the company would create a fund by investing in the common stock of the United Shoe Machinery Company and would add to it from time to time; that at the end of three years it would distribute the stock among the lessees of "the Goodyear welting, Goodyear stitching, and Goodyear turn sewing machines in the United States," who had "faithfully observed the covenants of their leases," and that in this fund not less than fifteen per cent of the amount received from the use of the Goodyear welters and stitchers in the United States would be invested and of the amount received from Goodyear turn machines not less than ten per cent would be invested. (Plff's Ex. 146, R. V, 1067, last four paragraphs.) The covenants referred to embrace the tying clauses which in effect obligated the lessees, as we have said, not to use machinery procured from competitors of the United Company.

This proposition of the United Company is of special significance, in view of the fact that the offer was made at a time when serious competition threatened the United Company. It was in May, 1910, that Plant discontinued the use of the United Company's

machines in the factory of the Thomas G. Plant Company and installed in their place the Plant machines. It was about that time that Endicott invited Winslow to meet Plant at Endicott's house at Dedham, Mass., for a conference with respect to the Plant machines, and it was in June, 1910, that the meeting was held. (R. I, 558, l. 6.) Furthermore, while this notification to the lessees of the United Company of the plan for rebating was not made until June 10, 1910, the plan, by the terms of the notification, became operative on January 1, 1910, antedating the notification by a period of more than five months.

The testimony of defendants' witnesses is to the effect that the principal improvements obtained by the United Company through the Plant purchase, were embodied in the welters and stitchers. (R. I, 785, l. 44; 787, l. 34 et seq.) The conclusion is irresistible that the defendants realized that Plant's welters and stitchers would appeal to the shoe manufacturers, and that it was for the purpose of holding the shoe manufacturers in line and inducing them to continue the exclusive use of the United Company's machines that the proposition of June 10, 1910, was made by that company. The United Company was organized in February, 1899, and a period of more than ten years had elapsed before there was any expression of an intention to grant a rebate. It is noteworthy that the plan did not present itself to the minds of the representatives of the United Company prior to the time when serious competition was threatened. Furthermore, it will be

observed that only those lessees "*who shall faithfully observe the covenants of their leases*"—the tying clauses—were entitled to the benefits of the plan.

2. PUNITIVE ACTION AGAINST DISOBEDIENT LESSEES.

The defendants contend that they have used their great power mildly and that their policy is much more liberal than the leases indicate. This forbearance if genuine can not be of any legal consequence. But it does not appear that the defendants have refrained from enforcing their rights in any appreciable number of cases of violation of the leases. That there should be few instances of violation is not remarkable when one considers the possible consequences to a recalcitrant manufacturer of such violation. The manufacturers could obtain no machines elsewhere, and hence they dare not violate the leases. But when the evidence is taken as a whole, there can be no doubt that the provisions of the leases which are especially obnoxious have been strictly enforced.

The efforts made by the United Company to enforce the restrictive provisions and their effect upon the business of competitors, are indicated by the following evidence, which is practically uncontradicted.

Frank R. Hilliard is a shoe manufacturer. His company attempted to install a turn sewing machine, made by the Haverhill Shoe Machinery Company, at a time when they had machines of the United Company doing the same work. They talked with Winslow, who stated that they were using that machine contrary to their lease, and would either have to change the lease or stop using the machine. They

had the Haverhill machine on trial, and returned it, on account of the objection of the United Company based on the provisions of the lease. (Hilliard, R. I, 282–4.)

The Haverhill Shoe Machinery Company installed with Herrick, of Lynn, a channeling machine, a turn sewer, a heeling machine, and a heel-breasting machine. There was a clause in Herrick's clicking machine lease, from the United Company, prohibiting the use of these machines. Under the terms of that lease he had to pay the United Company royalty *on work done on the Haverhill machines* of one and one-half cents per pair, with a fifty per cent discount for prompt payment, so Herrick did not dare keep the machine, and took it out. He kept the nailing machine for some time, but found that if he kept it, he would lose his rebate on his Gem insoles, and also the fifteen per cent rebate that the United was giving for not violating the leases. Consequently Herrick gave up the Haverhill machine. (Webster, R. I, 293, l. 2 et seq.; also Harriman, R. I, 318, l. 6.)

Fred W. Herrick testified as to one of these machines, that on negotiating for a return of a United machine, it was said by the United people that the Herrick Company would have to pay them royalty on the same shoes on which they had already paid for the use of the Haverhill machine, consequently the Haverhill machine was taken out. (Herrick, R. I, 357, l. 2 et seq.)

Louis H. Harriman, treasurer of the Haverhill Shoe Machinery Company, details the following instances

in which that company had trouble in installing machines, in addition to those detailed by the witnesses Webster and Hilliard:

Lynch & Sherman had a turn sewing machine which was installed in their factory and operated for a short time. They caused the Haverhill Company to take it out, because the agents of the United Company had told them that they were violating their lease (R. I, 318, l. 26).

W. S. Chase & Company had installed two channeling machines, a turn sewing machine, and a heeling machine, which were operated very satisfactorily, but a year before the witness testified the Haverhill Company was told to remove all their machines. One reason given by Chase & Company was that they had been sued for infringement by the Xpedite Company, and that one of the terms of the settlement of the suit without charging damages was that they should remove the Haverhill machines; and another reason assigned was that the United Company said they were violating the conditions of their leases. (R. I, 319, l. 35 et seq.)

Carleton & Hunt installed a channeling machine in 1908, and about two years later a turn sewing machine, which were operated until early in 1912. The machines were taken out because otherwise the manufacturers could not get from the United Company a line of machinery for making welt shoes. (R. I, 320, l. 1 et seq.)

The Haverhill Company installed two turn sewers and two channelers in N. D. Dodge & Son's factory.

Their use was discontinued because the Haverhill Company *could not furnish a line of welt machinery, and they could not get such line from the United Company while they used the Haverhill machines.* (R. I, 320, l. 9.)

Ned Pike was employed to install machinery by the Haverhill Company and while so employed he traveled in eight States, and he details certain difficulties which he encountered (R. I, 329–331) as follows:

He attempted to install a machine in the factory of Ashe, Noyes & Small, Auburn, Maine, but they said that under their existing leases with the United Company it would be impossible to take the machinery, without laying themselves open to a great deal of trouble with that company.

Dunn & McCarthy of Auburn, New York, stated "they would like to consider the proposition of putting in my machine, particularly the turn sewer, but under the United Company's leases, their toe-laster and heel-seat machines would cost them more than any saving they could make on our machines."

Krippendorf & Dittman, of Cincinnati, ordered some machines from another solicitor for the Haverhill Company, and when witness saw them afterwards, they said they did not dare put in the machines at that time, on account of the character of the leases of the United Company they were operating under.

The Syracuse Shoe Company, in New York, said it meant altogether too much to them to install a

competing machine, as it would make lots of trouble for them with the United Company.

The Irving Drew Shoe Company of Portsmouth, Ohio, said in substance that they were owned, body and soul, by the United Company, so far as shoe machinery was concerned.

George A. Learned, a shoe manufacturer at Newburyport, Mass., had been using United Company machines and some machines belonging to the Haverhill Shoe Machinery Company. He was told by one Gray, representing the United people, that if he wanted to use other machines in conjunction with the Haverhill machines he would have to pay $3,000 in addition to the sum that would be required from him if he discontinued the use of the Haverhill machines. Later he was told by Winslow that unless he did comply with the terms of his leases, that is, those which in effect prohibited him from using independent machinery, the United Company would withdraw all their machines from his factory and drive him out of business. (R. I, 313, l. 27 to 314, l. 16.)

Prior to December 12, 1911, the Union Lockstitch Company had difficulty in installing its curved needle machine, which had the same function as the United Company's outsole stitcher. In fact, the Lock Stitch Company had succeeded in installing but one and that was with a small manufacturer. The company had tried to sell to Roberts, Johnson & Rand, Harsh & Edmands, Commonwealth Shoe & Leather Company, and the Peters Shoe Company. Jones, of

the Commonwealth Company, said he could not afford to touch the Union Lockstitch Machine because his lease forbade it. (R. I, 203, l. 5.)

Merrick, of the Lockstitch Company, when subsequently recalled filed as Plff's Exs. 177, 178, and 179 letters showing that these parties would not take machines from his company on account of the United Company's leases. (R. I, 207, l. 36.)

John E. Williams, of the Portsmouth Shoe Co., has four factories at Portsmouth and Ironton, Ohio, manufacturing men's and boys' welts and mock welts. They had installed a Union lock-stitch machine, and talked with Colonel King, of Boston, representative of the United Company. After three days' talk, Colonel King said: "Mr. Williams, under the leases we feel that you have broken your obligation, and would ask you to discontinue it."

King, through Ross, the local representative of the United Company, submitted a plan whereby they could use the Union machine, but the initial charges would have been $3,675, and there would have been an additional royalty of one and one-eighth cents per pair. They thereupon sent the machine back, and took no more. The proposition was made with reference to the installation of a new factory, with much auxiliary machinery left out, the shoe to be a simple one. (R. I, 217, l. 14; 218, l. 27.)

E. P. Reed was using a turn sewing machine of the Standard Shoe Machinery Company, which was manufactured by the Bay State Shoe Machinery Company, and the Standard Company wanted him to introduce

more of its machine, but he said he was afraid—that the United Company was such a gigantic corporation that no shoe manufacturer could afford to be a martyr. (Darrah, R. I, 334, l. 35.)

The Standard Company had a Woodward machine with Mark J. Worthley, of Lynn, Mass., who reported that he was afraid he would have to return it; that the United Company's agents were after him all the time and were making threats. (Darrah, R. I, 335, l. 1.)

Thomas G. Plant who was using the Standard's Woodward machines told the witness Darrah that the United Company's agents had been after him so often and so persistently that he was afraid he would have to surrender the Woodward machines and install the McKay machines of the United Company. (Darrah, R. I, 335, l. 8.)

The T. D. Barry Company had obtained some machines from the Standard Shoe Machinery Company. The United Company's machines were also in use in that factory. Barry was in Europe, and the United Company had had a replevin warrant issued and started to take the United machines out, when William A. Hogan, treasurer of the Barry Company, threatened to shoot the officer. Hogan then obtained a writ of injunction, which was subsequently dissolved, and he then agreed with Storrow, counsel for the United Company, to stop the Standard machines until Barry should return. After his return the Standard machines were taken out. (Hogan, R. I, 222, l. 11–38.)

The Standard Shoe Machinery Company was incorporated in 1899 and went into the hands of a receiver in 1901. (R. I, 335, l. 30.)

Prior to 1912, Curtis & Jones had one shoe factory at Reading, Pennsylvania, and another at Hamburg, 16 miles from Reading. In the Hamburg factory they used a miscellaneous lot of machinery and the Lincoln machine made by the Campbell Sewing Machine Company, but used the United Company's sewing machines altogether in the Reading plant. They combined the two factories, moving the Hamburg plant to Reading, in July, 1902. (R. I, 363, l. 36, 364.) About the time of the consolidation they bought three Duplessis turn sewing machines, and they already had five Lincoln machines. Mr. Clark, the local representative of the United Company, told them that the operation of the Duplessis machines in the same factory with a Goodyear machine was prohibited by the United Company's leases, and that since the factories had been consolidated the rule applied. He said they would remove all their leased machines, unless they discontinued the use of the independent machines. (R. I, 365, l. 41.) Colonel King a manager of the United Company then came, and they agreed to turn over the independent machines at cost price, and replace them with Goodyear machines. (Shinn, R. 366, l. 3; Curtis, 377, l. 29 et seq.)

Curtis, of the same firm, testified that they changed to United Company's machines to avoid a fight with the United Company; that company told them that

they could not, under their leases, use any independent machinery in the same building, and that the United would take its machinery away if they kept on operating the independent machinery. If the witness's company had thrown the United machines out, he said they *could not have obtained substitutes, as he knew of no other concern from which he could obtain them.* (R. I, 380, l. 21 et seq.) The use of the United machines increased the cost one-half cent per pair. The independent machines were doing satisfactory work and they wanted to keep them. (R. I, 381, l. 8.)

In 1904, Peter Tessier, of Peter Tessier & Company, Haverhill, Mass., was manufacturing shoes. He had two channelers, a slugging machine, a molder, and a Goodyear stitcher, which he had obtained from the United Company. He installed a Duplessis sewing machine, and the United Company thereupon took all its machines out of his factory. (R. I, 281, 2.)

Ernest Bottomley, of Haverhill, Mass., testified that about 1903 he was engaged in making turn shoes, and had nailing and stitching machines made by the Duplessis Company. Prior to that time he had a Goodyear stitcher, which he quit using when he took the Duplessis. He had a sole rounder, and several other United machines. He had a talk with Colonel King of the United Company, in which King said, in effect, that witness would have to use one or the other line of machines. Witness chose the Duplessis, and the United Company took its machines out. Subsequently witness's factory was

changed from making turn shoes to McKays, and therefore had to change its machines. Witness went to the United Company, and they required him to pay royalty on the shoes *made on the Duplessis machinery*, after the machinery of the United Company had been taken out. He now uses United machinery exclusively, except a buffer or rounder, which he bought from others. (R. I, 284, l. 26.)

George R. Harsh, of Harsh-Edmands Shoe Company, Milwaukee, Wisconsin, had procured a clicking machine from the Richardson Shoe Machinery Company, of Lynn, and was trying to procure other clicking machines. Wilson a representative of the United Company told Harsh that it would be better for him if he ceased his activities against the United Company, and would take things as they were, and showed him that in a lease for a metallic fastening machine he was already bound by a provision similar to the one he was complaining about in the clicking machine lease. As a result the witness made no further efforts to obtain such machines elsewhere, but took them from the United Company. (R. I, 196, l. 5.)

George H. Clark had invented a method of molding shoes, and had also invented an attachment for a stitcher which enabled him to stitch the shoe and trim it at the same time. He had one of the machines in Richardson's factory at Lynn. The United Company refused to place any of their machines in that factory, saying, through its manager, Hurd,

"We have to put the knife and protect our interests." (R. I, 307, l. 12.)

Kimball & Hadley, of Lynn, Mass., were making needles and awls. Beginning about January, 1904, they found that they could not sell Universal Slugging Machine awls. Five firms told Hadley personally that the reason they would not purchase was that the use of their needles and awls was in violation of the lease of the United Company; and if they continued to use their needles and awls, the United Company would take its machines away from them. (Hadley, R. I, 308, l. 11.)

In truth, Mr. Choate, one of counsel for the defendants, concedes that they enforce the tying clauses, for he said in answer to a question by the presiding judge: "I do admit that they carry out the terms of the leases." (R. I, 281, l. 30.)

K. UNSUCCESSFUL EFFORTS OF SHOE MANUFACTURERS TO OBTAIN MODIFICATIONS OF THE RESTRICTIVE CLAUSES.

From the very beginning of the United Company's existence shoe manufacturers have attempted unsuccessfully to secure modifications of the restrictive clauses. These efforts have been uniformly unsuccessful. And the circumstances, taken together with Mr. Winslow's declarations show that the object sought by the defendants in devising and insisting upon the clauses was the exclusion of competitors.

We have already referred to the first of these efforts. It was made by the National Boot & Shoe Manufacturers' Association, of which Charles H. Krippendorf was a director. He testified that on November 8,

1900, members of the association had a conference with Winslow for the purpose of asking him to eliminate the restrictive clauses from the new leases for the metallic machines. They had a stenographer present, who reported the proceedings. The witness produced the report. In the course of Winslow's remarks refusing to modify the tying clauses, he said that if the tying clauses were eliminated his company would be compelled to buy out every new machine that might be manufactured, and when asked why he would have to do this, stated:

> Why? Well, let me ask you if we haven't got either to purchase that machine *or compete* with the man who is simply doing that to force us to buy. (Krippendorf, R. I, 216, l. 6.)

In January or February, 1907, Winslow sent for Charles H. Jones, president of the Commonwealth Shoe & Leather Company who went to his office with McElwain, another manufacturer, now deceased. During the meeting they urged Winslow to abandon the tying clauses. Winslow replied in substance that he could not consider doing so; that those clauses gave him complete control; that without that complete control other machines would creep in; that if the clauses were eliminated "the *intense competition* which existed before would return."

Florsheim testified that while in Boston in September, 1910, in connection with the Plant purchase (*supra*, p. 109), and a few days after the United Company had acquired that business, he and Jackson Johnson told Winslow that the manufacturers were

dissatisfied with the tying clauses of the leases, and after considerable talk Winslow proposed to let the matter rest for the present. (R. I, 161, l. 23.)

Winslow went to St. Louis in the following February, and Johnson, who presided at the meeting called to hear him, submitted to him a proposition looking towards the elimination of the clauses. No definite action was taken, but Winslow proposed another meeting in Boston. (Florsheim, R. I, 161, l. 38; 162, l. 15; Selz, R. I, 145, l. 5.)

The next meeting between them was in Boston, in May, 1911; and Winslow then said that he had given the matter a good deal of consideration, but he didn't see how he could make any changes in the leases, and that any such change as they suggested in the leases would ruin the system, and could not be made. (Selz, R. I, 147, l. 22–32.)

L. OTHER EFFORTS OF SHOE MANUFACTURERS TO ESCAPE THE TYING CLAUSES.

For the purpose of protecting themselves against the oppressive practices of the United Company a number of the shoe manufacturers invested in the Boylston Manufacturing Company.

Johnson, of the International Company, said:

> Our company has an interest in the Boylston Manufacturing Company. It amounts to about $80,000. We went into it to protect our business by insuring the permanency of the supply of shoe machinery. (R. I, 171, l. 19.)

Rand of the same Company says that they invested in the Boylston Company" to safe guard our shoe

business by developing another source of supply in shoe machinery, and competition in that commodity." (R. I, 182, l. 41.)

Harsh, of the Harsh-Edmonds Shoe Company, Milwaukee, speaking of his investment in the Bolston Company, said:

> My sole and only reason for taking that interest was to supply my business with shoe machinery. (R. I, 196, l. 33.)

Selz, of Selz, Schwab & Company, Chicago, said that he had invested between $25,000 and $30,000 in the Boylston Company, and when asked the object of that organization, said:

> If these leases are declared invalid, we want to have a competitive shoe machinery in the market. (R. I, 157, l. 31, 33.)

Sleby, of Drew, Selby & Company, testified:

> I have an interest in the Boylston Manufacturing Company which I acquired in January or February of this year to protect the business of the Selby Shoe Company, to get independence. (R. I, 212, l. 42.)

Jones, of the Commonwealth Company, says he invested $20,000 to $25,000 in the Boylston Company, "Because we could see no other way in which to establish competition in shoe machinery." (R. I, 135, l. 28.)

It does not appear that the Boylston Company has put out bottoming machinery to the trade. (R. I, 301, l. 29.) It stands ready to enter active competition "if the leases are declared invalid."

Even Mr. Choate, counsel for defendants, admits that producers of independent shoe machinery are doomed to destruction if the tying clauses are not struck down. This undoubtedly is the purport of the following colloquy between him and Mr. Selz, while cross-examining the latter. After Selz had stated that he had an investment of between $25,000 and $30,000 in that company, this took place:

> So you have that amount at stake upon these machinery leases being declared invalid?
>
> A. If you choose to look at it that way.
>
> Q. If they are not, you stand to lose that money?
>
> A. Yes, sir.
>
> Q. If they are, you stand to make it?
>
> A. Yes. (R. I, 158, l. 1.)

This is undoubtedly true, and Mr. Choate has made a valuable contribution to the Government's contention by his implied admission. The sustaining of the leases would destroy not only the Boylston Company, but every company that dared to compete with the United Company.

M. CERTAIN ALLEGED DEFENSES.

1. THAT THE "RIGHT TO CANCEL ALL LEASES" CLAUSE IS A NECESSARY PROTECTION AGAINST DISHONEST LESSEES.

This clause as has been shown makes every tying clause in *any* lease signed by a shoe manufacturer a condition of *every* lease signed by that manufacturer. The defendants contend that this is necessary to protect them against dishonesty on the part of lessees. (Winslow, R. I, 447, l. 22, et seq.) It can **not** be so easily disposed of.

All lessees are not dishonest. But this clause is contained in every lease put out by the company and the power created thereby remains whether it is exercised or not. It is a threat to honest manufacturers as well as to those described by Mr. Winslow in explaining the purpose of the clause. Its existence is sufficient to coerce them into strict obedience to the terms of their leases. It is not matter of wonder in view of this clause that defendants rarely need to take steps to enforce their leases.

But even if every lessee was dishonest, that remarkable circumstance would not justify the existence of this clause. It is a violation of the law. The defendants must find some legal method of protecting themselves in their just rights. There are many such.

2. THAT IT IS NECESSARY TO EFFICIENT WORK THAT MACHINES BE LEASED AND OPERATED IN "TEAMS."

Emphasis is laid by the defendants upon the circumstance that in practical shoe manufacturing, the product is routed so as to advance progressively along the line of machines. It is said that for maximum production and economy it is necessary that the flow of work should be continuous. And that in a factory so organized the breaking down of a single machine may throw the entire organization out of gear and the inferiority of a single machine may result in a deleterious effect upon the output of the line. (Winslow, R. I, 866, l. 33 et seq., 867.)

There is nothing peculiar to the shoe manufacturing industry in this. Such organization is a com-

monplace of modern manufacturing. The special application sought by the defendants is in their contention that in this industry it is peculiarly necessary that all of the machines comprising a given line be specially designed to work with each other, and that that circumstance and the further necessity of protecting the reputation of their machines by preventing the introduction into the line of an inferior machine of one of their competitors are a justification of their leasing system. (Winslow, R. I, 866, 867.)

Certain facts regarding this contention should be noticed. It is obvious that a machine must be properly designed to perform the function for which it is used. It does not follow that no machine not designed by the defendants can perform a given function. Unless there is some direct physical connection between the operation of two machines there can be no practical difficulty in their proper performance of successive related functions if each is in fact properly designed for its own work. It has already been pointed out that the defendants concede that even the machines which they term "auxiliary" to other machines perform entirely independent operations. "The operations are as separate and distinct as the lasting operation and the welting operation only they are not so far removed from each other." (Winslow, R. I, 537, l. 9.) This is borne out by the testimony of McElroy and Selby. McElroy, who equipped the Non-Royalty factory, a man of very wide experience, testified:

"I do not think it necessary for a factory to have all its machines from one manufacturer in order to get efficient service." (R. I, 921, l. 1.)

Selby, a shoe manufacturer of large experience in the use of shoe machinery, said:

> The operation of the lasting machine has nothing to do with the operation of the welt sewing machine. The operation of the welt sewing machine has nothing to do with the operation of the outsole stitching machine. The operations are performed by separate operators on different machines. The same is true of heeling machines. (R. I, 924, l. 21.)

Therefore, no machine is necessary to the operation of any other, and this is one of the grounds upon which the case is distinguishable from *Henry* v. *Dick* (*infra*, p. 274).

A further and even more convincing circumstance, however, is to be found in certain facts upon which the defendants rely to support certain other arguments which they make. The method of making shoes by the welt process is that which the defendants say they have peculiarly fostered and promoted. It is upon shoes of this type that defendants earn their largest royalties. Welt shoes made in that particular manner which distinguishes the operation of the defendants' machines have been given by the defendant a trade mark. (R. I, 22, l. 3.) They are claimed to be the best type of shoes. (R. I, 441, l. 38.) In their manufacture more different types of machines are used than in the making of shoes by

any other method. (Dfts. Ex. 235, R. V, 631.) Especially are more "auxiliary" machines used. (*Ibid.*) In no branch of shoe making can the "continuity of operation" of which defendants talk have greater significance. The operations of no machines are more closely related than those of the welt method principal and auxiliary machines. Yet in this all important division of their business it is not only admitted by the defendants but is asserted by them that "Auxiliary machines doing any of the operations that are performed by any of our auxiliary machines may be obtained from any one and used in connection with (our) welter and stitcher." (Winslow, R. I, 544, l. 12.)

Another thing that should be remembered in this connection is the fact that defendants boast their readiness for a consideration to admit independent machines into their line of machinery under the so-called independent leases. An independent machine thus admitted would be as likely to break down and disturb the continuity of operation as if admitted in any other way, but still defendants are willing to let it enter. Does this not expose the hollowness of their continuity argument?

3. THAT DEFENDANTS HAVE MADE IMPROVEMENTS IN MACHINERY AND METHODS.

The United Company further insists that it has greatly improved the different kinds of machinery; that it gives excellent service to the manufacturers; that its leasing system is satisfactory to some of the manufacturers and is a benefit to the public gener-

ally. From these things they seek to argue that the tying clauses are lawful. But even were they true, which we deny, they furnish no justification for violating the anti-trust act. Some such palliation is offered for every monopolistic endeavor. The question here is not whether some beneficial results have followed in the train of the defendants' acts. It is whether those acts were acts in restraint of trade—whether competition or monopoly shall be the law of this industry. Upon what is relevant to that inquiry this Court has long since passed.

In this connection it is proper to observe that shoe manufacturers may well prefer a leasing system to a system under which they could obtain machines only by purchase with a necessary investment of large amounts of fixed capital. That, however, shows no approval of the tying clauses. Those clauses are neither essential nor proper accompaniments to a satisfactory leasing system.

4. THAT ITS SUCCESS IS DUE WHOLLY TO THE EFFICIENCY OF ITS MACHINES.

It is also claimed by the defendants that their preponderant position in the shoe machinery business is due to the efficiency of their machines and not to the tying clauses. Assuming the claim of superiority for their machines to be well founded it is not clear how the defendants expect the Court to differentiate between the contribution to their control made by that circumstance and the contribution made by the fact that the United Company began with an admitted monopoly and has sup-

ported and extended it in the way herein indicated. Nor do the defendants indicate the answer to another obvious question. The superiority of their machines, if any, has been gained in a field in which the efforts and the possibilities of competitors of the defendants have been limited and circumscribed by the conditions which the defendants have been able to impose upon the industry. They have won in a race in which they have themselves allotted the handicaps. Who shall say what would have been the merits of competing machines developed by competitors to whom a fair and equal opportunity was open? Who can predict as to the future of such a field?

In fact it is here that the argument of the defendants destroys itself. If it be true that the superiority of their machines is in itself a sufficient explanation of their success, then it certainly is true that now that such superiority has been established it is unnecessary for them to hedge about the shoe manufacturers of the country with the restrictions and penalties of the tying and cognate clauses of the leases. Or is it the contention of the defendants that the shoe manufacturers do not understand their own best interests and therefore need the restraints imposed upon them,—that the defendants must be permitted to be the benevolent despots of the shoe machinery world? Unless this be their position, they should allow shoe manufacturers to exercise freely their own judgment as to what machines are best suitable for their purposes. For the tying clauses are utterly opposed to that freedom of trade which

it is the purpose of the Sherman Act to foster and are antagonistic to the genius of American institutions.

5. THAT THE UNITED COMPANY GIVES GOOD SERVICE.

Defendants make much of their alleged free service. They talk of service stations, of a force of six or eight thousand men maintained for the purpose of keeping leased machines in repair without charge, *except for parts*, to the lessee. But the machines are the defendants machines and they produce revenue only when in good condition. Keeping the machines in repair is in every respect a good business proposition for the defendants. It affords no basis for claims of altruism.

And it is very doubtful whether anything is given without compensation. The lessees are bound by the leases to permit defendants' men to enter their factories at any time, to determine whether repairs or repair parts are needed without the concurrence of the lessee. The lessee is obligated to purchase repair parts exclusively from the defendants at the prices which defendants fix. (Plff's Ex. 30, par. 2, 3, R. III, 278.) Given the power to determine when repair parts shall be bought and the price that shall be paid it is a pretty safe inference that the defendants do not lose money on this vaunted service system.

The weakness of the argument, however, is the failure to indicate any connection whatever between this service and the tying clauses. As a matter of fact, the defendants are by no means the only

corporation which gives service. The Singer Manufacturing Company for example does so. (R. I, 734, l. 44.) But it does not find it necessary to bind and gag its customers in order to do so.

It may however be repeated that the question here is whether the defendants have done acts which restrain trade in violation of the Sherman Law. It is no answer to such a charge to say that certain other acts of the defendants are not blameworthy.

6. THAT IT IS AS LIBERAL AS ITS CONSTITUENT COMPANIES WERE.

The defendants contend that they have not restrained trade because they continue to offer machines on substantially the same terms as they were offered before the consolidation. If this were true, it would be irrelevant. For the defendants have adopted also the restrictive system of leases and have so devised it as to compel its acceptance by shoe manufacturers. The contention, however, has no basis in fact. The leases under which machines were put out by the constituent companies are all set out in the record. (Plff's Exs. 3–17, R. III, 3–153; see also Donham, R. I, 2–6.)

Inspection of the leases shows that the McKay Shoe Machinery Company, at the time of the consolidation, was putting out its machines (comprising the numerous and important group of metallic and heeling machines) *without initial payment* and *without exclusive use or other tying clauses.* Its previous initial payment lease had no such clauses. (Plff's Exs. 11, 12, R. III, l. 90, 103.) The defendants offer no such

lease. The Goodyear Company was offering lasting machines upon leases (Plff's Ex. 5, III, 37) which forbade the use of the machine with welt method machines supplied by competitors of the Goodyear Company, *but had no other tie* to any other kind of bottoming machinery. It had no exclusive use clause and therefore permitted the lessee to have in his factory an independent lasting machine to use with independent welt method machines. The United Company offers no such lease. The Consolidated Company, Mr. Winslow's original company, had an initial payment for the hand-method machine. (Plff's Ex. 8, R. I, III, 6, 9, par. 1.) It contains none of the tying clauses. The United Company offers no such lease. The Goodyear Company's "full set" lease for welt method machines (Plff's Ex. 4, R. III, 29) contained no exclusive use clause. No such lease is now offered by the United Company.

It has already been pointed out that no lease of a constituent company could contain a prohibitive clause of the kind and effect of those which characterize the "restricted" system devised by the United Company. A prohibitive clause in the McKay Shoe Machinery Company leases could not have affected competition in lasting machines. It made no such machines. The effect of such a clause could have been produced only by an agreement that each company would refuse to put out their machines to shoe manufacturers who would not undertake to deal with the other companies exclusively as to the machines dealt in by them. The illegality of such a

boycott need no longer be argued to this Court. Yet what the defendants actually did, by progressive steps and what they must have intended since it resulted inevitably from what they did was to give such an illegal agreement the form of corporate organization. In so far as the defendants follow the leasing system of the constituent companies, they apply it under wholly different conditions to wholly different circumstances, with very different practical and legal effect.

7. THAT THE RESTRICTIVE LEASES SIMPLY MAKE A WHOLESALE PRICE

The defendants contend that their restrictive leases simply are the making of a wholesale price. But they regard it as a virtue that they charge a manufacturer who uses a dozen lasting machines no less per machine than a manufacturer who uses only one such machine. (*Supra*, p. 184.)

In no sense do they make any quantity discount. The discount—and it is a heavy one—is for monopoly and for monopoly alone. Where the ordinary purchaser who buys at wholesale is free to make his next purchase where he will, he who deals with the defendants surrenders his liberty of choice for seventeen years, at least—possibly for his business life.

8. THAT COMPETITORS HAVE NO RIGHT TO EXIST.

The defendants contend in effect that they can not be charged with violation of law in excluding competitors because competitors have no right to exist. They urge this especially in respect to welt machinery, a field which they say would not exist had they not

discovered and developed it. In so far as this contention is based on patent rights, it is discussed *infra* pp. 263–280. But a competitor who produces a non-infringing welt method machine has the same right to equal opportunity and users of such machines have the same right to a free choice as to welt method machines as in any other division of industry. No rights of preemption or prescription of a whole field of modern industry are recognized by the Sherman Law.

THE LAW OF THE CASE.

I.

THE UNITED COMPANY IS A COMBINATION IN VIOLATION OF THE FEDERAL ANTI-TRUST LAW.

A. RESTRAINT OF TRADE BY A COMBINATION OF PREVIOUSLY COMPETITIVE UNITS IS ILLEGAL NO MATTER WHAT FORM IT ASSUMES.

In view of the thoroughness with which the Federal Anti-Trust Act has been discussed recently in the Harvester and Steel cases, those features of the act which do not relate to facts peculiar to the instant case require only a very brief consideration.

In the foregoing pages it has been shown that the Goodyear Company, the Consolidated & McKay Company, McKay Shoe Machinery Company, and Eppler Company were "able competitors" (*International Harvester Company* v. *Missouri*, 234 U. S. 199) at the time the United Company was incorporated (*supra*, pp. 17–49), and that the purchase of those companies by the latter destroyed the existing and potential competition between them.

At one time it was apparently believed by some that the Federal Anti-Trust Law permitted the *purchase* of competitors, and Howe seemed to have thought so at the time this combination was formed, for he tells us that he feared a trade agreement between the companies would be illegal on the ground that it would restrain trade, and therefore he advised the formation of a corporation. In other

words he was conscious that the effect of what he and his associates were about to do would be the restraint of trade, but he thought he could escape the consequences of the act by forming a corporation. In this purpose Winslow, who says that he agreed with Howe in all matters of policy, concurred. (*Supra*, p. 52.) Both, however, were mistaken. The law can not be defeated by any "disguise or subterfuge of form." (*Tobacco Case*, 221 U. S. 106, 181.)

The prohibitions of the Federal Anti-Trust Law apply no less to combinations formed by a purchase of property by a corporation than to combinations formed by simple agreements. In the *Tobacco Case*, 221 U. S. 106, it was held that each of six New Jersey corporations was an unlawful combination. The Chief Justice, speaking for the court, observed (184):

> The assailed combination in all its aspects—that is to say, whether it be looked at from the point of view of stock ownership or from the standpoint of the principal corporation and the accessory or subsidiary corporations viewed independently, including the foreign corporations in so far as by the contracts made by them they become cooperators in the combination—comes within the prohibitions of the first and second sections of the Anti-Trust Act.

And it was decreed (187):

> That the combination in and of itself, as well as each and all of the elements composing it, whether corporate or individual, whether considered collectively or separately, be de-

> creed to be in restraint of trade and an attempt to monopolize and a monopolization within the first and second sections of the Anti-Trust Act.

In *Harriman* v. *Northern Securities Co.*, 197 U. S. 244, 291, it was said:

> Some of our number thought that as the Securities Company *owned* the stock the relief sought could not be granted, but the conclusion was that the possession of the power which, if exercised, would prevent competition, brought the case within the statute no matter what the tenure of title was. (Italics ours.)

In the *Union Pacific Case*, 226 U. S. 61, 97, it was held that the—

> acquisition [by the Union Pacific Company of a controlling stock interest in the Southern Pacific, a competing line,] constituted an unlawful combination in violation of the Anti-Trust Act.

Justice Brewer in his concurring opinion in the *Northern Securities Case*, 193 U. S. 197, said (362):

> There was a combination by several individuals separately owning stock in two competing railroad companies to place the control of both in a single corporation.

Continuing, he observed that a corporation—

> is an artificial person created and existing for the convenient transaction of business. In this case it was a mere instrumentality by which separate railroad properties were com-

> bined under one control. That combination is as direct a restraint of trade by destroying competition as the appointment of a committee to regulate rates. The prohibition of such a combination is not at all inconsistent with the right of an individual to purchase stock. The transfer of stock to the securities company was a mere incident, the manner in which the combination to destroy competition and thus unlawfully restrain trade was carried out.

In the *Standard Oil Case*, 221 U. S. 1, 59, the Chief Justice said:

> In view of the many new forms of contracts and combinations which were being evolved from existing economic conditions, it was deemed essential by an all-embracing enumeration to make sure that no form of contract or combination by which an undue restraint of interstate or foreign commerce was brought about could save such restraint from condemnation.

In *United States* v. *Great Lakes Towing Company*, 208 Fed. 733, it was proved that the Great Lakes Company was formed in 1899 and *acquired* the properties of various tug owners and operators, and subsequently secured by purchase the properties of other tug owners and operators, with the result that it then owned all the prominent towing companies at 14 important lake ports. The Government alleged that the Towing Company was a combination in restraint of trade and a monopoly.

The district court, three judges sitting, held that the Towing Company and the corporations controlled by it constituted a combination in violation of the Sherman Act. The court said (741):

> a combination which places the direct instrumentalities of interstate commerce in such a relation as to create a single dominating control in one corporation, whereby natural and existing competition in interstate commerce is unduly restricted or suppressed, is within the condemnation of the act (*Standard Oil Co. case, supra; American Tobacco Co. case, supra*).
>
> * * * * *
>
> (744) Has the Towing Company acquired this domination of the towing and wrecking service by normal methods alone; or, as otherwise stated, has it unduly restrained or suppressed competition? We think it clear that the Towing Company's domination does not result from normal methods alone. Whatever may be the views of individual economists, under the Federal statutory policy normal and healthy competition is the law of trade; and such evils as may result from such competition must be considered less than those liable to follow a complete unification of interests and the power such unification gives. The evil of unification lies in the temptation to higher rates and lessened regard for the public interests; and the tendency to this evil result must be recognized, even though not in a given case yet realized in actual experience. *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61; *Joint Traffic Association Case*, 171 U. S.

> 505, 576; *Standard Sanitary Mfg. Co.* v. *United States, supra.* Even competitive practices, of a nature which as between business rivals standing practically on equal terms may be normal and lawful, yet when employed by a powerful monopolistic combination with the ability to crush, and for the purpose of crushing, a weak rival, may become abnormal and unlawful.

Although the constituent elements of an illegal combination or monopoly considered separately may be unobjectionable, if they are bound together as a part of a plan to restrain trade, they are unlawful. Mr. Justice Holmes, who delivered the opinion of the court in *Swift & Company* v. *United States,* 196 U. S. 375, 396, said:

> Moreover, whatever we may think of them separately when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful.

In the *Reading Co. case,* 226 U. S. 324, Mr. Justice Lurton said (357):

> It is not essential that these contracts considered singly be unlawful as in restraint of trade. So considered, they may be wholly innocent. Even acts absolutely lawful may be steps in a criminal plot, *Aikens* v. *Wisconsin,* 195 U. S. 194, 206. But a series of such contracts, if the result of a concerted

> plan or plot between the defendants to thereby secure control of the sale of the independent coal in the markets of other States, and thereby suppress competition in prices between their own output and that of the independent operators, would come plainly within the terms of the statute, and as parts of the scheme or plot would be unlawful.

The application of these principles of law to the facts of this case is clearly suggested by the Supreme Judicial Court of Massachusetts (*United Shoe Machinery Co.* v. *La Chapelle*, 212 Mass. 467) which, in a carefully written opinion by Chief Justice Rugg reviewing all the decisions of this court up to the time at which he was speaking (1912) found that the plaintiff in that case, the principal defendant herein, was a combination in violation of the Federal Anti-Trust Act.

United States v. *Winslow*, 227 U. S. 202, is in nowise inconsistent with our argument on this or on any other point in the case. There the decision was on a demurrer to an indictment against Winslow, Hurd and Brown alleging a violation of the Sherman Act by combining three companies which became a part of the United Company, and by the adoption of the restrictive leasing system. The court below found that the facts stated in the indictment were insufficient to show competition at the time of the consolidation and this court held that it had "no jurisdiction to review" that interpretation of the indictment and also that "the validity of the leases or

of a combination contemplating them can not be passed upon in this case."

B. NO SPECIFIC INTENT IS REQUIRED WHERE THE NECESSARY RESULT IS MATERIALLY TO RESTRAIN TRADE.

The defendants deny any intent to restrain or monopolize trade and commerce, and strenuously urge that benefits to the shoe manufacturers and to the public have resulted from the organization of the United Shoe Machinery Company and its subsequent acquisitions.

It is well settled that the lawfulness or unlawfulness of a combination which restrains trade does not depend upon the primary intent or motive of the parties forming it. Otherwise the actual destruction of competition would become immaterial. Necessary consequences are presumed to have been intended, and the lawfulness of defendants' acts must be determined by the direct results.

Mr. Justice Peckham, in the *Trans-Missouri Freight Case*, 166 U. S. 290, said (341):

> If the intent alleged in the bill were a necessary fact to be proved in order to maintain the suit, the bill would have to be dismissed. In the view we have taken of the question, the intent alleged by the Government is not necessary to be proved. The question is one of law in regard to the meaning and effect of the agreement itself, namely: Does the agreement restrain trade or commerce in any way so as to be a violation of the act? We have no doubt that it does.

(342) The necessary effect of the agreement is to restrain trade or commerce, no matter what the intent was on the part of those who signed it.

In the *Addyston Pipe Case*, 175 U. S. 211, 234, it was held:

> If the necessary, direct, and immediate effect of the contract be to violate an act of Congress and also to restrain and regulate interstate commerce, it is manifestly immaterial whether the design to so regulate was or was not in existence when the contract was entered into. In such case the design does not constitute the material thing. The fact of a direct and substantial regulation is the important part of the contract, and that regulation existing, it is unimportant that it was not designed.

In the *Standard Sanitary Case*, 226 U. S. 20, 49, this Court went so far as to accept as true, for the purposes of argument, the alleged intent of the defendants to improve the quality of the ware and thereby benefit the public by forming the combination. Mr. Justice McKenna, speaking for the court, stated, however, that the prohibitions of the statute can not be evaded by good motives, and said (49):

> The law is its own measure of right and wrong, of what it permits, or forbids and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be of some good results. (*United*

> *States* v. *Trans-Missouri Freight Assn.*, 166 U. S. 290; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 62.)

Also in *United States* v. *Patten*, 226 U. S. 525, 543, where, after holding that the conspiracy burdened commerce and inflicted upon the public the injuries which the Sherman Act is designed to prevent, Mr. Justice Van Devanter said:

> And that there is no allegation of a specific intent to restrain such trade or commerce does not make against this conclusion, for, as is shown by prior decisions of this Court, the conspirators must be held to have intended the necessary and direct consequences of their acts and can not be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result (*Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 243; *United States* v. *Reading Co.*, 226 U. S. 324, 370).

To the same effect is the opinion of Mr. Justice Lurton in the *Reading Case*, 226 U. S. 324, 370, where he observed:

> Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing is done is of no consequence. * * * (*U. S.* v. *St. Louis Term. Assoc.*, 224 U. S. 383, 394; *Swift & Co.* v. *U. S.*, 196 U. S. 375.)

The record in the case at bar discloses beyond any doubt a direct, material, and undue restraint of trade. We submit that all of the evidence introduced by the defendants tending to show good motives and the absence of intent to restrain trade is wholly immaterial.

C. EVEN IF IT WERE NECESSARY TO PROVE INTENT, THE COMPREHENSIVENESS OF THE COMBINATION WOULD DO IT.

Where a combination takes in so large a proportion of the units in any branch of trade that those outside can not hope effectively to compete with it except by sufferance, it is a legitimate inference that one of the purposes of the combination was to prevent effective competition by those outside. This is clear from the *Standard Oil Case*, 221 U. S. 1, 75, where it was held that—

> the unification of power and control over petroleum and its products which was the inevitable result of the combining in the New Jersey corporation by the increase of its stock and the transfer to it of the stocks of so many other corporations, aggregating so vast a capital, gives rise, *in and of itself*, in the absence of countervailing circumstances, *to say the least*, to a *prima facie* presumption of intent and purpose to maintain the dominancy over the oil industry, not as a result of normal methods of industrial development, but by new means of combination which were resorted to in order that greater power might be added than would otherwise have arisen had normal methods been followed, the whole with the

> purpose of excluding others from the trade and thus centralizing in the combination a perpetual control of the movements of petroleum and its products in the channels of interstate commerce. [Italics ours.]

Again, in *United States* v. *St. Louis Terminal Railroad Ass'n*, 224 U. S. 383, 394–395, and in *United States* v. *Reading Co.*, 226 U. S. 324, 370, it was recognized that an intent to exclude others might be inferred from the "extent of the control" acquired by the combination, the court saying in the latter case:

> In the instant case the *extent of the control* over the limited supply of anthracite coal by means of the great proportion theretofore owned or controlled by the defendant companies, and the *extent of the control* acquired over the independent output which constituted the only competing supply, affords evidence of an intent to suppress that competition and of a purpose to unduly restrain the freedom of production, transportation and sale of the article at tide-water markets. [Italics ours.]

There was a similar ruling in *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423, 433, 434, where it was said:

> To what object was the assembling in one ownership or management so many compresses, and keeping the means and declaring the purpose of acquiring more? The answer would seem to be obvious. The first effect would necessarily be the cessation of competition. If there was left a possibility of other compresses being constructed, it was

> made less by the power that could be opposed to them * * *. This case presents something more than the lease of property by the Shawnee Company, induced or made necessary by financial embarrassment. It presents something more than the acquisition by the Gulf Company of another compress—of a mere addition to its business. It presents acts in aid of a scheme of monopoly.

The bearing upon its purpose of a combination's conduct toward its competitors of course requires no elucidation. In the case at bar the combination has acquired and now controls 89 per cent of the shoe eyelet production, over 96 per cent of the eyeletting machines, all the clicking machines, pegging machines and pulling-over machines, and over 96 per cent of the remainder of the machinery used in the United States in attaching the bottoms of shoes to the uppers. (Appendix B, part 1, *infra*.)

This is not denied. Even Mr. Winslow admits that more than 90 per cent of all the welt and turn shoes made in the United States are sewed upon machines put out by his company. (R. I, 597, l. 11.)

This is the necessary and direct result of the combination and therefore must have been intended by those who formed it. In the face of these circumstances, the literal denials by Winslow and Howe that they had in mind restraining trade are of no possible consequence.

D. THE COMBINATION, BEING A UNION OF ABLE COMPETITORS TOGETHER OCCUPYING A PREPONDERATING POSITION, VIOLATES THE LAW.

The testimony to which we have just re-called attention under the preceding head demonstrates that the defendants have acquired a preponderating position in the shoe machinery trade with respect at least to many essential machines—machines without which the trade of shoemaking can not be carried on profitably. Not only this, but they occupy such a position that every shoe manufacturer of consequence in the United States must deal with them. Out of 1,090, big and little, they do business with more than 1,033 (*supra*, p. 132) and have out 90,000 leases. (R. I, 37, l. 5.) Those with whom they do not have business relations must be insignificant. Donham, secretary of the United Company, could mention only two in the United States who do not receive their bottoming machinery from the United Company. (R. I, 30, l. 31.)

None of the manufacturers with whom the United Company does business can use machines for bottoming shoes obtained outside of the United Company, except upon conditions that are prohibitive. (*Supra*, p. 175.) It is impossible to procure a full line of shoe machinery anywhere except from the defendants, and as we have seen, they will not put out any of that machinery except upon conditions which in effect prohibit shoe manufacturers from dealing with the producers of independent machinery. Although the United Company does not embrace all

competitors in the manufacture of bottoming machinery, it does so virtually. But it is not necessary that it should control all in order that it may be guilty of monopolization. This court has said in the *Knight Case*, 156 U. S. 1, 16, that "all the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly. It is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition."

Circuit Judge Day, now Mr. Justice Day, said in the *Chesapeake & Ohio Case*, 115 Fed. 610, 623:

> It is not required in order to violate this statute that a monopoly be created. It is sufficient if that be the necessary tendency of the agreement.

A price-fixing combination which included a preponderant portion of the existing competitors would clearly violate the law. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211; *Swift & Co.* v. *United States*, 196 U. S. 375.

In the last named case "a dominant proportion" was held to be a combination in restraint of trade.

E. THE FACT, IF IT BE A FACT, THAT PRICES WERE NOT RAISED OR THAT SERVICE AND MACHINES HAVE BEEN MADE MORE EFFICIENT, IS NO JUSTIFICATION FOR THE COMBINATION.

A combination may temporarily or perhaps even permanently reduce the price of the article traded in or manufactured. But that is no defense. Thus in the *Trans-Missouri Freight Association Case*, 166 U. S. 290, 323, the court said:

> In business or trading combinations they may even temporarily, or perhaps permanently, reduce the price of the article traded in or manufactured, by reducing the expense inseparable from the running of many different companies for the same purpose. Trade or commerce under those circumstances may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent therein, and who might be unable to readjust themselves to their altered surroundings. Mere reduction in the price of the commodity dealt in might be dearly paid for by the ruin of such a class, and the absorption of control over one commodity by an all-powerful combination of capital.

Mr. Justice Day, in the *Union Pacific Case*, 226 U. S. 61, said (88):

> Nor does it make any difference that rates for the time being may not be raised and much money be spent in improvements after the combination is effected. It is the scope of such combinations and their power to suppress or stifle competition or create monopoly which determines the applicability of the act.

In *United States* v. *Addyston Pipe & Steel Company*, 85 Fed. 271, Mr. Taft, then circuit judge, had the following to say with respect to the question of the reasonableness of the prices claimed to have been charged by the combination (293):

> It has been earnestly pressed upon us that the prices at which the cast-iron pipe was sold

> in pay territory were reasonable. A great many affidavits of purchasers of pipe in pay territory, all drawn by the same hand or from the same model, are produced, in which the affiants say that, in their opinion, the prices at which pipe has been sold by defendants have been reasonable. We do not think the issue an important one, because, as already stated, we do not think that at common law there is any question of reasonableness open to the courts with reference to such a contract. Its tendency was certainly to give defendants the power to charge unreasonable prices, had they chosen to do so.

In *United States* v. *Great Lakes Towing Company*, 208 Fed. 733, 743, 744, *supra*, it was contended by the defendants that in 1899, when the Towing Company was formed, the tug service, both towing and wrecking, at certain of the lake ports was unsatisfactory. With respect to that contention, the court assumed that under the Towing Company's administration, the service had been improved, but held that improvement of service was no justification for the combination. The court said (743, 744):

> The question is whether the unsatisfactory towing facilities, including their practical operation, justified the making of this combination. * * *
>
> The fact that the towing and wrecking service has been improved under the Towing Company's administration can not legalize the combination if otherwise unlawful.

Much has been said by the defendants to the effect that their system of doing business results in greater efficiency and that it is in harmony with the best canons of modern commercial life. We deny both propositions, but even if they were true, it would make no difference. This court, replying to a like contention, said in the *Eastern States Lumber Case*, 234 U. S. 600, 613:

> The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 241–242.

II.

THE PLANT PURCHASE WAS ILLEGAL EVEN THOUGH PLANT HAD NOT INSTALLED HIS MACHINES IN ANY FACTORY OTHER THAN THAT OF THE PLANT COMPANY.

The Plant purchase resulted in the elimination of an able, existing and growing competitor. (*Supra*, p. 124.) Like the original combination, this purchase was a violation of the Anti-Trust Laws, as we have just disclosed.

If, however, it should be urged that Plant was not engaged in actual competition with the United Company because his machines were not in use in

any shoe factory except that of Thomas G. Plant Company (R. I, 778, l. 13), although they were in use in that company's factory at the time of the acquisition of the Plant property by the United Company and, indeed, until long afterward (*supra*, p. 103), it is none the less true that he had also offered, as we have seen, to install his machines in a number of large factories (R. I, 575, l. 36), and that representatives of other large factories were trying to make some arrangement whereby they might acquire an interest in Plant's machinery for the purpose of installing his machines (*supra*, p. 109). In other words, the record clearly shows that the Plant machines were right at the threshold of extended competition with the United Company's machines.

But conceding, *arguendo*, that Plant had invented and manufactured but had not yet installed his machines in any shoe factory, the purchase, nevertheless, would have been contrary to the provisions of the Sherman Act.

As was said by Circuit Judge Putnam in the *Patterson Case*, 59 Fed. 280, 283 (Mass.):

> neither the letter of the statute [the Sherman Act] nor its purpose distinguishes between strangling of commerce which has been born and preventing the birth of a commerce which does not exist.

And the language of this court in the *Reading Case*, 226 U. S. 324, *supra*, with respect to preventing competition from coming into existence is peculiarly applicable here. There the situation

was dominated by a number of carriers. It was desired to introduce competition and an independent railroad was projected for the purpose of providing it. The prevention of its construction was brought about by a combination through the defendants and the Temple Iron Company. Speaking of this Mr. Justice Lurton said (351):

> The New York, Wyoming & Western Railroad Company was successfully *strangled*, and the monopoly of transportation collectively held by the six defendant carrier companies was maintained.
>
> The *projected* competing railroad was undoubtedly a good faith proposition and held out *promise* to independent coal operators not only of the prospect of competition in transportation from the mines to tidewater, but the possibility of selling their coal either to the controlled coal companies defendant at better prices or to the consuming public at tidewater in competition with that of the controlled coal companies. *But if we assume that its construction was doubtful, the result must be the same* as characterizing the purpose and design of the concerted action of the defendants. They were so far convinced of the *threatening* character of the enterprise that they were moved at great cost *to thwart it and at the same time remove the temptation* for a like competition by securing to themselves forever the product of the collieries named. [Italics ours.]

That was precisely the situation in the Plant case, with respect to the threatening character of the Plant enterprise. Certain shoe manufacturers had been endeavoring for years to have the United Company modify its leases so that they might be enabled to place in their factories competing machinery. (*Supra*, p. 198.) The defendants feared the competition that the Plant machines were about to create, and they were willing, in the language of Mr. Justice Lurton, at a cost of $6,000,000 to "thwart it and at the same time remove the temptation for a like competition" by securing to themselves the product of Plant's genius and labor, and that of his large force of inventors, in perfecting a complete line of competitive machines, which made secure the monopoly that defendants already possessed of the shoe machinery industry. It was the first time in its history that the United Company was threatened with competition in the United States by a single concern in position to furnish to shoe manufacturers a complete line of shoe machinery.

III.

THE RESTRAINING AGREEMENTS MADE WITH VENDORS AT THE TIME THEIR PROPERTIES WERE ACQUIRED ARE ILLEGAL.

With respect to the various acquisitions of competitors, and others, we shall not discuss at length the question as to whether the covenants entered into with the vendors at the time their respective businesses were acquired are in each instance in

restraint of trade. All of the covenants restraining the vendors from again engaging in business, etc., are a part of the general plan of defendants to monopolize the bottoming shoe machinery business, and it is immaterial whether the contracts considered singly are void.

However, the majority of them, when considered separately, are clearly illegal, as they go far beyond what was necessary to afford fair protection to the legitimate interests of the purchaser, and all such agreements when entered into as part of a plan for monopolizing trade and commerce, are illegal.

In *United Shoe Machinery Co.* v. *La Chapelle* (*supra*, p. 220) the Supreme Judicial Court of Massachusetts applied the law to the facts of the case at bar. That was an action, it will be remembered, in which the United Shoe Machinery Company, one of the defendants herein, began a suit in equity against La Chapelle, to compel the specific performance of a contract between him and it. The contract provided among other things that La Chapelle, who was an inventor, should assign to the plaintiff all inventions he should make during the continuance of the contract and for ten years thereafter, and that for a like period he should not engage in any similar business. Speaking of the question as to whether or not the plaintiff was an unlawful combination within the meaning of the Federal Anti-Trust Act, Chief Justice Rugg said (479):

> It is to be observed that the averment of the answer is positive and direct that the plaintiff

> has acquired and maintained a monopoly of interstate trade in shoe machinery, *and the offer of proof in this regard was co-extensive with the averment.* This brings the case within the words of Section 2 of the Anti-Trust Act.

Continuing, the court, speaking of the contract in suit, observed (485):

> It was made by one who had a monopoly of one branch of trade; it was one of many similar contracts with individuals enough to constitute a practical monopoly of skill in that department; it was a necessary link in a chain of contracts essential to the maintenance and preservation of monopoly in interstate trade which had been established by the plaintiff.

In *Shawnee Compress Company* v. *Anderson*, 209 U. S. 423, *supra*, it appeared that the company had leased its property and business relating to the compressing of cotton to the Gulf Company.

The lease conveyed all of the property of the Shawnee Company to the Gulf Company and the former covenanted that it would not "directly or indirectly engage in the compressing of cotton within 50 miles of any plant operated by the Gulf Company," and further agreed to give to the latter "its good will, moral and legal support, and that it" would "render the Gulf Company every assistance in discouraging unreasonable and unnecessary competition." (430, 431.)

This court held that the lease was in restraint of trade and in furtherance of a scheme to monopolize. Mr. Justice McKenna, in delivering the unanimous opinion, said (433):

> It may be conceded that the evidence shows that the Shawnee Company was financially embarrassed, and its condition might have justified a lease of its property if that had been all it did. It however, covenanted for its assistance in discouraging competition against its tenant, and bound itself not to "directly or indirectly engage in the compressing of cotton within fifty miles of any plant operated by the tenant." So far it covenanted to aid in the restraint of trade. It went out of the field of competition; it covenanted not to enter into that field again, and it pledged itself to render every assistance to prevent others from entering it. And it could not misunderstand the purpose for which its lease was solicited.

Continuing, the court observed (434):

> This case presents something more than the lease of property by the Shawnee Company, induced or made necessary by financial embarrassment. It presents something more than the acquisition by the Gulf Company of another compress—of a mere addition to its business. It presents acts in aid of a scheme of monopoly. *Swift Co.* v. *United States*, 196 U. S. 375.
>
> But it is contended that it was held * * * that the sale of the good will of the business with an accompanying agreement not to engage in a similar business was not a restraint of trade within the meaning of the Sherman Act. Counsel has discussed with an affluent citation of cases the principle which regulates such contracts, and insists that the lease by the

> Shawnee Company conforms to such principle. The principle is well understood. The restraint upon one of the parties must not be greater than protection to the other party requires, and it needs no further explanation than is given in *Gibbs* v. *Baltimore Gas Company*, 130 U. S. 396.

In the *Gibbs* case it was held relative to restraints of trade, first, that (408)—

> In the instance of business of such character that it presumably can not be restrained to any extent whatever without prejudice to the public interest, courts decline to enforce or sustain contracts imposing such restraint, however partial, because in contravention of public policy.

And, secondly, that (409)—

> Even at common law such contracts were void when they are general, not to pursue one's trade at all, or not to pursue it in the entire realm or country. The country suffers the loss in both cases; and the party is deprived of his occupation, or is obliged to expatriate himself in order to follow it. A contract that is open to such grave objection is clearly against public policy.

The principle is also well stated in *United States* v. *Great Lakes Towing Company*, 208 Feb. 733, *supra*. There the Towing Company exacted from those whose properties it had acquired covenants whereby the vendors agreed that during the period of five years they would not engage in or be interested, directly or indirectly, in the business of towing and

wrecking or in any branch thereof, upon the Great Lakes (except Lake Ontario and its harbors and the waters east thereof), excepting only and so far as they, or either of them, shall be interested in or with the party of the second part, as shareholder or employee."

The court (three judges sitting) had the following to say with respect to those covenants (742):

> While the sale of a business and the surrender of the good will pertaining thereto, and an agreement thereunder, within reasonable limitations as to time and territory, not to enter into competition with the purchaser, when made as part of the sale of a business, and not as a device to control commerce, is not within the federal Anti-Trust Law (see authorities cited in *Darius Cole Transp. Co.* v. *White Star Line* (C. C. A. 6) 186 Fed. 63, 65, 108 C. C. A. 165), the imposition of a restraint greater than necessary to afford fair protection to the legitimate interests of the purchaser, or contractor, constitutes an unreasonable restraint under the Sherman act. *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423.

In *Darius Cole Transportation Co.* v. *White Star Line*, 186 Fed. 63, the lessor agreed "to surrender to the party of the second part all of the good will of the river business, so called, that may be controlled by it, and to that end agrees not to enter into competition with the party of the second part upon the routes herein named, and not to operate any of its vessels, or any vessel whatsoever, on the said routes, between

Detroit and Port Huron or between Detroit and Toledo during the period of the said three years."

Circuit Judge Knappen, who delivered the opinion of the Court of Appeals, had the following to say with respect to the agreement (68):

> On the other hand, if the restraint imposed is greater than necessary to afford a fair protection to the legitimate interests of a vendee or lessee, the contract is rendered void. *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423, 425, 28 Supt. Ct. 572, 52 L. ed. 865. The same test has been recognized by this court in several cases under the common law, including *Hitchcok* v. *Anthony*, 83 Fed. 779, 28 C. C. A. 80; *American Strawboard Co.* v. *Haldeman Paper Co.*, 83 Fed. 619, 27 C. C. A. 634; *Knapp* v. *S. Jarvis Adams Co.*, 135 Fed. 1008, 70 C. C. A. 536; *Prame* v. *Ferrell*, 166 Fed. 702, 92 C. C. A. 374.

It will be observed that in the *Darius Cole* case, *supra*, the court had before it but a single contract or lease, and it was held that the restrictive provisions against competition were illegal, as in restraint of trade, for the reason that the "restraint imposed" was "greater than necessary to afford a fair protection to the legitimate interests of the vendee or lessee."

Practically all of the agreements against competition in the case at bar are unlimited as to territory, and some of them as to time. A large number, in instances where only a single machine or a few machines were acquired, prohibit the vendors from en-

gaging in the shoe-machinery business in any way whatsoever, regardless of the properties conveyed. Many of them, in addition to the restraints against competition, provide that if the vendor shall invent or shall acquire any interest under any invention relating to shoe machinery, all such inventions shall be assigned to the United Company without additional compensation therefor. Such agreements not only restrict competition, but also tend to discourage the invention and improvement of shoe machinery.

These agreements, considered in their entirety, present "something more than the acquisition" by defendants of the business of others—"of a mere addition to" their "business." They present "acts in aid of a scheme of monopoly." (*Shawnee Compress Company* v. *Anderson*, 209 U. S. 423, *supra*.)

Thus in the *American Tobacco Case*, 221 U. S. 106, this court held that the wrongful purpose and illegal combination was overwhelmingly established by various considerations, and among others (183)—

> By the constantly recurring stipulations, whose legality, isolatedly viewed, we are not considering, by which numbers of persons, whether manufacturers, stockholders, or employees, were required to bind themselves, generally for long periods, not to compete in the future.

IV.

THE CLAIM THAT THE PLANT AND OTHER PURCHASES WERE MADE TO SETTLE LITIGATION IS IMMATERIAL.

Under a previous caption we saw that if the necessary and direct effect of what defendants did was illegal, they could not justify themselves by showing that they had a legitimate motive. (*Supra*, p. 221.) So here, they may not defend on the ground that their purpose in making the acquisitions complained of was the settlement of litigation and not the suppression of competition.

In *United States* v. *Patten*, supra (226 U. S. 525), Mr. Justice Van Devanter said (543):

> Conspirators must be held to have intended the necessary and direct consequences of their acts and can not be heard to say the contrary.

In the *Addystone Pipe Case* (175 U. S. 211) Mr. Justice Peckham observed (234):

> If the necessary, direct and immediate effect of the contract be to violate an act of Congress and also to restrain and regulate interstate commerce, it is manifestly *immaterial* whether the design to so regulate was or was not in existence when the contract was entered into. In such case the design does not constitute the material thing. The fact of a direct and substantial regulation is the important part of the contract, and that regulation existing, it is unimportant that it was not designed. (Italics ours.)

Neither will the defendants here be heard to say that they "did not intend the necessary and direct

consequences of their acts" but were moved by a lawful purpose only, to wit, the settlement of litigation.

The *Standard Sanitary Case* (226 U. S. 20, 49) is to the same effect. It says:

> The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts can not be set up against it in a supposed accommodation of its policy with the *good intention* of parties, and it may be, of some good results. (Italics ours.)

And directly on the specific point is this language from the Circuit Court of Appeals, 3d Circuit (*National Harrow Co.* v. *Hench*, 83 Fed. 36, 38):

> The suggestion that the contract is justified by the situation of the parties—their exposure to litigation—is entitled to no greater weight. *Patentees* may compose their differences, *as the owners of other property may*, but they can not make the occasion an excuse or cloak for the *creation* of *monopolies* to the public disadvantage. (Italics ours.)

Between saying that the defendants did not intend to unlawfully restrain trade, although they did it, and protesting that their purpose was legitimate, though resulting in an illegal restraint of trade, there is no difference. The law rejects both defenses.

As was observed by this Court in the *International Harvester Case* (234 U. S. 199, 209):

> It is too late in the day to assert against statutes which forbid combinations of competing companies that a particular combination was induced by good intentions and has had some good effect.

V.

THE OBNOXIOUS CLAUSES OF THE LEASES ILLEGALLY RESTRAIN TRADE.

A. THEY SUPPRESS COMPETITION AND MAINTAIN A MONOPOLY.

We repeat that we do not complain of the circumstance that the United Company leases rather than sells its important machinery. (*Supra*, p. 146.) Eliminate the objectionable clauses from those leases and the Government will find no fault with them, but the tying clauses, we insist, are illegal whether put out by a lawfully organized corporation or by one which is a combination in restraint of trade.

In our discussion of the facts (*supra*, pp. 145–213) we showed that the dominant purpose and necessary effect of those clauses were to suppress competition. It is not necessary to repeat here the argument made there.

The House Judiciary Committee, when it was considering the Clayton Bill (38 Stat. 730) conducted extensive hearings relative to these leases. In its report to the House the Committee said:

> Where the concern making these contracts is already great and powerful, such as the *United Shoe Machinery Company*, * * * the exclusive or "tying" contract made with local dealers becomes one of the *greatest agencies and instrumentalities of monopoly ever devised by the brain of man.* It completely shuts out competitors not only from trade in which they are already engaged but from the opportunities to build up trade in any com-

> munity where these great and powerful conditions are appearing under this system and practice. By this method and practice the *Shoe Machinery Company* has built up a monopoly that owns and controls the entire machinery now being used by all great manufacturing houses of the United States. No independent manufacturer of shoe machines has the *slightest opportunity* to build up any considerable trade in this country while this condition obtains. If the manufacturer who is using machines of the *Shoe Machinery Company* were to purchase and place a machine manufactured by an independent company in his establishment, the *Shoe Machinery Company could*, under its contracts, withdraw all their machinery from the establishment and *thereby wreck* the business of the manufacturer. (Report of Committee, p. 13.) [Italics ours.]

This view of the clauses here in question is sustained by judicial decision. Judge Dyer of the Eastern District of Missouri, in *United States* v. *United Shoe Machinery Company*, 227 Fed. 507, said of them (509):

> Are the clauses inserted in and forming parts of the contracts between the defendants and their lessees prohibited by the act of Congress heretofore referred to. Reading this act of Congress and the clauses complained of together, there can be but one conclusion, and that is that all of the clauses (with the possible exception of No. 2) complained of in the bill are clearly violative of the plain words of the statute.

Continuing, the court observed with respect to the same clauses (511):

> It is hard to see how the ingenuity of man could have devised a scheme that would more effectually create a monopoly than the scheme set forth in the bill in this case.

Afterwards, in the same case upon a motion to dismiss (234 Fed. 127), Judge Trieber, of the Eastern District of Arkansas, was called upon to consider the same question. He called the tying clauses conditions and, speaking of them, said (148):

> What is the natural, direct, and necessary effect of these conditions? There can be but one answer to this: To compel the lessees to use defendants' machinery and material, regardless of whether the terms granted by the defendants are as favorable as can be obtained from other manufacturers of some of the machines or dealers in some of the materials.
>
> In addition, it is charged that by reason of these leases there is no market for any one inclined to manufacture these or some of these machines, and therefore all are deterred from engaging in their manufacture, as, there being no market for them, financial failure is bound to result from the attempt. Such a condition of affairs clearly tends to substantially lessen competition, and create, *in favor of the defendants, a monopoly in that line of commerce.* [Italics ours.]

True, both of these decisions were rendered under Section 3 of the Clayton Act (38 Stat. 731), which was

passed after this action was submitted to the court below and which declares:

> That it shall be unlawful for any person engaged in commerce * * * to lease machinery * * * on the condition, agreement or understanding that the lessee * * * shall not use or deal in * * * machinery * * * of a competitor * * * of the lessor or seller, where the effect of such lease, * * * agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

This section, as we view it, presents a different measure of duty from that embodied in the Sherman Act, but, nevertheless, the clauses which were considered by the Judges were the very clauses here in question and the judicial pronouncements to which we have just referred clearly show that their necessary effect and tendency are to restrain trade and create a monopoly.

We cannot conceive how any other conclusion could be reached, when their language is given that meaning which, according to Mr. Justice Holmes in the *Swift Case*, 196 U. S. 395, "it fairly conveys to a dispassionate reader."

B. THEY UNLAWFULLY COERCE SHOE MANUFACTURERS AND FORCE A BOYCOTT OF DEFENDANTS' COMPETITORS.

All leases made by the United Company run for a period of 17 years. New leases are made from time to time by every shoe manufacturer who deals with the United Company. Each lease is tied to all the earlier

leases. It would be hard to imagine a time when a lessee would be free from all such leases in the ordinary course of business. Therefore there is no time when he is at liberty to procure his bottoming, clicking, or eyeletting machinery where he wills. He is coerced by virtue of the tying clauses into dealing with the United Company whether he desires to do so or not. It may well be said of that system that he who enters it "leaves all hope behind."

A system of leases or contracts producing such a situation must be illegal.

If the combined companies in the case at bar had entered into a trade agreement instead of a corporate combination, thereby securing control of more than 96 per cent of a certain line of machinery, and an absolute monopoly of other lines, and had agreed that no one company would trade with any shoe manufacturer unless he purchased all his machinery from the members of the combination, clearly we would have that "potency in numbers" spoken of in the *Loewe Case*, 187 Fed. 522, which amounts to coercion and creates a boycott. As was further said in that case (524):

> If it be shown that individuals have combined in order to induce a manufacturer engaged in interstate commerce to conduct his business as they wish, and upon his refusal, retaliatory steps are taken * * * such combination of individuals must be held to have essentially obstructed the free flow of com-

> merce between the States, a combination to effect such an obstruction is in violation of the Anti-Trust Law.

If the Danbury Hatters were guilty of boycotting by combining for the purpose of preventing dealers in hats from trading with Loewe, why are not the defendants equally guilty by combining with the shoe manufacturers through the tying clauses, to prevent the latter from dealing with independent shoe machinery manufacturers. True, the shoe manufacturers are unwilling members of the combination, but nevertheless they are members for the purpose of the combination—the destruction of trade with independent shoe machinery manufacturers.

The mere fact that the combined companies have united by a corporate combination instead of a loose combination, is wholly immaterial. They can not do by the one what they could not do by the other. Their conduct in either case would be in substance a boycott.

The power which the tying clauses gives to the defendants over the shoe manufacturers is analogous to that possessed by the combination in the *Eastern States Retail Lumber Case*, 234 U. S. 600; or in *Montague* v. *Lowry*, 193 U. S. 38; or in *Jayne* v. *Loder*, 149 Fed. 21.

In the former case the court said (614):

> When the retailer goes beyond his personal right, and conspiring and combining with others of like purpose, seeks to obstruct the free course of interstate trade and commerce

> * * * by placing obnoxious wholesale dealers under the coercive influence of a condemnatory report * * * he exceeds his lawful rights, and such action brings him and those acting with him within the condemnation of the act of Congress.

Every shoe manufacturer who deals with the appellees is by the coercive influence of the leases prohibited from trading with competitors of the defendants.

In *Continental Wall Paper Company* v. *Voight & Sons*, 212 U. S. 227, manufacturers of wall paper, controlling 97 per cent of interstate commerce therein, organized a corporation to act as their common selling agent, which corporation made separate contracts with wholesalers and jobbers in the several States by which such wholesalers and jobbers agreed to buy only of such corporation.

This court, speaking through Mr. Justice Harlan, quotes with approval the following language of Judge Lurton in the court below (256):

> The jobbers and wholesalers, who were to be *coerced* into contracts to buy their entire demands from the Continental Wall Paper Company or be driven out of business, were in every State. Before the combination each of the combining companies was engaged in both State and interstate commerce. The freedom of each, with respect to prices and terms, was restrained by the agreement and interstate commerce directly affected thereby, as well as by the enhancement of prices which resulted. *A more complete monopoly in an article of uni-*

> *versal use has probably never been brought about. It may be that the wit of man may yet devise a more complete scheme to accomplish the stifling of competition.* But none of the shifts resorted to for suppressing freedom of commerce and securing undue prices, shown by the reported cases, is half so complete in its details. None of the schemes with which this may be compared is more certain in results, more widespread in its operation, and more evil in its purposes. It must fall within the definition of a "restraint of trade," whether we confine ourselves to the common-law interpretation of that term or apply that given to the term as used in the Federal act. [Italics ours.]

In the *Reading Company Case*, 226 U. S. 324 *supra*, the defendant carriers controlled about seventy-five per cent, and the independent operators about twenty per cent, of the annual supply of anthracite coal. Contracts were entered into whereby the independent operators severally agreed to deliver their entire output to the defendants and in consideration therefor they were to receive sixty-five per cent of the general average price prevailing at tidewater points. The purpose of the contracts was to prevent the output of the independent mines being sold in competition with the output of the mines belonging to the defendants.

Speaking of these contracts the court said (357):

> It is not essential that these contracts, considered *singly*, be unlawful as in restraint of trade. So considered, they may be wholly innocent. Even acts absolutely lawful may be

> steps in a criminal plot. (*Aikens* v. *Wisconsin*, 195 U. S. 194, 206.) But a *series* of such contracts, if the result of a concerted plan or plot between the defendants to thereby secure control of the sale of the independent coal in the markets of other States, and thereby suppress competition in prices between their own output and that of the independent operators, would come plainly within the terms of the statute, and as parts of the scheme or plot would be unlawful. [Italics ours.]

The opinion proceeds (358):

> That the plan was calculated to accomplish the design averred, in the present case, seems plain enough. The anthracite field was very limited. The means for transportation from the mines to seaboard shipping points were in the hands of the defendant carriers. They, together with their subsidiary companies, controlled about ninety per cent of the coal deposit and about seventy-five per cent of the annual output. If the remaining output, that of the independent operators along their several lines, could be controlled as to production and sale at tidewater points, there would inevitably result such a dominating control of a necessity of life as to bring the scheme or combination within the condemnation of the statute.

We submit that the contracts in the *Continental Wall Paper case*, *supra*, and the 65 per cent contracts in the *Reading case*, *supra*, were not as far-reaching in their evil results as the system of leasing used by defendants.

C. THE TYING CLAUSES ARE CONDEMNED BY THE LAW IRRESPECTIVE OF WHETHER THE UNITED COMPANY IS A LAWFUL OR UNLAWFUL COMBINATION.

Assuming without conceding, that the United Company in absorbing the four companies at the time of its organization and in its subsequent acquisitions of concerns engaged in the shoe machinery business, did nothing illegal, still the tying clauses would be unlawful since their motive and necessary effect is the restraint and monoplization of trade. Especially is this true when it is considered that they are enforced by a single corporation (for the various corporate defendants must be treated as one) having such a preponderant position in the trade as that indicated by this record. (*Supra*, pp. 126–145.) What might be entirely harmless by an unimportant trade unit, is extremely vicious when practiced by an aggregation as powerful financially and industrially as the United Company.

Systems of exclusive contracts have been condemned in several cases under the Sherman Act. In *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502, it is said (510):

> As power increases, the temptation to abuse it is likely also to increase, so that the acts of an influential factor in a particular trade may well be scrutinized with more suspicion than the acts of a *weak and inconspicuous* contributor. * * * Beginning in 1904, or thereabouts, it made several attempts—perhaps not very numerous, but numerous enough—that showed a definite purpose to

> restrain trade by attempting to fix and maintain prices, and *by using a species of boycott or blacklisting in order to lessen the trade of its rivals.* [Italics ours.]

Every lease in the case at bar containing a tying clause is not only an attempt to restrain trade, but an actual restraint thereof, especially when it is considered that more than 1033 of the 1090 shoe manufacturers in the country are compelled to accept such leases for all the bottoming, clicking, and eyeletting machinery used by them.

Continuing, the same court said, in speaking of a circular letter informing jobbers that the Keystone Watch Case Company would refuse to deal with those who handled *independent* goods (512):

> We regard it not as a request, but as a threat; and *not as an empty threat, but as a real menace from a strong manufacturer* * * * Now what the defendant company did was either to close these already existing and already utilized outlets, or to narrow them materially so far as the cases of its competitors were concerned; and we think the proposition need not be discussed that this was *pro tanto* a direct and unlawful restraint of trade. [Italics ours.]

The United Company is a "strong manufacturer"—a giant. It refuses to deal with shoe manufacturers who use independent machines.

The Court in the *Great Lakes Towing Case* (208 Fed. 733 *supra*) says emphatically (745):

> *No more effective obstacle to successful competition could well be devised than is found in this exclusive contract system.* It is manifest that no competitor doing business at less than all 14 of the ports could compete with the Towing Company on anything like equal terms. With the field already occupied by a strong combination, with a large patronage fixedly secured through stockholding interests, the formation of another company equipped to do business at all 14 ports would seem a commercial and financial impossibility. [Italics ours.]
>
> * * * * *
>
> Even competitive practices, of a nature which as between business rivals standing practically on equal terms may be normal and lawful, yet when employed by a powerful monopolistic combination with the ability to crush, and for the purpose of crushing, a weak rival, may become abnormal and unlawful. (744.)

It is equally manifest here that no competitor having less than a complete line of bottoming machinery could compete with the United Company on any terms.

In the *Window Glass Jobbers Association Case*, 152 Fed. 864, we read (870–871):

> *It is argued with much force and ingenuity* by the defendant in error that the combination set out in the declaration was only an agreement by which a certain number of wholesalers were to trade exclusively with a certain manufacturer, with the reciprocal understand-

> ing that the manufacturer was to sell to no one else, except at a price higher than that paid by the parties to the contract; *that this was, in effect, nothing more than an agreement to sell to one person or to several at a price advantageously lower than the general price, on condition that such person or persons would buy exclusively from the manufacturer so agreeing.* In other words the American Window Glass Co. had the right to select its customers and charge one price to one and another price to another. It had the right to offer certain inducements to certain customers in exchange for their exclusive trade. And it had the right to do all or any of these things. But it is always to be borne in mind, in considering arguments of this kind, that the act of Congress has made, and was intended to make, illegal many sorts of contracts and agreements that prior thereto were not only legal, but were regarded as meritorious and beneficial, and has materially restricted the area within which freedom of contract may be exercised. (Italics ours.)

If a contract to sell to one person "at a price advantageously lower than the general price on condition that such person or persons would buy exclusively from the manufacturer so agreeing," is invalid, then a contract leasing to one person, who must agree to any terms fixed by the lessor, on condition that he will lease "exclusively" from the lessor, must be void.

In *Nash* v. *United States*, 229 U. S. 373, 375, one of the means of monopolization named was,

> coercing factors and brokers into contracts with the defendants for the storage and pur-

chase of their receipts and refusing to purchase from such factors and brokers unless such contracts were entered into.

The illegality of such systems even at common law is indicated by Stimson, Popular Law Making, as follows (p. 175):

> We have legislated * * * against what we have termed "*unfair competition,*" that being generally defined to be the making of an artificially low price in a certain locality for the purpose of destroying a competitor, or the making of *exclusive contracts; that is to say, refusing to deal with a person unless he binds himself not to deal with anybody else. This last thing can hardly, however, be said to add to common law principles.* [Italics ours.]

That is precisely what we have here and it is unlawful according to the foregoing authorities.

D. EVEN IF ALL THE SHOE MANUFACTURERS WERE SATISFIED WITH THE CLAUSES COMPLAINED OF THEY WOULD STILL BE ILLEGAL.

Defendants urge that a large number of shoe manufacturers are satisfied with the tying clause system. This can make no difference from a legal standpoint. No man nor body of men can enter into contracts that violate the law of the land merely because such contracts may be to his or their advantage. It is very doubtful, however, whether this contention of the defendants finds any support in the evidence. That a small number of shoe manufacturers prefer the leasing system to one which would require them to purchase their machines out-

right because, as they seem to think, it saves the investment of a large amount of capital in machinery, may be conceded. That it does in fact save the investment of much capital is far from clear, when we consider the great amount of royalties which manufacturers have to pay. (*Supra*, p. 175.) Be that as it may, the Government, as we have heretofore observed, does not find fault with the leasing system as such. That system can continue with all its actual or imaginary benefits to shoe manufacturers after the obnoxious clauses have been eliminated. Those clauses are burdens on, not benefits to, the shoe manufacturers of the country.

The following language from the opinion of this court in the *Reading Case*, 226 U. S. 324, *supra* is applicable here (359):

> That the conditions were not accepted by the independent producers as satisfactory, is evident. The majority at all times stood out, and those making such agreements as well as those refusing to do so, maintained an agitation for better freight rates and better prices for those who preferred to sell at their breakers. For many years before this proceeding they maintained an organization called "the Anthracite Coal Operators' Association," and through that body endeavored to improve their situation.

And so it is here. The so-called "Shoe Manufacturers' Alliance," composed of both large and small shoe manufacturers in the West and in the East, has been endeavoring for several years past through

their organization to devise some plan whereby they might be relieved from the domination of defendants. Practically their last effort was to obtain an interest in the inventions and machines of Thomas G. Plant, but even in that attempt they were thwarted, by the defendants going in during the late hours of the night and acquiring control of all of Plant's inventions, patents, and machinery.

We submit that with respect to the tying clause system employed by defendants the mind of man has about reached the zenith of perfection in devising a scheme to accomplish the stifling of competition and to monopolize trade and commerce. It is illegal and should be condemned.

VI.

THE LESSEES ARE NOT NECESSARY PARTIES TO THIS LITIGATION.

It was intimated in the trial court that the leases could not be condemned unless the lessees were parties to the action. As we have said before, the Government does not attack the leases, but only certain clauses of them. These clauses are, we say, illegal. They impose obligations upon the lessees and are made for the sole benefit of the defendants. The relief sought is a prohibition against the defendants enforcing them. We do not seek in any wise to control the action of the lessees. What we ask would not in the least impinge their rights. Neither would it impose any obligation upon them. On the contrary, it is designed to relieve them from an oppressive and wholly illegal burden.

There is nothing in *Minnesota* v. *Northern Securities Co.* (184 U. S. 199) which militates against our position. In that case, the Court said (245) that the controversy was between—

> the State of Minnesota, the Great Northern Railway Company, the Northern Pacific Railway Company * * * and the Northern Securities Company * * *, the stockholders and bondholders of those corporations, and of the numerous railway companies whose lines are alleged to be owned, managed, or controlled by the Great Northern and Northern Pacific Railway Companies

and that—

> the rights of the minority stockholders of the two railroad companies are not represented * * * ; they have a right to be represented * * * and their rights ought not to be affected without a hearing.

In the words "their rights ought not to be affected without a hearing" lies the gist of that case. But if their rights were not involved, it would follow that they were not necessary parties. As we have just observed, the rights of the lessees are not touched in this case, except to preserve them. Hence, it was not necessary to bring the lessees before the court.

Moreover, this action is not like a private one involving only private rights. It is an action in which the Government charges the defendants with violation of law, and asks for a judgment restraining them from continuing their illegal practices. They can not object to the suit proceeding because parties whom

they claim are interested in their unlawful conduct are not before the Court. No one has the right to say that the unlawful conduct of another shall be permitted to continue because he has an interest in it. The acts complained of are illegal, and the Government has an indubitable right to have defendants restrained from their continuance. This was all brought out very clearly by Judge Lanning in the case of *U. S.* v. *Du Pont de Nemours* (188 Fed. 127).

Speaking for the Circuit Court of Appeals, he said (153):

> We do not propose by our decree to deal with titles to property. Our power is defined in the fourth section of the Anti-Trust Act. That section invests us "with jurisdiction to prevent and restrain violations" of the Act. The same section provides that the petition may contain a prayer that the violation of law, therein alleged, "shall be enjoined or otherwise prohibited." It is our purpose, as it is our duty, to exert the power thus conferred on us to the extent necessary to "prevent and restrain" further violations of the act. In other words, *the relief we can give in this proceeding is preventive and injunctive only.* If our decree, limited to that purpose, shall *necessitate* a *discontinuance* of *present business methods,* it is *only because those methods are illegal.*

Again (155):

> We have not overlooked the motion of the defendants to dismiss the petition for *want* of *necessary* parties. It appears that certain of the defendant corporations have outstanding

> bonds secured by mortgages or trust deeds, held by trust companies, who are not defendants. As already stated, *this suit* is not designed, primarily, to deal with or dispose of *property* rights. We see no reason for bringing in mortgage or other creditors. [Italics ours.]

If "mortgage or other creditors" were not necessary parties in that case, neither are the lessees here. This suit is not designed to deal with any questions that may arise between the defendants and their lessees concerning the leases. It has to do alone with the enforcement of a public statute which defendants have violated.

VII.

STATEMENTS BY SHOE MANUFACTURERS OF THE REASONS WHY THEY DID NOT BUY INDEPENDENT MACHINES WERE ADMISSIBLE.

There is considerable evidence in the record consisting of statements made by shoe manufacturers to the representatives of independent shoe machinery dealers to the effect that they would like to trade with such dealers but could not do so because of the tying clauses in the United Company's leases to which they were parties. These statements were objected to on the ground that they were hearsay, but the objections were overruled and the testimony admitted. This was correct. (*Lawlor* v. *Loewe*, 235 U. S. 522; *Wigmore on Evidence*, Sec. 1729; *Casey* v. *Cincinnati Typographical Union*, 45 Fed. 135, 146, 147; *Elmer* v. *Fessenden*, 151 Mass., 359, 361.)

VIII.

LETTERS PATENT DO NOT JUSTIFY ACTS OTHERWISE ILLEGAL UNDER THE SHERMAN ACT.

A. CERTAIN RIGHTS NOT CONFERRED BY THE PATENT LAW.

The answer of defendant, the United Shoe Machinery Company of New Jersey, the principal operating company, with respect to its alleged rights under letters patent, says:

> If this defendant is engaged in interstate trade and commerce, which it denies, and has any monopoly of such trade or commerce, which it denies, *then this defendant says any such monopoly is a valid and legal monopoly of such trade or commerce derived under and pursuant to and coextensive with letters patent of the United States or of foreign countries, owned by it.* [Italics ours.] (R. I, 1045.)

It seems to be upon this defense that defendants chiefly rely. But we submit that there is no authority under the patent laws or in the decisions of the courts which sustains their contention.

> The right to make, use, and sell an invented article is not derived from the patent law. This right existed before and without the passage of the law, and was always the right of an inventor. The act secured to the inventor the exclusive right to make, use, and vend the thing patented, and consequently to prevent others from exercising like privileges without the consent of the patentee. *Bauer* v. *O'Donnell*, 229 U. S. 1. (See also *Bloomer* v. *McQuewan*, 14 How. 539, 549; *Continental Paper Bag Co.* v. *Eastern Paper Bag Co.*, 210

U. S. 405, 425; *Blount* v. *Yale & Towne Mfg. Co.*, 166 Fed. 555.)

The right to contract concerning the patent is not derived from the patent itself, but from the general law, and is governed by that law. *Pope Manufacturing Co.* v. *Gormully*, 144 U. S. 224; *State* v. *Bell Telephone Co.*, 23 Fed. 539; *State* v. *Delaware etc. Tel. Co.*, 47 Fed. 633; *Delaware, etc., Tel. Co.* v. *Postal Telegraph Co.*, 50 Fed. 677 (affirming 47 Fed. 633); *Heaton Peninsular Button-Fastener Co.* v. *Eureka Specialty Co.*, 77 Fed. 288; *Strait* v. *National Harrow Co.*, 18 N. Y. Supp. 224. *Opinion of the Justices*, 193 Mass. 605.

Thus, in *Pope* v. *Gormully, supra*, it was held that an agreement not to contest the validity of certain patents of the licensor, in consideration of a license to use certain other patents, is unenforceable.

Again, it was held in the three telephone cases, *supra*, that the holder of telephone patents could not lawfully impose in its licenses to subsidiary companies a condition that telephone service should not be furnished to any telegraph company except the Western Union Company, because such a condition violated the common-law duty of the licensee to serve all alike. The principle is thus stated by Wales, J., in *State* v. *Delaware, etc.*, 47 Fed. 633, 636:

> The conclusion drawn from an examination of these cases is that the patent laws give to the patentee a monopoly in his invention, and afford him protection in its proper and legitimate employment; but that they do not authorize him to employ it for a purpose or

in a manner that may be *forbidden to all other persons in the use of their unpatented property or discoveries.* [Italics ours.]

In the *State of Missouri, etc.*, v. *Bell Telephone Company*, 23 Fed., 539, Brewer, J., said (540):

> I believe fully in the sacredness of property; but I think all property stands upon an equal basis, whether that property consists of gold dollars in your pocket, real estate, or the ownership of a patent. There is no peculiar sanctity hovering over or attaching to the ownership of a patent. It is simply a property right, to be protected as such. Starting from that as a basis, while every property owner may determine for himself to what he will devote his property, yet the moment he puts that property into what I perhaps may, for lack of a better expression, define as the channels of commerce, that moment he subjects that property to the laws which control commercial transactions.

Similarly, in *Heaton-Peninsular Button-Fastener Co.* v. *Eureka Specialty Co.*, 77 Fed. 288, *supra*, Lurton, J., said (292–293):

> We are not at all prepared to say that there are no limitations upon a patentee's power of contract with reference to the use of his invention by others. *The property right of a patentee is, after all, but a property right, and subject, as is all other property, to the general law of the land.* We may also concede that contracts respecting the use of inventions and discoveries are, like all other contracts, sub-

> ject to the limitations imposed by definite principles of public policy. [Italics ours.]

In the same case the court continued thus (293):

> The patentees were under no obligation to license the use of their inventions by any public telephone company. Having done so, however, they were not at liberty to place restraints upon such a public corporation which would disable it from the discharge of all the duties imposed upon companies engaged in the discharge of duties subject to regulation by law. * * * Neither the patentee, nor the machine involving his invention, nor a license for use, can be exempted from the liabilities and regulations which, in the public interest, attach to all persons and property under the general law of the land.

Again, it was held in *Strait* v. *National Harrow Co.*, *supra*, that restrictive agreements extending 50 years beyond the life of the patent are invalid, though entered into in consideration of a license to use the patented invention.

In the same way, in the *Opinion of the Justices*, 193 Mass. 605, it was held that the State had the power to pass a statute prohibiting the owner of patented machinery to embody in leases thereof a condition that the lessee should procure other machinery from the lessor. That opinion was given by the Supreme Judicial Court of Massachusetts to the State Senate upon the question of the constitutionality of a proposed act "To regulate the lease and sale of ma-

chinery, tools, implements, and appliances" (St. 1907, c. 469,—Mass.).

The justices after quoting from the decision of Mr. Justice Harlan in *Patterson* v. *Kentucky*, 97 U. S. 501, with respect to property rights of patentees or assignees, went on to say (p. 610):

> We think also that it is manifest that not every right which in the absence of legislative prohibition can be by contract annexed to the assignment of a patent right, or to a license given thereunder, or to the sale or lease of a patented machine, is therefore to be said to be necessarily incident to the full exercise of the right secured by the patent.

The distinction between the right to exclude others from making, using, or selling the invention and the right to contract with respect to the invention is clear. The right to exclude is derived from the patent. That is the only right which the patent confers. The right to contract is derived from the general law. The patentee had it before he took out the patent. (*Brown* v. *Shannon*, 20 How. 55; *Hartell* v. *Tighlman*, 95 U. S. 547; *Wilson* v. *Sandford*, 10 How. 99; *Albright* v. *Teas*, 106 U. S. 613; *Dale Tile Mfg. Co.* v. *Hyatt*, 125 U. S. 46.) He would still have it if he had never obtained the patent. Clearly, therefore, it is not derived from or dependent upon the patent. Therefore since the right to contract is derived from the general law, the validity of the contracts so made must depend upon that law. But, *if the validity of such contracts is*

determined by the general law, they must be subject to the Sherman Act, which is a part of that law.

B. PATENTS CONFER NO RIGHT ON PATENTEES OR ASSIGNEES ENGAGED IN INTERSTATE TRADE AND COMMERCE TO COMBINE TO RESTRAIN OR MONOPOLIZE SUCH TRADE AND COMMERCE.

The cases on this point are not numerous and we shall refer briefly to each.

In *National Harrow Co.* v. *Hench et al.*, 76 Fed., 667, Circuit Judge Acheson, holding the Harrow Co. to be an illegal combination, said (p. 669):

> It is true that a patentee has the exclusive control of his invention during the life of the patent. He may practice the invention or not, as he sees fit, and he may grant to others licenses upon his own terms. But where, as was the case here, a large number of independent manufacturing concerns are engaged in making and selling, under different patents and in various forms, an extensively used article, competition between them is the natural and inevitable result, and thereby the public interest is promoted. Therefore, a combination between such manufacturers, which imposes a widespread restraint upon the trade, and destroys competition, is as injurious to the community, and as obnoxious to sound public policy, as if the confederates were dealing in unpatented articles. * * * To sanction such a result, because accomplished by a combination of patentees would be, I think, to pervert the patent laws. * * * I am constrained to regard the license contracts sued on as part of an illegal combination and in unwarrantable restraint of trade.

Plaintiff appealed to the Circuit Court of Appeals for the Third Circuit, 83 Fed. 36, where the judgment below was affirmed. On the question of illegal combination the appellate court said (p. 38):

> The fact that the property involved is covered by letters patent is urged as a justification; but we do not see how any importance can be attributed to this fact. Patents confer a monopoly as respects the property covered by them, but they confer no right upon the owners of several distinct patents to combine for the purpose of restraining competition and trade. Patented property does not differ in this respect from any other. The fact that one patentee may possess himself of several patents, and thus increase his monopoly, affords no support for an argument in favor of a combination by several distinct owners of such property to restrain manufacture, control sales, and enhance prices. Such combinations are conspiracies against the public interests and abuses of patent privileges. The object of these privileges is to promote the public benefit, as well as to reward inventors. The suggestion that the contract is justified by the situation of the parties—their *exposure to litigation*—is entitled to *no* greater weight. Patentees may compose their differences, *as* the owners of *other* property may, but they can *not* make the occasion an excuse, or cloak for the creation of monopolies to the public disadvantage. We do not see anything to distinguish this case, in principle, from *Nester* v. *Brewing Co.*, 161 Pa. St. 473; 29 Atl. 102; *Carbon Co.*

> v. *McMillin*, 119 N. Y. 46; 23 N. E. 530; *Morris Run Coal Co.* v. *Barclay Coal Co.*, 68 Pa. St. 173; *Distilling & Cattle Feeding Co.* v. *People* (Ill. Sup.). 41 N. E. 188; *Strait* v. *Harrow Co.* (Sup.), 18 N. Y. Supp. 233. [Italics ours.]

The italicized part is especially pertinent in view of the contention of the defendants that many of their illegal acquisitions were justified by the fact, as claimed by them, that they were made to avoid litigation (*supra*, pp. 43, 63, 120).

There is nothing in *Bement* v. *National Harrow Co.*, 186 U. S. 70, that is opposed to our position. In that case there was no proof that the contract involved was a contract and combination in violation of the Anti-Trust Law, and because of this the court refused to say that it was illegal. This was very clearly pointed out in the *Standard Sanitary Case*, 226 U. S. 20, where the court said (48):

> There was a contention in that case [Bement case] that the contract of the National Harrow Company with Bement & Sons was part of a contract and combination with many other companies and constituted a violation of the Sherman law, *but the fact was not established and the case was treated as one between the particular parties, the one granting and other receiving a right to use a patented article with conditions suitable to protect such use and secure its benefits.* [Italics ours.]

In Blount Manufacturing Company v. *Yale & Towne Manufacturing Company*, 166 Fed. 555, the Court said (557):

> The monopoly granted by letters patent is of a particular invention. Devices thus protected by patents are as a matter of fact in commercial competition with both patented and unpatented devices. A contract whereby the manufacturers of two independent patented inventions agree not to compete in the same commercial field deprives the public of the benefits of competition, and creates a restraint of trade which results, not from the granting of letters patent, but from agreement. While the monopoly of the patented articles is not increased, the monopoly of the commercial field is increased by the "unified tactics" as to prices.
>
> (562) Combinations between owners of *independent patents*, whereby, as a part of a plan to monopolize the commercial field, competition is eliminated, *are* within the Sherman Act, for the reason that the restraint of trade or monopoly arises from *combination*, and *not* from the exercise of rights granted by letters patent. As by the terms of the contracts under consideration the owners of *distinct patents* each agreed to restrain its own interstate trade, I am of the opinion that the contracts are in these particulars obnoxious to the Sherman Anti-trust Act. [Italics ours.]

That case is supported and supplemented by *United States* v. *Standard Sanitary Mfg. Co.*, 191 Fed. 172. The Court (three Judges sitting) said, through Rose, J. (190):

> A patentee is as much subject to the laws of the land as is any other man * * *. It [a

> patent] does not give a right to sell indulgences to violate the law of the land, be it the Sherman Law or another.

Continuing, the Court observed:

> A patentee who monopolizes his invention breaks no law. He who uses his property right to exclude others from the making, selling, or using his invention for the purpose and with the effect of making a combination to restrain trade in something from which his patent gives him no right to exclude others, does break the law. He breaks it precisely as the individual defendants in the Standard Oil and American Tobacco Companies broke it. They had the same right to use their brains, their capital, and their credit as they thought best, as he had to use his right to exclude all others from making, using, or selling automatic dredgers. He was subject to the same limitations as they were. They could not lawfully use their brains, their money, and their credit to restrain trade in petroleum and tobacco. He can not use his patent rights to restrain trade in unpatented bathtubs.

The judgment of the Circuit Court in that case was affirmed by this Court (226 U. S. 20, *supra*) in an opinion by Mr. Justice McKenna. After pointing out the distinction between that case and the *Bement* case as above noticed, he said:

> The agreements in the case at bar combined the manufacturers and jobbers of enameled ware very much to the same purpose and results as the association of manufacturers and dealers

> in tiles combined them in *Montague & Co.* v. *Lowry*, 193 U. S. 38, which combination was condemned by this court as offending the Sherman law. The added element of the patent in the case at bar can not confer immunity from a like condemnation for the reasons we have stated. * * * *Rights conferred by patents are indeed very definite and extensive, but they do not give any more than other rights an universal license against positive prohibitions. The Sherman law is a limitation of rights, rights which may be pushed to evil consequences and therefore restrained.* [Italics ours.]

The case of *Straus et al.* v. *American Publishers' Association et al.*, 231 U. S. 222, involved the question as to whether or not the copyright laws protected an agreement made by the defendants restricting the sale, price, etc., of copyrighted books, in violation of the Sherman Act. In it the foregoing language of Mr. Justice McKenna was quoted with approval, and then the Court observed:

> So, in the present case, it can not be successfully contended that the monopoly of a copyright is in this respect any more extensive than that secured under the patent law. No more than the patent statute was the copyright act intended to authorize agreements in unlawful restraint of trade and tending to monopoly, in violation of the specific terms of the Sherman law, which is broadly designed to reach all combinations in unlawful restraint of trade and tending because of the agree-

> ments or combinations entered into, to build up and perpetuate monopolies. * * *

To the same effect are *Virtue* v. *Creamery Package Co.*, 227 U. S. 8; *International Harvester Co.* v. *Missouri*, 234 U. S. 199, 209; and *U. S.* v. *Pacific and Arctic Co.*, 228 U. S. 87, 104.

United States v. *Winslow*, 227 U. S. 202, *supra*, contains no statement that owners of competing patents have a right to combine and no expression of any opinion upon a state of facts like those here in evidence.

Nor is *Henry et al.* v. *Dick*, 224 U. S. 1, applicable to the case at bar. A careful examination of that decision will show that it rests on ground fundamentally distinct from it.

The only restriction placed upon the purchaser of the mimeograph machine in that case was thus expressed (p. 11):

> This machine is sold by the A. B. Dick Co., with the license restriction that it may be used only with the stencil paper, ink, and other supplies made by A. B. Dick Company, Chicago, U. S. A.

As construed by this Court, the restriction is limited to "supplies necessary for" the operation of the machine. We quote from the opinion (34):

> For the purpose of testing the consequence of a ruling which will support the lawfulness of a sale of a patented machine for use only in connection with supplies *necessary for its operation* bought from the patentee, many fanciful suggestions of conditions which might

> be imposed by a patentee have been pressed upon us. [Italics ours.]

In the present case, the restrictions which the defendants impose go far beyond the use of its machines "only in connection with supplies necessary for (their) operation." They apply to the use of entirely different and independent machines which have no mechanical or other necessary connection with the machine as to which the alleged limitation of use is insisted upon by the defendants. (*Supra*, p. 14, 204–205.)

There are other differences, equally fundamental, between the *Dick* case and that now before the Court. In the *Dick* case, there was but one contract involved, a contract between the patentee and Miss Skou. In this case we have a vast number of contracts with a great number of people embodying a comprehensive system of restrictions. It might well be said that one contract such as existed in the *Dick* case would not be a violation of the Sherman Act, while a large number of like contracts with many persons as in the instant case, would be.

As the Court said in the *La Chapelle* case (212 Mass. 467, *supra*, at p. 485):

> A single contract for the employment in labor of one person is far away from interstate commerce. * * * As a single incident it may be harmless. As an integral part of an unlawful scheme for monopolizing commerce between the States which can not be perpetu-

> ated successfully without contracts of like tenor with all practicing a similar craft, it partakes of the illegality of the scheme.

This distinction was recognized and enforced in the *Bement* case, 186 U. S. 75, upon which the Court seemed to greatly rely in the *Dick* case. In the former there were but two contracts. Speaking of them, Mr. Justice Peckham observed (87):

> There is no finding by the referee that this agreement was ever signed by anyone other than the parties to this action or that any other person received the licenses from and made contracts with the plaintiffs similar to the ones entered into between these parties. * * * In the absence of any finding as to the escrow agreement having been signed by others, it must be regarded as unimportant, and we are brought back to the question whether these contracts or licenses, A and B, irrespective of any contracts not found by the referee as in any way connected with or forming a part thereof, are void as a violation of the Act of Congress (Anti-Trust Act).

He reached the conclusion they were not, but for the obvious reason that within themselves they were not sufficient to constitute an unreasonable restraint of trade.

This Court pointed out and emphasized the same distinction in the *Standard Sanitary Case*, 226 U. S. 20, where it said (48):

> There was a contention in that case that the contract of the National Harrow Company with Bement & Sons was part of a contract and

> combination with many other companies and constituted a violation of the Sherman law, *but the fact was not established, and the case was treated as one between the particular parties, the one granting and the other receiving a right to use a patented article with conditions suitable to protect such use and secure its benefits,* * * * and there is nothing in *Henry* v. *A. B. Dick Co.*, 224 U. S. 1, which contravenes the views herein expressed. [Italics ours.]

Even the *Dick* case recognizes that in certain circumstances the State and Nation may impose restrictions upon the rights of a patentee. It says (29):

> That there are limitations upon the right of vending and using a patented machine may be conceded. Thus, if the thing patented belong to a class of things which on account of their inherent danger to the public safety or health, can not be sold or used because prohibited by an exertion of the police power of a state, they will not be immune to such a law because patented.

If the state may impose restrictions for the reasons indicated *a fortiori* so also may the Nation where the public good demands it.

In *Bauer & Cie* v. *O'Donnell*, 229 U. S. 1, the right of a patentee to limit the price at which the vendee might dispose of a patented article is denied and attention is called to the narrowness of the facts in the *Dick* case and its scope is limited to them (pp. 14–16).

The precise question which we have here was before the Supreme Judicial Court of Massachusetts in the

La Chapelle case *supra*, p. 220. There the Court observed:

> Therefore, the further question arises whether a combination among several patentees of competing devices is within the inhibition of the statute.

Answering this, after referring to all the decisions of this Court upon the subject, including the *Dick* case, it was said (482–3):

> No word or phrase in the Sherman Anti-Trust Act reveals an intent to exempt the owners of patents from its sweeping provisions against monopolistic combination. We are unable to perceive any underlying reason for supposing that by implication growing out of economic or business conditions such an exemption was intended. There appears to be no inherent natural distinction between owners of patents and owners of oil which would justify the application of the statute to one and not to the other. The conclusion seems to follow that the comprehensive condemnation of the act against every person who monopolizes interstate commerce by combination with others includes holders of patents as well as others.

In *United States* v. *Motion Picture Patents Company*, 225 Fed. 800, a very recent decision, the court discusses at great length the question as to whether or not owners of patents may combine and thereby restrain and monopolize trade without violating the Anti-Trust Law, and he reaches the conclusion, after careful examination of all the decisions of this court

upon the question, that they may not. In that connection the Court says:

> The distinction sought to be pointed out is that while the owner of a patent on a plow covering the handles or beam might acquire or join with the owners of patents covering the moldboard or share or other parts of the plow for the protection of the patented rights of all and thereby incidentally secure an enlarged part of the trade in plows, the judgment would refuse to sanction a combination between the owners of patented plows, patented harrows, patented reapers and binders * * * for the purpose of monopolizing the whole trade in the products of agriculture if the direct end first proposed was to unduly and unreasonably restrain trade as a means to the final purpose of monopolizing. The ownership of the patents in such a case surely could not be accepted as a defense to the charge of unlawful combination. (810)

We can not end our discussion of this point better than by repeating the language of Mr. Justice McKenna in the *Standard Sanitary* case, *supra* (458):

> Rights conferred by patents are indeed very definite and extensive, but they do not give any more than other rights an universal license against positive prohibitions. The Sherman Act is a limitation of rights, rights which may be pushed to evil consequences and therefore restrained.

IX.

THE ALLEGED PATENT INFRINGEMENTS DO NOT REMOVE THE ILLEGALITY OF THE DEFENDANTS' ACQUISITIONS.

A. THE CHALLENGED PATENTS WERE PRESUMPTIVELY VALID.

The purchase of the Eppler Company, the Plant interests, and other acquisitions is sought to be justified by the defendants upon the ground that patented machines owned by them infringed machines belonging to the United Company. The defendants have attempted to prove such infringements. We deny that this may be done in an action under the Anti-Trust Act, because it would constitute a collateral attack upon the novelty and utility of the patent. Every patent issued is *prima facie* valid. It represents the judgment of the patent officials in a matter concerning which Congress has conferred upon them the exclusive right to decide in the first instance, and this judgment can not be reviewed or set aside except in the manner provided by statute.

In *Smelting Co.* v. *Kemp*, 104 U. S. 636, speaking of the issuance of a patent by the officers of the Land Department, the court said (640–641):

> In that respect they exercise a judicial function and, therefore, it has been held in various instances by this court that their judgment as to matters of fact properly determinable by them is conclusive when brought to notice in a collateral proceeding.

In *Boyd* v. *Jaynesville Hay Tool Co.*, 158 U. S. 260, the following language from Mr. Justice Strong in a former case was approved (261):

> The grant of the letters patent was virtually a decision of the patent office that there is a substantial difference between the inventions. It raises the *presumption* that, according to the claims of the later patentees, this invention is not an infringement of the earlier patent. [Italics ours.]

In *Lehnbeuter* v. *Holthaus*, 105 U. S. 94, 96, it was said:

> The patent is *prima facie* evidence of both novelty and utility.

See also *Barden* v. *Northern Pacific R. R. Co.*, 154 U. S. 288, 327; *U. S.* v. *Motion Pictures Patents Co.*, 225 Fed. 800, 804; *Marsh* v. *Nichols, etc., Co.*, 128 U. S. 605, 610.

B. THEIR VALIDITY MAY BE CHALLENGED ONLY IN AN APPEAL OR AN ACTION FOR INFRINGEMENT.

Congress has provided for appeals in certain cases from the decisions of the patent officials to the Supreme Court of the District of Columbia. (R. S. Sec. 4911–4914.) It has also provided that the validity of a patent may be attacked for certain reasons in a collateral proceeding. (R. S. Sec. 4920.) But this attack may be made only "*in an action for infringement*" and in accordance with the provisions of that Act.

Rubber Co. v. *Goodyear*, 9 Wall. 788, was an action for infringement. The court was asked to go behind the decision of the Commissioner of Patents and inquire into the frauds by which it was alleged that

a patent extension was procured (796). It refused to do so on the ground that this defense was not included amongst those that might be presented under the act of 1836, which was the statute then in force with respect to the grounds upon which a patent could be collaterally attacked. After stating that no defense could be entertained in a collateral proceeding *except that provided for in the statute*, the court said, quoting from Chancellor Kent (797):

> Unless letters patent are absolutely void on the face of them, or the issuing of them was without authority or was prohibited by statute, they can only be avoided in a regular course of pleading in which the fraud, irregularity or mistake is *regularly* put in issue. [Italics ours.]

In *Mahn* v. *Harwood*, 112 U. S. 354, 358, we read:

> It was not intended then, and is not now, to question the conclusiveness, in suits for infringements of patents, of the decisions of the Commissioner on questions of fact necessary to be decided before issuing such patents, except as the *statute* gives *specific* defenses in that regard. [Italics ours.]

In *Marsh* v. *Nichols, Shepard & Co.*, 128 U. S. 605, Mr. Justice Field, speaking for this court said (610):

> It is undoubtedly true, as a general rule, that a patent of the United States, whether for land or for an invention, can be attacked for defects, not apparent on its face, only by *regular* proceedings instituted for *that purpose*, and is not open to collateral attack except

> where *specially* provided by statute. [Italics ours.]

Continuing, he observed:

> In such cases the impeachment must be by pleadings setting up the *specific* acts, which it is alleged, vitiate and defeat the instrument. [Italics ours.]

We have no such pleading in this case.

Besides, Section 4920 R. S. requires the party who desires to avail himself in a collateral proceeding of the defenses enumerated therein, to give notice in writing thirty days before the trial of the defenses relied upon. That was not done in the case at bar and this alone would, under the authority of *Eureka Co.* v. *Bailey Company*, 11 Wall. 488, 492, prevent the defendants from availing themselves of the defenses.

This court has said in *United States* v. *Bell Telephone Co.*, 167 U. S. 224, at page 269, that courts of the United States sitting as courts of equity could not—

> entertain jurisdiction of a suit by the United States to set aside a patent for an invention on the mere ground of error of judgment on the part of the patent officials. That would be an attempt on the part of the courts in collateral attack to exercise an appellate jurisdiction over the decisions of the patent office although no appellate jurisdiction has been by the statutes conferred.

Why? Manifestly because suit by the United States would not be "an action for infringement."

If it was, the judgment of the patent officials in the respect mentioned could be attacked collaterally under Section 4920 of the Revised Statutes, *supra*.

Congress has, according to this court in that case, given to the patent office "exclusive jurisdiction in the first instance" over all questions of "novelty and utility" and "has specifically provided under what circumstances its decisions may be reviewed either *collaterally* or by appeal." (267) [Italics ours.]

In that case one of the contentions of the Government was that a prior patent covered the same invention covered by the subsequent one and therefore that the latter was invalid. The court held that the Government could not present such a question in the case then before the court because that question had been determined by the patent office (264), and that if presented at all it must be done in a suit brought by an *individual* for infringement under Section 4920, R. S. *supra*.

The meaning of this decision, as we read it, is that the contention of the Government being in the nature of a collateral attack upon the validity of the patent, the point could be presented *only* "in an action for infringement." The action at bar not being one for infringement, the validity of the patents can not be drawn in question—all must be treated as valid.

If the law were otherwise it would be very unfortunate, because it would greatly burden the administration of the Anti-Trust statute. In this case it would be necessary for the court to decide many hun-

dred patent claims before it could determine whether or not the Sherman Act had been violated. The patent expert, Howard, says that with respect to the Plant purchase alone, the number of patents would be 132 and the number of claims would be 708. (R. I, 800, l. 5.) The total number involved in all the acquisitions would be, of course, much greater.

C. WHETHER THE PATENTED MACHINES WHICH WERE ACQUIRED INFRINGED PATENTED MACHINES OWNED BY THE UNITED COMPANY IS IMMATERIAL FOR ANOTHER REASON.

There was actual and vigorous competition between the companies owning the machines which the United Company claims infringed machines belonging to it. That competition was suppressed by the acquisition. The Anti-Trust statute, it appears, makes no distinction between rightful or wrongful interstate trade. It was so held by the decision of the Circuit Court of Appeals for the 6th Circuit in *Patterson* v. *United States*, 222 Fed. 599, in which Mr. Justice Day concurred.

The lower Court had rejected certain evidence offered to prove that the purchasing corporation owned unexpired patents covering the machines made by 16 competitors whom it bought out. This evidence was offered for the purpose, as here, of showing that in acquiring the competitors the corporation did not violate the Anti-Trust Act. The court of appeals in sustaining the action of the lower court said of the Sherman Act (646):

> It includes every conspiracy in restraint of interstate trade or commerce. It is not a

question whether it is *rightful or wrongful interstate* trade or commerce that is covered by the conspiracy. It is *sufficient* that it is interstate trade or commerce. If two or more persons in no way interested in a patent were to conspire in restraint of interstate trade or commerce of an infringer, no one would contend that the conspiracy was not covered by the statute. *No more* is it open to contend that a *conspiracy* by a *patentee* and *another*, or by the officers and agents of a patentee in his interest, to restrain the interstate trade and commerce of an infringer is not within the statute. *The intent of the statute was to sweep away all conspiracies in restraint of such trade or commerce whatever their character may be. The statute respects the monopoly of the patentee.* It to no extent invades the rights conferred upon him. (Citing authorities.) But the right to conspire with another or others in his interest in restraint of the interstate trade or commerce covered by his patent *is not* one of the rights conferred thereby and such a conspiracy is within the statute. [Italics ours.]

CONCLUSION.

The Government has established then, that there existed vigorous competition between three of the Companies merged in the organization of the United Company, and that the fourth Company, which at any moment might have become a competitor, was taken in for the purpose and with the effect of furthering the unlawful scheme of the combination thus brought into being; that there was like competition

between the United Company and many of its subsequent acquisitions, and that such competition was especially vigorous and threatening with the Plant interests; that these acquisitions not only destroyed prevailing but also strangled potential competition both by combination and through the operation of restrictive contracts exacted from the vendors; and further that the defendants have adopted and are enforcing certain oppressive tying clauses in their leases which coerce the shoe manufacturers of the country into dealing with them on their own terms and force them to boycott independent shoe machinery manufacturers—clauses which have practically destroyed all competition in bottoming, eyeletting, and clicking machinery, and have eliminated every inducement to the birth of new competition. In the language of the House Judiciary Committee, those clauses form "one of the greatest instrumentalities of monopoly devised by the brain of man." Considering the entire record, the Government urges that the prayer of its petition in all respects should be granted.

Respectfully submitted.

T. W. GREGORY,
Attorney General.
JOHN W. DAVIS,
Solicitor General.
G. CARROLL TODD,
Assistant to the Attorney General.
CONSTANTINE J. SMYTH,
H. LA RUE BROWN,
Special Assistants to the Attorney General.

APPENDICES.

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APPENDIX "B."

ANALYSIS

OF

DEFENDANTS' EXHIBIT 337.

"LIST OF MACHINES

OFFERED BY

SHOE MACHINERY MANUFACTURERS AND DEALERS

OTHER THAN

UNITED SHOE MACHINERY COMPANY,

FOR PREPARING AND ATTACHING THE BOTTOMS TO THE UPPERS OF SHOES, EYELETTING MACHINES, DIEING-OUT MACHINES, AND CLICKING MACHINES,

NAMED IN

DEFENDANTS' EXHIBITS 311 TO 321, INCLUSIVE—CATALOGS, LETTERS, ADVERTISEMENTS, ETC."

APPENDIX B.

PART I.

PRINCIPAL MACHINES,

TOGETHER WITH

McKAY SEWING, CLICKING, AND EYELETTING MACHINES,

AND

PERCENTAGE OF EYELET OUTPUT CONTROL OF U. S. M. CO.

GOODYEAR DEPARTMENT.

WELT AND TURN SEWING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	2,527	.....	Pltffs. Ex. 163, IV, 1125.....	

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Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	86	Hamel (R. I, 326, l. 37).	Pltffs. Ex. 159, IV, 1113.... Defts. Ex. 321, p. 178C.	Total—all turn stitchers—marketed by Duplessis Shoe Mchy. Co.—a defunct concern and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 71 were sold by Duplessis Company, 6 by C. A. Hamel, and 9 by Hamel Shoe Mchy. Co. Of the 71 sold by the Duplessis Company 40 went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Defts. Ex. 321, reference.—Note by U. S. M. Co. representative that he has seen a "Duplessis Welt Sewing Machine" in operation in a factory.
Haverhill Shoe Mchy. Co Haverhill, Mass.	56	Webster (R. I, 292, l. 8).	Pltffs. Ex. 161, IV, 1118..... Dfts. Ex. 321, pp. 7C, 5A, 95C.	In use—June, 1913—by shoe manufacturers. Marketed since 1910. Defts. Ex. 321, reference.—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912. Also note by Haverhill Company to U. S. M. Co. that it can furnish this machine.
R. H. Long Mchy. Co.... So. Framingham, Mass.	0	Doidge (R. I, 344, l. 17; 345, l. 15; 346, l. 614).	..... Defts. Ex. 321, p. 56B.	Three Duplessis machines bought and resold—two to shoe manufacturers and one to repair man. None manufactured by company prior to June, 1913. Although listed in catalog, witness Doidge explained that not all so listed were manufactured, but that it was the intention to do so. Defts. Ex. 321, reference—Catalog of Long Company.
Boylston Mfg. Co..... Boston, Mass.	0	Maloy (R. I, 301, l. 23; 302, l. 16, 36).	..... Defts. Ex. 321, p. 192E.	Not included among machines specified by witness Maloy, nor in catalog of company. Defts. Ex. 321, reference.—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.

WELT OUTSOLE STITCHER.

Under lease by U. S. M. Co., on Mar. 1, 1911.	2,676	.....	Pltffs. Ex. 163, IV, 1125.....	
Boylston Mfg. Co..... Boston, Mass.	0	Maloy (R. I, 301, l. 23; 302, l. 16, 36.)	..... Defts. Ex. 321, p. 192B.....	Not included among machines specified by witness Maloy, nor in catalog of company. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.

GOODYEAR DEPARTMENT—Continued.

WELT OUTSOLE STITCHER—Continued.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Landis Machine Co. St. Louis, Mo.		McElroy (R. I, 923, l. 5)		No representative of company called.
			Defts. Ex. 321, p. 170	Witness McElroy, of St. Louis, Mo., knew this company to be engaged in manufacturing harness machinery, but never knew it to manufacture shoe machinery. Defts. Ex. 321, reference—Catalog entitled "Landis Shoe Repair Machinery." Same reference used under "Fairstitching Machine" classification.
Larsen Mchy. Co. Brooklyn, N. Y.		Wirths (R. I, 928, l. 6)		None marketed among shoe manufacturers.
			Defts. Ex. 316, p. 159	Defts. Ex. 316, reference—Catalog of C. V. Engstrom Company containing reference to this machine. Same reference used under "Fairstitching machine" classification.
C. V. Engstrom Co Peoria, Ill.				No representative of company called.
			Defts. Ex. 316, p. 161A	Defts. Ex. 316, reference—Catalog of company containing reference to an "Automatic Stitcher." Same reference used under "Fairstitching Machine" classification.
Jas. Clark Leather Co. St. Louis, Mo.		McElroy (R. I, 921, l. 29).		No representative of company called.
			Defts. Ex. 321, p. 161, (Cat. pp. 68-71).	Witness McElroy, of St. Louis, Mo., knew this company to be engaged in the shoe findings business and that it manufactured no shoe machinery. Defts. Ex. 321, reference—Announcement of Simplex Manufacturing Company in catalog of Clark Company, which shows that machine had not been marketed prior to issuance of same. Simplex Company not referred to elsewhere in record.
Union Lock Stitch Co. E. Boston, Mass.	400	Merrick (R. I, 199, l. 33, 37; 200, l. 18.		Approximate sales—4 curved needle and 350 to 400 straight-needle machines. Of latter type about 75 have been sold to shoe manufac-
			Defts. Ex. 321, pp. 44B, 5J.	

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				turers. Curved-needle machines marketed since May, 1910; straight-needle machines since 1906. Defts. Ex. 321, reference—Quotations to U. S. M. Co. Same reference used under "Fairstitching machine" classification.
Universal Shoe Mchy. Co. St. Louis, Mo.	.....	Johnson (R. I, 893, l. 38; 895, l. 10).	..... Defts. Ex. 321, pp. 7L, 95L	No representative of company called. Johnson, of Victor Shoe Mchy. Co. handled machinery for this company but never placed any. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.
Victor Shoe Mchy. Co. Boston, Mass.	**32**	Johnson (R. I, 893, l. 23; 894, l. 6).	..... Defts. Ex. 321, p. 174D.	Machine marketed only since September, 1913, and none among lessees of U. S. M. Co. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen machine of this company in demonstration at its factory
R. H. Long Mchy. Co. So. Framingham, Mass.	**285**	Doidge (R. I, 344, l. 26)	..... Defts. Ex. 321, pp. 5I, 56A.	Of this total only three have been sold to shoe manufacturers. Defts. Ex. 321, reference—Note by Haverhill Shoe Mchy. Co. to U. S. M. Co., that it can furnish Long machines; also catalog of Long Company.
Hamel Shoe Mchy. Co. Lynn & Haverhill, Mass.	**41**	Hamel (R. I, 326, l. 36).	Pltffs. Ex. 159, IV, 1113..... Defts. Ex. 321, p. 193C.	Total marketed by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 39 were sold by Duplessis Company. These went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. No machine included as marketed by Hamel Shoe Mchy. Co. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen a Duplessis machine in operation in shoe factory.

METALLIC DEPARTMENT.

STANDARD SCREW MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	**409**	.....	Defts. Ex. 228, V, 430	
Hamel Shoe Mchy. Co.	**1**	Hamel (R. I, 326, l. 50.)	.....	No reference under this classification in Defts. Ex. 337 to this testimony of Hamel.

METALLIC DEPARTMENT—Continued.

HEEL SLUGGING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	**1,878**	.....	Pltffs. Ex. 163, IV, 1125..... Defts. Ex. 228, V, 430.....	
Boylston Mfg. Co..... Boston, Mass.	**1**	Maloy (R. I, 301, l. 23; 302, l. 16.) Cavannaugh (R. I, 956, l. 19).	..... Defts. Ex. 321, p. 192C.....	Not included among machines specified by witness Maloy, nor in catalog of company. Machine noted was installed on trial in January, 1914. (Subsequent to death of Maloy.) Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	**22**	Hamel (R. I, 326, l. 31).	Pltffs. Ex. 159, IV, 1113.... Defts. Ex. 321, pp. 8Q, 95 N 2.	Total marketed by Duplessis Shoe Mchy. Co.—a defunct concern and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 17 were sold by Duplessis Company, 3 by C. A. Hamel, and 2 by Hamel Shoe Mchy. Co. Of the 17 sold by the Duplessis Company, 7 went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. Machines. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.
R. H. Long Mchy. Co... So. Framingham, Mass.	**0**	Long (R. I, 232, l. 4 et seq., 272, l. 16). Doidge (R. I, 346, l. 5)	..... Defts. Ex. 321, p. 56K.	Not included among machines specified by witnesses Long and Doidge as previously manufactured, or on hand. Statement by Long shows none manufactured at date of June, 1913. Although listed in catalog, Doidge explained that not all machines so listed were manufactured, but that it was intention to do so. Defts. Ex. 321, reference—Catalog of Long Company.

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Under lease by U. S. M. Co., on Mar. 1, 1911.	**1,835**	.....	Pltffs. Ex. 163, IV, 1125..... Dfts. Ex. 228, V, 430.....	
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	**24**	Hamel (R. I, 326, l. 30).	Pltffs. Ex. 159, IV, 1113, 1114. Defts. Ex. 321, p. 172A.	Total marketed by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 20 were sold by the Duplessis Company. Of these 15 went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co machines. Only 4 of the total have been sold by the Hamel Shoe Mchy. Co. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen a "Duplessis Loose Nailer" in operation in a shoe factory.
R. H. Long Mchy. Co... So. Framingham, Mass.	**0**	Long (R. I, 232, l. 4 et seq; 272, l. 16. Doidge (R. I, 346).	..... Defts. Ex. 321, p. 56J.	Not included among machines specified by witnesses Long and Doidge as previously manufactured or on hand. Statement by Long shows none manufactured at date of June, 1913. Although listed in catalog, Doidge explained that not all machines so listed were manufactured, but that it was intention to do so. Defts. Ex. 321, reference—Catalog of Long Company.
Universal Shoe Mchy. Co. St. Louis, Mo.	.....	Johnson (R. I, 893, l. 38).	..... Defts. Ex. 321, pp. 7H, 95P.	No representative of company called. Johnson, of Victor Shoe Mchy. Co., handled machinery for this company, but never placed any Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months, about 1912.
Victor Shoe Mchy. Co... Boston, Mass.	.....	Johnson (R. I, 894, l. 5, 27).	..... Defts. Ex. 321, p. 174A.	Adapted for repair trade only. Company started operations about January, 1911. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he had seen a "Tacking Machine" of this company in demonstration at its factory. Same reference used under "Tacking Machine" classification.

METALLIC DEPARTMENT—Continued.

TACKING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	3,488	.....	Pltffs. Ex. 163, IV, 1125, 1126.	Total represents: Metallic department 3065, lasting department 423.
Universal Shoe Mchy. Co. St. Louis, Mo.	.....	Johnson (R., I. 893, l. 38).	..... Defts. Ex. 321, pp. 88, 95I.	No representative of company called. Johnson, of Victor Shoe Mchy. Co. handled machinery for this company, but never placed any. Defts. Ex. 321, reference—Advertisement of "Clinching Machine" and same reference used under latter classification. Also notation for Universal "String Nailer" in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	6	Hamel (R., I, 326, l. 32).	Pltffs. Ex. 159, IV, 1113, 1114. Defts. Ex. 321, p. 193B.	All marketed by the Duplessis Shoe Mchy. Co.—a defunct concern—which preceded the Hamel Shoe Mchy. Co. by some years. These machines went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he had seen a "Duplessis Tacking Machine" in operation in a shoe factory.
Louis G. Freeman Co... Cincinnati, O.	.....	.....	..... Defts. Ex. 321, pp. 7A, 95A.	No representative of company called. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

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Victor Shoe Machy. Co. Boston, Mass.	.....	Johnson (R., I, 894, ls. 5, 27).	..... Defts. Ex. 321, p. 174A.	Adapted for repair trade only and known as a "Loose Nailing Machine." Company started operations about January, 1911. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he had seen a "Loose Nailing Machine" of this company in demonstration at its factory. Same reference used under "Loose Nailing Machine" classification.

HEELING DEPARTMENT.

HEELING MACHINE.

(ATTACHING HEELS.)

Under lease by U. S. M. Co., on Mar. 1, 1911.	**2,019**	.....	Pltffs. Ex. 163, IV, 1125..... Defts. Ex. 228, V, 430.....	Total represents: Bigelow 14, Wood Heel 9, National 10, American Lightning Nailing 978, McKay Automatic Heel Loading & Attaching 948, Rapid Nailing & Automatic (#1 & #2) 60.
R. H. Long Mchy. Co.... So. Framingham, Mass.	**6**	Doidge (R. I, 345, l. 42)	Defts. Ex. 321, p. 56Q.....	National heelers. All installed in Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Defts. Ex. 321, reference—Catalog of Long Company.
Haverhill Shoe Mchy. Co. Haverhill, Mass.	**12**	.....	Pltffs. Ex. 161, IV, 1118, 1120-1125. Defts. Ex. 321, pp. 8P, 5N...	In use—June, 1913—by shoe manufacturers. Marketed since about 1910. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912. Also note by Haverhill Company to U. S. M. Co. that it can supply this machine.

LASTING DEPARTMENT.

LASTING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	**7,496**	.....	Pltffs. Ex. 163, IV, 1125, 1126. Defts. Ex. 228, V, 430, 432.	Total represents: Hand method (four divisions), 3,854; Chase, 780; McKay & Copeland, 300; Ideal & Copeland (five divisions), 482; No. 5, 2,080.
R. H. Long Mchy. Co... So. Framingham, Mass.	**4**	Doidge (R. I, 344, l. 34).	Defts. Ex. 321, p. 5E.....	Three to Buffalo Shoe Company, not a lessee of U. S. M. Co.; one to Zion Coop. Merc. Ass'n, a hand-process concern mostly. Defts. Ex. 321, reference—Note by Haverhill Shoe Mchy. Co. to U. S. M. Co. that it can supply Long machine.
Boylston Mfg. Co..... Boston, Mass.	**1**	Maloy (R. I., 301, l. 23; 302, l. 16). Cavanaugh (R. I, 956, l. 8).	Defts. Ex. 321, p. 192A.....	Not included among machines specified by witness Maloy, nor in catalog of company. Machine noted was installed on trial in January, 1914 (subsequent to death of Maloy). Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.
Louis G. Freeman Co.... Cincinnati, O.	**2**	McElroy (R. I, 190, l. 20).	Defts. Ex. 321, p. 7, A1, A2..	No representative of company called. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912. Witness McElroy stated that the only lasting machine used in the Non-Royalty Shoe Company which was procured in the United States was a trial machine of the Krentler Company—last manufacturers—Detroit, Mich. This had not been perfected and was not a commercial proposition. The Krentler Company—prior to 1913—had produced only two of these machines. Both of these were installed in the Non-Royalty Shoe Company, but only one was operated. The Louis G. Freeman Co. was the representative for the Krentler Company.

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PULLING OVER DEPARTMENT.

PULLING OVER MACHINE.

No competition in United States.

PEGGING DEPARTMENT.

PEGGING MACHINE.

No competition in United States.

MISCELLANEOUS.

McKAY SEWING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	898	.....	Pltffs. Ex. 163, IV, 1126..... Defts. Ex. 228, V, 430, 437.	
Shawmut Macby. Co.... Boston, Mass.	8	Emerson (R. I, 910, l. 23).	.....	Marketed, on trial, only since June, 1913. No reference to Defts. Ex. 321 shown in Defts. Ex. 337, V, 906. Not mentioned in list of company's machines shown in Defts. Ex. 336, V, 849.
Haverhill Supply Co.... Haverhill, Mass.	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
Louis G. Freeman Co.... Cincinnati, O.	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in list of company's machines shown in Defts. Ex. 336.
Edward E. Spencer & Co. New York, N. Y.	.....	Spencer (R. I, 884, l. 40; 885, l. 1).	.....	Not included among machines specified by witness Spencer as manufactured by company. Company in bankruptcy in 1912. Principal business had been in supplies rather than shoe machinery. Defts. Ex. 312—Catalog of company, printed in 1897.

MISCELLANEOUS—Continued.

McKAY SEWING MACHINE—Continued.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Manufacturers Supply Co. St. Louis, Mo.				No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
J. W. White & Co. Haverhill, Mass.				No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
Lynn Supply Co. Lynn, Mass.				No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
American Worsted Mchy. Co. Abington, Mass.		Hall (R. I, 953, l. 5, 20).	Defts. Ex. 321, p. 1K.	None manufactured from 1907 to 1914. Parts only handled. Defts. Ex. 321, reference—Quotation to U. S. M. Co.
Walter Pearson. Whitman, Mass.			Defts. Ex. 321, p. 23A.	No representative of company called. Defts. Ex. 321, reference—Quotation to U. S. M. Co., together with catalog of McKay machines, printed in 1896.

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CLICKING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	3,655	.....	Pltffs. Ex. 163, IV, 1126..... Defts. Ex. 228, V, 430, 435.	
Seelye Mfg. Co..... Boston, Mass.	.....	Seelye (R. I, 327, l. 28).	.....	Not referred to in testimony of witness Seelye.
			Defts. Ex. 321, p. 182.	Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen machine in operation in a shoe factory.
Parsons Mchy. Co..... Marlboro, Mass.	.....	.....	.....	No representative of company called.
			Defts. Ex. 321, p. 12B.	Defts. Ex. 321, reference—Quotation to U. S. M. Co. for "Upper Leather Cutter."

EYELETTING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	4,472	.....	Pltffs. Ex. 163, IV, 1126..... Defts. Ex. 228, V, 430, 433.	
American Worsted Mchy. Co. Abington, Mass.	150	Hall (R., I, 953, l. 11)..	.....	Approximate sales from 1907 to 1914 to shoe manufacturers and others.
			Defts. Ex. 321, p. 2 K, B, C, D.	Defts. Ex. 321, reference—Quotations to U. S. M. Co.
Geo. Knight & Co..... Brockton, Mass.	0	Knight (R., I, 902, l. 40).	.....	None manufactured since 1906.
			Defts. Ex. 321, p. 9 G.	Now manufactured by Peerless Mfg. Company. U. S. M. Co. never manufactured machines of "Gang" type. Defts. Ex. 321, reference—Quotation to U. S. M. Co., on "Power" and "Gang" machines. (See Peerless Mfg. Co.)
Peerless Mfg. Co..... Boston, Mass.	.....	Muther (R., I, 303, l. 3 et seq).	.....	Output not stated, but we may assume that if it was large enough to be significant it would have been stated by the defendants.
			Defts. Ex. 321, p. 67 A, F.	Loaned to eyelet customers. Defts. Ex. 321, reference—Advertisement of "Rapid" and "Gang" eyeletting machines. U. S. M. Co. never manufactured machines of "Gang" type. (See Geo. Knight & Co.)

MISCELLANEOUS—Continued.

EYELET MANUFACTURERS IN 1913.

(See Defts. Ex. 234, V, 530.)

Shoe Eyelet Production.	Millions per month.
Hughes Eyelet Company, Taunton, Mass	20
Scoville Manufacturing Company, Taunton, Mass	2
Atlas Tack Company, Fairhaven, Mass	200
Waterbury Brass Company, Waterbury, Conn	5
S. O. & C. Company, Ansonia, Conn	200
J. C. Rhodes Company, New Bedford, Mass	200
Rimmon Eyelet Company, Seymour, Conn	5
United Fast Color Eyelet Company	30
Total	662

Controlled by U. S. M. Co. (and allied interests).	
Hughes Eyelet Company (by Winslow personally)	20
S. O. & C. Company, Ansonia, Conn	200
J. C. Rhodes Company, New Bedford, Mass	200
Rimmon Eyelet Company, Seymour, Conn	5
United Fast Color Eyelet Company	30
Total	455
Output of Atlas Tack Company (corrected) (Donovan I, 959, l. 7)	50
Output of Scoville Mfg. Company	2
Output of Waterbury Brass Company	5
Total	57
Corrected total	512
Percentage controlled by United Shoe Machinery Company and allied interests per cent	89

NOTE.—Output of Atlas Tack Company and percentage controlled by U. S. M. Co. are approximate figures.

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APPENDIX "B."

PART II.

OTHER MACHINES.

WELT BEATING MACHINE.

BOYLSTON MFG. CO., Boston, Mass.

Not included in list specified by witness Maloy on pages 301 and 302, nor in catalog of company—page 302.

(Maloy, I, 301, l. 23; 302, l. 16.)

Defts.' Ex. 321. Reference: page 192, item D. Note by U. S. M. Co. representative that he has reason to believe the Boylston Co. manufactures this machine.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

Twenty-five machines manufactured and marketed in United States by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff's Ex. 159, customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 44.)

Defts.' Ex. 321. Reference: page 95, item G. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

None marketed since date of manufacture—May, 1913.

(Webster, I, 292, l. 30.)

Defts.' Ex. 321. Reference: page 5, item T. Haverhill Co. statement to U. S. M. Co. that it can furnish this machine.

R. H. LONG MCHY. CO., South Framingham, Mass.

None marketed prior to June, 1913.

Doidge explained that not all machines listed in catalog were manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 16.)

Defts.' Ex. 321. Reference: page 56, item E. Notation for this machine in catalog of company.

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OUTSOLE BLOCKING MACHINE (cutting outsoles).

QUARMBY & HILLIKER, Lynn, Mass.

Twelve machines manufactured and marketed among shoe manufacturers—sometimes referred to as "sole cutters."

The manufacture of these machines has been discontinued.

(Hilliker, I, 929, l. 5.)

Defts.' Ex. 321. Reference: page 11, items A and B. Quotation to U. S. M. Co.

HEEL BUILDING MACHINE.

W. T. BOSWORTH, Brockton, Mass.

Machine manufactured by the Brockton Heel Co., which Bosworth represents.

This is sold or leased to shoe and heel manufacturers and is a measuring machine or device, rather than a heel building machine.

Manufacture of this machine commenced about January, 1914.

To Bosworth's knowledge the U. S. M. Co. builds no machine for performing a similar operation.

(Bosworth, I, 911, l. 22 et seq.)

Defts.' Ex. 321. Reference: page 43, item A. Quotation to U. S. M. Co. on "Log Building and Log Slicing Machines."

JAMES BOSTOCK & SONS, Brockton, Mass.

Approximately 100 machines per year have been sold during past 17 years to shoe and heel manufacturers. A fair proportion of these have been sold to the U. S. M. Co., which also manufactures a heel building machine, although not essentially the same as the Bostock machine.

(Bostock, I, 904, l. 24 et seq.)

Defts.' Ex. 321. Reference: page 21, item F. Quotation to U. S. M. Co.

FORTUNA MACHINE CO., New York, N. Y.

None manufactured since organization of this company in 1903.

This company intended to manufacture and market a heel-building machine invention of one Geiger. It did not prove commercially successful, however, and nothing further was done by the Fortuna Company.

(Diehl, I, 911, l. 1.)

Defts.' Ex. 321. Reference: page 79. Announcement by the company that a heel building machine will be exhibited at a shoe and leather fair.

W. J. Young Mchy. Co., Lynn, Mass.

Approximately 2,500 machines have been manufactured since about 1906, practically all of which were marketed in the United States. The majority of these machines were sold to shoe manufacturers, although this was not true during the earlier years of the sale of these machines.

(Young, I, 942, l. 27.)

Defts.' Ex. 321. Reference: page 62, item F. Advertisement of machine.

Geo. Knight & Co., Brockton, Mass.

None manufactured during the past 15 years.

(Knight, I, 902, l. 32.)

Defts.' Ex. 321. Reference: page 9, item H. Quotation to U. S. M. Co.

Parsons Mchy. Co., Marlboro, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 12, item C. Quotation to U. S. M. Co. on a "Pieced Heel Machine."

F. H. White & Co., So. Easton, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 46, item A. Quotation to U. S. M. Co. and catalog of the concern.

CEMENTING MACHINES (cementing taps for soles).

Universal Supply Co., Haverhill, Mass.

No representative of company called as a witness.

Witness Donnelly, who has been engaged in the shoe machinery business for the past 14 years, stated that he has never heard of this company.

(Donnelly, I, 943, l. 38; 944, l. 31.)

Defts.' Ex. 321. Reference: page 160. Letter offering machine for sale.

Hazen-Brown Co., Brockton, Mass.

None manufactured by this company itself, although these machines are manufactured for it. These are sold to the Cochituate Oilproof Company, which loans them free to

shoe manufacturers in connection with sale of a special cement known as "gumbo tap sticker."

(Hazen, I, 906, l. 14.)

Defts.' Ex. 321. Reference: page 158. Letter to the U. S. M. Co. explaining that these machines are loaned to shoe manufacturers buying "gumbo cement" and using nothing else in these machines.

BOSTON MACHINE WORKS, Lynn, Mass.

Approximately 700 to 800 Julian cementing machines for cementing soles of shoes marketed among shoe manufacturers during past 10 years, 90% of which have been sold in the United States.

This company manufactures a fold-cementing machine which can not properly be included under this classification.

(Illingworth, I, 926, l. 43, et seq.)

Defts.' Exhibit 321. Reference: page 95, item X. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

Another reference is to page 49 (Cat. p. 34). Notation for this machine in catalog of company.

CHANNELING MACHINES (insoles and outsoles).

R. H. LONG MCHY. CO., So. Framingham, Mass.

No information obtained as to the output of Arnold channeling machine referred to in testimony of witness Doidge—page 1698—as one of the machines manufactured by the company.

In explanation of catalog Doidge stated that not all machines listed therein were manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 5–16.)

Defts.' Ex. 321. Reference: page 56. Notations for "Arnold Channeler" and "Insole Channeler" in catalog of company.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

Fifty-nine machines at present used by customers of company—Pltff.'s Ex. 161, IV, 1118.

The manufacture of this machine—a turn sole channeler—was commenced in 1908.

(Webster, I, 291, l. 35.)

Defts.' Ex. 321. Reference: page 95, item A. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

Another reference is to page 5, item B. Note by Haverhill Co. to U. S. M. Co. that it can furnish this machine.

HAMEL SHOE MCHY. CO., Lynn & Haverhill, Mass.

Four machines manufactured and marketed in United States by the Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff.'s Ex. 159—customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 52.)

WALTER PEARSON, Whitman, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 23, item B. Quotation to U. S. M. Co.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

Approximately 25 to 30 McKay channeling machines marketed among shoe manufacturers from 1907 to 1914.

(Hall, I, 953, l. 5.)

Defts.' Ex. 321. Reference: page 2, item A. Quotation to U. S. M. Co.

GEORGE KNIGHT & Co., Brockton, Mass.

No McKay channeling machines manufactured or marketed during past 15 years.

(Knight, I, 902, l. 38.)

Defts.' Ex. 321. Reference: page 9, item I. Quotation to U. S. M. Co.

CLICKING MACHINE.

SEELYE MFG. CO., Boston, Mass.

PARSONS MCHY. CO., Marlboro, Mass.

Reference to the above in Appendix "B"—Part I.

CLINCHING MACHINE.

UNIVERSAL SHOE MCHY. CO., St. Louis, Mo.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 88. Advertisement of machine.

HEEL COMPRESSING MACHINE.

QUARMBY & HILLIKER, Lynn, Mass.

Manufacture of this machine discontinued about 1907.

(Hilliker, I, 929, l. 8.)

Defts.' Ex. 321. Reference: page 109. Quotation to U. S. M. Co.

W. J. YOUNG MCHY. CO., Lynn, Mass.

Approximately 300 machines manufactured and marketed—almost exclusively among heel manufacturers.

(Young, I, 942, l. 38; 943, l. 18.)

Defts.' Ex. 321. Reference: page 62, item G. Advertisement of machine.

LEATHER CUTTING MACHINES (including dieing-out machines).

THOMAS BOSTOCK & SONS, Brockton, Mass.

Rand cutting and tap cutting machines—properly included under this classification—manufactured by this concern.

Extent of output not stated.

This concern conducts a general machine shop business in which 15 men are employed.

(Bostock, I, 904–905.)

Defts.' Ex. 321. Reference: page 21, items C and H. Quotations to U. S. M. Co.

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item H. Quotation to U. S. M. Co. on "Rand Cutter."

PARSONS MCHY. CO., Marlboro, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 12, item H. Quotation to U. S. M. Co.

BOSTON MACHINE WORKS CO., Lynn, Mass.

Approximately 50 flap-slashing machines—properly included under this classification—manufactured and marketed principally in the United States.

(Illingworth, I, 927, l. 15.)

Defts.' Ex. 321. Reference: page 49 (Cat. p. 32). Advertisement of machine.

QUARMBY & HILLIKER, Lynn, Mass.

Approximately 150 to 200 dinking machines—properly included under this classification—manufactured and marketed since 1904, one-third of these among shoe manufacturers.

(Hilliker, I, 929, l. 39.)

Defts.' Ex. 321. Reference: page 10, item B. Quotation to U. S. M. Co. on "Beam Dinker."

SEELYE MFG. CO., Boston, Mass.

Approximately 50 to 100 beam-die pressers or dinking machines—properly included under this classification—manufactured and marketed yearly prior to formation of U. S. M. Co. Subsequent to 1899 not more than 25 per cent of this output marketed yearly.

(Seelye, I, 327, l. 37; 328, l. 11.)

Defts.' Ex. 321. Reference: pages 92, 93, 94. Advertisement of machine.

Another reference is to page 95, item N. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

TOWER BROS., Hudson, Mass.

Approximately 10 to 12 sole cutting machines manufactured and marketed yearly.

(Tower, I, 907, l. 35.)

Defts.' Ex. 321. Reference: page 3, item F. Quotation to U. S. M. Co. on "Beam Sole Cutter."

W. J. YOUNG MCHY. CO., Lynn, Mass.

A wedge lift dinker or cutter—properly included under this classification—is manufactured by this concern and marketed both to shoe and heel manufacturers.

Extent of output not stated.

(Young, I, 942, l. 39.)

Defts.' Ex. 321. Reference: page 62, item J. Advertisement of machine.

HEEL LIFT EVENING MACHINE.

QUARMBY & HILLIKER, Lynn, Mass.

Not referred to in testimony of witness Hilliker.

(Hilliker, I, 928–929.)

Defts.' Ex. 321. Reference: page 10, item F. Quotation to U. S. M. Co. on "Knox 30-inch Splitter."

This same reference is also used under the classification for "Splitting Machine."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item C. Quotation (unsigned) purporting to have been received by U. S. M. Co from Seelye—on "Splitting Machine."

This same reference is also used under the classification for "Splitting Machine."

J. S. WHEELER & Co., Boston, Mass.

Not referred to in testimony of witness Wheeler.

On page 4555 Counsel Choate, for the U. S. M. Co., stated "I want to call attention to the fact that all we offered was that this man put out a splitting machine and an insole flexing machine."

(Wheeler, I, 889, l. 43; 890, l. 27.)

Defts.' Ex. 321. Reference: page 41, item A. Quotation on "Baby Splitters" (upper leather and sole evener).

This same reference is also used under the classification for "Splitting Machine."

EYELETTING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

GEO. KNIGHT & Co., Brockton, Mass.

PEERLESS MFG. CO., Boston, Mass.

Reference to the above in Appendix "B"—Part I.

FAIRSTITCHING MACHINE.

LANDIS MACHINE CO., St. Louis, Mo.

No representative of company called as a witness.

Witness McElroy, of St. Louis, Mo., stated that he knew this company to be engaged in the manufacture of harness machinery but had no knowledge that it manufactured shoe machinery.

(McElroy, I, 923, l. 4.)

Defts.' Ex. 316. Reference: page 161. Catalog of C. V. Engstrom Co., Peoria, Ill., containing a reference to this machine.

This same reference is also used under the classification for "Welt Outsole Stitcher."

LARSEN MCHY. CO., Brooklyn, N. Y.

No specific reference is made in the testimony of witness Wirths to a "Fairstitching Machine."

On page 4746 Wirths stated that this company manufactures a "Welt Outsole Lockstitch Machine," but that none have been marketed among shoe manufacturers.

(Wirths, I, 928, l. 4–6.)

Defts.' Ex. 316. Reference: page 161, item A. Catalog of C. V. Engstrom Co., Peoria, Ill., containing reference to an "Automatic Stitcher."

This same reference is also used under the classification for "Welt Outsole Stitcher."

C. V. ENGSTROM CO., Peoria, Ill.

No representative of company called as a witness.

Defts.' Ex. 316. Reference: page 161, item A. Notation for "Automatic Stitcher" in catalog of company.

THE JOHN O'FLAHERTY CO., Rouses Point, N. Y.

No representative of company called as a witness.

Witness Spencer stated that he had handled machines for the O'Flaherty Company and that its lockstitch machine was adapted for harness work principally and could not be used in shoe bottoming operations.

(Spencer, I, 885, l. 13.)

Defts.' Ex. 321. (NOTE.—This Exhibit is one of many "physical" exhibits. It has not been printed, but is a part of the record. It is often referred to herein.) Reference: page 58. Advertisement of "Harness Sewing Machine."

It is to be noted that this machine is advertised for harness work, and that the advertisement appeared in the publication "Harness World."

PURITAN MFG. CO., Boston, Mass.

Approximately 1,000 machines manufactured and marketed since 1892, practically all among shoe manufacturers. A number of these have also been sold to the U. S. M. Co.

(Lingley, I, 891, l. 19 et seq.)

Defts.' Ex. 321. Reference: page 73, item E. Advertisement of "Flax or Dry Thread Machine."

J. D. Randall Co., Cincinnati, O.

No representative of company called as a witness.

Witness McElroy stated that the J. D. Randall Company was not known to him in the shoe machinery field.

(McElroy, I, 922, l. 42.)

Witness Spencer stated that the J. D. Randall Company particularized on machines for the harness trade and that, to his knowledge, it handles no machines for use in shoe manufacture other than strip cutters.

(Spencer, I, 885, l. 17.)

Defts.' Ex. 321. Reference: page 57. Advertisement in "Harness World."

Another reference is to Defts.' Ex. 313. Catalog of the company.

From both references it appears that no claim is made that this machine can be or is ordinarily used in shoe factories but rather for harness and horse collar work. In the catalog particularly this company sets itself forth as manufacturing only this type of machinery.

James Clark Leather Co., St. Louis, Mo.

No representative of company called as a witness.

Witness McElroy, of St. Louis, Mo., stated that this company is engaged in the shoe findings business and that it manufactures no shoe machinery.

(McElroy, I, 921, l. 29.)

Defts.' Ex. 321. Reference: page 161 (Cat. pp. 68, 69, 70). Catalog of the company.

On page 71 of this catalog it appears that this machine had not been placed upon the market prior to date of issuance, and there is no evidence that any of these machines have ever been marketed. Furthermore, although this announcement appears in the catalog of the Clark Company, it is signed by the Simplex Mfg. Co. of St. Louis, Mo., a company which has not been referred to elsewhere in the record as ever having been engaged in the shoe machinery business.

Union Lockstitch Co., E. Boston, Mass.

Four curved-needle stitching machines manufactured and marketed since May, 1910, and 350 to 400 straight-needle machines since 1906.

The curved-needle machines have been sold to shoe manufacturers. Of the straight-needle machines 75 only have been installed in shoe factories and the balance among harness and saddlery manufacturers.

From the testimony of witness Merrick it appears that both the curved-needle machine and the straight-needle machine may be used for fairstitching—an ornamental operation. The curved-needle machine, however, is capable of stitching around the shank, a very necessary operation, inasmuch as it attaches the outsole to the inner sole, and hence is essentially a bottoming operation.

(Merrick, I, 199, l. 27; 200, l. 18.)

Defts.' Ex. 321. Reference: page 44, item B; page 5, item J. Quotations to U. S. M. Co. on "curved-needle machines."

BOTTOM FILLING MACHINE.

No. American Chemical Co., Boston, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 147. Note by U. S. M. Co. representative that one of these machines had been seen in operation in a shoe factory.

McKAY NSOLE FLEXING MACHINE.

Edward E. Spencer, jr., New York, N. Y.

In connection with the concern of Edw. E. Spencer & Co., witness Spencer stated that this concern went into bankruptcy in August, 1912.

During the period from 1906 to 1911, Edw. E. Spencer & Co. averaged a yearly business of between $25,000 and $30,000 in shoe machinery and accessories, the larger proportion being in the shoe manufacturers' supply business, such as nails, tacks, wax, etc.

A strip cutter manufactured by Edw. E. Spencer & Co. has been referred to in Defts.' Ex. 321 as an insole flexing machine. Witness Spencer admitted that this machine, although not particularly adapted for this work, can be changed for this purpose by an adjustment of the knives.

(Spencer, I, 884, l. 40; 885, l. 5, 40.)

Defts.' Ex. 321. Reference: page 26. Quotation to U. S. M. Co. stating "We build a special machine for this

purpose—machine fitted up for McKay flexible-insole work on principle of our strip-cutting machine."

Another reference is to Defts.' Ex. 312. Catalog of Edward E. Spencer & Co.—issued in 1897. Few of these had been distributed among shoe manufacturers, but mostly outside of this field.

EDWIN B. STIMPSON & Co., New York, N. Y.

Witness Stimpson stated that this company manufactures a strip cutter—which has been used as a reference under this classification.

Stimpson further stated that the letter used as a reference was signed by him at the insistence of Nichols of the U. S. M. Co. that a strip cutter was the same as an insole flexing machine. Stimpson maintained, however, that this machine had been manufactured for stripping leather for belts and for cutting welts, and had been sold at all times for these purposes only.

Referring to the catalog of this company, Stimpson stated that it had been printed in 1890 and could not be considered applicable to present conditions.

(Stimpson, I, 882, l. 20.)

Defts.' Ex. 321. Reference: page 26. Letter to the U. S. M. Co. stating "In addition to illustrations in catalogue we build an insole flexing machine." (See above explanation.)

Another reference is to Defts.' Ex. 312. Catalogue of the company.

J. S. WHEELER & Co., Boston, Mass.

No insole flexing machines manufactured or marketed.

Witness Wheeler insisted that a welt cutting machine could not be used as a flexing machine—by an adjustment of the knives—as then it would be changed into an entirely different machine.

(Wheeler, I, 890, l .21.)

Defts.' Ex. 321. Reference: page 65, item X. Advertisement of "Welt Cutter."

HEEL LIFT GOUGING MACHINES.

THOMAS BOSTOCK & SONS, Brockton, Mass.

This machine is manufactured by this concern.

Extent of output not stated.

This concern conducts a general machine shop business in which 15 men are employed.

(Bostock, I, 904–905.)

Defts.' Ex. 321. Reference: page 21, item B. Quotation to U. S. M. Co.

W. J. Young Mchy. Co., Lynn, Mass.

Approximately 150 to 200 machines have been manufactured and marketed—evenly divided between shoe and heel manufacturers.

(Young, I, 942, l. 43; 943, l. 18.)

Defts.' Ex. 321. Reference: page 62, item K. Advertisement of machine.

GRADING MACHINE (gauging thickness of soles).

Lacene Mfg. Co., Manchester, N. H.

No representative of company called as a witness.

Witness Winslow stated that there is no other machine upon the market doing the work of this machine, and that the U. S. M. Co. has never put out a similar one.

(Winslow, I, 600, l. 9.)

Defts.' Ex. 321. Reference: page 77. Advertisement of machine.

This same reference is also used under the classification for "Splitting Machine."

WELT GROOVING AND BEVELING MACHINE.

Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.

Twenty-five of these machines have been manufactured and marketed in the United States by the Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and the Hamel Shoe Mchy. Co.

No division of sales shown in Pltff's Ex. 159, IV, 1113, customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 45.)

Defts.' Ex. 321. Reference: page 178, item B. Note by U. S. M. Co. representative that a "Duplessis Welt Groover and Beveler" had been seen in operation in a shoe factory.

Haverhill Shoe Mchy. Co., Haverhill, Mass.

Not included in the list of machines at present used by customers of this company—Pltff.'s Ex. 161, IV, 1118.

Witness Webster included this machine as one manufactured at date of June, 1913, but no information was obtained as to the extent of output.

(Webster, I, 291, l. 2.)

Defts.' Ex. 321. Reference: page 5, item U. Note by Haverhill Co. to U. S. M. Co. that it can furnish this machine.

R. H. Long Mchy. Co., So. Framingham, Mass.

Extent of output not stated.

Doidge explained that not all machines listed in catalog were manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 16.)

Defts.' Ex. 321. Reference: page 56, item M. Notation for this machine in catalog of company.

HARDENING SHOULDER MACHINE (for Gem insoles).

Plymouth Rubber Co., Canton, Mass.

No representative of company called as a witness.

Witness Donnelly stated that this machine has been manufactured by him for this company, but no further information was obtained.

(Donnelly, I, 944, l. 25.)

Defts.' Ex. 321. Reference: page 81. Advertisement of machine.

Walpole Shoe Supply Co., Boston, Mass.

Approximately 50 machines manufactured and marketed among shoe manufacturers from 1912 to 1914.

(Chamberlin, I, 889, l. 28.)

Defts.' Ex. 321. Reference: p. 80. Advertisement of machine.

HEELING MACHINE (attaching heels).

R. H. Long Mchy. Co., South Framingham, Mass.
Haverhill Shoe Mchy. Co., Haverhill, Mass.
References to the above in Appendix "B"—Part I.

LASTING MACHINE.

R. H. Long Mchy. Co., South Framingham, Mass.
Boylston Mfg. Co., Boston, Mass.
Louis G. Freeman Co., Cincinnati, O.
References to the above in Appendix "B"—Part I.

CHANNEL LAYING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

None manufactured, marketed, or handled from 1907 to 1914.

(Hall, I, 953, l. 14.)

Defts.' Ex. 321. Reference: page 1, item D. Quotation to U. S. M. Co.

GEORGE KNIGHT & CO., Brockton, Mass.

None manufactured or marketed during past 15 years.

(Knight, I, 902, l. 38.)

Defts.' Ex. 321. Reference: page 9, item J. Quotation to U. S. M. Co.

McKAY WELT LAYING MACHINE.

KIMBALL BROS. & SPRAGUE, Brockton, Mass.

Approximately 25 to 30 machines, adapted only for laying the Arnold flex welt, manufactured and marketed from 1909 to 1914.

(Sprague, I, 904, l. 5.)

Defts.' Ex. 321. Reference: page 36. Quotation to U. S. M. Co.

SOLE LAYING MACHINE.

R. H. LONG MCHY. CO., South Framingham, Mass.

Included—as turn sole layer—among machines specified by witness Doidge as manufactured by this company.

Extent of output not stated.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 11, 15.)

Defts.' Ex. 321. Reference: page 5, item H. Note by Haverhill Co. to U. S. M. Co. that it can furnish sole laying machine of the Long Company.

Another reference is to page 56, item F. Catalog of Long Company, including notation for "Twin Sole Layer."

LEVELING MACHINE.

BOYLSTON MFG. CO., Boston, Mass.

Not included in list of machines specified by witness Maloy on pages 1457 and 1460, nor in catalog of company—page 1463.

Cavanaugh explained that when the company absorbed the Giant Leveler Company in 1904—referred to in testimony of C. S. Johnson—some machines on hand were disposed of. Occasionally the company had rebuilt machines of this type for manufacturers, but had never manufactured any.

(Maloy, I, 301, l. 23: 302, l. 16, 36.)
(Cavanaugh, I, 955, l. 44.)

Defts.' Ex. 321. Reference: pages 108, 109, 179. Statements by U. S. M. Co. representatives that Giant leveling machines had been seen in operation in shoe factories.

A catalog of the Boylston Co. showing an advertisement for C. & J. leveling machines is also included.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

Five machines manufactured and marketed in the United States by the Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and the Hamel Shoe Mchy. Co.

Pltff.'s Ex. 159, IV, 1113—customers of Duplessis Co. and successors—shows that all of these machines had been marketed by the Duplessis Co. Four of these were installed in the Framingham Shoe Co.—controlled by Richard H. Long—which uses no U. S. M. Co. machines.

(Hamel, I, 326, l. 33.)

R. H. LONG MCHY. CO., South Framingham, Mass.

Not included among machines specified by witness Doidge as manufactured by the company.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, ls. 5, 16.)

Defts.' Ex. 321. Reference: page 56, item I. Notation for "Eclipse Leveler" in catalog of company.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

Not included in the list of machines at present used by customers of company—Pltff.'s Ex. 161, IV, 1118.

Not included among machines enumerated by witness Webster as manufactured by company at date of testimony, June, 1913.

This company handles a Webster leveler, however.

(Webster, I, 291, l. 1.)

Defts.' Ex. 321. Reference: page 5, item M. Note by Haverhill Co. to U. S. M. Co. that it can furnish a "Turn Leveler" manufactured by the Webster Machine Co.

WELT OUTSOLE STITCHER.

BOYLSTON MFG. CO., Boston, Mass.

LANDIS MACHINE CO., St. Louis, Mo.

LARSEN MFG. CO., Brooklyn, N. Y.

C. V. ENGSTROM CO., Peoria, Ill.

JAMES CLARK LEATHER CO., St. Louis, Mo.

UNION LOCKSTITCH CO., East Boston, Mass.

UNIVERSAL SHOE MCHY. CO., St. Louis, Mo.

VICTOR SHOE MCHY. CO., Boston, Mass.

R. H. LONG MCHY. CO., South Framingham, Mass.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

References to the above in Appendix "B"—Part I.

MOULDING MACHINE (for outsoles and turn soles).

BOYLSTON MFG. CO., Boston, Mass.

Not included in list of machines specified by witness Maloy on pages 1457 and 1460, nor in catalog of company—page 1463.

(Maloy, I, 301, l. 23; 302, ls. 16, 36.)

Defts.' Ex. 321. Reference: page 110. Note by U. S. M. Co. representative that he had seen a moulding machine in a shoe factory which he claimed was manufactured by the Boylston Company.

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item F. Quotations (unsigned) purporting to have been received by the U. S. M. Co. from Seelye—on "Moulders."

QUARMBY & HILLIKER, Lynn, Mass.

None manufactured since 1907.

(Hilliker, I, 929, l. 14.)

Defts.' Ex. 321. Reference: page 10, item D. Quotation to U. S. M. Company.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

Not included in list of machines at present used by customers of company—Pltff.'s Ex. 161, IV, 1118.

Witness Webster stated that the company manufactured a sole moulder for turn soles, and that 40 to 50 of these have been sold from 1910 to 1913—one with each Haverhill Co. stitcher marketed.

(Webster, I, 292, l. 18.)

Defts.' Ex. 321. Reference: page 5, item D. Note by Haverhill Co. to U. S. M. Co. that it can furnish a "Turn Moulder."

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

Thirty-five machines manufactured and marketed in the United States by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff.'s Ex. 159, IV, 1113—customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 40.)

Defts.' Ex. 321. Reference: page 159. Note by U. S. M. Co. representative that he had seen two "Duplessis Turn Moulding machines" in operation in a shoe factory.

LOOSE NAILING MACHINE.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.
R. H. LONG MCHY. CO., South Framingham, Mass.
UNIVERSAL SHOE MCHY. CO., St. Louis, Mo
VICTOR SHOE MCHY. CO., Boston, Mass.

References to the above in Appendix "B"—Part I.

CHANNEL OPENING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.
None manufactured or marketed from 1907 to 1914.
(Hall, I, 953, l. 19.)
Defts.' Ex. 321. Reference: page 1, item J. Quotation to U. S. M. Co.

GEORGE KNIGHT & CO., Brockton, Mass.
None manufactured during past 8 or 10 years.
(Knight, I, 902, l. 43.)
Defts.' Ex. 321. Reference: page 9, item K. Quotation to U. S. M. Co.

VENEER PRESS (for pressing cemented soles and taps).

JAMES BUSFIELD, Haverhill, Mass.
No representative of concern called as a witness.
Defts.' Ex. 321. Reference: page 6, item E. Quotation on "Veneer Sole Press."

HEEL PRESSING MACHINE.

SEELYE MFG. CO., Boston, Mass.
Not referred to in testimony of witness Seelye.
(Seelye, I, 327–328.)
Defts.' Ex. 321. Reference: page 91, item B. Quotation (unsigned) purporting to have been received by the U. S. M. Co. from Seelye—on "Presses."

TACK PULLING MACHINE.

LOUIS G. FREEMAN CO., Cincinnati, Ohio.
No representative of company called as a witness.
Defts.' Ex. 321. Reference: page 78, items A and F. Announcement that company will exhibit tack pulling machines.

PULLING OVER MACHINE.

Reference to the above in Appendix "B"—Part I.

TACK PULLING AND RESETTING MACHINE.

LOUIS G. FREEMAN CO., Cincinnati, Ohio.
No representative of company called as a witness.
Defts.' Ex. 321. Reference: page 7, item B. Note by U. S. M. Co. representative as to operation of machine in

Non-Royalty Shoe Co., St. Louis, Mo. This concern used no U. S. M. Co. machines and was in existence but a few months—about 1912.

REDUCING MACHINE.

American Worsted Mchy. Co., Abington, Mass.

No feather-edge or shank reducing machines—properly included under this classification—manufactured or marketed from 1907 to 1914.

(Hall, I. 953, l. 19.)

Defts.' Ex. 321. Reference: page 1, item F. Quotation to U. S. M. Co. on "Feather Reducer."

George Knight & Co., Brockton, Mass.

Feather-edge and shank reducing machines—properly included under this classification—manufactured and marketed by this company, mostly to shoe manufacturers.

Some of these are sold to and through the U. S. M. Co.

Extent of output not stated.

(Knight, I. 903, l. 6, 15.)

Defts.' Ex. 321. Reference: page 9, item D. Quotation to U. S. M. Co.

Theodore Ringenbach, Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 126. Advertisement of "Rapid Shoe Feathering Machine."

This same reference is also used under the classification for "Thin Edge Machine."

ROLLING MACHINE.

James Busfield, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item D. Quotation to U. S. M. Co. on "Rolling Mills."

Quarmby & Hilliker, Lynn, Mass.

Approximately 50 machines manufactured and marketed since 1904, one-half of these among shoe manufacturers.

(Hilliker, I. 929, l. 15.)

Defts.' Ex. 321. Reference: page 10, item E. Quotation to U. S. M. Co. on "Light Roller."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, IV, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item D. Quotation (unsigned) purporting to have been received by U. S. M. Co. from Seelye on "Rollers."

TAP ROUGHING MACHINE.

PEERLESS MCHY. CO., Boston, Mass.

The machine referred to is undoubtedly the sanding machine manufactured by this company, which merely "finishes or roughs the sole before it is put on the shoe."

Extent of output not stated.

(Muther, I, 303, l. 24.)

Defts.' Ex. 321. Reference: page 67, item J. Advertisement for "Auto-Scourer."

ROUGH ROUNDING AND CHANNELING MACHINE.

R. H. LONG MCHY. CO., South Framingham, Mass.

Not included as a single machine in list of machines specified by witness Doidge—page 1698—manufactured by the company.

Doidge stated that the company was "Getting ready to build" a rough rounder. From this it appears that none of these machines had been manufactured or marketed at date of June, 1913.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

A channeling machine manufactured by this company is also included under the "Channeling Machine" classification.

(Doidge, I, 346, l. 9, 15–16.)

Defts.' Ex. 321. Reference: page 56, item G. Notation for "Rough Rounder" in catalog of company.

VICTOR SHOE MCHY. CO., Boston, Mass.

Three machines manufactured and marketed since 1911.

None were sold to shoe manufacturers, but to repair men only.

(Johnson, I, 893, l. 29; 894, l. 5, 9.)

Defts.' Ex. 321. Reference: page 74, item B. Note by U. S. M. Co. representative that this machine was seen by him in demonstration at the Victor Co. factory.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

Not included in list of machines used at date of June, 1913, by customers of company—Pltff's Ex. 161, IV, 1118.

Not included—as a single machine—in list of machines specified by witness Webster (R. I., 291) as manufactured by the company.

This company has manufactured and marketed a turn channeling machine, included under the "Channeling Machine" classification.

(Webster, I, 291, l. 1.)

Defts.' Ex. 321. Reference: page 5, item B. Note by Haverhill Co. to U. S. M. Co. that it can furnish a "Rough Rounding and Channeling Machine."

ROUNDING MACHINE (rounding heels, heel seats, and taps).

LOUIS G. FREEMAN CO., Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 8, item T. Note by U. S. M. Co. representative as to operation of "Heel Seat Rounding Machine" in Non-Royalty Shoe Company, St. Louis, Mo. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.

CONSOLIDATED ROTARY ROUNDER CO., Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 128, item A. Telegram from W. F. Harmon to S. G. Ross naming certain shoe factories using Ross rounders; also catalog of company.

The catalog of this company was issued in 1897, evidently by the Ross-Moyer Mfg. Co. of Cincinnati, Ohio, now a subsidiary company of the U. S. M. Co.—its first page being headed "Ross-Moyer Mfg. Co., Distributing Agents." It is further to be noted that both Harmon and Ross were formerly connected with the Ross-Moyer Mfg. Co.—prior to its absorption.

Witness Selz, of Selz, Schwab & Co., Chicago, Ill.—one of the shoe factories named in the Ross telegram as using Ross

rounders—stated that these machines had been, and are now, marketed by the Ross-Moyer Mfg. Co.

(Selz, I, 144, l. 21; 154, l. 13.)

Boylston Mfg. Co., Boston, Mass.

A "Julian rounder" is included in the list of machines manufactured by this company specified by witness Maloy on page 302, and in catalog.

Extent of output not stated.

(Maloy, I, 302, l. 17.)

Defts.' Ex. 321. Reference: page 8, item K. Note by U. S. M. Co. representative as to operation of "Julian" machine in Non-Royalty Shoe Company, St. Louis, Mo. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

A further reference is to page 95, item B_2. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913.

Another reference is to page 5, item A. Note by Haverhill Company to U. S. M. Co., that it can furnish a Boylston Co. "Sole Rounder."

American Worsted Mchy. Co., Abington, Mass.

None manufactured by this company from 1907 to 1914.

(Hall, I, 953, l. 19.)

Defts.' Ex. 321. Reference: page 1, item A. Quotation to U. S. M. Co. on "Severance Tap Rounder."

SPRING HEEL SCARFING MACHINE.

James Bostock & Sons, Brockton, Mass.

None manufactured.

Second-hand machines have from time to time in the past been purchased and resold.

Extent of sales not stated.

(Bostock, I, 904, l. 37.)

Defts.' Ex. 321. Reference: page 21, item D. Quotation to U. S. M. Co.

Thomas J. Bowden & Son, Marblehead, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 28. Quotation to U. S. M. Co.

W. J. Young Mchy. Co., Lynn, Mass.

A spring heel scarfing machine manufactured and marketed by this company.

Extent of output not stated.

(Young, I, 943, l. 2.)

Defts.' Ex. 321. Reference: page 152, item K. Advertisement of machine.

LITTLE McKAY TURN SEWING MACHINE.

George Hobbs, Boston, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 177. Note by U. S. M. Co. representing that Hobbs machines have been seen in operation in a shoe factory. Also a catalog of parts for McKay turn sewing machine and channeler, issued in 1902.

McKAY SEWING MACHINE.

Shawmut Mchy. Co., Boston, Mass.
Haverhill Supply Co., Haverhill, Mass.
Louis G. Freeman, Cincinnati, O.
E. E. Spencer & Co., New York, N. Y.
Manufacturers' Supply Co., St. Louis, Mo.
J. W. White & Co., Haverhill, Mass.
Lynn Supply Co., Lynn, Mass.
American Worsted Mchy. Co., Abington, Mass.
Walter Pearson, Whitman, Mass.

References to the above in Appendix "B"—Part I.

WELT AND TURN SEWING MACHINE.

Hamel Shoe Mchy. Co., Lynn and Haverhill, Mass.
Haverhill Shoe Mchy. Co., Haverhill, Mass.
R. H. Long Mchy. Co., So. Framingham, Mass.
Universal Shoe Mchy. Co., St. Louis, Mo.
Boylston Mfg. Co., Boston, Mass.

References to the above in Appendix "B"—Part I.

SKIVING MACHINE (tap skiving, welt and rand splitting).

Victor Shoe Mchy. Co., Boston, Mass.

Witness Johnson indirectly admitted that this company manufactures a skiving machine.

Extent of output not stated.

(Johnson, I, 894, l. 21.)

Defts.' Ex. 321. Reference: page 174, item C. Note by U. S. M. Co. representative that Victor "Tap Skiving Machine" was seen in demonstration at Victor Co. factory.

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item F. Quotation to U. S. M. Co. for "Welt Splitting Machine." This same reference has also been used under the classification for "Splitting Machine."

AMERICAN WORSTED MCHY. CO., Abington, Mass.

Output of machines not stated in testimony of witness Hall.

(Hall, I, 954, l. 8.)

Defts.' Ex. 321. Reference: page 2, items G and J. Quotations to U. S. M. Co. on Tripp "Improved" and "New Old-Style" skivers.

This same reference for "Tripp Improved Skiver" has also been used under the classification for "Splitting Machine."

McKAY WELT SLASHING MACHINE.

THOMAS BOSTOCK & SONS, Brockton, Mass.

This machine is the same as the "Heel Lift Gouging Machine" included under the latter classification—for which the same reference has been used.

(Bostock, I, 904, l. 35.)

Defts.' Ex. 321. Reference: page 21, item G. Quotation to U. S. M. Co. on "Rand Chopping and Welt Slashing Machine."

A. G. BREWER, Natick, Mass.

Approximately ten machines manufactured and marketed, the last one about 1912.

(Brewer, I, 907, l. 15.)

Defts.' Ex. 321. Reference: page 105. Quotation to U. S. M. Co., and advertisement of "Double Rapid Welt Splitter."

WILLIAM KNIPE, Ward Hill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 167. Note by U. S. M. Co. representative that he had seen at Knipe Bros. shoe factory a "Knipe Welt Slasher."

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item G. Quotation to U. S. M. Co. on "Combination Welt Splitter and Slasher."

SLUGGING MACHINE.

BOYLSTON MFG. CO., Boston, Mass.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

R. H. LONG MCHY. CO., South Framingham, Mass.

References to the above in Appendix "B"—Part I.

SPLITTING MACHINE.

AMERICAN TOOL & MACHINE CO., Boston, Mass.

The machine referred to by witness Eichler—included under this classification as manufactured by this company—is a belt knife splitting machine.

Eichler stated that this company manufactures no bottoming machines, or eyeletting or clicking machines.

(Eichler, I, 886, l. 43; 887, l. 1.)

Defts.' Ex. 321. Reference: page 51. Advertisement of "Belt Knife Leather Splitting Machine."

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, items A and F. Quotations to U. S. M. Co.

The latter reference (6 F) is also used under the classification for "Skiving Machine."

J. S. WHEELER & CO., Boston, Mass.

None manufactured by this company.

Some have been rebuilt from time to time.

This concern does a small jobbing business and employs from two to six men only.

(Wheeler, I, 890, l. 3.)

Defts.' Ex. 321. Reference: page 41, item A. Quotation to U. S. M. Co. on "Baby splitters" (upper leather and sole evener).

This same reference has also been used under the classification for "Evening Machine."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item C. Quotation (unsigned)—purporting to have been received by the U. S. M. Co. from Seelye—on "Splitters."

Another reference is to page 95, item V. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

These same references are also used under the classification for "Evening Machine."

QUARMBY & HILLIKER, Lynn, Mass.

None manufactured.

From time to time some have been purchased second-hand and resold.

Extent of sales not stated.

(Hilliker, I, 929, l. 23.)

Defts.' Ex. 321. Reference: page 10, item F. Quotation to U. S. M. Co. on "Splitter."

This same reference has also been used under the classification for "Evening Machine."

AMERICAN WORSTED MCHY. CO., Abington, Mass.

Not referred to in testimony of witness Hall.

(Hall, I, 954, l. 8.)

Defts.' Ex. 321. Reference: page 2, item G. Quotation on "Tripp Improved Skiver."

This same reference has also been used under the classification for "Skiving Machine."

LACENE MFG. CO., Manchester, New Hampshire.

No representative of company called as a witness.

Witness Winslow stated that there is no other machine upon the market for doing the work of this machine and that the U. S. M. Co. has never put out a similar one.

(Winslow, I, 600, l. 9.)

Defts.' Ex. 321. Reference: page 77. Advertisement of machine.

This same reference is also used under the classification for "Grading Machine."

TURNER TANNING MCHY. CO., Peabody, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 119. Quotation to U. S. M. Co. on "Belt Knife Splitting Machine."

In this connection reference is made to the testimony of witness Eichler, for the American Tool & Machine Co., to the effect that this is not properly included as a bottoming machine.

(Eichler, I, 886, l. 43–887, l. 4.)

W. J. YOUNG MCHY. CO., Lynn, Mass.

None manufactured by this company.

At close of cross-examination, Counsel Choate for the U. S. M. Co. requested permission to correct this reference from "Rand Splitting Machine" to "Rand Trimming Machine."

(Young, I, 943, l. 2, 32.)

Defts.' Ex. 321. Reference: page 185. Advertisement of "New Rand Trimmer."

STRIPPING MACHINES (cutting leather or leatherboard into strips).

QUARMBY & HILLIKER, Lynn, Mass.

Approximately 75 machines manufactured and marketed since 1904, one-third of these to shoe manufacturers.

(Hilliker, I, 929, l. 20.)

Defts.' Ex. 321. Reference: page 10, item C. Quotation to U. S. M. Co. on "Knox Old-Style Geared Stripper."

PARSONS MCHY. CO., Marlboro, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 13. Quotation to U. S. M. Co. on "Old-Style Stripper."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item E. Quotation (unsigned)—purporting to have been received by U. S. M. Co. from Seelye—on "Strippers."

TOWER BROS., Hudson, Mass.

On page 4622 witness Tower stated—in answer to the question whether this concern manufactures this machine—

"We make stripping machines for anybody who wants them, but they have gone out of fashion." This indicates that this machine is not one regularly manufactured and marketed by this company.

(Tower, I, 907, l. 42.)

Defts.' Ex. 321. Reference: page 3, item E. Quotation to U. S. M. Co.

W. J. Young Mchy. Co., Lynn, Mass.

A wedge stripping machine—properly included under this classification—is manufactured by this company.

The majority of these are sold to heel manufacturers rather than to shoe manufacturers.

Extent of output not stated.

(Young, I, 942, l. 35.)

Defts.' Ex. 321. Reference: page 62, item I. Advertisement of "Wedge Stripper."

TACKING MACHINES (tacking soles and heel rands).

Universal Shoe Mchy. Co., St. Louis, Mo.
Hamel Shoe Mchy. Co., Lynn and Haverhill, Mass.
Louis G. Freeman Co., Cincinnati, Ohio.
Victor Shoe Mchy. Co., Boston, Mass.

References to the above in Appendix "B"—Part I.

THIN EDGE MACHINE.

Theodore Ringenbach, Cincinnati, Ohio.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 126. Advertisement of "Rapid Shoe Feathering Machine."

This same reference is also used under the classification for "Reducing Machine."

INSEAM TRIMMING MACHINE.

The Keighley Co., Vineland, N. J.

Witness Tappey stated that, during 1911, about 20 inseam trimming machines had been placed among shoe manufacturers on trial in New England.

(Tappey, I, 913, l. 4.)

In this connection it is to be noted that an agreement was entered into on September 21, 1912, between the U. S. M. Co.

and the Keighley Co., whereby the U. S. M. Co. obtained control of the inseam trimming machine business of the Keighley Co. in the United States.

The agreement provided in part that neither company, during the period of the agreement, would enter into, engage in, or financially or otherwise encourage or assist any other person, firm, or corporation from entering into or developing any business in inseam trimming machines.

It further provided that the Keighley Co. should not thereafter sell any inseam trimming machine of the type covered by the agreement for a price less than $650, and also that the U. S. M. Co. should not be required to pay more than $250 for a single inseam trimming machine of the same type.

Pltff.'s Ex. 275, IV, 1529 (U. S. M. Co.-Keighley Co. agreement).

Defts.' Ex. 321. Reference: page 7, item F. Note by U. S. M. Co. as to operation of machine in Non-Royalty Shoe Company, St. Louis, Mo.

Another reference is to page 95, item F. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

HEEL RAND TURNING MACHINE.

James Bostock & Sons, Brockton, Mass.

A rand turning machine is manufactured by this concern. Extent of output not stated.

(Bostock, I, 904, l. 36.)

Defts.' Ex. 321. Reference: page 21, item E. Quotation to U. S. M. Co.

American Worsted Mchy. Co., Abington, Mass.

No rand turning machines manufactured or marketed from 1907 to 1914.

(Hall, I, 953, l. 22.)

Defts.' Ex. 321. Reference: page 6, item B. Quotation to U. S. M. Co. on "Rand Crimping Machine."

LIP OF INSOLE TURNING MACHINE.

American Worsted Mchy. Co., Abington, Mass.

None manufactured or marketed from 1907 to 1914.

(Hall, I, 953, l. 22.)

Defts.' Ex. 321. Reference: page 1, item I. Quotation to U. S. M. Co. on "Lip Turner."

HAMEL SHOE MCHY. Co., Lynn and Haverhill, Mass.

Twelve lip turning machines manufactured and marketed in the United States by the Duplessis Shoe Machy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff.'s Ex. 159, IV, 1113—customers of Duplessis Co. and its successors.

(Hamel, I, 326, l. 41.)

Defts.' Ex. 321. Reference: page 178, item A. Note by U. S. M. Co. representative that he had seen a "Duplessis Channeling and Turning machine (hand power)" in operation in a factory.

HAVERHILL SHOE MCHY. Co., Haverhill, Mass.

Four lip turning machines manufactured and marketed from June, 1913, to June, 1914.

(Webster, I, 292, l. 24.)

Defts.' Ex. 321. Reference: page 5, item C. Note by Haverhill Co. to U. S. M. Co. that it can furnish an "Innersole Lip Turner."

Another reference is to page 8, item Z. Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, St. Louis, Mo.

A further reference is to page 95, item Z. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

GEORGE KNIGHT & Co., Brockton, Mass.

A lip turning machine is manufactured by this company. Extent of output not stated.

Some of the machines manufactured by this company are sold to and through the U. S. M. Co. Witness Knight did not specify whether a lip turning machine was so included, however.

(Knight, I, 903, l. 8, 15.)

Defts.' Ex. 321. Reference: page 9, item F. Quotation on "Lip Turner."

R. H. LONG MCHY. Co., South Framingham, Mass.

Number placed not stated.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 7, 16.)

Defts.' Ex. 321. Reference: page 56, item L. Notation for machine in catalog of company.

LIP GEM INSOLE TURNING MACHINE.

Inasmuch as the same companies and the same references thereto in Defts.' Ex. 321 have been used under this classification as under "Lip of Insole Turning Machine," no further reference thereto is considered necessary herein.

INSOLE REINFORCING MACHINE.

No competition in the United States.

TACKING MACHINE.

References to the above in Appendix "B"—Part I.

POUNDING AND TRIMMING MACHINE.

No competition in the United States.

STANDARD SCREW MACHINE.

Reference to the above in Appendix "B"—Part I.

* * * * *

FOREIGN COMPANIES.

That the Foreign Companies Referred to in the Catalogs Letters, Advertisements, &c., have not been Engaged in Marketing Shoe Machinery in the United States is Evidenced by the Testimony of witnesses Stone, McElroy, and Cavanaugh. (I, 339–344; 954–957; 190–193; 923.)

APPENDIX C.

SYNOPSIS OF LEASE FORMS SHOWING TYING CLAUSES CONTAINED IN EACH.

1. Lasting Machines.

(Exhibits 14–22)

(a) Consolidated Hand Method Machine.

i. Non Initial Payment.

Exhibit 16 (adopted September, 1900) contains

Prohibitive clause, applying to welting, stitching, turn sewing and metallic fastening machines.

Exclusive Use clause.

Full Capacity clause.

Return charge of $150.00.

Minimum royalty of $15 per month with deduction for months in which factory is wholly idle.

Right to terminate all leases clause.

Exhibit 15 (adopted December, 1900) contains

Same provisions in particulars here material as Exhibit 16, except that prohibitive clause does not extend to metallic fastening machines.

(Note this form of lease is used for the hand-method type of machine when adapted to lasting welt shoes.)

ii. Initial Payment.

Exhibit 14 (adopted December, 1900) contains

Full Capacity clause.

Exclusive Use clause, applying to all lasting machines and devices.

Initial payment of $300.

Minimum royalty $75 per annum.

1. Lasting Machines—Continued.
   (a) Consolidated Hand Method Machine—Continued.
      ii. Initial Payment—Continued.
         Exhibit 17 (adopted ———).
            Same provisions in particulars here material as Exhibit 14, except that exclusive use clause is extended to include all *tacking* devices as well as lasting machines and devices. There is also a difference in the royalty which is fixed at one cent per pair straight in Exhibit 14 and at one cent per pair for misses' and children's shoes and one and one-fourth cents for all other kinds in Exhibit 17. The latter figure is also that of Exhibits 15 and 16. In each case there is a 50% discount for prompt payment.
   (b) Chase Lasting Machine.
      Exhibit 19 (adopted June, 1901) contains
      Non Initial payment.
         Exclusive Use clause, applying both to lasting machines and tacking devices.
         Prohibitive clause, applying to welting, stitching, turn sewing and metallic machines.
         Full capacity clause.
         Right to terminate all leases clause.
         Minimum royalty $10.00 a month.
         Abated royalty ¾c for long legged boots, ½c for all others.
      No other form of lease was adopted by the defendants for this machine, but it is claimed by Mr. Winslow that a manufacturer might still have had the lease formerly offered by the Consolidated & McKay Company. (R. 543.) No evidence of any actual lease or offer to lease in that form subsequent to the adoption of Exhibit 19 appears. The royalties under the old lease (Exhibit 7) "were very much in excess of what they were under the United lease." (Winslow, R. 543.)

1. Lasting Machines—Continued.

(c) McKay & Copeland Machine.

Initial payment.

Exhibit 20 (adopted August, 1903) contains

Exclusive Use clause applying to tacking appliances as well as lasting machines.

Prohibitive Clause applying to welting, stitching, sewing, pegging, metallic fastening and heeling machines.

Full Capacity Clause.

Right to Terminate All Leases clause.

Minimum royalty of $125.00 per annum.

No other lease for this machine was adopted by the United Company. (Winslow R. 542.) It is worth noting in connection with the defendants' claim that the fields of the various lasting machines were so distinct as to exclude the idea of competition that the prohibitive clause of this lease indicates that in the opinion of the defendants it could be used in a serious attempt to last welt shoes—a circumstance which they are now inclined to deny. The lease used previously by the Consolidated & McKay Company indicates a similar opinion.

(d) Ideal Lasting Machine.

Initial Payment.

Exhibit 18 (adopted August, 1901) contains

Exclusive Use clause applying to tacking devices as well as lasting machines.

Prohibitive Clause applying to welting, sole stitching, and turn sewing machines.

Full Capacity clause.

Initial Payment of $300.

Minimum Royalty of $75 per annum.

Right to Terminate All Leases clause.

NOTE.—Mr. Winslow testified in response to the question whether there had ever been any "unrestricted" form of the leases for the Ideal machine that he did not "recall any different lease ever used by the United Company for the Ideal machine from that of Plaintiff's Exhibit 18. (R. 543.)

1. Lasting Machines—Continued.
   (e) Number Five Lasting Machine.
      i. Non Initial Payment.
         Exhibit 21 (adopted ——, 1906).
            Exclusive Use clause.
            Prohibitive Clause, applying to welt sewing, sole stitching, turn sewing, pulling over and metallic machines.
            Full Capacity Clause.
            Return charge of $150.
            Right to Terminate All Leases Clause.
            Minimum Royalty of $10 a month.
      ii. Initial Payment.
         Exhibit 22.
            Exclusive Use Clause.
            Full Capacity Clause.
            Right to Terminate All Leases clause.
            Initial Payment of $300.
            Minimum Royalty $75 per annum.
               NOTE.—The Royalties are the same in both forms of lease. The minimum royalty provision of the initial payment lease, Exhibit 22, provides for the return of the machine at the option of the lessor in case the royalty in any succeeding 12 months does not amount to $75. In case of such return, one-third of the initial payment is returned.
2. Welt and Turn Sewing and Outsole Stitching Machines and Auxiliaries.
   i. Non Initial Payment.
      Exhibit 24 (adopted January, 1905) contains
         Exclusive Use clause, applying to welt stitching and turn sewing machines.
         Prohibitive Clause, applying to the same machines.
         Full Capacity Clause.
         Return Charge of $150.
         Right to Terminate All Leases clause.
         Minimum Royalty, $15 a month for each machine.

2. Welt and Turn Sewing and Outsole Stitching Machines and Auxiliaries—Continued.

i. Non Initial Payment—Continued.

Exhibit 24—Continued.

NOTE.—This lease provides for "royalties" to the defendants upon shoes made upon machines supplied by competitors of the defendants.

Exhibit 25 (adopted January, 1905) lease for Auxiliary Machines only, contains

Exclusive Use clause applying to welting, turn sewing, inseaming and outsole stitching machines.

Prohibitive Clause applying to same machines.

Right to Terminate All Leases clause.

Annual Rental, amounting to about $184 per annum.

Return Charges as scheduled.

NOTE.—This lease embraces twenty-four different kinds of machines. There is no lease under which these auxiliary machines can be obtained without the prohibitive clause restricting their use to use on shoes upon which the defendants' principal welt method machines are used. That is to say, the United Company does not permit on any terms the use of its auxiliary machines with principal machines supplied by some other manufacturer.

ii. Initial Payment.

Exhibit 23 (adopted December, 1906) contains

Exclusive Use Clause as to welting and outsole stitching machines.

Prohibitive Clause applying to same machines.

Right to Terminate All Leases clause.

Initial Payment provided for in the written application for the lease. (Donham, R. I, 9.)

Exhibit 26 (adopted 1905).

This lease was intended as a substitute for Exhibit 23. To the provisions of that lease are added the full capacity clause applying

2. Welt and Turn Sewing and Outsole Stitching Machines and Auxiliaries—Continued.
   ii. Initial Payment—Continued.
      Exhibit 26—Continued.
         to all welting, turn sewing, inseam sewing and outsole stitching machines held under that *and all other leases;* the exclusive use clause was extended to turn sewing machines.
            NOTE.—There is no lease under which the defendants will put out a welt sewing machine for welt work without a limitation to work that is to be stitched on the outsole stitcher or under which it will put out the stitching machine for use upon work that has not been welted on the welt sewing machine. (Winslow, R. I, 544.) In order to obtain either the welt sewing or the stitching or any of the auxiliary machines, the lessee must agree that he will not use at any time in his factory any welt sewing or outsole stitching machines made by any competitor of the defendants.
3. Heeling Machines.
   i. Non Initial Payment.
      Exhibit 27 (adopted 1900) contains
         Right to Terminate All Leases clause.
         Minimum Royalty $230 per annum.
      Exhibit 28 (adopted 1904) contains
         Exclusive Use clause.
         Prohibitive Clause applying to welt sewing, sole stitching, turn sewing, lasting, pegging and metallic machinery.
         Full Capacity Clause.
         Right to Terminate All Leases Clause.
            NOTE.—It is not unusual for the defendants to contend that they did not withdraw previous forms of leases upon the formulation of the new. Such a claim has already been introduced, *supra*. There can hardly be any question, however, in the light of Mr. Wins-

3. Heeling Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 28—Continued.
         Right to Terminate All Leases Clause—Contd.
         low's testimony that upon the adoption of Exhibit 28, the more favorable terms of Exhibit 27 were withdrawn, for, according to Mr. Winslow, the reason for the formulation of Exhibit 28, the insertion of the prohibitive clause which had not appeared in Exhibit 27, was the fact that the United Company at the time was bringing out its leases of welt method machines without initial payment. (R. I, 546.) His attempt to explain that the compensating advantage which he expected to obtain by way of off-set to giving up requirements of the initial payment on the welt method machines was not the exclusion of competition in heeling machines will be noticed later.

         There was no form of lease of heeling machines without the prohibitive clause at the time of filing the petition, but there is testimony as to a rider which eliminated the prohibitive clause and substituted an initial payment.

4. Metallic Fastening Machines.
   i. Non Initial Payment.
      Exhibit 29 (adopted March, 1900).
         Additional Machinery clause.
         Full Capacity clause.
         Right to Terminate All Leases clause.
      Exhibit 30 (adopted June, 1900).
         Superseding Exhibit 29 which was then discontinued contains
            Additional machines clause, providing for the cancellation of all leases for metallic machinery if the lessee fails to take from the lessor any additional metallic fastening machines which he may need.

4. Metallic Fastening Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 30—Continued.
         Superseding Exhibit 29, etc.—Continued.
            Prohibitive clause, applying to lasting, welting, outsole stitching, and turn sewing machines.
            Full Capacity clause.
            Royalty in this lease is to be paid by the purchase of material of which not less than 400 pounds per annum is to be taken.
      Exhibit 31 (adopted March, 1901) contains
         Additional machines clause.
         Full Capacity Clause.
         Clause permitting removal of machines deemed by the lessor unnecessary for the lessee's business.
         Right to Terminate All Leases clause.
         Provision for payment for material at prices "which shall not be more than ten per cent in excess of prices to be required from time to time by the lessor for like fastening material to be used in its metallic department machinery by lessees who shall agree not to use the metallic department machinery leased to them in the manufacture of boots and shoes which are lasted on machines other than those leased from the lessor, or of welted boots and shoes which are not welted and stitched on welt sewing and sole stitching machines leased from the lessor, or of turned shoes, the soles of which are not attached by turn sewing machines leased from the lessor."
         Provision for minimum use of 400 pounds of material per annum.
      Exhibit 32.
         This is a lease like Exhibit 30 with a rider attached eliminating the prohibitive clause.

4. Metallic Fastening Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 33 (printed July, 1911).
         This is a form which takes the place of Exhibit 32.
      Exhibit 34 (adopted 1911).
         This is described by the witness Donham (R. I, 11) as the current form of lease for metallic machines "when taken without the initial payment and without the provision for ten per cent excess in royalty charge." These provisions present no substantial change from the form of Exhibit 30.
      Exhibit 35.
         This is a form of lease for a single machine, the standard screw machine, belonging to the metallic department. Its provisions are the same as those of Exhibit 34.
5. Pegging Machines.
   i. Non Initial Payment.
      Exhibit 45, (adopted June, 1901) contains
         Prohibitive Clause applicable to lasting and metallic machines.
         Exclusive Use clause.
         Right to Terminate All Leases clause.
         Full capacity clause.
         Minimum royalty $10 a month.
   ii. Initial Payment.
      Exhibit 46 (adopted 1905 or 1906) contains
         Exclusive Use clause.
         Right to Terminate All Leases clause.
         Full Capacity clause.
         Initial Payments.
6. Pulling Over machines.
   i. Non Initial Payment.
      Exhibit 36 (adopted March, 1902) contains
         Prohibitive clause applying to heeling, welting, stitching, lasting, pegging, and metallic fastening machines.
         Additional machines clause.

6. Pulling Over Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 36—Continued.
         Right to Terminate All Leases clause.
         Full Capacity clause.
         Return charge of $200.
         Minimum royalty of $15 a month.
      Exhibit 37 (adopted January, 1905) contains
         Exclusive Use clause providing for optional forfeiture of all leases existing between the lessor and lessee in case of its violation.
         Prohibitive Clause applying to welting, stitching, turn sewing, hand-method lasting machines, pegging, metallic fastening and heeling machines.
         Additional Machines clause requiring auxiliary machines to be used exclusively with lessors' pulling over machine.
         Right to terminate all leases clause applying to "stipulation" and "provisions" as well as to "conditions."
         Full capacity clause.
         Return charge of $200.
         Minimum royalty of $20 a month.
      Defendants' Exhibit 345, (adopted 1907).
         This form is the same as Exhibit 37 except that the additional machine clause is omitted, and the exclusive use clause, while retained, gives the lessor the right only to forfeit all leases for pulling over machines.
      Exhibit 38 (Adopted 1909).
         Covering auxiliaries to pulling over machines contains
            Prohibitive clause, including the machinery of the pulling over system held under that *and all other* leases, and prohibiting their use with independent welting, stitching, turn sewing, lasting, pegging, heeling and metallic fastening machines.
            Exclusive use clause.

6. Pulling Over Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 38—Continued.
         Covering auxiliaries to pulling over machines contains—Continued.
            Right to terminate all leases clause.
            Full capacity clause, extending also to all pulling over machines held under these or other leases from the lessor.
            The royalty provisions are noticed just below.
   ii. Initial Payment.
      Exhibit 39 (Printed August, 1911) contains
         Full Capacity clause.
         Prohibitive Clause extending only to the use of the auxiliary machines with the principal machines.
         Exclusive use clause.
         Right to terminate all leases clause.
         Minimum royalty $20 a month.
         Initial payment.

NOTE.—The royalty provisions of Exhibit 38 require the payment of ½ c. for each pair of shoes pulled over in whole or in part by machinery, plus a further payment of ¼ c. for the use of each of 6 of the 8 auxiliary machines named in the schedule, making a total payment if all the machines are used of 2 c., with the proviso, however, that if the lessee shall use no lasting machines or devices except those, of the defendants, the royalty shall not be more than ¾ c. on each pair. This royalty is in addition to all other royalties except royalty paid under other leases for pulling over machines. A minimum royalty is also required.

This lease furnishes an example of the interrelation and cumulative effect of the various parts of the defendants' leasing system. The defendants are here leasing a patented *pulling over* machine. Their price

6. Pulling Over Machines—Continued.
   ii. Initial Payments—Continued.
      Exhibit 39—Continued.
         Initial payment—Continued.

for it is ¾ c. a pair to those who aid them to obtain a monopoly in *lasting* machines, and 2 c. a pair to those who do not.

It may be noticed, also, that under the exclusive use clause, they could not have in their factory a competing pulling over machine if they could find one and the possession of this pulling over machine is conditioned upon its not being used upon any shoes which are operated upon by any welting, stitching, turn sewing, lasting pegging, heeling, or metallic fastening machine made by any competitor of the defendants.

Exhibit 39 as is noted omits the prohibitive clause. To obtain it, however, the lessee must pay an initial payment amounting to about the value of the machine, and the royalty is 1c. a pair straight, with no deduction for royalties paid on the lasting machine. The royalty charges are stated as to both Exhibits 38 and 39 without the 50% discount for prompt payment. The net result is for lasting and pulling over under Exhibit 39, the so called independent lease, the lessee has to pay 1c. a pair while under Exhibit 38, he pays only 3/8c. a pair.

7. General Department Machines.

Exhibits 40 and 41 cover these machines. It is said that they were discontinued after the filing of the Government's petition, and that the company now does not lease these general department machines, but sells them exclusively. Before the filing of the petition, manufacturers who did not use United Company machines exclusively could obtain the machines by outright purchase, but not by lease. Lessees of the United Company could obtain them upon lease.

7. General Department Machines—Continued.

Many of these leases are still in force. Their terms are as follows:

Exhibit 40 (adopted about 1902) contains

Prohibitive clause, applying to stitching, turn sewing, lasting, pegging, and metallic machinery.

Right to Terminate All Leases clause.

The only charge made is payment of the lease premium except that the lessee was bound to purchase repair parts from the lessor. Donham testified that the lease premium *was substantially less* than the price at which the machine was sold, but it will be observed that this lease was used as an inducement to manufacturers to take other machines.

Exhibit 41 (adopted about 1908).

Like Exhibit 40. This lease could be obtained only by users of other machines of the United Company. It is different from Exhibit 40 in that it required an annual rental instead of a lump sum payable at the beginning.

8. Eyeletting machines.

i. Non Initial Payment.

Exhibit 43 (adopted about 1902).

Prohibitive clause, applying to welting, stitching, turn sewing, lasting, pegging, metallic fastening and heeling machines.

Right to Terminate All Leases clause.

ii. Initial Payment.

Exhibit 42 (adopted 1902).

Initial Payment $100.

Right to Terminate All Leases clause.

NOTE.—In both leases, the lessor's further compensation is derived from the requirement that the lessee purchase only from the lessor the eyelets used in the machines.

9. Clicking Machines.

Exhibit 44 (adopted about 1907) contains

Prohibitive clause, prohibiting the use of the lessor's dies with clicking machines other than those furnished by the lessor.

9. Clicking Machines—Continued.
Exhibit 44—Continued.
Exclusive Use clause.
Full Capacity Clause.
Right to Terminate All Leases clause.

NOTE.—The compensation for the use of the machine in case it is used only on shoes lasted and welted or stitched on the lessor's machines is derived from the sale by the defendants of dies at a fixed price. The lease requires the lessee to pay the United Company 5 c. for each inch of cutting edge of any dies which the lessee purchases from manufacturers other than the defendants. It also provides that *1 c.* per pair is to be paid for footwear lasted on lessor's machines, and *6 c.* per pair for footwear welted, or stitched otherwise than by lessor's machines. These royalties are cumulative, but are subject to 50 per cent discount.

This is a further example of the interlocking and cumulative effect of the defendants leases. The compensation for the use of this machine in itself is definitely fixed, and makes the profits upon the sale of dies at established prices, but the lessor who uses a lasting machine or a welting and stitching machine supplied by competitors of the lessor is penalized an amount ranging from ½ c. to 3½ c. a pair, net. While this penalty is stated as a charge for the use of this machine its true purpose and effect as a destroyer of competition in other types of machines is apparent.

APPENDIX D.

RÉSUMÉ OF LEASES IN WHICH THE VARIOUS OBJECTIONABLE CLAUSES APPEAR.

That the effect of these clauses as used in the United Company's entire system of leases may the more readily appear, the leases containing each one of them will be separately designated. In doing so, neither the leases executed by the constituent companies, nor those executed by the subsidiary companies of the United Company will be considered.

First. All the leases contain the seventeen year term.

Second. All the leases contain the "right to terminate all leases" clause.

Third. The following leases contain the "full capacity" clause:

(1) Exhibit 16, adopted September, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, R. III, 139.)

(2) Exhibit 15, adopted December, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, R. III, 131.)

(3) Exhibit 14, adopted December, 1900, an initial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, R. III, 123.)

(4) Exhibit 17, adopted December, 1906, an initial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, R. III, 147.)

(5) Exhibit 19, adopted June, 1901, a non-initial payment lease for the Chase lasting machine. (Sec. 4, R. III, 165.)

(6) Exhibit 20, adopted August, 1903, an initial payment lease for the McKay & Copeland lasting machine. (Sec. 4, R. III, 174.)

(7) Exhibit 18, adopted August, 1901, an initial payment lease for Ideal lasting machine. (Sec. 4, R. III, 156.)

(8) Exhibit 21, adopted in 1906 or 1907, a non-initial payment lease for No. 5 lasting machine. (Sec. 5, R. III, 184.)

(9) Exhibit 22, adopted in 1906 or 1907, an initial payment lease for No. 5 lasting machine. (Sec. 4, R. III, 196.)

(10) Exhibit 24, adopted January, 1905, a non-initial payment lease for Goodyear machines. (Sec. 5, R. III, 217.)

(11) Exhibit 26, adopted in 1905, an initial payment lease for a full set of Goodyear machines. (Sec. 4, R. III, 245.)

(12) Exhibit 27, adopted in 1900, a non-initial payment lease for a heeling machine. (Sec. 3, R. III, 256.)

(13) Exhibit 28, adopted in 1904, a non-initial payment lease for heeling machine. (Sec. 5, R. III, 264.)

(14) Exhibit 29, adopted March, 1900, a non-initial payment lease for metallic machines. (Sec. 3, R. III, 274.)

(15) Exhibit 30, adopted in June, 1900, succeeding Exhibit No. 29, a non-initial payment lease for metallic machines. (Sec. 3, R. III, 280.)

(16) Exhibit 31, adopted March, 1901, equivalent to an initial-payment lease for metallic machines. (Sec. 6, R. III, 290.)

(17) Exhibits 32 and 33. No. 32 is Exhibit 30 with a rider, eliminating the "prohibitive" clause, adopted June, 1900; and Exhibit 33 is a reprint of July, 1911, with the provisions of the rider incorporated in the face of the lease, which is an initial payment lease for metallic machines. (Sec. 3, R. III, 300, 308.)

(18) Exhibit 34, adopted May, 1911, a non-initial payment lease for metallic machines. (Sec. 3, R. III, 316.)

(19) Exhibit 35, adopted May, 1911, a non-initial payment lease for Standard screw machine of metallic department. Sec. 3, R. III, 325.)

(20) Exhibit 45, adopted June, 1901, a non-initial payment lease for Davey pegging machine. (Sec. 5, R. III, 416.)

(21) Exhibit 46, adopted in 1905 or 1906, an initial payment lease for Davey Pegging machine, an alternative form for Exhibit 45. (Sec. 5, R. III, 425.)

(22) Exhibit 36, adopted March, 1902, a non-initial payment lease for pulling over machine. (Sec. 4, R. III, 334.)

(23) Exhibit 37, adopted January, 1905, a non-initial payment lease for pulling over set. (Sec. 5, R. III, 342.)

(24) Defendants' Exhibit 345, adopted as early as 1907, a non-initial payment lease for pulling-over machines. (Sec. 5, R. V, 962.)

(25) Exhibit 38, adopted February, 1909, a noninitial payment lease for pulling-over machine. Clause extends to entire system. (Sec. 5, R. III, p. 354.)

(26) Exhibit 39, adopted August, 1911, an initial payment lease for pulling-over machine. (Sec. 4, R. III, 366.)

(27) Exhibit 42, adopted about 1902, an initial payment lease for eyeletting machine. (Sec. 4, R. III, 390.)

(28) Exhibit 43, adopted about 1902, a noninitial payment lease for eyeletting machine. (Sec. 5, R. III, 397.)

(29) Exhibit 44, adopted 1907, 1908, or 1909, a noninitial payment lease for clicking machine. (Sec. 5, R. III, 405.)

(30) Exhibit 52, adopted December, 1907, a noninitial payment lease for Economy insole reenforcing set. Clause applies only to principal machines. (Sec. 5, R. III, 453.)

This clause, therefore, appears in each of the nine leases for lasting machines, two of the four leases for Goodyear machines, both heeling-machine leases, all six of the leases for metallic machines, both of the leases for pegging machines, all five of the leases for pulling-over machines, both leases for eyeletting machines, and the one lease for clicking machines.

Fourth. The following leases contain the "additional machines" clause:

(1) Exhibit 27, adopted in 1900, a non-initial payment lease for a heeling machine. (Clause 3, R. III, 256.)

(2) Exhibit 29, adopted March, 1900, a non-initial payment lease for metallic machines. (Sec. 3, R. III, 274.)

(3) Exhibit 30, adopted June, 1900, succeeding Exhibit 29, a non-initial payment lease for metallic machines. (Sec. 3, R. III, 280.)

(4) Exhibit 31, adopted March, 1901, equivalent to an initial payment lease, for metallic machines. (Sec. 6, R. III, 290.)

(5) Exhibit 32 and 33: Exhibit 32 is the same as Exhibit 30, with rider eliminating prohibitive clause, adopted June, 1900, and Exhibit 33 is a reprint of same in July, 1900. An initial payment lease for metallic machines. (Sec. 3, R. III, 300, 308.)

(6) Exhibit 34, adopted May 11, 1911, a non-initial payment lease for metallic machines. (Sec. 3, R. III, 316.)

(7) Exhibit 35, adopted May, 1911, a non-initial payment lease for Standard screw machine of metallic department. (Sec. 3, R. III, 325.)

(8) Exhibit 36, adopted March, 1902, a non-initial payment lease for pulling-over machine. (Sec. 4, R. III, 334.)

(9) Exhibit 39, adopted January, 1905, a non-initial payment lease for pulling-over set. (Sec. 5, R. III, 367.)

This clause therefore appears in the first of the two leases for heeling machines, all six leases for metallic machines, and in two of the four leases for pulling-over machines.

Fifth. The following leases contain the "exclusive use" clause:

(1) Exhibit 16, adopted September, 1900, a non-initial payment lease for the Consolidated hand-method lasting machine. (Sec. 7, R. III, 141.)

(2) Exhibit 15, adopted December, 1900, a non-initial payment lease for Consolidated hand-method lasting machine (Sec. 7, R. III, 133.)

(3) Exhibit 14, adopted December, 1900, an initial payment lease for the Consolidated hand-method lasting machine. (Sec. 7, R. III, 125.)

(4) Exhibit 17, adopted December, 1906, an initial payment lease for Consolidated hand-method lasting machine. (Sec. 7, R. III, 150.)

(5) Exhibit 19, adopted June, 1901, a non-initial payment lease for the Chase lasting machine. (Sec. 7. R. III, 168.)

(6) Exhibit 20, adopted August, 1903, an initial payment lease for the McKay & Copeland machine. (Sec. 7, R. III, 177.)

(7) Exhibit 18, adopted August, 1901, an initial payment lease for the Ideal lasting machine. (Sec. 7, R. III, 158.)

(8) Exhibit 21, adopted in 1906 or 1907, a non-initial payment lease for No. 5 lasting machine. (Sec. 8, R. III, 187.)

(9) Exhibit 22, adopted in 1906 or 1907, an intial payment lease for No. 5 lasting machine. (Sec. 7, R. III, 198.)

(10) Exhibit 23, adopted December, 1900, in initial payment lease for Goodyear set. Clause requires exclusive use of only welting, sewing, and outsole stitching machines, but a violation authorizes the forfeiture of all machines men-

tioned in schedule of machines held by lessee from lessor. (Sec. 7, R. III, 209.)

(11) Exhibit 24, adopted January, 1905, a noninitial payment lease for Goodyear machines. Clause requires exclusive use of welting, sewing, and outsole stitching machinery, and turn sewing machinery belonging to lessor, and its violation authorizes forfeiture of all Goodyear machinery. (Sec. 8, R. III, 221.)

(12) Exhibit 26, adopted in 1905, an initial payment lease for full Goodyear set. Clause excludes use of all but lessor's welting and turn sewing machines, but if violated authorizes forfeiture of all Goodyear department machines. (Sec. 7, R. III, 247.)

(13) Exhibit 25, adopted about January, 1905, a noninitial payment lease for the auxiliary machines of the Goodyear department. Clause excludes use of all but lessor's welting and turn sewing machines, but its violation authorizes forfeiture of all machines of Goodyear department. (Sec. 9, R. III, 234.)

(14) Exhibit 28, adopted in 1904, a noninitial payment lease for heeling machine. (Sec. 10, R. III, 267.)

(15) Exhibit 45, adopted June, 1901, a noninitial payment lease for Davey pegging machine. (Sec. 8, R. III, 418.)

(16) Exhibit 46, adopted in 1905 or 1906, an initial payment lease for Davey pegging machine, alternative form for Exhibit 45. (Sec. 8, R. III, 427.)

(17) Exhibit 37, adopted January, 1905, a noninitial payment lease for pulling-over set. For violation of clause the lessor is authorized to terminate "any or all leases or licenses of machinery then existing between the lessor and the lessee." (Sec. 9, R. III, 345.)

(18) Defendants' Exhibit 345, adopted as early as 1907. A noninitial payment lease for pulling-over machine. (Sec. 9, R. V, 965.)

(19) Exhibit 38, adopted in February, 1909, a noninitial payment lease for pulling-over machine. (Sec. 8, R. III, 358.)

(20) Exhibit 39, adopted August, 1911, an initial payment lease for pulling-over machine. (Sec. 8, R. III, 369.)

(21) Exhibit 44, adopted 1907, 1908, or 1909, a noninitial payment lease for clicking machine. (Sec. 9, R. III, 408.)

(22) Exhibit 52, adopted in December, 1907, a noninitial payment lease for Economy insole reinforcing set. (Sec. 9, R. III, 456.)

This clause, therefore, appears in each of the nine leases for lasting machines, the four leases for Goodyear machines, one of the two leases for heeling machines, which has been in use since 1904, both leases for pegging machines, four of the five leases for pulling-over machines, one of the leases for clicking machines, and the one lease for Economy insole machines.

Sixth. The following leases contain the "prohibitive" clause:

(1) Exhibit 16, adopted December, 1900, a non-initial payment lease for the Consolidated hand-method lasting machine. This clause applies to welting, sole stitching, turn sewing, and metallic fastening machines. (Sec. 4, R. III, 139.)

(2) Exhibit 15, adopted December, 1900, a non-initial payment lease for the Consolidated hand-method lasting machine. Clause applies to welting, sole stitching and turn sewing machines. (Sec. 4, R. III, 131.)

(3) Exhibit 19, adopted June, 1901, a non-initial payment lease for the Chase lasting machine. Clause applies to welting, sole stitching, turn sewing, and metallic machines. (Sec. 4, R. III, 165.)

(4) Exhibit 20, adopted August, 1903, an initial payment lease for the McKay-Copeland lasting machine. Clause applies to welting, sole stitching, and sewing, pegging, metallic, and heeling machines. (Sec. 4, R. III, 174.)

(5) Exhibit 18, adopted August, 1901, an initial payment lease for the Ideal lasting machine. Clause applies to welting, sole stitching, and turn sewing machines. (Sec. 4, R. III, 156.)

(6) Exhibit 21, adopted in 1906 or 1907, a non-initial payment lease for No. 5 lasting machine. Clause applies to welting, sole stitching, turn sewing, pulling over and metallic machines. (Sec. 5, R. III, 185.)

(7) Exhibit 23, adopted December, 1900, an initial payment lease for the Goodyear set. Clause prohibits the use of the machine on welt shoes not welted and sole stitched, and turn shoes, the bottoms of which are not attached by

the lessor's machinery. This lease does not tie the leased machines to other than Goodyear machines. (Sec. 4, R. III, 207.)

(8) Exhibit 24, adopted in January, 1905, a non-initial payment lease for Goodyear machines. Clause prohibits the use of machines except on "Goodyear welts" and "Goodyear turns," which have been welted or soles attached by certain specified machines belonging to the lessor. (Sec. 4 R. III, 217.)

(9) Exhibit 26, adopted in 1905, an initial payment lease for full set of Goodyear machines. Clause prohibits use of machines upon other than "Goodyear welts" and "Goodyear turns," welted or soles attached by lessor's machines. (Sec. 4, R. III, 245.)

(10) Exhibit 25, adopted January, 1905, a non-initial payment lease for the auxiliary machines of the Goodyear department. Clause prohibits the use of machines in connection with other than designated welting, sole stitching and turn sewing machines belonging to the lessor. (Sec. 5, R. III, 230.)

(11) Exhibit 28, adopted in 1904, a non-initial payment lease for heeling machines. Clause prohibits use with other than lessor's welting, sole stitching, turn sewing, lasting, pegging, and metallic machines. (Sec. 5, R. III, 264.)

(12) Exhibit 30, adopted June, 1900, succeeding Exhibit 29, which did not contain this clause. The clause applies to lasting, welting, sole stitching and turn sewing machines. (Sec. 3, R. III, 280.)

(13) Exhibit 34, adopted May, 1911, a non-initial payment lease for metallic machines. Clause applies to lasting, welting, sole stitching and turn sewing machines. (Sec. 3, R. III, 316.)

(14) Exhibit 35, adopted May, 1911, a non-initial payment lease for Standard screw machine, of metallic department. Clause applies to lasting, welting, sole stitching, and turn sewing machines. (Sec. 3, R. III, 325.)

(15) Exhibit 45, adopted June, 1901, a non-initial payment lease for Davey pegging machine. Clause applies to lasting and metallic machines. (Sec. 5, R. III, 416.)

(16) Exhibit 36, adopted March, 1902, a non-initial payment lease for pulling-over machine. Clause applies to welt-

ing, sewing and stitching, and pegging and metallic machines. (Sec. 4, R. III, 334.)

(17) Exhibit 37, adopted January, 1905, a noninitial payment lease for pulling-over set. Clause extends to welting, stitching, turn sewing, lasting, pegging, metallic, and heeling machines. (Sec. 6, R. III, 343.)

(18) Defendants' Exhibit 345, adopted as early as 1907, a noninitial payment lease for pulling-over machines. (Sec. 5, R. V, 962.)

(19) Exhibit 38, adopted February, 1909, a noninitial payment lease for pulling-over machines. Clause extends to welting, stitching, turn sewing, lasting, pegging, metallic, and heeling machines, and is made to apply to pulling-over machines held by or for the lessee under that or any "other lease or license agreements from the lessor." (Sec. 5, R. III, 354.)

(20) Exhibit 39, adopted August, 1911, an initial payment lease for pulling-over machines. Clause extends only to use of auxiliary with principal machines. (Sec. 5, R. III, 367.)

(21) Exhibit 40, adopted about 1902. An initial payment lease for general department machines. Clause applies to welting, sole stitching, turn sewing, lasting, pegging, and metallic machines. (Sec. 4, R. III, 376.)

(22) Exhibit 41, adopted about 1908. Noninitial payment lease for general department machines. Clause extends to welting, sole stitching, turn sewing, lasting, pegging, and metallic machines. (Sec. 5, R. III, 382.)

(23) Exhibit 43, adopted about 1902, a noninitial payment lease for eyeletting machines. Clause extends to welting, sole stitching, turn sewing, lasting, pegging, metallic and heeling machines. (Sec. 5, R. III, 397.)

(24) Exhibit 51, adopted December, 1900, a noninitial payment lease for Gem insole machinery. Clause applies only to welting, sewing, and stitching machines. (Sec. 4, R. III, 445.)

(25) Exhibit 52, adopted December, 1907, a noninitial payment lease for Economy insole reinforcing set. Clause applies as to principal machines to welt and turn sewing machines, and as to auxiliary machines, to use with Economy insole reinforcing machine. (Sec. 5, R. III, 453.)

(26) Exhibit 56, adopted about 1910 or 1911, an initial payment lease for repairing machine, used to repair patent leather injured in the manufacture of the shoe. Clause applies to welting, sole stitching, turn sewing, and lasting machines. (Sec. 5, R. III, 487.)

(27) Exhibit 57, an initial payment lease for Miller treeing machines. Clause applies to welting, sole stitching, turn sewing, lasting, pegging and metallic machines. (Sec. 4, R. III, 494.)

The clause, therefore, appears in six of the nine leases for lasting machines, all four of the leases for Goodyear machines, the one of the two leases for heeling machines which has been in use ever since 1904, three of the six leases for metallic machines, all five of the leases for pulling-over machines, the two leases for general department machines, one of the two leases for Gem insole machines, the one lease for Economy insole machines, and the one lease for the Miller treeing machine.

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Supreme Court of the United States

OCTOBER TERM, 1916

No. 207

THE UNITED STATES,
Appellant,

v.

UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL., APPELLEES

FREDERICK P. FISH
CHARLES F. CHOATE, Jr.
MALCOLM DONALD
Counsel for Appellees.

BOSTON
Press of Geo. H. Ellis Co.
1917

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 545.

THE UNITED STATES, *Appellant*,

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL., *Appellees*.

Appeal from the District Court of the United States for the District of Massachusetts.

BRIEF FOR THE UNITED SHOE MACHINERY COMPANY, ET AL.

PART ONE.

INTRODUCTORY AND GENERAL MATTERS.

I. INTRODUCTORY STATEMENT.

This is a direct appeal by the United States under the Expediting Act (32 Stat. 823, c. 544; 36 Stat. 854, c. 428) from a decree dismissing its petition by the District Court for the District of Massachusetts.

The petition was filed December 12, 1911. It charged a plan or scheme to monopolize shoe machinery, and a monopoly obtained in pursuance thereof in violation of the Sherman Anti-Trust Act (26 Stat. 209, c. 647). It prayed for the dissolution of

the defendants, United Shoe Machinery Company and United Shoe Machinery Corporation, and for other relief.

The Attorney-General filed a certificate under the Expediting Act, and the court which tried the case was composed of three judges of the first circuit—Judge Putnam, Judge Dodge, and Judge Brown (R. Vol. 1, pp. 1064, 1070).

All the evidence and the witnesses were heard by the judges in open court with the exception of certain evidence relating to patents which was heard before a special examiner (R. Vol. 2). The evidence taken in open court occupied about eleven weeks.

All three judges rendered opinions agreeing that the case was without merit and that the petition should be dismissed. Judge Putnam's opinion contained a general survey of the case (R. Vol. 1, p. 1110). Judge Dodge analyzed in detail the various transactions treated in the evidence and concurred in the opinion of Judge Brown as to the validity of the defendants' leases (R. Vol. 1, p. 1127). Judge Brown considered at length the defendants' lease system and expressed his concurrence with the opinions of his associates (R. Vol. 1, p. 1160).

In accordance with the opinions of the court a decree was entered on May 14, 1915, dismissing the bill (R. Vol. 1, p. 1188).

The evidence taken in open court has been condensed and is contained in Vol. 1 of the Record. The evidence as to patents by direction of the court was not condensed and is contained in Vol. 2 of the Record. The exhibits are found in Vols. 3 to 5. There are also a large number of physical exhibits which could not be reproduced in the record.

II. PARTIES DEFENDANT.

The petition names twenty corporate defendants and twenty-three individual defendants.

On motion of the United States the petition was dismissed against nine of the corporate defendants prior to the taking of testimony (R. Vol. 1, pp. 1061, 1062).

The corporate defendants now parties are the following:—

United Shoe Machinery Company.
United Shoe Machinery Corporation.
United Shoe Repairing Machine Company.
United Shoe Machinery Company of Maine.
United-Xpedite Finishing Company.
O. A. Miller Treeing Machine Company.
W. W. Cross & Co., Inc.
Ross-Moyer Manufacturing Company.
J. K. Krieg & Company.
Booth Brothers Company.
Ellis Lacer Company.

United Shoe Machinery Company, hereinafter called the "United Company," a New Jersey corporation, incorporated in 1899, is the principal defendant. It manufactures, leases, and sells certain types of patented shoe machinery and supplies, and has specialized in machinery for making Goodyear Welt and Goodyear Turn shoes and is the owner of the trademarks "Goodyear Welt" and "Goodyear Turn."

United Shoe Machinery Corporation, a New Jersey corporation, incorporated in 1905, owns most of the stock of the United Shoe Machinery Company. It is not an operating company, and it does not manufacture, sell, or lease machinery or supplies.

The other corporate defendants are subsidiaries of the United Company, or companies in which it holds a majority of the stock; they conduct minor departments of the United Company's business. No one of these companies competes with the United Company or with any of the others. Practically no evidence was introduced as to most of them, and they may be disregarded so

far as the present argument is concerned. Their business is as follows:—

The United Shoe Repairing Machine Company was organized by the United Shoe Machinery Company to take over and carry on that part of the business of the United Shoe Machinery Company which consisted in supplying machines to cobblers and others for use in repairing shoes (R. Vol. 4, P.'s Ex. 187, p. 1239).

The United Shoe Machinery Company of Maine operates as a branch of the United Shoe Machinery Company, leasing machines in certain States of the United States (R. Vol. 4, P.'s Ex. 187, pp. 1238–1239).

The United-Xpedite Finishing Company is engaged in the business of manufacturing and dealing in a heel-finishing machine known as the Xpedite Finishing Machine (R. Vol. 4, P.'s Ex. 187, pp. 1239, 1240).

The O. A. Miller Treeing Machine Company manufactures treeing machines and shoe trees on which shoes are cleaned and polished before packing (R. Vol. 4, P.'s Ex. 187, pp. 1234–1235; R. Vol. 1, pp. 97, 98).

W. W. Cross & Co. makes tacks and nails for use in shoe machines and sells practically its entire output to the United Company (R. Vol. 4, P.'s Ex. 187, p. 1233).

The Ross-Moyer Manufacturing Company, prior to the formation of the United Company, was the agent in Ohio of two of the constituent companies taken over by the United Company. It is now the agent for the service department of the United Company in Cincinnati and Chicago. It also deals in various findings and manufacturing accessories (R. Vol. 4, P.'s Ex. 187, p. 1235; R. Vol. 1, p. 34, lines 17–18; pp. 100, 101).

The J. K. Krieg Company acts as agent for the United Company in New York and sells findings and general merchandise in New York. It took over the business of a partnership of the same name which had acted as agent for two of the constituent companies prior to the formation of the United Company (R. Vol. 4, P.'s Ex. 187, p. 1234; R. Vol. 1, p. 34, lines 15–16; pp. 92, 93, 95, lines 30 ff.).

Booth Bros. Co. makes upper beading and fudge-edge machines (R. Vol. 4, P.'s Ex. 187, p. 1232; R. Vol. 1, p. 33, lines 28–32; p. 88).

The Ellis Lacer Company has been dissolved and is out of business (R. Vol. 1, p. 35, lines 17–18).

Of the individual defendants no evidence whatever was offered against the following:—

Wallace F. Robinson,
Louis A. Coolidge,
Frank L. Babbott,
Edmund LeB. Gardner,
John H. Hanan,
Joseph C. Kilham,
Edward N. Chase,
Rudolph Matz,
Charles G. Rice,
Alfred R. Turner,
Samuel Weil,
Frank Wood,
William Woodward,
Harold G. Donham,

except that they were at some period directors or officers of some of the corporations originally mentioned as defendants.

The only remaining individual defendants with respect to whom there is any further evidence in the record are:—

Sidney W. Winslow,
Elmer P. Howe,
William Barbour,
Edward P. Hurd,
George W. Brown.

III. THE PETITION.

1. ALLEGATIONS OF THE PETITION.

The petition makes a general charge of a combination to monopolize the entire field of shoe machinery. The principal allegations of the petition are:—

That the defendants have combined, contracted, and conspired to restrain interstate and foreign trade and commerce, and have monopolized and attempted to monopolize the same, all as hereinafter set forth. . . .

That for twenty-five years, last past, practically all of the boots and shoes worn by the people of the United States have been manufactured by the aid and use of several different kinds of machines. . . . The principal essential machines are:—

Lasting Machines, for lasting the uppers of boots and shoes.

Welt Sewing Machines and Outsole Stitching Machines, for attaching the upper and welt to the insole of a welt shoe, and sewing the welt to its outsole.

Heeling Machines, for preparing and attaching heels.

Metallic Fastening Machines, for preparing and inserting metallic fastenings.

For many years prior to February, 1899, a large number of persons and corporations were engaged in the manufacture of shoe machinery in competition with each other. The principal concerns so engaged were:—

Goodyear Shoe Machinery Company, which, with its subsidiaries, the International Goodyear Shoe Machinery Company of Maine and the Goodyear Shoe Machinery Company of Canada, manufactured 60% of the machines made in the United States for sewing the upper and the welt to the insole, and the welt to the outsole, of a welt shoe; and 10% of the lasting machines.

The Consolidated & McKay Lasting Machine Company, which manufactured 60% of the lasting machines.

McKay Shoe Machinery Company, which manufactured 70% of the heeling machines and 80% of the metallic fastening machines.

The Eppler Welt Machine Company, and its subsidiary, the International Eppler Welt Machine Company, which manu-

factured 10% of the machines for sewing the upper and welt to the insole, and the welt to the outsole, of a welt shoe.

The Davey Pegging Machine Company, which manufactured 75% of the pegging machines made in the United States, and which was owned and controlled by the Consolidated & McKay Lasting Machine Company.

Early in 1899 these companies were manufacturing their machines under Letters Patent of the United States and other countries. Many of the basic patents on the principal machines owned and controlled by them were about to expire, and, in the ordinary course of events, the general public would have acquired, in the near future, the right to the free manufacture and use of such machines. *The lawful monopoly of such machines theretofore enjoyed by virtue of the patents would have come to an end,* and the system of demanding large royalties for their use would have been replaced by their general manufacture and outright sale under competing conditions.

The defendants, not being satisfied with the benefit *of the lawful monopolies and rights belonging to them under Letters Patent of the United States* and of other countries, *which they had enjoyed for many years, determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery,* and through unlawful combinations and agreements to exclude all others from said trade and commerce. For the accomplishment of this purpose *they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to such manufacturer of shoes,* and thereby *to monopolize the trade and commerce therein* among the States and with foreign countries. The various contracts, combinations, conspiracies, and acts hereinafter described were steps in carrying out the above-mentioned unlawful project.

That the United Shoe Machinery Company was organized in February, 1899, and, by exchange, acquired the stock of the Goodyear Company, the Consolidated & McKay Lasting Machine Company, and McKay Shoe Machinery Company, and cash was provided to purchase the capital stock of the Eppler Company.

By the means above described the defendants acquired control of the greater portion of the manufacture and the trade and commerce in the machines included in the groups of machines above described.

Prior to the organization of the United Company, shoe manufacturers purchasing or leasing machines from one of the constituent companies were not compelled to use exclusively the machines of any other company. The defendants, *with the intent to acquire complete control of the business of manufacturing and selling or leasing shoe machinery, discontinued the sale to boot and shoe manufacturers of each and all of the machines included in said groups* of machines, and unlawfully adopted, and put into effect, arbitrary, oppressive, and unreasonable agreements, which boot and shoe manufacturers have been required to agree to in order to obtain from said defendants any of the machines included in said groups. These agreements contain provisions not found in their former agreements, *which compel boot and shoe manufacturers leasing any of such machines from defendants to agree to use exclusively one or more of the classes of machines included in said groups of machines owned and controlled by them*, upon penalty of having all the machines included in said groups so leased to them by defendants immediately taken away. These contracts further require boot and shoe manufacturers to take each of said machines for a period of not less than seventeen years, regardless of the terms of the patents relating thereto.

Lessees thereafter were also required to take duplicate parts at exorbitant prices; and the defendants have continually, persistently, and arbitrarily enforced the provisions of said leases.

The defendants, in pursuance of their general purpose, inserted in and made a part of each lease and license agreement, provisions reserving to themselves the right to forthwith terminate and cancel all existing lease and license agreements between them and the boot and shoe manufacturers, if the latter should fail or cease to use exclusively, and to their full capacity, machines leased or controlled by defendants.

The defendants have, by misrepresentation and threats, induced customers of their competitors to abandon them; have threatened that they would use their financial resources and power to secure the patronage of such competitors, and by threats have prevented others from entering into the business

with them; have acquired Letters Patent for valuable inventions, and have held the same for long periods of time without using them; have offered and granted rebates to shoe manufacturers who used exclusively one or more of the machines owned or controlled by them; have bought the business of competitors and paid exorbitant prices therefor.

In pursuance of their purpose to monopolize the shoe machinery industry, defendants have absorbed many competitors and driven others out of business, and have deterred and prevented others from entering the business, and thus made competition with themselves practically impossible. They have acquired some fifty-eight other businesses, and have taken from substantially all, covenants in writing not to engage for long terms in commerce in shoe machinery, and have required vendors to agree that, if they shall invent or patent machines for the manufacture of boots and shoes, they will assign all such inventions and patents to the defendants.

In April, 1905, the defendants organized the United Shoe Machinery Corporation, which acquired substantially all the stock of the United Shoe Machinery Company.

The result of the combinations, conspiracies, and monopolies described has been enormous and unreasonable profits.

That, by reason of the unlawful contracts and combinations above described, defendants control all the large and important establishments in the United States which were formerly engaged in the manufacture, sale, and lease of machines designed and used for attaching the bottoms to the uppers of shoes, and kindred and auxiliary machines, and have acquired a monopoly of interstate and foreign trade and commerce in shoe machinery.

The prayer of the petition is for dissolution and an injunction against the practices complained of.

Defendants' Answer.

The defendants denied the allegations of the petition, and further answering said (R. Vol. 1, p. 1044):—

That the organization of the defendant corporations and the acquisition of the businesses of the several constituent companies "was simply the fusion of several corporations owning noncompeting, complementary machines, covered by Letters Patent

of the United States, into one corporation, and was made with the expectation of an increase in business, economies in administration, and decrease in expenses, and cessation of patent litigation between the companies purchased, which had been expensive to them and annoying to shoe manufacturers; which results it was expected could be attained without increase of cost to the users of machinery . . . , and that better attention to the care of the machines and assistance to the users could be afforded. . . .

"That said organization and acquisition was nothing more than the combination of various elements of machinery all relating to the same art and the same school of manufactures, for the purpose of constructing economically and systematically, and of furnishing a lessee the whole or any part of a gradually developed system of machines for use in the manufacture of shoes, and was and is in strict and normal compliance with modern trade progress."

2. THE BASIC CHARGE OF THE PETITION.

The basic charge of the petition therefore is that

1. The constituent companies having lawful patent monopolies under which they did the greater part of the business of the country in the principal essential shoe machines, viz. (a) lasting machines, (b) welt-sewing and outsole stitching machines, (c) heeling machines, and (d) metallic-fastening machines, and finding these patents about to expire, planned to extend their monopolies unlawfully and to obtain a monopoly of all shoe machinery by

(A) Combining and acquiring all concerns engaged in the shoe machinery business, and then

(B) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machinery which he required and that

2. The United Company carried out said plan and thereby did acquire a monopoly of shoe machinery.

The various acts specified in the petition are alleged to be only "steps in carrying out" this unlawful project and are ma-

terial only if and in so far as they afford evidence of this plan and its accomplishment.

3. ATTEMPT OF THE UNITED STATES TO LIMIT SCOPE OF THE PETITION.

The United States During the Course of the Trial Admitted of Record That It Could Not Prove Its Charge of a Monopoly of all Shoe Machinery, and Attempted to Limit the Scope of the Petition to a Charge of Monopolizing Machines for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines and Clicking Machines.

The petition as stated above charges a monopoly of all shoe machinery, and the United States presented its direct case on this theory.

During the introduction of the Government's case in chief, statements were repeatedly made by counsel for the United States to the effect that the petition charged a general combination to obtain a monopoly of the entire field of shoe machinery; to illustrate:—

R. Vol. 1, p. 39, lines 4–8, Mr. Gregg, of counsel for the United States, said, referring to the so-called "acquisitions," which related not only to machinery of various kinds but to supplies and findings,—

> "Our position, if the court please, is that all of these acts of acquiring the business of other concerns were all part of a plan to monopolize the shoe machinery business.
> "PUTNAM, J. All; big and little?
> "Mr. GREGG. Big and little."

Again, Mr. Gregg said, R. Vol. 1, p. 52, lines 7–9:—

> ". . . We have alleged in the petition that each and every one of these acts, all taken together, was a part of a plan to monopolize."

Again, Mr. Gregg said, R. Vol. 1, p. 113, lines 16 ff.:—

> ". . . I suppose their defence will be: 'We didn't intend to get all the business.' . . . I assume that is what it will be: 'We didn't intend to monopolize the shoe machinery business, we were not making any attempt to get it all.' And I think

this conversation with the president of the Company is certainly competent to show that it was their intent at that time to monopolize the shoe machinery business, that they wanted to have it all, and that that was the very purpose of the tying clauses of the leases."

Again, R. Vol. 1, p. 202, lines 1–9, Mr. Fowler said:—

"Here is our position: this bill attacks this concern as being a monopoly, and it is alleged that they formed this combination back in 1899, and from 1899 up to the present time they have been doing various things for the purpose and with the intent of monopolizing. . . . This particular fact [a fact which Mr. Fowler urged leave to introduce in evidence] . . . . tends to show the purpose of the original organization."

As during the course of the trial the evidence presented by the United States showed that the defendants not only had no monopoly of certain large classes of machinery, but that the defendants did not even manufacture and had never attempted to manufacture many classes of important machinery, especially machinery used in sewing the uppers of shoes, and that there were scores of other machinery manufacturers greater in number and capacity than were in business when the United Company was formed, the United States undertook to limit the scope of the petition.

After the closing of the case of the United States in chief, and the opening of the defendants' case, Mr. Gregg, of counsel for the United States, made the following admission (R. Vol. 1, p. 414, lines 19 ff.):—

"If the court please, taking the whole bill together, the only charge that we make there and the only thing that we contend for is that they have monopolized machinery designed and adapted for use in the manufacture and attaching, preparation and attaching, bottoms to the uppers of shoes, the clicking machine and the eyeletting machine."

A little later, R. Vol. 1, p. 414, lines 31–33, Mr. Gregg said,—

"We make no contention that they designed or intended to monopolize machinery used for sewing the uppers to the shoe at all."

On R. Vol. 1, p. 435, lines 7–9, Mr. Fowler said,—

> "I never have understood that the purpose of this litigation was to go further than was stated by Mr. Gregg this morning."

And again, R. Vol. 1, p. 837, lines 40 ff., Mr. Fowler said:—

> "So far as the actual monopoly is concerned, it is limited to the machines fastening the soles and the uppers together, and to the clicking machines and the eyeletting machines. Mr. Gregg says he wants to state it.
>
> "Mr. GREGG. Machines for preparing and attaching the bottoms to the uppers of shoes, and eyeletting machines and dieing-out machines, otherwise known as clicking machines. Machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines."

A little later the following colloquy took place between the court and counsel for the United States, R. Vol. 1, p. 839, lines 9–22:—

> "PUTNAM, J. Do you admit that you don't claim a monopoly in trade and commerce, either in the United States or foreign countries, of anything except the bottoming machinery and the eyeletting machinery?
>
> "Mr. GREGG. Machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines and the clicking machines, and, as I stated, when I opened the case for the Government—
>
> "PUTNAM, J. One moment. Do you admit that that is all you claim?
>
> "Mr. GREGG. Yes sir. We make no contention—
>
> "PUTNAM, J. Can that go in the record?
>
> "Mr. GREGG. Yes, sir; I am perfectly willing for that to go in the record."

Still later, and when the defendants had nearly completed their introduction of evidence, and just before the close of the case, the United States presented a request for leave to amend its petition (R. Vol. 1, p. 881; motion to amend, R. Vol. 1, p. 1101).

The proposed amendment charges only a combination to acquire a monopoly of shoe machinery used in adjusting and attaching the upper to the last, in preparing the bottom and the heel

and fastening them to the upper, and in finishing the bottom and the heel of the shoe after said operations had been performed, and the claim with respect to the extent of the monopoly actually achieved was of all the principal and auxiliary machines used for adjusting and attaching the upper to the last preparatory to attaching the upper to the bottom, for preparing the bottom and heel and attaching them to the upper, and machines for finishing the bottom and heel, and clicking and eyeletting machines.

This request for leave to amend was disallowed by the trial court (R. Vol. 1, p. 1109).

These various shifts of position made by the United States during the course of the trial show its complete failure to prove its charge as made by the petition, and its attempt to succeed by making a different case.

The defendants contended below, and still contend, that the United States was required to prove its case as charged; that the defendants' defence was directed against the charge of an attempt to monopolize and of a monopoly of all shoe machinery; and that the limitation of this charge to a charge of an intent to monopolize, and a monopoly of, only a portion of the field of shoe machinery, constituted a material variance not permissible during the course of the trial.

Without waiving this contention, the defendants submit

(1) The United States utterly failed to prove a combination to monopolize or a monopoly of all shoe machinery.

(2) The United States admitted of record that it claimed no monopoly of all shoe machinery, and is therefore debarred from making any such charge.

(3) The United States failed to prove a combination to monopolize or a monopoly of machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines and clicking machines, to which the United States of record limited its charge (R. Vol. 1, p. 839, lines 9–22).

IV. PRELIMINARY STATEMENT.

Charge made by the Petition.

As stated above (*supra*, p. 10) the charge of the petition is,—

1. That the defendants planned to extend their lawful patent monopolies and acquire an unlawful monopoly of all shoe machinery by,—

(*a*) Combining and acquiring all concerns engaged in the shoe machinery business, and then

(*b*) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machinery which he required; and

2. That they carried out said plan and did thereby acquire a monopoly of shoe machinery.

The various acts set out in the petition are alleged to be only "steps in carrying out" this unlawful project.

The issue in the present case is whether or not this unlawful project was entered into by the defendants and carried out.

The record clearly establishes that the charge is entirely unfounded.

The record shows conclusively that the defendants did not attempt to acquire all concerns engaged in the shoe machinery industry. On the contrary, it shows that the United Company declined to purchase over 75 concerns offered to it for sale, many of them its largest competitors furnishing full lines of machines (*infra*, pp. 427–430). It also shows conclusively that the United Company did not attempt to acquire all concerns engaged in manufacturing machines used for preparing and attaching the soles to the uppers of shoes, eyeletting machines and clicking machines, to which the United States during the course of the trial attempted to limit its charge. Many of the concerns which the United Company refused to purchase were making machines of some of these classes and included the United Company's largest competitors. The shoe machinery concerns it did acquire were not competing, and were acquired to enable it to put out new machines, or to obtain patents necessary to perfect its own machines.

The United Company did not refuse to lease its so-called essential machines except on condition that the shoe manufacturer took practically all other machinery from it. On the contrary it continued to offer these machines on the same or better terms than were offered by the constituent companies prior to its formation (*infra*, pp. 358–359). The so-called restricted leases relied on by the United States in support of its charge were, in the first place, only alternative forms of lease, and in the second place, did not have the effect alleged (*infra*, pp. 346–357). The District Court found that there was no evidence whatsoever of any plan to deprive shoe manufacturers of the right to use some machines unless they would also use others, saying,—

> "As the leases prove no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge" (R. Vol. 1, pp. 1163–1164).

As then the record fails to show any such unlawful project as that alleged or any attempt to carry out any such project, it necessarily follows that the United Company has obtained no unlawful monopoly by means of any such unlawful plan or project. But further than this the record shows that the United Company has no unlawful monopoly obtained in any other way. The charge of the petition is that it has an unlawful monopoly of all shoe machinery. The record, however, shows that the United Company does not manufacture machines for sewing the uppers of shoes and certain other kinds of machines at all, and that it manufactures less than 50% of the machines required in an ordinary shoe factory (*infra*, pp. 557–559). The United States during the course of the trial attempted to limit the scope of the petition to a charge of monopolizing machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines. As to these classes of machines it was also shown that there were numerous competitors furnishing such machines (*infra*, pp. 562–567). It was further shown that while the United Company's machines are most desired by shoe manufacturers and, therefore, most in use, this is because its machines are the best machines made,

because they are patented and no other machines equally efficient have been invented, because they are adapted for use together, because the United Company furnishes a service with its machines which is vital to shoe manufacturers and which is furnished by no other company, because of the large sums it spends on its inventive department, the constant improvement of its machines, and the favorable terms it offers its lessees.

As we have stated, the evidence in the case is material only in so far as it bears on the issue above referred to which is the only issue raised by the petition. The United States, however, has not limited its contentions to this issue. But we submit that the record is barren of evidence justifying any other charge of an unlawful plan, or any unlawful monopoly under the Sherman Act, even if it be open to the United States to change the issue made by the petition.

The Present Case is Unique in Several Respects.

No case in any way resembling the present has heretofore been decided by this court with the exception of *United States* v. *Winslow*, 227 U. S. 202, in which it was held that the formation of the United Company was not only lawful, but so self-evidently a legitimate effort after a greater efficiency, and so inherently innocent that no intent on the part of its organizers could make it unlawful.

In the first place, the shoe machinery industry originated within recent years by reason of patented inventions, and it is entirely dominated by patents. As a result, no one can engage in the business successfully unless he does not infringe the patents of others, and holds patents which enable him to manufacture machines superior to or as good as those already on the market. In an unpatented industry, such as the tobacco, oil, cotton or woolen goods industries, competition is to be expected, and its absence raises a suspicion of an unlawful combination or of unlawful methods of competition. In a patented industry, like the shoe machinery industry, it is as natural that a company like the defendant United Shoe Machinery Company, which manufactures the best machines known to the art under patents so that its competitors can offer only inferior machines, should have a large share of the business, as it was natural that

the Telephone Company, as owner of the Bell Patent, lawfully dominated the telephone field.

In the second place, the United Company was a combination of non-competing concerns, each making different kinds of machines used for different purposes. The effort on the part of the United States to prove competition between a few of the machines put out by the constituent companies shows only a trivial and negligible overlapping of the fields of a few machines designed for making different types of shoes.

The formation of the United Company did not eliminate competitors previously in the field. The petition itself alleges, and the record establishes that the constituent companies had lawful patent monopolies under which they supplied the greater part of the machines used for the particular purposes for which the machines they manufactured were adapted. As a result, the United Company, in taking over these non-competing companies, acquired patents under which its constituent companies were doing, and under which it continued to do the greater part of the business of the country in these types of machines. It did not eliminate competitors formerly in the field; it did not create a monopoly. It merely continued a business which it is admitted was already lawfully existing. The monopoly charged in respect to the machines which had been put out by the constituent companies is the same monopoly which the petition avers, and the record establishes existed lawfully at the date the United Company was formed.

Findings of Fact by the District Court.

The decision of the District Court is based on the facts found by the court and set forth in the opinions. These facts, if accepted, completely dispose of the present case.

They establish not only that the contentions of the United States are utterly unfounded, but also that the development and success of the United Company's business has been due solely to the merits of its patented machines, which have been developed for use together as a unit, to the efficient service which it renders with its machines without cost to the shoe manufacturer, to the constant development and improvement of its machines by its inventive department, and to the favorable terms offered

shoe manufacturers under its lease system which enable them to equip their factories without initial cost, paying for the machines only a royalty based on their use. Quotations from the opinions of the District Court, showing the facts found by the District Court in respect to the principal allegations of the petition and the contentions of the United States, are set out below (*infra*, pp. 55–80).

The facts found by the District Court should be accepted so far as there is any testimony consistent with the findings (*infra*, pp. 81–87). Even in the ordinary equity case heard by the lower court on printed depositions prior to the adoption of the new equity rules, facts found by the lower court were treated as presumptively correct. In the present case there are the strongest possible reasons why the facts found by the District Court should be accepted.

The evidence, with the exception of certain technical testimony relating to patents, was heard orally in open court, and the District Court, therefore, had an opportunity to judge of the credibility of the witnesses.

Practically all of the oral testimony introduced by the United States which was material to the issue was disputed. The United States, as the District Court observed, made "efforts which may fairly be described as extraordinary" (R. Vol. 1, p. 1152) to bring before the court all persons who felt or expressed any grievance against the United Company. Practically all of the witnesses for the United States, except certain officials of the United Company, were hostile to the United Company, being competitors of the company, inventors or shoe machinery manufacturers who had endeavored to sell out to the United Company and whose offers had not been accepted, lessees who had violated their agreements with the United Company, or other persons with whom the United Company had had litigation or disputes, or members of the Shoe Manufacturers' Alliance, an association composed of large shoe manufacturers who desired on account of their size to obtain better rates from the United Company than their smaller competitors, who were themselves interested in a shoe machinery concern, and who showed a strong bias against the United Company. Such were the witnesses on whom the United States relied to sustain its charges. The credibility of their testimony and the

extent of their bias are questions which can best be determined by a trial court which hears the testimony and observes the witnesses.

The evidence relates to the details of the conduct of an immensely complicated business over a period of more than twelve years. Hundreds of transactions are involved. A determination of whether or not these transactions were undertaken in the normal and orderly development of the United Company's business, and of the motives and purposes of the defendants, is possible only if based upon a thorough understanding of this complicated business. The trial in open court occupied nearly three months, and the findings of the District Court are, therefore, based upon months of exhaustive and careful study of the entire situation.

Special Characteristics of the Shoe Machinery Industry.

The shoe machinery industry has special characteristics which differentiate it strikingly from any other industry in the country. These characteristics existed when the United Company was formed, and its methods of business were necessarily adapted to meet them. In considering whether the defendants' methods were "usual," "normal," and "orderly," whether they were entered into "with the legitimate purpose of reasonably forwarding personal interest and developing trade," or "on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done" with unlawful intent (*Standard Oil Case*, 221 U. S. 1, 58), it is essential to bear in mind constantly the particular conditions with which the defendants dealt. The test in the present case is not what would be normal, reasonable and legitimate in the tobacco or cotton goods business, but solely what was normal, reasonable and legitimate in dealing with the conditions peculiar to the shoe machinery industry.

Some of the most striking characteristics of the shoe machinery industry are as follows:—

1. A great variety of different machines are used in the manufacture of each shoe. Thus on certain classes of shoes over 100 different operations are performed by different machines (Defs.' Ex. 235, R. Vol. 5, pp. 531–671).

There is also a great variety of types of shoes made, such as McKay sewed shoes, in which the upper is united to the sole by a seam running through both outsole and insole inside the shoe; the welt shoe, in which a narrow strip of welt is attached to the upper and innersole, and the outersole then attached to the welt so that the foot does not rest on the seams which attach the sole; the turn shoe, which has a single sole to which the upper is sewed while the shoe is inside out, the shoe being then turned during the process of manufacture; the pegged shoe, in which the sole is attached by wooden pegs; the nailed shoe in which it is attached by nails; the Standard Screw shoe, in which it is attached by screws; and also various modifications of these types, such as the mock welt. Each type of shoe requires to a large extent different machines.

In addition there are various styles of each type of shoe and new styles are constantly developing. Thus we have men's and women's shoes, low and high-heeled shoes, slippers, pumps, laced and button shoes, high-legged shoes and low shoes, bull-dog toes, shoes with different kinds of insoles, shoes made of different materials such as calf, kid, patent leather and canvas, and a great variety of other styles. Many of these styles require certain special machines for their manufacture.

The result is that a great variety of machines are required in the shoe trade. The United Company, which has specialized in bottoming machines and which does not manufacture any machines for sewing the uppers of shoes, and which manufactures and furnishes only from 30% to 50% of the total number of machines used in the ordinary factory, nevertheless makes over 300 different kinds of machines.

2. The shoe machinery business, as stated above, is of recent origin. Previously to 1850 or 1860 shoes were made almost entirely by hand. The development of shoe machinery began about 1863, the McKay Sewing Machine being the first important machine (R. Vol. 1, p. 521, lines 15–17). The various machines have been invented and developed gradually from that date. The Goodyear Welt Machines ran back to 1870 or 1868. They were greatly improved about 1888. However, in 1899, when the United Company was formed, welt shoes constituted only about 10% of the total number of shoes made. Since 1899 the United Company has greatly improved its welter

and stitcher, and has developed 22 new welt auxiliary machines and 6 new turn auxiliary machines (*infra*, p. 197). Lasting machines date practically from 1890. In 1899 they were only partially developed, and half the shoes made were still lasted by hand. The United Company, since its organization, has invented and put out 150 new machines (*infra*, p. 195).

Practically all of these machines have been at all times patented. In the continuous patent development of the industry the machines in use have given place to new and improved machines, which do better work and have greater capacity, and new machines to take the place of hand work have been developed with the result that the best machines available, the machines which manufacturers demand and use, have at all times been effectively protected by patents (*infra*, pp. 222-234).

3. From the very beginning of the industry the principal shoe machines have been leased and not sold, the lessor depending for his return on a royalty of a certain specified sum for each pair of shoes on which the leased machine was used. Originally an initial payment was also charged to cover the cost of installing the machines and instructing operatives, but this has since been eliminated largely by the United Company.

Under this lease system the entire industry of manufacturing shoes by machinery was created and developed. It was the system under which the constituent companies furnished all their machines, at the time the United Company was formed. It had been adopted because it was found most satisfactory to the shoe manufacturer, and best suited to increase the use of the machines, and, consequently, the return to the shoe machinery manufacturer; in other words, because it was best suited to the conditions of this particular industry.

Under this system the shoe manufacturer is not obliged to invest his capital in machinery. He is, therefore, able to do a far larger business on a limited amount of capital, and his money is not tied up in machinery, which depreciates rapidly, and on which, as the testimony shows, he cannot borrow money. The lease system further enables comparatively poor men of small capital to enter the business, and thus extends the use of the machinery manufacturer's machines. The royalty payments made by the shoe manufacturer, being based on the amount of use to which the machines are put, are adjusted to the amount of

business which the shoe manufacturer does. Owing to the rapid development of shoe machinery, the machines not infrequently become obsolete in a few years. If a shoe manufacturer purchased his machines outright, he might thus suffer a large loss. Under the lease system the machinery manufacturer takes this risk and not the shoe manufacturer. The principal shoe machines are extremely delicate and need constant adjustment and repairs. Under the lease system the machinery manufacturer owns the machines, and his return being based on their use, he is interested in maintaining them in proper adjustment and repair, and he is far better qualified to give this service than is the shoe manufacturer.

For a full statement of the reasons for the adoption of the lease system, see *infra*, pp. 252–257.

4. As we have stated, a large number of different machines are used in the manufacture of each shoe. In the economical management of a shoe factory the shoes flow from one machine to another in a continuous stream, and when an important machine in the line breaks down, it interrupts this flow and, therefore, not only stops work on that machine, but also stops work on all machines coming after it in the line, and as to continue operating machines preceding it in the line would merely accumulate uncompleted work which could not be finished, it likewise stops work on those preceding machines. The capacity of shoe machines is so large that most shoe manufacturers require only one machine of certain kinds. The predicament of a shoe manufacturer, one of whose machines breaks down, is obviously very serious, and his loss is heavy unless he can obtain prompt and efficient repairs. The production of his entire factory may cease, and he will be unable to keep his contracts to deliver shoes. Furthermore, his operatives, who work by the piece, will earn nothing, and the lessors of machinery, the use of which is thereby prevented, will get no royalty.

It is, therefore, of the utmost importance that each machine in the line be well constructed and well cared for, so that it will not break down or get out of adjustment, and it is furthermore of the utmost importance that a machine be repaired at once if it does break down or get out of adjustment, so that the work will be interrupted for as short a time as possible.

The advantages of a well-constructed line or series of machines

which receive proper repair service are especially pronounced in respect to the principal bottoming machines such as welters, stitchers, and lasting, metallic fastening and heeling machines, which perform delicate and difficult operations, handle material like thread, wire, and nails, and which themselves are necessarily delicate machines, having a large number of moving parts liable to get out of adjustment or repair.

Furthermore, the machines are so complicated, and the variety of machines so great that the ordinary shoe manufacturer, who does business on a comparatively small scale and even the large manufacturer, cannot afford to keep in his employ skilled mechanics acquainted with the intricacies of all his machines, nor can he afford to keep on hand the great variety of duplicate parts which may at any time be required for repairs and replacements. This repair service to be effective must be furnished by the shoe machinery manufacturer who can do it on a large scale, and who can maintain skilled mechanics and a stock of repair parts in or near the various shoe centers.

For a statement as to the importance of an efficient series of machines, and of an adequate service, see *infra*, pp. 179–194, 333–340.

5. Each machine in the line or series of machines must also be so organized as to operate efficiently upon the shoe in the condition in which it has been left by the preceding machine, and so as to leave the shoe in condition to be operated on by the succeeding machines. In other words, the important machines to work effectively must be adapted for use together. The machines all co-operate in a single continuous process and constitute for practical purposes parts of a single machine rather than distinct and independent machines. It is as important that each machine of the series be adapted to use with the other machines of the series, and be well constructed and maintained in proper repair, as it is that each part of a single machine be so adapted, constructed, and maintained. If an outside principal machine not adapted for use with the other principal machines of the series is interjected into the series, both the quality of the work and the speed of the machines are seriously interfered with (*infra*, pp. 335–338).

6. Most shoe manufacturers are men of comparatively small capital, who operate on a small scale. The United Company

in 1911 had over 1,000 lessees, about half of whom made less than 300 pairs of shoes per day (R. Vol. 1, pp. 454–455).

Formation of the United Company.

The United Company was organized February 7, 1899. It was a consolidation of the Goodyear Company, the Consolidated & McKay Lasting Machine Company, and the McKay Shoe Machinery Company, essentially non-competing companies, making different types of machines used for different purposes. After the formation of the United Company was agreed upon it was found that the Eppler Company could be purchased, and it was acquired in March, 1899.

The Goodyear Company manufactured the Goodyear Welter and Stitcher used in attaching the soles to the uppers of Goodyear Welt shoes. The welter was also used in the manufacture of Goodyear Turn shoes. The Goodyear Company also supplied 13 welt auxiliary machines and 3 turn auxiliary machines, machines developed to assist the work of the principal machines. The Goodyear Company also manufactured the Ideal Lasting Machine, designed for lasting women's welt shoes. This was purely incidental to i s main business of furnishing welt sewing and outsole stitching machines. Only 248 Ideal machines were outstanding out of approximately 4,300 lasting machines of all kinds in use.

The Consolidated & McKay Lasting Machine Company made three kinds of lasting machines: (1) the Chase; (2) the McKay and Copeland; and (3) the Hand Method McKay Machine.

The Chase Machine was designed and developed for lasting men's welt shoes and was used almost exclusively for this purpose.

The McKay and Copeland Machine was designed and adapted for lasting men's heavy brogans and was used exclusively for this purpose.

The Hand Method McKay machine was designed and adapted for lasting McKay shoes and was used exclusively for this purpose.

The company also had endeavored to develop a hand method machine for lasting welt shoes. Owing to the difference in structure between a welt and a McKay shoe, the Consolidated Company had not succeeded in making this machine a com-

mercial success. Only 34 machines had been placed in factories, and they were experimental and not commercially successful.

The Davey Pegging Machine Company, owned by the Consolidated Company, made machines for attaching soles by wooden pegs.

The McKay Shoe Machinery Company manufactured and leased machines for inserting metallic fastenings in shoes and heeling machines used for preparing and attaching heels.

These three companies had originated and developed under their patents the business of manufacturing these special types of machines and were furnishing practically all the machines of these types in use by shoe manufacturers.

The Eppler Company, the purchase of which was arranged after the formation of the United Company was agreed upon, manufactured a welter and stitcher and a few auxiliary machines for making the Eppler Welt shoe, a shoe constructed quite differently from the Goodyear Welt shoe. The Eppler Company used a method which had been abandoned many years before by the Goodyear Company. Its machines were definitely inferior to the Goodyear Company's machines and, furthermore, they infringed the Goodyear Company's patents, and various patent suits had been brought by the Goodyear Company which its counsel was confident would succeed. The Eppler Company was commercially unsuccessful and had only about 30 or 40 welters outstanding.

For a statement of the business done by the foregoing companies see *infra*, pp. 109–113.

Machines not Manufactured by the Constituent Companies.

The constituent companies which were consolidated into the United Company covered only a portion of the shoe machinery field. They manufactured no machines for sewing or preparing the uppers of shoes. They did not manufacture the McKay Sewing Machine, the principal machine used in bottoming more than half the shoes then made. They made no General Department Machines, of which the United Company now manufactures more than 170 different kinds.

Defendants' Exhibit 221 A (R. Vol. 5, p. 370 A) gives a list of 85 different dealers in shoe machinery and supplies, adver-

tising in the trade papers between 1899 and 1902, which the United Company neither acquired nor attempted to acquire. The list includes such important concerns as the Wheeler & Wilson Sewing Machine Company, which supplied 90% of the machines which sewed the uppers of shoes; the Reece Button Hole Company, which furnished probably every machine used for making button-holes in shoes and for finishing the button-holes; and the Stanley Company, which manufactured the McKay Sewing Machine (*infra*, p. 117).

In the organization of the United Company, therefore, the defendants obviously made no attempt to acquire all concerns engaged in the shoe machinery business.

The Formation of the United Company held Lawful in United States v. Winslow, 227 U. S. 202.

The formation of the United Company was before this court in *United States* v. *Winslow*, 227 U. S. 202. The indictment in that case sets forth almost precisely the same facts with reference to the organization of the company as the present petition. The only material difference is that it omits reference to the Eppler Company.

This court held in *United States* v. *Winslow*, supra, that the combination was on its face "simply an effort after greater efficiency," lawful under the Sherman Act, and that the allegation of unlawful intent could not make it unlawful. The court further said:—

> ". . . we can see no greater objection to one corporation manufacturing 70% of three non-competing groups of patented machines collectively used for making a single product than to three corporations making the same proportion of one group each. The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels."

The United States has attempted to differentiate the present case by contending that competition existed between certain of the constituent companies and arguing that the elimination of this competition was a wrongful motive for the combination.

It contends that the Ideal Lasting Machine of the Goodyear Company competed with the Chase Machine and the experimental Hand Method Welt Lasting Machine of the Consolidated Company, and that the welt machines of the Goodyear Company competed with the machines of the Eppler Company.

It is conceded that the McKay Company did not compete with any of the other companies.

While no reference was made in the indictment in *United States* v. *Winslow*, supra, to the acquisition of the Eppler Company, it should be noted that the indictment did allege that the Goodyear Company made 10% of all the lasting machines used, and that the Consolidated Company made over 60% of all the asting machines used.

Alleged Competition in Lasting Machines.

The Chase Lasting Machine of the Consolidated Company was designed to last men's welt shoes. It was not structurally adapted to last women's welt shoes, and there is no evidence that it was ever used for this purpose.

The Ideal Machine of the Goodyear Company was designed to last women's welt shoes. While it was possible to use it on men's welt shoes, it was not structurally adapted for such use. Men's shoes are heavier and larger than women's shoes and require a stronger machine of greater power than the Ideal Machine. Furthermore, the box toe on a man's shoe is heavier and stiffer, and the Ideal machine could not successfully wipe over such toes. For these reasons it was not commercially successful on men's shoes, and its use for such purpose was purely incidental and outside of the field for which it was designed. It offered no commercial competition outside of its own field.

The Goodyear Company had put out only 248 Ideal Machines. Of these nearly 200 were in factories where only women's shoes were made and only about 40 were in factories where men's shoes were made. A total of nearly 4,300 lasting machines were in use so that the number of Ideal Machines outstanding was only 5 or 6 per cent. of the total lasting machines in use. The total number of shoes lasted on the Ideal Machine in 1899 and on the Copeland Rapid Machine, which was an earlier type of machine put out by the Goodyear Company, was only

.77 of 1 per cent. of the shoes lasted by machines in that year. Not more than one-half of the total number of shoes made in 1899 were lasted by machines so that less than .40 of 1 per cent. of the shoes made were lasted on the Ideal. As it appears that not more than 40 of the Ideal machines were used on men's shoes, the total number of men's welt shoes on which the Ideal Machine was used did not exceed .07 of 1 per cent. of the total shoes made. This is the extent of the alleged competition claimed with the Chase Machine.

It may be added that both the Chase and Ideal Machines have become obsolete, having been superseded by new and much improved machines.

The Hand Method Welt Machine of the Consolidated Company was in an experimental stage in 1899. It was not of the bed type, and was entirely different in structure from the Ideal Machine, which was of the bed type. The Consolidated Company had been unable to develop the machine so that it would last the toes of welt shoes properly. Only 34 machines were under lease or .08 of 1 per cent. of the total lasting machines in use, and they had been taken experimentally and were being constantly returned. The record does not show a single instance of the use of these machines on women's welt shoes, the field of the Ideal. The machine was not commercially successful until a new device for wiring the toes was adopted in 1900, long after the formation of the United Company, a device not known or reasonably to be anticipated in 1899, when the United Company was formed.

This insignificant overlapping of the fields of use of the Ideal and the Chase Machines and the trivial use of the experimental Hand Method Machine on welt shoes can hardly be termed competition. If it did constitute an incidental and negligible competition, it certainly does not show that the United Company was formed to eliminate this competition. The primary business of the Goodyear Company was the manufacture of welt machines, and its manufacture of Ideal Machines was of insignificant proportions and purely incidental to its main business. It is obvious that the purpose in taking over the Goodyear Company was to acquire its welt machine business. The acquisition of the Ideal Machine was purely incidental.

Furthermore, the United Company was clearly entitled to ac-

quire the Ideal Machine even if it had been the only machine manufactured by the Goodyear Company. The Ideal Machine was the only machine then invented which could last women's welt shoes commercially. It was patented and only by acquiring the patents could the United Company manufacture it. To hold that the United Company could not acquire these patents would be to hold that the United Company could not furnish a machine for lasting women's welt shoes, because such machines could also be used incidentally, though not successfully, for lasting men's welt shoes for which the United Company had another machine.

The Hand Method Welt Machine in 1899 was an unsuccessful experimental machine. It is quite obvious that the purpose in taking over the Consolidated Company was to acquire its three successful machines which were in general commercial use. The acquisition of this experimental Hand Method Welt Machine was purely incidental and no actual competition was thereby eliminated.

For a detailed statement as to this alleged competition in asti ng machines, see *infra*, pp. 119–151.

Alleged Competition between the Goodyear Company and the Eppler Company.

The Eppler Company's machines were patented machines of a different type from the Goodyear machines and made a shoe which differed structurally from the Goodyear Welt shoe. The Eppler machine laid the bulky double chain of the chain stitch in a prepared channel in the innersole on which the foot rested, while the Goodyear machine laid it on the welt outside of the surface on which the foot rested.

The Eppler machines were far inferior to the Goodyear machines, and the Eppler Welt shoe which they made was also inferior to the Goodyear Welt shoe, as the seam laid in the innersole was likely to cause discomfort. Furthermore, the Eppler Company had no satisfactory set of auxiliary machines which were essential to the commercial success of the system.

The result was that, though the Eppler Company's machines had been on the market about seven years, only between 30 or 40 of its welters were outstanding, of which one-third were in

the factory of the president of the company. The Eppler Company was not a success and was inevitably doomed to failure. The Eppler method was only one method of attaching the soles of shoes, used on a wholly insignificant portion of the total shoes made. It offered insignificant competition, if any. The real competition met by the Goodyear Company was the McKay method of sewing the sole to the upper, by which method half the shoes made were manufactured.

Furthermore, such competition, if any existed, was unlawful, as the Eppler machines infringed the Goodyear Company's patents. Patent suits had been brought and counsel for the Goodyear Company had every expectation of success. In continuing these suits the United Company would have been obliged to bring suit against certain of its own customers who were using Eppler machines and also the United Company's lasting, heeling, and metallic machines. The purchase was made in order to terminate this litigation which would necessarily cause friction between the United Company and its customers. An incidental reason was to acquire the Eppler patents and thus enable the United Company to furnish machines to make shoes by the Eppler method if any one so desired. That the United Company was not formed to eliminate this insignificant competition of the Eppler Company is conclusively shown by the fact that the organization of the United Company was arranged before the acquisition of the Eppler Company was thought of.

For a detailed statement as to this alleged competition with the Eppler Company, see *infra*, pp. 152–170.

Purposes for which the United Company was Formed.

Mr. Winslow testified that the fundamental reasons for the formation of the United Company were (*infra*, p. 171),—

First: To increase the productive efficiency of the machines.

Second: To economize in the manufacture of the machinery by bringing that manufacture into one modern factory and standardizing the manufacture.

Third: To encourage and increase the manufacture of Goodyear Welt shoes by the development of new machines to assist in their manufacture, and new methods to lower the cost, to

aid and assist those manufacturers who were making those shoes and induce other manufacturers to enter into their manufacture. It was contemplated in this connection to lower the cost of installation of the Goodyear machines and instruct manufacturers in the manufacture of welt shoes.

Fourth: To develop a better service for the instruction of operatives in the use of machines and for maintenance of the machines and at the same time decrease the expense of that service by avoiding duplication of depots and men employed in that work.

A further reason was that the Goodyear Company was being managed by Mr. Elmer P. Howe, an eminent patent attorney in active practice, who desired to get rid of this burden, and that the McKay Company was managed by Mr. Brooks, who was seventy years old, able to devote only a few days a week to the business, and who wished to retire (*infra*, p. 172).

The defendants specifically denied any attempt to monopolize or any plan such as that alleged in the petition (*infra*, p. 174).

Extent to which Purposes for which the United Company was Formed have been Carried Out.

The extent to which the purposes for which the United Company was formed have been carried out is important in two respects: first, in confirming the testimony of the defendants as to the reasons for forming the Company, and, second, in accounting for the success of the Company.

Concentration in one Factory.

Immediately following the organization of the Company a committee of experts was selected to visit manufacturing plants throughout the United States and gather data as to the best methods of machinery manufacture. As a result of their work the company built a large concrete factory at Beverly, Massachusetts, the first of its kind in the United States. The manufacturing business of the three principal constituent companies was thereafter carried on at the new factory. The Consolidated Company's business had previously been carried on in leased premises at Beverly. The McKay factory had been

in Winchester, a place unsuited to manufacturing business, as there was no labor at hand. The Goodyear Company had been situated in Boston but had no room to develop its factory.

Immediately the work of standardizing the parts for the manufacture and repair of the various machines was accomplished, and the necessity for making and carrying an infinite variety of screws, bolts, castings, and other parts, with the attendant expense, delay, and inconvenience, was obviated (*infra*, pp. 176–179).

Organization and Improvement of Service.

We have shown above the vital importance to shoe manufacturers of service. Such service consists in furnishing skilled mechanics to repair and readjust machines, in maintaining at convenient places a stock of duplicate parts to replace any broken parts, in instructing operatives in the use of machines, and generally in acting as engineers for shoe manufacturers.

Prior to the formation of the United Company each of the constituent companies had attempted to furnish service with its machines, but no one of them was sufficiently large or did a sufficient business in any one factory to furnish a satisfactory service. One of the principal reasons for the formation of the United Company was the belief that a single company furnishing these different types of machines would be able to unify and reduce the cost of this service so that it could be made vastly more efficient. After the consolidation a single organization would be able to take care of all three sets of machines.

Immediately after the formation of the United Company attention was given to the unification and improvement of the service. The best man was put in charge of each district, and arrangements made to render the service from one office in each district. Depots were established in 27 shoe manufacturing centers in 13 different States from Maine to California, and at all these places stocks of repair parts were established and skilled men kept to repair or adjust machines and instruct operatives immediately when a shoe manufacturer requested such assistance. This service was rendered free of charge by the United Company. A charge was made for new parts to take the place of those which were broken, but for the salaries

and expenses of the hundreds of men employed to render this service—608 in 1911—no charge was made.

During 1911 the number of calls by shoe manufacturers for the services of these men was 192,524. The time occupied in the work was 1,110,593 hours. The number of new operatives instructed was 8,889. The cost to the United Company for the year was $1,196,494.86 (*infra*, pp. 186–187). The vital importance of this service to the efficient conduct of the shoe manufacturer's business was testified to by many shoe manufacturers.

For a full statement as to the necessity for this service, and the character of the service, see *infra*, pp. 179–194.

Inventions and Improvements.

Soon after the formation of the United Company the development of inventions and the improvement of machines was placed in charge of a committee composed of three or four inventors experienced in the art of shoe machinery invention. To that committee every new idea or invention was submitted, investigation was made by them, and they reported their findings to the head of the department which had charge of placing those machines in the field, and a conclusion was arrived at as a result of which either an inventor was placed at work to develop that idea or it was filed as not practicable or not of commercial value. This work has been carried on consistently and continuously to the present time.

A large organization has given its entire time and attention to the development of ideas of the company's own men, or ideas suggested to the company, and to the consideration of inventions offered to the company.

Everything that the company has known how to do to advance the art of making shoes by machinery has been done from the organization of the company to the present time, and as soon as a new or improved machine has been developed which performs an operation already performed by some machine outstanding in the hands of lessees, the new machine has been substituted for the old machine without charge, and the old machine has been taken back and scrapped.

In the five years from 1907 to 1911, inclusive, the company expended upon this Experimental Department $2,467,954.70.

During fifteen years the company has brought out an average of seven or eight *new* machines a year. It has developed 150 different new machines of various types which have been supplied to customers (Defs.' Ex. 246). It has acquired or devised and leased or sold at the option of the shoe manufacturer 172 different General Department machines (Defs.' Ex. 227).

For a statement as to the inventions made by the United Company, see *infra*, pp. 194–197.

Increased Efficiency of Machines.

By reason of the invention of new and improved machines and of the service rendered by the United Company with its machines, the efficiency of the United Company's principal machines has been enormously increased. For example each Goodyear welter, each Goodyear stitcher, and each heeler operated on 60% more shoes in 1910 than in 1899 (*infra*, pp. 197–198).

The direct saving to shoe manufacturers by reason of the increased efficiency of the machines amounts to more than the total royalties paid to the United Company (*infra*, pp. 198–202).

In addition the United Company has eliminated initial payments required by the constituent companies in 1899 and in various cases reduced the royalties. It has not increased either initial payments or royalties charged in 1899, although the cost of manufacturing the machines, as is well known, has greatly increased and the capacity of the machines, and the quality of their work has vastly improved, so that they are worth much more to-day than they were worth in 1899.

The shoe operatives are generally paid by the piece, and the increased efficiency of the machines has, therefore, added materially to their earnings, although in many instances the piece price has been actually reduced (*infra*, pp. 202–203).

Development of Goodyear Method of Making Shoes.

One of the purposes in forming the United Company was to encourage and increase the manufacture of Goodyear Welt shoes. By eliminating the initial payments charged in 1899 by the Goodyear Company, and by inventing new auxiliary machines to

assist the work of the principal machines, and by enormously increasing the capacity of the principal machines, the United Company has succeeded as planned in greatly encouraging and increasing the manufacture of Goodyear Welt shoes which are unquestionably the best type of shoe made. In 1899 only 22,700,000 pairs of welt shoes were made, while in 1910 86,231,000 pairs were made (*infra*, p. 203).

The Patents on the Constituent Companies' Machines were not About to Expire in 1899.

The petition alleges that early in 1899 many of the basic patents on the machines put out by the constituent companies were about to expire and the United States contends that this furnished a motive for the formation of the United Company, the intent being, by some method not made clear by the petition, to create a new and unlawful monopoly in these machines to take the place of the lawful monopoly held under the patents.

The United States utterly failed to substantiate its charge that the basic patents were about to expire. On the contrary, it was shown that at the date of the formation of the United Company the machines which the petitioner's patent expert selected to sustain its charge embodied patents which had more than fourteen years to run. The District Court found that the allegation was not proved and said:—

> "It seems obvious, therefore, that the allegations in question could not have been founded, when they were made, upon any adequate or complete investigation of the facts."
>
> . . . . . .
>
> . . . "I must regard the allegations here in question as not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organization of the United Company, or any of its subsequent doings" (R. Vol. 1, pp. 1133, 1134).

Furthermore, the defendants showed that owing to the continuous patented development of the shoe machinery art, and the development and the invention of new and improved machines to take the place of hand work, the machines of the United Company have at all times since 1899 been protected by strong patents, and at the date this suit was brought they were as strongly, or even more strongly, protected than ever before.

(For a discussion of the patents, see *infra*, pp. 204–237.)

The Lease System.

As we have stated above the method of marketing the principal shoe machines by leasing rather than selling was employed from the very beginning of the shoe machinery industry, and the entire business of manufacturing shoes by machinery had been created and developed under this system. The system had been originated and maintained because it best suited the conditions of the industry, and had been shown by experience to be the most satisfactory to shoe manufacturers.

The exact form of the leases has been the result of an historical development and growth extending over many years. The various provisions have, of course, from time to time been modified and amended as new conditions arose or experience showed just what provisions were necessary to provide a satisfactory system and at the same time protect the lessor.

At the date of the formation of the United Company this lease system had long been definitely established. The United Company necessarily continued it, not only because it was accepted as the most satisfactory method of marketing machines, but because the United Company could not have given up the system without demoralizing the entire shoe industry. Many manufacturers had embarked in business because they could get their machines without capital expenditure, and in the expectation that as their business increased they could get additional equipment on the same terms. Had the United Company at or after its formation required shoe manufacturers to purchase outright the machines they then held, and which they desired in the future, it would undoubtedly have ruined many shoe manufacturers of slender capital and would have caused great hardship to all of them.

The fundamental basis of the lease system, which makes it so satisfactory to the shoe manufacturer, is that the machinery manufacturer installs the machines in the lessee's factory without charge, or, in some cases, for a small initial payment, and depends for his return upon a royalty of a certain sum for each pair of shoes on which the machines are used. The United Company has some $40,000,000 in machines in lessees' factories on these terms.

Under such a system it is obvious that the leases of the ma-

chines must contain provisions carefully protecting the lessor in respect to the use and care of the machines and the return to be paid for them.

It will be found that the provisions of the leases were all adopted to enable the lessor to furnish machines under this unique system, so obviously favorable to shoe manufacturers, on the best possible terms, and at the same time fairly to protect itself.

As stated above, the United Company found the lease system established. It continued the system, making no modifications at all in the leases for more than a year, and thereafter making modifications only from time to time to enable it to offer its lessees better terms, or to meet new conditions, just as the constituent companies had from time to time modified their leases prior to the organization of the United Company.

These modifications have not changed the essentials of the system which was established at the time of the formation of the United Company. In a number of instances they have eliminated or relaxed protective clauses which the constituent companies had required and believed necessary for their benefit.

The charge made by the petition that the United Company upon its formation discontinued the sale of machines was absolutely unfounded. The constituent companies did not sell a single machine, while the United Company, on the contrary, sells over 170 different types of machines which it has developed since its organization. This allegation is only an illustration of the reckless character of the charges made by the United States, obviously without any investigation of the facts.

The provisions of the leases, to which the United States took exception, neither support the charge made by the petition, that the United Company refused to lease its essential machines defined as welt sewing, outsole stitching, lasting, metallic, and heeling machines, unless the shoe manufacturer took practically all other machinery of it, nor do they establish a foundation for any charge not made by the petition.

Before considering the clauses objected to by the United States, one further word of explanation as to the lease system employed by the United Company will be useful. The United Company, for convenience, has grouped its machines into different

departments. Thus the Goodyear welt and turn machines are in the Goodyear Department, the lasting machines in the Lasting Department, the metallic machines in the Metallic Department, the heeling machines in the Heeling Department, the eyeletting machines in the Eyeletting Department, the pulling-over machines in the Pulling-over Department, and various miscellaneous machines in the General Department.

There are separate forms of lease for each department which differ from each other according to the character of the machines and their use, and there are different forms used in each department, both alternative forms and forms for different machines.

It is impossible in this preliminary statement to describe in detail the various clauses recited in the petition to which the United States objects. A thorough study of their history, of the complications of leasing so many different kinds of machines adapted for use together, and used in making a great variety of different kinds of shoes, for royalties based on the actual use of the machines, is essential to an understanding of the reasons for the adoption of the various clauses and their necessity. The leases are discussed in detail *infra*, pp. 238–422, and at this point we give only a brief outline of the principal clauses to which the United States takes exception.

1. The Full Capacity Clause. This clause required the lessee to use the particular machine leased to full capacity so far as the lessee has work for it to perform, and on which it can be used without violating any other provisions of the lease.

This is the only clause contained in the leases of the United Company at the time suit was brought, or for some years previously, which requires the lessee to use the United Company's machines at all.

Its purpose is obvious. The lessee obtains the leased machine, agreeing to pay a royalty based on its use. Unless the lessee uses it, the lessor will receive no royalty. It is obvious that the lessor cannot manufacture and install an expensive machine on these terms, unless the lessee will agree to use it when he has work which it can perform.

That the clause is employed solely to provide an adequate amount of royalty to the lessor is conclusively shown by the fact that this clause is not used in leases of machines which do not provide for a royalty based on the use of the machine.

This clause was used in various leases of the constituent companies.

For a full discussion of this clause and its effect, see *infra*, pp. 306–311.

2. The Exclusive Use Cancellation Clause. This clause permits the lessor to withdraw its machines of a certain kind or department, when other machines of that same kind are used by the lessee. It is not an agreement on the part of the lessee, but merely the reservation of an optional right by the lessor. It does not forbid the use of such other machines by the lessee; it only reserves an option to the lessor to withdraw its own machines of this particular kind if he deems such action necessary for his protection.

When other machines of the same kind as those leased are used by the lessee in the same factory with the leased machines, experience has shown that the lessee may actually do most of his work on the lessor's machines, but carelessly or dishonestly report it as done on his other machines, or he may use the leased machines only on slow or difficult work, or only during his busy seasons, or use them as a threat to reduce the prices of hand labor. Under these conditions the lessor may not get a proper return on his machines, and the constituent companies, therefore, found it necessary to insert in most of their leases a clause known as the Additional Machinery Clause, requiring the lessee to take additional machines of the same kind from them if needed (that is, to use their machines of the kind leased exclusively), or a clause known as the Exclusive Use Cancellation Clause, giving the lessor an option to cancel its leases if the machines were not used exclusively. The United Company found that the Exclusive Use Cancellation Clause gave it sufficient protection against the abuses outlined above, and therefore employed this clause, discarding entirely after 1907 the use of the Additional Machinery Clause, which it had continued to use up to that time only to a limited extent. It thus eliminated from the lease system the only clause employed by the constituent companies requiring an exclusive use of any of their machines.

For a discussion of the Exclusive Use Cancellation Clause and its effect, see *infra*, pp. 311–323.

3. The Cancellation for Breach Clause. This clause permits the lessor to withdraw all its leased machines and cancel all

its leases if the lessee violates his agreements which he has obligated himself to perform.

It is obvious that the lessor who installs his own machines without charge in the lessee's factory, to be paid for only when used, must have a right to withdraw them if the lessee acts in bad faith and violates his agreements. A similar clause was contained in all the leases of the constituent companies.

For a discussion of this clause and its effect, see *infra*, pp. 326–330.

4. The Restricted Use Clause. This clause is used in leases of machines of certain departments, restricting their use to use on shoes operated on by certain principal machines of other departments. The leases containing this clause are alternative forms of lease offered lessees who wish to use a series or team of the United Company's machines. Where certain principal machines are so used as a team and each machine of the team is kept in repair by the United Company, each machine does more and better work and produces a larger royalty than if used with machines not adapted for use together, and not properly cared for and maintained in efficient working condition. Where a team of machines is used, the United Company can also furnish service at less cost for each machine than where only a part of the series is used. This clause, therefore, merely provides a wholesale rate where the lessee desires to use a team of machines as a unit, *i.e.*, in a wholesale manner. Where so used, as we have stated, each machine produces a larger royalty for the United Company, and this clause enables shoe manufacturers to benefit and share in the increased economies resulting from a use of a team of the United Company's machines (*infra*, pp. 333–340).

The clause has an extremely limited effect as it only restricts the use of certain principal machines, which the petition calls essential machines, to use with each other and of certain other machines to use with certain of such so-called essential machines. No machines are restricted to use with the majority of the machines manufactured by the United Company. For example, no machines are restricted to use with over 170 General Department machines, with the 43 Goodyear Auxiliary machines, or with the eyeletting, clicking, or McKay sewing machines (*infra*, pp. 366–373).

The United States relied wholly on this clause to prove its fundamental charge in the petition that the United Company refused to lease its essential machines except on condition that the lessee take all other machinery of it, but, as found by the District Court, the clause had no such effect. In the first place, leases containing this clause were only alternative forms of lease, and machines without these restrictions were offered lessees on terms as favorable or more favorable than were offered by the constituent companies prior to the formation of the United Company (*infra*, pp. 357–364).

In the second place, the machines defined by the United States as essential machines, which it was contended the United Company used to compel the taking of other machines, defined as non-essential, were not restricted to use with such other machines. The restrictions ran the other way; that is, with two minor exceptions the so-called essential machines were not restricted to use with any of the so-called non-essential machines, but on the contrary the restrictions were solely restrictions either restricting the so-called essential machines to use with other essential machines, or restricting the so-called non-essential machines to use with certain of the essential machines (*infra*, pp. 346–356).

These restrictive clauses were not adopted immediately upon the formation of the United Company, but only from time to time as conditions called for their use. No such clause was ever inserted in leases of the Goodyear welter and stitcher, the machines which the petitioner's patent expert testified were the only essential machines in making the Goodyear Welt shoe.

For a discussion of this clause and its effect, see *infra*, pp. 331-414.

5. The Auxiliary Restricted Use Clause was used to restrict the use of auxiliary machines to use with the principal machine or machines of the department. In every case the principal machine was first invented. Auxiliary machines to assist the work of the principal machine were developed later. It was the invariable practice to supply these new auxiliary machines, when developed, to lessees already having the principal machines without additional royalty charge, the lessor receiving his return indirectly through the increased use and capacity of the principal machines which resulted. But of course, when so furnished without additional royalty charge, it was necessary to restrict the use of the auxiliary machines to use with the prin-

cipal machine; otherwise the lessor would receive no return direct or indirect. The auxiliary machines put out by the constituent companies had always been so restricted and the United Company merely continued the practice.

For a discussion of this clause and its effect, see *infra*, pp. 373–377.

6. The Term of the Leases. The leases of the constituent companies ran in some cases for the life of the machine; in others for seventeen years and thereafter during the life of the patents at any time embodied in the machines; and in still others for the life of the patents then or thereafter embodied in the machines. Most of the machines embodied the inventions contained in pending patent applications, so that the leases in most instances ran for more than seventeen years. If new improvements were added they would run still longer. The United Company, to make its leases consistent, adopted the term of seventeen years for all its leases. This term rather decreased than increased the term of most of the leases.

A long term is essential. The shoe manufacturer who undertakes to build up a shoe business wishes an assurance that he may hold his machines for an extended term, and the lessor constructing machines for the lessee's use needs an assurance that they will be held for a sufficient time to insure an adequate return. An extended term is therefore mutually advantageous.

For a full discussion of this clause and its effect, see *infra*, pp. 302–306.

The record shows that the United Company treated its lessees with the utmost liberality, and that it enforced its leases only when essential to its protection (*infra*, pp. 414–419). During its entire existence it exercised its right to cancel its leases in only five cases apart from bankruptcy cases, and in each of these cases the lessee either flagrantly violated his agreements or had abandoned the use of his machines entirely (*infra*, pp. 417–418). An examination in detail of the history of the lease system, of the reasons for the adoption of the various provisions, and of the spirit in which the rights reserved to the lessor have been enforced, will establish conclusively that the various clauses have been adopted for proper, legitimate business reasons and not for the purpose of excluding competitors, and that these clauses, or clauses having the same effect, are essential to the

maintenance of this highly satisfactory system under which shoe manufacturers obtain machines without capital expenditure to be paid for only according to their use.

Acquisitions of other Businesses and Properties.

As was entirely natural, the United Company in dealing with shoe manufacturers in labor saving machinery and devices was led to extend its business. The United States charges that between 1899 and 1911 the company acquired sixty other concerns. As to one of these, the Boston Blacking Company, the United States abandoned the charge and dismissed the bill. The Thomas G. Plant purchase will later be considered by itself. Of the remaining fifty-eight transactions, eleven took place in 1899, eight in 1900, six each in 1901 and 1902, three each in 1903, 1906, and 1908, nine in 1904, one each in 1905, 1907, and 1909, five in 1910 and one in 1911. They were offered in evidence by the United States in support of its claim set out in the petition of a plan by the defendants, to obtain a monopoly of the entire field of shoe machinery. But this claim, as we have stated above, was utterly abandoned by the United States during the trial, and the ground of complaint was shifted to a claim of monopoly of machines for preparing and attaching the soles to the uppers of shoes, eyeletting machines, and clicking machines. This change of position renders most of the acquisitions of no importance, for few of them had any relation to machines of the kinds last above described. Of these fifty-eight so-called acquisitions, many were not acquisitions at all. They may be classified as follows:—

(1) Contracts of employment (three), contracts to commute obligations created before 1899 (two), purchases of patents only (three) and an exclusive license to sell sandpaper. No tangible property or business of any kind was acquired by any of these nine transactions.

(2) Purchases to add findings and supplies which are used by shoe manufacturers. These numbered fifteen. No shoe machinery was acquired by any of these transactions.

(3) Purchases of new machines which the United Company did not have before. These numbered twenty.

(4) Purchases of patented improvements or inventions for the purpose of enabling the United Company to supply

better machines than it had before. These numbered eleven.

(5) Of the three remaining transactions one was a purchase of experimental machines, which had never been put out, for the purpose of settling a great amount of litigation; another was a purchase of an insignificant foreign business for the purpose of settling litigation; and the third was a purchase of foreign patents on a machine for which the United Company had been agent abroad for years and which it had put out exclusively abroad.

None of the businesses acquired was in competition with the United Company, and in all cases competitors were left outstanding. Many of the concerns were not engaged in business at all, and of those engaged in business many were not engaged in the shoe machinery business, but made sandpaper, brushes, cement, eyelets, lacings, pegwood, needles, awls, rawhide mallets, nails, tacks, metallic heels and counters, or other supplies of use to shoe manufacturers who were customers of the United Company.

The company continued to produce all the supplies or machines acquired by it. None of the businesses was restricted or suppressed in any way.

During the same period the United Company had offered to it and, *refused to purchase*, the businesses of between seventy-five and eighty other concerns among which were some of the United Company's principal competitors; many of these were of great size and importance and manufactured essential machinery used by shoe manufacturers, especially machinery for preparing and attaching the soles to the uppers of shoes, and taken together they were making a complete line of shoe machinery including machines for making the uppers (*infra*, pp. 427–430).

In addition to these businesses offered to the United Company, there were between June, 1904, and December, 1911, offered to it 493 inventions for shoe machinery which it did not acquire (*infra*, pp. 429–430).

In 1911 when this suit was brought there were a very large number of concerns engaged in manufacturing shoe machines, such concerns being more numerous and larger than ever before.

For a full discussion of the acquisitions, see *infra*, pp. 423–465, and Appendix, pp. 1–87.

Covenants in Contracts of Purchase.

The petition charges that the United Company took from vendors and patentees covenants not to compete and to assign future inventions.

The covenants in question are of the usual character taken from the vendor of a business or from an inventor entering into a contract of employment or selling patent rights. Such agreements have been long recognized as essential to the protection of the vendee or employer. In the present case the covenants were in no instance shown to exceed what is usual, lawful, and necessary. They utterly fail to establish any intent to obligate either vendors or patentees unlawfully. The record shows that the officers of the company had no plan or design whatever with respect to these covenants, and that their form was left to the attorney who drew the papers.

In thirteen transactions there were no covenants as to competition or future inventions whatsoever. In most of the transactions where covenants were inserted particular pains were taken to limit the covenant strictly to the particular kind of machines or goods which were sold.

The petition seriously misstates the extent and scope of many of the covenants, although the documents themselves were in the possession of the United States for a long time prior to the bringing of the petition.

For a discussion of the covenants, see *infra*, pp. 466–475, and Appendix, pp. 82–87.

The Plant Purchase.

In September, 1910, the United Company purchased of Thomas G. Plant a large number of patented inventions, applications for patents relating to shoe machinery, and 60% of the stock of the Thomas G. Plant Company, which manufactured women's shoes, paying therefor $3,000,000 in cash and $1,500,000 in common stock of the United Company at par.

This purchase is largely relied on by the United States as showing an attempt by the United Company to obtain a monopoly

of shoe machinery. It is claimed that Plant was a competitor of the United Company and threatened to become formidable. This is not the fact. He was not a competitor and never intended or was able to compete, but he had developed valuable improvements on certain of the defendants' machines which were of great importance to the art of shoemaking and which could not be used by the defendants, because Plant had patented the inventions.

Plant had been a successful manufacturer of women's welt shoes, and a user of United Company machines for his manufacture. He had differences with the United Company and went to work to provide himself with machines of his own for making shoes. Taking the United Company machines as a basis, he made certain changes and some important and valuable improvements which he patented. This resulted in extensive patent litigation between him and the company because he was infringing its patents and they could not use his improvements without infringing his patents.

In May, 1910, he removed all the United Company machines from his factory and installed his own machines, and attempted to manufacture shoes with them. Prior to this he had offered to equip two other factories with his machines without requiring royalties for their use, but these offers had been declined. Plant had declared in 1909 that his intention was to equip these factories and his own and then sell out to the United Company.

He first approached Henry B. Endicott, a large shoe manufacturer, and offered him $250,000 if he could sell the Plant inventions and patents to the United Company. Mr. Winslow, president of the United Company, declined to consider the proposition without an opportunity to examine by experts Plant's machines and ascertain their value to the art of shoemaking. Plant declined to permit such examination unless the company put up $1,000,000 to be forfeited in case the United Company did not purchase. He was fearful of the patent litigation which might follow such an examination. Plant increased his offer to Endicott to $500,000 if he succeeded in bringing about a sale.

Finally an examination by certain shoe manufacturers who were directors in the United Company was arranged for. They saw Plant's machinery and a majority of them reported against a purchase at Plant's terms, which were then $6,500,000 for

his patents and inventions alone. Plant was notified that negotiations were at an end. Plant then tried another avenue of approach. He went to one H. W. Smith, a friend who had often urged upon him the advantages of selling out, and told him that if he, Smith, would bring him, Plant, in touch with Mr. Barbour, vice-president of the company, and Mr. Herrick, its counsel, whom Plant supposed to be the persons chiefly opposing the purchase of his inventions, so that he might overcome their opposition, he would pay Smith 5% on the price he sold for. At the same time he told Smith that he was determined to get entirely out of business and dispose of his interest in his shoe manufacturing company, which comprised 60% of its stock.

The shoe factory known as the Thomas G. Plant Company was a very successful business. It had an output of 12,000 pairs a day of a type of women's welt shoes which were very popular, and its annual net profits over a series of years ranged from $500,000 to $700,000. In one year they had reached $1,200,000. Plant authorized Smith to urge upon the United Company the advantages of owning this factory. Smith, accordingly, having persuaded Plant to waive his condition of payment of $1,000,000 for an examination of the machines, arranged meetings for Plant with Barbour and Herrick, and himself saw Winslow. Mr. Winslow and Mr. Howe and a committee of experts were permitted to make an exhaustive examination of the machinery. The experts were instructed by Mr. Winslow to examine solely with the purpose of ascertaining whether the machinery embodied inventions which if added to the United Company's machines would be of benefit to shoe manufacturers and advance the art of shoemaking. The experts reported that Plant's inventions and improvements comprised a number of important and valuable features which, added to the United Company's machines, would greatly increase the economy and efficiency of their operation, particularly of the welter and stitcher.

During all the negotiations the United Company never made Plant any offer for his properties. Finally, on September 20, 1910, Plant offered to accept $3,000,000 in cash and $1,500,000 ($25 par) in common stock of the United Company having a market value of $50 a share for all his patents and inventions and 60% of the stock of the Thomas G. Plant Company with

its very large earnings. The offer was accepted and the sale consummated, and Plant paid Smith his 5% commission, or $300,000.

Plant was not producing machines on any commercial basis. He had no factory to make them in. Such as he had had been built in a great many different machine shops and afterwards assembled. He had no selling organization. He had put out a catalogue and published advertisements threatening the United Company, but he had never sold a machine except to the factory he himself controlled. He declared repeatedly that he did not desire or intend to go into the shoe machinery business, and that his plan was to sell out to the United Company.

Though the inventions were very valuable, as we shall show, the machines themselves were mechanically defective and too lightly built to do the work. They were crude, merely experimental, constantly broke down, and caused a tremendous breakage of lasts, and made shoes by obsolete and very expensive methods, and so poorly that it was necessary to employ a large number of men to repair the shoes after the operation. So great was the expense of their operation that the profits of the shoe company were one-half less than they had been when the United Company's machines were used. After the purchase the management of the shoe factory was left entirely in the hands of Plant's former associates. These men, who were practical shoemakers of great experience, found it impracticable to continue the manufacture of shoes with Plant's machines for the reasons just stated, and of their own volition discontinued the use of the Plant machines and resumed the use of United Company machines.

Crude and unsatisfactory as Plant's machines were, he had embodied in them many extremely valuable inventions which represented important advances in the shoe machinery art and which were capable of being reorganized and incorporated in the United Company's superior machines. Plant had, however, patterned his machines after the United Company's machines, with the result that he infringed a great number of claims in approximately 100 of the United Company's patents. On the other hand, the United Company had learned that 15 of its machines infringed 20 patents owned by Plant. Also there were 23 interferences pending in the patent office between the United

Company's applications and applications owned by Plant. The record establishes that it was a realization of the great benefits which would result to the industry; first, by incorporating Plant's valuable inventions in the United Company's superior machines, and, second, by avoiding the intolerable conditions which would have resulted from the great amount of litigation, existing and threatening, on account of the infringements by each party of the other's patents, which led to the purchase by the United Company, and that those considerations were the sole reasons for the purchase.

The United Company immediately took up the Plant inventions and so far as possible added them to its machines. These resulted in great savings and increased efficiency. In the case of the welter and stitcher a saving of $800 a year per machine to the shoe manufacturer was effected. Operatives were enabled to earn more money at a less piece price. The cost of operation of the welter was reduced 25 to 30% and at the same time the wages the operative was able to earn were increased 36 to 56%. On the new stitcher the operative was able to earn 24% more, though the piece price was 40% more on the old machine. The new machine was more accurate in its operation and saved the operative's time and strength.

These improvements with their benefits to manufacturers and operatives were added to its machines as rapidly as possible by the United Company and given to the trade without extra charge.

The evidence showed conclusively that the only interest of the United Company was in making the Plant patents of benefit to its customers and the trade.

For a discussion of the Plant purchase, see *infra*, pp. 476–542.

Unfair and Monopolistic Acts.

In its petition and subsequently in a bill of particulars filed by order of the court during the trial, the United States charged the defendants with many alleged instances of conduct claimed to be oppressive, unfair, and tending to monopoly. Of many of these the United States offered no evidence whatever. Many others were entirely abandoned. Of those which the petitioner attempted to prove, the evidence was in some instances so

thoroughly discredited and in others so completely answered that nothing remained on which to justify any complaint.

For a discussion of these alleged acts, see *infra*, pp. 543–552, and Appendix, pp. 88–131.

CONCLUSION.

The history of the United Company during the twelve years of its existence has been the story of the development of an efficient, intelligently and ably managed enterprise which by normal methods has vastly improved and aided the manufacturers of certain types of shoes. Its managers perceived the needs of the trade and supplied them and created the demand for their own machines.

In a decade which has witnessed a most extraordinary increase in the cost of everything that contributes to manufactured products, the cost of machinery for making shoes alone has been lessened.

The company has invented new machines to take the place of hand work, improved and developed the art, enabled the factory operative to earn more with less effort, has treated every manufacturer alike and discriminated against none, and by its reduced costs for machinery has enabled hundreds to engage in the manufacture of shoes who would otherwise have been unable to do so.

During the same period, from 1899 to 1911, the United Company not only eliminated the necessity of paying initial premiums, but reduced the royalty charged for machines for making welt shoes three-fourths of a cent per pair. It reduced the royalty on women's and children's turn shoes 50%, while the improvements, new machines, and more efficient service of the United Company have reduced the cost of making a pair of welt shoes seven and one-half cents per pair.

Meantime, the number of other manufacturers of shoe machinery has increased, and there are many more and larger manufacturers of shoe machinery than there were in 1899 outside the three constituent companies.

No machines or businesses have been destroyed or suppressed, but everywhere waste has been eliminated, machines have been improved, made more efficient and multiplied, and the

cost of making shoes has been reduced by more than the entire royalty which the company receives for the use of its machines for making the highest priced pair of shoes. The royalties on none of its machines have ever been increased.

The United Company's royalty charges are ridiculously small. For the use of all its machines for making men's welt shoes that retail for $3 to $7 a pair it receives less than five and three-fourths cents per pair, and for this sum it furnishes the machines, keeps them in repair, supplies expert mechanical and engineering advice in arranging and planning factories, and instructs operatives. For the same machines and service for making women's and children's shoes the royalty is about one-half the sum above named. For the use of all its machines adapted for making the McKay shoe, upwards of 100,000,000 pairs of which are made annually, including the use of an improved McKay sewing machine, the company receives one and three-fourths cents per pair. Averaging all shoes made by the use of its machines, the company receives in royalty two and one-half cents per pair (R. Vol. 1, p. 503, lines 28–36; p. 866, lines 29–32).

Its success in the field in which it has specialized has been clearly due to the merits of its patented machines, its remarkable service furnished by no other shoe machinery manufacturer, its success in developing new machines, and the favorable terms it offers its lessees.

Those opposed to the United Company, from whom a large part of the testimony for the United States was obtained, consist in the main of a group of shoe manufacturers, grown rich and prosperous by the use of the machinery of the company, who have invested in a competing shoe machinery company, and have formed an alliance for the purpose, if possible, of discrediting and injuring the United Company and forcing it to give the large manufacturer more favorable terms than it gives the small ones.

Their principal spokesman, Charles H. Jones, testified that on May 24, 1906, before he joined the Alliance and when on good terms with the United Company, he gave an interview to a reporter of the Boston *Transcript*, at which time, among other things, he said as follows, referring to the United Shoe Machinery Company (R. Vol. 1, pp. 130–133; P.'s Ex. 147, R. Vol. 4, pp. 1072, 1074–7):—

"It has placed others [*i.e.*, machines] in our hands on a rental system that has saved us a very large investment of capital; it has certainly given more faithful care and attention to the running of the machines and keeping them in order; and in our country factories, where we employ a large proportion of inexperienced help, they have given us more constant and faithful attention in instructing new operators, and in the supervision of the machinery under trying conditions, than we ever obtained from any of the constituent companies. . . . As far as I recall them, the royalties demanded by the company are the same, exactly in amount, that we have always paid. It is only fair to add that they have supplied us with many additional machines to do the minor parts of the work, without any charge at all. These machines have been of considerable value to us, both in the saving of labor and increasing the uniformity of the goods, and are such machines as would undoubtedly have cost us a round sum if the United Shoe Machinery Company had not been in position to furnish them to us gratis. . . . If you wish to know whether the company is charging us an unfair price for tacks and nails, will say that this is entirely untrue. The royalty on some of their machines is derived from the price of the tacks and nails used on them; consequently, the price which they charge for the tacks and nails is certainly greater than the same thing could be bought in the market, for use by hand; but, as a matter of fact, the Shoe Machinery Company charges us no more for tacks to-day than they did many years ago, when tacks in the open market were much cheaper than to-day; in fact, my impression is that they have actually reduced the price of tacks between 25 and 30 per cent., while everyone knows that the cost of tacks and nails in the open market has advanced. . . . *I do not believe any manufacturer who has been honest and straightforward in his dealings with the company can show any clear grievance against the company, or can make out the slightest case of crowding or coercion.* On the contrary, I can say for ourselves, that the question of royalties and machinery, which was formerly one of the most vexatious and exacting departments of our business, has ceased to give us any concern at all. We were formerly obliged to examine new inventions, and were forced to make experiments with machines for months at a time, with the result that we obtained more or less bad work and were put to much useless expense, and the thought and attention of our best men was given to deciding between the merits of the old and new. We were obliged to dicker and trade with every different manufacturer of machinery all the time

with the moral certainty that somebody who had more time and attention to give to it would get a better bargain than we were able to obtain; and with it all there was an enormous and perpetual shrinkage on account of the changes made necessary by the introduction and adoption of machinery that was not thoroughly and satisfactorily developed before being placed on the market. To-day this is all changed. If we want a machine, we simply notify the company. Their agent confers with our foreman. The best machine known for doing the work is installed with little or no expense to us. We are obliged to pay a rental in some cases, which would amount to about the same as the yearly shrinkage in value of the machine if we had had to buy it, but the capital which we would formerly have been called upon to invest is still in our possession for use in our regular business. We are confident that we are getting the machine on as favorable terms as any competitor, and we are enabled to employ our own time and ability in the legitimate branches of our business, and we have not, up to this time, been obliged to pay as much for this privilege as we formerly paid, for the very much less satisfactory condition" (italics ours).

He further said that before a committee on judiciary of Congress in the winter of 1912 it was called to his attention by Mr. Higgins of the committee that he had said:—

"'The terms which the Machinery Company have recently offered their patrons on certain lines of machinery are so liberal that the outsiders cannot compete.'

"'Mr. JONES. That was right.

"'Mr. HIGGINS. Was that changed in 1907?

"'Mr. JONES. No, sir. It has not been changed up to date.

"'Mr. LITTLEFIELD. Hasn't been changed?

"'Mr. JONES. *It has not been changed up to date*'" (italics ours).

And Mr. Jones then said this statement was true so far as he knew (R. Vol. 1, p. 136, lines 2–13).

V. FINDINGS OF FACT BY THE DISTRICT COURT.

The facts as found by the District Court completely refute the charges made by the petition. These findings of fact are not only fully sustained by the evidence, but necessarily follow from the evidence. Upon the basis of these facts there are no doubtful questions of law. Unless, therefore, this court should decline to accept the facts so found, it can hardly be contended by the United States that the decree of the District Court dismissing the petition should not be confirmed.

1. THE DISTRICT COURT FOUND THAT DEFENDANTS DID NOT PLAN TO ACQUIRE A MONOPOLY OF ALL SHOE MACHINERY, AND TO REFUSE TO SELL OR LEASE ESSENTIAL MACHINES UNLESS PRACTICALLY ALL OTHER MACHINERY WAS TAKEN, WHICH IS THE CHARGE ON WHICH THE PETITION IS BASED.

We have shown (*supra*, pp. 6–10) that the charge of the petition is that the defendants having lawful patent monopolies under which they did the greater part of the business of the country in the principal essential shoe machines, viz., lasting machines, welt-sewing and outsole stitching machines, heeling machines and metallic fastening machines, and finding these patents about to expire, planned to extend their monopolies unlawfully, and to obtain an unlawful monopoly of all shoe machinery, by

(1) Acquiring all concerns engaged in the shoe machinery business, and then

(2) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer, except on condition that he take from them practically all other machinery which he required.

The various acts specified in the petition are alleged to be only steps in carrying out this unlawful project, and are material only in so far as they prove the existence of this project, and its carrying out by the defendants.

A. The District Court found that the Defendants did not plan to acquire all concerns engaged in the shoe machinery business.

As to this charge the District Court found:—

(R. Vol. 1, p. 1114.) "Referring to the allegation that the respondents 'conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery,' the utmost that the case can in any event be said to show is a purpose to acquire control of certain machinery connected with bottoming shoes, or later of certain clicking or eyeletting machines; and of this the United States became during the trial so far satisfied that it asked permission to amend the above allegation accordingly."

B. The District Court found that the Defendants did not plan to acquire all Concerns engaged in the Business of manufacturing Bottoming Machines, as to which the United States during the Trial limited its Charge of Monopoly.

As to this charge the District Court found:—

(R. Vol. 1, p. 1141.) "It further appears that, during the same period of time the cases wherein the business of a concern producing shoe machinery was offered to the United Company and refused by it were far more numerous than the cases of acquisition specified by the petitioner. As to several, at least, of these instances of refusal, the evidence warrants the belief that the business offered and refused much exceeded in importance to any such scheme of monopoly as now charged, any of the specified acquisitions. The cases in which inventions were offered and refused during the same period were many times more numerous than the patents or inventions acquired. If a monopoly of all machinery for attaching bottoms to uppers was really undertaken, it is hard to believe that opportunities would have been neglected, as they were, such as those for acquiring the Union lock-stitch machines or the welters and stitchers of the R. H. Long Company, all of them patented machines for use on welt shoes; or for acquiring a considerable business in producing McKay sewing machines, though these were unpatented and not capable of use on shoes of that kind."

C. The District Court found that the Defendants did not refuse to sell or lease Essential Machines unless practically all other Machines were Taken.

As to this charge the District Court found:—

> (R. Vol. 1, p. 1155.) "As to the allegation that the defendants contemplated a policy of refusal to lease except on condition that the lessee buy or lease of them 'practically all other machinery of whatever kind necessary or useful' to him as a manufacturer of shoes, it requires no further notice, now that the charge of restraint or monopoly in 'any and all kinds of shoe machinery' has been abandoned. The evidence abundantly shows that nothing of this kind was ever contemplated, attempted, or done, and that there was never any justification for the charge as made."

2. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY WAS NOT FORMED TO ELIMINATE COMPETITION BETWEEN ITS CONSTITUENT COMPANIES AND THAT IT DID NOT ELIMINATE SUCH COMPETITION.

The United States charges that the United Company was formed to eliminate competition between its constituent companies or that the elimination of such competition made the formation of the United Company unlawful.

The only competition claimed by the United States was an alleged competition between the Ideal Lasting Machine of the Goodyear Company and the Chase machine and an experimental Hand Method Welt Lasting Machine of the Consolidated Company, and between the welt machines of the Goodyear Company and the machines of the Eppler Company.

The District Court found that the real motive for the formation of the United Company was an effort after greater efficiency, and that if any competition could be said to exist between the constituent companies, it was trivial and of no practical importance.

The District Court found as to the business of the constituent companies:—

> (R. Vol. 1, p. 1128.) "Up to the time of their union each constituent concern had been dealing, generally speaking, in a line of shoe machinery for the most part distinct from that dealt in by the others."

As to the alleged competition between the Chase and the Ideal machines, the District Court, after showing that the Chase machine was adapted and used for men's welt shoes, and that the Ideal machine was adapted and almost wholly used for women's welt shoes, concluded:—

> (R. Vol. 1, p. 1130.) "That there was any attempt to put either machine into the market as against the other does not appear. No competition between the two in the usual sense of the term is shown. . . . I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines."

As to the alleged competition between the Ideal machine and the experimental Hand Method Welt Lasting Machine the District Court said:—

> (R. Vol. 1, p. 1130.) "With still another laster with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed."

With reference to the alleged competition between the Goodyear Company and the Eppler Company, the District Court after referring to the differences between the machines of the two companies, and the differences in the character of shoes made by them respectively, and the insignificant business done by the Eppler Company, said:—

> (R. Vol. 1, p. 1131.) "The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful."

The District Court found as to the reasons for the formation of the United Company as follows:—

> (R. Vol. 1, p. 1131.) "No reason appears for supposing that the real purpose for which the constituent companies were

brought together, as disclosed not only by the evidence regarding all the circumstances as they existed in 1899, but by the evidence as to the course of development thereafter pursued by the United Company, was other than that stated in a circular letter to the Goodyear stockholders issued February 8, 1899, the day following the organization of the United Company (Petitioner's Exhibit 152). This dwelt upon the advantages to be secured by putting into one control 'the most efficient types' of shoe machinery."

The District Court stated its conclusion as follows:—

(R. Vol. 1, p. 1132.) "For the reasons stated, I am unable to find the charge that the United Company was unlawfully formed because of competition which it destroyed sufficiently supported by the evidence. It would, in any case, be difficult to regard this as sufficient ground for a decree dissolving the company into its component parts under a bill not filed until more than twelve years had passed since the combination complained of was accomplished. During this period, as the evidence shows, investments of a very large amount had been made, not merely by the defendants but also by the outside public, in the extension and development of the company's united business, the component companies passed out of existence, and the machines as made by them in 1899 were so far developed, improved upon, or added to by the United Company as now all to have become obsolete. To put the parties or the public back into that state of the prior art which existed in 1899 is, of course, an impossibility."

3. THE DISTRICT COURT FOUND THAT THE "BASIC" PATENTS OF THE CONSTITUENT COMPANIES WERE NOT ABOUT TO EXPIRE.

The petition charged that the patents held by the constituent companies were about to expire in 1899. This was recited as a reason for the formation of the United Company.

The District Court held that this charge was not proved and that it was not a motive for the formation of the United Company.

(R. Vol. 1, p. 1133.) "At the final arguments, however, on June 2, 1914, the statement was made by petitioner's counsel that so many machines and patents were involved that examination of more than a very few had been impossible. It seems obvious, therefore, that the allegations in

question could not have been founded, when they were made, upon any adequate or complete investigation of the facts.

"Nor can it be said that they have been sustained by the evidence before the examiner. It seems unnecessary to spend time in considering what patents could and what could not properly be regarded as 'basic,' in view of the fact that, of the patents principally relied on as such by the petitioner, those protecting the welter and stitcher of the Goodyear Company, there were two, one upon its welter, the other upon its stitcher, which ran until 1908 and 1909, respectively. The petitioner's final position, indeed, as to what was proved by the evidence before the examiner, was by no means that taken in the allegations referred to, but was only that the two machines above mentioned, and others protected in 1899 by patents not insisted on as 'basic' patents, became free to anyone to make or use—without any of the patented improvements added to them by the United Company since 1899, but nevertheless capable of successful commercial use—before the filing of this petition in 1911. In view of all the above, I must regard the allegations here in question as not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organization of the United Company, or any of its subsequent doings."

The District Court further found that the machines of the United Company have always been patented.

(R. Vol. 1, p. 1115.) "At any rate it must be accepted that from the beginning the machinery offered by the respondent corporation was, in all its essential elements, protected by patents, and that there has been no proof to the contrary. So that, for the purposes of this case, the machinery has been mainly, if not entirely, of that character."

4. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT TAKE OVER THE CONSTITUENT COMPANIES AT EXCESSIVE PRICES.

The petition charged that the United Company took over its constituent companies "at values far in excess of real worth" (R. Vol. 1, p. 995).

The District Court found that no proof of any kind was offered in support of this charge.

(R. Vol. 1, p. 1128.) "To allegations found in the petition (p. 18) [p. 995] that the business and property of the

Goodyear Company, the Consolidated Company, and the McKay Company were taken over by the United Company 'at values far in excess of real worth,' reference is made at this point only in order to state that no proof of any kind was offered in support of them, it was not argued on the petitioners' behalf that they were true, and they therefore require no further notice for any purpose in the case. There can be no doubt that each concern had an established business already of great value and possessing great possibilities of development, or that each also owned patents and property of very great value in connection with its business."

5. THE LEASES.

A. The District Court found that the Leasing System was of Great Advantage to Shoe Manufacturers.

(R. Vol. 1, p. 1171.) "While in the early stages of the case there were some criticisms of any leasing system as opposed to a system of selling, the very great advantages to shoe manufacturers in general of being provided with machine equipment of the highest efficiency, and of being relieved of individual effort in that most costly and difficult part of manufacturing, and the general satisfaction with the system were so overwhelmingly proved, that all doubt that the leasing system in general is unimpeachable has been removed."

B. The District Court found that the United Company did not discontinue the Sale of Machines.

The petition charges that the United Company "discontinued the sale to boot and shoe manufacturers" of machines and devised arbitrary leases (R. Vol. 1, p. 997).

The District Court found that this charge was untrue and without justification.

(R. Vol. 1, p. 1153.) "None of the constituent companies were in 1899 selling outright the patented machines they manufactured. The bill alleges the contrary, and charges that one of the steps taken after 1899, in pursuance of the alleged scheme to restrain or monopolize, was to discontinue sales and compel leases. An attempt to support this charge by evidence wholly failed. Nothing of the kind was done, nor is it easy to see what grounds for making the charge could ever have been supposed to exist."

C. The District Court found that the Leases did not compel a Shoe Manufacturer taking Machines previously put out by one of the Constituent Companies to take Other Machines not previously put out by such Constituent Company.

The District Court found that the evidence completely disproved this charge.

> (R. Vol. 1, p. 1162.) "The alleged plan of a refusal of what before could be had separately, as a means of compelling the taking of other machines, was a principal ground for invoking the Sherman Act.
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> "The leases in evidence, as documents, fail to substantiate the charges either as to the contrivance of such a plan or as to its execution. It appears that after the consolidation there was no refusal or imposition of conditions as alleged, but that the defendants continued to give manufacturers terms which were substantially the same as before and in some instances better than those offered by the constituent companies before the consolidation. This is shown not only by the exhibits of 'independent' leases but by the testimony of officers of the company."
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> (R. Vol. 1, p. 1163.) "The restricted or prohibitive leases do not in themselves as documents prove the denial of the right to procure, as before, independent leases for individual machines. As matter of fact, independent leases which did give the right to use the machines with machines of other kinds, made by other machinery manufacturers, were always procurable. This was the general rule, and if there were any exceptions they were, so far as appears, inconsiderable.
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> "It is a result of the consolidation that the United Company offers more attractive contracts for a group of machines of different kinds than for machines of one kind only; but as it still offers the contract for machines of one kind on as good terms as before it is difficult to see how that is detrimental to the shoe manufacturers.
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> "The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would also use others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had no choice, or in disregard of the fact that it was merely an

alternative form of lease. As the leases prove no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge."

D. The District Court found that the Provisions in the Leases were not adopted by the United Company for the Purpose of Monopolizing or Excluding the Use of Competitors' Machines.

The District Court found that the United Company made no changes in the leases as used by the constituent companies in pursuance of any arbitrary plan, but, on the contrary, the changes in each case were made because special circumstances had come to render it desirable; that the changes made in general tended to relax previous restrictions and to reduce the cost to lessees of installing the machines (R. Vol. 1, p. 1158); that the provisions were obviously prompted by the purpose of developing the company's business by offering the machines on terms more advantageous to users and were not intended to accomplish an arbitrary exclusion of competitors' machines. The District Court further found that the provisions in the leases were auxiliary to asserting rights unquestionably belonging to the lessor. It also found that there were sound mechanical and business reasons for grouping together machinery as it is grouped by the defendants' leases.

The following are a few extracts from the court's findings on this subject:—

(R. Vol. 1, p. 1159.) "Considering the clauses objected to in the light of what preceded them, and of the circumstances attending their adoption by the defendants, the petitioner has not, in my opinion, proved that the defendants' object in adopting them was the prevention of competition by others. Such prevention might, indeed, follow from the more favorable terms offered lessees, but modifications made in the existing system for the direct purpose of otherwise better adapting it to exclude competitors, would have been different in character from the modifications represented by these clauses.

"Not only would it have been unreasonable, as has been said, to expect the defendants to substitute a wholly different system from the leasing system which they found in use, but the evidence affords no reason to believe that anything

of the kind was desired by manufacturers in general. The advantages to them of not having to tie up capital in patented machines, and of paying for the privilege of their use only according to the amount of use, were advantages which they cannot be supposed desirous of surrendering.

"Modifications in the contracts offered them tending, as these are shown to have done, to enable the company, through provisions adapted to increase the number of shoes worked on by each machine, to lessen the royalty charged per pair, and to diminish or dispense with the initial payment before required, were so obviously prompted by the purpose of developing the company's business through the perfectly legitimate method of offering them on terms more advantageous to users, that it would be unjust to treat them, on evidence no stronger than that here presented, as really intended to accomplish an arbitrary exclusion of users from any dealings with others.

"If it were made to appear that the leases containing these clauses accomplished in and of themselves an unlawful restraint of trade, or necessarily secured to the defendants an unlawful monopoly, the intent to accomplish these results would, of course, be imputed to the defendants without regard to their actual purpose in adopting and using them. But the evidence seems to me insufficient for the conclusion that such results are so accomplished. The contention that they are fails, in my opinion, to take into account the defendants' rights in the field lawfully secured to them in the various patented improvements they had lawfully controlled and combined; and fails also to concede them proper scope for the rights properly incidental to their control of said improvements, to make such agreements with their lessees as would best promote the efficiency in combined operation of the machines leased, and thereby best enhance and safeguard their just return therefrom in the form of royalties."

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(R. Vol. 1, p. 1187.) "The clauses objected to are all subordinate and auxiliary to maintaining rights which unquestionably belong to the defendants; to charge their own prices and to choose as customers those who will pay those prices.

"The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them. Other modes, such as the requirement of arbitrary payment for the full period of the patents, would escape all such attacks. The attack arises from the attempt

to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions."

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(R. Vol. 1, p. 1184.) "If leases for machines for use as a group are offered and accepted for sound business reasons, and if, because of the greater productivity of a group and of the less cost of maintenance, better prices can be made, the defendants and the shoe manufacturers need not forego the making of such contracts for the sake of possible competitors who may have only single machines to offer. Contracts for large equipments of machinery, furniture, and other articles are too common to be condemned for such reason. . . .

"The grouping of machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them as groups and a sufficient business reason for dealing with them as groups.

"That there are sound mechanical and business reasons for grouping together machinery as it is grouped by a series of prohibitive leases is abundantly established. The United States fails to show that the grouping of the machines is in fact made merely as an unlawful artifice and not because of sound mechanical and business reasons. It has referred to certain leases in which there appears to be no necessary mechanical relation between some of the machines grouped. Thus to a limited extent it may be true that the grouping is for the purpose of trade or of contract rather than because of the close relation of the machines in process of manufacture; but this is insufficient to show that the principal purpose was not, as is contended by the defendants, to secure by efficient co-operation of machines a larger production of shoes."

E. The District Court found that the Leases did not result in the Arbitrary Exclusion of Competitors' Machines whatever the Intent with which they were Adopted.

The District Court found that the defendants' machines were used because of their merits and not to any substantial extent because of the lease clauses.

(R. Vol. 1, p. 1187.) "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer. To say that this is due, in any substantial degree, to the fact that its leases run beyond the terms of pat-

ents, or because of the exclusive use, prohibitive or cancellation clauses, rests largely, if not entirely, upon assumption. But that the business of these defendants rests upon the lease provisions objected to in such a substantial amount as to constitute any factor of independent force in securing or maintaining a monopoly does not appear."

F. The District Court found that the United Company did not exact Exorbitant Prices for Duplicate Parts and Exorbitant Return Charges.

The petition charges that the United Company's leases required lessees to obtain duplicate parts used in repairing the United Company's machines from the United Company and exacted "exorbitant prices" for such parts. It also charged that the leases required payment of return charges upon the termination of the lease which in some cases amounted to approximately the original cost of building the machines (R. Vol. 1, p. 997).

The District Court held there was no evidence justifying these charges.

> (R. Vol. 1, p. 1155.) "The evidence failed to show that lessees from the United Company had ever been compelled to pay exorbitant charges for repair parts, etc., or to pay any unreasonable return charges on leased machines."

G. The District Court found that the Leases have not been Arbitrarily Enforced.

The petition charges that the leases were continually, persistently, and arbitrarily enforced (R. Vol. 1, p. 997).

The District Court found that there was no proof of this charge and that, on the contrary, it appeared that the United Company had been moderate with respect to such enforcement.

> (R. Vol. 1, p. 1114.) "There is no proof that the United Shoe Company has enforced its leases in any arbitrary or unreasonable manner. On the whole, it seems to have been moderate with reference to such enforcements, and the number of cases in which anything in the way of a forfeiture has been demanded has been so small that, on looking over the great mass of the operations of the United Shoe

Company, such enforcements have been so few as to be practically negligible; and there is no evidence that the duplicate parts, extras, and other incidentals furnished by the United Shoe Company have been sold at exorbitant prices fixed by it, or that the cost involved in the return of machinery has, in any way, approximated its original cost, unless, possibly, in some exceptional instances which have not caught the eye of the court. We do not think the case as developed has turned on these particular allegations."

6. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT MAKE ACQUISITIONS OF COMPETING CONCERNS WITH INTENT TO MONOPOLIZE.

The petition charges that the defendants in pursuance of their purpose to monopolize the shoe machinery industry absorbed many competitors. A list of 59 such acquisitions is set forth in the petition.

The District Court considered the purchase of the patents from Thomas G. Plant separately. As to the 58 other acquisitions it found that the greater part of them were acquisitions of concerns dealing in supplies or machines not made by the United Company and, therefore, not competing with the United Company, and that as to the few remaining acquisitions it was not shown in any case that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company of such consequence as justifies either the conclusion that the acquisition was for the purpose of suppressing competition or the conclusion that a material restraint of trade was thereby accomplished, or that such acquisition contributed anything essentially important to the success obtained by the United Company.

The court after dismissing as immaterial a number of unimportant acquisitions because not related to the classes of machines to which the United States now limits its claim of monopoly or because no foundation for a charge of competition with the United Company existed, said:—

(R. Vol. 1, p. 1139.) "The instances then remaining in which the United Company was at the time producing or trying to develop for production a patented machine for doing work

more or less similar to that for which the invention of the machine acquired was intended, are the only ones capable of being regarded as of any possible significance for the purposes of the petitioner's case. In all such cases it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding[ed] in rendering commercially successful.

"No case, however, is found among the acquisitions of the character last described wherein it has fairly been made to appear that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company, of such consequence as justifies either the conclusion that the acquisition was for the purpose of suppressing such competition, or the conclusion that a material restraint of trade was thereby accomplished. In most of the cases of this sort the machine or device acquired was claimed to infringe patents belonging to the United Company, or the patent acquired was one which some machine belonging to it was claimed to infringe, or the application acquired was in interference with applications of its own; and the object of the acquisition is shown to have been the avoidance or compromise of pending or threatened litigation. In such cases it is still less possible to say that any wrongful absorption of a 'competitor's' business has been proved.

"The acquisitions above regarded as the only ones of any possible significance in the case were made at various separated times during the period of eleven years or thereabouts above referred to. It can not be said that the later ones were in contemplation when the earlier acquisitions were made, because there is nothing to show that the circumstances attending any of them were such as could have been anticipated as likely to occur at the time of the preceding acquisitions. The most that can be said is, that as, in the progress of events, the needs of the United Company became manifest and these opportunities presented themselves, they were availed of.

"Taken together, the acquisitions of this class are, in importance and amount, only of a consequence relatively small in proportion to the entire field then lawfully belonging to the United Company. It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the

development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build. Speaking of them generally, it may be said that the invention or machine obtained required further development in the company's hands before it could be properly used."

7. THE DISTRICT COURT FOUND THAT THE PURCHASE FROM THOMAS G. PLANT WAS NOT MADE IN PURSUANCE OF THE ALLEGED SCHEME TO MONOPOLIZE.

The District Court found that the purchase of patents from Thomas G. Plant in 1910 was made by the United Company to obtain the benefit of Plant's inventions and to settle and avoid serious patent litigation, and not for the purpose of suppressing competition.

(R. Vol. 1, p. 1142.) "The evidence does not show Plant to have been a competitor in the ordinary sense. He was not carrying on any going business in shoe machinery. He was neither producing his machines nor supplying them to users upon any commercial scale, nor was he prepared so to supply them, though he had issued an illustrated catalogue of them. The petition alleges that he had been inventing and patenting his improvements for at least two years before 1910. In one factory only were machines embodying them being operated; this belonged to the Thomas G. Plant Company, whereof he owned a majority of the stock. He installed them there in May, 1910, displacing the United Company's machines previously used there in order to do so. Before he installed them there, he had offered to equip two other factories with them without requiring royalties for their use, but these offers had been declined."

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(R. Vol. 1, p. 1143.) "The evidence regarding Plant's negotiations with the defendants sufficiently proves that they were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else; but that, on the contrary, all the efforts toward such a purchase were made by him. The first overtures toward it came from him; he began them soon after he had put his machines into the Plant factory; they led to interviews, all of which he sought and at which his proposals were declined without encouragement to renew them. Nowhere in the evidence is any

indication found that before Plant's overtures were thus made any purchase whatever from him had been suggested to or considered by the defendants.

"Whatever the merit of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially successful in September, 1910, or to have been capable of such success in their then stage of development. They are shown to have been lightly built, not adapted to produce men's shoes, and by no means satisfactory in making women's shoes, the kind of work to which the Plant factory was devoted. The evidence is uncontradicted that, while operated there, they fell behind the United Company's machines, which they had supplanted, in efficiency—that breaking down and defective work was more frequent with them—and the cost per pair of making shoes with them distinctly greater. Though some of them, as later developed and improved by the United Company, proved to have merit, the most that can be fairly said of them in 1910, on the evidence, is that they were more or less promising experimental machines. There was no complete set of them for combined operation; for that purpose several important machines were yet to be developed. In the state in which the United Company took them over, they were not found capable of profitable use. Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshold of extensive competition with the United Company.'"

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(R. Vol. 1, p. 1144.) "The terms finally agreed on with Plant were so much more favorable to the United Company than any he offered when he first approached them, and so inconsistent with his previous attitude toward them, as to leave no reasonable ground for believing that the defendants had ever sought, expected, or planned for the transaction as carried out. And in what they were thus unexpectedly enabled to acquire from him, there was included so much that was plainly of far greater consequence to them than could have been the avoidance of such competition as they can reasonably be supposed to have apprehended from his incomplete and undeveloped line of inventions—patents and machines also included—as to leave no sufficient ground for believing that avoidance of competition was their principal motive in accepting the opportunity offered. The normal, natural, and obvious business reasons, of wholly different kinds, why they should accept instead of refusing it, appear to have been so complete and sufficient as to

render the conclusion unreasonable that it was accepted in order to escape competition."

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(R. Vol. 1, p. 1145.) "The evidence that among these patented improvements obtained from Plant there were enough of sufficient value, in the defendants' hands and used as they only could have used them in further developing and perfecting the machines they were then producing or trying to produce, to make this part of the total acquisition extremely profitable to the United Company, was not met by any sufficient proof to the contrary. The agreement to take the patents and inventions was not made until after a careful examination and report as to their merits. The belief thereon founded that, used as above, they would be worth acquiring upon the terms proposed, is shown to have been justified by the result, and the acquisition can not be criticised so far as it was occasioned by that belief. As developed and added to its own machines by the United Company, some of the inventions acquired have proved to be of a value such as fairly justifies their claim that the patents acquired were the controlling feature of the purchase.

"The evidence shows also, without serious contradiction, that one result of the bargain made with Plant was to relieve the United Company from an amount of litigation, then pending or in prospect, which would otherwise have burdened and hindered it to an extent far greater than it had ever had reason to apprehend from any litigation with which it had before been concerned."

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(R. Vol. 1, p. 1145.) "It was part of the bargain with Plant, or followed from it as a result, that the above controversies were settled or avoided. That the prospect of accomplishing this result was a further normal, natural, and powerful inducement to the agreement made with him can not be reasonably doubted. In so far as the agreement was thus intended, no criticism of it can be valid.

"The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition. No such competition or prospect of competition at the time is proved as would justify such a conclusion. The competi-

tion threatened by Plant and his efforts to induce the defendants, in order to avoid it, to buy his machines and patents by themselves were wholly ineffectual. They met with nothing but refusal on the defendants' part to consider his proposals. It was not until he offered, through the intermediary he last employed (Smith), the shoe manufacturing business of the Plant Company as well that the defendants consented to deal with him.

"While it may have been his plan to realize a profit by threatening competition, it was not until this proposition, based upon tangible property of substantial value and of patent rights, was made, that any sale was effected. The property acquired being proved to have been worth the amount paid, the argument that the defendants were so anxious to hold a monopoly as to be willing to pay $6,000,000, or any other large sum, in order to get rid of a competitor, or that this was done in pursuance of a general plan conceived in 1899, fails completely."

8. THE DISTRICT COURT FOUND THAT THE ACQUISITIONS WERE NOT MADE AT EXORBITANT PRICES.

The District Court held that this charge was not established.

(R. Vol. 1, p. 1147.) "The charge that competitors have been bought out at 'exorbitant prices' is found not established in the case of the Plant acquisition, as has just been stated. Nor is evidence found sufficient to establish it in the case of any one of the numerous minor acquisitions specified in the petition. It has not been insisted on in argument that this charge is proved as to any one of them."

9. THE DISTRICT COURT FOUND THAT UNLAWFUL COVENANTS WERE NOT TAKEN FROM THOSE WHOSE BUSINESS WAS PURCHASED OBLIGATING THEM NOT TO COMPETE AND TO ASSIGN INVENTIONS TO UNITED COMPANY.

The District Court held that these covenants did not exceed what the law sanctions as necessary to protect the parties.

(R. Vol. 1, p. 1141.) "The petition charges generally that covenants in writing were taken from substantially all those whose business was acquired as specified, (1) not to engage for long terms of years in competition with the

defendants in commerce in shoe machinery, (2) to convey all inventions or patents in shoe machinery which they might make or acquire during such terms to the defendants.

"These charges are not justified by the documents themselves, which have been produced. They are by no means uniform in their terms, there was no generally prescribed form for them, nor were they all the work of the same hands. Each was framed according to the circumstances of the particular transaction. In many cases, at least, the agreements required only that there should be no competition in the line of business involved in the particular transaction, or that all patents or inventions thereafter made in the particular line to which the acquired invention belonged should be transferred. There are enough of the agreements in these cases which are without covenants of the kind described, to leave the allegation unjustified that such covenants were required in substantially all. And of the instances wherein covenants are found in any degree answering the alleged description, it may be said generally that none are clearly shown to have exceeded what the law permits. Still less reasonable would it be to regard what is found in them as indicating a consistent purpose on the defendants' part to exclude all those with whom the agreements were made from all possible future competition with the United Company."

10. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT COMMIT OTHER UNFAIR, MONOPOLISTIC AND OPPRESSIVE ACTS.

In paragraph VI of the petition (R. Vol. 1, p. 999) the defendants are charged with committing various other acts described as "unfair, oppressive," and "monopolistic." These acts are not specified in the petition. A bill of particulars setting forth such alleged acts relied on by the United States was filed during the trial (R. Vol. 1, p. 1075). As to the majority of acts so specified in the bill of particulars no evidence whatsoever was introduced by the United States. As to those acts in support of which the United States attempted to introduce evidence, comparatively few were relied upon in the argument before the District Court or in the brief of the petitioner filed in the District Court (R. Vol. 1, pp. 1146–1147).

The District Court sets forth in its opinion the facts in respect to those transactions which were relied upon by the United

States at R. Vol. 1, pages 1147–1152. It then summarizes its findings in respect to these charges as follows:—

> (R. Vol. 1, p. 1152.) "The history of the proceedings in this case indicates that efforts which may fairly be described as extraordinary have been made to bring before the court, so far as possible, all sayings or doings of any of the numerous defendants or their representatives, during the period beginning with 1899 and ending with 1911, which might afford ground for charging them with oppressive, coercive, or like unfair conduct toward competitors of the United Company or the public. In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignificant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects."

II. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT MAKE ENORMOUS AND UNREASONABLE PROFITS.

The petition charges that the United Company made "enormous and unreasonable profits" as a result of the alleged unlawful acts charged in the petition (R. Vol. 1, p. 1026).

The District Court held that this charge was not established:—

> (R. Vol. 1, p. 1135.) "No support is found in the evidence, for the charge in the petition (Par. X) that 'enormous and unreasonable profits' have been made. This allegation is made in connection with and apparently depends upon the allegation of which, as above stated, there is no proof, that the properties combined in 1899 were taken over at excessive valuations. Nothing shown by the evidence warrants the conclusion that profits unreasonably out of proportion to the extremely large cost at which the business has been developed and is maintained, the great investment of capital it has required, and the enterprise, inventive skill, and business ability devoted to it, have been realized. Nor has it been made to appear that the charges made for the privilege of using the machines are exorbitant or unreasonable; especially in view of the great benefit to manufacturers using them, in lessening their cost of production."

12. THE DISTRICT COURT FOUND THAT THE DEFENDANTS DID NOT HAVE AN UNLAWFUL PLAN AND PURPOSE.

The petition charges an unlawful plan to monopolize shoe machinery (R. Vol. 1, p. 994). The United States contended in the District Court that, even if all the acts and transactions as to which evidence was introduced were lawful if considered singly, the unlawful plan in pursuance of which it was alleged they were carried out made them unlawful.

The District Court held that there was no direct evidence of such unlawful plan, that whether it existed must be judged by "the necessary results of all the steps proved to have been taken by them [the defendants] as a whole" (R. Vol. 1, p. 1133), and that the evidence disclosed no unlawful purpose.

> (R. Vol. 1, p. 1133.) "Of their actual intent in forming it and in taking the various steps which they have taken as above in connection with it, there is no direct proof overcoming their denial that it was such as the petition charges, and no way of judging except from the necessary results of all the steps proved to have been taken by them, as a whole."
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> (R. Vol. 1, p. 1119.) "Nevertheless, we fail to find in the development of the United Shoe Machinery Company, and its operations, any support for the alleged charges in the bill of intended oppression, arbitrary conduct, or anything of that nature, especially so far as any allegations cover any attempts to destroy or cripple competitors. Looking at the great mass of facts proven in the case, and the immense number of transactions of the United Shoe Machinery Company, the evidence offered in that direction is so ineffectual that its weakness furnishes of itself satisfactory proof against what was intended to be established thereby. We find no evidence of what was shown especially in the Tobacco Company cases, namely, a purpose to destroy what could not be acquired by straightforward methods. The fact that the United Shoe Company has acquired so large a percentage of the business of the country to which it devoted itself comes so largely from the use of extraordinarily competent methods as to shut out from the eyes of the impartial investigator suggestions of other methods. So we lay aside that part of the case, and deal only with the proven facts, and the legitimate results of those facts, with

little consideration, however, for any charges in this connection, or elsewhere, of intended oppression or unreasonable course of procedure, or of results which can be attributed to any unworthy motive."

13. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY HAS NOT OBTAINED AN UNLAWFUL MONOPOLY.

A. The District Court found that the United Company has no Monopoly of all Shoe Machinery.

The petition charges a plan to monopolize all shoe machinery and that such monopoly has been obtained. As we have stated above, the United States has abandoned this charge during the course of the trial. The District Court said:—

(R. Vol. 1, p. 1127.) "The restraint or monopoly alleged in the petition is restraint or monopoly of interstate commerce in 'any and all kinds of shoe machinery,' *i.e.*, in shoe machinery generally.

"But it appeared early in the trial that no such charge could be proved, because neither the business of the component companies in 1899 nor that of the United Shoe Company from its beginning until the bill was filed related to 'all kinds of shoe machinery.' Both were always limited to certain kinds only. This was finally conceded, and the field of trade in shoe machinery with which this case is concerned limited by concession of the complainant's counsel to machines of the following kinds: (1) Lasting or 'pulling-over' machines, used for adjusting and attaching the upper of a shoe in process to a last; (2) machines for preparing bottoms and heels and fastening them to uppers; (3) machines for finishing bottoms and heels after they have been so fastened; (4) eyeletting machines for inserting eyelets in uppers; (5) 'clicking machines' for cutting out uppers. The 'shoe machinery' as to which restraint or monopoly is charged, therefore, includes machines of the above kinds only, for the purposes of all questions hereinafter considered. It is to be noted that such machines are insufficient for the making of a complete shoe, and that no attempt to control machines for stitching uppers is charged."

B. The District Court found that the United Company has no Monopoly of Bottoming Machines to which the United States limited its Charge during the Trial.

The District Court found on this point:—

> (R. Vol. 1, p. 1135.) "It is nevertheless true that, considering the whole field of machinery for stitching together the bottoms and uppers of shoes, there has all the time been free competition. The use of other machinery to accomplish the purpose has always been open to shoe manufacturers. In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate means—better machines. Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success."

C. The District Court found that the United Company's Success has been due solely to the Merits of its Patented Machines and the Service it renders with Them.

The District Court found that the success of the United Company's machines was due to the merits of the machines themselves and the service rendered with them, and that the "proof is complete" that such success "has been in fact reached by the use of methods entirely lawful" (R. Vol. 1, p. 1136).

> (R. Vol. 1, p. 1187.) "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer."
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> (R. Vol. 1, p. 1134.) "The combined business of the component companies as conducted and developed since 1899 by the United Company, related most largely to the machines used in producing welt shoes. The use of such machines (and thereby the production of and demand for such shoes) is shown to have been very greatly promoted by patented improvements made upon the machines of 1899 by that company, greatly increasing their efficiency and capacity, and by improvements effected by that company since 1899 in the methods of manufacturing them. It appears that the

total number of welt shoes produced in this country in 1899 was about 17 million pairs; in 1910 about 86 million; the total production of all kinds of shoes increasing during the same period from about 175 to about 280 million; the Goodyear welt shoe being all this time in direct competition with the McKay sewed shoe.

"It is further shown that the above improvements in the machines and their manufacture were accomplished by means of constant investigation, experiment, testing, and invention by competent experts employed by this company, involving a very large expenditure on its part. These efforts were directed not only toward making each machine as efficient as possible by itself, but also toward increasing its efficiency for so performing its own operation upon a shoe as best to combine it with the work upon the same shoe by the numerous other machines required for performing the remaining necessary operations, in order that all the many successive operations performed should cooperate toward the most economical and efficient accomplishment of the best final result in product. And besides thus developing and improving the machines of 1899, the company kept pace with the requirements of manufacturers by the invention and production of many other machines or improvements, unknown in 1899, as the need for them became apparent.

"There is no question that the above-described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufacturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion.

. . . . . .

(R. Vol. 1, p. 1135.) "If there is any sense in which the result attained as above can be called a 'monopoly,' it does not follow, in view of the circumstances shown, that the defendants have either restrained trade or been guilty of monopolizing or attempting to monopolize within the meaning of the act. Nor can I regard the case as one in which any presumption arises, from the fact that so large a proportion of the users of these machines use the defendants'— that the defendants have committed any of the above forbidden acts in accomplishing the above result. The proof is too complete that it has been in fact reached by the use

of methods entirely lawful, the leading features whereof are below indicated. As has been said, the field they have occupied is a special field, and the product for which their machinery is adapted is of higher price and quality than the product of the machinery of others.

"The business which the defendants have developed and established is not, and has never been, one in which everybody might freely engage. No one else could lawfully make or use machines containing improvements covered by the defendants' patents. Nor can it be said that the demand for such machines which they have supplied existed independently of the defendants; on the contrary, they have created it by the new methods of shoe manufacture which their improvements have educated and enabled manufacturers to follow. It cannot justly be said that the case is one in which a field of commerce normally belonging to all has been captured by a single concern. The principles applying in such cases can not justly be applied here. In so far as the defendants' occupation of the field has been due to the greater desirability of their patented machines and to the superiority of their methods of making and supplying users with such machines, no reason appears for holding it unlawful, whatever its extent.

"Supplementing the production and development of its various patented machines, methods introduced by the United Company for keeping them in efficient operating condition while in the hands of their various users throughout the country have most effectively aided the development of its business. It has undertaken not only to train operatives in the proper use of the machines and to secure the prompt repair of any machine disabled in use, but also to supply each user from time to time with the latest improvements, either by adding them to the machines or by substituting improved for superseded machines, without extra cost to the user. This service it has furnished by maintaining at central points bodies of competent employees who attend to the above matters whenever and wherever they are notified by users that such attention is desired.

"A system of standardization, introduced since 1899, whereby corresponding parts of the various machines have been so constructed as to be interchangeable whenever possible, has, in connection with the service furnished as above, effected a great reduction in the time lost by machines in waiting for repair. The introduction of such a system could not have been effected by the component companies because each carried on the manufacture of its machines at a different place. While each of them rendered

to its users some service of the character described, this was done to a limited extent only; and the maintenance of any such system of rendering it as the United Company has pursued would have been impossible to them because of the heavy outlay involved.

"The service secured to users of the machines by the system just described has been furnished to users without charge in addition to the royalties paid by them under the leases of their machines. For duplicate parts, extras, etc., required in operation, repair, or renewal, the terms of the leases required payment. Allegations in the petition that exorbitant prices were charged for such duplicate parts, etc., were not sustained by the evidence, and have not been insisted on in argument.

"That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason."

VI. THIS CASE WAS HEARD ORALLY, ALL MATERIAL TESTIMONY INTRODUCED BY THE UNITED STATES WAS CONTRADICTED BY THE DEFENDANTS' TESTIMONY, THE RECORD IS BEFORE THIS COURT IN A CONDENSED FORM, AND THE FINDINGS OF FACT BY THE DISTRICT COURT WHICH HEARD THE WITNESSES SHOULD BE ACCEPTED BY THIS COURT UNLESS MANIFESTLY WRONG.

I. THE LAW.

While an equity appeal brings to the Appellate Court questions both of law and of fact, the general principle has nearly always been recognized in equity appeals, whether the evidence was taken in the court of first instance by deposition or by oral testimony, that the findings on matters of fact of the lower court are presumptively correct and should not be reversed on appeal unless manifestly wrong.

Dade v. *Irwin*, 2 How. 383, 391, per Story, J.
Hewitt v. *Campbell*, 109 U. S. 103.
Lawson v. *U. S. Mining Co.*, 207 U. S. 1, 11, 12.
United States v. *Marshall*, 210 Fed. 595, 597 (C. C. A., 8th Circ.).
Tobey v. *Kilbourne*, 222 Fed. 760, 763 (C. C. A., 9th Circ.).
American Rotary Valve Co. v. *Moorehead*, 226 Fed. 202 (C. C. A., 7th Circ.).
Hartley v. *Richardson*, 91 Me. 424.
Barnes & Jessup Co. v. *Putnam*, 64 Fla. 190, 200.
Compare *Colonial Securities Trust Co.* v. *Massey*, (1896) 1 Q. B. 38.

There are two obvious reasons why this should be so, even when the evidence was not heard orally, and the Appellate Court has all the evidence before it in the same form in which it was presented to the trial court. In the first place, the burden of proving error is on the appellant, and where the Appellate Court is

wholly in doubt where the truth lies it must necessarily sustain the finding below on the ground that the appellant has not sustained his burden. But beyond this there is the consideration that the hearing of the case in the trial court would be little more than an empty form if its conclusions were given no weight in the court above, and the findings of a chancellor or trial judge who had carefully weighed and considered all the evidence were not accepted as at least highly persuasive in the Appellate Court. As pointed out in the Marshall Case, *supra*, to give such findings no weight would be in effect to make the Appellate Court a court of first instance. "The District Court is not in such matters a mere conduit. It, not this court, is the trial court. Our functions are simply to guard against manifest error on its part, and this is true whether such arises upon hearing witnesses or upon reading a record."

Since the establishment of the Circuit Courts of Appeals, equity appeals have generally come before this court after the decision of two courts below, and the rule has long been established that the concurrent findings of two courts on questions of fact would not be reversed in this court except in a case of manifest error.

Dun v. *Lumbermen's Credit Asso.*, 209 U. S. 20, 24, and cases cited.
First National Bank v. *Littlefield*, 226 U. S. 110.

The attitude of this court, under the old rules, when findings of only one lower court were before it, is shown by the cases above cited.

The adoption of the new equity rules, making it the general practice to hear evidence in equity cases orally in open court, has materially changed the situation, and greatly increased the force of the presumption in favor of the trial court's findings of fact. Authorities everywhere are agreed that where the testimony in an equity case is given by witnesses in open court, with the consequent opportunity for the trial judge to see and hear the witnesses and judge of their character, bias, and credibility, this circumstance, at least on any point on which there was conflicting testimony, adds greatly to the weight which should be given to the findings of the trial judge; and many

strong courts have held expressly or in effect that, whether or not the upper court would have reached the same conclusion from the printed record, findings of the trial court made under such circumstances should not be set aside on appeal if there was any evidence to justify the finding.

Espenschied v. *Baum*, 115 Fed. 793 (C. C. A., 7th Circ.).
Finlayson v. *Barrows*, 221 Fed. 936 (C. C. A., 5th Circ.).
Tobey v. *Kilbourne*, 222 Fed. 760 (C. C. A., 9th Circ.).
Nichols v. *Elken*, 225 Fed. 689 (C. C. A., 8th Circ.).
Brookheim v. *Greenbaum*, 225 Fed. 763 (C. C. A., 2d Circ.).
Gibson v. *American Graphophone Co.*, 234 Fed. 633 (C. C. A., 2d Circ.).
Gutlon v. *Marcus*, 165 Mass. 335 (per Holmes, J.).
Dickinson v. *Todd*, 172 Mass. 183.
Elmstedt v. *Nicholson*, 186 Ill. 580, 584.
Nichols v. *Hoxie*, 33 R. I. 77, 78, 81.
Shepard v. *Shepard*, 164 Mich. 183, 198.
Protzman's Executor v. *Joseph*, 65 W. Va. 788, 789.
Khoo Sit Hoh v. *Lim Thean Tong*, (1912) A. C. 323, 325.
Smith v. *Land, etc., Corporation*, 28 Ch. Div. 7.
In re *Wagstaff*, 77 L. J. Ch. 190, 192.
Duffin v. *Duffin*, 44 Ch. Div. 76, 83.

In *Dickinson* v. *Todd*, supra, the court said (p. 184):—

"An appeal in equity brings to the appellate court questions of fact which arise upon the record, as well as questions of law. But the practice which has long prevailed in Massachusetts of presenting the testimony in suits in equity orally instead of in writing has materially changed the effect of appeals in such suits upon questions of fact. Under the old practice of presenting all the testimony by deposition, the appellate tribunal had before it the evidence in the same form as when it was considered by the lower court. But under the present system the judge who sees and hears the witnesses has a great advantage in the search for truth over those who can only read their written

or printed words. For this reason the rule has long been established that upon an appeal from a decree of a judge in equity upon questions of fact arising on oral testimony heard before him, his decision will not be reversed unless it is plainly wrong."

In *Brookheim* v. *Greenbaum*, supra, the court said (p. 763):—

"The judge had the witnesses before him and is much better able to judge of their credibility than a court which sees only their statements on paper. We should not reverse his finding upon a pure question of fact, where the evidence justifies the finding, even if we might have reached a different conclusion upon the evidence."

In *Tobey* v. *Kilbourne*, supra, the court said (p. 763):—

"It is the established rule that the findings of the trial court in a suit in equity must be taken as presumptively correct, and that unless an obvious error has intervened in the application of the law, or some serious or important mistake has been made in the consideration of the evidence, the findings will not be disturbed by the appellate court. This rule is especially applicable in a case in which, as here, the testimony was taken in open court, where the trial court had the opportunity to observe the demeanor of the witnesses and their manner of testifying, and the appellate court has before it only a condensed printed statement of the evidence as it is presented under the new equity rule. Thorndyke v. Alaska Perseverance Mining Co., 164 Fed. 657, 90 C. C. A. 473; Brandt v. United States, 198 Fed. 449, 117 C. C. A. 208; Harper v. Taylor, 193 Fed. 944, 113 C. C. A. 572."

In *Smith* v. *Land, etc., Corporation*, supra, Fry, L. J., said (p. 17):—

"The second question is whether the purchasers purchased on the faith of that representation. The learned Judge has found that they did. On that question I feel the same difficulty as Lord Justice Bowen, and on the evidence as read before us I should have felt inclined to come to the conclusion that the contract was not induced by that representation; but as Mr. Justice Denman, who saw and heard Alderman Knight, was satisfied with his evidence, I cannot give my voice for reversing his decision."

In *Gutlon* v. *Marcus*, supra, the court said (p. 335):—

> "The ground of the bill is a fraudulent conspiracy. For proof it depends wholly upon oral testimony, and the judge who heard and saw the witnesses was not convinced by them. On the well known rule by which this court is governed in dealing with such evidence on appeal, we hardly need to go further to show that the plaintiff cannot prevail."

Presumably one of the most important objects sought to be secured by the change in the usual method of hearing equity cases, which was introduced by the new equity rules, was this very advantage in getting at the truth which would result from affording the trial court an opportunity to see and hear the witnesses on contested issues of fact and judge from their appearance and demeanor what weight and value should be given to their testimony. It was undoubtedly assumed that under this practice and in accordance with the well-established rule in other courts the Federal Appellate Courts would give due weight to the advantage thus afforded to the trial judge and would not undertake to reverse his findings on conflicting testimony unless clearly unwarranted by the evidence before him. This is indicated by the provision in Rule 75 that the "evidence to be included in the record shall not be set forth in full, but shall be stated in simple and condensed form," and that as a general rule the testimony of witnesses shall be stated only in narrative form. This provision is plainly adapted to simplify very greatly the labors of the Appellate Court, provided its inquiry is in general to be limited to the question whether there was evidence to justify the findings and to the questions of law arising on the facts found; but it would place the Appellate Court at a further disadvantage as compared with the trial court if the Appellate Court were expected to try all the facts *de novo* without the strongest possible presumption in favor of the findings of the court below. It is impossible to escape the conclusion that this rule was adopted in recognition of the fact that it would serve no useful purpose to set forth all the evidence in full, for the very reason that the findings of the judge who heard the witnesses ought not to be set aside if there was evidence adequate to support these findings. The following comments of this court in a case arising out of a hearing before the Interstate Commerce Commission strongly support the above conclusions:—

"The facts involved have been so fully stated by the Commission (28 I. C. C. 533) and by the court below (216 Fed. Rep. 672) that it is unnecessary here to repeat them. The Railroad Companies did not offer all of the evidence which was considered by the Commission; and on this appeal they do not include in the record all of the hundreds of pages of testimony which had been submitted to the Commission, but—conceding that the evidence was conflicting and tended to support the findings of the Commission—they insist that the facts found were insufficient in law to sustain the orders which were made. This most commendable practice not only saved the expense of printing many volumes of testimony, but saved the substantial points in the case from being submerged in a flood of testimony—much of which was explanatory before the Commission and most of which was wholly immaterial in an Appellate Court which cannot reverse findings when supported by substantial—though conflicting—evidence. The practice is also in compliance with the spirit of the new Equity Rules (75, 76, 77) which call for just such a winnowing out of the useless; the presentation of only the relevant parts of exhibits, documents, tables, and reports; the elimination of all reduplications in written and oral testimony and a condensation into narrative form of what is material to the then issue before the court."

Louisville & Nashville R.R. Co. v. *U. S.*, 238 U. S. 1, 10.

Where an equity case is tried in the District Court on oral testimony the situation in an appellate court is substantially the same as where a case is heard before a master, not under the usual order merely to take and report testimony, but by consent of the parties to hear the evidence and report his findings of fact to the court. In such a case it was held in

Kimberly v. *Arms*, 129 U. S. 512, 524, 525,

and again in

Davis v. *Schwartz*, 155 U. S. 631, 636, 637,

that the master's findings, unless shown to be unsupported by the evidence, should be treated as conclusive. And this was put upon the analogy of the master's report to the findings of a lower court, on the ground that "where the parties select and agree upon a special tribunal for the settlement of their controversy, there is no reason why the decision of such tribunal, with respect to the facts, should be treated as of less weight than that

of the court itself, where the parties expressly waive a jury, or the law declares that the appellate court shall act upon the finding of a subordinate court." And accordingly it was said in the case last cited that the finding of the master,—

> "so far as it involves questions of fact, is attended by a presumption of correctness similar to that in the case of a finding by a referee, the special verdict of a jury, the findings of a Circuit Court in a case tried by the court under Rev. Stat. Sec. 649, or in an admiralty case appealed to this court."

See also on the same point,

> *Crawford* v. *Neal*, 144 U. S. 585, 596.
> *Furrer* v. *Ferris*, 145 U. S. 132.

It hardly needs demonstration that the findings of the District Court itself on oral evidence heard before it are entitled to at least equal weight with those of a master appointed by that court, even though by consent of the parties; and the rule has been expressly applied to such findings in a recent decision of this court. In

> *Adamson* v. *Gilliland*, U. S. Adv. Ops. 1916, p. 169,

a patent case heard by the District Judge on oral testimony, "the practical rule," which this court applied, was said to be (quoting from *Davis* v. *Schwartz*, supra), that

> "so far as the finding of the master or judge who saw the witnesses 'depends upon conflicting testimony or upon the credibility of witnesses, *or so far as there is any testimony consistent with the finding*, it must be treated as unassailable.'"

2. STRONGEST POSSIBLE REASONS IN PRESENT CASE FOR ACCEPTING FINDINGS OF FACT BY DISTRICT COURT UNLESS WHOLLY UNWARRANTED.

In the present case there are the strongest possible reasons why the findings of fact of the District Court should be accepted as decisive unless shown to be wholly unwarranted by the evidence.

Testimony Heard Orally.

1. All of the testimony was heard in open court with the exception of certain technical testimony relating to patents. The District Court, therefore, had a full opportunity to judge of the credibility of the witnesses.

Testimony Disputed and Witnesses Biassed.

2. Every issue material to the present case as to which the United States introduced testimony was disputed by the defendants. The witnesses for the United States whose testimony was material to these issues, outside of certain officials of the United Company, were practically all hostile to the United Company. The extent of their prejudice or bias, the credibility of their testimony, and the weight, if any, to be given to it, are questions which can far better be determined by the District Court which heard the testimony and observed the witnesses than it can be by the Appellate Court upon a consideration of a condensed printed record.

The United States, as the District Court observed, made "efforts which may fairly be described as extraordinary" (R. Vol. 1, p. 1152) to bring before the court all persons who felt or expressed any grievance against the United Company. Thus, the witnesses for the United States consist principally of the following classes:—

(*a*) Competitors of the United Company. These include R. H. Long, who manufactures a complete set of shoe machinery; J. J. Doidge, manager of Long's Company; C. A. Hamel, who puts out a complete line of machines; Edwin A. Webster of the Haverhill Shoe Machinery Company, which puts out a complete line of machines; George W. Maloy, Charles S. Johnson, and John Cavanaugh of the Boylston Manufacturing Company, a competitor of the United Company; Frank W. Merrick, president, and Clarence S. Luitweiler, treasurer, of the Union Lockstitch Company; Lorenze Muther of the Peerless Machinery Company, which manufactures eyeletting machines, tip press and tip perforating machines, cementing machines, folding machines, and others; Nelson H. Seelye, who manufactures dieing-out machines; Solomon M. Cutter, who was general manager, and James

N. Darrah, director and chairman of the executive committee, of the Standard Shoe Machinery Company, which manufactured a full line of bottoming machinery until it went out of business in 1901; Charles H. Morse, of the Fifield Shoe Machinery Company, which manufactured some fifty shoe machines; Alex Stone, export manager for the Atlas Works, of Leipzig, Germany, which makes a complete line of shoe machinery; William F. Donovan, president of the Atlas Tack Company, manufacturers of eyelets; all of which concerns were competitors of the United Company.

(*b*) Inventors or shoe machinery manufacturers who had endeavored to sell or entered into negotiations to sell out to the United Company and whose offers had been declined. These include Harry E. Cilley, George H. Clark, Zotique Beaudry, and Joshua S. Holt; also the following-named under paragraph (*a*), —R. H. Long, Frank W. Merrick, Clarence S. Luitweiler.

(*c*) Lessees who had violated their agreements with the United Company, or other persons with whom the United Company had had litigation or disputes. These include George R. Harsh; John E. Williams; William A. Hogan; S. Burton McNamara; Peter Tessier; Frank R. Hilliard; Ernest Bottomley; Irving A. Hadley; George A. Learned; Frank Morrison; Charles G. Ross; Abram Sochat; Herbert E. Chase; Frederick W. Herrick; Ira J. Webster; Thomas H. Shinn; Frederick W. Curtis.

(*d*) Members of the Shoe Manufacturers' Alliance, an organization of large shoe manufacturers opposed to the United Shoe Machinery Company. This Alliance consisted of Jackson Johnson of the Roberts, Johnson & Rand Shoe Company; A. D. Brown of the Hamilton-Brown Shoe Company; George Brown of the Brown Shoe Company; Henry N. Peters of the Peters Shoe Company; Milton S. Florsheim of the Florsheim Shoe Company; Emanuel F. Selz of the Selz, Schwab Shoe Company; C. H. Jones of the Commonwealth Shoe & Leather Company (R. Vol. 1, pp. 119, 114–115); and Pearl E. Selby of the Selby Shoe Company (R. Vol. 1, p. 213). Practically all of the members of this Alliance testified for the United States against the defendants.

Since 1910 the members of this Alliance have been active in agitating against the United Company. Jones and others have

appeared before Committees of Congress attacking the Company (R. Vol. 1, pp. 121–122). Their counsel has appeared before one or more Committees of Congress for the same purpose (R. Vol. 1, p. 122). Its members have been to the Department of Justice with respect to the United Company (R. Vol. 1, p. 121).

All of them are financially interested in the Boylston Manufacturing Company, which is a shoe machinery company with a capital of $500,000 or $600,000 (R. Vol. 1, p. 122).

The members of this Alliance showed in their testimony a strong bias against the United Company, due apparently to two causes: first, a desire to obtain, on account of their size, better rates of royalty than were granted to other manufacturers; and second, a desire to engage themselves in the manufacture of shoe machinery.

The change in Mr. Jones's attitude is well illustrated by the interview given by him to the Boston *Transcript* in 1906 in which he expressed the greatest satisfaction with the United Company (R. Vol. 1, pp. 130–133, *supra*, pp. 53, 54). At that time Jones said the only persons who could be behind attacks on the United Company must be people who wanted to manufacture machinery.

Jonathan Brown testified that Jones said to him in the summer of 1911, "It is time we big manufacturers should pay less royalty than the smaller ones" (R. Vol. 1, p. 733, lines 28–32). James W. Hitchings was present at the time and testified to the same effect (R. Vol. 1, p. 735, lines 32–37).

Immediately after the purchase by the United Company of the patents and inventions of Thomas G. Plant, Jackson Johnson, and Milton S. Florsheim, members of the Alliance, called upon Mr. Winslow, president of the United Company, and suggested that they would like to furnish the $3,000,000 that the United Company had paid Plant and that in return the United Company should give them its stock at $25 a share, the stock being worth $50 a share. In other words, their proposition was to obtain stock of the United Company worth $6,000,000 for a cash payment of $3,000,000. The substance of the talk was that some means should be found for giving the manufacturers whom they represented a large interest in the United Company, and it was said in a way that made Mr. Winslow understand that if he didn't there would be trouble (R. Vol. 1, p. 493).

Testimony as to Motives.

3. The question of the purposes and motives which actuated the transactions in question in this suit is of the utmost materiality. Mr. Winslow, president of the United Company, Mr. Howe, one of the executive committee and its counsel, and other officials testified fully as to the intent and purposes with which the various transactions were undertaken. The District Court, which heard and observed them, was in a position to judge of their credibility.

District Court's Findings Based on over Three Months' Investigation.

4. The transactions in question in this suit involve the detailed conduct of an extremely complicated business over a period of more than twelve years, including an examination of the situation existing at the time of the formation of the United Company, the objects and purposes of the company, and the extent to which such objects and purposes have been carried out, the origin and reasons for the lease system and the causes for the modifications made therein, the reasons for the purchase of various patents, contracts with inventors and other acquisitions, and the dealings of the United Company with over 1,000 lessees. Hundreds of transactions are involved, and an understanding of most of them is only possible upon a detailed examination of the facts relating to them. An understanding of the real purposes and motives of the company and its officials, of the greater efficiency resulting from the formation of the United Company, and of the necessity for the lease provisions and the various acquisitions is only possible when based upon a thorough understanding of the shoe machinery industry and the difficulties involved in developing patented machines and in furnishing a vast variety of machines adapted for different uses upon a lease system.

The District Court, composed of three judges, devoted many months to this task. They heard evidence in open court for nearly three months. Their conclusion as to the intent and

purposes of the United Company, the situation of the industry, and the necessity for and effect of the leases and acquisitions and of the other transactions involved in the suit, arrived at after months of study, should not be disturbed unless this court is clearly satisfied that it cannot be sustained upon the evidence.

VII. GENERAL APPLICATION OF THE SHERMAN ACT TO THE PRESENT CASE.

Only such transactions are condemned by the Sherman Act as prejudice the public interests because by their inherent nature they materially and unduly restrict competition or obstruct the course of trade, or because by reason of the intent with which they are done they accomplish this result.

Transactions which are normal and usual, which seek to further trade by normal or reasonable methods, or which are entered into and performed for the legitimate purpose of reasonably forwarding personal interest and developing trade are not within the act.

In *Standard Oil Company* v. *United States*, 221 U. S. 1, the court said (pp. 58, 62):—

> "Without going into detail and but very briefly surveying the whole field, it may be with accuracy said that the dread of enhancement of prices and of other wrongs which it was thought would flow from the undue limitation on competitive conditions caused by contracts or other acts of individuals or corporations, led, as a matter of public policy, to the prohibition or treating as illegal all contracts or acts which were unreasonably restrictive of competitive conditions, either from the nature or character of the contract or act or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of reasonably forwarding personal interest and developing trade, but on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such as enhancement of prices, which were considered to be against public policy."
>
> " . . . And it is worthy of observation, as we have previously remarked concerning the common law, that although the statute by the comprehensiveness of the enumerations embodied in both the first and second sections makes it certain that its purpose was to prevent undue restraints of every kind or nature, nevertheless by the omission of any direct prohibition against monopoly in the concrete it indicates a consciousness that the freedom of the individual right to contract when not unduly or improperly exercised

was the most efficient means for the prevention of monopoly, since the operation of the centrifugal and centripetal forces resulting from the right to freely contract was the means by which monopoly would be inevitably prevented if no extraneous or sovereign power imposed it and no right to make unlawful contracts having a monopolistic tendency were permitted. In other words that freedom to contract was the essence of freedom from undue restraint on the right to contract."

In *United States* v. *American Tobacco Co.*, 221 U. S. 106, the court said (p. 179):—

> "Applying the rule of reason to the construction of the statute, it was held in the *Standard Oil Case* that as the words 'restraint of trade' at common law and in the law of this country at the time of the adoption of the Anti-trust Act only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade or which, either because of their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade, that the words as used in the statute were designed to have and did have but a like significance. It was therefore pointed out that the statute did not forbid or restrain the power to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose."

In *Nash* v. *United States*, 229 U. S. 373, the court, referring to the Standard Oil and Tobacco Cases, said (p. 376),—

> "Those cases may be taken to have established that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In *Eastern States Lumber Ass'n* v. *United States*, 234 U. S. 600, the court said (pp. 609–610),—

> "It [the Sherman Act] broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce. It is true that this court held in the *Standard Oil* and *Tobacco Cases, supra*, and in the subsequent cases following them,

that in its proper construction the act was not intended to reach normal and usual contracts incident to lawful purposes and intended to further legitimate trade. . . ."

Public Interest must be Prejudiced.

It is essential that the public interest be prejudiced. A restraint which is not of such a character as to prejudice the public interests is not covered by the statute.

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, the court said (p. 174),—

> "In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented, and hence not only the prohibitions of the statute but the remedies which it provided were co-extensive with such conceptions."

Sherman Act must be Interpreted to Carry out its Purpose.

The statute is general in its terms and as held in the Standard Oil and Tobacco Cases must be interpreted so as to carry out the public policy which it manifests. In the Tobacco Case the court said (p. 181),—

> ". . . it was pointed out [in the Standard Oil Case] that the generic designation of the first and second sections of the law, when taken together, embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts were clothed. That is to say, it was held that in view of the general language of the statute and the public policy which it manifested, there was no possibility of frustrating that policy by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by any indirection the prohibitions of the statute."

For the same reason it follows that no transactions whatever their garb and whether new or old in character are condemned unless they are prohibited by the spirit or purpose of the statute. In other words, the particular circumstances of each case must be examined to determine the character of the acts.

Incidental Restraints not Unlawful.

All restraints are not covered by the act. Those that are incidental to a legitimate purpose, which are the result of reasonable normal or usual transactions entered into for the legitimate purpose of furthering trade or personal interests, are permissible. As said in *United States* v. *Joint Traffic Asso.*, 171 U. S. 505 (p. 568):—

> ". . . to treat the act as condemning all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the application of the act far beyond the fair meaning of the language used. The effect upon interstate commerce must not be indirect or incidental only. An agreement entered into for the purpose of promoting the legitimate business of an individual or corporation, with no purpose to thereby affect or restrain interstate commerce, and which does not directly restrain such commerce, is not, as we think, covered by the act, although the agreement may indirectly and remotely affect that commerce."

Importance of Intent.

Certain acts by their very nature are of such a character as necessarily to prejudice the public interests and unduly restrain trade or create a monopoly. In such instances the intent to violate the statute may be conclusive.

In all other instances the intent to accomplish the unlawful purpose must be shown either directly or inferentially from the circumstances of the case.

Thus where the acts alone might not produce the unlawful result such intent is required.

Swift & Co. v. *United States*, 196 U. S. 375.

Where the transaction is of a doubtful character, that is, where the transaction might be entered into for the purpose of prejudicing the public and wrongfully restraining trade or excluding others from the business or might be undertaken for the legitimate purpose of fostering trade, the intent as shown by direct evidence or by inference from the circumstances of the case may determine the legality of the transaction.

Thus in *United States* v. *Reading Co.*, 226 U. S. 324 (p. 370), the court said:—

> "Whether a particular act, contract or agreement was a reasonable and normal method in furtherance of trade and commerce may, in doubtful cases, turn upon the intent to be inferred from the extent of the control thereby secured over the commerce affected, as well as by the method which was used. Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing was done is of no consequence. But when there is only a probability, the intent to produce the consequences may become important. *United States* v. *St. Louis Terminal Association*, 224 U. S. 383, 394; *Swift & Co.* v. *United States*, 196 U. S. 375."

The Standard Oil Case and the Tobacco Case also show the importance of intent.

In the Standard Oil Case it appeared that the Standard Oil Company had acquired by purchase and combination a large and controlling portion of the oil business of the country and eliminated competition between the companies acquired. This alone, however, was not held to constitute an illegal restraint of trade or monopoly. The court held that these circumstances gave rise in and of themselves, "in the absence of countervailing circumstances, to say the least, to the *prima facie* presumption of intent and purpose to maintain the dominancy over the oil industry, not as a result of normal methods of industrial development . . ." (221 U. S. 75), and that this "*prima facie* presumption of intent to restrain trade, to monopolize and to bring about monopolization" was "made conclusive by considering" the conduct of the persons and corporations, the proof as to what was done under the various agreements and the modes in which the power vested in the Standard Oil Company was exerted and the results arising from them (221 U. S. 75). It was held that the transactions prior to the formation of the trust agreements of 1879 and 1882, including those agreements showed

> "an intent and purpose to exclude others which was frequently manifested by acts and dealings wholly inconsistent with the theory that they were made with the single conception of advancing the development of business power by usual methods, but which on the contrary necessarily

> involved the intent to drive others from the field and to exclude them from their right to trade and thus accomplish the mastery which was the end in view" (221 U. S. 76).

The transactions up to the time of the formation of the New Jersey Corporation were held to make manifest "the continued existence of the intent," and the exercise of the power of the corporation was likewise held to show this purpose and intent (221 U. S. 76, 77).

In the American Tobacco Case the American Tobacco Company had by purchase and combination acquired a dominating control of the tobacco industry. Here again the court reached the conclusion of wrongful purpose. It said (221 U. S. 182):—

> "We say these conclusions are inevitable, not because of the vast amount of property aggregated by the combination, not because alone of the many corporations which the proof shows were united by resort to one device or another. Again, not alone because of the dominion and control over the tobacco trade which actually exists, but because we think the conclusion of wrongful purpose and illegal combination is overwhelmingly established by the following considerations:"

The court then goes on to recite the circumstances showing an "ever-present manifestation . . . of the purpose to restrain others and to monopolize . . . trade" (221 U. S. 182).

VIII. SPECIAL CONSIDERATIONS APPLICABLE TO THE PRESENT CASE.

In determining the questions involved in the present case the following considerations must be borne in mind:—

1. PRESENT CASE UNIQUE IN THAT (A) SHOE MACHINERY BUSINESS IS DOMINATED BY PATENTS, AND (B) NO COMPETITION PREVIOUSLY EXISTING WAS ELIMINATED.

The present case is unique in two important particulars: no case resembling it has ever before been decided by this court under the Sherman Act, except the case of *United States* v. *Winslow*, 227 U. S. 202, in which the formation of the present United Company was considered and held lawful. (*A*) In the first place, in every case heretofore decided in which a monopoly has been charged the business has been one in which any one having sufficient capital might freely engage on equal terms. In the present case the product which the defendant is accused of monopolizing is protected by dominating patents which restrict competitors to the marketing of machines of a different and inferior type. (*B*) In the second place, in every other case in which a monopoly has been charged the defendant has obtained a large or dominating share of the business previously carried on by various competitors. In the present case at the time the United Company was formed, the constituent companies each did the greater portion of the business in its particular field, under lawful patent monopolies, and the United Company merely took over and continued this business.

Industry Dominated by Patents.

A. In the present case the machines which the defendant is accused of monopolizing are protected by dominating patents so that competitors cannot manufacture them. There is a natural presumption that the general use of the defendants' patented machines and their success is due to their superiority

over other types of machines if such exist, and not to any illegal restraint of trade. As said of these machines by the court in *United States* v. *Winslow*, 227 U. S. 202 (p. 217),—

> "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, **and it may be assumed that the success of the several groups was due to their patents having been the best.**" (Black letters ours.)

The shoe machinery industry is not one in which any person may normally engage on equal terms. It is of very recent origin. The machines do work until recently done by hand. These machines have been originated and created and are now manufactured under the protection of lawful patent monopolies. No one can enter or engage in this business successfully unless he holds patents enabling him to make machines superior to or as good as those already in the market. In such an industry no competition on equal terms is possible. The machines offered by two different manufacturers must necessarily differ, as neither can manufacture machines of the type made by the other, and inevitably one manufacturer will have an advantage due to the superiority of the patented inventions under which his machines are manufactured. It is, therefore, natural and to be expected that in such an industry the machines of one manufacturer will be superior to other machines and will be generally used by shoe manufacturers. That one manufacturer will have most, if not all, of the business is as natural as it was that the Bell Telephone Company, after the invention of the telephone, was the only company manufacturing telephones.

No Previous Competition Eliminated.

B. In the present case we do not find that previously to the formation of the United Company there were numerous competitors engaged in furnishing machines in competition to shoe manufacturers and that upon the formation of the United Company these competitors were eliminated and the United Company took over their business. In such a case there might be a natural presumption of unlawful purpose or that unlawful

methods were used to acquire the monopoly which would require proof to the contrary. In the present case, however, the petition itself alleges and the record establishes that the constituent companies were essentially non-competing, and that they had lawful patent monopolies under which they did the greater part of the business of the country in the machines which they manufactured. The United Company in taking over these non-competing companies therefore lawfully acquired patent monopolies under which it did the greater part of the business of the country in these machines. It did not eliminate competitors formerly in the field; it did not create a monopoly. It merely continued a business already lawfully existing. The monopoly charged in respect to these machines is the same monopoly which the petition alleges and the record establishes was lawfully held by the constituent companies at the time of the formation of the United Company. Indeed, far from showing that the United Company has acquired a monopoly in shoe machinery, the record shows that on December 12, 1911, when the petition was filed there were more and larger shoe machinery manufacturers engaged in business in competition with the United Company than existed in 1899 outside the constituent companies.

2. CONDITIONS PECULIAR TO THE INDUSTRY MUST BE CONSIDERED.

It is necessary in determining whether or not the various acts and transactions of the defendants prejudiced the public interest or were entered into with the legitimate purpose of forwarding personal interest and developing trade and were normal and usual, to bear in mind the peculiar character of the shoe machinery business. In this business we find, among other things, a great variety of machines used in making each shoe; we find the entire industry based upon patents; we find that the principal machines are of such a delicate character that they require constant attention and care in order to give satisfactory service; we find a system of leasing machines for a royalty based upon the extent of the use which had grown up with the industry, which had proved itself of great benefit to shoe manufacturers, and which a shoe machinery manufacturer was obliged to follow in order to furnish shoe manufacturers machines on terms satis-

factory to them. This combination of conditions is peculiar to this particular business and exists in no other business in the country.

These were the conditions with which the defendants were dealing, and the various transactions must be judged in view of these particular conditions. What would be legitimate or normal in some other business—for instance, the cotton machine business or the steel business—would not be a test of what was legitimate or normal in the shoe machinery business.

3. TRANSACTIONS ARE MATERIAL ONLY IF THEY PROVE THE CHARGE OF THE UNITED STATES.

The petition charges a plan formed in 1899 and carried out by a series of steps or acts extending over a period of twelve years. An immense number of transactions covering the defendants' conduct of its business and the acts of its officers and agents during this entire period have been put in evidence. We believe the record is barren of any wrongful incident. However, if the record showed that during this extended period there were sporadic instances in which some agent or officer of the defendant company exceeded his rights or some agreement was entered into not necessary for the protection of the company's rights or the development of its business, such sporadic instances would not be sufficient to show a plan to monopolize such as is charged by the petition, nor would such acts by themselves be sufficient to accomplish a wrongful monopoly as charged by the bill.

In other words these various transactions are material only in so far as they prove the charge of the petition, viz., that they were steps in carrying out the alleged plan

(1) to acquire all concerns engaged in the shoe machinery business, and then

(2) to refuse to sell or lease any so-called essential machinery to a shoe manufacturer except on condition that he take from them practically all other machinery which he required.

PART TWO.

FACTS AND ARGUMENT.

I.

FORMATION OF THE UNITED COMPANY.

1. THE CONSOLIDATION OF THE GOODYEAR SHOE MACHINERY COMPANY AND ITS SUBSIDIARY COMPANIES WITH THE CONSOLIDATED & MCKAY LASTING MACHINE COMPANY AND THE MCKAY SHOE MACHINERY COMPANY INTO THE UNITED COMPANY IS THE SAME CONSOLIDATION HELD LAWFUL AND VALID AND NOT CONTRARY TO THE SHERMAN ACT IN UNITED STATES v. WINSLOW, 227 U. S. 202.

In *United States* v. *Winslow*, supra, the indictment charged that for twenty-five years last past practically all the shoes worn by people of the United States were manufactured by the aid of several different kinds of machines, namely,

lasting machines,
welt sewing machines,
outsole stitching machines,
heeling machines,
metallic fastening machines;

that the Goodyear Shoe Machinery Company manufactured 80% of all the welt sewing and outsole stitching machines, and 10% of all the lasting machines; that the Consolidated & McKay Lasting Machine Company manufactured 60% of all the lasting machines, and the McKay Shoe Machinery Company manufactured 70% of all the heeling machines and 80% of all the metallic fastening machines, and that these companies manufactured their machines under United States patents, that they were combined into the United Company in pursuance of a conspiracy to extend the defendants' monopolies and rights unlawfully, to oppress shoe manufacturers and restrain trade, and that their combination in the United Shoe Machinery Company was an unlawful combination in violation of the Sherman Act.

In the present case the petition charges almost in the language of the indictment that for twenty-five years all boots and shoes worn by people of the United States had been manufactured by the aid of machinery; that the principal machines so used are lasting machines, welt sewing machines and outsole stitching machines, heeling machines and metallic fastening machines; that some of such shoe machinery is manufactured under letters patent; that prior to February, 1899, a large number of persons and corporations were engaged in the manufacture of shoe machinery in competition with each other; that the principal concerns so engaged were the Goodyear Shoe Machinery Company and its subsidiaries, manufacturing 80% of welt sewing and outsole stitching machines and 10% of the lasting machines, the Consolidated & McKay Lasting Machine Company, manufacturing 60% of all the lasting machines, and the McKay Shoe Machinery Company, manufacturing 70% of all heeling machines and 80% of all metallic fastening machines, and the Eppler Welt Machine Company, manufacturing 10% of the welt sewing and outsole stitching machines, and the Davey Pegging Machine Company, manufacturing 75% of the pegging machines, and that all the above-named companies manufactured their machines under letters patent of the United States; that many of the "basic" patents were about to expire and the lawful monopoly of such machines about to come to an end; and the individual defendants as owners of the above-mentioned companies, not being satisfied with the benefit of the lawful monopolies and rights belonging to them under letters patent, combined and conspired to acquire a monopoly in the manufacture of shoe machinery.

There is no allegation in the petition that the companies that were combined in the United Shoe Machinery Company were in competition with each other, and the only difference between the two cases so far as the organization of the United Shoe Machinery Company is concerned is that the petition adds the name of the Eppler Welt Machine Company, which it is claimed manufactured 10% of the welt sewing and outsole stitching machines, and the Davey Pegging Machine Company, which manufactured 75% of the pegging machines and which on the face of the petition was not in competition with any of the other companies. (This last-named company at the time of the con-

solidation and for a long time prior thereto was wholly owned by the Consolidated & McKay Lasting Machine Company and it did not compete with any of the other companies.—R. Vol. 1, p. 32, line 30.)

In *United States v. Winslow*, supra, the court said, page 217:—

> "On the face of it the combination was simply an effort after greater efficiency. The business of the several groups that combined, as it existed before the combination, is assumed to have been legal. . . . The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels. Until the one intent is nearer accomplishment than it is by such a juxtaposition alone, no intent could raise the conduct to the dignity of an attempt."
>
> (*Ib.* p. 217.) "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, and it may be assumed that the success of the several groups was due to their patents having been the best. . . . It is said that from seventy to eighty per cent of all the shoe machinery business was put into a single hand. This is inaccurate, since the machines in question are not alleged to be types of all the machines used in making shoes, and since the defendants' share in commerce among the states does not appear. But taking it as true we can see no greater objection to one corporation manufacturing seventy per cent. of three non-competing groups of patented machines collectively used for making a single product than to three corporations making the same proportion of one group each."

The United States now seeks to differentiate the petition in the case at bar from the indictment by claiming that there was competition between the Eppler Company, making 10% of the welting and outsole stitching machines, and the Goodyear Company, manufacturing 80% of welting and outsole stitching machines; and also by making a very much belated claim that there was competition between the Ideal Laster of the Goodyear Company and the Chase Laster of the Consolidated & McKay Company, and that elimination of this competition was the motive for the consolidation of these companies into the United Shoe Machinery Company.

Upon this point the District Court, which saw and heard the witnesses and is the best judge of their credibility, said, by Dodge, J. (R. Vol. 1, p. 1130):—

"(1) As to the alleged competition in lasting machines, it is not claimed that there was any, so far as two of the three kinds made by the Consolidated Company are concerned. These are the 'McKay-Copeland' laster for lasting heavy metallic fastened or pegged shoes or brogans and the 'hand method McKay' laster for McKay sewed shoes; and neither of them could be used to last welt shoes, for which purpose alone the Goodyear Company's 'Ideal' laster was adapted. The only question here is whether the latter machine can be regarded as competing with the remaining laster of the Consolidated Company (the 'Chase'). With still another laster with which the Consolidated Company was experimenting in 1899, for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed.

"There is no proof of any actual use of the 'Chase' laster otherwise than for its intended purpose of lasting men's welt shoes. It could not work well for use with the lighter leather whereof women's shoes are made. The 'Ideal' laster, used almost exclusively for its intended purpose of lasting women's welt shoes, could not be relied on to work well with the heavier leather whereof men's shoes are made. The proof relied on to show that it competed with the 'Chase' went no further than to show that a number of 'Ideal' machines, small in proportion to the total number then in use, were being used in a few factories on men's shoes, notwithstanding their want of adaptation to such use. That there was any attempt to put either machine into the market as against the other, does not appear. No competition between the two in the usual sense of the term is shown. After the consolidation, by the addition of a patented 'hold down attachment' added by the United Company to the 'Ideal' in 1901 or 1902, some of the defects referred to were removed, but not until then can it be said to have been commercially successful for work on men's shoes. Before this improvement, it possessed at most a limited possibility of such use. I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines.

"(2) As to the alleged competition in welt-sewing ma-

chines, the question is to what extent the Eppler welting machinery can be regarded as competing with the Goodyear welting machinery. Outside of that produced by these two concerns, no other welting machinery appears to have been on the market at the time.

"The Eppler machines were adapted to produce men's thick-soled welt shoes only. They could not produce women's welt shoes (except perhaps those having the thickest soles), nor turn shoes of any kind, nor Goodyear welt shoes, either men's or women's, because of the difference between the respective machines in the character and position of the seam left in the inner sole of the shoe. The Goodyear machines could produce shoes of all the above kinds. The differences referred to resulted from differences in the character and operation of the machinery belonging to the different systems. These differences in character and in possible field of use had resulted when the United Company was formed in 1899 in the fact that over 2,500 Goodyear welting machines were in use, as against thirty or forty Eppler machines, one-third of these being used in the factory of the president of the Eppler Company. The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful. The Eppler machines were not suppressed by the United Company. It continued to supply them until the progress of improvement in such machinery superseded them. The patents covering them have long since expired, and it is open to anyone to make and use such machines if he desires. There is no present monopoly in them, and no action taken by the court could restore them to the field of competition, or encourage or create competition by them.

"Nor, if such competition as is shown to have existed between the 'Chase' and the 'Ideal' laster be taken together with that shown to have existed between the Eppler welting machinery and the Goodyear welting machinery, I find it credible that the avoidance of both amounted to a consideration of any substantial importance, so far as the formation of the United Company was concerned. No reason appears for supposing that the real purpose for which the constituent companies were brought together, as disclosed not only by the evidence regarding all the circumstances as they existed in 1899, but by the evidence as to the course of development thereafter pursued by the United

Company, was other than that stated in a circular letter to the Goodyear stockholders issued February 8, 1899, the day following the organization of the United Company. (Petitioner's Exhibit 152.) This dwelt upon the advantages to be secured by putting into one control 'the most efficient types' of shoe machinery. In *U. S.* v. *Winslow*, above cited, which was decided more than a year after the present bill was filed, it was said that the combination here in question was, on its face, 'simply an effort after greater efficiency,' and the legality of combination for such a purpose is fully recognized.

"Under their respective patents upon the 'Chase' and the 'Ideal' lasters there was litigation pending in 1899 between the Consolidated Company and the Goodyear Company, each claiming that the other's machine infringed its patents. Also under the patents covering their welt-sewing machines there was similar litigation pending between the Eppler Company and the Goodyear Company. A result sought to be attained by both parties to these controversies, and accomplished by them through the acquisition of all the patents by the United Company, was the termination of all this litigation. Reference is made below to other later acquisitions by the United Company, an important feature of which was that litigation, troublesome and expensive on both sides, was avoided or terminated. In so far as any of the defendants' transactions were in order to accomplish results of this kind, it can not be said that their purpose was unlawful.

"For the reasons stated, I am unable to find the charge that the United Company was unlawfully formed because of competition which it destroyed sufficiently supported by the evidence. It would, in any case, be difficult to regard this as sufficient ground for a decree dissolving the company into its component parts under a bill not filed until more than twelve years had passed since the combination complained of was accomplished. During this period, as the evidence shows, investments of a very large amount had been made, not merely by the defendants but also by the outside public, in the extension and development of the company's united business, the component companies passed out of existence, and the machines as made by them in 1899 were so far developed, improved upon, or added to by the United Company as now all to have become obsolete. To put the parties or the public back into that state of the prior art which existed in 1899 is, of course, an impossibility."

To Aid the Court in an Examination of the Issue thus Decided by the District Court, We Shall Consider Below:—

The Business Done by the Constituent Companies;

The Organization of the United Company;

The Evidence Relating to the Alleged Competition Between the Constituent Companies;

The Purposes for Which the United Company was Formed, and the Manner in Which These Purposes have been Carried Out.

2. BUSINESS DONE BY THE CONSTITUENT COMPANIES.

A. The Goodyear Company.

The Goodyear Company manufactured and leased machines for attaching the welt to the upper and the outsole to the welt of Goodyear Welt shoes. It had two principal machines—the Goodyear Welt and Turn Machine (called the welter) for attaching the welt to the upper, and the Goodyear Outsole Rapid Lockstitch Machine (the stitcher) for attaching the outsole to the welt. The welter was used also in the manufacture of Goodyear Turn shoes. The Goodyear Company had also thirteen auxiliary machines used in connection with its welter and stitcher in the manufacture of Goodyear Welt shoes, and three auxiliary machines used in connection with its welter in the manufacture of Goodyear Turn shoes (R. Vol. 5, Defs.' Ex. 242, p. 681; Defs.' Ex. 244, p. 683).

The Goodyear Company also manufactured and leased the Ideal Lasting Machine. The Ideal was designed and adapted for lasting women's welt shoes, which no machine in the market at the time it was developed could do successfully (R. Vol. 1, p. 397, lines 41–43; p. 626, lines 44–45). It was not adapted for lasting men's welt shoes commercially (R. Vol. 1, p. 398, line 32). The Ideal Machine had a comparatively small use. Only 248 Ideal Machines were outstanding out of a total of 4,300 lasting machines of all kinds outstanding, and only 0.77 of 1% of the shoes lasted on machines in 1899 were lasted on the Ideal (R. Vol. 1, p. 975, lines 36–41).

The Goodyear system for welt and turn shoes ran back to 1870 or 1868 (R. Vol. 1, p. 625, line 20).

Prior to the development of the Goodyear System there was no system for making welt shoes by machinery. The machines of the Goodyear Company, including the auxiliary machines, were adapted to making welt shoes only and could not be used on any other kind of shoes (R. Vol. 1, p. 625, lines 17–19), except that the welter was used on turn shoes and three of the auxiliaries were designed for use on turn shoes, and except that the Hadaway Stitch Separator, an auxiliary machine, could be used also in pricking imitation stitches on mock welts and McKay shoes (R. Vol. 1, p. 625, lines 15–17).

The auxiliary machines were designed and adapted to assist the work of the principal machines, the welter and stitcher, by preparing the work for the operation of these machines or finishing it afterwards (R. Vol. 1, pp. 624–625).

Prior to the invention of the Goodyear Welt System welt shoes were made by hand. The Goodyear System imitated the exact process by which a hand workman made a welted shoe (R. Vol. 1, p. 626, lines 3–8).

The Goodyear Company owned as trademarks the names "Goodyear Welt" and "Goodyear Turn" as applied to shoes made by its machines. Its lessees of shoe machinery were given the right to use that trademark on shoes made by the Goodyear machines (R. Vol. 1, p. 625, line 44; p. 626, line 2).

Shortly after 1888 the Goodyear Welter and Stitcher were both greatly improved and the Goodyear Company's business developed rapidly (R. Vol. 1, pp. 691–692). The Goodyear Welt shoe was a better grade of shoe than the McKay, pegged or Standard Screw shoes, which were the classes of shoes generally made by machines, but the Goodyear Welt shoe was more expensive to manufacture. It gradually proved its merit, but in 1899 only 22,700,000 pairs of welt shoes were made out of a total production in the country of 172,786, 000 pairs of shoes of all kinds, of which 82,457,000 were McKays (R. Vol. 5, Defs.' Ex. 215, p. 322). In 1898, just prior to the formation of the United Company, only about 17,000,000 pairs of welt shoes were made (R. Vol. 1, p. 414, lines 36–37).

The Goodyear Company, therefore, occupied a comparatively limited and special field which it had itself created and which

it lawfully controlled by reason of its patents. The process of making Goodyear Welts is only one of a number of methods of attaching the soles to the uppers of shoes by machinery, and this method was used in 1898 on only about 10% of the total shoes manufactured in that year.

B. The Consolidated & McKay Lasting Machine Company.

This company manufactured and leased three kinds of lasting machines, namely, the Chase, the McKay & Copeland, and the Hand Method McKay Machine.

The Chase Machine was especially adapted to and was developed for lasting men's welt shoes (R. Vol. 1, p. 397, lines 39–40).

The McKay & Copeland Machine was commercially adapted only for lasting heavy brogans (R. Vol. 1, p. 399, lines 13–14), that is, very heavy coarse shoes (R. Vol. 1, p. 397, line 14).

The Hand Method McKay Machine was designed and adapted for lasting McKay sewed shoes (R. Vol. 1, p. 399, line 22). It could not be used for lasting welt shoes (R. Vol. 1, pp. 399–400).

The Consolidated Company in 1899 had been endeavoring to develop a hand method welt lasting machine. This machine had been developed to a point where it could last the heel, shank and ball of the shoe satisfactorily, but it could not last the toes satisfactorily (R. Vol. 1, p. 400, lines 27–32). Thirty-four machines had been placed in factories, but they were experimental and not successful commercially (R. Vol. 1, p. 969, lines 1–6).

The Consolidated Company also furnished a few minor auxiliary machines (R. Vol. 1, p. 400, line 40).

The use of machines for lasting shoes was of a very recent development. In 1890 very few shoes were lasted by machinery, except heavy shoes lasted on the McKay and Copeland machine. Manufacturers and operatives were at that time sceptical as to the possibility of developing a machine which would last shoes. Lasting was a real handicraft operation requiring great skill. There was also considerable difficulty in introducing lasting machines, due to the opposition of the operatives. After machines were introduced and the operatives instructed in their use the operatives would strike or agree to last by hand for a reduction in pay and the machines would be stopped (R. Vol. 1, pp. 401–402). The result was that by 1899

only about one-half the shoes made were lasted by machine (R. Vol. 1, p. 402, lines 14–18).

The Davey Pegging Machine Company, which was owned by the Consolidated Company, made machines for attaching the soles of shoes by wooden pegs (R. Vol. 1, p. 415, lines 18–20; p. 534, lines 45–46).

C. The McKay Shoe Machinery Company.

This company manufactured and leased metallic fastening machines, used to insert metallic fastenings, and heeling machines, used for the preparation and attaching of heels. It operated through the McKay-Bigelow Heeling Machine Association and the McKay Metallic Fastening Association, both of which it owned (R. Vol. 1, p. 4, lines 23–36).

D. The Eppler Welt Machine Company.

This company, hereafter called the "Eppler Company," was not one of the constituent companies but was acquired after the formation of the United Company (R. Vol. 1, p. 530, lines 22–26; pp. 675–676). It manufactured and leased a welter, a stitcher, and a few auxiliary machines used in connection therewith. These machines were used for the manufacture of Eppler Welt shoes, and the leases under which they were put out limited their use to this purpose (R. Vol. 3, P.'s Ex. 59, p. 507).

The Eppler Welt shoe was of an entirely different construction from the Goodyear Welt shoe made by the Goodyear machines. It differed almost as radically as the McKay sewed shoe. This difference was due to a difference in the construction of the two welters put out by the respective companies. The Eppler machine placed the chain of the stitch used in attaching the welt in the channel made in the innersole. The Goodyear Machine laid the chain of the stitch on the welt so that the foot did not rest upon it (R. Vol. 1, p. 415, lines 26–43).

The Eppler Company had outstanding only between thirty and forty welt machines, one-third of which were in the factory of the president of the company (R. Vol. 1, p. 389, lines 6–9). The Goodyear Company had outstanding on March 1, 1900 (the nearest date to the formation of the United Company in evi-

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dence), 2,531 welters and stitchers (R. Vol. 5, Defs.' Ex. 226, p. 424).

The Eppler machines could not be used for turned shoes or for women's welt shoes and were unsatisfactory for use on men's shoes (R. Vol. 1, pp. 169–170, 531, lines 4–5).

The Eppler machines, therefore, occupied a small and very limited field.

E. The Machines manufactured by the Constituent Companies were protected by Patents, were the best Machines made, and, therefore, were used principally by Shoe Manufacturers for the Purposes for which they were Adapted.

The petition alleges,

> "Early in 1899 the companies above mentioned and described were manufacturing their machines, and parts thereof, under letters patent of the United States and of other countries" (R. Vol. 1, p. 993).

The petition further alleges that the principal concerns engaged in the business were the constituent companies (R. Vol. 1, p. 992), and that the United Company by the acquisition of the constituent companies "acquired control of the greater portion of the manufacture of, and trade and commerce in, the machines included in each and all of the groups of machines mentioned" (R. Vol. 1, p. 996).

A full discussion of the strong patents covering the machines is given at pages 204–237 of the Brief.

The machines put out by the constituent companies had been gradually developed by them or their predecessors in accordance with patents covering the machines. Each company had a lawful monopoly granted by the patent law covering the manufacture of its own machines, and of course no one else could manufacture these machines.

The shoe machinery industry was of very recent origin, all the work on shoes having previously been done by hand. The trade in machines of the kind manufactured by the constituent companies had been created by reason of and under the inventions for which the constituent companies held patents. No one else

had invented other types of machines which could do equally good work, and the machines put out by the constituent companies were, therefore, the best machines in the market (R. Vol. 1, p. 532, lines 16–18, 29–32). As a result, at the time of the formation of the United Company the Goodyear Company's machines were doing practically all the welt sewing and outsole stitching, the Consolidated Company's machines were doing practically all the lasting, and the McKay Company's machines were doing practically all the metallic fastening that was being done in the United States (R. Vol. 1, p. 537, lines 32–37). The McKay Company was also putting out all of the heeling machines that were being made in the United States at that time (R. Vol. 1, p. 851, lines 27–30).

3. ORGANIZATION OF THE UNITED COMPANY.

The United Company was organized on February 7, 1899.

The preliminary arrangements were made by Mr. Winslow, who was a member of the Executive Committee of the Consolidated Company (R. Vol. 1, p. 406, line 25), and Mr. Howe, who was vice-president of the Goodyear Company and in general charge of its business (R. Vol. 1, p. 466, lines 32–39).

Some time about July, 1898, they first discussed consolidating the businesses of the Goodyear Company and the Consolidated Company (R. Vol. 1, p. 629, line 19). This consolidation was agreed upon some time in January, 1899 (R.Vol. 1, p. 629, line 34). It was not originally planned to take over the McKay Company, and this question was only taken up after the formation of the United Company and the acquisition by it of the Goodyear and Consolidated Companies had been arranged (R. Vol. 1, p. 406, lines 36–40). It was not until the United Company had been agreed upon and about the time that it was organized that it was found the Eppler Company could be purchased and arrangements were made for its acquisition (R. Vol. 1, p. 633, line 5).

The United Company was organized with $25,000,000 authorized capital stock, of which $12,500,000 was preferred and $12,500,000 was common (R. Vol. 3, P.'s Ex. 1, p. 4).

The United Company at once took over the stock and later the properties of the Goodyear Company, the Consolidated Company, and the McKay Company, and likewise the International Goodyear Company, the Goodyear Company of Canada, and the Davey Pegging Machine Company, which were affiliated with the three principal companies. In March it took over the Eppler Company and the International Eppler Company.

The Goodyear Company, Consolidated Company, and the McKay Company, and such stock of the International Goodyear Company as was not owned by the Goodyear Company itself were paid for in stock of the United Company. In addition stockholders of the Consolidated Company received a small cash payment to adjust dividends. $2,395,435 of stock was issued for cash which was used to pay the expenses of organization, the floating debts of all the constituent companies, the

purchase of the capital stock of the Eppler Company, the International Eppler Company, and the Goodyear Company of Canada, and to provide $500,000 working capital for the United Company (R. Vol. 1, pp. 31–33).

The stock of the United Company was issued as follows:—

For $3,000,000 stock of the Goodyear Company .	$4,631,560
For minority stock of the International Goodyear Company not owned by the Goodyear Company	287,105
For $2,850,000 stock of the Consolidated Company	4,432,900
For $5,000,000 stock of the McKay Company .	5,500,000
To Syndicate for cash at par used to purchase Eppler Company, International Eppler Company, Goodyear Company of Canada, for payments of debts, organization expenses, and $500,000 working capital	2,395,435
Total,	$17,247,000

A. No Watered Stock was Issued.

The petition alleges that the constituent companies were taken over "at values far in excess of real worth" (R. Vol. 1, p. 995). This charge is absolutely unfounded.

The stock of the United Company was issued for value and was not watered (R. Vol. 1, p. 533, lines 31–32). The book values of the Goodyear and McKay companies, so far as could be judged, were far in excess of the prices paid by the United Company (R. Vol. 1, pp. 629–630). The stock of both companies had sold above par for a long time (R. Vol. 1, p. 533, lines 38–40). The McKay Company stock had sold at $8 or $9, but it was worth at least $11 a share, on which basis it was taken in (R. Vol. 1, p. 533, line 40–p. 534, line 4; p. 633, line 41–44). The stock issued to the syndicate was paid for in cash at par (R. Vol. 1, p. 32, lines 1–4).

The first statement of the United Company, issued in 1901, shows that it carried no item of good-will, and that it carried its valuable patents at only $745,269.27, and that the company had a substantial surplus (R. Vol. 4, P.'s Ex. 180, p. 1225).

B. Machines not Manufactured by the Constituent Companies.

The machines manufactured by the constituent companies which were acquired by the United Company covered only a portion of the shoe machinery field, and, as we have stated above, each had its own particular field which it had developed under its own patent monopolies. The constituent companies did not even manufacture all the machines used in bottoming shoes. Thus they did not manufacture the McKay Sewing Machine used to attach the soles to McKay shoes, which constituted substantially one-half the total number of shoes manufactured in 1899. They manufactured no machinery for cutting out or stitching or making uppers. They made no General Department machines, of which a large number were then manufactured, and of which the United Company now manufactures over one hundred and seventy different kinds.

Defendants' Exhibit 221A (R. Vol. 5, p. 370A) gives a list of eighty-five different dealers in machinery findings and supplies advertising in the trade papers in the years 1899 to 1902, which the United Company did not purchase and made no attempt to purchase. This list includes such important companies as the Wheeler & Wilson Sewing Machine Company, which supplied probably 90% of the machines which united the parts of the upper of the shoe (R. Vol. 1, p. 415, lines 12–14), and the Reece Button Hole Machine Company, which furnished probably every machine used for making buttonholes in shoes and for finishing the buttonholes (R. Vol. 1, p. 415, lines 15–17). The United Company also did not take over the Stanley Manufacturing Company, which put out the McKay Sewing Machine used to attach the soles of about one-half the shoes made (R. Vol. 1, p. 415, lines 4–12).

The fact that the United Company took over companies occupying only a portion of the shoe machinery field and made no attempt to acquire these other important companies establishes conclusively that the United Company was not formed to obtain a monopoly of all shoe machinery as charged in the petition.

4. ALLEGED COMPETITION BETWEEN CONSTITUENT COMPANIES.

The Government contends that there was competition between certain of the constituent companies of the United Company which made the formation of the United Company unlawful.

The brief statement given above of the business conducted by the constituent companies shows the unsubstantial character of this contention. However, as the United States has claimed that there was competition, we will consider it in detail.

The competition which the United States contends existed was (1) between the Ideal Lasting Machine made by the Goodyear Company and the lasting machines of the Consolidated Company, and (2) the welt machines of the Goodyear Company and the welt machines of the Eppler Company.

It is admitted that the McKay Company did not compete with any of the other companies.

A. ALLEGED LASTING MACHINE COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE CONSOLIDATED & McKAY LASTING MACHINE COMPANY.

(I) INTRODUCTORY STATEMENT.

The only claim of competition in 1899 between the Consolidated & McKay Company and the Goodyear Company is the petitioner's claim that there was competition between lasting machines of these companies. It is admitted that the great bulk of the business of the Goodyear Company was in welt sewing and outsole stitching machines and their auxiliaries, and that the sole business of the Consolidated & McKay Company was in lasting machines. Indeed, so comparatively insignificant was the lasting machine business of the Goodyear Company that, as Mr. Howe testified, it treated its lasting machine "as an auxiliary to its welt and turn machine and its outsole stitcher" (R. Vol. 1, p. 626, lines 42–43).

The Consolidated Company in 1899 was putting out three different lasting machines:—

The McKay & Copeland Machine;
The Chase Machine;
The Hand Method McKay Machine.

It was also experimenting on a hand method welt machine.

The Goodyear Company was putting out the Ideal lasting machine.

All of these machines were patented (R. Vol. 2, pp. 2365, 2383, 2387–9, 2391–3, 2400–2).

The McKay & Copeland machine was designed and adapted for men's heavy standard screw, pegged and loose nailed shoes (R. Vol. 1, p. 523). The hand method McKay machine was designed and adapted for McKay sewed shoes (R. Vol. 1, p. 524, lines 1–3; Vol. 2, p. 2399). It is admitted that the use of each of these machines was confined to the particular field for which it was designed and that neither competed with the Ideal

machine of the Goodyear Company. *The only contention of the United States*, therefore, is that there was competition between the Ideal machine of the Goodyear Company and the Chase machine of the Consolidated Company, and that the Ideal machine also competed with the hand method welt machine on which the Consolidated Company was experimenting.

In considering petitioner's contention that there was competition between lasting machines of the Consolidated & McKay Company and the Ideal lasting machine of the Goodyear Company, the court will, of course, bear in mind that this case relates to a highly specialized industry in which hundreds of entirely different machines are used on the various types of shoes, and that each kind of shoe requires for its successful manufacture machines designed *particularly just for that kind of shoe*. Nothing is more thoroughly established by the record than these vital and fundamental facts.

Petitioner's case on this issue depends primarily on the assumption that merely because two different machines were called lasting machines and were used in lasting shoes, each of them as a matter of course could be used in lasting any kind of shoes, despite the fact that one was designed for use on one particular and peculiar type of shoes and the other for use on another particular and peculiar type of shoes. This is hardly more reasonable than it would be to contend that the welt sewing and outsole stitching machines of the United Company compete or could compete with the upper stitching machines of the Singer Sewing Machine Company, because all of these machines sew together parts of boots and shoes.

Obviously, to establish that in February, 1899, there was existing or potential lasting machine competition between the Goodyear Company and the Consolidated & McKay Company, it must be clearly proved that a lasting machine of one of those companies was actually used in 1899, or at that time plainly could be used, to do with commercial success the work of a lasting machine of the other company, or that such competing use was then imminent or threatened.

That the alleged lasting machine competition was utterly trivial and insignificant will be shown by reviewing evidence, proving that the overlapping use in 1899 of the Chase and Ideal machines could not at the most have exceeded .13 of 1% of all

the shoes lasted by machines, or .07 of 1% of all the shoes made in 1899, and that the number of hand method welt lasting machines out in 1899 was less than .8 of 1% of all lasting machines in use in 1899.

Since the indictment which was before the court in *United States* v. *Winslow* charged that the Consolidated & McKay Company made 60% of all the lasting machines made in the United States and that the Goodyear Company made 10% of all the lasting machines, it would seem a waste of time to argue about alleged competition so trivial and insignificant as we have indicated; but in view of petitioner's contention on this issue, and since the court is entitled to assistance in reviewing the considerable amount of evidence of more or less technical character, it seems to be necessary to review and correlate this evidence.

It is proposed to discuss first the alleged competition between the Ideal lasting machine and the Chase lasting machine.

(2) THE EVIDENCE AFFORDS NO FOUNDATION FOR PETITIONER'S CLAIM THAT THERE WAS ANY COMPETITION BETWEEN THE IDEAL LASTING MACHINE OF THE GOODYEAR COMPANY AND THE CHASE LASTING MACHINE OF THE CONSOLIDATED & McKAY COMPANY.

(a) Introductory Statement.

With regard to the field of the Ideal lasting machine in 1899, Mr. Winslow testified:—

> "The Ideal was developed for the express purpose of lasting women's welt shoes, there being at that time no machine in the market which was adapted to that purpose" (R. Vol. 2, p. 2909, Int. 18).

Mr. Howe testified:—

> "The Ideal laster was adapted to work on women's welts, light leather which no machine in the market at that time would do successfully. . . . The machine was designed and almost wholly used for lasting women's welts" (R. Vol. 1, p. 626, lines 44–45; p. 627, lines 1–3).

Mr. Howard testified:—

> "It was especially designed for the lasting of women's welt shoes and in February, 1899, substantially all women's welt shoes which were lasted by machine were being lasted on the Ideal lasting machine" (R. Vol. 2, p. 2387).
>
> "That machine practically had the women's welt shoe field to itself" (R. Vol. 1, p. 966, lines 22–23).

Mr. Donham testified:—

> "It [the Goodyear Company] also had a specially designed lasting machine, which it had originated for the purpose of enabling women's Goodyear welt shoes to be lasted by machine, there being at that time no other lasting machine adapted for lasting that class of work" (R. Vol. 1, p. 2, lines 19–22).

The Chase lasting machine was primarily adapted and used almost exclusively for lasting men's welt shoes.

Mr. Winslow testified that—

> "the Chase machine was especially adapted to and was developed for the lasting of men's welt shoes" (R. Vol. 2, p. 2909, Int. 17).

Martin E. Welch, a witness for the defendants, who manufactured women's shoes, testified:—

> "We did not use the Chase lasting machine; we don't use it on women's work" (R. Vol. 1, p. 711, lines 32–33).

Mr. Howe testified:—

> "The Chase machine was designed for and used almost exclusively on men's welts" (R. Vol. 1, p. 627, lines 12–13).

It is not disputed that the Ideal lasting machine was developed, especially designed, and principally used for lasting women's welt shoes. It is also not disputed that the Chase lasting machine was developed, especially adapted, and principally used for lasting men's welt shoes.

The petitioner claims, however, that the Chase was also used in the field of the Ideal and that, conversely, the Ideal was also used in the field of the Chase.

That the petitioner's claim of competition between the Chase and Ideal lasting machines was not taken seriously even by petitioner is at least indicated by the belated attempt of petitioner to prove such competition. Throughout its direct case petitioner offered no evidence showing any use of either of these machines in the field of the other.

In its rebuttal case, petitioner made an effort to show some use of each of these lasting machines in the field of the other. It called three witnesses to establish use of the Chase machine in the field of the Ideal machine, O'Keefe, Lemay and Springer (R. Vol. 1, pp. 934, 947). We shall show that none of these witnesses testified that the Chase machine was used on women's *welt* shoes, the field of the Ideal, and that at the most they merely expressed opinions that it could be so used, and such opinions, in the light of strong evidence that it was not adapted for such use, obviously have no probative value.

In its rebuttal case petitioner also called nine witnesses, Snow (R. Vol. 1, p. 895), Worsencroft (R. Vol. 1, p. 913), Whitman (R. Vol. 1, p. 915), Heffernan (R. Vol. 1, p. 917), Jordan (R. Vol. 1, p. 932), Murphy (R. Vol. 1, p. 933), O'Keefe (R. Vol. 1, p. 934), Florsheim (R. Vol. 1, p. 935), Fletcher (R. Vol. 1, p. 937), in the effort to show use of the Ideal machine in the field of the Chase on men's welt shoes, but much of their testimony either related to use of the machine *after 1899*,—that is, after the United Company was formed,—with the addition of improvements which better adapted the machine for men's welt shoes, and upon a new shape of shoe which was introduced after 1899; or it related only to use of the Copeland Rapid laster, which was practically obsolete before the United Company was formed and which the Goodyear Company was not putting out at all. This evidence in no way refutes the testimony of defendants' witnesses, corroborated by several of petitioner's witnesses, that the Ideal machine was developed and designed and chiefly used for lasting women's welt shoes, and that while it actually was used to a small extent on men's welt shoes, it was not adapted for that use and such use was utterly insignificant.

(b) The Chase Lasting Machine was Neither Adapted nor Used for Lasting Women's Welt Shoes and therefore was not Used at all in the Field of the Ideal Lasting Machine.

There is absolutely no proof in the record that the Chase lasting machine was ever used for lasting women's *welt* shoes.

On the contrary, such slight use of the Chase lasting machine on women's shoes as the record shows was altogether on women's *McKay-sewed shoes*, and *there is no evidence in the record and no claim is made that the Ideal lasting machine was ever used on women's McKay shoes.*

The petitioner relies upon three witnesses to establish alleged use of the Chase machine in the field of the Ideal lasting machine.

Petitioner's witness O'Keefe, after naming four different factories in each of which he testified he had used Chase lasting machines for lasting *men's welt shoes*, testified that in one only of those factories were Chase lasting machines used on women's work. That use was "for a short time" only (R. Vol. 1, p. 934, lines 36–40; p. 935, lines 8–9, 18–20). There is no intimation in O'Keefe's testimony that those women's shoes were *welt shoes*. Petitioner's witness Lemay testified:—

> "I know of no reason why the Chase machine could not be used successfully in lasting women's shoes" (R. Vol. 1, p. 947, lines 37–39).

But that mere statement of opinion does not in the least discriminate between women's *welt* and women's *McKay* shoes, and further such statement of mere opinion on the part of a witness who, so far as the record shows, *never even saw a woman's shoe of any sort lasted on a Chase machine* is obviously entitled to no weight. Furthermore, it is answered by that witness's own testimony that the only women's shoes made in any factory where he worked were McKays and were lasted on the hand method McKay lasting machine (R. Vol. 1, p. 947, lines 25–36).

The only use of the Chase lasting machine on women's work testified to by petitioner's witness Springer was also use in lasting women's *McKay-sewed* shoes. The shoes made in that factory were mostly men's McKays, and the making of women's

McKays was an experiment and was confined to a year. They only made a few thousand pairs and used the same machines they had (R. Vol. 1, p. 948, lines 42–44; p. 949, lines 5–6, 18–24, 32-33).

The only testimony Springer gave with regard to use of the Chase lasting machine on *women's welts* was a bare statement of opinion:—

> "*Q.* Do you know of any reason why it cannot be used on women's welt shoes the same as on men's?
> "*A.* No, sir" (R. Vol. 1, p. 948, lines 17–19).

This statement of opinion, like that given by Lemay, obviously has absolutely no probative value. Indeed on cross-examination Springer testified:—

> "I am not undertaking to give any very well-studied opinion as to the various uses that the Chase machines may be commercially put to successfully" (R. Vol. 1, p. 949, lines 24–26).

Thus, not only did petitioner's witnesses fail to establish any use of the Chase lasting machine in the field of the Ideal either in 1899 or since 1899, but the testimony of those witnesses supplements defendants' evidence establishing that the Chase machine was neither used nor adapted for use in lasting women's welt shoes.

Mr. Winslow testified on cross-examination that the Chase lasting machine was *not used* on women's welt shoes:—

> "*A.* No; it wasn't used on women's welts.
> "*Q.* Was it used at all on women's welts?
> "*A.* I don't know of a single factory or a single machine that was being used to last women's welt shoes" (R. Vol. 1, p. 525, lines 15–18).

Mr. Howard testified:—

> "So far as I can learn the Chase lasting machine was never used, either before or after 1899, in lasting women's welt shoes. There was not one Chase lasting machine in Lynn, the great women's shoe center, in January, 1899. So far as I know, there has never been one there" (R. Vol. 1, p. 971, lines 10–14).

Not only did petitioner fail entirely to prove any *use* of the Chase lasting machine for lasting women's welt shoes, but the evidence is that the Chase lasting machine was *structurally not adapted* for that work. Mr. Winslow testified:—

> "The Chase machine was not adapted for lasting women's welt shoes. The reason why it was not is that it is a practical impossibility up to the present time to last the leather that is used in the manufacture of women's shoes over the toe by any bed machine that does not previously wipe it up over the toe before coming in over the last. . . . The Chase machine . . . did not have that function" (R. Vol. 1, p. 398, lines 41–44; p. 399, lines 1–3).

Another structural difficulty in the use of the Chase lasting machine for women's welt shoes arose from the use in that machine of a retarder which, as explained by Mr. Howard,—

> "worked satisfactorily on the heavier leathers of men's shoes, but on the lighter leathers of women's shoes it would pull the stock along the centre of the shoe and would result in bowing or bending the tip seam forwardly, which of course was bad shoemaking and spoiled the shoe" (R. Vol. 1, p. 968, lines 36–40).

Petitioner's counsel also read into the record an advertisement of the Chase Lasting Machine Company advertising the Chase machine for use on women's shoes (R. Vol. 1, p. 960). But this advertisement does not even purport to claim that the Chase machine could be used on women's *welt* shoes, that is, in the field of the Ideal. There was evidence that the Chase machine was used to a very slight extent on women's McKay shoes, and presumably the advertisement had reference to such use, that is, to use in the field of the Hand Method McKay machine.

Furthermore, even if this advertisement had been intended to state that the Chase machine could be used on women's welt shoes it merely shows an attempt to introduce the machine in this field, and the fact that it was never used in this field in spite of the attempt merely confirms the defendants' testimony that it was structurally unfitted for such use.

There is, therefore, no evidence that the Chase machine was ever used on women's welt shoes and there is evidence that it was not so used and that for structural reasons it could not be so used commer-

cially. The record, therefore, establishes clearly that the Chase machine did not compete with the Ideal machine in the lasting of women's welt shoes.

(c) The Evidence also Refutes Petitioner's Claim that the Ideal Machine was Competing with the Chase Machine in the Field of the Chase, that is, in Lasting Men's Welt Shoes.

Petitioner contends that the Ideal machine could be used and actually was used on men's welt shoes, and, therefore, that it did compete with the Chase machine. That it was possible so to use it, and that it was so used to a slight extent, is not disputed by the defendants. Their contention is that it was not adapted for such use and could not be so used successfully in a commercial sense and that such overlapping of use as existed was negligible and did not constitute competition in any true sense.

Mr. Winslow testified that the Ideal machine was not adapted for lasting men's welt shoes successfully, except possibly some shoes made of very light leather (R. Vol. 1, p. 398, lines 32–40).

Mr. Howe testified that the Ideal machine might as a feat be used on men's welts, particularly if they were made of thin leather, but the machine was designed and almost wholly used for lasting women's welts (R. Vol. 1, p. 627, lines 1–3).

> "As a feat you could use the Ideal laster, which was designed for women's welts, on men's shoes, but that no one would think of doing so unless they were forced to" (R. Vol. 1, p. 679, lines 34–37.)

Robert P. Hazzard, a witness for the defendants, who manufactured men's Goodyear welts exclusively, 5,000 pairs a day (R. Vol. p. 641, line 10), testified on cross-examination:—

> "Before the United Company was formed we lasted welt work on the Chase machine and by hand. I never used an Ideal machine. I don't know what kind of work the Ideal did. I always assumed it was used more for women's work. That is, it was always considered that the Ideal machine was for women's work. I never tried, and never saw an effort made, to use it on men's work" (R. Vol. 1, p. 649, lines 40–43; p. 650, lines 1–3).

There were Fundamental Structural Characteristics of the Ideal Lasting Machine which Rendered it Unadapted for Use with Commercial Success on Men's Welt Shoes.

Mr. Howard explained the characteristic organization of the Ideal machine by reference to a patent showing its construction, and testified that on account of its peculiar organization the machine was *not strong enough* to last men's shoes and *frequently broke* when it was used on men's shoes. Mr. Howard further testified:—

> "It was this characteristic of the organization of the machine which constituted its weakness in its use on men's shoes. Owing to the fact that the wipers were supported so far from their acting edges, and that there was lack of support for the toe-lasting head directly under the wipers, the wipers sprung so that they would not seat the upper materials properly against the lip of the insole, and owing to the strain there was frequent breakage.
>
> "That weakness in the organization of the machine which I have described didn't affect its successful operation in operating on women's shoes. The strain is so much less than that which the machine encounters in lasting men's shoes that the machine was strong enough for its operation upon women's shoes. But when it came to deal with the heavier leather of men's shoes, then the difficulty disclosed itself" (R. Vol. 1, p. 968, lines 13–27).

On cross-examination Mr. Howard further explained that the Ideal lasting machine could not be used successfully on men's shoes—

> "because the dimensions of a man's shoe and a woman's shoe are substantially different. The power required for lasting a man's shoe is much greater than that required for lasting a woman's shoe" (R. Vol. 1, p. 972, lines 43–44; p. 973, lines 1–2).

Mr. Howard also testified that another important difference between men's shoes and women's shoes, which added to the difficulties encountered in attempting to use the Ideal machine on men's shoes, was that in a man's shoe the box toe must be heavier and stiffer, because it has so much more to do. Practically all men's shoes have box toes; if they didn't they would fall in at the toe (R. Vol. 1, p. 973, lines 16–31).

Petitioner's witness Snow testified:—

> "The Ideal machine could not be used successfully in lasting men's heavy shoes, because in wiping over the toe, the shoe lifted from the toe piece" (R. Vol. 1, p. 896, lines 12–14).
>
> "When we wiped up over the toe of the shoe the toe would lift off the toe-rest" (R. Vol. 1, p. 896, lines 36–37).
>
> "*Q.* That was the defect with the Ideal when it worked on anything except very light leather?
>
> "*A.* Yes" (R. Vol. 1, p. 897, lines 4–6).

In 1901 or 1902 Mr. Snow made two important improvements in the Ideal machine (R. Vol. 1, pp. 896–898, 900) about which he testified:—

> "I think it was these two improvements that changed the machine from an unsuccessful machine into a successful one" (R. Vol. 1, p. 900, lines 11–12).

Petitioner's witness Fletcher testified that he knew about Snow's putting one of his improvements, the hold-down, on Ideal machines, and that—

> "without the hold down the Ideal machine continually allowed the toe to rise, which caused the tip to pull ahead and to bow" (R. Vol. 1, p. 939, lines 1–6).

But it should be noted that these improvements merely improved the *mode of operation* of the Ideal Machine on men's shoes, as we shall show (*infra*, pp. 133–136); they did not in any way remedy the *structural weaknesses* which were explained by Mr. Howard (*supra*, p. 128).

Much of the Evidence introduced by Petitioner to show Use of the Ideal on Men's Shoes is not directed to the Ideal at all, but relates to the Copeland Rapid Laster, a radically Different Machine which was practically Obsolete in 1899.

Petitioner has very much confused this issue by introducing considerable testimony which does not relate at all to the Ideal lasting machine, but deals only with the Copeland Rapid lasting machine, which was an old machine formerly put out by the Goodyear Company, but which was obsolete in 1899. The Copeland machine became out of date with the revolution in styles and shapes of lasts about 1895, at which time the new

high-speed Chase lasting machine and the Ideal lasting machine were produced. The Ideal was the only lasting machine which the Goodyear Company was putting out immediately before the United Company was organized (R. Vol. 1, p. 972, lines 19–38; R. Vol. 2, pp. 2366–7, 2387).

Petitioner's witness Florsheim gave no testimony whatsoever in relation to use of the Ideal lasting machine, but testified only that, "in 1899 we were using three *Copeland rapid lasters*" (italics ours) (R. Vol. 1, p. 158, line 22).

A large part of the testimony of petitioner's witnesses Worsencroft, Jordan and Murphy relates to the Copeland machine (R. Vol. 1, p. 913, lines 40–44; p. 914, lines 9–11, 27–34; p. 932, lines 35–36, 40–41; p. 931, lines 1–2; p. 933, lines 37–42).

It is true that some of petitioner's witnesses testified that there was not much difference between the Copeland machine and the Ideal machine; but their testimony is discredited by their own admissions.

Petitioner's witness Worsencroft admitted on cross-examination that he had had only a limited experience with lasting machines incidental to his principal business of operating welt-sewing machines (R. Vol. 1, p. 914, lines 40–44; p. 915, lines 10–13, 21–23, 33–37).

Petitioner's witness Heffernan admitted a substantial structural difference between the Copeland Rapid laster and the Ideal (R. Vol. 1, p. 918, lines 3–4).

Petitioner's witness Jones, after testifying that the Copeland Rapid laster and the Ideal were two modifications of the same machine, or "adaptions of the same machine for slightly different classes of work," brought out strikingly the radically different uses of the two machines by explaining that by "slightly different classes of work" he meant—

> "that the Copeland Rapid was used for men's and the Ideal for women's."

And by then testifying:—

> "*Q.* Well, could either machine do the work of the other; that is, could one machine be used for both men's and women's shoes?
>
> "*A.* I wouldn't answer that at this moment from my knowledge. My recollection isn't clear enough" (R. Vol. 1, p. 107, lines 39–43; p. 108, lines 23–33).

The irrelevance of testimony relating to the Copeland Rapid laster and the absurdity of the claim of identity between the Copeland Rapid laster and the Ideal are further proved by Mr. Howard's testimony:—

> "*Q.* Was there any difference between the Copeland Rapid and the Ideal?
> "*A.* There was a great deal of difference.
> "*Q.* What was it?
> "*A. Practically the only similarity was the fact that both machines were organized for the upward wipe at the toe, and the constructions by which that effect was obtained were substantially different, radically different in the two machines. In all other respects the machines were substantially different; in most respects radically different*" (italics ours) (R. Vol. 1, p. 972, lines 22–31).

Moreover, Mr. Howard testified that the Copeland Rapid laster "was practically obsolete in 1899" and that—

> "The Copeland had practically been killed by the new high speed Chase lasting machine, which was introduced in 1895" (R. Vol. 1, p. 972, lines 20–21, 36–38).

Since the Copeland Rapid lasting machine was out of date and obsolete and had been discarded by the Goodyear Company, which in 1899 and for some time previously had been putting out the Ideal machine exclusively, it is clear that any testimony as to use of some Copeland machines which were still out at that time is not in any way pertinent to the issue and is immaterial.

Nearly all of the Evidence introduced by Petitioner to show Use of the Ideal on Men's Shoes relates to alleged Use of the Ideal after February, 1899.

It should be noted that there is much confusion in petitioner's case between conditions *before 1899* and conditions *after 1899*, whereas it is obviously important that they be kept separate. *Overlapping of the fields of the lasting machines of the Goodyear Company and the Consolidated & McKay Company after 1899 clearly has no bearing upon this issue in the absence of evidence that there was good reason "early in 1899" to anticipate that there might later be such overlapping.*

Of the witnesses put on by petitioner in its attempt to show

use of the Ideal in the field of the Chase, Snow (R. Vol. 1, p. 895 *et seq.*) and O'Keefe (R. Vol. 1, p. 934 *et seq.*) did not testify *at all* as to use of the Ideal on men's work *prior to February, 1899.* Testimony of petitioner's witnesses Heffernan (R. Vol. 1, p. 917 *et seq.*), Fletcher (R. Vol. 1, p. 937 *et seq.*), Jordan (R. Vol. 1, p. 932 *et seq.*) and Worsencroft (R. Vol. 1, p. 913 *et seq.*), dealt largely or almost entirely with conditions *after 1899.* The testimony of both Whitman (R. Vol. 1, p. 915 *et seq.*) and Heffernan relates to one factory only, the Whitman & Keith factory, as does also much of the testimony of Worsencroft, Jordan and Murphy (R. Vol. 1, p. 933 *et seq.*). It does not appear whether Murphy's testimony as to the Ideal machine relates to conditions before or after 1899.

After the formation of the United Company there was a slightly greater use of Ideal machines on men's welt shoes, but that use was due, first, to a change in styles of shoes and, secondly, to the invention of improvements which remedied the defects in the organization of the Ideal machine that had rendered it unadapted for men's shoes. It cannot be assumed that defendants had any reason in February, 1899, to anticipate this change in the styles of shoes and much less can it be assumed that they had any reason to believe that inventions would be made which would better adapt the Ideal machine for men's work.

The slightly increased Use of the Ideal Lasting Machine after 1899 was due to the introduction of the High Toed Last and to Inventions which better Adapted the Ideal Machine for Men's Work.

The slightly increased use of Ideal machines on men's shoes after 1899 was due to a radical change in the styles of shoes—the introduction of the so-called bull-dog toe which was made on a high-toed last. This is explained in the testimony of George E. Keith, a shoe manufacturer at Brockton:—

> "I did not have an Ideal lasting machine in my factory before the organization of the United Company in February, 1899. I put in the first Ideal machine in my factory in November 1899.
>
> "The occasion for my taking any Ideal machines at that time was that that was about the time of a radical change in the style of shoes; it was the era of what they call the bull-dog toe. The bull-dog toe originated in Brockton,

and so far as I know there was no manufacturer in Brockton ahead of me in the introduction of the high-toed last.

"The idea of getting the Ideal machine to try on the high-toed last was because it wiped up on the side of the last better than the Chase and then with the adjustable head helped us to overcome the height and width of the toe. That was the reason that led me to take and try the Ideal" (R. Vol. 1, p. 964, lines 31–44).

But Even for this Special Work on Men's Shoes the Ideal Lasting Machine was not Successful until Patented Improvements were Embodied in the Machine long after February, 1899.

Mr. Keith further testified:—

"When we first used the Ideal laster on men's shoes we couldn't get the result that we expected or wanted. The difficulty was that the machine being so light the last would lift as you came up on the sides of the toe. . . . It would rise, so that it was impossible to do the work. . . . As it came up over the sides of the last the last would spring up. As a result, we could not complete the job. This required the operator to keep repeating the operation a number of times and that slowed him down, and it creased fine leather or patent leather so that the shoe would be almost ruined" (R. Vol. 1, p. 965, lines 1–29).

Petitioner's witness Snow testified emphatically to the same effect:—

"*Q.* By going over it two or three times, it was done all right?

"*A.* No; it wasn't done all right then. The more you wipe up a toe the worse it is" (R. Vol. 1, p. 899, lines 38–40).

Petitioner's witness Snow further testified that in 1901 or 1902 he invented a hold-down which was put on the Ideal machines in the Keith and Douglas factories in Brockton and which prevented the shoe from being lifted off the toe rest (R. Vol. 1, p. 896, lines 27–44; p. 897, lines 1–13).

Mr. Keith testified as to this hold-down:—

"A device was developed in my factory to be attached to the Ideal machine to help it in lasting men's shoes.

This was an attachment that could be swung around to hold the last down in its place so that the work could be performed better and so that the last could not rise. . . .

"Until that was done, in my opinion, the Ideal machine would not be commercially a success, under the conditions that were on the market at that time. Before we put on the hold down the trouble was with bringing the upper smoothly on a last that had a wide edge—to bring that up smooth before it was wiped over" (R. Vol. 1, p. 965, lines 8–24).

Petitioner's witness Whitman testified:—

"*Q.* And it is a problem with the old-fashioned Ideal laster to last those high-toed shoes without the lasts slipping up?

"*A.* Yes, sir.

"*Q.* Unless you have this hold-down?

"*A.* Yes, sir.

"*Q.* And without the hold-down you can't last those high-toed shoes as a good shoemaker wants to have it?

"*A.* *Not satisfactorily; no, sir*" (italics ours) (R. Vol. 1, p. 917, lines 7–14).

With regard to the difficulties encountered in the Whitman & Keith factory in the use of the Ideal lasting machine on men's shoes *before* the invention of the hold-down, petitioner's witness Heffernan testified that the hold-down was applied "because of the bowing of the tips and flattening of the heels."

Heffernan also testified:—

"*Q.* What does 'bowing of the tips' mean?

"*A.* Pulling up the tip of the shoe, pulling that cap line out of true. . . .

"*Q.* What happens to the heel?

"*A.* It flattens the back of the heel—flattens it in."

"I had to keep after the operators all the time, regulate the machines myself, put pressure on the heel pads to see that I could hold them down there and make them press on the shoe while they were trying to last the toe" (R. Vol. 1, p. 918, lines 35–43; p. 919, lines 1–5, 43–44; p. 920, lines 1–2).

Heffernan further testified that since this hold-down was applied to the machines in the Whitman & Keith factory—

"I don't have one tip bowed in a month now, whereas before I would get a dozen shoes in a case" (R. Vol. 1, p. 920, lines 8–9).

A case of men's shoes is *24* pairs (R. Vol. 1, p. 193, line 14).

Petitioner's witness Snow also testified:—

"*Q.* Did you also invent something else that held or that brought the wipers in around the counter?
"*A.* Yes, sir" (R. Vol. 1, p. 897, lines 14–16).

Snow also made another improvement on the Ideal machine, the patent on which is Defendants' Exhibit 338. He testified that before this improvement was added to the Ideal machine—

"the heel band would not bring the corners of the counters in.
"*Q.* The heel band of the Ideal machine?
"*A.* Yes; would not bring the end of the counters in. I made a something that would bring them in" (R. Vol. 1, p. 897, lines 30–34).
"*Q.* Now, it was with these two devices and improvements attached that Mr. Douglas used the Ideal laster on men's shoes?
"*A.* Successfully; yes.
"*Q.* And without those the Ideal would not last men's shoes successfully, would it?
"*A.* No, sir" (R. Vol. 1, p. 898, lines 35–40).

Heffernan testified that they had had the heel band improvement on the machines in the Whitman & Keith factory "for over twelve years" (R. Vol. 1, p. 918, lines 19–23).

We submit that this limited use of the Ideal machine *after 1899* which was occasioned by a radically new style of shoes that was not made in February, 1899, and which was made possible only by embodying in the machine inventions made long after that date, has no bearing upon this case. No one can reasonably anticipate today that a given patentable invention will be made to-morrow; that invention may not be made for ten years; it may never be made. If the record had shown, as it does not, that officials of the Consolidated & McKay and Goodyear companies had had reason to anticipate the introduction of high toes for men's shoes, by no possibility could it have been shown that they

had any reason to believe that inventions would be made several years later which would adapt the Ideal lasting machine for that development in the industry.

In February, 1899, there was only the most Trivial and Incidental Overlapping of the Ideal and Chase Machines through Use of the Ideal in the Field of the Chase, and that Overlapping Use was Absolutely Insignificant and Utterly Negligible.

Prior to the organization of the United Company the Goodyear Company had put out only 248 Ideal machines. Of these nearly two hundred were in factories where only women's shoes were made, and only about forty were in factories where men's shoes only were made (R. Vol. 1, p. 966). Of the 40 machines in factories where men's shoes only were made, Douglas had 17; Whitman & Keith, 7; Cushman, 6; Banister, 6, and the Duquesne factory at Pittsburgh had several (R. Vol. 1, p. 914, lines 5–8; p. 915, lines 7–8; p. 972, lines 9–13). There is evidence that the machines in the Whitman & Keith, Cushman, and Duquesne factories, 18 at the most, were being used before 1899. For all that the record shows the others may have been entirely idle. (O'Keefe did not work at Banister's before 1902 (R. Vol. 1, p. 934, lines 24–29).) This is certainly a meager showing of competition by a machine which had been on the market for nearly four years (R. Vol. 2, p. 2387).

The total number of lasting machines of all kinds out on January 1, 1899, was between 4,200 and 4,300. The Ideal machines, therefore, constituted about 5 or 6% of all lasting machines outstanding (R. Vol. 1, p. 975, lines 42–45). The total number of shoes operated on in 1899 by both the Ideal and the Copeland Rapid was .77 of 1% of all shoes lasted by machines (R. Vol. 1, p. 975, lines 35–41). Not more than one-half of the total number of shoes made in 1899 were lasted by machines (R. Vol. 1, p. 402, lines 14–18), so that less than .40 of 1% of all shoes made in 1899 were lasted on both the Copeland Rapid and the Ideal. As it appears that at the most not more than one-sixth of the Ideal machines were used on men's welt shoes, the total number of men's welt shoes on which the Ideal machine operated was less than .07 of 1% of all the shoes made in 1899.

With regard to the extent of this field which was occupied by the Ideal lasting machine it will not be forgotten that the bulk of women's shoes were lasted by hand in 1899, comparatively few being lasted by machine (R. Vol. 1, p. 525, lines 42–45).

(d) In the Normal and Natural Development of the Industry both the Chase Lasting Machine and the Ideal Lasting Machine have been superseded and have become obsolete. Accordingly any Question of their Possible Competition has become a Moot Point.

As a result of the development of the modern shapes of shoes, made on "crooked lasts," which is reviewed and explained by Mr. Howard, a few years after 1899 the Ideal and Chase machines both proved entirely inadequate for satisfactory work in lasting shoes made upon modern lasts (R. Vol. 2, pp. 2372–7, 2389–90). This situation was recognized by the United Company, and it met the demand for a machine which would successfully last shoes made upon these modern lasts by the development of a greatly improved lasting machine of radically different organization from either the Ideal or the Chase machine. The work of that new machine, the "No. 5," was so far superior and its capacity so much greater that it immediately superseded both the Chase and the Ideal machines, and there was no longer any demand for those machines. Mr. Howard testified:—

> "The Ideal machine, like the Chase machine, was not adapted for satisfactory work in lasting shoes made upon modern lasts such as have been used in the past eight or ten years" (R. Vol. 2, p. 2389).
>
> "After the No. 5 lasting machine was developed the demand from shoe manufacturers for Ideal machines ceased altogether and most of them have been returned in exchange for No. 5 machines. It was just the same in the case of the Chase machine" (R. Vol. 1, p. 971, lines 5–8).

Mr. Howard further testified:—

> "After manufacturers became acquainted with this No. 5 lasting machine the company was overwhelmed with orders. In February, 1911, the company was over 400 machines behind in its orders for No. 5 lasting machines, although it was building and shipping machines as fast as

> the facilities of its manufacturing plant would admit. For example, in April, 1911, the company shipped 208 machines. At no time since the machine was introduced has the company been able to catch up with its orders, and even as late as August, 1913, which is the date of the last report I have, the company was 82 machines behind in filling its orders. On that date 4,204 of these No. 5 lasting machines had been shipped. On December 1, 1911, over 3,000 of these machines were in use in shoe factories.
>
> "From the beginning, the No. 5 lasting machine has been adapted for lasting either men's or women's welt shoes. It has superseded the Ideal lasting machine as well as the Chase lasting machine and is now the standard commercial bed lasting machine supplied to manufacturers by the United Shoe Machinery Company" (R. Vol. 2, pp. 2380-1).

The ridiculous contention of petitioner's witnesses Heffernan, Whitman and Murphy that the Ideal machine had as great capacity as the No. 5 lasting machine was completely answered by Mr. Howard's testimony as to actual conditions in the Whitman & Keith factory, to which the testimony of those witnesses relates. He testified that several of the Ideal machines in that factory had been entirely idle, while they had been using the No. 5 machines all the time, and that the royalty returns giving the actual output of both types of machines showed that the average output of the No. 5 machine in that factory was much greater than that of the Ideal machine (R. Vol. 1, p. 967, lines 1-31). Mr. Howard concluded:—

> "For several years, and since some time prior to the beginning of this suit, it has been an accepted fact in the industry that the No. 5 machine did better work and more of it than the Ideal" (R. Vol. 1, p. 970, lines 5-8).

The absurd contention that the Ideal machine was as good as the No. 5 machine was further answered by petitioner's own witnesses. Cunningham said of the No. 5 machine: "It is a better machine." Fletcher said: "The No. 5 is superior to the Ideal" (R. Vol. 1, p. 289, lines 42-43; p. 938, line 21).

It thus appears that both the Ideal and Chase machines have become obsolete, and any question of their possible competition has become a moot point. No decree of this court could restore such competition if it ever existed.

(e) The Finding of the District Court as to Competition between the Chase and the Ideal Machines.

The District Court found in its opinion as follows:—

> "There is no proof of any actual use of the 'Chase' laster otherwise than for its intended purpose of lasting men's welt shoes. It could not work well for use with the lighter leather whereof women's shoes are made. The 'Ideal' laster, used almost exclusively for its intended purpose of lasting women's welt shoes, could not be relied on to work well with the heavier leather whereof men's shoes are made. The proof relied on to show that it competed with the 'Chase' went no further than to show that a number of 'Ideal' machines, small in proportion to the total number then in use, were being used in a few factories on men's shoes, notwithstanding their want of adaptation to such use. That there was any attempt to put either machine into the market as against the other does not appear. No competition between the two in the usual sense of the term is shown. After the consolidation, by the addition of a patented 'hold down attachment' added by the United Company to the 'Ideal' in 1901 or 1902, some of the defects referred to were removed, but not until then can it be said to have been commercially successful for work on men's shoes. Before this improvement, it possessed at most a limited possibility of such use. I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines" (Dodge, J., R. Vol. 1, p. 1130).

(3) THE EVIDENCE AFFORDS NO FOUNDATION WHATEVER FOR PETITIONER'S CLAIM THAT THERE WAS COMPETITION IN 1899 BETWEEN THE IDEAL LASTING MACHINE OF THE GOODYEAR COMPANY AND THE HAND METHOD WELT LASTING MACHINE OF THE CONSOLIDATED & McKAY COMPANY.

(a) Introductory Statement.

The Chase and Ideal lasting machines and the hand method lasting machine were of radically different types. The Chase and Ideal were of the "bed" type, in which the last and shoe are supported by a heel support and a toe rest, and the upper materials are worked over into lasted position at the heel and toe

by "wipers." This type also includes a "heel band" for forcing the upper materials, including the stiff "counter," around the heel end of the last. In this type of machine the tacks which secure the upper in lasted position are driven by a "hand tacker" except around the toes of welt shoes where the upper is secured by wire (R. Vol. 2, pp. 2362–3).

In the "hand method" type the upper is worked over the last and automatically tacked in a step-by-step operation, and the operator holds the shoe in his hands while the machine is operating upon it (R. Vol. 2, p. 2363).

When the United Company was formed the Consolidated & McKay Company was putting out the hand method McKay lasting machine. That machine could not be used for the lasting of welt shoes owing to the radical differences between McKay shoes and welt shoes, as explained by Mr. Howard:—

> "The lasting of welt shoes is a very different operation from the lasting of McKay shoes. . . . The insole of a McKay sewed shoe is flat, and in the lasting of such a shoe it is only necessary that the upper stock be worked properly over the edge of the last, laid down upon the flat insole, and tacked. The insole of a welt shoe, on the other hand, is formed with a channel lip or rib extending all the way around the shank, forepart and toe. The narrow strip between this lip or rib and the edge of the sole is known as the 'feather edge.' . . . In order that the shoe may be in proper condition for the welt-sewing operation, the upper must, in the lasting operation, be forced into the angle formed by the feather edge and the upturned lip, and must be secured in that position. The hand method lasting machine supplied for the lasting of McKay sewed shoes had no provision whatever for getting the upper into this angle between the feather edge and the lip, and for securing it in that position snugly against the lip. Not only was the hand method lasting machine for McKay work unsuited for the lasting of welt shoes satisfactorily, but in fact it could not possibly be used commercially for that work" (R. Vol. 2, pp. 2399–2400).

For some time prior to 1899 the Consolidated Company had been endeavoring to construct a hand method machine which would last welt shoes and it—

> "had developed that machine to a point where it could last the heel, shank and ball, but could not last the toes satisfactorily" (Winslow, R. Vol. 1, p. 400, lines 27–32).

Mr. Howard testified that prior to the organization of the United Company there were under lease only thirty-four hand method welt lasting machines. The manufacturers wouldn't take them. "The machines were being knocked about from pillar to post. They didn't stick. They would be sent out on trial and they wouldn't stay" (R. Vol. 1, p. 969, lines 4–6).

Mr. Winslow testified:—

> "And while it is true that we had machines out it is true that they were not being accepted by the manufacturers and they were being sent out and coming back. We were trying all the time to keep them going. . . . We were trying to hold them in the field, but we knew that they were not commercially successful" (R. Vol. 1, p. 978, lines 2–5, 11–13).

The petitioner read into the record certain advertisements of the Consolidated Company in a trade paper dated December 3, 17, and 31, 1898, advertising the hand method lasting machine for lasting welt shoes (R. Vol. 1, p. 960, lines 25–28).

These advertisements do not state that the machine is intended for women's welt shoes, the field of the Ideal machine. But apart from this, they merely show an attempt by the Consolidated Company to introduce the machine. They in no wise refute the testimony referred to above, showing that this attempt of the Consolidated Company had failed, and that the machine was not commercially successful.

The hand method welt machine was not a commercial success in 1899 principally because, as stated by Mr. Winslow, "it would not last the toes of the welt shoes properly" (R. Vol. 1, p. 524, lines 10–11).

Mr. Winslow explained why the machine could not be successfully used on a welt shoe:—

> "The inner sole is channeled, as shown in Defendants' Exhibit 145, and in lasting the upper has to be forced against the shoulder of the channel. In order to do this some form of wiper must be used and in the hand-method machine there was no wiper which would push the upper in up to the shoulder of the inner sole. The years of experimentation which we carried on were for the purpose of producing a wiper which would do that" (R. Vol. 1, p. 399, lines 34–41).

Mr. Winslow further testified that early in 1898 in the lasting of welt shoes by the bed machines the taping of the toes was adopted, thereby doing away entirely with the use of tacks to hold the toe, which is a great advantage to the welt sewing operation. The result of this was that the hand method welt machine became even less desirable by comparison with the bed machines (R. Vol. 1, p. 977, lines 40–45; p. 978, line 1).

Mr. Howard testified:—

> "In order to last a toe properly it was frequently desirable to give several pulls upon the same portion of the stock at the toe by the pinchers, and that could not be done, because since the machine drove a tack at every operation of the pinchers, the tacks would be driven one upon another. If they attempted to take hold of a portion of the stock near that or closely adjacent to that just acted upon, the tacks would be driven so close together that they would cut the stock and spoil the leather. Then, of course, the presence of some of those lasting tacks or of stay tacks, if they were driven to take their places, interfered seriously with the operation of the welting machine. The needles would break.
>
> "And more than that, until this wiring attachment was placed upon the machine the machine would not force the upper properly against the rib of the inner sole, and it was necessary to perform a subsequent hand operation upon the shoe by means of what was known as a 'banging iron,' one of which is Defendants' Exhibit 340. . . . That was a subsequent additional hand operation for which operators were paid two and one-half cents per dozen" (R. Vol. 1, p. 969, lines 13–30, 36–38).

(b) The Hand Method Welt Lasting Machine did not become Commercially Successful until a New Wiring Device was Invented and Incorporated in it after the Formation of the United Company.

Mr. Howard testified:—

> "The attachment for placing wire instead of tacks around the toe was first adopted and applied to the hand method welt lasting machine in January, 1900, in its original form. The wire attachment was improved a year later, but the machine really reached a point of commercial success with the adoption of the first wire attachment" (R. Vol. 1, p. 969, lines 41–44; p. 970, lines 1–2).

This wiring device performed the same function which the taping device performed on the bed machine (R. Vol. 1, p. 978, lines 6–8). It obviated the difficulties which had made the hand method machine previously unsatisfactory.

(c) There is no Evidence Whatever that the Thirty-four Experimental Hand Method Welt Lasting Machines which were out were ever used in the Field of the Ideal Machine, that is, on Women's Welt Shoes.

The record is absolutely silent as to the kinds of shoes on which the thirty-four experimental hand method welt lasting machines, which were out in February, 1899, were used, so far as they were being used. The petitioner did not attempt to show that there was any actual use of the machines on women's welt shoes.

With respect, therefore, to the claim of petitioner as to competition involving the hand method welt lasting machine, the record shows that the following state of facts existed at the time of the formation of the United Company:—

Only thirty-four hand method welt machines had been put out up to February, 1899, a trifling number compared with between 4,200 and 4,300 lasting machines of all kinds then in use; these thirty-four lasting machines were really only experimental and their use amounted to nothing more than affording thorough shoe-factory trials of the machine. In spite of continuous and aggressive attempts for several years on the part of the Consolidated & McKay Company to make the hand method welt machine successful, in February, 1899, that machine was a flat failure because it could not satisfactorily last the toes of welt shoes; at that time not only was the hand method welt machine in a state of experimental development only and a commercial failure, but there was absolutely nothing in sight upon which even to hazard a reasonable guess that the hand method welt machine *ever would become a success*. The toe-wiring mechanism to which the hand method welt machine owed its entire commercial success, first applied to the machine in 1900, was a radically new departure not even dreamed of in February, 1899. No one could then reasonably anticipate that mechanism would be invented which could be incorporated in that highly organized

automatic machine and would successfully apply wire around the toe during the step-by-step operation of the machine. If those inventions—and there were two of them before a successful organization was produced (R. Vol. 2, p. 2403)—had not been made, the hand method lasting machine for welt work would never have been heard of in this suit.

It is absolutely clear, therefore, if anything is clear from the record, that in February, 1899, the hand method welt machine did not offer either existing or potential competition worthy of the slightest notice.

(d) Even after the Hand Method Welt Lasting Machine became Commercially successful in 1900 It had a Field of its own distinct from the Field of the Bed Lasting Machines, such as the Ideal.

Furthermore, owing to the very radical differences between the hand method type of lasting machine and the bed type of lasting machine such as the Ideal, the hand method welt machine, after it became commercially successful, naturally found a field of its own distinct from the bed lasting machine field, manufacturers who preferred speed to quality employing the hand method welt machine and manufacturers who preferred quality to speed employing a bed machine. As explained by Mr. Howard:—

> "There is a difference of opinion among shoe manufacturers as to the desirability of using the hand method machine or the bed type of lasting machine for welt shoes. Those manufacturers who believe that they can secure better lasting upon the bed type of lasting machine prefer, and are supplied with, Lasting Machine No. 5, USMC, the United Company's standard commercial bed lasting machine, which was introduced in 1908. Other manufacturers who are satisfied with the quality of the work done on the hand method lasting machine for welt work prefer that machine because they can get twice the amount of work from it as from the bed type of lasting machine. Either type is supplied to the manufacturer by the United Company, according to his preference" (R. Vol. 2, pp. 2406, 2407).

As stated by Mr. Winslow:—

> "Wherever they can last a welt shoe satisfactorily by the hand method machine they use that in preference, because it is a speedier machine for lasting than any of the other machines, but the quality of work which can be done by that machine, especially around the toe, is not considered by the manufacturers so high grade as when you can use the bed machine" (R. Vol. 1, p. 526, lines 16–22).
>
> "Manufacturers prefer to use the hand method welt lasting machine on women's welt shoes or any welt shoes where quality is not the first consideration, because it is a faster and more economical machine" (R. Vol. 1, p. 527, lines 21–24).

The testimony of petitioner's witnesses also showed that the hand method machine and the bed machines had different fields. For example, petitioner's witness Selz testified:—

> "We use the Consolidated machine . . . for McKay work in men's shoes and both McKay and welt work in women's shoes. . . .
>
> "*Q.* And while it is true that you could possibly physically last almost any kind of a shoe on the hand-method machine, there are some kinds of shoes which it does very much more economical work upon than others?
>
> "*A.* Yes, that is true" (R. Vol. 1, p. 149, lines 4–7, 27–31).
>
> "The Chase machine is better on welt work than the Consolidated" (R. Vol. 1, p. 157, lines 21–22).

Petitioner's witness Fletcher testified that Douglas used the hand method machine on the cheapest grade of men's welt shoes (R. Vol. 1, p. 938, lines 12–16).

Petitioner's witness McElroy testified that the No. 5 lasting machine "is better adapted for men's welts" (R. Vol. 1, p. 192, line 37).

The high degree of specialization in lasting machines which is required by the industry is further illustrated by the fact that the United Company manufactures and puts out five different types of hand method lasting machines, each of which is designed for a particular use upon a particular kind of shoe, and none of which is adapted to be used successfully, if at all, upon the kind of work for which any of the other types is designed and adapted, as is fully explained in the record (R. Vol. 2, pp. 2390–2416).

(e) Finding of the District Court as to Competition between the Ideal and Hand Method Welt Machines.

The District Court held with respect to this alleged competition (Dodge, J.) (R. Vol. 1, p. 1130):—

> "With still another laster with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed."

(f) Such Insignificant and Incidental Lasting Machine Competition, if Any, as Existed in February, 1899, Involved Infringement by Each Company of the Other's Patents and Accordingly was at Least Prima Facie Unlawful.

Serious patent litigation between the Consolidated Company and the Goodyear Company was pending at the time of the formation of the United Company. This patent litigation involved important features common to the machines of both companies. Numerous infringement suits had been brought, in some of which one and some of which the other company was the defendant. Suits were also pending against users of the different machines who were largely the customers of both companies (R. Vol. 1, p. 632, lines 14–41).

(4) GENERAL STATEMENT OF THE SITUATION IN RESPECT TO THE ALLEGED LASTING MACHINE COMPETITION.

The true situation as to the lasting machine conditions in February, 1899, with respect to the Ideal lasting machine and the lasting machines of the Consolidated & McKay Company was thus stated by Mr. Howe:—

> "Whatever competition there was was due to their respective fields lapping over" (R. Vol. 1, p. 629, lines 14–15).
>
> "They really occupied separate fields. It was competi-

tion which might be described as incidental or as negligible" (R. Vol. 1, p. 629, lines 17–18).

"Each had its separate field for which it was designed, but in the cases of all machines of a genus the specific varieties will overlap" (R. Vol. 1, p. 627, lines 17–19).

As stated by Mr. Winslow:—

"Very soon after a given machine had been introduced they settled into their natural positions" (R. Vol. 1, p. 404, lines 37–38).

"These machines have the fields which I have described and they naturally belong to them. No manufacturer to-day would think of using them outside of those fields" (R. Vol. 1, p. 405, lines 3–6).

(5) SUMMARY OF THE EVIDENCE AS TO THE ALLEGED LASTING MACHINE COMPETITION.

1. Neither the McKay & Copeland machine nor the hand method McKay machine (both put out by the Consolidated Company) could be used on welt shoes, so that neither competed or could compete with the Ideal machine of the Goodyear Company. This has not been denied.

2. The Chase machine put out by the Consolidated Company was adapted for use and was used almost exclusively for lasting men's welt shoes.

Such slight use as was made of that machine in lasting women's shoes was on women's *McKay* shoes. The evidence shows that the Chase machine was structurally not adapted for use on women's welt shoes, and there is not a bit of evidence that it was ever used in lasting women's *welt* shoes. It, therefore, did not compete with the Ideal machine of the Goodyear Company in lasting women's welt shoes, which was the field of the Ideal machine.

3. The Ideal machine of the Goodyear Company was adapted to and developed for the purpose of lasting women's welt shoes. It was possible to use it on men's welt shoes, but it was not commercially practicable for such use.

The insignificant use of the Ideal machine on men's welt shoes did not show that there was competition between the Ideal machine and the Chase machine, but only showed an incidental

overlapping of the fields of the two machines which were primarily intended, adapted, and used in different and distinct fields.

In 1899 the Ideal machines constituted only 5 or 6% of all the lasting machines in use. The machines lasted only .77 of 1% of all shoes lasted by machines in 1899. At the most only about one-sixth of the shoes lasted on the Ideal machines were men's welt shoes. The alleged competition by the Ideal machine, therefore, was in lasting approximately .13 of 1% of the shoes lasted by machines in 1899. As only about one-half the shoes made in 1899 were lasted by machines, the actual use of the Ideal machine in alleged competition with the Chase machine is reduced to the use of the machine on less than .07 of 1% of all the shoes made in 1899.

It is obvious that the alleged competition was entirely insignificant.

4. The slightly increased use of the Ideal machine on men's welt shoes after 1899 was made possible by new inventions made long after the formation of the United Company which overcame some of the practical difficulties in using the machine on men's welt shoes, and the occasion for that use was the introduction of a radically new style of shoe which was made upon a new type of last.

5. The hand method welt machine of the Consolidated Company was only in an experimental stage in 1899. Only thirty-four machines were under lease, or about .08 of 1% of the total number of lasting machines in use, and these few machines were being constantly returned. Even as to these machines there is no evidence that they were used on women's welt shoes, the field of the Ideal machine. The machine did not become a commercial success until 1900, when a new mechanism was adopted which had not been invented and could not have been foreseen in 1899.

The machine, therefore, did not offer any actual competition to the Ideal machine in 1899 or any prospective competition which could have been foreseen.

6. Even after the hand method welt machine became commercially successful in 1900, it had a field of its own. Manufacturers preferring speed to quality used the hand method machine, and those preferring quality to speed used the Ideal

machine or the Chase machine, according to the character of their work.

7. The patent litigation between the Goodyear Company and the Consolidated Company shows that if a trivial and insignificant competition may be said to have existed, it involved infringement by each company of the patents owned by the other and accordingly it was at least *prima facie* unlawful.

8. In the natural and normal development of the industry both the Ideal machine and the Chase machine have become obsolete. If any competition ever existed it could not be recreated.

(6) THE ACQUIRING OF BOTH THE IDEAL MACHINE OF THE GOODYEAR COMPANY AND THE LASTING MACHINES OF THE CONSOLIDATED COMPANY DID NOT MAKE THE ORGANIZATION OF THE UNITED COMPANY UNLAWFUL NOR DID IT SHOW ANY WRONGFUL INTENT.

The acquisition by the United Company of the Ideal machine of the Goodyear Company and the Chase machine and the experimental hand method welt machine of the Consolidated Company could not make the formation of the United Company unlawful, unless by its necessary effect or by reason of the intent with which it was done it prejudiced the public interest by unduly restraining trade or creating a monopoly.

As we have shown, there is no evidence of anything which could be dignified by the name of competition between the machines of the two companies. So far as the Ideal and Chase machines are concerned there was only a slight overlapping of the fields of use of two machines adapted for different purposes. The slight experimental use of the hand method welt machine was negligible.

It cannot be seriously contended that this slight overlapping of the fields of the Ideal and Chase machines and the insignificant use of the experimental hand method lasting machine necessarily created an unlawful restraint of trade and made the formation of the United Company inherently unlawful.

Nor does this acquisition show any intent by the parties to eliminate competition. The manufacture of the Ideal machine

was a negligible part of the business of the Goodyear Company. It is self-evident that its acquisition by the United Company was purely incidental to its acquisition of the machines for making welt and turn shoes, the manufacture of which constituted the principal business of that company. There is absolutely no justification for contending that the elimination of this trivial competition, if indeed any actual competition did exist, was an actuating motive in the formation of the United Company.

The real purpose of the parties was to create a more efficient organization and to combine the Goodyear welt machines with the machines of the other companies. An incidental elimination of an almost insignificant competition between two different types of patented machines would not be sufficient to make unlawful the consummation of this lawful purpose.

Moreover, even if the Ideal machine had been the only machine owned by the Goodyear Company, so that its acquisition had been, not an incidental result of acquiring the Goodyear Company's welt machines, but the direct purpose of the acquisition, it would have been lawful.

The United Company naturally and properly desired to furnish the best and most efficient types of lasting machines. It obtained, through the Consolidated Company, the patents on, and therefore the right to supply the Chase machine, the McKay & Copeland and the Hand Method machines. No one of these, however, lasted women's welt shoes successfully. It naturally desired to furnish a machine for lasting women's welt shoes, and the Ideal machine was the only machine of the kind on the market. The Ideal was patented, and the United Company, therefore, could not furnish the Ideal unless it acquired the patents which the machine embodied. Until it acquired these patents it was absolutely restrained from furnishing this type of machine, and as the Ideal machine was the only machine then invented which could last women's welt shoes, the United Company was absolutely restrained from furnishing any machine for this purpose. It was, therefore, normal and strictly in furtherance of its legitimate business for the United Company to acquire these patents. To hold otherwise would be to hold that the United Company could not furnish a machine for lasting women's welt shoes, merely because such machine could also be used, or was used to a slight extent, for lasting men's welt shoes.

Furthermore, the settlement of the infringement suits between the parties justified the combination of the patents covering them. If, for example, the Goodyear Company had lost these suits, it might have been compelled to abandon the Ideal machine entirely. It was entitled by combination with the Consolidated Company to avoid infringement suits brought against users of this machine. An acquisition of both sets of patents for this purpose would have been a legitimate normal transaction not forbidden by the Sherman Act.

B. ALLEGED COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE EPPLER COMPANY.

(1) INTRODUCTORY STATEMENT.

The welt shoe differs from other kinds of shoes in the method by which the sole is attached to the upper. In pegged and metallic fastened shoes the sole is attached to the upper by wooden pegs or nails. In McKay shoes the sole is attached by a seam which runs through the outersole and innersole so that it appears on the inside surface of the shoe. In the case of pegged, nailed, and McKay shoes, as the fastening material or seam appears on the inside of the innersole it comes in contact with the sole of the foot and may cause annoyance and discomfort.

In the welt shoe, a welt or narrow strip of leather is attached to the outside of the upper and to the insole, and the outsole is sewed to this welt.

In the manufacture of the Goodyear Welt shoe the Goodyear Welter first sews together the upper, the welt, and the inner sole. This seam, instead of being sewed through the inner sole, is sewed sideways by a curved needle in a prepared channel in the exterior of the innersole. A light single thread lies in this channel, and the double thread or chain is laid on the welt outside the surface on which the foot rests. The outsole is then sewed to the welt by the Goodyear Stitcher. As a result, neither the chain of the stitch which attaches the welt to the upper nor the seam which attaches the outsole to the welt appears on the inside of the shoe or under the portion of the innersole on which the foot rests.

In the manufacture of the Eppler Welt shoe the bulky double thread of the chain-stitch was laid in the prepared channel in the bottom of the innersole underneath the surface on which the foot rests and not on the welt, as in the Goodyear method.

This difference in the construction of the shoe, as we show below, made it impossible to use the Eppler machine on women's shoes or turn shoes, and made it much inferior to the Goodyear machines on men's shoes.

The Goodyear System was the first system ever used for making welt shoes by machinery (R. Vol. 1, p. 626, lines 3–8). The Goodyear method ran back to 1870 or 1868 (R. Vol. 1, p.

625, line 20). The Goodyear Company, however, revolutionized its machines about 1890 by the use of new inventions (R. Vol. 1, p. 678, lines 6–9). In 1899 its machines were recognized as superior to any others in use; it had under lease approximately 2,500 welters and stitchers (R. Vol. 5, p. 424, Defs.' Ex. 226).

The Eppler Company, which first put out its machines in the early nineties (R. Vol. 1, p. 679, line 7), used a method which had been tried and abandoned years before by the Goodyear Company (R. Vol. 1, p. 625, lines 21–28). The Eppler Company had been unsuccessful in putting out its machines, having only between thirty and forty welters outstanding in 1899, of which about one-third were in the factory of the president of the company (R. Vol. 1, p. 389, lines 6–9).

(2) PURPOSE OF THE ACQUISITION OF THE EPPLER COMPANY.

Mr. Winslow testified that the reason for acquiring the Eppler Company was to get rid of the litigation between the Goodyear and Eppler companies in the starting out of the new company, and that it was acquired for no other purpose (R. Vol. 1, p. 416, lines 25–29; p. 531, lines 34–35).

Mr. Howe testified that the Eppler Company was acquired principally to get rid of this litigation (R. Vol. 1, p. 633, lines 15–17). Another subsidiary reason in Mr. Howe's mind was that the Eppler Company made a different kind of machine for making a different kind of shoe (R. Vol. 1, p. 633, lines 13–14). He felt it would be desirable to be able to furnish this machine if any customers desired it.

The machines of the Eppler Company infringed the Goodyear Company's patents, and, as we shall show later, a considerable number of patent suits brought by the Goodyear Company were pending. In conducting this litigation suits were brought against shoe manufacturers using the Eppler machines. The defendants in such suits were also lessees of lasting, heeling, and metallic machines taken over by the United Company, which was thus placed in the disagreeable position of being obliged to sue its own customers if the litigation against the Eppler Company were continued (R. Vol. 1, p. 417, lines 1–8; p. 633, lines 18–26). As Mr. Howe testified, "this made very unpleasant relations" (R. Vol. 1, p. 633, lines 25–26).

(3) THE PURCHASE OF THE EPPLER COMPANY WAS NOT CONSIDERED UNTIL AFTER THE FORMATION OF THE UNITED COMPANY WAS AGREED UPON.

The Eppler Company was acquired out of the proceeds of the funds supplied by the syndicate which took stock in the United Company (R. Vol. 1, p. 32, lines 6–7). It was actually acquired in March, 1899 (R. Vol. 1, p. 17, lines 12–13), a month after the United Company was organized.

Both Mr. Winslow and Mr. Howe testified that there was no discussion of the Eppler Company until after the arrangements between the Goodyear Company and the Consolidated Company to unite had all been settled (R. Vol. 1, p. 529, lines 12–15; p. 530, lines 22–25; p. 633, lines 5–7; p. 675, lines 34–35).

The United States apparently contends that elimination of competition between the Eppler Company and the Goodyear Company was one of the motives for the formation of the United Company. As this acquisition was not discussed or thought of until after the formation of the United Company was agreed to, it follows that the acquisition of the Eppler Company and the elimination of this alleged competition could not have been a motive for the formation of the United Company as charged by the United States.

(4) PATENT LITIGATION BETWEEN GOODYEAR AND EPPLER COMPANIES ON ACCOUNT OF WHICH THE EPPLER COMPANY WAS ACQUIRED.

George E. Keith, who had been the president of the Eppler Company, testified that there was patent litigation affecting all the machines of the Eppler Company from the time it first started business (R. Vol. 1, p. 392, lines 13–24).

Mr. Howe testified:—

> "There was extensive litigation between the Goodyear Company and the Eppler Company prior to 1899. . . . Broadly speaking the outsole stitcher and such auxiliary machines as the Eppler Company made and tried to lease infringed patents owned by the Goodyear Company" (R. Vol. 1, p. 470, lines 11–15).

> "As to the prospects of the ultimate result, on my side I thought we should succeed in all our cases" (R. Vol. 1, p. 470, lines 21–22).

In 1899 there were pending eight patent suits brought by the Goodyear Company against the Eppler Company or users of its machines for infringement of Goodyear patents (R. Vol. 1, pp. 471, 673, 674).

In one suit the Goodyear Company charged the Eppler Company's welt machine with infringing the Briggs patent for forming chain-stitches, which was owned by the Goodyear Company (R. Vol. 1, p. 673, lines 34–37). In another suit the Goodyear Company charged that the Eppler outsole stitcher infringed the French and Meyer patent owned by the Goodyear Company (R. Vol. 1, p. 674, lines 9–14). Two other suits against users of the stitching machine were also brought (R. Vol. 1, p. 674, lines 15–21). In another suit the Goodyear Company charged infringement of a patent belonging to it by the Eppler rounding and channeling machine, and in two others the Goodyear Company charged infringement upon its Hadaway patent by a stitch separating and indenting machine leased by the Eppler Company (R. Vol. 1, p. 674, lines 23–32). In still another, infringement was charged by the Goodyear Company by the Eppler welt beating machine (R. Vol. 1, p. 673, lines 17–33). There were a half dozen suits in nearly all of which testimony was being taken (R. Vol. 1, pp. 673–4). Mr. Howe examined the Eppler machines (R. Vol. 1, p. 677, lines 7–8).

The United States has endeavored to belittle the infringement of the Briggs patent by the Eppler welter and has attempted to distort the testimony of Mr. Howe that in his opinion—

> "the infringing devices were very material in the construction of the Eppler Company's machines, except the welt sewing machine" (R. Vol. 1, p. 623, lines 31–33).

In this effort the United States lost sight of the fact that Mr. Howe was testifying specifically about "infringing *devices*" and that this testimony has no bearing at all upon the infringement by the Eppler welter of the Briggs *method* patent. His testimony as to that was as follows:—

> "The Eppler welter infringed the Briggs method patent on an invention which accomplished the sewing of a tight

seam. That method patent and a machine patent revolutionized the Goodyear Company's business about 1890, and rendered the old Goodyear machines out of date. Everybody wanted the new machine embodying the invention of the Briggs patent" (R. Vol. 1, p. 678, lines 5–10).

The United States offered no testimony whatever controverting defendants' evidence as to any of the infringements above set forth.

This patent litigation was a serious embarrassment to the United Company, as, if it was continued against the Eppler Company, the United Company would be obliged, as explained above, to sue its own customers, such as Mr. Keith. To avoid this litigation was a normal and natural reason for the acquisition of the Eppler Company. Its acquisition can give rise to no inference of an unlawful intent to eliminate competition.

(5) IF ANY COMPETITION EXISTED BETWEEN THE EPPLER COMPANY AND THE GOODYEAR COMPANY, SUCH COMPETITION WAS TRIVIAL AND NEGLIGIBLE.

Field of Competition.

The Goodyear machines made Goodyear Welt shoes, the Eppler machines made Eppler Welt shoes (R. Vol. 1, p. 417, lines 5–21). The upper and innersole were differently attached in the two shoes, and, therefore, the machines did a different class of work. The Eppler machines were restricted by the leases of that company to use in the manufacture of the "Eppler Welt Shoes" (R. Vol. 3, P.'s Ex. 59, p. 512).

So the Eppler machines could not make Goodyear shoes and the Goodyear machines could not make Eppler shoes (R. Vol. 1, p. 417, lines 20–21).

The United States apparently contends that both machines made welt shoes; that the Goodyear Company did most of the welt machine business in the United States; and that by the acquisition of the Eppler Company, even though it did a very small business, some possible competition was eliminated.

The welt method was only one method of attaching the soles to the uppers of shoes. Until the Goodyear method was devised no welt shoes were made except by hand. Among other methods

of attaching the soles were pegging, nailing, and McKay sewing. Also there were other kinds of welt shoes than the Goodyear and Eppler, such as the mock welt shoe and the McKay welt shoe (R. Vol. 1, p. 199, line 26; p. 214, line 11; p. 698, line 8; p. 824, lines 28–31). In making a McKay welt shoe the welt was sewed to the upper and innersole on the McKay sewing machine (R. Vol. 1, p. 206, lines 22–24; p. 225, lines 14–18; p. 249, lines 7–17), but in this case the seam appeared on the inside of the innersole next to the foot and, as above explained, it was the distinguishing characteristic of the Goodyear welt shoe that there was no seam next to the foot. In 1899 only about 12% of the shoes made had their soles attached by the welt method, while nearly half were sewed on McKay machines (R. Vol. 1, p. 414, lines 42–45; p. 415, lines 1–6). So far, then, as any competition can be said to exist between machines making different kinds of shoes the real competition of the Goodyear machines was with the McKay machines. In acquiring both the Goodyear Company and the Eppler Company, therefore, the United Company acquired patents on machines which by two distinct methods attached the soles of only a small proportion of the total shoes made in the country.

The Eppler Machines were Distinctly Inferior to the Goodyear Machines, Offered No Real Competition, and were Certain to Succumb to the Goodyear in the Survival of the Fittest.

In the late eighties Andrew Eppler, who had at one time worked for the Goodyear Company, took up a method of making a double chain-stitch which had been abandoned by the Goodyear Company and applied it to a machine for welting men's shoes (R. Vol. 1, p. 625, lines 20–28).

At first the Eppler Company had no outsole stitching machine, but outsoles for its shoes were attached by a harness machine or by hand stitching (R. Vol. 1, p. 625, lines 29–34).

The Eppler Company developed a few auxiliary machines inferior in design and quality of work to the Goodyear auxiliaries (R. Vol. 1, p. 631, lines 9–15).

The Eppler Company at the date of the formation of the United Company had been putting out its machines for seven

years or more and had only succeeded in disposing of between thirty and forty welt machines, of which about one-third were in the factory of the president of the company, Mr. George E. Keith (R. Vol. 1, p. 389, lines 6–12). The Eppler machines were not commercially successful as profit-makers (R. Vol. 1, p. 392, lines 9–12). The Goodyear Company, on the contrary, had outstanding 2,531 welters and stitchers on March 1, 1900, the nearest date in evidence (R. Vol. 5, Defs.' Ex. 226, p. 424). The reason is clearly established by the Record: the Eppler machines were decidedly inferior.

As explained above, the Eppler machine laid a double chain-stitch in the channel of the insole under the portion thereof on which the foot rested, while the Goodyear machine laid a light single thread in the channel so that the double thread of the chain-stitch seam was not under the portion of the insole on which the foot rested (R. Vol. 1, p. 415, lines 26–36). The importance of this distinction in the construction of the Goodyear and Eppler shoes runs through the successful progress of the Goodyear System and the failure and final elimination of the Eppler System.

Mr. Keith, the president of the Eppler Company, testified that this double stitch on the inside of the sole "had a tendency to raise a ridge or lump around the inside of the sole against the foot, which had the effect both of lessening the durability of the shoe and of making it uncomfortable" (R. Vol. 1, p. 391, lines 10–17).

Charles S. Smith, a witness for the United States, testified that the chain-stitch of the Eppler machine, "being larger and more bulky than the single stitch, occupied more room and was likely to leave a ridge around the inside of the shoe, which would come against the foot" (R. Vol. 1, p. 353, lines 6–9).

The Eppler machine could not be used on turn shoes, in which the sole must be thin in order that the shoe may be turned after sewing (R. Vol. 1, p. 415, line 44; p. 416, line 5; p. 469, line 42; p. 470, line 4). The Goodyear Welt machine, on the other hand, was used to make both welt and turn shoes (R. Vol. 1, p. 470, lines 5–7). For the same reason, the Eppler machine could not be used successfully on women's welts, which usually have a thin sole. Mr. Winslow testified that he did not know of any women's welt shoes made by Eppler machines (R. Vol. 1, p. 531,

lines 4–5). Mr. McElroy testified that he believed the Eppler machine could be used on women's welts, but he never used an Eppler machine and merely examined it once (R. Vol. 1, p. 187, lines 30–38). There was no evidence that it ever had been so used. The Goodyear Welter was used on both men's and women's welts with equal success.

The fact that the Eppler machine could not be used for turn shoes and was not adapted and never used for women's welt shoes was a serious disadvantage, especially in those factories constituting more than one-half the factories in the country whose production required only a single machine of this character.

Furthermore, the necessity of using an unnecessarily thick and expensive innersole on an Eppler shoe merely to prevent the seam from hurting the foot added greatly to the expense of making Eppler Welt shoes, and this thick innersole did not add to the value or wear of the shoe. Light substitutes for insoles, or canvas reinforced insoles, could not be used on Eppler shoes (R. Vol. 1, p. 415, lines 36–43).

The Eppler machines were also inferior in construction to the Goodyear machines (R. Vol. 1, p. 677, lines 17–21).

Furthermore, the Eppler Company did not have a complete or satisfactory set of auxiliary machines. George E. Keith, the president of the Eppler Company, testified that the company did not manufacture a full set of machines for making welt shoes. The rough rounder was not a satisfactory machine (R. Vol. 1, p. 389, lines 19–20). The company did not have a satisfactory stitch separator (R. Vol. 1, p. 391, lines 39–41). This operation is necessary to make the shoe "complete in appearance" (R. Vol. 1, p. 391, lines 34–38).

Auxiliary machines are essential to the successful manufacture of welt shoes. As an illustration of their importance, the stitch separator, the rough rounder and channeler, and the automatic leveling machine were included in the limited number of machines which the Patent Counsel for the United States selected for discussion before the Patent Examiner on the issue of "basic" patents (R. Vol. 2, pp. 2201–08). The invention of the rough rounder of the Goodyear Company has revolutionized the manufacture of welt shoes (R. Vol. 1, p. 793, lines 23–33). The Eppler Company had no leveling machine of its own (R. Vol. 1, p. 416, line 38). The Eppler Company, therefore, lacked very

important auxiliary machines supplied by the Goodyear Company and essential to the commercial success of the welt process.

For the various reasons outlined above the Eppler machines were not satisfactory.

George E. Keith, the president of the Eppler Company, testified that he had a Goodyear machine in his factory at the same time he was using the Eppler machine, and that the Goodyear machine did decidedly the better work (R. Vol. 1, p. 392, lines 2–8).

James H. Cunningham, a witness for the United States, testified that "everything about the Goodyear was better" (R. Vol. 1, p. 289, line 19). He substituted the Goodyear System for the Eppler System "because it was more complete and did the work better" (R. Vol. 1, p. 289, lines 22–23).

Edward W. Burt, a shoe manufacturer, had an Eppler Welter and an Eppler Stitcher when he started business. He tried them out for about a year and found them inefficient for making high-grade shoes: "They were not anywhere near as satisfactory as the United Company machines." The soles of the shoes made on the Eppler machines "ripped off continuously." He changed to Goodyear machines because he "could not afford to have the shoes wear out on account of imperfect construction." The change was his "own idea" because he "wanted the best machines" he could get (R. Vol. 1, p. 739, lines 17–33).

Ira E. Fletcher, a witness for the United States, and a factory superintendent at the Douglas factory, testified that Douglas had a number of Eppler machines in 1902 (R. Vol. 1, p. 937, lines 38–43). These machines were changed for Goodyear machines "because with the Eppler machine there was trouble with the loose seam."

"It would make a bad shoe. That was the particular reason for changing over from the Eppler to the Goodyear. That change was the result of the business judgment of the men who were responsible, because we thought the Goodyears were the better machines" (R. Vol. 1, p. 939, lines 15–22).

George Strong, a shoe manufacturer and a witness for the United States, testified that he used Eppler Welters and Stitchers from about 1895 to about 1900. "I think the Goodyear machines do better work than the Eppler machines" (R. Vol. 1, p. 932, lines 21–22).

William P. Whitman, a shoe manufacturer and witness for the United States, testified that he used an Eppler machine for several years along with the Goodyear and then exchanged it for a Goodyear. "I consider the Goodyear Welt System the best system: it did better work on the shoe" (R. Vol. 1, p. 916, lines 11–18).

Mr. Winslow testified that personally he had no doubt that the Goodyear System was better and would survive (R. Vol. 1, p. 417, lines 9–11).

The evidence relied on by the United States to show the amount of use of the Eppler machines and to show that they were satisfactory is briefly as follows:—

Emanuel F. Selz testified that there was no material difference in the rapidity of the machines or quality of the work, though there was a difference in the character of the shoe made (R. Vol. 1, p. 143, lines 18–32). He admitted, on cross-examination, that he tried the Eppler for less than a year prior to 1896 and abandoned it. "We gave up the Epplers because we were sewing razor toes at that time and the Eppler would not sew the razor toes as well as the Goodyear. We never reinstated the Eppler" (R. Vol. 1, p. 152, lines 38–44).

Milton S. Florsheim, a shoe manufacturer, testified that he used the Eppler only to a "very slight extent." He was merely trying them out and had only one set (R. Vol. 1, p. 159, lines 8–12). The Eppler made as good shoes as were made (R. Vol. 1, p. 935, lines 41–42). He traded in his Eppler machines, after the formation of the United Company, and while he testified he tried to obtain the Epplers for a lower royalty, he evidently preferred the Goodyear machines at the same royalty (R. Vol. 1, p. 159; lines 16–30).

Warren F. McElroy, a shoe manufacturer, examined an Eppler machine at Keith's factory. It seemed to him to be doing as good work as the Goodyear machines, but he never used the Eppler or attempted to get one (R. Vol. 1, p. 187, lines 32–40).

Richard H. Long used Epplers and testified that he gave them up after the formation of the United Company because he could not get new parts (R. Vol. 1, p. 226, lines 3–12). This evidence as to his reason for giving up the use of his Eppler machines was untrue (*infra*, p. 164).

Selz and Florsheim were both members of the Manufact-

urers' Alliance, opposed to the United Company, and Long is a rival shoe machinery manufacturer whose testimony was shown to be thoroughly unreliable.

The only person who used Eppler machines for any length of time and found them satisfactory was Fred F. Field. He obtained his machines from the United Company in 1902, three years after its formation (R. Vol. 1, p. 930, line 28). He, however, used only Eppler Welters and in connection with the welters used Goodyear Stitchers and Goodyear Auxiliaries (R. Vol. 1, p. 931, lines 17–27, lines 39–40). In other words, Mr. Field used only one of the Eppler machines and made no comparison between the Eppler set and the Goodyear set, which was a proper basis of comparison if competition between the companies is to be considered.

Mr. Field changed to Goodyear machines a few years ago, because he felt the Goodyear machines were superior to the Epplers (R. Vol. 1, p. 931, lines 27–31).

It thus appears that out of over one thousand shoe manufacturers only one used the Eppler machines for any considerable length of time and found them as satisfactory as the Goodyear machines, and this single manufacturer started to use them three years after the United Company was formed, and used only the welter in connection with which he used a Goodyear Stitcher and Goodyear Auxiliaries, and even he finally gave up the use of the Eppler.

Thus it appears that the Eppler machines were decidedly inferior to the Goodyear machines and the Eppler shoe was inferior to the Goodyear shoe, and that in consequence the Eppler machines were used to an insignificant extent and presented no real competition, present or prospective, to the Goodyear Company.

(6) IF ANY COMPETITION EXISTED BETWEEN THE EPPLER COMPANY AND THE GOODYEAR COMPANY, IT WAS ILLEGAL ON THE PART OF THE EPPLER COMPANY AND COULD PROPERLY BE ELIMINATED BY THE UNITED COMPANY.

We have shown above that the Goodyear Company had brought suits for infringement against the Eppler Company on its welter and its stitcher and its three principal auxiliary machines (*supra*, pp. 154–156). Mr. Howe expected the Goodyear Company would succeed in all these cases (R. Vol. 1, p. 470, lines 21–22).

The Eppler Welter infringed the Briggs Method patent on an invention which accomplished the sewing of a tight seam (R. Vol. 1, p. 678, lines 5–6). The Stitcher, the Welt-beater, the Stitch-separator, and the Rounder and Channeler, which also infringed Goodyear Patents (R. Vol. 1, p. 677, lines 17–21), were essential to the success of the Eppler Company.

It thus appears that such slight use as was made of Eppler machines was made possible only by the fact that they infringed Goodyear patents. If, therefore, the Eppler machines presented any competition, it was an illegal competition in violation of the Goodyear Company's rights and could be lawfully stopped by the Goodyear Company or by the United Company.

(7) THE UNITED COMPANY CONTINUED TO PUT OUT THE EPPLER MACHINES SO FAR AS SHOE MANUFACTURERS DESIRED THEM.

Whenever a call was made for an Eppler machine of any kind the United Company supplied it, and it also supplied all calls and demands for machines, parts, and service as soon as possible (King, R. Vol. 1, p. 696, lines 38–41; Winslow, R. Vol. 1, p. 417, lines 22–28).

The United Company, during the five or six years after it was formed, put out more than forty Eppler Welters and more than twenty Eppler Stitchers (R. Vol. 1, p. 702, lines 9–10).

Mr. Field obtained his Eppler machines from the United Company in 1902 and continued to use them up to a few years

ago (R. Vol. 1, p. 930, lines 27–29; p. 931, lines 6–7). He testified that the United Company furnished him whichever machines he chose and treated him just as well in respect to the Epplers as when he had the Goodyears (R. Vol. 1, p. 931, lines 7–11).

The United States sought to prove by Richard H. Long that the United Company suppressed the use of the Eppler machines by failing to provide parts for them. Mr. Long is a rival manufacturer, making a full set of machinery. His evidence is not merely inaccurate; it is untrue and distorted by exaggeration and bias.

He testified that Mr. King of the United Company told him the company had decided not to put out any more Eppler machines, and that he gave up his Eppler machines because he could not get parts for them (R. Vol. 1, pp. 226, 227, lines 30–31). Mr. King denied having so informed Mr. Long and testified that Long "was promptly supplied with parts and with service whenever he called for it" (R. Vol. 1, p. 699, lines 19–21). Mr. Long used Eppler machines for a year and a half after the United Company was formed (R. Vol. 1, p. 699, lines 17–19), although he testified his conversation with Mr. King took place shortly after the formation of the United Company (R. Vol. 1, p. 226, lines 24–31). Mr. King further testified that Mr. Long gave up his Epplers entirely of his own accord (R. Vol. 1, p. 699, lines 34–38). Eppler machines were supplied to others long after Mr. Long gave his up (R. Vol. 1, p. 699, lines 39–41).)

On cross-examination Long admitted he remembered no specific instance of failure to get parts (R. Vol. 1, p. 252, lines 42–45). His testimony as to failure to get parts is disproved by his own admissions with respect to requests for parts (R. Vol. 1, pp. 253–259), and the testimony of Mrs. Hewitt, who kept the record of service rendered on Eppler machines and testified specifically as to the service rendered Long in reply to his requests, giving the dates on which such service was requested and rendered (R. Vol. 1, pp. 693–4); and by Walter S. Batchelder, who previously kept a record of parts supplied for Eppler machines, and who testified from the records specifically as to the dates on which requests for parts were made by Mr. Long and the dates on which the parts were sent (R. Vol. 1, pp. 694–696).

The reliance to be placed on Long's testimony is illustrated further by his testimony relative to Chase machines. He

stated that shortly after the United Company was formed it refused to let him have any more Chase lasting machines (R. Vol. 1, p. 228, lines 1–26), yet on cross-examination he admitted obtaining about eleven Chase machines after this date (R. Vol. 1, pp. 263–267; Defs.' Ex. 70 C, R. Vol. 5, pp. 105, 106).

(8) THE EPPLER MACHINES WERE PATENTED MACHINES OF A DIFFERENT KIND FROM THE GOODYEAR MACHINES AND MADE A DIFFERENT KIND OF SHOE. THE UNITED COMPANY WAS ENTITLED TO ACQUIRE THE PATENTS ON THE EPPLER MACHINES.

The petition itself (R. Vol. 1, pp. 993, 996) and the Record (R. Vol. 1, p. 634, lines 36–43) show that the Eppler machines were patented. While they infringed the Goodyear patents, they also differed in structure from the Goodyear machines. As we have shown, they also made a shoe of a different structure from the Goodyear Welt shoe made by the Goodyear machines. "The Goodyear machines could not make an Eppler welt and the Eppler machines could not make a Goodyear welt" (R. Vol. 1, p. 417, lines 20–21).

A secondary reason in Mr. Howe's mind for acquiring the Eppler Company was to enable the United Company to furnish Eppler machines for making Eppler welts to those shoe manufacturers, if any, who wanted to make Eppler welt shoes (R. Vol. 1, p. 630, lines 32–34). The United Company could not do this, unless it acquired the Eppler patents, without infringing those patents. A manufacturer has the right to acquire patents covering another machine, even if such machine can be used for a purpose similar to that for which he already has a machine. To hold otherwise would be to hold that a manufacturer could not furnish all types of machines and thus engage in the business without restraint. In the present case it would mean that the United Company could not furnish machines for making other styles of welt shoes even though its customers desired to make such shoes.

It is not without importance to note that, while the Eppler machines proved themselves of little value and have become obsolete, some of the Eppler patents proved to be of great value

when combined with other patents owned by the United Company. Thus Patent 613,228 issued to the Eppler Company in 1898 (Defs.' Physical Ex. 198) covered an important invention which proved the basis not only of one of the United Company's own machines later developed (R. Vol. 2, p. 2645), but also of the Plant Heel Seat Dinker (Defs.' Ex. 273, R. Vol. 5, p. 740). Another of the patents some years after its acquisition by the United Company was embodied in a new welter (R. Vol. 2, pp. 2252, 2766).

(9) OTHER EVIDENCE SUBMITTED BY THE UNITED STATES IN RESPECT TO THE EPPLER PURCHASE.

The Price.

The United States sought to prove that an exorbitant price had been paid for the Eppler Company, apparently for the purpose of showing the importance attached to the purchase. There was, however, no direct evidence as to the price paid.

The stock of the Eppler Company was acquired by the United Company, as shown above, through cash supplied by a syndicate, together with other property, but the officers of the United Company were unable to divide up the lump sum paid among the several items (R. Vol. 1, p. 33, lines 2–4).

William B. Arnold testified that about the time of the organization of the United Company his impression was that he sold one hundred shares of Eppler stock at $6 a share either to Mr. Brown or Mr. Hurd, vice-presidents of the United Company, but he would not be positive. He could not fix the date, however, within a year (R. Vol. 1, p. 952, lines 21–31). Both Mr. Brown and Mr. Hurd denied making the purchase (R. Vol. 1, p. 961, lines 9–16, 21–29).

Willard G. Brackett testified that February 15, 1899, he sold six hundred shares for $6.50 a share. He did not remember to whom. The par value was $10 a share (R. Vol. 1, p. 949, lines 38–42).

Mr. Keith testified he got $20,000 for his stock, but did not remember how much he had (R. Vol. 1, p. 385, line 32–p. 386, line 10).

Mr. Winslow had no recollection how much the Eppler stock-

holders were paid. He had no doubt it was as much as $100,000, but could not state whether it was as much as $200,000 (R. Vol. 1, p. 531, lines 37–41).

There is, then, no direct evidence as to the amount paid, and it does not appear in any event that the amount was exorbitant for the purpose of settling extensive litigation which would have been troublesome to the United Company's customers, for the acquisition of machines for doing a different kind of work if the United Company's customers should desire them and for patents which proved of very considerable value for other purposes.

The Papers offered by the United States Exhibits B, C and D, for Identification (see R. Vol. 4, pp. 1200 to 1212) were properly excluded by the District Court and should not be considered as Evidence.

The United States claimed that these "Certificates of Condition," which purported to show the assets and liabilities of the Eppler Company, were copies of papers on file in the office of the Massachusetts Commissioner of Corporations. But they were not properly authenticated.

> See Revised Laws of Mass., Ch. 175, Sect. 74.
> And *Commonwealth* v. *Corkery*, 175 Mass. 460.

The papers were not certified as true copies by the Commissioner of Corporations and the genuineness of the signature of the Commissioner was not attested by the Secretary of State.

The customary form for such attestation is well known in Massachusetts,

> See *Commonwealth* v. *Corkery*, supra,

and these papers were not attested according to that or any lawful form.

But even if admitted in evidence, these certificates do not specify the number of machines outstanding or in any way contradict the testimony referred to above, showing that only a few machines were outstanding and that the machines were unsuccessful.

Royalties Rebated by Eppler Company.

The United States also showed that, while the regular royalty charged for Eppler machines was the same as for Goodyear machines, the Eppler Company in certain instances granted a rebate of 25% (R. Vol. 1, p. 227, line 3; p. 250, lines 24–29, 36–38; Vol. 5, Defs.' Ex. 44, p. 57). These instances were sporadic (R. Vol. 1, p. 417, lines 29–35). The leases as printed expressly called for the same royalty as the Goodyear (P.'s Ex. 59, R. Vol. 3, pp. 509–510). The fact that the Eppler Company felt required to grant a rebate from its regular price in certain instances in an attempt to place its machines shows the inferiority of these machines and not their strength. The granting of these rebates had not enabled the Eppler Company to place its machines successfully or to prosper financially.

Nor does the fact that the United Company, after it had acquired the Eppler Company, maintained the regular Eppler royalty rate, granting no discounts to favored individuals, show any intent to suppress the Eppler machines. The policy of the United Company has always been to maintain the same rates for all customers, and its maintenance of the regular Eppler rate on all Eppler machines was merely "to make the rate uniform among all users and gives no special advantages to anybody" (R. Vol. 1, p. 417, lines 44–45).

10. FINDING OF THE DISTRICT COURT AS TO THE EPPLER ACQUISITION.

The District Court said with reference to the acquisition of the Eppler Company (R. Vol. 1, p. 1131):—

> "The Eppler machines were adapted to produce men's thick-soled welt shoes only. They could not produce women's welt shoes (except perhaps those having the thickest soles), nor turn shoes of any kind, nor Goodyear welt shoes, either men's or women's, because of the difference between the respective machines in the character and position of the seam left in the inner sole of the shoe. The Goodyear machines could produce shoes of all the above kinds. The differences referred to resulted from differences in the character and operation of the machinery belonging to the different systems. These differences in

character and in possible field of use had resulted when the United Company was formed in 1899 in the fact that over 2,500 Goodyear welting machines were in use, as against thirty or forty Eppler machines, one-third of these being used in the factory of the president of the Eppler Company. The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful. The Eppler machines were not suppressed by the United Company. It continued to supply them until the progress of improvement in such machinery superseded them. The patents covering them have long since expired, and it is open to anyone to make and use such machines if he desires. There is no present monopoly in them, and no action taken by the court could restore them to the field of competition, or encourage or create competition by them."

(11) CONCLUSION AS TO ACQUISITION OF THE EPPLER COMPANY.

We submit that the record establishes:—

1. The machines made by the Eppler Company were decidedly inferior to the Goodyear machines, and the Eppler Company had no complete or satisfactory system of auxiliary machines; that the Eppler shoe was inferior to the Goodyear shoe; that the Eppler Company after seven years was commercially unsuccessful and had placed an insignificant number of machines, both when compared to the number of Goodyear machines outstanding and to the total number of machines used to attach the soles to the uppers of shoes, including the McKay machines; and that if any competition existed between the Goodyear and Eppler companies it was insignificant in amount and did not make the acquisition of the Eppler Company inherently unlawful.

2. That the Goodyear Company had brought patent suits against the Eppler Company and its lessees for infringement of Goodyear patents by the principal machines of the Eppler Company, and believed it would succeed in this litigation; that the primary reason for acquiring the Eppler Company was to get rid

of this litigation, which would have proved troublesome to the United Company's customers and therefore would most certainly have created friction between them and the United Company.

3. That the Eppler machines were patented and made a shoe of a different character from that made by the Goodyear machines; that a secondary purpose in acquiring the Eppler Company was to enable the United Company to furnish machines for making this different class of shoe, and that the United Company was entitled to acquire the Eppler Company for this purpose.

4. That the United Company did not suppress the Eppler machines, but continued to furnish them to all shoe manufacturers desiring them until they became obsolete due to the superiority of the Goodyear machines.

5. That the acquisition of the Eppler Company was first proposed after the formation of the United Company was agreed upon, and its acquisition was not a motive for the formation of the United Company.

6. That Eppler Company's machines infringed the Goodyear patents, and if the Eppler machines competed with the Goodyear machines, such competition was unlawful.

7. That the Eppler machines have become obsolete and no manufacturer to-day would use them, so that the question of their possible competition has become a moot point.

We, therefore, submit that the purchase of the Eppler Company was not inherently unlawful; that it was acquired for normal and legitimate reasons; and that the transaction is barren of any incident which can give rise to an inference of unlawful purpose or intent to monopolize or exclude others unlawfully.

5. THE PURPOSES FOR WHICH THE UNITED COMPANY WAS FORMED, AND THE MANNER IN WHICH SUCH PURPOSES HAVE BEEN ACCOMPLISHED.

A. REASONS FOR FORMATION OF UNITED COMPANY AS TESTIFIED TO BY MR. WINSLOW AND MR. HOWE.

The fundamental reasons for the formation of the United Company by the proposed union of the Goodyear and Consolidated Companies were stated as follows by Mr. Winslow:—

> "The first was to increase the productive efficiency of the machines that were in the hands of shoe manufacturers. Second, to economize in the manufacture of the machinery itself by bringing that manufacture into one modern factory and standardizing the manufacture. Third, to encourage and increase the manufacture of Goodyear Welt shoes by the development of new machines to assist in that manufacture and new methods to lower the cost, to aid and assist those manufacturers who were making those shoes, and induce other manufacturers who were not making welt shoes to enter into their manufacture. It was contemplated in this connection to lower the cost of installation of the Goodyear machines and instruct manufacturers in the manufacture of welt shoes. And fourth, to develop a better service for the instruction of operatives in the use of machines and service for maintenance of the machines in condition to operate regularly, and at the same time decrease the proportionate expense of that service by avoiding the duplication of the depots and men who were employed in that work" (R. Vol. 1, p. 407, lines 18–36).

Mr. Howe testified as follows as to the purposes for which the United Company was formed:—

> "Well, we had many conferences, . . . and . . . they related entirely to the economies which we could get if the two complementary machines were handled by the same company—the economies, first, in the administration of the two companies; the economies due to manufacturing the machines themselves and the parts and the auxiliary machines in one factory where we could get a modern up-

> to-date factory; the economies that could be attained by consolidating our service. . . . I thought, particularly . . . that if we could in some way bring about a harmonious arrangement between the Lasting Machine Company and the Goodyear Company we could make a great saving and give the service with greater efficiency in all the branch offices and also, as I have said, in the manufacture of machines and the running of a factory. Proportionately to the amount of business done there would be less overhead charges" (R. Vol. 1, p. 628, line 21–p. 629, line 1).

Another reason for the formation of the United Company was that Mr. Howe, who was the real manager of the Goodyear Company, and Mr. Brooks, who managed the McKay Company, could not devote much of their time to the business and wished to withdraw. By combining these businesses with the Consolidated Company the services of the men active in that company were obtained.

Mr. Howe testified that the management of the Goodyear Company's business fell largely on him, but he was practising law (R. Vol. 1, p. 466, lines 34–40) and wished to get out (R. Vol. 1, p. 629, line 2). He further knew that Mr. Winslow and Mr. Brown of the Consolidated Company, who could give their whole time to the business, would secure a far better and more efficient management than the Goodyear Company then had (R. Vol. 1, p. 629, lines 3–7). Mr. Winslow and Mr. Brown were well known as efficient managers for the Consolidated Company (R. Vol. 1, p. 629, lines 8–11).

Mr. Brooks, who was the head of the McKay Company, was seventy years old and was anxious to retire from business and spend all his time at his country home. He only devoted one or two days a week to the business (R. Vol. 1, p. 467, lines 8–13).

B. REASONS FOR FORMATION OF THE UNITED COMPANY AS STATED IN CIRCULARS TO STOCKHOLDERS.

The directors of the three principal constituent companies sent out circulars to their stockholders announcing the formation of the United Company and recommending the exchange of stock. All the circulars stated that Winslow would be president and Brown treasurer of the United Company, and the board of directors included Gordon McKay, Louis D. Brandeis

and other well-known names. The McKay circular was signed by James W. Brooks, Louis D. Brandeis and other directors (R. Vol. 4, P.'s Ex. 151, pp. 1094–6). The Consolidated Company's circular, signed by Winslow, Brown, and other directors, contained the following statement:—

> "The undersigned Directors of the Consolidated & McKay Lasting Machine Company believe that the United Shoe Machinery Company will show much larger net earnings than the aggregate net earnings of the several companies whose stock is to be acquired, by reason of increase in business, economies in administration and decrease in expenses, and cessation of patent litigation between the Companies, which has been expensive to them and annoying to shoe manufacturers; and believe that these results can be attained without increase of cost to the users of machinery made by the Company, and that better attention to the care of machines and greater assistance to the users can be afforded" (R. Vol. 4, P.'s Ex. 175, pp. 1198–1200).

The Goodyear Company's circular, signed by Howe, Barbour and other directors, contained the same statement (R. Vol. 4, P.'s Ex. 152, pp. 1097–1100).

The Goodyear circular also contained the following statement:—

> "The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most efficient types of shoe machinery, have been for several years recognized by the officers of the principal shoe machinery companies" (p. 1097).
>
> "The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock" (p. 1098).

This statement the United States contends shows an unlawful attempt to monopolize. But it was in truth and fact, as was said in *United States* v. *Winslow*, supra, only "an effort after greater efficiency" and so the District Court found (R. Vol. 1, p. 1132). It must be remembered that there was a large field of shoe machinery, partly developed and partly undeveloped, which was not occupied by the constituent companies which were taken over by the United Company, and the Goodyear Company's circular merely shows an intention, if opportunity offered, to put out other machines not manufactured by the constituent companies.

Mr. Howe, who drew the Goodyear circular, testified that he had in mind in drawing this clause that if the United Company was a success it would naturally take on new machines and go into other fields which would supplement the business of the constituent companies. This was proper and lawful just as it was proper and lawful to acquire lasting, metallic, heeling, and welting machines in one company. Indeed, as held in *United States* v. *Winslow*, supra, no intent could make such acquisition unlawful. The probability which Mr. Howe had in mind, therefore, can give rise to no inference of unlawful intent as contended by the United States.*

C. SPECIFIC DENIALS OF INTENT TO MONOPOLIZE SHOE MACHINERY AS CHARGED IN THE PETITION.

Mr. Winslow testified that there had never been any intent on his part to acquire complete control of the shoe machinery business as charged in the bill, and that no such project was "ever discussed or considered by any persons interested" (R. Vol. 1, p. 407, lines 3–12). He further testified that he had no intent to exclude all others from the shoe machinery business, and that there was no discussion among any of the persons interested in the organization of the company directed towards such a purpose (R. Vol. 1, pp. 407–8). He denied any intent as charged in the bill to enhance the value of shoe machinery at

* The United States also contends that a certain recital in the contract between Peabody & Co. of Australia and the United Company, dated September 11, 1899, shows an intent to monopolize existing shortly after the formation of the United Company (R. Vol. 4, P.'s Ex. 189, p. 1250). This contract appointed Peabody & Co. the United Company's brokers or commission agents in Australia for the sale of the United Company's machines and findings. The preamble clause recited that the United Company had acquired certain specified companies and then recited that the United Company "contemplates acquiring the control of other lines of . . . boot and shoe findings." Mr. Winslow was abroad when the contract was made. Mr. Howe testified that Peabody & Co. wanted an assurance that the United Company would give them enough business to warrant them entering into a contract; that the United Company then had in mind purchasing some other lines of shoe machinery and findings, especially blackings, cement, and stains which Peabody & Co. had difficulty in supplying themselves with, and so this recital was inserted (R. Vol. 1, p. 672, line 35–p. 673, line 3).

The attempt of the United States to distort this recital into a statement of wrongful intent to eliminate competing concerns and monopolize shoe machinery shows the utter lack of evidence to support its claims with which the United States was confronted.

the expense of shoe manufacturers and the public, to use the same as a means for unlawfully controlling interstate commerce, or to acquire a complete monopoly of shoe machinery and destroy existing competition (R. Vol. 1, p. 414, lines 1–18).

Mr. Howe denied any intent to acquire complete control of the shoe machinery business and to exclude others. There was no discussion of obtaining control of the entire field of shoe machinery (R. Vol. 1, p. 631, lines 29–42; R. Vol. 1, p. 634, lines 18–31).

D. METHODS BY WHICH AND EXTENT TO WHICH UNITED COMPANY CARRIED OUT AND REALIZED THE PURPOSES FOR WHICH IT WAS ORGANIZED.

It is important at the outset to show the methods by which and the extent to which the United Company carried out and realized the purposes for which it was organized.

The peculiar character of the shoe machinery business permitted the United Company to effect not only great economies but also a vast improvement in the character of the service and the machines furnished customers which would probably not have been possible in any other business in the country.

The opportunities for improvement in machines, service, and economies made possible by the formation of the United Company and the success of the United Company in improving these opportunities show conclusively that the United Company was organized for the purpose of "greater efficiency," as this court, in *United States* v. *Winslow*, supra, held appeared on its face, and as the defendants Mr. Winslow and Mr. Howe testified.

Furthermore, it shows that the excellence of the United Company's patented machines and the efficient service it has rendered its customers fully account for its success and exclude any inference that such success was attained by wrongful means. In 1899, when the United Company was formed, the constituent companies furnished the greater part of the machines used in the particular fields for which their machines were adapted, because such machines were the best machines made and because they were patented so that others could not furnish them. The shoe machinery business was a comparatively new business, and the business done by the constituent companies had been

created by them through the excellence of their patented machines.

The evidence shows that the vast improvement in the character of the service rendered users of its machines, the improvement of its machines, and the invention of new machines fully account for the continuance of its success, and exclude the inference that the continuance of this success has been due to unlawful means.

As said by Judge Dodge (R. Vol. 1, p. 1137):—

> "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason.
>
> "So little room for doubt does the evidence leave that the success and preponderance referred to are the natural and legitimate result of the intrinsic merit of the patented machinery and service furnished as to require clear and convincing proof of any assertion that they are due to causes other than these."

(1) CONCENTRATION IN ONE FACTORY AND STANDARDIZATION.

WINSLOW testified:—

> "Another reason which I stated for the formation of the United Company was to economize in the manufacture of machinery by bringing that manufacture into one modern factory and standardizing the methods of manufacture.
>
> "Prior to 1899 the Goodyear Company was manufacturing in a factory on Albany Street, in Boston; the Lasting Machine Company at Beverly, Mass., and the McKay Company at Winchester, Mass. The Goodyear Company was employing less than 200 men; about 300 were employed at Beverly, and about 500 at Winchester; in all about 1000 men in 1899.

"In the manufacture of the machines of these three companies there were many parts in common, but they could not be interchanged. Screws, for example, might be used on ten different machines where the same strength was required, but the screw made for one machine would not fit any of the others. This is only an illustration of what was true of a great many parts which could be standardized and made interchangeable, and have been. This resulted in a very large saving in the number of parts to be carried in different places. The bringing together of these factories also enabled us to establish our own foundry. Since the United Company was formed, for the first time in the history of shoe machinery iron patterns for casting have been developed and are almost universally used now, reducing the cost of manufacture.

"It was intended and expected that the consolidation would effect a very large saving in the management expenses and it so resulted. There were three superintendents at that time in the factories. The time of two of those superintendents is available today for the development of the art of making machinery. They are not used as superintendents of manufacturing. While, broadly speaking, we made no saving by discharging men, their time became available in other directions, so that their productivity was availed of to economize and develop the business" (R. Vol. 1, p. 412, line 41–p. 413, line 30).

Again WINSLOW testified:—

"In carrying out our purpose of consolidating the manufacturing of the machines in one modern factory and standardizing the methods of manufacturing, about January, 1900, a committee of our manufacturing men was appointed to visit the various manufacturing plants throughout the United States and gather data as to the best methods of manufacture, the most efficient machines, the most efficient arrangement for carrying on the manufacture from one department to another, and the best character of factory for the operatives. After that committee had worked about a year we began to build a large factory at Beverly, Massachusetts.

"To avoid any possibility of the tools for duplicating parts of machines being subject to destruction by fire we built the factory of concrete, and I think at the time that was the largest concrete building in the world. A great deal of care and thought was put into the arrangement of the floors and rooms to eliminate waste in carrying machines from one part of the factory to another for different opera-

tions. In factories that had been built up to that time for the manufacture of shoe machinery nothing of that sort had been gone into; while the buildings were modern in construction, they were not modern in their arrangements of the parts of the factory with reference to the economy of production. The Beverly factory has been added to from time to time.

"The facilities for manufacturing the different kinds of machines were transferred to that plant successively from the old factory at Beverly, from the Winchester factory, and from the Goodyear factory. None of the three factories of the constituent companies prior to 1899 was adequate for the occupation of all of them, and there was no land connected with any of them, except possibly Winchester. The Beverly factory was not owned by the Lasting Machine Company, there wasn't room to develop the Goodyear plant, and Winchester was a poor place to manufacture on account of the lack of labor. It was not a manufacturing community. Labor had to be developed there. Beverly has about 75,000 people within a five-cent fare.

"At the new plant in Beverly we continued to manufacture all of the machines which we had been marketing before and we employed more labor from time to time. About 1,000 men were employed in 1899, and at the beginning of this suit there were over 4,000 men employed at the Beverly factory. There has been a gradual increase right along" (R. Vol. 1, p. 423, lines 5–46).

WINSLOW further testified:—

"There are wings connecting the three buildings which go to the full height of the building and contain the lavatories, wash rooms and tool rooms. The fourth building, which is separate from these buildings, is the foundry, and that was less than half its present size in 1903.

"When we built these buildings we prepared for a capacity about twenty-five per cent. more than the capacity of the three factories of the old constituent companies. We supposed that that would take care of our wants for a great many years, but we have made additions from time to time until we now have a factory twice as large as we contemplated in 1903. This is all concrete construction from the roof to the bottom floor."

"Defendants' Exhibit 255 is a photograph of the Beverly plant as it is to-day. . . . Defendants' Exhibit 256 is a photograph showing the same building with the employees included. Practically all of the 4,000 employees are there. Defendants' Exhibit 257 . . . contains some views of the in-

terior of the factory . . . including the hospital, operating room, an industrial training school for the operators' children, club house, play grounds and a boat club" (R. Vol. 1, p. 519, lines 23–35, lines 18–19, lines 36–46).

(2) INAUGURATION AND MAINTENANCE OF AN EFFICIENT REPAIR SERVICE WITH ITS MACHINES.

(a) NECESSITY FOR THE SERVICE.

The service rendered by the United Company in connection with its machines is of the utmost importance, not only to the shoe manufacturer, but also to the operative and the United Company. In no other industry are so many different machines of so delicate a character used in the manufacture of a single product, and, therefore, in no other industry is service of this nature of such vital consequence. Its importance must be emphasized and explained at some length because its necessity underlies the methods of marketing machines which have prevailed and proved themselves most satisfactory in the shoe machinery industry, and because the need of perfecting this service was one of the principal motives for the formation of the United Company, and because the excellence of the service rendered by the United Company accounts in considerable part for its success. This service can be rendered only by a company like the United, which furnishes a large number of different machines. It was impossible for the constituent companies prior to the formation of the United Company to furnish a satisfactory service.

The service rendered by the United Company consists in maintaining experienced mechanics at convenient places to repair machines and replace worn parts immediately upon request of the shoe manufacturer and to adjust the machines frequently to keep them in the highest state of efficiency; in maintaining depots of extra parts at convenient places so that they may be immediately available, and in instructing operatives in the use of machines. The United Company, as part of this service also, acts as engineers for the shoe manufacturer, advising and assisting him in the laying out of his plant.

The importance of this service is due to causes peculiar to the

shoe machinery industry. The principal machines furnished by the United Company are extremely delicate. They need constant adjustment by a skilled mechanic to maintain them in proper working order. The wearing parts also require frequent replacement. This necessitates not only having a stock of extra parts near at hand, but also the services of a skilled mechanic to insert and adjust the new parts. The ordinary shoe manufacturer could not afford to maintain skilled mechanics for this purpose, nor the large stock of parts which would be required to guard against his needs. If such service and new parts are not immediately available in case of need, the machines do imperfect work or cannot be used at all.

The importance of maintaining the machines in efficient condition is multiplied many fold by the fact that a great many different machines are used on each shoe manufactured. The work in the shoe factory is planned to travel from one room to another in fixed quantities. A certain number of pairs of shoes are started each day and an equal number are finished each day. In other words, there is a regular flow of shoes through the factory from one machine to another machine. No large number of shoes are kept prepared ready for the operation of each machine. The cost of doing so would be prohibitive, as it would necessitate having a large amount of capital invested in material and in lasts and would require too much space to store the partially prepared shoes. Furthermore, shoes in process of manufacture must be in "temper," that is, the soles and heel must be artificially moistened for the operations involved in lasting and in preparing and attaching them to the upper. Once in "temper" the shoe ought to be completed as rapidly as possible. Therefore, shoe factories, so far as possible, are run on the basis of having shoes in the process of manufacture travel from machine to machine without any substantial interruption. Only so can economical work be done.

When one machine breaks down, it, therefore, not only stops the work on that particular machine, but it also stops the work on all machines coming after it; and since, as explained above, it does not pay to prepare a large number of shoes which cannot be finished, it also stops the work on machines which come before it. Thus the effect of a single machine getting out of order is not confined to stopping work on that particular machine but

the effect is to stop the work on the entire line of machines of which that particular machine forms a part. Where there is only one machine of the kind in the factory, the entire production of the factory ceases.

Not only does the shoe manufacturer suffer when the machine breaks down, but his operatives and the United Company, which leases the machines, suffer also. The operatives are paid by piece work; when, therefore, they cannot work their compensation ceases. The United Company derives its income from royalties received for the use of its machines; this income ceases when the machines are not operated.

The daily capacity of many of the important machines furnished by the United Company is very large. As most of the shoe factories in the country have a comparatively small production, many, if not most of them, require only one machine of certain kinds. Thus nearly one-fourth of the 1150 shoe factories in the country in 1911 made 100 pairs or less per day; 637 or more than one-half made 500 or less pairs per day, and only 169 made more than 1,500 pairs per day (R. Vol. 1, p. 455, lines 1–19). In a factory making only 450 pairs per day, only 1 Pulling-over Machine, 1 Heeling Machine, 1 Slugging Machine, and 1 Loose Nailing Machine are required (R. Vol. 5, Defs.' Ex. 230, p. 442). If one of these machines should break down in a factory of this size, the entire production of the factory would stop. Only 1 Slugging Machine, 1 Loose Nailing Machine, and 1 Heel Pricking Machine, are required in a factory having a total production of 1,200 pairs of turn shoes per day (R. Vol. 5, Defs.' Ex. 249, p. 693).

The constant need of service is illustrated by its use. In 1911 shoe manufacturers called upon the United Company for repair service 192,524 times and 1,110,593 hours of its road men's time were occupied in this work (R.Vol. 5, Defs.' Ex. 214, p. 311). Its importance is further emphasized by the fact that such service, costing, in 1911, $1,196,494.86 (R. Vol. 1, p. 974, line 22), was rendered free of charge by the United Company (R. Vol. 1, p. 421, lines 18–23) because of its importance in increasing the reputation and productive efficiency of its machines and the consequent return to the United Company in the way of royalties.

Referring to the necessity for this service, Mr. WINSLOW testified (R. Vol. 1, pp. 410–11, lines 41–14):—

"This factor of service is at the very base of the successful operation of a shoe factory. The work is planned to travel from one room to another in fixed quantities. So many pair go in in the morning—so many pair come out at night. The operatives are dependent upon that work traveling along regularly to them. The breaking down of some of these machines will in many of the factories block the entire flow of the work. Of course, in any factory it will throw out of regularity the production of the factory and throw out of work many times the operator that follows the particular operator on the machine that has broken down or got out of adjustment. Of course, the operators in shoe factories are paid by the piece almost entirely. From the standpoint of the shoe machinery manufacturer and the shoe manufacturer and the operative, the ability of the factory as a whole to turn out its work right along regularly as if it were going through one machine is vital. Factory space is economized; the earning capacity of the investment in the machinery is vitally affected; the operatives' pay has as its foundation, of course, the regularity of the work."

FREDERICK W. CURTIS, president of the Curtis & Jones Company shoe manufacturers at Reading Pennsylvania, testified, as a witness for the United States (R. Vol. 1, p. 377, lines 27–28; p. 379, line 12; p. 382, lines 26–45):—

"The question of repairing and furnishing parts is an important consideration to the shoe manufacturer. We want to keep the volume of product moving steadily through our factory without any interruption. If an important machine, like a stitcher or welt-sewing machine, breaks down it stops the flow of the product, keeps the machines behind it idle, dams up the product right there at that point, to the general disarrangement of our factory, as well as throwing men who are on machines behind the disabled one out of work.

"The margin of profit in making shoes is such that it is very essential that our machinery should work smoothly, regularly, and with continuity, and economies in the manufacture of shoes often make the difference between a successful manufacturer and one who is not successful. One of the most important economies is to have our machinery working with continuity and with the highest efficiency and turning out our product with the utmost regularity day after day, just as we want to get it, so that there won't be any hitch anywhere in the flow of product through our factory."

The instruction of operators is also of great importance to shoe manufacturers. Just as the breaking down of one machine may stop all work in the factory, or work on an entire line of machines, so the lack of a single operator,—say a laster or a welter—may stop all work on an entire line of machines. Again, the character of the work done on the machines depends on the skill of the operator. Again, the already skilled operators must be instructed in the use of new or improved machines as they are put out. In consequence the Service Department of the United Company, by instructing operators for shoe manufacturers, and by furnishing one or more of its own men in an emergency to operate a machine, is of the greatest value to shoe manufacturers and greatly increases the productive efficiency of the machines. The value of this service is shown by the fact that a total of 8,889 operators were taught by the United Company in the year 1911 alone (R. Vol. 5, Defs.' Ex. 214, p. 312).

(b) INADEQUATE SERVICE RENDERED BY CONSTITUENT COMPANIES PRIOR TO THE FORMATION OF THE UNITED COMPANY.

The absolute necessity of service for shoe machinery of the character produced by the constituent companies, if such machinery was to prove satisfactory, had led the constituent companies, prior to the formation of the United Company, to institute such service as was possible under the circumstances.

The Consolidated Company was furnishing men to instruct operatives how to use its machines and men to keep the machines in adjustment so far as it could within its financial resources. It had no offices, however, except in Boston and Brockton. In Philadelphia, Cincinnati, Chicago, Haverhill, and Lynn there were concerns who carried parts for the Consolidated Company's machines and received notice of calls for service. The Consolidated Company's men called at these places to receive such notices (R. Vol. 1, p. 408).

The McKay Company furnished about the same amount of service as the Consolidated Company. In Chicago, Cincinnati, Haverhill and Lynn parts were carried for its machines by the same concerns which acted as agents for the Consolidated Company. In New York and Brockton it had some arrangements with agents (R. Vol. 1, pp. 408–409).

The Goodyear Company furnished the best service of the three companies. It had its own offices in Auburn, Maine, Lynn, Haverhill, Brockton, Worcester, New York, Philadelphia, Burlington, N.J., Cincinnati, Chicago, St. Louis, New Orleans and Rochester, N.Y. It carried its own parts and had its own men located in each of these offices and also had a system of traveling men to instruct operatives and keep the machines in adjustment (R. Vol. 1, p. 408). However, neither one of the companies gave a good service (R. Vol. 1, p. 409, line 37). Moreover, since the effective use of the machines of any one of the companies was dependent upon the efficiency of the machines of the other companies (since, as explained above, the machines of one company could not be used unless the machines of the other companies were in use) the efficiency of the service rendered by the three companies was regulated by the company which rendered the worst service. As Mr. WINSLOW testified:

> "In other words, the entire continuity of operation, the regularity of operation of the factory, was dependent upon that service that was rendered by that one of three companies that gave the least efficient service" (R. Vol. 1, p. 409, lines 38–41).

Furthermore, there was an unnecessary duplication of expense involved in the maintenance of this service.

> "Each of these three companies was employing its own traveling mechanics and instructors, who in many instances were traveling to the same places, visiting the same factories, and carrying parts to the same places, but each set working on their own particular machines" (Winslow, R. Vol. 1, p. 409, lines 14–18).

The unsatisfactory condition of this service and the increased efficiency in productiveness which would result from more efficient service, was, as stated, one of the main purposes for the formation of the United Company. Thus Mr. WINSLOW testified:

> "Both Mr. Howe and myself recognized that condition, and it seemed that by bringing our two companies together we could get a uniform service that would produce a great deal higher percentage of efficiency of the machines than

if a given factory was dependent upon an independent call to us and an independent call to their office. If the service was brought into one office, if the entire service was unified, a call coming in there would be attended to at once, no matter upon what machine it was needed. The regularity and continuous operation of the machines is dependent upon what may be termed instantaneous service" (R. Vol. 1, pp. 409–410, lines 41–8).

"Another reason which I gave for the consolidation was our purpose to increase the productive efficiency of the machines in shoe factories. In speaking of the productive efficiency of the machines I had in mind the amount of shoes upon which the machine would operate in a given day or week or year; in other words, the productiveness of the machine in the work that could be done upon it. A machine might have a capacity to do a thousand pairs a day, but for some reason other than the ability of the machine to do the work it would not produce its work. The operative himself might not be efficient. The way in which the work came to that particular machine might not be right. The machine itself might be broken down. The manufacturer might have only one machine, and that operative might be out, in which case we frequently found him a man. The many ways in which this service has been used had led to the conclusion on the part of some of the men who were familiar with the practical side of the business that a service could be furnished which would very materially increase the productivity of the machines daily, so that less machines would be needed, less floor space, a given investment in the machines would earn more money, the operatives themselves could earn better wages, and the result of that is productive efficiency; in other words, we did produce an ability on the part of the machines to increase the number of shoes that would go through them" (R. Vol. 1, p. 412, lines 17–40).

FREDERICK ALLEN, president of the Allen, Foster, Willett Company of Lynn, testified:—

"I can remember ten years ago, twelve years ago, when we did have some machines from the independent companies—some of the Bresnahan machinery, I believe—it would sometimes take us three or four days, if a machine broke down, before we could get it fixed up and repaired. At the present time there is a corps of experts in Lynn there who are efficient on each and every machine that we have, and if it is necessary within half an hour I can have

a man over there and the machine fixed up right away, and with one machine being dependent upon the running of another—that is, one machine breaking down will throw out the entire line—that is a very big advantage" (R. Vol. 1, p. 722, lines 23–33).

JONATHAN BROWN, Jr., a manufacturer of Salem, Mass., making 7,500 pairs of shoes a day, testified:—

"We have had experience with that situation, and it is a matter of record that everyone knows who has been connected with manufacturing shoes for a number of years that before the United Shoe Machinery Company was formed, where we would have machines from these different individual companies, a machine, the capacity of which may have been five, six, or seven hundred pair a day, would break down and we would send for some one to have the machine repaired, and it might be three days, four days, a week or ten days before we would get anyone to put that machine in order. The consequence was that all the operations beyond that machine which were waiting for that 500, 600, or 700 pair of shoes were simply lying idle" (R. Vol. 1, p. 731, lines 13–24).

(c) IMPROVEMENTS OF SERVICE BY UNITED COMPANY.

Almost immediately after the formation of the United Company the plans with reference to the improvements of the service commenced to be put into effect. Each territory was studied and the best man put in charge of that district (R. Vol. 1, p. 418, lines 22–31). Where previously the service had been rendered from different offices, these were amalgamated into a single office.

In 1911 the United Company had 18 offices situated in the following places: Auburn, Maine; Haverhill, Mass.; Lynn, Mass.; Manchester, New Hampshire; Marlboro, Mass.; Brockton, Mass.; New York City, New York; Rochester, New York; Lestershire, New York; Philadelphia, Pennsylvania; Harrisburg, Pennsylvania; Cincinnati, Ohio; Chicago, Illinois; Milwaukee, Wisconsin; St. Paul, Minnesota; St. Louis, Missouri; New Orleans, Louisiana; San Francisco, California.

It had also sub-stations at—Augusta, Maine; Gardiner, Maine; Rochester, New Hampshire; Nashua, New Hampshire;

Derry, New Hampshire; Newburyport, Mass.; Auburn, New York; Baltimore, Maryland, and Lancaster, Ohio.

This makes a total of 27 stations in 13 different states. At each of these places men were stationed to repair machines and instruct operators (R. Vol. 1, p. 974, lines 4–20). These men answer calls for service from shoe manufacturers situated in their district, immediately traveling to the shoe manufacturer's factory. In some instances they have to go several hundred miles (R. Vol. 1, pp. 420–1).

There is a stock of parts in each of these depots for practically every machine which the United Company produces, so that the men are in a position to repair any machine immediately (R. Vol. 1, p. 421, lines 35–39). The investment in parts carried by the United Company in 1911 was $1,415,474.49 (R. Vol. 1, p. 974, line 23).

The number of roadmen employed in this service increased from 237, employed by the United Company in 1899, to 689 employed in 1913, and the number of branch office managers and assistants increased from 12 to 31 (R. Vol. 5, Defs.' Ex. 211, p. 293). The total calls answered in the year 1911 were 192,524, and including calls for instruction to operatives 201,413. The time of the roadmen occupied in this work consumed 1,365,384 hours (R. Vol. 5, Defs.' Ex. 214, pp. 311–2).

The number of operatives taught during 1911 was as follows:

Goodyear operators taught	2,209
Metallic operators taught	956
Heeling operators taught	1,006
Lasting operators taught	1,359
Pulling-over operators taught	956
Eyelet and general operators taught	2,403
Total operators taught	8,889

Defendants' Exhibit 214 (R. Vol. 5, p. 311) shows in detail the number of calls made by each office, the number of operatives taught through each office, and the number of hours consumed in this service.*

*Defs.' Ex. 212 (R. Vol. 5, p. 294) shows in detail the calls for service made by E. W. Burt & Co. Shoe Manufacturers for 1911, and Defs'. Ex. 213 (R. Vol. 5, p. 298) shows the calls made for service by L. A. Crossett Co. for the period July 1, 1911, to January 1, 1912. E. W. Burt & Co., a small manufacturer averaging 123 pairs per day received in 1911 the services of the United Company 102 times. L. A. Crossett, Inc., for the year 1911 received the service of the United Company, 1,150 times.

The foregoing service is rendered absolutely without charge to shoe manufacturers. The shoe manufacturer is not even charged with the traveling expenses of the roadmen. All he pays is the cost of new parts (R. Vol. 1, p. 421, lines 18–23). This service cost for the year 1911, $1,196,494.86 (R. Vol. 1, p. 974, line 22).

The United Company is practically the only shoe machinery company which furnishes service (R. Vol. 1, p. 423, lines 1–4).

As to the character of the service and its improvements since 1899, Mr. WINSLOW testified as follows:—

> "As to the development of the service for shoe manufacturers since 1899, the service is now so far ahead of what existed in 1899 that there is really no comparison. At each depot is a general manager and a body of men who are experts in the adjustment and repair of all the machines. These men are at the call of the manufacturers by telephone at any moment of the day and are at their service nights, if necessary, to rearrange their factories or readjust their machines. There are men to teach new operatives how to run the machines and how to take care of them. That service is complete in each shoe manufacturing district in the country.
>
> "In addition we have men who are treated by the manufacturers as their engineers and who act in an advisory capacity as to the re-arrangement of factories and the improved processes of manufacture. We send these men around to the factories to call the attention of manufacturers to opportunities to improve their methods of manufacture. This service always includes the instruction of operatives. There is also a service in continually supervising and watching the operation of the machines by our experts, and in order for the manufacturer to keep a given set of machines in constant operation these men have to be acquainted with the manufacture of the particular kind of shoes made in each factory because the requirements as to the work of the same machines may be very different in one factory from the requirements in another factory.
>
> "These men have to know how to run the machines themselves, how to adjust them, repair them, take them apart and put in parts" (R. Vol. 1, p. 420, line 35–p. 421, line 17).

(d) TESTIMONY OF SHOE MANUFACTURERS AS TO IMPORTANCE OF THE SERVICE RENDERED BY THE UNITED COMPANY.

ALANSON C. BROWN, president of the Hamilton-Brown Shoe Company, of St. Louis, manufacturer of 25,000 pairs of shoes a day, testified:—

> "The service furnished by the United Company has helped us to educate our workmen and teach them how to run the machines. If a machine breaks down they send a man at any time to repair it or fix it up and keep us running, and they have furnished parts so that we didn't have to keep any supply of parts.
>
> "The United Company has instructed a good many operators for us. They instruct operators for us right along without any charge to us. As to the importance of that to us, the operatives struck in five of our factories a little over a year ago and we had to get practically all new operatives in all of those factories. Those operatives were instructed by the United Company's men without charge. The company also keeps our machines running. If one of the machines should be out of order it would clog up and congest that department until we got the machine running again. As fast as the United Company gets up a new machine which we think is an improvement over the old machine, we try to get them to install it in our factory and take out the old one. They have done this in every case without charge to us, except the freight" (R. Vol. 1, pp. 617–8, lines 32–8).
>
> "The United Company is helping us instruct operators almost daily. We have green help in our factories right along and they send an instructor who helps instruct these operators. During our labor trouble we tried the system of having some teachers ourselves. We didn't have enough instructors from the United Company and had one or two of our foremen try it. As to whether they could instruct all right, it would be a big expense to us if we had to do that. We never adopted a system of keeping our own instructors on hand and instructing new operators as they came in. This United Company system of instructing operators is a good thing all the time. We employ it practically all the time" (R. Vol. 1, p. 619, lines 19–30).

ROBERT P. HAZZARD, a shoe manufacturer of Gardiner, Maine, making about 5,000 pairs of welt shoes a day, testified:—

"The United Company's service is one of the greatest necessities for the economical running of a modern shoe factory. That service consists of men who specialize on certain classes of machines and who are located conveniently to the manufacturing centres. We are served to a certain extent from the Auburn, Maine, office, but there are several resident United Company men in Gardiner who are under the jurisdiction of the Auburn office, but who are located in Gardiner so as to be more available when we need them. If those men are busy at one of the other factories, or if there is anything that they cannot handle, we telephone Auburn and inside of an hour and a half we have a man from Auburn. Those men do anything that seems desirable in putting the machines in shape to do the maximum amount of work of good quality.

". . . The failure of a company to give efficient service is detrimental both to one's nervous system and to the smooth running of the factory.

"As to the importance of efficient service, the shoe business is peculiar because it is dependent on succeeding operations . . . and because an even production in all operations all the time is absolutely necessary for efficiency. That efficiency wants intelligent action and it wants it quick and may be compared to the fire department in case of fire.

"When manufacturers get that service it not only means bigger wages for the employees, but it means better results for the manufacturer and cheaper shoes for the consumer. In my judgment, with the United Company's service the consumer is buying shoes cheaper than he could if the royalty were done away with and efficient service were not furnished" (R. Vol. 1, p. 643, line 16–p. 644, line 3).

Mr. Hazzard has between $50,000 and $60,000 invested in lasts. A last is in a shoe about 5 days. It is of the utmost importance to get the shoes through the factory quickly so that too much money will not be tied up in lasts (R. Vol. 1, p. 644, lines 4–10). He further testified that operators were not allowed to have a large accumulation of shoes on any operation, because it would tie up too much money in lasts and stock and there would not be room to make the shoes, so that "every man is working right from rack to rack to the man ahead of him. These shoes are moved in racks of 24 pairs, and when one machine shuts down it is like breaking a link in a chain" (R. Vol. 1, p. 644, lines 17–23).

FREDERICK ALLEN of Lynn, who has been manufacturing shoes for about 17 years (R. Vol. 1, p. 721, lines 36–7) and whose

factory has a capacity of about 6,000 pairs a day (R. Vol. 1, p. 724, line 1), testified that 10 or 12 years ago when he had some machines from other companies, "it would sometimes take us three or four days, if a machine broke down, before we could get it fixed up and repaired" (R. Vol. 1, p. 722, lines 23–27).

> "At the present time there is a corps of experts in Lynn there who are efficient on each and every machine that we have, and if it is necessary within half an hour I can have a man over there and the machine fixed up right away, and with one machine being dependent upon the running of another—that is, one machine breaking down will throw out the entire line—that is a very big advantage" (R. Vol. 1, p. 722, lines 27–33).

JONATHAN BROWN, Jr., a manufacturer of Salem, Massachusetts, making about 7,500 pairs a day, testified:—

> ". . . If we had our choice in the matter, we wish that every machine we had in our establishment was under the control of the United Shoe Machinery Company. That is because we get such excellent service; we get it promptly; we get it cheap, and it allows us to go ahead with our production and figure down to a minimum cost for our shoes and go ahead and manufacture them without having the delays that we are subjected to whenever we have other machines.
>
> "We have had experience with that situation, and it is a matter of record that everyone knows who has been connected with manufacturing shoes for a number of years that before the United Shoe Machinery Company was formed where we would have machines from these different individual companies, a machine, the capacity of which may have been five, six, or seven hundred pair a day, would break down and we would send for someone to have the machine repaired, and it might be three days, four days, a week, or ten days before we would get any one to put that machine in order. The consequence was that all the operations beyond that machine which were waiting for that five hundred, six hundred, or seven hundred pair of shoes were simply lying idle. Today, if any of our machines break down, that is, any of the United Shoe Machinery Company's machines—we telephone over there, and inside of three minutes we have someone to put it in order. The consequence is we can figure on our production at the lowest minimum cost" (R. Vol. 1, p. 731, lines 4–29).

"To my knowledge no other company which supplies machinery to shoe manufacturers furnishes any service in any way comparable to that of the United Company. Assuming that machines were of equal merit, this factor of service would be an important element in deciding which company to trade with. There would be no question. You would simply go to the United Company because of the service. It certainly is as vital as that" (R. Vol. 1, p. 732, line 40–p. 733, line 3).

EDWARD W. BURT, a shoe manufacturer of Lynn, testified as follows:—

"As to how large a factor the service which they give is in the successful manufacture of shoes, personally I believe that one of the chief things that a manufacturer should consider in the making of shoes is the service given in keeping the machines in continuous operation" (R. Vol. 1, p. 739, lines 11–15).

"The United Company has furnished prompt and excellent service. That is absolutely important to the successful manufacture of shoes. We must have it. If our machine breaks down, every hour means so many shoes piled up behind that machine" (R. Vol. 1, p. 740, lines 42–45).

JOHN STROOTMAN, a shoe manufacturer of Buffalo, New York, making from 800 to 1,200 pairs per day (R. Vol. 1, p. 742, lines 41–3), testified:—

"The service which the United Company gives us is excellent, and it is an all-important factor in the manufacture of shoes. We could not run a factory without the Company's skilled men to keep the machines in order and keep them running. So far as I know, no other company furnishing shoe machines gives service of that kind" (R. Vol. 1, p. 744, lines 12–17).

CHARLES A. EATON of Brockton, making 2,400 pairs a day (R. Vol. 1, p. 751, lines 18–20), testified:—

"The service which we have received from the United Company has been very satisfactory indeed. All manufacturers depend very largely upon it, and in our own case we have considered it of vital importance" (R. Vol. 1, p. 753, lines 23–26).

He further testified that there were continually little annoying problems which the United Company solved for him by putting

him in touch with some method used in another factory (R. Vol. 1, p. 753, lines 27–34).

FRANK C. RAND, of St. Louis, vice-president of the International Shoe Company and a director of the Boylston Shoe Machinery Company, testified, as a witness for the United States (R. Vol. 1, p. 178, lines 19–20; p. 183, lines 18–19; p. 186, lines 31–34):—

> "They teach our operatives without charge, and furnish them in times of strikes without charge, at our request. It was a mutual proposition—if we didn't run the machines we didn't get any shoes and they didn't get any royalty."

C. WILLIS BENNETT, a shoe manufacturer of Fitchburg, Mass., making from 800 to 1,400 pairs a day, testified:—

> "As to my experience with them with reference to service, why, their service has been, I might say, indispensable. I don't know what I should do without their service. Whenever I have a machine break down, I immediately telephone to their branch office at Marlboro, and they have a man come up there from Marlboro, who is an expert on that particular machine, to put the machine in order, and they do all this without any expense to me, aside, of course, from the cost of the broken part of the machine, if there are any parts broken" (R. Vol. 1, p. 758, lines 36–44).

He further testified that when he started business in Fitchburg there was only one shoe factory there and there were no operatives outside of that factory, and consequently, he had to teach a good many operatives. The United Company furnished agents and expert instructors to instruct these operatives, making no charge for their services (R. Vol. 1, p. 759, lines 1–5). He also testified that the United Company's agents assisted him as to improved methods of manufacture by telling him of such methods seen in other factories (R. Vol. 1, p. 759, lines 5–8).

As to the services of the United Company in acting as engineers in laying out his plant, he testified as follows:—

> ". . . I went to the United Shoe Machinery Company to see if they would give me a line of machines, and they stated they would, and I had a few samples made down in Lynn and went on the road and sold some shoes. During my absence the United Shoe Machinery Company had their

expert mechanics there laying out my factory and setting up the machines, and when I returned . . . with orders for shoes, they had my factory all equipped ready for me to start; and all those who visit my factory say that I have one of the best equipped and up-to-date factories in the state, and I want to say also that they did this without any expense to me.

"As to how detailed the work of their experts was in laying out my factory, in the first place, they had an expert come there who thoroughly understood laying out a factory, and told me what sized shafting I would require, what sized pulleys I would require for running different machines. They chalked out on the floor the location of the different machines that would make my work go along in the best manner from one operation to another, and, as I say, when the whole factory was completed I had a thoroughly equipped factory.

"I was free to exercise my own judgment in the selection of machines, as to taking their machines or the machines of others, and I did so. Whatever machines I took I found had been arranged for and set up by the United Company, and they had my factory ready to run" (R. Vol. 1, p. 758, lines 10–35).

CHARLES H. JONES, a prominent witness for the United States, under cross-examination, admitted that he had said of the service of the United Company:—

"It has certainly given more faithful care and attention to the running of the machines and keeping them in order; and in our country factories, where we employ a large proportion of inexperienced help, they have given us more constant and faithful attention in instructing new operators, and in the supervision of the machinery under trying conditions, than we ever obtained from any of the constituent companies" (R. Vol. 1, p. 131, lines 14–21; Vol. 4, p. 1075).

(3) INVENTIONS AND IMPROVEMENTS IN MACHINES MADE BY THE UNITED COMPANY.

Mr. WINSLOW testified:—

"Soon after the formation of the [United] Company the development of inventions and improvements of machines was placed in the hands of a committee comprising three or four of the inventors experienced in shoe machinery invent-

ing. Every new idea or suggestion was submitted to that committee, who made an investigation and reported their findings to the heads of the respective departments; and a decision was made according to which a man was put at work to develop the idea, or it was filed as not being practicable" (R. Vol. 1, p. 424, line 40–p. 425, line 3).

In this experimental work the United Company has expended very large sums of money. For example, from 1907 to 1911, a total of $2,267,954.70 was spent, an average of $453,590.94 per year (R. Vol. 1, p. 426, lines 25–39).

Defendants' Exhibit 217 (R. Vol. 5, pp. 323–51) is a typical report showing the experimental work done during the month of October, 1911. It shows that experimental work was done on 61 different machines or parts of machines. The report sets out in detail each of the machines on which work was done and the expenditure on each.

In addition to conducting its own Experimental Department the company has purchased from others any inventions which it was thought would improve its machines.

The result of this effort and expenditure of money has been a remarkable development in the art of shoe machinery.

The United Company has, since 1899, brought out at least an average of 7 or 8 new machines a year (R. Vol. 1, p. 427, lines 12–13).

Mr. Winslow testified that since 1899 the United Company has invented and put out to its customers 150 new machines. These are shown in a list—Defendants' Exhibit 246. The list comprises five machines in the Eyeletting Department; 41 in the Goodyear Department; 11 in the Heeling Department; 4 in the Lasting Department; 7 in the Metallic Department; 15 in the Pulling-over Department; 64 in the General Department and 3 in the Fitting Room Department. These machines have all been offered to the public by the United Company by sale or lease (R. Vol. 1, p. 503, lines 7–23). 39 of these machines do work previously done by hand. (Defs.' Ex. 247).

Again Mr. WINSLOW testified:—

"That work has been carried on consistently and continuously, until now there is a very large organization that gives its entire time and attention to the development of

ideas of our own men, or ideas that are suggested to us, or to consideration of inventions which are submitted to us.

"From almost the beginning of the company to the present time we have done everything we know how to do to advance the art of making shoes by machinery.

"As soon as we had developed a new machine which performed an operation then being done by machines in the shoe factories, that machine was built in a wholesale way and was placed in the hands of the manufacturers without any charge whatever for the improvements or for the new machines, and the old machines were taken back and scrapped. No charge was made for substituting the new machine and taking out the old one. If the improvement was an attachment, that was added to the manufacturer's machines without any charge to him" (R. Vol. 1, p. 425, lines 4–20).

Among the striking illustrations of new machines which the company has invented and given to the trade is the Rex Pulling-over Machine and the auxiliary machines used with it. The Pulling-over Machine does the work formerly done by the hand operator in preparing the shoe for the lasting machine. It draws the upper over the last at the center and at each side of the toe and attaches it temporarily to the innersole, all at one operation, so that the operator can bring the seam of the tip in a right line across the toe and locate the heel seam directly in the center of the heel. Unless these two lines are made correct the shoes will not be salable (R. Vol. 1, p. 425, lines 21–34). The auxiliaries of the pulling-over system assemble the upper, innersole, counter and last (R. Vol. 1, p. 425, lines 35–40).

The clicking machine, developed by the United Company, enables the manufacturer to cut his uppers accurately with the least loss of stock. It saves every bit of the waste that was caused by the hand knife cutting and increases the product of the workman by at least twofold. The quality of the work is infinitely better. At the same time it cuts the parts of the uppers it makes marks to facilitate the assembling of the parts. Before this machine was invented manufacturers used a pattern of zinc or leatherboard which the cutter placed upon the stock and then cut around it with a hand knife. The knife always cut by the corners of the pattern and where the leather had been cut by the knife passing the corners the stock could not be used and was wasted (R. Vol. 1, p. 426, lines 2–10). It saves

more money to the manufacturer than any other machine which has been produced (R. Vol. 1, p. 426, lines 1–2).

Another illustration is the stapling machine, which saves the manufacturer the cost of a great many needles and a lot of cost for damage caused to machines when needles break (R. Vol. 1, p. 427, lines 20–23).

In the Goodyear Department nearly all the machines have been replaced by new and improved machines (R. Vol. 1, p. 430, lines 32–5). In addition a large number of new auxiliary machines have been developed. Thus in 1899 the United Company supplied 13 Auxiliary Machines for use in making welt shoes, while in 1911 it supplied 35 such Auxiliary Machines. In 1899 it supplied 3 Goodyear Auxiliary Machines for use in making turn shoes, while in 1911 it supplied 9 such Auxiliary Machines (R. Vol. 5, Defs.' Exs. 242–5, pp. 681–3).

The United Company has also developed a large line of so-called General Department Machines which it leased or sold at the option of the shoe manufacturer until 1911, after which time it has sold them only. A list of 172 such machines is set out in Defendant's Exhibit 227 (R. Vol. 5, p. 425).

(4) INCREASED EFFICIENCY OF MACHINES RESULTING FROM INVENTIONS AND SERVICE FURNISHED BY UNITED COMPANY.

The improvement in the defendants' machines, the addition of new machines to assist in the work of the principal machines and the service which the United Company has been able to render in connection with its machines have resulted in a remarkable increase in their efficiency. The result has been that each machine has been able to turn out a greatly increased number of shoes.

For example, each Goodyear Welt Sewing Machine in 1910 sewed 66.7 per cent. more shoes than in 1899; each Goodyear Outsole Stitching Machine sewed 69.5 per cent. more shoes in 1910 than in 1899; each Goodyear Welt Sewing Machine used for turn sewing sewed 54.3 per cent. more shoes in 1910 than in 1899; each Heel-Attaching Machine attached 62.3 per cent. more shoes in 1910 than in 1899; each Lasting Machine lasted 24 per cent. more shoes in 1910 than in 1899 (R. Vol. 1, pp. 428–29).

The difficulty of lasting high-toed shoes now in use has reduced the increased efficiency of the Lasting Machines. Prior to the introduction of this new style of shoe these machines showed a higher percentage of efficiency compared with the machines of 1899 than that stated above (R. Vol. 1, p. 429, lines 7–20).

(5) SAVINGS OF SHOE MANUFACTURERS FROM INCREASED EFFICIENCY OF MACHINES AND FROM DECREASE OF ROYALTIES AND INSTALLATION CHARGES.

Shoe manufacturers have benefited from the increased efficiency of the United Company's machines and from the development of new machines, both directly and indirectly. They have benefited directly because of the saving in material and cost of manufacture which has resulted, and also because of the reduction in royalties and other charges which the United Company has made. They have benefited indirectly because, owing to the constant service rendered by the United Company, the machines have been maintained in an efficient condition capable of working without interruption and because the increased efficiency of the machines has, as shown above, materially reduced the number of machines required to do a specified amount of work. The value of these indirect benefits, as testified to by shoe manufacturers, has been referred to above. The saving it has effected in reducing the amount of capital required to conduct the business by reducing the amount of space required for manufacturing purposes, and thus the rental paid by the shoe manufacturer, and by avoiding interruption to the operation of the factories, cannot, of course, be estimated exactly, but it is unquestionably very large.

The direct savings are also large. Mr. Winslow testified that the machines produced by the Experimental Department of the United Company alone had reduced the cost of manufacturing the welt shoe more than the total royalty the United Company receives from its machines used in manufacturing such shoes (R. Vol. 1, p. 427, lines 26–29).

Mr. WINSLOW testified:—

> "The savings effected, as between 1899 and 1911, in the cost of manufacture of the Goodyear welt shoe by increased

efficiency of the machines and by decrease in royalties . . . amounted to eight and one-quarter cents per pair. Of this saving the decrease in royalties amounted to three-quarters of a cent, comprising a quarter of a cent that had been paid to the company making the sole-laying machine and one-half a cent which had been paid to the Gem insole company for the use of its machines; that was before we acquired those companies. After we acquired those machines we credited the royalty to the manufacturers, so that there was a direct reduction of three-quarters of a cent per pair on the welt shoes made by the use of those machines" (R. Vol. 1, p. 430, lines 4–17).

"On turn shoes there has also been a direct reduction of three-quarters of a cent on women's shoes and one-half a cent on children's shoes, amounting to 50 per cent. of the royalty. That reduction was in 1900" (R. Vol. 1, p. 430, lines 18–21).

"On Goodyear welt shoes the saving in cost of manufacture, resulting from the introduction of new machines and improvements in other machines that existed in 1899 and which we improved after the formation of the company, amounts to about seven and a half cents" (R. Vol. 1, p. 430, lines 27–31).

"The improved machines have resulted in savings in the cost of operation, or in the material used, or in the cost of maintenance and the reduction of equipment required, or in the improved quality of the work" (R. Vol. 1, p. 430, lines 36–39).

"Of the saving, a cent and three-quarters per pair in the cost of manufacture is effected by the group of machines comprising the new welter, new stitcher, new rough rounder, new power grooving and beveling machine, the new Universal channeling machine, tack puller and resetter, new welt beating and slashing machine, the welt indenting and burnishing machine, the impression stitch burnishing machine No. 2, and the Goodyear jointing machine. The savings by these machines result from the increased speed of operation of the new welter, the new stitcher, and the new rough rounder, and from the pulling of tacks and resetting of tacks on the tack pulling and resetting machine, always before done by hand. These savings include the savings accomplished by the Plant improvements on the welter. Without the Plant improvements the savings would be somewhere between three-eighths of a cent and a half a cent less than that.

"It is entirely untrue that the modern welter and stitcher do not operate any faster than the old machines. They

are at least 50 per cent. faster in average speed than the old machines; that is, they will sew 50 per cent. more stitches in a minute than the old ones would.

"The next group of machines which effected a saving in the manufacture of welt shoes are the Ideal clicking machine, the Duplex eyeletting machine, the Ensign lacing machine, the lining cementing machine, and the improved skiving machine. I have credited three cents per pair saving as effected by those machines, but that is less than the manufacturers of welt shoes have said their saving was in leather by the use of the Ideal clicking machine alone. Three cents is well within the actual saving effected by those machines.

"A saving of two cents is effected by the group of machines comprising the insole heel seat rounder, the insole tacking machine, the Rex pulling-over machine, the Rex assembling machine, the Rex pounding machine, the upper trimming machine, and the No. 5 lasting machine" (R. Vol. 1, p. 430, line 40–p. 431, line 30).

"It is almost impossible to calculate the amount of savings effected by these machines on high-toed shoes. On those shoes probably the saving in lasting alone by the No. 5 lasting machine was two cents a pair, without reckoning the savings for the other machines" (R. Vol. 1, p. 431, lines 31–35).

"A quarter of a cent saving has been effected by the hand method lasting machine which we have furnished for lasting the sides of shoes the toes and heels of which are lasted on the No. 5 Lasting Machine" (R. Vol. 1, p. 431, line 42–p. 432, line 1).

"I have allotted a quarter of a cent saving to the Crest heel blacking machine, the channel cementing machine, and the tip scouring machine.

"All of the machines in these groups are new machines which the company has invented and brought out and the savings effected by them amount to a total of seven and one-half cents. Adding our reduction in royalties, the sum is eight and one-quarter cents" (R. Vol. 1, p. 432, lines 7–14).

Mr. WINSLOW also testified:—

"The amounts paid per pair of shoes for the use of all the principal royalty machines furnished by the United Company, when accounts are paid within thirty days, are for Goodyear welts, men's work, 5.694 cents; for Goodyear welts, women's work, 4.694 cents; for Goodyear Turn shoes, women's and misses', 1.972 cents; for children's Goodyear Turn shoes, half a cent; for men's and women's McKay

shoes, 1.746 cents; for children's McKay sewed shoes, 1.391 cents (R. Vol. 1, p. 503, lines 29–36).

"The average royalty paid by a shoe manufacturer for the use of all machines furnished by the United Company for the manufacture of all types and grades of shoes is less than two and two-thirds cents per pair" (R. Vol. 1, p. 866, lines 29–32).

"The United Company has suppressed absolutely no machines, no inventions and no improvements.

"In no instance when an initial premium is charged has that been increased over what was charged prior to 1899 and in no instance has the royalty charged on any machine been increased over that charged in 1899" (R. Vol. 1, p. 433, lines 27–32).

"Throughout our business dealings our prices, service, and forms of lease have been the same to everyone; we have made no price for any royalty or for any material or in any way that was not open to every lessee the day it was made" (R. Vol. 1, p. 439, lines 39–42).

"Our royalties have been the same to all, whether they used a thousand machines or one; they are charged by the pair and the service is exactly the same. No lease or modification of lease is adopted at any time that is not open to all lessees at the date of its adoption" (R. Vol. 1, p. 440, lines 2–6).

"As an illustration of the reductions made in prices of articles furnished by the United Company, I have had compiled the reductions made in the prices of the forepart and edge cutters acquired from the Boston Shoe Tool Company and the Globe Shoe Tool Company (defendants' Exhibit 239, Record, p. [678]). The prices charged by those companies compared with prices subsequently charged by us are as follows:

"The price of the heel cutter with blades in January, 1899, was $3.25; we reduced the price on March 1, 1900, to $2.25. In January, 1899, the price of the blades alone was $2; on March 1, 1900, we reduced the price for the blades alone to $1. The price of forepart and shank cutters in January, 1899, was thirty-five cents each, in small quantities, and twenty-five cents each in quantities of 100; on March 1, 1900, we reduced the price to twenty-five cents each in any quantity. The price of edge irons in January 1899, was fifty cents; on March 1, 1900, we reduced the price to twenty-five cents" (R. Vol. 1, p. 479, lines 3–19).

The United Company has put out many of its new and improved machines without charging any additional royalty.

Thus, for example, the shoe manufacturer of to-day gets the use of the Welter and Stitcher of the Goodyear Department and the 36 Auxiliary Machines without initial payment and for exactly the same royalty as was charged in 1899 for the use of a far less efficient Welter and Stitcher, and only 13 Welt Auxiliary Machines. For turn shoes he gets the Stitcher and 9 auxiliaries without initial payment and for one-half the royalty charged in 1899 for a much less efficient Welter and 3 Auxiliaries. Certain machines acquired from others for which the shoe manufacturer previously paid a substantial charge have been added to the Goodyear Auxiliary set without increasing the royalty. Thus the Company owning the Sole-laying Machine, previous to its acquisition by the United Company, charged a royalty of one-quarter cent per pair.

The United Company acquired this machine and included it in its Auxiliary Goodyear Set without any additional royalty. So in the case of the Gem Insole Machine on which the charge had been one-half cent per pair (R. Vol. 1, p. 430, lines 10–13).

The United Company has reduced or eliminated the initial charges made in 1899, thus reducing materially the cost to the shoe manufacturer of his machinery. The initial charge for an equipment of machines to manufacture 300 pairs of Goodyear Welt shoes per day was in 1899, $6,930.50. In 1911 the improved machines of the same character and 18 additional Auxiliary or General Department machines were furnished by the United Company for $1,430, a saving to the manufacturer of $5,500.50. The initial charge for an equipment to make 1,000 pairs of shoes per day was, in 1899, $11,300.50. Prior to 1911 the United Company had reduced the charge to $2,467.50, a saving to the manufacturer of $8,833 (R. Vol. 1, pp. 432–3). More than 50 per cent. of the manufacturers make 300 pairs or less per day (R. Vol. 1, pp. 454–5).

(6) BENEFITS TO SHOE OPERATIVES, RESULTING FROM INVENTIONS AND SERVICE OF UNITED COMPANY.

Shoe operatives are generally paid by the piece, that is, a certain amount for each pair of shoes operated on by them. Any increase in the efficiency of the machines tending to a larger production per machine thus increases the number of shoes

worked on by each operative. The increased efficiency of the United Company's machines has resulted in an increase in the compensation paid operatives, although shoe manufacturers have in many instances actually reduced the piece price.

Thus the testimony shows that the average output of Model K Welter is 40 dozen pairs a day instead of about 25 dozen pairs on the old machine and that an operative as a result can earn 20 per cent. to 36 per cent. more on the new welter, although the piece price on the old welter was one-third more than on the new (R. Vol. 1, pp. 646–8, .658–60, 710, 723, 753). On the Model M Stitcher the operatives can earn 24 to 45 per cent. more than on the old stitcher, although the piece price is 40 per cent. less than on the old stitcher (R. Vol. 1, pp. 647, 753).

(7) THE DEVELOPMENT BY UNITED COMPANY OF GOODYEAR METHOD OF MAKING SHOES.

One of the purposes in forming the United Company, as testified to by Mr. Winslow, was to encourage and increase the manufacture of Goodyear Welt shoes. This was to be done by the development of new machines to assist in that manufacture, by lowering the cost of installation of the Goodyear machines and by instructing operators in their use (R. Vol. 1, p. 407, lines 22–30). The United Company has constantly carried out this purpose and may be said to have specialized in machinery for making the Goodyear Welt shoes.

It has, in the first place, enormously increased the efficiency of its Welter and Stitcher, the two principal machines used in this process. As we have shown above, it has greatly increased the number of Auxiliary Machines furnished with its Welter and Stitcher (*supra*, p. 197). It has eliminated the initial charges made in 1899 on its principal machines, resulting in a large saving to the shoe manufacturer (*supra*, p. 202).

There has resulted a great increase in the production of Goodyear Welt shoes. In 1899, 22,700,000 pairs of welt shoes were made out of a total of 172,786,000. In 1910, 86,231,000 pairs of welt shoes were made out of a total of 278,916,000 (R. Vol. 1, p. 424, lines 24–35).

II.

THE EVIDENCE REGARDING DEFENDANTS' PATENTS.

I. INTRODUCTORY STATEMENT.

The petition alleges (R. Vol. 1, pp. 992–4) that early in 1899 the principal companies engaged in the manufacture of shoe machinery were manufacturing their machines under patents; that many of the "basic" patents on the principal machines were about to expire and the manufacture and use of such machines would have become open to the public in the near future; and that the owners and officers of those companies, designing and intending unlawfully to extend and perpetuate the monopolies which previously they had lawfully enjoyed under said patents, determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery.

In effect the allegation of the petition is that in 1899 the important patents on the principal machines were about to expire and that the defendants, knowing this, contrived a plan by which they could in effect create a new and unlawful monopoly to take the place of the lawful monopoly which they had previously enjoyed by virtue of the patents and which they were about to lose through expiration of the patents; and this is what petitioner expected and undertook to prove. Consistent assertions were made by its counsel several times during the trial. For example:—

> "BROWN, J. Well, you allege in substance that here was a clear unpatented field in which people would be dealing as free agents.
>
> "Mr. FOWLER. As to the basic patents on the essential machines" (R. Vol. 1, p. 982, lines 13–17).

In the following pages we shall show how entirely unsuccessful were petitioner's efforts to establish this allegation and how absolutely it was at variance with the facts. It will appear that petitioner's own evidence completely failed to support the allegation, in any respect or to any extent; while defendants' testimony completely answered and disproved it. The record shows that:—

(1) Petitioner completely failed to prove the allegation of the petition that early in 1899 "many of the basic patents on the principal machines" were "about to expire" (R. Vol. 1, p. 993). On the contrary,—

(2) *Petitioner's* testimony proved, as to machines of its own selection, that early in 1899 "basic" patents were *not* about to expire, and that there were patents on those machines which did not expire for more than ten years after the United Company was formed.

(3) Defendants proved that of the important patents "early in 1899" on the "principal machines" selected by petitioner's patent expert the latest patent on each of those machines had *more than fourteen years to run;* and that, in general, the machines of the companies which combined in February, 1899, to form the United Company were protected by strong patents having considerably over half their terms to run.

(4) While in nearly every instance the machines of those patents were not the first machines in the industry for performing the respective operations and while the patents on those first machines had expired before 1899, the patents which covered the 1899 machines were important and valuable because those machines were so much better than the machines of the expired patents that "early in 1899" they were used and demanded by manufacturers; but—

(5) The patents on the 1899 machines represented only the 1899 stage in the continuous and continuously patented development of the industry; and—

(6) In the rapid development of the industry since 1899 the machines of that day have in turn given place to superior, modern machines which do better work and have greater capacity, and these modern machines are protected by strong and valuable patents of recent date; so that—

(7) When this suit was begun and now, as at every stage in the development of shoe machinery, the best machines available, the machines which manufacturers demand and use, were and are effectively protected by patents.

(8) Moreover, the period since February, 1899, has been a period of more important and more rapid development than any corresponding period in the history of shoe machinery. A great number of new patented machines have been developed

and supplied to manufacturers, and the patents on thirty-nine of these machines which perform operations performed by hand or not at all in 1899 may fairly be termed pioneer patents.

(9) Accordingly, the machines which the United Company was putting out when this suit was begun, the machines which shoe manufacturers demand and use, are protected by strong and valuable patents of recent date.

2. PETITIONER'S EVIDENCE IN SUPPORT OF THE ALLEGATION OF THE PETITION THAT EARLY IN 1899 MANY OF THE BASIC PATENTS ON THE PRINCIPAL MACHINES WERE ABOUT TO EXPIRE.

The petition sets forth that the companies which came together to form the United Company were early in 1899 manufacturing their machines under patents. Then follows the allegation that

> "*many of the basic patents on the principal machines* owned and controlled by them *were about to expire*, and, in the ordinary course of events, the general public would have acquired *in the near future* the right to the free manufacture and use of such machines, the lawful monopoly of such machines theretofore enjoyed by virtue of the patents would have come to an end, . . . " (italics ours) (R. Vol. 1, p. 993).

Testimony with respect to these allegations of the petition was taken before a special examiner under the order of June 27, 1913 (R. Vol. 1, p. 1090), and is contained in Volume 2 of the Record.

That order provided for the taking of testimony—

> "with respect to the allegations of the petition set forth in the paragraph beginning at the bottom of page 15 [R. Vol. 1, p. 993] *and ending at the beginning of Section IV*. on page 16 [994], of the printed petition in the above-entitled cause" (italics ours) (R. Vol. 1, p. 1090).

The allegations of the petition referred to in this order, in addition to that above quoted, comprise the following:—

> "and the system of demanding large royalties for their use would have been replaced by their general manufacture and outright sale under competitive conditions. Furthermore, under the conditions then existing, new patents were being constantly taken out by others, and new and

improved machines for performing the principal operations in the manufacture of boots and shoes by the aid and use of machinery were being placed upon the market, either upon a smaller royalty than had theretofore been charged for machines doing similar work or for sale outright to boot and shoe manufacturers" (R. Vol. 1, pp. 993–4).

There is in the testimony no attempt whatever to support these latter allegations, so that they require no discussion.

A. Petitioner's Claim that Early in 1899 Many of the "Basic" Patents were About to Expire is Disproved by its Own Patent Expert.

In its *prima facie* case in support of this allegation the petitioner's patent expert, Mr. Chapman, mentioned patents on four machines only. The machines and the patents which he testified claimed improvements incorporated in the machines are as follows:—

Shoe Machine: Goodyear Welt and Turn ("Welter") (R. Vol. 2, pp. 2141–44):—

No. 412,704, Oct. 8, 1889 (expiring Oct. 8, 1906*).
No. 461,793, Oct. 20, 1891 (Method) (expiring Oct. 20, 1908*).
No. 488,505, Dec. 20, 1892 (expiring Dec. 20, 1909).
No. 518,911, Apr. 24, 1894 (*expiring Apr. 24, 1911*).

Lockstitch Machine: Goodyear Outsole Rapid ("Stitcher") (R. Vol. 2, pp. 2145–6):—

No. 473,874, Apr. 26, 1892 (expiring Apr. 26, 1909).
No. 474,774, May 10, 1892 (*expiring May 10, 1909*).

Lasting Machine: Chase (R. Vol. 2, pp. 2199–2201):—

No. 340,860, Apr. 27, 1886 (expiring Apr. 27, 1903).
No. 364,088, May 31, 1887 (expiring May 31, 1904).
No. 376,368, Jan. 10, 1888 (expiring Jan. 10, 1905).
No. 483,375, Sept. 27, 1892 (*expiring Sept. 27, 1909*).

Rounding and Channeling Machine: Goodyear Universal (R. Vol. 2, pp. 2201–4):—

No. 463,982, Nov. 24, 1891 (expiring Nov. 24, 1908).
No. 599,602, Feb. 22, 1898 (expiring Feb. 22, 1915†).
No. 600,883, Mar. 22, 1898 (*expiring Mar. 22, 1915*†).

*As to Mr. Chapman's contention that these patents expired prematurely because of the expiration of a British patent, see *infra*, pp. 218-220

†As to Mr. Chapman's contention that these patents expired in 1910 with a British patent, see *infra*, pp. 220-221.

At the conclusion of his testimony regarding the welter and the stitcher Mr. Chapman expressed his views as to the character of the patents on those machines which he had discussed and which are enumerated above, as follows:—

> "*Int.* 13. Should you say, from your knowledge, study and experience, that the patents to which you have referred in your deposition might properly be termed 'basic patents' early in 1899, in reference to the machines in question, welters and stitchers? . . .
>
> "*Ans.* Yes, with the exception of a few detailed claims contained in some of the patents examined by me" . . . (R. Vol. 2, pp. 2146–7).

As to the Chase lasting machine and the rounding and channeling machine Mr. Chapman in his *prima facie* testimony drew no distinctions as to the "basic" character of the patents on those machines. On rebuttal he testified that *none* of the patents on those machines early in 1899 was "basic."

In addition to the four machines listed above, Mr. Chapman discussed six other machines, but in those discussions he *mentioned no patents*, so that obviously his testimony regarding those six other machines cannot possibly be helpful on this issue and may be entirely disregarded.

Thus petitioner's *prima facie* case in support of the allegation of the petition that early in 1899 basic patents were about to expire established (1) that of the patents, alleged to be "basic," on two machines, the welter and the stitcher, the latest patent expired on April 24, 1911, and May 10, 1909, respectively; and (2) that patents, *not* "basic," on the Chase lasting machine and the rounding and channeling machine expired more than ten years after February, 1899.

The welter and stitcher were both put out "early in 1899" by the Goodyear Company, the Chase lasting machine was one of the three lasting machines being put out early in 1899 by the Consolidated & McKay Lasting Machine Company, and the rounding and channeling machine was an auxiliary machine being put out by the Goodyear Company (R. Vol. 1, p. 2, lines 12–18; p. 3, lines 15–39; p. 625, lines 38–39); no machine put out by the McKay Shoe Machinery Company was even mentioned by petitioner's patent expert.

The proposition that patents which in February, 1899, had

over ten years to run,—much more than half their terms,—were "about to expire" is too ridiculous for discussion. But this extraordinary position was not taken by petitioner without due warning of its unreasonableness. On the first day of the taking of testimony before the examiner on this issue, a week before Mr. Chapman began to testify, a discussion was precipitated by the following interrogatory propounded by petitioner's patent counsel to defendants' patent expert Howard, then a witness for petitioner:—

> "*Int.* 4. Kindly read to the magistrate the number, title, date and name of inventor of each patent on the Chase lasting machine, which patents *expired prior to the filing of the petition in this case*" (italics ours) (R. Vol. 2, p. 2102).

Defendants' counsel objected to this question "as not within the scope of this order," adding:—

> "But your order does not entitle you to make any such inquiry. It is limited to proof of Letters Patent under which the defendants were manufacturing their machines in 1899, and proof that many of those patents were about to expire. . . . The bill suggests a certain situation: that in 1899 the patents which had existed were about to expire, and that that was the occasion for doing something, which something was a conspiracy and combination which the bill charges. It does not seem to us that that opens to you the opportunity for an inquiry as to what patents expired *all the way from 1899 up to 1911*" (italics ours) (R. Vol. 2, pp. 2102–3).

B. Petitioner's Final Position as to Expiration of Basic Patents.

In its rebuttal evidence,—

Petitioner definitely limited its claim that early in 1899 many of the basic patents on the principal machines were about to expire to two machines, both put out by one company only, the Goodyear Shoe Machinery Company, and then only as employed on welt shoes, constituting less than 10 per cent. of the shoes made in 1898.

Petitioner's expert Chapman was asked what machines were "essential or necessary for the bottoming of *welt shoes* in the

commercial manufacture of shoes by machinery under the Goodyear process" (italics ours). Mr. Chapman's answer was:—

> "There are but two absolutely essential or indispensable machines necessary to the production of a Goodyear welt and turn shoe made in accordance with the so-called Goodyear process. Those machines are the machine which is familiarly known as welt and turn machine and out-sole rapid stitcher" (R. Vol. 2, p. 2794, Int. 2).

This statement was later referred to by petitioner's patent counsel as:—

> "your statement that welters and stitchers are the only indispensable machines required for the commercial bottoming of shoes by machinery" (R. Vol. 2, p. 2808, Int. 10).

The position thus taken by the petitioner was emphasized as follows (R. Vol. 2, p. 2809):—

> (Mr. WEBSTER): "*Int.* 11. In the commercial manufacture of shoes by machinery, what machines are of secondary importance in the bottoming of shoes?"
>
> (Mr. CHAPMAN): "*Ans.* *The machines of secondary importance* are a machine for insole channeling, *a machine for lasting*, a machine for sole laying, a machine for rough rounding and channeling, *a machine for heel-seat nailing* and *such machines as are ordinarily employed in the heeling operation* generically considered, a machine for edge trimming."
>
> (Mr. WEBSTER): "*Int.* 12. I notice you omit from the list machines for leveling or beating soles. Are they properly included in the list of secondary machines?"
>
> (Mr. CHAPMAN): "*Ans.* They may be considered of secondary importance" (italics ours).

Machines for lasting were all that the Consolidated & McKay Company was putting out early in 1899; and "a machine for heel seat nailing" (the loose nailing machine), and "such machines as are ordinarily employed in the heeling operation" were principal machines which the McKay Shoe Machinery Company was putting out (R. Vol. 1, p. 4, lines 19–21, 23–27).

Machines of "secondary importance" cannot of course be included with the "principal machines" referred to in the allegation of the petition now under discussion. Accordingly,—

Petitioner limited its claim that early in 1899 many of the basic patents on the principal machines were about to expire to TWO MACHINES, *both put out by one company only, the* GOODYEAR COMPANY, *and expressly excludes from its case* (1) *all machines* put out by the CONSOLIDATED & MCKAY COMPANY, (2) *all machines* put out by the MCKAY SHOE MACHINERY COMPANY, (3) *all machines*, other than the welter and stitcher, put out by the GOODYEAR COMPANY, and (4) *all machines of all kinds used in the manufacture of over ninety per cent. of all shoes made, i.e.*, all kinds of shoes other than Goodyear welt shoes. Less than 10 per cent. of the shoes made in the United States in 1898 were Goodyear Welt shoes (R. Vol. 1, p. 414, lines 36–40).

The petitioner having proved defendants' case they might well be content to submit this issue on petitioner's showing; but their case is even stronger than that which petitioner has established, as petitioner's patent counsel, Mr. Webster, doubtless anticipated when he said,—

> "I would like to show by Mr. Howard, unless we can agree upon it, what patents were owned by the United Company and its associate companies, which patents expired prior to the filing of the petition in this case. . . . I simply care for those which have expired. *I don't care for those which were alive at the time of the filing of the bill*" (italics ours) (R. Vol. 2, pp. 2093–97).

Consistently with this frank statement Mr. Webster, in examining defendants' patent expert Howard, called as a witness for the petitioner, requested him to produce lists of patents owned by the United Company on specified machines, "*which patents expired prior to the filing of the petition in this case*" (italics ours) (R. Vol. 2, pp. 2101–9).

3. DEFENDANTS' EVIDENCE AS TO THE PATENTS EARLY IN 1899 ON THE MACHINES DISCUSSED BY PETITIONER'S EXPERT.

Defendants' testimony showed that "early in 1899" there were important patents on the four machines discussed by petitioner's expert *which had more than fourteen years to run* and did not expire *until after this suit was begun in December, 1911*. Mr. Howard, defendants' patent expert, who has been

head of the United Company's patent Department since the company was organized (R. Vol. 2, pp. 2239–41), testified that there were patents on those machines when the United Company was formed, *in addition to those enumerated by Mr. Chapman* (*supra*, p. 207), as follows:—

Shoe Machine: Goodyear Welt and Turn ("Welter") (R. Vol. 2, p. 2249, Int. 10; p. 2722, Int. 240; p. 2723, Ints. 241, 242; p. 2726, Ints. 256, 258):

No. 495,452, Apr. 11, 1893 (expiring Apr. 11, 1910).
No. 561,386, June 2, 1896 (*expiring June 2, 1913*).

Lockstitch Machine: Goodyear Outsole Rapid ("Stitcher") (R. Vol. 2, p. 2279; p. 2284, Int. 25):—

Re. No. 11,578, reissued Dec. 8, 1896 (original patent No. 549,124, Nov. 5, 1895, expiring Nov. 5, 1912).
No. 563,471, July 7, 1896 (expiring July 7, 1913).
No. 563,472, July 7, 1896 (expiring July 7, 1913).
No. 582,510, May 11, 1897 (*expiring May 11, 1914*).
(*Also* No. 675,783, June 4, 1901, application pending in February, 1899 (*will expire June 4, 1918*);
No. 704,457, July 8, 1902, application pending in February, 1899 (*will expire July 8, 1919*).)

Lasting Machine: Chase (R. Vol. 2, pp. 2365–72):—

No. 545,052, Aug. 27, 1895 (expiring Aug. 27, 1912).
No. 566,831, Sept. 1, 1896 (expiring Sept. 1, 1913).
No. 569,182, Oct. 13, 1896 (expiring Oct. 13, 1913).
No. 569,231, Oct. 13, 1896 (expiring Oct. 13, 1913).
No. 571,339, Nov. 17, 1896 (expiring Nov. 17, 1913).
No. 571,404, Nov. 17, 1896 (expiring Nov. 17, 1913).
No. 571,429, Nov. 17, 1896 (*expiring Nov. 17, 1913*).

Rounding and Channeling Machine: Goodyear Universal (R. Vol. 2, pp. 2304–6):—

No. 595,764, Dec. 21, 1897 (expiring Dec. 21, 1914).
No. 625,633, May 23, 1899 (expiring May 23, 1916).
No. 630,339, Aug. 8, 1899 (*expiring Aug. 8, 1916*).

As we have stated (*supra*, p. 208), Mr. Chapman in petitioner's *prima facie* case discussed six other machines but did not refer to any patents on those machines, so that his testimony regarding those machines is of course not pertinent to this issue. It

may interest the Court, however, to know what the patents on those machines were "early in 1899." They were:—

Channeling Machine: Goodyear (insole and turn) (R. Vol. 2, pp. 2318–22):—

No. 550,402, Nov. 26, 1895 (*expiring Nov. 26, 1912*).

Leveling Machine: Goodyear Automatic Sole (R. Vol. 2, pp. 2332–5):—

No. 540,222, May 28, 1895 (expiring May 28, 1912).
No. 540,223, May 28, 1895 (expiring May 28, 1912).
No. 541,988, July 2, 1895 (expiring July 2, 1912).
No. 546,211, Sept. 10, 1895 (expiring Sept. 10, 1912).
No. 555,548, Mar. 3, 1896 (expiring Mar. 3, 1913).
No. 580,746, Apr. 13, 1897 (expiring Apr. 13, 1914).
No. 610,314, Sept. 6, 1898 (*expiring Sept. 6, 1915*).

Pegging Machine: Davey (R. Vol. 2, pp. 2351–2):—

No. 581,066, Apr. 20, 1897 (*expiring Apr. 20, 1914*).

Separating Machine: Hadaway Stitch (R. Vol. 2, pp. 2339–42):—

Re. No. 11,538, reissued May 12, 1896 (original patent 521,978, June 26, 1894) (expiring June 26, 1911).
No. 537,823, Apr. 23, 1895 (expiring Apr. 23, 1912).
No. 543,012, July 23, 1895 (*expiring July 23, 1912*).

Skiving Machine: Amazeen (R. Vol. 2, pp. 2356–9):—

No. 518,774, Apr. 24, 1894 (expiring Apr. 24, 1911).
No. 609,868, Aug. 30, 1898 (expiring Aug. 30, 1915).
No. 632,984, Sept. 12, 1899 (expiring Sept. 12, 1916).
No. 636,942, Nov. 14, 1899 (*expiring Nov. 14, 1916*).
(The applications for the last two patents were filed before February, 1899 (Defs.' Ex. 130).)

Channeling Machine: Goodyear Outsole, is omitted from the above list because that machine became obsolete when the rounding and channeling machine went into use, several years before 1899 (R. Vol. 2, p. 2330, Int. 40; p. 2764, Int. 375).

4. PETITIONER'S ATTEMPT TO BELITTLE THE IMPORTANCE OF THE LATER PATENTS ON THE WELTER AND STITCHER "EARLY IN 1899."

Before referring to Mr. Chapman's efforts in his rebuttal testimony to show that the later patents, which Mr. Howard testified claimed important improvements embodied in the welter and stitcher "early in 1899," were of comparatively little importance, attention should be called to Mr. Chapman's admissions as to the character of his work in preparation for giving his testimony.

At the outset of his discussion of the stitcher Mr. Chapman said:—

> "Since the testimony of Mr. Howard closed it has been a physical and mental impossibility for me or for counsel to go into the various patents with a view to determining their bearing on the questions at issue. . . ." (R. Vol. 2, p. 2798).

Also, when asked whether the structures of any of the claims of outsole stitcher patents which he had just been discussing were "necessary to the successful operation" of the stitcher of 1899, he said:—

> "I cannot answer that question with reference to all the claims of all the patents referred to, for the reason that I have been unable to go through the patents in detail sufficiently to give a comprehensive answer. . . ." (R. Vol. 2, p. 2802, Int. 7).

And again:—

> "As heretofore stated, I have had very little opportunity to study or go into the prior state of the art having reference to or bearing upon those patents to which Mr. Howard has made reference. . . ." (R. Vol. 2, p. 2810).

These statements were made by Mr. Chapman on the first day of his rebuttal deposition, November 12, 1913 (R. Vol. 2, p. 2793), nearly four months after Mr. Howard, as witness for petitioner, read into the record on July 23, 1913, lists of the patents on the welter and stitcher (R. Vol. 2, pp. 2116–9), and five weeks after Mr. Howard, as witness for defendants,

testified in detail regarding those patents on October 6 and 7, 1913 (R. Vol. 2, pp. 2247–2302).

If any doubt remains as to the superficial character of Mr. Chapman's work on this case, attention is called to the discussion of his misstatements of fact in his testimony regarding the Plant purchase (*infra*, pp. 536–538).

(a) *The Later Patents on the Welter "Early in 1899."*

As we have seen, Mr. Chapman testified in petitioner's *prima facie* case that "early in 1899" there were four "basic" patents on the welter (*supra*, pp. 207–208). In his rebuttal testimony, without a word to explain his inconsistency, he testified that only two of those patents were basic, viz., No. 412,704, October 8, 1889, and No. 461,793, October 20, 1891 (R. Vol. 2, pp. 2794–5, Ints. 3, 4), and he stated that later patents on the welter, including two which he had previously characterized as "basic," No. 488,505 and No. 518,911, and also including No. 561,386, June 2, 1896, which Mr. Howard had testified about, "relate to and cover by claim mere details of construction" (R. Vol. 2, p. 2795).

But the record does not support this contention.

Mr. Howard testified:—

> "I have never seen a welt and turn machine of 1899 which did not embody in its organization the mechanisms set forth in the LaChapelle patent No. 488,505, Briggs patent No. 518,911 and French patent No. 561,386. I know that the mechanisms set forth in those later patents are very useful in the machine and I am certain that no customer of the United Company would have accepted at any time since February, 1899, the welt and turn machine of 1899 which did not embody in its organization the improvements of those patents" (R. Vol. 2, p. 2725, Int. 249).

He also testified that the machine was never commercially used until it incorporated the mechanisms claimed in those patents (R. Vol. 2, p. 2723, Int. 245).

Further, as to patent No. 488,505 Mr. Howard testified that he considered,—

> "That the mechanism of the LaChapelle patent No. 488,505 is important to the commercial success of the welt and turn machine of 1899" (R. Vol. 2, p. 2725, Int. 252).

In regard to patent No. 518,911, petitioner's witness Bannican testified on cross-examination that the "auxiliary take-up" of that patent keeps the thread from dropping off the needle and prevents the machine from skipping stitches, which would make imperfect work (R. Vol. 2, pp. 2830–1, Ints. 57–63).

Mr. Howard explained in detail the advantages of the improvement of patent No. 561,386, June 2, 1896 (R. Vol. 2, p. 2249, Int. 10), and stated that in a machine not provided with the mechanism of that patent there would be frequent breakage of the thread, and on cross-examination he said,—

> "The improvement of patent No. 561,386, June 2, 1896, French, contributed substantially to the successful commercial operation of the welt and turn machine of 1899 and overcame serious difficulties which had been experienced in the commercial use of welt-sewing machines before this improvement was made" (R. Vol. 2, p. 2727, Int. 260).

(*b*) *The Later Patents on the Stitcher "Early in 1899."*

In his rebuttal deposition Mr. Chapman adhered to his original position that two "basic" patents on the stitcher expired in April and May, 1909. Then, after making the statement above quoted to the effect that it had been an "impossibility" for him to examine the patents "with a view to determining their bearing upon the questions at issue" (R. Vol. 2, p. 2798), Mr. Chapman attempted to decry the importance of the four patents on the extension edge organization of the 1899 stitcher, No. 563,471, No. 563,472, No. 582,510 and No. 675,783, expiring respectively in 1913, 1914 and 1918 (*supra*, p. 212) (R. Vol. 2, p. 2799).

But the record establishes beyond any doubt that the inventions of those patents were extremely important.

In his discussion of the improvements of those patents Mr. Howard explained that nearly all welt shoes have extension edges, that prior to 1895 extension edge shoes had been made by hand because up to that time there were no machines which were organized to sew the outsoles of shoes provided with extension edges, and that the four patents in question claimed improvements which for the first time adapted an outsole stitcher for attaching the soles of extension edge shoes. Mr. Howard also explained the practical advantages of the extension edge sole and the character of the organization which adapted the

1899 stitcher for making extension edge shoes, and he concluded his extended discussion (R. Vol. 2, pp. 2279–83) with the following statement:—

> "Finally, as to the importance and value of an organization in an outsole stitching machine which will enable it to attach the soles of extension edge shoes, I should state that in my opinion it is quite as important that the machine should be able to handle the shoe properly in such manner as to locate the line of stitching where good shoemaking requires that it should be located, as it is that the machine should properly form the stitch; and I regard the extension edge organization as important and as essential a part of an outsole stitching machine under modern conditions as are the needle and awl."

Mr. Warren testified to the same effect (R. Vol. 1, p. 794, lines 41–44; p. 795, lines 1–11).

It is submitted that the broadest of these patents, which will not expire until 1918 (R. Vol. 2, p. 2282), may fairly be characterized as a pioneer patent.

In regard to the improvement claimed in reissued patent No. 11,578 and in patent No. 704,457 (application filed June 3, 1898; Defs.' Ex. 113), expiring respectively November 5, 1912, and July 8, 1919, which improvement was made in the outsole stitcher "just prior to 1899" (R. Vol. 2, p. 2284, Int. 25), Mr. Chapman testified that that organization "while probably convenient, is not essential to the fundamental organization" of the 1899 stitcher (R. Vol. 2, p. 2799).

Mr. Howard testified that the embodiment in the outsole stitcher of this improvement adapted the machine to,—

> "Perform the welt beveling and the stitching operation simultaneously, thus obviating the necessity on such work of performing the welt beveling operation subsequently, either by hand or by another machine operation" (R. Vol. 2, p. 2284, Int. 25).

5. PETITIONER'S CONTENTION THAT CERTAIN PATENTS ON THE WELTER AND THE ROUNDING AND CHANNELING MACHINE EXPIRED PREMATURELY OR WERE ANTICIPATED.

Defendants are confident that it will be accepted without question that the patents which the United Company acquired from its component companies were, for the purposes of this suit, valid and in force for their full seventeen year terms. It does not appear that any of them had been held to be invalid or that any of them had been held to have expired before the end of its full term. Accordingly those patents were *prima facie* valid for their full terms, and defendants had a right to assume that they were valid and would be in force to the ends of their terms. That any of those patents was, years after the United Company was formed, held to be invalid or to have expired prematurely, or that a patent expert expressed an opinion, fourteen years after, that any of those patents was anticipated or had expired prematurely, is not of the slightest consequence. We anticipate, therefore, that petitioner's efforts to show such a situation in regard to two machines will be dismissed as of no importance whatever.

So far, however, as petitioner raised the issue of the validity of defendants' patents it may interest the court to know what defendants' position is.

Petitioner contended that patents No. 412,704 and No. 461,793 on the welter expired on September 17, 1902, with British patent No. 13,366, September 17, 1888 (R. Vol. 2, pp. 2144, 2145, 2197, 2198).

Defendants' position as to this contention is as follows:—

A. Petitioner's statement that patent No. 412,704, October 8, 1889, was held, in an opinion of the Circuit Court of Appeals for the First Circuit rendered *August 2, 1907*, in a suit *begun December 21, 1903* (P.'s Ex. 219, R. Vol. 4, p. 1277), to have expired on September 17, 1902, with British patent No. 13,366 of September 17, 1888, French & Meyer, defendants do not deny. BUT, *in the absence of the slightest indication on the record that prior to the organization of the United Company on February 7, 1899, any of the officials of the predecessor companies had any knowledge, or even any suspicion, that the term of this patent, No.*

412,704, was limited by that British patent, petitioner has absolutely failed to show that the fact that this patent expired on September 17, 1902, is of any consequence whatever in this suit. It is clear that for the purposes of this case this patent did not expire until October 8, 1906.

B. Defendants most vigorously deny petitioner's claim that patent No. 461,793, October 20, 1891, expired with British patent No. 13,366, September 17, 1888.

(1) Patent No. 461,793 was granted October 20, 1891, to the Goodyear Shoe Machinery Company as assignee of Henry Briggs, and British patent No. 13,366, dated September 17, 1888, was granted to Zachary Taylor French and William Cristian Meyer. Thus it appears from the patents themselves that *they were issued to different inventors*, and the record contains no suggestion that the British patent was "obtained by the American patentee or with his consent" (*Hobbs* v. *Beach*, 180 U. S. 383, 397). Accordingly, petitioner's contention is answered by the patents themselves.

(2) Mr. Chapman's assertion that the subject-matter of claims four and five of the French & Meyer British patent is "substantially that of the United States Briggs patent" (R. Vol. 2, p. 2198, Int. 50) was completely answered by Mr. Howard (R. Vol. 2, pp. 2273–4, Int. 17), who first pointed out that the Briggs method, as stated in its title, is a "method of forming chain stitches," while the method set forth in claims four and five of the British patent is a particular method to be practised in the manufacture of boots and shoes, and *includes only one step of the method defined in the claim of the Briggs patent.* Mr. Howard further testified:—

> "A machine could be built and used which would infringe the claim of the Briggs patent without infringing the claims 4 and 5 of the British patent No. 13,366 of 1888; while, on the other hand, a machine could be built and used which would infringe the method defined in claims 4 and 5 of the British patent, but would not infringe the claims of the Briggs patent. . . .
>
> "More than this the single claim of the Briggs patent includes as an important and essential step in its method a step which is not set forth in claims 4 and 5 of the British patent, and the claims in the Briggs patent would have been patentable if a machine practising the methods defined in

> claims 4 and 5 of the British patent had been a part of the prior art at the time the Briggs invention was made" (R. Vol. 2, p. 2274).

But here also, as in the case of the French and Meyer patent No. 412,704 above discussed, even if petitioner had proved its contention that Briggs patent No. 461,793 expired with the British patent in 1902, *it would be of no importance in this suit, because the record fails to afford the slightest suggestion that, prior to the organization of the United Company in February, 1899, any official of the predecessor companies believed, or had the least suspicion, that the Briggs patent expired before the end of its natural life on October 20, 1908.*

In another attack on Briggs patent No. 461,793 Mr. Chapman took a most extraordinary position. He asserted in 1913 that this patent, which had expired October 20, 1908, more than five years before he testified, was anticipated (R. Vol. 2, p. 2144, Int. 9). Since this contention was not mentioned in petitioner's briefs or arguments in the District Court, it may be assumed that it was abandoned and should not receive even passing notice. It was completely answered by Mr. Howard (R. Vol. 2, pp. 2270–3), who concluded his discussion of the alleged anticipation as follows:—

> "I never heard of the Stickel patent until it was mentioned by Mr. Chapman in his testimony, *and it has never in any way been mentioned in connection with any litigation involving the Briggs patent No. 461,793*" (italics ours).

Even assuming that Mr. Chapman was correct, it is submitted that testimony that this Briggs patent which expired in 1908 was anticipated by a patent which was never cited in any of the eleven suits on the Briggs patent and of which the owners of the Briggs patent had no knowledge until 1913, is not of the slightest consequence in this suit; the discovery of an anticipation *now* could have absolutely no bearing upon defendants' state of mind or intent in February, 1899.

Again, Mr. Chapman contended (R. Vol. 2, pp. 2203–4) that two of the patents which protected the rounding and channeling machine in 1899, No. 599,602, Feb. 22, 1898, and No. 600,883, Mar. 22, 1898, expired in 1910 with British patent No. 3497, of 1896, but petitioner nowhere charges defendants with knowledge

thereof in 1899. The facts regarding these two patents are as follows:

(1) Patent No. 599,602, February 22, 1898, French & Meyer, did *not* expire with British patent No. 3497 of 1896, because it shows and claims an *improvement* upon the machine shown in that British patent. The British patent which *does* correspond to patent No. 599,602 is No. 4426 of 1898, the application for which was filed February 22, 1898, the date upon which the United States patent issued. These facts are obvious upon comparing the patents.

(2) Patent No. 600,883, March 22, 1898, French & Meyer, is dominated by another patent on the rounding and channeling machine, No. 595,764, December 21, 1897, Cole, which was assigned to the Goodyear Company after it was granted (R. Vol. 2, p. 2305, Int. 30).

6. PETITIONER'S EVIDENCE THAT PATENTS ON MACHINES "EARLY IN 1899," OTHER THAN THE WELTER AND STITCHER, WERE NOT "BASIC" PATENTS, BUT THAT EARLIER PATENTS, MOST OF WHICH HAD EXPIRED, WERE THE BASIC PATENTS.

In his rebuttal testimony, after concluding his discussion of the welter and stitcher, Mr. Chapman completely abandoned the allegation of the petition that "early in 1899" many of the basic patents on the principal machines were about to expire. He then devoted his efforts to showing that the patents in 1899 on a number of machines, including the Chase lasting machine and the rounding and channeling machine, which he discussed in his first deposition, were not "basic" patents at all, but that earlier patents which had expired before 1899 were the basic patents (R. Vol. 2, pp. 2809–18).

For example, in discussing the Chase lasting machine, Mr. Chapman enumerated five lasting machine patents dated from October 4, 1859, to June 1, 1869, the latest of which expired in 1886, and said that the inventions of those patents "are clearly of pioneer character," and that in view of them the patents he had previously referred to (*supra*, p. 207) and those which Mr. Howard had discussed were "necessarily limited" (R. Vol. 2, pp. 2811–12). He also testified that all the patents in 1899 on

the rounding and channeling machine, another of the four machines selected by petitioner for its *prima facie* case, were "anticipated" by a patent granted in 1880 and,—

> "must necessarily, in their claims, run to details of construction and limited features of invention" (R. Vol. 2, p. 2816).

In elaborating this theory petitioner, by its own expert or on cross-examination of defendants' expert, proved that all the machines discussed by its own expert (*including the welter and stitcher* and excepting only the stitch separating machine, produced in 1895 for performing an operation always before performed by hand), and many others discussed by Mr. Howard, were improved machines for performing operations which had been performed many years before by machines the patents on which had expired prior to 1899 (R. Vol. 2, pp. 2719–20, 2733, 2734, 2743, 2746, 2758, 2760–1, 2763, 2764, 2809–18).

How petitioner could conceive that that evidence would be helpful in proving the allegation of the petition that early in 1899 many of the basic patents were about to expire is beyond understanding; the allegation is disproved by that evidence alone.

Moreover that evidence supplements and strongly corroborates defendants' evidence establishing that,—

7. THE PATENTS ON THE MACHINES "EARLY IN 1899" REPRESENTED MERELY THE 1899 STAGE IN THE CONTINUOUS AND CONTINUOUSLY PATENTED DEVELOPMENT OF SHOE MACHINERY.

The record shows that in nearly all instances the 1899 machines were not the first machines for performing their respective operations; that in fact there had been several machines in succession for performing each operation, each successive machine being better than its predecessor, before the 1899 machines had their turn as the best machines available at that time; but that under the constant pressure of continuous improvement and development, those 1899 machines have in their turn been superseded by machines which do more work and better work and which are much easier for the workmen to operate and enable them

to earn higher wages. The record also shows that from the beginning and all the way through this continuous development down to the present day the best machines have been patented; and that now, as at every stage in the development of the industry, manufacturers insist upon having the greatly superior patented machines and will not use the obsolete machines upon which the patents have expired.

The patents on the machines in 1899 represented the 1899 stage in the continuous patented development of the industry,—nothing more. The machines of the earlier expired patents had been superseded before 1899 by the improved patented machines of that day, and before December, 1911, when this suit was begun, the 1899 machines in their turn were in almost every case dead and buried and a new generation of much better patented machines had taken their places.

This steady and continuously patented development of shoe machinery may be illustrated by summarizing briefly the evidence showing the history of the welt and turn machine (the "welter") and the outsole stitcher, the two machines which petitioner regarded as "the only indispensable machines required for the commercial bottoming of shoes by machinery" (R. Vol. 2, pp. 2793–4; p. 2808, Int. 10).

A. Welt Sewing Machines.

The first machine for sewing the welt and upper to the insole was constructed under patent No. 34,413, February 18, 1862, Destouy, reissued as No. 3635, September 7, 1869. The fourth claim of the reissue is as follows:—

> "4. A sewing-mechanism, adapted to unite, by machinery, the upper, welt and sole, substantially as described, so as to produce a machine-made welted boot or shoe."

The Destouy machine, a lockstitch machine, was transformed into a chain-stitch machine by the improvements of patent No. 93,731, August 17, 1869, Mills. That machine was succeeded by the improved chain-stitch machine of patent No. 170,547, November 30, 1875, Goodyear and Hadley, which laid the chain on the welt instead of in the channel (R. Vol. 2, p. 2248, Int. 9). The machine of the Goodyear and Hadley patent, after being

extensively used for some years, was in turn succeeded by the machine of patent No. 190,709, May 15, 1877, Dancel. The machine of the Dancel patent was used until it was superseded by the welt and turn machine of 1899 (R. Vol. 2, p. 2248, Int. 9; p. 2720, Ints. 222–225).

Development Since 1899.

All the time since 1899 the United Company has been continuously engaged in aggressive and effective experimental work in developing improved welt sewing machines. In the course of this work a number of new machines have in succession been constructed and supplied to shoe manufacturers. Each of these machines was an advance in the art and an important step in the continuous development which, after a long period of inventing, experimenting, trying out and further improving, finally resulted in the wonderful Model K welter, which was the commercial machine when this suit was begun.

The first new welter put out by the United Company was a lockstitch welter known as "Sewing Machine: Goodyear Universal Inseam," which was first put out in June, 1899. This machine was protected by ten patents, of which six were granted after 1901 (R. Vol. 2, pp. 2250–1).

The United Company then concentrated its efforts on the production of an improved chain-stitch welter, and in July, 1902, put out an entirely new machine known as "Shoe Machine —Model E: Goodyear Welt and Turn." A large number of these machines were put out, all of which embodied improvements claimed in nine patents, six of which were granted after 1900 (R. Vol. 2, pp. 2252–3).

After years of continuous experimental work in the endeavor to produce a still better and faster welting machine, resulting in the construction in succession of several machines which were tried out, one after another, and in turn abandoned, the United Company finally produced in 1906 two experimental machines from which was eventually developed Shoe Machine—Model G: Goodyear Welt and Turn, an entirely new machine which was first put into commercial use in October, 1908 (R. Vol. 2, pp. 2253-4). Although many of the improvements embodied in this machine had not yet been patented when the testimony was

taken, there were seventeen patents claiming the organization of the machine, of which thirteen had been granted since January 1, 1910 (R. Vol. 2, pp. 2258, 2836(70)).

The Model G machine was run regularly at a speed of 500 stitches per minute as compared with the speed of 375 stitches per minute of the 1899 welter. Some of the many problems which had to be solved in producing a machine which would be capable of successful commercial use at so high a speed and the inventions which solved those problems were explained by Mr. Howard (R. Vol. 2, pp. 2254–7). Mr. Winslow testified that the Model G machine was:—

> "the highest development of sewing mechanism for attaching the welt, inner sole, and upper together that had been developed in the world up to that time" (R. Vol. 1, p. 560, lines 34–36).

Over 1,400 Model G machines were put out. The demand for it was so great that the company always had ahead unfilled orders for a large number of machines—more than 200 for a long period. It was the standard commercial machine until "it was superseded in June, 1911, by still another improved machine" (R. Vol. 2, pp. 2258–9).

After the acquisition of the Plant patents in September, 1910, the Model G machine was reorganized to incorporate the extremely valuable Plant inventions, together with important improvements made on those inventions by United Company inventors. The new machine,—Shoe Machine—Model K: Goodyear Welt and Turn,—was first put out for commercial use in June, 1911, and is now the standard commercial welter (Howard, R. Vol. 2, pp. 2259–66). On January 1, 1914, there were 1,024 Model K welters in use (R. Vol. 1, p. 863, lines 3–4).

This new Model K machine embodies improvements claimed in twenty-five patents, of which eighteen have been granted since January 1, 1910 (R. Vol. 2, pp. 2266–7, 2836(69)), and there are many pending applications (R. Vol. 1, p. 812, line 42; R. Vol. 2, p. 2117). The value and importance of these improvements were fully explained by Mr. Howard (R. Vol. 2, pp. 2259–68). This evidence is strongly supported by testimony of manufacturers and operators.

Testimony of shoe manufacturers and of welter operators

which will be reviewed in our discussion of the Plant purchase (*infra*, pp. 508–509) shows that the average output of the Model K welter is forty dozen pairs of shoes per day, while the average output of the old welter was only twenty-five dozen pairs; that the new welter sews a tighter seam; that there is a saving in welting on the new machine which amounts to five or six hundred dollars a year on each machine; that the new machine saves the operator's time and strength and that he can earn from 20 per cent. to 36 per cent. more on the new welter than he could on the old one, although the piece price on the old welter was one-third more than that on the new welter (R. Vol. 1, pp. 646–8, 658–60, 710, 723, 753).

The demand for the Model K welter has been so great that the United Company has always been unable to keep up with the orders for the machine; on March 1, 1913, it was 197 machines behind in filling its orders (R. Vol. 2, pp. 2268–9).

B. Outsole Stitching Machines.

The first patent for a machine for sewing the outsole to the welt was No. 127,423, June 4, 1872, Mills (R. Vol. 2, p. 2277). This machine was succeeded by a chain-stitch machine and by the lockstitch machine of patent No. 253,156, January 31, 1882, Campbell (R. Vol. 2, pp. 2278, 2734). Both those machines were superseded by the machine of patent No. 366,935, July 19, 1887, Dancel, while the machine of the Dancel patent was in turn superseded by Lockstitch Machine: Goodyear Outsole Rapid, which was the commercial machine, "early in 1899."

Development Since 1899.

Until the 1899 stitcher was in turn superseded by a better machine it was being continuously improved. One of the important improvements was organizing the machine to adapt it for stitching the outsole to the welt by the "fudge stitch," a practice which was introduced by shoe manufacturers about 1905 and was soon generally adopted. By 1908 and ever since over 75 per cent. of men's black shoes and nearly all women's black shoes have been fudge stitched. The advantages of

making shoes in that way and the importance of the improvements which enabled the machine to do that work were explained by Mr. Howard (R. Vol. 2, pp. 2285–7). Those improvements are broadly claimed in five patents granted from 1908 to 1912, the broadest in 1910 (R. Vol. 2, p. 2286).

Other very useful patented improvements were incorporated in the machine in 1905, 1907, 1908, 1909 and 1910 (R. Vol. 2, pp. 2284, 2287–9).

During all this period after 1899 the United Company had a number of inventors engaged in experimental work in an effort to develop an entirely new outsole stitching machine which would do more and better work. Their endeavors finally resulted in a radically new machine, known as Lockstitch Machine—Model K: Goodyear Outsole Rapid, which was first put out for commercial use in May, 1910, and immediately superseded the 1899 machine (R. Vol. 2, pp. 2284, 2289, 2290). The Model K machine was regularly operated at 540 to 560 stitches per minute as compared with 375 stitches per minute of the 1899 machine. In addition to this greatly increased capacity it did better work and was more convenient for the operator. Its numerous improvements were explained in detail by Mr. Howard (R. Vol. 2, pp. 2290–4). Besides many improvements for which patents had not yet been granted when the testimony was taken, the organization of this machine is set forth in the claims of twenty patents, of which seventeen have been granted since December 1, 1908 (R. Vol. 2, pp. 2294, 2836(73)). 543 Model K stitchers were put out in a single year, and the demand for the machine was so urgent that the company was always behind in filling the orders; for example, it was 145 machines behind in May, 1911 (R. Vol. 2, p. 2295).

Immediately after the acquisition of the Plant patents and inventions in September, 1910, including his valuable stitcher inventions (R. Vol. 1, p. 787, lines 16–30), the United Company put to work five different inventors upon the problem of embodying those Plant inventions in satisfactory mechanical form and adapting them for the Model K stitcher (R. Vol. 2, p. 2297). When that machine had been reorganized by incorporating in it the Plant inventions, much improved by the United Company's inventors, the new machine was called the Model M and was first put out for commercial use in June, 1911 (R. Vol. 1, p. 798,

lines 20–23; R. Vol. 2, pp. 2297, 2836(42)). The improvements incorporated in the machine give it a capacity of eight per cent. more than the Model K machine and 22 per cent. more than the 1899 stitcher. The commercial importance of those improvements were explained in detail by Mr. Howard (R. Vol. 2, pp. 2295–2301).

Both shoe manufacturers and stitcher operators testified to the practical advantages of the Model M machine. Ryan, a stitcher operator who had worked on the successive models of the United Company's stitcher, explained in detail the difficulties in operating the 1899 stitcher and the advantages of the Model M machine from the operator's standpoint (R. Vol. 1, p. 705, lines 1–38). He testified that he averaged fifty pairs a day more on the Model M stitcher than on the old machine, and that,—

> "The work on the Model M stitcher is a great deal easier. I earn more money. I will average fifty to seventy-five cents a day more on the Model M stitcher than on the old stitcher; and that is in less hours than I worked on the old stitcher, nine hours at the most. Lots of times I don't work nine hours" (R. Vol. 1, p. 706, lines 2–9).

Comparing the Model M and Model K machines Ryan testified:—

> "The Model M machine does more rapid work than the Model K. . . . I can make from 30 to 50 pairs more a day on the Model M machine than on the Model K. The Model M machine has devices which enable the operator to work with more convenience and which save his time" (R. Vol. 1, p. 707, lines 21, 25–28).

Shoe manufacturers testified that the increased capacity of the Model M machine was from 15 to 20 per cent. and that the operators of the Model M machine were earning from 24 to 45 per cent. more than they earned on the old stitcher, although the piece price was 40 per cent. less on the Model M than on the old stitcher (R. Vol. 1, p. 753, lines 16–18; p. 647, lines 10–14, 21–23).

On January 1, 1914, 1,158 Model M stitchers were in use (R. Vol. 1, p. 863, lines 5–7). Mr. Howard testified:—

> "The facilities of the Company's factory for building this machine have been overtaxed all the time since it was in-

troduced, and on the first of January, 1913, the Company was 256 machines behind in filling its orders for Model M machines" (R. Vol. 2, p. 2301).

The Model M machine is protected by twenty-two patents, of which sixteen have been granted since January 1, 1909, and a number of applications are still pending (R. Vol. 2, pp. 2299, 2836(67), 2836(73), 2119).

C. Other 1899 Machines.

The record shows that these two machines, the welter and the stitcher, are typical of nearly all the machines being put out "early in 1899." Other examples of those machines are:—Rounding and Channeling Machine: Goodyear Universal (R. Vol. 2, pp. 2303–2317, 2738, 2816); Channeling Machine: Goodyear (insole and turn) (R. Vol. 2, pp. 2321–2330, 2810); Leveling Machine: Goodyear Automatic Sole (R. Vol. 2, pp. 2332–2339, 2743); Separating Machine: Hadaway Stitch (R. Vol. 2, pp. 2340–2345); Pegging Machine: Davey (R. Vol. 2, pp. 2346–2355); Skiving Machine: Amazeen (R. Vol. 2, pp. 2355–2362, 2818); Lasting Machine: Chase (R. Vol. 2, pp. 2362–2382, 2811); Lasting Machine: McKay & Copeland (R. Vol. 2, p. 2364, Int. 72; pp. 2382–2387, 2760–2761); Lasting Machine: Ideal (R. Vol. 2, p. 2364, Int. 72; pp. 2387–2390; R. Vol. 1, p. 972, lines 19–34); Lasting Machine: Consolidated Hand Method (R. Vol. 2, pp. 2390–2421); Compressing and Loading Machine: Automatic Heel (R. Vol. 2, pp. 2423–2434, Int. 80; p. 2764, Int. 377); Compressing Machine: Fisher (R. Vol. 2, pp. 2423–2434; p. 2764, Int. 377); Nailing Machine: Loose (R. Vol. 2, pp. 2434–2443); Loading and Attaching Machine: McKay Automatic Heel ("Improved Rapid Nailer") (R. Vol. 2, pp. 2444–2451, 2459–2463; 2764, Int. 376); Nailing Machine: American Lightning (R. Vol. 2, pp. 2452–2459; 2764, Int. 376); Slugging Machine: Universal (R. Vol. 2, pp. 2464–2472; 2767, Int. 393); Turning Machine: Gem Lip (R. Vol. 2, pp. 2483–2486); Flexible Insole Machine: Gem (R. Vol. 2, pp. 2486–2494); Beating Machine: Goodyear Universal Welt (R. Vol. 2, pp. 2495–2502, 2817); Trimming Machine: Goodyear Universal Inseam (R.

Vol. 2, pp. 2502–2507); Skiving Machine: Goodyear Universal Shank (R. Vol. 2, pp. 2511–2516).

As to all these machines there was a strong patent situation in 1899 and there has been continuous and important patented development ever since, the details of which will be found in the testimony above referred to in connection with each machine.

It is perfectly clear on this record that the patents on the 1899 machines, far from being "basic patents" in any significant sense, represented merely the 1899 stage in the development of an old art; that the 1899 machines had in turn been superseded before December, 1911; that just as the 1899 machines were superior to the machines which preceded them, so were the machines of December, 1911, much better machines than those which they had superseded; and that at every stage in the development of shoe machinery the machines which shoe manufacturers wished to use and demanded were protected by strong patents. Again, just as in 1899, manufacturers could not afford to use the older machines which had been superseded, now the demand for the machines of 1899 has ceased and manufacturers demand the greatly superior modern machines.

The record further shows that during the period since February, 1899, there has been more important and more rapid development in shoe machinery than during any corresponding period in its history, and that this has been due to the remarkably aggressive and effective experimental work which has been continuously and consistently carried on by the United Company at enormous expense (R. Vol. 1, p. 424, lines 40–45; p. 425, lines 1–11; p. 426, lines 29–39; p. 427, lines 26–37).

D. New Machines Produced Since 1899.

As a result one hundred and fifty entirely new machines have been produced by the United Company (R. Vol. 1, p. 503, lines 7–9, 17; Defs.' Ex. 246, R. Vol. 5, p. 683), and it has developed thirty-nine machines which perform operations which in 1899 were performed by hand or not at all.

Among those thirty-nine machines are important machines such as pulling-over machine, assembling machine, welt-beating and slashing machine, clicking machine, lacing machine, pounding and trimming machine, tack-pulling and resetting machine,

shank reducing machine, shank welt-skiving machine, upper stapling machine, upper trimming machine, forepart turning machine, heel turning machine (R. Vol. 2, pp. 2671–2675). All these thirty-nine machines are patented, and the patents on them are "basic patents," if ever there were such.

The breadth and importance of the patents on the new machines which have been produced by the United Company were explained by Mr. Howard, in the case of the more important machines with great detail. For example: Rounding and Channeling Machine—Model E: Goodyear Universal (R. Vol. 2, pp. 2309–2316); Channeling Machine: Goodyear Universal (Welt Work) (R. Vol. 2, pp. 2323–2326); Channeling Machine: Goodyear Universal (Turn Work) (R. Vol. 2, pp. 2327–2330); Lasting Machine: No. 5 USMC (R. Vol. 2, pp. 2375–2382); Compressing Machine—Model No. 4: Automatic Heel (R. Vol. 2, pp. 2425–2434); Nailing Machine: No. 2 Loose (R. Vol. 2, pp. 2438–2443); Loading and Attaching Machine—Model B: McKay Automatic Heel (R. Vol. 2, pp. 2459–2464); Nailing Machine: Alpha Wood Heel (R. Vol. 2, pp. 2464, 2836(71)); Slugging Machine: No. 5 (Ziz) (R. Vol. 2, pp. 2468–2472); Heel Breasting Machine—Model B: Imperial (R. Vol. 2, pp. 2473–2476); Turning and Slashing Machine: Goodyear Lip (R. Vol. 2, pp. 2485–2486); Reinforcing Machine: Economy Insole (R. Vol. 2, pp. 2491–2492); Stitching Machine: Economy Insole (R. Vol. 2, pp. 2492–2493); Channeling Machine: Economy Insole (R. Vol. 2, pp. 2493–2495); Beating and Slashing Machine: Goodyear Welt (R. Vol. 2, pp. 2497–2501); Skiving Machine: Goodyear Shank Welt (R. Vol. 2, pp. 2512–2514); Reducing Machine: Goodyear Outsole Channel Shank (R. Vol. 2, pp. 2514–2516, 2836(75)); Indenting and Burnishing Machine: Goodyear Welt (R. Vol. 2, pp. 2517–2519); Trimming Machine—Model H: Rex Upper (R. Vol. 2, pp. 2523–2525); Pulling and Resetting Machine: Goodyear Tack (R. Vol. 2, pp. 2525–2528, 2836(75)); Stapling Machine: Goodyear Upper (R. Vol. 2, pp. 2528–2530); Pulling Machine: Goodyear Insole Tack (R. Vol. 2, pp. 2533–2537); Pulling-over Machine (3 models) (R. Vol. 2, pp. 2540–2553, 2836(75)); Assembling Machine: Rex (R. Vol. 2, pp. 2554–2558, 2836(71)); Pounding Machine—Model E: Rex (R. Vol. 2, pp. 2560–2562); Trimming Machine: Rex Toe (R. Vol. 2, pp. 2562–2564); Pounding and Trimming Machine—Model B:

Rex Rotary (R. Vol. 2, pp. 2564–2568); Pounding Machine—Model C: Rex Rotary (R. Vol. 2, pp. 2568–2570); Pounding and Beating Up Machine—Model A: Rex Rotary (R. Vol. 2, pp. 2570–2571, 2836(74)); Leveling Machine: Goodyear Welt and Turn (Turn Work) (R. Vol. 2, pp. 2576–2579); Leveling Machine: Hercules (2 models) (R. Vol. 2, pp. 2580–2584); Leveling Machine: Atlas (R. Vol. 2, pp. 2584–2587); Clicking Machine—Model C: Ideal (R. Vol. 2, pp. 2588–2597); Lacing Machine: Ensign (2 models) (R. Vol. 2, pp. 2599–2605); Trimming Machine: Goodyear Insole Heel Seat (R. Vol. 2, pp. 2607–2610); Jointing Machine: Goodyear (R. Vol. 2, pp. 2611–2616); Eyeletting Machine: Duplex (R. Vol. 2, pp. 2617–2621); Blacking Machine: Crest Heel (2 models) (R. Vol. 2, pp. 2622–2626); Repairing Machine—Model A: Patent Leather (R. Vol. 2, pp. 2628–2631); Beveling Machine—Model B: Champion Strip (R. Vol. 2, p. 2632); Building Machine: Pyramid Heel (3 models) (R. Vol. 2, p. 2632); Cementing Machine: Hub Lining (2 models) (R. Vol. 2, pp. 2633, 2836(72)); Cementing Machine: Star Channel (3 models) (R. Vol. 2, pp. 2633–2634); Clinch Machine: Universal Double (R. Vol. 2, p. 2634); Embossing Machine—Model B (R. Vol. 2, p. 2635); Eyeletting Machine: Universal (R. Vol. 2, p. 2636); Fastening Machine—Model D: Staple (R. Vol. 2, p. 2636); Grooving and Beveling Machine: Goodyear Power Welt (R. Vol. 2, p. 2638); Laying Machine—Model A: Apex Welt (R. Vol. 2, p. 2638); Laying Machine: Goodyear Improved Sole (3 models) (R. Vol. 2, p. 2639); Marking Machine—Model C: Paragon Vamp (R. Vol. 2, p. 2641); Molding Machine: American Twin Sole (2 models) (R. Vol. 2, pp. 2641, 2836(74)); Molding Machine—Model B: Goodyear Power (R. Vol. 2, p. 2642); Molding Machine: Stitch-Down Upper (R. Vol. 2, p. 2642); Nurling Machine—Model A (R. Vol. 2, p. 2642); Opening Machine—Model C: Apex Channel (R. Vol. 2, p. 2643); Rounding Machine: Goodyear Heel Seat (R. Vol. 2, p. 2645); Rounding Machine: Planet Sole (2 models) (R. Vol. 2, p. 2645); Sanding Machine—Model A: Tap and Sole (R. Vol. 2, p. 2646); Scalloping Machine—Model D: Top Piece (R. Vol. 2, p. 2647); Skiving Machine—Model D: Top Piece (R. Vol. 2, p. 2647); Skiving Machine—Model A: Champion Heel Lift (R. Vol. 2, p. 2648); Skiving Machine—Model A: Champion Shank (R. Vol. 2, p. 2648); Skiving Machine:

Eros Rand (R. Vol. 2, p. 2649); Skiving Machine: Pluma (2 models) (R. Vol. 2, pp. 2649, 2836(76)); Skiving and Finishing Machine: Monarch Counter and Box Toe (R. Vol. 2, p. 2649); Skiving or Rand Splitting Machine: Apex Tap (2 models) (R. Vol. 2, p. 2650); Snipping Machine: Goodyear Insole Toe (R. Vol. 2, pp. 2650, 2836(77)); Splitting Machine: Empire (2 models) (R. Vol. 2, p. 2651); Splitting Machine: Summit (R. Vol. 2, p. 2652); Stamping Machine—Model C: Eagle Sole (R. Vol. 2, p. 2652); Stamping Machine: Regent (2 models) (R. Vol. 2, p. 2653); Sticking Machine: Shank Piece (2 models) (R. Vol. 2, p. 2653); Trimming Machine: Ultima Heel (R. Vol. 2, p. 2655); Turning Machine: Goodyear Forepart (R. Vol. 2, p. 2655); Turning Machine: Goodyear Heel (R. Vol. 2, p. 2656); Turning Machine: Goodyear Welt Edge (R. Vol. 2, p. 2656).

Mr. WINSLOW testified:—

> "On Goodyear welt shoes the saving in cost of manufacture, resulting from the introduction of new machines and improvements in other machines that existed in 1899 and which we improved after the formation of the company, amounts to about seven and a half cents" (R. Vol. 1, p. 430, lines 27–31).

This saving is nearly two cents more than the aggregate royalties on men's Goodyear welt shoes and nearly three cents more than the aggregate royalties on women's welt shoes. In figuring the savings Mr. Winslow averaged men's, women's and children's shoes (R. Vol. 1, p. 430, lines 22–23). He also testified:—

> "On other kinds of shoes the manufacturers had the benefit of these savings so far as the machines were applicable to the reduction of the cost of those shoes" (R. Vol. 1, p. 430, lines 23–26).

In view of this situation it is of course to be expected, and the record shows, that—

8. IN DECEMBER, 1911, THE UNITED COMPANY'S MACHINES WERE FULLY PROTECTED BY STRONG AND VALUABLE PATENTS.

It is clear on the record that when this suit was begun the defendants' machines were more completely covered by patents

of real commercial value than ever before. The importance of those patents is explained in Mr. Howard's detailed discussion of over 150 of the more important machines, and the breadth of their claims is indicated by quoting typical claims (R. Vol. 2, pp. 2239–2664). Moreover, the patents on these modern machines are of recent date; indeed, 144 of the patents on the 1911 machines discussed in Mr. Howard's testimony in October and November, 1913, were granted after this suit was begun, and when he testified again in February, 1914, there had been granted twenty-eight more patents claiming improvements embodied in the machines (R. Vol. 2, pp. 2836(67–80)).

9. SUMMARY OF THE PATENT TESTIMONY.

Petitioner proved as to machines of its own selection that early in 1899 "basic patents" were *not* about to expire.

Defendants proved that of the important patents early in 1899 on the "principal machines" selected by petitioner's expert the latest had over fourteen years to run.

If the expression "basic patent" means anything, it means a patent on the first commercially successful machine for performing a given operation. There was no such patent "early in 1899" on any of the "principal machines" discussed by petitioner's expert,—the basic patents had all expired.

The record shows that throughout the history of this industry every machine which has been useful has been patented. Beginning with the crude machines of fifty years ago and following through the steady evolution of shoe machinery, we find continuously patented development, continuous step-by-step patented improvement, often by way of improving machines already existing, frequently involving the substitution of a radically new machine and sometimes,—often since 1899,—consisting in the introduction of the first machine for performing an operation always before performed by hand or for performing a new operation required by the improvements in shoes and in the methods of making them, so that to-day hand operations have been eliminated and machines have been provided for performing all the operations in the manufacture of shoes, by the use of which machines shoes are now made entirely by machinery for a frac-

tion of the cost of hand-made shoes and are made much better than hand-made shoes ever were made.

And the record further shows that practically all this patented development of shoe machinery has been accomplished by the United Shoe Machinery Company and its predecessors, that the period since February, 1899, has been a period of more important and more rapid development than any corresponding period in the history of the industry, and that this has been accomplished by the United Company through extraordinarily aggressive, effective and expensive experimental work; so that now the modern machines which the United Company is supplying to its customers, the machines which its customers demand and use and which they believe they must have to make the shoes which the public demands and to make those shoes economically and efficiently with a reasonable profit, are protected by broad and strong patents of recent date claiming the important and valuable improvements which are embodied in those machines and which make those machines so much better and so much more efficient and economical, through their greatly increased capacity and the improved quality of their work, that manufacturers of shoes do not desire and cannot afford to use the obsolete machines of the expired patents.

In a word, the machines which its customers demand and use, the machines which the United Company is supplying to its customers, are patented; they embody important improvements of so great commercial value that manufacturers must have these modern machines in order to make shoes which the public will buy and make them economically and efficiently; and those improvements are all protected by strong patents of recent date by which the United States has secured to the United Company a legalized monopoly of the machines which the United Company's customers demand and use.

10. FINDINGS OF THE DISTRICT COURT AS TO THE PATENT SITUATION.

A. The District Court Found that the Basic Patents Held by the Constituent Companies were not About to Expire.

The District Court found as follows:—

(R. Vol. 1, p. 1133.) "But it is important at this point first to determine how far certain allegations of the petition, which characterize the defendants' alleged project and their motives for forming it, have been sustained by the evidence. These are found on pages 15 to 17 of the record, and they are, in substance, that the component companies were in 1899 manufacturing their respective machines and parts thereof under patents; that 'many of the basic patents on the principal machines were about to expire'; that their manufacture and use was thus about to become open to the public 'in the near future,' and that the defendants, not being satisfied with the rights they had enjoyed under the patents and intending to expand and perpetuate them to the public detriment, devised the alleged project of acquiring a monopoly which the petition thereafter describes.

"This trial began on May 20, 1913. On June 27, 1913, the petitioner, having introduced substantially all its other direct evidence, stated that it desired to offer proof in support of the allegations just referred to, but was not then prepared to go into the matter.

"By consent, an order of reference to a Special Examiner was thereupon entered (pp. 262 T, 1996) for the purpose of taking such evidence as either party should offer regarding those allegations, out of court. Such evidence was required to be completed by October 11, 1913, but successive extensions of the time were afterward found necessary and allowed by consent. Before the Examiner the petitioner did not complete its direct evidence until October 6, 1913, and the evidence on both sides was not completed until November 19, 1913.

"At the final arguments, however, on June 2, 1914, the statement was made by petitioner's counsel that so many machines and patents were involved that examination of more than a very few had been impossible. It seems obvious, therefore, that the allegations in question could not have been founded, when they were made, upon any adequate or complete investigation of the facts.

"Nor can it be said that they have been sustained by the evidence before the Examiner. It seems unnecessary to spend time in considering what patents could and what could not properly be regarded as 'basic,' in view of the fact that, of the patents principally relied on as such by the petitioner, those protecting the welter and stitcher of the Goodyear Company, there were two, one upon its welter, the other upon its stitcher, which ran until 1908 and 1909, respectively. The petitioner's final position, indeed, as to what was proved by the evidence before the Examiner, was by no means that taken in the allegations referred to, but was only that the two machines above mentioned, and others protected in 1899 by patents not insisted on as 'basic' patents, became free to anyone to make or use—without any of the patented improvements added to them by the United Company since 1899, but nevertheless capable of successful commercial use—before the filing of this petition in 1911. In view of all the above, I must regard the allegations here in question as not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organization of the United Company, or any of its subsequent doings. The effect of the evidence and of the petitioner's argument is to show that Goodyear machines of the old type are capable of commercial use and could have been made by anyone who chose to make them. That after the expiration of the two so-called basic patents machines constructed according to them were not used is sufficiently accounted for by the superiority of the newer machines which the defendants had introduced. For that reason the older machines did not enter into competition with them, and the defendants cannot be charged with suppressing such competition."

B. The District Court Found that the United Company's Machines Have Always Been and are Now Protected by Patents.

The District Court found as follows:—

(R. Vol. 1, p. 1115.) "At any rate, it must be accepted that from the beginning the machinery offered by the respondent corporation was, in all its essential elements, protected by patents, and that there has been no proof to the contrary."

III.

THE DEFENDANTS' LEASES OF SHOE MACHINERY.

1. INTRODUCTORY STATEMENT.

Since about 1860, when the first shoe machinery was introduced, it has been the almost invariable practice as to all the important shoe bottoming machines, and a common practice as to all kinds of shoe machines, to lease them to shoe manufacturers on a royalty basis charging a fixed amount for each pair of shoes operated on by the machine. From the very beginning of the industry practically all shoe machinery was patented, and the agreements under which the machines were leased were not only leases but also licenses under patents granting specific and limited rights to use the leased machinery in certain ways and on the terms and conditions set out in the lease and license agreements. In 1899, therefore, when the United Company was formed, its constituent companies sold no machines manufactured by them but leased all machines under lease and license agreements. The United Company continued the lease system which had been employed by the constituent companies, and it has made no fundamental change in the system. It did not disturb outstanding leases and for over a year it made no changes at all. From time to time thereafter it has made changes in the leases of specific machines just as such changes had been made from time to time by the constituent companies in order to meet new conditions, to make its system of leases consistent or to enable it to offer more satisfactory terms to lessees. It has, of course, adopted certain leases for new machines which were invented or acquired by it and not previously manufactured by the constituent companies. As it has developed General Department Machines, which now total over 170 different machines, it has either leased or sold them at the option of the shoe manufacturer, thus relaxing the policy of the constituent companies which leased machines only.

The United Company's system of leases, therefore, was not formulated at any one time, but is the result of an historical development and growth extending over many years and represents the results of years of constant effort to provide a method of furnishing this great variety of intricate and expensive machinery to shoe manufacturers on terms mutually satisfactory and fair to the shoe manufacturer and to the machinery manufacturer.

Indeed it was admitted by the United States that the modifications made by the United Company in the leases were not planned in advance and that they did not base their charge of illegality upon the intent with which they were adopted. The District Court said:—

> "At the argument the admission was made on behalf of the United States that there was no proof that at the time they formed the United Company the defendants 'had in mind the adoption of the system of leasing which they later developed.' And the position then taken by the petitioner in argument was that the leasing system referred to has resulted in illegal restraint or monopoly and that the intent which prompted its development is therefore 'absolutely immaterial'" (R. Vol. 1, pp. 1154–5).

With this admission on the part of the United States that the intent with which the lease clauses were adopted is immaterial their entire contention in respect to the leases falls. We submit that an inspection of these clauses shows conclusively that they are not inherently unlawful, and therefore, if not adopted with an unlawful intent, they are clearly proper.

Owing to the gradual growth of the shoe machinery industry and the consequent gradual development of the leases, to the fact that different forms of leases have been adopted for different machines, to the variety of conditions which arose at different times and which led to the adoption of provisions to meet them, to the great number and variety of machines, and to the great number of different kinds of shoes made requiring the use of different machines or sets of machines, the leases are necessarily complicated and require careful study to understand them.

An examination of the record will show that the provisions in the leases which were in effect when the United Company was formed were adopted for the purpose of granting the shoe manu-

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facturer satisfactory terms and at the same time securing the machinery manufacturer reasonable protection. In other words, that these provisions were adopted for the purpose of providing for the most efficient, productive, and satisfactory use of the different machines; that such modifications as have been made by the United Company have had the same purpose and object; that the provisions in the leases were not adopted for the purpose of arbitrarily excluding others or creating a monopoly, and that these provisions, or provisions of substantially the same character and having the same effect, are essential to a commercially successful leasing system.

As we have stated above, one of the principal purposes the United Company had in mind was to reduce the cost of making Goodyear Welt shoes, and to encourage shoe manufacturers to manufacture them (R. Vol. 1, p. 441, lines 38-42; Vol. 1, p. 407, lines 22-30). Various modifications of the lease system had this object in view.

2. ALLEGATIONS OF THE PETITION AS TO THE LEASES.

The basic charge of the petition, as we have shown above, is that the defendants determined to acquire a monopoly of shoe machinery, by (R. Vol. 1, p. 994):

1. Acquiring all concerns engaged in the shoe machinery business, and then

2. Refusing to sell or lease any essential machines, viz., lasting, welt sewing, and outsole stitching, heeling and metallic fastening machines, unless the shoe manufacturer took "practically all other machinery" from them.

The leases, it is alleged, were a step in carrying out the foregoing plan (R. Vol. 1, p. 994).

In order to sustain the charge of the petition, therefore, it is necessary to find that the leases require a lessee who takes lasting, welt-sewing or outsole stitching, heeling, or metallic machines to take from the United Company practically all other machinery.

In support of its allegation that the leases were steps in carrying out the foregoing plan, the petition recites that prior to the formation of the United Company a shoe manufacturer could

get machines of one of the constituent companies without being required "to use exclusively machines . . . manufactured by either of the other companies" (R. Vol. 1, p. 996). After the formation of the United Company it is alleged that the defendants,

> " . . . *discontinued* the sale to boot and shoe manufacturers of each and all of the machines included in said groups of machines . . ." (italics ours) (R. Vol. 1, p. 997),

and unlawfully devised and adopted arbitrary, oppressive and unreasonable lease and license agreements, which shoe manufacturers "are required to agree and conform to in order to obtain from said defendants any of the machines included in said groups" (R. Vol. 1, p. 997).

It is alleged that these agreements

> "*contain provisions, not found in their former lease and license agreements*, which compel boot and shoe manufacturers leasing any of such machines from defendants to agree to use exclusively one or more of the classes of machines included in said groups of machines . . . upon penalty of having all the machines included in said groups so leased to them by defendants immediately reclaimed and taken away and the lease and license agreements cancelled" (italics ours) (R. Vol. 1, p. 997).

The petition then recites that the leases adopted by the defendants contain provisions as follows (R. Vol. 1, p. 997):—

(1) An agreement to take the machines for a period of not less than seventeen years, regardless of the terms of the patents relating thereto.

(2) That lessees thereunder are compelled to obtain all duplicate parts for the machines from defendants at exorbitant prices.

(3) Many of the leases provide that the lessee shall at the expiration of seventeen years return the machines to the defendants and pay a return charge which in some cases amounts approximately to the original cost of building the machines.

(4) A provision reserving to the lessor the right to cancel all leases with shoe manufacturers if they fail to use exclusively and to their full capacity machines leased from the defendants.

The foregoing provisions, however, purport to be only a statement of the character of the provisions which the leases contain. The provisions which the petition contends are unlawful, as

carrying out the unlawful plan charged, are specified in Section XII. of the petition as follows (R. Vol. 1, p. 1028):—

(1) A covenant that the lessee shall use exclusively machines of the lessor to perform the same kind of work as that performed by the leased machine.

(2) A covenant that the lessee shall use in accomplishing work other than that for which the machine was designed only machines controlled or leased by the lessor.

(3) A condition that, should the lessee violate either of the covenants mentioned, the lessee would thereby forfeit the use not only of the machine leased, but of other machines, both those designed to accomplish the same work as the leased machine and those designed to accomplish work entirely different.

(4) A covenant that the lessee should use the leased machine for seventeen years.

A. SUMMARY OF CHARGES OF THE PETITION WITH RESPECT TO THE LEASES.

To summarize, the petition alleges that, in pursuance of the defendants' plan,—

(1) to acquire all shoe machinery concerns, and

(2) to refuse to sell or lease lasting, welt-sewing, outsole stitching, heeling, or metallic machines, unless the shoe manufacturer took practically all other machinery of them,—

the United Company—

(*a*) discontinued selling machines, and

adopted arbitrary and oppressive leases which, it is alleged in paragraph XII. of the petition (R. Vol. 1, p. 1028) were illegal in that they

(*b*) required the lessee to covenant to use the United Company's machines of the kind leased and of all other kinds exclusively,

(*c*) permitted the United Company to cancel its leases of all machines if these covenants were broken,

(*d*) required the lessee to use the leased machinery for seventeen years.

The petition also alleges that the leases required the lessee,—

(*e*) to obtain duplicate parts of the United Company for which it charged an exorbitant price;

(*f*) on the cancellation of the lease to pay exorbitant return charges.

These last provisions do not require a use of the United Company's machines and are therefore not referred to as evidence of the alleged plan to refuse to lease any machines unless practically all other machines are taken. They are apparently referred to merely as showing a general intent on the part of the United Company to oppress its lessees.

3. PROVISIONS IN THE UNITED COMPANY'S LEASES ON WHICH THE UNITED STATES RELIED IN SUPPORT OF ITS CHARGES.

The defendants' leases do not contain any provisions such as those alleged in the petition whereby the lessee covenants to use exclusively the United Company's machines of all kinds.

This being so, the United States, at the argument in the District Court, did not restrict itself to an attempt to support the allegations of the petition, but took exception to various provisions in the leases which we submit do not conform to the allegations in the petition, and contended that these provisions were illegal and tended to a monopoly of shoe machinery, even though they did not conform to the case stated by the petition. The provisions in the leases to which exception was taken by the United States are briefly as follows:—

Full Capacity Clause.

A clause requiring the lessee to use the particular machine leased to its full capacity on the work for which it is adapted so far as the lessee has work for it to do. This is referred to below as the **"Full Capacity Clause."**

This is the only clause contained in the United Company's leases (except the "Additional Machinery Clause" which was used only to a slight extent and was discarded entirely in 1907) **which obligates the lessee to use the United Company's Machines at all.**

This clause was used in various leases of the Consolidated Company prior to the formation of the United Company. It is employed by the United Company only in respect to

those principal machines for which a royalty is charged based on the amount of use. Without this clause the lessee would be at liberty not to use the machine at all, and the United Company, whose return is dependent on a royalty based on the amount of use made of the machine, would have no assurance of a return on its investment in the machine.

This clause does not require an exclusive use of the particular kind of machine leased, nor does it require any use of other machines. It merely requires that the particular machine which is installed in the lessee's factory under the lease shall be used by the lessee.

Additional Machinery Clause.

A clause found in certain leases made by the constituent companies prior to 1899 and in a few leases made by the United Company prior to 1907, but eliminated by the United Company in all leases after that date, requiring the lessee to take additional machines of the particular kind leased if he needed such machines for additional work. This is referred to below as the **"Additional Machinery Clause."**

This clause was adopted prior to the formation of the United Company to secure an adequate return on the leased machines and the inventions embodied therein after the lessor had gone to the expense of installing the machines and instructing operators in their use. It required a use by the lessee of other machines of the particular kind or class leased, but of no other kinds.

As the use of this clause was continued by the United Company after its formation only to a limited extent and was entirely discarded after 1907, more than four years before the present petition was filed, it is important in the present case only in that it shows that the United Company actually discarded from its leases the only clause which required an agreement on the part of the lessee to use any of its machines exclusively.

Exclusive Use Cancellation Clause.

A clause giving the lessor an option under a lease of a particular kind of machines, such as heeling machines, to cancel its leases of that particular kind of machines if machines of that kind obtained from it are not used by the lessee exclusively.

This clause is referred to below as the **"Exclusive Use Cancellation Clause."**

Under this clause the lessee does not covenant to use the lessor's machines of the particular kind leased exclusively, nor does the lessee agree to use the machines at all. The clause merely reserves to the lessor an option to cancel its leases of machines of a particular kind, such as heeling machines, when machines of that particular kind are not used exclusively. As we show below, this provision is necessary for the lessor's protection in order to enable it to withdraw its machines of a particular kind when, owing to the use by the shoe manufacturer of other machines of the same kind, the lessor finds that its machines are used only occasionally, or only on slow or difficult work, or that proper reports of the amount of work done on its machines are not made by the lessee so that the lessor does not receive a fair return on its investment.

This clause, or the "Additional Machinery Clause" under which the lessee covenanted to take additional machines if needed (in other words, to use the lessor's machines exclusively for operations of the particular kind or class for which the particular machinery leased under the particular lease in question was adapted) was used in most of the leases of the constituent companies, they having found by experience that such a clause was necessary to their protection under the leasing system. The continuation of this clause by the United Company, therefore, effected no change in the leasing system. Furthermore, as it does not require the lessee to use the United Company's machines at all, but merely gives the United Company an option under certain circumstances to withdraw its machines of a particular kind or class when other machines of the same kind or class are used by the lessee, it affords no support to the allegation of the petition that the leases required the lessee to covenant to use the United Company's machines exclusively.

Restricted Use Clause.

A clause restricting the use of a certain kind or group of principal machines to use on shoes operated on by certain other groups of machines. This clause is referred to below as the **"Restricted Use Clause."**

This clause is used where machines of certain departments are leased at reduced rates to be used with machines of other departments as a team or series, in which case the machines of the United Company being concededly the best in the market, and being mechanically constructed and adapted to use together, and being the only machines with which efficient service by skilled mechanics is provided, are manifestly more efficient, productive, and economical in operation when so used together as a team, and thus each machine produces a greater return for the United Company. This clause does not require the lessee to use the United Company's machines at all. On the contrary, it merely forbids the lessee to use the United Company's machines except as a team. It is simply the granting of a patent license to use a patented machine in a particular and defined field in connection with machines of other departments which are mechanically developed and adapted for use together.

Leases containing this Restricted Use Clause are alternative forms of leases. In practically every case the lessee is also offered a lease which does not contain any such restriction, but permits the lessee to use the machines without regard to his use of any of the lessor's machines of other departments. These unrestricted leases are offered lessees on terms as favorable or more favorable than those on which the machines could be obtained from the constituent companies prior to the formation of the United Company. The use of the restricted leases by the United Company, therefore, did not have the effect of preventing shoe manufacturers from obtaining machines on unrestricted leases on the same or better terms than were offered prior to the formation of the United Company. Their effect was merely to offer a wholesale rate to shoe manufacturers using a set or team of machines which were adapted for use together.

Auxiliary Restricted Use Clause.

A similar clause is employed to restrict the use of certain auxiliary machines of a department to use with the principal machines of that department. The principal machines are the recording machines on which a royalty is charged. The auxiliary machines are machines developed to aid in the work of the principal machines. They are treated as part of the principal ma-

chines and no separate royalty is charged for their use, but the return comes indirectly from the royalties on the principal machine to use with which they are restricted. Such a clause is referred to below as the **"Auxiliary Restricted Use Clause."**

This "Auxiliary Restricted Use Clause" was employed by the constituent companies, and its continuance by the United Company effected no change in the leasing system.

Cancellation for Breach Clause.

A clause permitting the lessor to cancel all leases between it and the lessee for violation of any condition contained in any of the leases which is expressed in the lease to be obligatory upon the lessee. This is referred to below as the **"Cancellation for Breach Clause."**

This clause merely permits the United Company to sever relations with a lessee who violates his agreements. If the agreements on the part of the lessee are legal, it is obviously proper that the United Company should have the right to cancel its leases if any one of them is violated. The leases of the constituent companies all provided that they might be cancelled for breach of conditions contained in those leases.

Seventeen-year Term.

A clause providing that the lease shall run for seventeen years.

This clause grants the lessee the right for an extended term to retain the leased machines for the royalty agreed upon and assures the United Company that they will be held for a sufficient term to provide an adequate return on its investment.

The leases of the constituent companies ran in some cases for seventeen years and in others for the term of the patents then or thereafter embodied in the machines or for the entire life of the machines. The seventeen-year term was adopted by the United Company in all its leases to make them consistent, and shortened rather than increased the term of the leases.

Agreement to Buy Repair Parts.

A clause requiring the lessee to purchase of the lessor duplicate parts needed to repair the leased machines, the com-

plaint being that the United Company charged exorbitant prices for such duplicate parts.

The constituent companies' leases all contained this clause, which is essential to preserving the physical integrity of the leased machine. The record shows that there was absolutely no foundation for the allegation that exorbitant prices for repair parts were charged.

Return Charges.

A clause requiring the lessee on the expiration of the lease to pay a return charge which it was alleged amounted in some cases approximately to the cost of building the machines.

This allegation also was without foundation, the record showing that the charges made upon a return of machines were considerably less than the cost of repairing them.

4. THE PROVISIONS IN THE UNITED COMPANY'S LEASES TO WHICH THE UNITED STATES TOOK EXCEPTION DO NOT SUPPORT THE ALLEGATIONS OF THE PETITION.

The foregoing brief statement of the clauses in the United Company's leases to which the United States took exception shows how utterly the United States failed to support the allegations in the petition in respect to the leases.

Those allegations, as we have shown, are that the United Company, in pursuance of the plan to acquire all shoe machinery concerns and to refuse to sell or lease lasting, welting, outsole stitching, heeling, or metallic machines, unless the shoe manufacturer took practically all other machinery of it,—

(A) discontinued selling machines and adopted arbitrary and oppressive leases, which

(B) required the lessee to use the United Company's machines of the kind leased and of all other kinds exclusively; and

(C) permitted the United Company to cancel its leases of all machines if these covenants were broken; and

(D) required the lessee to use the leased machinery for seventeen years.

A. The record shows that the constituent companies only leased and never sold machines. The allegation that the United Company discontinued the sale of machines was without foundation.

B. As shown above, there is no provision in the United Company's leases requiring the lessee to use either the machines of the particular kind leased or other machines exclusively. **The "Additional Machinery Clause" and the "Full Capacity Clause" are the only clauses which require any use of the United Company's machines whatsoever.** The Additional Machinery Clause referred only to machines of the particular kind leased, and as it was discarded by the United Company in 1907 it is immaterial in the present case. It is the only clause ever contained in the leases which required the lessee to take any machines except the particular machines he leased, and it was strictly limited to machines of the same kind required for additional work. The "Full Capacity Clause" requires the use only of the particular machine leased and therefore does not even require an exclusive use of that kind of machine.

The United States, therefore, utterly failed to support the charge on which the petition is founded that the defendants refused to lease essential machines, which it defined as lasting, welt sewing, outsole stitching, heeling, or metallic machines, unless the shoe manufacturer took practically all other machinery of it.

The only clause on which the United States relied in support of this allegation was the Restricted Use Clause, which, as pointed out above, does not require the lessee to use the machines at all, but, on the other hand, prohibits their use except under certain conditions. The contention of the United States was that this clause, while it does not require a covenant from the lessee to use the United Company's machines, does, by reason of its restrictions, induce the lessee to use not only the particular machine leased, but other principal machines to use with which it is restricted. Even this modified charge, however, was completely refuted by the fact that the United Company continued to offer unrestricted leases of its machines on terms as favorable or more favorable than those offered by the constituent companies prior to the formation of the United Company.

The District Court, therefore, held that this modified charge of

a refusal by the United Company to lease machines separately, which, previous to the formation of the United Company, were offered separately, as a means of compelling the taking of other machines, was completely unfounded, saying:—

> "It appears that after the consolidation there was no refusal or imposition of conditions as alleged, but that the defendants continued to give manufacturers terms which were substantially the same as before and in some instances better than those offered by the constituent companies before the consolidation. This is shown not only by the exhibits of 'independent' leases but by the testimony of officers of the Company" (R. Vol. 1, p. 1162).
>
> "The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would also use others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had no choice, or in disregard of the fact that it was merely an alternative form of lease. As the leases proved no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge" (R. Vol. 1, pp. 1163–1164).

C. The allegation that the United Company was permitted to cancel its leases of all machines if the covenants requiring the lessee to use its machines exclusively were broken, was shown to be unfounded, since, as stated above, there were no covenants in the leases requiring the lessee to use the machines exclusively.

D. The term of the leases is for seventeen years. This is the only allegation in the petition which is substantiated by the leases themselves. An agreement that the lease of a particular machine shall run for seventeen years obviously does not require an exclusive use either of machines of the kind leased or any other machines. This clause, therefore, has no bearing on the fundamental charge made in the petition that the United Company refused to lease its essential machines unless the shoe manufacturer took practically all other machinery from it.

We submit, therefore, that the United States has wholly failed to substantiate by the leases the charge made by the petition that the defendants, acting through the United Company, planned to obtain a monopoly by refusing to lease essential ma-

chines except on condition that the shoe manufacturer should take practically all other machinery required by him.

We shall below consider the reasons for the leasing system, the leases used by the constituent companies, the modifications in the leasing system made by the United Company, and the business reasons underlying and requiring the use of the various provisions to which the United States objects and their legality.

5. THE UNITED COMPANY DID NOT DISCONTINUE THE SALE OF MACHINES—FOR THE CONSTITUENT COMPANIES ONLY LEASED AND DID NOT SELL MACHINES.

As above stated, the petition alleges that the defendants "discontinued the sale . . . of the machines . . . and . . . adopted . . . arbitrary . . . lease and license agreements" (R. Vol. 1, p. 997).

This charge that the United Company discontinued the sale of machines is absolutely without foundation. None of the constituent companies sold its machines; they were furnished to shoe manufacturers only on lease (Donham, R. Vol. 1, p. 2, lines 30–31; p. 4, lines 21–22, 28–29; Winslow, R. Vol. 1, p. 400, lines 37–39; Howe, R. Vol. 1, p. 468, lines 3–4).

The United States sought to show by Milton S. Florsheim that he had bought three Copeland Rapid Lasting Machines from the Goodyear Company (R. Vol. 1, p. 158, lines 22–25). On cross-examination Mr. Florsheim admitted he had obtained these on a lease which was introduced in evidence (R. Vol. 1, p. 165, line 40–p. 167, line 30). (See also Defendants' Exhibit 33; R. Vol. 5, p. 11.) This was the only evidence which the United States attempted to introduce in support of this important charge in its petition.

The District Court (Dodge, J.) said with reference to this charge:—

> "An attempt to support this charge by evidence wholly failed. Nothing of the kind was done, nor is it easy to see what grounds for making the charge could ever have been supposed to exist" (R. Vol. 1, p. 1153).

The United Company not only did not refuse to sell machines previously sold by the constituent companies, but on the con-

trary it did sell over 170 different kinds of General Department machines, which it developed, in contrast to the policy of the constituent companies (R. Vol. 1, p. 452, lines 39–44; p. 453, lines 1–6).

6. REASONS FOR MARKETING SHOE MACHINERY BY LEASES.

It is important to consider the reasons which had led shoe machinery manufacturers generally from the beginning of the industry to market their machinery by the lease system.

The adoption by a manufacturer of the best method of marketing his product and thereby best meeting the conditions peculiar to his goods or under which his customers do business is one of the most important elements of commercial success.

The ingenuity of modern business men has been largely directed to this problem and a great variety of methods has resulted. One manufacturer sells only at wholesale, one at retail, one through agents, another through jobbers, another through a chain of his own stores and another only upon mail orders; one leases, another sells outright; one sells for cash only, another on the instalment plan; one sells through traveling salesmen, another depends upon advertising in magazines or by letter; one offers premiums with each purchase, another sells on long-time contracts providing for all the customers' business; one makes discounts for large purchases, another declines to distinguish between large and small customers; one sells only for a money consideration, another takes stock or some share of the profits of the purchaser.

The foregoing are a few of the methods employed by modern salesmanship devised to attract customers and to provide an outlet for goods. They are all proper, normal methods because they are designed to advance the dealer's business by making his goods or terms attractive to his customers. The dealer is free to adopt any one of these methods he pleases. If he deems it the best policy to sell for cash only, no customer can demand credit; if he sells only through agents, no customer can demand that he sell directly to him; if he sells by mail only, no customer can demand that he sell at his office. Similarly, if he leases on terms which he believes best adapted to the conditions of the

industry, no customer can demand that he lease on other or different terms or that he sell as well as lease. This freedom of choice as to the method of marketing his goods is the life of competition and the very kind of activity which the Sherman Act sought to promote.

The system of leasing instead of selling shoe machinery, and charging not a fixed rental but a royalty based on the amount of use, has been a fixed and established principle in the shoe machinery industry from the date of the introduction of the first shoe machinery about 1860, and the entire business of manufacturing shoes by machinery originated and has been developed under the lease system because it was especially adapted to the conditions of that industry and was most satisfactory to the shoe manufacturer. The following are a few of the reasons:—

A. Under the lease system shoe manufacturers do not have to buy outright machines at the large prices which the manufacturer would be obliged to charge in case of a sale, as compensation not alone for the cost of the machines themselves but also for the use of the patented inventions embodied in the machines, and the great expense involved in experimenting with and developing them. Shoe manufacturers are thus saved a large initial investment in machinery and this money is left available for use in the business.

The shoe manufacturers testified almost unanimously to the advantages of this condition. Machinery depreciates rapidly and banks are unwilling to loan money on it. Furthermore, the shoe manufacturer turns his capital over rapidly and is thus able to do a large and profitable business on a small capital if he is not obliged to make a heavy investment in machines. Many shoe manufacturers are men with small capital and would be wholly unable to engage in the business if required to make a large initial investment.

Jonathan Brown, Jr., testified that depreciation in shoe machinery is so rapid from wear and on account of new machines being invented that 50 per cent. depreciation should be charged off as soon as a machine is purchased. He does not dare to carry machines as an asset at all, but if he buys a machine he charges it off as expense (R. Vol. 1, p. 732, lines 6–31).

Edward W. Burt testified that he figured about 25 per cent. depreciation on machines which he had to take care of himself.

His gross sales are six times his capital. He prefers not to tie up capital in machinery. In securing credit bankers never consider machinery worth a dollar (R. Vol. 1, p. 740, lines 29–41).

Frederick Allen testified that he turns his capital over about eight times a year. He prefers to lease rather than to purchase, because under the lease system he does not have to tie up his money in machinery "which as an asset is worthless as soon as it is installed" (R. Vol. 1, p. 722, lines 11–19).

ALANSON C. BROWN testified:—

> "The opportunity to lease our machines instead of investing our own capital in them by way of purchase has given us more money to put into other departments of our business. The capital which we invest in the materials which go into shoes we turn over about three times in the course of a year and in the usual course of business we make a profit every time. Our capital is four million and our gross business is around thirteen million a year" (R. Vol. 1, p. 618, lines 15–22).

R. P. HAZZARD testified:—

> "The capital of the Snow-Hazzard Company was $50,000. We now turn over our capital about eight times. Our investment as shown by our last audit is a little over $300,000 and during the past year we have done a business of approximately two millions and a half. We have gone on the plan of making as small a permanent investment in machinery as was possible and putting all our money into the active running of the business.
>
> "I might add right there that when the Snow-Hazzard Company was started as a $50,000 corporation, had we been obliged to have bought by outright purchase the machinery necessary to have equipped that plant, that it would have taken such a large part of our capital that our credit would not have been such as to enable us to have purchased our merchandise and conduct our business and allow us to grow as it has" (R. Vol. 1, p. 642, lines 3–16).
>
> "The thing which pleases me especially in this system is that I stand on an exact footing, so far as machinery and repairs are concerned, and everything of that kind, with every other shoe manufacturer that leases from the United Company, because I am conceited enough to think that if given an even start I can hold my own" (R. Vol. 1, p. 654, lines 3–8).

B. Under the lease system the shoe manufacturer only pays for the machines when and as he uses them. If business is poor, his royalties proportionately decrease. The amount of payment, therefore, is automatically adjusted to the amount of business which the shoe manufacturer does, and he is not burdened with heavy annual charges when business is poor.

C. The principal shoe machines are so delicate and need such constant adjustment that unless properly cared for they prove unsatisfactory. No small shoe manufacturer and few of the large shoe manufacturers can afford to maintain an efficient repair service. Nor do shoe manufacturers understand as thoroughly as the machinery manufacturers the importance of this service. In consequence, experience has shown that when machines were purchased outright they quickly got out of repair or adjustment, because of lack of proper attention, and thereby became discredited. Shoe machinery manufacturers, therefore, found that it gave better satisfaction to their customers if the machines were leased and were kept in repair by the lessor. The shoe manufacturer under this system got better machinery for his money and the machinery manufacturer a larger return.

D. From the beginning of the shoe machinery industry every machine has been to a large extent experimental until its usefulness is proved and demonstrated in actual commercial use over an extended period. Each machine as it has been developed has performed an operation which up to that time was done by hand. Shoe manufacturers hesitated to buy a machine at a large price which might not do as good work as was being done by hand, or which might otherwise prove a commercial failure, or might be supplanted within a short time by a better machine. Under the lease and license system shoe manufacturers do not have to take this risk; it is the machinery manufacturer who takes the risk.

See Strootman (R. Vol. 1, p. 744, lines 1–11).

E. By furnishing machines for a comparatively small initial cash payment or without any initial cash payment shoe machinery manufacturers were enabled to get active, energetic men to enter the shoe business and thus extend the use of their machines. To enter the shoe business no expensive factory is required, any loft being sufficient; the goods require no long time in process but are turned into cash quickly and the business can easily be started

on a small scale. The shoe machinery manufacturer is thus able to place his machines and develop his business in a way which would not be possible if a cash sale price were demanded.

As Mr. WINSLOW testified:—

"Under our system a small manufacturer has practically the same advantages as a large one as far as machine equipment is concerned. A man who goes into the business with a capital of $1,000 pays exactly the same royalty and receives exactly the same service as a man who goes into the business with a capital of $250,000" (R. Vol. 1, p. 555, lines 38–43).

FREDERICK ALLEN testified:—

"If I had had to buy my machinery I don't think I should have been able to start in business, because it would have taken all my capital to buy machinery. Under the arrangement by which I can obtain the machinery by lease, I can put all my capital into the business" (R. Vol. 1, p. 722, lines 34–38).

EDWARD W. BURT testified:—

"I am a small manufacturer. As to the effect upon my ability successfully to do business which a compulsory change in the method of leasing machines, making it necessary for the United Company to charge an initial premium when it put out its machines, would have, I am very glad you asked me that question, because I think it is a very important one. If manufacturers must buy their machines, they have got to get money from their capital, or borrow money, or get it somewhere, to buy machinery, and that takes away your working capital. Now, you must have machinery at the least expense possible in the manufacturing of shoes. And if we were obliged to buy our machines I should be very sorry. In fact, if the privilege of buying or leasing were given me, I should say lease every single time. I never would want to buy a machine.

"As to the effect which it would have had with reference to my ability to go into business at all, I never could have started. I started without any money in shoe manufacturing. I was able to do that because I could obtain my machines by this method.

"That is one of the greatest reasons why I could start in

the shoe business—because I could get machinery with practically no expense.

"I know that there are other men who from small beginnings have been enabled to start and grow. I have had experience along that line. I have had two superintendents leave me, both starting in the shoe business. They had practically no money" (R. Vol. 1, p. 741, lines 5–31).

C. Willis Bennett also testified that he could not have entered business had he been required to buy his machines (R. Vol. 1, p. 759, lines 1–20).

7. NECESSITY FOR PROVISIONS IN THE LEASES PROTECTING THE LESSOR.

A. Introductory Statement.

The United Company, under the lease system, installs in the shoe manufacturer's factory an equipment of machines, instructs the shoe manufacturer's operators in their use, and keeps the machines in proper operating condition. It depends for a fair return on its investment upon a royalty based upon the use of the machines.

The United Company, under this system, has installed millions of dollars' worth of machinery in the factories of lessees scattered all over the country. It is obvious that the leases of these machines must contain provisions carefully providing for the use and care of the machines and assuring the lessor a fair return on its investment.

The following conditions must be borne in mind in considering the provisions required in the leases:—

B. Compensation for Machines being Based on Amount of Use, Lessee must Agree to Use.

The United Company cannot manufacture and invest its money in expensive machines and install them in the shoe manufacturer's factory, instruct operatives and keep the machines in repair, depending for its return upon a royalty based on the use of the machines, unless assured that they will be used if the shoe manufacturer has work for them to perform. If the lessee were

under no obligation to them the United Company might receive no return on its investment. Mr. WINSLOW testified:—

> "The leases as existing in 1899, and as issued practically up to the present time, gave the possession of the machinery and the right to use the patents embodied in that machinery to the lessee, either for the life of all the patents that were then embodied in the machines, or for seventeen years upon his keeping certain conditions. The payment to the owner of the patents in these leases was dependent entirely upon the use that was made of the machines. Experience of the companies who were leasing machines prior to 1899 had shown them that frequently their machines would be in the hands of the manufacturers and would not be used for one reason or another. The machinery companies had gone to the expense of teaching operatives, educating the manufacturer in the use of the machines, and were by the custom of the trade called upon to teach the operator at any time in the use of those machines My own experience with the Lasting Machine Company had shown me that we might start and educate operatives on the machines two or three times, and then the machine would be stopped. Some method had to be adopted to properly protect the interests of the machinery company if it were to continue to lease machines" (R. Vol. 1, p. 443, lines 24–44).

C. Seasonal Character of Shoe Business Requires that Lessee Use Machines When He has Work.

The shoe manufacturer's business is seasonal; during three months of the year he will do twice to four times as much work as at other seasons. To enable him to do his work in his busy season the United Company must furnish him with an equipment having a capacity far in excess of his requirements during the greater part of the year. Mr. WINSLOW testified:—

> "The manufacturing of shoes is one that is divided into substantially two seasons. The manufacturer with an average production of a thousand pairs per day, in other words, who makes 300,000 pairs of shoes in the year, will ordinarily have to have a capacity to produce 600,000 pairs. His production in certain months will run at the rate of 2000 pairs per day, and in other months as low as 500 pairs per day, so that if he has the machines of our company—our entire income is dependent upon their use—we have to furnish him the equipment to make the 2000

pairs per day, although his total product only averages a thousand pairs per day. We furnish him that equipment for his maximum output, which is only used, the maximum, I am quite safe I think in saying, not over three months out of the twelve, and from that it runs down, varying according to the man's own particular business, to from twenty-five per cent. to fifty per cent." (R. Vol. 1, p. 444, lines 27–42).

It is obvious that if the shoe manufacturer, in order to provide for his maximum requirements during his comparatively short busy season, takes from the United Company a machinery equipment having a capacity in excess of his average or normal requirements, the United Company must be assured that such excess capacity taken by the shoe manufacturer be used when required. Otherwise, the United Company will furnish and the lessee will hold a machinery capacity which will not be used and for which the United Company will get no return.

D. Wholesale Price is Fair Both to United Company and to Shoe Manufacturers When its Machines are Used as a Team.

When a series of the United Company's principal machines, which are admittedly the best machines made and which have been developed and are adapted for use together, are used as a team or series and are repaired and cared for by the United Company and are thus maintained in an efficient operating condition so that no one of the team breaks down and stops the work on other machines, and when the operators are instructed in the proper use of the machines and operators are furnished the shoe manufacturer in case of necessity, each machine of the series can produce more shoes than it would produce if used with machines not so adapted for use together as a team and not so maintained and cared for. Furthermore, a series of machines can be cared for at less cost per machine than a single machine. As a result, when a shoe manufacturer desires to take the United Company's principal machines to be used together as a team or series the United Company can afford to charge a reduced or wholesale price, because it receives a larger return in royalties on each machine when so used and the cost of caring for each machine is less.

Mr. WINSLOW testified as follows in respect to the reasons for the increased productivity and efficiency of machines when used as a team:—

> "By limiting the use of one principal machine of the company to work which has been operated upon by other principal machines of the company, its use is confined to work done by machines with which we know that prompt and efficient service is furnished to keep that machine in proper condition to operate, and with operators who have been properly instructed in the operation of the machine at the expense of our company, and also with machines where new operators will be taught whenever they are needed. Now, of course, under those conditions we have a definite assurance as to the maintenance of the productivity of the machines and the quality of work that will be produced by those principal machines with which another principal machine is used" (R. Vol. 1, p. 857, lines 5–17).

E. United Company must have Right to Take Back its Machines if Lessees do not Act in Good Faith.

The United Company is dependent to a large extent upon its lessees for a correct statement of the number of shoes on which its machines operate and for a proper use of its machines.

The constituent companies which were combined into the United Company had 1,060 different lessees operating 1,079 factories (R. Vol. 1, p. 454, lines 21–23). The United Company in 1911 had 1,033 lessees operating 1,150 factories (R. Vol. 1, p. 454, line 45). An average of over 62 new concerns have started in the shoe manufacturing business in each year from 1900 to 1911, and in addition an average of over 22 new concerns have during that period succeeded old firms. 746 entirely new concerns engaged in business between March, 1900, and December 31, 1911 (Defs.' Ex. 223, R. Vol. 5, p. 390).

It is obvious that the United Company can have no assurance of the moral responsibility of many of its lessees. It is inevitable that some should act unfairly or dishonestly.

Furthermore, the United Company can have no assurance of the financial responsibility of many of its lessees. It is one of the virtues of the leasing system that it enables men having little capital and, therefore, necessarily slight financial responsibility, to engage in the business.

Under these circumstances the United Company must have fairly broad rights to withdraw its machines if it finds or has reason to believe that its machines are not properly cared for, or that the amount due in royalties is incorrectly reported, or that the lessee is otherwise violating his agreements, or if it finds that owing to the use by the lessee of other machines of the same kind as those leased, the lessee is using the United Company's machines only occasionally or only during his busy season, or only on slow or difficult work, or on shoes which although made on the United Company's machines the lessee reports as made on the other machines, and that for any of these reasons the United Company is not receiving a fair return on its investment in the machines.

F. Extended Term Necessary for Both Lessee and United Company.

The lessee embarking in business desires an assurance that he may hold his machines for an extended term and the United Company requires an assurance that the lessee will use the machines for a sufficient length of time to afford a fair return on the investment.

G. The Provisions in the Leases Objected to by the United States Attempt to Provide for and Meet the Foregoing Conditions.

The District Court said (R. Vol. 1, p. 1187):—

> "The clauses objected to are all subordinate and auxiliary to maintaining rights which unquestionably belong to the defendant; to charge their own prices and to choose as customers those who will pay those prices.
>
> "The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them. Other modes, such as the requirement of arbitrary payment for the full period of the patents, would escape all such attacks. *The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions*" (italics ours).

In considering the leases it must also be borne in mind that their purpose and effect cannot be tested solely by an examina-

tion of the wording of the clauses. In a lease of a complicated set of shoe machinery, even more than in the lease of a house or business premises, it is impossible to specify exactly and definitely every event or circumstance which should give the lessor a right to interfere for his protection. It is essential that the lessor reserve certain general rights, which, if violated, justify him in cancelling the lease if he feels such action necessary for his protection. As we show below (*infra*, pp. 415-420), the actual practice of the United Company has been to treat its lessees with the utmost liberality. The record shows that the United Company has enforced its right to cancel its leases in only five instances (apart from cases of insolvency) in each of which the lessee acted in flagrant disregard of the lessor's rights, and either used the United Company's machines without payment of any royalty at all, or abandoned their use entirely.

8. LEASE SYSTEM EMPLOYED BY THE CONSTITUENT COMPANIES PRIOR TO THE FORMATION OF THE UNITED COMPANY.

In order to understand the gradual growth of the lease system, the reasons necessitating the various provisions in the leases, and the reasons why the United Company upon its formation continued the system, and in order further to appreciate how slight were the changes made by the United Company in the system, it is necessary to consider carefully the lease system in use at the time the United Company was organized.

A. LEASES OF GOODYEAR COMPANY PRIOR TO 1899.

The Goodyear Shoe Machinery Company manufactured welt and turn sewing machines and outsole stitchers and sixteen auxiliary machines used in connection therewith. It also manufactured Ideal Lasting Machines developed and used for lasting women's welt shoes (R. Vol. 1, p. 468, lines 4–14; p. 624, line 31–p. 625, line 13; p. 626, line 36; p. 627, line 3).

(1) Lease of Goodyear Welt Set Prior to 1899 (P.'s Ex. 4, R. Vol. 3, p. 29).

The Goodyear Company leased its welt set, consisting of the Goodyear Welt and Turn Machine and the Goodyear Outsole

Stitcher and thirteen auxiliary machines as a single set and for a single royalty.

It charged an initial payment of $300 for the Welt and Turn Shoe Machines and $300 for the Outsole Stitcher and also an initial payment for each auxiliary (R. Vol. 1, p. 469, lines 16–18). It also charged a net royalty of four cents a pair for each pair of men's shoes on which the machines or any of them were used, three cents for women's shoes and boys' shoes, and less amounts for youths', misses', and children's shoes (P.'s Ex. 4, pars. Third and Fifth, R. Vol. 3, pp. 32–33).

The lessee agreed that the machine should be used only in the manufacture of "Goodyear Welts," *i.e.*, welt shoes welted and outsole-stitched on Goodyear Welters and Stitchers and that he would "*not use or permit the use of said machines, or either or any of them, upon boots or shoes in the manufacture of which any sole or welt-sewing machine not leased to him by the lessor is employed*" (italics ours) (par. Sixth, P.'s Ex. 4, R. Vol. 3, pp. 33–34).

The lease ran until the expiration of every patent referred to in the schedule of patents, or any extensions or renewals of the same (P.'s Ex. 4, par. Ninth, (*c*), R. Vol. 3, p. 35). The lessor had the right to add improvements, and if any patented improvements were added, it was provided that the lease should be construed as though such patents were contained in the original schedule (P.'s Ex. 4, par. Second, R. Vol. 3, p. 32). In other words, if the lessor added patented improvements, which he had the right to do, the lease would be continued indefinitely.

The lease could be terminated upon breach of any conditions on the part of the lessee (P.'s Ex. 4, par. Ninth, (*b*), Vol. 3, pp. 34–35). The lessee agreed to keep the machines in working order at his own expense and to procure all parts for repairing the machines from the lessor (P.'s Ex. 4, par. First, R. Vol. 3, pp. 31–32).

(2) Lease of Goodyear Turn Set Prior to 1899 (P.'s Ex. 3, R. Vol. 3, p. 22).

The Goodyear Company leased its turn set consisting of the Goodyear Welt and Turn Shoe Machine and three auxiliary machines as a single set and for a single royalty. It charged $300 as an initial payment for the turn machine, and likewise

initial payments for the auxiliary machines (R. Vol. 1, p. 21, lines 16–18; p. 469, lines 16–18). It charged a net royalty of 1½ cents per pair for men's, boys', youths', and women's shoes, and 1 cent for children's and misses' shoes (P.'s Ex. 3, pars. Third and Fifth, R. Vol. 3, pp. 24–25).

The lessee agreed that the machine should be used only in the manufacture of Goodyear turns.

The lessee agreed not to use in his factory any machines for uniting the soles of turn shoes to their uppers which were not leased to him by the lessor (P.'s Ex. 3, par Sixth, R. Vol. 3, pp. 25–26). *This clause, therefore, required an exclusive use of the Goodyear Company's turn machines.*

The lease ran for the same period as the lease of the welt set.

The lease could be terminated upon breach of any conditions (P.'s Ex. 3, par. Ninth, (*b*), R. Vol. 3, pp. 26–27).

The lessee agreed to keep the machines in working order at his own expense and to procure from the lessor all parts for repairing the machines (P.'s Ex. 3, par. First, R. Vol. 3, p. 23).

(3) Lease of Ideal Lasting Machines prior to 1899 (P.'s Ex. 5, R. Vol. 3, p. 37).

The Goodyear Company leased its Ideal Lasting Machine, together with the Rapid loose tackers used in connection therewith, for an initial payment of $300 (P.'s Ex. 5, Vol. 3, p. 44) and a royalty of one-half a cent for each pair of shoes lasted (P.'s Ex. 5, par. Fifth, pp. 40–41).

The lessee agreed not to use the machines on shoes "partially or wholly completed by the aid of any sole- or welt-sewing machine not leased to him by the Lessor" and not to use any of the rapid tackers on shoes "which have been partially or wholly lasted by the aid of any lasting machine not leased to him by the Lessor" (italics ours) (P.'s Ex. 5, par. Fourth, R. Vol. 3, p. 40). It is to be noted that this provision constituted a "Restricted Use Clause," limiting not only the use of the rapid tackers to the lasting machine or machines, but also limiting the use of the lasting machines to shoes on which the lessor's welter and stitcher were used.

The lessee agreed to buy of the lessor all tacks used in the loose tackers and hoppers (P.'s Ex. 5, par. First, R. Vol. 3, p. 39).

The lease, as in the case of the other leases of the Goodyear

machines, was to continue until the expiration of any patents embodied therein, or any patents or improvements which might thereafter be embodied in the machine by the lessor at its option (P.'s Ex. 5, par. Seventh, (*c*), and par. Second, R. Vol. 3, pp. 42, 39).

The lease could be terminated upon breach of any conditions (P.'s Ex. 5, par. Seventh, (*b*), R. Vol. 3, pp. 41–42). The lessee agreed to keep the machines in working order at his own expense, and to procure from the lessor all parts for repairing the machines (P.'s Ex. 5, par. First, R. Vol. 3, p. 39).

B. · LEASES OF CONSOLIDATED COMPANY PRIOR TO 1899.

(1) Lease of McKay and Copeland Lasting Machine Prior to 1899 (P.'s Ex. 6, R. Vol. 3, p. 45).

This machine was used for lasting heavy-weight brogans and metallic fastened and pegged shoes (R. Vol. 1, p. 3, lines 20–22).

An initial payment of $695 was required and a royalty (P.'s Ex. 6, Art. 3, R. Vol. 3, pp. 48–50; R. Vol. 1, p. 454, lines 3–8).

The lease declared it the intention of the lessee to use the machines leased for lasting all the shoes made by him applicable to said machines and not to have the machines in his possession as a means of reducing the price of hand lasting, or to influence any trade in connection with any other lasting machines not made by the lessor. The lessee further agreed to "use said machines and accessories hereby licensed and leased for rental, lasting all of his shoes and boots to their full capacity, limited only to the demands of his business; and should the demands of his business require, he shall take the license and lease of such additional machines and accessories as may be required to last all of his work, and in default of such use, the Licensor may at its option remove said machines and accessories . . . and may cancel this license and lease" (P.'s Ex. 6, Art. 12, R. Vol. 3, pp. 54–55). *This clause required the use of the machines to their full capacity and also required the exclusive use of the lessor's machines of this character.*

The lease ran "until canceled by the Licensor for breach of condition or otherwise"; in other words, it ran so long as the machine was in existence unless the lessor saw fit to cancel (P.'s Ex. 6, Art. 9, R. Vol. 3, p. 53).

The lessee agreed to buy of the lessor all spare parts for repairing the machines and also all string-nail, tack-strips, or other fastenings driven by any appliance for lasting all shoes lasted on the machines (P.'s Ex. 6, Art. 13, R. Vol. 3, p. 55). The right was reserved to cancel for breach of conditions (P.'s Ex. 6, Art. 9, R. Vol. 3, p. 53).

(2) Lease of Chase Lasting Machines Prior to 1899 (P.'s Ex. 7, R. Vol. 3, p. 57).

This machine, and the hand tackers used therewith, was used for lasting men's welts and was leased without initial payment for a royalty of one cent per pair for Goodyear shoes, with certain provisions for abatement (P.'s Ex. 7, par. Third, R. Vol. 3, pp. 60–62). If the lessor so requested, the lessee was required to pay not less than $10 per month, except when his factory was not running. If the machines were unused for four months the lessor could cancel the lease (P.'s Ex. 7, pars. Third and Eighth, R. Vol. 3, pp. 60–61, 63).

The lease declared it the intention of the lessee to use the machines leased for lasting all the shoes made by him applicable to said machines and not to have them in his possession as a means of reducing the price of hand lasting or of controlling hand lasters or of influencing a trade with the owners of any other lasting machines or reducing the price thereof. The lessee agreed to "use such machines hereby loaned for lasting all of his shoes and boots, to their full capacity, limited only by the demands of his business; and should the demands of his business require, he shall take and pay for the loan of such additional machines as may be required to do all his work" (P.'s Ex. 7, par. Twelfth, R. Vol. 3, p. 65). *This clause required the use of the machines to their full capacity and also required the exclusive use of the lessor's machines of this character.*

The lease ran until the expiration of the Letters Patent which the lessee was licensed to use, or which were or thereafter might be embodied in the machines (P.'s Ex. 7, par. Tenth, R. Vol. 3, p. 64). The lessor had the right to improve the machines (P.'s Ex. 7, par. Second, R. Vol. 3, p. 60). Thus the leases might run indefinitely.

The lessee agreed to buy all spare parts and all string-nail,

tack-strips or other fastenings of the lessor (P.'s Ex. 7, par. Thirteenth, R. Vol. 3, p. 65–66).

The lease might be cancelled for breach of conditions (P.'s Ex. 7, par. Ninth, R. Vol. 3, pp. 63–64).

(3) Lease of Consolidated Hand Method Lasting Machines (McKay) Prior to 1899 (P.'s Ex. 8, R. Vol. 3, p. 68; P.'s Ex. 9, R. Vol. 3, p. 74).

This machine was used for lasting McKay shoes. There were two alternative forms of lease, one requiring an initial payment, the other no initial payment.

Initial payment form (P.'s Ex. 8). This form required an initial payment of $300 for each machine and a royalty of one-half a cent a pair (P.'s Ex. 8, R. Vol. 3, pp. 69–70).

The lease ran until the expiration of all patents embodied in the machines or in any improvements thereafter attached thereto, which improvements the lessor had the right to make (P.'s Ex. 8, pars. Eighth and Sixth, R. Vol. 3, pp. 73, 71–72).

The lessee agreed to obtain all duplicate parts from the lessor. (P.'s Ex. 8, par. Sixth, R. Vol. 3, p. 72). The right was reserved to terminate for breach of conditions (P.'s Ex. 8, par. Seventh, R. Vol. 3, p. 72).

Non-initial payment form (P.'s Ex. 9). This form required a royalty of five-eighths of a cent per pair, with a minimum of $180 a year (P.'s Ex. 9, par. Third, R. Vol. 3, p. 77). If the machines were unused for four months the lease might be cancelled (P.'s Ex. 9, par. Eighth, R. Vol. 3, p. 79).

It was declared the intention of the lessee to use the machine for lasting all shoes made by him applicable to the machine, and the lessee agreed to use the machine "for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work" (P.'s Ex. 9, par. Twelfth, R. Vol. 3, pp. 80–81). *It therefore required a use of the leased machines to their full capacity and also required an exclusive use of machines of this kind.*

The lease ran until cancelled by the lessor for breach of condition or otherwise; that is, *it ran at the lessor's option so long*

as the machine was in existence (P.'s Ex. 9, par. Ninth, R. Vol. 3, pp. 79–80).

The lessee agreed to obtain all duplicate parts from the lessor, and wire used in lasting in the machines (P.'s Ex. 9, par. Thirteenth, R. Vol. 3, p. 81). The right was reserved to terminate for breach of conditions (P.'s Ex. 9, R. Vol. 3, p. 76).

(4) Lease of Consolidated Hand Method Lasting Machine (Welt) Prior to 1899 (P.'s Ex. 10, R. Vol. 3, p. 82).

This is a machine which the Company was just developing in 1899. A lease had been prepared prior to the formation of the United Company.

This lease required no initial payment and charged a royalty of one cent per pair (R. Vol. 1, p. 4, lines 9–13; P.'s Ex. 10, par. Third, R. Vol. 3, p. 85).

The lease ran until cancelled by the lessor for breach of condition or otherwise (P.'s Ex. 10, par. Ninth, R. Vol. 3, p. 87). It was declared the intention of the lessee to use the machine for lasting all the shoes made by him applicable to such machine, and the lessee agreed to use the machine "for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work" (P.'s Ex. 10, par. Twelfth, R. Vol. 3, pp. 88–89). *It therefore required a use of the leased machines to their full capacity, and also required an exclusive use of machines of this kind.*

The lessee was required to obtain all spare parts of the lessor and the lease could be cancelled for breach of condition (P.'s Ex. 10, par. Thirteenth, R. Vol. 3, p. 89; par. Ninth, R. Vol. 3, p. 87).

C. LEASES OF McKAY COMPANY PRIOR TO 1899.

(1) Lease of Heeling Machines Prior to 1899 (P.'s Ex. 11, R. Vol. 3, p. 90).

A royalty of one-fourth of a cent was charged and this charge extended to all heels made by or for the lessee, whether or not made by the lessor's machines (P.'s Ex. 11, par. Third, R. Vol. 3, pp. 97–98). The lessor reserved the right to cancel

if the lessee "*provides himself with any other machine to do any part of the work which any of said Lessors' machines are capable of doing*" (italics ours) (P.'s Ex. 11, par. Eighth, R. Vol. 3, p. 100). The lease ran for seventeen years "and for such further time as may be covered by the term of any Letters Patent now or hereafter owned by the Lessors, and any inventions of which are contained in any of the 'machinery' hereby leased or which shall be added to or embodied in said 'machinery' or used in connection therewith" (P.'s Ex. 11, par. Eighth, R. Vol. 3, p. 100). The lessor had the right to add improvements. The lessee agreed to buy all spare parts from the lessor (P.'s Ex. 11, pars. Second and First, R. Vol. 3, p. 97).

The lease could be terminated for breach of conditions (P.'s Ex. 11, R. Vol. 3, p. 96).

(2) Lease of Metallic Machines Prior to 1899 (P.'s Ex. 12, R. Vol. 3, p. 103).

This lease is upon an initial payment form which required the lessee to pay 10 cents a pair for all shoes operated on unless he should purchase of the lessor all the material used in the machines for fastening the shoes, which the lease stated was to be sold "at prices much in excess of the cost to the Lessors, with the intent that such excess shall be the rent and license fee hereunder" (P.'s Ex. 12, par. Third, R. Vol. 3, p. 107). This was in lieu of other royalty. The lease, however, carries a rider eliminating the initial payment and providing that the lessor has the right to terminate the lease whenever the lessee "*shall provide himself with any other machine to do any part of the work which said lessors' machines are, in the lessors' opinion, capable of doing*" (italics ours) (P.'s Ex. 12, Rider, R. Vol. 3, p. 112).

The lease ran until the expiration of all Letters Patent, embodied or thereafter embodied in the machines, by the lessor (P.'s Ex. 12, par. Ninth, R. Vol. 3, p. 110).

The lease carried a rider which provided the lessor might cancel if the lessee did not purchase all spare parts of the lessor (P.'s Ex. 12, Rider, R. Vol. 3, pp. 112–113, and par. Eighth, R. Vol. 3, p. 110).

(3) Lease of Davey Pegging Machine Prior to 1899 (P.'s Ex. 13, R. Vol. 3, p. 113).

A royalty of three-fourths of a cent was charged.

The lessee agreed that "he will do all the pegging of boots and shoes manufactured by him upon the said machines of the Lessor which are leased hereby, and that in case he has too much work for the machines hereby leased, he will take from the Lessor, under this lease or a similar lease containing the same terms and provisions, sufficient additional machines to perform the work" (P.'s Ex. 13, par. Fifth, R. Vol. 3, p. 118). *It therefore required an exclusive use of the machines.*

The lease continued until the expiration of Letters Patent embodied in the machine or on any inventions thereafter added to the machine, which improvements the lessor had the right to make (P.'s Ex. 13, pars. Tenth and Second, R. Vol. 3, pp. 120, 116). All spare parts were to be purchased from the lessor and the lease might be terminated for breach of conditions (P.'s Ex. 13, pars. First and Ninth, R. Vol. 3, pp. 115–16, 119).

9. SUMMARY OF LEASE SITUATION JUST PRIOR TO THE DATE OF THE FORMATION OF THE UNITED COMPANY.

A. General Summary of Provisions in Leases.

From the foregoing it will be seen that the system of leases of the Constituent Companies in effect at the date of the formation of the United Company incorporated the following provisions:

1. Machines could not be bought but were only leased.

2. When two or more machines were put out by the same company which were used on the same shoe, the machines were generally leased as a group. Thus the Goodyear Welter, Stitcher and Auxiliaries were leased for a single royalty. The Welter and Stitcher were restricted to use together and the auxiliaries were restricted to use on shoes operated on by the Welter and Stitcher (P.'s Ex. 4, par. Sixth). The Tackers were leased with the Ideal Machine for a single royalty and restricted to use on shoes operated on by the Ideal Machine (P.'s Ex. 5, par. Fourth). The various heeling machines of the McKay Company were leased as a whole for a single royalty (P.'s Ex. 11). In other

words, these leases contained the "Auxiliary Restricted Use Clause." The Ideal Laster was restricted to use on shoes operated on by the Welter and Stitcher, an instance of restricting a principal machine of one department to use with a principal machine of another department, *i.e.*, the "Restricted Use Clause."

3. Many of the leases required the lessee to use the lessor's machines of the kind leased exclusively, that is, they contained a direct agreement to this effect, or contained the "Additional Machinery Clause," which required the lessee to take additional machinery for all work which he had of the kind for which the machines were adapted (Goodyear Turn Set, P.'s Ex. 3, par. Sixth; McKay and Copeland Machine, P.'s Ex. 6, par. Twelfth; Chase Machine, P.'s Ex. 7, par. Twelfth; Consolidated Hand-method McKay Machine, P.'s Ex. 9, par. Twelfth; Consolidated McKay Hand-method Welt Machine, P.'s Ex. 10, par. Twelfth; Pegging Machine, P.'s Ex. 13, par. Fifth).

4. The leases of the McKay Company contained the "Exclusive Use Cancellation Clause" which permitted the lessor to cancel the lease if machines of the same kind as those leased were not used exclusively by the lessee (Metallic Machines, P.'s Ex. 12, Rider; Heeling Machine, P.'s Ex. 11, par. Eighth).

5. All of the leases ran for long and in most cases indefinite periods. In the case of the McKay and Copeland Machine, the non-initial lease of the Consolidated Hand-method McKay Machine and the Consolidated Hand-method Welt Machine, the lease ran until cancelled for breach of conditions; in other words, it ran for the life of the machine (P.'s Ex. 6, par. Ninth; P.'s Ex. 9, par. Ninth; P.'s Ex. 10, par. Ninth).

In the case of the heeling machines the leases ran for seventeen years and for such further time as any patents embodied then or thereafter in the machines were in force (P.'s Ex. 11, par. Eighth). In all other cases the leases ran for the life of the patents then embodied, or which might thereafter be embodied in the machines.

6. Most of the leases of the Consolidated Company contained the "Full Capacity Clause" (P.'s Ex. 6, par. Twelfth; P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par. Twelfth; P.'s Ex. 10, par. Twelfth).

7. All the leases permitted the lessor to cancel for breach of conditions.

8. All the leases required the lessee to obtain extra or duplicate parts required on the machines from the lessor.

9. The Goodyear Company required an initial payment upon the installation of its machines to cover the cost of installation and instruction of operatives. The Consolidated Company required an initial payment for its McKay & Copeland Machine and on one form of lease for its Consolidated Hand-method McKay Machine, and no initial payment on its other leases. The McKay Company had required an initial payment, but in 1899 was considering a change, and was temporarily loaning machines without initial payment.

B. Provisions by which the Constituent Companies Protected Themselves when Leasing Machines without Initial Payment.

Where the shoe machinery manufacturer as lessor installs his machinery in the factory of a lessee and instructs such lessee's operatives in the use of the machinery, the lessor to be paid by a royalty based on the amount the machinery is used, it is, of course, essential that the lessor be protected as to the amount of use in order to assure him an adequate return. He cannot afford to permit the lessee to keep the machinery idle or use it only on his difficult and slow work, or use it only at especially busy times, doing his work on other machines at other times; nor can he afford to permit the lessee to use the machine under such factory conditions that it cannot be determined how much the machine is actually used. Such protection is especially essential when no initial payment is required from the lessee. This protection was afforded in the leases of the constituent companies in various ways, some used in one lease and some in another. The following provisions are illustrations:—

(*a*) The lessee was required to use the machines to capacity, limited only by the demands of his business (P.'s Ex. 6, par. Twelfth; P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par Twelfth; P.'s Ex. 10, par. Twelfth).

(*b*) It was agreed that the lessor might cancel the lease if the machines were unused for a certain length of time (P.'s Ex. 7, par. Eighth; P.'s Ex. 9, par. Eighth).

(*c*) The lessor was permitted to cancel the leases of a type of machines if machines of that type were not used exclusively (P.'s Ex. 12, Rider; P.'s Ex. 11, par. Eighth).

(*d*) It was provided that the lessee should take additional

machines if he had more work than the leased machines could do (P.'s Ex. 6, par. Twelfth; P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par. Twelfth; P.'s Ex. 10, par. Twelfth).

(*e*) It was provided that the lessee should pay at the royalty rate in respect to all shoes whether or not made on the lessor's machines (P.'s Ex. 11, par. Third).

(*f*) The lessee guaranteed a minimum royalty (P.'s Ex. 7, par. Third; P.'s Ex. 9, par. Third).

(*g*) The lessor was given the right to cancel the lease if the machine was not used to the extent of earning a certain royalty within a given time (P.'s Ex. 6, par. Eighth).

(*h*) It was provided that the lessee should not hold the machines in his possession as a means of reducing the price of hand work or to influence a trade for other machines (P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par. Twelfth; P.'s Ex. 10, par. Twelfth).

Mr. Donham testified as follows with reference to the reasons for the introduction of certain of these clauses by the constituent companies upon the removal of the initial payments:—

> "Prior to the introduction of the non-initial payment leases, each time a lessee took a machine he had to pay down a certain amount of money, and he was not likely to do that unless he wanted the machine, but when machines were put out without initial payments the situation changed. The lessee then had no money in the machines and it was entirely the money of the lessor that was in them, and unless the lessor protected itself in some other way there was nothing to prevent a manufacturer from taking machines with no intention of using them—for example, simply to have them stand in his factory as a threat to his hand labor, to use as a means of trading for some other machine, or to use in case of an emergency.
>
> "So, when the constituent companies took off the initial payments before 1899, they simultaneously sought to protect themselves in several different ways against non-use or mis-use of the machines. Usually two or three different methods were adopted in the same lease. Provisions were inserted that the lessor might cancel the lease if the machines remained unused for a certain length of time; that he might cancel if they were not used to the extent of earning a certain amount of royalty within a certain time; that the lessee should pay a minimum guaranty in case the machines were not used enough to earn the amount of the guaranty; that the machines should be used for doing all

of a certain kind of work which a lessee might have; that the machines should be used for a certain kind of work only. The full capacity clause was inserted; and provisions were inserted that, in case the lessee had more work than could be done by the machines under lease, he should take additional machines; and that if he did not do so, the lessor could cancel his lease and take out his machines. There were also agreements in some cases that the lessee would not introduce any machinery not obtained from the lessor for doing the same work as done by the lessor's machines, and there were various limitations as to the manner and method of using the machines; for instance, a provision that the lessee should not retain the machines for the purpose of controlling his hand operatives or negotiating trades with other companies.

"In my study of the lease situation prior to 1899, I find that in all cases when the companies began to offer machines without initial payments they sought in some or all of these ways to protect themselves against the non-use or mis-use of the machines" (R. Vol. 1, p. 24, line 22; p. 25, line 17).

10. THE UNITED COMPANY NECESSARILY CONTINUED THE LEASING SYSTEM.

Such was the system of leasing machines in effect when the United Company was organized. It had gradually developed since the very beginning of the shoe machinery industry. Its general acceptance proved it to be the method best adapted to the needs of both the shoe machinery manufacturer and the shoe manufacturer.

The United Company could not have changed the essentials of this system even had it so desired without throwing the entire shoe business of the country into confusion. It could not have recalled and cancelled the outstanding leases without the consent of the lessees which it could not have obtained. As to all machines then outstanding it was obviously necessary to continue the system. The great majority of shoe manufacturers did business on a small scale and had comparatively little capital. They had been induced to enter the business by the offer of machines upon the lease system. Had the United Company refused to furnish additional machines on this basis, it would have seriously crippled many of these lessees and worked a great injustice. On the other hand, if it did continue to furnish ma-

chines on lease, it was essential that it continue the clauses which experience showed was necessary for the protection of the lessor.

Apart, then, from the fact that the United Company believed its lease system best adapted to the needs and conditions of the business, it found itself practically pledged to its continuance.

II. MODIFICATIONS BY UNITED COMPANY OF LEASES OF CONSTITUENT COMPANIES.

A. Introductory Statement.

The United Company made no modifications in the leases for more than a year after its formation, but continued to use the forms of leases employed by the constituent companies. Thereafter from time to time it made modifications in its leases, either to make them consistent, or gradually from time to time as special conditions relating to the machines of a particular kind demanded.

In making modifications in its leases, outstanding leases were not disturbed; Mr. Donham testified:—

> "After the formation of the United Company that company did nothing whatever with reference to the outstanding leases under which machinery had been obtained by manufacturers from the constituent companies. The manufacturers continued to hold their machines under the old leases so long as those leases continued to run. When the United Company adopted a new form of lease, it was offered to any lessees to take, if they desired. Old lessees had the privilege of changing to the new form if they wished to do so. But if the old lessees did not want the new leases they could remain undisturbed and enjoy their machines under the old forms of leases. A good many old leases issued by the constituent companies before the organization of the United Company are still outstanding" (R. Vol. 1, p. 19, line 40; p. 20, line 8).

The leases of the different constituent companies, as we have shown above, differed somewhat in their terms. Most of the modifications in the leases made by the United Company have relaxed restrictions rather than imposed additional restrictions.

An examination of the modifications of the leases of machines which had been put out by the constituent companies will show

that the two principal changes made in these leases by the United Company were the adoption in 1900 of an alternative form of lease for Metallic Machines containing a restricted use clause restricting the use of the machines to use with the United Company's Goodyear Welter and Stitcher and Lasting Machines, and the adoption in 1904 of an alternative form of lease for Heeling Machines containing a restricted use clause restricting their use to use with the United Company's Goodyear Welter and Stitcher, Lasting, Pegging and Metallic Machines. These restricted use forms of lease were optional and lessees could obtain the use of these machines as before without these restrictions.

The adoption of these alternative restricted use leases occurred long after the formation of the United Company, and an examination of the conditions which called for their adoption shows conclusively that they were adopted for the sole purpose of giving lessees better terms.

B. ADOPTION OF RESTRICTED USE CLAUSE IN METALLIC MACHINE LEASES.

With respect to the adoption of the restricted use clause in the leases of metallic machines, Mr. WINSLOW testified as follows (R. Vol. 1, p. 438, line 5; p. 439, lines 21, 31–38):

> "The first change made by the United Company in the method of marketing any of the machines which had been put out by the constituent companies prior to the organization of the United Company was the adoption of the new metallic lease of the United Company, about the middle of the year 1900.
>
> "For a year or two before 1899 the McKay Company had been putting out its machines without any lease, and that practice was continued by the United Company up to the middle of the year 1900.
>
> "At that time Mr. Charles H. Willson, who had been assistant to Mr. Brooks in the management of the metallic end of the McKay business, reported to me that the price of copper had been constantly advancing so that there was not a proper margin of profit in the sale of wire material used in the metallic machines, that he had called Mr. Brooks' attention to that fact just before our coming together, and that before 1899 he had prepared a list of advanced prices at which the material should be sold. He

suggested to me that something should be done and that I should take the matter up.

"Great amounts of brass wire and nails are used in the metallic fastening machines, and the price of copper is the important factor in the cost of that material. We use spelter [brass], composed of two parts copper and one of zinc.

"In January, 1898, copper was eleven cents a pound; in January, 1899, 12.8 cents per pound; in January, 1900, and in January, 1901, 17 cents per pound. During 1900 the lowest price was 16 cents in four months, 17 cents in three months, and from 16½ to 16¾ in four months. It averaged about 16½ cents a month.

"The old leases provided that the minimum amount of material for each metallic machine should be 400 pounds a year and a very substantial amount of that would be copper.

"This very considerable increase in the price of copper was a very serious factor, because the prices of the material used in the metallic machines constituted the entire royalty received for the use and care of those machines, and the margin between the cost of the material to the company and the price at which it was sold to represent that royalty had been fixed years prior to 1899, when copper was very much below these prices. The increase from 11 cents to 16 cents, of course, all came out of the royalty, so that it was a very serious question. All the royalty we got was the profit on the material, and when the material increased in cost the royalty disappeared.

"In view of this situation we adopted a policy of limiting the use of those metallic machines to work that had been done on machines of some other department that paid us a royalty. We restricted the use of the machines to footwear which had been lasted and welted and stitched upon machines leased of the United Company. That policy was adopted about August, 1900.

"That is, we got our royalty indirectly. We did not increase the price of material furnished for the metallic machines nor did we increase the royalty on the machines to use with which we restricted the metallic machines.

"We also adopted, in February, 1901, an alternative independent form of lease by which the use of the metallic machines was not limited to use with the machines of any other department and under which the manufacturer paid ten per cent. more for his material than he did under the limited license form. This form of lease was the result of negotiation and agreement with the manufacturers.

"Both forms of leases were offered to every lessee of the United Company simultaneously and he made his choice.

. . . . . .

"Since that time manufacturers have had a chance to take the metallic machines upon either of these forms, or more lately on a lease with an initial payment which is not limited to use with machines of any other department. Accordingly manufacturers have more recently had three alternatives, although it has been the intention of the company to withdraw the ten per cent. form and substitute the initial payment lease in order that the price of material might be uniform to all lessees."

C. ADOPTION OF RESTRICTED USE CLAUSE IN HEELING MACHINE LEASES.

With respect to the adoption of the restricted use clause in the heeling machine leases Mr. WINSLOW testified as follows (R. Vol. 1, p. 440, line 16; p. 441, line 42):—

"There was no change in the method of marketing the heeling machines until the year 1904. As to the occasion for the change which was made in that year, in the early Spring of 1904, as a result of long consideration of the subject, we had started to get out a lease for the Goodyear machines and their auxiliaries, without requiring the payment of an initial price, as had always been the case up to that time. As there were a great many machines in that department, and the amount involved was very large, that matter received a great deal of consideration, and it was not until late in that year that such a lease was finally prepared, not in fact until months after we expected to have it ready. Having that in contemplation, we had decided that if we were to remove that source of income, give up that source of income for the company, that we should be entitled to receive from that factory a surety of a further income, so the heeling machines were limited by that lease to use with the Goodyear department machines and some other departments.

"That was in effect simultaneous with the taking off of the initial payment on the Goodyear machines, because during the year 1904, while we had under contemplation this lease and were working on it, we furnished to a large number of manufacturers the loan of Goodyear department machines, and my remembrance is that in the case of every machine that was placed out after July 1st in that year, 1904, the manufacturer was allowed to exercise his choice of taking them upon the non-initial form of lease when it was gotten out, or the initial payment.

"With reference to preserving an alternative form of heeling department lease, it has always been the policy of the

company to maintain the right of the lessee to take a machine upon the preceding form of lease, if he cared to have it that way. There never has been a time when a lessee could not obtain the machines of any department upon an independent form of lease.

"The business reasons which led us to the adoption of the form of Goodyear lease without the payment of initial premium but accompanied by restrictive leases in the heeling department and the lasting department were as follows:

"The manufacture of Goodyear welt shoes required up to that time the investment of a very much larger amount of money for machinery and equipment than was required for any of the other types of shoes. This had resulted in the manufacture of welt shoes being limited to quite a large degree to those manufacturers who had a substantial amount of capital, but some of those manufacturers had seen their businesses grow so fast that they were embarrassed to find the money to add to their equipment. That was especially true as regards the auxiliary machines. Our company had spent a great many thousands of dollars to develop the auxiliary machines and believed that the use of all the auxiliary machines would produce a better shoe and that every manufacturer ought to have the benefit of them. They would facilitate the manufacture of a shoe, but it was a grave question with many of the manufacturers whether the improvements in quality or the little savings that could be made by the use of the auxiliary machines would warrant their investing their money in those machines in a fixed form rather than using it in their business, where they turned it over two or three times a year.

"Furthermore, the removal of initial payments would allow those who were entering into shoemaking, and all the other small manufacturers who were making other kinds of shoes, to equip their factories with a complete system for making Goodyear welt shoes so that they would be as well equipped as the largest and richest manufacturer in the country. The United Company believed that if those opportunities were offered its revenue and the manufacture of the Goodyear welt shoe would be very much increased. This of course required an investment by the United Company of a very large sum of money without any immediate return.

"I believed in the Goodyear shoe. I think there is no question in the minds of manufacturers, or of wearers who know the differences between shoes, that it is the best kind of footwear for any person to wear, and our endeavor was to bring that shoe within the reach of everyone."

D. SUMMARY OF MODIFICATIONS MADE BY THE UNITED COMPANY IN THE CONSTITUENT COMPANIES' LEASES.

(1) GENERAL SUMMARY OF MODIFICATIONS.

As we have stated, the modifications made by the United Company in the constituent companies' leases were for the purpose of making the leases consistent or to meet new or special conditions requiring a change. It should be very clearly understood that these modifications did not apply merely to machines of the exact type acquired from the constituent companies, but to entirely new machines or machines remodeled, improved, made vastly more efficient by the inventions of the experts of the United Company, to which had been added many new auxiliaries similarly invented and developed mostly for the purpose of facilitating the manufacture of the Goodyear shoe. The following is a summary of the modifications:—

1. The period of all the leases has been limited to seventeen years.

This was done to make the leases consistent and to make them run for a definite term. The employment of this definite term of seventeen years did not increase the term of the leases. Some of the leases of the constituent companies ran for the life of the machine; some ran for seventeen years and for such longer time as the patents embodied in the machines were in existence, and some ran for the life of the patents and for such further time as any patents then or thereafter embodied in the machines were in existence.

2. The "Additional Machinery Clause," employed in a number of the leases of the constituent companies, requiring the lessee to take additional machines from the lessor for additional work, thus requiring the lessee to use machines of the kind leased exclusively, was eliminated from all leases in or before 1907. The "Exclusive Use Cancellation Clause," that is, a clause permitting the lessor to cancel leases of its machines of the particular kind covered by the lease, if machines of that particular kind were not used exclusively, which clause had been used by the McKay Company prior to the organization of the United Company, was substituted for the "Additional Machinery Clause" and inserted

in most of the leases of royalty paying machines. By this clause the lessee was under no obligation to use the machines of the kind used exclusively. An option was reserved to the lessor to cancel if they were not so used.

If the "Additional Machinery Clause" which had been used by the constituent companies closed the door to competitors, the "Exclusive Use Cancellation Clause" which the United Company substituted for it clearly opened the door to competition.

3. The "Full Capacity Clause" requiring the use of the machines leased to their full capacity, so far as the lessee had work which they could perform, which was employed in certain of the leases of the constituent companies, was continued by the United Company and made to apply to such of its machines as are used to measure the amount of work done and royalty to be paid.

4. The "Restricted Use Clause" was employed in alternative forms of leases for certain groups of machines limiting their use to use on shoes operated on also by one or more other groups of machines leased from the United Company.

This is the provision most strenuously attacked by the United States. It was employed prior to the formation of the United Company by the Goodyear Company, which restricted the use of its lasting machines on welted shoes to use on shoes operated on by the welter and stitcher.

This clause, as we have explained, offers a wholesale rate to those lessees who desire to use two or more groups of the lessor's machines together.

In every instance where a lease of this kind restricting the use of the machines to use with certain other groups is offered, an alternative form of lease is also offered in which the same or a smaller initial payment than that formerly required by the constituent companies is charged and such restriction is omitted. These initial payment forms of lease without the Restricted Use Clause are as favorable or more favorable than the leases offered by the constituent companies prior to the formation of the United Company.

5. The United Company has adopted the "Cancellation for Breach Clause" in its new leases, permitting it to cancel all leases with the lessee for violation of any condition expressed by the lease to be obligatory upon the lessee. This merely permits

the United Company to sever relations with a lessee who violates his agreements. Prior to the organization of the United Company the constituent companies leased their machines on a single lease, adding to the old lease the numbers of the machines leased after the first one, so a single cancellation clause gave them the right in case of necessity to sever relations with a lessee. The United Company practically makes a separate lease for each machine so that the effect of its "Cancellation for Breach Clause" is practically the same as the effect of the cancellation clause in the leases of the constituent companies.

(2) MODIFICATIONS OF LEASES OF GOODYEAR MACHINES.

The United Company made no changes in the Goodyear Machinery leases until December, 1900, a year and nine months after its organization (R. Vol. 1, p. 7, lines 19–23).

The lease then adopted (P.'s Ex. 23, R. Vol. 3, p. 204) contained in the fourth clause the same restrictions upon the use of the machines as was contained in the former Goodyear Company lease (P.'s Ex. 23, par. Four, R. Vol. 3, p. 207; for description of this lease see also *supra*, pp. 262–264). This new form of lease was made applicable both to the welt set and the turn set of machines; the Goodyear Company had used different leases for the two sets of machines (R. Vol. 1, p. 7, lines 23–26).

In the new lease the United Company omitted the clause previously contained in the turn set lease (P.'s Ex. 3) by which the lessee agreed in Clause Sixth not to use in its factory any sewing machines not leased from the lessor and substituted the "Exclusive Use Cancellation Clause" giving the lessor an option to cancel if its machines were not used exclusively (P.'s Ex. 23, par. Seven, R. Vol. 3, p. 209). The royalty in turn shoes was reduced 50 per cent. from a net price of 1½ cents for women's shoes to ¾ of a cent (P.'s Ex. 23, R. Vol. 3, p. 207).

The principal changes then were the reduction of the royalty on the turn machines and the elimination of the agreement in the turn lease that the machines be used exclusively.

No further change was made until January 1, 1905. In the fall of 1904 the United Company determined to offer an optional form of lease for its Goodyear set without the initial payments.

The initial payment theretofore charged was $300 for the welter and turn machine and $300 for the stitcher (R. Vol. 1, p. 21, lines 10–12). The initial payments on the auxiliary machines ran as high as $500 for the more important machines (Defs.' Ex. 230A, R. Vol. 5, p. 443). It had been one of the purposes in forming the United Company to reduce if possible the cost of installing Goodyear machines and thus to extend their use (R. Vol. 1, p. 407, lines 22–30). January 1, 1905, a new form of lease without initial payment was put out (R. Vol. 1, p. 7, lines 36–41). Two forms of lease were provided, one for the sewing machines, including the welter and stitcher, and one for the auxiliary machines (P.'s Ex. 24, R. Vol. 3, p. 214; P.'s Ex. 25, R. Vol. 3, p. 226).

In these new forms no change was made in the restrictions imposed on the use of the machines. As in the case of the old Goodyear leases the welter and stitcher were to be used together and the auxiliary machines were limited to use with the welter and stitcher. To compensate for the removal of the initial payment the "Full Capacity Clause" was inserted, but it was made applicable only to the welter and stitcher, which are the two machines which record the amount of use (P.'s Ex. 24). The lessee agreed to pay royalty on all welted and turn shoes manufactured by him by the aid of machinery (P.'s Ex. 24, par. Six, R. Vol. 3, p. 218). A small minimum payment was guaranteed and a payment upon the return of the machine was provided for amounting to only ½ of the initial payment previously demanded.

In the lease of auxiliary machines a small annual rental for each machine was substituted for the initial payment (P.'s Ex. 25). This annual rental was very small compared with the initial payment previously required (Defs.' Ex. 230A, R. Vol. 5, p. 443). It was required so that a lessee should not, because they cost him nothing, take and hold auxiliary machines on which he paid no royalty, which were not needed by him.

The United Company continued to put out an initial payment form of lease (P.'s Ex. 26, R. Vol. 3, p. 241) which contained a full capacity clause, but otherwise was substantially the same as the form adopted in 1900 which followed the old Goodyear form of lease. The lessee, therefore, who chose to make the initial payments which had been required by the Goodyear Company and the United Company theretofore could just as

before get machines on the same terms previously asked by the Goodyear Company.

As Mr. WINSLOW testified:—

> "Both forms of Goodyear department leases, the old initial premium form and the non-initial premium form, have been continued as alternatives up to the present day at the choice of the manufacturer.
>
> "The difference between these leases, other than the initial premium, is that under the non-initial form the lessee paid royalty on all shoes welted or stitched in his factory, while on the initial form he paid royalty on all shoes welted or stitched on the leased machines" (R. Vol. 1, p. 442, lines 4–12).

In addition to these modifications in the regular form of leases various riders have from time to time been adopted to meet the wishes of lessees having special conditions to meet or special uses to which they wished to put the machine (Defs.' Exs. 278–279–280–281–283–284–285–286–287–288–289–290–291–292–293–294, R. Vol. 5, pp. 777–94). For example, Defendants' Exhibit 278 permits the auxiliary machines of the Goodyear Department to be used upon classes of footwear other than Goodyear Welt shoes. (For an explanation of these riders see R. Vol. 1, pp. 822–5.) When any such rider was executed for one lessee it was immediately made available to any lessee who wished it (R. Vol. 1, p. 823, lines 7–16).

Mr. DONHAM testified:—

> "Before the formation of the United Company the Goodyear Company charged an initial payment of $300 each on the welter and the stitcher. That sum has never been increased by the United Company. Wherever an initial payment has been charged by the United Company on the welter and the stitcher it has remained the same; but in 1905 the United Company offered those machines without that initial payment. The royalty charged by the Goodyear Company, before the United Company was formed, was the same as to-day. It has never been increased, but in the meantime both the welter and the stitcher have been very much improved, the auxiliary machines which the Goodyear Company had have been improved, and the United Company has introduced many additional auxiliary machines, all for the same royalty.

"In Plaintiff's Exhibit 25, the form of lease for Goodyear auxiliary machines, the figures in column 2 of the schedule are the small annual rentals paid for the machines against which they are set, when the machines are taken without initial payment. Otherwise there is no charge whatsoever for the use of those machines, but they are limited to use with the welting and stitching machines, in respect to which there is a royalty charge. That royalty charge for the principal machines is the same whether the lessee has the auxiliary machines or not.

"When the United Company was formed there were 16 or 17 auxiliary machines. The number has been increased, and now there are about 30 auxiliary machines. Those are all furnished to lessees of the welter and stitcher in the same way that the original 16 or 17 machines were furnished, without increase in the royalty and for a similar nominal charge.

"The United Company has reduced the royalty charged by the Goodyear Company for the use of its machines in making turn shoes, so that it is now only fifty per cent. of the royalty which was charged by the Goodyear Company" (R. Vol. 1, p. 21, lines 10–42).

The result of the modifications in the Goodyear leases has been an enormous saving to shoe manufacturers. In the first place, the lessee can get his machines without an initial payment. In the second place, the royalty on turn shoes has been reduced 50 per cent. In the third place, the lessee is given for the same royalty previously charged on welt shoes and one-half the royalty previously charged on turn shoes a vastly improved welter and stitcher and much improved auxiliary machines, and, due to the development and acquisition of new auxiliary machines the lessee is also offered for this same royalty 35 welt auxiliary machines instead of 13 welt auxiliary machines furnished in 1899, and 9 turn auxiliary machines instead of 3 turn auxiliary machines offered in 1899 (Defs.' Exs. 242–243–244–245, R. Vol. 5, pp. 681–3). In view of the charge of the petition that the defendants designed "to enhance the cost of said machines to users thereof" (R. Vol. 1, p. 997) the foregoing illustration of the reduction in cost to users of the machines is illuminating.

The elimination of the initial payments has enabled many shoe manufacturers of small capital to manufacture Goodyear Welt and Goodyear turn shoes.

Furthermore, the history of these Goodyear leases refutes

completely the charge that the defendants planned to "refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind," which is the charge on which the petition is founded (R. Vol. 1, p. 994).

The Goodyear Welter and Stitcher are as important as any machines produced by the United Company. Chapman, the patent expert for the United States, declared them to be the only essential machines for making a welt shoe (R. Vol. 2, p. 2794). The lessee of the Goodyear welter and stitcher, however, is not obligated to use any other machinery whatsoever. He is not even required by the leases to use Goodyear machinery exclusively. The clause contained in the old Goodyear Turn lease requiring the exclusive use of the lessor's turn machinery was eliminated in 1900, showing conclusively that the United Company did not plan to require an exclusive use of its machines by the adoption of new clauses in its leases as charged in the petition. The Goodyear Auxiliary Machines are limited to use with the welter and stitcher, but this clause was in the old Goodyear leases, and the lessee can use with the welter and stitcher any auxiliary machines obtained from others that he chooses. The "Exclusive Use Cancellation Clause" is applicable only to the use of the welter and stitcher; the United Company has no option to cancel its leases of its Goodyear Machines if auxiliary machines obtained from others are used. No Restricted Use Clause has been inserted in this lease. A lessee may obtain and use Goodyear machines without using any of the 250 or more other machines manufactured by the United Company.

(3) MODIFICATIONS OF LEASES OF LASTING MACHINES.

(a) Lease of Ideal Lasting Machine.

The United Company made no change in the lease of the Ideal Lasting Machine until August, 1901. It then put out a new form which substantially followed the old Goodyear form (R. Vol. 1, p. 6, lines 22–29). (Goodyear Company's form P.'s Ex. 3, R. Vol. 5, p. 37; *supra*, pp. 264-265; new form P.'s Ex. 18, R. Vol. 3, p. 154). As in the old form the use of the machine was restricted to use on shoes operated on by the Goodyear

Welter and Stitcher and the auxiliaries were restricted to use with the principal machine. Under the new form the royalty and initial payment remained the same. The lease contained the "Full Capacity Clause" and the "Exclusive Use Cancellation Clause." The clause in the former lease requiring the lessee to purchase from the lessor all tacks used in the loose tackers was omitted.

No other lease of Ideal machines has been put out (R. Vol. 1, p. 6, lines 28–9). It is to be noted that the United Company inserted no new provision obligating the lessee to use any other machines or requiring the lessee to use its lasting machines exclusively.

These machines were used only to a comparatively small extent and on the introduction of the new No. 5 laster became practically obsolete (R. Vol. 1, p. 971, lines 5–8).

(b) Lease of McKay and Copeland Lasting Machine.

The form of lease used by the Consolidated Company (P.'s Ex. 6, R. Vol. 3, p. 45; see also, for description of this lease, *supra*, pp. 265-266) continued to be the only form used until August, 1903, four and one-half years after the formation of the United Company (R. Vol. 1, p. 6, lines 38–39). The United Company then put out an additional form (P.'s Ex. 20, R. Vol. 3, p. 172). This lease reduced the initial payment previously required from $695 to $500 or less (R. Vol. 1, p. 454, lines 3–8) and contained a "Restricted Use Clause" limiting the use of the machine to use with the United Company's welter, stitcher, pegger, metallic and heeling machines. It continued the "Full Capacity Clause" which was in the old form of lease. It omitted, however, the "Additional Machinery Clause" and instead inserted the "Exclusive Use Cancellation Clause." The elimination of the "Additional Machinery Clause" eliminated the requirement of exclusive use; the insertion of the "Restricted Use Clause" was coincident with the reduction of the initial payment. The new form of lease was an alternative form, and any lessee could still obtain the old form if he desired it (R. Vol. 1, p. 852, lines 5–21).

These machines were used to a comparatively small and continually decreasing extent (R. Vol. 1, p. 454, lines 8–9).

(c) Lease of Chase Lasting Machine.

The form of lease used by the Consolidated Company (P.'s Ex. 7, R. Vol. 3, p. 57; see also, for description of this lease, *supra*, pp. 266-267) continued to be the only form used until June, 1901, when an additional form was adopted by the United Company (R. Vol. 1, p. 6, lines 32–35) (P.'s Ex. 19, R. Vol. 3, p. 163). The new form contained a "Restricted Use Clause" restricting the use to use with welting, stitching, and metallic fastening machines leased from the United Company. The "Additional Machinery Clause" was omitted and the "Exclusive Use Clause" substituted.

This new form was an alternative form, and the former lease without the "Restricted Use Clause" could be had by any lessee who desired it (R. Vol. 1, p. 543, lines 17–18). The use of these machines steadily declined and on the introduction of the New No. 5 Laster they became practically obsolete (R. Vol. 1, p. 971, lines 5–8).

(d) Lease of Consolidated Hand Method McKay Lasting Machine.

The Consolidated Company had two forms of lease for this machine, one requiring an initial payment of $300 and a royalty of ½ cent per pair (P.'s Ex. 8, R. Vol. 3, p. 68), the other requiring no initial payment and a royalty of ⅝ cent and containing the "Full Capacity Clause" and the "Additional Machinery Clause," thus requiring the exclusive use of the machines (P.'s Ex. 9, R. Vol. 3, p. 74; see also, for description of these leases, *supra*, pp. 267-268).

These forms were continued until the end of 1900 (R. Vol. 1, p. 5, lines 28–33). The United Company then adopted two forms of lease. It adopted an initial payment form (P.'s Ex. 14, R. Vol. 3, p. 121) in which $300 initial payment was required and ½ cent royalty (R. Vol. 1, p. 6, lines 2–5). This form contained the "Full Capacity Clause" and the "Exclusive Use Cancellation Clause." It contained no "Restricted Use Clause." The United Company also adopted a non-initial payment form (P.'s Ex. 16, R. Vol. 3, p. 137) requiring no initial payment, a royalty of ⅝ cent, and in addition to the clauses

contained in the initial form a "Restricted Use Clause" limiting the use of the machines to use with metallic fastening and Goodyear sewing machines leased from the United Company.

As to this lease, Mr. Winslow testified that the restriction as to use with Goodyear sewing machines was of no effect, as the machine was adapted for use only on McKay work on which Goodyear machines were not used. It was only inserted in the leases so that if the machines were remodeled to do welt work, they would be restricted like the welt lasting machines under Plaintiff's Exhibit 15 (R. Vol. 1, p. 540, lines 24–34).

(e) Lease of Hand Method Welt Laster.

This machine in 1899 was not perfected commercially. It was offered by the Consolidated Company on a form of lease with the "Full Capacity Clause" and the "Additional Machinery Clause" and a royalty of one cent per pair (P.'s Ex. 10, R. Vol. 3, p. 82; see also, for description of this lease, *supra*, p. 268).

This form was continued by the United Company until December, 1900, when it adopted a non-initial form (R. Vol. 1, p. 6, lines 5–9) which reduced the royalty from one cent to $\frac{5}{8}$ of a cent per pair, which continued the "Full Capacity Clause," but eliminated the "Additional Machinery Clause" and substituted the "Exclusive Use Cancellation Clause," and which contained the "Restricted Use Clause" restricting the use to use with Goodyear sewing machines (P.'s Ex. 15, R. Vol. 3, p. 129). In other words, the agreement to use the machines exclusively was eliminated, the royalty was reduced, and a "Restricted Use Clause" substituted. The United Company later (December, 1906) adopted another alternative form requiring an initial payment of $300, a royalty of $\frac{5}{8}$ of a cent, but which contained no "Restricted Use Clause" (P.'s Ex. 17, R. Vol. 3, p. 145; R. Vol. 1, p. 6, lines 15–21).

(4) MODIFICATIONS OF LEASES OF HEELING MACHINES.

The lease of heeling machines put out by the McKay Company required a royalty of $\frac{1}{4}$ cent and contained an "Exclusive Use Cancellation Clause" (P.'s Ex. 11, R. Vol. 3, p. 90; see also, for description of this lease, *supra*, pp. 268-269).

The United Company made no change in this lease until January, 1900 (R. Vol. 1, p. 9, lines 23–24). At that time the United Company adopted an additional form of lease, continuing the same royalty and containing the "Full Capacity Clause," and the "Additional Machinery Clause" (P.'s Ex. 27, R. Vol. 3, p. 254). In 1904 (R. Vol. 1, p. 9, lines 29–32) it adopted for the first time a form of lease containing a Restricted Use Clause limiting the use of the machines to use with Goodyear sewing machines, lasting, pegging, and metallic machines leased from the lessor (P.'s Ex. 28, R. Vol. 3, p. 261). No initial payment was required. The Additional Machinery Clause was eliminated. After the adoption of this form the United Company furnished its heeling machines, which had been much developed and improved since 1899, with an initial payment, and without the Restricted Use Clause, by attaching a rider to Exhibit 28 inserting the initial payment and striking out the Restricted Use Clause (R. Vol. 1, p. 9, line 38–p. 10, line 23).

The reason for the insertion of the Restricted Use Clause in 1904, was, as we have explained above (*supra*, pp. 282-283), that at that time the United Company determined to adopt the non-initial form of Goodyear lease, thus depriving itself of a large cash initial payment. This it could afford to do only if certain of its principal machines were used in groups so that the Goodyear Welter and Stitcher could be used efficiently and without interruption. The limitation in the use of the heeling machines when taken under the non-initial form of lease was, therefore, inserted in order to make the use of the Goodyear Welter and Stitcher more efficient and productive and compensate in part for the removal of the initial payments previously charged for these machines (R. Vol. 1, p. 440, line 16 *et seq.*).

(5) MODIFICATIONS OF LEASES OF METALLIC MACHINES.

Prior to 1899 this machinery was put out on a lease requiring the lessee to purchase all metallic material used in the machine from the lessor or pay a royalty of ten cents a pair on the shoes operated on. No initial payment was required, but the lease contained the "Exclusive Use Cancellation Clause" (P.'s Ex. 12, R. Vol. 3, p. 103; see also, for description of this lease,

supra, p. 269). A short time prior to 1899 the McKay Company had discontinued the use of this lease and had been temporarily putting out its machines without leases pending the adoption of the new form. This practice was continued by the United Company up to March, 1900 (R. Vol. 1, p. 438, lines 10–13). In March, 1900, the United Company adopted the form of lease requiring no initial payment, containing the Full Capacity Clause and the Additional Machinery Clause, but containing no Restricted Use Clause and no Exclusive Use Cancellation Clause (P.'s Ex. 29, R. Vol. 3, p. 272; R. Vol. 1, p. 10, lines 24–28).

In June, 1900, a lease containing a Restricted Use Clause was adopted restricting the use of the metallic machines to use with welt-stitching and lasting machines obtained from the lessor (P.'s Ex. 30, R. Vol. 3, p. 278). The "Additional Machinery Clause" was eliminated and a clause was substituted permitting the lessor to cancel if the lessee did not take additional machinery. The entire return to the United Company on its metallic machines came from the use of copper wire which the lessee used in the machine and was required to purchase from the lessor. Copper had increased so much in price that at the price charged by the United Company for the wire it did not receive a fair royalty on its machines. Instead of increasing the price of the wire it restricted the machines to use with the Goodyear and Lasting Machines, thus obtaining an indirect royalty through the royalties received on these other machines. The reasons for so doing are fully explained above (*supra*, pp. 276–278).

Shortly afterwards, in March, 1901 (R. Vol. 1, p. 10, line 40–p. 11, line 2), the United Company adopted a form requiring no initial payment and containing no Restricted Use Clause, in which form it reserved the right to charge 10 per cent. more for fastening material than was charged under the lease containing the Restricted Use Clause (P.'s Ex. 31, R. Vol. 3, p. 287). It also adopted a rider, which it attached to the Restricted Use form of lease (P.'s Ex. 30), eliminating the Restricted Use Clause and substituting an initial payment (P.'s Ex. 32, R. Vol. 3, p. 297; see also R. Vol. 1, p. 11, lines 5–17). A lease with this rider incorporated was drawn up in 1911 (P.'s Ex. 33, R. Vol. 3, p. 307; R. Vol. 1, p. 11, lines 18–20). A lessee of metallic machinery has, therefore, been at all times since 1901 able to take a non-

initial form of lease containing the Restricted Use Clause or a lease without the Restricted Use Clause under which he paid not in excess of 10 per cent. more for material or, at his option, paid an initial premium.

The lease adopted in March, 1901, without the Restricted Use Clause was the result of negotiations with the shoe manufacturers (R. Vol. 1, p. 439, lines 13–19), who acted through the New England Manufacturers' Association (R. Vol. 1, p. 635, lines 18–42). Plaintiff's Exhibit 31 was agreed upon as satisfactory in every respect to the shoe manufacturers (R. Vol. 1, p. 635, lines 35–38). It was agreed that a lessee could change his lease from the form containing the Restricted Use Clause (P.'s Ex. 30) to the form without the Restricted Use Clause (P.'s Ex. 31) at any time prior to February 1, 1902 (R. Vol. 1, p. 663). The United Company further stated its intention to offer both leases indefinitely after February 1, 1902 (R. Vol. 1, p. 663, lines 24–26) which intention was carried out (R. Vol. 1, p. 664, lines 1–4). Most shoe manufacturers took the form of lease containing the Restricted Use Clause (R. Vol. 1, p. 664, lines 4–8).

(6) MODIFICATIONS OF LEASE OF DAVEY PEGGING MACHINE.

The lease of the Davey Pegging Machine Company, at the time of the formation of the United Company, required an initial payment of $100, required the lessee to do all his pegging on the leased machines, and contained the Additional Machinery Clause (P.'s Ex. 13, R. Vol. 3, p. 113; see also, for description of this lease, *supra*, p. 270). This lease was used by the United Company until 1901 (R. Vol. 1, p. 14, lines 36–37), when the United Company adopted a form of lease which eliminated the initial payment, and which also eliminated the Additional Machinery Clause and the agreement to use exclusively (P.'s Ex. 45, R. Vol. 3, p. 413). It contained the Full Capacity Clause and the Exclusive Use Cancellation Clause and also a Restricted Use Clause limiting the use of the machine in connection with the United Company's lasting and metallic machines. It also adopted an initial payment form of lease (R. Vol. 1, p. 14, lines 43–45) which contained no Restricted Use Clause (P.'s Ex. 46, R. Vol. 3, p. 422).

Here again the Restricted Use Clause was inserted upon the removal of the initial payment, and the old form of lease without the Restricted Use Clause was continued as an alternative. In this case also the Additional Machinery Clause and the agreement to use exclusively were eliminated.

E. LEASES ADOPTED BY THE UNITED COMPANY FOR NEW MACHINES.

Many new machines, as we have stated, especially in the Goodyear Department, which were auxiliary to principal machines already in use, were added to the line of auxiliary machines already leased without charging any additional royalty and were leased under the existing forms of lease.

In the case of other new machines new leases were necessarily adopted which were substantially similar to the forms of lease in use at the time. In the case of all important machines two alternative forms were adopted. In one form no initial payment was charged and there was a Restricted Use Clause restricting the use to use in connection with machines of one or more of the following groups, namely, Goodyear sewing machines (*i.e.*, the Welter and Stitcher), lasting machines, metallic machines, and in certain cases pegging and heeling machines, and in one instance pulling-over machines. In the other form of lease an initial payment was charged and the Restricted Use Clause was omitted. In the case of most of the General Department machines the alternative was the right to purchase, the machines being sold outright.

(I) Pulling-over Machine Leases.

The pulling-over machines were invented and developed by the United Company and the first lease put out about 1902 (R. Vol. 1, p. 11, lines 37–40). This first form of lease (P.'s Ex. 36, R. Vol. 3, p. 331) contained the Full Capacity Clause, the Additional Machinery Clause, and a Restricted Use Clause limiting the use of the machine in connection with Goodyear sewing machinery, lasting machinery, metallic fastening, pegging, and heeling machinery of the United Company. By 1905 the United Company had developed a series of auxiliary machines, and a new lease was adopted (R. Vol. 1, p. 12, lines 9–13) which

covered the principal machines and the auxiliary machines and limited the use of the auxiliary machines to use in connection with the principal machines and which contained the Exclusive Use Cancellation Clause (P.'s Ex. 37, R. Vol. 3, p. 339). In other respects it was substantially similar to the previous lease.

In 1907 a lease containing substantially the same terms was adopted, except that it eliminated the Additional Machinery Clause (Defs.' Ex. 345, R. Vol. 5, p. 958; see also R. Vol. 1, p. 980, line 43; p. 981, line 20). In 1909 a new form was adopted which permitted the use of the auxiliary machines on shoes not operated on by the principal pulling-over machine and which contained the same Restricted Use Clause. It likewise omitted the Additional Machinery Clause (P.'s Ex. 38, R. Vol. 3, p. 350).

An alternative form of pulling-over lease requiring an initial payment and omitting the Restricted Use Clause was also offered lessees (P.'s Ex. 39; R. Vol. 3, p. 363).

(2) Clicking Machine Lease.

The Clicking Machine was invented and developed by the United Company about 1908 (R. Vol. 1, p. 14, lines 27–33). The lease adopted for this machine has never had a Restricted Use Clause limiting its use in connection with other groups of machines (P.'s Ex. 44, R. Vol. 3, p. 402). The lease provides that the lessee shall pay a certain sum in respect to all dies used on the machines. It further provides for a royalty payment when the machine is used on shoes lasted on machinery not leased from the United Company or welted or stitched on machinery not leased from the United Company. It contains the "Exclusive Use Cancellation Clause."

(3) Eyeletting Machine Leases.

The United Company first developed and put out its eyeletting machines in 1902 (R. Vol. 2, pp. 2617–22, 2636).

The United Company adopted a form of eyeletting machine lease requiring an initial payment of $100 and containing no Restricted Use Clause (P.'s Ex. 42, R. Vol. 3, p. 387; P.'s Ex. 173, R. Vol. 4, p. 1184). It also adopted a non-initial form of lease containing a Restricted Use Clause limiting the use in connec-

tion with Goodyear sewing, lasting, pegging, metallic fastening and heeling machinery of the United Company (P.'s Ex. 43, R. Vol. 3, p. 394; P.'s Ex. 172, R. Vol. 4, p. 1176).

Neither lease contained the Exclusive Use Cancellation Clause. Both leases required as royalty the use of eyelets purchased from the lessor.

The Vulcan Foot-power Eyeletting Machine was put out for an initial payment of $15 and was never restricted to use with other machines and the lease covering it did not contain the Exclusive Use Cancellation Clause (R. Vol. 1, p. 28, lines 20–24; P.'s Ex. 174, R. Vol. 4, p. 1191).

(4) No. 5 Lasting Machine Leases.

The No. 5 Lasting Machine is a new type of lasting machine invented and developed by the United Company and first put out about 1908 (R. Vol. 2, p. 2378).

Two forms of lease were adopted for this machine,—one requiring an initial payment and containing no Restricted Use Clause restricting its use to use with other machines (P.'s Ex. 22, R. Vol. 3, p. 193); the other a restricted use form of lease requiring no initial payment and restricting the machine to use with the United Company's Goodyear Welter and Stitcher, pulling-over machines, and metallic machines (P.'s Ex. 21, R. Vol. 3, p. 182). Both forms of lease have the Exclusive Use Cancellation Clause.

(5) General Department Machine Leases.

The General Department machines, comprising over 170 different machines (Defs.' Ex. 227, R. Vol. 5, p. 425), were all invented or developed by the United Company after its formation.

The General Department machines have at the option of the shoe manufacturer been either sold or leased. Since 1912 they have been only sold (R. Vol. 1, p. 12, line 37–p. 13, line 30). The leases of these machines required a small initial payment or a small annual rental, but called for no royalty. They contained a Restricted Use Clause restricting use to use with other groups of the defendants' machines. Under this form of lease the United Company, outside of the small initial payment or rental provided for by the lease, receives no return, except indirectly

through the royalties received from other groups of machines to use with which the General Department machines are restricted and through the added efficiency of such other groups of machines.

Plaintiff's Exhibit 40 (R. Vol. 3, p. 373), adopted in 1902 (R. Vol. 1, p. 13, lines 9–16), is the General Department lease requiring an initial payment. It has a Restricted Use Clause restricting the use to use in connection with the lessor's Goodyear sewing, lasting, pegging and metallic fastening machinery. It contains no Exclusive Use Cancellation Clause or Full Capacity Clause. The purpose of these two clauses is to insure an adequate return in the way of royalties to the lessor. As the General Department machines carry no royalty, the clauses are omitted.

Plaintiff's Exhibit 41 (R. Vol. 3, p. 379) is the form of General Department lease requiring a small yearly rental. It contains the same Restricted Use Clause and, like the initial payment form, contains no Exclusive Use Cancellation Clause or Additional Machinery Clause.

(6) Insole Machine Leases.

Before the United Company was formed the Gem Flexible Insole Company was engaged in the business of manufacturing and leasing a set of machines for making the patented Gem insole, a light canvas insole for use with welt shoes. After the United Company was formed the patents on the insole and the machines for producing it were acquired (R. Vol. 1, p. 15, lines 16–21). The United Company added the Gem Insole Machine to its Goodyear auxiliary set and abated the ½ cent a pair formerly charged (R. Vol. 1, p. 430, lines 11–13; p. 571, lines 24–29).

The lease of the Gem Insole Machine contains a Restricted Use Clause limiting the use to the manufacture of patented insoles to be used on welt shoes welted and stitched on the United Company's machines. It contains no Exclusive Use Cancellation Clause or Full Capacity Clause (P.'s Ex. 51, R. Vol. 3, p. 443).

As to the company's action respecting the Gem Insole machines Mr. Winslow testified that they did it,

"so as to reduce the cost to the manufacturer of the Goodyear welt shoe, as we have all of these things that you have treated in that way. The reason we took off the initial payment and put it out on rental was because we were hoping to increase the total manufacture of those shoes and thereby benefit the public" (R. Vol. 1, p. 571, lines 37–42).

Some years later (1907) the company acquired the patent for the Economy insole for welt shoes (R. Vol. 1, p. 15, lines 35–39).

The lease of the Economy insole machine (P.'s Ex. 52, R. Vol. 3, p. 450) limits the machines to making a patented insole to be used on Goodyear Welt and Turn shoes. The auxiliaries are limited to use with the principal machine. It contains the Full Capacity and Exclusive Use Cancellation Clauses. This is practically an auxiliary Goodyear machine except that in distinction from the other auxiliary machines a small royalty is charged for its use.

(7) McKay Sewing Machine Lease.

The constituent companies did not manufacture the McKay sewing machine. When the United Company started to manufacture it, it always either sold the machine or leased it at the option of the manufacturer. The machine was sold for $250 to $600 according to the type of the machine. It was leased for an initial payment of $100 and a rental of $5 per month and without any further royalty charge (R. Vol. 1, p. 29, lines 25–35). The lease (P.'s Ex. 170, R. Vol. 4, p. 1161) limited the use of the machine to use on shoes lasted by the United Company's machines. It contained no Full Capacity or Exclusive Use Cancellation Clause, as the machine was not a royalty machine.

The United Company did not begin to put out the machines covered by this lease till 1908 (R. Vol. 1, p. 977, lines 11–12).

F. USE OF RIDERS AND SPECIAL FORMS OF LEASE.

The United Company was always ready to adopt a new form of lease or a rider modifying its existing form of lease to meet new conditions or to accommodate lessees who wanted to use machines of other makers together with machines of the United

Company (R. Vol. 1, p. 442, line 42; p. 443, line 2). The regular forms of lease set forth are only such as are in general use. In addition the United Company had numerous riders which were adopted to meet such special conditions as they arose. (For the application of the various forms of riders see R. Vol. 1, pp. 822–828.) When any such rider was given one lessee other lessees were always free to obtain it (R. Vol. 1, p. 823, lines 7–16). Examples of such riders and agreements are given in Defendants' Exhibits 278–310 (R. Vol. 5, pp. 777–838).

Mr. WINSLOW testified:—

> "When lessees believed they wanted to put in machines other than those held from our company, or when it seemed to them that the necessities of their business required that they do this, the policy of the company has been to reorganize the leases which they then had so as to leave them in a position to use those other machines" (R. Vol. 1, p. 442, line 42; p. 443, line 2).

12. REASONS FOR USE OF THE VARIOUS CLAUSES AND THEIR LEGALITY.

An examination of the business conditions which led to the adoption of the various clauses will show that they were adopted either to enable the lessor to offer its machines on the best possible terms and so far as possible without initial charge to the lessees, so as to enable them to embark in the business or extend their business, or to provide for reasonable and proper protection to the lessor, and that such clauses or similar clauses are essential to a commercially satisfactory leasing system when the return to the lessor on its investment is based on the amount to which the machines are used.

A. CLAUSE REQUIRING LESSEE TO PURCHASE FROM THE LESSOR ALL REPAIR PARTS NEEDED IN THE MACHINE.

The United States in its petition alleges that lessees were required by the defendants to obtain duplicate parts for the leased machines from the United Company at exorbitant prices (R. Vol. 1, p. 997).

The only evidence offered in support of this allegation that exorbitant prices were charged is as follows:—

Frank C. Rand testified that he paid the United Company $25 for a pair of legs for a leveling machine and that he had a set of legs made himself for $6 not counting overhead charges (R. Vol. 1, p. 179, lines 9–13). On cross-examination he admitted that he did not know whether his mechanic made one or four legs and whether they were wrought or cast iron, and that his statement was hearsay at best (R. Vol. 1, p. 184, lines 25–41).

Herbert L. Cann, the local manager for the United Company in the St. Louis district, testified that the part which broke in Rand's leveling machine was not a leg which supports the machine, but a spindle which supports the last and which is referred to as a leg. This spindle is about 16 inches long, the bottom being made of wrought iron and the upper part of steel. The top part of the spindle in Rand's machine broke and his mechanic merely substituted a new top about 4 inches in length (R. Vol. 1, p. 749, lines 1–15). The United Company supplied entire spindles at $20 a pair (R. Vol. 1, p. 750, lines 10–13). After a year or so Rand obtained new spindles from the United Company to replace the repaired spindles (R. Vol. 1, p. 749, lines 16–17). It appears clearly, therefore, that Rand replaced only a portion of the spindle which the United Company furnished and for which it charged.

Carl H. Gleason, a witness for the defendants, testified that he had been employed in the Cost Department of the W. H. McElwain Company, one of the biggest companies in the country, and he had made a study of the cost of repair parts on the machines that the McElwain Company obtained from the United Company. He testified as follows (R. Vol. 1, p. 714, lines 17–40).

> "The cost per pair of shoes for the repair parts on these machines was as follows:—
>
> "Universal channeler, .001 of one cent; insole tacker, .005 of one cent; Rex assembling machine, .009 of one cent, Rex pulling over machine, .07 of one cent; Consolidated hand method lasting machine, .005 of one cent; No. 5 laster, .06 of one cent; tack puller and resetter, .008 of one cent; sole layer, model B, .007 of one cent; loose nailer, No. 2, .01 of one cent; Universal rounder and channeler, .01 of one cent; Rounder and channeler, model E, .01 of one cent;

Goodyear automatic leveler, .002 of one cent; lightning heeler, .004 of one cent; Mayo heeler, .008 of one cent; Universal slugger, .01 of one cent; edge setter, .02 of one cent.

"On the welter and stitcher my computation includes, in addition to mere parts, the cost of awls and needles which the machines are using all the time and which are ordinarily classed as supplies. The cost per pair of shoes for the model G welter, including awls and needles, was .15 of one cent per pair; for the model K stitcher, including awls and needles, .2 of one cent per pair; for the model M stitcher, including awls and needles, .08 of one cent per pair.

"I also computed the cost of repair parts on the model K stitcher, not including the needles and awls, and that is .1 of one cent per pair."

Mr. Winslow testified that the profits of the United Company from repair parts for the year 1911 were $276,000, while the net cost of repairing and putting into condition Goodyear, heeling, lasting, pulling-over, and metallic machines returned by lessees *in excess* of the charges made to customers for such work was $277,763.49, that is, $1,600 more than the entire profits on the parts (R. Vol. 1, p. 853, lines 12–18). He further testified that from the figure of $276,000 as profits for parts there had not been deducted any interest on capital or loss on obsolete parts (R. Vol. 1, p. 853, lines 1–8), although the loss from repair parts that are manufactured and are never used because they become obsolete runs into thousands each year (R. Vol. 1, p. 853, lines 9–11), and although the United Company carried an investment in parts for the year 1911 amounting to $1,415,474.49 (R. Vol. 1, p. 979, lines 3–5), on which, of course, it receives no interest return. It, therefore, appears that the total business of supplying parts and repairing returned machines shows a considerable loss. In the charge for repair parts the United Company does not take into account or include the cost to it of the services and expenses of its repair men, amounting to over $1,100,000 a year (R. Vol. 1, p. 554, lines 11–13; p. 979, lines 12–13).

Mr. Winslow further testified that the prices for repair parts, to the best of his knowledge and belief, are the same prices that would be charged by any other company manufacturing parts for machines; and that the prices charged for parts on General Department machines which were sold so that the owner was

under no obligation to purchase parts from the United Company were on the same basis as parts for leased machines where the lessee was required to purchase the new parts from the United Company (R. Vol. 1, pp. 553–4).

This provision is clearly necessary in the leases for the protection of the lessor. The leased machines are the property of the lessor. The new parts placed in the machine become the property of the lessor. When a part wears out it must be replaced by a part which is equally good and which has been made to fit that particular machine; if replaced by a cheaper part, or one which does not properly fit, the machine will be depreciated in value. The cheap part may also cause the machine to break down and thus prevent its earning royalty, and likewise stop work on other royalty-producing machines.

The lessor could properly provide that all repairs to its own machines should be made by itself and that the lessee should have no right to make repairs at all. In such a case the lessor could, of course, provide its own parts needed in the machine. When the lessee is permitted to make repairs himself, he cannot complain because the owner of the machine controls the character of the parts replaced. Nor can a competing shoe machinery manufacturer demand a right to supply parts for machines owned by the United Company.

This clause was employed in all the leases of the constituent companies prior to the formation of the United Company. Its continuance by the United Company was obviously necessary for its protection and constitutes no evidence of a plan to monopolize shoe machinery.

B. CLAUSE REQUIRING PAYMENT OF A RETURN CHARGE ON TERMINATION OF THE LEASE.

The petition charges that the United Company exacted a return charge at the termination of its leases which in some cases amounted approximately to the original cost of building the machines. It appeared in certain of the leases that a small return charge upon the expiration of the lease was required. Absolutely no evidence was introduced as to the cost of building the machines so leased or the comparative amount of this return charge. There is no evidence that the return charge was in any way exorbitant or oppressive.

On the contrary, it was shown that for the year 1911, a typical year, the cost of putting returned machines into condition for use was approximately $350,000, and the charges to lessees on account thereof only about $70,000, showing a loss to the United Company of $277,763.49 (R. Vol. 1, p. 853, lines 15–23).

This allegation of the petition is, therefore, only another example of the unfounded character of the charges made by the United States.

C. CLAUSE LIMITING THE TERM OF THE LEASE TO SEVENTEEN YEARS.

The leases of the constituent companies ran for long and indefinite periods. Thus the leases of certain lasting machines ran for the life of the machines. The McKay Company's heeling machine leases ran for seventeen years and for such further time as the patents embodied then or thereafter in the leased machine were in effect, and the other leases ran for the life of the patents then or thereafter embodied in the machines. These leases gave the lessor the right to attach improvements to the machines and thus gave it the right by attaching patented improvements to extend the life of the leases indefinitely. As many if not most of the machines when leased embodied inventions for which patents had recently been granted, or for which applications were still pending, and as in most instances improvements in the machines were made from time to time after they were leased, it is obvious that the leases of the constituent companies in most cases ran for more than seventeen years.

The adoption by the United Company of this term for all its new leases did not extend the period and affords no evidence of an intent to obtain a monopoly by new methods as charged in the petition. It was obviously adopted to make the leases consistent.

A long term is essential both from the point of view of the lessor and from the point of view of the lessee. If the United Company is called upon to build and place in the hands of shoe manufacturers millions of dollars' worth of machinery without receiving any initial payment, it obviously cannot do this unless the shoe manufacturers are willing to take this machinery for an

extended period so that the resulting royalties will compensate the United Company. The shoe manufacturer also requires an extended period. He proposes to engage in the business on the strength of obtaining patented machinery without initial cost. He must be assured of the right to retain this machinery for an extended period. If his leases ran only for a few years, he might find that after he had established a good-will and built up the business at considerable expense his leases of machines terminated and he could not extend the leases or obtain the machines elsewhere, or his royalties might be greatly increased or he might be required to buy his machines outright and not have sufficient capital to do so.

A lease of shoe machinery under these conditions is like a lease of a building erected for the use of a particular tenant. The landlord refuses to erect the building unless the prospective lessee agrees to take a lease for a sufficiently long term to compensate him for the capital invested in the building. The lessee on his part is unwilling to locate his business on the premises and establish a good-will in that locality unless he is assured of its permanency by means of a long lease.

The United States will doubtless contend that the long term of the leases makes it more difficult for the rival shoe manufacturers to compete. If this is so, it is merely incidental to a normal and proper contract. That bankers, brokers, and other business concerns have long leases of the premises occupied by them makes it more difficult for the owner of a new building to obtain tenants, but this does not make such leases illegal; that owners of cotton mills are already supplied with cotton machinery makes it more difficult for a manufacturer of new machinery to dispose of his product. If the leases ran for shorter terms,—say for ten or twelve years,—the rival shoe manufacturer would find substantially the same difficulty. Indeed, if the machines had been purchased outright by the shoe manufacturers, it is difficult to see, so far as this seventeen-year term is concerned, how the rival machinery manufacturer would be better off. Shoe manufacturers, if they had purchased machinery, would not discard it until it became obsolete or worn out. Their demands for new machinery would be limited to their requirements for additional machinery.

As said in *Coppage* v. *Kansas*, 236 U. S. 1 (p. 21):—

> "For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct."

Nor can the shoe manufacturer complain because he is bound for an extended term. He demands the assurance of an extended period during which he cannot be deprived of his machines, nor his royalties be increased.

In *Chicago, etc., R.R.* v. *Pullman Car Company*, 139 U. S. 79, the court held legal a contract giving an exclusive right to the Pullman Company to furnish drawing-room and parlor cars for a period of fifteen years, not only on the railroad company's then road but on any roads thereafter owned by it. The contract was held legal in spite of its extended term and in spite of the fact that it granted an exclusive right to furnish cars, the court saying (pp. 89–91):—

> "We cannot perceive that such a contract is at all in restraint of trade. . . .
>
> "But we are of opinion that public policy did not forbid the Railroad Company from employing the Pullman Southern Car Company to supply drawing-room and sleeping cars to be used by its passengers and, as a means of inducing the plaintiff to perform this public service and to incur the expense and hazard incident thereto, from giving it an exclusive right to furnish cars for that purpose. . . .
>
> "The stipulation, therefore, that the plaintiff, not being in default, should have the exclusive right for fifteen years to furnish drawing-room and sleeping cars for the defendant's use, and that the defendants should not, during that period, contract for cars of that kind with any other party, rightly construed is not unreasonable, and, properly performed, will promote the convenience of the public in that it enables the defendant to have on its lines, at all times, and as the requirements of travel demand, drawing-room and sleeping cars for use by passengers."

The United States complains that this seventeen-year term may extend the lease beyond the life of the patents embodied in the machines.

But the validity of this term is not dependent on the machines being patented. It is a normal and legitimate agreement desirable for the protection of both parties, and it, therefore, gives rise to no inference of illegal intent whether or not the machines are patented.

The fact that the machines are patented, however, affords an additional reason for holding this term legal. Patents are granted to recompense the inventor by enabling him to make a profit. For this purpose the patentee is granted a monopoly of the right to make, use, and sell the patented invention. The patentee in disposing of these rights, that is, in permitting others to make use of them, may impose any conditions he sees fit not in their very nature illegal.

Bement v. *National Harrow Co.*, 186 U. S. 70.

If the patentee feels that his invention is of great value and the price he is entitled to charge is so high that few might pay it, but that he can get an equivalent amount by leasing the machine for an extended period, charging a royalty for its use, he is entitled to do so. He can demand as long a term as manufacturers will agree to. If the public takes his machines on leases extending over a period of years in preference to other machines for shorter terms, it is because they believe the patentee's invention is of sufficient value to justify the extended agreement. The public, therefore, profits by obtaining the use of the invention more than it can lose by the extended term. The public is free to take or decline the invention on the terms offered. By taking it on these terms it proves that the use of the invention more than offsets the detriment, if there be any detriment involved in the length of the lease. Public policy does not forbid such an extended lease of patented articles; if it did, it might deprive the public of their use at all. As said by the court in *Henry* v. *Dick Co.*, 224 U. S. 1 (pp. 34–35), with reference to illustrations of conditions imposed by patentees which it was contended public policy should forbid:—

> "But these illustrations all fail of their purpose, because the public is always free to take or refuse the patented article on the terms imposed. If they be too onerous or not in keeping with the benefits, the patented article will not find a market. The public, by permitting the invention to go unused, loses nothing which it had before, and when the

patent expires will be free to use the invention without compensation or restriction."

The right to use the machine during the existence of the patent is of greater benefit than the obligation to pay for and use it after the patent expires or the public would reject the proposed terms.

The United States may object that the machines leased may become obsolete before the expiration of seventeen years and the lessee be obliged to continue paying for them after more efficient machines can be obtained elsewhere. No such condition has yet existed; the United Company has kept abreast of the times and given its lessees the benefits of the best improvements, and its lessees appear to have confidence that it will continue to do so. This argument is based upon too remote a contingency as held by the District Court (R. Vol. 1, p. 1177) and as held in *United Shoe Machinery Company* v. *Brunet*, 1909, A. C. 330.

Furthermore, while this clause permits the United Company to compel a lessee to retain the particular machine leased for the period of the lease, the record shows that the United Company in practice constantly varied this right, and furnished lessees with new or improved machines as they were developed without additional charge of any kind, taking back the old leased machines and scrapping them.

The record then shows that the adoption of the seventeen-year term actually reduced the term required by the constituent companies. It is clear that an extended term is a benefit to both parties, and there is not the slightest evidence that the term was adopted or used to oppress shoe manufacturers.

D. FULL CAPACITY CLAUSE.

The "Full Capacity Clause" requires the lessee to use the leased machines to capacity so far as he has work in his factory which they can perform. An example taken from the United Company's lease of its No. 5 Lasting Machine (P.'s Ex. 21, R. Vol. 3, p. 182, at p. 185) is as follows:—

"Subject to the foregoing limitations, the lessee shall use the leased machinery to its full capacity upon all boots, shoes or other footwear or portions thereof made by or for the

lessee in the manufacture or preparation of which such machinery is capable of being used."

The reason for this clause is obvious.

The lessor invests its money in a valuable machine, installs it in the lessee's factory, and instructs his operatives, relying for his return on a royalty paid on each pair of shoes on which the machine is used. The machine must be used or the lessor will get no return. The agreement to use the machine is a necessity if the machine is leased on this basis. Without this clause the lessee might get the lessor to invest in a valuable machine and install it in the lessee's factory and after a few months the lessee might discard it or use it only occasionally, thus depriving the lessor of any return on its investment.

The clause is a normal and natural agreement obviously designed for the purpose of assuring the lessor a return on its investment and not designed for the purpose of arbitrarily requiring the use of the United Company's machines or of excluding competitors. That this is the purpose of the clause is conclusively shown by the fact that this provision is applied only to machines for which a royalty is charged. Thus in the leases of General Department Machines the clause is omitted because the machines are leased for an annual rental or an initial payment and no royalty is charged, and, the lessor's return not being dependent on the use of the machines, it is not necessary that the lessee shall agree to use them. (See General Department Initial Payment form of lease P.'s Ex. 40, R. Vol. 3, p. 373; General Department Annual Rental form of lease P.'s Ex. 41, R. Vol. 3, p. 379; McKay Sewing Machine lease P.'s Ex. 170, R. Vol. 4, p. 1161.) So also in the case of the Goodyear auxiliary machinery. The lease of the Goodyear Welter and Stitcher provides that they shall be used to capacity because they are the recording machines on which royalty is paid (P.'s Ex. 24, R. Vol. 3, p. 214). No royalty being paid on the auxiliary machines, the lessee is not required to use them to capacity (P.'s Ex. 25, R. Vol. 3, p. 226).

There can be nothing unlawful in requiring one who has hired a machine upon a royalty measured by the machine's capacity, to pay for that capacity so far as he has work for it to do.

The lessee has acquired by his lease and license the full capacity of that machine. He has a right to the entire and exclusive use of it up to the limit of what it is physically able to do, but he is only required to pay according to that measure up to the extent of the work which he has for it.

If he has not work to keep it fully occupied, still he has the right to use the full capacity of the machine. Neither the United Company nor any one else can make any use of that surplus capacity which the lessee allows to go to waste. It is therefore obviously proper that he should agree to pay to the extent of the work he has for the machine to do.

If it once be granted that leasing for a royalty measured by use is reasonable, it is a necessary corollary that such use must be required and agreed to as will fairly compensate the one who supplies the use and fills the need.

The shoe manufacturer cannot complain of this clause. If he does not intend to use the machine, he has no right to take it under a lease whereby he is required to pay only if he does use it. If he does intend to use the machine, it is proper he should agree to use it so far as he has work for it to do.

The rival shoe machinery manufacturer also has no ground for complaint. He has no right to demand that shoe manufacturers who choose to take leases of the United Company's machines should remain as free to deal with him as though such leases had not been executed. If the lessee agreed to pay a fixed rental, he would use the machines for which he paid, not those taken from a competitor for which he must make an additional payment. Even if the lessee bought the machines, he would not ordinarily discard them for other machines. The rival shoe machinery manufacturer is in little if any different position from what he would be in if the lease omitted this clause and contained a fixed rental, or if the machines had been purchased outright. If there is any difference which affects him, it is the incidental result of a normal and proper contract.

The shoe manufacturer's business is seasonal, and he requires an equipment of machines having a maximum capacity far in excess of his average requirements. Furthermore, in many cases a lessee's business is so small that a single machine has a capacity exceeding his maximum requirements. The result is that the United Company's machines held by a lessee have a

capacity in excess of the ordinary requirements of the lessee. The United Company would be justified in charging a price based upon the maximum capacity of the machine. This, however, would be burdensome to the lessees who would only make use of such capacity occasionally. But if the United Company does not require payment for the full capacity of the machine, whether or not the lessee needs such capacity, it is only fair and reasonable that it should require payment for use to the full extent that the lessee has a use for it.

Mr. Winslow testified:—

> "We adopted the full-capacity clause in our leases to protect our interests under the conditions that I have described in the manufacture of shoes, where the seasons are changeable, and where our entire return is dependent upon the use made of the machine. The same reason applies to the adoption of the exclusive-use clause, but it is not the only reason for the adoption of either clause. There must be something in the lease requiring use of the machines or there is no security that they will be used. Because there are two seasons and because we have to furnish machines to take care of the peak of the manufacturer's load, there must be something to secure us properly for the use of the machines throughout the season. Otherwise, the manufacturer might use one of our machines just for taking care of the peak of his load and use somebody else's machine all the year round" (R. Vol. 1, p. 552, line 34; p. 553, line 3).

This provision for payment, viz., that the lessee shall use the machine so far as he has use for it, and pay for the amount it is used, is far more satisfactory to lessees and far less burdensome to them than a fixed monthly or annual payment (which is the only feasible alternative) would be. If a fixed payment were required, a shoe manufacturer would be obliged to pay the same amount whether his business was good or bad. Under the present method he pays according to the business he does, and thus his royalties are adjusted to his business: if business is good, his total royalties increase, but he can then afford to pay them; if business is poor, his total royalties are decreased.

Furthermore, if a fixed amount were charged, it would work to the disadvantage of the small manufacturer. Take a welter, for example. One welter will operate on 480 pairs of shoes a

day (R. Vol. 1, p. 647, line 3). In 1911 out of 1,033 lessees of the United Company 274 made less than 100 pairs of shoes a day (R. Vol. 1, p. 454, line 45; p. 455, line 1). If the welter were leased for a fixed rental, the shoe manufacturer who made 480 pairs of shoes a day would pay for his welting machine used on his entire output the same amount as the manufacturer of 100 pairs or less paid for his welting machine. In other words, his cost of welting machinery per pair of shoes would be less than one-fourth of the amount paid by the small manufacturer. The Pulling-over Machine, Goodyear Stitcher, Heeling Machine, Slugging Machine and Loose Nailing Machine each has as great a daily capacity (R. Vol. 1, p. 456, lines 4–9). The Slugger, Loose Nailer, and Heel Pricking Machine have a capacity of over 1,200 pairs per day (Defs.' Ex. 249, R. Vol. 5, p. 693).

The United States contended in the District Court that the Full Capacity Clause was unnecessary to assure the United Company a return on its investment, because it inserts in most of its leases a clause requiring a minimum payment. It is obvious that a minimum payment does not provide for a fair return unless it is large enough in and by itself to compensate for the use of the machine. In such case it becomes a fixed annual payment and is open to the objections stated above. The minimum payments required in the United Company's leases are so small that they do not provide for adequate compensation. This is not their purpose. The Minimum Payment Clause was inserted in the leases so that a lessee should return machines for which he had no use; if he were required to pay nothing on them, he might keep them although they were not needed at all.

Mr. Winslow testified (R. Vol. 1, p. 553, lines 4–28):—

> "The clause requiring payment of a minimum royalty, like many of the other clauses, is not enforced and never has been, excepting in cases of very great necessity to properly protect the company's interests, and then only in the way of asking the manufacturer to give up surplus machines. The original leases contained no means for recovering surplus machines. If a manufacturer's business decreased 50 per cent. he could retain a machine till the lease expired, and keep it idle. Such a condition showed us that we must have such control as would allow us to take back idle machines.

"The practice has been, when a manufacturer had surplus machines arising from these or other conditions, to call his attention to the minimum clause and to tell him that if he wanted to return the surplus machine, the lease of that machine would be cancelled. That clause is not enforced except to require adequate arrangements between our lessees and ourselves.

"The minimum-lease clause originated a great many years ago. It is not entirely a logical development, but, broadly speaking, the minimum clause is based upon half the capacity or 33 per cent. of the capacity of the machine, or something of that sort. The minimum has no bearing upon the amount of a reasonable return on our machines. In the Goodyear system, for example, the minimum is $15 per machine, if I remember correctly, but we are continually adding to the number of machines that we give to the manufacturer."

It is obvious that this clause is essential if machines are leased to be paid for only to the extent they are used. That it was adopted solely for the purpose of assuring an income from machines leased on this basis is conclusively shown by the fact that it is applied only to the royalty producing machines. If the United Company were forbidden to use this clause, it would necessarily be obliged to abandon leasing machines on this basis, a practice of enormous benefit to shoe manufacturers.

E. EXCLUSIVE USE CANCELLATION CLAUSE.

The following is an example of the Exclusive Use Cancellation Clause taken from the United Company's lease of Pulling-over Machines (P.'s Ex. 38, R. Vol. 3, p. 350, at p. 358):—

"*Eight:* If at any time the lessee shall fail or cease to use exclusively machinery held by him under lease from the lessor for performing all work in the manufacture or preparation of all boots, shoes, or other footwear made by or for him which is performed by the aid of machinery and which is of a kind or kinds which any or all of the machines of the lessor mentioned by name in the foregoing Schedule of Machines are designed to perform, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses of machinery of the Pulling Over System of the lessor then existing be-

tween the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever."

It is to be noted that this clause only permits the lessor to cancel where other machinery of the same kind as that leased is only used by the lessee, and the lessor is then permitted to cancel leases of machines of this particular kind.

This clause was employed in the leases of metallic machinery and heeling machinery put out by the McKay Company (P.'s Ex. 11, P.'s Ex. 12, Rider).

The Consolidated Company in all its non-initial payment leases required an exclusive use of machines of the kind leased (P.'s Ex. 7; P.'s Ex. 9; P.'s Ex. 10). The Goodyear Turn lease also required the lessee to use only the lessor's turn machines (P.'s Ex. 3). The United Company eliminated these clauses employed by the constituent companies requiring an exclusive use of machines of the kind leased, and inserted in its leases of royalty machines this Exclusive Use Cancellation Clause which had been employed by the McKay Company and an example of which is quoted above.

This Exclusive Use Cancellation Clause does not require or obligate the lessee to use the United Company's machines of the kind leased exclusively. On the contrary, it recognizes the right of the lessee to use other machines of the kind leased, contemplates that the lessee may do so, and merely provides that in such case the lessor may take back its own machines. The clause contains no agreement on the part of the lessee at all. It is a mere reservation of a right to terminate the lease under certain conditions.

The machines of each kind or department are leased under a separate form of lease. This clause refers only to machines of the particular kind leased. For example, if the lessee uses heeling machines obtained from others, this clause permits the United Company at its option to withdraw its heeling machines, but does not permit it to withdraw any other kind of machines.

Of the effect of this clause the District Court (Brown, J., R. Vol. 1, p. 1169) said:—

"The 'Exclusive Use' clause relates only to machines of a particular kind or department, thus differing essentially

from the Prohibitive Clause. It was in use before the consolidation, and after the consolidation was not changed in this respect. Though it does not relate to grouping what before was separate, this clause imposes a limitation upon the right to use machines of a particular kind. The legal effect of it is merely a reservation of a right to cancel the lease in case the lessee should fail or cease to use the defendants' machines exclusively for work of a particular kind. It does not have the legal effect of a contract by the lessee not to use the machines of others. It is merely a limitation imposed by a patentee upon the right to use.

"*The reiteration by the United States of the statement that the lessee must use, or is required to use, defendants' machines exclusively is misleading. The distinction between a contract requiring a lessee not to take other machines, and a limitation of a right to use the leased machines is very material*" (italics ours).

This clause protects the lessor by permitting him to withdraw his machines if by reason of the factory conditions under which the machines are used, caused by the use of other machines by the lessee, the lessor is not getting a fair or proper return on the leased machines (R. Vol. 1, p. 447, lines 18–21).

The primary reason for the use of this clause is as follows: The shoe machinery business is seasonal, being divided into substantially two seasons. The manufacturer with an average production of 300,000 pairs of shoes annually must ordinarily have machinery which has a capacity to produce 600,000 pairs of shoes annually. If his average production is 1,000 pairs of shoes a day, he will at times manufacture 2,000 pairs a day and at others 500 pairs a day. In other words, the United Company must furnish him with an equipment sufficient to make 2,000 pairs a day, although he will use it to this extent at most for about three months in the year (R. Vol. 1, p. 444, lines 27–42).

Defendants' Exhibits 212, 213, and 224 show the variations in production in typical factories. For example, Defendants' Exhibit 213 shows that L. A. Crossett made 113,191 shoes in January, 1911, and only 36,516 in April, 1911 (R. Vol. 5, p. 310); Defendants' Exhibit 212 shows that Burt made 4,492 shoes in November, 1911, and only 1,823 in February, 1911 (R. Vol. 5, p. 297); Defendants' Exhibit 224 shows that the John Strootman shoe factory made 5,492 women's stitched shoes in September,

1911; 2,234 in April, 1911, and 749 in May, 1911 (R. Vol. 5, p. 421).

Referring to the variance in production shown in the Strootman factory Mr. Winslow testified:—

> "This is a fair sample of the condition with which we are confronted throughout the trade. It is not a selected case. I would be quite ready to take any factory and prepare the same figures" (R. Vol. 1, p. 445, lines 27–30).

A shoe manufacturer, therefore, requires a machine capacity in his comparatively short busy season which is not needed during the greater part of the year. A lessee who holds the United Company's machines and also machines of others may use the United Company's machines only during his busy season and use the other machines during his slack season, or he may do only his difficult and slow work on the United Company's machines and thereby reduce the royalties payable to the United Company. The United Company cannot afford to install its machines for a royalty measured solely by extent of use if they are to be used only occasionally or for slow and difficult work. It therefore inserts the "Exclusive Use Cancellation Clause" in its leases, permitting it to cancel the leases if on account of the use of other machines such conditions exist and it is deprived of a fair return.

Another reason for the use of this clause is as follows: The United Company leases machines for a royalty to be paid on each pair of shoes made. The United Company cannot keep men in each factory watching each machine in use on which a royalty is payable and counting the number of shoes on which it is used. On certain machines it can place recording mechanisms which will record the use with a certain degree of accuracy. On other machines, such as lasting machines, no such device is practicable. Even where such a device can be used, it records the revolutions of the machine rather than the number of shoes passing through the machine, and it, therefore, is not accurate, and furthermore, it may be tampered with by the lessee or get out of repair. If the lessee uses the United Company's machines of a particular kind—for example, heeling machines—exclusively, the United Company can tell by an examination of the lessee's books or by a knowledge of its total sales substantially the number of shoes on which the machines are used. Where,

therefore, the United Company's machines are used exclusively, it can check the returns made by the lessee and correct errors in such returns due to carelessness or dishonesty. Where, however, the lessee uses the United Company's machines and also machines of others for doing the same class of work, the United Company has no such check. If, therefore, the United Company finds that a lessee who is using its machines and also the machines of others of the same kind pays it a small return on its machines, it may have reason to believe that actually more work is being done on its machines than is paid for, and that through carelessness or dishonesty a correct account of the work is not rendered, but there is no way to check this up, and the lessor is at the mercy of the lessee. Under these conditions it must have the right to withdraw its machines.

This clause, or a clause more stringent in that it required an exclusive use of the lessor's machines, was employed in most of the leases of the constituent companies. Its use in the modified form by the United Company is therefore no evidence of the charge made by the petition of an unlawful plan adopted by the defendants to monopolize by the use of new methods. On the contrary, the elimination by the United Company of the clauses requiring an exclusive use which were previously employed in the constituent companies' leases and the substitution in these leases of the Exclusive Use Cancellation Clause, which merely permits the United Company to withdraw its own machines, is direct evidence that the United Company had no intent to require an exclusive use of its machines.

This clause is one which the experience of the constituent companies had proved to be necessary for the lessor's protection for the reasons stated above. It is a normal, legitimate agreement designed to permit the lease of machines without a substantial initial payment and at the same time protect the lessor so that it may cancel the arrangement if it does not receive an adequate return.

That the purpose of this clause is to protect the lessor when the factory conditions under which its machines are used do not afford it a proper royalty return, and that its purpose is not arbitrarily to prevent other manufacturers from placing machines, is conclusively shown by the fact that this clause is applied only to those machines which carry a royalty. Thus the clause

does not appear in the leases of General Department machines for which no royalty based on the use of the machines is charged, but only a fixed annual payment, or an initial payment. (See leases of General Department machines, P.'s Ex. 40–41; lease of McKay Sewing Machine, P.'s Ex. 170.) And so also in the leases of Goodyear machines this clause is made applicable only when the lessee uses other welting and stitching machines which are the machines on which the royalty is based, and it is not applicable where the lessee uses auxiliary machines obtained from others (P.'s Ex. 26, par. Seven). If the purpose of the clause were to require a use of the United Company's machines exclusively and thus arbitrarily exclude other shoe machinery manufacturers, it would certainly be applied to leases of machines like the McKay Sewing Machine, for which a fixed rental is charged.

As the clause is not applicable to General Department Machines of which the United Company makes over 172 different kinds, or to Goodyear Auxiliaries, of which 43 different kinds are made, or to eyeletting machines, it results that it is not applied to a majority of the kinds and numbers of machines put out by the United Company. Out of 90,276 machines leased by the United Company on March 1, 1911, over 53,000 of the kinds above mentioned were leased under leases which did not permit the United Company to withdraw its machines because machines of the same kind obtained from others were used (Defs.' Ex. 228 R. Vol. 5, p. 430).

Had the United Company intended by this clause to require an exclusive use of its machines of the kind leased, it would have so provided. The right to withdraw the lessor's machines of a certain kind—for example, heeling machines—because other heeling machines are used, obviously cannot compel the lessee to use the lessor's heeling machines. If the lessee is using other heeling machines, he doubtless prefers them. The exercise by the United Company of its option to withdraw its machines would under those circumstances leave the lessee at liberty to use the competitors' heeling machines, which is what the lessee would desire. It could exert no pressure on him to discard other heeling machines which he preferred to use.

Mr. Winslow testified:—

> "The United Company has never adopted the policy of requiring the exclusive use clause as an agreement upon the part of the lessee. That clause has always been in the form of a right reserved to the company in case the lessee does not use exclusively and the conditions are unbearable" (R. Vol. 1, p. 444, lines 21–25).

Mr. Winslow further testified that it was not true that the defendants inserted in each lease provisions reserving to themselves the right to terminate and cancel all existing leases if a shoe manufacturer should fail or cease to use exclusively and to their full capacity machines leased of the defendant and that that never was the purpose of the Company (R. Vol. 1, p. 447)

> "The purpose of the company has been nothing more than to reserve to the company the right to cancel leases of machines of a type which the lessee had ceased to use exclusively if conditions became too onerous to continue" (R. Vol. 1, p. 447, lines 18–21).

It is difficult to see in what way it can be contended that this clause restrains competition. It does not require the shoe manufacturer to use the United Company's machines. So far as this clause is concerned, the shoe manufacturer can freely take and use any other machines he pleases. If, for example, he uses other heeling machines and the United Company withdraws its own heeling machines, this only leaves the lessee free to use other heeling machines which he can get and which he apparently prefers.

The rival shoe machinery manufacturer will be actually benefited by the enforcement of this clause. If the United Company withdraws its machines, the shoe manufacturer is necessarily in the market for new machines, and a market is thereby created for the United Company's competitor. Nothing, therefore, would please competitors of the United Company better than to have it enforce this clause.

It is obviously fair and just that the United Company be entitled to withdraw a machine on which its return consists of a royalty based on the number of shoes on which the machine is used, if, owing to the use of other machines of the same kind by the lessee, the machine is only used occasionally or on slow or

difficult work, or the United Company has reason to believe that work actually done on its machines is not so reported; in other words, when, to use Mr. Winslow's words, "conditions are unbearable."

That the United Company may properly reserve a right to withdraw its machines under the foregoing conditions seems indisputable. It would be impossible to specify exactly and definitely these conditions. The clause is, therefore, necessarily general in its terms; but it only reserves an option to cancel; it does not provide that there shall necessarily be a cancellation of the lease if other machines of the same kind are used.

As, therefore, the right reserved by the clause may clearly be exercised for a proper purpose, even if it could also be so exercised as to result in excluding competitors' machines (which we submit is not the case), nevertheless this possibility would not be sufficient to make the clause unlawful unless it were shown that it was inserted in the leases for this purpose or that it was enforced for this purpose.

Mr. Winslow, as quoted above, testified that it was not inserted or enforced for this purpose. There is absolutely nothing in the record to contradict his testimony. Not a single instance was shown in which the United Company enforced or threatened to enforce the clause in order to exclude competitors' machines. In the only five cases (except cases of bankruptcy) in which machines were withdrawn by the United Company, no such instance appears (R. Vol. 1, pp. 447–8; *infra*, pp. 417–418).

On the contrary, so far from showing that the United Company withdrew its machines because competitors' machines were used, Plaintiff's Exhibit 161 (R. Vol. 4, p. 1118) introduced by Louis H. Harriman of the Haverhill Shoe Machinery Company, a competitor of the United Company, as a witness for the United States, gives a list of 17 concerns which had used or were using the Haverhill Turn Sewing Machine in the same factory with the United Company's Goodyear Turn Sewing Machine the leases of which contained the Exclusive Use Cancellation Clause, thus contradicting absolutely the contention that the United Company withdrew its machines merely because a competitor's machines of the same kind were used.

We submit, then, that even if it can be contended (which we deny) that the right given by this clause could be so exercised

as to exclude a competitor's machines, the record establishes that it was not inserted in the lease for this purpose and that it was not enforced to accomplish this result.

The Use of the Exclusive Use Cancellation Clause is the Mere Exercise of a Patent Right. Its Legality is not Affected by the Sherman Act nor can it be Tested by Considerations of Public Policy not Recognized in the Patent Law.

The leases in the present case are termed "Lease and License Agreements" and constitute not only leases of the physical materials in the machines but also licenses under patents to use the machines in the manner and to the extent defined therein.

A patentee has an absolute right to exclude all others from the use of the patented invention even though he does not use it himself. *Paper Bag Patent Case*, 210 U. S. 405.

The motive of the patentee in refusing to license others to use the patented invention is immaterial. As said in the Paper Bag Patent Case (p. 429),—

> "As to the suggestion that competitors were excluded from the use of the new patent, we answer that such exclusion may be said to have been of the very essence of the right conferred by the patent, as it is the privilege of any owner of property to use or not use it, without question of motive."

If the patentee does consent to grant a license to use his patented invention, he may grant it for such time long or short as he pleases. As the patent law gives him an absolute right to withhold or grant licenses as he pleases, regardless of his reasons or motives, the length of time for which any licenses he may choose to grant shall extend is absolutely within his discretion.

In *Mitchell* v. *Hawley*, 16 Wall. 544, the patentee conveyed the right to make and use four machines during the remainder of the original term of the Letters Patent. The licensee constructed and sold the four machines which he was authorized to make. The patent having been extended for an additional term of seven years it was held that the purchaser of the four machines had no right to use them during the extended term whether or not he had purchased with notice of the limited term of the license to use.

It is clear, then, that a patentee has the right to grant a license to use his patented invention for as long or short a term as he pleases. In pursuance of this right he may grant a license to use for a definite term or for an indefinite term, that is, until such time as he in his absolute discretion chooses to terminate it. After such termination the licensee, of course, has no longer any right to use. This is so even if, as in *Mitchell* v. *Hawley*, supra, the licensee has bought the machine which embodies the invention and still holds title to it.

Just as the patentee can refuse to grant a license at all, regardless of his motives or of the effect of his refusal, so in granting a license he may make it terminable at such time or in such event as he pleases, regardless of the effect of such termination or of his motives in so doing.

Such a grant of a license does not obligate the licensee to use the patented invention. It is a mere grant of a right. The licensee is as free in every respect as he was before the grant was made and in addition has the rights conferred by the grant. Upon the cancellation of the license, whether it be terminable at a definite time or at the patentee's option, and regardless of the patentee's motive in cancelling the lease, the licensee is no worse off than if the patentee had refused to make the grant at all.

Having an absolute right to make or refuse the grant, questions of public policy are not relevant. An argument that a grant for the full term of the patent, or an irrevocable grant, would be more beneficial, or would confer a greater benefit on the licensee, or would be more advantageous to competitors, has no standing. As said by the court in *Henry* v. *Dick Co.*, 224 U. S. 1, 35, in referring to conditions imposed by patentees,—

> "Arguments based upon suggestions of public policy not recognized in the patent laws are not relevant."

It follows, then, that in the present case the United Company could, in the exercise of its indubitable rights granted it under its patents, provide in its lease and license agreements that the licenses to use the leased machines should be operative only until such time as the United Company might at its absolute discretion choose to terminate them. It would have the right in such case to terminate the licenses either because the licensee ceased to use its machines exclusively or for any other reason

whatsoever. Its motives could not be questioned any more than its motives for refusing to grant a license at all could be questioned.

If, then, the United Company can in granting its licenses reserve this broad right to terminate for any cause whatsoever, surely it can reserve the lesser right (which is inevitably embraced within this broader right) of terminating because the lessee does not use its machines exclusively. The termination of the license is a mere exercise of the rights granted by the patents, namely, the rights to exclude others completely or to permit the use of the patented inventions for as long or short a period as the patentee pleases.

The United States may object that the termination of the license because the licensee does not use the patented machines of the kind leased exclusively may result in excluding competitors' machines. We have shown above that no such result will follow and that, even if such a result were possible, the United Company did not insert this clause or enforce it for this purpose or with this result. But assuming that the clause results in an exclusive use of the United Company's machines of the kind leased, it is, as we have shown above, within the rights of the patentee. If he grants licenses to use his machines and they are superior to all others in the market, they may drive such other machines out of use. If he refuses to grant licenses of his machines and they are sufficiently superior, he may by using them himself obtain all trade in the article which the machines produce. Questions of his motives, of public policy, or of the effect of his acts are irrelevant so long as he limits himself to the exercise of his patent rights, that is, to excluding others or permitting them to use for such periods as he pleases.

The fact that the United Company in addition to reserving the right to terminate its licenses to use the machines also reserves a right to withdraw the machines themselves is immaterial. The machines belong to the United Company and are clearly of no value to the lessee when his right to use them has terminated. Their withdrawal in such event can in no way injuriously affect either the lessee or competing shoe machinery manufacturers.

Considered from another aspect the clause is seen to be equally within the rights granted a patentee.

Thus a patentee can not only grant a license to use his pat-

ented invention for as long or as short a period as he pleases, but can also grant a restricted use, that is, a use only in a particular place, by a particular person, or for a particular purpose, regardless of his motives or the effect of the restriction.

Thus in *Rubber Co.* v. *Goodyear*, 9 Wall. 788, the patentee granted a license to use the patented invention only at the licensee's own establishment and for a particular purpose, reserving to the patentee the exclusive right to manufacture goods to be sold to the United States Government. The authority of this case was recognized both by the majority and the minority opinions in the Dick case.

Such a restricted license may be granted irrespective of its effect or the motive of the patentee so long at least as it is confined to a mere grant and does not require action on the part of the lessee. In *Henry* v. *Dick Co.*, supra, the court, after referring to suggestions of the evil consequences to trade which might result from the right on the part of the patentee to grant licenses to use on such terms as the patentee chooses to prescribe, said (p. 35):—

> "This larger right [namely the right to exclude all others] embraces the lesser of permitting others to use upon such terms as the patentee chooses to prescribe. It must not be forgotten that we are dealing with a constitutional and statutory monopoly. An attack upon the rights under a patent because it secures a monopoly to make, to sell, and to use, is an attack upon the whole patent system. We are not at liberty to say that the Constitution has unwisely provided for granting a monopolistic right to inventors, or that Congress has unwisely failed to impose limitations upon the inventor's exclusive right of use. And if it be that the ingenuity of patentees in devising ways in which to reap the benefit of their discoveries requires to be restrained, Congress alone has the power to determine what restraints shall be imposed. As the law now stands it contains none, and the duty which rests upon this and upon every other court is to expound the law as it is written. Arguments based upon suggestions of public policy not recognized in the patent laws are not relevant. The field to which we are invited by such arguments is legislative, not judicial. The decisions of this court, as we have construed them, do not so limit the privilege of the patentee, and we could not so restrict a patent grant without overruling the long line of judicial decisions from Circuit Courts

and Circuit Courts of Appeal, heretofore cited, thus inflicting disastrous results upon individuals who have made large investments in reliance upon them."

If, then, as is well recognized, the patentee can license for use only in a particular place, by a particular person, or under certain conditions defined by him, he can surely license for use only in a factory so long as his machines of the same kind are used exclusively in that factory, or he can license for use by a particular licensee so long as such licensee uses his machines exclusively.

By so doing he is not obliging the licensee to use his machines exclusively. He is merely exercising his unquestioned right to grant a license to use. The licensee is left free to exercise his license or not as he pleases. The patentee having an absolute right to grant licenses, either partial or complete, his motives in so doing are immaterial.

It being clear, then, that the United Company has an absolute right to grant a license to use its machines to be exercised only in factories where its machines of the same kind are used exclusively, it necessarily follows that it can grant a license which is subject to revocation at its option if its machines are not used exclusively. Such a provision is less stringent as it permits the licensee to use, even though other machines of the same kind are used, and merely provides for a revocation of the use in such case if the patentee determines such revocation is desirable.

F. ADDITIONAL MACHINERY CLAUSE.

This clause was used by the United Company in only a few leases, and its use was abandoned entirely in 1907.

By this clause the lessee is required to take from the lessor additional machines of the same kind as those leased if his work requires them.

This clause was employed in non-initial payment leases of the Consolidated Company prior to 1899 (P.'s Ex. 7; P.'s Ex. 9; P.'s Ex. 10), and a similar clause forbidding the lessee to use any other turn machines was employed in the Goodyear Company's turn lease (P.'s Ex. 3). The following example of this clause is taken from Article Twelfth of the Consolidated Com-

pany's lease for the Consolidated Hand Method McKay Lasting Machine, in use before the United Company was formed:—

> "*Twelfth:* It is declared and understood that it is the intention of the Licensee to use said machine herein licensed and leased for lasting all the boots and shoes made by him applicable to the said machine, and not to have it in his possession as a means of reducing the price of hand-lasting or of controlling hand-lasters, or of influencing a trade with any other lasting machine not controlled by the Licensor, or the list price thereon, and the Licensor enters into this contract because of and by reason of such understanding and agreement on the part of the Licensee. It is, therefore, agreed that the Licensee shall use such machine hereby licensed and leased for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; *and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work*" (italics ours).

Mr. Winslow testified:—

> "All of those additional machinery clauses were removed from all of the leases of the United Company not later than 1907, and they were not in use and did not represent the policy of the company at the time of the bringing of this suit" (R. Vol. 1, p. 444, lines 17–20).

This clause was one of the various methods adopted by the constituent companies in an effort to assure a proper return upon their investment in machines. It protected the lessor against the abuses possible where its machines were not used exclusively, as we have explained above, in considering the Exclusive Use Cancellation Clause. By requiring an exclusive use of its machines it avoided their being used only occasionally during the busy season or only on slow work, thus reducing the royalty received, and it prevented also the difficulty of determining the actual work done on the machines which would arise where machines of others were used. It was usually introduced when the machines were first put on the market. Often when a shoe manufacturer first took a machine he used it only as a trading proposition. The lessor installed the machine and went to the expense of instructing operatives, and the lessee then used it to reduce the price of hand work or to obtain machines from others

cheaper and the machine being on a royalty basis, the lessor got no return. By this clause the lessee agreed to do his work by machines and to take additional machines for additional work, and this besides preventing the abuses above referred to gave a further assurance of an adequate return. Its purpose, therefore, was not to arbitrarily exclude others, but to provide an adequate return on the capital invested by the lessor.

The United Company did not adopt this clause for any general or extensive use. The United Company eliminated the clause from the lasting machine leases of the Consolidated Company as soon as new leases were drawn up, and substituted the Exclusive Use Cancellation Clause, which it felt sufficiently protected it against the abuses possible where machines of others were used.

It inserted this Additional Machinery Clause in its lease of metallic machines adopted in March, 1900 (P.'s Ex. 29; R. Vol. 1, p. 10, lines 24–25), but in the next printing of this lease, in June, 1900 (P.'s Ex. 30; R. Vol. 1, p. 10, line 31), it eliminated the clause and inserted a provision that the lessee should either take additional machines or the lessor might at its option cancel; in other words, a different form of the exclusive use cancellation clause under which the lessee was not obligated to use its machines exclusively.

The United Company employed this clause also in its Heeling Machine Lease adopted in January, 1900 (P.'s Ex. 27, R. Vol. 3, p. 254), but it eliminated the clause in the next form of lease, adopted in May, 1904 (P.'s Ex. 28, R. Vol. 3, p. 261). It also inserted the clause in its first lease of the pulling-over machine, which was an entirely new machine displacing hand labor, and, therefore, one which might be used as a trading proposition to reduce the price of hand work, but it eliminated the clause in the form of Pulling-over Lease which was adopted as early as 1907 (Defs.' Ex. 345, R. Vol. 5, p. 958; see also R. Vol. 1, p. 981, lines 1–7).

The Additional Machinery Clause was never used generally by the United Company. It was used by the constituent companies and to the limited extent above outlined by the United Company for a definite and legitimate business purpose and, therefore, shows no intention to restrain trade or monopolize.

The clause was primarily useful when new machines displacing hand work were first introduced. such cases, as explained above, it was found that a single machine was sometimes taken, not with the intention of doing the work by machine, but to enable the shoe manufacturer to reduce the prices paid hand workers by a threat of using the machine. The machinery manufacturer had gone to the expense of installing a single machine and instructing untrained operators in its use with the expectation and understanding that if successful, the shoe manufacturer would adopt it for general use. In such cases the additional machinery clause was important to the lessee's protection. When the superiority of the machine over hand labor was definitely established, experience showed that the other abuses guarded against by the additional machinery clause, namely, the abuses which might arise when machines of the same kind obtained from others were employed in the factory, could be sufficiently guarded against by the Exclusive Use Cancellation Clause, which did not require a use of additional machines, but merely gave an option to the lessor to withdraw its machines and this clause was, therefore, substituted.

The elimination of this clause by the United Company from the leases of the constituent companies, its limited use by the United Company, and its final abandonment by the United Company as early as 1907, four years before this petition was filed, show that it was not a method adopted by the defendants to monopolize, and make its further consideration immaterial in the present case.

G. CANCELLATION FOR BREACH CLAUSE.

The following example of this clause is taken from the defendant's Heeling Machine Lease (P.'s Ex. 28, par. Eleven; R. Vol. 3, p. 268):—

> "But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery

then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor."

This clause permits the cancellation of all leases between the lessor and the lessee provided, and only provided, the lessee breaks one of the conditions in one or more of such leases "expressed to be obligatory upon the lessee"; in other words, some condition which the lessee obligates himself to carry out.

The leases contain various conditions which are obligatory upon the lessee. The following, taken from Plaintiff's Exhibit 28, will illustrate their character: (1) The leased machinery shall be used only by the lessee at his factory and shall not be transferred to any other person (par. One). (2) The lessee shall keep the machinery in good working order and not permit any one to remove any plate, dates, numbers or other inscriptions affixed to the same. He shall obtain from the lessor all duplicate parts needed in the machine (par. Two). (3) He shall indemnify the lessor from injury, loss or destruction by fire or otherwise (par. Three). (4) He shall pay all taxes and assessments on the leased machinery (par. Four). (5) He shall use the machinery to full capacity so far as he has work for it, and respect the Restricted Use Clause (par. Five). (6) He shall pay the royalty provided for in the lease (par. Six).

This clause merely provides that if the lessee does not act in good faith and violates his agreements the United Company may sever relations with him. If, for example, the lessee refuses to pay royalties or abuses the machines held by it under one lease, the United Company reserves the right to take back all its machines so that it will not suffer similarly in respect to machines held under other leases.

Mr. Winslow testified:—

"The right to cancel clause, for breach of a condition expressed to be obligatory upon the lessee, was adopted by the company with respect to conditions which would be such as to make the continuance of the business relations between the lessee and ourselves impossible, as where the lessee did not make proper returns of the royalties or did not pay his royalty or refused to pay the taxes—those

conditions which in the ordinary business relations between men would make the continuance of the relations impossible.

"In the twelve to thirteen years prior to the beginning of this suit the United Company availed itself of the right to cancel leases and remove machinery for reasons other than bankruptcy or receivership in only five instances" (R. Vol. 1, p. 447, lines 22–34).

As in the case of the Exclusive Use Clause, this clause merely gives the United Company an option to cancel its leases, if the lessee violates their terms. It is obviously fair that this general right should be reserved to the lessor and it is clear that cases may arise in which its exercise would be essential to the protection of the lessor. If (which we deny) it is possible that it might also be so exercised as to oppress lessees or unlawfully exclude competitors' machines, this probability alone would not make the clause objectionable unless it were shown that it was inserted in the leases for this purpose, or was enforced for this purpose.

The record fully sustains Mr. Winslow's testimony (*supra*) that the clause was inserted only to permit the United Company to sever its relations with a lessee on account of conduct by the lessee which "in the ordinary business relations between men would make the continuance of the relations impossible."

In the five cases in which (apart from bankruptcy) leases were cancelled, the lessee either had abandoned the use of the United Company's machines entirely or was persistently cheating the United Company of the royalty due on its machines (R. Vol. 1, pp. 447–8; *infra*, pp. 417–418).

The leases of the constituent companies all contained provisions giving the lessor the right to cancel if the lessee violated the lease. Practically every lease of property has such a condition.

The United States apparently objects to the present clause because it permits the cancellation not only of the particular lease, the agreement in which is broken, but of all other leases between the parties. The United Company could perfectly well furnish all its machines on a single lease, and if it did so this objection of the United States would not be applicable. For convenience it issues different leases for machines of different departments and also issues a new lease each time a new machine

is taken in any one department. Thus, if a lessee has six Goodyear machines, he may have six different leases. The relationship created between the lessor and the lessee by these various leases, however, is essentially a single relationship which, for convenience, is expressed in a number of different documents. If the lessee violates an agreement in any one of these documents, it is as fair to cancel all as it would be to cancel that particular one.

The practice of the constituent companies was to issue one lease for all the machines originally taken, and then, when additional machines were taken of the same kind, to incorporate these machines in the original lease. The Fifteenth Clause of the Consolidated Company's lease of the Chase Lasting Machine (P.'s Ex. 7, R. Vol. 3, p. 66), for example, provides for this practice. Mr. Howe testified that that was the universal practice of the Goodyear Company (R. Vol. 1, p. 690, lines 12–23). When, therefore, the lease was broken the lessee could cancel the lease and thereby withdraw all its machines taken at different times and held under its terms. The clause as adopted by the United Company, which issued new leases for additional machines, accomplished practically the same result.

It is impossible to see how this clause can restrain trade or tend to create a monopoly. The shoe manufacturer cannot complain if he loses his leases because he violates his agreements. A rival shoe machinery manufacturer cannot complain of the exercise of this clause because he is obviously benefited if a shoe manufacturer is deprived of machines of the United Company and therefore must seek machines elsewhere.

The United States contended in the District Court that this "Cancellation for Breach Clause" taken in connection with the "Exclusive Use Cancellation Clause" permits the United Company to cancel all its leases if machines of any one kind held by the lessee are not used by the lessee exclusively. This is obviously not so. This "Cancellation for Breach Clause" which we are now considering permits cancellation only for violation of a condition "obligatory upon the lessee." The "Exclusive Use Cancellation Clause" does not obligate the lessee to use the United Company's machines exclusively. On the contrary, it contemplates that the lessee may use other machines of the same kind and permits him to do so, and merely reserves an option

to the United Company to cancel its leases of machines of that kind. As the lessee is not obligated to use such machines exclusively the condition is not one "obligatory upon the lessee," and therefore the use of other machines which gives the United Company a right under the "Exclusive Use Cancellation Clause" to cancel leases of machines of that kind does not give the United Company any right to cancel all its leases or any of its leases under this "Cancellation for Breach Clause."

The United States may claim that it is not the actual exercise of this cancellation clause which operates to exclude the use of competitors' machines, but the power to exercise it in case of a violation by the lessee of the Full Capacity Clause, or the Restricted Use Clause. In other words, the contention may be that a lessee will not use a competitor's machine if one of the United Company's machines held by him for doing the same work is not being used to capacity, and will not use one of the United Company's machines taken under a restricted use lease, in a manner not permitted by the license, on shoes operated on by some competitor's machines if as a consequence the United Company would have the right to withdraw all its machines. As a result it may be contended that the use of competitors' machines is interfered with.

This argument depends wholly upon whether the Full Capacity and Restricted Use Clauses are in themselves lawful. If it is lawful to require the lessee to use a leased machine to capacity, and to grant a restricted license to use the machine, then it is obviously fair that the lessee should be bound by these clauses, and that if he chooses to violate them, his leases should be cancelled.

The objection made by the United States, then, is not that the Cancellation for Breach Clause is unlawful, but that the Full Capacity and Restricted Use Clauses are unlawful. The Cancellation Clause, permitting cancellation for violation of a condition obligatory upon the lessee, can under no circumstances be unlawful, if the conditions made obligatory upon the lessee are lawful.

H. RESTRICTED USE CLAUSE.

(1) REASONS FOR ADOPTION OF THE RESTRICTED USE CLAUSE.

The "Restricted Use Clause" restricts the use of the defendants' machines of one group or department to use on shoes operated on by certain machines of another group or department. The following example, taken from the United Company's lease of the Hand Method Lasting Machine (P.'s Ex. 15, R. Vol. 3, p. 129, at p. 131), which restricts the use of the machine to use on shoes operated on by the Goodyear Welter and Stitcher, illustrates the character of the clause:—

> "But the leased machinery shall not, nor shall any part thereof, be used in the manufacture of any boots, shoes, or other footwear which are or shall be welted, or the soles stitched on welt sewing or sole stitching machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any turn boots, shoes, or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines, not leased to the lessee by the lessor or its assignor."

Considerations to be Noted at Outset of Discussion.

The following considerations must be noted at the outset:—

(*a*) In the first place, the Restricted Use Clause does not obligate the lessee to use either the leased machine or any other machines of the United Company at all. It merely restricts the use of the leased machine to use on shoes on which certain other machines obtained from the lessor are used. For instance, take the Restricted Use Clause quoted above from the lease of the Hand Method Lasting Machine, which restricts it to use with the Goodyear Welter and Stitcher. It does not require the lessee to use either the United Company's Lasting Machine or its Welter and Stitcher. If the lessee desires to use a competitor's lasting machine he may do so. If he desires to use a competitor's welter and stitcher he may do so. The only restriction is that if the lessee does use an outside welter and stitcher he cannot use the leased lasting machine on shoes on which such outside welter and stitcher are used. If he wishes to use the Lasting Machine

in connection with an outside welter and stitcher he may exchange his restricted lease for an unrestricted lease by paying an initial premium of $300.

Nor does the Full Capacity Clause taken in connection with the Restricted Use Clause obligate the lessee to use other machines. The Full Capacity Clause in every case requires the use of the leased machine only if the lessee is making shoes on which the leased machine may be used without violating the restrictions.

(*b*) Restricted Use Leases are only alternative forms of leases which are offered to lessees who desire to use a team of the United Company's principal machines. Unrestricted leases are offered all lessees who wish to use only certain kinds of machines furnished by the United Company in connection with other machines obtained from competitors. The royalty charged under the unrestricted leases is exactly the same as the royalty charged for the restricted leases. The only difference is that under the unrestricted leases an initial payment is charged to cover the loss in royalties and additional expense which result where the United Company's principal machines are not used as a team.

(*c*) The Restricted Use Clauses have a very limited application as we shall show below. They only restrict the use of the United Company's machines to use with a comparatively few of its principal machines, machines which are adapted for use together, which are delicate in operation, which are essential to the integrity of the shoe, and which must be kept in proper repair and adjustment to insure continuous and effective production in the factory. There is, as we show below, absolutely no justification for the charge on which the petition is founded that the United Company declined to lease its essential machines except on condition that all other machines be taken from it.

Auxiliary Restricted Use Clause Distinguished.

The Restricted Use Clause limits the machine leased to use on shoes operated on by the principal machines of another group or department. The Auxiliary Restricted Use Clause limits the use of auxiliary machines of a department to use on shoes operated on by the principal machines of that department. The reasons for the use of this latter clause differ somewhat from the reasons for the use of the Restricted Use Clause, grouping machines of different departments, and are considered below separately.

Reasons for Adoption of Restricted Use Clause.

The purpose of the Restricted Use Clause, when applied to machines of different departments, is to provide a lower rate for machines where they are used in a set or team, and thus not only make a better shoe, but work more efficiently and therefore produce a larger return for the United Company in the way of royalties on each machine. This clause provides a wholesale rate where the machines are used in a wholesale manner, thus enabling the lessee to share in the economies resulting from such use as a team.

The reasons why the use of certain of the United Company's machines as a team or series increases the efficiency of each machine, reduces the cost of service for each machine, and protects the reputation of the machines and thus justifies a better rate to lessees desiring to use the machines in this manner than is charged for machines taken independently to be used in connection with machines obtained from others, have been partially referred to above (*supra*, pp. 259–260). We shall, however, at this point summarize the reasons.

(*a*) A large number of different machines are used in the manufacture of each shoe. In the economical management of a shoe factory the shoes flow from one machine to another in a continuous stream, and when an important machine in the line breaks down it interrupts this flow and therefore not only stops work on that machine, but also stops work on all machines coming after it in the line; and as it would merely accumulate uncompleted work which could not be finished to operate machines preceding it in the line, it likewise stops work on those machines which precede it.

It is therefore of the utmost importance that each machine in the line be well constructed and well cared for so that it will not break down or get out of adjustment, and it is furthermore of the utmost importance that a machine be repaired at once if it does break down or get out of adjustment, so that work will be interrupted for as short a time as possible; otherwise, the machines all along the line will be idle when any one machine breaks down, and the lessor of those which pay a royalty will be deprived of his royalty, the operatives who are paid by the piece will suffer, as

they will be unable to work, and the shoe manufacturer's production will cease.

The advantages of a well-constructed line or series of machines which receive proper repair service are especially pronounced as respects the principal bottoming machines, namely, welters, stitchers, lasting, metallic fastening and heeling machines, to use with which other machines are restricted by the Restricted Use Clauses. These machines perform delicate and difficult operations, handle material like thread, wire and nails, and are themselves necessarily delicate machines, having a large number of moving parts, which are liable to get out of adjustment or repair.

No other company furnishes efficient service, so that when another company's machine is interjected into the series, the efficiency of the whole series of machines is lowered to the level of the efficiency of that machine, just as was the case with the machines of the constituent companies before 1899 (*supra*, pp. 183–186). The United Company's income decreases as the efficiency of the series is so lowered.

It is important, also, to remember that the machines of the different groups or departments furnished by the United Company are not used independently as separate groups, the work of one group being completed before the shoe passes to another group of machines of a different kind. The machines of the different groups are interspersed and in reality constitute a single unit.

This was illustrated by the moving pictures shown to the District Court. This was Defendants' Exhibit 241.

Mr. Winslow testified:—

> "The machines, the operation of which were illustrated by moving pictures, defendants' Exhibit 241, operate in a factory in the manufacture of Goodyear welt shoes in the order shown to the court." (The witness then stated the name of each machine as it operated in its order.) (R. Vol. 1, pp. 503–4.)
>
> "In these successive operations machines of the kinds obtained from the Goodyear Company, the Consolidated & McKay Lasting Machine Company, and the McKay Shoe Machinery Company are interspersed among each other through those consecutive operations, and they are all required in the production of a Goodyear welt shoe and perform these necessary consecutive operations" (R. Vol. 1, p. 504, lines 24–30).

Robert P. Hazzard, a large shoe manufacturer, testified:—

> "The machines from the different departments of the United Company are interspersed in their operations. The first thing in making the shoe is to prepare the bottom stock. In that we have to use auxiliary machines of the Goodyear department and also some of the general department machines. We next use the assembling machine and pulling over machine, from the pulling over department, and the No. 5 lasting machine from the lasting department, etc. At the same point we use the machine for tacking innersoles from the metallic department. We next employ machines for trimming the uppers, pulling the tacks, and welting the shoe from the Goodyear department, and then the auxiliary Goodyear machines for sole laying, etc. The heel seat nailing is done by a metallic department machine, and then we come to the Goodyear stitchers and more Goodyear auxiliary machines. Then the heeling machines of the metallic department are used, and then we swing back to the slugging machines of the metallic department. From there out we go back to the general department machines, edge trimmers, edge setters, etc. The operations of the machines from the different departments are all interwoven and the machines of one department are interspersed among the operations of the machines of the other departments" (R. Vol. 1, p. 642, lines 23–44).

The different machines might conceivably be incorporated into a single machine so far as their operation is concerned. They constitute for practical purposes a single machine. If one of the machines breaks down, the entire series is made idle to practically the same extent that all the parts of a single machine are made idle if one of the important parts breaks. It is as important for the efficiency of the machines as a whole that each machine of the team or series be adapted for use with the other machines and be well constructed and kept in proper repair and adjustment as it would be if they constituted parts of a single machine.

(*b*) It is important also to note that the principal machines of the United Company have been developed for use together. Each machine prepares the shoe for the operation of the next machine, leaving it in condition to be operated on by that machine, and the next machine is adapted to supplement the

operation of the preceding machine, correct any weaknesses or defects in its operation, and so in turn prepare the shoe for the peculiar operation of the succeeding machine in line.

The defendants exhibited to the court by moving pictures the operation of a large number of their machines to illustrate the truth of the foregoing. This was Defendants' Exhibit 241. As the pictures showing the operations of the various machines were exhibited to the court Mr. Winslow testified in explanation (see R. Vol. 1, pp. 495 to 502 inclusive).

Winslow testified:—

> "It is the fact that each of the principal machines of the United Company have been developed and improved with special reference to its operation upon work which has been or is to be done by other principal machines of the Company; and also new and improved machines have been developed to cooperate with them and increase the efficiency of the previously existing principal machines" (R. Vol. 1, p. 857, lines 29–35).

Robert P. Hazzard, a large shoe manufacturer, testified of the machines of the United Company:—

> "Practically every machine takes up the shoe where the preceding machine left it, and there are very few places today in the bottoming room where any labor is necessary between the operations of the United Company machines. Practically speaking, each machine prepares the shoe for the operation of the next; for example, when a shoe leaves the No. 5 lasting machine there are tacks in it to hold the upper in lasted position, and those tacks must be removed before the inseam can be trimmed. Then they come in with their tack-pulling machine which pulls out the tacks, leaving the shoe in condition so that the inseam trimmer can trim the upper, which it could not do if the tacks were there. So you go on indefinitely; it is just a continuous process" (R. Vol. 1, p. 643, lines 3–15).

Mr. Howard testified as follows:—

> "The manufacture of shoes is unique in that a great number of different successive operations are performed by different machines upon the shoe and its several parts. It is essential for the success of the operation of each machine that the shoe come to that machine in the right con-

dition for its operation, and that requires that the operations of machines which have previously been used upon the shoe shall have been performed properly. If such prior operations have not been properly performed, the work of that machine cannot be done right. On the other hand, proper performance of subsequent operations upon the shoe requires that each machine in turn shall efficiently prepare the shoe for the operation of the next machine to which the shoe is to be presented; and improper operation of any machine in the line may impair the efficiency of the operation of one or many of the machines which are to perform subsequent steps in the manufacture of the shoe. Frequently the combined effects of improper operations of a number of machines will accumulate as the shoe goes through the factory and will result in a poorly made shoe. It quite often happens that when the finished shoe is not right it requires some time to find out what machine is responsible, and frequently it will be found that the poor work is the combined effect of impaired efficiency of several machines which operate successively upon the shoe. It is therefore of the utmost importance that every machine shall be designed with a view to the succeeding machines, and so that it will deal accurately and efficiently with the precise shoe organization that comes to it from the preceding machines; and every machine must be kept in its most efficient and satisfactory condition. That requires incessant and careful supervision of the machines all along the line.

"Moreover, it is of great importance that each machine in the line be properly constructed from a mechanical standpoint. If a machine is poorly constructed, for example if some of the operating parts are weak, or if some of the movements given to any of the parts are too abrupt, or if the mechanical organization is not good, so that excessive wear and lost motion with consequent erratic operation results, a machine will frequently be put out of operation by breakage of parts or by necessity for adjustment to make the parts co-operate as they must to perform the machine's work. Every time a machine is put out of operation for any reason, shoes accumulate in front of that machine and there are no shoes for the operation of the machines for performing subsequent steps, so that those succeeding machines and their operators are idle and the whole factory suffers on account of that one disabled machine" (R. Vol. 2, pp. 2664–5).

Mr. Howard then explained at length the effect on the operation and work of other machines of a number of machines not

adapted for use with such other machines (R. Vol. 2, pp. 2265–2671), and added:—

> "The impairment of the efficiency of the operation of one machine by the failure of machines which have previously operated upon the shoe to do their work right extends all the way through the long line of machines which operate successively upon the shoe, and includes even those machines which perform minor operations. The difficulties which I have specifically discussed are merely illustrations of what may occur throughout the factory" (R. Vol. 2, p. 2671).

Therefore a team of the United Company's machines used together is more efficient and has a greater productivity and produces a better product than if the team were not used as a whole and an outside machine not specially adapted for use with other machines of the series were interjected into the series.

(*c*) The United Company, as we have shown, furnishes service with its machines free of charge. It is obvious that the United Company can furnish this service at less cost to itself for each machine if a series of machines is used than it can if a single machine or only a few machines of the series are used.

(*d*) Where a series of machines is used on each shoe, if the completed shoe is defective it is sometimes difficult to tell what particular machine of the series is at fault. Where a team of United Company's machines is used the United Company is responsible for the result, and by furnishing efficient machines and keeping its machines in proper adjustment and repair it maintains a high standard of product. Where an outside machine is introduced it may produce defective work.

The United Company owns the trademarks "Goodyear Welt" and "Goodyear Turn" and grants to its lessees the right to use them. Its machines have been especially developed to make "Goodyear Welts" and "Goodyear Turns." It is vitally interested in the quality of the product of its machines. Defective work affects the reputation of its machines.

When machines of different makes are used together on the same product it is not easy to tell which is responsible for defective work, and the results of poor work by one machine may run along and accumulate with each operation and produce unsalable or defective shoes and thereby affect the reputation of the United

Company's machines, even though they are not responsible for the defective work.

Mr. Winslow testified:—

> "The reputation for efficiency, both in quantity and quality of work done by our machines, is always in jeopardy and affected by the introduction of a machine of some other manufacturer into the series of operations done by our machines. The reputation of our Goodyear welt shoe, the standing of that shoe, is dependent upon the two different kinds of seams that are made by the two different machines used in the manufacture of that shoe. And the quality of work done is affected, and would be necessarily affected, by the way in which the work comes from, or is prepared by, one machine to go to the next machine.
>
> "Prior to the formation of the United Company there was a constant dispute between the different companies which made up the United Company as to who was responsible for a poor piece of work. As an illustration, which could be easily understood even by one not familiar with the manufacture of shoes, the very next operation from the lasting is the welt sewing. The welt-sewing machine operator would constantly lay the blame for poor work upon the lasting operator—the operator upon the lasting machine. The lasting machine operator would constantly blame the operator upon the welt-sewing machine.
>
> "Both those reasons have to do with the use of our tying clauses for the greatest and most successful production of our machines" (R. Vol. 1, pp. 866–7, lines 34–43, 1–12).

(*e*) The United Company also furnishes the best machines. This is proved by all the evidence and is found as a fact by the District Court. Having the best machines, adapted and developed to be used consecutively, as a team or plant, it is distinctly injurious to it to have an inferior machine introduced into the line, for at once the certainty and regularity of production is endangered, and royalties exposed to diminution.

One of the principal reasons for the formation of the United Company was to improve the service rendered with its machines and thus increase their productivity (*supra*, pp. 171–172). The three constituent companies prior to the formation of the United Company often had their machines in the same factory, but no one of the three could afford a really satis-

factory service. The extent to which the United Company was enabled to improve this service has been shown above (*supra*, pp. 186–188). The testimony of shoe manufacturers as to the efficiency and necessity of the service has also been referred to (*supra*, pp. 189–194). It has also been shown that as a result in part of this service and the use of the United Company's machines as a series or team the efficiency or productivity of each machine has increased to a startling extent. Thus each Goodyear welter operated on 66.7 per cent. more shoes in 1910 than it did in 1900, each Goodyear stitcher operated on 69.5 per cent. more shoes in 1910 than in 1900, each Goodyear turn sewing machine operated on 54.3 per cent. more shoes in 1910 than in 1900, each heel attaching machine operated on 62.3 per cent. more shoes in 1910 than in 1900, and each lasting machine operated on 24 per cent. more shoes in 1910 than in 1900 (*supra*, p. 197; Defs.' Ex. 218, R. Vol. 1, p. 428).

The foregoing conditions show beyond question that when a series of the United Company's machines is used the total number of shoes operated on by each machine is increased and therefore the amount of income on account of each machine carrying a royalty is proportionately increased; that the cost of the caring for each machine is reduced and the reputation of the defendants' machines is increased, factory space is economized because fewer machines will produce a larger output, and the regularity and certainty of product is assured. These results clearly justify the United Company (if any justification is needed) in granting the shoe manufacturer who uses a team of machines a better rate than is granted a shoe manufacturer who uses a single machine out of the team or only a portion of the machines constituting the team. Indeed, the shoe manufacturer may well insist that such wholesale or team rate is only fair to him, because when he so uses the machines the return to the United Company is greater on each machine. By granting such a team rate the shoe manufacturer is permitted to share in the economies resulting from the formation of the United Company and its consequent ability to furnish and care for a complete team of machines adapted for use together.

Mr. Winslow testified:—

"The restricted-use clause was adopted in our leases for the purpose of giving the company the proper return for the use of the machines when they were leased without initial premiums, and for that reason alone. With the terms of royalty fixed the company would not, without the initial premiums, receive a fair return for the machines unless they were used together as restricted in the leases. As a business proposition, after the initial premiums were removed, there would be no security whatever for a proper and fair return for the use of the machines without the restricted-use clause" (R. Vol. 1, p. 452, lines 29-38).

He further testified:—

"When I testified on cross-examination that the reason for the use of the tying clauses was not to cause more of our machines to be used and to make more people use them, but that the real reason was to increase the productivity of our machines, I meant that the clauses were introduced to increase the productivity of the principal machines and by increasing that productivity to reduce the number of machines required to do the work, and thereby reduce the cost to the company of the up-keep and service in connection with the machines, and at the same time increase the earnings of each machine.

"By limiting the use of one principal machine of the company to work which has been operated upon by other principal machines of the company, its use is confined to work done by machines with which we know that prompt and efficient service is furnished to keep that machine in proper condition to operate, and with operators who have been properly instructed in the operation of the machine at the expense of our company, and also with machines where new operators will be taught whenever they are needed. Now, of course, under those conditions we have a definite assurance as to the maintenance of the productivity of the machines and the quality of work that will be produced by those principal machines with which another principal machine is used.

This tendency in the operation of the tying clauses is clearly shown by the comparison in the exhibits showing the efficiency of the machines in 1911 over the machines in the year 1900. A relatively smaller number of machines are producing a larger number of shoes, resulting in less necessary investment in machines to produce a given product

and less relative expense to maintain those machines in condition to operate continuously, in the up-keep of those machines, and in the number of operators which must be instructed. The productive efficiency and quality of work done by any line of machines is only equal to that of the least efficient machine in the line.

. . . . . .

"With reference to this question of productivity, it would not be a business possibility for the company, without the requirement of initial premiums, to lease its machines on the terms of the restricted leases without the restrictions in those leases" (R. Vol. 1, p. 856, line 39; p. 857, line 39).

"While the restricted form of lease could not increase the number of our machines in use the two sets of machines were used in unison. The cost of the care of those machines was less per unit, and increased efficiency resulted because the same concern would from its branch office attend to the metallic machine so that it would not be delayed, or attend to the laster so that that would not be delayed" (R. Vol. 1, p. 550, lines 13–19).

"The manufacturers believe that we have the best machines, and they take them, first, for that reason. They take them on the limited lease system because it costs them less to equip their factories and they have the money that they would otherwise have in machinery to use to buy leather and other articles that they use, and they turn that money over two or three times a year. They know by experience that the life of a machine, while sometimes a long period, is many times a short period, and since the United Company was formed they have seen many improved machines. They know that if we improve a machine which they have without the license payment we will put the improved machine in their factory and take out the old one without any cost to them" (R. Vol. 1, p. 551, lines 5–17).

"The reputation for efficiency, both in quantity and quality of work done by our machines, is always in jeopardy and affected by the introduction of a machine of some other manufacturer into the series of operations done by our machines. The reputation of our Goodyear welt shoe, the standing of that shoe, is dependent upon the two different kinds of seams that are made by the two different machines used in the manufacture of that shoe. And the quality of work done is affected, and would be necessarily affected, by the way in which the work comes from, or is prepared by, one machine to go to the next machine" (R. Vol. 1, p. 866, lines 34–43).

(2) TESTIMONY OF SHOE MANUFACTURERS TO MERITS OF RESTRICTED LEASES.

The shoe manufacturers themselves appreciate the merits of the restricted forms of lease and prefer those forms to any others.

R. P. HAZZARD, manufacturer of 5,000 pairs of welt shoes daily, testified:—

> "When I started in for myself I adopted the plan of obtaining machines on the restricted leases because I considered it to our advantage to do so. Because in my judgment it was a necessity for the United Shoe Machinery Company to restrict in some way the use of those machines in connection with the machines paying a royalty, in order to make it practical for them to supply us with the agents' service which they give us, and that the saving in the machinery investment in our plant and the chances of new models coming up made the purchase of the machines in this manner better for us in a financial way as regards the investment of the machine, besides the advantage of the agents' services" (R. Vol. 1, p. 641, line 35; p. 642, line 2).
>
> "My reason for taking the restricted lease was primarily a question of finances, to save my money for working capital instead of tying it up in dead capital. Another reason was that I considered that the liability of loss in the replacement of a machine by a more up-to-date model would be less under the restricted lease than under the other lease. . . . I have never taken as much interest in the legal wording of the United Company's leases as I have in the personality of its people, and I have always had fair treatment from the United Company" (R. Vol. 1, p. 653, lines 10–20).

MARTIN E. WELCH testified:—

> "At the time we made up our minds to add a welt line of shoes I thought the United Company had the best machines and put them out on the best terms. I thought the restricted lease the best terms. First, because it allowed us the use of the money which would have to be put in machinery that at some time would be absolutely worthless; secondly, because we could tell almost to a dollar what the depreciation would be at the end, and thirdly, because I made a partner of the United Company. They owned the machines, and it was just as much to their interest to make the machines work to their fullest capacity

as it was to my interest to have them work to their fullest capacity. Again, when a man owns his own machine if a part breaks he must put it in, but if there are any poor parts in the United machines they paid for the parts. They have used me fair in that respect" (R. Vol. 1, pp. 709–10).

"As between the unrestricted lease and the restricted lease, in my judgment the restricted lease is preferable because, first, I can put into my business the money that I save instead of investing it in the machinery, so that I have more money; second, I can tell almost to a cent just what the depreciation is on that machinery—I call the return charges the depreciation; and, thirdly, I make a partner of the United Company. I have not a dollar invested in the machines, and their interest in the machines is fully as great as mine, and it is to their advantage to keep the machines working to their fullest capacity. That means less machinery for me to run in the factory, and it means a less investment for the United Company. It is true that under the unrestricted lease the United Company owns the machine, and the company draws the same royalty from that machine as it obtains from the other machine. . . .

"I do not see any advantage to the manufacturer in taking the unrestricted instead of the restricted lease, the advantage is with the restricted lease. . . .

"Before I changed to the restricted lease I had had the initial premium leases for about two years. I had practically all my machines on the initial payment basis and changed over from my own choice. I got back everything that was owed me" (R. Vol. 1, p. 713, lines 5–34).

FREDERICK ALLEN said:—

"When we equipped our new factory with machinery for making welt shoes we took the restricted form of lease. Of the three forms of obtaining machinery for making welt shoes—by purchase, by the independent lease, or by the restricted lease—in my judgment the restricted lease is the more advantageous for the manufacturer. I prefer that to purchase because I don't have to tie up our money in machinery, which as an asset is worthless as soon as it is installed. An investment in machinery has not any value for the purpose of obtaining credit; no one considers it an asset. Also the money is tied up so that a manufacturer is prevented from doing that much more business" (R. Vol. 1, p. 722, lines 6–16).

"I preferred the restricted form of lease because I am not obliged to tie up my money. There was a less invest-

ment of money if I took the machines under the restricted form of lease than if I took them under the unrestricted form" (R. Vol. 1, p. 723, lines 33–36).

CHARLES A. EATON testified:—

"We take a very large proportion of our machinery from the United Company. We chose the restricted lease because we felt that it was for our interest. That was because we were relieved from a large investment of capital, and because we believed that the development of shoe machinery was along that line and that we should get better and improved service by so doing.

"I have read the leases. The restrictions do not affect our activities at all. We have full confidence in the management of the company as indicated by their dealings with us since it was formed. They have not taken advantage of the technicalities of their leases to the extent that they could. They have been lenient in all their dealings and in the exchange of machines. Their policy has been very liberal, and they have kept the machines up to date. As new machines were brought out they have exchanged the old ones without any return payment or any charge to us, except for missing or worn parts and freight charges. Those are all the charges that have been made to us on account of the replacement of machines during these years of development since we have done business with the company" (R. Vol. 1, pp. 751–2).

EDWARD W. BURT testified:—

"We have always taken our machines on royalty leases, not paying initial charges. I have done that because I prefer not to tie up capital in machinery. It is a very great expense and, in securing credit, bankers never consider machinery worth a dollar" (R. Vol. 1, p. 740, lines 37–41).

C. WILLIS BENNET testified:—

"When I started out for myself I got my machinery from the United Company and from the Singer, the Union Special, and the Wheeler & Wilson Companies. I make from 800 to 1,400 pairs a day, depending upon the season.

"I took my machines from the United Company on the restricted form of lease without initial premiums. I chose that form because I had a very small capital when I started

and I didn't care to lock up so much money in machinery. I had been a superintendent and had saved some money. That is all I had to start with" (R. Vol. 1, p. 757, lines 40–45; p. 758, lines 1–4).

"As between purchasing machinery, or obtaining it upon an independent lease with an initial premium, or obtaining it on the restricted form of lease which I have, the restricted lease was the most advantageous because I had no money to tie up in machinery. Had I not been able to obtain my machines in that way, I would not have been able to start in business at all; never could have started if it hadn't been for the United Company. . . .

"I do not find anything irksome or difficult about the clauses in the leases limiting the use of our machines. I have read the leases" (R. Vol. 1, p. 759, lines 9–23).

(3) THE RESTRICTED USE CLAUSE DOES NOT REQUIRE A LESSEE TAKING ESSENTIAL MACHINES FROM THE UNITED COMPANY TO LEASE OF IT PRACTICALLY ALL OTHER MACHINES.

The fundamental charge of the petition, as we have shown (*supra*, p. 240), is that the defendants planned to acquire or obtain a monopoly by

A. Acquiring all concerns engaged in the shoe machinery business, and then

B. Refusing to sell or lease any essential machines, viz., lasting, welt sewing, outsole stitching, heeling, and metallic fastening machines, except on condition that the shoe manufacturer take from them "practically all other machines" which he required.

The United States relies upon the "Restricted Use Clause" to prove the second portion of this charge, namely, that the United Company refused to lease any of its essential machines, namely,

(1) Lasting machines,

(2) Welt sewing and outsole stitching machines,

(3) Heeling machines,

(4) Metallic fastening machines,

except on condition that the shoe manufacturer take practically all other machinery from it.

Unless, then, the Restricted Use Clause has the Effect of Requiring a Lessee taking Essential Machines to take Practically All Other Machinery from the United Company, it Fails to Support the Allegation of the Petition, and is Immaterial in the Present Case.

The charge is not that the United Company refused to furnish one of the so-called "essential" machines except upon conditions requiring the manufacturer to take from it the rest of the "essential" machines. The whole theory of this branch of the petitioner's case was that the manufacturer had to have the United Company's "essential" machines (that is, the five above enumerated), and that the United Company made use of its lawful patent monopoly of these machines and their controlling superiority to all others on the market to force upon the shoe manufacturers its much more numerous line of what the petitioner would presumably designate as "non-essential" machines and thus to exclude competitors and maintain an unlawful monopoly of such "non-essential" machines. It is clear, therefore, that the words, "practically all *other machines*," are intended to refer to machines other than the five kinds which the petitioner designates as "essential."

That the Restricted Use Clause has no such effect as that alleged is apparent from an examination of the leases themselves.

In the first place, it must be remembered throughout the discussion that the United Company never "refused to sell or lease" any of its machines, "essential" or "non-essential," except with the Restricted Use Clause in the lease. On the contrary, the United Company has always continued to offer all its machines, either for outright sale (as in the case of the General Department machines), or under leases containing no Restricted Use Clause, on the same or even more favorable terms than were in effect when the United Company was formed. The Restricted Use Clause merely offers an alternative form of lease at a reduced price to lessees desiring to use a number of the United Company's machines as a team. The wholly unfounded charge that the difference in price under the two forms of lease is prohibitive, or exorbitant, or in any way unreasonable, will be dealt with below.

Again, the Restricted Use Clause is not a "condition that the shoe manufacturer take from" the United Company "practically

all other machinery which he required," or all other machines even of a particular kind, or for a particular purpose. A lessee holding any machine under a lease containing this clause may take any other machines from competitors which he desires without in any way violating the terms of the Restricted Use Clause. The restriction is that he do not use certain of these machines *on the same shoes* on which he uses the United Company's machine. The clause merely limits the method of use of that particular machine. That this is not an immaterial distinction will appear below.

But disregarding for the moment both of these fundamentally erroneous statements in the petitioner's charge, the whole theory of this contention falls to the ground when it appears upon examination of the leases that instead of being customarily attached to the leases of the "essential" machines, and requiring these to be used only with the United Company's "other machinery," that is, the "non-essential" machines, the Restricted Use Clause was never used at all in any leases of the two machines which could most properly be described as "essential," namely, the Goodyear welt sewing and outsole stitching machines; and when used in leases of other so-called "essential" machines it restricts their use (with one or two minor exceptions noted below among the many forms of leases put out) not to use with other "non-essential" machinery, but solely to use with one or more of the other "essential" machines; and the Restricted Use Clauses, found in the leases of the "non-essential" machines, restrict them not to use with other "non-essential" machines, but to use with certain of the "essential" machines. Such a leasing system lends absolutely no support whatever to the charge that the "essential" machines were used to compel or even to induce by means of the Restricted Use Clause the purchase or leasing from the United Company of its "other machinery" or to exclude the "other machinery" of competitors. The Restricted Use Clause operated in exactly the wrong direction to support that theory; and the failure of this part of the petitioner's case was so complete as to make it rather astonishing that any one who had ever had an opportunity to read with any care the United Company's leases should ever have put forward such a claim.

The examination of the leases shows that a lessee, taking every

one of the so-called "essential" machines from the United Company under the restricted form of lease, is free to use with all of them on the same shoes any machines of any *other* kinds whatsoever obtained from competing makers, with only these two very small exceptions, namely, that if he uses under restricted lease a No. 5 Lasting Machine (which is only one of several kinds of lasting machines made by the United Company), he must, if he pulls over by machinery the shoes on which that lasting machine is employed, use the United Company's pulling-over machine in connection therewith; and that if he uses the United Company's heeling machine *on pegged shoes* (of which very few are made), he must use the United Company's pegging machine in connection therewith. With these two minor exceptions he is absolutely free to use all of the United Company's "essential" machines under restricted leases on the same shoes on which any other machines obtained from competitors are used, such as machines for stitching uppers, pulling-over machines, eyeletting machines, clicking machines, a large number of auxiliary machines (there being 43 in the Goodyear department alone), General Department machines (of which there are over 170 different kinds), and any other machines of any kind which may be useful in the manufacture of shoes.

That this statement, if true, completely disposes of the petitions charge must be apparent. It is only necessary to support the statement which has been made by a detailed examination of the leases of the so-called "essential" machines.

(*a*) Lasting Machines.

There were introduced by the Government, to show the form of lease upon which the United Company put out its lasting machines, nine different forms,—in addition to the forms in use before the United Company was formed and which the United Company continued to use.

Of the two forms introduced in respect to the **Consolidated hand method (welt) lasting machine** only one contains any limitation whatever to use with machines of any other department. That one limits the lasting machines held under it to use alone with the United Company's welt sewing and outsole stitching machines. There is no limitation or condition

as to any of what the Government refers to as "*other machinery*" whatsoever.

Of the two forms of lease for the **consolidated hand method (McKay) lasting machine** only one contains any limitation whatever to machines of any other department. That one limits the lasting machines held under it to use alone with United Company's metallic machines. There is no limitation as to any "*other machinery*" whatsoever.

Of the forms of lease introduced in respect to the United Company's **Ideal** and **Chase** lasting machines neither one limits to use with any machines other than the United Company's welt sewing and outsole stitching machines and metallic machines. In the case of the **Ideal** the restriction is to the United Company's welt sewing and outsole stitching machines only—there is no limitation or condition as to any "*other machinery*" whatsoever.

For the **McKay & Copeland lasting machines** one form of lease only (which was introduced by the United Company in 1903—four years after its formation) limits to any of what the Government refers to as "*other machinery.*" Of such "*other machinery*" that one limits to pegging machines only.

Of the two forms of lease introduced in respect to the United Company's **No. 5 lasting machines** only one contains any limitation to use with any other of the United Company's machines. That one so far as relates to what the Government refers to as "*other machinery*" limits to use with United Company's pulling-over machines only. This No. 5 Lasting Machine was not developed or put on the market until 1908—nine years after the formation of the United Company.

In the case of the other groups the lack of foundation for the Government's allegation is even more striking, if that is possible.

The second group which the Government refers to is—

(*b*) Welt Sewing Machines and Outsole Stitching Machines.

The Government introduced three forms of leases as showing the manner in which the United Company has leased these machines. There is not one of these leases which limits the machines to use with any "*other machinery*" whatsoever. As

a matter of fact, the United Company has never at any time in its existence put out any form of lease for its welt sewing and outsole stitching machines which limited such machines to use with the United Company's lasting, metallic fastening or heeling machines or any of them or which limited them to use with any "*other machinery*" whatsoever; or which prevented the use with the United Company's welt sewing and outsole stitching machines of any other machines of whatsoever kind or from whatsoever source obtained.

The next group mentioned by the Government is—

(*c*) Heeling Machines.

Of the three forms of lease in respect to the United Company's heeling machines only one contains any limitation whatsoever. Of such "*other machinery*," that one form (which was not adopted until 1904) restricts to pegging machines only.

The final group mentioned by the Government is—

(*d*) Metallic Machines.

The Government introduced seven forms of lease as showing the manner in which the United Company has put out its metallic machines; only three contain any limitation whatsoever to use with any of the United Company's other machines. In no instance is such limitation extended to the use of any of what the Government has referred to as "*other machinery*"—the limitation in the three cases which contain any limitation being to the United Company's lasting and to its welt sewing and outsole stitching machines alone.

The existence of a limitation to the United Company's pulling-over machinery in the one isolated instance in one form of lease for the No. 5 Lasting Machine adopted nine years after the formation of the United Company, and of a limitation to the United Company's Pegging Machine in the two instances mentioned, viz., one form of Lasting Machine lease adopted five years after the formation of the United Company and one form of Heeling Machine lease adopted six years after such formation, can hardly be taken as a demonstration of an "idea" alleged to have

been "conceived" by the defendants at the time of its formation years before—

> "*to refuse to sell or lease any of the essential machines* [(1) lasting machines, (2) welt sewing machines and outsole stitching machines, (3) heeling machines, and (4) metallic fastening machines] to the manufacturer of shoes *except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to* such manufacturer of shoes" (italics ours) (R. Vol. 1, pp. 991, 994).

As a matter of fact, an examination of all the leases offered in evidence will show that, with the exceptions noted below, in all those cases in which any limitation whatsoever exists it is always *to* one or more of the machines which the Government in its petition has designated as "essential" machines and never *from* such "essential" machines *to* "other" machines.

The only exceptions are that in a few instances, such as above pointed out, under particular forms of leases machines are limited to use with the United Company's pegging machines on pegged work, and in one instance, above noted (other than in the pulling-over leases themselves), there is a limitation to use with the United Company's pulling-over machines. The other limitations, where they exist, are all *to* one or more of the following of the United Company's machines, viz.: (1) lasting machines, (2) welt sewing and outsole stitching machines, (3) heeling machines, and (4) metallic machines.

The foregoing appears to be a complete answer to any claim that the United Company determined to "refuse to sell or lease any of the '*essential*' machines to the manufacturer of shoes except on condition that he buy or lease of them practically all *other machinery* of whatever kind necessary or useful to such manufacturer of shoes," but to further emphasize the lack of basis for such claim, consideration of some of the items of "*other machinery*" is illuminating. For example:—

"Other machinery" must include all of the machines used for attaching the soles of McKay shoes to their uppers. In 1899 such McKay sewed shoes amounted to 82,000,000 pairs out of a total of 172,000,000 pairs of shoes made in the United States; in 1904 to 94,000,000 pairs out of a total of 219,000,000 pairs made in the United States; and in 1910 to 105,000,000

out of a total of 278,000,000 pairs made in the United States (Defs'. Exhibit 215, Vol. 5, p. 322).

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines of any kind, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any McKay sewing machine from the United Company, or which limited the use of any of the United Company's machines to use with McKay sewing machines obtained from the United Company, or which precluded the use of any of the United Company's machines with McKay sewing machines obtained from any source whatever.

"*Other machinery*" must include all of the **machines used for the many operations in sewing together the parts of the uppers and linings** of all shoes made (100 per cent.). Such machinery in number of machines used represents a very large per cent. of all the machines used in the manufacture of shoes.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any machinery for performing any such operations from the United Company, or which limited the use of any of the United Company's machines to use with machines for such purposes obtained from the United Company, or which precluded the use of any of the United Company's machines with machines for such purposes obtained from any other source whatsoever.

"*Other machinery*" must include all of the **machines used for cutting or dieing out the various parts of the uppers and soles** of all shoes. This includes all **clicking** machines.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any such cutting or dieing-out machines or clicking machines from the United Company, or which limited

the use of any of the United Company's machines to use with cutting or dieing-out or clicking machines obtained from the United Company, or which precluded the use of any of the United Company's machines with cutting or dieing-out or clicking machines obtained from any other source whatsoever.

"*Other machinery*" must include all of the **machines for performing the various operations similar to those performed by the auxiliary machines of the Goodyear Department of the United Shoe Company, or other similar operations.**

The United Company never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer should buy or lease any such auxiliary machines from the United Company, or which limited the use of any of the United Company's machines to use with such auxiliary machines obtained from the United Company, or which precluded the use of any of the United Company's machines with similar auxiliary machines obtained from any other source whatsoever.

"*Other machinery*" must include all **machines for inserting the eyelets and for inserting the lacing hooks** in all laced shoes made.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any eyeletting or lacing hook machines from the United Company or which limited the use of any of the United Company's machines to use with eyeletting or lacing hook machines obtained from the United Company or which precluded the use of any of the United Company's machines with eyeletting and lacing hook machines obtained from any other source whatsoever.

"*Other machinery*" must include all **machines for making and finishing all buttonholes and for attaching the buttons** of all buttoned shoes made.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic

machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any button or buttonhole machinery of any kind from the United Company or which limited the use of any of the United Company's machines to use with button or buttonhole machinery obtained from the United Company or which precluded the use of any of the United Company's machines with button or buttonhole machinery obtained from any other source whatsoever.

"*Other machinery*" must include all **machines for treeing and finishing** all shoes made.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any treeing or finishing machinery from the United Company or which limited the use of any of the United Company's machines to use with treeing or finishing machinery obtained from the United Company, or which precluded the use of any of the United Company's machines with treeing or finishing machinery obtained from any other source whatsoever.

"*Other machinery*" must include all **machines for performing the operation of pulling over and the operations of the various auxiliary machines connected therewith** upon all shoes made which are so operated upon.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any pulling-over or auxiliary machinery from the United Company or (excepting in so far as in some forms of Pulling-Over Department leases the pulling-over machine and its auxiliaries are limited to use together) which limited the use of any of the United Company's other machines to use with pulling-over or auxiliary machinery obtained from the United Company or which precluded the use of any of the United Company's machines with pulling-over or auxiliary machinery obtained from any other source whatsoever. There is one exception that out of all the forms of lease put out by the United Company there was one

isolated form of lease for a No. 5 lasting machine (P.'s Ex. 21), which limited the No. 5 lasting machine when held on that particular form of lease to use with the United Company's pulling-over machine, when the shoes were pulled over by machine but not otherwise.

"*Other machinery*" must include all **machines for performing all of the various operations similar to those performed by the many different kinds of machines offered by the United Company for outright sale in its General Department.**

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any machinery for performing any of such operations from the United Company, or which limited the use of any of the United Company's machines to use with General Department machines obtained from the United Company or which precluded the use of any of the United Company's machines with machines for performing such operations obtained from any other source whatsoever.

(4) THE RESTRICTED USE CLAUSES WERE NOT ADOPTED FOR THE PURPOSE OF EXCLUDING COMPETITORS' MACHINES.

We have shown above that the Restricted Use Clauses were adopted for the purpose of offering a wholesale rate to lessees desiring to use a team of the United Company's machines adapted for use together, and working most effectively together.

We have also shown that they do not require or even offer inducements to a lessee taking essential machines from the United Company to take of it practically all other machinery, or indeed any other machinery, and thus that they offer no support to the charge on which the petition is based. This being so, these clauses become immaterial in the present case.

However, we wish to call the court's attention to various other considerations supporting our showing that the Restricted Use Clauses were adopted solely for the purpose of offering reduced

rates to shoe manufacturers using a team of machines, and that they were not adopted for the purpose of excluding competitors' machines.

(a) THE FACT THAT THE UNITED COMPANY HAS ALWAYS OFFERED ALTERNATIVE LEASES CONTAINING NO RESTRICTED USE CLAUSES DISPROVES ANY INTENT TO COMPEL THE USE OF OTHER MACHINES.

There has never been a time when a lessee could not obtain machines of any department upon a form of lease containing no restrictions as to use with machines of other departments. Mr. Winslow testified (R. Vol. 1, pp. 440–1, lines 45, 1–2),—

> "There never has been a time when a lessee could not obtain the machines of any department upon an independent form of lease."

In 1911 Mr. Winslow gave to a committee representing the Manufacturers' Alliance a statement of the terms upon which lessees could then and could at all times previously obtain machines on unrestricted leases from the United Company. This statement is given in Defendants' Exhibit 40 (R. Vol. 5, p. 40).

Mr. Winslow testified with reference to this statement:—

> "Referring to defendants' Exhibit 40, the statement under the heading 'Goodyear welt and turn shoe machine and Goodyear outsole rapid lockstitch machine' represents the practice of the United Company at that time and prior thereto, from the date of the formation of the company and since that time, at least up to the time when this suit was brought. The statements in the three paragraphs under the heading 'Goodyear auxiliary machines' in defendants' Exhibit 40 are true of the company's practice with reference to the marketing of the Goodyear auxiliary machines at that time and prior thereto and up to the time of the bringing of this suit.
>
> "The statement (in defendants' Exhibit 40) under the heading 'Rex pulling-over machine' was true of the practice of the company at that time and prior thereto from the time when we first put out the pulling-over machine, and it has continued to be true of the company's practice up

to the time this suit was brought. We had been prepared to furnish machines in that way at any time and had issued leases in that form.

"The statement in the first paragraph under the heading 'Rex pulling-over system—Auxiliary machines,' in defendants' Exhibit 40, has reference to the pulling-over department alone, and the statements in the three following paragraphs under that heading were true of the practice of the company regarding the pulling-over auxiliaries up to the time the suit was brought.

"The statement under the heading 'Consolidated hand method lasting machine—U. S. M. Co. lasting machine, No. 5,' in defendants' Exhibit 40, is true of the company's practice with reference to those machines. The statements in that exhibit under the headings 'Metallic machines,' 'Heeling machines,' 'Clicking machines,' and 'General department machinery' are true of the company's practice and readiness to perform at that time and prior thereto and up to the time the suit was brought" (R. Vol. 1, p. 514).

Furthermore, the United Company has always been willing to permit a lessee holding a lease of a machine containing a Restricted Use Clause to cancel his lease and take in exchange an unrestricted form of lease. On pages 450 to 451 of the Record, Vol. 1, are given the names of nineteen shoe manufacturers who were offered unrestricted leases in exchange for their restricted leases.

The unrestricted leases carry the same royalty as the restricted leases; the only difference is that an initial payment is charged under the unrestricted leases with the single exception of the unrestricted lease of metallic machines adopted in 1901 by agreement with a committee of shoe manufacturers. In that lease no initial payment is charged, but instead the United Company is authorized to charge 10% more for fastening material used in the machine, the profit from the sale of which constitutes the only royalty that is charged under the lease.

In no instance where an initial payment is charged for an unrestricted lease has the amount of the payment been increased over what was charged prior to 1899, the date of the formation of the United Company, and in some cases the initial payment has been reduced, and in no instance has the royalty charged on any machine been increased

over that charged in 1899 (R. Vol. 1, p. 433, lines 29–32). On the contrary, certain of the initial payments previously required have been removed and the machines leased without the Restricted Use Clause on leases requiring no initial payment. Thus in 1899 $300 initial payment was charged for the Goodyear Welter and the same amount for the Goodyear Stitcher (R. Vol. 1, p. 515, lines 1–12, and Defs.' Ex. 41, Vol. 5, p. 44). The charge for some of the auxiliary machines was as much as $500 each (Defs.' Ex. 41, Vol. 5, p. 45). The lessee to-day can get his Goodyear machines without any initial payment, paying on the auxiliary machines only a small annual rental (Defs.' Ex. 230A, Vol. 5, p. 443), and the leases contain no clause restricting their use to use with other groups of machines. In addition the royalty on the turn machine has been reduced 50%.

The result is that a lessee to-day who does not wish to be bound by the Restricted Use Clauses adopted by the United Company can get leases without these clauses on better terms than were available in 1899, before the formation of the United Company, although the machines themselves have been much improved, numerous auxiliary machines have been added, and the cost of manufacturing machines has unquestionably increased.

It is obvious that if the defendants, as charged by the United States, had organized the United Company in order to insert clauses in the leases requiring the use of machines of different groups if the machines of one group were taken in order to oppress shoe manufacturers and obtain an unlawful monopoly, they would not have continued to offer machines of each group independently on as favorable or more favorable terms than before.

The District Court, referring to the contention that the leases of the United Company compel shoe manufacturers desiring to take certain machines from the United Company to take other machines which prior to the formation of the United Company they could obtain separately, said,—

> "The alleged plan of a refusal of what before could be had separately, as a means of compelling the taking of other machines, was a principal ground for invoking the Sherman Act" (R. Vol. 1, p. 1162).

After reviewing the various clauses in the leases, the District Court found that the Restricted Use Clause was the only one that

> "... has relation to the supposed scheme of using the power acquired by combination to refuse machines that before were separately obtainable, and to offer such machines only on condition that other machines of different kinds should also be taken" (R. Vol. 1, p. 1163).

The District Court, however, found not only that the Restricted Use Clause was lawful in and by itself, but that in view of the fact that machines on unrestricted leases are offered on as favorable terms as previously the United States must be held to have utterly failed to prove its contention.

Thus the District Court said,—

> "The restricted or prohibitive leases do not in themselves as documents prove the denial of the right to procure, as before, independent leases for individual machines. As matter of fact, independent leases which did give the right to use the machines with machines of other kinds, made by other machinery manufacturers, were always procurable. This was the general rule, and if there were any exceptions they were, so far as appears, inconsiderable.
>
> "It is a result of the consolidation that the United Company offers more attractive contracts for a group of machines of different kinds than for machines of one kind only; but as it still offers the contract for machines of one kind on as good terms as before it is difficult to see how that is detrimental to the shoe manufacturers.
>
> "The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would use also others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had no choice, or in disregard of the fact that it was merely an alternative form of lease. As the leases prove no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge" (R. Vol. 1, p. 1163).

The Contention of the United States that the Prices Charged for Unrestricted Leases are Prohibitive is Utterly Unfounded.

The United States contended in the District Court that the initial payments charged for machines under the unrestricted leases were prohibitive. This of course is not the fact, because they are the same or less than the initial payments that manufacturers had paid and prospered under for many years before the United Company inaugurated the group form of leases from which the initial payments were eliminated.

The objection to the initial payment leases is not that the initial payments are exorbitant, but it lies only in the fact that the United Company's non-initial payment leases are more favorable.

No evidence was introduced by the United States as to the cost of building or the value of the machines, and there was absolutely no evidence that these initial payments were unfair. The United States did not attempt to show that the amount of the initial payments exceeded the difference between the return to the United Company when its principal machines are used as a team, and when they are used independently. In the case of the metallic lease adopted in 1901, where no initial payment was charged for the unrestricted lease, but the royalty was increased, where this form of lease was taken, over the amount charged under the restricted lease, the difference was only 10%.

The District Court said (R. Vol. 1, p. 1166):—

> "But surely, if the argument is made that there is coercion through an excessive price, such an argument can have no weight whatever for any purpose legal or ethical unless the fact that it is excessive affirmatively appears. From such evidence as is presented in this case as to the amount of initial charges upon independent leases we can draw no support for the charge of coercion through excessive charges."

Mr. F. C. Rand, vice-president of the International Shoe Company, a witness for the United States, testified that his company operated 1,635 machines taken from the United Company; that the cost of installing them under the restricted form of lease was between $10,000 and $12,000, and the cost under

the unrestricted form would be over $250,000, the royalty charged in both cases being the same (R. Vol. 1, p. 180, lines 38–45; p. 183, lines 37–38). The amount of the initial payment on each machine of the kind held by Mr. Rand is given in Defendants' Exhibit 41 (R. Vol. 5, p. 44). It is to be noted: *First*, that the amount stated by Mr. Rand as the cost of installation includes not only initial payments under the unrestricted form of leases of certain departments, but also the cost price of all General Department machines when purchased outright, which amounts to one-third of the total. The International Company by purchasing these General Department machines would avoid the annual rental otherwise payable on them; *Second*, that this total includes initial payments on Goodyear machines, the leases of which contain no clause restricting their use to use with other groups of machines, so that it would not be necessary to take the Goodyear machines on the initial payment form of lease to avoid the effect of the Restricted Use Clause; *Third*, that if a manufacturer desired to use machines without Restricted Use Clauses it would only be because he desired to use some but not all machines obtained from others, in which case he would not take machines of that kind from the United Company, and therefore would not pay the initial premiums required on such machines. This, of course, would reduce the total initial premiums paid by him. The more machines of others he took, the fewer would be the machines of the United Company which he used, and thus the initial payments made by him to the United Company would be proportionately reduced. In no possible case, then, would he be under the necessity of paying $250,000, or anything approaching that sum, because he wished to use a competitor's machines.

The International Company is one of the two largest shoe manufacturers in the world, having $25,000,000 capital, making 50,000 pairs of shoes a day, and operating twenty different factories (R. Vol. 1, p. 184). $250,000 (an average of $12,500 for each of the International Company's factories) is on its face a small sum to cover the cost of selling outright the General Department machines used in these twenty factories and furnishing the remaining machinery of the types manufactured by the United Company under conditions whereby the machines could be used at the option of the lessee independently of each other and not as part of a series.

That the Terms Charged for Unrestricted Leases are not Prohibitive or Arbitrary is Conclusively Shown by the Large Number of Machines which have been Taken on these Terms by Shoe Manufacturers.

On March 1, 1905, 1,798 out of a total of 1,851 welt and turn machines and 1,817 out of a total of 1,871 stitchers were out on unrestricted forms of lease, 603 out of a total of 8,129 metallic machines were on unrestricted leases, 1,500 out of a total of 1,652 heel attaching machines were on the unrestricted lease, and 1,956 out of a total of 5,280 lasting machines were on unrestricted leases (R. Vol. 1, pp. 448–9).

Mr. Winslow testified that in 1905 seven hundred and six manufacturers had principal machines of the United Company on unrestricted leases. "There were 186 unrestricted leases of principal metallic machines, 536 unrestricted leases of heel attaching machines, and 322 unrestricted leases of lasting machines" (R. Vol. 1, p. 976, line 43; p. 977, line 5).

As illustrating the extent to which manufacturers chose unrestricted leases and paid initial premiums, Mr. Winslow had compiled statistics for the Hand Method McKay Lasting Machine for each year from 1899 to 1911, as follows:—

March 1, 1899, to December 31, 1899, independent lease 185, restricted lease 250; in 1900, independent lease 65, restricted lease 283; in 1901, independent lease 143, restricted lease 415; in 1902, independent lease 115, restricted lease 425; in 1903, independent lease 72, restricted lease 385; in 1904, independent lease 54, restricted lease 233; in 1906, independent lease 59, restricted lease 293; in 1907, independent lease 36, restricted lease 247; in 1908, independent lease 47, restricted lease 159; in 1909, independent lease 54, restricted lease 169; in 1910, independent lease 21, restricted lease 200; in 1911, independent lease 18, restricted lease 214 (R. Vol. 1, p. 478, line 36–p. 479, line 2).

In 1911, 23,404 Goodyear, metallic, heeling, and lasting machines, including auxiliaries, were out on leases containing no Restricted Use Clauses (except that the auxiliaries were limited to use with the principal machines) out of a total number of machines in those departments under lease of 47,985. In other words, about half the total number of machines in these departments were leased on unrestricted leases (R. Vol. 1, p. 449, lines 25–32).

It is to be noted that the smallest number of unrestricted machines was in the Metallic Department. An unrestricted lease in this department can be obtained without initial payment for 10% more royalty than was charged on the restricted form, surely a small discount for a wholesale use of the machines as a team.

(b) OTHER CONSIDERATIONS SHOWING THAT THE RESTRICTED USE CLAUSES WERE NOT ADOPTED FOR THE PURPOSE OF EXCLUDING COMPETITORS' MACHINES.

That the Restricted Use Clauses are intended to offer wholesale prices to shoe manufacturers desiring to use a series or team of the United Company's machines and that they were not adopted to require an exclusive use of the Company's machines or to arbitrarily exclude competitors' machines is further shown by the following considerations:—

1. The clause, as we have shown above, does not require the lessee to use the United Company's machines at all. On the contrary, it prohibits the use of the United Company's machines except on certain conditions, that is, when they are used as part of a team.

The only effect, therefore, that it can have is to induce the shoe manufacturer to use a team of the United Company's machines because he thereby gets a wholesale price instead of a retail price.

Had the United Company planned, as charged, to refuse to lease any of its essential machines unless the lessee bought or leased practically all other machinery of it, or had it intended to require an exclusive use of its machines, or to arbitrarily exclude competitors' machines, it is obvious that it would have adopted a very different kind of provision to carry this purpose into effect.

2. The United Company, as we have shown, eliminated the clause occurring in a number of the leases put out by the constituent companies requiring the lessee to take additional machines of the same kind as those leased, if he needed them for additional work. The effect of this clause was to require an exclusive use of the machines of the kind leased. The fact that the United Company used this clause only to a limited

extent after its formation, and discarded it entirely after 1907, shows that it did not intend by its leases to require even an exclusive use of machines of the particular kind which the shoe manufacturer desired to take.

3. The Restricted Use Clause was not introduced at once upon the formation of the United Company, but only from time to time as special conditions, such as a reduction or elimination of an initial payment, called for its use. Thus, as we have shown, it was introduced into the metallic leases only when the cost of copper wire used by the lessees in the machines, the purchase of which afforded the royalty, compelled the United Company to introduce this clause or increase the price at which it sold the wire. It was not introduced into the heeling leases until the fall of 1904, nearly six years after the formation of the United Company, and was then introduced as partial compensation for the elimination of the initial payments previously charged for the Goodyear machines.

4. The United Company never inserted any Restricted Use Clause in its leases of Goodyear machines, restricting their use to use with machines of other departments. The Goodyear Welter and Stitcher are in many respects the most important machines manufactured by the United Company. Petitioner's patent expert Chapman testified that they were the only essential machines for welt shoes (R. Vol. 2, p. 2794). They are fundamental in its welt system and the largest royalty is paid for their use. Had the United Company contemplated refusing to lease its important or essential machines, unless the manufacturer took or used other machines furnished by it, it surely would have restricted the use of its Goodyear Welter and Stitcher.

5. The United Company sells outright 172 General Department machines which were invented or acquired by it after its formation (Defs.' Ex. 227). More than one-half the machines which it manufactures are General Department machines.

In other words, while the constituent companies prior to the formation of the United Company sold no machines, the United Company now sells outright more than half of the kinds of machines it makes. No other machines furnished by the United Company are restricted to use with any General Department machines. Had the United Company planned to compel shoe manufacturers leasing its machines, whether essential or otherwise, to take all

or a large part of the other machines required by them, it would certainly not have sold its General Department machines outright to any shoe manufacturer whether or not such shoe manufacturer took or used any of its other machines nor continued to lease all its other machines without any reference to whether the lessee bought any of its General Department machines.

6. The effect of the Restricted Use Clauses is very limited. Thus, a shoe manufacturer holding machines under restricted use leases can, without violating the restrictions applicable to such machines, obtain from competitors and use in connection with the United Company's machines the larger portion of the machines required by him in his factory. We consider this limited effect of the Restricted Use Clauses more in detail below.

(c) THE EFFECT OF THE RESTRICTED USE CLAUSES IS VERY LIMITED. A SHOE MANUFACTURER HOLDING MACHINES UNDER RESTRICTED LEASES CAN, WITHOUT VIOLATING THE RESTRICTIONS, OBTAIN FROM COMPETITORS, AND USE IN CONNECTION WITH UNITED COMPANY'S MACHINES BY FAR THE LARGER PORTION OF THE MACHINES REQUIRED BY HIM.

The restrictions contained in the United Company's restricted use leases, as we have shown above, limit the use of the machines to use in connection with only a few of its principal machines which are peculiarly delicate in their operation, which have, as we have stated, been constructed for use together, which are essential to the integrity of a shoe, and which comprise only a very small proportion of the total number of machines required by a shoe manufacturer.

As we have shown above, these so-called principal machines are restricted to use in certain cases with each other, but they are not restricted to use with any other machines, and while other machines are restricted to use with the principal machines, they are not restricted to use with each other. There are then no restrictions in any of the leases of any kind of machines which restrict the use of the leased machines except to use in connection with one or more of the following, viz., the Goodyear Welter and Stitcher (but not the 43 Goodyear Auxiliary Machines) Lasting Machines, Heeling Machines, Metallic Machines, and Pegging

Machines. The only exception to the foregoing statement is that the No. 5 Laster is limited to use with the Pulling-over Machine.

The result is that, with the single exception above noted, requiring a lessee of a No. 5 Laster to use it in connection with the United Company's Pulling-over Machine, a shoe manufacturer who leases from the United Company under restricted leases a Welter and Stitcher, a Lasting Machine, a Heeling Machine, a Metallic Fastening Machine (and, if he makes pegged shoes of which kind very few are made, a Pegging Machine) can use in connection with them, or in connection with any other machine leased from the United Company, any other kinds of machines he desires, whether obtained from competitors or not, without violating any Restricted Use Clause.

Thus he can take from competitors and use in connection with any machine he may lease from the United Company any one or all of the 43 different kinds of Goodyear Auxiliary Machines, any one or all of the 172 different kinds of General Department Machines, any Pulling-over Machines, Eyeletting Machines, Clicking Machines, Heeling Machines, or McKay Sewing Machines.

The Restricted Use Clause thus has a very limited effect.

Defendants' Exhibit 230 (R. Vol. 1, p. 456) shows the number of Pulling-over, Lasting, Heeling and Metallic Machines, and Welters and Stitchers required in factories making from 100 to 450 pairs of shoes per day. Only 7 such machines are needed in a factory making 100 pairs per day; only 12 in a factory making 450 pairs per day. In the manufacture of McKay shoes, the Welters and Stitchers are not needed, so that a factory making 450 pairs per day would require only 8 of these machines (R. Vol. 1, p. 456, lines 10–13). Out of a total of 1,150 factories which used the United Company's machinery in 1911, about half made less than 450 pairs per day (R. Vol. 1, p. 455). In a factory making 600 pairs of turn shoes only 6 such machines are needed, and in a factory making 4,800 pairs per day only 23 (Defs.' Ex. 249, R. Vol. 1, p. 506).

A shoe manufacturer, then, who leases from the United Company under restricted leases 12 machines of the kinds above mentioned in a factory making 450 pairs of welt shoes daily, or 8 of such machines in a factory making 450 pairs of McKay shoes daily,

or 6 of such machines in a factory making 600 pairs of turn shoes, can, at his option, take from competitors or from the United Company any one or more of 43 different kinds of Goodyear Auxiliary Machines, 172 General Department Machines, any eyeletting machines, insole machines, lacing machines, clicking machines, or any other kinds of machines, and use them in connection with any machines of any kind whatsoever leased from the United Company on restricted leases without violating any Restricted Use Clauses in such leases.

The foregoing limited effect of the Restricted Use Clauses is illustrated by the machines in the factory of R. P. Hazzard, who makes about 5,000 pairs of Goodyear Welt shoes per day (R. Vol. 1, p. 641, lines 9–10), and who, therefore, is one of the large manufacturers, and who takes from the United Company his welters, stitchers, lasting machines, heeling machines and metallic machines. A complete list of the machines in his factory is given in Defendants' Exhibit 262 (R. Vol. 5, p. 707). This company has in all 746 machines. 419 of these machines were obtained from other persons than the United Company and can be used in connection with any machine which the United Company makes without violating any restriction contained in any lease which it puts out. Of the remaining 327 machines which are furnished by the United Company only 121 including 14 pulling-over machines are machines to use with which any other machine made by the United Company is restricted in any of its leases. In other words, out of a total of 746 machines actually used by Mr. Hazzard's Company any one or all of 625 machines whether or not obtained from a competitor can be used in connection with any machine put out by the United Company on a restricted lease without violating any restriction contained in any such lease.

J. Brown & Sons' factory has a capacity of 7,500 pairs of McKay and Standard Screw shoes a day (R. Vol. 1, p. 730, lines 14–15). It is, therefore, one of the fifteen or sixteen largest factories in the country (R. Vol. 1, p. 455). A complete list of the machines in his factory is given in Defendants' Exhibit 236 (R. Vol. 5, p. 671). This company has a total of 424 machines. 296 of these machines were obtained from other persons than the United Company, and can be used in connection with any machine which the United Company makes without violating any restric-

tion contained in any lease which the United Company puts out. Of the remaining 128 machines furnished by the United Company only 53 are machines to use with which any other machines made by the United Company are restricted in any of its leases. In other words, out of a total of 424 machines actually used in this factory any one or more of 371 machines could be bought from a competitor and used in connection with any machine put out by the United Company without violating any Restricted Use Clause in any lease.

It seems self-evident that Restricted Use Clauses which, as in the case of J. Brown & Sons' factory, permit a lessee to use in connection with any of the United Company's machines he may take or wish to take 371 machines of competitors out of a total of 424 machines needed by him can hardly be said to show an intent to exclude competitors' machines, or, as alleged in the petition, an intention to require a lessee taking essential machines to take practically all other machinery from the United Company.

Furthermore, Each of the So-called Principal Machines is not Restricted to Use with all Other Principal Machines.

We have shown above that the only machines to use with which other machines are restricted are the two principal Goodyear Machines, viz., the Welter and Stitcher, Lasting Machines, Heeling Machines, Metallic Fastening Machines, and Pegging Machines with the single exception that the No. 5 Laster is restricted to use with the Pulling-over Machine.

However, the restricted leases do not restrict the use in most cases to all of the above-mentioned machines. Even in the case of the principal machines themselves this is not true. The result is that a shoe manufacturer can take various principal machines of competitors which he may desire to use and use them in connection with the United Company's principal machines of other kinds without taking all of such other principal machines from the United Company on unrestricted leases.

To illustrate:—

The Goodyear Welter and Stitcher are not restricted to use with any other machines whatsoever.

The Metallic Machines are restricted to use with the Goodyear Welter and Stitcher and the Lasting Machines.

The Heeling Machines are restricted to use with the Goodyear Welter and Stitcher, Lasting, Pegging, and Metallic Machines.

Lasting Machines are restricted:—

The Hand Method Welt to the Goodyear Welter and Stitcher.

The Hand Method McKay to the Metallic Machines.

The No. 5 to the Goodyear Welter and Stitcher, Pulling-over and Metallic Machines.

The other lasting machines have become practically or entirely obsolete.

The McKay Sewing Machine, when leased and not purchased, is restricted to use with the Lasting Machine.

A shoe manufacturer who does not desire to take all restricted or all independent leases from the United Company and who desires to use certain machines of the above classes obtained from competitors may therefore take the following, among many, combinations of machines and use them on the same shoes without violating any Restricted Use Clause and with very slight additional expense for such unrestricted or independent leases as are required. In no case will he be required to make an initial payment for his Goodyear machines.

FOR MAKING WELT SHOES.

No. 1. United Company's Goodyear Welter, Stitcher and Auxiliaries.
United Company's Metallic Machines on unrestricted 10% lease or initial payment lease.
Competitor's Heeler and Laster.

No. 2. United Company's Goodyear Welter, Stitcher.
Competitor's Auxiliaries.
United Company's Metallic Machines on restricted lease.
United Company's Lasting Machine on restricted lease.
Competitor's Heeler.

In this combination he will not be required to take any initial payment lease from the United Company.

No. 3. United Company's Welter and Stitcher, with either the United Company's or Competitor's Auxiliaries.
Competitor's Metallic Machines.
United Company's Hand Method Welt Laster on restricted lease.
Competitor's Heeler.

In this combination he will not be required to take any initial payment lease from the United Company.

No. 4. United Company's Welter and Stitcher with or without Auxiliaries.
Competitor's Laster.
United Company's Metallic on unrestricted 10% lease or initial payment lease.
United Company's Heeler on independent lease.

No. 5. United Company's Welter and Stitcher as above.
United Company's No. 5 Laster (on independent lease).
United Company's Metallic on restricted lease.
Competitor's Heeler.

No. 6. Competitor's Welter, Stitcher, and Auxiliaries.
United Company's Laster on independent lease.
United Company's Metallic on unrestricted 10% lease or initial payment lease.
United Company's Heeler on independent lease.

FOR MAKING MCKAY SHOES.

A manufacturer may take

No. 1. United Company's McKay Sewing Machine.
United Company's Hand Method McKay Laster—restricted.
United Company's Metallic—restricted.
Competitor's Heeler.

In this combination he need take no initial payment leases from the United Company.

No. 2. Competitor's McKay Sewing Machine.
United Company's Hand Method McKay Laster—restricted.
United Company's Metallic—restricted.
United Company's Heeler—restricted.

In this combination he need take no initial payment leases from the United Company.

No. 3. Competitor's McKay Sewing Machine.
Competitor's Laster.
United Company's Heeler—independent lease.
United Company's Metallic—unrestricted 10% lease or initial payment lease.

No. 4. Competitor's McKay Sewing Machine.
Competitor's Metallic Machines.
United Company's Heeler—independent lease.
United Company's Laster—independent lease.

No. 5. Competitor's McKay Sewing Machine.
Competitor's Laster.
Competitor's Heeler.
United Company's Metallic on unrestricted 10% lease or initial payment lease.

No. 6. United Company's McKay Sewing Machine.
United Company's Laster—independent lease.
Competitor's Heeler.
Competitor's Metallic Machines.

No. 7. United Company's McKay Sewing Machine—restricted.
United Company's Laster—restricted.
United Company's Metallic—restricted.
Competitor's Heeler.

In this combination he need take no initial payment lease from the United Company.

If a manufacturer has a full line of the United Company's Goodyear Machines, Lasting, Metallic and Heeling Machines on restricted leases and wants to use with them a competitor's

lasting machines, he need only change his heeling and metallic machine restricted leases to independent leases.

To change to a competitor's metallic machine he need only put his heeling machines on independent leases.

To change to a competitor's heeling machine he need not take unrestricted leases of any of the other machines. None of them is restricted to use with the heeling machine.

The foregoing are only a few illustrations of the many combinations available to a lessee desiring to equip his factory partially with United Company's principal machines, and partially with a competitor's principal machines.

Had the United Company intended by the use of the Restricted Clauses to exclude competitors' machines, it would obviously not have so drawn the clauses as to permit shoe manufacturers to use its machines in connection with competitors' machines, not only by taking initial payment leases, but even under the restricted leases with so little interference on account of the restrictions. The conclusion is obvious that the restricted clauses were not intended to exclude the use of competitors' machines.

(5) REASONS FOR ADOPTION OF "AUXILIARY RESTRICTED USE CLAUSE."

The "Auxiliary Restricted Use Clause" restricts the use of auxiliary machines to use on shoes operated on by the principal machines of the department.

This clause was used by the constituent companies, and the United Company merely continued the practice.

The larger number of auxiliary machines are in the Goodyear Department, and the reasons for the use of this clause can perhaps be best explained in connection with the Goodyear machines. The principal reasons for the use of this clause are as follows:—

1. The principal machines and the auxiliary machines as a rule perform practically a single operation, such as welting, pulling-over, or heeling. The auxiliary machines were originated and developed to assist the principal machine with which they are used, and are adapted for that particular purpose. For practical purposes they constitute a single machine. The principal machine or machines and the auxiliary machines used

in connection therewith are therefore leased as a unit, the auxiliaries being restricted to use with the principal machines, as this is the purpose for which they are taken by the lessee.

2. The United Company prefers not to put out machines of the kinds it leases unless it assures their being satisfactory by repairing them and keeping them in proper operating condition. A group of machines it can care for at a more or less ascertained price. A single auxiliary machine would be costly to care for by itself.

Mr. Winslow testified:—

> "I will state one reason why the United Company has not adopted a form of lease for the Goodyear auxiliary machines which would permit them to be used in connection with welters and stitchers manufactured by other companies, upon payment of a royalty. Of course our machines are all taken care of in the factories, and the expense of taking care of individual machines would be very large and no prices have been established for that. It was not the policy of the Goodyear Company, and we have developed along the same lines trying to furnish to manufacturers the greatest amount of help that we could in manufacturing Goodyear welt shoes, and it was only on these lines that we could see how to give the manufacturer the greatest value for the money. We spent large sums in developing these auxiliary machines, perhaps much in excess of their value as machines, or what we could charge for, but there was every incentive to do it to develop the manufacture of the shoes made by the principal machines" (R. Vol. 1, p. 544, lines 23–39).

3. As a matter of historical growth the principal machine of a group has been developed first and the auxiliary machines have been developed later to assist the work of the principal machine. When an auxiliary has been developed, therefore, the situation has been that the lessees already had the principal machine under leases requiring them to pay a specific royalty for each pair of shoes on which the principal machine was used. The lessor, having originated a new auxiliary machine, was therefore confronted with the question of whether he should put the machine out on an independent lease, charging a separate and additional royalty for its use, or should let the shoe manufacturer who was already using his principal machine have the new

auxiliary without additional royalty. It has always been the practice of the United Company and its predecessors to furnish lessees of its principal machines with auxiliary machines, as they have been successively developed, without requiring payment of any additional royalty. They have therefore furnished to a lessee a new auxiliary machine when it was developed, restricted to use with the principal machine the lessee already held, without exacting any additional payment except in some cases a small rental or initial payment. They have received their return for the use of the new machine indirectly through the increased use and efficiency of the principal machine on which royalty was paid. It is obvious that they could not be asked to furnish the new auxiliary machine without exacting any additional royalty for its use unless its use was so restricted, for otherwise they would have received no return whatsoever for the machine.

It is further obvious that as a practical business matter it was necessary to lease these machines as a group for a single royalty, which could only be done by restricting their use in this way. For example, the net royalty charged for Goodyear machines when used on men's shoes was four cents per pair (P.'s Ex. 24). It would have been impossible to distribute this royalty over the forty-five machines included in the Goodyear Department. Furthermore, as each new machine was put out it would have been necessary to increase the total royalty for the group by charging a new royalty on the new machine or to readjust the royalties on all outstanding machines. Such a readjustment would have been wholly impracticable.

4. The principal machines do better and more work when auxiliary machines are also used. It is to the advantage of both parties to furnish the lessees with auxiliary machines, which assist the principal machines, increase their productivity, and improve the quality of their work. The shoe manufacturer's output and the company's royalties are both increased. It therefore finds it to its interest to furnish lessees with auxiliary machines to be used in connection with the principal machines for the same reason that it finds it advantageous to furnish efficient repair service to lessees without making any charge for such service, believing thereby that the increased use of the principal machine will compensate it.

5. The royalty paid by the lessee is based on the number of

shoes on which the principal machines are or could be used. This at once presents a serious problem, namely, the problem of checking up the amount of the use of each machine. In the case of a large group of machines, such as the Goodyear Department group, where there are two principal machines and forty-three auxiliaries, it would be almost impossible to check the actual use of each machine, particularly in view of the fact that some of the auxiliaries are useful only on particular kinds of shoes and are not used at all on other kinds. It is easier to check the use of the principal machine or machines, which are always used, especially when, as in the case of the Goodyear Welter and Stitcher, they have recording mechanisms which show approximately the amount of their use. It would not be practicable to place such mechanisms on most of the auxiliary machines. The principal machines are therefore used as measuring machines to measure the payment required for the use of the entire group (R. Vol. 1, p. 442, lines 15–21). No independent charge is made for the use of the auxiliary machines except in some cases a small annual payment, but they are restricted to use with the principal machines, and thus the payment for their use is received indirectly through the royalty on the principal machines.

(6) THE "AUXILIARY RESTRICTED USE CLAUSE" DOES NOT RESTRICT THE PRINCIPAL MACHINES TO USE WITH THE AUXILIARY MACHINES NOR RESTRICT THE USE OF THE AUXILIARY MACHINES TO USE WITH EACH OTHER.

The "Auxiliary Restricted Use Clause" as a rule does not restrict the principal machines to use with the auxiliary machines. The lessee for example, who has the Goodyear Welter and Stitcher may use as many auxiliary machines obtained from others in connection with them as he pleases. Furthermore, the auxiliary machines are not restricted to use together; the lessee may use Goodyear auxiliaries and auxiliaries obtained from others on the same shoes. Finally, a lessee is not required to use auxiliary machines to full capacity, this clause being applicable only to the use of the principal machines; for instance, in the case of the Goodyear Welt set, to the Welter and Stitcher.

And the "Exclusive Use Cancellation Clause" is likewise applied only to the use of the principal machines, so that the United Company cannot cancel its leases of machines if Goodyear auxiliaries obtained from others are used.

A lessee of the Welter and Stitcher is furthermore under no obligation to take any auxiliary machines unless he wishes to do so.

The lessee can, therefore, freely take and use Goodyear auxiliary machines obtained from others in connection with any of the United Company's machines he may have. Many of these auxiliary machines are important, expensive machines. Had the United Company intended to compel lessees to use its machines exclusively and to exclude competitors' machines, it would surely have required that lessees using its principal machines must also take and use its auxiliary machines.

LEGALITY OF THE "RESTRICTED USE CLAUSE."

(7) THE RESTRICTED USE CLAUSE IS A NORMAL PROVISION ADOPTED TO ACCOMPLISH A LEGITIMATE BUSINESS PURPOSE, BENEFICIAL TO BOTH THE LESSOR AND LESSEE, AND IT IS THEREFORE LAWFUL.

The "Restricted Use Clause," where applied to principal machines, restricts the use of the principal machines of one department to use on shoes operated upon by certain of the principal machines of another department.

We have shown above that this clause was adopted for proper commercial reasons, namely, to grant wholesale terms where certain of the United Company's principal machines are used as a team or series, and the return to the United Company is consequently increased because of the increased productivity of the machines, and the cost of service is consequently decreased. The clause was therefore adopted for the purpose of furthering the United Company's business by enabling it to offer a wholesale rate to a lessee using its principal machines in a wholesale manner. It is therefore a normal agreement, adopted for a legitimate business purpose, beneficial alike to the lessee and the lessor, and not prohibited by the Sherman Act unless it is of such an inherently wrongful character that its use is

necessarily unlawful no matter with what intent it is employed. The contention that it is inherently unlawful we submit is without foundation.

It is necessary first to analyze the effect of the clause. As we have shown, it does not require the lessee to use any other machines of the United Company nor does it prohibit it from using competitors' machines. The clause merely defines the character of the use of the machines, which the lessee is authorized to make by the terms of the lease. It grants the lessee the use in a limited and defined field of a machine which without such grant he could not have used at all. The District Court (Brown, J.) said of its effect, referring to it as the "Tying Clause" (R. Vol. 1, p. 1163):—

> "'Tying,' therefore, does not mean that the manufacturer is required to agree, or agrees not to use the machines of others, but merely that he has secured only limited rights of use, and that if he exceeds such limited rights he may lose his lease. It is not a question of the legal effect of the lease, but of the practical consequences of securing only restricted rights of use. *The term is misleading in its implication that the manufacturer is bound by contract not to use the machines of others. He is bound only not to use the leased machinery in violation of the terms of the lease*" (italics ours).

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The fault, then, which the United States finds with this Restricted Use Clause is not that it imposes an obligation on the lessee not to use the machines of others or that it requires the lessee to use the United Company's machines, because it contains no such provision, but, on the contrary, that it forbids the use of the United Company's machines except on certain conditions.

If a lessee holding the United Company's principal machines on restrictive leases obtains an entire series of machines from a competitor, he can, so far as this clause is concerned, use them exclusively and discard the United Company's machines. If he obtains a competitor's machines of only one or more departments, he can also use them as much or as little as he pleases. The only restriction is that if he does use them on certain shoes he cannot use certain of the United Company's machines of other departments on the same shoes without giving up his

leases of such machines of other departments, making initial payments on the machines he desires so to use, and getting unrestricted leases.

If, for example, the lessee has a No. 5 lasting machine on a restricted lease, it can be used only on shoes operated on, or to be operated on, by the United Company's Welter, Stitcher, Pulling-over Machine and Metallic Machine. If the lessee obtains a metallic machine from a competitor, then as each shoe is started through the factory the lessee is free to use the competitor's metallic machine on it or the United Company's Metallic Machine. If he does use the competitor's metallic machine, however, he must use some competitor's lasting machine, or last by hand, or change his lease of the No. 5 machine, paying $300 initial premium and taking an unrestricted lease of the machine.

The only effect of the Restricted Use Clauses, then, is that the lessee as each shoe goes through his factory is forced to choose between (1) using on it certain of the principal machines of the United Company as a team and paying the wholesale rate or royalty for their use, or (2) using a team or series of some competitor's machines and discarding certain of the United Company's machines, or (3) using one or more groups of United Company's machines and one or more groups of competitor's machines, in which case he must in the case of certain of such machines of the United Company obtain unrestricted leases and pay the initial payments required for such leases. In other words, the effect is to make the shoe manufacturer choose between paying the wholesale rate for the use of a series of the United Company's machines, if he desires to use them as a series, or the retail rate on certain of the machines, if he desires to use them independently in a retail manner in connection with machines of other kinds obtained from others.

The only complaint that a shoe manufacturer can make is that if he desires to use only one or more groups of the United Company's machines, and not the entire series, he must pay more for the use of each group than is paid by the manufacturer who uses them as a series.

What possible right has a shoe manufacturer to demand that the United Company market separate machines forming part of a series adapted for use together for the same price per machine that is charged when the entire series is taken?

The shoe manufacturer desiring to take the series has far more right to ask that he be given a reduced price.

A manufacturer of locomotives cannot be required to sell the various parts of the locomotive, namely, the boilers, wheels, axles, etc., at prices which will aggregate no more than the price of the complete locomotive. The Pullman Company, which leases Pullman cars, is not required to lease separately the parts which go to make up its car, namely, the wheels, body, axles, etc., at prices which exactly aggregate the prices charged for the complete car.

In all these cases the manufacturer can furnish the series of machines or the completed article cheaper than he can furnish the units separately. The purchaser or lessee desiring the series of the completed article may properly be given a share of the increased profit resulting from his wholesale use.

The District Court said of the effect of these clauses:—

> "We are unable to see that a shoe manufacturer has any just cause of complaint that the defendants offer him and their other customers restricted leases. One who refuses these leases and takes the independent leases may complain that other shoe manufacturers are getting their machinery on lower terms; but the royalty rate will be the same, and the cost of initial payments is fixed and may be weighed as against the estimated value of taking machinery from other manufacturers. It is a mere question of dollars and cents. It is legal for the defendants to discriminate in price between customers who take large amounts and those who take small amounts" (R. Vol. 1, p. 1168).
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> "The assumption that it is highly desirable that the shoe manufacturer should be at liberty to group the defendant's machines with such other machines, taken from other manufacturers, as he may see fit, ignores the fact that though machines may be treated in the Patent Office as separate, in a shoe factory the machines have a very definite mechanical relation to each other and to the particular method of making the shoe. The grouping of machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them as groups and a sufficient business reason for dealing with them as groups.

"That there are sound mechanical and business reasons for grouping together machinery as it is grouped by a series of prohibitive leases is abundantly established. . . .

"A contract for a group of related machinery, or for a supply of machines not immediately related but used only in separate mechanical steps of a manufacturing business, is an entirely proper and normal contract" (R. Vol. 1, p. 1184).

It must be remembered that it is not the United Company alone which profits from the Restricted Use Clauses. The United Company profits because its machines when used together produce a larger royalty per machine. But the shoe manufacturer profits also, not only because he uses machines adapted for use together, and kept in repair by the United Company, but because he is enabled by the wholesale rate which the United Company can charge under these leases to obtain his machinery cheaper.

Nor has the competing shoe machinery manufacturer any cause of complaint when he attempts to dispose of his machines to a shoe manufacturer holding United Company's machines under restricted leases. He finds the shoe manufacturer entirely free to take and use his machines so far as these clauses are concerned. In other words, the leases contain no agreements whatever not to use machinery of others. If he can supply a complete series of machines, these clauses do not interfere with him at all. It is only the Full Capacity Clause, the only clause in the United Company's leases which requires a lessee to use its machines at all, which in any way interferes with him, and then only because he tries to supply a man who, to the extent of that particular machine's capacity but no further, has already been supplied and already taken out of the market.

If the machinery manufacturer has only a single kind of machine to offer, his only difficulty, so far as the Restricted Use Clauses are concerned, is that the lessee may prefer to use a series of the United Company's machines as a unit at a wholesale rate rather than to use separate groups of machines obtained from two or more manufacturers at retail rates. Unless the machinery manufacturer has a much superior machine to offer which justifies the lessee in paying retail rates this may prove a serious obstacle, but it is a normal, natural obstacle. In the same

way the manufacturer of one part of a locomotive, such for example as wheels, is at a disadvantage in competing with the manufacturer of complete locomotives.

The court in *United States* v. *Winslow*, 227 U. S. 202, 218, said,—

> "It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels."

A manufacturer who makes the completed engine has a right to offer it at a wholesale price, as we have shown above. It is only by offering such a wholesale price that the purchaser or lessee can be permitted to share in the economies resulting from the manufacture and marketing of the complete product.

The District Court, referring to the effect of these clauses on competing shoe manufacturers, said (R. Vol. 1, p. 1184):—

> "He [the shoe manufacturer] has taken the machines as a group, and one who has not a group to offer in substitution has little practical chance to compete. But a competitor must be able to compete. If leases for machines for use as a group are offered and accepted for sound business reasons, and if, because of the greater productivity of a group and of the less cost of maintenance, better prices can be made, the defendants and the shoe manufacturers need not forego the making of such contracts for the sake of possible competitors who may have only single machines to offer. Contracts for large equipments of machinery, furniture, and other articles are too common to be condemned for such reason."

The United Company could, we contend, perfectly properly adopt clauses which went much further than the Restricted Use Clauses actually used here. For example, it could perfectly lawfully (*A*) lease the entire system of machines restricted to use together, and refuse to offer any alternative leases without restrictions, or (*B*) require the lessee to use its machines of every kind exclusively.

We refer to such possible forms of lease merely to illustrate how far short the United Company's leases fall from requiring what they might lawfully and properly exact.

A. A manufacturer may lawfully refuse to sell at retail. In

the same way he may lawfully refuse to sell different parts of a machine or series of machines or any other collection of articles separately. A manufacturer of automobiles is not required to sell the parts separately. He can refuse to sell anything but the completed automobile. The Pullman Company cannot be compelled to lease wheels, trucks, bodies, and other parts of its cars separately.

What the United Company really sells is the use of its machines, charging a royalty for each time that they are used. Just as it can refuse to sell any of its series of machines unless all are bought, so it can refuse to sell the use of one machine unless the use of all is bought. It owns the machines; it can refuse to grant any right to use them at all. If it chooses to grant the right to use them as a series, why may it not lawfully do so? It could not be compelled to grant the right to use them separately. When, then, it grants the right to use them as a series it presents a new opportunity to the shoe manufacturer which he did not have before. This offer, then, can in no wise restrain trade.

The United Company could thus insist that if any of its machines were used all must be used, even though its purpose were solely to induce shoe manufacturers desiring only certain of its machines to use all. This would be merely a legitimate competitive method. It is common and usual for a manufacturer to attempt to make some particular part of his machine or product better than the corresponding part of his competitor's machine or product and thus induce customers to use his machine or product for this reason. Thus a manufacturer of printing-presses may introduce and obtain an attachment on his press which his competitor cannot use on account of the patent, and may advertise this feature and obtain customers on account of it. He is not obliged to sell this attachment separately in order to accommodate either his customers or his competitors. By being permitted to reap the advantage of offering some special feature which is better than anything offered by competitors, invention is stimulated and competition developed.

There is no difference in this respect between a single machine made up of parts which could be sold separately, such as a printing-press, a locomotive, or an automobile, and a series of machines adapted for use together. The machines in the present case are all adapted to a single purpose; they are co-related,

and quite conceivably could be incorporated into a single machine, just as a device for cutting paper may be used separately or may be attached to a printing-press. It is immaterial and a mere matter of convenience whether two operations are performed by a single machine or by two separate machines each performing a single function.

B. It would also be lawful for the United Company to lease its machines under agreements requiring the lessee to use its machines exclusively. In a case where a machinery manufacturer provides without initial payment an equipment of expensive machines, cares for the machines, instructs operatives in their use, and depends for substantially all his payment on royalties received from the use of the machines, he becomes for practical purposes a partner with a shoe manufacturer, being dependent upon the latter's success for his return. As such quasi partner he can properly by agreement control the manufacturing conditions which are essential to a return on his investment by providing that his own machines be used exclusively.

As said by the District Court (R. Vol. 1, p. 1174):—

> "A contract requiring the use of certain machinery in a manufacturing business, between one who is to carry it on and one who is to furnish capital, or his own property tangible or intangible as a means for carrying it on, is a provision 'for the prosecution of the business in a particular mode and not for its restraint.'"

An exclusive contract is not inherently illegal, and if adopted for a reasonable purpose it is unobjectionable. In *Chicago, etc., R.R. Co.* v. *Pullman Car Co.*, 139 U. S. 79, the Pullman Company agreed to lease to the Railroad Company drawing-room and sleeping cars sufficient to meet requirements of travel. It was agreed that it should have the exclusive right for a term of fifteen years to furnish such cars for the Railroad Company's use on the roads then or subsequently controlled or owned by it. The Railroad Company being expressly forbidden to contract with any other party to run cars of this character, the Railroad Company contended that the contract was void as against public policy because of the exclusive rights granted the Pullman Company.

The court said (p. 89):—

> "We cannot perceive that such a contract is at all in restraint of trade."

(p. 90)

> "But we are of opinion that public policy did not forbid the Railroad Company from employing the Pullman Southern Car Company to supply drawing-room and sleeping cars to be used by its passengers, and, as a means of inducing the plaintiff to perform this public service and to incur the expense and hazard incident thereto, from giving it an exclusive right to furnish cars for that purpose."

(p. 91)

> "The stipulation, therefore, that the plaintiff, not being in default, should have the exclusive right for fifteen years to furnish drawing-room and sleeping cars for the defendant's use, and that the defendant should not, during that period, contract for cars of that kind with any other party, rightly construed is not unreasonable, and, properly performed, will promote the convenience of the public in that it enables the defendant to have on its lines, at all times, and as the requirements of travel demand, drawing-room and sleeping cars for use by passengers."

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, it appeared that the Corn Products Company agreed with its customers to give them a discount of ten cents per hundred pounds on all shipments of glucose and grape sugar at the end of the year provided they should have purchased exclusively from the Corn Products Company all glucose and grape sugar required by them.

The court said (p. 172):—

> "The case therefore reduces itself to the question whether the contract of sale was inherently illegal so as to bring it within the also elementary rule that courts will not exert their powers to enforce illegal contracts or to compel wrongdoing. The only suggestion as to the intrinsic illegality of the sale results from the averments of the answer as to the offer of a percentage of profits upon the condition of dealing exclusively with the Refining Company for the following year and the clause to the effect that the goods were bought by the Manufacturing Company for its own use and not for resale. But we can see no ground whatever for holding that the contract of sale was illegal because of these conditions.

The leases of the United Company, however, neither require that the machines be all used together nor require an exclusive use of the United Company's machines.

The United States may contend that a single lease might be legal but that leases of the same kind made with shoe manufacturers all over the country have in some way a cumulative effect which make them illegal. In support of this contention it cited, in the District Court, *U. S.* v. *Reading Co.*, 226 U. S. 324.

In the Reading case a number of different railroad companies controlled about 90% of the anthracite coal deposit and about 75% of the annual output. The railroads, acting in unison, made contracts with a large proportion of the independent coal owners containing substantially uniform provisions by which the independent coal owners agreed to deliver to the various railroad companies all the anthracite coal thereafter mined from any of their mines now being operated or which might thereafter be owned and operated. The court held that these contracts were illegal, an intent to suppress competition and restrain trade being shown by the extent of the control over the limited supply of anthracite coal acquired thereby.

As said by the District Court (R. Vol. 1, p. 1181),—

> "The resemblance between the Reading case and the present case lies only in the fact that in each is a large number of contracts."

In the first place, in the Reading case, practically all of the anthracite coal in existence was monopolized by means of these contracts. In the present case the leases do not give control of an existing supply of shoe machinery. On the contrary, as pointed out by the District Court (R. Vol. 1, pp. 1181–2), if the leases give any control it is a control of customers and not of machines. Such customers cannot be monopolized to any substantial extent. For example, the record shows that from 1900 to 1911 an average of 62 new firms entered business each year and an average of 22 new firms succeeded old firms (Defs.' Ex. 223). Thus an average of 84 concerns each year started business free from any obligation to the United Company. The United Company in 1911 had a total of only 1,033 lessees (R. Vol. 1, p. 26, lines 38–40). Furthermore, a rival shoe machinery manufacturer could appeal to any business man in the country to

enter the shoe business and if, as claimed by the United States, existing manufacturers were burdened by their leases with the United Company such appeal would be effective. Furthermore, any existing shoe manufacturer could join in forming a new corporation and it could do business free from obligations to the United Company. It is impossible, then, to monopolize the field of customers for shoe machinery (see opinion of District Court R. Vol. 1, pp. 1181–2).

In the second place, in the Reading case, it was not necessary for the various coal companies to enter into similar contracts with a large proportion of the coal owners. The making of these identical contracts by the different coal companies with such a large proportion of the coal owners was unnatural and gave rise to a clear inference of a conspiracy to monopolize the coal supply. In the case of the United Company's leases, if a single lease of the kind in question with a single lessee was natural and justified, the making of identical leases with all lessees desiring its machines was likewise natural and normal. The United Company has properly adopted the policy of offering to all lessees the same terms it offers any one lessee. It would be abnormal to offer leases of this kind to, let us say, ten or a hundred lessees and then to refuse the same terms to the remaining nine hundred.

In the third place, in the Reading case, we find separate coal companies combining to make these contracts, giving rise to an inference of conspiracy, while in the present case we find only the United Company, a single concern, putting out the leases complained of.

These very Restricted Use Clauses were upheld as lawful at common law by the Privy Council of Great Britain, in the case of *United Shoe Machinery Company of Canada* v. *Brunet*, (1909) A. C. 330, Lords MacNaghten, Atkinson, Collins, and Gorell composing the court. An injunction was ordered enjoining the violation of the clauses. The Canadian Patent Act contained certain provisions providing for the terms on which patented articles could be disposed of. It was not shown by the record, however, that the machines were patented, and the court, therefore, treated them as unpatented machines and disregarded the provisions of the Patent Act.

The court said (p. 342):—

> "The findings of the jury, therefore, dispose completely of all questions arising on the Patent Act, as, indeed, they also dispose of all the charges of fraud and coercion, since they remove the foundation on which the first charge rests, and their answer to question 19 limits the latter to the presentation to the shoe manufacturers of Canada of the alternative of either doing without these machines altogether, or of hiring them on terms identical with or similar to those contained in the 'leases sued on.' This alternative, however, does not subject the would-be customers of the appellants to any coercion beyond what their desire to promote their own trade interests imposes upon them. By virtue of the privilege which the law secures to all traders, namely, that they shall be left free to conduct their own trade in the manner which they deem best for their own interests, so long as that manner is not in itself illegal, the respondents are at liberty to hire or not to hire the appellants' machines, as they choose, irrespective altogether of the injury their refusal to deal may inflict on others. The same privilege entitles the appellants to dispose of the products they manufacture on any terms not in themselves illegal, or not to dispose of their products at all, as they may deem best in their own interest, irrespective of the like consequences. This privilege is, indeed, the very essence of that freedom of trade in the name and in the interest of which the respondents claim to escape from the obligations of their contracts."

(8) THE RESTRICTED USE CLAUSE IS MERELY THE GRANT OF A LIMITED PATENT LICENSE, WHICH IS CLEARLY LAWFUL.

(a) GENERAL DISCUSSION.

In the foregoing discussion we have shown that the "Restricted Use Clauses" are reasonable provisions adopted for the purpose of offering wholesale terms for the use of a series of machines and therefore they would be lawful whether or not the machines were patented.

The machines, however, are patented, and the "Restricted Use Clauses" clearly contain such restrictions as a patentee is permitted to impose by the terms of his patent. They, therefore, are the mere exercise of patent rights and cannot fall within the prohibition of the Sherman Law.

The agreements under which the machines are leased constitute leases of the machines covered thereby and also licenses under patents providing that the lessee may use the leased machines and defining the extent and character of use which is permitted. The "Restricted Use Clause" provides that the use of the leased machine which the licensee is authorized to make is a use on shoes operated on by certain other principal machines leased from the United Company in connection with which the leased machine can, in the opinion of the United Company, be used most effectively and thus produce the largest royalty return. That such a restriction imposed on the use of a patented machine is the lawful exercise of a patentee's rights has been determined by this court.

The Dick Case.

The "Restricted Use Clauses" are clearly legal within the authority of *Henry* v. *Dick*, 224 U. S. 1. Just as in the Dick case the license clause restricted the use of the mimeograph to use with certain specified supplies, so do the Restricted Use Clauses restrict the use of the machines to use on shoes on which certain other machines operate.

But it should be noted that the decision in the Dick case goes much further than is necessary to support the Restricted Use Clauses.

In the Dick case the mimeograph had been sold, title was in the purchaser, and the restriction therefore applied to a machine which the patentee no longer owned. In the present case the Restricted Use Clauses apply only to machines owned by the United Company and for which, in most cases, the lessee has made no payment whatsoever except in the form of royalties covering such past use as he may have made of the machines. (*Victor Talking Machine Co.* v. *Strauss*, 230 Fed. 449.) If public policy were to be considered in determining the validity of such restrictions, an argument might well be made that the ownership of a machine should not be separated from the unlimited right to use it, with the consequence that, if the particular use for which the machine was licensed were abandoned, the machine could not be used at all.

It was not shown in the Dick case that the supplies furnished by the patentee increased the efficiency of the machine and

therefore it did not appear that the use of these supplies increased the return to the patentee over what it would have received had it charged a money royalty based on the amount of use. In the present case we have shown that the use of the United Company's machines as a series as required by the restrictive use clauses, enormously increases the productivity of the machines. In the present case, therefore, there is a strong reason for sustaining these restrictive use clauses which directly promote the efficiency of the machines, which was not applicable in the Dick case.

In the Dick case the restriction permitted the use only of unpatented supplies sold by the patentee. In the present case the restriction applies only to use in connection with other patented machines. The United Company, therefore, by its restrictive use clause does not attempt to induce the use of unpatented articles or to project its control beyond its own patented field.

Minority Opinion in the Dick Case.

The objections to the decision in the Dick case raised by the minority dissenting opinion are not applicable to the present case.

In the opinion of the minority the restriction in the Dick case was not a restriction upon the use of the machine (which would have made it a legitimate patent restriction), but it was in truth a restriction upon the use of certain unpatented materials not embraced within the patent. Thus the minority said (p. 52):—

> "But as the right to employ any desired operative materials in using the patented machine was not a right derived from or protected by the patent law, but was a mere right arising from the ownership of property, it cannot be said that the restriction concerning the *use of the materials* was a restriction upon the *use of the machine* protected by the patent law. . . . And this after all serves to demonstrate that it is a misconception to qualify the restriction as one on the use of the machine, when in truth both in form and substance it was but a restriction upon the use of materials capable of being employed in operating the machine" (italics ours).

Defining the use which the patent protected, the minority said (p. 52),—

> "The exclusive right of use of the invention embodied in the machine which the patent protected was a right to use it anywhere and everywhere for all and every purpose of which the machine as embraced by the patent was susceptible."

In the present case the restriction is clearly upon the use of the machine, and not upon the materials to be used in it. The right to use the machine on shoes which have been operated on by machines other than those specified is reserved to the patentee.

The patentee does not by contract "bring within the claims of his patent things which are not embraced therein" as the minority held to be true in the Dick case (p. 53). He merely restricts the use of his own patented machines to use on certain specified shoes. In the manufacture of the shoes the licensee is free to use any materials he pleases wherever obtained. No attempt is made to control such supplies or materials as in the Dick case.

The restriction in the present case is the same character of restriction made by the patentee in *Rubber Company* v. *Goodyear*, 9 Wall. 788, which was differentiated from the Dick case and approved in the minority opinion. In that case the licensee was authorized to use the patented invention in the manufacture and sale of certain goods, but was not authorized to "make any contract with the Government of the United States" (p. 799). In other words, the patentee reserved to himself the right to make goods sold or to be sold to the United States Government. So in the present case the patentee reserves the right to make shoes operated on, or to be operated on, by certain other machines.

Again, in the Dick case the transaction by which the patented mimeograph was sold amounted in the opinion of the minority to a sale of the machine together with all the patent rights relating to it. By this sale the machine was placed completely outside the patent monopoly. The alleged restriction, therefore, in the opinion of the minority, could not be a patent restriction, but was necessarily a mere covenant or contract on the part of the purchaser. Thus, the minority opinion says (p. 65),—

> "That the sale here in question was one of all the rights which the patent protected has, it seems to me, at the outset been demonstrated beyond reasonable dispute."

And again (p. 53),—

> "In other words, every use which the patent protected was transferred to Miss Skou, and the very existence of the particular restriction under consideration presupposes such right of complete enjoyment, and because of its possession there was engrafted a contract restriction, not upon the use of the machine, but upon the materials."

It having been found by the minority that by the transaction the patentee sold all his patent rights in respect to the machine, the machine was thereafter outside the patent monopoly, and it, of course, followed that the alleged restriction, if effective at all, was effective solely as an agreement on the part of the owner of the machine. This being accepted, it followed that to hold this agreement to be protected by the patent law was an "extension by contract of the patent laws" (p. 56). It also followed that the Federal courts in taking jurisdiction of the case as a patent case were unwarrantedly extending the Federal judicial power.

In the present case the United Company has clearly not sold the licensee "all the rights which the patent protected." It still owns the machines and at the termination of the lease has a right to take them back, the patent license in such case being terminated entirely. Furthermore, the right to use is restricted in various other ways. It can, for example, be exercised only in a designated factory. It is obvious that the machines have not passed outside the patent monopoly and that the United Company has not sold the lessee all the patent rights it had in respect to the machine, as the minority opinion held had resulted in the Dick case, and the patented inventions embodied in the machines even under the rule contended for by the minority opinion are therefore still subject to the control of the patentee.

The case of *Bauer* v. *O'Donnell*, 229 U. S. 1, does not affect the decision in the Dick case. It holds that a patentee who sells his patented article receiving full consideration cannot impose a price restriction on future sales. By making such a sale the patentee has exercised the exclusive right to sell granted by his

patent. The Dick case was expressly differentiated as involving a restriction on the right to use. The decision in *Bauer* v. *O'Donnell*, therefore, does not affect the present case. In the present case the United Company's machines have not been sold, they are to be returned at the expiration of the leases, the lessee has only a right to use them, and the full consideration for such use is not received by the United Company when the lease is made but is to be paid only when and as machines are used. In other words the restriction which the patentee attempted to impose in *Bauer* v. *O'Donnell* was on the right to sell, which the court held had been fully exercised by the sale made by the patentee. In the case of the United Company's leases the restriction is on the right to use.

In *United Shoe Machinery Co.* v. *La Chapelle*, 212 Mass. 467, the court applied the doctrine of the Dick case to the United Company's leases as set out in the bill in that case. It was alleged that the United Company was an illegal monopoly, and that as a means of maintaining its monopoly it inserted in its leases of the principal or basic machines a requirement that the lessee should use only its machines in the manufacture of shoes,—a provision which we have shown goes further than any clause actually contained in the Company's leases. The court on demurrer said of this allegation (p. 478):—

> "There are averments that the plaintiff is a monopoly perpetuated by means of conditions in leases of certain patented machines to the effect that the lessees shall use no other machines not manufactured by the plaintiff, and that the plaintiff thus secures to itself a monopoly of all machinery used in the manufacture of footwear which is alleged to be an infraction of the federal anti-trust act of July 2, 1890, 26 U. S. Sts. at Large, c. 647. The power to make such leases appears to be within the protection granted by the patents. This is settled by *Henry* v. *A. B. Dick Co.*, 224 U. S. 1, decided since the argument of this case. See also *National Phonograph Co. of Australia* v. *Menck*, [1911] A. C. 336; *United Shoe Machinery Co. of Canada* v. *Brunet*, [1909] A. C. 330, 344. Hence these allegations and the evidence offered in support of them drop out of the case."

This restrictive clause is incidental to a license to use a patented machine and is used to define the field in which such use may

be made. It consists merely in the exercise of the right to subdivide the patentee's monopoly and to grant a portion of it to persons who wish to use a portion.

The right referred to is a property right belonging to the owner of the patent. It is a property in the patented thing which he has not granted; because of every restrictive use, it has been said time and again that those rights not granted, the owner of the patent retains. To his exclusive enjoyment in the retained rights the public faith is pledged.

Grant v. *Raymond*, 6 Peters, 218, 241.

Suppose the United Company leases a lasting machine and restricts the use of it to use upon shoes operated upon by its Welter and Stitcher. Every other use of the patented idea the company retains itself to do with as it chooses. This is merely a subdivision of the monopoly; the right to use the invention embodied in the laster in ways other than those granted, the company retains to enjoy itself or to lease to others.

Thus partially to grant a use of the patent is not to make a contract restraining the use of that which was free before the grant, but is to give a partial use of that invention, the enjoyment of which Congress has vested exclusively in the owner and which the licensee could not use at all.

It cannot now be denied, as held in the Dick case, that a license to use a patented invention only with unpatented articles could at the time this suit was brought lawfully be made. But the United States seems to deny that such a result can be accomplished if the article with which the patented invention must be used is also patented. That is to say, the United States must admit that the Dick Company can restrict its Neostyle to use with certain unpatented inks and papers, but it denies that the United Company has a right to restrict the use of its patented Lasting Machine to use with its patented Metallic Machine.

The distinction is plainly untenable. The United Company seeks only to sustain its right to restrict the use of one patented machine to use upon shoes operated upon by another patented machine, when such restriction is necessary and reasonable and incidental to obtaining the best results and a full return from the patented invention, when without such restriction it would not obtain such return.

It is clear that the United Company may restrict the use of its metallic machines to use with fastening material furnished by it, and thus receive its income indirectly from the sale of an unpatented article. It is equally clear that if it does not thus receive a full return it may further restrict their use to use with its lasting machines, and thus indirectly obtain its full return. If this method of restriction operates to confine the activities of the user, it is not because his rights are interfered with or his liberties restrained, because he had none before he received his license.

All rights of enjoyment of the patented invention were, prior to that grant, vested exclusively in the owner of the patent; by granting a use thus restricted he has not restrained trade, but has enlarged the use of his invention, which prior to his grant Congress had forbidden all the world but him to use.

All that the patentee does by such a license is to grant a right. No new obligation is imposed on the licensee at all.

But the United States argues that if the licensee accepts such a restricted license he is restrained of his liberty to trade with others. This is not so. The licensee accepting such a license does not agree that he will not use other machines. He does not even agree by this clause that he will use the leased machine. All that he agrees to is that he will not use the leased machines except in accordance with the restricted license. He is restricted in the use of the leased machine, not in the use of any other machines.

To make a contract to abide by restrictions lawful for the licensor to impose is not unlawful, and the actions of the licensee are not in truth restrained at all. He receives a limited license to use a patented article which before he had no right to use whatever. His enjoyment of *that* and *that only* is circumscribed by the license. As to all else he is exactly as he was before.

The United States may argue,—

> "One who holds a heeling machine under a restricted lease is prohibited from using, during the entire term of such lease, in the manufacture of a shoe upon which the leased machine operated, a lasting machine, or a welting machine, or an out-sole or turn sewing machine, or a pegging or metallic machine not obtained from the lessor."

This is not true, for the only restriction is upon the heeling machine. It is *its use and its use only* which is restricted.

He may use any one's lasting, welting, stitching, pegging, and metallic machines he wants to; but without the license from the patentee he may not use the United Company's heeling machine at all. If he takes such license, he has added to his rights, not subtracted from them, for in addition to his right to use any one's laster, welter, stitcher, pegger, etc., upon all the shoes he was previously making he has acquired the right to use the patented heeler upon shoes operated upon by certain of the patentee's other machines if he desires to use them.

In no case do the leases of the company operate to restrict the licensee in the use of any machines except those which he would have no right to use at all except for licenses granted by the company.

Manufacturers who take such licenses are not prohibited from taking machines from others. They are simply limited to using the leased machines with certain other machines of the same owner. But the company was not required to allow them to use the machines even for such limited purpose, and such use as has been permitted is a removal of the restraint and not the imposition of a new one.

The very use of the word "restraint" in this connection is apt to raise a misconception as to the true situation. There is in truth no restraint, there is a partial grant; and it is when the grantee desires to use beyond the line of the grant and infringes upon the patent rights of the grantor that the United States claims his liberties have been restrained.

This is a common and legitimate exercise of the patent monopoly, and if exercised in the marketing of one type of machine would not be questioned. But it is argued that if the owner of several patented machines exercises this right as to each machine, he extends the monopolies which the several patents give him. This is not true. With reference to each patent he exercises only the rights which the patent grant gives him; viz., to subdivide his monopoly and allow others a partial enjoyment of it.

Suppose A had a welter which would, in A's opinion, do better work when operating on shoes lasted on B's lasting machine than on shoes lasted on any other machine, would A not have the right to license another to use it and restrict its use to shoes

lasted on B's machine, and retain himself or grant to others the right to use the welter with C's machine or any one's else?

Suppose one owner has a patented laster and a patented heeler and licenses each to be used only upon shoes operated on by the other. If there are no other heelers or lasters in the market, of course no question arises. No one is prevented from inventing or supplying other heelers and lasters. If both are invented and supplied, no licensee of the first inventor is prevented from taking them. If a new heeler, only, is invented, it will find a market if it is good enough to furnish more advantages than both heeler and laster together of the first owner.

But the first owner is entitled to the advantage that lies in being able to furnish both heelers and lasters instead of only one of the two. Unless he is permitted to exercise his patent right as to both, he is by reason of his ownership of both deprived of rights which belong to each separately.

The truth is that the inventor of the new heeler is at a commercial disadvantage because he has not so much to offer as the man who has both heeler and laster. And until he can make as advantageous an offer, either upon equal terms as to quantity, or his one article is worth more to the trade than the other man's combination of articles, he will not get the business.

If the first man has been clever enough to invent or acquire two machines, it is a perfectly legitimate exercise of his right to say to customers, "You must use both of my machines on a shoe or neither." Even if there were no patents this must be so, as we have shown above.

A clothing dealer offers suits consisting of coat, vest, and trousers, but refuses to sell anything less than a complete suit. Can a manufacturer of trousers complain because the first man refuses to sell a coat and vest to go with the second man's trousers? Or is the trade of the consumer or the trousers manufacturer restrained? This is but one of thousands of illustrations of trade practices always regarded as normal and legitimate, and never attacked, which involve exactly the same principle as the case at bar.

If a manufacturer of coats, a manufacturer of trousers, and a manufacturer of vests can combine, as they surely lawfully may, to manufacture complete suits, they can when combined refuse to sell anything less than complete suits. The situation

is not changed if each had a monopoly of his line before the combination.

As was said in *United States* v. *Winslow*, the law does not require the reduction of all manufacture to isolated units of the lowest degree. The competition between makers of complete suits is adequate. It need not be between vest makers. So here competition between makers of lines of machines for making particular types of shoes meets the requirements of the Sherman Act. It is not necessary that there be separate and distinct competition in every unit in the series or line of machines with other manufactures.

Otherwise a manufacturer would not be able to put out a complete machine because the maker of a pulley, or a shaft, or an awl, or a needle might complain.

(b) PATENT RESTRICTIONS ARE LAWFUL UNLESS IN THEIR VERY NATURE ILLEGAL.

The general rule is that conditions or restrictions imposed by patentees are lawful unless they are in their very nature illegal.

In *Bement* v. *National Harrow Co.*, 186 U. S. 70, the following general rule was laid down (p. 91):—

> "Notwithstanding these exceptions, the general rule is absolute freedom in the use or sale of rights under the patent laws of the United States. The very object of these laws is monopoly, and *the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee and agreed to by the licensee for the right to manufacture or use or sell the article, will be upheld by the courts.* The fact that the conditions in the contracts keep up the monopoly or fix prices does not render them illegal" (italics ours).

(c) CONSIDERATIONS OF PUBLIC POLICY NOT RECOGNIZED IN THE PATENT LAW ARE NOT RELEVANT WITH REGARD TO SUCH CONDITIONS OR RESTRICTIONS.

The rule permitting patentees to impose such conditions or restrictions as they please, provided only they are not definitely illegal, is a necessary part of and is included in the exclusive

right granted by the patent. As the patentee has the absolute right to exclude all others from any use, he necessarily must have the right to grant only a limited or restricted right of use, or a right to use only under such conditions as he pleases. As said by this court in *Henry* v. *Dick Co.*, 224 U. S. 1 (p. 35),—

> "This larger right [viz., the right of excluding all and refraining from use himself] embraces the lesser of permitting others to use upon such terms as the patentee chooses to prescribe."

The patentee's right, then, to prescribe the terms on which his patented article shall be used, being a right granted by the patent law, cannot be abrogated without depriving him of his rights of property granted by that law. So long, therefore, as the patent law remains in force the court cannot consider the legality of such restrictions in the light of public policy. To do so would be to abrogate the patent law. Public policy in respect to these restrictions is established by the Act of Congress.

As said by this court in *Henry* v. *Dick Co.*, supra (to repeat and add to the citation above made):—

> "This larger right [viz., the right of excluding all others and of refraining from use himself] embraces the lesser of permitting others to use upon such terms as the patentee chooses to prescribe. It must not be forgotten that we are dealing with a constitutional and statutory monopoly. An attack upon the rights under a patent because it secures a monopoly to make, to sell and to use, is an attack upon the whole patent system. We are not at liberty to say that the Constitution has unwisely provided for granting a monopolistic right to inventors, or that Congress has unwisely failed to impose limitations upon the inventor's exclusive right of use. And if it be that the ingenuity of patentees in devising ways in which to reap the benefit of their discoveries requires to be restrained, Congress alone has the power to determine what restraints shall be imposed. As the law now stands it contains none, and the duty which rests upon this and upon every other court is to expound the law as it is written. Arguments based upon suggestions of public policy not recognized in the patent laws are not relevant. The field to which we are invited by such arguments is legislative, not judicial."

Not only, then, is the patentee's right to impose restrictions included in the broader grant of rights to which his patent entitles him, and to the maintenance of which, to use Chief Justice Marshall's words below quoted, "the public faith is pledged," but, being a portion of those rights, it should be regarded and construed in the same liberal spirit in which a patentee's other rights are regarded and construed.

Mr. Justice Story, in *Ames* v. *Howard*, 1 Sumner, 482, 485, said:—

> "Patents for inventions are not to be treated as mere monopolies odious in the eyes of the law, and therefore not to be favored; nor are they to be construed with the utmost rigor, as *strictissimi juris*. The Constitution of the United States, in giving authority to Congress to grant such patents for a limited period, declares the object to be to promote the progress of science and useful arts, an object as truly national, and meritorious, and well founded in public policy, as any which can possibly be within the scope of national protection. Hence it has always been the course of the American Courts, (and it has latterly become that of the English Courts also,) to construe these patents fairly and liberally, and not to subject them to any over-nice and critical refinements."

In *Henry* v. *Dick Co.*, 224 U. S. 1, the Supreme Court said (p. 27) (in speaking of the patent law):—

> "It is a statute creating and protecting a monopoly. It is a true monopoly, one having its origin in the ultimate authority, the Constitution. . . . In *Bement* v. *National Harrow Co.*, 186 U. S. 70, 89, 90, 91 and 92, this court quoted with approval the language of Chief Justice Marshall in *Grant* v. *Raymond*, 6 Pet. 218, 241. Concerning the favorable view which the law takes as to the protection extended to the exclusive right, the court, through Chief Justice Marshall, said:
>
> "'It is the reward stipulated for the advantages derived by the public for the exertions of the individual, and is intended as a stimulus to those exertions. The laws which are passed to give effect to this purpose ought, we think, to be construed in the spirit in which they have been made; and to execute the contract fairly on the part of the United States, where the full benefit has been actually received, if this can be done without tran-

> scending the intention of the statute, or countenancing acts which are fraudulent or may prove mischievous. The public yields nothing which it has not agreed to yield; it receives all which it has contracted to receive. The full benefit of the discovery, after its enjoyment by the discoverer for fourteen years, is preserved, and for his exclusive enjoyment of it during that time the public faith is pledged.'"

Furthermore, such restrictions should be viewed with favor by the courts in order to carry out the manifest purpose and policy of the patent law. Congress, in granting a patentee exclusive rights for seventeen years, did so to enable the patentee to obtain as large a financial return as possible. It offered this opportunity "to promote the progress of science and the useful arts" by encouraging invention. Congress might have restricted the patentee's profits by providing, as has been done in some other countries, that the patentee should permit the use of his invention by others on reasonable terms. But it declined so to do, and, on the contrary, adopted the policy of permitting the patentee to obtain as much return as he could, either by granting licenses or by using the patented invention himself exclusively, or, if he deemed it to his best interest, by not using it at all. (*Paper Bag Patent Case*, 210 U. S. 405.) If, therefore, the patentee finds that his best return is obtained by granting restricted rather than unlimited licenses, it is clearly in accord with the policy of the patent law that he should be permitted to do so freely, and should be prohibited only when his conditions or restrictions are clearly and definitely illegal.

As the patentee can exclude all others from the use of his invention and use it exclusively himself, it is to the benefit of the public to induce him to permit others to enjoy the benefits of his invention, even if only to a limited extent. If, therefore, he is unwilling to grant others his full rights, he should be encouraged to grant them limited rights by being allowed to impose conditions or restrictions on the rights he grants. Public policy must favor conditions which give the public rights which might otherwise be denied them.

(d) RESTRICTIONS WHICH MERELY REQUIRE THE LICENSEE TO USE THE PATENTED ARTICLE IN A MANNER IN WHICH THE PATENTEE HIMSELF MIGHT LAWFULLY USE IT ARE NOT "IN THEIR VERY NATURE ILLEGAL."

As held in *Bement* v. *National Harrow Co.*, supra, the conditions and restrictions imposed by a patentee upon the use of the patented article are lawful except such as are "in their very nature illegal."

Conditions are in their very nature illegal which require a licensee to do something which it would be illegal for the patentee himself to do. Thus a patentee cannot himself sell a patented illuminating oil which falls below the standard required by law. He, therefore, cannot require or authorize his licensee to do so (*Patterson* v. *Kentucky*, 97 U. S. 501), and a provision to this effect in a patent license would be unlawful. The patentee cannot himself use a patented instrument as part of the equipment of a public service company and decline equal service to all. He, therefore, cannot authorize his licensee to do so.

In the present case the license merely grants the right to use the United Company's machines as a series. It is unquestioned that the United Company could use its own machines as a series and it would obviously violate no law in so doing. In granting the right to a licensee to use them in the same way, it is therefore merely restricting their use to a use which the United Company itself could lawfully and properly make of them. Such a limited license is clearly not in its very nature illegal.

(e) THE SHERMAN ACT DOES NOT FORBID SUCH RESTRICTIONS IMPOSED BY A PATENTEE.

In *Bement* v. *National Harrow Company*, supra, the court said (p. 92):—

> "But that statute [namely, the Sherman Act] clearly does not refer to that kind of a restraint of interstate commerce which may arise from reasonable and legal conditions imposed upon the assignee or licensee of a patent by the owner thereof, restricting the terms upon which the article may be used and the price to be demanded therefor.

> Such a construction of the act we have no doubt was never contemplated by its framers."

In *Henry* v. *Dick Company*, supra, the court, after quoting the above language and after referring to the fact that the court in that case held that restrictions as to the price at which patented articles could be sold were reasonable and legal, said (p. 31),—

> "If the stipulation in an agreement between patentees and dealers in patented articles, which, among other things, fixed a price below which the patented articles should not be sold, would be a reasonable and valid condition, it must follow that any other reasonable stipulation, not inherently violative of some substantive law, imposed by a patentee as part of a sale of a patented machine, would be equally valid and enforceable."

The language above quoted from the opinion in the Bement case was expressly quoted with approval in *Standard Sanitary Manufacturing Company et al.* v. *United States*, 226 U. S. 20.

In *Park* v. *Hartman*, 153 Fed. 24, at page 27, Mr. Justice Lurton (then circuit judge) said,—

> "That articles made under patents may be the subject of contracts by which their use and price in subsales may be controlled by the patentee, and that such contracts, if otherwise valid, are not within the terms of the act of Congress against restraints of interstate commerce or the rules of the common law against monopolies and restraints of trade, is now well settled."

In *Rubber Tire Wheel Co.* v. *Milwaukee Rubber Works Co.*, 154 Fed. 358, 362, the court said:—

> "The Sherman law contains no reference to the patent law. Each was passed under a separate and distinct constitutional grant of power; each was passed professedly to advantage the public; the necessary implication is not that one iota was taken away from the patent law; the necessary implication is that patented articles, unless or until they are released by the owner of the patent from the dominion of his monopoly, are not articles of trade or commerce among the several states."

In *Cilley* v. *United Shoe Machinery Co.*, 152 Fed. 726, 728, it was said,—

> "Contracts with respect to patents are, as a general rule, outside the doctrine of restraint of trade, both at common law and under the federal statute."

To the same effect are:—

Dickerson v. *Tinling*, 84 Fed. 192.
Edison Phonograph Co. v. *Kaufmann*, 105 Fed. 960.
Same v. *Pike*, 116 Fed. 863.
Rupp v. *Elliott*, 131 Fed. 730.
Victor Talking Machine Co. v. *The Fair*, 123 Fed. 424.

The reasons why the Sherman Act does not forbid restrictions which merely grant a limited or restricted right of use of a kind which the patentee himself might lawfully exercise are obvious. The grant of such a license is, as pointed out in the Dick case, the mere exercise of the patent rights granted by the patent, and the Sherman Act was not intended to repeal the Patent Act.

(f) THE GRANT OF A RESTRICTED LICENSE IMPOSES NO RESTRAINT ON TRADE.

The Sherman Act was directed against restraints imposed on trade. The grant of such a license imposes no restraint on trade; on the contrary it actually relaxes an existing restraint lawfully imposed by the patent law.

The patentee of inventions covering shoe machinery can absolutely exclude all others from the use of such machinery and either use it himself exclusively or not use it at all. In such a case no shoe manufacturer in the country can use the patented machines. Their use is absolutely restrained as the result of lawful patent monopolies. When the patentee grants the right to use these machines as a series he is imposing no new restraint on their use, but, on the contrary, is relaxing a restraint which previously was absolute. It is true that if he sold or leased the machines without any restriction whatsoever, he would still further remove the restraint imposed by the patent monopolies, but

this does not refute the fact that the grant of the restricted right, that is, the grant of the right to use as a series, removes an existing restraint and imposes no new restraint. Prior to the grant of such a license a shoe manufacturer had no right to use the patented machines at all; after the grant of this license he has a new right which he did not previously have, namely, the right to use them as a series. He is under no additional restraint of any kind because these Restricted Use Clauses do not require him to use the machines at all; they merely permit him to do so if he so desires.

It is important to bear in mind the fundamental distinction between contracts relating to patented articles and contracts relating to unpatented articles. In the case of unpatented articles, such as grain, lumber, and iron, every one is free to trade in and use them, and there is a natural flow of these articles in trade. As a matter of public policy the law requires such trade to continue free from monopoly or undue restraint caused by any contract or combination. In the case of patented articles there is an absolute restraint imposed by law except so far as the patentee is willing to release his rights. There is no trade in such articles to which the public is entitled, and there is no trade in them which the law on grounds of public policy holds should be free and untrammeled. As a matter of public policy the court is as much obliged to support and foster this monopoly and restraint which surrounds patented articles as in the case of unpatented articles it is obliged to encourage and insist upon freedom. No contract which the patentee can make with respect to such patented articles so long as they remain within the patent monopoly can impose a greater restraint on their use or a greater monopoly in respect to them than already exists by authority of the patent law.

To use the expression "suppression or restraint of trade" with respect to patented articles still in the control of the patentee is to misdescribe the situation. "Suppression" and "restraint" are predicated upon a former state of freedom of trade. They presuppose a restraint or restriction upon trade which but for such restraint or restriction would be free and untrammeled, which is not the case with the patented articles until they are released from the domain of the patent monopoly. Until such time the patentee can make no contract which restrains trade

in such articles, as there is no lawful existing trade to restrain, and he can do no act which creates a monopoly in them, as a complete lawful monopoly already exists.

In the present case the Restricted Use Clauses clearly impose no new restraint upon the lessee as respects the leased machines, because the lessee is absolutely restrained from using the patented machines until the license is granted. They impose no restraint upon the lessee as regards the use of other machines, as they do not prohibit him from using other machines, but, on the contrary, merely license him to use the United Company's machines if he so desires. It is clear, therefore, that these clauses impose no new restraint of any kind upon the licensee. Even then, if the Sherman Act applied to restrictions imposed by patentees (which the cases cited above show it does not) it could not be held to forbid the Restricted Use Clauses now under discussion.

(g) IF THE COURSE OF TRADE IS AFFECTED BY SUCH RESTRICTIONS IMPOSED BY A PATENTEE, SUCH EFFECT IS INCIDENTAL TO THE EXERCISE OF LAWFUL RIGHTS.

Any new invention or new method of doing business may greatly affect existing trade conditions. So also the grant of a restricted license may have an effect upon trade conditions. If so, it is merely incidental to the exercise of a lawful right and therefore not within the scope of the Sherman Act.

In the case of the restricted use clause which we are now considering, the only effect would be, as we have shown, that the shoe manufacturer might prefer to use a series of the United Company's machines at a wholesale rate, rather than to use a series of machines obtained from some other manufacturer or certain of the United Company's machines at retail rates in connection with certain other machines obtained from other manufacturers. Such an effect would be purely incidental to the exercise of a lawful patent right by the United Company.

The United States contends that, if the United Company granted only unrestricted leases, *i.e.*, only leased its machines separately, shoe manufacturers might be more easily induced by competitors to use certain of such competitors' machines. Of

course the United Company could not afford to furnish its machines separately at wholesale rates; if it only leased its machines separately, it could therefore not offer a wholesale price. Public policy does not require a course of marketing machines which would increase the cost to users thereof, but apart from this consideration the United Company has a right to refuse any use of its machines, and under these circumstances public policy cannot forbid the United Company to grant a limited use. Argument that the grant of an unlimited use would be more beneficial, even if true, is beside the point. As said by the Court in *Henry* v. *Dick* with reference to the consequences which might result from certain suggested conditions which patentees might impose (p. 34):—

> "But these illustrations all fail of their purpose, because the public is always free to take or refuse the patented article on the terms imposed. If they be too onerous or not in keeping with the benefits, the patented article will not find a market. The public, by permitting the invention to go unused, loses nothing which it had before, and when the patent expires will be free to use the invention without compensation or restriction. . . . It must not be forgotten that we are dealing with a constitutional and statutory monopoly. An attack upon the rights under a patent because it secures a monopoly to make, to sell and to use, is an attack upon the whole patent system. We are not at liberty to say that the Constitution has unwisely provided for granting a monopolistic right to inventors, or that Congress has unwisely failed to impose limitations upon the inventor's exclusive right of use."

An example of an incidental and therefore lawful effect on trade caused by the grant of a restricted license is furnished by *Heaton-Peninsular Co.* v. *Eureka Co.*, 77 Fed. 288. There the use of the patented machine for affixing buttons to shoes was restricted to use with staples furnished by the patentee. As such machines largely displaced all other machines previously used for the purpose, the market for the sale to the shoe trade of staples not adapted for use in the patented machines was practically destroyed, and, further, the users of the machines were restrained from purchasing staples for use on the machine other than from the patentee. Of this result Judge (later Mr. Justice) Lurton said (p. 296):—

"The monopoly in the unpatented staple results as an incident from the monopoly in the use of complainant's invention, and is, therefore, a legitimate result of the patentee's control over the use of his invention by others. Depending, as such a monopoly would, upon the merits of the invention to which it is a mere incident, it is neither obnoxious to public policy, nor an illegal restraint of trade."

Another example of an incidental effect is furnished by the case of *Henry* v. *Dick Co.*, supra, where the patentee's mimeograph could be used only with stencil paper and ink furnished by the patentee. Again, to the extent that this mimeograph process took the place of other processes for copying, the trade in paper and ink for such other copying purposes was destroyed and others were restrained from engaging in the business of furnishing such supplies for the new process.

A further example of the far-reaching but lawful effect on trade of the exercise of patent rights covering important or essential machines is set out by the court in the *Heaton-Peninsular case*, supra (p. 295):—

"Let it be supposed that the patents owned by this complainant were of so wide a character as to cheapen the process of manufacturing shoes, and to drive from competition all other modes of manufacture. Then suppose the patentees were of opinion that they could most profitably enjoy their inventions by retaining the monopoly of the use, and engaging in the manufacture of shoes. If content to undersell all others, they could engross the market for shoes, to the extent of their capacity to supply the demand during the life of their patents, or so long as their invention was not superseded by subsequent inventions still further cheapening the cost of manufacture. The monopoly thus secured would be the legitimate consequence of the meritorious character of their invention. Yet just such monopolies may result whenever a new and surprising advance is made in some art of wide and general use. The great consuming public would be benefited, rather than injured, for the monopoly could endure so long only as shoes were supplied at a less price than had prevailed before the invention. Now, if the patentees, by retaining to themselves the exclusive use of their invention, are able, legitimately and lawfully, to acquire a monopoly of the manufacture of shoes, and destroy the shoe market for those who before had shared it, why may they not, by a

system of restricted licenses, permit others to use their devices on condition that only some minor part of the shoe,—the pegs, the tips, the thread, or the buttons, or the button fasteners,—shall be bought from them? If these concessions were such as to enable others to compete, though their use of the mechanism was restricted by the terms of the license, who could justly complain, if the inventors, content with a monopoly of the market for the article named in their license, surrendered the opportunity for a monopoly of the manufacture of the complete shoe? The device protected by the patents owned by complainant is of no such wide or radical character as that used for purposes of illustration. Yet there is no appreciable difference in the legal principles applicable to the supposed facts used for illustration, and those stated on the face of the complainant's bill."

(h) RESTRICTIONS OF THE CHARACTER EMPLOYED BY THE UNITED COMPANY HAVE BEEN RECOGNIZED AS LAWFUL BY A LONG LINE OF DECISIONS. THE UNITED COMPANY IN EMPLOYING THESE PROVISIONS USED A METHOD OF MARKETING ITS MACHINES LONG RECOGNIZED AS NORMAL AND PROPER.

A great body of law has been built up which has recognized the right of patentees to restrict their patented machines not only in the manner employed in the present case, but in ways more far-reaching still.

Henry v. *Dick Co.*, 224 U. S. 1.
Bement v. *National Harrow Co.*, 186 U. S. 70.
Providence Rubber Co. v. *Goodyear*, 9 Wall. 788.
Mitchell v. *Hawley*, 16 Wall. 544.
Cilley v. *United Shoe Machinery Co.*, 152 Fed. 726.
U. S. Consolidated Co. v. *Griffin Co.*, 126 F. 364.
Heaton-Pen. Co. v. *Eureka Co.*, 77 F. 288.
Rupp v. *Elliott*, 131 F. 730.
Æolian Co. v. *Juelg Co.*, 155 F. 119.
Crown Cork and Seal Cases, 172 F. 225, 174 F. 252.
Commercial Acetylene Co. v. *Autolux Co.*, 181 F. 387.
Dickerson v. *Tinling*, 84 F. 192.
Broderick Copygraph Co. v. *Mayhew*, 131 F. 92.
Dickerson v. *Matheson*, 57 Fed. 524.

Burr v. *Duryee*, Fed. Cas. 2190.
Chambers v. *Smith*, Fed. Cas. 2582.
Machine Co. v. *Gibson*, 46 Fed. 488, 50 Fed. 423.
Pope Manufacturing Co. v. *Owsley*, 27 Fed. 100.
Tubular Rivet & Stud Co. v. *O'Brien*, 93 Fed. 200.
Broderick Copygraph v. *Roper*, 124 Fed. 1019.
Cortelyou v. *Lowe*, 111 Fed. 1005.
Cortelyou v. *Carters Ink Co.*, 118 Fed. 1022.
Rajah Auto Supply Co. v. *Rex Ignition Mfg. Co.*, 209 Fed. 622.
Incandescent Gas Light Co. v. *Cantello*, 11 T. L. R. 381.
British Mutoscope & Biograph Co. v. *Homer*, 17 T. L. R. 213.
Nat. Phonograph Co. v. *Menck*, 27 T. L. R. 239.

In *Henry* v. *Dick Co.*, supra, this court said (p. 36):—

> "That a violation of any such restriction annexed to a sale by one with notice constitutes an infringing use has been decided by a great majority of the Circuit Courts and Circuit Courts of Appeal, and has come to be a well-recognized principle in the patent law, in accordance with which vast transactions in respect to patented articles have been conducted. But it is now said that the numerous decisions by the lower courts have been erroneous in respect to the proper construction of the limit of the monopoly conferred by a patent, and that they should now be overruled. To these courts has been committed the duty of interpreting and administering the patent law. There is no power in this court to review their judgments, except upon a writ of certiorari, or to direct their decisions, save through a certified interrogatory for direction upon a question of law. This power to review by certiorari is one which has been seldom exercised in patent cases. *A line of decisions, which has come to be something like a rule of property, under which large businesses have been conducted, should at least not be overruled except upon reasons so clear as to make any other construction of the patent law inadmissible*" (italics ours).

The United Company in employing these restrictions, therefore, merely employed methods which were in general use in respect to patented machines and which were therefore normal and

natural in respect to such machines and were recognized by numerous decisions as a proper exercise of patent rights. Their doing so can give rise to no inference of intent to oppress shoe manufacturers or the public unlawfully. The use of these clauses can be material in the present case only if they are held to be inherently unlawful no matter with what intention they were used. This result can be reached only by overruling a large number of decisions which have established a rule that, as said in the Dick case, "has come to be something like a rule of property."

(i) CONSIDERATION OF DECISION IN STANDARD SANITARY MFG. CO. v. U. S., 226 U. S. 20.

The United States contends that the decision in *Standard Sanitary Mfg. Co.* v. *U. S.*, supra, shows that patent restrictions may be within the prohibition of the Sherman Act.

In this case sixteen competing manufacturers of enamel ware accepted licenses under a patent for the use of a tool the employment of which was useful but not essential to one out of many steps in the manufacture of the ware. Prior thereto the Standard Company, one of the manufacturers, had owned the patent, and none of the others had had licenses. A few of the others had used it by infringing, others had not used it at all. In accordance with an arrangement made by one Wayman the Standard Company transferred the patent to him, and he granted licenses to all the competing manufacturers to use the patented implement. Under these licenses the manufacturers agreed, among other things, to sell their enameled ware only at prices determined by a commission composed of the licensor and of five of their number. All jobbers were likewise required to sign licenses agreeing to sell only at stipulated prices and to buy all their enameled ware from the licensees. The concerns which accepted such licenses manufactured 85% of the total production. "The trade was, therefore, practically controlled from producer to consumer and the potency of the scheme was established by the co-operation of 85 per cent of the manufacturers and their fidelity to it was secured, not only by trade advantages, but by what was practically a pecuniary penalty."

The agreements were clearly in restraint of trade unless justi-

fied as restrictions under the patent. The court held that they were not so justified, because they "transcended what was necessary to protect the use of the patent or the monopoly which the law conferred upon it." In other words, the restrictions were not restrictions imposed by the patentee for his benefit upon the use of his patent and accepted by licensees in order to obtain the use of the patent. They were imposed, as the court pointed out, for the purpose of restraining trade, and were accepted by the licensees for this purpose. In fact, it was the licensees and not the patentee who insisted upon them. They were put in the form of restrictions in a patent license as a subterfuge with the hope of thereby legalizing them. The use of the patent was an entirely secondary consideration.

The court emphasizes the circumstances showing this. Thus the Standard Company which had owned the patent prior to the combination was unwilling to grant licenses, and the other manufacturers were unwilling to accept them, until the scheme for the elimination of competition was proposed. The manufacturers were also unwilling to accept the licenses until 83% of the total production assented, and it was provided that the licenses should not go into effect until such assents had been obtained. Furthermore, the patentee testified that "he hoped as one of the features of the license agreements to enable the companies to abolish ruinous competition," and he induced jobbers to accept licenses by stating that it was "a matter entirely for the jobber's benefit," and "much more advantageous than a continuous cut market."

It is clear that the entire transaction was brought about by a desire on the part of the competing manufacturers to restrain trade and regulate prices. The patent was merely used in an attempt to legalize this unlawful combination. The conditions contained in the licenses were not imposed by the patentee for his protection or benefit, but were, on the contrary, imposed by the licensees for their benefit. For example, the patentee did not benefit at all from the regulation of prices. The elimination of competition, therefore, did not result incidentally from the desire of the licensees to use the patented article and their consequent willingness to submit to conditions imposed by the patentee for his benefit.

Patents and patent rights cannot, of course, be used as a

subterfuge to justify an illegal combination. As the court said in *Virtue* v. *Creamery Package Co.*, 227 U. S. 8, 32,—

> "Of course patents and patent rights cannot be made a cover for a violation of law, as we said in *Standard Sanitary Manufacturing Company* v. *United States*, 226 U. S. 20."

The court in the Sanitary case took pains to point out that it approved the principle laid down in the Bement case, that the Sherman Act does not refer to that kind of restraint of commerce which may arise from reasonable and legal conditions imposed upon the licensee of a patent restricting the terms upon which the article may be used (p. 40). It further pointed out that its decision in no wise affected the decision in *Henry* v. *Dick* (p. 48).

The present case is different in every respect from the Sanitary case. There is no question in the present case but that the Restricted Use Clauses were imposed by the United Company for its benefit and protection and were accepted by licensees in order to enable them to use the patented machines. These clauses are not a subterfuge employed by agreement of the parties to effect some ulterior purpose. The present case falls within the rules laid down in the Bement case and the Dick case which, as expressly pointed out, were not affected by the decision in the Sanitary case.

It may further be noted that the restrictions in the Sanitary case applied to the prices charged for unpatented articles made and owned by the licensee by the use of an instrument not even essential to their production, while the restrictions in the present case relate to the use of patented articles owned by the patentee. There are no restrictions as to the prices which shall be charged for the shoes produced by the use of those patented articles. Further, it may be noted that these price restrictions in the Sanitary case applied to the goods even after they had been sold to jobbers, and thus, even had they been patented, they would have passed beyond the domain of the patent monopoly.

(9) LEGALITY OF "AUXILIARY RESTRICTED USE CLAUSE."

The legality of the "Auxiliary Restricted Use Clause" needs little further discussion, as it has been covered by the foregoing discussion of the "Restricted Use Clause."

It restricts the use of auxiliary machines to use with the principal machines, for the assistance of which the auxiliary machines were developed. As we have shown above, such clauses were used by the constituent companies and there were and are business reasons justifying and requiring their use. They were not adopted for the purpose of unlawfully excluding the use of other machines.

While no alternative forms of lease have been prepared permitting their use with principal machines obtained from other manufacturers, this is because they were developed for the purpose of assisting the principal machines of the United Company, and there has been no call for an unrestricted lease. The record showed no such demand. Mr. Winslow testified that the United Company would be prepared to so furnish them if there were such a demand and conditions justified (R. Vol. 1, pp. 544–6). As we have shown above, however, the United Company was under no obligation to furnish its machines except for use as a series.

13. ENFORCEMENT BY THE UNITED COMPANY OF ITS LEASES.

The petition alleges that the United Company has continually, persistently, and arbitrarily enforced the provisions of its leases (R. Vol. 1, p. 997). This charge is without any foundation whatsoever.

We have discussed the provisions of the leases above as though they were strictly enforced by the United Company. As a matter of fact, the United Company has only enforced them in a very few instances when the conditions in the lessee's factory were such that its machines were being damaged or it was being deprived of a proper return on its machines as was fairly contemplated by their spirit and intent.

The purpose and effect of leases of this character cannot, as stated above, be tested solely by an examination of the literal wording of the leases. In leasing a complicated set of shoe machinery to over a thousand lessees scattered all over the country, it is impossible to foresee all the conditions which may arise under which it may be unfair for the lessee to use the machinery, and even when such conditions can be foreseen it is often a ques-

tion of degree or of the particular circumstances of the case as to whether the lessor needs protection. It is essential that the lease contain general provisions agreed to by the lessee, which the lessor can enforce if his protection so requires. The same is true of the ordinary lease of a house or of business premises. For example, such a lease often contains a covenant on the part of the lessee not to permit any nails to be inserted in the walls, and the lessor is authorized to forfeit for violation of any covenant. If the lessee or any of his family drives a small nail into the wall, the lessor has a technical right to forfeit the lease. This, however, does not make the lease oppressive. It is obvious that the lease cannot specify exactly how many nails a lessee may drive without forfeiture. The reservation of this general right is necessary and the lessor in the ordinary lease exercises a reasonable discretion as to the exercise of his rights, and a court of equity will restrain an unjust forfeiture.

In considering, then, the purpose and effect of the provisions contained in the United Company's leases, it is necessary to consider not only the literal wording of the clauses, but the extent and manner in which the United Company has enforced these provisions.

The United Company has been far more Liberal to Lessees than the Terms of its Leases Required.

The following are a few striking examples of the extent to which the United Company has treated its lessees more liberally than was required by the terms of the leases.

1. Every lease which the United Company has put out requires the lessee at his own expense to keep the leased machinery in good and efficient working order and condition. (For example, see P.'s Ex. 24, par. Two; R. Vol. 3, p. 216.) None of the leases has required the United Company to instruct operatives for the lessee. Yet the United Company has always kept the machines in repair, charging only for the cost of new parts, and has always instructed operatives. It has charged the shoe manufacturer absolutely nothing for this service, except the cost of new parts, even paying the traveling expenses of its service men. In 1911 this service cost the United Company $1,196,494.86 (R. Vol. 1, p. 421, lines 18–23, 31–34; p. 974, line 22).

2. Every lease provides that the lessee upon the termination of the lease shall pay the lessor such sum as is necessary to put the leased machinery in suitable order and condition to lease to another lessee. (For example, see P.'s Ex. 24, par. Nine, R. Vol. 3, p. 223.) As a matter of practice the United Company has charged lessees upon the return of machines much less than the cost of repairs. For example, in 1911, the cost of repairing returned machines was $350,000, and the amount charged lessees was only $70,000 (R. Vol. 1, p. 853, lines 19–32).

The United Company has established a standard price for repairs to which is added the cost of new parts so that each lessee may know before he returns a machine how much the cost to him will be. All customers are treated exactly alike (R. Vol. 1, p. 853, lines 33–44; p. 854, lines 1–29).

3. When a lease of a machine is once made, the United Company has, of course, a right to insist that it be retained by the lessee for the period of seventeen years.

The United Company has disregarded this provision of its leases wherever a new machine has been developed which was better than a machine then in use. In such cases the United Company has offered the new machine to lessees, and taken back the machine previously leased, and when obsolete has scrapped it. The United Company has done this without making any charge to lessees for so doing, either on account of the scrapping of the old machine, or on account of the increased efficiency of the new machine (R. Vol. 1, p. 425, lines 12–20). The new Model K Welter, for example, effects a saving to shoe manufacturers and operatives of at least $800 per year. Yet these welters are substituted for the old welters without any charge, or the requirement of any additional royalty, although the United Company is under absolutely no obligation to do so. The United Company has thus substituted new improved machines for a large portion of the machines which were outstanding when it was formed. Nearly all of the machines made by the Goodyear Company in 1899 have been replaced by new and improved machines (R. Vol. 1, p. 430, lines 32–34).

4. The United Company has since its organization developed a large number of new auxiliary machines not supplied in 1899. It has, for example, added 22 welt auxiliary machines, and 6 turn auxiliary machines (Defs.' Ex. 242, R. Vol. 5, pp. 681; Defs.'

Ex. 245, R. Vol. 5, p. 683). Although under no obligation whatsoever to do so, it has furnished lessees under existing leases these new auxiliary machines without extra charge or royalty except a small rental or initial payment which affords no fair return on the machines.

5. Many of the leases require the lessee to guarantee a minimum payment. This clause has never been enforced, except for the purpose of requiring a lessee to return idle machines for which he had no further use (R. Vol. 1, p. 553, lines 4–19).

The United States, in spite of extraordinary efforts to present the evidence of every dissatisfied lessee out of the hundreds of lessees who have dealt with the United Company since 1899, has utterly failed to show a single instance of any arbitrary or oppressive enforcement of its leases. The thirteen instances of such conduct which it finally charged are set forth in its bill of particulars under the heading of "Misrepresentation and Threats to Induce Customers of Competitors to Abandon Competing Machinery" (R. Vol. 1, pp. 1075–8). As to six of these alleged instances it introduced no evidence whatsoever. The evidence as to the remaining seven showed the charge to be utterly unfounded. A statement of the evidence in respect to these charges is contained in the Appendix (Appendix, pp. 88–103), and a short summary is given below in the Brief (*infra*, pp. 544–546).

In a very few instances the record shows that the United Company called the attention of its lessees to the clauses in the leases. Except in the five cases of cancellation referred to below, and a single suit brought against the Plant Shoe Company under its leases, the record shows no instance of an enforcement by the United Company, by legal action or by cancellation of its leases, of any of the clauses objected to by the United States, viz., the clause providing that the lease should run for seventeen years, the Full Capacity Clause, the Exclusive Use Cancellation Clause, the Cancellation for Breach Clause, the Restricted Use Clause, or the Auxiliary Restricted Use Clause.

In each of the five cases of cancellation referred to, the United

Company cancelled its leases because of a most flagrant violation by the lessee of its rights. These were the cases of C. E. Ramlose, E. F. Bell & Co., Peter Tessier & Co., E. Bottomley & Co., and T. D. Barry & Co. (R. Vol. 1, p. 447).

In the Ramlose case the lessee persistently cheated the United Company by reporting on his royalty returns only about half the shoes made (R. Vol. 1, p. 447, lines 36–45).

In the Bell case the lessee persistently used wire purchased from others on his metallic machines, thus depriving the United Company of its royalty on these machines. Only the machines which were being so wrongfully used were removed, and the others were left (R. Vol. 1, p. 448, lines 1–10).

In the Tessier case the lessee had abandoned the use of the United Company's machines and was paying it no royalty (R. Vol. 1, p. 448, lines 11–18; see Appendix, p. 88).

In the Bottomley case the lessee obtained other machines and abandoned the use of the United Company's machines and wrote the United Company he would pay it no further royalties on them (see Appendix, p. 90).

In the Barry case the lessee abandoned the use of the Goodyear Welter, but used the Goodyear Auxiliaries without making any payment for such use (see Appendix, p. 92).

Not only then does the record fail to show any instances of oppressive enforcement of the provisions of the leases, but it shows various instances in addition to those stated above in which the United Company did not insist upon a compliance with the provisions of the leases or exercise its full rights reserved under the leases.

In respect to the term of the leases, we have shown that the United Company upon the invention of a new improved machine was always ready to cancel the old lease, and furnish the new machines without charge. The United Company was also ready at all times to change over restricted leases to unrestricted leases or vice versa (*supra*, p. 358). It was further ready to permit a shoe manufacturer to give up his leases if circumstances justified. Thus Mr. McElwain, whose company is one of the largest shoe concerns in the country, making about 30,000 pairs a day, asked the United Company if he could cancel his leases in case he decided he would take other machines, and was told by Mr. Winslow that the United Company would be

glad to make fair arrangements to cancel any or all of his leases, so that he might use another line of machines if he desired (R. Vol. 1, p. 502, lines 12–18).

Plaintiff's Exhibit 161 (R. Vol. 4, p. 1118), introduced by Louis H. Harriman of the Haverhill Shoe Machinery Company, a witness for the United States, gives a list of eight concerns which had used the Haverhill Company's Turn machine in the same factory with the United Company's Goodyear Turn machine, and of nine other concerns who were still doing so. In none of these cases had the United Company exercised the right to withdraw its Goodyear Turn machines, although it could have done so under the Exclusive Use Cancellation Clause, and although the lessee in certain cases was apparently using in connection with the Haverhill Turn machines, machines held under Restricted Use Clauses forbidding such use, including General Department machines on which no separate royalty was paid, and on which the entire royalty was received indirectly from the machines to use with which they were restricted (Donham, R. Vol. 1, pp. 828–30).

We do not intend to intimate that the lease clauses are not essential to the protection of the United Company. We merely wish to point out that, like all clauses of this kind, it is necessary that they should be general in their terms, and that the United Company enforces them only if necessary to protect itself against damage to its machines, or against the use of its machines under conditions which do not give it a fair return.

Furthermore, the leases as introduced in evidence do not give a complete picture of the policy of the United Company towards its lessees. The United Company is willing at all times to adapt its system to meet the reasonable requirements of shoe manufacturers.

Riders in great variety, as the record shows, have been adopted from time to time modifying the terms of the leases to meet particular situations, and the United Company is prepared to continue this policy. The policy of the United Company is expressed by Mr. Winslow's statement on cross-examination with reference to making a separate price for Goodyear Auxiliary machines:—

> "It is not fair to state that we will not permit one of these important auxiliary machines that we have developed and

are developing to be used in connection with a welter or outsole stitcher made by any one else. We have followed the line which in our judgment would give to the manufacturers of shoes the greatest amount of value for the money that we received, and there has been no other reason for it" (R. Vol. 1, p. 545, lines 19–25).

"Should a welter or a stitching machine that was the equal of our machine be developed and offered to the manufacturers, and the developer of that machine or that concern were not attempting to use it as a blackmailing proposition, or attempting to make shoes and call them Goodyear welts when they were not, I can quite understand our company to be perfectly willing to establish prices for its auxiliary machines" (R. Vol. 1, p. 545, lines 31–38).

The leases in evidence only represent the terms under which the United Company offers its machines for use under conditions for which there has so far been a demand. As Mr. Winslow testified:—

"The assumption that these leases that you have put in, or have been putting in, represent the policy of the company is entirely unfair. We have riders continually, when a condition arises, by which we let manufacturers use machines. They only represent just exactly certain notices as to how those machines should be used for the money that is paid for them, nothing more" (R. Vol. 1, p. 546, lines 13–20).

14. THE PROVISIONS IN THE LEASES ARE ESSENTIAL TO A CONTINUANCE OF THE PRESENT SATISFACTORY LEASE SYSTEM UNDER WHICH SHOE MANUFACTURERS OBTAIN MACHINES WITHOUT INITIAL PAYMENT FOR A ROYALTY BASED ON THE USE OF THE MACHINES. THEY ARE, THEREFORE, CLEARLY NOT CONDEMNED BY THE SHERMAN ACT.

The foregoing survey of the reasons necessitating the various provisions in the leases attacked by the United States shows that they are essential to a continuance of the present satisfactory lease system under which shoe manufacturers obtain machines without initial payment, and for a royalty based upon the use of the machine.

For example:—

The "Full Capacity Clause" is essential if machines are leased

without initial payment for a royalty based on use. The return to the United Company on its investment in machines cannot be made dependent on use unless the lessee agrees that he will use. If prohibited from employing this clause, the United Company would be obliged to (1) sell its machines, or (2) charge a large initial premium upon the installation of its machines, or (3) charge a fixed rental instead of a royalty based on use.

The "Restricted Use Clause," or some provision having the same effect, is essential if the shoe manufacturer who desires to use a team of the United Company's machines is to be given a wholesale rate and thus be permitted to share in the economies resulting from the use of the machines as a team. If forbidden to use this clause, the United Company must charge for each machine a price based upon the probable return from the machine when used as an independent unit, which is necessarily higher than the price charged when it is taken to be used as a part of a team of the United Company's machines. The shoe manufacturer desiring to use a team of the United Company's machines would, therefore, be obliged to pay more for his machines.

The "Exclusive Use Cancellation Clause" permits the United Company to withdraw its machines of a particular kind if, owing to the use by the lessee of the same kind of machines obtained from others, its machines are not used sufficiently to afford a fair return, or it has reason to believe that the lessee carelessly or dishonestly does more work on its machines than is reported. The United Company could not continue furnishing machines without an initial payment or fixed rental unless it had this right.

The "Cancellation for Breach Clause" enables the United Company to withdraw its machines if the lessee violates his agreements. If, in case the lessee refused to pay royalties, or damaged, removed, or assigned the machines or otherwise violated his agreements, the United Company had no remedy except to bring a succession of suits which might take years to conclude, and which might not be determined until after the lessee became insolvent, it could not continue to furnish its machines on lease at all, or, if it did lease them, without large initial payments.

A term of seventeen years is, of course, not essential. But a long term is essential. The United Company could not be asked to build $40,000,000 of machines and install them in

lessees' factories without initial payment on their part unless the lessees agreed to use the machines for a term long enough to insure an adequate return. The lessee likewise desires a long term; otherwise his royalties may be increased at any time. If the term is long, it is not of much consequence whether it be fifteen or seventeen years.

The clause requiring the lessee to obtain new parts needed in the leased machines from the United Company is essential to assure the proper maintenance of the machines which belong to the United Company. The United Company could not furnish its machines without initial payment if the lessee were permitted to replace broken parts with cheap parts or parts not adapted to the machine, and thus depreciate its value.

These clauses, then, or clauses similar in effect, are essential to the continuance of the present highly satisfactory lease system. The District Court said (R. Vol. 1, p. 1187):—

> "The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them. Other modes, such as the requirement of arbitrary payment for the full period of the patents, would escape all such attacks. *The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions*" (italics ours).

If the United Company should be forbidden to employ those or similar provisions and thus be prevented from continuing the present reasonable and satisfactory lease system, the consequences to shoe manufacturers and the public would be most serious.

Not only would the cost of machines be increased, but shoe manufacturers like Bennett, Burt, and Allen, as they testified, would not be able to start in business at all. Many existing shoe manufacturers who have made no initial payment on their machines and who have little capital would probably be unable to make an initial payment on the machines now held by them and thus be forced out of business.

Provisions necessary to enable the United Company to furnish machines without initial payment for a royalty based on use, and to share with its lessees the economies resulting from the use of machines as a team, are obviously normal, reasonable provisions not affected by the Sherman Act.

IV.

THE "ACQUISITIONS" OF OTHER CONCERNS AND PATENTS.

(The acquisition of the patents of Thomas G. Plant will for convenience be discussed separately (*infra*, pp. 476-542).)

1. GENERAL DISCUSSION.

The petition alleges that defendants

> "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery, destroy existing competition among the manufacturers and dealers in such machinery, . . ."

and that

> "they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery . . ." (R. Vol. 1, p. 994).

Section VII of the petition (R. Vol. 1, pp. 999–1023), which sets forth the "acquisitions," is introduced by these allegations:—

> "In pursuance of their purpose to monopolize the shoe machinery industry, the defendants have, through United Shoe Machinery Company, of New Jersey, by the methods herein described, absorbed many competitors. . . . Among the individuals, partnerships, and corporations who were competitors of the defendants, and whose businesses have been so acquired and absorbed by them are the following:" (R. Vol. 1, pp. 999–1000).

The petition then recites fifty-eight transactions entered into by the United Company at various separated times during a period of twelve years, and concludes,—

> "The competition which previously existed between said several concerns has been entirely destroyed" (R. Vol. 1, p. 1023).

The petition also alleges that defendants

> "have acquired many letters patent for valuable inventions, and have held the same for long periods of time without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom; . . . they have bought the business of many competitors, though compelled to pay exorbitant prices therefor . . ." (R. Vol. 1, p. 999).

In view of these unqualified allegations that the parties with whom these dealings were had were "competitors" of the United Company, and, in view of the failure of the petition to set forth either adequately or accurately the facts regarding either defendants' intent or their accomplishment, it is important that at the outset an understanding be had as to the general character of these transactions.

GENERAL SURVEY OF THE "ACQUISITIONS."

These fifty-eight parties, almost without exception, were *not* competitors of the United Company. The petition aims to create the impression that most of them were manufacturers or dealers in shoe machinery generally, like so many sugar refineries or so many tobacco factories, and that by these transactions the United Company removed so many competitors from the shoe machinery field. This is very far from the facts.

Less than a Half of the Parties were Engaged in any Shoe Machinery Business.

In the first place, in twenty-four of these transactions *no shoe machinery was acquired.* In eight more transactions the parties were doing no business, their machines were only experimental. That is, only twenty-six of the parties to the fifty-eight transactions set out in the petition were doing any shoe machinery business of any kind; thirty-two were not doing any shoe machinery business at all. Accordingly more than half of these transactions are not even *prima facie* within the allegation in the petition that defendants' intent was

> "acquiring the ownership or control of all concerns engaged in *manufacturing and dealing in* any and all kinds of *shoe machinery*" (italics ours) (R. Vol. 1, p. 994).

And further, with but few exceptions the machines of those concerns which were in one way or another engaged in shoe machinery business were all different, not only from anything that the United Company had before, but each from the machines of all the others. So far from the truth is the allegation that

> "the competition which previously existed between said several concerns has been entirely destroyed" (R. Vol. 1, p. 1023).

By nearly All of the Transactions by which the United Company Acquired Anything it Acquired Something which it had never Had before.

Probably the most striking fact about the "acquisitions" is that by nearly all of the transactions by which the United Company acquired anything it acquired something which it had never had before. By fifty of the fifty-eight transactions, including nearly all of those by which any shoe machinery was acquired, the United Company entered an entirely new field by acquiring machines for performing operations for which it did not have machines, or supplies or findings which it did not have before; or it acquired patented improvements or inventions for the purpose of enabling it to supply better machines or products than it had before; or it acquired no property or business whatever. The remaining eight concerns were either not engaged in the shoe machinery business or were not in any sense competitors.

In so far as there was any suggestion of competition in respect to any of those fifty concerns by reason of slight overlapping of the field in which any of them was doing business and the United Company's field,—and there were but few cases of that,—either (1) the United Company's machine or product was very inferior and unsatisfactory and was discarded when the new machine or product was acquired; or (2) the acquisition of the overlapping machine or product was merely incidental to the transaction, entirely outside of its real purpose and object, and such slight competition as existed or was promised was of no consequence at all and may be disregarded. In every one of these transactions the all-important fact bearing upon both the intent and what was actually accomplished was that the United Company ac-

quired a new machine or a new product which it did not have before but which its customers used and demanded, or a new invention which was needed to improve its machines. The charge that the United Company acquired competing concerns is thus absolutely without foundation.

In its efforts to show that in some instances there was competition between the acquired concerns and the United Company petitioner has throughout the case endeavored to obscure the facts by telling only a part of the story,—for example, that the United Company and an acquired concern had machines of the same or similar names. In considering such arguments by petitioner it is highly important that the court keep in mind the fact that as clearly appears from the record the different kinds of shoes, owing to their radically different shoe organizations, in most instances require different machines for the same, or corresponding, operation (R. Vol. 1, p. 84, lines 1–4).

By a Majority of the Transactions the United Company did not Acquire any Machine of the Class in respect to which the United States Claims a Monopoly.

Considering the "acquisitions" from another viewpoint, it is an illuminating fact that in thirty-two of the transactions the United Company did not acquire any machine of the class in respect to which the United States claims a monopoly, namely, machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines. By twenty-three of the twenty-six transactions which do fall within the above classification as to which monopoly is claimed the United Company acquired a machine or an invention which it did not have before and which it needed. As to the three remaining transactions, in one case the machines were only experimental and infringed many of the United Company's patents. The other two transactions related solely to foreign business and were in effect only purchases of foreign patents; in one of those cases there were patent complications and in the other the United Company had been agent for the machine affected.

This shows that the acquisitions did not give the United Company any monopoly such as that charged, or affect the alleged monopoly to any significant extent, and they may therefore be disregarded in this aspect of the case.

As to acquisitions of this class the District Court said (Dodge, J., R. Vol. 1, p. 1140):—

> "It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build."

The Concerns and Inventions which were Offered to the United Company and Declined were far more Numerous and Important than Those which it Acquired.

An examination of the lists of concerns dealing in shoe machinery and findings which were offered for sale to the United Company, but which it declined to purchase, and of the large number of other concerns engaged in the shoe machinery business in competition with the United Company which it has never acquired or attempted to acquire shows conclusively that the United Company made no attempt to acquire all concerns engaged in the shoe machinery business. This is confirmed by Mr. Winslow's testimony that in each instance outstanding competitors were left (R. Vol. 1, p. 465, lines 20–23).

Thus Defendants' Exhibit 233 (R. Vol. 5, p. 527), which is a partial list of concerns offered for sale to the United Company but declined, contains the names of 75 different concerns, many of great size and importance. (See Mr. Winslow's testimony regarding the business done by these concerns,—R. Vol. 1, pp. 472–5.) Many of these concerns had machines which are included within the classes of machines as to which the Government charges a monopoly. Mr. Winslow said of them (R. Vol. 1, p. 472, lines 16–23),—

> "Broadly speaking, this list includes manufacturers who, taken together, were making, or are now making, I should say, a complete line of shoe machinery, including the sewing machines for the fitting room."

The list includes such important concerns as the following:—

The Wheeler & Wilson Company (R. Vol. 1, p. 472, lines 24–26), manufacturing 90% of the machines used in making uppers.

The Atlas Tack Co., the largest manufacturer of tacks and a large producer of eyelets (R. Vol. 1, p. 472, lines 39–43).

The Canadian Shoe Machinery Co., making a full line of what is termed the important machines, including welters and stitchers, which did business in the United States through the Duplessis Company (R. Vol. 1, p. 473, lines 13–18).

The Duplessis Shoe Machinery Company (now the Hamel Shoe Machinery Company) which manufactured complete sets of machines for making welt, turn and McKay shoes (R. Vol. 1, p. 327, lines 15–25; p. 473, lines 30–31; p. 945, lines 1–4).

The Boylston Manufacturing Company, making lasting machines (R. Vol. 1, p. 956, line 8).

The Haverhill Shoe Machinery Company, which furnishes all kinds of shoe machinery for welts, McKays, turns, or pegged shoes (R. Vol. 1, p. 301, lines 5–9).

The Frechette Pegging Machine Co., making pegging machines (R. Vol. 1, p. 474, lines 9–12).

The Krentler Pym Lasting Machine Co., which manufactured a lasting machine (R. Vol. 1, p. 474, lines 26–28).

The R. H. Long Machinery Co., which manufactures large numbers of welters, stitchers, and lasting machines and is prepared to furnish a full line of machines for welt or turn shoes (R. Vol. 1, p. 345, lines 39–44).

The Union Lockstitch Co., which made and marketed large numbers of outsole stitchers (R. Vol. 1, p. 199, lines 9–45).

The Stanley Manufacturing Co., the successor of the McKay Sewing Machine Company, which manufactured the McKay Sewing Machine and carried on the business originally established by Gordon McKay (R. Vol. 1, p. 475, lines 26–32).

Defendants' Exhibit 336 (R. Vol. 5, p. 849) contains a list of shoe machinery manufacturers or dealers not acquired by the United Company, setting out the machines they offer for sale taken from Defendants' Physical Exhibits 311–321, which consist of catalogues, letters, and advertisements. It shows

over 125 different manufacturers and dealers offering every kind of machine, a number of them offering complete lines of machines.

Comparing the number of concerns which the United Company refused to purchase with those actually purchased the District Court said:—

> "As to several, at least, of these instances of refusal, the evidence warrants the belief that the business offered and refused much exceeded in importance to any such scheme of monopoly as now charged, any of the specified acquisitions. . . . If a monopoly of all machinery for attaching bottoms to uppers was really undertaken, it is hard to believe that opportunities would have been neglected, as they were, such as those for acquiring the Union lock-stitch machines or the welters and stitchers of the R. H. Long Company, all of them patented machines for use on welt shoes; or for acquiring a considerable business in producing McKay sewing machines, though these were unpatented and not capable of use on shoes of that kind" (Dodge, J., R. Vol. 1, p. 1141).

Defendants' failure to take advantage of the opportunities to acquire those companies could only be regarded as extraordinary, if back in 1899 they had, as the petition alleges,

> "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery" (R. Vol. 1, p. 994).

Mr. Winslow's testimony regarding those concerns which were offered to the United Company but were not acquired (R. Vol. 1, pp. 472–5) also shows that a large number of them were engaged in the same lines of business in which many of the concerns which the United Company acquired were engaged.

In addition to the businesses offered to the United Company and not purchased, there were offered to the United Company between June, 1904, and December, 1911, 493 inventions which it did not acquire. These are shown by Defendants' Exhibit 222 (R. Vol. 5, pp. 370, 371–389). A large portion of the so-called "acquisitions" consisted merely of the purchase of inventions of the same kind as the 493 so offered the United Company, the purchase of which was declined.

This list of inventions the purchase of which was declined

includes over two hundred inventions which it is obvious from their titles related to machines of the kind in respect to which monopoly is charged. Of these the District Court said:—

> "The cases in which inventions were offered and refused during the same period were many times more numerous than the patents or inventions acquired" (Dodge, J., R. Vol. 1, p. 1141).

The Transactions Extended through a Period of Twelve Years.

Reverting to the allegations of the petition that prior to the formation of the United Company the officers and directors of the predecessor companies, individual defendants,

> "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery,"

and

> "conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery" (R. Vol. 1, p. 994),

and that these fifty-eight "acquisitions" were made

> "in pursuance of their purpose to monopolize the shoe machinery industry" (R. Vol. 1, p. 999),—

these allegations prepare the reader for a showing that these defendants immediately went about gathering in all existing competitors and that they did this by a great number of practically simultaneous transactions so that within a few months at the most they had the field entirely to themselves.

On the contrary, the showing of the petition itself is that *these transactions were entered into at different separated times through a period of twelve years.* The petition alleges that eleven of them were at various times in 1899; seven in 1900; six each in 1901 and 1902; four in 1903; nine in 1904; one each in 1905, 1907, 1909, and 1911; three each in 1906 and 1908; and five in 1910. But, as we have already explained and shall later point out in detail, by a majority of these transactions the United Company did not acquire any shoe machinery business. Notwithstanding this fact, as was well stated by the District Court,—

> "Though thus extended through a period of years, and though widely varying each from the others in character, both in

respect to the nature of the transaction itself and also regarding the circumstances attending it, the petition sets them forth as if all had been in pursuance of one and the same scheme; there described as a scheme to control shoe machinery in general, though now called a scheme only to control the particular classes of shoe machinery before mentioned.

"The nature of some of these acquisitions may be regarded as enough of itself to prevent them from being called indications of a purpose to control any of the particular classes of machinery now important, however it might have been were the scheme now asserted the one originally alleged for controlling all shoe machinery in general" (Dodge, J., R. Vol. 1, p. 1138).

Taking only those transactions which are within the particular classes of machinery as to which monopoly is charged, there were, adopting the dates alleged in the petition, three transactions in 1899; four each in 1900, 1901, and 1902; two each in 1903 and 1908; one each in 1904, 1905, 1909, and 1911; and three in 1910.

It is beyond belief that these transactions, entered into at these widely separated times during this long period, none of which had any connection with or bearing upon any of the others, were entered into in the carrying out of an intent conceived in 1899, and defined in the petition as

"acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery" (R. Vol. 1, p. 994).

It was found by the District Court:—

"The acquisitions above regarded as the only ones of any possible significance in the case were made at various separated times during the period of eleven years or thereabouts above referred to. It cannot be said that the later ones were in contemplation when the earlier acquisitions were made, because there is nothing to show that the circumstances attending any of them were such as could have been anticipated as likely to occur at the time of the preceding acquisitions. The most that can be said is, that as, in the progress of events, the needs of the United Company became manifest and these opportunities presented themselves, they were availed of" (Dodge, J., R. Vol. 1, p. 1140).

It is Essential to Normal Development of a Business in Patented Shoe Machinery that Patented Inventions Occasionally be Purchased from Others.

The United States may rely upon the number of the transactions to show an intent to monopolize. That this is no evidence of such intent is shown by the facts set forth above that the purchases were small in number and importance compared with the business and inventions offered for sale and refused, and that they were not purchases of competing concerns.

There are special reasons why a large number of acquisitions are normal and necessary in the shoe machinery business if a company desires to develop its business and furnish the best machines. In the case of most manufacturing businesses the product is more or less uniform and is not patented. Each concern in the business is engaged in making more or less the same goods in competition. In the shoe machinery business, however, we find over three hundred different kinds of machines, each patented, and a great variety of different findings and supplies, such as eyelets, tacks, wire, cement, sandpaper, glue, peg-wood, awls, needles, etc. We also find new machines being developed constantly. For example, the United Company, since its organization, has developed and put upon the market over 39 different machines to do work previously done by hand (R. Vol. 1, p. 503, lines 37–41; Defs.' Ex. 247, R. Vol. 5, p. 690). We further find many concerns making or dealing in a single machine, or a single kind of supply (Defs.' Ex. 336, R. Vol. 5, p. 849). A shoe machinery company desiring to furnish a line of machines or supplies may therefore acquire hundreds of concerns without purchasing a single one which is in any sense a competitor. Furthermore, we find that many of the individual machines embody over a dozen different patented inventions. A shoe machinery company in developing a single machine, therefore, may acquire half a dozen different patents from as many different people for the purpose of combining them in a single effective machine. An examination of the so-called "acquisitions" in this case will show that many of them were of this class, namely for the purpose of acquiring an invention to be combined with other inventions in the development of or perfecting or improving a single machine.

It must also be remembered that since the shoe machinery art is entirely dominated by patents, a manufacturer desiring to furnish a variety of machines of the most efficient type must not only be constantly engaged in inventing himself, but must occasionally acquire inventions from others whose patents stand in the way of his own experimental work. The situation is entirely different from that found in an unpatented industry, such, for instance, as the woolen, steel, or tobacco industry where the manufacturer can, without purchasing any inventions, engage freely in the business and manufacture any goods which his customers may desire without being restrained by patent monopolies held by other persons.

An examination of the record will show that the acquisitions of the United Company have been made (1) to enable it to furnish machines which it did not at the time manufacture; (2) to enable it to obtain inventions to be combined with other inventions for developing or perfecting some machine; (3) to enable it to furnish its customers supplies or findings, such as eyelets, peg-wood, awls, needles, sandpaper, etc., which it did not manufacture at the time; or (4) that they have not been acquisitions of property at all, but merely employment contracts, transactions whereby litigation was settled, settlements of prior obligations, or similar transactions.

At the time the United Company was formed it had a comparatively small number of machines for an equally small number of operations (R. Vol. 1, p. 2, lines 10–22; p. 3, lines 15–19; p. 4, lines 23–27), and for the most part those machines were adapted for welt shoes only (R. Vol. 1, p. 48, lines 35–38). Since that time it has greatly extended the kinds of machines which it furnishes. Thus since its formation in 1899 it has added to the machines furnished by it over 170 different General Department machines. In addition to the machines which it has acquired it has developed and put out 150 entirely new machines and it has produced 39 machines which perform operations which in 1899 were performed by hand or not at all, including the pulling-over machine and auxiliaries, the eyeletting machines, and the clicking machines (R. Vol. 1, p. 503, lines 7–12, 17, 37–41; Defs.' Exs. 246, 247, R. Vol. 5, pp. 683, 690). The number of machines and inventions purchased by the United Company is small in comparison with the number developed and invented by its own experimental department.

The Allegation that Defendants Paid Exorbitant Prices.

The petition also alleges that defendants

> "have bought the business of many competitors, though compelled to pay exorbitant prices therefor" (R. Vol. 1, p. 999).

Passing over the allegation that these concerns were "competitors," which as we have shown and shall later explain more in detail is not supported by the facts, there is not a word of testimony in the entire record which shows or even suggests that the consideration paid in any instance was more than the property acquired was worth. The largest consideration, $775,000, was that paid in the J. C. Rhodes & Company transaction, and they did no shoe machinery business whatever. They were a large eyelet-making concern established long before, owning real estate and a factory and employing 116 men. The broadly patented enamel eyelet which they manufactured was in general use.

In only one other transaction, Pearson & Bennion, Ltd., did the consideration exceed $200,000. That concern did business only in England and it in no way competed with the United Company. The list of their assets, including a new factory, at the end of Plaintiff's Exhibit 61, coupled with their agreement to assign their Letters Patent (R. Vol. 3, pp. 525, 527, 530), shows that the United Company got full value for the amount which it paid, $410,245.

The aggregate of the considerations paid in all of the fifty-eight transactions, including nearly $1,200,000 paid in the Rhodes and Pearson & Bennion transactions, was approximately $3,555,000, an average of less than $62,000. That sum, excepting the consideration in the Plant purchase, which will be discussed by itself, represents the entire amount paid by the United Company over a period of twelve years for new machines, new products, and patented inventions which enabled it to enter many new fields and to add a great number of substantial and important improvements to its machines. It is certainly an insignificant sum as compared with the United Company's assets of over $40,000,000 on March 1, 1911 (P.'s Ex. 167, R. Vol. 4, pp. 1137, 1143). And compare the amounts paid from 1907 to 1911 with the $2,267,000 which it expended on its own experimental work in

that same period,—1907 to 1911 (Defs.' Ex. 216, R. Vol. 5, p. 322). The aggregate of the considerations paid for the acquisitions during those five years, including a number not doing any shoe machinery business, was $639,588.93; for those concerns which were doing shoe machinery business approximately $375,000 was paid during that period.

The District Court held:—

> "An allegation in the petition that the business of many competitors was bought at exorbitant prices, fails of support in the evidence relating to any specified instance of acquisition among those thus far considered [all except the Plant purchase]. As to them, indeed, no claim of the kind seems to be seriously urged" (Dodge J., R. Vol. 1, p. 1142).

The Charges that Plants have been Closed and Businesses have been Discontinued.

In the summary of the "acquisitions" in the petition there are frequent statements that "the plant has been closed" and "the business has been discontinued." The facts are as follows:—

In thirty-three of these transactions *no plant was acquired.* Real estate was acquired in only six. Five of those six businesses were continued and are now being carried on in the same plants, and the sixth was continued for a considerable time in the same plant and then, for reasons of convenience and economy, was transferred to the United Company's Beverly factory where it has since been continued and increased.

In general, as to forty-one of the fifty-eight transactions the United Company has continued to carry on the business when the transaction involved the acquisition of a business, or has used the patented inventions when those were the subjects-matter of the transactions; in most of the other seventeen transactions no shoe machinery business was acquired; while as to the few transactions in respect to which the United Company has not yet succeeded in doing anything with what it acquired, either the demand ceased entirely owing to radical changes in manufacturing methods or it proved impossible to make the experimental machines acquired commercially successful, as will be fully set forth in our detailed discussion.

Again, the petition alleges that defendants

> "have acquired many letters patent for valuable inventions, and have held the same for long periods of time without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom" (R. Vol. 1, p. 999).

There is not a particle of evidence in support of this allegation, but there is ample evidence which positively disproves it. Mr. Winslow testified:—

> "The United Company has suppressed absolutely no machines, no inventions and no improvements" (R. Vol. 1, p. 433, lines 27–28).

Mr. Howe testified:—

> "The United Shoe Machinery Company has never suppressed an invention that it thought could be worked out to make a commercial machine which would benefit the lessees. . . . I have never known of a single patent which had prospective value when embodied in machinery being laid on the shelf or suppressed" (R. Vol. 1, p. 671, lines 18–20, 23–25).

Mr. Howard testified that as regards all the acquisitions the acquired inventions were put to practical use so far as they were useful, and that in every instance where the invention was not put into practical use, it was because study and experiment proved that it was not practicable or was inferior to what the industry already had (R. Vol. 2, pp. 2087, 2088, Cr. Ints. 1657, 1658).

2. DETAILED DISCUSSION OF THE ACQUISITIONS.

(NOTE.—The Plant purchase (R. Vol. 1, p. 1019) will be discussed separately (*infra*, pp. 476–542). The allegation in the petition regarding the Boston Blacking Company (R. Vol. 1, p. 1005) was abandoned by petitioner and Plaintiff's Exhibit 76 (R. Vol. 3, p. 599) was withdrawn (R. Vol. 1, p. 47, lines 21–43).)

On examining the facts regarding these transactions, which are set forth in the Appendix to this Brief (pp. 3–81), the court will find that the circumstances attending each transaction fully justified the United Company in entering into it, and that the facts about all of them completely disprove the allegations of the

petition that these transactions were made in pursuance of any "purpose to monopolize the shoe machinery industry" (R. Vol. 1, p. 999), or with the intent to suppress competition, or that they had any such effect.

It is of course impracticable to review here the facts of each transaction, but, as indicated in our general discussion, each transaction presented one or more striking characteristics which were common to a large proportion of the others, so that the discussion of the transactions may be facilitated by grouping those presenting important distinctive features in common.

A. CLASSIFICATION OF THE ACQUISITIONS.

(1) In Nine Transactions no Tangible Property or Business of Any Kind was Acquired.

The agreements with GEORGE W. FREEMAN, FRED H. PERRY, and JOHN H. RICHARDSON were merely contracts of employment (Appendix, pp. 14, 49, 68).

The agreements with the LINCOLN SEWING MACHINE COMPANY and ZACHARY T. FRENCH were merely contracts commuting obligations created and existing before 1899 (Appendix, pp. 23, 53).

The AMERICAN GLUE COMPANY transaction was merely an exclusive agency, terminable by either party on six months' notice, for sandpaper in the shoe trade. The United Company was not manufacturing sandpaper (Appendix, p. 52).

By the BREACH MANUFACTURING COMPANY transaction the United Company acquired only an exclusive license under patents. Those patents related to a machine for cutting outsoles. The United Company had no such machine, and acquired this license for the purpose of developing a clicking machine under those patents (Appendix, p. 10).

From JOSEPH P. CURTIS the United Company acquired only two pending patent applications, which related to a machine for cementing a piece of fabric to an upper. Curtis had only an experimental machine which was not acquired. The United Company had no machine for that work and desired to be able to furnish one (Appendix, p. 48).

From LEOPOLD J. COURTEAU the United Company acquired a patented invention relating to a mechanism for holding linings

of uppers while being pasted to the upper leather. Courteau was doing no business and had only an experimental machine. Even that was not acquired. The United Company had no machine for that work and wished to develop one under the Courteau patent (Appendix, p. 56).

(2) By Fifteen Other Transactions the United Company Acquired Nothing More than Supplies of Various Kinds which are Used by Shoe Manufacturers; it did not Acquire Any Shoe Machinery.

The Corrugated Wire Fastening Company was doing a small business in supplying wire and spare parts for an obsolete machine which had not been put out for years (Appendix, p. 9). This business was characterized by the District Court "as making wire and spare parts for use in an obsolete metallic fastening machine" (Dodge, J., R. Vol. 1, p. 1128).

The Globe Shoe Tool Company was manufacturing and selling cutters and edge irons, which are tools, not machines. The Globe Company infringed two of the United Company's patents. The United Company desired to secure the services of H. M. Loomer, one of the vendors, as manager or superintendent (Appendix, p. 17).

The John Ritchie Company, who were shoe manufacturers at Quebec, Canada, were also, in a small way, making wire for use on standard screw machines and were selling it to lessees of the United Company. This was a dishonest situation which it was the purpose of the transaction to remove (Appendix, p. 18).

The Boston Fast Color Eyelet Company was dealing in patented celluloid covered eyelets known as Fast Color Eyelets. This was a new field for the United Company. The purpose of the transaction was to enable the United Company to go into the fast color eyelet business (Appendix, p. 23).

The Enamel Eyelet Company was endeavoring unsuccessfully to market a patented enamel eyelet. This was a new field for the United Company. The object of acquiring the Enamel Company's patents was to enable the United Company to enter that field (Appendix, p. 24).

J. C. Rhodes & Company was doing a large business in enamel eyelets which were broadly patented. Both the Rhodes

Company and the Enamel Company infringed a patent owned by the other and each had sued the other. The objects of this acquisition were to compose that litigation, to enable the United Company to produce a commercially satisfactory enamel eyelet without infringement, and to enable it to procure satisfactory metal blanks for its fast color eyelets (Appendix, p. 32).

From the MORLEY BUTTON MANUFACTURING COMPANY the United Company acquired a patented enamel eyelet of a different type from the Enamel Company and Rhodes Company eyelets. The Morley Company infringed and had been sued under the patents on both the Enamel and Rhodes eyelets. The objects of this transaction were to settle that litigation and to obtain valuable patents on a new type of enamel eyelet. The principal business of the Morley Company was manufacturing buttons; that business was not acquired (Appendix, p. 34).

The MARLBORO AWL & NEEDLE COMPANY was manufacturing McKay needles, hand awls and mallets,—none of which the United Company had made before. The object of this acquisition was to enable the United Company to enter that new field (Appendix, p. 36).

W. W. CROSS & COMPANY, INCORPORATED, was manufacturing nails and tacks. The United Company had never made any nails or tacks, but was buying tacks in large quantities from Cross for its lasting machines. The purpose of this transaction was to obtain an assured source of supply for the tacks which the United Company needed (Appendix, p. 45).

JOSEPH W. LEARY had a small business in cements and blackings and was dealing in an insignificant way in second-hand upper sewing machines. This transaction was merely an employment contract, Leary making it a condition of his employment that the United Company take over his small stock (Appendix, p. 49).

THE F. G. FARNHAM BRUSH MANUFACTURING CO. was dealing in patented brushes and parts of brushes. The United Company bought its patents in order to be able to furnish a better brush (Appendix, p. 50).

KIMBALL & HADLEY were making and selling Goodyear needles. The United Company was not making Goodyear needles and had been obliged to purchase from others the needles which it supplied for its own Goodyear machines. Its purpose was to

enable the United Company to manufacture its own Goodyear needles (Appendix, p. 54).

The METALLIC HEEL AND COUNTER COMPANY was manufacturing a patented metallic heel and counter for use on shoes worn by miners and quarrymen, etc. The United Company had nothing of the kind before. The United Company desired to enter that new field and to secure the services of three experts who were connected with that company (Appendix, p. 60).

The ELLIS LACER COMPANY was making a patented wire lacer for holding the edges of an upper at the right distance apart during manufacture. This was a new field for the United Company which it desired to enter but could not without acquiring the Ellis Company's patents, while on the other hand the Ellis Company infringed broad patents of the United Company (Appendix, p. 72).

The B. F. STURTEVANT COMPANY were manufacturing peg-wood and wooden shanks. The United Company had previously been obliged to purchase from others, including the Sturtevant Company, the peg-wood and shanks which it supplied to its customers; peg-wood was required for its pegging machines. The object of this transaction was to obtain an assured source of supply for those articles (Appendix, p. 75).

(3) Eight of the Parties from which Shoe Machinery was Acquired were Doing no Business at all with their Machines which were Merely Experimental and not Adapted for Commercial Use.

The GODDU SONS METAL FASTENING COMPANY had experimental metallic fastening machines of four types. It had done no business and its machines could not have been used commercially without entire reconstruction. The McKay Shoe Machinery Company claimed that the inventions in those machines belonged to it and had brought suit to compel the transfer of the inventions, which had been vigorously prosecuted. The McKay Company had also prepared to bring suits for infringements of several of its patents by each of the Goddu Company's machines. The purpose of this transaction was to settle and avoid litigation (Appendix, p. 3). The finding of the District Court on this transaction was:—

"The metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

EDWIN T. FREEMAN had constructed an experimental slugging machine which was patented. He had put out no machines. The United Company infringed one of his patents, there was an interference pending in the Patent Office, Freeman's machine infringed the United Company's patents, and the Freeman patents barred the way to improvement of the United Company's machines. The objects of the transaction were to avoid litigation and to enable the United Company to improve its machines without infringement. His inventions have since been embodied in three different machines of the United Company (Appendix, p. 13).

ALBERT G. BREWER had built an experimental heel breasting machine which was patented. The United Company had no such machine, but was experimenting on a machine of similar type, which was not successful until the Brewer invention had been incorporated in it. Brewer infringed a broad patent owned by the United Company. The purpose of the transaction was to obtain an invention needed to make the United Company's machine successful (Appendix, p. 15).

ERASTUS E. WINKLEY and BENJAMIN PHILLIPS were not engaged in business and no machinery was acquired from them. They had invented a leveling machine adapted for McKay shoes. The United Company had no leveling machine for McKay shoes and used the Winkley and Phillips inventions in the Atlas leveling machine. The object of this transaction was to enable the United Company to produce a leveling machine for McKay shoes (Appendix, p. 20).

THE SMITH LACING MACHINE COMPANY had an entirely new machine for lacing uppers. It was experimental and had not been put out. The United Company had no machine for that work and desired to obtain one. The Smith Company had broad

patents but infringed a patent owned by the United Company (Appendix, p. 59).

From ZOTIQUE BEAUDRY the United Company acquired a patented experimental heel burnishing machine. The inventions could be embodied in the machine of the United Company which had nothing like them. Beaudry's machine infringed the United Company's patents. These inventions were acquired for the purpose of improving the United Company's machine (Appendix, p. 62).

From HARRY L. RICE and FRED LACHAPELLE radically new patented welting machine inventions were acquired. Their machine was only experimental. These inventions could be put into the United Company's machines and were acquired for that purpose because they would strengthen the stitch and effect substantial economies (Appendix, p. 71).

From ADAM H. PRENZEL, a shoe manufacturer, patented inventions relating to children's shoes and machines for making them were acquired. The United Company had nothing of the kind and desired to be able to furnish these valuable inventions to its customers. Prenzel infringed (Appendix, p. 75).

From all of these eight parties excepting the Goddu Company the United Company acquired *either new machines which it did not have before or patented inventions which could be embodied in its own machines for the purpose of improving those machines.*

All of the Thirty-two Transactions which have been Named are Outside of the Petition's Allegations as to the Defendants' Intent.

The allegations as to defendants' intent in entering into these transactions are that they—

> "determined to acquire a complete monopoly of the *manufacture, sale, and lease of shoe machinery* . . ." (italics ours) (R. Vol. 1, p. 994),—

and that—

> "they conceived the idea of acquiring the ownership or control of all concerns *engaged in manufacturing and dealing in* any and all kinds of *shoe machinery*" (italics ours) (R. Vol. 1, p. 994).

These allegations certainly cannot be stretched to include either twenty-four concerns from whom no shoe machinery whatever was acquired or eight concerns whose machines were only experimental, far from being commercial, and who could not possibly be regarded as "engaged in manufacturing and dealing in . . . shoe machinery."

(4) By Seventeen of the Transactions with Parties who were actually doing Shoe Machinery Business the United Company entered an Entirely New Field by Acquiring Machines for Performing Operations for which it did not have Machines Before.

The new machines which were acquired will be briefly indicated in the following list of these transactions:—

PEARSON & BENNION, LTD., General Department machines (Appendix, p. 7).

PETER A. COUPAL and WILLIAM GORDON, experimental basting machine, really an employment contract (Appendix, p. 11).

BOSTON SHOE TOOL COMPANY (Timothy A. Bresnahan), edge trimming and setting machines and tools (Appendix, p. 12).

STANLEY MANUFACTURING COMPANY, foreign agency for McKay sewing machine and for some "General Department" machines (Appendix, p. 21).

ROSS-MOYER MANUFACTURING COMPANY, General Department machines (Appendix, p. 25).

SWAIN-FULLER MANUFACTURING COMPANY, leveler for turn shoes (Appendix, p. 29).

OLIVER A. MILLER, treeing machine (Appendix, p. 35).

THE T. A. NORRIS MACHINE COMPANY, six new "General Department" machines (Appendix, p. 37).

THE GEORGE A. SMITH MACHINERY COMPANY, supplies, spring heel scarfer (Appendix, p. 42).

G. W. EMERSON & COMPANY, tip scourer, power spring heel scarfer (Appendix, p. 43).

J. K. KRIEG & COMPANY, heel seat rounding, Louis heel scarfing machines (Appendix, p. 46).

ARNOLD MACHINE & SUPPLY COMPANY, machine for cementing Gem insoles (Appendix, p. 55).

Booth Brothers (1904 agreement), vamp perforating machine (Appendix, p. 57).

Brockton Supply Company, patents on tack pulling machine (Appendix, p. 58).

Booth Brothers (entire business), two new machines (Appendix, p. 63).

Carver Cotton Gin Company, leveling machine for "freaks" and samples, leatherboard skiver, counter dividing machine (Appendix, p. 68).

Charles P. Stanbon & Company, new folding machine, important improvements on two others (Appendix, p. 78).

(5) By Seven of the Nine Remaining Transactions the United Company Acquired Patented Improvements or Inventions for the Purpose of Enabling it to Supply Better Machines than it had Before.

The Boot & Shoe Sole Laying Company had a patented sole laying machine. The United Company's machine was inferior, of different type, and very unsatisfactory. The United Company infringed a patent owned by the Boot & Shoe Sole Laying Company (Appendix, p. 8).

The Seaver Process Lasting Company had a patented experimental pulling-over machine which, although a commercial failure, embodied inventions indispensable to a successful machine. The United Company was developing a pulling-over machine, not yet commercial, which embodied those inventions; they have been in all pulling-over machines put out by the United Company and are of the utmost importance (Appendix, p. 19).

The Globe Sewing Machine Company had patents on very superior features in its lockstitch welter which barred the way to development by the United Company of its lockstitch welter (Appendix, p. 30).

The American Sole Laying Machine Company had patent rights which prevented the United Company from making a double or two-form sole laying machine which would operate on right and left shoes and have double the capacity of the United Company's machine, and which also prevented development of the Atlas leveling machine. The United Company infringed (Appendix, p. 38).

The RICHARDSON SHOE MACHINERY COMPANY had a greatly improved, patented McKay sewing machine, which was much superior to and did a great deal better work than the United Company's machine. The Richardson patents prevented development of the United Company's machines and one of them was infringed by the United Company (Appendix, p. 65).

THE WENTWORTH COMPANY had a patent on a shank sticking machine which prevented the United Company from developing such a machine (Appendix, p. 73).

M. V. BRESNAHAN & COMPANY had a patented experimental lasting machine, not yet commercial, and a patented heel burnishing machine, which infringed two patents controlled by the United Company. The United Company had nothing in its lasting machines or its heel burnishing machines which would do the work that was done by the patented mechanisms in the two Bresnahan machines. A large amount of litigation was composed by this transaction (Appendix, p. 77).

(6) The Two Remaining Transactions.

The transactions with the BAY STATE INTERNATIONAL SHOE MACHINERY COMPANY (Appendix, p. 28) and WILLIAM J. YOUNG (Appendix, p. 40) both related solely to foreign business in patented machines, in no way to business or conditions in the United States. Both were in effect merely purchases of foreign patents. The Bay State Company was infringing the United Company's foreign patents. Its business was insignificant. The acquisition was made at the earnest solicitation of the people interested, who were shoe manufacturers and customers of the United Company, because it was the cheapest way to settle the litigation. The only property acquired from Young was his foreign patents under which as agent for Young the United Company had for years been putting out his heel compressing machine abroad. Young's machine was the only one of the kind that the United Company had been putting out abroad. Young has ever since continued to put out his machine in the United States in competition with the United Company.

The foregoing summary shows that by forty-four of the transactions the United Company either entered an entirely new field by acquiring machines or patents on machines for

performing operations for which it did not have machines, or supplies or findings which it did not have before, or it acquired patented improvements or inventions for the purpose of enabling it to supply better machines or products than it had before; and that the remaining transactions consisted merely in contracts of employment, contracts commuting obligations created before 1899, purchases to settle or avoid serious patent litigation or transactions of such character that they are entirely unimportant and have no significance in this case. Of the 58 transactions at least 20 were not concerned with the acquisition of shoe machinery or patents on shoe machinery at all.

During this period the United Company was engaged in a remarkable development of the art of shoe machinery. It improved by new inventions practically all its machines. It developed 150 new machines including 39 machines which performed work previously done by hand.

It developed and acquired 172 different General Department machines (*supra*, pp. 194–197). The patents and machines acquired by the acquisitions were used in building up and perfecting this large body of new and improved machines. They were, however, of insignificant importance, as the foregoing summary shows, compared with the results accomplished by the inventive efforts of the United Company itself.

B. THE ACQUISITIONS CONSIDERED FROM OTHER VIEWPOINTS.

(1) In Thirty-two of the Transactions the United Company did not Acquire Any Machine which was within the Scope of the Alleged Monopoly.

The parties to thirty-two of the transactions did not have any machine which was within the field to which petitioner has limited its charge of monopoly:—

> "Machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines" (R. Vol. 1, p. 837, lines 40–43; p. 838, lines 1–3, 18–20).

In this classification we have omitted all concerns which might possibly be regarded as within the field as to which petitioner claims a monopoly, although a number of those concerns had no "bottoming" machines but only machines of General

Department types performing minor operations in the way of "preparing" the soles.

As to the twenty-six transactions which may be regarded as within the class of machines as to which a monopoly is charged:—

(1) By fifteen transactions the United Company acquired machines for performing operations for which it did not have machines before, so that by each of those transactions it was entering a new field. These were: Pearson & Bennion, Ltd. (Appendix, p. 7); Breach Manufacturing Company (Appendix, p. 10); Erastus E. Winkley and Benjamin Phillips (Appendix, p. 20); Stanley Manufacturing Company (Appendix, p. 21); Ross-Moyer Manufacturing Company (Appendix, p. 25); Swain-Fuller Manufacturing Company (Appendix, p. 29); The T. A. Norris Machine Company (Appendix, p. 37); The George A. Smith Machinery Company (Appendix, p. 42); G. W. Emerson & Company (Appendix, p. 43); J. K. Krieg & Company (Appendix, p. 46); Arnold Machine & Supply Company (Appendix, p. 55); Brockton Supply Company (Appendix, p. 58); Carver Cotton Gin Company (Appendix, p. 68); Adam H. Prenzel (Appendix, p. 75); Charles P. Stanbon & Company (Appendix, p. 78).

It was held by the District Court:—

> "There remain a number of instances involving the acquisition of patent rights, patents, or machines relating to or capable of being included within some of those kinds of shoe machinery whereto the case is restricted as above. In the larger portion of these the device or machine acquired is shown to have been of a kind not then being produced by the United Company. There being nothing unlawful, as above stated, in the acquisition of different groups of non-competing patented machines, it is clear that by such enlargements of the United Company's field of operation no 'competitor' can be said to have been absorbed or driven out of business, and that no reason appears for holding the acquisitions thus made unlawful either in themselves or because made in furtherance of an unlawful purpose" (Dodge, J., R. Vol. 1, p. 1139).

All of these transactions are clearly within the rule of *United States* v. *Winslow*. So also, we submit, are the eight named in the next paragraph.

(2) By eight of the eleven remaining transactions the United Company acquired patented improvements or inventions for the purpose of enabling it to supply better machines than it had before. These were: Boot & Shoe Sole Laying Company (Appendix, p. 8); Seaver Process Lasting Company (Appendix, p. 19); Globe Sewing Machine Company (Appendix, p. 30); American Sole Laying Machine Company (Appendix, p. 38); Richardson Shoe Machinery Company (Appendix, p. 65); Harry L. Rice and Fred LaChapelle (Appendix, p. 71); The Wentworth Company (Appendix, p. 73); M. V. Bresnahan & Company (Appendix, p. 77).

The District Court held:—

> "In all such cases it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding[ed] in rendering commercially successful. . . . The most that can be said is, that as, in the progress of events, the needs of the United Company became manifest and these opportunities presented themselves, they were availed of" (Dodge, J., R. Vol. 1, pp. 1139, 1140).

It should also be noted that the United Company infringed patents owned by the Boot & Shoe Sole Laying Company and the Richardson Company; while the Seaver Company, the Globe Company, The Wentworth Company, and Bresnahan infringed the United Company's patents.

(3) There are but three other transactions which were within the class of machines as to which a monopoly is charged,—those with the Goddu Sons Metal Fastening Company, the Bay State International Shoe Machinery Company, and William J. Young.

As has previously been explained (*supra*, pp. 440-441) and as is set forth in detail in the Appendix (pp. 3–6), it is shown by the record and it was held by the District Court that the metallic fastening machines of the Goddu Company were experimental, and that they could not have been used without radical reconstruction. A suit had been brought by the McKay Shoe Ma-

chinery Company and had been vigorously prosecuted before February, 1899, to compel the transfer of the inventions embodied in the Goddu Company's machines on the ground that those inventions belonged to the McKay Company. The Goddu Company's machines all infringed the United Company's patents, in the aggregate a large number, and the only purpose of this transaction was to settle and avoid litigation.

The facts which we have already stated (*supra*, p. 445) show that the transactions with the Bay State International Shoe Machinery Company (Appendix, p. 28) and William J. Young (Appendix, p. 40) were entirely without significance in this case.

(2) In Forty-eight of the Transactions the United Company did not Acquire Any Machines which were Adapted or Intended for the Same Work as Any of the Machines which the United Company was Putting Out in February, 1899, or Any of its Predecessors before That.

In only ten of the fifty-eight transactions did the United Company acquire any machines which were adapted or intended for the same work as any of the machines which it was putting out in February, 1899, or any of its predecessors before that.

This shows conclusively that the United Company's purpose in making the acquisitions was to acquire machines or patents or supplies in new fields.

The ten concerns which had a machine or machines adapted or intended for the same work as any of the machines which the United Company was putting out in February, 1899, were: Goddu Sons Metal Fastening Company, Boot & Shoe Sole Laying Company, Edwin T. Freeman, Seaver Process Lasting Company, Bay State International Shoe Machinery Company, Globe Sewing Machine Company, American Sole Laying Machine Company, William J. Young, Harry L. Rice and Fred LaChapelle, M. V. Bresnahan & Company.

Summarizing the facts already stated about these ten concerns:—

(1) The machines acquired from four of these concerns were experimental, and no business was being done or could be done with them for they were far from being commercial. Those

were: Goddu Sons Metal Fastening Company (Appendix, p. 3), Edwin T. Freeman (Appendix, p. 13), Rice and LaChapelle (Appendix, p. 71), and M. V. Bresnahan & Company (Appendix, p. 77).

From three of those four, Freeman, Rice and LaChapelle, and Bresnahan, valuable inventions were acquired which the United Company did not have before. Also there were serious patent complications in connection with the Goddu Company, Freeman, and Bresnahan transactions. Other litigation with the Goddu Company and Bresnahan was pending.

(2) By four transactions the United Company acquired valuable inventions which were a bar to further development of its own machines. These were: Boot & Shoe Sole Laying Company (Appendix, p. 8), Seaver Process Lasting Company (Appendix, p. 19), Globe Sewing Machine Company (Appendix, p. 30), and American Sole Laying Machine Company (Appendix, p. 38).

(3) The two remaining transactions, those with the Bay State International Shoe Machinery Company (Appendix, p. 28) and William J. Young (Appendix, p. 40), have already been explained (*supra*, p. 445).

(4) There are other facts showing the little importance of these ten transactions. No real estate was acquired from any of the ten concerns and from only one of the six who were actually doing business was even a machine shop acquired. That was the Seaver Company, which employed only six men, whose lasting machine infringed, whose business had fallen to pieces, and which was insolvent (Appendix, p. 19). Further the aggregate considerations paid in the six transactions with the concerns which were actually doing business were less than $150,000.

(3) Serious Patent Complications were Cleared Up by a Large Number of the Acquisitions.

By twenty-six transactions the United Company secured patents completely dominating new fields which it desired to enter, patents which it infringed, patents which barred the way to needed improvements in its own machines, or patent applications with which its own applications were in interference; or

it acquired machines which infringed its patents, thereby composing and avoiding expensive and annoying litigation and protecting its lessees from the embarrassment of infringement suits.

Officials of the United Company were aware of these complications and they were, in all instances, the subject of study before the several acquisitions were made (R. Vol. 1, p. 821, lines 13–19).

All of the few concerns which petitioner may urge had apparently competing machines are in this class.

> "In most of the cases of this sort the machine or device acquired was claimed to infringe patents belonging to the United Company, or the patent acquired was one which some machine belonging to it was claimed to infringe, or the application acquired was in interference with applications of its own; and the object of the acquisition is shown to have been the avoidance or compromise of pending or threatened litigation. In such cases it is still less possible to say that any wrongful absorption of a 'competitor's' business has been proved" (Dodge, J., R. Vol. 1, p. 1140).

(NOTE.—These complications are set forth in full detail in Defs.' Ex. 275, R. Vol. 5, pp. 755–777, which consists largely in statements of the opinions of defendants' patent expert Howard in regard to these patent complications. Not a single statement in this exhibit and none of Mr. Howard's testimony to the same effect, no statement by Mr. Winslow as to patent complications in Defs.' Ex. 231, R. Vol. 5, pp. 444–479, and none of Mr. Winslow's or Mr. Howe's testimony to the same effect, have been controverted in any manner by petitioner.)

These transactions were: Goddu Sons Metal Fastening Company (Appendix, p. 3), Boot & Shoe Sole Laying Company (Appendix, p. 8), Peter A. Coupal and William Gordon (Appendix, p. 11), Edwin T. Freeman (Appendix, p. 13), Albert G. Brewer (Appendix, p. 15), Globe Shoe Tool Company (Appendix, p. 17), Seaver Process Lasting Company (Appendix, p. 19), Boston Fast Color Eyelet Company (Appendix, p. 23), Enamel Eyelet Company (Appendix, p. 24), Bay State International Shoe Machinery Company (Appendix, p. 28), Swain-Fuller Manufacturing Company (Appendix, p. 29), Globe Sewing Machine Company (Appendix, p. 30), J. C. Rhodes & Company (Appendix, p. 32), Morley Button Manufacturing Company (Appendix, p. 34), American Sole Laying Machine Company (Appendix, p. 38), G. W. Emerson & Company (Appendix, p. 43), Brockton Supply Company (Appendix, p. 58), The

Smith Lacing Machine Company (Appendix, p. 59), Zotique Beaudry (Appendix, p. 62), Booth Brothers (entire business) (Appendix, p. 63), Richardson Shoe Machinery Company (Appendix, p. 65), Ellis Lacer Company (Appendix, p. 72), The Wentworth Company (Appendix, p. 73), Adam H. Prenzel (Appendix, p. 75), M. V. Bresnahan & Company (Appendix, p. 77), Charles P. Stanbon & Company (Appendix, p. 78).

As to these transactions defendants' expert Howard, who has been head of the United Company's Patent Department since the company was organized (R. Vol. 2, p. 1998), testified:—

> "In some cases there were interferences pending in the Patent Office; in others, actual litigation, or, in my opinion, such a conflict of patents as to threaten litigation; or a field which we desired to enter was absolutely dominated, in our opinion, by patents owned by the acquired company; or the acquired company had inventions which we believed we ought to have and must have to make our machines commercially satisfactory" (R. Vol. 1, p. 820, lines 22-29).

3. WHAT THE UNITED COMPANY HAS DONE WITH THE ACQUIRED BUSINESSES.

In the summary of the acquisitions in the petition there are frequent statements that the "plant has been closed" or that "the business has been discontinued." The petition also alleges that defendants

> "have acquired many letters patent for valuable inventions, and have held the same for long periods of time without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom" (R. Vol. 1, p. 999).

These allegations are disproved, first, by the testimony of defendants' witnesses as to the United Company's general policy. Mr. Winslow testified:—

> "The United Company has suppressed absolutely no machines, no inventions and no improvements" (R. Vol. 1, p. 433, lines 27-28).

Mr. Howe testified:—

> "The United Shoe Machinery Company has never suppressed an invention that it thought could be worked out

to make a commercial machine which would benefit the lessees. . . . I have never known of a single patent which had prospective value when embodied in machinery being laid on the shelf or suppressed" (R. Vol. 1, p. 671, lines 18–20, 23–25).

These allegations of the petition are further disproved as to all the transactions by the evidence regarding each of those transactions.

As to the Allegations of the Petition that the Businesses have been Discontinued.

(*A*) With respect to forty-one of the transactions the record shows that the United Company has continued to carry on the business where a business was acquired, or has used inventions where those were the subjects-matter of the transactions. These were: Pearson & Bennion, Ltd. (Appendix, p. 7); Boot & Shoe Sole Laying Company (Appendix, p. 8); The Corrugated Wire Fastening Company (Appendix, p. 9); Peter A. Coupal and William Gordon (Appendix, p. 11); Boston Shoe Tool Company (Timothy A. Bresnahan) (Appendix, p. 12); Edwin T. Freeman (Appendix, p. 13); Albert G. Brewer (Appendix, p. 15); Globe Shoe Tool Company (Appendix, p. 17); Seaver Process Lasting Company (Appendix, p. 19); Erastus E. Winkley and Benjamin Phillips (Appendix, p. 20); Boston Fast Color Eyelet Company (Appendix, p. 23); Enamel Eyelet Company (Appendix, p. 24); Ross-Moyer Manufacturing Company (Appendix, p. 25); Swain-Fuller Manufacturing Company (Appendix, p. 29); J. C. Rhodes & Company (Appendix, p. 32); Morley Button Manufacturing Company (Appendix, p. 34); Oliver A. Miller (Appendix, p. 35); Marlboro Awl & Needle Company (Appendix, p. 36); The T. A. Norris Machine Company (Appendix, p. 37); American Sole Laying Machine Company (Appendix, p. 38); William J. Young (Appendix, p. 40); The George A. Smith Machinery Company (Appendix, p. 42); G. W. Emerson & Company (Appendix, p. 43); W. W. Cross & Company, Incorporated (Appendix, p. 45); J. K. Krieg & Company (Appendix, p. 46); The F. G. Farnham Brush Manufacturing Co. (Appendix, p. 50); American Glue Company

(Appendix, p. 52); Kimball & Hadley (Appendix, p. 54); Booth Brothers (1904 agreement) (Appendix, p. 57); Brockton Supply Company (Appendix, p. 58); The Smith Lacing Machine Company (Appendix, p. 59); Metallic Heel & Counter Company (Appendix, p. 60); Booth Brothers (entire business) (Appendix, p. 63); Richardson Shoe Machinery Company (Appendix, p. 65); Carver Cotton Gin Company (Appendix, p. 68); Ellis Lacer Company (Appendix, p. 72); The Wentworth Company (Appendix, p. 73); B. F. Sturtevant Company (Appendix, p. 75); Adam H. Prenzel (Appendix, p. 75); M. V. Bresnahan & Company (Appendix, p. 77); Charles P. Stanbon & Company (Appendix, p. 78).

. (*B*) *By thirteen of the seventeen transactions not included in the above list no shoe machinery business was acquired.* These were: Goddu Sons Metal Fastening Company (Appendix, p. 3); Breach Manufacturing Company (Appendix, p. 10); George W. Freeman (Appendix, p. 14); John Ritchie Company (John Ritchie) (Appendix, p. 18); Lincoln Sewing Machine Company (Appendix, p. 23); Joseph P. Curtis (Appendix, p. 48); Fred H. Perry (Appendix, p. 49); Joseph W. Leary (disregarding his insignificant dealing in second-hand upper sewing machines) (Appendix, p. 49); Zachary T. French (Appendix, p. 53); Leopold J. Courteau (Appendix, p. 56); Zotique Beaudry (Appendix, p. 62); John H. Richardson (Appendix, p. 68); Harry L. Rice and Fred LaChapelle (Appendix, p. 71).

As to these transactions:—

(1) From eight of these parties no tangible property whatever was acquired. The Freeman, Perry, and Richardson transactions were merely contracts of employment. The Lincoln Company and French transactions were merely contracts commuting obligations created and existing before 1899. From the Breach Company, Curtis and Courteau, the United Company acquired certain patent rights and nothing more.

(2) As we have already explained (*supra*, pp. 440, 441) the record shows and District Court held that the metallic fastening machines of the Goddu Company were experimental, that they were not capable of commercial use and that they could not have been used without radical reconstruction. The evidence also

shows that the minority stockholders of that company stood in the way of development of those machines.

(3) As to the inventions acquired from the Breach Company, Curtis and Courteau named above, and from Beaudry, the United Company experimented aggressively with each of those inventions until in each instance it was proved that the invention was of no commercial value. Each of these situations is set forth in detail in the Appendix.

(4) As to the John Ritchie Company business it is to be presumed that the United Company's lessees were supplied with the wire which they needed. It could not be expected that the United Company would continue the dishonest situation which it was the object of that transaction to eliminate, as fully explained in the Appendix (p. 18).

(5) The Leary transaction was in effect merely a contract of employment. He was dealing in a small way in cements, blacking and second-hand upper sewing machines and made it a condition of his employment by the United Company that it should buy his stock. The consideration was $3,052.

(6) The United Company has been working on the Rice and LaChapelle inventions since they were acquired, it has tried them out several times in a shoe factory, and is still at work with the purpose of developing them into a commercial machine. "It takes a long time to develop one of these machines" (R. Vol. 1, p. 72, lines 3–4).

(*C*) As to the four remaining transactions:—

For the machine acquired from the Arnold Machine & Supply Company (Appendix, p. 55) the demand ceased immediately after the acquisition owing to a revolutionary change in the methods of shoemaking.

Shortly after the acquisition of the patents of the Globe Sewing Machine Company (Appendix, p. 30) shoe manufacturers decided that they did not desire to sew the inseam by a lockstitch as they found it was impossible to secure a tight inseam, and they refused to use lockstitch welters.

The record is silent as to the history of the machines of the Stanley Manufacturing Company (Appendix, p. 21) and the Bay State International Shoe Machinery Company (Appendix, p. 28) after the dates of those transactions, but both of them

related to foreign business only. The Bay State Company had put out only a few machines in England and its machines were distinctly inferior to those of the United Company. The Stanley Company transaction amounted simply to an agency contract which contained a covenant that the United Company should use its best endeavors to sell the Stanley machines in foreign countries and provided that if it should fail to purchase machines from the Stanley Company, that company should then have the right to sell them abroad itself.

As to the Allegations of the Petition that the Plants have been Closed.

(*A*) *Thirty-three of the parties either did not have any manufacturing plant or even a machine-shop, or if they had any the United Company did not acquire it.* These were: Goddu Sons Metal Fastening Company (Appendix, p. 3); Boot & Shoe Sole Laying Company (Appendix, p. 8); Breach Manufacturing Company (Appendix, p. 10); Edwin T. Freeman (Appendix, p. 13); George W. Freeman (Appendix, p. 14); Albert G. Brewer (Appendix, p. 15); John Ritchie Company (John Ritchie) (Appendix, p. 18); Erastus E. Winkley and Benjamin Phillips (Appendix, p. 20); Stanley Manufacturing Company (Appendix, p. 21); Lincoln Sewing Machine Company (Appendix, p. 23); Boston Fast Color Eyelet Company (Appendix, p. 23); Enamel Eyelet Company (Appendix, p. 24); Bay State International Shoe Machinery Company (Appendix, p. 28); Globe Sewing Machine Company (Appendix, p. 30); Morley Button Manufacturing Company (Appendix, p. 34); American Sole Laying Machine Company (Appendix, p. 38); William J. Young (Appendix, p. 40); The George A. Smith Machinery Company (Appendix, p. 42); Joseph P. Curtis (Appendix, p. 48); Fred H. Perry (Appendix, p. 49); Joseph W. Leary (Appendix, p. 49); American Glue Company (Appendix, p. 52); Zachary T. French (Appendix, p. 53); Arnold Machine & Supply Company (Appendix, p. 55); Leopold J. Courteau (Appendix, p. 56); Booth Brothers (1904 agreement) (Appendix, p. 57); The Smith Lacing Machine Company (Appendix, p. 59); Zotique Beaudry (Appendix, p. 62); Richardson Shoe Machinery Company (Appendix, p. 65); John H. Richardson (Appendix, p.

68); Carver Cotton Gin Company (Appendix, p. 68); Harry L. Rice and Fred LaChapelle (Appendix, p. 71); Adam H. Prenzel (Appendix, p. 75).

Some of these parties had their machines or products made for them by others, *e.g.*, Boot & Shoe Sole Laying Company, Boston Fast Color Eyelet Company, Globe Sewing Machine Company, American Sole Laying Machine Company, Richardson Company. Others had each only a single experimental machine, *e.g.*, Brewer, Winkley and Phillips, Rice and LaChapelle. From others no tangible property of any kind was acquired, *e.g.*, Breach, G. W. Freeman, Lincoln Company, Curtis, Courteau, Perry, French, J. H. Richardson.

Seven of these thirty-three parties had manufacturing plants *but the United Company did not acquire the plants.* These parties were: Stanley Company, Morley Company, Young, American Glue Company, Booth Brothers (1904 agreement), Beaudry, Carver Cotton Gin Company.

(*B*) *Nineteen of the parties leased the premises which they occupied and no real estate was acquired from any of them.* These were: The Corrugated Wire Fastening Company (Appendix, p. 9); Peter A. Coupal and William Gordon (Appendix, p. 11); Globe Shoe Tool Company (Appendix, p. 17); Seaver Process Lasting Company (Appendix, p. 19); Ross-Moyer Manufacturing Company (Appendix, p. 25); Swain-Fuller Manufacturing Company (Appendix, p. 29); Marlboro Awl & Needle Company (Appendix, p. 36); The T. A. Norris Machine Company (Appendix, p. 37); G. W. Emerson & Company (Appendix, p. 43); J. K. Krieg & Company (Appendix, p. 46); The F. G. Farnham Brush Manufacturing Co. (Appendix, p. 50); Kimball & Hadley (Appendix, p. 54); Brockton Supply Company (Appendix, p. 58); Metallic Heel & Counter Company (Appendix, p. 60); Booth Brothers (entire business) (Appendix, p. 63); Ellis Lacer Company (Appendix, p. 72); The Wentworth Company (Appendix, p. 73); M. V. Bresnahan & Company (Appendix, p. 77); Charles P. Stanbon & Company (Appendix, p. 78).

As to these nineteen transactions, in every instance the business was continued, if a business was acquired, and the United Company has continued to manufacture the machines or products either on the acquired concern's leased premises or at the Beverly factory; or, if patented inventions were what was acquired, the

United Company has incorporated those inventions in its machines. The only apparent exception is the Seaver Process Lasting Company, but that company's lasting machine was inferior to the United Company's and there was no demand for it after the acquisition. Its valuable pulling-over inventions, the acquisition of which was the real object of that transaction, have been embodied ever since in the United Company's pulling-over machine and are of vital importance in that machine (Appendix, p. 19).

(*C*) *In only six of the transactions did the United Company acquire any real estate.* These were: Pearson & Bennion, Ltd. (Appendix, p. 7); Boston Shoe Tool Company (Timothy A. Bresnahan) (Appendix, p. 12); J. C. Rhodes & Company (Appendix, p. 32); Oliver A. Miller (Appendix, p. 35); W. W. Cross & Company, Incorporated (Appendix, p. 45); B. F. Sturtevant Company (Appendix, p. 75).

The businesses of five of those concerns were continued and are still being carried on *in the same plants.* These were: Pearson & Bennion; Rhodes; Miller; Cross; Sturtevant Company.

In the case of the Boston Shoe Tool Company

> "the business was continued at the same plant for a considerable period of time. Subsequently, for convenience and economy of manufacture, the business was transferred to the Beverly Factory, where the United Company has ever since continued and increased the business" (Winslow, Defs.' Ex. 231, R. Vol. 5, pp. 444, 460).

In this connection it should be understood that the purchase of machine-shops where shoe machinery has been made does not give the vendee control of existing facilities for making shoe machinery. As explained by Mr. Winslow:—

> "The manufacture of shoe machinery does not require any particular kind of machine tools. The standard machine tools used in manufacturing all ordinary machines are the tools that are used in every factory making shoe machinery. The only other things needed are the special tools and jigs which are made by any manufacturer of a particular machine" (R. Vol. 1, p. 858, lines 25–31).

4. CONCLUSION AS TO THE "ACQUISITIONS."

Petitioner has completely failed to establish its charges that these fifty-eight individuals or concerns were competitors, that these transactions were entered into in pursuance of a purpose to monopolize the shoe machinery industry or with intent to suppress competition, that defendants have acquired patents and suppressed them, or that the considerations in the transactions were exorbitant.

The parties from whom these acquisitions were made were not competing with the United Company; in the few cases in which a machine was acquired of the character of one made by the United Company, or an invention was acquired applicable to a machine made by the United Company, the purpose of the United Company in entering into the transaction was to acquire a patent necessary to perfect or improve its own machines, or to acquire a patented machine of the same name as one it had, but used for a different purpose, or to settle litigation which might have prevented the United Company from putting out its own machine, and if any possible competition was eliminated, it was trivial in character, its elimination was not a motive for the transaction, but incidental thereto, and in no case did such competition have any material effect upon the industry.

Practically all the parties who were doing business—and many were not doing any—were putting out machines performing operations which no machine that the United Company had before could perform; or they were making and selling some of the great variety of supplies or "findings" which were used by the United Company's customers and none of which it supplied or was in position to supply before; or they had valuable patented inventions which the United Company had to acquire in order to make some of its machines commercially successful or to enable it to effect substantial improvements in the quality of work or speed of operation of its machines.

Viewing the acquisitions as a whole it is clear that they were made for the purpose of enlarging the United Company's field or adding important and needed improvements to its machines. They were plainly a continuation of that "effort after greater efficiency" which began with the formation of the United Company in 1899, already approved by this court, and which has re-

sulted in the United Company's taking advantage of opportunities, which have presented themselves from time to time during a period of more than twelve years, to enlarge its field and improve its machines. That such transactions were lawful has been established by *United States* v. *Winslow*. The court in that case said:

> "It is said that from seventy to eighty per cent. of all the shoe machinery business was put into a single hand. This is inaccurate, since the machines in question are not alleged to be types of all the machines used in making shoes, and since the defendants' share in commerce among the States does not appear. *But taking it as true* we can see no greater objection to one corporation manufacturing seventy per cent. of three non-competing groups of patented machines collectively used for making a single product than to three corporations making the same proportion of one group each. The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree" (italics ours) (*United States* v. *Winslow*, 227 U. S. 202, 217).

If any further proof were needed that these fifty-eight transactions were normal and reasonable steps in the developing and carrying on of the United Company's business, we have, first, the fact that there were serious patent complications attending a large proportion of the transactions, including all of the few concerns which petitioner may urge had apparently competing machines. The acquiring of patents which it infringed or which barred the development of its machines, frequently preventing the construction of a successful machine, and the avoidance or composing of patent litigation are certainly normal, reasonable, and lawful steps in the development of the business of a corporation doing business in patented machines. Transactions entered into for such reasons and with such objects not only benefit the corporation, but they are clearly to the advantage of its customers and the public.

The unimportant character of these transactions in their bearing upon this case is further shown by the facts that more than half of the transactions were clearly outside of the scope of the alleged actual monopoly as frequently defined by counsel for the United States during the trial; that only ten of the parties had any machine which performed the same work as any of the machines which the United Company was putting out in February, 1899; that no

factory or machine shop was acquired in more than half of the transactions and real estate was acquired in only six, and that there is nothing on the record to show that any of forty-four of the parties were engaged in interstate or foreign trade or commerce. Nearly all of the parties that had any machines had but one or two. Many had but one machine, and that frequently only an experimental machine, never in a shoe factory.

If defendants had had any such intent as was alleged they never would have refused the opportunities which were offered them to acquire the large concerns which were and are actively competing with the United Company. The record shows that its biggest and most aggressive competitors, putting out complete lines of machines for making all kinds of shoes, were offered to the United Company and those offers were declined. And, in general, the record shows that a much greater number of shoe machinery concerns than it acquired, many of them having bottoming machines, and a far greater number of inventions than it purchased, over two hundred of which were within petitioner's definition of the alleged monopoly, were offered to the United Company and declined by it.

And finally the record shows that the United Company has *used* what it has acquired by these acquisitions. In a very few cases its hopes were disappointed and the most aggressive experimenting failed to make an acquired invention commercially successful, as frequently happens with its own experimental machines. But in nearly all cases the company has been able to utilize what it acquired to great advantage. For years it has been putting out and its customers have been using scores of machines—including such important machines as the Pulling-over Machine, Model M Outsole Stitcher, Goodyear Tack Pulling and Resetting Machine, Goodyear Twin Sole Layer, Goodyear Welt Indenting and Burnishing Machine, Model B Standard Screw Machine, Atlas Leveling Machine, Imperial Heel Breasting Machine, Ensign Lacing Machine, and Model B McKay Sewing Machine—which the United Company could not have manufactured or put out without infringement if it had not made these acquisitions.

In considering the few purchases of machines similar to machines held by the United Company or inventions applicable to machines of the kind already owned by the United Company,

the distinction between the acquisition of a patent or patented machine and the acquisition of an unpatented machine must be borne in mind. Even if the acquisition of a patent or patented machine may result in the elimination of actual or potential competition, it does not make the transaction inherently unlawful.

In the case of the purchase of the business of manufacturing and furnishing to the trade an unpatented machine, the purchaser, prior to the purchase, is free to make the machine and furnish it to his customers in competition. He is under no restraint, and by making the purchase he does not relieve himself of any restraint previously imposed upon him which forbade his furnishing the same kind of machine. By the purchase of a patented machine the purchaser acquires the patents covering the machine. Prior to the purchase he was restrained by these patents from making the machine; by the purchase he is relieved from this restraint. If the patented machine is one desired by his customers, he cannot satisfy their demands without making the purchase. Unless he make the purchase he is therefore not in a position to compete on equal terms with the owner of the patented machine.

The Sherman Act was intended to protect the normal flow of commerce. Where a manufacturer is lawfully restrained by a patent monopoly owned by another person from manufacturing machines desired by such manufacturer's customers, the Sherman Act was not intended to prevent his acquiring the right to make and furnish such machines by the acquisition of the patent even if thereby an incidental competition is eliminated.

In *Virtue* v. *Creamery Package Company*, 227 U. S. 8, it appeared that the Disbrow Company entered into a contract with the Owatonna Company granting the latter rights under patents for churns and butter workers. The latter company at the time had other patents covering such articles. The Owatonna Company also made the Creamery Package Company its exclusive sales agent.

The court said (pp. 36, 37):—

> "We may therefore sum up by saying that the Disbrow Company, by its contract with the Owatonna Company, did nothing more than confirm or enlarge the rights which the Owatonna Company had obtained, by the contract of 1893, and conveyed to it the exclusive right in the patents for cer-

tain named royalties. This was no violation of law. The Owatonna Company did nothing more in its contract with the Creamery Package Manufacturing Company than to make that Company its exclusive sales agent, and this was no violation of law. Both contracts had natural and adequate legal inducements and conveyed rights that could under the law be conveyed, and, as a necessary incident to the conveyance, one only of the parties could thereafter exercise them. *It may be that the Disbrow Company was to an extent in competition with the Owatonna Company, but it was a competition in part, at least, which, it was contended, was illegally conducted against rights which had been transferred in 1893. But, be that as it may, we repeat, patent rights may be conveyed partially or entirely, and the monopoly of use, of manufacture or of sale is not one condemned by law*" (italics ours).

If two patented machines can do the same work, it is not infrequently the case that each has a patented improvement which the other does not have. A far more efficient machine would result if the patents were combined and the two improvements embodied in a single machine. In such a case the manufacturer of one machine may lawfully purchase the patents held by the manufacturer of the other machine, even though competition between the two machines is thereby eliminated. To hold otherwise would be to hold that the public could not be furnished the most efficient machines possible to the art. But the Sherman Act was intended to benefit the public, not to injure it.

In *Nash* v. *United States*, 229 U.S. 373, the court said (p. 376):—

> " . . . Only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, the court said (p. 174):—

> "In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented."

A purchase which is made for the purpose of enabling the purchaser to produce a more efficient machine, even if it does result in the elimination of competition between inferior machines, cannot be said to "prejudice the public interests" or produce "harm to the general public." Such a purchase distinctly benefits the public, and is obviously a normal, legitimate step in the development of the industry.

In *United States* v. *American Bell Telephone Company*, 167 U. S. 224, the right of a patentee to acquire other patents which will improve his apparatus, although thereby his monopoly will be extended indefinitely, was affirmed as undoubted.

The court said (p. 249):—

> "Much is said in the briefs and in the arguments about the practical continuance of the telephone monopoly. It is well to understand exactly what is meant thereby. No one questions that the Bell patent has expired, and that all of his invention is free to the use of the public. It is not denied that Berliner's invention is something independent and distinct from the Bell invention. It is the combination of these inventions with those of Blake and Edison which makes the instrument in commercial use, and because this is the most serviceable it is the one that the public insists upon having. But each invention has independent rights. It loses nothing because when united with another it results in an instrument more valuable than either alone will give. Suppose that at the expiration of this Berliner patent some new invention shall be made by which in connection with those already free to the public an instrument can be manufactured far surpassing in utility that used today, and the Bell Company shall purchase that invention, the public, which always insists on having the best and most serviceable, will undoubtedly take the new instrument, and in that way it may happen that what is called the telephone monopoly is practically still further continued. But surely that does not abridge the legal rights of anyone. The inventor of the latest addition is entitled to full protection, and if the telephone company buys that invention it is entitled to all the rights which the inventor had."

It appears from that case that the telephone was covered by four patents. Bell's invention was the fundamental invention; the others were improvements. If, as was not impossible, after the expiration of Bell's patents, a telephone could have been con-

structed by the addition of either one of the improvements, could it possibly have been contended that the owners of those improvements, although there would have been competition between them if they had remained separate, could not have combined, and by the use of all their patents made a more perfect instrument? We think it clear from the language of the court that such a combination would have been permissible.

We do not here contend that every purchase of patents or of a business protected by patents is lawful, although there is authority to this effect. We do submit that every such purchase made to enable the purchaser to manufacture and offer his customers machines which he could not manufacture unless he purchased the patents, or to enable the purchaser by a combination of different patents to put on the market a better machine than any then manufactured, is lawful. To hold otherwise would prevent a manufacturer from fairly competing with his competitors by preventing his manufacturing the same class of machines which they can manufacture under their patents, or would prevent his putting upon the market the best machines which could be manufactured by a combination of patents.

Unless a company like the United Company which is engaged in an industry dominated by patents is privileged to make such acquisitions, the character of its machines will deteriorate and its business decline.

The United Company's machines are the best in the market. It hopes that they may continue to be the best. To this end it expends enormous sums each year in conducting experiments and making inventions. It also acquires from others such inventions as will improve or perfect its machines, or enable it to put out new machines. This it is legitimately and lawfully entitled to do.

Its lessees look to it to furnish them with the best and most improved machines. It can only do this by maintaining its own experimental department, and by acquiring such inventions made or owned by others as will effect this end. It is not only entitled to do so: it would be lax in its obligations to its lessees if it declined to do so.

V.

COVENANTS TAKEN FROM VENDORS, INVENTORS, AND EMPLOYEES IN CONNECTION WITH THE ACQUISITIONS.

1. GENERAL DISCUSSION.

The petition alleges that the defendants have taken from "*all or substantially all*" of those whose businesses they have purchased covenants in writing not to engage for long terms of years in trade "*in shoe machinery in competition*" with the defendants and have further required the vendors to agree that if they "*shall invent or cause to be invented*" or shall patent or cause to be patented "*any machines adapted for use in the manufacture of boots or shoes*" or shall acquire interests in or under letters patent relating thereto, they shall assign and transfer to the defendants all such inventions and letters patent (R. Vol. 1, p. 1000). The District Court found with respect to these allegations as follows (Dodge, J., R. Vol. 1, p. 1141):—

> "These charges are not justified by the documents themselves, which have been produced. They are by no means uniform in their terms, there was no generally prescribed form for them, nor were they all the work of the same hands. Each was framed according to the circumstances of the particular transaction. In many cases, at least, the agreements required only that there should be no competition in the line of business involved in the particular transaction, or that all patents or inventions thereafter made in the particular line to which the acquired invention belonged should be transferred. There are enough of the agreements in these cases which are without covenants of the kind described, to leave the allegation unjustified that such covenants were required in substantially all. And of the instances wherein covenants are found in any degree answering the alleged description, it may be said generally that none are clearly shown to have exceeded what the law permits. Still less reasonable would it be to regard what is found in them as indicating a consistent purpose on the defendants' part to exclude all those with whom the agreements were made from all possible future competition with the United Company."
>
> . . . . . .

This finding of the District Court is fully supported by the record.

The covenants are only such covenants as are usual and customary in the case of a purchase of a business, the purchase of patents, or a contract of employment with an inventor.

In the case of the purchase of a business it is well recognized as usual and necessary to require the vendor to covenant not to compete with the business sold. Such a covenant in nowise violates the Sherman Act.

When an inventor sells his patents it is recognized as equally essential that he covenant to transfer his future inventions covering the same subject-matter in order to give the purchaser protection. It is common experience that an inventor at the time of sale may have in mind inventions which he has not yet patented which may render valueless what he is selling.

When an inventor is employed and taken into the employer's experimental department a covenant to assign future inventions is even more essential. Not only must much expense be incurred in providing draughtsmen and mechanics to work out his inventions, but the inventor has every opportunity to acquire highly confidential information. It is accordingly essential that he be required to agree that if he leaves the company's employ, he will assign future inventions because, first, such inventions are likely to be the fruits of his labors while with the company and in reality the results of the work which the company has paid for; second, there is serious danger that if he has not agreed to transfer future inventions he will not disclose an important invention, but leave the company's employ and then patent the invention, taking to himself the benefit of the work for which the company has paid; and, third, there is grave danger that if unscrupulous he will appropriate the inventions of others with which his confidential relations have permitted him to become familiar, and will patent them himself,—dangers which render such covenants both usual and normal.

In the present case the covenants in each and every instance were necessary for the protection of the United Company, and the District Court so found. But this is not the material issue in the present case. Whether or not a covenant in a particular case is absolutely necessary for the protection of one of the parties is a question of judgment which must be determined in the light

of the circumstances surrounding that particular case, a question difficult alike for the court and for the parties themselves to decide, with reference to which the law has been developing and changing and differs in different states. The material fact here is that the covenants are of the general character which are customary, normal, and proper in such transactions, and afford no evidence of a design to take broader covenants than the parties fairly believed necessary and usual.

The record shows that the officers of the company had no plan or design whatsoever with respect to these covenants and did nothing but leave it to the attorney who drew the papers to insert such clauses as were usual to protect the company as purchaser.

Thus Mr. Howe testified:—

> "Neither the Directors nor officers of the Company, so far as I know, ever had anything to do with them [the covenants]. In fact, except in special instances, where they may have read that part of the contract, I doubt if they knew what they were" (R. Vol. 1, p. 667, lines 16–19).

He further testified (R. Vol. 1, p. 667, lines 20–27):—

> "*Q.* Or did you receive directions from President Winslow as to the covenants you should use?
> "*A.* Neither from the President nor from any officer.
> "*Q.* You then exercised your own judgment as a lawyer?
> "*A.* That matter was all left to the Legal Department.
> "*Q.* Was there any intent upon your part to bring about a monopoly or an unlawful restraint of trade by the use of those covenants?
> "*A.* No intention whatever. It was merely intended for the protection of the Company in what it had paid for, or what it had contracted to pay for."

Mr. Winslow testified (R. Vol. 1, p. 502, lines 19–30):—

> "With reference to the covenants in agreements of purchase of properties by the United Company, I have had nothing to do with the covenants of the vendors, with respect to their future activities, in agreements relating to the acquisitions by the United Company. The drafting of those papers was left entirely to the United Company's Legal Department; I did not direct anything to be inserted and

no action was taken by me, or by the Board of Directors, or by any officer of the Company that I knew of, directing or requiring the insertion of any such restrictive covenants in any agreement. These matters were left to counsel like the drawing of a deed, and I paid no attention to whether they put in covenants or what covenants they put in."

In thirteen transactions there were no covenants whatever as to competition or to future inventions. These were: The Corrugated Wire Fastening Company (R. Vol. 3, p. 530); Seaver Process Lasting Company (R. Vol. 3, p. 591); Lincoln Sewing Machine Company (R. Vol. 3, p. 628); Bay State International Shoe Machinery Company (R. Vol. 3, p. 655); Swain-Fuller Manufacturing Company (R. Vol. 3, p. 660); Globe Sewing Machine Company (R. Vol. 3, p. 662); Boot & Shoe Sole Laying Company (R. Vol. 3, p. 666); Marlboro Awl & Needle Company (R. Vol. 4, pp. 693, 703); The T. A. Norris Machine Company (R. Vol. 4, p. 734); W. W. Cross & Company, Incorporated (R. Vol. 4, p. 744); Brockton Supply Company (R. Vol. 4, p. 831); Metallic Heel & Counter Company (R. Vol. 4, p. 843); B. F. Sturtevant Company (R. Vol. 4, p. 928).

In the case of most of the transactions where covenants were inserted particular pains were taken to limit the covenant strictly to the particular kind of machines or goods which were sold. The allegation in the petition that the vendors who made covenants not to compete were restrained in all cases from engaging in competition in shoe machinery generally and that inventors were required to convey patents on shoe machinery generally which they might thereafter invent or acquire is absolutely without foundation. The very few cases in which general covenants were taken were either employment contracts where such broad protection was necessary or the general covenants were justified by the special circumstances of the case. Furthermore in nearly every case the covenants have been limited in time.

In the only case in which the United Company has sought to enforce any of these covenants they were held to be reasonable and the defendant was restrained (*United Shoe Machinery Company* v. *Kimball*, 193 Mass. 351). That was the contract with Kimball & Hadley (R. Vol. 4, p. 814).

2. LAW AS TO COVENANTS NOT TO COMPETE.

That a covenant not to compete when made as part of the sale of a business, although it directly undertakes to restrain trade, is not within the prohibition of the Sherman Act is settled by *Cincinnati Packet Co.* v. *Bay*, 200 U. S. 179. The court there says (pp. 184–5):—

> "Presumably all that there was to sell, besides certain instruments of competition, was the competition itself, and the purchasers did not want the vendors' names.
>
> "This being our view of the covenant in question, whatever differences of opinion there may have been with regard to the scope of the Act of July 2, 1890, there has been no intimation from anyone, we believe, that such a contract, made as part of the sale of a business and not as a device to control commerce, would fall within the act. On the contrary, it has been suggested repeatedly that such a contract is not within the letter or spirit of the statute, *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 329, *United States* v. *Joint Traffic Association*, 171 U. S. 505, 568, and it was so decided in the case of a patent. *Bement* v. *National Harrow Co.*, 186 U. S. 70, 92."

See also

Darius Coal Transportation Co. v. *White Star Line*, 186 Fed. 63 at p. 65.

Blount Mfg. Co. v. *Yale & Towne Mfg. Co.*, 166 Fed. 555 at p. 558.

Indeed, a covenant not to compete is so necessary to the protection of a purchaser of a business, that in Massachusetts, where most of these contracts were made, a covenant not to compete is implied by law where the good-will of a business is sold and such covenant is necessary or proper for the protection of the purchaser.

Marshall Engine Co. v. *New Marshall Engine Co.*, 203 Mass. 410.

It appears then that even if the United Company had not taken express covenants not to compete, its right to take such cove-

nants is so clear that the law would have protected it by implying them.

The law goes so far that under such an implied covenant the vendor may be forbidden to set up a competing business in any part of the world.

In *Marshall Engine Co.* v. *New Marshall Engine Co.*, supra, the court said (p. 422):—

> "On the other hand had there been no covenant in the sale by Nordenfelt of his good will as a manufacturer of guns and ammunition, which was before the House of Lords in *Nordenfelt* v. *Maxim Nordenfelt Guns & Ammunition Co.* (1894) A. C. 535, under the Massachusetts rule he could not have set up a similar business anywhere. Where the governments of the world are the customers, the place of business is of no consequence."

Such a covenant not to compete may, if necessary for the vendee's protection, be unlimited both in time and space.

In *Marshall Engine Co.* v. *New Marshall Engine Co.*, supra, the court said (p. 424):—

> "The defendants have argued that if Marshall had entered into a covenant never to engage in the business of manufacturing Marshall Perfecting Engines it would have been void as a covenant in restraint of trade. But it is now settled that a covenant, even if it be unlimited both in time and space (*United Shoe Machinery Co.* v. *Kimball*, 193 Mass. 351, 358), not to engage in a particular business is valid if it is coupled with the sale of a business and is necessary to give to the purchaser what he has bought. *Anchor Electric Co.* v. *Hawkes*, 171 Mass. 101. *United Shoe Machinery Co.* v. *Kimball*, 193 Mass. 351."

Where necessary to protect the vendee, a covenant not to compete with the business of the vendee generally, although that business is broader than the particular business sold, is valid.

Anchor Electric Company v. *Hawkes*, 171 Mass. 101.

3. LAW AS TO COVENANTS TO ASSIGN FUTURE INVENTIONS.

Covenants, by vendors of patents or by inventors who enter the employ of the company, not to compete are even more necessary for the vendee's or employer's protection than covenants not to compete made upon the sale of a business.

This is well recognized by numerous decisions.

In *Aspinwall Mfg. Co.* v. *Gill*, 32 Fed. 697, Mr. Justice Bradley said (p. 700):—

> "But where a man purchases a particular machine secured by a patent, and open to an indefinite line of improvements, it is often of great consequence to him that he should have the benefit of any future improvements that may be made to it. Without that the whole value of the thing may be taken away from him the next day. A better machine might be made by the inventor, and sold to another party, which would make the machine acquired by the first purchaser entirely useless. *These things happen every day. And hence it has become the practice, in many cases, to stipulate for all future improvements that may be made by the same inventor upon any particular machine which he induces a party to purchase from him, sometimes by way of license to use such improvements and sometimes by way of purchase and ownership thereof.* Where the inventor is connected in business with the party making such stipulation, or is interested in the profits arising from the business in which the invention is used, the arrangement seems to be altogether unobjectionable. But such a connection or interest does not seem to be necessary to the validity of such bargains" (italics ours).

In *Hulse* v. *Bonsack Machine Co.*, 65 Fed. Rep. 864, an agreement by an employee to assign all inventions made by him while in the company's employ or at any time thereafter was held reasonable and valid. The court said (p. 867):—

> "Is this contract unreasonable or unconscionable? The Bonsack Machine Company owned valuable patented machines, employed in the manufacture of cigarettes. Comparatively the invention was in its infancy, and the machinery was known to be difficult of operation, and open to improvement. Any one entering into the employment of the company had full opportunity of learning the merits of the machines,

and, by constant and daily use, could see where the machine was defective, and where improvement was needed. If any improvement suggested itself to his mind, he could, by using the machine and the time and material of the company, experiment upon it, and ascertain its value. The improvement would be his own idea. But it owed its suggestion and origin, its progressive development and perfection, to the business, the practical working, the opportunity afforded by the company. When, therefore, the company, taught by costly experience, determined to protect itself from the discovery of improvements by its own servants, it did a natural and reasonable thing; and, when it protected itself by a covenant in advance of any employment with those seeking its service, it did a fair thing. Nor was that part of the contract which put in the same category improvements made while in the employment of the company and those made at any time thereafter unconscionable or unreasonable."

See also *Westinghouse Air Brake Co.* v. *Chicago Brake Mfg. Co.*, 85 Fed. Rep. 786.

In *Registering Company* v. *Sampson*, L. R. 19, Eq. 462, the court said:—

"Now nothing is better known than this, that when persons have turned their attention to a particular class of invention they are likely to go on and invent, and likely to continuously improve the nature of their invention, and continuously to discover new modes of attaining the end desired. Persons, therefore, who buy patents of inventors are in the habit of protecting themselves from the utter destruction of the value of the thing purchased by bargaining with the seller that he shall not use any new invention of his for producing that product in which they are about to deal at a cheaper rate, because if he were allowed to do so he might, the day after he had sold his patent, produce something which, *without being technically an infringement, and without being technically an improvement*, might accomplish the desired object in some other way, and utterly destroy the value of that which they had purchased. They, therefore, not unreasonably, and not unusually, make it a part of their bargain that whatever the man discovers of the same kind in the shape of machinery or apparatus which will produce the product in which they are about to deal shall belong to them. They say, 'We cannot buy on any other terms, because otherwise we are exposed to the instantaneous, or almost instantaneous, competition of

the inventor with the benefit of his previous experience.' That, as I said before, is not an unusual, nor is it an unreasonable, bargain" (italics ours).

Reece Folding Machine Company v. *Fenwick*, 140 Fed. Rep. 287, decided in the First Circuit in 1905, is a strong case on this point. Judge Putnam in the opinion of the court, page 288, says:—

"By the last contract Fenwick agreed to assign all the inventions which he had already made, together with any which he might thereafter make, appertaining to the particular subject-matter to which the prior contracts related; that is, certain details in the manufacture of collars and cuffs. . . .

"The defense is set up that such contracts for an indefinite period, covering inventions to be afterwards made, are against public policy. On the other hand, whether based on agreements for employment or on other valuable considerations, such contracts have been extensively made, and have never been doubted until of late. They are essential to the business of the contracting parties, and are not unjust. A person may purchase an invention, and pay therefor a very large sum, and proceed to make use of it. The inventor, according to a practice not uncommon, may subsequently overlap that invention by improvements, which, though small, may be enough, in these days of sharp competition, to build up a successful hostile business. This court recognized these principles to a certain extent in *Thibodeau* v. *Hildreth*, 124 Fed. 892, 893, 60 C. C. A. 78, 63 L. R. A. 480. Therefore it is right and reasonable, and legal, that contracts of the kind in suit should be made and sustained where they relate to improvements upon inventions already purchased, as in the case at bar."

See also

American Brake Beam Company v. *Pungs*, 141 Fed. 923.

Thibodeau v. *Hildreth*, 124 Fed. 892.

McKinnon Pen Co. v. *Fountain Ink Co.*, 48 N. Y. Super. Ct. 442.

Wright v. *Vocalion Organ Co.*, 148 Fed. 209.

Brown v. *Rounsavell*, 78 Ill. 589.

Long v. *Towl*, 42 Mo. 545.

4. MISSTATEMENTS MADE IN THE PETITION AS TO THE COVENANTS.

In its statement of the alleged facts regarding the acquisitions (R. Vol. 1, pp. 999–1023), the petition purports to state the substance of the agreements and the covenants contained in the agreements entered into in connection with the respective transactions. Many of these statements are entirely inaccurate and grossly exaggerate the nature and scope of the covenants, although the United States had the original agreements in its possession for months prior to the filing of the petition (R. Vol. 1, p. 37, lines 15–20; p. 78, lines 24–29). The most glaring of these misstatements are set out in the appendix (see Appendix pp. 82–87).

VI.

THE PLANT PURCHASE.

1. INTRODUCTORY STATEMENT.

In September, 1910, the United Company acquired the patents and inventions of Thomas G. Plant. In the same transaction it acquired from Plant sixty per cent. of the capital stock of the Thomas G. Plant Company, a corporation manufacturing women's shoes.

The petition alleges that Plant—

> "was engaged in the manufacture of machines designed and adapted for use in performing all the principal operations in the manufacture of boots and shoes which can be performed by the aid and use of machinery" (R. Vol. 1, p. 1019).

This statement and many others in the petition regarding this transaction are incorrect and are entirely unsupported by the evidence.

Plant had constructed a number of experimental machines embodying his inventions and had installed them in the shoe factory which he controlled where women's shoes were made exclusively. He had not put any machines into any other factory.

Plant was not a competitor of the United Company. He was not carrying on any shoe machinery business and he was not prepared to supply any machines. He declared that he did not want to go into the shoe machinery business, that he desired to retire from business; and after the purchase he did retire. There is uncontradicted evidence showing that the sole purpose of the Plant enterprise was to create something which he could sell to the United Company. He so stated himself and the history of his negotiations with the United Company proves this to be the fact. He offered a large commission—$250,000 and later $500,000—to an influential shoe manufacturer if he succeeded in effecting a sale to the United Company, and he later offered and had to pay a commission of five per cent. to another

intermediary who undertook to effect a sale to the United Company.

Attention will be called to evidence, for the most part uncontradicted, which establishes that the Plant machines were crude, really in the experimental stage, entirely useless for men's shoes and unfit for the making of women's shoes; that in their use in the Plant shoe factory they were constantly breaking down; that they broke a great number of lasts; that it was necessary to employ a large number of men to repair shoes that were defective on account of the poor work of the machines; that it cost three and a quarter cents per pair more to make shoes on them than it cost on the United Company machines; that the profits of the Plant shoe business after the Plant machines were installed were one-half less than they had been when the United Company machines were used; that the machines could not be used for manufacturing shoes according to the methods universally followed by other shoe manufacturers; and that after the purchase the managers of the shoe factory, Plant's former associates, found it impracticable to continue the manufacture of shoes with Plant's machines and of their own volition discontinued the use of those machines and substituted United Company machines.

On the other hand, in the course of his experimental work Plant had made many inventions and his machines were patented. Although their mechanical embodiments in Plant's crude machines were defective and unsatisfactory, the United Company's experts could see that many of those inventions were extremely valuable and represented important advances in the shoe machinery art.

Plant had, however, developed his inventions and constructed his experimental machines upon the foundation which for many years the United Company and its predecessors had been building; he had added his improvements to old machines of the United Company, and all of his important machines infringed the United Company's patents,—a great number of claims in approximately a hundred patents,—as shown by evidence entirely uncontradicted. Many suits had already been brought by the United Company for infringements of its patents by the Plant machines. On the other hand, fifteen of the United Company's machines infringed twenty patents owned by Plant.

There were also pending in the United States Patent Office twenty-three interferences between patent applications owned by Plant and applications owned by the United Company. The patent complications in which the extremely valuable Plant welter and stitcher improvements were involved were such that neither Plant nor the United Company could have supplied those inventions to the public without infringing the other's patents.

The United Company had never sought nor even considered any purchase from Plant until overtures were made by Plant. The interviews resulting from those overtures were all sought by Plant and his proposals were several times declined without encouragement to renew them. Throughout the negotiations Mr. Winslow insisted that he would not consider the purchase unless there were opportunity for the United Company's experts to examine the Plant machines and determine the value of his inventions, and that he would consider purchasing those inventions upon no basis other than the value which they would have to the shoe industry and to the United Company in the advancement of the art.

After negotiations had several times been broken off by the United Company and renewed by Plant, he finally permitted its experts to examine the machines in the Plant shoe factory. As a result of the extended and thorough examination which was then made it was determined that while the Plant machines themselves were crude and unsatisfactory, Plant had made some very valuable inventions which could be incorporated in the United Company's machines with great advantage to the United Company and to its customers. Accordingly, when Plant offered to sell those inventions at a much lower price than he had previously named, and offered also to include his valuable holdings in the shoe manufacturing company, the United Company accepted the offer. The primary reason for the purchase was the great value of the Plant inventions, but the United Company's officials were also greatly influenced by a realization that common ownership of the patents and applications of the two parties would avoid endless litigation and chaotic conditions in the shoe manufacturing industry which would have been intolerable.

Immediately after the acquisition of the Plant patents and inventions the United Company put many inventors at work

to adapt to the United Company's machines the most important Plant inventions, the value of which had already been determined, and its inventors and mechanics worked night and day until those inventions had been successfully embodied in its machines. Experts were sent to the Plant shoe factory to make a thorough study of the Plant machines and inventions and to recommend what should be done with each Plant machine and invention. They spent many weeks in that investigation and their exhaustive written report is an exhibit (*infra*, pp. 504–505).

The United Company improved and adopted seventeen of Plant's patented machines, and inventions covered by forty-three of the patents acquired from Plant have been incorporated in twenty-six of the United Company's machines. Of these the welter and stitcher inventions are so valuable that alone they more than justify the price paid for all the Plant inventions. The record abounds with testimony as to the savings in material and other economies, the increased output and the improved working conditions, both in higher wages and in convenience of operation, which have been effected by these improvements as they have been incorporated in the United Company's machines (*infra*, pp. 506–514).

That the shoe manufacturing industry has been greatly benefited by common ownership of the Plant patents and those of the United Company is beyond dispute. Shoe manufacturers now have the best machines available, incorporating the valuable inventions of both parties, which could not have been had without common ownership of the patents, and intolerable conditions which otherwise would have inevitably resulted from the chaotic patent situation have been avoided.

We propose to discuss the evidence relating to the Plant purchase in the following order:—

(1) The evidence showing that Plant was not in competition with the United Company and did not desire or intend to go into the shoe machinery business.

(2) The evidence that Plant's machines were not commercially successful.

(3) The evidence as to Plant's valuable inventions and the use which the United Company has made of them.

(4) The evidence showing that the Plant purchase was a great benefit to the industry.

(5) The evidence showing that these great benefits were the only reason for the purchase.

(6) The evidence that the Plant patents were worth more than was paid for them.

(7) The evidence showing the history of the negotiations between Plant and the United Company.

(8) The evidence regarding the alleged attempt of certain shoe manufacturers to purchase Plant's patents after he had agreed to sell to the United Company.

(9) The evidence regarding misstatements as to facts by petitioner's patent expert.

2. PLANT WAS NOT IN COMPETITION WITH THE UNITED COMPANY, HE HAD NO MACHINES TO SELL, AND THE MACHINES WHICH HE HAD CONSTRUCTED AND HAD SOLD TO HIS OWN SHOE COMPANY WERE NOT COMMERCIALLY SUCCESSFUL.

A. Plant was not Engaged in Shoe Machinery Business, He did not Intend to Engage in that Business, and He had no Machines to Sell.

The only machines which Plant had constructed were the crude and defective machines which months before he had forced into his own shoe factory, of which he owned sixty per cent. of the stock (R. Vol. 1, p. 777, lines 18–23). Those machines had been bought and paid for by the Shoe Company (R. Vol. 1, p. 778, lines 13–14, 20–21), and accordingly had been definitely and completely withdrawn from the field of shoe machinery competition; there is no evidence that in September, 1910, Plant had any machines to sell or that he intended to make any machines.

The petition alleges that Plant had advertised his machines extensively through the public press (R. Vol. 1, p. 1020). Petitioner failed to put any such advertisements in evidence, although it had no difficulty in producing other advertisements published before the United Company was formed. The record shows that the advertisements which Plant did publish were not advertisements of machinery.

> "There were advertisements of the opinions of lawyers in regard to the shoe machinery leases. . . . The advertise-

ments attacked the United Company's leases, but they were not advertisements of machinery in the sense of advertisements of anything for sale" (Herrick, R. Vol. 1, p. 611, lines 17–21).

"They were advertisements calculated to 'bear' the stock of the United Shoe" (Howe, R. Vol. 1, p. 687, lines 44–45).

The petition alleges that Plant

"had solicited among shoe manufacturers, in various parts of the United States orders for the sale and lease of such machines" (R. Vol. 1, p. 1020).

Absolutely the only evidence suggesting any attempt by Plant to put machines into any shoe factory is the testimony regarding his offers, declined in both instances (R. Vol. 1, p. 576, lines 15–21; p. 720, line 5), to equip the factories of the Commonwealth Shoe & Leather Company (of which C. H. Jones is president) and the Endicott, Johnson Company, as a part of his scheme for forcing a sale to the United Company. Mr. Endicott testified that Plant in May, 1910,

"stated that his plan was to fit up three factories—the Thomas G. Plant factory, Commonwealth Shoe & Leather Company factory, and Endicott, Johnson's factories—with his machinery, and then sell out to the United Company" (R. Vol. 1, p. 575, lines 41–45; p. 576, lines 25–26).

"I think his proposition to equip our factory and the Commonwealth factory and the T. G. Plant factory was made to me in the presence of my partner and my expert, I think, and in the presence of Mr. Charles H. Jones and Mr. Clarence D. Reed. Mr. Reed is Mr. Jones's associate and is the practical man in the Commonwealth Shoe Company" (R. Vol. 1, p. 576, lines 27–32).

"He stated to me, as I testified, that he wanted to fit us up, use us as a club to sell out to the Machinery people" (R. Vol. 1, p. 576, lines 34–36).

"He said he would like to fit up our factory to help him to sell out to the United Shoe Machinery Company" (R. Vol. 1, p. 585, lines 2–4).

As to these offers it was found by the District Court (Dodge, J., R. Vol. 1, p. 1142):—

"There is uncontradicted evidence of declarations by Plant in 1909 that his intention was to equip these two

other factories and his own with his new machines and then sell out to the United Company. That the effecting of such a sale, and not any actual competition in the market with machines then in use, was his real purpose, is hardly left doubtful by the history of his subsequent negotiations with the defendants."

Robert Hazzard, a shoe manufacturer, testified:—

"Mr. Plant sent me one of his statements and wrote me a very nice letter about the wonderful things he had in machinery at the time he started his newspaper campaign. I told him I was very much interested and should like to bring my superintendent to Boston and look the plant over, but he wrote me that the plant was not open for inspection. Afterwards he sent a nice illustrated pamphlet and I told him I could not see any use in sending it out if he didn't have anything to sell; and that if he did, I would like to see it. My letter was never answered. I never had anything to do with the operation of Plant's machines; he would not let me see them" (R. Vol. 1, p. 650, lines 28–38).

There is a great deal more testimony, entirely uncontradicted, showing that Plant never had any intention of going into the machinery business, but his real purpose, the sole object and end of his enterprise was to sell out to the United Company.

Plant himself made repeated declarations to this effect. For example:—

"Mr. Plant stated, as he had before, that *he wanted to get out of business entirely* . . . that *he didn't want to embark in the shoe machinery business*" (italics ours) (Winslow, R. Vol. 1, p. 487, lines 11–12, 15–16).

"Mr. Plant stated that he would like to get out of business" (Endicott, R. Vol. 1, p. 580, lines 36–37).

Plant had previously, in 1909, endeavored to interest Mr. Endicott in his venture, stating that the investment

"would require some nerve, but *would be a pretty quick turn-over*" (italics ours) (Endicott, R. Vol. 1, p. 576, lines 5–6).

Plant told Mr. Herrick that

"he was anxious to get out of business . . . that he would like to get the money and retire . . . *that he had always planned to so arrange himself that he would be free to sell out*

to the United Shoe Machinery Company" (italics ours) (Herrick, R. Vol. 1, p. 603, lines 26–27, 30, 32–34).

At another time Plant told Mr. Herrick that while he had talked about putting his machinery in a factory he didn't intend to do it and that

> *"he had always held himself in a position where he could trade with the United Shoe Machinery Company, and that was his plan"* (italics ours) (R. Vol. 1, p. 611, lines 3–5).

On cross-examination Mr. Herrick testified that during a conversation with Mr. Plant

> "he never said anything to the effect that he was going to put competition into the field. *He always said that he had got it up to sell to the United Company"* (italics ours) (R. Vol. 1, p. 615, lines 26–28).

Harry W. Smith, whom Plant employed to effect the sale, testified that on July 22, 1910, Plant said to him *"that he wanted to play the game as he had figured to play it"* (italics ours), and also said:—

> "'I can do nothing on the eastern end. I have broken with Winslow, and Endicott has gone back on me.' . . . 'Now, if you can get Barbour to send for me, as you told me you could, then I can get an opening with Barbour, and if you can get Herrick, so Herrick will come to my side of the case, I believe something can be done.' . . . He said Mr. Herrick and Mr. Barbour were the strongest against him" (R. Vol. 1, p. 769, lines 38–44; p. 770, lines 7–9).

Finally there is uncontradicted evidence that Plant agreed to pay Mr. Endicott a commission of $250,000 if he would effect or help effect a sale to the United Company and that later he increased the offer to $500,000 (Endicott, R. Vol. 1, p. 576, lines 39–41; p. 580, lines 16–18); and that he paid his intermediary, Smith, a commission of $300,000.

> "For accomplishing what he wanted me to do, he paid me five per cent. on the six million—$300,000" (Smith, R. Vol. 1, p. 771, lines 8–10).

It appears that after the sale of his patents Plant carried out his expressed intention of retiring from business (R. Vol. 1, p. 488, lines 24–25).

B. Even if Plant's Machines had been Commercially Successful They would not have been Accepted by Shoe Manufacturers because They Made Shoes by Obsolete Methods and could not be Used for Making Shoes according to the Methods Universally Followed by Other Shoe Manufacturers.

George E. Warren, defendants' practical expert, who spent over two days examining the Plant machines before the purchase and about eight weeks in continuous study of them after the purchase (R. Vol. 1, p. 785, lines 7–20; p. 808, lines 42–44; p. 809, lines 1–3; p. 814, lines 34–35; p. 815, line 44; p. 816, lines 1–2), testified that every manufacturer that he knows of is using the rounding and channeling machine. Plant had no rounding and channeling machine. His catalogue illustrates a "Rough Rounder," *i.e.*, rounding and channeling machine, but it "was never completed" and Plant told Warren that it "was not in any condition to be shown" (R. Vol. 1, p. 792, lines 16, 18–19; p. 793, lines 13, 30–31). McGaffee, general manager of the Plant shoe factory, had never seen such a machine; Plant told him "he didn't have any rough rounding machine" (R. Vol. 1, p. 776, line 29; p. 781, lines 2–3). Plant's method of making shoes without a rounding and channeling machine was obsolete before the United Company was formed. The invention of the rounding and channeling machine revolutionized the method of attaching the outersole. By the old method which Plant used the outsole was shaped and then channeled before it was put on the shoe. By the modern method a blocked or unshaped outsole is temporarily cemented to the shoe and then is shaped to that particular shoe and the channel is formed in exactly the right location for that shoe, both operations being performed simultaneously by the rounding and channeling machine. The advantages of the modern method as compared with Plant's obsolete method are set forth in the record in detail, and an adequate explanation of the absence of a rounding and channeling machine from Plant's line will be found in the discussion of the United Company's patents on such machines (R. Vol. 1, p. 793, lines 13–15, 23–24; R. Vol. 2, pp. 2304–6, 2330, 2331).

Nine of Plant's machines were adapted only to peculiar methods which were in use only in the Plant factory. For example,

Plant used a peculiar kind of innersole and five of his machines were peculiarly adapted for making that innersole, of which Mr. Warren said, "We don't know of anybody that would care to make it" (R. Vol. 1, p. 792, lines 34–37, 42–43). Another of these machines was Plant's "cleaning and treeing leg" which operated according to an obsolete method and "the result was that the shape of the shoe was spoiled" (R. Vol. 1, p. 793, lines 34–43; p. 794, lines 1–9).

Plant's stitcher

> "could not be used commercially because it had never been organized to sew shoes with extension edges. This was a very serious defect, because almost every manufacturer wished to make shoes with extension edges" (Warren, R. Vol. 1, p. 794, lines 37–40).

Mr. McGaffee testified that it cost three and one-quarter cents per pair more to manufacture shoes in the Plant factory in accordance with the Plant method than in accordance with the method of the United Company's machines (R. Vol. 1, p. 780, lines 43–45).

Nearly all manufacturers used and insisted upon the extension edge organization (sometimes called the Baltimore Edge Attachment) and it produced a great deal better work (R. Vol. 1, p. 795, lines 25–27). Nearly all welt shoes, both men's and women's, are made with extension edges. The practical advantages of the extension edge and the importance and value of an organization in an outsole stitching machine which will enable it to attach the soles of extension edge shoes are explained in full detail by defendants' experts (R. Vol. 1, p. 794, lines 41–44; p. 795, lines 1–5; Vol. 2, pp. 2281–3, 2762).

Mr. McGaffee stated that the lack of an extension edge organization on the Plant stitcher "was a great hindrance to the quality made on that machine" and that it resulted in the shoe ripping (R. Vol. 1, p. 775, lines 34–35, 43–45). Ryan, who operated a Plant stitcher, testified that through the lack of the extension edge device there was "a great deal of trouble running into seams and one thing and another" (R. Vol. 1, p. 707, lines 7–9).

Plant told McGaffee that he could not use an extension edge

organization on account of the United Company's patents, which are set forth in the record (R. Vol. 1, p. 775, lines 32–34; p. 780, lines 1–7; Vol. 2, p. 2282).

Again, Plant had produced no pulling-over machine (R. Vol. 1, p. 792, lines 10–11), another of the "machines for preparing and attaching the bottoms to the uppers of shoes" (R. Vol. 1, p. 839, lines 13–14). The testimony regarding defendants' patents on that machine shows that Plant was wise not to enter that field (R. Vol. 2, pp. 2540–8).

Plant's heel slugger "couldn't handle the zinc wire or soft brass wire" which are commonly used for slugging, and in using that machine they had to slug the toplifts before they were attached to the shoe, thus not securing the advantages which are obtained by the general practice of inserting the slugs after the toplifts are attached to the shoe (R. Vol. 1, p. 796, lines 38–44; p. 797, lines 10–11; Vol. 2, p. 2464).

Also eight other Plant machines, including important machines such as the heelseat dinker, stitch separator and sole rounder, were either unfinished or were regarded by Plant himself as experimental, and the Plant Shoe Company was making shoes without using those machines, getting along in one way or another as best it could (R. Vol. 1, p. 791, lines 35–45; p. 792, lines 1–33; p. 814, lines 1–7).

C. Even for Manufacturing Shoes according to Plant's Obsolete Methods, Differing Radically from Methods Universally Used, Plant's Machines were not Commercially Successful in his own Factory where Women's Shoes only were Made.

No better evidence on this proposition can be had than that of the man who as general manager of the Plant factory had to make shoes on the Plant machines. Mr. McGaffee testified that the Plant machines "wouldn't stand up" (R. Vol. 1, p. 774, lines 15–16); that the profits of the shoe business the first year that the Plant machines were installed were one-half less than the profits of the preceding year when United Company machines were used, on account of "the great amount of bother and trouble we had with the Wonder Worker* machines" (R. Vol. 1, p. 778, lines

*Plant called his machines "Wonder Workers" (R. Vol. 1, p. 773, lines 20–22).

6–12); that an average of 235 pairs of lasts were broken each week on the Plant machines as compared with ten pairs a week on the United machines which were displaced by the Plant machines (R. Vol. 1, p. 777, lines 6–12; p. 780, lines 9–10); and that he had thirty repairers at one time repairing shoes after the Plant machines (R. Vol. 1, p. 776, lines 1–2).

> "The Wonder Worker would do the work so poorly that I would have to have somebody fixing the work up by hand before it could go to the next department" (R. Vol. 1, p. 779, lines 3–5).

He also testified as to the "continual breaking down" of the Plant machines (R. Vol. 1, p. 774, lines 22–23), and, finally, he stated as his reason for substituting the United Company machines for the Plant machines,—

> "I put those machines in for the simple reason that I couldn't make the shoes with the Wonder Worker" (R. Vol. 1, p. 774, lines 40–41).

Mr. Winslow testified:—

> "During our inspection we saw many machines that were broken down, not in condition to operate" (R. Vol. 1, p. 491, lines 24–26).

Mr. Warren testified that of the sixty-nine machines in the Plant catalogue (P.'s Ex. 266) ten machines were unfinished or had only been used experimentally (R. Vol. 1, p. 788, line 27; p. 791, lines 35–40); that eleven more machines were not commercial, with detailed explanations (R. Vol. 1, pp. 794–7); that seven other machines were "faulty in construction," also with detailed explanations (R. Vol. 1, p. 797, lines 28–45).

Among his criticisms of specific machines he testified that he observed frequent breakage in the welter, in the stitcher and in the heel-attaching machine, and observed also the noticeable breakage of lasts (R. Vol. 1, p. 790, lines 35–40); and stated that the Plant welter was mechanically defective and had to be run at practically maximum speed all the time "or else it would stop" (R. Vol. 1, p. 797, lines 23–27; p. 818, lines 26–37). The necessity of capacity for different speeds is explained in McGaffee's comparison of the Plant welter with the United Com-

pany welter (R. Vol. 1, p. 775, lines 23–28). Even the valuable improvements in the welter and stitcher "had not been carried out in a mechanical way," and Mr. Warren "felt satisfied that they would not stand up and do the work" (R. Vol. 1, p. 788, lines 3–7).

Of another defect in the welter Mr. Warren said:—

> "A particular weakness was the construction of the welt guide and back gage movement. With the particular mechanism used and the lightness of its construction this would not have lasted any time at all" (R. Vol. 1, p. 810, lines 20–24).

The leveler was constantly breaking lasts and required a great number of expensive forms,—the forms used at the Plant factory cost over $4,000. The custom sole layer required the same expensive forms and it was 50 per cent. slower than the United Company machine (R. Vol. 1, p. 795, lines 44–45; p. 796, lines 1–14, 24–28).

Four operators at the Plant shoe factory testified that the Plant toe and heel laster was much slower, that the work on the machine was very hard, and that accordingly the operators on those machines were given a raise in wages (R. Vol. 1, p. 761, lines 27–29; p. 762, lines 41–43; p. 764, lines 42–44; p. 765, lines 1–2, 31–38).

The testimony just referred to is typical of the evidence regarding the Plant machines, which is well summarized in Mr. Warren's following general comments:—

> "Generally speaking they were of such construction that they would break and get out of order" (R. Vol. 1, p. 794, lines 17–18).
>
> "And in looking over all these Plant machines we found by a careful examination that they were faulty in construction, light in weight in places, and badly designed" (R. Vol. 1, p. 790, lines 28–31).
>
> "These machines of Mr. Plant's, built as they were, in my opinion *would not have been commercially successful* to do work under the varying conditions under which machines have to be supplied to shoe manufacturers" (italics ours) (R. Vol. 1, p. 790, lines 15–18).

But perhaps the most conclusive evidence is the action of the Plant Shoe Company in throwing out the Plant machines, for

which they had paid $400,000 less than three years before, and substituting the United Company's machines (R. Vol. 1, p. 774, lines 33–44; p. 778, lines 13–14).

Mr. McGaffee, general manager and vice-president of the Plant Shoe Company, stated his reasons for discarding the Plant machines as follows:—

> "I changed back again because I wanted to see if I could get a line of machinery that would stand up and manufacture shoes, without manufacturing machines all the time. I was absolutely satisfied that the Wonder Workers wouldn't stand up . . . the longer they ran the weaker they got. . . . I was not able to get out the work. . . . I couldn't make the shoes with the Wonder Worker" (R. Vol. 1, p. 774, lines 13–16, 23, 24, 40–41).

Mr. McGaffee further testified:—

> "The United Company has not in the slightest way interfered with my management of the business, or in any way attempted to exercise any influence or control over my judgment in the management of the business. . . . It was my judgment that determined the policy of the company with respect to the changing over from the Wonder Workers. . . . My action in putting in the United Company machines was governed absolutely by my own wishes and my own independent judgment. I did it because I felt that it was for the interests of the business of the Thomas G. Plant Company, of which I am a stockholder. The United Company never approached me in any way" (R. Vol. 1, p. 773, lines 15–19; p. 774, lines 16–18; p. 775, lines 1–6).

He found that the work of the United machines was "a great deal less expensive," that on those machines they saved three cents and a quarter a pair as compared with the work on the Plant machines, and that his operators could do a good deal more work and make more money than they could on the Plant machines (R. Vol. 1, p. 775, lines 13–16; p. 776, lines 17–22; p. 777, lines 24–28).

Mr. McLeod, "practical man" and a director of the Plant Shoe Company, who shared the responsibility for the selection of machinery, decided that the United machines would be best for their business and approved the change. Among his reasons he stated that the United machines

> "do not tire an operator so much, so that the operator can do better work and feel fresher at night. . . . He can turn out a bigger day's work with the United machine than he could with the Wonder Worker machine" (R. Vol. 1, p. 782, lines 3–20, 25–27, 30–32).

He testified that he was in accord with what Mr. McGaffee said as to the economies and advantages effected by the change, the United Company did not bring any pressure or influence to bear, no suggestion was made that it would be advantageous to change machines, and the change was made in the exercise of his honest and independent judgment (R. Vol. 1, p. 783, lines 25–28, 33–39). Both these men had been connected with the Plant Shoe Company for over twenty years (R. Vol. 1, p. 773, lines 4–6; p. 782, line 6).

D. Much less could Plant's Machines have been Used on Men's Shoes, which Require much Stronger Machines and Frequently Machines of Entirely Different Types from Those Used on Women's Shoes.

It is not disputed that women's shoes exclusively were made in the Plant shoe factory and that there had been no use of the Plant machines in any other factory.

It is clear from the record that the problems that have to be solved in handling men's shoes, which are larger, made of heavier leather and with heavier box toes and counters and in which durability and wearing qualities are the first requisite, are entirely different from the problems met in producing machines for making women's shoes, which are smaller, made of lighter materials throughout, and in which the primary consideration is style and appearance. Accordingly for many operations the machines used on men's shoes and women's shoes are different. For example, we have seen that the Chase lasting machine was structurally not adapted and was never used for lasting women's welt shoes, while the Ideal lasting machine was structurally not adapted and was not successfully used for lasting men's welt shoes (*supra*, pp. 124-129, 133–135).

All the testimony which we have reviewed above (*supra*, pp. 484–486) showing that many of Plant's machines could be used for making shoes only by obsolete methods or by peculiar

methods used only in Plant's factory, and at prohibitive expense, condemns the machines for men's work as well as for women's work. The testimony that as used in the Plant shoe factory on women's shoes the machines were continually breaking down, that they were destroying lasts and that they did the work so poorly that it had to be fixed up by hand (*supra*, pp. 486–490), is further conclusive proof that the machines were entirely impracticable for use on men's shoes.

In addition to that evidence there is testimony bearing directly upon the capacity of Plant's machines for men's work and the possibility of using them on that work.

Mr. McGaffee, general manager of the Plant shoe factory, testified:—

> "I don't think you could have manufactured men's shoes on that line of machinery that Mr. Plant had got out and do it anywhere near satisfactory at all" (R. Vol. 1, p. 774, lines 30–32).

Mr. Howe, who examined the Plant machines with Mr. Winslow, testified that the Plant machines were

> "too light to stand commercial use for making men's work,"

and that they

> "were not strong enough for continuous use, in my judgment, on his own manufacture, women's welts" (R. Vol. 1, p. 668, lines 35–37; p. 688, line 44; p. 689, lines 8–9).

Mr. Warren testified that in his opinion the Plant machines

> "would not have been commercially successful to do work under the varying conditions under which machines have to be supplied to shoe manufacturers . . . it has always been the experience of anybody that has designed or made any shoe machinery that you can't tell by trial on one kind of work whether a machine will become commercial or not" (R. Vol. 1, p. 790, lines 16–18, 21–24).

The mechanical and shoemaking reasons why the various Plant machines could not be used for men's shoes were explained in great detail by Mr. Warren. Typical of his criticisms of specific machines are the following:—

HEELER AND ATTACHER: "The pressure in closing the heel down on to the shoe is much greater on a man's shoe than on a woman's shoe. We found parts that would break on a woman's shoe on account of this pressure, and we knew that when we attempted to apply any more pressure the breakage would be more frequent; and, also, there are more nails to drive in a man's shoe than in a woman's shoe, and that would have put additional strain on the machine, so that there would have been continual trouble in that respect, as there was in doing the women's shoes" (R. Vol. 1, p. 794, lines 24–33).

HEEL AND TOE LASTER: "We knew that it did not compare with our No. 5 machine for strength, and that trouble would come if it was attempted to be used on any heavy grade of work" (R. Vol. 1, p. 796, lines 34–37).

HEEL LOADER: "The machines in use at the Plant factory were continually giving trouble, and they only had to handle a small number of nails. Now, the wear and strain on the machine when used for men's work would have been a great deal worse" (R. Vol. 1, p. 797, lines 14–18).

"The LOOSE NAILER had the disadvantage that it was so constructed that you could not handle a nail longer than seven-eighths of an inch. In some classes of work, heavy double outersoles and spring heels, it is necessary quite often to drive nails longer than that" (R. Vol. 1, p. 797, lines 41–45).

"The WELT BEATER was not provided with any means for what is called slashing the welt . . . all men's work had to be slashed in order to beat it out properly" (R. Vol. 1, p. 795, lines 34–35, 40–41).

"The HEEL BREASTER was particularly adapted for women's work. There are several types of heels used in men's factories that could not be done on this machine, because either the knife or some of the mechanism was in the way" (R. Vol. 1, p. 797, lines 19–22).

Two Manufacturers of Men's Shoes to whom Plant Offered his Machines Examined the Machines and Decided that they were not Practicable for Men's Shoes.

As we have shown (*supra*, p. 481), Plant made an effort to put these machines into the factories of two shoe manufacturers as a part of his scheme for forcing a sale to the United Company. In consequence of those offers his machines were examined by those manufacturers.

Clarence D. Reed, treasurer of the Commonwealth Shoe & Leather Company (of which petitioner's witness C. H. Jones is president), who has charge of all the factories, the machinery and the selection of the machinery for that company (R. Vol. 1, p. 119, lines 16–17; p. 719, lines 25–26, 34–36), examined the Plant machines with particular reference to their adaptability for his factories, and "decided we better not have them" (R. Vol. 1, p. 720, line 5). He testified:—

> "Of course the machines looked light to us, and our work is men's work, which is heavier, and we thought there would be danger of breakage and trouble. . . . We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking. . . . We should get poorer work" (R. Vol. 1, p. 720, lines 7–9, 12–13, 16).

Henry B. Endicott, of the firm of Endicott, Johnson & Company, who made 40,000 pairs a day of all kinds of men's shoes (R. Vol. 1, p. 575, line 31; p. 576, lines 21–23), testified that he, his partner, and one of his superintendents spent a day examining the Plant machines (R. Vol. 1, p. 583, lines 28–30), and that—

> "as a result of my own examination and the reports of my experts the conclusion which I came to, as a practical shoe manufacturer, in regard to the equipment of my factory with Plant's inventions, was *not to put in his machines.* The reason for that conclusion was that, from the reports of my experts, my own judgment was that *the machines were not strong enough or practical to do our work*" (italics ours) (R. Vol. 1, p. 576, lines 15–21).

On cross-examination he testified:—

> "From the reports my experts gave me, I felt they were not practical for our business" (R. Vol. 1, p. 584, lines 8–9).

Petitioner's Fruitless Efforts to Show that the Plant Machines could have been Used for Men's Shoes.

In support of its contention that the Plant machines could have been used on men's shoes, petitioner relies upon the testimony of three witnesses, McElroy, Selz, and Jones.

McElroy testified that he examined the Plant machines and that

"They were actually at work on women's shoes. I saw men's shoes there which were made upon them" (R. Vol. 1, p. 189, lines 24–25).

On cross-examination he testified that the men's shoes that he saw there had been stitched but not heeled, that he didn't know when they had been stitched, and that to the best of his information men's shoes had never been made for the market on the Plant machines (R. Vol. 1, p. 193, lines 13–17). He added:

"I questioned the strength of those machines for making men's shoes. . . . The making of men's welts involves dealing with heavier material and requires more strength in the machine than the making of women's welts. If his machines had been used commercially on men's shoes the frames should have been stronger. As a commercial proposition they would have to be built heavier to make them available for that purpose" (R. Vol. 1, p. 193, lines 17–18, 20–26).

Selz, another shoe manufacturer, testified that he spent half a day examining the Plant machines and that they could have been used in making men's shoes (R. Vol. 1, p. 146, lines 1–2, 28–30). On cross-examination he testified that he questioned the strength of the Plant machines for making men's shoes and that he had never seen them used for making men's shoes (R. Vol. 1, p. 155, lines 33–45; p. 156, lines 1–3).

Selz was a prejudiced witness.

"*Q.* Mr. Selz, how large an interest have you in the Boylston Manufacturing Company?
"*A.* I think up to date we have paid in somewhere between twenty-five and thirty thousand dollars.
"*Q.* So you have that amount at stake upon these machinery leases being declared invalid?
"*A.* If you choose to look at it that way.
"*Q.* If they are not, you stand to lose that money?
"*A.* Yes, sir.
"*Q.* If they are, you stand to make it?
"*A.* Yes." (R. Vol. 1, p. 157, lines 41–44; p. 158, lines 1–7.)

Selz also testified that with several others, including Mr. Jones, he had visited the Attorney-General's office in Washington on shoe machinery business (R. Vol. 1, p. 155, lines 1–4).

Jones's testimony goes no further. Basing his expression of opinion upon an examination of Plant's machines "at different times during one entire day" (R. Vol. 1, p. 114, lines 29–30), he said that those machines could be used on men's shoes,—although admitting that he never knew of men's shoes being made on them (R. Vol. 1, p. 124, lines 16–27). That is all,—the barest expression of opinion without a bit of technical or practical explanation. But Jones's opinion on a matter requiring practical and technical knowledge is of no weight. He is not a practical shoe manufacturer. He admitted, "I haven't visited the factory for three years" (R. Vol. 1, p. 127, line 10). And against his testimony we have that of Clarence D. Reed, the treasurer of Jones's company, the Commonwealth Shoe & Leather Company, who owns over one-third of that company, and who has charge of the manufacturing end of the business, including the making of the shoes. He testified that he had charge of all the factories and has had charge of the selecting of the machinery for the factories for over ten years. He said that he examined the Plant machines in 1910, "saw them operating and went through them," considered the question of equipping his factories with those machines, and decided not to take them. His reasons were that the machines were too light, that "there would be danger of breakage and trouble," and that they would "get poorer work."

> "We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking" (R. Vol. 1, pp. 719–21).

Furthermore, Jones, like Selz, was a prejudiced witness. He testified:—

> "I am a stockholder and director in the Boylston Manufacturing Company. I have a stockholding interest in it that is large for me" (R. Vol. 1, p. 122, lines 28–30).

His well-known hostility to and activities against the United Company were evidenced by reluctant admissions and evasive answers throughout his cross-examination. When questioned about his attacks on and activities against the United Company he admitted that he had made "perhaps three visits to Washington" and that he had appeared before the Massachusetts

Legislature; that he had called on the Attorney-General and appeared before committees of Congress making complaints against the United Company:—

> "*Q.* And you spent a number of days there detached from your shoe business in Massachusetts, sitting around committee rooms and making complaints, didn't you?
> "*A.* Yes, sir";

that he had furnished information regarding the United Company to assistants to the Attorney-General; that he had appeared before a committee of the Massachusetts Legislature making complaints against the United Company's leases; and that he had published articles in the newspapers attacking the United Company's method of leasing machinery (R. Vol. 1, p. 119, lines 34–44; pp. 120, 121; p. 122, lines 1–24).

These bare expressions of opinion by three witnesses,—none of whom went so far as to say that the Plant machines were capable of *actual commercial use* on men's shoes,—constituted petitioner's entire showing on this point; and, as we have seen, Selz and Jones were prejudiced witnesses and Selz and McElroy retracted on cross-examination. And after defendants had introduced overwhelming testimony of many witnesses showing that the Plant machines were absolutely unfit for use on men's shoes (*supra*, pp. 490–493), no attempt to answer that evidence was made in petitioner's rebuttal.

E. There is Nothing in the Record to Indicate that Plant could have made his Machines Commercially Successful.

There is nothing in the record to indicate that Plant ever could have made his machines commercially successful for either men's or women's shoes. On the other hand, the record does contain abundant evidence as to the time that is required and the difficulties that must be overcome in transforming an experimental shoe machine into a commercially successful machine. That evidence shows that after a new machine has been constructed so that it can actually be used in making shoes, it frequently takes years of continuous experimental work before the machine becomes a commercial success, that

is, before the machine can be satisfactorily used under commercial conditions, and that during all that period there is no assurance that it ever will be made commercial.

The inseam trimming machine, which was put out by the Goodyear Company prior to 1899, did not become an entirely successful machine until 1909, after ten years of experimental work resulting in a long series of improvements (R. Vol. 2, pp. 2505–7). Experimental work upon a new slugging machine began in 1902 and has been continuously carried on ever since; the third design was given a shoe factory trial in 1907 and it then seemed sufficiently promising to justify building a number of machines to try out in different factories, and fourteen machines of that design were put into factories. It was confidently believed that the difficulties which were encountered in the use of those machines could all be overcome in time, but those problems have not been solved and the machine is not yet successful (R. Vol. 2, pp. 2468–70).

> "Whether or not the machine will ever become commercially successful is still problematical. Considerably over $100,000 has been spent already in the experimental work upon this machine" (Howard, R. Vol. 2, p. 2470).

Again, it was not until the third experimental pulling-over machine was constructed that the machine was deemed worthy of a factory trial, and after that nearly four years of continuous experimental work was required before the machine became a commercial success. During that period the United Company built and put into shoe factories over a hundred experimental machines, but, after a commercially successful machine had been produced, all of those machines, which had all been built less than three years before, were broken up for junk. Nearly a million dollars was spent in the development of the pulling-over machine before any revenue was derived from it (R. Vol. 2, pp. 2542, 2552, 2553).

The power heel breasting machine, which the McKay Company had started to develop before 1899, did not become commercially successful until 1902, when the invention purchased from Brewer was put into the machine. Up to that time experimental work on that machine had been carried on continuously; some fifty experimental machines had been constructed and put into shoe

factories, but none of them was commercially successful, none was operated at all after a few months' trial and eventually all of those fifty machines were junked (R. Vol. 1, p. 45, lines 9–16; R. Vol. 2, pp. 2473, 2474). Another machine which was started before 1899, the tack puller and resetter, did not become commercially successful until 1910, after experimental work extending over a period of more than ten years, during which a number of experimental machines had been successively constructed (R. Vol. 2, pp. 2525, 2526).

The United Company spent two years in the endeavor to make the Breach sole rounding machine commercially successful and had to give it up. This endeavor cost the United Company $40,000 (R. Vol. 2, pp. 2068, 2084, 2100; Defs.' Ex. 231, R. Vol. 5, p. 467).

The Beaudry experimental heel finishing machine contained inventions of which the United Company thought so highly that they paid $12,500 for the experimental machine. After it was acquired,—

> "we constructed several experimental machines. . . . We tried in all sorts of ways to make it practicable, but the extreme inconvenience to which the operator would be put by a machine so organized finally condemned it as entirely impracticable" (R. Vol. 1, p. 86, lines 1–3, 12–15; Defs.' Ex. 231, R. Vol. 5, p. 469).

Mr. Howard testified as to two other machines:—

> "We were unable to make a practicable machine embodying the Courteau invention. We made a very determined effort to make it practicable. . . . We did the best we could with it but could not develop anything out of it, and it was given up" (R. Vol. 1, p. 87, lines 38–40; p. 88, lines 3–4).
>
> "The Curtis machine did not prove commercially acceptable and was not a success. We did what we could to make it a commercial success. We put out some forty-five of them, but they were constantly giving trouble. . . . Most of the machines which we put out have come back" (R. Vol. 1, p. 92, lines 13–16, 19–20).

Another difficulty frequently encountered in developing shoe machinery, of which the record affords many specific illustrations, is stated by Mr. Winslow:—

"In other words, a machine may be constructed that will work perfectly in A's factory, but is entirely imperfect when you try to use it in B's factory in work that varies to the ordinary eye but very little. In the list that I presented to the Court the other day we have one machine on there which we have been at work on for seven or eight years to accomplish just that very thing" (R. Vol. 1, p. 491, lines 40–45; p. 492, line 1).

Mr. Warren testified that, "because conditions vary so in different factories," before the United Company adopts improved devices,—

"We will try out a machine with improved devices in one factory for several months, and then we give the machine a similar trial in some other factory on another kind of work, and we try it out in that way in six or eight different factories" (R. Vol. 1, p. 790, lines 7–14).

This testimony shows what Plant would have had to go through before he could have made his machines commercially successful, if indeed he ever could have done that. Mr. Howe thus summarized the situation:—

"To redesign and strengthen the machines would require first the making of working drawings and then changes in the patterns and tools for making the machines and making dies for parts that were to be drop forged, or else make the first machines by hand work in order to test them; it would require going back to first principles" (R. Vol. 1, p. 689, lines 1–6).

Mr. Warren testified:—

"Well, it would have taken him years to remedy those things. . . .

"*Q.* Couldn't it have been made a little heavier?

"*A.* When we say that, that leads to a change in some other part of the machine. It might finally mean a total reorganization of a machine to make it better.

"*Q.* But you don't mean to say, Mr. Warren, that that machine could not have been taken up by a mechanical expert or five mechanical experts, and those various defects taken out of it within a few months' time or a year's time, say?

"*A*. I think when they had done that they would probably have had a machine like ours" (R. Vol. 1, p. 809, lines 42–43; p. 810, lines 25–34).

F. Finding of the District Court as to the Character and Capacity of the Plant Machines.

"Whatever the merit of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially successful in September, 1910, or to have been capable of such success in their then stage of development. They are shown to have been lightly built, not adapted to produce men's shoes, and by no means satisfactory in making women's shoes, the kind of work to which the Plant factory was devoted. The evidence is uncontradicted that, while operated there, they fell behind the United Company's machines, which they had supplanted, in efficiency,—that breaking down and defective work was more frequent with them,—and the cost per pair of making shoes with them distinctly greater. Though some of them, as later developed and improved by the United Company, proved to have merit, the most that can be fairly said of them in 1910, on the evidence, is that they were more or less promising experimental machines. There was no complete set of them for combined operation; for that purpose several important machines were yet to be developed. In the state in which the United Company took them over, they were not found capable of profitable use. Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshold of extensive competition with the United Company'" (Dodge, J., R. Vol. 1, p. 1143).

3. CRUDE AND UNSATISFACTORY AS PLANT'S MACHINES WERE, HE HAD INCORPORATED IN THEM MANY VERY VALUABLE INVENTIONS WHICH WERE CAPABLE OF BEING USED IN THE UNITED COMPANY'S MACHINES.

While, as we have seen, Plant's machines were crude and not adapted for commercial use, Plant had nevertheless incorporated in them many extremely valuable inventions. Although the mechanical embodiments of those inventions in the Plant machines were also crude and unsatisfactory, the United Company's experts were able to see that the inventions

had great value and that when the Plant mechanisms had been reconstructed and reorganized to overcome their mechanical defects and to adapt them to the United Company's superior machines, those inventions would be of great value both to the United Company and its customers.

Mr. Winslow testified that the more important of the Plant inventions, "that were of special service in the development of our machinery," were those relating to the welt sewing machine, stitching machine, lasting machine, rough rounding machine and heel attaching machine (R. Vol. 1, p. 559, lines 11–13, 21–27). These inventions and numerous others, covered by forty-three of Plant's patents, are now embodied in twenty-six of the United Company's machines.

To explain here the nature and importance of inventions claimed in forty-three patents and to review the evidence regarding those inventions is of course out of the question. Accordingly we shall confine ourselves to a brief summary of the testimony regarding Plant's improvements on the welter and the outsole stitcher, the two machines which petitioner's patent counsel characterized as "the only indispensable machines required for the commercial bottoming of shoes by machinery" (R. Vol. 2, p. 2808, Int. 10).

The Plant Welter Inventions.

For the first time in the history of the industry Plant had embodied in a welt sewing machine means for cutting off the welt close to the end of the seam, for holding the end of the welt in proper position to start on the next shoe with minimum waste of welting, for measuring the welt and positively preventing waste, and, finally, means for automatically stopping the machine and casting off the last loop of thread from the barb of the needle. Always before, even in the United Company's new Model G Welter, it had been necessary for the operator to stop the machine by putting his hand on the belt pulley, first slowing up the machine, then stopping it, and finally turning the machine backward at such time and in such manner as to free the needle from the last loop of thread, in order to free the shoe from the machine. Then with a hand knife he cut the welt. In starting with the next shoe he had to hold the end of the welt with

his finger and this involved wasting about two inches of welting upon each pair of shoes, worth at least a quarter of a cent per pair,—more on men's shoes (R. Vol. 1, p. 488, lines 28–45; p. 489; p. 490, lines 1–7; p. 786, lines 29–46; p. 787, lines 1–3; p. 810, lines 43–44; p. 811, lines 1–8; Vol. 2, pp. 2259, 2260, 2263, 2268).

Mr. Warren reported to Mr. Winslow "that the advance made in the welter was very great" (R. Vol. 1, p. 786, lines 1–2). Mr. Winslow testified that he "studied those machines personally as an expert" and that he regarded those welter improvements "as of the very greatest practical importance and of very great value,"—"almost incalculable" (R. Vol. 1, p. 485, lines 15, 41–42; p. 488, line 32). Mr. Howard explained their importance and value in great detail and quoted typical claims from the Plant patents (R. Vol. 2, pp. 2259, 2265).

The Plant Stitcher Inventions.

The practical advantages of the Plant Stitcher improvements are explained in detail by Mr. Howard (R. Vol. 2, pp. 2296, 2298). The nature of these improvements is indicated by Mr. Warren (R. Vol. 1, p. 787, lines 16–23, 26–30) as follows:—

> "The stitcher was provided with a stop motion similar to that one on the welter, so arranged that the machine would always stop in a proper position to remove a shoe, and so that another could be inserted, and in this stopping it raised the presser-foot which helps hold the shoe in position. Before this it always had been necessary for the operator to stop the machine by hand—remove one hand from the shoe, stop the machine, and then raise the presser-foot so he could remove the work. . . . Also, under the old method, it was necessary for the operator to lift the presser-foot so he could introduce a shoe. Now, in this machine, after the shoe had been finished and removed, it was all ready to start again. This was a great saving in time and a great saving in the exertion of the operator."

Mr. Winslow testified:—

> "That was fundamental; it was a very important invention" (R. Vol. 1, p. 560, lines 11–12).

Speaking of the welter and stitcher inventions together, Mr. Warren testified:—

> "I was much impressed with the improvements. . . . I reported to Mr. Winslow that they were very valuable indeed. . . . I told Mr. Winslow that we should have them" (R. Vol. 1, p. 787, lines 34–35; p. 788, line 7; p. 809, line 35).

4. USE MADE BY THE UNITED COMPANY OF THE PLANT INVENTIONS.

The general policy which the United Company has followed in regard to the Plant inventions was set forth by Mr. Howe. He said that ever since the purchase the resources of the United Company's Experimental Department had been crowded to the full in the work of embodying the Plant inventions in the United Company's machines or building new machines to incorporate those inventions (R. Vol. 1, p. 670, lines 41–44; p. 671, lines 11–13).

Mr. Winslow testified (R. Vol. 1, p. 491, lines 12–14):—

> "We have offered every one of them to our customers as fast as we have perfected them, or where we have been able to take them without the necessity for perfection."

Mr. Warren testified that out of Plant's 69 machines and devices the United Company had so far made use of 30 and was still at work upon others which had not yet been satisfactorily worked out (R. Vol. 1, p. 799, lines 15–17).

The United Company adopted seventeen of the Plant machines, although they all required more or less development or improvement, and those machines have all been offered to the trade. Mr. Warren testified:—

> "Seventeen were adopted, but we found after adopting them that a number of them were not as good as we thought they would be, and especially when they were put on another kind of work. And the result is that several have been wholly reconstructed. Others we had to make some changes in to suit conditions that were different from the conditions in the Plant factory" (R. Vol. 1, p. 789, lines 33–39).

The United Company has also incorporated in its own machines thirteen devices which were found in the Plant machines. Mr. Warren said about these:—

> "We found many devices which would either assist the operator to do more work or better work, which we thought if they were embodied in our machines would be a great improvement, and we recommended that quite a number of those be adopted. And out of that number there were finally thirteen embodied in our machines. A great many more were tried but were found to be inoperative or not practical" (R. Vol. 1, p. 789, lines 17–24).

Striking illustrations of the United Company's aggressive work in perfecting the Plant inventions and incorporating them in its machines are afforded by the history of the Plant welter and stitcher inventions after the purchase.

The United Company immediately put to work six inventors to adapt the Plant welter improvements for the United Company's Model G Welter. They worked night and day and the result was the Model K Welter, which embodied all of the Plant inventions and also important improvements on them made by the United Company's inventors, and which was put out for commercial use in June 1911. On January 1, 1914, 1,024 of these Model K Welters were in use (R. Vol. 1, p. 810, lines 1–10; p. 812, lines 38–42; p. 817, lines 8–14; p. 863, lines 3–5; Vol. 2, pp. 2259, 2260, 2765). The advantages of these improvements as embodied in the Model K Welter will be referred to later (*infra*, pp. 506–510).

Immediately after the purchase five different inventors were put to work to adapt Plant's stitcher improvements to the United Company's Model K Stitcher. Their combined work resulted in the Model M Stitcher, which was first supplied to manufacturers in June, 1911, and of which 1,158 were in use on January 1, 1914 (R. Vol. 1, p. 863, lines 5–7; R. Vol. 2, pp. 2297, 2836 (42)). The advantages of the Plant improvements in that machine will be summarized later (*infra*, pp. 510–513).

The Mayo and Warren Report.

Immediately after the purchase of Plant's inventions two of the United Company's experts, Messrs. Mayo and Warren,

were sent to the Plant shoe factory to make a thorough examination of the Plant machines and the inventions incorporated in them and to recommend what should be done with each machine and each invention. Their entire time for eight weeks was spent in that work, and upon its completion on November 26, 1910, they submitted an exhaustive report (R. Vol. 1, p. 785, lines 35–43; p. 815, lines 43–44; p. 816, lines 1–2). Mr. Winslow testified that this report was made

> "to show what machines or improvements could be adopted to benefit our machines and in what respects. . . . Also to show if an invention in Plant's machines was in commercial shape or condition, or if it required and was advisable to try to develop it—that is to say, whether it gave promise of being of value to our customers in the trade" (R. Vol. 1, p. 594, lines 32–39).

The original signed report is Plaintiff's Exhibit 267, a physical exhibit. The typewritten matter in that report, but not the numerous illustrations, is reproduced in the record (R. Vol. 4, pp. 1396–1441). The letter which introduces the report (R. Vol. 4, p. 1395) shows how thoroughly their examination was conducted and how intelligently their report was prepared. Mr. Warren's testimony shows that the United Company has adopted practically all the machines and devices which they recommended. Could any doubt remain as to the United Company's motives in acquiring the Plant inventions, that doubt would be removed by this Mayo and Warren report and by the United Company's conduct in accordance with it.

5. THE ACQUISITION OF THE PLANT PATENTS BY THE UNITED COMPANY WAS A GREAT BENEFIT TO THE INDUSTRY.

A. Common ownership of the Plant patents and the United Company's patents made possible, first, the use of the valuable Plant inventions by shoe manufacturers without infringement of the controlling patents owned by the United Company; second, the incorporation of the Plant inventions in the superior machines of the United Company; and, third, further important improvements on those inventions by United Company inventors,—improvements which otherwise would never have been made.

The benefits to the industry which have resulted from common ownership of the Plant patents and the United Company's patents are strikingly illustrated by the testimony showing how the United Company has used and has improved upon the Plant welter and stitcher inventions.

Welter.

The testimony is uncontradicted that Plant's welter, incorporating his improvements, infringed United Company's patent No. 700,279, May 20, 1902, Winkley, which claimed a welt holder broadly (R. Vol. 2, p. 2262; Defs.' Ex. 273, R. Vol. 5, p. 739), and suits had already been brought by the United Company on that patent against Plant and the Plant Shoe Company (Defs.' Ex. 270, R. Vol. 5, p. 723). But the United Company had not succeeded in producing a commercially successful welt holder, the Winkley mechanism was only experimental, it did not include any means for either cutting or measuring the welt, and in Plant's improvements it was the combination of means for holding, cutting, and measuring that saved the welting (R. Vol. 1, p. 684, lines 10–24; p. 689, lines 20–29; p. 786, lines 13–18, 29–46; p. 787, lines 1–3; p. 816, lines 17–26; Defs.' Ex. 273, R. Vol. 5, p. 739). In Mr. Winslow's words,—

> "In a broad way it was a perfect deadlock. He had controlling patents for a practical way of doing it while we had the controlling patents of the invention itself" (R. Vol. 1, p. 488, lines 41–43).

Common ownership of the Winkley patent and the Plant patents removed this deadlock and made possible the use of these valuable improvements by shoe manufacturers without infringement. It also enabled the United Company to incorporate the Plant improvements in its own Model G Welter, which was much superior to Plant's (R. Vol. 1, p. 787, lines 36–37, 43–45; p. 809, lines 28–38; p. 815, lines 29–31; p. 818, lines 24–33), and which Mr. Winslow characterized as

> "the highest development of sewing mechanism for attaching the welt, innersole, and upper together that had been developed in the world up to that time" (R. Vol. 1, p. 560, lines 34–36).

The Plant welter was "constructed substantially on the lines of the United Company's 1899 machine" and was "not so satisfactory a machine as was the United Company's 1899 machine" (Vol. 2, p. 2266). Plant added these improved devices to the old type of machine (Warren, R. Vol. 1, p. 787, lines 6–7).

> "It was not, therefore, until these improvements were incorporated in the high speed Model G machine of the United Company that the advantages and utility of the improvements were fully realized" (Howard, R. Vol. 2, p. 2266).

This was an important development in the industry, but even greater advantages resulted. In the United Company's experimental work in adapting the Plant improvements to its Model G Welter,—

> "improvements were made which represent almost as important advances in the industry as did the Plant improvements" (Howard, R. Vol. 2, pp. 2260, 2261).

For example, in the use of the plant welter the operator had to step on a treadle to actuate the welt holder and cutter, while it is automatic in the Model K Machine,—the new United machine incorporating the Plant improvements,—"the machine itself operates it when the man gets ready to remove the shoe" (R. Vol. 1, p. 812, lines 3–4; R. Vol. 2, p. 2261). Again, the Plant mechanism for stopping the machine and freeing the shoe by casting off the loop of thread held by the needle was so constructed that the Plant machine had to be run "practically at

one speed all the time . . . or else it would stop" (R. Vol. 1, p. 818, lines 31–32, 37). This was bad, because it is essential that a welter have capacity for being run at a reduced speed around the toe, where the work is most difficult. The Model K Machine can be slowed down at any time when the operator desires (R. Vol. 1, p. 491, lines 6–7; p. 660, lines 3–4; p. 775, lines 26–28).

Also the mechanical embodiments of the Plant inventions in his machine were not commercially satisfactory.

> "The welter was defective in the stop motion and in the mechanisms for holding and cutting the welt. . . . The ideas were excellent, but they hadn't been carried out in such a manner that they could have been used in other factories" (Warren, R. Vol. 1, p. 797, lines 23–27).

These defects were all remedied when the Plant inventions were adapted to the United Company's machine.

> "We improved the stop mechanism very much, and also the cutting mechanism and the welt holder. We also made over the back gage and welt guide motion so as to put it on our machine in better shape than on the Plant machine" (Warren, R. Vol. 1, p. 798, lines 39–43).

The result of the incorporation of the Plant inventions in the United Company's machine in commercially successful constructions, with the important improvements made on them by the United Company's inventors, was the new Model K Welter, "a very much better machine" than either the United Company or Plant had before (R. Vol. 1, p. 799, lines 1–3). The record abounds with testimony to this effect. For example, McGaffee testified that in the Plant factory they "do 50 pairs of shoes a day more" on the Model K Welter embodying the Plant improvements than they did on the Plant welter, and that the operators can make a great deal more money (R. Vol. 1, p. 777, lines 24–32; p. 779, lines 42–44). Hazzard testified that in his factory the average wages of operators on the Model K Welter are 36 per cent. higher than the average wages of operators on the old model, although the piece price was higher on the old machine than on the new; that the average output of the old welter was 25 dozen pairs a day, while the average on the new welter is 40 dozen pairs per day; that the new welter sews a tighter seam; and that the saving in welting by the welt holding

and cutting device is at least half a cent a pair and amounts to $24 a day, five or six hundred dollars a year on each of their thirteen machines (R. Vol. 1, p. 646, lines 14–18, 41–44; p. 647, lines 1–3, 25–26, 41–44; p. 648, lines 6–7, 10).

Eaton, another manufacturer, testified:—

> "We have found that the saving in welting by the Model K welter, as compared with the Model G welter, was five per cent. under exactly similar conditions" (R. Vol. 1, p. 753, lines 6–8).

Allen testified that the new machine saves four inches of welting on a pair of shoes; that while on the old machine operators in his factory earned from $30 up to $40 a week, operators on the new machine had been earning over $50 a week (R. Vol. 1, p. 723, lines 1–2, 10–12).

Welch testified that in his factory they make a saving of a quarter of a cent per pair in the length of welting and also a saving in the width of welting which amounts to from one-quarter to three-quarters of a cent, according to the quality of the welting (R. Vol. 1, p. 710, lines 37–44).

Blagden, who had operated different types of welters since 1903, explained in detail the disadvantages and inconveniences of the old welter from the operator's standpoint. He said that the new machine

> "saves his time and saves his strength and quickens him in his work";

that on the old machine 25 dozen pairs were considered a good day's work, while an average day's work on the Model K Machine is 40 dozen pairs, and that he had done 65 dozen pairs in a day: that he earned 20 per cent. more on the Model K Welter than he did on the old welter and didn't have to work so hard, although the piece price on the old welter was about one-third more. He also said that there was a saving in both the length and width of the welting and a saving in thread on the new machine (R. Vol. 1, pp. 658–60).

Figuring the saving in welting at $500 per machine (which was Mr. Hazzard's minimum figure), the aggregate saving in welting alone effected by the 1,024 Model K Welters in use on

January 1, 1914 (R. Vol. 1, p. 810, lines 1–10), amounts to $512,000 per year. The Model K Welters were rapidly displacing the old machines and when the 2,527 machines which were out on March 1, 1911 (Defs.' Ex. 226, R. Vol. 5, p. 424) are all displaced, the saving in welting alone, figured on the same basis, will amount to $1,263,500 per year. Adding the large savings due to the greater capacity of the machine and the increase in the wages which were in consequence earned by the operators, the total economies effected for manufacturers and operators by each Model K Machine must be at least $800 per year. When the substitution of the new machines for the old ones has been completed, this saving will aggregate over $2,000,000 per year.

For an extended technical explanation of the commercial superiority of the Model K Machine see pages 2259–68 of Vol. 2 of the record. On January 1, 1914, 1,024 of the Model K Machines were being used (R. Vol. 1, p. 863, lines 3–4).

It is obvious that the industry would not have had this important machine with all these striking advantages if the Plant patents had not been acquired by the United Company. In no other way could it have been possible for shoe manufacturers to have a machine which embodied, first, the broad invention of the United Company's Winkley patent for holding the welt, which it had not made commercially successful; second, the valuable Plant inventions comprising the first practical mechanisms ever devised for holding, measuring, and cutting off the welt, and the combined stop motion and loop cast-off (all broadly claimed in four Plant patents) (R. Vol. 2, pp. 2262, 2263, 2266, 2267); and, third, the important improvements upon those Plant inventions made by the United Company's inventors, on which many applications for patents have been made (R. Vol. 1, p. 812, lines 42–44; Vol. 2, p. 2117).

Stitcher.

One of the two extremely valuable improvements in the Plant stitcher, the mechanism for automatically lifting the presser-foot to free the shoe from the machine when the machine stopped, infringed two of the United Company's patents and five allowed claims of an application filed in 1906 on which has been granted

patent No. 1,087,602, February 17, 1914, Nash (R. Vol. 2, pp. 2836 (67), 2836 (68); Defs.' Ex. 273, R. Vol. 5, p. 741).

On the other hand, the United Company had never had in its stitcher—even its new Model K Stitcher adopted in May, 1910 (R. Vol. 2, p. 2290),—any mechanism for automatically stopping the machine and lifting the presser-foot, or any mechanism for stopping the machine in proper position to permit the shoe to be removed and a new shoe put into the machine,—Plant's notable improvements (*supra*, p. 502).

Immediately after the acquisition of the Plant patents the United Company put to work five different inventors upon the problem of embodying these Plant inventions in satisfactory mechanical form and adapting them for the United Company's new Model K Stitcher (R. Vol. 2, p. 2297). That machine, after it was reorganized to embody these improvements, was named the Model M, and was first put into commercial use in June, 1911 (R. Vol. 2, p. 2836 (42)). On January 1, 1914, 1,158 Model M Stitchers, incorporating these Plant improvements, were in use (R. Vol. 1, p. 863, lines 5–6).

Mr. Howard's detailed statement of the advantages of the new machine as compared with the United Company's old machine (R. Vol. 2, pp. 2296–8) is strongly confirmed by the testimony of shoe manufacturers and machine operators.

For example, Eaton, a manufacturer, testified:—

> "Our stitcher will show an advance by comparison with the same operator under the same conditions a fifteen to twenty per cent. increased capacity over the old, because it is a higher speed machine and it takes less operations to work it" (R. Vol. 1, p. 753, lines 16–19).

Hazzard testified that on the Model M Stitcher, as compared with the old machine, there was

> "an increase in the average wage of about 24 per cent., while the piece price on the old model was 40 per cent. more than we are paying on the Model M" (R. Vol. 1, p. 647, lines 12–14).

He also said that this was not a fair showing because they had been educating nearly all of their operators, and that a compari-

son of the best operators on the old stitcher and on the new showed an increase in wages on the new machine of 45 per cent., with a piece price 40 per cent. less than that on the old stitcher (R. Vol. 1, p. 647, lines 21–23).

Ryan, a stitcher operator who had worked on the successive models of the United Company's stitcher and also on the Plant stitcher, explained in detail the difficulties in operating the old United Company machine and the advantages of the Model M Stitcher from the operator's standpoint (R. Vol. 1, p. 705, lines 1–38). He said that his average day's work on the Model M Stitcher was fifty pairs per day more than the average on the old machine, and further:—

> "The work on the Model M stitcher is a great deal easier. I earn more money. I will average fifty to seventy-five cents a day more on the Model M stitcher than on the old stitcher; and that is in less hours than I worked on the old stitcher" (R. Vol. 1, p. 706, lines 4–8).

McGaffee testified that

> "the operator could make a great deal more money on the United stitcher than he could on the Wonder Worker" (R. Vol. 1, p. 777, lines 29–31).

This great advance in the industry was made possible by the purchase of Plant's patents by the United Company. In a word, this is the story of the Model M Stitcher. Those valuable Plant improvements, embodied by him in a stitcher which was like the United Company's 1899 machine and, like that machine, operated at a speed of only 375 revolutions per minute (R. Vol. 1, p. 787, lines 31–32; p. 818, lines 15–16); which was not organized to sew shoes with extension edges, which nearly all welt shoes have, because such an organization would infringe patents of the United Company (R. Vol. 1, p. 775, lines 32–34; p. 780, lines 1–7; p. 818, lines 17–18, 20–23; R. Vol. 2, pp. 2283, 2762); and which was defective and frequently breaking (R. Vol. 1, p. 790, lines 30–31, 36–38; p. 815, line 14), "the weakest machine we had," "the one that caused the greatest trouble" (McGaffee, R. Vol. 1, p. 773, lines 37–38; p. 777, line 29), were incorporated by the United Company in its much superior stitcher, which operated at a speed of 540 to 550 stitches per minute (R. Vol. 2,

p. 2293), and in greatly improved mechanical constructions (R. Vol. 2, pp. 2836 (44), 2836 (45); R. Vol. 1, p. 798, lines 22–23).

That is, through common ownership of the United Company's patents which Plant infringed, Plant's patents on his improvements, and the United Company's patents and applications on the further improvements which it in turn made on Plant's inventions, the industry has been provided with the Model M Stitcher, in which all of these inventions and improvements are combined, and which is greatly superior both to Plant's machine and to any machine which the United Company had before (R. Vol. 1, p. 799, lines 1–3).

This welter and stitcher situation was thus summarized by Mr. Warren, from the standpoint of the practical expert:—

> "Assuming that each party had its patents on its respective inventions and devices, neither party could have accomplished the development of the machine which we have now developed, either as a stitcher or a welter, without the aid of the other; nor could either party have developed so satisfactory a machine" (R. Vol. 1, p. 799, lines 4–9).

And it will be remembered that in accordance with the United Company's invariable practice the new welters and stitchers, containing all these valuable improvements, were substituted for the older models without any charge whatever and without any increase in royalty, although the Model G Welter, previously the United Company's standard welter, had been put out only since October, 1908, and the Model K Stitcher, formerly its standard Stitcher, had been put out only since May, 1910 (R. Vol. 2, pp. 2254, 2290).

The Other Plant Inventions.

In addition to the Plant welter and stitcher improvements the United Company, as already stated, has adopted seventeen of the Plant machines and thirteen of his devices and improvements, with the result that the inventions of forty-three of Plant's patents are incorporated in twenty-six of the United Company's machines (R. Vol. 1, p. 799, lines 13, 14; Defs.' Ex. 342, R. Vol. 5, p. 949). The Plant purchase has made possible the use of these machines and devices by shoe manufacturers without in-

fringement of the United Company's patents and has also cleared the way for the reconstruction of some of the machines and the changes in others which were found to be necessary to make the machines commercially successful (*supra*, pp. 503–504).

B. Chaotic conditions in the shoe industry have been averted by common ownership of the patents of the United Company and the Plant patents.

As was found by the District Court,—

> "And between Plant, or concerns wherewith he was identified, and the United Company there were pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents so numerous, complicated and important as to threaten interminable controversy" (Dodge, J., R. Vol. 1, p. 1145).

(1) Infringement of the United Company's Patents by Plant.

Plant had patterned his machines after the United Company's machines. The welter and stitcher were substantially the same as the machines which the United Company had been putting out in 1899, with the addition of Plant's improvements, fifteen other Plant machines were "practically duplicates" of the United Company's machines, and nearly all "had a family resemblance to the United Company's machines" (R. Vol. 1, p. 485, lines 29–31; p. 668, lines 42–45; p. 669, line 1; p. 789, lines 13–16; p. 814, lines 22–23; p. 818, lines 15–16, 24–26; Vol. 2, p. 2266).

> "He had taken our machines, whether he had a right to or not, and had made certain improvements on them" (Howe, R. Vol. 1, p. 669, lines 17–18).

With this situation extensive infringement of the United Company's patents was to be expected.

Defendants' patent expert Howard testified that in his opinion 37 of Plant's machines, including practically all of his important machines, infringed claims in 99 patents and three pending applications owned by the United Company, amounting in the aggregate to 546 claims; and that many claims were infringed

by more than one machine, with the result that there were 708 distinct cases of infringement of United Company's patents by Plant machines (R. Vol. 1, p. 799, lines 31–44; p. 800, lines 1–6; p. 801, lines 26–39; Defs.' Ex. 273, R. Vol. 5, p. 750). Defendants' Exhibit 273 (R. Vol. 5, p. 733), Mr. Howard's detailed statement of these infringements, shows their serious character.

During the trial counsel for petitioner repeatedly stated that it was their intention to introduce testimony to contradict this evidence (R. Vol. 1, p. 394, lines 26–29; p. 800, lines 23–30; p. 803, lines 26–27, 38–40), and they secured an opportunity to do so by the order of February 10, 1914 (R. Vol. 1, pp. 984, 985).

All of the Plant machines were placed at the disposal of petitioner's counsel and its patent expert, and, assisted by Mr. Warren, they made an extended investigation of the machines (R. Vol. 1, p. 984, lines 24–39; Vol. 2, p. 2836 (156–159)); but no attempt to controvert this testimony was made by petitioner. It is submitted, therefore, that for the purposes of this suit defendants have proved these infringements. In fact, Mr. Gregg said during the trial—

> "If we don't contest it then the case rests . . . that there was an infringement by Plant" (R. Vol. 1, p. 394, lines 40, 43).

Eight infringement suits against Plant and ten suits against the Plant Shoe Company had already been begun, and bills of complaint had been prepared and signed in suits on six more patents (R. Vol. 1, p. 802, lines 7–11; Defs.' Ex. 270, R. Vol. 5, p. 723). For many months nearly all of Mr. Howard's time and a large part of the time of his associates had been spent on these infringements, and the United Company was "ready to go ahead" with a large number of suits (R. Vol. 1, p. 801, lines 5–7; p. 822, lines 3–7). Mr. Winslow testified:—

> "It was our intention to bring suits to protect our rights and undoubtedly we should have done so" (R. Vol. 1, p. 566, lines 38–39).

There was also a suit pending against the Plant Shoe Company and Plant for the purpose of enforcing the contracts which the Shoe Company had made with the United Company and which it had violated by substituting Plant's machines (R. Vol. 1, p. 688, lines 1–8; P.'s Ex. 162, a physical exhibit).

During the negotiations between Mr. Plant and Mr. Winslow, Plant expressed great concern over these suits and repeatedly stated that his refusal to allow an examination of his machines by the United Company's experts was due to his fear that additional infringement suits would be brought as a result of such an examination, and he stated that his counsel refused to sanction the examination for that reason (R. Vol. 1, p. 480, lines 15–22, 44–45; p. 481, lines 1–2, 45–46; p. 482, lines 6–8; p. 577, lines 29–33; p. 609, lines 38–42; p. 611, lines 38–45).

> "He seemed to be quite fearful that the experts would be of great assistance in the patent suits that were being brought and that were likely to be brought" (Endicott, R. Vol. 1, p. 580, lines 24–26).

So great was Plant's concern over these infringements that he made it a condition of the purchase that the United Company should release and discharge him from "claims of infringement of Letters Patent by said Plant" (P.'s Ex. 132, R. Vol. 4, pp. 932, 934; P.'s Ex. 139, R. Vol. 4, p. 1039).

(2) Infringement of Plant's Patents by the United Company.

Mr. Howard testified that in his opinion fifteen of the United Company's machines infringed twenty Plant patents. Defendants' Exhibit 274 (R. Vol. 5, p. 750) is his detailed statement of these infringements.

These infringements were due to the fact that for several years Plant's inventive work and that of the United Company's inventors had been going on simultaneously with the result that in a number of instances the United Company had embodied inventions in its machines which were later found to infringe Plant's patents (Winslow, R. Vol. 1, p. 870, lines 43–44; p. 871, lines 1–9; Howe, R. Vol. 1, p. 877, lines 12–26). In this embarrassing situation were involved some of the United Company's most important machines, such as its new Model K Outsole Stitcher, its No. 5 Lasting Machine, its new Model B Heel Attaching Machine, its American Lightning Nailing Machine, its new Model E Rounding and Channeling Machine. The serious character of these infringements is shown by testimony of Mr. Browne, Mr. Warren, and Mr. Howard (R. Vol. 2, pp. 2836 (125) (130–135) (154–156); Defs.' Ex. 274, pp. 751–754).

Ample opportunity was afforded petitioner's counsel and its patent expert, Mr. Chapman, to examine these fifteen infringing United Company machines, and Mr. Chapman did examine them (R. Vol. 2, pp. 2836 (156–159)), but he took issue with Mr. Howard as to only six. Mr. Chapman's testimony was completely answered by the noted patent expert Arthur S. Browne, who agreed with Mr. Howard's views as to infringement in every instance (R. Vol. 2, pp. 2836 (123–153)). It is submitted that Mr. Browne's testimony, supporting the testimony of defendants' expert in all respects and disagreeing with all the opinions expressed by petitioner's expert, establishes a preponderance of evidence which entitles defendants to claim that for the purposes of this case it has been proved that those six United Company machines, as well as the other nine, infringed Plant's patents. At the end of this discussion (*infra*, pp. 536-538) attention will be called to many misstatements as to facts made by Mr. Chapman in his testimony.

(3) Interferences.

There had been declared by the United States Patent Office 23 interferences between patent applications owned by Plant and applications owned by the United Company (R. Vol. 1, p. 819, lines 23–31; p. 846, lines 14–17; Defs.' Ex. 272, R. Vol. 5, p. 730).

Intolerable Conditions would have Resulted if the Plant Purchase had not been Made.

It cannot be doubted that if Plant had kept on he would have enforced his rights under his patents and would have brought suits on account of the infringements by the United Company's machines; indeed, his intention to bring suits was asserted over his signature in Plaintiff's Exhibit 137, a release signed by Plant on September 30, 1910:—

> "I . . . have planned to bring certain suits against said United Shoe Machinery Company" (P.'s Ex. 137, R. Vol. 4, p. 1037).

Mr. Winslow and Mr. Howe fully expected that Plant would bring suits against these infringing machines (R. Vol. 1, p. 862, lines 25–26; p. 877, lines 27–30; p. 878, lines 1–2).

The inconvenience and embarrassment to which the United Company and its customers would have been put if Plant had succeeded in litigation against these machines would have been intolerable. It might well have involved replacing thousands of machines or very likely discarding them altogether,—in any event endless experimental work in developing organizations which would avoid infringement, at an expense, to say nothing of the cost of the litigation, which would have mounted to a staggering sum. No wonder the United Company took pains to obtain from Plant a release from

> "all manner of actions and causes of action . . . and demands of every name and nature in law or equity" (P.'s Ex. 137, R. Vol. 4, p. 1037).

On the other hand, it is difficult to imagine the chaotic condition which would have resulted if Plant had put his machines in a number of shoe factories. Mr. Winslow declared:—

> "It was our intention to bring suits to protect our rights, and undoubtedly we should have done so" (R. Vol. 1, p. 566, lines 38–39).

The record shows that this intention was being aggressively carried out. Many suits had already been brought, a considerable number of bills of complaint had been prepared and were ready for filing, counsel had been engaged for months in work on these infringements and were "ready to go ahead" on nearly all of them before the date of the purchase (R. Vol. 1, p. 800, lines 36–44; p. 801, lines 1–11; p. 821, lines 20–34; p. 822, lines 1–7; p. 877, lines 5–12, 31–33).

As to these patent controversies the District Court held:—

> "The evidence shows also, without serious contradiction, that one result of the bargain made with Plant was to relieve the United Company from an amount of litigation, then pending or in prospect, which would otherwise have burdened and hindered it to an extent far greater than it had ever had reason to apprehend from any litigation with which it had before been concerned.
>
> "A suit by it to restrain the Plant Company from breaking the leases of its machines, displaced in order to instal the Plant machines as above, had been pending since May, 1910. And between Plant or concerns wherewith he was

identified and the United Company there were pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents, so numerous, complicated, and important as to threaten interminable controversy" (Dodge, J., R. Vol. 1, p. 1145).

The evidence which we have just reviewed proves that the expectations of the United Company in purchasing Plant's patents were fully realized. These great benefits were anticipated and were the reasons for the purchase, as we shall now show.

6. THE UNITED COMPANY ACQUIRED THE PLANT PATENTS BECAUSE ITS OFFICERS BELIEVED THAT THE ACQUISITION WOULD BE OF GREAT BENEFIT TO THE SHOE MANUFACTURING INDUSTRY.

A. The controlling consideration was the value to the shoe industry which the valuable Plant inventions would have if incorporated in the United Company's superior machines.

Typical of numerous statements in Mr. Winslow's testimony is the following:—

> "My entire and only interest was whether those patents could be made of benefit to our customers and the trade. If they could be of benefit, if they were of large benefit, and the trade ought to have them, I should be very glad to buy them and embody them in our machines for what I thought they were worth, irrespective of what they had cost him,—but I would not pay a cent more for them" (R. Vol. 1, p. 482, lines 26–32).

Mr. Howe testified:—

> "After we examined it, Mr. Winslow and I . . . agreed that Plant had some very valuable improvements that if we could get the ownership of at the right price could be introduced into our machinery in conjunction with our own experiments in the way of improvements that had then been under way for several years, and that by utilizing them in that way Plant's inventions could be made very valuable" (R. Vol. 1, p. 670, lines 29–37).

Mr. Endicott testified that Mr. Winslow told Mr. Plant that

> "he could not consider the proposition at all until he knew the value, and he stated then that he meant the value to the advancing of the art of shoemaking" (R. Vol. 1, p. 577, lines 12–14),

and that at a later interview Mr. Winslow said that he

> "would only purchase it if it was of value—if it was a good, fair offer at the price and was of value to the shoe trade and to the United Company" (R. Vol. 1, p. 582, lines 14–16).

Mr. Winslow's attitude is further shown by his refusal to consider the purchase at all

> "without seeing the machines, having them fully examined by our experts, and a full report made to me by them as to the advantages that there might be in those machines.
>
> "I always declined to have anything to do not only with buying it but considering his propositions without a full and complete right to examine his machinery, determine the value of the inventions—the patents that he had" (R. Vol. 1, p. 482, lines 20–24; p. 484, lines 16–19).

Mr. Howe confirms this:—

> "At these conferences and all along Mr. Winslow always took the position of declining to discuss prices or a price for the machinery and inventions until he had convinced himself by experts, in whom he had confidence, as to the value of these inventions to the United Shoe Machinery Company and to its lessees, . . . declined to have anything to do with any proposition unless he could have the machines examined by our experts and demonstrate that they would be of value to the United Company and its lessees" (R. Vol. 1, p. 670, lines 18–22; p. 687, lines 20–23).

Mr. Herrick testified that at a conference which he attended Mr. Winslow took the position

> "that there would be no consideration of that machinery without a careful examination by men who were competent to value what Mr. Plant had, and that there would have to be time enough for that, and that there would have to be a thorough examination,"

and that Mr. Winslow said to Mr. Plant:—

> "'If we see it has got value, we are perfectly ready to negotiate on the basis of whatever actual value it has got,

and there will be no hurry about it, and we will not deal at all without seeing it, and then we will only deal after the examination, and if we can't have the examination we won't deal at all'" (R. Vol. 1, p. 604, lines 17–21, 41–44; p. 605, lines 1–2).

Mr. Endicott and Plant's intermediary, Smith, testified to the same effect (R. Vol. 1, p. 577, lines 12–14; p. 772, lines 33–35).

As to the instructions given by Mr. Winslow to the experts, when Plant, after repeated refusals, had finally decided to permit the examination, Mr. Warren testified that he

> "was told to go with the rest of the gentlemen that were there to the Plant factory and look at any or all of the machines in that factory, and examine them to see what features there might be, if any, about the machines that would be valuable if added to our machines, or if they would be any addition in any way to the manufacture of shoes" (R. Vol. 1, p. 785, lines 27–32).
>
> "My orders were to look at the machines and tell Mr. Winslow, or report, what I could see in the machines that would be of value or that would improve our machines, to improve the art of making shoes" (R. Vol. 1, p. 814, lines 38–41).

The District Court found:—

> "The agreement to take the patents and inventions was not made until after a careful examination and report as to their merits. The belief thereon founded that, used as above, they would be worth acquiring upon the terms proposed, is shown to have been justified by the result, and the acquisition cannot be criticised so far as it was occasioned by that belief. As developed and added to its own machines by the United Company, some of the inventions acquired have proved to be of a value such as fairly justifies their claim that the patents acquired were the controlling feature of the purchase" (Dodge, J., R. Vol. 1, p. 1145).

B. Another consideration was the avoidance of endless litigation and intolerable conditions in the industry which would have resulted from the hopelessly complicated patent situation.

We have already shown (*supra*, pp. 514–519) that there was uncontradicted testimony that there were 708 distinct cases of infringement of the United Company's patents by thirty-seven

Plant machines; that the evidence shows that fifteen of the United Company's machines infringed twenty Plant patents,—evidence contradicted by petitioner as to only six machines, and as to those amply corroborated; that twenty-three interferences had been declared by the United States Patent Office between patent applications owned by Plant and applications owned by the United Company. We have explained that many suits had been brought against Plant for infringement by his machines, and that the United Company was prepared and intended to bring a large number of additional suits.

Before the Plant purchase all these patent complications were the subject of extended discussion by Mr. Howe, Mr. Howard, and other counsel with Mr. Winslow (R. Vol. 1, p. 821, lines 20–34; p. 862, lines 11–21; p. 877, lines 31–33).

Mr. Winslow testified (R. Vol. 1, p. 862, lines 24–31):—

> "The confusion and conflict in the patent situation of my own company and of Mr. Plant, the chaos which might result from conflicting claims and constant litigation, was a substantial consideration in my mind, affecting my negotiations or willingness to negotiate with Mr. Plant, and when Mr. Plant offered to me the patents at a price which to my mind was less than their value to the art of shoe manufacturing when combined with our machines, it might be said to be a controlling factor."

Mr. Howe testified:—

> "There would have been a large amount of litigation both by the owners of the Plant patents against the United Company, and by the United Company against Plant machines. . . . This chaotic condition which might result from the patent situation had considerable weight in my mind. Of course, the controlling consideration for the purchase of the Plant patents, was the value, the great value, it seemed to me, of his inventions, especially when combined with and merged in our machines. Then another consideration for the purchase was this avoidance of litigation either by ourselves against him, which would have cost a great deal of money and would have annoyed the trade very much, the shoe manufacturers, and also the cost and annoyance of having to be sued by Plant" (R. Vol. 1, p. 877, lines 28–31, 36–44; p. 878, lines 1–2).

It was held by the District Court (Dodge, J., R. Vol. 1, p. 1145):—

> "It was part of the bargain with Plant, or followed from it as a result, that the above controversies were settled or avoided. That the prospect of accomplishing this result was a further normal, natural, and powerful inducement to the agreement made with him cannot be reasonably doubted. In so far as the agreement was thus intended, no criticism of it can be valid."

7. THE PLANT PATENTS WERE WORTH MORE THAN THE PRICE PAID FOR THEM.

For the Plant inventions and patents and for 60 per cent. of the stock of the Thomas G. Plant Company, the shoe manufacturing concern, the United Company paid Plant $6,000,000, and of this amount Mr. Winslow considered that $2,500,000 ($1,250,000 in United Company stock at twice par) was paid for the Plant patents and inventions (R. Vol. 1, p. 490, lines 35–39; p. 569, lines 17–22; P.'s Ex. 132, R. Vol. 4, p. 935).

The stock of the Shoe Company was purchased because Plant refused to sell the inventions unless that stock were also purchased. He wanted to get out of business and retire (R. Vol. 1, p. 486, lines 2–7; p. 487, lines 11–16; p. 580, lines 36–39; p. 603, lines 26–30; P.'s Ex. 132, R. Vol. 4, p. 932). Mr. Winslow testified (R. Vol. 1, p. 568, lines 14–16):—

> "I did not want the shoe manufacturing stock, but at the price it was offered I thought it was a good bargain."

Mr. Winslow valued the shoe company stock purchased at $3,500,000 (R. Vol. 1, p. 490, lines 35–36). This seems a conservative estimate as the company was extremely prosperous. Its earnings for the past four years had averaged $738,000 annually and for the year preceding the use of Plant's own machinery had amounted to $1,122,196.28. These figures are taken from a sworn statement by a public accountant (P.'s Ex. 132, R. Vol. 4, pp. 1013–15). Mr. Winslow required Plant to guarantee the accuracy of that statement (R. Vol. 1, p. 496, lines 21–27; P.'s Ex. 132, R. Vol. 4, p. 936).

Plant owned and sold 60 per cent. interest in the stock of the company. Sixty per cent. of the average earnings for the past four years amounted to $442,800 annually. Capitalized at 10 per cent. this would show a value for the Shoe Company's stock which was purchased of $4,428,000.

The District Court held (Dodge, J., R. Vol. 1, pp. 1144–5):—

> "That it was of great value is shown beyond question by the dividends then and afterwards paid on the stock acquired by the United Company. These, and the ultimate disposition of the stock itself, afford every reason to believe its actual value when acquired sufficiently great to reduce the actual cost of the patented improvements also acquired to a comparatively small proportion of the total payment made to Plant."

Assuming, however, that the Shoe Company's stock was worth no more than $3,500,000, this would leave $2,500,000 to represent the patents. They are undoubtedly worth more than this to the United Company.

Mr. Winslow testified that to his mind this price was "less than their value to the art of shoe manufacturing when combined with our machines," that he would have considered them a very cheap purchase at a sum "much in excess of that price," that he would be "very glad to buy the same value next week," and that

> "if my judgment hadn't been that they were worth more than we paid for them, we never should have bought them" (R. Vol. 1, p. 490, lines 28–34; p. 569, lines 22–23; p. 862, lines 29–30).

Mr. Warren testified that it was his opinion and that soon after the purchase he told Mr. Winslow that the improvements on the *welter and stitcher alone* were worth all Mr. Winslow gave for the entire property (R. Vol. 1, p. 788, lines 8–10; p. 813, lines 6–9).

The District Court held (Dodge, J., R. Vol. 1, p. 1145):—

> "Taking the transaction as a whole, if the total amount paid by the United Company was large, the total value of all that was received in exchange also appears, not as matter of opinion merely, but by actual results shown, quite suffi-

cient to negative any claim that the defendants paid an exorbitant price for what they got.

"The evidence that among these patented improvements obtained from Plant there were enough of sufficient value in the defendants' hands and used as they only could have used them in further developing and perfecting the machines they were then producing or trying to produce, to make this part of the total acquisition extremely profitable to the United Company was not met by any sufficient proof to the contrary."

8. THAT THE UNITED COMPANY PURCHASED THE PLANT PATENTS BECAUSE IT WAS BELIEVED THAT THE PURCHASE WOULD BE A GREAT BENEFIT TO THE SHOE INDUSTRY, AND FOR NO OTHER REASON, IS FURTHER SHOWN BY THE HISTORY OF THE NEGOTIATIONS.

The United Company never approached Plant in any way directly or indirectly with reference to acquiring either his patents or his stock in the Plant Shoe Company. There is no evidence that before Plant made his overtures the United Company had ever considered acquiring his patents.

Negotiations were Opened by Plant.

Plant asked Henry B. Endicott, a shoe manufacturer, to help him make a sale of his patents to the United Company, and he offered Mr. Endicott a commission of $250,000 if he would effect the sale. He later increased that offer to $500,000 (Endicott, R. Vol. 1, p. 576, lines 33–43; p. 580, lines 16–18).

Accordingly Endicott invited Winslow to meet Plant at Endicott's house. That meeting was held in June, 1910 (Winslow, R. Vol. 1, p. 479, lines 27–40; Endicott, p. 577, lines 1–3).

At this first meeting, after explaining the merits of his machines, claiming that they were wonderful and very valuable, Plant offered to sell his patents for $6,000,000 and said that at the end of the week the price would go up $500,000 (Winslow, R. Vol. 1, p. 479, lines 41–45; p. 480, lines 1, 29–32; Endicott, p. 577, lines 6–10).

From the Start Winslow Insisted that He would not Purchase Plant's Patents until Their Value had been Determined by an Expert Examination, and then only if They would be of Value to the Shoe Industry.

Winslow told Plant that he could form no opinion regarding the value of Plant's inventions until his experts had examined Plant's machines. He said to Plant that

> "it was the value of the patents to our customers and the trade, the art of making shoes, that I was interested in, and when I could know what he had, why, then I could know what I thought they were worth to me" (R. Vol. 1, p. 480, lines 4–6, 34–38).

Endicott testified that at this interview Winslow told Plant that

> "he could not consider the proposition at all until he knew the value, and he stated then that he meant the value to the advancing of the art of shoemaking" (R. Vol. 1, p. 577, lines 12–14).

At this interview Plant questioned whether the United Company's mechanical experts ought to see his machines, fearing that infringement suits might be brought as a result of such an examination. The interview was adjourned with the understanding that Plant would consult his attorneys in New York as to an examination by experts (Winslow, R. Vol. 1, p. 480, lines 6–9, 15–22).

Winslow Continues to Insist that He would not Purchase without an Examination and not unless Plant had Improvements that would be of Value to the Industry.

When the discussion was resumed on June 23, 1910, at a meeting arranged by Mr. Endicott, Plant said that he could not consent to the United Company's experts seeing his machines; that his New York attorneys did not agree to it. He threatened that if Winslow did not trade with him without seeing his machines he would publish advertisements which would attack the United Company and its methods of doing business and also

would publish letters from attorneys. At both interviews nothing but Plant's inventions and patents was discussed. The Shoe Company stock was not mentioned (Winslow, R. Vol. 1, p. 481, lines 4–46; Endicott, p. 577, lines 15–28; p. 586, lines 43–45; p. 587, lines 1–4). This interview was concluded by this statement to Plant by Winslow:—

> "I said that of course I could not consider trading with him without seeing his machines and I was not interested in what he had unless he had improvements that would be of value to our customers. I was very sorry, but I could not do any business" (R. Vol. 1, p. 481, lines 41–44).

The Interview on June 27.

At the next interview, arranged by Endicott, on June 27 Plant said that his price was now $6,500,000 and that it would be $7,000,000 the next week. Plant again indicated that he desired very much to sell his patents and inventions, but was very reluctant to have the United Company see his machines. He made a proposition that the United Company should give him a million dollars and two of its officers could then examine his machines. Of this proposition Winslow said:—

> "If we did not buy, the million dollars was to be forfeited to Mr. Plant, so that a look at his machines would have cost us a million dollars.
>
> "I did not accept that proposition."

Winslow repeated that he would not even consider Plant's offers without a thorough examination to determine the value of the inventions (Winslow, R. Vol. 1, p. 482, lines 1–32; Endicott, p. 587, lines 4–9).

Endicott then suggested that Messrs. Keith and Hanan, both shoe manufacturers and directors of the United Company, should examine the machines and decide whether it would be right for Winslow to pay a million dollars for the option in order to get an opportunity for his mechanical experts to examine the machines; but Keith and Hanan refused to accept this responsibility (Winslow, R. Vol. 1, p. 482, lines 33–45; p. 483, lines 1–2; Endicott, p. 577, lines 29–45; p. 578, lines 1–9).

Winslow again Breaks off Negotiations.

Winslow then notified Endicott that

> "in view of the fact that Mr. Plant would not allow us to have our experts examine his machines we should drop all negotiations" (Winslow, R. Vol. 1, p. 483, lines 11–12).

Endicott confirms this (Endicott, R. Vol. 1, p. 578, lines 10–15).

This ended Endicott's connection with the negotiations as Plant's representative. The next day he called upon Winslow, told him he believed the United Company ought to have Plant's patents for the benefit of the industry, stated that if he had been a director he would have been willing to take the responsibility which Keith and Hanan refused to take, and suggested that if the United Company wished to elect him a director he would be willing to share that responsibility and examine the machines with Keith and Hanan. He told Winslow that he was so strongly convinced that the United Company ought to have the Plant inventions for the benefit of its customers that he wanted to do everything he could to bring that about. This statement was based on the report of Endicott's experts, who had examined Plant's machines, that there were many things in them which when combined with the United Company's machines would make them more valuable (Winslow, R. Vol. 1, p. 483, lines 15–35; Endicott, R. Vol. 1, p. 578, lines 19–31; p. 585, lines 24–28).

In accordance with Mr. Endicott's suggestion he was elected a director of the United Company and he thereupon notified Plant that he could no longer act in Plant's interest and that Plant's agreement to pay him a commission was terminated (Winslow, R. Vol. 1, p. 479, lines 29–32; p. 483, lines 26–43; Endicott, p. 579, lines 3–13).

Endicott, Keith, and Hanan, with Endicott's practical men, then examined the Plant machines on July 5 and they reported that evening at a meeting of the officers and counsel of the United Company. Endicott was in favor of putting up the million dollars, and Keith and Hanan were against it (Winslow, R. Vol. 1, p. 483, lines 44–45; p. 484, lines 1–15; Endicott, p. 579, lines 28–32).

Winslow once more Breaks off Negotiations.

Winslow testified:—

> "What was decided then was to decline to purchase, without seeing the machines, having them fully examined by our experts, and a full report made to me by them as to the advantages that there might be in those machines."

That decision was communicated to Plant (Winslow, R. Vol. 1, p. 484, lines 16–21).

Plant Employs Smith to Effect a Sale.

Harry A. Smith, of Worcester, Mass., testified that he had frequently argued with Plant that his patents and the United Company's patents ought to be put together so that the trade could get their value and that he had offered his services as an intermediary in effecting a sale to the United Company (R. Vol. 1, p. 769, lines 1–8, 19–25; p. 770, lines 14–20; p. 771, lines 26–29).

On July 21, 1910, Plant telephoned Smith from New York and asked him to come to New York to see him. Smith went to New York and Plant told him that he had been negotiating with the United Company and that the negotiations had been broken off. Plant then suggested to Smith for the first time selling his interest in the shoe factory as well as his patents. Plant asked Smith to get him in touch with Mr. Barbour, vice-president of the United Company, and Mr. Herrick, one of its counsel (R. Vol. 1, p. 769, lines 26–45; p. 770, lines 1–13, 34–40).

Smith Gets Plant in Touch with Barbour, Vice-President of the United Company.

Accordingly Smith first arranged an interview with Barbour, and Plant spent six hours talking to Barbour about the value of his inventions. Smith testified that they also saw Barbour the next day and that Barbour then decided to come to Boston to take the matter up with the directors of the United Company (R. Vol. 1, p. 770, lines 21–33; p. 771, lines 1–4).

Smith Gets Plant in Touch with Herrick, Counsel for the United Company.

Smith went to Mr. Herrick's summer home and also to his office in Boston and asked him to meet Plant. Herrick told him he would meet Plant if Plant's counsel approved, and Smith arranged for a meeting between Plant and Herrick in the latter part of July. Plant told Herrick that he wished to sell what he had to the United Company. Plant still objected to an examination of his machines through fear of infringement suits (Herrick, R. Vol. 1, p. 602, lines 17–40; Smith, p. 771, lines 5–6).

Shortly after Plant asked Herrick to go out to his shoe factory and took Herrick over the factory. Plant was still unwilling to have an examination. Herrick testified:—

> "I told him that there could be no negotiations excepting on the most careful examination and that there could be no agreements whatever as to bringing any suits."

At this interview Plant said that "he was anxious to get out of business" and that he would like to sell his interest in the shoe business as well as his patents and inventions. He said that he would like to retire from business and

> "that he had always planned to so arrange himself that he would be free to sell out to the United Shoe Machinery Company" (Herrick, R. Vol. 1, p. 603, lines 1–13, 20–34).

Smith Sees Winslow.

Smith saw Winslow on the 6th or 8th of August. Winslow told him that if Plant's patents had value he would look at them for his company, but that he would never buy them until he had looked at them (Smith, R. Vol. 1, p. 771, lines 6–7; p. 772, lines 29–35).

Plant Asks Endicott to Arrange Another Meeting with Winslow.

Early in September Plant saw Endicott and told him that he would make one more throw of the dice if Endicott was willing to arrange a meeting for him with Winslow. Plant told Endicott that his price was $6,500,000, but that he would give

Endicott all that he got for it over $6,000,000. Endicott of course told him that he could not accept any commission. Plant did not say anything about selling his shoe company stock (Endicott, R. Vol. 1, p. 580, lines 3–19, 31–33).

The Meeting on September 13.

At Plant's request Endicott arranged a meeting on September 13. Plant, Winslow, Endicott, and Herrick were present. At that interview Winslow again told Plant that he would not consider any proposition or carry on any negotiations unless Plant would permit the United Company's experts to examine his machinery and ascertain the value of his inventions to the art of shoemaking, and that that was all he was interested in (Winslow, R. Vol. 1, p. 484, lines 26–35; Endicott, p. 580, lines 20–30). Herrick testified that Winslow told Plant

> "that there would be no consideration of that machinery without a careful examination by men who were competent to value what Mr. Plant had, and that there would have to be time enough for that, and that there would have to be a thorough examination,"

and that the United Company was ready to negotiate on the basis of the actual value of Plant's inventions, but only after an examination, and that if they couldn't have the examination they wouldn't deal at all (Herrick, R. Vol. 1, p. 604, lines 10–21, 41–44; p. 605, lines 1–2).

After a final statement by Winslow that he would have no further negotiations without an examination of Plant's machines, Plant consented to the examination on the understanding that no more suits for infringement of the United Company's patents should be filed for two weeks (Winslow, R. Vol. 1, p. 484, lines 35–45; p. 485, lines 1–6).

The Examination of Plant's Machines.

On September 14 and 15 Messrs. Winslow and Howe, with a committee of machinery experts and patent experts, went to the Plant shoe factory and examined the machines embodying Plant's

inventions. The experts continued their examination on the 16th. They reported to Mr. Winslow each night (Winslow, R. Vol. 1, p. 485, lines 4–14; p. 559, lines 34–36).

The Meeting on September 16.

Plant, Endicott, and Winslow met on September 16 after the examination by the experts. Plant then said that he wanted to get out of business altogether and offered to sell his patents and his stock in the Plant Shoe Company, 60 per cent. of its total capital stock, for $8,000,000 or $8,500,000. Winslow told him that that was an impossible figure and that that price didn't interest him. That ended that interview (Winslow, R. Vol. 1, p. 486, lines 1–44; Endicott, p. 580, lines 34–45; p. 581, lines 1–13).

The Meeting on September 20.

Plant asked Endicott to arrange another interview with Winslow. Endicott arranged one on September 20 at which Plant, Winslow, Herrick, and Plant's attorney Carr were present (Winslow, R. Vol. 1, p. 487, lines 1–10; Endicott, p. 581, lines 30–39; Herrick, p. 605, lines 34–37).

At this meeting Plant said again that "he wanted to get out of business entirely" and that "he did not want to embark in the shoe machinery business." He said to Herrick:—

> "I am sick of all this waiting. Everybody advises me to sell. I have talked with Mr. Whipple, he advises me to sell. I have talked with Mr. Brandeis, he advises me to sell. And everybody advises me to sell. I could keep on and make a lot of money, but I prefer to get out of the business and pay my debts and retire on my cash."

Plant finally offered to sell his patents and inventions and his stock in the Plant Shoe Company for $3,000,000 in cash and $1,500,000 in stock of the United Company at par. This offer was accepted by Winslow subject to approval by his executive committee (Winslow, R. Vol. 1, p. 487, lines 11–42; Herrick, p. 606, lines 7–33).

The Purchase is Made.

On the morning of September 22 a check for $500,000 on account was delivered to Plant's attorney. The agreements were then prepared and were signed during the night of that day (Winslow, R. Vol. 1, p. 488, lines 1–5; Herrick, p. 607, lines 21–39).

Throughout the Negotiations Mr. Winslow never Made any Offer to Plant.

Throughout these extended negotiations, begun by Plant and renewed by him several times after Winslow had definitely broken them off, Winslow never made any offer to Plant. He testified on cross-examination:—

> "I didn't make any proposition at any time, from the time I first met him until the time that we parted, of any sort, name, or description" (R. Vol. 1, p. 559, lines 16–18).

Mr. Herrick testified:—

> "There never was any offer made to Mr. Plant at any time during all the negotiations" (R. Vol. 1, p. 606, lines 36–37).

Finding of the District Court as to the Negotiations.

The District Court said of these negotiations (Dodge, J., R. Vol. 1, pp. 1142–3):—

> "There is uncontradicted evidence of declarations by Plant in 1909, that his intention was to equip these two other factories and his own with his new machines and then sell out to the United Company. That the effecting of such a sale, and not any actual competition in the market with machines then in use, was his real purpose is hardly left doubtful by the history of his subsequent negotiations with the defendants. These, set on foot by him and at first stopped by the defendants' unqualified rejection of his proposals, he persisted in renewing, through various intermediaries, until they resulted in the purchase above described. It appears without contradiction that Plant was for a time under agreement to pay an influential shoe manufacturer, whose assist-

ance he procured, $250,000 if he succeeded in bringing about the desired sale; also that he later offered, and ultimately had to pay a commission of five per cent. on the price obtained to another intermediary who undertook to put the transaction through for him.

"The evidence regarding Plant's negotiations with the defendants sufficiently proves that they were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else; but that on the contrary all the efforts towards such a purchase were made by him. The first overtures toward it came from him; he began them soon after he had put his machines into the Plant factory; they led to interviews, all of which he sought and at which his proposals were declined without encouragement to renew them. Nowhere in the evidence is any indication found that before Plant's overtures were thus made any purchase whatever from him had been suggested to or considered by the defendants."

Allegations in the Petition that Certain Shoe Manufacturers were Endeavoring to Acquire Plant's Patents and that Defendants Made the Purchase on that Account.

The petition alleges that on September 22, 1910, certain shoe manufacturers were in conference with Plant with a view to either purchasing an interest in his inventions or making some arrangement which would enable them to obtain machines for use in their factories; that defendants were advised of the purpose and intent of said manufacturers, knew that if they made an arrangement with Plant defendants' machines would be removed from their factories and competition would thus be created; and made the agreement for the Plant purchase in order to prevent such competition.

The evidence shows that on September 22, 1910, a number of shoe manufacturers, members of the Shoe Manufacturers' Alliance, were in Boston, having come to confer with Plant (R. Vol. 1, pp. 114–5).

There is absolutely no proof whatever in this record that these manufacturers were endeavoring to make any arrangements to obtain machines for use in their factories.

What these manufacturers really thought Plant had to sell is shown by the testimony of petitioner's witness McElroy, who

testified regarding the inspection of the Plant machines which he made for them in 1910:—

> "The object of that inspection was looking to buying or acquiring *the Plant Patents*. There were some Western manufacturers that contemplated this, and I was sent as an expert to look over the machinery and make a report" (italics ours) (R. Vol. 1, p. 189, lines 8–12).

Prior to this time Plant had been negotiating with the United Company for several months; he had agreed on September 13th that the United Company's experts might examine his machines and on September 20th had practically concluded the sale to the United Company. There is absolutely no evidence that the United Company knew of any negotiations with these shoe manufacturers until the sale to the United Company was practically concluded on September 20th.

Mr. Howe first heard the Western manufacturers were in Boston on the morning of September 23d. The United Company had paid $500,000 before that (R. Vol. 1, p. 688, lines 16–21).

On the evening of September 20th Plant told Winslow he should put up to the Western manufacturers a proposition which they could not accept (R. Vol. 1, p. 488, lines 18–21).

And he did (R. Vol. 1, p. 115, lines 17–21).

There is not the slightest evidence, therefore, that possible negotiations with these shoe manufacturers were known to the United Company prior to the practical consummation of the purchase, or in any way affected the United Company's action. Furthermore, the evidence shows that Plant desired to sell not only his patents but also his interest in the Plant Shoe Company and retire from business. The evidence shows that no such purchase was contemplated by the shoe manufacturers, nor does it appear that they were in a position to carry such transaction through. It is quite evident that Plant preferred and desired to sell to the United Company if such transaction could be consummated.

The District Court said with reference to these allegations (Dodge, J., R. Vol. 1, p. 1144):—

> "But the evidence fails to support these allegations. It does not charge the defendants with any knowledge, at the time they came to terms with Plant, of any negotiations

between him and the manufacturers referred to. No reference appears to have been made to them or their doings during the defendants' negotiations with Plant, and no reason is found to believe that apprehension lest he might conclude some arrangement with them induced in any degree the defendants' final agreement with him. Were it important, it might be added that so far as the evidence can be said to show anything regarding Plant's intentions toward them, it shows that he never really meant to enter into any arrangement with others if he could get the defendants to take off his hands everything which he desired to sell; and no purchase so extensive as this appears to have been at any time contemplated by the manufacturers mentioned in the petition."

9. MISSTATEMENTS AS TO FACTS IN MR. CHAPMAN'S DEPOSITION REGARDING INFRINGEMENT OF PLANT PATENTS BY UNITED COMPANY MACHINES.

In Mr. Chapman's deposition (R.Vol. 2, pp. 2836 (91–119)) controverting Mr. Howard's testimony that fifteen United Company machines infringed twenty of Plant's patents, in which Mr. Chapman took issue as to six only of those fifteen machines, Mr. Chapman misstated the facts as to the construction of the infringing mechanism of three of the six machines.

As to Loading and Attaching Machine—Model B: McKay Automatic Heel, Mr. Chapman admitted ignorance of the matters inquired about in Cross-Ints. 41 and 42 (R. Vol 2, p. 2836 (98)), which interrogatories were directed to the essence of the infringement set forth in Defendants' Exhibit 274, R. Vol. 5, p. 751. Compare his answer to Int. 20 (R. Vol. 2, p. 2836 (92)), as to which Mr. Browne comments, "Mr. Chapman is wrong as to the facts" (R. Vol. 2, p. 2836 (130), Int. 6).

Again, attention is called to a portion of his testimony regarding Indenting and Burnishing Machine: Goodyear Welt:—

> "*Cross-Int.* 96. Did it also comprise worm and worm wheel connections geared to and to rotate said table in any of its positions?
>
> "*Ans.* No.
>
> "*Cross-Int.* 97. What mechanism referred to in my last question did it lack?
>
> "*Ans.* All the mechanism stated by the question."

"*Cross-Int.* 100. And you feel as positive in this matter as you do with regard to your other statements which you have made as to machines which you examined?

"*Ans.* Yes" (R. Vol. 2, p. 2836 (109)).

Mr. Browne testified that the machine had the mechanism referred to in Cross-Int. 96, above quoted, "which Mr. Chapman evidently overlooked in his examination of this machine" (R. Vol. 2, p. 2836 (127)).

In his testimony in regard to Pulling-over Machine—Model B: Rex, Mr. Chapman was handed a copy of patent to Ashton, No. 1,030,763, June 25, 1912 (Defs.' Ex. 351, a physical exhibit), and was asked:—

"*Cross-Int.* 136. . . . whether or not it illustrates in the drawings and describes in the specification any features of the pulling-over machine examined by you and in regard to which you testified in your direct examination?

". . . (Objection not quoted.)

"*Ans.* I do not recognize in the patent anything of the construction of the machine which I examined as stated by me in my direct examination" (R. Vol. 2, pp. 2836 (117, 118)).

Mr. Browne testified that this Ashton patent showed in one of its figures substantially the infringing construction of the machine in question, and that "Mr. Chapman when he testified evidently had forgotten the construction of the Model B Rex machine" (R. Vol. 2, p. 2836 (124), Int. 4). Mr. Chapman also testified that he found a gauging device in that machine

"consisting of a pivoted, bent lever, having in one end an aperture through which had been thrust a nail" (R. Vol. 2, p. 2836 (117), Int. 134).

Mr. Browne stated,—

"This is not true of the Model B Rex machine" (R. Vol. 2, p. 2836 (124), Int. 4).

Thus the record shows that, although he was afforded "ample opportunity for the examination of all the machines" about which Mr. Howard testified (Stipulation, R. Vol. 2, p. 2836 (158)), Mr. Chapman did not, when he testified, remember the construction of the infringing parts of the machines, but nevertheless had no hesitation in making positive statements about them. It is

submitted that this evidence as to his superficial work casts a cloud upon all his testimony in this suit.

10. FINDING OF THE DISTRICT COURT AS TO THE REASONS FOR THE PLANT PURCHASE.

The record completely supports the conclusions which were reached by the District Court, after summarizing the evidence which we have reviewed:—

> "The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition. No such competition or prospect of competition at the time is proved as would justify such a conclusion. . . . The property acquired being proved to have been worth the amount paid, the argument that the defendants were so anxious to hold a monopoly as to be willing to pay $6,000,000, or any other large sum, in order to get rid of a competitor, or that this was done in pursuance of a general plan conceived in 1899, fails completely" (Dodge, J., R. Vol. 1, pp. 1145, 1146).

11. THE PRACTICAL IMPOSSIBILITY OF SEGREGATING THE PLANT INVENTIONS IS IN ITSELF STRONG EVIDENCE THAT THE PLANT PURCHASE WAS A NORMAL AND LAWFUL TRANSACTION.

We have seen (*supra*, pp. 503, 504, 507, 508, 511–514) that the Plant inventions have been assimilated into the United Company's machines and that the United Company has made improvements upon those inventions which are built upon and around them, interwoven with them. To take those inventions out of the United Company's machines would leave unworkable, worthless skeletons; there are no machines to take their places, for the machines which they superseded have been junked; and the United Company would have to develop new machines and build tens of thousands of them to take the places of the stripped machines. This ruthless surgery would set back the development of the industry a full decade.

It is respectfully submitted that this extraordinary situation

is in itself the strongest evidence that the Plant purchase was a normal and lawful step in the normal development of the business of a concern which is engaged in inventing, manufacturing, and putting out patented machines.

12. CONCLUSION AS TO THE PLANT PURCHASE.

It is established by the record and the findings of the District Court that Plant was not in competition with the United Company; that he did not desire or intend to go into the shoe machinery business; that his sole purpose was to sell his patents to the United Company so that their purchase was a mere purchase of inventions made for the express purpose of being so purchased and combined with the United Company's patents; that the machines which he had constructed and installed in his own shoe factory were crude, really only experimental, constantly breaking down, and making shoes by obsolete and very expensive methods; but that in those commercially unsuccessful machines Plant had incorporated some very valuable inventions which were capable of use in the United Company's superior machines to the great benefit of the industry; that both the machines of Plant and those of the United Company infringed a large number of patents owned by the other so that there would have been a great amount of litigation which would have resulted in chaotic and intolerable conditions; that the great benefit to the industry which would result from incorporating Plant's valuable inventions in the superior machines of the United Company and from the avoidance of the great amount of threatened litigation was the sole reason for the purchase of Plant's patents by the United Company; and that the Plant patents were worth more than the United Company paid for them.

The lawfulness of the Plant purchase can hardly be questioned. The purpose of the purchase was to enable the United Company to perfect its machines and avoid chaotic litigation. The transaction was, therefore, not unlawful because of the intent with which it was done. And obviously it was not inherently unlawful. Indeed, the evident advantages to the shoe machinery industry, and, consequently, to the shoe manufacturers, of combining the Plant patents with the United Company's patents,

were so obviously beneficial to the public generally and so normal and natural a transaction that, like the formation of the United Company considered in *United States* v. *Winslow*, supra, it was not only not inherently unlawful, but no intent could make it unlawful.

As we have stated, the Sherman Act is directed only against restraints which prejudice the public interests.

In *Nash* v. *United States*, 229 U. S. 373, the court said (p. 376):—

> "... only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, the court said (p. 174):—

> "In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented."

In the present case, as we have clearly shown, had the Plant purchase not been made, the public would have been deprived of those machines which combined the latest and best improvements known to the art of shoe machinery, and shoe manufacturers would have been obliged to use far less efficient machines. A transaction which necessarily resulted in so great benefit to the industry, a result which could not otherwise have been accomplished, can clearly not be said to "prejudice the public interests" or produce "harm to the general public." On the contrary, such a transaction is one which public policy must necessarily favor from its self-evident advantage to the public, whatever the motive or intent which induced it. As such a transaction cannot result in "harm to the general public" or "prejudice the public interests," it is inherently lawful and cannot fall within the prohibitions of the Sherman Act.

If—which we deny—it could be contended that the transaction was not so beneficial to the public as to be necessarily

lawful, but that it was a transaction which unlawful purpose might bring within the prohibition of the statute, the record clearly shows that no unlawful purpose existed. Being entered into for the purpose of enabling the United Company to produce more efficient machines and to avoid chaotic patent litigation, which would not only have been very annoying and expensive, but would have resulted in preventing its putting out even as efficient machines as it was then manufacturing, the transaction was clearly a "normal" contract entered into for the purpose of "reasonably forwarding personal interest and developing trade." (*Standard Oil Co.* v. *United States*, supra.)

Can it possibly be contended that the purchase was not made for the direct purpose of acquiring and using the Plant patents and ending the existing and threatened patent litigation? We do not understand that the United States denies that these purposes existed. While the United States has attempted to minimize the value of the patents, it must admit that they were of great value and that they were bought to be used by the United Company and that they have been so used. The contention of the United States apparently is that the United Company feared that Plant might become a competitor, and that this was an additional inducement to make the purchase. The record clearly refutes this contention, showing that the officials of the United Company purchased at Plant's solicitation, that they would not purchase until after a thorough examination had convinced them that the patents would be of great value in increasing the efficiency of the United Company's machines, and that they realized the chaotic patent situation which existed and the intolerable conditions which would result. If it can be doubted that these were the sole purposes which actuated the transaction, it certainly cannot be questioned that Plant's patents were of great value, that the United Company desired to use them, and the most that can be contended is that possible competition by Plant was an added motive for the purchase. But if possible competition by Plant influenced the United Company, which we deny, this can only have been because the United Company believed Plant's patents to be so valuable that he would be able to offer machines attractive to customers which the United Company by reason of Plant's patent monopolies could not make. Plant had no established shoe machinery

business or good-will. He had no better or greater opportunity to compete with the United Company than any other one of thousands of American business men except in one respect, namely, his patents. If he could enter the shoe machinery business successfully, it would be solely because his patents enabled him to offer machines which the United Company was legally restrained from making. In other words, if the United Company feared competition, it was a competition which consisted in offering machines which the United Company could not manufacture, and, therefore, a competition which it could not meet on equal terms and which neither public policy nor the Sherman Act would prohibit it from meeting by the acquisition of the patents. In attempting to meet such competition, the United Company would be under a legal restraint, the restraint imposed by the lawful patent monopolies held by Plant. The Sherman Act was intended to prevent unnatural, abnormal restraint imposed on "the free flow of commerce." The removal of a restraint imposed by patent monopolies through the purchase of such monopolies cannot constitute the imposition of a restraint on the free flow of commerce such as the Sherman Act was designed to prohibit.

For a further discussion of the right to acquire patents see *supra*, pages 462–465.

VII.

THE CHARGE THAT THE UNITED COMPANY COMMITTED VARIOUS UNFAIR, OPPRESSIVE AND MONOPOLISTIC ACTS IS UNFOUNDED.

In Section VI of the petition (R. Vol. 1, p. 999) defendants are charged with having made various threats or committed various unfair and oppressive acts. No specific instances are set out in the petition, but a bill of particulars, setting forth the specific instances charged, was filed during the course of the trial (R. Vol. 1, p. 1075). The bill of particulars sets forth over fifty different alleged acts or threats. **As to at least thirty no evidence whatever was offered by the United States. This fact illustrates the unfounded character of the charges.**

Some instances consisted merely of requests by the United Company to lessees that they conform to the terms of their leases. In a few cases the United Company undertook to enforce such terms. In several instances these leases had been put out by the constituent companies prior to the formation of the United Company. In every such instance if there is criticism it must be with the terms of the lease and not with the request to observe or the enforcement of these terms.

Some instances consisted of alleged threatening statements of officers of the company made to other shoe machinery manufacturers as to what it would do. In no case was the alleged threatened action taken. These alleged threats are all disputed by the company and involve the credibility of witnesses and the truth or probability of their statements.

Practically all of the evidence introduced by the United States with respect to these alleged threats or acts comes from patent owners or competitors who have sought unsuccessfully to sell out their property to the United Company, or from lessees with whom the company has had a disagreement.

The number of instances referred to by the United States is surprisingly small, considering that the entire business life of the company has been examined and extraordinary efforts made to put in evidence all acts or remarks of the officials or agents of the company occurring over this extended period of time, as

to which any contention of unfairness or dissatisfaction could be made. The company has over 1,000 lessees with whom it is constantly in touch through its service men and with whom it is constantly dealing, making leases for new machines, taking back old machines, checking up royalties and furnishing service and new parts. Owing to the great variety of machines, of findings, and of supplies used in the shoe machinery business the United Company is constantly being asked to acquire new patents and businesses. For example, 493 different ideas, suggestions, and inventions have been submitted to the company by persons not employed by it as inventors, and have been declined (Defs.' Ex. 222, R. Vol. 5, p. 370). Over 75 different concerns have been offered for sale to the United Company and their purchase declined (Defs.' Ex. 233, R. Vol. 5, p. 527).

The District Court, after considering the facts in respect to such of these transactions as were relied on by the United States in argument, concluded as follows (R. Vol. 1, pp. 1152–3):—

> "The history of the proceedings in this case indicates that efforts which may fairly be described as extraordinary have been made to bring before the court, so far as possible, all sayings or doings of any of the numerous defendants or their representatives, during the period beginning with 1899 and ending with 1911, which might afford ground for charging them with oppressive, coercive, or like unfair conduct toward competitors of the United Company or the public. In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignificant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects."

In view of the District Court's finding and the complete failure of the United States to substantiate these charges, it hardly seems necessary to consider the evidence relating to them in detail; however, a detailed statement of the evidence is given in the Appendix (see Appendix, pp. 88–131) and the following summary inserted in the brief:—

1. The United States charged that the United Company removed its machines from Peter Tessier & Company's factory where competing machines were used.

The evidence shows that Tessier leased seven machines from the United Company. He obtained other machines to do his work and discontinued entirely the use of the United Company's machines except that he used the auxiliaries without paying anything for such use. The United Company therefore removed its machines which were not being used at all or were being used without payment (see Appendix, p. 88).

2. The United States charged that the United Company removed its machines from Bottomley's factory where competitors' machines were used.

The evidence showed that Bottomley had removed the United Company's machines from his factory and notified it that he would pay no further royalties on them. The United Company therefore merely removed machines which the lessee no longer desired to use or pay for (see Appendix, p. 90).

3. The United States charged that the United Company threatened to take back its machines from T. D. Barry Company in order to force the removal of competing machines.

The evidence showed that the T. D. Barry Company gave up the use of its Goodyear Welters, but continued to use Goodyear auxiliary machines without paying any royalty for them. The United Company, therefore, brought a replevin suit to take back its machines. The dispute was adjusted, and Barry retained the United Company's machines (see Appendix, p. 92).

4. The United States charged that the United Company threatened Curtis & Jones and caused them to remove from their factory other machinery.

The evidence shows that Curtis & Jones in 1897 had agreed with the old Goodyear Company to use its turn machines exclusively in consideration of a 50% reduction in royalties. They broke this agreement and their attention was called to it and they gave up the use of the other machines. The superintendent of the factory testified he made up his mind that the Goodyear machines were better and cheaper to operate and that the United Company's service was preferable (see Appendix, p. 94).

5. The United States charged that Hilliard & Tabor installed a Haverhill Turn Sewing Machine and the United Company threatened to make the terms of its lease covering its turn machines more onerous if the lessee used the Haverhill machine.

The evidence shows that Hilliard & Tabor had a Goodyear Turn

Machine and then installed a Haverhill machine, continuing to use the Goodyear auxiliaries without payment of royalty. After some months Mr. Hilliard happened to be at the United Company's office and his attention was called to the situation, and he was offered the initial payment form of lease if he wished to continue using the Haverhill machine (see Appendix, p. 97).

6. The United States charged that the Harsh & Edmonds Shoe Company desired to take a clicking machine from a competitor and was warned and threatened not to, and therefore took the United Company's machine.

It appears that the Harsh & Edmonds Shoe Company obtained a clicking machine from the Richardson Company. Mr. Harsh objected to the United Company's lease covering clicking machines. He testified that Mr. Willson, of the United Company, told him, or, as appeared on cross-examination, he thought intimated to him, that it would be better for him to cease his activity against the United Company and take things as they were. Mr. Willson pointed out to him that he already had another lease of the same character. Mr. Willson was dead at the time of the trial. Mr. Harsh took the United Company's machine, which he admitted was the only commercial machine in the market. He also admitted that Willson's advice was sound (see Appendix, p. 99).

7. The United States charged that a threat of like character was made to George A. Learned.

Mr. Learned testified he had Goodyear machines. He later obtained a Haverhill machine and claimed that Mr. Winslow told him he must pay on all the shoes he made or be driven out of business, and the least the United Company would do would be to take out its machines. This evidence was absolutely contradicted by Mr. Winslow and by Mr. Brown, who was present at the interview. Mr. Endicott testified that Learned later admitted he had been mistaken. No action was taken by the United Company, and Learned is still using the Haverhill machine (see Appendix, p. 101).

8. The United States charged that William Barbour, one of the directors of the United Company, made threatening statements to James N. Darrah, of the Standard Shoe Machinery Company, a competitor of the United Company.

Mr. Darrah testified Mr. Barbour told him he was making a

big mistake not to sell; that if the United Company could not buy out its competitors it crushed them; that he could not get any money to compete, as the United Company's influence was too great with the banks both in Boston and New York. Mr. Barbour absolutely denied making any such statements. Mr. Darrah was shown to be without financial responsibility or settled business (see Appendix, p. 103).

9. The United States charged that E. P. Hurd, of the United Company, threatened H. E. Cilley.

Mr. Cilley testified that he interviewed Mr. Hurd as to the sale of a leveling machine which Cilley had invented, and that Mr. Hurd said, "Cilley, you are thick; if you were offered $15,000 or $20,000 you ought to be well satisfied," and further told him that he could not do business except on the United Company's sufferance. It did not appear that Cilley was interfered with in any way. Cilley had been in litigation with the United Company since 1903 (see Appendix, p. 106).

10. The United States charged that Mr. Winslow threatened Charles H. Morse, who was endeavoring to market the Frechette Pegging Machine and a slugging machine.

Mr. Morse testified he called on Mr. Winslow about a purchase of his business. Mr. Winslow said, "You don't suppose we are going to let you put them on the market" (meaning Mr. Morse's machines). Mr. Winslow denied making such a statement. It further appeared probable that Mr. Morse had not seen Mr. Winslow since the United Company was formed, and that the conversation referred to, if it took place at all, occurred before the United Company was formed. It did not appear that Mr. Morse was interfered with in any way (see Appendix, p. 107).

11. The United States claimed that Mr. Winslow made threats to Messrs. Merrick and Luitweiler, who were engaged in manufacturing a lockstitch machine. The charge was not included in the bill of particulars. Messrs. Merrick and Luitweiler testified that they had a conversation with Mr. Winslow at his hotel in 1905, at which he stated in effect that he would not allow them to make a dollar, and that eventually their business would come around to him and he would take it. Mr. Winslow denied making any such statements to either of them. As bearing on the credibility of their evidence it should be noted

that Merrick and Luitweiler claimed that Mr. Sampson, of the United Company, solicited the conference. They admitted that they invited Sampson off for a sail and lunch on Merrick's yacht, and during the trip broached the subject of a sale of their patents and machines to the United Company. Mr. Sampson's testimony contradicted theirs and showed that they solicited the conference. Nothing ever came of the matter, nor is it contended that Mr. Winslow's threats, if made, were carried out (see Appendix, p. 108).

12. The United States charged that E. P. Hurd, of the United Company, threatened G. H. Clark and refused to let him have one of the United Company's machines to experiment with.

Mr. Clark testified he had invented a method for moulding or lasting shoes and put one of his machines in the Richardson factory; that he called on Mr. Hurd to get a lockstitch machine to put in the same factory and Mr. Hurd told him the United Company must protect its interests and not put one of its machines into a factory for Clark to experiment with (see Appendix, p. 110).

13. The United States charged that Kimball & Hadley, who manufactured needles and awls, were threatened by the United Company, and that in consequence they sold their business to the United Company.

Hadley testified that Bayley, an agent of the United Company, told him that he could not manufacture needles as cheap as the United Company, which could give them away if necessary. Mr. Bayley was in a sanitarium and could not testify. Mr. Hadley also testified that certain manufacturers had stated that the use of his needles and awls was in violation of the leases of the United Company. This testimony was absolutely denied by the manufacturers, and no lease of the United Company does contain such a provision. Hadley had been unsuccessful in litigation with the United Company and had been enjoined by the court (see Appendix, p. 111).

14. The United States charged that three operatives of the Plant factory were employed by Willson, general manager of the United Company, to organize a union of the employees at the factory and start a strike.

These three men testified they called on Mr. Willson, who agreed to pay them $2,000 apiece and their expenses if they

would organize the employees of the Plant factory and start a strike. They testified they spent $1,500 in entertaining the employees and giving them a good time. They testified their wages averaged about $15 a week, and this sum represented the savings of eleven or twelve years. They had no papers, receipts, or written evidence of any kind to support their story, claiming they had destroyed all their papers and the list of operatives' names. Their story was flatly contradicted by nine operatives in the Plant factory, who testified that they worked in the same room with the men who claimed they were so employed, and knew them well, and they had no knowledge of any union being organized or of any strike being attempted, and that no money was spent among the employees as testified to.

The testimony of these witnesses is incredible (see Appendix, p. 119). The District Court said of it (R. Vol. 1, p. 1152):—

> "Not only does the evidence of these three witnesses appear unworthy of belief in view of its improbability, its lack of corroboration, and the evidence tending to discredit it, but it is difficult to understand how the petitioner could seriously have expected the court to accept such testimony, or have considered itself justified in offering it."

15. The United States charged that in 1910 the agents of the United Company induced a former employee of the Plant Company to demonstrate one of the Plant machines.

This was not denied, but was a harmless performance (see Appendix, p. 119).

16. The United States charged that Mr. Winslow threatened C. S. Johnson and duplicated his machine.

Mr. Johnson testified that he was connected with a company which put out a leveling machine, that he agreed with Mr. Winslow upon a sale to the United Company of the machine, but the contract for purchase when prepared was not satisfactory to him and he declined to sign it. Mr. Winslow suggested he had better sign it because he was going to have the business anyway, or words to that effect, and that shortly afterwards the United Company put a similar machine on the market. Johnson admitted he had a grievance against the United Company and was hostile to it (Appendix, p. 123). Winslow denied any such conversation, and testified that the United Company had never interfered with Johnson's business.

17. The United States charged that Mr. Winslow threatened Frank L. Harmon, an inventor, and treated him unfairly in various ways.

Mr. Harmon testified he was developing some machine, and, having no business experience, he came to Mr. Winslow for information, who advised him that he was foolish to go into the machinery business with the small amount of capital he had. This conversation took place about twenty-five years before, and long previous to the formation of the United Company (see Appendix, p. 124).

18. The United States charged that Carlton & Hunt were using machines of the Haverhill Shoe Machinery Company and desired to obtain welt machines of the defendants, and were informed they would have to discontinue the use of the Haverhill machine or pay a prohibitive installation charge on their new machines.

The only evidence in support of this charge was the hearsay statement made by Harriman, an agent of the Haverhill Company, to the effect that Mr. Hunt had told him he could not get United Company's welt machines unless he discontinued using the Haverhill Turn Machine (see Appendix, p. 130).

19. The United States charged that one Webster was operating two Pettingill nailing machines, and because of this fact could not get pulling-over machines from the United Company without paying excessive installation charges, and he therefore removed the Pettingill machines.

Webster testified that the United Company offered him pulling-over machines without restrictions if he paid an initial payment or, as an alternative, offered him a restricted lease without the initial payment. The initial payment, he said, would cost him more than it would if he used the United Company's entire machinery (see Appendix, p. 131).

Charges as to Rebates.

The United States charged that the United Company granted rebates to manufacturers to effect an exclusive use of its machinery, (1) by making distribution of its stock to users of its Goodyear machines, and (2) by cancelling the royalty on the Gem Insole Machines to users of its other machinery.

1. On June 10, 1910, the United Company sent a circular letter to its lessees in which it stated that beginning January 1, 1910, it would create a fund by investing each year for three years in the common stock of the United Company a percentage increasing each year of the amounts received from lessees for the use of Goodyear Welting, Stitching, and Turn Sewing Machines in the United States. At the end of three years it agreed to distribute the entire amount of stock held in the fund among those lessees who used the Goodyear Welting, Stitching and Turn Sewing Machines, and who should have faithfully observed the covenants of their leases, each lessee to receive a share of the fund proportionate to the amounts paid by him for the use of such machines. It agreed that not less than 15% of the amount received from welting and stitching machines and 10% of the amount received from turn machines would be so invested (P.'s Ex. 146, R. Vol. 4, p. 1067).

This offer did not require an exclusive use of the United Company's machines, but merely proposed to return a portion of the royalties received from lessees who used Goodyear welting, stitching, or turn machinery if they observed the covenants of their leases which, of course, they were morally and legally required to do. It amounted merely to a reduction in the price charged for this machinery, such reduction to be represented by stock of the United Company. This was not unlawful.

Wilder v. *Corn Products Co.*, supra.

The Attorney-General was notified during the pendency of this suit that the United Company proposed to carry out this plan, and he offered no objection to it (R. Vol. 1, p. 979, and Defs.' Ex. 344, R. Vol. 5, p. 953).

2. On January 29, 1900, the executive committee of the United Company voted that a rebate be granted to exclusive users of the company's machines, such rebate to be made by quarterly payments of amounts equal to the sums paid by them respectively as royalty on the Gem Insole Machines during the quarter for which the rebate was made (R. Vol. 1, p. 351, line 39–p. 352, line 6).

The United Company after it was formed acquired the Gem Insole Machines, which had been put out previously for a royalty charge of one-half cent per pair (R. Vol. 1, p. 430, lines 11–13). This machine was used in the manufacture of Goodyear Welt

shoes. It was practically made, upon its acquisition, an auxiliary of the Welt Set. A number of these machines were already out on leases, and the machine was therefore put out by the United Company on a separate lease, but the royalty was repaid or credited to manufacturers who used the Goodyear Set of machines. It was necessary to have a general vote to apply to machines already out on lease as well as those which might be put out, and that was the purpose of the general vote (R. Vol. 1, p. 852, lines 33–41; p. 664, lines 31–36).

VIII.

THE UNITED COMPANY HAS NOT MADE EXORBITANT PROFITS AS CHARGED IN THE PETITION.

The petition charges that the United Company has made enormous and unreasonable profits (R. Vol. 1, p. 1026). This charge is without foundation.

The only purpose of this allegation is to support the charge that one object of the defendants' conspiracy or project was to "enhance the cost of said machines to users thereof" (R. Vol. 1, p. 997). As the record shows that the United Company has very materially reduced the cost to shoe manufacturers of their machines by removing initial payments, reducing, in certain cases, royalties and giving shoe manufacturers enormously improved machines, this charge of intent to enhance the cost of shoe machinery to shoe manufacturers is proved to be absolutely unfounded. If the economies and improvements introduced by the United Company have enabled it not only to reduce the cost to shoe manufacturers of their machines, but also to make large profits itself, this shows no illegal or unlawful purpose.

But the charge that the United Company has made unreasonable profits is without foundation.

The United States in support of this charge called Richard N. Morton, auditor of the United Company and of the United Shoe Machinery Corporation. His testimony showed that the earnings based on the net assets of the United Company and the United Corporation for the period from March 1, 1905, to March 1, 1911 (the period chosen by the United States), were 14.01% and the average rate per cent. of cash dividends to net assets was 7.10% (R. Vol. 1, pp. 359–360) (Defs.' Ex. 95, R. Vol. 5, p. 24).

Mr. Morton showed that the allegations in the petition that the United Company had made $45,314,261 in the period from March 1, 1905, to March 1, 1911, was due to erroneously combining the earnings of United Shoe Machinery Corporation and its subsidiary, the United Company, thus including a large part

of its earnings twice (R. Vol. 1, p. 360). The charge in the petition that these earnings were made on $20,000,000 of invested capital was not true (R. Vol. 1, p. 360). The net assets at all times during this period exceeded this amount and in 1910 amounted to $40,771,821.

In Mr. Morton's figures practically no value is placed on the patents owned by the United Company. The company has carried its patents during this period at only $400,000. The patents on the 150 new machines developed by the United Company, including the valuable patents on the pulling-over machine, which cost the United Company nearly $1,000,000 to develop, the clicking machine patents and numerous other valuable patents, including patents on thirty-nine machines which perform work previously done by hand, which have been invented and acquired by the United Company since its organization, have not been capitalized. If these patents were included in the assets at a fair valuation the percentage of profits would be greatly reduced.

The District Court found as follows with respect to this charge (R. Vol. 1, p. 1135):—

> "No support is found in the evidence, for the charge in the petition (Par. X) that 'enormous and unreasonable profits' had been made. . . . Nothing shown by the evidence warrants the conclusion that profits unreasonably out of proportion to the extremely large cost at which the business has been developed and is maintained, the great investment of capital it has required, and the enterprise, inventive skill, and business ability devoted to it, have been realized. Nor has it been made to appear that the charges made for the privilege of using the machines are exorbitant or unreasonable; especially in view of the great benefit to manufacturers using them, in lessening their cost of production."

IX.

FORMATION OF THE UNITED SHOE MACHINERY CORPORATION.

The petition charges (par. Ninth, R. Vol. 1, p. 1024) that the United Shoe Machinery Corporation was organized in 1905 and acquired practically all the stock of the United Company in order to provide means for distributing a portion of the accumulated surplus of the United Company and to secure better means for destroying competition and monopolizing commerce.

The United Shoe Machinery Corporation issued its preferred stock, share for share, for preferred stock of the United Company and issued 1½ shares of its common stock for each 1 share of the common stock of United Company (R. Vol. 1, p. 358, line 27 ff.).

The petition admits that the business of the United Shoe Machinery Corporation has been confined to holding the stock of the United Company (R. Vol. 1, p. 1025). No other evidence was introduced relating to the United Shoe Machinery Corporation. The charge that it was formed to restrain trade or monopolize more effectively is therefore shown to be without foundation.

X.

THE UNITED COMPANY HAS NO UNLAWFUL MONOPOLY OF SHOE MACHINERY. THIS FACT NECESSARILY DISPOSES OF THE PRESENT SUIT.

1. Introductory Statement.

The petition charges that the defendants in or prior to 1899 "determined to acquire a complete monopoly of the manufacture, sale and lease of shoe machinery" and that the various acts described in the petition were steps in carrying out this unlawful project (R. Vol. 1, p. 994). After setting forth the various acts charged it alleges that the defendants have thereby acquired a monopoly in shoe machinery (R. Vol. 1, p. 1027).

It is essential to the case of the United States that it prove the existence of this monopoly.

In the first place, there is no evidence of the unlawful plan or project charged in the petition or of any unlawful purpose unless it can be inferred from the acts of the defendants as proved in the record. If these acts during a period of nearly twelve years have not resulted in an illegal monopoly, it is obvious that they are not of a character to cause such result, and, therefore, cannot well give rise to any inference of an unlawful plan to obtain an illegal monopoly. An unlawful plan to accomplish an illegal result cannot be shown by proof of acts which are either not adapted to or cannot accomplish the result.

In the second place, the purpose of this suit is primarily (1) to have the United Company dissolved because it is an unlawful monopoly, and (2) to have the leases declared unlawful because they have created or aided in creating this unlawful monopoly. If the United Company is not an unlawful monopoly, it cannot be dissolved. If no unlawful monopoly exists, it is evident that the leases have had no unlawful effect, *i.e.*, they have not created or aided in the creation of an unlawful monopoly, and they, therefore, cannot be held unlawful on the ground that they have done so.

2. The United Company has not obtained a Monopoly of all Shoe Machinery as Charged in the Petition.

The District Court said with reference to this charge (R. Vol. 1, p. 1127):—

> "The restraint or monopoly alleged in the petition is restraint or monopoly of interstate commerce in 'any and all kinds of shoe machinery,' *i.e.*, in shoe machinery generally.
> "But it appeared early in the trial that no such charge could be proved, because neither the business of the component companies in 1899 nor that of the United Shoe Company from its beginning until the bill was filed related to 'all kinds of shoe machinery.' Both were always limited to certain kinds only. This was finally conceded. . . ."

There is a large field of shoe machinery not manufactured by the United Company at all, such as all the different machines for sewing the uppers of shoes (machines exceedingly important in the manufacture of a shoe), and many others.

For many years the United Company did not deal at all in the McKay Sewing Machine, which attaches the soles of 50% of all shoes made, and such machines were dealt in and supplied by many machinery men and can be made by any one, and even now the United Company manufactures only a special, improved McKay Sewing Machine, and McKay Sewing Machines are both sold and leased by it.

In addition there are manufacturers who, in competition with the United Company, furnish every kind of a machine needed in the manufacture of shoes. Of course such competitors do not manufacture machines exactly like the machines of the United Company, because these machines are made under patents and the United Company has a lawful monopoly of their manufacture.

The failure to prove the charge of monopoly in all shoe machinery is illustrated by the following facts:—

R. P. Hazzard, a shoe manufacturer, making Goodyear Welt shoes, with an output of 5,000 pairs a day (R. Vol. 1, p. 641, line 10), testified that he used in the Bottoming Department all the machines that the United Company produces and he could get (R. Vol. 1, p. 641, lines 26–28; p. 651, lines 10–13).

A complete list of the machines in his factory appears in Defendants' Exhibit 262 (R. Vol. 5, p. 707). It shows that Mr. Hazzard had a total of 746 machines in his factory, of which only 327, or less than 44%, were obtained from the United Company. Counting as United Company machines only those which cannot be bought (that is, excluding General Department machines, which can be bought outright or bought elsewhere), this list shows that Mr. Hazzard had only 296 United Company machines out of a total of 746 machines; in other words, that less than 40% were United Company machines. This list further shows that Mr. Hazzard had 258 machines in his stitching-rooms of which only 8 were obtained from the United Company.

Jonathan Brown & Sons manufacture McKay shoes, the class of shoes most largely made in the United States. Mr. Brown stated that he wished every machine in his factory was under the control of the United Company on account of its service (R. Vol. 1, p. 731, lines 3–12). He, therefore, took as many United Company machines as he could use. A list of the machines in his factory is given in Plaintiff's Exhibit 269 (R. Vol. 4, p. 1441). This list shows that out of a total of 424 machines only 128, or 30%, were obtained from the United Company. Excluding from the list of United Company machines General Department machines, which could be bought outright from the United Company, or bought elsewhere, the list shows that only 64 machines, or 15%, were United Company machines (R. Vol. 4, p. 1446). This list further shows that out of 191 machines in the stitching-rooms only 6 were obtained from the United Company.

Charles H. Jones was a member of the Shoe Manufacturers' Alliance, a witness for the United States, and a violent opponent of the United Company. His company, the Commonwealth Shoe and Leather Company, had an output of between 6,000 and 7,000 pairs a day, mainly men's welt shoes with a few pegged and Standard Screw shoes (R. Vol. 1, p. 105). A list of the machinery in the factory of this company is given in Plaintiff's Exhibit 279 (R. Vol. 4, p. 1557). This list shows a total of 1,311 machines, of which only 584, or 44%, were obtained from the United Company. Mr. Winslow showed, however, that Mr. Jones had included in this list as obtained from the United Company 73 hand tackers, which are not machines at all, but merely hand tools without power and similar to a hammer, and 41 attachments

placed on other machines (R. Vol. 1, p. 976). Deducting these 114 tools and attachments leaves only 470 machines obtained from the United Company out of a total of 1,197, or less than 40%. Deducting the 119 General Department machines which could be bought outright (R. Vol. 1, p. 976, lines 37–40), leaves only 351 machines obtained from the United Company, or less than 30%. This list further shows that out of 465 machines in the fitting-room only 8 were obtained from the United Company.

The International Shoe Co., one of the largest in the world, did not take more than 50% of its machines of the United Company (R. Vol. 1, p. 183, lines 37–42).

The machines manufactured by the constituent companies, as we have said, occupied a comparatively small portion of the entire shoe machinery field. As to the comparative size of this field, Mr. Winslow testified:—

> "The ratio of the machines of the constituent companies to all shoe machines in 1899 was 26 to 138; that is, in round numbers there were 26,000 of United Company machines and 112,000 of machines of other companies, a total of 138,000 in 1899" (R. Vol. 1, p. 452, lines 11–15.)

The machines of the Goodyear Company were used wholly for making welt and turn shoes. The manufacture of welt shoes increased enormously after 1899, namely, from 22,700,000 pairs out of a total of 172,786,000 pairs to 86,231,000 pairs out of a total of 278,916,000 pairs (Defs.' Ex. 215, R. Vol. 1, p. 424). The number of auxiliary machines also greatly increased. In 1899 only about 50% of the shoes made were lasted by machines, while to-day practically all shoes are so lasted. In spite of this, the percentage of machines of the kind previously put out by the constituent companies as compared with other machines increased very slightly. Mr. Winslow testified:—

> "On the nearest date to the beginning of this suit for which I was able to make a compilation there were 41,602 machines of the Goodyear, heeling, lasting, and metallic departments, compared with 181,000 of all kinds of machines, a ratio of 41 to 181. In this comparison I did not include lasting or metallic auxiliaries, because they are more devices than machines.
>
> "In round numbers the United Company's machines in 1899 were about one in every five and a quarter, and in

1910 about one in every four and a half" (R. Vol. 1, p. 452, lines 16–24).

Defendants' Exhibit 235 (R. Vol. 5, pp. 531–671) sets out each consecutive operation in the manufacture of eight different kinds of shoes most commonly made, viz.: Men's McKay sewed shoes, women's McKay sewed shoes, men's welt shoes, women's welt shoes, women's turn shoes, men's loose-nailed shoes, surface standard screwed shoes, and channel standard screwed shoes. It gives under the heading of each operation the name of the machine furnished by the United Company, where it furnishes the machine for performing the operation, and also the names of other concerns furnishing machines for performing the same operation. An examination of this list will show that for practically every operation performed by machines for which work the United Company furnishes a machine there is a competitor, and in most cases there are numerous competitors prepared to furnish machines for performing the same work. This list further shows that in the manufacture of a man's Goodyear Welt button shoe in a factory where the counters are made by the manufacturer, there are 157 different operations of which 44 are performed by hand leaving 113 different operations performed by machine. The United Company furnishes no machines for 35 of these operations. When the shoes have no buttons and the counters are not prepared by the manufacturer there are 94 machine operations, and the United Company furnishes no machines for 22 of these operations. The United Company has no machines for 35 operations which may be performed by machines in the manufacture of a woman's McKay button shoe.

Defendants' Exhibit 336 (R. Vol. 5, pp. 849–905) is a list of shoe machinery manufacturers or dealers setting out the machines they offer for sale taken from Defendants' Physical Exhibits 311 to 321, which consist of catalogues, letters, and advertisements of such manufacturers and dealers. It shows over 125 different manufacturers and dealers offering every kind of machine, a number of them offering complete lines of machines.

3. The United States of Record Limited its Charge to a Monopoly of Machines for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines and Clicking Machines.

The evidence having utterly failed to support the charge of a monopoly of all shoe machinery, the United States, as stated above (*supra*, pp. 11–13), admitted during the course of the trial that the United Company did not have a monopoly of all shoe machinery. It conceded of record that it limited its charge to a monopoly of

> "machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines and the clicking machines" (R. Vol. 1, p. 839, lines 13–22).

This admission eliminates at once a large portion of the field of shoe machinery and practically restricts the charge made by the United States to a monopoly of machines of the kind manufactured by the constituent companies, namely, welt and turn machines, lasting machines, heeling machines, metallic fastening machines, and pegging machines, and, in addition, the following machines developed by the United Company after its formation, namely, clicking machines, eyeletting machines, and pulling-over machines, and a few of its General Department machines.

In considering the charge of a monopoly in this limited field we submit that the record shows:—

1. That the United Company has not an actual monopoly of these machines, but, on the contrary, that there are active competitors ready to furnish machines for performing any and all of the operations for which these machines furnished by the United Company are adapted;

2. That whatever portion of the field of shoe machinery the United Company enjoys is due, among other things, to the excellence of its machines, which are patented and cannot be manufactured by others,—in other words, to its lawful patent monopolies; to the excellence of its service rendered with its machines, which no other company renders to any satisfactory extent; to its satisfactory business methods and the reasonable terms it offers which have appealed to shoe manufacturers

(as Charles H. Jones, a witness for the United States said, "The terms which the Machinery Company have recently offered their patrons on certain lines of machinery are so liberal that the outsiders cannot compete" (P.'s Ex. 147, Vol. 4, p. 1074)); to the fact that the United Company has specialized in certain lines of machines, notably those for making Goodyear shoes, has instructed, encouraged, and assisted manufacturers in their manufacture and so has created almost entirely the market which they supply.

The constituent companies, due to the patents held by them, had more of the field of shoe machinery at the time of the formation of the United Company than the United Company now has. The United Company has therefore not acquired any monopoly of the machines which were manufactured by the constituent companies, but has merely continued the monopoly already lawfully acquired and held by the constituent companies under their patents.

4. Machines for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines and Clicking Machines can be obtained of Numerous Competitors of the United Company.

The record shows that shoe manufacturers do not take the United Company's machines of the classes enumerated above as to which the United States charges a monopoly because they cannot obtain machines for performing the same work elsewhere. There are competitors ready to furnish these machines to any manufacturer desiring them.

Mr. Winslow testified:—

> "Some of the companies which I have named, like the Hamel Company, Haverhill Shoe Machinery Company, and the R. H. Long Company, are larger than any shoe machinery companies doing business in the United States or anywhere else in 1898, except the three companies which came into the United Company; and they are better fitted to build machines and do build to-day a larger number of different kinds of machines than any concern in existence in 1899, including the three companies that went into the United Company. It is generally true of shoe machinery

manufacturers doing business just prior to the bringing of this suit, as compared with the outside manufacturers doing business in 1899, that they are larger and are capable of furnishing a more complete equipment to factories" (R. Vol. 1, p. 859, lines 22–34).

"The manufacture of shoe machinery does not require any particular kind of machine tools. The standard machine tools used in manufacturing all ordinary machines are the tools that are used in every factory making shoe machinery" (R. Vol. 1, p. 858, lines 25–29).

One of the most important machines used in the bottoming of shoes is the McKay Sewing Machine. This machine was used to attach the sole to the upper of nearly 40 % of the shoes made in 1910 (Defs.' Ex. 215, R. Vol. 1, p. 424). The United Company did not even manufacture this machine for a number of years after its formation nor until 1908. Shoe manufacturers have always been able to obtain it from any one of a large number of dealers in machinery. A list of seventeen American dealers and ten foreign dealers furnishing this machine is set out at R. Vol. 1, pp. 858–9.

Mr. Brown testified that there was no difficulty in buying all the McKay machines he wanted at any time (R. Vol. 1, p. 730, lines 18–22). He had thirteen of these machines, only three of which he had obtained from the United Company (R. Vol. 1, p. 730, lines 23–25). The United Company never in any way interfered with his buying McKay Sewing Machines elsewhere (R. Vol. 1, p. 730, lines 26–30).

In 1909 there were in the principal shoe manufacturing districts 1,488 McKay Sewing Machines, of which 308 were supplied by the United Company and 1,180 by others. In the Lynn District there were 59 McKay machines supplied by the United Company and 367 supplied by others (R. Vol. 1, p. 977, lines 16–31).

John Bulmer, witness for the United States, testified: "McKay Sewing Machines are to be had from about all the shoe manufacturers. They pass through our hands more or less frequently and we rebuild or repair them and furnish them to others. We have no difficulty in getting them at any time" (R. Vol. 1, p. 908, lines 38–41).

This is the case of the bottoming machine used to attach the sole on the type of shoes made in the largest quantities. It is

clear that there are a very large number of manufacturers and dealers ready to furnish the machine and the United Company has furnished only a small percentage of the total machines outstanding.

In respect to other machines of the type of which monopoly is charged, namely, machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines, Defendants' Exhibit 337 (R. Vol. 5, p. 906), compiled from the catalogues, letters, and advertisements of various shoe manufacturers, gives a list of manufacturers and dealers prepared to furnish these machines. Each machine is listed separately and the names of the concerns offering it are given.

Defendants' Exhibit 331 (R. Vol. 5, p. 838) gives a list of concerns putting out welt and turn machines and outsole stitching machines from 1899 to 1911.

Defendants' Exhibit 332 (R. Vol. 5, p. 843) gives a list of Goodyear auxiliary machines and machines which other machinery manufacturers offered for doing the same work.

These lists are too long to copy in full upon the brief. They show the very large number of shoe machinery manufacturers making these kinds of machines and the considerable number of competitors prepared to furnish each kind of machine. Some of these shoe manufacturers are prepared to furnish complete lines of shoe machinery.

C. A. Hamel, who took over the Duplessis Company in 1909, and the Duplessis Company from 1903 to 1909, have done a considerable business in shoe machinery. Hamel testified: "We have a complete set of machines for making turn shoes and a complete set of machines for making welt shoes" (R. Vol. 1, p. 327, lines 15–16). A list of the number of machines put out by the Duplessis Company and Hamel, as its successor, is given at R. Vol. 1, page 326. It shows that they have put out 148 welt and turn machines (86 in this country and 62 abroad); 61 rapid outsole stitchers (41 in this country and 20 abroad); 90 insole channelers (70 in this country and 20 abroad); 55 loose nailers (24 in this country and 31 abroad); and 35 sluggers (22 in this country and 13 abroad).

R. H. Long, through the R. H. Long Machinery Company, is prepared to furnish a complete line of machines (see Physical Exhibits, R. H. Long Machinery Company catalogues, Defs.' Ex.

72, Defs.' Ex. 73). J. J. Doidge, manager of the company, testified that the company was ready to supply a full line of machinery for welt or turn shoes (R. Vol. 1, p. 345, lines 43–44). The company has practically completed and is ready to furnish the trade with 450 outsole stitching machines, 30 welters, 25 lasting machines, and 4 or 5 heeling machines (R. Vol. 1, p. 345, lines 39–42). It can also supply metallic fastening machines (R. Vol. 1, p. 346, line 1).

The Haverhill Shoe Machinery Company offers a full line of machines.

Edwin A. Webster, a director of the company, testified —

> "We [the Haverhill Company] undertake to fill the requirements of a manufacturer whatever they are. We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs or anything else. We are prepared to make good if our people that manufacture machines don't go back on us" (R. Vol. 1, p. 301, lines 4–9).

The Haverhill Company has put out about 25 heel nailing machines (R. Vol. 1, p. 291, lines 10–11); about 60 or 65 turn channeling machines (R. Vol. 1, p. 291, lines 35–36); and about 65 turn and welt machines of which 13 are in the company's own factories (R. Vol. 1, p. 292, lines 7–9), and various other machines (R. Vol. 1, pp. 291–2). The company has machines with 58 shoe manufacturers of whom 38 also use the United Company's machines (R. Vol. 1, p. 299, lines 4–7). It has five agents who solicit orders and keep the machines in repair (R. Vol. 1, p. 292, lines 40–42).

In addition there are several foreign firms prepared to furnish complete lines of machines. John Cavanaugh, a salesman of shoe machinery connected with the Boylston Manufacturing Company, and a witness for the United States, testified that the Standard Rotary Machine Company of England and Johnson of Paris are good-sized concerns and manufacture complete lines of machines. The Standard Engineering Company is ready to do business in the United States and he should say the other companies would do so (R. Vol. 1, p. 957, lines 31–40). The Atlas Company of Leipsic manufactures a complete line of machines for welt, turn, and McKay shoes (R. Vol. 1, p. 342, lines 8–9).

That shoe factories can be equipped without using United Company machines is admitted.

The Framingham Shoe Company, owned by R. H. Long, uses no United Company machines, nor does the Buffalo Shoe Company (R. Vol. 1, p. 30, lines 31–38).

Henry P. Guptill, a witness for the United States, whose factory has a capacity of 2,500 to 3,000 pairs of turn shoes a day, and is therefore a large factory, testified he used no United Company machines (R. Vol. 1, p. 290, lines 11–15, 24–25). Mr. Long testified that the Taylor Shoe Company of Lynn used no United Company machines (R. Vol. 1, p. 232, lines 29–31). Mr. Webster, of the Haverhill Shoe Machinery Company, testified he had machines with 58 shoe manufacturers, of whom only 38 also used United Company machines (R. Vol. 1, p. 299, lines 4–7), thus showing 20 shoe manufacturers not using United Company machines.

The Non-Royalty Shoe Company was organized by the Shoe Manufacturers' Alliance, which was opposed to the United Company, for the purpose of operating a factory without the use of United Company machines. Warren F. McElroy, a member of the Shoe Manufacturers' Alliance, equipped the factory. He obtained no machinery from the United Company, except one General Department creasing machine which he bought. A few machines he obtained from abroad. The factory was equipped to make welt shoes. According to Mr. McElroy's testimony, the Non-Royalty factory made a welt shoe which he considered a better shoe than the Goodyear Welt (R. Vol. 1, p. 194, lines 16–17). The factory was equipped to make 600 to 1,000 pairs a day (R. Vol. 1, p. 194, lines 21–22). The factory closed down in 1913 because of a fire (R. Vol. 1, p. 194, lines 17–18). At that time the machinery was offered for sale though the sale was postponed. A list of the machinery advertised for sale appears in Defs.' Ex. 42 (R. Vol. 5, p. 48).

It did not appear definitely how many shoe manufacturers there are in the United States. The United Company had 1,033 lessees who were shoe manufacturers during the year 1911 (R. Vol. 1, p. 26, lines 38–40). Mr. Donham testified that he did not know how many shoe manufacturers there were in the United States at that time, but should say there were somewhere between 1,300 and 1,500. The census for 1910 showed

somewhere in the neighborhood of 1,300 (R. Vol. 1, pp. 26–27), and the petition alleges there were in 1911 about 1,300 (R. Vol. 1, p. 991).

The District Court found that the defendants were not monopolists, saying (R. Vol. 1, p. 1135):—

> "There is no question that the above described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufacturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion.
>
> "It is nevertheless true that, considering the whole field of machinery for stitching together the bottoms and uppers of shoes, there has all the time been free competition. The use of other machinery to accomplish the purpose has always been open to shoe manufacturers. **In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate means,—better machines. Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success**" (BLACK LETTERS OURS).

5. The United Company Lawfully Occupies the Field it enjoys Under its Patents.

It is of the utmost importance to bear in mind that the United Company's machines are and always have been patented. The United Company, therefore, has a lawful monopoly of these machines. No one else can manufacture machines of this type, and there is a natural presumption that if they are generally or exclusively used this is due to their superiority over other types of machines if such exist and not to any illegal restraint of trade. As said of these machines, by this court, in *United States* v. *Winslow*, 227 U. S. 202, 217,—

> "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of

them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, and it may be assumed that the success of the several groups was due to their patents having been the best."

There is a vital difference between an industry concerned with the manufacture of unpatented goods or machines and an industry in which the product is dominated by patents. In a business free from patents, such as the tobacco or oil business, and the manufacture of cotton or woolen goods, the business is open to any one. It would be surprising to find a single manufacturer refining all the oil, making practically all the cigars, or cigarettes, or all the cotton or woolen goods used in the country. Instantly there would arise a suspicion, if not a presumption, of employment of illegal methods to obtain such a monopoly. Such presumption would be strengthened if it were found that such monopoly were obtained by combining a large number of concerns previously competing which could have continued to manufacture goods if left to operate independently. The same would be true in the case of an industry in which, though the product was patented, the patents covered minor parts or methods and had no important or dominating influence, so that a manufacturer could enter the business and compete without the use of patented inventions.

In an industry like the shoe machinery industry, however, in which patents dominate the entire situation the inference is quite different. It would be difficult to sell machinery of so old a type that the patents on it have expired. Such machinery would express the stage of development which machines had reached seventeen to twenty years previously, and as the art is comparatively young and has been constantly advancing such machines would be so far inferior to the latest patented machines that there would be little market for them. The manufacturer who can hope to engage in this industry successfully is one who has patents either better or as good as those of the manufacturer or manufacturers already in the field. Furthermore, even if a manufacturer holds such patents and is therefore able to enter the industry, he must maintain his position by the acquisition or development of new patented inventions, or his machines will rapidly become antiquated and will not be taken by shoe manufacturers. The rapid development of the industry,

the remarkable increase in efficiency every few years of improved machines makes this essential.

In such an industry dominated by patents either the inventions originally made completely control the industry and no other inventions are made, except improvements or additions to the original inventions, which are of value only in connection with the original inventions, and, therefore, the original inventors or their successors are the only persons who manufacture the patented product, or one manufacturer's patents are almost inevitably better than the patents held by any other manufacturer and his machines are therefore used almost exclusively. In such an industry, then, it is almost inevitable that one manufacturer will dominate the industry lawfully by reason of his patents until such time as the industry has developed to a point where the important inventions have all been made and the patents thereon have expired, and inventors must confine themselves to minor improvements and refinements which are not of vital importance. When that point is reached the industry will be open to all; prior to that time it is for practical purposes open only to those having the best patents. So long as it is dominated by patents the fact that the manufacturer who has the best patents produces the larger share of the product does not give rise to any presumption of illegal methods, but is natural and to be expected.

The United States points to the large proportion of the trade in shoe machinery held by the United Company and the fact that shoe manufacturers must turn to it if they wish the best machines as evidence of an unlawful monopoly. This is entirely unjustified. The right of an owner of patents to exclude all others from making use of his inventions and to draw to himself all trade in the patented articles and, as a consequence, to acquire a commanding position in the industry if no other patented articles are equally good is undoubted. This court in *United States* v. *Bell Telephone Company*, 167 U. S. 224, p. 250, said:—

> "Counsel seem to argue that one who has made an invention and thereupon applies for a patent therefor, occupies, as it were, the position of a quasi trustee for the public; that he is under a sort of moral obligation to see that the public acquires the right to the free use of that invention as soon as is conveniently possible. We dis-

> sent entirely from the thought thus urged. The inventor is one who has discovered something of value. It is his absolute property. He may withhold the knowledge of it from the public, and he may insist upon all the advantages and benefits which the statute promises to him who discloses to the public his invention. He does not make the law. He does not determine the measure of his rights. . . . As the law-making power has prescribed what the public will give, specified the terms and conditions of purchase, indicated the time and methods of determining the right of compensation, he on his part has an absolute legal right to avail himself of all the provisions thus made."

No case presenting facts in any way similar to the present has ever before been decided by this court under the Sherman Act, except the case of *United States* v. *Winslow*, supra, in which the formation of the United Company and its acquisition of the constituent companies holding patents which gave them a practical monopoly of the business was before this court and was held lawful. In no other case heretofore decided has the product which the defendant has been accused of monopolizing been protected by dominating patents which restricted competitors to the marketing of machines of a different and inferior type. In practically every case in which the monopoly of an industry has been charged such monopoly has been created by a combination of competing concerns, the combination of which was not necessary to enable the defendant to produce a satisfactory product. In the present case the United Company was a combination of non-competing concerns and its subsequent acquisitions have been mainly of small non-competing concerns of minor importance having little or no influence in the trade, acquired in order to enable the company to give its customers a broader line, or to acquire patents required to improve its own machines or to settle litigation. In all cases where such acquisitions were made there were left outstanding competitors (R. Vol. 1, p. 465, lines 20–23).

The presumptions and inferences applicable in other cases are inapplicable in the present case. The combination of non-competing concerns is lawful, no intent can make it unlawful, and it, therefore, can give rise to no unlawful inference (*United States* v. *Winslow*, supra). The defendants' patented machines are presumed to be the best of their kind (*United States* v. *Winslow*,

supra), and the fact that the United Company has a large portion of the business of furnishing shoe machinery is therefore natural and gives rise to no inference of unlawful methods.

The District Court said (R. Vol. 1, p. 1136):—

> "The business which the defendants have developed and established is not, and has never been, one in which everybody might freely engage. No one else could lawfully make or use machines containing improvements covered by the defendants' patents. Nor can it be said that the demand for such machines which they have supplied existed independently of the defendants; on the contrary, they have created it by the new methods of shoe manufacture which their improvements have educated and enabled manufacturers to follow. It cannot justly be said that the case is one in which a field of commerce normally belonging to all has been captured by a single concern. The principles applying in such cases cannot justly be applied here."

6. The Constituent Companies had Lawful Patent Monopolies of the Machines They manufactured. The United Company has not acquired Any New Monopoly in These Machines.

If previously to the formation of the United Company the constituent companies had supplied only a small portion of the machines of the kind they manufactured, and there had been competitors furnishing similar machines to a large portion of the shoe manufacturers, and if, after the formation of the United Company, such competitors had disappeared and the United Company had thus acquired all or the greater part of the trade, there might be a presumption or inference that such result was caused by illegal methods which would call for a careful scrutiny of the causes. Such, however, is not the fact. The constituent companies, at the time of the formation of the United Company, had as large, or a larger, portion of the trade in the machines they manufactured as the United Company now holds and this was due to the fact that these machines were the best and were protected by patents which prevented others from manufacturing them. The shoe machinery industry was new and the constituent companies, which held the only practical patents, had

created the industry, and, therefore, naturally had the greater part of the business.

The petition admits and alleges that the constituent companies had a lawful monopoly of the machines they manufactured. It sets out that the principal essential machines used in the manufacture of shoes are lasting machines, welt sewing and outsole stitching machines, heeling machines, and metallic fastening machines (R. Vol. 1, p. 991). It alleges that the principal concerns engaged in the business were the constituent companies (R. Vol. 1, p. 992). It alleges that the constituent companies were "manufacturing their machines and parts thereof under Letters Patent of the United States and of other countries" (R. Vol. 1, p. 993). It then alleges that the defendants, "not being satisfied with the benefit of lawful monopolies and rights belonging to them under Letters Patent of the United States and of other countries," formed an unlawful project to unlawfully expand their monopolies and rights (R. Vol. 1, p. 994). Finally it alleges that the United Company, by the acquisition of the constituent companies, "acquired control of the greater portion of the manufacture of, and trade and commerce in, the machines included in each and all of the groups of machines" mentioned (R. Vol. 1, p. 996).

In other words, the petition admits that the constituent companies had patents which gave them lawfully the greater part of the trade in lasting, welt sewing, and outsole stitching, metallic fastening, and heeling machines. This same fact is shown by the record.

As Charles A. Eaton testified:—

> "I haven't been looking about for other sources to go to to obtain my machines. I don't know of any other system of shoe machinery. This is the only system that is strong enough to commend itself at all. This system is the only one I ever had in mind; it is good enough for me" (R. Vol. 1, p. 755, lines 38–42).

There were other concerns putting out machines, but the constituent companies' machines were the best (R. Vol. 1, p. 532, lines 16–18, 29–32). The constituent companies' machines were doing about all the welting, outsole stitching, lasting, and metallic fastening that was being done in the United States (R. Vol. 1, p. 537, lines 32–37). No other company had put

out heeling machines for several years prior to 1899 and the McKay Company was putting out all of the heeling machines that were being made in the United States (R. Vol. 1, p. 851, lines 27–30).

The reason is obvious. The shoe machinery industry was of very recent origin. Previous to 1850 or 1860 all shoes were made almost entirely by hand (R. Vol. 1, p. 521, lines 15–16). Shoe machinery had only been gradually developed since that date, and, as we have shown, many important machines had not been invented in 1899. In respect to the machines put out by the constituent companies, their invention was new, and important improvements were constantly being made in them. The constituent companies held the patents under which they had originally been constructed; they were the ones most interested in developing and improving the machines and they, therefore, developed the machines, and held the patents on the new improvements. The constituent companies, therefore, had practically all the business as a result of these lawful patent monopolies.

To illustrate: The Goodyear machines were designed to make a welt shoe by machinery. Welt shoes had been made for many years previously, but always by hand. The system ran back to 1870 or 1868 (R. Vol. 1, p. 625, line 20). The Goodyear Company, however, revolutionized its machines about 1890 by the use of new inventions (R. Vol. 1, p. 678, lines 6–9). The auxiliary machines needed to make the system a practical success were only gradually developed and were still in process of development in 1899. The Goodyear Company in 1899 was still endeavoring to introduce its machines into general use. In 1899, after the formation of the United Company, only 22,700,000 pairs of welt shoes were made out of a total production of 172,786,000 shoes (R. Vol. 1, p. 424). The Goodyear shoe was in competition with the McKay shoe. In other words, the industry of making welt machinery had been created by the Goodyear Company; no one else had invented machines comparable to the Goodyear machines, so that inevitably the Goodyear Company, by reason of its patents, had practically all of this new field which it had created.

The lasting machine industry was more recent still. In 1890 very few shoes were lasted by machines except heavy brogans, which were, of course, limited in number and which were lasted

on the McKay & Copeland machine (R. Vol. 1, p. 401, lines 14–16). Shoe manufacturers at that time were sceptical as to the possibility of developing a lasting machine at all (R. Vol. 1, p. 401, lines 24–26). The industry dates from that period only nine years previous to the formation of the United Company. Even when the machines had become commercially useful the difficulty of introducing them, due to the opposition of operatives, the necessity of instructing operatives in the use of the machines, and the scepticism of shoe manufacturers was enormous (R. Vol. 1, pp. 401–3). In 1899 not more than 50% of the shoes made were lasted by machines (R. Vol. 1, p. 402, lines 14–18). Here again we find the lasting machine industry a new industry created by the Consolidated Company and only partially developed after some years of labor and inventions, and protected by patents. The fact that the Consolidated Company put out practically all of the lasting machines was no more remarkable than that the Bell Telephone Company, after the invention of the telephone, was the only concern engaged in making telephone instruments.

7. The Other Machines not manufactured by the Constituent Companies as to which Monopoly is charged were New Inventions developed by the United Company and protected by Lawful Patent Monopolies. Any Monopoly Acquired by the United Company in these Machines was due to the Fact the United Company created them and the Fact that they were Lawful Patent Monopolies.

The pulling-over machines were invented by the United Company and first put out in 1902. The pulling-over operation was previously done by hand exclusively (R. Vol. 1, p. 425, lines 33–34). Various auxiliary machines were developed later (R. Vol. 1, p. 12, lines 1–8). The first lease including auxiliaries was put out in 1905 (R. Vol. 1, p. 12, line 9). The pulling-over machine is a remarkable invention and an entirely new creation. Its development cost the United Company nearly $1,000,000 (R. Vol. 2, p. 2552). It had been in existence at the date the petition was filed only nine years (R. Vol. 2, p. 2542). It is protected by 19 patents (R. Vol. 2, p. 2573), and the auxiliary machines are protected by over 28 different patents (R. Vol.

2, pp. 2523–5, 2572–4. See pulling over system lease, P's. Ex. 39, R. Vol. 3, pp. 363, 364). The fact that no one else had developed or invented a different type of machine which was as satisfactory to shoe manufacturers and in general use is therefore not remarkable; on the contrary, it would be surprising if any one had done so.

The clicking machine was another remarkable invention developed by the Experimental Department of the United Company, which probably saves more money for the shoe manufacturer than any machine ever produced (R. Vol. 1, pp. 425–6). It was first made commercial in 1908 or 1909 and was then first leased (R. Vol. 1, p. 14, lines 30–33). The machine cuts out the uppers of shoes in such a way as to effect an enormous saving of leather; previously to its invention the shoe manufacturer generally cut the upper by a hand knife, resulting in a considerable loss of stock (R. Vol. 1, p. 426, lines 2–24).

Mr. Winslow testified:—

> "The clicking machine was another machine which was developed by the Experimental Department of our company and perhaps saves more money for the manufacturer than any other machine which has been produced" (R. Vol. 1, pp. 425–6, lines 43–44, 1–2).
>
> "Since my knowledge of the shoe art no machine has accomplished so much for the art as the clicking machine" (R. Vol. 1, p. 426, lines 19–20).

This machine had been put out less than three years before the present petition was brought. It is protected by 13 patents (R. Vol. 2, p. 2598). George Harsh, witness for the United States, testified that the United Company's clicking machine was the only commercial machine in the market (R. Vol. 1, p. 198, lines 30–32). It is obvious that the success it had was due to its merit and that the large trade in this machine which the United Company had was due to the lawful patent monopoly which prevented its manufacture by others.

The United Company's eyeletting machines were likewise patented machines developed by it (R. Vol. 1, p. 14, lines 21–23). The Duplex machine, which is the standard machine for regular work, was first put out in 1902 (R. Vol. 2, p. 2617). It is protected by twelve patents (R. Vol. 2, p. 2617). It is the only machine ever produced which inserts eyelets on both sides of the

shoe at once (R. Vol. 2, p. 2618). The Universal machine is another type likewise adopted in 1902 and it is now protected by five patents and one patent application (R. Vol. 2, p. 2636).

The above list includes all the machines as to which monopoly is charged by the United States, except in so far as such General Department machines may be included, which may come within the description of machines for preparing or attaching the sole to the upper. Some of these machines are used in preparing the bottoms of shoes. The United States, however, specified no General Department machines which it contended were included in its charge of monopoly. The United States introduced no evidence with respect to the comparative amount of business in General Department machines done by the United Company and other concerns, and no evidence was introduced showing that the United Company had any actual monopoly of such machines. There is absolutely no basis, therefore, in the record for charging any monopoly of them. General Department machines are sold outright. If, which does not appear, the United Company furnishes a considerable portion of any of these machines, it is presumably due to the excellence of the machines or the patents covering them.

Such General Department machines are manufactured by a large number of competitors of the United Company. A compilation from the testimony of machinery makers manufacturing and selling such machines will be found in the Appendix, pp. 132–156.

From the foregoing it appears that the constituent companies of the United Company, at the time of the formation of the United Company, furnished practically all the welt and turn machines, lasting machines, metallic fastening machines and heeling machines used in the country. The trade in these machines had only recently been created by inventions which made the machines possible, and the constituent companies held the best of the patents covering these inventions. Such monopoly as they had lawfully resulted from the patents. The United Company, therefore, did not acquire any new monopoly in these machines; it merely continued the lawful monopoly, if it can be called such, held by the constituent companies. The charge of the United States that the United Company acquired a monopoly is absolutely unfounded. The only possible con-

tention the United States could make is that the United Company maintained this monopoly by unlawful methods.

In respect to the pulling-over machines, clicking machines, and the eyeletting machines, it appears that they were developed by the United Company, that the United Company had a lawful and inevitable monopoly in these machines when first put out, because the United Company held strong patents covering them and no one else had invented any other machines to do the same work. Here again the original acquisition of the business by the United Company was unquestionably lawful, and the only possible contention that the United States can make is that these lawful patent monopolies have in some way been illegally maintained.

8. The United Company has Maintained the Business in Shoe Machinery which it Acquired, not by Unlawful Methods, but by Reason of the Excellence of its Patented Machines and the Service it Renders with Them.

We have shown above that the United Company lawfully acquired its business in the machines as to which a monopoly is charged. We submit the record shows that this business has been maintained by lawful methods.

The business was acquired by reason of the patented inventions held by the United Company and its constituent companies. The development of the machines since that date has been constant; the United Company has spent enormous sums in invention and development of machines and to-day the United Company has as strong if not stronger patents on its machines than it had in 1899 or has had at any time since. There is absolutely no evidence that other persons have invented better machines or equally good machines. If the United Company's patents in 1899 gave it most of the business in the machines which it manufactured, there is every reason that its patents should have enabled it to retain this business.

In addition, however, the United Company has developed a service in connection with its machines at enormous cost to itself, which has proved of the utmost importance to shoe manufacturers, which is given by no other shoe machinery company and which shoe manufacturers testified was vital. It has in no

instance increased its charges for machines; on the contrary, it has in certain instances reduced its royalties and it has removed the initial premiums charged in 1899. It has furnished new machines as they have been invented, free of charge, taking back the old machines, and it has added many important auxiliary machines without additional charge.

By these various means it has added enormously to the efficiency and usefulness of its machines. If owing to their excellence they were used almost entirely by shoe manufacturers in 1899, there is still more reason they should be so used to-day.

We submit that the United States has wholly failed to show that the United Company's continuance of the success of the constituent companies has been due to unlawful acts, or any unlawful plan on the part of the defendants to monopolize. Whatever view may be taken of the acts in evidence in this suit, whether any of them considered individually are deemed lawful or unlawful, the fact is clear from the record that the excellence of its patented machines which gave the constituent companies their success, coupled with the great improvement in the machines effected by the United Company, and the service it renders with them, is the cause of the success of the United Company to-day. The District Court so found, saying:—

> (R. Vol. 1, p. 1135.) "There is no question that the above described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufacturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion."
>
> . . . . . .
>
> "If there is any sense in which the result attained as above can be called a 'monopoly,' it does not follow, in view of the circumstances shown, that the defendants have either restrained trade or been guilty of monopolizing, or attempting to monopolize, within the meaning of the act. Nor can I regard the case as one in which any presumption arises, from the fact that so large a proportion of the users of these machines use the defendants'—that the defendants

have committed any of the above forbidden acts in accomplishing the above result. The proof is too complete that it has been in fact reached by the use of methods entirely lawful, the leading features whereof are below indicated."

. . . . . .

(R. Vol. 1, p. 1137.) "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason."

. . . . . .

(R. Vol. 1, p. 1187.) "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer. To say that this is due, in any substantial degree, to the fact that its leases run beyond the terms of patents, or because of the exclusive use, prohibitive or cancellation clauses, rests largely, if not entirely, upon assumption. But that the business of these defendants rests upon the lease provisions objected to in such a substantial amount as to constitute any factor of independent force in securing or maintaining a monopoly does not appear."

XI.

RELIEF ASKED FOR BY THE UNITED STATES.

The Impossibility of Granting the Relief asked for by the United States without Irreparable Damage to the Public proves the Lawfulness of the United Company's Business.

The petition prays:—

1. That the United Company and the United Shoe Machinery Corporation "be dissolved and separated into such parts that no one of them will constitute a monopoly" (R. Vol. 1, pp. 1030–1); and

2. That the leases of the United Company containing like or similar provisions to those complained of be declared illegal and void and the defendants be enjoined from enforcing such provisions (R. Vol. 1, pp. 1029–30).

The petition prays for other incidental relief, but the foregoing is the primary and material relief requested.

1. A Separation of the United Company's Business would Irreparably Damage Shoe Manufacturers and the Public.

A division of the United Company's business could be attempted in only one of two different ways, *i.e.*, either (1) by dividing the business among two or more non-competing concerns or (2) by attempting to divide it among two or more competing concerns.

If the business were divided into its original component parts, that is, if the Goodyear business were set apart in one company, the lasting machine business in another company, the heeling and metallic machines in another company, and the new machines, such as the pulling-over machines, clicking machines, eyeletting machines, and General Department machines acquired since the formation of the United Company were set apart in still another company, we should have four non-competing companies. These companies could, unless enjoined, consolidate again, because it would be entirely lawful to do so as held in *United States* v. *Winslow*, supra.. No competition would be

created by such a division and no good would be accomplished; on the contrary, the public would lose the benefit of the increased efficiency which results from the consolidation in one company of these different machines, such as better service to shoe manufacturers, the maintenance of a large Experimental Department, wholesale prices, and reduction of expenses.

If an attempt were made to divide the business of the United Company into competing concerns, this could be attempted only by taking each machine separately and transferring to one concern a portion of the patents covering the machine and to another concern the remainder of the patents covering it. The United Company has not two or more machines of each type protected by distinct patents and capable of competing with each other if transferred to separate companies. It has a single machine of each type. In certain cases it has a new improved model and one or more old models, but in such cases the new model is not only superior to the old model, but it almost invariably embodies patents also embodied in the old models.

A division of the patents covering a machine between two concerns would, of course, make it impossible for either to manufacture the machine. Suppose, for example, the court should order that one-half the patents on the welter or pulling-over machine should be sold or disposed of. Neither the United Company, which retained half the patents, nor the vendee of the other half could make the welter or pulling-over machine as it is now manufactured and put out.

Nor would the result be better if the court should order that the acquisitions which the United States contends are improper should be disposed of. Take, for example, the Ideal machine and the Eppler machine. Both are now obsolete. Nobody wishes to use these machines to-day. A concern holding the patents on these machines would not manufacture them even if they could do so without infringing the United Company's patents. Take the Plant acquisition. A sale by the United Company of these patents would prevent its manufacturing the improved Model K Welter which is enormously more efficient than either the former Plant welter or the former United Company welter. The loss to the shoe manufacturer would amount to hundreds of dollars a year on each new machine. Such sale of the Plant patents would also mean that patents on twenty-six

machines now put out by the United Company would be transferred and either the United Company would have to give up the manufacture of these machines or it would have to remodel them materially to avoid infringement of the transferred patents, and thus make them far less efficient. On the other hand, it is extremely doubtful if the grantee of the patents would attempt to manufacture under them. If he did, he would, as we have shown, be unable to manufacture efficient machines which he could market, or he would necessarily infringe patents of the United Company which it is necessary should be combined with the Plant patents to make efficient machines.

The fact that the United Company's business cannot be separated without such consequences proves conclusively that its creation was inherently lawful and for the purpose of greater efficiency and to enable it to furnish more efficient machines.

The Sherman Act, as we have shown, is intended to prevent "not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented."

> *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, 174.

It may possibly be true that if the United Company's patents should be distributed among two concerns, neither of which held all the patents on one machine, and neither of which was therefore able to make the latest improved machines, competitors of the United Company would be benefited. Shoe manufacturers and the public generally, however, would be disastrously affected. The Sherman Act was never intended to produce such a result.

In *United States* v. *St. Louis Terminal*, 236 U. S. 194, the decree of the lower court in a suit under the Sherman Act enjoined the defendant company from doing a transportation business which originated and terminated on its own lines. This court held that the decree should be qualified so as to recognize the defendants' right to do such business (p. 205):—

> "Because not to so decide would lead inevitably to the conclusion that the decision of this court contemplated safeguarding one public interest by destroying another and in

effect proposed making the movement of transportation freer in some channels by absolutely obstructing all possibility of its flow in others."

2. To hold the Leases void would disastrously affect Shoe Manufacturers and the Public.

The United Company owns the leased machines. If the leases were held void, lessees would have no further right to use the leased machines held by them until they made a new agreement with the United Company permitting them to do so.

We have shown above that the provisions complained of are necessary to enable the United Company to furnish its machines on the present favorable terms. If the leases were held void the United Company would therefore be obliged to sell its machines outright or to lease them on far less favorable terms than at present. If it were willing to enter into new lease agreements with shoe manufacturers in respect to the machines they now hold, and it were enjoined from inserting in its leases provisions similar to those now used, it would inevitably be obliged to require a large initial payment in order to insure itself a fair return on the machines. The result, therefore, of declaring the leases void would be to compel shoe manufacturers to raise the capital necessary to obtain their machines and to make them take the machines on less favorable terms. Many shoe manufacturers who have entered business because they were able to get their equipment without initial expense might be unable to raise the capital necessary to retain their machines. The Sherman Act was not intended to produce such a result; it was enacted only to prevent such acts as prejudice the public interests.

3. The Leases cannot be declared Unlawful or the United Company enjoined from enforcing them, as the Lessees are not Parties to the Suit.

The lessees are as vitally interested in the legality of the leases as the United Company itself. Under these leases they hold a valuable equipment without capital expenditure on their part, paying a wholesale rate for a wholesale use as a series, and paying only as they use the machines and to the extent that

they use them. They are necessary parties to a suit which seeks to declare these leases void.

Minnesota v. *Northern Securities Co.*, 184 U. S. 199.
Gregory v. *Stetson*, 133 U. S. 579.
Shields v. *Barrow*, 17 How. 130.

In *Minnesota* v. *Northern Securities Co.*, supra, the court said (p. 235):—

> "The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, are to be made parties to it, so that there may be a complete decree, which shall bind them all. By this means the court is enabled to make a complete decree between the parties, to prevent future litigation, by taking away the necessity of a multiplicity of suits, and to make it perfectly certain that no injustice is done, either to the parties before it, or to others who are interested in the subject-matter, by a decree which might otherwise be granted upon a partial view only of the real merits. When all the parties are before the court, the whole case may be seen; but it may not, where all the conflicting interests are not brought out upon the pleadings by the original parties thereto (Story's Eq. Plds. sec. 72).
>
> "The established practice of courts of equity to dismiss the plaintiff's bill if it appears that to grant the relief prayed for would injuriously affect persons materially interested in the subject-matter who are not made parties to the suit, is founded upon clear reasons, and may be enforced by the court, *sua sponte*, though not raised by the pleadings or suggested by the counsel. *Shields* v. *Barrow*, 17 How. 130. *Hipp* v. *Babin*, 19 How. 271, 278; *Parker* v. *Winnipiseogee Lake Cotton and Woolen Co.*, 2 Black, 545."

If it is impractical to make all the lessees parties, at least certain of the lessees should be made parties as representatives of the class.

Nor can the provisions of the leases be held illegal and the United Company be enjoined from enforcing them unless the lessees are parties. The provisions in the leases go to the essence of the contract; the leases would obviously not have been made on these terms if these provisions had not been employed. A decision that these provisions are void is therefore necessarily a decision that the leases themselves are void. Such a decision would therefore affect lessees to the same extent as a decision holding the leases themselves void.

XII.

CONCLUSION.

We submit:—

1. That the United States has wholly failed to prove any part of the charge made in the petition, namely, that the defendants, finding that the patents of the constituent companies under which they did the greater part of the business of the country in the principal essential shoe machines were about to expire, planned to extend their patent monopolies unlawfully by—

(*A*) Combining and acquiring all concerns engaged in the shoe machinery business, and then

(*B*) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machinery which he required, and that

(*C*) They thereby acquired an unlawful monopoly of all shoe machinery.

There is no evidence of any such plan, and the record shows conclusively that the defendants never did anything to carry out such a plan, for as the District Court found—

(*A*) They did not acquire all concerns engaged in the shoe business or attempt so to do.

(*B*) They did not refuse to lease the alleged essential machines except on condition that the shoe manufacturer take all other machines required by him from them. As the District Court found, this charge was wholly unfounded.

(*C*) They did not acquire an unlawful monopoly of all shoe machinery as the United States itself conceded during the course of the trial.

2. The United States attempted during the course of the trial to limit its charge to a charge that the defendants planned to extend their patent monopolies unlawfully by

(*A*) Combining and acquiring all concerns engaged in the business of manufacturing machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines and clicking machines, and

(*B*) Refusing to sell or lease any of the so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machines of the above named classes, and that

(*C*) The defendants carried out such plan and thereby acquired an unlawful monopoly of said classes of machinery.

There is equally no evidence of any such modified plan or of any monopoly obtained in pursuance of any such modified plan, for as the District Court found—

(*A*) The defendants did not acquire or attempt to acquire all concerns engaged in manufacturing shoe machinery of the above mentioned classes. On the contrary they expressly declined to purchase their largest competitors making such machines.

(*B*) They did not refuse to lease the so-called essential machines except on condition that the shoe manufacturer take all other machines from them. On the contrary the record shows that the United Company never required a shoe manufacturer leasing its so-called essential machines to take or use any other machines, and that the only clause employed in its leases at the time the petition was filed requiring any use whatsoever of its machines was the Full Capacity Clause which required only a use of the particular machines leased. It further shows that the United Company's so-called restricted leases not only did not require the lessee to agree to use other machines, but that they did not compel such a use in order to obtain the leased machines, since the lessee was offered alternative forms of leases without restrictions on terms as favorable, and in many cases more favorable than were offered him prior to the formation of the United Company.

(*C*) The record further shows, as the District Court found, that the defendants did not have an unlawful monopoly of machines of the above mentioned classes. On the

contrary it shows not only that there were a number of competitors, but that the business the defendants had in such machines was due to the fact that the United Company and its constituent companies had created such business by reason of their patented inventions; that their machines had always been the best in the market, and that their success was due to the excellence of the machines, the constant improvements made in them, the remarkable service rendered with them and the favorable terms offered lessees.

3. We further submit that the record utterly fails to justify any other charge of unlawful conduct or monopoly, even if such a charge had been made in the petition and it were therefore open to the United States.

The history of the development of the United Company and of its constituent companies is a remarkable history of the creation of a new industry. By constant efforts and intelligent experimentation conducted at great expense, it has produced what are unquestionably the best machines, and these machines are lawfully protected by patents so that others cannot manufacture them. Most of these machines when first put on the market were new creations doing work previously done by hand. Nearly all of the United Company's machines to-day are new machines or new models so improved as to constitute practically new machines, or are machines invented within a few years to do work previously done by hand. The United Company's success in furnishing these machines is as natural and lawful as was the success of the Bell Telephone Company as owner of the Bell patent in the telephone field.

In addition the United Company is furnishing its machines under a lease system whereby the lessee can obtain his machines with practically no initial cost, paying for them only as he has use for them, and under which he is permitted to share in the economies resulting from the combined use of the principal machines which are adapted for use together, and the United Company furnishes at great expense to itself and without charge to its lessees a service with its machines which shoe manufacturers testified was vital to the proper conduct of their business.

During a period in which the cost of nearly all supplies and

machinery has increased, the United Company has never increased its prices, but on the contrary has in numerous instances reduced them, and, in addition, for such prices it has furnished, not the machines put out in 1899, but greatly improved machines, and many additional auxiliary machines which save the shoe manufacturer more than the entire amount paid the United Company in royalties.

As the District Court found:—

> "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason" (R. Vol. 1, p. 1137).

The attempt of the United States to prove that the success of the United Company was not due to the above causes but to various unlawful means adopted in pursuance of a plan to monopolize failed utterly. The charges of the United States were made recklessly and without investigation. The petition is replete with allegations made without any foundation of fact whatsoever on which even to base a contention. Thus, for example, the allegation that the United Company discontinued the sale of machines; the allegation that the patents of the constituent companies were about to expire; the allegation that the leases required the lessee to covenant to use United Company's machines of the kind leased and all other kinds exclusively; the allegation that the United Company acquired various patents and held them without making any use of them, thus depriving the manufacturer and the public of the benefits arising therefrom; the allegation that exorbitant prices were charged for repair parts; and the allegation that the constituent companies were taken over for values far in excess of real worth, and numerous other allegations, were shown to have no foundation whatsoever, although the true facts would have been disclosed upon the

slightest investigation. The specifications of the United States with respect to the unfair acts alleged by it were shown to be equally unfounded. As to most of them, no evidence whatsoever was introduced, and as to the remainder the evidence showed an utter lack of foundation for the charges.

The District Court heard the witnesses in open court and thoroughly investigated the entire business history of the United Company. The facts on which its opinions are based are fully sustained by the record, and completely dispose of the contentions of the United States.

We respectfully submit that the decree of the District Court dismissing the bill should be affirmed.

FREDERICK P. FISH.
CHARLES F. CHOATE, Jr.
MALCOLM DONALD.

Office Supreme Court, U. S.
FILED
MAR 12 1917
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1916

No. [redacted] 207

THE UNITED STATES,
Appellant,

v.

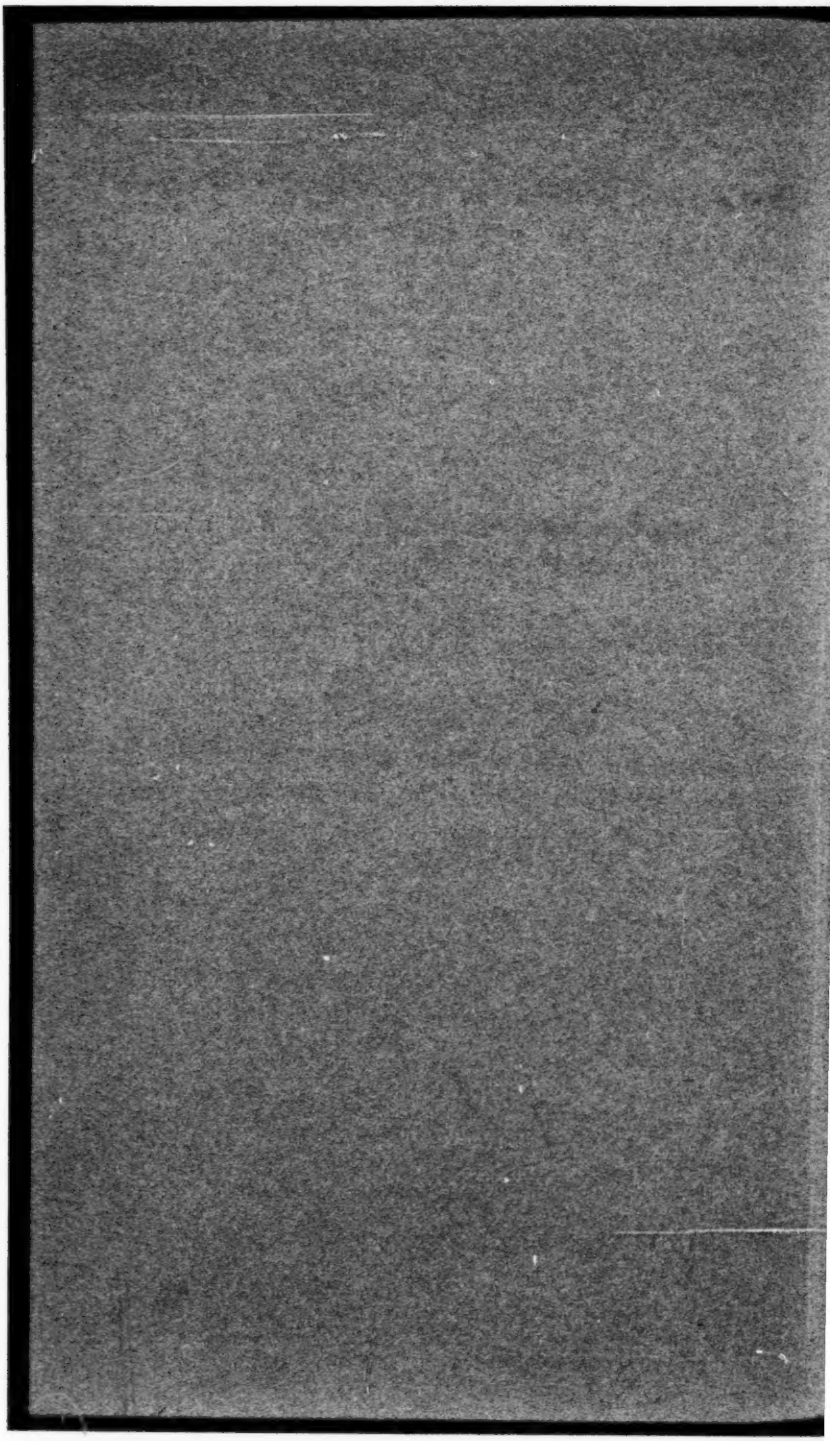
UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, ET AL.,
Appellees.

APPENDIX

TO BRIEF OF UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL., Appellees.

FREDERICK P. FISH.
CHARLES F. CHOATE, Jr.
MALCOLM DONALD.

BOSTON
Press of Geo. H. Ellis Co.
1917



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OCTOBER TERM, 1916

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UNITED SHOE MACHINERY COMPANY
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TO BRIEF OF UNITED SHOE MACHINERY COMPANY
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FREDERICK P. FISH.
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BOSTON
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1917

I.

THE ACQUISITIONS.

[This section contains a discussion of each acquisition.]

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THE "ACQUISITIONS."

Detailed Statements of the Facts.

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Goddu Sons Metal Fastening Company.

This transaction took place March 1, 1899. (Pltff.'s Exh. 60, R. Vol. 3, p. 514.) The Goddu Sons Metal Fastening Company "had constructed a loose nailing machine, a slugging machine, a tacking machine, and a standard screw machine." Each of these machines was "in a state of development" and none of them was "in a condition to be placed in the hands of manufacturers for continuous operation." (Howard, R. Vol. 1, p. 41, lines 38–40; Winslow, R. Vol. 1, p. 436, lines 28–31.) The Goddu Sons Company had no machines whatever in the hands of customers and accordingly was not engaged in interstate or foreign trade or commerce. These four machines, which were all patented, were all metallic fastening machines. The Goddu Sons Company had no factory and the experimental work had been done in a small machine shop with a few tools in it adjoining the house of Louis Goddu, the father of the "Goddu Sons." (R. Vol. 1, p. 103, lines 35–45; p. 104, lines 1–7; p. 436, lines 2–3, 27–28, 34–36.)

Louis Goddu had been for a long time employed by the McKay Shoe Machinery Company and its predecessors, and his inventive work "had been very meritorious. It was the base of the McKay metallic machinery business." (Winslow, R. Vol. 1, p. 436, lines 15–19; Defts.' Exh. 101, R. Vol. 5, pp. 166, 168.) All of his sons had also been employed by the McKay Company and several years prior to the organization of the United Company had all left the employ of the McKay Company. (R. Vol. 1, p. 104, lines 8–10, 12–13.)

The negotiations for this transaction were opened by the Goddus.

> "Mr. Goddu, senior, came to me and wanted the transfer, . . . to have the United Company take this property, . . . wanted to relieve himself of the position that he was in." (Winslow, R. Vol. 1, p. 436, lines 4, 5, 10.)

Both Goddu, senior, and Van Wagenen had talked to Mr. Winslow about the situation before the United Company was organized. (R. Vol. 1, p. 436, lines 20–23.)

The United Company did not acquire anything whatever from the Goddu Sons Company. It acquired from Louis Goddu and his sons a majority of the stock of the Goddu Sons Company and a number of patents and applications for patents. (R. Vol. 1, p. 41, lines 31–34; p. 534, lines 27–28.) There were two reasons for this acquisition:

(1) It was claimed by officials of the McKay Shoe Machinery Company "that the inventions embodied in the machines of the Goddu Sons Company had been made by Louis Goddu, the father," who had agreed to assign his inventions to the McKay Metallic Fastening Association, a predecessor of the McKay Company, by his employment contracts which were still in force and under which he had been paid continuously, and was still being paid, for his exclusive services. Suit had been brought on those contracts "to compel the transfer of these inventions" which were in the Goddu Company's machines to the McKay Company. (Winslow, R. Vol. 1, p. 436, lines 42–44; Howard, R. Vol. 2, p. 2071, Ints. 1578, 1579; Defts.' Exh. 104, R. Vol. 5, pp. 245–252.)

The bill of complaint in that suit, which is Defendants' Exhibit 104 (R. Vol. 5, p. 243), reviewed the history of Louis Goddu's relations with the McKay Company, including his declaration that he would assign no more inventions (pp. 245–252), set forth that none of the sons had made any inventions while in the employ of the McKay Company (p. 253) and charged that Louis Goddu, his sons and Albert Van Wagenen, also formerly employed by the McKay Company, conspired to have Louis Goddu invent metallic machines, communicate such inventions to his sons and permit them to apply for patents upon the machines and transfer such patents to the Goddu Company (pp. 253–262).

Counsel of the highest standing, Mr. Louis D. Brandeis, appeared for the McKay Company in this suit (R. Vol. 5, p. 264).

The endless trouble which the McKay Company had had with Louis Goddu and threats that he had made are further set forth in the affidavit of James W. Brooks (Defts.' Exh. 101, R. Vol. 5, p. 161), prepared for use in the proposed infringement suits. Among illuminating facts developed by the evidence in the

pending suit which are recited in this affidavit, it appears that Louis Goddu, the father, had contributed $40,000 to the Goddu Sons' enterprise (p. 187) and that he had been working with his sons continuously for several years (pp. 183, 184).

Mr. Winslow testified:

> "I knew Mr. Goddu, senior, quite well and believed personally that the patents then standing in his and his sons' names, and those that had been transferred to the Goddu Company, belonged in reality to the McKay Company." (R. Vol. 1, p. 435, lines 43–45; p. 436, lines 1–2; Defts.' Exh. 231, R. Vol. 5, p. 447.)

That is, by this acquisition Mr. Winslow was securing control for the United Company of inventions and patents and applications for patents which he believed already belonged to the United Company, as successor of the McKay Company.

(2) There was very serious litigation existing and threatened between the parties. The pending suit which had been brought on the Louis Goddu contracts had been running for some time before the formation of the United Company, had been "very vigorously contested" and "a very large amount" of testimony had been taken, and the claims of the McKay Company had been developed and substantiated before the acquisition. (R. Vol. 1, p. 104, lines 14–24; R. Vol. 2, p. 2082, Cr. Ints. 1618–1620; Defts.' Exh. 275, R. Vol. 5, p. 755.)

In addition to this pending suit the McKay Company had—

> "caused to be prepared bills of complaint and affidavits to accompany motions for preliminary injunctions in suits for infringements of its patents by all of the machines of the Goddu Sons Metal Fastening Company." (Howard, R. Vol. 2, pp. 2077, 2078, Ints. 1609–1611; Defts.' Exh. 275, R. Vol. 5, p. 755.)

A number of affidavits, including one by Joseph P. Livermore, and a bill of complaint had been printed prior to the formation of the United Company and printed copies constitute Defendants' Exhibit 101. According to Mr. Livermore's affidavit, the Goddu Sons' loose nailer infringed six of the McKay Company's patents; its screw machine infringed two of the McKay Company's patents; its slugging machine infringed two of the McKay Company's patents, and its string nailer infringed three of the

McKay Company's patents. (Defts.' Exh. 275, R. Vol. 5, p. 756.)

Mr. Winslow testified:

> "I very much desired to start the United Company free from all serious litigation. I was aware of the fact that there was serious litigation existing between the McKay Company and the Goddus."
>
> "I was very glad to get rid of the situation which meant I didn't know how much litigation and how much time it would require from me, and to get that whole matter cleaned up and clear the litigation."
>
> "I had had considerable experience in that sort of litigation."
>
> "*Q.* Did you acquire the Goddu Sons Company for the sake of getting rid of any competition?
>
> "*A.* I did not." (R. Vol. 1, p. 435, lines 40–43; p. 436, lines 10–14; p. 437, lines 6–10.)

The practical reasons why the Goddu machines could not be manufactured and put out without *entire reconstruction* were set forth by defendants' expert Howard with detailed explanations. In July, 1898, Mr. Howard spent a week in examining the Goddu Sons' machines, making drawings and notes. (R. Vol. 2, p. 2070, Int. 1577; pp. 2088, 2089, Cr. Int. 1660; p. 2099, Cr. Int. 1666.)

Moreover, even if the machines had been practical, "the United Company couldn't have developed those machines if they wanted to" because "they were stopped by the action of the minority stockholders of the Goddu Company." (Winslow, R. Vol. 1, p. 534, lines 20–26.)

It should also be noted that after the acquisition all but one of the Goddu Company's machines infringed patents of the United Company acquired from the Goddu Sons individually, which did not expire until 1915 and 1917. (Defts.' Exh. 275, R. Vol. 5, pp. 756, 757.)

As to this transaction it was held by the District Court:

> "the metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence sufficient for a belief

that without reconstruction, radical in character, anyone could have used them as competing machines." (Dodge, J., R. Vol. 1, p. 1140.)

Pearson & Bennion, Ltd.

This transaction took place June 8, 1899. (Ptlff.'s Exh. 61, R. Vol. 3, p. 525.) The reason for this purchase and the disposition of the acquired business after the purchase were summarized by Mr. Winslow as follows (R. Vol. 1, p. 420, lines 21–33):

> "Our agent in England for the Lasting Machine Company was Pearson & Bennion. They made or manufactured no machines that were made or manufactured by either of the companies which came together to form the United Shoe Machinery Company. They did make a few general department machines in England. Their principal business, probably eighty per cent of it, was the business they did as the agent for our lasting machine. We took their business, put our business with it and formed the British United Company. They entered our employ, and Mr. Bennion was made the general manager of that business. That was the reason; it was just putting in corporate form what had previously existed, only he was made the manager of all the business of these three companies."

As stated by Mr. Winslow: "The agreement of 1899 with Pearson & Bennion was in reality a consolidation of the foreign business of the United Company in England with Pearson and Bennion's business, and not a purchase." (Defts.' Exh. 231, R. Vol. 5, p. 450.) Among the assets acquired was a new factory. (R. Vol. 3, p. 530.)

From Mr. Winslow's testimony, above quoted, that the few machines which Pearson & Bennion made were of the general department type, it is clear that Pearson & Bennion were in no way competing with the United Company since the United Company had no general department machines at that time. While the record does not name the Pearson & Bennion machines, they were presumably of the types used by English manufacturers, somewhat different from those used in this country. They were being manufactured under patents. (R. Vol. 1, p. 53, lines 3–5; R. Vol. 2, pp. 2787, 2788, Cr. Ints. 432, 433; R. Vol. 3, p. 527.)

Boot & Shoe Sole Laying Company.

This acquisition is not referred to in its proper chronological order in the petition. The date alleged, May 25, 1901, is the date of the bill of sale formally transferring the company's property. (Pltff.'s Exh. 90, R. Vol. 3, p. 366.) A majority of the stock of this company was acquired by the United Company in June, 1899. (R. Vol. 1, p. 457, lines 30–31; Defts.' Exh. 275, R. Vol. 5, p. 763.) Accordingly this acquisition will be discussed here in its proper chronological relation to other acquisitions.

The Boot & Shoe Sole Laying Company was manufacturing and putting out a patented sole-laying machine known as the Boston sole layer. It was doing a very small business. It owned no real estate and contracted with outside parties for such machines as it had built. (R. Vol. 1, p. 54, lines 5–7; p. 99, lines 41, 43–45; R. Vol. 2, p. 2054, Ints. 1489, 1490; Defts.' Exh. 231, R. Vol. 5, p. 450.)

The United Company did not have a satisfactory sole-laying machine. They "had an inferior machine of different type," the rotary sole layer, "which was only adapted for large factories" and "which was very unsatisfactory because it was continually breaking down, particularly on men's shoes." (R. Vol. 1, p. 54, lines 20–21; Defts.' Exhs. 231, R. Vol. 5, p. 450, and 275, R. Vol. 5, p. 763.)

A further reason for this acquisition was that the United Company had "produced and desired to use the pressing form for sole laying machines shown and described in its patent 694,367 Mar. 4, 1902, Gifford (application filed Apr. 20, 1900)," but this form infringed a patent owned by the Boot & Shoe Sole Laying Company. (Howard, Defts.' Exh. 275, R. Vol. 5, p. 763; R. Vol. 1, p. 665, lines 1–3.) After this acquisition—

> "the United Company discarded the Rotary Sole Layer and adopted as its standard commercial machine the sole layer of the Boot and Shoe Laying Machine Company, using on that machine the pressing form of Gifford patent No. 694,367. This machine, combining the best features of the rotary machine and the machine of the Boot and Shoe Sole Laying Company, has been much improved by a number of inventions made from time to time, and in the various stages of its development it has ever since been and is

today the standard sole laying machine of the United Company." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 763; R. Vol. 2, p. 2050, Ints. 1467, 1468.)

The Corrugated Wire Fastening Company.

This transaction took place June 30, 1899. (Pltff.'s Exh. 62, R. Vol. 3, p. 530.) With regard to the Corrugated Wire Fastening Company, Mr. Howard testified that at the time of the purchase it—

> "had one machine, a tacking machine, and was doing a very small business in supplying wire for that machine. I believe that they had not put out any of the machines for some years because it was completely out of date. It was a very old machine." (Howard, R. Vol. 1, p. 42, lines 12–17.)
>
> "The only business that was left when the Corrugated Company was acquired was the supplying of wire and spare parts for the machine. They had not done any business in the way of supplying machines for some time, and there was no longer any demand for the machines, so that no business was done and no business could be done with that machine." (Howard, R. Vol. 1, p. 42, lines 28–33.)

This company "was purchased in 1899 for $12,750 at the earnest solicitation of the owners, their business having become unprofitable. At the price we paid we thought we could get out of it with a small profit." (Winslow, R. Vol. 1, p. 464, lines 20–23.)

The Corrugated Wire Fastening Company—

> "Owned no real estate. Leased a small room on South Street, Boston, where it employed two or three men." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 475.)

After the purchase—

> "The United Company continued to supply wire and parts for those machines. They have parts in stock today." (Howard, R. Vol. 1, p. 42, lines 33–35.)

The business of the Corrugated Company was characterized by the District Court as "making wire and spare parts for use

in an obsolete metallic-fastening machine." (Dodge, J., R. Vol. 1, p. 1138.)

Breach Manufacturing Company.

This transaction took place July 31, 1899. (Pltff.'s Exh. 63, R. Vol. 3, p. 531.) All that the United Company acquired from the Breach Manufacturing Company was an exclusive license under certain patents on a machine—

> "which was intended for cutting soles out of a side or strip of leather by a reciprocating knife which moved up and down through the stock as it went around." (Howard, R. Vol. 1, p. 42, lines 44–45; p. 43, line 1; R. Vol. 2, p. 2067, Int. 1559.)

At that time the United Company had no machine for cutting out soles. (R. Vol. 1, p. 43, lines 13–16, 22–24.)

The United Company paid the Breach Company $10,000 for an exclusive license under the Breach patents in the hope that a successful machine to cut the uppers of shoes (*i.e.*, to do the work done by the clicking machine invented some eight years later) would be developed under those patents. (Defts.' Exh. 231, R. Vol. 5, p. 467.)

Mr. Howard testified:

> "The United Company took Breach into its employ and for several years made strenuous efforts to develop something practical out of that machine. Breach worked on the machine during that period and spent a great deal of money, but finally came to a point where he could apparently do nothing more, and at that stage the machine was an entire failure as a commercial machine." (R. Vol. 1, p. 43, lines 16–22.)

Also—

> "The United Company built experimental machines and put them out on trial but could not interest manufacturers to use them." (R. Vol. 2, p. 2068, Int. 1562.)

"Every possible assistance" was given to Breach by the United Company in the endeavor to make commercial the ideas embodied in his inventions, and that work was continued for some two years. (R. Vol. 2, p. 2084, Cr. Ints. 1635, 1636.)

> "In this endeavor the United Company expended about $30,000 and then gave up the attempt." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 467; Howard, R. Vol. 2, p. 2100, Int. 1668.)

An important reason for the commercial failure of the Breach inventions was stated by Mr. Howard to be that—

> "Shortly before the time of the acquisition of the Breach patents, sole-rounding machines of the so-called Stanley and Julian type were introduced, which used a wooden pattern instead of a metal pattern such as had been previously used in sole-rounding machines, and as was used in the Breach machine. That pattern cost but a small fraction of the cost of the metal pattern, and was a very great improvement because it obviated the necessity of lubricating the edge of the pattern, which had always presented a serious difficulty." (R. Vol. 2, p. 2085, Cr. Int. 1641.)

Mr. Howard also said "the United Company offered to turn back the patents to the Breach Company, and I believe it did so." (R. Vol. 1, p. 43, lines 9–10.)

It should be noted that by this transaction the United Company acquired only an exclusive license under certain patents; it acquired no tangible property of any description. (R. Vol. 3, p. 531.)

Peter A. Coupal and William Gordon.

This transaction took place August 1, 1899. (Pltff.'s Exhs. 64–66, R. Vol. 3, pp. 535, 537, 538.) Coupal and Gordon were running a machine shop and doing a general machine shop business, "not particularly relating to shoe machinery." They had one or two unimportant machines and an experimental "Basting Machine" which infringed a patent of the United Company. (Howard, R. Vol. 1, p. 43, lines 27–35; p. 103, lines 25–26; Defts.' Exh. 275, R. Vol. 5, p. 757.)

> "The United Company was not engaged in putting out or manufacturing such machines as Coupal and Gordon were making and putting out, or machines for performing the same work or similar." (Howard, R. Vol. 1, p. 43, lines 36–39.)

The United Company acquired certain patents from Coupal and Gordon, but this transaction was primarily an employment contract. Coupal and Gordon were both "very skilled mechanics" and "were in the employ of the Goodyear Company prior to, and at the time of, the organization of the United Company and the United Company desired to obtain all their time free from outside matters." Gordon agreed to enter the employ of the company in a managerial capacity and remained in the company's service until his death in 1912. Coupal agreed to enter the employ of the company, but "only remained in the company's service a few months." (R. Vol. 1, p. 103, lines 22–24, 28–29; Pltff.'s Exhs. 64, 65, R. Vol. 3, pp. 535, 537; Defts.' Exh. 231, R. Vol. 5, p. 472.)

The size of their business and relative importance of their machines is indicated by the consideration of this transaction, which was $10,799.25,—the value of their inventory quoted in Plaintiff's Exhibit 66, pp. 539–563. No real estate was acquired. (Defts.' Exh. 231, R. Vol. 5, p. 472.)

> "Soon after the purchase the machinery was removed to one of the United Company's factories and the business was continued in conjunction with the other business of the company." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 472.)

Timothy A. Breshanan; Boston Shoe Tool Company.

This transaction took place August 16, 1899. (Pltff.'s Exh. 67, R. Vol. 3, p. 563.) The Boston Shoe Tool Company, which was Bresnahan's Company,—

> "was manufacturing and selling a patented edge trimming machine and a rotary edge setter, and was also making and selling forepart and shank cutters for use on the edge trimming machine, and edge setting irons for use on the rotary edge setter. The rotary edge setter was adapted only for the cheapest kind of work and never used on any other work. It could not be used with profit on any other kind of work. . . . Every edge trimming machine has a forepart cutter for trimming the sole around the forepart and a shank cutter for trimming the sole in the shank. . . . The finish or shine that the edge has when the shoe is new is given to it by the edge setting operation, and the tool which operates upon the shoe in this operation is known as an edge setting

iron. . . . At the time of this acquisition the United Company had no machines for doing the work of either of the two machines acquired from the Boston Shoe Tool Company and it was not manufacturing any edge cutters or any edge setting irons." (Howard, R. Vol. 1, p. 43, lines 40–45; p. 44, lines 1–23.)

The United Company acquired the Boston Shoe Tool Company's factory and the patents on its cutter and its edge trimming machine. (R. Vol. 1, p. 103, lines 19–21; Defts.' Exh. 231, R. Vol. 5, p. 460.)

> "The business was continued at the same plant for a considerable period of time. Subsequently, for convenience and economy of manufacture, the business was transferred to the Beverly Factory, where the United Company has ever since continued and increased the business." (Winslow Defts.' Exh. 231, R. Vol. 5, p. 460.)

In regard to the covenant quoted in the petition (R. Vol. 1, p. 1003) Mr. Howe testified as to the reasons why the covenant was in this particular form. (R. Vol. 1, p. 692, lines 34–44; p. 693, lines 1–6.)

Edwin T. Freeman.

This transaction took place October 9, 1899. (Pltff.'s Exh. 68, R. Vol. 3, p. 569.) Edwin T. Freeman had constructed an experimental slugging machine (R. Vol. 1, p. 44, lines 24–29; Defts.' Exh. 275, R. Vol. 5, p. 757; operation explained R. Vol. 2, p. 2464) which was patented. (R. Vol. 1, p. 103, lines 15–18.) He had no factory and was doing no business. He "had not put out any machines at all" (R. Vol. 1, p. 849, line 15; Defts.' Exh. 231, R. Vol. 5, p. 467); accordingly he was not engaged in interstate or foreign trade or commerce.

At the time of this acquisition the United Company was developing an improved standard screw machine, which later became Screw Machine, Model B, Rapid Standard, which infringed one of Freeman's patents. There was an interference in the

Patent Office between an application for reissue of that Freeman patent and the application on this standard screw machine which the United Company was developing. (Defts.' Exh. 275, R. Vol. 5, p. 758.)

On the other hand, the Freeman machine infringed one of the United Company's patents and after January 21, 1902, would have infringed another patent granted on that date. These infringements could not have been avoided without entirely reconstructing the Freeman machine to omit from it valuable inventions, on account of which the United Company purchased the Freeman patents. Furthermore, an important mechanism, without which Freeman's machine could not have been a commercial success, had been necessarily omitted from the Freeman machine because it was broadly covered by two of the United Company's patents. (Defts.' Exh. 275, R. Vol. 5, pp. 757, 758.)

This acquisition cleared up these serious patent complications and enabled the United Company to improve its slugging machine and to avoid infringement of the Freeman patents. (Defts.' Exh. 231, R. Vol. 5, p. 467.)

Since the purchase, inventions claimed in the patents assigned by Freeman have been embodied in three different types of machines which the United Company has built and put out; namely, Nailing Machine, No. 2 Loose; Slugging Machine, No. 5; Screw Machine, Model B, Rapid Standard. (R. Vol. 2, pp. 2066, 2067, Ints. 1554, 1557; pp. 2090, 2091, Int. 1662.)

George W. Freeman.

This transaction took place October 10, 1899. (Pltff.'s Exh. 69. R. Vol. 3, p. 573.) George W. Freeman is the son of Edwin T. Freeman, from whom certain patents were purchased in 1899, as above explained. "Nothing was acquired by the United Company from George W. Freeman." (R. Vol. 1, p. 44, lines 42–43.) Consequently the statement in the petition (R. Vol. 1, p. 1003) that the United Company acquired the interests of George W. Freeman relating to shoe machinery is absolutely erroneous. He had been engaged with his father in work upon his father's experimental machine and the acquisition of his father's patents left him without a job.

"As this transaction left the son, George W., without a job, his father asked the company to take the son into its employ for at least one year at a compensation of $800."

"Freeman has remained continuously in the employ of the company as a roadman and now receives $1200 per year. He has never made or assigned any inventions to the company." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 472.)

Mr. Winslow explained this employment contract as follows:

"It was undoubtedly in view of the fact that he had been associated with his father in experimental work, and on account of the possibility of his setting up some claim to the inventions assigned by his father, that the covenants in regard to competition and future inventions were made a part of the contract for employment of George W. Freeman." (Defts.' Exh. 231, R. Vol. 5, pp. 472, 473.)

Mr. Winslow's explanation is supplemented by Mr. Howard's testimony:

"The agreement was made with him at that time simply because he was his father's son and had been engaged with his father in work upon his father's machine. It not infrequently happens that a son may be responsible for some of the inventing in a case like that. It was a matter of precaution." (R. Vol. 1, p. 44, line 45; p. 45, lines 1–4.)

Albert G. Brewer.

This transaction took place October 11, 1899. (Pltff.'s Exh. 70, R. Vol. 3, p. 575.) Brewer had built one experimental heel breasting machine of the automatic type, which was covered by a pending patent application. A heel breasting machine is used to trim the front end of a heel. At that time the United Company was not putting out any heel breasting machine but was experimenting on a machine in which the knife was driven through the heel by power. (R. Vol. 1, p. 45, lines 7–29; p. 103, lines 12–14.)

"Prior to February, 1899, all heel breasting was done by foot power machines . . . all the power required for forcing the knife through the successive layers of stock in the heel being applied by the operator through the treadle." (Howard, R. Vol. 2, pp. 2472, 2473.)

Owing to the fact that "all heels vary in height, even the heels of shoes which are intended to be substantially alike," no power operated machine had yet been produced—

> "which could deal successfully with the problem of cutting just enough to sever completely the surplus stock and, at the same time, not cut far enough to deface the shank of the sole." (Howard, R. Vol. 2, p. 2473.)

Mr. Howard further testified (R. Vol. 1, p. 45, lines 34–37):

> "The Brewer patent covered a better, a more sensitive, mechanism than we had for stopping the knife properly when it reached the shank, to prevent cutting into and possibly cutting through the shank."

The United Company's experimental machine did not become a commercial success until "after the invention which we acquired from Brewer had been embodied in our machine." (Howard, R. Vol. 1, p. 45, lines 14–16.)

On the other hand, the Brewer experimental machine infringed fourteen claims of the United Company's broad Heys patent on mechanism for automatically stopping the knife. (R. Vol. 1, p. 45, lines 27–28; Defts.' Exh. 275, R. Vol. 5, p. 758.) As stated by Mr. Howard: "in my opinion Brewer could not have built a power heel-breasting machine without infringing that patent." (Defts.' Exh. 275, R. Vol. 5, p. 758.) After the purchase "approximately 700" machines incorporating the Brewer inventions were put out by the United Company (R. Vol. 2, p. 2066), and "That machine, with some modifications, is still being manufactured and put out by the United Company." (Howard, R. Vol. 2, p. 2065, Int. 1548; p. 2090, Int. 1662.)

The one experimental machine which Brewer had constructed was turned over by him to the United Company with his patent application. (Pltff.'s Exh. 70, R. Vol. 3, p. 576.) It follows, therefore, that Brewer was not engaged in interstate or foreign trade or commerce. No manufacturing plant of any kind was acquired. (Defts.' Exh. 231, R. Vol. 5, p. 467.)

Globe Shoe Tool Company.

This transaction took place October 24, 1899. (Pltff.'s Exhs. 71–73, R. Vol. 3, pp. 577, 580, 583.) The Globe Shoe Tool Company was a co-partnership, H. M. Loomer being one of the partners. It was engaged in the business of manufacturing and selling forepart cutters and edge irons, which are tools, not machines. It was acquired at the earnest solicitation of the partners and because the United Company desired to obtain the services of Mr. Loomer as the head of its department for manufacturing such tools. (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 460.)

The agreement between Loomer and the United Company (Pltff.'s Exh. 72, R. Vol. 3, p. 581) provides for the employment of Loomer by the United Company and recites that that had been agreed upon "as an inducement to the United Company to take over said business and to purchase the property and assets of said partnership."

On the other hand, the Globe Shoe Tool Company was infringing two patents of the United Company. (Defts.' Exh. 275, R. Vol. 5, p. 759.)

The Globe Company owned no real estate but leased floor space:

> "Soon after its acquisition the business was transferred to the factory of the Boston Shoe Tool Company in South Boston." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 460.)

After the Boston Shoe Tool Company and the Globe Shoe Tool Company acquisitions, very large reductions were made in the prices of the tools acquired, as follows:

> "The price of the heel cutter with blades in January, 1899, was $3.25; we reduced the price on March 1, 1900, to $2.25. In January, 1899, the price of the blades alone was $2; on March 1, 1900, we reduced the price for the blades alone to $1. The price of forepart and shank cutters in January, 1899, was thirty-five cents each, in small quantities, and twenty-five cents each in quantities of 100; on March 1, 1900, we reduced the price to twenty-five cents each in any quantity. The price of edge irons in January, 1899, was fifty cents; on March 1, 1900, we reduced the price to twenty-five cents." (Winslow, R. Vol. 1, p. 479, lines 10–19.)

John Ritchie Company and John Ritchie.

This transaction took place November 2, 1899. "The John Ritchie Company was a concern manufacturing shoes," located at Quebec, Canada. (R. Vol. 1, p. 46, lines 19–20; Pltff.'s Exh. 74, R. Vol. 3, p. 585.) This transaction was explained by Mr. Howard as follows:

> "They had manufactured, prior to the date in question, one old standard screw machine, so called, that being the type of machine which preceded the rapid standard screw machine, the greatly improved machine then in use for that kind of work. I think that machine was not being used by the John Ritchie Company, but had been sold by them. They had not built, and so far as I know did not contemplate building, any more machines, but they were making wire for use on standard screw machines. They were selling that wire to lessees of the United Company, who were obligated by their leases to buy wire from the United Company.
>
> "It has sometimes happened that the United Company will find that a dishonest lessee, who has agreed to buy wire from the United Company, in payment of royalty for the use of a metallic machine, or, to be more specific, a standard screw machine, will buy wire from another concern at a lower price and use it on the United Company's standard screw machine. That was exactly what was happening in Canada. The John Ritchie Company were making and selling standard screw wire to lessees of the United Company, which, of course, was not getting any return whatever for the use of its machines during the period that the Ritchie wire was being used in them. The purpose of this transaction was to eliminate that dishonest situation in Canada." (R. Vol. 1, p. 46, lines 20–42.)

Mr. Winslow stated that—

> "The reason for this contract and purchase was to prevent manufacturers who held Metallic Machinery under lease from the United Company . . . , violating their leases and contracts by purchasing material from Ritchie." (Defts.' Exh. 231, R. Vol. 5, p. 474.)

Mr. Winslow further stated:

> "No existing competition, or business, was interfered with by this contract. . . . No real estate acquired; only help

employed two or three boys." (Defts.' Exh. 231, R. Vol. 5, p. 476.)

The United Company agreed to pay the Ritchie Company $750 per annum with the right to cancel this annual payment at any time by paying $15,000. (Defts.' Exh. 231, R. Vol. 5, p. 476.)

Seaver Process Lasting Company.

This transaction took place January 13, 1900. (Pltff.'s Exh. 75, R. Vol. 3, p. 591.) The most important reason for this purchase was that the Seaver Company had patents which stood in the way of the development of the United Company's pulling-over machine. The experimental pulling-over machine of the Seaver Company, which "could be used for pulling over uppers, but it was slower than hand work," and the experimental pulling-over machine of the United Company each embodied a mechanism believed to be indispensable to a successful pulling-over machine. If the Seaver Company obtained a patent on this mechanism the United Company would be prevented from putting out commercially its pulling-over machine upon which already there had been an expenditure of hundreds of thousands of dollars. Both the experimental pulling-over machine of the Seaver Company and its lasting machine were patented. On the other hand, there were pending suits for infringement of two of the United Company's patents by the Seaver lasting machine. (R. Vol. 1, p. 47, lines 9–11; p. 103, lines 5–10; p. 456, lines 34–37; p. 849, lines 24–29; R. Vol. 2, pp. 2086, 2087; Defts.' Exhs. 231, R. Vol. 5, p. 447, and 275, pp. 759, 760.)

The Seaver Company was in debt to E. B. Seaver, a majority stockholder, for more than the amount paid by the United Company. (Pltff.'s Exh. 75, R. Vol. 3, p. 591.) The Seaver Company was insolvent and unable to pay its debts; it had only six employees and its business had fallen to pieces, and it is obvious that the company could have offered no competition either then or later that would have been more than negligible. The purchase was made at the earnest solicitation of Mr. Seaver, to remove the patent complications which stood in the way of the development of the United Company's pulling-over machine and to settle the existing litigation. (R. Vol. 1, p. 456, lines 28–39; p. 849, lines

24–29; Defts.' Exhs. 231, R. Vol. 5, pp. 447, 448, and 275, pp. 759, 760.)

The pulling-over machine inventions acquired from the Seaver Company have been embodied in all pulling-over machines put out by the United Company "and the mechanism embodying those features is of the utmost importance in that machine." (Howard, R. Vol. 2, p. 2086, Cr. Ints. 1650, 1653.) It was a combination of the Seaver inventions and those upon which the United Company inventors were working that resulted in the present commercial pulling-over machine, in the development of which nearly a million dollars was spent. (R. Vol. 2, pp. 2086, 2087, 2552.)

The lasting machine inventions did not prove as useful as was expected. In all respects the United Company's lasting machines were superior and there was no demand for the Seaver lasting machine. (R. Vol. 2, p. 2087, Cr. Ints. 1654, 1655.)

No real estate was acquired from the Seaver Company; it did its business in a leased room. (Defts.' Exh. 231, R. Vol. 5, p. 447.) Plaintiff's Exhibit 75 (R. Vol. 3, p. 591) recites that "the said Seaver Company is insolvent and is unable to continue its business or to pay its debts."

Erastus E. Winkley and Benjamin Phillips.

This transaction took place March 16, 1900. (Pltff.'s Exh. 77, R. Vol. 3, p. 615.) By the agreement with Winkley and Phillips, the United Company simply—

> "exercised the option which had previously existed between the Goodyear Company and Winkley and Phillips to take the exclusive right to the use of certain patents which had been transferred by Winkley and Phillips in 1898 to the Goodyear Company"

and under which they had reserved certain rights which were the subject-matter of this transaction. (Defts.' Exh. 231, R. Vol. 5, p. 467.)

Winkley and Phillips were not engaged in manufacturing anything. "No manufacturing plant of any kind was acquired." (Defts.' Exh. 231, R. Vol. 5, p. 468.) Mr. Winkley is an inventor and Mr. Phillips is a patent lawyer. (R. Vol. 1, p. 102, lines 38–39.)

> "They did not have any going machine. Winkley and Phillips were associated with the United Company, and this was a friendly arrangement by which the United Company acquired the right to use the inventions of their patents in its machine." (Howard, R. Vol. 1, p. 48, lines 5–9.)

These patents were named by Mr. Howard. (R. Vol. 1, p. 48, lines 5–9; R. Vol. 2, p. 2062, Int. 1532.) No machinery was acquired from Winkley and Phillips. (R. Vol. 1, p. 48, lines 3–5.)

The patented inventions acquired from Winkley and Phillips were embodied by the United Company in the Atlas Leveling Machine which is adapted peculiarly for use on McKay shoes. (R. Vol. 2, p. 2584.)

The United Company had no machine which could be used for leveling McKay shoes, while, on the other hand, the Atlas Leveling Machine cannot be used for leveling welt or turn shoes. The practical reasons why these different kinds of shoes require entirely different types of machines were pointed out in detail by Mr. Howard. (R. Vol. 1, p. 102, lines 14–34; R. Vol. 2, pp. 2576–2579, Int. 106.) The importance of the inventions of the Winkley and Phillips patents was fully explained by Mr. Howard in his discussion of "Leveling Machine: Atlas." (R. Vol. 2, p. 2584 *et seq.*)

Since this acquisition—

> "the inventions acquired from Winkley and Phillips were experimented upon and developed, with the addition of other inventions, into a machine which was suitable for commercial use, and was put out for commercial use." (Howard, R. Vol. 2, p. 2062, Int. 1530.)

The United Company has since continuously supplied this machine to the trade and has put out about 500 machines. (R. Vol. 2, p. 2084, Cr. Ints. 1631–1634.)

Stanley Manufacturing Company.

By this transaction, which took place March 19, 1900, the United Company acquired simply certain machines, parts and supplies which the Stanley Company had on hand at Frankfurt, Germany. This appears plainly from the agreement (Pltff.'s Exh. 78, R. Vol. 3, p. 620), which provides:—

> "That the said United Company shall purchase from the said Stanley Company, the stock of machines, parts and supplies which it now has on hand at Frankfurt, Germany, and in transit to Frankfurt, and all accounts and bills owing to said Stanley Manufacturing Company in Germany."

For these parts the United Company paid cost prices with certain deductions. (R. Vol. 3, p. 620.)

The Stanley Company was putting out miscellaneous general department machines, the most important of which was a McKay sewing machine. "The United Company was then putting out no machine for doing the work of any one of those machines." (Howard, R. Vol. 1, p. 48, lines 19–21, 26–27; Winslow, Defts.' Exh. 231, R. Vol. 5, p. 451.)

As stated by Mr. Winslow (Defts.' Exh. 231, R. Vol. 5, p. 451):

> "The store in Germany acted as the agent for the McKay Shoe Machinery Company in handling its McKay Heeling and Metallic Machines and parts, and this purchase amounted only to the acquirement of the selling agency for the goods manufactured by the Stanley Company in the United States."
>
> "The reason for the purchase was that the United Company was establishing its own German Company and the local manager for the Stanley Company's business in Germany was sick, or had just died, and the Stanley Company desired to have the United Company take over its store and stock of goods and act as agents for the Stanley Company, if the United Company was going to do its own business in Germany.
>
> "The contract, therefore, amounted simply to an agency contract, and that in itself necessitated the purchasing of the stock that the Stanley Company had in Frankfurt."

The agreement contained a covenant—

> "that the said United Company shall use its best endeavors to sell in foreign countries, machines made by the said Stanley Company . . ."

and provided that in case the United Company should discontinue the purchase from the Stanley Company and sale—

> "of any of the machines, parts or supplies made by the said Stanley Company . . . the said Stanley Company may then and thereafter sell such machines, parts or supplies thus discontinued to any and all persons without respect to the country to which they are to be sent.

"That the said Stanley Company may advertise and create and maintain in all proper business ways a demand for its machines in any and all countries in the world." (Pltff.'s Exh. 78, R. Vol. 3, pp. 621, 622.)

Lincoln Sewing Machine Company.

Contrary to the statement in the petition, the United Company by its agreement with the Lincoln Company, April 6, 1900 (Pltff.'s Exh. 80, R. Vol. 3, p. 628), did not acquire the business of the Lincoln Company, nor did it acquire anything new whatsoever. (R. Vol. 1, p. 49, lines 36–37.) As is clear from the plain terms of the agreement, it was entered into simply for the purpose of canceling an obligation arising from a previous contract made in 1897 (Pltff.'s Exh. 79, R. Vol. 3, p. 623) between the Lincoln Company and the Goodyear Shoe Machinery Company, whereby the Goodyear Company was to pay a sum of money to the Lincoln Company each year for forty-nine years. Mr. Winslow testified to this effect. (R. Vol. 1, p. 464, lines 9–13; see also Howard, R. Vol. 1, p. 49, lines 22–35.) The reason for canceling the original obligation was "to avoid the necessity for maintaining the Goodyear Company as a separate organization and to transfer the Goodyear Company's property to the United Company." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 471.)

The original agreement between the Lincoln Company and the Goodyear Company (Pltff.'s Exh. 79, R. Vol. 3, p. 623) effected the transfer of patent rights. (R. Vol. 2, pp. 2063, 2064, Ints. 1537–1539.)

Boston Fast Color Eyelet Company.

This transaction took place June 30, 1900. (Pltff.'s Exh. 81, R. Vol. 3, p. 630.) As stated in the petition, this company was engaged in the manufacture and sale of "eyelets covered with celluloid." These eyelets are known as "fast color eyelets" and the Boston Company had a registered trademark, "Fast Color." The Boston Company owned patents on the eyelet, the dies for making the eyelet, and the method of covering the eyelet. The celluloid covering makes the eyelet expensive so that it has never been used except on the better grades of shoes and never at any

time on more than ten per cent. of the shoes made. Its advantage is that it never wears down to the metal. (R. Vol. 1, p. 50, lines 40–45; p. 51, lines 1–5; p. 98, lines 26–27; R. Vol. 2, p. 2053, Int. 1487.)

Prior to this acquisition neither the United Company nor any of its associate companies was engaged in the manufacture of eyelets or of machinery for making them (R. Vol. 1, p. 50, lines 10–13), and—

> "The United Company could not extend its field to include the manufacturing and marketing of fast color eyelets without acquiring the broad patents owned by the Boston Fast Color Eyelet Company which dominated that field." (Defts.' Exh. 275, R. Vol. 5, p. 760.)

The business of the Boston Fast Color Eyelet Company was continued by the United Fast Color Eyelet Company, thus preserving the name "Fast Color." "That name was a very valuable asset" which "had designated this type of eyelet since it was invented." Since the acquisition, the fast color eyelet has been improved in ways that have made it possible to reduce its price and many new sizes have been made. (Howard, R. Vol. 1, p. 50, lines 17–18; p. 99, lines 31–32, 36–37.)

The Boston Fast Color Eyelet Company owned no real estate and did no manufacturing; their eyelets were manufactured by other parties under contract. (Defts.' Exh. 231, R. Vol. 5, p. 461.)

Enamel Eyelet Company.

This transaction took place June 30, 1900. (Pltff.'s Exh. 83, R. Vol. 3, p. 645.) The Enamel Eyelet Company was owned by the same people who owned the Boston Fast Color Eyelet Company, and this acquisition was "a part of the same transaction by which the stock of the Boston Fast Color Eyelet Company was acquired." The Enamel Company was attempting unsuccessfully to manufacture the type of eyelet known as the "enamel eyelet." "There was no competition whatever between the Boston Company and the Enamel Company." The differences in the constructions of the enamel eyelet and the fast color eyelet and in their fields are pointed out by Mr. Howard. (Howard,

R. Vol. 1, p. 51, lines 28–29; p. 98, lines 28–45; p. 99, lines 1–10, 13–18; Defts.' Exh. 275, R. Vol. 5, p. 760; Winslow, R. Vol. 1, p. 462, lines 13–14.)

At the time of this acquisition neither the United Company nor any of its associate companies was engaged in the manufacture of eyelets (R. Vol. 1, p. 50, lines 10–12), and—

> "had it not acquired control of the Enamel Company the United Company could not have entered the enamel eyelet field without subjecting itself to the liability of suit under the Enamel Company's design patent 24,867, November 12, 1895, Kempshall. The Enamel Company had brought and vigorously prosecuted suit on that patent against John C. Rhodes." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 760.)

By this acquisition the United Company made substantial progress in clearing up the patent situation in the enamel eyelet field. It proved, however, that the United Company had otherwise made no progress in the way of entering the enamel eyelet field; for although these people "knew well how to make fast color eyelets they did not know how to make enamel eyelets and were not producing a satisfactory enamel eyelet. We had to junk a large supply we had on hand which we couldn't get rid of." But the United Company continued to supply the Enamel Company's eyelets so far as there was any demand, and "if manufacturers would buy them, we should be glad to sell them." (Howard, R. Vol. 1, p. 99, lines 13–18, 25–30.)

The division of the preferred stock issued in payment for the Boston Fast Color Eyelet Company and the Enamel Eyelet Company, as stated in the petition, was purely arbitrary, and at the request of the common owners of the two companies.

No real estate was acquired in this transaction. The Enamel Company did no manufacturing but had their eyelets made by others. (Defts.' Exh. 231, R. Vol. 5, p. 461.)

Ross-Moyer Manufacturing Company.

This transaction took place September 20, 1900. (Pltff.'s Exh. 87, R. Vol. 3, p. 658.) The Ross-Moyer Company had stores in Chicago and Cincinnati. It leased floor space in Cincinnati and employed thirty-five men. It had been in business for many years, and was putting out nineteen machines of "what are now known as the general department type." The patents

on these machines were named by Mr. Howard. (Howard, R. Vol. 1, p. 52, lines 40–43; p. 100, lines 31–41; p. 101, lines 16–30; Winslow, R. Vol. 1, p. 408, lines 23–24; p. 459, line 7; Defts.' Exh. 231, R. Vol. 5, p. 451.)

With a single exception the United Company had no machines for doing the work of the machines acquired from the Ross-Moyer Company. (R. Vol. 1, p. 101, lines 12–15.)

"The acquisition of these machines was the first step toward the creation of the United Company's general department," and the machines acquired were the foundation of its general department. (Howard, R. Vol. 1, p. 53, lines 3–5; p. 100, lines 42–43.)

Another reason for this acquisition was the desire of the United Company to establish its own agencies in Cincinnati and Chicago, and to do this without taking away from the Ross-Moyer Company the business which it had been carrying on for many years as agent for the McKay Shoe Machinery Company and the Consolidated & McKay Lasting Machine Company (R. Vol. 1, p. 409, lines 2–5, 11–13; p. 418, lines 38–40), and which it was still carrying on for the United Company. The value and nature of the service rendered by the United Company are fully discussed elsewhere, and need not be dwelt upon at this time. The importance of having its service headquarters, supplies of parts, and material for all of its machines in one place in each trade centre and of having the service, supplies of parts, and materials for its machines entirely in its own control is obvious. The disadvantages of duplications of service, supply depots, and corps of "traveling mechanics and instructors" visiting the same factories, traveling to the same places, and carrying parts to the same places under conditions such as existed prior to 1899 are pointed out by Mr. Winslow. (R. Vol. 1, p. 408, lines 7–44; p. 409; p. 410, lines 1–16.) Accordingly—

> "The United Shoe Machinery Company desired to establish its own stores and offices in each one of the shoe manufacturing centres, for the purpose of furnishing a better service in connection with its machines than had heretofore been possible by each of the separate companies, and to carry a proper supply of spare parts and material used in its machines." (Defts.' Exh. 231, R. Vol. 5, p. 452.)

Mr. Ross "at once took up the question with us as to where they would fit into the new company." Of course, when the

concerns which had been agents for the old companies learned of the United Company's intention to establish its own headquarters they were much concerned. "In all of these cases the moving motive in making these arrangements was from Mr. Ross in the Ross-Moyer, and Smith, and representatives of the Krieg estate, who wanted in the rearrangement to make the best arrangements for themselves." (Winslow, R. Vol. 1, p. 418, lines 36–45; p. 419, lines 42–44; p. 420, lines 1–2.)

Mr. Winslow further stated:

> "these concerns would necessarily lose the business which they had done acting as agents for the various companies, and it formed such a large portion of their whole business that they desired to have the United Company take over all their business relating to shoe machinery, or supplies, when the United Company was ready to establish its own offices."
>
> "An additional reason for the purchase of Ross-Moyer was to secure the services of Mr. Samuel Ross, who had long been associated with the McKay Company and was an experienced shoe machinery man and well liked by the trade. The United Company desired to secure his services to represent their interests throughout the middle west." (Defts.' Exh. 231, R. Vol. 5, p. 453.)

This led to "the employment of Mr. Ross as the western agent of the company, in charge of all the western offices." He "was our general agent in the West until two or three weeks ago, when he died." (Winslow, R. Vol. 1, p. 419, lines 5–6, 10–12.) Plaintiff's Exhibit 87 (R. Vol. 3, p. 658) is the employment agreement made with Mr. Ross.

Mr. Winslow testified (R. Vol. 1, p. 419, lines 7–10):

> "There was absolutely nothing more in our doing that than our purpose of doing the square thing by Mr. Ross. They had been connected with the McKay Company and the Lasting Company for years; part of our own family, so to speak."

Since this purchase, the business has been carried on by the Ross-Moyer Manufacturing Company, all the machines of the Ross-Moyer Company being put into the United Company's General Department and sold. The United Company did not raise the prices or limit the sale or manufacture of these machines. "The only thing that happened regarding those machines was that we made them better than the Ross-Moyer. The trade

was benefited in that respect." Also, the Ross-Moyer Company was made a depot for spare parts and the headquarters of the United Company's repair force for the Cincinnati and Chicago districts. (R. Vol. 1, p. 53, lines 8–9; p. 95, lines 28–35; p. 100, lines 42–44; p. 101, lines 1–2, 8–11; Winslow, R. Vol. 1, p. 459, lines 15–24.)

Bay State International Shoe Machinery Company.

This transaction took place January 30, 1901. (Pltff.'s Exh. 86, R. Vol. 3, p. 655.) This company was organized to do foreign business and did not do any business in the United States, its only business being in England. (R. Vol. 1, p. 52, lines 18–20; p. 101, lines 34–35.) It had put out about ten sets of its machines in England. (R. Vol. 2, p. 2059, Int. 1519.) It owned no real estate and did no manufacturing business. Its machines were manufactured in Montreal, Canada; none whatever in this country. Its machines were covered by English and French patents. They were a welter, stitcher and rough rounder, which were distinctly inferior to the United Company's machines and were very different in construction. (R. Vol. 1, p. 52, lines 20–21; p. 101, lines 31–33; R. Vol. 2, p. 2059, Ints. 1517–1518; p. 2085, Cr. Ints. 1642–1644; Defts.' Exh. 231, R. Vol. 5, p. 448.)

Since this company was not organized to do business between Great Britain and the United States, did no such business, and did no business in the United States, obviously this acquisition has absolutely no bearing upon this case.

Machines of the Bay State International Shoe Machinery Company infringed claims of two of the United Company's English patents. The United Company owned continental patents corresponding to those two English patents. (Defts.' Exh. 275, R. Vol. 5, p. 761.)

The purchase was made "at the earnest solicitation of the people who were interested, who were also customers, shoe manufacturers, and customers of the United Company," because it was believed to be "the cheapest way to settle and dispose of the litigation." "This was a purchase of foreign patents," and the consideration was $25,000 in preferred stock of the United Company. (Winslow, R. Vol. 1, p. 457, lines 21–26; Defts.' Exh. 231, R. Vol. 5, p. 448.)

Swain-Fuller Manufacturing Company.

This transaction took place February 2, 1901. (Pltff.'s Exh. 88, R. Vol. 3, p. 660.) The Swain-Fuller Company was doing "a very small business." (R. Vol. 1, p. 53, line 18.) "They owned no real estate; they leased a small amount of floor space in Boston; employed less than ten men." (Winslow, R. Vol. 1, p. 459, lines 25–27.) Its principal business was manufacturing and putting out a machine of the "General Department" type known as the "Star Leveling Machine" for turn shoes, which was patented. (R. Vol. 1, p. 53, line 18; p. 100, lines 22–24; R. Vol. 2, pp. 2054, 2055, Int. 1491.)

> "The Star machine was a very light machine and was adapted and used only for leveling turn shoes, which, owing to the fact that they have but one sole, require and will stand a less degree of pressure than other types of shoes." (Howard, R. Vol. 2, p. 2063, Int. 1533.)

Prior to this acquisition the United Company was not putting out any leveling machine adapted for use on turn shoes. "It would be impossible to use any machine that the United Company then had on turn shoes." On the other hand, "the Star machine could not be used with commercial profit on other work. It was too light and exerted too light a pressure for Goodyear work." (Howard, R. Vol. 1, p. 53, lines 20–24.)

An important reason for this acquisition was the desire of the United Company to obtain a leveling machine adapted for leveling turn shoes, which it had not had before. (Defts.' Exh. 275, R. Vol. 5, p. 761.)

Another important reason for this acquisition was that the United Company had produced and desired to use a sole pressing form for sole laying machines, shown and described in Gifford patent No. 694,367, which infringed a patent owned by the Swain-Fuller Company. (Defts.' Exh. 275, R. Vol. 5, p. 761.)

Mr. Winslow stated: "This property was acquired at the solicitation of Mr. Fuller, who was the principal owner and desired to go out of shoe machinery business." (Defts.' Exh. 231, R. Vol. 5, p. 454.) Mr. Winslow also testified: "We did not seek the Swain Fuller Company; they sought us." (R. Vol. 1, p. 459, line 34.) The importance of the transaction is indicated by the amount paid,—$13,201.92. (Defts.' Exh. 231, R. Vol. 5, p. 455.)

After the purchase, the Star Leveling Machine was manufactured and put out by the United Company and was its standard machine for leveling turn shoes. (R. Vol. 2, p. 2055, Ints. 1493, 1494; Defts.' Exh. 275, R. Vol. 5, p. 761.) Also the United Company used on its commercial sole-laying machine, the one which it had previously acquired from the Boot & Shoe Sole Laying Company, the pressing form of the Gifford patent, which, as above explained, had infringed a patent owned by the Swain-Fuller Company. (Defts.' Exh. 275, R. Vol. 5, p. 763.)

Globe Sewing Machine Company.

This transaction took place February 15, 1901. (Pltff.'s Exh. 89, R. Vol. 3, p. 662.) The Globe Sewing Machine Company—

> "were attempting to use the same machine for sewing the welt to the upper and insole and for stitching the outsole to the welt. They had a lockstitch machine for both operations, and used some attachments for one operation and other attachments for the other."

It was not successful. They also had an experimental rough rounder. All of these machines were patented. (Howard, R. Vol. 1, p. 109, lines 5–21; p. 104, lines 33–37; p. 528, lines 7–8; R. Vol. 2, p. 2002, Int. 1234.) Mr. Winslow testified:

> "The purchase was not one that the United Company sought, but was made at the earnest solicitation of Mr. Mellen Bray, to whom the Globe Company owed a very large sum of money. He wanted to get rid of having anything to do with the company, and came to me personally and besought me to acquire his interest. They owned no real estate and did no manufacturing. Such as they had done they had contracted outside." (Winslow, R. Vol. 1, p. 457, lines 5–12.)

The Globe Company owed Bray $86,984. (R. Vol. 3, p. 665.) The United Company paid $20,000 in its preferred stock for a majority of the stock of the Globe Company. (Defts.' Exh. 231, R. Vol. 5, p. 448; R. Vol. 1, p. 457, lines 13–18.)

As explained by Mr. Howard in full detail, many of the patented features of the Globe lockstitch welter gave that machine marked superiority over the lockstitch welter which the United

Company had just begun to put out. (R. Vol. 2, pp. 2004, 2005, Ints. 1241, 1242.)

On the other hand, all the Globe Company's machines infringed patents owned by the United Company. There were pending one infringement suit brought by the United Company against the Globe Company and five suits against users of the Globe Company's machines. (Defts.' Exh. 275, R. Vol. 5, p. 762.)

By this acquisition the United Company acquired control of the patents of the Globe Company which stood in the way of development by the United Company of its lockstitch welter, settled the existing patent litigation and avoided further patent litigation.

In explaining why the inventions of the Globe Company's patents were not adopted by the United Company, Mr. Howard testified:

> "These two features of superiority, together with others of less striking importance, would undoubtedly have been adopted in the United Company's lockstitch welting machine had it not been for the fact that shortly after the acquisition of the Globe Company's patents shoe manufacturers decided that they did not desire to sew the inseam by a lockstitch, and they refused to use lockstitch welters. In the year ending March 1, 1902, we put out only nine lockstitch welters, and six were returned; in the year ending March 1, 1904, we did not put out any machines, and five were returned. By 'any machines' I mean of course lockstitch welting machines." (R. Vol. 2, p. 2005, Int. 1242.)

In Mr. Howard's detailed discussion of the United Company's lockstitch welting machine, known as "Sewing Machine: Goodyear Universal Inseam," he explained that manufacturers "found that it was impossible to secure the tight inseam, which is indispensable in the inseam of a welt shoe." (R. Vol. 2, p. 2251, Int. 11.)

In view of the facts above stated and particularly in view of the large indebtedness of the Globe Company stated in Plaintiff's Exhibit 89 (R. Vol. 3, p. 665), as amounting to $92,075.69, it is perfectly clear that the Globe Company did not offer even potential competition to the United Company and that this transaction is of no importance.

J. C. Rhodes & Company.

This transaction took place June 19, 1901. (Pltff.'s Exh. 91, R. Vol. 3, p. 668.) "This company was an old, established eyelet-making concern" which "owned its own real estate and factory at New Bedford, Mass., employing about one hundred and sixteen men." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 461.) They manufactured "a patented enamel eyelet, which was the one in general use at that time." (Howard, R. Vol. 1, p. 51, lines 41–42; p. 98, lines 16–17.)

Their patent No. 565,091, August 4, 1896, contained—

> "broad claims to an enamel eyelet so constructed as to prevent breaking of the enamel coating by the pressure exerted in the eyelet setting operation."
>
> "Otherwise the flange would bend in the setting operation and the enamel would crack. That feature has never been dispensed with in any enamel eyelet which was commercially satisfactory." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 764; R. Vol. 1, p. 98, lines 42–44.)

The United Company had previously acquired the stock of the Enamel Eyelet Company, but—

> "Both the Rhodes eyelet and the Enamel eyelet were patented, and as a matter of fact each company was infringing the other's patent. The Enamel Company's eyelet was never a commercial success." (Howard, R. Vol. 1, p. 51, lines 43–44; p. 52, lines 1–2.)

A suit had been brought by J. C. Rhodes & Company against "a user of the enamel eyelet put out by the Enamel Eyelet Company." (Howard, R. Vol. 2, p. 2080, Int. 1615.) On the other hand: "The Enamel Eyelet Company had brought and was vigorously prosecuting a suit against John C. Rhodes for infringement of its design patent 24,867, November 12, 1895, Kempshall." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 763.)

By this acquisition the United Company accomplished three important objects: (1) It cleared up a complicated patent situation. If the eyelet of the Enamel Company had been commercially satisfactory, the United Company could not have put it out without infringing the Rhodes patent. (2) The United Company was able to put out a commercially satisfactory enamel eyelet without infringing the broad Rhodes patent. (3) It was

able for the first time to procure satisfactory metal blanks for its fast color eyelets. "Prior to that time those blanks, which had been procured from different sources, had not been satisfactory." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 764; R. Vol. 1, p. 591, lines 31–33.)

With this acquisition the United Company really entered the enamel eyelet field for the first time. As explained in discussing the Enamel Eyelet Company,—

> "they did not know how to make enamel eyelets and were not producing a satisfactory enamel eyelet. We had to junk a large supply we had on hand, which we couldn't get rid of." (Howard, R. Vol. 1, p. 99, lines 15–18.)

The United Company was at that time engaged in the manufacture of fast color eyelets, but the fast color eyelet—

> "was much more expensive than the enamel eyelet and was used only on the highest grade of shoes, never at any time on more than ten per cent of the shoes made."

The celluloid covering on the flange of the fast color eyelet makes it expensive, so that it has never been used except in the better grades of shoes. (Howard, R. Vol. 1, p. 50, lines 41–45; p. 51, lines 1–5.)

The enamel eyelet comprises a metal eyelet having a flange of the contour desired for the finished eyelet, which flange is coated with enamel, while in the fast color eyelet the flange merely serves to anchor the thick celluloid covering. The enamel eyelet is much less expensive and the enamel wears off after a time so that the eyelet has a brassy appearance and accordingly enamel eyelets are used only on the cheaper grades of shoes. There was no competition between fast color eyelets and enamel eyelets. (R. Vol. 1, p. 51, lines 6–13; p. 98, lines 28–45; p. 99, lines 19–21.)

The business of J. C. Rhodes & Company was continued by J. C. Rhodes & Company, Inc. Since the purchase, the factory facilities have been increased by building a large new factory. (Defts.' Exh. 231, R. Vol. 5, p. 461.)

The United Company continued to sell the Rhodes eyelets at the same prices at which they had been sold by the Rhodes Company,—

> "and in addition furnished the eyeletting machines in which the eyelets were used without charge to our cus-

> tomers, with no increase whatever in the prices; but the eyelets were sold to anyone, whether they used our machines or not." (Winslow, R. Vol. 1, p. 463, lines 39–43.)

Also the Rhodes eyelet has been much improved and "many new sizes have been made which were not made in 1901." (Howard, R. Vol. 1, p. 99, lines 36–39.)

Morley Button Manufacturing Company.

This transaction took place on December 14, 1901. (Pltff.'s Exh. 92, R. Vol. 3, p. 675.)

> "The Morley Button Manufacturing Company was primarily a button manufacturing company, manufacturing and selling buttons. In addition to this button business it was engaged in the business of manufacturing and selling a patented enamel eyelet. . . . The United Company acquired only the eyelet business of the Morley Company, and that company is now engaged in the business of manufacturing and selling buttons and similar articles as before." (Howard, R. Vol. 1, p. 54, lines 30–39.)

"The United Company acquired no real estate or manufacturing plant with this purchase . . . the eyelet business was a very small part of its total business." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 462.) The novel patented feature of the Morley eyelet was that the enamel coating did not extend down inside of the barrel.

> "This was different from both the Rhodes and Enamel Company eyelets. It was claimed that it was objectionable to have the enamel inside the barrel. They made the eyelet by a secret process and by a secret formula." (Howard, R. Vol. 1, p. 99, lines 6–10.)

By the process followed in making the Rhodes eyelet the inside of the barrel was covered with enamel.

Although the Rhodes and Morley eyelets were of different types, the Morley eyelet embodied the broadly patented feature of the Rhodes eyelet. (R. Vol. 1, p. 98, lines 40–42; p. 99, line 4.) At the time of this acquisition there were pending two suits brought by J. C. Rhodes & Company, Inc., against the Morley Company on Rhodes patent No. 565,091, August 4, 1896, and Kempshall design patent No. 24,867, November 12, 1895. (R.

Vol. 2, p. 2080, Int. 1615.) One of the considerations stated in the agreement for the sale of the Morley Company's business and patents was a covenant by the United Company that it would cause these two suits to be dismissed without costs and cause J. C. Rhodes & Company, Inc., to release the Morley Company from all claims for damages or profits on account of the infringement of the patents in suit. Another consideration was a further covenant that the Morley Company should be licensed under these two patents to manufacture eyelets in process to fill the orders which it had on hand. (R. Vol. 3, pp. 677, 678; R. Vol. 2, p. 2081.)

Mr. Winslow stated:

> "This purchase was made in 1901 as the best method of settling the litigation . . . and was believed to be a fair and equitable settlement of the existing situation, and by it the Rhodes Company acquired certain patents on eyelets which were valuable to it." (Defts.' Exh. 231, R. Vol. 5, p. 462.)

The price paid was $31,000, for which the United Company obtained one patent and one application for a patent, and machinery, for making the Morley eyelets, etc., inventoried at $17,541.99. (R. Vol. 3, pp. 676, 677, 681.)

The Morley eyelet was used on a cheaper grade of shoes than the Rhodes eyelet, but, after the acquisition, manufacturers demanded the superior Rhodes eyelet for all grades of cheaper shoes and the demand for the inferior Morley eyelet was so small that it was supplied from the stock on hand, but so far as there was any demand for Morley eyelets the United Company has supplied them. (Howard, R. Vol. 1, p. 99, lines 23–24, 28–30.)

Oliver A. Miller.

This transaction took place February 15, 1902. (Pltff.'s Exh. 93–95, R. Vol. 3, pp. 683, 687, 690.) Miller was engaged in the manufacture of treeing machines, and tree legs and tree feet that are used on, and are parts of, treeing machines, which are used in all factories for cleaning and blacking shoes before they are packed. (R. Vol. 1, p. 464, lines 29–34; p. 97, lines 42–45.)

Mr. Winslow testified:

> "We had no such machines. We were not in competition, not in the slightest degree." (R. Vol. 1, p. 464, lines 37–38.)

Mr. Howard testified:

> "This was absolutely a new branch for the United Company. It had nothing of the sort before." (R. Vol. 1, p. 98, lines 3–4.)

The purchase was made by the United Company "entirely for the purpose of extending its business." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 476.) Miller's treeing machines, tree legs and tree feet were patented. (R. Vol. 1, p. 98, lines 5–8.)

Miller had become involved in financial difficulties, needed money and wished to sell; "he came to us and wanted to dispose of the business," negotiations being opened through Frank Hannigan, his manager. (Winslow, R. Vol. 1, p. 464, lines 35–37; Defts.' Exh. 231, R. Vol. 5, p. 476.)

> "The reputation of the Miller machines and the Miller business was high, and we found that we could secure the manager of that business, who had been with Mr. Miller for a great many years, to continue as manager for us, and we finally accepted the company and continued that business." (Winslow, R. Vol. 1, p. 464, lines 38–43.)

The Miller treeing machine business "has been continued by the O. A. Miller Treeing Machine Company, of which Mr. Hannigan, a minority stockholder, is manager" (Howard, R. Vol. 1, p. 55, lines 14–16), in the factory which was acquired from Miller, and which has been largely extended. The business has increased, 125 men are now employed there; Miller employed 65 men. (R. Vol. 1, p. 465, lines 3–7; Defts.' Exh. 231, R. Vol. 5, p. 476.)

Marlboro Awl & Needle Company.

This transaction took place June 30, 1902. (Pltff.'s Exhs. 96–97, R. Vol. 4, pp. 693, 703.) This company owned no real estate, leased floor space in Marlboro and employed twelve men. (Defts.' Exh. 231, R. Vol. 5, p. 462.) It manufactured needles, awls and rawhide mallets. (R. Vol. 1, p. 467, lines 3–7; R. Vol. 5,

p. 476.) The needles were for use in the McKay sewing machine; the awls were chiefly "hand awls, such as cobblers use for shoe repairing"; the mallets were rawhide mallets "used by shoe makers and cobblers." (Howard, R. Vol. 1, p. 97, lines 27–41.) Neither the United Company nor any of its subsidiary companies was manufacturing needles of any kind, hand awls or rawhide mallets. (R. Vol. 1, p. 55, lines 36–39.)

A small company was formed called the United Awl and Needle Company and the Marlboro Company's business has been continued by the United Awl and Needle Company at its factory at West Medway, where it has employed twenty-eight or thirty men. (R. Vol. 1, p. 55, lines 41–43; Defts.' Exh. 231, R. Vol. 5, p. 462.)

The unimportance of this transaction is indicated by the facts above stated and by the amount of the consideration, $16,300 in preferred stock of the United Awl and Needle Company. (Defts.' Exh. 231, R. Vol. 5, p. 462.)

The T. A. Norris Machine Company.

This transaction is not named in its proper chronological order in the petition. (R. Vol. 1, p. 1011.) It took place July 1, 1902 (Pltff.'s Exh. 102, R. Vol. 4, p. 734),—not in March, 1903, as stated in the petition.

The T. A. Norris Machine Company had no real estate, but operated a small machine shop in Brockton, employing about ten men, in which they did general machine shop work. "It was really a repair shop." (Winslow, R. Vol. 1, p. 460, lines 7–10.) Their business was chiefly in second-hand machines, or, as Mr. Gregg puts it, "I think this company was more of a dealer than anything else," but they had manufactured for them six simple, minor machines. (R. Vol. 1, p. 59, lines 19–23, 26–27; p. 93, lines 39–45; p. 460, lines 9–10.)

The United Company had no machines for performing the operations of any of the six machines acquired from the Norris Company or even for doing similar work. (R. Vol. 1, p. 59, lines 28–38; p. 94, lines 1–28.)

The machine shop of the Norris Company was located in a building owned by T. A. Norris personally, in which building the

United Company had its Brockton headquarters and repair shop, which it held under lease from Norris.

Mr. Winslow testified:

> "This purchase was made upon the basis of the inventory, $11,526.78, and at the solicitation of Mr. Norris, who was heavily interested in real estate and wanted to retire from any machinery business." (R. Vol. 1, p. 460, lines 14–17; Defts.' Exh. 231, R. Vol. 5, p. 456.)

As to the reasons for this purchase,—

(1) Mr. Winslow testified: "We wanted to increase our space in his building, and this business arrangement was made." (R. Vol. 1, p. 460, lines 17–18; R. Vol. 5, p. 456.)

(2) The United Company extended its line of machines by adding to it the six "General Department" machines acquired from the Norris Company.

(3) "Lasting machine parts were carried by The T. A. Norris Machine Company." (Winslow, R. Vol. 5, p. 453.) Consistently with its policy of having under its own control the supply of parts and the furnishing of service for its machines, as explained in the Ross-Moyer discussion (*supra*, pp. 26–27), it was important for the United Company to continue this agency itself and in this instance, as in the other similar transactions, a fair adjustment of the situation was to take over the business of its former agent.

Since the purchase the United Company has continued putting out all the machines which it acquired from the Norris Company, and has operated the Norris machine shop as a repair shop. (Defts.' Exh. 231, R. Vol. 5, p. 456.)

American Sole Laying Machine Company.

This transaction took place September 25, 1902. (Pltff.'s Exh. 98, R. Vol. 4, p. 705.) The chief business of the American Sole Laying Machine Company was putting out a two-form laying machine which they were manufacturing under a license from the Tripp Giant Leveler Company under "the famous Cutcheon patent." (Howard, R. Vol. 1, p. 56, lines 15–18; p. 96, lines 33–34.)

> "That machine had right and left forms and operated on a pair of shoes, rights and lefts, at one time, one being under pressure while the operator was putting the other into position to go into the machine." (Howard, R. Vol. 1, p. 96, lines 29–33.)

The American Company also owned patents on their machine which prevented the United Company from adopting a satisfactory pad. (R. Vol. 1, p. 96, lines 43–45; p. 97, lines 20–26.) It "owned no real estate and did no manufacturing. Contracted with outside parties for such machines as it had built." This company was purchased for $5200 at the solicitation of Mr. Fuller, "who was the principal owner and desired to spend his time in the South." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 475.) The agreement sets forth that "Fuller is the owner of a majority of the capital stock" and that "Fuller controls the actions of said company." (Pltff.'s Exh. 98, R. Vol. 4, p. 705.) Mr. Fuller had also been the principal owner and treasurer of the Swain-Fuller Manufacturing Company, which had previously sold out its business to the United Company. (Defts.' Exh. 231, R. Vol. 5, p. 455; Pltff.'s Exh. 88, R. Vol. 3, p. 661.)

> "The standard commercial machine of the United Company at that time was the machine which it had acquired from the Boot and Shoe Sole Laying Company . . . but that was a one-form or single machine." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 765.)

Mr. Howard further testified:

> "We desired to turn this single machine into a double machine and we were able to do that after this transaction, in which we acquired the license which the American Company had under the Cutcheon patent. Counsel advised us that this license was assignable." (R. Vol. 1, p. 56, lines 25–29; p. 96, lines 38–40.)

This license was also needed by the United Company to enable it to develop the Atlas leveling machine. (Defts.' Exh. 231, R. Vol. 5, p. 475.)

The Cutcheon patent had been sustained by the Court of Appeals in the First Circuit (Defts.' Exh. 275, R. Vol. 5, p. 765)

and petitioner's expert, Mr. Chapman, described this patent as a pioneer and basic patent. (R. Vol. 2, pp. 2813, 2814, Int. 15.)

> "After this acquisition we incorporated in the machine which we got from the Boot & Shoe Sole Laying Company, the inventions acquired from the American Company, particularly the two-form construction and the pad invention. In other words, we got the method of sole laying from the Boot & Shoe Sole Laying Company, and we got the double application of that method from the American Company.
>
> "By combining the inventions embodied in two machines we made a better machine than either. The new machine has right and left forms and operates twice as fast as the single machine which we had previously been putting out." (Howard, R. Vol. 1, p. 97, lines 6–16.)

That machine "has been placed with our customers in very large numbers." (Howard, R. Vol. 1, p. 97, lines 18–19.) Also the United Company has "put out fifty sole-laying machines substantially the same as the machines which had been put out by the American Sole Laying Company" and "The United Company continued putting out these machines so long as there was any demand for them from shoe manufacturers." (Howard, R. Vol. 2, p. 2098.)

William J. Young.

That no tangible property was acquired from William J. Young by this transaction is clear from the agreement with him made October 1, 1902 (Pltff.'s Exh. 99, R. Vol. 4, p. 713), and from the record. "No manufacturing plant of any kind was acquired." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 468.) The only property acquired was "Young's English and German patents under which our foreign companies had agencies" and under which they were putting out Young's heel-compressing machine (Howard, R. Vol. 1, p. 57, lines 13–17; p. 95, lines 44–45), and for these patents the United Company paid $14,000. (R. Vol. 4, p. 717.)

> "At this time our foreign companies had been putting out Young's machines for a number of years. They had been agents for his machine." (Howard, R. Vol. 1, p. 57, lines 15–17.)

Neither the United Company nor any of its affiliated companies was putting out in Europe any heel-compressing machine other than Young's, and "The United Company had not shipped a heel-compressing machine to England or Germany, the countries where Young's patents were taken, for a period of over ten years." (Howard, R. Vol. 1, p. 57, lines 17–20; p. 96, lines 18–19.)

> "The machine which we had before this was an old machine, very much inferior to Young's, which was of comparatively recent invention. He preceded us by two or three years in inventing a modern, satisfactory, high-speed heel-compressing machine." (Howard, R. Vol. 1, p. 96, lines 23–27.)

An important reason for this transaction is thus stated by Mr. Howard:

> "Under the requirements of the German patent law it was necessary, in order to maintain Young's German patent, to manufacture his machine in Germany right after this time, and Young had no facilities for manufacturing machines in Germany, while the United Company had a factory." (R. Vol. 1, p. 57, lines 21–25; p. 96, lines 5–9.)

In view of the situation just stated by Mr. Howard, this transaction was mutually advantageous. As agent for Young the United Company had established a business with his machine and it was the only machine which it was putting out in Europe. Failure to maintain the German patent would make this machine public property in Germany. On the other hand, if Young had not sold his German patent and had failed to manufacture under it, the patent would have become worthless.

From the standpoint of the United Company another reason for this transaction was that "as the machines made by Young were not well made, customers had complained regarding their quality." (Defts.' Exh. 231, R. Vol. 5, p. 468.) After acquisition of the patents the United Company could remedy this by making the machines itself.

After acquiring the German patent the United Company began to manufacture in Germany and marketed the machines there. Young continued to put out this machine in the United States and he has put it out ever since in competition with the United

Company. As witness for the petitioner, Young testified that he has put out over 300 of these machines. Young also testified that his business has been growing and names over a dozen different types of machines which his company is putting out, many of which have been put out in large numbers. (R. Vol. 1, p. 96, lines 9–11, 13–17; pp. 942, 943.)

The George A. Smith Machinery Company.

This transaction took place November 20, 1902. (Pltff.'s Exh. 100, R. Vol. 4, p. 721.) The George A. Smith Machinery Company had a store in Philadelphia. It owned no real estate and did no manufacturing. It employed one man repairing second-hand machinery. (Defts.' Exh. 231, R. Vol. 5, p. 451.) The only machine which the Smith Company was putting out was the hand-operated boss spring heel scarfing machine, which was patented. (R. Vol. 1, p. 58, lines 3–5; p. 95, lines 36–39.) This machine was manufactured for the Smith Company in outside machine shops. (Defts.' Exh. 231, R. Vol. 5, p. 451.)

The United Company was not putting out a machine for doing work similar to that of the Smith Company's machine. (R. Vol. 1, p. 58, lines 5–6.) After the acquisition, the United Company sold this machine through its General Department and it is still being supplied to customers. (R. Vol. 1, p. 95, lines 42–43.)

A controlling reason for the acquisition of the Smith Company was the desire of the United Company to establish its own agency in Philadelphia and to do this without injustice to the Smith Company or to Mr. Smith, who was the majority stockholder of the Smith Company, as set forth in Plaintiff's Exhibit 100. (R. Vol. 4, p. 721.)

> "The George A. Smith Machinery Company was agent for the United Company machines, except the Goodyear machines, as it had previously, before the formation of the United Company, been agent for all the predecessors of the United Company except the Goodyear Company. That business was taken over by the United Company." (Howard, R. Vol. 1, p. 57, lines 42–44; p. 58, lines 1–3.)

Like the Ross-Moyer Manufacturing Company, the Smith Company had been the agent in Philadelphia for the McKay

Shoe Machinery Company and the Consolidated & McKay Lasting Machine Company, carrying in stock spare parts for all the machines of those companies and the wire used in the machines of the McKay Company and after the formation of the United Company it had continued in the same relation to the United Company. (Defts.' Exh. 231, R. Vol. 5, pp. 452, 453; Vol. 1, p. 419, lines 13–17.)

Mr. Winslow testified:

> "When Mr. Smith found that we were going to unify this service and bring it all under one head, he wanted we should buy him out, and we did acquire his business." (Winslow, R. Vol. 1, p. 419, lines 17–20; p. 418, lines 36–38.)

The United Company's reasons for desiring to establish an agency in Philadelphia and the importance of so doing were the same as in the case of the Ross-Moyer Company (Defts.' Exh. 231, R. Vol. 5, p. 453), and have already been explained in the discussion of that company (*supra*, pp. 26–27).

The United Company continued the business of The George A. Smith Machinery Company except the cut soles and findings business, which was excepted from the transaction, on the premises which had been occupied by the Smith Company in Philadelphia and established the headquarters of its repair force there and carried there its supplies of machine parts and materials for use on the machines. (R. Vol. 1, p. 95, lines 18–35.) The consideration for this transaction was $38,790.79, the inventory value of the property acquired. (Defts.' Exh. 231, R. Vol. 5, p. 451.)

George W. Emerson & Company.

This transaction took place December 18, 1902. George W. Emerson & Company, a co-partnership (Pltff.'s Exh. 101, R. Vol. 4, p. 725), owned no real estate, leased two floors in a factory building in Lynn, and employed about thirty-five men. (R. Vol. 1, p. 460, lines 3–5.) Their principal business was "manufacturing and supplying lasts and forms for sole leveling machines of the 'Giant' type." They were also putting out a patented power spring heel scarfer, a patented heel-burnishing

machine, and a tip scourer. (Howard, R. Vol. 1, p. 58, lines 24–38, 44–45; p. 94, lines 29–44.)

The United Company had no tip scourer and no power operated spring heel scarfer and it was developing a leveling machine on which lasts and forms are used. (R. Vol. 1, p. 58, lines 22–24; p. 59, lines 3–10; p. 94, lines 29–31; p. 95, line 1.) The patented heel-burnishing machine which the Emerson concern was putting out was of "a different type" and performed its operation in an entirely different way from the United Company's machine, which was also patented. Some manufacturers preferred and insisted upon having one type of machine, while other manufacturers preferred and insisted upon having the other type. (R. Vol. 1, p. 58, lines 39–45; p. 59, lines 1–2; p. 95, lines 4–11.)

There were three important reasons for this acquisition:

(1) The United Company extended its line by adding a tip scourer, a power operated spring heel scarfer, and a new type of heel burnisher which some manufacturers preferred. It also secured a source of supply for the lasts and forms which had to be used upon the leveling machine which it was developing.

(2) "We desired to obtain the services of William R. Sampson, who was the active man with Emerson and who today occupies with our company a very prominent position and has been with us ever since." (Winslow, R. Vol. 1, p. 459, lines 41–44.)

(3) "To compose certain litigation then pending between the Xpedite Company and the Emerson Company for infringement of the Xpedite patents." (Winslow, R. Vol. 1, p. 460, lines 1–3.)

As to (3) the Emerson heel-finishing machine infringed eleven claims of two patents of the United-Xpedite Finishing Company, one of which is "one of the most important patents on that machine." (Defts.' Exh. 275, R. Vol. 5, p. 766.)

Mr. Winslow testified:

> "This property was acquired at the earnest solicitation of George W. Emerson, who was interested in a trout farm on Cape Cod and desired to retire from the shoe machinery business. . . The amount paid was based upon the inventory of the Emerson Company." (R. Vol. 1, p. 459, lines 35–40.)

Since this acquisition the business of the Emerson concern has been continued by the United Company in its several departments and the machines acquired have all been supplied to customers. (R. Vol. 1, p. 59, lines 12–13; p. 94, lines 37–38; p. 95, lines 1–3, 9–11.)

Mr. Sampson was for several years the head of the General Department and was then promoted to the executive offices. (R. Vol. 1, p. 95, lines 12–17.)

W. W. Cross & Company, Incorporated.

This transaction took place February 18, 1903. (Pltff.'s Exh. 103, R. Vol. 4, p. 744.) This corporation was formed to take over the business owned by W. B. Cross, including his real estate and factory. (Defts.' Exh. 231, R. Vol. 5, p. 463.) He did not manufacture shoe machinery, but nails and tacks for use in the manufacture of shoes. (R. Vol. 1, p. 60, lines 1–2.)

The United Company was not engaged in the manufacture of nails and tacks. (R. Vol. 1, p. 60, lines 3–5.) The Consolidated & McKay Lasting Machine Company had obtained from Cross substantially all of its tacks, "many tons every week," these tacks being made particularly for the lasting machines put out by the Consolidated & McKay Company; and the United Company, in continuing to put out those machines, obtained its tacks from the same source. (R. Vol. 1, p. 93, lines 31–38; Defts.' Exh. 231, R. Vol. 5, p. 463.)

Mr. Cross was very closely associated with the United Company, which was the only large customer that he had and which took nearly his entire output. (R. Vol. 1, p. 462, lines 28–34; p. 93, lines 35–36.) The demand for tacks by the customers of the United Company grew to such proportions that it became a problem how to obtain a sufficient supply (R. Vol. 1, p. 672, lines 6–12), since Mr. Cross was not willing, without some assurance as to the future, to put up the capital necessary for such an enlargement of his output for the accommodation of a single customer. (R. Vol. 1, p. 462, lines 30–32.)

> "We simply acquired that business to be able to supply our lasting machine customers with tacks." (Howard, R. Vol. 1, p. 93, lines 36–38.)

The agreement (Pltff.'s Exh. 103, R. Vol. 4, p. 744) was entered into "for the purpose of enabling the Cross Company to extend their business and fix permanently the relations between the company and W. B. Cross." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 463.)

Since the acquisition the United Company has continued to buy its tacks from W. W. Cross & Company, Inc., and the business has so increased that it now employs 317 men; it then employed about forty men. (R. Vol. 1, p. 462, lines 33–34.) However, that company by no means occupies this field exclusively. The Atlas Tack Company, in which the United Company has no interest, "is the largest manufacturer of tacks in this country." (Winslow, R. Vol. 1, p. 472, lines 39–41.)

J. K. Krieg & Company.

This transaction took place May 6, 1903. (Pltff.'s Exh. 104, R. Vol. 4, p. 746.) J. K. Krieg & Company was a copartnership doing business in New York. They owned no real estate and had a small machine shop above their store where they employed four men and one boy, who were engaged principally in rebuilding old machines and repairing machines used in other lines of manufacturing, but who when not so engaged were employed in building the few machines which Krieg put out. (Defts.' Exh. 231, R. Vol. 5, p. 452.)

Krieg had been local agent for the United Company and its predecessors for parts and supplies for all the machines except the Goodyear machines, and the Krieg store was the headquarters for the United Company's men. J. K. Krieg had died and his business was being carried on by his estate. Mr. Winslow testified:

> "We dealt with that situation in this way: We acquired that part of the J. K. Krieg business, which related directly to the business that was done with shoe manufacturers. The younger Krieg retained the business that had to do with retailers." (R. Vol. 1, p. 419, lines 31–42.)

One of the three machines which Krieg put out was a patented heel seat rounding machine especially constructed for rounding heel seats of Goodyear shoes. The only machine the United Com-

pany had for this operation was an edge-trimming machine provided with a larger cutter than was used for edge-trimming. This edge trimming machine effected the trimming operation by chewing up the surplus stock into dust while the Krieg machine cut off the surplus stock so that the scraps cut off could be sold or utilized either for scrap leather or for manufacturing pieced heels, thus effecting a substantial and therefore important economy. (R. Vol. 1, p. 60, lines 28–34; p. 92, lines 31–45; p. 93, lines 1–10; Vol. 2, p. 2045, Ints. 1446–1448.)

Krieg also had manufactured by other parties and was putting out a Louis heel-scarfing machine for cutting from the grain side of the outsole a strip of leather to be bent up over the undercut breast surface of a Louis heel, a wood heel, used in a particular type of woman's shoe. The United Company had no machine capable of performing the operation of that machine. Krieg also had an embossing machine for stamping names or trademarks on upper linings. (R. Vol. 1, p. 60, lines 35–41; p. 93, lines 11–28.)

By this transaction the United Company acquired machines which it did not have before and was thus extending its line.

But the more important reason for this acquisition had to do with the desire of the United Company to establish its own headquarters for its local repair men in the New York district and to take under its own control the carrying and supplying of spare parts for its machines to manufacturers in the New York district just as it had previously done in other parts of the country by the acquisition of the Ross-Moyer Manufacturing Company and The George A. Smith Machinery Company. The importance of this policy, both to the United Company and to the trade, and the general reasons why the United Company in establishing its own agencies acquired the properties of the concerns which had previously been its agents are fully explained in the discussion of the acquisition of the Ross-Moyer Manufacturing Company (*supra*, pp. 26–27).

Mr. Winslow testified:

> "In all of these cases the moving motive in making these arrangements was from Mr. Ross in the Ross-Moyer and Smith, and representatives of the Krieg estate, who wanted in the rearrangement to make the best arrangements for

themselves." (R. Vol. 1, p. 419, lines 42–44; p. 420, lines 1–2.)

The amount paid for this business was $97,056.52 (Defts.' Exh. 231, R. Vol. 5, p. 451), which was the inventory value of the property "less proper deductions therefrom" for depreciation and for unsalable goods. (Pltff.'s Exh. 104, R. Vol. 4, p. 749.)

After this acquisition the United Company used the Krieg store in New York as headquarters of its repair force, furnishing "very much better service," and kept there a complete line of parts and supplies for all its machines. The United Company also continued putting out the new machines which it had acquired from J. K. Krieg & Company. (R. Vol. 1, p. 95, lines 30–35; p. 60, lines 32–34; p. 93, lines 19–21, 29–30.)

Joseph P. Curtis.

By this transaction, which took place Oct. 20, 1903, the United Company acquired certain patent rights and nothing more. Curtis assigned two pending applications to the United Company. Curtis did not transfer his one experimental machine. (Pltff.'s Exh. 106, R. Vol. 4, p. 754; R. Vol. 1, p. 92, lines 21–22.) These patent rights related to a machine for cementing a piece of fabric to an upper. The United Company had no machine for use in performing this operation nor any machine that could be used for this work, "which required a machine of an entirely different type and entirely different organization from any we had."

On the other hand, the Curtis machine could not be used for the same purpose as any machine of the United Company. (R. Vol. 1, p. 61, lines 10–18; p. 92, lines 4–12.)

The consideration in this transaction was "$500 cash and a royalty of $10 on each machine embodying the inventions." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 468.)

The United Company subsequently obtained Letters Patent upon an application filed by Curtis and did all that it could to make the machine a commercial success, putting out in all about forty-five machines constructed according to that patent. The machines, however, did not prove to be a practical success, since the operation performed was not satisfactory. Most of the

machines which were put out were returned. (R. Vol. 1, p. 92, lines 13–20; Vol. 2, p. 2045, Int. 1445.) Moreover, "the Peerless Machine Company, under patents owned by them, were able to produce a better machine and have done the larger part of this business." (Winslow, Defts.' Exh. 231, R. Vol. 5, pp. 468, 469.)

Fred H. Perry.

The agreement with Fred H. Perry, which was merely an employment contract, was made January 1, 1904. (Pltff.'s Exh. 107, R. Vol. 4, p. 758.) No property of any kind was acquired from Mr. Perry. He had entered the employment of the company as a machinist, at wages of thirty-four cents an hour, less than four years before the date of the contract referred to in the petition. He was given the opportunity in 1903 "at his own urgent request" to enter the inventive department of the company and demonstrate whatever inventive ability he might possess, and was paid $30 a week for the first eighteen months of this employment. Mr. Perry developed into a "very successful inventor," and has made some very important inventions for the company. He is still employed by the company and his salary has been materially increased several times, and on January 1, 1911, was raised to $4,000 a year. The important inventions that he has made have been embodied in commercial machines which have been given immediately to the trade and have been put out in large numbers. Among these machines are the present commercial Rounding and Channeling Machine, Model E, Goodyear Universal, and Jointing Machine, Goodyear, the importance and value of which are explained in detail by Mr. Howard. (R. Vol. 1, p. 91, lines 18–40; Vol. 2, pp. 2309 *et seq.*; 2611 *et seq.*; Defts.' Exh. 231, R. Vol. 5, p. 473.)

Joseph W. Leary.

The agreement with Joseph W. Leary made January 1, 1904, was primarily an employment contract. (Pltff.'s Exh. 109, R. Vol. 4, p. 769.) The very small business which he was doing was insignificant. He did no manufacturing of any kind, employed no men, and had no factory. He was engaged principally in

retailing, in a small way, cements and blackings such as are used in the manufacture of shoes and are supplied by "hundreds of dealers." He also dealt in a very small way in second-hand sewing machines for sewing together the parts of an upper before the bottoming room operations, but dealt in no new machines except the Amazeen machine which he sold for the United Company. (R. Vol. 1, p. 62, lines 1–11; p. 91, lines 1–8; Defts.' Exh. 231, R. Vol. 5, p. 473.)

In connection with his small local sale business in Lynn, Leary was an agent for the Amazeen skiving machine which was being put out by the United Company. "He was an extremely capable salesman and mechanic, thoroughly familiar with the Amazeen machine, and unusually successful in selling it." His activities with reference to the machine were, however, in view of the local character of his business, entirely centered in Lynn, and the principal reason for entering into the contract of employment with him was to obtain his services in selling the machine in a much wider field. (Howard, R. Vol. 1, p. 91, lines 9–17; Defts.' Exh. 231, R. Vol. 5, p. 474.)

> "Mr. Leary stated that he would like to enter the employ of the United Company if the company would buy his stock of cement and second-hand machinery, and the company paid him $3052 for the small stock that he had on hand." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 474.)

Leary is still employed by the United Company as an agent for the Amazeen machine. (R. Vol. 1, p. 91, lines 16–17.)

The F. G. Farnham Brush Manufacturing Co.

This transaction took place January 23, 1904. (Pltff.'s Exh. 109, R. Vol. 4, p. 769.) The Farnham Company was a small concern employing only six men. It leased floor space in a small factory in Honesdale, Pa. Almost its entire business was in putting out patented Tampico brushes for the cut glass trade, but it also put out a few patented brushes for the shoe trade and it put out the sleeves, collars, hubs and fillers that are necessary parts of such brushes. Brushes are used in the shoe trade for cleaning and polishing only. (R. Vol. 1, p. 62, lines 30–44; p. 89, lines 42–44; p. 90, lines 1–9, 36–39; R. Vol. 2, p. 2045, Int. 1444; Defts.' Exh. 231, R. Vol. 5, p. 464.)

The United Company was putting out shoe brushes, sleeves, hubs and collars that it obtained from S. A. Felton & Son Company, in which the United Company has a half interest, but the United Company did no business in Tampico brushes. (R. Vol. 1, p. 62, lines 34–36; Defts.' Exh. 231, R. Vol. 5, p. 462.)

The important reason for this purchase was that the Farnham brush was much superior to the Felton brush.

> "The Farnham brush was very superior to our old brush, the Felton brush, with which we had been having great difficulty because the bristles were constantly coming out. For several years we had been having complaints all the time that the bristles would not stay in the brush. In this respect the Farnham brush was much superior to our old brush." (Howard, R. Vol. 1, p. 90, lines 15–20.)

The Farnham Company had patents on its brush, brush section and a combined brush and hub; and the United Company wished to obtain these patents in order to furnish a better brush to the shoe trade. (R. Vol. 1, p. 90, lines 36–39; Defts.' Exh. 231, R. Vol. 5, p. 464.)

The Farnham Company was poorly located geographically for dealing with the shoe trade and desired to sell out; the purchase was made "at the earnest solicitation of the officials of the Farnham Company" for $25,915.32. (R. Vol. 1, p. 90, lines 7–9; Winslow, Defts.' Exh. 231, R. Vol. 5, p. 464.)

After the purchase, the Farnham "business was continued at Honesdale for nearly a year and was then removed to the factory of S. A. Felton & Son Company, where the business has been continued." The business in brushes for the cut glass trade was continued and is still being carried on. The Farnham shoe brushes were supplied in considerable quantities for a time on account of its superiority to the old brush, "but it was more expensive, so that the demand for it has not been as great as it otherwise would have been." (Howard, R. Vol. 1, p. 90, lines 10–22; Defts.' Exh. 231, R. Vol. 5, p. 464.) Mr. Howard testified:

> "After we acquired the Farnham brush we made use of the general idea of the Farnham brush and produced an improved brush of this same general type, with the addition of valuable improvements which completely overcame the difficulties which we had had before. . . . That construction

afforded a complete solution of the difficulty which had been troubling us for several years." (R. Vol. 1, p. 90, lines 23–31.)

This improved brush, which is very satisfactory, is the one the United Company is now principally putting out. (R. Vol. 1, p. 90, lines 39–45.)

American Glue Company.

This transaction was merely a contract entered into May 2, 1904 (Pltff.'s Exh. 110, R. Vol. 4, p. 796) for the exclusive agency for the American Glue Company's sandpaper in the shoe trade:

> "The American Glue Company transaction was merely a contract, terminable on three months' notice, relating to sand-paper in the shoe trade—not in other trades." (Winslow, R. Vol. 1, p. 462, lines 39–41.)
>
> "It is agreed, however, that either party shall have the right to terminate this agreement by a three months' notice in writing delivered to the other of said parties, and in case such notice shall be given, then this agreement shall, at the end of the said three months, terminate." (Pltff.'s Exh. 110, R. Vol. 4, p. 798.)

As stated by Mr. Winslow (R. Vol. 1, p. 472, lines 30–33):

> "The American Glue Company wanted us to take over their molded sandpaper business, which is a part that especially applies to shoe making and does not include their entire business;"

but the United Company took only an agency for the United States and Canada such as it already had abroad, and "The United Company has no interest whatever in the American Glue Company." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 464; Howard, R. Vol. 1, p. 89, lines 35–36.)

> "The United Company made no goods of a similar character, but has marketed a large amount of goods for the American Glue Company under this contract." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 464.)
>
> "Sandpaper is used in the manufacture of shoes for the operations known as scouring and buffing. The general object of each operation is the same—to smooth up the

particular part of the shoe on which the operation takes place.

"Prior to this agreement the United Company was agent for the American Glue Company abroad, and it had bought from the American Glue Company the sandpaper which it furnished to customers in this country. This agreement did not change the trade relations of the parties in the least. After making the agreement the United Company continued to furnish the same sandpaper to customers as liberally as before." (Howard, R. Vol. 1, p. 89, lines 31–41.)

Zachary Taylor French.

This transaction took place January 1, 1904. (Pltff.'s Exh. 111, R. Vol. 4, p. 803.) Zachary Taylor French owned no real estate and no manufacturing plant was acquired. Contrary to the allegation in the petition (R. Vol. 1, p. 1014), "French had no business of his own, but had been for thirty years in the employ of the Goodyear Company, or its predecessors." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 471.)

This transaction was thus explained by Mr. Howard:

"Mr. French had for a great many years been in the employ of the United Company and its predecessor, the Goodyear Company, as an inventor, and later as superintendent of the Goodyear factory on Albany Street in Boston. His inventions were covered by a number of royalty agreements. He did not wish to move to Beverly when the plant there was opened about this time, and therefore desired to leave the employ of the company. A settlement was made of the royalties which would become due under his various contracts; and the agreement of plaintiff's Exhibit 111 incorporates the settlement which was made at that time." (R. Vol. 1, p. 63, lines 30–40.)

"It had been the practice of the Goodyear Company to make royalty agreements with him from time to time which provided for payments for his inventions by way of royalties." (R. Vol. 1, p. 89, lines 25–27.)

Mr. Winslow testified that the agreement was made—

"to commute obligations existing prior to 1899 under royalty contracts for the right to manufacture under patents." (R. Vol. 1, p. 464, lines 9–14.)

"Reason for agreement to assign future inventions and not to compete with the United Company for ten years, was

because French desired to leave the company's employ and to have his royalty contracts (which were entirely dependent upon the number of machines that might be put out) placed upon a definite basis of annual payment." (Defts.' Exh. 231, R. Vol. 5, p. 471.)

The consideration was the United Company's agreement to pay $15,000 in annual instalments of $1500 each. (Pltff.'s Exh. 111, R. Vol. 4, p. 810.)

Kimball and Hadley.

This transaction took place June 11, 1904. (Pltff.'s Exh. 112, R. Vol. 4, p. 814.) Kimball and Hadley were a copartnership. They leased small floor space in Lynn and employed two men and two boys. Their principal business was the manufacture of Goodyear needles, *i.e.*, the curved needles used on Goodyear welters and stitchers. (R. Vol. 1, p. 64, lines 10–12; Defts.' Exh. 231, R. Vol. 5, p. 464.)

The United Company was not making Goodyear needles. (R. Vol. 1, p. 64, lines 15–16.) Petitioner's witness Hadley testified to the same effect:

> "They obtained their Goodyear needles from the Smith Company in New Haven, Connecticut, and from the Excelsior Needle Company, of Torrington, Connecticut.
>
> "*Q.* But so far as you know they didn't make any of their own?
>
> "*A.* No. . . .
>
> "*Q.* You just told me they didn't manufacture any Goodyear needles.
>
> "*A.* They didn't." (R. Vol. 1, p. 310, lines 33–37; p. 311, lines 5–7.)

By this acquisition the United Company was merely extending its field to include the manufacture of Goodyear needles. The United Company has continued to manufacture Goodyear needles and to supply them at the same prices that had been charged by Kimball and Hadley. (R. Vol. 1, p. 64, lines 21–22; Defts.' Exh. 231, R. Vol. 5, p. 465.)

That this transaction was entirely negligible is proved by Mr. Hadley's testimony to the effect that at least two other concerns were engaged in the business of making Goodyear needles, by

the size of the concern as above indicated, and by the amounts of the purchase price, $4750, and Hadley's original asking price, $5000. (Hadley, R. Vol. 1, p. 310, lines 33–35; p. 311, lines 13–14.)

After this transaction Kimball and Hadley again engaged in the needle business despite their covenant to keep out of that business for fifteen years (Pltff.'s Exh. 112, R. Vol. 4, p. 815), and in a suit to enforce the terms of their agreement with the United Company they were enjoined from continuing the business. (Hadley, R. Vol. 1, p. 311, lines 15–20.) The decision of the Supreme Court of Massachusetts affirming the granting of this injunction is reported in 193 Mass. 351.

Arnold Machine & Supply Company (William B. Arnold).

This transaction took place June 28, 1904. (Pltff.'s Exh. 113, R. Vol. 4, p. 816.) The Arnold Machine & Supply Company was engaged in manufacturing a patented machine for applying cement to an insole for the purpose of securing a reinforcing strip of canvas to it in the process of making what is known as the Gem insole, of which Defendants' Exhibit 17 is a sample. The Arnold Company had put out only seven machines. This machine and two patents were all that was acquired by this transaction and the consideration was "$500 and royalties to be paid on machines when put out." (R. Vol. 1, p. 64, lines 39–46; p. 88, lines 20–30; Winslow, Defts.' Exh. 231, R. Vol. 5, p. 469.)

"It had never been the practice before this machine was invented to apply cement to the insole rather than to the canvas." The United Company had no machine which could possibly be used for performing the operation of the Arnold machine which had to be specially constructed for the purpose for which it was intended. "What had been used before was not a cementing machine; it was merely a cement pot through which the canvas was drawn on its way to the table, where it was cut off and applied to a piece of leather." (Howard, R. Vol. 1, p. 64, line 46; p. 65, lines 1–14; p. 92, lines 7–12.)

The Arnold machine was a very satisfactory one; but immediately after the purchase by the United Company demand for the machine entirely ceased for the reason that the process of pre-

paring the Gem insole was entirely revolutionized by the production of—.

> "a new type of reinforcing canvas which was introduced about this time by concerns other than the United Company. That canvas was sold to manufacturers with the cement already on it, and it was steamed and heated and then stuck right on the sole. There were three concerns engaged in preparing and selling this new type of reinforcing canvas and it entirely revolutionized the prior processes of making Gem insoles. This new process was subsequently used instead of the cementing machine and entirely superseded it." (Howard, R. Vol. 1, p. 88, lines 31–43.)

Leopold J. Courteau.

This transaction took place October 1, 1904. (Pltff.'s Exh. 115, R. Vol. 4, p. 826.) The United Company acquired from Leopold J. Courteau an invention; nothing more. As shown by the agreement, it did not even acquire title to the experimental machine in which Courteau had embodied his invention. The consideration was an agreement "to pay royalty of 10 per cent of the selling price until $1000 had been paid," and this agreement was conditional upon the United Company obtaining Letters Patent of the United States if its patent solicitors were of the opinion that such patent "can be obtained giving any substantial protection." (R. Vol. 1, p. 87, lines 35–37; Winslow, Defts.' Exh. 231, R. Vol. 5, p. 469; Pltff.'s Exh. 115, R. Vol. 4, p. 827.)

The object of this invention was "a mechanism for holding the linings of shoes during the process of pasting the outer [upper] leather to the lining." This cementing operation is performed to a limited extent on some kinds of shoes, and the work had previously been done by hand. The United Company had no machine for performing this operation. (R. Vol. 1, p. 66, lines 10–12; p. 87, lines 30–37; R. Vol. 4, p. 826.)

An application for United States patent upon Courteau's invention was filed, and a patent was subsequently issued upon this application. (R. Vol. 1, p. 87, lines 35–37; R. Vol. 2, p. 2043, Int. 1438.)

The United Company was entirely unable to produce a prac-

ticable machine embodying the Courteau invention. Mr. Howard testified:

> "Nothing ever came of this agreement. We were unable after the most strenuous efforts to make a practicable machine. During our experiments Courteau was often consulted and finally confessed himself that he saw no way to make the machine practicable." (R. Vol. 1, p. 66, lines 12–16.)

And again:

> "We made a very determined effort to make it practicable. Our inventors who were working upon it had frequent conferences with Courteau, and finally, when they were convinced that it was utterly impracticable, they made a final appeal to Courteau to see whether he could make any suggestions which would remedy the situation, and he was unable to do so. The concern with which Courteau was connected, which under the agreement was entitled to have machines at cost [see Pltff.'s Exh. 115, R. Vol. 4, p. 829], considered the machines worthless and refused to take any machines. We did the best we could with it but could not develop anything out of it, and it was given up." (R. Vol. 1, p. 87, lines 39–45; p. 88, lines 1–4.)

Booth Brothers (1904 Agreement).

By this transaction, which took place October, 25, 1904, the United Company acquired a vamp-perforating machine referred to in the agreement of Plaintiff's Exhibit 114 (R. Vol. 4, p. 822) as "the experimental machine," and the patent on that machine; it acquired no plant or shop. (R. Vol. 1, p. 88, lines 5–6; Defts.' Exh. 231, R. Vol. 5, p. 469.)

The consideration in this transaction was $2,400 in cash and $7,600 to be paid in royalties. (Defts.' Exh. 231, R. Vol. 5, p. 469; Pltff.'s Exh. 114, R. Vol. 4, p. 823.)

The Booth machine was designed for ornamenting uppers or parts of uppers. The United Company had no vamp-perforating machine nor any machine which could be used for perforating vamps. (R. Vol. 1, p. 65, lines 31–42; p. 88, lines 6–16; R. Vol. 2, p. 2044, Int. 1439; Defts.' Exh. 231, R. Vol. 5, p. 469.)

The acquisition of this patent enabled the United Company to extend its line to include a vamp-perforating machine.

This machine has been sold by the United Company through its General Department in large numbers and the business in it was very largely developed after the United Company acquired it. (R. Vol. 1, p. 88, lines 17–20.)

Brockton Supply Company.

As shown by Plaintiff's Exhibit 116 (R. Vol. 4, p. 831), by this transaction, which took place November 1, 1905, the United Company acquired from the Brockton Supply Company, a co-partnership, two patents covering a machine for pulling lasting tacks. At this time the United Company had no commercial tack-pulling machine; "it was developing one, but had put none out." (Howard, R. Vol. 1, p. 66, lines 24–26; p. 87, lines 3–6, 25.)

The United Company's experimental machine infringed two claims of one of the patents owned by the Brockton Supply Company. On the other hand, the Brockton Company's machine infringed seven claims of two applications owned by the United Company. (R. Vol. 1, p. 66, lines 26–27; p. 87, lines 25–27; R. Vol. 2, p. 2043, Ints. 1436, 1437; Defts.' Exh. 275, R. Vol. 5, p. 767.)

This situation created a patent deadlock which was removed by common ownership of the two groups of patents. Furthermore, the firm members of the Brockton Supply Company had had a serious disagreement and desired to liquidate their business. Also Mr. Campbell, one of the partners, was anxious to go out of business. They had already sold a part of their business to another concern, and "Campbell had suggested to Nichols that he (Nichols) see if they could not sell the rest of their business to the United Company, which Nichols did," and the United Company was willing to make this acquisition, as it "had not been able up to that time to produce a tack-pulling machine." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 477; Howard, R. Vol. 1, p. 66, lines 28–29.)

After this acquisition the United Company put out to a considerable extent the machine acquired from the Brockton Supply Company, but Mr. Howard testified that—

> "the most important use which we made of the inventions was to incorporate them in our experimental tack pulling and resetting machine, particularly the feature covered by

claims of those patents which that machine had infringed. That machine was for use on Goodyear shoes and not only pulled the lasting tacks but drove the lighter tacks, called slivers, which hold the upper in place until after the welt has been sewed on. . . . Previously it had always been the practice to drive those slivers by hand. This new tack pulling and resetting machine of ours, in which we incorporated the inventions claimed in the patents acquired from the Brockton Supply Company, was the first machine in the art for performing the two operations at once. . . . After the acquisition we combined their inventions and ours in our machine and furnished it to customers in large numbers." (R. Vol. 1, p. 87, lines 8–15, 19–24, 27–29.)

Smith Lacing Machine Company.

This transaction took place January 31, 1906. (Pltff.'s Exhs. 117, 118, R. Vol. 4, pp. 834, 840.) The Smith Lacing Machine Company owned no real estate and did no manufacturing. (Defts.' Exh. 231, R. Vol. 5, p. 477.)

The Smith Company had produced an entirely new machine for lacing uppers.

"The lacing machine is a wonderful machine, embodying a large number of patented inventions for automatically lacing and tying the opposed eyelets, of a shoe upper, preparatory to the lasting operation, for the purpose of maintaining the edges at just the right distance apart during the lasting and subsequent operations. . . .

"Prior to this the practice had been for girls to insert strings through the eyelets and tie the ends of the string. This was handwork. . . . The United Company had no machine for performing this operation or for the purpose of holding together the tops of the uppers of shoes." (Howard, R. Vol. 1, p. 67, lines 3–8, 13–15, 18–20.)

This machine "was not really on a commercial basis" and the nith Company "had placed none upon the market." (Howard, Vol. 1, p. 86, lines 31–32; Winslow, Defts.' Exh. 231, R. Vol. p. 477.)

The Smith machine infringed many allowed claims in a pend- g application owned by the United Company. The machine of at application, however, "was only experimental, and was

never used commercially" for reasons explained by Mr. Howard. (R. Vol. 2, p. 2601 *et seq.*)

On the other hand, the essential organization for a successful lacing machine was—

> "broadly covered by the claims of a patent owned by the Smith Company, which also owned other patents containing broad claims to many features of the machine which were found indispensable for a commercially successful machine.
>
> "This situation resulted in a deadlock since neither the United Company nor the Smith Lacing Company was able to put out a commercial lacing machine without infringing a patent or patents owned by the other." (Howard, Defts.' Exh. 275, R. Vol. 5, pp. 767, 768.)

Mr. Winslow testified that after the acquisition "we developed the lacing machine, till to-day it is used in pretty nearly every factory where they manufacture lace shoes." (R. Vol. 1, p. 463, lines 13–15.)

> "The Smith Company had intended to charge an initial payment and royalty for the use of the machine. The United Company furnished these machines to their customers without initial payment and at one-half the royalty that the Smith Company had intended to charge." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 478.)

Up to March 1, 1913, the United Company had put out 1415 lacing machines. One of these machines will take care of as many shoes as from four to seven welt-sewing machines. (R. Vol. 2, p. 2605, Int. 112.)

The consideration in this transaction was a payment of $50,000 in cash and $67,500 to be paid in royalties. "This payment was completed within three years." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 477.)

Metallic Heel and Counter Company.

This transaction took place January 31, 1906. (Pltff.'s Exh. 119, R. Vol. 4, p. 843.) The Metallic Heel and Counter Company owned no real estate, leased floor space, employed about seventy men, and manufactured metallic heels and counters. (Defts.' Exh. 231, R. Vol. 5, p. 465.)

"The United Company acquired from the Metallic Heel and Counter Company patented machines used in the manufacture of a patented metallic heel and counter. This was used on very heavy shoes worn by miners, quarrymen, and others engaged in work of that character" (Howard, R. Vol. 1, p. 67, lines 30–34; p. 86, lines 38–44); (a shoe with metallic heel and counter is Defendants' Exhibit 20).

"The Metallic Heel & Counter Company manufactured patented metallic heels and counters to go outside of shoes for miners' work or heavy outdoor work of that sort." (Winslow, R. Vol. 1, p. 462, lines 44–45; p. 463, line 1.)

The United Company did not manufacture any metallic heels and counters and had no machinery that could be used for that purpose. (R. Vol. 1, p. 67, lines 36–39; Defts.' Exh. 231, R. Vol. 5, p. 465.)

Important reasons for this acquisition were the following:

(1) The United Company extended its business by entering a new field.

(2) "A very substantial reason for acquiring this company and the Smith Lacing Machine Company was to secure the undivided services of George Warren, J. B. Hadaway, and William Gordon, who were already in the employ of the United Company in other matters. Messrs. Warren and Hadaway are members of the United Company's Experimental Committee." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 465.)

"The men who were interested in that company,—particularly two of them,—were men whom we used in our own business and consulted as experts. One of them was Mr. Warren." (Winslow, R. Vol. 1, p. 463, lines 3–6.)

Mr. Warren, a mechanical engineer, one of defendants' expert witnesses in this suit, has been engaged in "designing and overseeing the manufacture of shoe machinery" for the United Company. (Warren, R. Vol. 1, p. 785, lines 7–10.)

(3) "The parties interested in the Smith Lacing Machine Company and the Metallic Heel & Counter Company were the same. We had to buy them both in order to get either." (Howard, R. Vol. 1, p. 86, lines 35–37.)

"When we acquired that machine they wanted us to take over their whole enterprise, including the Heel & Counter

Company, which was really the machine shop." (Winslow, R. Vol. 1, p. 463, lines 9–11.)

"It was impossible to purchase the Smith Lacing Machine Company without acquiring this business." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 465.)

Since the acquisition the United Company has supplied to the trade the metallic heel and counter in very considerable quantities and has a separate department at Beverly for manufacturing them, which is busy all the time. (R. Vol. 1, p. 86, lines 44–45; p. 87, lines 1–2.)

The consideration for this acquisition was $52,320.24 in cash and $67,500 in royalties payable on account of the lacing machine acquired from the Smith Lacing Machine Company; that is, the payment of more than half the consideration depended upon the commercial success of the Smith Lacing Machine. (Defts.' Exh. 231, R. Vol. 5, p. 465; Pltff.'s Exh. 119, R. Vol. 4, p. 845.)

Zotique Beaudry.

This transaction took place September 4, 1906. (Pltff.'s Exh. 120, R. Vol. 4, p. 850.) Zotique Beaudry, as petitioner's witness, testified: "I am in the shoe machinery business, inventing and manufacturing." Mr. Winslow testified: "Beaudry was and is today a manufacturer of edge setters." (R. Vol. 1, p. 328, lines 42–43; p. 473, lines 3–4.) That business was not acquired.

By this transaction the United Company acquired an "experimental heel-burnishing machine, which had not been even tried out in any shoe factory," and the patents on that machine, and no other property whatever. The patents were acquired on account of and were assigned to the United-Xpedite Finishing Company, a majority of the capital stock of which is owned by the United Company. (Howard, Defts.' Exh. 275, R. Vol. 5, p. 768; R. Vol. 1, p. 68, lines 7–9; p. 86, lines 16–21.)

"At this time the United-Xpedite Company had a heel burnishing machine, but the Beaudry inventions covered appliances which could be added to the Xpedite machines corresponding to which the Xpedite Company had nothing at all. The Beaudry inventions, covered by several patent applications, embodied an entirely new idea." (Howard, R. Vol. 1, p. 68, lines 9–14.)

Mr. Winslow stated: "that it was believed at the time that it would enable the United-Xpedite Company to improve its machines very materially. Beaudry had been the original inventor of the machine put out by the Xpedite Company." (Defts.' Exh. 231, R. Vol. 5, p. 469; Beaudry, R. Vol. 1, p. 329, lines 1–3.)

Litigation was avoided by this acquisition. Beaudry's experimental machine infringed nine claims of a patent owned by the United-Xpedite Finishing Company. (Defts.' Exh. 275, R. Vol. 5, p. 768.)

Mr. Howard testified: "At the time we acquired the invention we thought very highly of it, as evidenced by the price that we paid for it." (R. Vol. 1, p. 86, lines 1–2.) The consideration was $12,500. (Defts.' Exh. 231, R. Vol. 5, p. 469.)

Mr. Howard testified that after the acquisition:

> "We constructed several experimental machines. . . . We tried in all sorts of ways to make it practicable, but the extreme inconvenience to which the operator would be put by a machine so organized finally condemned it as entirely impracticable." (R. Vol. 1, p. 86, lines 2–15.)

Mr. Winslow stated: "As a result of a great many experiments made after the purchase of the patents, this money was wasted." (Defts.' Exh. 231, R. Vol. 5, p. 469.)

Booth Brothers (entire business).

This transaction took place November 1, 1907. (Pltff.'s Exhs. 121–124, R. Vol. 4, pp. 856, 861, 862, 867.) This concern was "a partnership composed of Quentin W. Booth and Irving E. Booth. They owned no real estate but leased floor space in Rochester, New York, and employed about twenty-two men. The purchase was made in 1907 for $71,284.20." (Winslow, R. Vol. 1, p. 460, lines 21–25.)

At this time Booth Brothers were putting out patented machines of four types. (R. Vol. 1, p. 68, lines 35–45; p. 69, lines 1–8; p. 84, lines 12–15; p. 85, lines 1–27; R. Vol. 2, p. 2519, Int. 96.) One of these machines was the patented impression stitch-burnishing machine for burnishing impression stitches on the upper face of the welt of a welt shoe. This machine was much superior to the machine which the United Company was at-

tempting to use for the same work, but it infringed claims in a pending patent application owned by the United Company on which a patent was subsequently granted. The United Company's machine was not successful and after this transaction the United Company substituted the Booth machine for that work. (R. Vol. 1, p. 85, lines 1–14; Defts.' Exh. 275, R. Vol. 5, p. 766.)

Another Booth patented machine was a fudge edge making machine for making imitation stitches on the upper face of the sole edge and simultaneously setting or burnishing the edge of the sole. The United Company had no machine for doing the work of this machine. (R. Vol. 1, p. 84, lines 12–23.)

Booth Brothers were also putting out patented upper beading machines for beating down the seams after parts of uppers have been sewed together. These were better machines than the United Company's machine, which was satisfactory only on heavy work, and the United Company as agents had sold many of the Booth machines. (R. Vol. 1, p. 84, lines 35–45; Defts.' Exh. 231, R. Vol. 5, p. 457.)

They also had two types of wheeling machines which were used to define the imitation stitch on the upper face of a welt shoe preparatory to the stitch burnishing operation. Both of these machines infringed the United Company's patents. The United Company's wheeling machine was adapted for use only on McKay shoes, while the Booth machines, as stated, were used on welt shoes. (R. Vol. 1, p. 84, lines 24–34; Defts.' Exh. 275, R. Vol. 5, p. 765.)

Booth Brothers were also putting out "a simple contrivance, really a support for the shoe" known as an "Upper Shaping Machine" for holding the uppers of cloth-topped shoes while they were being cleaned. There was a small demand for it, and the United Company had nothing of the kind. (Howard, R. Vol. 1, p. 85, lines 15–21; p. 69, lines 13–14.)

The reasons for this acquisition were as follows:

(1) As above explained, the United Company had either no machines or inferior machines for performing the operations of the Booth Brothers' machines and the Booth Brothers' machines were patented.

> "The Company felt that it could add these particular machines to its line of machines to advantage to its customers and to itself, as an ordinary business transaction;

and also utilize the services of Irving E. Booth, who was a very capable man in that line of endeavor." (Winslow, R. Vol. 1, p. 460, lines 28–32.)

(2) This business was acquired at the solicitation of Booth Brothers.

> "The reason given by them for soliciting the United Company to purchase their business was that Quentin W. Booth wished to retire from business and Irving E. Booth did not care to attempt to run the business alone, but did not wish to retire."

The United Company, "were persuaded to make this purchase." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 457.)

(3) Three of the principal machines put out by Booth Brothers infringed claims of a patent and an application owned by the United Company. (Defts.' Exh. 275, R. Vol. 5, pp. 766, 767.)

After the purchase, a corporation was formed, of which Irving E. Booth was made the manager; the manufacture of the Booth machines was continued at the Booth factory, and through the Booth Company the United Company continued to put out in large numbers the machines which had previously been manufactured by Booth Brothers. (R. Vol. 1, p. 85, lines 28–35; p. 460, lines 33–37; Defts.' Exh. 231, R. Vol. 5, p. 457.)

Richardson Shoe Machinery Company.

This transaction took place December 1, 1908. (Pltff.'s Exh. 125, R. Vol. 4, p. 871.) The Richardson Company "owned no real estate; operated no factory. Contracted with outside parties to build its machines." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 478.) The only machine which the Richardson Company put out was "a greatly improved McKay sewing machine; that is, a McKay sewing machine which had been adapted to do better work with greater speed by their inventions." This machine was patented. (Howard, R. Vol. 1, p. 70, lines 6–9; p. 83, lines 5–8.)

The United Company was putting out the old McKay sewing machine and also a new one called the Model B in this country, but not abroad. It was putting out the Richardson machine abroad. (R. Vol. 1, p. 70, lines 10–15; p. 82, lines 29–33.) That

old machine was the "original McKay sewing machine which had been developed by Gordon McKay" and which the United Company was rebuilding and selling. Very few old style machines were being manufactured because there were plenty of second-hand ones to be had and the patents on the machine had expired long before. (Winslow, R. Vol. 1, p. 564, lines 23–24, 44–45; Howe, p. 680, lines 24–35.) Moreover, numerous other concerns supplied McKay sewing machines and in 1909, the year following the acquisition, there were 1488 old style McKay sewing machines in use in the United States and 308 Model B and Richardson machines, that is, nearly five times as many old machines; so that these two companies had made relatively little impression in this field. (R. Vol. 1, p. 565, lines 23–27; p. 977, lines 16–26.)

Neither the Richardson nor the Model B machines could possibly be used for sewing welt shoes. (R. Vol. 1, p. 83, lines 16–28.)

The reasons for this acquisition were as follows:

(1) The United Company's Model B machine infringed one of the Richardson Company's patents. A claim of one of these patents "clearly covered a very important feature of the Model B machine." (Howard, R. Vol. 1, p. 83, lines 9–13; Defts.' Exh. 275, R. Vol. 5, p. 768.)

Mr. Winslow stated:

> "Although the United Company had endeavored to avoid the infringement of all patents owned by the Richardson Company, this machine still infringed broad claim 16 of patent No. 710,613." (Defts.' Exh. 231, R. Vol. 5, p. 478.)

(2) "The work of the Richardson machine was a great deal better." "European manufacturers demanded the Richardson machine and would not have our machine." (Howard, R. Vol. 1, p. 70, lines 12–13; p. 82, lines 35–36.)

(3) "It was believed a better machine than either of the two could be constructed by the use of patents owned by both parties." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 479.)

> "We could not develop our machine without combining it with the Richardson machine, and the result of combining the patented inventions of both machines was to produce a better machine than either company alone could develop." (Howard, R. Vol. 1, p. 83, lines 11–15.)

(4) John H. Richardson, manager of the Richardson Company, initiated negotiations and stated that "he himself would like to come with the United Company," realizing that with only one machine as a business "the Richardson Company would not be able to make much of a success of its business." Also Mr. Rice, one of the largest stockholders, who is a shoe manufacturer, "wanted to get out of the shoe machinery business entirely." (Winslow, Defts.' Exh. 231, R. Vol. 5, pp. 470, 479.)

Since this acquisition the United Company has continued to put out both the Richardson machine and the Model B machine "as desired by the trade." (Winslow, R. Vol. 1, p. 565, lines 20–22, 37; Defts.' Exh. 231, R. Vol. 5, p. 479; Howard, R. Vol. 2, p. 2039, Ints. 1407, 1408.)

Further:

> "After the Richardson machine was obtained the United Company immediately put several inventors to work with instructions to combine, each in his own way, the best features of the two machines. The experimenting was carried on very aggressively."

As a result a machine was produced which is "far superior to either the Richardson machine or our Model B machine," and—

> "in its organization and its appearance it more nearly resembles the Richardson machine than it does the Model B. In this new machine many valuable improvements have been made by the United Company's inventors which could not have been embodied in a commercial machine and made available to shoe manufacturers had there not been common ownership of the United Company's patents and the Richardson Company's patents." (Howard, R. Vol. 1, p. 82, lines 39–45; p. 83, lines 1–4; Defts.' Exh. 275, R. Vol. 5, p. 769.)

Again, improvements broadly claimed in two of the Richardson Company's patents have been embodied in the United Company's new outsole stitching machine, Lockstitch Machine—Model M: Goodyear Outsole Rapid. (Defts.' Exh. 275, R. Vol. 5, p. 768; R. Vol. 2, pp. 2297–2299.)

The petition states that the Richardson Company was "engaged in the manufacture, sale and shipment in interstate commerce of . . . machines known to the trade as 'clicking machines.'" (R. Vol. 1, p. 1017.) This is a misstatement. The Richardson

Company had never made or sold a clicking machine. Through a contract with the Essex Machine Company it had a one-half interest in an experimental clicking machine which was being constructed by that company. "The machine has never at any time become commercial" and clearly amounts to nothing in this suit, since such interest as the Richardson Company had was not available to enable it to put the machine on the market. "It is controlled by an outside concern." Furthermore, if the machine had been commercial and if the Richardson Company had had such control of it as to be able to put it out, it could not have manufactured or sold this machine without infringing thirty-seven claims of one of the United Company's patents and thirteen claims of two pending applications on which patents were granted subsequently to this acquisition. (Howard, R. Vol. 1, p. 70, lines 17–23; Defts.' Exh. 275, R. Vol. 5, p. 769; Winslow, Defts.' Exh. 231, R. Vol. 5, p. 479; Pltff.'s Exh. 125, R. Vol. 4, p. 883.)

John H. Richardson.

The agreement with Richardson made December 1, 1908 (Pltff.'s Exh. 126, R. Vol. 4, p. 887) was simply an employment contract. "Richardson had been the general manager of the Richardson Company and was not satisfied with his position." He "had been influential in bringing about the sale of that company to the United" Company and simultaneously with that sale he entered the employ of the United Company. (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 474.)

Since "Richardson was an inventor having executive ability" he promised to be a very useful and valuable man to the United Company and hence "it seemed proper to safeguard the company" by means of such an employment contract, if the company "expected to gradually promote Mr. Richardson to an important position in its executive forces." In fact, "he is at present in charge of the general department of the United Company and his salary has been repeatedly raised." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 474.)

Carver Cotton Gin Company.

By this transaction which took place April 30, 1908 (Pltff.'s Exh. 127, R. Vol. 4, p. 893) the United Company acquired no

real estate or manufacturing plant. The Carver Cotton Gin Company was engaged in the business of making cotton gins and "the manufacture of any shoe machinery with them was entirely a side line." (Winslow, R. Vol. 1, p. 460, lines 42–43; Defts.' Exh. 231, R. Vol. 5, p. 457.)

> "They had got into it accidentally through having manufactured at one time or another machines on contract for parties who did not have shops of their own." (Howard, R. Vol. 1, p. 81, lines 27–29.)

Mr. Winslow testified:

> "As to the Carver Cotton Gin Company, we really got from them some jigs and tools, a small stock of parts, a few machines, all of which were in what is known as the general department." (R. Vol. 1, p. 460, lines 38–40.)

These General Department machines which the Carver Company was putting out were the Acme leveling machine, a vamp-skiving machine, a leatherboard skiver, a counter-dividing machine, and a patented machine for finishing the top-lifts of heels known as the "Adams top-piece sanding machine." The United Company had no machines for performing the operations performed by any of these Carver machines. (R. Vol. 1, p. 70, lines 32–45; p. 71, lines 1–15; p. 81, lines 30–44; p. 82, lines 1–23.)

The Acme leveling machine "is used on freak shoes and samples, where the size and shape change with almost every shoe," because, "after leveling a shoe of one kind, it could take a shoe of an absolutely different size and shape and operate upon it without any adjustment at all."

It was not adapted for regular use on welt shoes "because it is extremely slow as compared with the automatic leveler, and the work which it does is not equal to the work of that machine." It could not be used on either turn or McKay shoes. (Howard, R. Vol. 1, p. 70, lines 37–45; p. 81, lines 32–37; R. Vol. 2, p. 2034.)

On the other hand, the United Company's machine, "the Goodyear automatic leveling machine, which is the machine in general use for leveling welt shoes, must be adjusted for every variation in size or shape of last. The automatic leveler is so very much faster and does so much better work than the Acme

that it is almost universally used for the regular work going through the factory."

> "It was by far the best machine in existence for the regular work of a factory, but where every shoe that came to the machine was of a different size and shape it would take a great deal of time to effect the necessary adjustments between each shoe. Accordingly these two machines occupied quite different fields." (Howard, R. Vol. 2, p. 2034; R. Vol. 1, p. 81, lines 40–44.)

By this acquisition the United Company extended its line by adding machines which perform operations for which it previously had no machines and it obtained the special tools and patterns for manufacturing those machines. For some years the United Company had been purchasing Acme leveling machines from the Carver Company and putting them out. (R. Vol. 2, pp. 2032–2033, Ints. 1373–1376; Defts.' Exh. 231, R. Vol. 5, p. 458.)

Mr. Winslow testified:

> "This purchase was made at the solicitation of Mr. Hobart, the treasurer of the Carver Cotton Gin Company.... Their regular business had increased so that they had either got to add on to their factory or else dispose of some part of their business, and this portion of their business had been decreasing, and the price paid did not really cover the value of the tools plus the parts of machines." (R. Vol. 1, p. 460, lines 41–45; p. 461, lines 1–4.)

As further stated by Mr. Winslow:

> "The United Company had always been on friendly terms with the Carver Cotton Gin Company and had sold such machines as they made when desired by the trade, and the price paid (the total consideration was $16,883.79) above the inventory value for the machines on hand was less than it could have duplicated the patterns, tools, etc., which the Carver Cotton Gin Company desired to sell." (Defts.' Exh. 231, R. Vol. 5, p. 458.)

Since this acquisition the United Company has continued the manufacture of the Carver Company machines at its Beverly factory and has put them out in large numbers. (R. Vol. 2,

pp. 2033, 2035, Ints. 1375–1377, 1390; Defts.' Exh. 231, R. Vol. 5, p. 458.)

Harry L. Rice and Fred LaChapelle.

This transaction took place January 20, 1909. (Pltff.'s Exh. 128, R. Vol. 4, p. 898.) "No manufacturing plant of any kind was acquired." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 470.)

Mr. Howard testified:

> "The United Company acquired an experimental welting machine embodying a patented invention radically new. This machine put an extra thread on the single-thread side of the chain stitch formed by the machine. . . . That was entirely new. The purpose was to strengthen the 'between substance' " as it is called. (R. Vol. 1, p. 71, lines 30–38.)
>
> "When we acquired the LaChapelle device he had made only one machine, which was experimental and far from being commercial." (R. Vol. 1, p. 81, lines 13–15.)

The machine was protected by several applications upon which patents have since been granted. (R. Vol. 1, p. 81, lines 6–12; R. Vol. 2, p. 2031, Ints. 1367–1369.)

The consideration in this transaction was $11,500. (Defts.' Exh. 231, R. Vol. 5, p. 470.)

The reasons for this acquisition were:

(1) "In addition to strengthening the stitch it was believed, that by this invention an economy could be effected by using a thinner and less expensive insole than could be used with the present commercial type of welting machine which puts only one thread inside the channel." (Howard, R. Vol. 1, p. 81, lines 19–23.)

(2) Mr. Rice, a large shoe manufacturer, who was an officer of and one of the two largest stockholders in the Richardson Shoe Machinery Company (Pltff.'s Exh. 125, R. Vol. 4, p. 871; Defts.' Exh. 231, R. Vol. 5, p. 478)—

> "made it a condition of the purchase of the Richardson machine that the United Company should take over his rights in these inventions at a reasonable price because 'he wanted to get out of the shoe machinery business entirely.'" (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 470.)

Mr. Howard testified:

> "We have been working on it since we acquired it and have tried it out several times in a shoe factory, but it is not yet commercial. We are still at work with the purpose of developing it into a commercial machine." "It takes a long time to develop one of these machines." (R. Vol. 1, p. 81, lines 15–18; p. 72, lines 3–4.)

Ellis Lacer Company.

This transaction took place February 1, 1910. (Pltff.'s Exh. 129, R. Vol. 4, p. 905.) The Ellis Lacer Company was engaged in the business of manufacturing by patented machinery patented wire lacers for temporarily securing together the opposed eyeletted edges of shoe uppers to keep those edges at a proper distance apart during the lasting and subsequent operations. The Ellis lacer was the first lacer that had ever been used commercially. This company owned no real estate but leased floor space. (R. Vol. 1, p. 72, lines 23–35; p. 80, lines 40–42; R. Vol. 2, pp. 2028, 2029, 2030, Ints. 1351, 1357, 1358; Defts.' Exh. 231, R. Vol. 5, p. 466.)

Before this purchase the United Company never had put out any wire lacers, although prior to 1899 a company controlled by a predecessor of the United Company had attempted to develop and market a wire lacer, but "this device had not been successful, and attempts to market it had been discontinued before 1899." (Howard, R. Vol. 1, p. 72, lines 32–33; Defts.' Exh. 275, R. Vol. 5, p. 770.)

The United Company could not put out a commercially satisfactory lacer without infringing the Ellis Company's patents because essential features of such a lacer were covered by broad claims in those patents. (Defts.' Exh. 275, R. Vol. 5, p. 771.)

On the other hand, the United Company controlled several antedating patents. Twenty-nine claims of those patents were infringed by the Ellis lacers and completely dominated them. As a result of this patent deadlock "each company's patents if held valid and sustained would have prevented the other company from putting out lacers for commercial use." (Howard, R. Vol. 1, p. 81, lines 4–5; Defts.' Exh. 275, R. Vol. 5, p. 771; Winslow, Defts.' Exh. 231, R. Vol. 5, p. 466.) Obviously, therefore, the United Company could not enter this new field

without acquiring the patents of the Ellis Company, and the object of this purchase was to enable the United Company to go into this business without infringement.

The Ellis Company was notified of its infringement of the United Company's patents and opened negotiations which resulted in this acquisition. By this transaction no shoe machines whatever were acquired.

> "The only machinery acquired was a machine for making the wire lacer in our own factory. We did not sell or lease this machine, but furnished the product of the machine to the shoe manufacturers." (Howard, R. Vol. 1, p. 72, lines 27–31; Defts.' Exh. 275, R. Vol. 5, p. 771.)

Since this purchase the Ellis lacers have been manufactured and sold in large numbers by the United Company. These lacers have, at all times, been fully protected by ten patents obtained from the Ellis Company or maturing on applications of the Ellis Company, the oldest of which was granted in 1901. (R. Vol. 1, p. 72, line 33; Vol. 2, pp. 2029, 2030, Ints. 1356–1358.)

The Wentworth Company.

This transaction took place February 3, 1910. (Pltff.'s Exh. 130, R. Vol. 4, p. 913.) The Wentworth Company "owned no real estate. Leased floor space in a building in Cincinnati, Ohio, and employed about twelve men." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 449.)

The Wentworth Company was putting out two patented machines, a heel seat beating machine and a shank sticking machine. (R. Vol. 1, p. 73, lines 4–17; p. 80, lines 26–28, 34–38; R. Vol. 2, p. 2026, Ints. 1342–1344.)

The Wentworth heel seat beating machine flattened the heel down by rubbing it with a yielding tool but did not beat the heel. The United Company had a machine of an entirely different type "which flattened the heel by hammer blows." That machine was discarded after the Wentworth acquisition. (R. Vol. 1, p. 73, lines 18–26.)

The Wentworth shank sticking machine performed an operation which had been a hand operation before the introduction of that machine. The United Company did not have a com-

mercial shank sticking machine and "it was experimenting on one with difficulty, because the Wentworth Company had a patent on theirs." (Howard, R. Vol. 1, p. 73, lines, 29–34; p. 80, lines 28–31.)

The Wentworth heel seat beating machine infringed twenty-three claims of a patent owned by the United-Xpedite Finishing Company (controlled by the United Shoe Machinery Company) and a suit brought on those claims had been prosecuted to final hearing and the claims were held to be valid and infringed. This machine also infringed thirteen claims of another patent owned by the United Company upon which a successful suit had been brought.

> "The patents upon which these two suits were brought covered indispensable features of the Wentworth machine and The Wentworth Company could no longer put out their heel seat beating machine." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 772; R. Vol. 1, p. 73, lines 27–28.)

Also the Wentworth shank sticking machine infringed three claims of a patent owned by the United Company. (Defts.' Exh. 275, R. Vol. 5, p. 772.)

Mr. Winslow testified that "prior to the decision of the litigation the Wentworth Company had approached the United Company many times to dispose of their business," and stated that "immediately after the decision they asked to open the negotiations with the United Company, which finally resulted in the purchase." He also testified:

> "A great many of the Wentworth machines that had been put out were in the hands of our lessees, and as the easiest way of disposing of that whole question it seemed to be better to make a trade with the Wentworth Company and settle the litigation." (R. Vol. 1, p. 458, lines 3–9; Defts.' Exh. 231, R. Vol. 5, p. 449.)

After the acquisition the Wentworth machines were manufactured at the United Company's Beverly factory, "from which factory the machines and parts have been supplied by the United Company." (Winslow, Defts.' Exh. 231, R. Vol. 5, p. 449.) Mr. Howard testified that in further developing the United Company's shank sticking machine "the United Company eventually combined the best features of its experimental ma-

chine and the best features of the Wentworth machine in the machine which it is now putting out." That machine has been put out in large numbers. (R. Vol. 1, p. 73, lines 31–34; R. Vol. 2, p. 2027, Int. 1348.)

B. F. Sturtevant Company.

This transaction took place February 23, 1910. (Pltff.'s Exh. 131, R. Vol. 4, p. 928.) The B. F. Sturtevant Company "owned real estate at Conway, N.H., where it operated a factory for the manufacture of peg wood and wood shanks. Number of men employed about twelve." The amount paid for the property, including "all the real estate . . . the mill site, the mill building, the storage buildings, and all other buildings" (Pltff.'s Exh. 131, R. Vol. 4, p. 928) was $52,185.94; this price being based upon the inventory. "No machines that are used in the manufacture of shoes were obtained in this transaction." (Defts.' Exh. 231, R: Vol. 5, p. 466; Howard, R. Vol. 1, p. 74, lines 4–5.)

The object of this purchase was to obtain a permanent and assured source of supply of manufactured strips of peg wood for use on the pegging machines put out by the United Company, and of wooden shanks for shoes, both of which articles were supplied by the United Company to its customers. The United Company never had been engaged in the manufacture of peg-wood or wooden shanks, but had previously obtained its supply entirely from the Sturtevant Company, which was one of several manufacturers that were engaged in the peg-wood business. This business of the Sturtevant Company has been continued by the United Company at the same place with substantially the same number of men employed, and customers have been furnished with the Sturtevant products just as before. (R. Vol. 1, p. 73, lines 43–44; p. 74, lines 1–2; p. 80, lines 14–25; R. Vol. 2, p. 2046, Int. 1452; p. 2060, Int. 1521; Defts.' Exh. 231, R. Vol. 5, p. 466.)

Adam H. Prenzel.

The transaction with Adam H. Prenzel, who is a shoe manufacturer at Halifax, Pa., took place November 22, 1910. (R. Vol. 2, pp. 2024, 2025, Ints. 1329, 1335; Pltff.'s Exh. 143, R. Vol. 4, p. 1046.) Mr. Howard testified:

"By that agreement the United Company acquired several machines which Prenzel had invented for use in producing a novel patented spring heel shoe, entirely different from any spring heel shoe ever before known. . . . The numerous Prenzel inventions related to turn shoes and for the first time made it possible to sew the sole to the upper all the way around and produce a satisfactory product. . . . Spring heel shoes are turn shoes."

"It also acquired a machine for use in producing an infant's shoe, known as a 'cack.' . . . That machine was used, after the shoe had been finished, to press down the heel end of the sole so as to form a little heel, and at the same time it pressed in a heel seat piece to fill the space made by pressing down the heel end of the sole." (R. Vol. 1, p. 75, lines 43–45; p. 76, lines 1–18.)

These were the only machines acquired from Prenzel. The patents acquired from Prenzel covered not only the machines for making these two novel shoes, but also covered the shoes themselves and the processes employed in manufacturing them. (R. Vol. 1, p. 76, lines 19–20; R. Vol. 2, pp. 2023, 2024, Ints. 1328, 1330.)

Mr. Howard further testified:

"The United Company had no machines for performing the special operations which were performed by the machines secured from Prenzel. It puts those machines out now and they are used by manufacturers." (R. Vol. 1, p. 76, lines 20–23.)

One of the machines "which Prenzel was using in the manufacture of his improved turn shoe infringed two allowed claims of an application owned by the United Company," upon which the patent was granted in September, 1911, and still another improvement which Prenzel had made was incorporated in a machine covered by "several patents owned by the United Company." (Howard, R. Vol. 2, pp. 2327–2329; Defts.' Exh. 275, R. Vol. 5, pp. 772, 773.)

By this acquisition the United Company extended its line of machines and was enabled to supply its customers new machines for making new products.

M. V. Bresnahan & Company.

This transaction took place December 19, 1910. As stated in Plaintiff's Exhibit 144 (R. Vol. 4, p. 1053), M. V. Bresnahan & Company was a copartnership and the property of the concern enumerated in Schedule A of that exhibit comprises personal property only.

They had a patented experimental lasting machine which had not yet reached a commercial stage. They also had "a heel-burnishing machine embodying a novel patented device for spraying the wax on the heel-burnishing tool." That machine infringed two patents controlled by the United Company. (Howard, R. Vol. 1, p. 77, lines 1–6, 17–18, 22–23; p. 79, lines 36–38, 42–44; Defts.' Exh. 275, R. Vol. 5, p. 773.)

The United Company did not have any machines which would accomplish the results secured by the inventions embodied in the Bresnahan machines.

Mr. Howard testified:

> "The United Company was making lasting machines and heel burnishing machines, but they did not accomplish the same results as the Bresnahan machines, because they did not have the patented inventions that were in the Bresnahan machines. The Bresnahan lasting machine was only experimental.
>
> "The United Company is experimenting with machines constructed under both patents acquired from Bresnahan, but has not yet put out any machines. There has not been time yet to make the machines commercial. The United Company has an experimental lasting machine running, embodying the inventions acquired from Bresnahan." (R. Vol. 1, p. 77, lines 18–29.)
>
> "The Bresnahan experimental lasting machine was not being marketed at the time by Bresnahan and he was only trying it out. It had not yet reached the commercial stage.
>
> "The Bresnahan improvement on the heel burnishing machine related to the application of the wax. The United Company went to work to make that improvement commercial and give it to its customers. There was a patent application pending on this invention, and the United Company had nothing that would do what the mechanism embodying this invention would do." (R. Vol. 1, p. 79, lines 36–44.)

Another important object of this transaction was the composing of a great amount of litigation. Mr. Howard testified:

> "The transaction further involved the settlement of a large number of suits which had been pending for many years between the United Company and Bresnahan's concern in the earlier days before he sold out his interests to Plant." (R. Vol. 1, p. 77, lines 7–10.)
>
> "There had been a large number of suits, as many as eight or ten, between Bresnahan and the United Company which had been pending for a number of years, nearly all suits for infringements of patents. That litigation was all pending at the time of this acquisition." (R. Vol. 1, p. 79, lines 31–35.)

In addition to the infringement suits (R. Vol. 2, p. 2023, Ints. 1325, 1326) there were pending four suits brought by Bresnahan or the Bresnahan Shoe Machinery Company against the United Company in the Superior Court for Suffolk County, Massachusetts. (Defts.' Exh. 275, R. Vol. 5, p. 774.)

> "When Bresnahan sold his interest in the Bresnahan Shoe Machinery Company to Thomas G. Plant in January, 1906, the Bresnahan Company transferred to Bresnahan and Heys, who together owned all the stock of the Bresnahan Company, all interests under this litigation in the state courts between the United Company and the Bresnahan Company." (Howard, Defts.' Exh. 275, R. Vol. 5, pp. 773, 774.)

By Section 6 of the agreement relating to this transaction the vendors released and discharged the United Company from all actions, causes of action, claims and demands, etc., "whether brought in their names or in the names of any of them, or in the name of the Bresnahan Shoe Machinery Company or in the name of M. V. Bresnahan & Co., or otherwise." (Pltff.'s Exh. 144, R. Vol. 4, p. 1058.)

The agreement for the purchase provided that all of the three partners should enter the employ of the United Company.

Charles P. Stanbon & Company.

This transaction took place April 22, 1911. (Pltff.'s Exh. 145, R. Vol. 4, p. 1065.) Charles P. Stanbon was manufacturing shoe machinery in Lynn, doing business under the name and style of

Charles P. Stanbon & Company. Stanbon and Thomas G. Plant (Manufacturers' Machine Company) had made an agreement. (Pltff.'s Exh. 132, "Exhibit D," R. Vol. 4, p. 972.) Plant had made it a condition of the sale of his patents to the United Company that the United Company should assume, and the United Company agreed to assume,—

> "all agreements, obligations and liabilities of said Plant and of said Manufacturers' Machine Company under said existing contracts between said Plant or said Manufacturers' Machine Company and Charles P. Stanbon. . . ." (Pltff.'s Exh. 132, R. Vol. 4, pp. 932, 933, 935.)

Mr. Winslow testified:

> "We gave only the inventory value of the properties, and only because Mr. Stanbon was under option to Mr. Plant. Mr. Plant made it, as I remember it, a requisite of the arrangement that we should take Stanbon's property and then left it with Mr. Stanbon to agree whether he would turn in his property or not." (R. Vol. 1, p. 558, lines 34–39.)

Mr. Howard testified:

> "This Stanbon transaction was carrying out the contract which Plant had made with Stanbon and which the United Company had assumed." (R. Vol. 1, p. 79, lines 27–29.)

Stanbon had three important patented machines. "The most valuable thing acquired by the United Company in this transaction was a channel cementing machine, constructed particularly for cementing the channels of the soles of McKay sewed shoes" and "not adapted for use on other kinds of shoes." This machine was patented. (Howard, R. Vol. 1, p. 77, lines 38–41; p. 78, lines 36–37; R. Vol. 2, p. 2019, Int. 1304.)

Stanbon also had "a very valuable folding machine" which was "of a radically new character." Patent applications were pending on this machine. (Howard, R. Vol. 1, p. 78, lines 3–8; Defts.' Exh. 275, R. Vol. 5, p. 776.)

Stanbon also had a perforating machine which "was really adapted for doing embossing work . . . ornamenting rather than perforating." (Howard, R. Vol. 1, p. 79, lines 6–8.)

These Stanbon machines which were all of General Department types, were all covered by patents or pending applications. (R. Vol. 1, p. 79, lines 25–26; R. Vol. 2, p. 2022, Ints. 1318–1321.)

The United Company had a channel cementer which was inferior to Stanbon's and unsatisfactory because the United Company could not use the patented improvements which were on Stanbon's machines, as will be explained later. (R. Vol. 1, p. 78, lines 1–2, 38–45; p. 79, lines 1–2.)

"The United Company had no folding machine of any description." (Howard, R. Vol. 1, p. 79, lines 15–16.)

The United Company had the "Booth Perforating Machine" but "these two machines have distinct fields owing to radical differences in their organizations." The Booth machine "is far more accurate on curved work. . . . The Stanbon machine on the other hand is very much faster and is therefore much better adapted for substantially straight-edge work" and "has unlimited capacity as to spacing." In Defendants' Exhibit 100, a sample of work done on the Stanbon machine, the spacing is "more than double the maximum spacing permissible on the Booth perforator." Also as above explained the Stanbon machine was adapted for doing embossing work, while the United Company's machine was not. (Howard, R. Vol. 1, p. 79, lines 6–10; R. Vol. 2, pp. 2020, 2021, Int. 1311.)

By this transaction the United Company carried out the agreement with Plant as to his contract with Stanbon, quoted at the beginning of this discussion.

The United Company also extended its line by adding a folding machine, which enabled it for the first time to enter the folding machine field. It acquired a satisfactory channel cementing machine which it did not have before because it could not use Stanbon's patented improvements, and it acquired a perforating machine better adapted than its own for certain classes of work and capable of doing some work which its perforator could not do.

This acquisition also cleared up a serious patent complication.

> "Prior to the Stanbon acquisition, both the United Company and Stanbon had been developing an improved folding machine of a radically new character. Both machines incorporated substantially the same improvements"

and two interferences involving applications owned by the two parties had been declared.

> "The issues were so broad that the party that won the interference could undoubtedly prevent the other party

from putting out any machine of this character." (Howard, Defts.' Exh. 275, R. Vol. 5, p. 776.)

Also, Stanbon's channel cementer infringed a patent owned by the United Company while, on the other hand, the United Company could not use Stanbon's valuable improvements because—

> "The United Company had been in interference with Stanbon in the Patent Office and had lost before the Court of Appeals, the tribunal of last resort." (Howard, R. Vol. 1, p. 77, lines 43–45; Defts.' Exh. 275, R. Vol. 5, p. 776.)

Several other instances of infringements and interferences are set forth in detail by Mr. Howard. (Defts.' Exh. 275, R. Vol. 5, pp. 775, 777.)

After the acquisition of the Stanbon business the United Company put out the Stanbon Channel Cementer "immediately" and "in large numbers," and it has put out the Stanbon Perforating Machine. Stanbon's folding machine was "only experimental, had not been put out, and was a long way from a commercial machine when we took it." The United Company has "seldom worked more vigorously upon a machine than we have upon that one," and when Mr. Howard testified in January, 1914, he stated that the United Company "has put out in large numbers folding machines embodying the Stanbon inventions." (Howard, R. Vol. 1, p. 79, lines 4–5, 10–12, 16–18, 23–24; Defts.' Exh. 275, R. Vol. 5, p. 776.)

MISSTATEMENTS MADE IN THE PETITION AS TO THE COVENANTS TAKEN FROM VENDORS.

In its statement of the alleged facts regarding the acquisitions (R. Vol. 1, pp. 999–1023) the petition purports to state the substance of the agreements and the covenants contained in the agreements entered into in connection with the respective transactions. Many of these statements are entirely inaccurate and grossly exaggerate the nature and scope of the covenants.

These statements are inexcusably unfair; the United States had the original, executed agreements continuously in their possession for months prior to the filing of the petition. (R. Vol. 1, p. 37, lines 15–20; p. 78, lines 24–29.)

Some of the most glaring misstatements will now be pointed out.

John Ritchie and John Ritchie Company.

The petition charges that—

(1) The United Company "acquired all of the *business* of" this concern "relating to the *manufacture*" of certain specified shoe machines (italics ours).

(2) The vendors agreed that they would not engage "in *any business* in competition with" said United Company (italics ours). (R. Vol. 1, p. 1004.)

Mr. Gregg made statements to the same effect during the trial. (R. Vol. 1, p. 40, lines 6–14; p. 46, lines 6–9.)

The facts shown by the record are:

(1) The Ritchie Company was not in the business of *manufacturing machines* as alleged but was engaged in the manufacture of *boots and shoes*. It had one machine for the manufacture of *wire*. (R. Vol. 1, p. 46, lines 15–30; Vol. 3, pp. 586, 587, 589, par. 5; Vol. 5, p. 475.)

(2) The covenant against competition did not cover "*any business*," but *only* business relating to "wire fastening shoe machinery, or machines for making the same, or parts thereof," or wire, "or other fastening materials" (italics ours). (R. Vol. 3, p. 586.)

Erastus E. Winkley and Benjamin Phillips.

The petition sets forth—

> "The vendors, for the same consideration, agreed to convey to defendants all inventions or improvements in sole-leveling machines which they should thereafter make *or acquire*" (italics ours). (R. Vol. 1, pp. 1005–1006.)

There is absolutely no support in the agreement for these last two words "*or acquire.*" (R. Vol. 3, pp. 618, 619, par. 7.)

Mr. Gregg made the same erroneous statement during the trial. (R. Vol. 1, p. 40, lines 25–28.)

Lincoln Sewing Machine Company.

The petition charges that defendants—

> "acquired the *business* of Lincoln Sewing Machine Company . . . *engaged* in the manufacture, sale, lease, and shipment in interstate commerce, of sewing machines designed and used for the manufacture of boots and shoes" (italics ours). (R. Vol. 1, p. 1006.)

The petitioner's own exhibits show that the Lincoln Company had *gone out of business in 1897*, when it sold all its property to the Goodyear Shoe Machinery Company, so that there remained simply "certain payments and obligations on the part of the Goodyear Company to be made or performed to or toward the Lincoln Company." (R. Vol. 3, pp. 623, 629.)

These undisputed facts are also clearly set forth in the record. (R. Vol. 1, p. 49, lines 25–37; Vol. 5, pp. 470, 471).

Boston Fast Color Eyelet Company.

In the agreement relating to this transaction the covenant against competition was *limited to covered eyelets*, the subject-matter of the transaction. (R. Vol. 3, pp. 636, 637.)

In the statement of the petition *this important limitation is omitted.* (R. Vol. 1, p. 1007.)

Enamel Eyelet Company.

The petition sets forth that—

> "The vendors and each of them also agreed that they would not, for a period of 15 years, engage in any *business in competition* with defendants" (italics ours). (R. Vol. 1, p. 1007.)

That covenant was in fact limited to *enamel eyelet* business, the subject-matter of this transaction. (R. Vol. 3, pp. 647, 648.)

William J. Young.

In its statement of the covenant relative to competition (R. Vol. 1, p. 1010) the petition *omits entirely the limitation* in that covenant to "machinery or devices intended or adapted for use in any way in the manufacture or preparation of *heels*" (italics ours). (R. Vol. 4, p. 717.)

Again, in its statement of the covenant to assign future inventions relating to such machines (R. Vol. 1, p. 1010) the petition omits the limitation to "*countries other than the United States and the Dominion of Canada*" (italics ours). (R. Vol. 4, p. 714.)

J. K. Krieg & Company.

The statement in the petition regarding the covenant in the agreement with this concern includes—

> "all such supplies to be purchased from defendants." (R. Vol. 1, p. 1012.)

The agreement contains no such provision. (R. Vol. 4, p. 746.)

Joseph W. Leary.

The petition states that the vendor—

> "agreed to *convey* to the vendee and its successors *all inventions and improvements* which the vendor should make or acquire within ten years from the date of the termination of such employment by said United Company" (italics ours.) (R. Vol. 1, p. 1013.)

The fact is that Leary made no covenant whatever to convey any inventions or improvements. (R. Vol. 4, p. 765.) On the other hand, the agreement provided that—

> "The said Leary shall not be required to disclose his secret formulæ for making cements, blacking or stains." (R. Vol. 4, p. 768.)

Mr. Gregg made substantially the same erroneous statement during the trial. (R. Vol. 1, p. 61, lines 37–41.)

The F. G. Farnham Brush Manufacturing Co.

The petition states that—

> "The vendors agreed that they would not engage, directly or indirectly, or in any way assist in *any competition*, . . . for a period of 15 years" (italics ours). (R. Vol. 1, p. 1013.)

In fact, the covenant was *limited to* "*brushes* or parts or supplies therefor" (italics ours). (R. Vol. 4, p. 774.)

Mr. Gregg made the same erroneous statement during the trial. (R. Vol. 1, p. 62, lines 20–24.)

Zotique Beaudry.

The statement in the petition as to Beaudry's covenant to disclose future inventions relating to heel burnishing machinery (R. Vol. 1, p. 1016) *omits the limitation* to the period of fifteen years. (R. Vol. 4, pp. 851, 852.)

Richardson Shoe Machinery Company.

The petition alleges that the vendors agreed that they would not for a period of ten years "compete with the *business* carried on by defendants" (R. Vol. 1, p. 1017) and Mr. Fowler made the same broad allegation during the trial, but, on being corrected, admitted that the agreement was *limited* to "*McKay sewing*" and "*clicking*" machines (italics ours). (R. Vol. 1, p. 69, lines 27–31; Vol. 4, pp. 875, 876.)

Harry L. Rice and Fred LaChapelle.

The petition states that the vendors covenanted to assign all inventions, etc.—

> "relating to any methods, machinery, mechanisms, tools, or devices intended for use *in the manufacture of boots and shoes*" (italics ours);

and that the vendors also covenanted—

> "that neither of them would, directly or indirectly, engage in *any business* which would interfere or compete *with the business of defendants*" (italics ours). (R. Vol. 1, pp. 1018, 1019.)

Both these covenants were in fact *limited* to methods, machinery, etc., adapted—

> "for use in attaching in whole or in part the welts, outsoles, or insoles of welted or turned footwear." (R. Vol. 4, pp. 889–901.)

The same erroneous statement was made by Mr. Fowler during the trial. (R. Vol. 1, p. 71, lines 21–28.)

Ellis Lacer Company.

The petition sets forth that the vendors covenanted that—

(1) "They would not, directly, or indirectly, engage in *any business in competition* with defendants, and that"

(2) "they would convey to defendants, without additional consideration, *all inventions* and letters patent of the United States and of *all* other countries which they or either of them might make or acquire at any time within five years" (italics ours). (R. Vol. 1, p. 1019.)

Both statements are grossly exaggerated. Both covenants were strictly limited to the subject-matter of this transaction.

(1) The covenant against competition was limited to machinery, devices, etc., "useful for or adapted to the purpose for which *Ellis lacers* are designed," and it was limited to a period of *five years* (italics ours). (R. Vol. 4, p. 908.)

(2) The covenant to convey future inventions and patents within five years was limited to the *Western Hemisphere* and to

inventions "adapted to the purpose for which *Ellis lacers* are designed" (italics ours). (R. Vol. 4, p. 908, par. 6.)

Mr. Fowler made similar erroneous statements during the trial. (R. Vol. 1, p. 72, lines 14–20.)

The Wentworth Company.

The petition states that the covenant against competition covered—

> "*any* machinery or devices that would *in any way compete* or interfere with the business of said United Shoe Machinery Company" (italics ours). (R. Vol. 1, p. 1019.)

This covenant was in fact *limited* to—

> "any machinery or devices of any kind *heretofore dealt in*, exploited, manufactured, or built (whether in the form of a model, experimental or commercial machine or device) or originated *by or for the said The Wentworth Company*" (italics ours). (R. Vol. 4, p. 918.)

Adam H. Prenzel.

The petition states that Prenzel agreed to assign inventions and Letters Patent which he should *thereafter* acquire, relating to the class of machines covered by the agreement. (R. Vol. 1, p. 1022.)

The covenant was in fact *limited in time* by the expiration of the patent assigned or to be obtained upon any application assigned which should last expire. (R. Vol. 4, p. 1048.)

Mr. Fowler made the same erroneous statement during the trial. (R. Vol. 1, p. 75, lines 38–41.)

THE EVIDENCE RELATING TO THE CHARGES OF UNFAIR, OPPRESSIVE AND MONOPOLISTIC ACTS OF THE DEFENDANTS SPECIFIED IN THE PETITIONER'S BILL OF PARTICULARS.

In Section VI of the petition (R. Vol. 1, p. 999) defendants are charged with having made various threats or committed various unfair and oppressive acts. No specific instances are set out in the petition, but a bill of particulars, setting forth the specific instances charged, was filed during the course of the trial. (R. Vol. 1, p. 1075.) The bill of particulars sets forth over fifty different alleged acts or threats.

As to the majority of these instances as stated below the United States introduced no evidence at all.

The evidence relating to these charges is set forth below.

1. Tessier.

In the bill of particulars it is claimed that the United Company removed its leased machinery from the factory of Peter Tessier & Company of Haverhill, Mass., where a Duplessis turn sewing machine was being operated. (R. Vol. 1, p. 1076 (1).)

Peter Tessier for the United States said that he had been engaged in the shoe manufacturing business at Haverhill, that he used a Goodyear sewing machine for a time, that he installed a Duplessis sewing machine, that Octave Paquette, the agent of the United Company in Haverhill, came to him and presented a letter signed by the United Shoe Machinery Company, per S. W. Winslow, president (see Plaintiff's Exhibit 158), which letter read as follows:—

> "You are hereby notified that in the exercise of our rights in the premises we have elected to terminate all leases and licenses which have heretofore been granted to you covering machinery belonging to us, including herein specifically the following leases and licenses, viz:
> Metallic Department lease and license, No. 803, dated April 6, 1901.
> Metallic Department lease and license, No. 803A, dated January 4, 1904.
> Goodyear Department lease and license, No. 5486, dated December 18, 1902;

and to terminate all right and privilege to use any of the machines belonging to us which have heretofore been delivered into your possession. The said leases and licenses and said rights and privileges are accordingly hereby terminated, revoked and annulled, and we hereby forbid you to use or to permit the use by any other person of said machines or any of them hereafter, or to further use any of the patented inventions embodied in said machines, and which by said leases and licenses you are authorized to use.

"And we do further hereby demand that you forthwith deliver to us at our factory in Boston, Massachusetts, in accordance with your undertaking and agreement, all such machines, including therein specifically the machines designated by name and number as follows, viz:—

Grip Slugging Machine	No. 777
Universal Slugging Machine	2022
Knife Grinder	5571
Goodyear Welt and Turn Shoe Machine	417
Goodyear Turn Channelers	742 and 2125
Goodyear Moulding Machine	293"

The witness testified that this comprised all the machines of the United Company in use in his factory at that time; that he had machines that took the place of them and could get from the Duplessis Company machines for performing similar work; that he could get all those machines from the Duplessis Company that he had from the United Company for performing similar work. (R. Vol. 1, p. 282, lines 20–30.)

On cross-examination Tessier said that he had the Duplessis machines in his factory at the time the United machines were taken out. (R. Vol. 1, p. 282, lines 32–33.)

The United States agreed that these machines were taken out on a replevin writ brought by Louis D. Brandeis' office. (R. Vol. 1, p. 282, line 34.)

Mr. Winslow, the president of the United Company, testified that he sent the notice set out above to Tessier because Tessier had abandoned the use of the company's welt and turn sewing machines and had put in their place Duplessis turn sewing machines. He sent the notice canceling his leases, but as a matter of fact it did not interfere with Tessier going on with his business in the slightest degree; Tessier simply was not using the United machines, and the defendant took them out. (R. Vol. 1, p. 448, lines 11–18.)

Elmer P. Howe testified: "Peter Tessier also put in some Duplessis machines and it was really violating our lease in the most flagrant way by using our machines to prepare or to finish the work that was done on the Duplessis machines. Furthermore, when his attention was called to the violation of the lease I think he gave up his Goodyear machines without the necessity of actually prosecuting a replevin suit against him"; he had already provided himself with others. (R. Vol. 1, p. 668, lines 15–23.)

The court will observe that in the list of machines mentioned in Plaintiff's Exhibit 158, the Goodyear turn channelers and the Goodyear moulding machines were auxiliaries for which no royalty was paid, but which were limited to use with the principal machines, the welt and turn machines; that what Tessier had done was to use the Duplessis machine for the work of the Goodyear welt and turn machines and then finish the work on the Goodyear auxiliaries without paying for their use; that this was a violation of the condition of Tessier's lease. There was no evidence whatever of any threat made by the United Company or any agent.

2. Bottomley.

In the bill of particulars it is claimed that the United Company removed its leased machines from the factory of Ernest Bottomley & Company of Haverhill, Mass., where a Duplessis welt and turn machine was being operated. (R. Vol. 1, p. 1076 (2).)

Ernest Bottomley testified: That he was a manufacturer of McKay shoes; that he was engaged in 1903 in the manufacture of turn shoes; that he had some machines from the United Company and some from the Duplessis Company. From the Duplessis Company he had the turn machine, the loose nailer, slugger, tacker and stitching machines. From the United Company, the only one he could remember was a sole rounder. He had had a Goodyear stitching machine. When he took the Duplessis machines he stopped using Goodyear machines. Colonel King, of the United Company, came to him and had a conversation with him the substance of which was that he would have to use either the United Company machines or the Duplessis machines, with the result that he continued to use the Duplessis

machines, and the United Company took its machines away. (R. Vol. 1, p. 284, lines 24–36.)

On cross-examination he said that he had first installed Goodyear machines for doing turn work; he had taken one or more turn sewing machines and some of the auxiliaries that went with them; and that the royalty paid for the use of the turn sewing machines and the auxiliaries was kept track of by the indicator on the sewing machine, which was the principal machine. After he had had these for a while he took turn sewing machines from the Duplessis Company, and stopped using the turn sewing machines obtained from the Goodyear Company. He then notified the United Company that they—Bottomley & Company—would not pay any more royalties for shoes sewn on the Goodyear machines. (R. Vol. 1, p. 285, lines 27–35, and Defendants' Exhibit 74.)

Bottomley testified: "I understood I should choose between the Goodyear and Duplessis machines, that I was free to choose whichever of those I liked. I considered it and made a free choice. As a business probabillty if I was running shoes through the Duplessis machines I wouldn't use the Goodyear machines." (R. Vol. 1, p. 287, lines 3–8.)

Mr. Winslow testified: "Bottomley had served notice on us that he would not use our machines and would not pay any further royalty. He was using machines which he had also declined to sign the leases of. They had been leased previously to other parties." (R. Vol. 1, p. 448, lines 20–24.)

There was no other evidence as to what machines were removed from the Bottomley factory.

Neither case shows misrepresentation or threat, but simply the justifiable exercise of a plain right, which was resorted to, not to coerce a manufacturer but to protect the company's revenue.

3. The Case of Mark J. Worthley, Thomas G. Plant Company, A. Garside & Sons, Joseph Caunt, A. E. Little Company.

The United States charged the defendants or their agents threatened to remove under the terms of their leases their machines which were being operated by the above-named parties because said individuals and firms were operating in their fac-

tories machines obtained from the Standard Shoe Machinery Company. (R. Vol. 1, p. 1076 (1).)

There was no evidence whatever in support of this allegation. Darrah was the only witness who made any reference to these matters. (R. Vol. 1, pp. 334, 335.)

4. C. B. Lancaster Shoe Company.

The United States claimed: "In 1902 or shortly prior thereto C. B. Lancaster Shoe Company of Keene, New Hampshire, installed on trial in its factory a tackless lasting machine manufactured by the Tackless Shoe Machinery Company, whereupon the defendant the United Shoe Machinery Company gave notice that if such machine was not returned forthwith, it would remove all of its machinery with which the factory of said Lancaster Shoe Company was almost entirely equipped, and as a result thereof said tackless lasting machine was returned and not purchased or leased." (R. Vol. 1, p. 1076 (2).)

There was no evidence whatever in support of this allegation.

5. Nutt & Pratt.

The United States charged that the United Shoe Machinery Company threatened to remove its leased machinery from Nutt & Pratt of Natick, Mass., because said Nutt & Pratt had installed a tackless lasting machine obtained from the Tackless Shoe Machinery Company. (R. Vol. 1, p. 1076 (3).)

No evidence whatever was offered in support of this allegation.

6. T. D. Barry Shoe Company.

The United States charged that "The defendants threatened to take back their machines under the terms of their leases and thereby force manufacturers to remove competing machines which had already been installed in the following instances (R. Vol. 1, p. 1076 (c)):—

"They so threatened the T. D. Barry Shoe Company at Brockton, Massachusetts, in or about the spring or summer of 1900, and brought a proceeding to remove from said company's factory welting, stitching, heeling, lasting, slugging, insole channeling and other machines, and thus compelled said company to remove a system of machines of like character, except

slugging and channeling machines which Barry & Company had obtained from the Standard Shoe Machinery Company." (R. Vol. 1, p. 1077 (1).)

In support of this charge the United States called William A. Hogan, who testified he was part owner and treasurer of the T. D. Barry Company and had been with them for twenty-five years; that the company thirteen or fourteen years ago had machines from the Standard Shoe Machinery Company. He was not sure whether this was before or after the United Company was formed, but at the time he was using United Shoe machines and Standard Shoe Machinery Company machines. They had from the Standard Company a laster, welter, stitcher, welt beater and sole-layer, and machines performing similar work from the United Company; that on a certain afternoon a deputy sheriff served papers on him that they were going to take out some of the United Shoe Machinery Company's machines; that he stopped him by threatening to shoot him; that he went to the Superior Court in Boston and got an injunction against the company; that the injunction was dissolved, and he then agreed to stop using the Standard machines, and the Standard machines were removed from the factory. That prior to the claim of the sheriff he had no conversation with any representative of the United Company that he could remember. He could not say whether the United machines were actually removed or not. (R. Vol. 1, p. 222.)

On cross-examination he said that the T. D. Barry Company had leased some machines from the old Goodyear Company before the United Company was formed, including welting machines, stitching machines, and some auxiliary machines that he used with them. They had then introduced into the factory some standard welting, stitching and lasting machines, and did their welting and stitching on the Standard machines and used the Goodyear machines for the auxiliary work for those machines, so that they were getting Goodyear auxiliary machines for nothing and using them on shoes that were welted and stitched on the Standard machines. In that situation the United Company brought a replevin writ to get back its own property, and the witness sought to interfere with the officer by showing a revolver. Presently Mr. Barry, who had been in Europe, came home and the whole affair was straightened out. (R. Vol. 1, p. 223, lines 12–42.)

Elmer P. Howe testified that T. D. Barry Company were using Goodyear auxiliary machines with regard to which the United Company had no opportunity to determine the extent of use, and therefore had no means of collecting royalty. That is, they were using Goodyear auxiliary machines to prepare and finish the work which was sewn and stitched on Standard welt and turn sewing machines and Standard stitching machines. (R. Vol. 1, p. 667, line 44 *et seq.*)

This was another instance where because of the fact that the use of auxiliaries in the Goodyear department was paid for only through and by the royalty measured or recorded by the principal machines, the shoe manufacturer was unfairly treating the United Company by using its auxiliaries in connection with some other persons' principal machines, and therefore getting the use of the auxiliary machines for nothing.

7. Curtis & Jones.

The United States charged that the defendants likewise threatened Curtis & Jones, and caused them to remove from their factory a full line of machines which they had leased from the Duplessis Shoe Machinery Company. (R. Vol. 1, p. 1077 (2).)

In support of this allegation the United States called Thomas H. Shinn, who testified that he was superintendent of the Curtis & Jones factory; that that firm formerly had two factories, one at Hamburg and one at Reading (Pa.). In the Hamburg factory they used the Lincoln sewing machine made by the Campbell Company, but did not use at that factory any machinery of the United Company except loose nailers and possibly eyeletting machines; but later they combined the Hamburg and Reading factories in one building at Reading and moved the Hamburg plant to the new Reading plant. That at the Reading plant before the removal they had had a full line of Goodyear machinery from the United Company for making turned shoes; that about the time of removal they bought three Duplessis sewing machines and installed them together with the Lincoln machines in the Reading factory, which was built on a hollow square. When at the Hamburg plant they had had metallic machines of the United Company no objection was made by the United Company to the use of the Lincoln sewing machines, beyond calling attention to the merits of their own system and

trying to persuade the company to dispose of the Lincoln machines and put in Goodyears.

After the removal to Reading, Mr. Clark, the Philadelphia district manager of the United Company, called upon the witness and stated that the company had broken its leases by starting Duplessis machines in connection with Goodyear machines. Colonel King called later but said nothing about the continued use of the United machines, if Curtis & Jones continued to use the independent machinery, but the local agent, Mr. Clark, said that the United Company would remove all their leased machines unless Curtis & Jones discontinued the use of the independent machines. An arrangement was then made that Curtis & Jones should turn over to the United Company the independent machines, for which they would pay the cost, and replace them with Goodyear machines. (R. Vol. 1, pp. 363–365.)

The witness said he could probably have duplicated any of these machines which they had from the United Company, except the loose nailing machines. This change to machinery of the United Company apparently increased the cost of doing work one-half a cent a pair. (R. Vol. 1, p. 366, lines 13–34.)

On cross-examination he testified that when the change was made from Hamburg to Reading they built an entirely new building, and abandoned the old Reading factory and moved both of the old factories to the new one, with the idea of centralizing their business in one factory, with one office and running it as one factory. The factory happened to be built on four sides of a square to get light, but there was no separation of one side from any other side; it was open right around the square.

At the Hamburg factory, where they were using the United Company's loose nailer, they were using any sewing machines that they wanted to, without any interference of the United Company, on the same shoes. When they moved into the new factory they put all their sewing machines and stitching machines on one floor in the making-room, so that the Goodyear and Duplessis machines were practically side by side. The Lincoln machines were on the same floor, on the other side of the building, but still in the same making-room. (R. Vol. 1, p. 367, lines 13–41.)

Witness further testified "Up to that time, I think, whatever turn machinery we had we had from the old Goodyear Com-

pany and whatever agreements we had were agreements made with that company." (R. Vol. 1, p. 368, lines 3–6.)

The witness was then shown a lease dated June 3, 1892, from the Goodyear Shoe Machinery Company, and another lease dated 1897, also from the Goodyear Shoe Machinery Company, covering the Goodyear turn machines both principal and auxiliary which Curtis & Jones had.

To these leases was attached a rider reading as follows:—

> "The lessor hereby agrees that the rent and royalty to be paid by the lessee for children's turned shoes made after January 1, 1897, shall be one cent per pair instead of two cents per pair as provided in the schedule of section third of said lease; on condition, however, that the lessee while he retains possession of any machine leased to him by the lessor shall not without the consent in writing of the lessor use or allow to be used in his factory any sewing machine for uniting soles of turned shoes to their uppers which is not leased to him by the lessor."

This was executed October 7, 1897, by the Goodyear Company and Curtis & Jones Company (R. Vol. 1, p. 368); the leases to which this rider was attached were Defendants' Exhibits 96 and 97.

The witness said that the introduction of the Duplessis machines was in violation of this agreement, and that he could suggest no reason why they should not live up to their agreement. (R. Vol. 1, p. 369, lines 16–24.)

Prior to 1902 Curtis & Jones had held their loose nailer on terms by which they could use it with machinery of anybody else they wanted to. In 1901 they learned that the United Company was offering its metallic machine on a different form of lease which had been agreed upon between it and the Shoe Manufacturers' Association. Curtis & Jones wanted to change over to that new form of lease, and on January 17, 1902, Curtis & Jones wrote asking to have their leases changed over to that new form. (R. Vol. 1, p. 369, line 45 *et seq.*)

This change was made of their own volition; they had considered the advantages of the two situations and of their own accord wrote asking to have their lease changed. (R. Vol. 1, p. 370, lines 17–45, see Defendants' Exhibit 98.)

With reference to the change from the Lincoln and the Dup-

lessis machines to the Goodyear, he said he had given attention to the arguments presented by the Goodyear people upon the advantages of their machinery; that he knew the Goodyear machines were doing good work; that he got no service in taking care of the Lincoln machines from anybody—he had to take care of them himself, and had to send from Reading, Pa., to Haverhill, Mass., for parts, while the United Company had its depot in Philadelphia, fifty-eight miles from Reading, and reached by telephone or telegraph; that this was pretty convenient and was a consideration with him; that frequently the United Company's men came down and looked at the machines and instructed operators and that was a great convenience; that the Duplessis Company didn't have any agents nearer than Boston, and to get parts they would have to send to Canada. That he made comparisons between the quality of the work produced on the Goodyear machines and on the other machines, and became satisfied that the Goodyear machines were doing better work, and, in his opinion, the arrangement as to care, supplying of parts and promptness of service was very much on the side of the Goodyear. (R. Vol. 1, p. 371, line 41 *et seq.*)

In his testimony on direct with reference to the increased cost of making shoes, he mentioned that the difference of one-half a cent was the difference in the royalty, but that was without giving consideration to the economies resulting from the use of the Goodyear machines, which amounted to considerable. In his opinion, the United Shoe Machinery Company machines would be the cheapest; considering the service, the trouble and the worry he would have with the other machines the United Company machines would be the cheapest. (R. Vol. 1, p. 373, line 20—p. 374, line 17.)

This does not support the charge made by the United States that the company threatened Curtis & Jones and caused them to remove the Duplessis machines by any unfair method. Curtis & Jones had obtained and were enjoying a special concession from the old Goodyear Company and were asked to live up to their agreement.

8. Hilliard & Tabor.

The United States claimed that Hilliard and Tabor, who had United Shoe Machinery Company machines, installed a turn sew-

ing machine of the Haverhill Shoe Machinery Company, and that the defendant by its president pointed out that this machine was being operated in violation of the United Company's leases and threatened to change the terms of said leases and to make them more onerous if such Haverhill machines were purchased and installed. (R. Vol. 1, p. 1077 (d).)

In support of this claim the United States called Frank R. Hilliard, who testified that he manufactured women's welts, turns and McKays, having an output of four thousand pairs a day. In 1899 he was using in his factory machines of the Goodyear Shoe Machinery Company and the National nailer. About a year and a half prior to the giving of his testimony (June, 1913), he attempted to install a turn sewing machine of the Haverhill Shoe Machinery Company. After he had been running it about four or five months he was on one occasion at the office of the United Company and Mr. Winslow stated that we were using that machine contrary to our lease and that we would either have to change the lease and the contract with the United Company or stop using the Haverhill machine. The Haverhill machine did satisfactory work. He had it on trial but he had made no arrangement with the Haverhill Company at that time. They had offered it on royalty or on purchase. Mr. Winslow's objection partially caused him to return the Haverhill machine. The other reasons were that the machine was in on trial and he had not come to any absolute conclusion in regard to the matter. (R. Vol. 1, p. 282, line 39 *et seq.*)

On cross-examination he said that he had had the Goodyear machine for making turn shoes four to six months before he talked with Winslow, without any protest or objection. He had occasion to go to the United Company's office and happened to meet Mr. Winslow. Mr. Winslow called his attention to the fact that he had this machine in operation and asked him if he had noticed the provisions of his lease under which he had the Goodyear machine. The witness allowed that he had noticed the provisions and was running the machines contrary to the lease, which was a lease on which he had paid no initial premium. He got the United Company machine and paid for it according to the extent to which he used it. He had auxiliary machines with it and was using the auxiliary machines with the Haverhill machine. The effect of what he was doing was this: he took the

Haverhill machine on trial and used the Goodyear auxiliaries with it, for which use he did not pay a copper to the United Company. Winslow called his attention to this and the witness said it was true. Winslow said if he wanted to use the Haverhill machine he could change his lease and take another form, and he offered to give the witness that form of lease. The witness took the matter under consideration and decided he would rather keep the form of lease he had than change over his lease and use the Haverhill machine. There was no threat of coercion or compulsion. Everything was perfectly courteous and business like, and it was left for the witness to decide which he preferred. The election was his own choice and was satisfactory to him. (R. Vol. 1, p. 283, line 28—p. 284, line 5.)

The witness further testified: "The change which was to be made, provided we retained the Haverhill machine, was that we were to pay for the machines which we had. He did not say anything about paying an installation charge for the machine. . . . He did not fix the price for the machines; just said that he would have to change the leases." (R. Vol. 1, p. 284, lines 8–11, 18, 19.)

This was all the evidence in support of the above charge.

9. Harsh-Edmonds Shoe Company.

The United States charged that in 1909 the Harsh-Edmonds Shoe Company desired to lease clicking machines but on account of the burdensome conditions of the leases of the United Company, made an effort to obtain them from other parties. Shortly thereafter Mr. Harsh was sent for by the general manager of the United Company and warned and threatened by him with reference to making further effort to procure such machines elsewhere, and was caused thereby to take clicking machines from the United Company. (R. Vol. 1, p. 1077 (e).)

In support of this charge the United States called George R. Harsh, who testified that he used clicking machines obtained from the United Company; that he bought one machine from the Richardson Shoe Machinery Company and had tried to have them made in Milwaukee, but without success; that he had a conversation with one Willson, general manager of the United Company, in 1908 or 1909; that subsequently he was in Boston.

Willson left word that he would like to see him. The witness called on him and Willson said it would be better for him if he ceased his activity against the United Company and took things as they were. "He called my attention to the fact that there was a condition of a similar nature to the feature of the clicking machine lease I was objecting to in another lease of another machine, the metallic department lease as I remember it." The witness made no further attempts to get clicking machines elsewhere than of the United Company. He was a stockholder in the Boylston Shoe Machinery Company, to supply his own business with machinery. (R. Vol. 1, p. 196, lines 4–34.)

On cross-examination he said that he went into business in 1906; that he applied to the United Company for machines and took bottoming room machinery on the non-initial premium lease; machinery for other rooms he obtained elsewhere. He was not clear whether he had obtained the Richardson machine before or after he had talked with Willson. He went to Willson's office. Willson's greeting was courteous. He was a man of exceedingly kindly and courteous personality. Something was said with reference to a clicking machine, and the conversation turned to the fact that the witness was looking for a clicking machine. Willson told him the United Company manufactured one. Something was said which brought the conversation around to discussing the kind of leases which the witness had, and this presented the situation of the witness being a customer of the company. The witness said something to the effect that he objected to taking the company's clicking machine lease, and Willson pointed out that in the form of lease the witness had there was the same or a similar provision. The witness had not appreciated this fact before. Willson presented this by way of argument to meet the witness' objection, and did it perfectly fairly and quietly. When he had done that he urged the witness to take the United Company's clicking machine. The United Company's clicking machine was the only commercial machine in the market. The witness was a general customer of the United Company and it was giving service with its machines. No other company that he knew of was giving service with reference to clicking machines. Mr. Willson's advice to the witness seemed to be sound and the witness adopted it. He could not suggest any reason why as a practical business matter it was not sound, and it certainly has proved to be sound.

The witness further testified: "We used the Richardson machine only a short time. It was not commercially practicable and that was why we gave it up." (R. Vol. 1, pp. 196–199.)

This was all the evidence offered in support of this complaint.

10. Witherell & Dobbins.

The United States claimed that Witherell & Dobbins contemplated the manufacture of welt shoes, and in the spring of 1911 were threatened by the United Company or its agents that if they continued to operate machines of competitors the United Company would exact from Witherell & Dobbins installation charges on machines used in the manufacture of welt shoes which were exorbitant in comparison with those made to manufacturers not operating competing machines. (R. Vol. 1, p. 1077 (f).)

There was no evidence to support this charge.

11. George A. Learned.

The United States claimed that George A. Learned was engaged in the manufacture of turn shoes and contemplated entering upon the mar facture of welt shoes. "A threat of like character" was made by the defendant company or its agents. (R. Vol. 1, p. 1078 (g).)

In support of this claim the United States called George A. Learned, who testified that he had been using United Company's machines for fastening soles to uppers. In June, 1911, he installed some machines of the Haverhill Shoe Machinery Company for the same purpose. He testified that in August, 1911, the defendant's president informed him that he was violating a clause of his lease which provided that he should pay three-quarters of a cent a pair royalty on every pair of shoes stitched, whether by the United Company's machine or the Haverhill machine, and that the United Company intended to collect the royalty and 6 per cent interest. Mr. Winslow said that he would either have to pay that or they would drive him out of business, and that the least he would do would be to take out all the United Company's machines. (R. Vol. 1, pp. 313–314.)

Learned was contradicted in this testimony by Mr. Winslow who specifically denied all the statements alleged to have been

made to Learned by him with reference to driving Learned out of business or taking out the machines of the United Company. (R. Vol. 1, pp. 515–517.)

Edwin P. Brown, who was present at the time the conversation occurred, also contradicted Learned. (R. Vol. 1, pp. 715–716.)

Henry B. Endicott, who heard that Learned was making statements with reference to this alleged conversation, brought him to Mr. Winslow's office and testified that when Learned was there he admitted that he had been mistaken. (R. Vol. 1, pp. 582–583.)

Edwin P. Brown was also present at the second conversation and corroborated Mr. Endicott, stating that Mr. Learned in the course of conversation admitted that he was mistaken, and that, as he remembered it, Learned then agreed to write a letter of apology to Mr. Winslow. (R. Vol. 1, p. 717, lines 29–45.)

Subsequent to the conversation, on August 28, 1911, Mr. Brown in accordance with Mr. Learned's request, submitted a list of machines with the terms upon which the defendant would furnish them for Learned's use. (R. Vol. 1, p. 316, lines 13–18, and Defendants' Exhibit 86.) Several letters passed between Mr. Learned and Mr. Winslow on the subject. (See Defendants' Exhibits 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 and 254.)

The United Company has never at any time taken any machines out of Learned's factory or done anything to interfere with his business or attempted to put him out of business. He has substantially all the machines of the United Company that he had when the correspondence and conversations took place, and is using the defendant's auxiliaries and some of its general department machines to make shoes in connection with the use of the Haverhill Company's machines without paying any royalty on the machines of the United Company. (R. Vol. 1, p. 516, lines 24–32.) The fact was that Learned had the Goodyear department turn sewing machine and some auxiliary machines and was using the Goodyear auxiliaries in connection with the Haverhill Company turn sewing machine, so that he was using the United Company's auxiliaries and paying no royalty for their use. (R. Vol. 1, p. 515, lines 24–29.) He was offered the independent form of lease for these machines if he desired to use them. (R. Vol. 1, p. 515, lines 38–41.)

12. Harry H. Wentworth.

The United States claimed that in June, 1911, Harry H. Wentworth determined to install a heeling machine manufactured by the Haverhill Shoe Machinery Company, but was induced not to install said machine by representations upon the part of the United Company or its agents that if he should do so the United Company would increase its installation charges upon future orders for machines. (R. Vol. 1, p. 1078 (h).)

There was no evidence in support of this charge.

13. Alleged Threat to Enter Shoe Business.

The United States claimed that in certain conferences in St. Louis, in February, 1911, and in Boston, in May, 1911, between Mr. Winslow and Johnson, Florsheim, Rand and Selz and others, Winslow threatened that the United Company would enter upon the shoe manufacturing business, this threat being made in connection with efforts being made by the manufacturers to secure a modification of the leases of the United Company. (R. Vol. 1, p. 1078 (i).)

There was no evidence to support this allegation and it was denied by Florsheim, a witness for the United States. (R. Vol. 1, p. 162, lines 9–14.)

14. Alleged Threats by William Barbour.

Under the general head of "Threats to use financial resources and power of combination to ruin competitors," the United States claimed that William Barbour in conversation with James N. Darrah, an officer of the Standard Shoe Machinery Company, made certain threats as follows: "'Well, you are making a big mistake because we always try to be nice to people,—we offer to buy them at first, and then we crush. You can not do anything because we control the banking influences, both in New York and Boston, and you would not be able to get any money. You won't put in your machines because we have the shoe manufacturers in a state of terror. I own a million dollars of that stock and we can't afford to have any competition. My investment is liable to be jeopardized, and we can't afford to have any competition against the United Shoe Machinery Company. We have the field and we are going to retain that field.'" It was claimed that

Barbour also said on another occasion to Darrah, when Darrah suggested that he was going back into the shoe machinery business, "'You would make a big mistake because you would never get in. We would never let you in or anyone else. You will never have a chance to get in. You will never be able to place your machinery with shoe manufacturers. You can't find any customers.'" (R. Vol. 1, p. 1078 (a).)

The United States called James N. Darrah in support of this claim, who testified that he met Mr. Barbour at the office of John R. Dos Passos in New York in April, 1900, who introduced him to Mr. Barbour. That Barbour said he had a large investment in the stock of the United Company and did not propose to have it jeopardized. (R. Vol. 1, p. 333, lines 33–35.) Barbour said: "'I think you are making a big mistake if you don't sell .... We always try to buy out competitors and if we can't buy them out we force them out.'" (R. Vol. 1, p. 334, lines 4–8.) Barbour also said: "'Where are you going to get your money? You can't get any money to compete against the United Shoe Machinery Company. You can't get any banks to back you up. Our influence both in Boston and in New York is so great that you can't do anything.'" (R. Vol. 1, p. 334, lines 20–24.) Darrah said that he subsequently met Barbour in 1905 and suggested that he thought of going into the shoe machinery business, and Barbour laughed and said it would be a big mistake. (R. Vol. 1, p. 335, lines 35–39.)

On cross-examination Darrah testified that he was in the real estate business; that he hadn't any office; that he was at the time of his testimony going through bankruptcy; that before he went into the real estate business he was in a stock-broking business; he was not a member of the stock exchange but dealt in unlisted securities; he did that for about three years; for two years he was out of business. (R. Vol. 1, pp. 335–337.)

Barbour testified with reference to Darrah: "I met the man, but I never made such a statement at all. There was no threat or intimidation at all by language used by me in my conversation with him. There was no suggestion that I regarded him as a competitor who would jeopardize our interests, or that if he did not sell out we would force him out." (R. Vol. 1, p. 860, lines 38–40.)

The United States did not call Dos Passos as a witness at all.

Upon this charge the District Court found:

> "The only 'threats' which Barbour is charged with making are testified to by James N. Darrah, vice-president in 1900 of the Standard Shoe Machinery Company. According to Darrah, Barbour, at a talk in New York in April of 1900, tried to get him to sell out stock in his company by telling him, in substance, that if competitors of the United Company could not be bought out, they would be forced out. Barbour has denied that any such conversation took place. Darrah's evidence was not corroborated; and there is no proof that his concern, though it went out of business in 1901, was ever forced out or crushed by the defendants." (Dodge, J., R. Vol. 1, p. 1148.)

15. Richard H. Long.

The United States charged that in 1908 Richard H. Long was engaged in the shoe machinery business in competition with the United Company; that he endeavored to arrange a line of credit with the Chapin National Bank, of Springfield, but was prevented from doing so by the United Company; that he was offered a credit with the New England National Bank but was refused through the same influence. (R. Vol. 1, p. 1079 (b).)

There was no evidence whatever to support this charge. Long's testimony will be found. (R. Vol. 1, pp. 244–246.)

16. J. S. Holt.

In the bill of particulars it is claimed that about 1908 one Bayley, an officer of high rank in United Shoe Machinery Company, stated to J. S. Holt for the purpose of intimidating said Holt that R. H. Long would be ruined and driven from business by the United Company unless he ceased trying to compete, and that the same fate would befall any other who tried to enter the shoe machinery industry; that the said company would make every effort to ruin Long by destroying his credit and possessed such strong banking connections that it would be able to prevent Long from obtaining capital to continue operations. (R. Vol. 1, p. 1079 (c).)

There was no evidence whatever offered to support this charge. Holt's testimony will be found R. Vol. 1, pp. 280, 281.

17. Harry E. Cilley.

The United States claimed that Harry E. Cilley was told by E. P. Hurd of the United Company in 1901, that he could not do any business except by sufferance of the United Company; that the company did not care for the common law or the Sherman Law, and various other talk of a similar character. (R. Vol. 1, p. 1079 (d).)

In support of this the United States called Harry E. Cilley, who testified that he had invented a leveling machine and that he called on Mr. Hurd, who asked him if he had a proposition to make; that Hurd said, "'Cilley, you are thick; if you were offered fifteen or twenty thousand dollars I think under the circumstances you ought to be well satisfied.'" Cilley replied that this was outrageous. He testified that Hurd also said that the United Company was not an eleemosynary institution and that Cilley could not do business except on its sufferance. (R. Vol. 1, pp. 279–280.)

On cross-examination Cilley said that he had been in litigation with the United Company since 1903 and had been preparing himself to testify in that case. (R. Vol. 1, p. 280, lines 14–24.) It was evident from the character of Cilley's examination that the testimony of the witness was not reliable.

On this charge the District Court found as follows (Dodge, J., R. Vol. 1, p. 1149):

> "Mr. Hurd is charged, in the testimony of Harry E. Cilley, with having said to him in 1901, during a conference with respect to a possible sale of his business to the United Company: 'You can't do any business except on our sufferance and you can't get a new dollar for an old one.' It appears that Cilley's business at the time consisted in building a sole-leveling machine, that he was not satisfied with an amount suggested by Mr. Hurd as a proper price for it, told Mr. Hurd he considered it 'outrageous,' and never renewed the negotiations. Neither the business of this witness nor the remarks testified to, if made, can fairly be regarded as of any serious importance, in view of all the circumstances shown."

18. Tower Brothers.

The United States charged that Tower Brothers, engaged in business in making shoe machinery, were greatly injured by

their employees being taken away by the United Company and that the United Company threatened to drive Tower Brothers out of business. (R. Vol. 1, p. 1080 (e).)

There was no evidence whatever to support this charge, although John M. Tower of Tower Brothers appeared as a witness for the United States. (R. Vol. 1, pp. 907–908.)

19. Charles H. Morse.

The United States charged that Charles H. Morse in 1903 was endeavoring to market the Frechette pegging machine and a slugging machine for doing similar work; that Morse called on Mr. Winslow and Mr. Winslow said to him, "You don't suppose we are going to let you continue placing that machine upon the market." (R. Vol. 1, p. 1080 (f).)

In support of this charge the United States called Charles H. Morse, who testified that he called upon Mr. Winslow somewhere about 1901 or 1902, he thought—he could not tell exactly—and talked with Mr. Winslow about a purchase of his business; that Mr. Winslow said, "You don't suppose we are going to allow you put them on the market," meaning machines which Morse was manufacturing.

It further appears from the testimony of Morse that he continued in business until 1906 when he sold out to Samuel H. Nichols of Brockton, Mass. (R. Vol. 1, p. 338, lines 38–39.)

Winslow testified that he had no recollection whatever of making any such statement to Mr. Morse; that he had met Mr. Morse in the corridor of the Court House when Morse testified, and went up and shook hands with him and asked him how many years it had been since they had met, and Morse placed the date back of 1899, and didn't remember to have met Winslow since the formation of the United Company, so if he had ever had any conversation with Morse it must have been prior to the organization of the United Company. (R. Vol. 1, p. 518, line 38 *et seq.*)

In respect to this charge the District Court found as follows:

> "Mr. Winslow is charged, in testimony by Charles H. Morse, with having said to him at some time in 1901 or 1902: 'You don't suppose we are going to allow you to put them on the market,'—referring to certain pegging machines then being made by the Fifield Company with which Morse was connected. Morse, on his own testimony, was then negotiating with Winslow about a sale of the Fifield

> Company business to the United Company, but they failed to agree as to price. Its business was sold in 1906, but not to the United Company. There is nothing to prove that the United Company ever interfered with the marketing of this machine." (Dodge, J., R. Vol. 1, p. 1148, lines 23–32.)

20. The Merrick-Luitweiler Controversy.

The United States claimed that Mr. Winslow made threats to Messrs. Merrick and Luitweiler who were engaged in manufacturing a lock-stitch machine. This charge was not included in the bill of particulars.

Frank W. Merrick testified that in the summer of 1905 he had a conversation with Mr. Winslow at the Touraine Hotel with reference to a sale of the business of the Union Lockstitch Company, at which Mr. Winslow stated in effect that he would not allow Merrick and Luitweiler to make any money and that eventually their business would come around to him and he would take it. (R. Vol. 1, p. 200, line 21 *et seq.*) Luitweiler testified to the same effect. (R. Vol. 1, p. 208.)

Merrick testified under cross-examination that upon this occasion he could make no objection to Mr. Winslow's treatment of him, but that it was a "business bluff." (R. Vol. 1, p. 205, lines 35–41.) He commented upon it as follows:

> "I was not bluffed by what he said. It didn't influence my conduct. It might have frightened me a little. Up to that time the straight needle machine was the only thing we had developed. We have not been interfered with in marketing it except by ordinary methods of competition." (R. Vol. 1, p. 206, lines 11–15.)

Taken at its face value, the testimony of the witnesses for the United States would show only that Mr. Winslow made the statement referred to as a "business bluff"; that it was recognized as a bluff; that it did not influence the conduct of Merrick; and that it was not followed up by any interference with Merrick's business.

Mr. Winslow, however, specifically denied ever making any such statement to either Merrick or Luitweiler (R. Vol. 1, pp. 517, 518), and all the probabilities of the case support this denial. Merrick claimed that Sampson, who was employed by the United Company, arranged the conference with Mr. Winslow. (R.

Vol. 1, p. 200, lines 25, 26.) It appears, however, that before the conference Merrick had asked a mutual friend, Mr. Buck, to bring Sampson to him, had invited Sampson aboard his yacht and had taken him to the Hull Yacht Club as his guest. When Merrick had Sampson out on the yacht he talked with him about his (Merrick's) company and the enterprise in which he was engaged. (R. Vol. 1, p. 204, lines 5–25.) Merrick's machines were then in an experimental state, and Merrick testified: "We didn't get anywhere with Sampson. He didn't have anything to say." (R. Vol. 1, p. 204, lines 26, 27.)

Sampson testified that Mr. Buck called on him, showed him a sample of stitching and said it was done on a new machine which Merrick had brought out; that Merrick had several machines he would like to sell and would like to get employment with the United Company. Within a few days, Buck came and invited Sampson off on Merrick's yacht. Sampson declined to go and Buck came back a few days later and urged him to go. While on the yacht Luitweiler asked if he could meet Mr. Willson, general manager of the company, and pursuant to this request the meeting with Mr. Winslow came about. (R. Vol. 1, pp. 615, 616.)

Both Merrick and Luitweiler admitted that at a later interview Mr. Connor of the United Company stated positively that he would not consider buying their business on a competitive basis. (R. Vol. 1, p. 210, lines 2–5.) It seems quite obvious what sort of solicitation on the part of Merrick and Luitweiler would have called forth such a statement on the part of Connor.

In respect to this charge the District Court found as follows:

> "Mr. Winslow is also charged, in testimony given by Merrick and Luitweiler, president and treasurer of the Union Lock Stitch Company, then developing machines not yet put on the market, with having told them in 1905, while attempting to persuade them to sell out to the defendants, that they would not be allowed to make any money; that the United Company would build their machines; that their business would come round to it and be taken by it, and that it was cheaper to kill competitors than to acquire them. The alleged statements are denied by Winslow. The business referred to is one never acquired by the defendants, nor is any interference whatever with this business shown. This was admitted, and the

testimony of the two witnesses named is that they have put out 350 to 400 of the machines in question." (Dodge, J., R. Vol. 1, p. 1149, lines 1–13.)

21. George H. Clark.

The United States claimed that George H. Clark had invented a method of molding or lasting a shoe and stitching the seam on the last, and that he endeavored to introduce this method into various shoe factories; that he visited the United Company and talked with Edward P. Hurd regarding the purchase, lease or rental of a Goodyear rapid lock-stitch machine for use in shoe factories; that Hurd told him: "'Our policy is to stick the knife in deep to the hilt in the case of anyone interfering with our system, and surely your method does interfere. We will never let you have a machine or have one used in any factory where you or your method may be found, for you to experiment with.'" (R. Vol. 1, p. 1081 (g).)

In support of this charge the United States called George H. Clark, who testified that he was an inventor and had invented a method for molding or lasting shoes, and that he had put a machine for this purpose in the Richardson factory in Reading; that he called on Mr. Hurd to see if he could get a lock-stitch machine to put in the Richardson factory; that Hurd replied: "You mean well, but it is against our policy to put a machine in whereby it is going to interfere with our welt system, and we have to put the knife and protect our interests. . . . I won't put any one of our rapid stitching machines into any factory where you are to experiment with." (R. Vol. 1, pp. 306–307.)

On cross-examination Clark said that his machine was in the Richardson factory for experimental purposes—had been there perhaps four months—and that he went to Hurd to get a machine to use with his experimental machine, and that Hurd told him he wouldn't put one of his stitching machines in a factory for the witness to experiment with, and said: "'Clark, I will tell you what we must do; we have got to protect our own interests. We must protect ourselves on this method that you have of this flexible welt shoe of yours which jeopardizes our welt system. . . . I don't think it is wise for us to help you out and put a machine in where you are to experiment with.'" (R. Vol. 1, pp. 307–308.)

22. The Kimball & Hadley Case.

The United States claimed that Kimball & Hadley were manufacturing needles, awls and drivers in competition with the United Company; that the United Company notified shoe manufacturers if they purchased needles and awls of Kimball & Hadley the United Company would withdraw its machines, and that Martin, an employee of the United Company, told Hadley the United Company would have his business sooner or later, and that Bayley, an employee of the United Company, told Hadley that if necessary the United Company would give its needles away in order to destroy their business; and in fear that their business would be destroyed Kimball & Hadley sold to the United Company. (R. Vol. 1, p. 1081 (h).)

In support of this charge the United States called Irving A. Hadley, who testified that he was a lawyer and prior to 1904 engaged in making awls and Goodyear needles; that he called on Mr. Bayley, the agent of the defendants, who inquired of him the price at which he was selling needles. He said: "'We can manufacture needles and sell them as cheap as the United Shoe Machinery Company.'" And Bayley said: "'Oh, no, you can't; we can give them away if necessary.'" (R. Vol. 1, pp. 308–309.)

On cross-examination Hadley admitted that he knew at the time of the alleged conversation with Bayley that the United Company did not manufacture any Goodyear needles. (R. Vol. 1, p. 311, lines 3–10.)

This was all the evidence offered in support of the charge. It appeared that Bayley was in a sanitarium and could not be called to contradict Hadley's testimony. (R. Vol. 1, p. 309, lines 39–40.) But Hadley also testified that in 1904 he had trouble in making sales of needles and awls to shoe manufacturers, and specified the factories of E. E. Taylor, T. D. Barry & Company, Churchill & Alden and Rice & Hutchins, as places where he had called. (R. Vol. 1, p. 308, lines 28–31.) He testified that these manufacturers stated that the using of their needles and awls was in violation of the leases of the United Company, and if they took these awls and needles the United Company would take the machines from their factories. (R. Vol. 1, p. 308, lines 31–33.)

The defendants offered the evidence of John F. Belcher, who

had charge of the purchasing at Churchill & Alden's in 1904. He testified that he talked with Hadley about using his awls and needles and never made any such statement as Hadley had described. (R. Vol. 1, p. 746, lines 20–34.)

On cross-examination the witness further stated: "During my conversation with Mr. Hadley nothing at all was said about the leases which we had with the United Company. I am positive that the United Company was not mentioned." (R. Vol. 1, page 746, lines 36–38.)

Defendants also called Arlon S. Roberts, superintendent of the E. E. Taylor Company, who had charge of the purchasing of supplies for that company in 1904. He knew Hadley and had talked with him about purchasing awls and needles. He denied that he had ever made any such statement as Hadley had testified to. (R. Vol. 1, pp. 746–747.)

Defendants also called William A. Hogan, who testified that he was connected with the T. D. Barry Company; that he knew Hadley and talked with him about awls and needles; that he never made any statement to Hadley such as Hadley had testified. (R. Vol. 1, pp. 747–748.)

Defendants also called James J. Tierney, connected with E. E. Taylor & Company, and having charge of the purchase of awls and needles. He testified that he knew Hadley and positively contradicted Hadley's testimony. (R. Vol. 1, p. 760.)

Defendants called William O. Bryant, who testified that he was connected with the E. E. Taylor Company; that he knew Hadley, and that he had to do with the purchase of awls and needles. He also contradicted Hadley and testified that he had never made any such statement to him and that he had bought awls and needles of Hadley every time he came to him until he went out of business. (R. Vol. 1, pp. 760–761.)

Hadley further admitted under cross-examination: "We sold out in 1904. The United Company afterwards brought suit in equity for violating the terms of our agreement and entering into business again, which we had agreed not to do for a number of years, but had done in breach of our agreement. The Supreme Court of Massachusetts found that we had violated our agreement and granted an injunction against us." (R. Vol. 1, p. 311, lines 14–20.)

In respect to this charge the District Court found as follows:

> "Bayley, a department manager for the United Company, is charged, in testimony given by Irving A. Hadley, then representing Kimball & Hadley, manufacturers of awls and needles, with having said to him in January, 1904, in answer to a claim by him that Kimball & Hadley could sell needles as cheap as the United Company, that the United Company could give them away if necessary.
>
> "It does not seem possible to attach any serious importance, for any purpose, to the remark, if made, even if anything said at the interview can be supposed to have had reference to a possible purchase by the defendants of the Kimball & Hadley business. Bayley was in a sanitarium, unable to testify, at the trial. Further testimony from Hadley, however, that certain factories had refused needles offered them by him for fear of controversy with the United Company was contradicted by the managers he mentioned. The business of Kimball & Hadley was one of those acquired by the United Company, but it was not acquired until the following June. It consisted in making Goodyear needles, which, at the time of the acquisition, the United Company was not making at all. An attempt by Kimball & Hadley, in litigation with the United Company some time afterward, to prove that threats and intimidation had been used in acquiring their business wholly failed. (See *United Co.* v. *Kimball*, 193 Mass. 351.)" (Dodge, J., R. Vol. 1, p. 1149.)

23. Samuel A. Krewson.

The United States claimed that the defendants entered into negotiations with Samuel A. Krewson, an inventor of machinery, with a view to purchasing his inventions; that Krewson had a talk with E. P. Hurd of the United Company, and that Hurd said that the United Company could make scouring wheels and put them out cheaper than Krewson, and said, "We do it to drive little fellows like you out of business,"—and other statements to the same effect. (R. Vol. 1, p. 1081 (i).)

No evidence whatever was offered in support of this charge.

24. Alleged Acquisition of Patents and Suppression of Inventions.

The United States charged that the United Company had systematically and for the purpose of preventing others from

making practical use of various patented devices, acquired patents and suppressed or failed to make practical use thereof; also that by threats or alleged infringement had prevented the manufacture of unpatented machines. (R. Vol. 1, p. 1082 (a-b).)

No evidence whatever was offered in support of these charges and they are disproved by the testimony of defendants' witnesses. Mr. Winslow testified, "The United Company has suppressed absolutely no machines, no inventions and no improvements." (R. Vol. 1, p. 433, lines 27–28.)

Mr. Howe testified, "The United Shoe Machinery Company has never suppressed an invention that it thought could be worked out to make a commercial machine which would benefit the lessees. . . . I have never known of a single patent which had prospective value when embodied in machinery being laid on the shelf or suppressed." (R. Vol. 1, p. 671, lines 18–20, 23–25.)

In respect to these charges the District Court found as follows:

> "Nor has there been any evidence sufficient to show a practice followed by the defendants of buying up patented inventions to hold in disuse. This charge also is one not insisted upon in argument." (Dodge, J., R. Vol. 1, p. 1147, lines 8–10.)

25. Charge as to Rebates upon Gem Flexible Insole Machines.

In the bill of particulars it is claimed that the defendants granted to exclusive users of their leased machinery rebates of amounts equal to the sums paid by them respectively as royalty on Gem flexible insole machines for the purpose of effecting exclusive use of defendants' machinery.

The vote by the directors of the United Shoe Machinery Company of January 29, 1900, was as follows:

> "That a rebate be granted to exclusive users of the machines leased or controlled by this company and its subsidiary companies, and to such other manufacturers upon such special terms as the general manager may consider expedient; said rebate to be made by quarterly payments to the manufacturers of the amounts equal to the sums paid by them respectively as royalty on the Gem flexible insole machines during the quarter for which the rebate is made." (R. Vol. 1, p. 351, line 43 *et seq.*)

With reference to this matter Mr. Winslow testified as follows:

> "It was almost immediately after the United Company was formed and after we had acquired possession of the Gem Insole Company that we decided to turn back to the manufacturer the royalty on the Gem insole machine. As to why the Gem insole machine was not put in as an auxiliary machine rather than putting it out on a separate lease, I don't know unless it was because a lot of Gem insole machinery was put out on leases of the Gem Insole Company and it was simpler to keep up those old leases and return the royalty to the lessees." (R. Vol. 1, p. 682, lines 21–34.)

Mr. Howe testified as follows:

> "After the United Company was formed it acquired the Gem insole machines, which previously had been put out on a royalty, and after that paid back the royalty to all manufacturers who used the Goodyear principal machines entirely. So that in effect Gem insole machines were made auxiliary machines to build up the Goodyear welt system." (R. Vol. 1, p. 664, lines 31–35.)

In respect to this charge the District Court found as follows:

> "The vote of 1900 was that royalties on the Gem Insole machines be rebated to exclusive users of the company's machines. It appears that having acquired the Gem Company, which had machines in use under lease at the time at a royalty of one-half cent per pair, the United Company added the machine to its Goodyear auxiliary set, and to users of such sets paid back the one-half cent per pair in order to leave the rate upon the entire auxiliary set the same as before it included the Gem machine." (Dodge, J., R. Vol. 1, p. 1147, lines 18–25.)

The court further found that this act on the part of the United Company cannot "be said to answer to the terms in which the charge of offering and granting rebates is made." That the act was inspired by the purpose of giving exclusive users of the company's machines an unfair advantage over those who did not or had that effect "cannot be said to have been proved, and the charge is not believed to require further notice. It would seem to have been suggested by those cases relating to railroads wherein 'rebate' has acquired an obnoxious signification." (Dodge, J., R. Vol. 1, p. 1147, lines 33–41.)

26. Charge as to Rebates upon Goodyear Machines.

In the bill of particulars it is claimed that defendants, for the purpose of effecting exclusive use of their machinery, granted a rebate of not less than 15% of the royalties received from leases of certain Goodyear machines. (R. Vol. 1, p. 1083 (b).)

The circular letter of June 10, 1910, upon which this charge was based appears as Plaintiff's Exhibit 146. (R. Vol. 4, p. 1067.) This letter first calls attention to the services rendered by the United Company to its lessees in the way of improved machines, reduction of installation charges, reductions in royalties, furnishing auxiliary machines, establishment of branch offices, etc. The plan complained of is then announced as follows:

> "Benefits of a character similar to those enumerated have marked the course of the Company from the very beginning; but it has never been its purpose to confine within limits determined in advance, its ability to enhance the prosperity of the trade. Always recognizing that it has a common interest with its lessees and that its prosperity depends upon theirs, it has long had in contemplation the following plan, which, now that the elimination of initial charges has been effected, it is prepared to put into operation—a plan which is in conformity with its established policy and which it believes will result in the expansion of its own business through the increased business of its customers.
>
> "Beginning with January 1, 1910, the Company will create a fund by investing each year, for three years, in the common stock of the United Shoe Machinery Corporation a percentage, increasing each year, of the amounts received from its lessees for the use of its Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States, and will add to that fund from time to time the dividends which shall have been paid in the meantime upon such stock, or shares of the common stock of the Corporation purchased with such dividends. At the end of three years from that date it will distribute the entire amount of stock held in the fund among those lessees who use the Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States and who shall have faithfully observed the covenants of their leases; each lessee of these classes of machines to receive a share of the entire fund proportionate to the amounts paid by him for the use of such machines."

This offer did not require an exclusive use of the United Company's machines, but merely proposed to return a portion of the royalties received from lessee's machines who used Goodyear welting, stitching or turn machinery if they observed the covenants of their leases, which, of course, they were legally required to do. It, therefore, amounted merely to a reduction in the royalties charged for this machinery, such reduction to be represented by stock of the United Company instead of by a cash reduction.

This proposal was called to the attention of the Department of Justice and prior to the distribution made to the manufacturers Mr. Choate, in behalf of the United Company, called the matter to the attention of the Attorney General of the United States in the following letter:

"CHOATE, HALL & STEWART,

BOSTON, MASS., Feb. 7, 1913.

Hon. GEORGE W. WICKERSHAM,

Attorney-General, Department of Justice, Washington, D.C.

My Dear Mr. Wickersham: In 1910 the United Shoe Machinery Company advised its lessees that it proposed to put in effect a plan by which a certain proportion of the royalties should be invested in stock of the corporation, and at the end of a fixed term be distributed to lessees of the Goodyear welting and stitching and turn-sewing machines, who had in all respects observed the obligations of their leases. The period covered by this plan expired December 31, 1912, and the company proposes to make a distribution on or about March 1st, as it is bound to do by its agreement with the customers. This plan was, I think, fully called to the attention of Mr. Gregg while he was here examining the affairs of the company and as I read the bill in equity filed by the United States against the company, it does not seem that any complaint is made upon this ground. Under these circumstances the Company proposes to make the distribution provided for in that plan on the first day of March, or as soon as possible thereafter; and has desired me to call the matter to your attention that the plan may not be carried out without the knowledge of your department.

I send you herewith a copy of the circular of June 10th, 1910, which describes the plan.

Very truly yours,

CHAS. F. CHOATE, Jr."

(R. Vol. 1, pp. 979, 980.)

In response to this letter, no acknowledgment, answer or objection of any kind was received. (R. Vol. 1, p. 980, lines 23–24.)

In respect to this matter and the Gem insole rebates above discussed the District Court found as follows:

> "Neither of these acts on the company's part can be said to answer to the terms in which the charge of offering and granting rebates is made. That either act was inspired by the purpose of giving exclusive users of the company's machines an unfair advantage over those who did not, or that either had that effect, cannot be said to have been proved, and the charge is not believed to require further notice. It would seem to have been suggested by those cases relating to railroads wherein 'rebate' has acquired an obnoxious signification." (Dodge, J., R. Vol. 1, p. 1147, lines 33–41.)

27. Alleged Purchases of Competitors' Business at Exorbitant Prices.

The United States charged that the defendants had purchased the businesses of competitors and prospective competitors to eliminate competition, paying therefor, in many instances, exorbitant prices. (R. Vol. 1, p. 1083 (a).)

It having been shown that no competitors in the proper sense of that term were purchased, this charge necessarily fails.

Furthermore the United States failed to introduce in respect to any of the acquisitions, any evidence as to the value of the property purchased. In most cases the price paid was small, and in no case was there the slightest evidence that it was exorbitant.

In respect to this charge the District Court found as follows:

> "An allegation in the petition that the business of many competitors was bought at exorbitant prices fails of support in the evidence relating to any specified instance of acquisition among those thus far considered [all except the Plant

acquisition]. As to them, indeed, no claim of the kind seems to be seriously urged." (Dodge, J., R. Vol. 1, p. 1142, lines 1–5.)

The court then considered the acquisition of the Plant property and further held as follows:

> "The charge that competitors have been bought out at 'exorbitant prices' is found not established in the case of the Plant acquisition, as has just been stated. Nor is evidence found sufficient to establish it in the case of any one of the numerous minor acquisitions specified in the petition. It has not been insisted on in argument that this charge is proved as to any one of them." (Dodge, J., R. Vol. 1, p. 1147, lines 1–7.)

28. Alleged Attempt to Cause a Strike at Plant's Shoe Factory.

The United States claimed that Morrison, Ross and Sochat were employed by Charles Willson, the general manager of the United Company, to organize the employees and start a strike at the Thomas G. Plant factory in June, 1910. (R. Vol. 1, p. 1083 (1).)

Morrison testified that at the suggestion of one Johnson, he called on Willson with Ross and Sochat, that Mr. Willson's offer was that "if we would organize the place and get him all the information we could for so-and-so machine (*sic*) he would pay us two thousand dollars cash and our expenses, and he would see that we got a job." (R. Vol. 1, p. 346, lines 27–43.)

Morrison further testified: "We tried to organize the Plant factory and got something like three hundred members." (R. Vol. 1, p. 346, lines 43, 44.) "There was no attempt to strike, only to form an organization." (R. Vol. 1, p. 347, lines 12, 13.)

Ross and Sochat told substantially the same story except that Sochat testified that Willson said he would pay one thousand dollars and expenses. (R. Vol. 1, p. 350, lines 33, 34.)

Ross testified that they spent $1,500 in entertaining the employees and giving them a good time. That this $1,500 was contributed—$500 by Morrison, $600 by Ross and $400 by Sochat (R. Vol. 1, p. 349, lines 11–18); that their pay averaged $15 per week and that his contribution of $600 represented the savings of eleven or twelve years. (R. Vol. 1, p. 349, lines 11–41.)

They had no papers or receipts or written evidence of any kind to support this story, claiming that they had destroyed all their papers, including receipts and the list of three hundred names. (R. Vol. 1, p. 350, lines 5–20.)

This story was flatly contradicted by the following witnesses called by the defendants:—

Albert Harrison. (R. Vol. 1, p. 728 *et seq.*)
Cross Johnson. (R. Vol. 1, pp. 761–762.)
Benjamin Epstein. (R. Vol. 1, pp. 762–763.)
Arthur F. Crouch. (R. Vol. 1, p. 763.)
Charles F. Connor. (R. Vol. 1, p. 764.)
Samuel Pearlman. (R. Vol. 1, pp. 764–765.)
Joseph Beaudreau. (R. Vol. 1, pp. 765–766.)
Charles Wiedman. (R. Vol. 1, p. 766.)
Harry Johnson. (R. Vol. 1, p. 767.)

These men testified that they worked with Morrison, Ross and Sochat in the same room in the Plant factory, and knew them well, and were about with them in and out of the factory; that they had no knowledge of any Union being organized by the three witnesses for the United States, or of any strike being attempted. To their knowledge no money was spent among the employees for entertainments or for any other purpose, and that they never heard of the United Shoe Machinery Company making any attempt to stir up trouble in the Plant factory; that the whole story was simply this: that Mr. Plant had introduced some new lasting machines into his factory and that he increased the wages of the toe lasters. The operation of these machines was slower than the operation of the machines previously used, consequently the men earned less money. Mr. Plant increased the wages of the men operating these machines but did not increase the wages of the men who worked in the pulling-over operation connected with the lasting; that these latter formed a committee consisting of Morrison, Harrison, Epstein and Murphy, and went to Mr. Plant and asked for an increase of pay; that the increase was granted and there was no trouble whatsoever.

Mr. Winslow testified that some time in June, 1910, Willson told him that three Armenians came to him and asked him to assist them to start a strike in the Plant factory, and he, Winslow, instructed Willson to have nothing to do with them, and, so

far as he, Winslow, knew, the United Company paid no money whatsoever for any such purpose. (R. Vol. 1, p. 507, lines 30–44.)

Upon this charge the District Court found as follows:

> "The only evidence to show that Willson ever gave any such directions or assurances came from three witnesses, employees at the Plant factory in June and July, 1910, who gave their testimony in person before the court. No one else was present, according to their statements, at the various interviews they described between Willson and themselves during the two months just referred to. Willson having died in 1911, and before these charges were made, no direct contradiction was possible of their statements as to what was said by him to them.
>
> "He told them, according to their testimony, that if they would organize a strike at the factory and give him all the information they could about the Plant machines he would pay their expenses, get them jobs, and pay them also $2000 in cash (according to two of them)—$1000 (according to the other).
>
> "Willson never did pay them any money, as they all agreed. But their testimony was that they got about 300 men into an organization and spent about $1500 of their own money in doing so, mainly in entertaining the men who joined. According to their further statements, $600 was contributed by one of them, $500 by another, and $400 by a third; their wages at the time were $15 per week; these sums were the savings of eleven or twelve years; accounts, lists and vouchers containing details of their doings and expenditures, were kept, but all of these were either surrendered to Willson or destroyed by them. No written evidence of any kind was offered in support of their story.
>
> "It appeared that there was some prospect of trouble between Plant and the employees at the factory at the beginning of June, 1910, but, after meeting a committee with regard to an increase of pay asked for, Plant granted it and no strike or other trouble ever occurred. There was no proof whatever that he ever employed detectives to watch the three witnesses in question, or that any attempt by them at organizing a strike ever came to his knowledge.
>
> "The testimony of these three men was not corroborated by any others of the then employees at the factory. On the contrary, several of them, shown to have had ample opportunity for knowing the facts had there been any such organization attempted as testified to, denied any knowledge of such organization or of any such preparation for a strike.

"Winslow, president of the United Company, testified that Willson had told him, in June, 1910, that three Armenians had been to him asking that he furnish them with money to start a strike in the Plant factory, and that his instructions to Willson thereupon were to have nothing to do with them. No money of the United Company was ever paid out for any such purpose.

"Not only does the evidence of these three witnesses appear unworthy of belief in view of its improbability, its lack of corroboration, and the evidence tending to discredit it, but it is difficult to understand how the petitioner could seriously have expected the court to accept such testimony, or have considered itself justified in offering it." (Dodge, J., R. Vol. 1, p. 1151, line 30–p. 1152, line 34.)

29. Solomon N. Cutter.

The United States also claimed that the United Company had employed one Solomon N. Cutter to enter the employ of the Standard Shoe Machinery Company and obtain information as to its condition. (R. Vol. 1, p. 1084 (1).)

There was no evidence to support this charge. (Cutter's testimony will be found R. Vol. 1, p. 332.)

30. Harlow Shoe Finishing Machine Company.

The United States claimed that the Harlow Shoe Finishing Machine Company was engaged in manufacturing burnishing machines in competition with the Xpedite Company, and that in 1911 George H. Harlow, the president of the Harlow Company, was taken into the employ of the United Company. (R. Vol. 1, p. 1084 (2).)

There was no evidence to support this charge, although Edwin E. Bartlett of the Harlow Shoe Finishing Machine Company appeared as a witness for the United States. (R. Vol. 1, p. 942.)

31. Demonstration of Plant Lasting Machine.

The United States claimed that in 1910 agents of the United Company induced a former laster of the Plant Shoe Company to demonstrate a lasting machine. (R. Vol. 1, p. 1084 (3).)

This was not denied, but seemed to be a perfectly harmless performance.

32. Reece Buttonhole Machine Company.

The United States claimed that the Reece Buttonhole Company was engaged in the manufacture of buttonhole machinery; that the United Company in order to injure it induced two of its employees to enter the employ of the United Company. (R. Vol. 1, p. 1084 (4).)

There was no evidence in support of this charge.

33. Charles P. Stanbon.

The United States charged that Charles P. Stanbon was engaged in making stock-fitting machinery in competition with the United Company, and that to force said Stanbon to sell out the United Company induced certain of his employees to leave Stanbon and enter the employ of the United Company. (R. Vol. 1, p. 1085 (5).)

No evidence was offered in support of this charge.

34. Charles S. Johnson.

The United States claimed that one Charles S. Johnson was engaged in the manufacture of the Tripp Giant leveler; that Winslow, president of the defendant company, negotiated with said Johnson for the acquisition of his business; that a contract was prepared which differed from Johnson's proposition and Johnson refused to sign it; that thereupon Winslow said to Johnson: "'Johnson, you had better sign that contract. We are going to have your business anyway'"; and that six months thereafter the United Company began to manufacture machines which were duplicates of the Tripp Giant leveler. (R. Vol. 1, p. 1085 (1).)

In support of this charge the United States called Charles S. Johnson, who testified that he was connected with the Tripp Giant Leveller Company which put out a machine for leveling the bottoms of shoes; that in 1901 or 1902 he had a conference with Mr. Winslow and they came to a verbal agreement as to the acquisition of the company's business by the United Company; that a contract was prepared which was not satisfactory to Johnson and that he refused to sign it, and as he was going out Mr. Winslow suggested that he had better sign it because he was going to have their business anyway, or words to that effect; Johnson said: "I wouldn't say those were the absolute words, but that was the gist of the remark he made to me"; that shortly

after the United Company put a machine on the market substantially similar to the Tripp Giant leveler. (R. Vol. 1, pp. 304–305.)

On cross-examination Johnson said that there was an effort made by those in control of the Tripp Company to have the United Company buy the Tripp Company; that witness himself talked with Winslow for the purpose of selling it; that some verbal understanding was arrived at; that a paper was prepared which the witness thought did not embody all the terms of the oral agreement; that the meeting with Winslow was perfectly friendly and Winslow was courteous but businesslike (R. Vol. 1, p. 305, lines 21–33); that this was eleven years ago; that a Mr. Kelliher for the United States had been to see him about this matter and said in substance that he was employed by the United States to go around and see whom he could find who had complaints to make against the United Shoe Machinery Company, and inquired of the witness in substance whether he had any grievance; that he had a grievance against the United Company, and that he had written articles for trade papers hostile to it. (R. Vol. 1, p. 305, line 36 *et seq.*)

Upon this charge the District Court found as follows:

> "Mr. Winslow is also charged, in testimony given by Charles S. Johnson, with having said to him during negotiations in 1902 or 1903, regarding a sale of the Tripp Giant leveler, in which he was interested, to the United Company: 'You had better sign that contract because we are going to have your business any way.' But the negotiations did not result in a sale, and the Tripp Company's business, though sold out in 1905, was not acquired by the United Company. Not long after, according to Johnson's testimony, the United Company put on the market machines considered by him to be substantially the same as the Tripp Giant leveler, but there is no other indication of any interference with the Tripp Company or its business by the defendants." (Dodge, J., R. Vol. 1, p. 1148, lines 33–34.)

35. Frank L. Harmon.

The United States charged that Frank L. Harmon was an inventor of various shoe machines; that in 1905 Mr. Winslow was endeavoring to purchase Harmon's inventions, and told

Harmon he would see to it that Harmon didn't get any more money to work with; that he didn't have to buy Harmon's machine,—that he could have it if he cared for it and Harmon couldn't prevent it; that the United Company manufactured and leased machines infringing Harmon's patents without giving Harmon any compensation; that one H. A. Woodbury furnished Harmon money for experimenting, and negotiated with the United Company in the sale of Harmon's patent; that Woodbury assigned the patent to the company relying on representations that if the machine worked the company would pay a substantial sum; that the company tested the machine, which worked perfectly, but the company refused to pay any consideration for it. (R. Vol. 1, p. 1086 (2).)

In support of this charge the United States called Frank L. Harmon, who testified that he was developing some machines; that the witness [illegible] practical business ability and came to Mr. Winslow with the idea of getting information; that Winslow gave him some very good advice, to the effect that he was foolish to try to go into the machinery business with little capital; that all the companies were coming together to build their machinery on a large scale, and that he thought the witness would lose his time and money. Harmon said the substance of the conversation was that he could not compete with millions of dollars with a few thousands of dollars in the manufacture of machinery. (R. Vol. 1, p. 276.)

On cross-examination the witness said that this conversation occurred before the United Company came into existence. (R. Vol. 1, p. 277, lines 10–11.)

No evidence whatever was offered by the United States, other than this, in support of the Harmon allegation.

36. Euclid I. LaChapelle.

The United States charged that Euclid I. LaChapelle had invented an appliance for holding the uppers to soles during the sewing operation, and also an improvement on the pulling-over machine, and improvements on other machines; that the United Company took LaChapelle into its employ, representing that it would pay him a reasonable consideration for his invention; that subsequently LaChapelle was discharged and the United Com-

pany had perfected his inventions and placed them in operation without any consideration. (R. Vol. 1, p. 1086 (3).)

No evidence whatever was offered in support of this charge.

37. Nathaniel Sparks.

The United States charged that Nathaniel Sparks invented a heel-compressing machine and assigned it to William J. Young; that the United Company induced Sparks to make an affidavit denying that he had ever invented such a machine. (R. Vol. 1, p. 1087 (4).)

No evidence whatever was offered in support of this charge.

38. T. J. Edwards.

The United States charged that T. J. Edwards was engaged in the business of cutting stamps to be used in stamping shoes; that he was requested by the United Company to compile a catalogue of his stamp cuts; that he compiled such a catalogue but received no orders from the United Company, and that the United Company issued a catalogue which included those cuts furnished by Edwards, and that this catalogue ruined Edwards' business. (R. Vol. 1, p. 1087 (5).)

No evidence was offered in support of this charge.

39. Fortuna Machine Company.

The United States charged that the Fortuna Machine Company made a skiving machine; that the United Company also makes a skiving machine, closely resembling that of the Fortuna Company, which it represents to be a Fortuna machine, and discourages manufacturers from using the Fortuna machine, pretending that it is inferior. (R. Vol. 1, p. 1087 (6).)

No evidence was offered in support of this charge, although G. H. Diehl, Jr., president of the Fortuna Company since 1903, appeared as a witness for the United States. (R. Vol. 1, pp. 910–911.)

40. George E. Rollins.

The United States charged that George E. Rollins invented certain machines, and that after they were demonstrated to be a

success the United Company without any right put out a similar machine infringing Rollins' patents, and placed the same on the market in competition with Rollins' machines and destroyed the value thereof. (R. Vol. 1, p. 1087 (7).)

No evidence was offered in support of this charge.

41. A. McDowell.

The United States claimed that A. McDowell invented a spring heel shaver and negotiated with the United Company for its sale; that the United Company presently produced machines embodying the patented features of the McDowell machines and therefore destroyed the value of the same. (R. Vol. 1, p. 1087 (8).)

No evidence was offered in support of this charge, although V. H. McDowell, son of A. McDowell, appeared as a witness for the United States and testified that he was familiar with the machines put out by his father. (R. Vol. 1, p. 909.)

42. Charles L. Clifford.

The United States claimed that the defendants rendered a bill to Charles L. Clifford for royalties on shoes sewed on a Haverhill turn sewing machine. (R. Vol. 1, p. 1088 (1).)

In support of this charge they offered the evidence of Charles L. Clifford, whose evidence was excluded by the court. (R. Vol. 1, p. 362.)

43. Fred J. Thompson.

The United States claimed that in 1903 or 1904 one Fred J. Thompson was using two stitching machines of the Duplessis Company; that he later installed machinery of the United Company and was obliged to pay royalties to the United Company for all shoes manufactured by the Duplessis machinery. (R. Vol. 1, p. 1088 (2).)

No evidence was offered in support of this charge.

44. Alleged Wrongful Exaction of Return Charges.

The United States claimed that the defendants wrongfully exacted return charges from shoe manufacturers on leased ma-

chinery in instances where such charges did not properly apply. (R. Vol. 1, p. 1088 (e).)

No evidence was offered in support of this charge.

45. Alleged Arbitrary Increase of Charges.

The United States claimed that the defendants had arbitrarily increased the installation, return and other charges on machinery operated by manufacturers who operated machinery of competitors. (R. Vol. 1, p. 1088 (f).)

There was no evidence to support the charge.

46. Dodge Shoe Company.

The United States claimed that the N. D. Dodge Shoe Company were using Haverhill Shoe Machinery Company machines, but were forced to discontinue their use when they went to the United Company for welt machines; the United Company refused to put in welt machines unless Dodge paid what would be a fair price for the machines when installed, "and yet which gave them no equity in the machines, and they must then pay the same royalties as others who made no initial payment. The United Company required them not only to discontinue the use of the sewing machines, but the channeling machines also." (R. Vol. 1, p. 1088 (1).)

No evidence was offered to support these charges. On the contrary, William G. Dodge testified as follows: "I got the Haverhill machines in October or November, 1911, but I have not got them now. . . . I discontinued the use of the Haverhill machines after three or four months because the United Company installed some machines that we felt were more efficient." (R. Vol. 1, p. 354.) Further on cross-examination the witness testified: "It was while we were waiting for the new Model G machines. . . . As soon as the Model G was ready we installed it and discontinued the use of the Haverhill machines." (R. Vol. 1, p. 355, lines 12–24.)

47. Alleged Sales Below Cost.

The United States claimed that the defendants have offered or granted special terms and prices to shoe manufacturers on ma-

chinery, parts and supplies, at times below cost, to induce them to withdraw their business from competitors. (R. Vol. 1, p. 1089 (g).)

There was no evidence to support this charge.

48. E. P. Reed Company.

The United States charged that in 1900 E. P. Reed Company were using machines of the Standard Shoe Machinery Company; that defendants offered to install their machines free of charge if the Reed Company would discontinue the use of Standard machines. (R. Vol. 1, p. 1089 (1).)

No evidence was offered in support of this charge.

49. Alleged Refusal to Furnish Machinery, etc.

The United States charged that the defendants have refused or delayed unnecessarily in furnishing machinery parts or supplies to shoe manufacturers also operating machinery furnished by competitors or owned by said shoe manufacturers. (R. Vol. 1, p. 1089 (h).)

No evidence was offered in support of this charge, except the evidence of Richard H. Long, which has been discussed in the brief, which was shown to be unreliable and which was contradicted by the evidence of Col. King, Mrs. Hewitt and Mr. Batchelder. (See Brief for Appellees, p. 164.)

50. Alleged Threats to Remove Machinery.

The United States charged that the defendants have threatened to remove their leased machinery from factories wherein supplies purchased from competitors have been used. (R. Vol. 1, p. 1089 (i).)

There was no evidence to support this charge, unless it was found in the testimony of Irving A. Hadley, which has already been discussed, which testimony was contradicted by the testimony of Belcher, Roberts, Tierney and others. (*Supra*, pp. 111-112.)

51. Alleged Refusal to Furnish Individual Machines.

The United States charged that the defendants have refused to furnish individual machines to shoe manufacturers operating ma-

chinery of competitors, such refusals being either absolute or modified by demands for prohibitive installation charges. (R. Vol. 1, p. 1089 (j).)

No evidence whatever was offered of any absolute refusal by the United Company to furnish machines under these conditions. Indeed, the testimony of Edwin A. Webster, a witness for the United States, showed that the United Company was constantly furnishing machines to be used in connection with machines of other manufacturers.

Webster, a director of the Haverhill Shoe Machinery Company, testified as follows: "Our machinery is being used side by side with the United machinery in thirty-eight factories, producing the same product. Sometimes a manufacturer will use our turn sewing machine and the United Company's heeling apparatus and sometimes he will use our heeling apparatus and the United Company's turn sewing machines, or will mix them up on some other plan." (R. Vol. 1, p. 299, lines 32–37.) (See also Plaintiff's Exhibit 161, showing machines of the Haverhill Shoe Machinery Company used in connection with machines of the United Shoe Machinery Company.)

The defendants have always been ready to supply machines of all kinds to be used in connection with machines of any other manufacturer upon the same installation charges which prevailed prior to the organization of the United Company. (R. Vol. 1, p. 514, lines 11–43, and Defendants' Exhibit 40.) Where a lessee desired an independent lease, the initial premium was always the same or a less sum than had been required before the United Company was formed.

52. Carleton & Hunt.

The United States charged that Carleton & Hunt were using machines of the Haverhill Shoe Machinery Company and desired to obtain welt machines of the defendants, and were informed by the defendants that they would have to discontinue the use of the Haverhill machinery before the defendants' machinery would be installed, or pay an installation charge which was prohibitive. (R. Vol. 1, p. 1089 (1).)

The only evidence offered in support of this charge was the hearsay statement made by Louis H. Harriman (R. Vol. 1, p.

320, lines 1–6) to the effect that Mr. Hunt had told him that he had tried to get a set of United machines for making welt shoes from the United Company, and that he could not get them unless he discontinued using the Haverhill turn sewing machine.

53. Ira J. Webster.

The United States charged that in June, 1912, one Webster had been operating two Pettingill nailing machines, which he owned outright, and that he desired to obtain from the defendants a pulling-over machine; that because he was operating independent machinery the defendants demanded excessive installation charges; that he was unable to make satisfactory arrangements with the defendants and the Pettingill machines had been removed from his factory. (R. Vol. 1, p. 1089 (2).)

In support of this charge the United States called Ira J. Webster, who testified that he had Pettingill nailing machines; that he applied to the United Company for pulling-over and toe-capping machines; that no objection was made to furnishing him with them; that an installation price was to be paid if the machines were used with the Pettingill nailer that would cost more than if he used their entire machinery. He did not remember what this charge was. (R. Vol. 1, p. 362.)

On cross-examination he said that before he made his application he used some of the machinery of the United Company and also a Pettingill nailer from the Haverhill Company. Referring to agents of the United Company he further testified: "They offered me two alternatives; they said they would furnish me with the toe-capper and puller-over if I would pay an installation charge and a royalty on them, or they would furnish me a full line of machinery at wholesale rates, cheap. That is all there is about that transaction. I don't remember what the installation charge was." (R. Vol. 1, p. 363, lines 4–13.)

TESTIMONY OF COMPETING SHOE MACHINERY MANUFACTURERS CALLED BY THE UNITED STATES AS TO CONCERNS COMPETING WITH THE UNITED COMPANY.

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THE TESTIMONY OF COMPETING SHOE MACHINERY MANUFACTURERS AND THEIR REPRESENTATIVES, CALLED BY THE UNITED STATES IN PRESENTING ITS DIRECT CASE, PROVES THAT THERE ARE MANY AND SUBSTANTIAL CONCERNS OTHER THAN THE UNITED COMPANY ACTUALLY FURNISHING SHOE MANUFACTURERS WITH MACHINES.

In addition to the evidence which the defendants introduced, including various exhibits, catalogues of shoe machinery manufacturers, etc., as well as the testimony of Mr. Winslow, the following testimony was given by witnesses for the United States establishing the fact that a large number of concerns in addition to the United Company are, in fact, in the market supplying shoe machinery to the trade.

Duplessis Shoe Machinery Company.
Hamel Shoe Machinery Company.

Chas. A. Hamel, vice-president of the Hamel Shoe Machinery Company, the successor of the Duplessis Shoe Machinery Company, testified that the Duplessis Company began business at Haverhill in 1903 and it and Hamel, as its successor, have carried

on business since without interruption, having sold twenty or more types of machines used for bottoming shoes in the United States to the extent of between 400 and 450 separate machines, not counting the practically equal number sold abroad, and including 86 welt and turn machines, 41 stitchers, 70 insole channelers, 24 loose nailers, and 22 sluggers. (R. Vol. 1, p. 326.) Hamel named four other shoe machinery concerns which the Hamel Company had taken over and stated that that company manufactured at Haverhill, in addition to the machines made at Lynn, ten different types of machines, including welt and turn sewing machines and outsole lockstitch machines and also leveling, molding and various metallic fastening machines. He said that his concern employs "from sixty to sixty-five men at both our shops." (R. Vol. 1, p. 944, lines 44–45; p. 945, lines 1–42.) Summing up, he said: "We have a complete set of machines for making turn shoes and a complete set of machines for making welt shoes"; also "a complete set of metallic fastening machines for either a welt or McKay shoe." (R. Vol. 1, p. 327, lines 15–19.)

Hamel testified that Mr. Sullivan of the Singer Sewing Machine Company had become the treasurer of the Hamel Company. (R. Vol. 1, p. 945, lines 34–40.)

Thomas C. Rowen, the president of the Hamel Company, named a dozen types of machines, including buffing, breasting and scouring machines, manufactured at Lynn where he said "thirty-five or forty men" were employed and added that "our principal business is with shoe manufacturers. We do not do any business with shoe repair men." (R. Vol. 1, p. 946, lines 2–20.)

Catalogues of both the Duplessis and Hamel Companies are contained in Defendants' Physical Exhibit 321 and either Mr. Hamel or Mr. Rowen testified to manufacturing each of the machines appearing in the Hamel catalogue. (R. Vol. 1, p. 946, lines 21–26.)

Haverhill Shoe Machinery Company.

Edwin A. Webster, an inventor, and a director of the Haverhill Shoe Machinery Company, connected therewith since its formation in 1907, testified:

> "The Haverhill Shoe Machinery Company manufactures turn channel machines for turn soles, welt innersole lip turner, welt groover and beveler, welt beaters, turn sewers and welters, heel-nailing machines, heel-attaching machines, heel-trimming machines, heel-seat keying machines, keyer or beader, and turned sole-molding machines" (R. Vol. 1, p. 291, lines 1–6);

also "heel breasting machines." "We handle but do not build the Webster leveler." (R. Vol. 1, p. 298, line 42; p. 299, lines 2–3.) He testified further that his company were agents for lasting machines, rapid outsole stitchers, loose nailers and sluggers—metallic fastening machines. "We handle the Hamel machine for slugging heels and one turn machine." Some lasting and slugging machines are obtained from Gimson & Company and the Standard Rotary Company, of England. (R. Vol. 1, p. 298, lines 1–10, 44–45; p. 300, lines 40–45; p. 301, lines 1–3.)

In discussing certain of these machines more in detail, Mr. Webster testified that the Haverhill Company had put on the market 25 heel nailing machines ("Pettingill" type—R. Vol. 1, p. 302, lines 1–2), 65 welt and turn machines, and 60 or 65 turn channeling machines with 12 to 15 in stock. He admitted that the turn molding machine, of which they had put out 40 or 50, is "a copy of the Goodyear machine" and that their turn channeling machine and welt innersole turner and welt beater correspond to machines put out by the United Company "for performing the same kind of work" (R. Vol. 1, pp. 291–292).

Summarizing, he said: "We have machines with fifty-eight manufacturers, of whom thirty-eight also use United machines" side by side with Haverhill machines. (R. Vol. 1, p. 299, lines 5–7, 32–45.)

> "We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs, or anything else. We are prepared to make good if our people that manufacture machines don't go back on us." (R. Vol. 1, p. 301, lines 5–9; see also p. 298, lines 13–15.)

Mr. Louis H. Harriman, treasurer of the Haverhill Company and having "general oversight of its business" (R. Vol. 1, p.

317, line 45; p. 318, lines 2–3), furnished a long list comprising five different groups of "Past and Present Users of Machines of the Haverhill Shoe Mchy. Co." In connection with the machines sold to the Criterion Shoe Co., Beverly, Mass., the list contains this note: "A line of Welt machinery independent of U. S. M. Co. including Welter from Haverhill Co." (Pltff.'s Exh. 161, R. Vol. 4, pp. 1118–1122.)

R. H. Long Machinery Company.

Richard H. Long, treasurer of the R. H. Long Machinery Company (R. Vol. 2, p. 2135, Cr. Ints. 51–53), testified:

> "We manufacture machines for lasting and welting and stitching—sole stitching—leveling, heeling, some metallic fastening machines, and a number of others" (R. Vol. 1, p. 232, lines 4–6),

comprising fifty types in all, for the manufacture of welt shoes. (R. Vol. 1, p. 271, lines 10–15; Defts.' Physical Exhs. 72, 73, *i.e.*, catalogues of the Long Company.) Among the machines which he had actually sold he named "sole welting, stitching, some metallic machines" bought by "Mr. Taylor, of the Taylor Shoe Company, of Lynn," who is using no machinery of the United Company. (R. Vol. 1, p. 232, lines 23–31.)

Long stated that he had sold fifty to one hundred welters, stitchers "and some other machines" "to shoe manufacturers," in addition to machines sold "to cobblers—shoe repairers." (R. Vol. 1, p. 233, lines 8–14.) He stated further that he had on hand three or four hundred "rapid outsole lock-stitch machines," briefly referred to as stitchers, thirty or forty welting machines, twenty to twenty-five or more lasting machines and three or four heeling machines, not including metallic fastening machines being built and not including machines which he was actually using in his own factory. (R. Vol. 1, p. 274, lines 36–45; p. 275, lines 1–5.)

Long stated that since 1907, when he fitted up his own factory with machines procured from concerns other than the United Company, he had been making shoes entirely without United Company machines (R. Vol. 1, p. 231, lines 23–43; p. 232, lines 7–13), his daily capacity being "five or six thousand pairs . . . almost exclusively" welts (R. Vol. 1, p. 224, lines 39–44).

John J. Doidge, general manager of the Long Company, testifying a week later, confirmed generally the above statements of Mr. Long, but stated, "We have practically completed four hundred and fifty out-sole stitching machines"—copied exactly, except for patented parts, from the old Goodyear machines. (R. Vol. 1, p. 345, lines 6–14, 39–40.) This is a larger number than that set by Long. Among the many other machines which Doidge named as being made by the Long Company were innersole and outersole machines, welt machines, sole laying and leveling machines, heeling and lasting machines. He said:

> "We do not make all the machines shown in our catalogue. We are getting ready to make about all. Some auxiliary machines we buy from others. We have had as many as seventy-five employees, at present about eighteen. There are three buildings to our factory" (R. Vol. 1, p. 346, lines 16–20),

and he summed up with the statement: "We are ready to supply a full line of machinery for welt and turn shoes and we so advertise" (R. Vol. 1, p. 345, lines 43–44; Defts.' Physical Exhs. 72, 73).

Boylston Manufacturing Company.

George W. Maloy of Boston, who has for five or six years been "in charge of the sales department of the Boylston Manufacturing Company," testified:

> "We make power treeing machines, hand treeing stand, Julian rounder, Union edge setter, Webster buffer, Webster cleaner, Globe heel scourer, heel-finishing machine of hot wax type, and heel-blacking machine. That is all. The heel-blacking machine and the heel-finishing machine have been put out recently. They are adapted to all kinds of shoes. They are sold outright, except the power treers which are put out on royalty. Many are sold to customers of the United Company all over the country, I suppose." (R. Vol. 1, p. 302, lines 16–25.)
>
> "We have placed bottoming machines in the factories on trial but never tried to sell or lease any. We placed them in our own factory at Fair Haven and in a factory at Pepperill run by the Buffalo Shoe Company." (R. Vol. 1, p. 301, lines 29–32.)

Mr. Maloy affirmed that "we are offering all of the machinery named in" the Boylston catalogue. (R. Vol. 1, p. 302, lines 38–39; Defts.' Physical Exh. 76.)

From his knowledge as to parties making shoe machinery in the United States, he further testified:

> "Welting machines are put out by the Hamel Shoe Machinery Company, of Haverhill, the Haverhill Shoe Machinery Company, R. H. Long Company, of South Framingham, Champion Shoe Machinery Company, of St. Louis, and Victor Shoe Machinery Company, of Boston. I believe the two last confine their business to repairers and do not furnish machines to shoe makers. Outsole stitchers are made by R. H. Long & Company and Union Lockstitch Company of East Boston. . . . The Haverhill Shoe Machinery Company puts out the Pettingill heeler. . . . Long has a loose nailer." (R. Vol. 1, p. 301, lines 35–43; p. 302, lines 1–3.)

John F. Cavanaugh of Ashland, Mass., "salesman of shoe machinery connected with the Boylston Manufacturing Company," which had taken over the Flagg Manufacturing Company in 1904, and called by the United States in rebuttal, testified that the Boylston Company had put out lasting, pulling-over, slugging and heel finishing or blacking machines, referring specifically to about forty heel-finishing machines which had been placed in five localities, east and west. He also mentioned a large number of foreign concerns in the shoe machinery business including several "good-sized concerns" some of which "manufacture complete lines of shoe machinery" and at least two of which, he stated, were "ready to do business in the United States." (R. Vol. 1, pp. 954–957.)

Charles S. Johnson of Lynn, now connected with the Boylston Manufacturing Company, testified that it absorbed the Tripp Giant Leveler Company in 1905 and that the Tripp Company "made several types of levelers for leveling the bottoms of shoes of all kinds." "We had several machines; direct pressure leveler; rolling pressure leveler, called Giant leveler; and an improvement on it, the new Giant leveler. Our new Giant leveler sold for $350." (R. Vol. 1, p. 304, lines 29–33; p. 305, lines 6–9, lines 14–20.)

F. A. Brackett, formerly employed by the Boylston Manu-

facturing Company at Fairhaven, testified: "They had two welting machines which were manufactured by the Boylston Manufacturing Company." "We had no machines obtained from the United Company. We got them all elsewhere, and we made welt shoes without any machines from the United Company." (R. Vol. 1, p. 951, lines 11–18, 29–32.)

Harrie A. Ballard testified that he had gotten out a stitching machine and a welt machine which had been used in 1907 at Fairhaven. (R. Vol. 1, p. 958, lines 3–4, 35–40.)

Jackson Johnson, a member of the "Shoe Manufacturers' Alliance" and president of the International Shoe Company, which is financially interested in the Boylston Company, testified that the "Boylston Company contemplates making a full line of shoe machines." (R. Vol. 1, p. 170, lines 31–35; p. 171, lines 19–23.)

Union Lockstitch Company.

Frank W. Merrick of Boston, president of the Union Lockstitch Company, testified:

> "That company is located in East Boston and manufactures shoe machinery. We manufacture a straight needle lockstitch machine for saddlery and shoe work and a curved-needle stitching machine for shoe work. We make a lock-stitch welt machine, a sole-fitting machine, lasting machines, and two metallic fastening machines, used in connection with lasting operations. I have been building shoe machinery for thirty-two years, mostly stitching machinery. I have built the Merrick stitching machine, used almost exclusively on upper fitting; the Puritan machine used both on upper fitting and sole stitching and also harness and saddlery work; and a small chain-stitch machine, called the Rapid machine, for a similar class of work. After that I followed with the lock-stitch harness machine, which is a straight needle, waxed-thread stitching machine that can be used for certain kinds of sole stitching, and then with the curved-needle machine, designed expressly for stitching outsoles, both welted and McKay welt and McKay fair stitch shoes. It will do fair stitching on any type of shoe. At present we are putting the straight-needle lock-stitch machine on the market. We have between three hundred and fifty and four hundred lock-stitch machines out. We first engaged in the manu-

> facture of the lock-stitch machine in 1904. We sell those machines outright at seven hundred and fifty dollars, five off in thirty days. The machines are all over the United States. About seventy-five of the straight-needle machines are in shoe factories and the balance were placed among harness and saddlery people. We are attempting to market the curved-needle machines, of which three have been sold to shoe factories." (R. Vol. 1, p. 199, lines 9–37.)

One other has been sold while three others have been completed and a dozen nearly assembled. (R. Vol. 1, p. 199, lines 39–40; p. 207, lines 5–6.)

> "Our straight-needle machine was ready for the market about 1907, the curved-needle machine about 1909. . . .
>
> "The United Company has a curved-needle machine for doing similar work to ours. The Campbell-Bosworth Company has a machine for doing work similar to our straight-needle machine." (R. Vol. 1, p. 201, lines 13–20.)

Geo. R. Harsh of Milwaukee, a shoe manufacturer, testified: "We formerly used the Goodyear out-sole stitcher to stitch the two soles of a nailed shoe together before nailing them to the upper. We substituted the Union lock-stitch machine for that operation." "The Union lock-stitch machine is better and more rapid for that purpose." (R. Vol. 1, p. 195, lines 34–37; lines 23–24.) Other shoe manufacturers referred to this machine (see R. Vol. 1, p. 160, lines 14–15; p. 216, lines 39–40).

Peerless Machinery Company.

Lorenze Muther of Newton testified that the Peerless Machinery Company—

> "manufactures shoe machinery, principally what is called stitching-room machinery; *i.e.*, eyelet-setting machines, skiving machines, hook-setting machines, perforating machines, sanding machines, pasting machines, cementing machines, folding machines, button-sewing machines, and a tip press belonging to the finishing-room department of the factory. We have both tip press and tip perforating machines. Similar machines are put out and sold outright by the general department of the United Company." (R. Vol. 1, p. 303, lines 1–12.)

"Our machines relate to work on uppers of shoes, except the sanding machine which finishes or roughs the sole before it is put on the shoe. . . . We publish a catalogue." (R. Vol. 1, p. 303, lines 23–27.)

He referred to different concerns making eyelets and particularly to the Atlas Tack Company which "makes various kinds of eyelets for shoes," stating:

"We sell more Atlas than United eyelets, and our customers are altogether shoe manufacturers. . . . Our machines are sold to shoe manufacturers who use other machines obtained from the United Company. That company has machines for performing similar operations. Our machines and theirs are sometimes used side by side in the same factory." (R. Vol. 1, p. 303, lines 15–17; p. 304, lines 2–7, 10–13.)

George Knight testified:

"The Peerless Company is making and supplying the eyeletting machines, which we formerly made, in quite large quantities. They are used by shoe manufacturers." (R. Vol. 1, p. 903, lines 37–39.)

Atlas Works.

Alex Stone of New York, formerly "export manager for the Atlas Works at Leipsic, Germany," testified:

"My concern makes a complete line of shoe machinery, including welters and stitchers, heeling machines and lasting machines." "They are prepared to furnish a complete line of shoe machinery for welt, McKay, and turn shoes." "The Atlas factory employs three hundred men in Leipsic. It has a capacity of three of each of the principal machines a week, so that each week they could furnish three equipments." (R. Vol. 1, p. 339, lines 40–44; p. 340, lines 9–11; p. 342, lines 8–9; p. 343, lines 41–43.)

"I first attempted to install machinery for the Atlas Works in this country in December, 1910." "I offered to equip the Roberts, Johnson & Rand factory with a complete equipment for McKay, welt, and turn shoes, except a few minor machines" which could be bought from "other people." "I offered to equip the Hamilton-Brown Company with our full line. I offered to sell the machines out-

right." (R. Vol. 1, p. 340, lines 3–9; p. 342, lines 16–20, 43–44; p. 343, lines 1–2.)

"I sold machines to nail wooden heels on shoes of the turn variety to Evans in Wakefield, and Guptil in Haverhill. Those were the only two machines I sold in the six weeks I was here." (R. Vol. 1, p. 341, lines 21–23.)

An Atlas catalogue will be found as Defendants' Physical Exhibit 319.

Seelye Manufacturing Company.

Nelson H. Seelye of Winchester, Mass., testified that he manufactures—

"machines which, used in connection with dies, cut out material such as leather, cloth, rubber, etc. I have been in that business since 1889. The company was first called the Hawkins Machinery Company," later becoming the Seelye Manufacturing Company (Defts.' Exh. 336, R. Vol. 5, p. 891), "and made beam die presses or dinking machines for dieing out the soles of shoes, among other things. The machine for cutting the upper is the clicking machine. We were engaged in that business when the United Company was formed. We sold from fifty to one hundred per year to shoe manufacturers up to that time. We continued to place on the market our machines after the formation of the United Company." (R. Vol. 1, p. 327, lines 30–40.)

"The United Company offered its machines for sale at the same price as ours, and it also offered them on an annual rental of fifteen dollars. We never tried to rent any of our machines, but adhered to our old plan of one basis, sale only." (R. Vol. 1, p. 328, lines 18–21.)

THE TESTIMONY OF COMPETING SHOE MACHINERY MANUFACTURERS, CALLED BY THE UNITED STATES IN REBUTTAL, PROVES THAT THERE ARE IN THE FIELD MANY CONCERNS ACTUALLY BUILDING AND PUTTING OUT SHOE MACHINERY IN COMPETITION WITH THE UNITED COMPANY.

Among the large number of shoe machinery manufacturers and dealers who testified for the United States in rebuttal the testimony of the following will now be referred to briefly, and for convenience they will be taken up, as a rule, in the order in which their testimony appears in the record since they were called at about the same time and in reply to the testimony of William R. Sampson, witness for defendants, who produced, in addition to a number of loose catalogues (Defts.' Physical Exhs. 312–320), two large portfolios, one of which (Defts.' Physical Exh. 321)—

> "comprises letters, catalogues, and advertisements of different machines that are offered for sale and advertised in this country by manufacturers of shoe machinery. There are 116 manufacturers represented. . . . All of these concerns are still engaged in business." (R. Vol. 1, p. 836, lines 33–42.)

The other portfolio (Defts.' Physical Exh. 311) comprises additional catalogues of competing shoe machinery manufacturers. (R. Vol. 1, p. 836, lines 43–44; p. 837, lines 1–3.) All of these exhibits are indexed in Defts.' Exh. 336, R. Vol. 5, pp. 849–905. In the same connection, Mr. Sampson furnished a "list of machines offered by shoe machinery manufacturers and dealers other than United Shoe Machinery Company for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, dieing-out machines and clicking machines." (Defts.' Exh. 337, R. Vol. 5, pp. 906–935.)

As we shall now proceed to point out in detail, practically all of the machines of the manufacturers and dealers referred to below are in competition with similar machines of the United Company.

Edwin B. Stimpson & Son.

Edwin B. Stimpson of Brooklyn, a manufacturer of machinery for forty years, testified: "we can supply strip cutters" which can be used "to cut strips of welt." (R. Vol. 1, p. 882, line 38; p. 884, lines 3–12.) Other witnesses testified that "by an adjustment of the knives" a strip cutter can "be converted into a machine for flexing, and it has been so used. It is sometimes known as an insole flexer." (R. Vol. 1, p. 885, lines 43–44; p. 886, line 1; p. 890, lines 23–25.) Stimpson finally stated that the only machines "which I have placed with shoe manufacturers within the last five years are the pinking and perforating machines, which are used for ornamental perforations." (R. Vol. 1, p. 884, lines 15–19.)

All of these machines are in direct competition with machines of the United Company. (Defts.' Exhs. 227, 232, R. Vol. 5, pp. 425, 426, 482, 483, 498.)

Edward E. Spencer & Company.

Edward E. Spencer, Jr., of New York testified that the Spencer Company did a business in shoe machinery and accessories, building "channeling, rolling, splitting, impresssion stitch, buffing, and eyeleting machines"; also strip cutters. (R. Vol. 1, p. 885, lines 1–6.)

Mr. Spencer also testified that "John D. Randall & Company of Cincinnati put out machines for harness trade. The only machines put out by them which could be used in the shoe trade were strip cutters." (R. Vol. 1, p. 885, lines 17–19.)

All of these machines are in direct competition with machines of the United Company. (Defts.' Exhs. 227, 228, 246, R. Vol. 5, pp. 425, 437, 684, 685, 689.)

L. L. Barber & Company.

William L. Barber testified that his father had been in "business continuously" from 1859 to 1911, the name of the concern being L. L. Barber & Company.

> "The machines which we made which could be used in the manufacture of shoes were presses, dies for perforating

toe caps, and perforating machines for perforating uppers, and some smaller attachments which were used upon Singer sewing machines for stitching uppers." (R. Vol. 1, p. 887, lines 7–26.)

The United Company also puts out machines of these several classes with the exception of the attachment for the Singer machine. (Defts.' Exhs. 227, 232, 246, R. Vol. 5, pp. 427, 482, 483, 687.)

Leslie L. Hartwell.

Leslie L. Hartwell of Revere, superintendent for A. G. Walton & Company, testified: "I have put out a few machines which can be used in manufacturing shoes. They were a grooving machine, a sanding machine, a heel-building machine, and a counter-dividing machine." "Each of my machines had something to do with the bottom before it was attached to the upper." "I made some of the heel-building machines for our own concern and then sold the rights to manufacture them to the Young Machinery Company." "The machine is used by heel manufacturers, and by shoe manufacturers who make their heels. It is the universal heel-building machine today." (R. Vol. 1, p. 887, lines 43–44; p. 888, lines 1–27.)

All of the machines above mentioned are in direct competition with machines of the United Company. (Defts.' Exhs. 227, 228, 232, 246, R. Vol. 5, pp. 426, 434, 508, 685, 688.)

J. S. Wheeler & Company.

Joshua S. Wheeler of Winthrop, "principal owner of the business of J. S. Wheeler & Company," testified that that concern makes welt cutting, counter-dividing and other new machines. "We also rebuild shoe machinery" such as "vamp machines," "sole cutters," "National stitchers" and "Puritan stitchers." (R. Vol. 1, p. 889, lines 42–44; p. 890, lines 1–17.)

All of these machines are in direct competition with machines of the United Company. (Defts.' Exhs. 227, 228, 232, R. Vol. 5, pp. 425, 426, 435, 526; also Vol. 2, p. 2244.)

Puritan Manufacturing Company.

John H. Lingley of Brockton, manager of the Puritan Mfg. Company, after mentioning a half-dozen types of machines sold by his company, said:

> "Our welt-seaming machine attaches a McKay welt to the sole before it is laid. Our Puritan fair-stitching machine and our vamp-welt-seaming machine are used in the operation of attaching the sole to the upper. All the machines mentioned are sold to shoe manufacturers." (R. Vol. 1, p. 892, lines 4–9.)
>
> "We sell a good many Puritan fair-stitch machines, and have probably sold around a thousand since we first went into business in 1892 or 1894." (R. Vol. 1, p. 891, lines 36–38.)

The stitchers which the United Company puts out in the Goodyear Department compete with these machines of the Puritan Company in attaching soles to welts. (Defts.' Exhs. 228, 232, 235, R. Vol. 5, pp. 439, 505, 556.)

Victor Shoe Machinery Company.

L. E. Johnson, of the Victor Company, testified that in four or five months they have delivered "thirty-two lock-stitch machines to small shoe manufacturers." (R. Vol. 1, p. 893, line 24.)

> "We have been putting out a rough rounder and channeler longer than that. It is a machine intended to perform an operation on the sole of a shoe, for completing the work of attaching the sole to the upper." (R. Vol. 1, p. 894, lines 6–12.)

He referred to five or six other machines put out by his company and some similar machines put out by the Champion Shoe Machinery Company or the Universal Shoe Machinery Company and the Specialty Shoe Machinery Company, all of Missouri. Some of these machines were intended for the "repair trade," but some were for the "shoe factory trade" and "could be used on a new shoe" (R. Vol. 1, pp. 893–895). Among the machines put out by these companies, he mentioned "a lock-stitch machine" and "a welt machine." (R. Vol. 1, p. 893, lines 40–42; see also p. 921, lines 17–22.)

All of these machines are in direct competition with machines of the United Company. (Defts.' Exh. 232, R. Vol. 5, pp. 512, 513, 515, 516.)

George Knight & Company.

George Knight of Brockton stated that his concern had "put out a power gang eyeletting machine" and also makes—

> "tip-perforating presses (models E, F, & G), hand, foot, and power tip-punching machines, vamp creasers, feather edgers, lip turners, and K and K cementing machines. We do make all of these. We have made heel shaving, lining sticking, and heel building machines in the [about 29] years I have been in business." (R. Vol. 1, p. 902, lines 40–41; p. 903, lines 28–33.)

The United Company puts out machines in direct competition with all of these Knight machines. (Defts.' Exhs. 227, 228, 232, 235, 246, R. Vol. 5, pp. 427, 431, 483, 494, 497, 498, 500, 503, 527, 634, 684.)

Kimball Brothers & Sprague.

Fred S. Sprague, of Kimball Brothers & Sprague, Brockton, testified that they "make a welt laying machine" and "sell it to shoe manufacturers." (R. Vol. 1, p. 904, lines 1–7.)

The United Company has two competing models of welt laying machine. (Defts.' Exh. 232, R. Vol. 5, p. 507.)

Thomas Bostock.

Thomas Bostock of Brockton named ten different machines which he was

> "making right along," each performing "an operation which is either preparing or finishing the bottom of the shoe before or after it is attached to the upper, or getting the upper ready for attachment to the sole." (R. Vol. 1, p. 905.)
>
> "We have put out as many as one hundred heel building machines a year," mostly to shoe manufacturers. (R. Vol. 1, p. 904, lines 42–43; p. 905, lines 36–40.)

The machines which he named comprise, in addition to the heel building machine, a "toe softener, a heel gouger, a cap

(tap) cutter, a spring heel scarfer, a rand turner, a rand chopper, a welt slasher, a rand cutter, and a box toe press."

The United Company has machines which directly compete with practically all of these Bostock machines. (Defts.' Exh. 232, R. Vol. 5, pp. 497, 498, 504–510.)

Carlson Brothers.

Carl A. Carlson of Brockton testified: "We make a toe softening machine used for softening the box of the shoe before it is lasted. . . . They are used altogether by shoe manufacturers." (R. Vol. 1, p. 906, lines 1–7.)

The United Company puts out a machine for the same purpose. (Defts.' Exh. 232, R. Vol. 5, pp. 509, 510.)

Albert G. Brewer.

Albert G. Brewer of Natick testified: "I make a McKay welt-slashing machine, which I sell to shoe manufacturers." (R. Vol. 1, p. 907, lines 13–16.)

The United Company puts out a machine for the same purpose. (Defts.' Exh. 232, R. Vol. 5, p. 506.)

Tower Brothers.

John M. Tower of Tower Bros., Hudson, Mass., named eight machines made and put out by his concern which "all have to do with finishing the sole or the heel after it is attached to the upper" and also two more "for dieing out the sole."

The names of these ten machines as given by Mr. Tower follow: "high-speed buffer, beveling machine, edge trimmer, edge scourer, stamping machine, heel trimmer, rotary edge setter, power stripping machine," "vamp cutter," "dieing-out" machine. (R. Vol. 1, p. 908, lines 10–17.)

All of these machines are in direct competition with machines of the United Company. (Defts.' Exhs. 228, 232, R. Vol. 5, pp. 434, 480, 481, 496, 501, 521–526.)

J. S. Holt Co. (Inc.).

John Bulmer of Boston, superintendent of the Holt Company, testified that his "company is engaged in the business of second-hand shoe machinery." He stated we "rebuild" McKay sewing machines. (R. Vol. 1, p. 908, lines 19–41.)

The United Company is one of the many concerns putting out McKay sewing machines. (R. Vol. 1, p. 858, lines 35–45; p. 859, lines 1–21.)

Union Special Machine Company.

Alonzo H. Hatch, New England manager for the Union Special Machine Company, stated that most of his company's machines were used "for performing operations for preparing the upper for the lasting operation," but that they had an "overedge machine" and a "butting machine" "used for preparing an imitation Gem insole" and that they had "fitted up one machine especially for making a corded welt." (R. Vol. 1, p. 909, lines 25–37; p. 910, lines 8–10.)

While the United Company does not compete with the Union Special Company with respect to machines for sewing uppers, it does have various machines for preparing Gem insoles and for making welts. (R. Vol. 2, pp. 2243, 2247.)

Shawmut Machinery Company.

Frank P. Emerson of the Shawmut Machinery Company, of Boston, testified that his company made and put out to shoe manufacturers a McKay sewing machine of improved design as well as a vamp and lining cementing machine, a power hammer, a tip scouring machine, and a seam rubber. (R. Vol. 1, p. 910.)

All of these machines are in direct competition with machines of the United Company. (R. Vol. 1, p. 858, lines 35–45; p. 859, lines 1–21; Defts.' Exh. 232, R. Vol. 5, pp. 482, 483, 484, 490, 527.)

Fortuna Machine Company.

George H. Diehl, Jr., of New York City, president of the Fortuna Machine Company organized in 1903, testified that

they "manufacture skiving machines for skiving the uppers, vamps, and all parts of shoes." (R. Vol. 1, p. 910, lines 44–46; p. 911, lines 1–3.)

The United Company puts out two similar machines in direct competition with the Fortuna machine. (Defts.' Exh. 232, R. Vol. 5, pp. 481, 509.)

Brockton Heel Company.

Wendell P. Bosworth, connected with the Brockton Heel Company, testified that they "supply shoe manufacturers with a heel-log building machine" and also a sanding machine. (R. Vol. 1, p. 911, lines 21–34.)

The United Company puts out heel building machines but not heel-log building machines. It also puts out sanding machines. (Defts.' Exh. 246, R. Vol. 5, pp. 684, 688.)

Stewart Brothers.

J. Hammond Stewart of Lynn, "connected with Stewart Brothers, who have been manufacturing counter machinery for approximately twenty years," which machinery "is used for making and adjusting molded counters to the last," named and described five different machines which they build. (R. Vol. 1, p. 912, lines 8–14, 33–34.)

The United Company puts out several counter skiving machines which compete with Stewart machines (Defts.' Exh. 232, R. Vol. 5, p. 508), but does not have a complete line of counter machinery.

Keighley Company.

Leopold C. Tappey testified that during the year 1911, the Keighley Company, of New Jersey, "made a cleaning machine, a finishing machine, a polishing machine, and an inseam trimmer." (R. Vol. 1, p. 912, lines 38–43; p. 913, line 1.)

All these machines are in direct competition with machines of the United Company or of the Xpedite Company. (Defts.' Exh. 232, R. Vol. 5, pp. 513, 524–526.)

C. S. Pierce Company.

Eben W. Thomas, treasurer of C. S. Pierce Company, testified that they market a machine used for skiving upper leather. (R. Vol. 1, p. 913, lines 26–32.)

The United Company puts out two machines of this character. (Defts.' Exh. 232, R. Vol. 5, p. 481.)

Beckman Machine Company.

Aaron Beckman of Lynn, connected with the Beckman Machine Company, testified that he had put out a heel finishing machine and a heel beading machine. (R. Vol. 1, p. 926, lines 1–12.)

The United Company, through the Xpedite Company, puts out one machine for performing both of these operations and also puts out directly two other heel beading machines. (Defts.' Exh. 232, R. Vol. 5, p. 524.)

Beckwith Box Toe Company.

Harry H. Beckwith of Boston testified that the Beckwith Company, which had been in business ten years, had put out about two hundred machines used to soften the box toes in the lasting operation during the past two years and that the United Company "has a machine for performing a similar operation." (R. Vol. 1, p. 926, lines 25–33.)

The machine of the United Company referred to is put out in two models. (Defts.' Exh. 232, R. Vol. 5, p. 510.)

Boston Machine Works Company.

Harry I. Illingworth, manager of the Boston Machine Works Company, testified: "We manufacture shoe machinery, special machinery, and tools," specifying seventeen types of machines which they put upon the market as follows:

> "We make the Monarch and the Boston beading machines for beading the tops of shoes, the Julian cementing machine, used for cementing the soles of shoes, and the New York fold cementing machine, used for cementing the edges of

skived leather before folding. We have put out during the last ten years seven or eight hundred Julian cementing machines. They have gone to shoe manufacturers. We make folding machines, the Booth folding machine, used for folding the edges of the upper; the Boston machine, for similar work of a heavier character; a foot-power machine for small pieces, such as backstays; and a vamp machine, which is a special machine for folding the vamp. We make the Rochester lacing machine for lacing the upper to give the proper opening before being lasted, and marking machines for marking leather; a lining pricking machine; a snipping machine, used for snipping the edges of curves of the upper leather before folding; a tip scouring machine, and a flap-slashing machine, used for slashing the curves in the shank of the insole. We have put out perhaps fifty flap-slashing machines. They were principally sold in this country. The Julian cementing machines were nearly all—about 90%—sold in this country. We formerly made a hookhole punching machine, but do very little on it now. It was used to prepare the upper for setting of the hooks. We handle the Union Seam rubbing machine, but do not make it. We have the exclusive sale of it. It is used for pressing the seams of the uppers. . . . We make an insole pinking machine." (R. Vol. 1, p. 926, lines 39–44; p. 927.)

He added: "We hold ourselves ready to supply all of the machines named" in our catalogue. "We employ 100 men, more or less, altogether." (R. Vol. 1, p. 927, lines 39–42; catalogue in Defts.' Physical Exhibit 321.)

The United Company puts out machines for performing nearly all of the operations which are performed by the various machines mentioned by Mr. Illingworth. (Defts.' Exh. 232, R. Vol. 5, pp. 481, 490, 493, 496, 499–501, 504–507, 527.)

Larsen Machine Company.

Charles G. Wirths, an officer of the Larsen Machine Company, of New York, testified: "We make a welt and outsole lockstitch machine. It is used principally by shoe repairers." "There is no reason why it could not be used for making new shoes except that it is not as fast as a Goodyear stitcher." (R. Vol. 1, p. 928, lines 2–15.)

The Goodyear Outsole Rapid Lockstitch Machine of the United

Company is put out for this character of work. (Defts.' Exh. 232, R. Vol. 5, p. 516.)

Matson-Hoyt Machine Company.

Carl A. Matson of Lynn testified that the Matson-Hoyt Company "make a heel-finishing machine" sold "directly to shoe manufacturers" of which "about a dozen" had been put out "within the last three years." (R. Vol. 1, p. 928, lines 29–38.)

The United Company, through the Xpedite Company, puts out a machine of this character. (Defts.' Exh. 232, R. Vol. 5, p. 524.)

Quarmby & Hilliker.

Charles T. Hilliker of Lynn testified that Quarmby & Hilliker make more than half a dozen types of machines, including sole cutting and leather stripping machines, which go to shoe manufacturers and "to persons making parts for shoe manufacturers, such as soles or linings or uppers." "We have made between one hundred and fifty and two hundred dinking machines." Referring to his catalogue and letter contained in Defendants' Physical Exhibit 321 (p. 10 and the reverse of p. 11), he said: "We . . . could make any of the machines named if we were asked to." (R. Vol. 1, p. 928, lines 42–45; p. 929.)

The United Company puts out substantially the same line of machines. (R. Vol. 1, p. 929, lines 27–29; Defts.' Exh. 232, R. Vol. 5, pp. 480, 481, 496–498, 501, 502, 506.)

Holmes Leather Working Machinery Company.

Frank A. Bradford, manager of the Holmes Machinery Company of Cambridgeport, testified that they make a sole-leather roller sometimes sold to shoe manufacturers. (R. Vol. 1, p. 941, lines 29–33.)

The United Company also puts out such rolling machines. (Defts.' Exhs. 227, 228, R. Vol. 5, pp. 427, 437.)

Harlow Shoe Finishing Machinery Company.

Edwin E. Bartlett of Hyde Park, connected with the Harlow Shoe Finishing Machinery Company, testified that he had put out about one hundred and thirty-seven heel finishing machines to shoe manufacturers and also put out personally a heel-seat beading machine. (R. Vol. 1, p. 942, lines 6–14.)

The United Company, through the Xpedite Company, puts out one machine for performing both the heel finishing and heel beading operations. It also puts out directly two other heel-seat beading machines. (Defts.' Exh. 232, R. Vol. 5, p. 524.)

W. J. Young Machinery Company.

William J. Young of Peabody, treasurer of the W. J. Young Company, testified that they manufacture or put out "a heel building machine,"

> "a buffing machine for buffing counters and box toes; a wedge-strip beveling machine, which makes wedge lifts for use in heels, and which goes to shoe manufacturers and heel manufacturers, probably more to the latter; a heel compressing machine, which is sold almost altogether to heel manufacturers at the present time; a wedge lift-cutting machine for dieing out the wedge lifts from the wedge strips in connection with the heel, which goes to both heel makers and shoe manufacturers; a counter end finishing machine which is used in connection with the counter; a heel-lift gouging machine, which goes to both heel makers and shoe manufacturers about equally; a counter molding machine; a box-toe skiving machine; a counter-skiving machine; a shank-piece skiving machine; and a spring-heel scarfing machine. We do not build a rand-splitting machine, though we may possibly have handled one or two secondhand, and have not as yet put out a treeing machine. We do put out a waxing and rolling machine for counters. We employ between forty and fifty men.
>
> "We have been in business for twenty-four or twenty-five years. Our business has been growing. . . . We lease on a royalty rental our automatic lift-die machine, which has not yet been mentioned, and our counter-buffing machine, and one or two machines for molding the heel seat. The others we sell. . . . we are preparing to build a pneu-

matic treeing machine. . . . We make a rand trimming machine." (R. Vol. 1, p. 942, lines 34–45; p. 943, lines 1–16, 27–30.)

He stated also that, during seven or eight years, he had "put out between two and three thousand heel building machines" in this country, largely to shoe manufacturers, and also "three or four hundred counter-molding machines, over three hundred heel-compressing machines, and one hundred and fifty to two hundred lift-gouging machines." "We advertise ourselves as manufacturers of the most complete line of counter and heel making machines, and we consider that to be true." (R. Vol. 1, p. 942, lines 28–33; p. 943, lines 16–24.)

Practically all of these machines named by Young are in direct competition with machines of the United Company. (R. Vol. 2, p. 2445; Defts.' Exhs. 228, 232, 235, R. Vol. 5, pp. 431, 432, 435, 497, 498, 504–509, 526, 653, 654.)

Donnelly Machine Company.

John F. Donnelly of Brockton testified that the Donnelly Machine Company "designs, manufactures, and rebuilds shoe machinery." He named eight or ten different machines all of which, except two, "operate on the bottom or the heel of the shoe." (R. Vol. 1, p. 943, lines 36–44; p. 944.)

With hardly a single exception, all of these machines are in direct competition with machines of the United Company. (Defts.' Exh. 232, R. Vol. 5, pp. 481–483, 519, 522–525; as to McKay sewers, see also R. Vol. 1, p. 858, lines 35–45; p. 859, lines 1–21.)

American Worsted Machinery Company.

Bicknell Hall of Abington testified that for seven years, beginning about 1907, he had been connected with the American Worsted Machinery Company which had, ready to put out, more than a dozen types of machines and had facilities for making and were ready to make about a dozen others; he quoted specific prices therefor. They had made and put out twenty-five or thirty McKay channeling machines to shoe manufacturers and

had also made and sold "between one hundred and twenty-five and one hundred and fifty eyeletting machines." They had also handled a McKay sewing machine and made parts for it. (R. Vol. 1, pp. 953–954; p. 976, lines 25–28.)

With hardly a single exception all of the machines named by Mr. Hall are in direct competition with the machines of the United Company. (Defts.' Exhs. 232, 235, R. Vol. 5, pp. 482, 483, 490–491, 494–495, 500, 503–505, 507, 517, 519, 525, 603; see also Vol. 2, p. 2246 and Pltff.'s Exh. 190 (a physical exhibit).)

Atlas Tack Company.

William F. Donovan, president of the Atlas Tack Company, testified:

> "Our output during the last year has been from forty to sixty million eyelets per month. Three or four years ago, before my advent into the business, it was nearly twice as high. Practically all of the eyelets we make go into the shoe trade." (R. Vol. 1, p. 959, lines 7–10.)

The "United Company owns or has an interest in" several competing eyelet concerns. (R. Vol. 1, p. 477, lines 1–4.)

ADDITIONAL SHOE MACHINERY MANUFACTURERS CALLED IN REBUTTAL.

We have omitted, in the foregoing, reference to the testimony of certain of the rebuttal witnesses, as for example Morris of the Singer Sewing Machine Company, Spaulding of the Willcox and Gibbs Company, and Heath of the Boston Last Company (R. Vol. 1, pp. 886, 890–891, 901), whose concerns admittedly supply shoe machinery to shoe manufacturers but do not supply machines for the operations as to which the United States charges a monopoly. We have likewise omitted reference to still other witnesses, such as Chamberlain of the Walpole Shoe Supply Company and Hammond of the Becket & Hammond Machine Company (R. Vol. 1, pp. 889, 925), whose concerns actually supply machines for such operations to shoe manufacturers *although the United Company does not supply machines competing therewith.* (Defts.' Exh. 232, R. Vol. 5, pp. 501, 521.)

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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 207.

UNITED STATES OF AMERICA, APPELLANT,

v.

UNITED SHOE MACHINERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR THE UNITED STATES.

[REARGUMENT.]

INTRODUCTORY STATEMENT.

This is an appeal from a decree of the District Court for the District of Massachusetts, dismissing a suit brought by the United States under the Sherman Act against the United Shoe Machinery Company of New Jersey, certain affiliated or subsidiary corporations and certain individuals who were officers or directors of the corporate defendants.

The petition was filed December 12, 1911. The trial court, in error as petitioner believes, refused to

hear evidence of any events subsequent to that date (I, 201, l. 42).[1] The case was submitted June 5, 1914. The decree is dated March 14, 1915.

Trial of the cause was delayed, in part because in the first instance, the Court, over the Government's protest (I, 1062), ordered the public and the press excluded from the taking of testimony before the examiner designated to act in the case. (I, 1064–1070.)

Congress thereupon passed a statute (Act of March 3, 1913) forbidding such exclusion of the public from the taking of testimony in proceedings of this character.

Thereafter, the Attorney General filed a certificate under the expediting act (32 Stat. 823). The case was then set down for trial before two circuit judges and a district judge and was heard in open court.

THE PLEADINGS AND THE SUBJECT MATTER.

I. THE NATURE OF THE PROCEEDING.

The object of the suit is to forbid and prevent the defendants further making, maintaining, or engaging in certain unlawful combinations, contracts and agreements hereafter described, and from continuing to monopolize a part of the interstate and foreign commerce of the United States in machines used for the manufacture of shoes, as hereafter defined.

[1] References to the record are by volume, page, and line. Thus the reference I, 201, l. 42 is to the Record, volume I, page 201, line 42.

The relief sought is a decree adjudging the corporate defendants to be combinations in restraint of trade and to have acquired and to be maintaining and extending a monopoly of the commerce in question and enjoining the further continuance of such illegal combinations and such monopolization; and, especially, forbidding the continued making or enforcement of certain provisions of certain leases or contracts under which the defendants have put out and are putting out machines, or any provisions of like tenor and effect.

The defendants, other than certain corporations as to whom at the opening (I, 1061) a discontinuance was entered, are—

United Shoe Machinery Company of New Jersey.
United Shoe Machinery Corporation.
United Shoe Machinery Company of Maine.
United Xpedite Finishing Company.
O. A. Miller Treeing Machine Company.
W. W. Cross & Company.
Ross-Moyer Manufacturing Company.
J. K. Krieg & Company.
Booth Brothers Company.
Ellis Lacer Company.
United Shoe Repairing Company.
Sidney W. Winslow, and twenty-one other individuals, all of whom were officers or directors of the corporate defendants above named or of some of them.

The answers of the various defendants are not identical, but the answer of the United Shoe Machin-

ery Company of New Jersey embraces substantially all the defenses set up by them. A brief outline of it is, therefore, sufficient.

It denies every allegation of the petition not specifically admitted; admits that it acquired the business, assets, and letters patent of the companies named in the petition (I, 1043); claims that those companies were non-competing at the time of their acquisition; that the machinery owned by each was covered by letters patent of the United States; and that the acquisitions were made with the expectation of economies in administration and cessation of patent litigation between the companies purchased. It also alleges that the greater part of its business consists in the manufacture under letters patent of shoe machines and in the leasing of those machines to shoe manufacturers under the letters patent. It denies that it restrains or monopolizes interstate or foreign trade and commerce or ever attempted so to do, but alleges that if it has any such monopoly it is valid and legal as derived under the letters patent owned by it. It also sets up the statute of limitations. (I, 1042–1046.)

Replications were filed to the answers. (I, 1058.)

II. DESCRIPTION OF THE DEFENDANTS.

The United Shoe Machinery Company of New Jersey is a corporation of that State. It was organized February 7, 1899 (I, 1, l. 32; 633, l. 4), and was a consolidation of the business and properties of

the following competing companies, which were taken over as going concerns:

Goodyear Shoe Machinery Company.
International Goodyear Shoe Machinery Company.
Consolidated & McKay Lasting Machine Company.
McKay Shoe Machinery Company.
Davey Pegging Machine Company.
Eppler Welt Machine Company.
International Eppler Welt Machine Company.

(Answer, I, 1043.)

Many of the principal owners and managers of these companies became officers and directors of the new company. Its main factory is in Beverly, Massachusetts. (I, 35, 423, l. 41.) In addition it maintains stations "throughout the country covering all the principal shoe manufacturing centers." (I, 553, l. 34.) It has been engaged, ever since its formation, in manufacturing at its Beverly plant, and in selling, leasing, and shipping to shoe manufacturers all over the United States shoe machines, supplies, and related things. (I, 35, l. 32; 423.)

The authorized capital of the United Shoe Machinery Company of New Jersey is $25,000,000.

United Shoe Machinery *Corporation* was organized in 1905. It also is a corporation of New Jersey. Its business appears merely to be that of a holding company. (Plff.'s Exs. 164–7, IV, 1126–37.) Upon its organization, it acquired "substantially all of the

capital stock of the United Shoe Machinery Company of New Jersey." (Morton, I, 358, l. 28.)

Assuming that the stock issued at the organization of the United Shoe Machinery Company represented no more than the fair value of the properties acquired, the defendants in twelve years, as shown by dividends and surplus, have earned in excess of $50,000,000 upon a total investment in cash or its equivalent of about $20,000,000. (Morton, I, 358–360.)

The United Shoe Machinery Company of Maine is, since a change in 1902, the present name of the old Goodyear Shoe Machinery Company. All its stock—$3,000,000—is owned by the United Company, which acquired it when that company was organized. Its present business is the leasing of machines manufactured by the United Company of which it is merely a department. (Donham, I, 34, l. 40.)

The other corporate defendants do not require particular description.

The combined activities of the various corporate and individual defendants, so far as they relate to the subject matter of the present action, are commonly referred to in the record and are here referred to as those of the "United Company," except where clearness requires a more specific designation.

Of the individual defendants, Sidney W. Winslow was the president of all the corporate defendants and their chief executive officer. He was the principal witness for the defense. The other individual defendants are, or were at the time when the bill was filed, directors or officers of the United Shoe

Machinery Company or of the United Shoe Machinery Corporation. In most cases they were connected with both these companies as well as with others of the corporate defendants. (Plff's. Exs. 186, 167, IV, 1231, 1137.)

III. DESCRIPTION OF THE SUBJECT MATTER OF THE ACTION.

A. IN GENERAL.

The end which avowedly was sought by the organizers of the United Company was "the control in one corporation, both in the United States and in foreign countries, of the efficient types of shoe machinery." (Statement to the Stockholders of the Goodyear Shoe Machinery Company, February 8, 1899. Plff's. Ex. 152, I, 140.) The business in which the defendants are engaged is that of supplying machines used in the manufacture of shoes. The interstate and foreign trade in certain, though not all, of such machines (*infra*, p. 13) is that which defendants are charged with having restrained and monopolized. The subject matter of the action, therefore, is the effect of the things done by the defendants upon the trade between manufacturers of machines used in the manufacture of shoes and the manufacturers of shoes.

B. THE BUSINESS OF SHOE MANUFACTURING.

To understand, therefore, the nature and importance of the questions presented by this case, it is necessary to have in mind certain facts regarding

the manufacture of shoes and the relations thereto of the use of machinery and its supply.

The defendants lease machines to at least 1,033 shoe manufacturers. (Donham, I, 26, l. 39.)[1] In 1909, the latest year for which figures are available, 285,000,000 pairs of shoes, in round numbers, were made in this country, as against 175,000,000 in 1899. (Winslow, 414, l. 38.) Shoes are made in every section of the Union. It is obvious that supplying important machines for such an industry must be an exceedingly important part of the interstate trade and commerce of the United States.

C. EXTENT OF THE USE OF MACHINES IN THE MANUFACTURE OF SHOES.

The making of shoes was almost wholly a handicraft until about 1860. At about that time the first practical machine for performing an important shoemaking operation began to attain wide use. Other machines followed.

When this suit was brought, and indeed at the formation of the United Company in 1899, the industry had become almost wholly a machine industry. Of

[1] The latest figures of the Census of Manufactures (1914) show 1,090 firms, individuals, and corporations reported as engaged in the manufacture of "footwear," operating 1,355 establishments. In dealing with such figures it should be remembered that makers of moccasins, infants' shoes, etc., are classed as making "footwear" and that these do not need to use the essential bottoming machines, the supply of which defendants have monopolized. Their number, which is not established by the record, is to be deducted in considering the extent to which the defendants rule their province of the shoemachinery trade.

the 175,000,000 pairs of shoes produced in this country in that year, according to defendants' figures (Dfts. Ex. 215, I, 424), only 197,000 are described as hand made, and Mr. Winslow testified (I, 869, ls. 37–39) that 110,000,000 were of kinds which never had been made by hand and could not be so made. The record shows that to-day hand work has been superseded by machine work even as to the simplest and least expensive operations. (I, 91, ls. 26–30.) For the most part it persists only for incidental work in connection with the use of machines (e. g. I, 497). No shoe manufacturer attempting to do business on any considerable scale can to-day exist in competition with other manufacturers without having in his factory a substantially complete line of machines. In order to compete successfully, he must, of course, obtain his machinery upon a basis of cost not substantially above that upon which his competitors obtain their equipment.

D. THE MANUFACTURE OF SHOES BY MACHINERY, METHODS AND MACHINES.

The mysteries of the shoemaker's art and the variations between different methods of making shoes are not within the knowledge of the ordinary purchaser nor do they enlist his interest. To him shoes are shoes, except as they differ in appearance, comfort, wearing qualities, and price. For his approval all shoes which approximate his size may be said to compete and the factors which govern that competition are those noted rather than the details of their manufacture.

In the industry, however, shoes are classified according to the manner in which the outsole—what we call the sole—is attached to the upper, and this classification is helpful in understanding the application and importance of various facts which will be brought to the attention of the court.

Shoes, then, are divided into welt shoes, turn shoes, stitch-downs, McKay sewed shoes, McKay welts, fair-stitched shoes, pegged shoes, standard screw shoes, loose-nailed shoes. (Dfts. Ex. 215, I, 424.) In all but the last three varieties the bottom is attached to the upper by a seam of thread. Pegged shoes are shoes in which the sole is attached to the upper by means of wooden pegs. In standard screw and loose nailed shoes the sole is attached by wire slugs or nails. Such shoes are therefore sometimes called "metallic fastened," and the machines which insert the fastenings are among those classified in the trade and by the defendants as "metallic machines." (I, 5, l. 5.)

Welt shoes derive their name from a narrow strip of leather known as the "welt" which is first sewed to the upper and insole by a machine called a "welt sewing machine" or "welter" and is then sewed to the outsole by a machine known as an "outsole stitcher," thus attaching the upper and bottom together, the welt serving as a kind of link. Welt sewing, outsole stitching, and certain other machines used in making welt shoes are hereinafter sometimes called welt method machines.

The sole of the turn shoe is sewed to the upper by the welt sewing machine, adapted for the purpose by the removal of an attachment. Turn shoes are lighter, as a rule, than those made in other ways. They derive their name from the fact that the upper is turned inside out during the process of attaching the sole.

The bottom of the "McKay sewed" shoe is attached to the upper by a seam passing directly through the outsole, insole, and upper. A "McKay sewing machine" is used for this operation.

As was said, the pegged shoe is a shoe in which the sole is attached by wooden pegs. These are inserted by a "pegging machine."

The sole of the "standard screw" shoe is attached by slugs of wire. These are inserted by a "standard screw machine."

The sole of the nailed shoe is attached to the upper by nails made for the purpose. A "loose nailing machine" is used. This machine also is used in the manufacture of substantially all kinds of shoes for attaching to the upper that part of the shoe to which the heel is in turn attached. That is to say, in shoes which are sewed, as distinguished from shoes in which the sole is "metallic fastened," only the part of the sole forward of the shank is attached by the seam of thread. The heel part of the sole, the "heel seat," is nailed on by the loose nailing machine.

McKay welts, fairstitched and stitch-down shoes, mentioned above, are all produced in such relatively small numbers as to be unimportant in com-

parison with the great classes of welt, turn, McKay sewed and metallic fastened shoes which have just been described. (Dfts'. Ex. 215, I, 424.)

Despite these radical differences as to the particular manner in which the bottoms of various kinds of shoes are attached, the general process of manufacture of all shoes is substantially the same. In every case, the parts of the uppers must be cut out and assembled, the linings fitted, the upper, counter, and insole assembled, the shoe "lasted," i. e., the upper stretched and shaped over the last, the outsole shaped and attached, the sole "leveled" or made to conform to the bottom of the last, the heel prepared and attached and the shoe "finished" by polishing, smoothing, and burnishing the edges and bottom of the sole and heel. It follows that "according to general usage, certain names are given by shoe manufacturers to certain parts of their factories in which certain work is done." These are the cutting room where the uppers and linings are cut out, the stitching or fitting room where the uppers, linings, and trimmings are assembled and stitched together, the lasting room, the bottoming room, the finishing room, and the sole leather room. (Winslow, I, 859, l. 39 et seq.)

In all the foregoing rooms in every factory machines are used. Besides the machines used for the major operations of attaching the sole to the upper, there are used in the bottoming of McKay shoes thirty-two different types of machines. (Dfts'. Ex. 236, V, 671.) A shoe manufacturer possessing only

a McKay sewing machine would therefore be a long way from the necessary equipment even for the bottoming department of his factory. For bottoming welt shoes, a larger number of different types of machines is required. (Plff's. Ex. 279, IV, 1557.)

E. THE PART OF THE INTERSTATE AND FOREIGN COMMERCE OF THE UNITED STATES IN MACHINES USED IN THE MANUFACTURE OF SHOES WHICH DEFENDANTS HAVE RESTRAINED AND MONOPOLIZED.

When the petition was filed, the defendants did not manufacture machines used in the fitting room, above mentioned, in which the previously cut and prepared parts of the uppers and linings are assembled. As to certain other machines necessary to the manufacture of shoes, the defendants had not at that time acquired a monopoly. At the trial, therefore, the claim of the United States as to the part of the trade in machines used in the manufacture of shoes which the defendants *actually* had restrained and monopolized was defined as the business of supplying—

> all the [principal and auxiliary] machines used for preparing and attaching the bottoms of shoes to the uppers, and clicking and eyeletting machines. (I, 837–839, *passim*. I, 192, l. 15–19, I, 414, l. 21.)

"Principal machines" and "auxiliary machines" are phrases taken from the practice of the defendants in leasing machines. The defendants class as "principal" the welting, lasting, pulling over, slugging, heeling, standard screw and loose nailing machines. (Winslow, I, 537, l. 12 et seq.) A number of other

machines are called "auxiliary" machines. This is justified in a measure because in one sense some of the auxiliary machines "prepare the work" for the operation of some of the machines called "principal." (I, 537, l. 12 et seq.) In the main, however, the reason for the distinction is rather arbitrary. Mr. Winslow says:

> We call [them] principal machines because they perform operations which are treated as measuring operations for the entire set of machines and because their operations preceded in most cases the development of the auxiliary machines. The auxiliary machines in many instances did work that had been done by hand and their development succeeded the development of what have been termed the principal machines. (I, 537, l. 14 et seq.)

A list of auxiliary machines, including only the machines classed by the defendants as "Goodyear auxiliaries," i. e., auxiliaries used in the manufacture of welt shoes is to be found in Plaintiff's Exhibit 270 (IV, 1446). Inspection of it will show something of the number and variety of the "auxiliary" machines. *These machines are, however, in no sense mere attachments to the principal machines. The operations performed by them are wholly independent.* "That is true with reference to every one of the auxiliary machines. There are no two that operate on the same shoe at the same time. The operations are as separate and distinct as the lasting operation and the welting operation, only they are not so far removed from each other." (Winslow, I, 537, l. 7 et seq.)

The uses of some of these "principal" machines, namely, the welting, standard screw machines, and loose nailing machines have already been noted. (*Supra*, pp. 10, 11.) Pulling over machines stretch the upper over the last, preliminary to the process of shaping it or lasting it. Lasting machines shape the upper over the last and secure it there temporarily or permanently according to the process of manufacture which is to follow. Heeling machines attach the heel to the shoe. Slugging machines which are included in the foregoing list of principal machines are used for inserting slugs or nails around the perimeter of the heel. Clicking machines are used for cutting out the parts of the upper. Eyeletting machines insert eyelets in the uppers.

In the record (I, 495–502) is an enumeration of some of the machines used in the bottoming of welt shoes, with a description of their functions. The nature of the relations between "principal" and "auxiliary" machines, *supra*, appears from what is there said. The distinction, while convenient for the understanding of certain leases of the defendants, *infra*, pp. 154–221, is of no real importance in the Government's view of this case.

F. THE IMPORTANCE, AS A MATTER OF SHOE MANUFACTURING, OF THE MACHINES, THE TRADE IN WHICH DEFENDANTS HAVE RESTRAINED AND MONOPOLIZED.

The processes of lasting, of preparing the bottom and the heel, of attaching them to the upper are necessary processes in the making of every shoe and constitute the "bottoming" of the shoe. The use of ma-

chines in these processes is universal. Shoes can not as a commercial proposition be made without them. This is, perhaps, sufficiently established by what has already been said. It may, however, be added that nearly two score shoe manufacturers testified in the case as witnesses either for the Government or for the defendants. These manufacturers represented concerns whose output ranged from 500 pairs daily (Burt, I, 739, l. 4) to well over forty thousand pairs (Johnson, I, 170, l. 33, Endicott, I. 575, l. 31). Their product comprised all varieties of shoes. Every one of them used machines for the processes named. In substantially every case, for reasons which will be noted, they used the machines of the defendants exclusively.

The process of cutting out uppers, for which the clicking machine was designed, was at the time of filing the petition still performed by hand in a considerable but decreasing number of factories. The clicking machine has been on the market only since 1908, and therefore had been out only about three years at the time when the petition was filed—the time to which testimony was limited by the Court (I, 201, l. 42). The importance of this machine and its practical necessity to shoe manufacturers is indicated by Mr. Winslow's appreciative remarks about it. In his opinion (I, 426, l. 19), according to his experience in the shoe art, "no machine has accomplished so much for the art as the clicking machine." The saving by its use is estimated at as much as three cents a pair *in leather alone* (I, 431,

l. 22), aside from the advantages of machine over hand operation with respect to the cost of labor, speed, etc. The familiar effect of the introduction of such machinery upon the supply of hand operators also is to be considered. The importance to a shoe manufacturer of possessing such a machine is obvious. The manner in which the defendants use their control of it to extend their monopoly in respect to other machines is noted, *infra*, pp. 169–70, 178.

That monopoly is a monopoly of the important and essential machinery used by shoe manufacturers in bottoming shoes, as above defined. Defendants persistently seek to divert attention from the contemplation of the field which they have monopolized to that which is, as yet, not subject to their domination. Like Warren Hastings, they appear to be astonished at their moderation.

It is no answer to proof of control of a great field of industry to say that a related field is as yet open to competition. As well might the Union Pacific have argued that it had violated no law in controlling the Southern Pacific because it had not yet acquired control of lines east of the Missouri River. To say, when charged with monopolizing the great business of supplying the essential bottoming machines upon whose control defendants have built up their tremendous and profitable enterprise, that competition still exists as to certain other machines used in large numbers by shoe manufacturers is to urge upon the Court a total irrelevance.

THE ARGUMENT.

I. INTRODUCTORY OUTLINE.

The general philosophy, construction, and application of the Federal Antitrust Acts have been the subject of exhaustive discussion in the briefs and arguments of the United States in other cases now pending in this Court. What has there been said as to the underlying public policy of the Sherman Act, as to the limits of its application and as to its bearing upon the social, political, and economic structure of the life of the American people is equally applicable here. But as the position of the United States with respect to these general matters is the same in this case as in those, it is hardly useful to repeat here, in detail, the argument there set forth.

A further and even more persuasive reason for avoiding repetition here with respect to the wider aspects of the law of restraint of trade is the belief on the part of the United States that however narrow may be the final definition of that undue interference with competition which is denounced by the law, the facts bring this case within that definition.

For, if the test is the combination of able competitors together preponderant in an important field of interstate commerce, here there were combined competitors who occupied substantially the entire field; if the governing consideration is the intent with which the combination was formed, there was here shown both in what was done at the formation of the corporation and in the subsequent conduct of its affairs a

manifest intent to restrict competition and to establish a monopoly, an intent made plain not only by the comprehensiveness of the combination and by the inherent nature and effect of what was done, but by direct expression of such a purpose; if the acquisition of monopolistic power is the distinguishing mark of an illegal combination, here was both such power and its exercise; if the legality of such a corporation is to be judged by its conduct subsequent to its formation, here is a combination which has steadfastly pursued methods which in themselves are necessarily unduly restrictive of freedom of competition and indeed have had the intended and necessary result of completely excluding from the field any substantial competition; if the question is to be determined by inquiring whether the combination has maintained that domination with which it was endowed by the combination itself, here has such domination, to a degree hardly paralleled in any other industrial situation, brought to the attention of this Court, not only been maintained but has been so intrenched and strengthened by the interposition of artificial barriers in the path of possible competition that such competition is, practically speaking, impossible until those barriers shall be struck down by a decree of this Court.

The United States believes all this will become apparent upon consideration of what is established by the record. It is therefore to the facts that it desires first and chiefly to request the attention of

the Court. Later, it is proposed to discuss briefly certain particular propositions of law which seem to have especial bearing upon certain phases of the present case.

First, therefore, it is proposed to review the conditions existing in the trade when the United Company was formed, to call attention to what was said and done at its formation, and to point out the effect upon competition, existing and potential, of those circumstances. It is next intended to review briefly the subsequent conduct of the corporation and to make clear the position in the trade which it occupied when this petition was filed. Finally it is proposed to state to the Court in detail the outstanding features of the system of leasing machinery adopted by the corporation as the only method of putting out the more important of its machines, to analyze the terms of these documents and to comment upon their inevitable effect upon the trade.

When these matters have all been laid before the Court, as the record shows them, little else, it is believed, is necessary to the decision of this case.

II. CONDITIONS IN THE SHOE MACHINERY INDUSTRY AT THE FORMATION OF THE UNITED COMPANY.

The principal companies which were combined in the organization of the United Company were, as heretofore observed, the Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, and Eppler Welt Machine Company. (*Supra*, p. 5.)

A. THERE WAS EXISTING AND POTENTIAL COMPETITION BETWEEN THE GOODYEAR AND THE CONSOLIDATED & McKAY COMPANIES IN LASTING MACHINES.

Before the organization of the United Company, lasting machines of the following types had been at some time in use, namely, the McKay and Copeland, Chase, Copeland-Rapid, Consolidated Hand Method, Seaver, Sinning, and Ideal lasting machines. There may have been others. (Jones, I, 106, ls. 23–30; Selz, I, 141, l. 43.) In addition, there were the Continental and Boston machines which, however, are described by Mr. Winslow as "tacking machines" rather than lasting machines. (I, 521, l. 32.) Some of these machines had apparently disappeared prior to the organization of the United Company.

There can be no serious dispute with reference to the various kinds of lasting machines which were being produced at the time the United Company was formed.

At that time there were on the market (Winslow, I, 399, l. 13; 521, ls. 39–41; 526, l. 45) the following:

McKay & Copeland, Chase, Consolidated Hand Method.	Owned by Consolidated & McKay Co.
Ideal, Copeland-Rapid.	Owned by Goodyear Company.

The Ideal lasting machine was a development of the Copeland-Rapid laster (I, 107, l. 38; 526, l. 45; 626, ls. 37–43; 914, l. 3). The only substantial difference between these two machines was that the latter was

operated by the foot of the workman while the former was operated by power.[1] (I, 914, l. 3; 918, l. 3.)

Mr. Winslow testified (I, 526, l. 36) that at the formation of the United Company, the Consolidated & McKay Company and the Goodyear Company were the only companies putting out lasting machines except the Seaver Company. He said that that company was putting out some machines but that it was not doing a successful business. (I, 526, ls. 28–34.) The Seaver Company had no plant and only one witness testified to any use of the Seaver machine. (I, 289, l. 25). The Seaver Company was acquired by the United Company within a year after the formation of that company, in 1899. (I, 526, l. 33.)

There is no dispute that the McKay & Copeland machine was used chiefly on heavy shoes. The Chase laster, according to Mr. Winslow, was used chiefly for lasting men's welt shoes but it was offered by its makers as a machine for lasting women's shoes as well. (I, 960, ls. 29–30.)

The Consolidated hand method machine as originally designed was adapted principally for lasting

[1] The record does not show clearly whether the Goodyear Company continued to manufacture the "Rapid" machine after it produced the improved form to which it gave the name "Ideal." However the fact may be, it is not material upon the issue whether the lasting machines put out by the Goodyear Company were in actual and potential competition with those put out by the Consolidated Company. If the "Rapid" machine is shown by the record, at the places to be cited, to have done the same classes of work and to have competed with the lasting machines put out by the Consolidated Company, *a fortiori*, the improved Rapid, the Ideal, was also a competing machine.

McKay sewed, pegged, and metallic fastened shoes. These types of shoes are lasted in the same manner. At first it could not be used successfully for lasting welt shoes, but the problem of adapting it for such use was in the way of sclution in the fall of 1898. In December, 1898, the Consolidated & McKay Lasting Machine Company was offering to the trade the hand-method machine as a satisfactory machine for the lasting of welt shoes. (I, 960, l. 27.)

Mr. Winslow was not willing to testify that the machine was completely successful for that purpose, despite the fact of his company's offering the machine to the trade, but admitted that some machines were already in shoe factories. (I, 524, l. 7, 8.) He also admitted that it was the intention of the Consolidated & McKay Company to perfect the machine so as to make it an efficient welt lasting machine, and that in 1900, about a year after the formation of the United Company, it had become, even in his present opinion, a commercially successful machine. (I, 524, l. 28.) He added (I, 526, l. 11) that women's welt shoes are now lasted very largely upon this hand method machine.

It appears, then, upon Mr. Winslow's testimony, that the Consolidated & McKay Company was putting out lasting machines which covered the entire ground. Taking at face value his statements as to the kind of work for which the various machines were peculiarly fit, the McKay-Copeland covered the heavy field, the Chase, men's welt shoes, and the

hand method machine, all McKay shoes, and in its improved form, women's welt shoes.

The Goodyear Company's principal lasting machine was, as has been said, the Ideal machine, which was a development of its Copeland-Rapid machine. It was said by Mr. Winslow (I, 527, l. 3) that it was used practically altogether on women's welt shoes, that is to say, in the field in which the hand method machine owned by the Consolidated & McKay Company before the organization of the United Company has now been so successful. Mr. Winslow declined to attempt to state any reasons why the Ideal machine could not last men's welt shoes as well as women's welt shoes, thus bringing it into direct competition with the Chase lasting machine, put out by the Consolidated & McKay Company. In response to the question whether the Ideal could have easily been developed into a machine which would have lasted men's welts successfully he stated that he did not know anything about it. (I, 527, l. 24.)

Mr. Howe testified (I, 627, l. 29) that while each machine had a fairly well defined field, it would frequently happen that McKay shoes would be lasted upon the Ideal machine.

Even if the work of the Ideal machine had been confined to women's welt shoes, that was the field which the Consolidated & McKay Company was entering with its adapted hand method machine.

In addition, however, to the testimony of Mr. Howe as to the use of the Ideal machine for lasting McKay *lasted* shoes (which include standard screw

and loose-nailed shoes as well as McKay *sewed* shoes) there is abundant testimony as to the possibility of the use, and as to the actual use of the Ideal machine owned by the Goodyear Company, for lasting men's shoes, both McKays and welts, in direct competition with the Chase machine owned by the Consolidated & McKay Company. The testimony shows also that the Ideal was in direct competiton with the latter company's hand method machine.[1]

Milton J. Florsheim testified that his company was engaged at the time of the formation of the United Company in the manufacture of men's welt shoes, and at the time they were using three Copeland-Rapid lasters (the same machine as the Ideal machine except that it was operated by the foot of the workman rather than by power, *supra*) and several Chase machines; that the Chase and Rapid (Copeland-Rapid) machines did the same class of work, and that "when the shoe was done, you could not tell on which machine it was lasted;" that there was no difference in the quality of the work, and if there was any difference in the rapidity, the advantage was with the Rapid. (I, 158, 159, l. 32.)

[1] In some cases, the use of the Ideal machine on men's shoes, shown by the testimony, was subsequent to the formation of the United Company. This is immaterial, the issue being whether such use was possible. The machine was unchanged, except *in some instances* by the addition of certain attachments described by witnesses Snow and Heffernan (*post*, 26, 29). Both attachments seem to have been comparatively simple. Their importance is discussed in the body of the brief at the pages mentioned.

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Warren F. McElroy also testified that the Hamilton-Brown Company, of St. Louis, made men's shoes on the Rapid machines in 1899, and continued to use them until they were exchanged for the new machine brought out by the United Company after its formation. (I, 187, l. 15; 189 l. 26 et seq.)

Stephen Snow testified that he was formerly employed by the W. L. Douglas Company, which made *men's* shoes, both McKays and welts, having a capacity of about ten thousand pairs a day; that the company used only the Consolidated hand method and the Ideal lasting machines; that he had charge of the Ideal machines, of which there were more than a dozen; *that the Ideal machines were used both on the McKay and the welt shoes* (I, 895, ls. 36–43); that he had previously worked for George E. Keith Company, which also made *men's McKay and welt shoes;* that its capacity was also about ten thousand pairs a day; that he did not remember that the Keith Company had any other lasting machine except the Ideal machine; that there were about a dozen of them (I, 896, ls. 6–12).

Snow spoke of two attachments which he claimed to have devised for the Ideal machine. One which he had patented had to do with pressing in the counter, and he explained that "they used a very heavy counter at that time and the heel band would not bring the corners of the counter in" (I, 897, ls. 28–31). He testified that he attached this device to one of Keith's machines but did

not remember that he had put it on any others, although all Keith's Ideal machines were used in lasting men's shoes during the entire year he stayed there (I, 899, ls. 21–26). The other attachment which Snow claimed to have invented in 1901 or 1902 (I, 896, 897) seems to have been patented by Heffernan (I, 897, l. 9; 898, line 12), who testified that it was first used in 1909 or 1910 (I, 918, l. 15). Snow claimed that the Ideal machine would not last men's "heavy" shoes "successfully" without his inventions, but that they made it successful on those shoes (I, 898, ls. 32–37). But he admitted that Ideal machines had been used by both Keith and Douglas in the practical manufacture of their men's shoes without the device (I, 900, ls. 5–7; 899, ls. 8–15), and he had already testified (I, 896, l. 16) that Keith and Douglas were making "about a four-dollar shoe which was as heavy as they generally make in those factories." Asked in redirect examination what he meant by his statement that the Ideal laster would not last men's "heavy" shoes, he said he meant "long-legged boots, brogans, miners' shoes, and shoes of that character," adding that nothing could handle those shoes except the McKay-Copeland machine. (I, 900, ls. 15–18.)

As bearing upon the weight of Snow's assent to certain propositions emphasizing the importance of his device, put as leading questions by counsel for the defendants, it seems not unfair to observe that

Snow presumably had the familiar enthusiasm of an inventor respecting his invention.

It may be added that another witness, Fletcher, testified that he was with Douglas at the time and could not say that the hold-down attachment was ever put on more than half of the Douglas Company's Ideal machines (I, 939, ls. 9–11). He also said that Douglas had used the Ideal machine for a number of years without the attachment (I, 938, ls. 26, 27).[1]

Thomas Worsencroft testified that in 1890 he was employed to instruct men to operate the Rapid lasting machine (I, 913), that the only difference between the Rapid and the Ideal was that the Rapid worked by foot power and the Ideal by steam power (I, 914, l. 3); that he was employed from 1897 to 1901 by the Duquesne Shoe Company, of Pittsburgh, Pa., which made men's welt shoes; that that company used five Ideal lasting machines for lasting those shoes, and no other lasting machines; that, previously, he had worked for S. A. Crooks Company, of Hopkinton, Mass., where the Rapid machine was used on men's McKay shoes, and, in 1891 and 1892, in the factory of John Hanan & Sons, of New York City, where high-priced welt shoes were lasted on the Rapid machines, and at George Snow's factory at Brockton in 1893 where welt shoes were made both on the Rapid and the Chase machines (I, 914, l. 33). He thought that the Ideal machine did better work on men's welts than the Chase machine and was equally rapid (I, 914, l. 23).

[1] See also testimony of Jordan, *infra*, p. 31.

William P. Whitman testified that he had been manufacturing shoes since 1883, and that he had obtained Ideal machines from the Goodyear Company, and was still using six or seven of them at the time of his testimony; that he made men's welt shoes and never had made any other kind (I, 915, 916). That he has also now some Number 5 lasting machines [the latest development by the United Company, I, 397, l. 38, now offered as the successor of the Chase machine, I, 453, l. 25], but he sees very little difference in quality or rapidity between the work of the Number 5 machine and that of the Ideal (I, 916, ls. 4–10). Referring to the necessity of the hold-down attachment for the Ideal machine, he said it became necessary when the high-toed shoe began to come in "which was about ten or twelve years ago" (I, 916, l. 38). He was testifying in 1914 and therefore the date referred to was two or three years after the formation of the United Company.

Edward F. Heffernan testified that he had been employed in the factory of the witness just mentioned for seventeen or eighteen years, and for six years had had charge of the lasting department (I, 917, ls. 38–43) and he had operated an Ideal machine for twelve or fourteen years; that there was no substantial difference between it and the Rapid machine (I, 918, l. 3); that he lasted men's welt shoes for twelve years upon Ideal machines without any hold-down appliance; that he had invented such an appliance which improves the operation of the Ideal, and that anything which is

lasted on a Number Five [the United Company's successor to the Chase machine, (I, 453, l. 25)] can be lasted on an Ideal (I, 918, ls. 30, 31). That the Whitman firm is still using seven Ideal machines; that they have also been using the Number 5 lasting machine for three years and he has observed its operation; that the same operator will get as much work off the Ideal as he can off the Number 5 and, in his opinion, probably a little more; that he can run both machines himself, and considers the Ideal a little faster; that the character of the work depends on the operator, a good operator being able to do equally as good work on one machine as on the other; and as to whether or not heavy welt shoes can be successfully lasted on the Ideal machine, everything that can be lasted on the Number 5 can be lasted on the Ideal just the same—they make no distinction; that while the Number 5 is a heavier, stronger machine, yet there is no reason why the Ideal could not be made just as strong, and that by a stronger construction it could last any kind of shoes (I, 918, ls. 1–33). He said that about four years ago he was given his choice between the Number 5 and the Ideal and took two Ideals. (I, 919, l. 41.)

It will be remembered that Whitman & Keith were manufacturers of *men's* welt shoes. Therefore, it is demonstrated in practice that the Ideal without the Snow attachment or any other attachment but, as it was in 1899, was capable of lasting men's welts

as well as women's, and therefore was a competitor of the Chase machine.

John Jordan testified (I, 932, l. 31) that he had been a laster for 25 years and he had lasted *men's* high-grade welt shoes on the Chase machine for two years, on the Rapid for three or four years, and on the Ideal for about ten years; that in his opinion the Ideal did better work than the Chase; that the Ideals at the time he worked on them did not have the hold-down attachment referred to by the other witnesses (I, 933, l. 18, 19); that the Ideal was used at the W. L. Douglas factory for lasting *men's* shoes without any hold-down attachment (I, 933, l. 30); that such an attachment was put on but was taken off after a short time.

John N. Murphy testified that he had been an operator on lasting machines for about twenty-three years; he testified further that he also operated an Ideal machine both at Whitman & Keith's factory and at Douglas's factory upon *men's* high-grade welt shoes (I, 933, l. 43; 934, l. 5).

He said he had also operated the Number 5; that the quality of the work of the Ideal was about the same and that the Ideal was a little faster (I, 933, l. 13, 15).

Francis O'Keefe testified that he was now foreman of the lasting room of Stacy-Adams Company and had been engaged in lasting shoes for about eighteen years. He testified further (I, 934, l. 20 et seq.) that James A. Banister & Company, makers of *men's*

fine welt shoes, were lasting such shoes on six Ideal machines, and that the Chase and Ideals did about the same amount of work. He also testified that that company was at the same time using Chase machines for work of like character. On cross-examination he testified that L. Boyden & Company by whom he was first employed in 1896 successfully used the Chase machine for lasting women's shoes. He said that the Chase could not be used on a high-toed shoe like those which have been out in the last three or four years, but added "It was just as good as any other kind of machine I know of, on regular work." (I, 934, ls. 41–44.)

The Chase owned by the Consolidated & McKay Company and the Ideal owned by the Goodyear Company were, therefore, competitive machines when the United Company was formed.

Ira Fletcher testified that he was superintendent of F. M. Hoyt Shoe Company of Manchester, New Hampshire, that he was employed by W. L. Douglas from 1902 to 1910, and that during that period the Douglas Company which was making *men's* welt shoes only was lasting them on Ideal lasting machines, of which, in 1902, 54 were in use (I, 938, l. 11); that Douglas preferred the Ideal to the Chase (ibid, l. 36). He further testified that he had been previously employed between 1894 and 1901 by Cushman & Company, of Auburn, Maine; that that company made *men's* welt shoes and lasted them upon Ideals, of which they had twelve; that they had no

other kinds of lasting machines in the room in which he was working.

Joshua LeMay testified that he is foreman of Rice & Hutchins' lasting department, and that in that factory the Chase machine was used on both welt and McKay work, indiscriminately, and that in 1897 or 1898 women's McKay shoes were lasted upon the Chase machine. He stated that he had worked on the Chase machine for eight years and that he knew of no reason why the Chase machine could not be used on women's welt shoes, the same as men's. (I. 947, ls. 23–37.)

Walter C. Springer (I, 947, l. 43) testified that he had worked for Rice & Hutchins about twenty-one years, and was, when his evidence was given, assistant superintendent of the Curtis factory, and at times had partial charge of the lasting room. Before the "No. 5" came out they used the Chase machine, on men's, boys', and youths' McKay and welt shoes. They also used it successfully on *women's* shoes, and he knew of no reason why it could not be used on women's welt shoes, the same as on men's. He had never heard of anything wrong with the lasting of the women's shoes done on the Chase machine. (I, 949, l. 29.)

Emanuel F. Selz, general manager of the manufacturing department of Selz, Schwab & Company for more than twenty years, testified that his company's factories had a capacity of fifteen thousand pairs of shoes per day (I, 141, l. 16); that just before the

establishment of the United Company the Rapid, the Chase, the Consolidated hand method, Ideal and Boston machines were in use; that there was practically no difference as to the uses to which these various lasting machines were put; that they could *all* last *men's* and *women's* shoes (I, 142, ls. 14–19); that he got the Chase in 1891 and used it up to a few years ago and that his company still has the Boston and some of the Consolidated hand method machines (I, 148, ls. 22, 32); that they have lasted both men's and women's shoes on the Chase and on the Consolidated (I, 148, l. 40); that they now use the Consolidated laster principally for *women's* shoes and men's McKay shoes (I, 149, l. 5).

Martin E. Welch, a man of forty-seven years' experience as a shoe manufacturer, twenty-five of which were spent in business for himself, testified that "when we started the welts we began with the Consolidated hand method machines and we are still lasting all our welt shoes on that machine. We make women's shoes altogether and have never made any men's welt shoes." (I, 712, ls. 2–7.)

The foregoing testimony shows that the Consolidated hand method machine, owned by the Consolidated & McKay Company, was in competition with the Ideal, owned by the Goodyear Company, in the lasting of women's shoes at the time the combination was formed.

John Strootman (I, 742, l. 41) testified that he was engaged in manufacturing *women's* shoes, one half of which were McKays and the other half turns

and welts. He said, "We lasted by hand until we got the Consolidated hand method machine and we are still using improved machines of that type. Formerly we lasted our shoes *entirely* on that machine, but now we last the toes on the Number 5 machine and the sides on the Consolidated hand method." (I, 744, l. 28.)

Charles A. Eaton (I, 751, l. 18), engaged exclusively in the manufacture of men's welt shoes, except a few ladies' and boys' shoes, testified that he had been in the manufacturing business since 1879; that between 1892 and 1899 he was making men's welt shoes exclusively (I, 755, l. 6); that he used the Consolidated hand method, the Chase and the Seaver machines, replacing the Chase by the Seaver on the better grade of work, and doing the cheaper work on the hand-method machine (I, 755, ls. 2–7); that the Seaver was put out by the Seaver Lasting Machine Company acquired by the United Company soon after its organization. (*Supra*, p. 22.) The Seaver, owned by one company, and the Chase, and Consolidated hand method machines, owned by another, were therefore in competition at the time the United was formed.

The defendants made no effort to meet the foregoing testimony directly, but while contending that each type of lasting machine was better on some kinds of work than others, conceded that there was "some overlapping." (Winslow, I, 527, ls. 1–27; Howe, 627, ls. 18, 19.)

Mr. Howard, the patent attorney for the Company, gave certain technical testimony (I, 966–973) which is intended to show by reference to patent drawings the unsatisfactory character of the Ideal lasting machine for men's work. *He admitted that he had never lasted a pair of shoes* and does not pretend to any knowledge qualifying him to contradict the direct statements of the witnesses as to the actual use of these machines.

He stated that his testimony must be taken "as technical information" only (I, 971, l. 32). He admitted that "it is pretty hard to identify the Ideal machines used before 1899 because the records of the Goodyear Company (the owner of the Ideal) were not nearly as complete as those of the Lasting Machine Company," owner of the Chase and other machines. (I, 973, l. 35.) His testimony is therefore of little value when confronted with the foregoing testimony of practical and disinterested witnesses.

The same may be said of the testimony of Mr. Winslow (I, 975, l. 42) relative to the number of Ideal machines out January 1, 1899, and the work done upon them. This, too, can be based only upon the records, which Mr. Howard tells us "were not nearly as complete as those of the Lasting Machine Company." Besides, the relative number of machines in use would have little if any tendency to prove whether or not they were competitive. The greater number in use of the one might be due to better management, more capital, or any one of a number

of causes having nothing to do with the competitive character of the machines.

It appears also from the testimony of Mr. Winslow that prior to 1898 the Goodyear Company was accustomed to put out the Ideal machines "on a large initial payment and no royalty." (I, 978, l. 24.) This being so, the company would have no record of the number of shoes operated upon by the Ideal.

In addition to the foregoing facts, as to the active competition existing between the lasting machines put out by the Goodyear Company on the one hand and those controlled by the Consolidated & McKay Company on the other and as to the prospect of increasingly sharp competition between those machines, some one of which was necessary to the making of every shoe, it is further to be noted that the Goodyear Company, though possessing only a single type of lasting machine, had the great advantage of being able to offer also welt sewing and outsole stitching machines and auxiliaries to those machines. It was able, therefore, to make its lasting machine help its welt machine, and *vice versa*. At the same time, the Consolidated Company was retaliating by requiring the use of its lasting machines to full capacity and insisting upon the requirement that if the lessor should have work for *lasting machines* requiring additional machines, such machines should be taken from the Consolidated & McKay Company. (Plff's. Exs. 6–10, III, 45–82.)

This is in effect an admission that Mr. Winslow's company, the Consolidated & McKay Company,

believed that its own lasters were capable of lasting men's and women's shoes, and were, therefore, in direct competition with the Ideal machine as to both classes of shoes.

The Government's testimony on this point is strongly sustained by certain advertisements which appeared in the Hide & Leather Reporter, a trade paper. On December 3, 17, and 31, 1898, about two months before the combination was formed, the Consolidated & McKay Lasting Machine Company published an advertisement stating that the Consolidated hand method lasting machine was adapted to the lasting of "welt shoes" and offered it to the trade for that purpose. The advertisements made no distinction between men's and women's welt shoes, but claimed the machine would last welt shoes without distinction. (I, 960, l. 24.)

On December 22, 1897,[1] about a year and two months before the consolidation, the Chase laster, also put out by the Consolidated & McKay Company, of which Mr. Winslow was the chief managing officer (I, 522, l. 21, et seq.), was advertised in the same paper as a machine "for lasting women's shoes." (I, 960, ls. 29–30.)

The evidence afforded by these contemporaneous advertisements should overcome anything which Mr. Winslow and his witnesses said in this law suit, twelve years afterwards. If the advertisements were warranted, which may perhaps fairly be assumed, the Consolidated hand method, and certainly the Chase,

[1] The date is stated in the record as 1907, an obvious misprint.

both owned by the Consolidated & McKay Company prior to the organization of the United Company in 1899, were adapted to the lasting of *women's* welt shoes as well as men's. Unquestionably they were so offered to the trade. Therefore as to these shoes, also, they were competitors of the Ideal laster, owned by the Goodyear Company, which is conceded by all hands to have been thoroughly fitted for the lasting of *women's* welt shoes.

The foregoing testimony clearly shows that the purchase of the Consolidated & McKay Company and of the Goodyear Company by the United Company, February 7, 1899, destroyed an existing and vigorous competition between lasting machines.

That with the development of the industry this existing competition between powerful corporations must have become increasingly sharp is, it is respectfully submitted, not open to doubt.

B. THERE WAS EXISTING AND POTENTIAL COMPETITION BETWEEN THE GOODYEAR AND EPPLER COMPANIES IN WELT SEWING AND OUTSOLE STITCHING MACHINES AND AUXILIARIES.

The characteristic feature of the welt method of making shoes is, as has already been said (*supra*, p. 10), the use of a strip of leather called the welt, which is employed as a connective between the upper and the outsole, both of which are sewed to it. Before the consolidation the Eppler Welt Machine Company and the Goodyear Shoe Machinery Company were each putting out machines for performing the operations involved. Each put out welting machines. They laid the stitch of the seam which attached the welt

to the upper in different ways. Each also put out outsole stitchers, and the two companies were therefore in competition as to these machines also (Howe, I, 469, l. 36). Undoubtedly many more machines had been put out by the Goodyear Company, which had 20 years' priority in the field. The statement made in the lower court that the Eppler machines could not produce "Goodyear welt" shoes is, however, only warranted when understood literally, and when so understood is of absolutely no significance. Eppler machines could not produce "Goodyear welt" shoes because "Goodyear welt" was a trade-mark name for shoes produced on Goodyear machines. (I, 22, l. 3; 625, l. 44.) But Eppler machines could and did produce merchantable shoes made by the welt method, and the shoes so produced possessed the advantages of that method. (*Infra*, pp. 41–46.) Manufacturers using both kinds of machines packed the shoes made upon them together indiscriminately in the same case and sold them all as welt shoes. (*Infra*, p. 46.) That there was open to the Eppler Company a wide field of possible competition, that it was successfully entering that field, and that in all human probability it must have become at least a dangerous and annoying competitor of the Goodyear Company are circumstances which, if true, are not lessened in significance by the contention of the defendants that the competition when ended by the illegal combination had not yet threatened the dominance of the Goodyear Company. Neither are they affected by the *belief* on the

part of some, even if such a belief were warranted, that after all was over, the Goodyear machines, whether because of the placing of the seam or otherwise, would have demonstrated a superiority which the Eppler interests could not have offset either by improvement of their machine or by concessions of price. That the Eppler company was, in fact, an able and a prospectively very dangerous competitor is shown by the following evidence:

C. H. Jones testified (I, 108, l. 42) that when the United Company was formed the Goodyear Company and the Eppler Company were both putting out welting, sewing, and outsole stitching machines, and he knows of his own personal knowledge that the welters and outsole stitchers produced by the Goodyear and Eppler companies were used for the same grade of work (I, 111, l. 16).

E. F. Selz testified that immediately before the United Company was organized there were on the market the Goodyear and the Eppler stitchers and inseam sewing machines (inseam machine is the same as welting machine) and that they were doing exactly the same work, the only difference between the Eppler and the Goodyear being in the formation of the stitch, but so far as he knew, and he had used both machines, there was no difference in the rapidity with which the work was done (I, 143, l. 22 et seq.).

Warren F. McElroy, an expert of wide experience, (*infra*, pp. 111, 144) testified that in 1897 or 1898 the company with which he was working was solicited

by an agent of the Eppler Machine Company, and that the witness went to a factory and looked at the machines and the class of work they were doing. They were working on men's medium and fine grade welt shoes, and from his observation it appeared that the work of the Eppler was equally as good as the work done by the Goodyear machine and that it could have been used on women's shoes (I, 187, l. 32 et seq.).

Charles S. Smith testified that the Eppler Company began business in 1893, and put out the welting machine, and began putting out the outsole stitching machine in 1893 or 1895. The witness had sewed shoes on the Eppler machines as an expert (I, 352, l. 43) and they could be and were used for the same purposes as the Goodyear welt sewing machine (I, 352, l. 20).

William P. Whitman testified that he installed an Eppler welt machine before the formation of the United Company and operated it for several years. The work done by the machine was satisfactory (I, 916, l. 11).

Fred F. Field testified that he was president of the Fred F. Field Company, of Brockton, and vice president of Field Brothers & Gross, of Auburn, Maine. The Fred F. Field Company, of which he has immediate charge, manufactures men's welt shoes, and they at one time had in their Brockton factory as many as *eight* Eppler welt machines. At the same time they had *two* Goodyear welters. He thinks

they obtained the first Epplers probably in 1902 or 1903, and kept five or six of the machines until about a year ago. (This witness testified February 5, 1914.) During that entire time he was using both Eppler and Goodyear welters, and it was the witness' judgment that the Eppler machine sewed a flatter seam than the old Goodyear, hence the shoe did not require so much filling in the bottom, which he regarded as some advantage, and he does not think there was much difference between the old Goodyear and the Eppler as to the amount of work which could be done. They put in the Eppler machines because they regarded them as the better of the two, and kept them until the United put out its Model K. (I, 930, l. 15, 24 et seq.)

George Strong testified (I, 931, l. 42) that he has been making men's welt shoes for thirty years; that he began the use of the Eppler outsole stitcher about 1892, when they were then sewing the inner seam by hand, and they got along with the stitcher very well. About 1895, they took two Eppler welt machines and used them until about 1900, when they made a trade with the United Company and took Goodyear machines. The witness testified that at that time, i. e., after the Eppler Company had become a part of the United Company, "the machines had been used a long time and were practically gone by, and we had a chance to turn them in to the United Company for the new rapid stitcher and welter and we did so." (I, 932, ls. 18–21.)

Milton S. Florsheim testified that when the United Company was formed, he had Goodyear welters and stitchers, and had installed one line of Eppler welters, stitchers and rounders (I, 159, l. 7); that the Epplers were being used by others and he wanted to find out whether he could not use them and thus save one cent per pair royalty, the Eppler people charging that much less than the Goodyear (I, 169, l. 22). And he said that in his opinion the work performed by the Eppler welters, stitchers and auxiliaries was as well done as that performed by the Goodyear machines, and that the best shoes made at that time, or as good as any made, were made on the Eppler machines. His company then made a high-grade shoe, but they were not as high priced as the shoes it is now making, which retail [1913] from $4 to $6 per pair. (I, 935, l. 30 et seq.)

George E. Keith, formerly president of the Eppler Company, and now a director of the United Company (I, 385, l. 21) admits that the Eppler Company had put out about thirty or forty welters, but not so many stitchers; that they had been attempting to install welters after 1892, and stitchers after 1894 or 1895, and that they had a line of machines for making welt shoes, except a rough rounder, and were trying to perfect that, and had put five agents in the field (I, 389, l. 6, 26).

R. H. Long (I, 224, l. 31) testified that he engaged in shoe manufacturing for himself in 1886 and was so employed at the time the United Company was formed; that his factory had a capacity of six

thousand pairs a day; that at the time the United Company was formed he was engaged exclusively in the manufacturing of welt shoes, and was using the Eppler welt machine principally (I, 225, l. 10) and that he continued to use that machine long after the formation of the United Company (I, 226, l. 3); that finally he surrendered the Eppler and took the Goodyear, which performs exactly the same class of work (I, 227, l. 41). There is considerable testimony as to why he made the surrender, but that is immaterial. We are only concerned with the fact that he had successfully used the Eppler for many years.

James H. Cunningham (I, 288, l. 31) testified that he had been superintendent of Stacy Adams Company for 30 years, which company has a daily capacity of about 1,200 pairs, welt shoes, exclusively; that his company commenced the use of the Eppler welter about 1892 and continued it until two or three years after the United Company was formed; that it was used for performing the same kind of work as the Goodyear machine; and that the *welter* was satisfactory to him, but the outsole stitcher was not (I. 290, l. 3).

Ira E. Fletcher (I, 937, l. 36 et seq.) superintendent of F. M. Hoyt Shoe Company, said that he worked for W. L. Douglas from 1902 to 1910; that Mr. Douglas used the Eppler and Goodyear welt machines, had about *twelve* of the former and *eight* of the latter; *that the two classes of machines ran side by side in the same factory.* The shoes made on the Eppler and Goodyear machines were both put on the market

as welted shoes. They were not kept separate, but shoes made on the Eppler machine were sent out in the same cases with shoes made on the other machines. Douglas was using the Eppler stitcher as well as the welter, he said. The witness considered the Goodyear *stitcher* better than the Eppler, but he made no comparison between the Eppler and Goodyear *welter* further than to say that they ran side by side in the same factory.

Mr. Keith, just mentioned, testified that the Eppler welter was put out in 1892 and the stitcher in 1894 or 1895 (I, 389, l. 11). The Eppler Company, then, was in business some seven years before the consolidation. It was shown that the Eppler Company was pressing its business and was advertising its product up to the moment of its acquisition by the United Company. (I. 361, l. 37.) It was a valuable property. In the Court below the Government sought to prove its value by reports of the company made as required by statute to the Commissioner of Corporations for Massachusetts covering the years 1896, 1897, and 1898. Copies of these reports, duly certified by the Secretary of the Commonwealth, were rejected by the Court on the ground of incompetence (I, 362, l. 5; 388, l. 45). Mr. Keith, president of the Eppler Company at the time it was absorbed and a director of the United Company, when he testified swore to the originals of the reports, in one case before a notary who duly attested the fact under his seal, according to the certified copies. Asked whether he knew of the reports at the time they were made,

Keith said, "I suppose I must have had knowledge of that." And further answered, when asked if the reports contained a correct statement of the assets owned by the company at the times covered by them, "I suppose it must have been. It must have been reported that way," but insisted that he had no present recollection of it (I, 386, l. 42; 387, l. 41).

The reports were sworn to and filed in pursuance of law. Hence, properly certified copies of them were, under the circumstances, at least *prima facie* evidence of what they purported to disclose, and should have been admitted.

The report made March 30, 1898, less than a year before the United Company was formed, shows:

Machinery	$19,977.03
Cash and debts receivable	10,421.09
Patent rights	245,853.61
Machines in factories	287,010.09
Miscellaneous	17,713.16

and the admitted testimony shows, despite an extraordinary and unexplained reticence, ignorance, and forgetfulness upon the part of the former officers of the Eppler Company and upon the part of the officers of the United Company (Winslow, I, 531, l. 37; 842, l. 20 et seq.; Keith, I, 385–7; Howe, 675, l. 42; 676, l. 1–39), that there was paid for the stock of the Eppler Company some $6.00 (Arnold, I, 952, l. 24) or $6.50 (Brackett, I, 949, l. 40) a share. The par of the stock was $10.00 and its issued capital stock was $600,000. At this rate there was paid in the interests of the United Company from $360,000 to $390,000 for the business of this

company, which, according to the defendants' evidence, then had only thirty or forty machines out in shoe factories, and these largely in the factory of its president (*supra*, p. 44). Mr. Howe was certain that the Eppler people would not take $100,000, but as to whether they got as much as $500,000 he did not know (I, 676, l. 27). Although the officers of the United Company, when asked to do so by the United States, could find no records showing what was paid for the Eppler Company, they were able to find without any apparent difficulty a letter which passed between R. H. Long and the Eppler Company and a lease executed by that company and him before the consolidation (I, 32, l. 33; 251, l. 6).

The value placed upon the Eppler Company by the purchase shows that in the opinion of the defendants the Eppler Company was a real and dangerous competitor.

The testimony above quoted as to the actual use of the Eppler machines and their possibilities of competition with the Goodyear machines is substantially corroborated by Mr. Winslow himself. He said that both machines were being used in the manufacture of welt shoes, and that the machines were intended to perform the same operation but they did it in distinct and different ways (I, 530, l. 37, et seq.; 531, l. 14). And he added,

> It is true that in obtaining the Eppler Company we did not broaden our field, because it was embraced in the Goodyear Company's machines.

Q. I believe you claim the Eppler machine was not hardly as good as the Goodyear welting machine?

A. It wouldn't make as good a shoe; no.

Q. But it was being put on the market?

A. It was in use.

Q. At that time, in the same territory in which the Goodyear machine was being put on the market?

A. It was in use at that time and they were manufacturing Eppler welt shoes with it. (I, 531, l. 22–33.)

There should here be noticed the reason given for this acquisition made secretly through Henry B. Endicott (who will again appear in connection with an even more important acquisition) at a cost of over $350,000 (Winslow, I, 530, l. 4). The reason according to Mr. Winslow was to get rid of existing litigation. He insists there was no other purpose. (I, 531, l. 34.) Howe claims now that the Goodyear Company, which was going into the United Company, was confident of winning this litigation (I, 470, l. 21) which was all litigation brought by the Goodyear Company, not against it. It was, moreover, litigation in which the plaintiff was apparently not very keenly interested. The principal case, No. 248, was brought in April, 1892. When the United Company was formed, seven years later, the evidence, if any had been taken, had never been turned into court and no hearing had been had. (I, 470, l. 16, 472, l. 1.) According to Mr. Howe, "The taking of testimony

had been abandoned when the United Company acquired the Eppler Company and these suits were all dismissed in November, 1905, on a general call of the docket under the order of the Court of October, 1905, dismissing all cases in which nothing had been done." (I, 472, ls. 1–5.)

It is only the merest speculation what the outcome of those suits would have been. Their history does not appear to reflect the confidence which Mr. Howe professed some fifteen years later to have had in them. But it is to be observed that in only one of them was the essential mechanism of a principal machine directly involved. Mr. Howe says, "Excepting the suit under the Briggs patent, on the welting machine, and three suits on the outside stitcher, *on the improvement in shuttles,* all these suits related to auxiliary machines." (I, 123, l. 29.) Mr. Howe continued: "It is my opinion that the infringing devices were very material in the construction of the Eppler Company's machines, *except the welt sewing machine,* and that the litigation would have compelled alterations, especially in their stitcher and auxiliary machines." (I, 623, ls. 31–35.) (Italics ours.)

It is respectfully submitted that Mr. Howe's opinion expressed in 1913 as to what would have been the outcome of this patent litigation which had been abandoned in 1899 after lying dormant for years before that date can not be regarded as any justification for the acquisition by the

United Company of a competitor. The patent questions involved can not properly be tried out in that manner in this litigation, but even an established infringement by the Eppler Company afforded no justification for the acquisition. The authority supporting that contention will be set out later in this brief.

Assuming all that is said by the defendants upon this subject to be relevant and justified, all that it amounts to is that there were pending the suits in question and that their result might have been to compel alterations in certain of the Eppler machines. "It is," said Mr. Howe, "of course, a matter of speculation whether they could have succeeded in making those alterations and in getting around such decrees as we were likely to obtain." (I, 623, ls. 35–38.) But it is as useless to speculate upon that question as upon the primary question whether, in fact, the Goodyear Company was likely to obtain any decrees at all. One can not, however, refrain from wondering over the lack of enthusiasm shown with respect to pressing litigation now said to have been so important and so promising.

Perhaps the reason was that the litigation did not, according to Mr. Howe (I, 679, l. 15), relate to the fundamental patents, taking "fundamental" to mean what Mr. Howe later (I, 686, ls. 25–29) explained was intended by him. In view of the nature of what was claimed, as shown above, this may well have been the explanation. That specu-

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lation also, however, is hardly of much relevance to the questions now presented to this Court.

The only advantage which defendants suggest that the United Company could obtain by "getting rid" of this inactive litigation brought by one of its constituent companies against a competitor was that it escaped controversy with customers of the Eppler Company who were customers also of constituent companies of the United Company other than the Goodyear Company. If this was indeed the reason it suggests that the Eppler Company's customers were more in number and greater in importance than the United Company is now willing to admit. Brief consideration will suggest the number of ways in which such a purpose might have been accomplished other than by the purchase of the competitor, without spending between $360,000 and $390,000.

That the purchase which suppressed substantial competition was illegal even if it be assumed that the real purpose was merely to end this litigation is shown later. (*Infra*, p. 246.)

Other facts of importance in their bearing upon the position of the Eppler Company as an actual and prospective competitor and the purpose behind its acquisition are these:

The Goodyear Company asked and received a royalty of four cents a pair for each pair of men's shoes made on its machine. Its competitor, the Eppler Company, charged only three cents (Florsheim, I, 159. l. 24–27; Long, 249, l. 43; Advertisement, Eppler Welt Machine Company, I, 960, l.

31–35.) This very usual competitive situation is to be borne in mind when one is asked to consider the competitive disadvantages of the Eppler machines with respect to the number of auxiliary machines, etc.

The United Company after the consolidation demanded as the royalty on the Eppler machines four cents (Winslow, I, 417, l. 36–45). It refused to give Eppler machines at three cents to Florsheim, who testified that some time after the United was formed, "I desired to trade in my Goodyear machines on which I was paying four cents a pair royalty for Eppler machines, for which, under my understanding with the Eppler Company, I would have had to pay only three cents a pair. Mr. Wilson [an officer of the United Company] would not make the trade." (I, 159, l. 24–28.) None the less, a demand for the Eppler machine continued, even after the consolidation.

Frederick G. King (I, 696, l. 30) called by the defendants testified that he was manager of the Goodyear Department of the United Company; that since the United Company was formed it had put out more than *forty* Eppler welters and more than *twenty* Eppler stitchers, but that he did not recollect that any auxiliary machines were put out; also that the last Eppler machines were received back by the United Company about December, *1912*. (I. 702, ls. 9–15.)

After all, the preponderant cause is found in the following:

There was a circular letter sent by the directors of the Goodyear Company to the stockholders of that

company announcing the organization of the United Company and inviting their participation. That statement (Plff's Ex. 152, I, 140) was drawn by defendant witness Howe (I, 630, l. 18). It contained the following:

> The great advantages to be secured by the control in one corporation, both in the United States and foreign countries, of the most efficient types of shoe machinery have been for several years recognized by the officers of the principal shoe machinery companies. For more than a year your directors and large stockholders have been in negotiations to accomplish this end.
>
> The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock.

When asked about the meaning of the paragraph first quoted above, Howe said (I, 630, l. 18 et seq.):

> I drew the circular letter to the stockholders of the Goodyear Company, which is Plaintiff's Exhibit 152. As to what I had in mind in making the statement in the first sentence in that circular, when this circular was issued, we had acquired the Eppler Welt Machine Company. * * * Therefore we had then the most efficient types of shoe machinery—perhaps I should have said protected by patents—in that we had the Goodyear welt and turn sewing machines and a long line of auxiliaries, which were the only system or set of machines which would make the Goodyear

> welts. * * * If any manufacturer wanted to make Eppler welts, we had the only system that would make them. Therefore, that seemed to my mind at that time—the United Shoe Machinery Company did—to represent the control in one corporation of the most efficient types of shoe machinery,

and he added:

> We didn't know whether the manufacturers would prefer, if there were no litigation at all between the two companies, whether the trade would prefer Eppler welts or whether they would prefer Goodyear welts. (I, 630, l. 43; 631, l. 1–3.)

This statement of the chief managing officer of the Goodyear Company (I, 466, l. 34 et seq.) that those concerned in the organization of the United Company did not know "whether or not the trade" eventually "would prefer the Eppler" machines to the Goodyear machines demonstrates that the Eppler Company was an important actual and even more important potential competitor of the Goodyear Company with which it was combined in the organization of the United Company. Taking this fact in conjunction with his explanation that the purpose of himself and associates was to place in the control of one corporation "the most efficient types of shoe machinery," there can be no doubt as to the real reason why the Eppler Company was absorbed. It was for the purpose of monopolization.

C. THE CONSOLIDATED & McKAY COMPANY HAD A MONOPOLY IN PEGGING MACHINES.

Formerly at least three types of pegging machines had been in use (I, 534, l. 34–39). At the time of the organization of the United Company, however, only the Davey Pegging Machine Company then owned by the Consolidated & McKay Company was putting out such machines. Pegged shoes had become an increasingly negligible factor in the industry. Of the 173,000,000 pairs of shoes made in 1899, only 7,475,000 were pegged. Of the 279,000,000 pairs made in 1910, only 3,000,000 were pegged (Dfts. Ex. 215, I, 424).

D. THE McKAY SHOE MACHINERY COMPANY HAD A SUBSTANTIAL MONOPOLY IN METALLIC AND HEELING MACHINES.

At the time of the formation of the United Company in 1899, the McKay Shoe Machinery Company was not a competitor of either the Eppler, the Goodyear, or the Consolidated & McKay Company. It did not produce either a welter, laster, or outsole stitcher. But it had a substantial monopoly of the more important metallic machines.

Mr. Winslow said, referring to metallic machines,

> As regards different kinds or makes of machines there were not a great many in 1899 and practically all were being made by the McKay Company, which was putting out a large number of those machines. My best information is that the McKay Company was putting out all the heel attaching machines that were being put out in 1899, and that no other company had put out any heel attach-

> ing machines for quite a number of years prior to 1899. When I speak of a heeling machine, I mean a heel attaching machine always. (I, 851, l. 23, et seq.)

As to metallic fastening machines other than heeling machines, Mr. Winslow said,

> I think the Metallic Association * * * the stock of which was owned by the McKay Company were putting out nearly all the metallic fastening machines that were being made in the United States. (I, 532, l. 6, et seq.)

The acquisition of this company by the United Company did not, in itself, destroy existing competition. It did, however, remove the possibility that this powerful corporation engaged in a cognate line of business might some day become a competitor of the United Company, a familiar occurrence. (Cmp. what is said by counsel for the International Harvester Company with respect to the entry of Deere & Co. into the field of harvesting machinery.) The acquisition, moreover, had a much more important result. As will appear, it completed the defendants' fabric of monopoly in important bottoming machinery and made fully effective the system of leasing, which will be set out. (*Infra*, pp. 154–221.)

III. THE ORGANIZATION OF THE UNITED SHOE MACHINERY COMPANY IN 1899.

It has already been stated that the United Shoe Machinery Company of New Jersey was incorporated February 7, 1899. The circumstances which led up

to its formation were related in considerable detail both by Mr. Winslow and Mr. Howe who appear to have been the prime movers of the project. (Winslow, I, 406, l. 35; Howe, I, 627, l. 44; 628, l. 1, 2.)

Mr. Winslow was the principal man in the Consolidated & McKay Company. (I, 406, l. 25; 522, l. 20.) That company, as has been noted, put out a line of lasting machines which substantially covered the field, and it owned the Davey Company, which was the only company then putting out pegging machines. Mr. Howe was the principal executive officer of the Goodyear Company (I, 466, l. 34) which had a large business in welt-method machines, and a considerable business in lasting machines. The competition between these two companies has been noted above. (*Supra*, pp. 21–39.)

The discussions between Mr. Winslow and Mr. Howe covered several months. The date was 1898. Mr. Howe was a lawyer of wide experience in patent and corporation law, having come to the bar in 1878. (I, 466, l. 28.) Mr. Winslow was not a lawyer. Mr. Howe was "opposed to the plan of having a harmonious agreement, a sort of working agreement between the Lasting Machine Company [the Consolidated & McKay Co.] and the Goodyear Company because (he) had a sort of indefinite idea that it might be deemed a combination in restraint of trade." (I, 629, l. 20.) He evidently thought, however, as did a good many other lawyers at that chronological stage of the interpretation of the Sherman Law, that it was enough to escape the penalties of

the statute to give the combination a corporate form. He insisted, therefore, "that there should be a complete merger and consolidation." (I, 630, l. 7.) This idea "led to the formation of the United Company instead of carrying out the matter in the other way." (Howe, I, 675, l. 13.) Mr. Howe added, "I think it was under my advice." (Ibid.) Mr. Winslow says he was in accord with the general policy outlined by Mr. Howe upon this point. (I, 535, l. 14.)

In addition to being a lawyer, Mr. Howe was a practical business man, for he says that the management of the Goodyear Company "fell very largely upon" him. (I, 466, l. 34.) He knew whether or not the welter, stitcher, and auxiliaries which his company was putting out competed with the welter, stitcher, and auxiliaries of the Eppler company and he knew whether the lasting machines put out by the Consolidated & McKay Company were competitors of the lasting machine put out by his company. Because of what he knew, he also knew that the *combination of the companies would suppress competition* and restrain trade. His error, not then uncommon, in supposing that a *combination in corporate form* could suppress competition and escape the penalties of the Sherman Law, is discussed *infra*, p. 237.

The plan was thereafter expanded to include the McKay Shoe Machinery Company which had a monopoly of its particular field, and had not yet extended its activities to the point of competition with the Consolidated & McKay or the Goodyear Compa-

nies, *supra*. The only reason given by Mr. Howe for the inclusion of the McKay Shoe Machinery Company was the opportunity to consolidate its agencies with those of the Goodyear Company. (I, 633, l. 27.) Mr. Winslow, however (I, 409, l. 29), apparently did not think very highly of the agencies of the McKay Company. He suggests as a reason for the inclusion of the McKay Company that its managing director, Mr. Brooks, was an old man, and wanted to retire (I, 406, l. 41), and his final statement was that he believed that by adding the metallic and heeling machines to the lasting and welt method machines they could give better service, get a better product from the machines, and get better results to the manufacturers and themselves. (Winslow, I, 529, l. 27 et seq.) This is the customary justification for monopoly. And he must have had a belief approaching certainty that a far-reaching monopoly would result. Whatever the reason, the fact was that the McKay Company was acquired at a price of eleven dollars a share for stock which was selling on the market at eight or nine dollars (I, 533, l. 40) and the original offer was raised from nine to eleven dollars in order to get it. (Howe, I, 633, l. 41.) There is no ambiguity about the monopolistic result. (*Infra*, p. 61.)

It was decided also to acquire the business of the Eppler Welt Machine Company. The business of that company in welt machinery has been described. (*Supra*, pp. 39–55.) It is insisted that this company

was taken in only to avoid the litigation above described. (Winslow, I, 531, l. 34.) The facts as to this litigation have been noticed. (*Supra*, pp. 49–52.) For some reason best known to the parties concerned, this stock was treated differently from that of the other companies. Instead of an offer to exchange the stock of the United Company for the stock of the Eppler Company, the stock of the latter company was purchased quietly by Mr. Endicott and later turned over to a syndicate which took it for the United Company and turned it over to that company. (Winslow, I, 528, l. 42; 529, l. 1–3; 530, l. 1 et seq.)

IV. CONSEQUENCES OF THE FORMATION OF THE UNITED COMPANY AND THE SUPPRESSION OF EXISTING AND POTENTIAL COMPETITION.

The formation of the United Company brought under a single control every company actively putting out or planning to put out lasting, pegging, welt sewing and outsole stitching, heeling and the more important metallic fastening machines in the United States. (Jones, I, 112, l. 22; Selz, I, 142–145; Winslow, I, 537, l. 32; 851, l. 19 et seq.; Howe, I, 630, l. 24 et seq.)

The immediate results were:

(1) The suppression of the actual and of the potential competition in lasting machines theretofore existing between the Consolidated & McKay Company and the Goodyear Shoe Machinery Company. (*Supra*, pp. 21–39.) It created a monopoly in lasting machines.

(2) The suppression of the actual and of the potential competition between the Goodyear Shoe Machinery Company and the Eppler Welt Machine Company. (*Supra*, pp. 39–55.) It created a monopoly of welting and outsole stitching machinery.

(3) The absolute prevention of future competition between the McKay Shoe Machinery Company, the Goodyear Shoe Machinery Company, the Eppler Welt Machine Company, and the Consolidated & McKay Company.

(4) The creation of an absolute and complete monopoly in lasting, pegging, welting, outsole stitching, heeling and metallic fastening machines.

(5) The creation of an organization with vast resources whose control of many different types of machines necessary to the shoe manufacturing industry gave it a power to extend and intrench its monopoly which none of its constitutent companies, however successful, could approach.

A simple illustration makes this clear. Before the consolidation the McKay Company had a monopoly of metallic machines. (*Supra*, p. 56.) But a shoe manufacturer, though obliged to go to it for such machines, was free to choose welt machinery where he could find it. The leases of each of the constituent companies dealt only with the machines made by it. In the case put, therefore, a competitor of the Goodyear Company would not be affected by the McKay Company's monopoly. After the consolidation, however, it became possible for the United Company to say to a manufacturer seek-

ing metallic machines that he could have them on acceptable terms only if he used also United Company's welt machinery, lasting machinery, and so on through the list.

From the formation of the United Company, therefore, it became possible to that company to destroy any competitor who had only one or two types of machines to offer, no matter what the excellence of those machines. It acquired the power, by using an appropriate leasing system, to eliminate and forever exclude all competitors and to maintain a monopoly of all the lines of machines made by it.

The manner in which exactly this was accomplished under the system of leases devised and enforced by the United Company to transform into fact the possibilities of monopoly afforded by the circumstances of its organization appears *infra*, pp. 154–221.

The effect of the consolidation of those companies was precisely the same as if they had remained *separate* but had entered into a written agreement vesting in Winslow and the other persons who became officers of the United Company the power to refuse the machines of one company to any shoe manufacturer who would not agree to operate them only in connection with the machines of the other companies.

Even Mr. Howe recognized the illegality of such a plan. The device of corporate organization was accordingly resorted to. (*Supra*, p. 59.) Such an artifice is not a way of escape from the prohibition of the Sherman Law. (*Infra*, p. 237.)

Control of the McKay Shoe Machinery Company was necessary to the success of a design to exclude competition in the manner just outlined. This is, as was suggested, a sufficient and, it is submitted, the true reason for taking in that company.

(6) The creation of a corporation so powerful that it could raise royalties, e. g., by increasing the royalty on welt machines established by the Eppler Company at three cents to four cents (*supra*, p. 53); bring about a manufacturer's giving up machines to which he had title, and substituting machines for whose mere use he must pay royalties by refusing to supply repair parts (McElroy, I, 189, l. 39); compel an association of manufacturers to accept leases to whose terms they made earnest objection (*infra*, p. 216); and generally to become an overlord of the industry.

V. THE EXPRESSED PURPOSE OF THE CONSOLIDATION.

The evidence establishes that it was the purpose of the combiners to create and perpetuate a monopoly in the lines of shoe machinery then put out by the companies entering the combination and to extend it to other lines.

This purpose was expressed. When the organization of the United Company had been determined upon, the directors of each of the constituent companies sent out, as we have shown, an address to its stockholders; and in the first paragraph of the address to the stockholders of the Goodyear Shoe Ma-

chinery Company, dated February 8, 1899, it was said:

> The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most efficient types of shoe machinery have been for several years recognized by the officers of the principal shoe-machinery companies. For more than a year your directors and large shareholders have been in negotiation to accomplish this end. * * *
>
> The United Company will also from time to time acquire other shoe-machinery properties, either by direct ownership or by purchase of shares of their stock. (Plff's Ex. 152, I, 140.)

Mr. Winslow was confronted (I, 535, l. 22) with this statement of which Mr. Howe admitted authorship (I, 630, l. 18). He did not deny that the original purpose of the United Company was that set forth in the above quotation. And it is very significant with respect to the purpose actuating the combination that 20 days after its organization the United Company bought out the Goddu Company, a competitor. (*Infra*, pp. 69–72.)

Speaking of that acquisition, Mrs. Converse, formerly Miss Van Wagennen, daughter of the treasurer of that company, testified to a conversation with Mr. Winslow on February 3, 1900, about the purchase of the stock of that company in which he said, "Miss Van Wagennen, I bought them out to get rid of them, to have no more trouble or *competition* with them." (I, 311, l. 32; 312, l. 11.)

Mr. Winslow at first denied this, although he admitted the conversation with her, and then said, "I do not remember any talk about competition." (I, 437, l. 17.) But Mrs. Converse supported her statement by producing what she testified was a substantial copy of a memorandum of the conversation made by her at the time. (I, 312, l. 30–32.)

Other instances showing that it was Winslow's purpose to suppress competition by the purchase of competing companies appear later on. (*Infra*, pp. 72–133.)

A contract entered into on September 11, 1899, between the United Company and Henry W. Peabody & Company, wherein Peabody & Company were made agents of the United Company in Australia, contains the following:

> Whereas the United Company have acquired control of the boot and shoe and leather working machinery made by the following-named corporations doing business in said Boston, namely:
>
> Goodyear Shoe Machinery Company,
> Consolidated & McKay Lasting Machine Company,
> McKay Shoe Machine Company,
> Eppler Welt Machine Company,
> Goddu Metal Fastening Company,
> Gordon Staple Lasting and Tacking Co.,
> Davey Pegging Machine Company,
> Gem Flexible Insole Company,
> Boot & Shoe Sole Laying Company,
>
> and contemplates acquiring the control of other lines of boot and shoe and leather work-

ing machinery and boot and shoe findings, except leather, linings, lasts, and finished boots and shoes. (Plff's Ex. 189, IV, 1250.)

That contract was signed by George W. Brown, treasurer of the United Company. And after Winslow had stated that he was in constant communication with Brown about the various matters affecting the company and its policy, he was asked whether Mr. Brown was correct in the recitals just quoted. He answered with a significant evasion. (I, 536, l. 3.)

There is no doubt that the organization of the United Company accomplished exactly the purpose of combining "in one corporation the most efficient types of shoe machinery," most of which before the combination were competitive. (Plff's Ex. 152, *supra.*) The recitals of the contract quoted above show that the United Company contemplated exactly the expansion of that company which in fact took place. The inevitable results upon interstate commerce have been noted and will be the subject of further comment. In the face of these facts, literal denials of specific intent to restrain trade are of no significance.

VI. SUBSEQUENT ACQUISITIONS MADE BY UNITED COMPANY FOR PURPOSE OF DESTROYING COMPETITION AND EXTENDING ITS MONOPOLY.

A. ACQUISITIONS OTHER THAN THE PLANT PURCHASE.

In the record (I, 37–105) are set out summaries of contracts of purchase and bills of sale under which the United Company acquired the shoe machinery business and assets of fifty-six individuals, partnerships,

and corporations, not including the properties of Thomas G. Plant, which are dealt with separately hereafter. The result of these acquisitions was to remove certain remains of competition, to give the United Company control of a number of shoe manufacturing machines previously freely obtainable in the open market, and so to intensify the possibilities of domination already noted as an effect of the original consolidation. They emphasize and make clear the intent to monopolize which underlay defendants' course of action. In many instances covenants were exacted from the vendors designed to prevent future competition with the United Company where the vendors were inventors. These covenants required assignment to the United Company of all inventions made during a period of years.

The general attitude of the defendants with respect to these acquisitions is vividly exemplified by the testimony of C. H. Krippendorf. The witness was a director of the National Boot & Shoe Manufacturers' Association. Testifying with regard to Mr. Winslow's statements at a conference with a committee of that body, Krippendorf said:

> After discussion, he said, in substance, "We in order to prevent competition, have to buy out competing machines, and we have endeavored to create a condition under which we don't have to pay more money for those machines than they are worth." (I, 214, ls. 35–39.)

It is also a fact that in some cases what was purchased was patent rights and inventions and not

machines. This difference would seem to be of no importance. A prospective competitor is none the less such because he has only proceeded to the point of acquiring a valid patent under which to pursue competition at the time he is removed from the field by acquisition.

For example, the first of the acquisitions proved was that of the Goddu Company. This was consummated less than a month after the organization of the United Company and was deemed by defendants of sufficient importance to warrant inclusion in the recitals of the Henry W. Peabody contract. (*Supra*, p. 66.) The Goddu Company was engaged in perfecting and manufacturing nailing machines, slugging machines, tacking machines and standard screw machines—all important metallic fastening machines. No other concern except the United Company was engaged in this field. The United Company, as successor to the McKay Company, was putting out machines for doing the work for which the Goddu machines were adapted. (I, 42, l. 1.) The Goddu machines, according to Winslow, were not yet in a condition to be placed in the hands of manufacturers for continuous operation, "but they were in a state of development where some of them could have been, without extensive changes, made operative." (I, 436, l. 28.)

In view of this testimony there would seem to be no warrant for the contention of one of the judges below that "the evidence is not sufficient for a belief that without reconstruction, radical in character, anyone

could have used them as competing machines." In any event, it appeared that the very thing the Goddus were doing was the perfection, by all necessary reconstruction, of their machines. The contention referred to is made as a basis for the proposition that, if a competitor is likely to become so important that his removal after his competition had become actual would be illegal, illegality is escaped by removing him before he develops to that point. This is ingenious, but it is not the law. (*Infra*, pp. 252–254.)

In the particular case the reason given by Mr. Winslow for the acquisition, at a cost of about $150,000 (Plff's Ex. 60, III, 514), was the disposal of patent litigation to which the United Company had succeeded as *plaintiffs*. Howard testified that all the alleged infringements were on the part of the Goddus. (I, 849, l. 4.) The disposal of such litigation could hardly be worth $150,000 to the defendants. The removal of an able competitor might well have been worth that amount. The testimony of Mrs. Converse, previously referred to, shows this reason to be the true one. Her father had been a stockholder and was treasurer of the Goddu Company from its organization in 1897. (It had been in existence less than two years when acquired.) The actual purchase by the defendants was of the stock belonging to the Goddus, who possessed inventive ability (I, 436, l. 42) as the witness's father apparently did not. When the Goddus sold out they left her father and others in. (I, 312, l. 25.) Mrs. Converse testified to a subsequent conversation with Mr.

Winslow to which reference has previously been made and which was supported by a copy of a contemporaneous memorandum. She said:

> We had discussed a long while. I said to Mr. Winslow, "If you say what is true, that they had no business and no machines,and no money in the treasury and no money—they couldn't raise money to go on with the business, and no manufacturers to take them—they couldn't put them on the market then," I said, "Mr. Winslow, why did you buy them out—because they would have gone to the wall—they would have had to if you say what is true—they could never have competed with you, a rich, powerful trust; why didn't you leave them alone and let them die a natural death, which they would have done? Why did you buy them out?" And he said: "Miss Van Waggenen, I bought them out to get rid of them, to have no more trouble or competition with them." (I, 312, l. 1.)

The Goddu Company ceased to do business. The Goddus under the contract agreed to assign any and all inventions which they should thereafter make within a period of 10 years and agreed that thereafter they would not during a period of 10 years engage directly or indirectly in the business of making or selling any invention relating in *any* way to machinery useful in the manufacture of boots and shoes. (Plff's Ex. 60, III, 518, par. 1.)

Thus, by this initial acquisition the prospective opportunity of shoe manufactures to obtain metallic machines elsewhere than from the defendants was

removed, and the defendants were enabled to say to a shoe manufacturer in need of such machines, "You may have metallic machines on acceptable terms only if you are willing to use them upon shoes upon which other operations are performed by our lasting and other machines."

It is unnecessary to review in detail all of the 56 acquisitions set out in the testimony. Some may, however, be noted as having special significance in the aspects already shown.

Among these are the following transactions:

1. WINKLEY AND PHILLIPS.

On March 16, 1900, the United Company acquired from Erastus E. Winkley and Benjamin Phillips their inventions and improvements relating to "sole leveling machines," agreeing to pay to Winkley and Phillips a royalty of $20 for each made or sold, leased, or otherwise disposed of. (Plff's Ex. 77, III, 615, par. 3.)

It took covenants from Winkley and Phillips that all inventions or improvements in sole-leveling machines or sole-pressing machines which they should *thereafter* make or acquire should be conveyed to the United Company. (Plff's Ex. 77, III, 615 par. 7.)

Howard, defendants' patent attorney and expert (I, 41, l. 27), testified that at the time of acquiring the above inventions or improvements the United Company was engaged in putting out sole-leveling machines, but that they were not of the same type as those covered by the inventions and improvements acquired (I, 48, l. 11).

2. SWAIN-FULLER MANUFACTURING COMPANY.

On February 2, 1911, United Company acquired the business and assets, including the latters patent, of Swain-Fuller Manufacturing Company, Boston, Mass., a Maine corporation engaged in manufacturing shoe machines, paying therefor $13,201.98, part in cash and part in preferred stock of the United Company. (Plff's Ex. 88, III, 660, par. 1; Dfts' Ex. 231, V, 454.)

Howard testified that the Swain-Fuller Company was manufacturing and putting out, among others, a machine known as the "Star leveling machine," used practically exclusively on turn shoes, and that the United Company was manufacturing and putting out a leveling machine, but he claimed that the United Company's machine was not adapted for leveling turn shoes. (Howard I, 53, l. 20.)

Winslow testified that by this purchase they also acquired a "Single sole-molding" machine. (I, 459, l. 28. Dfts' Ex. 231, V, 455.)

3. CARVER COTTON GIN COMPANY.

On April 30, 1908, the United Company acquired for $16,883 cash the shoe machinery business of the Carver Cotton Gin Company, a corporation engaged in the business of manufacturing and putting out machines and devices used in the manufacture of shoes. (Plff's Ex. 127, IV, 893.)

The United Company took from the vendors covenants that they would not within 15 years directly or indirectly enter into or assist any other

concern in entering into or carrying on any business relating to manufacturing or dealing in any machininery or devices used in the manufacture of shoes, or any other business which would *in any way interfere* or *compete* with the business of the United Company with respect to such machines or devices. (Plff's Ex. 127, IV, 895.)

Howard testified that among the machines obtained from the Carver Cotton Gin Company were the Acme leveling machine, a vamp skiving machine, and a machine known as the Davis leather-board skiver. (I, 71, l. 1.)

He further testified that at the time of this agreement the United Company was putting out the Goodyear automatic leveler and the Emerson skiving machines, but that the acquired machine did not do the work in the same way. (I, 70, l. 37.) Even though this be admitted the result accomplished was the same.

Since the acquisition of its shoe machinery business, the Carver Cotton Gin Company has continued with its cotton gin business.

By these three acquisitions the defendants acquired control of a machine needed in manufacturing all kinds of shoes. The leveling machine used in welt shoes is now put out only as an auxiliary machine. (Dfts' Ex. 231, V, 457.) It can not be obtained for use with welt machinery supplied by any competitor of the defendants. (I, 468, l. 34; 544, l. 10.)

4. THE SEAVER PROCESS LASTING COMPANY.

On January 30, 1900, the United Company acquired for $38,000 (capital stock $600,000) the business and assets, including all letters patent of the Seaver Process Lasting Company, a corporation engaged in manufacturing *lasting* machines and *pulling-over* machines used in the manufacture of shoes. (Plff's Ex. 75, III, 591.) The Seaver Company was then insolvent. (Winslow, I, 456, l. 30.)

Suits had been brought by the Consolidated & McKay Company against the Seaver Company. The record does not show that the suits were ever prosecuted to a final determination.

The Seaver Company was the only company putting out lasting machines in 1899, except the Goodyear and Consolidated Companies. (*Supra*, p. 22.) It had also a pulling-over machine; as had the United Company. (Howard, I, 47, l. 8.) The development of the latter machine was continued. It is now put out by the United Company and is a successful machine. No other pulling-over machine is now offered by any American manufacturer of shoe machinery. (Dfts' Ex. 235, V, 585 [72].)

The result of this acquisition, then, was to remove the final vestige of competition in lasting machines, and to shake off the possibility of competition in pulling-over machines.

5. CORRUGATED WIRE FASTENING COMPANY.

On June 30, 1899, defendant Hurd, in behalf of the United Company, acquired for $12,750 from Silas Pierce and John M. Kingsbury a majority of the

capital stock of the Corrugated Wire Fastening Company, Boston, a corporation engaged in the manufacture and sale of a tacking machine and corrugated wire used in the manufacture of boots and shoes. (Plff's Ex. 62, III, 530–531; Donham, I, 37, l. 43; 38, l. 1; Dfts'. Ex. 231, V, 474.)

Howard testified that the United Company had a machine for performing the *same* character of work as the one obtained from the Corrugated Company. (I, 42, l. 17.) He says the machine was "out of date" (I, 42, l. 16), but this is discredited by the further statement which he makes, viz, "The United Company continued to supply wire and parts for those machines. They have parts in stock to-day." (I, 42, l. 34.)

The Corrugated Company was discontinued as a going concern and its business transferred to the factory of the United Company. (Dfts'. Ex. 231, V, 475.)

6. GLOBE SEWING MACHINE COMPANY.

On February 15, 1901, the United Company acquired control of the stock of the Globe Sewing Machine Company, Boston, a corporation engaged in putting out sewing machines used in the manufacture of shoes, paying therefor $20,000. (Plff's Ex. 89, III, 662.)

Howard testified that at the time of acquiring stock control of the Globe Company that company was engaged in manufacturing a *welting* machine, an *outsole stitching machine*, and an experimental *rough rounding machine*. The business of the Globe

Sewing Machine Company was discontinued. (Howard, I, 53, l. 36.)

By this acquisition a possible competitor in welt method machines was removed. It is noteworthy that the Globe Company had an experimental rough rounder. The absence of such a machine is said by defendants' witnesses to have been a weakness in Mr. Plant's effort to produce a complete line of independent shoe machinery. (I, 776, l. 29.)

7. ROSS-MOYER MANUFACTURING COMPANY.

On September 20, 1900, the United Company acquired for $86,580 all the business of the Ross-Moyer Manufacturing Company, Cincinnati, engaged in manufacturing and putting out *edge setters, edge trimmers,* heel scourers, buffing machines, rolling machines, etc., used in the manufacture of shoes. (Dfts'. Ex. 231, V, 451, 454.)

On the same day an employment agreement was made by the United Company with Simon Ross, under the terms of which he contracted that in consideration of the purchase of the Ross-Moyer Company, and the agreement to employ him, he would not during a period of *ten* years engage in the manufacture of, or deal in, machines, tools, or appliances in *competition* with said United Company and would convey to the United Company any invention relating to shoe machinery which he then owned, or which he should thereafter, during the period of ten years, invent. (Plff's Ex. 87, III, 658.)

Howard testified that at the time of the acquisition of the Ross-Moyer Company the United Company was engaged in putting out *edge setters* and *edge trimmers*. (I, 52, l. 44.)

The Ross-Moyer Company (issued capital stock $197,400—all owned by the United Company) now acts as agent for the United Company. (Plff's Ex. 187, IV, 1235.)

Defendant Winslow is also president of the Ross-Moyer Company (Plff's Ex. 188, IV, 1242), and he and Howe are on its board of directors (Plff's Ex. 188, IV, 1247).

4. EDWIN THEOPHILUS FREEMAN.

On October 9, 1899, the United Company acquired from Edwin Theophilus Freeman, Boston, all of his business, including machinery and letters patent of the United States, relating to nailing machines used in the manufacture of shoes, for $11,000, $500 in cash and $10,500 in preferred stock of the United Company, and in addition thereto $500 per year as royalties for a period of eight years. (Plff's Ex. 68, III, 568.)

The United Company took from Freeman, for the same consideration, covenants that he would not *thereafter* engage in the manufacture of, or deal in, or directly or indirectly aid, assist, or encourage anyone to engage in the manufacture of, or to deal in, boot and shoe or leather-working machinery, in *competition* with said United Company, or the corporations owned or controlled by it, and an additional covenant from Freeman that he would "convey to said United Com-

pany any and all improvements or inventions in or relating to shoe machinery which he has made, or which he shall hereafter make." (Plff's Ex. 68, III, 570, par. 3.)

Howard testified that when the above agreement was entered into with Freeman the United Company already had a nailing machine for performing operations *similar* to the operations performed by the Freeman machine. (I, 44, l. 37.)

It is claimed by the defendants that there were cross infringements of the United's machines by Freeman and of the Freeman patents by a machine that the United Company was developing, although no infringement suits had been brought. (Dfts.' Ex. 275, V, 757.)

9. ALBERT G. BREWER.

On October 11, 1899, the United Company acquired from Albert G. Brewer, Hopkinton, all of his inventions and improvements in machines used in the manufacture of boots and shoes known to the trade as "heel-breasting machines" for $250 in cash and $5 royalty on each machine thereafter marketed by the United Company. (Plff's Ex. 70, III, 576.)

It took also from Brewer an assignment of "all inventions which he may hereafter make relating to machines for breasting heels on the last."

Howard testified that Brewer had built an experimental heel-breasting machine, and that the United Company, prior to the acquisition of Brewer's machines, had been experimenting with a machine for performing *similar* operations, but that it was not

upon the market as a commercial machine; that Brewer's inventions were subsequently embodied in the United's machines. (I, 45 l. 14.)

The defendants claimed that Brewer's machine infringed one of the United's patents, but there is no evidence that the United's machine infringed Brewer's patents.

Six hundred and ninety-eight power heel-breasting machines alleged to have embodied the Brewer inventions, were subsequently made and put out by the United Company. (Dfts'. Ex. 275, V, 759.)

10. AMERICAN SOLE LAYING MACHINE COMPANY.

On September 25, 1902, the United Company acquired for $5,200 from Arthur Fuller, all the property and assets, including letters patent of the American Sole Laying Machine Company, Boston, a corporation, engaged in manufacturing and putting out machines designed and used for laying or leveling shoes. (Plff's Ex. 98, IV, 705.)

The United Company took from Fuller covenants that he would not become interested, directly or indirectly, for a period of ten years in the business of manufacturing machines adapted for use in the operation of laying or leveling the soles of boots and shoes. (Plff's Ex. 98, IV, 708, par. 9.)

Howard testified that at the time of the acquisition of the business of the American Sole Laying Machine Company, the United Company was engaged in manufacturing and putting out machines for laying the soles of boots and shoes, although he claims that

the United Company's machines were inferior to those of the American Sole Laying Company. (I, 56, l. 19.)

11. BOOT & SHOE SOLE LAYING COMPANY

On May 25, 1901, the United Company acquired for $45,000 cash, the property and business of the Boot & Shoe Sole Laying Company, Boston, a corporation, engaged in manufacturing and putting out machines designed and used for laying the soles of boots and shoes. (Plff's Ex. 90, III, 666.)

Howard testified that, at the time, this company was engaged in manufacturing and putting out a sole-laying machine known as the "Boston sole layer," and that the United Company was then engaged in putting out a machine for doing *similar* work, although he claims that the United's machine was inferior to the machine acquired. The acquired company was discontinued as a going concern and its business taken over by the United Company. (I, 54, l. 20 et seq.)

12. J. K. KRIEG & COMPANY.

On May 6, 1903, the United Company acquired for $97,056.52 the property and assets of J. K. Krieg & Company, New York, engaged in manufacturing and dealing in shoe machinery, etc. (Plff's Ex. 104, IV, p. 746, also Ex. 105, IV, 752.) The United Company took from the vendors covenants that they would not engage for a period of 15 years, except as employees of said United Company or some one of its controlled corporations, in any business relating

in any way to the manufacture of or dealing in shoe machinery, or in any business which would in any way interfere with or *compete* with said United Company. (Plff's Ex. 104, IV, 750, par. 8.)

Howard testified that the Krieg Company was engaged in putting out a heel-seat rounding machine, a Louis heel-scarfing machine, and two or three types of embossing machines; that the United Company at that time was putting out a heel-seat rounder and a scarfing machine of different types; that the United Company was also engaged in putting out embossing machines. (I, 60, l. 28.)

Winslow testified that the Krieg Company had also been agent for some of the old companies that became a part of the United. (I, 419, l. 31.)

11. JOSEPH P. CURTIS.

On October 20, 1903, the United Company acquired from Joseph P. Curtis, Everett, Mass., all of his business, including letters patent and applications relating to cementing machines for $500 in cash and the balance in royalties until the total should amount to $5,000. (Plff's Ex. 106, IV, 756.)

The United Company took from Curtis conveyances of all inventions and improvements which he should *at any time thereafter* make relating to cementing machines, and all letters patent and interest therein. (Plff's Ex. 106, IV, 755.)

Howard testified that at the time of entering into the above agreement with Curtis the United Company was engaged in putting out a cementing ma-

chine, but for performing an entirely different operation from that performed by the Curtis machine. (Howard, I., 61, l. 12.)

14. GEORGE A. SMITH MACHINERY COMPANY.

On November 20, 1902, the United Company acquired for $38,790.79 from George A. Smith all the assets and business of the George A. Smith Machinery Company, a corporation "engaged in the business of manufacturing devices and supplies used by manufacturers and dealers in boots and shoes, and by others." (Plff's Ex. 100, IV, 721, 2nd par.)

The United Company took from the vendor covenants that he would not at any time within 10 years enter into or be engaged in or assist any other person in entering or carrying on any business relating to the manufacture or sale of any machinery intended or adapted for use in the manufacture of boots or shoes, or *compete* or interfere with any business carried on by said United Company, or by any company of which it is the owner of the majority of the capital stock. (Plff's Ex. 100, IV, 723, par. 4.)

Howard testified that the Smith Company at the time of its acquisition was putting out a spring-heel scarfing machine, and that at the time the United Company was not putting out a machine for doing similar work. (I, 58, l. 3.) He further testified that the Smith Company had also been acting as agent prior to 1899 for certain of the companies that made up the United Company. (I, 57, l. 42.)

13. ARNOLD MACHINE & SUPPLY COMPANY (WILLIAM B. ARNOLD).

On June 28, 1904, the United Company acquired all the business and assets of the Arnold Machine & Supply Company, Boston, a corporation engaged in manufacturing and putting out cementing machines used in the manufacture of boots and shoes, for $500 cash, and the royalties to be paid on each machine thereafter manufactured by the United Company during the life of the patents transferred. (Plff's Ex. 113, IV, 820.)

The United Company for the same consideration required and took from Arnold restrictive covenants similar to the others already noted, providing that he would not engage in a like business within 15 years, and would convey to it any inventions relating to such machinery he might make. (Plff's Ex. 113, IV, 818.)

Howard testified that at the time of entering into the above agreement the United Company was engaging in putting out *cementing* machines, but he claimed that they were not adapted for work similar to that of the Arnold machine. (I, 64, l. 39 et seq.)

14. BOOTH BROTHERS.

On October 25, 1904, the United Company acquired from Booth Brothers, Rochester, N. Y., an assignment of their business in the United States and Canada relating to *perforating* machines, for $24,000 and a royalty of $15 to be paid for each machine thereafter sold by the United Company in the United States and $10 for each machine sold by it in Canada; the said royalties to be continued until they should

aggregate $7,600, whereupon all interest of said Booth Brothers in the said inventions should cease. (Plff's Ex. 114, IV, 823, par. 2.)

The United Company took covenants from the vendors that neither of them would engage in the manufacture or sale of any perforating machines, or become interested in any manner whatsoever in any such machines during the terms of the patents assigned to the United Company. (Plff's Ex. 114, IV, 825, par. 8.)

Howard testified that the United Company was engaged in putting out a *perforating* machine which could be used for the same operation as the Booth machines, although he claimed that it was not *intended* for the same operation. (I., 65, l. 28.)

On November 1, 1907, the United Company acquired for $71,284 the entire remaining business of Booth Brothers of manufacturing and putting out machinery, tools, mechanisms, devices, findings, materials, and supplies used in the manufacture of boots and shoes. (Plff's Exs. 121–124, IV, 856–871.) The United Company took from the vendors elaborate restrictive covenants, excluding the vendors from having any interest in any shoe machinery business or any business or patents relating to the manufacture of shoes for a term of 15 years. (Plff's Ex. 121, IV, 859.)

Howard testified that the United Company through the above agreement acquired from Booth Brothers a fudge edge-making machine, a *wheeling* machine,

a stitch burnishing machine, an upper-shaping machine, and a *beating* machine. He further testified that the United Company at that time had a *wheeling* machine and an upper-*beating* machine. (I, 69, l. 9.)

Having acquired Booth Brothers' business, a corporation was formed under the laws of New York, with a capital of $25,000, all of which is issued and owned by the United Company. It operates a manufacturing plant at Rochester, N. Y. Winslow became president of the company and also a director, as well as defendants Hurd, Howe, and Coolidge. (Plff's Exs. 187, IV, 1232, 188; IV, 1240, 1246.)

17. FRED H. PERRY.

On January 1, 1904, Fred H. Perry entered into an agreement with the United Company wherein he agreed to convey to that company all inventions which he should make relating to shoe machinery for a period of five years from the termination of his employment by the United Company. (I, 61, l. 19, et seq.)

18. BOSTON SHOE TOOL COMPANY.

On August 16, 1899, the United Company acquired the business of Timothy A. Bresnahan, Boston, engaged in manufacturing and putting out machines, tools, and appliances used in the manufacture of shoes, together with the entire capital stock of the Boston Shoe Tool Company for approximately $72,000, paid in cash and preferred stock of the United Company. (I, 38, l. 33; Plff's Ex. 67, III, 563 et seq.; Dfts' Ex. 231, V, 460.) The business of

the Boston Shoe Tool Company as a going concern was discontinued and the business transferred to the Beverly factory of the United Company. (Dfts' Ex. 231, V, 460.)

Bresnahan agreed to enter the employ of the Boston Shoe Tool Company, as manager, for a period of two years. United Company took from him covenants that he would not *thereafter* engage in nor directly or indirectly aid, assist, or encourage any other person to engage in the manufacture of heel-trimming, edge-trimming, or edge-cutting machines and tools, cutters or irons for heel or edge trimming, for edge setting, or of any of the machines, tools, and products formerly made by the Boston Shoe Tool Company. (Plff's Ex. 67, III, 565.)

19. GLOBE SHOE TOOL COMPANY.

On October 24, 1899, the United Company acquired the business of James H. Reed, and others, copartners, trading under the name of Globe Shoe Tool Company, Boston, engaged in manufacturing and putting out edge cutters and irons used in the manufacture of shoes. The purchase price was $30,000, which was paid part in cash and part in preferred stock of the United Company. (Plff's Ex. 71, III, 577.)

Loomer and Perkins, part owners of the Globe Shoe Tool Company, each agreed to enter the employ of the United Company at a compensation of $25 per week, for a period of one year, and furthermore agreed that they would not *thereafter* engage, either directly or indirectly, or assist or encourage

any other person so to do, in the manufacture of shoe machinery in competition with the United Company; and for the same consideration each of them further agreed that they would convey to the United Company all improvements or inventions relating to shoe machinery, which they should *thereafter* make. (Plff's Ex. 72–73, III, 581, 582, 583, 584.)

The machines and business of the Globe Shoe Tool Company were along the *same* line as that of the Boston Shoe Tool Company *previously* acquired by the United Company. (I, 46, l. 1; Dfts' Ex. 231, V, 430.)

M. JOHN RITCHIE, AND JOHN RITCHIE COMPANY.

On November 18, 1899, the United Company acquired all the business of John Ritchie, and John Ritchie Company, a corporation, relating to the manufacture of standard screw machines, slugging machines, tacking machines, and machines, mechanisms, and appliances for manufacturing and inserting metallic fastenings, including standard screw wire, slugger wire, and tacker wire, used in the manufacture of boots and shoes. The purchase price was not to exceed $15,000 (I, 40, l. 11; Plff's Ex. 74, III, 585, 588.)

The vendors agreed that they would not *thereafter* manufacture, or sell, or become, directly or indirectly, interested in any wire-fastening shoe machinery like that which they had sold.

The purpose of defendants to force shoe manufacturers to deal exclusively with the United Company is well illustrated in Dfts' Ex. 231, V., 444. It is

there stated, with respect to the contract with John Ritchie, and the John Ritchie Company—"the reason for this contract and purchase was to prevent manufacturers who held metallic machinery under lease from the United Company (and who had agreed to purchase their metallic fastening material from the United Company) violating their leases and contracts by purchasing material from Ritchie." (I, 46, l. 31 et seq.)

21. STANLEY MANUFACTURING COMPANY.

On March 19, 1900, the United Company acquired the stock of machines, parts, and supplies on hand at Frankfurt, Germany, of the Stanley Manufacturing Company, a Maine corporation, with its principal place of business at Lawrence, Mass., engaged in the manufacture of McKay sewing machines and other machines, paying therefor $86,500 in preferred stock of the United Company. (I, 40, l. 35; Plff's Ex. 78, III, 620.)

The United Company took from the Stanley Company a covenant that "the said Stanley Company will at once give up its branch office in Germany, so far as relates to the sale or disposal of shoe machinery or shoe manufacturers' supplies, and that the Stanley Company will not in the future establish an office or maintain an agent or representative of any kind to solicit orders for the sale of such machinery and supplies outside of the United States of America, and will not *export* or sell, or dispose of to others for export, any boot or shoe machinery or supplies therefor outside of the United States, except

through the United Company." (Plff's Ex. 78, III, 621.)

A somewhat similar transaction in respect of a shoe machinery company engaged in foreign commerce is that with W. J. Young. (Plff's Ex. 99, IV, 713.)

22. BAY STATE INTERNATIONAL SHOE MACHINERY COMPANY.

On January 30, 1901, United Company acquired for the United Shoe Machinery Company de France and for Deutsche Vereinigte Schuhmaschinen Gesellschaft G. m. b. H. the property and good will for the Continent of Europe of the Bay State International Shoe Machinery Company, Boston, Mass., paying therefor approximately $25,000 in preferred stock of the United Company. (Plff's Ex. 86, III, 655; Dfts' Ex. 231, V, 448.)

Howard said that the acquired company "had a welter and stitcher and I think *a rough rounder,*" but that he did not know whether it "was shipping machinery from the United States to foreign countries." (I, 52, l. 20.) It was free to do so if it saw fit, and therefore it was a potential if not an actual competitor.

23. GEORGE W. EMERSON & COMPANY.

On December 18, 1902, the United Company acquired for $41,500 the business of George W. Emerson and William R. Sampson, copartners, trading under the name of George W. Emerson & Company, Lynn, Mass., engaged in manufacturing

and putting out machinery, appliances, devices, and supplies used in the manufacture of boots and shoes. (Plff's Ex. 101, IV, 725.)

The United Company, for the same consideration, took from the vendors covenants that they would not engage in competition with the United Company for a period of 15 years, and that all inventions which they should make relating to machinery for use in the manufacture of shoes at any time within said period should be forthwith disclosed to the United Company. (Plff's Ex. 101, IV, 729, 730, 731; pars. 5, 6, and 7.)

Howard testified that the Emerson Company at the time of its acquisition was engaged in manufacturing a power-spring heel scarfer, and a heel-burnishing machine, and that the United Company was at that time putting out a heel-burnishing machine but of a different type from that put out by the Emerson Company, and that the United Company was also putting out a spring heel-scarfing machine, to be operated by hand. (I, 58, l. 21, 39; 59, l. 5.)

The business of the Emerson Company as a going concern was discontinued and its business transferred to the United Company. (I, 59, l. 11.)

Sampson has remained in the employ of the United Company. (I, 95, l. 12.)

24. JOSEPH W. LEARY.

On January 1, 1904, the United Company acquired, for $3,052, from Joseph W. Leary, Lynn, Mass., his business of manufacturing and dealing in shoe machinery. (Plff's Ex. 108, IV, 765.)

The vendor agreed to enter the employ of the United Company for a period of 5 years at a compensation of $40 per week, and for the same consideration, agreed to convey to the United Company all improvements which he should make within 10 years from the date of the termination of his employment with the United Company, and that within the same period he would not engage, directly or indirectly, in any business which *competed* or interfered with the United Company. (Plff's Ex. 108, IV, 767, par. 3.)

25. ZACHARY TAYLOR FRENCH.

On January 1, 1904, the United Company and United Shoe Machinery Company, of Maine, acquired the business of Zachary Taylor French, Boston, Mass., engaged in the development of machines designed and used in the manufacture of boots and shoes, agreeing to pay therefor $15,000 in annual installments of $1,500 each. (I, 63, l. 22; Plff's Ex. 111, IV, 803.)

The United Company took from the vendor, for the same consideration, covenants that he would assign all inventions which he should make or acquire within 10 years relating to machines useful in the manufacture of boots and shoes, and that he would not engage in competition with the United Company, for the same period, in the United States or in any foreign country. (Plff's Ex. 111, IV, 807, pars. 5 and 6.)

Howard testified that French had been in the employ of the United Company and previously in the employ of the Goodyear Company, as an inventor,

and was later superintendent of the Goodyear factory at Boston; that the above agreement was entered into as a settlement of the royalties that would become due under various existing contracts, as French desired to leave the employ of the United Company. (I, 63, l. 30.)

M. KIMBALL & HADLEY.

On June 11, 1904, the United Company acquired, for $4,750 cash, the business of Herbert L. Kimball and Irving A. Hadley, copartners, doing business under the firm name of Kimball & Hadley, Lynn, Mass., engaged in manufacturing and marketing *awls, needles*, drivers, supplies, etc., used in the manufacture of boots and shoes. (Plff's Ex. 112, IV, 814.)

The United Company, for the same consideration, took from the vendors *covenants* that neither of them would, within a period of 15 years, become interested in, developing, or carrying on any business which related to manufacturing or dealing in awls, needles, or drivers. (Plff's Ex. 112, IV, 815, par. 2.)

Howard testified that at the time of acquiring the business of Kimball & Hadley the United Company was engaged in manufacturing and putting out *awls, and needles*, except curved needles for the Goodyear sewing machine, and that the United Company was making awls for the use of its own machines; that the United Company purchased Goodyear needles from others, including Kimball & Hadley. (I, 64, l. 16.)

Howard's testimony that the United Company bought Goodyear needles from Kimball & Hadley

is specifically denied by Hadley, who testified as follows:

> Q. Now, do you know whether the United Company, before it obtained your needles, manufactured any needles for its Goodyear machines?
>
> A. It did not, to my knowledge.
>
> Q. Did it buy Goodyear needles of you?
>
> A. Never.
>
> Q. Did you supply Goodyear needles for its machines?
>
> A. Not to the United Shoe Machinery Company. (I, 310, l. 20.)

The fact is that Kimball and Hadley were forced to sell out their business to the United Company by reason of the latter's leasing system, discussed *infra*, pp. 154–221. That company was buying its awls and needles from persons other than Kimball & Hadley and supplying them to its lessees, who were obliged by the terms of their leases (Plts. Ex. 24, par. "Two," III, 214, 216) to take the needles from the United Company. Consequently when Kimball & Hadley approached the lessees for the purpose of selling their needles, "They stated orally that the using of our needles and awls was in violation of the terms and conditions of the leases and if the manufacturer continued to use our awls and needles the United Company would take their machines out of the factories." (I, 308, l. 31.) Finding it difficult to place the output of their factory, Hadley had a conversation with Mr. Bailey, one of the managing officers of the United Company, with respect to the sale of the Kimball &

Hadley business. They were not able to agree upon a price. He said to Mr. Bailey, "We can manufacture needles and sell them as cheap as the United Shoe Machinery Company," to which the latter replied, "Oh, no, you can't; we can give them away if necessary. You know Mr. Winslow is a man that once having made up his mind to get something, he will get it." (I, 309, l. 16 et seq.) Realizing the impossibility of competing with the United Company and impressed by the truth of what Mr. Bailey said with respect to Mr. Winslow's disposition, Kimball & Hadley sold out; but the sale was not voluntary; it was coerced.

Kimball & Hadley, several years after they had sold out their partnership business to the United Company again engaged in the awl and needle business and the United Company brought suit to enjoin them, upon the ground that they were violating their agreement of June 11, 1904. (I, 311, l. 15.)

27. LEOPOLD J. COURTEAU.

On October 1, 1904, the United Company acquired from Leopold J. Courteau, Brockton, an assignment of all his inventions and devices, including letters patent, relating to machines and mechanisms for holding the linings of shoes during the process of pasting the outer leather to the lining. (Plff's Ex. 115, IV, 826–831.)

The United Company, for the same consideration, took from Courteau covenants that he would convey to it all inventions which he should at any time thereafter, within 15 years, own or possess or in which he

should have any interest whatsoever, relating to mechanisms or devices for handling or holding linings. (Plff's Ex. 115, IV, 830, 1st par.)

28. BROCKTON SUPPLY COMPANY.

On November 1, 1905, United Shoe Machinery Company of New Jersey acquired, for $21,724, the business of Oscar A. Campbell and Samuel H. Nichols, copartners, trading under the name of Brockton Supply Company, Brockton, Mass., engaged in manufacturing and putting out machines for pulling lasting tacks. (Plff's Ex. 116, IV, 831–834.)

Howard testified that at the time of acquiring the business of the Brockton Supply Company the United Company was engaged in developing a machine for pulling lasting tacks, but that none had been put out. (I, 66, l. 24.)

29. ZOTIQUE BEAUDRY.

On September 4, 1906, the United Xpedite Finishing Company, a corporation controlled by the United Company, acquired for $12,500 cash, from Zotique Beaudry, Lynn, his inventions and improvements relating to machines, and parts thereof, for burnishing and finishing the heels of shoes. The United Xpedite Finishing Company for the same consideration took from vendor covenants that all inventions which he should thereafter make should be disclosed to the United Xpedite Finishing Company, and that the vendor would not within a period of 15 years engage in making, developing, or exploiting any improvements in heel burnishing machinery or carry-

ing on any business of manufacturing mechanisms for finishing or burnishing the heels of shoes without the consent in writing of said United Xpedite Finishing Company. (Plff's Ex. 120, IV, 850–855.)

Howard testified that at the time of entering into the agreement with Beaudry, the United Company *had* a heel-burnishing machine. (I, 68, l. 9.)

30. RICHARDSON SHOE MACHINERY COMPANY.

On December 1, 1908, the United Company acquired, for $80,000, from W. B. Rice and others, all the property and business of Richardson Shoe Machinery Company, Lynn, Mass., engaged according to the recitals of the contract of purchase "in developing and in dealing in and with certain machinery intended or adapted for use in the manufacture of footwear, including especially sewing machines of the type known in the trade as '*McKay Sewing Machines*' and machinery intended or adapted for cutting or dieing out leather or other materials, including machines of the kind known in the trade as '*Clicking Machines.*'" (Plff's Ex. 125., IV, 871.) (Italics ours.)

United Company took from the vendors, and each of them, covenants that they would not for a period of 10 years engage in the manufacture of any machinery which should compete with the business of said Richardson Company in such machinery. (Plff's Ex. 125, IV, 875, par. 6; also Plff's Ex. 126, IV, 889, par. 3.)

Howard testified that at the time of the acquisition of the Richardson Company, United Company was also engaged in manufacturing and putting out *McKay* sewing machines. (I, 70, l. 10 et seq.)

31. HARRY L. RICE—FRED LA CHAPELLE.

On January 20, 1909, the United Company acquired, for $11,500 cash, from Harry L. Rice and Fred La Chapelle, of Lynn, their inventions and improvements relating to machinery for forming chain stitches and chain-stitch seams, and machines used for attaching the welts of boots and shoes. (Plff's Ex. 128, IV, 898–904.)

The vendors for the consideration aforesaid in effect agreed to sell to the United Company all inventions which they owned relating to methods for the formation of chain stitches adapted to use in attaching the welts to shoes, etc., and likewise to transfer to the United Company all inventions which either of them within 10 years thereafter might make or acquire relating to any shoe machinery intended for the purposes described in the agreement.

They further agreed that they would not, without the consent in writing of the United Company, enter into or become interested financially or otherwise or assist any person in carrying on the manufacturing of or dealing in the machinery described in the agreement in any manner which would directly or indirectly *compete* with the business of the United Company therein. (Plff's Ex. 128, IV, 899, 901, pars. 1, 4.)

Howard testified that the United Company acquired by this purchase a welting machine which was equipped "to put an extra thread on to the single thread side of the chain stitch formed by the machine," and that the United Company was then engaged in manufacturing and putting out welting machines, minus the improvement on the Rice and La Chapelle machine. (I, 71, l. 32.)

Howard further testified that the United Company has not yet put out the machine acquired from Rice and La Chapelle, but "we are still experimenting with it." (I, 72, l. 1.)

32. THE WENTWORTH COMPANY.

On February 3, 1910, the United Company acquired for $60,000 cash all of the capital stock and business of the Wentworth Company of Cincinnati, a corporation engaged in manufacturing and putting out machines used in the manufacture of boots and shoes. (Plff's Ex. 130, IV, 913.)

The United Company took from each of the vendors (seven individuals) covenants which in effect provided that none of them would at any time within a period of 10 years without the consent in writing of the United Company engage in manufacturing, developing, or dealing in certain shoe machinery described therein and would not compete or interfere with the business of the United Company in the aforementioned machinery. (Plff's Ex. 130, IV, 918, par. 5.)

Howard testified that through this acquisition they acquired a "machine for beating heel seats; * * * This operation was to prepare the heel end of the shoe for the sole." That they also acquired "a shank sticking machine." He further testified that the United Company at that time was manufacturing a machine for beating heel seats, and that the United was experimenting with the shank sticking machine. (I, 73, ls. 6, 18, 29.)

Winslow testified that the Wentworth Company was acquired for the purpose of settling infringement litigation.

33. ADAM H. PRENZEL.

On November 22, 1910, the United Company acquired from Adam H. Prenzel, of Halifax, Pa., all his inventions and letters patent of the United States and of other countries, relating to certain machines used in the manufacture of turn shoes, for $8,000 cash and 25 per cent of all royalties on machines thereafter manufactured by the United Company under the letters patent acquired until they shall have aggregated $75,000. (Plff's Ex. 143, IV, 1046.)

The United Company for the same consideration took from the vendor covenants which in effect provided that he would convey to the United Company all inventions, etc., adapted for use in connection with footwear or for use in connection with machinery adapted for use in the manufacture of footwear which the vendor should make or acquire at any time prior to the expiration of certain letters patent. (Plff's Ex. 143, IV, 1048.)

This, like other similar covenants, tends to show suppression of competition so far as it puts restrictions upon the use of any inventions which the vendor might make respecting the art of shoe machinery.

34. M. V. BRESNAHAN & COMPANY.

On December 19, 1910, the United Company acquired for $25,000 cash the business of Maurice V. Bresnahan, William H. Bresnahan, and John J. Dolan, trading under the name of M. V. Bresnahan & Company, of Lynn, engaged in manufacturing and putting out machines used in the manufacture of boots and shoes. The vendors each agreed to enter the employ of the United Company. (Plff's Ex. 144, IV, 1054, 1057.)

The United Company took from the vendors covenants that neither of them should, directly or indirectly, within 10 years *after* the termination of their employment by the United Company engage in any business relating to manufacturing machinery adapted for use in the manufacture of boots and shoes, or in any business which would in any way compete with the business of said United Company; and each of them further agreed to convey to the United Company for the same consideration all inventions which they should make or acquire at any time within 10 years after the termination of said employment agreement relating to shoe machinery. (Plff's Ex. 144, IV, 1055, 1058, pars. 2 and 5.)

Howard testified that by this purchase they acquired an experimental *lasting* machine and a *heel-*

burnishing machine and that the United Company at that time was manufacturing and putting out *lasting* machines and *heel-burnishing* machines. (I, 77, l. 1, 18.)

"Schedule A" attached to Plaintiff's Exhibit 144 gives a list of many different machines together with supplies acquired from the Bresnahan Company.

35. CHARLES P. STANBON & COMPANY.

On April 2, 1911, the United Company acquired for approximately $122,735 cash the business of Charles P. Stanbon, doing business under the name of Charles P. Stanbon & Company of Lynn, engaged in manufacturing and putting out machines, tools, mechanisms, and devices used in the manufacture of shoes. The vendor agreed to enter the employ of the United Company. (Plff's Ex. 145, IV, 1064.)

Howard testified that the United Company acquired from the Stanbon Company a channel-cementing machine, a folding machine, perforating machine, and a channel-opening machine, and that the United Company at that time *was* putting out an inferior channel-cementing machine and a perforating machine. (I, 78, l. 15.)

The foregoing evidence shows a series of restrictive covenants imposed upon the vendors which greatly restrained trade. They were forbidden to engage in *competition* with the United Company for a stated period of years and were required during a like period, where they were inventors, and most of them were, to assign to the United Company all discoveries made by them. This had the effect of chill-

ing the genius of invention and of removing all incentives to serious work in that field of discovery. Not only that, but it withheld any inventions the vendor should make from the hands of men who might become competitors of the United Company.

The claim that any or all of these acquisitions were made for the purpose of avoiding litigation relative to patent infringements will not do, because the purpose, real or fancied, is immaterial when the natural and necessary effect, as here, is undue restraint of trade. (*Infra*, pp. 242, 244–248.)

Moreover, if the machines acquired were infringing any machines owned by the United Company, the parties owning them could have been prevented by injunction from manufacturing or operating them, but suits for infringement would not prevent the defendants therein from inventing or acquiring other constructions which would accomplish the same purpose and avoid infringement. Hence to bring about the desired result, namely, the destruction of competition, it became necessary not only to buy out the inventors but to tie them by covenants which would prevent future competition. Accordingly there are here constantly recurring stipulations binding competitors and inventors who might become competitors not to compete in the future. Whether such covenants isolately viewed are illegal need not be discussed. Such a series of such covenants is forbidden by the Anti-Trust Law. (*Infra*, p. 255.)

The fact that some of the machines obtained by the defendants in the foregoing acquisitions were not

at the time actually competing with machines put out by the United Company does not alter the illegal character of the transaction. It must always be remembered that these machines were taken over by a great corporation which had a monopoly of certain machines which no shoe manufacturer could be without (*supra*, pp. 15–16, 61–62), and therefore could compel every shoe manufacturer to come to it for those machines. Every acquisition which gave to the defendants control of a machine formerly freely obtainable in the open market increased the power of the defendants to exclude competition as to other machines by refusing to let shoe manufacturers have on acceptable terms machines of which defendants were the only source of supply, unless such manufacturers took also from the defendants machines in which competition existed or threatened. How the defendants availed themselves of this power is shown. (*Infra*, pp. 154–221.)

B. THE PLANT ACQUISITION.

1. INTRODUCTORY.

During several years prior to September, 1910, Thomas G. Plant had, at great trouble and expense, developed a complete line of shoe machinery for manufacturing welt, turn, and McKay shoes. (I, 189, l. 19.) Plant also had contracts with factories where such machines could be made in large quantities, and had equipped and was successfully operating his machines in the factory of Thomas G. Plant Company, a corporation, engaged in the shoe manufactur-

ing business at Boston, Mass. (daily capacity approximately 17,000 pairs). He had thus demonstrated his ability to become immediately an active and effective competitor of the United Company, when that company, after extended negotiations, purchased all his assets, including machines and patents relating to shoe machinery, together with a majority of the capital stock of the Thomas G. Plant Company. Clearness requires the statement that this latter company is a *shoe manufacturing* corporation of whose stock Plant owned 60 per cent. It must not be confounded with the *shoe machinery* interest of Thomas G. Plant of which he was the sole owner.

On September 23, 1910, at four o'clock in the morning, the purchase was consummated. (I, 590, l. 1.)

2. WHAT PLANT HAD.

The properties and contracts acquired from Plant were as follows:

(a) Two hundred and six United States patents.

(b) Twenty-eight applications for United States patents.

(c) Seventy-four British patents.

(d) Twenty-one applications for British patents.

(e) Seventy-three French patents.

(f) Fourteen applications for French patents.

(g) Forty-two German patents.

(h) Forty-seven applications for German patents.

(i) Twenty-six Austrian patents.

(j) Fifty-eight applications for Austrian patents.

(k) Thirty-three Australian and eleven New Zealand patents.

(l) Fifteen thousand shares of the preferred and seven thousand five hundred shares of the common stock of the Thomas G. Plant Company. This company, which was engaged in *shoe manufacturing* exclusively, had outstanding twenty-five thousand shares of preferred stock and twelve thousand five hundred shares of common stock. The par value of each share of preferred and common stock was $100.

(m) The contents of a machine shop located in the Pevear Building, in Lynn, Mass., and two-thirds of the capital stock of the Bresnahan Shoe Machinery Company, which was manufacturing for Plant; also patterns, tools, jigs, etc., built for the purpose of manufacturing the "Wonder Worker" shoe machinery (Plant's machinery). These patterns, etc., were in use at the place of business of the Bresnahan Shoe Machinery Company, at the machine shop in the Pevear Building, at the place of business of C. P. Stanbon & Company, Lynn, Mass.; Taft-Pierce Manufacturing Company, Woonsocket, Rhode Island; Stanley Manufacturing Company, Lawrence, Mass.; National Machine & Tool Company, Boston. Certain machines and parts were also included. (I, 563, l. 9.)

(n) There were also assigned the following agreements:

i. Between Charles P. Stanbon & Company and the Manufacturers' Machine Company, which latter was controlled by Plant, under which the Stanbon Company gave to the Manufacturers' Company an option

to purchase on or before November 1, 1906, the business of the Stanbon Company. (Plff's Ex. 132, IV, 931.) By a separate contract the United Company assumed all obligations and liabilities of Plant under the Stanbon contract. (Plff's Ex. 138, IV, 1038.)

ii. Between the Keighley Company and Thomas G. Plant, dated January 26, 1910, whereby the Keighley Company agreed to furnish to Plant its rapid inseam trimming machines in such quantities, up to twenty-five per cent of its output, as Plant might desire, said machines to be subject to a lease of forty-nine years without the payment of royalty. Plant agreed that he would place said machines only in the factories of such shoe manufacturing concerns as equip their factories with his general line of machinery; that he would use his best efforts to induce the users of his machines to use the Keighley rapid inseam trimming machines; Plant further agreed that he would take thirty or more of said machines during the year 1910 and fifteen or more during each six months thereafter during the life of the agreement; and the Keighley Company agreed that it would not sell its business or patents to any one within one year in such manner or to such effect as would interfere with the performance of its contract with Plant. (Plff's Ex. 132, IV, 975.)

By separate contract, the United Company covenanted with Plant that it would indemnify and save him harmless from all actions, claims, and liabilities, which might at any time arise under the contract with the Keighley Company, and Plant agreed that he

would exercise the rights secured to him by said agreement *solely* as the United Company should direct. (Plff's Ex. 135, IV, 1023.)

iii. Between Plant and the Stanley Company, dated June 15, 1910, wherein Plant obtained the right to use certain machinery belonging to the Stanley Company. (Plff's Ex. 132, IV, 931.)

iv. Between Plant and the Stanley Company of the same date, which assigned to Plant the rights held by the Stanley Company under a contract it had made with the United Company on May 1, 1901. (Plff's Ex. 132, IV, 983.)

v. Between Plant and the Stanley Manufacturing Company whereby the latter leased to Plant certain real estate, also a lot of machinery; by which Plant also agreed that on or before the termination of the lease, to wit, June 30, 1915, he would purchase the property described for $150,000 cash. (Plff's Ex. 132, IV, 988, 991.)

vi. Between Plant and the Stanley Manufacturing Company, whereby Plant agreed to manufacture for that Company so many of certain machines as the Stanley Company might thereafter need, and as Plant might find it convenient to make. (Plff's Ex. 132, IV, 1012.)

In connection with the several contracts above referred to, the United Company entered into special contracts to protect Plant against all liability that might arise therefrom. (Plff's Ex. 140, 142, IV, 1040–43.)

It was also agreed that claims against Plant to enforce certain leases for the use of United Company's machines, which were set forth in a bill in equity then pending in the Supreme Judicial Court of Massachusetts, and claims for infringement of letters patent by Plant, would be abandoned.

We invite attention to the large number of important obligations assumed by the United Company for the purpose, defendants say, of procuring a few patents owned by Plant.

The United Company took from Plant covenants that he would assign to it all inventions, etc., which he might make or otherwise acquire within 15 years thereafter, relating to the manufacture of shoes or to machinery, devices, etc., used in such manufacture.

Thus the several contracts executed between Plant and the United Company show within themselves that Plant was the owner of numerous patents upon shoe machinery, that he had obtained the ownership or control of or was in contract relations with a number of factories for the manufacture of shoe machinery located in different parts of the country, and that he was fully equipped to enter upon active and extensive competition with the United Company.

3. THE PURCHASE BY THE DEFENDANTS.

In June, 1910, negotiations were entered upon between the United Company and Plant with a view to purchasing the Plant machinery interests just described. At first they were without success. They

were renewed from time to time until September 23rd, 1910, when they were closed, according to Howe, after an all-night session, at 4.30 a. m. (I., 688, l. 21.) The money consideration was $6,000,000; according to the defendants' testimony, $500,000 had been paid the day before when not so much as a scrap of paper had been drafted or signed. (I., 487, ls. 28–44; 488, l. 1.)

This covered the Plant machinery, 60 per cent of the capital stock of the Plant shoe manufacturing company, and the other Plant interests described under the previous head. (I., 486, ls. 1–11.)

The story of the negotiations eventuating in the purchase is told by Winslow (I., 558, l. 6 *et seq.*); Endicott (I., 578, l. 10 *et seq.*); Howe (I., 668 l. 35 *et seq.*) and Herrick (I., 602, l. 6 *et seq.*). We do not think it necessary further to abstract it here.

4. PLANT WAS A SERIOUS COMPETITOR OF THE DEFENDANTS.

a. He Had Already Completely Equipped a Large Shoe Factory.

As stated, *supra*, Plant had equipped with his machines the shoe factory of the Thomas G. Plant Company, Boston, which had a daily capacity approximating 17,000 pairs. The Thomas G. Plant Company conducted its entire business for several years with this machinery. It continued to use it even after the purchase by the United Company. Substantially all the machines were continued in use until December, 1912 (McGaffee, I., 774, l. 36), and some of them were in operation at the time when the testimony was taken [Jan. 7, 1914] (McGaffee, I., 781, l. 42).

b. He Was Offering to Equip Other Manufacturers and Was Ready to Do So.

Plant also had contracts with factories where his machines could be made in large quantities. (*Supra*, pp. 104–108.) He had offered to install them in the factories of the Commonwealth Shoe and Leather Company and Endicott-Johnson & Company. (Jones, I, 114, l. 31; also Endicott, I, 576, l. 27.) He had issued an elaborate catalogue (Plff's Ex. 266) and was prepared to furnish his machines to shoe manufacturers generally if the opportunity was presented.

Representatives of large shoe factories located in the West had caused his machines to be inspected and as will appear came to Boston immediately prior to the sale to the United Company and made a further inspection with a view to purchasing an interest in the business. (*Infra*, pp. 116–118.)

c. His Machines Were Efficient Competitors of the United Machines in the Opinion of Experts.

Apart from actual success in the Plant shoe factory, there was the following direct testimony as to the capabilities of Plant's machines:

Warren F. McElroy, from 1890 to 1911, superintendent of the manufacturing department of the Hamilton-Brown Shoe Company, later president of the Non-Royalty Shoe Company, and still later in the employ of Burrow, Jones & Dyer Shoe Company, St. Louis, Mo., testified that he went through Plant's factory in May, 1910, at the request of Mr. Brown, president of the Hamilton-Brown Shoe Company. The shoe manufacturers just mentioned as contem-

plating acquiring an interest in Plant's shoe machinery had also sent McElroy as an expert to examine the machines.

Mr. McElroy testified:

> The machines were doing women's McKay and welt work of good workmanship and high grade. I spent practically two days going over the machinery. I can not state the number of machines in operation, but it was a full line, consisting of lasting, welting, stitching, and leveling machines. The essential bottoming room machinery was the machinery I examined. The work done was equally as good as that done by our United Company machines [the Hamilton-Brown Company, his employer, had the United Company's machines] and I felt they were doing about the same number of pairs. They were actually at work on women's shoes. I saw men's shoes there which were made upon them. (I, 189, l. 15, et seq.)

Milton S. Florsheim, president of the Florsheim Shoe Company, of Chicago, Illinois, testified that he went through Plant's factory in 1910, and found that Plant's machines were doing very satisfactory work, and that Plant had a line of machines which were making welt shoes and also McKay sewed shoes. (Florsheim, I, 160, l. 37 et seq.)

E. F. Selz, general manager of the manufacturing department of Selz, Schwab & Company, Chicago, Illinois, engaged in the manufacture of men's and women's shoes, testified that he spent a half day

examining Plant's machinery which was in operation in Plant's shoe factory and that the machines were making women's welts and McKay sewed shoes, and that Plant had a full line of machinery for making such shoes; that the machines were doing equally as good work, as far as he could observe, as the United Company's machines in his own factory, and with as much rapidity; that the machines were capable of being used in the manufacture of men's welt shoes. (I, 145, l. 40; 146, l. 1 et seq.)

Charles H. Jones, president of the Commonwealth Shoe and Leather Company, with factories at Whitman, Mass., and at Gardiner and Skowhegan, Maine, testified that he spent one entire day in June, 1910, examining Plant's machines; that his examining the machines was with a view to arranging for their use in his own factory; that Plant offered him the complete line of machinery which included every machine that was then in use in the Jones factories belonging to the United Shoe Manufacturing Company, offering in all, somewhere between 125 and 150 machines; that the price named by Plant was somewhere between $125,000 and $150,000 for the complete line; that the proposition was rejected principally on account of the tying clauses of the United Company's leases (*infra*, pp. 154–186); that Plant's machines were adapted for the manufacture of men's shoes as well as women's, although witness never saw the machines manufacturing men's shoes. (Jones, I, 114, l. 26 et seq.; 124, l. 16 et seq.; 125, l. 31.)

George E. Warren, an expert in the employ of the United Company, testified that, in conjunction with a Mr. Phillips, he had made an examination of the Plant factory in September, 1910, at the instance of the United Company. (I, 808, l. 29.) He said there were "sixty-nine machines in the Plant catalogue, and we saw them all, but not all in operation. It was a very large factory and had a capacity of ten thousand pairs a day or more, and was in full operation at that time," (I, 809, l. 6.) "I found a welter which was welting shoes and doing the work rapidly. They were running it at different speeds, some of them as fast as we run ours. The work on the shoe looked very well." (I, 809, l. 21.) "I regard the United Company welter as mechanically superior and, taken as a whole, to some extent a superior machine to the Plant machine." (Ibid, l. 35.) "These Plant improvements on the welter were the things which especially impressed me." (I, 813, l. 5.)

This, we may add, is high praise from a representative of the United Company.

Elmer P. Howe, director and expert of the United Company, said that he had examined the Plant machines with Winslow prior to the purchase (I, 668, l. 35), and that in the main the machines "were improvements on old machines" upon which the patents had expired (I, 787, l. 6; 669, l. 16). With respect to the Plant *welting* machines, he said that Plant had added certain improvements which constituted a very valuable feature. (I, 669, l. 21–30.)

The defendants introduced considerable evidence with reference to this transaction, designed to show that Plant's machines as they were in September, 1910, were not yet fully satisfactory for shoe making processes; that the purchase was intended merely to acquire certain inventions which the United Company believed that *it*, but inferentially not Plant, could develop so as to be of great value and to relieve the United Company of litigation.

It appears, however, that after the report of Mr. Warren and his associate experts was made to Winslow, there was no suggestion whatever upon Winslow's part that the particular inventions mentioned by them should be singled out and purchased, but during the entire negotiations nothing was talked of but the buying of Plant's *entire* line of machinery. (I, 559, l. 19 et seq.)

The machines were new, and to a certain extent experimental, and, as was to be expected, certain weaknesses and defects developed under the test of actual operation. Much is made of this circumstance by the defendants. There is, however, nothing in the record to indicate that the defects were of such character as not to be easily remedied by the alterations and adjustments common in the practical working out of a project like Plant's and the evidence does show conclusively that Plant and his assistants were possessed of a very high grade of inventive genius which already had been shown in the production of a number of inventions admitted by the defendants to be very valuable.

d. Shoe Manufacturers Believed the Plant Machines to be Efficient and Were Eager to Purchase an Interest in Them.

In September, 1910, a group of shoe manufacturers had been for some time in negotiation with Plant with a view to acquiring an interest in his shoe machinery business for the purpose of obtaining a source of supply of machinery other than the United Company and to secure relief from what they regarded as oppressive and arbitrary methods of the United Company. These manufacturers were Jackson Johnson, representing the Roberts, Johnson & Rand Shoe Company, with a capacity of over 30,000 pairs of shoes daily, A. C. Brown, representing the Hamilton-Brown Company of St. Louis, with a capacity of 25,000 pairs of shoes daily, George Brown, representing the Brown Shoe Company of St. Louis, Henry W. Peters, representing the Peters Shoe Company of St. Louis, Milton S. Florsheim, representing the Florsheim Shoe Company of Chicago, with a capacity of 4,000 pairs of shoes daily, E. F. Selz, representing the Selz, Schwab Company of Chicago, with a capacity of over 15,000 pairs of shoes daily, and Charles H. Jones of the Commonwealth Shoe and Leather Company of Boston, with a capacity of 6,000 to 7,000 pairs of shoes daily. (Rand, I, 178, l. 24; Florsheim, I, 158, l. 13; Selz, I, 141. l. 16; Jones, I, 105, l. 20; Brown, I, 617, l. 10.)

A further idea of the importance of these manufacturers may be gathered from the fact that they paid to the United Company royalties ranging from $79,000 (Jones, I, 117, l. 23) to $600,000 per annum (Rand, I, 186, l. 40).

These gentlemen met in Boston on September 22, 1910. Plant made them an offer to sell an undivided *one-half* of the *shoe machinery* business for $1,600,000. They asked for specifications as to what he owned. He was then unable to give them such, but insisted that it was unnecessary as they had seen the machinery in operation, and he assured them that he had the facilities to produce the machines in large quantities. This was true. (*Supra*, pp. 104–108.) That was between eight and nine o'clock on the evening of September 22d. The purchase was not effected that night because they were unable to raise before Plant left them the very large sum required. The following morning, before they heard anything further from Plant, they succeeded in procuring subscriptions for $1,100,000, and Wade, treasurer of the North American Company of St. Louis, and Campbell, president of the Mercantile Trust Company of St. Louis, men abundantly able to supply the money, undertook to underwrite the purchase. That occurred about nine or ten o'clock in the morning of September 23d, but when the shoe manufacturers heard from Plant on that morning, they learned that about three or four o'clock on the previous night, after Plant had left them, he had gone to the office of counsel for the United Company and had sold all his interests to that company for $6,000,000. (Jones, I, 114, l. 39 *et seq.;* 115, l. 1 *et seq.;* Selz, I, 147, l. 7 *et seq.;* Florsheim, I, 160, l. 30 *et seq.;* 161, l. 1 *et seq.*)

The fact that the shoe manufacturers who had examined the machinery were willing to purchase a half interest in Plant's shoe machinery business, and pay therefor $1,600,000, is very persuasive that they regarded the machinery as capable of doing well the same work as that done by the United Company's product.

e. Winslow Knew of Their Desire.

Winslow states that on the evening of September 20, the day of the meeting when Winslow practically agreed to buy the Plant property, Plant advised him that he was expecting the "western people," and that if he traded with Winslow he would have to put up a proposition to the western people that they could not accept, or words to that effect. (I, 488, l. 18–23.) According to Winslow, the "western people" came on September 22. (I, 488, l. 17.) Mr. Endicott, who became a director of the United Company "to carry through the deal for the Plant machinery" (I, 587, l. 33), also knew that the western shoe manufacturers were interested and were coming to examine Plant's machines (I, 589, l. 25). He knew this at least as far back as June, 1910. (I, 589, l. 27.)

He also testified that Plant had told him the day *before* the papers closing the purchase were signed that the western manufacturers *were in town and that he was going to take them out that day and show them his factory*, but that he, Endicott, didn't "think" that he knew of their presence in Boston until *then*. (I, 589, l. 30.)

Mr. Endicott, a leading figure in the defendants' negotiations, must have informed Mr. Winslow and Mr. Herrick of the presence of the western manufacturers in the town and the object of their mission. No other hypothesis is reasonable.

From this testimony it is fair to conclude that Winslow and his associates were well aware that negotiations were going on between Plant and the shoe manufacturers, and that unless the United people were prompt in closing the bargain the shoe manufacturers would obtain the Plant machines and establish a vigorous rival of the United Company. The result was the all-night session, ending in closing the deal at 4.30 a. m. (I, 688, l. 9.)

f. Defendants Knew That Other Capitalists Contemplated the Purchase of the Plant Machines.

Herrick, attorney for the United Company, who took an important part in the Plant negotiations (I, 602, l. 6 et seq.), stated that on September 1, 1910, while the Plant purchase was under consideration by the United people, he was called to New York by Wiggin, president of the Chase National Bank, who said to him that Evans, of the North American Insurance Company, desired to see him; that when he asked what Evans wanted to see him about, he was told by Wiggin to call upon Wallace, president of the Central Trust Company, New York; that he did so, and Wallace, after talking for a while about other matters, said in effect that a large concern with international banking connections was considering buying into the Plant machinery, and that he, Wallace, was

planning to have an expert, together with a patent lawyer, go to Boston for the purpose of seeing what Plant had, and that if this concern which he was speaking about took over the Plant machinery it would undoubtedly establish a strong and prosperous business (I, 613, l. 28 et seq.); that he also saw Woodward, of the Hanover National Bank, a director of the United Company, who told him that he had heard "Plant owed the City Bank (of New York) some money, and that the City Bank and a hide man, whose name he would not tell me, had some plan for buying Plant's business" (I, 614, l. 14).

g. Winslow was Exceedingly Anxious to Get Plant's Machines.

The whole history of the transaction shows that the defendants were keenly alive to the importance of removing from their path so dangerous a competitor and were exceedingly anxious to accomplish that end.

The negotiations began in June, 1910, with a talk between Winslow and Plant at Endicott's home in Dedham. (I, 479, ls. 39, 40.) When Winslow did not hear from Plant as then agreed, he called up Endicott "to see if Plant had decided what he wanted to do." (I, 480, ls. 13, 14.) From that time on the negotiations were continuous until their consummation in September. When they were not proceeding between Plant and Winslow, through Endicott, they were going on between Herrick and Plant, at the instance of one Smith. Herrick was reporting to Winslow after every interview. (I, 602, l. 17; 604, l. 10; 605, l. 18; 608, l. 43; 609, l. 1 et seq.; 610, l. 4, 20.)

The defendants insist that the fact that the evidence does not show any offer by Winslow to Plant is of some significance. But Winslow was a good trader. Through Endicott and Herrick, he knew what was going on between Plant and the other parties interested. He knew what they were saying in the New York banks about the condition of Plant's enterprises and finances. He was in a position to bide his time and wait for the psychological moment. That moment arrived when the western manufacturers came to town.

One very significant circumstance shows his anxiety in sharp relief. When the negotiations had once reached the semblance of agreement, although none of the intricate details had been worked out, the defendants hastened to give Mr. Plant a check for $500,000. (I, 488.) When this check was delivered not a document had been drawn.

Other facts indicate this imperative anxiety even more strongly.

I. Endicott's Story.

Henry B. Endicott, of Endicott-Johnson Shoe Company, Endicott, New York (daily capacity about 40,000 pairs) testified that in 1909 Plant had told him that he would give to him $250,000 if he would complete or help to complete the sale of Plant's machinery to the United people (I, 576, l. 40); and that thereupon Endicott arranged for a meeting between Winslow and Plant at his house (I, 577, l. 1); that, after he had failed as the representative of

Plant, he then sought Winslow, and made to him a remarkable proposition. Here is the way he tells it:

> "I am going to make a proposition to you, Mr. Winslow, and you may laugh at it, but you shall be the only man that will laugh at it, because you must promise me, if you don't accept it, never to reveal it," which of course he did promise. I said, "Hanan and Keith refuse to take the responsibility of this recommendation" (to examine the Plant machines and report on the advisability of the purchase). "I have been thinking that if I had been director in your company I would have been willing to take that responsibility; if you care to elect me as a director in your company, I will do my share toward taking that responsibility." Mr. Winslow said he would not laugh at that (of course not); that he liked the idea of it; and he asked me if I would go and see Mr. Howe, which we did—took a motor and went to Mr. Howe's residence, I think to Marblehead. (I, 578, l. 22.)

Asked why he thus pledged Mr. Winslow to secrecy, Mr. Endicott said, "I am not in the habit of offering myself as a director."

> Q. Why did you offer yourself as a director in this case?
>
> A. Because I wanted to make a success of what I had started in on.
>
> Q. In other words, you wanted to be elected a director of the United Shoe Machinery Company to carry through this deal to acquire the Plant machinery; is that right?

A. As far as I was concerned, yes, sir; and because I believed, of course, as I have stated here, that there was value there. (I, 587, l. 30.)

That night he informed Plant that he had changed his allegiance (I, 579, l. 4), went with Winslow to New York, where they met others of the directors, and was elected to the board, although he did not own a dollar's worth of stock in the company. (I, 587, l. 43.) He then continued his efforts to forward the purchase. (I, 579, l. 11.) But, according to his story, he had, simply for the sake of accomplishing that end, exchanged a position where $250,000 was to reward his success for one where he could profit not a penny.

It will be remembered in this connection that this was not the first time Mr. Endicott was so used to serve the ends of the United Company. When Mr. Winslow desired to secure control of the Eppler Company, he did not go about it directly, but employed Mr. Endicott as the man to accomplish the result. (I, 530, l. 4.)

Here we find Mr. Endicott appearing as the most active agent in the purchase of a much more important competitor. He was made a director expressly to carry forward those negotiations. When it was decided that he assume that position he had not yet renounced his character as agent for Plant. As agent he had acquired information about the machinery. It had been examined by his experts. (I, 576, l. 12.) He knew of the desire of the western men to

buy it. (*Supra*, p. 118.) When he became a director of the defendants he knew better than any other how likely Plant was to become a powerful competitor of the defendants.

Endicott's maneuvers are difficult to understand. His story excites lively curiosity. It is doubtful if it has a parallel in the history of great business transactions. However that may be, it shows the deep anxiety of Mr. Winslow and his associates to acquire the Plant machinery and their willingness to adopt any means necessary to accomplish the result.

There was a cause for this anxiety. It rested in the fact that the Plant machinery was seriously competitive and that men capable of making that machinery a vigorous antagonist of the United Company were on the spot or near at hand ready to purchase it.

II. Suits by United Company to Compel the Sale.

On July 5, 1910, a committee appointed by Winslow to examine the Plant machinery made an adverse report. (I, 484, l. 16 et seq.) On that day the United Company commenced a suit against Plant and the Thomas G. Plant Company to enjoin the latter company from using the machines which had been supplied to it by Plant; to enjoin Plant from supplying to the Plant Company other machines in place of those leased by the United Company, and for other purposes. (Pff's Ex. 162.) Soon thereafter a number of patent infringement suits were instituted against Plant and others made

ready for filing. (I, 480, l. 19; 484 l. 38; Dfts' Ex. 270, V, 723.) Defendants' witnesses talk of counter infringements by their machines. (I, 820, l. 17; Dfts' Ex. 277.) *But no litigation was begun by Plant.* These suits, no doubt, were intended in part at least as spurs to induce Plant to sell and hence certainly tend to show that the United Company believed Plant to be a dangerous competitor.

5. DEFENDANTS' ALLEGED REASONS FOR MAKING THE PURCHASE ARE INSUFFICIENT TO CONCEAL THEIR FEAR OF PLANT AS A COMPETITOR.

Defendants say that the purchase was made to obtain Plant's improvements so that they might advance the art of shoe machinery for the benefit of shoe manufacturers.

This altruistic motive might have been satisfied without the expenditure of $6,000,000. All that was necessary was to permit the shoe manufacturers who were ready and anxious to purchase an interest in Plant's machinery to carry through their design. They were ready to interest themselves in the machinery to which the improvements had already been successfully applied.

And the facts demonstrate that the United Company, which is directed by pretty efficient business minds, hardly could have invested $6,000,000 for the purpose of getting control of a few improvements.

In the first place, no effort was made to acquire the improvements or any of them or any right to use them without at the same time acquiring all of Plant's interests in shoe machinery. In the second place, the defendants' own witnesses show that

however valuable the Plant improvements were to him as a present and prospective competitor of the defendants, they were of little use to the United Company, for the following testimony shows what, according to the defendants, the improvements were and what they did with them.

Warren, an expert of the United Company, said:

> These Plant improvements on the welter were the things which especially impressed me. (I, 813, l. 5.)

Howe said that Plant had added a certain improvement to his welting machine which constituted a valuable feature. (I, 669, l. 20–30.)

From Howard we learn that these improvements were an automatic stopping mechanism on an outsole stitcher and a welt measurer and cutter attached to the welting machine. (II, 2259–2263, *passim.*)

With respect to the stopping mechanism, Howard said:

> The Plant mechanism was far from satisfactory as it was not a good mechanical arrangement and occasioned much trouble from breakage. After the acquisition of the Plant patents by the United Company in September, 1910, *five* different inventors employed by the United Company were put to work upon the *problem* of providing a *commercially satisfactory stopping* mechanism. * * * The mechanism finally produced by the joint work of these five inventors was that which I have described and *was entirely different in structure and mode of operation from the Plant mechanism.* (II, 2297.)

Concerning the welt measurer and cutter, he said:

> Some four or *five* inventors were put to work by the United Company to adapt [it] to the United Company's Model G. welter. * * * The United Company's inventors made *important improvements* upon them so that, as finally incorporated in the Model G. machine embodying these improvements and others to which I shall refer, became known as Model K. machine, improvements were made which represent almost as *important advances* in the industry as did the Plant improvements. In operating the Plant welt holder and cutter, it was necessary for the operator to step on a treadle at the time when he desired to sever the welt. In the Model K. machine it is only necessary for the operator to move the shoe slightly to the left. (II, 2260–2261.)

It appears, then, that none of the improvements purchased from Plant at enormous cost could be used by the United Company without radical and far reaching change.

Plant's machines were efficient and were of great value *to him as a competitor of the defendants.* But the United Company already had machines, of different design, which it believed efficient. All that it could get from Plant in the way of machinery of value to it was improvements which it could add to its own machines. The foregoing testimony shows that Plant's improvements could not be added to its machines without being so changed that they were *entirely different* in structure and mode of operation. New invention was required. What was of immediate

value to the defendants in the Plant acquisition was the removal of Plant's competition. This is what they bought and it was for this that they paid their millions.

It is suggested by the defendants also that the purchase was inspired by a desire to avoid litigation. This would not be a defense for an otherwise illegal purchase. (*Infra*, p. 246.) But that the avoidance of litigation was in fact an actuating factor in the transaction does not appear. In no part of the negotiations was it suggested that the defendants should buy out Plant in order to avoid litigation. And no litigation *against* the United Company had been brought.

It is true that a number of infringement suits had been instituted against Plant, as above noted. But it does not appear that if any or all of them had been sustained it would have been fatal to the line of machinery owned by him. His improvements, so far as his two principal machines were concerned, were made upon machines previously put out by the United Company. (I, 787, l. 6.) The patents on these machines had expired, by limitation.

Nor will it do to say that Plant had developed his line of machines with the design to force the United Company to purchase them and that the purchase was made at his instance. He did not have to sell to the United Company. The western manufacturers and the people of whom Herrick was told in New York (*supra*, pp. 116–120), were ready to go in with him. He had two courses open, one to sell to the

United Company and restore the complete monopoly in his lines of machinery which existed before he came into the field, and the other to sell to the others and thus perpetutate the active competition in those lines. He chose the former and no doubt was moved thereto by the fact that the United Company was willing to buy out his entire interest in both his shoe machinery and his shoe-manufacturing business and permit him to retire to enjoy his mountain in New Hampshire. (I, 488, l. 24.) But whether the initiative came from the defendants or from Plant, the result was the same. A powerful existing and potential competitor was purchased. That is the significant fact.

The purchase of the shoe factory is in itself enlightening. The United Company had never been in the shoe-manufacturing business and, so far as this record shows, had never intended to go into that business. (I, 580, l. 42.) Yet, in order to obtain Plant's machines, it took 60 per cent of the stock of the Thomas G. Plant Shoe Company, *whose factory was equipped with Plant's machines*, at a price which Winslow says was $3,500,000. (I, 499, l. 35.)

Furthermore Winslow says that this stock was not purchased because he wanted it. It was because Plant made it a condition of his proposition. (I, 562, l. 12.) It is inconceivable that such an expensive piece of property which was not desired and in which the United Company had never manifested any interest was purchased for no other reason than to

obtain inventions which defendants say had to be entirely worked over before they could be adjusted to the United Company's machines, machines which defendants insist were already better machines than those made by Plant.

In addition, the magnitude of the consideration paid clearly shows that the value of the purchase did not consist alone in the machines and improvements obtained. In the original organization the stockholders of the Consolidated & McKay Lasting Machine Company received $4,599,840 of stock, preferred and common, and $432,000 in cash, or a total of $5,031,840, or $968,160 less than was paid Plant. (I, 568, l. 21.) The Goodyear stockholders received $4,800,000 in stock, or $1,200,000 less than was paid Plant. (I, 569, l. 3.) The McKay Shoe Machinery Company stockholders received $5,500,000, or a half a million dollars less than was paid Plant. (I, 569, l. 8.) Furthermore, it is difficult to conceive how Winslow could value 60 per cent of the stock of T. G. Plant Company at $3,500,000. The total capitalization of that company was $3,750,000, of which $2,500,000 was preferred and $1,250,000 was common stock. Plant owned and the United Company received by this purchase only $1,500,000 preferred and $750,000 common, or a total of $2,250,000 (I, 486, l. 8 et seq.), and the statement furnished the company by Plant showed that the Plant Company had a net investment at that time of only $2,500,000 (Plff's. Ex. 132, IV, 1015), 60 per cent of which was $1,500,000. The evi-

dence does not show that the stock of the Plant Company was worth any such figure.

Besides the amount paid Plant, the United Company also paid under the several contracts which Plant had, $122,000 to Stanbon (I, 558, l. 33 et seq.), $150,000 to the Stanley Company, and also considerable sums to other concerns which were taken over; but Winslow says that these purchases were regarded as mere incidents.

6. RESULT OF THE ACQUISITION OF THE PLANT PROPERTIES.

a. The United Company Again Acquired Substantial Control of Welters and Stitchers.

In order to fully comprehend the effect of this purchase, the conditions then existing must be kept in mind. The only other concern at that time engaged in putting out welters and stitchers to any material extent was the United Company. Winslow named the Haverhill Company, R. H. Long, and the Boylston and Duplessis Companies as being engaged in manufacturing welting machines but the evidence of representatives of each of those companies is in the record and shows that when the Plant purchase was made no one of them was manufacturing welting machines to any material extent. (Webster, I, 290, l. 26; 291, l. 42; 292, l. 8; Doidge, I, 344, l. 17 and 26; Maloy, I, 301, l. 26; Hamel, I, 326, l. 9, 36, 37.)

b. The United Company Secured Control of the McKay Sewing Machine.

While the McKay sewing machine was the first shoe bottoming machine and was one used in large numbers by shoe manufacturers, it was apparently

not put out by any of the companies combined in the organization of the United Company and that company, though putting out the machine in its general department, seems to have done little with it until after 1908. Two reasons seems to have contributed to this, although its exact cause is left by the record somewhat to conjecture. It was a machine which the United Company, bending its energies chiefly to the development of the welt process (I, 441) regarded as obsolescent. Moreover, the Richardson Company was putting out an improved patented type which was considered by the experts of the United Company to be superior to that which the latter company was making. (I, 70, l. 10–14; 82, l. 33–35.) The lack of attention paid to the McKay machine by the United Company resulted in the fact that a large majority of the McKay machines in use came from other manufacturers. In the second place, the McKay sewing machine was not included within the scope of the defendants' leasing system. On both these circumstances, defendants rely heavily in argument in this case.

But in 1908 the situation regarding this machine began to change. In that year the Richardson Company was acquired. (I, 69, l. 20 et seq.) Thereafter the United Company began putting out the McKay sewing machine in its improved form, either by sale or more recently by lease.[1] There still remained,

[1] The lease form adopted was Plff's. Exhibit 170, IV, 1161. It "ties" the use of the machine to the use of defendants' lasting machines. Only a manufacturer who uses exclusively United Company's lasting machines can lease the McKay machine.

however, an established competitor, the Stanley Company, which was putting out the original McKay machine. (I, 564, l. 22.) Its properties were procured at a consideration of $150,000 as a part of the Plant acquisition. This gave the United Company complete control of that machine.

Winslow testified that the machine could be obtained elsewhere, but he was wholly unable to name any other concerns which manufacture it in competition with the United Company. (I, 564, l. 25.) Possibly second-hand machines can be obtained from dealers, but when that supply is exhausted it will be necessary for every manufacturer to equip his factory with McKay machines held by the United Company.

In consequence, the United Company by procuring control of the McKay sewing machine completed its monopoly of every important machine used in bottoming shoes.

c. It Removed the One Formidable Competitor of the Defendants.

Mr. Johnson of the International Shoe Company, one of the largest practical shoe manufacturers of the country, truly said of the Plant purchase that—

> it showed either that somebody was able to make a superior line of shoe machinery to what the United Company had, or else they wanted to retain an absolute monopoly of the shoe machinery business. (I, 161, l. 26.)

The fact is that the purchase removed the one really formidable competitor which had appeared since the organization of the United Company.

VII. THE POSITION OF THE UNITED COMPANY AT THE TIME WHEN THIS ACTION WAS BEGUN.

A. IT WAS OVERWHELMINGLY PREPONDERANT.

Facts already reviewed show that upon its formation the United Company acquired every company then actively putting out or planning to put out lasting, pegging, welt sewing, outsole stitching, heeling and metallic fastening machines. (*Supra*, p. 61.) In the twelve years before the bringing of this action no substantial change took place, but rather the monopoly so acquired was in some respects extended and in many respects strengthened and intrenched. In 1911 the United Company was putting out a complete line of machinery in the field which it then had entered. It was offering machines for every operation performed by machinery in the bottoming of shoes, clicking and eyeletting machines. (Dfts.' Ex. 232, V, 480.) As to many of these machines, it appears from Exhibit 232 that the defendants admit that they have no competition. No company in this country except the United Company offer such a full line of machines. (Jones, I, 115, l. 31; Long, I, 231, l. 17; Dfts.' Ex. 232, V, 480.) The testimony of the many shoe manufacturers who appeared as witnesses either for the United States or for the defendants shows that substantially every machine used for these operations by shoe manufacturers in the United States is a machine put out by the defendants.

Charles H. Jones, president of the Commonwealth Shoe & Leather Company, of Boston, Mass.—capacity

6,000 to 7,000 pairs per day—testified that his company does not use any welting, outsole stitching, lasting, heeling, or metallic fastening machines other than those of the United Company. (I, 114, l. 22.)

E. F. Selz, of Selz, Schwab & Co., Chicago, Illinois—daily capacity about 15,000 pairs—testified that his company has obtained all its welting, stitching, lasting, heeling, and metallic fastening machines under lease from the United Company. (I, 144, l. 15.)

Milton S. Florsheim, president of the Florsheim Company, Chicago—daily capacity about 4,000 pairs—testified that his company leases all of its welting and stitching, lasting, and heeling machines from the United Company, except a few machines which had been obtained previous to the consolidation from companies which became a part thereof. All royalties are paid to the United Company, except royalties for the use of the Xpedite finishing machine, which is paid direct to the Xpedite Company, a subsidiary of the United. (I, 159, l. 44; 160, l. 1 et seq.)

Frank C. Rand, vice president of the International Shoe Company, of St. Louis, Mo.—daily capacity about 50,000 pairs—testified that his company leases all of its lasting, heeling, welting, stitching, and metallic fastening machines, etc., from the United Company. (I, 178, l. 37 et seq.)

George R. Harsh, president and general manager of Harsh-Edmands Shoe Company, Milwaukee, Wisconsin, testified that his company did not use in the bottoming department any machines other than those obtained from the United Company, except one

stitching machine of the Union Lock Stitch Company for ornamental work. (I, 195, l. 14.)

Pearl E. Selby, of the Selby Shoe Company, Portsmouth, Ohio—daily capacity about 6,000 pairs—testified that his company uses the United Company's welters and stitchers exclusively for welt work, but for fair stitching, viz, inserting an ornamental stitch in the McKay shoe they have used a Puritan machine for about 15 years, and were trying out the Union lock-stitch machine (I, 210, l. 38; 213, l. 11 et seq.) and that the company uses exclusively lasting, heeling, and metallic fastening machines of the United Company (I, 212, l. 33).

John E. Williams, with factories at Portsmouth and Ironton, Ohio, testified that he used exclusively the United's bottoming machines. (I, 216, l. 37.)

William A. Hogan, treasurer of T. D. Barry Company, Brockton, Mass.—daily capacity from 3,000 to 3,500 pairs—testified his company uses exclusively the United Company's welters, stitchers, heeling, lasting, and metallic fastening machines. (I, 222, l. 10; 224, l. 14.)

Frank R. Hilliard, Haverhill, Mass., manufacturer of women's welt and turn shoes—daily capacity about 4,000 pairs—uses the United Company's machines exclusively. (I, 282, l. 42; 283, l. 4.)

Ernest Bottomley, Haverhill, Mass., manufacturer of McKay shoes—daily capacity about 700 pairs—testified that with the exception of two old McKay sewing machines he uses exclusively bottoming

machines of the United Company. (I, 285, l. 2, 24; 287, l. 18.)

James H. Cunningham, general superintendent of the Stacy-Adams Company, Brockton, Mass.—daily capacity about 1,200 pairs of welt shoes—testified that his company uses exclusively the United Company's welting and outsole stitching, lasting, heeling, metallic fastening, and eyeletting machines. (I, 288, l. 35; 289, l. 29.)

Ira J. Webster, Haverhill, Mass., shoe manufacturer, testified that he uses exclusively bottoming machinery of the United Company. (I, 362, l. 20.)

Thomas H. Shinn, superintendent for the Curtis & Jones Company, Reading, Pa.—daily capacity about 10,000 pairs—testified that his company uses the United Company's bottoming machinery exclusively. (I, 366, l. 35, 37.)

Alanson C. Brown, president of Hamilton-Brown Shoe Company, St. Louis, Mo., manufacturers of welts, turns, and McKays, with a daily capacity of about 25,000 pairs, testified that practically all of the machinery used in his factories was obtained from the United Company. (I, 617, l. 10, 26.)

Robert P. Hazzard, of the R. P. Hazzard Company, Gardiner, Me., manufacturers of men's welt shoes, with a daily capacity of about 5,000 pairs, testified that his company "got from the United Company all the machinery they could supply." (I, 651, l. 10, 26.)

Martin E. Welch, of the Welch Shoe Company, of Lynn, Mass., testified that every machine used by

that company in the bottoming room with the exception of two or three machines are United machines. (I, 710, l. 25.)

Frederick Allen, of the Allen, Foster, Willett Company, of Lynn, Mass., manufacturers of welts, turns, and McKays with a daily capacity of about 6,000 pairs, testified that his concern uses the United Company's bottoming machines exclusively, with the exception of the Puritan fair stitching machines. They also used defendants' eyeletting and clicking machines. (I, 723, l. 37.)

Jonathan Brown, jr., manufacturers of women's, misses', and children's McKay sewed and standard screw shoes, with an output of about 7,500 pairs per day, testified that he uses practically all of the United's bottoming machines in his factory. (I, 730, l. 15, 31; Plff's Ex. 269, IV, 1441.)

James W. Hitchings, of Luther S. Johnson & Co., Lynn, Mass., manufacturers of slippers, testified that all of the bottoming machines used by his company belonged to the United Company. (I, 738, l. 6.)

Edward W. Burt, of E. W. Burt & Co. (Inc.), of Lynn, Mass., manufacturers of men's, women's, misses', boys', and children's welt shoes, with a daily capacity of about 500 pairs, testified that he was using the United Company's machines. (I, 739, l. 4.)

Charles A. Eaton, of the Charles A. Eaton Company, Brockton, Mass., manufacturers of men's welt shoes, with a daily capacity of about 2,400 pairs, testified that he had not made any attempt to obtain bottoming machines from any other source than the

United Company. (I, 751, l. 20, 27; 755, l. 25 et seq.)

C. Willis Bennett, Fitchburg, Mass., manufacturer of women's, misses', and children's McKay sewed shoes, with a daily capacity of from 800 to 1,400 pairs, testified that, with the exception of machines for fair stitching, all of his sewing, heeling, lasting, and metallic fastening machines were obtained from the United Company. (I, 757, l. 42; 760, l. 1.)

Frederick J. Gross, of Field Bros. & Gross Company, Auburn, Me., shoe manufacturers, with a capacity of 7,200 pairs per day, testified that at the time of his examination his company was using no bottoming machines except those of the United Company. (I, 806, l. 21; 808, l. 1.)

Evidence of this kind might have been indefinitely multiplied, but even the foregoing was hardly necessary in view of the defendants' admission that they are in business relations with 1,033 shoe manufacturers in the United States. (Donham, I, 26, l. 39.) The census of 1910 showed that in 1909, there were in the neighborhood of 1,300 manufacturers.

These figures are sufficiently impressive even without the corrections necessary to accuracy. Census figures appear to include not only shoe manufacturers but producers of "cut stock and findings." These do not use the machines which the defendants have monopolized. Nor do makers of certain kinds of "footwear" other than boots and shoes, e. g., moccasins, infants' shoes, and various types of slippers.

The surviving small hand shops also are to be excluded.

The number thus to be deducted is, unfortunately, not shown by the record. Taking, however, the proof as to the use of defendants' machines together with the absence of a showing that any appreciable number of substantial shoe manufacturers are equipped with competing machines, it is submitted that it is well established that the United Company was not only greatly preponderant in the industry but that its control very closely approximated 100 per cent. Direct evidence, however, was put in as to the actual results of the efforts of those attempting competition. It removes any possible doubt upon the question.

B. EXISTING COMPETITION WAS NEGLIGIBLE IN EXTENT.

1. IN GENERAL.

The foregoing testimony in itself shows that the defendants had in the American market no competition worthy of the name as to any of the more important machines used for operations lying within the field to which the Government's charge of monopolization applies. In the course of the testimony of Mr. Winslow and of other officers of the United Company various manufacturers are named as offering to the trade machines which competed with the United Company's machines of these departments, and a number of exhibits containing lists of such names were introduced. The claims of the defendants, however, were summed up in a final exhibit,

to which the attention of the Court is respectfully invited. (Dfts.' Ex. 337, V, 906). This was chronologically the last of the series of these exhibits to be produced, and therefore may fairly be taken as stating the defendants' case on this point in the way in which they desired to leave it and the heading of the exhibit itself indicates this. It is headed: "List of Machines Offered by Shoe Machinery Manufacturers and Dealers Other Than United Shoe Machinery Company for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines, Dieing-Out Machines, and Clicking Machines. Named in Defendants' Exhibit 311 (Folio of Catalogues), Defendants' Exhibits 312, 313, 314, 315, 316, 317, 318, 319, and 320 (Catalogues), Defendants' Exhibit 321 (Letters, Advertisements, and Catalogues)." Alleged "competitors" who do not appear in this final statement of the defendants may therefore be and they are herein disregarded.

Analysis of this exhibit (Dfts.' Ex. 337, V, 906) in the light of certain testimony in the record discloses the unsoundness of any claim that the defendants have any substantial competition in the field which they have undertaken to preempt.

The basis of the exhibit as is shown by its descriptive heading was a number of catalogues, letters, and advertisements which defendants were permitted to introduce. The circumstances under which this material was received appear in the examination of the witness Sampson. (I, 836–837, 879–881.) He

was permitted to put in, as Defendants' Exhibit 311, what he described as

> catalogues of machines which I have not seen specifically advertised within a few years, but which were generally known to be those of manufacturers who have these machines for sale as a matter of general trade knowledge. (I, 836, l. 43; 837, l. 1–3.)

Other catalogues were gathered by solicitation. As to the actual putting out of machines by the concerns whose catalogues he had collected, the witness testified in substance that he had no way of knowing, and he explained:

> As to how I know that these various concerns that have catalogues are holding themselves out to the trade as furnishing these various machines, I know it from the advertisements and catalogues which they issue and from general trade knowledge. I have not undertaken to buy anything from them * * *. I do not know how many they are selling. (I, 880, l. 43; 881, l. 1–5.)

In view of the care and labor expended by the defendants in collecting these catalogues, in writing letters to the concerns, many of them mere machine shops (I, 837, l. 6 et seq.), asking them for quotations on machines which the concerns had described themselves as ready to furnish upon order, and in utilizing the "general trade knowledge" of the witness, it is very significant that neither he nor any witness called by the defendants informed the Court of any appreciable use of the machines furnished by

this cloud of alleged competitors. Eighty-five representatives of a number of these manufacturers were, however, called by the Government (I, 882–960 and elsewhere) and testified as to the actual character and amount of the business of these companies. Some of the machines named in defendants' Exhibit 337 are minor machines used for cutting sole leather, etc., as to which the United States does not charge the United Company with monopoly. As to many others the defendants, in that exhibit, do not claim to have any American competition.

2. THE FOREIGN COMPANIES.

It is convenient, therefore, first to dispose of the eleven foreign companies which are mentioned by the defendants in connection with a large number of the machines enumerated in Defendants' Exhibit 337. A number of companies in France, England, and Germany are named as manufacturing one or more of the more important machines used for bottoming operations and it is contended by the defendants that these companies compete with them in this country. The defendants did not show the use of a single foreign machine in the United States, offered no evidence of any attempt to introduce such machines, and contented themselves with producing catalogues bearing the names of the companies in question which they were allowed to introduce as evidence of something.

On the other hand, the United States produced witnesses Stone, McElroy, and Cavanaugh, who

testified specifically on the matter and supplied the full story of foreign machines in this country. This evidence was in addition to the testimony of the shoe manufacturers as to their exclusive use of the defendants' machines which has been noted, *supra*. The testimony shows that these foreign companies had not attempted marketing their machines in the United States in competition with the United Company.

Cavanaugh (I. 954, l. 31 et seq.; 955, l. 1 et seq.) testified that as a salesman of shoe machinery he had visited shoe factories all over this country. He was acquainted with nearly all the foreign companies mentioned, and testified that he knew of no business in shoe machinery having been done in the United States by any of the foreign companies mentioned.

McElroy was especially qualified to testify on this point because of his experience in attempting to fit up a factory to manufacture welt shoes without using any of the machinery supplied by the United Company. (I, 190, l. 1 et seq.) In his effort to do so, he "looked over all the available markets." (I, 190, l. 18.) He did obtain in England certain machines, to wit, sole molding, stitching, indenting, rough rounding, leveling, and lasting machines "because we could only get them from the United Company in this country." (I, 190, l. 43.) These are the only foreign machines which the record shows ever to have been used in this country. To obtain these machines, he was compelled to make a journey to England (I, 190, l. 20, 45; 191, l. 1 et seq.)

and then was unable to secure a machine without waiting for it to be constructed. It took him in all seven months to get together machinery (I, 922, ls. 26–29) sufficient to equip *one* factory with a capacity of 600 to 1,000 pairs of shoes a day. (I, 194, l. 18.) On page 923 this witness reviewed the foreign concerns named in defendants' list. The only one which he knew of as having done any business in this country was the Standard Rotary Machine Company, of England, and in connection with it he refers *only* to the machinery which he himself had obtained. He testified that it had no machinery in this country at the time when he resorted to it for his machinery. (I, 190, l. 35.)

Stone, who was called by the United States (I, 339, l. 41), testified to all that the record shows as to the making of any efforts by any foreign company to market machines in this country. Representing the Atlas Works, of Leipsic, Germany, he spent six weeks in this country. In that time he succeeded in selling two machines for nailing wooden heels on turn shoes to two small manufacturers. (I, 341, l. 21.) He placed no important machines and did no business with any manufacturers of any considerable size.

Why he was unable to do any more business is graphically illustrated by the reception he got from Mr. Jackson Johnson, of the Roberts, Johnson & Rand Company, of St. Louis. Mr. Johnson said:

> My boy, I know all about it, about the machines you are producing in Germany, and what kind of machines can be made in Ger-

> many or in Europe; but, as it is, you know, if you bring over a machine which is constructed in such a way that we drive a cow into it, and on one side ready-made shoes come out and on the other side ready-made sausages and you want to sell it to us for ten cents, then we are not allowed to install it or make use of it.

and added (I, 340, l. 13) that this situation arose from the leases of the United Shoe Machinery Company which are dismissed *infra*. Other large manufacturers gave him the same reason. (I, 340, l. 29; 341, ls. 12, 16.)

This witness, who was the only person ever connected with any foreign company who testified, was asked as to the capacity of the Atlas Works. He answered that his proposition to the American shoe manufacturers was that if they would put at his company's disposal the capital that they would pay in one year in royalties they "might be able *to enlarge* their plant and furnish them machinery; but, as it was, *they were equipped only for European business.*" (I, 344, l. 4.) He stated that he had given up his employment "automatically," being unable to do anything for his employers. (I. 343, l. 28.) It will be noticed that he was not even permitted to show his wares. To be sure, he had no wares in the shape of actual machines to show.

Nothing on the record goes further than to show that these foreign companies are doing business in the countries in which they are respectively

situated, and issue catalogues, of which the United Company had been able to procure copies.

With respect to the Plant transaction, the United Company contended that Mr. Plant was not in competition with them, although he had issued an elaborate catalogue, and announced that he stood ready to supply shoe manufacturers with all of the machinery therein named. The Government, however, supported its contention as to Mr. Plant with the concrete evidence of ability to supply machines, which has heretofore been reviewed. The United Company made no such effort as to the foreign, or indeed as to most of the domestic, concerns whose catalogues were introduced and referred to in Defendants' Exhibit 337.

It is submitted, therefore, that the alleged foreign competition may be dismissed without further notice.

3. AMERICAN COMPANIES.

It has just been noted that Warren F. McElroy testified that in the year 1911 he attempted to equip, as a demonstration, a factory to manufacture welt shoes having a capacity of from 600 to 1,000 pairs a day from sources independent of the United Company. (*Supra*, p. 144–145.) He searched all over the United States, picking up machines here and there. But he could not get in this country, and was compelled to go to England to obtain, many essential machines which he desired. (*Supra*, p. 144.) Certain machines, such as heeling machines, he found he could obtain in this country with the exercise of

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sufficient patience, "but it took two months to get the first one." (I, 191, l. 6.) He could not get a full line of welt machines in this country (I, 190, l. 45; 191, l. 1–2), although he did get two welt machines for trial from *two* American manufacturers. After his return from England he found that the Krentler Company, of Detroit, had a crude lasting machine which they were ready to install on trial. That machine was not a commercial proposition at the time. (I, 190, l. 22.) The record shows that *Krentler's entire output was two machines*, both of which were installed in this demonstration factory. (I, 190, l. 29.) Winslow testified that the Krentler property had been offered to the United Company. It had not been accepted at the time the suit was brought. (I, 570, l. 25.) Under the rule of the Court limiting the introduction of evidence to events prior to the filing of the petition, the subsequent history of this company could not, of course, appear in the record.

McElroy also spoke of the circumstance that from the organization of the United Company he observed the discontinuance of calls from agents for different shoe machines which had been customary before. (I, 188, l. 35; 189, l. 2.)

Winslow also testified that while other machines for dieing out heavy stock were offered, he knew "of no clicking machine that is being used in this country in the manufacture of light grades of shoes except ours." (I, 592, l. 38.)

The foregoing testimony in itself tends to establish the situation with respect to the dominance of the United Company, already disclosed by the evidence of the shoe manufacturers and otherwise. (*Supra*, pp. 134–140.) It did appear that certain companies were preparing to enter the field, provided a reasonable opportunity of successful competition presented itself. The defendants make the most of the fact that some of these companies had at times claimed to be better off than the evidence shows them to have been. A certain exaggeration in such matters is neither unusual nor surprising. In fact, however, representatives of practically every one of these factories testified with reference to the machines which they had actually put out, the supply of machinery which they had on hand, and the capacity and resources of their factories. It is to be presumed that they made the best possible showing for their respective companies. But there is in these matters a very great difference between desire and performance. It is one thing to have for exhibition purposes an experimental machine and quite a different thing to be prepared to produce a practical machine in commercial quantities. The evidence of their representatives showed that these companies are at present wholly inadequate to supply any appreciable part of the American demand. (Merrick, I, 199, l. 8; Long, I, 232, l. 4, and 233, l. 11; Maloy, I, 301, l. 23; 302, l. 2; Webster, I, 298, l. 1; Doidge, I, 344, l. 14.)

Charles H. Jones, of the Commonwealth Shoe & Leather Company, testified that from his knowl-

edge of the shoe-machine business no one outside of the United Company could, on December 12, 1911, furnish machines for the purpose of fitting out a factory for the manufacture of welt and turn shoes. (I, 115, l. 31.)

Long testified to the same effect. (I. 231, l. 17.)

Appendix B, parts 1 and 2, attached hereto, is a condensed statement drawn from the uncontradicted evidence of the 85 witnesses referred to with respect to the catalogues, etc., and from other undisputed sources indicated therein, showing in part 1 the number of principal bottoming machines together with clicking machines which the United Company had out March 1, 1911, and the number which all competing concerns had out at that time. The appendix, part 1, does not give the number of pulling over, standard screw, or pegging machines in use at that time, but they are found in Defendants' Exhibit 228. A summarization of the appendix aided by Defendants' Exhibit 228, as just indicated, is as follows:

Machines.	By defendants.	By all others.
Clicking machine	3,655	None.
Pulling-over machine	1,632	None.
Lasting machine	7,496	7
Standard screw machine	409	None.
Pegging machine	146	None.
Tacking machine	3,488	6
Welt sewing machine	2,527	142
Outsole stitching machine	2,676	758
Loose-nailing machine	1,835	24
Heeling machine	2,019	17
Slugging machine	1,876	23
McKay sewing machine	898	8

With respect to the situation as to McKay sewing machines, see *supra*, pp. 131–133.

According to this summary, the United Company controls all the clicking, all the pulling over, all the pegging, and all the standard screw machines, and about 96 per cent of the total number of bottoming machines in use (clicking machines are not bottoming machines).

It should also be noted that welt sewing and outsole stitching machines are used in repair work and many of the independent machines of these classes are used for that work and not for making new shoes. Doidge, general manager of the R. H. Long Machinery Company, said:

> We have sold 285 outsole stitching machines, of which 3 went to shoe manufacturers and the others to cobblers. (I, 344, l. 25.)

The Victor Shoe Machinery Company also disposes of its product to cobblers. (I, 301, ls. 38–39.)

Remarkable as this showing is, it finds ample support in the testimony of Mr. Winslow. He said "that a large proportion, to wit, more than 90 per cent, of all the welt and turn shoes made in this country are sewed upon such machines" (meaning the machines of the United) (I, 597, l. 10); also, "I know of no clicking machine that is being used in this country in the manufacture of light grades of shoes except ours" (I, 592, l. 38).

The evidence therefore demonstrates conclusively that there is now no substantial competition with the defendants in the field which they have preempted by combination and acquisition.

To this the defendants made no answer other than to introduce the catalogues, letters, and advertisements already referred to and discussed unless certain testimony of Mr. Winslow based upon lists made up for him (I, 575 l. 4. et seq.), can be said to supplement them. The defendants did not call any *independent* maker of machinery *or any shoe manufacturer* to testify *to the use* of such *independent* machinery. In view of the evidence offered by the Government the reason for their so doing is obvious.

Two other claims of the defendants with respect to the question of their monopoly may be here noted. The defendants suggest that they are not to be charged with monopolizing because a number of ideas and inventions had been offered to the company which it had not bought. And because a number of concerns manufacturing or dealing in certain kinds of shoe machinery had been offered to the United Company but rejected. But Mr. Winslow was asked to name a single one of the rejected ideas or inventions which had developed into a machine of any value. His reply was that he should "hope [he] could not mention a single one, but [he had] not looked through the list to see." (I, 574, l. 25.) He was asked whether any one of the concerns which had been offered to the United Company and rejected by it was in existence on December 12, 1911, and was doing a substantial business in competition with the United Company. His answer (I, 575, l. 14) was that he should have to study the list before he could state.

A further example of the value of Mr. Winslow's elaborate testimony as to the existence of competition, testimony based on lists which were worked up laboriously by clerks who were not called (I, 575, l. 4 et seq.) appears in what he says regarding the acquisition of the Stanley Company, the last independent manufacturer of the McKay sewing machine, *supra*, page 133. He referred to a list previously filed which shows Walter Pearson, A. Johnson & Sons, the American Worsted Machine Company and the Nolle Works as manufacturers of or dealers in the McKay machine. But he was unable to state who Walter Pearson was, or anything about A. Johnson & Sons, except that they were probably somewhere in France. He did not know what the American Worsted Machine Company was putting out. He did know that the Nolle Works were in Germany. (I, 565, l. 29.)

It is respectfully submitted that Mr. Winslow would not need to make any particular research to remember the names of substantial competitors. The fact is that the United Company is now the only company in this country making and putting out the McKay sewing machine. That circumstance is unaffected by the fact that second-hand machines may be had, if one wants second-hand machinery, or that the old types of McKay machines are unaffected by patent control, and therefore *could* be manufactured by others than the United Company.

Nor are the figures stated as to the comparative numbers of McKay machines put out by the United Company and by existing competitors affected by the

fact that such machines put out, say, by the Stanley Company, before its acquisition are still in use.

A final reason why no one else *will* manufacture such machines will appear when the leases of the United Company are considered.

Winslow also filed a list showing the increase in welt machines, lasting machines, and certain other shoe machines from 1900 to 1911. He admits, however, that the entire increase in welt machines and in lasting machines was in machines put out by his company.

The evidence is wholly c[illegible]vincing and indeed substantially uncontradicted that the United Company which had a complete monopoly of the field which it entered at its organization in 1899 retained that monopoly down to the institution of this suit, and that in 1911 it had no substantial competition.

VIII. CLAUSES IN DEFENDANTS' LEASES UNDULY INTERFERE WITH INTERSTATE COMMERCE.

A. IN GENERAL.

Irrespective of whether the original formation of the United Company or the subsequent acquisitions by that company were legal or illegal, the defendants have adopted and are enforcing a system of leasing machines which has contributed to the building up and intrenchment of their illegal monopoly and is unlawful in itself in that it directly and inevitably interferes with the free flow of trade in the channels of interstate commerce.

The United States raises no objection to the fact that the United Company leases but refuses to sell its

more important machines. The illegality to which it directs the attention of the Court lies in the insertion in the defendants' leases of certain specific clauses "framed to accomplish exactly what they seemed to be intended to accomplish" (Choate, I, 113, l. 31) whose necessary effect is the restraint described.

These leases themselves are in every respect carefully and skilfully drawn and contain every ordinary provision to protect the interests of a lessor. Among these is a clause requiring the payment of a fixed minimum royalty. In many leases there is a clause authorizing the lessor to take back all machines not needed for the business requirements of the lessee. The lessee is bound at his own expense to keep the machinery in good and efficient working order; to procure from the lessor exclusively the parts which he may need to replace worn or defective ones and to pay therefor "the regular prices from time to time *established by the lessor.*" The machine is held at the sole risk of the lessee, who is bound to pay all taxes and assessments upon it, and when the term of the lease has expired he must return the machine to Beverly, Mass., and pay the freight on it. If the machinery be destroyed by fire, he must pay for it a sum fixed in the lease; and whether the machine is put out on a rental or a royalty basis he is obligated to guarantee a minimum monthly return. Plaintiff's Exhibit 21 (III, 182) is in these and other respects a fair sample of the defendants' leases.

But in addition to these provisions there are clauses in general use in defendants' system of leases which

are sometimes called "tying clauses." These restrict the freedom of choice of the lessee between the defendants' machines and those of their competitors not merely as to the particular need for machinery whose satisfaction was the occasion for the making of the particular lease but also as to his future desires both for machinery of the kind leased and for shoe machines of different but important and necessary kinds. Correlatively they limit and prevent the possibility of access to the shoe manufacturers—the only market possible to defendants and their competitors—of all competitors of the defendants not only as to the immediate transaction closed by the particular lease but as to all future transactions, including the replacement of existing equipment with superior or cheaper machinery.

The objectionable clauses are inter-related and operate together with cumulative effect. They are unlawful both as integral and effective parts of an unlawful whole, and, for the most part, in and of themselves. It is, however, in their combined effect as a system of leasing, used and insisted upon by a corporation dominant in its field that the full extent of their illegality is to be perceived.

The number of the lease forms, the intricate and often equivocal nature of their verbiage, and the technical complications of the situation to which they are applied render an attempt at a general statement of the nature and combined effect of this leasing system at once necessary and difficult. Much of the apparent difficulty of dealing with the matter is, however,

removed by keeping in mind a few general propositions. For instance, although new forms of leases for various machines have been devised by the defendants from time to time, the outstanding forms have usually not been changed or retired. They remain binding upon the lessee until their expiration by lapse of time and their effect upon the organization of the lessee's business remains after them. *Of more importance is the fact that the lessee has no right to demand either the cancellation or modification of an existing lease.*[1] Nor has he the right, when it is a matter of a new lease, to insist that he be given one form rather than another. All these matters are wholly within the control of the United Company. Argument, therefore, as to what competition could be permitted by the United Company if it chose to allow to a lessee a particular selection from its leases is of little moment. What is important rather is what actually has been done and what is being done through the leasing system. Still more important is the use which can be made of it to extinguish competition should it receive judicial approval. For it is fair to judge it by its extreme forms. If a given lease is legal for a given type of lasting machine, for example, it is legal for all lasting machines and for all machines of whatever type.

In what follows care has been taken, as elsewhere, to support the statements made by reference to the record. And ultimately, of course, it is upon the lease forms themselves and their apparent and nec-

[1] He has no right whatever to demand that his "restricted" leases be changed to the so-called "independent" system (*infra*, 190).

essary effect upon competition that the United States relies. All of the forms actually in use at any time by the United Company and its controlled companies appear in the record.

B. THE LEASE FORMS.

Petitioner's Exhibits, 14 to 49, inclusive (III, 121–435), 149, 168–174, 176 (IV, 1082, 1144–1197, 1212), are leases made by the United Company or controlled companies subsequent to the organization of the United Company. Defendants' Exhibits 278 to 308 (V 777–807) are riders attached by the defendants at different times to their leases. The testimony as to the circumstances and frequency of their use is in the record (I, 832–835). The exhibits first referred to cover samples of all the United Company leases of lasting machines (Exhibits 14 to 22, III, 121–203), welt sewing and outsole stitching machines (Exhibits 23 to 26, III, 204–254), heeling machines (Exhibits 27, 28, III, 254–272), metallic machines, including slugging, nailing, standard screw, and all the remaining machines classified by the defendants as metallic machines (Exhibits 29 to 35, III, 272–331), pulling over machines and auxiliaries (Exhibits 36, 39, III, 331–373), general department machines[1]

[1] Defendants refer repeatedly in argument to these "general department" leases as not containing various objectionable clauses and in other connections. Much emphasis is laid upon the variety and number of the machines in the general department. The "general department" leases are not dealt with at length in this brief for two reasons: First, because the defendants claim to have discontinued leasing these machines (Donham, I, 13, ls. 12–13); second,

(Exhibits 40, 41, III, 373–387), eyeletting machines (Exhibits 42, 43, III, 387–401), clicking machines (Exhibit 44, III, 402), McKay sewing machines (Exhibit 170. IV, 1161), and pegging machines (Exhibits 45, 46, III, 413–430). Order forms used by the United Company are Exhibits 47 to 49 (III, 430–435). Leases used by companies controlled by the United Company are Exhibits 50 to 59 (III, 436–514).

The foregoing leases are forms of all the leases used by the United Company. (Donham, I, 5–17,

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because the machines in question have, as a result, become less subject to monopolization. It should be said, however, that the general department leases were a very effective agent of monopolization of machines in other departments, for these leases which were made upon an initial payment "substantially less than" the sale price (Donham, I, 13, ls. 6–8), carried under one form of lease no further payment and under the other only a small annual rental. But only a shoe manufacturer who had machines of the defendants' other departments could have the general department machines upon lease and, when leased, they were limited to use with such machines, i. e., tied to them. All other manufacturers were compelled to buy at the higher price (Donham, I, 12, l. 37 et seq.). It should be added that manufacturers of machines like the general department machines found their market very seriously affected by the fact that the United Company was thus putting out these machines at a price so low as to make competition practically impossible to those who could not recoup their losses in increased royalties on other machines. It should also be noticed that certain important machines while called "general department" machines—e. g., clicking machines and McKay sewing machines—are not treated as are the other machines in that department. The leases covering those machines are dealt with separately in the record and in this brief.

passim.) The riders referred to are all the riders ever used by the defendants (Donham, I, 822, l. 12), and together the exhibits cover the entire body of leases in force and exemplify both what the defendants call their restricted system and their "independent" system.

C. THE "TYING" CLAUSES.

The leases are characterized by the inclusion in them of the tying clauses to which reference has been made. They are called "tying" clauses because they tie the use of the machine leased to the use of machines not covered by the particular lease. Their result is to make it in effect a condition of the lease that the lessee shall not use the machines of competitors either to supply a need for additional machines of the kind leased or for machines of other important though wholly different types. For example, a welting machine may not be used upon any shoe operated upon by a sole-stitching machine procured from another than the lessor. This necessitates taking the sole-stitching machine from the United Company, and thus the use of the welter and the sole stitcher are *tied* together. (Plff's. Ex. 21, par. 9, III, 182.) As it is in the case of the welting machine, so it is with respect to the other machines used in the bottoming of shoes.

In addition to these clauses there are certain other clauses which have a similar effect upon the freedom of the lessee's choice of machines. They give to the tying clauses their maximum effect as destroyers of the possibility of competition with the defendants.

Examples of the various tying clauses and other clauses which together give the defendants' leasing system its illegal character are set out below. The names given to them are adopted purely for convenience.

1. THE SEVENTEEN YEAR TERM.

All leases made by the defendants are made for a uniform term of seventeen years. The result is of course that during that long period no replacement of a machine so leased by a better machine of defendants or others and no change in the form of the lease or avoidance of any of its requirements is open to the lessee except with the defendants' consent and upon their terms.[1]

2. THE "ADDITIONAL MACHINES" CLAUSE.

This clause appears in many leases. It is said by the defendants (I, 444, l. 17) to have been abandoned in 1907, but the defendants have called in no leases containing this clause (Donham, I, 981, l. 2, 16 et seq.), and therefore have now in full force many leases in which it appears. A typical form is that of Plaintiff's Exhibit 30, lease for Metallic department machines (III, 281, par. 3)—covering in one lease 26 machines. The clause reads:

> In case the lessee has more work of the kind which can be performed by any of the machines belonging to the Metallic department of the lessor than the capacity of the Metallic machinery which he has under lease from the

[1] The lessee has no right to demand that an obsolete machine be replaced by a modern one. He can not even "junk" and replace an outworn model and buy a new one. He is compelled to keep on using the old one to "full capacity."

> lessor will permit, then the lessee *shall either take from the lessor*, under a like lease and agreement, sufficient *additional machinery* to perform the work, *or* in case the lessee does not thus lease additional Metallic machinery from the lessor, then *the lessor may*, if it so elects, *cancel* forthwith this lease *and any other* lease of Metallic machinery then in force between the lessor and the lessee. [Italics ours.]

The extent of the use of this clause and any material modifications which have been made in its phraseology are noted in Appendices C and D. This is true of all the clauses here set out. It is sometimes claimed by defendants that this "additional machines" clause was abandoned in 1907. The fact is that Exhibit 34 is the current form of lease for the important group of "metallic machines." (Donham I, 11, ls. 24–28.) *The clause as quoted is taken from that lease.*

1. THE EXCLUSIVE USE CLAUSE.

This clause as it appears in Plaintiff's Exhibit 21 (III, 187, par. 8) lease of No. 5 lasting machine, reads as follows:

> If at any time the lessee shall fail or *cease to use exclusively* lasting machinery held by him under lease from the lessor for lasting all boots, shoes, and other footwear made by or for him, which are lasted by the aid of machinery, or shall fail or cease to use *exclusively* tacking mechanisms and appliances held by him under lease from the lessor for doing all work in the manufacture of all boots, shoes, and other footwear made by or for him which is done by the aid of tacking mechanisms and appliances, *the*

lessor, although it may have waived or ignored prior instances of such failure or cessation, *may* at its option *terminate forthwith* by notice in writing *any or all leases* or licenses of lasting machines, lasting machinery, lasting mechanisms, or lasting devices then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all lasting machines, lasting machinery, lasting mechanisms, and lasting devices the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever.

4. THE PROHIBITIVE CLAUSE.

This clause as it appears in the lease last referred to, Exhibit 21 (III, 185, par. 5), is as follows:

> The leased machinery *shall not* nor shall any part thereof *be used in the manufacture* or preparation *of any* welted boots, shoes, or other footwear or portions thereof *which* have been or *shall be welted in whole or in part*, or the soles in whole or in part stitched by the aid of any welt-sewing or sole-stitching machinery not held by the lessee under lease from the lessor, or in the manufacture or preparation of any turned boots, shoes, or other footwear or portions thereof, the soles of which have been or shall be in whole or in part attached to their uppers by the aid of any turn-sewing machinery not held by the lessee under lease from the lessor, *or in the manufacture of any boots, shoes, or other footwear which have been or shall be in whole or in part pulled over,*

slugged, heel seat nailed, or otherwise partly made by the aid of any pulling-over or "metallic" machinery not held by the lessee under lease from the lessor. [Italics ours.]

5. THE "RIGHT TO TERMINATE ALL LEASES" CLAUSE.

This clause as it also appears in Plaintiff's Exhibit 21 (III, 188, par. 9) is as follows:

> But if any breach or default shall be made in the observance of *any one or more* of the conditions in *this* agreement contained or contained *in any other* lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, *the lessor shall have the right* by notice in writing to the lessee *to terminate* forthwith *any or all leases* of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor. * * * Upon the expiration or termination of this agreement or any extension thereof, or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the *lessee shall forthwith deliver* the leased machinery to the lessor at *Beverly, Massachusetts, complete* and *in good order,* reasonable wear and tear alone excepted. [Italics ours.]

6. THE "FULL-CAPACITY" CLAUSE.

This clause as it appears in Plaintiff's Exhibit 21 (III, 185, par. 5) reads as follows:

> The lessee shall use the leased machinery to its full capacity upon all boots, shoes, or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machinery is capable of being used.

7. THE RETURN CHARGE.

Where machines are installed by the defendants under certain of their restricted leases no charge is made at the time of installation. Many of these leases, however, provide for what is called a "return charge." The provision for the charge as it appears in Plaintiff's Exhibit 21 (III, 189, par. 9), previously referred to, reads as follows:

> Upon the expiration or termination of this agreement or any extension thereof or of the lease and license herein contained by notice or by reason of any default on the part of the lessee as to the terms of this agreement or of any other lease or license agreement from the lessor or otherwise, in any manner whatsoever, the *lessee shall forthwith deliver* the leased machinery to the lessor *at Beverly*, Mass., complete and *in good order*, reasonable wear and tear alone excepted; *and shall thereupon pay* to the lessor without prejudice to any other rights or remedies of the lessor the sum of *One Hundred and Fifty Dollars* ($150) in respect to each lasting machine hereby leased as partial reim-

bursement to the lessor for deterioration of the leased machinery, expenses in connection with the installation thereof, and instruction of operators.

The figure above set out is significant upon the question of the value of the machine when considered in connection with the fire insurance demanded of $225.

8. FASTENING MATERIALS USED ON DEFENDANTS' METALLIC MACHINES TO BE PURCHASED ONLY FROM DEFENDANTS.

Leases of the defendants' metallic machinery also provide that the lessee shall use in or in connection with such machinery only fastening material purchased from the defendants. The requirement as it appears in paragraph 4 of Petitioner's Exhibit 30 (III, 278), reads as follows:

> The lessee agrees, as rent or royalty for the said machinery, to purchase of the lessor at the prices established by the lessor all the fastening material used by him in or in connection with the said machinery, paying therefor in cash on delivery. The lessee hereby guarantees that for each machine hereby leased the amount of fastening material used by him and purchased from the lessor in accordance with the terms hereof shall not be less than 400 pounds during each calendar year embraced by this lease, excepting that a reduction of 33 pounds from the amount thus guaranteed shall be allowed at the end of the year for each calendar month during which the factory of the lessee has remained wholly idle.

3. "ROYALTY" CHARGES ON WORK NOT DONE ON DEFENDANTS' MACHINES.

A clause which is not strictly a "tying" clause in the sense in which that phrase is ordinarily used, but which operates to support and extend the monopoly of the defendants, appears in several leases and especially in leases of welt machinery which the defendants contend are "unrestricted" and classify as such in tabulations introduced as exhibits. Plaintiff's Exhibit 24 (III, 214) is an example of such a lease. In addition to the exclusive use, full capacity, and right to terminate all leases clauses, it provides (par. 6, p. 218) that—

> The lessee shall pay to the lessor throughout the full term of this agreement the respective amounts set forth in the following schedule in respect to each pair of welted boots, shoes, or other footwear, or portions thereof, manufactured or prepared by or for the lessee, which shall have been welted in whole or in part or the soles of which shall have been in whole *or in part* attached to welts by the use of *any welting* or stitching or sewing *machinery*, and in respect to each pair of "turned" boots, shoes, or other footwear, or portions thereof, manufactured or prepared by or for the lessee, the soles of which shall have been sewed or attached to their uppers in whole or in part by the use of *any* sewing or stitching machinery, viz: * * * [Here follows a schedule of prices.]

It will be noted that if a shoe manufacturer made 1,000 pairs of shoes of which 500 were sewed on defendants' machines *used to their full capacity* and 500

on a machine of a competitor, he would nevertheless have to pay to defendants royalties both on the 500 pairs made on their machines *and on the 500 pairs made on the competing machine.* In addition, he would, of course, have to pay for the competing machine. The likelihood of a shoe manufacturer's taking a welt machine of a competitor of defendants under such circumstances need not be enlarged upon.

The lease proceeds (p. 219):

> All payments and the guarantee in this agreement provided for are independent of and in addition to all payments and guarantees provided for in any other leases or licenses or agreements between the lessor and the lessee, provided, however, that (excepting in so far as is required by the guarantees herein contained or contained in other lease and license agreements between the lessor and the lessee) in case under any other "Goodyear department" lease and license agreement between the lessor and the lessee and covering one or more Goodyear Welt and Turn Shoe Machines, Goodyear Universal Inseam Sewing Machines, or Goodyear Outsole Rapid Lockstitch Machines, the lessee shall have paid to the lessor the amount set forth in the schedule of payments in such lease and license agreement contained in respect to any pair of boots, shoes, or other footwear, then the lessee shall be relieved from said payment hereunder in respect to that pair of boots, shoes, or other footwear.

This means that the United Company charges in the first instance for *each* machine what it deems an adequate compensation for *all* the machines of the

group described. When, therefore, the lessee pays for one, he has paid for all, and is relieved by the provision quoted from further payment for the use of any of the others. That is to say, he is obliged to pay as much *for one machine* as *for all* in the group. The evident purpose and result of this provision is to prevent a manufacturer who leases one of the machines, without which he can not get along, e. g., under the prohibitive clauses in his leases of lasting and other machines, from taking an independent machine. For if he did he would have to pay not only for it, but also royalties to the defendants in the same amount as though the work were done on their machines. It is a cunning and effective provision.

10. DISCRIMINATORY ROYALTY CHARGES WHERE COMPETITORS' MACHINES ARE USED BY THE LESSEE.

Apart from the "initial premiums" which characterize the so-called "independent" leases, which are discussed *infra*, the defendants in many cases make higher demands for compensation where the lessee uses machines of defendants' competitors than where he refrains from such use. These demands are made. although the use of competitors' machines be for purposes for which the machine covered by the particular lease is not designed.

An example of such a clause is the following, taken from Petitioner's Exhibit 44 (III, 405, par. 6), lease of a clicking machine, a machine used for cutting out the parts of uppers, whose importance is indicated *supra*, page 16:

> The lessee shall pay to the lessor on the last day of each calendar month the amount or

amounts set forth in the following schedule of payments in respect to each pair of footwear of a kind or kinds therein specified cut during the preceding calendar month in whole or in part by the aid of any clicking machine or machines held by the lessee under lease from the lessor or by the aid of any Clicking Machine dies of the lessor:

Schedule of Payments.

	Per pair.
For all footwear which is lasted by machinery *not* held by the lessee under lease *from* the *lessor*	1 cent.
For all welted footwear which is welted or stitched by machinery *not* held by the lessee under lease *from* the *lessor*	6 cents.
For all turned footwear the soles of which are sewed to their uppers by machinery *not* held by the lessee under lease *from* the *lessor*	1¾ cents.

[Italics ours.]

(NOTE.—The lease provides for a discount of 50 per cent for prompt payment.)

It will be noted that the royalties above stated are cumulative.

The pulling-over machine lease which is Petitioner's Exhibit 38 (III, 350) contains a similar provision. Payment is required in respect to each pair of shoes "pulled over in any way, whether wholly or in part, by the use of machinery" (Par. 6, III, 355).

The same principle in another form appears in a lease for metallic machines. As to these machines, comprising a large and important group, it appears that the defendants' compensation is derived from payments for material used in the machines, the lease requiring all such material to be bought of the lessor.

Exhibit 31 is a lease for metallic machines. It may cover a number of machines or only one, e. g., a standard screw machine. (I, 11, l. 20.) It contains the full capacity clause, additional machines clause, applying not only to machines of the kind leased but to *all* metallic machines, and the right to terminate all leases clause. It provides for the return to the lessor of any machines which the *lessor* thinks the lessee does not need for the requirements of his business and for the payment on such return of such sums as may be necessary to put the machine into condition to be leased to another lessee. It provides for the purchase of a minimum amount of material. It does not contain the prohibitive clause and therefore apparently permits the use of the machines leased upon shoes operated upon by machines, other than metallic machines, supplied by competitors of the defendants. In return for this apparent grant of freedom, wholly illusory as will be shown (*infra*, pp. 190–200), the lease contains this clause:

> The lessee, as rent and royalty for the leased machinery, shall purchase exclusively of the lessor all the fastening material used by him in or in connection with the leased machinery, and shall pay the lessor in cash on delivery the regular and uniform prices therefor as established *from time to time by the lessor*, which shall not be more than *ten* per cent *in excess* of the prices to be established from time to time by the lessor for like fastening material to be used in its metallic department machinery by lessees who shall *agree not* to use the me-

tallic department machinery leased to them in the manufacture of boots or shoes which are lasted on machines *other* than those leased from the lessor, or of welted boots or shoes which are *not* welted and stitched on welt-sewing and sole-stitching machines leased from the lessor, or of turned shoes the soles of which are *not* attached by turn sewing machines leased from the lessor. (Plff's Ex. 31, III, 290, par. 4.)[1]

D. THE USE OF THE RESTRICTIVE CLAUSES IN LEASES OF DEFENDANTS' MACHINES.

All of defendants' leases, as we have seen, provide for a seventeen years' term. All contain the "right to terminate all leases" clause. The varying use of the other clauses noted above appears from the summaries which are to be found in Appendices C and D. These appendices contain all the forms of lease used by the defendants for the machines mentioned, whether such leases are in the "noninitial payment" form or in the "initial payment" form in which in some cases, though not in all, the prohibitive clause is replaced by the demand for an installation charge. Appendix C is a brief statement of the clauses contained in each lease of the defendants. It has been carefully compared with the record and is believed to be entirely accurate. Appendix D shows, as to each of the various clauses set out, the leases in which it is to be found. Appendix E is a tabular statement of the same material.

[1] Defendants' own construction of the prohibitive clause as used in the restricted form of this lease as an agreement by the lessee is to be noted.

E. THE EFFECT OF THE RESTRICTIVE CLAUSES.[1]

Certain of the foregoing clauses clearly restrain the freedom of trade of buyers and sellers of shoe machinery even when considered separately and not as parts of a greater whole. The exclusive-use clause, for example, obviously limits the freedom of choice of every lessee as to all his future needs for machines of the kind leased and clearly restricts access to him, as a possible customer for any such machines, of all who seek to compete with defendants as to those machines.

Some other clauses considered separately and without regard to the circumstance that in practice they are combined with the other clauses as units in an interrelated system used by a dominant monopoly might be argued to be unexceptionable. Such an argument, for example, has been made regarding the full capacity clause taken by itself. But even this clause can not be considered separately and it is a grave misconception of the situation to endeavor to so dispose of them. Were all the clauses, considered separately, legal enough, which we deny, their combined and cumulative effect constitutes a clearly illegal restraint of trade.

For example, if it be assumed that the full capacity clause standing alone is a reasonable and not unduly restrictive condition where machinery is leased, here it is not alone. The clause binds the manufacturer

[1] Under this head, reference is made *only* to the so-called "*noninitial payment*" or "*restricted*" leases. The leases claimed by the defendants to be alternative leases are discussed under G, later, pp. 190–200.

to use to full capacity the machine leased, for the term of and, of course, subject to all the conditions of the lease. A manufacturer is not only forbidden by it even to try out a competing machine by doing upon it work which could be done on the leased machine but he is bound for 17 years. He has no right to cancel or change the form of his lease. During all that long period he is legally unable to replace that machine with that of a competitor no matter how superior. Should he take the one method open to him of obtaining freedom, that of violating his lease and permitting the defendants to exercise their right of cancellation, he finds—under a lease like Exhibit 24, paragraphs 9 and 10 (III, 222–223), for example—that he must pay not only the cost of putting the machine into condition to be leased to another but, in addition, a return charge amounting practically to the value of the machine. Nor is this heavy payment all. He also, under the right to cancel all leases clause, *supra*, page 164, subjects himself to the penalty of cancellation of *all* his leases and the loss of *all* his leased machinery. And this though he may conceivably have made heavy payments for "initial premiums" in order to obtain machines under the so-called "independent" leases. The result, then, of an attempt to replace a machine of sufficient capacity to do his work may be not only to cost him a prohibitive sum of money but also to take away from him machines necessary to his business which he can not obtain elsewhere—e. g., lasting machines. (*Infra*, p. 177.) The

practical operation, then, of this clause which to outward seeming is perhaps the most reasonable of all the restrictive clauses is to prevent the displacement by competitors of any of the defendants' machines. Without looking beyond it and those which have just been mentioned as giving it its peculiar effect the United Company is, indeed, as Brown, J., says, in a phrase not marked by exaggeration, "a very formidable competitor." Without going further, it is apparent that no field of competition is left open except the equipment of entirely new manufacturers and the satisfaction of new or additional requirements of old manufacturers.

But, for practical purposes, this latter field is closed by the exclusive use clause. Since a manufacturer who takes a single machine from a competitor has ceased to use United Company's machines of that type exclusively, no new demand of a manufacturer holding machines under a lease containing that clause or its equivalent can be satisfied without its breach. And the clause or its equivalent is contained in every lease of the principal bottoming machines, except the McKay sewing machine, which has been discussed *supra*, page 131.

The consequence of such a violation may be, at the least, the cancellation of defendants' leases of machines of the kind in question, and it by no means follows that a manufacturer who could get one satisfactory machine of a given type from a source other than the United Company could replace from that source on short notice all the machines of that

kind necessary to his factory. Without seeking to try out here a collateral question of law,[1] it seems clear enough that the matter goes much further and that a violation of the exclusive use clause may, under the "right to terminate all leases" clause, have exactly the same consequences as a breach of the full-capacity clause. Those need not be repeated. It is enough to say that, "as a practical question," no manufacturer can afford to hazard the chance that he may incur them.

Nor is this enough for the defendants. Even the opportunity to do business with new manufacturers is closed by the all-embracing system of defendants' leases. Here the "prohibitive clause" is peculiarly effective. It is the "tying clause" *par excellence*. The defendants term leases which do not contain it "independent" leases. How complete a misnomer the term "independent" is as applied to these leases and how fictitious the pretended choice offered to the shoe manufacturer really is will appear when those leases are examined, as shortly they will be. (*Infra*, p. 190–200.)

What is important here is the fact that a shoe manufacturer about to enter the field who finds,

[1] Defendants are inclined to quibble here by claiming that the exclusive use clause is only a reservation and not a "condition expressed to be obligatory on the lessee" within the intendment of the "right to terminate all leases" clause. While the Government is content to rest upon the language of the clause itself, *supra*, p. 162, it may be said that this clause was expressly decided to be such a condition by Trieber, J., in *U. S.* v. *United Shoe Machinery Company*, 234 Fed. 127, at p. 148.

as he will find, that he is compelled by business necessity to take one important machine from the defendants under a lease which contains a "prohibitive clause" is thereby removed as a possible customer for competitors of the defendants not only as to machines of the particular type leased but also as to all machines of other important types used in the bottoming of shoes. This can, perhaps, best be made clear by stating a specific case, based on the facts as they were at the filing of the petition.

One of the necessary machines for bottoming shoes is the lasting machine (*supra*, pp. 12, 15). A manufacturer in need of lasting machines finds in the first place that except the United Company, which has out 7,496 such machines, only one American company is professing to put them out (Appendix B.) That company, the R. H. Long Machinery Company, has out in all only four and it does not appear that it is able to supply any lasting machines for standard screw shoes, loose nailed shoes, McKay sewed shoes, or turn shoes. (Dfts.' Ex. 235, V, 531.) It has no machine for lasting the sides of welt shoes (Dfts.' Ex. 235, V, 531), no pulling over or assembling machines, and no lasting machine auxiliaries (Dfts.' Ex. 235, V, 531). These circumstances, in themselves compelling of resort to the defendants for lasting machines, are reinforced by the further circumstances that under the restricted lease system if he should do any of his lasting on machines supplied by any concern other than the

United Company, his payments for pulling over machines as to which the United Company has no American competition (Dfts.' Ex. 235, V, 531) would be nearly tripled (Pffs.' Ex. 38 III, 350, par. 6).[1] His payments for clicking machines as to which also the United Company has no American competition (Winslow, I, 592, l. 38) would also be increased by a penalty royalty of at least one-half cent a pair. And if in addition he contemplates the use of welting or stitching machinery not obtained from the defendants, the royalty upon the clicking machine will be increased 3 cents more. *Supra*, p. 170.

Obviously such a manufacturer must go to the defendants for the kinds of lasting machines which no other American manufacturer even professes to be able to supply. Practically, he must go to them for all lasting machines, for the defendants offer no form of lease for lasting machines which does not contain an "exclusive use" clause. The manufacturer is thus committed to the defendants for all of his present and future demands for any kind of lasting machine or device. He is presented with the form of lease for lasting machines which the defendants assure him (Winslow, I, 594, l. 6) is most favorable to him. In the case of the No. 5 machine, the defendants' latest product and the successor to the Ideal and Chase machines, it is Exhibit 21. It contains the "pro-

[1] Petitioner's Exhibit 38 is the *noninitial payment* form of pulling-over machine lease. It provides for a royalty of one-half cent (par. 6) *plus* the amounts set out in column I of a table appearing near the beginning of the lease.

hibitive clause" as quoted, *supra*, p. 163. He may learn of another form without this clause. But he will also learn of certain conditions attached thereto which make the choice of the alleged alternative commercially impossible. These will be discussed. (*Infra*, p. 190–200.) Accordingly he accepts the lease containing the prohibitive clause.

At once the possibilities of competition with the defendants in respect of future needs of that manufacturer, already closed as to lasting machines, are closed as to welting, sole stitching, turn sewing, pulling over, slugging, nailing, and all "metallic" machines. For, under the prohibitive clause, he can not use any machine of any competitor of the defendants for any of those operations upon any shoe lasted in any part on the defendants' lasting machine. And for the reasons already given he can have in his factory no lasting machine not the defendants'.[1]

A chart illustrative of the practical effect of the tying clauses in these restrictive leases is submitted herewith as Appendix A. This chart has been criti-

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These amount to 1½ cents if all the machines of the pulling-over set are used, making a total of 2 cents, or 1 cent *net*. But it is also provided that if the lessee uses defendants' lasting machines exclusively, the maximum royalty shall be three-eighths cent net, or a little more than one-third of 1 cent.

[1] As pointed out, *supra*, p. 157, if Exhibit 21 is legal for No. 5 lasting machines, it is legal for any lasting or other machine to which defendants choose to apply it. In fact, however, the restricted leases of all types of lasting machines contain the tying clauses in various forms and combinations.

cized by the defendants, but all the criticisms are trivial and none of them is based upon fact. It will be observed that this chart relates to provisions in "restrictive" leases and not to leases generally, and it will be found that every statement made in it is supported by the provisions of the leases to which reference is made therein.

It is also to be noted that each lease is in practice tied to all the earlier leases. This is made clear by an illustration. Suppose a manufacturer took lasting machines on the noninitial payment form (Exhibit 21) in 1910, heeling machines (Exhibit 28) in 1922, and metallic machines (Exhibit 30) in 1926. In 1927 his lasting machine leases would expire. His heeling and metallic machines, however, must be used by him to full capacity for 12 and 16 years more. But those machines can not be used under the terms of the leases upon them except upon shoes lasted on defendants' lasting machines. (Ex. 28, par. 5; Ex. 30, par. 3.) Therefore in order to comply with the "full capacity" clause of the heeling and metallic leases the manufacturer must take out new lasting machine leases from the United Company and thereby commit himself to that company for all his demands for lasting machines (*exclusive use* clause) for a further term of 17 years. When other leases expire, a similar situation will arise as to those machines. It results that a manufacturer once within the toils of the tying clauses never can escape.

The foregoing emphasizes what has been said as to the illegality of the full capacity clause when

used in conjunction with the other tying clauses and the hollowness of the defendants' contention that the prohibitive clause is a mere restriction of the right to use the machine leased under it and not an obligation of the lessee that he will not use other machines. Since the full capacity clause, which is expressly an agreement of the lessee, can not be complied with by a manufacturer using other manufacturers' machines of the kinds affected by the tying clauses the result is that in agreeing to a lease containing both the full capacity and the prohibitive clause the shoe manufacturer does agree that he will not use machines of the enumerated classes which are supplied by competitors of the defendants.

It follows, therefore, that by the cumulative and interrelated operation of the various parts of the defendants' leasing system coupled with the circumstance that, as to certain machines necessary in the bottoming of shoes the defendants admit a virtual monopoly (Dfts.' Ex. 235, V, 531) the defendants have brought about a situation in which competition with them either as to the existing or the future needs for machinery of existing or future shoe manufacturers has become entirely impossible. The United Company is not merely "a formidable competitor." It is absolute monarch of the industry. No competitor can exist unless for its own pleasure or policy it withholds its destroying hand.

It remains only to notice certain special features in regard to the leases of certain machines.

1. GOODYEAR MACHINES.

The leases of Goodyear machines are noteworthy in several respects. In the first place, the two principal machines, the welter and stitcher, are tied together under all available forms of lease. In the second place, the noninitial payment forms of these leases contain the royalty provision requiring payment on all shoes made by *any* welting machinery which was discussed, *supra*, page 167. There is no "independent" lease of the auxiliary machines. They can be used only with the principal machines. Leases of these machines have the exclusive use clause.

Much is made by the defendants of the circumstance that the leases of their principal welt method machines while tying them to each other do not forbid the use of competitors' machines other than welt method machines on shoes on which defendants' welt method machines are used. This might be important were it not that the prohibitive clauses in leases of the other indispensable machines as above indicated make the use of such competing machines impossible.

The defendants also call attention to and emphasize the circumstance that they permit the use of their principal welt method machines with auxiliary machines supplied by other manufacturers. This would be more important were there such machines to be had. But Winslow testified that a great many of these machines were manufactured only by the defendants. (I, 545, l. 31 et seq.; 546, l. 3; and Dfts.' Ex. 235, V, 531.)

(For the definition of "principal" and "auxiliary" in this connection, see *supra*, p. 13.)

A much more important circumstance is the fact that the defendants do *not* permit their "auxiliary" machines to be used with principal welt method machines supplied by other manufacturers. (I, 544, l. 8.) The operations performed by these auxiliary machines are necessary to the making of welt shoes. The effect of the defendants' refusal to permit the auxiliary machines of which they have an admitted monopoly to be used with principal welt method machines supplied by their competitors upon the possibility of competition is too obvious to require elaboration. Winslow was questioned regarding this practice of the defendants. Attention is invited to the evasive character of his answers. (I, 867, l. 17.) The upshot of his testimony is that the defendants have not departed from the practice just noted because no competitor has yet produced welt method machines which, in their opinion, are the equal of their own machines. But he suggests that when the happy day arrives on which a competing welt method machine is produced which the defendants recognize as equal to their own, then the company will establish prices for its auxiliary machines. The prospect which this position holds out to competitors of the defendants is also too obvious to warrant elaboration.

It may be said, however, that if no welter or stitcher made by any competitor of the defendants is in fact equal to those of the defendants, the defend-

ants who offer increased economy and efficiency of manufacturing as the justification of their combination need fear no competition even if they made it possible by relaxing the rigors of their practices as regards these auxiliary machines. Nor can the practice in any way redound to their advantage except by extending their monopoly of principal welt method machines and intrenching it by keeping out competitors.

It is apparent that these machines are tied together and are tied to the principal welt method machines of the defendants in order to hold for the United Company the monopoly in such machines which it acquired at its organization.

2. HEELING MACHINES.

It will be observed (Appendix C) that from 1900 to 1904 the only form of lease for heeling machines which had been adopted by the United Company was Exhibit 27. In 1904 Exhibit 28 was adopted. This superseding lease contained in addition to the "right to terminate all leases" clause which had appeared in Exhibit 27, the full capacity, exclusive use, and prohibitive clauses.

Winslow testified that the prohibitive clause was inserted in the lease of Exhibit 28 because it had been decided to get out a lease for welt method machines without requiring an initial payment and it was decided "to have the manufacturer use our heeling machines or [to be] entitled to limit it to use with the welter or stitcher." (I, 546, l. 29.) He said that compensation for ceasing to charge the

initial premium was not to be obtained by requiring manufacturers to put in more heeling machines but by getting a greater volume of business in a given factory. (I, 546, l. 34.) Pressed for further explanation, he said that since the productive capacity of a series of machines depends on regularity of operation, the breaking down of a heeling machine obtained from a competitor might stop defendants' machines (I, 547, l. 1), and added that "What we wanted to bring about was the productivity of the machines that were in use." (I, 547, l. 25.)

The machines whose breakdowns are in Mr. Winslow's apprehension to stop the flow of work are machines of competitors of the defendants. Productivity was to be increased by replacing them with defendants' machines. In other words, the defendants proposed to increase productivity by so designing their system of leasing as to produce monopoly. The probabilities as to increase of productivity depend upon whether the Court is willing to believe that no other manufacturer could produce a machine as effective as that of the defendants. But there was nothing problematical about the effect of the defendants' efforts in respect of their monopoly. The tie created between the welt method and the heeling departments rendered doubly secure the monopoly already enjoyed as to each.

3. METALLIC FASTENING MACHINES.

The prohibitive clause was applied to metallic machines upon the adoption of Exhibit 30 in June, 1900. The defendants attempt to justify it as an

offset to the rising cost of copper. They say that instead of increasing the price of the material sold by them (Winslow, I, 548, l. 5) they adopted the policy of limiting the use of these metallic machines to work that had been done on machines of other departments (*ibid*). But while it was practical and desirable in the opinion of the defendants to tie the metallic machines to the other machines when the price of copper rose it was "not a practical proposition" to untie them when it fell. (Winslow, I, 548, l. 29.)

The obvious effect of the tying was to protect the defendants' control of machines. That this was the object is consistent with their having found it impracticable to give up the tie when the conditions which they say justified it disappeared. That such was the purpose is substantially admitted. Mr. Winslow testified that at the time this lease was adopted the United Company "was about the only one that had any metallic machines or any welting or stitching machines in the factories in this country." (I, 550, l. 20.) In other words, it had a monopoly. The purpose of the tying as expressed by Mr. Winslow was to lessen the cost of service by placing two sets of defendants' machinery in a given factory where without tying there might be only one. (I, 549, l. 29.) But when asked how in view of the circumstance that his company had at the time a virtual monopoly of the business that result could follow, his only answer was, "The best way I can answer is to ask why we didn't raise the price."

(I, 550, l. 25.) Such an answer from Mr. Winslow, who was usually a resourceful witness, is extremely suggestive. The real reason is indicated by Mr. Winslow's testimony, as far as it can be understood, at the bottom of page 549. The increased revenue was to be obtained by "treating the metallic machines in the broad sense like auxiliary machines." How the defendants treat auxiliary machines has just been shown. The change of the form of lease could not change the location of a single machine or add a penny to any royalty. But it could and did operate to prevent future competition with the defendants in the machines to which the metallic machines were tied. And it could have been intended for no other purpose.

F. OTHER OPPRESSIVE PROVISIONS OF DEFENDANTS' LEASES.

In addition to the tying and rebate clauses there are other clauses which are extremely burdensome. Brief reference has been made to these, *supra*, but a more extended statement is warranted.

Take, for example, the provisions of Exhibit 21. (III, 182, par. 1.)

The lessee can not without permission from the lessor remove a machine from one of his factories to another.

The lessor "and its agents and employees shall at all times be given access to the leased machinery for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use." The representatives of the United Company

may enter the factory of the lessee at any time they please, and put themselves in a position to learn any manufacturing secret the lessee may have. They have the power to determine when repairs are needed and the extent thereof. (Par. 11.) If a lessee should refuse he violates his lease and the lessor acquires the right to cancel every lease on machines in his factory. (Par. 8.)

Further, he is required "at his own expense" to keep the machinery "in good and efficient working order," although the machinery belongs to the lessor and the lessee is bound to pay for its use. He is also required to obtain from the "lessor exclusively" the parts needed for repairs and to pay therefor the prices "from time to time established by the lessor," no matter how unreasonable. (Plff's. Ex. 21, par. 2.)

The machinery must be held by the lessee at his risk and in case of its destruction by fire he is required to pay a stated sum (where it is a lasting machine, $225), and must return whatever remains of it to the defendants. (Plff's. Ex. 21, par. 3.)

Where the machine has not been lost, he must, after paying full royalties for its use and also keeping it in good order at his own expense, return it at the end of the term for which it has been leased to Beverly, Mass., and pay a return charge of $150, in the case of a laster, "as partial reimbursement to the lessor for deterioration," etc.

If the value of the machine is $225, as we may infer from the amount which the lessee is required to pay

in case of destruction, payment of this return charge is exorbitant. In other words, after paying for the use of the machine for 17 years, paying for all repairs necessary and all taxes and assessments upon it during that period and the freight from Beverly to the lessee's factory, and the freight from the latter place to Beverly at the end of the term (par. 9), he is compelled to pay the lessor a very large proportion of the value of the machine, while the lessor takes the machine.

He must also pay a *minimum* charge of $10 a month for 17 years, or $2,040 for the use of a machine valued, as we have just said, at $225. (Par. 6.)

He is obligated to keep accurate accounts showing the number of boots and shoes or other footwear operated upon, to submit these accounts to the defendants or their representatives, and to "furnish any further information which may be called for in relation to the leased machinery or the use thereof." (Par. 7.)

He gives to the lessor the full right, power, and authority to enter upon his premises and take possession of the machine and remove it in case of "any default on the part of the leesee as to the terms of this agreement or of any other lease," and he agrees that he will not have any claim for the repayment of any sum which shall have been paid upon the machine. (Par. 9.)

For the use of machinery under these conditions he pays an extraordinary price. Assuming a very small factory with a maximum capacity of 350 pairs per day,

making all the deductions for which defendants contend (I, 444, ls. 41–43), its actual annual production will still be over 41,000 pairs. At 6 cents per pair, the royalty fixed for machines making welt shoes (I, 503, l. 32), the defendants would receive annual royalties of $2,460. For this they lease nine principal machines. Assuming their value to average $225, the defendants have here an investment of $2,025. They receive *annually* a return of over 120 per cent on this investment. This calculation omits both the auxiliary machines, whose value ranges from a small figure to a rather large one, and the rentals, which likewise range from $5 to $35 a year, paid by the manufacturers for them. It omits also the payments for materials used in metallic machines which expressly include a royalty charge. (Ptr's Ex. 29, III, 272, par. 4, etc.)

No self-respecting business man would enter into stipulations so offensive and destructive of his liberty unless he was coerced by the circumstances surrounding him. This is additional evidence that all competition in bottoming shoe machinery is substantially dead, and that by reason of the tying clauses the defendants hold all shoe manufacturers in a steel-like grip from which escape is impossible save through a decree of this Court.

G. THE SO-CALLED "INDEPENDENT" LEASES.

The defendants also offer what they call "independent" leases and have much to say about this "alternative." The difference between the "independent" and the "restricted" leases lies in the fact that they do not contain the "prohibitive" clause. But these

leases do contain the exclusive-use, full-capacity, and right-to-terminate-all-leases clauses, and other burdensome and restrictive provisions. The defendants grant these leases only upon terms which, as a practical matter, prohibit their acceptance and coerce the manufacturer into taking the restricted form.

In the first place, they are granted only on the payment of heavy "initial premiums." It does not remove the effect of this circumstance to say that these premiums whose payment is the price of a limited freedom to deal with competitors of the United Company are no larger now than at a previous time when there were no leases without them. When all pay the same, the situation of a shoe manufacturer is very different from that where he is called upon to make payments which his business rivals who are content to deal with the United Company exclusively are not obliged to pay.

In the second place, under the later practice of the United Company, it seems clear that a manufacturer must take all his leased machines on the "independent" leases if he is to gain the limited measure of freedom which they offer.

To a very large degree this is inevitable because of the interlocking of the restricted system. For illustration, suppose one entering upon the making of welt shoes should take restricted leases of his No. 5 lasting machines (Ex. 21) and of his heeling machines (Ex. 28) but the independent form of lease for metallic machines (Ex. 32). He would still not be

free to use competing metallic machines because his lasting-machine lease (par. 5) and his heeling-machine lease (par. 5) prohibit the use of those machines in connection with metallic machines not leased from the United Company. For that matter, should he take independent leases for all machines except the No. 5 machine that one lease would prohibit the use of the lasting machine in connection with welting, stitching, pulling-over, and metallic machines taken from a competitor of the United Company. Whether the form of Exhibit 21, if legal, shall be extended to all machines or made even more onerous in its restrictions is, of course, a matter wholly within the control of the defendants.

Examination of the terms of the various leases as they stand, however, shows that the same general principles which underlie the situation outlined apply to other combinations of leases with variations of detail.

The Curtis & Jones Company, shoe manufacturers, had an experience almost exactly like that outlined above. They had heard of the "independent" lease of metallic machines. (Ex. 32.) Supposing that that form of lease gave the manufacturer the right to use any independent machines, that "the arrangement related to the whole field," they determined to avail themselves of the option offered as a result of the efforts of the committee of the National Boot and Shoe Manufacturers' Association, under which *during the period of a year* from January 29,

1901, manufacturers were permitted to change from the "restricted" or "ironclad" lease to the "modified" lease. (I, 661–663.) But they found that they were mistaken in the belief that they thus obtained liberty of action with respect to their use of machines. Shinn testified:

> On the strength of that we sent the notice referred to, because we wanted to get into a position to use independent machines, and we told Mr. Clark when he raised his question with reference to our violating our leases that we were working under the modified lease, which gave us the privilege of putting in any machine that we wanted. Mr. Clark said the modified lease didn't apply in this instance. (I, 376, ls. 17–26; also see ls. 35–39.)

Mr. Clark was speaking by the lease and the result was the removal of competing machines and their replacement with United machines.

Mr. Winslow made clear the actual practice of the United Company in this respect. He testified:

> For example, if a manufacturer wished to use Pettingill heelers, which are not built by our company, in the place of our heeling machine, we asked him to respect his leases up to the time when he made that decision. Then he could return our heeling machines, place his machines in the other departments upon the independent forms of leases, and continue to use the heeling machines of others. (I, 443, l. 2.)

Mr. Winslow, it will be observed, was speaking of a situation where a manufacturer who had taken the restricted system and committed himself to the defendants desired to change his leases so as to use competing machines. It must be borne in mind that such a manufacturer has no right to change existing leases and that in this respect he can do what the United Company will permit and nothing more.

The defendants endeavor to meet Mr. Winslow's testimony by showing that it is possible to pick out a group of leases for certain machines, some "restricted" and some "independent," whose terms are not mutually exclusive. But Mr. Winslow's statement, which obviously deals with facts and not possibilities, is clear and direct. Defendants contend that he did not mean what he said. But there was ample opportunity for later explanation or qualification, and there is none. And the statement seems to be in complete harmony with what the record shows of defendants' actual practice. (I, 180, 181, 217, 873.)

The difference in cost between the "independent" and the restricted leases is well illustrated in the record. Winslow says that in 1899, when his company was operating under the so-called independent form of lease, it cost $11,350 to equip a factory with certain machinery necessary to manufacture a thousand pairs of welts per day, while in 1911, under the restricted form of lease, it would cost only $2,467.50 to equip the same kind of factory with the same

machinery, a difference of $8,882.50. The figure for 1899 includes the purchase price of the "general department" machines, which in 1911 could have been had on lease from the United Company. The fact, if it be a fact, that these machines are no longer leased does not remove the effect of the circumstance that it was during the long period from 1899 to the beginning of this litigation in 1911 that the United Company was building up and intrenching its hold upon the trade.

Williams, a shoe manufacturer of Portsmouth, Ohio, testified that the United people proposed to charge him $3,675 for equipping his factory, having a capacity of less than 600 pairs per day, with machines under the "independent" leases. (I, 217, l. 28; also 218, l. 20.)

George A. Learned was told by Matthew Gray, a representative of the United Company, that it would cost him $3,000 to secure the machines which he desired from the United Company under the "independent" leases. (I, 313, l. 35.)

Rand, of the International Shoe Company, obtained from Winslow a careful estimate of what it would cost his company to change from the restricted to the "independent" leases, and it amounted to about $250,000. (I, 180, l. 42.)

Winslow made a proposition to F. E. Leavitt to install certain machines under "independent" leases. (Dfts.' Ex. 334, V, 848; I, 873, l. 22 et seq.) Leavitt's factory was a small one, as there was but one McKay and one lasting machine included in the list. How-

ever, the total charge for the privilege of installing one "independent" machine would be $1,800.

In this regard it must not be forgotten that after the shoe manufacturer has paid for the privilege of using independent machines he is required to pay to the United Company, except in the case of one machine, the same royalty upon the machines leased from it as if they were taken on the restricted lease. In addition, he must make increased payments on certain machines, e. g., clicking and metallic fastening machines, *supra*. Only under extraordinary circumstances would a shoe manufacturer who knew what he was doing indulge in these independent leases. The handicap under which he would rest in his competition with manufacturers who took machines under the restricted system would deter him. Consequently the alleged alternative afforded by the so-called independent leases is the merest illusion. Manufacturers are, in practice, compelled to take their machines under the restricted leases or not at all. But, as we have heretofore shown, even if the shoe manufacturer did take the independent lease he would gain but little freedom, because every lease of the principal bottoming machines except the McKay sewing machine contains the "exclusive use" clause, or its equivalent, and all have the "right to terminate all leases" clause. (Appendix D, p. 366.)

In fact, it is not claimed by the defendants that the shoe manufacturers can obtain any benefits by taking the independent leases. Touching this question

Winslow says: "I believe a manufacturer is better off if he uses all our machines in series." (I, 550, l. 39.) Again: "I do not think it is any advantage for a manufacturer to take metallic machines on an independent lease; I never have thought so." (I 551, l. 26.)

Therefore, Winslow has deliberately formulated two classes of leases, and has so established the relation between the two classes that in his judgment it is more beneficial to the lessee to adopt the restricted class, which ties him hand and foot to the United Company.

No shoe manufacturer testified that under the present conditions there are any advantages in operating under the United's so-called "independent" leases. Many of the large manufacturers who are the most strongly opposed to the present system equip their factories under the restricted leases.

The competitive disadvantage which they otherwise would suffer is a sufficient explanation. This disadvantage results not only from the heavy initial premiums but from the discriminatory royalties and other conditions of the defendants' system. It should not be forgotten that this is an industry where pennies in machinery charges may make the difference between success and bankruptcy. One cent a pair sounds trifling; but 1 cent a pair means many dollars to a manufacturer making thousands of pairs a day. Florsheim came to Boston to beg for Eppler machines, which cost 3 cents a pair instead of the 4 cents charged for Goodyear machines. (I, 159, ls.

16–28). Herrick did not dare to keep a Haverhill machine because under his leases with defendants it meant an increase of royalties of 1½ cents a pair. (I, 293, l. 2 et seq.; 318, l. 6.)

Assuming for convenience that these cumulative disadvantages to the manufacturer who tried the "independent" lease amounted only to 4 cents a pair, it would mean to a manufacturer like Selby, a small manufacturer as compared with many mentioned in the record (I, 210–214), $72,000 in a working year of 300 days. It is no wonder that Selby gave up an attempt to use independent machines upon welt shoes, but acquired an interest in the Boylston Manufacturing Company "to get independence" (I, 212, l. 44). It would cost the International Shoe Company (I, 170) $600,000 a year. The difference in the clicking machine royalties (*supra*, p. 170) is alone sufficient "as a matter of dollars and cents" to compel the choice of the restricted leases.

The natural result of the system appears in the relative number of manufacturers who held restricted and those who held unrestricted leases in the years 1905 and 1911. (Winslow, I, 448, l. 42 et seq.)

In 1905 the United Company had under lease 8,129 metallic machines, of which 603, or 7.4 per cent, were under independent leases.

In 1911 it had out 7,587 metallic machines, of which 225, or 3 per cent, were under independent leases. (I, 449, l. 17.)

In 1905 it had out 1,652 heeling machines, of which 1,500, or 90.8 per cent, were under independent leases. (I, 448, l. 44.)

In 1911 it had out 2,019 heeling machines, of which 415, or 20.5 per cent, were under independent leases.

In 1905 it had out 5,289 lasting machines, of which 1,956, or 37 per cent, were under the independent leases (I, 449, l. 3, 23) while in 1911 it had out 7,819, of which 1,506, or 19.3 per cent, were under independent leases.

That is, from 1905 to 1911 there had been a decrease in the number of machines held under independent leases, of metallic machines, 4.4 per cent; heeling machines, 70.3 per cent; and lasting machines, 17.7 per cent. These figures not only show that a very large proportion of the principal machines are now held under the restricted forms of leases, but that there is an increasing tendency among shoe manufacturers to take the restricted form in preference to the so-called "independent" leases; and that the result of the system in actual operation is to destroy such independence upon the part of the shoe manufacturers as heretofore existed, to tie them more strongly to the United Company, and thus to prevent the development of any competition with the defendants. Nothing could demonstrate more clearly the actual workings of the system than these figures presented by Winslow.

The defendants attempt to offset these figures by presenting Exhibit 225 (I, 449), which purports to show that of 90,296 machines out on lease (Ptr's Ex.

163, IV. 1125) 23,403 were machines of the Goodyear metallic heeling and lasting departments which were out on "independent" leases. But of these 23,403, 5,203 were Goodyear principal machines and 16,054 were auxiliary machines of various kinds. How far these are "independent" is noted, *supra*, p. 182. It follows, then, that on these figures of defendants only 2,146 machines (2.3 per cent of the leased machines) are out on the leases pretended to be "independent." Of these, 1,506 are lasting machines and the consolidated hand method lasting machine for McKay shoes is the one machine carrying a lower royalty on the initial payment form. *There remain 640 machines, almost exactly seven-tenths of 1 per cent of the leased machines. How many of these were out on leases dating from a time when there were no other forms, defendants do not tell us.* At the best, on defendants' own showing, the use by shoe manufacturers of independent leases is negligible. In view of the conditions attending these leases, there is no cause for wonder.

H. ALLEGED MODIFICATIONS OF THE RESTRICTIVE LEASES.

The defendants insist that the leases do not represent the policy of the company because of certain "riders" by which their leases are modified upon occasion. (Winslow, I, 546, l. 16 et seq.) Donham, however, produced and described (I, 822, l. 12 et seq.) all riders of which he had any knowledge. They are Exhibits 278 to 310. (V, 777–809.) Winslow produced no others.

On account of the large number of these exhibits, no special analysis will here be attempted, but a glance at them will show that the modifications were generally the giving of permission to a lessee to use some particular machine upon a certain kind of work, as, for instance, an outsole stitcher upon shoes welted by hand, or upon McKay shoes, for fair-stitching. In some cases, the rider was intended to modify a "restricted" lease form by eliminating the prohibitive clause and thus giving the document the "independent" form. In no instance does any modification indicate the least deviation from the general policy or effect of the lease system.

There is certainly no material proof otherwise than from the officers of the company that any liberality of spirit along this line was shown.

The legality of the lease system must be determined independently of occasional concessions to particular individuals for the special use of a machine. There is certainly nothing in any lease which obligates the company to make such concessions. If they are made it is by favor of the company and not as a matter of right to the lessees.

I. EFFECT OF THE LEASING SYSTEM UPON COMPETITION WHICH WOULD OTHERWISE EXIST BETWEEN SHOE MANUFACTURERS.

Mr. Winslow testified upon this point:

> We have never granted concessions of any sort. * * * Our royalties have been the same to all, whether they used a thousand machines or one; they are charged by the pair, and the service is exactly the same. (I, 439, l. 43; 440, l. 2 et seq.)

This testimony is not quite correct, for the record shows that the United Company granted rebates in the form of stock donations, whose amounts varied according to the premiums paid. (I, 351, l. 43.) But it is generally true and characteristic of the United Company's system.

The general effect of it is to eliminate all opportunity of competition as to a very important element embraced in the manufacture of footwear, namely, machinery.

Manufacturers may compete in the purchase of hides and other material for the manufacture of shoes, in the location of their factories with regard to shipping and manufacturing convenience, in the construction and arrangement of the factory, and in marketing the finished product. But the skilful manufacturer is denied the privilege of exercising a choice as to machines or to exercise his judgment as to the terms on which he will take them or the manner of keeping them in proper efficiency. Undoubtedly the cost of a shoe must depend to a very material extent upon the kind and cost of the machinery used in its manufacture. But from the time the shoe is presented to the pulling-over machine until it emerges from the final bottoming machine the possibility of competition in this respect to any material extent is entirely cut off; and the cost of preparing and attaching the sole of every shoe of a given kind must be exactly the same to every lessee of the United Shoe Machinery Company, which

comprises substantially all the shoe manufacturers of the United States.

Any scheme which is enforced by contracts, and which has the effect of making absolutely uniform one element of cost of practically all the shoes which enter into interstate commerce, must be violative of the Sherman Act.

J. ENFORCEMENT BY THE UNITED COMPANY OF THE RESTRICTIVE PROVISIONS OF ITS LEASES.

The United Company in administering its leasing system and its consequent control of the shoe manufacturing industry has adopted a system of rewards for those who assist its program of monopoly and of punishment for those who do not comply with its requirements.

1. REBATES GRANTED TO OBEDIENT LESSEES.

The restricted leases in themselves represent not merely a persuasive but a controlling concession in price to those who will use the United Company's essential machinery exclusively.

As a part of its plan for monopolizing the shoe machinery business, the United Company at one especially important period granted rebates and special inducements to its lessees upon condition that they should faithfully observe the covenants of the leases.

On June 10, 1910, the United Shoe Machinery Company of New Jersey, by its president, Sidney W. Winslow, addressed a circular letter "To the Lessees of the United Shoe Machinery Company," in which it was provided that beginning with January 1, 1910,

the company would create a fund by investing in the common stock of the United Shoe Machinery Company and would add to it from time to time; that at the end of three years it would distribute the stock among the lessees of "the Goodyear welting, Goodyear stitching, and Goodyear turn sewing machines in the United States," who had "faithfully observed the covenants of their leases," and that in this fund not less than 15 per cent of the amount received from the use of the Goodyear welters and stitchers in the United States would be invested and of the amount received from Goodyear turn machines not less than 10 per cent would be invested. (Plff's Ex. 146, V, 1067, last four paragraphs.) The covenants referred to embrace the tying clauses which in effect obligated the lessees, as we have said, not to use machinery procured from competitors of the United Company.

This proposition of the United Company is of special significance, in view of the fact that the offer was made at a time when serious competition threatened the United Company. It was in May, 1910, that Plant discontinued the use of the United Company's machines in the factory of the Thomas G. Plant Company and installed in their place the Plant machines. It was about that time that Endicott invited Winslow to meet Plant at Endicott's house at Dedham, Mass., for a conference with respect to the Plant machines, and it was in June, 1910, that the meeting was held. (I, 558, l. 6.) Furthermore, while this notification to the lessees of the United Company of

the plan for rebating was not made until June 10, 1910, the plan, by the terms of the notification, became operative on January 1, 1910, antedating the notification by a period of more than five months.

The testimony of defendants' witnesses is to the effect that the principal improvements obtained by the United Company through the Plant purchase, were embodied in the welters and stitchers. (I. 785, l. 44; 787, l. 34 et seq.) The conclusion is irresistible that the defendants realized that Plant's welters and stitchers would appeal to the shoe manufacturers, and that it was for the purpose of holding the shoe manufacturers in line and inducing them to continue the exclusive use of the United Company's machines that the proposition of June 10, 1910, was made by that company. The United Company was organized in February, 1899, and a period of more than 10 years had elapsed before there was any expression of an intention to grant a rebate. It is noteworthy that the plan did not present itself to the minds of the representatives of the United Company prior to the time when serious competition was threatened. Furthermore, it will be observed that only those lessees "*who shall faithfully observe the covenants of their leases*"—the tying clauses—were entitled to the benefits of the plan.

2. PUNITIVE ACTION AGAINST DISOBEDIENT LESSEES.

The defendants contend that they have used their great power mildly and that their policy is much more liberal than the leases indicate. This

forbearance, if genuine, can not be of any legal consequence. But it does not appear that the defendants have refrained from enforcing their rights in any appreciable number of cases of violation of the leases. That there should be few instances of violation is not remarkable when one considers the possible consequences to a recalcitrant manufacturer of such violation. A manufacturer who can not procure the machinery necessary to his business existence elsewhere is not likely to violate the leases. But when the evidence is taken as a whole, there can be no doubt that the provisions of the leases which are especially obnoxious have been strictly enforced.

The efforts made by the United Company to enforce the restrictive provisions and their effect upon the business of competitors, are indicated by the following evidence, which is practically uncontradicted.

Frank R. Hilliard is a shoe manufacturer. His company attempted to install a turn sewing machine made by the Haverhill Shoe Machinery Company at a time when they had machines of the United Company doing the same work. They talked with Winslow, who stated that they were using that machine contrary to their lease, and would either have to change the lease or stop using the machine. They had the Haverhill machine on trial, and returned it, on account of the objection of the United Company based on the provisions of the lease. (Hilliard, I, 282–284.)

The Haverhill Shoe Machinery Company installed with Herrick, of Lynn, a channeling machine, a turn sewer, a heeling machine, and a heel-breasting machine. There was a clause in Herrick's clicking machine lease, from the United Company, prohibiting the use of these machines. Under the terms of that lease he had to pay the United Company royalty *on work done on the Haverhill machines* of 1½ cents per pair, with a 50 per cent discount for prompt payment; so Herrick did not dare keep the machine, and took it out. He kept the nailing machine for some time, but found that if he kept it, he would lose his rebate on his Gem insoles, and also the 15 per cent rebate that the United was giving for not violating the leases. Consequently Herrick gave up the Haverhill machine. (Webster, I, 293, l. 2, et seq.; also Harriman, I, 318, l. 6.)

Fred W. Herrick testified as to one of these machines, that on negotiating for a return of a United machine, it was said by the United people that the Herrick Company would have to pay them royalty on the same shoes on which they had already paid for the use of the Haverhill machine, consequently the Haverhill machine was taken out. (Herrick, I, 357, l. 2 et seq.)

Louis H. Harriman, treasurer of the Haverhill Shoe Machinery Company, details the following instances in which that company had trouble in installing machines, in addition to those detailed by the witnesses Webster and Hilliard:

Lynch & Sherman had a turn sewing machine which was installed in their factory and operated for

a short time. They caused the Haverhill Company to take it out, because the agents of the United Company had told them that they were violating their lease. (I, 318, l. 26.)

W. S. Chase & Company had installed two channeling machines, a turn sewing machine, and a heeling machine, which were operated very satisfactorily, but a year before the witness testified the Haverhill Company was told to remove all their machines. One reason given by Chase & Company was that they had been sued for infringement by the Xpedite Company, and that one of the terms of the settlement of the suit without charging damages was that they should remove the Haverhill machines, and another reason assigned was that the United Company said they were violating the conditions of their leases. (I, 319, l. 35 et seq.)

Carleton & Hunt installed a channeling machine in 1908, and about two years later a turn sewing machine, which were operated until early in 1912. The machines were taken out because otherwise the manufacturers could not get from the United Company a line of machinery for making welt shoes. (I, 320, l. 1 et seq.)

The Haverhill Company installed two turn sewers and two channelers in N. D. Dodge & Son's factory. Their use was discontinued because the Haverhill Company *could not furnish a line of welt machinery, and they could not get such line from the United Company while they used the Haverhill machines.* (I, 320, l. 9.)

Ned Pike was employed to install machinery by the Haverhill Company and while so employed he traveled in eight States, and he details certain difficulties which he encountered (I, 329–331) as follows:

He attempted to install a machine in the factory of Ashe, Noyes & Small, Auburn, Me., but they said that under their existing leases with the United Company it would be impossible to take the machinery without laying themselves open to a great deal of trouble with that company.

Dunn & McCarthy, of Auburn, N. Y., stated "they would like to consider the proposition of putting in my machine, particularly the turn sewer, but under the United Company's leases their toe-laster and heel-seat machines would cost them more than any saving they could make on our machines."

Krippendorf & Dittman, of Cincinnati, ordered some machines from another solicitor for the Haverhill Company, and when witness saw them afterwards they said they did not dare put in the machines at that time, on account of the character of the leases of the United Company they were operating under.

The Syracuse Shoe Company, in New York, said it meant altogether too much to them to install a competing machine, as it would make lots of trouble for them with the United Company.

The Irving Drew Shoe Company, of Portsmouth, Ohio, said in substance that they were owned, body and soul, by the United Company, so far as shoe machinery was concerned.

George A. Learned, a shoe manufacturer at Newburyport, Mass., had been using United Company machines and some machines belonging to the Haverhill Shoe Machinery Company. He was told by one Gray, representing the United people, that if he wanted to use other machines in conjunction with the Haverhill machines he would have to pay $3,000 in addition to the sum that would be required from him if he discontinued the use of the Haverhill machines. Later he was told by Winslow that unless he did comply with the terms of his leases—that is, those which in effect prohibited him from using independent machinery—the United Company would withdraw all their machines from his factory and drive him out of business. (I, 313, l. 27 to 314, l. 16.)

Prior to December 12, 1911, the Union Lockstitch Company had difficulty in installing its curved needle machine, which had the same function as the United Company's outsole stitcher. In fact, the Lockstitch Company had succeeded in installing but one, and that was with a small manufacturer. The company had tried to sell to Roberts, Johnson & Rand, Harsh & Edmands, Commonwealth Shoe & Leather Company, and the Peters Shoe Company. Jones, of the Commonwealth Company, said he could not afford to touch the Union Lockstitch Machine because his lease forbade it. (I, 203, l. 5.)

Merrick, of the Lockstitch Company, when subsequently recalled, filed as Plaintiff's Exhibits 177, 178 and 179 letters showing that these parties would

not take machines from his company on account of the United Company's leases. (I, 207, l. 36.)

John E. Williams, of the Portsmouth Shoe Company, has four factories at Portsmouth and Ironton, Ohio, manufacturing men's and boys' welts and mock welts. They had installed a Union lock-stitch machine, and talked with Col. King, of Boston, representative of the United Company. After three days' talk, Col. King said: "Mr. Williams, under the leases we feel that you have broken your obligation, and would ask you to discontinue it."

King, through Ross, the local representative of the United Company, submitted a plan whereby they could use the Union machine, but the initial charges would have been $3,675, and there would have been an additional royalty of 1⅛ cents per pair. They thereupon sent the machine back, and took no more. The proposition was made with reference to the installation of a new factory, with much auxiliary machinery left out, the shoe to be a simple one. (I, 217, l. 14; 218, l. 27.)

E. P. Reed was using a turn sewing machine of the Standard Shoe Machinery Company, which was manufactured by the Bay State Shoe Machinery Company, and the Standard Company wanted him to introduce more of its machines, but he said he was afraid—that the United Company was such a gigantic corporation that no shoe manufacturer could afford to be a martyr. (Darrah, I, 334, l. 35.)

The Standard Company had a Woodward machine with Mark J. Worthley, of Lynn, Mass., who reported

that he was afraid he would have to return it; that the United Company's agents were after him all the time and were making threats. (Darrah, I, 335, l. 1.)

Thomas G. Plant, who was using the Standard's Woodward machines, told the witness Darrah that the United Company's agents had been after him so often and so persistently that he was afraid he would have to surrender the Woodward machines and install the McKay machines of the United Company. (Darrah, I, 335, l. 8.)

The T. D. Barry Company had obtained some machines from the Standard Shoe Machinery Company. The United Company's machines were also in use in that factory. Barry was in Europe, and the United Company had had a writ of replevin issued and started to take the United machines out, when William A. Hogan, treasurer of the Barry Company, threatened to shoot the officer. Hogan then obtained a writ of injunction, which was subsequently dissolved, and he then agreed with Storrow, counsel for the United Company, to stop the Standard machines until Barry should return. After his return the Standard machines were taken out. (Hogan, I, 222, l. 11–38.)

The Standard Shoe Machinery Company was incorporated in 1899 and went into the hands of a receiver in 1901. (I, 335, l. 30.)

Prior to 1912, Curtis & Jones had one shoe factory at Reading, Pa., and another at Hamburg, 16 miles from Reading. In the Hamburg factory they used

a miscellaneous lot of machinery and the Lincoln machine, made by the Campbell Sewing Machine Company, but used the United Company's sewing machines altogether in the Reading plant. They combined the two factories, moving the Hamburg plant to Reading, in July, 1902. (I, 363, l. 36, 364.) About the time of the consolidation they bought three Duplessis turn sewing machines, and they already had five Lincoln machines. Mr. Clark, the local representative of the United Company, told them that the operation of the Duplessis machines in the same factory with a Goodyear machine was prohibited by the United Company's leases, and that since the factories had been consolidated the rule applied. He said they would remove all their leased machines unless they discontinued the use of the independent machines. (I, 365, l. 41.) Col. King, a manager of the United Company, then came, and they agreed to turn over the independent machines at cost price, and replace them with Goodyear machines. (Shinn, I, 366, l. 3; Curtis, I, 377, l. 29 et seq.)

Curtis, of the same firm, testified that they changed to United Company's machines to avoid a fight with the United Company; that company told them that they could not, under their leases, use any independent machinery in the same building, and that the United would take its machinery away if they kept on operating the independent machinery. If the witness's company had thrown the United machines out, he said they *could not have obtained substitutes*,

as he knew of no other concern from which he could obtain them. (I, 380, l. 21 et seq.) The use of the United machines increased the cost one-half cent per pair. The independent machines were doing satisfactory work and they wanted to keep them. (I, 381, l. 8.)

In 1904, Peter Tessier, of Peter Tessier & Company, Haverhill, Mass., was manufacturing shoes. He had two channelers, a slugging machine, a molder, and a Goodyear stitcher, which he had obtained from the United Company. He installed a Duplessis sewing machine, and the United Company thereupon took all its machines out of his factory. (I, 281, 282.)

Ernest Bottomley, of Haverhill, Mass., testified that about 1903 he was engaged in making turn shoes, and had nailing and stitching machines made by the Duplessis Company. Prior to that time he had a Goodyear stitcher, which he quit using when he took the Duplessis. He had a sole rounder, and several other United machines. He had a talk with Col. King, of the United Company, in which King said, in effect, that witness would have to use one or the other line of machines. Witness chose the Duplessis, and the United Company took its machines out. Subsequently witness's factory was changed from making turn shoes to McKays, and therefore had to change its machines. Witness went to the United Company, and they required him to pay royalty on the shoes *made on the Duplessis machinery,* after the machinery of the United Company had been taken out. He now uses United machinery exclusively,

except a buffer or rounder, which he bought from others. (I, 284, l. 26.)

George R. Harsh, of Harsh-Edmands Shoe Company, Milwaukee, Wis., had procured a clicking machine from the Richardson Shoe Machinery Company, of Lynn, and was trying to procure other clicking machines. Wilson, a representative of the United Company, told Harsh that it would be better for him if he ceased his activities against the United Company, and would take things as they were, and showed him that in a lease for a metallic fastening machine he was already bound by a provision similar to the one he was complaining about in the clicking machine lease. As a result the witness made no further efforts to obtain such machines elsewhere, but took them from the United Company. (I, 196, l. 5.)

George H. Clark had invented a method of molding shoes, and had also invented an attachment for a stitcher which enabled him to stitch the shoe and trim it at the same time. He had one of the machines in Richardson's factory at Lynn. The United Company refused to place any of their machines in that factory, saying, through its manager, Hurd, "We have to put the knife and protect our interests." (I, 307, l. 12.)

Kimball & Hadley, of Lynn, Mass., were making needles and awls. Beginning about January, 1904, they found that they could not sell Universal Slugging Machine awls. Five firms told Hadley personally that the reason they would not purchase was that the

use of their needles and awls was in violation of the lease of the United Company (Ptr's. Ex. 24, par. "Two," III, 214, 216); and if they continued to use their needles and awls, the United Company would take its machines away from them. (Hadley, I, 308, l. 11.)

In truth, Mr. Choate, one of counsel for the defendants, concedes that they enforce the tying clauses, for he said in answer to a question by the presiding judge: "I do admit that they carry out the terms of the leases." (I, 281, l. 30.)

K. UNSUCCESSFUL EFFORTS OF SHOE MANUFACTURERS TO OBTAIN MODIFICATIONS OF THE RESTRICTIVE CLAUSES.

From the very beginning of the United Company's existence shoe manufacturers have attempted unsuccessfully to secure modifications of the restrictive clauses. These efforts have been uniformly unsuccessful. And the circumstances, taken together with Mr. Winslow's declarations, show that the object sought by the defendants in devising and insisting upon the clauses was the exclusion of competitors.

We have already referred to the first of these efforts. It was made by the National Boot and Shoe Manufacturers' Association, of which Charles H. Krippendorf was a director. He testified that on November 8, 1900, members of the association had a conference with Winslow for the purpose of asking him to eliminate the restrictive clauses from the new leases for the metallic machines. They had a stenographer present, who reported the proceedings. The witness produced the report. In the course of Winslow's remarks refusing to modify the tying clauses, he said

that if the tying clauses were eliminated his company would be compelled to buy out every new machine that might be manufactured, and when asked why he would have to do this, stated:

> Why? Well, let me ask you if we haven't got either to purchase that machine *or compete* with the man who is simply doing that to force us to buy. (Krippendorf, I, 216, l. 6.)

In January or February, 1907, Winslow sent for Charles H. Jones, president of the Commonwealth Shoe & Leather Company, who went to his office with McElwain, another manufacturer, now deceased. During the meeting they urged Winslow to abandon the tying clauses. Winslow replied in substance that he could not consider doing so; that those clauses gave him complete control; that without that complete control other machines would creep in; that if the clauses were eliminated "the *intense competition* which existed before would return."

Florsheim testified that while in Boston in September, 1910, in connection with the Plant purchase (*supra*, p. 116), and a few days after the United Company had acquired that business, he and Jackson Johnson told Winslow that the manufacturers were dissatisfied with the tying clauses of the leases, and after considerable talk Winslow proposed to let the matter rest for the present. (I, 161, l. 23.)

Winslow went to St. Louis in the following February, and Johnson, who presided at the meeting called to hear him, submitted to him a proposition looking toward the elimination of the clauses. No definite

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action was taken, but Winslow proposed another meeting in Boston. (Florsheim, I, 161, l. 38; 162, l. 15; Selz, I, 145, l. 5.)

The next meeting between them was in Boston, in May, 1911; and Winslow then said that he had given the matter a good deal of consideration, but he didn't see how he could make any changes in the leases, and that any such change as they suggested in the leases would ruin the system, and could not be made. (Selz, I, 147, l. 22–32.)

L. OTHER EFFORTS OF SHOE MANUFACTURERS TO ESCAPE THE TYING CLAUSES.

For the purpose of protecting themselves against the oppressive practices of the United Company, a number of the shoe manufacturers invested in the Boylston Manufacturing Company.

Johnson, of the International Company, said:

> Our company has an interest in the Boylston Manufacturing Company. It amounts to about $80,000. We went into it to protect our business by insuring the permanency of the supply of shoe machinery. (I, 171, l. 19.)

Rand, of the same company, says that they invested in the Boylston Company "to safeguard our shoe business by developing another source of supply in shoe machinery, and competition in that commodity." (I, 182, l. 41.)

Harsh, of the Harsh-Edmonds Shoe Company, Milwaukee, speaking of his investment in the Boylston Company, said:

> My sole and only reason for taking that interest was to supply my business with shoe machinery. (I, 196, l. 33.)

Selz, of Selz, Schwab & Company, Chicago, said that he had invested between $25,000 and $30,000 in the Boylston Company, and, when asked the object of that organization, said:

> If these leases are declared invalid, we want to have a competitive shoe machinery in the market. (I, 157, l. 31, 33.)

Selby, of Drew, Selby & Company, testified:

> I have an interest in the Boylston Manufacturing Company which I acquired in January or February of this year to protect the business of the Selby Shoe Company, to get independence. (I, 212, l. 42.)

Jones, of the Commonwealth Company, says he invested $20,000 to $25,000 in the Boylston Company, "Because we could see no other way in which to establish competition in shoe machinery." (I, 135, l. 28.)

It does not appear that the Boylston Company has put out bottoming machinery to the trade. (I, 301, l. 29.) It stands ready to enter active competition "if the leases are declared invalid."

Even Mr. Choate, counsel for defendants, admits that producers of independent shoe machinery are doomed to destruction if the tying clauses are not struck down. This undoubtedly is the purport of the following colloquy between him and Mr. Selz, while cross-examining the latter. After Selz had stated that he had an investment of between $25,000 and $30,000 in that company, this took place:

> Q. So you have that amount at stake upon these machinery leases being declared invalid?

A. If you choose to look at it that way.

Q. If they are not, you stand to lose that money?

A. Yes, sir.

Q. If they are, you stand to make it?

A. Yes. (I, 158, l. 1.)

This is undoubtedly true, and Mr. Choate has made a valuable contribution to the Government's contention by his implied admission. The sustaining of the leases would destroy not only the Boylston Company but every company that dared to compete with the United Company.

M. BY WAY OF SUMMARY.

In general, the United States contends with respect to these lease clauses:

That the United Company having by combination, development, and acquisition whose legality is not important in this connection, acquired control of all clicking machines, all lasting machines of certain necessary types, all pulling over machines and about 96 per cent of all bottoming machines, has adopted a system of leases which whether originated wholly by them or in part an inheritance from their predecessors has been so designed that its practical effect is necessarily to exclude, to all intents and purposes, competing shoe machinery manufacturers from the trade.

That such exclusion is accomplished by compelling, or, as defendants would perhaps say, inducing substantially all shoe manufacturers as a condition of securing necessary machines from the defendants

upon acceptable terms, to agree—for such in final analysis is the necessary effect and manifest purpose of the tying clauses—that they will not use the machinery of competitors.

Finally, that the defendants and the shoe manufacturers have through the leases brought into existence a combination in which the latter enter, as we say, under coercion which is in effect as much a boycott of independent shoe machinery dealers as was the boycott of Loewe by the Danbury hatters. (*Infra*, p. 267.)

IX. CERTAIN ALLEGED DEFENSES.

The main lines of defendants' effort to explain or to extenuate the circumstances set out above have become apparent in the course of the litigation, but it is neither practicable nor profitable to expand this brief by attempting to anticipate and to reply to all that may be said. The United States has rather endeavored to state fairly the facts upon which it relies and to support its statement by references to the record which settle any question as to its justification. It is content to stand upon the case so made.

A few things insisted upon by defendants with particular earnestness may, however, be noticed. For example, the difference of the United States with the lower Court is not so much with its findings as to the fundamental facts as with the deductions drawn from them, the conclusions reached, and the applications made. In a few instances, it is believed that the Court below fell into error which becomes plain upon

reading the evidence. These matters so far as they have seemed to be of importance have been discussed upon their merits at their proper place in the argument. The United States, however, differs chiefly with the learned judges of the lower Court with respect to the view of the law in the light of which they interpreted the facts which were established, a view which obviously forms the premise for many of the conclusions believed by the United States to be unsound. Indeed the decision below seems very largely to have been shaped by what is believed to have been a wholly unwarranted extension of the doctrine of *Henry* v. *Dick Co.*, 224 U. S. 1. Since, as noticed, *infra*, p. 280, that case has been overruled, the matter need not be discussed here.

Certain particular contentions of the defendants may, however, be here dealt with briefly.

A. THAT THE UNITED COMPANY'S LEASING SYSTEM IS MERELY AN INHERITANCE FROM ITS PREDECESSORS AND THAT IT IS AS LIBERAL AS WERE ITS CONSTITUENT COMPANIES.

Defendants argue that the leasing system as at present constituted must, whatever its effects, be regarded as a normal development of this particular business and therefore is justified. They say it is a mere inheritance from the predecessors of their corporation. The defendants themselves, however, are given to emphasizing the fact that the history of shoe machinery is very recent history. The fact is that so far as this matter is concerned the history of the industry disclosed by the record is the history of these defendants themselves and especially of Messrs.

Howe and Winslow. The argument of defendants seems to be that because they have always done the things now complained of, they have thereby set all the standards for judging their conduct; that it is to be judged by that conduct and to be subjected to the application of no other rules.

The fact is that the leasing system of the United Company is very much more than an inheritance from the constituent companies and that it is applied to a very different situation with very different effects. It is this which makes defendants' further contention that they have not restrained trade because, as they say, they have continued to offer machines on substantially the same terms as they were offered before the consolidation, irrelevant if true. For the defendants have now adopted also the restricted system of leases and have so devised it as to make its acceptance by manufacturers a matter of practical business necessity. The contention has, however, no basis in fact. The leases under which machines were put out by the constituent companies are all set out in the record. (Ptr's Exs. 3–17, III, 3–153; see also Donham, I, 2–6.)

Inspection of the leases shows that the McKay Shoe Machinery Company, at the time of the consolidation, was putting out its machines (comprising the numerous and important group of metallic and heeling machines) *without initial payment* and *without exclusive use or other tying clauses.* Its previous initial payment lease had no such clauses. (Plff's. Exs. 11,

12, III, 90, 103.) The defendants offer no such lease. The Goodyear Company was offering lasting machines upon leases (Plff's Ex. 5, III, 37) which forbade the use of the machine with welt method machines supplied by competitors of the Goodyear Company, *but had no other tie* to any other kind of bottoming machinery. It had no exclusive use clause and therefore permitted the lessee to have in his factory an independent lasting machine to use with independent welt method machines. The United Company offers no such lease. The Consolidated Company, Mr. Winslow's original company, had an initial payment for the hand method machine. (Plff's. Ex. 8, III, 68.) It contains none of the tying clauses. The United Company offers no such lease. The Goodyear Company's "full set" lease for welt method machines (Plff's. Ex. 4, III, 29) contained no exclusive use clause. No such lease is now offered by the United Company.

It has already been pointed out that no lease of a constituent company could contain a prohibitive clause of the kind and effect of those which characterize the "restricted" system devised by the United Company. A prohibitive clause in the McKay Shoe Machinery Company leases could not have affected competition in lasting machines. It made no such machines. The effect of such a clause could have been produced only by an agreement that each company would refuse to put out their machines to shoe manufacturers who would not undertake to deal

with the other companies exclusively as to the machines dealt in by them. The illegality of such a boycott need no longer be argued to this Court. Yet what the defendants actually did, by progressive steps and what they must have intended since it resulted inevitably from what they did, was to give such an illegal agreement the form of corporate organization. And so, as said above, in so far as the defendants follow the leasing system of the constituent companies, they apply it under wholly different conditions to wholly different circumstances, with very different practical and legal effect.

B. THAT THE TYING CLAUSES AND ESPECIALLY THE "RIGHT TO TERMINATE ALL LEASES" CLAUSE ARE NECESSARY PROTECTION AGAINST DISHONEST LESSEES.

The defendants insist that there are excellent business reasons for their desire to maintain the tying clauses. Among other things they contend that these clauses and particularly the "right to cancel all leases" clause are necessary to protect them against dishonesty on the part of lessees. (Winslow, I, 447, l. 22 et seq.)

This clause, as has been shown, makes every tying clause in *any* lease signed by a shoe manufacturer a condition of *every* lease signed by that manufacturer. Its effect upon the shoe manufacturer's freedom to deal with competitors of the defendants has been noted. (*Supra*, pp. 174, 175.)

Now all lessees are not dishonest. But this clause is contained in every lease put out by the company

and the power created thereby remains whether it is exercised or not. It is a threat to honest manufacturers as well as to others. Its existence is sufficient to compel obedience to the tying clauses and to impel a shoe manufacturer to take no chances in case of a difference of opinion between him and the United Company. Under all the circumstances it is not surprising that defendants should very seldom have to take steps to enforce their leases.

But even if every lessee was inclined to dishonesty that remarkable circumstance would not justify the existence of this clause. The defendants must find some legal method of protecting themselves in their just rights. There are many such.

C. THAT IT IS NECESSARY TO EFFICIENT WORK THAT MACHINES BE LEASED AND OPERATED IN "TEAMS."

Emphasis is laid by the defendants upon the circumstance that in practical shoe manufacturing, the product is routed so as to advance progressively along the line of machines. It is said that for maximum production and economy it is necessary that the flow of work should be continuous. And that in a factory so organized the breaking down of a single machine may throw the entire organization out of gear and the inferiority of a single machine may result in a deleterious effect upon the output of the line. (Winslow, I, 866, l. 33 et seq., 867.)

There is nothing peculiar to the shoe manufacturing industry in this. Such organization is a commonplace of modern manufacturing. The special application sought by the defendants is in their con-

tention that in this industry it is peculiarly necessary that all of the machines comprising a given line be specially designed to work with each other, and that that circumstance and the further necessity of protecting the reputation of their machines by preventing the introduction into the line of an inferior machine of one of their competitors are a justification of their leasing system. (Winslow, I, 866, 867.) It is upon such an application also that defendants base rather elaborate argument, in which they press a supposed analogy to a manufacturer of a single machine, who, they say, could not be criticised for refusing to sell the parts of his product, and insisting that customers take the complete machine.

Certain facts regarding this contention should be noticed. It is obvious that a machine must be properly designed to perform the function for which it is used. It does not follow that no machine not designed by the defendants can perform a given function. Unless there is some direct physical connection between the operation of two machines there can be no practical difficulty in their proper performance of successive related functions if each is in fact properly designed for its own work. It has already been pointed out that the defendants concede that even the machines which they term "auxiliary" to other machines perform entirely independent operations. "The operations are as separate and distinct as the lasting operation and the welting operation, only they are not so far re-

moved from each other." (Winslow, I, 537, l. 9.) This is borne out by the testimony of McElroy and Selby. McElroy, who equipped the Non-Royalty factory, a man of very wide experience, testified: "I do not think it necessary for a factory to have all its machines from one manufacturer in order to get efficient service." (I, 921, l. 1.)

Selby, a shoe manufacturer of large experience in the use of shoe machinery, said:

> The operation of the lasting machine has nothing to do with the operation of the welt sewing machine. The operation of the welt sewing machine has nothing to do with the operation of the outsole stitching machine. The operations are performed by separate operators on different machines. The same is true of heeling machines. (I, 924, l. 21.)

Therefore no machine is necessary to the operation of any other.

A further and even more convincing circumstance, however, is to be found in certain facts upon which the defendants rely to support certain other arguments which they make. The method of making shoes by the welt process is that which the defendants say they have peculiarly fostered and promoted. It is upon shoes of this type that defendants earn their largest royalties. Welt shoes made in that particular manner which distinguishes the operation of the defendants' machines have been given by the defendants a trade-mark. (I, 22, l. 3.) They are claimed to be the best type of shoes. (I, 441, l. 38.) In

their manufacture more different types of machines are used than in the making of shoes by any other method. (Dfts.' Ex. 235, V, 631.) Especially are more "auxiliary" machines used. (*Ibid.*) In no branch of shoemaking can the "continuity of operation" of which defendants talk have greater significance. The operations of no machines are more closely related than those of the welt method principal and auxiliary machines. Yet in this all-important division of their business it is not only admitted by the defendants but is asserted by them that "Auxiliary machines doing any of the operations that are performed by any of our auxiliary machines may be obtained from any one and used in connection with (our) welter and stitcher." (Winslow, I, 544, l. 12.)

Another thing that should be remembered in this connection is the fact that defendants boast their readiness for a consideration to admit independent machines into their line of machinery under the so-called independent leases. An independent machine thus admitted would be as likely to break down and disturb the continuity of operation as if admitted in any other way, but still defendants are willing to let it enter. Does this not expose the hollowness of their continuity argument?

D. THAT DEFENDANTS HAVE MADE IMPROVEMENTS IN MACHINERY AND METHODS.

The United Company further insists that it has greatly improved the different kinds of machinery; that it gives excellent service to the manufacturers; that its leasing system is satisfactory to some of the manufacturers and is a benefit to the public generally. From these things they seek to argue that the tying clauses are lawful. But even were they all true, which we deny, they furnish no justification for violating the Anti-Trust Act (*infra*, pp. 244-248). Some such palliation is offered for every monopolistic endeavor. The question here is not whether some beneficial results have followed in the train of the defendants' acts. It is whether those acts were acts in restraint of trade—whether competition or monopoly shall be the law of this industry. Upon what is relevant to that inquiry this Court has long since passed.

In this connection it is proper to observe that shoe manufacturers may well prefer a leasing system to a system under which they could obtain machines only by purchase with a necessary investment of large amounts of fixed capital. That, however, shows no approval of the tying clauses. Those clauses are neither essential nor proper accompaniments to a satisfactory leasing system. Nor does it prove any necessity for the exclusion from the trade of competing machinery manufacturers. Defendants have no patent upon the system of putting out machines on lease.

E. THAT DEFENDANTS' SUCCESS IS DUE WHOLLY TO THE EFFICIENCY OF THEIR MACHINES.

It is also claimed by the defendants that their preponderant position in the shoe machinery business is due to the efficiency of their machines and not to the tying clauses. Assuming the claim of superiority for their machines to be well founded, it is not clear how the defendants expect the Court to differentiate between the contribution to their control made by that circumstance and the contribution made by the fact that the United Company began with an admitted monopoly and has supported and extended it in the way herein indicated. Nor do the defendants indicate the answer to another obvious question. The superiority of their machines, if any, has been gained in a field in which the efforts and the possibilities of competitors of the defendants have been limited and circumscribed by the conditions which the defendants have been able to impose upon the industry. They have won in a race in which they have themselves allotted the handicaps. Who shall say what would have been the merits of competing machines developed by competitors to whom a fair and equal opportunity was open? Who can predict as to the future of such a field?

In fact it is here that the argument of the defendants destroys itself. If it be true that the superiority of their machines is in itself a sufficient explanation of their success, then it certainly is true that now that such superiority has been established it is unnecessary for them to hedge about the shoe

manufacturers of the country with the restrictions and penalties of the tying and cognate clauses of the leases. Unless the defendants contend that the shoe manufacturers do not understand their own best interests and that the defendants must therefore be permitted to be the benevolent despots of the shoe machinery world, they should allow shoe manufacturers to exercise freely their own judgment as to what machines are best suitable for their purposes. For the tying clauses are utterly opposed to that freedom of trade which it is the purpose of the Sherman Act to foster and are antagonistic to the genius of American institutions.

F. THAT THE UNITED COMPANY GIVES GOOD SERVICE.

Defendants make much of their alleged free service.[1] They talk of service stations, of a force of six or eight thousand men maintained for the purpose of keeping leased machines in repair without charge, *except for parts*, to the lessee. But the machines are the defendants' machines and they produce revenue only when in good condition. Keeping the machines in repair is in every respect a good business proposition for the defendants. It affords no basis for claims of altruism.

And it is very doubtful whether anything is given without compensation. At most all that can be said is that no separate charge is made apart from what is charged in royalties and for repair parts, etc. In this connection, the great profits of the defendant corpo-

[1] The leases give the lessee no *right* to this service. It can be withheld or refused at any time.

ration, *supra*, p. 6, are especially significant. And it must be remembered that the lessees are bound by the leases to permit defendants to determine whether repairs or repair parts are needed and to purchase repair parts exclusively from the defendants at prices which the defendants fix. (Plff's. Ex. 30, par. 2, 3, III, 278.) Upon all the facts it is a pretty safe inference that the defendants do not lose money on this vaunted service system.

The weakness of the argument, however, is the failure to indicate any connection whatever between this service and the tying clauses. What has just been said with reference to the claim of excellence for defendants' machines applies equally here. As a matter of fact the defendants are by no means the only corporation which gives service. The Singer Manufacturing Company, for example, does so. (I, 734, l. 44.) But it does not find it necessary to adopt a system of restricted leases in order to do so.

It may, however, be repeated that the question here is whether the defendants have done acts which restrain trade and thereby violate the Sherman Law. It is no answer to that charge to say that certain other acts of the defendants are not blameworthy.

G. THAT THE RESTRICTIVE LEASES SIMPLY MAKE A WHOLESALE PRICE.

The defendants contend that their restrictive leases simply are the making of a wholesale price. But they regard it as a virtue that they charge a manufacturer who uses a dozen lasting machines no

less per machine than a manufacturer who uses only one such machine. (*Supra*, p. 201.)

The point here, however, is that in no sense do they make a quantity discount. The discount—and it is a heavy one—is for monopoly and for monopoly alone. The discount is made to an exclusive user of defendants' machines in exactly the same proportions whether he uses one machine of each type or many. Where the ordinary purchaser who buys "at wholesale" is free to make his next purchase where he will, he who deals with the defendants under the restricted system surrenders his liberty of choice for at least seventeen years—in many cases it may be for his business life.

H. THAT COMPETITORS HAVE NO RIGHT TO EXIST.

Defendants contend in effect that they can not be charged with violation of law in excluding competitors because competitors have no right to exist. They urge this especially in respect to welt machinery, a field they say would not exist had they not discovered and developed it. In so far as this contention is based on patent rights, it is discussed, *infra*, pp. 277–301. But a competitor who produces a noninfringing welt method machine has the same right to equal opportunity, and users of such machines have the same right to a free choice as to welt method machines as in any other division of industry. No rights of preemption or prescription are recognized by the Sherman Law.

X. THE UNITED COMPANY IS A COMBINATION IN VIOLATION OF THE ANTITRUST ACT.

A. The organization of the United Company was illegal.

The organization of the United Company was a merger of the Goodyear Company, the Consolidated & McKay Company, the Eppler Company, and the McKay Shoe Machinery Company. It resulted in the immediate suppression of the existing competition between those companies and in the creation of a great and powerful single corporation with vast resources which dominated to the point of practical exclusion the important field of supplying the principal and essential machines necessary in the manufacture of shoes. As was said by Rugg, C. J., in *United Shoe Machinery Company* v. *La Chapelle*, 212 Mass. 467, 480, "the modern machinery for the manufacture of footwear would seem to be a close approach to a prime necessity." The merger resulted in the creation of a monopoly. In the *La Chapelle Case*, just referred to, the Court said (480):

> But whatever may be the precise definition of the word monopoly as used in this statute [the Sherman Law], a business device by which a considerable number of competing corporations are welded into a single corporate entity which controls from ninety to ninety-five per cent of the commerce of the country in a particular branch required for the economical production of a necessity of mankind, is a monopoly.

More than this, the merger precluded all future possibility of competition between the "able" industrial units which were combined. That the Goodyear Company, which had already departed from the restricted limits of the welt machine field and entered upon the production, in competition with the Consolidated Company, of lasting machines, would have stopped at the point it had reached in 1899; that the Consolidated Company with its resources and energetic management would have been content to remain upon the defensive and confine itself to lasting machines; that the McKay Company, itself a strong unit, would not have extended its business into cognate lines are suppositions wholly at variance with the modern history of industry. But these obvious probabilities, amounting, indeed, to practical certainty, of increasing future competition were for all time cut off by the merger of 1899. As was said in the *Reading Case*, 226 U. S. 324, 353, without the combination the several groups had the power and the motive to compete. Both were ended by the organization of the United Company. If "competition not combination should be the law of trade" (*National Cotton Oil Co.* v. *Texas*, 197 U. S. 115; *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61, 87), if the purpose of the anti-trust laws is "to secure competition and to preclude combinations which tend to defeat it" (*International Harvester Co.* v. *Missouri*, 234 U. S. 199, 209), there was here clearly a combination which was illegal.

In fact its essential illegality was recognized at the time and confessed at the trial by the witness Howe, one of those principally concerned in bringing it about. He testified that he had an idea that the making of a working agreement between the Goodyear Company and the Consolidated Company would be an illegal restraint of trade. (*Supra*, pp. 58, 69.) He was, however, one of a somewhat numerous and distinguished company of lawyers who believed and long contended that a combination in corporate form which could be defended as an exercise of the "right to purchase property" escaped the prohibition of the Sherman Act. He accordingly insisted upon resort to that "subterfuge of form" (*Tobacco Case*, 221 U. S. 106, 181), and Winslow, who was not a lawyer, concurred. Howe was wrong in his belief that a corporate combination offered a means of evading the Sherman Law. *Standard Oil Case*, 221 U. S. 1, 59; *Tobacco Case*, 221 U. S. 106, 184, 187; *Harriman* v. *Northern Securities Co.*, 197 U. S. 244, 291; *Northern Securities Case*, 193 U. S. 197, 362. But what is here important is that he was entirely right in his idea that what he and his associates were consciously doing was an illegal restraint of trade.

B. The original illegality has been emphasized by the subsequent conduct of the defendants.

The subsequent history of the defendants emphasizes and reinforces what has just been said. It is a history of aggrandizement, of restrictive contracts, covenants and acquisitions, some unobjectionable in and of themselves but all playing their parts in an

ever strengthening scheme of monopoly. It is marked by the spending of millions to acquire within a few months of its definite appearance the first and only self-contained and truly formidable competitor which arose to challenge the defendants' supremacy. Above all it is notable for the consistent extension and enforcement of the restrictive lease system well characterized by the Judiciary Committee of the House of Representatives as "one of the greatest agencies and instrumentalities of monopoly ever devised by the brain of man." (Report accompanying the Clayton bill, p. 13.)

Through the years, the United Company has maintained and strengthened the control of the trade with which it was endowed by its organization. It has, while distributing very generous dividends to its stockholders, steadily added to its financial and other resources. It has become to all intents and purposes the only practical source of supply for the more important types of machines which it puts out, with the result that no shoe manufacturer dare hazard its displeasure. In short, it has gained a position in which competition with it, so long as it retains the weapons of the monopolist, is a practical business impossibility.

It but strengthens this argument that a few small companies maintain a precarious existence without the gates of the rich industrial province which the defendants have usurped; that they are experimenting with machines and trying them out as occasional opportunity offers, hoping if hope be not too long

deferred to enter active competition with the United Company when those gates shall be opened to them by decree of this Court. It is not necessary to the support of a charge of monopolization that the last vestige of competition shall be destroyed. Mr. Justice Day, then Circuit Judge, said in the *Chesapeake & Ohio Case*, 115 Fed. 610, 623:

> It is not required in order to violate this statute that a monopoly be created. It is sufficient if that be the necessary tendency of the agreement.

And, in the *Knight Case*, 156 U. S. 1, 16, this Court said:

> All the authorities agree that in order to vitiate a contract or combination it is not essential that its result should be a complete monopoly. It is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition.

To the same effect, see the *Lackawanna Case*, 238 U. S. 516, 533; *Atty. Genl.* v. *Great Northern Railway Co.*, 29 Law Journal (N. S. Equity) 794, 799; *Atty. Gen'l* v. *Central R. Co.*, 50 N. J. Eq. 52, 81.

When, as here, acts tending toward monopoly have so far produced that actual result that the defendants have put out over 96 per cent of all the principal machines used in bottoming shoes in this country (Appendix B, part 1, *infra;* see also Winslow, I, 597, l. 11); when Donham, Secretary of the United Company, could remember but two manufacturers making welt shoes who did not use the defendants'

machines (I, 30, l. 31); when there is considered in connection with defendants' preponderance their use of the system of restrictive leases, there seems hardly room for doubt that the United Company is a combination in restraint of trade.

C. The defendants can not justify what they have done by claiming that they did not intend to restrain trade.

1. A direct intention to restrain trade is shown by the record.

Defendants Howe and Winslow, responding to questions by their counsel, made literal denials that in the formation of the United Company they had any intention to restrain trade. Against this, however, are to be set the evidence of Mr. Howe with respect to his reason for insisting that the combination be given corporate form (*supra*, pp. 58, 59), and that of the circulars announcing the purposes of the combination (*supra*, pp. 54, 65). The Peabody contract (*supra*, p. 66) also is a very suggestive contemporary expression of the intention of the combiners.

Apart from these matters, the very comprehensiveness of the combination, taken together with the subsequent conduct of the corporation in carrying out the purposes announced in the documents just referred to, not merely warrants but requires inferences which negative such denials of specific intent. In this respect the case is not unlike the *Standard Oil Case*, 221 U. S. 1, in which the Chief Justice said (75):

> The unification of power and control over petroleum and its products which was the inevitable result of the combining in the New

> Jersey corporation by the increase of its stock and the transfer to it of the stocks of so many other corporations, aggregating so vast a capital, gives rise, *in and of itself*, in the absence of countervailing circumstances, *to say the least*, to a *prima facie* presumption of intent and purpose to maintain the dominancy over the oil industry, not as a result of normal methods of industrial development, but by new means of combination which were resorted to in order that greater power might be added than would otherwise have arisen had normal methods been followed, the whole with the purpose of excluding others from the trade and thus centralizing in the combination a perpetual control of the movements of petroleum and its products in the channels of interstate commerce. [Italics ours.]

Again, in *United States* v. *St. Louis Terminal Railroad Ass'n*, 224 U. S. 383, 394–395, and in *United States* v. *Reading Co.*, 226 U. S. 324, 370, it was recognized that an intent to exclude others might be inferred from the "extent of the control" acquired by the combination, the Court saying in the latter case:

> In the instant case the *extent of the control* over the limited supply of anthracite coal by means of the great proportion theretofore owned or controlled by the defendant companies, and the *extent of the control* acquired over the independent output which constituted the only competing supply, affords evidence of an intent to suppress that competition and of a purpose to unduly

> restrain the freedom of production, transportation and sale of the article at tidewater markets. [Italics ours.]

There was a similar ruling in *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423, 433, 434, where it was said:

> To what object was the assembling in one ownership or management so many compresses, and keeping the means and declaring the purpose of acquiring more? The answer would seem to be obvious. The first effect would necessarily be the cessation of competition. If there was left a possibility of other compresses being constructed, it was made less by the power that could be opposed to them * * *. This case presents something more than the lease of property by the Shawnee Company, induced or made necessary by financial embarrassment. It presents something more than the acquisition by the Gulf Company of another compress—of a mere addition to its business. It presents acts in aid of a scheme of monopoly.

2. Restraint of trade was the direct and necessary result of what the defendants did

If, however, it be assumed that the defendants in doing what they did had no conscious purpose to restrain trade and were wholly unaware, despite their legal and business experience, that such a result would follow their acts, it is immaterial. For, as has been shown, undue suppression of competition was the necessary result of what the defendants did. As was said by Mr. Justice Lurton in the *Reading Case*, 226 U. S. 324, 370:

> Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing is done is of no consequence * * * *U. S.* v. *St. Louis Terminal Assoc.* 224 U. S. 383, 394; *Swift & Co.* v. *U. S.* 196 U. S. 375.

To the same effect, see *United States* v. *Patten*, 226 U. S. 525, 543; *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 234.

D. The Winslow Case, 227 U. S. 202, does not affect this case.

United States v. *Winslow*, 227 U. S. 202, is so frequently referred to by the defendants as though decisive of some point in this case that it should be noted that it is not in any respect a decision by this Court that the acts of these defendants as shown by this record are within the law.

That case came to this Court upon appeal from an order sustaining a demurrer to an indictment. Under the familiar rule in such cases, this Court accepted, without reviewing, the construction given to the indictment in the lower Court. That construction was that the indictment did not charge a merger of competing but only of noncompeting and complementary units. It has been shown that those are not the facts here.

Following further, without reviewing, the construction put upon the indictment by the lower Court, this Court also held that—

> The validity of the leases or of a combination contemplating them can not be passed upon in this case.

It results that the decision in the *Winslow Case* is not a decision upon the facts of the present case and does not affect it.

E. It is no defense that defendants' combination is said to have been induced by good intentions and to have had some good results.

It was said in *International Harvester Co.* v. *Missouri*, 234 U. S. 199, at page 209:

> It is too late in the day to assert against statutes which forbid combinations of competing companies that a particular combination was induced by good intentions and has had some good effect.

In that pronouncement of this Court lies the short answer to all that defendants say with respect to the excellence of their machines and the improvements which they have perfected, the superiority and usefulness to shoe manufacturers of their service and the reasonableness of their prices. It was but a summing up of what this court had held more than once before. In the *Trans-Missouri Case*, 166 U. S. 290, 323, the Court pointed out that even a permanent reduction of prices, made possible by the concentration of manufacturing and the reduction of overhead expense which has been urged upon the Court so often in these cases and is again urged here as a predominating motive of combination, is no defense and, indeed, in the long run, may be no economic benefit to the public. While Mr. Justice Day, in the *Union Pacific Case*, 226 U. S. 61, said (88):

> Nor does it make any difference that rates for the time being may not be raised and much money be spent in improvements after the combination is effected. It is the scope of such combinations and their power to suppress or stifle competition or create monopoly which determines the applicability of the act.

The law was well stated by Mr. Taft, then Circuit Judge, in the *Addyston Case*, 85 Fed. 271, 293. After remarking that it had been earnestly pressed upon the Court that the prices charged by the combination were reasonable, he added:

> We do not think the issue an important one because, as already stated, we do not think that at common law there is any question of reasonableness open to the courts with reference to such a contract. Its tendency was certainly to give defendants the power to charge unreasonable prices, had they chosen to do so.

The defense that when the combination was formed, conditions with respect to service were unsatisfactory and that it has greatly improved them was offered in the *Great Lakes Towing Case*, 208 Fed. 733, as in this case. It was rejected as immaterial. (743, 744.)

In a recent decision (*Thomsen* v. *Cayser*, 243 U. S. 66, 86) this Court observed that this argument had been addressed to the Court in all of the cases and that it terminated, as it had always terminated, in the assertion that the particular combination in-

volved promoted trade, did not restrain it, and was a beneficial and not a detrimental agency of commerce. The Court dismissed the contention summarily, saying that it did not require extended consideration.

One phase of the defense of good primary motives perhaps deserves particular notice. Defendants say that they were actuated in acquiring the Eppler Company and the Plant interests in part at least by a desire to compose certain patent litigation. The adjustment of litigation is in and of itself a proper, perhaps a laudable, motive. But, like other good intentions, its presence will not excuse acts whose necessary result is a direct and undue restraint of trade. The following language of the Circuit Court of Appeals for the Third Circuit is directly on the point:

> The suggestion that the contract is justified by the situation of the parties—their exposure to litigation—is entitled to no greater weight. *Patentees* may compose their differences, *as the owners of other property may*, but they can not make the occasion an excuse or cloak for the *creation* of *monopolies* to the public disadvantage. *Natl. Harrow Co.* v. *Hench*, 83 Fed. 36, 38.

The attempted justification, urged especially with respect to the continuance of the system of restrictive leases, that it is *necessary* in the best interests of the trade even if conceded to have any substantial foundation is equally ineffective.

This Court replied to a like contention in the *Eastern States Lumber Case*, 234 U. S. 600, 613, by saying:

> The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 241–242.

Similarly, in *Grenada Lumber Co.* v. *Mississippi*, 217 U. S. 433, 441, this Court said:

> That such an agreement is one in restraint of trade is undeniable, whatever the motive or *necessity* which has induced the compact. [Italics ours.]

There is no legal difference between the contention that defendants did not intend unlawfully to restrain trade, although undue restraint necessarily resulted from what they intentionally did, and protesting that defendants' purpose was legitimate, although their acts resulted in an illegal restraint of trade. Neither contention states a defense. In the *Standard Sanitary Case*, 226 U. S. 20, the Court went so far as to accept as true, for the purposes of the argument, the alleged intention of defendants to improve the quality of the ware and to benefit the

trade and the public. But Mr. Justice McKenna, speaking for the Court, said (49):

> The law is its own measure of right and wrong, of what it permits or forbids, and the judgment of the courts can not be set up against it in a supposed accommodation of its policy with the good intention of parties, and it may be of some good results. *United States* v. *Trans-Missouri Freight Assn.*, 166 U. S. 290; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 62.

F. The defendants can not justify what they have done as merely a natural and normal development of their business enterprise.

In *United States* v. *Great Lakes Towing Company*, 208 Fed. 733, it was proved that the defendant was formed in 1899 and *acquired* the properties of various tug operators, and subsequently secured by purchase the properties of other operators, with the result that it then owned all the prominent towing companies at 14 important lake ports. The Government alleged that it was a combination in restraint of trade and a monopoly.

The Court sustained its contention and said (741):

> A combination which places the direct instrumentalities of interstate commerce in such a relation as to create a single dominating control in one corporation, whereby natural and existing competition in interstate commerce is unduly restricted or suppressed, is within the condemnation of the act. *Standard Oil Co. Case, supra; American Tobacco Co. Case, supra.*
>
> * * * * *

(744) Has the Towing Company acquired this domination of the towing and wrecking service by normal methods alone; or, as otherwise stated, has it unduly restrained or suppressed competition? We think it clear that the Towing Company's domination does not result from normal methods alone. Whatever may be the views of individual economists, under the Federal statutory policy normal and healthy competition is the law of trade; and such evils as may result from such competition must be considered less than those liable to follow a complete unification of interests and the power such unification gives. The evil of unification lies in the temptation to higher rates and lessened regard for the public interests; and the tendency to this evil result must be recognized, even though not in a given case yet realized in actual experience. *United States* v. *Union Pacific R. R. Co.*, 226 U. S. 61; *Joint Traffic Association Case*, 171 U. S. 505, 576; *Standard Sanitary Mfg. Co.* v. *United States, supra*. Even competitive practices, of a nature which as between business rivals standing practically on equal terms may be normal and lawful, yet when employed by a powerful monopolistic combination with the ability to crush, and for the purpose of crushing, a weak rival, may become abnormal and unlawful.

The distinction taken by the Court that business practises which as between equal rivals may be normal and lawful become, when employed by a powerful combination for the purpose of crushing a weak

rival, abnormal and unlawful is of the very first importance. It has sometimes been overlooked by courts and text writers and there has resulted confusion of thought and inaccuracy of expression. Especially it differentiates cases which arise under the Sherman Law and are like the present case from cases like *Mogul Steamship Co.* v. *McGregor* (1892), A. C. 25, and decisions based upon it. Competition may in a proper case be sufficient justification for intentional injury to the trade of a rival and how far acts not in themselves intrinsically unlawful may be so justified is shown by the *Mogul Case*.[1] But where it is a question, under the Sherman Law, of the employment by a combination, constituted by its organization a substantial monopoly and endowed thereby with the monopolist's power, a very different situation arises.

It is also to be remembered in this connection that although the constituent elements of an illegal combination or monopoly, considered separately, may be

[1] The *Mogul Case* did not decide that the agreement there in question was not a contract in restraint of trade. What was held in that case was that a contract in restraint of trade, although not enforceable when sued upon, would not support an action at common law by one injured in his business by the carrying out of such an agreement. A number of the Law Lords who concurred in this result indicated clearly their opinion that the contract *was in restraint of trade.* (See opinions of Halsbury, L. C. (1892), A. C. 25 at pp. 26 and 39; Lord Bramwell, *s. c.* 46; Lord Hannen, *s. c.* 58. That the contract was in restraint of trade was held also by all three of the judges in the Court of Appeal (L. R. 23 Q. B. D. 619), which by a majority held that that circumstance did not make the contract actionable.

unobjectionable, they become unlawful when bound together as parts of a plan to restrain trade.

Mr. Justice Holmes, who delivered the opinion of the Court in *Swift & Company* v. *United States*, 196 U. S. 375, 396, said:

> Moreover, whatever we may think of them separately when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful.

In the *Reading Co. Case*, 226 U. S. 324, Mr. Justice Lurton said (357):

> It is not essential that these contracts considered singly be unlawful as in restraint of trade. So considered, they may be wholly innocent. Even acts absolutely lawful may be steps in a criminal plot. *Aikens* v. *Wisconsin*, 195 U. S. 194, 206. But a series of such contracts, if the result of a concerted plan or plot between the defendants to thereby secure control of the sale of the independent coal in the markets of other States, and thereby suppress competition in prices between their own output and that of the independent operators, would come plainly within the terms of the statute, and as parts of the scheme or plot would be unlawful.

The application of these principles to the present case is clearly suggested by the Supreme Judicial Court of Massachusetts in *United Shoe Machinery Company* v. *La Chapelle*, 212 Mass., 467.

The Court, in a learned opinion by Rugg, C. J., held that the facts which, on the record, were there taken as true and which were in substance what was proved here, showed the United Company to be a combination in restraint of trade in violation of the Federal Anti-Trust Act.

XI. THE PLANT PURCHASE WAS ILLEGAL EVEN THOUGH PLANT HAD NOT YET INSTALLED HIS MACHINES IN ANY FACTORY OTHER THAN THAT OF THE PLANT SHOE MANUFACTURING COMPANY.

The Plant purchase resulted in the elimination of an able, existing, and growing competitor. (*Supra*, pp. 110–125.) Like the original combination, this purchase was a violation of the Anti-Trust Laws.

It may be urged that Plant was not yet engaged in actual competition with the United Company because his machines were not in use in any shoe factory except that of Thomas G. Plant Company (I, 778, l. 13), although they were in use in that company's factory at the time of the acquisition of the Plant property by the United Company and, indeed, until long afterward (*supra*, p. 110). He had, however, also offered, as we have seen, to install his machines in a number of large factories (I, 575, l. 36), and representatives of still other large factories were trying to make some arrangement whereby they might acquire an interest in Plant's machinery for the purpose of installing his machines (*supra*, p. 116). In other words, the record clearly shows that the Plant machines were indeed right at the threshold of extended competition with the United Company's machines

But conceding, *arguendo*, that Plant had invented and manufactured but had not yet installed his machines in any shoe factory, the purchase, nevertheless, would have been contrary to the provisions of the Sherman Act.

As was said by Circuit Judge Putnam in the *Patterson Case*, 59 Fed. 280, 283 (Mass.):

> Neither the letter of the statute [the Sherman Act] nor its purpose distinguishes between strangling of commerce which has been born and preventing the birth of a commerce which does not exist.

And the language of this Court in the *Reading Case*, 226 U. S. 324, *supra*, with respect to preventing competition from coming into existence is peculiarly applicable here. There the situation was dominated by a number of carriers. It was desired to introduce competition and an independent railroad was projected for the purpose of providing it. Its construction was prevented by a combination of the defendants and the Temple Iron Company. Speaking of this Mr. Justice Lurton said (351):

> The New York, Wyoming & Western Railroad Company was successfully *strangled*, and the monopoly of transportation collectively held by the six defendant carrier companies was maintained.
>
> The *projected* competing railroad was undoubtedly a good faith proposition and held out *promise* to independent coal operators not

> only of the prospect of competition in transportation from the mines to tidewater, but the possibility of selling their coal either to the controlled coal companies defendant at better prices or to the consuming public at tidewater in competition with that of the controlled coal companies. *But if we assume that its construction was doubtful, the result must be the same* as characterizing the purpose and design of the concerted action of the defendants. They were so far convinced of the *threatening* character of the enterprise that they were moved at great cost *to thwart it and at the same time remove the temptation* for a like competition by securing to themselves forever the product of the collieries named. [Italics ours.]

That was precisely the situation in the Plant case, with respect to the threatening character of the Plant enterprise. Certain shoe manufacturers had been endeavoring for years to have the United Company modify its leases so that they might use in their factories competing machinery. For the first time in its history the United Company was threatened with competition in the United States by a single concern in position to furnish a complete line of machinery. The defendants feared that competition and were willing, at a cost of some $6,000,000, to "thwart it and at the same time remove the temptation for a like competition." They secured to themselves the product of the genius and labor of Plant and his inventors. They made secure the monopoly which they possessed of the shoe machinery industry.

XII. THE RESTRAINING AGREEMENTS MADE WITH VENDORS AT THE TIME THEIR PROPERTIES WERE ACQUIRED ARE ILLEGAL.

It is unnecessary to discuss at length whether the covenants entered into with vendors in connection with the acquisitions of competitors and others are in each instance in restraint of trade. All of the covenants restraining the vendors from again engaging in business, etc., are a part of the general plan of defendants to monopolize the bottoming shoe machinery business, and it is immaterial whether the contracts considered singly are void.

However, the majority of them, when considered separately, are clearly illegal, as they go far beyond what was necessary to afford fair protection to the legitimate interests of the purchaser. *Darius Cole Transp. Co.* v. *White Star Line*, 186 Fed. 63, and cases cited. *Gibbs* v. *Baltimore Gas Co.*, 130 U. S. 396.

In any event such agreements when entered into as part of a plan for monopolizing trade and commerce are illegal.

In *United Shoe Machinery Co.* v. *La Chapelle* (212 Mass. 467) the Supreme Judicial Court of Massachusetts applied the law to the facts of the case at bar. That was an action in which the United Shoe Machinery Company began a suit to compel the specific performance of a contract between La Chapelle and it containing a covenant to assign all future inventions and to refrain from engaging in any similar business. The Court said of the contract (485):

> It was made by one who had a monopoly of one branch of trade; it was one of many similar contracts with individuals enough to constitute a practical monopoly of skill in that department; it was a necessary link in a chain of contracts essential to the maintenance and preservation of monopoly in interstate trade which had been established by the plaintiff.

In *Shawnee Compress Company* v. *Anderson*, 209 U.S. 423, *supra*, it appeared that the company had leased all its property and business to the Gulf Company, covenanting that it would not "directly or indirectly engage in the compressing of cotton within 50 miles of any plant operated by the Gulf Company," and that it would "render the Gulf Company every assistance in discouraging unreasonable and unnecessary competition." (430, 431.)

This Court held that the lease was in restraint of trade and in furtherance of a scheme to monopolize. Mr. Justice McKenna, in delivering the unanimous opinion, after observing that the financial embarrassment of the Shawnee Company might have justified the mere lease of the property, said of these covenants (433):

> It covenanted to aid in the restraint of trade. It went out of the field of competition; it covenanted not to enter into that field again, and it pledged itself to render every assistance to prevent others from entering it. And it could not misunderstand the purpose for which its lease was solicited.

He added (434):

> This case presents something more than the lease of property by the Shawnee Company, induced or made necessary by financial embarrassment. It presents something more than the acquisition by the Gulf Company of another compress—of a mere addition to its business. It presents acts in aid of a scheme of monopoly. *Swift Co.* v. *United States*, 196 U. S. 375.

The principle is also well stated in *United States* v. *Great Lakes Towing Company*, 208 Fed. 733, *supra*. There the Towing Company exacted from those whose properties it had acquired covenants whereby the vendors agreed that during the period of five years they would not engage in or be interested, directly or indirectly, in the business of towing and wrecking or in any branch thereof, upon the Great Lakes (except Lake Ontario and its harbors and the waters east thereof), excepting only and so far as they, or either of them, shall be interested in or with the party of the second part, as shareholder or employee.

The Court (three judges sitting) had the following to say with respect to those covenants (742):

> While the sale of a business and the surrender of the good will pertaining thereto, and an agreement thereunder, within reasonable limitations as to time and territory, not to enter into competition with the purchaser, when made as part of the sale of a business, and not as a device to control commerce, is not

within the Federal Anti-Trust Law (see authorities cited in *Darius Cole Transp. Co.* v. *White Star Line* (186 Fed. 63, 65, 108 C. C. A. 165), the imposition of a restraint greater than necessary to afford fair protection to the legitimate interests of the purchaser, or contractor, constitutes an unreasonable restraint under the Sherman Act. *Shawnee Compress Co.* v. *Anderson*, 209 U. S. 423.

Practically all of the agreements against competition in the case at bar are unlimited as to territory, and some of them as to time. A large number, in instances where only a single machine or a few machines were acquired, prohibit the vendors from engaging in the shoe machinery business in any way whatsoever, regardless of the properties conveyed. Many of them, in addition to the restraints against competition, provide that if the vendor shall invent or shall acquire any interest under any invention relating to shoe machinery, all such inventions shall be assigned to the United Company without additional compensation therefor. Such agreements not only restrict competition, but also tend to discourage the invention and improvement of shoe machinery. Considered in their entirety, they present "something more than the acquisition" by defendants of the business of others—"of a mere addition to" their "business." They present "acts in aid of a scheme of monopoly." *Shawnee Compress Company* v. *Anderson*, 209 U. S. 423, *supra*.

In the *American Tobacco Case*, 221 U. S. 106, this Court held that the wrongful purpose of the defend-

ants and their illegal combination was overwhelmingly established by various considerations, and among others (183)—

> By the constantly recurring stipulations, whose legality, isolatedly viewed, we are not considering, by which numbers of persons, whether manufacturers, stockholders, or employees, were required to bind themselves, generally for long periods, not to compete in the future.

XIII. THE LESSEES ARE NOT NECESSARY PARTIES TO THIS LITIGATION.

It was intimated in the trial Court that the leases could not be condemned unless the lessees were parties to the action. As we have said before, the Government does not attack the leases as such, but only certain clauses which, it says, are illegal. They impose obligations upon the lessees and are made for the sole benefit of the defendants. The relief sought is a prohibition against the defendants enforcing them. We do not seek in any wise to control the action of the lessees. What we ask would neither affect their rights, nor impose any obligation upon them. On the contrary, it will relieve them from an oppressive and wholly illegal burden.

There is nothing in *Minnesota* v. *Northern Securities Co.*, 184 U. S. 199, which militates against our position. In that case, the Court said (245) that the controversy was between—

> the State of Minnesota, the Great Northern Railway Company, the Northern Pacific Rail-

> way Company * * * and the Northern Securities Company * * *, the stockholders and bondholders of those corporations, and of the numerous railway companies whose lines are alleged to be owned, managed, or controlled by the Great Northern and Northern Pacific Railway Companies

and that—

> the rights of the minority stockholders of the two railroad companies are not represented * * * ; they have a right to be represented * * * and their rights ought not to be affected without a hearing.

In the words "their rights ought not to be affected without a hearing" lies the gist of that case. As we have just observed, the rights of the lessees are not touched in this case, except to preserve them. Hence, it was not necessary to bring the lessees before the Court.

Moreover, this action is not like a private one involving only private rights. It is an action in which the Government charges the defendants with violation of law, and asks that they be restrained from continuing their illegal practices. They can not object to the suit proceeding because parties whom they claim are interested in their unlawful conduct are not before the Court. No one has the right to say that the unlawful conduct of another shall be permitted to continue because he has an interest in it. The acts complained of are illegal, and the Government has an indubitable right to have defendants

restrained from their continuance This was all brought out very clearly by Judge Lanning in the case of *U. S.* v. *Du Pont de Nemours*, 188 Fed. 127.

Speaking for the Circuit Court of Appeals, he said (153):

> We do not propose by our decree to deal with titles to property. Our power is defined in the fourth section of the anti-trust act. That section invests us "with jurisdiction to prevent and restrain violations" of the act. The same section provides that the petition may contain a prayer that the violation of law, therein alleged, "shall be enjoined or otherwise prohibited." It is our purpose, as it is our duty, to exert the power thus conferred on us to the extent necessary to "prevent and restrain" further violations of the act. In other words, *the relief we can give in this proceeding is preventive and injunctive only.* If our decree, limited to that purpose, shall *necessitate* a *discontinuance* of *present business methods*, it is *only because those methods are illegal.*

Again (155):

> We have not overlooked the motion of the defendants to dismiss the petition for *want* of *necessary* parties. It appears that certain of the defendant corporations have outstanding bonds secured by mortgages or trust deeds, held by trust companies, who are not defendants. As already stated, *this suit* is not designed, primarily, to deal with or dispose of *property* rights. We see no reason for bring-

ing in mortgage or other creditors. [Italics ours.]

If "mortgage or other creditors" were not necessary parties in that case, neither are the lessees here. This suit is not designed to deal with any questions that may arise between the defendants and their lessees concerning the leases. It has to do alone with the enforcement of a public statute which defendants have violated. See, upon practically the precise question, *United States* v. *United Shoe Machinery Co.*, 234 Fed. 127, 138–140.

XIV. STATEMENTS BY SHOE MANUFACTURERS OF THE REASONS WHY THEY DID NOT BUY INDEPENDENT MACHINES WERE ADMISSIBLE.

There is considerable evidence in the record consisting of statements made by shoe manufacturers to the representatives of independent shoe machinery dealers to the effect that they would like to trade with such dealers but could not do so because of the tying clauses in the United Company's leases to which they were parties. These statements were objected to on the ground that they were hearsay, but the objections were overruled and the testimony admitted. This was correct. (*Lawlor* v. *Loewe*, 235 U. S. 522; *Wigmore on Evidence*, sec. 1729; *Casey* v. *Cincinnati Typographical Union*, 45 Fed. 135, 146, 147; *Elmer* v. *Fessenden*, 151 Mass. 359, 361.)

XV. THE TYING CLAUSES ARE ILLEGAL IN THEMSELVES.

As has been said, the Government does not complain of the fact that the United Company leases and does not sell its important machines. Its

objection is to the inclusion in the leases of the tying clauses. These, it says, are illegal as an integral part of an illegal scheme which has produced intended illegal results. Were the United Company and its methods in all other respects unobjectionable the use of these clauses would still be illegal.

A. The tying clauses necessarily suppress competition and tend to create a monopoly.

If the dominant purpose and necessary result of the use of these clauses is a substantial restraint of trade and to tend to create a monopoly, it is apparent that their use is illegal. That, in their practical working, such is their effect and must have been their purpose, has already been shown.

Where their consideration had not been clouded by unwarranted assumptions as to their justification under the supposed rights of patentees, such has been seen to be their necessary effect.

The Judiciary Committee of the House of Representatives, when considering the Clayton Bill (38 Stat. 730), conducted extensive hearings relative to these leases. In its report the Committee said:

> Where the concern making these contracts is already great and powerful, such as the *United Shoe Machinery Company,* * * * the exclusive or "tying" contract made with local dealers becomes one of the *greatest agencies and instrumentalities of monopoly ever devised by the brain of man.* It completely shuts out competitors not only from trade in which they are already engaged but from the

> opportunities to build up trade in any community where these great and powerful conditions are appearing under this system and practice. By this method and practice the *Shoe Machinery Company* has built up a monopoly that owns and controls the entire machinery now being used by all great manufacturing houses of the United States. No independent manufacturer of shoe machines has the slightest opportunity to build up any considerable trade in this country while this condition obtains. If the manufacturer who is using machines of the *Shoe Machinery Company* were to purchase and place a machine manufactured by an independent company in his establishment, the *Shoe Machinery Company could*, under its contracts, withdraw all their machinery from the establishment and *thereby wreck* the business of the manufacturer. (Report of Committee, p. 13.) [Italics ours.]

This view of the clauses here in question is sustained by judicial decision. Judge Dyer of the Eastern District of Missouri, in *United States* v. *United Shoe Machinery Company*, 227 Fed. 507, said of them (509):

> Are the clauses inserted in and forming parts of the contracts between the defendants and their lessees prohibited by the act of Congress heretofore referred to? Reading this act of Congress and the clauses complained of together, there can be but one conclusion, and that is that all of the clauses (with the possible exception of No. 2) complained of in the

> bill are clearly violative of the plain words of the statute.

Continuing, the Court observed with respect to the same clauses (511):

> It is hard to see how the ingenuity of man could have devised a scheme that would more effectually create a monopoly than the scheme set forth in the bill in this case.

Afterwards, in the same case upon a motion to dismiss (234 Fed. 127), Judge Trieber, of the Eastern District of Arkansas, was called upon to consider the same question. He called the tying clauses conditions and, speaking of them, said (148):

> What is the natural, direct, and necessary effect of these conditions? There can be but one answer to this: To compel the lessees to use defendants' machinery and material, regardless of whether the terms granted by the defendants are as favorable as can be obtained from other manufacturers of some of the machines or dealers in some of the materials.
>
> In addition, it is charged that, by reason of these leases, there is no market for anyone inclined to manufacture these or some of these machines, and therefore all are deterred from engaging in their manufacture, as, there being no market for them, financial failure is bound to result from the attempt. Such a condition of affairs clearly tends to substantially lessen competition, and create, *in favor of the defendants, a monopoly in that line of commerce.* [Italics ours.]

Both of these decisions, it is true, were rendered under section 3[1] of the Clayton Act (38 Stat. 731), but the meaning of monopoly is not changed by that circumstance.

B. The effect of the tying clauses is unlawfully to coerce shoe manufacturers to boycott defendants' competitors.

All leases made by defendants run for 17 years. New leases are made from time to time with lessees under earlier leases. As already shown, *supra*, p. 180, each lease is tied to each of the earlier leases. In practice, there never comes a time when the manufacturer is at liberty to procure his bottoming machinery where he wills. There is practical coercion, exercised through the tying clauses, compelling the shoe manufacturer to continue indefinitely to deal with the United Company and to refrain from dealing with its competitors.

A system of leases or contracts producing such a situation must be illegal.

If the combined companies in the case at bar had entered into a trade agreement instead of a corporate combination, thereby securing control of more than 96 per cent of a certain line of machinery, and an absolute monopoly of other lines, and had agreed that no one company would trade with any shoe manufacturer unless he purchased all his machinery from the members of the combination, clearly we

[1] This section, it was said by this court, in *Motion Picture Patents Co.* v. *Universal Film Company*, 243 U. S. 502, 517, "must be accepted by us as a most persuasive expression of the public policy of our country with respect to the question before us."

would have that "potency in numbers" spoken of in the *Loewe Case*, 187 Fed. 522, which amounts to coercion and creates a boycott. As was further said in that case (524):

> If it be shown that individuals have combined in order to induce a manufacturer engaged in interstate commerce to conduct his business as they wish, and upon his refusal, retaliatory steps are taken * * * such combination of individuals must be held to have essentially obstructed the free flow of commerce between the States, a combination to effect such an obstruction is in violation of the Anti-Trust Law.

If the Danbury Hatters were guilty of boycotting by combining for the purpose of preventing dealers in hats from trading with Loewe, the defendants are equally guilty by combining with the shoe manufacturers through the tying clauses, to prevent the latter from dealing with independent shoe machinery manufacturers. The shoe manufacturers are unwilling members of the combination, but they are members for the purpose of the combination—the destruction of trade with independent shoe machinery manufacturers.

The mere fact that the combined companies have united by a corporate combination instead of a loose combination, is wholly immaterial as already shown.

The power which the tying clauses give to the defendants over the shoe manufacturers is analogous to that possessed by the combination in the *Eastern States Retail Lumber Case*, 234 U. S. 600; in *Mon-*

tague v. *Lowry*, 193 U. S. 38; and in *Jayne* v. *Loder*, 149 Fed. 21.

In the former case the Court said (614):

> When the retailer goes beyond his personal right, and conspiring and combining with others of like purpose, seeks to obstruct the free course of interstate trade and commerce * * * by placing obnoxious wholesale dealers under the coercive influence of a condemnatory report * * * he exceeds his lawful rights, and such action brings him and those acting with him within the condemnation of the act of Congress.

Every shoe manufacturer who deals with the appellees is by the coercive influence of the leases prohibited from trading with competitors of the defendants.

In *Continental Wall Paper Company* v. *Voight & Sons*, 212 U. S. 227, manufacturers of wall paper, controlling 97 per cent of interstate commerce therein, organized a corporation to act as their common selling agent, which corporation made separate contracts with wholesalers and jobbers in the several States by which such wholesalers and jobbers agreed to buy only of such corporation.

This Court, speaking through Mr. Justice Harlan, quotes with approval the following language of Judge Lurton in the Court below (256):

> The jobbers and wholesalers, who were to be *coerced* into contracts to buy their entire demands from the Continental Wall Paper Company or be driven out of business, were in

every State. Before the combination each of the combining companies was engaged in both State and interstate commerce. The freedom of each, with respect to prices and terms, was restrained by the agreement and interstate commerce directly affected thereby, as well as by the enhancement of prices which resulted. *A more complete monopoly in an article of universal use has probably never been brought about. It may be that the wit of man may yet devise a more complete scheme to accomplish the stifling of competition.* But none of the shifts resorted to for suppressing freedom of commerce and securing undue prices, shown by the reported cases, is half so complete in its details. None of the schemes with which this may be compared is more certain in results, more widespread in its operation, and more evil in its purposes. It must fall within the definition of a "restraint of trade," whether we confine ourselves to the common-law interpretation of that term or apply that given to the term as used in the Federal act. [Italics ours.]

In the *Reading Company Case*, 226 U. S. 324 *supra*, the defendant carriers controlled about seventy-five per cent, and the independent operators about twenty per cent, of the annual supply of anthracite coal. Contracts were entered into whereby the independent operators severally agreed to deliver their entire output to the defendants and in consideration therefor they were to receive sixty-five per cent of the general average price prevailing at tidewater points. The purpose of the contracts

was to prevent the output of the independent mines being sold in competition with the output of the mines belonging to the defendants.

Speaking of these contracts the Court said (357):

> It is not essential that these contracts, considered *singly*, be unlawful as in restraint of trade. So considered, they may be wholly innocent. Even acts absolutely lawful may be steps in a criminal plot. (*Aikens* v. *Wisconsin*, 195 U. S. 194, 206.) But a *series* of such contracts, if the result of a concerted plan or plot between the defendants to thereby secure control of the sale of the independent coal in the markets of other States, and thereby suppress competition in prices between their own output and that of the independent operators, would come plainly within the terms ot the statute, and as parts of the scheme or plot would be unlawful. [Italics ours.]

The opinion proceeds (358):

> That the plan was calculated to accomplish the design averred, in the present case, seems plain enough. The anthracite field was very limited. The means for transportation from the mines to seaboard shipping points were in the hands of the defendant carriers. They, together with their subsidiary companies, controlled about ninety per cent of the coal deposit and about seventy-five per cent of the annual output. If the remaining output, that of the independent operators along their several lines, could be controlled as to production and sale at tidewater points, there would inevitably result such a dominating control of a necessity of life as to bring the

scheme or combination within the condemnation of the statute.

We submit that the contracts in the *Continental Wall Paper case, supra*, and the 65 per cent contracts in the *Reading case, supra*, were not as far-reaching in their evil results as the system of leasing used by defendants.

C. The tying clauses are illegal irrespective of whether the United Co. is otherwise a lawful or an unlawful combination.

Though it be assumed that the United Company in its original constitution by combination and in its subsequent acquisitions of concerns engaged in the shoe machinery business did nothing illegal, the tying clauses would none the less be illegal because of the restraint and monopolization which is their purpose and necessary effect. They are enforced by a single corporation having an overwhelmingly preponderant position in the trade. It has already been pointed out that trade practices which might be lawful and harmless when pursued by a relatively unimportant trade unit are quite the contrary when practiced by an aggregation as powerful, financially and industrially, as the United Shoe Machinery Co.

The defendants have attempted to justify the tying clauses as a valid exercise of their rights as patentees, basing their contention upon *Henry* v. *Dick Co.*, 224 U. S. 1. This contention which met with favor in the Court below is rendered wholly untenable by the decision of this Court in *Motion Picture Patents Co.* v. *Universal Film Co.*, 243

U. S. 502, *supra*. It is discussed later. Apart from the question of patents, systems of exclusive contracts have been repeatedly condemned in cases under the Sherman Act. What was said in the previous section of this brief and the authority there cited is, of course, equally applicable here. In a footnote are collected a number of citations of cases, some very recent and others at common law, where such contracts when entered into by a corporation subject to the law of public service or when initiated by a powerful industrial corporation have been held to be illegal.[1]

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[1] Systems of exclusive contracts initiated by a powerful industrial corporation or between those engaged in the public service have been condemned in the following cases: *United States* v. *Reading Co.*, 226 U. S. 324; *United States* v. *Eastern States Lumber Dealers Assn.*, 234 U. S. 600; *Montague* v. *Lowry*, 193 U. S. 38; *Continental Wall Paper Co.* v. *Voight & Sons*, 212 U. S. 227; *Jayne* v. *Loder*, 149 Fed. 21; *United States* v. *Eastman Kodak Co.*, 226 Fed. 62, 76–77; *United States* v. *Motion Picture Patents Co.*, 225 Fed. 800; *United States* v. *Corn Products Refining Co.*, 234 Fed. 964; *United States Tel. Co.* v. *Central Union Tel. Co.*, 202 Fed. 66, 72, 74; *Gwynn* v. *Telephone Company*, 69 S. C. 434, 442, 443; *Merchants Legal Stamp Co.* v. *Murphy*, 220 Mass. 281; *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502, 510, 512; *United States* v. *Great Lakes Towing Co.*, 208 Fed. 733 745; *Wheeler-Stenzel Co.* v. *Window Glass Jobbers Assn.*, 152 Fed. 864, 870–871; *Nash* v. *United States*, 229 U. S. 373, 375; *United States* v. *United Shoe Machinery Company*, 227 Fed. 507; *Same* v. *Same*, 234 U. S. 127.

Wilder Mfg. Co. v. *Corn Products Co.*, 236 U. S. 165, is not *contra*. It merely holds that a purchaser under such a contract can not escape paying for his purchase by attacking collaterally his vendor as an illegal combination but can resist payment only in case the individual contract of sale was, in and of itself, in violation of law.

A few of these cases deserve particular notice because they show the importance of the possession of the monopolist's power in connection with the legality of such a system of exclusive contracts and for other reasons.

In *United States* v. *Keystone Watch Case Co.*, 218 Fed. 502, it is said (510):

> As power increases, the temptation to abuse it is likely also to increase, so that the acts of an influential factor in a particular trade may well be scrutinized with more suspicion than the acts of a *weak and inconspicuous* contributor. * * * Beginning in 1904, or thereabouts, it made several attempts—perhaps not very numerous, but numerous enough—that showed a definite purpose to restrain trade by attempting to fix and maintain prices, and *by using a species of boycott or blacklisting in order to lessen the trade of its rivals.* [Italics ours.]

Every lease in the case at bar containing a tying clause is not only an attempt to restrain trade, but an actual restraint thereof, especially when it is considered that practically all of the shoe manufacturers in the country are, for practical purposes, compelled to accept such leases for all the bottoming, clicking, and eyeletting machinery used by them.

Continuing, the same Court said, in speaking of a circular letter informing jobbers that the Keystone Watch Case Company would refuse to deal with those who handled *independent* goods (512):

> We regard it not as a request, but as a threat; and *not as an empty threat, but as a real menace from a strong manufacturer* * * * Now what the defendant company did was either to close these already existing and already utilized outlets, or to narrow them materially so far as the cases of its competitors were concerned; and we think the proposition need not be discussed that this was *pro tanto* a direct and unlawful restraint of trade. [Italics ours.]

The United Company is indeed a "strong manufacturer"—and its business practice amounts to a refusal to deal with shoe manufacturers who use independent machines.

The Court in the *Great Lakes Towing Case* (208 Fed. 733 *supra*) says emphatically (745):

> *No more effective obstacle to successful competition could well be devised than is found in this exclusive contract system.* It is manifest that no competitor doing business at less than all 14 of the ports could compete with the Towing Company on anything like equal terms. With the field already occupied by a strong combination, with a large patronage fixedly secured through stockholding interests, the formation of another company equipped to do business at all 14 ports would seem a commercial and financial impossibility. [Italics ours.]
>
> * * * * *
>
> Even competitive practices, of a nature which as between business rivals standing practically on equal terms may be normal and

> lawful, yet when employed by a powerful monopolistic combination with the ability to crush, and for the purpose of crushing, a weak rival, may become abnormal and unlawful. (744.)

It is equally manifest here that no competitor having less than a complete line of bottoming machinery could compete with the United Company on any terms.

In the *Window Glass Jobbers Association Case*, 152 Fed. 864, we read (870–871):

> *It is argued with much force and ingenuity* by the defendant in error that the combination set out in the declaration was only an agreement by which a certain number of wholesalers were to trade exclusively with a certain manufacturer with the reciprocal understanding that the manufacturer was to sell to no one else, except at a price higher than that paid by the parties to the contract; *that this was, in effect, nothing more than an agreement to sell to one person or to several at a price advantageously lower than the general price, on condition that such person or persons would buy exclusively from the manufacturer so agreeing.* In other words, the American Window Glass Co. had the right to select its customers and charge one price to one and another price to another. It had the right to offer certain inducements to certain customers in exchange for their exclusive trade. And it had the right to do all or any of these things. But it is always to be borne in mind, in considering arguments of

> this kind, that the act of Congress has made, and was intended to make, illegal many sorts of contracts and agreements that prior thereto were not only legal but were regarded as meritorious and beneficial, and has materially restricted the area within which freedom of contract may be exercised. [Italics ours.]

If a contract to sell to one person "at a price advantageously lower than the general price on condition that such person or persons would buy exclusively from the manufacturer so agreeing" is invalid, then a contract leasing to one person who must agree to any terms fixed by the lessor on condition that he will lease "exclusively" from the lessor must be void.[1]

In *Nash* v. *United States*, 229 U. S. 373, 375, one of the means of monopolization named was,

> coercing factors and brokers into contracts with the defendants for the storage and purchase of their receipts and refusing to purchase from such factors and brokers unless such contracts were entered into.

The illegality of such systems at common law is indicated by Stimson, Popular Law Making, as follows (p. 175):

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[1] The long line of decisions of this Court and of Circuit Courts of Appeal to the effect that a system of contracts between a manufacturer and dealers fixing resale prices, thereby eliminating competition and fixing the prices which the ultimate consumer must pay, is restraint of trade and illegal at common law and under the Anti-Trust Act is comparable. See the authorities collected in *Ford Motor Co.* v. *Union Motor Sales Co.*, 244 Fed. 156 (C. C. A.—6th Ct.), at p. 157.

> We have legislated * * * against what we have termed "*unfair competition*," that being generally defined to be the making of an artificially low price in a certain locality for the purpose of destroying a competitor, or the making of *exclusive contracts; that is to say, refusing to deal with a person unless he binds himself not to deal with anybody else. This last thing can hardly, however, be said to add to common law principles.* [Italics ours.]

That is precisely what we have here and it is unlawful according to the foregoing authorities.

D. It is no defense that certain shoe manufacturers do not object to the tying clauses.

Defendants urge that a large number of shoe manufacturers are satisfied with the tying clause system. This can make no difference from a legal standpoint. No man nor body of men can enter into contracts that violate the law of the land merely because such contracts may be to his or their advantage. It is very doubtful, however, whether this contention of the defendants finds any support in the evidence. That a number of shoe manufacturers prefer a leasing system to one which would require them to purchase their machines outright because it saves an initial investment of capital in machinery may be conceded. That it does in fact save the investment of much capital is far from clear, when we consider the amount of the royalties which manufacturers have to pay. (*Supra*, p. 190.) But the Government, as we have heretofore observed, does not find fault with the leasing system as such.

That system can continue with all its actual or imaginary benefits to shoe manufacturers after the obnoxious clauses have been eliminated. Those clauses are burdens on, not benefits to, the shoe manufacturers of the country.

However, the following language from the opinion of this Court in the *Reading Case*, 226 U. S. 324, *supra*, is applicable here (359):

> That the conditions were not accepted by the independent producers as satisfactory, is evident. The majority at all times stood out, and those making such agreements as well as those refusing to do so, maintained an agitation for better freight rates and better prices for those who preferred to sell at their breakers. For many years before this proceeding they maintained an organization called "the Anthracite Coal Operators' Association," and through that body endeavored to improve their situation.

And so it is here. The so-called "Shoe Manufacturers' Alliance," composed of both large and small shoe manufacturers in the West and in the East, has been endeavoring for several years past through their organization to devise some plan whereby they might be relieved from the domination of defendants. Practically their last effort was to obtain an interest in the inventions and machines of Thomas G. Plant, but even in that attempt they were thwarted, by the defendants going in during the late hours of the night and acquiring control of all of Plant's inventions, patents, and machinery.

We submit that in the tying clause system employed by defendants there has been devised and applied a scheme for the stifling of competition and the monopolization of trade and commerce which approaches near to perfection. It is illegal and should be condemned.

XVI. THE DEFENDANTS CAN NOT EXCUSE EITHER THEIR COMBINATION OR THE TYING CLAUSES BY SETTING UP THAT THEY ARE PATENTEES.

A. The ownership of patents does not create an exemption from the antitrust laws.

The answer of the United Company of New Jersey, the principal operating company, contains the following:

> If this defendant is engaged in interstate trade and commerce, which it denies, and has any monopoly of such trade or commerce, which it denies, *then this defendant says any such monopoly is a valid and legal monopoly of such trade or commerce derived under and pursuant to and coextensive with letters patent of the United States, or of foreign countries, owned by it.* [Italics ours.] (I, 1045.)

It seems to be upon this defense that the defendants have hitherto chiefly relied. The defendants, as appears from the quoted excerpt from their answer, offer their ownership of patents as justifying their monopoly. Further, they contend, with respect to their insistence upon the tying clauses, that that insistence is but a valid exercise of the exclusive right to use patented inventions which is granted to them by the patent law. Test of the validity of these

contentions is, of course, to be made by ascertaining exactly what is granted to patentees by the patent law, as distinguished from the general law, and by measuring the claims of defendants by the result of that inquiry.

The long controversy with respect to the limits of the grant to a patentee has recently been brought to a plain and definite conclusion by the decision of this Court in *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502. In that case, in which *Henry* v. *Dick Co.*, 224 U. S. 1, was directly overruled, it is made clear (p. 513) that the right of the patentee under the patent law is limited strictly to the particular mechanism described in the particular patent as necessary to produce the described results and that all other rights which a person who is a patentee may have must be derived from and governed by the general law. Since they are derived from and are governed by the general law, all these rights of the patentee, apart from his exclusive control of the particular mechanism patented, including his right of property and his right to contract must yield when their exercise involves a violation of the Anti-Trust Acts. It was in this very connection that Mr. Justice McKenna used in the *Standard Sanitary Case*, 226 U. S. 20, his often quoted words:

> Rights conferred by patents are indeed very definite and extensive but they do not give any more than other rights an universal license against positive prohibitions. The Sherman Act is a limitation of rights, rights which may

be pushed to evil consequences and therefore restrained.[1]

The particular application of the *Motion Pictures* decision to the justification of the tying clauses, in the past largely grounded by defendants upon *Henry* v. *Dick Co.*, 224 U. S. 1, is the aspect in which, because of the essential similarity of the questions presented, it is of the greatest significance in this case. It will be considered in the following section. With respect to the question whether a patentee has any greater rights than another to violate the general law of the land the implications of the recent decision but reaffirm what was established law.[1] Even in the *Button Fastener Case*, 77 Fed. 288, in which originated the doctrine of the *Dick Case*, the Court said, 292–293:

> We are not at all prepared to say that there are no limitations upon a patentee's power of contract with reference to the use of his invention by others. *The property right of a patentee is, after all, but a property right, and subject, as is all other property, to the general*

[1] Indeed the argument with respect to the alleged rights of a patentee is by no means as strong as that based upon the undisputed right to acquire property which has so often been offered to this Court in these cases without acceptance as a justification for monopolistic enterprise. The *Northern Securities Cases*, 193 U. S. 197, 197 U. S. 244; the *Tobacco Case*, 221 U. S. 106; the *Union Pacific Case*, 226 U. S. 61; the *Pacific & Arctic Case*, 228 U. S. 87, and the *Reading Case*, 226 U. S. 324, are among those in which acquisitions were sought to be justified as merely the exercise of this right. But since they resulted in producing the results forbidden by the Anti-Trust Law they were none the less condemned.

> *law of the land.* We may also concede that contracts respecting the use of inventions and discoveries are, like all other contracts, subject to the limitations imposed by definite principles of public policy. [Italics ours.]
>
> * * * Neither the patentee, nor the machine involving his invention, nor a license for use, can be exempted from the liabilities and regulations which, in the public interest, attach to all persons and property under the general law of the land.

Other cases announcing the proposition that the right to contract concerning the patent is not derived from the patent itself but from the general law, and therefore that the patentee's rights are governed by that law, are noted in the margin.[1]

Since the rights of defendants to contract, with third persons or with each other, are governed by

[1] In *Pope Mfg. Co.* v. *Gormully*, 144 U. S. 224, an agreement not to contest the validity of a certain patent in consideration of a license under other patents was held unenforceable.

In *State* v. *Telephone Co.*, 23 Fed. 539, and *State* v. *Telephone Co.*, 47 Fed. 633, affirmed 50 Fed. 677, it was held that a holder of telephone patents could not insist that its licensees refuse service to any telegraph company except the Western Union because the restrictions violated their common law duty to serve all alike. In the last case, Wales, J., said:

"The conclusion drawn from an examination of these cases is that the patent laws give to the patentee a monopoly in his invention * * * but that they do not authorize him to employ it for a purpose or in a manner that may be forbidden to all other persons in the use of their unpatented property or discoveries."

In the earlier Telephone case, Brewer, J., pointed out that the ownership of a patent was merely a property right to be

the general law it is a truism that they are subject to the Sherman Act which is a part of that law.

And as might be expected, it was decided, before the decision of the *Motion Picture Case, supra*, that competitors had because of their ownership of patents no right to combine in restraint of trade. In *National Harrow Company* v. *Hench*, 76 Fed. 667, Circuit Judge Acheson held the Harrow Company to be an illegal combination. He said (p. 669):

> It is true that a patentee has the exclusive control of his invention during the life of the patent. He may practice the invention or not, as he sees fit, and he may grant to others licenses upon his own terms. But where, as was the case here, a large number of independent manufacturing concerns are engaged in making and selling, under different patents and in various forms, an extensively used article, competition between them is the natural and inevitable result, and thereby the public interest is promoted. Therefore, a combination between such manufacturers, which imposes a widespread restraint upon the trade,

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protected as such. He added (23 Fed. 539, at 540): "The moment he puts that property into what I perhaps may call, for lack of a better expression, the channels of commerce, that moment he subjects that property to the laws which control commercial transactions."

In *Straight* v. *National Harrow Company*, 18 N. Y. Supp. 224, restrictive agreements extending fifty years beyond the life of a patent were held invalid though entered into in consideration of a license to use the patented invention.

In *Patterson* v. *Kentucky*, 97 U. S. 501, the rights of patentees, as of other persons, were held subject to the police power.

> and destroys competition, is as injurious to the community, and as obnoxious to sound public policy, as if the confederates were dealing in unpatented articles. * * * To sanction such a result, because accomplished by a combination of patentees, would be, I think, to pervert the patent laws. * * * I am constrained to regard the license contract sued on as part of an illegal combination * * *.

And on an appeal to the Circuit Court of Appeals for the Third Circuit the judgment below was affirmed (83 Fed. 36). The Court said (p. 38):

> The fact that the property involved is covered by letters patent is urged as a justification; but we do not see how any importance can be attributed to this fact. Patents confer a monopoly as respects the property covered by them, but they confer no right upon the owners of several distinct patents to combine for the purpose of restraining competition and trade. Patented property does not differ in this respect from any other. The fact that one patentee may possess himself of several patents, and thus increase his monopoly, affords no support for an argument in favor of a combination by several distinct owners of such property to restrain manufacture, control sales, and enhance prices. Such combinations are conspiracies against the public interests and abuses of patent privileges. The object of these privileges is to promote the public benefit, as well as to reward inventors. The suggestion that the contract is justified by the situation of the parties—their *exposure to liti-*

> *gation*—is entitled to *no* greater weight. Patentees may compose their differences, *as* the owners of *other* property may, but they can *not* make the occasion an excuse, or cloak for the creation of monopolies to the public disadvantage. We do not see anything to distinguish this case, in principle, from *Nester* v. *Brewing Co.*, 161 Pa. St. 473; 29 Atl. 102; *Carbon Co.* v. *McMillin*, 119 N. Y. 46; 23 N. E. 530; *Morris Run Coal Co.* v. *Barclay Coal Co.*, 68 Pa. St. 173; *Distilling & Cattle Feeding Co.* v. *People* (Ill. Sup.); 41 N. E. 188; *Strait* v. *Harrow Co.* (Sup.), 18 N. Y. Supp. 233. [Italics ours.]

The italicized part is especially pertinent in view of the contention of the defendants that many of their illegal acquisitions were justified by the fact, as claimed by them, that they were made to avoid litigation (*supra*, pp. 49, 70, 128).

There is nothing in *Bement* v. *National Harrow Company*, 186 U. S. 70, which is opposed to our position. The distinction between it and the present case was clearly pointed out by Mr. Justice McKenna in the *Standard Sanitary Case*, 226 U. S. 20, when he said:

> There was a contention in that case [*Bement Case*] that the contract of the National Harrow Company with Bement & Sons was part of a contract and combination with many other companies and constituted a violation of the Sherman law, *but the fact was not established and the case was treated as one between the particular parties, the one granting and the other*

> *receiving a right to use a patented article with conditions suitable to protect such use and secure its benefits.* [Italics ours.]

The same distinction had been taken, a few months earlier, by Rugg, C. J., in *United Shoe Machinery Co.* v. *La Chapelle*, 212 Mass. 467, 481–483, who concludes an exhaustive review of the existing authorities by saying:

> The comprehensive condemnation of the [Sherman] Act against every person who monopolizes interstate commerce by combination with others includes holders of patents as well as others.

See also, in this connection, *Ford Motor Co.* v. *Union Motor Sales Co.*, 244 Fed. 156, 158, 159; *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 345.

In *Blount Manufacturing Company* v. *Yale & Towne Manufacturing Company*, 166 Fed. 555, the Court said (557):

> The monopoly granted by letters patent is of a particular invention. Devices thus protected by patents are as a matter of fact in commercial competition with both patented and unpatented devices. A contract whereby the manufacturers of two independent patented inventions agree not to compete in the same commercial field deprives the public of the benefits of competition and creates a restraint of trade which results not from the granting of letters patent but from agreement. While the monopoly of the patented articles is not increased, the monopoly of the commercial

field is increased by the "unified tactics" as to prices.

(562) Combinations between owners of *independent patents* whereby as a part of a plan to monopolize the commercial field competition is eliminated *are* within the Sherman Act, for the reason that the restraint of trade or monopoly arises from *combination* and *not* from the exercise of rights granted by letters patent. As by the terms of the contracts under consideration the owners of *distinct patents* each agreed to restrain its own interstate trade, I am of the opinion that the contracts are in these particulars obnoxious to the Sherman Anti Trust Act. [Italics ours.]

That case is supported and supplemented by *Unite States* v. *Standard Sanitary Mfg. Co.*, 191 Fed. 172. The Court (three judges sitting) said, through Rose, J. (190):

> A patentee is as much subject to the laws of the land as is any other man * * *. It [a patent] does not give a right to sell indulgences to violate the law of the land, be it the Sherman Law or another.

Continuing, the Court observed:

> A patentee who monopolizes his invention breaks no law. He who uses his property right to exclude others from the making, selling, or using his invention for the purpose and with the effect of making a combination to restrain trade in something from which his patent gives him no right to exclude others, does break the law. He breaks it precisely as the individual defendants in the Standard Oil

> and American Tobacco Companies broke it. They had the same right to use their brains, their capital, and their credit as they thought best, as he had to use his right to exclude all others from making, using, or selling automatic dredgers. He was subject to the same limitations as they were. They could not lawfully use their brains, their money, and their credit to restrain trade in petroleum and tobacco. He can not use his patent rights to restrain trade in unpatented bathtubs.

The judgment of the Circuit Court in that case was affirmed by this Court (226 U. S., 20, *supra*) in an opinion of Mr. Justice McKenna. After pointing out the distinction between that case and the *Bement Case* as above noticed, he said:

> The agreements in the case at bar combined the manufacturers and jobbers of enameled ware very much to the same purpose and results as the association of manufacturers and dealers in tiles combined them in *Montague & Co.* v. *Lowry*, 193 U. S. 38, which combination was condemned by this court as offending the Sherman Law. The added element of the patent in the case at bar can not confer immunity from a like condemnation for the reasons we have stated. * * * *Rights conferred by patents are indeed very definite and extensive, but they do not give any more than other rights an universal license against positive prohibitions. The Sherman Law is a limitation of rights, rights which may be pushed to evil consequences and therefore restrained.* [Italics ours.]

The precise question of law involved in the present case was considered by the Supreme Judicial Court of Massachusetts in *United Shoe Machinery Company* v. *La Chapelle*, 212 Mass. 467, *supra*. The Court observed:

> Therefore the further question arises whether a combination among several patentees of competing devices is within the inhibition of the statute.

Answering its question, the Court reviewed the decisions of this Court, including the *Dick Case*, and said (482, 483):

> No word or phrase in the Sherman Anti-Trust Act reveals an intent to exempt the owners of patents from its sweeping provisions against monopolistic combination. We are unable to perceive any underlying reason for supposing that by implication growing out of economic or business conditions such an exemption was intended. There appears to be no inherent natural distinction between owners of patents and owners of oil which would justify the application of the statute to one and not to the other. The conclusion seems to follow that the comprehensive condemnation of the act against every person who monopolizes interstate commerce by combination with others includes holders of patents as well as others.

In *United States* v. *Motion Picture Patents Company*, 225 Fed. 800, a very recent decision, the Court discusses at great length the question as to whether or not owners of patents may combine and thereby

restrain and monopolize trade without violating the Anti-Trust Law, and reaches the conclusion, after careful examination of all the decisions of this Court upon the question, that they may not. In that connection the Court says:

> The distinction sought to be pointed out is that while the owner of a patent on a plow covering the handles or beam might acquire or join with the owners of patents covering the moldboard or share or other parts of the plow for the protection of the patented rights of all and thereby incidentally secure an enlarged part of the trade in plows, the judgment would refuse to sanction a combination between the owners of patented plows, patented harrows, patented reapers and binders * * * for the purpose of monopolizing the whole trade in the products of agriculture if the direct end first proposed was to unduly and unreasonably restrain trade as a means to the final purpose of monopolizing. The ownership of the patents in such a case surely could not be accepted as a defense to the charge of unlawful combination. (810)

This language is especially applicable to the present case. Defendants attempt the argument that wholly independent machines covered by entirely distinct patents are to be considered as parts of one machine, although their only relation is that they follow each other in making a shoe just as the agricultural implements referred to follow each other in producing and gathering a crop.

The case of *Straus et al.* v. *American Publishers' Association et al.*, 231 U. S. 222, involved the question as to whether or not the copyright laws protected an agreement made by the defendants restricting the sale, price, etc., of copyrighted books, in violation of the Sherman Act. In it the foregoing language of Mr. Justice McKenna was quoted with approval, and then the Court observed:

> So, in the present case, it can not be successfully contended that the monopoly of a copyright is in this respect any more extensive than that secured under the patent law. No more than the patent statute was the copyright act intended to authorize agreements in unlawful restraint of trade and tending to monopoly, in violation of the specific terms of the Sherman law, which is broadly designed to reach all combinations in unlawful restraint of trade and tending because of the agreements or combinations entered into, to build up and perpetuate monopolies. * * *

To the same effect are *Virtue* v. *Creamery Package Co.*, 227 U. S. 8; *International Harvester Co.* v. *Missouri*, 234 U. S. 199, 209; and *U. S.* v. *Pacific & Arctic Co.*, 228 U. S. 87, 104.

United States v. *Winslow*, 227 U. S. 202, *supra*, contains no statement that owners of competing patents have a right to combine and no expression of any opinion upon a state of facts like those here in evidence.

If authority be needed at this late date, it is submitted that there can be no question, upon a

review of the decisions, that the graphic language of Rose, J., *supra*, was well warranted. A patent does not give a right to sell indulgences to violate the law of the land, be it the Sherman Law or another.

B. The patent law does not confer the right to insist upon leases containing the tying clauses.

In the previous stages of this case and at the former argument defendants sought to justify the tying clauses under the patent law as a valid exercise of their exclusive right to use their patented inventions, and, indeed, ascribed to themselves no little virtue in that they had not pushed their rights in practice to the full extent to which, in theory, they contended they were, under the patent law, entitled to go.

In support of this contention defendants relied, as did the court below, upon *Henry* v. *Dick Co.*, 224 U. S. 1. That case has been overruled in the *Motion Picture Case*, 243 U. S. 502, at 518, and the argument based upon it now demands little attention. In fact, however, *Henry* v. *Dick*, did not support the defendants' contentions for two reasons. First, because the present is not a case where the restriction is to the use of the patented machines only in connection with supplies or other things necessary to the operation of the particular patented mechanism, whose "use" is said to be restricted. The present restrictions apply to and forbid the use of entirely different and independent machines which have no mechanical or other necessary connection with the machine leased by the instrument containing any particular

tying clause. In the second place, there was not in the *Dick Case* the element of a system of contracts together constituting a far-reaching scheme for restraining trade. It did not follow that because the single contract before the Court in the *Dick Case* was then held legal that a whole system of such contracts with many persons, as here, would have been so held.

In fact this distinction between the single contract and the many is exactly that taken by the Supreme Court of Massachusetts in the *La Chapelle Case*, 212 Mass. 467, *supra*, in which the Court was dealing with contracts made by this defendant containing restrictive covenants. It was recognized and enforced by this court in the *Bement Case*, 186 U. S. 75, upon which the Court seemed greatly to rely in the *Dick Case*. The Court there (87) emphasizes the fact that there was no finding that the agreement challenged was ever entered into by any person other than the immediate parties. If the *Bement Case* remains law despite the overruling of *Henry* v. *Dick Co.*, a question which need not be here discussed, it remains law with the qualification upon its effect necessarily involved in the significant circumstance noted.

The sharp distinction between the *Bement Case* and this case has already been noted, *supra*, p. 285.

All question, however, whether the tying clauses can be justified as a valid exercise of the defendants' exclusive right to use their patented inventions is

settled by the decision in the *Motion Picture Case supra.*

In that case the plaintiffs asserted as the defendants here assert a right to insist that the mechanism in question, being covered, at least as to an essential part, by a valid patent owned by them, should be used only in connection with materials supplied by them, or their licensees. In fact the situation in that case was exactly that which arises here in connection with the defendants' requirement that lessees of its metallic machines shall use with them only fastening material obtained from the lessor. (Ptr's. Ex. 30, par. 4; III, 278, 281; *supra*, p. 166.) The film in that case, the fastening material in this, each pass through the patented mechanism and are acted upon it in passing. In each case the use with the patented mechanism of appropriate material is necessary to produce the result for which the patented mechanism is designed. In neither case is the material a part of the patented invention.

In the *Motion Picture Case*, this Court said (p. 516):

> The statutory authority to grant the exclusive right to "use" a patented machine is not greater, indeed it is precisely the same, as the authority to grant the exclusive right to "vend," and, looking to that authority, for the reasons stated in this opinion, we are convinced that the exclusive right granted in every patent must be limited to the invention described in the claims of the patent and that it is not competent for the owner of a patent by notice attached to its machine to, in effect,

> extend the scope of its patent monopoly by restricting the use of it to materials necessary in its operation but which are no part of the patented invention * * *.

The opinion had already pointed out that the scope of every patent is limited to the inventions described in the claims contained in it, that the patentee receives nothing from the law which he did not have before and that the primary purpose of the patent laws is not, as defendants have contended, to create "private fortunes for owners of patents" but "is 'to promote the progress of science and useful arts,'" and to promote the benefit of the community at large (510, 511). Mr. Justice Clarke, after observing that the language of the statute and its established rules of construction restrict the patent to the particular mechanism described in it and that the patent has nothing to do with the materials with which *or on which* the machine operates, continued:

> The difference is clear and vital between the exclusive right to use the machine which the law gives to the inventor and the right to use it exclusively with prescribed materials to which such a license notice as we have here seeks to restrict it. The restrictions of the law relate to the useful and novel features of the machine which are described in the claims of the patent; they have nothing to do with the materials used in the operation of the machine, while the notice restrictions have nothing to do with the invention which is patented but relate wholly to the materials to be used with it. Both in form and in substance the notice

> attempts a restriction upon the use of the supplies only and it can not with any regard to propriety in the use of language be termed a restriction upon the use of the machine itself.

If this is true as to an attempt under color of the patent laws to restrict the use with the patented invention of materials which though not a part of it are necessarily used in actual combination with it to produce the very result for which the particular patented mechanism was designed, what shall be said of an attempt to restrict the use with a given patented invention of wholly separate and distinct mechanisms, totally without connection or mechanical relation to the patented invention through whose license the restriction is attempted? If the patent law does not permit the Motion Picture Patents Company to tie together a projecting machine and the film projected by the machine it is too plain for argument that that law does not permit the defendants to impose "limitations upon the use" of a patented machine which tie to it other machines whose only relation to it is that they operate, at a different stage of its manufacture, upon the same shoe.

This one element of relationship between the mechanisms so tied is of no more importance than the fact that the projecting machine and the film in combination produce a moving picture upon a single screen.

The defendants can not find in the patent laws justification for those leasing practices which, as shown herein, the general law denounces as a mani-

fest and unreasonable restraint of interstate commerce.

In the *Motion Picture Case* the Court puts aside the question as to the extent to which the use of the patented machine may be restricted to specific supplies or otherwise by special contract between the owner of a patent and the purchaser or licensee as a question "outside the patent law." It is because such a contract, e. g., the tying clause of a lease, is outside the patent law that it receives no protection from that law in cases like the present.

In *Ford Motor Co.* v. *Union Motor Sales Co.*, 244 Fed. 156, the Circuit Court of Appeals for the Sixth Circuit had before it the exact question whether in a case which it had held (157) to present elements of undue restraint of trade, any escape from the conclusions of this Court in the *Motion Picture Case* and in *Straus* v. *Victor Talking Machine Co.*, 243 U. S. 490, was to be found in the fact that the restrictions were sought to be imposed by special contract instead of by a "license notice." The Court held that it could see no difference in principle between the two situations.[1]

In the present case, the tying clauses of the leases are wholly outside the protection of the patent law.

[1] *Ford Motor Co.* v. *Boone*, 244 Fed. 335, if sound, rests on different facts. In this case it was taken as true that the restrictive agreement did not interfere with the free play of competition. This circumstance distinguishes the case from that cited above and from the present. It may be added that in view of what is said in the *Boone Case* as to the element of unfair competition what is said as to the restrictions is *obiter*.

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They are subject to the general law. They constitute and contribute to undue suppression of competition and to restraint of trade. They tend to create a monopoly and indeed are the bulwark of a monopoly already established. They are clearly a violation of the Sherman law.

XVIII. THE ALLEGED PATENT INFRINGEMENTS DO NOT REMOVE THE ILLEGALITY OF THE DEFENDANTS' ACQUISITIONS.

A. The challenged patents were presumptively valid.

The purchase of the Eppler Company, the Plant interests, and other acquisitions is sought to be justified by the defendants upon the ground that patented machines owned by them infringed machines belonging to the United Company. This is a part of the defense of good intentions which has already been sufficiently discussed. (*Supra*, pp. 244–248.) In addition to what has been there said certain particular considerations may be noticed. In the first place, patent infringements can not be proved in an action under the Anti-Trust Act, because it would constitute a collateral attack upon the novelty and utility of the patent. Every patent issued is *prima facie* valid. The judgment of the patent officials can not be reviewed or set aside except in the manner provided by statute. *Smelting Co.* v. *Kemp*, 104 U. S. 636; *Boyd* v. *Jaynesville Hay Tool Co.*, 158 U. S. 260; *Lehnbeuter* v. *Holthaus*, 105 U. S. 94, 96; *Barden* v. *Northern Pacific R. R. Co.*, 154 U. S. 288, 327; *U. S.*

v. *Motion Picture Patents Co.*, 225 Fed. 800, 804; *Marsh* v. *Nichols, etc., Co.*, 128 U. S. 605, 610.

The validity of patents can be challenged only by a proper appeal (R. S. sec. 4911–4914) or "*in an action for infringement*" and in accordance with the provisions of the statute (R. S. sec. 4920). *Rubber Co.* v. *Goodyear*, 9 Wall. 788; *Mahn* v. *Harwood*, 112 U. S. 354; *Marsh* v. *Nichols, etc., Co.*, 128 U. S. 605.

Nor were the imperative requirements of Revised Statutes Section 4920, regarding notice of what is relied upon in a collateral attack upon a patent complied with. *Eureka* v. *Bailey Co.*, 11 Wall. 488.

This Court has held that the Federal courts have no jurisdiction of a suit by the United States to establish the invalidity of a patent alleged to have been improperly issued, it being said to be a collateral attack on the validity of the patent. *United States* v. *Bell Telephone Co.*, 167 U. S. 224, 269.

It would obviously greatly burden the administration of the Anti-Trust statute if such a defense, easily raised and difficult to meet, were permitted. In this case it would be necessary for the Court to decide many hundred patent claims before it could determine whether or not the Sherman Act had been violated. The patent expert, Howard, says that with respect to the Plant purchase alone the number of patents would be 132 and the number of claims would be 708. (I., 800, l. 5.) The total number involved in all the acquisitions would be, of course, much greater.

B. Whether the patented machines which were acquired infringed patented machines owned by the United Company is immaterial.

The acquisitions suppressed actual and vigorous competition between the companies owning the machines which the United Company claims infringed machines belonging to it. The Anti-Trust statute, it appears, makes no distinction based upon the existence of patent infringement. It was so held by the decision of the Circuit Court of Appeals for the Sixth Circuit in *Patterson* v. *United States*, 222 Fed. 599, in which Mr. Justice Day concurred.

The lower Court had rejected certain evidence offered to prove that the purchasing corporation owned unexpired patents covering the machines made by 16 competitors whom it bought out. This evidence was offered for the purpose, as here, of showing that in acquiring the competitors the corporation did not violate the Anti-Trust Act. The Court of Appeals, in sustaining the action of the lower Court, said of the Sherman Act (646):

> It includes every conspiracy in restraint of interstate trade or commerce. It is not a question whether it is *rightful or wrongful interstate* trade or commerce that is covered by the conspiracy. It is *sufficient* that it is interstate trade or commerce. If two or more persons in no way interested in a patent were to conspire in restraint of interstate trade or commerce of an infringer, no one would contend that the conspiracy was not covered by the statute. *No more* is it open to contend that a *conspiracy* by a *patentee*

and *another*, or by the officers and agents of a patentee in his interest, to restrain the interstate trade and commerce of an infringer is not within the statute. *The intent of the statute was to sweep away all conspiracies in restraint of such trade or commerce whatever their character may be. The statute respects the monoply of the patentee.* It to no extent invades the rights conferred upon him. (Citing authorities.) But the right to conspire with another or others in his interest in restraint of the interstate trade or commerce covered by his patent *is not* one of the rights conferred thereby, and such a conspiracy is within the statute. [Italics ours.]

CONCLUSION.

The Government has established, then, that there existed vigorous competition between three of the companies merged in the organization of the United Company, and that the fourth company, which at any moment might have become a competitor, was taken in for the purpose and with the effect of furthering the unlawful scheme of the combination thus brought into being; that there was like competition between the United Company and many of its subsequent acquisitions, and that such competition was especially vigorous and threatening in the Plant instance; that these acquisitions not only destroyed prevailing but also strangled potential competition both by combination and through the operation of restrictive contracts exacted from the vendors; and further that the defendants have adopted and are enforcing certain oppressive tying clauses in their

leases which coerce the shoe manufacturers of the country into dealing with them on their own terms and force them to boycott independent shoe machinery manufacturers—clauses which have practically destroyed all competition in bottoming and clicking machinery, and have eliminated every inducement to the birth of new competition. Considering the entire record, the Government urges that the prayer of its petition in all respects should be granted.

Respectfully submitted.

T. W. GREGORY,
Attorney General.

JOHN W. DAVIS,
Solicitor General.

G. CARROLL TODD,
Assistant to the Attorney General.

H. LA RUE BROWN,
LEO A. ROGERS,
Special Assistants to the Attorney General.

DECEMBER, 1917.

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FOR
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APPENDIX B.

ANALYSIS
OF
DEFENDANTS' EXHIBIT 337.

"LIST OF MACHINES
OFFERED BY
SHOE MACHINERY MANUFACTURERS AND DEALERS
OTHER THAN
UNITED SHOE MACHINERY COMPANY,
FOR PREPARING AND ATTACHING THE BOTTOMS TO THE UPPERS OF SHOES, EYELETTING MACHINES, DIEING-OUT MACHINES, AND CLICKING MACHINES,
NAMED IN
DEFENDANTS' EXHIBITS 311 TO 321, INCLUSIVE—CATALOGS, LETTERS, ADVERTISEMENTS, ETC."

APPENDIX B.

PART I.

PRINCIPAL MACHINES,

TOGETHER WITH

McKAY SEWING, CLICKING, AND EYELETTING MACHINES,

AND

PERCENTAGE OF EYELET OUTPUT CONTROL OF U. S. M. CO.

GOODYEAR DEPARTMENT.

WELT AND TURN SEWING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Underlease by U. S. M. Co., on Mar. 1, 1911.	**2,527**	.....	Pltffs. Ex. 163, IV, 1125.....	
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	**86**	Hamel (R. I, 326, l. 37).	Pltffs. Ex. 159, IV, 1113..... Defts. Ex. 321, p. 178C.	Total—all turn stitchers—marketed by Duplessis Shoe Mchy. Co.—a defunct concern and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 71 were sold by Duplessis Company, 6 by C. A. Hamel, and 9 by Hamel Shoe Mchy. Co. Of the 71 sold by the Duplessis Company 40 went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines.

				Defts. Ex. 321, reference.—Note by U. S. M. Co. representative that he has seen a "Duplessis Welt Sewing Machine" in operation in a factory.
Haverhill Shoe Mchy. Co. Haverhill, Mass.	56	Webster (R. I, 292, l. 8).	Pltffs. Ex. 161, IV, 1118..... Dfts. Ex. 321, pp. 7C, 5A, 95C.	In use—June, 1913—by shoe manufacturers. Marketed since 1910. Defts. Ex. 321, reference.—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912. Also note by Haverhill Company to U. S. M. Co. that it can furnish this machine.
R. H. Long Mchy. Co.... So. Framingham, Mass.	0	Doidge (R. I, 344, l. 17; 345, l. 15; 346, l. 614).	..... Defts. Ex. 321, p. 56B.	Three Duplessis machines bought and resold—two to shoe manufacturers and one to repair man. None manufactured by company prior to June, 1913. Although listed in catalog, witness Doidge explained that not all so listed were manufactured, but that it was the intention to do so. Defts. Ex. 321, reference—Catalog of Long Company.
Boylston Mfg. Co..... Boston, Mass.	0	Maloy (R. I, 301, l. 23; 302, l. 16, 36).	..... Defts. Ex. 321, p. 192E.	Not included among machines specified by witness Maloy, nor in catalog of company. Defts. Ex. 321, reference.—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.

WELT OUTSOLE STITCHER.

Under lease by U. S. M. Co., on Mar. 1, 1911.	2,676	.....	Pltffs. Ex. 163, IV, 1125.....	
Boylston Mfg. Co..... Boston, Mass.	0	Maloy (R. I, 301, l. 23; 302, l. 16, 36).	..... Defts. Ex. 321, p. 192B.....	Not included among machines specified by witness Maloy, nor in catalog of company. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.
Landis Machine Co..... St. Louis, Mo.	.....	McElroy (R. I, 923, l. 5).	..... Defts. Ex. 321, p. 170.....	No representative of company called. Witness McElroy, of St. Louis, Mo., knew this company to be engaged in manufacturing harness machinery, but never knew it to manufacture shoe machinery. Defts. Ex. 321, reference—Catalog entitled "Landis Shoe Repair Machinery." Same reference used under "Fairstitching Machine" classification.

GOODYEAR DEPARTMENT—Continued.

WELT OUTSOLE STITCHER—Continued.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Larsen Mchy. Co. Brooklyn, N. Y.		Wirths (R. I, 928, l. 6).	Defts. Ex. 316, p. 159.	None marketed among shoe manufacturers. Defts. Ex. 316, reference—Catalog of C. V. Engstrom Company containing reference to this machine. Same reference used under "Fairstitching machine" classification.
C. V. Engstrom Co. Peoria, Ill.			Defts. Ex. 316, p. 161A.	No representative of company called. Defts. Ex. 316, reference—Catalog of company containing reference to an "Automatic Stitcher." Same reference used under "Fairstitching Machine" classification.
Jas. Clark Leather Co. St. Louis, Mo.		McElroy (R. I, 921, l. 29).	Defts. Ex. 321, p. 161 (Cat. pp. 68-71).	No representative of company called. Witness McElroy, of St. Louis, Mo., knew this company to be engaged in the shoe findings business and that it manufactured no shoe machinery. Defts. Ex. 321, reference—Announcement of Simplex Manufacturing Company in catalog of Clark Company, which shows that machine had not been marketed prior to issuance of same. Simplex Company not referred to elsewhere in record.
Union Lock Stitch Co. E. Boston, Mass.	400	Merrick (R. I, 199, l. 33, 37; 200, l. 18).	Defts. Ex. 321, pp. 44B, 5J.	Approximate sales—4 curved needle and 350 to 400 straight-needle machines. Of latter type about 75 have been sold to shoe manufacturers. Curved-needle machines marketed since May, 1910; straight-needle machines since 1906. Defts. Ex. 321, reference—Quotations to U. S. M. Co. Same reference used under "Fairstitching machine" classification.
Universal Shoe Mchy. Co. St. Louis, Mo.		Johnson (R. I, 893, l. 38; 895, l. 10).	Defts. Ex. 321, pp. 7L, 95L.	No representative of company called. Johnson, of Victor Shoe Mchy. Co. handled machinery for this company but never placed any.

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				Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.
Victor Shoe Mchy. Co... Boston, Mass.	32	Johnson (R. I, 893, l. 23; 894, l. 6).	..... Defts. Ex. 321, p. 174D.	Machine marketed only since September 1913, and none among lessees of U. S. M. Co. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen machine of this company in demonstration at its factory.
R. H. Long Mchy. Co.... So. Framingham, Mass.	285	Doidge (R. I, 344, l. 26).	..... Defts. Ex. 321, pp. 5I, 56A.	Of this total only three have been sold to shoe manufacturers. Defts. Ex. 321, reference—Note by Haverhill Shoe Mchy. Co. to U. S. M. Co., that it can furnish Long machines; also catalog of Long Company.
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	41	Hamel (R. I, 326, l. 36).	Pltffs. Ex. 159, IV, 1113..... Defts. Ex. 321, p. 193C.	Total marketed by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 39 were sold by Duplessis Company. These went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. No machine included as marketed by Hamel Shoe Mchy. Co. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen a Duplessis machine in operation in shoe factory.

METALLIC DEPARTMENT.

STANDARD SCREW MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	409	.....	Defts. Ex. 228, V, 430.....	
Hamel Shoe Mchy. Co...	1	Hamel (R. I, 326, l. 50).	.....	No reference under this classification in Defts. Ex. 337 to this testimony of Hamel.

METALLIC DEPARTMENT—Continued.

HEEL SLUGGING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	**1,878**	.....	Pltffs. Ex. 163, IV, 1125..... Defts. Ex. 228, V, 430.....	
Boylston Mfg. Co...... Boston, Mass.	1	Maloy (R. I, 301, l. 23; 302, l. 16.) Cavanaugh (R. I, 956, l. 19).	..... Defts. Ex. 321, p. 192C.....	Not included among machines specified by witness Maloy, nor in catalog of company. Machine noted was installed on trial in January, 1914. (Subsequent to death of Maloy.) Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	22	Hamel (R. I, 326, l. 31).	Pltffs. Ex. 159, IV, 1113.... Defts. Ex. 321, pp. 8Q, 95 N 2.	Total marketed by Duplessis Shoe Mchy. Co.—a defunct concern and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 17 were sold by Duplessis Company, 3 by C. A. Hamel, and 2 by Hamel Shoe Mchy. Co. Of the 17 sold by the Duplessis Company, 7 went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machine—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.
R. H. Long Mchy. Co... So. Framingham, Mass.	0	Long (R. I, 232, l. 4 et seq., 272, l. 16). Doidge (R. I, 346, l. 5).	..... Defts. Ex. 321, p. 56K.....	Not included among machines specified by witnesses Long and Doidge as previously manufactured, or on hand. Statement by Long shows none manufactured at date of June 1913. Although listed in catalog, Doidge explained that not all machines so listed were manufactured, but that it was intention to do so. Defts. Ex. 321, reference—Catalog of Long Company.

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LOOSE NAILING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	**1,835**	.....	Pltffs. Ex. 163, IV, 1125..... Defts. Ex. 228, V, 430.....	
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	**24**	Hamel (R. I, 326, l. 30).	Pltffs. Ex. 159, IV, 1113, 1114. Defts. Ex. 321, p. 172A.	Total marketed by Duplessis Shoe Mchy. Co.—a defunct concern and its successors, C. A. Hamel and Hamel Shoe Mchy. Co., of which 20 were sold by the Duplessis Company. Of these 15 went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Only 4 of the total have been sold by the Hamel Shoe Mchy. Co. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen a "Duplessis Loose Nailer" in operation in a shoe factory.
R. H. Long Machy. Co... So. Framingham, Mass.	**0**	Long (R. I, 232, l. 4 et seq., 272, l. 16. Doidge (R. I, 346).	..... Defts. Ex. 321, p. 56J.	Not included among machines specified by witnesses Long and Doidge as previously manufactured or on hand. Statement by Long shows none manufactured at date of June, 1913. Although listed in catalog, Doidge explained that not all machines so listed were manufactured, but that it was intention to do so. Defts. Ex. 321, reference—Catalog of Long Company.
Universal Shoe Mchy. Co. St. Louis, Mo.	.....	Johnson (R.I, 893, l. 38).	..... Defts. Ex. 321, pp. 7H, 95P.	No representative of company called. Johnson, of Victor Shoe Mchy. Co., handled machinery for this company, but never placed any. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.
Victor Shoe Mchy. Co... Boston, Mass.	.....	Johnson (R. I. 894, ls. 5, 27).	..... Defts. Ex. 321, p. 174A.	Adapted for repair trade only. Company started operations about January, 1911. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he had seen a "Tacking Machine" of this company in demonstration at its factory. Same reference used under "Tacking Machine" classification.

METALLIC DEPARTMENT—Continued.

TACKING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	**3,488**	.....	Pltffs. Ex. 163, IV, 1125, 1126.	Total represents: Metallic department 3065, lasting department 423.
Universal Shoe Mchy. Co. St. Louis, Mo.	.....	Johnson (R. I, 893, l. 38).	..... Defts. Ex. 321, pp. 88, 95I.	No representative of company called. Johnson, of Victor Shoe Mchy. Co., handled machinery for this company, but never placed any. Defts. Ex. 321, reference—Advertisement of "Clinching Machine" and same reference used under latter classification. Also notation for Universal "String Nailer" in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.
Hamel Shoe Mchy. Co... Lynn & Haverhill, Mass.	**6**	Hamel (R. I, 326, l. 32)	Pltffs. Ex. 159, IV, 1113, 1114. Defts. Ex. 321, p. 193B.	All marketed by the Duplessis Shoe Mchy Co.—a defunct concern—which preceded the Hamel Shoe Mchy. Co. by some years. These machines went to the Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he had seen a "Duplessis Tacking Machine" in operation in a shoe factory.
Louis G. Freeman Co... Cincinnati, O.	.....	.....	..... Defts. Ex. 321, pp. 7A, 95A.	No representative of company called. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, and notation in sale list of its machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

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Victor Shoe Mchy. Co. Boston, Mass.	.....	Johnson (R. I. 894, ls. 5, 27).	..... Defts. Ex. 321, p. 174A.	Adapted for repair trade only and known as a "Loose Nailing Machine." Company started operations about January, 1911. Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he had seen a "Loose Nailing Machine" of this company in demonstration at its factory. Same reference used under "Loose Nailing Machine classification.

HEELING DEPARTMENT.

HEELING MACHINE.

(ATTACHING HEELS.)

Under lease by U. S. M. Co., on Mar. 1, 1911.	**2,019**	.....	Pltffs. Ex. 163, IV, 1125..... Defts. Ex. 228, V, 430.....	Total represents: Bigelow 14, Wood Heel 9, National 10, American Lightning Nailing 978, McKay Automatic Heel Loading & Attaching 948, Rapid Nailing & Automatic (#1 & #2) 60.
R. H. Long Mchy. Co..... So. Framingham, Mass.	**5**	Doidge (R. I, 345, l. 42)	Defts. Ex. 321, p. 56Q.....	National heelers. All installed in Framingham Shoe Company—controlled by Richard H. Long—which uses no U. S. M. Co. machines. Defts. Ex. 321, reference—Catalog of Long Company.
Haverhill Shoe Mchy. Co. Haverhill, Mass.	**12**	.....	Pltffs. Ex. 161, IV, 1118, 1120-1125. Defts. Ex. 321, pp. 8P, 5N...	In use—June, 1913—by shoe manufacturers. Marketed since about 1910. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912. Also note by Haverhill Company to U. S. M. Co. that it can supply this machine.

LASTING DEPARTMENT.

LASTING MACHINE.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Under lease by U. S. M. Co., on Mar. 1, 1911.	**7,496**	.....	Pltffs. Ex. 163, IV, 1125, 1126. Defts. Ex. 228, V, 430, 432.	Total represents: Hand method (four divisions), 3,854; Chase, 780; McKay & Copeland, 300; Ideal & Copeland (five divisions), 482; No. 5, 2,080.
R. H. Long Mchy. Co.... So. Framingham, Mass.	**4**	Doidge (R. I, 344, l. 34)	Defts. Ex. 321, p. 5E.....	Three to Buffalo Shoe Company, not a lessee of U. S. M. Co.; one to Zion Coop. Merc. Ass'n, a hand-process concern mostly. Defts. Ex. 321, reference—Note by Haverhill Shoe Mchy. Co. to U. S. M. Co. that it can supply Long machine.
Boylston Mfg. Co..... Boston, Mass.	**1**	Maloy (R. I., 301, l. 23; 302, l. 16). Cavanaugh (R. I, 956, l. 8).	Defts. Ex. 321, p. 192A.....	Not included among machines specified by witness Maloy, nor in catalog of company. Machine noted was installed on trial in January, 1914 (subsequent to death of Maloy). Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has reason to believe this company manufactures this machine.
Louis G. Freeman Co.... Cincinnati, Ohio.	**2**	McElroy (R. I, 190, l. 20).	Defts. Ex. 321, p. 7, A1, A2...	No representative of company called. Defts. Ex. 321, reference—Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912. Witness McElroy stated that the only lasting machine used in the Non-Royalty Shoe Company which was procured in the United States was a trial machine of the Krentler Company—last manufacturers—Detroit, Mich. This had not been perfected and was not a commercial proposition. The Krentler Company—prior to 1913—had produced only two of these machines. Both of these

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					were installed in the Non-royalty Shoe Company, but only one was operated. The Louis G. Freeman Co. was the representative for the Krentler Company.

PULLING OVER DEPARTMENT.

PULLING OVER MACHINE.

No competition in United States.

PEGGING DEPARTMENT.

PEGGING MACHINE.

No competition in United States.

MISCELLANEOUS.

McKAY SEWING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	898	.....	.....	Pltffs. Ex. 163, IV, 1126..... Defts, Ex. 228, V, 430, 437.	
Shawmut Machy. Co.... Boston, Mass.	8	Emerson (R. I, 910, 1. 23).	.....	.....	Marketed, on trial, only since June, 1913. No reference to Defts. Ex. 321 shown in Defts. Ex. 337, V, 906. Not mentioned in list of company's machines shown in Defts. Ex. 336, V, 849.
Haverhill Supply Co.... Haverhill, Mass.	.....	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.

MISCELLANEOUS—Continued.

McKAY SEWING MACHINE—Continued.

Company.	Manufactured and marketed in U. S. to shoe manufacturers.	References.		Remarks.
		Testimony.	Exhibits.	
Louis G. Freeman Co. Cincinnati, O.	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in list of company's machines shown in Defts. Ex. 336.
Edward E. Spencer & Co. New York, N. Y.	.....	Spencer (R. I, 884, l. 40; 885, l. 1).	Defts. Ex. 312.	Not included among machines specified by witness Spencer as manufactured by company. Company in bankruptcy in 1912. Principal business had been in supplies rather than shoe machinery. Defts. Ex. 312—Catalog of company, printed in 1897.
Manufacturers Supply Co. St. Louis, Mo.	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
J. W. White & Co. Haverhill, Mass.	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
Lynn Supply Co. Lynn, Mass.	.....	.....	.....	No representative of company called. No reference to Defts. Ex. 321 shown in Defts. Ex. 337. Not mentioned in Defts. Ex. 336 nor elsewhere in record.
American Worsted Mchy Co. Abingdon, Mass.	.....	Hall (R. I, 953, l. 5, 20).	Defts. Ex. 321, p. 1K.	None manufactured from 1907 to 1914. Parts only handled. Defts. Ex. 321, reference—Quotation to U. S. M. Co.
Walter Pearson. Whitman, Mass.	.....	.....	Defts. Ex. 321, p. 23A.	No representative of company called. Defts. Ex. 321, reference—Quotation to U. S. M. Co., together with catalog of McKay machines, printed in 1896.

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CLICKING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	**3,655**	.....	Pltffs. Ex. 163, IV, 1126..... Defts. Ex. 228, V, 430, 435.	
Seelye Mfg. Co...... Boston, Mass.	.....	Seelye (R. I, 327, l. 28).	.....	Not referred to in testimony of witness Seelye.
			Defts. Ex. 321, p. 182.	Defts. Ex. 321, reference—Note by U. S. M. Co. representative that he has seen machine in operation in a shoe factory.
Parsons Mchy. Co...... Marlboro, Mass.	.....	.....	.....	No representative of company called.
			Defts. Ex. 321, p. 12B.	Defts. Ex. 321, reference—Quotation to U. S. M. Co. for "Upper Leather Cutter."

EYELETTING MACHINE.

Under lease by U. S. M. Co., on Mar. 1, 1911.	**4,472**	.....	Pltffs. Ex. 163, IV, 1126..... Defts. Ex. 228, V, 430, 433.	
American Worsted Mchy. Co. Abingdon, Mass.	**150**	Hall (R. I, 953, l. 11)...	.....	Approximate sales from 1907 to 1914 to shoe manufacturers and others.
			Defts. Ex. 321, p. 2 K, B, C, D.	Defts. Ex. 321, reference—Quotations to U. S. M. Co.
Geo. Knight & Co...... Brockton, Mass.	**0**	Knight (R., I, 902, l. 40).	.....	None manufactured since 1906.
			Defts. Ex. 321, p. 9 G.	Now manufactured by Peerless Mfg. Company. U. S. M. Co. never manufactured machines of "Gang" type. Defts. Ex. 321, reference—Quotation to U. S. M. Co., on "Power" and "Gang" machines. (See Peerless Mfg. Co.)
Peerless Mfg. Co...... Boston, Mass.	.....	Muther (R., I, 303, l. 3. et seq).	.....	Output not stated, but we may assume that if it was large enough to be significant it would have been stated by the defendants. Loaned to evelet customers.
			Defts. Ex. 321, p. 67 A, F.	Defts. Ex. 321, reference—Advertisement of "Rapid" and "Gang" eyeletting machines. U. S. M. Co. never manufactured machines of "Gang" type. (See Geo. Knight & Co.)

EYELET MANUFACTURERS IN 1913.

(See Defts. Ex. 234, V, 530.)

Shoe eyelet production.

	Millions per month.
Hughes Eyelet Company, Taunton, Mass	20
Seaville Manufacturing Company, Taunton, Mass	2
Atlas Tack Company, Fairhaven, Mass	200
Waterbury Brass Company, Waterbury, Conn	5
S. O. & C. Company, Ansonia, Conn	200
J. C. Rhodes Company, New Bedford, Mass	200
Rimmon Eyelet Company, Seymour, Conn	5
United Fast Color Eyelet Company	30
Total	662

Controlled by U. S. M. Co. (and allied interests).

Hughes Eyelet Company (by Winslow personally)	20
S. O. & C. Company, Ansonia, Conn	200
J. C. Rhodes Company, New Bedford, Mass	200
Rimmon Eyelet Company, Seymour, Conn	5
United Fast Color Eyelet Company	30
Total	455
Output of Atlas Tack Company (corrected) (Donovan I, 959, I. 7)	50
Output of Seaville Mfg. Company	2
Output of Waterbury Brass Company	5
Total	57
Corrected total	512
Percentage controlled by United Shoe Machinery Company and allied interests ..... per cent..	**89**

NOTE.—Output of Atlas Tack Company and percentage controlled by U. S. M. Co. are approximate figures.

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APPENDIX B.

PART II.

OTHER MACHINES.

WELT BEATING MACHINE.

BOYLSTON MFG. CO., Boston, Mass.

Not included in list specified by witness Maloy on pages 301 and 302, nor in catalog of company—page 302.

(Maloy, I, 301, l. 23; 302, l. 16.)

Defts.' Ex. 321. Reference: page 192, item D. Note by U. S. M. Co. representative that he has reason to believe the Boylston Co. manufactures this machine.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

Twenty-five machines manufactured and marketed in United States by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff's Ex. 159, customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 44.)

Defts.' Ex. 321. Reference: page 95, item G. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

None marketed since date of manufacture—May, 1913.

(Webster, I, 292, l. 30.)

Defts.' Ex. 321. Reference: page 5, item T. Haverhill Co. statement to U. S. M. Co. that it can furnish this machine.

R. H. LONG MCHY. CO., South Framingham, Mass.

None marketed prior to June, 1913.

Doidge explained that not all machines listed in catalog were manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 16.)

Defts.' Ex. 321. Reference: page 56, item E. Notation for this machine in catalog of company.

OUTSOLE BLOCKING MACHINE (cutting outsoles).

QUARMBY & HILLIKER, Lynn, Mass.

Twelve machines manufactured and marketed among shoe manufacturers—sometimes referred to as "sole cutters."

The manufacture of these machines has been discontinued.

(Hilliker, I, 929, l. 5.)

Defts.' Ex. 321. Reference: page 11, items A and B. Quotation to U. S. M. Co.

HEEL BUILDING MACHINE.

W. T. BOSWORTH, Brockton, Mass.

Machine manufactured by the Brockton Heel Co., which Bosworth represents.

This is sold or leased to shoe and heel manufacturers and is a measuring machine or device, rather than a heel building machine.

Manufacture of this machine commenced about January, 1914.

To Bosworth's knowledge the U. S. M. Co. builds no machine for performing a similar operation.

(Bosworth, I, 911, l. 22 et seq.)

Defts.' Ex. 321. Reference: page 43, item A. Quotation to U. S. M. Co. on "Log Building and Log Slicing Machines."

JAMES BOSTOCK & SONS, Brockton, Mass.

Approximately 100 machines per year have been sold during past 17 years to shoe and heel manufacturers. A fair proportion of these have been sold to the U. S. M. Co., which also manufactures a heel building machine, although not essentially the same as the Bostock machine.

(Bostock, I, 904, l. 24 et seq.)

Defts.' Ex. 321. Reference: page 21, item F. Quotation to U. S. M. Co.

FORTUNA MACHINE CO., New York, N. Y.

None manufactured since organization of this company in 1903.

This company intended to manufacture and market a heel-building machine invention of one Geiger. It did not prove commercially successful, however, and nothing further was done by the Fortuna Company.

(Diehl, I, 911, l. 1.)

Defts.' Ex. 321. Reference: page 79. Announcement by the company that a heel building machine will be exhibited at a shoe and leather fair.

W. J. Young Mchy. Co., Lynn, Mass.

Approximately 2,500 machines have been manufactured since about 1906, practically all of which were marketed in the United States. The majority of these machines were sold to shoe manufacturers, although this was not true during the earlier years of the sale of these machines.

(Young, I, 942, l. 27.)

Defts.' Ex. 321. Reference: page 62, item F. Advertisement of machine.

Geo. Knight & Co., Brockton, Mass.

None manufactured during the past 15 years.

(Knight, I, 902, l. 32.)

Defts.' Ex. 321. Reference: page 9, item H. Quotation to U. S. M. Co.

Parsons Mchy. Co., Marlboro, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 12, item C. Quotation to U. S. M. Co. on a "Pieced Heel Machine."

F. H. White & Co., So. Easton, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 46, item A. Quotation to U. S. M. Co. and catalog of the concern.

CEMENTING MACHINES (cementing taps for soles).

Universal Supply Co., Haverhill, Mass.

No representative of company called as a witness.

Witness Donnelly, who has been engaged in the shoe machinery business for the past 14 years, stated that he has never heard of this company.

(Donnelly, I, 943, l. 38; 944, l. 31.)

Defts.' Ex. 321. Reference: page 160. Letter offering machine for sale.

Hazen-Brown Co., Brockton, Mass.

None manufactured by this company itself, although these achines are manufactured for it. These are sold to the Cochituate Oilproof Company, which loans them free to

shoe manufacturers in connection with sale of a special cement known as "gumbo tap sticker."

(Hazen, I, 906, l. 14.)

Defts.' Ex. 321. Reference: page 158. Letter to the U. S. M. Co. explaining that these machines are loaned to shoe manufacturers buying "gumbo cement" and using nothing else in these machines.

BOSTON MACHINE WORKS, Lynn, Mass.

Approximately 700 to 800 Julian cementing machines for cementing soles of shoes marketed among shoe manufacturers during past 10 years, 90% of which have been sold in the United States.

This company manufactures a fold-cementing machine which can not properly be included under this classification.

(Illingworth, I, 926, l. 43, et seq.)

Defts.' Exhibit 321. Reference: page 95, item X. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

Another reference is to page 49 (Cat. p. 34). Notation for this machine in catalog of company.

CHANNELING MACHINES (insoles and outsoles).

R. H. LONG MCHY. CO., So. Framingham, Mass.

No information obtained as to the output of Arnold channeling machine referred to in testimony of witness Doidge—page 1698—as one of the machines manufactured by the company.

In explanation of catalog Doidge stated that not all machines listed therein were manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 5–16.)

Defts.' Ex. 321. Reference: page 56. Notations for "Arnold Channeler" and "Insole Channeler" in catalog of company.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

Fifty-nine machines at present used by customers of company—Pltff.'s Ex. 161, IV, 1118.

The manufacture of this machine—a turn sole channeler—was commenced in 1908.

(Webster, I, 291, l. 35.)

Defts.' Ex. 321. Reference: page 95, item A. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

Another reference is to page 5, item B. Note by Haverhill Co. to U. S. M. Co. that it can furnish this machine.

HAMEL SHOE MCHY. CO., Lynn & Haverhill, Mass.

Four machines manufactured and marketed in United States by the Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff.'s Ex. 159—customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 52.)

WALTER PEARSON, Whitman, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 23, item B. Quotation to U. S. M. Co.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

Approximately 25 to 30 McKay channeling machines marketed among shoe manufacturers from 1907 to 1914.

(Hall, I, 953, l. 5.)

Defts.' Ex. 321. Reference: page 2, item A. Quotation to U. S. M. Co.

GEORGE KNIGHT & CO., Brockton, Mass.

No McKay channeling machines manufactured or marketed during past 15 years.

(Knight, I, 902, l. 38.)

Defts.' Ex. 321. Reference: page 9, item I. Quotation to U. S. M. Co.

CLICKING MACHINE.

SEELYE MFG. CO., Boston, Mass.

PARSONS MCHY. CO., Marlboro, Mass.

Reference to the above in Appendix "B"—Part I.

CLINCHING MACHINE.

UNIVERSAL SHOE MCHY. CO., St. Louis, Mo.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 88. Advertisement of machine.

HEEL COMPRESSING MACHINE.

QUARMBY & HILLIKER, Lynn, Mass.

Manufacture of this machine discontinued about 1907. (Hilliker, I, 929, l. 8.)

Defts.' Ex. 321. Reference: page 109. Quotation to U. S. M. Co.

W. J. YOUNG MCHY. CO., Lynn, Mass.

Approximately 300 machines manufactured and marketed—almost exclusively among heel manufacturers.

(Young, I, 942, l. 38; 943, l, 18.)

Defts.' Ex. 321. Reference: page 62, item G. Advertisement of machine.

LEATHER CUTTING MACHINES (including dieing-out machines).

THOMAS BOSTOCK & SONS, Brockton, Mass.

Rand cutting and tap cutting machines—properly included under this classification—manufactured by this concern.

Extent of output not stated.

Tnis concern conducts a general machine shop business in which 15 men are employed.

(Bostock, I, 904–905.)

Defts.' Ex. 321. Reference: page 21, items C. and H. Quotations to U. S. M. Co.

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item H. Quotation to U. S. M. Co. on "Rand Cutter."

PARSONS MCHY. CO., Marlboro, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 12, item H. Quotation to U. S. M. Co.

BOSTON MACHINE WORKS CO., Lynn, Mass.

Approximately 50 flap-slashing machines—properly included under this classification—manufactured and marketed principally in the United States.

(Illingworth, I, 927, l. 15.)

Defts.' Ex. 321. Reference: page 49 (Cat. p. 32). Advertisement of machine.

QUARMBY & HILLIKER, Lynn, Mass.

Approximately 150 to 200 dinking machines—properly included under this classification—manufactured and marketed since 1904, one-third of these among shoe manufacturers.

(Hilliker, I, 929, l. 39.)

Defts.' Ex. 321. Reference: page 10, item B. Quotation to U. S. M. Co. on "Beam Dinker."

SEELYE MFG. CO., Boston, Mass.

Approximately 50 to 100 beam-die pressers or dinking machines—properly included under this classification—manufactured and marketed yearly prior to formation of U. S. M. Co. Subsequent to 1889 not more than 25 per cent of this output marketed yearly.

(Seelye, I, 327, l. 37; 328, l. 11.)

Defts.' Ex. 311. Reference: pages 92, 93, 94. Advertisement of machine.

Another reference is to page 95, item N. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

TOWER BROS., Hudson, Mass.

Approximately 10 to 12 sole cutting machines manufactured and marketed yearly.

(Tower, I, 907, l. 35.)

Defts.' Ex. 321. Reference: page 3, item F. Quotation to U. S. M. Co. on "Beam Sole Cutter."

W. J. YOUNG MCHY. CO., Lynn, Mass.

A wedge lift dinker or cutter—properly included under this classification—is manufactured by this concern and marketed both to shoe and heel manufacturers.

Extent of output not stated.

(Young, I, 942, l. 39.)

Defts.' Ex. 321. Reference: page 62, item J. Advertisement of machine.

HEEL LIFT EVENING MACHINE.

QUARMBY & HILLIKER, Lynn, Mass.

Not referred to in testimony of witness Hilliker.

(Hilliker, I, 928–929.)

Defts.' Ex. 321. Reference: page 10, item F. Quotation to U. S. M. Co. on "Knox 30-inch Splitter."

This same reference is also used under the classification for "Splitting Machine."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327-328.)

Defts.' Ex. 321. Reference: page 91, item C. Quotation (unsigned) purporting to have been received by U. S. M. Co. from Seelye—on "Splitting Machine."

This same reference is also used under the classification for "Splitting Machine."

J. S. WHEELER & CO., Boston, Mass.

Not referred to in testimony of witness Wheeler.

On page 4555 Counsel Choate, for the U. S. M. Co., stated: "I want to call attention to the fact that all we offered was that this man put out a splitting machine and an insole flexing machine."

(Wheeler, I, 889, l. 43; 890, l. 27.)

Defts.' Ex. 321. Reference: page 41, item A. Quotation on "Baby Splitters" (upper leather and sole eveners).

This same reference is also used under the classification for "Splitting Machine."

EYELETTING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

GEO. KNIGHT & CO., Brockton, Mass.

PEERLESS MFG. CO., Boston, Mass.

Reference to the above in Appendix "B"—Part I.

FAIRSTITCHING MACHINE.

LANDIS MACHINE CO., St. Louis, Mo.

No representative of company called as a witness.

Witness McElroy, of St. Louis, Mo., stated that he knew this company to be engaged in the manufacture of harness machinery but had no knowledge that it manufactured shoe machinery.

(McElroy, I, 923, l. 4.)

Defts.' Ex. 316. Reference: page 161. Catalog of C. V. Engstrom Co., Peoria, Ill., containing a reference to this machine.

This same reference is also used under the classification for "Welt Outsole Stitcher."

LARSEN MCHY. Co., Brooklyn, N. Y.

No specific reference is made in the testimony of witness Wirths to a "Fairstitching Machine."

On page 4746 Wirths stated that this company manufactures a "Welt Outsole Lockstitch Machine," but that none have been marketed among shoe manufacturers.

(Wirths, I, 928, l. 4–6.)

Defts.' Ex. 316. Reference: page 161, item A. Catalog of C. V. Engstrom Co., Peoria, Ill., containing reference to an "Automatic Stitcher."

This same reference is also used under the classification for "Welt Outsole Stitcher."

C. V. ENGSTROM Co., Peoria, Ill.

No representative of company called as a witness.

Defts.' Ex. 316. Reference: page 161, item A. Notation for "Automatic Stitcher" in catalog of company.

THE JOHN O'FLAHERTY Co., Rouses Point, N. Y.

No representative of company called as a witness.

Witness Spencer stated that he had handled machines for the O'Flaherty Company and that its lockstitch machine was adapted for harness work principally and could not be used in shoe bottoming operations.

(Spencer, I, 885, l. 13.)

Defts.' Ex. 321. (NOTE.—This Exhibit is one of many "physical" exhibits. It has not been printed, but is a part of the record. It is often referred to herein.) Reference: page 58. Advertisement of "Harness Sewing Machine."

It is to be noted that this machine is advertised for harness work, and that the advertisement appeared in the publication "Harness World."

PURITAN MFG. Co., Boston, Mass.

Approximately 1,000 machines manufactured and marketed since 1892, practically all among shoe manufacturers.

A number of these have also been sold to the U. S. M. Co.

(Lingley, I, 891, l. 19 et seq.)

Defts.' Ex. 321. Reference: page 73, item E. Advertisement of "Flax or Dry Thread Machine."

J. D. Randall Co., Cincinnati, O.

No representative of company called as a witness.

Witness McElroy stated that the J. D. Randall Company was not known to him in the shoe machinery field.

(McElroy, I, 922, l. 42.)

Witness Spencer stated that the J. D. Randall Company particularized on machines for the harness trade and that, to his knowledge, it handles no machines for use in shoe manufacture other than strip cutters.

(Spencer, I, 885, l. 17.)

Defts.' Ex. 321. Reference: page 57. Advertisement in "Harness World."

Another reference is to Defts.' Ex. 313. Catalog of the company.

From both references it appears that no claim is made that this machine can be or is ordinarily used in shoe factories but rather for harness and horse collar work. In the catalog particularly this company sets itself forth as manufacturing only this type of machinery.

James Clark Leather Co., St. Louis, Mo.

No representative of company called as a witness.

Witness McElroy, of St. Louis, Mo., stated that this company is engaged in the shoe findings business and that it manufactures no shoe machinery.

(McElroy, I, 921, l. 29.)

Defts.' Ex. 321. Reference: page 161 (Cat. pp. 68, 69, 70). Catalog of the company.

On page 71 of this catalog it appears that this machine had not been placed upon the market prior to date of issuance, and there is no evidence that any of these machines have ever been marketed. Furthermore, although this announcement appears in the catalog of the Clark Company, it is signed by the Simplex Mfg. Co. of St. Louis, Mo., a company which has not been referred to elsewhere in the record as ever having been engaged in the shoe machinery business.

Union Lockstitch Co., E. Boston, Mass.

Four curved-needle stitching machines manufactured and marketed since May, 1910, and 350 to 400 straight-needle machines since 1906.

The curved-needle machines have been sold to shoe manufacturers. Of the straight-needle machines 75 only have been

installed in shoe factories and the balance among harness and saddlery manufacturers.

From the testimony of witness Merrick it appears that both the curved-needle machine and the straight-needle machine may be used for fairstitching—an ornamental operation. The curved-needle machine, however, is capable of stitching around the shank, a very necessary operation, inasmuch as it attaches the outsole to the inner sole, and hence is essentially a bottoming operation.

(Merrick, I, 199, l. 27; 200, l. 18.)

Defts.' Ex. 321. Reference: page 44, item B; page 5, item J. Quotations to U. S. M. Co. on "curved-needle machines."

BOTTOM FILLING MACHINE.

No. American Chemical Co., Boston, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 147. Note by U. S. M. Co. representative that one of these machines had been seen in operation in a shoe factory.

McKAY INSOLE FLEXING MACHINE.

Edward E. Spencer, jr., New York, N. Y.

In connection with the concern of Edw. E. Spencer & Co., witness Spencer stated that this concern went into bankruptcy in August, 1912.

During the period from 1906 to 1911, Edw. E. Spencer & Co. averaged a yearly business of between $25,000 and $30,000 in shoe machinery and accessories, the larger proportion being in the shoe manufacturers' supply business, such as nails, tacks, wax, etc.

A strip cutter manufactured by Edw. E. Spencer & Co. has been referred to in Defts.' Ex. 321 as an insole flexing machine. Witness Spencer admitted that this machine, although not particularly adapted for this work, can be changed for this purpose by an adjustment of the knives.

(Spencer, I, 884, l. 40; 885, l. 5, 40.)

Defts.' Ex. 321. Reference: page 26. Quotation to U. S. M. Co. stating: "We build a special machine for this purpose—machine fitted up for McKay flexible-insole work on principle of our strip-cutting machine."

Another reference is to Defts.' Ex. 312. Catalog of Edward E. Spencer & Co.—issued in 1897. Few of these had been distributed among shoe manufacturers, but mostly outside of this field.

EDWIN B. STIMPSON & Co., New York, N. Y.

Witness Stimpson stated that this company manufactures a strip cutter—which has been used as a reference under this classification.

Stimpson further stated that the letter used as a reference was signed by him at the insistence of Nichols of the U. S. M. Co. that a strip cutter was the same as an insole flexing machine. Stimpson maintained, however, that this machine had been manufactured for stripping leather for belts and for cutting welts, and had been sold at all times for these purposes only.

Referring to the catalog of this company, Stimpson stated that it had been printed in 1890 and could not be considered applicable to present conditions.

(Stimpson, I, 882, l. 20.)

Defts.' Ex. 321. Reference: page 26. Letter to the U. S. M. Co. stating "In addition to illustrations in catalogue we build an insole flexing machine." (See above explanation.)

Another reference is to Defts.' Ex. 312. Catalogue of the company.

J. S. WHEELER & Co., Boston, Mass.

No insole flexing machines manufactured or marketed.

Witness Wheeler insisted that a welt cutting machine could not be used as a flexing machine—by an adjustment of the knives—as then it would be changed into an entirely different machine.

(Wheeler, I, 890, l. 21.)

Defts.' Ex. 321. Reference: page 65, item X. Advertisement of "Welt Cutter."

HEEL LIFT GOUGING MACHINES.

THOMAS BOSTOCK & SONS, Brockton, Mass.

This machine is manufactured by this concern.

Extent of output not stated.

This concern conducts a general machine shop business in which 15 men are employed.

(Bostock, I, 904–905.)

Defts.' Ex. 321. Reference: page 21, item B. Quotation to U. S. M. Co.

W. J. Young Mchy. Co., Lynn, Mass.

Approximately 150 to 200 machines have been manufactured and marketed—evenly divided between shoe and heel manufacturers.

(Young, I, 942, l. 43; 943, l. 18.)

Defts.' Ex. 321. Reference: page 62, item K. Advertisement of machine.

GRADING MACHINE (gauging thickness of soles).

Lacene Mfg. Co., Manchester, N. H.

No representative of company called as a witness.

Witness Winslow stated that there is no other machine upon the market doing the work of this machine, and that the U. S. M. Co. has never put out a similar one.

(Winslow, I, 600, l. 9.)

Defts.' Ex. 321. Reference: page 77. Advertisement of machine.

This same reference is also used under the classification for "Splitting Machine."

WELT GROOVING AND BEVELING MACHINE.

Hamel Shoe Mchy. Co., Lynn & Haverhill, Mass.

Twenty-five of these machines have been manufactured and marketed in the United States by the Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and the Hamel Shoe Mchy. Co.

No division of sales shown in Pltff's Ex. 159, IV, 1113, customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 45.)

Defts.' Ex. 321. Reference: page 178, item B. Note by U. S. M. Co. representative that a "Duplessis Welt Groover and Beveler" had been seen in operation in a shoe factory.

Haverhill Shoe Mchy. Co., Haverhill, Mass.

Not included in the list of machines at present used by customers of this company—Pltff.'s Ex. 161, IV, 1118.

Witness Webster included this machine as one manufactured at date of June, 1913, but no information was obtained as to the extent of output.

(Webster, I, 291, l. 2.)

Defts.' Ex. 321. Reference: page 5, item U. Note by Haverhill Co. to U. S. M. Co. that it can furnish this machine.

R. H. Long Mchy. Co., So. Framingham, Mass.

Extent of output not stated.

Doidge explained that not all machines listed in catalog were manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 16.)

Defts.' Ex. 321. Reference: page 56, item M. Notation for this machine in catalog of company.

HARDENING SHOULDER MACHINE (for Gem insoles).

Plymouth Rubber Co., Canton, Mass.

No representative of company called as a witness.

Witness Donnelly stated that this machine has been manufactured by him for this company, but no further information was obtained.

(Donnelly, I, 944, l. 25.)

Defts.' Ex. 321. Reference: page 81. Advertisement of machine.

Walpole Shoe Supply Co., Boston, Mass.

Approximately 50 machines manufactured and marketed among shoe manufacturers from 1912 to 1914.

(Chamberlin, I, 889, l. 28.)

Defts.' Ex. 321. Reference: p. 80. Advertisement of machine.

HEELING MACHINE (attaching heels).

R. H. Long Mchy. Co., South Framingham, Mass.

Haverhill Shoe Mchy Co., Haverhill, Mass.

References to the above in Appendix "B"—Part I.

LASTING MACHINE.

R. H. Long Mchy. Co., South Framingham, Mass.

Boylston Mfg. Co., Boston, Mass.

Louis G. Freeman Co., Cincinnati, O.

References to the above in Appendix "B"—Part I.

CHANNEL LAYING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

None manufactured, marketed, or handled from 1907 to 1914.

(Hall, I, 953, l. 14.)

Defts.' Ex. 321. . Reference: page 1, item D. Quotation to U. S. M. Co.

GEORGE KNIGHT & CO., Brockton, Mass.

None manufactured or marketed during past 15 years.

(Knight, I, 902, l. 38.)

Defts.' Ex. 321. Reference: page 9, item J. Quotation to U. S. M. Co.

McKAY WELT LAYING MACHINE.

KIMBALL BROS. & SPRAGUE, Brockton, Mass.

Approximately 25 to 30 machines, adapted only for laying the Arnold flex welt, manufactured and marketed from 1909 to 1914.

(Sprague, I, 904, l. 5.)

Defts.' Ex. 321. Reference: page 36. Quotation to U. S. M. Co.

SOLE LAYING MACHINE.

R. H. LONG MCHY. CO., South Framingham, Mass.

Included—as turn sole layer—among machines specified by witness Doidge as manufactured by this company.

Extent of output not stated.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, l. 11, 15.)

Defts.' Ex. 321. Reference: page 5, item H. Note by Haverhill Co. to U. S. M. Co. that it can furnish sole laying machine of the Long Company.

Another reference is to page 56, item F. Catalog of Long Company, including notation for "Twin Sole Layer."

LEVELING MACHINE.

BOYLSTON MFG. CO., Boston, Mass.

Not included in list of machines specified by witness Maloy on pages 1457 and 1460, nor in catalog of company—page 1463.

Cavanaugh explained that when the company absorbed the Giant Leveler Company in 1904—referred to in testimony of C. S. Johnson—some machines on hand were disposed of. Occasionally the company had rebuilt machines of this type for manufacturers, but had never manufactured any.

(Maloy, I, 301, l. 23; 302, l. 16, 36.)
(Cavanaugh, I, 955, l. 44.)

Defts.' Ex. 321. Reference: pages 108, 109, 179. Statements by U. S. M. Co. representatives that Giant leveling machines had been seen in operation in shoe factories.

A catalog of the Boylston Co. showing an advertisement for C. & J. leveling machines is also included.

Hamel Shoe Mchy. Co., Lynn and Haverhill, Mass.

Five machines manufactured and marketed in the United States by the Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and the Hamel Shoe Mchy. Co.

Pltff.'s Ex. 159, IV, 1113—customers of Duplessis Co. and successors—shows that all of these machines had been marketed by the Duplessis Co. Four of these were installed in the Framingham Shoe Co.—controlled by Richard H. Long—which uses no U. S. M. Co. machines.

(Hamel, I, 326, l. 33.)

R. H. Long Mchy. Co., South Framingham, Mass.

Not included among machines specified by witness Doidge as manufactured by the company.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

(Doidge, I, 346, ls. 5, 16.)

Defts.' Ex. 321. Reference: page 56, item I. Notation for "Eclipse Leveler" in catalog of company.

Haverhill Shoe Mchy. Co., Haverhill, Mass.

Not included in the list of machines at present used by customers of company—Pltff.'s Ex. 161, IV, 1118.

Not included among machines enumerated by witness Webster as manufactured by company at date of testimony, June, 1913.

This company handles a Webster leveler, however.
(Webster, I, 291, l. 1.)

Defts.' Ex. 321. Reference: page 5, item M. Note by Haverhill Co. to U. S. M. Co. that it can furnish a "Turn Leveler" manufactured by the Webster Machine Co.

WELT OUTSOLE STITCHER.

Boylston Mfg. Co., Boston, Mass.

Landis Machine Co., St. Louis, Mo.

Larsen Mfg. Co., Brooklyn, N. Y.

C. V. Engstrom Co., Peoria, Ill.

James Clark Leather Co., St. Louis, Mo.

Union Lockstitch Co., East Boston, Mass.

Universal Shoe Mchy. Co., St. Louis, Mo.

Victor Shoe Mchy. Co., Boston, Mass.

R. H. Long Mchy. Co., South Framingham, Mass.

Hamel Shoe Mchy. Co., Lynn and Haverhill, Mass.

References to the above in Appendix "B"—Part I.

MOULDING MACHINE (for outsoles and turn soles).

Boylston Mfg. Co., Boston, Mass.

Not included in list of machines specified by witness Maloy on pages 1457 and 1460, nor in catalog of company—page 1463.

(Maloy, I, 301, l. 23; 302, ls. 16, 36.)

Defts.' Ex. 321. Reference: page 110. Note by U. S. M. Co. representative that he had seen a moulding machine in a shoe factory which he claimed was manufactured by the Boylston Company.

Seelye Mfg. Co., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327-328.)

Defts.' Ex. 321. Reference: page 91, item F. Quotations (unsigned) purporting to have been received by the U. S. M. Co. from Seelye—on "Moulders."

Quarmby & Hilliker, Lynn, Mass.

None manufactured since 1907.

(Hilliker, I, 929, l. 14.)

Defts.' Ex. 321. Reference: page 10, item D. Quotation to U. S. M. Company.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

Not included in list of machines at present used by customers of company—Pltff.'s Ex. 161, IV, 1118.

Witness Webster stated that the company manufactured a sole moulder for turn soles, and that 40 to 50 of these have been sold from 1910 to 1913—one with each Haverhill Co. stitcher marketed.

(Webster, I, 292, l. 18.)

Defts.' Ex. 321. Reference: page 5, item D. Note by Haverhill Co. to U. S. M. Co. that it can furnish a "Turn Moulder."

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

Thirty-five machines manufactured and marketed in the United States by Duplessis Shoe Mchy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff.'s Ex. 159, IV, 1113—customers of Duplessis Co. and successors.

(Hamel, I, 326, l. 40.)

Defts.' Ex. 321. Reference: page 159. Note by U. S. M. Co. representative that he had seen two "Duplessis Turn Moulding machines" in operation in a shoe factory.

LOOSE NAILING MACHINE.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

R. H. LONG MCHY. CO., South Framingham, Mass.

UNIVERSAL SHOE MCHY. CO., St. Louis, Mo.

VICTOR SHOE MCHY. CO., Boston, Mass.

References to the above in Appendix "B"—Part I.

CHANNEL OPENING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

None manufactured or marketed from 1907 to 1914.

(Hall, I, 953, l. 19.)

Defts.' Ex. 321. Reference: page 1, item J. Quotation to U. S. M. Co.

GEORGE KNIGHT & Co., Brockton, Mass.

None manufactured during past 6 or 18 years.

(Knight, I, 902, l. 43.)

Defts.' Ex. 321. Reference: page 9, item K. Quotation to U. S. M. Co.

VENEER PRESS (for pressing cemented soles and taps).

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item E. Quotation on "Veneer Sole Press."

HEEL PRESSING MACHINE.

SEELYE MFG. Co., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item B. Quotation (unsigned) purporting to have been received by the U. S. M. Co. from Seelye—on "Presses."

TACK PULLING MACHINE.

LOUIS G. FREEMAN Co., Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 78, items A and F. Announcement that company will exhibit tack pulling machines.

PULLING OVER MACHINE.

Reference to the above in Appendix "B"—Part I.

TACK PULLING AND RESETTING MACHINE.

LOUIS G. FREEMAN Co., Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 7, item B. Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Co., St. Louis, Mo. This concern used no U. S. M. Co. machines and was in existence but a few months—about 1912.

REDUCING MACHINE.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

No feather-edge or shank reducing machines—properly included under this classification—manufactured or marketed from 1907 to 1914.

(Hall, I, 953, l. 19.)

Defts.' Ex. 321. Reference: page 1, item F. Quotation to U. S. M. Co. on "Feather Reducer."

GEORGE KNIGHT & CO., Brockton, Mass.

Feather-edge and shank reducing machines—properly included under this classification—manufactured and marketed by this company, mostly to shoe manufacturers.

Some of these are sold to and through the U. S. M. Co.

Extent of output not stated.

(Knight, I, 903, l. 6, 15.)

Defts.' Ex. 321. Reference: page 9, item D. Quotation to U. S. M. Co.

THEODORE RINGENBACH, Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 126. Advertisement of "Rapid Shoe Feathering Machine."

This same reference is also used under the classification for "Thin Edge Machine."

ROLLING MACHINE.

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item D. Quotation to U. S. M. Co. on "Rolling Mills."

QUARMBY & HILLIKER, Lynn, Mass.

Approximately 50 machines manufactured and marketed since 1904, one-half of these among shoe manufacturers.

(Hilliker, I, 929, l. 15.)

Defts.' Ex. 321. Reference: page 10, item E. Quotation to U. S. M. Co. on "Light Roller."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item D. Quotation (unsigned) purporting to have been received by U. S. M. Co. from Seelye on "Rollers."

TAP ROUGHING MACHINE.

PEERLESS MCHY. CO., Boston, Mass.

The machine referred to is undoubtedly the sanding machine manufactured by this company, which merely "finishes or roughs the sole before it is put on the shoe."

Extent of output not stated.

(Muther, I, 303, l. 24.)

Defts.' Ex. 321. Reference: page 67, item J. Advertisement for "Auto-Scourer."

ROUGH ROUNDING AND CHANNELING MACHINE.

R. H. LONG MCHY. CO., South Framingham, Mass.

Not included as a single machine in list of machines specified by witness Doidge—page 1698—manufactured by the company.

Doidge stated that the company was "getting ready to build" a rough rounder. From this it appears that none of these machines had been manufactured or marketed at date of June, 1913.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so.

A channeling machine manufactured by this company is also included under the "Channeling Machine" classification.

(Doidge, I, 346, l. 9, 15–16.)

Defts.' Ex. 321. Reference: page 56, item G. Notation for "Rough Rounder" in catalog of company.

VICTOR SHOE MCHY. CO., Boston, Mass.

Three machines manufactured and marketed since 1911.

None were sold to shoe manufacturers, but to repair men only.

(Johnson, I, 893, l. 29; 894, l. 5, 9.)

Defts.' Ex. 321. Reference: page 74, item B. Note by U. S. M. Co. representative that this machine was seen by him in demonstration at the Victor Co. factory.

HAVERHILL SHOE MCHY. Co., Haverhill, Mass.

Not included in list of machines used at date of June, 1913, by customers of company—Pltff's Ex. 161, IV, 1118.

Not included—as a single machine—in list of machines specified by witness Webster (I., 291) as manufactured by the company.

This company has manufactured and marketed a turn channeling machine, included under the "Channeling Machine" classification.

(Webster, I, 291, l. 1.)

Defts.' Ex. 321. Reference: page 5, item B. Note by Haverhill Co. to U. S. M. Co. that it can furnish a "Rough Rounding and Channeling Machine."

ROUNDING MACHINE (rounding heels, heel seats, and taps).

LOUIS G. FREEMAN Co., Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 8, item T. Note by U. S. M. Co. representative as to operation of "Heel Seat Rounding Machine" in Non-Royalty Shoe Company, St. Louis, Mo. This company used no U. S. M. Co. machines, and was in existence but a few months—about 1912.

CONSOLIDATED ROTARY ROUNDER Co., Cincinnati, Ohio.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 128, item A. Telegram from W. F. Harmon to S. G. Ross naming certain shoe factories using Ross rounders; also catalog of company.

The catalog of this company was issued in 1897, evidently by the Ross-Moyer Mfg. Co. of Cincinnati, Ohio, now a subsidiary company of the U. S. M. Co.—its first page being headed "Ross-Moyer Mfg. Co., Distributing Agents." It is further to be noted that both Harmon and Ross were formerly connected with the Ross-Moyer Mfg. Co.—prior to its absorption.

Witness Selz, of Selz, Schwab & Co., Chicago, Ill.—one of the shoe factories named in the Ross telegram as using Ross rounders—stated that these machines had been, and are now, marketed by the Ross-Moyer Mfg. Co.

(Selz, I, 144, l. 21; 154, l. 13.)

BOYLSTON MFG. CO., Boston, Mass.

A "Julian rounder" is included in the list of machines manufactured by this company specified by witness Maloy on page 302, and in catalog.

Extent of output not stated.

(Maloy, I, 302, l. 17.)

Defts.' Ex. 321. Reference: page 8, item K. Note by U. S. M. Co. representative as to operation of "Julian" machine in Non-Royalty Shoe Company, St. Louis, Mo. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

A further reference is to page 95, item B_2. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913.

Another reference is to page 5, item A. Note by Haverhill Company to U. S. M. Co., that it can furnish a Boylston Co. "Sole Rounder."

AMERICAN WORSTED MCHY. CO., Abington, Mass.

None manufactured by this company from 1907 to 1914.

(Hall, I, 953, l. 19.)

Defts.' Ex. 321. Reference: page 1, item A. Quotation to U. S. M. Co. on "Severance Tap Rounder."

SPRING HEEL SCARFING MACHINE.

JAMES BOSTOCK & SONS, Brockton, Mass.

None manufactured.

Second-hand machines have from time to time in the past been purchased and resold.

Extent of sales not stated.

(Bostock, I, 904, l. 37.)

Defts.' Ex. 321. Reference: page 21, item D. Quotation to U. S. M. Co.

THOMAS J. BOWDEN & SON, Marblehead, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 28. Quotation to U. S. M. Co.

W. J. YOUNG MCHY. CO., Lynn, Mass.

A spring heel scarfing machine manufactured and marketed by this company.

Extent of output not stated.

(Young, I, 943, l. 2.)

Defts.' Ex. 321. Reference: page 152, item K. Advertisement of machine.

LITTLE McKAY TURN SEWING MACHINE.

GEORGE HOBBS, Boston, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 177. Note by U. S. M. Co. representative that Hobbs machines have been seen in operation in a shoe factory. Also a catalog of parts for McKay turn sewing machine and channeler, issued in 1902.

McKAY SEWING MACHINE.

SHAWMUT MCHY. CO., Boston, Mass.

HAVERHILL SUPPLY CO., Haverhill, Mass.

LOUIS G. FREEMAN, Cincinnati, O.

E. E. SPENCER & CO., New York, N. Y.

MANUFACTURERS' SUPPLY CO., St. Louis, Mo.

J. W. WHITE & CO., Haverhill, Mass.

LYNN SUPPLY CO., Lynn, Mass.

AMERICAN WORSTED MCHY. CO., Abington, Mass.

WALTER PEARSON, Whitman, Mass.

References to the above in Appendix "B"—Part I.

WELT AND TURN SEWING MACHINE.

HAMEL SHOE MCHY. CO., Lynn and Haverhill, Mass.

HAVERHILL SHOE MCHY. CO., Haverhill, Mass.

R. H. LONG MCHY. CO., So. Framingham, Mass.

UNIVERSAL SHOE MCHY. CO., St. Louis, Mo.

BOYLSTON MFG. CO., Boston, Mass.

References to the above in Appendix "B"—Part I.

SKIVING MACHINE (tap skiving, welt and rand splitting).

VICTOR SHOE MCHY. CO., Boston, Mass.

Witness Johnson indirectly admitted that this company manufactures a skiving machine.

Extent of output not stated.

(Johnson, I, 894, l. 21.)

Defts.' Ex. 321. Reference: page 174, item C. Note by U. S. M. Co. representative that Victor "Tap Skiving Machine" was seen in demonstration at Victor Co. factor

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item F. Quotation to U. S. M. Co. for "Welt Splitting Machine." This same reference has also been used under the classification for "Splitting Machine."

AMERICAN WORSTED MCHY. CO., Abington, Mass.

Output of machines not stated in testimony of witness Hall.

(Hall, I, 954, l. 8.)

Defts.' Ex. 321. Reference: page 2, items G and J. Quotations to U. S. M. Co. on Tripp "Improved" and "New Old-Style" skivers.

This same reference for "Trip Improved Skiver" has also been used under the classification for "Splitting Machine."

McKAY WELT SLASHING MACHINE.

THOMAS BOSTOCK & SONS, Brockton, Mass.

This machine is the same as the "Heel Lift Gouging Machine" included under the latter classification—for which the same reference has been used.

(Bostock, I, 904, l. 35.)

Defts.' Ex. 321. Reference: page 21, item G. Quotation to U. S. M. Co. on "Rand Chopping and Welt Slashing Machine."

A. G. BREWER, Natick, Mass.

Approximately ten machines manufactured and marketed, the last one about 1912.

(Brewer, I, 907, l. 15.)

Defts.' Ex. 321. Reference: page 105. Quotation to U.S. M. Co., and advertisement of "Double Rapid Welt Splitter."

WILLIAM KNIPE, Ward Hill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 167. Note by U. S. M. Co. representative that he had seen at Knipe Bros. shoe factory a "Knipe Welt Slasher."

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, item G. Quotation to U. S. M. Co. on "Combination Welt Splitter and Slasher."

SLUGGING MACHINE.

BOYLSTON MFG. CO., Boston, Mass.

HAMEL SHOE MACHY. CO., Lynn and Haverhill, Mass.

R. H. LONG MCHY CO., South Framingham, Mass.

References to the above in Appendix "B"—Part I.

SPLITTING MACHINE.

AMERICAN TOOL & MACHINE CO., Boston, Mass.

The machine referred to by witness Eichler—included under this classification as manufactured by this company—is a belt knife splitting machine.

Eichler stated that this company manufactures no bottoming machines, or eyeletting or clicking machines.

(Eichler, I, 886, l. 43; 887, l. 1.)

Defts.' Ex. 321. Reference: page 51. Advertisement of "Belt Knife Leather Splitting Machine."

JAMES BUSFIELD, Haverhill, Mass.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 6, items A and F. Quotations to U. S. M. Co.

The latter reference (6 F) is also used under the classification for "Skiving Machine."

J. S. WHEELER & CO., Boston, Mass.

None manufactured by this company.

Some have been rebuilt from time to time.

This concern does a small jobbing business and employs from two to six men only.

(Wheeler, I, 890, l. 3.)

Defts.' Ex. 321. Reference: page 41, item A. Quotation to U. S. M. Co. on "Baby splitters" (upper leather and sole evener).

This same reference has also been used under the classification for "Evening Machine."

SEELYE MFG. CO., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item C. Quotation (unsigned)—purporting to have been received by the U. S. M. Co. from Seelye—on "Splitters."

Another reference is to page 95, item V. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

These same references are also used under the classification for "Evening Machine."

QUARMBY & HILLIKER, Lynn, Mass.

None manufactured.

From time to time some have been purchased second-hand and resold.

Extent of sales not stated.

(Hilliker, I, 929, l. 23.)

Defts.' Ex. 321. Reference: page 10, item F. Quotation to U. S. M. Co. on "Splitter."

This same reference has also been used under the classification for "Evening Machine."

AMERICAN WORSTED MCHY. CO., Abington, Mass.

Not referred to in testimony of witness Hall.

(Hall, I, 954, l. 8.)

Defts.' Ex. 321. Reference: page 2, item G. Quotation on "Tripp Improved Skiver."

This same reference has also been used under the classification for "Skiving Machine."

LACENE MFG. CO., Manchester, New Hampshire.

No representative of company called as a witness.

Witness Winslow stated that there is no other machine upon the market for doing the work of this machine and that the U. S. M. Co. has never put out a similar one.

(Winslow, I, 600, l. 9.)

Defts.' Ex. 321. Reference: page 77. Advertisement of machine.

This same reference is also used under the classification for "Grading Machine."

TURNER TANNING MCHY. CO., Peabody, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 119. Quotation to U. S. M. Co. on "Belt Knife Splitting Machine."

In this connection reference is made to the testimony of witness Eichler, for the American Tool & Machine Co., to

the effect that this is not properly included as a bottoming machine.

(Eichler, I, 886, l. 43: 887, l. 4.)

W. J. Young Mchy. Co., Lynn, Mass.

None manufactured by this company.

At close of cross-examination, Counsel Choate for the U. S. M. Co. requested permission to correct this reference from "Rand Splitting Machine" to "Rand Trimming Machine."

(Young, I, 943, l. 2, 32.)

Defts.' Ex. 321. Reference: page 185. Advertisement of "New Rand Trimmer."

STRIPPING MACHINES (cutting leather or leatherboard into strips).

Quarmby & Hilliker, Lynn, Mass.

Approximately 75 machines manufactured and marketed since 1904, one-third of these to shoe manufacturers.

(Hilliker, I, 929, l. 20.)

Defts.' Ex. 321. Reference: page 10, item C. Quotation to U. S. M. Co. on "Knox Old-Style Geared Stripper."

Parsons Mchy. Co., Marlboro, Mass.

No representative of company called as a witness.

Defts.' Ex. 321. Reference: page 13. Quotation to U. S. M. Co. on "Old-Style Stripper."

Seelye Mfg. Co., Boston, Mass.

Not referred to in testimony of witness Seelye.

(Seelye, I, 327–328.)

Defts.' Ex. 321. Reference: page 91, item E. Quotation (unsigned)—purporting to have been received by U. S. M. Co. from Seelye—on "Strippers."

Tower Bros., Hudson, Mass.

On page 4622 witness Tower stated—in answer to the question whether this concern manufactures this machine—"We make stripping machines for anybody who wants them, but they have gone out of fashion." This indicates that this machine is not one regularly manufactured and marketed by this company.

(Tower, I, 907, l. 42.)

Defts.' Ex. 321. Reference: page 3, item E. Quotation to U. S. M. Co.

W. J. YOUNG MCHY. Co., Lynn, Mass.

A wedge stripping machine—properly included under this classification—is manufactured by this company.

The majority of these are sold to heel manufacturers rather than to shoe manufacturers.

Extent of output not stated.

(Young, I, 942, l. 35.)

Defts.' Ex. 321. Reference: page 62, item I. Advertisement of "Wedge Stripper."

TACKING MACHINES (tacking soles and heel rands).

UNIVERSAL SHOE MCHY. Co., St. Louis, Mo.

HAMEL SHOE MCHY. Co., Lynn and Haverhill, Mass.

LOUIS G. FREEMAN Co., Cincinnati, Ohio.

VICTOR SHOE MCHY. Co., Boston, Mass.

References to the above in Appendix "B"—Part 1.

THIN EDGE MACHINE.

THEODORE RINGENBACH, Cincinnati, Ohio.

No representative of concern called as a witness.

Defts.' Ex. 321. Reference: page 126. Advertisement of "Rapid Shoe Feathering Machine."

This same reference is also used under the classification for "Reducing Machine."

INSEAM TRIMMING MACHINE.

THE KEIGHLEY Co., Vineland, N. J.

Witness Tappey stated that, during 1911, about 20 inseam trimming machines had been placed among shoe manufacturers on trial in New England.

(Tappey, I, 913, l. 4.)

In this connection it is to be noted that an agreement was entered into on September 21, 1912, between the U. S. M. Co. and the Keighley Co., whereby the U. S. M. Co. obtained control of the inseam trimming machine business of the Keighley Co. in the United States.

The agreement provided in part that neither company, during the period of the agreement, would enter into, engage

in, or financially or otherwise encourage or assist any other person, firm, or corporation from entering into or developing any business in inseam trimming machines.

It further provided that the Keighley Co. should not thereafter sell any inseam trimming machine of the type covered by the agreement for a price less than $650, and also that the U. S. M. Co. should not be required to pay more than $250 for a single inseam trimming machine of the same type.

Pltff.'s Ex. 275, IV, 1529 (U. S. M. Co.-Keighley Co. agreement).

Defts.' Ex. 321. Reference: page 7, item F. Note by U. S. M. Co. as to operation of machine in Non-Royalty Shoe Company, St. Louis, Mo.

Another reference is to page 95, item F. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

HEEL RAND TURNING MACHINE.

James Bostock & Sons, Brockton, Mass.

A rand turning machine is manufactured by this concern. Extent of output not stated.

(Bostock, I, 904, l. 36.)

Defts.' Ex. 321. Reference: page 21, item E. Quotation to U. S. M. Co.

American Worsted Mchy. Co., Abington, Mass.

No rand turning machines manufactured or marketed from 1907 to 1914.

(Hall, I, 953, l. 22.)

Defts.' Ex. 321. Reference: page 6, item B. Quotation to U. S. M. Co. on "Rand Crimping Machine."

LIP OF INSOLE TURNING MACHINE.

American Worsted Mchy. Co., Abington, Mass.

None manufactured or marketed from 1907 to 1914.

(Hall, I, 953, l. 22.)

Defts.' Ex. 321. Reference: page 1, item I. Quotation to U. S. M. Co. on "Lip Turner."

HAMEL SHOE MCHY. Co., Lynn and Haverhill, Mass.

Twelve lip turning machines manufactured and marketed in the United States by the Duplessis Shoe Machy. Co.—a defunct concern—and its successors, C. A. Hamel and Hamel Shoe Mchy. Co.

No division of sales shown in Pltff.'s Ex. 159, IV, 1113—customers of Duplessis Co. and its successors.

(Hamel, I, 326, l. 41.)

Defts.' Ex. 321. Reference: page 178, item A. Note by U. S. M. Co. representative that he had seen a "Duplessis Channeling and Turning machine (hand power)" in operation in a factory.

HAVERHILL SHOE MCHY. Co., Haverhill, Mass.

Four lip turning machines manufactured and marketed from June, 1913, to June, 1914.

(Webster, I, 292, l. 24.)

Defts.' Ex. 321. Reference: page 5, item C. Note by Haverhill Co. to U. S. M. Co. that it can furnish an "Innersole Lip Turner."

Another reference is to page 8, item Z. Note by U. S. M. Co. representative as to operation of machine in Non-Royalty Shoe Company, St. Louis, Mo.

A further reference is to page 95, item Z. Notation in sale list of Non-Royalty Shoe Company machines—June, 1913. This company used no U. S. M. Co. machines and was in existence but a few months—about 1912.

GEORGE KNIGHT & Co., Brockton, Mass.

A lip turning machine is manufactured by this company. Extent of output not stated.

Some of the machines manufactured by this company are sold to and through the U. S. M. Co. Witness Knight did not specify whether a lip turning machine was so included, however.

(Knight, I, 903, l. 8, 15.)

Defts.' Ex. 321. Reference: page 9, item F. Quotation on "Lip Turner."

R. H. LONG MCHY. Co., South Framingham, Mass.

Number placed not stated.

In explanation of catalog, Doidge stated that not all machines listed therein had been manufactured at date of June, 1913, but that it was the intention of the company to do so. (Doidge, I, 346, l. 7, 16.)

Defts.' Ex. 321. Reference: page 56, item L. Notation for machine in catalog of company.

LIP GEM INSOLE TURNING MACHINE.

Inasmuch as the same companies and the same reference thereto in Defts.' Ex. 321 have been used under this classification as under "Lip of Insole Turning Machine," no further reference thereto is considered necessary herein.

INSOLE REINFORCING MACHINE.

No competition in the United States.

TACKING MACHINE.

References to the above in Appendix "B"—Part I.

POUNDING AND TRIMMING MACHINE.

No competition in the United States.

STANDARD SCREW MACHINE.

Reference to the above in Appendix "B"—Part I.

* * * * *

FOREIGN COMPANIES.

That the Foreign Companies Referred to in the Catalogs, Letters, Advertisements, &c., have not been Engaged in Marketing Shoe Machinery in the United States is Evidenced by the Testimony of witnesses Stone, McElroy, and Cavanaugh. (I, 339–344; 954–957; 190–193; 923.)

APPENDIX C.

SYNOPSIS OF LEASE FORMS SHOWING TYING CLAUSES CONTAINED IN EACH.

1. Lasting Machines.

(Exhibits 14–22)

(a) Consolidated Hand Method Machine.

i. Non Initial Payment.

Exhibit 16 (adopted September, 1900) contains

Prohibitive clause, applying to welting, stitching, turn sewing and metallic fastening machines.

Exclusive Use clause.

Full Capacity clause.

Return charge of $150.00.

Minimum royalty of $15 per month with deduction for months in which factory is wholly idle.

Right to terminate all leases clause.

Exhibit 15 (adopted December, 1900) contains same provisions in particulars here material as Exhibit 16, except that prohibitive clause does not extend to metallic fastening machines.

(Note this form of lease is used for the hand-method type of machine when adapted to lasting welt shoes.)

ii. Initial Payment.

Exhibit 14 (adopted December, 1900) contains

Full Capacity clause.

Exclusive Use clause, applying to all lasting machines and devices.

Initial payment of $300.

Minimum royalty $75 per annum.

1. Lasting Machines—Continued.
   (a) Consolidated Hand Method Machine—Continued.
      ii. Initial Payment—Continued.
         Exhibit 17 (printed 1906).
            Same provisions in particulars here material as Exhibit 14, except that exclusive use clause is extended to include all *tacking* devices as well as lasting machines and devices. There is also a difference in the royalty which is fixed at one cent per pair straight in Exhibit 14 and at one cent per pair for misses' and children's shoes and one and one-fourth cents for all other kinds in Exhibit 17. The latter figure is also that of Exhibits 15 and 16. In each case there is a 50% discount for prompt payment.
   (b) Chase Lasting machine.
      Exhibit 19 (adopted June, 1901) contains
      Non Initial payment.
         Exclusive Use clause, applying both to lasting machines and tacking devices.
         Prohibitive clause, applying to welting, stitching, turn sewing and metallic machines.
         Full capacity clause.
         Right to terminate all leases clause.
         Minimum royalty $10.00 a month.
         Abated royalty ¾c for long legged boots, ½c for all others.
      No other form of lease was adopted by the defendants for this machine, but it is claimed by Mr. Winslow that a manufacturer might still have had the lease formerly offered by the Consolidated & McKay Company. (I. 543.) No evidence of any actual lease or offer to lease in that form subsequent to the adoption of Exhibit 19 appears. The royalties under the old lease (Exhibit 7) "were very much in excess of what they were under the United lease." (Winslow, I. 543.)
      Initial payment.

1. Lasting Machines—Continued.

(b) Chase Lasting Machine—Continued.

Exhibit 20 (adopted August, 1903) contains

Exclusive Use clause applying to tacking appliances as well as lasting machines.

Prohibitive Clause applying to welting, stitching, sewing, pegging, metallic fastening and heeling machines.

Full Capacity Clause.

Right to Terminate All Leases clause.

Minimum royalty of $125.00 per annum.

No other lease for this machine was adopted by the United Company. (Winslow I. 542.) It is worth noting in connection with the defendants' claim that the fields of the various lasting machines were so distinct as to exclude the idea of competition that the prohibitive clause of this lease indicates that in the opinion of the defendants it could be used in a serious attempt to last welt shoes—a circumstance which they are now inclined to deny. The lease used previously by the Consolidated & McKay Company indicates a similar opinion.

(d) Ideal Lasting Machine.

Initial Payment.

Exhibit 18 (adopted August, 1901) contains

Exclusive Use clause applying to tacking devices as well as lasting machines.

Prohibitive Clause applying to welting, sole stitching, and turn sewing machines.

Full Capacity clause.

Initial Payment of $300.

Minimum Royalty of $75 per annum.

Right to Terminate All Leases clause.

NOTE.—Mr. Winslow testified in response to the question whether there had ever been any "unrestricted" form of the leases for the Ideal machine that he did not "recall any different lease ever used by the United Company for the Ideal machine from that of Plaintiff's Exhibit 18." (I. 543.)

1. Lasting Machines—Continued.
   (e) Number Five Lasting Machine.
      i. Non Initial Payment.
         Exhibit 21 (adopted ——, 1906).
            Exclusive Use clause.
            Prohibitive Clause, applying to welt sewing, sole stitching, turn sewing, pulling over and metallic machines.
            Full Capacity Clause.
            Return charge of $150.
            Right to Terminate All Leases Clause.
            Minimum Royalty of $10 a month.
      ii. Initial Payment.
         Exhibit 22.
            Exclusive Use Clause.
            Full Capacity Clause.
            Right to Terminate All Leases clause.
            Initial Payment of $300.
            Minimum Royalty $75 per annum.
               NOTE.—The royalties are the same in both forms of lease. The minimum royalty provision of the initial payment lease, Exhibit 22, provides for the return of the machine at the option of the lessor in case the royalty in any succeeding 12 months does not amount to $75. In case of such return, one-third of the initial payment is returned.
2. Welt and Turn Sewing and Outsole Stitching Machines and Auxiliaries.
   i. Non Initial Payment.
      Exhibit 24 (adopted January, 1905) contains
         Exclusive Use clause, applying to welting, outsole stitching, and turn sewing machines.
         Prohibitive Clause, applying to the same machines.
         Full Capacity Clause.
         Return Charge of $150.
         Right to Terminate All Leases clause.

2. Welt and Turn Sewing and Outsole Stitching Machines and Auxiliaries—Continued.

i. Non Initial Payment—Continued.

Exhibit 24—Continued.

Minimum Royalty, $15 a month for each machine.

NOTE.—This lease provides for "royalties" to the defendants upon shoes made upon machines supplied by competitors of the defendants.

Exhibit 25 (adopted January, 1905) lease for Auxiliary Machines only, contains

Exclusive Use clause applying to welting, turn sewing, and outsole stitching machines.

Prohibitive Clause applying to same machines.

Right to Terminate All Leases clause.

Annual Rental, amounting to about $184 per annum.

Return Charges as scheduled.

NOTE.—This lease embraces twenty-four different kinds of machines. There is no lease under which these auxiliary machines can be obtained without the prohibitive clause restricting their use to use on shoes upon which the defendants' principal welt method machines are used. That is to say, the United Company does not permit on any terms the use of its auxiliary machines with principal machines supplied by some other manufacturer.

ii. Initial Payment.

Exhibit 23(adopted December, 1900) contains

Exclusive Use Clause as to welting and outsole stitching machines.

Prohibitive Clause applying to same machines.

Right to Terminate All Leases clause.

Initial Payment provided for in the written application for the lease. (Donham, I, 9.)

2. Welt and Turn Sewing and Outside Stitching Machines and Auxiliaries—Continued.

ii. Initial Payment—Continued.

Exhibit 26 (adopted 1905).

This lease was intended as a substitute for Exhibit 23. To the provisions of that lease are added the full capacity clause applying to all welting, turn sewing, inseam sewing and outsole stitching machines held under that *and all other leases;* the exclusive use clause was extended to turn sewing machines.

NOTE.—There is no lease under which the defendants will put out a welt sewing machine for welt work without a limitation to work that is to be stitched on the outsole stitcher or under which it will put out the stitching machine for use upon work that has not been welted on the welt sewing machine. (Winslow, I, 544.) In order to obtain either the welt sewing or the stitching or any of the auxiliary machines, the lessee must agree that he will not use at any time in his factory any welt sewing or outsole stitching machines made by any competitor of the defendants.

3. Heeling Machines.

i. Non Initial Payment.

Exhibit 27 (adopted 1900) contains

Right to Terminate All Leases clause.

Minimum Royalty $230 per annum.

Exhibit 28 (adopted 1904) contains

Exclusive Use clause.

Prohibitive Clause applying to welt sewing, sole stitching, turn sewing, lasting, pegging and metallic machinery.

Full Capacity Clause.

3. Heeling Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 28—Continued.
         Right to Terminate All Leases Clause.

NOTE.—It is not unusual for the defendants to contend that they did not withdraw previous forms of leases upon the formulation of the new. Such a claim has already been introduced, *supra*. There can hardly be any question, however, in the light of Mr. Winslow's testimony that upon the adoption of Exhibit 28, the more favorable terms of Exhibit 27 were withdrawn, for, according to Mr. Winslow, the reason for the formulation of Exhibit 28, the insertion of the prohibitive clause which had not appeared in Exhibit 27, was the fact that the United Company at the time was bringing out its leases of welt method machines without initial payment. (I, 546.) His attempt to explain that the compensating advantage which he expected to obtain by way of off-set to giving up requirements of the initial payment on the welt method machines was not the exclusion of competition in heeling machines will be noticed later.

There was no form of lease of heeling machines without the prohibitive clause at the time of filing the petition, but there is testimony as to a rider which eliminated the prohibitive clause and substituted an initial payment.

4. Metallic Fastening Machines.
   i. Non Initial Payment.
      Exhibit 29 (adopted March, 1900).
         Additional Machinery clause.
         Full Capacity clause.
         Right to Terminate All Leases clause.
      Exhibit 30 (adopted June, 1900).
         Superseding Exhibit 29 which was then discontinued contains
            Additional machines clause, providing for the cancellation of all leases for metallic machinery if the lessee fails to take from the lessor any additional metallic fastening machines which he may need.
            Prohibitive clause, applying to lasting, welting, outsole stitching, and turn sewing machines.
            Full capacity clause.
            Royalty in this lease is to be paid by the purchase of material of which not less than 400 pounds per annum is to be taken.
      Exhibit 31 (adopted March, 1901) contains
         Additional machines clause.
         Full Capacity Clause.
         Clause permitting removal of machines deemed by the lessor unnecessary for the lessee's business.
         Right to Terminate All Leases clause.
         Provision for payment for material at prices "which shall not be more than ten per cent in excess of the prices to be established from time to time by the lessor for like fastening material to be used in its metallic department machinery by lessees who shall agree not to use the metallic department machinery leased to them in the manufacture of boots or shoes which are lasted on machines other than those leased from the lessor, or of welted boots or shoes which are not welted

4. Metallic Fastening Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 31—Continued.
         and stitched on welt sewing and sole stitching machines leased from the lessor, or of turned shoes, the soles of which are not attached by turn sewing machines leased from the lessor."
         Provision for minimum use of 400 pounds of material per annum.
      Exhibit 32.
         This is a lease like Exhibit 30 with a rider attached eliminating the prohibitive clause.
      Exhibit 33 (printed July, 1911).
         This is a form which takes the place of Exhibit 32.
      Exhibit 34 (adopted 1911).
         This is described by the witness Donham (I, 11) as the current form of lease for metallic machines "when taken without the initial payment and without the provision for ten per cent excess in royalty charge." These provisions present no substantial change from the form of Exhibit 30.
      Exhibit 35.
         This is a form of lease for a single machine, the standard screw machine, belonging to the metallic department. Its provisions are the same as those of Exhibit 34.
5. Pegging Machines.
   i. Non Initial Payment.
      Exhibit 45, (adopted June, 1901) contains
         Prohibitive Clause applicable to lasting and metallic machines.
         Exclusive Use clause.
         Right to Terminate All Leases clause.
         Full Capacity clause.
         Minimum royalty $10 a month.

5. Pegging Machines—Continued.
   ii. Initial Payment.
      Exhibit 46 (adopted 1905 or 1906) contains
         Exclusive Use clause.
         Right to Terminate All Leases clause.
         Full Capacity clause.
         Initial Payments.
6. Pulling Over Machines.
   i. Non Initial Payment.
      Exhibit 36 (adopted March, 1902) contains
         Prohibitive clause applying to heeling, welting, stitching, lasting, pegging, and metallic fastening machines.
         Additional machines clause.
         Right to Terminate All Leases clause.
         Full Capacity clause.
         Return charge of $200.
         Minimum royalty of $15 a month.
      Exhibit 37 (adopted January, 1905) contains
         Exclusive Use providing for optional forfeiture of all lesases existing between the lessor and lessee in case of its violation.
         Prohibitive Clause applying to welting, stitching, turn sewing, hand-method lasting machines, pegging, metallic fastening and heeling machines.
         Additional Machines clause requiring auxiliary machines to be used exclusively with lessors' pulling over machine.
         Right to terminate all leases clause applying to "stipulation" and "provisions" as well as to "conditions."
         Full capacity clause.
         Return charge of $200.
         Minimum royalty of $20 a month.
      Defendants' Exhibit 345, (adopted 1907).
         This form is the same as Exhibit 37 except that the additional machine clause is omitted, and the exclusive use clause, while retained, gives the lessor the right only to forfeit all leases for pulling over machines.

6. Pulling Over Machines—Continued.
   i. Non Initial Payment—Continued.
      Exhibit 38 (adopted 1909).
         Covering auxiliaries to pulling over machines contains
            Prohibitive clause, including the machinery of the pulling over system held under that *and all other* leases, and prohibiting their use with independent welting, stitching, turn sewing, lasting, pegging, heeling and metallic fastening machines.
            Exclusive use clause.
            Right to terminate all leases clause.
            Full capacity clause, extending also to all pulling over machines held under these or other leases from the lessor.
            The royalty provisions are noticed just below.
   ii. Initial Payment.
      Exhibit 39 (Printed August, 1911) contains
         Full Capacity clause.
         Prohibitive Clause extending only to the use of the auxiliary machines with the principal machines.
         Exclusive use clause.
         Right to terminate all leases clause.
         Minimum royalty $20 a month.
         Initial payment.
            NOTE.—The royalty provisions of Exhibit 38 require the payment of ½ c. gross for each pair of shoes pulled over in whole or in part by machinery, plus a further payment of ¼ c. for the use of each of 6 of the 8 auxiliary machines named in the schedule, making a total payment if all the machines are used of 2 c. gross, with the proviso, however, that if the lessee shall use no lasting machines or devices except those of the defendants, the royalty shall not be more than

6. Pulling Over Machines—Continued.
ii. Initial Payment—Continued.
Exhibit 39—Continued.
Initial Payment—Continued.

$\frac{3}{4}$ c. on each pair. This royalty is in addition to all other royalties except royalty paid under other leases for pulling over machines. A minimum royalty is also required.

This lease furnishes an example of the interrelation and cumulative effect of the various parts of the defendants' leasing system. The defendants are here leasing a patented *pulling over* machine. Their net price for it is $\frac{3}{8}$ c. a pair to those who aid them to obtain a monopoly in *lasting* machines, and 1 c. a pair to those who do not.

It may be noticed, also, that under the exclusive use clause, the lessee could not have in his factory a competing pulling over machine if he could find one and the possession of this pulling over machine is conditioned upon its not being used upon any shoes which are operated upon by any welting, stitching, turn sewing, lasting, pegging, heeling, or metallic fastening machine made by any competitor of the defendants.

Exhibit 39 as is noted omits the prohibitive clause. To obtain it, however, the lessee must pay an initial payment amounting to about the value of the machine, and the royalty is $\frac{1}{2}$ c. a pair net, with no deduction for royalties paid on the lasting machine. The figures stated as net include the 50% discount for prompt payment. The net result is for lasting and pulling over under Exhibit 39, the so-called independent lease, the lessee has to pay $\frac{1}{2}$ c. a pair while under Exhibit 38, he pays only $\frac{3}{4}$ c. a pair.

7. General Department Machines.

Exhibits 40 and 41 cover these machines. It is said that they were discontinued after the filing of the Government's petition, and that the company now does not lease these general department machines, but sells them exclusively. Before the filing of the petition, manufacturers who did not use United Company machines exclusively could obtain the machines by outright purchase, but not by lease. Lessees of the United Company could obtain them upon lease. Many of these leases are still in force. Their terms are as follows:

Exhibit 40 (adopted about 1902) contains

Prohibitive clause, applying to stitching, turn sewing, lasting, pegging, and metallic machinery.

The only charge made is payment of the lease premium except that the lessee was bound to purchase repair parts from the lessor. Donham testified that the lease premium *was substantially less* than the price at which the machine was sold, but it will be observed that this lease was used as an inducement to manufacturers to take other machines.

While not containing the *right to terminate all leases* clause the lease provides for its termination upon breach of its conditions or upon breach of the conditions of any other lease from the lessor.

Exhibit 41 (adopted about 1908).

Like Exhibit 40. This lease could be obtained only by users of other machines of the United Company. It is different from Exhibit 40 in that it required an annual rental instead of a lump sum payable at the beginning.

8. Eyeletting machines.
   i. Non Initial Payment.
      Exhibit 43 (adopted about 1902).
         Full Capacity clause.
         Prohibitive clause, applying to welting, stitching, turn sewing, lasting, pegging, metallic fastening and heeling machines.
         Right to Terminate All Leases clause.
   ii. Initial Payment.
      Exhibit 42 (adopted 1902).
         Full Capacity clause.
         Initial Payment $100.
         Right to Terminate All Leases clause.
            NOTE.—In both leases, the lessor's further compensation is derived from the requirement that the lessee purchase only from the lessor the eyelets used in the machines.
9. Clicking Machines.
   Exhibit 44 (adopted about 1907) contains
      Prohibitive clause, prohibiting the use of the lessor's dies with clicking machines other than those furnished by the lessor or others' dies with lessor's machine. See note.
      Exclusive Use clause.
      Full Capacity clause.
      Right to Terminate All Leases clause.
         NOTE.—The compensation for the use of the machine in case it is used only on shoes lasted and welted or stitched on the lessor's machines is derived from the sale by the defendants of dies at a fixed price. The lease requires the lessee to pay the United Company 5 c. for each inch of cutting edge of any dies which the lessee purchases from manufacturers other than the defendants. It also provides that *1* c. per pair is to be paid for footwear lasted on machines not obtained from the lessor, and *6 c.* per pair for footwear welted, or stitched otherwise than by lessor's machines. These royalties are cumulative, but are subject to 50 per cent discount.

9. Clicking Machines—Continued.

Exhibit 44—Continued.

Right to Terminate All Leases clause—Continued.

This is a further example of the interlocking and cumulative effect of the defendants' leases. The compensation for the use of this machine in itself is definitely fixed, and is the profit upon the sale of dies at established prices, but the lessor who uses a lasting machine or a welting and stitching machine supplied by competitors of the lessor is penalized an amount ranging from ½ c. to 3½ c. a pair, net. While this penalty is stated as a charge for the use of this machine its true purpose and effect as a destroyer of competition in other types of machines is apparent.

10. McKay Sewing Machines.

i. Initial Payment.

Exhibit 170 contains

Prohibitive clause applying to all lasting machines and devices.

Royalty $5. monthly.

NOTE.—While this lease does not contain the *Right to Terminate All Leases* clause it does provide for its termination for breach of any of its conditions or for a breach of the conditions of any other lease from the lessor.

Initial Payment of $100.

APPENDIX D.

RÉSUMÉ OF LEASES IN WHICH THE VARIOUS OBJECTIONABLE CLAUSES APPEAR.

That the effect of these clauses as used in the United Company's entire system of leases may the more readily appear, the leases containing each one of them will be separately designated. In doing so, neither the leases executed by the constituent companies, nor those executed by the subsidiary companies of the United Company will be considered.

First. All the leases contain the seventeen-year term.

Second. All the leases contain the "right to terminate all leases" clause.[1]

Third. The following leases contain the "full capacity" clause:

(1) Exhibit 16, adopted September, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, III, 139.)

(2) Exhibit 15, adopted December, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, III, 131.)

(3) Exhibit 14, adopted December, 1900, an initial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, III, 123.)

(4) Exhibit 17, adopted December, 1906, an initial payment lease for the Consolidated hand-method lasting machine. (Sec. 4, III, 147.)

(5) Exhibit 19, adopted June, 1901, a noninitial payment lease for the Chase lasting machine. (Sec. 4, III, 165.)

(6) Exhibit 20, adopted August, 1903, an initial payment lease for the McKay & Copeland lasting machine. (Sec. 4, III, 174.)

(7) Exhibit 18, adopted August, 1901, an initial payment lease for Ideal lasting machine. (Sec. 4, III, 156.)

---

[1] In Exhibits 40 and 170 the clause is the converse of the usual form. It is provided that the particular lease may be canceled for breach of the conditions of that or any other lease from the lessor.

(8) Exhibit 21, adopted in 1906 or 1907, a noninitial payment lease for No. 5 lasting machine. (Sec. 5, III, 184.)

(9) Exhibit 22, adopted in 1906 or 1907, an initial payment lease for No. 5 lasting machine. (Sec. 4, III, 196.)

(10) Exhibit 24, adopted January, 1905, a noninitial payment lease for Goodyear machines. (Sec. 5, III, 217.)

(11) Exhibit 26, adopted in 1905, an initial payment lease for a full set of Goodyear machines. (Sec. 4, III, 245.)

(12) Exhibit 27, adopted in 1900, a noninitial payment lease for a heeling machine. (Sec. 3, III, 256.)

(13) Exhibit 28, adopted in 1904. a noninitial payment lease for heeling machine. (Sec. 5, III, 264.)

(14) Exhibit 29, adopted March, 1900, a noninitial payment lease for metallic machines. (Sec. 3, III, 274.)

(15) Exhibit 30, adopted in June, 1900, succeeding Exhibit No. 29, a noninitial payment lease for metallic machines. (Sec. 3, III, 280.)

(16) Exhibit 31, adopted March, 1901, equivalent to an initial payment lease for metallic machines. (Sec. 6, III, 290.)

(17) Exhibits 32 and 33. No 32 is Exhibit 30 with a rider, eliminating the "prohibitive" clause, adopted June, 1900; and Exhibit 33 is a reprint of July, 1911, with the provisions of the rider incorporated in the face of the lease, which is an initial payment lease for metallic machines. (Sec 3, III, 300, 308.)

(18) Exhibit 34, adopted May, 1911, a noninitial payment lease for metallic machines. (Sec. 3, III, 316.)

(19) Exhibit 35, adopted May, 1911, a noninitial payment lease for Standard screw machine of metallic department. (Sec. 3, III, 325.)

(20) Exhibit 45, adopted June, 1901, a noninitial payment lease for Davey pegging machine. (Sec. 5, III, 416.)

(21) Exhibit 46, adopted in 1905 or 1906, an initial payment lease for Davey Pegging machine, an alternative form for Exhibit 45. (Sec. 5, III, 425.)

(22) Exhibit 36, adopted March, 1902, a noninitial payment lease for pulling over machine. (Sec. 4, III, 334.)

(23) Exhibit 37, adopted January, 1905, a noninitial payment lease for pulling over set. (Sec. 5, III, 342.)

(24) Defendants' Exhibit 345, adopted as early as 1907, a noninitial payment lease for pulling-over machines. (Sec. 5, V, 962.)

(25) Exhibit 38, adopted February, 1909, a noninitial payment lease for pulling-over machine. Clause extends to entire system. (Sec. 5, III, 354.)

(26) Exhibit 39, adopted August, 1911, an initial payment lease for pulling-over machine. (Sec. 4, III, 366.)

(27) Exhibit 42, adopted about 1902, an initial payment lease for eyeletting machine. (Sec. 4, III, 390.)

(28) Exhibit 43, adopted about 1902, a noninitial payment lease for eyeletting machine. (Sec. 5, III, 397.)

(29) Exhibit 44, adopted 1907, 1908, or 1909, a noninitial payment lease for clicking machine. (Sec. 5, III, 405.)

(30) Exhibit 52, adopted December, 1907, a noninitial payment lease for Economy insole reenforcing set. Clause applies only to principal machines. (Sec. 5, III, 453.)

This clause, therefore, appears in each of the nine leases for lasting machines, two of the four leases for Goodyear machines, both heeling-machine leases, all six of the leases for metallic machines, both of the leases for pegging machines, all five of the leases for pulling-over machines, both leases for eyeletting machines, and the one lease for clicking machines.

Fourth. The following leases contain the "additional machines" clause:

(1) Exhibit 27, adopted in 1900, a noninitial payment lease for a heeling machine. (Clause 3, III, 256.)

(2) Exhibit 29, adopted March, 1900, a noninitial payment lease for metallic machines. (Sec. 3, III, 274.)

(3) Exhibit 30, adopted June, 1900, succeeding Exhibit 29, a noninitial payment lease for metallic machines. (Sec. 3, III, 280.)

(4) Exhibit 31, adopted March, 1901, equivalent to an initial payment lease, for metallic machines. (Sec. 6, III, 290.)

(5) Exhibits 32 and 33: Exhibit 32 is the same as Exhibit 30, with rider eliminating prohibitive clause, adopted June, 1900, and Exhibit 33 is a reprint of same in July, 1900. An initial payment lease for metallic machines. (Sec. 3, III, 300, 308.)

(6) Exhibit 34, adopted May 11, 1911, a noninitial payment lease for metallic machines. (Sec. 3, III, 316.)

(7) Exhibit 35, adopted May, 1911, a noninitial payment lease for Standard screw machine of metallic department. (Sec. 3, III, 325.)

(8) Exhibit 36, adopted March, 1902, a noninitial payment lease for pulling-over machine. (Sec. 4, III, 334.)

(9) Exhibit 39, adopted January, 1905, a noninitial payment lease for pulling-over set. (Sec. 5, III, 367.)

This clause therefore appears in the first of the two leases for heeling machines, all six leases for metallic machines, and in two of the four leases for pulling-over machines.

Fifth. The following leases contain the "exclusive use" clause:

(1) Exhibit 16, adopted September, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. (Sec. 7, III, 141.)

(2) Exhibit 15, adopted December, 1900, a noninitial payment lease for Consolidated hand-method lasting machine. (Sec. 7, III, 133.)

(3) Exhibit 14, adopted December, 1900, an initial payment lease for the Consolidated hand-method lasting machine. (Sec. 7, III, 125.)

(4) Exhibit 17, adopted December, 1906, an initial payment lease for Consolidated hand-method lasting machine. (Sec. 7, III, 150.)

(5) Exhibit 19, adopted June, 1901, a noninitial payment lease for the Chase lasting machine. (Sec. 7, III, 168.)

(6) Exhibit 20, adopted August, 1903, an initial payment lease for the McKay & Copeland machine. (Sec. 7, III, 177.)

(7) Exhibit 18, adopted August, 1901, an initial payment lease for the Ideal lasting machine. (Sec. 7, III, 158.)

(8) Exhibit 21, adopted in 1906 or 1907, a noninitial payment lease for No. 5 lasting machine. (Sec. 8, III, 187.)

(9) Exhibit 22, adopted in 1906 or 1907, an initial payment lease for No. 5 lasting machine. (Sec. 7, III, 198.)

(10) Exhibit 23, adopted December, 1900, an initial payment lease for Goodyear set. Clause requires exclusive use of only welting, sewing, and outsole stitching machines, but a violation authorizes the forfeiture of all machines men-

tioned in schedule of machines held by lessee from lessor. (Sec. 7, III, 209.)

(11) Exhibit 24, adopted January, 1905, a noninitial payment lease for Goodyear machines. Clause requires exclusive use of welting, sewing, and outsole stitching machinery, and turn sewing machinery belonging to lessor, and its violation authorizes forfeiture of all Goodyear machinery. (Sec. 8, III, 221.)

(12) Exhibit 26, adopted in 1905, an initial payment lease for full Goodyear set. Clause excludes use of all but lessor's welting and turn sewing machines, but if violated authorizes forfeiture of all Goodyear department machines. (Sec. 7, III, 247.)

(13) Exhibit 25, adopted about January, 1905, a noninitial payment lease for the auxiliary machines of the Goodyear department. Clause excludes use of all but lessor's welting and turn sewing machines, but its violation authorizes forfeiture of all machines of Goodyear department. (Sec. 9, III, 234.)

(14) Exhibit 28, adopted in 1904, a noninitial payment lease for heeling machine. (Sec. 10, III, 267.)

(15) Exhibit 45, adopted June, 1901, a noninitial payment lease for Davey pegging machine. (Sec. 8, III, 418.)

(16) Exhibit 46, adopted in 1905 or 1906, an initial payment lease for Davey pegging machine, alternative form for Exhibit 45. (Sec. 8, III, 427.)

(17) Exhibit 37, adopted January, 1905, a nonitial payment lease for pulling-over set. For violation of clause the lessor is authorized to terminate "any or all leases or licenses of machinery then existing between the lessor and the lessee." (Sec. 9, III, 345.)

(18) Defendants' Exhibit 345, adopted as early as 1907. A noninitial payment lease for pulling-over machine. (Sec. 9, V, 965.)

(19) Exhibit 38, adopted in February, 1909, a noninitial payment lease for pulling-over machine. (Sec. 8, III, 358.)

(20) Exhibit 39, adopted August, 1911, an initial payment lease for pulling-over machine. (Sec. 8, III, 369.)

(21) Exhibit 44, adopted 1907, 1908, or 1909, a noninitial payment lease for clicking machine. (Sec. 9, III, 408.)

(22) Exhibit 52, adopted in December, 1907, a noninitial payment lease for Economy insole reinforcing set. (Sec. 9, III, 456.)

This clause, therefore, appears in each of the nine leases for lasting machines, the four leases for Goodyear machines, one of the two leases for heeling machines, which has been in use since 1904, both leases for pegging machines, four of the five leases for pulling-over machines, one of the leases for clicking machines, and the one lease for Economy insole machines.

Sixth. The following leases contain the "prohibitive" clause:

(1) Exhibit 16, adopted December, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. This clause applies to welting, sole stitching, turn sewing, and metallic fastening machines. (Sec. 4, III, 139.)

(2) Exhibit 15, adopted December, 1900, a noninitial payment lease for the Consolidated hand-method lasting machine. Clause applies to welting, sole stitching and turn sewing machines. (Sec. 4, III, 131.)

(3) Exhibit 19, adopted June, 1901, a noninitial payment lease for the Chase lasting machine. Clause applies to welting, sole stitching, turn sewing, and metallic machines. (Sec. 4, III, 165.)

(4) Exhibit 20, adopted August, 1903, an initial payment lease for the McKay-Copeland lasting machine. Clause applies to welting, sole stitching, and sewing, pegging, metallic, and heeling machines. (Sec. 4, III, 174.)

(5) Exhibit 18, adopted August, 1901, an initial payment lease for the Ideal lasting machine. Clause applies to welting, sole stitching, and turn sewing machines. (Sec. 4, III, 156.)

(6) Exhibit 21, adopted in 1906 or 1907, a noninitial payment lease for No. 5 lasting machine. Clause applies to welting, sole stitching, turn sewing, pulling over and metallic machines. (Sec. 5, III, 185.)

(7) Exhibit 23, adopted December, 1900, an initial payment lease for the Goodyear set. Clause prohibits the use of the machine on welt shoes not welted and sole stitched,

and turn shoes, the bottoms of which are not attached by the lessor's machinery. This lease does not tie the leased machines to other than Goodyear machines. (Sec. 4, III, 207.)

(8) Exhibit 24, adopted in January, 1905, a noninitial payment lease for Goodyear machines. Clause prohibits the use of machines except on "Goodyear welts" and "Goodyear turns," which have been welted or soles attached by certain specified machines belonging to the lessor. (Sec. 4 III, 217.)

(9) Exhibit 26, adopted in 1905, an initial payment lease for full set of Goodyear machines. Clause prohibits use of machines upon other than "Goodyear welts" and "Goodyear turns," welted or soles attached by lessor's machines (Sec. 4, III, 245.)

(10) Exhibit 25, adopted January, 1905, a noninitial payment lease for the auxiliary machines of the Goodyear department. Clause prohibits the use of machines in connection with other than designated welting, sole stitching and turn sewing machines belonging to the lessor. (Sec. 5, III, 230.)

(11) Exhibit 28, adopted in 1904, a noninitial payment lease for heeling machines. Clause prohibits use with other than lessor's welting, sole stitching, turn sewing, lasting, pegging, and metallic machines. (Sec 5, III, 264.)

(12) Exhibit 30, adopted June, 1900, succeeding Exhibit 29, which did not contain this clause. The clause applies to lasting, welting, sole stitching and turn sewing machines. (Sec. 3, III, 280.)

(13) Exhibit 34, adopted May, 1911, a noninitial payment lease for metallic machines. Clause applies to lasting, welting, sole stitching and turn sewing machines. (Sec. 3, III, 316.)

(14) Exhibit 35, adopted May, 1911, a noninitial payment lease for Standard screw machine, of metallic department. Clause applies to lasting, welting, sole stitching, and turn sewing machines. (Sec. 3, III, 325.)

(15) Exhibit 45, adopted June, 1901, a noninitial payment lease for Davey pegging machine. Clause applies to lasting and metallic machines. (Sec. 5, III, 416.)

(16) Exhibit 36, adopted March, 1902, a noninitial payment lease for pulling-over machine. Clause applies to welting, sewing and stitching, and pegging and metallic machines. (Sec. 4, III, 334.)

(17) Exhibit 37, adopted January, 1905, a noninitial payment lease for pulling-over set. Clause extends to welting, stitching, turn sewing, lasting, pegging, metallic, and heeling machines. (Sec. 6, III, 343.)

(18) Defendants' Exhibit 345, adopted as early as 1907, a noninitial payment lease for pulling-over machines. (Sec. 5, V, 962.)

(19) Exhibit 38, adopted February, 1909, a noninitial payment lease for pulling-over machines. Clause extends to welting, stitching, turn sewing, lasting, pegging, metallic, and heeling machines, and is made to apply to pulling-over machines held by or for the lessee under that or any "other lease or license agreements from the lessor." (Sec. 5, III, 354.)

(20) Exhibit 39, adopted August, 1911, an initial payment lease for pulling-over machines. Clause extends only to use of auxiliary with principal machines. (Sec. 5, III, 367.)

(21) Exhibit 40, adopted about 1902. An initial payment lease for general department machines. Clause applies to welting, sole stitching, turn sewing, lasting, pegging, and metallic machines. (Sec. 4, III, 376.)

(22) Exhibit 41, adopted about 1908. Noninitial payment lease for general department machines. Clause extends to welting, sole stitching, turn sewing, lasting, pegging, and metallic machines. (Sec. 5, III, 382.)

(23) Exhibit 43, adopted about 1902, a noninitial payment lease for eyeletting machines. Clause extends to welting, sole stitching, turn sewing, lasting, pegging, metallic and heeling machines. (Sec. 5, III, 397.)

(24) Exhibit 51, adopted December, 1900, a noninitial payment lease for Gem insole machinery. Clause applies only to welting, sewing, and stitching machines. (Sec. 4, III, 445.)

(25) Exhibit 52, adopted December, 1907, a noninitial payment lease for Economy insole reinforcing set. Clause applies as to principal machines to welt and turn sewing

machines, and as to auxiliary machines, to use with Economy insole reinforcing machine. (Sec. 5, III, 453.)

(26) Exhibit 56, adopted about 1910 or 1911, an initial payment lease for repairing machine, used to repair patent leather injured in the manufacture of the shoe. Clause applies to welting, sole stitching, turn sewing, and lasting machines. (Sec. 5, III, 487.)

(27) Exhibit 57, an initial payment lease for Miller treeing machines. Clause applies to welting, sole stitching, turn sewing, lasting, pegging and metallic machines. (Sec. 4, III, 494.)

The clause, therefore, appears in six of the nine leases for lasting machines, all four of the leases for Goodyear machines, the one of the two leases for heeling machines which has been in use ever since 1904, three of the six leases for metallic machines, all five of the leases for pulling-over machines, the two leases for general department machines, one of the two leases for Gem insole machines, the one lease for Economy insole machines, and the one lease for the Miller treeing machine.

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APPENDIX E.

Table giving paragraphs in which the tying clauses appear in the lease specimens referred to in Appendix C of our brief; also in Exhibit 170.

Lease form.	Exhibit.	Additional machinery clause.	Paragraph.	Exclusive-use clause.	Paragraph.	Prohibitive clause.	Paragraph.	Right to terminate clause.	Paragraph.	Full-capacity clause.	Paragraph.
Lasting	14			Yes	7			Yes	8	Yes	4
Do	15			Yes	7	Yes	4	Yes	8	Yes	4
Lasting, McKay	16			Yes	7	Yes	4	Yes	8	Yes	4
Lasting	17			Yes	7			Yes	8	Yes	4
Lasting, Ideal	18			Yes	7	Yes	4	Yes	8	Yes	4
Lasting, Chase	19			Yes	7	Yes	4	Yes	8	Yes	4
Lasting, McKay-Copeland	20			Yes	7	Yes	4	Yes	8	Yes	4
Lasting, No. 5	21			Yes	8	Yes	5	Yes	9	Yes	5
Do	22			Yes	7			Yes	8	Yes	4
Goodyear	23			Yes	7	Yes	4	Yes	8		
Do	24			Yes	8	Yes	5	Yes	9	Yes	5
Auxiliaries	25			Yes	9	Yes	5	Yes	10		
Full set, initial payt	26			Yes	7	Yes	4	Yes	8		
Heeling	27	Yes	3					Yes	6	Yes	3
Do	28			Yes	10	Yes	5	Yes	11	Yes	5
Metallic	29	Yes	3					Yes	6	Yes	3
Do	30	Yes	3			Yes	3	Yes	6	Yes	3
Do	31	Yes	6					Yes	7	Yes	6
Do	32	Yes	3					Yes	7	Yes	3
Do	33	Yes	3					Yes	6	Yes	3

Table giving paragraphs in which the tying clauses appear in the lease specimens referred to in Appendix C of our brief; also in Exhibit 170—Continued.

Lease form.	Exhibit.	Additional machinery clause.	Paragraph.	Exclusive-use clause.	Paragraph.	Prohibitive clause.	Paragraph.	Right to terminate clause.	Paragraph.	Full-capacity clause.	Paragraph.
Metallic	34	Yes	3			Yes	3	Yes	7	Yes	3
Standard screw	35	Yes	3			Yes	2	Yes	7	Yes	2
Pulling over	36	Yes	4			Yes	4	Yes	7	Yes	4
Do	37	Yes	5	Yes	9	Yes	6	Yes	10	Yes	5
Do	38			Yes	8	Yes	5	Yes	9	Yes	5
Do	39			Yes	8	Yes	5	Yes	9	Yes	4
General department	40					Yes	4	Yes	7		
Do	41					Yes	5	Yes	9		
Eyeletting	42							Yes	7	Yes	4
Do	43					Yes	5	Yes	8	Yes	5
Clicking	44			Yes	9			Yes	10	Yes	5
Pegging	45			Yes	8	Yes	5	Yes	8	Yes	5
Do	46			Yes	8			Yes	9	Yes	5
McKay	170					Yes	4	Yes	7		
Total	34	10		20		23		34		28	

NOTE.—Exclusive use or additional machinery clause in all leases of bottoming machines except McKay sewing machines (Ex. 170).
Donham describes the character of the various leases and the differences between them (I. 5–15).
Leases without prohibitive clauses are the so-called independent leases.
As to "Right to terminate all leases" clause in Exhibits 40 and 170, see footnote, *supra*, p. 336.

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Supreme Court of the United States

OCTOBER TERM, 1917

No. 207

THE UNITED STATES,
Appellant,

v.

UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR UNITED SHOE MACHINERY COMPANY, ET AL., APPELLEES

(REARGUMENT)

FREDERICK P. FISH
CHARLES F. CHOATE, JR.
MALCOLM DONALD
of Counsel for Appellees.

BOSTON
PRESS OF GEO. H. ELLIS CO
1917

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In the Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 207.

THE UNITED STATES, *Appellant*,

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL., *Appellees*.

Appeal from the District Court of the United States for the District of Massachusetts.

BRIEF FOR THE UNITED SHOE MACHINERY COMPANY ET AL.

PART ONE.

INTRODUCTORY AND GENERAL MATTERS.

I. INTRODUCTORY STATEMENT.

This is a direct appeal by the United States under the Expediting Act (32 Stat. 823, c. 544; 36 Stat. 854, c. 428) from a decree dismissing its petition by the District Court for the District of Massachusetts.

The petition was filed December 12, 1911. It charged a plan or scheme to monopolize shoe machinery, and a monopoly obtained in pursuance thereof in violation of the Sherman

Anti-Trust Act (26 Stat. 209, c. 647). It prayed for the dissolution of the defendants, United Shoe Machinery Company and United Shoe Machinery Corporation, and for other relief.

The Attorney-General filed a certificate under the Expediting Act, and the court which tried the case was composed of three judges of the first circuit—Judge Putnam, Judge Dodge, and Judge Brown (R. Vol. 1, pp. 1064, 1070).

All the evidence and the witnesses were heard by the judges in open court with the exception of certain evidence relating to patents which was heard before a special examiner (R. Vol. 2). The evidence taken in open court occupied about eleven weeks.

All three judges rendered opinions agreeing that the case was without merit and that the petition should be dismissed. Judge Putnam's opinion contained a general survey of the case (R. Vol. 1, p. 1110). Judge Dodge analyzed in detail the various transactions relied on by the United States, and as to each found in favor of the defendants; he also concurred in the opinion of Judge Brown as to the validity of the defendants' leases (R. Vol. 1, p. 1127). Judge Brown considered at length the defendants' lease system and expressed his concurrence with the opinions of his associates (R. Vol. 1, p. 1160).

In accordance with the opinions of the Court a decree was entered on May 14, 1915, dismissing the bill (R. Vol. 1, p. 1188).

The evidence taken in open court has been condensed and is contained in Vol. 1 of the Record. The evidence as to patents by direction of the court was not condensed and is contained in Vol. 2 of the Record. The exhibits are found in Vols. 3 to 5. There are also a large number of physical exhibits which could not be reproduced in the record but which it is important for the Court to examine.

II. PARTIES DEFENDANT.

The petition names twenty corporate defendants and twenty-three individual defendants.

On motion of the United States the petition was dismissed against nine of the corporate defendants prior to the taking of testimony (R. Vol. 1, pp. 1061, 1062).

The corporate defendants now parties are the following:—

United Shoe Machinery Company.
United Shoe Machinery Corporation.
United Shoe Repairing Machine Company.
United Shoe Machinery Company of Maine.
United-Xpedite Finishing Company.
O. A. Miller Treeing Machine Company.
W. W. Cross & Company, Inc.
Ross-Moyer Manufacturing Company.
J. K. Krieg Company.
Booth Brothers Company.
Ellis Lacer Company.

United Shoe Machinery Company, hereinafter called the "United Company," a New Jersey corporation, incorporated in 1899, is the principal defendant. It manufactures, leases, and sells certain types of patented shoe machinery and supplies, and has specialized in machinery for making Goodyear Welt and Goodyear Turn shoes and is the owner of the trademarks "Goodyear Welt" and "Goodyear Turn."

United Shoe Machinery Corporation, a New Jersey corporation, incorporated in 1905, owns most of the stock of the United Shoe Machinery Company. It is not an operating company, and it does not manufacture, sell, or lease machinery or supplies.

The other corporate defendants are companies which con-

duct minor departments of the United Company's business. No one of these companies competes with the United Company or with any of the others. Practically no evidence was introduced as to most of them, and they may be disregarded so far as the present argument is concerned. Their business is as follows:—

The United Shoe Repairing Machine Company was organized by the United Shoe Machinery Company to take over and carry on that part of the business of the United Shoe Machinery Company which consisted in supplying machines to cobblers and others for use in repairing shoes (R. Vol. 4, P.'s Ex. 187, p. 1239).

The United Shoe Machinery Company of Maine operates as a branch of the United Shoe Machinery Company, leasing machines in certain States of the United States (R. Vol. 4, P.'s Ex. 187, pp. 1238–1239).

The United-Xpedite Finishing Company is engaged in the business of manufacturing and dealing in a heel-finishing machine known as the Xpedite Finishing Machine (R. Vol. 4, P.'s Ex. 187, pp. 1239, 1240).

The O. A. Miller Treeing Machine Company manufactures treeing machines and shoe trees on which shoes are cleaned and polished before packing (R. Vol. 4, P.'s Ex. 187, pp. 1234–1235; R. Vol. 1, pp. 97, 98).

W. W. Cross & Company, Inc., makes tacks and nails for use in shoe machines and sells practically its entire output to the United Company (R. Vol. 4, P.'s Ex. 187, p. 1233).

The Ross-Moyer Manufacturing Company, prior to the formation of the United Company, was the agent in Ohio of two of the constituent companies taken over by the United Company. It is now the agent for the service department of the United Company in Cincinnati and Chicago. It also deals in various findings and manufacturing accessories (R. Vol. 4, P.'s Ex. 187, p. 1235; R. Vol. 1, p. 34, lines 17–18; pp. 100, 101).

The J. K. Krieg Company acts as agent for the United Company in New York and sells findings and general merchandise in New York. It took over the business of a partnership of the same name which had acted as agent for two of the constituent companies prior to the formation of the United

Company (R. Vol. 4, P.'s Ex. 187, p. 1234; R. Vol. 1, p. 34, lines 15–16; pp. 92, 93, 95, lines 30 ff.).

Booth Brothers Company makes upper beading and fudge-edge machines (R. Vol. 4, P.'s Ex. 187, p. 1232; R. Vol. 1, p. 33, lines 28–32; p. 88).

The Ellis Lacer Company has been dissolved and is out of business (R. Vol. 1, p. 35, lines 17–18).

Of the individual defendants no evidence whatever was offered against the following:—

Wallace F. Robinson,
John H. Connor,
Louis A. Coolidge,
Edwin P. Brown,
Frank L. Babbott,
Henry B. Endicott,
Edmund LeB. Gardner,
John H. Hanan,
Joseph C. Kilham,
George E. Keith,
Edward N. Chase,
Rudolph Matz,
Charles G. Rice,
Alfred R. Turner,
Samuel Weil,
Frank Wood,
William Woodward,
Harold G. Donham,

except that they were at some period directors or officers of some of the corporations originally mentioned as defendants.

The only remaining individual defendants with respect to whom there is any further evidence in the record are:—

Sidney W. Winslow,
Elmer P. Howe,
William Barbour,
Edward P. Hurd,
George W. Brown.

III. THE PETITION.

1. ALLEGATIONS OF THE PETITION.

The petition makes a general charge of a combination to monopolize the entire field of shoe machinery. The principal allegations of the petition are:—

That the defendants have combined, contracted, and conspired to restrain interstate and foreign trade and commerce, and have monopolized and attempted to monopolize the same, all as hereinafter set forth . . . (R. Vol. 1, p. 990).

That for twenty-five years, last past, practically all of the boots and shoes worn by the people of the United States have been manufactured by the aid and use of several different kinds of machines. . . . The principal essential machines are:—

Lasting Machines, for lasting the uppers of boots and shoes.

Welt Sewing Machines and Outsole Stitching Machines, for attaching the upper and welt to the insole of a welt shoe, and sewing the welt to its outsole.

Heeling Machines, for preparing and attaching heels.

Metallic Fastening Machines, for preparing and inserting metallic fastenings (R. Vol. 1, p. 991).

For many years prior to February, 1899, a large number of persons and corporations were engaged in the manufacture of shoe machinery in competition with each other. The principal concerns so engaged were:—

Goodyear Shoe Machinery Company, which, with its subsidiaries, the International Goodyear Shoe Machinery Company of Maine and the Goodyear Shoe Machinery Company of Canada, manufactured 80% of the machines made in the United States for sewing the upper and the welt to the insole, and the welt to the outsole, of a welt shoe; and 10% of the lasting machines.

The Consolidated & McKay Lasting Machine Company, which manufactured 60% of the lasting machines.

McKay Shoe Machinery Company, which manufactured 70% of the heeling machines and 80% of the metallic fastening machines.

The Eppler Welt Machine Company, and its subsidiary, the International Eppler Welt Machine Company, which manufactured 10% of the machines for sewing the upper and welt to the insole, and the welt to the outsole, of a welt shoe.

The Davey Pegging Machine Company, which manufactured 75% of the pegging machines made in the United States, and which was owned and controlled by the Consolidated & McKay Lasting Machine Company (R. Vol. 1, pp. 992–3).

Early in 1899 these companies were manufacturing their machines under Letters Patent of the United States and other countries. Many of the basic patents on the principal machines owned and controlled by them were about to expire, and, in the ordinary course of events, the general public would have acquired, in the near future, the right to the free manufacture and use of such machines. *The lawful monopoly of such machines theretofore enjoyed by virtue of the patents would have come to an end*, and the system of demanding large royalties for their use would have been replaced by their general manufacture and outright sale under competing conditions (R. Vol. 1, p. 993).

The defendants, not being satisfied with the benefit *of the lawful monopolies and rights belonging to them under Letters Patent of the United States* and of other countries, *which they had enjoyed for many years, determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery*, and through unlawful combinations and agreements to exclude all others from said trade and commerce. For the accomplishment of this purpose *they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to such manufacturer of shoes*, and thereby *to monopolize the trade and commerce therein*

among the States and with foreign countries. The various contracts, combinations, conspiracies, and acts hereinafter described were steps in carrying out the above-mentioned unlawful project (R. Vol. 1, p. 994).

That the United Shoe Machinery Company was organized in February, 1899, and, by exchange, acquired the stock of the Goodyear Company, the Consolidated & McKay Lasting Machine Company, and McKay Shoe Machinery Company, and cash was provided to purchase the capital stock of the Eppler Company and for several other purposes (R. Vol. 1, pp. 995–6).

By the means above described the defendants acquired control of the greater portion of the manufacture and the trade and commerce in the machines included in the groups of machines above described (R. Vol. 1, p. 996).

Prior to the organization of the United Company, shoe manufacturers purchasing or leasing machines from one of the constituent companies were not compelled to use exclusively the machines of any other company. The defendants, *with the intent to acquire complete control of the business of manufacturing and selling or leasing shoe machinery, discontinued the sale to boot and shoe manufacturers of each and all of the machines included in said groups* of machines, and unlawfully adopted, and put into effect, arbitrary, oppressive, and unreasonable agreements, which boot and shoe manufacturers have been required to agree to in order to obtain from said defendants any of the machines included in said groups. These agreements contain provisions not found in their former agreements, *which compel boot and shoe manufacturers leasing any of such machines from defendants to agree to use exclusively one or more of the classes of machines included in said groups of machines owned and controlled by them,* upon penalty of having all the machines included in said groups so leased to them by defendants immediately taken away. These contracts further require boot and shoe manufacturers to take each of said machines for a period of not less than seventeen years, regardless of the terms of the patents relating thereto (R. Vol. 1, pp. 996–7).

Lessees thereafter were also required to take duplicate parts at exorbitant prices; and the defendants have continually, per-

sistently, and arbitrarily enforced the provisions of said leases (R. Vol. 1, p. 997).

The defendants, in pursuance of their original purpose, inserted in and made a part of each lease and license agreement, provisions reserving to themselves the right to forthwith terminate and cancel all existing lease and license agreements between them and the boot and shoe manufacturers, if the latter should fail or cease to use exclusively, and to their full capacity, machines leased or controlled by defendants (R. Vol. 1, pp. 997–8).

The defendants have, by misrepresentation and threats, induced customers of their competitors to abandon them; have threatened that they would use their financial resources and power to secure the patronage of such competitors, and by threats have prevented others from entering into the business with them; have acquired Letters Patent for valuable inventions, and have held the same for long periods of time without using them; have offered and granted rebates to shoe manufacturers who used exclusively one or more of the machines owned or controlled by them; have bought the business of competitors and paid exorbitant prices therefor (R. Vol. 1, p. 999).

In pursuance of their purpose to monopolize the shoe machinery industry, defendants have absorbed many competitors at exorbitant prices and driven others out of business, and have deterred and prevented others from entering the business, and thus made competition with themselves practically impossible. They have acquired some fifty-eight other businesses, and have taken from substantially all, covenants in writing not to engage for long terms in commerce in shoe machinery, and have required vendors to agree that, if they shall invent or patent machines for the manufacture of boots and shoes, they will assign all such inventions and patents to the defendants (R. Vol. 1, pp. 1000–1023).

In April, 1905, the defendants organized the United Shoe Machinery Corporation, which acquired substantially all the stock of the United Shoe Machinery Company (R. Vol. 1, p. 1024).

The result of the combinations, conspiracies, and monopolies described has been enormous and unreasonable profits (R. Vol. p. 1026).

That, by reason of the unlawful contracts and combinations above described, defendants control all the large and important establishments in the United States which were formerly engaged in the manufacture, sale, and lease of machines designed and used for attaching the bottoms to the uppers of shoes, and kindred and auxiliary machines, and have acquired a monopoly of interstate and foreign trade and commerce in shoe machinery (R. Vol. 1, p. 1027).

The prayer of the petition is for dissolution and an injunction against the practices complained of (R. Vol. 1, pp. 1029–1032).

Defendants' Answer.

The defendants denied the allegations of the petition, and further answering said (R. Vol. 1, p. 1044):—

That the organization of the defendant corporations and the acquisition of the businesses of the several constituent companies "was simply the fusion of several corporations owning non-competing, complementary machines, covered by Letters Patent of the United States, into one corporation, and was made with the expectation of an increase in business, economies in administration, and decrease in expenses, and cessation of patent litigation between the companies purchased, which had been expensive to them and annoying to shoe manufacturers; which results it was expected could be attained without increase of cost to the users of machinery . . . , and that better attention to the care of the machines and assistance to the users could be afforded. . . .

"That said organization and acquisition was nothing more than the combination of various elements of machinery all relating to the same art and the same school of manufactures, for the purpose of constructing economically and systematically, and of furnishing a lessee the whole or any part of a gradually developed system of machines for use in the manufacture of shoes, and was and is in strict and normal compliance with modern trade progress."

2. THE BASIC CHARGE OF THE PETITION.

The basic charge of the petition therefore is that

1. The constituent companies having lawful patent monopolies under which they did the greater part of the business of the country in the principal essential shoe machines, viz. (a) lasting machines, (b) welt-sewing and outsole stitching machines, (c) heeling machines, and (d) metallic-fastening machines, and finding these patents about to expire, planned to extend their monopolies unlawfully and to obtain a monopoly of all shoe machinery by

(A) Combining and acquiring all concerns engaged in the shoe machinery business, and then

(B) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machinery which he required and that

2. The United Company carried out said plan and thereby did acquire a monopoly of shoe machinery.

The various acts specified in the petition are alleged to be only "steps in carrying out" this unlawful project and are material only if and in so far as they afford evidence of this plan and its accomplishment.

3. ATTEMPT OF THE UNITED STATES TO LIMIT SCOPE OF THE PETITION.

The United States During the Course of the Trial Admitted of Record That It Could Not Prove Its Charge of a Monopoly of all Shoe Machinery, and Attempted to Limit the Scope of the Petition to a Charge of Monopolizing Machines for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines and Clicking Machines.

The petition as stated above charges a monopoly of all shoe machinery, and the United States presented its direct case on this theory.

During the introduction of the case in chief for the United States, statements were repeatedly made by counsel for the United States to the effect that the petition charged a general combination to obtain a monopoly of the entire field of shoe machinery; to illustrate:—

R. Vol. 1, p. 39, lines 4–8, Mr. Gregg, of counsel for the United States, said, referring to the so-called "acquisitions," which related not only to machinery of various kinds but to supplies and findings:—

> "Our position, if the court please, is that all of these acts of acquiring the business of other concerns were all part of a plan to monopolize the shoe machinery business.
> "PUTNAM, J. All; big and little?
> "Mr. GREGG. Big and little."

Again, Mr. Gregg said, R. Vol. 1, p. 52, lines 7–9,—

> ". . . We have alleged in the petition that each and every one of these acts, all taken together, was a part of a plan to monopolize."

Again, Mr. Gregg said, R. Vol. 1, p. 113, lines 16 ff.:—

> ". . . I suppose their defence will be: 'We didn't intend to get all the business.' . . . I assume that is what it will be: 'We didn't intend to monopolize the shoe machinery business, we were not making any attempt to get it all.' And I think this conversation with the president of the company is certainly competent to show that it was their intent at that time to monopolize the shoe machinery business, that they wanted to have it all, and that that was the very purpose of the tying clauses of the leases."

Again, R. Vol. 1, p. 202, lines 1–9, Mr. Fowler said:—

> "Here is our position: this bill attacks this concern as being a monopoly, and it is alleged that they formed this combination back in 1899, and from 1899 up to the present time they have been doing various things for the purpose and with the intent of monopolizing. . . . This particular fact [a fact which Mr. Fowler urged leave to introduce in evidence] . . . tends to show the purpose of the original organization."

As during the course of the trial the evidence presented by the United States showed that the defendants not only had no monopoly of certain large classes of machinery, but that the defendants did not even manufacture and had never attempted to manufacture many classes of important machinery, especially machinery used in sewing the uppers of shoes, and that there were scores of other machinery manufacturers greater in number and capacity than were in business when the United Company was formed, the United States undertook to limit the scope of the petition.

After the closing of the case of the United States in chief, and the opening of the defendants' case, Mr. Gregg, of counsel for the United States, made the following admission (R. Vol. 1, p. 414, lines 19 ff.):—

> "If the court please, taking the whole bill together, the only charge that we make there and the only thing that we contend for is that they have monopolized machinery designed and adapted for use in the manufacture and attaching, preparation and attaching, bottoms to the uppers of shoes, the clicking machine and the eyeletting machine."

A little later, R. Vol. 1, p. 414, lines 31–33, Mr. Gregg said,—

> "We make no contention that they designed or intended to monopolize machinery used for sewing the uppers to the shoe at all."

On R. Vol. 1, p. 435, lines 7–9, Mr. Fowler said,—

> "I never have understood that the purpose of this litigation was to go further than was stated by Mr. Gregg this morning."

And again, R. Vol. 1, p. 837, lines 40 ff., Mr. Fowler said:—

> "So far as the actual monopoly is concerned, it is limited to the machines fastening the soles and the uppers together, and to the clicking machines and the eyeletting machines. Mr. Gregg says he wants to state it.
>
> "Mr. GREGG. Machines for preparing and attaching the bottoms to the uppers of shoes, and eyeletting machines and dieing-out machines, otherwise known as

clicking machines. Machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines."

A little later the following colloquy took place between the Court and counsel for the United States, R. Vol. 1, p. 839, lines 9–22:—

"PUTNAM, J. Do you admit that you don't claim a monopoly in trade and commerce, either in the United States or foreign countries, of anything except the bottoming machinery and the eyeletting machinery?

"Mr. GREGG. Machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines and the clicking machines, and, as I stated, when I opened the case for the Government—

"PUTNAM, J. One moment. Do you admit that that is all you claim?

"Mr. GREGG. Yes, sir. We make no contention—

"PUTNAM, J. Can that go in the record?

"Mr. GREGG. Yes, sir; I am perfectly willing for that to go in the record."

Still later, and when the defendants had nearly completed their introduction of evidence, and just before the close of the case, the United States presented a request for leave to amend its petition (R. Vol. 1, p. 881; motion to amend, R. Vol. 1, p. 1101).

The proposed amendment charges only a combination to acquire a monopoly of shoe machinery used in adjusting and attaching the upper to the last, in preparing the bottom and the heel and fastening them to the upper, and in finishing the bottom and the heel of the shoe after said operations had been performed, and the claim with respect to the extent of the monopoly actually achieved was of all the principal and auxiliary machines used for adjusting and attaching the upper to the last preparatory to attaching the upper to the bottom, for preparing the bottom and heel and attaching them to the upper, and machines for finishing the bottom and heel, and clicking and eyeletting machines.

This request for leave to amend was disallowed by the trial court (R. Vol. 1, p. 1109).

These various shifts of position made by the United States during the course of the trial show its complete failure to prove its charge as made by the petition, and its attempt to succeed by making a different case.

The defendants contended below, and still contend, that the United States was required to prove its case as charged; that the defendants' defence was directed against the charge of an attempt to monopolize and of a monopoly of all shoe machinery; and that the limitation of this charge to a charge of an intent to monopolize, and a monopoly of, only a portion of the field of shoe machinery, constituted a material variance not permissible during the course of the trial.

Without waiving this contention, the defendants submit:—

(1) The United States utterly failed to prove a combination to monopolize or a monopoly of all shoe machinery.

(2) The United States admitted of record that it claimed no monopoly of all shoe machinery, and is therefore debarred from making any such charge.

(3) The United States failed to prove a combination to monopolize or a monopoly of machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines and clicking machines, to which the United States of record limited its charge (R. Vol. 1, p. 839, lines 9–22).

IV. PRELIMINARY STATEMENT.

Formation of the United Company.

The United Company was a combination of three essentially non-competing concerns,—the Goodyear Company, the Consolidated Company, and the McKay Company.

The Goodyear Company made a welter and stitcher, 16 different kinds of welt and turn auxiliary machines used in connection with the welter and stitcher, and the Ideal Lasting Machine.

The Consolidated Company made lasting machines, and through a subsidiary, pegging machines.

The McKay Company made metallic machines and heeling machines.

Shoe machines had been i vented for a comparatively short time. All of the machir es made by these companies were patented; they were superior to any other machines which had been invented and for this reason each of these three companies furnished practically all of the machines of the classes it manufactured which were then being supplied.

The Eppler Company, which made different and inferior types of welter, stitcher, and certain auxiliary machines, cannot properly be termed one of the constituent companies. Its acquisition was not considered until after the formation of the United Company was agreed upon. Its machines were inferior and unsuccessful commercially, and as a factor in the shoe trade had no significance or standing. Its machines further infringed the Goodyear Company's patents, and suits brought by the Goodyear Company were pending to prevent their use. The Company was acquired for the purpose of settling this litigation and enabling the United Company to start business free from patent litigation.

Alleged Competition in Lasting and Welt Machines.

The United States contends that there was competition between the Ideal Lasting Machine of the Goodyear Company and the lasting machines of the Consolidated Company, and between the welt machines of the Goodyear Company and the Eppler machines. It contends that the elimination of this competition was a motive for the formation of the United Company, or, if it was not a motive, that it made the formation of the company inherently unlawful. This contention is so unsubstantial as to show the utter lack of evidence found by the United States to support its contentions.

None of the Consolidated Company's lasting machines was adapted for use or was used on women's welt shoes. The Ideal machine of the Goodyear Company was adapted for use and used almost exclusively on women's welt shoes. It was possible to use it on men's welt shoes and it was so used by a very few shoe manufacturers, but it was not adapted for such use, which was outside the field for which the machine was intended and in which it was commercially successful, and the total use on such shoes was insignificant. The lasting machines of these two companies, therefore, as the District Court found, did not compete in any practical sense.

Furthermore, the Ideal machine was only one out of 19 machines manufactured by the Goodyear Company, and its entire use on men's welt shoes which is the only use as to which it can possibly be contended it competed with the Consolidated Company's machines did not amount to more than .03 of 1 per cent. of the total shoes made. Obviously the Consolidated and Goodyear Companies were not combined to eliminate a competition which for practical purposes did not exist, but for the purpose of consolidating the welt machines of the Goodyear Company, which constituted its real business, and the lasting machines of the Consolidated Company.

The Eppler machines attached the bottoms of the soles by a welt as did the Goodyear machines, but by a different method. The company was unsuccessful, and only 30 or 40 of its welters were in use, although it had been in business since the early 90's. Its machines were doomed to failure, and are now en-

tirely obsolete. Furthermore, its machines infringed the Goodyear patents and their use would doubtless have been enjoined as a result of pending patent litigation. No competition of the slightest significance was eliminated by the acquisition of the Eppler Company and its patents. It was obviously acquired, as the defendants testified, to terminate the pending patent litigation.

Purposes for which the United Company was Formed.

The United Company was formed:—

1. To enable the United Company to provide a better service with its machines than could be furnished by either of the three constituent companies operating separately;

2. To economize in the manufacture of the machines and to standardize the machines and their parts;

3. To develop the manufacture of Goodyear welt shoes by the development and invention of new machines and new methods and thus reduce the cost of manufacturing this kind of shoe, which was admittedly the best shoe made;

4. To increase the productive efficiency of the machines of the constituent companies.

It was possible to carry out these purposes successfully by the combination of these various types of machines in a single company, which could thus adapt for use together the different kinds of machines each of which was used in the manufacture of a pair of shoes, could care for them and otherwise furnish service for them at less cost, and through its enlarged resources could undertake the inventive work necessary to improve the machines and develop new machines for operations then performed by hand, and in other ways perfect the art of shoe machinery.

The Extent to which these Purposes have been Carried Out.

That the United Company was formed for the above purposes is proved by the fact that the United Company at once undertook to carry them out and has succeeded to an extraordinary extent.

It has developed the most remarkable and efficient service which consists of furnishing skilled mechanics to repair machines, instructing operatives in their use, maintaining stations in the manufacturing districts where duplicate parts are kept for immediate use and where its skilled mechanics can be obtained, and generally acting as machinery engineers for shoe manufacturers. All this service it furnishes free of cost. Such service is essential to the effective operation of a shoe factory.

It has standardized the parts of its machines and economized by manufacturing them in a single factory.

It has undertaken the improvement of the machines manufactured by the constituent companies and the invention of new machines with such success that it has greatly improved practically every machine which was manufactured by the constituent companies, and it has developed during a period of only twelve years 150 new machines, 39 of which do work previously done by hand.

It has reduced charges for its machines materially by eliminating initial payments charged by the constituent companies, by reducing royalties in some instances and by furnishing a large number of new auxiliary machines without charging additional royalty.

By its reduction in charges and the increased efficiency of its machines it has reduced the cost of manufacturing, and thereby greatly assisted the manufacture of Goodyear welt shoes, which are admittedly the best shoes made and are the most satisfactory to the public.

As a result of the increased efficiency of its machines the new machines it has developed, and the service it renders, it has decreased the cost of manufacturing shoes by more than the royalty it charges. The machines previously put out by the constituent companies have been so improved that most of them now produce more than 50 per cent. more shoes per year than they did in 1899. Manufacturers have not only benefited by a reduction in royalties, but, owing to the increased efficiency of the machines, they are able to economize in factory space and to effect large savings in materials. Operatives on machines, who are generally piece-workers, produce over 50 per cent. more work, and thus, although the piece wages have been reduced, earn considerably more money.

The Patents.

The constituent companies' patents were not about to expire at the date of the formation of the United Company, as alleged by the United States, and their early expiration was, therefore, not a reason for the formation of the United Company, as alleged.

The United Company's machines have always been protected by patents and are more strongly protected to-day than ever before.

The Leases.

The constituent companies always leased and never sold machines. The leasing system had been adopted at the very beginning of the shoe machinery industry, because, as a method of furnishing these complicated and expensive machines, it proved most satisfactory to the shoe manufacturer and to the machinery manufacturer. The system was firmly established at the date the United Company was formed.

The clauses in the United Company's leases to which the United States objects are of the same character as those employed by the constituent companies. They are essential to enable a shoe manufacturer to lease machines under the remarkable lease system under which the United Company furnishes machines.

Under this lease system the United Company installs machines in a shoe manufacturer's factory without initial payments, charges a royalty based upon the number of shoes on which they are used, keeps the machines in repair, instructs operatives in their use, and acts as engineer for the shoe manufacturer.

The United Company has not changed the essentials of the lease system as employed by the constituent companies. The modifications it has made have been adopted from time to time to make its leases consistent or to enable it to offer better terms to lessees. On the whole it has relaxed the provisions employed by the constituent companies. The principal changes are as follows:—

1. It has eliminated the clauses contained in certain leases of the constituent companies requiring a shoe manufacturer to take additional machines if needed for his work and thus to use the lessor's machines of the kind leased exclusively.

2. It has developed and acquired various miscellaneous machines of over 170 different kinds which it has included in its General Department and which machines it has sold at the option of the shoe manufacturer, thus departing from the practice of the constituent companies, which only leased machines.

3. Where a series of different kinds of machines adapted for use together in the manufacture of shoes are used as a series, each machine returns a greater royalty and the cost of furnishing service for each machine is, of course, less. The United Company has permitted a shoe manufacturer so using a series of machines to share in the savings thus effected by granting a reduced rate to a shoe manufacturer taking machines to be used as a series. It has accomplished this in most instances by adopting alternative forms of lease under which it has eliminated the initial payments previously charged by the constituent companies and has, of course, provided that the machines so taken for use as a series shall be used as agreed upon.

The United Company has never enforced its leases arbitrarily. It has never attempted to enforce them so as to exclude competitors, nor has it adopted any provisions adapted or intended to accomplish this result.

The clauses in the leases are only such as are essential to the maintenance of this lease system, which is so highly advantageous to shoe manufacturers.

The Acquisitions.

The United Company has never acquired competitors. It has from time to time acquired:—

(*a*) Concerns manufacturing supplies such as tacks, nails, brushes, peg-wood, etc., which it did not at the time manufacture itself, but wished to furnish shoe manufacturers;

(*b*) Patented machines which it did not manufacture at the time;

(c) Patents or patented machines to enable it to improve its own machines and to settle patent litigation which stood in the way of the development of its machines.

There is absolutely no foundation in the record for any charge that the United Company's success has been due to the acquisition or elimination of competitors. On the contrary, it has declined to purchase its largest competitors, though offered to it for sale. While there were practically no competitors in the field in 1899, there are now a considerable number of good-sized competitors.

Furthermore, the United Company has made no attempt whatsoever to acquire all concerns engaged in the shoe machinery industry as alleged in the petition. On the contrary, it has declined to purchase over 75 concerns engaged in manufacturing machines and supplies and has declined to purchase hundreds of patents.

In making such acquisitions as it has made it has taken from certain of the vendors such covenants not to compete or to assign future inventions as are usual and proper in such cases. There is not the slightest foundation for a charge that such covenants were taken in pursuance of any plan to acquire a monopoly thereby.

Alleged Unfair or Monopolistic Acts.

The United States utterly failed to prove its allegations of unfair and monopolistic acts. The record shows that the United Company during the entire course of its history has acted with fairness both to competitors and lessees. As the District Court found, it has been above reproach in these respects.

The Alleged Monopoly.

The United Company has no monopoly of all shoe machinery. As admitted by the United States, there are large classes of machines which it does not even manufacture.

When the United Company was formed, the Goodyear Company, the Consolidated Company, and the McKay Company (which were combined into the United Company) were

not in competition, and each by reason of its patent monopolies furnished practically all the machines used in the country of the type in which it specialized. The machines as to which monopoly is charged are these same machines much improved by the inventions of the United Company and certain additional machines most of which have been since invented and first put upon the market by the United Company. They are all strongly protected by patents. The United Company does not furnish all the machines of these kinds now in use, as its constituent companies did, as there are now a number of competitors. It does, however, furnish a large proportion of such machines used by shoe manufacturers for the same reason that the constituent companies were successful; namely, because its machines are admittedly superior and in addition because it furnishes service with its machines of a kind furnished by no other machinery manufacturer; because it has consistently reduced its charges for machines; because it has without cost to its lessees substituted new and improved machines as rapidly as they were invented for machines then outstanding and so assured shoe manufacturers of having the most modern and up-to-date machinery; and because in many other ways it has treated its lessees with the utmost liberality.

The District Court found, and the record shows, that the United Company's success has been due to the foregoing causes. The record completely fails to show that such success has been due to the acquisition of competitors or to the adoption of clauses in its leases for the purpose of excluding competitors.

The record utterly fails to sustain the allegations of the petition that the defendants unlawfully planned to acquire all concerns engaged in the shoe machinery business and to refuse to sell or lease machines of the kind manufactured by the constituent companies unless the shoe manufacturer took all other kinds from it, or that the United Company acquired any monopoly in pursuance of any such plan.

The record further fails to show any unlawful or arbitrary acts whatsoever upon which any charge of unlawful monopoly or restraint of trade can be founded.

V. SPECIAL CONSIDERATIONS APPLICABLE TO THE PRESENT CASE.

In determining the questions involved in the present case the following considerations must be borne in mind:—

I. PRESENT CASE UNIQUE IN THAT (A) SHOE MACHINERY BUSINESS IS DOMINATED BY PATENTS, AND (B) NO COMPETITION PREVIOUSLY EXISTING WAS ELIMINATED.

The present case is unique in two important particulars: no case resembling it has ever before been decided by this Court under the Sherman Act, except the case of *United States* v. *Winslow*, 227 U. S. 202, in which the formation of the present United Company was considered and held lawful. (*A*) In the first place, in every case heretofore decided in which a monopoly has been charged the business has been one in which any one having sufficient capital might freely engage on equal terms. In the present case the product which the defendant is accused of monopolizing is protected by dominating patents which restrict competitors to the marketing of machines of a different and inferior type. (*B*) In the second place, in every other case in which a monopoly has been charged the defendant has obtained a large or dominating share of the business previously carried on by various competitors. In the present case at the time the United Company was formed, the constituent companies each did the greater portion of the business in its particular field, under lawful patent monopolies, and the United Company merely took over and continued this business. and did not eliminate any competition.

Industry Dominated by Patents.

A. In the present case the machines which the defendants is accused of monopolizing are protected by dominating patents so that competitors cannot manufacture them. There is a natural presumption that the general use of the defendants' patented machines and their success is due to their superiority over other types of machines if such exist, and not to any illegal restraint of trade. As said of these machines by the Court in *United States* v. *Winslow*, 227 U. S. 202 (p. 217),—

> "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, **and it may be assumed that the success of the several groups was due to their patents having been the best.**" (Black letters ours.)

The shoe machinery industry is not one in which any person may normally engage on equal terms. It is of very recent origin. The machines do work until recently done by hand. These machines have been originated and created and are now manufactured under the protection of lawful patent monopolies. No one can enter or engage in this business successfully unless he holds patents enabling him to make machines superior to or as good as those already in the market. In such an industry no competition on equal terms is possible. The machines offered by two different manufacturers must necessarily differ, as neither can manufacture machines of the type made by the other, and inevitably one manufacturer will have an advantage due to the superiority of the patented inventions under which his machines are manufactured. It is, therefore, natural and to be expected that in such an industry the machines of one manufacturer will be superior to other machines and will be generally used by shoe manufacturers. That one manufacturer will have most, if not all, of the business is as natural as it was that the Bell Telephone Company, after the invention of the telephone, was the only company manufacturing telephones.

No Previous Competition Eliminated.

B. In the present case we do not find that previously to the formation of the United Company there were numerous competitors engaged in furnishing machines in competition to shoe manufacturers and that upon the formation of the United Company these competitors were eliminated and the United Company took over their business. In such a case there might be a natural presumption of unlawful purpose or that unlawful methods were used to acquire the monopoly which would require proof to the contrary. In the present case, however, the petition itself alleges and the record establishes that the constituent companies were essentially non-competing, and that they had lawful patent monopolies under which they did the greater part of the business of the country in the machines which they manufactured. The United Company in taking over these non-competing companies therefore lawfully acquired patent monopolies under which it did the greater part of the business of the country in these machines. It did not eliminate competitors formerly in the field; it did not create a monopoly. It merely continued a business already lawfully existing. The monopoly charged in respect to these machines is the same monopoly which the petition alleges and the record establishes was lawfully held by the constituent companies at the time of the formation of the United Company. Indeed, far from showing that the United Company has acquired a monopoly in shoe machinery, the record shows that on December 12, 1911, when the petition was filed there were more and larger shoe machinery manufacturers engaged in business in competition with the United Company than existed in 1899 outside its constituent companies.

2. CONDITIONS PECULIAR TO THE INDUSTRY MUST BE CONSIDERED.

The shoe machinery industry has special characteristics which differentiate it strikingly from any other industry in the country. These characteristics existed when the United Company was formed, and its methods of business were necessarily adapted to meet them. In considering whether the defendants' methods were "usual," "normal," and "orderly," whether they were entered into "with the legitimate purpose of reasonably forwarding personal interest and developing trade," or "on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done" with unlawful intent (*Standard Oil Case*, 221 U. S. 1, 58), it is essential to bear in mind constantly the particular conditions with which the defendants dealt. The test in the present case is not what would be normal, reasonable and legitimate in the tobacco or cotton goods business, but solely what was normal, reasonable and legitimate in dealing with the conditions peculiar to the shoe machinery industry.

Some of the most striking characteristics of the shoe machinery industry are as follows:—

1. A great variety of different machines are used in the manufacture of each shoe. Thus on certain classes of shoes over 100 different operations are performed by different machines (Defs.' Ex. 235, R. Vol. 5, pp. 531–671).

There is also a great variety of types of shoes made, such as McKay sewed shoes, in which the upper is united to the sole by a seam running through both outsole and insole inside the shoe; the welt shoe, in which a narrow strip of welt is attached to the upper and insole, and the outsole then attached to the welt so that the foot does not rest on the seams which attach the sole; the turn shoe, which has a single sole to which the upper is sewed while the shoe is inside out, the shoe being then turned during the process of manufacture; the pegged shoe, in which the sole is attached by wooden pegs; the nailed shoe in which it is attached by nails; the Standard

Screw shoe, in which it is attached by screws; and also various modifications of these types, such as the mock welt. Each type of shoe requires to a large extent different machines.

In addition there are various styles of each type of shoe and new styles are constantly developing. Thus we have men's and women's shoes, low and high-heeled shoes, slippers, pumps, laced and button shoes, high-legged shoes and low shoes, bull-dog toes, shoes with different kinds of insoles, shoes made of different materials such as calf, kid, patent leather and canvas, and a great variety of other styles. Many of these styles require certain special machines for their manufacture.

The result is that a great variety of machines are required in the shoe trade. The United Company, which has specialized in bottoming machines and which does not manufacture any machines for sewing the uppers of shoes, and which manufactures and furnishes only from 30% to 50% of the total number of machines used in the ordinary factory, nevertheless makes over 300 different kinds of machines.

2. The shoe machinery business, as stated above, is of recent origin. Previously to 1850 or 1860 shoes were made almost entirely by hand. The development of shoe machinery began about 1863, the McKay Sewing Machine being the first important machine (R. Vol. 1, p. 521, lines 15–17). The various machines have been invented and developed gradually from that date. The Goodyear Welt Machines ran back to 1870 or 1868. They were greatly improved about 1888. However, in 1899, when the United Company was formed, welt shoes constituted only about 10% of the total number of shoes made. Since 1899 the United Company has greatly improved its welter and stitcher, and has developed 22 new welt auxiliary machines and 6 new turn auxiliary machines (*infra*, pp. 86, 428). Lasting machines date practically from 1890. In 1899 they were only partially developed, and half the shoes made were still lasted by hand (R. Vol. 1, p. 401, lines 14–30; p. 403, lines 19–32). The United Company, since its organization, has invented and put out 150 new machines (*infra*, p. 188).

Practically all of these machines have been at all times patented. In the continuous patent development of the industry the machines in use have given place to new and im-

proved machines, which do better work and have greater capacity, and new machines to take the place of hand work have been developed with the result that the best machines available, the machines which manufacturers demand and use, have at all times been effectively protected by patents (*infra*, pp. 215–230).

3. From the very beginning of the industry the principal shoe machines have been leased and not sold, the lessor depending for his return on a royalty of a certain specified sum for each pair of shoes on which the leased machine was used. Originally an initial payment was also charged to cover the cost of installing the machines and instructing operatives, but this has since been eliminated largely by the United Company.

Under this lease system the entire industry of manufacturing shoes by machinery was created and developed. It was the system under which the constituent companies furnished all their machines, at the time the United Company was formed. It had been adopted because it was found most satisfactory to the shoe manufacturer, and best suited to increase the use of the machines, and, consequently, the return to the shoe machinery manufacturer; in other words, because it was best suited to the conditions of this particular industry.

Under this system the shoe manufacturer is not obliged to invest his capital in machinery. He is, therefore, able to do a far larger business on a limited amount of capital, and his money is not tied up in machinery, which depreciates rapidly, and on which, as the testimony shows, he cannot borrow money. The lease system further enables comparatively poor men of small capital to enter the business, and thus extends the use of the machinery manufacturer's machines. The royalty payments made by the shoe manufacturer, being based on the amount of use to which the machines are put, are adjusted to the amount of business which the shoe manufacturer does. Owing to the rapid development of shoe machinery, the machines not infrequently become obsolete in a few years. If a shoe manufacturer purchased his machines outright, he might thus suffer a large loss. Under the lease system the machinery manufacturer takes this risk and not the shoe manufacturer. The principal shoe machines are extremely delicate and need constant adjustment and repairs.

Under the lease system the machinery manufacturer owns the machines, and his return being based on their use, he is interested in maintaining them in proper adjustment and repair, and he is far better qualified to give this service than is the shoe manufacturer.

For a full statement of the reasons for the adoption of the lease system, see *infra*, pp. 248–253.

4. As we have stated, a large number of different machines are used in the manufacture of each shoe. In the economical management of a shoe factory the shoes flow from one machine to another in a continuous stream, and when an important machine in the line breaks down, it interrupts this flow and, therefore, not only stops work on that machine, but also stops work on all machines coming after it in the line, and as to continue operating machines preceding it in the line would merely accumulate uncompleted work which could not be finished, it likewise stops work on those preceding machines. The capacity of shoe machines is so large that most shoe manufacturers require only one machine of certain kinds. The predicament of a shoe manufacturer, one of whose machines breaks down, is obviously very serious, and his loss is heavy unless he can obtain prompt and efficient repairs. The production of his entire factory may cease, and he will be unable to keep his contracts to deliver shoes. Furthermore, his operatives, who work by the piece, will earn nothing, and the lessors of machinery, the use of which is thereby prevented, will get no royalty.

It is, therefore, of the utmost importance that each machine in the line be well constructed and well cared for, so that it will not break down or get out of adjustment, and it is furthermore of the utmost importance that a machine be repaired at once if it does break down or get out of adjustment, so that the work will be interrupted for as short a time as possible.

The advantages of a well-constructed line or series of machines which receive proper repair service are especially pronounced in respect to the principal bottoming machines such as welters, stitchers, and lasting, metallic fastening and heeling machines, which perform delicate and difficult operations, handle material like thread, wire, and nails, and which

themselves are necessarily delicate machines, having a large number of moving parts liable to get out of adjustment or repair.

Furthermore, the machines are so complicated, and the variety of machines so great that the ordinary shoe manufacturer, who does business on a comparatively small scale, and even the large manufacturer, cannot afford to keep in his employ skilled mechanics acquainted with the intricacies of all his machines, nor can he afford to keep on hand the great variety of duplicate parts which may at any time be required for repairs and replacements. This repair service to be effective must be furnished by the shoe machinery manufacturer, who can do it on a large scale and who can maintain skilled mechanics and a stock of repair parts in or near the various shoe centers.

For a statement as to the importance of an efficient series of machines, and of an adequate service, see *infra*, pp. 171–187, 334–343.

5. Each machine in the line or series of machines must also be so organized as to operate efficiently upon the shoe in the condition in which it has been left by the preceding machine, and so as to leave the shoe in condition to be operated on by the succeeding machines. In other words, the important machines to work effectively must be adapted for use together. The machines all co-operate in a single continuous process and constitute for practical purposes parts of a single machine rather than distinct and independent machines. It is as important that each machine of the series be adapted to use with the other machines of the series, and be well constructed and maintained in proper repair, as it is that each part of a single machine be so adapted, constructed, and maintained. If an outside principal machine not adapted for use with the other principal machines of the series is interjected into the series, both the quality of the work and the speed of the machines are seriously interfered with (*infra*, p. 339).

6. Most shoe manufacturers are men of comparatively small capital, who operate on a small scale. The United Company in 1911 had over 1,000 lessees, about half of whom made less than 300 pairs of shoes per day (R. Vol. 1, pp. 454–455).

The foregoing are the conditions with which the defendants were dealing, and the various transactions must be judged in view of these particular conditions. What would be legitimate or normal in some other business—for instance, the cotton machine business or the steel business—would not be a test of what was legitimate or normal in the shoe machinery business.

3. TRANSACTIONS ARE MATERIAL ONLY IF THEY PROVE THE CHARGE OF THE UNITED STATES.

The petition charges a plan formed in 1899 and carried out by a series of steps or acts extending over a period of twelve years. An immense number of transactions covering the United Company's conduct of its business and the acts of its officers and agents during this entire period have been put in evidence. We believe the record is barren of any wrongful incident. However, if the record showed that during this extended period there were sporadic instances in which some agent or officer of the United Company exceeded his rights or some agreement was entered into not necessary for the protection of the company's rights or the development of its business, such sporadic instances would not be sufficient to show a plan to monopolize such as is charged by the petition, nor would such acts by themselves be sufficient to accomplish a wrongful monopoly as charged by the bill.

In other words these various transactions are material only in so far as they prove the charge of the petition, viz., that they were steps in carrying out the alleged plan

(1) to acquire all concerns engaged in the shoe machinery business, and then

(2) to refuse to sell or lease any so-called essential machinery to a shoe manufacturer except on condition that he take from them practically all other machinery which he required.

VI. THIS CASE WAS HEARD ORALLY, ALL MATERIAL TESTIMONY INTRODUCED BY THE UNITED STATES WAS CONTRADICTED BY THE DEFENDANTS' TESTIMONY, THE RECORD IS BEFORE THIS COURT IN A CONDENSED FORM, AND THE FINDINGS OF FACT BY THE DISTRICT COURT WHICH HEARD THE WITNESSES SHOULD BE ACCEPTED BY THIS COURT UNLESS MANIFESTLY WRONG.

1. THE LAW.

While an equity appeal brings to the Appellate Court questions both of law and of fact, the general principle has nearly always been recognized in equity appeals, whether the evidence was taken in the court of first instance by deposition or by oral testimony, that the findings on matters of fact of the lower court are presumptively correct and should not be reversed on appeal unless manifestly wrong.

Dade v. *Irwin*, 2 How. 383, 391, per Story, J.
Hewitt v. *Campbell*, 109 U. S. 103.
Lawson v. *U. S. Mining Co.*, 207 U. S. 1, 11, 12.
United States v. *Marshall*, 210 Fed. 595, 597 (C. C. A., 8th Circ.).
Tobey v. *Kilbourne*, 222 Fed. 760, 763 (C. C. A., 9th Circ.).
American Rotary Valve Co. v. *Moorehead*, 226 Fed. 202 (C. C. A., 7th Circ.).

Since the establishment of the Circuit Courts of Appeals, equity appeals have generally come before this Court after the decision of two courts below, and the rule has long been estab-

lished that the concurrent findings of two courts on questions of fact would not be reversed in this Court except in a case of manifest error.

Dun v. *Lumbermen's Credit Asso.*, 209 U. S. 20, 24, and cases cited.
First National Bank v. *Littlefield*, 226 U. S. 110.

The attitude of this Court, under the old rules, when findings of only one lower court were before it, is shown by the cases above cited.

The adoption of the new equity rules, making it the general practice to hear evidence in equity cases orally in open court, has materially changed the situation, and greatly increased the force of the presumption in favor of the trial court's findings of fact. Authorities everywhere are agreed that where the testimony in an equity case is given by witnesses in open court, with the consequent opportunity for the trial judge to see and hear the witnesses and judge of their character, bias, and credibility, this circumstance, at least on any point on which there was conflicting testimony, adds greatly to the weight which should be given to the findings of the trial judge; and many strong courts have held expressly or in effect that, whether or not the upper court would have reached the same conclusion from the printed record, findings of the trial court made under such circumstances should not be set aside on appeal if there was any evidence to justify the finding.

Espenschied v. *Baum*, 115 Fed. 793 (C. C. A., 7th Circ.).
Finlayson v. *Barrows*, 221 Fed. 936 (C. C. A., 5th Circ.).
Tobey v. *Kilbourne*, 222 Fed. 760 (C. C. A., 9th Circ.).
Nichols v. *Elken*, 225 Fed. 689 (C. C. A., 8th Circ.).
Brookheim v. *Greenbaum*, 225 Fed. 763 (C. C. A., 2d Circ.).
Gibson v. *American Graphophone Co.*, 234 Fed. 633 (C. C. A., 2d Circ.).
Gutlon v. *Marcus*, 165 Mass. 335 (per Holmes, J.).
Dickinson v. *Todd*, 172 Mass. 183.

Elmstedt v. *Nicholson*, 186 Ill. 580, 584.
Nichols v. *Hoxie*, 33 R. I. 77, 78, 81.
Shepard v. *Shepard*, 164 Mich. 183, 198.
Prötzman's Executor v. *Joseph*, 65 W. Va. 788, 789.
Khoo Sit Hoh v. *Lim Thean Tong*, (1912) A. C. 323, 325.
Smith v. *Land, etc., Corporation*, 28 Ch. Div. 7.
In re *Wagstaff*, 77 L. J. Ch. 190, 192.
Duffin v. *Duffin*, 44 Ch. Div. 76, 83.

In *Dickinson* v. *Todd*, supra, the Court said (p. 184):—

"An appeal in equity brings to the appellate court questions of fact which arise upon the record, as well as questions of law. But the practice which has long prevailed in Massachusetts of presenting the testimony in suits in equity orally instead of in writing has materially changed the effect of appeals in such suits upon questions of fact. Under the old practice of presenting all the testimony by deposition, the appellate tribunal had before it the evidence in the same form as when it was considered by the lower court. But under the present system the judge who sees and hears the witnesses has a great advantage in the search for truth over those who can only read their written or printed words. For this reason the rule has long been established that upon an appeal from a decree of a judge in equity upon questions of fact arising on oral testimony heard before him, his decision will not be reversed unless it is plainly wrong."

In *Brookheim* v. *Greenbaum*, supra, the Court said (p. 763):—

"The judge had the witnesses before him and is much better able to judge of their credibility than a court which sees only their statements on paper. We should not reverse his finding upon a pure question of fact, where the evidence justifies the finding, even if we might have reached a different conclusion upon the evidence."

In *Tobey* v. *Kilbourne*, supra, the Court said (p. 763):—

"It is the established rule that the findings of the trial court in a suit in equity must be taken as presumptively correct, and that unless an obvious error has intervened in the application of the law, or some serious or important

mistake has been made in the consideration of the evidence, the findings will not be disturbed by the appellate court. This rule is especially applicable in a case in which, as here, the testimony was taken in open court, where the trial court had the opportunity to observe the demeanor of the witnesses and their manner of testifying, and the appellate court has before it only a condensed printed statement of the evidence as it is presented under the new equity rule. Thorndyke v. Alaska Perseverance Mining Co., 164 Fed. 657, 90 C. C. A. 473; Brandt v. United States, 198 Fed. 449, 117 C. C. A. 208; Harper v. Taylor, 193 Fed. 944, 113 C. C. A. 572."

In *Smith* v. *Land, etc., Corporation*, supra, Fry, L. J., said (p. 17):—

"The second question is whether the purchasers purchased on the faith of that representation. The learned Judge has found that they did. On that question I feel the same difficulty as Lord Justice Bowen, and on the evidence as read before us I should have felt inclined to come to the conclusion that the contract was not induced by that representation; but as Mr. Justice Denman, who saw and heard Alderman Knight, was satisfied with his evidence, I cannot give my voice for reversing his decision."

In *Gutlon* v. *Marcus*, supra, the Court said (p. 335):—

"The ground of the bill is a fraudulent conspiracy. For proof it depends wholly upon oral testimony, and the judge who heard and saw the witnesses was not convinced by them. On the well known rule by which this court is governed in dealing with such evidence on appeal, we hardly need to go further to show that the plaintiff cannot prevail."

Presumably one of the most important objects sought to be secured by the change in the usual method of hearing equity cases, which was introduced by the new equity rules, was this very advantage in getting at the truth which would result from affording the trial court an opportunity to see and hear the witnesses on contested issues of fact and judge from their appearance and demeanor what weight and value should be given to their testimony. It was undoubtedly assumed that

under this practice and in accordance with the well-established rule the Federal Appellate Courts would give due weight to the advantage thus afforded to the trial judge and would not undertake to reverse his findings on conflicting testimony unless clearly unwarranted by the evidence before him. This is indicated by the provision in Rule 75 that the "evidence to be included in the record shall not be set forth in full, but shall be stated in simple and condensed form," and that as a general rule the testimony of witnesses shall be stated only in narrative form. This provision is plainly adapted to simplify very greatly the labors of the Appellate Court, provided its inquiry is in general to be limited to the question whether there was evidence to justify the findings and to the questions of law arising on the facts found; but it would place the Appellate Court at a further disadvantage as compared with the trial court if the Appellate Court were expected to try all the facts *de novo* without the strongest possible presumption in favor of the findings of the court below. It is impossible to escape the conclusion that this rule was adopted in recognition of the fact that it would serve no useful purpose to set forth all the evidence in full, for the very reason that the findings of the judge who heard the witnesses ought not to be set aside if there was evidence to support these findings.

This rule that the finding of a trial court which hears oral testimony should be accepted, if there is any evidence to sustain it, was expressly recognized in the recent case of

Adamson v. *Gilliland*, 242 U. S. 350,

a patent case heard by the District Court on oral testimony. The practical rule was said by the Court to be—

> ". . . that so far as the finding of the master or judge who saw the witnesses 'depends upon conflicting testimony, or upon the credibility of witnesses, or so far as there is any testimony consistent with the finding, it must be treated as unassailable.' *Davis* v. *Schwartz*, 155 U. S. 631, 636."

2. STRONGEST POSSIBLE REASONS IN PRESENT CASE FOR ACCEPTING FINDINGS OF FACT BY DISTRICT COURT UNLESS WHOLLY UNWARRANTED.

In the present case there are the strongest possible reasons why the findings of fact of the District Court should be accepted as decisive unless shown to be wholly unwarranted by the evidence.

Testimony Heard Orally.

1. All of the testimony was heard in open court with the exception of certain technical testimony relating to patents. The District Court, therefore, had a full opportunity to judge of the credibility of the witnesses.

Testimony Disputed and Witnesses Biassed.

2. Every issue material to the present case as to which the United States introduced testimony was disputed by the defendants. The witnesses for the United States whose testimony was material to these issues, outside of certain officials of the United Company, were practically all hostile to the United Company. The extent of their prejudice or bias, the credibility of their testimony, and the weight, if any, to be given to it, are questions which can far better be determined by the District Court which heard the testimony and observed the witnesses than it can be by the Appellate Court upon a consideration of a condensed printed record.

The United States, as the District Court observed, made "efforts which may fairly be described as extraordinary" (R. Vol. 1, p. 1152) to bring before the court all persons who felt or expressed any grievance against the United Company. Thus, the witnesses for the United States consist principally of the following classes:—

(*a*) Competitors of the United Company. These include R. H. Long, who manufactures a complete set of shoe machinery; J. J. Doidge, manager of Long's Company; C. A. Hamel,

who puts out a complete line of machines; Edwin A. Webster of the Haverhill Shoe Machinery Company, which puts out a complete line of machines; George W. Maloy, Charles S. Johnson, and John Cavanaugh of the Boylston Manufacturing Company, a competitor of the United Company; Frank W. Merrick, president, and Clarence S. Luitweiler, treasurer, of the Union Lockstitch Company; Lorenze Muther of the Peerless Machinery Company, which manufactures eyeletting machines, tip press and tip perforating machines, cementing machines, folding machines, and others; Nelson H. Seelye, who manufactures dieing-out machines; Solomon M. Cutter, who was general manager, and James N. Darrah, director and chairman of the executive committee, of the Standard Shoe Machinery Company, which manufactured a full line of bottoming machinery until it went out of business in 1901; Charles H. Morse, of the Fifield Shoe Machinery Company, which manufactured some fifty shoe machines; Alex Stone, export manager for the Atlas Works, of Leipzig, Germany, which makes a complete line of shoe machinery; William F. Donovan, president of the Atlas Tack Company, manufacturers of eyelets; all of which concerns were competitors of the United Company.

(*b*) Inventors or shoe machinery manufacturers who had endeavored to sell or entered into negotiations to sell out to the United Company and whose offers had been declined. These include Harry E. Cilley, George H. Clark, Zotique Beaudry, and Joshua S. Holt; also the following-named under paragraph (*a*), —R. H. Long, Frank W. Merrick, Clarence S. Luitweiler.

(*c*) Lessees who had violated their agreements with the United Company, or other persons with whom the United Company had had litigation or disputes. These include George R. Harsh; John E. Williams; William A. Hogan; S. Burton McNamara; Peter Tessier; Frank R. Hilliard; Ernest Bottomley; Irving A. Hadley; George A. Learned; Frank Morrison; Charles G. Ross; Abram Sochat; Herbert E. Chase; Frederick W. Herrick; Ira J. Webster; Thomas H. Shinn; Frederick W. Curtis.

(*d*) Members of the Shoe Manufacturers' Alliance, an organization of large shoe manufacturers opposed to the United

Shoe Machinery Company. This Alliance consisted of Jackson Johnson of the Roberts, Johnson & Rand Shoe Company; A. D. Brown of the Hamilton-Brown Shoe Company; George Brown of the Brown Shoe Company; Henry N. Peters of the Peters Shoe Company; Milton S. Florsheim of the Florsheim Shoe Company; Emanuel F. Selz of the Selz, Schwab Shoe Company; C. H. Jones of the Commonwealth Shoe & Leather Company (R. Vol. 1, pp. 119, 114–115); and Pearl E. Selby of the Selby Shoe Company (R. Vol. 1, p. 213). Practically all of the members of this Alliance testified for the United States against the defendants.

Since 1910 the members of this Alliance have been active in agitating against the United Company. Jones and others have appeared before Committees of Congress attacking the Company (R. Vol. 1, pp. 121–122). Their counsel has appeared before one or more Committees of Congress for the same purpose (R. Vol. 1, p. 122). Its members have been to the Department of Justice with respect to the United Company (R. Vol. 1, p. 121).

All of them are financially interested in the Boylston Manufacturing Company, which is a shoe machinery company with a capital of $500,000 or $600,000 (R. Vol. 1, p. 122).

The members of this Alliance showed in their testimony a strong bias against the United Company, due apparently to two causes: first, a desire to obtain, on account of their size, better rates of royalty than were granted to other manufacturers; and second, a desire to engage themselves in the manufacture of shoe machinery.

The change in Mr. Jones's attitude is well illustrated by the interview given by him to the Boston *Transcript* in 1906 in which he expressed the greatest satisfaction with the United Company (R. Vol. 1, pp. 130–133). At that time Jones said the only persons who could be behind attacks on the United Company must be people who wanted to manufacture machinery.

Jonathan Brown testified that Jones said to him in the summer of 1911, "It is time we big manufacturers should pay less royalty than the smaller ones" (R. Vol. 1, p. 733, lines 26–32). James W. Hitchings was present at the time and testified to the same effect (R. Vol. 1, p. 735, lines 32–37).

Immediately after the purchase by the United Company of the patents and inventions of Thomas G. Plant, Jackson Johnson, and Milton S. Florsheim, members of the Alliance, called upon Mr. Winslow, president of the United Company, and suggested that they would like to furnish the $3,000,000 that the United Company had paid Plant and that in return the United Company should give them its stock at $25 a share, the stock being worth $50 a share. In other words, their proposition was to obtain stock of the United Company worth $6,000,000 for a cash payment of $3,000,000. The substance of the talk was that some means should be found for giving the manufacturers whom they represented a large interest in the United Company, and it was said in a way that made Mr. Winslow understand that if he didn't there would be trouble (R. Vol. 1, p. 493).

Testimony as to Motives.

3. The purposes and motives which actuated the transactions in question in this suit are of the utmost materiality. Mr. Winslow, president of the United Company, Mr. Howe, one of the executive committee and its counsel, and other officials testified fully as to the intent and purposes with which the various transactions were undertaken. The District Court, which heard and observed them, was in a position to judge of their credibility.

District Court's Findings Based on over Three Months' Investigation.

4. The transactions in question in this suit involve the detailed conduct of an extremely complicated business over a period of more than twelve years, including an examination of the situation existing at the time of the formation of the United Company, the objects and purposes of the company, and the extent to which such objects and purposes have been carried out, the origin and reasons for the lease system and the causes for the modifications made therein, the reasons for the

purchase of various patents, contracts with inventors and other acquisitions, and the dealings of the United Company with over 1,000 lessees. Hundreds of transactions are involved, and an understanding of most of them is only possible upon a detailed examination of the facts relating to them. An understanding of the real purposes and motives of the Company and its officials, of the greater efficiency resulting from the formation of the United Company, and of the necessity for the lease provisions and the various acquisitions is only possible when based upon a thorough understanding of the shoe machinery industry and the difficulties involved in developing patented machines and in furnishing a vast variety of machines adapted for different uses upon a lease system.

The District Court, composed of three judges, devoted many months to this task. They heard evidence in open court for nearly three months. Their conclusion as to the intent and purposes of the United Company, the situation of the industry, and the necessity for and effect of the leases and acquisitions and of the other transactions involved in the suit, arrived at after months of study, should not be disturbed unless this Court is clearly satisfied that it cannot be sustained upon the evidence.

VII. FINDINGS OF FACT BY THE DISTRICT COURT.

The facts as found by the District Court completely refute the charges made by the petition. These findings of fact are not only fully sustained by the evidence, but necessarily follow from the evidence. Upon the basis of these facts there are no doubtful questions of law. Unless, therefore, this Court should decline to accept the facts so found, it can hardly be contended by the United States that the decree of the District Court dismissing the petition should not be affirmed.

1. THE DISTRICT COURT FOUND THAT DEFENDANTS DID NOT PLAN TO ACQUIRE A MONOPOLY OF ALL SHOE MACHINERY, AND TO REFUSE TO SELL OR LEASE ESSENTIAL MACHINES UNLESS PRACTICALLY ALL OTHER MACHINERY WAS TAKEN, WHICH IS THE CHARGE ON WHICH THE PETITION IS BASED.

We have shown (*supra*, pp. 7–8) that the charge of the petition is that the defendants having lawful patent monopolies under which they did the greater part of the business of the country in the principal essential shoe machines, viz., lasting machines, welt-sewing and outsole stitching machines, heeling machines and metallic fastening machines, and finding these patents about to expire, planned to extend their monopolies unlawfully, and to obtain an unlawful monopoly of all shoe machinery, by

(1) Acquiring all concerns engaged in the shoe machinery business, and then

(2) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer, except on condition that he take from them practically all other machinery which he required.

The various acts specified in the petition are alleged to be only steps in carrying out this unlawful project, and are material only in so far as they prove the existence of this project, and its carrying out by the defendants.

A. The District Court Found that the Defendants did not Plan to Acquire all Concerns Engaged in the Shoe Machinery Business.

As to this charge the District Court found:—

(R. Vol. 1, p. 1114.) "Referring to the allegation that the respondents 'conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery,' the utmost that the case can in any event be said to show is a purpose to acquire control of certain machinery connected with bottoming shoes, or later of certain clicking or eyeletting machines; and of this the United States became during the trial so far satisfied that it asked permission to amend the above allegation accordingly."

B. The District Court Found that the Defendants did not Plan to Acquire all Concerns Engaged in the Business of Manufacturing Bottoming Machines, as to which the United States during the Trial Limited its Charge of Monopoly.

As to this charge the District Court found:—

(R. Vol. 1, p. 1141.) "It further appears that, during the same period of time the cases wherein the business of a concern producing shoe machinery was offered to the United Company and refused by it were far more numerous than the cases of acquisition specified by the petitioner. As to several, at least, of these instances of refusal, the evidence warrants the belief that the business offered and refused much exceeded in importance to any such scheme of monopoly as now charged, any of the specified acquisitions. The cases in which inventions were offered and refused during the same period were many times more numerous than the patents or inventions acquired. If a monopoly of all machinery for attaching bottoms to up-

pers was really undertaken, it is hard to believe that opportunities would have been neglected, as they were, such as those for acquiring the Union lock-stitch machines or the welters and stitchers of the R. H. Long Company, all of them patented machines for use on welt shoes; or for acquiring a considerable business in producing McKay sewing machines, though these were unpatented and not capable of use on shoes of that kind."

C. The District Court Found that the Defendants did not Refuse to Sell or Lease Essential Machines unless practically all other Machines were Taken.

As to this charge the District Court found:—

(R. Vol. 1, p. 1155.) "As to the allegation that the defendants contemplated a policy of refusal to lease except on condition that the lessee buy or lease of them 'practically all other machinery of whatever kind necessary or useful' to him as a manufacturer of shoes, it requires no further notice, now that the charge of restraint or monopoly in 'any and all kinds of shoe machinery' has been abandoned. The evidence abundantly shows that nothing of this kind was ever contemplated, attempted, or done, and that there was never any justification for the charge as made."

2. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY WAS NOT FORMED TO ELIMINATE COMPETITION BETWEEN ITS CONSTITUENT COMPANIES AND THAT IT DID NOT ELIMINATE SUCH COMPETITION.

The United States charges that the United Company was formed to eliminate competition between its constituent companies or that the elimination of such competition made the formation of the United Company unlawful.

The only competition claimed by the United States was an alleged competition between the Ideal Lasting Machine of the Goodyear Company and the Chase machine and an experimental Hand Method Welt Lasting Machine of the Consoli-

dated Company, and between the welt machines of the Goodyear Company and the machines of the Eppler Company.

The District Court found that the real motive for the formation of the United Company was an effort after greater efficiency, and that if any competition could be said to exist between the constituent companies, it was trivial and of no practical importance.

The District Court found as to the business of the constituent companies:—

> (R. Vol. 1, p. 1128.) "Up to the time of their union each constituent concern had been dealing, generally speaking, in a line of shoe machinery for the most part distinct from that dealt in by the others."

As to the alleged competition between the Chase and the Ideal machines, the District Court, after showing that the Chase machine was adapted and used for men's welt shoes, and that the Ideal machine was adapted and almost wholly used for women's welt shoes, concluded:—

> (R. Vol. 1, p. 1130.) "That there was any attempt to put either machine into the market as against the other does not appear. No competition between the two in the usual sense of the term is shown. . . . I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines."

As to the alleged competition between the Ideal machine and the experimental Hand Method Welt Lasting Machine the District Court said:—

> (R. Vol. 1, p. 1130.) "With still another laster with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed."

With reference to the alleged competition between the Goodyear Company and the Eppler Company, the District Court

after referring to the differences between the machines of the two companies, and the differences in the character of shoes made by them respectively, and the insignificant business done by the Eppler Company, said:—

> (R. Vol. 1, p. 1131.) "The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful."

The District Court found as to the reasons for the formation of the United Company as follows:—

> (R. Vol. 1, p. 1131.) "No reason appears for supposing that the real purpose for which the constituent companies were brought together, as disclosed not only by the evidence regarding all the circumstances as they existed in 1899, but by the evidence as to the course of development thereafter pursued by the United Company, was other than that stated in a circular letter to the Goodyear stockholders issued February 8, 1899, the day following the organization of the United Company (Petitioner's Exhibit 152). This dwelt upon the advantages to be secured by putting into one control 'the most efficient types' of shoe machinery."

The District Court stated its conclusion as follows:—

> (R. Vol. 1, p. 1132.) "For the reasons stated, I am unable to find the charge that the United Company was unlawfully formed because of competition which it destroyed sufficiently supported by the evidence. It would, in any case, be difficult to regard this as sufficient ground for a decree dissolving the company into its component parts under a bill not filed until more than twelve years had passed since the combination complained of was accomplished. During this period, as the evidence shows, investments of a very large amount had been made, not merely by the defendants but also by the outside public, in the extension and development of the company's united business, the component companies passed out of existence, and the machines as made by them in 1899 were so far developed, improved upon, or added to by

the United Company as now all to have become obsolete. To put the parties or the public back into that state of the prior art which existed in 1899 is, of course, an impossibility."

3. THE DISTRICT COURT FOUND THAT THE "BASIC" PATENTS OF THE CONSTITUENT COMPANIES WERE NOT ABOUT TO EXPIRE.

The petition charged that the patents held by the constituent companies were about to expire in 1899. This was recited as a reason for the formation of the United Company.

The District Court held that this charge was not proved and that it was not a motive for the formation of the United Company.

(R. Vol. 1, p. 1133.) "At the final arguments, however, on June 2, 1914, the statement was made by petitioner's counsel that so many machines and patents were involved that examination of more than a very few had been impossible. It seems obvious, therefore, that the allegations in question could not have been founded, when they were made, upon any adequate or complete investigation of the facts.

"Nor can it be said that they have been sustained by the evidence before the examiner. It seems unnecessary to spend time in considering what patents could and what could not properly be regarded as 'basic,' in view of the fact that, of the patents principally relied on as such by the petitioner, those protecting the welter and stitcher of the Goodyear Company, there were two, one upon its welter, the other upon its stitcher, which ran until 1908 and 1909, respectively. The petitioner's final position, indeed, as to what was proved by the evidence before the examiner, was by no means that taken in the allegations referred to, but was only that the two machines above mentioned, and others protected in 1899 by patents not insisted on as 'basic' patents, became free to anyone to make or use—without any of the patented improvements added to them by the United Company since 1899, but nevertheless capable of successful commercial use—before the filing of this petition in 1911. In view of all the above, I must regard the allegations here in question as

not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organization of the United Company, or any of its subsequent doings."

The District Court further found that the machines of the United Company have always been patented.

(R. Vol. 1, p. 1115.) "At any rate it must be accepted that from the beginning the machinery offered by the respondent corporation was, in all its essential elements, protected by patents, and that there has been no proof to the contrary. So that, for the purposes of this case, the machinery has been mainly, if not entirely, of that character."

4. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT TAKE OVER THE CONSTITUENT COMPANIES AT EXCESSIVE PRICES.

The petition charged that the United Company took over its constituent companies "at values far in excess of real worth" (R. Vol. 1, p. 995).

The District Court found that no proof of any kind was offered in support of this charge.

(R. Vol. 1, p. 1128.) "To allegations found in the petition (p. 18) [p. 995] that the business and property of the Goodyear Company, the Consolidated Company, and the McKay Company were taken over by the United Company 'at values far in excess of real worth,' reference is made at this point only in order to state that no proof of any kind was offered in support of them, it was not argued on the petitioners' behalf that they were true, and they therefore require no further notice for any purpose in the case. There can be no doubt that each concern had an established business already of great value and possessing great possibilities of development, or that each also owned patents and property of very great value in connection with its business."

5. THE LEASES.

A. The District Court Found that the Leasing System was of Great Advantage to Shoe Manufacturers.

(R. Vol. 1, p. 1171.) "While in the early stages of the case there were some criticisms of any leasing system as opposed to a system of selling, the very great advantages to shoe manufacturers in general of being provided with machine equipment of the highest efficiency, and of being relieved of individual effort in that most costly and difficult part of manufacturing, and the general satisfaction with the system were so overwhelmingly proved, that all doubt that the leasing system in general is unimpeachable has been removed."

B. The District Court Found that the United Company did not Discontinue the Sale of Machines.

The petition charges that the United Company "discontinued the sale to boot and shoe manufacturers" of machines and devised arbitrary leases (R. Vol. 1, p. 997).

The District Court found that this charge was untrue and without justification.

(R. Vol. 1, p. 1153.) "None of the constituent companies were in 1899 selling outright the patented machines they manufactured. The bill alleges the contrary, and charges that one of the steps taken after 1899, in pursuance of the alleged scheme to restrain or monopolize, was to discontinue sales and compel leases. An attempt to support this charge by evidence wholly failed. Nothing of the kind was done, nor is it easy to see what grounds for making the charge could ever have been supposed to exist."

C. The District Court Found that the Leases did not compel a Shoe Manufacturer taking Machines previously put out by one of the Constituent Companies to take Other Machines not previously put out by such Constituent Company.

The District Court found that the evidence completely disproved this charge.

> (R. Vol. 1, p. 1162.) "The alleged plan of a refusal of what before could be had separately, as a means of compelling the taking of other machines, was a principal ground for invoking the Sherman Act.
>
> "The leases in evidence, as documents, fail to substantiate the charges either as to the contrivance of such a plan or as to its execution. It appears that after the consolidation there was no refusal or imposition of conditions as alleged, but that the defendants continued to give manufacturers terms which were substantially the same as before and in some instances better than those offered by the constituent companies before the consolidation. This is shown not only by the exhibits of 'independent' leases but by the testimony of officers of the company."
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> . . . . . .
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> (R. Vol. 1, p. 1163.) "The restricted or prohibitive leases do not in themselves as documents prove the denial of the right to procure, as before, independent leases for individual machines. As matter of fact, independent leases which did give the right to use the machines with machines of other kinds, made by other machinery manufacturers, were always procurable. This was the general rule, and if there were any exceptions they were, so far as appears, inconsiderable.
>
> "It is a result of the consolidation that the United Company offers more attractive contracts for a group of machines of different kinds than for machines of one kind only; but as it still offers the contract for machines of one kind on as good terms as before it is difficult to see how that is detrimental to the shoe manufacturers.
>
> "The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would also use others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had

no choice, or in disregard of the fact that it was merely an alternative form of lease. As the leases prove no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge."

D. The District Court Found that the Provisions in the Leases were not Adopted by the United Company for the Purpose of Monopolizing or Excluding the Use of Competitors' Machines.

The District Court found that the United Company made no changes in the leases as used by the constituent companies in pursuance of any arbitrary plan, but, on the contrary, the changes in each case were made because special circumstances had come to render it desirable; that the changes made in general tended to relax previous restrictions and to reduce the cost to lessees of installing the machines (R. Vol. 1, p. 1158); that the provisions were obviously prompted by the purpose of developing the company's business by offering the machines on terms more advantageous to users and were not intended to accomplish an arbitrary exclusion of competitors' machines. The District Court further found that the provisions in the leases were auxiliary to asserting rights unquestionably belonging to the lessor. It also found that there were sound mechanical and business reasons for grouping together machinery as it is grouped by the defendants' leases.

The following are a few extracts from the Court's findings on this subject:—

(R. Vol. 1, p. 1159.) "Considering the clauses objected to in the light of what preceded them, and of the circumstances attending their adoption by the defendants, the petitioner has not, in my opinion, proved that the defendants' object in adopting them was the prevention of competition by others. Such prevention might, indeed, follow from the more favorable terms offered lessees, but modifications made in the existing system for the direct

purpose of otherwise better adapting it to exclude competitors, would have been different in character from the modifications represented by these clauses.

"Not only would it have been unreasonable, as has been said, to expect the defendants to substitute a wholly different system from the leasing system which they found in use, but the evidence affords no reason to believe that anything of the kind was desired by manufacturers in general. The advantages to them of not having to tie up capital in patented machines, and of paying for the privilege of their use only according to the amount of use, were advantages which they cannot be supposed desirous of surrendering.

"Modifications in the contracts offered them tending, as these are shown to have done, to enable the company, through provisions adapted to increase the number of shoes worked on by each machine, to lessen the royalty charged per pair, and to diminish or dispense with the initial payment before required, were so obviously prompted by the purpose of developing the company's business through the perfectly legitimate method of offering them on terms more advantageous to users, that it would be unjust to treat them, on evidence no stronger than that here presented, as really intended to accomplish an arbitrary exclusion of users from any dealings with others.

"If it were made to appear that the leases containing these clauses accomplished in and of themselves an unlawful restraint of trade, or necessarily secured to the defendants an unlawful monopoly, the intent to accomplish these results would, of course, be imputed to the defendants without regard to their actual purpose in adopting and using them. But the evidence seems to me insufficient for the conclusion that such results are so accomplished. The contention that they are fails, in my opinion, to take into account the defendants' rights in the field lawfully secured to them in the various patented improvements they had lawfully controlled and combined; and fails also to concede them proper scope for the rights properly incidental to their control of said improvements, to make such agreements with their lessees as would best promote the efficiency in combined operation of the machines leased, and thereby best enhance and safeguard their just return therefrom in the form of royalties."

. . . . . .

(R. Vol. 1, p. 1187.) "The clauses objected to are all subordinate and auxiliary to maintaining rights which

unquestionably belong to the defendants; to charge their own prices and to choose as customers those who will pay those prices.

"The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them. Other modes, such as the requirement of arbitrary payment for the full period of the patents, would escape all such attacks. The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions."

. . . . . .

(R. Vol. 1, p. 1184.) "If leases for machines for use as a group are offered and accepted for sound business reasons, and if, because of the greater productivity of a group and of the less cost of maintenance, better prices can be made, the defendants and the shoe manufacturers need not forego the making of such contracts for the sake of possible competitors who may have only single machines to offer. Contracts for large equipments of machinery, furniture, and other articles are too common to be condemned for such reason. . . .

"The grouping of machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them as groups and a sufficient business reason for dealing with them as groups.

"That there are sound mechanical and business reasons for grouping together machinery as it is grouped by a series of prohibitive leases is abundantly established. The United States fails to show that the grouping of the machines is in fact made merely as an unlawful artifice and not because of sound mechanical and business reasons. It has referred to certain leases in which there appears to be no necessary mechanical relation between some of the machines grouped. Thus to a limited extent it may be true that the grouping is for the purpose of trade or of contract rather than because of the close relation of the machines in process of manufacture; but this is insufficient to show that the principal purpose was not, as is contended by the defendants, to secure by efficient co-operation of machines a larger production of shoes."

E. The District Court Found that the Leases did not Result in the Arbitrary Exclusion of Competitors' Machines whatever the Intent with which they were Adopted.

The District Court found that the defendants' machines were used because of their merits and not to any substantial extent because of the lease clauses.

> (R. Vol. 1, p. 1187.) "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer. To say that this is due, in any substantial degree, to the fact that its leases run beyond the terms of patents, or because of the exclusive use, prohibitive or cancellation clauses, rests largely, if not entirely, upon assumption. But that the business of these defendants rests upon the lease provisions objected to in such a substantial amount as to constitute any factor of independent force in securing or maintaining a monopoly does not appear."

F. The District Court Found that the United Company did not Exact Exorbitant Prices for Duplicate Parts and Exorbitant Return Charges.

The petition charges that the United Company's leases required lessees to obtain duplicate parts used in repairing the United Company's machines from the United Company and exacted "exorbitant prices" for such parts. It also charged that the leases required payment of return charges upon the termination of the lease which in some cases amounted to approximately the original cost of building the machines (R. Vol. 1, p. 997).

The District Court held there was no evidence justifying these charges.

> (R. Vol. 1, p. 1155.) "The evidence failed to show that lessees from the United Company had ever been compelled to pay exorbitant charges for repair parts, etc., or to pay any unreasonable return charges on leased machines."

G. The District Court Found that the Leases have not been Arbitrarily Enforced.

The petition charges that the leases were continually, persistently, and arbitrarily enforced (R. Vol. 1, p. 997).

The District Court found that there was no proof of this charge and that, on the contrary, it appeared that the United Company had been moderate with respect to such enforcement.

> (R. Vol. 1, p. 1114.) "There is no proof that the United Shoe Company has enforced its leases in any arbitrary or unreasonable manner. On the whole, it seems to have been moderate with reference to such enforcements, and the number of cases in which anything in the way of a forfeiture has been demanded has been so small that, on looking over the great mass of the operations of the United Shoe Company, such enforcements have been so few as to be practically negligible; and there is no evidence that the duplicate parts, extras, and other incidentals furnished by the United Shoe Company have been sold at exorbitant prices fixed by it, or that the cost involved in the return of machinery has, in any way, approximated its original cost, unless, possibly, in some exceptional instances which have not caught the eye of the court. We do not think the case as developed has turned on these particular allegations."

6. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT MAKE ACQUISITIONS OF COMPETING CONCERNS WITH INTENT TO MONOPOLIZE.

The petition charges that the defendants in pursuance of their purpose to monopolize the shoe machinery industry absorbed many competitors. A list of 59 such acquisitions is set forth in the petition.

The District Court considered the purchase of the patents from Thomas G. Plant separately. As to the 58 other acquisitions it found that the greater part of them were acquisitions of concerns dealing in supplies or machines not made by the United Company and, therefore, not competing with the

United Company, and that as to the few remaining acquisitions it was not shown in any case that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company of such consequence as justifies either the conclusion that the acquisition was for the purpose of suppressing competition or the conclusion that a material restraint of trade was thereby accomplished, or that such acquisition contributed anything essentially important to the success obtained by the United Company.

The court after dismissing as immaterial a number of unimportant acquisitions because not related to the classes of machines to which the United States now limits its claim of monopoly or because no foundation for a charge of competition with the United Company existed, said:—

> (R. Vol. 1, p. 1139.) "The instances then remaining in which the United Company was at the time producing or trying to develop for production a patented machine for doing work more or less similar to that for which the invention of the machine acquired was intended, are the only ones capable of being regarded as of any possible significance for the purposes of the petitioner's case. In all such cases it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding[ed] in rendering commercially successful.
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> "No case, however, is found among the acquisitions of the character last described wherein it has fairly been made to appear that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company, of such consequence as justifies either the conclusion that the acquisition was for the purpose of suppressing such competition, or the conclusion that a material restraint of trade was thereby accomplished. In most of the cases of this sort the machine or device acquired was claimed to infringe patents belonging to the United Company, or the patent acquired was one which some machine belonging to it was claimed to infringe, or the application acquired was in interference with applications of its own; and the object of the acquisition is shown to have been

the avoidance or compromise of pending or threatened litigation. In such cases it is still less possible to say that any wrongful absorption of a 'competitor's' business has been proved.

"The acquisitions above regarded as the only ones of any possible significance in the case were made at various separated times during the period of eleven years or thereabouts above referred to. It can not be said that the later ones were in contemplation when the earlier acquisitions were made, because there is nothing to show that the circumstances attending any of them were such as could have been anticipated as likely to occur at the time of the preceding acquisitions. The most that can be said is, that as, in the progress of events, the needs of the United Company became manifest and these opportunities presented themselves, they were availed of.

"Taken together, the acquisitions of this class are, in importance and amount, only of a consequence relatively small in proportion to the entire field then lawfully belonging to the United Company. It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build. Speaking of them generally, it may be said that the invention or machine obtained required further development in the company's hands before it could be properly used."

7. THE DISTRICT COURT FOUND THAT THE PURCHASE FROM THOMAS G. PLANT WAS NOT MADE IN PURSUANCE OF THE ALLEGED SCHEME TO MONOPOLIZE.

The District Court found that the purchase of patents from Thomas G. Plant in 1910 was made by the United Company to obtain the benefit of Plant's inventions and to settle and avoid serious patent litigation, and not for the purpose of suppressing competition.

(R. Vol. 1, p. 1142.) "The evidence does not show Plant to have been a competitor in the ordinary sense. He was not carrying on any going business in shoe ma-

chinery. He was neither producing his machines nor supplying them to users upon any commercial scale, nor was he prepared so to supply them, though he had issued an illustrated catalogue of them. The petition alleges that he had been inventing and patenting his improvements for at least two years before 1910. In one factory only were machines embodying them being operated; this belonged to the Thomas G. Plant Company, whereof he owned a majority of the stock. He installed them there in May, 1910, displacing the United Company's machines previously used there in order to do so. Before he installed them there, he had offered to equip two other factories with them without requiring royalties for their use, but these offers had been declined."

. . . . . .

(R. Vol. 1, p. 1143.) "The evidence regarding Plant's negotiations with the defendants sufficiently proves that they were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else; but that, on the contrary, all the efforts toward such a purchase were made by him. The first overtures toward it came from him; he began them soon after he had put his machines into the Plant factory; they led to interviews, all of which he sought and at which his proposals were declined without encouragement to renew them. Nowhere in the evidence is any indication found that before Plant's overtures were thus made any purchase whatever from him had been suggested to or considered by the defendants.

"Whatever the merit of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially successful in September, 1910, or to have been capable of such success in their then stage of development. They are shown to have been lightly built, not adapted to produce men's shoes, and by no means satisfactory in making women's shoes, the kind of work to which the Plant factory was devoted. The evidence is uncontradicted that, while operated there, they fell behind the United Company's machines, which they had supplanted, in efficiency—that breaking down and defective work was more frequent with them—and the cost per pair of making shoes with them distinctly greater. Though some of them, as later developed and improved by the United Company, proved to have merit, the most that can be fairly said of them in 1910, on the evidence, is that they were more or less

promising experimental machines. There was no complete set of them for combined operation; for that purpose several important machines were yet to be developed. In the state in which the United Company took them over, they were not found capable of profitable use. Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshold of extensive competition with the United Company.'"

. . . . . .

(R. Vol. 1, p. 1144.) "The terms finally agreed on with Plant were so much more favorable to the United Company than any he offered when he first approached them, and so inconsistent with his previous attitude toward them, as to leave no reasonable ground for believing that the defendants had ever sought, expected, or planned for the transaction as carried out. And in what they were thus unexpectedly enabled to acquire from him, there was included so much that was plainly of far greater consequence to them than could have been the avoidance of such competition as they can reasonably be supposed to have apprehended from his incomplete and undeveloped line of inventions—patents and machines also included—as to leave no sufficient ground for believing that avoidance of competition was their principal motive in accepting the opportunity offered. The normal, natural, and obvious business reasons, of wholly different kinds, why they should accept instead of refusing it, appear to have been so complete and sufficient as to render the conclusion unreasonable that it was accepted in order to escape competition."

. . . . . .

(R. Vol. 1, p. 1145.) "The evidence that among these patented improvements obtained from Plant there were enough of sufficient value, in the defendants' hands and used as they only could have used them in further developing and perfecting the machines they were then producing or trying to produce, to make this part of the total acquisition extremely profitable to the United Company, was not met by any sufficient proof to the contrary. The agreement to take the patents and inventions was not made until after a careful examination and report as to their merits. The belief thereon founded that, used as above, they would be worth acquiring upon the terms proposed, is shown to have been justified by the result, and the acquisition can not be criticised so far as it was

occasioned by that belief. As developed and added to its own machines by the United Company, some of the inventions acquired have proved to be of a value such as fairly justifies their claim that the patents acquired were the controlling feature of the purchase.

"The evidence shows also, without serious contradiction, that one result of the bargain made with Plant was to relieve the United Company from an amount of litigation, then pending or in prospect, which would otherwise have burdened and hindered it to an extent far greater than it had ever had reason to apprehend from any litigation with which it had before been concerned."

. . . . . .

(R. Vol. 1, p. 1145.) "It was part of the bargain with Plant, or followed from it as a result, that the above controversies were settled or avoided. That the prospect of accomplishing this result was a further normal, natural, and powerful inducement to the agreement made with him can not be reasonably doubted. In so far as the agreement was thus intended, no criticism of it can be valid.

"The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition. No such competition or prospect of competition at the time is proved as would justify such a conclusion. The competition threatened by Plant and his efforts to induce the defendants, in order to avoid it, to buy his machines and patents by themselves were wholly ineffectual. They met with nothing but refusal on the defendants' part to consider his proposals. It was not until he offered, through the intermediary he last employed (Smith), the shoe manufacturing business of the Plant Company as well that the defendants consented to deal with him.

"While it may have been his plan to realize a profit by threatening competition, it was not until this proposition, based upon tangible property of substantial value and of patent rights, was made, that any sale was effected. The property acquired being proved to have been worth the amount paid, the argument that the defendants were so anxious to hold a monopoly as to be willing to pay

$6,000,000 or any other large sum, in order to get rid of a competitor, or that this was done in pursuance of a general plan conceived in 1899, fails completely."

8. THE DISTRICT COURT FOUND THAT THE ACQUISITIONS WERE NOT MADE AT EXORBITANT PRICES.

The District Court held that this charge was not established.

(R. Vol. 1, p. 1147.) "The charge that competitors have been bought out at 'exorbitant prices' is found not established in the case of the Plant acquisition, as has just been stated. Nor is evidence found sufficient to establish it in the case of any one of the numerous minor acquisitions specified in the petition. It has not been insisted on in argument that this charge is proved as to any one of them."

9. THE DISTRICT COURT FOUND THAT UNLAWFUL COVENANTS WERE NOT TAKEN FROM THOSE WHOSE BUSINESS WAS PURCHASED OBLIGATING THEM NOT TO COMPETE AND TO ASSIGN INVENTIONS TO UNITED COMPANY.

The District Court held that these covenants did not exceed what the law sanctions as necessary to protect the parties.

(R. Vol. 1, p. 1141.) "The petition charges generally that covenants in writing were taken from substantially all those whose business was acquired as specified, (1) not to engage for long terms of years in competition with the defendants in commerce in shoe machinery, (2) to convey all inventions or patents in shoe machinery which they might make or acquire during such terms to the defendants.

"These charges are not justified by the documents themselves, which have been produced. They are by no means uniform in their terms, there was no generally prescribed form for them, nor were they all the work of the same hands. Each was framed according to the circumstances of the particular transaction. In many cases, at least, the agreements required only that there should

be no competition in the line of business involved in the particular transaction, or that all patents or inventions thereafter made in the particular line to which the acquired invention belonged should be transferred. There are enough of the agreements in these cases which are without covenants of the kind described, to leave the allegation unjustified that such covenants were required in substantially all. And of the instances wherein covenants are found in any degree answering the alleged description, it may be said generally that none are clearly shown to have exceeded what the law permits. Still less reasonable would it be to regard what is found in them as indicating a consistent purpose on the defendants' part to exclude all those with whom the agreements were made from all possible future competition with the United Company."

10. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT COMMIT OTHER ALLEGED UNFAIR, MONOPOLISTIC OR OPPRESSIVE ACTS.

In paragraph VI of the petition (R. Vol. 1, p. 999) the defendants are charged with committing various other acts described as "unfair, oppressive," and "monopolistic." These acts are not specified in the petition. A bill of particulars setting forth such alleged acts relied on by the United States was filed during the trial (R. Vol. 1, p. 1075). As to the majority of acts so specified in the bill of particulars no evidence whatsoever was introduced by the United States. As to those acts in support of which the United States attempted to introduce evidence, comparatively few were relied upon in the argument before the District Court or in the brief of the petitioner filed in the District Court (R. Vol. 1, pp. 1146–1147).

The District Court set forth in its opinion the facts in respect to those transactions which were relied upon by the United States at R. Vol. 1, pages 1147–1152. It then summarized its findings in respect to these charges as follows:—

(R. Vol. 1, p. 1152.) "The history of the proceedings in this case indicates that efforts which may fairly be described as extraordinary have been made to bring before

the court, so far as possible, all sayings or doings of any of the numerous defendants or their representatives, during the period beginning with 1899 and ending with 1911, which might afford ground for charging them with oppressive, coercive, or like unfair conduct toward competitors of the United Company or the public. In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignificant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects."

II. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY DID NOT MAKE ENORMOUS AND UNREASONABLE PROFITS.

The petition charges that the United Company made "enormous and unreasonable profits" as a result of the alleged unlawful acts charged in the petition (R. Vol. 1, p. 1026). The District Court held that this charge was not established:

(R. Vol. 1, p. 1135.) "No support is found in the evidence, for the charge in the petition (Par. X) that 'enormous and unreasonable profits' have been made. This allegation is made in connection with and apparently depends upon the allegation of which, as above stated, there is no proof, that the properties combined in 1899 were taken over at excessive valuations. Nothing shown by the evidence warrants the conclusion that profits unreasonably out of proportion to the extremely large cost at which the business has been developed and is maintained, the great investment of capital it has required, and the enterprise, inventive skill, and business ability devoted to it, have been realized. Nor has it been made to appear that the charges made for the privilege of using the machines are exorbitant or unreasonable; especially in view of the great benefit to manufacturers using them, in lessening their cost of production."

12. THE DISTRICT COURT FOUND THAT THE DEFENDANTS DID NOT HAVE AN UNLAWFUL PLAN AND PURPOSE.

The petition charges an unlawful plan to monopolize shoe machinery (R. Vol. 1, p. 994). The United States contended in the District Court that, even if all the acts and transactions as to which evidence was introduced were lawful if considered singly, the unlawful plan in pursuance of which it was alleged they were carried out made them unlawful.

The District Court held that there was no direct evidence of such unlawful plan, that whether it existed must be judged by "the necessary results of all the steps proved to have been taken by them [the defendants], as a whole" (R. Vol. 1, p. 1133), and that the evidence disclosed no unlawful purpose.

> (R. Vol. 1, p. 1133.) "Of their actual intent in forming it and in taking the various steps which they have taken as above in connection with it, there is no direct proof overcoming their denial that it was such as the petition charges, and no way of judging except from the necessary results of all the steps proved to have been taken by them, as a whole."
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> . . . . . .
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> (R. Vol. 1, p. 1119.) "Nevertheless, we fail to find in the development of the United Shoe Machinery Company, and its operations, any support for the alleged charges in the bill of intended oppression, arbitrary conduct, or anything of that nature, especially so far as any allegations cover any attempts to destroy or cripple competitors. Looking at the great mass of facts proven in the case, and the immense number of transactions of the United Shoe Machinery Company, the evidence offered in that direction is so ineffectual that its weakness furnishes of itself satisfactory proof against what was intended to be established thereby. We find no evidence of what was shown especially in the Tobacco Company cases, namely, a purpose to destroy what could not be acquired by straightforward methods. The fact that the United Shoe Company has acquired so large a percentage of the business of the country to which it devoted itself comes so largely from the use of extraordinarily competent methods as to shut out from the eyes of the impartial

investigator suggestions of other methods. So we lay aside that part of the case, and deal only with the proven facts, and the legitimate results of those facts, with little consideration, however, for any charges in this connection, or elsewhere, of intended oppression or unreasonable course of procedure, or of results which can be attributed to any unworthy motive."

13. THE DISTRICT COURT FOUND THAT THE UNITED COMPANY HAS NOT OBTAINED AN UNLAWFUL MONOPOLY.

A. The District Court Found that the United Company has no Monopoly of all Shoe Machinery.

The petition charges a plan to monopolize all shoe machinery and that such monopoly has been obtained. As we have stated above, the United States has abandoned this charge during the course of the trial. The District Court said:—

(R. Vol. 1, p. 1127.) "The restraint or monopoly alleged in the petition is restraint or monopoly of interstate commerce in 'any and all kinds of shoe machinery,' *i.e.*, in shoe machinery generally.

"But it appeared early in the trial that no such charge could be proved, because neither the business of the component companies in 1899 nor that of the United Shoe Company from its beginning until the bill was filed related to 'all kinds of shoe machinery.' Both were always limited to certain kinds only. This was finally conceded, and the field of trade in shoe machinery with which this case is concerned limited by concession of the complainant's counsel to machines of the following kinds: (1) Lasting or 'pulling-over' machines, used for adjusting and attaching the upper of a shoe in process to a last; (2) machines for preparing bottoms and heels and fastening them to uppers; (3) machines for finishing bottoms and heels after they have been so fastened; (4) eyeletting machines for inserting eyelets in uppers; (5) 'clicking machines' for cutting out uppers. The 'shoe machinery' as to which restraint or monopoly is charged, therefore, includes machines of the above kinds only, for the purposes of all questions hereinafter considered. It is to be

noted that such machines are insufficient for the making of a complete shoe, and that no attempt to control machines for stitching uppers is charged."

B. The District Court Found that the United Company has no Monopoly of Bottoming Machines to which the United States Limited its Charge during the Trial.

The District Court found on this point:—

(R. Vol. 1, p. 1135.) "It is nevertheless true that, considering the whole field of machinery for stitching together the bottoms and uppers of shoes, there has all the time been free competition. The use of other machinery to accomplish the purpose has always been open to shoe manufacturers. In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate means—better machines. Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success."

C. The District Court Found that the United Company's Success has been Due solely to the Merits of its Patented Machines and the Service it Renders with Them.

The District Court found that the success of the United Company's machines was due to the merits of the machines themselves and the service rendered with them, and that the "proof is complete" that such success "has been in fact reached by the use of methods entirely lawful" (R. Vol. 1, p. 1136).

(R. Vol. 1, p. 1187.) "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer."

. . . . . .

(R. Vol. 1, p. 1134.) "The combined business of the component companies as conducted and developed since 1899 by the United Company, related most largely to the machines used in producing welt shoes. The use

of such machines (and thereby the production of and demand for such shoes) is shown to have been very greatly promoted by patented improvements made upon the machines of 1899 by that company, greatly increasing their efficiency and capacity, and by improvements effected by that company since 1899 in the methods of manufacturing them. It appears that the total number of welt shoes produced in this country in 1899 was about 17 million pairs; in 1910 about 86 million; the total production of all kinds of shoes increasing during the same period from about 175 to about 280 million; the Goodyear welt shoe being all this time in direct competition with the McKay sewed shoe.

"It is further shown that the above improvements in the machines and their manufacture were accomplished by means of constant investigation, experiment, testing, and invention by competent experts employed by this company, involving a very large expenditure on its part. These efforts were directed not only toward making each machine as efficient as possible by itself, but also toward increasing its efficiency for so performing its own operation upon a shoe as best to combine it with the work upon the same shoe by the numerous other machines required for performing the remaining necessary operations, in order that all the many successive operations performed should cooperate toward the most economical and efficient accomplishment of the best final result in product. And besides thus developing and improving the machines of 1899, the company kept pace with the requirements of manufacturers by the invention and production of many other machines or improvements, unknown in 1899, as the need for them became apparent.

"There is no question that the above-described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufacturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion.

. . . . . .

(R. Vol. 1, p. 1135.) "If there is any sense in which the result attained as above can be called a 'monopoly,'

it does not follow, in view of the circumstances shown, that the defendants have either restrained trade or been guilty of monopolizing or attempting to monopolize within the meaning of the act. Nor can I regard the case as one in which any presumption arises, from the fact that so large a proportion of the users of these machines use the defendants'—that the defendants have committed any of the above forbidden acts in accomplishing the above result. The proof is too complete that it has been in fact reached by the use of methods entirely lawful, the leading features whereof are below indicated. As has been said, the field they have occupied is a special field, and the product for which their machinery is adapted is of higher price and quality than the product of the machinery of others.

"The business which the defendants have developed and established is not, and has never been, one in which everybody might freely engage. No one else could lawfully make or use machines containing improvements covered by the defendants' patents. Nor can it be said that the demand for such machines which they have supplied existed independently of the defendants; on the contrary, they have created it by the new methods of shoe manufacture which their improvements have educated and enabled manufacturers to follow. It cannot justly be said that the case is one in which a field of commerce normally belonging to all has been captured by a single concern. The principles applying in such cases can not justly be applied here. In so far as the defendants' occupation of the field has been due to the greater desirability of their patented machines and to the superiority of their methods of making and supplying users with such machines, no reason appears for holding it unlawful, whatever its extent.

"Supplementing the production and development of its various patented machines, methods introduced by the United Company for keeping them in efficient operating condition while in the hands of their various users throughout the country have most effectively aided the development of its business. It has undertaken not only to train operatives in the proper use of the machines and to secure the prompt repair of any machine disabled in use, but also to supply each user from time to time with the latest improvements, either by adding them to the machines or by substituting improved for superseded machines, without extra cost to the user. This service it has furnished by maintaining at central points bodies of competent employees who attend to the above matters whenever and

wherever they are notified by users that such attention is desired.

"A system of standardization, introduced since 1899, whereby corresponding parts of the various machines have been so constructed as to be interchangeable whenever possible, has, in connection with the service furnished as above, effected a great reduction in the time lost by machines in waiting for repair. The introduction of such a system could not have been effected by the component companies because each carried on the manufacture of its machines at a different place. While each of them rendered to its users some service of the character described, this was done to a limited extent only; and the maintenance of any such system of rendering it as the United Company has pursued would have been impossible to them because of the heavy outlay involved.

"The service secured to users of the machines by the system just described has been furnished to users without charge in addition to the royalties paid by them under the leases of their machines. For duplicate parts, extras, etc., required in operation, repair, or renewal, the terms of the leases required payment. Allegations in the petition that exorbitant prices were charged for such duplicate parts, etc., were not sustained by the evidence, and have not been insisted on in argument.

"That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason."

VIII. GENERAL APPLICATION OF THE SHERMAN ACT TO THE PRESENT CASE.

Only such transactions are condemned by the Sherman Act as prejudice the public interests because by their inherent nature they materially and unduly restrict competition or obstruct the course of trade, or because by reason of the intent with which they are done they accomplish this result.

Transactions which are normal and usual, which seek to further trade by normal or reasonable methods, or which are entered into and performed for the legitimate purpose of reasonably forwarding personal interest and developing trade are not within the act.

In *Standard Oil Company* v. *United States*, 221 U. S. 1, the Court said (pp. 58, 62):—

> "Without going into detail and but very briefly surveying the whole field, it may be with accuracy said that the dread of enhancement of prices and of other wrongs which it was thought would flow from the undue limitation on competitive conditions caused by contracts or other acts of individuals or corporations, led, as a matter of public policy, to the prohibition or treating as illegal all contracts or acts which were unreasonably restrictive of competitive conditions, either from the nature or character of the contract or act or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of reasonably forwarding personal interest and developing trade, but on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such as enhancement of prices, which were considered to be against public policy."
>
> ". . . And it is worthy of observation, as we have previously remarked concerning the common law, that although the statute by the comprehensiveness of the enu-

> merations embodied in both the first and second sections makes it certain that its purpose was to prevent undue restraints of every kind or nature, nevertheless by the omission of any direct prohibition against monopoly in the concrete it indicates a consciousness that the freedom of the individual right to contract when not unduly or improperly exercised was the most efficient means for the prevention of monopoly, since the operation of the centrifugal and centripetal forces resulting from the right to freely contract was the means by which monopoly would be inevitably prevented if no extraneous or sovereign power imposed it and no right to make unlawful contracts having a monopolistic tendency were permitted. In other words that freedom to contract was the essence of freedom from undue restraint on the right to contract."

In *United States* v. *American Tobacco Co.*, 221 U. S. 106, the Court said (p. 179):—

> "Applying the rule of reason to the construction of the statute, it was held in the *Standard Oil Case* that as the words 'restraint of trade' at common law and in the law of this country at the time of the adoption of the Anti-trust Act only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade or which, either because of their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade, that the words as used in the statute were designed to have and did have but a like significance. It was therefore pointed out that the statute did not forbid or restrain the power to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose."

In *Nash* v. *United States*, 229 U. S. 373, the Court, referring to the Standard Oil and Tobacco Cases, said (p. 376),—

> "Those cases may be taken to have established that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In *Eastern States Lumber Ass'n* v. *United States*, 234 U. S. 600, the Court said (pp. 609–610):—

> "It [the Sherman Act] broadly condemns all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce. It is true that this court held in the *Standard Oil* and *Tobacco Cases*, *supra*, and in the subsequent cases following them, that in its proper construction the act was not intended to reach normal and usual contracts incident to lawful purposes and intended to further legitimate trade. . . ."

Public Interest must be Prejudiced.

It is essential that the public interest be prejudiced. A restraint which is not of such a character as to prejudice the public interests is not covered by the statute.

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, the Court said (p. 174),—

> "In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented, and hence not only the prohibitions of the statute but the remedies which it provided were co-extensive with such conceptions."

Sherman Act must be Interpreted to Carry out its Purpose.

The statute is general in its terms and as held in the Standard Oil and Tobacco Cases must be interpreted so as to carry out the public policy which it manifests. In the Tobacco Case the Court said (p. 181):—

> ". . . it was pointed out [in the Standard Oil Case] that the generic designation of the first and second sections of the law, when taken together, embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts were clothed. That is to say, it was held that in view of the general language of the

statute and the public policy which it manifested, there was no possibility of frustrating that policy by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by any indirection the prohibitions of the statute."

For the same reason it follows that no transactions whatever their garb and whether new or old in character are condemned unless they are prohibited by the spirit or purpose of the statute. In other words, the particular circumstances of each case must be examined to determine the character of the acts.

Incidental Restraints not Unlawful.

All restraints are not covered by the act. Those that are incidental to a legitimate purpose, which are the result of reasonable normal or usual transactions entered into for the legitimate purpose of furthering trade or personal interests, are permissible. As said in *United States* v. *Joint Traffic Asso.*, 171 U. S. 505 (p. 568):—

"... to treat the act as condemning all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the application of the act far beyond the fair meaning of the language used. The effect upon interstate commerce must not be indirect or incidental only. An agreement entered into for the purpose of promoting the legitimate business of an individual or corporation, with no purpose to thereby affect or restrain interstate commerce, and which does not directly restrain such commerce, is not, as we think, covered by the act, although the agreement may indirectly and remotely affect that commerce."

Importance of Intent.

Certain acts by their very nature are of such a character as necessarily to prejudice the public interests and unduly restrain trade or create a monopoly. In such instances the intent to violate the statute may be conclusive.

In all other instances the intent to accomplish the unlawful purpose must be shown either directly or inferentially from the circumstances of the case.

Thus where the acts alone might not produce the unlawful result such intent is required.

Swift & Co. v. *United States*, 196 U. S. 375.

Where the transaction is of a doubtful character, that is, where the transaction might be entered into for the purpose of prejudicing the public and wrongfully restraining trade or excluding others from the business or might be undertaken for the legitimate purpose of fostering trade, the intent as shown by direct evidence or by inference from the circumstances of the case may determine the legality of the transaction.

Thus in *United States* v. *Reading Co.*, 226 U. S. 324 (p. 370), the Court said:—

> "Whether a particular act, contract or agreement was a reasonable and normal method in furtherance of trade and commerce may, in doubtful cases, turn upon the intent to be inferred from the extent of the control thereby secured over the commerce affected, as well as by the method which was used. Of course, if the necessary result is materially to restrain trade between the States, the intent with which the thing was done is of no consequence. But when there is only a probability, the intent to produce the consequences may become important. *United States* v. *St. Louis Terminal Association*, 224 U. S. 383, 394; *Swift & Co.* v. *United States*, 196 U. S. 375."

The Standard Oil Case and the Tobacco Case also show the importance of intent.

In the Standard Oil Case it appeared that the Standard Oil Company had acquired by purchase and combination a large and controlling portion of the oil business of the country and eliminated competition between the companies acquired. This alone, however, was not held to constitute an illegal restraint of trade or monopoly. The Court held that these circumstances gave rise in and of themselves, "in the absence of countervailing circumstances, to say the least, to the *prima facie* presumption of intent and purpose to maintain the dominancy over the oil industry, not as a result of normal methods of industrial development . . ." (221 U. S. 75), and that this "*prima facie* presumption of intent to restrain trade, to monopolize and to bring about monopolization" was "made con-

clusive by considering" the conduct of the persons and corporations, the proof as to what was done under the various agreements and the modes in which the power vested in the Standard Oil Company was exerted and the results arising from them (221 U. S. 75). It was held that the transactions prior to the formation of the trust agreements of 1879 and 1882, including those agreements showed

> "an intent and purpose to exclude others which was frequently manifested by acts and dealings wholly inconsistent with the theory that they were made with the single conception of advancing the development of business power by usual methods, but which on the contrary necessarily involved the intent to drive others from the field and to exclude them from their right to trade and thus accomplish the mastery which was the end in view" (221 U. S. 76).

The transactions up to the time of the formation of the New Jersey Corporation were held to make manifest "the continued existence of the intent," and the exercise of the power of the corporation was likewise held to show this purpose and intent (221 U. S. 76, 77).

In the American Tobacco Case the American Tobacco Company had by purchase and combination acquired a dominating control of the tobacco industry. Here again the Court reached the conclusion of wrongful purpose. It said (221 U. S. 182):—

> "We say these conclusions are inevitable, not because of the vast amount of property aggregated by the combination, not because alone of the many corporations which the proof shows were united by resort to one device or another. Again, not alone because of the dominion and control over the tobacco trade which actually exists, but because we think the conclusion of wrongful purpose and illegal combination is overwhelmingly established by the following considerations:"

The Court then goes on to recite the circumstances showing an "ever-present manifestation . . . of the purpose to restrain others and to monopolize . . . trade" (221 U. S. 182).

PART TWO.

FACTS AND ARGUMENT.

I.

FORMATION OF THE UNITED COMPANY.

1. THE CONSOLIDATION OF THE GOODYEAR SHOE MACHINERY COMPANY AND ITS SUBSIDIARY COMPANIES WITH THE CONSOLIDATED & McKAY LASTING MACHINE COMPANY AND THE McKAY SHOE MACHINERY COMPANY INTO THE UNITED COMPANY IS THE SAME CONSOLIDATION HELD LAWFUL AND VALID AND NOT CONTRARY TO THE SHERMAN ACT IN UNITED STATES *v.* WINSLOW, 227 U. S. 202.

In *United States* v. *Winslow*, supra, the indictment charged that for twenty-five years last past practically all the shoes worn by people of the United States were manufactured by the aid of several different kinds of machines, namely,

lasting machines,
welt sewing machines,
outsole stitching machines,
heeling machines,
metallic fastening machines;

that the Goodyear Shoe Machinery Company manufactured 80% of all the welt sewing and outsole stitching machines, and 10% of all the lasting machines; that the Consolidated &

McKay Lasting Machine Company manufactured 60% of all the lasting machines, and the McKay Shoe Machinery Company manufactured 70% of all the heeling machines and 80% of all the metallic fastening machines, and that these companies manufactured their machines under United States patents, that they were combined into the United Company in pursuance of a conspiracy to extend the defendants' monopolies and rights unlawfully, to oppress shoe manufacturers and restrain trade, and that their combination in the United Shoe Machinery Company was an unlawful combination in violation of the Sherman Act.

In the present case the petition charges almost in the language of the indictment that for twenty-five years all boots and shoes worn by people of the United States had been manufactured by the aid of machinery; that the principal machines so used are lasting machines, welt sewing machines and outsole stitching machines, heeling machines and metallic fastening machines; that some of such shoe machinery is manufactured under letters patent; that prior to February, 1899, a large number of persons and corporations were engaged in the manufacture of shoe machinery in competition with each other; that the principal concerns so engaged were the Goodyear Shoe Machinery Company and its subsidiaries, manufacturing 80% of welt sewing and outsole stitching machines and 10% of the lasting machines, the Consolidated & McKay Lasting Machine Company, manufacturing 60% of all the lasting machines, and the McKay Shoe Machinery Company, manufacturing 70% of all heeling machines and 80% of all metallic fastening machines, and the Eppler Welt Machine Company, manufacturing 10% of the welt sewing and outsole stitching machines, and the Davey Pegging Machine Company, manufacturing 75% of the pegging machines, and that all the above-named companies manufactured their machines under letters patent of the United States; that many of the "basic" patents were about to expire and the lawful monopoly of such machines about to come to an end; and the individual defendants as owners of the above-mentioned companies, not being satisfied with the benefit of the lawful monoplies and rights belonging to them under letters patent, combined and conspired to acquire a monopoly in the manufacture of shoe machinery.

There is no allegation in the petition that the companies that were combined in the United Shoe Machinery Company were in competition with each other, and the only difference between the two cases so far as the organization of the United Shoe Machinery Company is concerned is that the petition adds the name of the Eppler Welt Machine Company, which it is claimed manufactured 10% of the welt sewing and outsole stitching machines, and the Davey Pegging Machine Company, which manufactured 75% of the pegging machines and which on the face of the petition was not in competition with any of the other companies. (This last-named company at the time of the consolidation and for a long time prior thereto was wholly owned by the Consolidated & McKay Lasting Machine Company and it did not compete with any of the other companies.—R. Vol. 1, p. 32, line 30.)

In *United States* v. *Winslow*, supra, the Court said, page 217:—

> "On the face of it the combination was simply an effort after greater efficiency. The business of the several groups that combined, as it existed before the combination, is assumed to have been legal. . . . The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels. Until the one intent is nearer accomplishment than it is by such a juxtaposition alone, no intent could raise the conduct to the dignity of an attempt."
>
> (*Ib.* p. 217.) "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, and it may be assumed that the success of the several groups was due to their patents having been the best. . . . It is said that from seventy to eighty per cent of all the shoe machinery business was put into a single hand. This is inaccurate, since the machines in question are not alleged to be types of all the machines used in making shoes, and since the defendants' share in commerce among the states does not appear. But taking it as true we can see no greater objection to one corporation manufacturing seventy per cent. of three non-competing groups of patented machines collectively used for

making a single product than to three corporations making the same proportion of one group each."

The United States now seeks to differentiate the petition in the case at bar from the indictment by claiming that there was competition between the Eppler Company, which the petition alleges made 10% of the welting and outsole stitching machines, and the Goodyear Company, which the petition alleges made 80% of the welting and outsole stitching machines; and also by making a very much belated claim that there was competition between the Ideal Laster of the Goodyear Company and the Chase Laster of the Consolidated & McKay Company, and that elimination of this competition was the motive for the consolidation of these companies into the United Shoe Machinery Company.

Upon this point the District Court, which saw and heard the witnesses and is the best judge of their credibility, said, by Dodge, J. (R. Vol. 1, p. 1130):—

"(1) As to the alleged competition in lasting machines, it is not claimed that there was any, so far as two of the three kinds made by the Consolidated Company are concerned. These are the 'McKay-Copeland' laster for lasting heavy metallic fastened or pegged shoes or brogans and the 'hand method McKay' laster for McKay sewed shoes; and neither of them could be used to last welt shoes, for which purpose alone the Goodyear Company's 'Ideal' laster was adapted. The only question here is whether the latter machine can be regarded as competing with the remaining laster of the Consolidated Company (the 'Chase'). With still another laster with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed.

"There is no proof of any actual use of the 'Chase' laster otherwise than for its intended purpose of lasting men's welt shoes. It could not work well for use with the lighter leather whereof women's shoes are made. The 'Ideal' laster, used almost exclusively for its intended purpose of lasting women's welt shoes, could not be relied on to work well with the heavier leather whereof

men's shoes are made. The proof relied on to show that it competed with the 'Chase' went no further than to show that a number of 'Ideal' machines, small in proportion to the total number then in use, were being used in a few factories on men's shoes, notwithstanding their want of adaptation to such use. That there was any attempt to put either machine into the market as against the other, does not appear. No competition between the two in the usual sense of the term is shown. After the consolidation, by the addition of a patented 'hold down attachment' added by the United Company to the 'Ideal' in 1901 or 1902, some of the defects referred to were removed, but not until then can it be said to have been commercially successful for work on men's shoes. Before this improvement, it possessed at most a limited possibility of such use. I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines.

"(2) As to the alleged competition in welt-sewing machines, the question is to what extent the Eppler welting machinery can be regarded as competing with the Goodyear welting machinery. Outside of that produced by these two concerns, no other welting machinery appears to have been on the market at the time.

"The Eppler machines were adapted to produce men's thick-soled welt shoes only. They could not produce women's welt shoes (except perhaps those having the thickest soles), nor turn shoes of any kind, nor Goodyear welt shoes, either men's or women's, because of the difference between the respective machines in the character and position of the seam left in the inner sole of the shoe. The Goodyear machines could produce shoes of all the above kinds. The differences referred to resulted from differences in the character and operation of the machinery belonging to the different systems. These differences in character and in possible field of use had resulted when the United Company was formed in 1899 in the fact that over 2,500 Goodyear welting machines were in use, as against thirty or forty Eppler machines, one-third of these being used in the factory of the president of the Eppler Company. The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition

as rendered it unlawful. The Eppler machines were not suppressed by the United Company. It continued to supply them until the progress of improvement in such machinery superseded them. The patents covering them have long since expired, and it is open to anyone to make and use such machines if he desires. There is no present monopoly in them, and no action taken by the court could restore them to the field of competition, or encourage or create competition by them.

"Nor, if such competition as is shown to have existed between the 'Chase' and the 'Ideal' laster be taken together with that shown to have existed between the Eppler welting machinery and the Goodyear welting machinery, do I find it credible that the avoidance of both amounted to a consideration of any substantial importance, so far as the formation of the United Company was concerned. No reason appears for supposing that the real purpose for which the constituent companies were brought together, as disclosed not only by the evidence regarding all the circumstances as they existed in 1899, but by the evidence as to the course of development thereafter pursued by the United Company, was other than that stated in a circular letter to the Goodyear stockholders issued February 8, 1899, the day following the organization of the United Company. (Petitioner's Exhibit 152.) This dwelt upon the advantages to be secured by putting into one control 'the most efficient types' of shoe machinery. In *U. S.* v. *Winslow*, above cited, which was decided more than a year after the present bill was filed, it was said that the combination here in question was, on its face, 'simply an effort after greater efficiency,' and the legality of combination for such a purpose is fully recognized.

"Under their respective patents upon the 'Chase' and the 'Ideal' lasters there was litigation pending in 1899 between the Consolidated Company and the Goodyear Company, each claiming that the other's machine infringed its patents. Also, under the patents covering their welt-sewing machines there was similar litigation pending between the Eppler Company and the Goodyear Company. A result sought to be attained by both parties to these controversies, and accomplished by them through the acquisition of all the patents by the United Company, was the termination of all this litigation. Reference is made below to other later acquisitions by the United Company, an important feature of which was that litigation, troublesome and expensive on both sides, was avoided

or terminated. In so far as any of the defendants' transactions were in order to accomplish results of this kind, it can not be said that their purpose was unlawful.

"For the reasons stated, I am unable to find the charge that the United Company was unlawfully formed because of competition which it destroyed sufficiently supported by the evidence. It would, in any case, be difficult to regard this as sufficient ground for a decree dissolving the company into its component parts under a bill not filed until more than twelve years had passed since the combination complained of was accomplished. During this period, as the evidence shows, investments of a very large amount had been made, not merely by the defendants but also by the outside public, in the extension and development of the company's united business, the component companies passed out of existence, and the machines as made by them in 1899 were so far developed, improved upon, or added to by the United Company as now all to have become obsolete. To put the parties or the public back into that state of the prior art which existed in 1899 is, of course, an impossibility."

To Aid the Court in an Examination of the Issue thus Decided by the District Court, We Shall Consider Below:—

The Business Done by the Constituent Companies;

The Organization of the United Company;

The Evidence Relating to the Alleged Competition Between the Constituent Companies;

The Purposes for Which the United Company was Formed, and the Manner in Which These Purposes have been Carried Out.

2. BUSINESS DONE BY THE CONSTITUENT COMPANIES WHICH FORMED THE UNITED COMPANY.

The United Company was organized February 7, 1899, to take over and continue the business of the Goodyear Shoe Machinery Company (hereafter called the Goodyear Company), the Consolidated & McKay Lasting Machine Company (hereafter called the Consolidated Company), and the McKay Shoe Machinery Company (hereafter called the McKay Company), essentially non-competing concerns engaged in making different types of machines used for different purposes.

The Goodyear Company made Welt Machines. It also furnished a comparatively few Ideal Lasting Machines designed for lasting women's welt shoes.

The Consolidated Company made lasting machines designed for lasting McKay shoes, brogans, and men's welt shoes. It had no machines which could be used successfully on women's welt shoes. Through a subsidiary company, it also made Pegging Machines.

The McKay Company made Metallic Machines and Heeling Machines.

A more complete statement of the business of those companies is given below.

A. The Goodyear Company.

The Goodyear Company manufactured and leased machines for attaching the welt to the upper and insole and the outsole to the welt of Goodyear Welt shoes. It had two principal machines—the Goodyear Welt and Turn Machine (called the welter) for attaching the welt to the upper and insole, and the Goodyear Outsole Rapid Lockstitch Machine (the stitcher)

for attaching the outsole to the welt. The welter was used also in the manufacture of Goodyear Turn shoes. The Goodyear Company had also thirteen auxiliary machines used in connection with its welter and stitcher in the manufacture of Goodyear Welt shoes, and three auxiliary machines used in connection with its welter in the manufacture of Goodyear Turn shoes (R. Vol. 5, Defs.' Ex. 242, p. 681; Defs.' Ex. 244, p. 683).

The Goodyear Company also manufactured and leased the Ideal Lasting Machine. The Ideal was designed and adapted for lasting women's welt shoes, which no machine in the market at the time it was developed could do successfully (R. Vol. 1, p. 397, lines 41–43; p. 626, lines 44–45). It was not adapted for lasting men's welt shoes commercially (R. Vol. 1, p. 398, line 32). The Ideal Machine had a comparatively small use. Only 248 Ideal Machines were outstanding out of a total of 4,300 lasting machines of all kinds outstanding, and only 0.77 of 1% of the shoes lasted on machines in 1899 were lasted on the Ideal (R. Vol. 1, p. 975, lines 34–45).

The Goodyear system for welt and turn shoes ran back to 1870 or 1868 (R. Vol. 1, p. 625, line 20).

Prior to the development of the Goodyear System there was no system for making welt shoes by machinery. The machines of the Goodyear Company, including the auxiliary machines, were adapted to making welt shoes only and could not be used on any other kind of shoes (R. Vol. 1, p. 18, lines 11–14; p. 470, lines 5–7; p. 625, lines 17–19; p. 626, line 3), except that the welter was used on turn shoes and three of the auxiliaries were designed for use on turn shoes, and except that the Hadaway Stitch Separator, an auxiliary machine, could be used also in pricking imitation stitches on mock welts or McKay welts (R. Vol. 1, p. 625, lines 15–17).

The auxiliary machines were designed and adapted to assist the work of the principal machines, the welter and stitcher, by preparing the work for the operation of these machines or finishing it afterwards (R. Vol. 1, pp. 624–625).

Prior to the invention of the Goodyear Welt System welt shoes were made by hand. The Goodyear System imitated the exact process by which a hand workman made a welted shoe (R. Vol. 1, p. 626, lines 3–8).

The Goodyear Company owned as a trademark the name

"Goodyear Welt" as applied to shoes made by its machines. Its lessees of shoe machinery were given the right to use that trademark on shoes made by the Goodyear machines (R. Vol. 1, p. 625, line 44; p. 626, line 2).

Shortly after 1888 the Goodyear Welter and Stitcher were both greatly improved and the Goodyear Company's business developed rapidly (R. Vol. 1, pp. 691–692). The Goodyear Welt shoe was a better grade of shoe than the McKay sewed, pegged or Standard Screw shoes, which were the classes of shoes generally made by machines, but the Goodyear Welt shoe was more expensive to manufacture. It gradually proved its merit, but in 1899 only 22,700,000 pairs of welt shoes were made out of a total production in the country of 172,786,000 pairs of shoes of all kinds, of which 82,457,000 were McKays (R. Vol. 5, Defs.' Ex. 215, p. 322). In 1898, just prior to the formation of the United Company, only about 17,000,000 pairs of welt shoes were made (R. Vol. 1, p. 414, lines 36–37).

The Goodyear Company, therefore, occupied a comparatively limited and special field which it had itself created and which it lawfully controlled by reason of its patents. The process of making Goodyear Welts is only one of a number of methods of attaching the soles to the uppers of shoes by machinery, and this method was used in 1898 on only about 10% of the total shoes manufactured in that year.

B. The Consolidated & McKay Lasting Machine Company.

This company manufactured and leased three kinds of lasting machines, namely, the Chase, the McKay & Copeland, and the Hand Method McKay Machine.

The Chase Machine was especially adapted to and was developed for lasting men's welt shoes (R. Vol. 1, p. 397, lines 39–40).

The McKay & Copeland Machine was commercially adapted only for lasting heavy brogans (R. Vol. 1, p. 399, lines 13–14), that is, very heavy coarse shoes (R. Vol. 1, p. 397, line 14).

The Hand Method McKay Machine was designed and adapted for lasting McKay sewed shoes (R. Vol. 1, p. 399,

line 22). It could not be used for lasting welt shoes (R. Vol. 1, pp. 399–400).

The Consolidated Company in 1899 had been endeavoring to develop a hand method welt lasting machine. This machine had been developed to a point where it could last the heel, shank and ball of the shoe satisfactorily, but it could not last the toes satisfactorily (R. Vol. 1, p. 400, lines 27–32). A few machines had been placed in factories, but they were experimental and not successful commercially (R. Vol. 1, p. 524, lines 1–11).

The Consolidated Company also furnished a few minor auxiliary machines used in lasting (R. Vol. 1, p. 400, line 40).

The use of machines for lasting shoes was of a very recent development. In 1890 very few shoes were lasted by machinery, except heavy shoes lasted on the McKay and Copeland machine. Manufacturers and operatives were at that time sceptical as to the possibility of developing a machine which would last shoes. Lasting was a real handicraft operation requiring great skill. There was also considerable difficulty in introducing lasting machines, due to the opposition of the operatives. After machines were introduced and the operatives instructed in their use the operatives would strike or agree to last by hand for a reduction in pay and the machines would be stopped (R. Vol. 1, pp. 401–402). The result was that by 1899 only about one-half the shoes made were lasted by machine (R. Vol. 1, p. 402, lines 14–18).

The Davey Pegging Machine Company, which was owned by the Consolidated Company, made machines for attaching the soles of shoes by wooden pegs (R. Vol. 1, p. 415, lines 18–20; p. 534, lines 45–46).

C. The McKay Shoe Machinery Company.

This company manufactured and leased metallic fastening machines, used to insert metallic fastenings, and heeling machines, used for the preparation and attaching of heels. It operated through the McKay-Bigelow Heeling Machine Association and the McKay Metallic Fastening Association, both of which it owned (R. Vol. 1, p. 4, lines 23–36).

D. The Machines Manufactured by the Constituent Companies were Protected by Patents, were the Best Machines Made, and, therefore, were Used principally by Shoe Manufacturers for the Purposes for which they were Adapted.

The petition alleges,—

> "Early in 1899 the companies above mentioned and described were manufacturing their machines, and parts thereof, under letters patent of the United States and of other countries" (R. Vol. 1, p. 993).

The petition further alleges that the principal concerns engaged in the business were the constituent companies (R. Vol. 1, p. 992), and that the United Company by the acquisition of the constituent companies "acquired control of the greater portion of the manufacture of, and trade and commerce in, the machines included in each and all of the groups of machines hereinbefore mentioned" (R. Vol. 1, p. 996).

A full discussion of the strong patents covering the machines is given at pages 199–232 of the Brief.

The machines put out by the constituent companies had been gradually developed by them or their predecessors in accordance with patents covering the machines. Each company had a lawful monopoly granted by the patent law covering the manufacture of its own machines, and of course no one else could manufacture these machines.

The shoe machinery industry was of very recent origin, all the work on shoes having previously been done by hand. The trade in machines of the kind manufactured by the constituent companies had been created by reason of and under the inventions for which the constituent companies held patents. No one else had invented other types of machines which could do equally good work, and the machines put out by the constituent companies were, therefore, the best machines in the market (R. Vol. 1, p. 532, lines 16–18, 29–32). As a result, at the time of the formation of the United Company the Goodyear Company's machines were doing practically all the welt sewing and outsole stitching, the Consolidated Com-

pany's machines were doing practically all the lasting, and the McKay Company's machines were doing practically all the metallic fastening that was being done in the United States (R. Vol. 1, p. 537, lines 32–37). The McKay Company was also putting out all of the heeling machines that were being made in the United States at that time (R. Vol. 1, p. 851, lines 27–30).

E. Acquisition of the Eppler Welt Machine Company.

The Eppler Company is referred to by the United States as one of the constituent companies. It cannot properly be so termed. Although it had been organized for a number of years, it was doing practically no business and it was inevitably doomed to failure. Its machines infringed the Goodyear Company's patents, and patent suits brought by the Goodyear Company were pending to enjoin their use which counsel for the Goodyear Company were confident would succeed (*infra*, pp. 136–138). After the formation of the United Company was agreed upon, it was found that the Eppler Company could be acquired and the patent litigation thus settled. The Eppler Company was accordingly acquired, not for the purpose of taking over its business, as it had practically no business, but to enable the United Company to start free from litigation (*infra*, p. 134).

The Eppler Company manufactured and leased a welter, stitcher, and a few auxiliary machines used in connection therewith. These machines attached the welt and sole to a shoe according to the Eppler welt process. The Eppler shoe so made was of an entirely different construction from the Goodyear welt shoe, which was made by the Goodyear machines and which could not be made by the Eppler machines (*infra*, p. 139).

In the Eppler process the bulky double thread of the chainstitch was laid in the prepared channel in the bottom of the insole and under the surface on which the foot rests. This bulky double chain was likely to cause a ridge under the foot and made the Eppler welt shoe much inferior to the Goodyear welt shoe. This difference in construction also made it im-

possible to use the Eppler machine on women's welt shoes, which have light inner soles, or on turn shoes. The Eppler machines were also inferior in construction to the Goodyear machines. The Eppler Company had no complete or satisfactory set of auxiliary machines and it was necessary in an Eppler shoe to use an unnecessarily thick and expensive insole to prevent the seam from hurting the foot, which added greatly to the expense of making Eppler welt shoes (*infra*, pp. 141–143).

Owing to the above causes the Eppler Company had not proved a commercial success. It had outstanding only between 30 and 40 welt machines, one-third of which were in the factory of the president of the company (R. Vol. 1, p. 389, lines 6–9).

The Eppler machines, therefore, were inferior to the Goodyear machines; the Eppler shoe was much inferior to the Goodyear shoe; and, consequently, the Eppler Company was doing little or no business and was doomed to failure. Further, as we have stated, its machines infringed the Goodyear Company's patents.

3. ORGANIZATION OF THE UNITED COMPANY.

The United Company was organized on February 7, 1899.

The preliminary arrangements were made by Mr. Winslow, who was a member of the Executive Committee of the Consolidated Company (R. Vol. 1, p. 406, line 25), and Mr. Howe, who was vice-president of the Goodyear Company and in general charge of its business (R. Vol. 1, p. 466, lines 32–39).

Some time about July, 1898, they first discussed consolidating the businesses of the Goodyear Company and the Consolidated Company (R. Vol. 1, p. 629, line 19). This consolidation was agreed upon some time in January, 1899 (R. Vol. 1, p. 629, line 34). It was not originally planned to take over the McKay Company, and this question was only taken up after the formation of the United Company and the acquisition by it of the Goodyear and Consolidated Companies had been arranged (R. Vol. 1, p. 406, lines 36–40). It was not until the United Company had been agreed upon and about the time that it was organized that it was found the Eppler Company could be purchased and arrangements were made for its acquisition (R. Vol. 1, p. 633, line 5).

The United Company was organized with $25,000,000 authorized capital stock, of which $12,500,000 was preferred and $12,500,000 was common (R. Vol. 3, P.'s Ex. 1, p. 4).

The United Company at once took over the stock and later the properties of the Goodyear Company, the Consolidated Company, and the McKay Company, and likewise the International Goodyear Company, the Goodyear Company of Canada, and the Davey Pegging Machine Company, which were affiliated with the three principal companies. In March it took over the Eppler Company and the International Eppler Company.

The Goodyear Company, Consolidated Company, and the McKay Company, and such stock of the International Goodyear Company as was not owned by the Goodyear Company itself were paid for in stock of the United Company. In addition stockholders of the Consolidated Company received a small cash payment to adjust dividends. $2,395,435 of stock

was issued for cash which was used to pay the expenses of organization, the floating debts of all the constituent companies, the purchase of the capital stock of the Eppler Company, the International Eppler Company, and the Goodyear Company of Canada, and to provide $500,000 working capital for the United Company (R. Vol. 1, pp. 31–33).

The stock of the United Company was issued as follows:—

For $3,000,000 stock of the Goodyear Company	$4,631,560
For minority stock of the International Goodyear Company not owned by the Goodyear Company	287,105
For $2,850,000 stock of the Consolidated Company	4,432,900
For $5,000,000 stock of the McKay Company	5,500,000
To Syndicate for cash at par used to purchase Eppler Company, International Eppler Company, Goodyear Company of Canada, for payments of debts, organization expenses, and $500,000 working capital	2,395,435
Total,	$17,247,000

A. No Watered Stock was Issued.

The petition alleges that the constituent companies were taken over "at values far in excess of real worth" (R. Vol. 1, p. 995). This charge is absolutely unfounded.

The stock of the United Company was issued for value and was not watered (R. Vol. 1, p. 533, lines 31–32). The book values of the Goodyear and Consolidated Companies, so far as could be judged, were far in excess of the prices paid by the United Company (R. Vol. 1, pp. 629–630). The stock of both companies had sold above par for a long time (R. Vol. 1, p. 533, lines 38–40). The McKay Company stock had sold at $8 or $9, but it was worth at least $11 a share, on which basis it was taken in (R. Vol. 1, p. 533, line 40–p. 534, line 4; p. 633, lines 41–44). The stock issued to the syndicate was paid for in cash at par (R. Vol. 1, p. 32, lines 1–4).

The first statement of the United Company, issued in 1901, shows that it carried no item of good-will, and that it carried its valuable patents at only $745,269.27, and that the Company had a substantial surplus (R. Vol. 4, P.'s Ex. 180, p. 1225).

B. Machines not Manufactured by the Constituent Companies.

The machines manufactured by the constituent companies which were acquired by the United Company covered only a portion of the shoe machinery field, and, as we have stated above, each had its own particular field which it had developed under its own patent monopolies. The constituent companies did not even manufacture all the machines used in bottoming shoes. Thus they did not manufacture the McKay Sewing Machine used to attach the soles to McKay shoes, which constituted substantially one-half the total number of shoes manufactured in 1899. They manufactured no machinery for cutting out or stitching or making uppers. They made no General Department machines, of which a large number were then manufactured, and of which the United Company now manufactures over one hundred and seventy different kinds.

Defendants' Exhibit 221A (R. Vol. 5, p. 370A) gives a list of eighty-five different dealers in machinery findings and supplies advertising in the trade papers in the years 1899 to 1902, which the United Company did not purchase and made no attempt to purchase. This list includes such important companies as the Wheeler & Wilson Sewing Machine Company, which supplied probably 90% of the machines which united the parts of the upper of the shoe (R. Vol. 1, p. 415, lines 12–14), and the Reece Buttonhole Machine Company, which furnished probably every machine used for making buttonholes in shoes and for finishing the buttonholes (R. Vol. 1, p. 415, lines 15–17). The United Company also did not take over the Stanley Manufacturing Company, which put out the McKay Sewing Machine used to attach the soles of about one-half the shoes made (R. Vol. 1, p. 415, lines 4–12).

The fact that the United Company took over companies occupying only a portion of the shoe machinery field and made no attempt to acquire these other important companies establishes conclusively that the United Company was not formed to obtain a monopoly of all shoe machinery as charged in the petition.

4. ALLEGED COMPETITION BETWEEN GOODYEAR AND CONSOLIDATED COMPANIES AND BETWEEN GOODYEAR AND EPPLER COMPANIES.

The United States contends that there was competition between the Goodyear Company and the Consolidated Company, and also between the Goodyear Company and the Eppler Company which made the formation of the United Company unlawful.

The brief statement given above of the business conducted by these companies shows the unsubstantial character of this contention. However, as the United States has claimed that there was competition, we will consider it in detail.

The competition which the United States contends existed was (1) between the Ideal Lasting Machine made by the Goodyear Company and the lasting machines of the Consolidated Company, and (2) the welt machines of the Goodyear Company and the welt machines of the Eppler Company.

It is admitted that the McKay Company did not compete with any of the other companies.

A. ALLEGED LASTING MACHINE COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE CONSOLIDATED & McKAY LASTING MACHINE COMPANY.

(1) INTRODUCTORY STATEMENT.

The only claim of competition in 1899 between the Consolidated & McKay Company and the Goodyear Company is the claim of the United States that there was competition between lasting machines of these companies. It is admitted that the great bulk of the business of the Goodyear Company was in welt sewing and outsole stitching machines and their auxiliaries, and that the sole business of the Consolidated &

McKay Company was in lasting machines. Indeed, so comparatively insignificant was the lasting machine business of the Goodyear Company that, as Mr. Howe testified, it treated its lasting machine "as an auxiliary to its welt and turn machine and its outsole stitcher" (R. Vol. 1, p. 626, lines 42–43).

The Consolidated Company in 1899 was putting out three different lasting machines:—

The McKay & Copeland Machine;
The Chase Machine;
The Hand Method McKay Machine.

It was also experimenting on a hand method welt machine.

The Goodyear Company was putting out the Ideal lasting machine (R. Vol. 1, p. 526, line 46).

All of these machines were patented (R. Vol. 2, pp. 2365, 2383, 2387–9, 2391–3, 2400–2).

The McKay & Copeland machine was designed and adapted for men's heavy standard screw, pegged and loose nailed shoes (R. Vol. 1, p. 523). The hand method McKay machine was designed and adapted for McKay sewed shoes (R. Vol. 1, p. 524, lines 1–3; Vol. 2, p. 2399). It is admitted that the use of each of these machines was confined to the particular field for which it was designed and that neither competed with the Ideal machine of the Goodyear Company. The United States contends, however, that there was competition between the Ideal machine of the Goodyear Company and the Chase machine of the Consolidated Company, and also that the hand method welt lasting machine on which the Consolidated Company was experimenting offered competition to the Ideal machine.

In considering the contention that there was competition between lasting machines of the Consolidated & McKay Company and the Ideal lasting machine of the Goodyear Company, the Court will, of course, bear in mind that this case relates to a highly specialized industry in which hundreds of entirely different machines are used on the various types of shoes, and that each kind of shoe requires for its successful manufacture machines designed *particularly just for that kind of shoe.* Nothing is more thoroughly established by the

record than these vital and fundamental facts. And the record further shows their specific application to lasting machines (R. Vol. 2, p. 2399).

The case of the United States on this issue depends primarily on the assumption that merely because two different machines were called lasting machines and were used in lasting shoes, each of them as a matter of course could be used in lasting any kind of shoes, despite the fact that one was designed for use on one particular and peculiar type of shoes and the other for use on another particular and peculiar type of shoes. This is hardly more reasonable than it would be to contend that the welt sewing and outsole stitching machines of the United Company compete or could compete with the upper stitching machines of the Singer Sewing Machine Company because all of these machines sew together parts of boots and shoes.

Obviously, to establish that in February, 1899, there was existing or potential lasting machine competition between the Goodyear Company and the Consolidated Company, it must be clearly proved that a lasting machine of one of those companies was actually used in 1899, or at that time plainly could be used, to do with commercial success the work of a lasting machine of the other company, or that such competing use was then imminent or threatened. We shall show that the contrary was proved.

That the alleged lasting machine competition was utterly trivial and insignificant will be shown by reviewing evidence proving that the overlapping use of the Ideal machine in 1899 testified to by witnesses for the United States did not exceed .06 of 1% of all the shoes lasted by machines, or .03 of 1% of all the shoes made in 1899, and that there was no overlapping use of the few hand method welt lasting machines that were out in 1899, which, moreover, were merely experimental and were unsuccessful

Since the indictment which was before the Court in *United States* v. *Winslow* charged that the Consolidated & McKay Company made 60% of all the lasting machines made in the United States and that the Goodyear Company made 10% of all the lasting machines, it would seem a waste of time to argue about alleged competition so trivial and insignificant

as we have indicated; but in view of the contentions of the United States on this issue, and since the Court is entitled to assistance in reviewing the considerable amount of evidence of more or less technical character, it seems to be necessary to review and correlate this evidence.

It is proposed to discuss first the alleged competition between the Ideal lasting machine and the Chase lasting machine.

(2) THE EVIDENCE AFFORDS NO FOUNDATION FOR THE CLAIM OF THE UNITED STATES THAT THERE WAS ANY COMPETITION BETWEEN THE IDEAL LASTING MACHINE OF THE GOODYEAR COMPANY AND THE CHASE LASTING MACHINE OF THE CONSOLIDATED & McKAY COMPANY.

(a) Introductory Statement.

With regard to the field of the Ideal lasting machine in 1899, Mr. Winslow testified,—

> "The Ideal lasting machine was developed for the express purpose of lasting women's welt shoes, there being at that time no machine in the market which was adapted to that purpose" (R. Vol. 1, p. 397, lines 40–43).

Mr. Howe testified:—

> "The Ideal laster was adapted to work on women's welts, light leather which no machine in the market at that time would do successfully. . . . The machine was designed and almost wholly used for lasting women's welts" (R. Vol. 1, p. 626, lines 44–45; p. 627, lines 1–3).

Mr. Howard testified:—

> "It was especially designed for the lasting of women's welt shoes and in February, 1899, substantially all women's

welt shoes which were lasted by machine were being lasted upon the Ideal lasting machine" (R. Vol. 2, p. 2387).

"That machine practically had the women's welt shoe field to itself" (R. Vol. 1, p. 966, lines 22–23).

Mr. Donham testified,—

"It [the Goodyear Company] also had a specially designed lasting machine, which it had originated for the purpose of enabling women's Goodyear welt shoes to be lasted by machine, there being at that time no other lasting machine adapted for lasting that class of work". (R. Vol. 1, p. 2, lines 19–22).

The Chase lasting machine was primarily adapted and used almost exclusively for lasting men's welt shoes.

Mr. Winslow testified that—

"the Chase lasting machine was especially adapted to and was developed for the lasting of men's welt shoes" (R. Vol. 1, p. 397, lines 39–40).

Martin E. Welch, a witness for the defendants, who manufactured women's shoes, testified,—

"We did not use the Chase lasting machine; we don't use it on women's work" (R. Vol. 1, p. 711, lines 32–33).

Mr. Howe testified,—

"The Chase machine was designed for and used almost exclusively on men's welts" (R. Vol. 1, p. 627, lines 12–13).

It is not disputed that the Ideal lasting machine was developed, especially designed, and principally used for lasting women's welt shoes. It is also not disputed that the Chase lasting machine was developed, especially adapted, and principally used for lasting men's welt shoes.

The United States claims, however, that the Chase was also used in the field of the Ideal and that, conversely, the Ideal was also used in the field of the Chase.

That its claim of competition between the Chase and Ideal

lasting machines was not taken seriously even by the United States is at least indicated by its belated attempt to prove such competition. Throughout its direct case it offered no evidence showing any use of either of these machines in the field of the other.

In its rebuttal case, the United States made an effort to show some use of each of these lasting machines in the field of the other. It called three witnesses to establish use of the Chase machine in the field of the Ideal machine, O'Keefe, Lemay and Springer (R. Vol. 1, pp. 934, 947). We shall show that none of these witnesses testified that the Chase machine was used on women's *welt* shoes, the field of the Ideal, and that the most that can be said of their testimony is that two of them merely expressed opinions that it could be so used. Such opinions in the light of strong evidence that it was not adapted for such use, obviously have no probative value.

In its rebuttal case the United States also called nine witnesses, Snow (R. Vol. 1, p. 895), Worsencroft (R. Vol. 1, p. 913), Whitman (R. Vol. 1, p. 915), Heffernan (R. Vol. 1, p. 917), Jordan (R. Vol. 1, p. 932), Murphy (R. Vol. 1, p. 933), O'Keefe (R. Vol. 1, p. 934), Florsheim (R. Vol. 1, p. 935), Fletcher (R. Vol. 1, p. 937), in an effort to show use of the Ideal machine in the field of the Chase on men's welt shoes, but the greater part of their testimony either related to use of the machine *after 1899*,—that is, after the United Company was formed,—with the addition of improvements which better adapted the machine for men's welt shoes, and upon a new shape of shoe which was introduced after 1899; or it related only to use of the Copeland Rapid laster, which was practically obsolete before the United Company was formed and which the Goodyear Company was not putting out at all. Some of these witnesses did testify to use of a few Ideal machines on men's shoes prior to 1899, but this evidence in no way refutes the testimony of defendants' witnesses, corroborated by several witnesses for the United States, that the Ideal machine was developed and designed and chiefly used for lasting women's welt shoes, and that while it actually was used to a small extent on men's welt shoes, it was not adapted for that use and such use was utterly insignificant.

(b) The Chase Lasting Machine was Neither Used nor Adapted for Use in Lasting Women's Welt Shoes and therefore was not Used at all in the Field of the Ideal Lasting Machine.

There is absolutely no proof in the record that the Chase lasting machine was ever used for lasting women's *welt* shoes.

On the contrary, such slight use of the Chase lasting machine on women's shoes as the record shows was altogether on women's *McKay-sewed* shoes, the field of the Consolidated Company's hand method machine.

In its effort to show use of the Chase machine in the field of the Ideal machine the United States relies upon four witnesses, O'Keefe, Lemay, Springer and Selz, but not one of them testified to any such use. Only two of them even went so far as to express an opinion that the Chase machine could be used in the field of the Ideal.

O'Keefe, a witness for the United States, after naming four different factories in each of which he testified he had used Chase lasting machines for lasting *men's welt* shoes, testified that in one only of those factories were Chase lasting machines used on women's work. That use was "for a short time" only (R. Vol. 1, p. 934, lines 36–40; p. 935, lines 8–9, 18–20). There is no intimation in O'Keefe's testimony that those women's shoes were *welt* shoes.

Lemay, a witness for the United States, testified,—

> "I know of no reason why the Chase machine could not be used successfully in lasting women's shoes" (R. Vol. 1, p. 947, lines 37–39).

But that mere statement of opinion does not in the least discriminate between women's *welt* and women's *McKay* shoes, and such statement of mere opinion on the part of a witness who, so far as the record shows, *never even saw a woman's shoe of any sort lasted on a Chase machine* is obviously entitled to no weight. Further, the only women's shoes made in any factory where he worked were McKays and were lasted on the hand method McKay lasting machine (R. Vol. 1, p. 947, lines 25–36).

The only use of the Chase lasting machine on women's work testified to by Springer, a witness for the United States, was used in lasting women's *McKay-sewed* shoes. The shoes made in that factory were mostly men's McKays, and the making of women's McKays was an experiment and was confined to a year. They only made a few thousand pairs and used the same machines they had (R. Vol. 1, p. 948, lines 42–44; p. 949, lines 5–6, 18–24, 32–33). The only testimony Springer gave with regard to possibility of use of the Chase lasting machine on *women's welts* was a bare statement of opinion:—

> "*Q.* Do you know of any reason why it cannot be used on women's welt shoes the same as on men's?
> "*A.* No, sir" (R. Vol. 1, p. 948, lines 17–19).

This statement of opinion, like Lemay's, obviously has no probative value. Indeed on cross-examination Springer testified,—

> "I am not undertaking to give any very well-studied opinion as to the various uses that the Chase machines may be commercially put to successfully" (R. Vol. 1, p. 949, lines 24–26).

In Selz's testimony regarding the use of the Chase machine women's welt shoes were not even mentioned (R. Vol. 1, p. 142, lines 1–18; p. 148, lines 40–41). His testimony is, therefore, irrelevant to this issue.

Thus, not only did the witnesses for the United States fail to establish any use of the Chase lasting machine in the field of the Ideal either before or since 1899, but their testimony supplements defendants' evidence establishing that the Chase machine was neither used nor adapted for use in lasting women's welt shoes.

Mr. Winslow testified on cross-examination that the Chase lasting machine was *not used* on women's welt shoes:—

> "*A.* No; it wasn't used on women's welts.
> "*Q.* Was it used at all on women's welts?
> "*A.* I don't know of a single factory or a single machine that was being used to last women's welt shoes" (R. Vol. 1, p. 525, lines 15–18).

Mr. Howard testified:—

> "So far as I can learn the Chase lasting machine was never used, either before or after 1899, in lasting women's welt shoes. There was not one Chase lasting machine in Lynn, the great women's shoe center, in January, 1899. So far as I know, there has never been one there" (R. Vol. 1, p. 971, lines 10–14).

Welch, a Lynn shoe manufacturer, testified,—

> "We did not use the Chase lasting machine; *we don't use it on women's work*" (italics ours) (R. Vol. 1, p. 708, line 39; p. 711, lines 32–33).

Not only did the United States fail entirely to offer any evidence of any *use* of the Chase lasting machine for lasting women's welt shoes, but the evidence proves that the Chase lasting machine was *structurally not adapted* for that work. Mr. Winslow testified:—

> "The Chase machine was not adapted for lasting women's welt shoes. The reason why it was not is that it is a practical impossibility up to the present time to last the leather that is used in the manufacture of women's shoes over the toe by any bed machine which does not previously wipe it up over the toe before coming in over the last. . . . The Chase machine . . . did not have that function" (R. Vol. 1, p. 398, lines 41–44; p. 399, lines 1–3).

Another structural difficulty in the use of the Chase lasting machine for women's welt shoes arose from the use in that machine of a retarder which, as explained by Mr. Howard,—

> "worked satisfactorily on the heavier leathers of men's shoes, but on the lighter leathers of women's shoes it would pull the stock along the centre of the shoe and would result in bowing or bending the tip seam forwardly, which of course was bad shoemaking and spoiled the shoe" (R. Vol. 1, p. 968, lines 36–40).

Counsel for the United States read into the record an advertisement of the Chase machine advertising it for use on women's shoes (R. Vol. 1, p. 960). But this advertise-

ment does not even purport to claim that the Chase machine could be used on women's *welt* shoes, that is, in the field of the Ideal. Presumably the advertisement had reference to women's McKay shoes, on which the record shows a slight use of the Chase machine (*supra*, pp. 100–101). That use, however, was in the field of the hand method McKay machine of the Consolidated Company and evidence regarding it is not relevant to any issue in this case. But even if it should be assumed that the advertisement intended to offer the Chase machine for women's welt shoes, it would merely show an attempt to introduce the machine in that field, and the complete failure of the attempt confirms the defendants, testimony that the machine was structurally unfitted for such use.

There is, therefore, no evidence that the Chase machine was ever used on women's welt shoes and there is evidence that it was not so used and that for structural reasons it could not be so used successfully. The record, accordingly, establishes clearly that the Chase machine did not compete with the Ideal machine in the lasting of women's welt shoes.

(c) The Evidence also refutes the Claim of the United States that the Ideal Machine was Competing with the Chase Machine in the Field of the Chase, that is, in Lasting Men's Welt Shoes.

The United States contends that the Ideal machine could be used and actually was used on men's welt shoes, and, therefore, that it did compete with the Chase machine. That it was possible so to use it, and that it was so used to a slight extent, is not disputed by the defendants. Their contention is that it was not adapted for such use and could not be so used successfully in a commercial sense and that such overlapping use as existed was negligible and did not constitute competition in any true sense.

Mr. Winslow testified that the Ideal machine was not adapted for lasting men's welt shoes successfully, except possibly some shoes made of very light leather (R. Vol. 1, p. 398, lines 32–40).

Mr. Howe testified that the Ideal machine might as a feat be used on men's welts, particularly if they were made of thin leather, but the machine was designed and almost wholly used for lasting women's welts (R. Vol. 1, p. 627, lines 1–3).

> "As a feat you could use the Ideal laster, which was designed for women's welts, on men's shoes, but that no one would think of doing so unless they were forced to" (R. Vol. 1, p. 679, lines 35–37).

Robert P. Hazzard, a witness for the defendants, who manufactured men's Goodyear welts exclusively, 5,000 pairs a day (R. Vol. p. 641, line 10), testified on cross-examination:—

> "Before the United Company was formed we lasted welt work on the Chase machine and by hand. I never used an Ideal machine. I don't know what kind of work the Ideal did. I always assumed it was used more for women's work. That is, it was always considered that the Ideal machine was for women's work. I never tried, and never saw an effort made, to use it on men's work" (R. Vol. 1, p. 649, lines 40–43; p. 650, lines 1–3).

There were Fundamental Structural Characteristics of the Ideal Lasting Machine which Rendered it Unadapted for Use with Commercial Success on Men's Welt Shoes.

Mr. Howard, who qualified as a practical expert, as well as a patent expert (R. Vol. 2, pp. 2239–2241), testified that on account of its peculiar organization the machine was *not strong enough* to last men's shoes and *frequently broke* when it was used on men's shoes. Mr. Howard further testified that when the Ideal machine was used on men's shoes:—

> "Owing to the fact that the wipers were supported so far from their acting edges, and that there was lack of support for the toe-lasting head directly under the wipers, the wipers sprung so that they would not seat the upper materials properly against the lip of the insole, and owing to the strain *there was frequent breakage.*
>
> "That weakness in the organization of the machine which I have described didn't affect its successful opera-

tion in operating on women's shoes. The strain is so much less than that which the machine encounters in lasting men's shoes that the machine was strong enough for its operation upon women's shoes. But when it came to deal with the heavier leather of men's shoes, then the difficulty disclosed itself" (italics ours) (R. Vol. 1, p. 968, lines 13–27).

Mr. Howard further explained the organization of the Ideal machine by referring to the drawings of a patent showing the construction of the machine, pointing out on those drawings a part which "was frequently breaking in the operation of the machine on men's shoes" (R. Vol. 1, p. 967, lines 40–45; p. 968, lines 1–13).

On cross-examination Mr. Howard further explained that the Ideal lasting machine could not be used successfully on men's shoes—

> "because the dimensions of a man's shoe and a woman's shoe are substantially different. The power required for lasting a man's shoe is much greater than that required for lasting a woman's shoe" (R. Vol. 1, p. 972, lines 43–44; p. 973, lines 1–2).

Mr. Howard also testified that another important difference between men's shoes and women's shoes, which added to the difficulties encountered in attempting to use the Ideal machine on men's shoes, was that in a man's shoe the box toe must be heavier and stiffer, because it has so much more to do. Practically all men's shoes have box toes; if they didn't they would fall in at the toe (R. Vol. 1, p. 973, lines 16–31).

Snow, a witness for the United States, testified:—

> "The Ideal machine could not be used successfully in lasting men's heavy shoes, because in wiping over the toe, the shoe lifted from the toe piece" (R. Vol. 1, p. 896, lines 12–14).
>
> "When we wiped up over the toe of the shoe the toe would lift off the toe-rest" (R. Vol. 1, p. 896, lines 36–37).
>
> "*Q.* That was the defect with the Ideal when it worked on anything except very light leather?
>
> "*A.* Yes" (R. Vol. 1, p. 897, lines 4–6).

In 1901 Mr. Snow made two important improvements in the Ideal machine (R. Vol. 1, pp. 896–898, 900) about which he testified,—

> "I think it was these two improvements that changed the machine from an unsuccessful machine into a successful one" (R. Vol. 1, p. 900, lines 11–12).

Snow further testified that before he made his improvements the Ideal would not last men's shoes successfully even if the operation were repeated two or three times. It would not even last patent leather shoes successfully (R. Vol. 1, p. 899, lines 27–42).

Fletcher, a witness for the United States, testified that he knew about Snow's putting one of his improvements, the hold-down, on Ideal machines, and that—

> "without the hold down the Ideal machine continually allowed the toe to rise, which caused the tip to pull ahead and to bow" (R. Vol. 1, p. 939, lines 1–6).

But it should be noted that these improvements merely improved the *mode of operation* of the Ideal machine on men's shoes, as we shall show (*infra*, pp. 111–113); they did not in any way remedy the *structural weaknesses* which were explained by Mr. Howard (*supra*, pp. 104–106).

Much of the Evidence Relied upon by the United States to Show Use of the Ideal on Men's Shoes is not Directed to the Ideal at all, but Relates to the Copeland Rapid Laster, a radically Different Machine which was practically Obsolete in 1899.

The United States has very much confused this issue by referring to considerable testimony which does not relate at all to the Ideal lasting machine, but deals only with the Copeland Rapid lasting machine, which was an old machine formerly put out by the Goodyear Company, but which was obsolete in 1899. The Copeland machine became out of date with the revolution in styles and shapes of lasts about 1895, at which time the new high-speed Chase lasting machine and

the Ideal lasting machine were produced. The Ideal was the only lasting machine which the Goodyear Company was putting out immediately before the United Company was organized (R. Vol. 1, p. 972, lines 19–38; R. Vol. 2, pp. 2366–7, 2387).

Florsheim, a witness for the United States, *did not mention* the Ideal machine. He testified only regarding the obsolete Copeland Rapid machine (R. Vol. 1, p. 158, line 22).

A large part of the testimony of Worsencroft, Jordan and Murphy, witnesses for the United States, relates to the Copeland machine (R. Vol. 1, p. 913, lines 40–44; p. 914, lines 9–11, 27–34; p. 932, lines 35–36, 40–41; p. 933, lines 37–42).

It is true that some of the witnesses for the United States testified that there was not much difference between the Copeland machine and the Ideal machine; but their testimony is discredited by their own admissions.

Worsencroft, a witness for the United States, admitted on cross-examination that he had had only a limited experience with lasting machines incidental to his principal business of operating welt-sewing machines (R. Vol. 1, p. 914, lines 40–44; p. 915, lines 10–13, 21–23, 33–37). He also said that the Copeland Rapid machine "was succeeded by the Ideal lasting machine" (R. Vol. 1, p. 913, line 44; p. 914, line 1).

Heffernan, a witness for the United States, admitted an important structural difference between the Copeland Rapid laster and the Ideal (R. Vol. 1, p. 918, lines 3–4).

Jones, a witness for the United States, after testifying that the Copeland Rapid laster and the Ideal were two modifications of the same machine, or "adaptations of the same machine for slightly different classes of work," brought out strikingly the radically different uses of the two machines by explaining that by "slightly different classes of work" he meant—

> "that the Copeland Rapid was used for men's and the Ideal for women's."

He also said:—

> "*Q.* Well, could either machine do the work of the other; that is, could one machine be used for both men's and women's shoes?

"*A.* I wouldn't answer that at this moment from my knowledge. My recollection isn't clear enough" (R. Vol. 1, p. 107, lines 39–43; p. 108, lines 23–33).

The irrelevance of testimony relating to the Copeland Rapid laster and the absurdity of the claim of identity between the Copeland Rapid laster and the Ideal are further proved by Mr. Howard's testimony:—

"*Q.* Was there any difference between the Copeland Rapid and the Ideal?

"*A.* There was a great deal of difference.

"*Q.* What was it?

"*A.* *Practically the only similarity was the fact that both machines were organized for the upward wipe at the toe, and the constructions by which that effect was obtained were substantially different, radically different in the two machines. In all other respects the machines were substantially different; in most respects radically different*" (italics ours) (R. Vol. 1, p. 972, lines 22–31).

Moreover, Mr. Howard testified that the Copeland Rapid laster "was practically obsolete in 1899" and that—

"The Copeland had practically been killed by the new high speed Chase lasting machine, which was introduced in 1895" (R. Vol. 1, p. 972, lines 20–21, 36–38).

Since the Copeland Rapid lasting machine was out of date and obsolete and had been discarded by the Goodyear Company, which in 1899 and for some time previously had been putting out the Ideal machine exclusively, it is clear that any testimony as to use of some Copeland machines which were still out at that time is not in any way pertinent to the issue and is immaterial.

The record indicates that the reliance of the United States upon testimony relating to the obsolete Copeland Rapid machine was an afterthought, doubtless due to its failure to make out a case as to the Ideal machine. This position is not consistent with the petition as construed by the counsel who drew it and who tried the case.

"PUTNAM, J. Your petition alleges that the Goodyear lasted ten per cent. . . .

"Mr. GREGG. That was the Ideal machine" (R. Vol. 1, p. 968, lines 41–45).

Nearly all of the Evidence Relied upon by the United States to Show Use of the Ideal on Men's Shoes Relates to Alleged Use of the Ideal after February, 1899.

The greater part of the testimony relating to use of the Ideal machine on men's shoes upon which the United States relies relates to use of the machine *after 1899*. This testimony was not supported by any evidence that defendants had any reason to anticipate that use of the machine after 1899 and accordingly it is irrelevant. *Overlapping of the fields of the lasting machines of the Goodyear Company and the Consolidated & McKay Company after 1899 clearly has no bearing upon this issue in the absence of evidence that there was good reason "early in 1899" to anticipate that there might later be such overlapping.*

Of the witnesses put on by the United States in its attempt to show use of the Ideal in the field of the Chase, Snow (R. Vol. 1, p. 895 *et seq.*) and O'Keefe (R. Vol. 1, p. 934 *et seq.*) did not testify *at all* as to use of the Ideal on men's work *prior to February, 1899*. Testimony of Heffernan (R. Vol. 1, p. 917 *et seq.*), Fletcher (R. Vol. 1, p. 937 *et seq.*), Jordan (R. Vol. 1, p. 932 *et seq.*) and Worsencroft (R. Vol. 1, p. 913 *et seq.*), all witnesses for the United States, dealt largely or almost entirely with conditions *after 1899*. The testimony of both Whitman (R. Vol. 1, p. 915 *et seq.*) and Heffernan relates to one factory only, the Whitman & Keith factory, as does also much of the testimony of Worsencroft, Jordan and Murphy (R. Vol. 1, p. 933 *et seq.*). It does not appear whether Murphy's testimony as to the Ideal machine relates to conditions before or after 1899.

After the formation of the United Company there was a slightly greater use of Ideal machines on men's welt shoes, but that use was due, first, to a change in styles of shoes and, secondly, to the invention of improvements which remedied the defects in the organization of the Ideal machine that had rendered it unadapted for men's shoes. It cannot be assumed that defendants had any reason in February, 1899, to anticipate this change in the styles of shoes and much less can it be assumed that they had any reason to believe that inventions would be made which would better adapt the Ideal machine for men's work.

The slightly Increased Use of the Ideal Lasting Machine after 1899 was Due to the Introduction of the High-toed Last and to Inventions which better Adapted the Ideal Machine for Men's Work.

The slightly increased use of Ideal machines on men's shoes after 1899 was due to a radical change in the styles of shoes—the introduction of the so-called bull-dog toe which was made on a high-toed last. This is explained in the testimony of George E. Keith, a shoe manufacturer at Brockton:—

> "I did not have an Ideal lasting machine in my factory before the organization of the United Company in February, 1899. I put in the first Ideal machines in my factory in November, 1899.
>
> "The occasion for my taking any Ideal machines at that time was that that was about the time of a radical change in the style of shoes; it was the era of what they call the bull-dog toe. The bull-dog toe originated in Brockton, and so far as I know there was no manufacturer in Brockton ahead of me in the introduction of the high-toed last.
>
> "The idea of getting the Ideal machine to try on the high-toed last was because it wiped up on the side of the last better than the Chase and then with the adjustable head helped us to overcome the height and width of the toe. That was the reason that led me to take and try the Ideal" (R. Vol. 1, p. 964, lines 31–44).

Jordan, a witness for the United States, testified that "the high box toe requires a differently adjusted machine" (R. Vol. 1, p. 933, lines 16–17).

There can be no question as to the date when the high-toed shoe was introduced. Howard said that the high toe started in 1899 and he produced a last which was used from 1899 to 1901 (R. Vol. 1, p. 966, lines 39–41; Vol. 2, pp. 2367–2368).

Fletcher, a witness for the United States, said the high-toed last "was started by George Keith in Brockton" (R. Vol. 1, p. 938, lines 42–45).

But Even for this Special Work on Men's Shoes the Ideal Lasting Machine was not Successful until Patented Improvements were Embodied in the Machine long after February, 1899.

Mr. Keith further testified:—

> "When we first used the Ideal laster on men's shoes we couldn't get the result that we expected or wanted. The difficulty was that the machine being so light the last would lift as you came up on the sides of the toe. . . . It would rise, so that it was impossible to do the work. . . . As it came up over the sides of the last the last would spring up. As a result, we could not complete the job. This required the operator to keep repeating the operation a number of times and that slowed him down, and it creased fine leather or patent leather so that the shoe would be almost ruined" (R. Vol. 1, p. 965, lines 1–29).

Snow, a witness for the United States, testified emphatically to the same effect:—

> "*Q.* By going over it two or three times, it was done all right?
>
> "*A.* No; it wasn't done all right then. The more you wipe up a toe the worse it is" (R. Vol. 1, p. 899, lines 38–40).

Snow further testified that in 1901 he invented a hold-down which was put on the Ideal machines in the Keith and Douglas factories in Brockton and which prevented the shoe from being lifted off the toe rest (R. Vol. 1, p. 896, lines 22–44; p. 897, lines 1–13; p. 899, lines 10–11.)

Keith testified as to this hold-down:—

> "A device was developed in my factory to be attached to the Ideal machine to help it in lasting men's shoes. This was an attachment that could be swung around to hold the last down in its place so that the work could be performed better and so that the last could not rise. . . .
>
> "Until that was done, in my opinion, the Ideal machine would not be commercially a success, under the conditions that were on the market at that time. Before we put on the hold down the trouble was with bringing the upper

smoothly on a last that had a wide edge—to bring that up smooth before it was wiped over" (R. Vol. 1, p. 965, lines 8–24).

Whitman, a witness for the United States, testified:—

"*Q.* And it is a problem with the old-fashioned Ideal laster to last those high-toed shoes without the lasts slipping up?

"*A.* Yes, sir.

"*Q.* Unless you have this hold-down?

"*A.* Yes, sir.

"*Q.* And without the hold-down you can't last those high-toed shoes as a good shoemaker wants to have it?

"*A.* *Not satisfactorily; no, sir*" (italics ours) (R. Vol. 1, p. 917, lines 7–14).

With regard to the difficulties encountered in the Whitman & Keith factory in the use of the Ideal lasting machine on men's shoes *before* the invention of the hold-down, Heffernan, a witness for the United States, testified that the hold-down was applied "because of the bowing of the tips and flattening of the heels."

Heffernan also testified:—

"*Q.* What does 'bowing of the tips' mean?

"*A.* Pulling up the tip of the shoe, pulling that cap line out of true. . . .

"*Q.* What happens to the heel?

"*A.* It flattens the back of the heel—flattens it in. . . ."

"I had to keep after the operators all the time, regulate the machines myself, put pressure on the heel pads to see that I could hold them down there and make them press on the shoe while they were trying to last the toe" (R. Vol. 1, p. 918, lines 35–43; p. 919, lines 1–5, 43–44; p. 920, lines 1–2).

Heffernan further testified that since this hold-down was applied to the machines in the Whitman & Keith factory—

"I don't have one tip bowed in a month now, whereas before I would get a dozen shoes in a case" (R. Vol. 1, p. 920, lines 8–9).

A case of men's shoes is *24* pairs (R. Vol. 1, p. 193, line 14).

Snow also made another improvement on the Ideal machine, the patent on which is Defendants' Exhibit 338 (R. Vol. 1, p. 897, lines 14–16; Vol. 5, p. 937). He testified that before this improvement was added to the Ideal machine—

> "the heel band would not bring the corners of the counters in.
>
> "*Q.* The heel band of the Ideal machine?
>
> "*A.* Yes; would not bring the end of the counters in. I made a something that would bring them in" (R. Vol. 1, p. 897, lines 30–34).
>
> "*Q.* Now, it was with these two devices and improvements attached that Mr. Douglas used the Ideal laster on men's shoes?
>
> "*A.* Successfully; yes.
>
> "*Q.* And without those the Ideal would not last men's shoes successfully, would it?
>
> "*A.* No, sir" (R. Vol. 1, p. 898, lines 35–40).

Heffernan testified that they had had the heel band improvement on the machines in the Whitman & Keith factory "for over twelve years" (R. Vol. 1, p. 918, lines 19–23).

The United States relies upon the testimony of Jordan that the hold-downs were used at Douglas's only a short time and were then taken off. The credibility of Jordan's testimony may be judged from the fact that he testified that he worked at the George E. Keith factory after the record shows beyond question that the hold-downs were put on all the Ideals in that factory (*supra*, p. 111), but says that the hold-downs were not on the machines when he worked there and that he did not remember that the hold-downs were ever used at the George E. Keith factory (R. Vol. 1, p. 933, lines 18–32).

We submit that this limited use of the Ideal machine *after 1899* which was occasioned by a radically new style of shoe that was not made in February, 1899, and which was made possible only by embodying in the machine inventions made long after that date, has no bearing upon this case. No one can reasonably anticipate to-day that a given patentable invention will be made to-morrow; that invention may not be made for ten years; it may never be made. If the record

had shown, as it does not, that officials of the Consolidated & McKay and Goodyear Companies had any reason to anticipate the introduction of high toes for men's shoes, by no possibility could it have been shown that they had any reason to believe that inventions would be made several years later which would adapt the Ideal lasting machine for that development in the industry.

In February, 1899, there was only the most Trivial and Incidental Overlapping of the Ideal and Chase Machines through Use of the Ideal in the Field of the Chase, and that Overlapping Use was Absolutely Insignificant and Utterly Negligible.

The contention of the United States that the Ideal machine was used on men's welt shoes *before 1899* is supported by evidence that the machines in the Whitman & Keith, Cushman and Duquesne factories, eighteen at the most, were being used on men's shoes before 1899.

Prior to the organization of the United Company the Goodyear Company had put out only 248 Ideal machines (R. Vol. 1, p. 966, lines 14–15).

The total number of lasting machines of all kinds out on January 1, 1899, was between 4,200 and 4,300. The Ideal machines, therefore, constituted about 5 or 6% of all lasting machines outstanding (R. Vol. 1, p. 975, lines 42–45). The total number of shoes operated on in 1899 by both the Ideal and the Copeland Rapid was .77 of 1% of all shoes lasted by machines (R. Vol. 1, p. 975, lines 35–41). Not more than one-half of the total number of shoes made in 1899 were lasted by machines (R. Vol. 1, p. 402, lines 14–18), so that less than .40 of 1% of all shoes made in 1899 were lasted on both the Copeland Rapid and the Ideal. As the United States has proved that at the most only eighteen Ideal machines were used on men's welt shoes, the total number of men's welt shoes on which the Ideal machine operated was about .03 of 1% of all the shoes made in 1899. This is certainly a meagre showing of competition by a machine which had been on the market for nearly four years (R. Vol. 2, p. 2387).

With regard to the extent of this field which was occupied by the Ideal lasting machine it will not be forgotten that the bulk of women's welt shoes were lasted by hand in 1899, comparatively few being lasted by machine (R. Vol. 1, p. 525, lines 42–45).

(d) In the Normal and Natural Development of the Industry both the Chase Lasting Machine and the Ideal Lasting Machine have been Superseded and have become Obsolete. Accordingly any Question of their Possible Competition has become a Moot Point.

As a result of the development of the modern shapes of shoes, made on "crooked lasts," a few years after 1899 the Ideal and Chase machines both proved inadequate for satisfactory work in lasting shoes made upon modern lasts (R. Vol. 1, p. 933, lines 13–16; Vol. 2, pp. 2372–7, 2389–90). This situation was recognized by the United Company, and it met the demand for a machine which would successfully last shoes made upon these modern lasts by the development of a greatly improved lasting machine of radically different organization from either the Ideal or the Chase machine. The work of that new machine, the "No. 5," was so far superior and its capacity so much greater that it immediately superseded both the Chase and the Ideal machines, and there was no longer any demand for those machines. Mr. Howard testified:—

> "The Ideal machine, like the Chase machine, was not adapted for satisfactory work in lasting shoes made upon modern lasts such as have been used in the past eight or ten years" (R. Vol. 2, p. 2389).
>
> "After the No. 5 lasting machine was developed the demand from shoe manufacturers for Ideal machines ceased altogether and most of them have been returned in exchange for No. 5 machines. It was just the same in the case of the Chase machine" (R. Vol. 1, p. 971, lines 5–8).

Mr. Howard further testified:—

> "After manufacturers became acquainted with this No. 5 lasting machine the company was overwhelmed with

orders. In February, 1911, the company was over 400 machines behind in its orders for No. 5 lasting machines, although it was building and shipping machines as fast as the facilities of its manufacturing plant would admit. For example, in April, 1911, the company shipped 208 machines. At no time since the machine was introduced has the company been able to catch up with its orders, and even as late as August, 1913, which is the date of the last report I have, the company was 82 machines behind in filling its orders. On that date 4,204 of these No. 5 lasting machines had been shipped. On December 1, 1911, over 3,000 of these machines were in use in shoe factories.

"From the beginning, the No. 5 lasting machine has been adapted for lasting either men's or women's welt shoes. It has superseded the Ideal lasting machine as well as the Chase lasting machine, and it is now the standard commercial bed lasting machine supplied to manufacturers by the United Shoe Machinery Company" (R. Vol. 2, pp. 2380–1).

Florsheim, a witness for the United States, testified that he substituted the No. 5 machines for his Chase machines because the No. 5 is "a better machine" than the Chase, "does better work" and will last "about ten per cent more shoes" (R. Vol. 1, p. 159, lines 39–41; p. 169, lines 12–14).

The ridiculous contention of Heffernan, Whitman and Murphy, witnesses for the United States, that the Ideal machine had as great capacity as the No. 5 lasting machine was completely answered by Mr. Howard's testimony as to actual conditions in the Whitman & Keith factory, to which the testimony of those witnesses relates. He testified that four of the Ideal machines in that factory had been entirely idle, while they had been using all their three No. 5 machines constantly since they were installed, and that the royalty returns giving the actual output of both types of machines showed that the average output of the No. 5 machine in that factory was much greater than that of the Ideal machine (R. Vol. 1, p. 967, lines 1–31). Mr. Howard concluded,—

"For several years, and since some time prior to the beginning of this suit, it has been an accepted fact in the industry that the No. 5 machine did better work and more of it than the Ideal" (R. Vol. 1, p. 970, lines 5–8).

The absurd contention that the Ideal machine was as good as the No. 5 machine was further answered by witnesses for the United States. Cunningham said of the No. 5 machine: "It is a better machine." Fletcher said: "The No. 5 is superior to the Ideal" (R. Vol. 1, p. 289, lines 42–43; p. 938, line 21).

It thus appears that both the Ideal and Chase machines have become obsolete, and any question of their possible competition has become a moot point. No decree of this Court could restore such competition if it ever existed.

(e) The Finding of the District Court as to Competition between the Chase and the Ideal Machines.

The District Court found in its opinion as follows:—

> "There is no proof of any actual use of the 'Chase' laster otherwise than for its intended purpose of lasting men's welt shoes. It could not work well for use with the lighter leather whereof women's shoes are made. The 'Ideal' laster, used almost exclusively for its intended purpose of lasting women's welt shoes, could not be relied on to work well with the heavier leather whereof men's shoes are made. The proof relied on to show that it competed with the 'Chase' went no further than to show that a number of 'Ideal' machines, small in proportion to the total number then in use, were being used in a few factories on men's shoes, notwithstanding their want of adaptation to such use. That there was any attempt to put either machine into the market as against the other does not appear. No competition between the two in the usual sense of the term is shown. After the consolidation, by the addition of a patented 'hold down attachment' added by the United Company to the 'Ideal' in 1901 or 1902, some of the defects referred to were removed, but not until then can it be said to have been commercially successful for work on men's shoes. Before this improvement, it possessed at most a limited possibility of such use. I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines" (Dodge, J., R. Vol. 1, p. 1130).

(3) THE EVIDENCE AFFORDS NO FOUNDATION WHATEVER FOR THE CLAIM THAT THERE WAS COMPETITION IN 1899 BETWEEN THE IDEAL LASTING MACHINE OF THE GOODYEAR COMPANY AND THE HAND METHOD WELT LASTING MACHINE OF THE CONSOLIDATED & McKAY COMPANY.

(a) Introductory Statement.

The Chase and Ideal lasting machines and the hand method lasting machine were of radically different types. The Chase and Ideal were of the "bed" type, in which the last and shoe are supported by a heel support and a toe rest, and the upper materials are worked over into lasted position at the heel and toe by "wipers." This type also includes a "heel band" for forcing the upper materials, including the stiff "counter," around the heel end of the last. In this type of machine the tacks which secure the upper in lasted position are driven by a "hand tacker" except around the toes of welt shoes where the upper is secured by wire (R. Vol. 2, pp. 2362-3).

In the "hand method" type the upper is worked over the last and automatically tacked in a step-by-step operation, and the operator holds the shoe in his hands while the machine is operating upon it (R. Vol. 2, p. 2363).

When the United Company was formed the Consolidated was putting out the hand method McKay lasting machine. That machine could not be used for the lasting of welt shoes owing to the radical differences between McKay shoes and welt shoes, as explained by Mr. Howard:—

> "The lasting of welt shoes is a very different operation from the lasting of McKay shoes. . . . The insole of a McKay sewed shoe is flat, and in the lasting of such a shoe it is only necessary that the upper stock be worked properly over the edge of the last, laid down upon the flat insole, and tacked. The insole of a welt shoe, on the other hand, is formed with a channel lip or rib extending all the way around the shank, forepart and toe.

> The narrow strip between this lip or rib and the edge of the sole is known as the 'feather edge.' . . . In order that the shoe may be in proper condition for the welt-sewing operation, the upper must, in the lasting operation, be forced into the angle formed by the feather edge and the upturned lip, and must be secured in that position. The hand method lasting machine supplied for the lasting of McKay sewed shoes had no provision whatever for getting the upper into this angle between the feather edge and the lip, and for securing it in that position snugly against the lip. Not only was the hand method lasting machine for McKay work unsuited for the lasting of welt shoes satisfactorily, but in fact it could not possibly be used commercially for that work" (R. Vol. 2, pp. 2399–2400).

For some time prior to 1899 the Consolidated Company had been endeavoring to construct a hand method machine which would last welt shoes, but,—

(b) In February, 1899, the Hand Method Welt Lasting Machine was only an Unsuccessful Experimental Machine.

Mr. Winslow testified:—

> "At the date of the formation of the United Company in 1899 the Consolidated & McKay Company were at work endeavoring to adapt or improve that machine so that it could last welt shoes. It did have out experimentally in the factories of manufacturers a very few machines. I don't think there were twenty of them, but at the date of the formation of the United Company *it was not a successful welt lasting machine. It would not last the toes of the welt shoes properly*" (italics ours) (R. Vol. 1, p. 524, lines 4–11).

Mr. Winslow further testified:—

> "And while it is true that we had machines out it is true that they were not being accepted by the manufacturers and they were being sent out and coming back. We were trying all the time to keep them going. . . . We were trying to hold them in the field, but we knew that they were not commercially successful" (R. Vol. 1, p. 978, lines 2–5, 11–13).

Mr. Howard testified:—

> "The machines were being knocked around from pillar to post. They didn't stick. They would be sent out on trial and they wouldn't stay" (R. Vol. 1, p. 969, lines 4–6).

Mr. Winslow explained why the machine could not be successfully used on a welt shoe:—

> "The inner sole is channeled, as shown in Defendants' Exhibit 145, and in lasting the upper has to be forced against the shoulder of the channel. In order to do this some form of wiper must be used and in the hand-method machine there was no wiper which would push the upper in up to the shoulder of the inner sole. The years of experimentation which we carried on were for the purpose of producing a wiper which would do that" (R. Vol. 1, p. 399, lines 34–41).

Mr. Winslow further testified that early in 1898 in the lasting of welt shoes by the bed machines the taping of the toes was adopted, thereby doing away entirely with the use of tacks to hold the toe, which is a great advantage to the welt sewing operation. The result of this was that the hand method welt machine became even less desirable by comparison with the bed machines (R. Vol. 1, p. 977, lines 40–45; p. 978, line 1).

Mr. Howard testified:—

> "In order to last a toe properly it was frequently desirable to give several pulls upon the same portion of the stock at the toe by the pinchers, and that could not be done, because since the machine drove a tack at every operation of the pinchers, the tacks would be driven one upon another. If they attempted to take hold of a portion of the stock near that or closely adjacent to that just acted upon, the tacks would be driven so close together that they would cut the stock and spoil the leather. Then, of course, the presence of some of those lasting tacks or of stay tacks, if they were driven to take their places, interfered seriously with the operation of the welting machine. The needles would break.
>
> "And more than that, until this wiring attachment was placed upon the machine [*infra*, p. 121] the machine

> would not force the upper properly against the rib of the inner sole, and it was necessary to perform a subsequent hand operation upon the shoe by means of what was known as a 'banging iron,' one of which is Defendants' Exhibit 340. . . . That was a subsequent additional hand operation for which operators were paid two and one-half cents per dozen" (R. Vol. 1, p. 969, lines 13–30, 36–38).

Counsel for the United States read into the record certain advertisements of the Consolidated Company in a trade paper in December, 1898, advertising the hand method lasting machine for lasting welt shoes (R. Vol. 1, p. 960, lines 24–28).

These advertisements do not state that the machine was intended for women's welt shoes, the field of the Ideal machine. But apart from this, they merely show an attempt by the Consolidated Company to introduce the machine. They in no wise refute the testimony referred to above, showing that this attempt of the Consolidated Company had failed, and that the machine was not commercially successful.

(c) The Hand Method Welt Lasting Machine did not become Commercially Successful until a New Wiring Device was Invented and Incorporated in it after the Formation of the United Company.

Mr. Howard testified:—

> "The attachment for placing wire instead of tacks around the toe was first adopted and applied to the hand method welt lasting machine in January, 1900, in its original form. The wire attachment was improved a year later, but the machine really reached a point of commercial success with the adoption of the first wire attachment" (R. Vol. 1, p. 969, lines 41–44; p. 970, lines 1–2).

This wiring device performed the same function which the taping device performed on the bed machine (R. Vol. 1, p. 978, lines 6–8). It obviated the difficulties which had previously made the hand method welt machine unsatisfactory.

(d) There is no Evidence Whatever that the Few Experimental Hand Method Welt Lasting Machines which were out in 1899 were ever Used in the Field of the Ideal Machine, that is, on Women's Welt Shoes.

The record does not show that there was any use whatever of the few experimental hand method welt lasting machines which had been put out before February, 1899, in the field of the Ideal machine, that is, in lasting women's welt shoes. The only witness who testified to any use of that machine prior to 1899 was Eaton, and he used the machine on the cheapest grade of *men's* welts (R. Vol. 1, p. 752, lines 16–17; p. 755, lines 6–7).

It is important to note that such use of the hand method welt lasting machine on women's shoes as is shown by the record was all *long after 1899*, and after the machine had been made commercially successful by embodying in it improvements invented after 1899, as has just been explained (*supra*, p. 121).

(e) Accordingly the Hand Method Welt Lasting Machine did not Offer either Existing or Potential Competition in 1899.

With respect, therefore, to the claim that the hand method welt lasting machine offered competition the record shows that the situation when the United Company was formed was as follows:—

Only a few hand method welt machines had been put out up to February, 1899, compared with between 4,200 and 4,300 lasting machines of all kinds then in use; these machines were only experimental, their use amounted to nothing more than shoe factory trials of the machine, and those trials showed the machine to be unsuccessful. Such use as was made of those experimental machines was not in the field of the Ideal machine. In spite of continuous and aggressive efforts for several years to make the machine successful, it was a flat failure in February, 1899, because it could not last satisfactorily the toes of welt shoes.

At that time not only was the hand method welt machine in a state of experimental development only and a commercial failure, but there was absolutely nothing in sight upon which even to hazard a reasonable guess that the hand method welt machine *ever would become a success.* The toe-wiring mechanism to which the hand method welt machine owed its entire commercial success, first applied to the machine in 1900, was a radically new departure not even dreamed of in February, 1899. No one could then reasonably anticipate that mechanism would be invented which could be incorporated in that highly organized automatic machine and would successfully apply wire around the toe during the step-by-step operation of the machine. If those inventions—and there were two of them before a successful organization was produced (R. Vol. 2, p. 2403)—had not been made, the hand method lasting machine for welt work would never have been heard of in this suit.

It is absolutely clear, therefore, if anything is clear from the record, that in February, 1899, the hand method welt machine did not offer either existing or potential competition worthy of the slightest notice.

(f) Even after the Hand Method Welt Lasting Machine became Commercially Successful in 1900 It had a Field of its own Distinct from the Field of the Bed Lasting Machines, such as the Ideal.

Furthermore, owing to the very radical differences between the hand method type of lasting machine and the bed type of lasting machine such as the Ideal (*supra*, p. 118), the hand method welt machine, after it became commercially successful, naturally found a field of its own distinct from the bed lasting machine field, manufacturers who preferred speed to quality employing the hand method welt machine and manufacturers who preferred quality to speed employing a bed machine. As explained by Mr. Howard:—

> "There is a difference of opinion among shoe manufacturers as to the desirability of using the hand method machine or the bed type of lasting machine for welt shoes.

> Those manufacturers who believe that they can secure better lasting upon the bed type of lasting machine prefer, and are supplied with, Lasting Machine No. 5, USMC, the United Company's standard commercial bed lasting machine, which was introduced in 1908. Other manufacturers who are satisfied with the quality of the work done on the hand method lasting machine for welt work prefer that machine because they can get twice the amount of work from it as from the bed type of lasting machine. Either type is supplied to the manufacturer by the United Company, according to his preference" (R. Vol. 2, pp. 2406, 2407).

As stated by Mr. Winslow:—

> "Wherever they can last a welt shoe satisfactorily by the hand method machine they use that in preference, because it is a speedier machine for lasting than any of the other machines, but the quality of work which can be done by that machine, especially around the toe, is not considered by the manufacturers so high grade as when you can use the bed machine" (R. Vol. 1, p. 526, lines 16–22).

Thus the record shows that the hand method welt machine was an entirely different type of machine from the bed lasting machines, such as the Ideal, and that accordingly and as was to be expected it found a field of its own. The United Company, therefore, would not have been able to supply the machines its customers preferred for different classes of work if it had not acquired both the bed machines and the hand method welt machine.

Even if the hand method welt lasting machine, experimental and unsuccessful in 1899, had offered any competition to the Ideal machine, which it did not (*supra*, pp. 122–123), there can be no question that the United Company could lawfully acquire these two radically different machines which did their work in wholly different ways and were preferred and found best suited for different grades of work. To deny the right to acquire both machines would deny the United Company the right to supply these different types of machines, both of which were desired by its customers, since both machines were patented and could be supplied only if the United Company owned the patents.

(g) Finding of the District Court as to the Alleged Competition between the Ideal and Hand Method Welt Machines.

The District Court held with respect to this alleged competition (Dodge, J.) (R. Vol. 1, p. 1130):—

> "With still another laster with which the Consolidated Company was experimenting in 1899 for use on welt shoes, we are not here concerned, because, though this laster was afterward further improved, developed, and finally furnished to users by the United Company, it had not been made an article of commerce in any practical sense when that company was formed."

(4) SUCH INSIGNIFICANT AND INCIDENTAL LASTING MACHINE COMPETITION, IF ANY, AS EXISTED IN FEBRUARY, 1899, INVOLVED INFRINGEMENT BY EACH COMPANY OF THE OTHER'S PATENTS AND ACCORDINGLY WAS AT LEAST PRIMA FACIE UNLAWFUL.

Serious patent litigation between the Consolidated Company and the Goodyear Company was pending at the time of the formation of the United Company. This patent litigation involved important features common to the machines of both companies. Numerous infringement suits had been brought, in some of which one and some of which the other company was the defendant. Suits were also pending against users of the different machines who were largely the customers of both companies (R. Vol. 1, p. 632, lines 14–41).

(5) THE SETTLEMENT OF THIS LITIGATION WAS ALONE A SUFFICIENT JUSTIFICATION FOR COMBINING THE PATENTS OF THE TWO COMPANIES.

The District Court found (R. Vol. 1, p. 1132):—

> "Under their respective patents upon the 'Chase' and the 'Ideal' lasters there was litigation pending in 1899 between the Consolidated Company and the Goodyear

Company, each claiming that the other's machine infringed its patents. Also, under the patents covering their welt-sewing machines there was similar litigation pending between the Eppler Company and the Goodyear Company. A result sought to be attained by both parties to these controversies, and accomplished by them through the acquisition of all the patents by the United Company, was the termination of all this litigation. Reference is made below to other later acquisitions by the United Company, an important feature of which was that litigation, troublesome and expensive on both sides, was avoided or terminated. In so far as any of the defendants' transactions were in order to accomplish results of this kind, it can not be said that their purpose was unlawful."

In *Bement* v. *National Harrow Company*, 186 U. S. 70, it was said by this Court (p. 93):—

"There had been, as the referee finds, a large amount of litigation between the many parties claiming to own various patents covering these implements. Suits for infringements and for injunction had been frequent, and it was desirable to prevent them in the future. This execution of these contracts did in fact settle a large amount of litigation regarding the validity of many patents as found by the referee. This was a legitimate and desirable result in itself."

(6) THE CLAIM OF THE UNITED STATES THAT ITS CONTENTIONS ARE SUPPORTED BY THE TESTIMONY OF "SIXTEEN PRACTICAL MEN."

At the first argument of this case before this Court the junior counsel for the United States stated that fifteen practical shoemakers testified to the actual use in shoe factories of the lasting machines put out by the Goodyear Company, and that that use was necessarily in competition with the lasting machines of the Consolidated Company. The senior counsel for the United States made statements to the effect that sixteen practical men testified that they used for many years in some eleven factories the Ideal, the Copeland Rapid

and the Chase lasting machines, that they used these machines together in their factories, that they did the same work, that the Ideal lasted men's welts and that the Chase lasted women's welts.

These statements were not supported by the record.

Instead of sixteen practical men testifying that the Chase machine lasted women's welts, the fact is that *not a single witness so testified* (*supra*, p. 100).

Again, eight of these "sixteen practical men" did not testify to *any use whatever* of the Ideal machine on men's welts. Three others did not testify to any use of the Ideal machine before 1899, so that their testimony is not relevant to the issue, as has been explained (*supra*, p. 109). *Five witnesses only* testified to any use of the Ideal machine on men's welts before 1899 and they testified to such use in *three factories only* (*supra*, p. 114), and testimony of two of those witnesses, Heffernan and Fletcher, was to the effect that the Ideal was not satisfactory on men's shoes until the hold-down was invented, *after 1899* (*supra*, pp. 112, 106).

Further, ten of these sixteen witnesses did not testify to any use of the Copeland Rapid lasting machine, although this fact is important only as showing added inaccuracy in the arguments for the United States at the former hearing; as we have shown (*supra*, pp. 106, 108), evidence regarding that machine is not relevant to any issue in this case.

(7) GENERAL STATEMENT OF THE SITUATION IN RESPECT TO THE ALLEGED LASTING MACHINE COMPETITION.

The true situation as to the lasting machine conditions in February, 1899, with respect to the Ideal lasting machine and the lasting machines of the Consolidated & McKay Company was thus stated by Mr. Howe:—

> "Whatever competition there was was due to their respective fields lapping over" (R. Vol. 1, p. 629, lines 14–15).
>
> "They really occupied separate fields. It was competi-

tion which might be described as incidental or as negligible" (R. Vol. 1, p. 629, lines 17–18).

"Each had its separate field for which it was designed, but in the cases of all machines of a genus the specific varieties will overlap" (R. Vol. 1, p. 627, lines 17–19).

As stated by Mr. Winslow:—

"Very soon after a given machine had been introduced they settled into their natural positions" (R. Vol. 1, p. 404, lines 37–38).

"These machines have the fields which I have described and they naturally belong to them. No manufacturer to-day would think of using them outside of those fields" (R. Vol. 1, p. 405, lines 3–6).

(8) SUMMARY OF THE EVIDENCE AS TO THE ALLEGED LASTING MACHINE COMPETITION.

1. The lasting machines being put out by the Consolidated & McKay Company and the Goodyear Company were all patented.

2. Neither the McKay & Copeland machine nor the hand method McKay machine (both put out by the Consolidated Company) could be used on welt shoes, so that neither competed or could compete with the Ideal machine of the Goodyear Company. This has not been denied.

3. The Chase machine put out by the Consolidated Company was adapted for use and was used almost exclusively for lasting men's welt shoes.

Such slight use as was made of that machine in lasting women's shoes was on women's *McKay* shoes. The evidence shows that the Chase machine was structurally not adapted for use on women's welt shoes, and there is not a bit of evidence that it was ever used in lasting women's *welt* shoes. It, therefore, did not compete with the Ideal machine of the Goodyear Company in lasting women's welt shoes, which was the field of the Ideal machine.

4. The Ideal machine of the Goodyear Company was adapted to and developed for the purpose of lasting women's

welt shoes. It was possible to use it on men's welt shoes, but it was not commercially practicable for such use.

The insignificant use of the Ideal machine on men's welt shoes did not show that there was competition between the Ideal machine and the Chase machine, but only showed an incidental overlapping of the fields of the two machines which were primarily intended, adapted, and used in different and distinct fields.

In 1899 the Ideal machines constituted only 5 or 6% of all the lasting machines in use. The machines lasted only .77 of 1% of all shoes lasted by machines in 1899. The United States has proved that at the most eighteen machines were used in lasting men's welt shoes. The alleged competition by the Ideal machine, therefore, was in lasting approximately .06 of 1% of the shoes lasted by machines in 1899. As only about one-half the shoes made in 1899 were lasted by machines, the actual use of the Ideal machine in alleged competition with the Chase machine is reduced to the use of the machine on .03 of 1% of all the shoes made in 1899.

It is obvious that the alleged competition was entirely insignificant.

5. The slightly increased use of the Ideal machine on men's welt shoes after 1899 was made possible by new inventions made long after the formation of the United Company which overcame some of the practical difficulties in using the machine on men's welt shoes, and the occasion for that use was the introduction of a radically new style of shoe which was made upon a new type of last.

6. The hand method welt machine of the Consolidated Company was only in an experimental stage in 1899, with no promise of ultimate success. Only a few machines were used and they were being constantly returned. Even as to these machines there is no evidence that they were used on women's welt shoes, the field of the Ideal machine. The machine did not become a commercial success until 1900, when a new mechanism was adopted which had not been invented and could not have been foreseen in 1899.

The machine, therefore, did not offer any actual competition to the Ideal machine in 1899 or any prospective competition which could have been foreseen.

7. Even after the hand method welt machine became commercially successful in 1900, it had a field of its own, distinct from that of the bed lasting machines. Manufacturers preferring speed to quality used the hand method machine, and those preferring quality to speed used the Ideal machine or the Chase machine, according to the character of their work. If the United Company had not acquired that machine as well as the Ideal and Chase machines, it would not have been able to supply all its customers with the machines which they desired.

8. The patent litigation between the Goodyear Company and the Consolidated Company shows that if a trivial and insignificant competition may be said to have existed, it involved infringement by each company of the patents owned by the other and accordingly it was at least *prima facie* unlawful.

9. In the natural and normal development of the industry both the Ideal machine and the Chase machine have become obsolete. If any competition ever existed it could not be recreated.

(9) THE ACQUIRING OF BOTH THE IDEAL MACHINE OF THE GOODYEAR COMPANY AND THE LASTING MACHINES OF THE CONSOLIDATED COMPANY DID NOT MAKE THE ORGANIZATION OF THE UNITED COMPANY UNLAWFUL NOR DID IT SHOW ANY WRONGFUL INTENT.

The acquisition by the United Company of the Ideal machine of the Goodyear Company and the Chase machine and the experimental hand method welt machine of the Consolidated Company could not make the formation of the United Company unlawful, unless by its necessary effect or by reason of the intent with which it was done it prejudiced the public interest by unduly restraining trade or creating a monopoly.

As we have shown, there is no evidence of anything which could be dignified by the name of competition between the

machines of the two companies. So far as the Ideal and Chase machines are concerned there was only a slight overlapping of the fields of use of two machines adapted for different purposes. The slight experimental use of the hand method welt machine was negligible and did not overlap at all.

It cannot be seriously contended that this slight overlapping of the fields of the Ideal and Chase machines and the insignificant and non-competing use of the experimental hand method welt lasting machine necessarily created an unlawful restraint of trade and made the formation of the United Company inherently unlawful.

Nor does this acquisition show any intent by the parties to eliminate competition. The manufacture of the Ideal machine was a negligible part of the business of the Goodyear Company. It is self-evident that its acquisition by the United Company was purely incidental to the acquisition of the machines for making welt and turn shoes, the manufacture of which constituted the principal business of the Goodyear Company. There is absolutely no justification for contending that the elimination of this trivial competition, if indeed any actual competition did exist, was an actuating motive in the formation of the United Company.

The real purpose of the parties was to create a more efficient organization by combining the Goodyear welt machines with the lasting, heeling and metallic machines of the other companies. An incidental elimination of an almost insignificant competition between two different types of patented machines would not be sufficient to make unlawful the consummation of this lawful purpose.

Moreover, even if the Ideal machine had been the only machine owned by the Goodyear Company, so that its acquisition had been, not an incidental result of acquiring the Goodyear Company's welt machines, but the direct purpose of the acquisition, it would have been lawful.

The United Company naturally and properly desired to furnish the best and most efficient types of lasting machines. It obtained, through the Consolidated Company, the patents on, and therefore the right to supply the Chase machine, the McKay & Copeland and the Hand Method machines. No

one of these, however, lasted women's welt shoes successfully. It naturally desired to furnish a machine for lasting women's welt shoes, and the Ideal machine was the only machine for that work on the market. The Ideal was patented, and the United Company, therefore, could not furnish the Ideal unless it acquired the patents which the machine embodied. Until it acquired these patents it was absolutely restrained from furnishing this type of machine, and as the Ideal machine was the only machine then invented which could last women's welt shoes, the United Company was absolutely restrained from furnishing any machine for that work. It was, therefore, normal and strictly in furtherance of its legitimate business for the United Company to acquire these patents. To hold otherwise would be to hold that the United Company could not furnish a machine for lasting women's welt shoes, merely because such machine could also be used, or was used to a slight extent, for lasting men's welt shoes.

Furthermore, the settlement of the infringement suits between the parties justified the combination of the patents covering them. If, for example, the Goodyear Company had lost these suits, it might have been compelled to abandon the Ideal machine entirely. It was entitled by combination with the Consolidated Company to avoid infringement suits brought against users of this machine. An acquisition of both sets of patents for this purpose alone would have been a legitimate normal transaction not forbidden by the Sherman Act.

B. ALLEGED COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE EPPLER COMPANY.

(1) INTRODUCTORY STATEMENT.

The welt shoe differs from other kinds of shoes in the method by which the sole is attached to the upper. In pegged and metallic fastened shoes the sole is attached to the upper by wooden pegs or nails. In McKay shoes the sole is attached by a seam which runs through the outsole and insole so that it appears on the inside surface of the shoe. In the case of pegged, nailed, and McKay shoes, as the fastening material or seam appears on the inside of the insole it comes in contact with the sole of the foot and may cause annoyance and discomfort.

In the welt shoe, a welt or narrow strip of leather is attached to the outside of the upper and to the insole, and the outsole is sewed to this welt.

In the manufacture of the Goodyear Welt shoe the Goodyear Welter first sews together the upper, the welt, and the insole. This seam, instead of being sewed through the insole, is sewed sideways by a curved needle in a prepared channel in the exterior of the insole. A light single thread lies in this channel, and the double thread or chain is laid on the welt outside the surface on which the foot rests. The outsole is then sewed to the welt by the Goodyear Stitcher. As a result, neither the chain of the stitch which attaches the welt to the upper nor the seam which attaches the outsole to the welt appears on the inside of the shoe or under the portion of the insole on which the foot rests.

In the manufacture of the Eppler Welt shoe the bulky double thread of the chain-stitch was laid in the prepared channel in the bottom of the insole underneath the surface on which the foot rests and not on the welt, as in the Goodyear method (R. Vol. 1, p. 353, lines 4–20; p. 391, lines 7–17; p. 469, lines 36–41).

The Eppler machine was so organized that it could only make the shoe in this way, so that it was impossible to use the Eppler machine on women's shoes or turn shoes, and it was much inferior to the Goodyear machine on men's shoes.

The Goodyear System was the first system ever used for making welt shoes by machinery (R. Vol. 1, p. 626, lines 3–8). The Goodyear method ran back to 1870 or 1868 (R. Vol. 1, p. 625, line 20). The Goodyear Company, however, revolutionized its machines about 1890 by the use of new inventions (R. Vol. 1, p. 678, lines 6–9). In 1899 its machines were recognized as superior to any others in use; it had under lease approximately 2,500 welters and stitchers (R. Vol. 5, p. 424, Defs.' Ex. 226).

The Eppler Company, which first put out its machines in the early nineties (R. Vol. 1, p. 679, line 7), used a method which had been tried and abandoned years before by the Goodyear Company (R. Vol. 1, p. 625, lines 21–28). The Eppler Company had been unsuccessful in putting out its machines, having only between thirty and forty welters outstanding in 1899, of which about one-third were in the factory of the president of the company. The number of stitchers out was even less (R. Vol. 1, p. 389, lines 6–10).

(2) PURPOSE OF THE ACQUISITION OF THE EPPLER COMPANY.

Mr. Winslow testified that the reason for acquiring the Eppler Company was to get rid of the litigation between the Goodyear and Eppler companies in the starting out of the new company, and that it was acquired for no other purpose (R. Vol. 1, p. 416, lines 25–29; p. 531, lines 34–35).

Mr. Howe testified that the Eppler Company was acquired principally to get rid of this litigation (R. Vol. 1, p. 633, lines 15–17). Another subsidiary reason in Mr. Howe's mind was that the Eppler Company made a different kind of machine for making a different kind of shoe (R. Vol. 1, p. 633, lines 13–14). He felt it would be desirable to be able to furnish this machine if any customers desired it.

The machines of the Eppler Company infringed the Goodyear Company's patents, and, as we shall show later, a considerable number of patent suits brought by the Goodyear Company were pending. In conducting this litigation suits were brought against shoe manufacturers using the Eppler machines. The defendants in such suits were also lessees of lasting, heeling, and metallic machines taken over by the United Company, which was thus placed in the disagreeable position of being obliged to sue its own customers if the litigation against the Eppler Company were continued (R. Vol. 1, p. 417, lines 1–8; p. 633, lines 18–26). As Mr. Howe testified, this "made very unpleasant relations" (R. Vol. 1, p. 633, lines 25–26). The situation was the more embarrassing because the officers and managers of the United Company were the men who had formerly been officers and managers of the Lasting Machine Company (R. Vol. 1, p. 629, lines 2–11; P.'s Ex. 274, R. Vol. 4, p. 1524), and those men were threatened, at the critical period when the United Company was just getting started, with the interruption by this litigation of the friendly relations which they had established between the Lasting Machine Company and its customers.

The testimony of Mr. Winslow and Mr. Howe that the purpose in acquiring the Eppler Company was to end this embarrassing and annoying litigation is confirmed by the circular letters which were sent in February, 1899, by the directors of the Goodyear Company and the Consolidated & McKay Lasting Machine Company to the respective stockholders of those companies. In the circular letter to the stockholders of the Goodyear Company dated February 8, 1899, which was signed by the directors of the Goodyear Company, including Mr. Howe, the litigation between the various companies before 1899 was characterized as having been "expensive to them and annoying to shoe manufacturers" (P.'s Ex. 152, R. Vol. 4, p. 1097; p. 1099, lines 30–32). There was a similar statement in the circular letter to the stockholders of the Lasting Machine Company dated February 11, 1899, which was signed by the directors of that company, including Messrs. Winslow and Brown, who were respectively the president and the treasurer and general manager of the United Company (P.'s Ex. 175, R. Vol. 4, p. 1198; p. 1199, lines 12, 16, 23–25).

That it was entirely proper to terminate this litigation by acquiring the Eppler Company's patents is shown by *Bement* v. *National Harrow Company*, 186 U. S. 70, where it was said by this Court (p. 93):—

> "There had been, as the referee finds, a large amount of litigation between the many parties claiming to own various patents covering these implements. Suits for infringements and for injunction had been frequent, and it was desirable to prevent them in the future. This execution of these contracts did in fact settle a large amount of litigation regarding the validity of many patents as found by the referee. This was a legitimate and desirable result in itself."

(3) PATENT LITIGATION BETWEEN GOODYEAR AND EPPLER COMPANIES ON ACCOUNT OF WHICH THE EPPLER COMPANY WAS ACQUIRED.

George E. Keith, who had been the president of the Eppler Company, testified that there was patent litigation affecting all the machines of the Eppler Company from the time it first started business (R. Vol. 1, p. 392, lines 13–24).

Mr. Howe testified:—

> "There was extensive litigation between the Goodyear Company and the Eppler Company prior to 1899. . . . As to the prospects of the ultimate result, on my side I thought we should succeed in all our cases" (R. Vol. 1, p. 470, lines 11–12, 21–22).

In 1899 there were pending eight patent suits brought by the Goodyear Company against the Eppler Company or users of its machines for infringement of Goodyear patents (R. Vol. 1, pp. 471, 673, 674).

In one suit the Goodyear Company charged the Eppler Company's welt machine with infringing the Briggs patent for forming chain-stitches, which was owned by the Goodyear Company (R. Vol. 1, p. 673, lines 34–37). In three suits the Goodyear Company charged that the Eppler outsole

stitcher infringed a French and Meyer patent owned by the Goodyear Company (R. Vol. 1, p. 674, lines 9–21).

In another suit the Goodyear Company charged infringement of a patent belonging to it by the Eppler rounding and channeling machine, and in two others the Goodyear Company charged infringement of its Hadaway patent by the Eppler stitch separating and indenting machine (R. Vol. 1, p. 471, lines 30–33; p. 674, lines 23–32). In still another, infringement by the Eppler welt beating machine was charged by the Goodyear Company (R. Vol. 1, p. 673, lines 17–33). In nearly all of those suits testimony was being taken (R. Vol. 1, pp. 673–4). Mr. Howe had carefully examined all the Eppler machines (R. Vol. 1, p. 677, lines 7–8).

The United States has endeavored to belittle the infringement of the Briggs patent by the Eppler welter and has attempted to distort the testimony of Mr. Howe that in his opinion—

> "the infringing devices were very material in the construction of the Eppler Company's machines, except the welt sewing machine" (R. Vol. 1, p. 623, lines 31–33).

In this effort the United States lost sight of the fact that Mr. Howe was testifying specifically about "infringing *devices*" and that this testimony has no bearing at all upon the infringement by the Eppler welter of the Briggs *method* patent,—a method which could be performed by hand (R. Vol. 1, p. 691, lines 30–31). His testimony as to that was as follows:—

> "The Eppler welter infringed the Briggs method patent on an invention *which accomplished the sewing of a tight seam*" (italics ours) (R. Vol. 1, p. 678, lines 5–6).
>
> "That revolutionized the art with respect to the Goodyear machine because *it would sew a tight seam, which the old method did not*" (italics ours) (R. Vol. 1, p. 691, lines 32–34).

A tight seam is very important because it prevents ripping of the seam and leaking of water into the shoe, and the Briggs method also made it possible to use less expensive insoles than before (R. Vol. 1, p. 691, lines 22–29, 35–42). A tight seam "is indispensable in the inseam of a welt shoe" (R. Vol. 2, p. 2251).

The United States offered no testimony whatever controverting defendants' evidence as to any of the infringements above set forth.

This patent litigation was a serious embarrassment to the United Company, as, if it was continued against the Eppler Company, the United Company would be obliged, as explained above, to sue its own customers, such as Mr. Keith. To avoid this litigation was a normal and natural reason for the acquisition of the Eppler Company. Its acquisition can give rise to no inference of an unlawful intent to eliminate competition.

(4) THE PURCHASE OF THE EPPLER COMPANY WAS NOT CONSIDERED UNTIL AFTER THE FORMATION OF THE UNITED COMPANY WAS AGREED UPON.

The Eppler Company was acquired out of the proceeds of the funds supplied by the syndicate which took stock in the United Company (R. Vol. 1, p. 32, lines 6–7). It was actually acquired in March, 1899 (R. Vol. 1, p. 17, lines 12–13), a month after the United Company was organized.

Both Mr. Winslow and Mr. Howe testified that there was no discussion of the Eppler Company until after the arrangements between the Goodyear Company and the Consolidated Company to unite had all been settled (R. Vol. 1, p. 529, lines 12–15; p. 530, lines 22–25; p. 633, lines 5–7; p. 675, lines 34–35).

The United States apparently contends that elimination of competition between the Eppler Company and the Goodyear Company was one of the motives for the formation of the United Company. As this acquisition was not discussed or thought of until after the formation of the United Company was agreed to, it follows that the acquisition of the Eppler Company and the elimination of this alleged competition could not have been a motive for the formation of the United Company as charged by the United States.

(5) IF ANY COMPETITION EXISTED BETWEEN THE EPPLER COMPANY AND THE GOODYEAR COMPANY, SUCH COMPETITION WAS TRIVIAL AND NEGLIGIBLE.

Field of Competition.

The Goodyear machines made Goodyear welt shoes, the Eppler machines made Eppler welt shoes (R. Vol. 1, p. 417, lines 5–21). The upper and insole were differently attached in the two shoes, and, therefore, the machines did a different class of work. The Eppler machines were restricted by the leases of that company to use in the manufacture of the "Eppler Welt Shoes" (R. Vol. 3, P.'s Ex. 59, p. 512).

So the Eppler machines could not make Goodyear shoes and the Goodyear machines could not make Eppler shoes (R. Vol. 1, p. 417, lines 20–21).

The frivolous argument of the United States that the only reason why the Eppler machines could not produce Goodyear welt shoes was because "Goodyear Welt" was a trade name for shoes produced on Goodyear machines, not only has no support in the record but is directly at variance with uncontradicted evidence showing that the difference between the Eppler welt shoe and the Goodyear welt shoe was a difference in the *structure* of the shoe (*supra*, p. 133). As Mr. Howe explained, the Goodyear welt shoe—

> "was the hand sewed shoe, sewed by machinery. The Eppler welt shoe was a shoe made in a different way, different from what a hand workman would make it" (R. Vol. 1, p. 678, lines 25–28).

Mr. Howe also testified that the Eppler machines could not make a Goodyear welt shoe because of the construction of the machines (R. Vol. 1, p. 469, lines 33–36).

The United States apparently contends that both machines made welt shoes; that the Goodyear Company did most of the welt machine business in the United States; and that by the acquisition of the Eppler Company, even though it did a very small business, some possible competition was eliminated.

The welt method was only one method of attaching the

soles to the uppers of shoes. Until the Goodyear method was devised no welt shoes were made except by hand. Among other methods of attaching the soles were pegging, nailing, and McKay sewing. Also there were other kinds of welt shoes than the Goodyear and Eppler, such as the mock welt shoe and the McKay welt shoe (R. Vol. 1, p. 199, line 26; p. 214, line 11; p. 698, line 8; p. 824, lines 28–31). In making a McKay welt shoe the welt was sewed to the upper and insole on the McKay sewing machine (R. Vol. 1, p. 206, lines 22–24; p. 225, lines 14–18; p. 249, lines 7–17), but in this case the seam appeared on the inside of the insole next to the foot and, as above explained, it was the distinguishing characteristic of the Goodyear welt shoe that there was no seam next to the foot. In 1898 less than 10% of the shoes made had their soles attached by the welt method, while nearly half were sewed on McKay machines (R. Vol. 1, p. 414, lines 36–41). So far, then, as any competition can be said to exist between machines making different kinds of shoes the real competition of the Goodyear machines was with the McKay machines. In acquiring both the Goodyear Company and the Eppler Company, therefore, the United Company acquired patents on machines which by two distinct methods attached the soles of only a small proportion of the total shoes made in the country. And the Eppler Company occupied only a portion of that small field since its welter could not be used on turn shoes, on women's welts or on shoes made with reinforced insoles (*infra*, p. 142).

The Eppler Machines were Distinctly Inferior to the Goodyear Machines, Offered No Real Competition, and were Certain to Succumb to the Goodyear in the Survival of the Fittest.

In the late eighties Andrew Eppler, who had at one time worked for the Goodyear Company, took up a method of making a double chain-stitch which had been abandoned by the Goodyear Company and applied it to a machine for welting men's shoes (R. Vol. 1, p. 625, lines 20–28).

At first the Eppler Company had no outsole stitching ma-

chine, but outsoles for its shoes were attached by a harness machine or by hand stitching (R. Vol. 1, p. 625, lines 29–34).

The Eppler Company developed a few auxiliary machines inferior in design and quality of work to the Goodyear auxiliaries (R. Vol. 1, p. 631, lines 9–15).

The Eppler Company at the date of the formation of the United Company had been putting out its machines for seven years or more and had only succeeded in disposing of between thirty and forty welt machines, of which about one-third were in the factory of the president of the Company, Mr. George E. Keith (R. Vol. 1, p. 389, lines 6–12). The Eppler machines were not commercially successful as profit-makers (R. Vol. 1, p. 392, lines 9–12). The Goodyear Company, on the contrary, had outstanding 2,531 welters and stitchers on March 1, 1900, the nearest date in evidence (R. Vol. 5, Defs.' Ex. 226, p. 424). The reason is clearly established by the record: the Eppler machines were decidedly inferior and did not make as good a shoe.

As explained above, the Eppler machine laid a double chain-stitch in the channel of the insole under the portion thereof on which the foot rested, while the Goodyear machine laid a light single thread in the channel so that the double thread of the chain-stitch seam was not under the portion of the insole on which the foot rested (R. Vol. 1, p. 415, lines 26–36). The importance of this distinction in the construction of the Goodyear and Eppler shoes runs through the successful progress of the Goodyear System and the failure and final elimination of the Eppler System.

Mr. Keith, the president of the Eppler Company, testified that this double stitch on the inside of the sole "had a tendency to raise a ridge or lump around the inside of the sole against the foot, which had the effect both of lessening the durability of the shoe and of making it uncomfortable" (R. Vol. 1, p. 391, lines 10–17).

Charles S. Smith, a witness for the United States, testified that the chain-stitch of the Eppler machine, "being larger and more bulky than the single stitch, occupied more room and was likely to leave a ridge around the inside of the shoe, which would come against the foot." This would cause discomfort to the wearer (R. Vol. 1, p. 353, lines 6–20).

For this reason **the Eppler machine could not be used on turn shoes,** in which the sole must be thin in order that the shoe may be turned after sewing (R. Vol. 1, p. 415, line 44; p. 416, line 5; p. 469, line 42; p. 470, line 4). The Goodyear Welt machine, on the other hand, was used to make both welt and turn shoes (R. Vol. 1, p. 470, lines 5–7). For the same reason, **the Eppler machine could not be used successfully on women's welts,** which have thin insoles. Mr. Winslow testified that he did not know of any women's welt shoes made by Eppler machines (R. Vol. 1, p. 531, lines 4–5).

Mr. McElroy, a witness for the United States, after testifying that he did not know whether the Eppler machine could be used on women's shoes, said that it could have been so used. But the context shows that he meant no more than that as a mechanical operation it was possible to sew a woman's shoe on the Eppler machine, and that he did not mean to express any opinion as to the quality or salability of the shoe operated upon. He never used an Eppler machine and merely examined it once (R. Vol. 1, p. 187, lines 33–34; p. 188, lines 2–22). There was no evidence that the Eppler machine ever had been used on women's shoes and no other witness even expressed an opinion that it could have been so used. The Goodyear Welter was used on both men's and women's welts with equal success.

The fact that the Eppler machine could not be used for turn shoes and was not adapted and was never used for women's welt shoes was a serious disadvantage, especially in those factories constituting more than one-half the factories in the country whose production required only a single machine of this character.

Furthermore, the necessity of using an unnecessarily thick and expensive insole on an Eppler shoe merely to prevent the seam from hurting the foot added greatly to the expense of making Eppler Welt shoes, and this thick insole did not add to the value or wear of the shoe. Light substitutes for insoles, or canvas reinforced insoles, could not be used on Eppler shoes (R. Vol. 1, p. 415, lines 36–43).

The Eppler machines were also inferior in construction to the Goodyear machines (R. Vol. 1, p. 677, lines 17–21).

Furthermore, **the Eppler Company did not have a com-**

plete or satisfactory set of auxiliary machines. George E. Keith, the president of the Eppler Company, testified that the Company did not manufacture a full set of machines for making welt shoes and he named only two auxiliary machines, the rough rounder and stitch separator (R. Vol. 1, p. 389, lines 15–17; p. 390, lines 37–43). The rough rounder was not a satisfactory machine (R. Vol. 1, p. 389, lines 19–20). The Company did not have a satisfactory stitch separator (R. Vol. 1, p. 391, lines 39–41). This operation is necessary to make the shoe "complete in appearance" (R. Vol. 1, p. 391, lines 34–38).

Auxiliary machines are essential to the successful manufacture of welt shoes. As an illustration of their importance, the stitch separator, the rough rounder and channeler, and the automatic leveling machine were included in the limited number of machines which the United States selected for discussion before the special examiner on the issue of "basic" patents (R. Vol. 2, pp. 2201–08). The invention of the rough rounder of the Goodyear Company had revolutionized the manufacture of welt shoes (R. Vol. 1, p. 793, lines 23–33). The Eppler Company had no leveling machine of its own (R. Vol. 1, p. 416, line 38). The Eppler Company, therefore, lacked very important auxiliary machines such as were supplied by the Goodyear Company and were essential to the commercial success of the welt process.

For the various reasons outlined above the Eppler machines were not satisfactory and they did not make as good shoes as the Goodyear machines.

George E. Keith, the president of the Eppler Company, testified that the Goodyear machine did decidedly better work than the Eppler (R. Vol. 1, p. 385, lines 22–24; p. 392, lines 2–8).

James H. Cunningham, a shoe manufacturer and a witness for the United States, testified that "everything about the Goodyear was better" and it "did the work better" (R. Vol. 1, p. 288, lines 32–34; p. 289, lines 19, 23).

Ira E. Fletcher, a factory superintendent and a witness for the United States, testified that "the Goodyear welter was the best," and that the seam made by the Eppler machine was loose and weak and "it would make a bad shoe" (R. Vol.

1, p. 937, lines 36–37; p. 938, lines 2–3; p. 939, lines 15–22). As to the importance of a tight seam, see *supra*, p. 137.

George Strong, a shoe manufacturer and a witness for the United States, said that the Goodyear welter was better and did better work; and specifically that the seam made by the Goodyear machine was flatter (R. Vol. 1, p. 931, line 43; p. 932, lines 22–25).

William P. Whitman, a shoe manufacturer and a witness for the United States, said that the Goodyear "did better work on the shoe" (R. Vol. 1, p. 915, lines 40–41; p. 916, line 16).

Edward W. Burt, a shoe manufacturer, had an Eppler Welter and an Eppler Stitcher when he started business. He tried them out thoroughly for about a year and found them inefficient for making high-grade shoes: "They were not anywhere near as satisfactory as the United Company machines." The soles of the shoes made on the Eppler machines "ripped off continuously." He changed to Goodyear machines because he "could not afford to have the shoes wear out on account of imperfect construction." The change was his "own idea" because he "wanted the best machines" he could get (R. Vol. 1, p. 739, lines 17–33).

Mr. Winslow testified that personally he had no doubt that the Goodyear system was better and would survive. The Eppler machine would not make as good a shoe (R. Vol. 1, p. 417, lines 9–11; p. 531, lines 25–27).

The "Twelve Witnesses" upon Whom the United States Relies.

At the first argument of this case in this Court the senior counsel for the United States made statements to the effect that twelve witnesses testified that they had used both the Eppler and Goodyear welters for many years and that they said that you could not tell the difference between the shoes when they had come from the machine.

The record does not support these statements.

Not one of those twelve witnesses testified that you could not tell the difference between the shoes when they had come

from the machine. On the contrary, seven of them, all witnesses for the United States, testified that the work done by the Goodyear welter was superior to that done by the Eppler welter. We will first summarize the testimony of those seven witnesses.

Emanuel F. Selz, a witness for the United States, testified on direct examination that the Goodyear and Eppler machines were doing exactly the same work and that there was no material difference in the quality of the work or the rapidity of operation of the two machines (R. Vol. 1, p. 143, lines 18–32), but there was a difference in the character of shoe made. He admitted on cross-examination that he tried the Eppler for less than a year prior to 1896 and abandoned it.

> "We gave up the Epplers because we were sewing razor toes at that time and the Eppler would not sew the razor toes as well as the Goodyear. We never reinstated the Eppler" (R. Vol. 1, p. 152, lines 38–44).

Charles S. Smith, a witness for the United States, testified that the Eppler machines could be and were used for the same purpose as the Goodyear machines; but on cross-examination he testified that the Goodyear was superior on account of the bulky chain-stitch which the Eppler laid in the channel of the insole and which was likely to form a ridge in the inside of the shoe that would come against the foot and cause discomfort to the wearer (R. Vol. 1, p. 352, lines 21–23; p. 353, lines 4–20).

William P. Whitman, a witness for the United States, used one Eppler welter for three or four years along with the Goodyear and then exchanged it for a Goodyear machine. There is not a word in his testimony which indicates that he found the Eppler machine satisfactory. On the contrary, he testified,—

> "I consider the Goodyear welt system the best system; it did better work on the shoe" (R. Vol. 1, p. 916, lines 11–18).

George Strong, a witness for the United States, testified that he had used both Eppler stitchers and welters and, while

he said that the Eppler stitcher did satisfactory work, he testified that the Goodyear machines did better work than the Eppler machines and said that he thought the Goodyear welter was better and sewed a flatter seam. He also said that they exchanged the Eppler machines for Goodyear machines about 1900 and that then the Eppler machines "were practically gone by," although they had been used only about five years (R. Vol. 1, p. 932, lines 3–26). Strong was treasurer and a director of the Eppler Company (R. Vol. 1, p. 388, lines 35–39; Vol. 4, p. 1202).

George E. Keith, a witness for the United States, who was president of the Eppler Company and is now a director of the United Company, testified that he used Eppler machines in his factory and also used one Goodyear machine, and that the Goodyear machine did decidedly better work (R. Vol. 1, p. 392, lines 2–8).

James H. Cunningham, a witness for the United States, testified that the Eppler welt machine was satisfactory, but the outsole stitcher was not. That obviously meant no more than that he could get along with the machine, in view of his refusal to say that the Eppler machine did its work as effectively as the Goodyear, and his further statement that the Goodyear did the work better and everything about it was better. His company discontinued the Eppler machines and substituted Goodyear machines about 1900 (R. Vol. 1, p. 289, lines 7, 13–23; p. 290, lines 2–3). W. H. Stacy of Cunningham's company was a director in the Eppler Company (R. Vol. 1, p. 388, lines 35–39).

Ira E. Fletcher, a witness for the United States, testified that W. L. Douglas used twelve Eppler and eight Goodyear machines for at least three years and that they ran side by side. But he also testified on direct examination that the Goodyear welter and stitcher were the best, and on cross-examination he testified that the seam made by the Eppler machine was loose and weak, and "it would make a bad shoe." For this reason and because they thought the Goodyears were the better machines, they changed from Eppler machines to Goodyear machines (R. Vol. 1, p. 937, lines 38–43; p. 938, lines 1–4; p. 939, lines 15–22).

Of the remaining five witnesses, upon whose testimony

the United States relies, Charles H. Jones and Warren F. McElroy never used the Eppler machines.

Jones merely testified that the Goodyear and Eppler welters were both used to perform the welting operation and that the Goodyear and Eppler stitchers were both used to perform the outsole stitching operation. He did not compare the machines or the quality of their work (R. Vol. 1, p. 110, lines 38–46; p. 111, lines 11–18).

McElroy merely examined the Eppler machine once at the solicitation of an agent of the Eppler Company. He said that the work looked equally as good as the work of the Goodyear machine. As already stated, he never used the machine (R. Vol. 1, p. 187, lines 33–40). His expression of opinion that it could be used on women's shoes has already been discussed (*supra*, p. 142).

Milton S. Florsheim testified that in 1899 he had one line of the Eppler machines, a welter, a stitcher and a rounder, that he used them "only to a very slight extent" and that he was "merely trying them out" (R. Vol. 1, p. 159, lines 7–12). He said that in his opinion the work of the Eppler welter and stitcher was as well done as the work of the Goodyear welter and stitcher and that as good shoes as were made at that time were made on Eppler machines (R. Vol. 1, p. 935, lines 37–42). But Florsheim traded in his Eppler machines after the formation of the United Company, and while he testified that he tried to obtain the Epplers for a lower royalty, he evidently preferred the Goodyear machines at the same royalty (R. Vol. 1, p. 159, lines 16–30).

Florsheim, Selz and Jones were stockholders in the Boylston Manufacturing Company, a competing shoe machinery concern (R. Vol. 1, p. 122, lines 28–35; also see *infra*, pp. 529–530).

Fred F. Field, a witness for the United States, took Eppler welters from the United Company in 1902, three years after the United Company was formed, and used them for eight or ten years, at the same time using some Goodyear welters. He said that they put in the Eppler machine because they thought the Eppler was better; but he said that "the Eppler machine sewed a somewhat looser and weaker seam than the Goodyear." As to the importance of a tight seam, see *supra*, p. 137. They changed the Epplers for the new Model K

machines but they wanted to change some time before on account of the weak seam sewed by the Eppler; under the advice of the United Company they waited for the new machine. It is important to note that Field did not have Eppler stitchers or Eppler auxiliaries. He said,—

> "That is, we had five Eppler welting machines which were assisted and helped out by the Goodyear machines that completed the operation of uniting the sole of a welt shoe to the upper" (R. Vol. 1, p. 930, lines 24–44; p. 931, lines 13–31).

Field's opinion that the Eppler machine sewed a flatter seam was of course wrong. For example, Strong, a witness for the United States, testified that "you get a flatter seam on the Goodyear welter" (R. Vol. 1, p. 932, line 25).

Richard H. Long had Eppler machines from September, 1898, until shortly after the United Company was formed; but he was not using Goodyear machines at the same time. He did not testify at all as to the character of the Eppler machines or the quality of their work, and went no further than to say that the Goodyear machines which he obtained in place of the Eppler machines were used for performing the same work that he had performed with the Eppler machines (R. Vol. 1, p. 226, lines 15–17, 24; p. 227, lines 33–35, 41–44; p. 250, lines 1–9; Defs.' Ex. 44, Vol. 5, p. 54). Long is a competing shoe machinery manufacturer making a full line of machines (R. Vol. 1, p. 232, lines 2–6; Defs.' Physical Exs. 72, 73).

Thus it appears that the Eppler machines were decidedly inferior to the Goodyear machines and the Eppler shoe was inferior to the Goodyear shoe, and that in consequence the Eppler machines were used to an insignificant extent and presented no real competition, present or prospective, to the Goodyear Company.

(6) OTHER EVIDENCE SUBMITTED BY THE UNITED STATES IN RESPECT TO THE EPPLER PURCHASE.

The Price.

The United States sought to prove that an exorbitant price had been paid for the Eppler Company, apparently for the purpose of showing the importance attached to the purchase. There was, however, no direct evidence as to the price paid.

William B. Arnold testified that about the time of the organization of the United Company his impression was that he sold one hundred shares of Eppler stock at $6 a share either to Mr. Brown, vice-president of the United Company, or to Mr. E. P. Hurd, but he would not be positive. He could not fix the date, however, within a year (R. Vol. 1, p. 952, lines 21–31). Both Mr. Brown and Mr. Hurd denied making the purchase (R. Vol. 1, p. 961, lines 9–16, 21–29).

Willard G. Brackett testified that February 15, 1899, he sold six hundred shares for $6.50 a share. He did not remember to whom. The par value was $10 a share (R. Vol. 1, p. 949, lines 38–42).

Mr. Keith testified he got $20,000 for his stock, but did not remember how much he had (R. Vol. 1, p. 385, line 32–p. 386, line 10).

Mr. Winslow had no recollection as to how much the Eppler stockholders were paid. He had no doubt it was as much as $100,000, but could not state whether it was as much as $200,000 (R. Vol. 1, p. 531, lines 37–41).

The United States lays much stress upon the fact that the officers of the United Company were unable to state the exact amount paid for the stock of the Eppler Company. But the record explains why. The Eppler Company stock was acquired in the first instance by a syndicate which was formed at the time the United Company was organized and which also bought the stock of the International Eppler Welt Machine Company and the Goodyear Shoe Machinery Company of Canada, and in addition provided funds for various needs of the United Company at that time. The United Company simply took over those properties, including the

Eppler Company stock, from the syndicate for a lump sum. No separate valuation was placed on the Eppler stock (R. Vol. 1, p. 32, lines 1–13; p. 33, lines 2–17). The United Company's records, therefore, only show the total sum paid for all the properties, and do not show what proportion of the total was paid for the Eppler stock, nor of course do they show what the syndicate which sold the stock to the United Company paid for it (R. Vol. 1, p. 32, lines 36–38; p. 33, lines 6–8).

But, whether the syndicate paid $200,000, or twice that sum, for the Eppler stock, it cannot be regarded as an exorbitant price and justify an inference of unlawful intent, since this purchase (1) enabled the United Company to start free from the most extensive litigation that it had inherited from its constituent companies, (2) made it possible to furnish to its customers machines for making a different kind of welt shoe, should a demand for that kind of shoe continue, and (3) secured for the United Company patents which proved to be of substantial value in the development of new machines when combined with its own patents (*infra*, p. 156).

The Papers Offered by the United States Exhibits B, C and D, for Identification (see R. Vol. 4, pp. 1200 to 1212) were properly Excluded by the District Court and should not be Considered as Evidence.

The United States claimed that these "Certificates of Condition," which purported to show the assets and liabilities of the Eppler Company, were copies of papers on file in the office of the Massachusetts Commissioner of Corporations. But they were not properly authenticated.

> "Copies of books, papers, documents and records in the executive or other departments of the commonwealth, or of any city or town, authenticated by the attestation of the officer who has charge of the same, shall be competent evidence in all cases equally with the originals thereof, if the genuineness of the signature of such officer is attested by the secretary of the commonwealth under its seal or by the clerk of such city or town, as the case may be" (Revised Laws of Mass. Ch. 175, Sect. 74).

And see *Commonwealth* v. *Corkery*, 175 Mass. 460.

The papers were not certified as true copies by the Commissioner of Corporations and the genuineness of the signature of the Commissioner was not attested by the Secretary of State. The customary form for such attestation is well known in Massachusetts,

see *Commonwealth* v. *Corkery*, supra,

and these papers were not attested according to that or any lawful form.

But it does not appear that even if these papers were admissible they would support the contentions of the United States. The 1898 report, for example (R. Vol. 4, pp. 1207, 1209), was obviously made up in such manner that the assets should balance the capital stock and other liabilities. Patent rights were carried at $245,853.61, and the machines placed at a figure which with the other assets would be sufficient to equalize the total liabilities. The report does not in any way disprove the testimony of the president of the Eppler Company that it had put out only between thirty and forty welters and a smaller number of stitchers, or the testimony that the machines were unsuccessful, nor is it any test of what the assets of the company were actually worth if sold or what the stock of this company, which was not making any money, was worth, or what was paid for it by the United Company.

Royalties Rebated by Eppler Company.

The United States showed that, while the regular royalty charged for Eppler machines was the same as for Goodyear machines, the Eppler Company in two instances granted a rebate of 25 per cent. (R. Vol. 1, p. 159, lines 24–27; p. 250, lines 24–38). But Mr. Winslow testified,—

> "There were sporadic instances of special rebates given by the Eppler Company, *but their regular rate was the same as the Goodyear*" (italics ours) (R. Vol. 1, p. 417, lines 29–35).

This was confirmed by Mr. Howe (R. Vol. 1, p. 470, lines 24–29).

Of the three executed leases of Eppler machines which are in evidence, two (P.'s Ex. 59, R. Vol. 3, pp. 507, 509, 510;

and Defs.' Ex. 269, R. Vol. 5, pp. 716, 718, 719) provided for a net royalty of *four cents* per pair for men's shoes, the same as the Goodyear royalty, while the third lease (Defs.' Ex. 44, R. Vol. 5, p. 54), as printed, provided (pp. 56, 57) for a royalty of four cents, and a provision for a discount was written into the lease in red ink (R. Vol. 1, p. 250, lines 30–38). In the face of this documentary evidence it certainly cannot be successfully contended that the Eppler royalty was lower than the Goodyear royalty or that the United Company raised the Eppler royalty after the acquisition.

Nor does the fact that the United Company, after it had acquired the Eppler Company, maintained the regular Eppler royalty rate, granting no discounts to favored individuals, show any intent to suppress the Eppler machines. The policy of the United Company has always been to maintain the same rates for all customers, and its maintenance of the regular Eppler rate on all Eppler machines was merely "to make the rate uniform among all users and gives no special advantages to anybody" (R. Vol. 1, p. 417, lines 44–45).

(7) IF ANY COMPETITION EXISTED BETWEEN THE EPPLER COMPANY AND THE GOODYEAR COMPANY, IT WAS ILLEGAL ON THE PART OF THE EPPLER COMPANY AND COULD PROPERLY BE ELIMINATED BY THE UNITED COMPANY.

We have shown above that the Goodyear Company had brought eight suits for infringement against the Eppler Company on its welter and its stitcher and its auxiliary machines (*supra*, pp. 136–137). Mr. Howe expected the Goodyear Company would succeed in all these cases (R. Vol. 1, p. 470, lines 21–22).

The Eppler Welter infringed the Briggs Method patent on an invention which accomplished the sewing of a tight seam and revolutionized the industry (R. Vol. 1, p. 678, lines 5–10). The Stitcher, the Welt-beater, the Stitch-separator, and the Rounder and Channeler, which also infringed Goodyear Patents (R. Vol. 1, p. 677, lines 17–21), were essential to the success of the Eppler Company (*supra*, p. 143).

It thus appears that such slight use as was made of Eppler machines was made possible only by the fact that they infringed Goodyear patents. If, therefore, the Eppler machines presented any competition, it was an illegal competition in violation of the Goodyear Company's rights and could be lawfully stopped by the Goodyear Company or by the United Company either by a prosecution of the patent suits brought by the Goodyear Company, or by purchase.

(8) THE EPPLER COMPANY WAS NOT SUCCESSFUL AND IT WOULD NOT HAVE SURVIVED.

The United States contends that the Eppler Company was a successful competitor, relying upon evidence that it had been in business for seven years and that it was advertising shortly before the United Company was formed.

But this goes to prove, not that the Eppler Company was successful, but quite the contrary. The fact that, despite the long time that the Eppler Company had been in business and the efforts it had been making to put its machines into factories, it had succeeded in installing only between thirty and forty welters—of which one-third were in the factory of the president of the company and others in the factories of the directors of the company—and a less number of stitchers (R. Vol. 1, p. 288, lines 31 *et seq.;* p. 388, lines 35–39; p. 389, lines 8–11; p. 931, lines 43 *et seq.;* Vol. 4, p. 1202) is certainly strong evidence both that the machines were unsatisfactory and that the company's business was not successful. Mr. Keith, the president of the company, testified that the Eppler Company had not been financially successful (R. Vol. 1, p. 392, lines 9–12).

This evidence also completely answers the argument that the Eppler Company offered potential competition. Disregarding the bearing upon possible future competition of the facts that the Eppler machines infringed the Goodyear Company's patents and that eight infringement suits had been brought, the evidence that the Eppler Company after seven years of strenuous efforts had not succeeded in doing more than an insignificant amount of business and had not made

any money proves that it did not offer even potential competition. For surely there had been ample time for the development of all the possibilities of competition that existed.

(9) THE UNITED COMPANY CONTINUED TO PUT OUT THE EPPLER MACHINES SO FAR AS SHOE MANUFACTURERS DESIRED THEM.

Whenever a call was made for an Eppler machine of any kind the United Company supplied it, and it also supplied all calls and demands for machines, parts, and service as soon as possible (King, R. Vol. 1, p. 696, lines 38–41; Winslow, R. Vol. 1, p. 417, lines 22–28).

The United Company, during the five or six years after it was formed, put out more than forty Eppler Welters and more than twenty Eppler Stitchers (R. Vol. 1, p. 702, lines 9–10, 16–19).

Mr. Field obtained his Eppler machines from the United Company in 1902 and continued to use them up to a few years ago (R. Vol. 1, p. 930, lines 27–29; p. 931, lines 6–7, 36). He testified that the United Company furnished him whichever machines he chose and treated him just as well in respect to the Epplers as when he had the Goodyears (R. Vol. 1, p. 931, lines 7–11).

The United States endeavored to prove by Richard H. Long that the United Company failed to provide parts for the Eppler machines (R. Vol. 1, p. 226, lines 34–40; p. 227, line 31). But Long's testimony was untrue and distorted by exaggeration and bias. The United States does not now rely upon that testimony, so it may be dismissed with the statement that it was disproved by his own admissions on cross-examination (R. Vol. 1, pp. 253–259), by the testimony of the clerks who kept the records of service rendered and parts supplied for Eppler machines and who testified specifically, referring to those records, as to the promptness in rendering service and supplying parts for Long's machines (R. Vol. 1, pp. 693–696); and by the manager of the United Company's Goodyear Department (R. Vol. 1, p. 699, lines 19–21).

The reliance to be placed on Long's testimony is illustrated further by his testimony relative to Chase lasting machines.

He stated that shortly after the United Company was formed it refused to let him have any more Chase machines (R. Vol. 1, p. 228, lines 1–26), but on cross-examination he admitted obtaining about eleven Chase machines after that date (R. Vol. 1, pp. 262–265; Defs.' Ex. 70C, R. Vol. 5, pp. 105, 106).

(10) THE EPPLER MACHINES WERE PATENTED MACHINES OF A DIFFERENT KIND FROM THE GOODYEAR MACHINES AND MADE A DIFFERENT KIND OF SHOE. THE UNITED COMPANY WAS ENTITLED TO ACQUIRE THE PATENTS ON THE EPPLER MACHINES.

The petition itself (R. Vol. 1, pp. 993, 996) and the record (R. Vol. 1, p. 634, lines 36–43; P.'s Ex. 59, Vol. 3, p. 507) show that the Eppler machines were patented. While they infringed the Goodyear patents, they also differed in structure from the Goodyear machines. As we have shown, they also made a shoe of a different structure from the Goodyear Welt shoe made by the Goodyear machines. "The Goodyear machines could not make an Eppler welt and the Eppler machines could not make a Goodyear welt" (R. Vol. 1, p. 417, lines 20–21).

A secondary reason in Mr. Howe's mind for acquiring the Eppler Company was to enable the United Company to furnish Eppler machines for making Eppler welts to those shoe manufacturers, if any, who wanted to make Eppler welt shoes (R. Vol. 1, p. 630, lines 32–34). The United Company could not do this, unless it acquired the Eppler patents, without infringing those patents. A manufacturer has the right to acquire patents covering another radically different machine, even if such machine can be used for a purpose similar to that for which he already has a machine. To hold otherwise would be to hold that a manufacturer could not furnish all types of machines and thus engage in the business without restraint. In the present case it would mean that the United Company could not furnish machines for making other styles of welt shoes even though its customers desired to make such shoes.

It is important to note that, while the Eppler machines proved themselves of little value and have become obsolete, some of the Eppler patents proved to be of great value when combined with other patents owned by the United Company. Thus patent 613,228 issued to the Eppler Company in 1898 (Defs.' Physical Ex. 198) covered an important invention which proved the basis not only of one of the United Company's own machines later developed (R. Vol. 2, p. 2645), but also of the Plant Heel Seat Dinker (Defs.' Ex. 273, R. Vol. 5, p. 740). Another of the patents some years after its acquisition by the United Company was embodied in a new welter (R. Vol. 2, pp. 2252, 2766).

(11) DEMAND FOR THE EPPLER MACHINES CEASED LONG AGO AND THEY ARE OBSOLETE. ANY QUESTION OF THEIR POSSIBLE COMPETITION HAS BECOME A MOOT POINT.

The United Company furnished Eppler machines to any manufacturer who asked for them, but none of the machines has been put out since about 1905 and no one is using any of the machines now (R. Vol. 1, p. 702, lines 13, 16–19, 22–24; p. 416, lines 17–24; p. 417, lines 22–26). The machines are obsolete and any question of their possible competition has become a moot point. No decree of this Court could restore such competition, if it ever existed, or create competition by the Eppler machines.

(12) FINDING OF THE DISTRICT COURT AS TO THE EPPLER ACQUISITION.

The District Court said with reference to the acquisition of the Eppler Company (R. Vol. 1, p. 1131):—

> "The Eppler machines were adapted to produce men's thick-soled welt shoes only. They could not produce women's welt shoes (except perhaps those having the thickest soles), nor turn shoes of any kind, nor Goodyear

welt shoes, either men's or women's, because of the difference between the respective machines in the character and position of the seam left in the inner sole of the shoe. The Goodyear machines could produce shoes of all the above kinds. The differences referred to resulted from differences in the character and operation of the machinery belonging to the different systems. These differences in character and in possible field of use had resulted when the United Company was formed in 1899 in the fact that over 2,500 Goodyear welting machines were in use, as against thirty or forty Eppler machines, one-third of these being used in the factory of the president of the Eppler Company. The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful. The Eppler machines were not suppressed by the United Company. It continued to supply them until the progress of improvement in such machinery superseded them. The patents covering them have long since expired, and it is open to anyone to make and use such machines if he desires. There is no present monopoly in them, and no action taken by the court could restore them to the field of competition, or encourage or create competition by them."

(13) CONCLUSION AS TO ACQUISITION OF THE EPPLER COMPANY.

We submit that the record establishes:—

1. That the machines made by the Eppler Company were decidedly inferior to the Goodyear machines, and the Eppler Company had no complete or satisfactory system of auxiliary machines; that the Eppler shoe was inferior to the Goodyear shoe; that the Eppler Company after seven years was commercially unsuccessful and had placed an insignificant number of machines, both when compared to the number of Goodyear machines outstanding and to the total number of machines used to attach the soles to the uppers of shoes, including the McKay machines; and that if any competition existed be-

tween the Goodyear and Eppler companies it was insignificant in amount and did not make the acquisition of the Eppler Company inherently unlawful.

2. That the Goodyear Company had brought patent suits against the Eppler Company and its lessees for infringement of Goodyear patents by all the machines of the Eppler Company, and believed it would succeed in this litigation; that the primary reason for acquiring the Eppler Company was to get rid of this litigation, which would have proved troublesome to the United Company's customers and therefore would most certainly have created friction between them and the United Company.

3. That the Eppler machines were patented and made a shoe of a different character from that made by the Goodyear machines; that a secondary purpose in acquiring the Eppler Company was to enable the United Company to furnish machines for making this different class of shoe, and that the United Company was entitled to acquire the Eppler Company for this purpose.

4. That the acquisition of the Eppler Company was first proposed after the formation of the United Company was agreed upon, and its acquisition was not a motive for the formation of the United Company.

5. That all the Eppler Company's machines infringed the Goodyear Company's patents, so that if the Eppler machines competed with the Goodyear machines such competition was unlawful.

6. That the United Company did not suppress the Eppler machines, but continued to furnish them to all shoe manufacturers desiring them until they became obsolete due to the superiority of the Goodyear machines.

7. That the Eppler machines have become obsolete and no manufacturer to-day would use them, so that the question of their possible competition has become a moot point.

We, therefore, submit that the purchase of the Eppler Company was not inherently unlawful; that it was acquired for normal and legitimate reasons; and that the transaction is barren of any incident which can give rise to an inference of unlawful purpose or intent to monopolize or exclude others unlawfully

5. THE PURPOSES FOR WHICH THE UNITED COMPANY WAS FORMED, AND THE MANNER IN WHICH SUCH PURPOSES HAVE BEEN ACCOMPLISHED.

A. REASONS FOR FORMATION OF UNITED COMPANY AS TESTIFIED TO BY MR. WINSLOW AND MR. HOWE.

The fundamental reasons for the formation of the United Company by the proposed union of the Goodyear and Consolidated Companies were stated as follows by Mr. Winslow:—

> "The first was to increase the productive efficiency of the machines that were in the hands of shoe manufacturers. Second, to economize in the manufacture of the machinery itself by bringing that manufacture into one modern factory and standardizing the manufacture. Third, to encourage and increase the manufacture of Goodyear Welt shoes by the development of new machines to assist in that manufacture and new methods to lower the cost, to aid and assist those manufacturers who were making those shoes, and induce other manufacturers who were not making welt shoes to enter into their manufacture. It was contemplated in this connection to lower the cost of installation of the Goodyear machines and instruct manufacturers in the manufacture of welt shoes. And fourth, to develop a better service for the instruction of operatives in the use of machines and service for maintenance of the machines in condition to operate regularly, and at the same time decrease the proportionate expense of that service by avoiding the duplication of the depots and men who were employed in that work" (R. Vol. 1, p. 407, lines 18–36).

Mr. Howe testified:—

> "Well, we had many conferences, . . . and . . . they related entirely to the economies which we could get if

the two complementary machines were handled by the same company—the economies, first, in the administration of the two companies; the economies due to manufacturing the machines themselves and the parts and the auxiliary machines in one factory where we could get a modern up-to-date factory; the economies that could be attained by consolidating our service. . . . I thought, particularly . . . that if we could in some way bring about a harmonious arrangement between the Lasting Machine Company and the Goodyear Company we could make a great saving and give the service with greater efficiency in all the branch offices and also, as I have said, in the manufacture of machines and the running of a factory. Proportionately to the amount of business done there would be less overhead charges" (R. Vol. 1, p. 628, line 21–p. 629, line 1).

The same reasons which caused Mr. Winslow and Mr. Howe to deem it highly desirable that the Goodyear and Consolidated Companies should be united, of course, applied equally to the consolidation with them of the McKay Company, which made heeling and metallic machines, the two other principal elements required in a series of bottoming machines.

After the consolidation of the Goodyear Company and the Consolidated Company was agreed upon, but before it was consummated, the McKay Company was, therefore, approached and agreed to unite with the others.

Mr. Winslow testified (R. Vol. 1, p. 529, lines 27–39):—

"The McKay people were approached because I advised it, and I advised it because I believed that with the metallic and heeling machines and the Goodyear machines and the lasting machines we could give better service, get a better product from the machines, and give better results both to the manufacturers and to ourselves.

"It is true that there would be a broader field to operate in. But the real reason was, first, to give the service of all of these machines and get a better result from the co-operative action of the machines together. That is to say, the unification of the service would allow those machines to be kept in continuous operation, giving a larger productive capacity to them and at less expense than in any other way."

Another reason for the consolidation of these companies was that Mr. Howe, who was the real manager of the Goodyear Company, and Mr. Brooks, who managed the McKay Company, could not devote much of their time to the business and wished to withdraw. By combining these businesses with the Consolidated Company the services of the men active in that company were obtained.

Mr. Howe testified that the management of the Goodyear Company's business fell largely on him, but he was practising law (R. Vol. 1, p. 466, lines 34–40) and wished to get out (R. Vol. 1, p. 629, line 2). He further knew that Mr. Winslow and Mr. Brown of the Consolidated Company, who could give their whole time to the business, would secure a far better and more efficient management than the Goodyear Company then had (R. Vol. 1, p. 629, lines 3–7). Mr. Winslow and Mr. Brown were well known as efficient managers for the Consolidated Company (R. Vol. 1, p. 629, lines 8–11).

Mr. Brooks, who was the head of the McKay Company, was seventy years old and was anxious to retire from business and spend all his time at his country home. He only devoted one or two days a week to the business (R. Vol. 1, p. 467, lines 8–13).

B. REASONS FOR FORMATION OF THE UNITED COMPANY AS STATED IN CIRCULARS TO STOCKHOLDERS.

The directors of the three principal constituent companies sent out circulars to their stockholders announcing the formation of the United Company and recommending the exchange of stock. All the circulars stated that Winslow would be president and Brown treasurer of the United Company, and the board of directors included Gordon McKay, Louis D. Brandeis and other well-known names. The McKay circular was signed by James W. Brooks, Louis D. Brandeis and other directors (R. Vol. 4, P.'s Ex. 151, pp. 1094–6). The Consolidated Company's circular, signed by Winslow, Brown, and other directors, contained the following statement:—

> "The undersigned Directors of the Consolidated & McKay Lasting Machine Company believe that the United Shoe Machinery Company will show much larger net earnings than the aggregate net earnings of the several companies whose stock is to be acquired, by reason of increase in business, economies in administration and decrease in expenses, and cessation of patent litigation between the Companies, which has been expensive to them and annoying to shoe manufacturers; and believe that these results can be attained without increase of cost to the users of machinery made by the Company, and that better attention to the care of machines and greater assistance to the users can be afforded" (R. Vol. 4, P.'s Ex. 175, pp. 1198–1200).

The Goodyear Company's circular, signed by Howe, Barbour and other directors, contained the same statement (R. Vol. 4, P.'s Ex. 152, pp. 1097–1100).

The Goodyear circular also contained the following statement:—

> "The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the most efficient types of shoe machinery, have been for several years recognized by the officers of the principal shoe machinery companies" (p. 1097).
>
> "The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock" (p. 1098).

This statement the United States contends shows an unlawful attempt to monopolize. But it was in truth and fact, as was said in *United States* v. *Winslow*, supra, only "an effort after greater efficiency" and so the District Court found (R. Vol. 1, p. 1132). It must be remembered that there was a large field of shoe machinery, partly developed and partly undeveloped, which was not occupied by the constituent companies which were taken over by the United Company, and the Goodyear Company's circular merely shows an intention, if opportunity offered, to put out other machines not manufactured by the constituent companies.

Mr. Howe, who drew the Goodyear circular, testified that he had in mind in drawing this clause that if the United

Company was a success it would naturally take on new machines and go into other fields which would supplement the business of the constituent companies. This was proper and lawful just as it was proper and lawful to acquire lasting, metallic, heeling, and welting machines in one company. Indeed, as held in *United States* v. *Winslow*, supra, no intent could make such acquisition unlawful. The probability which Mr. Howe had in mind, therefore, can give rise to no inference of unlawful intent as contended by the United States.

C. SPECIFIC DENIALS OF INTENT TO MONOPOLIZE SHOE MACHINERY AS CHARGED IN THE PETITION.

Mr. Winslow testified that there had never been any intent on his part to acquire complete control of the shoe machinery business as charged in the bill, and that no such project was "ever discussed or considered by any persons interested" (R. Vol. 1, p. 407, lines 3–12). He further testified that he had no intent to exclude all others from the shoe machinery business, and that there was no discussion among any of the persons interested in the organization of the company directed towards such a purpose (R. Vol. 1, pp. 407–8). He denied any intent as charged in the bill to enhance the value of shoe machinery at the expense of shoe manufacturers and the public, to use the same as a means for unlawfully controlling interstate commerce, or to acquire a complete monopoly of shoe machinery and destroy existing competition (R. Vol. 1, p. 414, lines 1–18).

Mr. Howe denied any intent to acquire complete control of the shoe machinery business and to exclude others. There was no discussion of obtaining control of the entire field of shoe machinery (R. Vol. 1, p. 631, lines 29–42; R. Vol. 1, p. 634, lines 18–31).

D. CERTAIN EVIDENCE RELIED ON BY THE UNITED STATES TO SHOW UNLAWFUL INTENT IN THE FORMATION OF THE UNITED COMPANY.

The United States, in its brief filed at the former hearing in this Court, contended that a certain recital in a contract between Peabody & Co. of Australia and the United Company, dated September 11, 1899, shows an intent to monopolize, existing shortly after the formation of the United Company. This contract appointed Peabody & Co. the United Company's brokers or commission agents in Australia to take orders for its machines and shoe findings in Australia. The preamble clause recites that the United Company has acquired certain specified companies and then recites that the United Company contemplates "acquiring the control of other lines of boot and shoe and leather working machinery and boot and shoe findings" (R. Vol. 4, P.'s Ex. 189, p. 1250).

Mr. Winslow was abroad when this contract was executed and knew nothing about the language or the contract until long after it was made (R. Vol. 1, p. 536, lines 19–24). Mr. Howe, who drew the contract, testified that Peabody & Company were commission merchants in shoe machinery and shoe findings in Australia, and they wanted an assurance that the United Company would give them enough business to warrant their entering into an agency contract. The United Company then had in mind the purchase of some other lines of shoe machinery and findings which, if acquired, would tend to increase the business of Peabody & Co. as agents for the United Company. He had in mind especially blackings, cements and stains which Peabody & Co. previously had difficulty in supplying themselves with (R. Vol. 1, pp. 672–673, lines 21–22, 35–45, 1–13).

It is obvious that Peabody & Co. were interested in knowing whether the United Company might furnish additional machines or supplies, especially additional supplies which, as Mr. Howe testified, they had previously had difficulty in supplying themselves. They were not interested in knowing whether the United Company contemplated acquiring com-

peting concerns. This provision was inserted as an assurance to Peabody & Co. that they might expect to be agents not only for the then product of the United Company, but certain additional supplies which would tend to increase their business as agents. The acquisition of such additional lines of supplies or of additional machines which the United Company did not then furnish was wholly lawful and proper.

The attempt of the United States to construe this recital into an admission of unlawful purpose to acquire competing concerns shows the lack of evidence it found to support its contentions.

The United States, at the former hearing, also laid stress on a statement made by Mr. Howe that he was opposed to having merely "a harmonious arrangement, a sort of working agreement between the Lasting Machine Company and the Goodyear Company, because I had a sort of indefinite idea that it might be deemed to be a combination in restraint of trade" (R. Vol. 1, p. 629, lines 20–24).

The United States attempts to construe this statement into an admission on Mr. Howe's part of unlawful purpose. It is insinuated that Mr. Howe recognized that the combination of the constituent companies would suppress competition and restrain trade, but that he erroneously believed that a consolidation in corporate form would avoid the penalties of the Sherman Act.

This construction of Mr. Howe's testimony is entirely unjustified. Mr. Howe explained his meaning further, saying:—

> "By my previous reference to something being in restraint of trade I meant that I had an indefinite fear that if the two companies remained separate, but, for instance, had a joint factory and joint branch offices, there might be something in the way of restraint of trade. I insisted for that reason that there should be a complete merger and consolidation" (R. Vol. 1, p. 630, lines 3–8).

Mr. Howe, at this point in his testimony, was referring to an arrangement between the Goodyear and the Consolidated Companies which it was first proposed should be consolidated. What he obviously meant by his statement was not that he feared that the end sought to be accomplished, namely, the

manufacture of the machines of both companies in a single factory and the furnishing of service by a single organization was unlawful or a restraint of trade, but that an agreement between two companies whereby they agreed to obligate themselves to maintain a single factory and service might be held unlawful on the ground that corporations representing numerous stockholders ought not to limit themselves to doing business in one specified way, which practically amounted to a partnership between them, even if such method of doing business was lawful. For example, a company dealing in locomotive wheels and a company dealing in locomotive bodies can lawfully consolidate, but Mr. Howe had a vague idea that there might be some question whether contracts between such companies under which they remained separate and yet obligated themselves to act as though consolidated might not impose restrictions which independent corporations ought not to incur. There is no suggestion in Mr. Howe's testimony that he thought the consolidation of the two companies would eliminate competition or restrain commerce in shoe machinery. On the contrary, he testified that there was no actual competition between them.

His testimony was obviously intended to meet a possible contention of the United States. One of the principal purposes for the formation of the United Company was to have the service for the different machines furnished by a single organization and to have the machines manufactured at a single plant where the parts could be standardized. The United States might have argued that this result could have been accomplished by agreement between the parties without an actual consolidation. Mr. Howe's testimony was intended to show one reason why he thought it inadvisable to attempt to accomplish this lawful result by agreement without an actual consolidation.

The attempt to construe this explanation into an admission of wrongful purpose has no foundation.

E. METHODS BY WHICH AND EXTENT TO WHICH UNITED COMPANY CARRIED OUT AND REALIZED THE PURPOSES FOR WHICH IT WAS ORGANIZED.

It is important at the outset to show the methods by which and the extent to which the United Company carried out and realized the purposes for which it was organized.

The peculiar character of the shoe machinery business permitted the United Company by uniting the businesses of manufacturing the various machines previously conducted by the constituent companies to effect not only great economies but also a vast improvement in the character of the service and the machines furnished customers which would probably not have been possible in any other business in the country.

The opportunities for improvement in machines, service, and economies made possible by the formation of the United Company and the success of the United Company in improving these opportunities show conclusively that the United Company was organized for the purpose of "greater efficiency," as this Court, in *United States* v. *Winslow*, supra, held appeared on its face, and as the defendants Mr. Winslow and Mr. Howe testified.

Furthermore, it shows that the excellence of the United Company's patented machines and the efficient service it has rendered its customers fully account for its success and exclude any inference that such success was attained by wrongful means. In 1899, when the United Company was formed, the constituent companies furnished the greater part of the machines used in the particular fields for which their machines were adapted, because such machines were the best machines made and because they were patented so that others could not furnish them. The shoe machinery business was a comparatively new business, and the business done by the constituent companies had been created by them through the excellence of their patented machines.

The evidence shows that the vast improvement in the character of the service rendered users of its machines, the im-

provement of its machines, and the invention of new machines fully account for the continuance of its success, and exclude the inference that the continuance of this success has been due to unlawful means.

As said by Judge Dodge (R. Vol. 1, p. 1137):—

> "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason.
>
> "So little room for doubt does the evidence leave that the success and preponderance referred to are the natural and legitimate result of the intrinsic merit of the patented machinery and service furnished as to require clear and convincing proof of any assertion that they are due to causes other than these."

(1) CONCENTRATION IN ONE FACTORY AND STANDARDIZATION.

The United Company concentrated the manufacture of its machines in one factory, and standardized the parts of its various machines. It thus effected a great saving in manufacturing expense, and obviated the necessity of carrying so great a variety of parts for use in repairing its machines, which not only saved expense, but was of course a great convenience to users of machines.

Mr. WINSLOW testified:—

> "Another reason which I stated for the formation of the United Company was to economize in the manufacture of machinery by bringing that manufacture into one

modern factory and standardizing the methods of manufacture.

"Prior to 1899 the Goodyear Company was manufacturing in a factory on Albany Street, in Boston; the Lasting Machine Company at Beverly, Mass., and the McKay Company at Winchester, Mass. The Goodyear Company was employing less than 200 men; about 300 were employed at Beverly, and about 500 at Winchester; in all about 1000 men in 1899.

"In the manufacture of the machines of these three companies there were many parts in common, but they could not be interchanged. Screws, for example, might be used on ten different machines where the same strength was required, but the screw made for one machine would not fit any of the others. This is only an illustration of what was true of a great many parts which could be standardized and made interchangeable, and have been. This resulted in a very large saving in the number of parts to be carried in different places. The bringing together of these factories also enabled us to establish our own foundry. Since the United Company was formed, for the first time in the history of shoe machinery iron patterns for casting have been developed and are almost universally used now, reducing the cost of manufacture.

"It was intended and expected that the consolidation would effect a very large saving in the management expenses and it so resulted. There were three superintendents at that time in the factories. The time of two of those superintendents is available today for the development of the art of making machinery. They are not used as superintendents of manufacturing. While, broadly speaking, we made no saving by discharging men, their time became available in other directions, so that their productivity was availed of to economize and develop the business" (R. Vol. 1, p. 412, line 41–p. 413, line 30).

Again WINSLOW testified:—

"In carrying out our purpose of consolidating the manufacturing of the machines in one modern factory and standardizing the methods of manufacturing, about January, 1900, a committee of our manufacturing men was appointed to visit the various manufacturing plants throughout the United States and gather data as to the best methods of manufacture, the most efficient machines, the most efficient arrangement for carrying on the manu-

facture from one department to another, and the best character of factory for the operatives. After that committee had worked about a year we began to build a large factory at Beverly, Massachusetts.

"To avoid any possibility of the tools for duplicating parts of machines being subject to destruction by fire we built the factory of concrete, and I think at the time that was the largest concrete building in the world. A great deal of care and thought was put into the arrangement of the floors and rooms to eliminate waste in carrying machines from one part of the factory to another for different operations. In factories that had been built up to that time for the manufacture of shoe machinery nothing of that sort had been gone into; while the buildings were modern in construction, they were not modern in their arrangements of the parts of the factory with reference to the economy of production. The Beverly factory has been added to from time to time.

"The facilities for manufacturing the different kinds of machines were transferred to that plant successively from the old factory at Beverly, from the Winchester factory, and from the Goodyear factory. None of the three factories of the constituent companies prior to 1899 was adequate for the occupation of all of them, and there was no land connected with any of them, except possibly Winchester. The Beverly factory was not owned by the Lasting Machine Company, there wasn't room to develop the Goodyear plant, and Winchester was a poor place to manufacture on account of the lack of labor. It was not a manufacturing community. Labor had to be developed there. Beverly has about 75,000 people within a five-cent fare.

"At the new plant in Beverly we continued to manufacture all of the machines which we had been marketing before and we employed more labor from time to time. About 1,000 men were employed in 1899, and at the beginning of this suit there were over 4,000 men employed at the Beverly factory. There has been a gradual increase right along" (R. Vol. 1, p. 423, lines 5–46).

(2) INAUGURATION AND MAINTENANCE OF AN EFFICIENT REPAIR SERVICE WITH ITS MACHINES.

(a) Necessity for the Service.

The service rendered by the United Company in connection with its machines is of the utmost importance, not only to the shoe manufacturer, but also to the operative and the United Company. In no other industry are so many different machines of so delicate a character used in the manufacture of a single product, and, therefore, in no other industry is service of this nature of such vital consequence. Its importance must be emphasized and explained at some length because its necessity underlies the methods of marketing machines which have prevailed and proved themselves most satisfactory in the shoe machinery industry, and because the need of perfecting this service was one of the principal motives for the formation of the United Company, and because the excellence of the service rendered by the United Company accounts in considerable part for its success. This service can be rendered adequately only by a company like the United, which furnishes a large number of different machines. It was impossible for the constituent companies prior to the formation of the United Company to furnish a satisfactory service.

The service rendered by the United Company consists in maintaining experienced mechanics at convenient places to repair machines and replace worn parts immediately upon request of the shoe manufacturer and to adjust the machines frequently in order to keep them in the highest state of efficiency; in maintaining depots of extra parts at convenient places so that they may be immediately available, and in instructing operatives in the use of machines. The United Company, as part of this service also, acts as engineer for the shoe manufacturer, advising and assisting him in the laying out of his plant.

The importance of this service is due to causes peculiar to the shoe machinery industry. The principal machines fur-

nished by the United Company are extremely delicate. They need constant adjustment by a skilled mechanic to maintain them in proper working order. The wearing parts also require frequent replacement. This necessitates not only having a stock of extra parts near at hand, but also the services of a skilled mechanic to insert and adjust the new parts. The ordinary shoe manufacturer could not afford to maintain skilled mechanics for this purpose, nor the large stock of parts which would be required to guard against his needs. If such service and new parts are not immediately available in case of need, the machines do imperfect work or cannot be used at all.

The importance of maintaining the machines in efficient condition is multiplied many fold by the fact that a great many different machines are used on each shoe manufactured. The work in the shoe factory is planned to travel from one room to another in fixed quantities. A certain number of pairs of shoes are started each day and an equal number are finished each day. In other words, there is a regular flow of shoes through the factory from one machine to another machine. No large number of shoes are kept prepared ready for the operation of each machine. The cost of doing so would be prohibitive, as it would necessitate having a large amount of capital invested in material and in lasts and would require too much space to store the partially prepared shoes. Furthermore, shoes in process of manufacture must be in "temper," that is, the soles and heel must be artificially moistened for the operations involved in lasting and in preparing and attaching them to the upper. Once in "temper" the shoe ought to be completed as rapidly as possible. Therefore, shoe factories, so far as possible, are run on the basis of having shoes in the process of manufacture travel from machine to machine without any substantial interruption. Only so can economical work be done.

When one machine breaks down, it, therefore, not only stops the work on that particular machine, but it also stops the work on all machines coming after it; and since, as explained above, it does not pay to prepare a large number of shoes which cannot be finished, it also stops the work on machines which come before it. Thus the effect of a single

machine getting out of order is not confined to stopping work on that particular machine but the effect is to stop the work on the entire line of machines of which that particular machine forms a part. Where there is only one machine of the kind in the factory, the entire production of the factory ceases (*infra*, pp. 334–338).

Not only does the shoe manufacturer suffer when the machine breaks down, but his operatives and the United Company, which leases the machines, suffer also. The operatives are paid by piece work; when, therefore, they cannot work their compensation ceases. The United Company derives its income from royalties received for the use of its machines; this income ceases when the machines are not operated.

The daily capacity of many of the important machines furnished by the United Company is very large. As most of the shoe factories in the country have a comparatively small production, many, if not most of them, require only one machine of certain kinds. Thus nearly one-fourth of the 1,150 shoe factories in the country in 1911 made 100 pairs or less per day; 636 or more than one-half made 500 or less pairs per day, and only 169 made more than 1,500 pairs per day (R. Vol. 1, p. 455, lines 1–19). In a factory making only 450 pairs per day, only 1 Pulling-over Machine, 1 Heeling Machine, 1 Slugging Machine, and 1 Loose Nailing Machine are required (R. Vol. 5, Defs.' Ex. 230, p. 442). If one of these machines should break down in a factory of this size, the entire production of the factory would stop. Only 1 Slugging Machine, 1 Loose Nailing Machine, and 1 Heel Pricking Machine, are required in a factory having a total production of 1,200 pairs of turn shoes per day (R. Vol. 5, Defs.' Ex. 249, p. 693).

The constant need of service is illustrated by its use. In 1911 shoe manufacturers called upon the United Company for repair service 192,524 times and 1,110,593 hours of its road men's time were occupied in this work (R. Vol. 5, Defs.' Ex. 214, p. 311). Its importance is further emphasized by the fact that such service, costing, in 1911, $1,196,494.86 (R. Vol. 1, p. 974, line 22), was rendered free of charge by the United Company (R. Vol. 1, p. 421, lines 18–23) because of its importance in increasing the reputation and productive efficiency of its machines and the consequent return to the United Company in the way of royalties.

Referring to the necessity for this service, Mr. WINSLOW testified (R. Vol. 1, pp. 410–11, lines 41–14):—

> "This factor of service is at the very base of the successful operation of a shoe factory. The work is planned to travel from one room to another in fixed quantities. So many pair go in in the morning—so many pair come out at night. The operatives are dependent upon that work traveling along regularly to them. The breaking down of some of these machines will in many of the factories block the entire flow of the work. Of course, in any factory it will throw out of regularity the production of the factory and throw out of work many times the operator that follows the particular operator on the machine that has broken down or got out of adjustment. Of course, the operators in shoe factories are paid by the piece almost entirely. From the standpoint of the shoe machinery manufacturer and the shoe manufacturer and the operative, the ability of the factory as a whole to turn out its work right along regularly as if it were going through one machine is vital. Factory space is economized; the earning capacity of the investment in the machinery is vitally affected; the operatives' pay has as its foundation, of course, the regularity of the work."

FREDERICK W. CURTIS, president of the Curtis & Jones Company, shoe manufacturers at Reading, Pennsylvania, testified, as a witness for the United States (R. Vol. 1, p. 377, lines 27–28; p. 379, line 12; p. 382, lines 26–45):—

> "The question of repairing and furnishing parts is an important consideration to the shoe manufacturer. We want to keep the volume of product moving steadily through our factory without any interruption. If an important machine, like a stitcher or welt-sewing machine, breaks down it stops the flow of the product, keeps the machines behind it idle, dams up the product right there at that point, to the general disarrangement of our factory, as well as throwing men who are on machines behind the disabled one out of work.
>
> "The margin of profit in making shoes is such that it is very essential that our machinery should work smoothly, regularly, and with continuity, and economies in the manufacture of shoes often make the difference between a successful manufacturer and one who is not successful. One of the most important economies is to have our machin-

ery working with continuity and with the highest efficiency and turning out our product with the utmost regularity day after day, just as we want to get it, so that there won't be any hitch anywhere in the flow of product through our factory."

The instruction of operators is also of great importance to shoe manufacturers. Just as the breaking down of one machine may stop all work in the factory, or work on an entire line of machines, so the lack of a single operator—say a laster or a welter—may stop all work on an entire line of machines. Again, the character of the work done on the machines depends on the skill of the operator. Again, the already skilled operators must be instructed in the use of new or improved machines as they are put out. In consequence the Service Department of the United Company, by instructing operators for shoe manufacturers, and by furnishing one or more of its own men in an emergency to operate a machine, is of the greatest value to shoe manufacturers and greatly increases the productive efficiency of the machines. The value of this service is shown by the fact that a total of 8,889 operators were taught by the United Company in the year 1911 alone (R. Vol. 5, Defs.' Ex. 214, p. 312).

(b) Inadequate Service Rendered by Constituent Companies Prior to the Formation of the United Company.

The absolute necessity of service for shoe machinery of the character produced by the constituent companies, if such machinery was to prove satisfactory, had led the constituent companies, prior to the formation of the United Company, to institute such service as was possible under the circumstances.

The Consolidated Company was furnishing men to instruct operatives how to use its machines and men to keep the machines in adjustment so far as it could within its financial resources. It had no offices, however, except in Boston and Brockton. In Philadelphia, Cincinnati, Chicago, Haverhill, and Lynn there were concerns who carried parts for the Con-

solidated Company's machines and received notice of calls for service. The Consolidated Company's men called at these places to receive such notices (R. Vol. 1, p. 408).

The McKay Company furnished about the same amount of service as the Consolidated Company. In Chicago, Cincinnati, Haverhill and Lynn parts were carried for its machines by the same concerns which acted as agents for the Consolidated Company. In New York and Brockton it had some arrangements with agents (R. Vol. 1, pp. 408–409).

The Goodyear Company furnished the best service of the three companies. It had its own offices in Auburn, Maine, Lynn, Haverhill, Brockton, Worcester, New York, Philadelphia, Burlington, N.J., Cincinnati, Chicago, St. Louis, New Orleans and Rochester, N.Y. It carried its own parts and had its own men located in each of these offices and also had a system of traveling men to instruct operatives and keep the machines in adjustment (R. Vol. 1, p. 408). However, none of the companies gave a good service (R. Vol. 1, p. 411, lines 40–41; p. 412, lines 3–4). Moreover, since the effective use of the machines of any one of the companies was dependent upon the efficiency of the machines of the other companies (since, as explained above, the machines of one company could not be used unless the machines of the other companies were in use) the efficiency of the service rendered by the three companies was regulated by the company which rendered the worst service. As Mr. WINSLOW testified,—

> "In other words, the entire continuity of operation, the regularity of operation of the factory, was dependent upon that service that was rendered by that one of three companies that gave the least efficient service" (R. Vol. 1, p. 409, lines 38–41).

Furthermore, there was an unnecessary duplication of expense involved in the maintenance of this service.

> "Each of these three companies was employing its own traveling mechanics and instructors, who in many instances were traveling to the same places, visiting the same factories, and carrying parts to the same places, but each set working on their own particular machines" (Winslow, R. Vol. 1, p. 409, lines 14–18).

The unsatisfactory condition of this service, and the increased efficiency in productiveness which would result from more efficient service, was, as stated, one of the main purposes for the formation of the United Company. Thus Mr. WINSLOW testified:—

> "Both Mr. Howe and myself recognized that condition, and it seemed that by bringing our two companies together we could get a uniform service that would produce a great deal higher percentage of efficiency of the machines than if a given factory was dependent upon an independent call to us and an independent call to their office. If the service was brought into one office, if the entire service was unified, a call coming in there would be attended to at once, no matter upon what machine it was needed. The regularity and continuous operation of the machines is dependent upon what may be termed instantaneous service" (R. Vol. 1, pp. 409–410, lines 41–8).
>
> "Another reason which I gave for the consolidation was our purpose to increase the productive efficiency of the machines in shoe factories. In speaking of the productive efficiency of the machines I had in mind the amount of shoes upon which the machine would operate in a given day or week or year; in other words, the productiveness of the machine in the work that could be done upon it. A machine might have a capacity to do a thousand pairs a day, but for some reason other than the ability of the machine to do the work it would not produce its work. The operative himself might not be efficient. The way in which the work came to that particular machine might not be right. The machine itself might be broken down. The manufacturer might have only one machine, and that operative might be out, in which case we frequently found him a man. The many ways in which this service has been used had led to the conclusion on the part of some of the men who were familiar with the practical side of the business that a service could be furnished which would very materially increase the productivity of the machines daily, so that less machines would be needed, less floor space, a given investment in the machines would earn more money, the operatives themselves could earn better wages, and the result of that is productive efficiency; in other words, we did produce an ability on the part of the machines to increase the number of shoes that would go through them" (R. Vol. 1, p. 412, lines 17–40).

FREDERICK ALLEN, president of the Allen, Foster, Willett Company of Lynn, testified:—

> "I can remember ten years ago, twelve years ago, when we did have some machines from the independent companies—some of the Bresnahan machinery, I believe—it would sometimes take us three or four days, if a machine broke down, before we could get it fixed up and repaired. At the present time there is a corps of experts in Lynn there who are efficient on each and every machine that we have, and if it is necessary within half an hour I can have a man over there and the machine fixed up right away, and with one machine being dependent upon the running of another—that is, one machine breaking down will throw out the entire line—that is a very big advantage" (R. Vol. 1, p. 722, lines 23–33).

JONATHAN BROWN, Jr., a manufacturer of Salem, Mass., making 7,500 pairs of shoes a day, testified:—

> "We have had experience with that situation, and it is a matter of record that everyone knows who has been connected with manufacturing shoes for a number of years that before the United Shoe Machinery Company was formed, where we would have machines from these different individual companies, a machine, the capacity of which may have been five, six, or seven hundred pair a day, would break down and we would send for some one to have the machine repaired, and it might be three days, four days, a week, or ten days before we would get anyone to put that machine in order. The consequence was that all the operations beyond that machine which were waiting for that 500, 600, or 700 pair of shoes were simply lying idle" (R. Vol. 1, p. 731, lines 13–24).

(c) Improvements in Service by United Company.

Almost immediately after the formation of the United Company the plans with reference to the improvements in the service commenced to be put into effect. Each territory was studied and the best man put in charge of that district (R. Vol. 1, p. 418, lines 22–31). Where previously the service

had been rendered from different offices, these were amalgamated into a single office.

In 1911 the United Company had 18 offices situated in the following places: Auburn, Maine; Haverhill, Mass.; Lynn, Mass.; Manchester, New Hampshire; Marlboro, Mass.; Brockton, Mass.; New York City, New York; Rochester, New York; Lestershire, New York; Philadelphia, Pennsylvania; Harrisburg, Pennsylvania; Cincinnati, Ohio; Chicago, Illinois; Milwaukee, Wisconsin; St. Paul, Minnesota; St. Louis, Missouri; New Orleans, Louisiana; San Francisco, California.

It had also sub-stations at—Augusta, Maine; Gardiner, Maine; Rochester, New Hampshire; Nashua, New Hampshire; Derry, New Hampshire; Newburyport, Mass.; Auburn, New York; Baltimore, Maryland; and Lancaster, Ohio.

This makes a total of 27 stations in 13 different states. At each of these places men were stationed to repair machines and instruct operators (R. Vol. 1, p. 974, lines 4–20). These men answer calls for service from shoe manufacturers situated in their district, immediately traveling to the shoe manufacturer's factory. In some instances they have to go several hundred miles (R. Vol. 1, pp. 420–1).

There is a stock of parts in each of these depots for practically every machine which the United Company produces, so that the men are in a position to repair any machine immediately (R. Vol. 1, p. 421, lines 35–39). The investment in parts carried by the United Company in 1911 for the service alone (not including any parts for new machines) was $1,415,474.49 (R. Vol. 1, p. 974, line 23; p. 979, lines 3–11).

The number of roadmen employed in this service increased from 237, employed by the United Company in 1899, to 689 employed in 1913, and the number of branch office managers and assistants increased from 12 to 31 (R. Vol. 5, Defs.' Ex. 211, p. 293). The total calls answered in the year 1911 were 192,524, and including calls for instruction to operatives 201,413. The time of the roadmen occupied in this work consumed 1,365,384 hours (R. Vol. 5, Defs.' Ex. 214, pp. 311–2).

The number of operatives taught during 1911 was as follows:

Goodyear operators taught	2,209
Metallic operators taught	956
Heeling operators taught	1,006
Lasting operators taught	1,359
Pulling-over operators taught	956
Eyelet and general operators taught	2,403
Total operators taught	8,889

Defendants' Exhibit 214 (R. Vol. 5, p. 311) shows in detail the number of calls made by each office, the number of operatives taught through each office, and the number of hours consumed in this service.*

The foregoing service is rendered absolutely without charge to shoe manufacturers. The shoe manufacturer is not even charged with the traveling expenses of the roadmen. All he pays is the cost of new parts (R. Vol. 1, p. 421, lines 18–23). This service cost the United Company for the year 1911, $1,196,494.86 (R. Vol. 1, p. 974, line 22).

The United Company is practically the only shoe machinery company which furnishes service (R. Vol. 1, p. 423, lines 1–4).

As to the character of the service and its improvements since 1899, Mr. WINSLOW testified as follows:—

> "As to the development of the service for shoe manufacturers since 1899, the service is now so far ahead of what existed in 1899 that there is really no comparison. At each depot is a general manager and a body of men who are experts in the adjustment and repair of all the machines. These men are at the call of the manufacturers by telephone at any moment of the day and are at their service nights, if necessary, to rearrange their factories or readjust their machines. There are men to teach new operatives how to run the machines and how to take care of them. That service is complete in each shoe manufacturing district in the country.
>
> "In addition we have men who are treated by the manufacturers as their engineers and who act in an advisory capacity as to the re-arrangement of factories and

* Defs.' Ex. 212 (R. Vol. 5, p. 294) shows in detail the calls for service made by E. W. Burt & Co., Inc., for 1911, and Defs.' Ex. 213 (R. Vol. 5, p. 298) shows the calls made for service by L. A. Crossett, Inc., for the period July 1, 1911, to January 1, 1912. E. W. Burt & Co., a small manufacturer averaging 123 pairs per day, received in 1911 the services of the United Company 102 times. L. A. Crossett, Inc., for the year 1911 received the service of the United Company 1,150 times.

the improved processes of manufacture. We send these men around to the factories to call the attention of manufacturers to opportunities to improve their methods of manufacture. This service always includes the instruction of operatives. There is also a service in continually supervising and watching the operation of the machines by our experts, and in order for the manufacturer to keep a given set of machines in constant operation these men have to be acquainted with the manufacture of the particular kind of shoes made in each factory because the requirements as to the work of the same machines may be very different in one factory from the requirements in another factory.

"These men have to know how to run the machines themselves, how to adjust them, repair them, take them apart and put in parts" (R. Vol. 1, p. 420, line 35–p. 421, line 17).

(d) Testimony of Shoe Manufacturers as to Importance of the Service Rendered by the United Company.

ALANSON C. BROWN, president of the Hamilton-Brown Shoe Company, of St. Louis, manufacturer of 25,000 pairs of shoes a day, testified:—

"The service furnished by the United Company has helped us to educate our workmen and teach them how to run the machines. If a machine breaks down they send a man at any time to repair it or fix it up and keep us running, and they have furnished parts so that we didn't have to keep any supply of parts.

"The United Company has instructed a good many operators for us. They instruct operators for us right along without any charge to us. As to the importance of that to us, the operatives struck in five of our factories a little over a year ago and we had to get practically all new operatives in all of those factories. Those operatives were instructed by the United Company's men without charge. The company also keeps our machines running. If one of the machines should be out of order it would clog up and congest that department until we got the machine running again. As fast as the United Company gets up a new machine which we think is an improvement over the old machine, we try to get them to install it in our

factory and take out the old one. They have done this in every case without charge to us, except the freight" (R. Vol. 1, pp. 617–8, lines 32–8).

"The United Company is helping us instruct operators almost daily. We have green help in our factories right along and they send an instructor who helps instruct these operators. During our labor trouble we tried the system of having some teachers ourselves. We didn't have enough instructors from the United Company and had one or two of our foremen try it. As to whether they could instruct all right, it would be a big expense to us if we had to do that. We never adopted a system of keeping our own instructors on hand and instructing new operators as they came in. This United Company system of instructing operators is a good thing all the time. We employ it practically all the time" (R. Vol. 1, p. 619, lines 19–30).

Robert P. Hazzard, a shoe manufacturer of Gardiner, Maine, making about 5,000 pairs of welt shoes a day (R. Vol. 1, p. 641, lines 4–10), testified:—

"The United Company's service is one of the greatest necessities for the economical running of a modern shoe factory. That service consists of men who specialize on certain classes of machines and who are located conveniently to the manufacturing centres. We are served to a certain extent from the Auburn, Maine, office, but there are several resident United Company men in Gardiner who are under the jurisdiction of the Auburn office, but who are located in Gardiner so as to be more available when we need them. If those men are busy at one of the other factories, or if there is anything that they cannot handle, we telephone Auburn and inside of an hour and a half we have a man from Auburn. Those men do anything that seems desirable in putting the machines in shape to do the maximum amount of work of good quality.

". . . The failure of a company to give efficient service is detrimental both to one's nervous system and to the smooth running of the factory.

"As to the importance of efficient service, the shoe business is peculiar because it is dependent on succeeding operations . . . and because an even production in all operations all the time is absolutely necessary for efficiency. That efficiency wants intelligent action and it wants it quick, and may be compared to the fire department in case of fire.

"When manufacturers get that service it not only means bigger wages for the employees, but it means better results for the manufacturer and cheaper shoes for the consumer. In my judgment, with the United Company's service the consumer is buying shoes cheaper than he could if the royalty were done away with and efficient service were not furnished" (R. Vol. 1, p. 643, line 16–p. 644, line 3).

Mr. Hazzard has between $50,000 and $60,000 invested in lasts. A last is in a shoe about 5 days. It is of the utmost importance to get the shoes through the factory quickly so that too much money will not be tied up in lasts (R. Vol. 1, p. 644, lines 4–10). He further testified that operators were not allowed to have a large accumulation of shoes on any operation, because it would tie up too much money in lasts and stock and there would not be room to make the shoes, so that "every man is working right from rack to rack to the man ahead of him. These shoes are moved in racks of 24 pairs, and when one machine shuts down it is like breaking a link in a chain" (R. Vol. 1, p. 644, lines 17–23).

FREDERICK ALLEN, of Lynn, who has been manufacturing shoes for about 17 years (R. Vol. 1, p. 721, lines 36–7) and whose factory has a capacity of about 6,000 pairs a day (R. Vol. 1, p. 724, line 1), testified that 10 or 12 years ago when he had some machines from other companies, "it would sometimes take us three or four days, if a machine broke down, before we could get it fixed up and repaired" (R. Vol. 1, p. 722, lines 23–27).

"At the present time there is a corps of experts in Lynn there who are efficient on each and every machine that we have, and if it is necessary within half an hour I can have a man over there and the machine fixed up right away, and with one machine being dependent upon the running of another—that is, one machine breaking down will throw out the entire line—that is a very big advantage" (R. Vol. 1, p. 722, lines 27–33).

JONATHAN BROWN, Jr., a shoe manufacturer of Salem, Massachusetts, making about 7,500 pairs a day (R. Vol. 1, p. 730, lines 9–15), testified:—

". . . If we had our choice in the matter, we wished that every machine we had in our establishment was under the control of the United Shoe Machinery Company. That is because we get such excellent service; we get it promptly; we get it cheap, and it allows us to go ahead with our production and figure down to a minimum cost for our shoes and go ahead and manufacture them without having the delays that we are subjected to whenever we have other machines.

"We have had experience with that situation, and it is a matter of record that everyone knows who has been connected with manufacturing shoes for a number of years that before the United Shoe Machinery Company was formed, where we would have machines from these different individual companies, a machine, the capacity of which may have been five, six, or seven hundred pair a day, would break down and we would send for someone to have the machine repaired, and it might be three days, four days, a week, or ten days before we would get any one to put that machine in order. The consequence was that all the operations beyond that machine which were waiting for that five hundred, six hundred, or seven hundred pair of shoes were simply lying idle. Today, if any of our machines break down—that is, any of the United Shoe Machinery Company's machines—we telephone over there, and inside of three minutes we have someone to put it in order. The consequence is we can figure on our production at the lowest minimum cost" (R. Vol. 1, p. 731, lines 4–29).

"To my knowledge no other company which supplies machinery to shoe manufacturers furnishes any service in any way comparable to that of the United Company. Assuming that machines were of equal merit, this factor of service would be an important element in deciding which company to trade with. There would be no question. You would simply go to the United Company because of the service. It certainly is as vital as that" (R. Vol. 1, p. 732, line 40–p. 733, line 3).

EDWARD W. BURT, a shoe manufacturer of Lynn (R. Vol. 1, p. 738, lines 33-34), testified as follows:—

"As to how large a factor the service which they give is in the successful manufacture of shoes, personally I believe that one of the chief things that a manufacturer should consider in the making of shoes is the service given

in keeping the machines in continuous operation" (R. Vol. 1, p. 739, lines 11–15).

"The United Company has furnished prompt and excellent service. That is absolutely important to the successful manufacture of shoes. We must have it. If our machine breaks down, every hour means so many shoes piled up behind that machine" (R. Vol. 1, p. 740, lines 42–45).

JOHN STROOTMAN, a shoe manufacturer of Buffalo, New York, making from 800 to 1,200 pairs per day (R. Vol. 1, p. 742, lines 41–3), testified:—

"The service which the United Company gives us is excellent, and it is an all-important factor in the manufacture of shoes. We could not run a factory without the Company's skilled men to keep the machines in order and keep them running. So far as I know, no other company furnishing shoe machines gives service of that kind" (R. Vol. 1, p. 744, lines 12–17).

CHARLES A. EATON, of Brockton, making 2,400 pairs a day (R. Vol. 1, p. 751, lines 18–20), testified:—

"The service which we have received from the United Company has been very satisfactory indeed. All manufacturers depend very largely upon it, and in our own case we have considered it of vital importance" (R. Vol. 1, p. 753, lines 23–26).

He further testifie that there were continually little annoying problems which the United Company solved for him by putting him in touch with some method used in another factory (R. Vol. 1, p. 753, lines 27–34).

FRANK C. RAND, of St. Louis, vice-president of the International Shoe Company and a director of the Boylston Shoe Machinery Company, testified, as a witness for the United States (R. Vol. 1, p. 178, lines 19–20; p. 183, lines 18–19; p. 186, lines 31–34):—

"They teach our operatives without charge, and furnish them in times of strikes without charge, at our request. It was a mutual proposition—if we didn't run

the machines we didn't get any shoes and they didn't get any royalty."

C. WILLIS BENNETT, a shoe manufacturer of Fitchburg, Mass., making from 800 to 1,400 pairs a day (R. Vol. 1, p. 757, lines 32–33, 42–43), testified:—

> "As to my experience with them with reference to service, why, their service has been, I might say, indispensable. I don't know what I should do without their service. Whenever I have a machine break down, I immediately telephone to their branch office at Marlboro, and they have a man come up there from Marlboro, who is an expert on that particular machine, to put the machine in order, and they do all this without any expense to me, aside, of course, from the cost of the broken part of the machine, if there are any parts broken" (R. Vol. 1, p. 758, lines 36–44).

He further testified that when he started business in Fitchburg there was only one shoe factory there and there were no operatives outside of that factory, and consequently, he had to teach a good many operatives. The United Company furnished agents and expert instructors to instruct these operatives, making no charge for their services (R. Vol. 1, p. 759, lines 1–5). He also testified that the United Company's agents assisted him as to improved methods of manufacture by telling him of such methods seen in other factories (R. Vol. 1, p. 759, lines 5–8).

As to the services of the United Company in acting as engineers in laying out his plant, he testified as follows:—

> ". . . I went to the United Shoe Machinery Company to see if they would give me a line of machines, and they stated they would, and I had a few samples made down in Lynn and went on the road and sold some shoes. During my absence the United Shoe Machinery [Company] had their expert mechanics there laying out my factory and setting up the machines, and when I returned . . . with orders for shoes, they had my factory all equipped ready for me to start; and all those who visit my factory say that I have one of the best equipped and up-to-date factories in the state, and I want to say also that they did this without any expense to me.

"As to how detailed the work of their experts was in laying out my factory, in the first place they had an expert come there who thoroughly understood laying out a factory, and told me what size shafting I would require, what size pulleys I would require for running different machines. They chalked out on the floor the location of the different machines that would make my work go along in the best manner from one operation to another, and, as I say, when the whole factory was completed I had a thoroughly equipped factory.

"I was free to exercise my own judgment in the selection of machines, as to taking their machines or the machines of others, and I did so. Whatever machines I took I found had been arranged for and set up by the United Company, and they had my factory ready to run" (R. Vol. 1, p. 758, lines 10–35).

CHARLES H. JONES, a prominent witness for the United States, under cross-examination, admitted that he had said of the service of the United Company,—

"It has certainly given more faithful care and attention to the running of the machines and keeping them in order; and in our country factories, where we employ a large proportion of inexperienced help, they have given us more constant and faithful attention in instructing new operators, and in the supervision of the machinery under trying conditions, than we ever obtained from any of the constituent companies" (R. Vol. 1, p. 131, lines 14–21; Vol. 4, p. 1075).

(3) INVENTIONS AND IMPROVEMENTS IN MACHINES MADE BY THE UNITED COMPANY.

Mr. WINSLOW testified:—

"Soon after the formation of the [United] Company the development of inventions and improvements of machines was placed in the hands of a committee comprising three or four of the inventors experienced in shoe machinery inventing. Every new idea or suggestion was submitted to that committee, who made an investigation and reported their findings to the heads of the respective departments; and a decision was made according to which

a man was put at work to develop the idea, or it was filed as not being practicable" (R. Vol. 1, p. 424, line 40–p. 425, line 3).

In this experimental work the United Company has expended very large sums of money. For example, from 1907 to 1911, a total of $2,267,954.70 was spent, an average of $453,590.94 per year (R. Vol. 1, p. 426, lines 25–39).

Defendants' Exhibit 217 (R. Vol. 5, pp. 323–51) is a typical report showing the experimental work done during the month of October, 1911. It shows that experimental work was done on 61 different machines or parts of machines. The report sets out in detail each of the machines on which work was done and the expenditure on each.

In addition to conducting its own Experimental Department the company has purchased from others any inventions which it was thought would improve its machines.

The result of this effort and expenditure of money has been a remarkable development in the art of shoe machinery.

The United Company has, since 1899, brought out at least an average of 7 or 8 new machines a year (R. Vol. 1, p. 427, lines 12–13).

Mr. Winslow testified that since 1899 the United Company has invented and put out to its customers 150 new machines. These are shown in a list—Defendants' Exhibit 246 (R. Vol. 5, p. 683). The list comprises five machines in the Eyeletting Department; 41 in the Goodyear Department; 11 in the Heeling Department; 4 in the Lasting Department; 7 in the Metallic Department; 15 in the Pulling-over Department; 64 in the General Department and 3 in the Fitting Room Department. These machines have all been offered to the public by the United Company by sale or lease (R. Vol. 1, p. 503, lines 7–23). 39 of these machines do work previously done by hand (Defs.' Ex. 247, R. Vol. 5, p. 690).

Again Mr. WINSLOW testified:—

"That work has been carried on consistently and continuously, until now there is a very large organization that gives its entire time and attention to the develop-

ment of ideas of our own men, or ideas that are suggested to us, or to consideration of inventions which are submitted to us.

"From almost the beginning of the company to the present time we have done everything we know how to do to advance the art of making shoes by machinery.

"As soon as we had developed a new machine which performed an operation then being done by machines in the shoe factories, that machine was built in a wholesale way and was placed in the hands of the manufacturers without any charge whatever for the improvements or for the new machines, and the old machines were taken back and scrapped. No charge was made for substituting the new machine and taking out the old one. If the improvement was an attachment, that was added to the manufacturer's machines without any charge to him" (R. Vol. 1, p. 425, lines 4–20).

Among the striking illustrations of new machines which the company has invented and given to the trade is the Rex Pulling-over Machine and the auxiliary machines used with it. The Pulling-over Machine does the work formerly done by the hand operator in preparing the shoe for the lasting machine. It draws the upper over the last at the center and at each side of the toe and attaches it temporarily to the innersole, all at one operation, so that the operator can bring the seam of the tip in a right line across the toe and locate the heel seam directly in the center of the heel. Unless these two lines are made correct the shoes will not be salable (R. Vol. 1, p. 425, lines 21–34). The auxiliaries of the pulling-over system assemble the upper, innersole, counter and last (R. Vol. 1, p. 425, lines 35–40).

The clicking machine, developed by the United Company, enables the manufacturer to cut his uppers accurately with the least loss of stock. It saves every bit of the waste that was caused by the hand knife cutting and increases the product of the workman by at least twofold. The quality of the work is infinitely better. At the same time it cuts the parts of the uppers it makes marks to facilitate the assembling of the parts. Before this machine was invented manufacturers used a pattern of zinc or leatherboard which the cutter placed upon the stock and then cut around it with a hand knife. The knife

always cut by the corners of the pattern and where the leather had been cut by the knife passing the corners the stock could not be used and was wasted. It saves more money to the manufacturer than any other machine which has been produced (R. Vol. 1, p. 425, line 43–p. 426, line 20).

Another illustration is the stapling machine, which saves the manufacturer the cost of a great many needles and a lot of cost for damage caused to machines when needles break (R. Vol. 1, p. 427, lines 20–23).

In the Goodyear Department nearly all the machines have been replaced by new and improved machines (R. Vol. 1, p. 430, lines 32–5). In addition a large number of new auxiliary machines have been developed. Thus in 1899 the United Company supplied 13 Auxiliary Machines for use in making welt shoes, while in 1911 it supplied 35 such Auxiliary Machines. In 1899 it supplied 3 Goodyear Auxiliary Machines for use in making turn shoes, while in 1911 it supplied 9 such Auxiliary Machines (R. Vol. 5, Defs.' Exs. 242–5, pp. 681–3).

The United Company has also developed a large line of so-called General Department Machines which it leased or sold at the option of the shoe manufacturer until 1911, after which time it has sold them only (R. Vol. 1, p. 12, line 37 *et seq.*). A list of 172 such machines is set out in Defendants' Exhibit 227 (R. Vol. 5, p. 425).

Everything that the United Company has known how to do to advance the art of making shoes by machinery has been done from the organization of the Company to the present time.

Furthermore, as soon as a new or improved machine has been developed which performs an operation already performed by some machine held by lessees, the new machine has been substituted for the old machine without charge, and the old machine has been taken back and scrapped. As Charles A. Eaton testified (R. Vol. 1, pp. 751–752, lines 39–43, 1–2):—

> "... Their policy has been very liberal, and they have kept the machines up to date. As new machines were brought out they have exchanged the old ones without any return payment or any charge to us, except for missing or worn parts and freight charges. Those are all the charges that have been made to us on account of the replacement of machines during these years of development since we have done business with the company."

(4) INCREASED EFFICIENCY OF MACHINES RESULTING FROM INVENTIONS AND SERVICE FURNISHED BY UNITED COMPANY.

The improvement in the United Company's machines, the addition of new machines to assist in the work of the principal machines and the service which the United Company has been able to render in connection with its machines have resulted in a remarkable increase in their efficiency. The result has been that each machine has been able to turn out a greatly increased number of shoes.

For example, each Goodyear Welt Sewing Machine in 1910 sewed 66.7 per cent. more shoes than in 1899; each Goodyear Outsole Stitching Machine sewed 69.5 per cent. more shoes in 1910 than in 1899; each Goodyear Welt Sewing Machine used for turn sewing sewed 54.3 per cent. more shoes in 1910 than in 1899; each Heel-Attaching Machine attached 62.3 per cent. more shoes in 1910 than in 1899; each Lasting Machine lasted 24 per cent. more shoes in 1910 than in 1899 (R. Vol. 1, pp. 428–29).

The difficulty of lasting high-toed shoes now in use has reduced the increased efficiency of the Lasting Machines. Prior to the introduction of this new style of shoe these machines showed a higher percentage of efficiency compared with the machines of 1899 than that stated above (R. Vol. 1, p. 429, lines 7–20).

(5) SAVINGS OF SHOE MANUFACTURERS FROM INCREASED EFFICIENCY OF MACHINES AND FROM DECREASE OF ROYALTIES AND INSTALLATION CHARGES.

Shoe manufacturers have benefited from the increased efficiency of the United Company's machines and from the development of new machines, both directly and indirectly. They have benefited directly because of the saving in material

and cost of manufacture which has resulted, and also because of the reduction in royalties and other charges which the United Company has made. They have benefited indirectly because, owing to the constant service rendered by the United Company, the machines have been maintained in an efficient condition capable of working without interruption and because the increased efficiency of the machines has, as shown above, materially reduced the number of machines required to do a specified amount of work. The value of these indirect benefits, as testified to by shoe manufacturers, has been referred to above. The saving it has effected in reducing the amount of capital required to conduct the business by reducing the amount of space required for manufacturing purposes, and thus the rental paid by the shoe manufacturer, and by avoiding interruption to the operation of the factories, cannot, of course, be estimated exactly, but it is unquestionably very large.

The direct savings are also large. Mr. Winslow testified that the machines produced by the Experimental Department of the United Company alone had reduced the cost of manufacturing the welt shoe more than the total royalty that the United Company receives from its machines used in manufacturing such shoes (R. Vol. 1, p. 427, lines 26–29).

Mr. Winslow testified:—

> "The savings effected, as between 1899 and 1911, in the cost of manufacture of the Goodyear welt shoe by increased efficiency of the machines and by decrease in royalties . . . amounted to eight and one-quarter cents per pair. Of this saving the decrease in royalties amounted to three-quarters of a cent, comprising a quarter of a cent that had been paid to the company making the sole-laying machine and one-half a cent which had been paid to the Gem insole company for the use of its machines; that was before we acquired those companies. After we acquired those machines we credited the royalty to the manufacturers, so that there was a direct reduction of three-quarters of a cent per pair on the welt shoes made by the use of those machines" (R. Vol. 1, p. 430, lines 4–17).
>
> "On turn shoes there has also been a direct reduction of three-quarters of a cent on women's shoes and one-half a cent on children's shoes, amounting to 50 per cent.

of the royalty. That reduction was in 1900" (R. Vol. 1, p. 430, lines 18–21).

"On Goodyear welt shoes the saving in cost of manufacture, resulting from the introduction of new machines and improvements in other machines that existed in 1899 and which we improved after the formation of the company, amounts to about seven and a half cents" (R. Vol. 1, p. 430, lines 27–31).

"The improved machines have resulted in savings in the cost of operation, or in the material used, or in the cost of maintenance and the reduction of equipment required, or in the improved quality of the work" (R. Vol. 1, p. 430, lines 36–39).

"Of the saving, a cent and three-quarters per pair in the cost of manufacture is effected by the group of machines comprising the new welter, new stitcher, new rough rounder, new power grooving and beveling machine, the new Universal channeling machine, tack puller and resetter, new welt beating and slashing machine, the welt indenting and burnishing machine, the impression stitch burnishing machine No. 2, and the Goodyear jointing machine. The savings by these machines result from the increased speed of operation of the new welter, the new stitcher, and the new rough rounder, and from the pulling of tacks and resetting of tacks on the tack pulling and resetting machine, always before done by hand. These savings include the savings accomplished by the Plant improvements on the welter. Without the Plant improvements the savings would be somewhere between three-eighths of a cent and a half a cent less than that.

"It is entirely untrue that the modern welter and stitcher do not operate any faster than the old machines. They are at least 50 per cent. faster in average speed than the old machines; that is, they will sew 50 per cent. more stitches in a minute than the old ones would.

"The next group of machines which effected a saving in the manufacture of welt shoes are the Ideal clicking machine, the Duplex eyeletting machine, the Ensign lacing machine, the lining cementing machine, and the improved skiving machine. I have credited three cents per pair saving as effected by those machines, but that is less than the manufacturers of welt shoes have said their saving was in leather by the use of the Ideal clicking machine alone. Three cents is well within the actual saving effected by those machines.

"A saving of two cents is effected by the group of machines comprising the insole heel seat rounder, the insole

tacking machine, the Rex pulling-over machine, the Rex assembling machine, the Rex pounding machine, the upper trimming machine, and the No. 5 lasting machine" (R. Vol. 1, p. 430, line 40–p. 431, line 30).

"It is almost impossible to calculate the amount of savings effected by these machines on high-toed shoes. On those shoes probably the saving in lasting alone by the No. 5 lasting machine was two cents a pair, without reckoning the savings for the other machines" (R. Vol. 1, p. 431, lines 31–35).

"A quarter of a cent saving has been effected by the hand method lasting machine which we have furnished for lasting the sides of shoes the toes and heels of which are lasted on the No. 5 Lasting Machine" (R. Vol. 1, p. 431, line 42–p. 432, line 1).

"I have allotted a quarter of a cent saving to the Crest heel blacking machine, the channel cementing machine, and the tip scouring machine.

"All of the machines in these groups are new machines which the company has invented and brought out and the savings effected by them amount to a total of seven and one-half cents. Adding our reduction in royalties, the sum is eight and one-quarter cents" (R. Vol. 1, p. 432, lines 7-14).

Mr. WINSLOW also testified:—

"The amounts paid per pair of shoes for the use of all the principal royalty machines furnished by the United Company, when accounts are paid within thirty days, are for Goodyear welts, men's work, 5.694 cents; for Goodyear welts, women's work, 4.694 cents; for Goodyear Turn shoes, women's and misses', 1.972 cents; for children's Goodyear Turn shoes, half a cent; for men's and women's McKay shoes, 1.746 cents; for children's McKay sewed shoes, 1.391 cents (R. Vol. 1, p. 503, lines 29–36).

"The average royalty paid by a shoe manufacturer for the use of all machines furnished by the United Company for the manufacture of all types and grades of shoes is less than two and two-thirds cents per pair" (R. Vol. 1, p. 866, lines 29–32).

"The United Company has suppressed absolutely no machines, no inventions and no improvements.

"In no instance when an initial premium is charged has that been increased over what was charged prior to 1899 and in no instance has the royalty charged on any

machine been increased over that charged in 1899" (R. Vol. 1, p. 433, lines 27–32).

"Throughout our business dealings our prices, service, and forms of lease have been the same to everyone; we have made no price for any royalty or for any material or in any way that was not open to every lessee the day it was made" (R. Vol. 1, p. 439, lines 39–42).

"Our royalties have been the same to all, whether they used a thousand machines or one; they are charged by the pair and the service is exactly the same. No lease or modification of lease is adopted at any time that is not open to all lessees at the date of its adoption" (R. Vol. 1, p. 440, lines 2–6).

"As an illustration of the reductions made in prices of articles furnished by the United Company, I have had compiled the reductions made in the prices of the forepart and edge cutters acquired from the Boston Shoe Tool Company and the Globe Shoe Tool Company (defendants' Exhibit 239, Record, p. [678]). The prices charged by those companies compared with prices subsequently charged by us are as follows:

"The price of the heel cutter with blades in January, 1899, was $3.25; we reduced the price on March 1, 1900, to $2.25. In January, 1899, the price of the blades alone was $2; on March 1, 1900, we reduced the price for the blades alone to $1. The price of forepart and shank cutters in January, 1899, was thirty-five cents each, in small quantities, and twenty-five cents each in quantities of 100; on March 1, 1900, we reduced the price to twenty-five cents each in any quantity. The price of edge irons in January, 1899, was fifty cents; on March 1, 1900, we reduced the price to twenty-five cents" (R. Vol. 1, p. 479, lines 3–19).

The United Company has put out many of its new and improved machines without charging any additional royalty. Thus, for example, the shoe manufacturer of to-day gets the use of the Welter and Stitcher of the Goodyear Department and the 36 Auxiliary Machines without initial payment and for exactly the same royalty as was charged in 1899 for the use of a far less efficient Welter and Stitcher, and only 13 Welt Auxiliary Machines. For turn shoes he gets the Stitcher and 9 auxiliaries without initial payment and for one-half the royalty charged in 1899 for a much less efficient Welter and 3 Auxiliaries. Certain machines acquired from others for which

the shoe manufacturer previously paid a substantial charge have been added to the Goodyear Auxiliary set without increasing the royalty.

Thus the Company owning the Sole Laying Machine, previous to its acquisition by the United Company, charged a royalty of one-quarter cent per pair.

The United Company acquired this machine and included it in its Auxiliary Goodyear Set without any additional royalty. So in the case of the Gem Insole Machine on which the charge had been one-half cent per pair (R. Vol. 1, p. 430, lines 10–13).

The United Company has reduced or eliminated the initial charges made in 1899, thus reducing materially the cost to the shoe manufacturer of his machinery. The initial charge for an equipment of machines to manufacture 300 pairs of Goodyear Welt shoes per day was in 1899, $6,930.50. In 1911 the improved machines of the same character and 18 additional Auxiliary or General Department machines were furnished by the United Company for $1,430, a saving to the manufacturer of $5,500.50. The initial charge for an equipment to make 1,000 pairs of shoes per day was, in 1899, $11,300.50. Prior to 1911 the United Company had reduced the charge to $2,467.50, a saving to the manufacturer of $8,833 (R. Vol. 1, pp. 432–3). More than 50 per cent. of the manufacturers make 300 pairs or less per day (R. Vol. 1, pp. 454–5).

The royalties now charged for the United Company's machines are extremely small and hardly affect at all the prices charged the public for the completed shoes. As stated above, the average royalty paid by a shoe manufacturer for the use of all machines furnished by the United Company for the manufacture of all types and grades of shoes is less than 2⅔ cents per pair (*supra*, p. 194).

In addition, certain nominal annual rentals are charged for the use of certain auxiliary or General Department machines. These are not charged as a substantial compensation for the machines, but in order that a shoe manufacturer shall not take these machines for which no independent royalty is charged, unless he really has a use for them. The total cost per pair of shoes of such rentals is almost infinitesimal,

and adds no appreciable amount to the royalty charged per pair of shoes. Take, for instance, the rental of $15 per year for the Goodyear Universal Channeling Machine (Def.'s Ex. 230A, R. Vol. 5, p. 443). The normal capacity of this machine is about 1,600 pairs of shoes per day (R. Vol. 2, p. 2329; Vol. 1, p. 658, lines 32–42), and hence if used for three hundred days in the year, the cost would be .003 of a cent per pair of shoes.

For these very small charges the United Company installs in the shoe manufacturer's factory all these expensive patented bottoming machines that the shoe manufacturer needs; it charges no royalty unless the shoe manufacturer has work for the machines to perform; it sends its mechanics to maintain the machines in efficient operating condition and to repair them without cost to the shoe manufacturer, except for the new parts supplied; it instructs the shoe manufacturer's operatives in the use of the machines; and it furnishes new or improved machines, or improved attachments whenever developed.

(6) BENEFITS TO OPERATIVES OF THE MACHINES RESULTING FROM INVENTIONS AND SERVICE OF UNITED COMPANY.

Operatives of shoe machines are generally paid by the piece, that is, a certain amount for each pair of shoes operated on by them. Any increase in the efficiency of the machines tending to a larger production per machine thus increases the number of shoes worked on by each operative. The increased efficiency of the United Company's machines has resulted in an increase in the compensation paid operatives, although shoe manufacturers have in many instances actually reduced the piece price.

Thus the testimony shows that the average output of Model K Welter is 40 dozen pairs a day instead of about 25 dozen pairs on the old machine and that an operative as a result can earn 20 per cent. to 36 per cent. more on the new welter, although the piece price on the old welter was one-third more than on the new (R. Vol. 1, pp. 646–8, 658–60, 710, 723, 753).

On the Model M Stitcher the operatives can earn 24 to 45 per cent. more than on the old stitcher, although the piece price is 40 per cent. less than on the old stitcher (R. Vol. 1, pp. 647, 753).

(7) THE DEVELOPMENT BY UNITED COMPANY OF GOODYEAR METHOD OF MAKING SHOES.

One of the purposes in forming the United Company, as testified to by Mr. Winslow, was to encourage and increase the manufacture of Goodyear Welt shoes. This was to be done by the development of new machines to assist in that manufacture, by lowering the cost of installation of the Goodyear machines and by instructing operators in their use (R. Vol. 1, p. 407, lines 22–30). The United Company has constantly carried out this purpose and may be said to have specialized in machinery for making the Goodyear Welt shoes.

It has, in the first place, enormously increased the efficiency of its Welter and Stitcher, the two principal machines used in this process. It has greatly increased the number of Auxiliary Machines furnished with its Welter and Stitcher (*infra*, p. 428). It has reduced or eliminated the initial charges made in 1899 on its principal machines, resulting in a large saving to the shoe manufacturer (*supra*, p. 196).

There has resulted a great increase in the production of Goodyear Welt shoes. In 1899, 22,700,000 pairs of welt shoes were made out of a total of 172,786,000. In 1910, 86,231,000 pairs of welt shoes were made out of a total of 278,916,000 (R. Vol. 1, p. 424, lines 24–35).

II.

THE EVIDENCE REGARDING DEFENDANTS' PATENTS.

1. INTRODUCTORY STATEMENT.

The petition sets forth that the companies which came together to form the United Company were early in 1899 manufacturing their machines under patents. Then follows the allegation that—

> "*many of the basic patents on the principal machines* owned and controlled by them *were about to expire*, and, in the ordinary course of events, the general public would have acquired *in the near future* the right to the free manufacture and use of such machines, the lawful monopoly of such machines theretofore enjoyed by virtue of the patents would have come to an end, . . ." (italics ours) (R. Vol. 1, p. 993).

Testimony with respect to this allegation of the petition was taken before a special examiner under the order of June 27, 1913 (R. Vol. 1, p. 1090), and is contained in Volume 2 of the record.

That order provided for the taking of testimony—

> "with respect to the allegations of the petition set forth in the paragraph beginning at the bottom of page 15 [R. Vol. 1, p. 993] *and ending at the beginning of Section IV* on page 16 [994], of the printed petition in the above-entitled cause" (italics ours) (R. Vol. 1, p. 1090).

The allegations of the petition referred to in this order, in addition to that above quoted, comprise the following:—

> "and the system of demanding large royalties for their use would have been replaced by their general manufacture and outright sale under competitive conditions.

> Furthermore, under the conditions then existing, new patents were being constantly taken out by others, and new and improved machines for performing the principal operations in the manufacture of boots and shoes by the aid and use of machinery were being placed upon the market, either upon a smaller royalty than had theretofore been charged for machines doing similar work or for sale outright to boot and shoe manufacturers" (R. Vol. 1, pp. 993–4).

The United States did not offer any evidence whatever in support of these latter allegations.

The charge that early in 1899 the basic patents were about to expire was not mentioned in the briefs or arguments for the United States at the first hearing in this Court. While it may accordingly be assumed that the United States has abandoned this contention, it is important that the attention of the Court should be called to evidence showing that there was no ground whatever for this charge; that it was disproved by the very evidence which the United States introduced in its support, which showed as to machines selected by the United States that early in 1899 "basic patents" were *not* about to expire; that defendants proved that of the important patents early in 1899 on each of the "principal machines" selected by the United States the latest had *over fourteen years to run*, and, in general, that the machines being put out in 1899 were protected by strong patents having long terms to run; that in the rapid development of the industry since 1899 the machines of that day have been superseded by greatly superior machines which do better work and have greater capacity; and that since 1899 a great number of new machines have been developed by the United Company, many of which perform operations which in 1899 were performed by hand; so that the machines which the United Company was putting out when this suit was begun and the machines which it is now putting out were and are protected by strong patents of recent date, by which the United States has secured to the United Company a lawful monopoly of the machines which its customers demand and use.

2. THE EVIDENCE OF THE UNITED STATES IN SUPPORT OF THE ALLEGATION OF THE PETITION THAT EARLY IN 1899 MANY OF THE BASIC PATENTS ON THE PRINCIPAL MACHINES WERE ABOUT TO EXPIRE.

A. The Claim of the United States that Early in 1899 Many of the "Basic" Patents were About to Expire was Disproved by its Own Patent Expert.

In its *prima facie* case in support of this allegation the patent expert for the United States, Mr. Chapman, mentioned patents on four machines only. The machines and the patents which he testified claimed improvements incorporated in the machines are as follows:—

Shoe Machine: Goodyear Welt and Turn ("Welter") (R. Vol. 2, pp. 2141–44):—

No. 412,704, Oct. 8, 1889 (expiring Oct. 8, 1906*).
No. 461,793, Oct. 20, 1891 (Method) (expiring Oct. 20, 1908*).
No. 488,505, Dec. 20, 1892 (expiring Dec. 20, 1909).
No. 518,911, Apr. 24, 1894 (*expiring Apr. 24, 1911*).

Lockstitch Machine: Goodyear Outsole Rapid ("Stitcher") (R. Vol. 2, pp. 2145–6):—

No. 473,874, Apr. 26, 1892 (expiring Apr. 26, 1909).
No. 474,774, May 10, 1892 (*expiring May 10, 1909*).

Lasting Machine: Chase (R. Vol. 2, pp. 2199–2201):—

No. 340,860, Apr. 27, 1886 (expiring Apr. 27, 1903).
No. 364,088, May 31, 1887 (expiring May 31, 1904).
No. 376,368, Jan. 10, 1888 (expiring Jan. 10, 1905).
No. 483,375, Sept. 27, 1892 (*expiring Sept. 27, 1909*).

Rounding and Channeling Machine: Goodyear Universal (R. Vol. 2, pp. 2201–4):—

No. 463,982, Nov. 24, 1891 (expiring Nov. 24, 1908).
No. 599,602, Feb. 22, 1898 (expiring Feb. 22, 1915†).
No. 600,883, Mar. 22, 1898 (*expiring Mar. 22, 1915*†).

*As to Mr. Chapman's contention that these patents expired prematurely because of the expiration of a British patent, see *infra*, pp. 212–215.

† As to Mr. Chapman's contention that these patents expired in 1910 with a British patent, see *infra*, p. 215.

At the conclusion of his testimony regarding the welter and the stitcher Mr. Chapman expressed his views as to the character of the patents on those machines which he had discussed and which are enumerated above, as follows:—

> "*Int.* 13. Should you say, from your knowledge, study and experience, that the patents to which you have referred in your deposition might properly be termed 'basic patents' early in 1899, in reference to the machines in question, welters and stitchers? . . .
>
> "*Ans.* Yes, with the exception of a few detailed claims contained in some of the patents examined by me" . . . (R. Vol. 2, pp. 2146–7).

As to the Chase lasting machine and the rounding and channeling machine Mr. Chapman in his *prima facie* testimony drew no distinctions as to the "basic" character of the patents on those machines. On rebuttal he testified that *none* of the patents on those machines early in 1899 was "basic."

In addition to the four machines listed above, Mr. Chapman discussed six other machines, but in those discussions he *mentioned no patents*, so that obviously his testimony regarding those six other machines cannot possibly be helpful on this issue and may be entirely disregarded.

Thus the *prima facie* case of the United States in support of the allegation of the petition that early in 1899 basic patents were about to expire established (1) that of the patents, alleged to be "basic," on two machines, the welter and the stitcher, the latest patent expired on April 24, 1911, and May 10, 1909, respectively; and (2) that patents, *not* "basic," on the Chase lasting machine and the rounding and channeling machine expired more than ten years after February, 1899.

The welter and stitcher were both put out "early in 1899" by the Goodyear Company, the Chase lasting machine was one of the three lasting machines being put out early in 1899 by the Consolidated & McKay Lasting Machine Company, and the rounding and channeling machine was an auxiliary machine being put out by the Goodyear Company (R. Vol. 1, p. 2, lines 12–18; p. 3, lines 15–39; p. 625, lines 38–39); no machine put out by the McKay Shoe Machinery Company was even mentioned by the patent expert for the United States.

The proposition that patents which in February, 1899, had over ten years to run,—much more than half their terms,—were "about to expire" is too ridiculous for discussion. But this extraordinary position was not taken by the United States without due warning of its unreasonableness. On the first day of the taking of testimony before the examiner on this issue, a week before Mr. Chapman began to testify, a discussion was precipitated by the following interrogatory propounded by the patent counsel for the United States to defendants' patent expert Howard, then a witness for the United States,—

> "*Int.* 4. Kindly read to the magistrate the number, title, date and name of inventor of each patent on the Chase lasting machine, which patents *expired prior to the filing of the petition in this case*" (italics ours) (R. Vol. 2, p. 2102).

Defendants' counsel objected to this question "as not within the scope of this order," adding:—

> "But your order does not entitle you to make any such inquiry. It is limited to proof of Letters Patent under which the defendants were manufacturing their machines in 1899, and proof that many of those patents were about to expire. . . . The bill suggests a certain situation: that in 1899 the patents which had existed were about to expire, and that that was the occasion for doing something, which something was a conspiracy and combination which the bill charges. It does not seem to us that that opens to you the opportunity for an inquiry as to what patents expired *all the way from 1899 up to 1911*" (italics ours) (R. Vol. 2, pp. 2102–3).

B. The Final Position of the United States as to Expiration of Basic Patents.

In its rebuttal evidence,—

the United States definitely limited its claim that early in 1899 many of the basic patents on the principal machines were about to expire to two machines, both put out by one company only, the Goodyear Shoe Machinery Company, and then only as employed on welt shoes, constituting less than 10 per cent. of the shoes made in 1898.

Mr. Chapman, expert for the United States, was asked what machines were "essential or necessary for the bottoming of *welt shoes* in the commercial manufacture of shoes by machinery under the Goodyear process" (italics ours). Mr. Chapman's answer was:—

> "There are but two absolutely essential or indispensable machines necessary to the production of a Goodyear welt and turn shoe made in accordance with the so-called Goodyear process. Those machines are the machine which is familiarly known as welt and turn machine and out-sole rapid stitcher" (R. Vol. 2, pp. 2793–4, Int. 2).

This statement was later referred to by the patent counsel for the United States as,—

> "your statement that welters and stitchers are the only indispensable machines required for the commercial bottoming of shoes by machinery" (R. Vol. 2, p. 2808, Int. 10).

The position thus taken by the United States was emphasized as follows (R. Vol. 2, p. 2809):—

> (Mr. WEBSTER): "*Int.* 11. In the commercial manufacture of shoes by machinery, what machines are of secondary importance in the bottoming of shoes?"
>
> (Mr. CHAPMAN): "*Ans. The machines of secondary importance* are a machine for insole channeling, *a machine for lasting*, a machine for sole laying, a machine for rough rounding and channeling, *a machine for heel-seat nailing*, and *such machines as are ordinarily employed in the heeling operation* generically considered, a machine for edge trimming."
>
> (Mr. WEBSTER): "*Int.* 12. I notice you omit from the list machines for leveling or beating soles. Are they properly included in the list of secondary machines?
>
> (Mr. CHAPMAN): "*Ans.* They may be considered of secondary importance" (italics ours).

Machines for lasting were all that the Consolidated & McKay Company was putting out early in 1899; and "a machine for heel seat nailing" (the loose nailing machine), and "such machines as are ordinarily employed in the heeling

operation" were principal machines which the McKay Shoe Machinery Company was putting out (R. Vol. 1, p. 4, lines 19–21, 23–27).

Machines of "secondary importance" cannot of course be included with the "principal machines" referred to in the allegation of the petition now under discussion. Accordingly, *The United States limited its claim* that early in 1899 many of the basic patents on the principal machines were about to expire to TWO MACHINES, *both put out by one company only, the* GOODYEAR COMPANY, *and expressly excluded from its case* (1) *all machines* put out by the CONSOLIDATED & MCKAY COMPANY, (2) *all machines* put out by the MCKAY SHOE MACHINERY COMPANY, (3) *all machines*, other than the welter and stitcher, put out by the GOODYEAR COMPANY, and (4) *all machines of all kinds used in the manufacture of over 90 per cent. of all shoes made, i.e.*, all kinds of shoes other than Goodyear welt shoes. Less than 10 per cent. of the shoes made in the United States in 1898 were Goodyear Welt shoes (R. Vol. 1, p. 414, lines 36–40).

The United States having proved defendants' case they might well be content to submit this issue on that showing; but their case is even stronger than that which the United States has established, as its patent counsel, Mr. Webster, doubtless anticipated when he said:—

> "I would like to show by Mr. Howard, unless we can agree upon it, what patents were owned by the United Company and its associate companies, which patents expired prior to the filing of the petition in this case. . . . I simply care for those which have expired. *I don't care for those which were alive at the time of the filing of the bill*" (italics ours) (R. Vol. 2, pp. 2093–97).

Consistently with this frank statement Mr. Webster, in examining defendants' patent expert Howard, called as a witness for the United States, requested him to produce lists of patents owned by the United Company on specified machines, "*which patents expired prior to the filing of the petition in this case*" (italics ours) (R. Vol. 2, pp. 2101–9).

3. DEFENDANTS' EVIDENCE AS TO THE PATENTS EARLY IN 1899 ON THE MACHINES DISCUSSED BY THE EXPERT FOR THE UNITED STATES.

Defendants' testimony showed that "early in 1899" there were important patents on the four machines discussed by the expert for the United States *which had more than fourteen years to run* and did not expire *until after this suit was begun in December, 1911.* Mr. Howard, defendants' patent expert, who has been head of the United Company's Patent Department since the Company was organized (R. Vol. 2, pp. 2239–41) testified that there were patents on those machines when the United Company was formed, *in addition to those enumerated by Mr. Chapman* (*supra*, p. 201), as follows:—

Shoe Machine: Goodyear Welt and Turn ("Welter") (R. Vol. 2, p. 2249, Int. 10; p. 2722, Int. 240; p. 2723, Ints. 241, 242; p. 2726, Ints. 256, 258):

No. 495,452, Apr. 11, 1893 (expiring Apr. 11, 1910).
No. 561,386, June 2, 1896 (*expiring June 2, 1913*).

Lockstitch Machine: Goodyear Outsole Rapid ("Stitcher") (R. Vol. 2, p. 2279; p. 2284, Int. 25):—

Re. No. 11,578, reissued Dec. 8, 1896 (original patent No. 549,124, Nov. 5, 1895, expiring Nov. 5, 1912).
No. 563,471, July 7, 1896 (expiring July 7, 1913).
No. 563,472, July 7, 1896 (expiring July 7, 1913).
No. 582,510, May 11, 1897 (*expiring May 11, 1914*).
(*Also* No. 675,783, June 4, 1901, application pending in February, 1899 (*will expire June 4, 1918*);
No. 704,457, July 8, 1902, application pending in February, 1899 (*will expire July 8, 1919*).)

Lasting Machine: Chase (R. Vol. 2, pp. 2365–72):—

No. 545,052, Aug. 27, 1895 (expiring Aug. 27, 1912).
No. 566,831, Sept. 1, 1896 (expiring Sept. 1, 1913).
No. 569,182, Oct. 13, 1896 (expiring Oct. 13, 1913).
No. 569,231, Oct. 13, 1896 (expiring Oct. 13, 1913).
No. 571,339, Nov. 17, 1896 (expiring Nov. 17, 1913).
No. 571,404, Nov. 17, 1896 (expiring Nov. 17, 1913).
No. 571,429, Nov. 17, 1896 (*expiring Nov. 17, 1913*).

Rounding and Channeling Machine: Goodyear Universal (R. Vol. 2, pp. 2304–6):—

No. 595,764, Dec. 21, 1897 (expiring Dec. 21, 1914).
No. 625,633, May 23, 1899 (expiring May 23, 1916).
No. 630,339, Aug. 8, 1899 (*expiring Aug. 8, 1916*).

As we have stated (*supra*, p. 202), Mr. Chapman in the *prima facie* case of the United States discussed six other machines, but did not refer to any patents on those machines, so that his testimony regarding those machines is of course not pertinent to this issue. It may interest the Court, however, to know what the patents on those machines were "early in 1899." They were:—

Channeling Machine: Goodyear (insole and turn) (R. Vol. 2, pp. 2318–22):—

No. 550,402, Nov. 26, 1895 (*expiring Nov. 26, 1912*).

Leveling Machine: Goodyear Automatic Sole (R. Vol. 2, pp. 2332–5):—

No. 540,222, May 28, 1895 (expiring May 28, 1912).
No. 540,223, May 28, 1895 (expiring May 28, 1912).
No. 541,988, July 2, 1895 (expiring July 2, 1912).
No. 546,211, Sept. 10, 1895 (expiring Sept. 10, 1912).
No. 555,548, Mar. 3, 1896 (expiring Mar. 3, 1913).
No. 580,746, Apr. 13, 1897 (expiring Apr. 13, 1914).
No. 610,314, Sept. 6, 1898 (*expiring Sept. 6, 1915*).

Pegging Machine: Davey (R. Vol. 2, pp. 2351–2):—

No. 581,066, Apr. 20, 1897 (*expiring Apr. 20, 1914*).

Separating Machine: Hadaway Stitch (R. Vol. 2, pp. 2339–42):—

Re. No. 11,538, reissued May 12, 1896 (original patent 521,978, June 26, 1894) (expiring June 26, 1911).
No. 537,823, Apr. 23, 1895 (expiring Apr. 23, 1912).
No. 543,012, July 23, 1895 (*expiring July 23, 1912*).

Skiving Machine: Amazeen (R. Vol. 2, pp. 2356–9):—

No. 518,774, Apr. 24, 1894 (expiring Apr. 24, 1911).
No. 609,868, Aug. 30, 1898 (expiring Aug. 30, 1915).
No. 632,984, Sept. 12, 1899 (expiring Sept. 12, 1916).
No. 636,942, Nov. 14, 1899 (*expiring Nov. 14, 1916*).

(The applications for the last two patents were filed before February, 1899 (Defs.' Ex. 130).)

Channeling Machine: Goodyear Outsole, is omitted from the above list because that machine became obsolete when the rounding and channeling machine went into use, several years before 1899 (R. Vol. 2, p. 2330, Int. 40; p. 2764, Int. 375).

4. THE ATTEMPT OF THE UNITED STATES TO BELITTLE THE IMPORTANCE OF THE LATER PATENTS ON THE WELTER AND STITCHER "EARLY IN 1899."

Before referring to Mr. Chapman's efforts in his rebuttal testimony to show that the later patents, which Mr. Howard testified claimed important improvements embodied in the welter and stitcher "early in 1899," were of comparatively little importance, attention should be called to Mr. Chapman's admissions as to the character of his work in preparation for giving his testimony.

At the outset of his discussion of the stitcher Mr. Chapman said,—

> "Since the testimony of Mr. Howard closed it has been a physical and mental impossibility for me or for counsel to go into the various patents with a view to determining their bearing on the questions at issue . . ." (R. Vol 2, p. 2798).

Also, when asked whether the structures of any of the claims of outsole stitcher patents which he had just been discussing were "necessary to the successful operation" of the stitcher of 1899, he said,—

> "I cannot answer that question with reference to all the claims of all the patents referred to, for the reason that I have been unable to go through the patents in detail sufficiently to give a comprehensive answer . . ." (R. Vol. 2, p. 2802, Int. 7).

And again,—

> "As heretofore stated, I have had very little opportunity to study or go into the prior state of the art having reference to or bearing upon those patents to which Mr. Howard has made reference . . ." (R. Vol. 2, p. 2810).

These statements were made by Mr. Chapman on the first day of his rebuttal deposition, November 12, 1913 (R. Vol. 2, p. 2793), nearly four months after Mr. Howard, as witness for the United States, read into the record on July 23, 1913, lists of the patents on the welter and stitcher (R. Vol. 2, pp. 2116–9), and five weeks after Mr. Howard, as witness for defendants, testified in detail regarding those patents on October 6 and 7, 1913 (R. Vol. 2, pp. 2247–2302).

If any doubt remains as to the superficial character of Mr. Chapman's work on this case, attention is called to the discussion of his misstatements of fact in his testimony regarding the Plant purchase (*infra*, pp. 579–580).

A. The Later Patents on the Welter "Early in 1899."

As we have seen, Mr. Chapman testified in the *prima facie* case of the United States that "early in 1899" there were four "basic" patents on the welter (*supra*, pp. 201–202). In his rebuttal testimony, without a word to explain his inconsistency, he testified that only two of those patents were basic, viz., No. 412,704, October 8, 1889, and No. 461,793, October 20, 1891 (R. Vol. 2, pp. 2794–5, Ints. 3, 4), and he stated that later patents on the welter, including two which he had previously characterized as "basic," No. 488,505 and No. 518,911, and also including No. 561,386, June 2, 1896, which Mr. Howard had testified about, "relate to and cover by claim mere details of construction" (R. Vol. 2, p. 2795).

But the record does not support this contention.

Mr. HOWARD testified:—

> "I have never seen a welt and turn machine of 1899 which did not embody in its organization the mechanisms set forth in the LaChapelle patent No. 488,505, Briggs patent No. 518,911 and French patent No. 561,386. I know that the mechanisms set forth in those later patents are very useful in the machine and I am certain that no customer of the United Company would have accepted at any time since February, 1899, the welt and turn machine of 1899 which did not embody in its organization the improvements of those patents" (R. Vol. 2, p. 2725, Int. 249).

He also testified that the machine was never commercially used until it incorporated the mechanisms claimed in those patents (R. Vol. 2, p. 2723, Int. 245).

Further, as to patent No. 488,505 Mr. Howard testified that he considered,—

> "That the mechanism of the LaChapelle patent No. 488,505 is important to the commercial success of the welt and turn machine of 1899" (R. Vol. 2, p. 2725, Int. 252).

In regard to patent No. 518,911, Bannican, a witness for the United States, testified on cross-examination that the "auxiliary take-up" of that patent keeps the thread from dropping off the needle and prevents the machine from skipping stitches, which would make imperfect work (R. Vol. 2, pp. 2830-1, Ints. 57-63).

Mr. Howard explained in detail the advantages of the improvement of patent No. 561,386, June 2, 1896 (R. Vol. 2, p. 2249, Int. 10), and stated that in a machine not provided with the mechanism of that patent there would be frequent breakage of the thread, and on cross-examination he said,—

> "The improvement of patent No. 561,386, June 2, 1896, French, contributed substantially to the successful commercial operation of the welt and turn machine of 1899 and overcame serious difficulties which had been experienced in the commercial use of welt-sewing machines before this improvement was made" (R. Vol. 2, p. 2727, Int. 260).

B. The Later Patents on the Stitcher "Early in 1899."

In his rebuttal deposition Mr. Chapman adhered to his original position that two "basic" patents on the stitcher expired in April and May, 1909. Then, after making the statement above quoted to the effect that it had been an "impossibility" for him to examine the patents "with a view to determining their bearing on the questions at issue" (R. Vol. 2, p. 2798), Mr. Chapman attempted to decry the importance of the four patents on the extension edge organization of the 1899 stitcher, No. 563,471, No. 563,472, No. 582,510

and No. 675,783, expiring in 1913, 1914 and 1918 (*supra*, p. 206) (R. Vol. 2, p. 2799).

But the record establishes beyond any doubt that the inventions of those patents were extremely important.

In his discussion of the improvements of those patents Mr. Howard explained that nearly all welt shoes have extension edges, that prior to 1895 extension edge shoes had been made by hand because up to that time there were no machines which were organized to sew the outsoles of shoes provided with extension edges, and that the four patents in question claimed improvements which for the first time adapted an outsole stitcher for attaching the soles of extension edge shoes. Mr. Howard also explained the practical advantages of the extension edge sole and the character of the organization which adapted the 1899 stitcher for making extension edge shoes, and he concluded his extended discussion (R. Vol. 2, pp. 2279-83) with the following statement:—

> "Finally, as to the importance and value of an organization in an outsole stitching machine which will enable it to attach the soles of extension edge shoes, I should state that in my opinion it is quite as important that the machine should be able to handle the shoe properly in such manner as to locate the line of stitching where good shoemaking requires that it should be located, as it is that the machine should properly form the stitch; and I regard the extension edge organization as important and as essential a part of an outsole stitching machine under modern conditions as are the needle and awl."

Mr. Warren testified to the same effect (R. Vol. 1, p. 794, lines 41–44; p. 795, lines 1–11).

It is submitted that the broadest of these patents, which will not expire until 1918 (R. Vol. 2, p. 2282), may fairly be characterized as a pioneer patent.

In regard to the improvement claimed in reissued patent No. 11,578 and in patent No. 704,457 (application filed June 3, 1898; Defs.' Ex. 113), expiring respectively November 5, 1912, and July 8, 1919, which improvement was made in the outsole stitcher "just prior to 1899" (R. Vol. 2, p. 2284, Int. 25), Mr. Chapman testified that that organization "while probably convenient, is not essential to the fundamental organization" of the 1899 stitcher (R. Vol. 2, p. 2799).

Mr. Howard testified that the embodiment in the outsole stitcher of this improvement adapted the machine to—

> "perform the welt beveling and the stitching operation simultaneously, thus obviating the necessity on such work of performing the welt beveling operation subsequently, either by hand or by another machine operation" (R. Vol. 2, p. 2284, Int. 25).

5. THE CONTENTION OF THE UNITED STATES THAT CERTAIN PATENTS ON THE WELTER AND THE ROUNDING AND CHANNELING MACHINE EXPIRED PREMATURELY OR WERE ANTICIPATED.

Defendants are confident that it will be accepted without question that the patents which the United Company acquired from its component companies were, for the purposes of this suit, valid and in force for their full seventeen year terms. It does not appear that any of them had been held to be invalid or that any of them had been held to have expired before the end of its full term. Accordingly those patents were *prima facie* valid for their full terms, and defendants had a right to assume that they were valid and would be in force to the ends of their terms. That any of those patents was, years after the United Company was formed, held to be invalid or to have expired prematurely, or that a patent expert expressed an opinion, fourteen years after, that any of those patents was anticipated or had expired prematurely, is not of the slightest consequence. We anticipate, therefore, that the efforts of the United States to show such a situation in regard to two machines will be dismissed as of no importance whatever.

So far, however, as the United States raised the issue of the validity of defendants' patents it may interest the Court to know what defendants' position is.

The United States contended that patents No. 412,704 and No. 461,793 on the welter expired on September 17, 1902, with British patent No. 13,366, September 17, 1888 (R. Vol. 2, pp. 2144, 2145, 2197, 2198).

Defendants' position as to this contention is as follows:—

A. The statement that patent No. 412,704, October 8,

1889, was held, in an opinion of the Circuit Court of Appeals for the First Circuit rendered *August 2, 1907*, in a suit *begun December 21, 1903* (P.'s Ex. 219, R. Vol. 4, p. 1277), to have expired on September 17, 1902, with British patent No. 13,366 of September 17, 1888, French & Meyer, defendants do not deny. BUT, *in the absence of the slightest indication on the record that prior to the organization of the United Company on February 7, 1899, any of the officials of the predecessor companies had any knowledge, or even any suspicion, that the term of this patent, No. 412,704, was limited by that British patent, the United States has absolutely failed to show that the fact that this patent expired on September 17, 1902, is of any consequence whatever in this suit. It is clear that for the purposes of this case this patent did not expire until October 8, 1906.*

B. Defendants most vigorously deny the claim that patent No. 461,793, October 20, 1891, expired with British patent No. 13,366, September 17, 1888.

(1) Patent No. 461,793 was granted October 20, 1891, to the Goodyear Shoe Machinery Company as assignee of Henry Briggs, and British patent No. 13,366, dated September 17, 1888, was granted to Zachary Taylor French and William Cristian Meyer. Thus it appears from the patents themselves that *they were issued to different inventors*, and the record contains no suggestion that the British patent was "obtained by the American patentee or with his consent" (*Hobbs* v. *Beach*, 180 U. S. 383, 397). Accordingly, the contention is answered by the patents themselves.

(2) Mr. Chapman's assertion that the subject-matter of claims four and five of the French & Meyer British patent is "substantially that of the claim of the United States Briggs patent" (R. Vol. 2, p. 2198, Int. 50) was completely answered by Mr. Howard (R. Vol. 2, pp. 2273–4, Int. 17), who first pointed out that the Briggs method, as stated in its title, is a "method of forming chain stitches," while the method set forth in claims four and five of the British patent is a particular method to be practised in the manufacture of boots and shoes, and *includes only one step of the method defined in the claim of the Briggs patent.* Mr. Howard further testified:—

> "A machine could be built and used which would infringe the claim of the Briggs patent without infringing

the claims 4 and 5 of the British patent No. 13,366 of 1888; while, on the other hand, a machine could be built and used which would infringe the method defined in claims 4 and 5 of the British patent, but would not infringe the claims of the Briggs patent. . . .

"More than this, the single claim of the Briggs patent includes as an important and essential step in its method a step which is not set forth in claims 4 and 5 of the British patent, and the claims in the Briggs patent would have been patentable if a machine practising the methods defined in claims 4 and 5 of the British patent had been a part of the prior art at the time the Briggs invention was made" (R. Vol. 2, p. 2274).

But here also, as in the case of the French and Meyer patent No. 412,704 above discussed, even if the United States had proved its contention that Briggs patent No. 461,793 expired with the British patent in 1902, *it would be of no importance in this suit, because the record fails to afford the slightest suggestion that, prior to the organization of the United Company in February, 1899, any official of the predecessor companies believed, or had the least suspicion, that the Briggs patent expired before the end of its natural life on October 20, 1908.*

In another attack on Briggs patent No. 461,793 Mr. Chapman took a most extraordinary position. He asserted in 1913 that this patent, which had expired October 20, 1908, more than five years before he testified, was anticipated (R. Vol. 2, p. 2144, Int. 9). Since this contention was not mentioned in the briefs or arguments either in the District Court or at the first hearing in this Court, it may be assumed that it was abandoned and should not receive even passing notice. It was completely answered by Mr. Howard (R. Vol. 2, pp. 2270-3), who concluded his discussion of the alleged anticipation as follows:—

"I never heard of the Stickel patent until it was mentioned by Mr. Chapman in his testimony, *and it has never in any way been mentioned in connection with any litigation involving the Briggs patent No. 461,793*" (italics ours).

Even assuming that Mr. Chapman was correct, it is submitted that testimony that this Briggs patent which expired in 1908 was anticipated by a patent which was never cited in

any of the eleven suits on the Briggs patent and of which the owners of the Briggs patent had no knowledge until 1913, is not of the slightest consequence in this suit; the discovery of an anticipation *now* could have absolutely no bearing upon defendants' state of mind or intent in February, 1899.

Again, Mr. Chapman contended (R. Vol. 2, pp. 2203–4) that two of the patents which protected the rounding and channeling machine in 1899, No. 599,602, Feb. 22, 1898, and No. 600,883, Mar. 22, 1898, expired in 1910 with British patent No. 3497, of 1896, but the United States nowhere charges defendants with knowledge thereof in 1899. The facts regarding these two patents are as follows:

(1) Patent No. 599,602, February 22, 1898, French & Meyer, did *not* expire with British patent No. 3497 of 1896, because it shows and claims an *improvement* upon the machine shown in that British patent. The British patent which *does* correspond to patent No. 599,602 is No. 4426 of 1898, the application for which was filed February 22, 1898, the date upon which the United States patent issued. These facts are obvious upon comparing the patents.

(2) Patent No. 600,883, March 22, 1898, French & Meyer, is dominated by another patent on the rounding and channeling machine, No. 595,764, December 21, 1897, Cole, which was assigned to the Goodyear Company after it was granted (R. Vol. 2, p. 2305, Int. 30).

6. THE EVIDENCE OF THE UNITED STATES THAT PATENTS ON MACHINES "EARLY IN 1899," OTHER THAN THE WELTER AND STITCHER, WERE NOT "BASIC" PATENTS, BUT THAT EARLIER PATENTS, MOST OF WHICH HAD EXPIRED, WERE THE BASIC PATENTS.

In his rebuttal testimony, after concluding his discussion of the welter and stitcher, Mr. Chapman completely abandoned the allegation of the petition that "early in 1899" many of the basic patents on the principal machines were about to expire. He then devoted his efforts to showing that the

patents in 1899 on a number of machines, including the Chase lasting machine and the rounding and channeling machine, which he discussed in his first deposition, were not "basic" patents at all, but that earlier patents which had expired before 1899 were the basic patents (R. Vol. 2, pp. 2809–18).

For example, in discussing the Chase lasting machine, Mr. Chapman enumerated five lasting machine patents dated from October 4, 1859, to June 1, 1869, the latest of which expired in 1886, and said that the inventions of those patents "are clearly of pioneer character," and that in view of them the patents he had previously referred to (*supra*, p. 201) and those which Mr. Howard had discussed were "necessarily limited" (R. Vol. 2, pp. 2811–12). He also testified that all the patents in 1899 on the rounding and channeling machine, another of the four machines selected by the United States for its *prima facie* case, were "anticipated" by a patent granted in 1880 and,—

> "must necessarily, in their claims, run to details of construction and limited features of invention" (R. Vol. 2, p. 2816).

In elaborating this theory the United States, by its own expert or on cross-examination of defendants' expert, proved that all the machines discussed by its own expert (*including the welter and stitcher* and excepting only the stitch separating machine, produced in 1895 for performing an operation always before performed by hand), and many others discussed by Mr. Howard, were improved machines for performing operations which had been performed many years before by machines the patents on which had expired prior to 1899 (R. Vol. 2, pp. 2719–20, 2733, 2734, 2743, 2746, 2758, 2760–1, 2763, 2764, 2809–18).

How the United States could conceive that that evidence would be helpful in proving the allegation of the petition that early in 1899 many of the basic patents were about to expire is beyond understanding; the allegation is disproved by that evidence alone.

Moreover that evidence supplements and strongly corroborates defendants' evidence establishing that,—

7. THE PATENTS ON THE MACHINES "EARLY IN 1899" REPRESENTED MERELY THE 1899 STAGE IN THE CONTINUOUS AND CONTINUOUSLY PATENTED DEVELOPMENT OF SHOE MACHINERY.

The record shows that in nearly all instances the 1899 machines were not the first machines for performing their respective operations; that in fact there had been several machines in succession for performing each operation, each successive machine being better than its predecessor, before the 1899 machines had their turn as the best machines available at that time; but that under the constant pressure of continuous improvement and development those 1899 machines have in their turn been superseded by machines which do more work and better work and which are much easier for the workmen to operate and enable them to earn higher wages. The record also shows that from the beginning and all the way through this continuous development down to the present day the best machines have been patented; and that now, as at every stage in the development of the industry, manufacturers insist upon having the greatly superior patented machines and will not use the obsolete machines upon which the patents have expired.

The patents on the machines in 1899 represented the 1899 stage in the continuous patented development of the industry, —nothing more. The machines of the earlier expired patents had been superseded before 1899 by the improved patented machines of that day, and before December, 1911, when this suit was begun, the 1899 machines in their turn were in almost every case dead and buried and a new generation of much better patented machines had taken their places.

This steady and continuously patented development of shoe machinery may be illustrated by summarizing briefly the evidence showing the history of the welt and turn machine (the "welter") and the outsole stitcher, the two machines which the United States regarded as "the only indispensable machines required for the commercial bottoming of shoes by machinery" (R. Vol. 2, pp. 2793–4; p. 2808, Int. 10).

A. Welt Sewing Machines.

The first machine for sewing the welt and upper to the insole was constructed under patent No. 34,413, February 18, 1862, Destouy, reissued as No. 3635, September 7, 1869. The fourth claim of the reissue is as follows:—

> "4. A sewing-mechanism, adapted to unite, by machinery, the upper, welt and sole, substantially as described, so as to produce a machine-made welted boot or shoe."

The Destouy machine, a lockstitch machine, was transformed into a chain-stitch machine by the improvements of patent No. 93,731, August 17, 1869, Mills. That machine was succeeded by the improved chain-stitch machine of patent No. 170,547, November 30, 1875, Goodyear and Hadley, which laid the chain on the welt instead of in the channel (R. Vol. 2, p. 2248, Int. 9). The machine of the Goodyear and Hadley patent, after being extensively used for some years, was in turn succeeded by the machine of patent No. 190,709, May 15, 1877, Dancel. The machine of the Dancel patent was used until it was superseded by the welt and turn machine of 1899 (R. Vol. 2, p. 2248, Int. 9; p. 2720, Ints. 222–225).

Development Since 1899.

All the time since 1899 the United Company has been continuously engaged in aggressive and effective experimental work in developing improved welt sewing machines. In the course of this work a number of new machines have in succession been constructed and supplied to shoe manufacturers. Each of these machines was an advance in the art and an important step in the continuous development which, after a long period of inventing, experimenting, trying out and further improving, finally resulted in the wonderful Model K welter, which was the commercial machine when this suit was begun.

The first new welter put out by the United Company was a lockstitch welter known as "Sewing Machine: Goodyear

Universal Inseam," which was first put out in June, 1899. This machine was protected by ten patents, of which six were granted after 1901 (R. Vol. 2, pp. 2250–1).

The United Company then concentrated its efforts on the production of an improved chain-stitch welter, and in July, 1902, put out an entirely new machine known as "Shoe Machine—Model E: Goodyear Welt and Turn." A large number of these machines were put out, all of which embodied improvements claimed in nine patents, six of which were granted after 1900 (R. Vol. 2, pp. 2252–3).

After years of continuous experimental work in the endeavor to produce a still better and faster welting machine, resulting in the construction in succession of several machines which were tried out, one after another, and in turn abandoned, the United Company finally produced in 1906 two experimental machines from which was eventually developed Shoe Machine—Model G: Goodyear Welt and Turn, an entirely new machine which was first put into commercial use in October, 1908 (R. Vol. 2, pp. 2253–4). Although many of the improvements embodied in this machine had not yet been patented when the testimony was taken, there were seventeen patents claiming the organization of the machine, of which thirteen had been granted since January 1, 1910 (R. Vol. 2, pp. 2258, 2836(70)).

The Model G machine was run regularly at a speed of 500 stitches per minute as compared with the speed of 375 stitches per minute of the 1899 welter. Some of the many problems which had to be solved in producing a machine which would be capable of successful commercial use at so high a speed and the inventions which solved those problems were explained by Mr. Howard (R. Vol. 2, pp. 2254–7). Mr. Winslow testified that the Model G machine was—

> "the highest development of sewing mechanism for attaching the welt, inner sole, and upper together that had been developed in the world up to that time" (R. Vol. 1, p. 560, lines 34–36).

Over 1,400 Model G machines were put out. The demand for it was so great that the company always had ahead unfilled orders for a large number of machines—more than 200

for a long period. It was the standard commercial machine until "it was superseded in June, 1911, by still another improved machine" (R. Vol. 2, pp. 2258–9).

After the acquisition of the Plant patents in September, 1910, the Model G machine was reorganized to incorporate the extremely valuable Plant inventions, together with important improvements made on those inventions by United Company inventors. The new machine, Shoe Machine—Model K: Goodyear Welt and Turn, was first put out for commercial use in June, 1911, and is now the standard commercial welter (Howard, R. Vol. 2, pp. 2259–66). On January 1, 1914, there were 1,024 Model K welters in use (R. Vol. 1, p. 863, lines 3–4).

This new Model K machine embodies improvements claimed in twenty-five patents, of which eighteen have been granted since January 1, 1910 (R. Vol. 2, pp. 2266–7, 2836(69)), and there are many pending applications (R. Vol. 1, p. 812, line 42; R. Vol. 2, p. 2117). The value and importance of these improvements were fully explained by Mr. Howard (R. Vol. 2, pp. 2259–68). This evidence is strongly supported by testimony of manufacturers and operators.

Testimony of shoe manufacturers and of welter operators which will be reviewed in our discussion of the Plant purchase (*infra*, pp. 544–549) shows that the average output of the Model K welter is forty dozen pairs of shoes per day, while the average output of the old welter was only twenty-five dozen pairs; that the new welter sews a tighter seam; that there is a saving in welting on the new machine which amounts to five or six hundred dollars a year on each machine; that the new machine saves the operator's time and strength and that he can earn from 20 per cent. to 36 per cent. more on the new welter than he could on the old one, although the piece price on the old welter was one-third more than that on the new welter (R. Vol. 1, pp. 646–8, 658–60, 710, 723, 753).

The demand for the Model K welter has been so great that the United Company has always been unable to keep up with the orders for the machine; on March 1, 1913, it was 197 machines behind in filling its orders (R. Vol. 2, pp. 2268–9).

B. Outsole Stitching Machines.

The first patent for a machine for sewing the outsole to the welt was No. 127,423, June 4, 1872, Mills (R. Vol. 2, p. 2277). This machine was succeeded by a chain-stitch machine and by the lockstitch machine of patent No. 253,156, January 31, 1882, Campbell (R. Vol. 2, pp. 2278, 2734). Both those machines were superseded by the machine of patent No. 366,935, July 19, 1887, Dancel, while the machine of the Dancel patent was in turn superseded by Lockstitch Machine: Goodyear Outsole Rapid, which was the commercial machine "early in 1899."

Development Since 1899.

Until the 1899 stitcher was in turn superseded by a better machine it was being continuously improved. One of the important improvements was organizing the machine to adapt it for stitching the outsole to the welt by the "fudge stitch," a practice which was introduced by shoe manufacturers about 1905 and was soon generally adopted. By 1908 and ever since over 75 per cent. of men's black shoes and nearly all women's black shoes have been fudge stitched. The advantages of making shoes in that way and the importance of the improvements which enabled the machine to do that work were explained by Mr. Howard (R. Vol. 2, pp. 2285–7). Those improvements are broadly claimed in five patents granted from 1908 to 1912, the broadest in 1910 (R. Vol. 2, p. 2286).

Other very useful patented improvements were incorporated in the machine in 1905, 1907, 1908, 1909 and 1910 (R. Vol. 2, pp. 2284–9).

During all this period after 1899 the United Company had a number of inventors engaged in experimental work in an effort to develop an entirely new outsole stitching machine which would do more and better work. Their endeavors finally resulted in a radically new machine, known as Lockstitch Machine—Model K: Goodyear Outsole Rapid, which was first put out for commercial use in May, 1910, and immediately superseded the 1899 machine (R. Vol. 2, pp. 2284,

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2289, 2290). The Model K machine was regularly operated at 540 to 560 stitches per minute as compared with 375 stitches per minute of the 1899 machine. In addition to this greatly increased capacity it did better work and was more convenient for the operator. Its numerous improvements were explained in detail by Mr. Howard (R. Vol. 2, pp. 2290–4). Besides many improvements for which patents had not yet been granted when the testimony was taken, the organization of this machine is set forth in the claims of twenty patents, of which seventeen have been granted since December 1, 1908 (R. Vol. 2, pp. 2294, 2836(73)). 543 Model K stitchers were put out in a single year, and the demand for the machine was so urgent that the company was always behind in filling the orders; for example, it was 145 machines behind in May, 1911 (R. Vol. 2, p. 2295).

Immediately after the acquisition of the Plant patents and inventions in September, 1910, including his valuable stitcher inventions (R. Vol. 1, p. 787, lines 16–30), the United Company put to work five different inventors upon the problem of embodying those Plant inventions in satisfactory mechanical form and adapting them for the Model K stitcher (R. Vol. 2, p. 2297). When that machine had been reorganized by incorporating in it the Plant inventions, much improved by the United Company's inventors, the new machine was called the Model M and was first put out for commercial use in June, 1911 (R. Vol. 1, p. 798, lines 20–23; R. Vol. 2, pp. 2297, 2836 (42)). The improvements incorporated in the machine give it a capacity of eight per cent. more than the Model K machine and 22 per cent. more than the 1899 stitcher. The commercial importance of those improvements were explained in detail by Mr. Howard (R. Vol. 2, pp. 2295–2301).

Both shoe manufacturers and stitcher operators testified to the practical advantages of the Model M machine. Ryan, a stitcher operator who had worked on the successive models of the United Company's stitcher, explained in detail the difficulties in operating the 1899 stitcher and the advantages of the Model M machine from the operator's standpoint (R. Vol. 1, p. 705, lines 1–38). He testified that he averaged fifty pairs a day more on the Model M stitcher than on the old machine, and that:—

"The work on the Model M stitcher is a great deal easier. I earn more money. I will average fifty to seventy-five cents a day more on the Model M stitcher than on the old stitcher; and that is in less hours than I worked on the old stitcher, nine hours at the most. Lots of times I don't work nine hours" (R. Vol. 1, p. 706, lines 2–9).

Comparing the Model M and the Model K machines Ryan testified:—

"The Model M machine does more rapid work than the Model K. . . . I can make from 30 to 50 pairs more a day on the Model M machine than on the Model K. The Model M machine has devices which enable the operator to work with more convenience and which save his time" (R. Vol. 1, p. 707, lines 21, 25–28).

Shoe manufacturers testified that the increased capacity of the Model M machine was from 15 to 20 per cent. and that the operators of the Model M machine were earning from 24 to 45 per cent. more than they earned on the old stitcher, although the piece price was 40 per cent. less on the Model M than on the old stitcher (R. Vol. 1, p. 753, lines 16–18; p. 647, lines 10–14, 21–23; p. 743, lines 5–7).

On January 1, 1914, 1,158 Model M stitchers were in use (R. Vol. 1, p. 863, lines 5–7). Mr. Howard testified:—

"The facilities of the Company's factory for building this machine have been overtaxed all the time since it was introduced, and on the first of January, 1913, the Company was 256 machines behind in filling its orders for Model M machines" (R. Vol. 2, p. 2301).

The Model M machine is protected by twenty-two patents, of which sixteen have been granted since January 1, 1909, and a number of applications are still pending (R. Vol. 2, pp. 2299, 2836(67), 2836(73), 2119).

C. Other 1899 Machines.

The record shows that these two machines, the welter and the stitcher, are typical of nearly all the machines being put out "early in 1899." Other examples of those machines are:—

Rounding and Channeling Machine: Goodyear Universal (R. Vol. 2, pp. 2303–2317, 2738, 2816); Channeling Machine: Goodyear (insole and turn) (R. Vol. 2, pp. 2321–2330, 2810); Leveling Machine: Goodyear Automatic Sole (R. Vol. 2, pp. 2332–2339, 2743); Separating Machine: Hadaway Stitch (R. Vol. 2, pp. 2340–2345); Pegging Machine: Davey (R. Vol. 2, pp. 2346–2355); Skiving Machine: Amazeen (R. Vol. 2, pp. 2355–2362, 2818); Lasting Machine: Chase (R. Vol. 2, pp. 2362–2382, 2811); Lasting Machine: McKay & Copeland (R. Vol. 2, p. 2364, Int. 72; pp. 2382–2387, 2760–2761); Lasting Machine: Ideal (R. Vol. 2, p. 2364, Int. 72; pp. 2387–2390; R. Vol. 1, p. 972, lines 19–34); Lasting Machine: Consolidated Hand Method (R. Vol. 2, pp. 2390–2421); Compressing and Loading Machine: Automatic Heel (R. Vol. 2, pp. 2423–2434, Int. 80; p. 2764, Int. 377); Compressing Machine: Fisher (R. Vol. 2, pp. 2423–2434; p. 2764, Int. 377); Nailing Machine: Loose (R. Vol. 2, pp. 2434–2443); Loading and Attaching Machine: McKay Automatic Heel ("Improved Rapid Nailer") (R. Vol. 2, pp. 2444–2451, 2459–2463; 2764, Int. 376); Nailing Machine: American Lightning (R. Vol. 2, pp. 2452–2459; 2764, Int. 376); Slugging Machine: Universal (R. Vol. 2, pp. 2464–2472; 2767, Int. 393); Turning Machine: Gem Lip (R. Vol. 2, pp. 2483–2486); Flexible Insole Machine: Gem (R. Vol. 2, pp. 2486–2494); Beating Machine: Goodyear Universal Welt (R. Vol. 2, pp. 2495–2502, 2817); Trimming Machine: Goodyear Universal Inseam (R. Vol. 2, pp. 2502–2511); Skiving Machine: Goodyear Universal Shank (R. Vol. 2, pp. 2511–2516).

As to all these machines there was a strong patent situation in 1899 and there has been continuous and important patented development ever since, the details of which will be found in the testimony above referred to in connection with each machine.

It is perfectly clear on this record that the patents on the 1899 machines, far from being "basic patents" in any significant sense, represented merely the 1899 stage in the development of an old art; that the 1899 machines had in turn been superseded before December, 1911; that just as the 1899 machines were superior to the machines which preceded them, so were the machines of December, 1911, much better machines

than those which they had superseded; and that at every stage in the development of shoe machinery the machines which shoe manufacturers wished to use and demanded were protected by strong patents. Again, just as in 1899, manufacturers could not afford to use the older machines which had been superseded, now the demand for the machines of 1899 has ceased and manufacturers demand the greatly superior modern machines.

The record further shows that during the period since February, 1899, there has been more important and more rapid development in shoe machinery than during any corresponding period in its history, and that this has been due to the remarkably aggressive and effective experimental work which has been continuously and consistently carried on by the United Company at enormous expense (R. Vol. 1, p. 424, lines 40–45; p. 425, lines 1–11; p. 426, lines 29–39; p. 427, lines 26–37).

D. New Machines Produced Since 1899.

As a result one hundred and fifty entirely new machines have been produced by the United Company (R. Vol. 1, p. 503, lines 7–9, 17; Defs.' Ex. 246, R. Vol. 5, p. 683), and it has developed thirty-nine machines which perform operations which in 1899 were performed by hand or not at all.

Among those thirty-nine machines are important machines such as pulling-over machine, assembling machine, welt-beating and slashing machine, clicking machine, lacing machine, pounding and trimming machine, tack-pulling and resetting machine, shank reducing machine, shank welt-skiving machine, upper stapling machine, upper trimming machine, forepart turning machine, heel turning machine (R. Vol. 2, pp. 2671–2675). All these thirty-nine machines are patented, and the patents on them are "basic patents," if ever there were such.

The breadth and importance of the patents on the new machines which have been produced by the United Company were explained by Mr. Howard, in the case of the more important machines with great detail. For example: Rounding and Channeling Machine—Model E: Goodyear Universal

(R. Vol. 2, pp. 2309–2316); Channeling Machine: Goodyear Universal (Welt Work) (R. Vol. 2, pp. 2323–2326); Channeling Machine: Goodyear Universal (Turn Work) (R. Vol. 2, pp. 2327–2330); Lasting Machine: No. 5 USMC (R. Vol. 2, pp. 2375–2382); Compressing Machine—Model No. 4; Automatic Heel (R. Vol. 2, pp. 2425–2434); Nailing Machine: No. 2 Loose (R. Vol. 2, pp. 2438–2443); Loading and Attaching Machine—Model B: McKay Automatic Heel (R. Vol. 2, pp. 2459–2464); Nailing Machine: Alpha Wood Heel (R. Vol. 2, pp. 2464, 2836(71)); Slugging Machine: No. 5 (Ziz) (R. Vol. 2, pp. 2468–2472); Heel Breasting Machine—Model B: Imperial (R. Vol. 2, pp. 2473–2476); Turning and Slashing Machine: Goodyear Lip (R. Vol. 2, pp. 2485–2486); Reinforcing Machine: Economy Insole (R. Vol. 2, pp. 2491–2492); Stitching Machine: Economy Insole (R. Vol. 2, pp. 2492–2493); Channeling Machine: Economy Insole (R. Vol. 2, pp. 2493–2495); Beating and Slashing Machine: Goodyear Welt (R. Vol. 2, pp. 2497–2501); Skiving Machine: Goodyear Shank Welt (R. Vol. 2, pp. 2512–2514); Reducing Machine: Goodyear Outsole Channel Shank (R. Vol. 2, pp. 2514–2516, 2836(75)); Indenting and Burnishing Machine: Goodyear Welt (R. Vol. 2, pp. 2517–2519); Trimming Machine—Model H: Rex Upper (R. Vol. 2, pp. 2523–2525); Pulling and Resetting Machine: Goodyear Tack (R. Vol. 2, pp. 2525–2528, 2836(75)); Stapling Machine: Goodyear Upper (R. Vol. 2, pp. 2528–2530); Pulling Machine: Goodyear Insole Tack (R. Vol. 2, pp. 2533–2537); Pulling-over Machine (3 models) (R. Vol. 2, pp. 2540–2553, 2836(75)); Assembling Machine: Rex (R. Vol. 2, pp. 2554–2558, 2836(71)); Pounding Machine—Model E: Rex (R. Vol. 2, pp. 2560–2562); Trimming Machine: Rex Toe (R. Vol. 2, pp. 2562–2564); Pounding and Trimming Machine—Model B: Rex Rotary (R. Vol. 2, pp. 2564–2568); Pounding Machine—Model C: Rex Rotary (R. Vol. 2, pp. 2568–2570); Pounding and Beating Up Machine—Model A: Rex Rotary (R. Vol. 2, pp. 2570–2571, 2836(74)); Leveling Machine: Goodyear Welt and Turn (Turn Work) (R. Vol. 2, pp. 2576–2579); Leveling Machine: Hercules (2 models) (R. Vol. 2, pp. 2580–2584); Leveling Machine: Atlas (R. Vol. 2, pp. 2584–2587); Clicking Machine—Model C: Ideal (R. Vol.

2, pp. 2588–2597); Lacing Machine: Ensign (2 models) (R. Vol. 2, pp. 2599–2605); Trimming Machine: Goodyear Insole Heel Seat (R. Vol. 2, pp. 2607–2610); Jointing Machine: Goodyear (R. Vol. 2, pp. 2611–2616); Eyeletting Machine: Duplex (R. Vol. 2, pp. 2617–2621); Blacking Machine: Crest Heel (2 models) (R. Vol. 2, pp. 2622–2626); Repairing Machine—Model A: Patent Leather (R. Vol. 2, pp. 2628–2631); Beveling Machine—Model B: Champion Strip (R. Vol. 2, p. 2632); Building Machine: Pyramid Heel (3 models) (R. Vol. 2, p. 2632); Cementing Machine: Hub Lining (2 models) (R. Vol. 2, pp. 2633, 2836(72)); Cementing Machine: Star Channel (3 models) (R. Vol. 2, pp. 2633–2634); Clinch Machine: Universal Double (R. Vol. 2, p. 2634); Embossing Machine—Model B (R. Vol. 2, p. 2635); Eyeletting Machine: Universal (R. Vol. 2, p. 2636); Fastening Machine—Model D: Staple (R. Vol. 2, p. 2636); Grooving and Beveling Machine: Goodyear Power Welt (R. Vol. 2, p. 2638); Laying Machine—Model A: Apex Welt (R. Vol. 2, p. 2638); Laying Machine: Goodyear Improved Sole (3 models) (R. Vol. 2, p. 2639); Marking Machine—Model C: Paragon Vamp (R. Vol. 2, p. 2641); Molding Machine: American Twin Sole (2 models) (R. Vol. 2, pp. 2641, 2836(74)); Molding Machine—Model B: Goodyear Power (R. Vol. 2, p. 2642); Molding Machine: Stitch-Down Upper (R. Vol. 2, p. 2642); Nurling Machine—Model A (R. Vol. 2, p. 2642); Opening Machine—Model C: Apex Channel (R. Vol. 2, p. 2643); Rounding Machine: Goodyear Heel Seat (R. Vol. 2, p. 2645); Rounding Machine: Planet Sole (2 models) (R. Vol. 2, p. 2645); Sanding Machine—Model A; Tap and Sole (R. Vol. 2, p. 2646); Scalloping Machine—Model B: Top Piece (R. Vol. 2, p. 2647); Skiving Machine—Model A: Champion Heel Lift (R. Vol. 2, p. 2648); Skiving Machine—Model A: Champion Shank (R. Vol. 2, p. 2648); Skiving Machine: Eros Rand (R. Vol. 2, p. 2649); Skiving Machine: Pluma (2 models) (R. Vol. 2, pp. 2649, 2836(76)); Skiving and Finishing Machine: Monarch Counter and Box Toe (R. Vol. 2, p. 2649); Skiving or Rand Splitting Machine: Apex Tap (2 models) (R. Vol. 2, p. 2650); Snipping Machine: Goodyear Insole Toe (R. Vol. 2, pp. 2650, 2836(77)); Splitting Machine: Empire (2 models) (R. Vol. 2, p. 2651); Splitting Machine:

Summit (R. Vol. 2, p. 2652); Stamping Machine—Model C: Eagle Sole (R. Vol. 2, p. 2652); Stamping Machine: Regent (2 models) (R. Vol. 2, p. 2653); Sticking Machine—Model B: Shank Piece (R. Vol. 2, p. 2653); Trimming Machine: Ultima Heel (R. Vol. 2, p. 2655); Turning Machine: Goodyear Forepart (R. Vol. 2, p. 2655); Turning Machine: Goodyear Heel (R. Vol. 2, p. 2656); Turning Machine: Goodyear Welt Edge (R. Vol. 2, p. 2656).

Mr. WINSLOW testified:—

> "On Goodyear welt shoes the saving in cost of manufacture, resulting from the introduction of new machines and improvements in other machines that existed in 1899 and which we improved after the formation of the company, amounts to about seven and a half cents" (R. Vol. 1, p. 430, lines 27–31).

This saving is nearly two cents more than the aggregate royalties on men's Goodyear welt shoes and nearly three cents more than the aggregate royalties on women's welt shoes. In figuring the savings Mr. Winslow averaged men's, women's and children's shoes (R. Vol. 1, p. 430, lines 22–23). He also testified:—

> "On other kinds of shoes the manufacturers had the benefit of these savings so far as the machines were applicable to the reduction of the cost of those shoes" (R. Vol. 1, p. 430, lines 23–26).

In view of this situation it is of course to be expected, and the record shows, that—

8. IN DECEMBER, 1911, THE UNITED COMPANY'S MACHINES WERE FULLY PROTECTED BY STRONG AND VALUABLE PATENTS.

It is clear on the record that when this suit was begun the defendants' machines were more completely covered by patents of real commercial value than ever before. The importance

those patents is explained in Mr. Howard's detailed discus-
on of over 150 of the more important machines, and the
eadth of their claims is indicated by quoting typical claims
. Vol. 2, pp. 2239–2664). Moreover, the patents on
ese modern machines are of recent date; indeed, 144 of
e patents on the 1911 machines discussed in Mr. Howard's
stimony in October and November, 1913, were granted
ter this suit was begun, and when he testified again in Febru-
y, 1914, there had been granted twenty-eight more patents
aiming improvements embodied in the machines (R. Vol.
pp. 2836(67–80)).

9. SUMMARY OF THE PATENT TESTIMONY.

(1) The United States completely failed to prove the allega-
on of the petition that early in 1899 "many of the basic
atents on the principal machines" were "about to expire"
. Vol. 1, p. 993). On the contrary,—

(2) The United States proved, as to machines of its own
lection, that early in 1899 "basic" patents were *not* about to
pire, and that there were patents on those machines which
d not expire for more than ten years after the United Com-
any was formed.

(3) Defendants proved that of the important patents
early in 1899" on the "principal machines" selected by the
nited States the latest patent on each of those machines
d *more than fourteen years to run;* and that, in general,
e machines of the companies which combined in February,
99, to form the United Company were protected by strong
atents having considerably over half their terms to run.

(4) While in nearly every instance the machines of those
atents were not the first machines in the industry for perform-
g the respective operations and while the patents on those
st machines had expired before 1899, the patents which
vered the 1899 machines were important and valuable
cause those machines were so much better than the ma-
ines of the expired patents that "early in 1899" they were
ed and demanded by manufacturers; but—

(5) The patents on the 1899 machines represented only the 1899 stage in the continuous and continuously patented development of the industry; and—

(6) In the rapid development of the industry since 1899 the machines of that day have in turn given place to superior, modern machines which do better work and have greater capacity, and these modern machines are protected by strong and valuable patents of recent date; so that—

(7) When this suit was begun and now, as at every stage in the development of shoe machinery, the best machines available, the machines which manufacturers demand and use, were and are effectively protected by patents.

(8) Moreover, the period since February, 1899, has been a period of more important and more rapid development than any corresponding period in the history of shoe machinery. A great number of new patented machines have been developed and supplied to manufacturers, and the patents on thirty-nine of these machines which perform operations performed by hand or not at all in 1899 may fairly be termed pioneer patents.

(9) Accordingly, the machines which the United Company was putting out when this suit was begun, the machines which shoe manufacturers demand and use, are protected by strong and valuable patents of recent date.

10. FINDINGS OF THE DISTRICT COURT AS TO THE PATENT SITUATION.

A. The District Court Found that the Basic Patents Held by the Constituent Companies were not About to Expire.

The District Court found as follows:—

> (R. Vol. 1, p. 1133.) "But it is important at this point first to determine how far certain allegations of the petition, which characterize the defendants' alleged project and their motives for forming it, have been sustained by the evidence. These are found on pages 15 to 17 of the record, and they are, in substance, that the component

companies were in 1899 manufacturing their respective machines and parts thereof under patents; that 'many of the basic patents on the principal machines were about to expire'; that their manufacture and use was thus about to become open to the public 'in the near future,' and that the defendants, not being satisfied with the rights they had enjoyed under the patents and intending to expand and perpetuate them to the public detriment, devised the alleged project of acquiring a monopoly which the petition thereafter describes.

"This trial began on May 20, 1913. On June 27, 1913, the petitioner, having introduced substantially all its other direct evidence, stated that it desired to offer proof in support of the allegations just referred to, but was not then prepared to go into the matter.

"By consent, an order of reference to a Special Examiner was thereupon entered (pp. 262 T, 1996) for the purpose of taking such evidence as either party should offer regarding those allegations, out of court. Such evidence was required to be completed by October 11, 1913, but successive extensions of the time were afterward found necessary and allowed by consent. Before the Examiner the petitioner did not complete its direct evidence until October 6, 1913, and the evidence on both sides was not completed until November 19, 1913.

"At the final arguments, however, on June 2, 1914, the statement was made by petitioner's counsel that so many machines and patents were involved that examination of more than a very few had been impossible. It seems obvious, therefore, that the allegations in question could not have been founded, when they were made, upon any adequate or complete investigation of the facts.

"Nor can it be said that they have been sustained by the evidence before the Examiner. It seems unnecessary to spend time in considering what patents could and what could not properly be regarded as 'basic,' in view of the fact that, of the patents principally relied on as such by the petitioner, those protecting the welter and stitcher of the Goodyear Company, there were two, one upon its welter, the other upon its stitcher, which ran until 1908 and 1909, respectively. The petitioner's final position, indeed, as to what was proved by the evidence before the Examiner, was by no means that taken in the allegations referred to, but was only that the two machines above mentioned, and others protected in 1899 by patents not insisted on as 'basic' patents, became free to anyone to make or use—without any of the patented improvements

added to them by the United Company since 1899, but nevertheless capable of successful commercial use—before the filing of this petition in 1911. In view of all the above, I must regard the allegations here in question as not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organization of the United Company, or any of its subsequent doings. The effect of the evidence and of the petitioner's argument is to show that Goodyear machines of the old type are capable of commercial use and could have been made by anyone who chose to make them. That after the expiration of the two so-called basic patents machines constructed according to them were not used is sufficiently accounted for by the superiority of the newer machines which the defendants had introduced. For that reason the older machines did not enter into competition with them, and the defendants cannot be charged with suppressing such competition."

B. The District Court Found that the United Company's Machines Have Always Been and are Now Protected by Patents.

The District Court found as follows:—

(R. Vol. 1, p. 1115.) "At any rate, it must be accepted that from the beginning the machinery offered by the respondent corporation was, in all its essential elements, protected by patents, and that there has been no proof to the contrary."

III.

THE DEFENDANTS' LEASES OF SHOE MACHINERY.

1. INTRODUCTORY STATEMENT.

Since about 1860, when the first shoe machinery was introduced, it has been the almost invariable practice as to all the important shoe bottoming machines, and a common practice as to all kinds of shoe machines, to lease them to shoe manufacturers on a royalty basis charging a fixed amount for each pair of shoes operated on by the machine. From the very beginning of the industry practically all shoe machinery was patented, and the agreements under which the machines were leased were not only leases but also licenses under patents granting specific and limited rights to use the leased machinery in certain ways and on the terms and conditions set out in the lease and license agreements. In 1899, therefore, when the United Company was formed, its constituent companies sold no machines manufactured by them but leased all machines under lease and license agreements. The United Company continued the lease system which had been employed by the constituent companies, and it has made no fundamental change in the system. It did not disturb outstanding leases and for over a year it made no changes at all. From time to time thereafter it has made changes in the leases of specific machines, just as such changes had been made from time to time by the constituent companies, in order to meet new conditions, to make its system of leases consistent or to enable it to offer more satisfactory terms to lessees. It has, of course, adopted certain leases for new machines which were invented or acquired by it and not previously manufactured by the constituent companies. As it has developed General Department Machines, which now total over 170 different machines, it has either leased or sold them at the option of the

shoe manufacturer, thus relaxing the policy of the constituent companies which leased machines only.

The United Company's system of leases, therefore, was not formulated at any one time, but is the result of an historical development and growth extending over many years and represents the results of years of constant effort to provide a method of furnishing this great variety of intricate and expensive machinery to shoe manufacturers on terms mutually satisfactory and fair to the shoe manufacturer and to the machinery manufacturer.

Indeed it was admitted by the United States that the modifications made by the United Company in the leases were not planned in advance and that it did not base its charge of illegality upon the intent with which they were adopted. The District Court said:—

> "At the argument the admission was made on behalf of the United States that there was no proof that at the time they formed the United Company the defendants 'had in mind the adoption of the system of leasing which they later developed.' And the position then taken by the petitioner in argument was that the leasing system referred to has resulted in illegal restraint or monopoly and that the intent which prompted its development is therefore 'absolutely immaterial'" (R. Vol. 1, pp. 1154–5).

With this admission on the part of the United States that the intent with which the lease clauses were adopted is immaterial its entire contention in respect to the leases falls. We submit that an inspection of these clauses shows conclusively that they are not inherently unlawful, and therefore, if not adopted with an unlawful intent, they are clearly lawful.

Owing to the gradual growth of the shoe machinery industry and the consequent gradual development of the leases, to the fact that different forms of leases have been adopted for different machines, to the variety of conditions which arose at different times and which led to the adoption of provisions to meet them, to the great number and variety of machines, and to the great number of different kinds of shoes made requiring the use of different machines or sets of machines, the leases are necessarily complicated and require careful study to understand them.

An examination of the record will show that the provisions in the leases which were in effect when the United Company was formed were adopted for the purpose of granting the shoe manufacturer satisfactory terms and at the same time securing the machinery manufacturer reasonable protection. In other words, that these provisions were adopted for the purpose of providing for the most efficient, productive, and satisfactory use of the different machines; that such modifications as have been made by the United Company have had the same purpose and object; that the provisions in the leases were not adopted for the purpose of excluding others or creating a monopoly, and that these provisions, or provisions of substantially the same character and having the same effect, are essential to a commercially successful leasing system.

As we have stated above, one of the principal purposes the United Company had in mind was to reduce the cost of making Goodyear Welt shoes, and to encourage shoe manufacturers to manufacture them (R. Vol. 1, p. 441, lines 38–42; Vol. 1, p. 407, lines 22–30). Various modifications of the lease system had this object in view.

2. ALLEGATIONS OF THE PETITION AS TO THE LEASES.

The basic charge of the petition, as we have shown above, is that the defendants determined to acquire a monopoly of shoe machinery, by (R. Vol. 1, p. 994):

1. Acquiring all concerns engaged in the shoe machinery business, and then

2. Refusing to sell or lease any essential machines, viz., lasting, welt sewing, and outsole stitching, heeling and metallic fastening machines, unless the shoe manufacturer took "practically all other machinery" from them.

The leases, it is alleged, were a step in carrying out the foregoing plan (R. Vol. 1, p. 994).

In order to sustain the charge of the petition, therefore, it is necessary to find that the leases require a lessee who takes lasting, welt-sewing or outsole stitching, heeling, or metallic machines to take from the United Company practically all other machinery.

In support of its allegation that the leases were steps in carrying out the foregoing plan, the petition recites that prior to the formation of the United Company a shoe manufacturer could get machines of one of the constituent companies without being required "to use exclusively machines . . . manufactured by either of the other companies" (R. Vol. 1, p. 996). After the formation of the United Company it is alleged that the defendants—

> ". . . *discontinued* the sale to boot and shoe manufacturers of each and all of the machines included in said groups of machines . . ." (italics ours) (R. Vol. 1, p. 997),

and unlawfully devised and adopted arbitrary, oppressive and unreasonable lease and license agreements, which shoe manufacturers "are required to agree and conform to in order to obtain from said defendants any of the machines included in said groups" (R. Vol. 1, p. 997).

It is alleged that these agreements—

> "*contain provisions, not found in their former lease and license agreements*, which compel boot and shoe manufacturers leasing any of such machines from defendants to agree to use exclusively one or more of the classes of machines included in said groups of machines . . . upon penalty of having all the machines included in said groups so leased to them by defendants immediately reclaimed and taken away and the lease and license agreements cancelled" (italics ours) (R. Vol. 1, p. 997).

The petition then recites that the leases adopted by the defendants contain provisions as follows (R. Vol. 1, p. 997):—

(1) An agreement to take the machines for a period of not less than seventeen years, regardless of the terms of the patents relating thereto.

(2) That lessees thereunder are compelled to obtain all duplicate parts for the machines from defendants at exorbitant prices.

(3) Many of the leases provide that the lessee shall at the expiration of seventeen years return the machines to the defendants and pay a return charge which in some cases amounts approximately to the original cost of building the machines.

(4) A provision reserving to the lessor the right to cancel

all leases with shoe manufacturers if they fail to use exclusively and to their full capacity machines leased from the defendants.

The foregoing provisions, however, purport to be only a statement of the character of the provisions which the leases contain. The provisions which the petition contends are unlawful, as carrying out the unlawful plan charged, are specified in Section XII. of the petition as follows (R. Vol. 1, p. 1028):—

(1) A covenant that the lessee shall use exclusively machines of the lessor to perform the same kind of work as that performed by the leased machine.

(2) A covenant that the lessee shall use in accomplishing work other than that for which the machine was designed only machines controlled or leased by the lessor.

(3) A condition that, should the lessee violate either of the covenants mentioned, the lessee would thereby forfeit the use not only of the machine leased, but of other machines, both those designed to accomplish the same work as the leased machine and those designed to accomplish work entirely different.

(4) A covenant that the lessee should use the leased machine for seventeen years.

(A) Summary of Charges of the Petition with Respect to the Leases.

To summarize, the petition alleges that, in pursuance of the defendants' plan,—

(1) to acquire all shoe machinery concerns, and

(2) to refuse to sell or lease lasting, welt-sewing, outsole stitching, heeling, or metallic machines, unless the shoe manufacturer took practically all other machinery of them,—

the United Company—

(*a*) discontinued selling machines, and

adopted arbitrary and oppressive leases which, it is alleged in paragraph XII. of the petition (R. Vol. 1, p. 1028) were illegal in that they

(*b*) required the lessee to covenant to use the United Company's machines of the kind leased and of all other kinds exclusively,

(*c*) permitted the United Company to cancel its leases of all machines if these covenants were broken,

(*d*) required the lessee to use the leased machinery for seventeen years.

The petition also alleges that the leases required the lessee,—

(*e*) to obtain duplicate parts of the United Company for which it charged an exorbitant price;

(*f*) on the cancellation of the lease to pay exorbitant return charges.

These last provisions do not require a use of the United Company's machines and are therefore not referred to as evidence of the alleged plan to refuse to lease any machines unless practically all other machines are taken. They are apparently referred to merely as showing a general intent on the part of the United Company to oppress its lessees.

3. PROVISIONS IN THE UNITED COMPANY'S LEASES ON WHICH THE UNITED STATES RELIED IN SUPPORT OF ITS CHARGES.

The defendants' leases do not contain any provisions such as those alleged in the petition whereby the lessee covenants to use exclusively the United Company's machines.

This being so, the United States, at the argument in the District Court and at the previous argument in this Court, did not restrict itself to an attempt to support the allegations of the petition, but took exception to various provisions in the leases which we submit do not conform to the allegations in the petition, and contended that these provisions were illegal and tended to a monopoly of shoe machinery, even though they did not conform to the case stated by the petition. The provisions in the leases to which exception was taken by the United States are briefly as follows:—

Full Capacity Clause.

A clause requiring the lessee to use the particular machine leased to its full capacity on the work for which it is adapted so far as the lessee has work for it to do. This is referred to below as the **"Full Capacity Clause."**

This is the only clause contained in the United Company's leases (except the "Additional Machinery Clause" which was used only to a slight extent and was discarded entirely in 1907) **which obligates the lessee to use the United Company's Machines at all.**

This clause was used in various leases of the Consolidated Company prior to the formation of the United Company. It is employed by the United Company only in respect to those machines for which a royalty is charged based on the amount of use. Without this clause the lessee would be at liberty not to use the machine at all, and the United Company, whose return is dependent on a royalty based on the amount of use made of the machine, would have no assurance of a return on its investment in the machine.

This clause does not require an exclusive use of the particular kind of machine leased, nor does it require any use of other machines. It merely requires that the particular machine which is installed in the lessee's factory under this particular lease shall be used by the lessee, if he has work for it to perform. Without this clause the lessor would have no assurance of any compensation whatsoever for his machine.

Additional Machinery Clause.

A clause found in certain leases made by the constituent companies prior to 1899 and in a few leases made by the United Company prior to 1907, but eliminated by the United Company in all leases after that date, requiring the lessee to take additional machines of the particular kind leased if he needed such machines for additional work. This is referred to below as the **"Additional Machinery Clause."**

This clause was adopted prior to the formation of the United Company to secure an adequate return on the leased

machines and the inventions embodied therein after the lessor had gone to the expense of installing the machines and instructing operators in their use. It required a use by the lessee of other machines of the particular kind or class leased, but of no other kinds.

As the use of this clause was continued by the United Company after its formation only to a limited extent and was entirely discarded after 1907, more than four years before the present petition was filed, it is important in the present case only in that it shows that the United Company actually discarded from its leases the only clause which required an agreement on the part of the lessee to use any of its machines exclusively.

Exclusive Use Cancellation Clause.

A clause giving the lessor an option under a lease of a particular kind of machines, such as heeling machines, to cancel its leases of that particular kind of machines if the lessee provides himself with other machines of the same kind to do his work. This clause is referred to below as the "**Exclusive Use Cancellation Clause.**"

Under this clause the lessee does not covenant to use the lessor's machines of the particular kind leased exclusively, nor does the lessee agree to use the machines at all. The clause merely reserves to the lessor an option to cancel its leases of machines of a particular kind, such as heeling machines, when the lessee provides himself with other machines of that particular kind. As we show below, this provision is necessary for the lessor's protection in order to enable it to withdraw its machines of a particular kind when, owing to the use by the shoe manufacturer of other machines of the same kind, the lessor finds that its machines are used only occasionally, or only on slow or difficult work, or that proper reports of the amount of work done on its machines are not made by the lessee so that the lessor does not receive a fair return on its investment.

This clause, or the Additional Machinery Clause under which the lessee covenanted to take additional machines if needed was used in most of the leases of the constituent com-

panies, they having found by experience that such a clause was necessary to their protection under the leasing system. The continuation of this clause by the United Company, therefore, effected no change in the leasing system. Furthermore, as it does not require the lessee to use the United Company's machines at all, but recognizing the right of the lessee to install and use other machines merely gives the United Company an option under certain circumstances to withdraw its machines of a particular kind or class when other machines of the same kind or class are used by the lessee, it affords no support whatever to the allegation of the petition that the leases required the lessee to covenant to use the United Company's machines exclusively.

Restricted Use Clause.

A clause contained in certain alternative forms of lease restricting the use of certain kinds of machines thereby leased to use on shoes operated on by certain other specified machines. This clause is referred to below as the "**Restricted Use Clause.**"

This clause is used where machines of certain departments are leased at reduced rates to be used with machines of other departments as a team or series, in which case the machines of the United Company being concededly the best in the market, and being mechanically constructed and adapted to use together, and being the only machines with which efficient service by skilled mechanics is provided, are manifestly more efficient, productive, and economical in operation when so used together as a team, and thus each machine produces a greater return for the United Company. This clause does not require the lessee to use the United Company's machines at all. On the contrary, it merely forbids the lessee to use the United Company's machines when taken on this form of lease otherwise than as a team. It is simply the granting of a patent license to use a patented machine in a particular and defined field in connection with patented machines of other departments which are mechanically developed and adapted for use together.

Leases containing this Restricted Use Clause are alternative forms of leases. In practically every case the lessee is also offered a lease which does not contain any such restriction, but permits the lessee to use the machines without regard to his use of any of the lessor's machines of other departments. These unrestricted leases are offered lessees on terms as favorable or more favorable than those on which the machines could be obtained from the constituent companies prior to the formation of the United Company. The use of the restricted leases by the United Company, therefore, did not have the effect of preventing shoe manufacturers from obtaining machines on unrestricted leases on the same or better terms than were offered prior to the formation of the United Company. Their effect was merely to offer a wholesale rate to shoe manufacturers desiring to use a set or team of machines which were adapted for use together.

Auxiliary Restricted Use Clause.

A similar clause is employed to restrict the use of certain auxiliary machines of a department to use with the principal machines of that department. The principal machines are the recording machines on which a royalty is charged. The auxiliary machines are machines developed to aid in the work of the principal machines. They are treated as part of the principal machines and no separate royalty is charged for their use, but the return comes indirectly from the royalties on the principal machine to use with which they are restricted. Such a clause is referred to below as the **"Auxiliary Restricted Use Clause."**

This Auxiliary Restricted Use Clause was employed by the constituent companies, and its continuance by the United Company effected no change in the leasing system.

Cancellation for Breach Clause.

A clause permitting the lessor to cancel all leases between it and the lessee for violation of any condition contained in any of the leases which is expressed in the lease to be obligatory

upon the lessee, that is, for violation of certain specified conditions which the lessee obligates himself to fulfill. This is referred to below as the **"Cancellation for Breach Clause."**

This clause merely permits the United Company to sever relations with a lessee who violates his agreement to fulfill certain specified conditions. If such agreement on the part of the lessee is legal, it is obviously proper that the United Company should have the right to cancel its leases if any one of them is violated. The leases of the constituent companies all provided that they might be cancelled for breach of conditions contained in those leases.

Seventeen-year Term.

A clause providing that the lease shall run for seventeen years.

This clause grants the lessee the right for an extended term to retain the leased machines for the royalty agreed upon and assures the United Company that they will be held for a sufficient term to provide an adequate return on its investment.

The leases of the constituent companies ran in some cases for seventeen years and in others for the term of the patents then or thereafter embodied in the machines or for the entire life of the machines. The seventeen-year term was adopted by the United Company in all its leases to make them consistent, and shortened rather than increased the term of the leases.

Agreement as to Repair Parts.

A clause requiring the lessee to obtain of the lessor duplicate parts needed to repair the leased machines, the complaint being that the United Company charged exorbitant prices for such duplicate parts.

The constituent companies' leases all contained this clause, which is essential to preserving the physical integrity of the leased machine. The record shows that there was absolutely no foundation for the allegation that exorbitant prices for repair parts were charged.

Return Charges.

A clause requiring the lessee on the expiration of the lease to pay a return charge which it was alleged amounted in some cases approximately to the cost of building the machines.

This allegation also was without foundation, the record showing that the charges made upon a return of machines were considerably less than the cost of repairing them.

4. THE PROVISIONS IN THE UNITED COMPANY'S LEASES TO WHICH THE UNITED STATES TOOK EXCEPTION DO NOT SUPPORT THE ALLEGATIONS OF THE PETITION.

The foregoing brief statement of the clauses in the United Company's leases to which the United States took exception shows how utterly the United States failed to support the allegations in the petition in respect to the leases.

Those allegations, as we have shown, are that the United Company, in pursuance of the plan to acquire all shoe machinery concerns and to refuse to sell or lease lasting, welting, outsole stitching, heeling, or metallic machines, unless the shoe manufacturer took practically all other machinery of it,—

(A) discontinued selling machines and adopted arbitrary and oppressive leases, which

(B) required the lessee to use the United Company's machines of the kind leased and of all other kinds exclusively; and

(C) permitted the United Company to cancel its leases of all machines if these covenants were broken; and

(D) required the lessee to use the leased machinery for seventeen years.

A. The record shows that the constituent companies only leased and never sold machines. The allegation that the United Company discontinued the sale of machines was without foundation.

B. As shown above, there is no provision in the United Company's leases requiring the lessee to use either the machines of the particular kind leased or other machines exclusively. **The Additional Machinery Clause and the Full Capacity Clause are the only clauses which require any use of the United Company's machines whatsoever.** The Additional Machinery Clause referred only to machines of the particular kind leased, and as it was discarded by the United Company in 1907 it is immaterial in the present case, It is the only clause ever contained in the leases which required the lessee to take any machines except the particular machines he leased, and it was strictly limited to machines of the same kind required for additional work. The Full Capacity Clause requires the use only of the particular machine leased and therefore does not even require an exclusive use of that kind of machine.

The United States, therefore, utterly failed to support the charge on which the petition is founded that the defendants refused to lease essential machines, which it defined as lasting, welt sewing, outsole stitching, heeling, or metallic machines, unless the shoe manufacturer took practically all other machinery of it.

The only clause on which the United States relied in support of this allegation was the Restricted Use Clause, which, as pointed out above, does not require the lessee to use the machines at all, but, on the other hand, prohibits their use except under certain conditions. The contention of the United States was that this clause, while it does not require a covenant from the lessee to use the United Company's machines, does, by reason of its restrictions, induce the lessee to use not only the particular machine leased, but other principal machines to use with which it is restricted. Even this modified charge, however, was completely refuted by the fact that the United Company continued to offer unrestricted leases of its machines on terms as favorable or more favorable than those offered by the constituent companies prior to the formation of the United Company.

The District Court, therefore, held that this modified charge of a refusal by the United Company to lease machines separately, which, previous to the formation of the United Com-

pany, were offered separately, as a means of compelling the taking of other machines, was completely unfounded, saying:—

> "It appears that after the consolidation there was no refusal or imposition of conditions as alleged, but that the defendants continued to give manufacturers terms which were substantially the same as before and in some instances better than those offered by the constituent companies before the consolidation. This is shown not only by the exhibits of 'independent' leases but by the testimony of officers of the company" (R. Vol. 1, p. 1162).
>
> "The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would also use others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had no choice, or in disregard of the fact that it was merely an alternative form of lease. As the leases proved no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge" (R. Vol. 1, pp. 1163–1164).

C. The allegation that the United Company was permitted to cancel its leases of all machines if the covenants requiring the lessee to use its machines exclusively were broken, was shown to be unfounded, since, as stated above, there were no covenants in the leases requiring the lessee to use the machines exclusively.

D. The term of the leases is for seventeen years. This is the only allegation in the petition which is substantiated by the leases themselves. An agreement that the lease of a particular machine shall run for seventeen years obviously does not require an exclusive use either of machines of the kind leased or any other machines. This clause, therefore, has no bearing on the fundamental charge made in the petition that the United Company refused to lease its essential machines unless the shoe manufacturer took practically all other machinery from it.

We submit, therefore, that the United States has wholly failed to substantiate by the leases the charge made by the petition that the defendants, acting through the United Com-

pany, planned to obtain a monopoly by refusing to lease essential machines except on condition that the shoe manufacturer should take practically all other machinery required by him.

We shall below consider the reasons for the leasing system, the leases used by the constituent companies, the modifications in the leasing system made by the United Company, and the business reasons underlying and requiring the use of the various provisions to which the United States objects and their legality.

5. THE UNITED COMPANY DID NOT DISCONTINUE THE SALE OF MACHINES—FOR THE CONSTITUENT COMPANIES ONLY LEASED AND DID NOT SELL MACHINES.

As above stated, the petition alleges that the defendants "discontinued the sale . . . of the machines . . . and . . . adopted . . . arbitrary . . . lease and license agreements" (R. Vol. 1, p. 997).

This charge that the United Company discontinued the sale of machines is absolutely without foundation. None of the constituent companies sold its machines; they were furnished to shoe manufacturers only on lease (Donham, R. Vol. 1, p. 2, lines 30–31; p. 4, lines 21–22, 28–29; Winslow, R. Vol. 1, p. 400, lines 37–39; Howe, R. Vol. 1, p. 468, lines 3–4).

The United States sought to show by Milton S. Florsheim that he had bought three Copeland Rapid Lasting Machines from the Goodyear Company (R. Vol. 1, p. 158, lines 22–25). On cross-examination Mr. Florsheim admitted he had obtained these on a lease which was introduced in evidence (R. Vol. 1, p. 165, line 40; p. 167, line 30). (See also Defendants' Exhibit 33; R. Vol. 5, p. 11.) This was the only evidence which the United States attempted to introduce in support of this important charge in its petition.

The District Court (Dodge, J.) said with reference to this charge:—

> "An attempt to support this charge by evidence wholly failed. Nothing of the kind was done, nor is it

easy to see what grounds for making the charge could ever have been supposed to exist" (R. Vol. 1, p. 1153).

The United Company not only did not refuse to sell machines previously sold by the constituent companies, but on the contrary it did sell over 170 different kinds of General Department machines, which it developed, in contrast to the policy of the constituent companies (R. Vol. 1, p. 452, lines 39–44; p. 453, lines 1–6).

6. REASONS FOR MARKETING SHOE MACHINERY BY LEASES.

In considering the clauses in the leases complained of it is important to appreciate the reasons which had led shoe machinery manufacturers generally from the beginning of the industry to market their machinery by the lease system.

The adoption by a manufacturer of the best method of marketing his product and thereby best meeting the conditions peculiar to his goods or under which his customers do business is one of the most important elements of commercial success.

The ingenuity of modern business men has been largely directed to this problem and a great variety of methods has resulted. One manufacturer sells only at wholesale, one at retail, one through agents, another through jobbers, another through a chain of his own stores and another only upon mail orders; one leases, another sells outright; one sells for cash only, another on the instalment plan; one sells through traveling salesmen, another depends upon advertising in magazines or by letter; one offers premiums with each purchase, another sells on long-time contracts providing for all the customers' business; one makes discounts for large purchases, another declines to distinguish between large and small customers; one sells only for a money consideration, another takes stock or some share of the profits of the purchaser.

The foregoing are a few of the methods employed by modern salesmanship devised to attract customers and to provide an

outlet for goods. They are all proper, normal methods because they are designed to advance the dealer's business by making his goods or terms attractive to his customers. The dealer is free to adopt any one of these methods he pleases. If he deems it the best policy to sell for cash only, no customer can demand credit; if he sells only through agents, no customer can demand that he sell directly to him; if he sells by mail only, no customer can demand that he sell at his office. Similarly, if he leases on terms which he believes best adapted to the conditions of the industry, no customer can demand that he lease on other or different terms or that he sell as well as lease. This freedom of choice as to the method of marketing his goods is the life of competition and the very kind of activity which the Sherman Act sought to promote.

The system of leasing instead of selling shoe machinery, and charging not a fixed rental but a royalty based on the amount of use, has been a fixed and established principle in the shoe machinery industry from the date of the introduction of the first shoe machinery about 1860, and the entire business of manufacturing shoes by machinery originated and has been developed under the lease system because it was especially adapted to the conditions of that industry and was most satisfactory to the shoe manufacturer. The following are a few of the reasons:—

A. Under the lease system shoe manufacturers do not have to buy outright machines at the large prices which the manufacturer would be obliged to charge in case of a sale, as compensation not alone for the cost of the machines themselves but also for the use of the patented inventions embodied in the machines, and the great expense involved in experimenting with and developing them. Shoe manufacturers are thus saved a large initial investment in machinery and this money is left available for use in the business.

The shoe manufacturers testified almost unanimously to the advantages of this method. Machinery depreciates rapidly and banks are unwilling to loan money on it. Furthermore, the shoe manufacturer turns his capital over rapidly and is thus able to do a large and profitable business on a small capital if he is not obliged to make a heavy investment in machines. Many shoe manufacturers are men with small

capital and would be wholly unable to engage in the business if required to make a large initial investment.

Jonathan Brown, Jr., testified that depreciation in shoe machinery is so rapid from wear and on account of new machines being invented that 50 per cent. depreciation should be charged off as soon as a machine is purchased. He does not dare to carry machines as an asset at all, but if he buys a machine he charges it off as expense (R. Vol. 1, p. 732, lines 6–31).

Edward W. Burt testified that he figured about 25 per cent. depreciation on machines which he had to take care of himself. His gross sales are six times his capital. He prefers not to tie up capital in machinery. In securing credit bankers never consider machinery worth a dollar (R. Vol. 1, p. 740, lines 29–41).

Frederick Allen testified that he turns his capital over about eight times a year. He prefers to lease rather than to purchase, because under the lease system he does not have to tie up his money in machinery "which as an asset is worthless as soon as it is installed" (R. Vol. 1, p. 722, lines 11–19).

Alanson C. Brown testified:—

> "The opportunity to lease our machines instead of investing our own capital in them by way of purchase has given us more money to put into other departments of our business. The capital which we invest in the materials which go into shoes we turn over about three times in the course of a year and in the usual course of business we make a profit every time. Our capital is four million and our gross business is around thirteen million a year" (R. Vol. 1, p. 618, lines 15–22).

R. P. Hazzard testified:—

> "The capital of the Snow-Hazzard Company was $50,000. We now turn over our capital about eight times. Our investment as shown by our last audit is a little over $300,000 and during the past year we have done a business of approximately two millions and a half. We have gone on the plan of making as small a permanent investment in machinery as was possible and putting all our money into the active running of the business.

"I might add right there that when the Snow-Hazzard Company was started as a $50,000 corporation, had we been obliged to have bought by outright purchase the machinery necessary to have equipped that plant, that it would have taken such a large part of our capital that our credit would not have been such as to enable us to have purchased our merchandise and conduct our business and allow us to grow as it has" (R. Vol. 1, p. 642, lines 3–16).

"The thing which pleases me especially in this system is that I stand on an exact footing, so far as machinery and repairs are concerned, and everything of that kind, with every other shoe manufacturer that leases from the United Company, because I am conceited enough to think that if given an even start I can hold my own" (R. Vol. 1, p. 654, lines 3–8).

B. Under the lease system the shoe manufacturer only pays for the machines when and as he uses them. If business is poor, his royalties proportionately decrease. The amount of payment, therefore, is automatically adjusted to the amount of business which the shoe manufacturer does, and he is not burdened with heavy annual charges when business is poor.

C. The principal shoe machines are so delicate and need such constant adjustment that unless properly cared for they prove unsatisfactory. No small shoe manufacturer and few of the large shoe manufacturers can afford to maintain an efficient repair service. Nor do shoe manufacturers understand as thoroughly as the machinery manufacturers the importance of this service. In consequence, experience has shown that when machines were purchased outright they quickly got out of repair or adjustment, because of lack of proper attention, and thereby became discredited. Shoe machinery manufacturers, therefore, found that it gave better satisfaction to their customers if the machines were leased and were kept in repair by the lessor. The shoe manufacturer under this system got better machinery for his money and the machinery manufacturer a larger return.

D. From the beginning of the shoe machinery industry every machine has been to a large extent experimental until its usefulness has been proved and demonstrated in actual commercial use over an extended period. Shoe manufacturers

hesitated to buy a machine at a large price which might not do as good work as was being done by hand, or which might otherwise prove a commercial failure, or might be supplanted within a short time by a better machine. Under the lease and license system shoe manufacturers do not have to take this risk; it is the machinery manufacturer who takes the risk.

See Strootman (R. Vol. 1, p. 744, lines 1–11).

E. By furnishing machines for a comparatively small initial cash payment or without any initial cash payment shoe machinery manufacturers were enabled to get active, energetic men to enter the shoe business and thus extend the use of their machines. To enter the shoe business no expensive factory is required, any loft being sufficient; the goods require no long time in process but are turned into cash quickly and the business can easily be started on a small scale. The shoe machinery manufacturer is thus able to place his machines and develop his business in a way which would not be possible if a cash sale price were demanded.

As Mr. WINSLOW testified:—

> "Under our system a small manufacturer has practically the same advantages as a large one as far as machine equipment is concerned. A man who goes into the business with a capital of $1,000 pays exactly the same royalty and receives exactly the same service as a man who goes into the business with a capital of $250,000" (R. Vol. 1, p. 555, lines 38–43).

FREDERICK ALLEN testified:—

> "If I had had to buy my machinery I don't think I should have been able to start in business, because it would have taken all my capital to buy machinery. Under the arrangement by which I can obtain the machinery by lease, I can put all my capital into the business" (R. Vol. 1, p. 722, lines 34–38).

EDWARD W. BURT testified:—

> "I am a small manufacturer. As to the effect upon my ability successfully to do business which a compulsory change in the method of leasing machines, making it necessary for the United Company to charge an initial

premium when it put out its machines, would have, I am very glad you asked me that question, because I think it is a very important one. If manufacturers must buy their machines, they have got to get money from their capital, or borrow money, or get it somewhere, to buy machinery, and that takes away your working capital. Now, you must have machinery at the least expense possible in the manufacturing of shoes. And if we were obliged to buy our machines I should be very sorry. In fact, if the privilege of buying or leasing were given me, I should say lease every single time. I never would want to buy a machine.

"As to the effect which it would have had with reference to my ability to go into business at all, I never could have started. I started without any money in shoe manufacturing. I was able to do that because I could obtain my machines by this method.

"That is one of the greatest reasons why I could start in the shoe business—because I could get machinery with practically no expense.

"I know that there are other men who from small beginnings have been enabled to start and grow. I have had experience along that line. I have had two superintendents leave me, both starting in the shoe business. They had practically no money" (R. Vol. 1, p. 741, lines 5–31).

C. Willis Bennett also testified that he could not have entered business had he been required to buy his machines (R. Vol. 1, p. 759, lines 1–20).

7. NECESSITY FOR PROVISIONS IN THE LEASES PROTECTING THE LESSOR.

A. Introductory Statement.

The United Company, under the lease system, installs in the shoe manufacturer's factory an equipment of machines, instructs the shoe manufacturer's operators in their use, and keeps the machines in proper operating condition. It depends for a fair return on its investment upon a royalty based upon the use of the machines.

The United Company, under this system, has installed millions of dollars' worth of machinery in the factories of lessees scattered all over the country. It is obvious that the leases of these machines must contain provisions carefully providing for the use and care of the machines and assuring the lessor a fair return on its investment.

The following conditions must be borne in mind in considering the provisions required in the leases:—

B. Compensation for Machines being Based on Amount of Use, Lessee must Agree to Use.

The United Company cannot manufacture and invest its money in expensive machines and install them in the shoe manufacturer's factory, instruct operatives and keep the machines in repair, depending for its return upon a royalty based on the use of the machines, unless assured that they will be used if the shoe manufacturer has work for them to perform. If the lessee were under no obligation to use them the United Company might receive no return on its investment. Mr. WINSLOW testified:—

> "The leases as existing in 1899, and as issued practically up to the present time, gave the possession of the machinery and the right to use the patents embodied in that machinery to the lessee, either for the life of all the patents that were then embodied in the machines, or for seventeen years upon his keeping certain conditions. The payment to the owner of the patents in these leases was dependent entirely upon the use that was made of the machines. Experience of the companies who were leasing machines prior to 1899 had shown them that frequently their machines would be in the hands of the manufacturers and would not be used for one reason or another. The machinery companies had gone to the expense of teaching operatives, educating the manufacturer in the use of the machines, and were by the custom of the trade called upon to teach the operator at any time in the use of those machines. My own experience with the Lasting Machine Company had shown me that we might start and educate operatives on the machines two or three times, and then the machine would be stopped. Some method had to be adopted to properly protect the inter-

ests of the machinery company if it were to continue to lease machines" (R. Vol. 1, p. 443, lines 24–44).

C. Seasonal Character of Shoe Business Requires that Lessee Use Machines When He has Work.

The shoe manufacturer's business is seasonal; during three months of the year he will do twice to four times as much work as at other seasons. To enable him to do his work in his busy season the United Company must furnish him with an equipment having a capacity far in excess of his requirements during the greater part of the year. Mr. WINSLOW testified:—

> "The manufacturing of shoes is one that is divided into substantially two seasons. The manufacturer with an average production of a thousand pairs per day, in other words, who makes 300,000 pairs of shoes in the year, will ordinarily have to have a capacity to produce 600,000 pairs. His production in certain months will run at the rate of 2000 pairs per day, and in other months as low as 500 pairs per day, so that if he has the machines of our company—our entire income is dependent upon their use—we have to furnish him the equipment to make the 2000 pairs per day, although his total product only averages a thousand pairs per day. We furnish him that equipment for his maximum output, which is only used, the maximum, I am quite safe I think in saying, not over three months out of the twelve, and from that it runs down, varying according to the man's own particular business, to from twenty-five per cent. to fifty per cent" (R. Vol. 1, p. 444, lines 27–42).

It is obvious that if the shoe manufacturer, in order to provide for his maximum requirements during his comparatively short busy season, takes from the United Company a machinery equipment having a capacity in excess of his average or normal requirements, the United Company must be assured that such excess capacity taken by the shoe manufacturer be used when required. Otherwise, the United Company will furnish and the lessee will hold a machinery capacity which will not be used and for which the United Company will get no return.

D. Wholesale Price is Fair Both to United Company and to Shoe Manufacturers When its Machines are Used as a Team.

When a series of the United Company's principal machines, which are admittedly the best machines made and which have been developed and are adapted for use together, are used as a team or series and are repaired and cared for by the United Company and are thus maintained in an efficient operating condition so that no one of the team breaks down and stops the work on other machines, and when the operators are instructed in the proper use of the machines and operators are furnished the shoe manufacturer in case of necessity, each machine of the series can produce more shoes than it would produce if used with machines not so adapted for use together as a team and not so maintained and cared for. Furthermore, a series of machines can be cared for at less cost per machine than a single machine. As a result, when a shoe manufacturer desires to take the United Company's principal machines to be used together as a team or series the United Company can afford to charge a reduced or wholesale price, because it receives a larger return in royalties on each machine when so used and the cost of caring for each machine is less.

Mr. WINSLOW testified as follows in respect to the reasons for the increased productivity and efficiency of machines when used as a team:—

> "By limiting the use of one principal machine of the company to work which has been operated upon by other principal machines of the company, its use is confined to work done by machines with which we know that prompt and efficient service is furnished to keep that machine in proper condition to operate, and with operators who have been properly instructed in the operation of the machine at the expense of our company, and also with machines where new operators will be taught whenever they are needed. Now, of course, under those conditions we have a definite assurance as to the maintenance of the productivity of the machines and the quality of work that will be produced by those principal machines with which another principal machine is used" (R. Vol. 1, p. 857, lines 5–17).

E. United Company must have Right to Take Back its Machines if Lessees do not Act in Good Faith.

The United Company is dependent to a large extent upon its lessees for a correct statement of the number of shoes on which its machines operate and for a proper use of its machines.

The constituent companies which were combined into the United Company had 1,060 different lessees operating 1,079 factories (R. Vol. 1, p. 454, lines 21–23). The United Company in 1911 had 1,033 lessees operating 1,150 factories (R. Vol. 1, p. 454, line 45). An average of over 62 new concerns have started in the shoe manufacturing business in each year from 1900 to 1911, and in addition an average of over 22 new concerns have during that period succeeded old firms. 746 entirely new concerns engaged in business between March, 1900, and December 31, 1911 (Defs.' Ex. 223, R. Vol. 5, p. 390).

It is obvious that the United Company can have no assurance of the moral responsibility of many of its lessees. It is inevitable that some should act unfairly or dishonestly.

Furthermore, the United Company can have no assurance that many of its lessees if they violate their agreements for any period of time will be able to pay for any resulting damages which may occur. It is one of the virtues of the leasing system that it enables men having little capital and, therefore, necessarily small resources, to engage in the business.

Under these circumstances the United Company must have fairly broad rights to withdraw its machines if it finds or has reason to believe that its machines are not properly cared for, or that the amount due in royalties is incorrectly reported, or that the lessee is otherwise violating his agreements, or if it finds that owing to the use by the lessee of other machines of the same kind as those leased, the lessee is using the United Company's machines only occasionally or only during his busy season, or only on slow or difficult work, or on shoes which although made on the United Company's machines the lessee reports as made on the other machines, and that for any of these reasons the United Company is not receiving a fair return on its investment in the machines.

F. Extended Term Necessary for Both Lessee and United Company.

The lessee embarking in business desires an assurance that he may hold his machines for an extended term and the United Company requires an assurance that the lessee will use the machines for a sufficient length of time to afford a fair return on the investment.

G. The Provisions in the Leases Objected to by the United States Attempt to Provide for and Meet the Foregoing Conditions.

The District Court said (R. Vol. 1, p. 1187):—

> "The clauses objected to are all subordinate and auxiliary to maintaining rights which unquestionably belong to the defendant; to charge their own prices and to choose as customers those who will pay those prices.
>
> "The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them. Other modes, such as the requirement of arbitrary payment for the full period of the patents, would escape all such attacks. *The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions*" (italics ours).

In considering the leases it must also be borne in mind that their purpose and effect cannot be tested solely by an examination of the wording of the clauses. In a lease of a complicated set of shoe machinery, even more than in the lease of a house or business premises, it is impossible to specify exactly and definitely every event or circumstance which should give the lessor a right to interfere for his protection. It is essential that the lessor reserve certain general rights, which, if violated, justify him in cancelling the lease if he feels such action necessary for his protection. As we show below (*infra*, pp. 427–432), the actual practice of the United Company has been to treat its lessees with the utmost liberality. The record shows that the United Company has enforced its right

to cancel its leases in only five instances (apart from cases of insolvency) in each of which the lessee acted in flagrant disregard of the lessor's rights, and either used the United Company's machines without payment of any royalty at all, or abandoned their use entirely.

8. LEASE SYSTEM EMPLOYED BY THE CONSTITUENT COMPANIES PRIOR TO THE FORMATION OF THE UNITED COMPANY.

In order to understand the gradual growth of the lease system, the reasons necessitating the various provisions in the leases, and the reasons why the United Company upon its formation continued the system, and in order further to appreciate how slight were the changes made by the United Company in the system, it is necessary to consider carefully the lease system in use at the time the United Company was organized.

A. LEASES OF GOODYEAR COMPANY PRIOR TO 1899.

The Goodyear Shoe Machinery Company manufactured welt and turn sewing machines and outsole stitchers and sixteen auxiliary machines used in connection therewith. It also manufactured Ideal Lasting Machines developed and used for lasting women's welt shoes (R. Vol. 1, p. 468, lines 4–14; p. 624, line 31–p. 625, line 13; p. 626, line 36; p. 627, line 3).

(1) Lease of Goodyear Welt Set Prior to 1899 (P.'s Ex. 4, R. Vol. 3, p. 29).

The Goodyear Company leased its welt set, consisting of the Goodyear Welt and Turn Machine and the Goodyear Outsole Stitcher and thirteen auxiliary machines as a single set and for a single royalty.

It charged an initial payment of $300 for the Welt and Turn Shoe Machines and $300 for the Outsole Stitcher and also an initial payment for each auxiliary (R. Vol. 1, p. 469, lines 16–18). It also charged a net royalty of four cents a pair for each pair of men's shoes on which the machines or any of them were used, three cents for women's shoes and boys' shoes, and less amounts for youths', misses', and children's shoes (P.'s Ex. 4, pars. Third and Fifth, R. Vol. 3, pp. 32–33).

The lessee agreed that the machine should be used only in the manufacture of "Goodyear Welts," *i.e.*, welt shoes welted and outsole-stitched on Goodyear Welters and Stitchers and that he would "*not use or permit the use of said machines, or either or any of them, upon boots or shoes in the manufacture of which any sole or welt sewing machine not leased to him by the Lessor is employed*" (italics ours) (par. Sixth, P.'s Ex. 4, R. Vol. 3, pp. 33–34).

The lease ran until the expiration of every patent referred to in the schedule of patents, or any extensions or renewals of the same (P.'s Ex. 4, par. Ninth, (*c*), R. Vol. 3, p. 35). The lessor had the right to add improvements, and if any patented improvements were added, it was provided that the lease should be construed as though such patents were contained in the original schedule (P.'s Ex. 4, par. Second, R. Vol. 3, p. 32). In other words, if the lessor added patented improvements, which he had the right to do, the lease would be continued indefinitely.

The lease could be terminated upon breach of any conditions on the part of the lessee (P.'s Ex. 4, par. Ninth, (*b*), Vol. 3, pp. 34–35). The lessee agreed to keep the machines in working order at his own expense and to procure all parts for repairing the machines from the lessor (P.'s Ex. 4, par. First, R. Vol. 3, pp. 31–32).

(2) Lease of Goodyear Turn Set Prior to 1899 (P.'s Ex. 3, R. Vol. 3, p. 22).

The Goodyear Company leased its turn set consisting of the Goodyear Welt and Turn Shoe Machine and three auxiliary machines as a single set and for a single royalty. It

charged $300 as an initial payment for the turn machine, and likewise initial payments for the auxiliary machines (R. Vol. 1, p. 21, lines 16–18; p. 469, lines 16–18). It charged a net royalty of 1½ cents per pair for men's, boys', youths', and women's shoes, and 1 cent for children's and misses' shoes (P.'s Ex. 3, pars. Third and Fifth, R. Vol. 3, pp. 24–25).

The lessee agreed that the machine should be used only in the manufacture of Goodyear turns.

The lessee agreed not to use in his factory any machines for uniting the soles of turn shoes to their uppers which were not leased to him by the lessor (P.'s Ex. 3, par. Sixth, R. Vol. 3, pp. 25–26). *This clause, therefore, required an exclusive use of the Goodyear Company's turn machines.*

The lease ran for the same period as the lease of the welt set.

The lease could be terminated upon breach of any conditions (P.'s Ex. 3, par. Ninth, (*b*), R. Vol. 3, pp. 26–27).

The lessee agreed to keep the machines in working order at his own expense and to procure from the lessor all parts for repairing the machines (P.'s Ex. 3, par. First, R. Vol. 3, p. 23).

(3) Lease of Ideal Lasting Machines prior to 1899 (P.'s Ex. 5, R. Vol. 3, p. 37).

The Goodyear Company leased its Ideal Lasting Machine, together with the Rapid loose tackers used in connection therewith, for an initial payment of $300 (P.'s Ex. 5, Vol. 3, p. 44) and a net royalty of one-half a cent for each pair of shoes lasted (P.'s Ex. 5, par. Fifth, pp. 40–41).

The lessee agreed not to use the machines on shoes "partially or wholly completed by the aid of any sole- or welt-sewing machine not leased to him by the Lessor" and not to use any of the rapid tackers on shoes "which have been partially or wholly lasted by the aid of any lasting machine not leased to him by the Lessor" (italics ours) (P.'s Ex. 5, par. Fourth, R. Vol. 3, p. 40). It is to be noted that this provision constituted a Restricted Use Clause, limiting not only the use of the rapid tackers to the lasting machine or machines, but also limiting the use of the lasting machines to shoes on which the lessor's welter and stitcher were used.

The lessee agreed to buy of the lessor all tacks used in the loose tackers and hoppers (P.'s Ex. 5, par. First, R. Vol. 3, p. 39).

The lease, as in the case of the other leases of the Goodyear machines, was to continue until the expiration of any patents embodied therein, or any patents or improvements which might thereafter be embodied in the machine by the lessor at its option (P.'s Ex. 5, par Seventh, (*c*), and par. Second, R. Vol. 3, pp. 42, 39).

The lease could be terminated upon breach of any conditions (P.'s Ex. 5, par. Seventh, (*b*), R. Vol. 3, pp. 41–42). The lessee agreed to keep the machines in working order at his own expense, and to procure from the lessor all parts for repairing the machines (P.'s Ex. 5, par. First, R. Vol. 3, p. 39).

B. LEASES OF CONSOLIDATED COMPANY PRIOR TO 1899.

(1) Lease of McKay and Copeland Lasting Machine Prior to 1899 (P.'s Ex. 6, R. Vol. 3, p. 45).

This machine was used for lasting heavy-weight brogans and metallic fastened and pegged shoes (R. Vol. 1, p. 3, lines 20–22).

An initial payment of $695 was required and a royalty (P.'s Ex. 6, Art. 3, R. Vol. 3, pp. 48–50; R. Vol. 1, p. 454, lines 3–8).

The lease declared it the intention of the lessee to use the machines leased for lasting all the shoes made by him applicable to said machines and not to have the machines in his possession as a means of reducing the price of hand lasting, or to influence any trade in connection with any other lasting machines not made by the lessor. The lessee further agreed to "use said machines and accessories hereby licensed and leased for rental, lasting all of his shoes and boots to their full capacity, limited only to the demands of his business; and should the demands of his business require, he shall take the

license and lease of such additional machines and accessories as may be required to last all of his work, . . . " (P.'s Ex. 6, Art. 12, R. Vol. 3, pp. 54–55). *This clause required the use of the machines to their full capacity and also required the exclusive use of the lessor's machines of this character.*

The lease ran "until canceled by the Licensor for breach of condition or otherwise"; in other words, it ran so long as the machine was in existence unless the lessor saw fit to cancel (P.'s Ex. 6, Art 9, R. Vol. 3, p. 53).

The lessee agreed to buy of the lessor all spare parts for repairing the machines and also all string-nail, tack-strips, or other fastenings driven by any appliance for lasting all shoes lasted on the machines (P.'s Ex. 6, Art. 13, R. Vol. 3, p. 55). The right was reserved to cancel for breach of conditions (P.'s Ex. 6, Art. 9, R. Vol. 3, p. 53).

(2) Lease of Chase Lasting Machines Prior to 1899 (P.'s Ex. 7, R. Vol. 3, p. 57).

This machine, and the hand tackers used therewith, was used for lasting men's welts and was leased without initial payment for a royalty of one cent per pair for ~~Goodyear~~ shoes, with certain provisions for abatement (R. Vol. 1, p. 397, lines 39–40 P.'s Ex. 7, par. Third, R Vol. 3, pp. 60–62). If the lessor so requested, the lessee was required to pay not less than $10 per month, except when his factory was not running. If the machines were unused for four months the lessor could cancel the lease (P.'s Ex. 7, pars. Third and Eighth, R. Vol. 3, pp. 60–61, 63).

The lease declared it the intention of the lessee to use the machines leased for lasting all the shoes made by him applicable to said machines and not to have them in his possession as a means of reducing the price of hand lasting or of controlling hand lasters or of influencing a trade with the owners of any other lasting machines or reducing the price thereof. The lessee agreed to "use such machines hereby loaned for lasting all of his shoes and boots, to their full capacity, limited only by the demands of his business; and should the demands of his business require, he shall take and pay for the loan of such

additional machines as may be required to do all his work" (P.'s Ex. 7, par. Twelfth, R. Vol. 3, p. 65). *This clause required the use of the machines to their full capacity and also required the exclusive use of the lessor's machines of this character.*

The lease ran until the expiration of the Letters Patent which the lessee was licensed to use, or which were or thereafter might be embodied in the machines (P.'s Ex. 7, par. Tenth, R. Vol. 3, p. 64). The lessor had the right to improve the machines (P.'s Ex. 7, par. Second, R. Vol. 3, p. 60). Thus the leases might run indefinitely.

The lessee agreed to buy all spare parts and all string-nail, tack-strips or other fastenings of the lessor (P.'s Ex. 7, par. Thirteenth, R. Vol. 3, pp. 65–66).

The lease might be cancelled for breach of conditions (P.'s Ex. 7, par. Ninth, R. Vol. 3, pp. 63–64).

(3) Lease of Consolidated Hand Method Lasting Machines (McKay) Prior to 1899 (P.'s Ex. 8, R. Vol. 3, p. 68; P.'s Ex. 9, R. Vol. 3, p. 74).

This machine was used for lasting McKay sewed shoes. There were two alternative forms of lease, one requiring an initial payment, the other no initial payment (R. Vol. 1, p. 3, lines 39–43; p. 399, lines 22–23).

Initial payment form (P.'s Ex. 8). This form required an initial payment of $300 for each machine and a royalty of one-half a cent a pair (P.'s Ex. 8, R. Vol. 3, pp. 69–70).

The lease ran until the expiration of all patents embodied in the machines or in any improvements thereafter attached thereto, which improvements the lessor had the right to make (P.'s Ex. 8, pars. Eighth and Sixth, R. Vol. 3, pp. 73, 71–72).

The lessee agreed to obtain all duplicate parts from the lessor (P.'s Ex. 8, par. Sixth, R. Vol. 3, p. 72). The right was reserved to terminate for breach of conditions (P.'s Ex. 8, par. Seventh, R. Vol. 3, p. 72).

Non-initial payment form (P.'s Ex. 9). This form required a royalty of five-eighths of a cent per pair, with a minimum of

$180 a year (P.'s Ex. 9, par. Third, R. Vol. 3, p. 77). If the machines were unused for four months the lease might be cancelled (P.'s Ex. 9, par. Eighth, R. Vol. 3, p. 79).

It was declared the intention of the lessee to use the machine for lasting all shoes made by him applicable to the machine, and the lessee agreed to use the machine "for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work" (P.'s Ex. 9, par. Twelfth, R. Vol. 3, pp. 80–81). *It therefore required a use of the leased machines to their full capacity and also required an exclusive use of machines of this kind.*

The lease ran until cancelled by the lessor for breach of condition or otherwise; that is, *it ran at the lessor's option so long as the machine was in existence* (P.'s Ex. 9, par. Ninth, R. Vol. 3, pp. 79–80).

The lessee agreed to obtain all duplicate parts from the lessor, and wire used in lasting in the machines (P.'s Ex. 9, par. Thirteenth, R. Vol. 3, p. 81). The right was reserved to terminate for breach of conditions (P.'s Ex. 9, R. Vol. 3, p. 76).

(4) Lease of Consolidated Hand Method Lasting Machine (Welt) Prior to 1899 (P.'s Ex. 10, R. Vol. 3, p. 82).

This is a machine which the Company had in an experimental stage in 1899. A lease had been prepared prior to the formation of the United Company.

This lease required no initial payment and charged a royalty of one cent per pair (R. Vol. 1, p. 4, lines 9–13; p. 398, lines 27–31; P.'s Ex. 10, par. Third, R. Vol. 3, p. 85).

The lease ran until cancelled by the lessor for breach of condition or otherwise (P.'s Ex. 10, par. Ninth, R. Vol. 3, p. 87). It was declared the intention of the lessee to use the machine for lasting all the shoes made by him applicable to such machine, and the lessee agreed to use the machine "for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; and should the demands of his busi-

ness require he shall take the license and lease of such additional machines as may be needed to do all his work" (P.'s Ex. 10, par. Twelfth, R. Vol. 3, pp. 88–89). *It therefore required a use of the leased machines to their full capacity, and also required an exclusive use of machines of this kind.*

The lessee was required to obtain all spare parts of the lessor and the lease could be cancelled for breach of condition (P.'s Ex. 10, par. Thirteenth, R. Vol. 3, p. 89; par. Ninth, R. Vol. 3, p. 87).

(5) Lease of Davey Pegging Machine Prior to 1899 (P.'s Ex. 13, R. Vol. 3, p. 113).

A net royalty of three-fourths of a cent and an initial payment of $100 was charged (P.'s Ex. 13, par. Third, R. Vol. 3, p. 116; p. 114).

The lessee agreed that "he will do all the pegging of boots and shoes manufactured by him upon the said machines of the Lessor which are leased hereby, and that in case he has too much work for the machines hereby leased, he will take from the Lessor, under this lease or a similar lease containing the same terms and provisions, sufficient additional machines to perform the work" (P.'s Ex. 13, par. Fifth, R. Vol. 3, p. 118). *It therefore required an exclusive use of the machines.*

The lease continued until the expiration of Letters Patent embodied in the machine or on any inventions thereafter added to the machine, which improvements the lessor had the right to make (P.'s Ex. 13, pars. Tenth and Second, R. Vol. 3, pp. 120, 116). All spare parts were to be purchased from the lessor and the lease might be terminated for breach of conditions (P.'s Ex. 13, pars. First and Ninth, R. Vol. 3, pp. 115–16, 119).

C. LEASES OF McKAY COMPANY PRIOR TO 1899.

(1) Lease of Heeling Machines Prior to 1899 (P.'s Ex. 11, R. Vol. 3, p. 90).

A net royalty of one-fourth of a cent was charged and this charge extended to all heels made by or for the lessee, whether or not made by the lessor's machines (P.'s Ex. 11, par. Third, R. Vol. 3, pp. 97–98). The lessor reserved the right to cancel if the lessee "*provides himself with any other machine to do any part of the work which any of said Lessors' machines are capable of doing*" (italics ours) (P.'s Ex. 11, par. Eighth, R. Vol. 3, p. 100). The lease ran for seventeen years "and for such further time as may be covered by the term of any Letters Patent now or hereafter owned by the Lessors, and any inventions of which are contained in any of the 'machinery' hereby leased or which shall be added to or embodied in said 'machinery' or used in connection therewith" (P.'s Ex. 11, par. Eighth, R. Vol. 3, p. 100). The lessor had the right to add improvements. The lessee agreed to buy all spare parts from the lessor (P.'s Ex. 11, pars. Second and First, R. Vol. 3, p. 97).

The lease could be terminated for breach of conditions (P.'s Ex. 11, R. Vol. 3, p. 96).

(2) Lease of Metallic Machines Prior to 1899 (P.'s Ex. 12, R. Vol. 3, p. 103).

This lease required an initial payment. It provided that the lessee should pay 10 cents a pair for all shoes operated on unless he should purchase of the lessor all the material used in the machines for fastening the shoes, which the lease stated was to be sold "at prices much in excess of the cost to the Lessors, with the intent that such excess shall be the rent and license fee hereunder" (P.'s Ex. 12, par. Third, R. Vol. 3, p. 107). This was in lieu of other royalty. The lease, however, carried a rider eliminating the initial payment and

providing that the lessor had the right to terminate the lease whenever the lessee "*shall provide himself with any other machine to do any part of the work which said lessors' machines are, in the lessors' opinion, capable of doing*" (italics ours) (P.'s Ex. 12, Rider, R. Vol. 3, p. 112).

The lease ran until the expiration of all Letters Patent, embodied or thereafter embodied in the machines, by the lessor (P.'s Ex. 12, par. Ninth, R. Vol. 3, p. 110).

The lease carried a rider which provided the lessor might cancel if the lessee did not purchase all spare parts of the lessor (P.'s Ex. 12, Rider, R. Vol. 3, pp. 112–113, and par. Eighth, R. Vol. 3, p. 110).

9. SUMMARY OF LEASE SITUATION JUST PRIOR TO THE DATE OF THE FORMATION OF THE UNITED COMPANY.

A. General Summary of Provisions in Leases.

From the foregoing it will be seen that the system of leases of the constituent companies in effect at the date of the formation of the United Company incorporated the following provisions:

1. Machines could not be bought but were only leased.

2. When two or more machines were put out by the same company which were used on the same shoe, the machines were generally leased as a group. Thus the Goodyear Welter, Stitcher and auxiliaries were leased for a single royalty. The Welter and Stitcher were restricted to use together and the auxiliaries were restricted to use on shoes operated on by the Welter and Stitcher (P.'s Ex. 4, par. Sixth). The Tackers were leased with the Ideal Machine for a single royalty and restricted to use on shoes operated on by the Ideal Machine (P.'s Ex. 5, par. Fourth). The various heeling machines of the McKay Company were leased as a whole for a single royalty (P.'s Ex. 11). In other words, these leases contained the Auxiliary Restricted Use Clause. The Ideal Laster was restricted to use on shoes operated on by the Welter and

Stitcher, an instance of restricting a principal machine of one department to use with a principal machine of another department, *i.e.*, the Restricted Use Clause.

3. Many of the leases required the lessee to use the lessor's machines of the kind leased exclusively, that is, they contained a direct agreement to this effect, or contained the Additional Machinery Clause, which required the lessee to take additional machinery for all work which he had of the kind for which the machines were adapted (Goodyear Turn Set, P.'s Ex. 3, par. Sixth; McKay and Copeland Machine, P.'s Ex. 6, Art. 12; Chase Machine, P.'s Ex. 7, par. Twelfth; Consolidated Hand-method McKay Machine, P.'s Ex. 9, par. Twelfth; Consolidated Hand-method Welt Machine, P.'s Ex. 10, par. Twelfth; Pegging Machine, P.'s Ex. 13, par. Fifth).

4. The leases of the McKay Company contained the "Exclusive Use Cancellation Clause" which permitted the lessor to cancel the lease if the lessee provided himself with machines of the same kind as those leased to do his work (Metallic Machines, P.'s Ex. 12, Rider; Heeling Machine, P.'s Ex. 11, par. Eighth).

5. All of the leases ran for long and in most cases indefinite periods. In the case of the McKay and Copeland Machine, the non-initial lease of the Consolidated Hand-method McKay Machine and the Consolidated Hand-method Welt Machine, the lease ran until cancelled for breach of conditions; in other words, it ran for the life of the machine (P.'s Ex. 6, Art. 9; P.'s Ex. 9, par. Ninth; P.'s Ex. 10, par. Ninth).

In the case of the heeling machines the leases ran for seventeen years and for such further time as any patents embodied then or thereafter in the machines were in force (P.'s Ex. 11, par. Eighth). In all other cases the leases ran for the life of the patents then embodied, or which might thereafter be embodied in the machines.

6. Most of the leases of the Consolidated Company contained the Full Capacity Clause (P.'s Ex. 6, Art. 12; P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par. Twelfth; P.'s Ex. 10, par. Twelfth).

7. All the leases permitted the lessor to cancel for breach of conditions.

8. All the leases required the lessee to obtain extra or duplicate parts required on the machines from the lessor.

9. The Goodyear Company required an initial payment upon the installation of its machines to cover the cost of installation and instruction of operatives. The Consolidated Company required an initial payment for its McKay & Copeland Machine and on one form of lease for its Consolidated Hand-method McKay Machine, and no initial payment on its other leases. The McKay Company had required an initial payment, but in 1899 was considering a change, and was temporarily loaning machines without initial payment (R. Vol. 1, p. 4, line 42 *et seq.*).

B. Provisions by which the Constituent Companies Protected Themselves when Leasing Machines without Initial Payment.

Where the shoe machinery manufacturer as lessor installs his machinery in the factory of a lessee and instructs such lessee's operatives in the use of the machinery, the lessor to be paid by a royalty based on the amount the machinery is used, it is, of course, essential that the lessor be protected as to the amount of use in order to assure him an adequate return. He cannot afford to permit the lessee to keep the machinery idle or use it only on his difficult and slow work, or use it only at especially busy times, doing his work on other machines at other times; nor can he afford to permit the lessee to use the machine under such factory conditions that it cannot be determined how much the machine is actually used. Such protection is especially essential when no initial payment is required from the lessee. This protection was afforded in the leases of the constituent companies in various ways, some used in one lease and some in another. The following provisions are illustrations:—

(*a*) The lessee was required to use the machines to capacity, limited only by the demands of his business (P.'s Ex. 6, Art. 12; P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par Twelfth; P.'s Ex. 10, par. Twelfth).

(*b*) It was agreed that the lessor might cancel the lease if the machines were unused for a certain length of time (P.'s Ex. 7, par. Eighth; P.'s Ex. 9, par. Eighth).

(*c*) The lessor was permitted to cancel the leases of a certain type of machine if machines of that type were not used exclusively (P.'s Ex. 12, Rider; P.'s Ex. 11, par. Eighth).

(*d*) It was provided that the lessee should take additional machines if he had more work than the leased machines could do (P.'s Ex. 6, Art. 12; P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par. Twelfth; P.'s Ex. 10, par. Twelfth).

(*e*) It was provided that the lessee should pay at the royalty rate in respect to all shoes whether or not made on the lessor's machines (P.'s Ex. 11, par. Third).

(*f*) The lessee guaranteed a minimum royalty (P.'s Ex. 7, par. Third; P.'s Ex. 9, par. Third).

(*g*) The lessor was given the right to cancel the lease if the machine was not used to the extent of earning a certain royalty within a given time (P.'s Ex. 6, Art. 8).

(*h*) It was provided that the lessee should not hold the machines in his possession as a means of reducing the price of hand work or to influence a trade for other machines (P.'s Ex. 7, par. Twelfth; P.'s Ex. 9, par. Twelfth; P.'s Ex. 10, par. Twelfth).

Mr. Donham testified as follows with reference to the reasons for the introduction of certain of these clauses by the constituent companies upon the removal of the initial payments:—

> "Prior to the introduction of the non-initial payment leases, each time a lessee took a machine he had to pay down a certain amount of money, and he was not likely to do that unless he wanted the machine, but when machines were put out without initial payments the situation changed. The lessee then had no money in the machines and it was entirely the money of the lessor that was in them, and unless the lessor protected itself in some other way there was nothing to prevent a manufacturer from taking machines with no intention of using them—for example, simply to have them stand in his factory as a threat to his hand labor, to use as a means of trading for some other machine, or to use in case of an emergency.
>
> "So, when the constituent companies took off the initial payments before 1899, they simultaneously sought to pro-

tect themselves in several different ways against non-use or mis-use of the machines. Usually two or three different methods were adopted in the same lease. Provisions were inserted that the lessor might cancel the lease if the machines remained unused for a certain length of time; that he might cancel if they were not used to the extent of earning a certain amount of royalty within a certain time; that the lessee should pay a minimum guaranty in case the machines were not used enough to earn the amount of the guaranty; that the machines should be used for doing all of a certain kind of work which a lessee might have; that the machines should be used for a certain kind of work only. The full capacity clause was inserted; and provisions were inserted that, in case the lessee had more work than could be done by the machines under lease, he should take additional machines; and that if he did not do so, the lessor could cancel his lease and take out his machines. There were also agreements in some cases that the lessee would not introduce any machinery not obtained from the lessor for doing the same work as done by the lessor's machines, and there were various limitations as to the manner and method of using the machines; for instance, a provision that the lessee should not retain the machines for the purpose of controlling his hand operatives or negotiating trades with other companies.

"In my study of the lease situation prior to 1899, I find that in all cases when the companies began to offer machines without initial payments they sought in some or all of these ways to protect themselves against the non-use or mis-use of the machines" (R. Vol. 1, p. 24, line 22; p. 25, line 17).

10. THE UNITED COMPANY NECESSARILY CONTINUED THE LEASING SYSTEM.

Such was the system of leasing machines in effect when the United Company was organized. It had gradually developed since the very beginning of the shoe machinery industry. Its general acceptance proved it to be the method best adapted to the needs of both the shoe machinery manufacturer and the shoe manufacturer.

The United Company could not have changed the essentials of this system even had it so desired without throwing the entire shoe business of the country into confusion. It could not have recalled and cancelled the outstanding leases without the consent of the lessees, which it could not have obtained. As to all machines then outstanding it was obviously necessary to continue the system. The great majority of shoe manufacturers did business on a small scale and had comparatively little capital. They had been induced to enter the business by the offer of machines upon the lease system. Had the United Company refused to furnish additional machines on this basis, it would have seriously crippled many of these lessees and worked a great injustice. On the other hand, if it did continue to furnish machines on lease, it was essential that it continue the clauses which experience showed were necessary for the protection of the lessor.

Apart, then, from the fact that the United Company believed its lease system best adapted to the needs and conditions of the business, it found itself practically pledged to its continuance.

II. MODIFICATIONS BY UNITED COMPANY IN LEASES OF CONSTITUENT COMPANIES.

A. INTRODUCTORY STATEMENT.

The United Company made no modifications in the leases for more than a year after its formation, but continued to use the forms of leases employed by the constituent companies (R. Vol. 1, p. 438, lines 5–9). Thereafter from time to time it made modifications in its leases, either to make them consistent, or gradually from time to time as special conditions relating to the machines of a particular kind demanded.

In making modifications in its leases, outstanding leases were not disturbed; Mr. Donham testified:—

> "After the formation of the United Company that company did nothing whatever with reference to the outstanding leases under which machinery had been ob-

tained by manufacturers from the constituent companies. The manufacturers continued to hold their machines under the old leases so long as those leases continued to run. When the United Company adopted a new form of lease, it was offered to any lessees to take, if they desired. Old lessees had the privilege of changing to the new form if they wished to do so. But if the old lessees did not want the new leases they could remain undisturbed and enjoy their machines under the old forms of leases. A good many old leases issued by the constituent companies before the organization of the United Company are still outstanding" (R. Vol. 1, p. 19, line 40; p. 20, line 8).

The leases of the different constituent companies, as we have shown above, differed somewhat in their terms. Most of the modifications in the leases made by the United Company have relaxed restrictions rather than imposed additional restrictions.

An examination of the modifications of the leases of machines which had been put out by the constituent companies will show that the two principal changes made in these leases by the United Company were the adoption in 1900 of an alternative form of lease for Metallic Machines containing a restricted use clause restricting the use of the machines to use with the United Company's Goodyear Welter and Stitcher and Lasting Machines, and the adoption in 1904 of an alternative form of lease for Heeling Machines containing a restricted use clause restricting their use to use with the United Company's Goodyear Welter and Stitcher, Lasting, Pegging and Metallic Machines. These restricted use forms of lease were optional and lessees could obtain the use of these machines as before without these restrictions.

The adoption of these alternative restricted use leases occurred long after the formation of the United Company, and an examination of the conditions which called for their adoption shows conclusively that they were adopted for the sole purpose of giving lessees better terms.

B. ADOPTION OF RESTRICTED USE CLAUSE IN METALLIC MACHINE LEASES.

With respect to the adoption of the restricted use clause in the leases of metallic machines, Mr. WINSLOW testified as follows (R. Vol. 1, p. 438, line 5–p. 439, line 21, lines 31–38):—

"The first change made by the United Company in the method of marketing any of the machines which had been put out by the constituent companies prior to the organization of the United Company was the adoption of the new metallic lease of the United Company, about the middle of the year 1900.

"For a year or two before 1899 the McKay Company had been putting out its machines without any lease, and that practice was continued by the United Company up to the middle of the year 1900.

"At that time Mr. Charles H. Willson, who had been assistant to Mr. Brooks in the management of the metallic end of the McKay business, reported to me that the price of copper had been constantly advancing so that there was not a proper margin of profit in the sale of wire material used in the metallic machines, that he had called Mr. Brooks' attention to that fact just before our coming together, and that before 1899 he had prepared a list of advanced prices at which the material should be sold. He suggested to me that something should be done and that I should take the matter up.

"Great amounts of brass wire and nails are used in the metallic fastening machines, and the price of copper is the important factor in the cost of that material. We use spelter [brass], composed of two parts of copper and one of zinc.

"In January, 1898, copper was eleven cents a pound; in January, 1899, 12.8 cents per pound; in January, 1900, and in January, 1901, 17 cents per pound. During 1900 the lowest price was 16 cents in four months, 17 cents in three months, and from 16½ to 16¾ in four months. It averaged about 16½ cents a month.

"The old leases provided that the minimum amount of material for each metallic machine should be 400 pounds a year and a very substantial amount of that would be copper.

"This very considerable increase in the price of copper

was a very serious factor, because the prices of the material used in the metallic machines constituted the entire royalty received for the use and care of those machines, and the margin between the cost of the material to the company and the price at which it was sold to represent that royalty had been fixed years prior to 1899, when copper was very much below these prices. The increase from 11 cents to 16 cents, of course, all came out of the royalty, so that it was a very serious question. All the royalty we got was the profit on the material, and when the material increased in cost the royalty disappeared.

"In view of this situation we adopted a policy of limiting the use of those metallic machines to work that had been done on machines of some other department that paid us a royalty. We restricted the use of the machines to footwear which had been lasted and welted and stitched upon machines leased of the United Company. That policy was adopted about August, 1900.

"That is, we got our royalty indirectly. We did not increase the price of material furnished for the metallic machines nor did we increase the royalty on the machines to use with which we restricted the metallic machines.

"We also adopted, in February, 1901, an alternative independent form of lease by which the use of the metallic machines was not limited to use with the machines of any other department and under which the manufacturer paid ten per cent. more for his material than he did under the limited license form. This form of lease was the result of negotiation and agreement with the manufacturers.

"Both forms of leases were offered to every lessee of the United Company simultaneously and he made his choice.

. . . . . .

"Since that time manufacturers have had a chance to take the metallic machines upon either of these forms, or more lately on a lease with an initial payment which is not limited to use with machines of any other department. Accordingly manufacturers have more recently had three alternatives, although it has been the intention of the company to withdraw the ten per cent. form and substitute the initial payment lease in order that the price of material might be uniform to all lessees."

C. ADOPTION OF RESTRICTED USE CLAUSE IN HEELING MACHINE LEASES.

With respect to the adoption of the restricted use clause in the heeling machine leases Mr. WINSLOW testified as follows (R. Vol. 1, p. 440, line 16–p. 441, line 42):—

"There was no change in the method of marketing the heeling machines until the year 1904. As to the occasion for the change which was made in that year, in the early Spring of 1904, as a result of long consideration of the subject, we had started to get out a lease for the Goodyear machines and their auxiliaries, without requiring the payment of an initial price, as had always been the case up to that time. As there were a great many machines in that department, and the amount involved was very large, that matter received a great deal of consideration, and it was not until late in that year that such a lease was finally prepared, not in fact until months after we expected to have it ready. Having that in contemplation, we had decided that if we were to remove that source of income, give up that source of income for the company, that we should be entitled to receive from that factory a surety of a further income, so the heeling machines were limited by that lease to use with the Goodyear department machines and some other departments.

"That was in effect simultaneous with the taking off of the initial payment on the Goodyear machines, because during the year 1904, while we had under contemplation this lease and were working on it, we furnished to a large number of manufacturers the loan of Goodyear department machines, and my remembrance is that in the case of every machine that was placed out after July 1st in that year, 1904, the manufacturer was allowed to exercise his choice of taking them upon the non-initial form of lease when it was gotten out, or the initial payment.

"With reference to preserving an alternative form of heeling department lease, it has always been the policy of the company to maintain the right of the lessee to take a machine upon the preceding form of lease, if he cared to have it that way. There never has been a time when a lessee could not obtain the machines of any department upon an independent form of lease.

"The business reasons which led us to the adoption of the form of Goodyear lease without the payment of initial premium but accompanied by restrictive leases in the heeling department and the lasting department were as follows:

"The manufacture of Goodyear welt shoes required up to that time the investment of a very much larger amount of money for machinery and equipment than was required for any of the other types of shoes. This had resulted in the manufacture of welt shoes being limited to quite a large degree to those manufacturers who had a substantial amount of capital, but some of those manufacturers had seen their businesses grow so fast that they were embarrassed to find the money to add to their equipment. That was especially true as regards the auxiliary machines. Our company had spent a great many thousands of dollars to develop the auxiliary machines and believed that the use of all the auxiliary machines would produce a better shoe and that every manufacturer ought to have the benefit of them. They would facilitate the manufacture of a shoe, but it was a grave question with many of the manufacturers whether the improvements in quality or the little savings that could be made by the use of the auxiliary machines would warrant their investing their money in those machines in a fixed form rather than using it in their business, where they turned it over two or three times a year.

"Furthermore, the removal of initial payments would allow those who were entering into shoemaking, and all the other small manufacturers who were making other kinds of shoes, to equip their factories with a complete system for making Goodyear welt shoes so that they would be as well equipped as the largest and richest manufacturer in the country. The United Company believed that if those opportunities were offered its revenue and the manufacture of the Goodyear welt shoe would be very much increased. This of course required an investment by the United Company of a very large sum of money without any immediate return.

"I believed in the Goodyear shoe. I think there is no question in the minds of manufacturers, or of wearers who know the differences between shoes, that it is the best kind of footwear for any person to wear, and our endeavor was to bring that shoe within the reach of everyone."

D. SUMMARY OF MODIFICATIONS MADE BY THE UNITED COMPANY IN THE CONSTITUENT COMPANIES' LEASES.

(1) GENERAL SUMMARY OF MODIFICATIONS.

As we have stated, the modifications made by the United Company in the constituent companies' leases were for the purpose of making the leases consistent or to meet new or special conditions requiring a change. It should be very clearly understood that these modifications did not apply merely to machines of the exact type acquired from the constituent companies, but to entirely new machines or machines remodeled, improved, made vastly more efficient by the inventions of the experts of the United Company, to which had been added many new auxiliaries similarly invented and developed mostly for the purpose of facilitating the manufacture of the Goodyear shoe. The following is a summary of the modifications:—

1. The period of all the leases has been limited to seventeen years.

This was done to make the leases consistent and to make them run for a definite term. The employment of this definite term of seventeen years did not increase the term of the leases. Some of the leases of the constituent companies ran for the life of the machine; some ran for seventeen years and for such longer time as the patents embodied in the machines were in existence, and some ran for the life of the patents and for such further time as any patents then or thereafter embodied in the machines were in existence.

2. The Additional Machinery Clause, employed in a number of the leases of the constituent companies, requiring the lessee to take additional machines from the lessor for additional work, thus requiring the lessee to use machines of the kind leased exclusively, was eliminated from all leases in or before 1907. The Exclusive Use Cancellation Clause, that is, a clause permitting the lessor to cancel leases of its machines of

the particular kind covered by the lease, if the lessee supplied himself with other machines of the same kind to do his work, which clause had been used by the McKay Company prior to the organization of the United Company, was substituted for the Additional Machinery Clause and inserted in most of the leases of royalty paying machines. By this clause the lessee was under no obligation to use the machines of the kind used exclusively. An option was reserved to the lessor to cancel if other machines of the same kind were used.

If the Additional Machinery Clause which had been used by the constituent companies closed the door to competitors, the Exclusive Use Cancellation Clause which the United Company substituted for it clearly opened the door to competition.

3. The Full Capacity Clause requiring the use of the machines leased to their full capacity, so far as the lessee had work which they could perform, which was employed in certain of the leases of the constituent companies, was continued by the United Company and made to apply to such of its machines as are used to measure the amount of work done and royalty to be paid.

4. The Restricted Use Clause was employed in alternative forms of leases for certain kinds of machines limiting their use to use on shoes operated on also by one or more other kinds of machines leased from the United Company.

This is the provision most strenuously attacked by the United States. It was employed prior to the formation of the United Company by the Goodyear Company, which restricted the use of its lasting machines on welted shoes to use on shoes operated on by the welter and stitcher (*supra*, p. 261).

This clause, as we have explained, offers a wholesale rate to those lessees who desire to use two or more of the lessor's machines of different departments together.

In every instance where a lease of this kind restricting the use of the machines to use with machines of other departments is offered, an alternative form of lease is also offered in which the same or a smaller initial payment than that formerly required by the constituent companies is charged and such restriction is omitted. These initial payment forms of lease without the Restricted Use Clause are as favorable or more

favorable than the leases offered by the constituent companies prior to the formation of the United Company.

5. The United Company has adopted the Cancellation for Breach Clause in its new leases, permitting it to cancel all leases with the lessee for violation of any condition expressed by the lease to be obligatory upon the lessee. This merely permits the United Company to sever relations with a lessee who violates his agreements. Prior to the organization of the United Company the constituent companies in general leased their machines on a single lease, adding to the old lease the numbers of the machines leased after the first one, so a single cancellation clause gave them the right in case of necessity to sever relations with a lessee. The United Company practically makes a separate lease for each machine so that the effect of its Cancellation for Breach Clause is practically the same as the effect of the cancellation clause in the leases of the constituent companies.

(2) MODIFICATIONS IN LEASES OF GOODYEAR MACHINES.

The United Company made no changes in the Goodyear Machinery leases until December, 1900, a year and nine months after its organization (R. Vol. 1, p. 7, lines 19–23).

The lease then adopted (P.'s Ex. 23, R. Vol. 3, p. 204) contained in the fourth clause (R. Vol. 3, p. 207) the same restrictions upon the use of the machines as was contained in the former Goodyear Company lease (P.'s Ex. 4, par. Sixth, R. Vol. 3, p. 33; for description of this lease see also *supra*, pp. 259–260). This new form of lease was made applicable both to the welt set and the turn set of machines; the Goodyear Company had used different leases for the two sets of machines (R. Vol. 1, p. 7, lines 23–26).

In the new lease the United Company omitted the clause previously contained in the turn set lease (P.'s Ex. 3) by which the lessee agreed in Clause Sixth not to use in its factory any sewing machines not leased from the lessor and substituted the Exclusive Use Cancellation Clause which merely gives the

lessor an option to cancel if its machines of this particular kind are not used exclusively (P.'s Ex. 23, par. Seven, R. Vol. 3, p. 209). The royalty on turn shoes was reduced 50 per cent., from a net price of 1½ cents for women's shoes to ¾ of a cent (P.'s Ex. 23, R. Vol. 3, p. 207).

The principal changes then were the reduction of the royalty on the turn machines and the elimination of the agreement in the turn lease that the machines be used exclusively.

No further change was made until January 1, 1905. In the fall of 1904 the United Company determined to offer an optional form of lease for its Goodyear set without the initial payments. The initial payment theretofore charged was $300 for the welt and turn machine and $300 for the stitcher (R. Vol. 1, p. 21, lines 10–12). The initial payments on the auxiliary machines ran as high as $500 for the more important machines (Defs.' Ex. 230A, R. Vol. 5, p. 443). It had been one of the purposes in forming the United Company to reduce if possible the cost of installing Goodyear machines and thus to extend their use (R. Vol. 1, p. 407, lines 22–30). January 1, 1905, a new form of lease without initial payment was put out (R. Vol. 1, p. 7, lines 36–41). Two forms of lease were provided, one for the sewing machines, namely the welter and stitcher, and one for the auxiliary machines (P.'s Ex. 24, R. Vol. 3, p. 214; P.'s Ex. 25, R. Vol. 3, p. 226).

In these new forms no change was made in the restrictions imposed on the use of the machines. As in the case of the old Goodyear leases the welter and stitcher were to be used together and the auxiliary machines were limited to use with the welter and stitcher. To compensate for the removal of the initial payment the Full Capacity Clause was inserted, but it was made applicable only to the welter and stitcher, which are the two machines which record the amount of use (P.'s Ex. 24). The lessee agreed to pay royalty on all welted and turn shoes manufactured by him by the aid of machinery (P.'s Ex. 24, par. Six, R. Vol. 3, p. 218). A small minimum payment was guaranteed and a payment upon the return of the machine was provided for amounting to only one-half of the initial payment previously demanded.

In the lease of auxiliary machines a small annual rental for each machine was substituted for the initial payment (P.'s

Ex. 25). This annual rental was very small compared with the initial payment previously required (Defs.' Ex. 230A, R. Vol. 5, p. 443). It was required so that a lessee should not, because they cost him nothing, take and hold auxiliary machines on which he paid no royalty, which were not needed by him.

The United Company continued to put out an initial payment form of lease (P.'s Ex. 26, R. Vol. 3, p. 241) which contained a full capacity clause, but otherwise was substantially the same as the form adopted in 1900 which followed the old Goodyear form of lease. The lessee, therefore, who chose to make the initial payments which had been required by the Goodyear Company and the United Company theretofore, could just as before get machines on the same terms previously asked by the Goodyear Company.

As Mr. WINSLOW testified:—

> "Both forms of Goodyear department leases, the old initial premium form and the non-initial premium form, have been continued as alternatives up to the present day at the choice of the manufacturer.
>
> "The difference between these leases, other than the initial premium, is that under the non-initial form the lessee paid royalty on all shoes welted or stitched in his factory, while on the initial form he paid royalty on all shoes welted or stitched on the leased machines" (R. Vol. 1, p. 442, lines 4–12).

In addition to these modifications in the regular form of leases various riders have from time to time been adopted to meet the wishes of lessees having special conditions to meet or special uses to which they wished to put the machine (Defs.' Exs. 278–279–280–281–283–284–285–286–287–288–289–290–291–292–293–294, R. Vol. 5, pp. 777–94). For example, Defendants' Exhibit 278 permits the auxiliary machines of the Goodyear Department to be used upon classes of footwear other than Goodyear welt shoes. (For an explanation of these riders see R. Vol. 1, pp. 822–5.) When any such rider was executed for one lessee it was immediately made available to any lessee who wished it (R. Vol. 1, p. 823, lines 7–16).

Mr. DONHAM testified:—

"Before the formation of the United Company the Goodyear Company charged an initial payment of $300 each on the welter and the stitcher. That sum has never been increased by the United Company. Wherever an initial payment has been charged by the United Company on the welter and the stitcher it has remained the same; but in 1905 the United Company offered those machines without that initial payment. The royalty charged by the Goodyear Company, before the United Company was formed, was the same as to-day. It has never been increased, but in the meantime both the welter and the stitcher have been very much improved, the auxiliary machines which the Goodyear Company had have been improved, and the United Company has introduced many additional auxiliary machines, all for the same royalty.

"In Plaintiff's Exhibit 25, the form of lease for Goodyear auxiliary machines, the figures in column 2 of the schedule are the small annual rentals paid for the machines against which they are set, when the machines are taken without initial payment. Otherwise there is no charge whatsoever for the use of those machines, but they are limited to use with the welting and stitching machines, in respect to which there is a royalty charge. That royalty charge for the principal machines is the same whether the lessee has the auxiliary machines or not.

"When the United Company was formed there were 16 or 17 auxiliary machines. The number has been increased, and now there are about 30 auxiliary machines. Those are all furnished to lessees of the welter and stitcher in the same way that the original 16 or 17 machines were furnished, without increase in the royalty and for a similar nominal charge.

"The United Company has reduced the royalty charged by the Goodyear Company for the use of its machines in making turn shoes, so that it is now only fifty per cent. of the royalty which was charged by the Goodyear Company" (R. Vol. 1, p. 21, lines 10–42).

The result of the modifications in the Goodyear leases has been an enormous saving to shoe manufacturers. In the first place, the lessee can get his machines without an initial payment. In the second place, the royalty on turn shoes has been reduced 50 per cent. In the third place, the lessee is given for the same royalty previously charged on welt shoes

and one-half the royalty previously charged on turn shoes a vastly improved welter and stitcher and much improved auxiliary machines, and, due to the development and acquisition of new auxiliary machines the lessee is also offered for this same royalty 35 welt auxiliary machines instead of 13 welt auxiliary machines furnished in 1899, and 9 turn auxiliary machines instead of 3 turn auxiliary machines offered in 1899 (Defs.' Exs. 242–243–244–245, R. Vol. 5, pp. 681–3). In view of the charge of the petition that the defendants designed "to enhance the cost of said machines to users thereof" (R. Vol. 1, p. 997) the foregoing illustration of the reduction in cost to users of the machines is illuminating.

The elimination of the initial payments has enabled many shoe manufacturers of small capital to manufacture Goodyear welt and Goodyear turn shoes.

Furthermore, the history of these Goodyear leases refutes completely the charge that the defendants planned to "refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind," which is the charge on which the petition is founded (R. Vol. 1, p. 994).

The Goodyear Welter and Stitcher are as important as any machines produced by the United Company. Chapman, the patent expert for the United States, declared them to be the only essential machines for making a welt shoe (R. Vol. 2, p. 2794). The lessee of the Goodyear welter and stitcher, however, is not obligated to use any other machinery whatsoever. He is not even required by the leases to use Goodyear machinery exclusively. The clause contained in the old Goodyear Turn lease requiring the exclusive use of the lessor's turn machinery was eliminated in 1900, showing conclusively that the United Company did not plan to require an exclusive use of its machines by the adoption of new clauses in its leases as charged in the petition. The Goodyear auxiliary machines are limited to use with the welter and stitcher, but this clause was in the old Goodyear leases, and the lessee can use with the welter and stitcher any auxiliary machines obtained from others that he chooses. The Exclusive Use Cancellation Clause is applicable only to the use of the welter and stitcher; the United Company has no option to cancel its leases of its

Goodyear Machines if auxiliary machines obtained from others are used. No Restricted Use Clause has been inserted in this lease. A lessee may obtain and use Goodyear machines without using any of the 250 or more other machines manufactured by the United Company.

(3) MODIFICATIONS IN LEASES OF LASTING MACHINES.

(a) Lease of Ideal Lasting Machine.

The United Company made no change in the lease of the Ideal Lasting Machine until August, 1901. It then put out a new form which substantially followed the old Goodyear form (R. Vol. 1, p. 6, lines 22–29). (Goodyear Company's form P.'s Ex. 5, R. Vol. 3, p. 37; *supra*, pp. 261–262; new form P.'s Ex. 18, R. Vol. 3, p. 154.) As in the old form the use of the machine was restricted to use on shoes operated on by the Goodyear Welter and Stitcher, and the auxiliaries were restricted to use with the principal machine. Under the new form the royalty and initial payment remained the same. The lease contained the Full Capacity Clause and the Exclusive Use Cancellation Clause. The clause in the former lease requiring the lessee to purchase from the lessor all tacks used in the loose tackers was omitted.

No other lease of Ideal machines has been put out (R. Vol. 1, p. 6, lines 28–9). It is to be noted that the United Company inserted no new provision obligating the lessee to use any other machines or requiring the lessee to use its lasting machines exclusively.

On the introduction of the new No. 5 laster the Ideal machine became practically obsolete (R. Vol. 1, p. 971, lines 5–8).

(b) Lease of McKay and Copeland Lasting Machine.

The form of lease used by the Consolidated Company (P.'s Ex. 6, R. Vol. 3, p. 45; see also, for description of this lease, *supra*, pp. 262–263) continued to be the only form used until

August, 1903, four and one-half years after the formation of the United Company (R. Vol. 1, p. 6, lines 38–39). The United Company then put out an additional form (P.'s Ex. 20, R. Vol. 3, p. 172). This lease reduced the initial payment previously required from $695 to $500 or less (R. Vol. 1, p. 454, lines 3–8) and contained a Restricted Use Clause limiting the use of the machine to use with the United Company's welter, stitcher, pegger, metallic and heeling machines. It continued the Full Capacity Clause which was in the old form of lease. It omitted, however, the Additional Machinery Clause and instead inserted the Exclusive Use Cancellation Clause. The elimination of the Additional Machinery Clause eliminated the requirement of exclusive use; the insertion of the Restricted Use Clause was coincident with the reduction of the initial payment. The new form of lease was an alternative form, and any lessee could still obtain the old form if he desired it (R. Vol. 1, p. 852, lines 5–21).

These machines were used to a comparatively small and continually decreasing extent (R. Vol. 1, p. 454, lines 8–9).

(c) Lease of Chase Lasting Machine.

The form of lease used by the Consolidated Company (P.'s Ex. 7, R. Vol. 3, p. 57; see also, for description of this lease, *supra*, pp. 263–264) continued to be the only form used until June, 1901, when an additional form was adopted by the United Company (R. Vol. 1, p. 6, lines 32–35) (P.'s Ex. 19, R. Vol. 3, p. 163). The new form contained a Restricted Use Clause restricting the use to use with welting, stitching, and metallic fastening machines leased from the United Company. The Additional Machinery Clause was omitted and the Exclusive Use Clause substituted.

This new form was an alternative form, and the former lease without the Restricted Use Clause could be had by any lessee who desired it (R. Vol. 1, p. 543, lines 17–18). On the introduction of the new No. 5 Laster the Chase machine became practically obsolete (R. Vol. 1, p. 971, lines 5–8).

(d) Lease of Consolidated Hand Method McKay Lasting Machine.

The Consolidated Company had two forms of lease for this machine, one requiring an initial payment of $300 and a net royalty of ½ cent per pair (P.'s Ex. 8, R. Vol. 3, p. 68), the other requiring no initial payment and a net royalty of ⅝ cent and containing the Full Capacity Clause and the Additional Machinery Clause thus requiring the exclusive use of the machines (P.'s Ex. 9, R. Vol. 3, p. 74; see also, for description of these leases, *supra*, pp. 264-265)

These forms were continued until the end of 1900 (R. Vol. 1, p. 5, lines 28–33). The United Company then adopted two forms of lease. It adopted an initial payment form (P.'s Ex. 14, R. Vol. 3, p. 121) in which $300 initial payment was required and ½ cent net royalty (R. Vol. 1, p. 6, lines 2–5). This form contained the Full Capacity Clause and the Exclusive Use Cancellation Clause. It contained no Restricted Use Clause. The United Company also adopted a non-initial payment form (P.'s Ex. 16, R. Vol. 3, p. 137) requiring no initial payment, a net royalty of ⅝ cent, and in addition to the clauses contained in the initial form a Restricted Use Clause limiting the use of the machines to use with metallic fastening and Goodyear sewing machines leased from the United Company.

As to this lease, Mr. Winslow testified that the restriction as to use with Goodyear sewing machines was of no effect, as the machine was adapted for use only on McKay work on which Goodyear machines were not used. It was only inserted in the leases so that if the machines were remodeled to do welt work, they would be restricted like the welt lasting machines under Plaintiff's Exhibit 15 (R. Vol. 1, p. 540, lines 24–34).

(e) Lease of Hand Method Welt Laster.

This machine in 1899 was not perfected commercially. It was offered by the Consolidated Company on a form of lease with the Full Capacity Clause and the Additional Machinery

Clause and a royalty of one cent per pair (P.'s Ex. 10, R. Vol. 3, p. 82; see also, for description of this lease, *supra*, pp. 265-266).

This form was continued by the United Company until December, 1900, when it adopted a non-initial payment form (R. Vol. 1, p. 6, lines 5–9) which reduced the royalty from one cent to $\frac{5}{8}$ of a cent per pair, which continued the Full Capacity Clause, but eliminated the Additional Machinery Clause and substituted the Exclusive Use Cancellation Clause, and which contained the Restricted Use Clause restricting the use to use with Goodyear sewing machines (P.'s Ex. 15, R. Vol. 3, p. 129). In other words, the agreement to use the machines exclusively was eliminated, the royalty was reduced, and a Restricted Use Clause substituted. The United Company later adopted another alternative form requiring an initial payment of $300, a net royalty of $\frac{5}{8}$ of a cent, but which contained no Restricted Use Clause (P.'s Ex. 17, R. Vol. 3, p. 145; R. Vol. 1, p. 6, lines 15–21).

(4) MODIFICATIONS IN LEASES OF HEELING MACHINES.

The lease of heeling machines put out by the McKay Company required a net royalty of $\frac{1}{4}$ cent and contained an Exclusive Use Cancellation Clause (P.'s Ex. 11, R. Vol. 3, p. 90; see also, for description of this lease, *supra*, p. 267).

The United Company made no change in this lease until January, 1900 (R. Vol. 1, p. 9, lines 23–24). At that time the United Company adopted an additional form of lease, continuing the same royalty and containing the Full Capacity Clause, and the Additional Machinery Clause (P.'s Ex. 27, R. Vol. 3, p. 254). In 1904 (R. Vol. 1, p. 9, lines 29–32) it adopted for the first time a form of lease containing a Restricted Use Clause limiting the use of the machines to use with Goodyear sewing machines, lasting, pegging, and metallic machines leased from the lessor (P.'s Ex. 28, R. Vol. 3, p. 261). No initial payment was required. The Additional Machinery Clause was eliminated. After the adoption of this form the United Company furnished its heeling ma-

chines, which had been much developed and improved since 1899, with an initial payment, and without the Restricted Use Clause, by attaching a rider to Exhibit 28 inserting the initial payment and striking out the Restricted Use Clause (R. Vol. 1, p. 9, line 38–p. 10, line 23).

The reason for the insertion of the Restricted Use Clause in 1904, was, as we have explained above (*supra*, pp. 277–278), that at that time the United Company determined to adopt the non-initial payment form of Goodyear lease, thus depriving itself of a large cash initial payment. This it could afford to do only if economies were effected, and added efficiency and productivity obtained in some other ways. For this reason the heeling machines when taken on the non-initial payment form of lease were restricted to use with the welter and stitcher, thus reducing the cost of furnishing service for the group, and making the use of the group more efficient, and productive of greater royalties, and thus compensating in part for the removal of the initial payments previously charged for the welter and stitcher (R. Vol. 1, p. 440, line 16 *et seq.*).

(5) MODIFICATIONS IN LEASES OF METALLIC MACHINES.

Prior to 1899 this machinery was put out on a lease requiring the lessee to purchase all metallic material used in the machine from the lessor or pay a royalty of ten cents a pair on the shoes operated on. No initial payment was required, but the lease contained the Exclusive Use Cancellation Clause (P.'s Ex. 12, R. Vol. 3, p. 103; see also, for description of this lease, *supra*, pp. 267–268). A short time prior to 1899 the McKay Company had discontinued the use of this lease and had been temporarily putting out its machines without leases pending the adoption of the new form. This practice was continued by the United Company up to March, 1900 (R. Vol. 1, p. 438, lines 10–13). In March, 1900, the United Company adopted the form of lease requiring no initial payment, containing the Full Capacity Clause and the Additional Machinery Clause, but containing no Restricted Use Clause and no

Exclusive Use Cancellation Clause (P.'s Ex. 29, R. Vol. 3, p. 272; R. Vol. 1, p. 10, lines 24–28).

In June, 1900, a lease containing a Restricted Use Clause was adopted restricting the use of the metallic machines to use with lasting machines, and in the case of welts or turns with a welter and stitcher, obtained from the lessor (P.'s Ex. 30, R. Vol. 3, p. 278). The Additional Machinery Clause was eliminated and a clause was substituted permitting the lessor to cancel if the lessee did not take additional machinery. The entire return to the United Company on its metallic machines came from the use of fastening materials made largely of copper which the lessee used in the machine and was required to purchase from the lessor. Copper had increased so much in price that at the price charged by the United Company for the materials it did not receive a fair royalty on its machines. Instead of increasing the price of the materials it restricted the machines to use with the welter and stitcher and lasting machines, thus obtaining an indirect royalty through the royalties received on these other machines The reasons for so doing are fully explained above (*supra*, pp. 275–276).

Shortly afterwards, in March, 1901 (R. Vol. 1, p. 10, line 40–p. 11, line 2), the United Company adopted a form requiring no initial payment and containing no Restricted Use Clause, in which form it reserved the right to charge 10 per cent. more for fastening material than was charged under the lease containing the Restricted Use Clause (P.'s Ex. 31, R. Vol. 3, p. 287). It also adopted a rider, which it attached to the Restricted Use form of lease (P.'s Ex. 30), eliminating the Restricted Use Clause and substituting an initial payment (P.'s Ex. 32, R. Vol. 3, p. 297; see also R. Vol. 1, p. 11, lines 5–17). A lease with this rider incorporated was drawn up in 1911 (P.'s Ex. 33, R. Vol. 3, p. 307; R. Vol. 1, p. 11, lines 18–20). A lessee of metallic machinery has, therefore, been at all times since 1901 able to take a non-initial payment form of lease containing the Restricted Use Clause or a lease without the Restricted Use Clause under which he either paid not in excess of 10 per cent. more for material or, at his option, paid an initial premium.

The lease adopted in March, 1901, without the Restricted

Use Clause was the result of negotiations with the shoe manufacturers (R. Vol. 1, p. 439, lines 13–19), who acted through the New England Manufacturers' Association (R. Vol. 1, p. 635, lines 18–42). Plaintiff's Exhibit 31 was agreed upon as satisfactory in every respect to the shoe manufacturers (R. Vol. 1, p. 635, lines 35–38). It was agreed that a lessee could change his lease from the form containing the Restricted Use Clause (P.'s Ex. 30) to the form without the Restricted Use Clause (P.'s Ex. 31) at any time prior to February 1, 1902 (R. Vol. 1, p. 663). The United Company further stated its intention to offer both leases ndefinitely after February 1, 1902 (R. Vol. 1, p. 663, lines 24–26) which intention was carried out (R. Vol. 1, p. 664, lines 1–4). Most shoe manufacturers took the form of lease containing the Restricted Use Clause (R. Vol. 1, p. 664, lines 4–8).

(6) MODIFICATION IN LEASE OF DAVEY PEGGING MACHINE.

The lease of the Davey Pegging Machine Company, at the time of the formation of the United Company, required an initial payment of $100, required the lessee to do all his pegging on the leased machines, and contained the Additional Machinery Clause (P.'s Ex. 13, R. Vol. 3, p. 113; see also, for description of this lease, *supra*, p. 266). This lease was used by the United Company until 1901 (R. Vol. 1, p. 14, lines 36–37), when the United Company adopted a form of lease which eliminated the initial payment, and which also eliminated the Additional Machinery Clause, *i.e.*, the agreement to use exclusively (P.'s Ex. 45, R. Vol. 3, p. 413). It contained the Full Capacity Clause and the Exclusive Use Cancellation Clause and also a Restricted Use Clause limiting the use of the machine in connection with the United Company's lasting and metallic machines. It also adopted an initial payment form of lease (R. Vol. 1, p. 14, lines 43–45) which contained no Restricted Use Clause (P.'s Ex. 46, R. Vol. 3, p. 422).

Here again the Restricted Use Clause was inserted upon the removal of the initial payment, and the old form of lease

without the Restricted Use Clause was continued as an alternative. In this case also the Additional Machinery Clause, or agreement to use exclusively, was eliminated.

E. LEASES ADOPTED BY THE UNITED COMPANY FOR NEW MACHINES.

Many new machines, as we have stated, especially in the Goodyear Department, which were auxiliary to principal machines already in use, were added to the line of auxiliary machines already leased without charging any additional royalty and were leased under the existing forms of lease.

In the case of other machines of new types which were developed by the United Company new leases were necessarily adopted which were substantially similar to the forms of lease in use at the time. In the case of all important machines two alternative forms were adopted. In one form no initial payment was charged and there was a Restricted Use Clause restricting the use to use in connection with machines of one or more of the following groups, namely, Goodyear sewing machines (*i.e.*, the Welter and Stitcher), lasting machines, metallic machines, and in certain cases pegging and heeling machines, and in one instance pulling-over machines. In the other form of lease an initial payment was charged and the Restricted Use Clause was omitted. In the case of most of the General Department machines the alternative was the right to purchase, the machines being sold outright.

(1) Pulling-over Machine Leases.

The pulling-over machines were invented and developed by the United Company and the first lease put out about 1902 (R. Vol. 1, p. 11, lines 37–40). This first form of lease (P.'s Ex. 36, R. Vol. 3, p. 331) contained the Full Capacity Clause, the Additional Machinery Clause, and a Restricted Use Clause limiting the use of the machine in connection with the welter, stitcher, lasting, metallic fastening, pegging, and heeling machine of the United Company. By 1905 the United Com-

pany had developed a series of auxiliary machines, and a new lease was adopted (R. Vol. 1, p. 12, lines 9–13) which covered the principal machines and the auxiliary machines and limited the use of the auxiliary machines to use in connection with the principal machines and which contained the Exclusive Use Cancellation Clause (P.'s Ex. 37, R. Vol. 3, p. 339). In other respects it was substantially similar to the previous lease.

In 1907 a lease containing substantially the same terms was adopted, except that it eliminated the Additional Machinery Clause (Defs.' Ex. 345, R. Vol. 5, p. 958; see also R. Vol. 1, p. 980, line 43–p. 981, line 20). In 1909 a new form was adopted (R. Vol. 1, p. 12, line 23) which permitted the use of the auxiliary machines on shoes not operated on by the principal pulling-over machine and which contained the same Restricted Use Clause. It likewise omitted the Additional Machinery Clause (P.'s Ex. 38, R. Vol. 3, p. 350).

An alternative form of pulling-over lease requiring an initial payment and omitting the Restricted Use Clause was also offered lessees (P.'s Ex. 39, R. Vol. 3, p. 363).

(2) Clicking Machine Lease.

The Clicking Machine was invented and developed by the United Company about 1908 (R. Vol. 1, p. 14, lines 27–33). The lease adopted for this machine has never had a Restricted Use Clause limiting its use in connection with other groups of machines (P.'s Ex. 44, R. Vol. 3, p. 402). The lease provides that the lessee shall pay a certain sum in respect to all dies used on the machines. It further provides for a royalty payment when the machine is used on shoes lasted on machinery not leased from the United Company or welted or stitched on machinery not leased from the United Company. It contains the Exclusive Use Cancellation Clause.

(3) Eyeletting Machine Leases.

The United Company first developed and put out its eyeletting machines in 1902 (R. Vol. 2, pp. 2617–22; 2636).

The United Company adopted a form of eyeletting machine lease requiring an initial payment of $100 and containing no

Restricted Use Clause (P.'s Ex. 42, R. Vol. 3, p. 387; P.'s Ex. 173, R. Vol. 4, p. 1184). It also adopted a non-initial payment form of lease containing a Restricted Use Clause limiting the use in connection with the welter, stitcher, lasting, pegging, metallic fastening and heeling machines of the United Company (P.'s Ex. 43, R. Vol. 3, p. 394; P.'s Ex. 172, R. Vol. 4, p. 1176).

Neither lease contained the Exclusive Use Cancellation Clause. Both leases required as royalty the use of eyelets purchased from the lessor.

The Vulcan Foot-power Eyeletting Machine was put out for an initial payment of $15 and was never restricted to use with other machines and the lease covering it did not contain the Exclusive Use Cancellation Clause (R. Vol. 1, p. 28, lines 20–24; P.'s Ex. 174, R. Vol. 4, p. 1191).

(4) No. 5 Lasting Machine Leases.

The No. 5 Lasting Machine is a new type of lasting machine invented and developed by the United Company and first put out about 1908 (R. Vol. 2, p. 2378).

Two forms of lease were adopted for this machine,—one requiring an initial payment and containing no Restricted Use Clause restricting its use to use with other machines (P.'s Ex. 22, R. Vol. 3, p. 193); the other a restricted use form of lease requiring no initial payment and restricting the machine to use with the United Company's Goodyear Welter and Stitcher, pulling-over machines, and metallic machines (P.'s Ex. 21, R. Vol. 3, p. 182). Both forms of lease have the Exclusive Use Cancellation Clause.

(5) General Department Machine Leases.

The General Department machines, comprise over 170 different machines (Defs.' Ex. 227, R. Vol. 5, p. 425). The United Company's entire business in these machines has been developed by the United Company since its formation.

The General Department machines have at the option of the shoe manufacturer been either sold or leased. Since 1911 they have been only sold (R. Vol. 1, p. 12, line 37–p. 13, line

30). The leases of these machines required a small initial payment or a small annual rental, but called for no royalty. They contained a Restricted Use Clause restricting use to use with other groups of the defendants' machines. Under this form of lease the United Company, outside of the small initial payment or rental provided for by the lease, receives no return, except indirectly through the royalties received from other groups of machines to use with which the General Department machines are restricted and through the added efficiency of such other groups of machines.

Plaintiff's Exhibit 40 (R. Vol. 3, p. 373), adopted in 1902 (R. Vol. 1, p. 13, lines 9–16), is the General Department lease requiring an initial payment. It has a Restricted Use Clause restricting the use to use in connection with the lessor's welter, stitcher, lasting, pegging and metallic fastening machinery. It contains no Exclusive Use Cancellation Clause or Full Capacity Clause. The purpose of these two clauses is to insure an adequate return in the way of royalties to the lessor. As the General Department machines carry no royalty, the clauses are omitted.

Plaintiff's Exhibit 41 (R. Vol. 3, p. 379) is the form of General Department lease requiring a small yearly rental. It contains the same Restricted Use Clause and, like the initial payment form, contains no Exclusive Use Cancellation Clause or Full Capacity Clause.

(6) Insole Machine Leases.

Before the United Company was formed the Gem Flexible Insole Company was engaged in the business of manufacturing and leasing a set of machines for making the patented Gem insole, a light canvas insole for use with welt shoes. After the United Company was formed the patents on the insole and the machines for producing it were acquired (R. Vol. 1, p. 15, lines 16–21). The United Company added the Gem insole machine to its Goodyear auxiliary set and abated the ½ cent a pair formerly charged (R. Vol. 1, p. 430, lines 11–13; p. 571, lines 24–29).

The lease of the Gem insole machine contains a Restricted Use Clause limiting the use to the manufacture of patented

insoles to be used on welt shoes welted and stitched on the United Company's machines. It contains no Exclusive Use Cancellation Clause or Full Capacity Clause (P.'s Ex. 51, R. Vol. 3, p. 443).

As to the Company's action respecting the Gem insole machines Mr. Winslow testified that they did it,--

> "so as to reduce the cost to the manufacturer of the Goodyear welt shoe, as we have all of these things that you have treated in that way. . . . we were hoping to increase the total manufacture of those shoes and thereby benefit the public" (R. Vol. 1, p. 571, lines 37–42)

Some years later (1907) the Company acquired the patent for the Economy insole for welt shoes (R. Vol. 1, p. 15, lines 35–39).

The lease of the Economy insole machine (P.'s Ex. 52, R. Vol. 3, p. 450) limits the machines to making a patented insole to be used in Goodyear welt shoes or as a sole in Goodyear turn shoes. The auxiliaries are limited to use with the principal machine. It contains the Full Capacity and Exclusive Use Cancellation Clauses. This is practically an auxiliary Goodyear machine except that in distinction from the other auxiliary machines a small royalty is charged for its use.

(7) McKay Sewing Machine Lease.

The constituent companies did not manufacture the McKay sewing machine. When the United Company started to manufacture it, it always either sold the machine or leased it at the option of the manufacturer. The machine was sold for $250 to $600 according to the type of the machine. It was leased for an initial payment of $100 and a rental of $5 per month and without any further royalty charge (R. Vol. 1, p. 29, lines 25–35). The lease (P.'s Ex. 170, R. Vol. 4, p. 1161) limited the use of the machine to use on shoes lasted by the United Company's machines. It contained no Full Capacity or Exclusive Use Cancellation Clause, as the machine was not a royalty machine.

The United Company did not begin to put out the machines covered by this lease until 1908 (R. Vol. 1, p. 977, lines 11–12).

F. USE OF RIDERS AND SPECIAL FORMS OF LEASE.

The United Company was always ready to adopt a new form of lease or a rider modifying its existing form of lease to meet new conditions or to accommodate lessees who wanted to use machines of other makers together with machines of the United Company (R. Vol. 1, p. 442, line 42—p. 443, line 2). The regular forms of lease set forth are only such as are in general use. In addition the United Company had numerous riders which were adopted to meet such special conditions as they arose. (For the application of the various forms of riders see R. Vol. 1, pp. 822–828.) When any such rider was given one lessee other lessees were always free to obtain it (R. Vol. 1, p. 823, lines 7–16). Examples of such riders and agreements are given in Defendants' Exhibits 278–310 (R. Vol. 5, pp. 777–838).

Mr. WINSLOW testified,—

> "When lessees believed they wanted to put in machines other than those held from our company, or when it seemed to them that the necessities of their business required that they do this, the policy of the company has been to reorganize the leases which they then had so as to leave them in a position to use those other machines" (R. Vol. 1, p. 442, line 42; p. 443, line 2).

12. REASONS FOR USE OF THE VARIOUS CLAUSES AND THEIR LEGALITY.

An examination of the business conditions which led to the adoption of the various clauses will show that they were adopted either to enable the lessor to offer its machines on the best possible terms and so far as possible without initial charge to the lessees, so as to enable them to enter business or extend their business, or to provide for reasonable and proper protection to the lessor, and that such clauses or similar clauses are essential to a commercially satisfactory leasing system when the return to the lessor on its investment is based on the amount which the machines are used.

A. CLAUSE REQUIRING LESSEE TO PURCHASE FROM THE LESSOR ALL REPAIR PARTS NEEDED IN THE MACHINE.

The United States in its petition alleges that lessees were required by the defendants to obtain duplicate parts for the leased machines from the United Company at exorbitant prices (R. Vol. 1, p. 997).

The only evidence offered in support of this allegation that exorbitant prices were charged is as follows:—

Frank C. Rand testified that he paid the United Company $25 for a pair of legs for a leveling machine and that he had a set of legs made himself for $6 not counting overhead charges (R. Vol. 1, p. 179, lines 9–13). On cross-examination he admitted that he did not know whether his mechanic made one or four legs and whether they were wrought or cast iron, and that his statement was hearsay at best (R. Vol. 1, p. 184, lines 25–41).

Herbert L. Cann, the local manager for the United Company in the St. Louis district, testified that the part which broke in Rand's leveling machine was not a leg which supports the machine, but a spindle which supports the last and which is referred to as a leg. This spindle is about 16 inches long, the bottom being made of wrought iron and the upper part of steel. The top part of the spindle in Rand's machine broke and his mechanic merely substituted a new top about 4 inches in length (R. Vol. 1, p. 749, lines 1–15). The United Company supplied entire spindles at $20 a pair (R. Vol. 1, p. 750, lines 10–13). After a year or so Rand obtained new spindles from the United Company to replace the repaired spindles (R. Vol. 1, p. 749, lines 16–17). It appears clearly, therefore, that Rand replaced only a portion of the spindle which the United Company furnished and for which it charged.

Carl H. Gleason, a witness for the defendants, testified that he had been employed in the Cost Department of the W. H. McElwain Company, one of the biggest companies in the country, and he had made a study of the cost of repair parts on the machines that the McElwain Company obtained from

the United Company. He testified as follows (R. Vol. 1, p. 714, lines 17–40):—

> "The cost per pair of shoes for the repair parts on these machines was as follows:—
>
> "Universal channeler, .001 of one cent; insole tacker, .005 of one cent; Rex assembling machine, .009 of one cent; Rex pulling over machine, .07 of one cent; Consolidated hand method lasting machine, .005 of one cent; No. 5 laster, .06 of one cent; tack puller and resetter, .008 of one cent; sole layer, model B, .007 of one cent; loose nailer, No. 2, .01 of one cent; Universal rounder and channeler, .01 of one cent; Rounder and channeler, model E, .01 of one cent; Goodyear automatic leveler, .002 of one cent; lightning heeler, .004 of one cent; Mayo heeler, .008 of one cent; Universal slugger, .01 of one cent; edge setter, .02 of one cent.
>
> "On the welter and stitcher my computation includes, in addition to mere parts, the cost of awls and needles which the machines are using all the time and which are ordinarily classed as supplies. The cost per pair of shoes for the model G welter, including awls and needles, was .15 of one cent per pair; for the model K stitcher, including awls and needles, .2 of one cent per pair; for the model M stitcher, including awls and needles, .08 of one cent per pair.
>
> "I also computed the cost of repair parts on the model K stitcher, not including the needles and awls, and that is .1 of one cent per pair."

Mr. Winslow testified that the profits of the United Company from repair parts for the year 1911 were $276,000, while the net cost of repairing and putting into condition Goodyear, heeling, lasting, pulling-over, and metallic machines returned by lessees *in excess* of the charges made to customers for such work was $277,763.49, that is, $1,600 more than the entire profits on the parts (R. Vol. 1, p. 853, lines 12–18). He further testified that from the figure of $276,000 as profits for parts there had not been deducted any interest on capital or loss on obsolete parts (R. Vol. 1, p. 853, lines 1–8), although the loss from repair parts that are manufactured and are never used because they become obsolete runs into thousands each year (R. Vol. 1, p. 853, lines 9–11), and although the United Company carried an investment in parts for the year

1911 amounting to $1,415,474.49 (R. Vol. 1, p. 979, lines 3–5), on which, of course, it receives no interest return. It, therefore, appears that the total business of supplying parts and repairing returned machines shows a considerable loss. In the charge for repair parts the United Company does not take into account or include the cost to it of the services and expenses of its repair men, amounting to over $1,100,000 a year (R. Vol. 1, p. 554, lines 11–13; p. 979, lines 12–13).

Mr. Winslow further testified that the prices for repair parts, to the best of his knowledge and belief, are the same prices that would be charged by any other company manufacturing parts for machines; and that the prices charged for parts on General Department machines which were sold so that the owner was under no obligation to purchase parts from the United Company were on the same basis as parts for leased machines where the lessee was required to purchase the new parts from the United Company (R. Vol. 1, pp. 553–4).

This Repair Parts Clause is clearly necessary in the leases for the protection of the lessor. The leased machines are the property of the lessor. The new parts placed in the machine become the property of the lessor. When a part wears out it must be replaced by a part which is equally good and which has been made to fit that particular machine; if replaced by a cheaper part, or one which does not properly fit, the machine will be depreciated in value. The cheap part may also cause the machine to break down and thus prevent its earning royalty, and likewise stop work on other royalty-producing machines.

The lessor could properly provide that all repairs to its own machines should be made by itself and that the lessee should have no right to make repairs at all. In such a case the lessor could, of course, provide its own parts needed in the machine. When the lessee is permitted to make repairs on the United Company's machines, he cannot complain because the owner of the machine controls the character of the parts replaced. Nor can a competing shoe machinery manufacturer demand a right to supply parts for machines owned by the United Company.

This clause was employed in all the leases of the constituent companies prior to the formation of the United Company.

Its continuance by the United Company was obviously necessary for its protection. It does not relate to the use of machines or require lessors to take other machines, and certainly constitutes no evidence of a plan to monopolize shoe machinery.

B. CLAUSE REQUIRING PAYMENT OF A RETURN CHARGE ON TERMINATION OF THE LEASE.

The petition charges that the United Company exacted a return charge at the termination of its leases which in some cases amounted approximately to the original cost of building the machines. It appeared that in certain of the leases a small return charge upon the expiration of the lease was required. Absolutely no evidence was introduced as to the cost of building the machines so leased or the comparative amount of this return charge. There is no evidence that the return charge was in any way exorbitant or oppressive.

On the contrary, it was shown that for the year 1911, a typical year, the cost of putting returned machines into condition for use was approximately $350,000, and the charges to lessees on account thereof only about $70,000, showing a loss to the United Company of $277,763.49 (R. Vol. 1, p. 853, lines 15–23).

This allegation of the petition is, therefore, only another example of the unfounded character of the charges made by the United States.

C. CLAUSE LIMITING THE TERM OF THE LEASE TO SEVENTEEN YEARS.

The leases of the constituent companies ran for long and indefinite periods. Thus the leases of certain lasting machines ran for the life of the machines. The McKay Company's heeling machine leases ran for seventeen years and for such further time as the patents embodied then or thereafter in

the leased machine were in effect, and the other leases ran for the life of the patents then or thereafter embodied in the machines. These leases gave the lessor the right to attach improvements to the machines and thus gave it the right by attaching patented improvements to extend the life of the leases indefinitely. As many if not most of the machines when leased embodied inventions for which patents had recently been granted, or for which applications were still pending, and as in many instances improvements in the machines were made from time to time after they were leased, it is obvious that the leases of the constituent companies in most cases ran for more than seventeen years.

The adoption by the United Company of this term for all its new leases did not extend the period and affords no evidence of an intent to obtain a monopoly by new methods as charged in the petition. It was obviously adopted to make the leases consistent.

A long term is essential both from the point of view of the lessor and from the point of view of the lessee. If the United Company is called upon to build and place in the hands of shoe manufacturers millions of dollars' worth of machinery without receiving any initial payment, it obviously cannot do this unless the shoe manufacturers are willing to take this machinery for an extended period so that the resulting royalties will compensate the United Company. The shoe manufacturer also requires an extended period. He proposes to engage in the business on the strength of obtaining patented machinery without initial cost. He must be assured of the right to retain this machinery for an extended period. If his leases ran only for a few years, he might find that after he had established a good-will and built up the business at considerable expense his leases of machines terminated and he could not extend the leases or obtain the machines elsewhere, or his royalties might be greatly increased or he might be required to buy his machines outright and not have sufficient capital to do so.

A lease of shoe machinery under these conditions is like a lease of a building erected for the use of a particular tenant. The landlord refuses to erect the building unless the prospective lessee agrees to take a lease for a sufficiently long term

to compensate him for the capital invested in the building. The lessee on his part is unwilling to locate his business on the premises and establish a good-will in that locality unless he is assured of its permanency by means of a long lease.

The United States will doubtless contend that the long term of the leases makes it more difficult for the rival shoe manufacturers to compete. If this is so, it is merely incidental to a normal and proper contract. That bankers, brokers, and other business concerns have long leases of the premises occupied by them makes it more difficult for the owner of a new building to obtain tenants, but this does not make such leases illegal; that owners of cotton mills are already supplied with cotton machinery makes it more difficult for a manufacturer of new machinery to dispose of his product. If the leases ran for shorter terms,—say for ten or twelve years,—the rival shoe manufacturer would find substantially the same difficulty. Indeed, if the machines had been purchased outright by the shoe manufacturers, it is difficult to see, so far as this seventeen-year term is concerned, how the rival machinery manufacturer would be better off. Shoe manufacturers, if they had purchased machinery, would not discard it until it became obsolete or worn out. Their demands for new machinery would be limited to their requirements for additional machinery.

As said in *Coppage* v. *Kansas*, 236 U. S. 1 (p. 21):—

> "For constitutional freedom of contract does not mean that a party is to be as free after making a contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct."

Nor can the shoe manufacturer complain because he is bound for an extended term. He demands the assurance of an extended period during which he cannot be deprived of his machines, nor his royalties be increased.

In *Chicago, etc., R.R.* v. *Pullman Car Company*, 139 U. S. 79, the Court held legal a contract giving an exclusive right to

the Pullman Company to furnish drawing-room and parlor cars for a period of fifteen years, not only on the railroad company's then road but on any roads thereafter owned by it. The contract was held legal in spite of its extended term and in spite of the fact that it granted an exclusive right to furnish cars, the Court saying (pp. 89–91):—

> "We cannot perceive that such a contract is at all in restraint of trade. . . .
>
> "But we are of opinion that public policy did not forbid the Railroad Company from employing the Pullman Southern Car Company to supply drawing-room and sleeping cars to be used by its passengers, and, as a means of inducing the plaintiff to perform this public service and to incur the expense and hazard incident thereto, from giving it an exclusive right to furnish cars for that purpose. . . .
>
> "The stipulation, therefore, that the plaintiff, not being in default, should have the exclusive right for fifteen years to furnish drawing-room and sleeping cars for the defendant's use, and that the defendant should not, during that period, contract for cars of that kind with any other party, rightly construed is not unreasonable, and, properly performed, will promote the convenience of the public in that it enables the defendant to have on its lines, at all times, and as the requirements of travel demand, drawing-room and sleeping cars for use by passengers."

The United States complains that this seventeen-year term may extend the lease beyond the life of the patents embodied in the machines.

But the validity of this term is not dependent on the machines being patented. The cars of the Pullman Company were not patented. It is a normal and legitimate agreement desirable for the protection of both parties.

The fact that the machines are patented, however, affords an additional reason for holding this term legal. The patentee is free to refuse to sell or lease his inventions at all.

If the public takes his machines on leases extending over a period of years in preference to other machines for shorter terms, it is because they believe the patentee's invention is of sufficient value to justify the extended agreement. The

public is free to take or decline the invention on the terms offered. By taking it on these terms it proves that the use of the invention more than offsets the detriment, if there be any detriment involved in the length of the lease. Public policy does not forbid such an extended lease of patented articles; if it did, since the patentee has the right to refuse the use of his machines, it might deprive the public of their use at all. It is to the interest of the public to permit the lessor to impose such terms as he pleases, unless they are in their very nature illegal, in order to induce patentees to grant licenses to use them.

The United States may object that the machines leased may become obsolete before the expiration of seventeen years and the lessee be obliged to continue paying for them after more efficient machines can be obtained elsewhere. No such condition has yet existed; the United Company has kept abreast of the times and given its lessees the benefits of the best improvements, and its lessees appear to have confidence that it will continue to do so. This argument is based upon too remote a contingency as held by the District Court (R. Vol. 1, p. 1177) and as held in *United Shoe Machinery Company of Canada* v. *Brunet*, 1909, A. C. 330.

Furthermore, while this clause permits the United Company to compel a lessee to retain the particular machine leased for the period of the lease, the record shows that the United Company in practice constantly waived this right, and furnished lessees with new or improved machines as they were developed without additional charge of any kind, taking back the old leased machines and scrapping them.

The record shows that the adoption of the seventeen-year term actually reduced the term required by the constituent companies. It therefore clearly does not sustain the charge of a new plan formed by the United Company to monopolize. Further, it is clear that an extended term is a benefit to both parties, and there is not the slightest evidence that the term was adopted or used to oppress shoe manufacturers.

D. FULL CAPACITY CLAUSE.

The Full Capacity Clause requires the lessee to use the leased machines to capacity so far as he has work in his factory which they can perform. An example taken from the United Company's lease of its No. 5 Lasting Machine (P.'s Ex. 21, R. Vol. 3, p. 182, at p. 185) is as follows:—

> "Subject to the foregoing limitations, the lessee shall use the leased machinery to its full capacity upon all boots, shoes or other footwear or portions thereof made by or for the lessee in the manufacture or preparation of which such machinery is capable of being used."

The reason for this clause is obvious.

The lessor invests its money in a valuable machine, installs it in the lessee's factory, and instructs his operatives, relying for his return on a royalty paid on each pair of shoes on which the machine is used. The machine must be used or the lessor will get no return. The agreement to use the machine is a necessity if the machine is leased on this basis. Without this clause the lessee might get the lessor to invest in a valuable machine and install it in the lessee's factory and after a few months the lessee might discard it or use it only occasionally, thus depriving the lessor of any return on its investment.

The clause is a normal and natural agreement obviously designed for the purpose of assuring the lessor a return on its investment and not designed for the purpose of arbitrarily requiring the use of the United Company's machines or of excluding competitors. That this is the purpose of the clause is conclusively shown by the fact that this provision is applied only to machines for which a royalty is charged. Thus in the leases of General Department machines the clause is omitted because the machines are leased for an annual rental or an initial payment and no royalty is charged, and, the lessor's return not being dependent on the use of the machines, it is not necessary that the lessee shall agree to use them. (See General Department Initial Payment form of lease, P.'s Ex. 40, R. Vol. 3, p. 373; General Department Annual Rental

form of lease, P.'s Ex. 41, R. Vol. 3, p. 379; McKay Sewing Machine lease, P.'s Ex. 170, R. Vol. 4, p. 1161.) So also in the case of the Goodyear auxiliary machinery. The lease of the Goodyear welter and stitcher provides that they shall be used to capacity because they are the recording machines on which royalty is paid (P.'s Ex. 24, R. Vol. 3, p. 214). No royalty being paid on the auxiliary machines, the lessee is not required to use them to capacity (P.'s Ex. 25, R. Vol. 3, p. 226).

There can be nothing unlawful in requiring one who has hired a machine upon a royalty measured by the machine's capacity, to pay for that capacity so far as he has work for it to do.

The lessee has acquired by his lease and license the full capacity of that machine. He has a right to the entire and exclusive use of it up to the limit of what it is physically able to do, but he is only required to pay according to that measure up to the extent of the work which he has for it.

If he has not work to keep it fully occupied, still he has the right to use the full capacity of the machine. Neither the United Company nor any one else can make any use of that surplus capacity which the lessee allows to go to waste. It is therefore obviously proper that he should agree to pay to the extent of the work he has for the machine to do.

If it once be granted that leasing for a royalty measured by use is reasonable, it is a necessary corollary that such use must be required and agreed to as will fairly compensate the one who supplies the use and fills the need.

The shoe manufacturer cannot complain of this clause. If he does not intend to use the machine, he has no right to take it under a lease whereby he is required to pay only if he does use it. If he does intend to use the machine, it is proper he should agree to use it so far as he has work for it to do.

The rival shoe machinery manufacturer also has no ground for complaint. He has no right to demand that shoe manufacturers who choose to take leases of the United Company's machines should remain as free to deal with him as though such leases had not been executed. If the lessee agreed to pay a fixed rental, he would use the machines for which he paid, not those taken from a competitor for which he must

make an additional payment. Even if the lessee bought the machines, he would not ordinarily discard them for other machines. The rival shoe machinery manufacturer is in little if any different position from what he would be in if the lease omitted this clause and contained a fixed rental, or if the machines had been purchased outright. If there is any difference which affects him, it is the incidental result of a normal and proper contract.

The shoe manufacturer's business is seasonal, and he requires an equipment of machines having a maximum capacity far in excess of his average requirements. Furthermore, in many cases a lessee's business is so small that a single machine has a capacity exceeding his maximum requirements. The result is that the United Company's machines held by a lessee have a capacity in excess of the ordinary requirements of the lessee. The United Company would be justified in charging a price based upon the maximum capacity of the machine. This, however, would be burdensome to the lessees who would only make use of such capacity occasionally. But if the United Company does not require payment for the full capacity of the machine, whether or not the lessee needs such capacity, it is only fair and reasonable that it should require payment for use to the full extent that the lessee has a use for it.

Mr. Winslow testified:—

> "We adopted the full-capacity clause in our leases to protect our interests under the conditions that I have described in the manufacture of shoes, where the seasons are changeable, and where our entire return is dependent upon the use made of the machine. The same reason applies to the adoption of the exclusive-use clause, but it is not the only reason for the adoption of either clause. There must be something in the lease requiring use of the machines or there is no security that they will be used. Because there are two seasons and because we have to furnish machines to take care of the peak of the manufacturer's load, there must be something to secure us properly for the use of the machines throughout the season. Otherwise, the manufacturer might use one of our machines just for taking care of the peak of his load and use somebody else's machine all the year round" (R. Vol. 1, p. 552, line 34—p. 553, line 3).

This provision for payment, viz., that the lessee shall use the machine so far as he has use for it, and pay for the amount it is used, is far more satisfactory to lessees and far less burdensome to them than a fixed monthly or annual payment (which is the only feasible alternative) would be. If a fixed payment were required, a shoe manufacturer would be obliged to pay the same amount whether his business was good or bad. Under the present method he pays according to the business he does, and thus his royalties are adjusted to his business: if business is good, his total royalties increase, but he can then afford to pay them; if business is poor, his total royalties are decreased.

Furthermore, if a fixed amount were charged, it would work to the disadvantage of the small manufacturer. Take a welter, for example. One welter will operate on 480 pairs of shoes a day (R. Vol. 1, p. 647, line 3). In 1911 out of 1,033 lessees of the United Company 274 made less than 100 pairs of shoes a day (R. Vol. 1, p. 454, line 45; p. 455, line 1). If the welter were leased for a fixed rental, the shoe manufacturer who made 480 pairs of shoes a day would pay for his welting machine used on his entire output the same amount as the manufacturer of 100 pairs or less paid for his welting machine. In other words, his cost of welting machinery per pair of shoes would be less than one-fourth of the amount paid by the small manufacturer. The Pulling-over Machine, Goodyear Stitcher, Heeling Machine, Slugging Machine and Loose Nailing Machine each has as great a daily capacity (R. Vol. 1, p. 456, lines 4–9). The Slugger, Loose Nailer, and Heel Pricking Machine have a capacity of over 1,200 pairs per day (Defs.' Ex. 249, R. Vol. 5, p. 693).

The United States contended in the District Court that the Full Capacity Clause was unnecessary to assure the United Company a return on its investment, because it inserts in most of its leases a clause requiring a minimum payment. It is obvious that a minimum payment does not provide for a fair return unless it is large enough in and by itself to compensate for the use of the machine. In such case it becomes a fixed annual payment and is open to the objections stated above. The minimum payments required in the United Company's leases are so small that they do not provide for

adequate compensation. This is not their purpose. The Minimum Payment Clause was inserted in the leases so that a lessee should return machines for which he had no use; if he were required to pay nothing on them, he might keep them although they were not needed at all.

Mr. Winslow testified (R. Vol. 1, p. 553, lines 4–28):—

> "The clause requiring payment of a minimum royalty, like many of the other clauses, is not enforced and never has been, excepting in cases of very great necessity to properly protect the company's interests, and then only in the way of asking the manufacturer to give up surplus machines. The original leases contained no means for recovering surplus machines. If a manufacturer's business decreased 50 per cent. he could retain a machine till the lease expired, and keep it idle. Such a condition showed us that we must have such control as would allow us to take back idle machines.
>
> "The practice has been, when a manufacturer had surplus machines arising from these or other conditions, to call his attention to the minimum clause and to tell him that if he wanted to return the surplus machine, the lease of that machine would be cancelled. That clause is not enforced except to require adequate arrangements between our lessees and ourselves.
>
> "The minimum-lease clause originated a great many years ago. It is not entirely a logical development, but, broadly speaking, the minimum clause is based upon half the capacity or 33 per cent. of the capacity of the machine, or something of that sort. The minimum has no bearing upon the amount of a reasonable return on our machines. In the Goodyear system, for example, the minimum is $15 per machine, if I remember correctly, but we are continually adding to the number of machines that we give to the manufacturer."

As we have shown, the introduction of this clause was not a new departure on the part of the United Company. This clause, or a clause going much further and requiring an exclusive use of the lessor's machines, or the taking of additional machines for additional work (which resulted in requiring an exclusive use) had been employed in many of the leases of the constituent companies. Experience had shown that some such clause was necessary to assure the lessor a return if his royalties were based on the use of the machine.

It is obvious that this clause is essential if machines are leased to be paid for only to the extent they are used. That it was adopted solely for the purpose of assuring an income from machines leased on this basis is conclusively shown by the fact that it is applied only to the royalty producing machines. If the United Company were forbidden to use this clause, it would necessarily be obliged to abandon leasing machines on this basis, a practice of enormous benefit to shoe manufacturers. It is therefore clearly a necessary and reasonable provision.

E. EXCLUSIVE USE CANCELLATION CLAUSE.

The following is an example of the Exclusive Use Cancellation Clause taken from the United Company's lease of Pulling-over Machines (P.'s Ex. 38, R. Vol. 3, p. 350, at p. 358):—

> "*Eight:* If at any time the lessee shall fail or cease to use exclusively machinery held by him under lease from the lessor for performing all work in the manufacture or preparation of all boots, shoes, or other footwear made by or for him which is performed by the aid of machinery and which is of a kind or kinds which any or all of the machines of the lessor mentioned by name in the foregoing Schedule of Machines are designed to perform, the lessor, although it may have waived or ignored prior instances of such failure or cessation, may at its option terminate forthwith by notice in writing any or all leases or licenses of machinery of the Pulling Over System of the lessor then existing between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise; and the possession of and full right to and control of all machinery the lease or license of which is so terminated shall thereupon revest in the lessor free from all claims and demands whatsoever."

It is to be noted that this clause only permits the lessor to cancel where the lessee supplies himself with other machinery to do his work of the same kind as that leased, and the lessor is then permitted to cancel only leases of machines of this particular kind.

This clause was employed in the leases of metallic machinery and heeling machinery put out by the McKay Company (P.'s Ex. 11, P.'s Ex. 12, Rider).

The Consolidated Company in all its non-initial payment leases required an exclusive use of machines of the kind leased (P.'s Ex. 7; P.'s Ex. 9; P.'s Ex. 10). The Goodyear Turn lease also required the lessee to use only the lessor's turn machines (P.'s Ex. 3). The United Company eliminated these clauses employed by the constituent companies requiring an exclusive use of machines of the kind leased, and inserted in its leases of royalty machines this Exclusive Use Cancellation Clause which had been employed by the McKay Company and an example of which is quoted above.

This Exclusive Use Cancellation Clause does not require or obligate the lessee to use the United Company's machines of the kind leased exclusively. On the contrary, it recognizes the right of the lessee to use other machines of the kind leased, contemplates that the lessee may do so, and merely provides that in such case the lessor may take back its own machines. The clause contains no agreement on the part of the lessee at all. It is a mere reservation of a right to terminate the lease under certain conditions.

The machines of each kind or department are leased under a separate form of lease. This clause refers only to machines of the particular kind leased. For example, if the lessee uses heeling machines obtained from others, this clause permits the United Company at its option to withdraw its heeling machines, but does not permit it to withdraw any other kind of machines.

The United States has persistently misrepresented the effect of this clause. It has contended that it requires the lessee to use machines of the kind leased exclusively, in spite of the fact that the clause by its terms does not so provide, and in spite of the fact that the District Court pointed out the distinction between an agreement to use exclusively and a right to cancel if machines are not used exclusively.

Of the effect of this clause the District Court (Brown, J., R. Vol. 1, p. 1169) said:—

> "The 'exclusive use' clause relates only to machines of a particular kind or department, thus differing essentially from the prohibitive clause. It was in use before

the consolidation, and after the consolidation was not changed in this respect. Though it does not relate to grouping what before was separate, this clause imposes a limitation upon the right to use machines of a particular kind. The legal effect of it is merely a reservation of a right to cancel the lease in case the lessee should fail or cease to use the defendants' machines exclusively for work of a particular kind. It does not have the legal effect of a contract by the lessee not to use the machines of others. It is merely a limitation imposed by a patentee upon the right to use.

"*The reiteration by the United States of the statement that the lessee must use, or is required to use, defendants' machines exclusively is misleading. The distinction between a contract requiring a lessee not to take other machines, and a limitation of the right to use the leased machines is very material*" (italics ours).

This clause protects the lessor by permitting him to withdraw his machines if by reason of the factory conditions under which the machines are used, caused by the use of other machines by the lessee, the lessor is not getting a fair or proper return on the leased machines (R. Vol. 1, p. 447, lines 18–21).

The primary reason for the use of this clause is as follows: The shoe machinery business is seasonal, being divided into substantially two seasons. The manufacturer with an average production of 300,000 pairs of shoes annually must ordinarily have machinery which has a capacity to produce 600,000 pairs of shoes annually. If his average production is 1,000 pairs of shoes a day, he will at times manufacture 2,000 pairs a day and at others 500 pairs a day. In other words, the United Company must furnish him with an equipment sufficient to make 2,000 pairs a day, although he will use it to this extent at most for about three months in the year (R. Vol. 1, p. 444, lines 27–42).

Defendants' Exhibits 212, 213, and 224 show the variations in production in typical factories. For example, Defendants' Exhibit 213 shows that L. A. Crossett made 113,191 shoes in January, 1911, and only 36,516 in April, 1911 (R. Vol. 5, p. 310); Defendants' Exhibit 212 shows that Burt made 4,492 shoes in November, 1911, and only 1,828 in February, 1911 (R. Vol. 5, p. 297); Defendants' Exhibit 224 shows that the

John Strootman shoe factory made 5,492 women's stitched shoes in September, 1911; 2,234 in April, 1911, and 749 in May, 1911 (R. Vol. 5, p. 421).

Referring to the variance in production shown in the Strootman factory Mr. Winslow testified:—

> "This is a fair sample of the condition with which we are confronted throughout the trade. It is not a selected case. I would be quite ready to take any factory and prepare the same figures" (R. Vol. 1, p. 445, lines 27–30).

A shoe manufacturer, therefore, requires a machine capacity in his comparatively short busy season which is not needed during the greater part of the year. A lessee who holds the United Company's machines and also machines of others may use the United Company's machines only during his busy season and use the other machines during his slack season, or he may do only his difficult and slow work on the United Company's machines and thereby reduce the royalties payable to the United Company. The United Company cannot afford to install its machines for a royalty measured solely by extent of use if they are to be used only occasionally or for slow and difficult work. It therefore inserts the Exclusive Use Cancellation Clause in its leases, permitting it to cancel the leases if on account of the use of other machines such conditions exist and it is deprived of a fair return.

Another reason for the use of this clause is as follows: The United Company leases machines for a royalty to be paid on each pair of shoes made. The United Company cannot keep men in each factory watching each machine in use on which a royalty is payable and counting the number of shoes on which it is used. On certain machines it can place recording mechanisms which will record the use with a certain degree of accuracy. On other machines, such as lasting machines, no such device is practicable. Even where such a device can be used, it records the revolutions of the machine rather than the number of shoes passing through the machine, and it, therefore, is not accurate, and furthermore, it may be tampered with by the lessee or get out of repair. If the lessee uses the United Company's machines of a particular kind—for example, heeling machines—exclusively, the United Company

can tell by an examination of the lessee's books or by a knowledge of its total sales substantially the number of shoes on which the machines are used. Where, therefore, the United Company's machines are used exclusively, it can check the returns made by the lessee and correct errors in such returns due to carelessness or dishonesty. Where, however, the lessee uses the United Company's machines and also machines of others for doing the same class of work, the United Company has no such check. If, therefore, the United Company finds that a lessee who is using its machines and also the machines of others of the same kind pays it a small return on its machines, it may have reason to believe that actually more work is being done on its machines than is paid for, and that through carelessness or dishonesty a correct account of the work is not rendered, but there is no way to check this up, and the lessor is at the mercy of the lessee. Under these conditions it must have the right to withdraw its machines.

This clause, or a clause more stringent in that it required an exclusive use of the lessor's machines, was employed in most of the leases of the constituent companies. Its use in the modified form by the United Company is therefore no evidence of the charge made by the petition of an unlawful plan adopted by the defendants to monopolize by the use of new methods. On the contrary, the elimination by the United Company of the clauses requiring an exclusive use which were previously employed in the constituent companies' leases and the substitution in these leases of the Exclusive Use Cancellation Clause, which merely permits the United Company to withdraw its own machines, is direct evidence that the United Company had no intent to require an exclusive use of its machines.

This clause is one which the experience of the constituent companies had proved to be necessary for the lessor's protection for the reasons stated above. It is a normal, legitimate agreement designed to permit the lease of machines without a substantial initial payment and at the same time protect the lessor so that it may cancel the arrangement if it does not receive an adequate return.

That the purpose of this clause is to protect the lessor when the factory conditions under which its machines are used do

not afford it a proper royalty return, and that its purpose is not arbitrarily to prevent other manufacturers from placing machines, is conclusively shown by the fact that this clause is applied only to those machines which carry a royalty. Thus the clause does not appear in the leases of General Department machines for which no royalty based on the use of the machines is charged, but only a fixed annual rental, or an initial payment. (See leases of General Department machines, P.'s Exs. 40–41; lease of McKay Sewing Machines, P.'s Ex. 170.) And so also in the leases of Goodyear machines this clause is made applicable only when the lessee supplies himself with other welting and stitching machines which are the machines on which the royalty is based, and it is not applicable where the lessee uses auxiliary machines obtained from others (P.'s Ex. 26, par. Seven). If the purpose of the clause were to require a use of the United Company's machines exclusively and thus arbitrarily exclude other shoe machinery manufacturers, it would certainly be applied to leases of machines like the McKay Sewing Machine, for which a fixed rental is charged.

As the clause is not applicable to General Department machines of which the United Company makes over 172 different kinds, or to Goodyear auxiliaries, of which 43 different kinds are made, or to eyeletting machines, it results that it is not applied to a majority of the kinds and numbers of machines put out by the United Company. Out of 90,276 machines leased by the United Company on March 1, 1911, over 53,000 of the kinds above mentioned were leased under leases which did not permit the United Company to withdraw its machines because machines of the same kind obtained from others were used (Defs.' Ex. 228, R. Vol. 5, p. 430).

Had the United Company intended by this clause to require an exclusive use of its machines of the kind leased, it would have so provided. The right to withdraw the lessor's machines of a certain kind—for example, heeling machines—because the lessee supplies himself with other heeling machines, obviously cannot compel the lessee to use the lessor's heeling machines. If the lessee is using other heeling machines, he doubtless prefers them. The exercise by the United Company of its option to withdraw its machines would under those

circumstances leave the lessee at liberty to use the competitor's heeling machines, which is what the lessee would desire. It could exert no pressure on him to discard other heeling machines which he preferred to use.

Mr. Winslow testified:—

> "The United Company has never adopted the policy of requiring the exclusive use clause as an agreement upon the part of the lessee. That clause has always been in the form of a right reserved to the company in case the lessee does not use exclusively and the conditions are unbearable" (R. Vol. 1, p. 444, lines 21–25).

Mr. Winslow further testified that it was not true, as alleged in the petition, that the defendants inserted in each lease provisions reserving to themselves the right to terminate and cancel all existing leases if a shoe manufacturer should fail or cease to use exclusively and to their full capacity machines leased of the defendants and that never was the purpose of the Company (R. Vol. 1, p. 447).

> "The purpose of the company has been nothing more than to reserve to the company the right to cancel leases of machines of a type which the lessee had ceased to use exclusively if conditions became too onerous to continue" (R. Vol. 1, pp. 447, lines 18–21).

It is difficult to see in what way it can be contended that this clause restrains competition. It does not require the shoe manufacturer to use the United Company's machines. So far as this clause is concerned, the shoe manufacturer can freely take and use any other machines he pleases. If, for example, he uses other heeling machines and the United Company withdraws its own heeling machines, this only leaves the lessee free to use other heeling machines which he can get and which he apparently prefers.

The rival shoe machinery manufacturer will be actually benefited by the enforcement of this clause. If the United Company withdraws its machines, the shoe manufacturer is necessarily in the market for new machines, and a market is thereby created for the United Company's competitor. Noth-

ing, therefore, would please competitors of the United Company better than to have it enforce this clause.

It is obviously fair and just that the United Company be entitled to withdraw a machine on which its return consists of a royalty based on the number of shoes on which the machine is used, if, owing to the use of other machines of the same kind by the lessee, the machine is only used occasionally or on slow or difficult work, or the United Company has reason to believe that work actually done on its machines is not so reported; in other words, when, to use Mr. Winslow's words, "conditions are unbearable."

That the United Company may properly reserve a right to withdraw its machines under the foregoing conditions seems indisputable. It would be impossible to specify exactly and definitely these conditions. The clause is, therefore, necessarily general in its terms; but it only reserves an option to cancel; it does not provide that there shall necessarily be a cancellation of the lease if other machines of the same kind are used.

As, therefore, the right reserved by the clause may clearly be exercised for a proper purpose, even if it could also be so exercised as to result in excluding competitors' machines (which we submit is not the case), nevertheless this possibility would not be sufficient to make the clause unlawful unless it were shown that it was inserted in the leases for this purpose or that it was enforced for this purpose.

Mr. Winslow, as quoted above, testified that it was not inserted or enforced for this purpose. There is absolutely nothing in the record to contradict his testimony. Not a single instance was shown in which the United Company enforced or threatened to enforce the clause in order to exclude competitors' machines. In the only five cases (except cases of bankruptcy) in which machines were withdrawn by the United Company, no such instance appears (R. Vol. 1, pp. 447–8; *infra*, pp. 429–430).

On the contrary, so far from showing that the United Company withdrew its machines because competitors' machines were used, Plaintiff's Exhibit 161 (R. Vol. 4, p. 1118) introduced by Louis H. Harriman of the Haverhill Shoe Machinery Company, a competitor of the United Company, as a witness

for the United States, gives a list of 17 concerns which had used or were using the Haverhill turn sewing machine in the same factory with the United Company's Goodyear turn sewing machine the leases of which contained the Exclusive Use Cancellation Clause, thus contradicting absolutely the contention that the United Company withdrew its machines merely because a competitor's machines of the same kind were used.

We submit, then, that even if it can be contended (which we deny) that the right given by this clause could be so exercised as to exclude a competitor's machines, the record establishes that it was not inserted in the lease for this purpose and that it was not enforced to accomplish this result.

The Use of the Exclusive Use Cancellation Clause is the Mere Exercise of a Patent Right, namely, the Right to Permit Others to Use or to Refuse such Permission.

The leases in the present case are termed "Lease and License Agreements" and constitute not only leases of the physical materials in the machines but also licenses under patents to use the machines in the manner and to the extent defined therein.

A patentee has an absolute right to exclude all others from the use of the patented invention even though he does not use it himself. *Paper Bag Patent Case*, 210 U. S. 405.

The motive of the patentee in refusing to license others to use the patented invention is immaterial. As said in the Paper Bag Patent Case (p. 429),--

> "As to the suggestion that competitors were excluded from the use of the new patent, we answer that such exclusion may be said to have been of the very essence of the right conferred by the patent, as it is the privilege of any owner of property to use or not use it, without question of motive."

If the patentee does consent to grant a license to use his patented invention, he may grant it for such time, long or

short, as he pleases. As the patent law gives him an absolute right to withhold or grant licenses as he pleases, regardless of his reasons or motives, the length of time for which any licenses he may choose to grant shall extend is absolutely within his discretion.

In *Mitchell* v. *Hawley*, 16 Wall. 544, the patentee conveyed the right to make and use four machines during the remainder of the original term of the Letters Patent. The licensee constructed and sold the four machines which he was authorized to make. The patent having been extended for an additional term of seven years it was held that the purchaser of the four machines had no right to use them during the extended term whether or not he had purchased with notice of the limited term of the license to use.

It is clear, then, that a patentee has the right to grant a license to use his patented invention for as long or short a term as he pleases. In pursuance of this right he may grant a license to use for a definite term or for an indefinite term, that is, until such time as he in his absolute discretion chooses to terminate it. After such termination the licensee, of course, has no longer any right to use. This is so even if, as in *Mitchell* v. *Hawley*, supra, the licensee has bought the machine which embodies the invention and still holds title to it.

Just as the patentee can refuse to grant a license at all, regardless of his motives or of the effect of his refusal, so in granting a license he may make it terminable at such time or in such event as he pleases, regardless of the effect of such termination or of his motives in so doing.

Such a grant of a license does not obligate the licensee to use the patented invention. It is a mere grant of a right. The licensee is as free in every respect as he was before the grant was made and in addition has the rights conferred by the grant. Upon the cancellation of the license, whether it be terminable at a definite time or at the patentee's option, and regardless of the patentee's motive in cancelling the lease, the licensee is no worse off than if the patentee had refused to make the grant at all.

Having an absolute right to make or refuse the grant, questions of public policy are not relevant. An argument that a grant for the full term of the patent, or an irrevocable

grant, would be more beneficial, or would confer a greater benefit on the licensee, or would be more advantageous to competitors, has no standing.

It follows, then, that in the present case the United Company could, in the exercise of its indubitable rights granted it under its patents, provide in its lease and license agreements that the licenses to use the leased machines should be in effect until such time as the United Company might at its absolute discretion terminate them. It would have the right in such case to terminate the licenses either because the licensee ceased to use its machines exclusively or for any other reason whatsoever. Its motives could not be questioned any more than its motives for refusing to grant a license at all could be questioned.

If, then, the United Company can in granting its licenses reserve this broad right to terminate for any cause whatsoever, surely it can reserve the lesser right (which is inevitably embraced within this broader right) of terminating because the lessee supplies himself with other machines to do his work. The termination of the license is a mere exercise of the rights granted by the patents, namely, the rights to exclude others completely or to permit the use of the patented inventions for as long or short a period as the patentee pleases.

The United States may object that the termination of the license because the licensee does not use the patented machines of the kind leased exclusively may result in excluding competitors' machines. We have shown above that no such result will follow and that, even if such a result were possible, the United Company did not insert this clause or enforce it for this purpose or with this result. But assuming that the clause may result in some instances in an exclusive use of the United Company's machines of the kind leased, it is, as we have shown above, within the rights of the patentee. If he grants licenses to use his machines and they are superior to all others in the market, they may drive such other machines out of use. If he refuses to grant licenses of his machines and they are sufficiently superior, he may by using them himself obtain all trade in the article which the machines produce. Questions of his motives, of public policy, or of the effect of his acts are irrelevant so long as he limits himself to the exercise

of his patent rights, that is, to excluding others or permitting them to use for such periods as he pleases.

The fact that the United Company in addition to reserving the right to terminate its licenses to use the machines also reserves a right to withdraw the machines themselves is immaterial. The machines belong to the United Company and are clearly of no value to the lessee when his right to use them has terminated. Their withdrawal in such event can in no way injuriously affect either the lessee or competing shoe machinery manufacturers.

F. ADDITIONAL MACHINERY CLAUSE.

This clause, contained in certain leases of the constituent companies, was employed by the United Company in only a few leases, and its use was abandoned entirely in 1907.

By this clause the lessee is required to take from the lessor additional machines of the same kind as those leased if his work requires them.

This clause was employed in non-initial payment leases of the Consolidated Company prior to 1899 (P.'s Ex. 7; P.'s Ex. 9; P.'s Ex. 10), and a similar clause forbidding the lessee to use any other turn machines was employed in the Goodyear Company's turn lease (P.'s Ex. 3). The following example of this clause is taken from Article Twelfth of the Consolidated Company's lease for the Consolidated Hand Method McKay Lasting Machine, in use before the United Company was formed (p. 80):—

> "*Twelfth:* It is declared and understood that it is the intention of the Licensee to use said machine herein licensed and leased for lasting all the boots and shoes made by him applicable to the said machine, and not to have it in his possession as a means of reducing the price of hand-lasting or of controlling hand-lasters, or of influencing a trade with any other lasting machine not controlled by the Licensor, or the list price thereon, and the Licensor enters into this contract because of and by reason of such understanding and agreement on the part of the Licensee. It is, therefore, agreed that the Licensee shall

use such machine hereby licensed and leased for lasting all of his boots and shoes to its full capacity, limited only by the demands of his business; *and should the demands of his business require he shall take the license and lease of such additional machines as may be needed to do all his work*" (italics ours).

Mr. Winslow testified:—

"All of those additional machinery clauses were removed from all of the leases of the United Company not later than 1907, and they were not in use and did not represent the policy of the company at the time of the bringing of this suit" (R. Vol. 1, p. 444, lines 17–20).

This clause was one of the various methods adopted by the constituent companies in an effort to assure a proper return upon their investment in machines. It protected the lessor against the abuses possible where its machines were not used exclusively, as we have explained above, in considering the Exclusive Use Cancellation Clause. By requiring an exclusive use of its machines it avoided their being used only occasionally during the busy season or only on slow work, thus reducing the royalty received, and it prevented also the difficulty of determining the actual work done on the machines which would arise where machines of others were used. It was usually introduced when the machines were first put on the market. Often when a shoe manufacturer first took a machine he used it only as a trading proposition. The lessor installed the machine and went to the expense of instructing operatives, and the lessee then used it to reduce the price of hand work or to obtain machines from others cheaper and the machine being on a royalty basis, the lessor got no return. By this clause the lessee agreed to do his work by machines and to take additional machines for additional work, and this besides preventing the abuses above referred to gave a further assurance of an adequate return (R. Vol. 1. pp. 405–406). Its purpose, therefore, was not to arbitrarily exclude others, but to provide an adequate return on the capital invested by the lessor.

The United Company did not adopt this clause for any general or extensive use. The United Company eliminated

the clause from the lasting machine leases of the Consolidated Company as soon as new leases were drawn up, and substituted the Exclusive Use Cancellation Clause, which it felt sufficiently protected it against the abuses possible where machines of others were used.

It inserted this Additional Machinery Clause in its lease of metallic machines adopted in March, 1900 (P.'s Ex. 29; R. Vol. 1, p. 10, lines 24–25), but in the next printing of this lease, in June, 1900 (P.'s Ex. 30; R. Vol. 1, p. 10, line 31), it eliminated the clause and inserted a provision that the lessee should either take additional machines or the lessor might at its option cancel; in other words, a different form of the Exclusive Use Cancellation Clause under which the lessee was not obligated to use its machines exclusively.

The United Company employed this clause also in its Heeling Machine Lease adopted in January, 1900 (P.'s Ex. 27, R. Vol. 3, p. 254), but it eliminated the clause in the next form of lease, adopted in May, 1904 (P.'s Ex. 28, R. Vol. 3, p. 261). It also inserted the clause in its first lease of the pulling-over machine, which was an entirely new machine displacing hand labor, and, therefore, one which might be used as a trading proposition to reduce the price of hand work, but it eliminated the clause in the form of Pulling-over Lease which was adopted as early as 1907 (Defs.' Ex. 345, R. Vol. 5, p. 958; see also R. Vol. 1, p. 981, lines 1–7).

The Additional Machinery Clause was never used generally by the United Company. It was used by the constituent companies and to the limited extent above outlined by the United Company for a definite and legitimate business purpose and, therefore, shows no intention to restrain trade or monopolize.

The clause was primarily useful when new machines displacing hand work were first introduced. In such cases, as explained above, it was found that a single machine was sometimes taken, not with the intention of doing the work by machine, but to enable the shoe manufacturer to reduce the prices paid hand workers by a threat of using the machine. The machinery manufacturer had gone to the expense of installing a single machine and instructing untrained operators in its use with the expectation and understanding that if suc-

cessful, the shoe manufacturer would adopt it for general use. In such cases the additional machinery clause was important to the lessor's protection. When the superiority of the machine over hand labor was definitely established, experience showed that the other abuses guarded against by the additional machinery clause, namely, the abuses which might arise when machines of the same kind obtained from others were employed in the factory, could be sufficiently guarded against by the Exclusive Use Cancellation Clause, which did not require a use of additional machines but merely gave an option to the lessor to withdraw its machines, and this clause was, therefore, substituted.

The fact, established by the record, that the clause was adopted by the constituent companies for a definite proper business purpose shows first, that it was not an unlawful provision adopted to monopolize trade, and second, that it was not a scheme devised by the United Company, and, therefore, affords no evidence of the plan which the United States alleges was devised in 1899 to monopolize shoe machinery. Furthermore, its limited use by the United Company, and its final abandonment in 1907, four years before the present petition was filed or contemplated, conclusively shows that it was not employed by the United Company to monopolize.

Its only importance in the present case is this. This clause and a similar clause in the lease of turn machines put out by the Goodyear Company prior to 1899 were the only clauses ever employed in any leases of the United Company or its constituent companies requiring a lessee to use any machines exclusively. The fact that these clauses have been eliminated by the United Company conclusively disproves the charge of the United States of a scheme to adopt leases requiring an exclusive use of the United Company's machines.

G. CANCELLATION FOR BREACH CLAUSE.

The following example of this clause is taken from the defendant's Heeling Machine Lease (P.'s Ex. 28, par. Eleven; R. Vol. 3, p. 268):—

> "But if any breach or default shall be made in the observance of any one or more of the conditions herein contained or contained in any other lease or license agreement subsisting between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise and expressed to be obligatory upon the lessee, the lessor shall have the right by notice in writing to the lessee to terminate forthwith any or all leases of or licenses to use machinery then in force between the lessor and the lessee, whether as the result of assignment to the lessor or otherwise, and this notwithstanding that previous breaches or defaults may have been unnoticed, waived, or condoned by or on behalf of the lessor."

This clause permits the cancellation of all leases between the lessor and the lessee provided, and only provided, the lessee breaks one of the conditions in one or more of such leases "expressed to be obligatory upon the lessee"; in other words, some condition which the lessee obligates himself to carry out.

The leases contain various conditions which are obligatory upon the lessee. The following, taken from Plaintiff's Exhibit 28, will illustrate their character: (1) The leased machinery shall be used only by the lessee at his factory and shall not be transferred to any other person (par. One). (2) The lessee shall keep the machinery in good working order and not permit any one to remove any plate, dates, numbers or other inscriptions affixed to the same. He shall obtain from the lessor all duplicate parts needed in the machine (par. Two). (3) He shall indemnify the lessor from injury, loss or destruction by fire or otherwise (par. Three). (4) He shall pay all taxes and assessments on the leased machinery (par. Four). (5) He shall use the machinery to full capacity so far as he has work for it, and respect the Restricted Use Clause (par. Five). (6) He shall pay the royalty provided for in the lease (par. Six).

This clause merely provides that if the lessee does not act in good faith and violates his agreements the United Company may sever relations with him. If, for example, the lessee refuses to pay royalties or abuses the machines held by it under one lease, the United Company reserves the right to take back all its machines so that it will not suffer similarly in respect to machines held under other leases.

Mr. Winslow testified:—

> "The right to cancel clause, for breach of a condition expressed to be obligatory upon the lessee, was adopted by the company with respect to conditions which would be such as to make the continuance of the business relations between the lessee and ourselves impossible, as where the lessee did not make proper returns of the royalties or did not pay his royalty or refused to pay the taxes—those conditions which in the ordinary business relations between men would make the continuance of the relations impossible.
>
> "In the twelve to thirteen years prior to the beginning of this suit the United Company availed itself of the right to cancel leases and remove machinery for reasons other than bankruptcy or receivership in only five instances" (R. Vol. 1, p. 447, lines 22–34).

As in the case of the Exclusive Use Clause, this clause merely gives the United Company an option to cancel its leases, if the lessee violates their terms. It is obviously fair that this general right should be reserved to the lessor and it is clear that cases may arise in which its exercise would be essential to the protection of the lessor. If (which we deny) it is possible that it might also be so exercised as to oppress lessees or unlawfully exclude competitors' machines, this probability alone would not make the clause objectionable unless it were shown that it was inserted in the leases for this purpose, or was enforced for this purpose.

The record fully sustains Mr. Winslow's testimony (*supra*) that the clause was inserted only to permit the United Company to sever its relations with a lessee on account of conduct by the lessee which "in the ordinary business relations between men would make the continuance of the relations impossible."

In the five cases in which (apart from bankruptcy) leases

were cancelled, the lessee either had abandoned the use of the United Company's machines entirely or was persistently cheating the United Company of the royalty due on its machines (R. Vol. 1, pp. 447–8; *infra*, pp. 429–430).

The leases of the constituent companies all contained provisions giving the lessor the right to cancel if the lessee violated the lease. Practically every lease of property has such a condition.

The United States apparently objects to the present clause because it permits the cancellation not only of the particular lease, the agreement in which is broken, but of all other leases between the parties. The United Company could perfectly well furnish all its machines on a single lease, and if it did so this objection of the United States would not be applicable. For convenience it issues different leases for machines of different departments and also issues a new lease each time a new machine is taken in any one department. Thus, if a lessee has six Goodyear machines, he may have six different leases. The relationship created between the lessor and the lessee by these various leases, however, is essentially a single relationship which, for convenience, is expressed in a number of different documents. If the lessee violates an agreement in any one of these documents, it is as fair to cancel all as it would be to cancel that particular one.

The practice of the constituent companies was to issue one lease for all the machines originally taken, and then, when additional machines were taken of the same kind, to incorporate these machines in the original lease. The Fifteenth Clause of the Consolidated Company's lease of the Chase Lasting Machine (P.'s Ex. 7, R. Vol. 3, p. 66), for example, provides for this practice. Mr. Howe testified that that was the universal practice of the Goodyear Company (R. Vol. 1, p. 690, lines 12–23). When, therefore, the lease was broken the lessor could cancel the lease and thereby withdraw all its machines taken at different times and held under its terms. The clause as adopted by the United Company, which issued new leases for additional machines, accomplished practically the same result.

It is impossible to see how this clause can restrain trade or tend to create a monopoly. The shoe manufacturer cannot

complain if he loses his leases because he violates his agreements. A rival shoe machinery manufacturer cannot complain of the exercise of this clause because he is obviously benefited if a shoe manufacturer is deprived of machines of the United Company and therefore must seek machines elsewhere.

The United States contended in the District Court that this Cancellation for Breach Clause taken in connection with the Exclusive Use Cancellation Clause permits the United Company to cancel all its leases if machines of any one kind held by the lessee are not used by the lessee exclusively. This is obviously not so. This Cancellation for Breach Clause which we are now considering permits cancellation only for violation of a condition "obligatory upon the lessee." The Exclusive Use Cancellation Clause does not obligate the lessee to use the United Company's machines exclusively. On the contrary, it contemplates that the lessee may use other machines of the same kind and permits him to do so, and merely reserves an option to the United Company to cancel its leases of machines of that kind. As the lessee is not obligated to use such machines exclusively the condition is not one "obligatory upon the lessee," and therefore the use of other machines which gives the United Company a right under the Exclusive Use Cancellation Clause to cancel leases of machines of that kind does not give the United Company any right to cancel all its leases or any of its leases under this Cancellation for Breach Clause.

The United States may claim that it is not the actual exercise of this cancellation clause which operates to exclude the use of competitors' machines, but the power to exercise it in case of a violation by the lessee of the Full Capacity Clause or the Restricted Use Clause. In other words, the contention may be that a lessee will not use a competitor's machine if one of the United Company's machines held by him for doing the same work is not being used to capacity, and will not use one of the United Company's machines taken under a restricted use lease, in a manner not permitted by the license, on shoes operated on by some competitor's machines if as a consequence the United Company would have the right to withdraw all its machines. As a result it may be contended that the use of competitors' machines is interfered with.

This argument depends wholly upon whether the Full Capacity and Restricted Use Clauses are in themselves lawful. If it is lawful to require the lessee to use a leased machine to capacity, and to grant a restricted license to use the machine, then it is obviously fair that the lessee should be bound by these clauses, and that if he chooses to violate them, his leases should be cancelled.

The objection made by the United States, then, is not that the Cancellation for Breach Clause is unlawful, but that the Full Capacity and Restricted Use Clauses are unlawful. The Cancellation Clause, permitting cancellation for violation of a condition obligatory upon the lessee, can under no circumstances be unlawful, if the conditions made obligatory upon the lessee are lawful.

H. RESTRICTED USE CLAUSE.

(1) REASONS FOR ADOPTION OF THE RESTRICTED USE CLAUSE.

The Restricted Use Clause restricts the use of the United Company's machines of one group or department to use on shoes operated on by certain machines of another group or department. The following example, taken from the United Company's lease of the Hand Method Welt Lasting Machine (P.'s Ex. 15, R. Vol. 3, p. 129, at p. 131), which restricts the use of the machine to use on shoes operated on by the Goodyear Welter and Stitcher, illustrates the character of the clause:—

> "But the leased machinery shall not, nor shall any part thereof, be used in the manufacture of any boots, shoes, or other footwear which are or shall be welted, or the soles stitched on welt sewing or sole stitching machines not leased to the lessee by the lessor or its assignor, or in the manufacture of any turn boots, shoes, or other footwear, the soles of which are or shall be attached to their uppers by turn sewing machines, not leased to the lessee by the lessor or its assignor."

Considerations to be Noted at Outset of Discussion.

The following considerations must be noted at the outset:—

(*a*) **In the first place, the Restricted Use Clause does not obligate the lessee to use either the leased machine or any other machines of the United Company at all.** It merely restricts the use of the leased machine to use on shoes on which certain other machines obtained from the lessor are used. For instance, take the Restricted Use Clause quoted above from the lease of the Hand Method Lasting Machine, which restricts it to use with the Goodyear Welter and Stitcher. It does not require the lessee to use either the United Company's Lasting Machine or its Welter and Stitcher. If the lessee desires to use a competitor's lasting machine he may do so. If he desires to use a competitor's welter and stitcher he may do so. The only restriction is that if the lessee does use an outside welter and stitcher he cannot use the leased lasting machine on shoes on which such outside welter and stitcher are used. If he wishes to use the Lasting Machine in connection with an outside welter and stitcher he may exchange his restricted lease for an unrestricted lease by paying an initial premium of $300.

Nor does the Full Capacity Clause taken in connection with the Restricted Use Clause obligate the lessee to use other machines. The Full Capacity Clause in every case requires the use of the leased machine only if the lessee is making shoes on which the leased machine may be used without violating the restrictions.

(*b*) **Restricted Use Leases are only alternative forms of leases which are offered to lessees who desire to use a team of the United Company's principal machines.** Unrestricted leases are offered all lessees who wish to use only certain kinds of machines furnished by the United Company in connection with other machines obtained from competitors. The royalty charged under the unrestricted leases is in practically every case exactly the same as the royalty charged under the restricted leases. The only difference is that under the unrestricted leases an initial payment is charged to cover the loss

in royalties and additional expense which result where the United Company's principal machines are not used as a team (*infra*, pp. 358–361).

(*c*) **The Restricted Use Clauses have a very limited application as we shall show below.** They only restrict the use of the United Company's machines to use with a comparatively few of its principal machines, machines which are adapted for use together, which are delicate in operation, which are essential to the integrity of the shoe, and which must be kept in proper repair and adjustment to insure continuous and effective production in the factory.

Auxiliary Restricted Use Clause Distinguished.

The Restricted Use Clause limits the machine leased to use on shoes operated on by the principal machines of another group or department. The Auxiliary Restricted Use Clause limits the use of auxiliary machines of a department to use on shoes operated on by the principal machines of that department. The reasons for the use of this latter clause differ somewhat from the reasons for the use of the Restricted Use Clause, grouping machines of different departments, and are considered below separately (*infra*, pp. 375–378).

Reasons for Adoption of Restricted Use Clause.

The purpose of the Restricted Use Clause, when applied to machines of different departments, is to provide a lower rate for machines where they are used in a set or team, and thus not only make a better shoe, but work more efficiently and therefore produce a larger return for the United Company in the way of royalties on each machine. This clause provides a wholesale rate where the machines are used in a wholesale manner and bring in a larger return to the United Company. It thus enables a lessee to participate in the saving effected by the use of the machines as a team.

The reasons why the use of certain of the United Company's machines as a team or series increases the efficiency of each

machine, reduces the cost of service for each machine, and protects the reputation of the machines and thus justifies a better rate to lessees desiring to use the machines in this manner than is charged for machines taken independently to be used in connection with machines obtained from others, have been partially referred to above (*supra*, p. 256). We shall, however, at this point summarize the reasons.

(*a*) A large number of different machines are used in the manufacture of each shoe. In the economical management of a shoe factory the shoes flow from one machine to another in a continuous stream, and when an important machine in the line breaks down it interrupts this flow and therefore not only stops work on that machine, but also stops work on all machines coming after it in the line; and as it would merely accumulate uncompleted work which could not be finished to operate machines preceding it in the line, it likewise stops work on those machines which precede it.

It is therefore of the utmost importance that each machine in the line be well constructed and well cared for so that it will not break down or get out of adjustment, and it is furthermore of the utmost importance that a machine be repaired at once if it does break down or get out of adjustment, so that work will be interrupted for as short a time as possible; otherwise, the machines all along the line will be idle when any one machine breaks down, and the lessor of those which pay a royalty will be deprived of his royalty, the operatives who are paid by the piece will suffer, as they will be unable to work, and the shoe manufacturer's production will cease.

The advantages of a well-constructed line or series of machines which receive proper repair service are especially pronounced as respects the principal bottoming machines, namely, welters, stitchers, lasting, metallic fastening and heeling machines, to use with which other machines are restricted by the Restricted Use Clauses. These machines perform delicate and difficult operations, handle material like thread, wire and nails, and are themselves necessarily delicate machines, having a large number of moving parts, which are liable to get out of adjustment or repair.

No other company furnishes efficient service, so that when another company's machine is interjected into the series, the

efficiency of the whole series of machines is lowered to the level of the efficiency of that machine, just as was the case with the machines of the constituent companies before 1899 (*supra*, pp. 175–178). The United Company's income decreases as the efficiency of the series is so lowered.

It is important, also, to remember that the machines of the different groups or departments furnished by the United Company are not used independently as separate groups, the work of one group being completed before the shoe passes to another group of machines of a different kind. The machines of the different groups are interspersed and in reality constitute a single unit.

This was illustrated by the moving pictures shown to the District Court. This was Defendants' Exhibit 241.

Mr. Winslow testified:—

> "The machines, the operation of which were illustrated by moving pictures, Defendants' Exhibit 241, operate in a factory in the manufacture of Goodyear welt shoes in the order shown to the court." (The witness then stated the name of each machine as it operated in its order.) (R. Vol. 1, pp. 503–4.)
>
> "In these successive operations machines of the kinds obtained from the Goodyear Company, the Consolidated McKay Lasting Machine Company, and the McKay Shoe Machinery Company are interspersed among each other through those consecutive operations, and they are all required in the production of a Goodyear welt shoe and perform these necessary consecutive operations" (R. Vol. 1, p. 504, lines 24–30).

Robert P. Hazzard, a large shoe manufacturer, testified:—

> "The machines from the different departments of the United Company are interspersed in their operations. The first thing in making the shoe is to prepare the bottom stock. In that we have to use auxiliary machines of the Goodyear department and also some of the general department machines. We next use the assembling machine and pulling over machine, from the pulling over department, and the No. 5 lasting machine from the lasting department, etc. At the same point we use the machine for tacking innersoles from the metallic department. We next employ machines for trimming the uppers,

pulling the tacks, and welting the shoe from the Goodyear department, and then the auxiliary Goodyear machines for sole laying, etc. The heel seat nailing is done by a metallic department machine, and then we come to the Goodyear stitchers and more Goodyear auxiliary machines. Then the heeling machines of the metallic department are used, and then we swing back to the slugging machines of the metallic department. From there out we go back to the general department machines, edge trimmers, edge setters, etc. The operations of the machines from the different departments are all interwoven and the machines of one department are interspersed among the operations of the machines of the other departments" (R. Vol. 1, p. 642, lines 23–44).

The different machines might conceivably be incorporated into a single machine so far as their operation is concerned. They constitute for practical purposes a single machine. If one of the machines breaks down, the entire series is made idle to practically the same extent that all the parts of a single machine are made idle if one of the important parts breaks. It is as important for the efficiency of the machines as a whole that each machine of the team or series be adapted for use with the other machines and be well constructed and kept in proper repair and adjustment as it would be if they constituted parts of a single machine.

(*b*) I' is important also to note that the principal machines of the United Company have been developed for use together. Each machine prepares the shoe for the operation of the next machine, leaving it in condition to be operated on by that machine, and the next machine is adapted to supplement the operation of the preceding machine, correct any weaknesses or defects in its operation, and so in turn prepare the shoe for the peculiar operation of the succeeding machine in line.

This was also illustrated by the moving pictures referred to above.

Mr. Winslow testified,—

"It is the fact that each of the principal machines of the United Company have been developed and improved with special reference to its operation upon work which has been or is to be done by other principal machines of

the Company; and also new and improved machines have been developed to cooperate with them and increase the efficiency of the previously existing principal machines" (R. Vol. 1, p. 857, lines 29–35).

Robert P. Hazzard, a large shoe manufacturer, testified of the machines of the United Company:—

"Practically every machine takes up the shoe where the preceding machine left it, and there are very few places to-day in the bottoming room where any labor is necessary between the operations of the United Company machines. Practically speaking, each machine prepares the shoe for the operation of the next; for example, when a shoe leaves the No. 5 lasting machine there are tacks in it to hold the upper in lasted position, and those tacks must be removed before the inseam can be trimmed. Then they come in with their tack-pulling machine which pulls out the tacks, leaving the shoe in condition so that the inseam trimmer can trim the upper, which it could not do if the tacks were there. So you go on indefinitely; it is just a continuous process" (R. Vol. 1, p. 643, lines 3–15).

Mr. Howard testified as follows:—

"The manufacture of shoes is unique in that a great number of different successive operations are performed by different machines upon the shoe and its several parts. It is essential for the success of the operation of each machine that the shoe come to that machine in the right condition for its operation, and that requires that the operations of machines which have previously been used upon the shoe shall have been performed properly. If such prior operations have not been properly performed, the work of that machine cannot be done right. On the other hand, proper performance of subsequent operations upon the shoe requires that each machine in turn shall efficiently prepare the shoe for the operation of the next machine to which the shoe is to be presented; and improper operation of any machine in the line may impair the efficiency of the operation of one or many of the machines which are to perform subsequent steps in the manufacture of the shoe. Frequently the combined effects of improper operations of a number of machines will accumulate as the shoe goes through the factory

and will result in a poorly made shoe. It quite often happens that when the finished shoe is not right it requires some time to find out what machine is responsible, and frequently it will be found that the poor work is the combined effect of impaired efficiency of several machines which operate successively upon the shoe. It is therefore of the utmost importance that every machine shall be designed with a view to the succeeding machines, and so that it will deal accurately and efficiently with the precise shoe organization that comes to it from the preceding machines; and every machine must be kept in its most efficient and satisfactory condition. That requires incessant and careful supervision of the machines all along the line.

"Moreover, it is of great importance that each machine in the line be properly constructed from a mechanical standpoint. If a machine is poorly constructed, for example, if some of the operating parts are weak, or if some of the movements given to any of the parts are too abrupt, or if the mechanical organization is not good, so that excessive wear and lost motion with consequent erratic operation results, a machine will frequently be put out of operation by breakage of parts or by necessity for adjustment to make the parts co-operate as they must to perform the machine's work. Every time a machine is put out of operation for any reason, shoes accumulate in front of that machine and there are no shoes for the operation of the machines for performing subsequent steps, so that those succeeding machines and their operators are idle and the whole factory suffers on account of that one disabled machine" (R. Vol. 2, pp. 2664–5).

Mr. Howard then explained at length the effect on the operation and work of other machines of a number of machines not adapted for use with such other machines (R. Vol. 2, pp. 2265–2671), and added:—

"The impairment of the efficiency of the operation of one machine by the failure of machines which have previously operated upon the shoe to do their work right extends all the way through the long line of machines which operate successively upon the shoe, and includes even those machines which perform minor operations. The difficulties which I have specifically discussed are merely illustrations of what may occur throughout the factory" (R. Vol. 2, p. 2671).

Therefore a team of the United Company's machines used together is more efficient and has a greater productivity and produces a better product than if the team were not used as a whole and an outside machine not specially adapted for use with other machines of the series were interjected into the series.

(*c*) The United Company, as we have shown, furnishes service with its machines free of charge. It is obvious that the United Company can furnish this service at less cost to itself for each machine if a series of machines is used than it can if a single machine or only a few machines of the series are used.

(*d*) Where a series of machines is used on each shoe, if the completed shoe is defective it is sometimes difficult to tell what particular machine of the series is at fault. Where a team of United Company's machines is used the United Company is responsible for the result, and by furnishing efficient machines and keeping its machines in proper adjustment and repair it maintains a high standard of product. Where an outside machine is introduced it may produce defective work.

The United Company owns the trademarks "Goodyear Welt" and "Goodyear Turn" and grants to its lessees the right to use them (R. Vol. 1, p. 22, lines 3–4). Its machines have been especially developed to make "Goodyear Welts" and "Goodyear Turns." It is vitally interested in the quality of the product of its machines. Defective work affects the reputation of its machines.

When machines of different makes are used together on the same product it is not easy to tell which is responsible for defective work, and the results of poor work by one machine may run along and accumulate with each operation and produce unsalable or defective shoes and thereby affect the reputation of the United Company's machines, even though they are not responsible for the defective work.

Mr. Winslow testified:—

> "The reputation for efficiency, both in quantity and quality of work done by our machines, is always in jeopardy and affected by the introduction of a machine of some other manufacturer into the series of operations

done by our machines. The reputation of our Goodyear welt shoe, the standing of that shoe, is dependent upon the two different kinds of seams that are made by the two different machines used in the manufacture of that shoe. And the quality of work done is affected, and would be necessarily affected, by the way in which the work comes from, or is prepared by, one machine to go to the next machine.

"Prior to the formation of the United Company there was a constant dispute between the different companies which made up the United Company as to who was responsible for a poor piece of work. As an illustration, which could be easily understood even by one not familiar with the manufacture of shoes, the very next operation from the lasting is the welt sewing. The welt-sewing machine operator would constantly lay the blame for poor work upon the lasting operator—the operator upon the lasting machine. The lasting machine operator would constantly blame the operator upon the welt-sewing machine.

"Both those reasons have to do with the use of our tying clauses for the greatest and most successful production of our machines" (R. Vol. 1, pp. 866–7, lines 34–43, 1–12).

(*e*) The United Company also furnishes the best machines. This was proved by all the evidence and was found as a fact by the District Court. Having the best machines, adapted and developed to be used consecutively, as a team or plant, it is distinctly injurious to it to have an inferior machine introduced into the line, for at once the certainty and regularity of production is endangered, and royalties exposed to diminution.

One of the principal reasons for the formation of the United Company was to improve the service rendered with its machines and thus increase their productivity (*supra*, pp. 159–160–177). The three constituent companies prior to the formation of the United Company often had their machines in the same factory, but no one of the three could afford a really satisfactory service. The extent to which the United Company was enabled to improve this service has been shown above (*supra*, pp. 177–181). The testimony of shoe manufacturers as to the efficiency and necessity of the service has also been referred to (*supra*, pp. 181–187). It has also been shown that as a result in part of this service and the use of

the United Company's machines as a series or team the efficiency or productivity of each machine has increased to a startling extent. Thus each Goodyear welter operated on 66.7 per cent. more shoes in 1910 than it did in 1900, each Goodyear stitcher operated on 69.5 per cent. more shoes in 1910 than in 1900, each Goodyear turn sewing machine operated on 54.3 per cent. more shoes in 1910 than in 1900, each heel attaching machine operated on 62.3 per cent. more shoes in 1910 than in 1900, and each lasting machine operated on 24 per cent. more shoes in 1910 than in 1900 (*supra*, p. 191; Defs.' Ex. 218, R. Vol. 1, p. 428).

The foregoing conditions show beyond question that when a series of the United Company's machines is used the total number of shoes operated on by each machine is increased and therefore the amount of income on account of each machine carrying a royalty is proportionately increased; that the cost of the caring for each machine is reduced and the reputation of the defendants' machines is increased, factory space is economized because fewer machines will produce a larger output, and the regularity and certainty of product is assured. These results clearly justify the United Company (if any justification is needed) in granting the shoe manufacturer who uses a team of machines a better rate than is granted a shoe manufacturer who uses a single machine out of the team or only a portion of the machines constituting the team. Indeed, the shoe manufacturer may well insist that such wholesale or team rate is only fair to him, because when he so uses the machines the return to the United Company is greater on each machine. By granting such a team rate the shoe manufacturer is permitted to share in the economies resulting from the formation of the United Company and its consequent ability to furnish and care for a complete team of machines adapted for use together.

Mr. Winslow testified:—

> "The restricted-use clause was adopted in our leases for the purpose of giving the company the proper return for the use of the machines when they were leased without initial premiums, and for that reason alone. With the terms of royalty fixed the company would not, without

the initial premiums, receive a fair return for the machines unless they were used together as restricted in the leases. As a business proposition, after the initial premiums were removed, there would be no security whatever for a proper and fair return for the use of the machines without the restricted-use clause" (R. Vol. 1, p. 452, lines 29–38).

He further testified:—

"When I testified on cross-examination that the reason for the use of the tying clauses was not to cause more of our machines to be used and to make more people use them, but that the real reason was to increase the productivity of our machines, I meant that the clauses were introduced to increase the productivity of the principal machines and by increasing that productivity to reduce the number of machines required to do the work, and thereby reduce the cost to the company of the up-keep and service in connection with the machines, and at the same time increase the earnings of each machine.

"By limiting the use of one principal machine of the company to work which has been operated upon by other principal machines of the company, its use is confined to work done by machines with which we know that prompt and efficient service is furnished to keep that machine in proper condition to operate, and with operators who have been properly instructed in the operation of the machine at the expense of our company, and also with machines where new operators will be taught whenever they are needed. Now, of course, under those conditions we have a definite assurance as to the maintenance of the productivity of the machines and the quality of work that will be produced by those principal machines with which another principal machine is used.

"This tendency in the operation of the tying clauses is clearly shown by the comparison in the exhibits showing the efficiency of the machines in 1911 over the machines in the year 1900. A relatively smaller number of machines are producing a larger number of shoes, resulting in less necessary investment in machines to produce a given product and less relative expense to maintain those machines in condition to operate continuously, in the upkeep of those machines, and in the number of operators which must be instructed. The productive efficiency and quality of work done by any line of machines is only equal to that of the least efficient machine in the line.

. . . . . .

"With reference to this question of productivity, it would not be a business possibility for the company, without the requirement of initial premiums, to lease its machines on the terms of the restricted leases without the restrictions in those leases" (R. Vol. 1, p. 856, line 39; p. 857, line 39).

"While the restricted form of lease could not increase the number of our machines in use the two sets of machines were used in unison. The cost of the care of those machines was less per unit, and increased efficiency resulted because the same concern would from its branch office attend to the metallic machine so that it would not be delayed, or attend to the laster so that that would not be delayed" (R. Vol. 1, p. 550, lines 13–19).

"The manufacturers believe that we have the best machines, and they take them, first, for that reason. They take them on the limited lease system because it costs them less to equip their factories and they have the money that they would otherwise have in machinery to use to buy leather and other articles that they use, and they turn that money over two or three times a year. They know by experience that the life of a machine, while sometimes a long period, is many times a short period, and since the United Company was formed they have seen many improved machines. They know that if we improve a machine which they have without the license payment we will put the improved machine in their factory and take out the old one without any cost to them" (R. Vol. 1, p. 551, lines 5–17).

"The reputation for efficiency, both in quantity and quality of work done by our machines, is always in jeopardy and affected by the introduction of a machine of some other manufacturer into the series of operations done by our machines. The reputation of our Goodyear welt shoe, the standing of that shoe, is dependent upon the two different kinds of seams that are made by the two different machines used in the manufacture of that shoe. And the quality of work done is affected, and would be necessarily affected, by the way in which the work comes from, or is prepared by, one machine to go to the next machine" (R. Vol. 1, p. 866, lines 34–43).

(2) TESTIMONY OF SHOE MANUFACTURERS TO MERITS OF RESTRICTED LEASES.

The shoe manufacturers themselves appreciate the merits of the restricted forms of lease and prefer those forms to any others.

R. P. HAZZARD, manufacturer of 5,000 pairs of welt shoes daily, testified:—

> "When I started in for myself I adopted the plan of obtaining machines on the restricted leases because I considered it to our advantage to do so. Because in my judgment it was a necessity for the United Shoe Machinery Company to restrict in some way the use of those machines in connection with the machines paying a royalty, in order to make it practical for them to supply us with the agents' service which they give us, and that the saving in the machinery investment in our plant and the chances of new models coming up made the purchase of the machines in this manner better for us in a financial way as regards the investment of the machine, besides the advantage of the agents' services" (R. Vol. 1, p. 641, line 35; p. 642, line 2).
>
> "My reason for taking the restricted lease was primarily a question of finances, to save my money for working capital instead of tying it up in dead capital. Another reason was that I considered that the liability of loss in the replacement of a machine by a more up-to-date model would be less under the restricted lease than under the other lease. . . . I have never taken as much interest in the legal wording of the United Company's leases as I have in the personality of its people, and I have always had fair treatment from the United Company" (R. Vol. 1, p. 653, lines 10–20).

MARTIN E. WELCH testified:—

> "At the time we made up our minds to add a welt line of shoes I thought the United Company had the best machines and put them out on the best terms. I thought the restricted lease the best terms. First, because it allowed us the use of the money which would have to be put in machinery that at some time would be absolutely worthless; secondly, because we could tell almost

to a dollar what the depreciation would be at the end, and thirdly, because I made a partner of the United Company. They owned the machines, and it was just as much to their interest to make the machines work to their fullest capacity as it was to my interest to have them work to their fullest capacity. Again, when a man owns his own machine if a part breaks he must put it in, but if there are any poor parts in the United machines they paid for the parts. They have used me fair in that respect" (R. Vol. 1, pp. 709–10).

"As between the unrestricted lease and the restricted lease, in my judgment the restricted lease is preferable because, first, I can put into my business the money that I save instead of investing it in the machinery, so that I have more money; second, I can tell almost to a cent just what the depreciation is on that machinery—I call the return charges the depreciation; and, thirdly, I make a partner of the United Company. I have not a dollar invested in the machines, and their interest in the machines is fully as great as mine, and it is to their advantage to keep the machines working to their fullest capacity. That means less machinery for me to run in the factory, and it means a less investment for the United Company. It is true that under the unrestricted lease the United Company owns the machine, and the company draws the same royalty from that machine as it obtains from the other machine. . . .

"I do not see any advantage to the manufacturer in taking the unrestricted instead of the restricted lease, the advantage is with the restricted lease. . . .

"Before I changed to the restricted leases I had had the initial premium leases for about two years. I had practically all my machines on the initial payment basis and changed over from my own choice. I got back everything that was owed me" (R. Vol. 1, p. 713, lines 5–34).

FREDERICK ALLEN said:—

"When we equipped our new factory with machinery for making welt shoes we took the restricted form of lease. Of the three forms of obtaining machinery for making welt shoes—by purchase, by the independent lease, or by the restricted lease—in my judgment the restricted lease is the more advantageous for the manufacturer. I prefer that to purchase because I don't have to tie up our money in machinery, which as an asset is worthless as soon as it is installed. An investment in machin-

ery has not any value for the purpose of obtaining credit; no one considers it an asset. Also the money is tied up so that a manufacturer is prevented from doing that much more business" (R. Vol. 1, p. 722, lines 6–16).

"I preferred the restricted form of lease because I am not obliged to tie up my money. There was a less investment of money if I took the machines under the restricted form of lease than if I took them under the unrestricted form" (R. Vol. 1, p. 723, lines 33–36).

CHARLES A. EATON testified:—

"We take a very large proportion of our machinery from the United Company. We chose the restricted lease because we felt that it was for our interest. That was because we were relieved from a large investment of capital, and because we believed that the development of shoe machinery was along that line and that we should get better and improved service by so doing.

"I have read the leases. The restrictions do not affect our activities at all. We have full confidence in the management of the company as indicated by their dealings with us since it was formed. They have not taken advantage of the technicalities of their leases to the extent that they could. They have been lenient in all their dealings and in the exchange of machines. Their policy has been very liberal, and they have kept the machines up to date. As new machines were brought out they have exchanged the old ones without any return payment or any charge to us, except for missing or worn parts and freight charges. Those are all the charges that have been made to us on account of the replacement of machines during these years of development since we have done business with the company" (R. Vol. 1, pp. 751–2).

EDWARD W. BURT testified:—

"We have always taken our machines on royalty leases, not paying initial charges. I have done that because I prefer not to tie up capital in machinery. It is a very great expense and, in securing credit, bankers never consider machinery worth a dollar" (R. Vol. 1, p. 740, lines 37–41).

C. WILLIS BENNETT testified:—

"When I started out for myself I got my machinery from the United Company and from the Singer, the

Union Special, and the Wheeler & Wilson Companies. I make from 800 to 1,400 pairs a day, depending upon the season.

"I took my machines from the United Company on the restricted form of lease without initial premiums. I chose that form because I had a very small capital when I started and I didn't care to lock up so much money in machinery. I had been a superintendent and had saved some money. That is all I had to start with" (R. Vol. 1, p. 757, lines 40–45; p. 758, lines 1–4).

"As between purchasing machinery, or obtaining it upon an independent lease with an initial premium, or obtaining it on the restricted form of lease which I have, the restricted lease was the most advantageous because I had no money to tie up in machinery. Had I not been able to obtain my machines in that way, I would not have been able to start in business at all; never could have started if it hadn't been for the United Company. . . .

"I do not find anything irksome or difficult about the clauses in the leases limiting the use of our machines. I have read the leases" (R. Vol. 1, p. 759, lines 9–23).

(3) THE RESTRICTED USE CLAUSE DOES NOT REQUIRE A LESSEE TAKING ESSENTIAL MACHINES FROM THE UNITED COMPANY TO LEASE OF IT PRACTICALLY ALL OTHER MACHINES.

The fundamental charge of the petition, as we have shown (*supra*, p. 11), is that the defendants planned to acquire or obtain a monopoly by

A. Acquiring all concerns engaged in the shoe machinery business, and then

B. Refusing to sell or lease any essential machines, viz., lasting, welt sewing, outsole stitching, heeling, and metallic fastening machines, except on condition that the shoe manufacturer take from them "practically all other machinery" which he required (R. Vol. 1, p. 994).

The United States relies upon the Restricted Use Clause to prove the second portion of this charge, namely, that the

United Company refused to lease any of its essential machines, namely:—

(1) Lasting machines,
(2) Welt sewing and outsole stitching machines,
(3) Heeling machines,
(4) Metallic fastening machines,

except on condition that the shoe manufacturer take practically all other machinery from it.

Unless, then, the Restricted Use Clause has the Effect of Requiring a Lessee taking Essential Machines to take Practically All Other Machinery from the United Company, it Fails to Support the Allegation of the Petition, and is Immaterial in the Present Case.

The charge is not that the United Company refused to furnish one of the so-called "essential" machines except upon conditions requiring the manufacturer to take from it the rest of the "essential" machines. The whole theory of this branch of the case for the United States was that the manufacturer had to have the United Company's "essential" machines (that is, the five above enumerated), and that the United Company made use of its lawful patent monopoly of these machines and their controlling superiority to all others on the market to force upon the shoe manufacturers its much more numerous line of what the United States would presumably designate as "non-essential" machines and thus to exclude competitors and maintain an unlawful monopoly of such "non-essential" machines. It is clear, therefore, that the words, "practically all *other machinery*," are intended to refer to machines other than the five kinds which the petitioner designates as "essential."

That the Restricted Use Clause has no such effect as that alleged is apparent from an examination of the leases themselves.

In the first place, it must be remembered throughout the discussion that it is not true that the United Company ever "refused to sell or lease" any of its machines, "essential" or "non-essential," except with the Restricted Use Clause in the lease. On the contrary, the United Company has always

continued to offer all its machines, either for outright sale (as in the case of the General Department machines), or under leases containing no Restricted Use Clause, on the same or even more favorable terms than were in effect when the United Company was formed (*infra*, pp. 358–361). The Restricted Use Clause merely offers an alternative form of lease at a reduced price to lessees desiring to use a number of the United Company's machines as a team. The wholly unfounded charge that the difference in price under the two forms of lease is prohibitive, or exorbitant, or in any way unreasonable, will be dealt with below (*infra*, pp. 362–365).

Again, the Restricted Use Clause is not a condition that the shoe manufacturer take from the United Company "practically all other machinery" which he required, or all other machines even of a particular kind, or for a particular purpose. A lessee holding any machine under a lease containing this clause may take any other machines from competitors which he desires without in any way violating the terms of the Restricted Use Clause. The restriction is that he do not use the United Company's machine on shoes on which he uses certain other machines. The clause merely limits the method of use of that particular machine. That this is not an immaterial distinction will appear below (*infra*, p. 365).

But disregarding for the moment both of these fundamentally erroneous statements in the charge of the petition, the whole theory of this contention falls to the ground when it appears upon examination of the leases that instead of being customarily attached to the leases of the "essential" machines, and requiring these to be used only with the United Company's "other machinery," that is, the "non-essential" machines, the Restricted Use Clause was never used at all in any leases of the two machines which could most properly be described as "essential," namely, the Goodyear welt sewing and outsole stitching machines; and when used in leases of the other so-called "essential" machines it restricts their use (with one or two minor exceptions noted below among the many forms of leases put out) not to use with other "non-essential" machinery, but solely to use with one or more of the other "essential" machines; and the Restricted Use Clauses, found in the leases of the "non-essential" machines, restrict them not to

use with other "non-essential" machines, but to use with certain of the "essential" machines. Such a leasing system lends absolutely no support whatever to the charge that the "essential" machines were used to compel or even to induce by means of the Restricted Use Clause the purchase or leasing from the United Company of its "other machinery" or to exclude the "other machinery" of competitors. The Restricted Use Clause operated in exactly the wrong direction to support that theory; and the failure of this part of the case for the United States was so complete as to make it rather astonishing that any one who had ever had an opportunity to read with any care the United Company's leases should ever have put forward such a claim.

The examination of the leases shows that a lessee, taking every one of the so-called "essential" machines from the United Company under the restricted form of lease, is free to use with all of them on the same shoes any machines of any *other* kinds whatsoever obtained from competing makers, with only these three very small exceptions, namely, (1) that if he uses under restricted lease a No. 5 Lasting Machine (which is only one of several kinds of lasting machines made by the United Company), he must, if he pulls over by machinery the shoes on which that lasting machine is employed, use the United Company's pulling-over machine in connection therewith; (2) that if he uses under the restricted lease the United Company's heeling machine *on pegged shoes* (of which very few are made), he must use the United Company's pegging machine in connection therewith; and, (3) that if he uses the McKay & Copeland Lasting machine (of which very few are used (R. Vol. 1, p. 454, lines 8–9)) under the restricted form of lease, on pegged shoes, he must use the United Company's pegging machines in connection with it. With these three minor exceptions he is absolutely free to use all of the United Company's "essential" machines under restricted leases on the same shoes on which any other machines obtained from competitors are used, such as machines for stitching uppers, pulling-over machines, eyeletting machines, clicking machines, a large number of auxiliary machines (there being 43 in the Goodyear department alone), General Department machines (of which there are over 170 different kinds), and any

other machines of any kind which may be useful in the manufacture of shoes.

That this statement, if true, completely disposes of the charge of the petition must be apparent. It is only necessary to support the statement which has been made by a detailed examination of the leases of the so-called "essential" machines.

(*a*) Lasting Machines.

There were introduced by the United States, to show the form of lease upon which the United Company put out its lasting machines, nine different forms,—in addition to the forms in use before the United Company was formed and which the United Company continued to use.

Of the two forms introduced in respect to the **Consolidated hand method welt lasting machine** only one contains any limitation whatever to use with machines of any other department. That one limits the lasting machines held under it to use alone with the United Company's welt sewing and outsole stitching machines. There is no limitation or condition as to any of what the United States refers to as "*other machinery*" whatsoever (*supra* pp. 288–289).

Of the two forms of lease for the **Consolidated hand method McKay lasting machine** only one contains any limitation whatever to machines of any other department. That one limits to use with the lasting machines held under it to use alone with United Company's metallic machines. There is no limitation as to any "*other machinery*" whatsoever (*supra*, p. 288).

Of the forms of lease introduced in respect to the United Company's **Ideal** and **Chase** lasting machines neither one limits to use with any machines other than the United Company's welt sewing and outsole stitching machines and metallic machines. In the case of the **Ideal** the restriction is to the United Company's welt sewing and outsole stitching machines only—there is no limitation or condition as to any "*other machinery*" whatsoever (*supra*, pp. 286–287).

For the **McKay & Copeland lasting machines** one form of lease only (which was introduced by the United Company in 1903—four years after its formation) limits to use with

any of what the Government refers to as "*other machinery.*" Of such "*other machinery*" that one limits to use with pegging machines only (*supra*, pp. 286–287).

Of the two forms of lease introduced in respect to the United Company's **No. 5 lasting machines** only one contains any limitation to use with any other of the United Company's machines. That one so far as relates to what the United States refers to as "*other machinery*" limits to use with United Company's pulling-over machines only. This No. 5 Lasting Machine was not developed or put on the market until 1908—nine years after the formation of the United Company (*supra*, p. 295).

In the case of the other groups the lack of foundation for the allegation is even more striking, if that is possible.

The second group which the United States refers to is—

(*b*) Welt Sewing Machines and Outsole Stitching Machines.

The United States introduced three forms of leases as showing the manner in which the United Company has leased these machines. There is not one of these leases which limits the machines to use with any "*other machinery*" whatsoever. As a matter of fact, the United Company has never at any time in its existence put out any form of lease for its welt sewing and outsole stitching machines which limited such machines to use with the United Company's lasting, metallic fastening or heeling machines or any of them or which limited them to use with any "*other machinery*" whatsoever; or which prevented the use with the United Company's welt sewing and outsole stitching machines of any other machines of whatsoever kind or from whatsoever source obtained (*supra*, pp. 281–283).

The next group mentioned by the Government is—

(*c*) Heeling Machines.

Of the three forms of lease in respect to the United Company's heeling machines only one contains any limitation whatsoever. Of such "*other machinery*," that one form (which was

not adopted until 1904) restricts to use with pegging machines only (*supra*, p. 289).

The final group mentioned by the Government is—

(*d*) METALLIC MACHINES.

The United States introduced seven forms of lease as showing the manner in which the United Company has put out its metallic machines; only three contain any limitation whatsoever to use with any of the United Company's other machines. In no instance is such limitation extended to the use of any of what the United States has referred to as "*other machinery*"—the limitation in the three cases which contain any limitation being to use with the United Company's lasting and to its welt sewing and outsole stitching machines alone (*supra*, pp. 290–292).

The existence of a limitation to use with the United Company's pulling-over machinery in the one isolated instance in one form of lease for the No. 5 Lasting Machine adopted nine years after the formation of the United Company, and of a limitation to use with the United Company's Pegging Machine in the two instances mentioned, viz., one form of Lasting Machine lease adopted five years after the formation of the United Company and one form of Heeling Machine lease adopted six years after such formation, can hardly be taken as a demonstration of an "idea" alleged to have been "conceived" by the defendants at the time of its formation years before—

> "*to refuse to sell or lease any of the essential machines* [(1) lasting machines, (2) welt sewing machines and outsole stitching machines, (3) heeling machines, and (4) metallic fastening machines] to the manufacturer of shoes *except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to* such manufacturer of shoes" (italics ours) (Petition R. Vol. 1, pp. 991, 994).

An examination of all the leases offered in evidence shows, as stated above, that, with the three minor exceptions noted above, in all those cases in which any limitation whatsoever exists it is always *to* one or more of the machines which the United States in its petition has designated as "essential"

machines, viz.: (1) lasting machines, (2) welt sewing and outsole stitching machines (3) heeling machines, and (4) metallic machines and never *from* such "essential" machines *to* "other" machines.

The foregoing appears to be a complete answer to any claim that the United Company determined to "refuse to sell or lease any of the *'essential'* machines to the manufacturer of shoes except on condition that he buy or lease of them practically all *other machinery* of whatever kind necessary or useful to such manufacturer of shoes," but to further emphasize the lack of basis for such claim, consideration of some of the items of *"other machinery"* is illuminating. For example:—

"Other machinery" must include all of the machines used for attaching the soles of McKay shoes to their uppers. In 1899 such McKay sewed shoes amounted to 82,000,000 pairs out of a total of 172,000,000 pairs of shoes made in the United States; in 1904 to 94,000,000 pairs out of a total of 219,000,000 pairs made in the United States; and in 1910 to 105,000,000 out of a total of 278,000,000 pairs made in the United States (Defs.' Ex. 215, Vol. 5, p. 322).

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines of any kind, *"essential"* or otherwise, which contained any condition that such manufacturer buy or lease any McKay sewing machine from the United Company, or which limited the use of any of the United Company's machines to use with McKay sewing machines obtained from the United Company, or which precluded the use of any of the United Company's machines with McKay sewing machines obtained from any source whatever.

"Other machinery" must include all of the **machines used for the many operations in sewing together the parts of the uppers and linings** of all shoes made. Such machinery in number of machines used represents a very large per cent. of all the machines used in the manufacture of shoes.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, *"essential"*

or otherwise, which contained any condition that such manufacturer buy or lease any machinery for performing any such operations from the United Company, or which limited the use of any of the United Company's machines to use with machines for such purposes obtained from the United Company, or which precluded the use of any of the United Company's machines with machines for such purposes obtained from any other source whatsoever.

"*Other machinery*" must include all of the machines used for cutting or dieing out the various parts of the uppers and soles of all shoes. This includes all clicking machines.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any such cutting or dieing-out machines or clicking machines from the United Company, or which limited the use of any of the United Company's machines to use with cutting or dieing-out or clicking machines obtained from the United Company, or which precluded the use of any of the United Company's machines with cutting or dieing-out or clicking machines obtained from any other source whatsoever.

"*Other machinery*" must include all of the machines for performing the various operations similar to those performed by the auxiliary machines of the Goodyear Department of the United Company, or other similar operations.

The United Company never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer should buy or lease any such auxiliary machines from the United Company, or which limited the use of any of the United Company's machines to use with such auxiliary machines obtained from the United Company, or which precluded the use of any of the United Company's machines with similar auxiliary machines obtained from any other source whatsoever.

"*Other machinery*" must include all machines for inserting the eyelets and for inserting the lacing hooks in all laced shoes made.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any eyeletting or lacing hook machines from the United Company or which limited the use of any of the United Company's machines to use with eyeletting or lacing hook machines obtained from the United Company or which precluded the use of any of the United Company's machines with eyeletting and lacing hook machines obtained from any other source whatsoever.

"*Other machinery*" must include all machines for making and finishing all buttonholes and for attaching the buttons of all buttoned shoes made.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any button or buttonhole machinery of any kind from the United Company or which limited the use of any of the United Company's machines to use with button or buttonhole machinery obtained from the United Company or which precluded the use of any of the United Company's machines with button or buttonhole machinery obtained from any other source whatsoever.

"*Other machinery*" must include all machines for treeing and finishing all shoes made.

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any treeing or finishing machinery from the United Company or which limited the use of any of the United Company's machines to use with treeing or finish-

ing machinery obtained from the United Company, or which precluded the use of any of the United Company's machines with treeing or finishing machinery obtained from any other source whatsoever.

"*Other machinery*" must include all **machines for performing the operation of pulling over and the operations of the various auxiliary machines connected therewith** upon all shoes made which are so operated upon.

The United Company with one minor exception has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any pulling-over or auxiliary machinery from the United Company or (excepting in so far as in some forms of Pulling-Over Department leases the pulling-over machine and its auxiliaries are limited to use together) which limited the use of any of the United Company's other machines to use with pulling-over or auxiliary machinery obtained from the United Company or which precluded the use of any of the United Company's machines with pulling-over or auxiliary machinery obtained from any other source whatsoever. The one exception is that there is one form of lease for the No. 5 lasting machine (P.'s Ex. 21) which limits the No. 5 lasting machine when held on that particular form of lease to use with the United Company's pulling-over machine, when the shoes were pulled over by machine but not otherwise.

"*Other machinery*" must include all **machines for performing all of the various operations similar to those performed by the 172 different kinds of machines offered by the United Company for outright sale in its General Department.**

The United Company has never put out a lease to any manufacturer for any of its lasting or for any of its welt sewing or outsole stitching or for any of its heeling or for any of its metallic machines, or in fact for any of its machines, "*essential*" or otherwise, which contained any condition that such manufacturer buy or lease any machinery for performing any of such operations from the United Company, or which limited the use of any of the United Company's machines to use with

General Department machines obtained from the United Company or which precluded the use of any of the United Company's machines with machines of any of the 170 different kinds included in the General Department, which were obtained from others.

(4) THE RESTRICTED USE CLAUSES WERE NOT ADOPTED FOR THE PURPOSE OF EXCLUDING COMPETITORS' MACHINES.

We have shown above that the Restricted Use Clauses were adopted for the purpose of offering a wholesale rate to lessees desiring to use a team of the United Company's machines adapted for use together, and working most effectively together.

We have also shown that they do not require or even offer inducements to a lessee taking essential machines from the United Company to take of it practically all other machinery, or indeed any other machinery, and thus that they offer no support to the charge on which the petition is based. This being so, these clauses become immaterial in the present case.

However, we wish to call the Court's attention to various other considerations supporting our showing that the Restricted Use Clauses were adopted solely for the purpose of offering reduced rates to shoe manufacturers using a team of machines, and that they were not adopted for the purpose of excluding competitors' machines.

(a) THE FACT THAT THE UNITED COMPANY HAS ALWAYS OFFERED ALTERNATIVE LEASES CONTAINING NO RESTRICTED USE CLAUSES DISPROVES ANY INTENT TO COMPEL THE USE OF OTHER MACHINES.

There has never been a time when a lessee could not obtain machines of any department upon a form of lease containing no restrictions as to use with machines of other depart-

ments. Mr. Winslow testified (R. Vol. 1, pp. 440–1, lines 45, 1–2),—

> "There never has been a time when a lessee could not obtain the machines of any department upon an independent form of lease."

In 1911 Mr. Winslow gave to a committee representing the Manufacturers' Alliance a statement of the terms upon which lessees could then and could at all times previously obtain machines on unrestricted leases from the United Company. This statement is given in Defendants' Exhibit 40 (R. Vol. 5, p. 40). See also Mr. Winslow's testimony with reference to this statement (R. Vol. 1, p. 514).

Furthermore, the United Company has always been willing to permit a lessee holding a lease of a machine containing a Restricted Use Clause to cancel his lease and take in exchange an unrestricted form of lease. On pages 450 to 451 of the record, Vol. 1, are given the names of nineteen shoe manufacturers who were offered unrestricted leases in exchange for their restricted leases.

The unrestricted leases in practically every instance carry the same royalty as the restricted leases. The difference is that an initial payment is charged under the unrestricted leases. One form of unrestricted lease of metallic machines adopted in 1901 by agreement with a committee of shoe manufacturers is an exception to this rule. In that lease no initial payment is charged, but instead the United Company is authorized to charge 10% more for fastening material used in the machine, the profit from the sale of which constitutes the only royalty that is charged under the lease (*supra*, p. 291).

In no instance where an initial payment is charged for an unrestricted lease has the amount of the payment been increased over what was charged prior to 1899, the date of the formation of the United Company, and in some cases the initial payment has been reduced, and in no instance has the royalty charged on any machine been increased over that charged in 1899 (R. Vol. 1, p. 433, lines 29–32). On the contrary, certain of the initial payments previously required have been removed and the machines leased without the

Restricted Use Clause on leases requiring no initial payment. Thus in 1899 $300 initial payment was charged for the Goodyear Welter and the same amount for the Goodyear Stitcher (R. Vol. 1, p. 515, lines 1–12, and Defs.' Ex. 41, Vol. 5, p. 44). The charge for some of the auxiliary machines was as much as $500 each (Defs.' Ex. 41, Vol. 5, p. 45). The lessee to-day can get his Goodyear machines without any initial payment, paying on the auxiliary machines only a small annual rental (Defs.' Ex. 230A, Vol. 5, p. 443), and the leases contain no clause restricting their use to use with other groups of machines. In addition the royalty on the turn machine has been reduced 50%.

The result is that a lessee to-day who does not wish to be bound by the Restricted Use Clauses adopted by the United Company can get leases without these clauses on better terms than were available in 1899, before the formation of the United Company, although the machines themselves have been much improved, numerous auxiliary machines have been added, and the cost of manufacturing machines has unquestionably increased.

It is obvious that if the defendants, as charged by the United States, had organized the United Company in order to compel shoe manufacturers taking one kind of machine to take all kinds, they would not have continued to offer machines of each kind independently on as favorable or more favorable terms than before.

The District Court, referring to the contention that the leases of the United Company compel shoe manufacturers desiring to take certain machines from the United Company to take other machines which prior to the formation of the United Company they could obtain separately, said,—

> "The alleged plan of a refusal of what before could be had separately, as a means of compelling the taking of other machines, was a principal ground for invoking the Sherman Act" (R. Vol. 1, p. 1162).

After reviewing the various clauses in the leases, the District Court found that the Restricted Use Clause was the only one that—

". . . has relation to the supposed scheme of using the power acquired by combination to refuse machines that before were separately obtainable, and to offer such machines only on condition that other machines of different kinds should also be taken" (R. Vol. 1, p. 1163).

The District Court, however, found not only that the Restricted Use Clause was lawful in and by itself, but that in view of the fact that machines on unrestricted leases are offered on as favorable terms as previously the United States must be held to have utterly failed to prove its contention.

Thus the District Court said:—

"The restricted or prohibitive leases do not in themselves as documents prove the denial of the right to procure, as before, independent leases for individual machines. As matter of fact, independent leases which did give the right to use the machines with machines of other kinds, made by other machinery manufacturers, were always procurable. This was the general rule, and if there were any exceptions they were, so far as appears, inconsiderable.

"It is a result of the consolidation that the United Company offers more attractive contracts for a group of machines of different kinds than for machines of one kind only; but as it still offers the contract for machines of one kind on as good terms as before it is difficult to see how that is detrimental to the shoe manufacturers.

"The charge of this supposed scheme to deprive former customers of the right to use some machines unless they would also use others seems to have originated either in the erroneous assumption that a prohibitive lease was the only kind procurable, and that the former customer had no choice, or in disregard of the fact that it was merely an alternative form of lease. As the leases prove no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge" (R. Vol. 1, p. 1163).

The Contention of the United States that the Terms Charged for Unrestricted Leases are Prohibitive is Utterly Unfounded.

The United States contended in the District Court that the initial payments charged for machines under the unrestricted leases were prohibitive. This of course is not the fact, because they are the same or less than the initial payments that manufacturers had paid and prospered under for many years before the United Company inaugurated the group form of leases from which the initial payments were eliminated.

The objection to the initial payment leases is not that the initial payments are exorbitant, but it lies only in the fact that the United Company's non-initial payment leases are more favorable.

No evidence was introduced by the United States as to the cost of building or the value of the machines, and there was absolutely no evidence that these initial payments were unfair. The United States did not attempt to show that the amount of the initial payments exceeded the difference between the return to the United Company when its principal machines are used as a team, and when they are used independently. In the case of the metallic lease adopted in 1901, where no initial payment was charged for the unrestricted lease, but the royalty was increased, where this form of lease was taken, over the amount charged under the restricted lease, the difference was only 10%.

The District Court said (R. Vol. 1, p. 1166):—

> "But surely, if the argument is made that there is coercion through an excessive price, such an argument can have no weight whatever for any purpose legal or ethical unless the fact that it is excessive affirmatively appears. From such evidence as is presented in this case as to the amount of initial charges upon independent leases we can draw no support for the charge of coercion through excessive charges."

Mr. F. C. Rand, vice-president of the International Shoe Company, a witness for the United States, testified that his

company operated 1,635 machines taken from the United Company; that the cost of installing them under the restricted form of lease was between $10,000 and $12,000, and the cost under the unrestricted form would be over $250,000—a difference of approximately $240,000, the royalty charged in both cases being the same (R. Vol. 1, p. 180, lines 38–45; p. 183, lines 37–38). The amount of the initial payment on each machine of the kind held by Mr. Rand is given in Defendants' Exhibit 41 (R. Vol. 5, p. 44). It is to be noted: *First*, that the amount stated by Mr. Rand as the cost of installation includes not only initial payments under the unrestricted form of leases of certain departments, but also the cost price of all General Department machines when purchased outright, which amounts to one-third of the total. The International Company by purchasing these General Department machines would avoid the annual rental otherwise payable on them; *Second*, that this total includes initial payments on Goodyear machines, the leases of which contain no clause restricting their use to use with other groups of machines, so that it would not be necessary to take the Goodyear machines on the initial payment form of lease to avoid the effect of the Restricted Use Clause; *Third*, that if a manufacturer desired to use machines without Restricted Use Clauses it would only be because he desired to use some but not all machines obtained from others, in which case he would not take machines of that kind from the United Company, and therefore would not pay the initial premiums required on such machines. This, of course, would reduce the total initial premiums paid by him. The more machines of others he took, the fewer would be the machines of the United Company which he used, and thus the initial payments made by him to the United Company would be proportionately reduced. In no possible case, then, would he be under the necessity of paying $250,000, or anything approaching that sum, because he wished to use a competitor's machines.

The International Company is one of the two largest shoe manufacturers in the world, having $25,000,000 capital, making 50,000 pairs of shoes a day, and operating twenty different factories (R. Vol. 1, p. 184). $240,000 (an average of $12,000 for each of the International Company's factories) is on its

face a small sum to cover the cost of buying outright the General Department machines used in these twenty factories and obtaining the remaining machinery of the types manufactured by the United Company under conditions whereby the machines could be used at the option of the lessee independently of each other and not as part of a series.

That the Terms Charged for Unrestricted Leases are not Prohibitive or Arbitrary is Conclusively Shown by the Large Number of Machines which have been Taken on these Terms by Shoe Manufacturers.

The continued and extensive use of the unrestricted leases and the large number of machines covered thereby in and of themselves clearly prove that the terms upon which the United Company offered its machines on such leases are not prohibitive and that any shoe manufacturer who cares to do so can take from the United Company such machines as he desires on these forms of lease and continue in competition with other manufacturers. In 1905, 706 shoe manufacturers had machines of the Lasting, Heeling, and Metallic Departments upon unrestricted leases—"There were 186 unrestricted leases of principal metallic machines, 536 unrestricted leases of heel attaching machines and 322 unrestricted leases of lasting machines" (R. Vol. 1, p. 976, line 43; p. 977, line 5).

During the twelve years from the formation of the United Company up to 1911, shoe manufacturers took 869 unrestricted leases of the hand method McKay lasting machine alone.

In 1911 there were 225 metallic machines, 415 principal heel attaching machines, 514 auxiliary heeling machines and 1,506 lasting machines held on unrestricted leases.

The payment of lease premiums for the use of shoe machinery has been an accustomed feature of obtaining such machinery. The manufacturer of the Goodyear welt or Goodyear turn shoe had never, prior to the formation of the United Company or subsequent to its formation until January 1, 1905, been able to obtain Goodyear machinery other than by the payment of lease premium.

It is to be noted that the smallest number of unrestricted

machines was in the Metallic Department. An unrestricted lease in this department can be obtained without initial payment for 10% more royalty than was charged on the restricted form, surely a small discount for a wholesale use of the machines as a team.

(b) OTHER CONSIDERATIONS SHOWING THAT THE RESTRICTED USE CLAUSES WERE NOT ADOPTED FOR THE PURPOSE OF EXCLUDING COMPETITORS' MACHINES.

That the Restricted Use Clauses are intended to offer wholesale prices to shoe manufacturers desiring to use a series or team of the United Company's machines and that they were not adopted to require an exclusive use of the Company's machines or to arbitrarily exclude competitors' machines is further shown by the following considerations:—

1. The clause, as we have shown above, does not require the lessee to use the United Company's machines at all. On the contrary, it prohibits the use of the United Company's machines except on certain conditions, that is, when they are used as part of a team.

The only effect, therefore, that it can have is to induce the shoe manufacturer to use a team of the United Company's machines because he thereby gets a wholesale price instead of a retail price.

Had the United Company planned, as charged, to refuse to lease any of its essential machines unless the lessee bought or leased practically all other machinery of it, or had it intended to require an exclusive use of its machines, or to arbitrarily exclude competitors' machines, it is obvious that it would have adopted a very different kind of provision to carry this purpose into effect.

2. The United Company, as we have shown, eliminated the clause occurring in a number of the leases put out by the constituent companies requiring the lessee to take additional machines of the same kind as those leased, if he needed them for additional work. The effect of this clause was to require an exclusive use of the machines of the kind leased. The fact

that the United Company used this clause only to a limited extent after its formation, and discarded it entirely after 1907, shows that it did not intend by its leases to require even an exclusive use of machines of the particular kind which the shoe manufacturer desired to take.

3. The Restricted Use Clause was not introduced at once upon the formation of the United Company, but only from time to time as special conditions made it possible for the United Company to reduce its charges or in some other way grant more favorable terms to lessees who desired to use a series of its machines. Thus, as we have shown, it was introduced into the metallic leases only when the cost of copper wire used by the lessees in the machines, the purchase of which afforded the royalty, compelled the United Company to increase the price at which it sold the wire to lessees who did not use a series of its machines and thus enable it to obtain a royalty from the series sufficient to compensate it (*supra*, pp. 275–276). It was not introduced into the heeling leases until the fall of 1904, nearly six years after the formation of the United Company, and was then introduced as partial compensation for the elimination of the initial payments previously charged for the Goodyear machines (*supra*, pp. 277–278).

4. The United Company never inserted any Restricted Use Clause in its leases of Goodyear machines, restricting their use to use with machines of other departments. The Goodyear Welter and Stitcher are in many respects the most important machines manufactured by the United Company. The patent expert for the United States, Chapman, testified that they were the only essential machines for welt shoes (R. Vol. 2, p. 2794). They are fundamental in its welt system and the largest royalty is paid for their use. Had the United Company contemplated refusing to lease its important or essential machines, unless the manufacturer took or used other machines furnished by it, it surely would have restricted the use of its Goodyear Welter and Stitcher.

5. The United Company sells outright 172 General Department machines which were invented or acquired by it after its formation (Defs.' Ex. 227). More than one-half the machines which it manufactures are General Department machines.

In other words, while the constituent companies prior to

the formation of the United Company sold no machines, the United Company now sells outright more than half of the kinds of machines it makes. No other machines furnished by the United Company are restricted to use with any General Department machines. Had the United Company planned to compel shoe manufacturers leasing its machines, whether essential or otherwise, to take all or a large part of the other machines required by them, it would certainly not have sold its General Department machines outright to any shoe manufacturer whether or not such shoe manufacturer took or used any of its other machines nor continued to lease all its other machines without any reference to whether the lessee bought or used any of its General Department machines.

6. The effect of the Restricted Use Clauses is very limited. Thus, a shoe manufacturer holding machines under restricted use leases can, without violating the restrictions applicable to such machines, obtain from competitors and use in connection with the United Company's machines the larger portion of the machines required by him in his factory. We consider this limited effect of the Restricted Use Clauses more in detail below.

(c) THE EFFECT OF THE RESTRICTED USE CLAUSES IS VERY LIMITED. A SHOE MANUFACTURER HOLDING MACHINES UNDER RESTRICTED LEASES CAN, WITHOUT VIOLATING THE RESTRICTIONS, OBTAIN FROM COMPETITORS, AND USE IN CONNECTION WITH UNITED COMPANY'S MACHINES BY FAR THE LARGER PORTION OF THE MACHINES REQUIRED BY HIM.

The restrictions contained in the United Company's restricted use leases, as we have shown above, limit the use of the machines to use in connection with only a few of its principal machines which are peculiarly delicate in their operation, which have, as we have stated, been constructed for use together, which are essential to the integrity of a shoe, and which comprise only a very small proportion of the total number of machines required by a shoe manufacturer.

As we have shown above, these so-called principal machines are restricted to use in certain cases with each other, but they are not restricted to use with any other machines, and while other machines are restricted to use with the principal machines, they are not restricted to use with each other. There are then no restrictions in any of the leases of any kind of machines which restrict the use of the leased machines except to use in connection with one or more of the following, viz., the Goodyear Welter and Stitcher (but not the 43 Goodyear Auxiliary Machines), Lasting Machines, Heeling Machines, Metallic Machines, and Pegging Machines. The only exception to the foregoing statement is that the No. 5 Laster is limited to use with the Pulling-over Machines.

The result is that, with the single exception above noted, requiring a lessee of a No. 5 Laster to use it in connection with the United Company's Pulling-over Machine, a shoe manufacturer who leases from the United Company under restricted leases a Welter and Stitcher, a Lasting Machine, a Heeling Machine, a Metallic Fastening Machine (and, if he makes pegged shoes of which kind very few are made, a Pegging Machine) can use in connection with them, or in connection with any other machine leased from the United Company, any other kinds of machines he desires, whether obtained from competitors or not, without violating any Restricted Use Clause.

Thus he can take from competitors and use in connection with any machine he may lease from the United Company any one or all of the 43 different kinds of Goodyear Auxiliary Machines, any one or all of the 172 different kinds of General Department Machines, any Pulling-over Machines, Eyeletting Machines, Clicking Machines, Heeling Machines, Lacing Machines, Insole Machines, or McKay Sewing Machines.

The Restricted Use Clause thus has a very limited effect.

Defendants' Exhibit 230 (R. Vol. 1, p. 456) shows the number of Pulling-over, Lasting, Heeling and Metallic Machines, and Welters and Stitchers required in factories making from 100 to 450 pairs of welt shoes per day. Only 7 such machines are needed in a factory making 100 pairs per day; only 12 in a factory making 450 pairs per day. In the manufacture of McKay shoes, the Welters and Stitchers are not needed, so

that a factory making 450 pairs per day would require only 8 of these machines (R. Vol. 1, p. 456, lines 10–13). Out of a total of 1,150 factories which used the United Company's machinery in 1911, about half made less than 450 pairs per day (R. Vol. 1, p. 455). In a factory making 600 pairs of turn shoes only 6 such machines are needed, and in a factory making 4,800 pairs per day only 23 (Defs.' Ex. 249, R. Vol. 1, p. 506).

A shoe manufacturer, then, who leases from the United Company under restricted leases 12 machines of the kinds above mentioned in a factory making 450 pairs of welt shoes daily, or 8 of such machines in a factory making 450 pairs of McKay shoes daily, or 6 of such machines in a factory making 600 pairs of turn shoes, can, at his option, take from competitors or from the United Company any one or more of 43 different kinds of Goodyear Auxiliary Machines, 172 General Department Machines, any eyeletting machines, insole machines, lacing machines, clicking machines, or any other kinds of machines, and use them in connection with any machines of any kind whatsoever leased from the United Company on restricted leases without violating any Restricted Use Clauses in such leases.

The foregoing limited effect of the Restricted Use Clauses is illustrated by the machines in the factory of R. P. Hazzard, who makes about 5,000 pairs of Goodyear Welt shoes per day (R. Vol. 1, p. 641, lines 9–10), and who, therefore, is one of the large manufacturers, and who takes from the United Company his welters, stitchers, lasting machines, heeling machines and metallic machines. A complete list of the machines in his factory is given in Defendants' Exhibit 262 (R. Vol. 5, p. 707). This company has in all 746 machines. 419 of these machines were obtained from other persons than the United Company and can be used in connection with any machine which the United Company makes without violating any restriction contained in any lease which it puts out. Of the remaining 327 machines furnished by the United Company only 121 including 14 pulling-over machines are machines to use with which any other machine made by the United Company is restricted in any of its leases. In other words, out of a total of 746 machines actually used by Mr. Hazzard's company any one

or all of 625 machines, or over 83 per cent., whether or not obtained from a competitor can be used in connection with any machine put out by the United Company on a restricted lease without violating any restriction contained in any such lease.

J. Brown & Sons' factory has a capacity of 7,500 pairs of McKay and Standard Screw shoes a day (R. Vol. 1, p. 730, lines 14–15). It is, therefore, one of the fifteen or sixteen largest factories in the country (R. Vol. 1, p. 455). A complete list of the machines in his factory is given in Defendants' Exhibit 236 (R. Vol. 5, p. 671). This company has a total of 424 machines. 296 of these machines were obtained from other persons than the United Company, and can be used in connection with any machine which the United Company makes without violating any restriction contained in any lease which the United Company puts out. Of the remaining 128 machines furnished by the United Company only 53 are machines to use with which any other machines made by the United Company are restricted in any of its leases. In other words, out of a total of 424 machines actually used in this factory any one or more of 371 machines, or over 87 per cent. of the total number of machines in the factory, could be bought from a competitor and used in connection with any machine put out by the United Company without violating any Restricted Use Clause in any lease.

It seems self-evident that Restricted Use Clauses which, as in the case of J. Brown & Sons' factory, permit a lessee to take on a restricted lease any or all of the United Company's machines he may wish to use, and to obtain from competitors, and use in connection with such machines obtained from the United Company, 87 per cent. of the total number of machines needed by him can hardly be said to show an intent to exclude competitors' machines, or, as alleged in the petition, an intention to require a lessee taking essential machines to take practically all other machinery from the United Company (R. Vol. 1, p. 994).

Furthermore, Each of the So-called Principal Machines is not Restricted to Use with all Other Principal Machines.

We have shown above that the only machines to use with which other machines are restricted are the two principal Goodyear machines, viz., the Welter and Stitcher, Lasting Machines, Heeling Machines, Metallic Fastening Machines, and Pegging Machines with the single exception that the No. 5 Laster is restricted to use with the Pulling-over Machine.

However, the restricted leases do not restrict the use in most cases to all of the above-mentioned machines. Even in the case of the principal machines themselves this is not true. The result is that a shoe manufacturer can take various principal machines of competitors which he may desire to use and use them in connection with the United Company's principal machines of other kinds without taking all of such other principal machines from the United Company on unrestricted leases.

To illustrate:—

The Goodyear Welter and Stitcher are not restricted to use with any other machines whatsoever.

The Metallic Machines are restricted to use with the Goodyear Welter and Stitcher and the Lasting Machines.

The Heeling Machines are restricted to use with the Goodyear Welter and Stitcher, Lasting, Pegging, and Metallic Machines.

Lasting Machines are restricted:—

The Hand Method Welt to the Goodyear Welter and Stitcher.

The Hand Method McKay to the Metallic Machines.

The No. 5 to the Goodyear Welter and Stitcher, Pulling-over and Metallic Machines.

The other lasting machines have become practically or entirely obsolete.

The McKay Sewing Machine, when leased and not purchased, is restricted to use with the Lasting Machine.

The shoe manufacturer choosing his principal machines for making welt, turn, or McKay shoes, which are the principal kinds of shoes made, may take any of the following combinations of the United Company's machines and competitors' machines without paying to the United Company one cent more for any of the United Company's machines either in royalties or initial payments than he would pay for such machines if he took all his machines from the United Company.

FOR MAKING WELT SHOES.

No. 1. The United Company's Goodyear Welter and Stitcher.
Competitor's Welt Auxiliary Machines.
Competitor's Lasting Machines.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 2. United Company's Goodyear Welter and Stitcher.
United Company's Goodyear Welt Auxiliary Machines.
Competitor's Lasting Machines.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 3. United Company's Goodyear Welter and Stitcher.
United Company's Goodyear Welt Auxiliary Machines.
United Company's Hand Method Welt Lasting Machine.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 4. United Company's Welter and Stitcher.
Competitor's Welt Auxiliary Machines.
United Company's Metallic Machines.
United Company's Hand Method Welt Lasting Machine.
Competitor's Heeling Machines.

No. 5. United Company's Welter and Stitcher.
United Company's Goodyear Welt Auxiliary Machines.
United Company's Hand Method Welt Lasting Machine.
Competitor's Metallic Machines.
Competitor's Heeling Machine.

FOR MAKING TURN SHOES.

In making turn shoes the lasting is usually done by hand, so that the Lasting Machine is omitted from the following list. The Turn Machine is the same machine as the Goodyear Welter without the Welt attachment.

No. 1. United Company's Turn Machine.
Competitor's Turn Auxiliaries.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 2. United Company's Turn Machine.
United Company's Turn Auxiliaries.
Competitor's Metallic Machine.
Competitor's Heeling Machine.

No. 3. United Company's Turn Machine.
United Company's Turn Auxiliaries.
United Company's Metallic Machine.
Competitor's Heeling Machine.

No. 4. United Company's Turn Machine.
Competitor's Turn Auxiliaries.
United Company's Metallic Machine.
United Company's Heeling Machine.

FOR MAKING MCKAY SHOES.

No. 1. Competitor's McKay Machine.
United Company's Metallic Machine.
United Company's Hand Method McKay Lasting Machine.
Competitor's Heeling Machine.

No. 2. United Company's McKay Machine.
United Company's Metallic Machine.
United Company's Hand Method McKay Lasting Machine.
Competitor's Heeling Machine.

No. 3. Competitor's McKay Machine.
United Company's Metallic Machine.
United Company's Hand Method McKay Lasting Machine.
United Company's Heeling Machine.

In other combinations in which it would be necessary for the lessee to take an Unrestricted Initial Payment Lease of one or more of the United Company's machines, the lessee would be obliged to pay the initial premium charged for the lease of those particular machines so taken. For example, take the following combination:—

Competitor's Welter and Stitcher.
Competitor's Welt Auxiliaries.
United Company's Hand Method Welt Lasting Machine—Unrestricted Initial Payment Lease.
Competitor's Metallic Machine.
United Company's Heeling Machine—Unrestricted Initial Payment Lease.

In such combination the lessee would be required to make initial payments for his Lasting and Heeling Machines. For his Lasting Machine he would be required to pay $300 initial payment, and for the Automatic Heel Loading and Attaching Machine, $400 to $750, according to the particular model chosen (Defs.' Ex. 41, R. Vol. 5, p. 44).

If he took the United Company's Metallic Machines also on an unrestricted lease he would either make an initial payment, or pay an additional 10 per cent. for the material used in the machine on which the royalty is based (*supra*, p. 291).

These initial payments, or, in the case of the Metallic Machines, at his option, a 10 per cent. additional royalty would

be the entire additional amount the lessee would be required to pay to obtain these machines from the United Company on unrestricted leases running for seventeen years.

If a manufacturer has a full line of the United Company's Goodyear Machines, Lasting, Metallic and Heeling Machines on restricted leases and wants to use with them a competitor's lasting machines, he need only change his heeling and metallic machine restricted leases to independent leases.

To change to a competitor's metallic machine he need only put his heeling machines on independent leases.

To change to a competitor's heeling machine he need not take unrestricted leases of any of the other machines. None of them is restricted to use with the heeling machine.

The foregoing are only a few illustrations of the combinations available to a lessee desiring to equip his factory partially with United Company's principal machines, and partially with a competitor's principal machines.

Had the United Company intended by the use of the Restricted Clauses to exclude competitors' machines, it would obviously not have so drawn the clauses as to permit shoe manufacturers to use its machines in connection with competitors' machines, not only by taking initial payment leases, but even under the restricted leases with so little interference on account of the restrictions. The conclusion is obvious that the restricted clauses were not intended to exclude the use of competitors' machines.

(5) REASONS FOR ADOPTION OF AUXILIARY RESTRICTED USE CLAUSE.

The Auxiliary Restricted Use Clause restricts the use of auxiliary machines to use on shoes operated on by the principal machines of the department.

This clause was used by the constituent companies, and the United Company merely continued the practice.

The larger number of auxiliary machines are in the Goodyear Department, and the reasons for the use of this clause

can perhaps be best explained in connection with the Goodyear machines. The principal reasons for the use of this clause are as follows:—

1. The principal machines and the auxiliary machines as a rule perform practically a single operation, such as welting, pulling-over, or heeling. The auxiliary machines were originated and developed to assist the principal machine with which they are used, and are adapted for that particular purpose. For practical purposes they constitute a single machine. The principal machine or machines and the auxiliary machines used in connection therewith are therefore leased as a unit, the auxiliaries being restricted to use with the principal machines, as this is the purpose for which they are taken by the lessee.

2. The United Company prefers not to put out machines of the kinds it leases unless it assures their being satisfactory by repairing them and keeping them in proper operating condition. A group of machines it can care for at a more or less ascertained price. A single auxiliary machine would be costly to care for by itself.

Mr. Winslow testified:—

> "I will state one reason why the United Company has not adopted a form of lease for the Goodyear auxiliary machines which would permit them to be used in connection with welters and stitchers manufactured by other companies, upon payment of a royalty. Of course our machines are all taken care of in the factories, and the expense of taking care of individual machines would be very large and no prices have been established for that. It was not the policy of the Goodyear Company, and we have developed along the same lines trying to furnish to manufacturers the greatest amount of help that we could in manufacturing Goodyear welt shoes, and it was only on these lines that we could see how to give the manufacturer the greatest value for the money. We spent large sums in developing these auxiliary machines, perhaps much in excess of their value as machines, or what we could charge for, but there was every incentive to do it to develop the manufacture of the shoes made by the principal machines" (R. Vol. 1, p. 544, lines 23–39).

3. As a matter of historical growth the principal machine of a group has been developed first and the auxiliary machines have been developed later to assist the work of the principal machine. When an auxiliary has been developed, therefore, the situation has been that the lessees already had the principal machine under leases requiring them to pay a specific royalty for each pair of shoes on which the principal machine was used. The lessor, having originated a new auxiliary machine, was therefore confronted with the question of whether he should put the machine out on an independent lease, charging a separate and additional royalty for its use, or should let the shoe manufacturer who was already using his principal machine have the new auxiliary without additional royalty. It has always been the practice of the United Company and its predecessors to furnish lessees of its principal machines with auxiliary machines, as they have been successively developed, without requiring payment of any additional royalty. They have therefore furnished to a lessee a new auxiliary machine when it was developed, restricted to use with the principal machine the lessee already held, without exacting any additional payment except in some cases a small rental or initial payment. They have received their return for the use of the new machine indirectly through the increased use and efficiency of the principal machine on which royalty was paid. It is obvious that they could not be asked to furnish the new auxiliary machine without exacting any additional royalty for its use unless its use was so restricted, for otherwise they would have received no return whatsoever for the machine.

It is further obvious that as a practical business matter it was necessary to lease these machines as a group for a single royalty, which could only be done by restricting their use in this way. For example, the net royalty charged for Goodyear machines when used on men's shoes was four cents per pair (P.'s Ex. 24). It would have been impossible to distribute this royalty over the forty-five machines included in the Goodyear Department. Furthermore, as each new machine was put out it would have been necessary to increase the total royalty for the group by charging a new royalty on the new machine or to readjust the royalties on all outstanding ma-

chines. Such a readjustment would have been wholly impracticable.

4. The principal machines do better and more work when auxiliary machines are also used. It is to the advantage of both parties to furnish the lessees with auxiliary machines, which assist the principal machines, increase their productivity, and improve the quality of their work. The shoe manufacturer's output and the company's royalties are both increased. The United Company therefore finds it to its interest to furnish lessees with auxiliary machines to be used in connection with the principal machines for the same reason that it finds it advantageous to furnish efficient repair service to lessees without making any charge for such service, believing thereby that the increased use of the principal machine will compensate it.

5. The royalty paid by the lessee is based on the number of shoes on which the principal machines are or could be used. This at once presents a serious problem, namely, the problem of checking up the amount of the use of each machine. In the case of a large group of machines, such as the Goodyear Department group, where there are two principal machines and forty-three auxiliaries, it would be almost impossible to check the actual use of each machine, particularly in view of the fact that some of the auxiliaries are useful only on particular kinds of shoes and are not used at all on other kinds. It is easier to check the use of the principal machine or machines, which are always used, especially when, as in the case of the Goodyear Welter and Stitcher, they have recording mechanisms which show approximately the amount of their use. It would not be practicable to place such mechanisms on most of the auxiliary machines. The principal machines are therefore used as measuring machines to measure the payment required for the use of the entire group (R. Vol. 1, p. 442, lines 15–21). No independent charge is made for the use of the auxiliary machines except in some cases a small annual payment, but they are restricted to use with the principal machines, and thus the payment for their use is received indirectly through the royalty on the principal machines.

(6) THE AUXILIARY RESTRICTED USE CLAUSE DOES NOT RESTRICT THE PRINCIPAL MACHINES TO USE WITH THE AUXILIARY MACHINES NOR RESTRICT THE USE OF THE AUXILIARY MACHINES TO USE WITH EACH OTHER.

The Auxiliary Restricted Use Clause as a rule does not restrict the principal machines to use with the auxiliary machines. The lessee for example, who has the Goodyear Welter and Stitcher may use as many auxiliary machines obtained from others in connection with them as he pleases. Furthermore, the auxiliary machines are not restricted to use together; the lessee may use Goodyear auxiliaries and auxiliaries obtained from others on the same shoes. Finally, a lessee is not required to use these auxiliary machines to full capacity, this clause being applicable only to the use of the principal machines, the Welter and Stitcher. And the Exclusive Use Cancellation Clause is likewise applied only to the use of the principal machines, so that the United Company cannot cancel its leases of machines if Goodyear auxiliaries obtained from others are used.

A lessee of the Welter and Stitcher is furthermore under no obligation to take any auxiliary machines unless he wishes to do so.

The lessee can, therefore, freely take and use Goodyear auxiliary machines obtained from others in connection with any of the United Company's machines he may have. Had the United Company intended to compel lessees to use its machines exclusively and to exclude competitors' machines, it would surely have required that lessees using its principal machines must also take and use its auxiliary machines.

I. LEGALITY OF THE RESTRICTED USE CLAUSE.

The Restricted Use Clause is

(1) A normal provision designed to accomplish a legitimate business purpose, beneficial alike to the lessor and the lessee;
(2) It does not in any way restrain trade;
(3) It is a valid patent restriction which the United Company is entitled to impose.

(1) THE RESTRICTED USE CLAUSE IS A NORMAL PROVISION DESIGNED TO ACCOMPLISH A LEGITIMATE BUSINESS PURPOSE.

The Restricted Use Clause is a normal provision designed to accomplish a legitimate business purpose and is, therefore, lawful, even if no patents or patent rights were involved. We shall, therefore, first consider it without reference to the patent situation.

We have shown above that where a series or team of the United Company's machines are used, which are adapted for use together and each of which is kept in repair by the United Company, the efficiency of the machines is increased, the royalty received on each machine is greater, an improved product results, and the cost of caring for each individual machine is reduced (*supra*, pp. 256, 333–341).

It obviously follows that if the machines are to be paid for according to the number of shoes they produce, a machine leased to be used as part of the series will return a greater income than if taken to be used alone, and that it can, therefore, be leased for a less price than would necessarily be charged if it were taken to be used separately.

The leases containing the Restricted Use Clause result in offering the lessee who desires to take a machine to be used as part of a series of the United Company's machines a reduced price and they accomplish only this result.

A shoe manufacturer, as we have shown (*supra*, pp. 358–360), who does not desire to use the entire series of machines, can obtain the use of a machine of any one department on an unrestricted lease by making an initial payment, *i.e.*, by paying a larger price for the use of the machine.

The Restricted Use Clause, therefore, merely provides for a reduced rate for machines used as a series or unit. It embodies only the well-known principle of a wholesale price for the use of machines on a wholesale basis.

The United Company loans or leases its machines to its lessees and then charges a certain sum for each use made of them. The transaction is in substance a loan by the United Company of the machines, which by itself gives no right to use them, and an agreement on the part of the United Company to sell to the shoe manufacturer or permit him to take the use of the machines each time he has a shoe on which he desires to use them.

It is in principle exactly like an offer to sell goods over a period of time in quantity lots at wholesale prices. It differs in form from such an agreement only because the form of a transaction in which goods are sold at wholesale prices differs from the form of a transaction in which machines are leased and their use paid for each time they are used. There is no difference in substance.

For example, take an offer by a sugar refiner to sell sugar in quantity. The sugar refiner says:—

> "I only sell my sugar at wholesale in 100 barrel lots. I agree to sell you for the next year as much sugar as you wish in 100 barrel lots at $15 a barrel. Each time you take 100 barrels you must pay me this price. If you wish at any time to take less than 100 barrels you must make a new trade with me and I will charge you a higher price for each barrel."

Similarly in the present case the United Company says:—

> "Here is a series of my machines which I place in your factory. I dispose of the use of these machines at a wholesale price only when the machines are used as a series. I agree to furnish you the use of these machines as a series at wholesale rates on the following basis: Each time you make a shoe you can take the use of the entire

series and pay me a definite amount for the use of each machine. If you wish to take the use of less than the whole series you must make a different trade with me and pay me a higher price for each machine so used."

If machines are to be leased on the royalty basis and only their use paid for (a practice established since the very beginning of the shoe machinery industry and admitted to be highly beneficial), there is no other practical way which we can conceive of in which the wholesale rate for the use of a series of machines can be applied.

The Restricted Use Clause, by enabling the United Company to offer better terms for a series of its machines, not only benefits the United Company by enabling it to offer terms acceptable to shoe manufacturers, but also, of course, benefits the shoe manufacturer. By using the United Company's machines as a series, the shoe manufacturer reduces the expense to the United Company of caring for each machine and increases the productivity and, therefore, the royalty paid on each machine. Through the agency of the Restricted Use Clause the shoe manufacturer is enabled to share in this saving to the United Company.

It must further be remembered that these machines belong to the United Company and that it is only regulating and controlling the use of its own property. If the shoe manufacturer bought and paid for the machines and the United Company had, therefore, no further interest in them, the situation would be quite different. In such case any control of the use of the machines by agreement might restrain rights and property in which the United Company had no interest and thus might offend public policy.

But in the present case the United Company has never parted with the ownership of the machines. It must be admitted that it is under no obligation to permit shoe manufacturers to use them at all. In permitting their use, but without parting with its ownership or interest in them, it surely does not forfeit its rights to determine the character of the use which shall be made of them. It would seem that the United Company, owning the machines, would have an absolute right to control the use which was made of them. In any event it must have the right to direct that machines

which it has constructed for use together and which produce the greatest return when used together, shall be so used. The right of the owner of property to control its use to this extent can hardly be questioned.

The Restricted Use Clause, therefore, being merely a control by the United Company of machines which it still owns and has the right to control, being designed to offer merely a wholesale rate for the use of a series of machines and being the only practical method under the royalty system by which such wholesale rate can be offered, is clearly a normal agreement designed to accomplish a legitimate result, and it, therefore, cannot be within the condemnation of the Sherman Act.

We do not understand that the United States denies that the use by a shoe manufacturer of a series of the United Company's machines will reduce the cost of service on each machine, or that the use of a series of machines constructed for use together, each of which is kept in proper operating condition, will result in an increased output by each machine, and, therefore, an increased royalty earned by each machine.

The contention of the United States, as we understand it, is:

First: That even if the United Company does still own the machines and even if the use of a series of the United Company's machines does increase its return on each machine, and even if the Restricted Use Clause was adopted for the purpose of offering a wholesale rate for the use of a series of machines, nevertheless, the clause is inherently unlawful because of its effect on competitors.

Second: That if the clause is not inherently unlawful, it is unlawful in the present case, because the purpose of its adoption was to make it difficult for competitors to compete.

(2) CONTENTION THAT THE RESTRICTED USE CLAUSE IS INHERENTLY UNLAWFUL.

As we have shown above (*supra*, p. 365), the Restricted Use Clause does not obligate the lessee to use either the particular machine leased or any other machine of the United Company, nor does it forbid the lessee to use competitors'

machines as freely as he pleases. It merely forbids the lessee to use the particular machine leased unless it is used as part of a series of the United Company's machines.

As said of this clause by the District Court (R. Vol. 1, p. 1163):—

> "'Tying,' therefore, does not mean that the manufacturer is required to agree, or agrees not to use the machines of others, but merely that he has secured only limited rights of use, and that if he exceeds such limited rights, he may lose his lease. . . . The term is misleading in its implication that the manufacturer is bound by contract not to use the machines of others. He is bound only not to use the leased machinery in violation of the terms of the lease."

The complaint made by the United States, then, is not that the lessee is required to use the United Company's machines or forbidden to use other machines, but, on the contrary, that the United Company forbids the use of its own machines, except when they are used as part of a certain series.

It is obvious that this clause cannot interfere with the competitor who also offers a complete series of machines which the shoe manufacturer desires to use. The shoe manufacturer, whether he is just entering business or already has the United Company's machines under restricted leases, is absolutely free, so far as this clause is concerned, to take the competitor's series of machines and use them.

The objection of the United States is that if a shoe manufacturer desires to use one or two of the series of machines put out by the United Company, he is, by reason of the better terms offered by the restricted leases, induced to use all of the series furnished by the United Company. The result, it contends, is that a competitor having only a single machine, and not a complete series of machines to offer, finds it more difficult to dispose of his product.

When analyzed, the contention merely amounts to this: That a manufacturer who furnishes a complete article has an advantage over the manufacturer who offers only one of the component parts of the article, and, therefore, that the manufacturer of the complete article, although not required to

permit others to use the article at all, must, if he does permit the complete article to be used, also permit each of its component parts to be used separately on terms which will enable the public to use certain parts obtained from him and the remaining parts from his competitors and thus obtain the use of the complete article as cheaply as if it were taken as a whole from him. To state this contention is to refute it.

Take an illustration on all fours with the present case. The Pullman Company leases its sleeping and parlor cars to railroads. It obviously has an advantage over a competitor who has only one of the component parts of the car to lease or sell,—say, for instance, the wheels. Such competitor in attempting to lease or sell his wheels is met by the statement that the wheels without the body of the car are of no value to the railroad, and that the Pullman Company either refuses to lease the bodies and wheels separately, or, if it is willing to do so, that it leases them at retail prices which total more than the wholesale price charged if the complete car is leased. The contention of the United States, as we understand it, is, first,—that if the Pullman Company leases the complete car, it must also lease the component parts of the car, viz., the wheels, the bodies, the chairs, etc., for use separately, so that the manufacturer of wheels may sell or lease his wheels to customers who can then lease the remainder of the cars from the Pullman Company; and, second,—that the Pullman Company must lease the component parts of the car at such prices that the total of the prices charged for the component parts does not exceed the price charged for the complete car, or is so little greater that a customer can obtain the wheels from the Pullman Company's competitor and obtain the other parts of the car from the Pullman Company at substantially the same cost as if he obtained the complete car from the Pullman Company.

Take another analogous illustration. A manufacturer of a locomotive, who manufactures all the component parts, the boiler, the wheels, the brakes, etc., and offers the locomotive for sale as a whole, has an obvious advantage over a competitor who manufactures and offers only a boiler. The United States contends that to enable the competitor to compete on equal terms, the manufacturer of the complete locomotive

must sell all the parts of the locomotive separately, and not only this, but must sell them at prices which will enable the purchaser to obtain his boiler from the competitor and the remaining parts from the locomotive manufacturer without its costing him more than if he purchased the complete locomotive from the locomotive company.

But on what possible theory can the Pullman Company be required to lease the parts of its car, or the locomotive manufacturer be compelled to sell the parts of his locomotive separately, or be compelled to lease or sell them at prices which total no more, or substantially no more, than the prices charged for the complete car or locomotive.

In the first place,—the manufacturer is under no legal or moral obligation to lease or sell the component parts of his car or locomotive separately. There are thousands of manufacturers in this country who sell only at wholesale or who furnish only a complete article. Can it possibly be contended that this practice is illegal?

In *Great Atlantic and Pacific Tea Company* v. *Cream of Wheat Company*, 227 Fed. 46, the Court said (p. 47):—

> "As was stated before, defendant has elected not to sell to consumers or retailers, but to confine its sales exclusively to wholesalers. There is nothing unusual about such a course of business, and certainly it is no offence against common law, statutes, public policy, or good morals, for a trader to confine his sales to persons who will buy from him in large quantities."

It is equally no offence against law or morals for a manufacturer of a complete article to confine his leases or sales to persons who will use or purchase such complete article as a whole.

The United States may contend that there is a difference between a series of machines, and a combination of articles or parts in a single machine. But there is no practical difference between a complete car or locomotive and the series of machines which the United Company furnishes. The series of machines furnished by the United Company are adapted for use together, and the machines must be so adapted to do effective work. The fact of physical connec-

tion is the only distinction between the complete locomotive and the complete series of machines. The United Company's machines could conceivably be connected physically. If this were done, would the United States agree that its objections were removed? Clearly the question of whether the manufacturer can refuse to sell or lease the use of two machines or articles except as a unit cannot depend upon the immaterial question of whether they are physically connected. The boiler of the locomotive has far less actual connection with the wheels of the locomotive than has the lasting machine with the welter, one of which must be so constructed as to prepare the shoe for the work of the next and either of which if not so constructed will ruin or make impossible good work by the other.

There is no more reason why the United Company should be required to permit the use of its lasting machines and its welter separately than there is why it should be required to permit its welter to be taken apart, and certain of the parts only used.

The District Court said (R. Vol. 1, p. 1184):—

> "The assumption that it is highly desirable that the shoe manufacturer should be at liberty to group the defendant's machines, with such other machines taken from other manufacturers, as he may see fit, ignores the fact though machines may be treated in the Patent Office as separate, in a shoe factory machines have a very definite mechanical relation to each other and to the particular method of making the shoe. The grouping of machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them in groups and a sufficient business reason for dealing with them as groups.
>
> "That there are sound, mechanical and business reasons for grouping together machinery as it is grouped by a series of prohibitive leases is abundantly established. . . .
>
> "A contract for a group of related machinery, or for a supply of machines not immediately related but used only in separate mechanical steps of a manufacturing business, is an entirely proper and normal contract."

It follows, then, that the United Company would be justified in refusing to permit the use of its machines, except as a

series, but the United Company does not pursue this course. It permits the machines of the different departments to be used independently if the shoe manufacturer so desires, requiring him in such cases to pay, in addition to the royalties charged when the series is used, an initial payment for each machine. Thus the manufacturer of one class of machines, such as lasting machines, is not shut out of the market, even though his customer desires and insists upon using the other machines manufactured by the United Company. The Lasting Machine manufacturer can say to his customer, "Take my lasting machines and take your other machinery if you so desire from the United Company." If such manufacturer has a lasting machine which the shoe manufacturer prefers to the United Company's, the only difficulty he encounters is that the shoe manufacturer may say, "If I use certain of the United Company's machines with your lasting machine, I must take them on unrestricted leases and pay the United Company an initial payment, not payable if I use its entire series of machines." In other words, the expense of using the United Company's metallic and certain other machines is increased because they are taken for use at retail and not at wholesale. The only difficulty is in the difference in cost. The United States, as we understand their argument, contends either—

(1) That the United Company cannot charge a less price for the use of a series of machines than the total of the prices charged for the use of the machines separately, or—

(2) That if the prices charged for the use of the machines separately are higher they must be reasonable, and that the United Company's charges are unreasonable.

If, as we contend and have shown above, the United Company is fully justified in only permitting the use of a series of its machines and refusing to permit them to be used separately, it is immaterial what prices it charges for the use of the machines separately. As it can refuse to permit their use separately at all, it can, if it offers them for use separately, place a price on them which is prohibitive. This would be no worse than a refusal to lease separately at all.

However, even if we accept the assumption that the use of the machines must be permitted separately (which we contend

is contrary to reason) we submit that the United Company is legally and morally entitled to charge more for the machines when so used than when used as a part of a series, and we further submit (if it be material) that the prices charged by the United Company for its unrestricted leases are not unreasonable.

In respect to the first proposition, namely, that the United Company may charge less for the use of a series of machines than it charges for the use of the same machines when used separately, it is abundantly proved by the record that machines used as part of a series produce a greater royalty per machine and cost less to care for (*supra*, pp. 256, 333–341). There is, therefore, a distinct increase in the return to the United Company when they are so used.

Is it not clear that the United Company is legally as well as morally entitled to share this increased return with its lessees by giving them reduced rates when its machines are so used?

In practically every business in this country the wholesale purchaser gets a reduction in price which is granted on the basis that there is a saving to the seller in making a quantity sale. There is no distinction when the quantity consists of a series of machines instead of a number of machines of the same kind. In case six machines of the same kind are sold or leased, the question of whether a saving results to the manufacturer in the usual case may be problematical. In case six different shoe machines of a series adapted for use together are leased, to be cared for by the lessor and paid for by royalties based on their output, there can be no question that there is a saving or increased return to the lessor.

The United States has referred to no authority and we submit none exists for contending that a reduced price cannot be properly charged a shoe manufacturer desiring to use a complete series of machines.

The District Court said (R. Vol. 1, p. 1184):—

> "We are unable to see that a shoe manufacturer has any just cause of complaint that the defendants offer him and their other customers restricted leases. One who refuses these leases and takes the independent leases may complain that other shoe manufacturers are getting their machinery on lower terms; but the royalty rate will be

the same, and the cost of initial payments is fixed and may be weighed as against the estimated value of taking machinery from other manufacturers. It is a mere question of dollars and cents. It is legal for the defendants to discriminate in price between customers who take large amounts and those who take small amounts" (R. Vol. 1, p. 1168).

"If leases for machines for use as a group are offered and accepted for sound business reasons, and if, because of the greater productivity of a group and of the less cost of maintenance, better prices can be made, the defendants and shoe manufacturers need not forego the making of such contracts for the sake of possible competitors who may have only single machines to offer. Contracts for large equipments of machinery, furniture, and other articles, are too common to be condemned for such reason."

The United States, however, contends that the price charged by the United Company for the use of its series of machines is so much less than the prices charged for its machines when taken on unrestricted leases that the difference is unreasonable.

What is the test of the reasonableness of a wholesale price? Surely the United Company, without being charged with being unreasonable, can grant shoe manufacturers who use a series of its machines a reduction equal to the increased return effected by such use or any part of such increased return.

The United States has utterly failed to show that the reduction granted users of a series of its machines exceeds such increased return. The record shows that certain initial payments are charged for independent leases, but it utterly fails to show that they are unreasonable. On the contrary, the essential reasonableness of the prices charged for the restricted leases is shown by the number of such leases which are outstanding (*supra*, pp. 364–365), and by the fact that the initial payments are in substantially no case larger and in certain cases are less than were charged under the leases put out by the constituent companies prior to the formation of the United Company, although the machines have since that time been greatly improved and the cost of manufacturing them has increased (*supra*, pp. 359–360).

The United States, however, contends that competitors

offering single machines find it difficult to get shoe manufacturers to take their machines. The United Company's machines are the best that are made and, owing to the fact that they are patented, competitors can only offer inferior machines. Is it surprising that shoe manufacturers hesitate to take and interject into the United Company's series of machines an inferior machine probably unadapted for use with the series, and furnished by one who offers no adequate service, and pay a higher price for certain of the United Company's machines he continues to use, even though the additional amount paid the United Company for such independent use is entirely reasonable?

The District Court found that it was not shown that the price charged for the independent leases was unreasonable. The Court said (R. Vol. 1, p. 1165):—

> "Nor has the United States made any attempt to show by evidence that the prices charged for independent or unrestricted leases are excessive, or such as to prevent the shoe manufacturer from using them profitably."

(3) CONCLUSION AS TO CONTENTION OF THE UNITED STATES THAT THE RESTRICTED USE CLAUSE IS INHERENTLY UNLAWFUL.

We submit that the contention of the United States, that a wholesale price for the use of a series of machines cannot be offered, because, as a result, a competitor who has only one or two of the machines of a series to offer will find it more difficult to compete, is wholly without foundation or reason.

This contention denies entirely the right of an owner of machines, who has never sold them and thus placed them unrestricted in the channels of trade, to control the use of his own property. It denies the right of a manufacturer and owner of machines to dispose of the use of them at wholesale or retail prices as he pleases. It proposes that the shoe manufacturer must be required to pay a retail price for the use of each machine, even though he uses the series of machines, that is,

uses the machines in a wholesale way and the machinery manufacturer is willing to grant him a wholesale price. In other words, it proposes to deprive both the machinery manufacture and the shoe manufacturer of the right to make reasonable normal and usual contracts beneficial to both of them with reference to machines owned by the machinery manufacturer in order that competitors who have less to offer may more easily compete.

The proposal of the United States would not result in freeing competition from unlawful restraints, but, on the contrary, would restrain it. The public policy which condemns restraints on competition is designed to leave manufacturers absolutely free to compete by all lawful and normal methods. This is the very life of competition. Freedom of competition means that manufacturers are encouraged to effect such economies as they can and thereby reduce prices and obtain trade. The United States proposes that manufacturers who effect an economy by furnishing a series of machines adapted for use together, cannot share with their customers the benefit of such economy and thus further their trade.

This Court in *United States* v. *Winslow*, 227 U. S. 202, said (p. 218),—

> "It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels."

If this is true and if an economy results from such integrated manufacture, surely the manufacturer can dispose of the complete locomotive at a lower price than is charged for the separate parts.

So in the present case, if the United Company by producing a complete series of machines is thereby enabled to lease the use of the series at a reduced price, surely it is entitled to do so.

The District Court said with reference to this contention of the United States (R. Vol. 1, p. 1184):—

> "If leases for machines for use as a group are offered and accepted for sound business reasons, and if, because of the greater productivity of the group and of the less

cost of maintenance, better prices can be made, the defendants and the shoe manufacturers need not forego the making of such contracts for the sake of possible competitors who may have only single machines to offer."

That the Restricted Use Clauses are lawful agreements at Common Law without regard to whether the machines are patented and that they do not offend public policy by an improper restraint of trade was determined by the Privy Council of Great Britain in *United Shoe Machinery Company of Canada* v. *Brunet* (1909) A. C. 330; Lords MacNaghten, Atkinson, Collins & Gorell composing the Court.

In this case the record did not show that the machines were patented, and the Court, therefore, treated them as unpatented and disregarded the provisions of the Patent Act. In sustaining the validity of the Restricted Use Clauses, the Court, after stating that the findings of the jury limited the question at issue as to whether it was proper to present to the shoe manufacturers of Canada the alternative of either doing without these machines altogether or of hiring them on the terms set forth in the leases, said (p. 342):—

"This alternative, however, does not subject the would-be customers of the appellants to any coercion beyond what their desire to promote their own trade interests imposes upon them. By virtue of the privilege which the law secures to all traders, namely, that they shall be left free to conduct their own trade in the manner which they deem best for their own interests, so long as that manner is not in itself illegal, the respondents are at liberty to hire or not to hire the appellants' machines, as they choose, irrespective altogether of the injury their refusal to deal may inflict on others. The same privilege entitles the appellants to dispose of the products they manufacture on any terms not in themselves illegal, or not to dispose of their products at all, as they may deem best in their own interest, irrespective of the like consequences. This privilege is, indeed, the very essence of that freedom of trade in the name and in the interest of which the respondents claim to escape from the obligations of their contracts."

(4) CONTENTION THAT THE RESTRICTED USE CLAUSE WAS ADOPTED WITH INTENT TO EXCLUDE COMPETITORS.

The United States apparently contends that, even if the Restricted Use Clause is not inherently unlawful, it is unlawful as used by the United Company, because it was adopted for the purpose of excluding competitors.

We have above reviewed the evidence on this question (*supra*, pp. 331–358), which fully establishes the fact that the Restricted Use Clause was adopted for the legitimate purpose of forwarding trade by offering a reduced wholesale price, and that it was not adopted for the purpose of arbitrarily excluding competitors.

The evidence reviewed further shows that the clause was adopted not at one time in all the leases, but only from time to time as some special reason, such as a reduction in initial payments, called for its use; that the United Company has always continued, as an alternative, to lease its machines on independent leases, charging no more than was charged for such leases by the constituent companies; that the machines to use with which other machines are restricted are limited in number, comprising only a few of the principal machines, and that a shoe manufacturer is free to obtain from competitors and use with any machine furnished by the United Company on a restricted lease the great majority both in number and kinds of the machines that he needs, including all machines for sewing uppers, clicking machines, Goodyear auxiliary machines (of which there are 43 different kinds), General Department machines (of which there are 172 different kinds), McKay sewing machines, heeling machines, lacing machines, button attaching machines, button-hole machines, and, with one immaterial exception, pulling-over machines (*supra*, pp. 368–369).

The District Court found that the clauses in the leases, including the Restricted Use Clause, were not adopted for the purpose of arbitrarily excluding competitors. The Court said:—

"Considering the clauses objected to in the light of what preceded them, and of the circumstances attending their adoption by the defendants, the petitioner has not, in my opinion, proved that the defendants' object in adopting them was the prevention of competition by others. Such prevention might, indeed, follow from the more favorable terms offered lessees, but modifications made in the existing system for the direct purpose of otherwise better adapting it to exclude competitors, would have been different in character from the modifications represented by these clauses. . . .

"Modifications in the contracts offered them tending, as these are shown to have done, to enable the Company, through provisions adapted to increase the number of shoes worked on by each machine, to lessen the royalty charged per pair, and to diminish or dispense with the initial payment before required, were so obviously prompted for the purpose of developing the company's business through the perfectly legitimate method of offering them on terms more advantageous to users, that it would be unjust to treat them, on evidence no stronger than that here presented, as really intended to accomplish an arbitrary exclusion of users from any dealings with others" (R. Vol. 1, p. 1159).

These findings of the District Court are fully sustained by the record.

But even if the defendants admitted that the Restricted Use Clause was adopted for the purpose of increasing its business, and thus taking business away from competitors, it is difficult to see how such intent would make the use of the clause illegal. Normal usual conduct adapted to the legitimate furtherance of business is not made unlawful under the Sherman Act no matter what the intent of the parties may be. Thus in *United States* v. *Winslow*, supra, the Court said with respect to the contention that a combination of non-competing concerns was unlawful by reason of the alleged intent with which it was done,—

"That . . . no intent could raise the conduct to the dignity of an attempt."

Suppose the American Locomotive Company sells its complete locomotive for less than the sum of the parts, and sells

ten locomotives for less than it sells one, and admits that it offers these wholesale prices for the purpose of obtaining more business, and thereby necessarily taking business from its competitors. Can it possibly be charged that this intent makes its offer of wholesale prices illegal? The intent to obtain business, and thus necessarily to deprive competitors of such business is at the root of all legitimate competition. If it is accomplished only by legitimate business methods, such as the offer of a wholesale price, it is lawful. To hold otherwise would kill competition, not stimulate it.

The United Company is entitled to obtain business, and it is, therefore, entitled to take business which would otherwise go to competitors. The only way in which the Restricted Use Clause can operate to exclude competitors is by offering a wholesale price for the use of a series of machines. The United Company is entitled to offer such wholesale price, and the fact that such offer brings it business, and that the United Company so intends, cannot make the offer unlawful.

(5) THE RESTRICTED USE CLAUSE DOES NOT AND CANNOT RESTRAIN TRADE OR TEND TO CREATE AN UNLAWFUL MONOPOLY.

In condemning agreements and combinations in restraint of trade, it is self-evident that the Sherman Act only has reference to such restraints as create or impose a new restraint which did not previously exist. In condemning monopolies it refers only to such as are obtained by the imposition of new restraints or by conduct which in some way unlawfully restricts the freedom of others. A grant by the United Company of a lease containing a Restricted Use Clause not only does not create or impose a new restraint not existing at the time, but it actually removes in part an existing restraint and grants the lessee greater rights and privileges than he previously held.

The United Company's machines are patented. In *United States* v. *Winslow*, 227 U. S. 202, this Court said (p. 217),—

> "The machines are patented, making them is a monopply in any case, the exclusion of competitors from the

use of them is of the very essence of the right conferred by the patents, . . ."

The United Company may refuse to permit any one to make or to use them. *Paper Bag Patent Case*, 210 U. S. 405, 429.

In agreeing under the terms of the Restricted Use Clause that they may be used as a series, but not separately, the United Company grants a right to the shoe manufacturer which he previously did not have. Prior to such grant the shoe manufacturer could use any other machines he pleased, but he could not use the United Company's machines at all. By reason of the United Company's patents the shoe manufacturer was absolutely restrained from so doing. After the grant of the United Company, the shoe manufacturer can still, so far as the Restricted Use Clause is concerned, use any other machines he desires, his freedom in this respect not being in the slightest degree restrained, and he can also use a series of the United Company's machines at his option.

In other words, the shoe manufacturer, after obtaining a series of the United Company's machines on restricted leases, has, so far as the Restricted Use Clause is concerned, all the freedom and rights he previously had and also an additional right, namely, the right to use at his option the United Company's machines as a series.

A provision which in no way restrains the freedom of the lessee and which grants him an additional right, namely, the right to use at his option a series of patented machines, can hardly be termed a restraint of trade. On the contrary, it is a removal of an existing restraint.

The mere fact that the new option or right obtained by the shoe manufacturer is so favorable that he desires to take advantage of it and thus is induced to use the United Company's machines cannot, with any propriety, be termed a restraint or limitation of his freedom of action.

It is true that if the shoe manufacturer were granted the r ght not only to use the machines as a series, but also the right to use any one or more of them he chose, in any manner he chose, he would obtain still greater rights. But this does not refute the fact that the grant of the right to use as a series is the grant of an additional right which the shoe manufacturer

did not have before. and that it imposes no new restraint.

It is also true that by accepting a lease of machines the shoe manufacturer agrees to use certain o' them to capacity and to this extent limits his future action. But this limitation is wholly due to the Full Capacity Clause, the legality of which is considered above. It is not created or in any way affected by the Restricted Use Clause which we are now considering, which neither obligates him to use the United Company's machines nor forbids his use of other machines.

As the United Company's machines are all patented, the Restricted Use Clause does not even indirectly by its advantageous terms induce or encourage the shoe manufacturer to take or use any unpatented machines furnished by the United Company or give it any control or greater business in unpatented machines. The United Company urnishes only its own patented machines, of which it has a lawful patent monopoly.

The United States persistently contends that a shoe manufacturer who accepts a lease containing a Restricted Use Clause limiting the use of the leased machines to use on shoes operated on by certain other machines of the United Company is thereby restrained from using a competitor's machines. It contends that a shoe manufacturer who takes a lasting machine on a restricted lease is compelled, for example, to use the United Company's Welter and Stitcher. But, as we have shown, this is not so. The lessee taking such a lease does not agree that he will use the United Company's Welter and Stitcher or that he will not use a competitor's Welter and Stitcher. All that he agrees to is that he will not overstep the rights granted him, that is, that he will not use the lasting machine except for the purpose of performing operations on shoes made on the United Company's Welter and Stitcher. He is restricted as to his use of the leased machine which belongs to the United Company and not as to his use of any other machines. By accepting the leased machine he has added to his rights and not restrained them.

The United States may further contend that as the Full Capacity Clause requires the lessee to use the leased machine to capacity so far as he has work for it to do, and as under

the Restricted Use Clause he can use it only on shoes made on the United Company's Welter and Stitcher, the lessee is thus indirectly required to use the Welter and Stitcher. This again is untrue. The Full Capacity Clause only requires the lessee to use the leased machines to full capacity on shoes on which the lessee is permitted to use them. For example, the lessee of the lasting machine held on a restricted lease is forbidden to use it except on shoes on which the United Company's Welter and Stitcher are used. He is free to use a competitor's Welter and Stitcher on any shoe. If he does so he is not required by the Full Capacity Clause to use the United Company's lasting machine on such shoe, but, on the contrary, he is forbidden by the Restricted Use Clause from so doing. The Restricted Use Clause and the Full Capacity Clause together, therefore, do not impose any obligation on the lessee of a lasting machine to use the United Company's Welter or Stitcher.

We submit that as the Restricted Use Clause in no way deprives the lessee of any freedom of action he had before, but grants him additional rights, it cannot be held to restrain trade or tend to create a monopoly under the Sherman Act.

(6) THE RESTRICTED USE CLAUSE IS MERELY THE GRANT OF A VALID PATENT LICENSE.

The agreements under which the United Company's machines are leased constitute agreements whereby the machines themselves are loaned to the lessee and also constitute licenses under the patents, the inventions of which are embodied in the machines, granting the lessee a right to use such patented inventions in the machines to the extent set forth. The Restricted Use Clause is a mere grant of a limited instead of a complete right of use in machines which are still owned by the patentee, and which are still within the limits of the patent monopoly, and it is therefore a lawful exercise of patent rights.

By a patent the patentee is granted the right to exclude all others from making, using, or vending the patented machines.

In *Bloomer* v. *McQuewan et al.*, 14 How. 539, the Court said (p. 549),—

> "The franchise which the patent grants, consists altogether in the right to exclude every one from making, using, or vending the thing patented, without the permission of the patentee."

The patentee may grant such permission, and when he does do so such permission is termed either an assignment or a license, depending upon whether it is a transfer of an entire patent, an undivided interest in the entire patent, an exclusive right in a designated territory, or some lesser right.

Waterman v. *MacKenzie*, 138 U. S. 252.

It has never been questioned that the patentee may not only grant licenses to make, use, and sell anywhere at any time and for any purpose, but that he may, instead of granting full and complete licenses, grant partial or restricted licenses. Thus he may grant the right to sell to one person, the right to use to another, and the right to make to a third. As said by the Court in *Adams* v. *Burke*, 17 Wall. 453,—

> "The right to manufacture, the right to sell, and the right to use are each substantive rights, and may be granted or conferred separately by the patentee."

The patentee may further limit each of these rights. Thus he may grant to one person the right to make 12 machines containing the patented invention and no more, to a second he may grant the right to sell a limited number or the right to sell in a defined territory, and to a third the right to use in a defined place for a limited time or for a specific purpose only.

Mitchell v. *Hawley*, 16 Wall. 544.
Rubber Co. v. *Goodyear*, 9 Wall. 788.
Gayler v. *Wilder*, 10 How. 477.
Waterman v. *MacKenzie*, 138 U.S. 252.

In making such a limited grant or license the patentee reserves to himself all rights not so granted. If, for example, he

sells certain machines, and grants a license to use his patented invention embodied in them for a limited period, as in *Mitchell* v. *Hawley*, supra, he reserves to himself the exclusive right to use the invention embodied in those machines after that period. If he grants a license to use his invention for a specific purpose, such as for the manufacture of certain classes of goods, as in *Rubber Co.* v. *Goodyear*, supra, he reserves to himself the exclusive right to use the invention for other classes of goods. If the licensee oversteps the limits of his license, he becomes an infringer.

The patentee has an absolute right to refuse to grant licenses at all, or to grant partial or full licenses at his pleasure. The patentee, by the terms of his grant, has a complete mon poly of the patented invention. The grant of a license to another to make use of the invention, either in whole or in part, is necessarily a relaxation of the monopoly already legally existing. It can neither create nor impose any new restraint or monopoly, nor can it contravene public policy.

We do not understand that any decision of this Court has ever questioned the right of the patentee to grant a partial license and reserve to himself all rights not so granted. As said by this Court in *Virtue* v. *Creamery Package Company*, 227 U. S. 8:—

> (p. 32) "The owner of a patent has exclusive rights,—rights of making, using and selling. He may keep them or transfer them to another—keep some of them and transfer others. This is elementary; and, keeping it in mind, there is no trouble in estimating the character of such rights or their transfer."
>
> (p. 37) ". . . We repeat, patent rights may be conveyed partially or entirely, and the monopoly of use, of manufacture or of sale is not one condemned by law."

The patentee may, in addition to granting a license, partial or complete, and as consideration therefor, require the licensee to fulfil certain conditions or require him to agree to perform certain acts, such as the payment of royalty.

Such agreements or conditions to be fulfilled by the licensee are not part of the grant of the license. They do not limit the grant, but are collateral agreements or conditions indepen-

dent of the grant. If they are not fulfilled, the licensee may forfeit his license and lose his right further to enjoy the license granted him. But mere failure on the part of the licensee to fulfil such conditions and agreements does not in and of itself constitute infringement of the patent. For example, if a patentee grants the right to use his patented invention in a certain designated territory and the licensee agrees to pay the patentee $100 a month for such right, the agreement to pay royalty in nowise limits the patent license or reserves patent rights. Failure to pay royalty is not an infringement of the patent.

The validity of such collateral agreements or conditions must be determined by considerations of public policy and the general law. An agreement on the part of the licensee that in consideration of the grant of the license he will commit a crime is clearly illegal. The fact that such collateral conditions or agreements are contained in the patent license does not affect their legality except to the extent that their character is affected by the fact that they relate to a legal monopoly conferred by the patent law. In other words, in determining whether such an agreement or condition is condemned by public policy, all the circumstances must be considered. Agreements relating to a monopoly conferred by Congress may and usually do have an effect quite different from their effect if they related to unpatented articles.

Where a patented article is sold and no rights of use are reserved such purchase, as the Court said in *Keeler* v. *Standard Folding Bed Company*, 157 U. S. 659 (p. 666), "emancipates such article from any further subjection to the patent throughout the entire life of the patent." A patented article so purchased, as said by the court in *Bloomer* v. *McQuewan*, supra, passes outside "the limits of the monopoly." See also *Adams* v. *Burke*, 17 Wall. 453, in which the Court said (p. 456):—

> "In the essential nature of things, when the patentee, or the person having his rights, sells a machine or instrument whose sole value is in its use, he receives the consideration for its use and he parts with the right to restrict that use. The article, in the language of the court, passes without the limit of the monopoly. That is to say, the patentee or his assignee having in the act of

sale received all the royalty or consideration which he claims for the use of his invention in that particular machine or instrument, it is open to the use of the purchaser without further restriction on account of the monopoly of the patentees."

In such cases where the article is sold unreservedly all patent rights in the article are released, and the article is placed outside the limit of the patent monopoly. Any conditions or restrictions which the patentee attempts to impose upon the purchaser, or subsequent purchasers, are necessarily not patent restrictions, since all patent rights in the article are granted, and they can only be justified and enforced as special contracts.

Patented articles which are not so sold remain within the limits of the patent monopoly and subject to control and restriction on the part of the patentee except to the extent that he expressly waives the right by special agreement to control and restrict them.

We do not understand that any decision of this Court has questioned the ruling that a patentee can control or restrict the use of patented machines which still remain within the limits of his patent monopoly or that he may legally and properly transfer by assignment or license either all or such portion of his rights conferred by his patent as he pleases. The difficulty encountered by the courts and the conflict between recent decisions of this Court and earlier decisions have resulted not from any real difference of opinion as to the principles of law applicable, but to a difference of opinion as to the proper construction of the transaction before the Court. The difficulty, in other words, has consisted in determining whether the transaction consisted of the grant of a limited license to use or enjoy the patented invention or article, or whether, on the contrary, the transaction was a sale or transfer of full rights to enjoy the patented article or invention and the restriction was a mere collateral agreement or condition and therefore not a patent restriction at all.

To show the law applicable to the present case and the effect of recent decisions of this Court upon restrictions, conditions and agreements contained in patent licenses it is necessary to review the more important decisions.

In *Heaton Peninsular Button Fastener Co.* v. *Eureka Specialty Co.*, 77 Fed. 288 (decided in 1896), the Heaton Company furnished a patented machine for fastening buttons to shoes with metallic fasteners. It sold this machine with a notice attached, stating that it was to be used only with fasteners furnished by the Heaton Co. The Eureka Co. furnished fasteners for use on this machine and was sued for contributory infringement. The Court held that, in spite of the fact that the machines were sold to the public and paid for, the notice constituted a reservation of a right of use in the patented invention, namely, the right to use the machine on materials furnished by persons other than the patentee. The notice being construed as a reservation of a right of use, it was held that the use of the machine with other materials was an infringement and a person furnishing such materials was a contributory infringer.

While this case has now been overruled by *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502, considered below, it is on the ground that the Court misconstrued the nature of the transaction, which was a sale of the machine with full rights of use, thus placing it outside the limits of the patent monopoly, the restriction being, not as the Court construed it—a reservation of certain rights of use, but a collateral condition or agreement attempting to limit not the use of the machine, but the character of the materials which should be used on the machine. The rule applied by the Court, namely, that rights of use not granted by the patentee cannot be exercised by the licensee, was correct and has never been questioned. It was the application of the rule which was held erroneous.

In *Bement* v. *National Harrow Co.*, 186 U. S. 70 (1902), the Harrow Co. licensed Bement to manufacture at Lansing, Mich., and to sell throughout the United States, harrows of a certain character made under its patents. This grant was a mere license to make and sell, and in and of itself was clearly legal. The agreement then provided that the license was granted in consideration of a number of terms which included, (1) the payment of a royalty on each harrow sold by the defendant; (2) the making of certain reports by the defendant and an agreement that he would not sell the harrows

on commission; (3) an agreement that the defendant would sell only at certain prices; (4) an agreement that the Harrow Co. would furnish labels which were to be affixed to the harrows; (5) an agreement that the defendant would not manufacture or sell any other harrows except those he was licensed to make; (6) an agreement that the defendant would not contest the validity of the Harrow Company's patents or alter or change the construction of the harrows which it was authorized to manufacture under the license.

The Harrow Company contended that Bement had violated certain of these agreements and brought suit for violation thereof in the New York State Court and recovered judgment. The case came before this Court on writ of review, the question being whether the agreements violated the Sherman Act.

With a possible exception of the provision limiting the price charged for sales of harrows manufactured under the license, it is clear that the agreements were not reservations in the license grant, but were collateral agreements. For example, the agreement for royalty, the agreement to make reports, the agreement as to sales of other harrows cannot be construed as a reservation of any rights in the invention or the patented harrows. It was necessary, therefore, to consider whether these provisions violated the public policy expressed in the Sherman Act. Not being reservations in the grant of a patent license, the fact that they referred to patents was material only because this was an important consideration in determining their effect.

The Court held that, as these agreements affected the manufacture and sale of patented articles which are a recognized legal monopoly, the fact that they might keep up the monopoly or fix prices at which the harrows were sold was immaterial. The Court said (p. 91):—

> "The very object of these laws is monopoly, and the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee and agreed to by the licensee for the right to manufacture or use or sell the article, will be upheld by the courts. The fact that the conditions in the contracts keep up the monopoly or fix prices does not render them illegal."

While the Court held that the agreements affected interstate commerce, it held that they were not within the scope of the Sherman Act, because that act was directed only against illegal restraints and these agreements merely assisted in maintaining a monopoly which the law recognized as legal.

The Court said (p. 94):—

> "But that statute [viz., the Sherman Act] clearly does not refer to that kind of a restraint of interstate commerce which may arise from reasonable and legal conditions imposed upon the assignee or licensee of a patent by the owner thereof, restricting the terms upon which the article may be used and the price to be demanded therefor. Such a construction of the act we have no doubt was never contemplated by its framers."

Numerous decisions of the Circuit Courts of Appeal and the Circuit Courts followed, in which the validity of restrictions, conditions, and agreements imposed by patentees were considered. In the cases similar to the Heaton Peninsular case the transaction was construed, as in that case, as a mere reservation of patent rights, and upon such construction the restrictions were held valid and the licensee restrained from violating it in accordance with the well-established doctrine that a licensee cannot exercise rights of use not granted him. The courts, in a large number of cases, went so far as to hold that an article could be sold with the full right to use for every purpose and yet the right to control future sales be reserved. The rule applied, viz., that if a patent right was reserved, it constituted a valid patent reservation, was correct. The error was in holding that any patent right was reserved. As later held in *Bauer* v. *O'Donnell*, 229 U. S. 1, when an article is sold with full right of use, the patentee's right to vend is completely exercised and the article passes beyond the limits of the monopoly, and, therefore, no patent right to control future sales is or can be reserved. In certain cases the rule laid down in the Bement case was misconceived. In that case it was held that conditions agreed to by the licensee, not in their very nature illegal in respect to patented property, could be enforced as contracts.

The distinction between an agreement to be enforced by an action of contract and the reservation of a patent right was not always recognized, nor was the limitation always borne in mind that agreements should relate to and protect the patent monopoly in order to fall within the rule.

In *Standard Sanitary Manufacturing Company* v. *United States*, 226 U. S. 20 (decided in 1912), the defendant attempted to justify a combination clearly in restraint of trade by reason of a patent.

In this case sixteen competing manufacturers of enamel ware accepted licenses under a patent for the use of a tool, the employment of which was useful but not essential to the manufacture of the ware. Prior thereto the Standard Company, one of the sixteen, had owned the patent and the others had held no licenses. Some had infringed the patent and others had not made use of it at all. In accordance with an arrangement made by one Wyman, the Standard Company transferred the patent to him and he granted licenses to all the competing manufacturers to use the patented implement in manufacturing enamel ware. Under these licenses the manufacturers agreed, among other things, to sell their enamel ware only at prices determined by a commission composed of the licensor and of five of their number. All jobbers to whom they sold were likewise required to sign licenses agreeing to sell only at stipulated prices and to buy all their enamel ware from the licensees. The concerns which accepted such licenses manufactured 85 per cent. of the total production.

The patentee's only right was to control the use of the invention embodied in the tools used in manufacturing enamel ware, and the use and enjoyment of such patented tools while still within the limits of the patentee's monopoly. He had no right by reason of his patent to control the manufacture of unpatented enamel ware or the price at which such enamel ware was sold, either by the manufacturer or by the jobbers who purchased it. Nor did he have any power by reason of his patent to control the right of the jobbers to purchase enamel ware from other persons than his licensees. Yet he attempted by agreement to control all these matters. Clearly there was no question in this case of a limited or partial grant of a license or of the mere control of patented articles which had

not been sold and thus were still within the limits of the patentee's monopoly. The sole question was whether the patentee could legally take from his licensees the agreements that in consideration of the license to use his tool they would restrict their sales of unpatented enamel ware in which they were previously competing and would impose agreements on jobbers, who did not even have licenses to use the patent, that they would sell only at certain prices and deal with no other persons.

The only possible defence was that the agreements did not create a restraint of trade within the intent of the Sherman Act because they related to goods made by the use of a patented tool or process. They were adopted for the purpose of restraining trade in enamel ware which was not, and never had been protected by the licensee's patent; and they were, therefore, not affected by the patent on the tool or the patent licenses to use the tool. They did not keep up a monopoly in the patented article, as in the Bement case, but in enamel ware and they were not adapted to or "necessary to protect the use of the patent or the monopoly which the law conferred upon it" (p. 48).

In *Henry* v. *Dick*, 224 U. S. 1 (decided in 1912), the Dick Company sold a patented mimeograph to which was attached a notice that the machine could be used only with stencil paper, ink, and other supplies furnished by the Dick Company. Suit was brought against the defendant Henry for contributory infringement in selling ink to one Miss Skou to be used on a machine which she had bought and owned.

The majority of the Court held that the right granted was a limited one, namely, the right to use with supplies furnished by the Dick Company, that the right of use with other supplies was reserved and not licensed, and, therefore, that a use of other supplies constituted an infringement. Henry was, therefore, held to be a contributory infringer.

The minority did not dispute the rule that the reservation of a patent right was lawful, and that a use not licensed constituted an infringement. It held, however, that the restriction in question was not a reservation of a right to use the machine, or the patent embodied therein, but was a restriction upon the "use of the materials" employed in the machine. It held

that by the sale to Miss Skou every possible use of the machine which the patent protected was transferred to Miss Skou. Thus the minority opinion said (p. 65),—

> "That the sale here in question was one of all the rights which the patent protected has, it seems to me, at the outset been demonstrated beyond reasonable dispute."

And again (p. 53),—

> "Every use which the patent protected was transferred to Miss Skou, and the very existence of the particular restriction under consideration presupposes such right of complete enjoyment, and because of its possession there was engrafted a contract restriction, not upon the use of the machine, but upon the materials."

The minority, therefore, held that, as the right to use for every purpose was transferred to Miss Skou, the machine had passed outside the limits of the patentee's monopoly, and that the restriction was, therefore, necessarily not a reservation of a right to use for a certain purpose which would have been a valid patent restriction but was at best a mere agreement by Miss Skou that she would not use certain materials on the machine. Since, therefore, Miss Skou so far as her patent rights were concerned, held the right to use her machine for any and every purpose, she could not be held to be an infringer.

The minority opinion distinguished the case from *Mitchell* v. *Hawley*, supra, where a use of certain machines was granted for a limited term and a use of the machines after the close of the term was held to be an infringement as follows (p. 64):—

> "The difference between the rule applied in that case and the doctrine of the many other cases which we have cited and which also exists between the controversy presented in *Mitchell* v. *Hawley* and the one here under consideration was simply as follows: (*a*) That which exists between the conveyance of all one's rights covered by a patent and a transfer of only a part of such rights; (*b*) that which obtains between the ability of a patentee to protect the right which he enjoys under the patent law from infringement and his want of power on parting with all his rights under the patent to contract so as to secure

rights never embraced in his patent, and to bring such newly acquired contract rights under the protection of the patent law."

The question of whether Miss Skou had impliedly agreed not to use other materials, and whether if so this agreement would be invalid, was not involved in the case, as it was a suit for infringement, although the minority intimated that such an agreement was against public policy.

In *Bauer* v. *O'Donnell*, 229 U. S. 1 (decided in 1913), the plaintiff sold Sanatogen, a patented remedy, in packages bearing a notice that the packages were licensed for sale and use by retailers at a price not less than one dollar. The defendant, a retailer, had bought from jobbers and paid for packages of this remedy bearing the notice above referred to, which he sold for less than the price named. He was sued for infringement.

The majority of the Court held that the patentee, by selling the packages with full right of use, had "exercised" his exclusive right to sell granted him by the patent law, and had placed the packages outside the "limits of the monopoly granted by the patent law." The attempted restriction on future sales was, therefore, not a reservation of any patent right, since all the rights which the patentee had in respect to these particular packages had been transferred by him. The Court, therefore, held that no future sales of these packages could constitute an infringement.

In the recent case of *Strauss* v. *Victor Talking Machine Co.*, 243 U. S. 490 (decided April, 1917), the Victor Company adopted a plan for distributing its machines whereby, among other things, it attached a notice to each machine providing that its use for demonstrating purposes only was granted dealers and retailers; that dealers could convey a right to use it to the public only on payment of a royalty to the retailer of $200 each, and that title remained in the Victor Company until the expiration of the patents embodied in the machine. The Victor Company received the full payment to which it was entitled upon delivering the machines to the wholesaler, and received no part of the $200 for which the machines were to be sold to the public. The defendant, a retailer, obtained machines from retailers or wholesalers for less than $200, the

price which the notice on the machines required should be paid when sold to the public, and were selling these machines for less than this price. The Victor Company asked that the defendant be enjoined from selling the machines and from further violating the Victor Company's patent rights.

The Court held that the evident purpose and intent of this arrangement was not to secure to the plaintiff any use of its machines, but that it was a mere attempt to restrict the prices charged for them after the plaintiff had been fully paid for the machines and they had passed into the possession of dealers and the public, and that the case, therefore, fell within the principle of *Bauer* v. *O'Donnell*, supra, and *Adams* v. *Burke*, supra.

The case, in other words, decided that the retailer or wholesaler had paid for every right which he transferred to Strauss, and that these rights, as in the case of *Bauer* v. *O'Donnell*, supra, had passed outside the "limits of the patentee's monopoly." This being so, the wholesaler or retailer in transferring his rights to Strauss could commit no infringement of the plaintiff's patent rights.

In *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502 (decided in April, 1917), the decision of the minority in the Dick case was sustained and the Dick case was overruled.

In this case the patentee granted a license to make and sell a patented machine for exhibiting moving-picture films. The agreement contained a covenant on the part of the licensee that every machine it sold should be sold under the restriction and condition that the machine should be used solely for exhibiting pictures containing the inventions of a certain patent for films and on other terms to be affixed by the licensor. The patent on the films had expired. The defendant Prague Amusement Company leased and held the machine which had been sold to its lessor bearing a notice which set forth the above restriction and used this machine with films furnished by the defendant Universal Film Company of a character not permitted by the attempted restriction. Suit for infringement of the patent was brought.

The question with which we are here concerned was, as stated by the Court,—

> "May a patentee or his assignee license another to manufacture and sell a patented machine and by mere notice attached to it limit its use by the purchaser or by the purchaser's lessee, to films which are no part of the patented machine, and which are not patented?" (p. 508).

The majority of this Court held that the attempted restriction was invalid (p. 518),—

> "Because such a film is obviously not any part of the invention of the patent in suit; because it is an attempt, without statutory warrant, to continue the patent monopoly in this particular character of film after it has expired, and because to enforce it would be to create a monopoly in the manufacture and use of moving picture films, wholly outside of the patent in suit and of the patent law as we have interpreted it."

The Court said that the patentee's right was to control the use of the patented mechanism. The materials with which it was used were no part of the patented machine.

> "Both in form and in substance the notice attempts a restriction upon the use of the supplies only and it cannot with any regard to propriety in the use of language be termed a restriction upon the use of the machine itself" (p. 512).

In other words, the Court held, as did the minority in the Dick case, that the full use of the machine for all purposes was sold, and, therefore, passed outside of the limits of the patent monopoly and no right of use in the machine was reserved. There was, therefore, no question of a limited patent grant or of a patent infringement.

Whether such an agreement restricting the use of supplies could be made by special contract between the patentee and the purchaser of the machine was not involved in the case (p. 509), though from the language of the Court it is to be presumed it would be held unlawful on the ground that it would create a monopoly in an unpatented article.

RESULT OF THE FOREGOING DECISIONS.

The decisions we have referred to above determine the following rules:—

1. A patentee has the exclusive right to make, use, or vend the patented invention.

2. The patentee at his sole discretion may retain these rights or transfer or grant licenses, either partial or complete, to exercise these rights. Any manufacture, use, or sale of a patented invention which is not so licensed is an infringement of the patentee s rights.

3. As the patentee can retain all his rights, he cannot be criticised for granting only partial licenses. A transaction which consists solely of the grant of certain rights and the reservation of those not granted is clearly valid.

4. When a patented article has not been sold by the patentee, and it, therefore, still remains within the limits of the patent monopoly, it is subject to the control of the patentee, and no other person can use or sell it except as the patentee expressly directs or permits.

5. When an article is sold with the full right of use, it passes outside the patent monopoly, and no use or sale of it made thereafter can be an infringement of the patent. Such future sale or use can be forbidden if at all only by special contract, and not by reservation of a patent right by the patentee, since he has made no such reservation in his grant. No future use or sale of such article can constitute an infringement: it can at best constitute a violation of a contract or condition.

6. When a machine is bought and paid for and a notice is attached stating that it is to be used only with certain unpatented materials furnished by the patentee, the transaction is construed as a transfer of the machine with full rights of use for every purpose, and the attempted restriction is construed, not as a reservation of a use of the machine (which would make it a valid patent reservation), but as a restriction on the use of the materials. Its violation is, therefore, not an infringement of the patent. Such a restriction cannot be

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imposed on purchasers of the machine by mere notice, but can only be imposed and enforced, if at all, by special contract.

7. All agreements and conditions which do not operate to restrict the use of a patented machine while such machine is still within the limits of the patent monopoly, or which do not constitute a reservation of a right of making, using, or vending, are collateral to the granting of the license. Their legality is governed by the general law and they cannot be imposed as a matter of right conferred by the patent law. Such collateral agreements or conditions, however, which merely tend to keep up a monopoly conferred by the patent laws, as held in the Bement case, are not in restraint of trade.

APPLICATION OF THE FOREGOING PRINCIPLES TO THE PRESENT CASE.

In the present case the patented machines have not been sold, but remain the property of the United Company. There is nothing in the transaction which can be construed to be even analogous to a sale. The machines are installed in the shoe manufacturer's factory without payment of any purchase price whatsoever. The shoe manufacturer is only required to pay for such use as he may from time to time make of them. They must be returned at the termination of the lease or earlier in case of prior cancellation of the lease. In practice shoe manufacturers frequently change the character of their work or go out of business, with the result that the machines are being constantly returned. They have not been sold, and they have, therefore, not passed beyond the limits of the patent monopoly as in *Bauer* v. *O'Donnell*, supra, or *Adams* v. *Burke*, supra.

Since the United Company, as patentee, has never sold the machines, they remain within the limits of its patent monopoly and cannot be used in any way by a shoe manufacturer without infringement unless such shoe manufacturer has been granted a license so to use them.

The only license a shoe manufacturer holds is contained in his lease and license agreement under which the machines are installed. That lease and license agreement provides that

the machines may be used as a series. It expressly provides that no right to use them otherwise is granted.

Since this license is the only license the shoe manufacturer holds, if he uses the machines otherwise than the license permits he commits infringement. It cannot be contended with reason that the license agreement grants him a license to use the machines in any way he pleases, and that the limitation is not a limitation of the rights granted, but a mere collateral agreement. The transaction expressly negatives such a construction. The restriction relates directly to the use of the patented machines and provides what use is licensed and what use is not licensed.

It is not a restriction on the use of other unpatented materials or articles, but a restriction on the use of the patented machines themselves. These machines are adapted for use as a series. When so used they work more efficiently, produce a better product, and return larger royalties. The patentee, owner of the machines, naturally desires that its machines be used in the manner in which they can be used most effectively and in which they return the largest royalty. A provision to this effect is clearly a provision relating to the use of the machines, limiting and defining the use which may be made of them, and it, therefore, constitutes a mere partial license to use.

The United States relies on *Motion Picture Patents Co.* v. *Universal Film Co.*, supra, to sustain its contention that the restriction is a collateral agreement or condition, and not a reservation of patent rights. In the Motion Picture Patents case it was held that the restriction was not on the use of the machine, but on the use of the films. In that case the machine had been sold and the patentee had received the full royalty he claimed in connection with the patent embodied therein. The machine had thus passed outside the limits of the patent monopoly, and the notice attached to it was necessarily a restriction, not against the use of the patented machine, since the right to use it for all purposes had been granted and paid for, but against the use of materials in the machine. It was, therefore, not a reservation of any use of the machine.

In the present case the machine is clearly still within the limits of the patent monopoly and subject to the control of

the patentee. It is not sold or paid for, nor is any full right of use for any and every purpose granted even for the term of the lease. The machine remains the property of the United Company; it cannot be sold by the licensee; it can be used only by the licensee and only as permitted by the license, namely, for a limited term at a designated factory and for a designated purpose. The licensee has not even paid for this limited license to use, but pays only as he uses the machine. The machine is still within the limits of the patent monopoly and subject to the rights of control granted by the patent. The licensee therefore cannot, without infringement of these rights, use the machine at all unless he obtains permission to do so from the patentee. The only permission granted him to use it at all is the license contained in his lease and license agreement. That license only grants him certain limited rights. He is granted the right to use it only at his factory. He cannot use it at any other place without violating a right reserved by the patentee and, therefore, committing an infringement. He is granted the right to use it himself. Others cannot use it without violating a reserved patent right and committing an infringement. He is granted the right to use it only on shoes operated on by certain patented machines leased from the United Company. If he uses it on shoes operated on by other machines, he violates a patent right which the United Company has not granted him and is under no obligation to grant him. He thus commits an infringement of the rights conferred by the United Company's patent. There being no sale or transfer of all rights of use, but only a limited license to use the machine which is still owned by the patentee and within the limits of his patent monopoly, there is no basis for a contention that since all rights of use have been sold the restriction must be construed as a collateral agreement and not as a patent reservation.

Furthermore, in the Motion Picture Patents case it was evident that the purpose of the restriction was to control the use of the films and not to control the use of the patented device. The patentee had sold the patented machine and had no interest in its future use. The purpose of the restriction was solely to obtain control of unpatented films used in the machine. The patentee, having charged such price as

he saw fit for the machine and the right to use it, attempted, in addition, to control the use of the films which had no relation to the use of the machine. As pointed out by the Court (pp. 512–513), the restriction both in form and in substance was on the use of materials and not on the use of the patented device embodied in the machine.

In the present case the restriction is clearly on the use of the machine itself. The United Company's machine is designed and adapted for use in connection with other patented machines which no one else can furnish. When so used the machine produces more work and better work. The United Company is vitally interested in having the machines which it owns used most effectively and in the manner for which they are designed. The reputation of its machines is thus enhanced and the return to the United Company increased. In providing that its machine shall be used in the way in which it is designed to be used and can be used most effectively, the United Company is obviously controlling the use of the machine itself. In form as well as in substance, the restriction is on the use of the patented machine.

There is no attempt to regulate the use of materials employed in the machine as in the Motion Picture Patents case. The shoe manufacturer is free to use any materials he pleases. The United Company, in leasing a set of its patented machines, merely regulates the use of these patented machines. It does not attempt to bring within its control or the control of its patents, nor does it require the lessee to use, materials, supplies, or machines for which it has no patents and over which the patent law gives it no control. In the Motion Picture Patents case the patentee attempted to exclude others from furnishing unpatented films which they were free to make and dispose of. In the present case the patentee only controls the use of his patented machines.

The reasons given for the decision in the Motion Picture Patents case are wholly inapplicable to the present case. They are stated as follows in the opinion (p. 518):—

> "Such a restriction is invalid because such a film is obviously not any part of the invention of the patent in suit; because it is an attempt, without statutory warrant, to continue the patent monopoly in this particular char-

acter of film after it has expired, and because to enforce it would be to create a monopoly in the manufacture and use of moving picture films, wholly outside of the patent in suit and of the patent law as we have interpreted it."

The first reason given is because the films, the use of which is restricted, are no part of the patented invention. In the present case, as we have shown, it is only the United Company's patented machines, the use of which is restricted. There is no attempt to control any unpatented materials or machines.

The second reason is that an attempt is made to continue the patent monopoly in films after it has expired. In the present case there is no attempt to continue any monopoly in articles on which the patents have expired.

The third reason is that to enforce the restriction would result in creating a monopoly in moving-picture films wholly outside of the patent in suit. In the present case the restriction is limited to the United Company's own patented machines.

The other cases which we have referred to above setting limits on the right of the patentee to impose conditions on his licensee are equally inapplicable to the present case. In none of them was the right of the patentee to grant a limited right of use or to control the use of patented machines still owned by the patentee and still within the limits of his patent monopoly, questioned.

In *Strauss* v. *Victor Talking Machine Co.*, supra, the license to use and the rights which Strauss acquired in the machines and proposed to sell at a less price than the notice on the machines permitted had been acquired and paid for in full by his predecessors in title and had passed outside the patent monopoly. There was, therefore, no question of infringement or reservation of patent rights, but solely a question of whether such a condition could be imposed by mere notice on rights after they had been sold and paid for and passed outside the patent monopoly.

In *Henry* v. *Dick*, supra (regarding the minority opinion as the opinion of the Court), the machine had been sold and paid for with full right to use for any and every purpose and had thus passed outside the limits of the patent monopoly and the

restriction was not a reservation of patent rights but a mere attempt by notice to impose a condition on the use of materials in the machine after it had passed beyond the control of the patentee.

In *Bauer* v. *O Donnell*, supra, the packages of Sanatogen had been sold with full right of use and paid for. They had thus passed outside the patentee's monopoly and outside of his control. The restriction could operate, if at all, only as a contract restricting the sale of goods no 'onger within the control of the patentee. It was obviously not a patent restriction.

In *Standard Sanitary Co.* v. *U. S.*, supra, the restriction did not purport to be on the use of the patented tool. It was on the goods made by the tool and went even further than this and required that the licensee should compel jobbers to agree with him not to deal in any goods except those made with the patented tool. There was not even a semblance of a patent reservation, and the sole question was whether such a contract made with licensees was justified.

In the present case the machines which are restricted are the property of the patentee. It has never sold them and they have never passed beyond the limits of its patent monopoly. Lessees can use them only as licensed so to do and any use not so licensed is unlawful. The Restricted Use Clause merely permits their use as a series. The right to use them in other ways is not granted. It is a case of a grant of a partial license to use in a particular way as distinguished from a full license to use in any and every way. The right of a patentee to grant such a partial license and to reserve all rights not granted is recognized by the patent laws and by a long line of decisions which have never been questioned.

(7) LEGALITY OF AUXILIARY RESTRICTED USE CLAUSE.

The Auxiliary Restricted Use Clause restricts the use of an auxiliary machine to use with a principal machine. Its legality needs little further discussion, as it has been covered by the foregoing discussion of the Restricted Use Clause.

Like the Restricted Use Clause, it

(1) is a normal agreement adapted to accomplish a legitimate business purpose;

(2) cannot restrain trade;

(3) is a valid exercise of a patentee's rights.

The reasons for the adoption of this clause are set forth above (*supra*, pp. 375–378). It is there shown that the auxiliary machines are mainly Goodyear Department machines which have been developed from time to time to assist the operation of the principal Goodyear machines, the Welter and Stitcher. These machines were developed after the principal machines were invented, and, instead of leasing them separately for an additional royalty, the United Company (and the Goodyear Company before 1899) furnished them without royalty to users of its Welter and Stitcher, charging only a nominal rental or initial payment. The purpose has been to increase the productivity of the Welter and Stitcher and improve the character of work they produced and thus to increase the use of the Welter and Stitcher and the return received in royalties from those machines. A further reason has been that, as the United Company's machines are paid for to the extent used, it would be impossible to determine the exact use of all these auxiliary machines, on most of which no recording mechanisms can be placed. By restricting them to use with the principal machines this difficulty is largely avoided. A further reason is that a fair separate charge for the use of each auxiliary machine would be impossible to determine with any exactness, and, furthermore, as a new machine was put out the royalty on each machine outstanding would have to be changed or the total royalty for the set would necessarily be increased. Still other reasons which make this form of lease necessary are given *supra*, pp. 375–378.

The Auxiliary Restricted Use Clause, being designed to accomplish these legitimate and proper purposes, is clearly a normal agreement.

Furthermore, it is a mere continuation of the method of leasing employed by the Goodyear Company from the very beginning. It was not a plan devised by the United Company and is no evidence of the plan charged in the petition, which it is alleged was formed in 1899 to monopolize shoe machinery by acquiring all shoe machinery companies and

adopting new forms of leases. By continuing the method of leasing machines in use by the Goodyear Company, the United Company did not affect the existing situation in the slightest degree.

The United States contends that this clause restrains trade because shoe manufacturers may desire to use the United Company's auxiliary machines and thus be induced to take the principal machines. There is no evidence in the record that any manufacturer was induced to take the United Company's Welter and Stitcher for this reason. But even if this were true it would not make the clause illegal. A manufacturer, as we have shown above (*supra*, pp. 384–387), is not compelled to furnish separately each of the parts of an article, or of a series of articles, adapted and constructed for use together. A manufacturer is free to furnish a complete set of machines, if he pleases, just as he can furnish a complete locomotive and refuse to enter into retail transactions to furnish the separate parts.

The use of this provision does not restrain trade. Shoe manufacturers have no right to use the patented auxiliary machines at all. If they obtain the right to use them in connection with the United Company's Welter and Stitcher, they are obtaining new rights, and they remain as free to use auxiliary machines obtained from others, either with the United Company's Welter and Stitcher or with welters and stitchers obtained from others, as they ever were. By taking the machines they are not even required to use them. The result is that they have every right they had before and in addition a right to use these auxiliary machines on certain shoes. The grant of a new right, as we have shown, without the imposition of any new restriction on the grantee cannot be termed a restraint of trade.

And, finally, as we have shown above (*supra*, pp. 396–397), such a clause is merely the grant of a limited right of use of machines still within the limits of the patentee's monopoly and a reservation of all other rights. The patentee is free to reserve all his rights or such portion of his rights, as he pleases, and in so doing is merely exercising the rights granted him by his patent.

J. OTHER CLAUSES COMPLAINED OF BY THE UNITED STATES.

The Factory Output Clause in Goodyear Lease and Royalty Clause in Clicking Machine Lease.

In its brief filed at the previous hearing in this Court, the United States made objection to two clauses, neither of which was referred to in the petition, and neither of which was objected to specifically at the hearing in the lower court. These two clauses are the Factory Output Clause, contained in one alternative form of Goodyear lease, and the Royalty Clause in the Clicking Machine lease.

(1) The Factory Output Clause in the Goodyear Lease.

In the lease of Goodyear Welt machines used by the Goodyear Company, prior to 1899, a substantial initial payment was required, and a royalty was charged for each pair of shoes on which the machines were used. In its lease of turn machines a similar initial payment and royalty was charged, but the lessee was required to use the Company's turn machines exclusively; and was thus obliged to pay a royalty on all turn shoes made by him.

In 1900 the United Company eliminated this clause requiring the lessee to use its Turn machines exclusively and thus pay a royalty on all turn shoes which the lessee made. From this date until 1905 the United Company required an initial payment and as royalty for its Goodyear Welt and Turn machines a payment based only on the number of welt or turn shoes made on its Goodyear machines.

On January 1, 1905, the United Company adopted a form of lease for Goodyear machines under which no initial payments were required (*supra*, p. 282). These initial payments had been fairly large and had been a considerable source of income to the United Company. Under this new form of lease requiring no initial payment, the lessee was required to pay a royalty for the use of the leased machines

based on the total number of shoes made in his factory. There is a similar clause in one form of lease for Pulling-over machines.

The reason for the clause is clear. The United Company could not afford to give up these large initial payments and place its machines in a lessee's factory without such initial payments unless it was assured of an adequate return in the shape of royalties. When the lessee made an initial payment the United Company felt that the lessee would not make the payment unless he intended in good faith to use the machine and thus pay royalties for its use to the United Company. When the lessee made no initial payment the United Company had no such assurance unless some other clauses were added for its protection. It, therefore, required the lessee to pay a royalty for the use of its machines based upon his factory production. The United Company was thus assured of an income provided the lessee manufactured shoes and had work which the machines could perform.

A form of lease which did not contain this factory production clause, but which called for the initial payments which had always been charged by the old Goodyear Company and by the United Company, was continued and could be obtained by any lessee who desired it (*supra*, p. 283). Any lessee, therefore, who held welters and stitchers obtained from other sources and who did not wish to pay for the United Company's Welter and Stitcher on the basis of his factory production would not take this factory output form of lease.

The United States has called this provision a royalty charge for work done on competing machines. It obviously is not. It is a charge for the right to use the United Company's machines if the lessee so chooses, by paying a royalty based on factory production. For this payment the United Company gives the lessee the right to use its Goodyear machines if he so desires. A fixed annual payment for the right to use the Goodyear Company's patented machines on any shoes the lessee wishes to use them on would certainly be beyond criticism. So equally must be this clause, which, instead of requiring a fixed payment for such right, requires a payment based on the actual number of shoes on which the lessee is privileged to use the machines.

The United States contends that no shoe manufacturer hav-

ing such a lease will take and use a welter from a competitor as the lessee would have to continue paying the same charge to the United Company as previously. If the shoe manufacturer had an equipment of welt machines from the United Company under a lease by which he paid a fixed annual rental, he would be obliged to continue paying this same annual rental even if he obtained and used a competitor's welter.

Furthermore, if the lessee does not desire to be bound by this clause, his remedy is simple. He can change his lease to an initial payment form and thus avoid the effect of the clause.

This same clause had been used by the McKay Company in its leases of heeling machines prior to the formation of the United Company for the same reason that it was employed by the United Company in its Goodyear leases, namely, to assure the lessor of an adequate return for its machines.

(2) Clicking Machine Royalty.

The Clicking machine is not restricted to use with any other machine.

The lease provides that the dies used on the machine shall be obtained from the United Company or a royalty paid the United Company equivalent to five cents per inch of all dies obtained from others. In other words, a royalty is charged based on the use of the machine as measured by the number of dies employed, which royalty is paid either by the purchase from the United Company of dies on which it expects to obtain a manufacturing profit or by the payment of a specified sum if other dies are used. This payment is not intended to provide an adequate royalty, as the profit from this source is very small. The United Company could not afford to lease this valuable machine for the trivial return it receives from this provision.

However, when the machine is used on shoes lasted on the United Company's lasting machines, and, in the case of welt or turn shoes, sewed on the United Company's Goodyear machines, no additional royalty is charged, the United Company getting its return indirectly through the royalties received on

these other machines. In other words, the Clicking machine is treated substantially as an auxiliary machine when used as part of a series with the United Company's Welter, Stitcher, and Lasting machines, and the United Company is sufficiently compensated for its use by the total royalties received from all the machines of the series.

The lease of the Clicking machine, however, differs from the lease of the ordinary auxiliary machine in that it contains no Restricted Use Clause whatsoever. The lessee is free to use the Clicking machine with a competitor's welter or lasting machines if he pleases. If he does so, and, therefore, does not use the Clicking machine as part of a series of the United Company's machines, he is not entitled to the wholesale rate charged for the series. The lease, therefore, provides that in such case he must pay the United Company a royalty of ½ of a cent net if the machine is used in connection with other lasting machines, ⅞ of a cent net if used with another turn sewer on turn shoes, and 3 cents net if used with another welter and stitcher on welt shoes. If these amounts were not charged where the machine is not used as part of the series, the United Company would get no fair return for the use of its Clicking machine, either directly as a royalty for the machine or indirectly from the total royalties received for the use of the series.

In the case of the Goodyear auxiliary machines, the United Company makes no charge for the use of the machines, except a small rental, but restricts their use to use with the Goodyear Welter and Stitcher on which it receives a royalty. The United States objects to this practice, because it contends that the United Company should also lease these auxiliary machines for a separate royalty to be used with the competitor's welter and stitcher.

In the Clicking Machine lease the United Company does exactly what the United States insists it ought to do in respect to Goodyear auxiliaries. It leases the machine for a small royalty when used as part of a series with its other machines, and charges an additional royalty when used separately. This is the full effect of the clause.

The fact that the United Company objects to this method of payment shows clearly and definitely that the real objection of the United States to the United Company's leases is

that they provide for a wholesale rate where a series of machines is used. *The position of the United States is that each machine must be leased separately for a definite royalty regardless of economies resulting from use as a series and that no wholesale rate can be granted.*

13. ENFORCEMENT BY THE UNITED COMPANY OF ITS LEASES.

The petition alleges that the United Company has continually, persistently, and arbitrarily enforced the provisions of its leases (R. Vol. 1, p. 997). This charge is without any foundation whatsoever.

We have discussed the provisions of the leases above as though they were strictly enforced by the United Company. As a matter of fact, the United Company has only enforced them in a very few instances when the conditions in the lessee's factory were such that its machines were being damaged or it was being deprived of a proper return on its machines as was fairly contemplated by their spirit and intent.

The purpose and effect of leases of this character cannot, as stated above, be tested solely by an examination of the literal wording of the leases. In leasing a complicated set of shoe machinery to over a thousand lessees scattered all over the country, it is impossible to foresee all the conditions which may arise under which it may be unfair for the lessee to use the machinery, and even when such conditions can be foreseen it is often a question of degree or of the particular circumstances of the case as to whether the lessor needs protection. It is essential that the lease contain general provisions agreed to by the lessee, which the lessor can enforce if his protection so requires. The same is true of the ordinary lease of a house or of business premises. For example, such a lease often contains a covenant on the part of the lessee not to permit any nails to be inserted in the walls, and the lessor is authorized to forfeit for violation of any covenant. If the lessee or any of his family drives a small nail into the wall, the lessor has a

technical right to forfeit the lease. This, however, does not make the lease oppressive. It is obvious that the lease cannot specify exactly how many nails a lessee may drive without forfeiture. The reservation of this general right is necessary and the lessor in the ordinary lease exercises a reasonable discretion as to the exercise of his rights, and a court of equity will restrain an unjust forfeiture.

In considering, then, the purpose and effect of the provisions contained in the United Company's leases, it is necessary to consider not only the literal wording of the clauses, but the extent and manner in which the United Company has enforced these provisions.

The United Company has been far more Liberal to Lessees than the Terms of its Leases Required.

The following are a few striking examples of the extent to which the United Company has treated its lessees more liberally than was required by the terms of the leases.

1. Every lease which the United Company has put out requires the lessee at his own expense to keep the leased machinery in good and efficient working order and condition. (For example, see P.'s Ex. 24, par. Two; R. Vol. 3, p. 216.) None of the leases has required the United Company to instruct operatives for the lessee. Yet the United Company has always supplied its service for keeping the machines in repair, charging only for the cost of new parts, and has always instructed operatives. It has charged the shoe manufacturer absolutely nothing for this service, except the cost of new parts, even paying the traveling expenses of its service men. In 1911 this service cost the United Company $1,196,494.86 (R. Vol. 1, p. 421, lines 18–23, 31–34; p. 974, line 22).

2. Every lease provides that the lessee upon the termination of the lease shall pay the lessor such sum as is necessary to put the leased machinery in suitable order and condition to lease to another lessee. (For example, see P.'s Ex. 24, par. Nine, R. Vol. 3, p. 223.) As a matter of practice the United Company has charged lessees upon the return of machines much less than the cost of repairs. For example, in 1911, the cost

of repairing returned machines was $350,000, and the amount charged lessees was only $70,000 (R. Vol. 1, p. 853, lines 19–32).

3. When a lease of a machine is once made, the United Company has, of course, a right to insist that it be retained by the lessee for the period of seventeen years.

The United Company has disregarded this provision of its leases wherever a new machine has been developed which was better than a machine then in use. In such cases the United Company has offered the new machine to lessees, and taken back the machine previously leased, and when obsolete has scrapped it. The United Company has done this without making any charge to lessees for so doing, either on account of the scrapping of the old machine, or on account of the increased efficiency of the new machine (R. Vol. 1, p. 425, lines 12–20). The new Model K Welter, for example, effects a saving to shoe manufacturers and operatives of at least $800 per year. Yet these welters are substituted for the old welters without any charge, or the requirement of any additional royalty, although the United Company is under absolutely no obligation to do so. The United Company has thus substituted new improved machines for a large portion of the machines which were outstanding when it was formed. Nearly all of the machines made by the Goodyear Company in 1899 have been replaced by new and improved machines (R. Vol. 1, p. 430, lines 32–34).

4. The United Company has since its organization developed a large number of new auxiliary machines not supplied in 1899. It has, for example, added 22 welt auxiliary machines, and 6 turn auxiliary machines (Defs.' Exs. 242 and 243, R. Vol. 5, p. 681; Defs.' Exs. 244 and 245, R. Vol. 5, p. 683). Although under no obligation whatsoever to do so, it has furnished lessees under existing leases these new auxiliary machines without extra charge or royalty except a small rental or initial payment which affords no fair return on the machines.

5. Many of the leases require the lessee to guarantee a minimum payment. This clause has never been strictly enforced, except for the purpose of requiring a lessee to return idle machines for which he had no further use (R. Vol. 1, p. 553, lines 4–19).

The United States, in spite of extraordinary efforts to present the evidence of every dissatisfied lessee out of the hundreds of lessees who have dealt with the United Company since 1899, has utterly failed to show a single instance of any arbitrary or oppressive enforcement of its leases. The thirteen instances of such conduct which it finally charged are set forth in its bill of particulars under the heading of "Misrepresentation and Threats to Induce Customers of Competitors to Abandon Competing Machinery" (R. Vol. 1, pp. 1075–8). As to five of these alleged instances it introduced no evidence whatsoever. The evidence as to the remaining eight showed the charge to be utterly unfounded. A statement of the evidence in respect to these charges is contained in Appendix II (*infra*, pp. 743–761), and a short summary is given below in the Brief (*infra*, pp. 589–595).

In a very few instances the record shows that the United Company called the attention of its lessees to the clauses in the leases. Except in the five cases of cancellation referred to below, and a single suit brought against the Plant Shoe Company under its leases, the record shows no instance of an enforcement by the United Company, by legal action or by cancellation of its leases, of any of the clauses objected to by the United States, viz., the clause providing that the lease should run for seventeen years, the Full Capacity Clause, the Exclusive Use Cancellation Clause, the Cancellation for Breach Clause, the Restricted Use Clause, or the Auxiliary Restricted Use Clause.

In each of the five cases of cancellation referred to, the United Company cancelled its leases because of a most flagrant violation by the lessee of its rights. These were the cases of C. E. Ramlose, E. F. Bell & Co., Peter Tessier & Co., E. Bottomley & Co., and T. D. Barry & Co. (R. Vol. 1, p. 447).

In the Ramlose case the lessee persistently cheated the United Company by reporting on his royalty returns only about half the shoes made (R. Vol. 1, p. 447, lines 36–45).

In the Bell case the lessee persistently used wire purchased from others on his metallic machines, thus depriving the United Company of its only royalty on these machines. Only the machines which were being so wrongfully used were removed, and the others were left (R. Vol. 1, p. 448, lines 1–10).

In the Tessier case the lessee had abandoned the use of the United Company's machines and was paying it no royalty (R. Vol. 1, p. 448, lines 11–18; see Appendix II, *infra*, p. 143).

In the Bottomley case the lessee obtained other machines and abandoned the use of the United Company's machines and wrote the United Company he would pay it no further royalties on them (see Appendix II, *infra*, p. 746).

In the Barry case the lessee abandoned the use of the Goodyear Welter, but used the Goodyear Auxiliaries without making any payment for such use (see Appendix II, *infra*, p. 748).

Not only then does the record fail to show any instances of oppressive enforcement of the provisions of the leases, but it shows various instances in addition to those stated above in which the United Company did not insist upon a compliance with the provisions of the leases or exercise its full rights reserved under the leases.

In respect to the term of the leases, we have shown that the United Company upon the invention of a new improved machine was always ready to cancel the old lease, and furnish the new machines without charge. The United Company was also ready at all times to change over restricted leases to unrestricted leases or vice versa (*supra*, p. 359). It was further ready to permit a shoe manufacturer to give up his leases if circumstances justified. Thus Mr. McElwain, whose company is one of the largest shoe concerns in the country, making about 30,000 pairs a day, asked the United Company if he could cancel his leases in case he decided he would take other machines, and was told by Mr. Winslow that the United Company would be glad to make fair arrangements to cancel any or all of his leases, so that he might use another line of machines if he desired (R. Vol. 1, p. 502, lines 12–18).

Plaintiff's Exhibit 161 (R. Vol. 4, p. 1118), introduced by Louis H. Harriman of the Haverhill Shoe Machinery Company, a witness for the United States, gives a list of eight concerns which had used the Haverhill Company's Turn machine in the same factory with the United Company's Goodyear Turn machine, and of nine other concerns who were still doing so. In none of these cases had the United Company exercised the right to withdraw its Goodyear Turn machines, although it could have done so under the Exclusive Use Can-

cellation Clause, and although the lessee in certain cases was apparently using in connection with the Haverhill Turn machines, machines held under Restricted Use Clauses forbidding such use, including General Department machines on which no separate royalty was paid, and on which the entire royalty was received indirectly from the machines to use with which they were restricted (Donham, R. Vol. 1, pp. 828–30).

We do not intend to intimate that the lease clauses are not essential to the protection of the United Company. We merely wish to point out that, like all clauses of this kind, it is necessary that they should be general in their terms, and that the United Company enforces them only if necessary to protect itself against damage to its machines, or against the use of its machines under conditions which do not give it a fair return.

Furthermore, the leases as introduced in evidence do not give a complete picture of the policy of the United Company towards its lessees. The United Company is willing at all times to adapt its system to meet the reasonable requirements of shoe manufacturers.

Riders in great variety, as the record shows, have been adopted from time to time modifying the terms of the leases to meet particular situations, and the United Company is prepared to continue this policy. The policy of the United Company is expressed by Mr. Winslow's statement on cross-examination with reference to making a separate price for Goodyear Auxiliary machines:—

> "It is not fair to state that we will not permit one of these important auxiliary machines that we have developed and are developing to be used in connection with a welter or outsole stitcher made by any one else. We have followed the line which in our judgment would give to the manufacturers of shoes the greatest amount of value for the money that we received, and there has been no other reason for it" (R. Vol. 1, p. 545, lines 19–25).
>
> "Should a welter or a stitching machine that was the equal of our machine be developed and offered to the manufacturers, and the developer of that machine or that concern were not attempting to use it as a black-mailing proposition, or attempting to make shoes and call them Goodyear welts when they were not, I can quite

understand our company to be perfectly willing to establish prices for its auxiliary machines" (R. Vol. 1, p. 545, lines 31–38).

The leases in evidence only represent the terms under which the United Company offers its machines for use under conditions for which there has so far been a demand. As Mr. Winslow testified:—

> "The assumption that these leases that you have put in, or have been putting in, represent the policy of the company is entirely unfair. We have riders continually, when a condition arises, by which we let manufacturers use machines. They only represent just exactly certain notices as to how those machines should be used for the money that is paid for them, nothing more" (R. Vol. 1, p. 546, lines 13–20).

14. THE PROVISIONS IN THE LEASES ARE ESSENTIAL TO A CONTINUANCE OF THE PRESENT SATISFACTORY LEASE SYSTEM UNDER WHICH SHOE MANUFACTURERS OBTAIN MACHINES WITHOUT INITIAL PAYMENT FOR A ROYALTY BASED ON THE USE OF THE MACHINES. THEY ARE, THEREFORE, CLEARLY NOT CONDEMNED BY THE SHERMAN ACT.

The foregoing survey of the reasons necessitating the various provisions in the leases attacked by the United States shows that they are essential to a continuance of the present satisfactory lease system under which shoe manufacturers obtain machines without initial payment, and for a royalty based upon the use of the machine.

For example:—

The Full Capacity Clause is essential if machines are leased without initial payment for a royalty based on use. The return to the United Company on its investment in machines cannot be made dependent on use unless the lessee agrees that he will use. If prohibited from employing this clause, the United Company would be obliged to adopt some

method of payment far less satisfactory to its lessees such as to (1) sell its machines, or (2) charge a large initial premium upon the installation of its machines, or (3) charge a fixed rental based on the capacity of the machine instead of a royalty based on use.

The Restricted Use Clause, or some provision having the same effect, is essential if the shoe manufacturer who desires to use a team of the United Company's machines is to be given a wholesale rate and thus be permitted to share in the economies resulting from the use of the machines as a team. If forbidden to use this clause, the United Company must charge for each machine a price based upon the probable return from the machine when used as an independent unit, which is necessarily higher than the price charged when it is taken to be used as a part of a team of the United Company's machines. The shoe manufacturer desiring to use a team of the United Company's machines would, therefore, be obliged to pay more for his machines.

The Exclusive Use Cancellation Clause permits the United Company to withdraw its machines of a particular kind if, owing to the use by the lessee of the same kind of machines obtained from others, its machines are not used sufficiently to afford a fair return, or it has reason to believe that the lessee carelessly or dishonestly does more work on its machines than is reported. Unless it had this right, the United Company could not continue furnishing machines without a fixed rental based upon the capacity of the machine, instead of the present royalty based on use.

The Cancellation for Breach Clause enables the United Company to withdraw its machines if the lessee violates his agreements. If, in case the lessee refused to pay royalties, or damaged, removed, or assigned the machines or otherwise violated his agreements, the United Company had no remedy except to bring a succession of suits which might take years to conclude, and which might not be determined until after the lessee became insolvent, it could not continue to furnish its machines on lease at all, or, if it did lease them, without large initial payments which would serve as a guarantee against such possible loss.

A term of seventeen years is, of course, not essential. But

a long term is essential. The United Company could not be asked to build $40,000,000 of machines and install them in lessees' factories without initial payment on their part unless the lessees agreed to use the machines for a term long enough to insure an adequate return. The lessee likewise desires a long term; otherwise his royalties may be increased at any time. If the term is long, it is not of controlling consequence whether it be fifteen or seventeen years.

The clause requiring the lessee to obtain new parts needed in the leased machines from the United Company is essential to assure the proper maintenance of the machines which belong to the United Company. The United Company could not furnish its machines on lease if the lessee were permitted to replace broken parts with cheap parts or parts not adapted to the machine, and thus depreciate its value.

These clauses, then, or clauses similar in effect, are essential to the continuance of the present highly satisfactory lease system. The District Court said (R. Vol. 1, p. 1187):—

> "The attack of the United States is not upon these rights, but upon the particular mode in which they have sought to exercise them. Other modes, such as the requirement of arbitrary payment for the full period of the patents, would escape all such attacks. *The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions*" (italics ours).

If the United Company should be forbidden to employ those or similar provisions, it would be prevented from continuing the present reasonable and satisfactory lease system, and the consequences to shoe manufacturers and the public would be most serious.

Substantial initial charges for machines and an increased royalty would inevitably result. Men like Bennett, Burt, and Allen, as they testified, would be unable to enter the business under such a system. Existing manufacturers would be required to make capital expenditures for the machines now held by them and all new machines they took. Many who have little capital might be unable to do so and be forced out of business. The small manufacturers especially would

be injured, and the shoe manufacturing business would tend to concentrate in the hands of the larger manufacturers, who have large capital resources and who can better afford to invest their capital in machines.

Provisions necessary to enable the United Company to furnish machines without initial payment for a royalty based on use, and to share with its lessees the economies resulting from the use of machines as a series, are obviously normal, reasonable provisions not affected by the Sherman Act.

IV.

THE "ACQUISITIONS" OF OTHER CONCERNS AND PATENTS.

1. GENERAL DISCUSSION.

A. INTRODUCTORY STATEMENT.

The petition alleges that defendants

> "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery, destroy existing competition among the manufacturers and dealers in such machinery, . . ."

and that

> "they conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery . . ." (R. Vol. 1, p. 994).

Section VII of the petition (R. Vol. 1, pp. 999–1023), which sets forth the "acquisitions," is introduced by these allegations:—

> "In pursuance of their purpose to monopolize the shoe machinery industry, the defendants have, through United Shoe Machinery Company, of New Jersey, by the methods herein described, absorbed many competitors. . . . Among the individuals, partnerships, and corporations who were competitors of the defendants and whose businesses have been so acquired and absorbed by them are the following:" (R. Vol. 1, pp. 999–1000).

The petition then recites * fifty-eight transactions entered

* The Plant purchase (R. Vol. 1, p. 1019) will be discussed separately (*infra*, pp. 507–586). The allegation in the petition regarding the Boston Blacking Company (R. Vol. 1, p. 1005) was abandoned by the United States, and Plaintiff's Exhibit 76 (R. Vol. 3, p. 599) was withdrawn (R. Vol. 1, p. 47, lines 21–43).

into by the United Company at various separated times during a period of twelve years, and concludes,—

> "The competition which previously existed between said several concerns has been entirely destroyed" (R. Vol. 1, p. 1023).

The petition also alleges that defendants

> "have acquired many letters patent for valuable inventions, and have held the same for long periods of time without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom; . . . they have bought the business of many competitors, though compelled to pay exorbitant prices therefor . . ." (R. Vol. 1, p. 999).

In view of these unqualified allegations that the parties with whom these dealings were had were "competitors" of the United Company, and, in view of the failure of the petition to set forth either adequately or accurately the facts regarding either defendants' intent or their accomplishment, it is important that at the outset an understanding be had as to the general character of these transactions.

In the first place, it is essential to a proper understanding of the purpose and effect of these "acquisitions" that adequate realization be had of the fact that the shoe machinery industry is unique, and that, on account of the characteristics which distinguish this industry from all others which this Court has been called upon to investigate in suits under the Sherman Act, it was not only lawful but it was necessary, and it was the United Company's duty, in order that it might properly develop its business and improve its machines to enable it to serve its customers better, that it should make such acquisitions as it did occasionally during the period of twelve years over which they extended. Those acquisitions, so far as they related to shoe machinery, were complementary to the extraordinarily aggressive, expensive, and effective experimental work which the United Company has constantly been carrying on since its organization.

The distinguishing characteristics of the shoe machinery industry which have particular bearing upon the necessity and lawfulness of the acquisitions are as follows:—

(1) In making a shoe a great number of successive operations are performed, each requiring a separate and distinct machine, so that in the manufacture of a machine-made shoe a large number of different machines must be used one after another.

(2) The different kinds of shoes, owing to their radically different shoe organizations, in most instances require different machines for the same or corresponding operations (R. Vol. 1, p. 84, lines 1–4; p. 86, lines 16–45).

(3) Every important shoe machine embodies many inventions claimed in a number of patents, often a dozen or a score of patents, and those inventions are coördinated and interwoven into a harmonious and complete mechanical organization.

(4) Shoe manufacturers use a great variety of supplies or "findings," such as eyelets, nails, tacks, lacings, peg-wood, awls, needles, sandpaper, brushes, cement, blackings, and stains.

When the United Company was formed it had a comparatively small number of machines for an equally small number of operations, a very small proportion of the great number of operations which must be performed in making a shoe (R. Vol. 1, p. 2, lines 10–22; p. 3, lines 15–19; p. 4, lines 23–27), and for the most part those machines were adapted for welt shoes only (R. Vol. 1, p. 48, lines 35–38). For example, there was then no General Department, where we find over 170 machines to-day. Also, in 1899 the United Company had no facilities for furnishing findings and supplies to its customers, many of which, such as tacks, peg-wood, needles, eyelets, sandpaper, brushes, and cement, were used on its own machines. When the United Company was organized, therefore, it was able to supply only a small proportion of its customers' needs for machines and no part of their needs for supplies.

In 1899, therefore, the United Company was confronted with the question whether it should be content to stand still,—whether it should be content to put out its machines as it had received them from its predecessors,—or whether it should undertake constantly to advance the industry by improving its machines, adding other machines to make its line more complete, producing entirely new machines for doing work then done by hand and providing itself with facilities for fur-

nishing supplies used by shoe manufacturers, particularly the many kinds of supplies used on its own machines.

Defendants realized that there was opportunity for enormous improvement in the shoe machinery of that day; they foresaw the tremendous development in shoe machinery which has in fact, as the record shows, been effected on these lines, and they conceived it to be their duty as well as their opportunity to undertake that development. Defendants knew that their machines were then the best, embodying the improvements of recently granted patents, and they believed that the further development of the industry should be directed to improving those superior machines and developing new machines which should be properly coördinated with the existing machines to coöperate with them in performing successfully the successive operations on the shoe.

Accordingly, the defendants undertook this work of continuing the experimental and development work which had been carried on by its predecessors since the beginning of the industry, and we have already shown how intelligently, aggressively, and successfully they carried on that work, resulting in great improvement in all the United Company's machines and in the development of a large number of entirely new machines (*supra*, pp. 187–191; 218–228). Most of the remarkable development in shoe machinery since 1899 has been effected by the United Company through the persistent and successful work of its large experimental department.

But the shoe machinery industry is dominated by patents, and when the United Company had developed an improvement for one of its machines it occasionally found that the improvement infringed a patent owned by another. And likewise, when the United Company desired to supply to its customers a machine for performing an operation for which it had not before had a machine it sometimes found either that the new field was completely dominated by patents owned by others or that a machine which it was developing infringed patents owned by others. Accordingly, it was occasionally necessary for the United Company to acquire patents from others before it could supply to its customers a machine which they needed.

In some of those instances the United Company had a

machine for performing an operation on one kind of shoe which, however, could not be used for performing the corresponding operation upon another kind of shoe because the organization of that shoe and the necessarily different methods of making it required a wholly different type of machine. For example, the Goodyear Automatic Leveler, the only leveling machine that the United Company had in 1899, could only be used on welt shoes. The United Company had no leveling machine which could be used on turn shoes until it acquired the patented Star Leveler from the Swain-Fuller Company, and it had no leveling machine that could be used on McKay sewed shoes until it developed the Atlas Leveling Machine embodying the inventions acquired from Winkley and Phillips combined with many inventions of its own; while neither of those machines could be used on welt work or for the work done by the other. Many of the transactions presented similar situations.

Again, a large proportion of the acquisitions were for the purpose of enabling the United Company to manufacture and furnish to its customers "findings" or supplies, which were constantly used by its customers, but which the United Company had never before manufactured. In these transactions no shoe machinery whatever was acquired.

Accordingly, disregarding for the present a considerable number of transactions by which no property was acquired and which were not "acquisitions" at all, the record shows that the acquisitions were not made for the purpose of monopolizing shoe machinery or destroying competition, as the petition alleges, but that they were made for the following purposes.

(1) To enable the United Company to furnish to its customers patented machines for performing operations for which it had never before had any machines. The United Company was obviously entitled to furnish such machines, which did not compete with any machines it was manufacturing, and for this purpose was entitled to acquire such other machines as were then invented. It was further a convenience to its customers to get such machines from the United Company, which not only took excellent care of them, but, owing to its large manufacturing establishment, could produce them economically, and offer them at reasonable prices.

(2) To enable the United Company to improve substantially the machines which it was making and putting out. In many instances patents owned by others prevented the United Company from using much needed improvements which it had made in its machines. The United Company acquired those patents and by combining them with its own patents still further improved its machines. It was clearly to the advantage of its customers that its machines be improved both to give them greater capacity and thereby greater economy in operation and to enable them to keep pace with the progress and development of the shoemaking industry. Obviously it was advantageous for the United Company to be in a position to furnish the best machines possible for in no other way could it hold its business.

(3) To enable the United Company to develop and put out entirely new machines upon which it was experimenting. In many instances such machines were found to infringe patents owned by others and could not be put out by the United Company without infringement unless those patents were acquired. Combining the improvements which the United Company was making with the improvements of the patents which it infringed and thereby producing a better machine than if only a part of those improvements were used was clearly advantageous both to the United Company and its customers.

(4) To enable the United Company to manufacture and supply to its customers the various kinds of findings which are constantly used in a shoe factory. These acquisitions enabled the United Company's customers to obtain such supplies at the Company's numerous branch offices, an obvious convenience. They benefited the United Company because they provided an assured source of supply for the many articles used on its machines such as needles, tacks, nails, eyelets, peg-wood, sandpaper, etc., and because they enabled the United Company to provide the proper kinds and qualities of those articles and thereby insure greater efficiency for its machines and less trouble in keeping them in repair.

It is clear that the United Company not only had the right to make the acquisitions for these purposes and under

these conditions, but also that it was its duty to make them. Its predecessors had been constantly improving their machines, and the United Company inherited the responsibility for continuing that improvement.

If the United Company had been content to stand still and go on doing business with its machines as they were in 1899, that policy would inevitably have held back the development of the industry for many years. The United Company's machines were preëminent and they were patented. That further improvements should become immediately effective, it was essential that they should be combined with the patented improvements already in those machines. The result was that, if the development of shoe machinery was to go on steadily and consistently, it was necessary that the United Company should undertake it. Furthermore, if the United Company had not assumed this duty and had rested content with its machines as they were in 1899, it would eventually have lost its business, for others would have made improvements and after the patents on its machines had expired the machines would have become out of date and manufacturers would have ceased to use them.

The duty which confronted the United Company in 1899, to improve its machines to the best of its ability, is made clear by the manner in which it discharged that duty, by the tremendous development and the remarkable improvements in shoe machinery which it has effected since 1899, with great benefits resulting both to itself and to the shoemaking industry. But, as we have indicated and will later show more in detail, that duty could not have been properly discharged if the United Company had not made these acquisitions.

It was under such conditions and for such normal and reasonable purposes that the so-called acquisitions were made by the United Company. The acquired concerns were small, and of those which had machines many had but a single machine, and that more often merely an experimental machine. The Plant transaction was the only one in which patents relating to any considerable number of machines were obtained, and that transaction may more conveniently be discussed by itself (*infra*, p. 507).

As showing how the United Company in developing its

machines has been obliged to acquire from others patents covering inventions to be combined with those developed by its own inventors, some specific illustrations may be noted. The Model K Welting Machine embodies inventions covered by six patents acquired from others combined with the inventions of nineteen patents which were developed by the United Company (R. Vol. 1, p. 83, lines 5–8; R. Vol. 2, pp. 2266–7; p. 2836(73); Defs.' Ex. 343, R. Vol. 5, p. 951); the Model M Outsole Stitcher, five patents acquired from others and the inventions of seventeen patents developed by the United Company (R. Vol. 1, p. 83, lines 5–8; R. Vol. 2, pp. 2299–2300, 2836(73); Defs.' Ex. 343, R. Vol. 5, p. 950); the Ensign Lacing Machine, four acquired patents and five patents developed by the United Company (R. Vol. 1, p. 86, lines 25–30; R. Vol. 2, p. 2606; P.'s Ex. 117, R. Vol. 4, p. 839); the Universal Channeling Machine (turn work), three acquired patents and eight patents developed by the United Company (R. Vol. 2, p. 2329; Appendix I, *infra*, pp. 733–4); the Star Channel Cementing Machine—Model D, one acquired patent and three patents developed by the United Company (R. Vol. 1, p. 79, lines 2–5; R. Vol. 2, p. 2019, Int. 1304; p. 2634); the Atlas Leveling Machine, two acquired patents and five patents developed by the United Company (R. Vol. 2, p. 2062, Ints. 1530–1532; pp. 2584–6); No. 5 Slugging Machine, three acquired patents and seventeen patents developed by the United Company (R. Vol. 1, p. 103, lines 15–18; Vol. 2, pp. 2470, 2781).

These examples not only illustrate the normal and legitimate character of the acquisitions, but they also show the practical impossibility of separating out and taking away from the United Company the inventions which it has acquired. The record shows that those acquired inventions are just as essential to the commercial success of the machines in which they are embodied as are the inventions made by the United Company which have been combined and interwoven with the acquired inventions; and more than that, in many instances the United Company could not have used its own inventions, if it had not acquired from others patents which its inventions infringed.

As we have stated, at the time the United Company was formed

it had a comparatively small number of machines for an equally small number of operations (R. Vol. 1, p. 2, lines 10–22; p. 3, lines 15–19; p. 4, lines 23–27), and for the most part those machines were adapted for welt shoes only (R. Vol. 1, p. 48, lines 35–38). Since that time it has greatly extended the kinds of machines which it furnishes. Thus since its formation in 1899 it has added to the machines furnished by it over 170 different General Department machines. In addition to the machines which it has acquired it has developed and put out 150 entirely new machines and it has produced 39 machines which perform operations which in 1899 were performed by hand or not at all, including the pulling-over machine and auxiliaries, the eyeletting machines, and the clicking machines (R. Vol. 1, p. 503, lines 7–12, 17, 37–41; Defs.' Exs. 246, 247, R. Vol. 5, pp. 683, 690). The number of machines and inventions purchased by the United Company is small in comparison with the number developed and invented by its own experimental department.

B. GENERAL SURVEY OF THE "ACQUISITIONS."

The petition aims to create the impression that most of these fifty-eight parties were manufacturers or dealers in shoe machinery generally, like so many sugar refineries or so many tobacco factories, and that by these transactions the United Company removed so many competitors from the shoe machinery field. This is very far from the facts.

Less than a Half of the Parties were Engaged in any Shoe Machinery Business.

In twenty-four of these transactions *no shoe machinery was acquired.* Many of the concerns were not engaged in business at all, and of those engaged in business many were not engaged in the shoe machinery business, but made sandpaper, brushes, cement, eyelets, lacings, peg-wood, needles, awls, rawhide mallets, nails, tacks, metallic heels and counters, or

other supplies which were used by shoe manufacturers who were customers of the United Company.

In eight more transactions the parties were doing no business, their machines were only experimental (*infra*, p. 460).

That is, only twenty-six of the parties to the fifty-eight transactions set out in the petition were doing any shoe machinery business of any kind; thirty-two were not doing any shoe machinery business at all. Accordingly more than half of these transactions are not even *prima facie* within the allegation in the petition that defendants' intent was

> "acquiring the ownership or control of all concerns engaged in *manufacturing and dealing in* any and all kinds of *shoe machinery*" (italics ours) (R. Vol. 1, p. 994).

And further, with but few exceptions the machines of those concerns which were in one way or another engaged in shoe machinery business were all different, not only from anything that the United Company had before, but each from the machines of all the others. So far from the truth is the allegation that

> "the competition which previously existed between said several concerns has been entirely destroyed" (R. Vol. 1, p. 1023).

Furthermore, in all cases competitors were left outstanding.

By nearly All of the Transactions by which the United Company Acquired Anything it Acquired Something which it had never had before.

Probably the most striking fact about the "acquisitions" is that by nearly all of the transactions by which the United Company acquired anything it acquired something which it had never had before. By fifty of the fifty-eight transactions, including nearly all of those by which any shoe machinery was acquired, the United Company entered an entirely new field by acquiring machines for performing operations for which it did not have machines, or supplies or findings which it did not have before; or it acquired patented improvements or inven-

tions for the purpose of enabling it to supply better machines or products than it had before; or it acquired no property or business whatever. The remaining eight concerns were either not engaged in the shoe machinery business or were not in any sense competitors (*infra*, pp. 456–466).

In so far as there was any suggestion of competition in respect to any of those fifty concerns by reason of slight overlapping of the field in which any of them was doing business and the United Company's field,—and there were but few cases of that,—either (1) the United Company's machine or product was very inferior and unsatisfactory and was discarded when the new machine or product was acquired; or (2) the acquisition of the overlapping machine or product was merely incidental to the transaction, entirely outside of its real purpose and object, and such slight competition as existed or was promised was of no consequence at all and may be disregarded. In every one of these transactions the all-important fact bearing upon both the intent and what was actually accomplished was that the United Company acquired a new machine or a new product which it did not have before but which its customers used and demanded, or a new invention which was needed to improve its machines. The charge that the United Company acquired competing concerns is thus absolutely without foundation.

In its efforts to show that in a few instances there was competition between the acquired concerns and the United Company the United States has throughout the case endeavored to obscure the facts by telling only a part of the story,—for example, that the United Company and an acquired concern had machines of the same or similar names. In considering such arguments by the United States it is highly important that the Court keep in mind the fact that as clearly appears from the record the different kinds of shoes, owing to their radically different shoe organizations, in most instances require different machines for the same, or corresponding, operation (R. Vol. 1, p. 83, lines 29–45; p. 84, lines 1–4).

By a Majority of the Transactions the United Company did not Acquire any Machine of the Class in respect to which the United States Claims a Monopoly.

Considering the "acquisitions" from another viewpoint, it is an illuminating fact that in thirty-two of the transactions the United Company did not acquire any machine which was within the field of the alleged monopoly as defined during the trial, namely, machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines; and a dozen other transactions related only to machines of the General Department type which, however, might be regarded as machines for "preparing" soles. By twenty-three of the twenty-six transactions which do fall within the above classification, thus liberally construed, the United Company acquired a machine or an invention which it did not have before and which it needed. As to the three remaining transactions, in one case the machines were only experimental and infringed many of the United Company's patents. The other two transactions related solely to foreign business and were in effect only purchases of foreign patents; in one of those cases there were patent complications and in the other the United Company had been agent for the machine acquired (*infra*, pp. 470, 460–466).

But the situation is even more striking when considered in the light of the definition of the alleged monopoly given by counsel for the United States in the argument at the first hearing in this Court. That new definition excluded General Department machines from the field of the alleged monopoly. Forty-four of the transactions are entirely outside that field, as thus finally defined; and the few remaining transactions, as is true of all of them, did not eliminate competition (*infra*, p. 470).

This shows that the acquisitions did not give the United Company any monopoly such as that charged, or affect the alleged monopoly to any significant extent, and that they may therefore be disregarded in this aspect of the case.

As to acquisitions of this class the District Court said (Dodge, J., R. Vol. 1, p. 1140):—

"It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build."

The Concerns and Inventions which were Offered to the United Company and Declined were far more Numerous and Important than Those which it Acquired.

An examination of the lists of concerns dealing in shoe machinery and findings which were offered for sale to the United Company, but which it declined to purchase, and of the large number of other concerns engaged in the shoe machinery business in competition with the United Company which it has never acquired or attempted to acquire shows conclusively that the United Company made no attempt to acquire all concerns engaged in the shoe machinery business. This is confirmed by Mr. Winslow's testimony that in each instance outstanding competitors were left (R. Vol. 1, p. 465, lines 20–23).

Thus Defendants' Exhibit 233 (R. Vol. 5, p. 527), which is a partial list of concerns offered for sale to the United Company but declined, contains the names of 75 different concerns, many of great size and importance. (See Mr. Winslow's testimony regarding the business done by these concerns,— R. Vol. 1, pp. 472–5.) Many of these concerns had machines which are included within the classes of machines as to which the United States charges a monopoly. Mr. Winslow said of them (R. Vol. 1, p. 472, lines 16–23),—

"Broadly speaking, this list includes manufacturers who, taken together, were making, or are now making, I should say, a complete line of shoe machinery, including the sewing machines for the fitting room."

The list includes such important concerns as the following:—

The Wheeler & Wilson Company (R. Vol. 1, p. 472, lines 24–26), manufacturing 90% of the machines used in making uppers.

The Atlas Tack Co., the largest manufacturer of tacks and a large producer of eyelets (R. Vol. 1, p. 472, lines 39–43).

The Canadian Shoe Machinery Co., making a full line of what is termed the important machines, including welters and stitchers, which did business in the United States through the Duplessis Company (R. Vol. 1, p. 473, 13–18).

The Duplessis Shoe Machinery Company (now the Hamel Shoe Machinery Company) which manufactured complete sets of machines for making welt, turn and McKay shoes (R. Vol. 1, p. 327, lines 15–25; p. 473, lines 30–31; p. 945, lines 1–4).

The Boylston Manufacturing Company, making lasting machines (R. Vol. 1, p. 956, line 8).

The Haverhill Shoe Machinery Company, which furnishes all kinds of shoe machinery for welts, McKays, turns, or pegged shoes (R. Vol. 1, p. 301, lines 5–9).

The Frechette Pegging Machine Co., making pegging machines (R. Vol. 1, p. 474, lines 9–12).

The Krentler Pym Lasting Machine Co., which manufactured a lasting machine (R. Vol. 1, p. 474, lines 26–28).

The R. H. Long Machinery Co., which manufactures large numbers of welters, stitchers, and lasting machines and is prepared to furnish a full line of machines for welt or turn shoes (R. Vol. 1, p. 345, lines 39–44).

The Union Lockstitch Co., which made and marketed large numbers of outsole stitchers (R. Vol. 1, p. 199, lines 9–45).

Defendants' Exhibit 336 (R. Vol. 5, p. 849) contains a list of shoe machinery manufacturers or dealers not acquired by the United Company, setting out the machines they offer for sale taken from Defendants' Physical Exhibits 311–321, which consist of catalogues, letters, and advertisements. It shows over 125 different manufacturers and dealers offering every kind of machine, a number of them offering complete lines of machines.

Comparing the number of concerns which the United Com-

pany refused to purchase with those actually purchased the District Court said:—

> "As to several, at least, of these instances of refusal, the evidence warrants the belief that the business offered and refused much exceeded in importance to any such scheme of monopoly as now charged, any of the specified acquisitions. . . . If a monopoly of all machinery for attaching bottoms to uppers was really undertaken, it is hard to believe that opportunities would have been neglected, as they were, such as those for acquiring the Union lock-stitch machines or the welters and stitchers of the R. H. Long Company, all of them patented machines for use on welt shoes; or for acquiring a considerable business in producing McKay sewing machines, though these were unpatented and not capable of use on shoes of that kind" (Dodge, J., R. Vol. 1, p. 1141).

Defendants' failure to take advantage of the opportunities to acquire those companies could only be regarded as extraordinary, if back in 1899 they had, as the petition alleges,—

> "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery" (R. Vol. 1, p. 994).

Mr. Winslow's testimony regarding those concerns which were offered to the United Company but were not acquired (R. Vol. 1, pp. 472–5) also shows that a large number of them were engaged in the same lines of business in which many of the concerns which the United Company acquired were engaged.

In addition to the businesses offered to the United Company and not purchased, there were offered to the United Company between June, 1904, and December, 1911, 493 inventions which it did not acquire. These are shown by Defendants' Exhibit 222 (R. Vol. 5, pp. 370, 371–389). A large portion of the so-called "acquisitions" consisted merely of the purchase of inventions of the same kind as the 493 so offered the United Company, the purchase of which was declined.

This list of inventions the purchase of which was declined includes over two hundred inventions which it is obvious from their titles related to machines of the kind in respect

to which monopoly is charged. Of these the District Court said,—

> "The cases in which inventions were offered and refused during the same period were many times more numerous than the patents or inventions acquired" (Dodge, J., R. Vol. 1, p. 1141).

The Transactions Extended through a Period of Twelve Years.

Reverting to the allegations of the petition that prior to the formation of the United Company the officers and directors of the predecessor companies, individual defendants,—

> "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery,"

and—

> "conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery" (R. Vol. 1, p. 994),

and that these fifty-eight "acquisitions" were made—

> "in pursuance of their purpose to monopolize the shoe machinery industry" (R. Vol. 1, p. 999),—

these allegations prepare the reader for a showing that these defendants immediately went about gathering in all existing competitors and that they did this by a great number of practically simultaneous transactions so that within a few months at the most they had the field entirely to themselves.

On the contrary, the showing of the petition itself is that *these transactions were entered into at different separated times through a period of twelve years.* The petition alleges that eleven of them were at various times in 1899; seven in 1900; six each in 1901 and 1902; four in 1903; nine in 1904; one each in 1905, 1907, 1909, and 1911; three each in 1906 and 1908; and five in 1910. But, as we have already explained and shall later point out in detail, by a majority of these transactions the United Company did not acquire any shoe machinery business. Notwithstanding this fact, as was well stated by the District Court,—

"Though thus extended through a period of years, and though widely varying each from the others in character, both in respect to the nature of the transaction itself and also regarding the circumstances attending it, the petition sets them forth as if all had been in pursuance of one and the same scheme; there described as a scheme to control shoe machinery in general, though now called a scheme only to control the particular classes of shoe machinery before mentioned" (Dodge, J., R. Vol. 1, p. 1138).

Taking only those transactions which are within the particular classes of machinery as to which monopoly is charged, according to the definition of the alleged monopoly during the trial (*infra*, p. 467) there were, adopting the dates alleged in the petition, three transactions in 1899; four each in 1900, 1901, and 1902; two each in 1903 and 1908; one each in 1904, 1905, 1909, and 1911; and three in 1910. Of the fourteen transactions which are within the more limited field of the alleged monopoly as defined by counsel for the United States at the first hearing in this Court (*infra*, p. 470) there were two transactions each in 1899, 1901, and 1902; one each in 1900, 1904, 1905, 1908 and 1909; three in 1910; and none in 1903, 1906, 1907, and 1911.

It is beyond belief that these transactions, entered into at these widely separated times during this long period, none of which had any connection with or bearing upon any of the others, were entered into in the carrying out of an intent conceived in 1899, and defined in the petition as—

"acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery" (R. Vol. 1, p. 994).

It was found by the District Court:—

"The acquisitions above regarded as the only ones of any possible significance in the case were made at various separated times during the period of eleven years or thereabouts above referred to. It cannot be said that the later ones were in contemplation when the earlier acquisitions were made, because there is nothing to show that the circumstances attending any of them were such as could have been anticipated as likely to occur at the time

of the preceding acquisitions. The most that can be said is, that as, in the progress of events, the needs of the United Company became manifest and these opportunities presented themselves, they were availed of" (Dodge, J., R. Vol. 1, p. 1140).

The Allegation that Defendants Paid Exorbitant Prices.

The petition also alleges that defendants

> "have bought the business of many competitors, though compelled to pay exorbitant prices therefor" (R. Vol. 1, p. 999).

Passing over the allegation that these concerns were "competitors," which as we have shown and shall later explain more in detail is not supported by the facts, there is not a word of testimony in the entire record which shows or even suggests that the consideration paid in any instance was more than the property acquired was worth. The largest consideration, $775,000, was that paid in the J. C. Rhodes & Company transaction, and they did no shoe machinery business whatever. They were a large eyelet-making concern established long before, owning real estate and a factory and employing 116 men. The broadly patented enamel eyelet which they manufactured was in general use (Appendix I, *infra*, p. 687).

In only one other transaction, Pearson & Bennion, Ltd., did the consideration exceed $200,000. That concern did business in General Department machines only in England and it in no way competed with the United Company. The list of their assets, including a new factory, at the end of Plaintiff's Exhibit 61, coupled with their agreement to assign their Letters Patent (R. Vol. 3, pp. 525, 527, 530), shows that the United Company got full value for the amount which it paid, $410,245.

Neither of these transactions was included in the thirty-six acquisitions which were discussed in the brief for the United States at the former hearing and which its counsel said in argument were the only ones which seemed to them to be of any material importance in any aspect of the case.

The aggregate of the considerations paid in all of the fifty-eight transactions, including nearly $1,200,000 paid in the

Rhodes and Pearson & Bennion transactions, was approximately $3,555,000, an average of less than $62,000. That sum, excepting the consideration in the Plant purchase, which will be discussed by itself, represents the entire amount paid by the United Company over a period of twelve years for new machines, new supplies, and patented inventions which enabled it to enter many new fields and to add a great number of substantial and important improvements to its machines. It is certainly an insignificant sum as compared with the United Company's assets of over $40,000,000 on March 1, 1911 (P.'s Ex. 167, R. Vol. 4, pp. 1137, 1143). And compare the amounts paid from 1907 to 1911 with the $2,267,000 which it expended on its own experimental work in that same period, —1907 to 1911 (Defs.' Ex. 216, R. Vol. 5, p. 322). The aggregate of the considerations paid for the acquisitions during those five years, including a number not doing any shoe machinery business, was $639,588.93; for those concerns which were doing shoe machinery business approximately $375,000 was paid during that period.

The District Court held:—

> "An allegation in the petition that the business of many competitors was bought at exorbitant prices, fails of support in the evidence relating to any specified instance of acquisition among those thus far considered [all except the Plant purchase]. As to them, indeed, no claim of the kind seems to be seriously urged" (Dodge, J., R. Vol. 1, p. 1142).

The Charges that Plants have been Closed and Businesses have been Discontinued.

In the summary of the "acquisitions" in the petition there are frequent statements that "the plant has been closed" and "the business has been discontinued." The facts are as follows:—

In thirty-three of these transactions *no plant was acquired.* Real estate was acquired in only six, and only one of those six was included in the thirty-six transactions which at the first hearing in this Court counsel for the United States said

were the only ones which they considered to be of any material importance in any aspect of the case. The only machines which that concern had were two General Department machines. Five of those six businesses were continued and are now being carried on in the same plants, and the sixth was continued for a considerable time in the same plant and then, for reasons of convenience and economy, was transferred to the United Company's Beverly factory where it has since been continued and increased (*infra*, pp. 481–482).

In general, as to forty-one of the fifty-eight transactions the United Company has continued to carry on the business when the transaction involved the acquisition of a business, or has used the patented inventions when those were the subjects-matter of the transactions; in most of the other seventeen transactions no shoe machinery business was acquired; while as to the few transactions in respect to which the United Company has not yet succeeded in doing anything with what it acquired, either the demand ceased entirely owing to radical changes in manufacturing methods or it proved impossible to make the experimental machines acquired commercially successful, as will be fully set forth in our detailed discussion (*infra*, pp. 475–478).

Again, the petition alleges that defendants—

> "have acquired many letters patent for valuable inventions, and have held the same for long periods of time without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom" (R. Vol. 1, p. 999).

There is not a particle of evidence in support of this allegation, but there is ample evidence which positively disproves it (*infra*, pp. 474–475).

2. DETAILED DISCUSSION OF THE ACQUISITIONS.

NOTE.—The Plant purchase (R. Vol. 1, p. 1019) will be discussed separately (*infra*, pp. 507–586). The allegation in the petition regarding the Boston Blacking Company (R. Vol. 1, p. 1005) was abandoned by the United States, and Plaintiff's Exhibit 76 (R. Vol. 3, p. 599) was withdrawn (R. Vol. 1, p. 47, lines 21–43).

On examining the facts regarding these transactions, which are set forth in Appendix I (*infra*, pp. 655–739), the Court will find that the circumstances attending each transaction fully justified the United Company in entering into it, and that the facts about all of them completely disprove the allegations of the petition that these transactions were made in pursuance of any "purpose to monopolize the shoe machinery industry" (R. Vol. 1, p. 999), or with the intent to suppress competition, or that they had any such effect.

It is of course impracticable to review here the facts of each transaction, but, as indicated in our general discussion, each transaction presented one or more striking characteristics which were common to a large proportion of the others, so that the discussion of the transactions may be facilitated by grouping those presenting important distinctive features in common.

A. CLASSIFICATION OF THE ACQUISITIONS.

(1) In Nine Transactions no Tangible Property or Business of Any Kind was Acquired.

The agreements with GEORGE W. FREEMAN, FRED H. PERRY, and JOHN H. RICHARDSON were merely contracts of employment (Appendix I, *infra*, pp. 668, 705, 725).

The agreements with the LINCOLN SEWING MACHINE COMPANY and ZACHARY T. FRENCH were merely contracts commuting obligations created and existing before 1899 (Appendix I, *infra*, pp. 677, 709).

The AMERICAN GLUE COMPANY transaction was merely an exclusive agency, terminable by either party on six months'

notice, for sandpaper in the shoe trade. The United Company was not manufacturing sandpaper (Appendix I, *infra*, p. 708).

By the BREACH MANUFACTURING COMPANY transaction the United Company acquired only an exclusive license under patents. Those patents related to a machine for cutting outsoles. The United Company had no such machine, and acquired this license for the purpose of developing a clicking machine under those patents (Appendix I, *infra*, p. 664).

From JOSEPH P. CURTIS the United Company acquired only two pending patent applications, which related to a machine for cementing a piece of fabric to an upper. Curtis had only an experimental machine which was not acquired. The United Company had no machine for that work and desired to be able to furnish one (Appendix I, *infra*, p. 704).

From LEOPOLD J. COURTEAU the United Company acquired a patented invention relating to a mechanism for holding linings of uppers while being pasted to the upper leather. Courteau was doing no business and had only an experimental machine. Even that was not acquired. The United Company had no machine for that work and wished to develop one under the Courteau patent (Appendix I, *infra*, p. 712).

(2) By Fifteen Other Transactions the United Company Acquired Nothing More than Supplies of Various Kinds which are Used by Shoe Manufacturers; it did not Acquire Any Shoe Machinery.

THE CORRUGATED WIRE FASTENING COMPANY was doing a small business in supplying wire and spare parts for an obsolete machine which had not been put out for years (Appendix I, *infra*, p. 663). This business was characterized by the District Court "as making wire and spare parts for use in an obsolete metallic fastening machine" (Dodge, J., R. Vol. 1, p. 1128).

The GLOBE SHOE TOOL COMPANY was manufacturing and selling cutters and edge irons, which are tools, not machines. The Globe Company infringed two of the United Company's patents. The United Company desired to secure the services

of H. M. Loomer, one of the vendors, as manager or superintendent (Appendix I, *infra*, p. 671).

The JOHN RITCHIE COMPANY, who were shoe manufacturers at Quebec, Canada, were also, in a small way, making wire for use on standard screw machines and were selling it to lessees of the United Company, who had agreed to buy wire from the United Company in payment for the use of the machines. This was a dishonest situation which it was the purpose of the transaction to remove (Appendix I, *infra*, p. 672).

The BOSTON FAST COLOR EYELET COMPANY was dealing in patented celluloid covered eyelets known as Fast Color Eyelets. This was a new field for the United Company. The purpose of the transaction was to enable the United Company to go into the fast color eyelet business (Appendix I, *infra*, p. 678).

The ENAMEL EYELET COMPANY was endeavoring unsuccessfully to market a patented enamel eyelet. This was a new field for the United Company. The object of acquiring the Enamel Company's patents was to enable the United Company to enter that field (Appendix I, *infra*, p. 679).

J. C. RHODES & COMPANY was doing a large business in enamel eyelets which were broadly patented. Both the Rhodes Company and the Enamel Company infringed a patent owned by the other and each had sued the other. The objects of this acquisition were to compose that litigation, to enable the United Company to produce a commercially satisfactory enamel eyelet without infringement, and to enable it to procure satisfactory metal blanks for its fast color eyelets (Appendix I, *infra*, p. 687).

From the MORLEY BUTTON MANUFACTURING COMPANY the United Company acquired a patented enamel eyelet of a different type from the Enamel Company and Rhodes Company eyelets. The Morley Company infringed and had been sued under the patents on both the Enamel and Rhodes eyelets. The objects of this transaction were to settle that litigation and to obtain valuable patents on a new type of enamel eyelet. The principal business of the Morley Company was manufacturing buttons; that business was not acquired (Appendix I, *infra*, p. 689).

The MARLBORO AWL & NEEDLE COMPANY was manufacturing McKay needles, hand awls and mallets,—none of which the United Company had made before. The object of this acquisition was to enable the United Company to enter that new field (Appendix I, *infra*, p. 692).

W. W. CROSS & COMPANY, INCORPORATED, was manufacturing nails and tacks. The United Company had never made any nails or tacks, but was buying tacks in large quantities from Cross for its lasting machines. The purpose of this transaction was to obtain an assured source of supply for the tacks which the United Company needed (Appendix I, *infra*, p. 701).

JOSEPH W. LEARY had a small business in cements and blackings and was dealing in an insignificant way in second-hand upper sewing machines. This transaction was merely an employment contract, Leary making it a condition of his employment that the United Company take over his small stock (Appendix I, *infra*, p. 705).

THE F. G. FARNHAM BRUSH MANUFACTURING CO. was dealing in patented brushes and parts of brushes. The United Company bought its patents in order to be able to furnish a better brush (Appendix I, *infra*, p. 706).

KIMBALL & HADLEY were making and selling Goodyear needles. The United Company was not making Goodyear needles and had been obliged to purchase from others the needles which it supplied for its own Goodyear machines. Its purpose was to enable the United Company to manufacture its own Goodyear needles (Appendix I, *infra*, p. 710).

The METALLIC HEEL AND COUNTER COMPANY was manufacturing a patented metallic heel and counter for use on shoes worn by miners and quarrymen, etc. The United Company had nothing of the kind before. The United Company desired to enter that new field and to secure the services of three experts who were connected with that company (Appendix I, *infra*, p. 717).

The ELLIS LACER COMPANY was making a patented wire lacer for holding the edges of an upper at the right distance apart during manufacture. This was a new field for the United Company which it desired to enter but could not without acquiring the Ellis Company's patents, while on the

other hand the Ellis Company infringed broad patents of the United Company (Appendix I, *infra*, p. 729).

The B. F. Sturtevant Company was manufacturing peg-wood and wooden shanks. The United Company had previously been obliged to purchase from others, including the Sturtevant Company, the peg-wood and shanks which it supplied to its customers; peg-wood was required for its pegging machines. The object of this transaction was to obtain an assured source of supply for those articles (Appendix I, *infra*, p. 732).

(3) Eight of the Parties from which Shoe Machinery was Acquired were Doing no Business at all with their Machines which were Merely Experimental and not Adapted for Commercial Use.

The Goddu Sons Metal Fastening Company had experimental metallic fastening machines of four types. It had done no business and its machines could not have been used commercially without entire reconstruction. The McKay Shoe Machinery Company claimed that the inventions in those machines had been made by Louis Goddu while in its employ and while paid to make them, and that accordingly it owned the inventions. It had brought suit to compel the transfer of the inventions and the suit had been vigorously prosecuted. The McKay Company had also prepared to bring suits for infringements of several of its patents by each of the Goddu Company's machines. The purpose of this transaction was to settle and avoid litigation (Appendix I, *infra*, p. 657). The finding of the District Court on this transaction was:—

> "The metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

EDWIN T. FREEMAN had constructed an experimental slugging machine which was patented. He had put out no machines. The United Company infringed one of his patents, there was an interference pending in the Patent Office, Freeman's machine infringed the United Company's patents, and the Freeman patents barred the way to improvement of the United Company's machines. The objects of the transaction were to avoid litigation and to enable the United Company to improve its machines without infringement. His inventions have since been embodied in three different machines of the United Company (Appendix I, *infra*, p. 667).

ALBERT G. BREWER had built an experimental heel breasting machine which was patented. The United Company had no such machine, but was experimenting on a machine of similar type, which was not successful until the Brewer invention had been incorporated in it. It is a General Department machine. Brewer infringed a broad patent owned by the United Company. The purpose of the transaction was to obtain an invention needed to make the United Company's machine successful (Appendix I, *infra*, p. 669).

ERASTUS E. WINKLEY and BENJAMIN PHILLIPS were not engaged in business and no machinery was acquired from them. They had invented a leveling machine adapted for McKay shoes. The United Company had no leveling machine for McKay shoes and used the Winkley and Phillips inventions in the Atlas leveling machine, a General Department machine. The object of this transaction was to enable the United Company to produce a leveling machine for McKay shoes (Appendix I, *infra*, p. 675).

THE SMITH LACING MACHINE COMPANY had an entirely new machine for lacing uppers. It was experimental and had not been put out. The United Company had no machine for that work and desired to obtain one. The Smith Company had broad patents but infringed a patent owned by the United Company (Appendix I, *infra*, p. 715).

From ZOTIQUE BEAUDRY the United Company acquired a patented experimental heel burnishing machine. The inventions could be embodied in the machine of the United Company which had nothing like them. Beaudry's machine infringed the United Company's patents. These inventions

were acquired for the purpose of improving the United Company's machine (Appendix I, *infra*, p. 719).

From HARRY L. RICE and FRED LACHAPELLE radically new patented welting machine inventions were acquired. Their machine was only experimental. These inventions could be put into the United Company's machines and were acquired for that purpose because they would strengthen the stitch and effect substantial economies (Appendix I, *infra*, p. 728).

From ADAM H. PRENZEL, a shoe manufacturer, patented inventions relating to children's shoes and machines for making them were acquired. The United Company had nothing of the kind and desired to be able to furnish these valuable inventions to its customers. Prenzel infringed (Appendix I, *infra*, p. 733).

From all of these eight parties excepting the Goddu Company the United Company acquired *either new machines which it did not have before or patented inventions which could be embodied in its own machines for the purpose of improving those machines.*

All of the Thirty-two Transactions which have been Named are Outside of the Petition's Allegations as to the Defendants' Intent.

The allegations as to defendants' intent in entering into these transactions are that they—

> "determined to acquire a complete monopoly of the *manufacture, sale, and lease of shoe machinery* . . ." (italics ours) (R. Vol. 1, p. 994),—

and that—

> "they conceived the idea of acquiring the ownership or control of all concerns *engaged in manufacturing and dealing in* any and all kinds of *shoe machinery*" (italics ours) (R. Vol. 1, p. 994).

These allegations certainly cannot be stretched to include either twenty-four concerns from whom no shoe machinery whatever was acquired or eight concerns whose machines were only experimental, far from being commercial, and who could

not possibly be regarded as "engaged in manufacturing and dealing in . . . shoe machinery."

(4) By Seventeen of the Transactions with Parties who were actually doing Shoe Machinery Business the United Company entered an Entirely New Field by Acquiring Machines for Performing Operations for which it did not have Machines Before.

The new machines which were acquired will be briefly indicated in the following list of these transactions:—

PEARSON & BENNION, LTD., General Department machines (Appendix I, *infra*, p. 661).

PETER A. COUPAL and WILLIAM GORDON, experimental basting machine, really an employment contract (Appendix I, *infra*, p. 665).

BOSTON SHOE TOOL COMPANY (Timothy A. Bresnahan), edge trimming and setting machines (General Department) and tools (Appendix I, *infra*, p. 666).

STANLEY MANUFACTURING COMPANY, foreign agency for McKay sewing machine and for some General Department machines (Appendix I, *infra*, p. 676).

ROSS-MOYER MANUFACTURING COMPANY, General Department machines (Appendix I, *infra*, p. 680).

SWAIN-FULLER MANUFACTURING COMPANY, leveler for turn shoes (General Department) (Appendix I, *infra*, p. 684).

OLIVER A. MILLER, treeing machine (Appendix I, *infra*, p. 691).

THE T. A. NORRIS MACHINE COMPANY, six new General Department machines (Appendix I, *infra*, p. 693).

THE GEORGE A. SMITH MACHINERY COMPANY, supplies, spring heel scarfer (General Department) (Appendix I, *infra*, p. 697).

G. W. EMERSON & COMPANY, tip scourer, power spring heel scarfer (General Department) (Appendix I, *infra*, p. 699).

J. K. KRIEG & COMPANY, heel seat rounding, Louis heel scarfing machines (General Department) (Appendix I, *infra*, p. 702).

ARNOLD MACHINE & SUPPLY COMPANY, machine for cementing Gem insoles (Appendix I, *infra*, p. 711).

BOOTH BROTHERS (1904 agreement), vamp perforating machine (General Department) (Appendix I, *infra*, p. 713).

BROCKTON SUPPLY COMPANY, patents on tack pulling machine (Appendix I, *infra*, p. 714).

BOOTH BROTHERS (entire business), two new machines (Appendix I, *infra*, p. 720).

CARVER COTTON GIN COMPANY, leveling machine for "freaks" and samples, leatherboard skiver, counter dividing machine (all General Department) (Appendix I, *infra*, p. 725).

CHARLES P. STANBON & COMPANY, new folding machine, important improvements on two others (all General Department) (Appendix I, *infra*, p. 736).

(5) By Seven of the Nine Remaining Transactions the United Company Acquired Patented Improvements or Inventions for the Purpose of Enabling it to Supply Better Machines than it had Before.

The BOOT & SHOE SOLE LAYING COMPANY had a patented sole laying machine. The United Company's machine was inferior, of different type, and very unsatisfactory. The United Company infringed a patent owned by the Boot & Shoe Sole Laying Company (Appendix I, *infra*, p. 662).

The SEAVER PROCESS LASTING COMPANY had a patented experimental pulling-over machine which, although a commercial failure, embodied inventions indispensable to a successful machine. The United Company was developing a pulling-over machine, not yet commercial, which embodied those inventions; they have been in all pulling-over machines put out by the United Company and are of the utmost importance (Appendix I, *infra*, p. 673).

The GLOBE SEWING MACHINE COMPANY had patents on very superior features in its lockstitch welter which barred the way to development by the United Company of its lockstitch welter (Appendix I, *infra*, p. 685).

The AMERICAN SOLE LAYING MACHINE COMPANY had patent rights which prevented the United Company from mak-

ing a double or two-form sole laying machine which would operate on right and left shoes and have double the capacity of the United Company's machine, and which also prevented development of the Atlas leveling machine. The United Company infringed (Appendix I, *infra*, p. 694).

The RICHARDSON SHOE MACHINERY COMPANY had a greatly improved, patented McKay sewing machine, which was much superior to and did a great deal better work than the United Company's machine. The Richardson patents prevented development of the United Company's machines and one of them was infringed by the United Company (Appendix I, *infra*, p. 722).

THE WENTWORTH COMPANY had a patent on a shank sticking machine which prevented the United Company from developing such a machine (Appendix I, *infra*, p. 730).

M. V. BRESNAHAN & COMPANY had a patented experimental lasting machine, not yet commercial, and a patented heel burnishing machine, which infringed two patents controlled by the United Company. The United Company had nothing in its lasting machines or its heel burnishing machines which would do the work that was done by the patented mechanisms in the two Bresnahan machines. A large amount of litigation was composed by this transaction (Appendix I, *infra*, p. 734).

(6) The Two Remaining Transactions.

The transactions with the BAY STATE INTERNATIONAL SHOE MACHINERY COMPANY (Appendix I, *infra*, p. 683) and WILLIAM J. YOUNG (Appendix I, *infra*, p. 696) both related solely to foreign business in patented machines, in no way to business or conditions in the United States. Both were in effect merely purchases of foreign patents.

The Bay State Company was infringing the United Company's foreign patents. Its business was insignificant. The acquisition was made at the earnest solicitation of the people interested, who were shoe manufacturers and customers of the United Company, because it was the cheapest way to settle the litigation.

The only property acquired from Young was his foreign patents under which as agent for Young the United Company had for years been putting out his heel compressing machine abroad. Young's machine was the only one of the kind that the United Company had been putting out abroad. Young has ever since continued to put out his machine in the United States in competition with the United Company.

The foregoing summary shows that by forty-four of the transactions the United Company either entered an entirely new field by acquiring machines or patents on machines for performing operations for which it did not have machines, or supplies or findings which it did not have before, or it acquired patented improvements or inventions for the purpose of enabling it to supply better machines or products than it had before; and that the remaining transactions consisted merely in contracts of employment, contracts commuting obligations created before 1899, purchases to settle or avoid serious patent litigation or transactions of such character that they are entirely unimportant and have no significance in this case. Of the 58 transactions at least 20 were not concerned with the acquisition of shoe machinery or patents on shoe machinery at all.

It is also important to note that in all instances competitors were left outstanding (R. Vol. 1, p. 465, lines 20–23).

During this period the United Company was engaged in a remarkable development of the art of shoe machinery. It improved by new inventions practically all its machines. It developed 150 new machines including 39 machines which performed work previously done by hand (R. Vol. 1, p. 503, lines 7–12, 17, 37–41; Defs.' Exs. 246, 247, R. Vol. 5, pp. 683, 690).

It developed and acquired 172 different General Department machines (*supra*, p. 190). The patents and machines acquired by the acquisitions were used in building up and perfecting this large body of new and improved machines. They were, however, of insignificant importance, as the foregoing summary shows, compared with the results accomplished by the inventive efforts of the United Company itself.

B. THE ACQUISITIONS CONSIDERED FROM OTHER VIEWPOINTS.

(1) In Thirty-two of the Transactions the United Company did not Acquire Any Machine which was within the Field of the Alleged Monopoly as defined during the Trial.

The parties to thirty-two of the transactions did not have any machine which was within the field to which the United States limited its charge of monopoly during the trial:—

> "Machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines" (R. Vol. 1, p. 837, lines 40–43; p. 838, lines 1–3, 18–20).

In this classification we have omitted all concerns which might possibly be regarded as within the field as above defined, although a dozen of those concerns had no "bottoming" machines but only machines of General Department types performing minor operations in the way of "preparing" the soles.

At the first hearing in this Court counsel for the United States still further limited the claim as to the field of the alleged monopoly and we shall presently consider the acquisitions from the viewpoint of that final definition (*infra*, p. 470). But dealing now with the delimitation of the field of the alleged monopoly made during the trial, as set forth in the above quotation, there were but twenty-six of the fifty-eight transactions which come within that definition.

As to those twenty-six transactions:

(1) By fifteen transactions the United Company acquired machines for performing operations for which it did not have machines before, so that by each of those transactions it was entering a new field. These were: Pearson & Bennion, Ltd. (Appendix I, *infra*, p. 661); Breach Manufacturing Company (Appendix I, *infra*, p. 664); Erastus E. Winkley and Benjamin Phillips (Appendix I, *infra*, p. 675); Stanley Manufacturing Company (Appendix I, *infra*, p. 676); Ross-Moyer Manufact-

uring Company (Appendix I, *infra*, p. 680); Swain-Fuller Manufacturing Company (Appendix I, *infra*, p. 684); The T. A. Norris Machine Company (Appendix I, *infra*, p. 693); The George A. Smith Machinery Company (Appendix I, *infra*, p. 697); G. W. Emerson & Company (Appendix I, *infra*, p. 699); J. K. Krieg & Company (Appendix I, *infra*, p. 702); Arnold Machine & Supply Company (Appendix I, *infra*, p. 711); Brockton Supply Company (Appendix I, *infra*, p. 714); Carver Cotton Gin Company (Appendix I, *infra*, p. 725); Adam H. Prenzel (Appendix I, *infra*, p. 733); Charles P. Stanbon & Company (Appendix I, *infra*, p. 736).

It was held by the District Court:—

> "There remain a number of instances involving the acquisition of patent rights, patents, or machines relating to or capable of being included within some of those kinds of shoe machinery whereto the case is restricted as above. In the larger portion of these the device or machine acquired is shown to have been of a kind not then being produced by the United Company. There being nothing unlawful, as above stated, in the acquisition of different groups of noncompeting patented machines, it is clear that by such enlargements of the United Company's field of operation no 'competitor' can be said to have been absorbed or driven out of business, and that no reason appears for holding the acquisitions thus made unlawful either in themselves or because made in furtherance of an unlawful purpose" (Dodge, J., R. Vol. 1, p. 1139).

All of these transactions are clearly within the rule of *United States* v. *Winslow*, supra. So also, we submit, are the eight named in the next paragraph.

(2) By eight of the eleven remaining transactions the United Company acquired patented improvements or inventions for the purpose of enabling it to supply better machines than it had before. These were: Boot & Shoe Sole Laying Company (Appendix I, *infra*, p. 662); Seaver Process Lasting Company (Appendix I, *infra*, p. 673); Globe Sewing Machine Company (Appendix I, *infra*, p. 685); American Sole Laying Machine Company (Appendix I, *infra*, p. 694); Richardson Shoe Machinery Company (Appendix I, *infra*, p. 722); Harry L. Rice and Fred LaChapelle (Appendix I, *infra*, p. 728); The Went-

worth Company (Appendix I, *infra*, p. 730); M. V. Bresnahan & Company (Appendix I, *infra*, p. 734).

The District Court held:—

> "In all such cases it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding[ed] in rendering commercially successful. . . . The most that can be said is, that as, in the progress of events, the needs of the United Company became manifest and these opportunities presented themselves, they were availed of" (Dodge, J., R. Vol. 1, pp. 1139, 1140).

It should also be noted that the United Company infringed patents owned by the Boot & Shoe Sole Laying Company and the Richardson Company; while the Seaver Company, the Globe Company, The Wentworth Company, and Bresnahan infringed the United Company's patents.

(3) There are but three other transactions which were within the class of machines as to which a monopoly is charged,—those with the Goddu Sons Metal Fastening Company, the Bay State International Shoe Machinery Company, and William J. Young.

As has previously been explained (*supra*, p. 460) and as is set forth in detail in Appendix I (*infra*, p. 657), it is shown by the record and it was held by the District Court that the metallic fastening machines of the Goddu Company were experimental, and that they could not have been used without radical reconstruction. A suit had been brought by the McKay Shoe Machinery Company and had been vigorously prosecuted before February, 1899, to compel the transfer of the inventions embodied in the Goddu Company's machines on the ground that those inventions belonged to the McKay Company. The Goddu Company's machines all infringed the United Company's patents, in the aggregate a large number, and the only purpose of this transaction was to settle and avoid litigation.

The facts which we have already stated (*supra*, p. 465) show

that the transactions with the Bay State International Shoe Machinery Company (Appendix I, *infra*, p. 683) and William J. Young (Appendix I, *infra*, p. 696) were entirely without significance in this case.

(2) In Forty-four of the Transactions the United Company did not Acquire any Machine which was within the Field of the Alleged Monopoly as Defined by Counsel for the United States at the First Hearing in this Court.

At the first hearing in this Court counsel for the United States made a new classification of the machines which they claimed the United Company has monopolized. That new definition excluded the General Department machines from the field of the alleged monopoly, as emphasized by the statement by counsel for the United States that they made no question with respect to General Department machines and that they are not involved in this suit.

In forty-four of the transactions no machine was involved which is within the field of the alleged monopoly as thus defined.

The transactions with the fourteen concerns which did have machines within the field of the above definition are within the groups which have just been characterized (*supra*, pp. 467–470, paragraphs (1), (2), and (3)). Not only was no competition eliminated by these acquisitions, but, considered in the light of the total number of machines in this field owned by the United Company and the inventions and improvements relating to them which it itself developed, these acquisitions are of little significance.

Referring to the acquisitions of this character the District Court said (R. Vol. 1, p. 1140):—

> "The acquisitions of this class are, in importance and amount, only of a consequence relatively small in proportion to the entire field then lawfully belonging to the United Company. It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that

they afforded anything more than a basis whereon to build."

(3) In Forty-eight of the Transactions the United Company did not Acquire Any Machines which were Adapted or Intended for the Same Work as Any of the Machines which the United Company was Putting Out in February, 1899, or Any of its Predecessors before that.

In only ten of the fifty-eight transactions did the United Company acquire any machines which were adapted or intended for the same work as any of the machines which it was putting out in February, 1899, or any of its predecessors before that.

This shows conclusively that the United Company's purpose in making the acquisitions was to acquire machines or patents or supplies in new fields.

The ten concerns which had a machine or machines adapted or intended for the same work as any of the machines which the United Company was putting out in February, 1899, were: Goddu Sons Metal Fastening Company, Boot & Shoe Sole Laying Company, Edwin T. Freeman, Seaver Process Lasting Company, Bay State International Shoe Machinery Company, Globe Sewing Machine Company, American Sole Laying Machine Company, William J. Young, Harry L. Rice and Fred LaChapelle, M. V. Bresnahan & Company.

Summarizing the facts already stated about these ten concerns:—

(1) The machines acquired from four of these concerns were experimental, and no business was being done or could be done with them for they were far from being commercial. Those were: Goddu Sons Metal Fastening Company (Appendix I, *infra*, p. 657), Edwin T. Freeman (Appendix I, *infra*, p. 667), Rice and LaChapelle (Appendix I, *infra*, p. 728), and M. V. Bresnahan & Company (Appendix I, *infra*, p. 734).

From three of those four, Freeman, Rice and LaChapelle, and Bresnahan, valuable inventions were acquired which the United Company did not have before. Also there were serious patent complications in connection with the Goddu Company, Freeman, and Bresnahan transactions. Other litigation with the Goddu Company and Bresnahan was pending.

(2) By four transactions the United Company acquired valuable inventions which were a bar to further development of its own machines. These were: Boot & Shoe Sole Laying Company (Appendix I, *infra*, p. 662), Seaver Process Lasting Company (Appendix I, *infra*, p. 673), Globe Sewing Machine Company (Appendix I, *infra*, p. 685), and American Sole Laying Machine Company (Appendix I, *infra*, p. 694).

(3) The two remaining transactions, those with the Bay State International Shoe Machinery Company (Appendix I, *infra*, p. 683) and William J. Young (Appendix I, *infra*, p. 696), have already been explained (*supra*, p. 465).

(4) There are other facts showing the little importance of these ten transactions. No real estate was acquired from any of the ten concerns and from only one of the six who were actually doing business was even a machine shop acquired. That was the Seaver Company, which employed only six men, whose lasting machine infringed, whose business had fallen to pieces, and which was insolvent (Appendix I, *infra*, p. 673). Further the aggregate considerations paid in the six transactions with the concerns which were actually doing business were less than $150,000.

(4) Serious Patent Complications were Cleared Up by a Large Number of the Acquisitions.

By twenty-six transactions the United Company secured patents completely dominating new fields which it desired to enter, patents which it infringed, patents which barred the way to needed improvements in its own machines, or patent applications with which its own applications were in interference; or it acquired machines which infringed its patents, thereby composing and avoiding expensive and annoying litigation and protecting its lessees from the embarrassment of infringement suits.

Officials of the United Company were aware of these complications and they were, in all instances, the subject of study before the several acquisitions were made (R. Vol. 1, p. 821, lines 13–19).

All of the few concerns which the United States may urge had apparently competing machines are in this class.

The District Court said:—

> "In most of the cases of this sort the machine or device acquired was claimed to infringe patents belonging to the United Company, or the patent acquired was one which some machine belonging to it was claimed to infringe, or the application acquired was in interference with applications of its own; and the object of the acquisition is shown to have been the avoidance or compromise of pending or threatened litigation. In such cases it is still less possible to say that any wrongful absorption of a 'competitor's' business has been proved" (Dodge, J., R. Vol. 1, p. 1140).

In *Bement* v. *National Harrow Company*, 186 U. S. 70, it was said by this Court (p. 93):—

> "There had been, as the referee finds, a large amount of litigation between the many parties claiming to own various patents covering these implements. Suits for infringements and for injunction had been frequent, and it was desirable to prevent them in the future. This execution of these contracts did in fact settle a large amount of litigation regarding the validity of many patents as found by the referee. This was a legitimate and desirable result in itself."

NOTE.—These complications are set forth in full detail in Defs.' Ex. 275, R. Vol. 5, pp. 755–777, which consists largely in statements of the opinions of defendants' patent expert Howard in regard to these patent complications. Not a single statement in this exhibit and none of Mr. Howard's testimony to the same effect, no statement by Mr. Winslow as to patent complications in Defs.' Ex. 231, R. Vol. 5, pp. 444–479, and none of Mr. Winslow's or Mr. Howe's testimony to the same effect, have been controverted in any manner by the United States.

These transactions were: Goddu Sons Metal Fastening Company (Appendix I, *infra*, p. 657), Boot & Shoe Sole Laying Company (Appendix I, *infra*, p. 662), Peter A. Coupal and William Gordon (Appendix I, *infra*, p. 665), Edwin T. Freeman, (Appendix I, *infra*, p. 667), Albert G. Brewer (Appendix I, *infra*, p. 669), Globe Shoe Tool Company (Appendix I, *infra*, p. 671), Seaver Process Lasting Company (Appendix I, *infra*, p. 673), Boston Fast Color Eyelet Company (Appendix I, *infra*, p. 678), Enamel Eyelet Company (Appendix I, *infra*, p. 679), Bay

State International Shoe Machinery Company (Appendix I, *infra*, p. 683), Swain-Fuller Manufacturing Company (Appendix I, *infra*, p. 684), Globe Sewing Machine Company (Appendix I, *infra*, p. 685), J. C. Rhodes & Company (Appendix I, *infra*, p. 687), Morley Button Manufacturing Company (Appendix I, *infra*, p. 689), American Sole Laying Machine Company (Appendix I, *infra*, p. 694), G. W. Emerson & Company (Appendix I, *infra*, p. 699), Brockton Supply Company (Appendix I, *infra*, p. 714), The Smith Lacing Machine Company (Appendix I, *infra*, p. 715), Zotique Beaudry (Appendix I, *infra*, p. 719), Booth Brothers (entire business) (Appendix I, *infra*, p. 720), Richardson Shoe Machinery Company (Appendix I, *infra*, p. 722), Ellis Lacer Company (Appendix I, *infra*, p. 729), The Wentworth Company (Appendix I, *infra*, p. 730), Adam H. Prenzel (Appendix I, *infra*, p. 733), M. V. Bresnahan & Company (Appendix I, *infra*, p. 734), Charles P. Stanbon & Company (Appendix I, *infra*, p. 736).

As to these transactions defendants' expert Howard, who has been head of the United Company's Patent Department since the company was organized (R. Vol. 2, p. 1998), testified:

> "In some cases there were interferences pending in the Patent Office; in others, actual litigation, or, in my opinion, such a conflict of patents as to threaten litigation; or a field which we desired to enter was absolutely dominated, in our opinion, by patents owned by the acquired company; or the acquired company had inventions which we believed we ought to have and must have to make our machines commercially satisfactory" (R. Vol. 1, p. 820, lines 22–29).

3. WHAT THE UNITED COMPANY HAS DONE WITH THE ACQUIRED BUSINESSES.

In the summary of the acquisitions in the petition there are frequent statements that the "plant has been closed" or that "the business has been discontinued." The petition also alleges that defendants—

> "have acquired many letters patent for valuable inventions, and have held the same for long periods of time

without making use thereof, thus depriving the manufacturers and the public of the benefits arising therefrom" (R. Vol. 1, p. 999).

These allegations are disproved, first, by the testimony of defendants' witnesses as to the United Company's general policy. Mr. Winslow testified,—

"The United Company has suppressed absolutely no machines, no inventions and no improvements" (R. Vol. 1, p. 433, lines 27–28).

Mr. Howe testified:—

"The United Shoe Machinery Company has never suppressed an invention that it thought could be worked out to make a commercial machine which would benefit the lessees. . . . I have never known of a single patent which had prospective value when embodied in machinery being laid on the shelf or suppressed" (R. Vol. 1, p. 671, lines 18–20, 23–25).

Mr. Howard testified that as regards all the acquisitions the acquired inventions were put to practical use so far as they were useful, and that in every instance where the invention was not put into practical use, it was because study and experiment proved that it was not practicable or was inferior to what the industry already had (R. Vol. 2, pp. 2087, 2088, Cr. Ints. 1657, 1658).

These allegations of the petition are further disproved as to all the transactions by the evidence regarding each of those transactions.

As to the Allegations of the Petition that the Businesses have been Discontinued.

(*A*) With respect to forty-one of the transactions the record shows that the United Company has continued to carry on the business where a business was acquired, or has used inventions where those were the subjects-matter of the transactions. These were: Pearson & Bennion, Ltd. (Appendix I, *infra*, p. 661); Boot & Shoe Sole Laying Company (Appendix I, *infra*, p. 662); The Corrugated Wire Fastening Company (Appendix I, *infra*, p. 663); Peter A. Coupal and William Gordon (Appendix I,

infra, p. 665); Boston Shoe Tool Company (Timothy A. Bresnahan) (Appendix I, *infra*, p. 666); Edwin T. Freeman (Appendix I, *infra*, p. 667); Albert G. Brewer (Appendix I, *infra*, p. 669); Globe Shoe Tool Company (Appendix I, *infra*, p. 671); Seaver Process Lasting Company (Appendix I, *infra*, p. 673); Erastus E. Winkley and Benjamin Phillips (Appendix I, *infra*, p. 675); Boston Fast Color Eyelet Company (Appendix I, *infra*, p. 678); Enamel Eyelet Company (Appendix I, *infra*, p. 679); Ross-Moyer Manufacturing Company (Appendix I, *infra*, p. 680); Swain-Fuller Manufacturing Company (Appendix I, *infra*, p. 684); J. C. Rhodes & Company (Appendix I, *infra*, p. 687); Morley Button Manufacturing Company (Appendix I, *infra*, p. 689); Oliver A. Miller (Appendix I, *infra*, p. 691); Marlboro Awl & Needle Company (Appendix I, *infra*, p. 692); The T. A. Norris Machine Company (Appendix I, *infra*, p. 693); American Sole Laying Machine Company (Appendix I, *infra*, p. 694); William J. Young (Appendix I, *infra*, p. 696); The George A. Smith Machinery Company (Appendix I, *infra*, p. 697); G. W. Emerson & Company (Appendix I, *infra*, p. 699); W. W. Cross & Company, Incorporated (Appendix I, *infra*, p. 701); J. K. Krieg & Company (Appendix I, *infra*, p. 702); The F. G. Farnham Brush Manufacturing Co. (Appendix I, *infra*, p. 706); American Glue Company (Appendix I, *infra*, p. 708); Kimball & Hadley (Appendix I, *infra*, p. 710); Booth Brothers (1904 agreement) (Appendix I, *infra*, p. 713); Brockton Supply Company (Appendix I, *infra*, p. 714); The Smith Lacing Machine Company (Appendix I, *infra*, p. 715); Metallic Heel & Counter Company (Appendix I, *infra*, p. 717); Booth Brothers (entire business) (Appendix I, *infra*, p. 720); Richardson Shoe Machinery Company (Appendix I, *infra*, p. 722); Carver Cotton Gin Company (Appendix I, *infra*, p. 725); Ellis Lacer Company (Appendix I, *infra*, p. 729); The Wentworth Company (Appendix I, *infra*, p. 730); B. F. Sturtevant Company (Appendix I, *infra*, p. 732); Adam H. Prenzel (Appendix I, *infra*, p. 733); M. V. Bresnahan & Company (Appendix I, *infra*, p. 734); Charles P. Stanbon & Company (Appendix I, *infra*, p. 736).

(*B*) *By thirteen of the seventeen transactions not included in the above list no shoe machinery business was acquired.* These

were: Goddu Sons Metal Fastening Company (Appendix I, *infra*, p. 657); Breach Manufacturing Company (Appendix I, *infra*, p. 664); George W. Freeman (Appendix I, *infra*, p. 668); John Ritchie Company (John Ritchie) (Appendix I, *infra*, p. 672); Lincoln Sewing Machine Company (Appendix I, *infra*, p. 677); Joseph P. Curtis (Appendix I, *infra*, p. 704); Fred H. Perry (Appendix I, *infra*, p. 705); Joseph W. Leary (disregarding his insignificant dealing in second-hand upper sewing machines) (Appendix I, *infra*, p. 705); Zachary T. French (Appendix I, *infra*, p. 709); Leopold J. Courteau (Appendix I, *infra*, p. 712); Zotique Beaudry (Appendix I, *infra*, p. 719); John H. Richardson (Appendix I, *infra*, p. 725); Harry L. Rice and Fred LaChapelle (Appendix I, *infra*, p. 728).

As to these transactions:—

(1) From eight of these parties no tangible property whatever was acquired. The Freeman, Perry and Richardson transactions were merely contracts of employment. The Lincoln Company and French transactions were merely contracts commuting obligations created and existing before 1899. From the Breach Company, Curtis and Courteau, the United Company acquired certain patent rights and nothing more.

(2) As we have already explained (*supra*, p. 460) the record shows and District Court held that the metallic fastening machines of the Goddu Company were experimental, that they were not capable of commercial use and that they could not have been used without radical reconstruction. The evidence also shows that the minority stockholders of that company stood in the way of development of those machines.

(3) As to the inventions acquired from the Breach Company, Curtis and Courteau, named above in paragraph (1), and from Beaudry, the United Company experimented aggressively with each of those inventions until in each instance it was proved that the invention was of no commercial value. Each of these situations is set forth in detail in Appendix I (*infra*, pp. 664, 704, 712, 719).

(4) As to the John Ritchie Company business it is to be presumed that the United Company's lessees were supplied with the wire which they needed. It could not be expected that the United Company would continue the dishonest situation which it was the object of that transaction to eliminate, as fully explained in Appendix I, *infra*, page 672.

(5) The Leary transaction was in effect merely a contract of employment. He was dealing in a small way in cements, blacking and second-hand upper sewing machines and made it a condition of his employment by the United Company that it should buy his stock. The consideration was $3,052.

(6) The United Company has been working on the Rice and LaChapelle inventions since they were acquired, it has tried them out several times in a shoe factory, and is still at work with the purpose of developing them into a commercial machine. "It takes a long time to develop one of these machines" (R. Vol. 1, p. 72, lines 3–4).

(*C*) As to the four remaining transactions:—

For the machine acquired from the Arnold Machine & Supply Company (Appendix I, *infra*, p. 711) the demand ceased immediately after the acquisition owing to a revolutionary change in the methods of shoemaking.

Shortly after the acquisition of the patents of the Globe Sewing Machine Company (Appendix I, *infra*, p. 685) shoe manufacturers decided that they did not desire to sew the inseam by a lockstitch as they found it was impossible to secure a tight inseam, and they refused to use lockstitch welters.

The record is silent as to the history of the machines of the Stanley Manufacturing Company (Appendix I, *infra*, p. 676) and the Bay State International Shoe Machinery Company (Appendix I, *infra*, p. 683) after the dates of those transactions, but both of them related to foreign business only. The Bay State Company had put out only a few machines in England and its machines were distinctly inferior to those of the United Company. The Stanley Company transaction amounted simply to an agency contract which contained a covenant that the United Company should use its best endeavors to sell the Stanley machines in foreign countries and provided that if it should fail to purchase machines from the Stanley Company, that company should then have the right to sell them abroad itself.

As to the Allegations of the Petition that the Plants have been Closed.

(*A*) *Thirty-three of the parties either did not have any manufacturing plant or even a machine-shop, or if they had any the United Company did not acquire it.* These were: Goddu Sons Metal Fastening Company (Appendix I, *infra*, p. 657); Boot & Shoe Sole Laying Company (Appendix I, *infra*, p. 662); Breach Manufacturing Company (Appendix I, *infra*, p. 664); Edwin T. Freeman (Appendix I, *infra*, p. 667); George W. Freeman (Appendix I, *infra*, p. 668); Albert G. Brewer (Appendix I, *infra*, p. 669); John Ritchie Company (John Ritchie) (Appendix I, *infra*, p. 672); Erastus E. Winkley and Benjamin Phillips (Appendix I, *infra*, p. 675); Stanley Manufacturing Company (Appendix I, *infra*, p. 676); Lincoln Sewing Machine Company (Appendix I, *infra*, p. 677); Boston Fast Color Eyelet Company (Appendix I, *infra*, p. 678); Enamel Eyelet Company (Appendix I, *infra*, p. 679); Bay State International Shoe Machinery Company (Appendix I, *infra*, p. 683); Globe Sewing Machine Company (Appendix I, *infra*, p. 685); Morley Button Manufacturing Company (Appendix I, *infra*, p. 689); American Sole Laying Machine Company (Appendix I, *infra*, p. 694); William J. Young (Appendix I, *infra*, p. 696); The George A. Smith Machinery Company (Appendix I, *infra*, p. 697); Joseph P. Curtis (Appendix I, *infra*, p. 704); Fred H. Perry (Appendix I, *infra*, p. 705); Joseph W. Leary (Appendix I, *infra*, p. 705); American Glue Company (Appendix I, *infra*, p. 708); Zachary T. French (Appendix I, *infra*, p. 709); Arnold Machine & Supply Company (Appendix I, *infra*, p. 711); Leopold J. Courteau (Appendix I, *infra*, p. 712); Booth Brothers (1904 agreement) (Appendix I, *infra*, p. 713); The Smith Lacing Machine Company (Appendix I, *infra*, p. 715); Zotique Beaudry (Appendix I, *infra*, p. 719); Richardson Shoe Machinery Company (Appendix I, *infra*, p. 722); John H. Richardson (Appendix I, *infra*, p. 725); Carver Cotton Gin Company (Appendix I, *infra*, p. 725); Harry L. Rice and Fred LaChapelle (Appendix I, *infra*, p. 728); Adam H. Prenzel (Appendix I, *infra*, p. 733).

Some of these parties had their machines or products made

for them by others, *e.g.*, Boot & Shoe Sole Laying Company, Boston Fast Color Eyelet Company, Globe Sewing Machine Company, American Sole Laying Machine Company, Richardson Company. Others had each only a single experimental machine, *e.g.*, Brewer, Winkley and Phillips, Rice and LaChapelle. From others no tangible property of any kind was acquired, *e.g.*, Breach, G. W. Freeman, Lincoln Company, Curtis, Courteau, Perry, French, J. H. Richardson.

Seven of these thirty-three parties had manufacturing plants *but the United Company did not acquire the plants.* These parties were: Stanley Company, Morley Company, Young, American Glue Company, Booth Brothers (1904 agreement), Beaudry, Carver Cotton Gin Company.

(*B*) *Nineteen of the parties leased the premises which they occupied and no real estate was acquired from any of them.* These were: The Corrugated Wire Fastening Company (Appendix I, *infra*, p. 663); Peter A. Coupal and William Gordon (Appendix I, *infra*, p. 665); Globe Shoe Tool Company (Appendix I, *infra*, p. 671); Seaver Process Lasting Company (Appendix I, *infra*, p. 673); Ross-Moyer Manufacturing Company (Appendix I, *infra*, p. 680); Swain-Fuller Manufacturing Company (Appendix I, *infra*, p. 684); Marlboro Awl & Needle Company (Appendix I, *infra*, p. 692); The T. A. Norris Machine Company (Appendix I, *infra*, p. 693); G. W. Emerson & Company (Appendix I, *infra*, p. 699); J. K. Krieg & Company (Appendix I, *infra*, p. 702); The F. G. Farnham Brush Manufacturing Co. (Appendix I, *infra*, p. 706); Kimball & Hadley (Appendix I, *infra*, p. 710); Brockton Supply Company (Appendix I, *infra*, p. 714); Metallic Heel & Counter Company (Appendix I, *infra*, p. 717); Booth Brothers (entire business) (Appendix I, *infra*, p. 720); Ellis Lacer Company (Appendix I, *infra*, p. 729); The Wentworth Company (Appendix I, *infra*, p. 730); M. V. Bresnahan & Company (Appendix I, *infra*, p. 734); Charles P. Stanbon & Company (Appendix I, *infra*, p. 736).

As to these nineteen transactions, in every instance the business was continued, if a business was acquired, and the United Company has continued to manufacture the machines or products either on the acquired concern's leased premises or at the Beverly factory; or, if patented inventions were what was

acquired, the United Company has incorporated those inventions in its machines. The only apparent exception is the Seaver Process Lasting Company, but that company's lasting machine was inferior to the United Company's and there was no demand for it after the acquisition. Its valuable pulling-over inventions, the acquisition of which was the real object of that transaction, have been embodied ever since in the United Company's pulling-over machine and are of vital importance in that machine (Appendix I, *infra*, p. 673).

(*C*) *In only six of the transactions did the United Company acquire any real estate.* These were: Pearson & Bennion, Ltd. (Appendix I, *infra*, p. 661); Boston Shoe Tool Company (Timothy A. Bresnahan) (Appendix I, *infra*, p. 666); J. C. Rhodes & Company (Appendix I, *infra*, p. 687); Oliver A. Miller (Appendix I, *infra*, p. 691); W. W. Cross & Company, Incorporated (Appendix I, *infra*, p. 701); B. F. Sturtevant Company (Appendix I, *infra*, p. 732).

Only one of these concerns, the Boston Shoe Tool Company, was included in the thirty-six transactions which at the first hearing in this court counsel for the United States said were the only ones which they considered to be of any material importance in any aspect of the case. The only machines which that company had were two General Department machines which are sold outright (R. Vol. 1, p. 12, line 37 *et seq.*; Vol. 5, pp. 425, 428, 429), and counsel for the United States also said at the former hearing that they made no question with respect to General Department machines and that they are not involved in this suit. Pearson & Bennion also dealt in General Department machines only, while Miller handled only treeing machines, not included in the field alleged to be monopolized. Of the three other concerns, Rhodes made eyelets, Cross made tacks, and Sturtevant made peg-wood and wooden shanks. None of them handled any shoe machinery.

The result is that the United Company did not acquire ownership of a single plant making machines of the character as to which monopoly is charged.

The businesses of five of those concerns were continued and are still being carried on *in the same plants*. These were: Pearson & Bennion; Rhodes; Miller; Cross; Sturtevant Company.

In the case of the Boston Shoe Tool Company—

> "the business was continued at the same plant for a considerable period of time. Subsequently, for convenience and economy of manufacture, the business was transferred to the Beverly Factory, where the United Company has ever since continued and increased the business" (Winslow, Defs.' Ex. 231, R. Vol. 5, pp. 444, 460).

In this connection it should be understood that the purchase of machine-shops where shoe machinery has been made does not give the vendee control of existing facilities for making shoe machinery. As explained by Mr. Winslow:—

> "The manufacture of shoe machinery does not require any particular kind of machine tools. The standard machine tools used in manufacturing all ordinary machines are the tools that are used in every factory making shoe machinery. The only other things needed are the special tools and jigs which are made by any manufacturer of a particular machine" (R. Vol. 1, p. 858, lines 25–31).

4. CONCLUSION AS TO THE "ACQUISITIONS."

The United States has completely failed to establish its charges that these fifty-eight individuals or concerns were competitors, that these transactions were entered into in pursuance of a purpose to monopolize the shoe machinery industry or with intent to suppress competition, that defendants have acquired patents and suppressed them, or that the considerations in the transactions were exorbitant.

The parties with whom these transactions were made were not competing with the United Company; in the few cases in which a machine was acquired of the character of one made by the United Company, or an invention was acquired applicable to a machine made by the United Company, the purpose of the United Company in entering into the transaction was to acquire a patent necessary to perfect or improve its own machines, or to acquire a patented machine of the same name as one it had, but used for a different purpose, or to settle litigation which might have prevented the United Company from

putting out its own machine, and if any possible competition was eliminated, it was trivial in character, its elimination was not a motive for the transaction, but incidental thereto, and in no case did such competition have any material effect upon the industry.

Practically all the parties who were doing business—and many were not doing any—were putting out machines performing operations which no machine that the United Company had before could perform; or they were making and selling some of the great variety of supplies or "findings" which were used by the United Company's customers and none of which it supplied or was in position to supply before; or they had valuable patented inventions which the United Company had to acquire in order to make some of its machines commercially successful or to enable it to effect substantial improvements in the quality of work or speed of operation of its machines.

Viewing the acquisitions as a whole it is clear that they were made for the purpose of enlarging the United Company's field or adding important and needed improvements to its machines. They were plainly a continuation of that "effort after greater efficiency" which began with the formation of the United Company in 1899, already approved by this Court, and which has resulted in the United Company's taking advantage of opportunities, which have presented themselves from time to time during a period of more than twelve years, to enlarge its field and improve its machines. That such transactions were lawful has been established by *United States* v. *Winslow*. The Court said in that case:—

> "It is said that from seventy to eighty per cent. of all the shoe machinery business was put into a single hand. This is inaccurate, since the machines in question are not alleged to be types of all the machines used in making shoes, and since the defendants' share in commerce among the States does not appear. *But taking it as true* we can see no greater objection to one corporation manufacturing seventy per cent. of three non-competing groups of patented machines collectively used for making a single product than to three corporations making the same proportion of one group each. The disintegration aimed at by the statute does not extend to reducing all manufacture

to isolated units of the lowest degree" (italics ours) (*United States* v. *Winslow*, 227 U. S. 202, 217).

If any further proof were needed that these fifty-eight transactions were normal and reasonable steps in the developing and carrying on of the United Company's business, we have, first, the fact that there were serious patent complications attending a large proportion of the transactions, including all of the few concerns which the United States may urge had apparently competing machines. The acquiring of patents which it infringed or which barred the development of its machines, frequently preventing the construction of a successful machine, and the avoidance or composing of patent litigation are certainly normal, reasonable, and lawful steps in the development of the business of a corporation doing business in patented machines. Transactions entered into for such reasons and with such objects not only benefit the corporation, but they are clearly to the advantage of its customers and the public.

The unimportant character of these transactions in their bearing upon this case is further shown by the facts that more than half of the transactions were clearly outside of the scope of the alleged actual monopoly as frequently defined by counsel for the United States during the trial; that only ten of the parties had any machine which performed the same work as any of the machines which the United Company was putting out in February, 1899; that no factory or machine shop was acquired in more than half of the transactions and real estate was acquired in only six, and that there is nothing on the record to show that any of forty-four of the parties were engaged in interstate or foreign trade or commerce. Nearly all of the parties that had any machines had but one or two. Many had but one machine, and that frequently only an experimental machine, never in a shoe factory.

If defendants had had any such intent as was alleged they never would have refused the opportunities which were offered them to acquire the large concerns which were and are actively competing with the United Company. The record shows that its biggest and most aggressive competitors, putting out complete lines of machines for making all kinds of shoes, were

offered to the United Company and those offers were declined. And, in general, the record shows that a much greater number of shoe machinery concerns than it acquired, many of them having bottoming machines, and a far greater number of inventions than it purchased, over two hundred of which were within the alleged monopoly as defined by the United States during the trial, were offered to the United Company and declined by it.

And finally the record shows that the United Company has *used* what it has acquired by these acquisitions. In a very few cases its hopes were disappointed and the most aggressive experimenting failed to make an acquired invention commercially successful, as frequently happens with its own experimental machines. But in nearly all cases the company has been able to utilize what it acquired to great advantage. For years it has been putting out and its customers have been using many machines—including such important machines as the Pulling-over Machine, Model M Outsole Stitcher, Goodyear Tack Pulling and Resetting Machine, Goodyear Twin Sole Layer, Goodyear Welt Indenting and Burnishing Machine, Model B Standard Screw Machine, Atlas Leveling Machine, Imperial Heel Breasting Machine, Ensign Lacing Machine, and Model B McKay Sewing Machine—which incorporate an improvement or improvements which make the machines more efficient and which the United Company could not have used without infringement if it had not made these acquisitions.

In considering the comparatively few purchases of machines similar to machines held by the United Company or inventions applicable to machines of the kind already owned by the United Company, the distinction between the acquisition of a patent or patented machine and the acquisition of an unpatented machine must be borne in mind. Even if the acquisition of a patent or patented machine may result in the elimination of some possible or even actual competition, it does not make the transaction inherently unlawful.

In the case of the purchase of the business of manufacturing and furnishing to the trade an unpatented machine, the purchaser, prior to the purchase, is free to make the machine and furnish it to his customers in competition. He is under no restraint, and by making the purchase he does not relieve

himself of any restraint previously imposed upon him which forbade his furnishing the same kind of machine. By the purchase of a patented machine the purchaser acquires the patents covering the machine. Prior to the purchase he was restrained by these patents from making the machine; by the purchase he is relieved from this restraint. If the patented machine is one desired by his customers, he cannot satisfy their demands without making the purchase. Unless he make the purchase he is therefore not in a position to compete on equal terms with the owner of the patented machine.

The Sherman Act was intended to protect the normal flow of commerce. Where a manufacturer is lawfully restrained by a patent monopoly owned by another person from manufacturing machines desired by such manufacturer's customers, the Sherman Act was not intended to prevent his acquiring the right to make and furnish such machines by the acquisition of the patent even if thereby an incidental competition is eliminated.

In *Virtue* v. *Creamery Package Company*, 227 U. S. 8, it appeared that the Disbrow Company entered into a contract with the Owatonna Company granting the latter rights under patents for churns and butter workers. The latter company at the time had other patents covering such articles. The Owatonna Company also made the Creamery Package Company its exclusive sales agent.

The Court said (pp. 36, 37):—

> "We may therefore sum up by saying that the Disbrow Company, by its contract with the Owatonna Company, did nothing more than confirm or enlarge the rights which the Owatonna Company had obtained, by the contract of 1893, and conveyed to it the exclusive right in the patents for certain named royalties. This was no violation of law. The Owatonna Company did nothing more in its contract with the Creamery Package Manufacturing Company than to make that Company its exclusive sales agent, and this was no violation of law. Both contracts had natural and adequate legal inducements and conveyed rights that could under the law be conveyed, and, as a necessary incident to the conveyance, one only of the parties could thereafter exercise them. *It may be that the Disbrow Company was to an extent in competition with the Owatonna Company, but it was a competition in*

part, at least, which, it was contended, was illegally conducted against rights which had been transferred in 1893. But, be that as it may, we repeat, patent rights may be conveyed partially or entirely, and the monopoly of use, of manufacture or of sale is not one condemned by law" (italics ours).

If two patented machines can do the same work, it is not infrequently the case that each has a patented improvement which the other does not have. A far more efficient machine would result if the patents were combined and the two improvements embodied in a single machine. In such a case the manufacturer of one machine may lawfully purchase the patents held by the manufacturer of the other machine, even though competition between the two machines is thereby eliminated. To hold otherwise would be to hold that the public could not be furnished the most efficient machines possible to the art. But the Sherman Act was intended to benefit the public, not to injure it.

In *Nash* v. *United States*, 229 U. S. 373, the Court said (p. 376),—

> ". . . Only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, the Court said (p. 174),—

> "In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented."

A purchase which is made for the purpose of enabling the purchaser to produce a more efficient machine, even if it does result in the elimination of competition between inferior machines, cannot be said to "prejudice the public interests" or produce "harm to the general public." Such a purchase dis-

tinctly benefits the public, and is obviously a normal, legitimate step in the development of the industry.

In *United States* v. *American Bell Telephone Company*, 167 U. S. 224, the right of a patentee to acquire other patents which will improve his apparatus, although thereby his monopoly will be extended indefinitely, was affirmed as undoubted.

The Court said (p. 249):—

> "Much is said in the briefs and in the arguments about the practical continuance of the telephone monopoly. It is well to understand exactly what is meant thereby. No one questions that the Bell patent has expired, and that all of his invention is free to the use of the public. It is not denied that Berliner's invention is something independent and distinct from the Bell invention. It is the combination of these inventions with those of Blake and Edison which makes the instrument in commercial use, and because this is the most serviceable it is the one that the public insists upon having. But each invention has independent rights. It loses nothing because when united with another it results in an instrument more valuable than either alone will give. Suppose that at the expiration of this Berliner patent some new invention shall be made by which in connection with those already free to the public an instrument can be manufactured far surpassing in utility that used today, and the Bell Company shall purchase that invention, the public, which always insists on having the best and most serviceable, will undoubtedly take the new instrument, and in that way it may happen that what is called the telephone monopoly is practically still further continued. But surely that does not abridge the legal rights of anyone. The inventor of the latest addition is entitled to full protection, and if the telephone company buys that invention it is entitled to all the rights which the inventor had."

It appears from that case that the telephone was covered by four patents. Bell's invention was the fundamental invention; the others were improvements. If, as was not impossible, after the expiration of Bell's patents a telephone could have been constructed by the addition of either one of the improvements, could it possibly have been contended that the owners of those improvements, although there would have been competition between them if they had remained sepa-

rate, could not have combined, and by the use of all their patents made a more perfect instrument? We think it clear from the language of the Court that such a combination would have been permissible.

We do not here contend that every purchase of patents or of a business protected by patents is lawful, although there is authority to this effect. We do submit that every such purchase made to enable the purchaser to manufacture and offer his customers machines which are more efficient, which they prefer, and which he could not manufacture unless he purchased the patents, or to enable the purchaser by a combination of different patents to put on the market a better machine than any then manufactured, is lawful. To hold otherwise would prevent a manufacturer from fairly competing with his competitors by preventing his manufacturing as efficient machines as they can manufacture under their patents, or would prevent his putting upon the market the best machines which could be manufactured by a combination of patents.

Unless a company like the United Company which is engaged in an industry dominated by patents is privileged to make such acquisitions, the character of its machines will deteriorate and its business decline.

The United Company's machines are the best in the market. It hopes that they may continue to be the best. To this end it expends enormous sums each year in conducting experiments and making inventions. It also acquires from others such inventions as will improve or perfect its machines, or enable it to put out new machines. This it is lawfully entitled to do.

Its lessees look to it to furnish them with the best and most improved machines. It can only do this by maintaining its own experimental department, and by acquiring such inventions made or owned by others as will effect this end. It is not only entitled to do so; it would be lax in its obligations to its lessees if it declined to do so.

In other words, not only were the acquisitions made by the United Company reasonable and lawful steps in the normal development of its business, but it was the United Company's duty to make them. The machines which it received from

its predecessors had been continuously improved by those companies, and if the United Company had stood still and had declined to continue improving the machines it would have failed in its duty both to its customers and itself. Shoe manufacturers would not have had the benefit of the wonderful development in its machinery which has been effected by the United Company, and when its patents expired and improvements were made by others the United Company's machines would have become out of date and its business would eventually have fallen to pieces. As we have shown, the remarkable development of the industry which has taken place in recent years could not have been effected unless the United Company had occasionally acquired from others patents which from time to time barred the way to further development. The United Company not only had the right but it was its duty to acquire those patents.

V.

COVENANTS TAKEN FROM VENDORS, INVENTORS, AND EMPLOYEES IN CONNECTION WITH THE ACQUISITIONS.

1. GENERAL DISCUSSION.

The petition alleges that the defendants have taken from "*all or substantially all*" of those whose businesses they have purchased covenants in writing not to engage for long terms of years in trade "*in shoe machinery in competition*" with the defendants and have further required the vendors to agree that if they "*shall invent or cause to be invented*" or shall patent or cause to be patented "*any machines adapted for use in the manufacture of boots or shoes*" or shall acquire interests in or under letters patent relating thereto, they shall assign and transfer to the defendants all such inventions and letters patent (italics ours) (R. Vol. 1, p. 1000). The District Court found with respect to these allegations as follows (Dodge, J., R. Vol. 1, p. 1141):—

> "These charges are not justified by the documents themselves, which have been produced. They are by no means uniform in their terms, there was no generally prescribed form for them, nor were they all the work of the same hands. Each was framed according to the circumstances of the particular transaction. In many cases, at least, the agreements required only that there should be no competition in the line of business involved in the particular transaction, or that all patents or inventions thereafter made in the particular line to which the acquired invention belonged should be transferred. There are enough of the agreements in these cases which are without covenants of the kind described, to leave the allegation unjustified that such covenants were required in substantially all. And of the instances wherein covenants

are found in any degree answering the alleged description, it may be said generally that none are clearly shown to have exceeded what the law permits. Still less reasonable would it be to regard what is found in them as indicating a consistent purpose on the defendants' part to exclude all those with whom the agreements were made from all possible future competition with the United Company."

This finding of the District Court is fully supported by the record.

The covenants were only such covenants as are usual and customary in the case of a purchase of a business, the purchase of patents, or a contract of employment with an inventor.

In the case of the purchase of a business it is well recognized as usual and necessary to require the vendor to covenant not to compete with the business sold. Such a covenant in nowise violates the Sherman Act.

When an inventor sells his patents it is recognized as equally essential that he covenant to transfer his future inventions covering the same subject-matter in order to give the purchaser protection. It is common experience that an inventor at the time of sale may have in mind inventions which he has not yet patented which may render valueless what he is selling.

When an inventor is employed and taken into the employer's experimental department a covenant to assign future inventions is even more essential. Not only must much expense be incurred in providing draughtsmen and mechanics to work out his inventions, but the inventor has every opportunity to acquire highly confidential information. It is accordingly essential that he be required to agree that if he leaves the company's employ, he will assign future inventions because, first, such inventions are likely to be the fruits of his labors while with the company and in reality the results of the work which the company has paid for; second, there is serious danger that if he has not agreed to transfer future inventions he will not disclose an important invention, but leave the company's employ and then patent the invention, taking to himself the benefit of the work for which the company has paid; and, third, there is grave danger that if unscrupulous he will appropriate the inventions of others with which his

confidential relations have permitted him to become familiar, and will patent them himself,—dangers which render such covenants both usual and normal.

In the present case the covenants in each and every instance were necessary for the protection of the United Company, and the District Court so found. But this is not the material issue in the present case. Whether or not a covenant in a particular case is absolutely necessary for the protection of one of the parties is a question of judgment which must be determined in the light of the circumstances surrounding that particular case, a question difficult alike for the Court and for the parties themselves to decide, with reference to which the law has been developing and changing and differs in different states. The material fact here is that the covenants are of the general character which are customary, normal, and proper in such transactions, and afford no evidence whatsoever of a design to take broader covenants than the parties fairly believed to be necessary and usual.

The record shows that the officers of the company had no plan or design whatsoever with respect to these covenants and did nothing but leave it to the attorney who drew the papers to insert such clauses as were usual to protect the company as purchaser.

Thus Mr. Howe testified:—

> "Neither the directors nor officers of the company, as far as I know, ever had anything to do with them [the covenants]. In fact, except in special instances, where they may have read that part of the contract, I doubt if they knew what they were" (R. Vol. 1, p. 667, lines 16–19).

He further testified (R. Vol. 1, p. 667, lines 20–27):—

> "*Q.* Or did you receive directions from President Winslow as to the covenants you should use?
> "*A.* Neither from the president nor from any officer.
> "*Q.* You then exercised your own judgment as a lawyer?
> "*A.* That matter was all left to the legal department.
> "*Q.* Was there any intent upon your part to bring about a monopoly or an unlawful restraint of trade by the use of those covenants?

"*A.* No intention whatever. It was merely intended for the protection of the company in what it had paid for, or what it had contracted to pay for."

Mr. Winslow testified (R. Vol. 1, p. 502, lines 19–30):—

"With reference to the covenants in agreements of purchase of properties by the United Company, I have had nothing to do with the covenants of the vendors, with respect to their future activities, in agreements relating to acquisitions by the United Company. The drafting of those papers was left entirely to the United Company's legal department; I did not direct anything to be inserted and no action was taken by me, or by the board of directors, or by any officer of the company that I knew of, directing or requiring the insertion of any such restrictive covenants in any agreement. These matters were left to counsel like the drawing of a deed, and I paid no attention to whether they put in covenants or what covenants they put in."

In thirteen transactions there were no covenants whatever as to competition or to future inventions. These were: The Corrugated Wire Fastening Company (R. Vol. 3, p. 530); Seaver Process Lasting Company (R. Vol. 3, p. 591); Lincoln Sewing Machine Company (R. Vol. 3, p. 628); Bay State International Shoe Machinery Company (R. Vol. 3, p. 655); Swain-Fuller Manufacturing Company (R. Vol. 3, p. 660); Globe Sewing Machine Company (R. Vol. 3, p. 662); Boot & Shoe Sole Laying Company (R. Vol. 3, p. 666); Marlboro Awl & Needle Company (R. Vol. 4, pp. 693, 703); The T. A. Norris Machine Company (R. Vol. 4, p. 734); W. W. Cross & Company, Incorporated (R. Vol. 4, p. 744); Brockton Supply Company (R. Vol. 4, p. 831); Metallic Heel & Counter Company (R. Vol. 4, p. 843); B. F. Sturtevant Company (R. Vol. 4, p. 928).

In the case of most of the transactions where covenants were inserted especial pains were evidently taken to limit the covenant strictly to the particular kind of machines or goods which were sold. The allegation in the petition that the vendors who made covenants not to compete were restrained in all cases from engaging in competition in shoe machinery generally and that inventors were required to convey patents on shoe machinery generally which they might thereafter invent or

acquire is absolutely without foundation. The very few cases in which general covenants were taken were either employment contracts where such broad protection was necessary or the general covenants were justified by the special circumstances of the case. Furthermore in nearly every case the covenants have been limited in time.

In the only case in which the United Company has sought to enforce any of these covenants they were held to be reasonable and the defendant was restrained (*United Shoe Machinery Company* v. *Kimball*, 193 Mass. 351). That was the contract with Kimball & Hadley (R. Vol. 4, p. 814).

2. LAW AS TO COVENANTS NOT TO COMPETE.

That a covenant not to compete when made as part of the sale of a business, although it directly undertakes to restrain trade, is not within the prohibition of the Sherman Act is settled by *Cincinnati Packet Co.* v. *Bay*, 200 U. S. 179. The court there says (pp. 184–5):—

> "Presumably all that there was to sell, besides certain instruments of competition, was the competition itself, and the purchasers did not want the vendors' names.
>
> "This being our view of the covenant in question, whatever differences of opinion there may have been with regard to the scope of the Act of July 2, 1890, there has been no intimation from anyone, we believe, that such a contract, made as part of the sale of a business and not as a device to control commerce, would fall within the act. On the contrary, it has been suggested repeatedly that such a contract is not within the letter or spirit of the statute, *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 329, *United States* v. *Joint Traffic Association*, 171 U. S. 505, 568, and it was so decided in the case of a patent. *Bement* v. *National Harrow Co.*, 186 U. S. 70, 92."

See also

Darius Coal Transportation Co. v. *White Star Line*, 186 Fed. 63 at p. 65.

Blount Mfg. Co. v. *Yale & Towne Mfg. Co.*, 166 Fed. 555 at p. 558.

Indeed, a covenant not to compete is so necessary to the protection of a purchaser of a business, that in Massachusetts, where most of these contracts were made, a covenant not to compete is implied by law where the good-will of a business is sold and such covenant is necessary or proper for the protection of the purchaser.

Marshall Engine Co. v. *New Marshall Engine Co.*, 203 Mass. 410.

It appears then that even if the United Company had not taken express covenants not to compete, its right to take such covenants is so clear that the law would have protected it by implying them.

The law goes so far that under such an implied covenant the vendor may be forbidden to set up a competing business in any part of the world.

In *Marshall Engine Co.* v. *New Marshall Engine Co.*, supra, the Court said (p. 422),—

> "On the other hand had there been no covenant in the sale by Nordenfelt of his good will as a manufacturer of guns and ammunition, which was before the House of Lords in *Nordenfelt* v. *Maxim Nordenfelt Guns & Ammunition Co.* (1894) A. C. 535, under the Massachusetts rule he could not have set up a similar business anywhere. Where the governments of the world are the customers, the place of business is of no consequence."

Such a covenant not to compete may, if necessary for the vendee's protection, be unlimited both in time and space.

In *Marshall Engine Co.* v. *New Marshall Engine Co.*, supra, the Court said (p. 424),—

> "The defendants have argued that if Marshall had entered into a covenant never to engage in the business of manufacturing Marshall Perfecting Engines it would have been void as a covenant in restraint of trade. But it is now settled that a covenant, even if it be unlimited both in time and space (*United Shoe Machinery Co.* v. *Kimball*, 193 Mass. 351, 358), not to engage in a particular business is valid if it is coupled with the sale of a business and is necessary to give to the purchaser what he has

bought. *Anchor Electric Co.* v. *Hawkes*, 171 Mass. 101. *United Shoe Machinery Co.* v. *Kimball*, 193 Mass. 351."

Where necessary to protect the vendee, a covenant not to compete with the business of the vendee generally, although that business is broader than the particular business sold, is valid.

Anchor Electric Company v. *Hawkes*, 171 Mass. 101.

3. LAW AS TO COVENANTS TO ASSIGN FUTURE INVENTIONS.

Covenants, by vendors of patents or by inventors who enter the employ of the company, not to compete are even more necessary for the vendee's or employer's protection than covenants not to compete made upon the sale of a business.

This is well recognized by numerous decisions.

In *Aspinwall Mfg. Co.* v. *Gill*, 32 Fed. 697, Mr. Justice Bradley said (p. 700):—

> "But where a man purchases a particular machine secured by a patent, and open to an indefinite line of improvements, it is often of great consequence to him that he should have the benefit of any future improvements that may be made to it. Without that the whole value of the thing may be taken away from him the next day. A better machine might be made by the inventor, and sold to another party, which would make the machine acquired by the first purchaser entirely useless. *These things happen every day. And hence it has become the practice, in many cases, to stipulate for all future improvements that may be made by the same inventor upon any particular machine which he induces a party to purchase from him, sometimes by way of license to use such improvements and sometimes by way of purchase and ownership thereof.* Where the inventor is connected in business with the party making such stipulation, or is interested in the profits arising from the business in which the invention is used, the arrangement seems to be altogether unobjectionable. But such a connection or interest does not seem to be necessary to the validity of such bargains" (italics ours).

In *Hulse* v. *Bonsack Machine Co.*, 65 Fed. Rep. 864, an agreement by an employee to assign all inventions made by him while in the company's employ or at any time thereafter was held reasonable and valid. The Court said (p. 867):—

> "Is this contract unreasonable or unconscionable? The Bonsack Machine Company owned valuable patented machines, employed in the manufacture of cigarettes. Comparatively the invention was in its infancy, and the machinery was known to be difficult of operation, and open to improvement. Any one entering into the employment of the company had full opportunity of learning the merits of the machines, and, by constant and daily use, could see where the machine was defective, and where improvement was needed. If any improvement suggested itself to his mind, he could, by using the machine and the time and material of the company, experiment upon it, and ascertain its value. The improvement would be his own idea. But it owed its suggestion and origin, its progressive development and perfection, to the business, the practical working, the opportunity afforded by the company. When, therefore, the company, taught by costly experience, determined to protect itself from the discovery of improvements by its own servants, it did a natural and reasonable thing; and, when it protected itself by a covenant in advance of any employment with those seeking its service, it did a fair thing. Nor was that part of the contract which put in the same category improvements made while in the employment of the company and those made at any time thereafter unconscionable or unreasonable."

See also *Westinghouse Air Brake Co.* v. *Chicago Brake Mfg. Co.*, 85 Fed. Rep. 786.

In *Registering Company* v. *Sampson*, L. R. 19, Eq. 462, the Court said:—

> "Now nothing is better known than this, that when persons have turned their attention to a particular class of invention they are likely to go on and invent, and likely to continuously improve the nature of their invention, and continuously to discover new modes of attaining the end desired. Persons, therefore, who buy patents of inventors are in the habit of protecting themselves from the utter destruction of the value of the thing purchased by

bargaining with the seller that he shall not use any new invention of his for producing that product in which they are about to deal at a cheaper rate, because if he were allowed to do so he might, the day after he had sold his patent, produce something which, *without being technically an infringement, and without being technically an improvement*, might accomplish the desired object in some other way, and utterly destroy the value of that which they had purchased. They, therefore, not unreasonably, and not unusually, make it a part of their bargain that whatever the man discovers of the same kind in the shape of machinery or apparatus which will produce the product in which they are about to deal shall belong to them. They say, 'We cannot buy on any other terms, because otherwise we are exposed to the instantaneous, or almost instantaneous, competition of the inventor with the benefit of his previous experience.' That, as I said before, is not an unusual, nor is it an unreasonable, bargain" (italics ours).

Reece Folding Machine Company v. *Fenwick*, 140 Fed. Rep. 287, decided in the First Circuit in 1905, is a strong case on this point. Judge Putnam in the opinion of the Court, page 288, says:—

"By the last contract Fenwick agreed to assign all the inventions which he had already made, together with any which he might thereafter make, appertaining to the particular subject-matter to which the prior contracts related; that is, certain details in the manufacture of collars and cuffs. . . .

"The defense is set up that such contracts for an indefinite period, covering inventions to be afterwards made, are against public policy. On the other hand, whether based on agreements for employment or on other valuable considerations, such contracts have been extensively made, and have never been doubted until of late. They are essential to the business of the contracting parties, and are not unjust. A person may purchase an invention, and pay therefor a very large sum, and proceed to make use of it. The inventor, according to a practice not uncommon, may subsequently overlap that invention by improvements, which, though small, may be enough, in these days of sharp competition, to build up a successful hostile business. This court recognized these principles to a certain extent in *Thibodeau* v. *Hildreth*, 124 Fed. 892, 893, 60 C. C. A. 78, 63 L. R. A. 480. Therefore it is

right and reasonable, and legal, that contracts of the kind in suit should be made and sustained where they relate to improvements upon inventions already purchased, as in the case at bar."

See also

American Brake Beam Company v. *Pungs*, 141 Fed. 923.
Thibodeau v. *Hildreth*, 124 Fed. 892.
McKinnon Pen Co. v. *Fountain Ink Co.*, 48 N. Y. Super. Ct. 442.
Wright v. *Vocalion Organ Co.*, 148 Fed. 209.
Brown v. *Rounsavell*, 78 Ill. 589.
Long v. *Towl*, 42 Mo. 545.

4. MISSTATEMENTS MADE IN THE PETITION AS TO THE COVENANTS.

In its statement of the alleged facts regarding the acquisitions (R. Vol. 1, pp. 999–1023) the petition purports to state the substance of the agreements and the covenants contained in the agreements entered into in connection with the respective transactions. Many of these statements are entirely inaccurate and grossly exaggerate the nature and scope of the covenants.

These statements are inexcusably unfair; the United States had the original, executed agreements continuously in its possession for months prior to the filing of the petition (R. Vol. 1, p. 37, lines 15–20; p. 78, lines 24–29).

Some of the most glaring misstatements will now be pointed out.

John Ritchie and John Ritchie Company.

The petition charges that:—

(1) The United Company "acquired all of the *business* of" this concern "relating to the *manufacture*" of certain specified shoe machines (italics ours).

(2) The vendors agreed that they would not engage "in *any business* in competition with" said United Company (italics ours) (R. Vol. 1, p. 1004).

Counsel for the United States made statements to the same effect during the trial (R. Vol. 1, p. 40, lines 6–14; p. 46, lines 6–9).

The facts shown by the record are:—

(1) The Ritchie Company was not in the business of *manufacturing machines* as alleged but was engaged in the manufacture of *boots and shoes*. It had one machine for the manufacture of *wire* (R. Vol. 1, p. 46, lines 15–30; Vol. 3, pp. 586, 587, 589, par. 5; Vol. 5, p. 475).

(2) The covenant against competition did not cover "*any business*," but *only* business relating to "wire fastening shoe machinery, or machines for making the same, or parts thereof," or wire, "or other fastening materials" (italics ours) (R. Vol. 3, p. 586).

Erastus E. Winkley and Benjamin Phillips.

The petition sets forth:—

> "The vendors, for the same consideration, agreed to convey to defendants all inventions or improvements in sole-leveling machines which they should thereafter make *or acquire*" (italics ours) (R. Vol. 1, pp. 1005–1006).

There is absolutely no support in the agreement for these last two words "*or acquire*" (R. Vol. 3, pp. 618, 619, par. 7).

Counsel for the United States made the same erroneous statement during the trial (R. Vol. 1, p. 40, lines 25–28).

Lincoln Sewing Machine Company.

The petition charges that defendants—

> "acquired the *business* of Lincoln Sewing Machine Company . . . *engaged* in the manufacture, sale, lease, and shipment in interstate commerce, of sewing machines designed and used for the manufacture of boots and shoes" (italics ours) (R. Vol. 1, p. 1006).

The exhibits of the United States show that the Lincoln Company had *gone out of business in 1897*, when it sold all its property to the Goodyear Shoe Machinery Company, so that

there remained simply "certain payments and obligations on the part of the Goodyear Company to be made or performed to or toward the Lincoln Company" (R. Vol. 3, pp. 623, 629).

These undisputed facts are also clearly set forth in the record (R. Vol. 1, p. 49, lines 25–37; Vol. 5, pp. 470, 471).

Boston Fast Color Eyelet Company.

In the agreement relating to this transaction the covenant against competition was *limited to covered eyelets*, the subject-matter of the transaction (R. Vol. 3, pp. 636, 637).

In the statement of the petition *this important limitation is omitted* (R. Vol. 1, p. 1007).

Enamel Eyelet Company.

The petition sets forth that—

> "The vendors and each of them also agreed that they would not, for a period of 15 years, engage in any *business in competition* with defendants" (italics ours) (R. Vol. 1, p. 1007).

That covenant was in fact limited to *enamel eyelet* business, the subject-matter of this transaction (R. Vol. 3, pp. 647, 648).

William J. Young.

In its statement of the covenant relative to competition (R. Vol. 1, p. 1010) the petition *omits entirely the limitation* in that covenant to "machinery or devices intended or adapted for use in any way in the manufacture or preparation of *heels*" (italics ours) (R. Vol. 4, p. 717).

Again, in its statement of the covenant to assign future inventions relating to such machines (R. Vol. 1, p. 1010) the petition omits the limitation to "*countries other than the United States and the Dominion of Canada*" (italics ours) (R. Vol. 4, p. 714).

J. K. Krieg & Company.

The statement in the petition regarding the covenant in the agreement with this concern includes—

> "all such supplies to be purchased from defendants" (R. Vol. 1, p. 1012).

The agreement contains no such provision (R. Vol. 4, p. 746).

Joseph W. Leary.

The petition states that the vendor—

> "agreed to *convey* to the vendee and its successors *all inventions and improvements* which the vendor should make or acquire within ten years from the date of the termination of such employment by said United Company" (italics ours) (R. Vol. 1, p. 1013).

The fact is that Leary made no covenant whatever to convey any inventions or improvements (R. Vol. 4, p. 765). On the other hand, the agreement provided that—

> "The said Leary shall not be required to disclose his secret formulæ for making cements, blackings or stains" (R. Vol. 4, p. 768).

Counsel for the United States made substantially the same erroneous statement during the trial (R. Vol. 1, p. 61, lines 37–41).

The F. G. Farnham Brush Manufacturing Co.

The petition states that—

> "The vendors agreed that they would not engage, directly or indirectly, or in any way assist in *any competition*, . . . for a period of 15 years" (italics ours) (R. Vol. 1, p. 1013).

In fact, the covenant was *limited to* "*brushes* or parts or supplies therefor" (italics ours) (R. Vol. 4, p. 774).

Counsel for the United States made the same erroneous statement during the trial (R. Vol. 1, p. 62, lines 20–24).

Zotique Beaudry.

The statement in the petition as to Beaudry's covenant to disclose future inventions relating to heel burnishing machinery (R. Vol. 1, p. 1016) *omits the limitation* to the period of fifteen years (R. Vol. 4, pp. 851, 852).

Richardson Shoe Machinery Company.

The petition alleges that the vendors agreed that they would not for a period of ten years "compete with the *business* carried on by defendants" (R. Vol. 1, p. 1017) and Mr. Fowler made the same broad allegation during the trial, but, on being corrected, admitted that the agreement was *limited* to "*McKay sewing*" and "*clicking*" machines (italics ours) (R. Vol. 1, p. 69, lines 27–31; Vol. 4, pp. 875, 876).

Harry L. Rice and Fred LaChapelle.

The petition states that the vendors covenanted to assign all inventions, etc.,—

> "relating to any methods, machinery, mechanisms, tools, or devices intended for use *in the manufacture of boots and shoes*" (italics ours);

and that the vendors also covenanted—

> "that neither of them would, directly or indirectly, engage in *any business* which would interfere or compete *with the business of defendants*" (italics ours) (R. Vol. 1, pp. 1018, 1019).

Both these covenants were in fact *limited* to methods, machinery, etc., adapted—

> "for use in attaching in whole or in part the welts, outsoles, or insoles of welted or turned footwear" (R. Vol. 4, pp. 899–901).

The same erroneous statement was made by Counsel for the United States during the trial (R. Vol. 1, p. 71, lines 21–28).

Ellis Lacer Company.

The petition sets forth that the vendors covenanted that—

(1) "They would not, directly, or indirectly, engage in *any business in competition* with defendants, and that"

(2) "they would convey to defendants, without additional consideration, *all inventions* and letters patent of the United States and of *all* other countries which they or either of them might make or acquire at any time within five years" (italics ours) (R. Vol. 1, p. 1019).

Both statements are grossly exaggerated. Both covenants were strictly limited to the subject-matter of this transaction.

(1) The covenant against competition was limited to machinery, devices, etc., "useful for or adapted to the purpose for which *Ellis lacers* are designed," and it was limited to a period of *five years* (italics ours) (R. Vol. 4, p. 908).

(2) The covenant to convey future inventions and patents within five years was limited to the *Western Hemisphere* and to inventions "adapted to the purpose for which *Ellis lacers* are designed" (italics ours) (R. Vol. 4, p. 908, par. 6).

Counsel for the United States made similar erroneous statements during the trial (R. Vol. 1, p. 72, lines 14–20).

The Wentworth Company.

The petition states that the covenant against competition covered—

> "*any* machinery or devices that would *in any way compete* or interfere with the business of said United Shoe Machinery Company" (italics ours) (R. Vol. 1, p. 1019).

This covenant was in fact *limited* to—

> "any machinery or devices of any kind *heretofore dealt in*, exploited, manufactured, or built (whether in the form of a model, experimental or commercial machine or device) or originated *by or for the said The Wentworth Company*" (italics ours) (R. Vol. 4, p. 918).

Adam H. Prenzel.

The petition states that Prenzel agreed to assign inventions and Letters Patent which he should *thereafter* acquire, relating to the class of machines covered by the agreement (R. Vol. 1, p. 1022).

The covenant was in fact *limited in time* by the expiration of the patent assigned or to be obtained upon any application assigned which should last expire (R. Vol. 4, p. 1048).

Counsel for the United States made the same erroneous statement during the trial (R. Vol. 1, p. 75, lines 38–41).

VI.

THE PURCHASE OF THE PATENTS AND INVENTIONS OF THOMAS G. PLANT.

1. INTRODUCTORY STATEMENT.

In September, 1910, the United Company acquired the patents and inventions of Thomas G. Plant. In the same transaction it acquired from Plant sixty per cent. of the capital stock of the Thomas G. Plant Company, a corporation manufacturing women's shoes. The consideration was $3,000,000 in cash and $1,500,000 in common stock of the United Company at par, the market value of which was $3,000,000.

The United States has laid great stress upon the Plant Purchase, because it is the only acquisition made by the United Company involving patents relating to any considerable number of machines and involving a substantial purchase price. Except that the patents thereby acquired were of great value, and when incorporated into the United Company's machines resulted in the greatly increased efficiency of a number of machines, whereas the other transactions were mostly concerned with a single patented improvement or machine, the Plant transaction did not differ from the more or less insignificant transactions which we have considered above. It was not made to eliminate a competitor, as the District Court found and the record abundantly proves, but to enable the United Company to incorporate the Plant patented improvements in its superior machines and to settle a vast amount of threatened and pending patent litigation which would have seriously interfered with the development of the United Company's machines.

It is not unimportant to note that this transaction upon which so much reliance is placed by counsel for the United States took place over eleven years after the formation of the

United Company. Even if it were of the character which the United States alleges, and were in and of itself unlawful, it would have little weight in proving the unlawful charge made by the petition. The petition charges an unlawful project formed in 1899 to acquire all shoe machinery concerns and to refuse to lease machinery unless practically all machinery was so taken. The acquisition of the Plant patents eleven years later would have little significance in proving this unlawful project unless proved to be part of such a continuing plan formed in 1899 and continuing up to 1910, which the record abundantly refutes.

The petition alleges that Plant—

> "was engaged in the manufacture of machines designed and adapted for use in performing all the principal operations in the manufacture of boots and shoes which can be performed by the aid and use of machinery" (R. Vol. 1, p. 1019).

This statement and many others in the petition regarding this transaction are incorrect and are entirely unsupported by the evidence.

Plant was not "engaged in the manufacture of machines." He was and had been for many years engaged in the manufacture of shoes (R. Vol. 1, p. 557, lines 22–26). He had, however, conceived valuable inventions relating to shoe machinery, and he had constructed a number of experimental machines embodying his inventions and had installed them in the shoe factory which he controlled where women's shoes were made exclusively, the factory of the Thomas G. Plant Company. He had not put any machines into any other factory. To avoid confusion it should be clearly understood that "the Plant machines" which will be frequently referred to in the briefs and arguments for both parties were those machines in the factory of the Shoe Company; they were not machines that Plant had to sell or machines that the United Company purchased. Those machines had been bought and paid for by the Plant shoe manufacturing concern and they were not for sale. Their only importance in this case is that they were concrete evidence showing how much or how little Plant had accomplished.

Plant was not a competitor of the United Company. He was not carrying on any shoe machinery business and he was not prepared to supply any machines. He declared that he did not want to go into the shoe machinery business, that he desired to retire from business; and after the purchase he did retire. There is uncontradicted evidence showing that the sole purpose of the Plant enterprise was to create something which he could sell to the United Company. He so stated himself and the history of his negotiations with the United Company proves this to be the fact. He offered a large commission—$250,000 and later $500,000—to an influential shoe manufacturer if he succeeded in effecting a sale to the United Company, and he later offered and had to pay a commission of five per cent. to another intermediary who undertook to effect a sale to the United Company.

The record establishes that the Plant machines were crude, really in the experimental stage, entirely useless for men's shoes and unfit for the making of women's shoes; that in their use in the Plant shoe factory they were constantly breaking down; that they broke a great number of lasts; that it was necessary to employ a large number of men to repair shoes that were defective on account of the poor work of the machines; that it cost three and a quarter cents per pair more to make shoes on them than it cost on the United Company machines; that the profits of the Plant shoe business after the Plant machines were installed were one-half less than they had been when the United Company machines were used; that the machines could not be used for manufacturing shoes according to the methods universally followed by other shoe manufacturers; and that after the purchase the managers of the shoe factory, Plant's former associates, found it impracticable to continue the manufacture of shoes with Plant's machines and of their own volition discontinued the use of those machines and substituted United Company machines.

This evidence was almost entirely uncontradicted. After it had been introduced the United States made no effort in its rebuttal case to meet this evidence.

On the other hand, in the course of his experimental work Plant had made many inventions and his machines were

patented. Although their mechanical embodiments in Plant's crude machines were defective and unsatisfactory, the United Company's experts could see that many of those inventions were extremely valuable and represented important advances in the shoe machinery art. Plant's patents claimed those inventions broadly.

Plant had, however, developed his inventions and constructed his experimental machines upon the foundation which for many years the United Company and its predecessors had been building; he had added his improvements to old machines of the United Company, and all of his important machines infringed the United Company's patents,—a great number of claims in approximately a hundred patents,—as shown by evidence entirely uncontradicted. Many suits had already been brought by the United Company for infringements of its patents by the Plant machines. On the other hand, fifteen of the United Company's machines, including a number of its most important machines, infringed twenty patents owned by Plant. There were also pending in the United States Patent Office twenty-three interferences between patent applications owned by Plant and applications owned by the United Company. The patent complications in which the extremely valuable Plant welter and stitcher improvements were involved were such that neither Plant nor the United Company could have supplied those inventions to the public without infringing the other's patents.

The United Company had never sought nor even considered any purchase from Plant until overtures were made by Plant. The interviews resulting from those overtures were all sought by Plant and his proposals were several times declined without encouragement to renew them. Throughout the negotiations Mr. Winslow insisted that he would not consider the purchase unless there were opportunity for the United Company's experts to examine the Plant machines and determine the value of his inventions, and that he would consider purchasing those inventions upon no basis other than the value which they would have to the shoe industry and to the United Company in the advancement of the art.

After negotiations had several times been broken off by

the United Company and renewed by Plant, he finally permitted its experts to examine the machines in the Plant shoe factory. As a result of the extended and thorough examination which was then made it was determined that while the Plant machines themselves were crude and unsatisfactory, Plant had made some very valuable inventions which could be incorporated n the United Company's machines with great advantage to the United Company and to its customers. Accordingly, when Plant offered to sell those inventions at a much lower price than he had previously named, and offered also to include his valuable holdings in the shoe manufacturing company, the United Company accepted the offer. The primary reason for the purchase was the great value of the Plant inventions, but the United Company's officials were also greatly influenced by a realization that common ownership of the patents and applications of the two parties would avoid endless litigation and chaotic conditions in the shoe manufacturing industry which would have been intolerable. The record shows conclusively that the sole reasons for this purchase were the great benefits to the United Company and to the shoe manufacturing industry which would result, first, from incorporating Plant's valuable inventions in the superior machines of the United Company and, second, from the avoidance of endless litigation and chaotic and intolerable conditions in the shoe manufacturing industry which could be averted only through common ownership of the patents and applications of the two parties. The record also shows that the Plant patents were worth more than the United Company paid for them.

Immediately after the acquisition of the Plant patents and inventions the United Company put many inventors at work to adapt to the United Company's machines the most important Plant inventions, the value of which had already been determined, and its inventors and mechanics worked night and day until those inventions had been successfully embodied in its machines. This work was necessary because the United Company's modern machines were of entirely different design from the Plant machines and different mechanical constructions were required to fit the Plant inventions to the United Company's machines. Experts were immediately sent to

the Plant shoe factory to make a thorough study of the Plant machines and inventions and to recommend what should be done with each Plant machine and invention. They spent many weeks in that investigation and their exhaustive written report is an exhibit.

The United Company improved and adopted seventeen of Plant's patented machines, and inventions covered by forty-three of the patents acquired from Plant have been incorporated in twenty-six of the United Company's machines. Of these the welter and stitcher inventions are so valuable that alone they more than justify the price paid for all the Plant inventions. The record abounds with testimony as to the savings in material and other economies, the increased output and the improved working conditions, both in higher wages and in convenience of operation, which have been effected by these improvements as they have been incorporated in the United Company's machines (*infra*, pp. 523, 541–550).

That the shoe manufacturing industry has been greatly benefited by common ownership of the Plant patents and those of the United Company is beyond dispute. Shoe manufacturers now have the best machines available, incorporating the valuable inventions of both parties, which could not have been had without common ownership of the patents, and intolerable conditions which otherwise would have inevitably resulted from the chaotic patent situation have been avoided.

We propose to discuss the evidence relating to the Plant purchase in the following order:—

(1) The evidence showing that Plant was not in competition with the United Company and did not desire or intend to go into the shoe machinery business.

(2) The evidence that the Plant machines were not commercially successful.

(3) The evidence as to Plant's valuable inventions and the use which the United Company has made of them.

(4) The evidence showing that the Plant purchase resulted in great benefits to the shoe manufacturing industry.

(5) The evidence showing that these great benefits were the only reason for the purchase.

(6) The evidence that the Plant patents were worth more than was paid for them.

(7) The evidence showing the history of the negotiations between Plant and the United Company.

(8) The evidence regarding the alleged attempt of certain shoe manufacturers to purchase Plant's patents after he had agreed to sell to the United Company.

(9) The evidence regarding misstatements as to facts by the patent expert for the United States.

2. PLANT WAS NOT IN COMPETITION WITH THE UNITED COMPANY, HE HAD NO MACHINES TO SELL, AND THE MACHINES WHICH HE HAD CONSTRUCTED AND HAD SOLD TO HIS OWN SHOE COMPANY WERE NOT COMMERCIALLY SUCCESSFUL.

A. Plant was not Engaged in Shoe Machinery Business, He did not Intend to Engage in that Business, and He had no Machines to Sell.

The only machines which Plant had constructed were the crude and defective machines which months before he had forced into his own shoe factory, of which he owned sixty per cent. of the stock (R. Vol. 1, p. 777, lines 18–23). Those machines had been bought and paid for by the Shoe Company (R. Vol. 1, p. 778, lines 13–14, 20–21), and accordingly had been definitely and completely withdrawn from the field of shoe machinery competition; there is no evidence that in September, 1910, Plant had any machines to sell or that he intended to make any machines.

As we have already pointed out, it should be clearly understood that the "Plant machines," about which there is so much testimony and which will frequently be referred to in the briefs and arguments for both parties, were those machines in the Plant shoe factory, and that they were not machines which the United Company purchased or which Plant had for sale.

The petition alleges that Plant had advertised his machines extensively through the public press (R. Vol. 1, p. 1020). The United States failed to put any such advertisements in

evidence, although it had no difficulty in producing other advertisements published before the United Company was formed. The record shows that the advertisements which Plant did publish were not advertisements of machinery.

> "There were advertisements of the opinions of lawyers in regard to the shoe machinery leases. . . . The advertisements attacked the United Company's leases; but they were not advertisements of machinery in the sense of advertisements of anything for sale" (Herrick, R. Vol. 1, p. 611, lines 17–21).
>
> "They were advertisements calculated to 'bear' the stock of the United Shoe" (Howe, R. Vol. 1, p. 687, lines 44–45).

The petition alleges that Plant—

> "had solicited among shoe manufacturers, in various parts of the United States orders for the sale and lease of such machines" (R. Vol. 1, p. 1020).

Absolutely the only evidence suggesting any attempt by Plant to put machines into any shoe factory is the testimony regarding his offers, declined in both instances (R. Vol. 1, p. 576, lines 15–21; p. 720, line 5), to equip the factories of the Commonwealth Shoe & Leather Company (of which C. H. Jones is president) and the Endicott, Johnson Company, as a part of his scheme for forcing a sale to the United Company. Mr. Endicott testified that Plant in May, 1910,—

> "stated that his plan was to fit up three factories—the Thomas G. Plant factory, Commonwealth Shoe & Leather Company factory, and Endicott, Johnson Company's factories—with his machinery, and then sell out to the United Company" (R. Vol. 1, p. 575, lines 41–45; p. 576, lines 25–26).
>
> "I think his proposition to equip our factory and the Commonwealth factory and the T. G. Plant factory was made to me in the presence of my partner and my expert, I think, and in the presence of Mr. Charles H. Jones and Mr. Clarence D. Reed. Mr. Reed is Mr. Jones's associate and is the practical man in the Commonwealth Shoe Company" (R. Vol. 1, p. 576, lines 27–32).
>
> "He stated to me, as I testified, that he wanted to fit us up, use us as a club to sell out to the Machinery people" (R. Vol. 1, p. 576, lines 34–36).

"He said he would like to fit up our factory to help him to sell out to the United Shoe Machinery Company" (R. Vol. 1, p. 585, lines 2–4).

As to these offers it was found by the District Court (Dodge, J., R. Vol. 1, p. 1142):—

"There is uncontradicted evidence of declarations by Plant in 1909 that his intention was to equip these two other factories and his own with his new machines and then sell out to the United Company. That the effecting of such a sale, and not any actual competition in the market with machines then in use, was his real purpose, is hardly left doubtful by the history of his subsequent negotiations with the defendants."

Robert Hazzard, a shoe manufacturer, testified:—

"Mr. Plant sent me one of his statements and wrote me a very nice letter about the wonderful things he had in machinery at the time he started his newspaper campaign. I told him I was very much interested and should like to bring my superintendent to Boston and look the plant over, but he wrote me that the plant was not open for inspection. Afterwards he sent a nice illustrated pamphlet and I told him I could not see any use in sending it out if he didn't have anything to sell; and that if he did, I would like to see it. My letter was never answered. I never had anything to do with the operation of Plant's machines; he would not let me see them" (R. Vol. 1, p. 650, lines 28–38).

There is a great deal more testimony, entirely uncontradicted, showing that Plant never had any intention of going into the machinery business, but his real purpose, the sole object and end of his enterprise was to sell out to the United Company.

Plant himself made repeated declarations to this effect. For example:—

"Mr. Plant stated, as he had before, that *he wanted to get out of business entirely . . .* that *he didn't want to embark in the shoe machinery business*" (italics ours) (Winslow, R. Vol. 1, p. 487, lines 11–12, 15–16).

"Mr. Plant stated that he would like to get out of business" (Endicott, R. Vol. 1, p. 580, lines 36–37).

Plant had previously, in 1909, endeavored to interest Mr. Endicott in his venture, stating that the investment—

> "would require some nerve, but *would be a pretty quick turn-over*" (italics ours) (Endicott, R. Vol. 1, p. 576, lines 5–6).

Plant told Mr. Herrick that—

> "he was anxious to get out of business . . . that he would like to get the money and retire . . . *that he had always planned to so arrange himself that he would be free to sell out to the United Shoe Machinery Company*" (italics ours) (Herrick, R. Vol. 1, p. 603, lines 26–27, 30, 32–34).

At another time Plant told Mr. Herrick that while he had talked about putting his machinery in a factory he didn't intend to do it and that—

> "*he had always held himself in a position where he could trade with the United Shoe Machinery Company, and that was his plan*" (italics ours) (R. Vol. 1, p. 611, lines 3–5).

On cross-examination Mr. Herrick testified that during a conversation with Mr. Plant—

> "he never said anything to the effect that he was going to put competition into the field. *He always said that he had got it up to sell to the United Company*" (italics ours) (R. Vol. 1, p. 615, lines 26–28).

Harry W. Smith, whom Plant employed to effect the sale, testified that on July 22, 1910, Plant said to him "*that he wanted to play the game as he had figured to play it*" (italics ours), and also said:—

> "'I can do nothing on the eastern end. I have broken with Winslow, and Endicott has gone back on me.' . . . . 'Now, if you can get Barbour to send for me, as you told me you could, then I can get an opening with Barbour, and if you can get Herrick, so Herrick will come to my side of the case, I believe something can be done.' . . . He said Mr. Herrick and Mr. Barbour were the strongest against him" (R. Vol. 1, p. 769, lines 38–44; p. 770, lines 7–9).

Finally there is uncontradicted evidence that Plant agreed to pay Mr. Endicott a commission of $250,000 if he would effect or help effect a sale to the United Company and that later he increased the offer to $500,000 (Endicott, R. Vol. 1, p. 576, lines 39–41; p. 580, lines 16–18); and that he paid his intermediary, Smith, a commission of $300,000.

> "For accomplishing what he wanted me to do, he paid me five per cent. on the six million—$300,000" (Smith, R. Vol. 1, p. 771, lines 8–10).

After the sale of his patents Plant carried out his expressed intention of retiring from business (R. Vol. 1, p. 488, lines 24–25).

B. Even if the Plant Machines had been Commercially Successful They would not have been Accepted by Shoe Manufacturers because They Made Shoes by Obsolete Methods and could not be Used for Making Shoes according to the Methods Universally Followed by Other Shoe Manufacturers.

George E. Warren, defendants' practical expert, who spent over two days examining the Plant machines in the Plant shoe factory before the purchase and about eight weeks in continuous study of them after the purchase (R. Vol. 1, p. 785, lines 7–20; p. 808, lines 42–44; p. 809, lines 1–3; p. 814, lines 34–35; p. 815, line 44; p. 816, lines 1–2), testified that every manufacturer that he knows of is using the rounding and channeling machine. Plant had no rounding and channeling machine. His catalogue illustrates a "Rough Rounder," *i.e.*, rounding and channeling machine, but it "was never completed" and Plant told Warren that it "was not in any condition to be shown" (R. Vol. 1, p. 792, lines 16, 18–19; p. 793, lines 13, 30–31). McGaffee, general manager of the Plant shoe factory, had never seen such a machine; Plant told him "he didn't have any rough rounding machine" (R. Vol. 1, p. 776, line 29; p. 781, lines 2–3). Plant's method of making shoes without a rounding and channeling machine was obsolete before the United Company was formed. The invention of the rounding and channeling machine revolutionized the

method of attaching the outersole. By the old method which Plant used the outsole was shaped and then channeled before it was put on the shoe. By the modern method a blocked or unshaped outsole is temporarily cemented to the shoe and then is shaped to that particular shoe and the channel is formed in exactly the right location for that shoe, both operations being performed simultaneously by the rounding and channeling machine. The advantages of the modern method as compared with Plant's obsolete method are set forth in the record in detail, and an adequate explanation of the absence of a rounding and channeling machine from Plant's line will be found in the discussion of the United Company's patents on such machines (R. Vol. 1, p. 793, lines 13–15, 23–24; R. Vol. 2, pp. 2304–6, 2330, 2331).

Nine of Plant's machines were adapted only to peculiar methods which were in use only in the Plant shoe factory. For example, Plant used a peculiar kind of innersole and five of his machines were peculiarly adapted for making that innersole, of which Mr. Warren said, "We don't know of anybody that would care to make it" (R. Vol. 1, p. 792, lines 34–37, 42–43). Another of these machines was Plant's "cleaning and treeing leg" which operated according to an obsolete method and "the result was that the shape of the shoe was spoiled" (R. Vol. 1, p. 793, lines 34–43; p. 794, lines 1–9).

Plant's stitcher—

> "could not be used commercially, because it had never been organized to sew shoes with extension edges. This was a very serious defect, because almost every manufacturer wished to make shoes with extension edges" (Warren, R. Vol. 1, p. 794, lines 37–40).

Nearly all manufacturers used and insisted upon the extension edge organization (sometimes called the Baltimore Edge Attachment) and it produced a great deal better work (R. Vol. 1, p. 795, lines 25–27). Nearly all welt shoes, both men's and women's, are made with extension edges. The practical advantages of the extension edge and the importance and value of an organization in an outsole stitching machine

which will enable it to attach the soles of extension edge shoes are explained in full detail by defendants' experts (R. Vol. 1, p. 794, lines 41–44; p. 795, lines 1–5; Vol. 2, pp. 2281–3, 2762).

Mr. McGaffee stated that the lack of an extension edge organization on the Plant stitcher "was a great hindrance to the quality made on that machine" and that it resulted in the shoe ripping (R. Vol. 1, p. 775, lines 34–35, 43–45). Ryan, who operated a Plant stitcher, testified that through the lack of the extension edge device there was "a great deal of trouble running into seams and one thing and another" (R. Vol. 1, p. 707, lines 7–9).

Plant told McGaffee that he could not use an extension edge organization on account of the United Company's patents, which are set forth in the record (R. Vol. 1, p. 775, lines 32–34; p. 780, lines 1–7; Vol. 2, p. 2282).

Again, Plant had produced no pulling-over machine (R. Vol. 1, p. 792, lines 10–11), another of the "machines for preparing and attaching the bottoms to the uppers of shoes" (R. Vol. 1, p. 839, lines 13–14). The testimony regarding defendants' patents on that machine shows that Plant was wise not to enter that field (R. Vol. 2, pp. 2540–8).

Plant's heel slugger "couldn't handle the zinc wire or soft brass wire" which are commonly used for slugging, and in using that machine they had to slug the toplifts before they were attached to the shoe, thus not securing the advantages which are obtained by the general practice of inserting the slugs after the toplifts are attached to the shoe (R. Vol. 1, p. 796, lines 38–44; p. 797, lines 10–11; Vol. 2, p. 2464).

Also eight other Plant machines, including important machines such as the heel-seat dinker, stitch separator and sole rounder, were either unfinished or were regarded by Plant himself as experimental, and the Plant Shoe Company was making shoes without using those machines, getting along in one way or another as best it could (R. Vol. 1, p. 791, lines 35–45; p. 792, lines 1–33; p. 814, lines 1–7).

Mr. McGaffee testified that it cost three and one-quarter cents per pair more to manufacture shoes in the Plant factory in accordance with the Plant method than in accordance with the method of the United Company's machines (R. Vol. 1, p. 780, lines 43–45).

C. Even for Manufacturing Shoes according to Plant's Obsolete Methods, Differing Radically from Methods Universally Used, the Plant Machines were not Commercially Successful in the Plant Factory where Women's Shoes only were Made.

No better evidence on this proposition can be had than that of the man who as general manager of the Plant shoe factory had to make shoes on the Plant machines. Mr. McGaffee testified that the Plant machines "wouldn't stand up" (R. Vol. 1, p. 774, lines 15–16); that the profits of the shoe business the first year that the Plant machines were installed were one-half less than the profits of the preceding year when United Company machines were used, on account of "the great amount of bother and trouble we had with the Wonder Worker * machines" (R. Vol. 1, p. 778, lines 6–12); that an average of 235 pairs of lasts were broken each week on the Plant machines as compared with ten pairs a week on the United machines which were displaced by the Plant machines (R. Vol. 1, p. 777, lines 6–12; p. 780, lines 9–10); and that he had thirty repairers at one time repairing shoes after the Plant machines (R. Vol. 1, p. 776, lines 1–2).

> "The Wonder Worker would do the work so poorly that I would have to have somebody fixing the work up by hand before it could go to the next department" (R. Vol. 1, p. 779, lines 3–5).

He also testified as to the "continual breaking down" of the Plant machines (R. Vol. 1, p. 774, lines 22–23), and, finally, he stated as his reason for substituting the United Company machines for the Plant machines,—

> "I put those machines in for the simple reason that I couldn't make the shoes with the Wonder Worker" (R. Vol. 1, p. 774, lines 40–41).

Mr. Winslow testified,—

> "During our inspection we saw many machines that were broken down, not in condition to operate" (R. Vol. 1, p. 491, lines 24–26).

* Plant called his machines "Wonder Workers" (R. Vol. 1, p. 773, lines 20–22).

Mr. Warren testified that of the sixty-nine machines in the Plant catalogue (P.'s Ex. 266) ten machines were unfinished or had only been used experimentally (R. Vol. 1, p. 788, line 27; p. 791, lines 35–40); that eleven more machines were not commercial, with detailed explanations (R. Vol. 1, pp. 794–7); that seven other machines were "faulty in construction," also with detailed explanations (R. Vol. 1, p. 797, lines 28–45).

Among his criticisms of specific machines he testified that he observed frequent breakage in the welter, in the stitcher and in the heel-attaching machine, and observed also the very noticeable breakage of lasts (R. Vol. 1, p. 790, lines 35–40; p. 791, lines 6–7); and stated that the Plant welter was mechanically defective and had to be run at practically maximum speed all the time "or else it would stop" (R. Vol. 1, p. 797, lines 23–27; p. 818, lines 26–37). The necessity of capacity for different speeds is explained in McGaffee's comparison of the Plant welter with the United Company welter (R. Vol. 1, p. 775, lines 23–28). Even the valuable improvements in the welter and stitcher "had not been carried out in a mechanical way," and Mr. Warren "felt satisfied that they would not stand up and do the work" (R. Vol. 1, p. 788, lines 3–7).

Of another defect in the welter Mr. Warren said:—

> "A particular weakness was the construction of the welt-guide and back-gage movement. With the particular mechanism used and the lightness of its construction this would not have lasted any time at all" (R. Vol. 1, p. 810, lines 20–24).

The leveler was constantly breaking lasts and required a great number of expensive forms,—the forms used at the Plant factory cost over $4,000. The custom sole layer required the same expensive forms and it was 50 per cent. slower than the United Company machine (R. Vol. 1, p. 795, lines 44–45; p. 796, lines 1–14, 24–28).

Four operators at the Plant shoe factory testified that the Plant toe and heel laster was much slower, that the work on the machine was very hard, and that accordingly the operators on those machines were given a raise in wages (R. Vol. 1, p. 761, lines 27–29; p. 762, lines 41–43; p. 764, lines 42–44; p. 765, lines 1–2, 31–38).

The testimony just referred to is typical of the evidence regarding the Plant machines, which is well summarized in Mr. Warren's following general comments:—

> "Generally speaking they were of such construction that *they would break and get out of order*" (italics ours) (R. Vol. 1, p. 794, lines 17–18).
>
> "And in looking over all these Plant machines we found by a careful examination that they were *faulty in construction, light in weight in places, and badly designed*" (italics ours) (R. Vol. 1, p. 790, lines 28–31).
>
> "These machines of Mr. Plant's, built as they were, in my opinion *would not have been commercially successful* to do work under the varying conditions under which machines have to be supplied to shoe manufacturers" (italics ours) (R. Vol. 1, p. 790, lines 15–18).

Mr. Warren further testified that he expressed emphatically to Mr. Winslow his opinion that—

> "the Plant machines as they were *would not be commercial;* we could not use them as they were, but that we would have to work them over entirely" (italics ours) (R. Vol. 1, p. 815, lines 25–27).

But perhaps the most conclusive evidence is the action of the Plant Shoe Company in throwing out the Plant machines, for which they had paid $400,000 less than three years before, and substituting the United Company's machines (R. Vol. 1, p. 774, lines 33–44; p. 778, lines 13–14).

Mr. McGaffee, general manager and vice-president of the Plant Shoe Company, stated his reasons for discarding the Plant machines as follows:—

> "I changed back again because I wanted to see if I could get a line of machinery that would stand up and manufacture shoes, without manufacturing machines all the time. I was absolutely satisfied that the Wonder Workers wouldn't stand up . . . the longer they ran the weaker they got. . . . I was not able to get out the work. . . . I couldn't make the shoes with the Wonder Worker" (R. Vol. 1, p. 774, lines 13–16, 23, 24, 40–41).

Mr. McGaffee further testified:—

> "The United Company has not in the slightest way interfered with my management of the business, or in any

> way attempted to exercise any influence or control over my judgment in the management of the business. . . . It was my judgment that determined the policy of the company with respect to the changing over from the Wonder Workers. . . . My action in putting in the United Company machines was governed absolutely by my own wishes and my own independent judgment. I did it because I felt that it was for the interests of the business of the Thomas G. Plant Company, of which I am a stockholder. The United Company never approached me in any way" (R. Vol. 1, p. 773, lines 15–19; p. 774, lines 16–18; p. 775, lines 1–6).

He found that the work of the United machines was "a great deal less expensive," that on those machines they saved three cents and a quarter a pair as compared with the work on the Plant machines, and that his operators could do a good deal more work and make more money than they could on the Plant machines (R. Vol. 1, p. 775, lines 13–16; p. 776, lines 17–22; p. 777, lines 24–28).

Mr. McLeod, "practical man" and a director of the Plant Shoe Company, who shared the responsibility for the selection of machinery, decided that the United machines would be best for their business and approved the change. Among his reasons he stated that the United machines—

> "do not tire an operator so much, so that the operator can do better work and feel fresher at night. . . . He can turn out a bigger day's work with the United machine than he could with the Wonder Worker machine" (R. Vol. 1, p. 782, lines 3–20, 25–27, 30–32).

He testified that he was in accord with what Mr. McGaffee said as to the economies and advantages effected by the change, the United Company did not bring any pressure or influence to bear, no suggestion was made that it would be advantageous to change machines, and the change was made in the exercise of his honest and independent judgment (R. Vol. 1, p. 783, lines 25–28, 33–39). Both these men had been connected with the Plant Shoe Company for over twenty years (R. Vol. 1, p. 773, lines 4–6; p. 782, line 6).

In its effort to meet this evidence the United States relies upon the testimony of McElroy, Florsheim, Selz, and Jones

(R. Vol. 1, p. 189, lines 15–25; p. 193, lines 11–26; p. 160, lines 35–39; p. 145, lines 40–44; p. 146; p. 114, lines 26–36; p. 124, lines 16–27). But beyond bare expressions of opinion by Selz and Jones that Plant's machines could have been used on men's shoes (see *infra*, pp. 528–530), none of these four witnesses went any further than to express an opinion about the quality of the *shoes* operated upon by the Plant machines. None of them said anything which controverts in any manner the evidence as to the weakness and numerous other defects of the Plant machines which has just been reviewed.

And after all this evidence had been put in by defendants the United States made no attempt whatever to meet it in its rebuttal evidence.

D. Much less could the Plant Machines have been Used on Men's Shoes, which Require much Stronger Machines and Frequently Machines of Entirely Different Types from Those Used on Women's Shoes.

It is not disputed that women's shoes exclusively were made in the Plant shoe factory and that there had been no use of the Plant machines in any other factory.

It is clear from the record that the problems that have to be solved in handling men's shoes, which are larger, made of heavier leather and with heavier box toes and counters and in which durability and wearing qualities are the first requisite, are entirely different from the problems met in producing machines for making women's shoes, which are smaller, made of lighter materials throughout, and in which the primary consideration is style and appearance. Accordingly for many operations the machines used on men's shoes and women's shoes are different. For example, we have seen that the Chase lasting machine was structurally not adapted and was never used for lasting women's welt shoes, while the Ideal lasting machine was structurally not adapted and was not successfully used for lasting men's welt shoes (*supra*, pp. 100–106).

All the testimony which we have reviewed above (*supra*,

pp. 517–523) showing that many of Plant's machines could be used for making shoes only by obsolete methods or by peculiar methods used only in the Plant shoe factory, and at prohibitive expense, condemns the machines for men's work as well as for women's work. The testimony that as used in the Plant shoe factory on women's shoes the machines were continually breaking down, that they were destroying lasts and that they did the work so poorly that it had to be fixed up by hand (*supra*, pp. 520–521), is further conclusive proof that the machines were entirely impracticable for use on men's shoes.

In addition to that evidence there is testimony bearing directly upon the capacity of the Plant machines for men's work and the possibility of using them on that work.

Mr. McGaffee, general manager of the Plant shoe factory, testified,—

> "I don't think you could have manufactured men's shoes on that line of machinery that Mr. Plant had got out and do it anywhere near satisfactory at all" (R. Vol. 1, p. 774, lines 30–32).

Mr. Howe, who examined the Plant machines with Mr. Winslow, testified that the Plant machines were—

> "too light to stand commercial use for making men's work,"—

and that they—

> "were not strong enough for continuous use, in my judgment, on his own manufacture, women's welts" (R. Vol. 1, p. 668, lines 35–37; p. 688, line 44; p. 689, lines 8–9).

Mr. Warren testified that in his opinion the Plant machines—

> "would not have been commercially successful to do work under the varying conditions under which machines have to be supplied to shoe manufacturers . . . it has always been the experience of anybody that has designed or made any shoe machinery that you can't tell by trial on one kind of work whether a machine will become commercial or not" (R. Vol. 1, p. 790, lines 16–18, 21–24).

The mechanical and shoemaking reasons why the various Plant machines could not be used for men's shoes were explained in great detail by Mr. Warren. Typical of his criticisms of specific machines are the following:—

HEELER AND ATTACHER: "The pressure in closing the heel down on to the shoe is much greater on a man's shoe than on a woman's shoe. We found parts that would break on a woman's shoe on account of this pressure, and we knew that when we attempted to apply any more pressure the breakage would be more frequent; and, also, there are more nails to drive in a man's shoe than in a woman's shoe, and that would have put additional strain on the machine, so that there would have been continual trouble in that respect, as there was in doing the woman's shoes" (R. Vol. 1, p. 794, lines 24–33).

HEEL AND TOE LASTER: "We knew that it did not compare with our No. 5 machine for strength, and that trouble would come if it was attempted to be used on any heavy grade of work" (R. Vol. 1, p. 796, lines 34–37).

HEEL LOADER: "The machines in use at the Plant factory were continually giving trouble, and they only had to handle a small number of nails. Now, the wear and strain on the machine when used for men's work would have been a great deal worse" (R. Vol. 1, p. 797, lines 14–18).

"The LOOSE NAILER had the disadvantage that it was so constructed that you could not handle a nail longer than seven-eighths of an inch. In some classes of work, heavy double outersoles and spring heels, it is necessary quite often to drive nails longer than that" (R. Vol. 1, p. 797, lines 41–45).

"The WELT BEATER was not provided with any means for what is called slashing the welt . . . all men's work had to be slashed in order to beat it out properly" (R. Vol. 1, p. 795, lines 34–35, 40–41).

"The HEEL BREASTER was particularly adapted for women's work. There are several types of heels used in men's factories that could not be done on this machine, because either the knife or some of the mechanism was in the way" (R. Vol. 1, p. 797, lines 19–22).

Two Manufacturers of Men's Shoes to whom Plant Offered his Machines Examined the Machines and Decided that they were not Practicable for Men's Shoes.

As we have shown (*supra*, p. 514), Plant made an effort to put these machines into the factories of two shoe manufacturers as a part of his scheme for forcing a sale to the United Company. In consequence of those offers his machines were examined by those manufacturers.

Clarence D. Reed, treasurer of the Commonwealth Shoe & Leather Company (of which witness for the United States, C. H. Jones, is president), who has charge of all the factories, the machinery and the selection of the machinery for that company (R. Vol. 1, p. 119, lines 16–17; p. 719, lines 25–26, 34–36), examined the Plant machines with particular reference to their adaptability for his factories, and "decided we better not have them" (R. Vol. 1, p. 720, line 5). He testified:—

> "Of course the machines looked light to us, and our work is men's work, which is heavier, and we thought there would be danger of breakage and trouble. . . . We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking. . . . We should get poorer work" (R. Vol. 1, p. 720, lines 7–9, 12–13, 16).

Henry B. Endicott, of the firm of Endicott, Johnson & Company, who made 40,000 pairs a day of all kinds of men's shoes (R. Vol. 1, p. 575, line 31; p. 576, lines 21–23), testified that he, his partner, and one of his superintendents spent a day examining the Plant machines (R. Vol. 1, p. 583, lines 28–30), and that—

> "as a result of my own examination and the reports of my experts the conclusion which I came to, as a practical shoe manufacturer, in regard to the equipment of my factory with Plant's inventions, was *not to put in his machines.* The reason for that conclusion was that, from the reports of my experts, my own judgment was that *the machines were not strong enough or practical to do our work*" (italics ours) (R. Vol. 1, p. 576, lines 15–21).

On cross-examination he testified,—

> "From the reports my experts gave me, I felt they were not practical for our business" (R. Vol. 1, p. 584, lines 8–9).

Fruitless Efforts of the United States to Show that the Plant Machines could have been Used for Men's Shoes.

In support of its contention that the Plant machines could have been used on men's shoes, the United States relies upon the testimony of three witnesses, McElroy, Selz, and Jones.

McElroy testified that he examined the Plant machines and that—

> "They were actually at work on women's shoes. I saw men's shoes there which were made upon them" (R. Vol. 1, p. 189, lines 24–25).

On cross-examination he testified that the men's shoes that he saw there had been stitched but not heeled, that he didn't know when they had been stitched, and that to the best of his information men's shoes had never been made for the market on the Plant machines (R. Vol. 1, p. 193, lines 13–17). He added:—

> "I questioned the strength of those machines for making men's shoes. . . . The making of men's welts involves dealing with heavier material and requires more strength in the machine than the making of women's welts. If his machines had been used commercially on men's shoes the frames should have been stronger. As a commercial proposition they would have to be built heavier to make them available for that purpose" (R. Vol. 1, p. 193, lines 17–18, 20–26).

Selz, another shoe manufacturer, testified that he spent half a day examining the Plant machines and that they could have been used in making men's shoes (R. Vol. 1, p. 146, lines 1–2, 28–30). On cross-examination he testified that he questioned the strength of the Plant machines for making men's shoes and that he had never seen them used for making men's shoes (R. Vol. 1, p. 155, lines 33–45; p. 156, lines 1–3).

Selz was a prejudiced witness. He is a large stockholder and a director in the Boylston Manufacturing Company, a competing shoe machinery company (R. Vol. 1, p. 150, line 28).

Selz also testified that with several others, including Mr. Jones, he had visited the Attorney-General's office in Washington on shoe machinery business (R. Vol. 1, p. 155, lines 1–4).

Jones's testimony goes no further. Basing his expression of opinion upon an examination of Plant's machines "at different times during one entire day" (R. Vol. 1, p. 114, lines 29–30), he said that those machines could be used on men's shoes,—although admitting that he never knew of men's shoes being made on them (R. Vol. 1, p. 124, lines 16–27). That is all,—the barest expression of opinion without a bit of technical or practical explanation. But Jones's opinion on a matter requiring practical and technical knowledge is of no weight. He is not a practical shoe manufacturer. He admitted, "I haven't visited the factory for three years." He was so thoroughly out of touch with his company's factory that he testified that they did not use the No. 5 Lasting Machine, when as a matter of fact all the shoes being made in that factory were being lasted upon 38 No. 5 machines (R. Vol. 1, p. 127, lines 8–10; Vol. 2, p. 2372, lines 3–6).

And against his testimony we have that of Clarence D. Reed, the treasurer of Jones's company, the Commonwealth Shoe & Leather Company, who owns over one-third of that company, and who has charge of the manufacturing end of the business, including the making of the shoes. He testified that he had charge of all the factories and has had charge of the selecting of the machinery for the factories for over ten years. He said that he examined the Plant machines in 1910, "saw them operating and went through them," considered the question of equipping his factories with those machines, and decided not to take them. His reasons were that the machines were too light, that "there would be danger of breakage and trouble," and that they would "get poorer work."

> "We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking" (R. Vol. 1, pp. 719–21).

Furthermore, Jones, like Selz, was a prejudiced witness. He testified:—

> "I am a stockholder and director in the Boylston Manufacturing Company. I have a stockholding interest in it that is large for me" (R. Vol. 1, p. 122, lines 28–30).

His well-known hostility to and activities against the United Company were evidenced by reluctant admissions and evasive answers throughout his cross-examination. When questioned about his attacks on and activities against the United Company he admitted that he had made "perhaps three visits to Washington" and that he had appeared before the Massachusetts Legislature; that he had called on the Attorney-General and appeared before committees of Congress making complaints against the United Company:—

> "*Q.* And you spent a number of days there detached from your shoe business in Massachusetts, sitting around committee rooms and making complaints, didn't you?
> "*A.* Yes, sir";

that he had furnished information regarding the United Company to assistants to the Attorney-General; that he had appeared before a committee of the Massachusetts Legislature making complaints against the United Company's leases; and that he had published articles in the newspapers attacking the United Company's method of leasing machinery (R. Vol. 1, p. 119, lines 34–44; pp. 120, 121; p. 122, lines 1–24).

These bare expressions of opinion by three witnesses,—none of whom went so far as to say that the Plant machines were capable of *actual commercial use* on men's shoes,—constituted the entire showing of the United States on this point; and, as we have seen, Selz and Jones were prejudiced witnesses and Selz and McElroy retracted on cross-examination. And after defendants had introduced overwhelming testimony of many witnesses showing that the Plant machines were absolutely unfit for use on men's shoes (*supra*, pp. 524–528), no attempt to answer that evidence was made by the United States in its rebuttal.

E. There is Nothing in the Record to Indicate that Plant could have made his Machines Commercially Successful.

The United States urges that there is nothing in the record to indicate that the defects in the Plant machines could not have been easily remedied, and points to the evidence that Plant and his assistants were possessed of a very high grade of inventive genius. But it is common knowledge that inventive genius is frequently unaccompanied by mechanical genius and that many a successful inventor is not even able to construct experimental devices embodying his inventions, —much less produce successful commercial machines.

On the contrary, there is nothing in the record to indicate that Plant ever could have made his machines commercially successful for either men's or women's shoes. But the record does contain abundant evidence as to the time that is required and the difficulties that must be overcome in transforming an experimental shoe machine into a commercially successful machine. That evidence shows that after a new machine has been constructed so that it can actually be used in making shoes, it frequently takes years of continuous experimental work before the machine becomes a commercial success, that is, before the machine can be satisfactorily used under commercial conditions, and that during all that period there is no assurance that it ever will be made commercial.

The inseam trimming machine, which was put out by the Goodyear Company prior to 1899, did not become an entirely successful machine until 1909, after ten years of experimental work resulting in a long series of improvements (R. Vol. 2, pp. 2505–7).

Experimental work upon a new slugging machine began in 1902 and has been continuously carried on ever since; the third design was given a shoe factory trial in 1907 and it then seemed sufficiently promising to justify building a number of machines to try out in different factories, and fourteen machines of that design were put into factories. It was confidently believed that the difficulties which were encountered in the use of those machines could all be overcome in time,

but those problems have not been solved and the machine is not yet successful (R. Vol. 2, pp. 2468–70).

> "Whether or not the machine will ever become commercially successful is still problematical. Considerably over $100,000 has been spent already in the experimental work upon this machine" (Howard, R. Vol. 2, p. 2470).

Again, it was not until the third experimental pulling-over machine was constructed that the machine was deemed worthy of a factory trial, and after that nearly four years of continuous experimental work was required before the machine became a commercial success. During that period the United Company built and put into shoe factories over a hundred experimental machines, but, after a commercially successful machine had been produced, all of those machines, which had all been built less than three years before, were broken up for junk. Nearly a million dollars was spent in the development of the pulling-over machine before any revenue was derived from it (R. Vol. 2, pp. 2542, 2552, 2553).

The power heel breasting machine, which the McKay Company had started to develop before 1899, did not become commercially successful until 1902, when the invention purchased from Brewer was put into the machine. Up to that time experimental work on that machine had been carried on continuously; some fifty experimental machines had been constructed and put into shoe factories, but none of them was commercially successful, none was operated at all after a few months' trial and eventually all of those fifty machines were junked (R. Vol. 1, p. 45, lines 9–16; R. Vol. 2, pp. 2473, 2474).

Another machine which was started before 1899, the tack puller and resetter, did not become commercially successful until 1910, after experimental work extending over a period of more than ten years, during which a number of experimental machines had been successively constructed (R. Vol. 2, pp. 2525, 2526).

The United Company spent two years in the endeavor to make the Breach sole rounding machine commercially successful and had to give it up. This endeavor cost the United

Company $40,000 (R. Vol. 2, pp. 2068, 2084, 2100; Defs.' Ex. 231, R. Vol. 5, p. 467).

The Beaudry experimental heel finishing machine contained inventions of which the United Company thought so highly that they paid $12,500 for the experimental machine. After it was acquired,—

> "We constructed several experimental machines. . . . We tried in all sorts of ways to make it practicable, but the extreme inconvenience to which the operator would be put by a machine so organized finally condemned it as entirely impracticable" (R. Vol. 1, p. 86, lines 1–3, 12–15; Defs.' Ex. 231, R. Vol. 5, p. 469).

Mr. Howard testified as to two other machines:—

> "We were unable to make a practicable machine embodying the Courteau invention. We made a very determined effort to make it practicable. . . . We did the best we could with it but could not develop anything out of it, and it was given up" (R. Vol. 1, p. 87, lines 38–40; p. 88, lines 3–4).
>
> "The Curtis machine did not prove commercially acceptable and was not a success. We did what we could to make it a commercial success. We put out some forty-five of them, but they were constantly giving trouble. . . . Most of the machines which we put out have come back" (R. Vol. 1, p. 92, lines 13–16, 19–20).

Another difficulty frequently encountered in developing shoe machinery, of which the record affords many specific illustrations, was stated by Mr. Winslow:—

> "In other words, a machine may be constructed that will work perfectly in A's factory, but is entirely imperfect when you try to use it in B's factory in work that varies to the ordinary eye but very little. In the list that I presented to the Court the other day we have one machine on there which we have been at work on for seven or eight years to accomplish just that very thing" (R. Vol. 1, p. 491, lines 40–45; p. 492, line 1).

Mr. Warren testified that, "because conditions vary so in different factories," before the United Company adopts improved devices,—

"We will try out a machine with improved devices in one factory for several months, and then we give the machine a similar trial in some other factory on another kind of work, and we try it out in that way in six or eight different factories" (R. Vol. 1, p. 790, lines 7–14).

This testimony shows what Plant would have had to go through before he could have made his machines commercially successful, if indeed he ever could have done that.

Mr. Howe thus summarized the situation:—

"To redesign and strengthen the machines would require first the making of working drawings and then changes in the patterns and tools for making the machines and making dies for parts that were to be drop-forged, or else making the first machines by hand work in order to test them; it would require going back to first principles" (R. Vol. 1, p. 689, lines 1–6).

Mr. Warren testified:—

"Well, it would have taken him years to remedy those things. . . .

"*Q.* Couldn't it have been made a little heavier?

"*A.* When we say that, that leads to a change in some other part of the machine. It might finally mean a total reorganization of a machine to make it better.

"*Q.* But you don't mean to say, Mr. Warren, that that machine could not have been taken up by a mechanical expert or five mechanical experts, and those various defects taken out of it within a few months' time or a year's time, say?

"*A.* I think when they had done that they would probably have had a machine like ours" (R. Vol. 1, p. 809, lines 42–43; p. 810, lines 25–34).

F. Finding of the District Court as to the Character and Capacity of the Plant Machines.

"Whatever the merits of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially successful in September, 1910, or to have been capable of such success in their then stage of development. They are shown to have been lightly built, not adapted to produce men's

shoes, and by no means satisfactory in making women's shoes, the kind of work to which the Plant factory was devoted. The evidence is uncontradicted that, while operated there, they fell behind the United Company's machines, which they had supplanted, in efficiency—that breaking down and defective work was more frequent with them—and the cost per pair of making shoes with them distinctly greater. Though some of them, as later developed and improved by the United Company, proved to have merit, the most that can be fairly said of them in 1910, on the evidence, is that they were more or less promising experimental machines. There was no complete set of them for combined operation; for that purpose several important machines were yet to be developed. In the state in which the United Company took them over, they were not found capable of profitable use. Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshold of extensive competition with the United Company'" (Dodge, J., R. Vol. 1, p. 1143).

3. CRUDE AND UNSATISFACTORY AS THE PLANT MACHINES WERE, PLANT HAD INCORPORATED IN THEM MANY VERY VALUABLE INVENTIONS WHICH WERE CAPABLE OF BEING USED IN THE UNITED COMPANY'S MACHINES.

While, as we have seen, the Plant machines were crude and not adapted for commercial use, Plant had nevertheless incorporated in them many extremely valuable inventions. Although the mechanical embodiments of those inventions in the Plant machines were also crude and unsatisfactory, the United Company's experts were able to see that the inventions had great value and that when the Plant mechanisms had been reconstructed to overcome their mechanical defects and to adapt them to the United Company's superior machines, those inventions would be of great value both to the United Company and its customers.

Mr. Winslow testified that the more important of the Plant inventions, "that were of special service in the development of our machinery," were those relating to the welt sewing

machine, stitching machine, lasting machine, rough rounding machine and heel attaching machine (R. Vol. 1, p. 559, lines 11–13, 21–27). These inventions and numerous others, covered by forty-three of Plant's patents, are now embodied in twenty-six of the United Company's machines (Defs.' Ex. 342, R. Vol. 5, p. 949).

To explain here the nature and importance of inventions claimed in forty-three patents and to review the evidence regarding those inventions is of course out of the question. Accordingly we shall confine ourselves to a brief summary of the testimony regarding Plant's improvements on the welter and the outsole stitcher, the two machines which the patent counsel for the United States characterized as "the only indispensable machines required for the commercial bottoming of shoes by machinery" (R. Vol. 2, p. 2808, Int. 10).

The Plant Welter Inventions.

For the first time in the history of the industry Plant had embodied in a welt sewing machine means for cutting off the welt close to the end of the seam, means for holding the end of the welt in proper position to start on the next shoe with minimum waste of welting, a welt measurer which determined the amount of welt left on the shoe when it was cut off and positively prevented waste, and, finally, means for automatically stopping the machine and casting off the last loop of thread from the barb of the needle. Always before, even in the United Company's new Model G Welter, it had been necessary for the operator to stop the machine by putting his hand on the belt pulley, first slowing down the machine, then stopping it, and finally turning the machine backward at such time and in such manner as to free the needle from the last loop of thread, in order to free the shoe from the machine. Then with a hand knife he cut the welt. In starting with the next shoe he had to hold the end of the welt with his finger and this involved wasting about two inches of welting upon each pair of shoes, worth at least a quarter of a cent per pair, —more on men's shoes (R. Vol. 1, p. 488, lines 28–45; p. 489; p. 490, lines 1–7; p. 786, lines 29–46; p. 787, lines 1–3; p.

810, lines 43–44; p. 811, lines 1–8; p. 812, lines 23–32; Vol. 2, pp. 2259, 2260, 2263, 2268).

Mr. Warren reported to Mr. Winslow "that the advance made in the welter was very great" (R. Vol. 1, p. 786, lines 1–2). Mr. Winslow testified that he "studied those machines personally as an expert" and that he regarded those welter improvements "as of the *very greatest practical importance and of very great value*,"—"*almost incalculable*" (italics ours) (R. Vol. 1, p. 485, lines 15, 41–42; p. 488, line 32). Mr. Howard explained their importance and value in great detail and quoted typical claims from the Plant patents which covered all of these inventions broadly (R. Vol. 2, pp. 2259, 2265).

The Plant Stitcher Inventions.

The practical advantages of the Plant Stitcher improvements were explained in detail by Mr. Howard (R. Vol. 2, pp. 2296, 2298). The nature of these improvements was indicated by Mr. Warren (R. Vol. 1, p. 787, lines 16–23, 26–30) as follows:—

> "The stitcher was provided with a stop motion similar to that one on the welter, so arranged that the machine would always stop in a proper position to remove a shoe, and so that another could be inserted, and in this stopping it raised the presser-foot which helps hold the shoe in position. Before this it always had been necessary for the operator to stop the machine by hand—remove one hand from the shoe, stop the machine, and then raise the presser-foot so he could remove the work. . . . Also, under the old method, it was necessary for the operator to lift the presser-foot so he could introduce a shoe. Now, in this machine, after the shoe had been finished and removed, it was all ready to start again. This was a great saving in time and a great saving in the exertion of the operator."

Mr. Winslow testified,—

> "That was fundamental; it was a very important invention" (R. Vol. 1, p. 560, lines 11–12).

Speaking of the welter and stitcher inventions together, Mr. Warren testified:—

"I was much impressed with the improvements. . . . I reported to Mr. Winslow that they were very valuable indeed. . . . I told Mr. Winslow that we should have them" (R. Vol. 1, p. 787, lines 34–35; p. 788, line 7; p. 809, line 35).

Testimony of shoe manufacturers and machine operators showing the great value of these Plant inventions as they have been incorporated in the United Company's machines will be reviewed later (*infra*, pp. 544–548).

4. USE MADE BY THE UNITED COMPANY OF THE PLANT INVENTIONS.

The general policy which the United Company has followed in regard to the Plant inventions was set forth by Mr. Howe. He said that ever since the purchase the resources of the United Company's Experimental Department had been crowded to the full in the work of embodying the Plant inventions in the United Company's machines or building new machines to incorporate those inventions (R. Vol. 1, p. 670, lines 41–44; p. 671, lines 11–13).

Mr. Winslow testified (R. Vol. 1, p. 491, lines 12–14),—

"We have offered every one of them to our customers as fast as we have perfected them, or where we have been able to take them without the necessity for perfection."

Mr. Warren testified that out of Plant's 69 machines and devices the United Company had so far made use of 30 and was still at work upon others which had not yet been satisfactorily worked out (R. Vol. 1, p. 799, lines 15–17).

The United Company adopted seventeen of the Plant machines, although they all required more or less development or improvement, and those machines have all been offered to the trade. Mr. Warren testified:—

"Seventeen were adopted, but we found after adopting them that a number of them were not as good as we thought they would be, and especially when they were

put on another kind of work. And the result is that several have been wholly reconstructed. Others we had to make some changes in to suit conditions that were different from the conditions in the Plant factory" (R. Vol. 1, p. 789, lines 33–39).

The United Company has also incorporated in its own machines thirteen devices which were found in the Plant machines. Mr. Warren said about these:—

> "We found many devices which would either assist the operator to do more work or better work, which we thought if they were embodied in our machines would be a great improvement, and we recommended that quite a number of those be adopted. And out of that number there were finally thirteen embodied in our machines. A great many more were tried, but were found to be inoperative or not practical" (R. Vol. 1, p. 789, lines 17–24).

Striking illustrations of the United Company's aggressive work in adapting the Plant inventions to its machines are afforded by the history of the Plant welter and stitcher inventions after the purchase.

The United Company immediately put to work six inventors to adapt the Plant welter improvements for the United Company's Model G Welter, which was of different design from the Plant welter and required different mechanical embodiments of the Plant inventions (R. Vol. 1, p. 811, lines 40–43; p. 812, lines 23–37). They worked night and day and the result was the Model K Welter, which embodied all of the Plant inventions and also important improvements on them made by the United Company's inventors, and which was put out for commercial use in June, 1911. On January 1, 1914, 1,024 of these Model K Welters were in use (R. Vol. 1, p. 810, lines 1–10; p. 812, lines 38–42; p. 817, lines 8–14; p. 863, lines 3–5; Vol. 2, pp. 2259, 2260, 2765). The advantages of the Plant improvements as embodied in the Model K Welter will be referred to later (*infra*, pp. 541–546).

Immediately after the purchase five different inventors were put to work to adapt Plant's stitcher improvements to the United Company's Model K Stitcher. Their combined work resulted in the Model M Stitcher, which was first supplied to

manufacturers in June, 1911, and of which 1,158 were in use on January 1, 1914 (R. Vol. 1, p. 863, lines 5–7; R. Vol. 2, pp. 2297, 2836(42). The advantages of the Plant improvements in that machine will be summarized later (*infra*, pp. 547–549).

The Mayo and Warren Report.

Immediately after the purchase of Plant's inventions two of the United Company's experts, Messrs. Mayo and Warren, were sent to the Plant shoe factory to make a thorough examination of the Plant machines and the inventions incorporated in them and to recommend what should be done with each machine and each invention. Their entire time for eight weeks was spent in that work, and upon its completion on November 26, 1910, they submitted an exhaustive report (R. Vol. 1, p. 785, lines 35–43; p. 815, lines 43–44; p. 816, lines 1–2). Mr. Winslow testified that this report was made—

> "to show what machines or improvements could be adopted to benefit our machines and in what respects. . . . Also to show if an invention in Plant's machines was in commercial shape or condition, or if it required and was advisable to try to develop it—that is to say, whether it gave promise of being of value to our customers in the trade" (R. Vol. 1, p. 594, lines 32–39).

The original signed report is Plaintiff's Exhibit 267, a physical exhibit. The typewritten matter in that report, but not the numerous illustrations, is reproduced in the record (R. Vol. 4, pp. 1396–1441). The letter which introduces the report (R. Vol. 4, p. 1395) shows how thoroughly their examination was conducted and how intelligently their report was prepared. Mr. Warren's testimony shows that the United Company has adopted practically all the machines and devices which they recommended (R. Vol. 1, p. 789, line 40; p. 790, line 6). Could any doubt remain as to the United Company's motives in acquiring the Plant inventions, that doubt would be removed by this Mayo and Warren report and by the United Company's conduct in accordance with it.

5. THE ACQUISITION OF THE PLANT PATENTS BY THE UNITED COMPANY RESULTED IN GREAT BENEFITS TO THE SHOE MANUFACTURING INDUSTRY.

A. Common ownership of the Plant patents and the United Company's patents made possible, first, the use of the valuable Plant inventions by shoe manufacturers without infringement of the controlling patents owned by the United Company; second, the incorporation of the Plant inventions in the superior machines of the United Company; and, third, further important improvements on those inventions by United Company inventors,—improvements which otherwise would never have been made.

The benefits to the shoe manufacturing industry which have resulted from common ownership of the Plant patents and the United Company's patents are strikingly illustrated by the testimony showing how the United Company has used and has improved upon the Plant welter and stitcher inventions.

Welter.

The testimony is uncontradicted that Plant's welter, incorporating his improvements, infringed United Company's patent No. 700,279, May 20, 1902, Winkley, which claimed a welt holder broadly (R. Vol. 2, p. 2262; Defs.' Ex. 273, R. Vol. 5, p. 739), and suits had already been brought by the United Company on that patent against Plant and the Plant Shoe Company (Defs.' Ex. 270, R. Vol. 5, p. 723). But the United Company had not succeeded in producing a commercially successful welt holder, the Winkley mechanism was only experimental, it did not include any means for either cutting or measuring the welt, and in Plant's improvements it was the combination of means for holding, cutting, and measuring that saved the welting (R. Vol. 1, p. 684, lines 10–24; p. 689, lines 20–29; p. 786, lines 13–18, 29–46; p. 787, lines 1–3; p. 816, lines 17–26; Defs.' Ex. 273, R. Vol. 5, p. 739). All these Plant improvements, and also his valuable

invention of means for stopping the machine and casting off the loop of thread held by the needle, are broadly claimed in his patents (R. Vol. 2, pp. 2262–5).

In Mr. Winslow's words:—

> "In a broad way it was a perfect deadlock. He had controlling patents for a practical way of doing it while we had the controlling patents of the invention itself" (R. Vol. 1, p. 488, lines 41–43).

Common ownership of the Winkley patent and the Plant patents removed this deadlock and made possible the use of these valuable improvements by shoe manufacturers without infringement. It also enabled the United Company to incorporate the Plant improvements in its own Model G Welter, which was much superior to Plant's (R. Vol. 1, p. 787, lines 36–37, 43–45; p. 809, lines 28–38; p. 815, lines 29–31; p. 818, lines 24–33), and which Mr. Winslow characterized as—

> "the highest development of sewing mechanism for attaching the welt, innersole, and upper together that had been developed in the world up to that time" (R. Vol. 1, p. 560, lines 34–36).

The Plant welter was "constructed substantially on the lines of the United Company's 1899 machine" and was "not so satisfactory a machine as was the United Company's 1899 machine" (Vol. 2, p. 2266). Plant added these improved devices to the old type of machine (Warren, R. Vol. 1, p. 787, lines 6–7).

> "It was not, therefore, until these improvements were incorporated in the high speed Model G machine of the United Company that the advantages and utility of the improvements were fully realized" (Howard, R. Vol. 2, p. 2266).

This was an extremely important development in the industry, but still further advantages resulted. In the United Company's experimental work in adapting the Plant improvements to its Model G Welter,—

> "improvements were made which represent almost as important advances in the industry as did the Plant improvements" (Howard, R. Vol. 2, pp. 2260, 2261).

For example, in the use of the Plant welter the operator had to step on a treadle to actuate the welt holder and cutter, while it is automatic in the Model K Machine,—the new United machine incorporating the Plant improvements,—"the machine itself operates it when the man gets ready to remove the shoe" (R. Vol. 1, p. 812, lines 3–4; R. Vol. 2, p. 2261). Again, the Plant mechanism for stopping the machine and freeing the shoe by casting off the loop of thread held by the needle was so constructed that the Plant machine had to be run "practically at one speed all the time . . . or else it would stop" (R. Vol. 1, p. 818, lines 31–32, 37). This was bad, because it is essential that a welter have capacity for being run at a reduced speed around the toe, where the work is most difficult. The Model K Machine can be slowed down at any time when the operator desires (R. Vol. 1, p. 491, lines 6–7; p. 660, lines 3–4; p. 775, lines 26–28).

Also the mechanical embodiments of the Plant inventions in his machine were not commercially satisfactory.

> "The welter was defective in the stop motion and in the mechanisms for holding and cutting the welt. . . . The ideas were excellent, but they hadn't been carried out in such a manner that they could have been used in other factories" (Warren, R. Vol. 1, p. 797, lines 23–27).

These defects were all remedied when the Plant inventions were adapted to the United Company's machine.

> "We improved the stop mechanism very much, and also the cutting mechanism and the welt holder. We also made over the back gage and welt guide motion so as to put it on our machine in better shape than on the Plant machine" (Warren, R. Vol. 1, p. 798, lines 39–43).

The result of the incorporation of the valuable Plant inventions in the United Company's machine in commercially successful constructions, with the improvements made on them by the United Company's inventors, was the new Model K Welter, "a very much better machine" than either the United Company or Plant had before (R. Vol. 1, p. 799, lines 1–3). The record abounds with testimony to this effect.

McGaffee testified that in the Plant factory they "do 50 pairs of shoes a day more" on the Model K Welter embodying the Plant improvements than they did on the Plant welter, and that the operators can make a great deal more money (R. Vol. 1, p. 777, lines 24–32; p. 779, lines 42–44).

Hazzard testified that in his factory the average wages of operators on the Model K Welter are 36 per cent. higher than the average wages of operators on the old model previously put out by the United Company, although the piece price was higher on the old machine than on the new; that the average output of the old welter was 25 dozen pairs a day, while the average on the new welter is 40 dozen pairs per day; that the new welter sews a tighter seam; and that the saving in welting by the welt holding and cutting device is at least half a cent a pair and amounts to $24 a day in his factory, five or six hundred dollars a year on each of their thirteen machines (R. Vol. 1, p. 646, lines 14–18, 41–44; p. 647, lines 1–3, 25–26, 41–44; p. 648, lines 6–7, 10).

Strootman, a manufacturer of women's shoes, testified that the new welters were about one-third more efficient, doing more work and better work, and that the saving in welting in his factory is about a quarter of a cent a pair (R. Vol. 1, p. 742, line 42; p. 743, lines 5–11).

Eaton, another manufacturer, testified,—

> "We have found that the saving in welting by the Model K welter, as compared with the Model G welter, was five per cent. under exactly similar conditions" (R. Vol. 1, p. 753, lines 6–8).

Allen testified that the new machine saves four inches of welting on a pair of shoes; that while on the old machine operators in his factory earned from $30 up to $40 a week, operators on the new machine had been earning over $50 a week (R. Vol. 1, p. 723, lines 1–2, 10–12).

Welch testified that in his factory they make a saving of a quarter of a cent per pair in the length of welting and also a saving in the width of welting which amounts to from one-quarter to three-quarters of a cent, according to the quality of the welting (R. Vol. 1, p. 710, lines 37–44).

Blagden, who had operated different types of welters since

1903, explained in detail the disadvantages and inconveniences of the old welter from the operator's standpoint. He said that the new machine—

> "saves his time and saves his strength and quickens him in his work";

that on the old machine 25 dozen pairs were considered a good day's work, while an average day's work on the Model K Machine is 40 dozen pairs, and that he had done 65 dozen pairs in a day; that he earned 20 per cent. more on the Model K Welter than he did on the old welter and didn't have to work so hard, although the piece price on the old welter was about one-third more. He also said that there was a saving in both the length and width of the welting and a saving in thread on the new machine (R. Vol. 1, pp. 658–60).

Figuring the saving in welting at $500 per machine (which was Mr. Hazzard's minimum figure), the aggregate saving in welting alone effected by the 1,024 Model K Welters in use on January 1, 1914 (R. Vol. 1, p. 810, lines 1–10), amounts to $512,000 per year. The Model K Welters were rapidly displacing the old machines and when the 2,527 machines which were out on March 1, 1911 (Defs.' Ex. 226, R. Vol. 5, p. 424) are all displaced, the saving in welting alone, figured on the same basis, will amount to $1,263,500 per year. Adding the large savings due to the greater capacity of the machine and the increase in the wages which were in consequence earned by the operators, the total economies effected for manufacturers and operators by each Model K Machine must be at least $800 per year. When the substitution of the new machines for the old ones has been completed, this saving on 2,527 machines when in active use through the year will aggregate over $2,000,000 per year.

For an extended technical explanation of the commercial superiority of the Model K Machine see pages 2259–68 of Vol. 2 of the record. On January 1, 1914, 1,024 of the Model K Machines were being used (R. Vol. 1, p. 863, lines 3–4).

It is obvious that the industry would not have had this important machine with all these striking advantages if the Plant patents had not been acquired by the United Company. In no other way could it have been possible for shoe manu-

facturers to have a machine which embodied, first, the broad invention of the United Company's Winkley patent for holding the welt, which it had not made commercially successful; second, the valuable Plant inventions comprising the first practical mechanisms ever devised for holding, measuring, and cutting off the welt, and the combined stop motion and loop cast-off (all broadly claimed in four Plant patents) (R. Vol. 2, pp. 2262, 2263, 2266, 2267); and, third, the important improvements upon those Plant inventions made by the United Company's inventors, on which many applications for patents have been made (R. Vol. 1, p. 812, lines 42–44; Vol. 2, p. 2117).

The United States urges that the fact that the United Company changed and so much improved the mechanical structures in which Plant had used his welter inventions shows that the inventions were of little use to the United Company. But the United Company's welter in which the Plant improvements were embodied *was of different design* from the Plant machine, so that "the mechanical construction had to be entirely changed in order to apply it to our machine" (R. Vol. 1, p. 811, lines 40–43; Vol. 2, p. 2260). That in reorganizing these Plant mechanical structures to fit its machine the United Company's inventors should make still further improvements was to be expected and was consistent with the constant improvement of its machines which the United Company is always making. But these improved mechanical structures in which the Plant improvements were embodied in the United Company's new welter *all contained the Plant inventions and were all covered by the Plant patents.* Typical broad claims of the Plant patents which cover the United Company's machine are quoted in the record (R. Vol. 2, pp. 2262–5). These Plant inventions are the heart and core of the welt holding, the welt cutting, the welt measuring, and the stopping and loop cast-off mechanisms of the Model K Welter by which the tremendous savings have been effected (*supra*, pp. 544–545).

Stitcher.

One of the two extremely valuable improvements in the Plant stitcher, the mechanism for automatically lifting the presser-foot to free the shoe from the machine when the machine stopped, infringed two of the United Company's patents and five allowed claims of an application filed in 1906 on which has been granted patent No. 1,087,602, February 17, 1914, Nash (R. Vol. 2, pp. 2836(67), 2836(68); Defs.' Ex. 273, R. Vol. 5, p. 741).

On the other hand, the United Company had never had in its stitcher—even its new Model K Stitcher adopted in May, 1910 (R. Vol. 2, p. 2290),—any mechanism for automatically stopping the machine and lifting the presser-foot, or any mechanism for stopping the machine in proper position to permit the shoe to be removed and a new shoe put into the machine,—Plant's notable improvements (*supra*, p. 537).

Immediately after the acquisition of the Plant patents the United Company put to work five different inventors upon the problem of embodying these Plant inventions in satisfactory mechanical form and adapting them for the United Company's new Model K Stitcher (R. Vol. 2, p. 2297). That machine, after it was reorganized to embody these improvements, was named the Model M, and was first put into commercial use in June, 1911 (R. Vol. 2, p. 2836(24)). On January 1, 1914, 1,158 Model M Stitchers, incorporating these Plant improvements, were in use (R. Vol. 1, p. 863, lines 5–6).

Mr. Howard's detailed statement of the advantages of the new machine as compared with the United Company's old machine (R. Vol. 2, pp. 2296–8) is strongly confirmed by the testimony of shoe manufacturers and machine operators.

For example, Eaton, a manufacturer, testified,—

> "Our stitcher will show an advance by comparison with the same operator under the same conditions a fifteen to twenty per cent. increased capacity over the old, because it is a higher speed machine and it takes less operations to work it" (R. Vol. 1, p. 753, lines 16–19).

Hazzard testified that on the Model M Stitcher, as compared with the old machine, there was—

> "an increase in the average wage of about 24 per cent., while the piece price on the old model was 40 per cent. more than we are paying on the Model M" (R. Vol. 1, p. 647, lines 12–14).

He also said that this was not a fair showing because they had been educating nearly all of their operators, and that a comparison of the best operators on the old stitcher and on the new showed an increase in wages on the new machine of 45 per cent., with a piece price 40 per cent. less than that on the old stitcher (R. Vol. 1, p. 647, lines 21–23).

Strootman, another manufacturer, testified that the new stitchers were about one-third more efficient, doing more work and better work (R. Vol. 1, p. 743, lines 5–7).

Ryan, a stitcher operator who had worked on the successive models of the United Company's stitcher and also on the Plant stitcher, explained in detail the difficulties in operating the old United Company machine and the advantages of the Model M Stitcher from the operator's standpoint (R. Vol. 1, p. 705, lines 1–38). He said that his average day's work on the Model M Stitcher was fifty pairs per day more than the average on the old machine, and further:—

> "The work on the Model M stitcher is a great deal easier. I earn more money. I will average fifty to seventy-five cents a day more on the Model M stitcher than on the old stitcher; and that is in less hours than I worked on the old stitcher" (R. Vol. 1, p. 706, lines 4–8).

McGaffee testified that—

> "the operator could make a great deal more money on the United stitcher than he could on the Wonder Worker" (R. Vol. 1, p. 777, lines 29–31).

This great advance in the industry was made possible by the purchase of Plant's patents by the United Company. In a word, this is the story of the Model M Stitcher. Those valuable Plant improvements, embodied by him in a stitcher which was like the United Company's 1899 machine and, like

that machine, operated at a speed of only 375 revolutions per minute (R. Vol. 1, p. 787, lines 31–32; p. 818, lines 15–16); which was not organized to sew shoes with extension edges, which nearly all welt shoes have, because such an organization would infringe patents of the United Company (R. Vol. 1, p. 775, lines 32–34; p. 780, lines 1–7; p. 818, lines 17–18, 20–23; R. Vol. 2, pp. 2283, 2762); and which was defective and frequently breaking (R. Vol. 1, p. 790, lines 30–31, 36–38; p. 815, line 14), "the weakest machine we had," "the one that caused the greatest trouble" (McGaffee, R. Vol. 1, p. 773, lines 37–38; p. 777, line 29), were incorporated by the United Company in its much superior stitcher, which operated at a speed of 540 to 550 stitches per minute (R. Vol. 2, p. 2293), and in greatly improved mechanical constructions (R. Vol. 2, pp. 2836(44), 2836(45); R. Vol. 1, p. 798, lines 22–23).

That is, through common ownership of the United Company's patents which Plant infringed, Plant's patents on his improvements, and the United Company's patents and applications on the further improvements which it in turn made on Plant's inventions, the industry has been provided with the Model M Stitcher, in which all of these inventions and improvements are combined, and which is greatly superior both to Plant's machine and to any machine which the United Company had before (R. Vol. 1, p. 799, lines 1–3).

This welter and stitcher situation was thus summarized by Mr. Warren, from the standpoint of the practical expert:—

> "Assuming that each party had its patents on its respective inventions and devices, neither party could have accomplished the development of the machine which we have now developed, either as a stitcher or a welter, without the aid of the other; nor could either party have developed so satisfactory a machine" (R. Vol. 1, p. 799, lines 4–9).

Mr. Winslow emphatically expressed his opinion as follows:

> "I think it would have been a crime to the art of shoe manufacturing if they could not have been combined, those improvements that Plant had—combined with the

best welt and stitching machine that was in existence at that time, which was one that we had" (R. Vol. 1, p. 560, line 42 *et seq.*).

And it will be remembered that in accordance with the United Company's invariable practice the new welters and stitchers, containing all these valuable improvements, were substituted for the older models without any charge whatever and without any increase in royalty, although the Model G Welter, previously the United Company's standard welter, had been put out only since October, 1908, and the Model K Stitcher, formerly its standard stitcher, had been put out only since May, 1910 (R. Vol. 2, pp. 2254, 2290).

The Other Plant Inventions.

Including the Plant welter and stitcher improvements the United Company, as already stated, has incorporated the inventions of forty-three of Plant's patents in twenty-six of its machines, among which, in addition to the Model K Welter and the Model M Outsole Stitcher, are such important machines as the No. 5 Lasting Machine, the Model B Heeling Machine, the Lightning Heeling Machine, the Pulling-over Machine, and the Model E Rounding and Channeling Machine (R. Vol. 1, p. 799, lines 13, 14; Defs.' Ex. 342, R. Vol. 5, p. 949). The Plant purchase has made it possible for shoe manufacturers to use machines embodying these inventions without infringement of either Plant's patents or the United Company's patents.

B. Chaotic conditions in the shoe industry have been averted by common ownership of the patents of the United Company and the Plant patents.

As was found by the District Court,—

> "And between Plant, or concerns wherewith he was identified, and the United Company there were pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents so numerous, complicated and important

as to threaten interminable controversy" (Dodge, J., R. Vol. 1, p. 1145).

(1) Infringement of the United Company's Patents by Plant.

Plant had patterned his machines after the United Company's machines. The welter and stitcher were substantially the same as the machines which the United Company had been putting out in 1899, with the addition of Plant's improvements, fifteen other Plant machines were "practically duplicates" of the United Company's machines, and nearly all "had a family resemblance to the United Company's machines" (R. Vol. 1, p. 485, lines 29–31; p. 668, lines 42–45; p. 669, line 1; p. 789, lines 13–16; p. 814, lines 22–23; p. 818, lines 15–16, 24–26; Vol. 2, p. 2266).

> "He had taken our machines, whether he had a right to or not, and had made certain improvements on them" (Howe, R. Vol. 1, p. 669, lines 17–18).

With this situation extensive infringement of the United Company's patents was to be expected.

Defendants' patent expert Howard testified that in his opinion 37 of Plant's machines, including practically all of his important machines, infringed claims in 99 patents and three pending applications owned by the United Company, amounting in the aggregate to 546 claims; and that many claims were infringed by more than one machine, with the result that there were 708 distinct cases of infringement of United Company's patents by Plant machines (R. Vol. 1, p. 799, lines 31–44; p. 800, lines 1–6; p. 801, lines 26–39; Defs.' Ex. 273, R. Vol. 5, p. 750). Defendants' Exhibit 273, Mr. Howard's detailed statement of these infringements, shows their serious character (R. Vol. 5, p. 733).

During the trial counsel for the United States repeatedly stated that it was their intention to introduce testimony to contradict this evidence (R. Vol. 1, p. 394, lines 26–29; p. 800, lines 23–30; p. 803, lines 26–27, 38–40), and they secured an opportunity to do so by the order of February 10, 1914 (R. Vol. 1, pp. 984, 985).

All of the Plant machines were placed at the disposal of

counsel for the United States and its patent expert, and, assisted by Mr. Warren, they made an extended investigation of the machines (R. Vol. 1, p. 984, lines 24–39; Vol. 2, p. 2836 (156–159)); but no attempt to controvert this testimony was made by the United States. It is submitted, therefore, that for the purposes of this suit defendants have proved these infringements. In fact counsel for the United States said during the trial,—

> "If we don't contest it then the case rests . . . that there was an infringement by Plant" (R. Vol. 1, p. 394, lines 40, 43).

Eight infringement suits against Plant and ten suits against the Plant Shoe Company had already been begun, and bills of complaint had been prepared and signed in suits on six more patents (R. Vol. 1, p. 802, lines 7–11; Defs.' Ex. 270, R. Vol. 5, p. 723). For many months nearly all of Mr. Howard's time and a large part of the time of his associates had been spent on these infringements, and the United Company was "ready to go ahead" with a large number of suits (R. Vol. 1, p. 801, lines 5–7; p. 822, lines 3–7). Mr. Winslow testified,—

> "It was our intention to bring suits to protect our rights, and undoubtedly we should have done so" (R. Vol. 1, p. 566, lines 38–39).

There was also a suit pending against the Plant Shoe Company and Plant for the purpose of enforcing the contracts which the Shoe Company had made with the United Company and which it had violated by substituting Plant's machines (R. Vol. 1, p. 688, lines 1–8; P.'s Ex. 162, a physical exhibit).

During the negotiations between Mr. Plant and Mr. Winslow, Plant expressed great concern over these suits and repeatedly stated that his refusal to allow an examination of his machines by the United Company's experts was due to his fear that additional infringement suits would be brought as a result of such an examination, and he stated that his counsel refused to sanction the examination for that reason (R. Vol. 1, p. 480, lines 15–22, 44–45; p. 481, lines 1–2, 45–46; p. 482, lines 6–8; p. 577, lines 29–33; p. 609, lines 38–42; p. 611, lines 38–45).

"He seemed to be quite fearful that the experts would be of great assistance in the patent suits that were being brought and that were likely to be brought" (Endicott, R. Vol. 1, p. 580, lines 24–26).

So great was Plant's concern over these infringements that he made it a condition of the purchase that the United Company should release and discharge him from "claims of infringement of Letters Patent by said Plant" (P.'s Ex. 132, R. Vol. 4, pp. 932, 934; P.'s Ex. 139, R. Vol. 4, p. 1039).

(2) Infringement of Plant's Patents by the United Company.

Mr. Howard testified that in his opinion fifteen of the United Company's machines infringed twenty Plant patents. Defendants' Exhibit 274 (R. Vol. 5, p. 750), which is his detailed statement of these infringements, shows that a large number of claims of those patents were infringed.

These infringements were due to the fact that for several years Plant's inventive work and that of the United Company's inventors had been going on simultaneously with the result that in a number of instances the United Company had embodied inventions in its machines which were later found to infringe Plant's patents (Winslow, R. Vol. 1, p. 870, lines 43–44; p. 871, lines 1–9; Howe, R. Vol. 1, p. 877, lines 12–26). In this embarrassing situation were involved some of the United Company's most important machines, such as its new Model K Outsole Stitcher, its No. 5 Lasting Machine, its new Model B Heel Attaching Machine, its American Lightning Nailing Machine, its new Model E Rounding and Channeling Machine. The serious character of these infringements is shown by testimony of Mr. Browne, Mr. Warren, and Mr. Howard (R. Vol. 2, p. 2836(125) (130–135) (154–156); Defs.' Ex. 274, pp. 751–754).

Ample opportunity was afforded counsel for the United States and its patent expert, Mr. Chapman, to examine these fifteen infringing United Company machines, and Mr. Chapman did examine them (R. Vol. 2, p. 2836(156–159)), but he took issue with Mr. Howard as to only six. Mr. Chap-

man's testimony was completely answered by the noted patent expert Arthur S. Browne, who agreed with Mr. Howard's views as to infringement in every instance (R. Vol. 2, p. 2836(123–153)). It is submitted that Mr. Browne's testimony, supporting the testimony of defendants' expert in all respects and disagreeing with all the opinions expressed by the expert for the United States, establishes the defendants' claim that for the purposes of this case it has been proved that those six United Company machines, as well as the other nine, infringed Plant's patents. At the end of this discussion (*infra*, pp. 579–580) attention will be called to many misstatements as to facts made by Mr. Chapman in his testimony.

(3) Interferences.

There had been declared by the United States Patent Office 23 interferences between patent applications owned by Plant and applications owned by the United Company. These involved important machines of the United Company, such as lasting machines, heel nailing machines, impression stitch machines, welt preparing machines, heel seat rounding machines, leveling machines, shank trimming machines, machines for operating on insoles, the pulling-over machine, and the clicking machine (R. Vol. 1, p. 819, lines 23–31; p. 846, lines 14–17; Defs.' Ex. 272, R. Vol. 5, p. 730).

Intolerable Conditions would have Resulted if the Plant Purchase had not been Made.

It cannot be doubted that if Plant had kept on he would have enforced his rights under his patents and would have brought suits on account of the infringements by the United Company's machines; indeed, his intention to bring suits was asserted over his signature in Plaintiff's Exhibit 137, a release signed by Plant on September 30, 1910:—

> "I . . . have planned to bring certain suits against said United Shoe Machinery Company" (P.'s Ex. 137, R. Vol. 4, p. 1037).

Mr. Winslow and Mr. Howe fully expected that Plant would bring suits against these infringing machines (R. Vol. 1, p. 862, lines 25–26; p. 877, lines 27–30; p. 878, lines 1–2).

The inconvenience and embarrassment to which the United Company and its customers would have been put if Plant had succeeded in litigation against these machines would have been intolerable. It might well have involved replacing thousands of machines or very likely discarding them altogether,—in any event endless experimental work in developing organizations which would avoid infringement, at an expense, to say nothing of the cost of the litigation, which would have mounted to a staggering sum. No wonder the United Company took pains to obtain from Plant a release from—

> "all manner of actions and causes of action . . . and demands of every name and nature in law or equity" (P.'s Ex. 137, R. Vol. 4, p. 1037).

On the other hand, it is difficult to imagine the chaotic condition which would have resulted if Plant had put his machines in a number of shoe factories. Mr. Winslow declared,—

> "It was our intention to bring suits to protect our rights, and undoubtedly we should have done so" (R. Vol. 1, p. 566, lines 38–39).

The record shows that this intention was being aggressively carried out. Many suits had already been brought, a considerable number of bills of complaint had been prepared and were ready for filing, counsel had been engaged for months in work on these infringements and were "ready to go ahead" on nearly all of them before the date of the purchase (R. Vol. 1, p. 800, lines 36–44; p. 801, lines 1–11; p. 821, lines 20–34; p. 822, lines 1–7; p. 877, lines 5–12, 31–33).

The interminable litigation which would have resulted from this situation would have caused great annoyance and embarrassment to the shoe manufacturers and the public. As the great number of suits were terminated one after another, injunctions would have issued restraining the use of the infringing machines. Since, under the peculiar condi-

tions of the shoe industry, with shoes constantly moving through a factory from one group of machines to another, the business of the factory is stopped when one group of machines for doing a particular part of the work is stopped (R. Vol. 1, p. 25, lines 18–39; p. 382, lines 30–35; Vol. 2, p. 2665), it is obvious that a most serious condition would have developed, with consequent inconvenience and annoyance to the general public.

The chaotic and intolerable conditions which would surely have resulted from the situation as it then existed were of course averted by bringing the conflicting patents into a common ownership.

As to this situation the District Court held:—

> "The evidence shows also, without serious contradiction, that one result of the bargain made with Plant was to relieve the United Company from an amount of litigation, then pending or in prospect, which would otherwise have burdened and hindered it to an extent far greater than it had ever had reason to apprehend from any litigation with which it had before been concerned.
>
> "A suit by it to restrain the Plant Company from breaking the leases of its machines, displaced in order to install the Plant machines as above, had been pending since May, 1910. And between Plant or concerns wherewith he was identified and the United Company there were pending interferences, claims of infringement on both sides, and pending infringement suits, raising questions relating to his or its patents, so numerous, complicated, and important as to threaten interminable controversy" (Dodge, J., R. Vol. 1, p. 1145).

The evidence which we have just reviewed proves that the expectations of the United Company in purchasing Plant's patents were fully realized. These great benefits were anticipated and were the reasons for the purchase, as we shall now show.

6. THE UNITED COMPANY ACQUIRED THE PLANT PATENTS BECAUSE ITS OFFICERS BELIEVED THAT THE ACQUISITION WOULD RESULT IN GREAT BENEFITS TO THE SHOE MANUFACTURING INDUSTRY.

A. The controlling consideration was the value to the shoe manufacturing industry which the valuable Plant inventions would have if incorporated in the United Company's superior machines.

Typical of numerous statements in Mr. Winslow's testimony is the following:—

> "My entire and only interest was whether those patents could be made of benefit to our customers and the trade. If they could be of benefit, if they were of large benefit, and the trade ought to have them, I should be very glad to buy them and embody them in our machines for what I thought they were worth, irrespective of what they had cost him,—but I would not pay a cent more for them" (R. Vol. 1, p. 482, lines 26–32).

Mr. Howe testified:—

> "After we examined it, Mr. Winslow and I . . . agreed that Plant had some very valuable improvements that if we could get the ownership of at the right price could be introduced into our machinery in conjunction with our own experiments in the way of improvements that had then been under way for several years, and that by utilizing them in that way Plant's inventions could be made very valuable" (R. Vol. 1, p. 670, lines 29–37).

Mr. Endicott testified that Mr. Winslow told Mr. Plant that—

> "he could not consider the proposition at all until he knew the value, and he stated then that he meant the value to the advancing of the art of shoemaking" (R. Vol. 1, p. 577, lines 12–14),—

and that at a later interview Mr. Winslow said that he—

> "would only purchase it if it was of value—if it was a good, fair offer at the price and was of value to the shoe

trade and to the United Company" (R. Vol. 1, p. 582, lines 14–16).

Mr. Winslow's attitude is further shown by his refusal to consider the purchase at all—

> "without seeing the machines, having them fully examined by our experts, and a full report made to me by them as to the advantages that there might be in those machines.
>
> "I always declined to have anything to do not only with buying but considering his propositions without a full and complete right to examine his machinery, determine the value of the inventions—the patents that he had" (R. Vol. 1, p. 482, lines 20–24; p. 484, lines 16–19).

Mr. Howe confirms this:—

> "At these conferences and all along Mr. Winslow always took the position of declining to discuss prices or a price for the machinery and inventions until he had convinced himself by experts, in whom he had confidence, as to the value of these inventions to the United Shoe Machinery Company and to its lessees, . . . declined to have anything to do with any proposition unless he could have the machines examined by our experts and demonstrate that they would be of value to the United Company and its lessees" (R. Vol. 1, p. 670, lines 18–22; p. 687, lines 20–23).

Mr. Herrick testified that at a conference which he attended Mr. Winslow took the position—

> "that there would be no consideration of that machinery without a careful examination by men who were competent to value what Mr. Plant had, and that there would have to be time enough for that, and that there would have to be a thorough examination,"

and that Mr. Winslow said to Mr. Plant:—

> "'If we see it has got value, we are perfectly ready to negotiate on the basis of whatever actual value it has got, and there will be no hurry about it, and we will not deal at all without seeing it, and then we will only deal after the examination, and if we can't have the examination we won't deal at all'" (R. Vol. 1, p. 604, lines 17–21, 41–44; p. 605, lines 1–2).

Mr. Endicott and Plant's intermediary, Smith, testified to the same effect (R. Vol. 1, p. 577, lines 12–14; p. 772, lines 33–35).

As to the instructions given by Mr. Winslow to the experts, when Plant, after repeated refusals, had finally decided to permit the examination, Mr. Warren testified that he—

> "was told to go with the rest of the gentlemen that were there to the Plant factory and look at any or all of the machines in that factory, and examine them to see what features there might be, if any, about the machines that would be valuable if added to our machines, or if they would be any addition in any way to the manufacture of shoes" (R. Vol. 1, p. 785, lines 27–32).
>
> "My orders were to look at the machines and tell Mr. Winslow, or report, what I could see in the machines that would be of value or that would improve our machines, to improve the art of making shoes" (R. Vol. 1, p. 814, lines 38–41).

The District Court found:—

> "The agreement to take the patents and inventions was not made until after a careful examination and report as to their merits. The belief thereon founded that, used as above, they would be worth acquiring upon the terms proposed, is shown to have been justified by the result, and the acquisition cannot be criticised so far as it was occasioned by that belief. As developed and added to its own machines by the United Company, some of the inventions acquired have proved to be of a value such as fairly justifies their claim that the patents acquired were the controlling feature of the purchase" (Dodge, J., R. Vol. 1, p. 1145).

B. Another consideration was the avoidance of endless litigation and intolerable conditions in the industry which would have resulted from the hopelessly complicated patent situation.

We have already shown (*supra*, pp. 551–556) that there was uncontradicted testimony that there were 708 distinct cases of infringement of the United Company's patents by thirty-seven Plant machines, including all of his more important

machines; that the evidence shows that fifteen of the United Company's machines, including many of its most important machines, infringed a large number of claims in twenty Plant patents,—evidence contradicted by the United States as to only six machines, and as to those amply corroborated; and that twenty-three interferences had been declared by the United States Patent Office between patent applications owned by Plant and applications owned by the United Company, in which many of the United Company's most important machines were involved. We have explained that many suits had been brought against Plant for infringement by his machines, and that the United Company was prepared and intended to bring a large number of additional suits.

Before the Plant purchase all these patent complications were the subject of extended discussion by Mr. Howe, Mr. Howard, and other counsel with Mr. Winslow (R. Vol. 1, p. 821, lines 20–34; p. 862, lines 11–21; p. 877, lines 31–33).

Mr. Winslow testified (R. Vol. 1, p. 862, lines 24–31):—

> "The confusion and conflict in the patent situation of my own company and of Mr. Plant, the chaos which might result from conflicting claims and constant litigation, was a substantial consideration in my mind, affecting my negotiations or willingness to negotiate with Mr. Plant, and when Mr. Plant offered to me the patents at a price which to my mind was less than their value to the art of shoe manufacturing when combined with our machines, it might be said to be a controlling factor."

Mr. Howe testified:—

> "There would have been a large amount of litigation both by the owners of the Plant patents against the United Company, and by the United Company against Plant machines. . . . This chaotic condition which might result from the patent situation had considerable weight in my mind. Of course, the controlling consideration for the purchase of the Plant patents, was the value, the great value, it seemed to me, of his inventions, especially when combined with and merged in our machines. Then another consideration for the purchase was this avoidance of litigation either by ourselves against him, which would have cost a great deal of money and would have annoyed

the trade very much, the shoe manufacturers, and also the cost and annoyance of having to be sued by Plant" (R. Vol. 1, p. 877, lines 28–31, 36–44; p. 878, lines 1–2).

It was held by the District Court (Dodge, J., R. Vol. 1, p. 1145):—

> "It was part of the bargain with Plant, or followed from it as a result, that the above controversies were settled or avoided. That the prospect of accomplishing this result was a further normal, natural, and powerful inducement to the agreement made with him cannot be reasonably doubted. In so far as the agreement was thus intended, no criticism of it can be valid."

In *Bement* v. *National Harrow Company*, 186 U. S. 70, it was said by this Court (p. 93):—

> "There had been, as the referee finds, a large amount of litigation between the many parties claiming to own various patents covering these implements. Suits for infringements and for injunction had been frequent, and it was desirable to prevent them in the future. This execution of these contracts did in fact settle a large amount of litigation regarding the validity of many patents as found by the referee. This was a legitimate and desirable result in itself."

7. THE PLANT PATENTS WERE WORTH MORE THAN THE PRICE PAID FOR THEM.

For the Plant inventions and patents and for 60 per cent. of the stock of the Thomas G. Plant Company, the shoe manufacturing concern, the United Company paid Plant $6,000,000, and of this amount Mr. Winslow considered that $2,500,000 ($1,250,000 in United Company stock at twice par) was paid for the Plant patents and inventions (R. Vol. 1, p. 490, lines 35–39; p. 569, lines 17–22; P.'s Ex. 132, R. Vol. 4, p. 935).

The stock of the Shoe Company was purchased because Plant refused to sell the inventions unless that stock were also purchased. He wanted to get out of business and retire

(R. Vol. 1, p. 486, lines 2–7; p. 487, lines 11–16; p. 562, lines 11–13; p. 580, lines 36–39; p. 603, lines 26–30; P.'s Ex. 132, R. Vol. 4, p. 932). Mr. Winslow testified that he did not want the Shoe Company stock, but thought that it was a good bargain at the price, and that he could dispose of it (R. Vol. 1, p. 562, lines 17–18; p. 568, lines 14–16).

Mr. Winslow valued the shoe company stock purchased at $3,500,000 (R. Vol. 1, p. 490, lines 35–36). This seems a conservative estimate as the company was extremely prosperous. Its earnings for the past four years had averaged $738,000 annually and for the year preceding the use of Plant's own machinery had amounted to $1,122,196.28. These figures are taken from a sworn statement by a public accountant (P.'s Ex. 132, R. Vol. 4, pp. 1013–15). Mr. Winslow required Plant to guarantee the accuracy of that statement (R. Vol. 1, p. 496, lines 21–27; P.'s Ex. 132, R. Vol. 4, p. 1017).

Plant owned and sold 60 per cent. interest in the stock of the Shoe Company. Sixty per cent. of the average earnings for the past four years amounted to $442,800 annually. Capitalized at 10 per cent. this would show a value for the Shoe Company's stock which was purchased of $4,428,000.

The District Court held (Dodge, J., R. Vol. 1, pp. 1144–5):—

> "That it was of great value is shown beyond question by the dividends then and afterwards paid on the stock acquired by the United Company. These, and the ultimate disposition of the stock itself, afford every reason to believe its actual value when acquired sufficiently great to reduce the actual cost of the patented improvements also acquired to a comparatively small proportion of the total payment made to Plant."

Assuming, however, that the Shoe Company's stock was worth no more than $3,500,000, this would leave $2,500,000 to represent the patents. They are undoubtedly worth more than this to the United Company.

Mr. Winslow testified that to his mind this price was "less than their value to the art of shoe manufacturing when combined with our machines," that he would have considered them a very cheap purchase at a sum "much in excess of

that price," that he would be "very glad to buy the same value next week," and that—

> "If my judgment hadn't been that they were worth more than we paid for them, we never should have bought them" (R. Vol. 1, p. 490, lines 28–34; p. 569, lines 22–23; p. 862, lines 29–30).

Mr. Warren testified that it was his opinion and that soon after the purchase he told Mr. Winslow that the improvements on the *welter and stitcher alone* were worth all Mr. Winslow gave for the entire property (R. Vol. 1, p. 788, lines 8–10; p. 813, lines 6–9).

The United States urges strenuously that the Plant inventions were not worth as much as was paid for them. But the United States contends that the Western manufacturers were willing to pay $1,600,000 for only a *half interest* in Plant's patents and inventions, *not* including any interest in the Shoe Company (R. Vol. 1, p. 126, lines 14–28; p. 189, lines 5–15). If the record supports that contention, the Western manufacturers were setting a value of $3,200,000 on the patents and inventions alone, and the United States cannot consistently claim that they were not worth the $2,500,000 which the United Company paid for them.

The District Court held (Dodge, J., R. Vol. 1, p. 1145):—

> "Taking the transaction as a whole, if the total amount paid by the United Company was large, the total value of all that was received in exchange also appears, not as matter of opinion merely, but by actual results shown, quite sufficient to negative any claim that the defendants paid an exorbitant price for what they got.
>
> "The evidence that among these patented improvements obtained from Plant there were enough of sufficient value, in the defendants' hands and used as they only could have used them in further developing and perfecting the machines they were then producing or trying to produce, to make this part of the total acquisition extremely profitable to the United Company was not met by any sufficient proof to the contrary."

8. THAT THE UNITED COMPANY PURCHASED THE PLANT PATENTS BECAUSE IT WAS BELIEVED THAT THE PURCHASE WOULD RESULT IN GREAT BENEFITS TO THE SHOE MANUFACTURING INDUSTRY, AND FOR NO OTHER REASON, IS FURTHER SHOWN BY THE HISTORY OF THE NEGOTIATIONS.

The United Company never approached Plant in any way directly or indirectly with reference to acquiring either his patents or his stock in the Plant Shoe Company (R. Vol. 1, p. 559, lines 5–6; p. 566, lines 27–28). There is no evidence that before Plant made his overtures the United Company had ever considered acquiring his patents.

Negotiations were Opened by Plant.

Plant asked Henry B. Endicott, a shoe manufacturer, to help him make a sale of his patents to the United Company, and he offered Mr. Endicott a commission of $250,000 if he would effect the sale. He later increased that offer to $500,000 (Endicott, R. Vol. 1, p. 576, lines 33–43; p. 580, lines 16–18).

Accordingly Endicott invited Winslow to meet Plant at Endicott's house. That meeting was held in June, 1910 (Winslow, R. Vol. 1, p. 479, lines 27–40; Endicott, p. 577, lines 1–3).

At this first meeting, after explaining the merits of his machines, claiming that they were wonderful and very valuable, Plant offered to sell his patents for $6,000,000 and said that at the end of the week the price would go up $500,000 (Winslow, R. Vol. 1, p. 479, lines 41–45; p. 480, lines 1, 29–32; Endicott, p. 577, lines 6–10).

From the Start Winslow Insisted that He would not Purchase Plant's Patents until Their Value had been Determined by an Expert Examination, and then only if They would be of Value to the Shoe Manufacturing Industry.

Winslow told Plant that he could form no opinion regarding the value of Plant's inventions until his experts had examined Plant's machines. He said to Plant that—

> "it was the value of the patents to our customers and the trade, the art of making shoes, that I was interested in, and when I could know what he had, why, then I could know what I thought they were worth to me" (R. Vol. 1, p. 480, lines 4–6, 34–38).

Endicott testified that at this interview Winslow told Plant that—

> "he could not consider the proposition at all until he knew the value, and he stated then that he meant the value to the advancing of the art of shoemaking" (R. Vol. 1, p. 577, lines 12–14).

At this interview Plant questioned whether the United Company's mechanical experts ought to see his machines, fearing that infringement suits might be brought as a result of such an examination. The interview was adjourned with the understanding that Plant would consult his attorneys in New York as to an examination by experts (Winslow, R. Vol. 1, p. 480, lines 6–9, 15–22).

Winslow Continues to Insist that He would not Purchase without an Examination and not unless Plant had Improvements that would be of Value to the Industry.

When the discussion was resumed on June 23, 1910, at a meeting arranged by Mr. Endicott, Plant said that he could not consent to the United Company's experts seeing his machines; that his New York attorneys did not agree to it. He threatened that if Winslow did not trade with him without seeing his machines he would publish advertisements which would attack the United Company and its methods of doing

business and also would publish letters from attorneys. At both interviews nothing but Plant's inventions and patents was discussed. The Shoe Company's stock was not mentioned (Winslow, R. Vol. 1, p. 481, lines 4–46; Endicott, p. 577, lines 15–28; p. 586, lines 43–45; p. 587, lines 1–4). This interview was concluded by this statement to Plant by Winslow:—

> "I said that of course I could not consider trading with him without seeing his machines and I was not interested in what he had unless he had improvements that would be of value to our customers. I was very sorry, but I could not do any business" (R. Vol. 1, p. 481, lines 41–44).

The Interview on June 27.

At the next interview, arranged by Endicott, on June 27, Plant said that his price was now $6,500,000 and that it would be $7,000,000 the next week. Plant again indicated that he desired very much to sell his patents and inventions, but was very reluctant to have the United Company see his machines. He made a proposition that the United Company should give him a million dollars and two of its officers could then examine his machines. Of this proposition Winslow said:—

> "If we did not buy, the million dollars was to be forfeited to Mr. Plant, so that a look at his machines would have cost us a million dollars.
> "I did not accept that proposition."

Winslow repeated that he would not even consider Plant's offers without a thorough examination to determine the value of the inventions (Winslow, R. Vol. 1, p. 482, lines 1–32; Endicott, p. 587, lines 4–9).

Endicott then suggested that Messrs. Keith and Hanan, both shoe manufacturers and directors of the United Company, should examine the machines and decide whether it would be right for Winslow to pay a million dollars for the option in order to get an opportunity for his mechanical experts to examine the machines; but Keith and Hanan refused to accept this responsibility (Winslow, R. Vol. 1, p. 482, lines

33–45; p. 483, lines 1–2; Endicott, p. 577, lines 29–45; p. 578, lines 1–9).

Winslow again Breaks off Negotiations.

Winslow then notified Endicott that—

> "in view of the fact that Mr. Plant would not allow us to have our experts examine his machines we should drop all negotiations" (Winslow, R. Vol. 1, p. 483, lines 11–12).

Endicott confirms this (Endicott, R. Vol. 1, p. 578, lines 10–15).

This ended Endicott's connection with the negotiations as Plant's representative. The next day he called upon Winslow, told him he believed the United Company ought to have Plant's patents for the benefit of the industry, stated that if he had been a director he would have been willing to take the responsibility which Keith and Hanan refused to take, and suggested that if the United Company wished to elect him a director he would be willing to share that responsibility and examine the machines with Keith and Hanan. He told Winslow that he was so strongly convinced that the United Company ought to have the Plant inventions for the benefit of its customers that he wanted to do everything he could to bring that about. This statement was based on the report of Endicott's experts, who had examined Plant's machines, that there were many things in them which when combined with the United Company's machines would make them more valuable (Winslow, R. Vol. 1, p. 483, lines 15–35; Endicott, R. Vol. 1, p. 578, lines 19–31; p. 585, lines 24–28).

In accordance with Mr. Endicott's suggestion he was elected a director of the United Company and he thereupon notified Plant that he could no longer act in Plant's interest and that Plant's agreement to pay him a commission was terminated (Winslow, R. Vol. 1, p. 479, lines 29–32; p. 483, lines 26–43; Endicott, p. 579, lines 3–13).

Endicott, Keith, and Hanan, with Endicott's practical men, then examined the Plant machines on July 5 and they reported that evening at a meeting of the officers and counsel of the United Company. Endicott was in favor of putting up the

million dollars, and Keith and Hanan were against it (Winslow, R. Vol. 1, p. 483, lines 44–45; p. 484, lines 1–15; Endicott, p. 579, lines 28–32).

Winslow once more Breaks off Negotiations.

Winslow testified,—

> "What was decided then was to decline to purchase, without seeing the machines, having them fully examined by our experts, and a full report made to me by them as to the advantages that there might be in those machines."

That decision was communicated to Plant (Winslow, R. Vol. 1, p. 484, lines 16–21).

Plant Employs Smith to Effect a Sale.

Harry A. Smith, of Worcester, Mass., testified that he had frequently argued with Plant that his patents and the United Company's patents ought to be put together so that the trade could get their value and that he had offered his services as an intermediary in effecting a sale to the United Company (R. Vol. 1, p. 769, lines 1–8, 19–25; p. 770, lines 14–20; p. 771, lines 26–29).

On July 21, 1910, Plant telephoned Smith from New York and asked him to come to New York to see him. Smith went to New York and Plant told him that he had been negotiating with the United Company and that the negotiations had been broken off. Plant then suggested to Smith for the first time selling his interest in the shoe factory as well as his patents. Plant asked Smith to get him in touch with Mr. Barbour, vice-president of the United Company, and Mr. Herrick, one of its counsel. Smith told Plant that he would not start at all unless Plant withdrew his demand for a million dollars before permitting the inventions to be examined, and Plant said he would withdraw it (R. Vol. 1, p. 769, lines 26–45; p. 770, lines 1–13, 34–44).

Smith Gets Plant in Touch with Barbour, Vice-President of the United Company.

Accordingly Smith first arranged an interview with Barbour, and Plant spent six hours talking to Barbour about the value of his inventions. Smith testified that they also saw Barbour the next day and that Barbour then decided to come to Boston to take the matter up with the directors of the United Company (R. Vol. 1, p. 770, lines 21–33; p. 771, lines 1–4).

Smith Gets Plant in Touch with Herrick, Counsel for the United Company.

Smith went to Mr. Herrick's summer home and also to his office in Boston and asked him to meet Plant. Herrick told him he would meet Plant if Plant's counsel approved, and Smith arranged for a meeting between Plant and Herrick in the latter part of July. Plant told Herrick that he wished to sell what he had to the United Company. Plant still objected to an examination of his machines through fear of infringement suits (Herrick, R. Vol. 1, p. 602, lines 17–40; Smith, p. 771, lines 5–6).

Shortly after Plant asked Herrick to go out to his shoe factory and took Herrick over the factory. Plant was still unwilling to have an examination. Herrick testified,—

> "I told him that there could be no negotiations excepting on the most careful examination and that there could be no agreements whatever as to bringing any suits."

At this interview Plant said that "he was anxious to get out of business" and that he would like to sell his interest in the shoe business as well as his patents and inventions. He said that he would like to retire from business and that—

> "*he had always planned to so arrange himself that he would be free to sell out to the United Shoe Machinery Company*" (italics ours) (Herrick, R. Vol. 1, p. 603, lines 1–13, 20–34).

Smith Sees Winslow.

Smith saw Winslow on the 6th or 8th of August. Winslow told him that if Plant's patents had value he would look at them for his company, but that he would never buy them until he had looked at them (Smith, R. Vol. 1, p. 771, lines 6–7; p. 772, lines 29–35).

Plant Asks Endicott to Arrange Another Meeting with Winslow.

Early in September Plant saw Endicott and told him that he would make one more throw of the dice if Endicott was willing to arrange a meeting for him with Winslow. Plant told Endicott that his price was $6,500,000, but that he would give Endicott all that he got for it over $6,000,000. Endicott of course told him that he could not accept any commission. Plant did not say anything about selling his shoe company stock (Endicott, R. Vol. 1, p. 580, lines 3–19, 31–33).

The Meeting on September 13.

At Plant's request Endicott arranged a meeting on September 13. Plant, Winslow, Endicott, and Herrick were present. At that interview Winslow again told Plant that he would not consider any proposition or carry on any negotiations unless Plant would permit the United Company's experts to examine his machinery and ascertain the value of his inventions to the art of shoemaking, and that that was all he was interested in (Winslow, R. Vol. 1, p. 484, lines 26–35; Endicott, p. 580, lines 20–30). Herrick testified that Winslow told Plant—

> "that there would be no consideration of that machinery without a careful examination by men who were competent to value what Mr. Plant had, and that there would have to be time enough for that, and that there would have to be a thorough examination,"

and that the United Company was ready to negotiate on the basis of the actual value of Plant's inventions, but only after

an examination, and that if they couldn't have the examination they wouldn't deal at all (Herrick, R. Vol. 1, p. 604, lines 10–21, 41–44; p. 605, lines 1–2).

After a final statement by Winslow that he would have no further negotiations without an examination of Plant's machines, Plant consented to the examination on the understanding that no more suits for infringement of the United Company's patents should be filed for two weeks (Winslow, R. Vol. 1, p. 484, lines 35–45; p. 485, lines 1–6).

The Examination of Plant's Machines.

On September 14 and 15 Messrs. Winslow and Howe, with a committee of machinery experts and patent experts, went to the Plant shoe factory and examined the machines embodying Plant's inventions. The experts continued their examination on the 16th. They reported to Mr. Winslow each night (Winslow, R. Vol. 1, p. 485, lines 4–14; p. 559, lines 34–36; Warren, R. Vol. 1, p. 785, lines 21–34; p. 808, line 29–p. 809, line 3; p. 815, lines 19–21).

The Meeting on September 16.

Plant, Endicott, and Winslow met on September 16 after the examination by the experts. Plant then said that he wanted to get out of business altogether and offered to sell his patents and his stock in the Plant Shoe Company, 60 per cent. of its total capital stock, for $8,000,000 or $8,500,000. Winslow told him that that was an impossible figure and that that price didn't interest him. That ended that interview (Winslow, R. Vol. 1, p. 486, lines 1–44; Endicott, p. 580, lines 34–45; p. 581, lines 1–13).

The Meeting on September 20.

Plant asked Endicott to arrange another interview with Winslow. Endicott arranged one on September 20 at which

Plant, Winslow, Herrick, and Plant's attorney Carr were present (Winslow, R. Vol. 1, p. 487, lines 1–10; Endicott, p. 581, lines 30–39; Herrick, p. 605, lines 34–37).

At this meeting Plant said again that "he wanted to get out of business entirely" and that "he did not want to embark in the shoe machinery business." He said to Herrick:—

> "'I am sick of all this waiting. Everybody advises me to sell. I have talked with Mr. Whipple; he advises me to sell. I have talked with Mr. Brandeis; he advises me to sell. And everybody advises me to sell. I could keep on and make a lot of money, but I prefer to get out of the business and pay my debts and retire on my cash.'"

Plant finally offered to sell his patents and inventions and his stock in the Plant Shoe Company for $3,000,000 in cash and $1,500,000 in stock of the United Company at par. This offer was accepted by Winslow subject to approval by his executive committee (Winslow, R. Vol. 1, p. 487, lines 11–42; Herrick, p. 606, lines 7–33).

The Purchase is Made.

On the morning of September 22 a check for $500,000 was delivered to Plant's attorney, Plant having insisted that that amount should be paid on account. The agreements were then prepared and were signed during the night of that day (Winslow, R. Vol. 1, p. 488, lines 1–5; Herrick, p. 607, lines 5–10, 21–39).

Throughout the Negotiations Mr. Winslow never Made any Offer to Plant.

Throughout these extended negotiations, begun by Plant and renewed by him several times after Winslow had definitely broken them off, Winslow never made any offer to Plant. He testified on cross-examination,—

"I didn't make any proposition at any time, from the time I first met him until the time that we parted, of any sort, name, or description" (R. Vol. 1, p. 559, lines 16–18).

Mr. Herrick testified,—

"There never was any offer made to Mr. Plant at any time during all the negotiations" (R. Vol. 1, p. 606, lines 36–37).

Finding of the District Court as to the Negotiations.

The District Court said of these negotiations (Dodge, J., R. Vol. 1, pp. 1142–3):—

"There is uncontradicted evidence of declarations by Plant in 1909, that his intention was to equip these two other factories and his own with his new machines and then sell out to the United Company. That the effecting of such a sale, and not any actual competition in the market with machines then in use, was his real purpose, is hardly left doubtful by the history of his subsequent negotiations with the defendants. These, set on foot by him and at first stopped by the defendants' unqualified rejection of his proposals, he persisted in renewing, through various intermediaries, until they resulted in the purchase above described. It appears without contradiction that Plant was for a time under agreement to pay an influential shoe manufacturer, whose assistance he procured, $250,000 if he succeeded in bringing about the desired sale; also that he later offered and ultimately had to pay a commission of five per cent. on the price obtained to another intermediary who undertook to put the transaction through for him.

"The evidence regarding Plant's negotiations with the defendants sufficiently proves that they were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else; but that, on the contrary, all the efforts towards such a purchase were made by him. The first overtures toward it came from him; he began them soon after he had put his machines into the Plant factory; they led to interviews, all of which he sought and at which his proposals were declined without encouragement to renew them. Nowhere in the evidence is any

indication found that before Plant's overtures were thus made any purchase whatever from him had been suggested to or considered by the defendants."

Allegations in the Petition that Certain Shoe Manufactu ers were Endeavoring to Acquire Plant's Patents and that Defendants Made the Purchase on that Account.

The petition alleges that on September 22, 1910, certain shoe manufacturers were in conference with Plant with a view to either purchasing an interest in his inventions or making some arrangement which would enable them to obtain machines for use in their factories; that defendants were advised of the purpose and intent of said manufacturers, knew that if they made an arrangement with Plant defendants' machines would be removed from their factories and competition would thus be created; and made the agreement for the Plant purchase in order to prevent such competition.

The evidence shows that on September 22, 1910, a number of shoe manufacturers, members of the Shoe Manufacturers' Alliance, were in Boston, having come to confer with Plant (R. Vol. 1, pp. 114–5).

What these manufacturers really thought Plant had to sell is shown by the testimony of petitioner's witness McElroy, who testified regarding the inspection of the Plant machines which he made for them in 1910:—

> "The object of that inspection was looking to buying or acquiring *the Plant patents.* There were some western manufacturers that contemplated this, and I was sent as an expert to look over the machinery and make a report" (italics ours) (R. Vol. 1, p. 189, lines 8–12).

Prior to this time Plant had been negotiating with the United Company for several months; he had agreed on September 13th that the United Company's experts might examine his machines and on September 20th had practically concluded the sale to the United Company. There is absolutely no evidence that the United Company knew of any negotiations with these shoe manufacturers until the sale to

the United Company was practically concluded on September 20th.

Mr. Howe first heard the Western manufacturers were in Boston on the morning of September 23d. The United Company had paid $500,000 before that (R. Vol. 1, p. 688, lines 16–21).

On the evening of September 20th Plant told Winslow he should put up to the Western manufacturers a proposition which they could not accept (R. Vol. 1, p. 488, lines 18–21).

And he did (R. Vol. 1, p. 115, lines 17–21).

There is not the slightest evidence, therefore, that possible negotiations with these shoe manufacturers were known to the United Company prior to the practical consummation of the purchase, or in any way affected the United Company's action. Furthermore, the evidence shows that Plant desired to sell not only his patents but also his interest in the Plant Shoe Company and retire from business. The evidence shows that no such purchase was contemplated by the shoe manufacturers, nor does it appear that they were in a position to carry such transaction through. It is quite evident that Plant preferred and desired to sell to the United Company if such transaction could be consummated.

It is also clear from the record that if Plant had not refused for about two months to permit the United Company's experts to examine his machines the sale would have been consummated long before the Western manufacturers came to Boston. Mr. Winslow testified that, at the very beginning of Plant's efforts to make the sale,—

> "I told Mr. Plant that I should be very glad to acquire his patents if he had the valuable improvements and inventions that he claimed to have; but, of course, I could have no opinion regarding the value of his machines unless I had my experts examine them" (R. Vol. 1, p. 480, lines 2–6).

This was on June 16, 1910 (R. Vol. 1, p. 557, lines 36–37; p. 558, lines 40–41).

After the examination was made on September 14–16, the transaction was completed in less than a week. The history of the negotiations (*supra*, pp. 565–573) shows that the pur-

chase would undoubtedly have been effected much earlier had it not been for Plant's continued refusal to permit the machines to be examined.

The Great Benefits which have Resulted from the Plant Purchase would not have been Secured if the Western Manufacturers had Purchased the Plant Patents.

The United States contends that the industry would have been equally as well off if the Western manufacturers had purchased Plant's patents. But this is not so. None of the great benefits which have resulted from the purchase of Plant's patents by the United Company would have been secured if the Western manufacturers or any other party had purchased those patents.

A. A purchase of Plant's patents by any other party would not have permitted the combination of Plant's patents with the United Company's patents, which has resulted in much better machines than either the United Company or Plant had before.

We have shown that one of the great benefits resulting from the Plant purchase has been the incorporation of the valuable Plant inventions in the United Company's superior modern machines,—the combination of the inventions embodied in the United Company's superior machines with Plant's inventions which, although extremely valuable, had been incorporated by Plant in machines which were practically copies of old machines long before discarded by the United Company (*supra*, p. 551). As we have seen, the inventions of 43 Plant patents are incorporated in 26 of the United Company's most important machines (*supra*, p. 550). It is perfectly obvious that that combination of the valuable inventions of the United Company and Plant could have been secured in no other way than by common ownership of the United Company's patents and Plant's patents.

B. The intolerable conditions which would have resulted from the great number of infringements, both by the United Company's machines of Plant's patents and by the Plant machines of the United Company's patents, would not have been avoided in any degree if the Plant patents had been purchased by another party.

A purchase of Plant's patents by the Western manufacturers or by any party other than the United Company would not in any way have remedied or relieved the intolerable conditions which would have resulted from the great amount of patent litigation existing and threatened on account of the large number of infringements by both Plant and the United Company of the other's patents. As already explained in detail, there were 708 distinct cases of infringement of the United Company's patents by 37 of Plant's machines, including practically all of his important machines, while, on the other hand, a large number of claims in 20 Plant patents were infringed by 15 of the United Company's machines, including some of the United Company's most important machines (*supra*, pp. 551–554). A purchase by the Western manufacturers would merely have substituted them for Plant as a party to interminable litigation, with all the unfortunate results to the shoe machinery industry, the shoe manufacturers, and the public which would certainly have followed (*supra*, pp. 554–556).

Finding of the District Court as to These Allegations.

The District Court said with reference to these allegations (Dodge, J., R. Vol. 1, p. 1144):—

> "But the evidence fails to support these allegations. It does not charge the defendants with any knowledge, at the time they came to terms with Plant, of any negotiations between him and the manufacturers referred to. No reference appears to have been made to them or their doings during the defendants' negotiations with Plant, and no reason is found to believe that apprehension lest he might conclude some arrangement with them induced

in any degree the defendants' final agreement with him. Were it important, it might be added that so far as the evidence can be said to show anything regarding Plant's intentions toward them, it shows that he never really meant to enter into any arrangement with others if he could get the defendants to take off his hands everything which he desired to sell; and no purchase so extensive as this appears to have been at any time contemplated by the manufacturers mentioned in the petition."

The Claim of the United States that Other Capitalists Contemplated Purchasing Plant's Patents.

The United States attaches much importance to the testimony of Mr. Herrick, one of the counsel for the United Company, in regard to an interview which he had with Mr. Wallace, president of the Central Trust Company of New York, at the request of Mr. Wallace. In its brief and argument at the former hearing the United States presented this insignificant and unimportant incident in a wholly different light from that which is given by Mr. Herrick's testimony. The effect of that testimony is merely that Mr. Wallace was trying to see whether he could get the United Company to make an offer with a view, in case it did, of trying to buy Plant's patents at a lower figure and make something on the turnover. "They had no idea of putting any money out" (R. Vol. 1, p. 613, lines 44–45).

The utter insignificance of this incident is shown by the following testimony of Mr. Herrick:—

> "Mr. Wallace said that he and this large international banking concern, which had an immense amount of influence, were seriously considering acquiring an interest in the Plant factory. *I did not believe him.* My reasons for thinking that Mr. Wallace did not mean what he said were, first, I knew Mr. Wallace; then he spoke in a perfectly easy, comfortable way about how he was going to do these things. I was convinced he did not know what he was talking about and that *all he had in mind was to see if he couldn't make a turn by getting a bid from the United Company and then dealing with Plant. He almost said so*" (italics ours) (R. Vol. 1, p. 614, lines 31–40).

There is no evidence that the United Company's officials ever heard of this interview. It is inconceivable that if they had they could have been influenced by it to the slightest degree.

9. MISSTATEMENTS AS TO FACTS IN MR. CHAPMAN'S DEPOSITION REGARDING INFRINGEMENT OF PLANT PATENTS BY UNITED COMPANY MACHINES.

In Mr. Chapman's deposition (R. Vol. 2, pp. 2836(91–119)) controverting Mr. Howard's testimony that fifteen United Company machines infringed twenty of Plant's patents, in which Mr. Chapman took issue as to six only of those fifteen machines, Mr. Chapman misstated the facts as to the construction of the infringing mechanism of three of the six machines.

As to Loading and Attaching Machine—Model B: McKay Automatic Heel, Mr. Chapman admitted ignorance of the matters inquired about in Cross-Ints. 41 and 42 (R. Vol. 2, p. 2836(98)), which interrogatories were directed to the essence of the infringement set forth in Defendants' Exhibit 274 (R. Vol. 5, p. 751). Compare his answer to Int. 20 (R. Vol. 2, p. 2836(92)), as to which Mr. Browne comments, "Mr. Chapman is wrong as to the facts" (R. Vol. 2, p. 2836(130), Int. 6).

Again, attention is called to a portion of his testimony regarding Indenting and Burnishing Machine: Goodyear Welt:—

> "*Cross-Int.* 96. Did it also comprise worm and worm wheel connections geared to and to rotate said table in any of its positions?
> "*Ans.* No.
> "*Cross-Int.* 97. What mechanism referred to in my last question did it lack?
> "*Ans.* All the mechanism stated by the question."
> "*Cross-Int.* 100. And you feel as positive in this matter as you do with regard to your other statements which you have made as to machines which you examined?
> "*Ans.* Yes" (R. Vol. 2, p. 2836(109)).

Mr. Browne testified that the machine had the mechanism referred to in Cross-Int. 96, above quoted, "which Mr. Chap-

man evidently overlooked in his examination of this machine" (R. Vol. 2, p. 2836(127)).

In his testimony in regard to Pulling-over Machine—Model B: Rex, Mr. Chapman was handed a copy of patent to Ashton, No. 1,030,763, June 25, 1912 (Defs.' Ex. 351, a physical exhibit), and was asked:—

> "*Cross-Int.* 136. . . . whether or not it illustrates in the drawings and describes in the specification any features of the pulling-over machine examined by you and in regard to which you testified in your direct examination?
>
> ". . . (Objection not quoted.)
>
> "*Ans.* I do not recognize in the patent anything of the construction of the machine which I examined as stated by me in my direct examination" (R. Vol. 2, p. 2836(117, 118)).

Mr. Browne testified that this Ashton patent showed in one of its figures substantially the infringing construction of the machine in question, and that "Mr. Chapman when he testified evidently had forgotten the construction of the Model B Rex machine" (R. Vol. 2, p. 2836(124), Int. 4). Mr. Chapman also testified that he found a gauging device in that machine—

> "consisting of a pivoted, bent lever, having in one end an aperture through which had been thrust a nail" (R. Vol. 2, p. 2836(117), Int. 134).

Mr. Browne stated,—

> "This is not true of the Model B Rex machine" (R. Vol. 2, p. 2836(124), Int. 4).

Thus the record shows that, although he was afforded "ample opportunity for the examination of all the machines" about which Mr. Howard testified (Stipulation, R. Vol. 2, p. 2836(158)), Mr. Chapman did not, when he testified, remember the construction of the infringing parts of the machines, but nevertheless had no hesitation in making positive statements about them. It is submitted that this evidence as to his superficial work casts a cloud upon all his testimony in this suit.

10. FINDING OF THE DISTRICT COURT AS TO THE REASONS FOR THE PLANT PURCHASE.

The record completely supports the conclusions which were reached by the District Court, after summarizing the evidence which we have reviewed:—

> "The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition. No such competition or prospect of competition at the time is proved as would justify such a conclusion. . . . The property acquired being proved to have been worth the amount paid, the argument that the defendants were so anxious to hold a monopoly as to be willing to pay $6,000,000, or any other large sum, in order to get rid of a competitor, or that this was done in pursuance of a general plan conceived in 1899, fails completely" (Dodge, J., R. Vol. 1, pp. 1145, 1146).

11. THE PRACTICAL IMPOSSIBILITY OF SEGREGATING THE PLANT INVENTIONS PROVES THAT THE PLANT PURCHASE WAS A NORMAL AND LAWFUL TRANSACTION.

We have seen (*supra*, pp. 541–550) that the Plant inventions have been assimilated into the United Company's machines and that the United Company has made improvements upon those inventions which are built upon and around them, interwoven with them. Those inventions, covered by 43 Plant patents, have been incorporated in 26 of the United Company's machines, including many of its most important machines, such as the Model K Welter, the Model M Outsole Stitcher, the No. 5 Lasting Machine, the

Model B Heeling Machine, the Lightning Heeling Mach[illegible], the Pulling-over Machine, and the Model E Rounding [illegible] Channeling Machine. To take those inventions out of [the] United Company's machines would leave unworkable, wo[rth]less skeletons; there are no machines to take their places, [for] the machines which they superseded have been junked; [and] the United Company would have to develop new mach[ines] and build tens of thousands of them to take the places of [the] stripped machines. This ruthless surgery would set b[ack] the development of the industry a full decade.

It is respectfully submitted that this extraordinary sit[ua]tion is in itself the strongest evidence that the purchase [of] Plant's patents and inventions was a normal and lawful s[tep] in the normal development of the business of a concern which is engaged in inventing, manufacturing, and putting out patented machines.

12. CONCLUSION AS TO THE PURCHASE OF PLANT'S PATENTS AND INVENTIONS.

Even if it were unlawful, the acquisition in September, 1910, of Plant's patents and inventions could not reasonably be regarded as proving the alleged intent conceived early in 1899, more than eleven years before and many years before Plant had made any inventions, to monopolize shoe machinery and destroy existing competition, as is set forth in the petition. Nor could this transaction be connected to that alleged intent on the theory that it was but one of a series of acquisitions extending through the intervening years and made in pursuance of the alleged original scheme, since, as we have shown and as the District Court found, the other acquisitions were not unlawful, they were proper and reasonable steps in the normal and lawful development of the United Company's business and, accordingly, they were not made in pursuance of any unlawful purpose.

But the Plant transaction was not unlawful. It is established by the record and the findings of the District Court that Plant was not in competition with the United Company;

that he did not desire or intend to go into the shoe machinery business; that his sole purpose was to sell his patents to the United Company so that their purchase was a mere purchase of inventions made for the express purpose of being so purchased and combined with the United Company's patents; that the machines which he had constructed and installed in his own shoe factory were crude, really only experimental, constantly breaking down, and making shoes by obsolete and very expensive methods; but that in those commercially unsuccessful machines Plant had incorporated some very valuable inventions which were capable of use in the United Company's superior machines to the great benefit of the shoe manufacturing industry; that both the machines of Plant and those of the United Company infringed a large number of patents owned by the other so that there would have been a great amount of litigation which would have resulted in chaotic and intolerable conditions; that the great benefit to the industry which would result from incorporating Plant's valuable inventions in the superior machines of the United Company and from the avoidance of the great amount of threatened litigation were the sole reasons for the purchase of Plant's patents by the United Company; and that the Plant patents were worth more than the United Company paid for them.

The lawfulness of the Plant purchase can hardly be questioned. The purpose of the purchase was to enable the United Company to perfect its machines and avoid chaotic litigation. The transaction was, therefore, not unlawful because of the intent with which it was done. And obviously it was not inherently unlawful. Indeed, the evident advantages to the shoe machinery industry and to the shoe manufacturers of combining the Plant patents with the United Company's patents, were so obviously beneficial to the public generally and so normal and natural a transaction that, like the formation of the United Company considered in *United States* v. *Winslow*, supra, it was not only not inherently unlawful, but no intent could make it unlawful.

As we have stated, the Sherman Act is directed only against restraints which prejudice the public interests.

In *Nash* v. *United States*, 229 U. S. 373, the Court said (p. 376),—

> ". . . only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

In *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, the Court said (p. 174),—

> "In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented."

In the present case, as we have clearly shown, had the Plant purchase not been made, the public would have been deprived of those machines which combined the latest and best improvements known to the art of shoe machinery, and shoe manufacturers would have been obliged to use far less efficient machines. A transaction which necessarily resulted in so great benefit to the industry, a result which could not otherwise have been accomplished, can clearly not be said to "prejudice the public interests" or produce "harm to the general public." On the contrary, such a transaction is one which public policy must necessarily favor from its self-evident advantage to the public, whatever the motive or intent which induced it. As such a transaction cannot result in "harm to the general public" or "prejudice the public interests," it is inherently lawful and cannot fall within the prohibitions of the Sherman Act.

If—which we deny—it could be contended that the transaction was not so beneficial to the public as to be necessarily lawful, but that it was a transaction which unlawful purpose might bring within the prohibition of the statute, the record clearly shows that no uniawful purpose existed. Being entered into for the purpose of enabling the United Company to produce more efficient machines and to avoid chaotic patent litigation, which would not only have been very annoying and expensive, but would have resulted in preventing its putting out even as efficient machines as it was then manufacturing, the transaction was clearly a "normal" contract entered into

for the purpose of "reasonably forwarding personal interest and developing trade." (*Standard Oil Co.* v. *United States*, supra.)

Can it possibly be contended that the purchase was not made for the direct purpose of acquiring and using the Plant patents and ending the existing and threatened patent litigation? We do not understand that the United States denies that these purposes existed. While the United States has attempted to minimize the value of the patents, it must admit that they were bought to be used by the United Company, that they have been so used, and that they have proved to be of very great value to the United Company and the shoe manufacturers. The contention of the United States apparently is that the United Company feared that Plant might become a competitor, and that this was an additional inducement to make the purchase. The record clearly refutes this contention, showing that the officials of the United Company believed that the Plant machines would not be commercially successful, that they purchased Plant's patents at his solicitation, that they would not purchase until after a thorough examination had convinced them that the patents would be of great value in increasing the efficiency of the United Company's machines, and that they realized the chaotic patent situation which existed and the intolerable conditions which would result. If it can be doubted that these were the sole purposes which actuated the transaction, it certainly cannot be questioned that Plant's patents were of great value and that the United Company desired to use them, and the most that can be contended is that possible competition by Plant was an added motive for the purchase. But if possible competition by Plant influenced the United Company, which we deny, this can only have been because the United Company believed Plant's patents to be so valuable that he would be able to offer machines attractive to customers which the United Company by reason of Plant's patent monopolies could not make. Plant had no established shoe machinery business or good-will, and the machines which he had constructed were so defective and unsatisfactory that if he had desired to go into the shoe machinery business he would have been obliged to develop and build a new line of machines. He had no better or greater

opportunity to compete with the United Company than any other one of thousands of American business men except in one respect, namely, his patents. If he could enter the shoe machinery business successfully, it would be solely because his patents enabled him to offer machines which the United Company was legally restrained from making. In other words, if the United Company feared competition, it was a competition which consisted in offering machines which the United Company could not manufacture, and, therefore, a competition which it could not meet on equal terms and which neither public policy nor the Sherman Act would prohibit it from meeting by the acquisition of the patents. In attempting to meet such competition, the United Company would be under a legal restraint, the restraint imposed by the lawful patent monopolies held by Plant. The Sherman Act was intended to prevent unnatural, abnormal restraint imposed on "the free flow of commerce." The removal of a restraint imposed by patent monopolies through the purchase of such monopolies cannot constitute the imposition of a restraint on the free flow of commerce such as the Sherman Act was designed to prohibit.

For a further discussion of decisions of this Court as to the right to acquire patents see *supra*, pages 486–487.

VII.

THE CHARGE THAT THE UNITED COMPANY COMMITTED VARIOUS UNFAIR, OPPRESSIVE OR MONOPOLISTIC ACTS IS UNFOUNDED.

1. THE CHARGES SPECIFIED IN THE BILL OF PARTICULARS.

In Section VI of the petition (R. Vol. 1, p. 999) defendants are charged with having made various threats or committed various unfair and oppressive acts. No specific instances are set out in the petition, but a bill of particulars, setting forth the specific instances charged, was filed during the course of the trial (R. Vol. 1, p. 1075). The bill of particulars sets forth over fifty different alleged acts or threats. **As to at least thirty no evidence whatever was offered by the United States. This fact illustrates the unfounded character of the charges.**

Some instances consisted merely of requests by the United Company to lessees that they conform to the terms of their leases. In a few cases the United Company undertook to enforce such terms. In several instances these leases had been put out by the constituent companies prior to the formation of the United Company. In every such instance if there is criticism it must be with the terms of the lease and not with the request to observe or the enforcement of these terms.

Some instances consisted of alleged threatening statements of officers of the company made to other shoe machinery manufacturers as to what it would do. In no case was the alleged threatened action taken. These alleged threats are all disputed by the company and involve the credibility of witnesses and the truth or probability of their statements.

Practically all of the evidence introduced by the United States with respect to these alleged threats or acts came from patent owners or competitors who had sought unsuccessfully

to sell out their property to the United Company, or from lessees with whom the company had had a disagreement.

The number of instances referred to by the United States is surprisingly small, considering that the entire business life of the company has been examined and extraordinary efforts made to put in evidence all acts or remarks of the officials or agents of the company occurring over this extended period of time, as to which any contention of unfairness or dissatisfaction could be made. The company has over 1,000 lessees with whom it is constantly in touch through its service men and with whom it is constantly dealing, making leases for new machines, taking back old machines, checking up royalties and furnishing service and new parts. Owing to the great variety of machines, of findings, and of supplies used in the shoe machinery business the United Company is constantly being asked to acquire new patents and businesses. For example, 493 different ideas, suggestions, and inventions have been submitted to the company by persons not employed by it as inventors, and have been declined (Defs.' Ex. 222, R. Vol. 5, p. 370). Over 75 different concerns have been offered for sale to the United Company and their purchase declined (Defs.' Ex. 233, R. Vol. 5, p. 527).

The District Court, after considering the facts in respect to such of these transactions as were relied on by the United States in argument, concluded as follows (R. Vol. 1, pp. 1152–3):—

> "The history of the proceedings in this case indicates that efforts which may fairly be described as extraordinary have been made to bring before the court, so far as possible, all sayings or doings of any of the numerous defendants or their representatives, during the period beginning with 1899 and ending with 1911, which might afford ground for charging them with oppressive, coercive, or like unfair conduct toward competitors of the United Company or the public. In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignificant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects."

In view of the District Court's finding and the complete failure of the United States to substantiate these charges, it hardly seems necessary to consider the evidence relating to them in detail; however, a detailed statement of the evidence is given in the Appendix (see Appendix II, *infra*, pp. 743–807), and we will summarize here the evidence relating to those charges which were supported by any evidence:—

1. The United States charged that the United Company removed its machines from Peter Tessier & Company's factory where a competing machine was used.

The evidence shows that Tessier leased seven machines from the United Company. He obtained other machines to do his work and discontinued entirely the use of the United Company's machines except that he used the auxiliaries without paying anything for such use. The United Company therefore removed its machines which were not being used at all or were being used without payment (see Appendix II, p. 743).

2. The United States charged that the United Company removed its machines from Bottomley's factory where a competitor's machine was used.

The evidence shows that Bottomley had stopped using the United Company's machines in his factory and notified it that he would pay no further royalties on them. The United Company therefore merely removed machines which the lessee no longer desired to use or pay for (see Appendix II, p. 746).

3. The United States charged that the United Company threatened to take back its machines from T. D. Barry Company in order to force the removal of competing machines.

The evidence shows that the T. D. Barry Company gave up the use of its Goodyear welters and stitchers, but continued to use Goodyear auxiliary machines without paying any royalty for them. The United Company, therefore, brought a replevin suit to take back its machines. The dispute was adjusted, and Barry retained the United Company's machines (see Appendix II, p. 748).

4. The United States charged that the United Company threatened Curtis & Jones and caused them to remove from their factory other machinery.

The evidence shows that Curtis & Jones in 1897 had agreed with the old Goodyear Company to use its turn machines ex-

clusively in consideration of a 50% reduction in royalties. They broke this agreement and their attention was called to it and they gave up the use of the other machines. The superintendent of the factory testified he made up his mind that the Goodyear machines were better and cheaper to operate and that the United Company's service was preferable (see Appendix II, p. 750).

5. The United States charged that Hilliard & Tabor installed a Haverhill Turn Sewing Machine and the United Company threatened to make the terms of its lease covering its turn machines more onerous if the lessee used the Haverhill machine.

The evidence shows that Hilliard & Tabor had a Goodyear Turn Machine and then installed a Haverhill machine, continuing to use the Goodyear auxiliaries without payment of royalty. After some months Mr. Hilliard happened to be at the United Company's office and his attention was called to the situation, and he was offered the initial payment form of lease if he wished to continue using the Haverhill machine (see Appendix II, p. 754).

6. The United States charged that the Harsh-Edmonds Shoe Company desired to take a clicking machine from a competitor and was warned and threatened not to, and therefore took the United Company's machine.

It appears that the Harsh-Edmonds Shoe Company obtained a clicking machine from the Richardson Company. Mr. Harsh objected to the United Company's lease covering clicking machines. He testified that Mr. Wilson, of the United Company, told him, or, as appeared on cross-examination, he thought intimated to him, that it would be better for him to cease his activity against the United Company and take things as they were. Mr. Wilson pointed out to him that he already had another lease of the same character. Mr. Wilson was dead at the time of the trial. Mr. Harsh took the United Company's machine, which he admitted was the only commercial machine in the market. He also admitted that Wilson's advice was sound (see Appendix II, p. 756).

7. The United States charged that a threat of onerous terms was made to George A. Learned if he continued to use competitors' machines.

Mr. Learned testified he had Goodyear machines. He later

obtained a Haverhill machine and claimed that Mr. Winslow told him he must pay on all the shoes he made or be driven out of business, and the least the United Company would do would be to take out its machines. This evidence was absolutely contradicted by Mr. Winslow and by Mr. Brown, who was present at the interview. Mr. Endicott testified that Learned later admitted he had been mistaken. No action was taken by the United Company, and Learned is still using the Haverhill machine (see Appendix II, p. 759).

8. The United States charged that William Barbour, one of the directors of the United Company, made threatening statements to James N. Darrah, of the Standard Shoe Machinery Company, a competitor of the United Company.

Mr. Darrah testified Mr. Barbour told him he was making a big mistake not to sell; that if the United Company could not buy out its competitors it crushed them; that he could not get any money to compete, as the United Company's influence was too great with the banks both in Boston and New York. Mr. Barbour absolutely denied making any such statements. Mr. Darrah was shown to be without financial responsibility or settled business (see Appendix II, p. 761).

9. The United States charged that E. P. Hurd, of the United Company, threatened H. E. Cilley.

Mr. Cilley testified that he interviewed Mr. Hurd as to the sale of a leveling machine which Cilley had invented, and that Mr. Hurd said, "Cilley, you are thick. If you were offered fifteen or twenty thousand dollars I think under the circumstances you ought to be very well satisfied," and further told him that he could not do business except on the United Company's sufferance. It did not appear that Cilley was interfered with in any way. Cilley had been in litigation with United Company since 1903 (see Appendix II, p. 764).

10. The United States charged that Mr. Winslow threatened Charles H. Morse, who was endeavoring to market the Frechette pegging machine and a slugging machine.

Mr. Morse testified he called on Mr. Winslow about a purchase of his business. Mr. Winslow said, "You don't suppose we are going to allow you to put them on the market" (meaning Mr. Morse's machines). Mr. Winslow denied making such a statement. It further appeared probable that Mr. Morse

had not seen Mr. Winslow since the United Company was formed, and that the conversation referred to, if it took place at all, occurred before the United Company was formed. It did not appear that Mr. Morse was interfered with in any way (see Appendix II, p. 765).

11. The United States charged that E. P. Hurd, of the United Company, threatened G. H. Clark and refused to let him have one of the United Company's machines to experiment with.

Mr. Clark testified he had invented a method for molding or lasting shoes and put one of his machines in a shoe factory; that he called on Mr. Hurd to get a lockstitch machine to put in the same factory and Mr. Hurd told him the United Company must protect its interests and not put one of its machines into a factory for Clark to experiment with (see Appendix II, p. 766).

12. The United States charged that Kimball & Hadley, who manufactured needles and awls, were threatened by the United Company, and that in consequence they sold their business to the United Company.

Hadley testified that Bayley, an agent of the United Company, told him that he could not manufacture needles as cheap as the United Company, which could give them away if necessary. Mr. Bayley was in a sanitarium and could not testify. Mr. Hadley also testified that certain manufacturers had stated that the use of his needles and awls was in violation of the leases of the United Company. This testimony was absolutely denied by the manufacturers, and no lease of the United Company does contain such a provision. Hadley had been unsuccessful in litigation with the United Company and had been enjoined by the court (see Appendix II, p. 767).

13. The United States charged that three operatives of the Plant factory were employed by Willson, general manager of the United Company, to organize a union of the employees at the factory and start a strike.

These three men testified they called on Mr. Willson, who agreed to pay them $2,000 apiece and their expenses if they would organize the employees of the Plant factory and start a strike. They testified they spent $1,500 in entertaining the employees and giving them a good time. They testified their

wages averaged about $15 a week, and this sum represented the savings of eleven or twelve years. They had no papers, receipts, or written evidence of any kind to support their story, claiming they had destroyed all their papers and the list of operatives' names. Their story was flatly contradicted by nine operatives in the Plant factory, who testified that they worked in the same room with the men who claimed they were so employed, and knew them well, and they had no knowledge of any union being organized or of any strike being attempted, and that no money was spent among the employees as testified to.

The testimony of these witnesses is incredible (see Appendix II, pp. 776–779). The District Court said of it (R. Vol. 1, p. 1152),—

> "Not only does the evidence of these three witnesses appear unworthy of belief in view of its improbability, its lack of corroboration, and the evidence tending to discredit it, but it is difficult to understand how the petitioner could seriously have expected the court to accept such testimony, or have considered itself justified in offering it."

14. The United States charged that in 1910 the agents of the United Company induced a former employee of the Plant Company to demonstrate one of the Plant machines.

This was not denied, but was a harmless performance (see Appendix II, p. 780).

15. The United States charged that Mr. Winslow threatened C. S. Johnson and duplicated his machine.

Mr. Johnson testified that he was connected with a company which put out a leveling machine, that he agreed with Mr. Winslow upon a sale to the United Company of the machine, but the contract for purchase when prepared was not satisfactory to him and he declined to sign it. Mr. Winslow suggested he had better sign it because he was going to have the business anyway, or words to that effect, and that shortly afterwards the United Company put a similar machine on the market. Johnson admitted he had a grievance against the United Company and was hostile to it (Appendix II, p. 782). Winslow denied any such conversation, and testified that the United Company had never interfered with Johnson's business.

16. The United States charged that Mr. Winslow threatened Frank L. Harmon, an inventor, and treated him unfairly in various ways.

Mr. Harmon testified he was developing some machine, and, having no business experience, he came to Mr. Winslow for information, who advised him that he was foolish to go into the machinery business with the small amount of capital he had. This conversation took place about twenty-five years before, and long previous to the formation of the United Company (see Appendix II, p. 783).

17. The United States charged that the N. D. Dodge Shoe Company was using machines of the Haverhill Shoe Machinery Company but when they desired to put in the United Company's welt machines they had to discontinue using the Haverhill machines because the installation charges demanded were so large.

The only evidence in support of this charge was hearsay evidence of L. H. Harriman, treasurer of the Haverhill Company, who testified that the Haverhill machines were discontinued by the Dodge concern because the Haverhill Company could not supply the welt machinery which they wanted and the United Company would not do so as long as they used Haverhill machines.

William G. Dodge testified that they tried the Haverhill machines while they were waiting for new machines of the United Company and that when the new machines were ready they discontinued the Haverhill machines because the United Company machines were more efficient (see Appendix II, p. 787).

18. The United States charged that Carlton & Hunt were using machines of the Haverhill Shoe Machinery Company and desired to obtain welt machines of the defendants, and were informed they would have to discontinue the use of the Haverhill machine or pay a prohibitive installation charge on their new machines.

The only evidence in support of this charge was the hearsay statement made by Harriman, an agent of the Haverhill Company, to the effect that Mr. Hunt had told him he could not get United Company's welt machines unless he discontinued using the Haverhill Turn Machine. Carleton & Hunt

were using in connection with the Haverhill machine a number of United Company machines for the use of which the United Company was not receiving any compensation (see Appendix II, p. 790).

19. The United States charged that one Webster was operating two Pettengill nailing machines, and because of this fact could not get pulling-over and toe-capping machines from the United Company without paying excessive installation charges, and he therefore removed the Pettengill machines.

Webster testified that the United Company offered him these machines without restrictions if he paid an initial payment or, as an alternative, offered him a restricted lease without the initial payment. The initial payment, he said, would cost him more than it would if he used the United Company's entire machinery (see Appendix II, pp. 790–791).

Charges as to Rebates.

The United States charged that the United Company granted rebates to manufacturers to effect an exclusive use of its machinery, (1) by making distribution of its stock to users of its Goodyear machines and, (2) by cancelling the royalty on the Gem Insole Machines to users of its other machinery.

1. On June 10, 1910, the United Company sent a circular letter to its lessees in which it stated that beginning January 1, 1910, it would create a fund by investing each year for three years in the common stock of the United Company a percentage increasing each year of the amounts received from lessees for the use of Goodyear Welting, Stitching, and Turn Sewing Machines in the United States. At the end of three years it agreed to distribute the entire amount of stock held in the fund among those lessees who used the Goodyear Welting, Stitching, and Turn Sewing Machines, and who should have faithfully observed the covenants of their leases, each lessee to receive a share of the fund proportionate to the amounts paid by him for the use of such machines. It agreed that not less than 15% of the amount received from welting and stitching machines and 10% of the amount received from turn machines would be so invested (P.'s Ex. 146, R. Vol. 4, p. 1067).

This offer did not require an exclusive use of the United Company's machines, but merely proposed to return a portion of the royalties received from lessees who used Goodyear welting, stitching, or turn machinery if they observed the covenants of their leases which, of course, they were morally and legally required to do. It amounted merely to a reduction in the price charged for this machinery, such reduction to be represented by stock of the United Company. This was not unlawful.

Wilder v. *Corn Products Co.*, supra.

The Attorney-General was notified during the pendency of this suit that the United Company proposed to carry out this plan, and he offered no objection to it (R. Vol. 1, p. 979, and Defs.' Ex. 344, R. Vol. 5, p. 953).

2. On January 29, 1900, the executive committee of the United Company voted that a rebate be granted to exclusive users of the company's machines, such rebate to be made by quarterly payments of amounts equal to the sums paid by them respectively as royalty on the Gem Insole Machines during the quarter for which the rebate was made (R. Vol. 1, p. 351, line 39–p. 352, line 6).

The United Company after it was formed acquired the Gem Insole Machines, which had been put out previously for a royalty charge of one-half cent per pair (R. Vol. 1, p. 430, lines 11–13). This machine was used in the manufacture of Goodyear Welt shoes. It was practically made, upon its acquisition, an auxiliary of the Welt Set. A number of these machines were already out on leases, and the machine was therefore put out by the United Company on a separate lease, but the royalty was repaid or credited to manufacturers who used the Goodyear Set of machines. It was necessary to have a general vote to apply to machines already out on lease as well as those which might be put out, and that was the purpose of the general vote (R. Vol. 1, p. 852, lines 33–41; p. 664, lines 31–36).

2. OTHER CHARGES OF UNFAIR, OPPRESSIVE OR MONOPOLISTIC ACTS, NOT SPECIFIED IN THE BILL OF PARTICULARS.

The United States also claims that the United Company has committed certain other unfair or oppressive acts, although they were not specified in the bill of particulars.

The evidence which the United States relies on to support these charges consists for the most part in the evidence of competitors who were endeavoring to displace the United Company's machines by their own and who in their testimony repeated statements alleged to have been made to them by shoe manufacturers.

In each instance the shoe manufacturer had the United Company's machines which he had agreed to use so far as he had work for them and substitution of the competitor's machines would have resulted in his setting the United Company's machines aside and letting them stand idle. This would, of course, have been a violation of the Full Capacity Clause in his leases.

Furthermore, it should be remembered that if a shoe manufacturer does not want a competitor's machines it is easier for him to say he cannot take them than to argue their relative merit with the salesman. Remarks made by shoe manufacturers to salesmen as to the reasons why they do not take such salesmen's machines cannot be treated with great seriousness.

So far as the evidence bearing on these charges shows anything material it shows that the United Company was always willing so to arrange a shoe manufacturer's leases that he could use with the United Company's machines any other kinds of machines obtained from competitors which he wished to use.

The evidence regarding these charges is reviewed and discussed in Appendix II (*infra*, pp. 791–804), and at the end of that discussion will be found quotations from the opinion of the District Court showing its findings as to the charges of unfair and oppressive acts and as to the charges that provisions of the leases have been arbitrarily enforced (Appendix II, *infra*, pp. 804–807).

VIII.

THE UNITED COMPANY HAS NOT MADE EXORBITANT PROFITS AS CHARGED IN THE PETITION.

The petition charges that the United Company has made enormous and unreasonable profits (R. Vol. 1, p. 1026). This charge is without foundation.

The only purpose of this allegation is to support the charge that one object of the defendants' conspiracy or project was to "enhance the cost of said machines to users thereof" (R. Vol. 1, p. 997). As the record shows that the United Company has very materially reduced the cost to shoe manufacturers of their machines by removing initial payments, reducing royalties in certain cases, and giving shoe manufacturers enormously improved machines, this charge of intent to enhance the cost of shoe machinery to shoe manufacturers is proved to be absolutely unfounded. If the economies and improvements introduced by the United Company have enabled it not only to reduce the cost to shoe manufacturers of their machines, but also to make large profits itself, this shows no illegal or unlawful purpose.

But the charge that the United Company has made unreasonable profits is without foundation.

The United States in support of this charge called Richard N. Morton, auditor of the United Company and of the United Shoe Machinery Corporation. His testimony showed that the earnings based on the net assets of the United Company and the United Corporation for the period from March 1, 1905, to March 1, 1911 (the period chosen by the United States), were 14.01% and the average rate per cent. of cash dividends to net assets was 7.10% (R. Vol. 1, pp. 359–360) (Defs.' Ex. 95, R. Vol. 5, p. 124).

Mr. Morton showed that the allegations in the petition that

the United Company had made $45,314,261 in the period from March 1, 1905, to March 1, 1911, was due to erroneously combining the earnings of United Shoe Machinery Corporation and its subsidiary, the United Company, thus including a large part of its earnings twice (R. Vol. 1, p. 360). The charge in the petition that these earnings were made on $20,000,000 of invested capital was not true (R. Vol. 1, p. 360). The net assets at all times during this period exceeded this amount and in 1910 amounted to $40,771,821.

In Mr. Morton's figures practically no value is placed on the patents owned by the United Company. The company has carried its patents during this period at only $400,000. The patents on the 150 new machines developed by the United Company, including the valuable patents on the pulling-over machine, which cost the United Company nearly $1,000,000 to develop, the clicking machine patents and numerous other valuable patents, including patents on thirty-nine machines which perform work previously done by hand, which have been invented and acquired by the United Company since its organization, have not been capitalized. If these patents were included in the assets at a fair valuation the percentage of profits would be greatly reduced.

The District Court found as follows with respect to this charge (R. Vol. 1, p. 1135):—

> "No support is found in the evidence, for the charge in the petition (Par. X) that 'enormous and unreasonable profits' had been made. . . . Nothing shown by the evidence warrants the conclusion that profits unreasonably out of proportion to the extremely large cost at which the business has been developed and is maintained, the great investment of capital it has required, and the enterprise, inventive skill, and business ability devoted to it, have been realized. Nor has it been made to appear that the charges made for the privilege of using the machines are exorbitant or unreasonable; especially in view of the great benefit to manufacturers using them, in lessening their cost of production."

IX.

FORMATION OF THE UNITED SHOE MACHINERY CORPORATION.

The petition charges (par. Ninth, R. Vol. 1, p. 1024) that the United Shoe Machinery Corporation was organized in 1905 and acquired practically all the stock of the United Company in order to provide means for distributing a portion of the accumulated surplus of the United Company and to secure better means for destroying competition and monopolizing commerce.

The United Shoe Machinery Corporation issued its preferred stock, share for share, for preferred stock of the United Company and issued 1½ shares of its common stock for each 1 share of the common stock of United Company (R. Vol. 1, p. 358, line 27).

The petition admits that the business of the United Shoe Machinery Corporation has been confined to holding the stock of the United Company (R. Vol. 1, p. 1025). No other evidence was introduced relating to the United Shoe Machinery Corporation. The charge that it was formed to restrain trade or monopolize more effectively is therefore shown to be without foundation.

X.

THE UNITED COMPANY HAS NO UNLAWFUL MONOPOLY OF SHOE MACHINERY. THIS FACT NECESSARILY DISPOSES OF THE PRESENT SUIT.

1. Introductory Statement.

The petition charges that the defendants in or prior to 1899 "determined to acquire a complete monopoly of the manufacture, sale and lease of shoe machinery" and that the various acts described in the petition were steps in carrying out this unlawful project (R. Vol. 1, p. 994). After setting forth the various acts charged it alleges that the defendants have thereby acquired a monopoly in shoe machinery (R. Vol. 1, p. 1027).

It is essential to the case of the United States that it prove the existence of this monopoly.

In the first place, there is no evidence of the unlawful plan or project charged in the petition or of any unlawful purpose unless it can be inferred from the acts of the defendants as proved in the record. If these acts during a period of more than twelve years have not resulted in an illegal monopoly, it is obvious that they are not of a character to cause such result, and, therefore, cannot well give rise to any inference of an unlawful plan to obtain an illegal monopoly. An unlawful plan to accomplish an illegal result cannot be shown by proof of acts which are either not adapted to or cannot accomplish the result.

In the second place, the purpose of this suit is primarily (1) to have the United Company dissolved because it is an unlawful monopoly, and (2) to have the leases declared un-

lawful because they have created or aided in creating this unlawful monopoly. If the United Company is not an unlawful monopoly it should not be dissolved. If no unlawful monopoly exists, it is evident that the leases have had no unlawful effect, *i.e.*, they have not created or aided in the creation of an unlawful monopoly, and they, therefore, cannot be held unlawful on the ground that they have done so.

2. The United Company has not obtained a Monopoly of all Shoe Machinery as Charged in the Petition.

The District Court said with reference to this charge (R. Vol. 1, p. 1127):—

> "The restraint or monopoly alleged in the petition is restraint or monopoly of interstate commerce in 'any and all kinds of shoe machinery,' *i.e.*, in shoe machinery generally.
>
> "But it appeared early in the trial that no such charge could be proved, because neither the business of the component companies in 1899 nor that of the United Shoe Company from its beginning until the bill was filed related to 'all kinds of shoe machinery.' Both were always limited to certain kinds only. This was finally conceded. . . ."

There is a large field of shoe machinery not manufactured by the United Company at all, such as all the different machines for sewing the uppers of shoes (machines exceedingly important in the manufacture of a shoe), and many others.

In addition there are manufacturers who, in competition with the United Company, furnish every kind of a machine needed in the manufacture of shoes. Of course such competitors do not manufacture machines exactly like the machines of the United Company, because these machines are made under patents and the United Company has a lawful monopoly of their manufacture.

The failure to prove the charge of monopoly in all shoe machinery is illustrated by the following facts:—

R. P. Hazzard, a shoe manufacturer, making Goodyear Welt shoes, with an output of 5,000 pairs a day (R. Vol. 1, p. 641,

line 10), testified that he used in the Bottoming Department all the machines that the United Company produces and he could get (R. Vol. 1, p. 641, lines 26–28; p. 651, lines 10–13). A complete list of the machines in his factory appears in Defendants' Exhibit 262 (R. Vol. 5, p. 707). It shows that Mr. Hazzard had a total of 746 machines in his factory, of which only 327, or less than 44%, were obtained from the United Company. Counting as United Company machines only those which it leases only (that is, excluding General Department machines, which can be bought outright or bought elsewhere and as to which no monopoly is charged), this list shows that Mr. Hazzard had only 296 United Company machines out of a total of 746 machines; in other words, that less than 40% were United Company machines. This list further shows that Mr. Hazzard had 258 machines in his stitching-rooms of which only 8 were obtained from the United Company.

Jonathan Brown & Sons manufacture McKay shoes, the class of shoes most largely made in the United States. Mr. Brown stated that he wished every machine in his factory was under the control of the United Company on account of its service (R. Vol. 1, p. 731, lines 3–12). He, therefore, took as many United Company machines as he could use. A list of the machines in his factory is given in Plaintiff's Exhibit 269 (R. Vol. 4, p. 1441). This list shows that out of a total of 424 machines only 128, or 30%, were obtained from the United Company. Excluding from the list of United Company machines General Department machines, which could be bought outright from the United Company, or bought elsewhere and as to which no monopoly is charged, the list shows that only 64 machines, or 15%, were United Company machines (R. Vol. 4, p. 1446). This list further shows that out of 191 machines in the stitching-rooms only 6 were obtained from the United Company.

Charles H. Jones, a witness for the United States, testified that his company, the Commonwealth Shoe and Leather Company, had an output of between 6,000 and 7,000 pairs a day, mainly men's welt shoes with a few pegged and Standard Screw shoes (R. Vol. 1, p. 105). A list of the machinery in the factory of this company is given in Plaintiff's

Exhibit 279 (R. Vol. 4, p. 1557). This list shows a total of 1,316 machines, of which only 584, or 44% were obtained from the United Company. Mr. Winslow showed, however, that Mr. Jones had included in this list as obtained from the United Company 73 hand tackers, which are not machines at all, but merely hand tools without power and similar to a hammer, and 41 attachments placed on other machines (R. Vol. 1, p. 976). Deducting these 114 tools and attachments leaves only 470 machines obtained from the United Company out of a total of 1,202, or less than 40%. Deducting the 119 General Department machines which could be bought outright (R. Vol. 1, p. 976, lines 37–40), leaves only 351 machines obtained from the United Company, or less than 30%. This list further shows that out of 465 machines in the fitting-room only 8 were obtained from the United Company.

The International Shoe Co., one of the largest in the world, did not take more than 50% of its machines of the United Company (R. Vol. 1, p. 183, lines 37–42).

The machines manufactured by the constituent companies, as we have said, occupied a comparatively small portion of the entire shoe machinery field. As to the comparative size of this field, Mr. Winslow testified,—

> "The ratio of the machines of the constituent companies to all shoe machines in 1899 was 26 to 138; that is, in round numbers there were 26,000 of United Company machines and 112,000 of machines of other companies, a total of 138,000 in 1899" (R. Vol. 1, p. 452, lines 11–15).

The machines of the Goodyear Company were used wholly for making welt and turn shoes. The manufacture of welt shoes increased enormously after 1899, namely, from 22,700,000 pairs out of a total of 172,786,000 pairs to 86,231,000 pairs out of a total of 278,916,000 pairs (Defs.' Ex. 215, R. Vol. 1, p. 424). The number of auxiliary machines also greatly increased. In 1899 only about 50% of the shoes made were lasted by machines, while to-day practically all shoes are so lasted. In spite of this, the percentage of machines of the kind previously put out by the constituent companies as compared with other machines increased very slightly. Mr. Winslow testified:—

"On the nearest date to the beginning of this suit for which I was able to make a compilation there were 41,602 machines of the Goodyear, heeling, lasting, and metallic departments, compared with 181,000 of all kinds of machines, a ratio of 41 to 181. In this comparison I did not include lasting or metallic auxiliaries, because they are more devices than machines.

"In round numbers the United Company's machines in 1899 were about one in every five and a quarter, and in 1910 about one in every four and a half" (R. Vol. 1, p. 452, lines 16–24).

Defendant's Exhibit 235 (R. Vol. 5, pp. 531–671) sets out each consecutive operation in the manufacture of eight different kinds of shoes most commonly made, viz.: men's McKay sewed shoes, women's McKay sewed shoes, men's welt shoes, women's welt shoes, women's turn shoes, men's loose-nailed shoes, surface standard screwed shoes, and channel standard screwed shoes. It gives under the heading of each operation the name of the machine furnished by the United Company, where it furnishes the machine for performing the operation, and also the names of other concerns furnishing machines for performing the same operation. An examination of this list will show that for practically every operation performed by machines for which work the United Company furnishes a machine there is a competitor, and in most cases there are numerous competitors, prepared to furnish machines for performing the same work. This list further shows that in the manufacture of a man's Goodyear welt button shoe in a factory where the counters are made by the manufacturer, there are 157 different operations of which 44 are performed by hand leaving 113 different operations performed by machine. The United Company furnishes no machines for 35 of these operations. When the shoes have no buttons and the counters are not prepared by the manufacturer there are 94 machine operations, and the United Company furnishes no machines for 22 of these operations. The United Company has no machines for 35 operations which may be performed by machines in the manufacture of a woman's McKay button shoe.

Defendants' Exhibit 336 (R. Vol. 5, pp. 849–905) is a list of shoe machinery manufacturers or dealers setting out the

machines they offer for sale taken from Defendants' Physical Exhibits 311 to 321, which consist of catalogues, letters, and advertisements of such manufacturers and dealers. It shows over 125 different manufacturers and dealers offering every kind of machine, a number of them offering complete lines of machines.

3. The United States of Record Limited its Charge to a Monopoly of Machines for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines and Clicking Machines.

The evidence having utterly failed to support the charge of a monopoly of all shoe machinery, the United States, as stated above (*supra*, pp. 11–15), admitted during the course of the trial that the United Company did not have a monopoly of all shoe machinery. It conceded of record that it limited its charge to a monopoly of—

> "machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines and the clicking machines" (R. Vol. 1, p. 839, lines 13–22).

While a considerable number of the General Department machines, of which the United Company makes 172 different kinds, are used in preparing the bottoms of shoes, Mr. Smyth, counsel for the United States, at the first argument before this Court further limited the field of the monopoly charged by disclaiming any charge of monopoly of General Department machines. He said, according to the stenographic report of his argument:—

> "Something has been said about the General Department machines. We make no question with respect to them, and they are not involved in this law suit."

The foregoing concessions of the United States limit the charge of monopoly to a comparatively few machines. Thus there are excluded from the charge of monopoly the following machines:—

(*a*) All machines for sewing and preparing the uppers of shoes, including sewing, buttonhole, and other machines which are not manufactured by the United Company at all.

This excludes a large portion of the machines used in any factory. For example, in R. P. Hazzard's factory, containing a total of 746 machines, there were 245 machines in the stitching-room alone which were of this character and which were not furnished by the United Company (see Defs.' Ex. 262, R. Vol. 5, p. 707).

(*b*) All General Department machines, of which the United Company manufactures 172 different kinds.

(*c*) All lacing, treeing, and various other miscellaneous machines used in every shoe factory.

It limits the charge of monopoly to a monopoly of the kinds of machines manufactured by the constituent companies, namely, Goodyear Department, that is, welting machines, lasting machines, heeling machines, metallic machines, and pegging machines, and the following machines which have since its formation been invented or put out by the United Company, viz., clicking machines, eyeletting machines, pulling-over machines, and McKay Sewing Machines.

In considering the charge of a monopoly in this limited field we submit that the record shows:—

1. That the United Company has not an actual monopoly of these machines, but, on the contrary, that there are active competitors ready to furnish machines for performing any and all of the operations for which these machines furnished by the United Company are adapted;

2. That whatever portion of the field of shoe machinery the United Company enjoys is due to the excellence of its machines, which are patented and cannot be manufactured by others,—in other words, to its lawful patent monopolies; to the excellence of its service rendered with its machines, which no other company renders to any satisfactory extent; to its satisfactory business methods and the reasonable terms it offers which have appealed to shoe manufacturers (as Charles H. Jones, a witness for the United States said, "The terms which the Machinery Company have recently

offered their patrons on certain lines of machinery are so liberal that the outsiders cannot compete" (P.'s Ex. 147, Vol. 4, p. 1074); to the fact that the United Company has specialized in certain lines of machines, notably those for making Goodyear welt shoes, has instructed, encouraged, and assisted manufacturers in their manufacture and so has created almost entirely the market which they supply.

Each of the constituent companies, due to the patents held by them, manufactured at the date the United Company was formed practically all the machines of the kind it made which were used in the country. The United Company has therefore not acquired any monopoly of the machines which were manufactured by the constituent companies, but has, by continuous patent development, merely continued the monopoly already lawfully acquired and held by the constituent companies under their patents.

4. Machines for Preparing and Attaching the Bottoms to the Uppers of Shoes, Eyeletting Machines and Clicking Machines can be obtained of Numerous Competitors of the United Company.

The record shows that shoe manufacturers do not take the United Company's machines of the classes enumerated above as to which the United States charges a monopoly because they cannot obtain machines for performing the same work elsewhere. There are competitors ready to furnish these machines to any manufacturer desiring them.

Mr. Winslow testified:—

> "Some of the companies which I have named, like the Hamel Company, Haverhill Shoe Machinery Company, and the R. H. Long Company, are larger than any shoe machinery companies doing business in the United States or anywhere else in 1898, except the three companies which came into the United Company; and they are better fitted to build machines and do build to-day a larger number of different kinds of machines than any concern in

existence in 1899, including the three companies that went into the United Company. It is generally true of shoe machinery manufacturers doing business just prior to the bringing of this suit, as compared with the outside manufacturers doing business in 1899, that they are larger and are capable of furnishing a more complete equipment to factories" (R. Vol. 1, p. 859, lines 22–34).

"The manufacture of shoe machinery does not require any particular kind of machine tools. The standard machine tools used in manufacturing all ordinary machines are the tools that are used in every factory making shoe machinery" (R. Vol. 1, p. 858, lines 25–29).

One of the most important machines used in the bottoming of shoes is the McKay Sewing Machine. This machine was used to attach the sole to the upper of nearly 40% of the shoes made in 1910 (Defs.' Ex. 215, R. Vol. 1, p. 424). The United Company did not even manufacture this machine for a number of years after its formation nor until 1908. Shoe manufacturers have always been able to obtain it from any one of a large number of dealers in machinery. A list of seventeen American dealers and ten foreign dealers furnishing this machine is set out at R. Vol. 1, pp. 858–9.

Mr. Brown testified that there was no difficulty in buying all the McKay machines he wanted at any time (R. Vol. 1, p. 730, lines 18–22). He had thirteen of these machines, only three of which he had obtained from the United Company (R. Vol. 1, p. 730, lines 23–25). The United Company never in any way interfered with his buying McKay Sewing Machines elsewhere (R. Vol. 1, p. 730, lines 26–30).

In 1909 there were in the principal shoe manufacturing districts 1,488 McKay Sewing Machines, of which 308 were supplied by the United Company and 1,180 by others. In the Lynn District there were 59 McKay machines supplied by the United Company and 367 supplied by others (R. Vol. 1, p. 977, lines 16–31).

John Bulmer, witness for the United States, testified: "McKay Sewing Machines are to be had from about all the shoe manufacturers. They pass through our hands more or less frequently, and we rebuild or repair them and furnish them to others. We have no difficulty in getting them at any time" (R. Vol. 1, p. 908, lines 38–41).

This is the case of the bottoming machine used to attach the sole on the type of shoes made in the largest quantities. It is clear that there are a very large number of manufacturers and dealers ready to furnish the machine and the United Company has furnished only a small percentage of the total machines outstanding.

In respect to other machines of the type of which monopoly is charged, namely, machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines, Defendants' Exhibit 337 (R. Vol. 5, p. 906), compiled from the catalogues, letters, and advertisements of various shoe manufacturers, gives a list of manufacturers and dealers prepared to furnish these machines. Each machine is listed separately and the names of the concerns offering it are given.

Defendants' Exhibit 331 (R. Vol. 5, p. 838) gives a list of concerns putting out welt and turn machines and outsole stitching machines from 1899 to 1911.

Defendants' Exhibit 332 (R. Vol. 5, p. 843) gives a list of Goodyear auxiliary machines and machines which other machinery manufacturers offered for doing the same work.

These lists are too long to copy in full upon the brief. They show the very large number of shoe machinery manufacturers making these kinds of machines and the considerable number of competitors prepared to furnish each kind of machine.

Appendix III to this brief (*infra*, pp. 808–834) gives a summary of the testimony of a large number of machinery manufacturers who furnish machines which compete with the United Company's machines. While a considerable number of them furnish General Department machines which are now excluded from the charge of monopoly, a considerable number furnish machines of the classes as to which the charge of monopoly is limited. Some of these manufacturers are prepared to furnish complete lines of shoe machinery.

C. A. Hamel, who took over the Duplessis Company in 1909, and the Duplessis Company prior thereto, from 1903 to 1909, have done a considerable business in shoe machinery. Hamel testified: "We have a complete set of machines for making turn shoes and a complete set of machines for making

welt shoes" (R. Vol. 1, p. 327, lines 15–16). A list of the number of machines put out by the Duplessis Company and Hamel, as its successor, is given at R. Vol. 1, page 326. It shows that they have put out 148 welt and turn machines (86 in this country and 62 abroad); 61 rapid outsole stitchers (41 in this country and 20 abroad); 90 insole channelers (70 in this country and 20 abroad); 55 loose nailers (24 in this country and 31 abroad); and 35 sluggers (22 in this country and 13 abroad).

Owing to the large capacity of each machine, and, therefore, the small number of machines of each type required in the shoe machinery industry, the above represents a very considerable business compared with the business done by the United Company.

For example, it shows that Hamel and his predecessor have put out since 1903, 35 sluggers. From 1903 to 1913, owing to improvement in capacity of its machines, the number of slugging machines which the United Company had out declined from 1862 to 1838 (Defs.' Ex. 226, R. Vol. 5, p. 424). It shows that Hamel put out from 1903, 148 welt and turn machines. The United Company from 1903 to 1913 increased the number of its welt and turn machines outstanding by only 963 (Defs.' Ex. 226, R. Vol. 5, p. 424). It shows that Hamel put out 55 loose nailers. The United Company from 1903 to 1913 increased the number of loose nailers outstanding by only 838 (Defs.' Ex. 226, R. Vol. 5, p. 424).

R. H. Long, through the R. H. Long Machinery Company, is prepared to furnish a complete line of machines (see Physical Exhibits, R. H. Long Machinery Company catalogues, Defs.' Ex. 72, Defs.' Ex. 73). J. J. Doidge, manager of the company, testified that the company was ready to supply a full line of machinery for welt or turn shoes (R. Vol. 1, p. 345, lines 43–44). The company has practically completed and is ready to furnish the trade with 450 outsole stitching machines, 30 welters, 25 lasting machines, and 4 or 5 heeling machines (R. Vol. 1, p. 345, lines 39–42). It can also supply metallic fastening machines (R. Vol. 1, p. 346, line 1).

The Haverhill Shoe Machinery Company offers a full line of machines.

Edwin A. Webster, a director of the company, testified:—

> "We [the Haverhill Company] undertake to fill the requirements of a manufacturer whatever they are. We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs or anything else. We are prepared to make good if our people that manufacture machines don't go back on us" (R. Vol. 1, p. 301, lines 4–9).

The Haverhill Company has put out about 25 heel nailing machines (R. Vol. 1, p. 291, lines 10–11); about 60 or 65 turn channeling machines (R. Vol. 1, p. 291, lines 35–36); and about 65 turn and welt machines of which 13 are in the company's own factories (R. Vol. 1, p. 292, lines 7–9), and various other machines (R. Vol. 1, pp. 291–2). The company has machines with 58 shoe manufacturers of whom 38 also use the United Company's machines (R. Vol. 1, p. 299, lines 4 [illegible]). It has five agents who solicit orders and keep the machines in repair (R. Vol. 1, p. 292, lines 40–42).

In addition there are several foreign firms prepared to furnish complete lines of machines. John Cavanaugh, a salesman of shoe machinery connected with the Boylston Manufacturing Company, and a witness for the United States, testified that the Standard Rotary Machine Company of England and Johnson of Paris are good-sized concerns and manufacture complete lines of machines. The Standard Engineering Company is ready to do business in the United States and he should say the other companies would do so (R. Vol. 1, p. 957, lines 31–40). The Atlas Company of Leipsic manufactures a complete line of machines for welt, turn, and McKay shoes (R. Vol. 1, p. 342, lines 8–9).

Moreover, not only do competitors of the United Company offer complete lines of shoe machinery, but such machines, including machines for preparing and attaching bottoms, obtained from others than the United Company are found in large numbers even in those shoe factories where, generally speaking, the United Company's machines are preferred.

Only three shoe manufacturers, Messrs. Brown, Hazzard and Jones, furnished complete lists of all the machines used in their factories and the source from which each machine was obtained (*supra*, pp. 602–604). Each of these witnesses is a

lessee of the United Company and manufactures from 5,000 to 7,500 pairs of shoes per day. These lists show that Jones has 110, Hazzard 87 and Brown 54 machines, obtained outside the United Company, in the departments or "rooms" for preparing and attaching bottoms. Furthermore, Jones and Hazzard both have three times as many eyeletting machines obtained from others as they have from the United Company (P.'s Exs. 269, 279, R. Vol. 4, pp. 1441–6; 1556–64; Defs.' Ex. 262, R. Vol. 5, pp. 707–711).

That shoe factories can be equipped without using United Company machines is admitted.

The Framingham Shoe Company, owned by R. H. Long, uses no United Company machines, nor does the Buffalo Shoe Company (R. Vol. 1, p. 30, lines 31–38).

Henry P. Guptill, a witness for the United States, whose factory has a capacity of 2,500 to 3,000 pairs of turn shoes a day, and is therefore a large factory, testified he used no United Company machines (R. Vol. 1, p. 290, lines 11–15, 24–25).

Frank Albert Brackett, a witness for the United States, testified that Mr. Henry H. Rogers' factory was equipped to make as many as 1200 pairs per day of men's welt shoes. He said:—

> "We had no machines obtained from the United Company. We got them all elsewhere" (R. Vol. 1, p. 951, lines 28–33).

Mr. Long testified that the Taylor Shoe Company of Lynn used no United Company machines (R. Vol. 1, p. 232, lines 29–31). Mr. Webster, of the Haverhill Shoe Machinery Company, showed that 20 of the 58 shoe manufacturers who used his machines did not use United Company machines (R. Vol. 1, p. 299, lines 4–7).

The Non-Royalty Shoe Company was organized by the Shoe Manufacturers' Alliance, which was opposed to the United Company, for the purpose of operating a factory without the use of United Company machines. Warren F. McElroy, a member of the Shoe Manufacturers' Alliance, equipped the factory. He obtained no machinery from the United Company, except one General Department creasing machine which he bought. A few machines he obtained from

abroad. The factory was equipped to make welt shoes. According to Mr. McElroy's testimony, the Non-Royalty factory made a welt shoe which he considered a better shoe than the Goodyear Welt (R. Vol. 1, p. 194, lines 16–17). The factory was equipped to make 600 to 1,000 pairs a day (R. Vol. 1, p. 194, lines 21–22). The factory closed down in 1913 because of a fire (R. Vol. 1, p. 194, lines 17–18). At that time the machinery was offered for sale though the sale was postponed. A list of the machinery advertised for sale appears in Defs.' Ex. 42 (R. Vol. 5, p. 48).

It did not appear definitely how many shoe manufacturers there are in the United States. The United Company had 1,033 lessees who were shoe manufacturers during the year 1911 (R. Vol. 1, p. 26, lines 38–40). Mr. Donham testified that he did not know how many shoe manufacturers there were in the United States at that time, but should say there were somewhere between 1,300 and 1,500. The census for 1910 showed somewhere in the neighborhood of 1,300 (R. Vol. 1, pp. 26–27), and the petition alleges there were in 1911 about 1,300 (R. Vol. 1, p. 991).

The District Court found that the defendants were not monopolists, saying (R. Vol. 1, p. 1135):—

> "There is no question that the above described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufacturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion.
>
> "It is nevertheless true that, considering the whole field of machinery for stitching together the bottoms and uppers of shoes, there has all the time been free competition. The use of other machinery to accomplish the purpose has always been open to shoe manufacturers. **In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate**

means,—better machines. Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success" (BLACK LETTERS ours).

5. The United Company Lawfully Occupies the Field it Enjoys Under its Patents.

It is of the utmost importance to bear in mind that the United Company's machines are and always have been patented. The United Company, therefore, has a lawful monopoly of these machines. No one else can manufacture machines of this type, and there is a natural presumption that if they are generally or exclusively used this is due to their superiority over other types of machines if such exist and not to any illegal restraint of trade. As said of these machines, by this Court, in *United States* v. *Winslow*, 227 U. S. 202, 217,—

> "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, and it may be assumed that the success of the several groups was due to their patents having been the best."

There is a vital difference between an industry concerned with the manufacture of unpatented goods or machines and an industry in which the product is dominated by patents. In a business free from patents, such as the tobacco or oil business, and the manufacture of cotton or woolen goods, the business is open to any one. It would be surprising to find a single manufacturer refining all the oil, making practically all the cigars, or cigarettes, or all the cotton or woolen goods used in the country. Instantly there would arise a suspicion, if not a presumption, of employment of illegal methods to obtain such a monopoly. Such presumption would be strengthened if it were found that such monopoly were obtained by combining a large number of concerns previously competing which could have continued to manufacture goods if left to operate independently. The same would be true in

the case of an industry in which, though the product was patented, the patents covered minor parts or methods and had no important or dominating influence, so that a manufacturer could enter the business and compete without the use of patented inventions.

In an industry like the shoe machinery industry, however, in which patents dominate the entire situation the inference is quite different. It would be difficult to sell machinery of so old a type that the patents on it have expired. Such machinery would express the stage of development which machines had reached seventeen to twenty years previously, and as the art is comparatively young and has been constantly advancing such machines would be so far inferior to the latest patented machines that there would be little market for them. The manufacturer who can hope to engage in this industry successfully is one who has patents either better than or as good as those of the manufacturer or manufacturers already in the field. Furthermore, even if a manufacturer holds such patents and is therefore able to enter the industry, he must maintain his position by the acquisition or development of new patented inventions, or his machines will rapidly become antiquated and will not be taken by shoe manufacturers. The rapid development of the industry, the remarkable increase in efficiency of improved machines every few years makes this essential.

In such an industry dominated by patents either the inventions originally made completely control the industry and no other inventions are made, except improvements or additions to the original inventions, which are of value only in connection with the original inventions, and, therefore, the original inventors or their successors are the only persons who manufacture the patented product; or one manufacturer's patents are almost inevitably better than the patents held by any other manufacturer and his machines are therefore used almost exclusively. In such an industry, then, it is almost inevitable that one manufacturer will dominate the industry lawfully by reason of his patents until such time as the industry has developed to a point where the important inventions have all been made and the patents thereon have expired, and inventors must confine themselves to minor improvements

and refinements which are not of vital importance. When that point is reached the industry will be open to all; prior to that time it is for practical purposes open only to those having the best patents. So long as it is dominated by patents the fact that the manufacturer who has the best patents produces the larger share of the product does not give rise to any presumption of illegal methods, but is natural and to be expected.

The United States points to the large proportion of the trade in shoe machinery held by the United Company and the fact that shoe manufacturers must turn to it if they wish the best machines as evidence of an unlawful monopoly. This is entirely unjustified. The right of an owner of patents to exclude all others from making use of his inventions and to draw to himself all trade in the patented articles and, as a consequence, to acquire a commanding position in the industry if no other patented articles are equally good is undoubted. This Court in *United States* v. *Bell Telephone Company*, 167 U. S. 224, p. 250, said:—

> "Counsel seem to argue that one who has made an invention and thereupon applies for a patent therefor, occupies, as it were, the position of a quasi trustee for the public; that he is under a sort of moral obligation to see that the public acquires the right to the free use of that invention as soon as is conveniently possible. We dissent entirely from the thought thus urged. The inventor is one who has discovered something of value. It is his absolute property. He may withhold the knowledge of it from the public, and he may insist upon all the advantages and benefits which the statute promises to him who discloses to the public his invention. He does not make the law. He does not determine the measure of his rights. . . . As the law-making power has prescribed what the public will give, specified the terms and conditions of purchase, indicated the time and methods of determining the right of compensation, he on his part has an absolute legal right to avail himself of all the provisions thus made."

No case presenting facts in any way similar to the present has ever before been decided by this Court under the Sherman Act, except the case of *United States* v. *Winslow*, supra, in

which the formation of the United Company and its acquisition of the constituent companies holding patents which gave them a practical monopoly of the business was before this Court and was held lawful. In no other case heretofore decided has the product which the defendant has been accused of monopolizing been protected by dominating patents which restricted competitors to the marketing of machines of a different and inferior type. In practically every case in which the monopoly of an industry has been charged such monopoly has been created by a combination of competing concerns, the combination of which was not necessary to enable the defendant to produce a satisfactory product. In the present case the United Company was a combination of non-competing concerns and its subsequent acquisitions have been mainly of small non-competing concerns of minor importance having little or no influence in the trade, acquired in order to enable the company to give its customers a broader line of machines, or to obtain patents required to improve its own machines. In all cases where such acquisitions were made there were left outstanding competitors (R. Vol. 1, p. 465, lines 20–23).

The presumptions and inferences applicable in other cases are inapplicable in the present case. The combination of non-competing concerns is lawful, no intent can make it unlawful, and it, therefore, can give rise to no unlawful inference (*United States* v. *Winslow*, supra). The defendants' patented machines are presumed to be the best of their kind (*United States* v. *Winslow*, supra), and the fact that the United Company has a large portion of the business of furnishing shoe machinery is therefore natural and gives rise to no inference of unlawful methods.

The District Court said (R. Vol. 1, p. 1136):—

> "The business which the defendants have developed and established is not, and has never been, one in which everybody might freely engage. No one else could lawfully make or use machines containing improvements covered by the defendants' patents. Nor can it be said that the demand for such machines which they have supplied existed independently of the defendants; on the contrary, they have created it by the new methods of

shoe manufacture which their improvements have educated and enabled manufacturers to follow. It cannot justly be said that the case is one in which a field of commerce normally belonging to all has been captured by a single concern. The principles applying in such cases cannot justly be applied here."

6. The Constituent Companies had Lawful Patent Monopolies of the Machines They Manufactured. The United Company has not Acquired Any New Monopoly in These Machines.

If previously to the formation of the United Company the constituent companies had supplied only a small portion of the machines of the kind they manufactured, and there had been competitors furnishing similar machines to a large portion of the shoe manufacturers, and if, after the formation of the United Company, such competitors had disappeared and the United Company had thus acquired all or the greater part of the trade, there might be a presumption or inference that such result was caused by illegal methods which would call for a careful scrutiny of the causes. Such, however, is not the fact. The constituent companies, at the time of the formation of the United Company, had a larger proportion of the trade in the machines they manufactured than the United Company now holds and this was due to the fact that these machines were the best and were protected by patents which prevented others from manufacturing them. The shoe machinery industry was new and the constituent companies, which held the only practical patents, had created the industry, and, therefore, naturally had the greater part of the business.

The petition admits and alleges that the constituent companies had a lawful monopoly of the machines they manufactured. It sets out that the principal essential machines used in the manufacture of shoes are lasting machines, welt sewing and outsole stitching machines, heeling machines, and metallic fastening machines (R. Vol. 1, p. 991). It alleges that the principal concerns engaged in the business were the constituent companies (R. Vol. 1, p. 992). It alleges that

the constituent companies were "manufacturing their machines and parts thereof under Letters Patent of the United States and of other countries" (R. Vol. 1, p. 993). It then alleges that the defendants, "not being satisfied with the benefit of lawful monopolies and rights belonging to them under Letters Patent of the United States and of other countries," formed an unlawful project to unlawfully expand their monopolies and rights (R. Vol. 1, p. 994). Finally it alleges that the United Company, by the acquisition of the constituent companies, "acquired control of the greater portion of the manufacture of, and trade and commerce in, the machines included in each and all of the groups of machines" mentioned (R. Vol. 1, p. 996).

In other words, the petition admits that the constituent companies had patents which gave them lawfully the greater part of the trade in lasting, welt sewing, and outsole stitching, metallic fastening, and heeling machines.

There were other concerns putting out machines, but the constituent companies' machines were the best (R. Vol. 1, p. 532, lines 16–18, 29–32). The constituent companies' machines were doing about all the welting, outsole stitching, lasting, and metallic fastening that was being done in the United States (R. Vol. 1, p. 537, lines 32–37). No other company had put out heeling machines for several years prior to 1899 and the McKay Company was putting out all of the heeling machines that were being made in the United States (R. Vol. 1, p. 851, lines 27–30).

The reason is obvious. The shoe machinery industry was of very recent origin. Previous to 1850 or 1860 all shoes were made almost entirely by hand (R. Vol. 1, p. 521, lines 15–16). Shoe machinery had only been gradually developed since that date, and, as we have shown, many important machines had not been invented in 1899. In respect to the machines put out by the constituent companies, their invention was new, and important improvements were constantly being made in them. The constituent companies held the patents under which they had originally been constructed; they were the ones most interested in developing and improving the machines and they, therefore, developed the machines, and held the patents on the new improvements. The constituent

companies, therefore, had practically all the business as a result of these lawful patent monopolies.

To illustrate: The Goodyear machines were designed to make a welt shoe by machinery. Welt shoes had been made for many years previously, but always by hand. The system ran back to 1870 or 1868 (R. Vol. 1, p. 625, line 20). The Goodyear Company, however, revolutionized its machines about 1890 by the use of new inventions (R. Vol. 1, p. 678, lines 6–9). The auxiliary machines needed to make the system a practical success were only gradually developed and were still in process of development in 1899. The Goodyear Company in 1899 was still endeavoring to introduce its machines into general use. In 1899, after the formation of the United Company, only 22,700,000 pairs of welt shoes were made out of a total production of 172,786,000 shoes (R. Vol. 1, p. 424). In other words, the industry of making welt machinery had been created by the Goodyear Company; no one else had invented machines comparable to the Goodyear machines, so that inevitably the Goodyear Company, by reason of its patents, had practically all of this new field which it had created.

The lasting machine industry was more recent still. In 1890 very few shoes were lasted by machines except heavy brogans, which were, of course, limited in number and which were lasted on the McKay & Copeland machine (R. Vol. 1, p. 401, lines 14–16). Shoe manufacturers at that time were sceptical as to the possibility of developing a lasting machine at all (R. Vol. 1, p. 401, lines 24–26). The industry dates from that period only nine years previous to the formation of the United Company. Even when the machines had become commercially useful the difficulty of introducing them, due to the opposition of operatives, the necessity of instructing operatives in the use of the machines, and the scepticism of shoe manufacturers was enormous (R. Vol. 1, pp. 401–3). In 1899 not more than 50% of the shoes made were lasted by machines (R. Vol. 1, p. 402, lines 14–18). Here again we find the lasting machine industry a new industry created by the Consolidated Company and only partially developed after some years of labor and inventions, and protected by patents. The fact that the Consolidated Company put out practically

all of the lasting machines was no more remarkable than that the Bell Telephone Company, after the invention of the telephone, was the only concern engaged in making telephone instruments.

7. The Other Machines not Manufactured by the Constituent Companies as to which Monopoly is Charged were New Inventions Developed by the United Company and Protected by Lawful Patent Monopolies. Any Monopoly Acquired by the United Company in these Machines was due to the Fact that the United Company Created them and the Fact that they were Lawful Patent Monopolies.

The pulling-over machines were invented by the United Company and first put out in 1902. The pulling-over operation was previously done by hand exclusively (R. Vol. 1, p. 425, lines 33–34). Various auxiliary machines were developed later (R. Vol. 1, p. 12, lines 1–8). The first lease including auxiliaries was put out in 1905 (R. Vol. 1, p. 12, line 9). The pulling-over machine is a remarkable invention and an entirely new creation. Its development cost the United Company nearly $1,000,000 (R. Vol. 2, p. 2552). It had been in existence at the date the petition was filed only nine years (R. Vol. 2, p. 2542). It is protected by 19 patents (R. Vol. 2, p. 2573), and the auxiliary machines are protected by over 28 different patents (R. Vol. 2, pp. 2523–5, 2572–4. See pulling-over system lease, P.'s Ex. 39, R. Vol. 3, pp. 363, 364). The fact that no one else had developed or invented a different type of machine which was as satisfactory to shoe manufacturers and in genera luse is therefore not remarkable; on the contrary, it would be surprising if any one had done so.

The clicking machine was another remarkable invention developed by the Experimental Department of the United Company, which probably saves more money for the shoe manufacturer than any machine ever produced (R. Vol. 1, pp. 425–6). It was first made commercial in 1908 and was then first leased (R. Vol. 1, p. 14, lines 30–33; Vol. 2, p. 2589). The machine cuts out the uppers of shoes in such a way as to effect an enormous saving of leather; previously to its invention the shoe manufacturer generally cut the upper by a hand

knife, resulting in a considerable loss of stock (R. Vol. 1, p. 426, lines 2–24).

Mr. Winslow testified:—

> "The clicking machine was another machine which was developed by the Experimental Department of our company and perhaps saves more money for the manufacturer than any other machine which has been produced" (R. Vol. 1, pp. 425–6, lines 43–44, 1–2).
>
> "Since my knowledge of the shoe art no machine has accomplished so much for the art as the clicking machine" (R. Vol. 1, p. 426, lines 19–20).

This machine had been put out less than four years before the present petition was brought. It is protected by 13 patents (R. Vol. 2, p. 2598). George Harsh, witness for the United States, testified that the United Company's clicking machine was the only commercial machine in the market (R. Vol. 1, p. 198, lines 30–32). It is obvious that the success it had was due to its merit and that the large trade in this machine which the United Company had was due to the lawful patent monopoly which prevented its manufacture by others.

The United Company's eyeletting machines were likewise patented machines developed by it (R. Vol. 1, p. 14, lines 21–23). The Duplex machine, which is the standard machine for regular work, was first put out in 1902 (R. Vol. 2, p. 2617). It is protected by 12 patents (R. Vol. 2, p. 2617). It is the only machine ever produced which inserts eyelets on both sides of the shoe at once (R. Vol. 2, p. 2618). The Universal machine is another type likewise adopted in 1902 and it is now protected by five patents and one patent application (R. Vol. 2, p. 2636). As to the McKay sewing machine, while the United Company acquired a business of manufacturing this machine, it clearly has no monopoly, as such machines can be obtained of many machinery dealers. Such success as the United Company has had in furnishing this machine is due to the fact that it is putting out an improved patented machine (*supra*, p. 297; R. Vol. 1, p. 83, lines 9–15; P.'s Ex. 170, Vol. 4, p. 1161).

The above list includes all the machines as to which monopoly is charged by the United States.

From the foregoing it appears that the constituent com-

panies of the United Company, at the time of the formation of the United Company, furnished practically all the welt and turn machines, lasting machines, metallic fastening machines and heeling machines used in the country. The trade in these machines had only recently been created by inventions which made the machines possible, and the constituent companies held the best of the patents covering these inventions. Such monopoly as they had resulted lawfully from the patents. The United Company, therefore, did not acquire any new monopoly in these machines; it merely continued the lawful monopoly, if it can be called such, held by the constituent companies. The charge of the United States that the United Company acquired a monopoly is absolutely unfounded. The only possible contention the United States could make is that the United Company maintained this monopoly by unlawful methods.

In respect to the pulling-over machines, clicking machines, and the eyeletting machines, it appears that they were developed by the United Company, that the United Company had a lawful and inevitable monopoly in these machines when first put out, because the United Company held strong patents covering them and no one else had invented any other machines to do the same work. Here again the original acquisition of the business by the United Company was unquestionably lawful, and the only possible contention that the United States can make is that these lawful patent monopolies have in some way been illegally maintained.

As to the McKay sewing machines, the United Company obviously has no monopoly (*supra*, p. 609).

8. The United Company has Maintained the Business in Shoe Machinery which it Acquired, not by Unlawful Methods, but by Reason of the Excellence of its Patented Machines and the Service it Renders with Them.

We have shown above that the United Company lawfully acquired its business in the machines as to which a monopoly is charged. We submit the record shows that this business has been maintained by lawful methods.

The business was acquired by reason of the patented inven-

tions held by the United Company and its constituent companies. The development of the machines since that date has been constant; the United Company has spent enormous sums in invention and development of machines and to-day the United Company has as strong if not stronger patents on its machines than it had in 1899 or has had at any time since (*supra*, pp. 187–190, 217–225). There is absolutely no evidence that other persons have invented better machines or equally good machines. If the United Company's patents in 1899 gave it most of the business in the machines which it manufactured, there is every reason that its patents should have enabled it to retain this business.

In addition, however, the United Company has developed a service in connection with its machines at enormous cost to itself, which has proved of the utmost importance to shoe manufacturers, which is given by no other shoe machinery company and which shoe manufacturers testified was vital (*supra*, pp. 178–185). It has in no instance increased its charges for machines; on the contrary, it has in certain instances reduced its royalties and it has removed the initial premiums charged in 1899 (*supra*, pp. 191, 192, 196). It has furnished new machines as they have been invented, free of charge, taking back the old machines, and it has added many important auxiliary machines without additional charge (*supra*, pp. 189–190, 195–196).

By these various means it has added enormously to the efficiency and usefulness of its machines. If owing to their excellence they were used almost entirely by shoe manufacturers in 1899, there is still more reason they should be so used to-day.

We submit that the United States has wholly failed to show that the United Company's continuance of the success of the constituent companies has been due to the acquisition of competing concerns, or to the effect of its leases.

That this is true is proved conclusively by an examination of certain machines as to which monopoly is charged.

Take, for example, eyeletting machines. The record does not show a single instance in which the United Company has acquired any eyeletting machines or any company dealing in eyeletting machines. Obviously the success of the United

Company in furnishing eyeletting machines has not been due to the acquisition of competitors. The eyeletting machines under one form of lease are restricted to use with certain other machines, but not a single lease of such other machines restricts them to use with the United Company's eyeletting machines. The shoe manufacturer can take any machine he pleases from the United Company under a restricted lease and use it with a competitor's eyeletting machines. Obviously the restricted clauses in the leases of other machines have not compelled or induced a use of the United Company's eyeletting machines. Whatever success these machines have had must, therefore, be due solely to the excellence of the machines and the service rendered with them.

The same is true of the clicking machines. No acquisition of any competing clicking machine has ever been made, nor is any other machine restricted to use with the clicking machine. Its success cannot have been due to the acquisition of competitors or to the fact that lessees are induced or compelled by restrictive clauses in the leases of other machines to use them.

The same is also true of the pulling-over machines. The United Company has never acquired a competitor putting out pulling-over machines. The only acquisition has been that of the Seaver Experimental Pulling-over Machine, which stood in the way of the development of the United Company's machine (Appendix I, p. 673). The only machine restricted to use with the pulling-over machines is the No. 5 Lasting Machine; but this is a comparatively new machine, and shoe manufacturers can use hand method machines for their lasting. The result is that the success of the United Company's pulling-over machines has not been due to the acquisition of competitors or the restrictive clauses in the leases.

The same is true of the Goodyear welt and turn auxiliaries, of which 43 different kinds are furnished by the United Company. No acquisitions of competing concerns furnishing these machines have been made which are of the slightest significance, and no other machines are restricted to use with these auxiliary machines.

Although the United Company has acquired the Richardson Company's patents on an improved McKay sewing machine, because such patents would improve its machine, and be-

cause the United Company's machine infringed such patents (see Appendix I, pp. 722, 723), and although the United Company acquired the Stanley Company's business of manufacturing McKay machines, it did not thereby acquire any monopoly in the manufacture of McKay machines, since they can at any time be obtained from a large number of machinery dealers (*supra*, p. 609). No other machine put out by the United Company is under any form of lease restricted to use with the McKay machine, so that no shoe manufacturer is compelled or induced to use the McKay machine by reason of the restricted clauses in the leases of any other machines.

The result is that obviously the success of the United Company in furnishing eyeletting, pulling-over, clicking, Goodyear auxiliary, and McKay sewing machines has not been due to the elimination of competitors or to the restricted clauses in the leases.

The only other machines as to which monopoly is charged are the welter, stitcher, lasting, metallic, heeling, and pegging machines. As to all these machines it is admitted that the constituent companies had lawful patent monopolies in 1899 and no other persons were furnishing such machines to any material extent. To-day good-sized competitors are furnishing them.

If the United Company's success in furnishing eyeletting, clicking, pulling-over, Goodyear auxiliary, and McKay sewing machines has clearly been due to the excellence of its machines and service, and not to the elimination of competitors or the restricted clauses in the leases, it would take strong evidence to prove that such success as the United Company has had in maintaining the business of the constituent companies in welters, stitchers, lasting, metallic, heeling, and pegging machines has not been due to the same causes, but, on the contrary, has been due to the elimination of competitors and the effect of the restricted leases. The failure to show any elimination of competitors, the limited effect of the restricted leases, and the offer on the part of the United Company of unrestricted leases to all who desire them, justify no contention that this success has been due to the elimination of competitors or to the restricted leases.

We submit that whatever view may be taken of the acts

in evidence in this suit, whether any of them considered individually are deemed lawful or unlawful, the fact is clear from the record that the excellence of its patented machines which gave the constituent companies their success, coupled with the great improvement in the machines effected by the United Company, and the service it renders with them, is the cause of the success of the United Company to-day. The District Court so found, saying:—

> (R. Vol. 1, p. 1135.) "There is no question that the above described development of the United Company's business has resulted in a very great commercial success. Its machines, as was the case with those produced by the component companies in 1899, have ever since been those which shoe manufacturers in general can use to the best advantage and therefore prefer. The increase in the number of its machines in the hands of users has been very large. Nor is there any question that of all the machines, of the kinds to which this case relates, in use when the petition was filed, those of the United Company constituted all but a very small proportion."
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> . . . . . .
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> "If there is any sense in which the result attained as above can be called a 'monopoly,' it does not follow, in view of the circumstances shown, that the defendants have either restrained trade or been guilty of monopolizing, or attempting to monopolize, within the meaning of the act. Nor can I regard the case as one in which any presumption arises, from the fact that so large a proportion of the users of these machines use the defendants'—that the defendants have committed any of the above forbidden acts in accomplishing the above result. The proof is too complete that it has been in fact reached by the use of methods entirely lawful, the leading features whereof are below indicated."
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> . . . . . .
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> (R. Vol. 1, p. 1137.) "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and

amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason."

. . . . . .

(R. Vol. 1, p. 1187.) "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer. To say that this is due, in any substantial degree, to the fact that its leases run beyond the terms of patents, or because of the exclusive use, prohibitive or cancellation clauses, rests largely, if not entirely, upon assumption. But that the business of these defendants rests upon the lease provisions objected to in such a substantial amount as to constitute any factor of independent force in securing or maintaining a monopoly does not appear."

XI.

RELIEF ASKED FOR BY THE UNITED STATES.

The Impossibility of Granting the Relief asked for by the United States without Irreparable Damage to the Public proves the Lawfulness of the United Company's Business.

The petition prays:—

1. That the United Company and the United Shoe Machinery Corporation "be dissolved and separated into such parts that no one of them will constitute a monopoly" (R. Vol. 1, pp. 1030–1); and

2. That the leases of the United Company containing like or similar provisions to those complained of be declared illegal and void and the defendants be enjoined from enforcing such provisions (R. Vol. 1, pp. 1029–30).

The petition prays for other incidental relief, but the foregoing is the primary and material relief requested.

1. A Separation of the United Company's Business would Irreparably Damage Shoe Manufacturers and the Public.

In the case of the American Tobacco Company, the Standard Oil Company, and other companies in which dissolution has been ordered by this Court, or by the lower courts, the business dissolved has consisted of an accumulation of different manufacturing plants and businesses, each of which, if separated, would or might compete with all or a part of the others. When separated, they could continue to carry on separately and in competition the business previously conducted by the company which was dissolved. As a result of such dissolution, each of the companies among which the business was divided had its own plant or plants in which to

manufacture its goods and the same class and character of goods as previously could be manufactured, and the only difference has been that competition between these separate companies into which the business was divided was created.

In the case of the United Company no such situation exists or can be created.

1. In the first place, the business of the United Company as to which monopoly is charged consists in manufacturing a variety of patented machines. No two machines which it manufactures compete with each other in any practical sense. In practically no case has it two distinct machines each protected by its own patents which do the same work and are, therefore, capable of competition. In certain cases there are two types of machines for doing similar work, but they are used for different purposes or they embody to a considerable extent the same patents. For example, the welt leveler is used exclusively for welt shoes, and the McKay leveler is used exclusively for McKay shoes, and neither can be used to do the work of the other, and, therefore, they are not capable of competition. In certain other cases there is a new improved model and an older model, but in such cases the new model is not only superior to the old model so that the old model is becoming obsolete, but it almost invariably embodies some patents which are also embodied in the old model.

In other words, the business of manufacturing each of the machines which the United Company produces cannot be carried on without the ownership of the patents embodied in the machine and under which it was created. It would be utterly impossible, therefore, to transfer to two or more separate companies the right to manufacture any one of these machines and thereby create competition without cancelling the patents under which such machine is manufactured.

2. In the second place, the United Company has a single manufacturing plant at Beverly, where all its machines of any importance are manufactured. The only other plants which it controls are a small plant for making treeing machines (O. A. Miller Treeing Machine Company), a small plant for making fudge edge and beading machines (owned by the Booth Brothers Company), and plants for making supplies, such as eyelets, blacking-brushes, etc. If the Beverly factory

were retained and these other small plants were transferred to a separate company or companies, such company or companies would not thereby be placed in a position to manufacture shoe machinery.

The United Company's plant at Beverly, which is the only factory owned by the United Company which is used or suitable for manufacturing shoe machinery on any scale, and the only factory which has the tools and patents for manufacturing the machines as to which monopoly is charged, is a single plant with a single foundry and designed for use by a single concern. If the United Company were divided into two or more companies, it would, therefore, be necessary for one to take the plant at Beverly and for the other company or companies to obtain new plants.

A division of the United Company's business could be attempted in only one of three different ways,—either

(1) By dividing the business into its original component parts, that is, by dividing the business of two or more non-competing concerns, each of which took the patents covering certain distinct types of machines; or

(2) By attempting to divide the business among two or more competing concerns, each of which took one or more of the patents covering each machine; or

(3) By attempting to compel the United Company to dispose of all machines and businesses which the United States contends were unlawfully acquired since its formation in 1899.

If an attempt were made to divide the business into its original component parts or into other non-competing groups, that is, if the Goodyear business acquired from the Goodyear Company were set apart in one company, the lasting machine business acquired from the Consolidated Company in another company, the heeling and metallic machines acquired from the McKay Company in another company, and the new machines, such as the pulling-over machines, clicking machines, eyeletting machines, and General Department machines invented by the United Company, or acquired since the formation of the United Company, were set apart in still another company, we should have four non-competing companies. These companies could, unless enjoined, consolidate

again because it would be entirely lawful to do so, as held in *United States* v. *Winslow*, supra. No competition would be created by such a division and no beneficial result would be accomplished. On the contrary, the public would lose the benefit of the increased efficiency which results from the consolidation in one company of these different types of machines, such as better service to shoe manufacturers, the maintenance of a large experimental department, wholesale prices, and reduction of expenses.

If an attempt were made to divide the business of the United Company into competing concerns, this could only be done by taking each machine separately and transferring to one company a portion of the patents covering the machine and to another the remainder of the patents covering it. A division of the patents covering a machine between two concerns would, of course, make it impossible for either to manufacture the machine as now manufactured. Suppose, for example, the Court should order that one-half the patents on the welter or pulling-over machine should be sold or disposed of. Neither the United Company, which retained half the patents, nor the vendee of the other half of the patents, could make the welter or pulling-over machine as it is now manufactured and put out. The result would be disastrous to the industry, as it would necessarily mean far less efficient machines, or in some cases that no machine at all could be manufactured without infringement.

Nor would a better result be accomplished if the Court should order that the acquisitions which the United States contends are unlawful should be disposed of.

The sale by the United Company of the concerns manufacturing supplies which it has acquired would certainly not create competition in shoe machinery. Nor would it create competition in such supplies, since the United Company has not acquired two or more competing concerns of this character. Upon the sale of the business of supplying peg-wood, blacking, eyelets, etc., the result would merely be that shoe manufacturers would be deprived of the benefit of obtaining these supplies from the United Company's various service stations, and would likewise be deprived of the right to obtain them at the prices which the United Company is able to quote

because of the fact that it has an established organization in constant touch with shoe manufacturers through which it can furnish these supplies with comparatively little additional expense.

Take the acquisitions of machines which the United Company was not manufacturing until such acquisition. If the United Company should sell these machines and the patents covering them, no competition would be created, as the United Company would have no machines left to compete with. The result would merely be that the shoe manufacturers would probably have to pay more for the machines and would get a poorer service with them, as the United Company with its large factory can manufacture these machines more cheaply and on account of the number of machines it puts out can furnish service more economically than would be possible for a purchaser of these patents.

Take the acquisition of patents which were acquired to be embodied in machines which the United Company was at the time producing or developing. If these patents were sold, the United Company would be unable to manufacture machines containing the improvements protected by these patents. On the other hand, the purchaser of these patents would not be able to manufacture the machine now produced by the United Company which embodies other patents, which the United Company would retain.

An examination of our discussion of the acquisitions (*supra*, pp. 436–490) will show that none of the businesses, patents, or machines acquired by these so-called acquisitions could be sold so as to benefit the public and create competition.

In a number of cases the particular machine the acquisition of which is criticised by the United States, has become entirely obsolete, and if any competition did exist, which we deny, none could be created by selling such machine or the patents covering it.

For example, the Ideal Machine and the Eppler Machine, acquired in the original organization of the United Company are now both obsolete. Anybody is free to manufacture these machines to-day, as the patents under which they were made in 1899 have expired; but nobody does manufacture them, because nobody wishes to use them. There are no patents cov-

ering these machines to sell and no business of manufacturing them to dispose of.

Take the patents acquired from the Richardson Shoe Machinery Company (see Appendix I, *infra*, p. 722). Those patents covered inventions which the United Company did not have and which it has embodied, together with many of its own inventions, in its new Model K Welter, its new Model M Outsole Stitcher and the new McKay Sewing Machine which it has produced since those patents were acquired; and its Model B McKay Sewing Machine infringed one of those patents. If the United Company sold those patents it would no longer be able to supply machines embodying those improvements. The purchaser, on the other hand, would not be able to supply machines nearly as efficient as the United Company's machines in which those improvements have been embodied because they have been combined with many other important improvements which have been developed by the United Company and which are covered by its patents. The result of such a sale would merely be to reduce the efficiency of existing machines.

Take the Plant acquisition. A sale by the United Company of the Plant patents would prevent its manufacturing the improved Model K Welter, which is enormously more efficient than either the former Plant welter or the former United Company welter. The loss to shoe manufacturers would amount to hundreds of dollars a year on each new machine. Such sale of the Plant patents would also mean that patents on 26 machines now put out by the United Company would be transferred and the United Company would have to give up the manufacture of these machines or would have to remodel them materially to avoid infringement of the transferred patents and thus make them far less efficient. On the other hand, it is extremely doubtful if the grantee of the patents would attempt to manufacture under them. If he did, he would be unable to manufacture efficient machines which he could market, or if he did make efficient machines he would infringe patents of the United Company which must be combined with the Plant patents to make efficient machines.

These instances are typical of all the acquisitions of patents for shoe machinery or machines.

The fact that the United Company's business cannot be separated without such consequences proves conclusively that its creation was inherently lawful and for the purpose of greater efficiency and to enable it to furnish more efficient machines.

The Sherman Act, as we have shown, is intended to prevent "not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented."

Wilder Mfg. Co. v. *Corn Products Co.*, 236 U. S. 165, 174.

It may possibly be true that if the United Company's patents should be distributed among two concerns, neither of which held all the patents on one machine, and neither of which was therefore able to make the latest improved machines, competitors of the United Company would be benefited. Shoe manufacturers and the public generally, however, would be disastrously affected. The Sherman Act was never intended to produce such a result.

In *United States* v. *St. Louis Terminal*, 236 U. S. 194, the decree of the lower court in a suit under the Sherman Act enjoined the defendant company from doing a transportation business which originated and terminated on its own lines. This Court held that the decree should be qualified so as to recognize the defendants' right to do such business (p. 205),—

> "Because not to so decide would lead inevitably to the conclusion that the decision of this court contemplated safe-guarding one public interest by destroying another and in effect proposed making the movement of transportation freer in some channels by absolutely obstructing all possibility of its flow in others."

2. To Hold the Leases Void would disastrously Affect Shoe Manufacturers and the Public.

The United Company owns the leased machines, and shoe manufacturers are only entitled to hold them under the lease and license agreements under which they were placed in such lessees' factories. If the leases were held void, lessees would

no longer have a right to retain or use the machines now held by them until they made a new agreement with the United Company permitting them to do so.

But if the leases were held void because the provisions now contained in the leases are illegal, the United Company would necessarily be unable to permit the use of its machines on the favorable terms on which lessees now hold them.

Under the present system the shoe manufacturer obtains the machines practically without initial cost, and, apart from nominal rentals charged for certain auxiliary machines, the shoe manufacturer pays for the machines only to the extent that he uses them. Such an arrangement is possible only when the lessee agrees to use the machines if he has work for them to perform. Otherwise valuable machines would be placed in the lessee's hands and he would be under no obligation to pay anything to the United Company if he did not choose to use them. But if the Full Capacity Clause were held illegal, the lessee could not be asked to agree to use the machines and, therefore, the United Company could not let him have them on the present terms. It would be obliged either to sell the machines or charge a large initial payment or a fixed annual rental sufficient to compensate it for the machines and payable whether the lessee had work for the machines or not.

If the United Company should therefore determine to sell its machines or charge a large initial payment, the result would be that the shoe manufacturer whose capital is small might be unable to make the payments required of him and therefore be unable to continue in business, or if he did succeed in making the payments he might find himself with insufficient quick capital to conduct his business properly. Small manufacturers without sufficient capital to pay for their machines would be unable to enter business in the future, as they can now do.

If a fixed rental should be charged it would necessarily be based on the capacity of the machines. This again would injure the small shoe manufacturer. If he made only 200 pairs a day, as many shoe manufacturers do, he would have to pay for a machine like the heeling machine, which has a capacity of over 1,200 pairs per day, as much as the large manufacturer making 1,200 pairs per day and using the machine to its full capacity would have to pay.

Under the present system a shoe manufacturer using a series of machines gets the benefit of the reduced price which the United Company is able to offer when such a series is used. If the Restricted Use Clause were forbidden and the United Company were forced to lease each machine separately, regardless of whether it were to be used separately or not, the royalty or price charged would have to be based on the cost of caring for and the probable return from each machine if used separately, and not as part of a series of machines.

It is obvious, as we have shown, that a series of machines, for example, a welter, stitcher, 10 auxiliaries, lasting, heeling, and metallic machines, can be cared for more economically and will return more revenue if used together in one factory than if each machine is in a separate factory in a separate place. Yet, if the Restricted Use Clause were forbidden, the shoe manufacturer taking the series of machines would have to pay for their use a price which would be the total charge if he took each machine separately. The shoe manufacturer using the series would therefore be charged more than he pays at present.

Most of the United Company's customers, as many of them testified, consider the United Company's machines the best made and prefer to take the entire series. These shoe manufacturers would necessarily suffer.

If the United Company cannot protect itself by the Exclusive Use Clause permitting it to take back its machines if others of the same kind are used and for this reason it does not get a fair return, if it cannot protect itself by the Cancellation Clause permitting it to cancel its leases if the lessee violates his agreements, and if it cannot protect itself by the Repair Clause requiring the lessee to use in repairing its machines parts which are made for them and which it knows are proper, the United Company cannot put in its lessees' hands millions of dollars worth of machinery without charging an initial payment sufficient to cover possible losses arising from these various contingencies.

If the seventeen-year term is held illegal and the United Company is forbidden to enter into an agreement to lease the machinery for an extended term, the United Company cannot afford to construct expensive machinery to be placed

without charge in the hands of its lessees, which might be returned for some whim of the lessee after a short period.

The present remarkable system of leasing machines without initial payment, to be paid for only as used, is made possible only by the use of these clauses or similar clauses which are essential to the protection of the lessor. It is inevitable that if these clauses were held illegal the United Company would be obliged to abandon the lease system entirely or charge very large initial payments and also charge more for each machine though used as part of a series than would be charged if it could lease the series as a whole. Such a result would be a misfortune to the shoe manufacturing industry. The cost of machinery would increase and many manufacturers of small capital would be unable to retain their machinery or to obtain all the machinery they need for the most efficient conduct of their business and many men of small means would be debarred in the future from entering into business at all. The only persons who would be pleased would be a few large shoe manufacturers who object to the present system because it enables the small manufacturer to enter business and compete, and who do not care what they pay for their machines (provided it does not exceed the amount paid by others) if they can eliminate the competition of the small manufacturers which has been encouraged by the United Company.

3. If the Clauses in the Leases Objected to by the United States are Illegal, the Leases as a Whole must necessarily be Void.

Counsel for the United States seeks to avoid the foregoing consequences in the following way. Although the petition prays that all leases containing these clauses "be declared illegal and void" and their enforcement enjoined (R. Vol. 1, p. 1029), counsel suggested at the former hearing of this case that they did not ask that the leases be declared void, but only asked that the United Company be enjoined from enforcing the clauses objected to. In this way they suggest shoe manufacturers may retain their machines without paying more than

at present and be freed from all these provisions which pro ect the United Company. In other words, they submit that such a decree would work to the advantage of the shoe manufacturers.

Such a decree, of course, would not compel the United Company to lease additional machines to existing lessees or to new manufacturers hereafter entering business except on such new terms as to payment as the United Company should determine it necessary to charge. It would therefore not give shoe manufacturers in the future the benefit of the present conditions.

But furthermore as applied to present leases this proposal is absolutely without justification. The clauses in question go to the very root of the leases. If they were held illegal and their enforcement enjoined, there would be no contract left between the parties, and the leases would necessarily be illegal and unenforceable by either party, or at least could be cancelled by either party at any time.

For example, take the seventeen-year term. If the United Company were enjoined from enforcing this clause, it would mean that the United Company could not compel a lessee to retain his machines for the period of seventeen years, but that the lessee could return them at any time. But if the United Company were so enjoined, it must be because the clause is illegal. If so, it clearly follows that the lessee could not enforce the clause. In other words, there would be no term for the lease, and the lessee could return the machines, or the United Company could withdraw them at any time. The lease could be cancelled by the United Company at once and the United Company would certainly be obliged to make such cancellation. In other words, it is impossible to enjoin the United Company from enforcing this seventeen-year clause without cancelling the leases or making them terminable at the option of either party.

Take the Full Capacity Clause. Machines held under leases containing this clause were leased on an understanding that they should be used as contemplated in the Full Capacity Clause. If they are not so used, the United Company may get no return for its machines, as its royalty is dependent on the use of the machines. This clause goes to the very essence of the contract. If it were held illegal, the whole lease must

be illegal, and therefore the lessee would no longer have any right to retain the machines without the permission of the United Company. To hold otherwise would be to hold that the Court can decree that machines owned by the United Company shall be held by a shoe manufacturer on terms not contemplated or agreed to by either party. In other words, it would be to hold that the Court by its decree can create a new contract between the parties which would be totally unfair to one of them and in some instances might deprive it of practically its entire return on its investment.

Take the clause contained in some of the Goodyear leases requiring the lessee to pay a royalty for the use of the machines based upon the total factory output of the lessee. This is the only clause in the lease requiring the lessee to pay any royalty to the United Company (except a small minimum payment). This clause goes to the very essence of the contract. If the United Company were enjoined from enforcing it, it could not obtain any compensation for its machines whatsoever. To enjoin the United Company from enforcing it and at the same time to hold that the lessee may continue to retain and use the machines would be to confiscate the United Company's machines.

Take the Auxiliary Restricted Use Clause. The United Company has thousands of patented Goodyear auxiliary machines on lease. No royalty is charged directly for the use of these machines but they are restricted to use with the Goodyear Welter and Stitcher. The United Company receives its return for the entire group of machines from the royalties paid for the Welter and Stitcher.

Is it possible that the Court could enjoin the United Company from enforcing the restrictions placed on the use of these Goodyear auxiliaries and at the same time hold that the lessee had a right to continue to retain the machines under his lease and use them in connection with any machines he pleased? If so, it would mean that the Court would confiscate millions of dollars worth of machines owned by the United Company, for the result would be that lessees could continue to hold and use thousands of machines without making any royalty payment direct or indirect to the United Company for their use, excepting in some cases a nominal rental.

These auxiliary machines are patented machines. The only license the lessee has to use them is the restricted license contained in the leases authorizing their use on certain shoes. If, as the United States contends, this license is unlawful, then it necessarily follows that the lessee has no license at all to use the machines. If a patent suit is brought against him by the United Company for an infringement by the use of the machines, the lessee can defend only by setting up a license and of course it cannot set up an unlawful license. Therefore, if the restricted license were held unlawful, it clearly follows that the lessee would have no license to use the machines at all. To hold the only license which has been granted unlawful and at the same time to decree that the lessee has a right to use the machines as he pleases would be to create by decree of this Court a patent license which the United Company has never granted.

In the case of leases of machines containing the Restricted Use Clause, restricting their use to use in connection with machines of other departments, the same situation obtains. Such machines are leased at a reduced rate on the agreement that they are to be used as part of a series. To permit the lessee to use them otherwise would be to force a contract upon the United Company which it never entered into. Furthermore, the only license to use these patented machines is the restricted license contained in the leases which would be held unlawful. Lessees could not be authorized to continue their use unless a new license were granted them by the United Company.

The contention of counsel for the United States that the enforcement of these clauses can be enjoined and at the same time the lessees can be authorized to retain and use their machines for the term of the leases without complying with these provisions is, we submit, without justification.

In *Darius Cole Transportation Co.* v. *White Star Line*, 186 Fed. 63, a steamer was leased for three years at a specified rental, to be used on certain routes including a route between Toledo and Detroit. The lessor agreed to surrender to the lessee all of the good-will of the "river business," so-called, and agreed not to enter into competition with the lessee upon the routes named in the lease. It was held under the circum-

stances of the case that the lease resulted in giving the lessee a monopoly of the business between Detroit and Toledo, which constituted interstate commerce, and that it was, therefore, void because in violation of the Sherman Act. It was urged by the lessor that the agreement in relation to the interstate route between Detroit and Toledo be held void and the remainder of the lease be held valid and enforceable. The Court said (p. 68),—

> "The only use which respondent had of the Idlewild was under the contract, and that being void, and no basis existing for an apportionment of earnings under the interstate route from those earned wholly within the state, and thus no means of separating the legal from the illegal provision, it follows that no recovery can be had."

In *Dennehy* v. *M'Nulta*, 86 Fed. 825, a distilling company delivered to purchasers of its goods vouchers by which it agreed to pay a rebate on such purchases on condition that the vendee bought of it all his goods of a certain kind for a specified period. The condition was held illegal. The holders of the vouchers sought to recover the amount of the rebates provided for thereunder, although the conditions had not been complied with, on the ground that such conditions were unlawful. The Court said (p. 828):—

> "But assuming, for the argument, that both premises are well taken, no relief can then be granted for enforcement of the contract, as no consideration is left to support the promise. The condition is the sole consideration for the promise, and, if that is illegal, the promise falls with it. Even if the consideration were invalid only in part, the same result would follow, the promise being indivisible. Bish. Cont. §§74, 487; 3 Am. & Eng. Enc. Law, 886; Greenh. Pub. Pol. rule 24. No element of the contract as actually made between the parties remains to be enforced. *A court of equity cannot make a new contract for them, nor can it destroy the substance of the one which they have entered into, and at the same time preserve the contract obligation.* Recovery upon the vouchers in question, with the conditions unfulfilled, would have that effect, and must be denied in equity as well as in law" (italics ours).

In *Bishop* v. *Palmer*, 146 Mass. 469, the defendants purchased a certain business and property together with the goodwill for a consideration to be paid in instalments and the plaintiff agreed not to compete. The agreement not to compete was held invalid. The plaintiff sued the defendant for failure to pay the instalments due. The Court held that, since a portion of the consideration given by the plaintiff, namely, his contract not to compete, was unlawful, he could not compel the defendants to fulfil their agreement to pay for the property purchased. The Court said (p. 475):—

> "If they [the defendants] pay to the plaintiff the whole sum called for by the terms of the contract, it may well be that they can call on him to perform all of his agreements except such as are unlawful. In such case, they would merely waive or forego a part of what they were to receive, and recover or enforce the rest. It does not, however, follow from this that they can be compelled to pay the sum promised by them, when a part of the consideration of such promise was illegal. They are at liberty to repudiate the contract on this ground; and, having done so, the present action founded on the contract cannot be maintained; . . ."

4. The Leases cannot be Declared Unlawful or the United Company Enjoined from Enforcing them, as the Lessees are not Parties to the Suit.

We have shown above that the United Company cannot be enjoined from enforcing these leases without declaring the leases void, or at least without permitting the United Company to cancel the leases which it would necessarily be obliged to do. The lessees, therefore, are as vitally interested in the question of whether these leases are held valid as is the United Company itself. They now hold a valuable equipment of machines which have cost them no capital expenditure and for the use of which they pay very low royalties. They are entitled to hold these machines for long terms at the rates provided for in the lease and license agreements. If the leases were held void, in order to retain these machines they would be obliged to pay such prices as the United Company

might determine to exact from them. If the United Company chose, it could exact such terms as would make it impossible for many of them to continue in business, and, as we have shown, it would necessarily be required to charge prices which would seriously injure hundreds of small manufacturers.

Under these circumstances, in accordance with decisions of this Court, the lessees are necessary parties to a suit which seeks to declare these leases void or which seeks to declare provisions in the leases illegal which if held illegal would necessarily make the leases void or subject to cancellation by either party.

Minnesota v. *Northern Securities Co.*, 184 U. S. 199.
Gregory v. *Stetson*, 133 U. S. 579.
Shields v. *Barrow*, 17 How. 130.

In *Minnesota* v. *Northern Securities Co.* (*supra*) the State of Minnesota charged that a majority of the stockholders of the Northern Pacific and Great Northern Railroads had combined and transferred their stock to the Northern Securities Co. in order that the Northern Securities Co. might exercise a joint control over these two roads in violation of the laws of the State. It asked that the Northern Securities Co. be enjoined from voting its stock in the two roads or exercising control over them. This Court held that the Northern Pacific and Great Northern Railway Companies or their minority stockholders whom they represented were interested in the suit and were, therefore, necessary parties. It dismissed the bill on this ground. The Court said (p. 235):—

> "The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, are to be made parties to it, so that there may be a complete decree, which shall bind them all. By this means the court is enabled to make a complete decree between the parties, to prevent future litigation, by taking away the necessity of a multiplicity of suits, and to make it perfectly certain that no injustice is done, either to the parties before it, or to others who are interested in the subject-matter, by a decree which might otherwise be granted upon a partial view only of the real merits. When all the parties are before the court, the whole case may be seen; but it may not, where all the conflicting

interests are not brought out upon the pleadings by the original parties thereto (Story's Eq. Plds. sec. 72).

"The established practice of courts of equity to dismiss the plaintiff's bill if it appears that to grant the relief prayed for would injuriously affect persons materially interested in the subject-matter who are not made parties to the suit, is founded upon clear reasons, and may be enforced by the court, *sua sponte*, though not raised by the pleadings or suggested by the counsel. *Shields* v. *Barrow*, 17 How. 130. *Hipp* v. *Babin*, 19 How. 271, 278; *Parker* v. *Winnipiseogee Lake Cotton and Woolen Co.*, 2 Black, 545."

If the Northern Pacific and Great Northern Railway Companies are necessary parties in a suit to enjoin another corporation holding stock in them from voting its stock or exercising control over them, it would seem clear that a lessee in the present case having a valuable set of machines under lease on very favorable terms is a necessary party to a suit to hold such lease invalid.

The United States contends that this suit is not like a private suit involving only private rights, but *Minnesota* v. *Northern Securities Co.* equally involved public rights. The United States also relies upon *United States* v. *du Pont de Nemours & Co.*, 188 Fed. 127, in which it was held that a trustee for bondholders of the company was not a necessary party to a suit for dissolution under the Sherman Act. But as the Court pointed out in that case, it was not dealing with titles to property. The obligations of the Company to its bondholders were not to be affected nor the bondholders deprived of their bonds nor of the security therefor. In the present case it is sought to hold the leases void and thereby deprive the lessees of their rights in the leased machines, thus directly affecting their property rights, and their contracts of lease.

If it is impractical to make all the lessees parties, at least certain of the lessees should be made parties as representatives of the class.

XII.

CONCLUSION.

We submit:—

1. That the United States has wholly failed to prove any part of the charge made in the petition, namely, that the defendants, finding that the patents of the constituent companies under which they did the greater part of the business of the country in the principal essential shoe machines were about to expire, planned to extend their patent monopolies unlawfully by—

(*A*) Combining and acquiring all concerns engaged in the shoe machinery business, and then

(*B*) Refusing to sell or lease any of said so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machinery which he required, and that

(*C*) They thereby acquired an unlawful monopoly of all shoe machinery.

There is no evidence of any such plan, and the record shows conclusively that the defendants never did anything to carry out such a plan, for, as the District Court found:—

(*A*) They did not acquire all concerns engaged in the shoe machinery business or attempt so to do.

(*B*) They did not refuse to lease the alleged essential machines except on condition that the shoe manufacturer take all other machines required by him from them. As the District Court found, this charge was wholly unfounded.

(*C*) They did not acquire an unlawful monopoly of all shoe machinery, as the United States itself conceded during the course of the trial.

2. The United States attempted during the course of the trial to limit its charge to a charge that the defendants planned to extend their patent monopolies unlawfully by—

(*A*) Combining and acquiring all concerns engaged in the business of manufacturing machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines and clicking machines, and

(*B*) Refusing to sell or lease any of the so-called essential machines to a shoe manufacturer except on condition that he take from them practically all other machines of the above named classes, and that

(*C*) The defendants carried out such plan and thereby acquired an unlawful monopoly of said classes of machinery.

There is equally no evidence of any such modified plan or of any monopoly obtained in pursuance of any such modified plan, for, as the District Court found,—

(*A*) The defendants did not acquire or attempt to acquire all concerns engaged in manufacturing shoe machinery of the above mentioned classes. On the contrary they expressly declined to purchase their largest competitors making such machines.

(*B*) They did not refuse to lease the so-called essential machines except on condition that the shoe manufacturer take all other machines from them. On the contrary the record shows that the United Company never required a shoe manufacturer leasing its so-called essential machines to take or use any other machines, and that the only clause employed in its leases at the time the petition was filed requiring any use whatsoever of its machines was the Full Capacity Clause which required only a use of the particular machines leased. It further shows that the United Company's so-called restricted leases not only did not require the lessee to agree to use other machines, but that they did not compel such a use in order to obtain the leased machines, since the lessee was offered alternative forms of leases without restrictions on terms as favorable, and in many cases more favorable than were offered him prior to the formation of the United Company.

(*C*) The defendants did not have an unlawful monopoly of machines of the above-mentioned classes. On the contrary not only were there a number of competitors, but the business the defendants had in such machines was due to the fact that the United Company and its constituent companies had created such business by reason of their patented inventions, that their machines had always been the best in the market, and their success was due to the excellence of the machines, the constant improvements made in them, the remarkable service rendered with them and the favorable terms offered lessees.

3. We further submit that the record utterly fails to justify any other charge of unlawful conduct or monopoly, even if such a charge had been made in the petition and it were therefore open to the United States.

The history of the development of the United Company and of its constituent companies is a remarkable history of the creation of a new industry. By constant efforts and intelligent experimentation conducted at great expense, it has produced what are unquestionably the best machines, and these machines are lawfully protected by patents so that others cannot manufacture them. Most of these machines when first put on the market were new creations doing work previously done by hand. Nearly all of the United Company's machines to-day are new machines or new models so improved as to constitute practically new machines, or are machines invented within a few years to do work previously done by hand. The United Company's success in furnishing these machines is as natural and lawful as was the success of the Bell Telephone Company as owner of the Bell patent in the telephone field.

In addition the United Company is furnishing its machines under a lease system whereby the lessee can obtain his machines with practically no initial cost, paying for them only as he has use for them, and under which he is permitted to share in the economies resulting from the combined use of the principal machines which are adapted for use together, and

the United Company furnishes at great expense to itself and without charge to its lessees a service with its machines which shoe manufacturers testified was vital to the proper conduct of their business.

During a period in which the cost of nearly all supplies and machinery has increased, the United Company has never increased its prices, but on the contrary has in numerous instances reduced them, and, in addition, for such prices it has furnished, not the machines put out in 1899, but greatly improved machines, and many additional auxiliary machines which save the shoe manufacturer more than the entire amount paid the United Company in royalties.

As the District Court found:—

> "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question. It is not disputed that, when the petition was filed, its machines represented, in number and amount, the highest development ever reached in the art to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason" (R. Vol. 1, p. 1137).

The attempt of the United States to prove that the success of the United Company was not due to the above causes but to various unlawful means adopted in pursuance of a plan to monopolize failed utterly. The charges of the United States were made recklessly and without investigation. The petition is replete with allegations made without any foundation of fact whatsoever on which even to base a contention. Thus, for example, the allegation that the United Company discontinued the sale of machines; the allegation that the patents of the constituent companies were about to expire; the allegation that the leases required the lessee to covenant to use United Company's machines of the kind leased and all other kinds exclusively; the allegation that the United Company acquired various patents and held them without making any use of them, thus depriving the manufacturer and the

public of the benefits arising therefrom; the allegation that exorbitant prices were charged for repair parts; and the allegation that the constituent companies were taken over for values far in excess of real worth, and numerous other allegations, were shown to have no foundation whatsoever, although the true facts would have been disclosed upon the slightest investigation. The specifications of the United States with respect to the unfair acts alleged by it were shown to be equally unfounded. As to the majority of them, no evidence whatsoever was introduced, and as to the remainder the evidence showed an utter lack of foundation for the charges.

The District Court heard the witnesses in open court and thoroughly investigated the entire business history of the United Company. The facts on which its opinions are based are fully sustained by the record, and completely dispose of the contentions of the United States.

We respectfully submit that the decree of the District Court dismissing the bill should be affirmed.

Respectfully submitted,

FREDERICK P. FISH
CHARLES F. CHOATE, JR.
MALCOLM DONALD
of Counsel for Appellees

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APPENDIX I.

THE "ACQUISITIONS."

Detailed Statements of the Facts.

(NOTE.—The companies are discussed in the same order as in the petition except the Boot & Shoe Sole Laying Company, a majority of the stock of which was acquired by the United Company in June, 1899, while the date of the acquisition stated in the petition is May 25, 1901; and except The T. A. Norris Machine Company, which was acquired July 1, 1902, not in March, 1903, as stated in the petition. The statements as to those companies will be found in their proper places in chronological order. The purchase of Plant's patents and inventions is not discussed here as the facts regarding that transaction have been set forth in our brief, *supra*, pp. 507–586.)

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Goddu Sons Metal Fastening Company.

This transaction took place March 1, 1899 (P.'s Ex. 60, R. Vol. 3, p. 514). The Goddu Sons Metal Fastening Company "had constructed a loose nailing machine, a slugging machine, a tacking machine, and a standard screw machine." Each of these machines was "in a state of development" and none of them was "in a condition to be placed in the hands of manufacturers for continuous operation" (Howard, R. Vol. 1, p. 41, lines 38–40; Winslow, R. Vol. 1, p. 436, lines 28–31). The Goddu Sons Company had no machines whatever in the hands of customers and accordingly was not engaged in interstate or foreign trade or commerce. These four machines, which were all patented, were all metallic fastening machines. The Goddu Sons Company had no factory and the experimental work had been done in a small machine shop with a few tools in it adjoining the house of Louis Goddu, the father of the "Goddu Sons" (R. Vol. 1, p. 103, lines 35–45; p. 104, lines 1–7; p. 436, lines 2–3, 27–28, 34–36).

Louis Goddu had been for a long time employed by the McKay Shoe Machinery Company and its predecessors, and his inventive work "had been very meritorious. It was the base of the McKay metallic machinery business" (Winslow, R. Vol. 1, p. 436, lines 15–19; Defs.' Ex. 101, R. Vol. 5, pp. 166, 168). All of his sons had also been employed by the McKay Company and several years prior to the organization of the United Company had all left the employ of the McKay Company (R. Vol. 1, p. 104, lines 8–10, 12–13).

The negotiations for this transaction were opened by the Goddus.

> "Mr. Goddu, senior, came to me and wanted the transfer, . . . to have the United Company take this property, . . . wanted to relieve himself of the position that he was in" (Winslow, R. Vol. 1, p. 436, lines 4, 5, 10).

Both Goddu, senior, and Van Wagenen had talked to Mr. Winslow about the situation before the United Company was organized (R. Vol. 1, p. 436, lines 20–23).

The United Company did not acquire anything whatever from the Goddu Sons Company. It acquired from Louis Goddu and his sons a majority of the stock of the Goddu Sons Company and a number of patents and applications for patents (R. Vol. 1, p. 41, lines 31–34; p. 534, lines 27–28). There were two reasons for this acquisition:

(1) It was claimed by officials of the McKay Shoe Machinery Company "that the inventions embodied in the machines of the Goddu Sons Company had been made by Louis Goddu, the father," who had agreed to assign his inventions to the McKay Metallic Fastening Association, a predecessor of the McKay Company, by his employment contracts which were still in force and under which he had been paid continuously, and was still being paid, for his exclusive services. Suit had been brought on those contracts "to compel the transfer of these inventions" which were in the Goddu Company's machines to the McKay Company (Winslow, R. Vol. 1, p. 436, lines 42–44; Howard, R. Vol. 2, p. 2071, Ints. 1578, 1579; Defs.' Ex. 104, R. Vol. 5, pp. 245–252).

The bill of complaint in that suit, which is Defendants' Exhibit 104 (R. Vol. 5, p. 243), reviewed the history of Louis Goddu's relations with the McKay Company, including his declaration that he would assign no more inventions (pp. 245–252), set forth that none of the sons had made any inventions while in the employ of the McKay Company (p. 253) and charged that Louis Goddu, his sons and Albert Van Wagenen, also formerly employed by the McKay Company, conspired to have Louis Goddu invent metallic machines, communicate such inventions to his sons and permit them to apply for patents upon the machines and transfer such patents to the Goddu Company (pp. 253–262).

Counsel of the highest standing, Mr. Louis D. Brandeis, appeared for the McKay Company in this suit (R. Vol. 5, p. 264).

The endless trouble which the McKay Company had had with Louis Goddu and threats that he had made are further set forth in the affidavit of James W. Brooks (Defs.' Ex. 101, R. Vol. 5, p. 161), prepared for use in the proposed infringement suits. Among illuminating facts developed by the evidence in the pending suit which are recited in this affidavit,

it appears that Louis Goddu, the father, had contributed $40,000 to the Goddu Sons' enterprise (p. 187) and that he had been working with his sons continuously for several years (pp. 183, 184).

Mr. Winslow testified,—

> "I knew Mr. Goddu, senior, quite well and believed personally that the patents then standing in his and his sons' names, and those that had been transferred to the Goddu Company, belonged in reality to the McKay Company" (R. Vol. 1, p. 435, lines 43–45; p. 436, lines 1–2; Defs.' Ex. 231, R. Vol. 5, p. 447).

That is, by this acquisition Mr. Winslow was securing control for the United Company of inventions and patents and applications for patents which he believed already belonged to the United Company, as successor of the McKay Company.

(2) There was very serious litigation existing and threatened between the parties. The pending suit which had been brought on the Louis Goddu contracts had been running for some time before the formation of the United Company, had been "very vigorously contested" and "a very large amount" of testimony had been taken, and the claims of the McKay Company had been developed and substantiated before the acquisition (R. Vol. 1, p. 104, lines 14–24; R. Vol. 2, p. 2082, Cr. Ints. 1618–1620; Defs.' Ex. 275, R. Vol. 5, p. 755).

In addition to this pending suit the McKay Company had—

> "caused to be prepared bills of complaint and affidavits to accompany motions for preliminary injunctions in suits for infringements of its patents by all of the machines of the Goddu Sons Metal Fastening Company" (Howard, R. Vol. 2, pp. 2077, 2078, Ints. 1609–1611; Defs.' Ex. 275, R. Vol. 5, p. 755).

A number of affidavits, including one by Joseph P. Livermore, and a bill of complaint had been printed prior to the formation of the United Company and printed copies constitute Defendants' Exhibit 101 (R. Vol. 5, p. 140). According to Mr. Livermore's affidavit, the Goddu Sons' loose nailer infringed six of the McKay Company's patents; its screw machine infringed two of the McKay Company's patents; its slugging machine infringed two of the McKay Company's patents.

and its string nailer infringed three of the McKay Company's patents (Defs.' Ex. 275, R. Vol. 5, p. 756).

Mr. Winslow testified:—

> "I very much desired to start the United Company free from all serious litigation. I was aware of the fact that there was serious litigation existing between the McKay Company and the Goddus."
>
> "I was very glad to get rid of the situation which meant I didn't know how much litigation and how much time it would require from me, and to get that whole matter cleaned up and clear the litigation."
>
> "I had had considerable experience in that sort of litigation.
>
> "*Q.* Did you acquire the Goddu Sons Company for the sake of getting rid of any competition?
>
> "*A.* I did not" (R. Vol. 1, p. 435, lines 40–43; p. 436, lines 10–14; p. 437, lines 6–10).

The practical reasons why the Goddu machines could not be manufactured and put out without *entire reconstruction* were set forth by defendants' expert Howard with detailed explanations. In July, 1898, Mr. Howard spent a week in examining the Goddu Sons' machines, making drawings and notes (R. Vol. 2, p. 2070, Int. 1577; pp. 2088, 2089, Cr. Int. 1660; p. 2099, Cr. Int. 1666).

Moreover, even if the machines had been practical, "the United Company couldn't have developed those machines if they wanted to" because "they were stopped by the action of the minority stockholders of the Goddu Company" (Winslow, R. Vol. 1, p. 534, lines 20–26).

It should also be noted that after the acquisition all but one of the Goddu Company's machines infringed patents of the United Company acquired from the Goddu Sons individually, which did not expire until 1915 and 1917 (Defs.' Ex. 275, R. Vol. 5, pp. 756, 757).

As to this transaction it was held by the District Court:

> "the metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence suffi-

cient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

Pearson & Bennion, Ltd.

This transaction took place June 8, 1899 (P.'s Ex. 61, R. Vol. 3, p. 525). The reason for this purchase and the disposition of the acquired business after the purchase were summarized by Mr. Winslow as follows (R. Vol. 1, p. 420, lines 21–33):

> "Our agent in England for the Lasting Machine Company was Pearson & Bennion. They made or manufactured no machines that were made or manufactured by either of the companies which came together to form the United Shoe Machinery Company. They did make a few general department machines in England. Their principal business, probably eighty per cent of it, was the business they did as the agent for our lasting machine. We took their business, put our business with it and formed the British United Company. They entered our employ, and Mr. Bennion was made the general manager of that business. That was the reason; it was just putting in corporate form what had previously existed, only he was made the manager of all the business of these three companies."

As stated by Mr. Winslow: "The agreement of 1899 with Pearson & Bennion was in reality a consolidation of the foreign business of the United Company in England with Pearson and Bennion's business, and not a purchase" (Defs.' Ex. 231, R. Vol. 5, p. 450). Among the assets acquired was a new factory (R. Vol. 3, p. 530).

From Mr. Winslow's testimony, above quoted, that the few machines which Pearson & Bennion made were of the general department type, it is clear that Pearson & Bennion were in no way competing with the United Company since the United Company had no general department machines at that time. While the record does not name the Pearson & Bennion machines, they were presumably of the types used by English manufacturers, somewhat different from those used in this country. They were being manufactured under

patents (R. Vol. 1, p. 53, lines 3–5; R. Vol. 2, pp. 2787, 2788, Cr. Ints. 432, 433; R. Vol. 3, p. 527).

Boot & Shoe Sole Laying Company.

This acquisition is not referred to in its proper chronological order in the petition. The date alleged, May 25, 1901, is the date of the bill of sale formally transferring the company's property (P.'s Ex. 90, R. Vol. 3, p. 366). A majority of the stock of this company was acquired by the United Company in June, 1899 (R. Vol. 1, p. 457, lines 30–31; Defs.' Ex. 275, R. Vol. 5, p. 763). Accordingly this acquisition will be discussed here in its proper chronological relation to other acquisitions.

The Boot & Shoe Sole Laying Company was manufacturing and putting out a patented sole laying machine known as the Boston sole layer. It was doing a very small business. It owned no real estate and contracted with outside parties for such machines as it had built (R. Vol. 1, p. 54, lines 5–7; p. 99, lines 41, 43–45, R. Vol. 2, p. 2054, Ints. 1489, 1490; Defs.' Ex. 231, R. Vol. 5, p. 450).

The United Company did not have a satisfactory sole laying machine. They "had an inferior machine of different type," the rotary sole layer, "which was only adapted for large factories" and "which was very unsatisfactory because it was continually breaking down, particularly on men's shoes" (R. Vol. 1, p. 54, lines 20–21; Defs.' Ex. 231, R. Vol. 5, p. 450, and 275, R. Vol. 5, p. 763).

A further reason for this acquisition was that the United Company had "produced and desired to use the pressing form for sole laying machines shown and described in its patent 694,367 Mar. 4, 1902, Gifford (application filed Apr. 20, 1900)," but this form infringed a patent owned by the Boot & Shoe Sole Laying Company (Howard, Defs.' Ex. 275, R. Vol. 5, p. 763; R. Vol. 1, p. 665, lines 1–3). After this acquisition—

> "the United Company discarded the Rotary Sole Layer and adopted as its standard commercial machine the sole layer of the Boot and Shoe Laying Machine Company, using on that machine the pressing form of Gifford patent

No. 694,367. This machine, combining the best features of the rotary machine and the machine of the Boot and Shoe Sole Laying Company, has been much improved by a number of inventions made from time to time, and in the various stages of its development it has ever since been and is today the standard sole laying machine of the United Company" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 763; R. Vol. 2, p. 2050, Ints. 1467, 1468).

The Corrugated Wire Fastening Company.

This transaction took place June 30, 1899 (P.'s Ex. 62, R. Vol. 3, p. 530). With regard to the Corrugated Wire Fastening Company, Mr. Howard testified that at the time of the purchase it—

> "had one machine, a tacking machine, and was doing a very small business in supplying wire for that machine. I believe they had not put out any of the machines for some years because it was completely out of date. It was a very old machine" (Howard, R. Vol. 1, p. 42, lines 12–17).
>
> "The only business that was left when the Corrugated Company was acquired was the supplying of wire and spare parts for the machine. They had not done any business in the way of supplying machines for some time, and there was no longer any demand for the machines, so that no business was done and no business could be done with that machine" (Howard, R. Vol. 1, p. 42, lines 28–33).

This company "was purchased in 1899 for $12,750 at the earnest solicitation of the owners, their business having become unprofitable. At the price we paid we thought we could get out of it with a small profit" (Winslow, R. Vol. 1, p. 464, lines 20–23).

The Corrugated Wire Fastening Company—

> "Owned no real estate. Leased a small room on South Street, Boston, where it employed two or three men" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 475).

After the purchase—

> "The United Company continued to supply wire and parts for those machines. They have parts in stock today" (Howard, R. Vol. 1, p. 42, lines 33–35).

The business of the Corrugated Company was characterized by the District Court as "making wire and spare parts for use in an obsolete metallic-fastening machine" (Dodge, J., R. Vol. 1, p. 1138).

Breach Manufacturing Company.

This transaction took place July 31, 1899 (P.'s Ex. 63, R. Vol. 3, p. 531). All that the United Company acquired from the Breach Manufacturing Company was an exclusive license under certain patents on a machine—

> "which was intended for cutting soles out of a side or strip of leather by a reciprocating knife which moved up and down through the stock as it went around" (Howard, R. Vol. 1, p. 42, lines 44–45; p. 43, line 1; R. Vol. 2, p. 2067, Int. 1559).

At that time the United Company had no machine for cutting out soles (R. Vol. 1, p. 43, lines 13–16, 22–24). The machine which it puts out now for that purpose is a General Department machine (R. Vol. 2, p. 2645).

The United Company paid the Breach Company $10,000 for an exclusive license under the Breach patents in the hope that a successful machine to cut the uppers of shoes (*i.e.*, to do the work done by the clicking machine invented some eight years later) would be developed under those patents (Defs.' Ex. 231, R. Vol. 5, p. 467).

Mr. Howard testified:

> "The United Company took Breach into its employ and for several years made strenuous efforts to develop something practical out of that machine. Breach worked on the machine during that period and spent a great deal of money, but finally came to a point where he could apparently do nothing more, and at that stage the machine was an entire failure as a commercial machine" (R. Vol. 1, p. 43, lines 16–22).

Also—

> "The United Company built experimental machines and put them out on trial but could not interest manufacturers to use them" (R. Vol. 2, p. 2068, Int. 1562).

"Every possible assistance" was given to Breach by the United Company in the endeavor to make commercial the ideas embodied in his inventions, and that work was continued for some two years (R. Vol. 2, p. 2084, Cr. Ints. 1635, 1636).

> "In this endeavor the United Company expended about $30,000 and then gave up the attempt" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 467; Howard, R. Vol. 2, p. 2100, Int. 1668).

An important reason for the commercial failure of the Breach inventions was stated by Mr. Howard to be that—

> "Shortly before the time of the acquisition of the Breach patents, sole-rounding machines of the so-called Stanley and Julian type were introduced, which used a wooden pattern instead of a metal pattern such as had been previously used in sole-rounding machines, and as was used in the Breach machine. That pattern cost but a small fraction of the cost of the metal pattern, and was a very great improvement because it obviated the necessity of lubricating the edge of the pattern, which had always presented a serious difficulty" (R. Vol. 2, p. 2085, Cr. Int. 1641).

Mr. Howard also said "the United Company offered to turn back the patents to the Breach Company, and I believe it did so" (R. Vol. 1, p. 43, lines 9–10).

It should be noted that by this transaction the United Company acquired only an exclusive license under certain patents; it acquired no tangible property of any description (R. Vol. 3, p. 531).

Peter A. Coupal and William Gordon.

This transaction took place August 1, 1899 (P.'s Exs. 64–66, R. Vol. 3, pp. 535, 537, 538). Coupal and Gordon were running a machine shop and doing a general machine shop business, "not particularly relating to shoe machinery." They had one or two unimportant machines and an experimental "Basting Machine" which infringed a patent of the United Company (Howard, R. Vol. 1, p. 43, lines 27–35; p. 103, lines 25–26; Defs.' Ex. 275, R. Vol. 5, p. 757).

> "The United Company was not engaged in putting out or manufacturing such machines as Coupal and Gordon were making and putting out, or machines for performing the same or similar work" (Howard, R. Vol. 1, p. 43, lines 36–39).

The United Company acquired certain patents from Coupal and Gordon, but this transaction was primarily an employment contract. Coupal and Gordon were both "very skilled mechanics" and "were in the employ of the Goodyear Company prior to, and at the time of, the organization of the United Company and the United Company desired to obtain all their time free from outside matters." Gordon agreed to enter the employ of the company in a managerial capacity and remained in the company's service until his death in 1912. Coupal agreed to enter the employ of the company, but "only remained in the company's service a few months" (R. Vol. 1, p. 103, lines 22–24, 28–29; P.'s Exs. 64, 65, R. Vol. 3, pp. 535, 537; Defs.' Ex. 231, R. Vol. 5, p. 472).

The size of their business and relative importance of their machines is indicated by the consideration of this transaction, which was $10,799.25,—the value of their inventory quoted in Plaintiff's Exhibit 66, pp. 539–563. No real estate was acquired (Defs.' Ex. 231, R. Vol. 5, p. 472).

> "Soon after the purchase the machinery was removed to one of the United Company's factories and the business was continued in conjunction with the other business of the company" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 472).

Timothy A. Bresnahan; Boston Shoe Tool Company.

This transaction took place August 16, 1899 (P.'s Ex. 67, R. Vol. 3, p. 563). The Boston Shoe Tool Company, which was Bresnahan's Company,—

> "was manufacturing and selling a patented edge trimming machine and a rotary edge setter, and was also making and selling forepart and shank cutters for use on the edge trimming machine, and edge setting irons for use on the rotary edge setter. The rotary edge setter was adapted only for the cheapest kind of work and never used on any

other work. It could not be used with profit on any other kind of work. . . . Every edge trimming machine has a forepart cutter for trimming the sole around the forepart and a shank cutter for trimming the sole in the shank. . . . The finish or shine that the edge has when the shoe is new is given to it by the edge setting operation, and the tool which operates upon the shoe in this operation is known as an edge setting iron. . . . At the time of this acquisition the United Company had no machines for doing the work of either of the two machines acquired from the Boston Shoe Tool Company and it was not manufacturing any edge cutters or any edge setting irons" (Howard, R. Vol. 1, p. 43, lines 40–45; p. 44, lines 1–23).

The United Company acquired the Boston Shoe Tool Company's factory and the patents on its cutter and its edge trimming machine (R. Vol. 1, p. 103, lines 19–21; Defs.' Ex. 231, R. Vol. 5, p. 460).

"The business was continued at the same plant for a considerable period of time. Subsequently, for convenience and economy of manufacture, the business was transferred to the Beverly Factory, where the United Company has ever since continued and increased the business" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 460).

Edge trimming and edge setting machines, the only two machines acquired from this concern, are General Department machines and are sold outright (R. Vol. 1, p. 12, line 37 *et seq.;* Vol. 5, pp. 425, 428, 429).

In regard to the covenant quoted in the petition (R. Vol. 1, p. 1003) Mr. Howe testified as to the reasons why the covenant was in this particular form (R. Vol. 1, p. 692, lines 34–44; p. 693, lines 1–6).

Edwin T. Freeman.

This transaction took place October 9, 1899 (P.'s Ex. 68, R. Vol. 3, p. 569). Edwin T. Freeman had constructed an experimental slugging machine (R. Vol. 1, p. 44, lines 24–29; Defs.' Ex. 275, R. Vol. 5, p. 757); operation explained (R. Vol. 2, p. 2464) which was patented (R. Vol. 1, p. 103, lines 15–18). He had no factory and was doing no business. He "had not put out any machines at all" (R. Vol. 1, p. 849, line 15;

Defs.' Ex. 231, R. Vol. 5, p. 467); accordingly he was not engaged in interstate or foreign trade or commerce.

At the time of this acquisition the United Company was developing an improved standard screw machine, which later became Screw Machine, Model B—Rapid Standard, which infringed one of Freeman's patents. There was an interference in the Patent Office between an application for reissue of that Freeman patent and the application on this standard screw machine which the United Company was developing (Defs.' Ex. 275, R. Vol. 5, p. 758).

On the other hand, the Freeman machine infringed one of the United Company's patents and after January 21, 1902, would have infringed another patent granted on that date. These infringements could not have been avoided without entirely reconstructing the Freeman machine to omit from it valuable inventions, on account of which the United Company purchased the Freeman patents. Furthermore, an important mechanism, without which Freeman's machine could not have been a commercial success, had been necessarily omitted from the Freeman machine because it was broadly covered by two of the United Company's patents (Defs.' Ex. 275, R. Vol. 5, pp. 757, 758).

This acquisition cleared up these serious patent complications and enabled the United Company to improve its slugging machine and to avoid infringement of the Freeman patents (Defs.' Ex. 231, R. Vol. 5, p. 467).

Since the purchase, inventions claimed in the patents assigned by Freeman have been embodied in three different types of machines which the United Company has built and put out; namely, Nailing Machine, No. 2 Loose; Slugging Machine, No. 5; Screw Machine—Model B, Rapid Standard (R. Vol. 2, pp. 2066, 2067, Ints. 1554, 1557; pp. 2090, 2091, Int. 1662).

George W. Freeman.

This transaction took place October 10, 1899 (P.'s Ex. 69, R. Vol. 3, p. 573). George W. Freeman is the son of Edwin T. Freeman, from whom certain patents were purchased in 1899, as above explained. "Nothing was acquired by the

United Company from George W. Freeman" (R. Vol. 1, p. 44, lines 42–43). Consequently the statement in the petition (R. Vol. 1, p. 1003) that the United Company acquired the interests of George W. Freeman relating to shoe machinery is absolutely erroneous. He had been engaged with his father in work upon his father's experimental machine and the acquisition of his father's patents left him without a job.

> "As this transaction left the son, George W., without a job, his father asked the company to take the son into its employ for at least one year at a compensation of $800."
>
> "Freeman has remained continuously in the employ of the company as a roadman and now receives $1200 per year. He has never made or assigned any inventions to the company" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 472).

Mr. Winslow explained this employment contract as follows:

> "It was undoubtedly in view of the fact that he had been associated with his father in experimental work, and on account of the possibility of his setting up some claim to the inventions assigned by his father, that the covenants in regard to competition and future inventions were made a part of the contract for employment of George W. Freeman" (Defs.' Ex. 231, R. Vol. 5, pp. 472, 473).

Mr. Winslow's explanation is supplemented by Mr. Howard's testimony:—

> "The agreement was made with him at that time simply because he was his father's son and had been engaged with his father in work upon his father's machine. It not infrequently happens that a son may be responsible for some of the inventing in a case like that. It was a matter of precaution" (R. Vol. 1, p. 44, line 45; p. 45, lines 1–4).

Albert G. Brewer.

This transaction took place October 11, 1899 (P.'s Ex. 70, R. Vol. 3, p. 575). Brewer had built one experimental heel breasting machine of the automatic type, which was covered

by a pending patent application. A heel breasting machine is used to trim the front end of a heel. At that time the United Company was not putting out any heel breasting machine but was experimenting on a machine in which the knife was driven through the heel by power (R. Vol. 1, p. 45, lines 7–29; p. 103, lines 12–14).

> "Prior to February, 1899, all heel breasting was done by foot power machines . . . all the power required for forcing the knife through the successive layers of stock in the heel being applied by the operator through the treadle" (Howard, R. Vol. 2, pp. 2472, 2473).

Owing to the fact that "all heels vary in height, even the heels of shoes which are intended to be substantially alike," no power operated machine had yet been produced—

> "which could deal successfully with the problem of cutting just far enough to sever completely the surplus stock and, at the same time, not cut far enough to deface the shank of the sole" (Howard, R. Vol. 2, p. 2473).

Mr. Howard further testified (R. Vol. 1, p. 45, lines 34–37):

> "The Brewer patent covered a better, a more sensitive, mechanism than we had for stopping the knife properly when it reached the shank, to prevent cutting into and possibly cutting through the shank."

The United Company's experimental machine did not become a commercial success until "after the invention which we acquired from Brewer had been embodied in our machine" (Howard, R. Vol. 1, p. 45, lines 14–16).

On the other hand, the Brewer experimental machine infringed fourteen claims of the United Company's broad Heys patent on mechanism for automatically stopping the knife (R. Vol. 1, p. 45, lines 27–28; Defs.' Ex. 275, R. Vol. 5, p. 758). As stated by Mr. Howard: "in my opinion Brewer could not have built a power heel-breasting machine without infringing that patent" (Defs.' Ex. 275, R. Vol. 5, p. 758). After the purchase "approximately 700" machines incorporating the Brewer inventions were put out by the United Company (R. Vol. 2, p. 2066), and "That machine, with some modifications, is still being manufactured and put out by the United

Company" (Howard, R. Vol. 2, p. 2065, Int. 1548; p. 2090, Int. 1662). It is a General Department machine and is sold outright (R. Vol. 1, p. 12, line 37 *et seq.;* Vol. 5, p. 425).

The one experimental machine which Brewer had constructed was turned over by him to the United Company with his patent application (P.'s Ex. 70, R. Vol. 3, p. 576). It follows, therefore, that Brewer was not engaged in interstate or foreign trade or commerce. No manufacturing plant of any kind was acquired (Defs.' Ex. 231, R. Vol. 5, p. 467).

Globe Shoe Tool Company.

This transaction took place October 24, 1899 (P.'s Exs. 71–73, R. Vol. 3, pp. 577, 580, 583). The Globe Shoe Tool Company was a co-partnership, H. M. Loomer being one of the partners. It was engaged in the business of manufacturing and selling forepart cutters and edge irons, which are tools, not machines. It was acquired at the earnest solicitation of the partners and because the United Company desired to obtain the services of Mr. Loomer as the head of its department for manufacturing such tools (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 460).

The agreement between Loomer and the United Company (P.'s Ex. 72, R. Vol. 3, p. 581) provides for the employment of Loomer by the United Company and recites that that had been agreed upon "as an inducement to the United Company to take over said business and to purchase the property and assets of said partnership."

On the other hand, the Globe Shoe Tool Company was infringing two patents of the United Company (Defs.' Ex. 275, R. Vol. 5, p. 759).

The Globe Company owned no real estate but leased floor space:—

> "Soon after its acquisition the business was transferred to the factory of the Boston Shoe Tool Company in South Boston" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 460).

After the Boston Shoe Tool Company and the Globe Shoe Tool Company acquisitions, very large reductions were made in the prices of the tools acquired, as follows:—

"The price of the heel cutter with blades in January, 1899, was $3.25; we reduced the price on March 1, 1900, to $2.25. In January, 1899, the price of the blades alone was $2; on March 1, 1900, we reduced the price for the blades alone to $1. The price of forepart and shank cutters in January, 1899, was thirty-five cents each, in small quantities, and twenty-five cents each in quantities of 100; on March 1, 1900, we reduced the price to twenty-five cents each in any quantity. The price of edge irons in January, 1899, was fifty cents; on March 1, 1900, we reduced the price to twenty-five cents" (Winslow, R. Vol. 1, p. 479, lines 10–19).

John Ritchie Company and John Ritchie.

This transaction took place November 2, 1899. "The John Ritchie Company was a concern manufacturing shoes," located at Quebec, Canada (R. Vol. 1, p. 46, lines 19–20; P.'s Ex. 74, R. Vol. 3, p. 585). This transaction was explained by Mr. Howard as follows:—

"They had manufactured, prior to the date in question, one old standard screw machine, so called, that being the type of machine which preceded the rapid standard screw machine, the greatly improved machine then in use for that kind of work. I think that machine was not being used by the John Ritchie Company, but had been sold by them. They had not built, and so far as I know did not contemplate building, any more machines, but they were making wire for use on standard screw machines. They were selling that wire to lessees of the United Company, who were obligated by their leases to buy wire from the United Company.

"It has sometimes happened that the United Company will find that a dishonest lessee, who has agreed to buy wire from the United Company, in payment of royalty for the use of a metallic machine, or, to be more specific, a standard screw machine, will buy wire from another concern at a lower price and use it on the United Company's standard screw machine. That was exactly what was happening in Canada. The John Ritchie Company were making and selling standard screw wire to lessees of the United Company, which, of course, was not getting any return whatever for the use of its machines during the period that the Ritchie wire was being used in them. The

purpose of this transaction was to eliminate that dishonest situation in Canada" (R. Vol. 1, p. 46, lines 20–42).

Mr. Winslow stated that—

> "The reason for this contract and purchase was to prevent manufacturers who held Metallic Machinery under lease from the United Company . . ., violating their leases and contracts by purchasing material from Ritchie" (Defs.' Ex. 231, R. Vol. 5, p. 475).

Mr. Winslow further stated:—

> "No existing competition, or business, was interfered with by this contract. . . . No real estate acquired; only help employed two or three boys" (Defs.' Ex. 231, R. Vol. 5, p. 476).

The United Company agreed to pay the Ritchie Company $750 per annum with the right to cancel this annual payment at any time by paying $15,000 (Defs.' Ex. 231, R. Vol. 5, p. 476).

Seaver Process Lasting Company.

This transaction took place January 13, 1900 (P.'s Ex. 75, R. Vol. 3, p. 591). The most important reason for this purchase was that the Seaver Company had patents which stood in the way of the development of the United Company's pulling-over machine. The experimental pulling-over machine of the Seaver Company, which "could be used for pulling over uppers, but it was slower than hand work," and the experimental pulling-over machine of the United Company each embodied a mechanism believed to be indispensable to a successful pulling-over machine. If the Seaver Company obtained a patent on this mechanism the United Company would be prevented from putting out commercially its pulling-over machine upon which already there had been an expenditure of hundreds of thousands of dollars. Both the experimental pulling-over machine of the Seaver Company and its lasting machine were patented. On the other hand, there were pending suits for infringement of two of the United

Company's patents by the Seaver lasting machine (R. Vol. 1, p. 47, lines 9–11; p. 103, lines 5–10; p. 456, lines 34–37; p. 849, lines 24–29; R. Vol. 2, pp. 2086, 2087; Defs.' Exs. 231, R. Vol. 5, p. 447, and 275, pp. 759, 760).

The Seaver Company was in debt to E. B. Seaver, a majority stockholder, for more than the amount paid by the United Company (P.'s Ex. 75, R. Vol. 3, p. 591). The Seaver Company was insolvent and unable to pay its debts; it had only six employees and its business had fallen to pieces, and it is obvious that the company could have offered no competition either then or later that would have been more than negligible. The purchase was made at the earnest solicitation of Mr. Seaver, to remove the patent complications which stood in the way of the development of the United Company's pulling-over machine and to settle the existing litigation (R. Vol. 1, p. 456, lines 28–39; p. 849, lines 24–29; Defs.' Exs. 231, R. Vol. 5, pp. 447, 448, and 275, pp. 759, 760).

The pulling-over machine inventions acquired from the Seaver Company have been embodied in all pulling-over machines put out by the United Company "and the mechanism embodying those features is of the utmost importance in that machine" (Howard, R. Vol. 2, p. 2086, Cr. Ints. 1650, 1653). It was a combination of the Seaver inventions and those upon which the United Company inventors were working that resulted in the present commercial pulling-over machine, in the development of which nearly a million dollars was spent (R. Vol. 2, pp. 2086, 2087, 2552). At that time the machine was only experimental and it did not become commercially successful for over two years (R. Vol. 2, p. 2542).

The lasting machine inventions did not prove as useful as was expected. In all respects the United Company's lasting machines were superior and there was no demand for the Seaver lasting machine (R. Vol. 2, p. 2087, Cr. Ints. 1654, 1655).

No real estate was acquired from the Seaver Company; it did its business in a leased room (Defs.' Ex. 231, R. Vol. 5, p. 447). Plaintiff's Exhibit 75 (R. Vol. 3, p. 591) recites that "the said Seaver Company is insolvent and is unable to continue its business or to pay its debts."

Erastus E. Winkley and Benjamin Phillips.

This transaction took place March 16, 1900 (P.'s Ex. 77, R. Vol. 3, p. 615). By the agreement with Winkley and Phillips, the United Company simply—

> "exercised the option which had previously existed between the Goodyear Company and Winkley and Phillips to take the exclusive right to the use of certain patents which had been transferred by Winkley and Phillips in 1898 to the Goodyear Company"

and under which they had reserved certain rights which were the subject-matter of this transaction (Defs.' Ex. 231, R. Vol. 5, p. 467).

Winkley and Phillips were not engaged in manufacturing anything. "No manufacturing plant of any kind was acquired" (Defs.' Ex. 231, R. Vol. 5, p. 468). Mr. Winkley is an inventor and Mr. Phillips is a patent lawyer (R. Vol. 1, p. 102, lines 38–39).

> "They did not have any going machine. Winkley and Phillips were associated with the United Company, and this was a friendly arrangement by which the United Company acquired the right to use the inventions of their patents in its machine" (Howard, R. Vol. 1, p. 48, lines 5–9).

These patents were named by Mr. Howard (R. Vol. 1, p. 48, lines 5–9; R. Vol. 2, p. 2062, Int. 1532). No machinery was acquired from Winkley and Phillips (R. Vol. 1, p. 48, lines 3–5).

The patented inventions acquired from Winkley and Phillips were embodied by the United Company in the Atlas Leveling Machine which is adapted peculiarly for use on McKay shoes (R. Vol. 2, p. 2584).

The United Company had no machine which could be used for leveling McKay shoes, while, on the other hand, the Atlas Leveling Machine cannot be used for leveling welt or turn shoes. The practical reasons why these different kinds of shoes require entirely different types of machines were pointed out in detail by Mr. Howard (R. Vol. 1, p. 102, lines 14–34; R. Vol. 2, pp. 2576–2579, Int. 106). The importance of the

inventions of the Winkley and Phillips patents was fully explained by Mr. Howard in his discussion of "Leveling Machine: Atlas" (R. Vol. 2, p. 2584 *et seq.*).

Since this acquisition—

> "the inventions acquired from Winkley and Phillips were experimented upon and developed, with the addition of other inventions, into a machine which was suitable for commercial use, and was put out for commercial use" (Howard, R. Vol. 2, p. 2062, Int. 1530).

The United Company has since continuously supplied the Atlas leveling machine to the trade and has put out about 500 machines (R. Vol. 2, p. 2084, Cr. Ints. 1631–1634). It is a General Department machine and is sold outright (R. Vol. 1, p. 12, line 37 *et seq.*; Vol. 2, p. 2587; Vol. 5, pp. 425, 427, line 3).

Stanley Manufacturing Company.

By this transaction, which took place March 19, 1900, the United Company acquired simply certain machines, parts and supplies which the Stanley Company had on hand at Frankfurt, Germany. This appears plainly from the agreement (P.'s Ex. 78, R. Vol. 3, p. 620), which provides,—

> "That the said United Company shall purchase from the said Stanley Company the stock of machines, parts and supplies which it now has on hand at Frankfurt, Germany, and in transit to Frankfurt, and all accounts and bills owing to the said Stanley Manufacturing Company in Germany."

For these parts the United Company paid cost prices with certain deductions (R. Vol. 3, p. 620).

The Stanley Company was putting out miscellaneous general department machines, the most important of which was a McKay sewing machine. "The United Company was then putting out no machine for doing the work of any one of those machines" (Howard, R. Vol. 1, p. 48, lines 19–21, 26–27; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 451).

As stated by Mr. Winslow (Defs.' Ex. 231, R. Vol. 5, p. 451):—

> "The store in Germany acted as the agent for the McKay Shoe Machinery Company in handling its McKay

Heeling and Metallic Machines and parts, and this purchase amounted only to the acquirement of the selling agency for the goods manufactured by the Stanley Company in the United States."

"The reason for the purchase was that the United Company was establishing its own German Company and the local manager for the Stanley Company's business in Germany was sick, or had just died, and the Stanley Company desired to have the United Company take over its store and stock of goods and act as agents for the Stanley Company, if the United Company was going to do its own business in Germany.

"The contract, therefore, amounted simply to an agency contract, and that in itself necessitated the purchasing of the stock that the Stanley Company had in Frankfurt."

The agreement contained a covenant—

"that the said United Company shall use its best endeavors to sell in foreign countries, machines made by the said Stanley Company . . ."

and provided that in case the United Company should discontinue the purchase from the Stanley Company and sale—

"of any of the machines, parts or supplies made by the said Stanley Company . . . the said Stanley Company may then and thereafter sell such machines, parts or supplies thus discontinued to any and all persons without respect to the country to which they are to be sent.

"That the said Stanley Company may advertise and create and maintain in all proper business ways a demand for its machines in any and all countries in the world" (P.'s Ex. 78, R. Vol. 3, pp. 621, 622).

Lincoln Sewing Machine Company.

Contrary to the statement in the petition, the United Company by its agreement with the Lincoln Company, April 6, 1900 (P.'s Ex. 80, R. Vol. 3, p. 628), did not acquire the business of the Lincoln Company, nor did it acquire anything new whatsoever (R. Vol. 1, p. 49, lines 36–37). As is clear from the plain terms of the agreement, it was entered into simply for the purpose of canceling an obligation arising from

a previous contract made in 1897 (P.'s Ex. 79, R. Vol. 3, p. 623) between the Lincoln Company and the Goodyear Shoe Machinery Company, whereby the Goodyear Company was to pay a sum of money to the Lincoln Company each year for forty-nine years. Mr. Winslow testified to this effect (R. Vol. 1, p. 464, lines 9–13; see also Howard, R. Vol. 1, p. 49, lines 22–35). The reason for canceling the original obligation was "to avoid the necessity for maintaining the Goodyear Company as a separate organization and to transfer the Goodyear Company's property to the United Company" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 471).

The original agreement between the Lincoln Company and the Goodyear Company (P.'s Ex. 79, R. Vol. 3, p. 623) effected the transfer of patent rights (R. Vol. 2, pp. 2063, 2064, Ints. 1537–1539).

Boston Fast Color Eyelet Company.

This transaction took place June 30, 1900 (P.'s Ex. 81, R. Vol. 3, p. 630). As stated in the petition, this company was engaged in the manufacture and sale of "eyelets covered with celluloid." These eyelets are known as "fast color eyelets" and the Boston Company had a registered trademark, "Fast Color." The Boston Company owned patents on the eyelet, the dies for making the eyelet, and the method of covering the eyelet. The celluloid covering makes the eyelet expensive so that it has never been used except on the better grades of shoes and never at any time on more than ten per cent. of the shoes made. Its advantage is that it never wears down to the metal. (R. Vol. 1, p. 50, lines 40–45; p. 51, lines 1–5; p. 98, lines 26–27; R. Vol. 2, p. 2053, Int. 1487).

Prior to this acquisition neither the United Company nor any of its associate companies was engaged in the manufacture of eyelets or of machinery for making them (R. Vol. 1, p. 50, lines 10–13), and—

> "The United Company could not extend its field to include the manufacturing and marketing of fast color eyelets without acquiring the broad patents owned by the Boston Fast Color Eyelet Company which dominated that field" (Defs.' Ex. 275, R. Vol. 5, p. 760).

The business of the Boston Fast Color Eyelet Company was continued by the United Fast Color Eyelet Company, thus preserving the name "Fast Color." "That name was a very valuable asset" which "had designated this type of eyelet since it was invented." Since the acquisition, the fast color eyelet has been improved in ways that have made it possible to reduce its price and many new sizes have been made (Howard, R. Vol. 1, p. 50, lines 17–18; p. 99, lines 31–32, 36–37).

The Boston Fast Color Eyelet Company owned no real estate and did no manufacturing; their eyelets were manufactured by other parties under contract (Defs.' Ex. 231, R. Vol. 5, p. 461).

Enamel Eyelet Company.

This transaction took place June 30, 1900 (P.'s Ex. 83, R. Vol. 3, p. 645). The Enamel Eyelet Company was owned by the same people who owned the Boston Fast Color Eyelet Company, and this acquisition was "a part of the same transaction by which the stock of the Boston Fast Color Eyelet Company was acquired." The Enamel Company was attempting unsuccessfully to manufacture the type of eyelet known as the "enamel eyelet." "There was no competition whatever between the Boston Company and the Enamel Company." The differences in the constructions of the enamel eyelet and the fast color eyelet and in their fields are pointed out by Mr. Howard (Howard, R. Vol. 1, p. 51, lines 28–29; p. 98, lines 28–45; p. 99, lines 1–10, 13–18; Defs.' Ex. 275, R. Vol. 5, p. 760; Winslow, R. Vol. 1, p. 462, lines 13–14).

At the time of this acquisition neither the United Company nor any of its associate companies was engaged in the manufacture of eyelets (R. Vol. 1, p. 50, lines 10–12), and—

> "had it not acquired control of the Enamel Company the United Company could not have entered the enamel eyelet field without subjecting itself to the liability of suit under the Enamel Company's design patent 24,867, November 12, 1895, Kempshall. The Enamel Company had brought and vigorously prosecuted suit on that

patent against John C. Rhodes" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 760).

By this acquisition the United Company made substantial progress in clearing up the patent situation in the enamel eyelet field. It proved, however, that the United Company had otherwise made no progress in the way of entering the enamel eyelet field; for although these people "knew well how to make fast color eyelets they did not know how to make enamel eyelets and were not producing a satisfactory enamel eyelet. We had to junk a large supply we had on hand which we couldn't get rid of." But the United Company continued to supply the Enamel Company's eyelets so far as there was any demand, and "if manufacturers would buy them, we should be glad to sell them" (Howard, R. Vol. 1, p. 99, lines 13–18, 25–30).

The division of the preferred stock issued in payment for the Boston Fast Color Eyelet Company and the Enamel Eyelet Company, as stated in the petition, was purely arbitrary, and at the request of the common owners of the two companies.

No real estate was acquired in this transaction. The Enamel Company did no manufacturing but had their eyelets made by others (Defs.' Ex. 231, R. Vol. 5, p. 461).

Ross-Moyer Manufacturing Company.

This transaction took place September 20, 1900 (P.'s Ex. 87, R. Vol. 3, p. 658). The Ross-Moyer Company had stores in Chicago and Cincinnati. It leased floor space in Cincinnati and employed thirty-five men. It had been in business for many years, and was putting out nineteen machines of "what are now known as the general department type." The patents on these machines were named by Mr. Howard (Howard, R. Vol. 1, p. 52, lines 40–43; p. 100, lines 31–41; p. 101, lines 16–30; Winslow, R. Vol. 1, p. 408, lines 23–24; p. 459, line 7; Defs.' Ex. 231, R. Vol. 5, p. 451).

With a single exception the United Company had no machines for doing the work of the machines acquired from the Ross-Moyer Company (R. Vol. 1, p. 101, lines 12–15).

"The acquisition of these machines was the first step toward the creation of the United Company's general department," and the machines acquired were the foundation of its general department (Howard, R. Vol. 1, p. 53, lines 3–5; p. 100, lines 42–43).

Another reason for this acquisition was the desire of the United Company to establish its own agencies in Cincinnati and Chicago, and to do this without taking away from the Ross-Moyer Company the business which it had been carrying on for many years as agent for the McKay Shoe Machinery Company and the Consolidated & McKay Lasting Machine Company (R. Vol. 1, p. 409, lines 2–5, 11–13; p. 418, lines 38–40), and which it was still carrying on for the United Company. The value and nature of the service rendered by the United Company are fully discussed elsewhere, and need not be dwelt upon at this time. The importance of having its service headquarters, supplies of parts, and material for all of its machines in one place in each trade centre and of having the service, supplies of parts, and materials for its machines entirely in its own control is obvious. The disadvantages of duplications of service, supply depots, and corps of "traveling mechanics and instructors" visiting the same factories, traveling to the same places, and carrying parts to the same places under conditions such as existed prior to 1899 are pointed out by Mr. Winslow (R. Vol. 1, p. 408, lines 7–44; p. 409; p. 410, lines 1–16). Accordingly—

> "The United Shoe Machinery Company desired to establish its own stores and offices in each one of the shoe manufacturing centres, for the purpose of furnishing a better service in connection with its machines than had heretofore been possible by each of the separate companies, and to carry a proper supply of spare parts and material used in its machines" (Defs.' Ex. 231, R. Vol. 5, p. 452).

Mr. Ross "at once took up the question with us as to where they would fit into the new company." Of course, when the concerns which had been agents for the old companies learned of the United Company's intention to establish its own headquarters they were much concerned. "In all of these cases the moving motive in making these arrangements was from

Mr. Ross in the Ross-Moyer, and Smith, and representatives of the Krieg estate, who wanted in the rearrangement to make the best arrangements for themselves" (Winslow, R. Vol. 1, p. 418, lines 36–45; p. 419, lines 42–44; p. 420, lines 1–2).

Mr. Winslow further stated:—

> "these concerns would necessarily lose the business which they had done acting as agents for the various companies, and it formed such a large portion of their whole business that they desired to have the United Company take over all their business relating to shoe machinery, or supplies, when the United Company was ready to establish its own offices."
>
> "An additional reason for the purchase of Ross-Moyer was to secure the services of Mr. Samuel Ross, who had long been associated with the McKay Company and was an experienced shoe machinery man and well liked by the trade. The United Company desired to secure his services to represent their interests throughout the middle west" (Defs.' Ex. 231, R. Vol. 5, p. 453).

This led to "the employment of Mr. Ross as the western agent of the company, in charge of all the western offices." He "was our general agent in the West until two or three weeks ago, when he died" (Winslow, R. Vol. 1, p. 419, lines 5–6, 10–12). Plaintiff's Exhibit 87 (R. Vol. 3, p. 658) is the employment agreement made with Mr. Ross.

Mr. Winslow testified (R. Vol. 1, p. 419, lines 7–10):—

> "There was absolutely nothing more in our doing that than our purpose of doing the square thing by Mr. Ross. They had been connected with the McKay Company and the Lasting Company for years; part of our own family, so to speak."

Since this purchase, the business has been carried on by the Ross-Moyer Manufacturing Company, all the machines of the Ross-Moyer Company being put into the United Company's General Department and sold. The United Company did not raise the prices or limit the sale or manufacture of these machines. "The only thing that happened regarding those machines was that we made them better than the Ross-Moyer. The trade was benefited in that respect." Also, the Ross-Moyer Company was made a depot for spare parts and the

headquarters of the United Company's repair force for the Cincinnati and Chicago districts (R. Vol. 1, p. 53, lines 8–9; p. 95, lines 28–35; p. 100, lines 42–44; p. 101, lines 1–2, 8–11; Winslow, R. Vol. 1, p. 459, lines 15–24).

Bay State International Shoe Machinery Company.

This transaction took place January 30, 1901 (P.'s Ex. 86, R. Vol. 3, p. 655). This company was organized to do foreign business and did not do any business in the United States, its only business being in England (R. Vol. 1, p. 52, lines 18–20; p. 101, lines 34–35). It had put out about ten sets of its machines in England (R. Vol. 2, p. 2059, Int. 1519). It owned no real estate and did no manufacturing business. Its machines were manufactured in Montreal, Canada; none whatever in this country. Its machines were covered by English and French patents. They were a welter, stitcher and rough rounder, which were distinctly inferior to the United Company's machines and were very different in construction (R. Vol. 1, p. 52, lines 20–21; p. 101, lines 31–33; R. Vol. 2, p. 2059, Ints. 1517–1518; p. 2085, Cr. Ints. 1642–1644; Defs.' Ex. 231, R. Vol. 5, p. 448).

Since this company was not organized to do business between Great Britain and the United States, did no such business, and did no business in the United States, obviously this acquisition has absolutely no bearing upon this case.

Machines of the Bay State International Shoe Machinery Company infringed claims of two of the United Company's English patents. The United Company owned continental patents corresponding to those two English patents (Defs.' Ex. 275, R. Vol. 5, p. 761).

The purchase was made "at the earnest solicitation of the people who were interested, who were also customers, shoe manufacturers, and customers of the United Company," because it was believed to be "the cheapest way to settle and dispose of the litigation." "This was a purchase of foreign patents," and the consideration was $25,000 in preferred stock of the United Company (Winslow, R. Vol. 1, p. 457, lines 21–26; Defs.' Ex. 231, R. Vol. 5, p. 448).

Swain-Fuller Manufacturing Company.

This transaction took place February 2, 1901 (P.'s Ex. 88, R. Vol. 3, p. 660). The Swain-Fuller Company was doing "a very small business" (R. Vol. 1, p. 53, line 18). "They owned no real estate; they leased a small amount of floor space in Boston; employed less than ten men" (Winslow, R. Vol. 1, p. 459, lines 25–27). Its principal business was manufacturing and putting out a machine of the "General Department" type known as the "Star Leveling Machine" for turn shoes, which was patented (R. Vol. 1, p. 53, line 18; p. 100, lines 22–24; R. Vol. 2, pp. 2054, 2055, Int. 1491).

> "The Star machine was a very light machine and was adapted and used only for leveling turn shoes, which, owing to the fact that they have but one sole, require and will stand a less degree of pressure than other types of shoes" (Howard, R. Vol. 2, p. 2063, Int. 1533).

Prior to this acquisition the United Company was not putting out any leveling machine adapted for use on turn shoes. "It would be impossible to use any machine that the United Company then had on turn shoes." On the other hand, "the Star machine could not be used with commercial profit on other work. It was too light and exerted too light a pressure for Goodyear work" (Howard, R. Vol. 1, p. 53, lines 20–24).

An important reason for this acquisition was the desire of the United Company to obtain a leveling machine adapted for leveling turn shoes, which it had not had before (Defs.' Ex. 275, R. Vol. 5, p. 761).

Another important reason for this acquisition was that the United Company had produced and desired to use a sole pressing form for sole laying machines, shown and described in Gifford patent No. 694,367, which infringed a patent owned by the Swain-Fuller Company (Defs.' Ex. 275, R. Vol. 5, p. 761).

Mr. Winslow stated: "This property was acquired at the solicitation of Mr. Fuller, who was the principal owner and desired to go out of shoe machinery business" (Defs.' Ex. 231, R. Vol. 5, p. 454). Mr. Winslow also testified: "We did not seek the Swain Fuller Company; they sought us" (R. Vol. 1,

p. 459, line 34). The importance of the transaction is indicated by the amount paid,—$13,201.92 (Defs.' Ex. 231, R. Vol. 5, p. 455).

After the purchase, the Star Leveling Machine was manufactured and put out by the United Company and was its standard machine for leveling turn shoes (R. Vol. 2, p. 2055, Ints. 1493, 1494; Defs.' Ex. 275, R. Vol. 5, p. 761). It is a General Department machine and is sold outright (R. Vol. 1, p. 12, line 37 *et seq.;* Vol. 5, pp. 425, 427, line 6). Also the United Company used on its commercial sole-laying machine, the one which it had previously acquired from the Boot & Shoe Sole Laying Company, the pressing form of the Gifford patent, which, as above explained, had infringed a patent owned by the Swain-Fuller Company (Defs.' Ex. 275, R. Vol. 5, p. 763).

Globe Sewing Machine Company.

This transaction took place February 15, 1901 (P.'s Ex. 89, R. Vol. 3, p. 662). The Globe Sewing Machine Company—

> "were attempting to use the same machine for sewing the welt to the upper and insole and for stitching the outsole to the welt. They had a lockstitch machine for both operations, and used some attachments for one operation and other attachments for the other."

It was not successful. They also had an experimental rough rounder. All of these machines were patented (Howard, R. Vol. 1, p. 100, lines 5–21; p. 104, lines 33–37; p. 528, lines 7–8; R. Vol. 2, p. 2002, Int. 1234). Mr. Winslow testified:—

> "The purchase was not one that the United Company sought, but was made at the earnest solicitation of Mr. Mellen Bray, to whom the Globe Company owed a very large sum of money. He wanted to get rid of having anything to do with the company, and came to me personally and besought me to acquire his interest. They owned no real estate and did no manufacturing. Such as they had done they had contracted outside" (Winslow, R. Vol. 1, p. 457, lines 5–12).

The Globe Company owed Bray $86,984 (R. Vol. 3, p. 665). The United Company paid $20,000 in its preferred stock for

a majority of the stock of the Globe Company (Defs.' Ex. 231, R. Vol. 5, p. 448, R. Vol. 1, p. 457, lines 13–18).

As explained by Mr. Howard in full detail, many of the patented features of the Globe lockstitch welter gave that machine marked superiority over the lockstitch welter which the United Company had just begun to put out (R. Vol. 2, pp. 2004, 2005, Ints. 1241, 1242).

On the other hand, all the Globe Company's machines infringed patents owned by the United Company. There were pending one infringement suit brought by the United Company against the Globe Company and five suits against users of the Globe Company's machines (Defs.' Ex. 275, R. Vol. 5, p. 762).

By this acquisition the United Company acquired control of the patents of the Globe Company which stood in the way of development by the United Company of its lockstitch welter, settled the existing patent litigation and avoided further patent litigation.

In explaining why the inventions of the Globe Company's patents were not adopted by the United Company, Mr. Howard testified:—

> "These two features of superiority, together with others of less striking importance, would undoubtedly have been adopted in the United Company's lockstitch welting machine had it not been for the fact that shortly after the acquisition of the Globe Company's patents shoe manufacturers decided that they did not desire to sew the inseam by a lockstitch, and they refused to use lockstitch welters. In the year ending March 1, 1902, we put out only nine lockstitch welters, and six were returned; in the year ending March 1, 1904, we did not put out any machines, and five were returned. By 'any machines' I mean of course lockstitch welting machines" (R. Vol. 2, p. 2005, Int. 1242).

In Mr. Howard's detailed discussion of the United Company's lockstitch welting machine, known as "Sewing Machine: Goodyear Universal Inseam," he explained that manufacturers "found that it was impossible to secure the tight inseam, which is indispensable in the inseam of a welt shoe" (R. Vol. 2, p. 2251, Int. 11).

In view of the facts above stated and particularly in view of the large indebtedness of the Globe Company stated in

Plaintiff's Exhibit 89 (R. Vol. 3, p. 665), as amounting to $92,075.69, it is perfectly clear that the Globe Company did not offer even potential competition to the United Company and that this transaction is of no importance.

J. C. Rhodes & Company.

This transaction took place June 19, 1901 (P.'s Ex. 91, R. Vol. 3, p. 668). "This company was an old, established eyelet-making concern" which "owned its own real estate and factory at New Bedford, Mass., employing about one hundred and sixteen men" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 461). They manufactured "a patented enamel eyelet, which was the one in general use at that time" (Howard, R. Vol. 1, p. 51, lines 41–42; p. 98, lines 16–17).

Their patent No. 565,091, August 4, 1896, contained—

> "broad claims to an enamel eyelet so constructed as to prevent breaking of the enamel coating by the pressure exerted in the eyelet setting operation."
>
> "Otherwise the flange would bend in the setting operation and the enamel would crack. That feature has never been dispensed with in any enamel eyelet which was commercially satisfactory" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 764; R. Vol. 1, p. 98, lines 42–44).

The United Company had previously acquired the stock of the Enamel Eyelet Company, but—

> "Both the Rhodes eyelet and the Enamel eyelet were patented, and as a matter of fact each company was infringing the other's patent. The Enamel Company's eyelet was never a commercial success" (Howard, R. Vol. 1, p. 51, lines 43–44; p. 52, lines 1–2).

A suit had been brought by J. C. Rhodes & Company against "a user of the enamel eyelet put out by the Enamel Eyelet Company" (Howard, R. Vol. 2, p. 2080, Int. 1615). On the other hand: "The Enamel Eyelet Company had brought and was vigorously prosecuting a suit against John C. Rhodes for infringement of its design patent 24,867, November 12, 1895, Kempshall" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 763).

By this acquisition the United Company accomplished three important objects: (1) It cleared up a complicated patent situation. If the eyelet of the Enamel Company had been commercially satisfactory, the United Company could not have put it out without infringing the Rhodes patent. (2) The United Company was able to put out a commercially satisfactory enamel eyelet without infringing the broad Rhodes patent. (3) It was able for the first time to procure satisfactory metal blanks for its fast color eyelets. "Prior to that time those blanks, which had been procured from different sources, had not been satisfactory" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 764; R. Vol. 1, p. 591, lines 31–33).

With this acquisition the United Company really entered the enamel eyelet field for the first time. As explained in discussing the Enamel Eyelet Company,—

> "they did not know how to make enamel eyelets and were not producing a satisfactory enamel eyelet. We had had to junk a large supply we had on hand which we couldn't get rid of" (Howard, R. Vol. 1, p. 99, lines 15–18).

The United Company was at that time engaged in the manufacture of fast color eyelets, but the fast color eyelet—

> "was much more expensive than the enamel eyelet and was used only on the highest grade of shoes, never at any time on more than ten per cent of the shoes made."

The celluloid covering on the flange of the fast color eyelet makes it expensive, so that it has never been used except in the better grades of shoes (Howard, R. Vol. 1, p. 50, lines 41–45; p. 51, lines 1–5).

The enamel eyelet comprises a metal eyelet having a flange of the contour desired for the finished eyelet, which flange is coated with enamel, while in the fast color eyelet the flange merely serves to anchor the thick celluloid covering. The enamel eyelet is much less expensive and the enamel wears off after a time so that the eyelet has a brassy appearance and accordingly enamel eyelets are used only on the cheaper grades of shoes. There was no competition between fast color eyelets and enamel eyelets (R. Vol. 1, p. 51, lines 6–13; p. 98, lines 28–45; p. 99, lines 19–21).

The business of J. C. Rhodes & Company was continued by J. C. Rhodes & Company, Inc. Since the purchase, the factory facilities have been increased by building a large new factory (Defs.' Ex. 231, R. Vol. 5, p. 461).

The United Company continued to sell the Rhodes eyelets at the same prices at which they had been sold by the Rhodes Company,—

> "and in addition furnished the eyeletting machines in which the eyelets were used without charge to our customers, with no increase whatever in the prices; but the eyelets were sold to anyone, whether they used our machines or not" (Winslow, R. Vol. 1, p. 463, lines 39–43).

Also the Rhodes eyelet has been much improved and "many new sizes have been made which were not made in 1901" (Howard, R. Vol. 1, p. 99, lines 36–39).

Morley Button Manufacturing Company.

This transaction took place on December 14, 1901 (P.'s Ex. 92, R. Vol. 3, p. 675).

> "The Morley Button Manufacturing Company was primarily a button manufacturing company, manufacturing and selling buttons. In addition to this button business it was engaged in the business of manufacturing and selling a patented enamel eyelet. . . . The United Company acquired only the eyelet business of the Morley Company, and that company is now engaged in the business of manufacturing and selling buttons and similar articles as before" (Howard, R. Vol. 1, p. 54, lines 30–39).

"The United Company acquired no real estate or manufacturing plant with this purchase . . . the eyelet business was a very small part of its total business" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 462). The novel patented feature of the Morley eyelet was that the enamel coating did not extend down inside of the barrel.

> "This was different from both the Rhodes and Enamel Company eyelets. It was claimed that it was objection-

able to have the enamel inside the barrel. They made the eyelet by a secret process and by a secret formula" (Howard, R. Vol. 1, p. 99, lines 6–10).

By the process followed in making the Rhodes eyelet the inside of the barrel was covered with enamel.

Although the Rhodes and Morley eyelets were of different types, the Morley eyelet embodied the broadly patented feature of the Rhodes eyelet (R. Vol. 1, p. 98, lines 40–42; p. 99, line 4). At the time of this acquisition there were pending two suits brought by J. C. Rhodes & Company, Inc., against the Morley Company on Rhodes patent No. 565,091, August 4, 1896, and Kempshall design patent No. 24,867, November 12, 1895 (R. Vol. 2, p. 2080, Int. 1615). One of the considerations stated in the agreement for the sale of the Morley Company's business and patents was a covenant by the United Company that it would cause these two suits to be dismissed without costs and cause J. C. Rhodes & Company, Inc., to release the Morley Company from all claims for damages or profits on account of the infringement of the patents in suit. Another consideration was a further covenant that the Morley Company should be licensed under these two patents to manufacture eyelets in process to fill the orders which it had on hand (R. Vol. 3, pp. 677, 678; R. Vol. 2, p. 2081).

Mr. Winslow stated,—

"This purchase was made in 1901 as the best method of settling the litigation . . . and was believed to be a fair and equitable settlement of the existing situation, and by it the Rhodes Company acquired certain patents on eyelets which were valuable to it" (Defs.' Ex. 231, R. Vol. 5, p. 462).

The price paid was $31,000, for which the United Company obtained one patent and one application for a patent, and machinery, for making the Morley eyelets, etc., inventoried at $17,541.99 (R. Vol. 3, pp. 676, 677, 681).

The Morley eyelet was used on a cheaper grade of shoes than the Rhodes eyelet, but, after the acquisition, manufacturers demanded the superior Rhodes eyelet for all grades of

cheaper shoes and the demand for the inferior Morley eyelet was so small that it was supplied from the stock on hand, but so far as there was any demand for Morley eyelets the United Company has supplied them (Howard, R. Vol. 1, p. 99, lines 23–24, 28–30).

Oliver A. Miller.

This transaction took place February 15, 1902 (P.'s Ex. 93–95, R. Vol. 3, pp. 683, 687, 690). Miller was engaged in the manufacture of treeing machines, and tree legs and tree feet that are used on, and are parts of, treeing machines, which are used in all factories for cleaning and blacking shoes before they are packed (R. Vol. 1, p. 464, lines 29–34; p. 97, lines 42–45).

Mr. Winslow testified,—

> "We had no such machines. We were not in competition not in the slightest degree" (R. Vol. 1, p. 464, lines 37–38).

Mr. Howard testified,—

> "This was absolutely a new branch for the United Company. It had nothing of the sort before" (R. Vol. 1, p. 98, lines 3–4).

The purchase was made by the United Company "entirely for the purpose of extending its business" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 476). Miller's treeing machines, tree legs and tree feet were patented (R. Vol. 1, p. 98, lines 5–8).

Miller had become involved in financial difficulties, needed money and wished to sell; "he came to us and wanted to dispose of the business," negotiations being opened through Frank Hannigan, his manager (Winslow, R. Vol. 1, p. 464, lines 35–37; Defs.' Ex. 231, R. Vol. 5, p. 476).

> "The reputation of the Miller machines and the Miller business was high, and we found that we could secure the manager of that business, who had been with Mr. Miller for a great many years, to continue as manager for us,

and we finally accepted the company and continued that business" (Winslow, R. Vol. 1, p. 464, lines 38–43).

The Miller treeing machine business "has been continued by the O. A. Miller Treeing Machine Company, of which Mr. Hannigan, a minority stockholder, is manager" (Howard, R. Vol. 1, p. 55, lines 14–16), in the factory which was acquired from Miller, and which has been largely extended. The business has increased, 125 men are now employed there; Miller employed 65 men (R. Vol. 1, p. 465, lines 3–7; Defs.' Ex. 231, R. Vol. 5, p. 476).

Marlboro Awl & Needle Company.

This transaction took place June 30, 1902 (P.'s Exs. 96–97, R. Vol. 4, pp. 693, 703). This company owned no real estate, leased floor space in Marlboro and employed twelve men (Defs.' Ex. 231, R. Vol. 5, p. 462). It manufactured needles, awls and rawhide mallets (R. Vol. 1, p. 467, lines 3–7; R. Vol. 5, p. 476). The needles were for use in the McKay sewing machine; the awls were chiefly "hand awls, such as cobblers use for shoe repairing"; the mallets were rawhide mallets "used by shoe makers and cobblers" (Howard, R. Vol. 1, p. 97, lines 27–41). Neither the United Company nor any of its subsidiary companies was manufacturing needles of any kind, hand awls or rawhide mallets (R. Vol. 1, p. 55, lines 36–39).

A small company was formed called the United Awl and Needle Company and the Marlboro Company's business has been continued by the United Awl and Needle Company at its factory at West Medway, where it has employed twenty-eight or thirty men (R. Vol. 1, p. 55, lines 41–43; Defs.' Ex. 231, R. Vol. 5, p. 462).

The unimportance of this transaction is indicated by the facts above stated and by the amount of the consideration, $16,300 in preferred stock of the United Awl and Needle Company (Defs.' Ex. 231, R. Vol. 5, p. 462).

The T. A. Norris Machine Company.

This transaction is not named in its proper chronological order in the petition (R. Vol. 1, p. 1011). It took place July 1, 1902 (P.'s Ex. 102, R. Vol. 4, p. 734),—not in March, 1903, as stated in the petition.

The T. A. Norris Machine Company had no real estate, but operated a small machine shop in Brockton, employing about ten men, in which they did general machine shop work. "It was really a repair shop" (Winslow, R. Vol. 1, p. 460, lines 7–10). Their business was chiefly in second-hand machines, or, as Mr. Gregg puts it, "I think this company was more of a dealer than anything else," but they had manufactured for them six simple, minor machines (R. Vol. 1, p. 59, lines 19–23, 26–27; p. 93, lines 39–45; p. 460, lines 9–10).

The United Company had no machines for performing the operations of any of the six machines acquired from the Norris Company or even for doing similar work (R. Vol. 1, p. 59, lines 28–38; p. 94, lines 1–28).

The machine shop of the Norris Company was located in a building owned by T. A. Norris personally, in which building the United Company had its Brockton headquarters and repair shop, which it held under lease from Norris.

Mr. Winslow testified,—

> "This purchase was made upon the basis of the inventory, $11,526.78, and at the solicitation of Mr. Norris, who was heavily interested in real estate and wanted to retire from any machinery business" (R. Vol. 1, p. 460, lines 14–17; Defs.' Ex. 231, R. Vol. 5, p. 456).

As to the reasons for this purchase:—

(1) Mr. Winslow testified: "We wanted to increase our space in his building, and this business arrangement was made" (R. Vol. 1, p. 460, lines 17–18; R. Vol. 5, p. 456).

(2) The United Company extended its line of machines by adding to it the six "General Department" machines acquired from the Norris Company (R. Vol. 1, p. 461, lines 5–6).

(3) "Lasting machine parts were carried by the T. A. Norris Machine Company" (Winslow, R. Vol. 5, p. 453).

Consistently with its policy of having under its own control the supply of parts and the furnishing of service for its machines, as explained in the Ross-Moyer discussion (*supra* pp., 680–683), it was important for the United Company to continue this agency itself and in this instance, as in the other similar transactions, a fair adjustment of the situation was to take over the business of its former agent.

Since the purchase the United Company has continued putting out all the machines which it acquired from the Norris Company, and has operated the Norris machine shop as a repair shop (Defs.' Ex. 231, R. Vol. 5, p. 456).

American Sole Laying Machine Company.

This transaction took place September 25, 1902 (P.'s Ex. 98, R. Vol. 4, p. 705). The chief business of the American Sole Laying Machine Company was putting out a two-form laying machine which they were manufacturing under a license from the Tripp Giant Leveler Company under "the famous Cutcheon patent" (Howard, R. Vol. 1, p. 56, lines 15–18; p. 96, lines 33–34).

> "That machine had right and left forms and operated on a pair of shoes, rights and lefts, at one time, one being under pressure while the operator was putting the other in position to go into the machine" (Howard, R. Vol. 1, p. 96, lines 29–33).

The American Company also owned patents on their machine which prevented the United Company from adopting a satisfactory pad (R. Vol. 1, p. 96, lines 43–45; p. 97, lines 20–26). It "owned no real estate and did no manufacturing. Contracted with outside parties for such machines as it had built." This company was purchased for $5200 at the solicitation of Mr. Fuller, "who was the principal owner and desired to spend his time in the South" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 475). The agreement sets forth that "Fuller is the owner of a majority of the capital stock" and that "Fuller controls the actions of said company" (P.'s Ex. 98, R. Vol. 4, p. 705). Mr. Fuller had also been the principal owner and treasurer

of the Swain-Fuller Manufacturing Company, which had previously sold out its business to the United Company (Defs.' Ex. 231, R. Vol. 5, p. 455; P.'s Ex. 88, R. Vol. 3, p. 661).

> "The standard commercial machine of the United Company at that time was the machine which it had acquired from the Boot and Shoe Sole Laying Company . . . but that was a one-form or single machine" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 765).

Mr. Howard further testified:—

> "We desired to turn this single machine into a double machine and we were able to do that after this transaction, in which we acquired the license which the American Company had under the Cutcheon patent. Counsel advised us that this license was assignable" (R. Vol. 1, p. 56, lines 25–29; p. 96, lines 38–40).

This license was also needed by the United Company to enable it to develop the Atlas leveling machine (Defs.' Ex. 231, R. Vol. 5, p. 475).

The Cutcheon patent had been sustained by the Court of Appeals in the First Circuit (Defs.' Ex. 275, R. Vol. 5, p. 765) and the patent expert for the United States, Mr. Chapman, described this patent as a pioneer and basic patent (R. Vol. 2, pp. 2813, 2814, Int. 15).

> "After this acquisition we incorporated in the machine which we got from the Boot & Shoe Sole Laying Company, the inventions acquired from the American Company, particularly the two-form construction and the pad invention. In other words, we got the method of sole laying from the Boot & Shoe Sole Laying Company, and we got the double application of that method from the American Company.
>
> "By combining the inventions embodied in two machines we made a better machine than either. The new machine has right and left forms and operates twice as fast as the single machine which we had previously been putting out" (Howard, R. Vol. 1, p. 97, lines 6–16).

That machine "has been placed with our customers in very large numbers" (Howard, R. Vol. 1, p. 97, lines 18–19). Also the United Company has "put out fifty sole-laying machines

substantially the same as the machines which had been put out by the American Sole Laying Company" and "The United Company continued putting out these machines so long as there was any demand for them from shoe manufacturers" (Howard, R. Vol. 2, p. 2098).

William J. Young.

That no tangible property was acquired from William J. Young by this transaction is clear from the agreement with him made October 1, 1902 (P.'s Ex. 99, R. Vol. 4, p. 713), and from the record. "No manufacturing plant of any kind was acquired" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 468). The only property acquired was "Young's English and German patents under which our foreign companies had agencies" and under which they were putting out Young's heel-compressing machine (Howard, R. Vol. 1, p. 57, lines 13–17; p. 95, lines 44–45), and for these patents the United Company paid $14,000 (R. Vol. 4, p. 717).

> "At this time our foreign companies had been putting out Young's machines for a number of years. They had been agents for his machine" (Howard, R. Vol. 1, p. 57, lines 15–17).

Neither the United Company nor any of its affiliated companies was putting out in Europe any heel-compressing machine other than Young's, and "The United Company had not shipped a heel-compressing machine to England or Germany, the countries where Young's patents were taken, for a period of over ten years" (Howard, R. Vol. 1, p. 57, lines 17–20; p. 96, lines 18–19).

> "The machine which we had before this was an old machine, very much inferior to Young's, which was of comparatively recent invention. He preceded us by two or three years in inventing a modern, satisfactory, high-speed heel-compressing machine" (Howard, R. Vol. 1, p. 96, lines 23–27).

An important reason for this transaction is thus stated by Mr. Howard:—

"Under the requirements of the German patent law it was necessary, in order to maintain Young's German patent, to manufacture his machine in Germany right after this time, and Young had no facilities for manufacturing machines in Germany, while the United Company had a factory" (R. Vol. 1, p. 57, lines 21–25; p. 96, lines 5–9).

In view of the situation just stated by Mr. Howard, this transaction was mutually advantageous. As agent for Young the United Company had established a business with his machine and it was the only machine which it was putting out in Europe. Failure to maintain the German patent would make this machine public property in Germany. On the other hand, if Young had not sold his German patent and had failed to manufacture under it, the patent would have become worthless.

From the standpoint of the United Company another reason for this transaction was that "as the machines made by Young were not well made, customers had complained regarding their quality" (Defs.' Ex. 231, R. Vol. 5, p. 468). After acquisition of the patents the United Company could remedy this by making the machines itself.

After acquiring the German patent the United Company began to manufacture in Germany and marketed the machines there. Young continued to put out this machine in the United States and he has put it out ever since in competition with the United Company. As witness for the United States, Young testified that he has put out over 300 of these machines. Young also testified that his business has been growing and named over a dozen different types of machines which his company is putting out, many of which have been put out in large numbers (R. Vol. 1, p. 96, lines 9–11, 13–17; pp. 942, 943).

The George A. Smith Machinery Company.

This transaction took place November 20, 1902 (P.'s Ex. 100, R. Vol. 4, p. 721). The George A. Smith Machinery Company had a store in Philadelphia. It owned no real estate and did no manufacturing. It employed one man re-

pairing second-hand machinery (Defs.' Ex. 231, R. Vol. 5, p. 451). The only machine which the Smith Company was putting out was the hand-operated boss spring heel scarfing machine, which was patented (R. Vol. 1, p. 58, lines 3–5; p. 95, lines 36–39). This machine was manufactured for the Smith Company in outside machine shops (Defs.' Ex. 231, R. Vol. 5, p. 451).

The United Company was not putting out a machine for doing work similar to that of the Smith Company's machine (R. Vol. 1, p. 58, lines 5–6). After the acquisition, the United Company sold this machine through its General Department and it is still being supplied to customers (R. Vol. 1, p. 95, lines 42–43).

A controlling reason for the acquisition of the Smith Company was the desire of the United Company to establish its own agency in Philadelphia and to do this without injustice to the Smith Company or to Mr. Smith, who was the majority stockholder of the Smith Company, as set forth in Plaintiff's Exhibit 100 (R. Vol. 4, p. 721).

> "The George A. Smith Machinery Company was agent for the United Company machines, except the Goodyear machines, as it had previously, before the formation of the United Company, been agent for all the predecessors of the United Company except the Goodyear Company. That business was taken over by the United Company" (Howard, R. Vol. 1, p. 57, lines 42–44; p. 58, lines 1–3).

Like the Ross-Moyer Manufacturing Company, the Smith Company had been the agent in Philadelphia for the McKay Shoe Machinery Company and the Consolidated & McKay Lasting Machine Company, carrying in stock spare parts for all the machines of those companies and the wire used in the machines of the McKay Company and after the formation of the United Company it had continued in the same relation to the United Company (Defs.' Ex. 231, R. Vol. 5, pp. 452, 453; Vol. 1, p. 419, lines 13–17).

Mr. Winslow testified,—

> "When Mr. Smith found that we were going to unify this service and bring it all under one head, he wanted we

should buy him out, and we did acquire his business" (Winslow, R. Vol. 1, p. 419, lines 17–20; p. 418, lines 36–38).

The United Company's reasons for desiring to establish an agency in Philadelphia and the importance of so doing were the same as in the case of the Ross-Moyer Company (Defs.' Ex. 231, R. Vol. 5, p. 453), and have already been explained in the discussion of that company (*supra*, pp. 680–683).

The United Company continued the business of The George A. Smith Machinery Company except the cut soles and findings business, which was excepted from the transaction, on the premises which had been occupied by the Smith Company in Philadelphia and established the headquarters of its repair force there and carried there its supplies of machine parts and materials for use on the machines (R. Vol. 1, p. 95, lines 18–35). The consideration for this transaction was $38,790.79, the inventory value of the property acquired (Defs.' Ex. 231, R. Vol. 5, p. 451).

George W. Emerson & Company.

This transaction took place December 18, 1902. George W. Emerson & Company, a co-partnership (P.'s Ex. 101, R. Vol. 4, p. 725), owned no real estate, leased two floors in a factory building in Lynn, and employed about thirty-five men (R. Vol. 1, p. 460, lines 3–5). Their principal business was "manufacturing and supplying lasts and forms for sole leveling machines of the 'Giant' type." They were also putting out a patented power spring heel scarfer, a patented heel-burnishing machine, and a tip scourer (Howard, R. Vol. 1, p. 58, lines 24–38, 44–45; p. 94, lines 29–44).

The United Company had no tip scourer and no power operated spring heel scarfer and it was developing a leveling machine on which lasts and forms are used (R. Vol. 1, p. 58, lines 22–24; p. 59, lines 3–10; p. 94, lines 29–31; p. 95, line 1). The patented heel-burnishing machine which the Emerson concern was putting out was of "a different type" and performed its operation in an entirely different way from the United Company's machine, which was also patented. Some manufacturers preferred and insisted upon having one type

of machine, while other manufacturers preferred and insisted upon having the other type (R. Vol. 1, p. 58, lines 39–45; p. 59, lines 1–2; p. 95, lines 4–11).

There were three important reasons for this acquisition:—

(1) The United Company extended its line by adding a tip scourer, a power operated spring heel scarfer, and a new type of heel burnisher which some manufacturers preferred. It also secured a source of supply for the lasts and forms which had to be used upon the leveling machine which it was developing.

(2) "We desired to obtain the services of William R. Sampson, who was the active man with Emerson and who today occupies with our company a very prominent position and has been with us ever since" (Winslow, R. Vol. 1, p. 459, lines 41–44).

(3) "To compose certain litigation then pending between the Xpedite Company and the Emerson Company for infringement of the Xpedite patents" (Winslow, R. Vol. 1, p. 460, lines 1–3).

As to (3) the Emerson heel-finishing machine infringed eleven claims of two patents of the United-Xpedite Finishing Company, one of which is "one of the most important patents on that machine" (Defs.' Ex. 275, R. Vol. 5, p. 766).

Mr. Winslow testified:—

> "This property was acquired at the earnest solicitation of George W. Emerson, who was interested in a trout farm on Cape Cod and desired to retire from the shoe machinery business. . . . The amount paid was based upon the inventory of the Emerson Company" (R. Vol. 1, p. 459, lines 35–40).

Since this acquisition the business of the Emerson concern has been continued by the United Company in its several departments and the machines acquired have all been supplied to customers (R. Vol. 1, p. 59, lines 12–13; p. 94, lines 37–38; p. 95, lines 1–3, 9–11). The tip scourer and power spring heel scarfer were both sold outright through the General Department. The heel burnishing machine was taken over by the United Xpedite Company (R. Vol. 1, p. 12, line 37 *et seq.;* p. 94, lines 37–38; p. 95, lines 1–3, 10–11).

Mr. Sampson was for several years the head of the General Department and was then promoted to the executive offices (R. Vol. 1, p. 95, lines 12–17).

W. W. Cross & Company, Incorporated.

This transaction took place February 18, 1903 (P.'s Ex. 103, R. Vol. 4, p. 744). This corporation was formed to take over the business owned by W. B. Cross, including his real estate and factory (Defs.' Ex. 231, R. Vol. 5, p. 463). He did not manufacture shoe machinery, but nails and tacks for use in the manufacture of shoes (R. Vol. 1, p. 60, lines 1–2).

The United Company was not engaged in the manufacture of nails and tacks (R. Vol. 1, p. 60, lines 3–5). The Consolidated & McKay Lasting Machine Company had obtained from Cross substantially all of its tacks, "many tons every week," these tacks being made particularly for the lasting machines put out by the Consolidated & McKay Company; and the United Company, in continuing to put out those machines, obtained its tacks from the same source (R. Vol. 1, p. 93, lines 31–38; Defs.' Ex. 231, R. Vol. 5, p. 463).

Mr. Cross was very closely associated with the United Company, which was the only large customer that he had and which took nearly his entire output (R. Vol. 1, p. 462, lines 28–34; p. 93, lines 35–36). The demand for tacks by the customers of the United Company grew to such proportions that it became a problem how to obtain a sufficient supply (R. Vol. 1, p. 672, lines 6–12), since Mr. Cross was not willing, without some assurance as to the future, to put up the capital necessary for such an enlargement of his output for the accommodation of a single customer (R. Vol. 1, p. 462, lines 30–32).

> "We simply acquired that business to be able to supply our lasting machine customers with tacks" (Howard, R. Vol. 1, p. 93, lines 36–38).

The agreement (P.'s Ex. 103, R. Vol. 4, p. 744) was entered into "for the purpose of enabling the Cross Company to extend their business and fix permanently the relations between the company and W. B. Cross" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 463).

Since the acquisition the United Company has continued to buy its tacks from W. W. Cross & Company, Inc., and the business has so increased that it now employs 317 men; it then employed about forty men (R. Vol. 1, p. 462, lines 33–34). However, that company by no means occupies this field exclusively. The Atlas Tack Company, in which the United Company has no interest, "is the largest manufacturer of tacks in this country" (Winslow, R. Vol. 1, p. 472, lines 39–41).

J. K. Krieg & Company.

This transaction took place May 6, 1903 (P.'s Ex. 104, R. Vol. 4, p. 746). J. K. Krieg & Company was a copartnership doing business in New York. They owned no real estate and had a small machine shop above their store where they employed four men and one boy, who were engaged principally in rebuilding old machines and repairing machines used in other lines of manufacturing, but who when not so engaged were employed in building the few machines, of General Department types, which Krieg put out (Defs.' Ex. 231, R. Vol. 5, p. 452).

Krieg had been local agent for the United Company and its predecessors for parts and supplies for all the machines except the Goodyear machines, and the Krieg store was the headquarters for the United Company's men. J. K. Krieg had died and his business was being carried on by his estate. Mr. Winslow testified,—

> "We dealt with that situation in this way: We acquired that part of the J. K. Krieg business, which related directly to the business that was done with shoe manufacturers. The younger Krieg retained the business that had to do with retailers" (R. Vol. 1, p. 419, lines 39–42).

One of the three machines which Krieg put out was a patented heel seat rounding machine especially constructed for rounding heel seats of Goodyear shoes. The only machine the United Company had for this operation was an edge-trimming machine provided with a larger cutter than was used for edge-trimming. This edge trimming machine effected

the trimming operation by chewing up the surplus stock into dust while the Krieg machine cut off the surplus stock so that the scraps cut off could be sold or utilized either for scrap leather or for manufacturing pieced heels, thus effecting a substantial and therefore important economy. The United Company "had no machine of that kind before" (R. Vol. 1, p. 60, lines 28–34; p. 92, lines 31–45; p. 93, lines 1–10; Vol. 2, p. 2045, Ints. 1446–1448).

Krieg also had manufactured by other parties and was putting out a Louis heel scarfing machine for cutting from the grain side of the outsole a strip of leather to be bent up over the undercut breast surface of a Louis heel, a wood heel, used in a particular type of woman's shoe. The United Company had no machine capable of performing the operation of that machine. Krieg also had an embossing machine for stamping names or trademarks on upper linings (R. Vol. 1, p. 60, lines 35–41; p. 93, lines 11–28).

By this transaction the United Company acquired machines which it did not have before and was thus extending its line.

But the more important reason for this acquisition had to do with the desire of the United Company to establish its own headquarters for its local repair men in the New York district and to take under its own control the carrying and supplying of spare parts for its machines to manufacturers in the New York district just as it had previously done in other parts of the country by the acquisition of the Ross-Moyer Manufacturing Company and The George A. Smith Machinery Company. The importance of this policy, both to the United Company and to the trade, and the general reasons why the United Company in establishing its own agencies acquired the properties of the concerns which had previously been its agents are fully explained in the discussion of the acquisition of the Ross-Moyer Manufacturing Company (*supra*, pp. 680–683).

Mr. Winslow testified,—

> "In all of these cases the moving motive in making these arrangements was from Mr. Ross in the Ross-Moyer and Smith, and representatives of the Krieg estate, who wanted

in the rearrangement to make the best arrangements for themselves" (R. Vol. 1, p. 419, lines 42–44; p. 420, lines 1–2).

The amount paid for this business was $97,056.52 (Def's. Ex. 231, R. Vol. 5, p. 451), which was the inventory value of the property "less proper deductions therefrom" for depreciation and for unsalable goods (P.'s Ex. 104, R. Vol. 4, p. 749).

After this acquisition the United Company used the Krieg store in New York as headquarters of its repair force, furnishing "very much better service," and kept there a complete line of parts and supplies for all its machines. The United Company also continued putting out the new machines which it had acquired from J. K. Krieg & Company (R. Vol. 1, p. 95, lines 30–35; p. 60, lines 32–34; p. 93, lines 19–21, 29–30).

Joseph P. Curtis.

By this transaction, which took place Oct. 20, 1903, the United Company acquired certain patent rights and nothing more. Curtis assigned two pending applications to the United Company. Curtis did not transfer his one experimental machine (P.'s Ex. 106, R. Vol. 4, p. 754; R. Vol. 1, p. 92, lines 21–22). These patent rights related to a machine for cementing a piece of fabric to an upper. The United Company had no machine for use in performing this operation nor any machine that could be used for this work, "which required a machine of an entirely different type and entirely different organization from any we had."

On the other hand, the Curtis machine could not be used for the same purpose as any machine of the United Company (R. Vol. 1, p. 61, lines 10–18; p. 92, lines 4–12).

The consideration in this transaction was "$500 cash and a royalty of $10 on each machine embodying the inventions" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 468).

The United Company subsequently obtained Letters Patent upon an application filed by Curtis and did all that it could to make the machine a commercial success, putting out in all about forty-five machines constructed according to that patent. The machines, however, did not prove to be a practical success, since the operation performed was not satisfactory. Most

of the machines which were put out were returned (R. Vol. 1, p. 92, lines 13–20; Vol. 2, p. 2045, Int. 1445). Moreover, "the Peerless Machine Company, under patents owned by them, were able to produce a better machine and have done the larger part of this business" (Winslow, Defs.' Ex. 231, R. Vol. 5, pp. 468, 469).

Fred H. Perry.

The agreement with Fred H. Perry, which was merely an employment contract, was made January 1, 1904 (P.'s Ex. 107, R. Vol. 4, p. 758). No property of any kind was acquired from Mr. Perry. He had entered the employment of the company as a machinist, at wages of thirty-four cents an hour, less than four years before the date of the contract referred to in the petition. He was given the opportunity in 1903 "at his own urgent request" to enter the inventive department of the company and demonstrate whatever inventive ability he might possess, and was paid $30 a week for the first eighteen months of this employment. Mr. Perry developed into a "very successful inventor," and has made some very important inventions for the company. He is still employed by the company and his salary has been materially increased several times, and on January 1, 1911, was raised to $4,000 a year. The important inventions that he has made have been embodied in commercial machines which have been given immediately to the trade and have been put out in large numbers. Among these machines are the present commercial Rounding and Channeling Machine—Model E: Goodyear Universal, and Jointing Machine: Goodyear, the importance and value of which are explained in detail by Mr. Howard (R. Vol. 1, p. 91, lines 18–40; Vol. 2, pp. 2309 *et seq.*, 2611 *et seq.*; Defs.' Ex. 231, R. Vol. 5, p. 473).

Joseph W. Leary.

The agreement with Joseph W. Leary made January 1, 1904, was primarily an employment contract (P.'s Ex. 109, R. Vol. 4, p. 769). The very small business which he was doing

was insignificant. He did no manufacturing of any kind, employed no men, and had no factory. He was engaged principally in retailing, in a small way, cements and blackings such as are used in the manufacture of shoes and are supplied by "hundreds of dealers." He also dealt in a very small way in second-hand sewing machines for sewing together the parts of an upper before the bottoming room operations, but dealt in no new machines except the Amazeen machine which he sold for the United Company (R. Vol. 1, p. 62, lines 1–11; p. 91, lines 1–8; Defs.' Ex. 231, R. Vol. 5, p. 473).

In connection with his small local sale business in Lynn, Leary was an agent for the Amazeen skiving machine which was being put out by the United Company. "He was an extremely capable salesman and mechanic, thoroughly familiar with the Amazeen machine, and unusually successful in selling it." His activities with reference to the machine were, however, in view of the local character of his business, entirely centered in Lynn, and the principal reason for entering into the contract of employment with him was to obtain his services in selling the machine in a much wider field (Howard, R. Vol. 1, p. 91, lines 9–17; Defs.' Ex. 231, R. Vol. 5, p. 474).

> "Mr. Leary stated that he would like to enter the employ of the United Company if the company would buy his stock of cement and second-hand machinery, and the company paid him $3052 for the small stock that he had on hand" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 474).

Leary is still employed by the United Company as an agent for the Amazeen machine (R. Vol. 1, p. 91, lines 16–17).

The F. G. Farnham Brush Manufacturing Co.

This transaction took place January 23, 1904 (P.'s Ex. 109, R. Vol. 4, p. 769). The Farnham Company was a small concern employing only six men. It leased floor space in a small factory in Honesdale, Pa. Almost its entire business was in putting out patented Tampico brushes for the cut glass trade, but it also put out a few patented brushes for the shoe trade and it put out the sleeves, collars, hubs and fillers that

are necessary parts of such brushes. Brushes are used in the shoe trade for cleaning and polishing only (R. Vol. 1, p. 62, lines 30–44; p. 89, lines 42–44; p. 90, lines 1–9, 36–39; R. Vol. 2, p. 2045, Int. 1444; Defs.' Ex. 231, R. Vol. 5, p. 464).

The United Company was putting out shoe brushes, sleeves, hubs and collars that it obtained from S. A. Felton & Son Company, in which the United Company has a half interest, but the United Company did no business in Tampico brushes (R. Vol. 1, p. 62, lines 34–36; Defs.' Ex. 231, R. Vol. 5, p. 462).

The important reason for this purchase was that the Farnham brush was much superior to the Felton brush.

> "The Farnham brush was very superior to our old brush, the Felton brush, with which we had been having great difficulty because the bristles were constantly coming out. For several years we had been having complaints all the time that the bristles would not stay in the brush. In this respect the Farnham brush was much superior to our old brush" (Howard, R. Vol. 1, p. 90, lines 15–20).

The Farnham Company had patents on its brush, brush section and a combined brush and hub; and the United Company wished to obtain these patents in order to furnish a better brush to the shoe trade (R. Vol. 1, p. 90, lines 36–39; Defs.' Ex. 231, R. Vol. 5, p. 464).

The Farnham Company was poorly located geographically for dealing with the shoe trade and desired to sell out; the purchase was made "at the earnest solicitation of the officials of the Farnham Company" for $25,915.32 (R. Vol. 1, p. 90, lines 7–9; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 464).

After the purchase, the Farnham "business was continued at Honesdale for nearly a year and was then removed to the factory of S. A. Felton & Son Company, where the business has been continued." The business in brushes for the cut glass trade was continued and is still being carried on. The Farnham shoe brushes were supplied in considerable quantities for a time on account of its superiority to the old brush, "but it was more expensive, so that the demand for it has not been as great as it otherwise would have been" (Howard, R. Vol. 1, p. 90, lines 10–22; Defs.' Ex. 231, R. Vol. 5, p. 464). Mr. Howard testified:—

"After we acquired the Farnham brush we made use of the general idea of the Farnham brush and produced an improved brush of this same general type, with the addition of valuable improvements which completely overcame the difficulties which we had had before. . . . That construction afforded a complete solution of the difficulty which had been troubling us for several years." (R. Vol. 1, p. 90, lines 23–31).

This improved brush, which is very satisfactory, is the one the United Company is now principally putting out (R. Vol. 1, p. 90, lines 39–45).

American Glue Company.

This transaction was merely a contract entered into May 2, 1904 (P.'s Ex. 110, R. Vol. 4, p. 796) for the exclusive agency for the American Glue Company's sandpaper in the shoe trade:

"The American Glue Company transaction was merely a contract, terminable on three months' notice, relating to sand-paper in the shoe trade—not in other trades" (Winslow, R. Vol. 1, p. 462, lines 39–41).

"It is agreed, however, that either party shall have the right to terminate this agreement by a three months' notice in writing delivered to the other of said parties, and in case such notice shall be given, then this agreement shall, at the end of the said three months, terminate" (P.'s Ex. 110, R. Vol. 4, p. 798).

As stated by Mr. Winslow (R. Vol. 1, p. 472, lines 30–33):

"The American Glue Company wanted us to take over their molded sandpaper business, which is a part that especially applies to shoe making and does not include their entire business;"

but the United Company took only an agency for the United States and Canada such as it already had abroad, and "The United Company has no interest whatever in the American Glue Company" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 464; Howard, R. Vol. 1, p. 89, lines 35–36).

"The United Company made no goods of a similar character, but has marketed a large amount of goods for the American Glue Company under this contract" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 464).

"Sandpaper is used in the manufacture of shoes for the operations known as scouring and buffing. The general object of each operation is the same—to smooth up the particular part of the shoe on which the operation takes place.

"Prior to this agreement the United Company was agent for the American Glue Company abroad, and it had bought from the American Glue Company the sandpaper which it furnished to customers in this country. This agreement did not change the trade relations of the parties in the least. After making the agreement the United Company continued to furnish the same sandpaper to customers as liberally as before" (Howard, R. Vol. 1, p. 89, lines 31–41).

Zachary Taylor French.

This transaction took place January 1, 1904 (P.'s Ex. 111, R. Vol. 4, p. 803). Zachary Taylor French owned no real estate and no manufacturing plant was acquired. Contrary to the allegation in the petition (R. Vol. 1, p. 1014), "French had no business of his own, but had been for thirty years in the employ of the Goodyear Company, or its predecessors" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 471).

This transaction was thus explained by Mr. Howard:—

"Mr. French had for a great many years been in the employ of the United Company and its predecessor, the Goodyear Company, as an inventor, and later as superintendent of the Goodyear factory on Albany Street in Boston. His inventions were covered by a number of royalty agreements. He did not wish to move to Beverly when the plant there was opened about this time, and therefore desired to leave the employ of the company. A settlement was made of the royalties which would become due under his various contracts; and the agreement of plaintiff's Exhibit 111 incorporates the settlement which was made at that time" (R. Vol. 1, p. 63, lines 30–40).

"It had been the practice of the Goodyear Company to make royalty agreements with him from time to time which provided for payments for his inventions by way of royalties" (R. Vol. 1, p. 89, lines 25–27).

Mr. Winslow testified that the agreement was made—

> "to commute obligations existing prior to 1899 under royalty contracts for the right to manufacture under patents" (R. Vol. 1, p. 464, lines 9–14).
>
> "Reason for agreement to assign future inventions and not to compete with the United Company for ten years, was because French desired to leave the company's employ and to have his royalty contracts (which were entirely dependent upon the number of machines that might be put out) placed upon a definite basis of annual payment" (Defs.' Ex. 231, R. Vol. 5, p. 471).

The consideration was the United Company's agreement to pay $15,000 in annual instalments of $1500 each (P.'s Ex. 111, R. Vol. 4, p. 810).

Kimball and Hadley.

This transaction took place June 11, 1904 (P.'s Ex. 112, R. Vol. 4, p. 814). Kimball and Hadley were a copartnership. They leased small floor space in Lynn and employed two men and two boys. Their principal business was the manufacture of Goodyear needles, *i.e.*, the curved needles used on Goodyear welters and stitchers (R. Vol. 1, p. 64, lines 10–12; Defs.' Ex. 231, R. Vol. 5, p. 464).

The United Company was not making Goodyear needles (R. Vol. 1, p. 64, lines 15–16). Hadley, a witness for the United States, testified to the same effect:—

> "They obtained their Goodyear needles from the Smith Company in New Haven, Connecticut, and from the Excelsior Needle Company, of Torrington, Connecticut.
>
> "*Q.* But so far as you know they didn't make any of their own?
>
> "*A.* No. . . .
>
> "*Q.* You just told me they didn't manufacture any Goodyear needles.
>
> "*A.* They didn't" (R. Vol. 1, p. 310, lines 33–37; p. 311, lines 5–7).

By this acquisition the United Company was merely extending its field to include the manufacture of Goodyear needles. The United Company has continued to manufact-

ure Goodyear needles and to supply them at the same prices that had been charged by Kimball and Hadley (R. Vol. 1, p. 64, lines 21–22; Defs.' Ex. 231, R. Vol. 5, p. 465).

That this transaction was entirely negligible is proved by Mr. Hadley's testimony to the effect that at least two other concerns were engaged in the business of making Goodyear needles, by the size of the concern as above indicated, and by the amounts of the purchase price, $4750, and Hadley's original asking price, $5000 (Hadley, R. Vol. 1, p. 310, lines 33–35; p. 311, lines 13–14).

After this transaction Kimball and Hadley again engaged in the needle business despite their covenant to keep out of that business for fifteen years (P.'s Ex. 112, R. Vol. 4, p. 815), and in a suit to enforce the terms of their agreement with the United Company they were enjoined from continuing the business (Hadley, R. Vol. 1, p. 311, lines 15–20). The decision of the Supreme Court of Massachusetts affirming the granting of this injunction is reported in 193 Mass. 351. (See also *infra*, pp. 767–770.)

Arnold Machine & Supply Company (William B. Arnold).

This transaction took place June 28, 1904 (P.'s Ex. 113, R. Vol. 4, p. 816). The Arnold Machine & Supply Company was engaged in manufacturing a patented machine for applying cement to an insole for the purpose of securing a reinforcing strip of canvas to it in the process of making what is known as the Gem insole, of which Defendants' Exhibit 17 is a sample. The Arnold Company had put out only seven machines. This machine and two patents were all that was acquired by this transaction and the consideration was "$500 and royalties to be paid on machines when put out" (R. Vol. 1, p. 64, lines 39–46; p. 88, lines 20–30; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 469).

"It had never been the practice before this machine was invented to apply cement to the insole rather than to the canvas." The United Company had no machine which could possibly be used for performing the operation of the Arnold machine which had to be specially constructed for the purpose

for which it was intended. "What had been used before was not a cementing machine; it was merely a cement pot through which the canvas was drawn on its way to the table, where it was cut off and applied to a piece of leather" (Howard, R. Vol. 1, p. 64, line 46; p. 65, lines 1–14; p. 92, lines 7–12).

The Arnold machine was a very satisfactory one; but immediately after the purchase by the United Company demand for the machine entirely ceased for the reason that the process of preparing the Gem insole was entirely revolutionized by the production of—

> "a new type of reinforcing canvas which was introduced about this time by concerns other than the United Company. That canvas was sold to manufacturers with the cement already on it, and it was steamed and heated and then stuck right on the sole. There were three concerns engaged in preparing and selling this new type of reinforcing canvas and it entirely revolutionized the prior processes of making Gem insoles. This new process was subsequently used instead of the cementing machine and entirely superseded it" (Howard, R. Vol. 1, p. 88, lines 31–43).

Leopold J. Courteau.

This transaction took place October 1, 1904 (P.'s Ex. 115, R. Vol. 4, p. 826). The United Company acquired from Leopold J. Courteau an invention; nothing more. As shown by the agreement, it did not even acquire title to the experimental machine in which Courteau had embodied his invention. The consideration was an agreement "to pay royalty of 10 per cent of the selling price until $1000 had been paid," and this agreement was conditional upon the United Company obtaining Letters Patent of the United States if its patent solicitors were of the opinion that such patent "can be obtained giving any substantial protection" (R. Vol. 1, p. 87, lines 35–37; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 469; P.'s Ex. 115, R. Vol. 4, p. 827).

The object of this invention was "a mechanism for holding the linings of shoes during the process of pasting the outer [upper] leather to the lining." This cementing operation is performed to a limited extent on some kinds of shoes, and the

work had previously been done by hand. The United Company had no machine for performing this operation (R. Vol. 1, p. 66, lines 10–12; p. 87, lines 30–37; R. Vol. 4, p. 826).

An application for United States patent upon Courteau's invention was filed, and a patent was subsequently issued upon this application (R. Vol. 1, p. 87, lines 35–37; R. Vol. 2, p. 2043, Int. 1438).

The United Company was entirely unable to produce a practicable machine embodying the Courteau invention. Mr. Howard testified,—

> "Nothing ever came of this agreement. We were unable after the most strenuous efforts to make a practicable machine. During our experiments Courteau was often consulted and finally confessed himself that he saw no way to make the machine practicable" (R. Vol. 1, p. 66, lines 12–16).

And again,—

> "We made a very determined effort to make it practicable. Our inventors who were working upon it had frequent conferences with Courteau, and finally, when they were convinced that it was utterly impracticable, they made a final appeal to Courteau to see whether he could make any suggestions which would remedy the situation, and he was unable to do so. The concern with which Courteau was connected, which under the agreement was entitled to have machines at cost [see P.'s Ex. 115, R. Vol. 4, p. 829], considered the machines worthless and refused to take any machines. We did the best we could with it but could not develop anything out of it, and it was given up" (R. Vol. 1, p. 87, lines 39–45; p. 88, lines 1–4).

Booth Brothers (1904 Agreement).

By this transaction, which took place October 25, 1904, the United Company acquired a vamp-perforating machine referred to in the agreement of Plaintiff's Exhibit 114 (R. Vol. 4, p. 822) as "the experimental machine," and the patent on that machine; it acquired no plant or shop (R. Vol. 1, p. 88, lines 5–6; Defs.' Ex. 231, R. Vol. 5, p. 469).

The consideration in this transaction was $2,400 in cash and $7,600 to be paid in royalties (Defs.' Ex. 231, R. Vol. 5, p. 469; P.'s Ex. 114, R. Vol. 4, p. 823).

The Booth machine was designed for ornamenting uppers or parts of uppers. The United Company had no vamp-perforating machine nor any machine which could be used for perforating vamps (R. Vol. 1, p. 65, lines 31–42; p. 88, lines 6–16; R. Vol. 2, p. 2044, Int. 1439; Defs.' Ex. 231, R. Vol. 5, p. 469).

The acquisition of this patent enabled the United Company to extend its line to include a vamp-perforating machine.

This machine has been sold by the United Company through its General Department in large numbers and the business in it was very largely developed after the United Company acquired it (R. Vol. 1, p. 88, lines 17–20).

Brockton Supply Company.

As shown by Plaintiff's Exhibit 116 (R. Vol. 4, p. 831), by this transaction, which took place November 1, 1905, the United Company acquired from the Brockton Supply Company, a copartnership, two patents covering a machine for pulling lasting tacks. At this time the United Company had no commercial tack-pulling machine; "it was developing one, but had put none out" (Howard, R. Vol. 1, p. 66, lines 24–26; p. 87, lines 3–6, 25).

The United Company's experimental machine infringed two claims of one of the patents owned by the Brockton Supply Company. On the other hand, the Brockton Company's machine infringed seven claims of two applications owned by the United Company (R. Vol. 1, p. 66, lines 26–27; p. 87, lines 25–27; R. Vol. 2, p. 2043, Ints. 1436, 1437; Defs.' Ex. 275, R. Vol. 5, p. 767).

This situation created a patent deadlock which was removed by common ownership of the two groups of patents. Furthermore, the firm members of the Brockton Supply Company had had a serious disagreement and desired to liquidate their business. Also Mr. Campbell, one of the partners, was anxious to go out of business. They had already sold a part

of their business to another concern, and "Campbell had suggested to Nichols that he (Nichols) see if they could not sell the rest of their business to the United Company, which Nichols did," and the United Company was willing to make this acquisition, as it "had not been able up to that time to produce a tack-pulling machine" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 477; Howard, R. Vol. 1, p. 66, lines 28–29).

After this acquisition the United Company put out to a considerable extent the machine acquired from the Brockton Supply Company, but Mr. Howard testified that—

> "the most important use which we made of the inventions was to incorporate them in our experimental tack pulling and resetting machine, particularly the feature covered by claims of those patents which that machine had infringed. That machine was for use on Goodyear shoes and not only pulled the lasting tacks but drove the lighter tacks, called slivers, which hold the upper in place until after the welt has been sewed on. . . . Previously it had always been the practice to drive those slivers by hand. This new tack pulling and resetting machine of ours, in which we incorporated the inventions claimed in the patents acquired from the Brockton Supply Company, was the first machine in the art for performing the two operations at once. . . . After the acquisition we combined their inventions and ours in our machine and furnished it to customers in large numbers" (R. Vol. 1, p. 87, lines 8–15, 19–24, 27–29).

Smith Lacing Machine Company.

This transaction took place January 31, 1906 (P.'s Exs. 117, 118, R. Vol. 4, pp. 834, 840). The Smith Lacing Machine Company owned no real estate and did no manufacturing (Defs.' Ex. 231, R. Vol. 5, p. 477).

The Smith Company had produced an entirely new machine for lacing uppers.

> "The lacing machine is a wonderful machine, embodying a large number of patented inventions for automatically lacing and tying the opposed eyelets, of a shoe upper, preparatory to the lasting operation, for the purpose of

maintaining the edges at just the right distance apart during the lasting and subsequent operations. . . .

"Prior to this the practice had been for girls to insert strings through the eyelets and tie the ends of the string. This was handwork. . . . The United Company had no machine for performing this operation or for the purpose of holding together the tops of the uppers of shoes" (Howard, R. Vol. 1, p. 67, lines 3–8, 13–15, 18–20; p. 86, lines 25–30).

This machine "was not really on a commercial basis" and the Smith Company "had placed none upon the market" (Howard, R. Vol. 1, p. 86, lines 31–32; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 477).

The Smith machine infringed many allowed claims in a pending application owned by the United Company. The machine of that application, however, "was only experimental, and was never used commercially" for reasons explained by Mr. Howard (R. Vol. 2, p. 2601 *et seq.*).

On the other hand, the essential organization for a successful lacing machine was—

"broadly covered by the claims of a patent owned by the Smith Company, which also owned other patents containing broad claims to many features of the machine which were found indispensable for a commercially successful machine.

"This situation resulted in a deadlock since neither the United Company nor the Smith Lacing Company was able to put out a commercial lacing machine without infringing a patent or patents owned by the other" (Howard, Defs.' Ex. 275, R. Vol. 5, pp. 767, 768).

Mr. Winslow testified that after the acquisition "we developed the lacing machine, till to-day it is used in pretty nearly every factory where they manufacture lace shoes" (R. Vol. 1, p. 463, lines 13–15).

"The Smith Company had intended to charge an initial payment and royalty for the use of the machine. The United Company furnished these machines to their customers without initial payment and at one-half the royalty that the Smith Company had intended to charge" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 478).

Up to March 1, 1913, the United Company had put out 1415 lacing machines. One of these machines will take care of as many shoes as from four to seven welt-sewing machines (R. Vol. 2, p. 2605, Int. 112).

The consideration in this transaction was a payment of $50,000 in cash and $67,500 to be paid in royalties. "This payment was completed within three years" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 477).

Metallic Heel and Counter Company.

This transaction took place January 31, 1906 (P.'s Ex. 119, R. Vol. 4, p. 843). The Metallic Heel and Counter Company owned no real estate, leased floor space, employed about seventy men, and manufactured metallic heels and counters (Defs.' Ex. 231, R. Vol. 5, p. 465).

> "The United Company acquired from the Metallic Heel and Counter Company patented machines used in the manufacture of a patented metallic heel and counter. This was used on very heavy shoes worn by miners, quarrymen, and others engaged in work of that character" (Howard, R. Vol. 1, p. 67, lines 30–34; p. 86, lines 38–44); (a shoe with metallic heel and counter is Defendants' Exhibit 20).
>
> "The Metallic Heel & Counter Company manufactured patented metallic heels and counters to go outside of shoes for miners' work or heavy outdoor work of that sort" (Winslow, R. Vol. 1, p. 462, lines 44–45; p. 463, line 1).

The United Company did not manufacture any metallic heels and counters and had no machinery that could be used for that purpose (R. Vol. 1, p. 67, lines 36–39; Defs.' Ex. 231, R. Vol. 5, p. 465).

Important reasons for this acquisition were the following:—

(1) The United Company extended its business by entering a new field.

(2) "A very substantial reason for acquiring this company and the Smith Lacing Machine Company was to secure

the undivided services of George Warren, J. B. Hadaway, and William Gordon, who were already in the employ of the United Company in other matters. Messrs. Warren and Hadaway are members of the United Company's Experimental Committee" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 465).

"The men who were interested in that company,—particularly two of them,—were men whom we used in our own business and consulted as experts. One of them was Mr. Warren" (Winslow, R. Vol. 1, p. 463, lines 3–6).

Mr. Warren, a mechanical engineer, one of defendants' expert witnesses in this suit, has been engaged in "designing and overseeing the manufacture of shoe machinery" for the United Company (Warren, R. Vol. 1, p. 785, lines 7–10).

(3) "The parties interested in the Smith Lacing Machine Company and the Metallic Heel & Counter Company were the same. We had to buy them both in order to get either" (Howard, R. Vol. 1, p. 86, lines 35–37).

"When we acquired that machine they wanted us to take over their whole enterprise, including the Heel & Counter Company, which was really the machine shop" (Winslow, R. Vol. 1, p. 463, lines 9–11).

"It was impossible to purchase the Smith Lacing Machine Company without acquiring this business" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 465).

Since the acquisition the United Company has supplied to the trade the metallic heel and counter in very considerable quantities and has a separate department at Beverly for manufacturing them, which is busy all the time (R. Vol. 1, p. 86, lines 44–45; p. 87, lines 1–2).

The consideration for this acquisition was $52,320.24 in cash and $67,500 in royalties payable on account of the lacing machine acquired from the Smith Lacing Machine Company; that is, the payment of more than half the consideration depended upon the commercial success of the Smith Lacing Machine (Defs.' Ex. 231, R. Vol. 5, p. 465; P.'s Ex. 119, R. Vol. 4, p. 845).

Zotique Beaudry.

This transaction took place September 4, 1906 (P.'s Ex. 120, R. Vol. 4, p. 850). Beaudry, as a witness for the United States, testified: "I am in the shoe machinery business, inventing and manufacturing." Mr. Winslow testified: "Beaudry was and is today a manufacturer of edge setters" (R. Vol. 1, p. 328, lines 42–43; p. 473, lines 3–4). That business was not acquired.

By this transaction the United Company acquired an "experimental heel-burnishing machine, which had not been even tried out in any shoe factory," and the patents on that machine, and no other property whatever. The patents were acquired on account of and were assigned to the United-Xpedite Finishing Company, a majority of the capital stock of which is owned by the United Company (Howard, Defs.' Ex. 275, R. Vol. 5, p. 768; R. Vol. 1, p. 68, lines 7–9; p. 86, lines 16–21).

> "At this time the United-Xpedite Company had a heel burnishing machine, but the Beaudry inventions covered appliances which could be added to the Xpedite machines corresponding to which the Xpedite Company had nothing at all. The Beaudry inventions, covered by several patent applications, embodied an entirely new idea" (Howard, R. Vol. 1, p. 68, lines 9–14).

Mr. Winslow stated: "that it was believed at the time that it would enable the United-Xpedite Company to improve its machines very materially. Beaudry had been the original inventor of the machine put out by the Xpedite Company" (Defs.' Ex. 231, R. Vol. 5, p. 469; Beaudry, R. Vol. 1, p. 329, lines 1–3).

Litigation was avoided by this acquisition. Beaudry's experimental machine infringed nine claims of a patent owned by the United-Xpedite Finishing Company (Defs.' Ex. 275, R. Vol. 5, p. 768).

Mr. Howard testified: "At the time we acquired the invention we thought very highly of it, as evidenced by the price that we paid for it" (R. Vol. 1, p. 86, lines 1–2). The consideration was $12,500 (Defs.' Ex. 231, R. Vol. 5, p. 469).

Mr. Howard testified that after the acquisition:—

> "We constructed several experimental machines. . . . We tried in all sorts of ways to make it practicable, but the extreme inconvenience to which the operator would be put by a machine so organized finally condemned it as entirely impracticable" (R. Vol. 1, p. 86, lines 2–15).

Mr. Winslow stated: "As a result of a great many experiments made after the purchase of the patents, this money was wasted" (Defs.' Ex. 231, R. Vol. 5, p. 469).

Booth Brothers (entire business).

This transaction took place November 1, 1907 (P.'s Exs. 121–124, R. Vol. 4, pp. 856, 861, 862, 867). This concern was "a partnership composed of Quentin W. Booth and Irving E. Booth. They owned no real estate but leased floor space in Rochester, New York, and employed about twenty-two men. The purchase was made in 1907 for $71,284.20" (Winslow, R. Vol. 1, p. 460, lines 21–25).

At this time Booth Brothers were putting out patented machines of four types (R. Vol. 1, p. 68, lines 35–45; p. 69, lines 1–8; p. 84, lines 12–15; p. 85, lines 1–27; R. Vol. 2, p. 2519, Int. 96). One of these machines was the patented impression stitch-burnishing machine for burnishing impression stitches on the upper face of the welt of a welt shoe. This machine was much superior to the machine which the United Company was attempting to use for the same work, but it infringed claims in a pending patent application owned by the United Company on which a patent was subsequently granted. The United Company's machine was not successful and after this transaction the United Company substituted the Booth machine for that work (R. Vol. 1, p. 85, lines 1–14; Defs.' Ex. 275, R. Vol. 5, p. 766).

Another Booth patented machine was a fudge edge making machine for making imitation stitches on the upper face of the sole edge and simultaneously setting or burnishing the edge of the sole. The United Company had no machine for doing the work of this machine (R. Vol. 1, p. 84, lines 12–23).

Booth Brothers were also putting out patented upper beading machines for beating down the seams after parts of uppers have been sewed together. These were better machines than the United Company's machine, which was satisfactory only on heavy work, and the United Company as agents had sold many of the Booth machines, which were much better on light work (R. Vol. 1, p. 69, lines 12–13; p. 84, lines 35–45; Defs.' Ex. 231, R. Vol. 5, p. 457).

They also had two types of wheeling machines which were used to define the imitation stitch on the upper face of a welt shoe preparatory to the stitch burnishing operation. Both of these machines infringed the United Company's patents. The United Company's wheeling machine was adapted for use only on McKay shoes, while the Booth machines, as stated, were used on welt shoes (R. Vol. 1, p. 84, lines 24–34; Defs.' Ex. 275, R. Vol. 5, p. 765).

Booth Brothers were also putting out "a simple contrivance, really a support for the shoe" known as an "Upper Shaping Machine" for holding the uppers of cloth-topped shoes while they were being cleaned. There was a small demand for it, and the United Company had nothing of the kind (Howard, R. Vol. 1, p. 85, lines 15–21; p. 69, lines 13–14).

The reasons for this acquisition were as follows:—

(1) As above explained, the United Company had either no machines or inferior machines for performing the operations of the Booth Brothers' machines and the Booth Brothers' machines were patented.

> "The Company felt that it could add these particular machines to its line of machines to advantage to its customers and to itself, as an ordinary business transaction; and also utilize the services of Irving E. Booth, who was a very capable man in that line of endeavor" (Winslow, R. Vol. 1, p. 460, lines 28–32).

(2) This business was acquired at the solicitation of Booth Brothers.

> "The reason given by them for soliciting the United Company to purchase their business was that Quentin W. Booth wished to retire from business and Irving E. Booth did not care to attempt to run the business alone, but did not wish to retire."

The United Company, "were persuaded to make this purchase" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 457).

(3) Three of the principal machines put out by Booth Brothers infringed claims of a patent and an application owned by the United Company (Defs.' Ex. 275, R. Vol. 5, pp. 766, 767).

After the purchase, a corporation was formed, of which Irving E. Booth was made the manager; the manufacture of the Booth machines was continued at the Booth factory, and through the Booth Company the United Company continued to put out in large numbers the machines which had previously been manufactured by Booth Brothers (R. Vol. 1, p. 85, lines 28–35; p. 460, lines 33–37; Defs.' Ex. 231, R. Vol. 5, p. 457).

Richardson Shoe Machinery Company.

This transaction took place December 1, 1908 (P.'s Ex. 125, R. Vol. 4, p. 871). The Richardson Company "owned no real estate; operated no factory. Contracted with outside parties to build its machines" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 478). The only machine which the Richardson Company put out was "a greatly improved McKay sewing machine; that is, a McKay sewing machine which had been adapted to do better work with greater speed by their inventions." This machine was patented (Howard, R. Vol. 1, p. 70, lines 6–9; p. 83, lines 5–8).

The United Company was putting out the old McKay sewing machine and also a new one called the Model B in this country, but not abroad. It was putting out the Richardson machine abroad (R. Vol. 1, p. 70, lines 10–15; p. 82, lines 29–33). That old machine was the "original McKay sewing machine which had been developed by Gordon McKay" and which the United Company was rebuilding and selling. Very few old style machines were being manufactured because there were plenty of second-hand ones to be had and the patents on the machine had expired long before (Winslow, R. Vol. 1, p. 564, lines 23–24, 44–45; Howe, p. 680, lines 24–35). Moreover, numerous other concerns supplied McKay sewing machines and in 1909, the year following the acquisition, there were 1488 old style McKay sewing machines in use in the United

States and 308 Model B and Richardson machines, that is, nearly five times as many old machines; so that these two companies had made relatively little impression in this field (R. Vol. 1, p. 565, lines 23–27; p. 977, lines 16–26).

Neither the Richardson nor the Model B machines could possibly be used for sewing welt shoes (R. Vol. 1, p. 83, lines 16–28).

The reasons for this acquisition were as follows:—

(1) The United Company's Model B machine infringed one of the Richardson Company's patents. A claim of one of these patents "clearly covered a very important feature of the Model B machine" (Howard, R. Vol. 1, p. 83, lines 9–13; Defs.' Ex. 275, R. Vol. 5, p. 768).

Mr. Winslow stated:—

> "Although the United Company had endeavored to avoid the infringement of all patents owned by the Richardson Company, this machine still infringed broad claim 16 of patent No. 710,613" (Defs.' Ex. 231, R. Vol. 5, p. 478).

(2) "The work of the Richardson machine was a great deal better." "European manufacturers demanded the Richardson machine and would not have our machine." (Howard, R. Vol. 1, p. 70, lines 12–13; p. 82, lines 35–36).

(3) "It was believed a better machine than either of the two could be constructed by the use of patents owned by both parties" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 479).

> "We could not develop our machine without combining it with the Richardson machine, and the result of combining the patented inventions of both machines was to produce a better machine than either company alone could develop" (Howard, R. Vol. 1, p. 83, lines 11–15).

(4) John H. Richardson, manager of the Richardson Company, initiated negotiations and stated that "he himself would like to come with the United Company," realizing that with only one machine as a business "the Richardson Company would not be able to make much of a success of its business." Also Mr. Rice, one of the largest stockholders, who is a shoe manufacturer, "wanted to get out of the shoe machinery business entirely" (Winslow, Defs.' Ex. 231, R. Vol. 5, pp. 470, 479).

Since this acquisition the United Company has continued to put out both the Richardson machine and the Model B machine "as desired by the trade" (Winslow, R. Vol. 1, p. 565, lines 20–22, 37; Defs.' Ex. 231, R. Vol. 5, p. 479; Howard, R. Vol. 2, p. 2039, Ints. 1407, 1408.) They are both General Department machines (R. Vol. 5, pp. 430, 437, lines 34, 35).

Further:

> "After the Richardson machine was obtained the United Company immediately put several inventors to work with instructions to combine, each in his own way, the best features of the two machines. The experimenting was carried on very aggressively."

As a result a machine was produced which is "far superior to either the Richardson machine or our Model B machine," and—

> "in its organization and its appearance it more nearly resembles the Richardson machine than it does the Model B. In this new machine many valuable improvements have been made by the United Company's inventors which could not have been embodied in a commercial machine and made available to shoe manufacturers had there not been common ownership of the United Company's patents and the Richardson Company's patents" (Howard, R. Vol. 1, p. 82, lines 39–45; p. 83, lines 1–4; Defs.' Ex. 275, R. Vol. 5, p. 769).

Again, improvements broadly claimed in two of the Richardson Company's patents have been embodied in the United Company's new outsole stitching machine, Lockstitch Machine—Model M: Goodyear Outsole Rapid (Defs.' Ex. 275, R. Vol. 5, p. 768; R. Vol. 2, pp. 2297–2299). Also the improvement of one of those patents has been embodied in the United Company's new Model K welter (R. Vol. 1, p. 83, lines 5–8; Vol. 2, p. 2266).

The petition states that the Richardson Company was "engaged in the manufacture, sale and shipment in interstate commerce of . . . machines known to the trade as 'clicking machines'" (R. Vol. 1, p. 1017). This is a misstatement. The Richardson Company had never made or sold a clicking machine. Through a contract with the Essex Machine Company it had a one-half interest in an experimental clicking machine which was being constructed by that company.

"The machine has never at any time become commercial" and clearly amounts to nothing in this suit, since such interest as the Richardson Company had was not available to enable it to put the machine on the market. "It is controlled by an outside concern." Furthermore, if the machine had been commercial and if the Richardson Company had had such control of it as to be able to put it out, it could not have manufactured or sold this machine without infringing thirty-seven claims of one of the United Company's patents and thirteen claims of two pending applications on which patents were granted subsequently to this acquisition (Howard, R. Vol. 1, p. 70, lines 17–23; Defs.' Ex. 275, R. Vol. 5, p. 769; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 479; P.'s Ex. 125, R. Vol. 4, p. 883).

John H. Richardson.

The agreement with Richardson made December 1, 1908 (P.'s Ex. 126, R. Vol. 4, p. 887) was simply an employment contract. "Richardson had been the general manager of the Richardson Company and was not satisfied with his position." He "had been influential in bringing about the sale of that company to the United" Company and simultaneously with that sale he entered the employ of the United Company (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 474).

Since "Richardson was an inventor having executive ability" he promised to be a very useful and valuable man to the United Company and hence "it seemed proper to safeguard the company" by means of such an employment contract, if the company "expected to gradually promote Mr. Richardson to an important position in its executive forces." In fact, "he is at present in charge of the general department of the United Company and his salary has been repeatedly raised" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 474).

Carver Cotton Gin Company.

By this transaction which took place April 30, 1908 (P.'s Ex. 127, R. Vol. 4, p. 893) the United Company acquired no real estate or manufacturing plant. The Carver Cotton Gin

Company was engaged in the business of making cotton gins and "the manufacture of any shoe machinery with them was entirely a side line" (Winslow, R. Vol. 1, p. 460, lines 42–43; Defs.' Ex. 231, R. Vol. 5, p. 457).

> "They had got into it accidentally through having manufactured at one time or another machines on contract for parties who did not have shops of their own" (Howard, R. Vol. 1, p. 81, lines 27–29).

Mr. Winslow testified:—

> "As to the Carver Cotton Gin Company, we really got from them some jigs and tools, a small stock of parts, a few machines, all of which were in what is known as the general department" (R. Vol. 1, p. 460, lines 38–40).

These General Department machines which the Carver Company was putting out were the Acme leveling machine, a vamp-skiving machine, a leatherboard skiver, a counter-dividing machine, and a patented machine for finishing the top-lifts of heels known as the "Adams top-piece sanding machine." The United Company had no machines for performing the operations performed by any of these Carver machines (R. Vol. 1, p. 70, lines 32–45; p. 71, lines 1–15; p. 81, lines 30–44; p. 82, lines 1–23).

The Acme leveling machine "is used on freak shoes and samples, where the size and shape change with almost every shoe," because, "after leveling a shoe of one kind, it could take a shoe of an absolutely different size and shape and operate upon it without any adjustment at all."

It was not adapted for regular use on welt shoes "because it is extremely slow as compared with the automatic leveler, and the work which it does is not equal to the work of that machine." It could not be used on either turn or McKay shoes (Howard, R. Vol. 1, p. 70, lines 37–45; p. 81, lines 32–37; R. Vol. 2, p. 2034).

On the other hand, the United Company's machine, "the Goodyear automatic leveling machine, which is the machine in general use for leveling welt shoes, must be adjusted for every variation in size or shape of last. The automatic leveler is so very much faster and does so much better work than the

Acme that it is almost universally used for the regular work going through the factory" (Howard, R. Vol. 2, p. 2034).

> "It was by far the best machine in existence for the regular work of a factory, but where every shoe that came to the machine was of a different size and shape it would take a great deal of time to effect the necessary adjustments between each shoe. Accordingly these two machines occupied quite different fields" (Howard, R. Vol. 1, p. 81, lines 40–44).

By this acquisition the United Company extended its line by adding machines which perform operations for which it previously had no machines and it obtained the special tools and patterns for manufacturing those machines. For some years the United Company had been purchasing Acme leveling machines from the Carver Company and putting them out (R. Vol. 2, pp. 2032–2033, Ints. 1373–1376; Defs.' Ex. 231, R. Vol. 5, p. 458).

Mr. Winslow testified:—

> "This purchase was made at the solicitation of Mr. Hobart, the treasurer of the Carver Cotton Gin Company.... Their regular business had increased so that they had either got to add on to their factory or else dispose of some part of their business, and this portion of their business had been decreasing, and the price paid did not really cover the value of the tools plus the parts of machines" (R. Vol. 1, p. 460, lines 41–45; p. 461, lines 1–4).

As further stated by Mr. Winslow:—

> "The United Company had always been on friendly terms with the Carver Cotton Gin Company and had sold such machines as they made when desired by the trade, and the price paid [the total consideration was $16,883.79] above the inventory value for the machines on hand was less than it could have duplicated the patterns, tools, etc., which the Carver Cotton Gin Company desired to sell" (Defs.' Ex. 231, R. Vol. 5, p. 458).

Since this acquisition the United Company has continued the manufacture of the Carver Company machines at its Beverly factory and has put them out in large numbers (R.

Vol. 2, pp. 2033, 2035, Ints. 1375–1377, 1390; Defs.' Ex. 231, R. Vol. 5, p. 458). As stated by Mr. Winslow (*supra*, p. 726) these machines are all General Department machines and are sold outright (R. Vol. 1, p. 12, line 37 *et seq.*; Vol. 5, pp. 425, 426, 427).

Harry L. Rice and Fred LaChapelle.

This transaction took place January 20, 1909 (P.'s Ex. 128, R. Vol. 4, p. 898). "No manufacturing plant of any kind was acquired" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 470).

Mr. Howard testified:—

> "The United Company acquired an experimental welting machine embodying a patented invention radically new. This machine put an extra thread on the single-thread side of the chain stitch formed by the machine. . . . That was entirely new. The purpose was to strengthen the 'between substance'" as it is called (R. Vol. 1, p. 71, lines 30–38).
>
> "When we acquired the LaChapelle device he had made only one machine, which was experimental and far from being commercial" (R. Vol. 1, p. 81, lines 13–15).

The machine was protected by several applications upon which patents have since been granted (R. Vol. 1, p. 81, lines 6–12; R. Vol. 2, p. 2031, Ints. 1367–1369).

The consideration in this transaction was $11,500 (Defs.' Ex. 231, R. Vol. 5, p. 470).

The reasons for this acquisition were:—

(1) "In addition to strengthening the stitch it was believed, that by this invention an economy could be effected by using a thinner and less expensive insole than could be used with the present commercial type of welting machine, which puts only one thread inside the channel" (Howard, R. Vol. 1, p. 81, lines 19–23).

(2) Mr. Rice, a large shoe manufacturer, who was an officer of and one of the two largest stockholders in the Richardson Shoe Machinery Company (P.'s Ex. 125, R. Vol. 4, p. 871, Defs.' Ex. 231, R. Vol. 5, p. 478)—

"made it a condition of the purchase of the Richardson machine that the United Company should take over his rights in these inventions at a reasonable price because 'he wanted to get out of the shoe machinery business entirely'" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 470).

Mr. Howard testified:—

"We have been working on it since we acquired it and have tried it out several times in a shoe factory, but it is not yet commercial. We are still at work with the purpose of developing it into a commercial machine." "It takes a long time to develop one of these machines" (R. Vol. 1, p. 81, lines 15–18; p. 72, lines 3–4).

Ellis Lacer Company.

This transaction took place February 1, 1910 (P.'s Ex. 129, R. Vol. 4, p. 905). The Ellis Lacer Company was engaged in the business of manufacturing by patented machinery patented wire lacers for temporarily securing together the opposed eyeletted edges of shoe uppers to keep those edges at a proper distance apart during the lasting and subsequent operations. The Ellis lacer was the first lacer that had ever been used commercially. This company owned no real estate but leased floor space (R. Vol. 1, p. 72, lines 23–35; p. 80, lines 40–42; R. Vol. 2, pp. 2028, 2029, 2030, Ints. 1351, 1357, 1358; Defs.' Ex. 231, R. Vol. 5, p. 466).

Before this purchase the United Company never had put out any wire lacers, although prior to 1899 a company controlled by a predecessor of the United Company had attempted to develop and market a wire lacer, but "this device had not been successful, and attempts to market it had been discontinued before 1899" (Howard, R. Vol. 1, p. 72, lines 32–33 Defs.' Ex. 275, R. Vol. 5, p. 770).

The United Company could not put out a commercially satisfactory lacer without infringing the Ellis Company's patents because essential features of such a lacer were covered by broad claims in those patents (Defs.' Ex. 275, R. Vol. 5, p. 771).

On the other hand, the United Company controlled several antedating patents. Twenty-nine claims of those patents

were infringed by the Ellis lacers and completely dominated them. As a result of this patent deadlock "each company's patents if held valid and sustained would have prevented the other company from putting out lacers for commercial use" (Howard, R. Vol. 1, p. 81, lines 4–5; Defs.' Ex. 275, R. Vol. 5, p. 771; Winslow, Defs.' Ex. 231, R. Vol. 5, p. 466). Obviously, therefore, the United Company could not enter this new field without acquiring the patents of the Ellis Company, and the object of this purchase was to enable the United Company to go into this business without infringement.

The Ellis Company was notified of its infringement of the United Company's patents and opened negotiations which resulted in this acquisition. By this transaction no shoe machines whatever were required.

> "The only machinery acquired was a machine for making the wire lacer in our own factory. We did not sell or lease this machine, but furnished the product of the machine to the shoe manufacturers" (Howard, R. Vol. 1, p. 72, lines 27–31; Defs.' Ex. 275, R. Vol. 5, p. 771).

Since this purchase the Ellis lacers have been manufactured and sold in large numbers by the United Company. These lacers have, at all times, been fully protected by ten patents obtained from the Ellis Company or maturing on applications of the Ellis Company, the oldest of which was granted in 1901 (R. Vol. 1, p. 72, line 33; Vol. 2, pp. 2029, 2030, Ints. 1356–1358).

The Wentworth Company.

This transaction took place February 3, 1910 (P.'s Ex. 130, R. Vol. 4, p. 913). The Wentworth Company "owned no real estate. Leased floor space in a building in Cincinnati, Ohio, and employed about twelve men" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 449).

The Wentworth Company was putting out two patented machines, a heel seat beating machine and a shank sticking machine (R. Vol. 1, p. 73, lines 4–17; p. 80, lines 26–28, 34–38; R. Vol. 2, p. 2026, Ints. 1342–1344).

The Wentworth heel seat beating machine flattened the heel down by rubbing it with a yielding tool but did not beat

the heel. The United Company had a machine of an entirely different type "which flattened the heel by hammer blows." That machine was discarded after the Wentworth acquisition (R. Vol. 1, p. 73, lines 18–26).

The Wentworth shank sticking machine performed an operation which had been a hand operation before the introduction of that machine. The United Company did not have a commercial shank sticking machine and "it was experimenting on one with difficulty, because the Wentworth Company had a patent on theirs" (Howard, R. Vol. 1, p. 73, lines 29–34; p. 80, lines 28–31).

The Wentworth heel seat beating machine infringed twenty-three claims of a patent owned by the United-Xpedite Finishing Company (controlled by the United Shoe Machinery Company) and a suit brought on those claims had been prosecuted to final hearing and the claims were held to be valid and infringed. This machine also infringed thirteen claims of another patent owned by the United Company upon which a successful suit had been brought.

> "The patents upon which these two suits were brought covered indispensable features of the Wentworth machine and The Wentworth Company could no longer put out their heel seat beating machine" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 772; R. Vol. 1, p. 73, lines 27–28).

Also the Wentworth shank sticking machine infringed three claims of a patent owned by the United Company (Defs.' Ex. 275, R. Vol. 5, p. 772).

Mr. Winslow testified that "prior to the decision of the litigation the Wentworth Company had approached the United Company many times to dispose of their business," and stated that "immediately after the decision they asked to open the negotiations with the United Company, which finally resulted in the purchase." He also testified,—

> "A great many of the Wentworth machines that had been put out were in the hands of our lessees, and as the easiest way of disposing of that whole question it seemed to be better to make a trade with the Wentworth Company and settle the litigation" (R. Vol. 1, p. 458, lines 5–9; Defs.' Ex. 231, R. Vol. 5, p. 449).

After the acquisition the Wentworth machines were manufactured at the United Company's Beverly factory, "from which factory the machines and parts have been supplied by the United Company" (Winslow, Defs.' Ex. 231, R. Vol. 5, p. 449). Mr. Howard testified that in further developing the United Company's shank sticking machine "the United Company eventually combined the best features of its experimental machine and the best features of the Wentworth machine in the machine which it is now putting out." That machine has been put out in large numbers (R. Vol. 1, p. 73, lines 31–34; R. Vol. 2, p. 2027, Int. 1348).

B. F. Sturtevant Company.

This transaction took place February 23, 1910 (P.'s Ex. 131, R. Vol. 4, p. 928). The B. F. Sturtevant Company "owned real estate at Conway, N.H., where it operated a factory for the manufacture of peg-wood and wood shanks. Number of men employed about twelve." The amount paid for the property, including "all the real estate . . . the mill site, the mill building, the storage buildings, and all other buildings" (P.'s Ex. 131, R. Vol. 4, p. 928) was $52,185.94; this price being based upon the inventory. "No machines that are used in the manufacture of shoes were obtained in this transaction" (Defs.' Ex. 231, R. Vol. 5, p. 466; Howard, R. Vol. 1, p. 74, lines 4–5).

The object of this purchase was to obtain a permanent and assured source of supply of manufactured strips of peg-wood for use on the pegging machines put out by the United Company, and of wooden shanks for shoes, both of which articles were supplied by the United Company to its customers. The United Company never had been engaged in the manufacture of peg-wood or wooden shanks, but had previously obtained its supply entirely from the Sturtevant Company, which was one of several manufacturers that were engaged in the peg-wood business. This business of the Sturtevant Company has been continued by the United Company at the same place with substantially the same number of men employed, and customers have been furnished with the Sturtevant products

just as before (R. Vol. 1, p. 73, lines 43–44; p. 74, lines 1–2; p. 80, lines 14–25; R. Vol. 2, p. 2046, Int. 1452; p. 2060, Int. 1521; Defs.' Ex. 231, R. Vol. 5, p. 466).

Adam H. Prenzel.

The transaction with Adam H. Prenzel, who is a shoe manufacturer at Halifax, Pa., took place November 22, 1910 (R. Vol. 2, pp. 2024, 2025, Ints. 1329, 1335; P.'s Ex. 143, R. Vol. 4, p. 1046). Mr. Howard testified:—

> "By that agreement the United Company acquired several machines which Prenzel had invented for use in producing a novel patented spring heel shoe, entirely different from any spring heel shoe ever before known. . . . The numerous Prenzel inventions related to turn shoes and for the first time made it possible to sew the sole to the upper all the way around and produce a satisfactory product. . . . Spring heel shoes are turn shoes."
>
> "It also acquired a machine for use in producing an infant's shoe, known as a 'cack.' . . . That machine was used, after the shoe had been finished, to press down the heel end of the sole so as to form a little heel, and at the same time it pressed in a heel seat piece to fill the space made by pressing down the heel end of the sole" (R. Vol. 1, p. 75, lines 43–45; p. 76, lines 1–18).

These were the only machines acquired from Prenzel. The patents acquired from Prenzel covered not only the machines for making these two novel shoes, but also covered the shoes themselves and the processes employed in manufacturing them (R. Vol. 1, p. 76, lines 19–20; R. Vol. 2, pp. 2023, 2024, Ints. 1328, 1330).

Mr. Howard further testified:—

> "The United Company had no machines for performing the special operations which were performed by the machines secured from Prenzel. It puts those machines out now and they are used by manufacturers" (R. Vol. 1, p. 76, lines 20–23).

One of the machines "which Prenzel was using in the manufacture of his improved turn shoe infringed two allowed claims of an application owned by the United Company," upon which the patent was granted in September, 1911, and still another improvement which Prenzel had made was incorporated in a machine covered by "several patents owned by the United Company" (Howard, R. Vol. 2, pp. 2327–2329; Defs.' Ex. 275, R. Vol. 5, pp. 772, 773).

By this acquisition the United Company extended its lines of machines and was enabled to supply its customers new machines for making new products. It was also enabled to use three Prenzel patents in one of its important machines (R. Vol. 2, p. 2329).

M. V. Bresnahan & Company.

This transaction took place December 19, 1910. As stated in Plaintiff's Exhibit 144 (R. Vol. 4, p. 1053), M. V. Bresnahan & Company was a copartnership and the property of the concern enumerated in Schedule A of that exhibit comprises personal property only.

They had a patented experimental lasting machine which had not yet reached a commercial stage. They also had "a heel-burnishing machine embodying a novel patented device for spraying the wax on the heel-burnishing tool." That machine infringed two patents controlled by the United Company (Howard, R. Vol. 1, p. 77, lines 1–6, 17–18, 22–23; p. 79, lines 36–38, 42–44; Defs.' Ex. 275, R. Vol. 5, p. 773).

The United Company did not have any machines which would accomplish the results secured by the inventions embodied in the Bresnahan machines.

Mr. Howard testified:—

> "The United Company was making lasting machines and heel burnishing machines, but they did not accomplish the same results as the Bresnahan machines, because they did not have the patented inventions that were in the Bresnahan machines. The Bresnahan lasting machine was only experimental.
>
> "The United Company is experimenting with machines constructed under both patents acquired from

Bresnahan, but has not yet put out any machines. There has not been time yet to make the machines commercial. The United Company has an experimental lasting machine running, embodying the inventions acquired from Bresnahan" (R. Vol. 1, p. 77, lines 18–29).

"The Bresnahan experimental lasting machine was not being marketed at the time by Bresnahan and he was only trying it out. It had not yet reached the commercial stage.

"The Bresnahan improvement on the heel burnishing machine related to the application of the wax. The United Company went to work to make that improvement commercial and give it to its customers. There was a patent application pending on this invention, and the United Company had nothing that would do what the mechanism embodying this invention would do" (R. Vol. 1, p. 79, lines 36–44).

Another important object of this transaction was the composing of a great amount of litigation. Mr. Howard testified:

"The transaction further involved the settlement of a large number of suits which had been pending for many years between the United Company and Bresnahan's concern in the earlier days before he sold out his interests to Plant" (R. Vol. 1, p. 77, lines 7–10).

"There had been a large number of suits, as many as eight or ten, between Bresnahan and the United Company which had been pending for a number of years, nearly all suits for infringements of patents. That litigation was all pending at the time of this acquisition" (R. Vol. 1, p. 79, lines 31–35).

In addition to the infringement suits (R. Vol. 2, p. 2023, Ints. 1325, 1326) there were pending four suits brought by Bresnahan or the Bresnahan Shoe Machinery Company against the United Company in the Superior Court for Suffolk County, Massachusetts (Defs.' Ex. 275, R. Vol. 5, p. 774).

"When Bresnahan sold his interest in the Bresnahan Shoe Machinery Company to Thomas G. Plant in January, 1906, the Bresnahan Company transferred to Bresnahan and Heys, who together owned all the stock of the Bresnahan Company, all interests under this litigation in the state courts between the United Company and the Bresnahan Company" (Howard, Defs.' Ex. 275, R. Vol. 5, pp. 773, 774).

By Section 6 of the agreement relating to this transaction the vendors released and discharged the United Company from all actions, causes of action, claims and demands, etc., "whether brought in their names or in the names of any of them, or in the name of the Bresnahan Shoe Machinery Company or in the name of M. V. Bresnahan & Co., or otherwise" (P.'s Ex. 144, R. Vol. 4, p. 1058).

The agreement for the purchase provided that all of the three partners should enter the employ of the United Company.

Charles P. Stanbon & Company.

This transaction took place April 22, 1911 (P.'s Ex. 145, R. Vol. 4, p. 1065). Charles P. Stanbon was manufacturing shoe machinery in Lynn, doing business under the name and style of Charles P. Stanbon & Company. Stanbon and Thomas G. Plant (Manufacturers' Machine Company) had made an agreement (P.'s Ex. 132, "Exhibit D," R. Vol. 4, p. 972). Plant had made it a condition of the sale of his patents to the United Company that the United Company should assume, and the United Company agreed to assume,—

> "all agreements, obligations and liabilities of said Plant and of said Manufacturers' Machine Company under said existing contracts between said Plant or said Manufacturers' Machine Company and Charles P. Stanbon. . . ." (P.'s Ex. 132, R. Vol. 4, pp. 932, 933, 935).

Mr. Winslow testified,—

> "We gave only the inventory value of the properties, and only because Mr. Stanbon was under option to Mr. Plant. Mr. Plant made it, as I remember it, a requisite of the arrangement that we should take Stanbon's property and then left it with Mr. Stanbon to agree whether he would turn in his property or not" (R. Vol. 1, p. 558, lines 34–39).

Mr. Howard testified,—

> "This Stanbon transaction was carrying out the contract which Plant had made with Stanbon and which the United Company had assumed" (R. Vol. 1, p. 79, lines 27–29).

Stanbon had three important patented machines. "The most valuable thing acquired by the United Company in this transaction was a channel cementing machine, constructed particularly for cementing the channels of the soles of McKay sewed shoes" and "not adapted for use on other kinds of shoes." This machine was patented (Howard, R. Vol. 1, p. 77, lines 38–41; p. 78, lines 36–37; R. Vol. 2, p. 2019, Int. 1304).

Stanbon also had "a very valuable folding machine" which was "of a radically new character." Patent applications were pending on this machine (Howard, R. Vol. 1, p. 78, lines 3–8; Defs.' Ex. 275, R. Vol. 5, p. 776).

Stanbon also had a perforating machine which "was really adapted for doing embossing work . . . ornamenting rather than perforating" (Howard, R. Vol. 1, p. 79, lines 6–8).

These Stanbon machines, which were all of General Department types, were all covered by patents or pending applications (R. Vol. 1, p. 79, lines 25–26; R. Vol. 2, p. 2022, Ints. 1318–1321).

The United Company had a channel cementer which was inferior to Stanbon's and unsatisfactory because the United Company could not use the patented improvements which were on Stanbon's machines, as will be explained later (R. Vol. 1, p. 78, lines 1–2, 38–45; p. 79, lines 1–2).

"The United Company had no folding machine of any description" (Howard, R. Vol. 1, p. 79, lines 15–16).

The United Company had the "Booth Perforating Machine" but "these two machines have distinct fields owing to radical differences in their organizations." The Booth machine "is far more accurate on curved work. . . . The Stanbon machine on the other hand is very much faster and is therefore much better adapted for substantially straight-edge work" and "has unlimited capacity as to spacing." In Defendants' Exhibit 100, a sample of work done on the Stanbon machine, the spacing is "more than double the maximum spacing permissible on the Booth perforator." Also as above explained the Stanbon machine was adapted for doing embossing work, while the United Company's machine was not (Howard, R. Vol. 1, p. 79, lines 6–10; R. Vol. 2, pp. 2020, 2021, Int. 1311).

By this transaction the United Company carried out the agreement with Plant as to his contract with Stanbon, quoted at the beginning of this discussion.

The United Company also extended its line by adding a folding machine, which enabled it for the first time to enter the folding machine field. It acquired a satisfactory channel cementing machine which it did not have before because it could not use Stanbon's patented improvements, and it acquired a perforating machine better adapted than its own for certain classes of work and capable of doing some work which its perforator could not do.

This acquisition also cleared up a serious patent complication.

> "Prior to the Stanbon acquisition, both the United Company and Stanbon had been developing an improved folding machine of a radically new character. Both machines incorporated substantially the same improvements."

and two interferences involving applications owned by the two parties had been declared.

> "The issues were so broad that the party that won the interference could undoubtedly prevent the other party from putting out any machine of this character" (Howard, Defs.' Ex. 275, R. Vol. 5, p. 776).

Also, Stanbon's channel cementer infringed a patent owned by the United Company while, on the other hand, the United Company could not use Stanbon's valuable improvements because—

> "The United Company had been in interference with Stanbon in the Patent Office and had lost before the Court of Appeals, the tribunal of last resort" (Howard, R. Vol. 1, p. 77, lines 43–45; Defs.' Ex. 275, R. Vol. 5, p. 776).

Several other instances of infringements and interferences are set forth in detail by Mr. Howard (Defs.' Ex. 275, R. Vol. 5, pp. 775, 777).

After the acquisition of the Stanbon business the United Company put out the Stanbon Channel Cementer "immediately" and "in large numbers," and it has put out the Stanbon Perforating Machine. Stanbon's folding machine was "only experimental, had not been put out, and was a long way from

a commercial machine when we took it." The United Company has "seldom worked more vigorously upon a machine than we have upon that one," and when Mr. Howard testified in January, 1914, he stated that the United Company "has put out in large numbers folding machines embodying the Stanbon inventions" (Howard, R. Vol. 1, p. 79, lines 4–5, 10–12, 16–18, 23–24; Defs.' Ex. 275, R. Vol. 5, p. 776).

APPENDIX II.

THE EVIDENCE RELATING TO ALLEGED UNFAIR, OPPRESSIVE OR MONOPOLISTIC ACTS OF THE DEFENDANTS, INCLUDING ALLEGED ARBITRARY ENFORCEMENT OF LEASE PROVISIONS.

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A. THE EVIDENCE RELATING TO THE CHARGES OF UNFAIR, OPPRESSIVE OR MONOPOLISTIC ACTS OF THE DEFENDANTS, INCLUDING ALLEGED ARBITRARY ENFORCEMENT OF LEASE PROVISIONS, SPECIFIED IN THE BILL OF PARTICULARS FILED BY THE UNITED STATES.

In Section VI of the petition (R. Vol. 1, p. 999) defendants are charged with having made various threats or committed various unfair and oppressive acts. No specific instances are set out in the petition, but a bill of particulars, setting forth the specific instances charged, was filed during the course of the trial (R. Vol. 1, p. 1075). The bill of particulars sets forth over fifty different alleged acts or threats, including a number of instances of alleged arbitrary enforcement of lease provisions which relate to the charges in Section V of the petition (R. Vol. 1, p. 997).

As to the majority of these instances, as will be shown, the United States introduced no evidence at all.

The evidence relating to these charges is set forth below. This summary will be followed by a discussion of the evidence relating to other alleged acts of similar character upon which the United States relies, but which were not specified in the bill of particulars (*infra*, pp. 791–804).

1. Peter Tessier & Company.

In the bill of particulars it is claimed that the United Company removed its leased machinery from the factory of Peter Tessier & Company of Haverhill, Mass., where a Duplessis turn sewing machine was being operated (R. Vol. 1, p. 1076(1)).

Peter Tessier, as a witness for the United States, said that he had been engaged in the shoe manufacturing business at Haverhill, that he used a Goodyear sewing machine for a time,

that he installed a Duplessis sewing machine, that Octave Paquette, the agent of the United Company in Haverhill, came to him and presented a letter signed by the United Company (R. Vol. 1, p. 281, lines 13–19). This letter read as follows (P.'s Ex. 158, R. Vol. 4, p. 1107):—

> "You are hereby notified that in the exercise of our rights in the premises we have elected to terminate all leases and licenses which have heretofore been granted to you covering machinery belonging to us, including herein specifically the following leases and licenses, viz:—
> Metallic Department lease and license, No. 803, dated April 6, 1901;
> Metallic Department lease and license, No. 803A, dated January 4, 1904;
> Goodyear Department lease and license, No. 5486, dated December 18, 1902;
> and to terminate all right and privilege to use any of the machines belonging to us which have heretofore been delivered into your possession.
>
> "The said leases and licenses and said rights and privileges are accordingly hereby terminated, revoked and annulled; and we hereby forbid you to use or to permit the use by any other person of said machines or any of them hereafter, or to further use any of the patented inventions embodied in said machines and which by said lease and licenses you are authorized to use.
>
> "And we do further hereby demand that you forthwith deliver to us at our factory in Boston, Massachusetts, in accordance with your undertaking and agreement, all of such machines, including therein specifically the machines designated by name and number as follows, viz:—

Grip Slugging Machine, ...	No. 777
Universal Slugging Machine, ...	2022
Knife Grinder, ...	5571
Goodyear Welt and Turn Shoe Machine, ...	417
Goodyear Turn Channelers	742–2125
Goodyear Moulding Machine, . . .	293"

Tessier testified that this comprised all the machines of the United Company in use in his factory at that time; that he had machines that took the place of them and could get from the Duplessis Company machines for performing similar work; that he could get all those machines from the Duplessis

Company that he had from the United Company for performing similar work (R. Vol. 1, p. 282, lines 20–30).

On cross-examination Tessier said that he had the Duplessis machines in his factory at the time the United machines were taken out (R. Vol. 1, p. 282, lines 32–33).

The United States agreed that these machines were taken out on a replevin writ brought by Mr. Brandeis' office (R. Vol. 1, p. 282, line 34).

Mr. Winslow, the president of the United Company, testified that he sent the notice set out above to Tessier because Tessier had abandoned the use of the company's welt and turn sewing machines and had put in their place Duplessis turn sewing machines. He sent the notice canceling his leases, but as a matter of fact it did not interfere with Tessier going on with his business in the slightest degree; Tessier simply was not using the United machines, and the United Company took them out (R. Vol. 1, p. 448, lines 11–18).

Elmer P. Howe testified: "Peter Tessier also put in some Duplessis machines and it was really violating our lease in the most flagrant way by using our machines to prepare or to finish the work that was done on the Duplessis machines. Furthermore, when his attention was called to the violation of the lease I think he gave up his Goodyear machines without the necessity of actually prosecuting a replevin suit against him"; he had already provided himself with others (R. Vol. 1, p. 668, lines 15–23).

The Court will observe that in the list of machines mentioned in the letter to Tessier, the Goodyear turn channelers and the Goodyear moulding machines were auxiliaries for which no royalty was paid, but which were limited to use with the principal machines, the welt and turn machines; that what Tessier had done was to use the Duplessis machine for the work of the Goodyear welt and turn machines and then finish the work on the Goodyear auxiliaries without paying for their use; and that this was a violation of the condition of Tessier's lease. There was no evidence whatever of any threat made by the United Company or any agent.

2. Ernest Bottomley & Company.

In the bill of particulars it is claimed that the United Company removed its leased machines from the factory of Ernest Bottomley & Company of Haverhill, Mass., where a Duplessis welt and turn machine was being operated (R. Vol. 1, p. 1076 (2)).

Ernest Bottomley testified: That he was a manufacturer of McKay shoes; that he was engaged in 1903 in the manufacture of turn shoes; that he had some machines from the United Company and some from the Duplessis Company. From the Duplessis Company he had the turn machine, the loose nailer, slugger, tacker and stitching machines. From the United Company, the only one he named was a sole rounder. He had had a Goodyear stitching machine. When he took the Duplessis machines he stopped using Goodyear machines. Colonel King, of the United Company, came to him and had a conversation with him the substance of which was that he would have to use either the United Company machines or the Duplessis machines, with the result that he continued to use the Duplessis machines, and the United Company took its machines away (R. Vol. 1, p. 284, lines 24–36).

On cross-examination he said that he had first installed Goodyear machines for doing turn work; he had taken one or more turn sewing machines and some of the auxiliaries that went with them; and that the royalty paid for the use of the turn sewing machines and the auxiliaries was kept track of by the indicator on the sewing machine, which was the principal machine. After he had had these for a while he took turn sewing machines from the Duplessis Company, and stopped using the turn sewing machines obtained from the Goodyear Company. He then notified the United Company that they —Bottomley & Company—would not pay any more royalties for shoes sewn on the Goodyear machines (R. Vol. 1, p. 285, lines 27–35; p. 286, lines 18–33).

Bottomley further testified: "I understood I should choose between the Goodyear and Duplessis machines, that I was free to choose whichever of those I liked. I considered it and made a free choice. As a business probability if I was run-

ning shoes through the Duplessis machines I wouldn't use the Goodyear machines" (R. Vol. 1, p. 287, lines 3–8).

Mr. Winslow testified: "Bottomley had served notice on us that he would not use our machines and would not pay any further royalty. He was using machines which he had also declined to sign the leases on. They had been leased previously to other parties" (R. Vol. 1, p. 448, lines 20–24).

There was no other evidence as to what machines were removed from the Bottomley factory.

Neither the Tessier nor the Bottomley case shows misrepresentation or threat, but simply the justifiable exercise of a plain right, which was resorted to, not to coerce a manufacturer but to protect the company's revenue.

3. The Cases of Mark J. Worthley, Thomas G. Plant Company, A. Garside & Sons, Joseph Caunt, A. E. Little Company.

The United States charged that the defendants or their agents threatened to remove under the terms of their leases their machines which were being operated by the above-named parties because said individuals and firms were operating in their factories machines obtained from the Standard Shoe Machinery Company (R. Vol. 1, p. 1076 (1)).

There was no evidence whatever in support of this allegation. Darrah was the only witness who made any reference to these matters and his testimony did not support the allegation (R. Vol. 1, pp. 334, 335). Since, however, the United States attaches some importance to Darrah's testimony in regard to the Standard Company's Woodward machines in the Worthley and Plant factories (R. Vol. 1, p. 334, line 44-p. 335, line 9), attention should be called to Darrah's admission on cross-examination that those machines infringed the United Company's patents, that infringement suits had been brought, and that the decisions in those suits were in favor of the United Company, holding the Woodward machine to be an infringement of the United Company's patents (R. Vol. 1, p. 337, line 38–p. 338, line 2). That situation affords ample explanation of any apprehension that Worthley or Plant may have expressed to Darrah.

Darrah produced a list of 60 shoe manufacturers who used the Standard Company's machines, which is Plaintiff's Exhibit 160 (R. Vol. 1, p. 338, lines 10–14; Vol. 4, p. 1116).

4. C. B. Lancaster Shoe Company.

The United States claimed: "In 1902 or shortly prior thereto C. B. Lancaster Shoe Company, of Keene, New Hampshire, installed on trial in its factory a tackless lasting machine manufactured by the Tackless Shoe Machinery Company, whereupon the defendant, the United Shoe Machinery Company, gave notice that if such machine was not returned forthwith, it would remove all of its machinery with which the factory of said Lancaster Shoe Company was almost entirely equipped, and as a result thereof said tackless lasting machine was returned and not purchased or leased" (R. Vol. 1, p. 1076 (2)).

There was no evidence whatever in support of this allegation.

5. Nutt & Pratt.

The United States charged that the United Company threatened to remove its leased machinery from the factory of Nutt & Pratt of Natick, Mass., because said Nutt & Pratt had installed a tackless lasting machine obtained from the Tackless Shoe Machinery Company (R. Vol. 1, p. 1076(3)).

No evidence whatever was offered in support of this allegation.

6. T. D. Barry Shoe Company.

The United States charged that "The defendants threatened to take back their machines under the terms of their leases and thereby force manufacturers to remove competing machines which had already been installed in the following instances (R. Vol. 1, p. 1076 (c)):—

"They so threatened T. D. Barry Shoe Company at Brockton, Massachusetts, in or about the spring or summer of 1900, and brought a proceeding to remove from said company's

factory welting, stitching, heeling, lasting, slugging, insole channeling, and other machines, and thus compelled said company to remove a system of machines of like character, except slugging and channeling machines which Barry & Company had obtained from the Standard Shoe Machinery Company" (R. Vol. 1, p. 1077 (1)).

In support of this charge the United States called William A. Hogan, who testified he was part owner and treasurer of the T. D. Barry Company and had been with them for twenty-five years; that the company thirteen or fourteen years ago had machines from the Standard Shoe Machinery Company. He was not sure whether this was before or after the United Company was formed, but at the time he was using United Company machines and Standard Shoe Machinery Company machines. They had from the Standard Company a laster, welter, stitcher, welt beater, and sole-layer, and machines performing similar work from the United Company; that a deputy sheriff served papers on him that they were going to take out some of the United Company's machines; that he stopped him by threatening to shoot him; that he got an injunction against the company; that the injunction was dissolved, and he then agreed to stop using the Standard machines, and the Standard machines were removed from the factory. Before the sheriff came he had no conversation with any representative of the United Company that he could remember. He could not say whether the United machines were actually removed or not (R. Vol. 1, p. 222).

On cross-examination he said that the T. D. Barry Company had leased some machines from the old Goodyear Company before the United Company was formed, including welting machines, stitching machines, and some auxiliary machines that he used with them. They had then introduced into the factory some Standard welting, stitching, and lasting machines, and did their welting and stitching on the Standard machines and used the Goodyear machines for the auxiliary work for those machines, so that they were getting Goodyear auxiliary machines for nothing and using them on shoes that were welted and stitched on the Standard machines. In that situation the United Company brought a replevin writ to get back its own property and that was the time that the

officer came. When Mr. Barry, who had been in Europe, came home, the whole affair was straightened out (R. Vol. 1, p. 223, lines 12–42).

Elmer P. Howe testified that T. D. Barry Company were using Goodyear auxiliary machines with regard to which the United Company had no opportunity to determine the extent of use, and therefore had no means of collecting royalty. That is, they were using Goodyear auxiliary machines to prepare and finish the work which was sewed and stitched on Standard welt and turn sewing machines and Standard stitching machines (R. Vol. 1, p. 667, line 44 *et seq.*).

This was another instance where because of the fact that the use of auxiliaries in the Goodyear department was paid for only through and by the royalty measured or recorded by the principal machines, the shoe manufacturer was unfairly treating the United Company by using its auxiliaries in connection with some other persons' principal machines, and therefore getting the use of the auxiliary machines for nothing.

7. Curtis & Jones.

The United States charged that the defendants likewise threatened Curtis & Jones, and caused them to remove from their factory a full or nearly full line of machines which they had leased from the Duplessis Shoe Machinery Company (R. Vol. 1, p. 1077 (2)).

In support of this allegation the United States called Thomas H. Shinn, who testified that he was superintendent of the Curtis & Jones factory; that that firm formerly had two factories, one at Hamburg and one at Reading (Pa.). In the Hamburg factory they used the Lincoln sewing machine made by the Campbell Company, but did not use at that factory any machinery of the United Company except loose nailers and possibly eyeletting machines; but later they combined the Hamburg and Reading factories in one building at Reading and moved the Hamburg plant to the new Reading plant. At the Reading plant before the removal they had had a full line of Goodyear machinery from the United Company for

making turned shoes; that about the time of removal they bought three Duplessis sewing machines and installed them together with the Lincoln machines in the Reading factory, which was built on a hollow square. When at the Hamburg plant they had had metallic machines of the United Company no objection was made by the United Company to the use of the Lincoln sewing machines, beyond calling attention to the merits of their own system and trying to persuade the company to dispose of the Lincoln machines and put in Goodyears.

After the removal to Reading, Mr. Clark, the Philadelphia district manager of the United Company, called upon the witness and stated that the company had broken its leases by starting Duplessis machines in connection with Goodyear machines. Colonel King called later but said nothing about the continued use of the United machines, if Curtis & Jones continued to use the independent machinery, but the local agent, Mr. Clark, said that the United Company would remove all their leased machines unless Curtis & Jones discontinued the use of the independent machines. An arrangement was then made that Curtis & Jones should turn over to the United Company the independent machines, for which they would pay the cost, and replace them with Goodyear machines (R. Vol. 1, pp. 363–366).

The witness said he could probably have duplicated any of these machines which they had from the United Company, except the loose nailing machines. This change to machinery of the United Company apparently increased the cost of doing work one-half a cent a pair (R. Vol. 1, p. 366, lines 13–34).

On cross-examination he testified that when the change was made from Hamburg to Reading they built an entirely new building, and abandoned the old Reading factory and moved both of the old factories to the new one, with the idea of centralizing their business in one factory, with one office and running it as one factory. The factory happened to be built on four sides of a square to get light, but there was no separation of one side from any other side; it was open right around the square.

At the Hamburg factory, where they were using the United Company's loose nailer, they were using any sewing machines

that they wanted to, without any interference of the United Company, on the same shoes. When they moved into the new factory they put all their sewing machines and stitching machines on one floor in the making-room, so that the Goodyear and Duplessis machines were practically side by side. The Lincoln machines were on the same floor, on the other side of the building, but still in the same making-room (R. Vol. 1, p. 367, lines 13–41).

Witness further testified, "Up to that time, I think, *whatever turn machinery we had we had from the old Goodyear Company and whatever agreements we had were agreements made with that company*" (italic ours) (R. Vol. 1, p. 368, lines 3–6).

The witness was then shown a lease dated June 3, 1892, from the Goodyear Shoe Machinery Company, and another lease dated 1897, also from the Goodyear Company, *covering the Goodyear turn machines both principal and auxiliary which Curtis & Jones had.*

To these leases was attached a rider reading as follows:—

> "The lessor hereby agrees that the rent and royalty to be paid by the lessee for children's turned shoes made after January 1, 1897, shall be one cent per pair instead of two cents per pair as provided in the schedule of section third of said lease, on condition, however, that the lessee while he retains possession of any machine leased to him by the lessor shall not without the consent in writing of the lessor use or allow to be used in his factory any sewing machine for uniting the soles of turned shoes to their uppers which is not leased to him by the lessor."

This was executed October 7, 1897, by the Goodyear Company and Curtis & Jones Company (R. Vol. 1, p. 368); the leases to which this rider was attached were Defendants' Exhibits 96 and 97 (R. Vol. 5, pp. 125, 131).

The witness said that the introduction of the Duplessis machines was in violation of this agreement, and that he could suggest no reason why they should not live up to their agreement (R. Vol. 1, p. 369, lines 16–24).

Prior to 1902 Curtis & Jones had held their loose nailer on terms by which they could use it with machinery of anybody else they wanted to. In 1901 they learned that the United

Company was offering its metallic machines on a different form of lease which had been agreed upon between it and the Shoe Manufacturers' Association. Curtis & Jones wanted to change over to that new form of lease, and on January 17, 1902, Curtis & Jones wrote asking to have their leases changed over to that new form (R. Vol. 1, p. 369, line 45 *et seq.*).

This change was made of their own volition; they had considered the advantages of the two situations and of their own accord wrote asking to have their leases changed (R. Vol. 1, p. 370, lines 17–45).

With reference to the change from the Lincoln and the Duplessis machines to the Goodyear, he said they had given attention to the arguments presented by the Goodyear people upon the advantages of their machinery; that they knew the Goodyear machines were doing good work; that they got no service in taking care of the Lincoln machines from anybody—they had to take care of them themselves, and had to send from Reading, Pa., to Haverhill, Mass., for parts, while the United Company had its depot in Philadelphia, fifty-eight miles from Reading, reached easily by telephone or telegraph; that this was pretty convenient and was a consideration with them; that frequently the United Company's men came down and looked at the machines and instructed operators and that was a great convenience; that the Duplessis Company didn't have any agents nearer than Boston, and to get parts they would have to send to Canada; that they made comparisons between the quality of the work produced on the Goodyear machines and on the other machines, and knew that the Goodyear machines were doing better work, and, in his opinion, the arrangement as to care, supplying of parts and promptness of service was very much on the side of the Goodyear (R. Vol. 1, p. 371, line 41 *et seq.*).

In his testimony on direct with reference to the increased cost of making shoes, he mentioned that the difference of one-half a cent was the difference in the royalty, but that was without giving consideration to the economies resulting from the use of the Goodyear machines, which amounted to considerable. In his opinion, the United Company machines would be the cheapest; considering the service, the trouble and the worry he would have with the other machines the United Com-

pany machines would be the cheapest (R. Vol. 1, p. 373, line 20–p. 374, line 17).

Although Shinn testified, "I don't think Mr. Curtis had anything to do with it" (R. Vol. 1, p. 373, lines 4–5), the United States called Frederick W. Curtis, of the Curtis & Jones Company, to testify regarding this matter. His testimony was substantially to the same effect as Shinn's. Like Shinn he testified on direct that discontinuing the use of the Duplessis and Lincoln machines increased the cost of making their shoes one-half a cent on each pair (R. Vol. 1, p. 381, lines 8–11), but on cross-examination he admitted that he meant only that the change added the royalty of half a cent a pair, but that he did not take into consideration resulting benefits and economies (R. Vol. 1, p. 382, lines 4–7). He explained that they did not get any service with the Duplessis machines and after pointing out the importance of prompt and effective service he concluded: "Taking all things on both sides, I think I agree with Mr. Shinn that the operation of the Goodyear machines was on the whole more economical than the operation of the Duplessis, and on the whole the Goodyear machines did better work than the Duplessis machines" (R. Vol. 1, p. 382, line 15–p. 383, line 5).

This does not support the charge made by the United States that the company threatened Curtis & Jones and caused them to remove the Duplessis machines by any unfair method. Curtis & Jones had obtained and were enjoying a special concession from the old Goodyear Company and were asked to live up to their agreement.

8. Hilliard & Tabor.

The United States claimed that Hilliard & Tabor, who had United Company machines, installed a turn sewing machine of the Haverhill Shoe Machinery Company, and that defendant Winslow, acting for the United Company, pointed out that this machine was being operated in violation of the United Company's leases and threatened to change the terms of said leases and to make them more onerous if such Haverhill machines were purchased and installed (R. Vol. 1, p. 1077 (d)).

In support of this claim the United States called Frank R. Hilliard, who testified that he manufactured women's welts, turns, and McKays, having an output of four thousand pairs a day. In 1899 he was using in his factory machines of the Goodyear Shoe Machinery Company and the National nailer. About a year and a half prior to the giving of his testimony (June, 1913), he attempted to install a turn sewing machine of the Haverhill Shoe Machinery Company. After he had been running it about four or five months he was on one occasion at the office of the United Company and Mr. Winslow stated that they were using that machine contrary to their lease and that they would either have to change the lease and the contract with the United Company or stop using the Haverhill machine. The Haverhill machine did satisfactory work. They had it on trial but had made no arrangement with the Haverhill Company at that time. It had been offered on royalty or on purchase. Mr. Winslow's objection partially caused them to return the Haverhill machine. The other reasons were that the machine was in on trial and they had not come to any absolute conclusion in regard to the matter (R. Vol. 1, p. 282, line 39 *et seq.*).

On cross-examination he said that he had had the Haverhill machine for making turn shoes four to six months before he talked with Winslow, without any protest or objection. He had occasion to go to the United Company's office and happened to meet Mr. Winslow. The witness had a lease of Goodyear machines on which he had paid no initial premium. He got the United Company turn machine and paid for it according to the extent to which he used it. He had auxiliary machines with it and was using the auxiliary machines with the Haverhill machine. The effect of what he was doing was this: He took the Haverhill machine on trial and used the Goodyear auxiliaries with it, for which use he did not pay a copper to the United Company. The lease provided that he should use the Goodyear auxiliaries only with the Goodyear principal machine. Winslow called his attention to this and the witness said it was true. Winslow said if he wanted to use the Haverhill machine he could change his lease and take another form, and he offered to give the witness that form of lease. The witness took the matter under consideration and

decided he would rather keep the form of lease he had than change over his lease and use the Haverhill machine. There was no threat or coercion. Everything was perfectly courteous and businesslike, and it was left for the witness to decide which he preferred. The election was his own choice and was satisfactory to him (R. Vol. 1, p. 283, line 28–p. 284, line 5).

The witness further testified: "The change which was to be made, provided we retained the Haverhill machine, was that we were to pay for the machines which we had. He did not say anything about paying an installation charge for the machine. . . . He did not fix the price for the machines; just said that he would have to change the leases" (R. Vol. 1, p. 284, lines 8–11, 18, 19).

Louis H. Harriman, treasurer of the Haverhill Shoe Machinery Company, testified: "Our machines were operated for a time and then removed from Hilliard & Tabor's factory, and were removed for the reason given by Mr. Hilliard" (R. Vol. 1, p. 317, line 45; p. 318, lines 1, 23–25). On cross-examination he said that Hilliard & Tabor "took our machines on trial for thirty days" (R. Vol. 1, p. 324, line 13).

Mr. Donham testified as to the number and variety of United Company's machines which Hilliard & Tabor were using at that time, including many machines on which the United Company did not receive proper compensation, if any, while the Haverhill turn sewing machine was being used instead of the United Company's turn sewing machine (R. Vol. 1, p. 829, lines 17–44; p. 830, lines 1–11).

Mr. Winslow testified: "Hilliard & Tabor, of Haverhill, were using the Fox turn machine and the Pettengill heeler [Haverhill Company machines] and were offered the right to keep any of our machines on the initial-payment plan" (R. Vol. 1, p. 450, lines 38–41).

9. Harsh-Edmonds Shoe Company.

The United States charged that in 1909 the Harsh-Edmonds Shoe Company desired to lease clicking machines, but, on account of the burdensome conditions of the leases of the United Company, made an effort to obtain them from other

parties. Shortly thereafter Mr. Harsh was sent for by the general manager of the United Company and warned and threatened by him with reference to making further effort to procure such machines elsewhere, and was caused thereby to take clicking machines from the United Company (R. Vol. 1, p. 1077 (e)).

In support of this charge the United States called George R. Harsh, who testified that he used clicking machines obtained from the United Company; that he bought one machine from the Richardson Shoe Machinery Company and had tried to have machines made in Milwaukee, but without success; that he had a conversation with Mr. Wilson, assistant general manager of the United Company, in 1908 or 1909; that subsequently he was in Boston. Wilson left word that he would like to see him. The witness called on him and Wilson said it would be better for him if he ceased his activity against the United Company and took things as they were. "He called my attention to the fact that there was a condition of a similar nature to the feature of the clicking machine lease I was objecting to in another lease of another machine, the metallic department lease as I remember it." The witness made no further attempts to get clicking machines elsewhere than of the United Company. He was a stockholder in the Boylston Shoe Machinery Company, to supply his own business with machinery (R. Vol. 1, p. 196, lines 4–34).

On cross-examination he said that he went into business in 1906; that he applied to the United Company for machines and took bottoming room machinery on the non-initial premium lease; machinery for other rooms he obtained elsewhere. He was not clear whether he had obtained the Richardson machine before or after he had talked with Wilson. He went to Wilson's office. Wilson's greeting was courteous. He was a man of exceedingly kindly and courteous personality. Something was said with reference to a clicking machine, and the conversation turned to the fact that the witness was looking for a clicking machine. Wilson told him the United Company manufactured one. Something was said which brought the conversation around to discussing the kind of leases which the witness had, and this presented the situation of the witness being a customer of the company. The witness said something

to the effect that he objected to taking the company's clicking machine lease, and Wilson pointed out that in the form of lease the witness had there was the same or a similar provision. The witness had not appreciated this fact before. Wilson presented this by way of argument to meet the witness' objection, and did it perfectly fairly and quietly. When he had done that he urged the witness to take the United Company's clicking machine. The United Company's clicking machine was the only commercial machine in the market. The witness was a general customer of the United Company and it was giving service with its machines. No other company that he knew of was giving service with reference to clicking machines. Mr. Wilson's advice to the witness seemed to be sound and the witness adopted it. He knew of no reason why as a practical business matter it was not sound. He said it certainly has proved to be sound.

The witness further testified: "We used the Richardson machine only a short time. It was not commercially practicable and that was why we gave it up" (R. Vol. 1, pp. 196–199).

This was all the evidence offered in support of this complaint.

10. Witherell & Dobbins.

The United States claimed that Witherell & Dobbins, manufacturers of turn shoes, contemplated the manufacture of welt shoes, and in the spring of 1911 were threatened by the United Company or its agents that if they continued to operate machines of competitors in making turn shoes the United Company would exact from Witherell & Dobbins installation charges on machines used in the manufacture of welt shoes which were exorbitant in comparison with those made to manufacturers not operating competing machines (R. Vol. 1, p. 1077 (f)).

There was no evidence to support this charge. On the contrary, the list of present users of machines of the Haverhill Company, which was introduced by Mr. Harriman, treasurer of that company, shows that when he testified in June, 1913, Witherell & Dobbins were still using Haverhill machines in-

stalled in 1910 and 1912 (R. Vol. 1, p. 325, line 44 *et seq.*; Vol. 4, pp. 1118, 1124).

11. George A. Learned.

The United States claimed that George A. Learned was engaged in the manufacture of turn shoes and contemplated entering upon the manufacture of welt shoes. "A threat of like character" was made by the defendant company or its agents (R. Vol. 1, p. 1078 (g)).

In support of this claim the United States called George A. Learned, who testified that he had been using United Company's turn sewing machines. In June, 1911, he installed a turn sewing machine of the Haverhill Shoe Machinery Company. He testified that in August, 1911, Mr. Winslow informed him that he was violating a clause of his lease which provided that he should pay three-quarters of a cent a pair royalty on every pair of shoes stitched, whether by the United Company's machine or the Haverhill machine, and that the United Company intended to collect the royalty and 6 per cent. interest; that Mr. Winslow said that he would either have to pay that or they would drive him out of business, and that the least they would do would be to take out all the United Company's machines (R. Vol. 1, pp. 313–314).

Learned was contradicted in this testimony by Mr. Winslow who specifically denied all the statements alleged to have been made to Learned by him with reference to driving Learned out of business or taking out the machines of the United Company (R. Vol. 1, pp. 515–517).

Edwin P. Brown, who was present at the time the conversation occurred, also contradicted Learned (R. Vol. 1, pp. 715–716).

Henry B. Endicott, who heard that Learned was making statements with reference to this alleged conversation, brought him to Mr. Winslow's office and testified that when Learned was there he admitted that he had been mistaken (R. Vol. 1, pp. 582–583).

Edwin P. Brown was also present at the second conversation and corroborated Mr. Endicott, stating that Mr. Learned

in the course of conversation admitted that he was mistaken, and that, as he remembered it, Learned then agreed to write a letter of apology to Mr. Winslow (R. Vol. 1, p. 717, lines 29–45).

Subsequent to the conversation, on August 28, 1911, Mr. Brown in accordance with Mr. Learned's request, submitted a list of machines with the terms upon which the United Company would furnish them for Learned's use in connection with the Haverhill machines (R. Vol. 1, p. 316, lines 13–18, and Defs.' Ex. 86, R. Vol. 5, p. 118). Several letters passed between Mr. Learned and Mr. Winslow on the subject (see Defs.' Exs. 77 to 89, inc., 254, R. Vol. 5, p. 110 *et seq.*, 699).

Mr. Winslow said: The United Company has never at any time taken any machines out of Learned's factory or done anything to interfere with his business or attempted to put him out of business. He has substantially all the machines of the United Company that he had when the correspondence and conversations took place, and is using the United Company's auxiliaries and some of its general department machines to make shoes in connection with the use of the Haverhill Company's machines without paying any royalty on the machines of the United Company (R. Vol. 1, p. 515, lines 42–44; p. 516, lines 24–32).

The fact was that Learned had the Goodyear department turn sewing machine and some auxiliary machines and was using the Goodyear auxiliaries in connection with the Haverhill Company turn sewing machine, so that he was using the United Company's auxiliaries and paying no royalty for their use (R. Vol. 1, p. 515, lines 17–18, 24–29). He was offered the independent form of lease for the United Company's machines if he desired to use the Haverhill machines (R. Vol. 1, p. 515, lines 33–35, 38–41).

12. Harry H. Wentworth.

The United States claimed that in June, 1911, Harry H. Wentworth determined to install heeling machines manufactured by the Haverhill Shoe Machinery Company, but was induced not to install said machines by representations upon

the part of the United Company or its agents that if he should do so the United Company would increase its installation charges upon future orders for machines (R. Vol. 1, p. 1078 (h)).

There was no evidence in support of this charge.

13. Alleged Threat to Enter Shoe Business.

The United States claimed that in certain conferences in St. Louis, in February, 1911, and in Boston, in May, 1911, between Mr. Winslow and Johnson, Florsheim, Rand and Selz, and others, Winslow threatened that the United Company would enter upon the shoe manufacturing business, this threat being made in connection with efforts being made by the manufacturers to secure a modification of the leases of the United Company (R. Vol. 1, p. 1078 (i)).

There was no evidence to support this allegation and it was denied by Florsheim, a witness for the United States (R. Vol. 1, p. 162, lines 9–14).

14. Alleged Threats by William Barbour.

Under the general head of "Threats to use financial resources and power of combination to ruin competitors," the United States claimed that William Barbour in conversation with James N. Darrah, an officer of the Standard Shoe Machinery Company, made certain threats as follows: "'Well, you are making a big mistake because we always try to be nice to people—we offer to buy them at first and then we crush. You can not do anything, because we control the banking influences both in New York and Boston, and you would not be able to get any money. You won't put in your machines because we have the shoe manufacturers in a state of terror. I own a million dollars of that stock, and we can't afford to have any competition. My investment is liable to be jeopardized and we can't afford to have any competition against the United Shoe Machinery Company. We have the field and we are going to retain that field.'" It was claimed that Barbour also said on another occasion to Darrah, when Darrah

suggested that he was going back into the shoe machinery business, "'You would make a big mistake because you would never get in. We will never let you in or anyone else. You will never have a chance to get in. You will never be able to place your machinery with shoe manufacturers. You can't find any customers'" (R. Vol. 1, p. 1078 (a)).

The United States called James N. Darrah in support of this claim, who testified that he met Mr. Barbour at the office of John R. Dos Passos in New York in April, 1900, who introduced him to Mr. Barbour. Barbour said he had a large investment in the stock of the United Company and did not propose to have it jeopardized (R. Vol. 1, p. 333, lines 9–12, 22, 33–35). Barbour said: "'I think you are making a big mistake if you don't sell. . . . We always try to buy out competitors and if we can't buy them out we force them out'" (R. Vol. 1, p. 334, lines 4–8). Barbour also said: "'Where are you going to get your money? You can't get any money to compete against the United Shoe Machinery Company. You can't get any banks to back you up. Our influence both in Boston and in New York is so great that you can't do anything'" (R. Vol. 1, p. 334, lines 20–24). Darrah said that he subsequently met Barbour in 1904 or 1905 and suggested that he thought of going into the shoe machinery business, and Barbour laughed and said it would be a big mistake (R. Vol. 1, p. 335, lines 35–39).

On cross-examination Darrah testified that he was in the real estate business; that he hadn't any office; that he was at the time of his testimony going through bankruptcy; that before he went into the real estate business he was in a stock-broking business; he was not a member of the stock exchange but dealt in unlisted securities; he did that for about three years; for two years he was out of business (R. Vol. 1, pp. 335–337).

Barbour testified with reference to Darrah: "I met the man, but I never made such a statement at all. There was no threat or intimidation at all by language used by me in my conversation with him. There was no suggestion that I regarded him as a competitor who would jeopardize our interests, or that if he did not sell out we would force him out" (R. Vol. 1, p. 860, lines 38–40).

The United States did not call Dos Passos as a witness at all. Upon this charge the District Court found:—

> "The only 'threats' which Barbour is charged with making are testified to by James N. Darrah, vice president in 1900 of the Standard Shoe Machinery Company. According to Darrah, Barbour, at a talk in New York in April of 1900, tried to get him to sell out stock in his company by telling him, in substance, that if competitors of the United Company could not be bought out they would be forced out. Barbour has denied that any such conversation took place. Darrah's evidence was not corroborated; and there is no proof that his concern, though it went out of business in 1901, was ever forced out or crushed by the defendants" (Dodge, J., R. Vol. 1, p. 1148).

15. Richard H. Long.

The United States charged that in 1908 Richard H. Long was engaged in the shoe machinery business in competition with the United Company; that he endeavored to arrange a line of credit with the Chapin National Bank, of Springfield, Mass., but was prevented from doing so by the United Company; that he was offered a credit with the New England National Bank but was refused through the same influence (R. Vol. 1, p. 1079 (b)).

There was no evidence whatever to support this charge. Long's testimony will be found R. Vol. 1, pp. 244–246.

16. J. S. Holt.

In the bill of particulars it is claimed that about 1908 one Bayley, an officer of high rank in the United Shoe Machinery Company, stated to J. S. Holt for the purpose of intimidating said Holt that R. H. Long would be ruined and driven from business by the United Company unless he ceased trying to compete, and that the same fate would befall any other who tried to enter the shoe machinery industry; that the said company would make every effort to ruin Long by destroying his credit and possessed such strong banking connections that it

would be able to prevent Long from obtaining capital to continue operations (R. Vol. 1, p. 1079 (c)).

There was no evidence whatever offered to support this charge. Holt's testimony will be found R. Vol. 1, pp. 280, 281.

17. Harry E. Cilley.

The United States claimed that Harry E. Cilley was told by E. P. Hurd of the United Company in 1901, that he could not do any business except by sufferance of the United Company; that the company did not care for the common law or the Sherman Law, and various other talk of a similar character (R. Vol. 1, p. 1079 (d)).

In support of this the United States called Harry E. Cilley, who testified that he had invented a leveling machine and that he called on Mr. Hurd, who asked him if he had a proposition to make; that Hurd said, "'Cilley, you are thick. If you were offered fifteen or twenty thousand dollars I think under the circumstances you ought to be very well satisfied.'" Cilley replied that this was outrageous. He testified that Hurd also said that the United Company was not an eleemosynary institution and that Cilley could not do business except on its sufferance (R. Vol. 1, p. 278, lines 18–19, 44; p. 279, line 30–p. 280).

On cross-examination Cilley said that he had been in litigation with the United Company since 1903 and had been preparing himself to testify in that case (R. Vol. 1, p. 280, lines 14–24). It was evident from the character of Cilley's examination that his testimony was not reliable.

On this charge the District Court found as follows (Dodge, J., R. Vol. 1, p. 1149):—

> "Mr. Hurd is charged, in the testimony of Harry E. Cilley, with having said to him in 1901, during a conference with respect to a possible sale of his business to the United Company: 'You can't do any business except on our sufferance, and you can't get a new dollar for an old one.' It appears that Cilley's business at the time consisted in building a sole-leveling machine; that he was not satisfied with an amount suggested by Mr. Hurd as a proper price for it, told Mr. Hurd he considered it 'out-

rageous,' and never renewed the negotiations. Neither the business of this witness nor the remarks testified to, if made, can fairly be regarded as of any serious importance, in view of all the circumstances shown.

18. Tower Brothers.

The United States charged that Tower Brothers, engaged in business in making shoe machinery, were greatly injured by their employees being taken away by the United Company and that the United Company threatened to drive Tower Brothers out of business (R. Vol. 1, p. 1080 (e)) .

There was no evidence whatever to support this charge, although John M. Tower of Tower Brothers appeared as a witness for the United States (R. Vol. 1, pp. 907–908).

19. Charles H. Morse.

The United States charged that Charles H. Morse in 1903 was endeavoring to market the Frechette pegging machine and a slugging machine which competed with United Company machines for doing similar work; that Morse called on Mr. Winslow and Mr. Winslow said to him, "You don't suppose we are going to let you continue placing that machine upon the market" (R. Vol. 1, p. 1080 (f)).

In support of this charge the United States called Charles H. Morse, who testified that he called upon Mr. Winslow somewhere about 1901 or 1902, he thought—he could not tell exactly—and talked with Mr. Winslow about a purchase of his business; that Mr. Winslow said, "You don't suppose we are going to allow you to put them on the market," meaning machines which Morse was manufacturing (R. Vol. 1, p. 338, lines 26–35).

It further appears from the testimony of Morse that he continued in business until 1906 when he sold out to Samuel H. Nichols of Brockton, Mass. (R. Vol. 1, p. 338, lines 38–39).

Winslow testified that he had no recollection whatever of making any such statement to Mr. Morse; that he had met Mr. Morse in the corridor of the Court House when Morse

testified, and went up and shook hands with him and asked him how many years it had been since they had met, and Morse placed the date back of 1899, and didn't remember having met Winslow since the formation of the United Company, so if he had ever had any conversation with Morse it must have been prior to the organization of the United Company (R. Vol. 1, p. 518, line 38 *et seq.*).

In respect to this charge the District Court found as follows:

> "Mr. Winslow is charged, in testimony by Charles H. Morse, with having said to him at some time in 1901 or 1902: 'You don't suppose we are going to allow you to put them on the market'—referring to certain pegging machines then being made by the Fifield Company, with which Morse was connected. Morse, on his own testimony, was then negotiating with Winslow about a sale of the Fifield Company business to the United Company, but they failed to agree as to price. Its business was sold in 1906, but not to the United Company. There is nothing to prove that the United Company ever interfered with the marketing of this machine" (Dodge, J., R. Vol. 1, p. 1148, lines 23–32).

20. George H. Clark.

The United States claimed that George H. Clark had invented a method of molding or lasting a shoe and stitching the same on the last, and that he endeavored to introduce this method into various shoe factories; that he visited the United Company and talked with Edward P. Hurd regarding the purchase, lease or rental of a Goodyear rapid lockstitch machine for use in a shoe factory; that Hurd told him: "'Our policy is to stick the knife in deep to the hilt in the case of anyone interfering with our system, and surely your method does interfere. We will never let you have a machine or have one used in any factory where you or your method may be found, for you to experiment with'" (R. Vol. 1, p. 1081 (g)).

In support of this charge the United States called George H. Clark, who testified that he was an inventor and had invented a method for molding or lasting shoes, and that he had put a machine for this purpose in the Richardson factory in Reading; that he called on Mr. Hurd to see if he could get a lock-

stitch machine to put in the Richardson factory; that Hurd replied: "You mean well, but it is against our policy to put a machine in whereby it is going to interfere with our welt system, and we have to put the knife and protect our interests. . . . I won't put any one of our rapid stitching machines into any factory where you are to experiment with" (R. Vol. 1, pp. 306–307).

On cross-examination Clark said that his machine was in the Richardson factory for experimental purposes—had been there perhaps four months—and that he went to Hurd to get a machine to use with his experimental machine, and that Hurd told him he wouldn't put one of his stitching machines in a factory for the witness to experiment with, and said: "'Clark, I will tell you what we must do; we have got to protect our own interests. We must protect ourselves on this method that you have of this flexible welt shoe of yours which jeopardizes our welt system. . . . I don't think it is wise for us to help you out and put a machine in where you are to experiment with'" (R. Vol. 1, pp. 307–308).

21. The Kimball & Hadley Case.

The United States claimed that Kimball & Hadley were manufacturing needles, awls, and drivers in competition with the United Company; that the United Company notified shoe manufacturers if they purchased needles and awls of Kimball & Hadley the United Company would withdraw its machines, and that Martin, an employee of the United Company, told Hadley the United Company would have his business sooner or later, and that Bayley, an employee of the United Company, told Hadley that if necessary the United Company would give its needles away in order to destroy their business; and in fear that their business would be destroyed Kimball & Hadley sold to the United Company (R. Vol. 1, p. 1081 (h)).

In support of this charge the United States called Irving A. Hadley, who testified that he was a lawyer and prior to 1904 engaged in making awls and Goodyear needles; that he called on Mr. Bayley, the agent of the defendants, who inquired of him the price at which he was selling needles. He said, "'We

can manufacture needles and sell them as cheap as the United Shoe Machinery Company.'" And Bayley said, "'Oh, no, you can't; we can give them away if necessary'" (R. Vol. 1, pp. 308–309).

On cross-examination Hadley admitted that he knew at the time of the alleged conversation with Bayley that the United Company did not manufacture any Goodyear needles (R. Vol. 1, p. 311, lines 3–10).

This was all the evidence offered in support of the charge. It appeared that Bayley was in a sanitarium and could not be called to contradict Hadley's testimony (R. Vol. 1, p. 309, lines 39–40). But Hadley also testified that in 1904 he had trouble in making sales of needles and awls to shoe manufacturers, and specified the factories of E. E. Taylor, T. D. Barry & Company, Churchill & Alden, and Rice & Hutchins, as places where he had called (R. Vol. 1, p. 308, lines 28–31). He testified that these manufacturers stated that the using of their needles and awls was in violation of the leases of the United Company, and if they took these awls and needles the United Company would take the machines from their factories (R. Vol. 1, p. 308, lines 31–33).

The defendants offered the evidence of John F. Belcher, who had charge of the purchasing at Churchill & Alden's in 1904. He testified that he talked with Hadley about using his awls and needles and never made any such statement as Hadley had described (R. Vol. 1, p. 746, lines 20–34).

On cross-examination the witness further stated: "During my conversation with Mr. Hadley nothing at all was said about the leases which we had with the United Company, I am positive that the United Company was not mentioned" (R. Vol. 1, page 746, lines 36–38).

Defendants also called Arlon S. Roberts, assistant superintendent of the E. E. Taylor Company, who had charge of the purchasing of supplies for that company in 1904. He knew Hadley and had talked with him about purchasing awls and needles. He denied that he had ever made any such statement as Hadley had testified to (R. Vol. 1, pp. 746–747).

Defendants also called William A. Hogan, who testified that he was connected with the T. D. Barry Company; that he knew Hadley and talked with him about awls and needles;

that he never made any statement to Hadley such as Hadley had testified (R. Vol. 1, pp. 747–748).

Defendants also called James J. Tierney, connected with E. E. Taylor & Company, and having charge of the purchase of awls and needles. He testified that he knew Hadley and positively contradicted Hadley's testimony (R. Vol. 1, p. 760).

Defendants called William O. Bryant, who testified that he was connected with the E. E. Taylor Company; that he knew Hadley, and that he had to do with the purchase of awls and needles. He also contradicted Hadley and testified that he had never made any such statement to him and that he had bought awls and needles of Hadley every time he came to him until he went out of business (R. Vol. 1, pp. 760–761).

Hadley further admitted under cross-examination: "We sold out in 1904. The United Company afterwards brought suit in equity for violating the terms of our agreement and entering into business again, which we had agreed not to do for a number of years, but had done in breach of our agreement. The Supreme Court of Massachusetts found that we had violated our agreement and granted an injunction against us" (R. Vol. 1, p. 311, lines 14–20).

In the case referred to by Hadley, *United Shoe Machinery Company* v. *Kimball*, 193 Mass. 551, the Supreme Court of Massachusetts approved findings of the trial justice (pp. 354, 355) that Kimball & Hadley made the sale to the United Company voluntarily and "that there were, in fact, no illegal threats or illegal intimidation."

In respect to this charge the District Court found as follows:—

> "Bayley, a department manager for the United Company, is charged, in testimony given by Irving A. Hadley, then representing Kimball & Hadley, manufacturers of awls and needles, with having said to him in January, 1904, in answer to a claim by him that Kimball & Hadley could sell needles as cheap as the United Company, that the United Company could give them away if necessary.
>
> "It does not seem possible to attach any serious importance, for any purpose, to the remark, if made, even if anything said at the interview can be supposed to have had reference to a possible purchase by the defendants of the Kimball & Hadley business. Bayley was in a sanitarium, unable to testify, at the trial. Further testi-

mony from Hadley, however, that certain factories had refused needles offered them by him for fear of controversy with the United Company was contradicted by the managers he mentioned. The business of Kimball & Hadley was one of those acquired by the United Company, but it was not acquired until the following June. It consisted in making Goodyear needles, which at the time of the acquisition the United Company was not making at all. An attempt by Kimball & Hadley, in litigation with the United Company some time afterward, to prove that threats and intimidation had been used in acquiring their business wholly failed (see *United Co.* v. *Kimball*, 193 Mass. 351)" (Dodge, J., R. Vol. 1, p. 1149).

22. Samuel A. Krewson.

The United States claimed that the defendants entered into negotiations with Samuel A. Krewson, an inventor of shoe machinery, with a view to purchasing his inventions; that Krewson had a talk with E. L. Hurd of the United Company, and that Hurd said that the United Company could make scouring wheels and put them out cheaper than Krewson, and said, "We do it to drive little fellows like you out of business," —and other statements to the same effect (R. Vol. 1, p. 1081 (i)).

No evidence whatever was offered in support of this charge.

23. Alleged Acquisition of Patents and Suppression of Inventions.

The United States charged that the United Company had systematically, for the purpose of preventing others from making practical use of various patented devices, acquired patents and suppressed or failed to make practical use thereof; also that by suits and threats of suits for alleged infringement they had prevented the manufacture of unpatented machines (R. Vol. 1, p. 1082 (a-b)).

No evidence whatever was offered in support of these charges and they are disproved by the testimony of defendants' witnesses. Mr. Winslow testified, "The United Company has

suppressed absolutely no machines, no inventions and no improvements" (R. Vol. 1, p. 433, lines 27–28).

Mr. Howe testified, "The United Shoe Machinery Company has never suppressed an invention that it thought could be worked out to make a commercial machine which would benefit the lessees. . . . I have never known of a single patent which had prospective value when embodied in machinery being laid on the shelf or suppressed" (R. Vol. 1, p. 671, lines 18–20, 23–25).

In respect to these charges the District Court found as follows:—

> "Nor has there been any evidence sufficient to show a practice followed by the defendants of buying up patented inventions to hold in disuse. This charge also is one not insisted upon in argument" (Dodge, J., R. Vol. 1, p. 1147, lines 8–10).

24. Charge as to Rebates upon Gem Flexible Insole Machines.

In the bill of particulars it is claimed that the defendants granted to exclusive users of their leased machinery rebates of amounts equal to the sums paid by them respectively as royalty on Gem flexible insole machines for the purpose of effecting exclusive use of defendants' machinery (R. Vol. 1, pp. 1082–3 (a)).

The vote by the directors of the United Shoe Machinery Company of January 29, 1900, was as follows:—

> "That a rebate be granted to exclusive users of the machines leased or controlled by this company and its subsidiary companies, and to such other manufacturers upon such special terms as the general manager may consider expedient; said rebate to be made by quarterly payments to the manufacturers of the amounts equal to the sums paid by them respectively as royalty on the Gem flexible insole machines during the quarter for which the rebate is made" (R. Vol. 1, p. 351, line 43 *et seq.*).

With reference to this matter Mr. Winslow testified as follows:—

> "It was almost immediately after the United Company was formed and after we had acquired possession of

the Gem Insole Company that we decided to turn back to the manufacturer the royalty on the Gem insole machine. As to why the Gem insole machine was not put in as an auxiliary machine rather than putting it out on a separate lease, I don't know unless it was because a lot of Gem insole machinery was put out on leases of the Gem Insole Company and it was simpler to keep up those old leases and return the royalty to the lessees" (R. Vol. 1, p. 682, lines 21–34).

Mr. Howe testified as follows:—

> "After the United Company was formed it acquired the Gem insole machines, which previously had been put out on a royalty, and after that paid back the royalty to all manufacturers who used the Goodyear principal machines entirely. So that in effect Gem insole machines were made auxiliary machines to build up the Goodyear welt system" (R. Vol. 1, p. 664, lines 31–35).

In respect to this charge the District Court found as follows:—

> "The vote of 1900 was that royalties on the Gem insole machines be rebated to exclusive users of the company's machines. It appears that having acquired the Gem Company, which had machines in use under lease at the time at a royalty of one-half cent per pair, the United Company added the machine to its Goodyear auxiliary set, and to users of such sets paid back the one-half cent per pair in order to leave the rate upon the entire auxiliary set the same as before it included the Gem machine" (Dodge, J., R. Vol. 1, p. 1147, lines 18–25).

The Court further found that this act on the part of the United Company cannot "be said to answer to the terms in which the charge of offering and granting rebates is made." That the act was inspired by the purpose of giving exclusive users of the company's machines an unfair advantage over those who did not, or that it had that effect, "can not be said to have been proved, and the charge is not believed to require further notice. It would seem to have been suggested by those cases relating to railroads wherein 'rebate' has acquired an obnoxious signification" (Dodge, J., R. Vol. 1, p. 1147, lines 33–41).

25. Charge as to Rebates upon Goodyear Machines.

In the bill of particulars it is claimed that defendants, for the purpose of effecting exclusive use of their machinery, granted a rebate of not less than 15% of the royalties received from leases of certain Goodyear machines (R. Vol. 1, p. 1083 (b)).

The circular letter of June 10, 1910, upon which this charge was based appears as Plaintiff's Exhibit 146 (R. Vol. 4, p. 1067). This letter first calls attention to the services rendered by the United Company to its lessees in the way of improved machines, reduction of installation charges, reductions in royalties, furnishing auxiliary machines, establishment of branch offices, etc. The plan complained of is then announced as follows:—

> "Benefits of a character similar to those enumerated have marked the course of the Company from the very beginning; but it has never been its purpose to confine within limits determined in advance, its ability to enhance the prosperity of the trade. Always recognizing that it has a common interest with its lessees and that its prosperity depends upon theirs, it has long had in contemplation the following plan, which, now that the elimination of initial charges has been effected, it is prepared to put into operation—a plan which is in conformity with its established policy and which it believes will result in the expansion of its own business through the increased business of its customers.
>
> "Beginning with January 1, 1910, the Company will create a fund by investing each year, for three years, in the common stock of the United Shoe Machinery Corporation a percentage, increasing each year, of the amounts received from its lessees for the use of its Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States, and will add to that fund from time to time the dividends which shall have been paid in the meantime upon such stock, or shares of the common stock of the Corporation purchased with such dividends. At the end of three years from that date it will distribute the entire amount of stock held in the fund among those lessees who use the Goodyear Welting, Goodyear Stitching and Goodyear Turn Sewing Machines in the United States and who shall have faith-

fully observed the covenants of their leases; each lessee of these classes of machines to receive a share of the entire fund proportionate to the amounts paid by him for the use of such machines."

This offer did not require an exclusive use of the United Company's machines, but merely proposed to return a portion of the royalties received from lessees' machines who used Goodyear welting, stitching, or turn machinery if they observed the covenants of their leases, which, of course, they were legally required to do. It, therefore, amounted merely to a reduction in the royalties charged for this machinery, such reduction to be represented by stock of the United Company instead of by a cash reduction.

This proposal was called to the attention of the Department of Justice and prior to the distribution made to the manufacturers Mr. Choate, in behalf of the United Company, called the matter to the attention of the Attorney-General of the United States in the following letter:—

"CHOATE, HALL & STEWART,

BOSTON, MASS., Feb. 7, 1913.

Hon. GEORGE W. WICKERSHAM,
Attorney-General, Department of Justice, Washington, D.C.

MY DEAR MR. WICKERSHAM: In 1910 the United Shoe Machinery Company advised its lessees that it proposed to put in effect a plan by which a certain proportion of the royalties should be invested in stock of the corporation, and at the end of a fixed term be distributed to lessees of the Goodyear welting and stitching and turn-sewing machines, who had in all respects observed the obligations of their leases. The period covered by this plan expired December 31, 1912, and the company proposes to make a distribution on or about March 1st, as it is bound to do by its agreement with the customers. This plan was, I think, fully called to the attention of Mr. Gregg while he was here examining the affairs of the company and as I read the bill in equity filed by the United States against the company, it does not seem that any complaint is made upon this ground. Under these circumstances, the Company proposes to make the distribution provided for in that plan on the first day of March, or as soon as possible thereafter; and has desired

me to call the matter to your attention that the plan may not be carried out without the knowledge of your department.

I send you herewith a copy of the circular of June 10th, 1910, which describes the plan.

Very truly yours,

CHAS. F. CHOATE, Jr."

(R. Vol. 1, pp. 979, 980.)

In response to this letter, no acknowledgment, answer, or objection of any kind was received (R. Vol. 1, p. 980, lines 23–24).

In respect to this matter and the Gem insole rebates above discussed the District Court found as follows:—

> "Neither of these acts on the company's part can be said to answer to the terms in which the charge of offering and granting rebates is made. That either act was inspired by the purpose of giving exclusive users of the company's machines an unfair advantage over those who did not, or that either had that effect, cannot be said to have been proved, and the charge is not believed to require further notice. It would seem to have been suggested by those cases relating to railroads wherein 'rebate' has acquired an obnoxious signification" (Dodge, J., R. Vol. 1, p. 1147, lines 33–41).

26. Alleged Purchases of Competitors' Businesses at Exorbitant Prices.

The United States charged that the defendants had purchased the business of competitors and prospective competitors to eliminate competition, paying therefor, in many instances, exorbitant prices (R. Vol. 1, p. 1083 (a)).

It having been shown that no competitors in the proper sense of that term were purchased, this charge necessarily fails.

Furthermore the United States failed to introduce in respect to any of the acquisitions, any evidence as to the value of the property purchased. In most cases the price paid was small, and in no case was there the slightest evidence that it was exorbitant.

In respect to this charge the District Court found as follows:

> "An allegation in the petition that the business of many competitors was bought at exorbitant prices fails of support in the evidence relating to any specified instance of acquisition among those thus far considered [all except the Plant acquisition]. As to them, indeed, no claim of the kind seems to be seriously urged" (Dodge, J., R. Vol. 1, p. 1142, lines 1–5).

The Court then considered the acquisition of the Plant property and further held as follows:—

> "The charge that competitors have been bought out at 'exorbitant prices' is found not established in the case of the Plant acquisition, as has just been stated. Nor is evidence found sufficient to establish it in the case of any one of the numerous minor acquisitions specified in the petition. It has not been insisted on in argument that this charge is proved as to any one of them" (Dodge, J., R. Vol. 1, p. 1147, lines 1–7).

27. Alleged Attempt to Cause a Strike at Plant's Shoe Factory.

The United States claimed that Morrison, Ross, and Sochat were employed by Charles H. Willson, the assistant general manager of the United Company, to organize the employees and start a strike at the Thomas G. Plant factory in June, 1910 (R. Vol. 1, p. 1083 (1)).

Morrison testified that at the suggestion of one Johnson, he called on Willson with Ross and Sochat, that Mr. Willson's offer was that "if we would organize the place and get him all the information we could for so-and-so machine (*sic*) he would pay us two thousand dollars cash and our expenses, and he would see that we got a job" (R. Vol. 1, p. 346, lines 27–43).

Morrison further testified: "We tried to organize the Plant factory and got something like three hundred members" (R. Vol. 1, p. 346, lines 43, 44). "There was no attempt to strike, only to form an organization" (R. Vol. 1, p. 347, lines 12, 13).

Ross and Sochat told substantially the same story except that Sochat testified that Willson said he would pay one thousand dollars and expenses (R. Vol. 1, p. 350, lines 33, 34.)

Ross testified that they spent $1,500 in entertaining the em-

ployees and giving them a good time. That is $1,500 was contributed—$500 by Morrison, $600 by Ross, and $400 by Sochat (R. Vol. 1, p. 349, lines 11–18); that their pay averaged $15 per week and that his contribution of $600 represented the savings of eleven or twelve years (R. Vol. 1, p. 349, lines 11–41).

They had no papers or receipts or written evidence of any kind to support this story, claiming that they had destroyed all their papers, including receipts and the list of three hundred names (R. Vol. 1, p. 348, lines 14–18; p. 350, lines 5–20; p. 351, lines 29–32).

This story was flatly contradicted by the following witnesses called by the defendants:—

Albert Harrison (R. Vol. 1, p. 728 *et seq.*).
Cross Johnson (R. Vol. 1, pp. 761–762).
Benjamin Epstein (R. Vol. 1, pp. 762–763).
Arthur F. Crouch (R. Vol. 1, p. 763).
Charles F. Connor (R. Vol. 1, p. 764).
Samuel Pearlman (R. Vol. 1, pp. 764–765).
Joseph Beaudreau (R. Vol. 1, pp. 765–766).
Charles Weidman (R. Vol. 1, p. 766).
Harry Johnson (R. Vol. 1, p. 767).

These men testified that they worked with Morrison, Ross, and Sochat in the same room in the Plant factory, and knew them well, and were about with them in and out of the factory; that they had no knowledge of any Union being organized by the three witnesses for the United States, or of any strike being attempted. To their knowledge no money was spent among the employees for entertainments or for any other purpose, and that they never heard of the United Shoe Machinery Company making any attempt to stir up trouble in the Plant factory; that the whole story was simply this: that Mr. Plant had introduced some new lasting machines into his factory and that he increased the wages of the toe lasters. The operation of these machines was slower than the operation of the machines previously used, consequently the men earned less money. Mr. Plant increased the wages of the men operating these machines but did not increase the wages of the men who worked on the pulling-over operation connected

with the lasting; that these latter formed a committee consisting of Morrison, Harrison, Epstein, and Murphy, and went to Mr. Plant and asked for an increase of pay; that the increase was granted and there was no trouble whatsoever.

Mr. Winslow testified that some time in June, 1910, Willson told him that three Armenians had come to him and wanted the United Company to assist them to start a strike in the Plant factory, and he, Winslow, instructed Willson to have nothing to do with them, and to his knowledge the United Company never did anything to foment a strike at the Plant factory and Mr. Willson never did anything beyond the instructions that Mr. Winslow gave him (R. Vol. 1, p. 507, lines 30–44). Mr. Willson died before the trial of this case (R. Vol. 1, p. 261, lines 37–38; p. 262, line 1).

Upon this charge the District Court found as follows:—

> "The only evidence to show that Willson ever gave any such directions or assurances came from three witnesses, employees at the Plant factory in June and July, 1910, who gave their testimony in person before the court. No one else was present, according to their statements, at the various interviews they described between Willson and themselves during the two months just referred to. Willson having died in 1911, and before these charges were made, no direct contradiction was possible of their statements as to what was said by him to them.
>
> "He told them, according to their testimony, that if they would organize a strike at the factory and give him all the information they could about the Plant machines he would pay their expenses, get them jobs, and pay them also $2000 in cash (according to two of them)—$1000 (according to the other).
>
> "Willson never did pay them any money, as they all agreed. But their testimony was that they got about 300 men into an organization and spent about $1500 of their own money in doing so, mainly in entertaining the men who joined. According to their further statements, $600 was contributed by one of them, $500 by another, and $400 by a third; their wages at the time were $15 per week; these sums were the savings of eleven or twelve years; accounts, lists, and vouchers containing details of their doings and expenditures, were kept, but all of these were either surrendered to Willson or destroyed by them. No written evidence of any kind was offered in support of their story.

"It appeared that there was some prospect of trouble between Plant and the employees at the factory at the beginning of June, 1910, but after meeting a committee with regard to an increase of pay asked for, Plant granted it and no strike or other trouble ever occurred. There was no proof whatever that he ever employed detectives to watch the three witnesses in question, or that any attempt by them at organizing a strike ever came to his knowledge.

"The testimony of these three men was not corroborated by any others of the then employees at the factory. On the contrary, several of them, shown to have had ample opportunity for knowing the facts had there been any such organization attempted as testified to, denied any knowledge of such organization or of any such preparation for a strike.

"Winslow, president of the United Company, testified that Willson had told him, in June, 1910, that three Armenians had been to him asking that he furnish them with money to start a strike in the Plant factory, and that his instructions to Willson thereupon were to have nothing to do with them. No money of the United Company was ever paid out for any such purpose.

"Not only does the evidence of these three witnesses appear unworthy of belief in view of its improbability, its lack of corroboration, and the evidence tending to discredit it, but it is difficult to understand how the petitioner could seriously have expected the court to accept such testimony, or have considered itself justified in offering it" (Dodge, J., R. Vol. 1, p. 1151, line 30–p. 1152, line 34).

28. Solomon N. Cutter.

The United States also claimed that the United Company had employed one Solomon N. Cutter to enter the employ of the Standard Shoe Machinery Company and obtain information as to its condition (R. Vol. 1, p. 1084 (1)).

There was no evidence to support this charge. (Cutter's testimony will be found R. Vol. 1, p. 332.)

29. Harlow Shoe Finishing Machine Company.

The United States claimed that the Harlow Shoe Finishing Machine Company was engaged in manufacturing burnishing

machines in competition with the Xpedite Company, and that in 1911 George H. Harlow, the president of the Harlow Company, was taken into the employ of the United Company (R. Vol. 1, p. 1084 (2)).

There was no evidence to support this charge, although Edwin E. Bartlett of the Harlow Shoe Finishing Machine Company appeared as a witness for the United States (R. Vol. 1, p. 942).

30. Demonstration of Plant Lasting Machine.

The United States claimed that in 1910 agents of the United Company induced a former laster of the Plant Shoe Company to demonstrate a lasting machine invention operated in the Plant factory (R. Vol. 1, p. 1084 (3)).

This was not denied, but seemed to be a perfectly harmless performance.

31. Reece Buttonhole Machine Company.

The United States claimed that the Reece Buttonhole Company was engaged in the manufacture of buttonhole machinery; that the United Company in order to injure it induced two of its employees to enter the employ of the United Company (R. Vol. 1, p. 1084 (4)).

There was no evidence in support of this charge.

32. Charles P. Stanbon.

The United States charged that Charles P. Stanbon was engaged in making stock-fitting machinery in competition with the United Company, and that to force said Stanbon to sell out the United Company induced certain of his employees to leave Stanbon and enter the employ of the United Company (R. Vol. 1, p. 1085 (5)).

No evidence was offered in support of this charge.

33. Charles S. Johnson.

The United States claimed that one Charles S. Johnson was engaged in the manufacture of the Tripp Giant leveler; that Winslow, president of the defendant company, negotiated with said Johnson for the acquisition of his business; that a contract was prepared which differed from Johnson's proposition and Johnson refused to sign it; that thereupon Winslow said to Johnson: " 'Johnson, you had better sign that contract. We are going to have your business anyway' "; and that six months thereafter the United Company began to manufacture machines which were duplicates of the Tripp Giant Leveler (R. Vol. 1, p. 1085 (1)).

In support of this charge the United States called Charles S. Johnson, who testified that he was connected with the Tripp Giant Leveler Company which put out a machine for leveling the bottoms of shoes; that in 1902 or early in 1903 he had a conference with Mr. Winslow and they came to a verbal agreement as to the acquisition of the company's business by the United Company; that a contract was prepared which was not satisfactory to Johnson and that he refused to sign it, and as he was going out Mr. Winslow suggested that he had better sign it because he was going to have their business anyway, or words to that effect; Johnson said, "I wouldn't say those were the absolute words, but that was the gist of the remark he made to me"; that shortly after the United Company put a machine on the market substantially similar to the Tripp Giant leveler (R. Vol. 1, pp. 304–305). Johnson further testified that his company was absorbed by the Boylston Manufacturing Company in 1905 and that he has been connected with that company ever since (R. Vol. 1, p. 305, lines 14–20).

On cross-examination Johnson said that there was an effort made by those in control of the Tripp Company to have the United Company buy the Tripp Company; that witness himself talked with Winslow for the purpose of selling it; that some verbal understanding was arrived at; that a paper was prepared which the witness thought did not embody all the terms of the oral agreement; that the meeting with Winslow

was perfectly friendly and Winslow was courteous but business-like; that this was eleven years ago; that a Mr. Kelliher for the United States had been to see him about this matter and said in substance that he was employed by the United States to go around and see whom he could find who had complaints to make against the United Shoe Machinery Company, and inquired of the witness in substance whether he had any grievance; that he had a grievance against the United Company, and that he had written articles for trade papers hostile to it (R. Vol. 1, p. 305, lines 21–33; p. 306, lines 1–36).

Mr. Winslow testified that such a contract was drawn, but he did not tell Mr. Johnson that the United Company was going to get his business anyway. He used only such language as he would use with any one. Such language as he used "was not offensive or intended to be offensive in any way or to intimate to him that we would drive him out of business. We have competed with him right along; we have not interfered with his business" (R. Vol. 1, p. 518, lines 25–37).

Mr. Winslow further testified that the interview in question was not in 1902 or early in 1903, as stated by Mr. Johnson, but was later than that. "The interview in 1902 or 1903 was prior to the contract and he then wanted me to acquire their business, but I did not" (R. Vol. 1, p. 519, lines 12–17).

Upon this charge the District Court found as follows:—

> "Mr. Winslow is also charged, in testimony given by Charles S. Johnson, with having said to him during negotiations in 1902 or 1903, regarding a sale of the Tripp Giant leveler, in which he was interested, to the United Company: 'You had better sign that contract because we are going to have your business any way.' But the negotiations did not result in a sale, and the Tripp Company's business, though sold out in 1905, was not acquired by the United Company. Not long after, according to Johnson's testimony, the United Company put on the market machines considered by him to be substantially the same as the Tripp Giant leveler, but there is no other indication of any interference with the Tripp Company or its business by the defendants" (Dodge, J., R. Vol. 1, p. 1148, lines 33–34).

34. Frank L. Harmon.

The United States charged that Frank L. Harmon was an inventor of various shoe machines; that in 1905 Mr. Winslow was endeavoring to purchase some of Harmon's patents, and told Harmon he would see to it that Harmon didn't get any more money to work with; that he didn't have to buy Harmon's machine,—that he could have Harmon's machines if he cared for them and Harmon couldn't prevent it; that the United Company manufactured and leased machines infringing one of Harmon's patents without giving Harmon any compensation; that one H. A. Woodbury furnished Harmon money for experimenting, and negotiated with the United Company for the sale of another of Harmon's patents, that Woodbury assigned the patent to the company relying on representations that if the machine worked the company would pay a substantial sum; that the company tested the machine, which worked perfectly, but the company refused to pay any consideration for it (R. Vol. 1, p. 1086 (2)).

In support of this charge the United States called Frank L. Harmon, who testified that he was developing some machines; that the witness had no practical business ability and came to Mr. Winslow with the idea of getting information; that Winslow gave him some very good advice, to the effect that he was foolish to try to go into the machinery business with little capital; that all the companies were coming together to build their machinery on a large scale, and that he thought the witness would lose his time and money. Harmon said the substance of the conversation was that he could not compete with millions of dollars with a few thousands of dollars in the manufacture of machinery (R. Vol. 1, p. 276).

On cross-examination the witness said that this conversation occurred before the United Company came into existence (R. Vol. 1, p. 277, lines 10–11).

No evidence whatever was offered by the United States, other than this, in support of the Harmon allegation.

35. Euclid I. LaChapelle.

The United States charged that Euclid I. LaChapelle had invented an appliance for holding the uppers to soles during the sewing operation, and also an improvement on the pulling-over machine, and improvements on other machines; that the United Company took LaChapelle into its employ, representing that it would pay him a reasonable consideration for his inventions, that subsequently LaChapelle was discharged and the United Company had perfected his inventions and placed them in operation without any adequate consideration (R. Vol. 1, p. 1086 (3)).

No evidence whatever was offered in support of this charge.

36. Nathaniel Sparks.

The United States charged that Nathaniel Sparks invented a heel-compressing machine and assigned it to William J. Young; that the United Company induced Sparks to make an affidavit denying that he had ever invented such a machine (R. Vol. 1, p. 1087 (4)).

No evidence whatever was offered in support of this charge.

37. T. J. Edwards.

The United States charged that T. J. Edwards was engaged in the business of cutting stamps to be used in stamping shoes; that he was requested by the United Company to compile a catalogue of his stamp cuts; that he compiled such a catalogue but received no orders from the United Company, and that the United Company issued a catalogue which included those cuts furnished by Edwards, and that this catalogue ruined Edwards' business (R. Vol. 1, p. 1087 (5)).

No evidence was offered in support of this charge.

38. Fortuna Machine Company.

The United States charged that the Fortuna Machine Company made a skiving machine; that the United Com-

pany also made a skiving machine, closely resembling that of the Fortuna Company, which it represented to be a Fortuna machine, and discouraged manufacturers from using the Fortuna machine, pretending that it was inferior (R. Vol. 1, p. 1087 (6)).

No evidence was offered in support of this charge, although G. H. Diehl, Jr., president of the Fortuna Company since 1903, appeared as a witness for the United States (R. Vol. 1, pp. 910–911).

39. George E. Rollins.

The United States charged that George E. Rollins invented a certain machine, and that after it was demonstrated to be a success the United Company without any right put out a similar machine infringing Rollins' patent, and placed the same on the market in competition with Rollins' machine and destroyed the value thereof (R. Vol. 1, p. 1087 (7)).

No evidence was offered in support of this charge.

40. A. McDowell.

The United States claimed that A. McDowell invented a spring heel shaver and negotiated with the United Company for its sale; that thereafter the United Company notified him that it had a similar machine of its own, and that that machine was an infringement of McDowell's invention; that McDowell also invented and patented two other machines and that the United Company purposely produced machines embodying the patented features of the McDowell machines and therefore destroyed the value of the same (R. Vol. 1, p. 1087 (8)).

No evidence was offered in support of this charge, although V. H. McDowell, son of A. McDowell, appeared as a witness for the United States and testified that he was familiar with the machines put out by his father (R. Vol. 1, p. 909).

41. Charles L. Clifford.

The United States claimed that the defendants rendered a bill to Charles L. Clifford for royalties on shoes sewed on a Haverhill turn sewing machine (R. Vol. 1, p. 1088 (1)).

In support of this charge they offered the evidence of Charles L. Clifford, whose evidence was excluded by the court (R. Vol. 1, p. 362).

Mr. Winslow testified that the independent lease was offered to Clifford (R. Vol. 1, p. 451, lines 12–14).

42. Fred J. Thompson.

The United States claimed that in 1903 or 1904 Fred J. Thompson was using two stitching machines of the Duplessis Company; that he later installed machinery of the United Company and was obliged to pay royalties to the United Company for all shoes manufactured by the Duplessis machinery (R. Vol. 1, p. 1088 (2)).

No evidence was offered in support of this charge.

43. Alleged Wrongful Exaction of Return Charges.

The United States claimed that the defendants wrongfully exacted return charges from shoe manufacturers on leased machinery in instances where such charges did not properly apply (R. Vol. 1, p. 1088 (e)).

No evidence was offered in support of this charge.

44. Alleged Arbitrary Increase of Charges.

The United States claimed that the defendants had arbitrarily increased the installation, return, and other charges on machinery operated by shoe manufacturers who operated machinery of competitors (R. Vol. 1, p. 1088 (f)).

There was no evidence to support the charge.

45. N. D. Dodge Shoe Company.

The United States claimed that the N. D. Dodge Shoe Company were using Haverhill Shoe Machinery Company machines, but were forced to discontinue their use when they went to the United Company for welt machines; the United Company refused to put in welt machines unless Dodge paid what would be a fair price for the machines when installed, "and yet which gave them no equity in the machines, and they must then pay the same royalties as others who made no initial payment. The United Company required them not only to discontinue the use of the sewing machines, but the channeling machines also" (R. Vol. 1, p. 1088 (1)).

The only testimony which supported this charge was hearsay evidence of L. H. Harriman, treasurer of the Haverhill Shoe Machinery Company (R. Vol. 1, p. 317, line 45), who testified as follows: "We had two turn sewers and two channelers in the factory of N. D. Dodge & Son in 1911. Their use was discontinued because we could not supply a line of welt machinery which they wanted and the United Company would not do so as long as they used our machines" (R. Vol. 1, p. 320, lines 9–13).

William G. Dodge, as witness for the United States, testified as follows: "I got the Haverhill machines in October or November, 1911, but I have not got them now. . . . I discontinued the use of the Haverhill machines after three or four months because the United Company installed some machines that we felt were more efficient" (R. Vol. 1, p. 354, lines 43–44; p. 355, lines 2–5). Further on cross-examination the witness testified: "It was while we were waiting for the new Model G machine of the United Company that we tried some Haverhill machines . . . intending to use them merely until we could get the Model G. As soon as the Model G was ready we installed it and discontinued the use of the Haverhill machines" (R. Vol. 1, p. 355, lines 12–24).

46. Alleged Sales Below Cost.

The United States claimed that the defendants have offered or granted special terms and prices to shoe manufacturers on machinery, parts and supplies, at times below cost, to induce them to withdraw their business from competitors (R. Vol. 1, p. 1089 (g)).

There was no evidence to support this charge.

47. E. P. Reed Company.

The United States charged that in 1900 E. P. Reed Company were using machines of the Standard Shoe Machinery Company; that defendants offered to install their machines free of charge if the Reed Company would discontinue the use of Standard machines (R. Vol. 1, p. 1089 (1)).

No evidence was offered in support of this charge.

48. Alleged Refusal to Furnish Machinery, etc.

The United States charged that the defendants have refused or delayed unnecessarily in furnishing machinery, parts, or supplies to shoe manufacturers also operating machinery furnished by competitors or owned by said shoe manufacturers (R. Vol. 1, p. 1089 (h)).

No evidence was offered in support of this charge, except the evidence of Richard H. Long, which was shown to be unreliable and which was contradicted by the evidence of King, Mrs. Hewitt, and Batchelder (see *supra*, pp. 154–155).

49. Alleged Threats to Remove Machinery.

The United States charged that the defendants have threatened to remove their leased machinery from factories wherein supplies purchased from competitors have been used (R. Vol. 1, p. 1089 (i)).

There was no evidence to support this charge, unless it was in the testimony of Irving A. Hadley, which has already been

discussed, which testimony was contradicted by the testimony of Belcher, Roberts, Tierney, and others (*supra*, pp. 768–769).

50. Alleged Refusal to Furnish Individual Machines.

The United States charged that the defendants have refused to furnish individual machines to shoe manufacturers operating machinery of competitors, such refusals being either absolute or modified by demands for prohibitive installation charges (R. Vol. 1, p. 1089 (j)).

No evidence whatever was offered of any absolute refusal by the United Company to furnish machines under these conditions. Indeed, the testimony of Edwin A. Webster, a witness for the United States, showed that the United Company was constantly furnishing machines to be used in connection with machines of other manufacturers.

Webster, a director of the Haverhill Shoe Machinery Company, testified as follows: "Our machinery is being used side by side with the United machinery in thirty-eight factories, producing the same product. Sometimes a manufacturer will use our turn sewing machine and the United Company's heeling apparatus and sometimes he will use our heeling apparatus and the United Company's turn sewing machines, or will mix them up on some other plan" (R. Vol. 1, p. 299, lines 32–37). (See also P.'s Ex. 161, R. Vol. 4, p. 1118, showing machines of the Haverhill Shoe Machinery Company used in connection with machines of the United Shoe Machinery Company.)

The defendants have always been ready to supply machines of all kinds to be used in connection with machines of any other manufacturer upon the same installation charges which prevailed prior to the organization of the United Company (R. Vol. 1, p. 514, lines 11–43; Defs.' Ex. 40, R. Vol. 5, p. 40). Mr. Winslow named a large number of the manufacturers to whom the choice between the independent form of lease and the restricted form of lease had been offered from time to time (R. Vol. 1, p. 450, line 11; p. 451, line 16). Where a lessee desired an independent lease, the initial premium was always the same or a less sum than had been required before

the United Company was formed (R. Vol. 1, p. 433, lines 29–32).

51. Carleton & Hunt.

The United States charged that Carleton & Hunt were using machines of the Haverhill Shoe Machinery Company and desired to obtain welt machines of the defendants, and were informed by the defendants that they would have to discontinue the use of the Haverhill sewing machine before the defendants' machinery would be installed, or pay an installation charge which was prohibitive (R. Vol. 1, p. 1089 (1)).

The only evidence offered in support of this charge was the hearsay statement made by Louis H. Harriman (R. Vol. 1, p. 320, lines 1–6) to the effect that Mr. Hunt had told him that he had tried to get a set of machines for making welt shoes from the United Company, and that he could not get them unless he discontinued using the Haverhill turn sewing machine.

Mr. Donham's testimony showed that when Carleton & Hunt discontinued the use of the United Company's turn sewing machine and used instead the Haverhill turn sewing machine they continued to use in connection with that Haverhill machine a number of other United Company machines for the use of which the United Company was not receiving any compensation (R. Vol. 1, p. 828, lines 26–44; p. 829, lines 17–33; P.'s Ex. 161, R. Vol. 4, p. 1119).

52. Ira J. Webster.

The United States charged that in June, 1912, Ira J. Webster had been operating two Pettengill nailing machines, which he owned outright, and that he desired to obtain from the defendants a pulling-over machine and a toe-capping machine; that because he was operating independent machinery the defendants demanded excessive installation charges; that he was unable to make satisfactory arrangements with the defendants and the Pettengill machines had been removed from his factory (R. Vol. 1, p. 1089 (2)).

In support of this charge the United States called Ira J. Webster, who testified that he had Pettengill nailing machines; that he applied to the United Company for pulling-over and toe-capping machines; that no objection was made to furnishing him with them; that an installation price was to be paid if the machines were used with the Pettengill nailer that would cost more than if he used their entire machinery. He did not remember what this charge was (R. Vol. 1, p. 362).

On cross-examination he said that before he made his application he used some of the machinery of the United Company and also a Pettengill nailer from the Haverhill Company. Referring to agents of the United Company he further testified: "They offered me two alternatives; they said they would furnish me with the toe capper and puller-over if I would pay an installation charge and a royalty on them, or they would furnish me a full line of machinery at wholesale rates, cheap. That is all there is about that transaction. I don't remember what the installation charge was" (R. Vol. 1, p. 363, lines 4–13).

Mr. Winslow testified that the independent lease was offered to Webster (R. Vol. 1, p. 451, line 12).

B. THE EVIDENCE RELATING TO ALLEGED UNFAIR, OPPRESSIVE OR MONOPOLISTIC ACTS OF THE DEFENDANTS, INCLUDING INSTANCES OF ALLEGED ARBITRARY ENFORCEMENT OF LEASE PROVISIONS, NOT SPECIFIED IN THE BILL OF PARTICULARS FILED BY THE UNITED STATES.

The foregoing discussion of the evidence regarding the charges contained in the bill of particulars shows that as to the majority of those charges the United States did not introduce any evidence and that the record entirely fails to support those charges as to which evidence was introduced.

The United States also claims that the evidence proves other unfair or oppressive acts, which were not specified in the bill of particulars.

These charges are in the main centred about the efforts of rival shoe machinery manufacturers to displace machines of the United Company already in use in shoe factories by substituting their machines.

The shoe manufacturers whom these machinery manufacturers approached were already fully equipped with machines which they had leased from the United Company and had agreed to use so far as they had work for the machines. It would violate that agreement to let those machines stand idle and use machines of others instead. Also in certain instances they held the United Company's machines under restricted leases under which they were permitted and had agreed to use the machines only as a series. The competitor asked them to interject his machines into the series. For example, they held General Department machines which, instead of buying outright, as they could have done, they had elected to take under leases which restricted their use to certain of the United Company's royalty-earning, principal machines. If those principal machines were displaced by a competitor's machines and the shoe manufacturers did not purchase the General Department machines, but continued to hold them under those restricted leases, and used them with the competitor's machines, they would be using them without proper compensation to the United Company (*infra*, p. 796).

The shoe manufacturers who were solicited to install competing machines under these conditions recognized the equities of the situation. They did not want the machines and it was perfectly natural that they should take the easiest way to get rid of the solicitors and plead the United Company's leases as an excuse for refusing to listen to persistent solicitation.

(1) Testimony of Louis H. Harriman, Treasurer of the Haverhill Shoe Machinery Company.

In addition to his evidence regarding the charges in the bill of particulars as to Hilliard & Tabor, Carleton & Hunt, and N. D. Dodge Shoe Company (*supra*, pp. 754, 790, 787), Louis H. Harriman, treasurer of the Haverhill Shoe Machinery Company (R. Vol. 1, p. 317, line 45), testified about a number of attempts

of his company to install machines in shoe factories to displace machines leased from the United Company already in use in those factories.

(a) Frederick W. Herrick.

Harriman testified that Fred Herrick of the Herrick Shoe Company asked him to guarantee to refund to Herrick additional royalty which he would have to pay to the United Company if he operated machines of the Haverhill Company. The Haverhill Company was unwilling to do this and removed its machine because Herrick would not operate it without this guarantee. The Haverhill Company also had to remove its heeling machine "so Mr. Herrick could get the stock which was a rebate on his Goodyear sewing royalties" (R. Vol. 1, p. 318, lines 6–22).

Edwin A. Webster, a director of the Haverhill Shoe Machinery Company, testified that the reason why his company took out the heeling machine was because Herrick "found he would lose his rebate on his Gem insole machine if he kept it longer" (R. Vol. 1, p. 290, lines 30–31; p. 293, lines 1–11).

Frederick W. Herrick, as a witness for the United States, testified that his concern took the Haverhill turn sewing machine on trial and ran it a little less than a month. They used it for work previously done by the United Company's machine, which they kept idle or partly idle while trying the Haverhill machine. They then went back to the United Company's machine. The reason why they discontinued the Haverhill heeler was because they were making high-heeled shoes and the United Company had developed a new machine to attach high heels. Before that machine was developed there were no heeling machines for making high-heeled shoes right. "We got it because we wanted a machine to do that work right" (R. Vol. 1, p. 357, line 38–p. 358, line 21).

Herrick said that the Gem insole rebate was not discussed in connection with the Haverhill machines (R. Vol. 1, p. 357, lines 18–22) and nowhere in his testimony did he speak of the "rebate on his Goodyear sewing royalties" which Harriman

said was his reason for removing the heeling machine. It is plain from Herrick's testimony that he resumed using the United Company's machines because he considered them better for his work than the Haverhill machines.

(b) Lynch & Sherman.

Harriman testified: "We had a turn sewer in the Lynch & Sherman factory which had been operated but a short time when they telephoned us to take it out, as an agent of the United Company had informed them it violated their lease with that company" (R. Vol. 1, p. 318, lines 26–29). This hearsay evidence, which was duly objected to (R. Vol. 1, p. 318, lines 30–38; p. 319, lines 30–32), is all that the record contains in support of this claim.

Mr. Harriman's list of users of Haverhill Company machines (P.'s Ex. 161, R. Vol. 4, p. 1118) shows that Lynch & Sherman had a turn sewing machine from the United Company which of course they had agreed to use. The use of the Haverhill machine and the failure to use the United Company's machine which the lessee had agreed to use were doubtless the violation referred to.

(c) W. S. Chase & Company.

Harriman testified that W. S. Chase & Company had several machines of the Haverhill Company, but, about a year before the witness testified, Mr. Herbert Chase told them to remove the machines "because he had been sued for patent infringement on a heel-burnishing machine by the Xpedite Company, and he told me that one of the conditions of settling the suit was his discontinuing our machines. He also gave the reason that he was violating his leases" (R. Vol. 1, p. 319, lines 35–41). Harriman was testifying on June 11, 1913 (R. Vol. 1, p. 317, line 42), so that this took place after the suit was begun.

The evidence of Herbert E. Chase, offered by the United States, as to his discontinuing the use of the Haverhill machines

was excluded on the ground that "the whole transaction was subsequent to the filing of this bill" (R. Vol. 1, p. 354, lines 15–32).

Mr. Winslow testified:—

> "W. S. Chase & Son, Haverhill, were using the Fox turn machine and the Pettengill heeler [both Haverhill Company machines]. We offered to let them return our turn machines and our heeling machines and to keep the lasting and metallic machines on the independent leases, but they decided to keep our machines and gave up the use of the Fox and Pettengill machines" (R. Vol. 1, p. 450, lines 27–32).

That is, the United Company did not insist that the Chase concern should use its turn machine and heeling machine, which they had agreed to use, but offered to cancel their leases of those machines and also offered to put on independent leases the lasting and metallic machines which they were using, so that the Chase concern would be free to use the United Company's lasting and metallic machines with the turn machine and the heeling machine of the Haverhill Company.

The Real Situation in respect to the Concerns about which Mr. Harriman testified.

Mr. Harriman produced a list entitled "Past and Present Users of Machines of the Haverhill Shoe Mchy. Co.," which is Plaintiff's Exhibit 161 (R. Vol. 4, p. 1118). All of the six concerns which Mr. Harriman testified about, including three named in the bill of particulars (*supra*, p. 792), are comprised in Group 1 of that list (pp. 1118, 1119). The list purports to state the machines of the United Company with which the machines of the Haverhill Company were used. Mr. Donham, secretary of the United Company, pointed out that "in no instance does the list show the fact that the lessee had the United Company's Goodyear auxiliary machines, or does it show the fact that the lessee had the United Company's general department machines which the lessee had elected to take

upon the lease plan instead of buying outright" (R. Vol. 1, p. 829, lines 11–16).

Mr. Donham then pointed out that in each of these instances the lessee had Goodyear auxiliary machines and that when he used those auxiliary machines with the Haverhill turn sewing machine he was using the United Company's machinery without making any payment for its use. Also in each of these instances the lessee had some of the General Department machines which instead of purchasing he had elected to take on lease, restricted to use with the United Company's welt and turn sewing machine. By using those machines with the Haverhill turn machines he was using them without proper compensation to the United Company (R. Vol. 1, p. 829, lines 17–33). Mr. Donham illustrated by enumerating the different kinds of machines held by Hilliard & Tabor (R. Vol. 1, p. 830, lines 1–11).

In fact Mr. Harriman admitted: "In most of the above instances *I knew I was asking the manufacturers to displace the United Company machines and use ours. I pointed out to many of them that taking our machines would be in violation of their leases from the United Company*, but that I did not think the leases valid and we would contest any suit" (italics ours) (R. Vol. 1, p. 324, lines 20–25).

The insignificance of the occurrences cited by Mr. Harriman, as well as those testified to by Pike (*infra*, pp. 797–798), even taking their testimony at its face value, is shown by the testimony of Webster, of the Haverhill Company, that "our machinery is being used side by side with the United machinery in thirty-eight factories, producing the same product. Sometimes a manufacturer will use our turn sewing machine and the United Company's heeling apparatus and sometimes he will use our heeling apparatus and the United Company's turn sewing machines, or will mix them up on some other plan" (R. Vol. 1, p. 299, lines 32–37).

(2) Testimony of Ned Pike, an Employee of the Haverhill Shoe Machinery Company.

Ned Pike, who installed machinery and solicited business for the Haverhill Shoe Machinery Company, testified that he met with serious difficulty in installing machines. He testified to his experiences in attempting to install machines with Ashe, Noyes & Small, Auburn, Maine, Dunn & McCarthy, Auburn, New York, Krippendorf & Dittman, Cincinnati, Syracuse Shoe Company, and Irving Drew Shoe Company, Portsmouth, Ohio. The effect of Pike's testimony was that each of these concerns refused to install the Haverhill Company's machines on account of the United Company's leases (R. Vol. 1, p. 329, lines 15–42).

Pike admitted that in each case that he testified about he solicited the business of the concern without having been sent for and that he suggested they take Haverhill Company machines to do the work already being done by United Company machines (R. Vol. 1, p. 330, lines 2–8, 26–35). Accordingly, as we have shown above (*supra*, p. 792), Pike was asking these concerns to substitute Haverhill Company machines for United Company machines for which they paid only as they used them and which they had agreed to use. If they did plead the leases as a reason for not taking his company's machines, it was a natural and proper thing to do.

But Nathaniel C. Small and Willard A. Noyes, of the Ashe, Noyes & Small Company, the only witnesses representing any of the five concerns named by Pike who testified regarding his alleged efforts to install machines, denied that any such statement was made to Pike as he claimed.

Nathaniel C. Small testified that he was treasurer of the Ashe, Noyes & Small Company and that Pike came and solicited his company to put in machines and talked with him. Small testified that he never made any such statement to Pike as Pike had testified. Pike had said, "they told me that under the leases of the United Company it would be impossible for them to install our machinery, unless they laid themselves open to a great deal of trouble—conflict with the United Com-

pany" (R. Vol. 1, p. 329, lines 24–27). Small further testified, "I did not make any statement to Mr. Pike which was at all to the effect that I would not put in his machines because of the existing leases with the United Company" (R. Vol. 1, p. 804, lines 3–16, 43–45).

Willard A. Noyes testified that he was a director of the Ashe, Noyes & Small Company and that he and Mr. Small were the active men in the concern. He said that no such statement as Pike claimed was made to Pike with his knowledge. While Pike was talking with Small, Noyes passed through the room and Pike showed him a picture of a turn sewing machine. Noyes glanced at the picture and asked what advantage the machine had, and one of the replies was that it was a non-royalty machine. Noyes said that did not interest him in the least; that the saving of royalty would not offset the value of the United Company to his concern. On cross-examination Noyes said: "In my conversation with Mr. Pike nothing was said about the leases which we had with the United Company. They were not mentioned" (R. Vol. 1, p. 805, line 18–p. 806, line 1).

It is significant that neither Charles H. Krippendorf, of the Krippendorf-Dittman Company, nor William F. Fowler, superintendent of the Krippendorf-Dittman factory, both of whom testified as witnesses for the United States (R. Vol. 1, pp. 214, 924), referred in any way to these alleged efforts of Pike to install Haverhill Company machines, or even mentioned the Haverhill Company. The United States did not call any witnesses representing the other concerns named by Pike.

Pike admitted that his concern was not in a position to furnish proper service to concerns which he solicited and that that question "usually comes up when we are trying to place our machines" (R. Vol. 1, p. 331, lines 21–41). That testimony alone furnishes an adequate reason for refusal of manufacturers to take his company's machines.

(3) Evidence Regarding the Union Lockstitch Machine.

(a) Testimony of Frank W. Merrick.

Frank W. Merrick, president of the Union Lock Stitch Company (R. Vol. 1, p. 199, lines 8–9), testified: "We tried to sell our machines to Mr. Jones, to Roberts, Johnson & Rand, Harsh and Edmands, and Peters Shoe Company, and could not sell them. Not all these transactions were by letter. Mr. Jones said the conditions in his leases of his other machines would not admit of his use of the machine and that he couldn't afford to touch it, because his leases forbade him. Roberts, Johnson & Rand gave the same answer" (R. Vol. 1, p. 203, lines 6–13).

Jackson Johnson (R. Vol. 1, p. 170) and Frank C. Rand (R. Vol. 1, p. 178), with whose firm the Peters Shoe Company had combined to form the International Shoe Company (R. Vol. 1, p. 162, lines 26–28; p. 171, lines 28–31), Charles H. Jones (R. Vol. 1, pp. 105, 951; Vol. 2, p. 2164), and George R. Harsh (R. Vol. 1, p. 195), all testified as witnesses for the United States, but *not one of them said a word about the Union lockstitch machine*, except Harsh who had taken and used it.

Furthermore, Merrick said Roberts, Johnson & Rand and the Peters Shoe Company *now have Union lockstitch machines* (R. Vol. 1, p. 208, lines 2–3). He also said his company had between 350 and 400 straight needle lockstitch machines out, all over the United States (R. Vol. 1, p. 199, lines 28–33).

(b) The Case of John E. Williams.

The testimony of John E. Williams, which related entirely to events which took place *after this suit was begun*, was introduced subject to defendants' objections and exceptions.

Williams testified that he was using United Company machines and that in August, 1912 (after this suit was begun in December, 1911), he installed a Union lockstitch machine in one of his factories and contemplated installing additional

machines in a new factory. He said that he talked with Mr. King of the United Company in November, 1912, and that Mr. King told him that the United Company felt that he had broken the obligation of his leases and would ask him to discontinue using the Union machine. At his request Mr. King submitted a plan by which he could use Union machines. Williams produced a memorandum which had been submitted to him at the time showing the initial payments which would be required if he substituted the Union machines for the United Company machines. Those additional payments for machines of four departments aggregated $3,675, and Williams testified that he understood that the memorandum also called for extra royalties on the pulling-over machine, the heel compressor, and the clicker, a total extra royalty of one and one-eighth cents per pair (R. Vol. 1, pp. 216–218).

On cross-examination Williams testified that the memorandum of initial charges referred to equipment to be furnished by the United Company for the new factory on the assumption that Williams would use the Union lockstitch machines there (R. Vol. 1, p. 218, lines 29–36).

Williams also said that he talked with Mr. King about the Union lockstitch machine which was already in his factory. He had the Goodyear lockstitch machine on a restricted lease on which he had paid no initial payment and on which the company received income only according as the machine was used. Putting in the Union machine would leave the Goodyear machine idle. Mr. King's final reply was that that would be in contravention of the leases; he said that with the initial premium form of lease they could use their Union machine as much as they wanted to. Williams also said that there was either no royalty on the clicker when used with the Goodyear Welter and Stitcher or the royalty was absorbed in the royalty paid upon the Stitcher (R. Vol. 1, pp. 218–219). So far as he knew the United Company had never had occasion before to fix a royalty on the clicking machine for use in making mock welts.

Williams further testified that he did not make any complaint to Mr. King about any restriction on the use of the Union machine but wanted to use it if he had a right to do so under the leases. He had an interest in the Boylston Manu-

facturing Company amounting to about $5,000 or $6,000 (R. Vol. 1, p. 221, lines 20–26).

Frederick G. King, manager of the United Company's Goodyear Department, testified that Williams' concern had a number of United Company machines under the restricted form of lease and that Williams inquired whether it was a violation of those leases to use the Union lockstitch machine with such machines of the United Company. King told him that it would violate some of the provisions of the leases, but offered to give him unrestricted leases under which he could do it. Williams decided not to use the Union machine, which he said he had put in for experimental trial (R. Vol. 1, p. 697, line 10–p. 698, line 16).

King further testified that the initial premiums stated in the memorandum which Williams testified about were the same as always charged to others on the independent form of lease and that the pulling-over machine royalty, which covered the use of the complete pulling-over system, was the regular rate. As to the heel compressor there would be no extra royalty if Williams compressed the heels in the factory in which he was making the shoes; Williams wanted to compress them somewhere else and sell them to this factory (R. Vol. 1, p. 698, lines 35–44; p. 699, lines 1–4).

Frank W. Merrick, president of the Union Lock Stitch Company, testified in June, 1913, that the Excelsior Shoe Company, Williams' concern, still had the Union machine, although they had not yet purchased it (R. Vol. 1, p. 199, lines 6–9, 42–44).

This testimony about the machines in Williams' factory amounts to no more than showing that the United Company was ready in this instance as always to make equitable terms with a manufacturer contemplating the use of a competitor's bottoming machine with the other bottoming machines of the United Company.

(4) The Merrick-Luitweiler Controversy.

The United States claimed that Mr. Winslow made threats to Messrs. Merrick and Luitweiler, president and treasurer of the Union Lock Stitch Company which was manufacturing a lockstitch machine (R. Vol. 1, p. 199, line 8 *et seq.*; p. 208, lines 17–18).

Frank W. Merrick testified that in the summer of 1905 he had a conversation with Mr. Winslow at the Touraine Hotel with reference to a sale of the business of the Union Lock Stitch Company, at which Mr. Winslow stated in effect that he would not allow Merrick and Luitweiler to make any money and that eventually their business would come around to him and he would take it (R. Vol. 1, p. 199, line 9; p. 200, line 21 *et seq.*). Luitweiler testified to the same effect (R. Vol. 1, p. 208).

Merrick testified under cross-examination that upon this occasion he could make no objection to Mr. Winslow's treatment of him, but that it was a "business bluff" (R. Vol. 1, p. 205, lines 35–42). He commented upon it as follows:—

> "I was not bluffed by what he said. It didn't influence my conduct. It might have frightened me a little. Up to that time the straight needle machine was the only thing we had developed. We have not been interfered with in marketing it except by ordinary methods of competition" (R. Vol. 1, p. 206, lines 11–15).

Taken at its face value, the testimony of the witnesses for the United States would show only that Mr. Winslow made the statement referred to as a "business bluff"; that it was recognized as a bluff; that it did not influence the conduct of Merrick; and that it was not followed up by any interference with Merrick's business.

Mr. Winslow, however, specifically denied ever making any such statement to either Merrick or Luitweiler (R. Vol. 1, pp. 517, 518), and all the probabilities of the case support this denial. Merrick claimed that Sampson, who was employed by the United Company, arranged the conference with Mr. Winslow (R. Vol. 1, p. 200, lines 21, 25, 26). It appears, how-

ever, that before the conference Merrick had asked a mutual friend, Mr. Buck, to bring Sampson to him, had invited Sampson aboard his yacht and had taken him to the Hull Yacht Club as his guest. When Merrick had Sampson out on the yacht he talked with him about his (Merrick's) company and the enterprise in which he was engaged (R. Vol. 1, p. 204, lines 5–23). Merrick's machines were then in an experimental state, and Merrick testified: "We didn't get anywhere with Sampson. He didn't have anything to say" (R. Vol. 1, p. 204, lines 23–27).

Sampson testified that Mr. Buck called on him, showed him a sample of stitching and said it was done on a new machine which Merrick had brought out; that Merrick had several machines he would like to sell and would like to get employment with the United Company. Within a few days, Buck came and invited Sampson off on Merrick's yacht. Sampson declined to go and Buck came back a few days later and urged him to go. While on the yacht Luitweiler asked if he could meet Mr. Wilson, general manager of the company, and pursuant to this request the meeting with Mr. Winlsow came about (R. Vol. 1, pp. 615, 616).

Both Merrick and Luitweiler admitted that at a later interview Mr. Connor of the United Company stated positively that he would not consider buying their business on a competitive basis (R. Vol. 1, p. 210, lines 2–5). It seems quite obvious what sort of solicitation on the part of Merrick and Luitweiler would have called forth such a statement on the part of Connor.

Mr. Connor's attitude is shown by the testimony of Edwin P. Brown, then general manager of the United Company, who testified that he was present at an interview which Merrick and Luitweiler had with Mr. Connor and that Mr. Connor said to them, "'If you care to have me look into it, I should be glad to do so, but I want you to understand that we wouldn't consider it for a minute, otherwise than on its merits, only in so far as it is an improvement over anything that we have or is something that we can use advantageously for our lessees'" (R. Vol. 1, p. 718, lines 28–33).

In respect to this charge the District Court found as follows:—

"Mr. Winslow is also charged, in testimony given by Merrick and Luitweiler, president and treasurer of the Union Lock Stitch Company, then developing machines not yet put on the market, with having told them in 1905, while attempting to persuade them to sell out to the defendants, that they would not be allowed to make any money; that the United Company would build their machines; that their business would come round to it and be taken by it, and that it was cheaper to kill competitors than to acquire them. The alleged statements are denied by Winslow. The business referred to is one never acquired by the defendants, nor is any interference whatever with this business shown. This was admitted, and the testimony of the two witnesses named is that they have put out 350 to 400 of the machines in question" (Dodge, J., R. Vol. 1, p. 1149, lines 1–13).

C. FINDING OF THE DISTRICT COURT AS TO THE ALLEGED "THREATS AND INTIMIDATIONS" BY DEFENDANTS.

The District Court said (R. Vol. 1, pp. 1147–8):—

"It remains to consider how far the evidence proves the defendants to have used 'threats and intimidations' of the various kinds described in the petition. . As to far the greater part of the specified instances set forth in the bill of particulars, the charges of this kind have been allowed to go wholly without attempt at proof. Of those regarding which any such attempt was made, six only have been insisted upon in the petitioner's briefs or argument. No reason whatever to believe that any greater significance could be claimed for any others of the specified instances than for these appears from the evidence regarding them to be found in the record."

The Court then reviewed the evidence regarding the six alleged instances which were insisted upon in the District Court (R. Vol. 1, pp. 1148–9), and concluded (R. Vol. 1, p. 1150):—

"It thus seems clear that nothing proved as to the above instances of so-called 'threats and intimidations' is sufficient to justify such allegations as are made in paragraph VI of the petition about them. Even if anything said by a representative of the United Company on these occasions can properly be called a 'threat,' in view of all the surrounding circumstances shown, there is certainly no adequate reason established for believing that any competitor's customers have been induced to abandon them, or that anybody has been prevented from attempting competition by what was said. The instances relied on are widely separate in time and distinct as to circumstances and persons. They cannot reasonably be regarded as showing a concerted purpose to suppress competition through intimidation, such as paragraph VI purports to charge. In every instance the expressions said to have been used by a representative of the United Company were in interviews with persons interested in some concern or machine which the United Company was asked or might be asked to buy. As has appeared, propositions of this kind were constantly being made to its representatives, and many more of them were refused than were accepted."

D. FINDING OF THE DISTRICT COURT AS TO THE CHARGE THAT PROVISIONS OF THE LEASES HAVE BEEN ARBITRARILY ENFORCED.

The District Court said (R. Vol. 1, pp. 1150–1):—

"Not in paragraph VI, but in the preceding paragraph V of the petition, the charge is made that certain provisions of the leases, under which the United Company's machines have been operated by users, have been arbitrarily enforced, in pursuance of a general policy and practice to refuse machines for failure to comply with the terms and spirit of the leases 'and to otherwise injure' users so failing to comply.

"In the above bill of particulars filed, as has been said, on June 25, 1913, 'in amplification of Section VI of the petition,' the defendants are charged, in a number of specified instances, with threatening to remove or remov-

ing machines from the factories of users because competing machines or machines obtained from other concerns were also being there used or because such use of other machines was in contemplation. No proof whatever has been offered as to a considerable proportion of the instances thus specified.

"In the instances specified regarding which there is some proof nothing more is shown than that the United Company insisted, to a greater or less extent, upon observance by the lessee of provisions in his lease to which he had expressly agreed when he took the machine, and which he was purposely violating or proposing to violate to the detriment of the lessor, because such violation would tend to decrease the number of pairs of shoes operated on by the machine and thus the royalty to be paid for its use by the lessee.

"If the provisions referred to in the leases are contrary to law, it was unlawful to insist upon them. The question here involved is later considered. But unless the provisions were unlawful, the evidence regarding these specified instances in which their observance was insisted upon wholly fails to show that in any instance the defendants did or attempted anything whereof either the lessee of the machine or anyone else had any right to complain.

"It may be said generally that the instances in which machines were in fact removed from the factories of lessees under the provisions referred to have been so few in proportion to the total number of leases as to leave the general charge that such provisions have been arbitrarily or oppressively enforced destitute of any sufficient foundation. Only five such cases appear in the evidence. In each the lessee's conduct was in wilful disregard of the lease agreements and afforded a complete justification for the lessor's action, unless none is possible."

In concluding its discussion of the charges of alleged unfair and oppressive acts the District Court said (R. Vol. 1, pp. 1152–3):—

"The history of the proceedings in this case indicates that efforts which may fairly be described as extraordinary have been made to bring before the court, so far as possible, all sayings or doings of any of the numerous defendants or their representatives, during the period beginning with 1899 and ending with 1911, which might afford ground for charging them with oppressive, coer-

cive, or like unfair conduct toward competitors of the United Company or the public. In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignificant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects."

APPENDIX III.

TESTIMONY OF COMPETING SHOE MACHINERY MANUFACTURERS CALLED BY THE UNITED STATES AS TO CONCERNS COMPETING WITH THE UNITED COMPANY.

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THE TESTIMONY OF COMPETING SHOE MACHINERY MANUFACTURERS AND THEIR REPRESENTATIVES, CALLED BY THE UNITED STATES IN PRESENTING ITS DIRECT CASE, PROVES THAT THERE ARE MANY AND SUBSTANTIAL CONCERNS OTHER THAN THE UNITED COMPANY ACTUALLY FURNISHING SHOE MANUFACTURERS WITH MACHINES.

In addition to the evidence which the defendants introduced, including various exhibits, catalogues of shoe machinery manufacturers, etc., as well as the testimony of Mr. Winslow, the following testimony was given by witnesses for the United States establishing the fact that a large number of concerns in addition to the United Company are, in fact, in the market supplying shoe machinery to the trade.

Duplessis Shoe Machinery Company.

Hamel Shoe Machinery Company.

Chas. A. Hamel, vice-president of the Hamel Shoe Machinery Company, the successor of the Duplessis Shoe Machinery Company, testified that the Duplessis Company began business at Haverhill in 1903 and it and Hamel, as its successor, have carried on business since without interruption, having sold in the United States twenty or more types of machines used for bottoming shoes to the extent of between 400 and 450 separate machines, not counting the practically equal number sold abroad, and including 86 welt and turn machines, 41 stitchers, 70 insole channelers, 24 loose nailers, and 22 sluggers (R. Vol. 1, p. 326). Hamel named four shoe machinery concerns which the Hamel Company had taken over and stated that that company manufactured at Haverhill, in addition to the machines made at Lynn, ten different types of machines, including welt and turn sewing machines and outsole lock-

stitch machines and also leveling, molding, and various metallic fastening machines. He said that his concern employs "from sixty to sixty-five men at both our shops" (R. Vol. 1, p. 944, lines 44–45; p. 945, lines 1–42). Summing up, he said: "We have a complete set of machines for making turn shoes and a complete set of machines for making welt shoes"; also "a complete set of metallic fastening machines for either a welt or McKay shoe" (R. Vol. 1, p. 327, lines 15–19).

Hamel testified that Mr. Sullivan of the Singer Sewing Machine Company had become the treasurer of the Hamel Company (R. Vol. 1, p. 945, lines 34–40).

Thomas C. Rowen, the president of the Hamel Company, named a dozen types of machines, including buffing, breasting and scouring machines, manufactured at Lynn where he said "thirty-five or forty men" were employed and added that "our principal business is with shoe manufacturers. We do not do any business with shoe repair men" (R. Vol. 1, p. 946, lines 2–20).

Catalogues of both the Duplessis and Hamel Companies are contained in Defendants' Physical Exhibit 321 and either Mr. Hamel or Mr. Rowen testified to manufacturing each of the machines appearing in the Hamel catalog (R. Vol. 1, p. 946, lines 21–26).

Haverhill Shoe Machinery Company.

Edwin A. Webster, an inventor, and a director of the Haverhill Shoe Machinery Company, connected therewith since its formation in 1907, testified:—

> "The Haverhill Shoe Machinery Company manufactures turn channel machines for turn soles, welt innersole lip turner, welt groover and beveler, welt beaters, turn sewers and welters, heel-nailing machines, heel-attaching machines, heel-trimming machines, heel-seat keying machines, keyer or beader, and turned sole-molding machines" (R. Vol. 1, p. 291, lines 1–6);

also "heel breasting machines." "We handle but do not build the Webster leveler" (R. Vol. 1, p. 298, line 42; p. 299, lines 2–3). He testified further that his company were agents

for lasting machines, rapid outsole stitchers, loose nailers and sluggers—metallic fastening machines. "We handle the Hamel machine for slugging heels and one turn machine." Some lasting and slugging machines are obtained from Gimson & Company and the Standard Rotary Company, of England (R. Vol. 1, p. 298, lines 1–10, 44–45; p. 300, lines 40–45; p. 301, lines 1–3).

In discussing certain of these machines more in detail, Mr. Webster testified that the Haverhill Company had put on the market 25 heel nailing machines ("Pettingill" type—R. Vol. 1, p. 302, lines 1–2), 65 welt and turn machines, and 60 or 65 turn channeling machines with 12 to 15 in stock. He admitted that the turn molding machine, of which they had put out 40 or 50, is "a copy of the Goodyear machine" and that their turn channeling machine and welt innersole turner and welt beater correspond to machines put out by the United Company "for performing the same kind of work" (R. Vol. 1, pp. 291–292).

Summarizing, he said: "We have machines with fifty-eight manufacturers, of whom thirty-eight also use United machines" side by side with Haverhill machines (R. Vol. 1, p. 299, lines 5–7, 32–45).

> "We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs or anything else. We are prepared to make good if our people that manufacture machines don't go back on us" (R. Vol. 1, p. 301, lines 5–9; see also p. 298, lines 13–15).

Mr. Louis H. Harriman, treasurer of the Haverhill Company and having "general oversight of its business" (R. Vol. 1, p. 317, line 45; p. 318, lines 2–3), furnished a long list comprising five different groups of "Past and Present Users of Machines of the Haverhill Shoe Mchy. Co." In connection with the machines sold to the Criterion Shoe Co., Beverly, Mass., the list contains this note: "A line of Welt machinery independent of U. S. M. Co. including Welter from Haverhill Co." (P.'s Ex. 161, R. Vol. 4, pp. 1118–1122).

R. H. Long Machinery Company.

Richard H. Long, treasurer of the R. H. Long Machinery Company (R. Vol. 2, p. 2135, Cr. Ints. 51–53), testified,—

> "We manufacture machines for lasting and welting and stitching—sole stitching—leveling, heeling, some metallic fastening machines, and a number of others" (R. Vol. 1, p. 232, lines 4–6),

comprising fifty types in all, for the manufacture of welt shoes (R. Vol. 1, p. 271, lines 10–15); Defs.' Physical Exs. 72, 73, *i.e.*, catalog of the Long Company). Among the machines which he had actually sold he named "sole welting, stitching, some metallic machines" bought by "Mr. Taylor, of the Taylor Shoe Company, of Lynn," who is using no machinery of the United Company (R. Vol. 1, p. 232, lines 23–31).

Long stated that he had sold fifty to one hundred welters, stitchers "and some other machines" "to shoe manufacturers," in addition to machines sold "to cobblers—shoe repairers" (R. Vol. 1, p. 233, lines 8–14). He stated further that he had on hand three or four hundred "rapid outsole lock-stitch machines," briefly referred to as stitchers, thirty or forty welting machines, twenty to twenty-five or more lasting machines and three or four heeling machines, not including metallic fastening machines being built and not including machines which he was actually using in his own factory (R. Vol. 1, p. 274, lines 36–45; p. 275, lines 1–5).

Long stated that since 1907, when he fitted up his own factory with machines procured from concerns other than the United Company, he had been making shoes entirely without United Company machines (R. Vol. 1, p. 231, lines 23–43; p. 232, lines 7–13), his daily capacity being "five or six thousand pairs . . . almost exclusively" welts (R. Vol. 1, p. 224, lines 39–44).

John J. Doidge, general manager of the Long Company, testifying a week later, confirmed generally the above statements of Mr. Long, but stated, "We have practically completed four hundred and fifty out-sole stitching machines"—

copied exactly, except for patented parts, from the old Goodyear machines (R. Vol. 1, p. 345, lines 6–14, 39–40). This is a larger number than that set by Long. Among the many other machines which Doidge named as being made by the Long Company were innersole and outersole machines, welt machines, sole laying and leveling machines, heeling and lasting machines. He said:

> "We do not make all the machines shown in our catalogue. We are getting ready to make about all. Some auxiliary machines we buy from others. We have had as many as seventy-five employees, at present about eighteen. There are three buildings to our factory" (R. Vol. 1, p. 346, lines 16–20).

And he summed up with the statement: "We are ready to supply a full line of machinery for welt and turn shoes and we so advertise" (R. Vol. 1, p. 345, lines 43–44; Defs.' Physical Exs. 72, 73).

Boylston Manufacturing Company.

George W. Maloy of Boston, who has for five or six years been "in charge of the sales department of the Boylston Manufacturing Company," testified:—

> "We make power treeing machines, hand treeing stand, Julian rounder, Union edge setter, Webster buffer, Webster cleaner, Globe heel scourer, heel-finishing machine of hot wax type, and heel-blacking machine. That is all. The heel-blacking machine and the heel-finishing machine have been put out recently. They are adapted to all kinds of shoes. They are sold outright, except the power treers which are put out on royalty. Many are sold to customers of the United Company all over the country, I suppose" (R. Vol. 1, p. 302, lines 16–25).
>
> "We have placed bottoming machines in the factories on trial but never tried to sell or lease any. We placed them in our own factory at Fair Haven and in a factory at Pepperell run by the Buffalo Shoe Company" (R. Vol. 1, p. 301, lines 29–32).

Mr. Maloy affirmed that "we are offering all of the machinery named in" the Boylston catalogue (R. Vol. 1, p. 302, lines 38–39; Defs.' Physical Ex. 76).

From his knowledge as to parties making shoe machinery in the United States, he further testified:—

> "Welting machines are put out by the Hamel Shoe Machinery Company, of Haverhill, the Haverhill Shoe Machinery Company, R. H. Long Company, of South Framingham, Champion Shoe Machinery Company, of St. Louis, and Victor Shoe Machinery Company, of Boston. I believe the two last confine their business to repairers and do not furnish machines to shoe makers. Outsole stitchers are made by R. H. Long & Company and Union Lockstitch Company of East Boston. . . . The Haverhill Shoe Machinery Company puts out the Pettingill heeler. . . . Long has a loose nailer" (R. Vol. 1, p. 301, lines 35–43; p. 302, lines 1–3).

John F. Cavanaugh of Ashland, Mass., "salesman of shoe machinery connected with the Boylston Manufacturing Company," which had taken over the Flagg Manufacturing Company in 1904, and called by the United States in rebuttal, testified that the Boylston Company had put out lasting, pulling-over, slugging and heel finishing or blacking machines, referring specifically to about forty heel-finishing machines which had been placed in five localities, east and west. He also mentioned a large number of foreign concerns in the shoe machinery business including several "good-sized concerns" some of which "manufacture complete lines of shoe machinery" and at least two of which, he stated, were "ready to do business in the United States" (R. Vol. 1, pp. 954–7).

Charles S. Johnson of Lynn, now connected with the Boylston Manufacturing Company, testified that it absorbed the Tripp Giant Leveler Company in 1905 and that the Tripp Company "made several types of levelers for leveling the bottoms of shoes of all kinds." "We had several machines; direct pressure leveler; rolling pressure leveler, called Giant leveler; and an improvement on it, the new Giant leveler. Our new Giant leveler sold for $350" (R. Vol. 1, p. 304, lines 29–33; p. 305, lines 6–9, 14–20).

F. A. Brackett, formerly employed by the Boylston Manufacturing Company at Fairhaven, testified: "They had two welting machines which were manufactured by the Boylston Manufacturing Company." "We had no machines obtained from the United Company. We got them all elsewhere, and we made welt shoes without any machines from the United Company" (R. Vol. 1, p. 951, lines 11–18, 29–32).

Harrie A. Ballard testified that he had gotten out a stitching machine and a welt machine which had been used in 1907 at Fairhaven (R. Vol. 1, p. 958, lines 3–4, 35–40).

Jackson Johnson, a member of the "Shoe Manufacturers' Alliance" and president of the International Shoe Company, which is financially interested in the Boylston Company, testified that the "Boylston Company contemplates making a full line of shoe machines" (R. Vol. 1, p. 170, lines 31–35; p. 171, lines 19–23).

Union Lock Stitch Company.

Frank W. Merrick of Boston, president of the Union Lock Stitch Company, testified:—

> "That company is located in East Boston and manufactures shoe machinery. We manufacture a straight needle lock-stitch machine for saddlery and shoe work and a curved-needle stitching machine for shoe work. We make a lock-stitch welt machine, a sole-fitting machine, lasting machines, and two metallic fastening machines, used in connection with lasting operations. I have been building shoe machinery for thirty-two years, mostly stitching machinery. I have built the Merrick stitching machine, used almost exclusively on upper fitting; the Puritan machine, used both on upper fitting and sole stitching and also harness and saddlery work; and a small chain-stitch machine, called the Rapid machine, for a similar class of work. After that I followed with the lock-stitch harness machine, which is a straight needle, waxed-thread stitching machine that can be used for certain kinds of sole stitching, and then with the curved-needle machine, designed expressly for stitching outsoles, both welted and McKay welt and McKay fair stitch shoes. It will do fair stitching on any type of shoe. At present we are putting the straight-needle lock-

stitch machine on the market. We have between three hundred and fifty and four hundred lock-stitch machines out. We first engaged in the manufacture of the lock-stitch machine in 1904. We sell those machines outright at seven hundred and fifty dollars, five off in thirty days. The machines are all over the United States. About seventy-five of the straight-needle machines are in shoe factories and the balance were placed among harness and saddlery people. We are attempting to market the curved-needle machines, of which three have been sold to shoe factories" (R. Vol. 1, p. 199, lines 9–37).

One other has been sold while three others have been completed and a dozen nearly assembled (R. Vol. 1, p. 199, lines 39–40; p. 207, lines 5–6).

"Our straight-needle machine was ready for the market about 1907, the curved-needle machine about 1909. . . .

"The United Company has a curved-needle machine for doing similar work to ours. The Campbell-Bosworth Company has a machine for doing work similar to our straight-needle machine" (R. Vol. 1, p. 201, lines 13–20).

Geo. R. Harsh of Milwaukee, a shoe manufacturer, testified: "We formerly used the Goodyear out-sole stitcher to stitch the two soles of a nailed shoe together before nailing them to the upper. We substituted the Union lock-stitch machine for that operation." "The Union lock-stitch machine is better and more rapid for that purpose" (R. Vol. 1, p. 195, lines 34–37; lines 23–34). Other shoe manufacturers referred to this machine (see R. Vol. 1, p. 160, lines 14–15; p. 216, lines 39–40).

Peerless Machinery Company.

Lorenze Muther of Newton testified that the Peerless Machinery Company—

"manufactures shoe machinery, principally what is called stitching-room machinery; *i.e.*, eyelet-setting machines, skiving machines, hook-setting machines, perforating machines, sanding machines, pasting machines, cementing machines, folding machines, button-sewing machines, and a tip press belonging to the finishing-room depart-

ment of the factory. We have both tip press and tip perforating machines. Similar machines are put out and sold outright by the general department of the United Company" (R. Vol. 1, p. 303, lines 1–12).

"Our machines relate to work on uppers of shoes, except the sanding machine which finishes or roughs the sole before it is put on the shoe. . . . We publish a catalogue" (R. Vol. 1, p. 303, lines 23–27).

He referred to different concerns making eyelets and particularly to the Atlas Tack Company which "makes various kinds of eyelets for shoes," stating:—

"We sell more Atlas than United eyelets, and our customers are altogether shoe manufacturers. . . . Our machines are sold to shoe manufacturers who use other machines obtained from the United Company. That company has machines for performing similar operations. Our machines and theirs are sometimes used side by side in the same factory" (R. Vol. 1, p. 303, lines 15–17; p. 304, lines 2–7, 10–13).

George Knight testified:—

"The Peerless Company is making and supplying the eyeletting machines, which we formerly made, in quite large quantities. They are used by shoe manufacturers" (R. Vol. 1, p. 903, lines 37–39).

Atlas Works.

Alex Stone of New York, formerly "export manager for the Atlas Works at Leipsic, Germany," testified:—

"My concern makes a complete line of shoe machinery, including welters and stitchers, heeling machines and lasting machines." "They are prepared to furnish a complete line of shoe machinery for welt, McKay, and turn shoes." "The Atlas factory employs three hundred men in Leipsic. It has a capacity of three of each of the principal machines a week, so that each week they could furnish three equipments" (R. Vol. 1, p. 339, lines 40–44; p. 340, lines 9–11; p. 342, lines 8–9; p. 343, lines 41–43).

"I first attempted to install machinery for the Atlas

Works in this country in December, 1910." "I offered to equip the Roberts, Johnson & Rand factory with a complete equipment for McKay, welt, and turn shoes, except a few minor machines" which could be bought from "other people." "I offered to equip the Hamilton-Brown Company with our full line. I offered to sell the machines outright" (R. Vol. 1, p. 340, lines 3–9; p. 342, lines 16–20, 43–44; p. 343, lines 1–2).

"I sold machines to nail wooden heels on shoes of the turn variety to Evans in Wakefield, and Guptil in Haverhill. Those were the only two machines I sold in the six weeks I was here" (R. Vol. 1, p. 341, lines 21–23).

An Atlas catalogue will be found as Defendants' Physical Exhibit 319.

Seelye Manufacturing Company.

Nelson H. Seelye of Winchester, Mass., testified that he manufactures—

"machines which, used in connection with dies, cut out material such as leather, cloth, rubber, etc. I have been in that business since 1889. The company was first called the Hawkins Machinery Company [later becoming the Seelye Manufacturing Company (Defs.' Ex. 336, R. Vol. 5, p. 891)] and made beam die presses or dinking machines for dieing out the soles of shoes, among other things. The machine for cutting the upper is the clicking machine. We were engaged in that business when the United Company was formed. We sold from fifty to one hundred per year to shoe manufacturers up to that time. We continued to place on the market our machines after the formation of the United Company" (R. Vol. 1, p. 327, lines 30–40).

"The United Company offered its machines for sale at the same price as ours, and it also offered them on an annual rental of fifteen dollars. We never tried to rent any of our machines, but adhered to our old plan of one basis, sale only" (R. Vol. 1, p. 328, lines 18–21).

THE TESTIMONY OF COMPETING SHOE MACHINERY MANUFACTURERS, CALLED BY THE UNITED STATES IN REBUTTAL, PROVES THAT THERE ARE IN THE FIELD MANY CONCERNS ACTUALLY BUILDING AND PUTTING OUT SHOE MACHINERY IN COMPETITION WITH THE UNITED COMPANY.

Among the large number of shoe machinery manufacturers and dealers who testified for the United States in rebuttal the testimony of the following will now be referred to briefly, and for convenience they will be taken up, as a rule, in the order in which their testimony appears in the record since they were called at about the same time and in reply to the testimony of William R. Sampson, witness for defendants, who produced, in addition to a number of loose catalogues (Defs.' Physical Exs. 312–320), two large portfolios, one of which (Defs.' Physical Ex. 321)—

> "comprises letters, catalogues, and advertisements of different machines that are offered for sale and advertised in this country by manufacturers of shoe machinery. There are 116 manufacturers represented. . . . All of these concerns are still engaged in business" (R. Vol. 1, p. 836, lines 33–42).

The other portfolio (Defs.' Physical Ex. 311) comprises additional catalogues of competing shoe machinery manufacturers (R. Vol. 1, p. 836, lines 43–44; p. 837, lines 1–3). All of these exhibits are indexed in Defs.' Ex. 336, R. Vol. 5, pp. 849–905. In the same connection, Mr. Sampson furnished a "list of machines offered by shoe machinery manufacturers and dealers other than United Shoe Machinery Company for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, dieing-out machines and clicking machines" (Defs.' Ex. 337, R. Vol. 5, pp. 906–935).

As we shall now proceed to point out in detail, practically

all of the machines of the manufacturers and dealers referred to below are in competition with similar machines of the United Company.

Edwin B. Stimpson & Son.

Edwin B. Stimpson of Brooklyn, a manufacturer of machinery for forty years, testified: "we can supply strip cutters" which can be used "to cut strips of welt" (R. Vol. 1, p. 882, line 38; p. 884, lines 3–12). Other witnesses testified that "by an adjustment of the knives" a strip cutter can "be converted into a machine for flexing, and it has been so used. It is sometimes known as an insole flexer" (R. Vol. 1, p. 885, lines 43–44; p. 886, line 1; p. 890, lines 23–25). Stimpson finally stated that the only machines "which I have placed with shoe manufacturers within the last five years are the pinking and perforating machines, which are used for ornamental perforations" (R. Vol. 1, p. 884, lines 15–19).

All of these machines are in direct competition with machines of the United Company (Defs.' Exs. 227, 232, R. Vol. 5, pp. 425, 426, 482, 483, 498).

Edward E. Spencer & Company.

Edward E. Spencer, Jr., of New York testified that the Spencer Company did a business in shoe machinery and accessories, building "channeling, rolling, splitting, impression stitch, buffing, and eyeletting machines"; also strip cutters (R. Vol. 1, p. 885, lines 1–6).

Mr. Spencer also testified that "John D. Randall & Company of Cincinnati put out machines for harness trade. The only machines put out by them which could be used in the shoe trade were strip cutters" (R. Vol. 1, p. 885, lines 17–19).

All of these machines are in direct competition with machines of the United Company (Defs.' Exs. 227, 228, 246, R. Vol. 5, pp. 425, 437, 684, 685, 689).

L. L. Barber & Company.

William L. Barber testified that his father had been in "business continuously" from 1859 to 1911, the name of the concern being L. L. Barber & Company.

> "The machines which we made which could be used in the manufacture of shoes were presses, dies for perforating toe caps, and perforating machines for perforating uppers, and some smaller attachments which were used upon Singer sewing machines for stitching uppers" (R. Vol. 1, p. 887, lines 7–26).

The United Company also puts out machines of these several classes with the exception of the attachment for the Singer machine (Defs.' Exs. 227, 232, 246, R. Vol. 5, pp. 427, 482, 483, 687).

Leslie L. Hartwell.

Leslie L. Hartwell of Revere, superintendent for A. G. Walton & Company, testified: "I have put out a few machines which can be used in manufacturing shoes. They were a grooving machine, a sanding machine, a heel-building machine, and a counter-dividing machine." "Each of my machines had something to do with the bottom before it was attached to the upper." "I made some of the heel-building machines for our own concern and then sold the rights to manufacture them to the Young Machinery Company." "The machine is used by heel manufacturers, and by shoe manufacturers who make their heels. It is the universal heel-building machine today" (R. Vol. 1, p. 887, lines 43–44; p. 888, lines 1–27).

All of the machines above mentioned are in direct competition with machines of the United Company (Defs.' Exs. 227, 228, 232, 246, R. Vol. 5, pp. 426, 434, 508, 685, 688).

J. S. Wheeler & Company.

Joshua S. Wheeler of Winthrop, "principal owner of the business of J. S. Wheeler & Company," testified that that

concern makes welt cutting, counter-dividing and other new machines. "We also rebuild shoe machinery" such as "vamp machines," "sole cutters," "National stitchers" and "Puritan stitchers" (R. Vol. 1, p. 889, lines 42–44; p. 890, lines 1–17).

All of these machines are in direct competition with machines of the United Company (Defs.' Exs. 227, 228, 232, R. Vol. 5, pp. 425, 426, 435, 526; also Vol. 2, p. 2244).

Puritan Manufacturing Company.

John H. Lingley of Brockton, manager of the Puritan Mfg. Company, after mentioning a half-dozen types of machines sold by his company, said:

> "Our welt-seaming machine attaches a McKay welt to the sole before it is laid. Our Puritan fair-stitching machine and our vamp-welt-seaming machine are used in the operation of attaching the sole to the upper. All the machines mentioned are sold to shoe manufacturers" (R. Vol. 1, p. 892, lines 4–9).
>
> "We sell a good many Puritan fair-stitch machines, and have probably sold around a thousand since we first went into business in 1892 or 1894" (R. Vol. 1, p. 891, lines 36–38).

The stitchers which the United Company puts out in the Goodyear Department compete with these machines of the Puritan Company in attaching soles to welts (Defs.' Exs. 228, 232, 235, R. Vol. 5, pp. 439, 505, 556).

Victor Shoe Machinery Company.

L. E. Johnson, of the Victor Company, testified that in four or five months they have delivered "thirty-two lock-stitch machines to small shoe manufacturers" (R. Vol. 1, p. 893, line 24).

> "We have been putting out a rough rounder and channeler longer than that. It is a machine intended to perform an operation on the sole of a shoe, for completing the work of attaching the sole to the upper" (R. Vol. 1, p. 894, lines 6–12).

He referred to five or six other machines put out by his company and some similar machines put out by the Champion Shoe Machinery Company or the Universal Shoe Machinery Company and the Specialty Shoe Machinery Company, all of Missouri. Some of these machines were intended for the "repair trade," but some were for the "shoe factory trade" and "could be used on a new shoe" (R. Vol. 1, pp. 893–895). Among the machines put out by these companies, he mentioned "a lock-stitch machine" and "a welt machine" (R. Vol. 1, p. 893, lines 40–42; see also p. 921, lines 17–22).

All of these machines are in direct competition with machines of the United Company (Defs.' Ex. 232, R. Vol. 5, pp. 512, 513, 515, 516).

George Knight & Company.

George Knight of Brockton stated that his concern had "put out a power gang eyeletting machine" and also makes—

> "tip-perforating presses (models E, F, & G), hand, foot, and power tip-punching machines, vamp creasers, feather edgers, lip turners, and K and K cementing machines. We do make all of these. We have made heel shaving, lining sticking, and heel building machines in the [about 29] years I have been in business" (R. Vol. 1, p. 902, lines 40–41; p. 903, lines 28–33).

The United Company puts out machines in direct competition with all of these Knight machines (Defs.' Exs. 227, 228, 232, 235, 246, R. Vol. 5, pp. 427, 431, 483, 494, 497, 498, 500, 503, 527, 634, 684).

Kimball Brothers & Sprague.

Fred S. Sprague, of Kimball Brothers & Sprague, Brockton, testified that they "make a welt laying machine" and "sell it to shoe manufacturers" (R. Vol. 1, p. 904, lines 1–7).

The United Company has two competing models of welt laying machine (Defs.' Ex. 232, R. Vol. 5, p. 507).

Thomas Bostock.

Thomas Bostock of Brockton named ten different machines which he was—

> "making right along," each performing "an operation which is either preparing or finishing the bottom of the shoe before or after it is attached to the upper, or getting the upper ready for attachment to the sole" (R. Vol. 1, p. 905).
>
> "We have put out as many as one hundred heel building machines a year," mostly to shoe manufacturers (R. Vol. 1, p. 904, lines 42–43; p. 905, lines 36–40).

• The machines which he named comprise, in addition to the heel building machine, a toe softener, a heel lift gouger, a cap (tap) cutter, a spring heel scarfer, a rand turner, a rand chopper, a welt slasher, a rand cutter, and a box toe press.

The United Company has machines which directly compete with practically all of these Bostock machines (Defs.' Ex. 232, R. Vol. 5, pp. 497, 498, 504–510).

Carlson Brothers.

Carl A. Carlson of Brockton testified: "We make a toe softening machine used for softening the box of the shoe before it is lasted. . . . They are used altogether by shoe manufacturers" (R. Vol. 1, p. 906, lines 1–7).

The United Company puts out a machine for the same purpose (Defs.' Ex. 232, R. Vol. 5, pp. 509, 510).

Albert G. Brewer.

Albert G. Brewer of Natick testified, "I make a McKay welt-slashing machine, which I sell to shoe manufacturers" (R. Vol. 1, p. 907, lines 13–16).

The United Company puts out a machine for the same purpose (Defs.' Ex. 232, R. Vol. 5, p. 506).

Tower Brothers.

John M. Tower of Tower Bros., Hudson, Mass., named eight machines made and put out by his concern which "all have to do with finishing the sole or the heel after it is attached to the upper" and also two more "for dieing out the sole."

The names of these ten machines as given by Mr. Tower follow: "high-speed buffer, beveling machine, edge trimmer, edge scourer, stamping machine, heel trimmer, rotary edge setter, power stripping machine," "vamp cutter," "dieing-out" machine (R. Vol. 1, p. 908, lines 10–17).

All of these machines are in direct competition with machines of the United Company (Defs.' Exs. 228, 232, R. Vol. 5, pp. 434, 480, 481, 496, 501, 521–526).

J. S. Holt Co. (Inc.).

John Bulmer of Boston, superintendent of the Holt Company, testified that his "company is engaged in the business of second-hand shoe machinery." He stated we "rebuild" McKay sewing machines (R. Vol. 1, p. 908, lines 19–41).

The United Company is one of the many concerns putting out McKay sewing machines (R. Vol. 1, p. 858, lines 35–45; p. 859, lines 1–21).

Union Special Machine Company.

Alonzo H. Hatch, New England manager for the Union Special Machine Company, stated that most of his company's machines were used "for performing operations for preparing the upper for the lasting operation," but that they had an "overedge machine" and a "butting machine" "used for preparing an imitation Gem insole" and that they had "fitted up one machine especially for making a corded welt" (R. Vol. 1, p. 909, lines 25–37; p. 910, lines 8–10).

While the United Company does not compete with the Union Special Company with respect to machines for sewing uppers, it does have various machines for preparing Gem insoles and for making welts (R. Vol. 2, pp. 2243, 2247).

Shawmut Machinery Company.

Frank P. Emerson of the Shawmut Machinery Company, of Boston, testified that his company made and put out to shoe manufacturers a McKay sewing machine of improved design, as well as a vamp and lining cementing machine, a power hammer, a tip scouring machine, and a seam rubber (R. Vol. 1, p. 910).

All of these machines are in direct competition with machines of the United Company (R. Vol. 1, p. 858, lines 35–45; p. 859, lines 1–21; Defs.' Ex. 232, R. Vol. 5, pp. 482, 483, 484, 490, 527).

Fortuna Machine Company.

George H. Diehl, Jr., of New York City, president of the Fortuna Machine Company organized in 1903, testified that they "manufacture skiving machines for skiving the uppers, vamps, and all parts of shoes" (R. Vol. 1, p. 910, lines 44–46; p. 911, lines 1–3).

The United Company puts out two similar machines in direct competition with the Fortuna machine (Defs.' Ex. 232, R. Vol. 5, pp. 481, 509).

Brockton Heel Company.

Wendell P. Bosworth, connected with the Brockton Heel Company, testified that they "supply shoe manufacturers with a heel-log building machine" and also a sanding machine (R. Vol. 1, p. 911, lines 21–34).

The United Company puts out heel building machines but not heel-log building machines. It also puts out sanding machines (Defs.' Ex. 246, R. Vol. 5, pp. 684, 688).

Stewart Brothers.

J. Hammond Stewart of Lynn, "connected with Stewart Brothers, who have been manufacturing counter machinery for approximately twenty years," which machinery "is used

for making and adjusting molded counters to the last," named and described five different machines which they build (R. Vol. 1, p. 912, lines 8–14, 33–34).

The United Company puts out several counter skiving machines which compete with Stewart machines (Defs.' Ex. 232, R. Vol. 5, p. 508), but does not have a complete line of counter machinery.

Keighley Company.

Leopold C. Tappey testified that during the year 1911, the Keighley Company, of New Jersey, "made a cleaning machine, a finishing machine, a polishing machine, and an inseam trimmer" (R. Vol. 1, p. 912, lines 38–43; p. 913, line 1).

All these machines are in direct competition with machines of the United Company or of the Xpedite Company (Defs.' Ex. 232, R. Vol. 5, pp. 513, 524–526).

C. S. Pierce Company.

Eben W. Thomas, treasurer of C. S. Pierce Company, testified that they market a machine used for skiving upper leather (R. Vol. 1, p. 913, lines 26–32).

The United Company puts out two machines of this character (Defs.' Ex. 232, R. Vol. 5, p. 481).

Beckman Machine Company.

Aaron Beckman of Lynn, connected with the Beckman Machine Company, testified that he had put out a heel finishing machine and a heel beading machine (R. Vol. 1, p. 926, lines 1–12).

The United Company, through the Xpedite Company, puts out one machine for performing both of these operations and also puts out directly two other heel beading machines (Defs.' Ex. 232, R. Vol. 5, p. 524).

Beckwith Box Toe Company.

Harry H. Beckwith of Boston testified that the Beckwith Company, which had been in business ten years, had put out during the past two years about two hundred machines used to soften the box toes in the lasting operation and that the United Company "has a machine for performing a similar operation" (R. Vol. 1, p. 926, lines 25–33).

The machine of the United Company referred to is put out in two models (Defs.' Ex. 232, R. Vol. 5, p. 510).

Boston Machine Works Company.

Harry I. Illingworth, manager of the Boston Machine Works Company, testified: "We manufacture shoe machinery, special machinery, and tools," specifying seventeen types of machines which they put upon the market as follows:—

> "We make the Monarch and the Boston beading machines for beading the tops of shoes, the Julian cementing machine, used for cementing the soles of shoes, and the New York fold cementing machine, used for cementing the edges of skived leather before folding. We have put out during the last ten years seven or eight hundred Julian cementing machines. They have gone to shoe manufacturers. We make folding machines, the Booth folding machine, used for folding the edges of the upper; the Boston machine, for similar work of a heavier character; a foot-power machine for small pieces, such as backstays; and a vamp machine, which is a special machine for folding the vamp. We make the Rochester lacing machine for lacing the upper to give the proper opening before being lasted, and marking machines for marking leather; a lining pricking machine; a snipping machine, used for snipping the edges of curves of the upper leather before folding; a tip scouring machine, and a flap-slashing machine, used for slashing the curves in the shank of the insole. We have put out perhaps fifty flap-slashing machines. They were principally sold in this country. The Julian cementing machines were nearly all—about 90%—sold in this country. We formerly made a hook-hole punching machine, but do very little on it now. It was used to prepare the upper for setting of the hooks. We handle the Union Seam rubbing machine, but do not

make it. We have the exclusive sale of it. It is used for pressing the seams of the uppers. . . . We make an insole pinking machine" (R. Vol. 1, p. 926, lines 39–44; p. 927).

He added: "We hold ourselves ready to supply all of the machines named" in our catalogue. "We employ 100 men, more or less, altogether" (R. Vol. 1, p. 927, lines 39–42; catalogue in Defs.' Physical Ex. 321).

The United Company puts out machines for performing nearly all of the operations which are performed by the various machines mentioned by Mr. Illingworth (Defs.' Ex. 232, R. Vol. 5, pp. 481, 490, 493, 496, 499–501, 504–407, 527).

Larsen Machine Company.

Charles G. Wirths, an officer of the Larsen Machine Company, of New York, testified: "We make a welt and outsole lockstitch machine. It is used principally by shoe repairers." "There is no reason why it could not be used for making new shoes except that it is not as fast as a Goodyear stitcher" (R. Vol. 1, p. 928, lines 2–15).

The Goodyear Outsole Rapid Lockstitch Machine of the United Company is put out for this character of work (Defs.' Ex. 232, R. Vol. 5, p. 516).

Matson-Hoyt Machine Company.

Carl A. Matson of Lynn testified that the Matson-Hoyt Company "make a heel-finishing machine" sold "directly to shoe manufacturers" of which "about a dozen" had been put out "within the last three years" (R. Vol. 1, p. 928, lines 29–38).

The United Company, through the Xpedite Company, puts out a machine of this character (Defs.' Ex. 232, R. Vol. 5, p. 524).

Quarmby & Hilliker.

Charles T. Hilliker of Lynn testified that Quarmby & Hilliker make more than half a dozen types of machines, including sole cutting and leather stripping machines, which go to shoe

manufacturers and "to persons making parts for shoe manufacturers, such as soles or linings or uppers." "We have made between one hundred and fifty and two hundred dinking machines." Referring to his catalogue and letter contained in Defendants' Physical Exhibit 321 (p. 10 and the reverse of p. 11), he said "We . . . could make any of the machines named if we were asked to" (R. Vol. 1, p. 928, lines 42–45; p. 929).

The United Company puts out substantially the same line of machines (R. Vol. 1, p. 929, lines 27–29; Defs.' Ex. 232, R. Vol. 5, pp. 480, 481, 496–498, 501, 502, 506).

Holmes Leather Working Machinery Company.

Frank A. Bradford, manager of the Holmes Machinery Company of Cambridgeport, testified that they make a sole-leather roller sometimes sold to shoe manufacturers (R. Vol. 1, p. 941, lines 29–33).

The United Company also puts out such rolling machines (Defs.' Exs. 227, 228, R. Vol. 5, pp. 427, 437).

Harlow Shoe Finishing Machinery Company.

Edwin E. Bartlett of Hyde Park, connected with the Harlow Shoe Finishing Machinery Company, testified that he had put out about one hundred and thirty-seven heel finishing machines to shoe manufacturers and also put out personally a heel-seat beading machine (R. Vol. 1, p. 942, lines 6–14).

The United Company, through the Xpedite Company, puts out one machine for performing both the heel finishing and heel beading operations. It also puts out directly two other heel-seat beading machines (Defs.' Ex. 232, R. Vol. 5, p. 524).

W. J. Young Machinery Company.

William J. Young of Peabody, treasurer of the W. J. Young Company, testified that they manufacture or put out "a heel building machine;"

> "a buffing machine for buffing counters and box toes; a wedge-strip beveling machine, which makes wedge lifts

for use in heels, and which goes to shoe manufacturers and heel manufacturers, probably more to the latter; a heel compressing machine, which is sold almost altogether to heel manufacturers at the present time; a wedge lift-cutting machine for dieing out the wedge lifts from the wedge strips in connection with the heel, which goes to both heel makers and shoe manufacturers; a counter end finishing machine which is used in connection with the counter; a heel-lift gouging machine, which goes to both heel makers and shoe manufacturers about equally; a counter molding machine; a box-toe skiving machine; a counter-skiving machine; a shank-piece skiving machine; and a spring-heel scarfing machine. We do not build a rand-splitting machine, though we may possibly have handled one or two secondhand, and have not as yet put out a treeing machine. We do put out a waxing and rolling machine for counters. We employ between forty and fifty men.

"We have been in business for twenty-four or twenty-five years. Our business has been growing. . . . We lease on a royalty rental our automatic lift-die machine, which has not yet been mentioned, and our counter-buffing machine, and one or two machines for molding the heel seat. The others we sell. . . . we are preparing to build a pneumatic treeing machine. . . . We make a rand trimming machine" (R. Vol. 1, p. 942, lines 34–45; p. 943, lines 1–16, 27–30).

He stated also that, during seven or eight years, he had "put out between two and three thousand heel building machines" in this country, largely to shoe manufacturers, and also "three or four hundred counter-molding machines, over three hundred heel-compressing machines, and one hundred and fifty to two hundred lift-gouging machines." "We advertise ourselves as manufacturers of the most complete line of counter and heel making machines, and we consider that to be true" (R. Vol. 1, p. 942, lines 28–33; p. 943, lines 16–24).

Practically all of these machines named by Young are in direct competition with machines of the United Company (R. Vol. 2, p. 2445; Defs.' Exs. 228, 232, 235, R. Vol. 5, pp. 431, 432, 435, 497, 498, 504–509, 526, 653, 654).

Donnelly Machine Company.

John F. Donnelly of Brockton testified that the Donnelly Machine Company "designs, manufactures, and rebuilds shoe machinery." He named eight or ten different machines all of which, except two, "operate on the bottom or the heel of the shoe" (R. Vol. 1, p. 943, lines 36–44; p. 944).

With hardly a single exception, all of these machines are in direct competition with machines of the United Company (Defs.' Ex. 232, R. Vol. 5, pp. 481–483, 519, 522–525; as to McKay sewers, see also R. Vol. 1, p. 858, lines 35–45; p. 859, lines 1–21).

American Worsted Machinery Company.

Bicknell Hall of Abington testified that for seven years, beginning about 1907, he had been connected with the American Worsted Machinery Company which had, ready to put out, more than a dozen types of machines and had facilities for making and were ready to make about a dozen others; he quoted specific prices therefor. They had made and put out twenty-five or thirty McKay channeling machines to shoe manufacturers and had also made and sold "between one hundred and twenty-five and one hundred and fifty eyeletting machines." They had also handled a McKay sewing machine and made parts for it (R. Vol. 1, pp. 953–954; p. 976, lines 25–28).

With hardly a single exception all of the machines named by Mr. Hall are in direct competition with the machines of the United Company (Defs.' Exs. 232, 235, R. Vol. 5, pp. 482, 483, 490–491, 494–495, 500, 503–505, 507, 517, 519, 525, 603; see also Vol. 2, p. 2246 and P.'s Ex. 190 (a physical exhibit)).

Atlas Tack Company.

William F. Donovan, president of the Atlas Tack Company, testified:—

> "Our output during the last year has been from forty to sixty million eyelets per month. Three or four years

ago, before my advent into the business, it was nearly twice as high. Practically all of the eyelets we make go into the shoe trade" (R. Vol. 1, p. 959, lines 7–10).

The "United Company owns or has an interest in" several competing eyelet concerns (R. Vol. 1, p. 477, lines 1–4).

ADDITIONAL SHOE MACHINERY MANUFACTURERS CALLED IN REBUTTAL.

We have omitted, in the foregoing, reference to the testimony of certain of the rebuttal witnesses, as for example Morris of the Singer Sewing Machine Company, Spaulding of the Willcox and Gibbs Company, and Heath of the Boston Last Company (R. Vol. 1, pp. 886, 890–891, 901), whose concerns admittedly supply shoe machinery to shoe manufacturers but do not supply machines for the operations as to which the United States charges a monopoly. We have likewise omitted reference to still other witnesses, such as Chamberlain of the Walpole Shoe Supply Company and Hammond of the Becket & Hammond Machine Company (R. Vol. 1, pp. 889, 925), whose concerns actually supply machines for such operations to shoe manufacturers *although the United Company does not supply machines competing therewith* (Defs'. Exs. 232, 235, R. Vol. 5, pp. 521, 622).

Supreme Court of the United States

OCTOBER TERM, 1917

No. 207

THE UNITED STATES,
Appellant,

v.

UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, ET AL.,
Appellees.

REPLY TO BRIEF FOR THE UNITED STATES.

(REARGUMENT)

FREDERICK P. FISH
CHARLES F. CHOATE, JR.
MALCOLM DONALD
Counsel for Appellees.

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1917

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REPLY TO BRIEF FOR THE UNITED STATES.

GENERAL CONSIDERATIONS APPLICABLE TO BRIEF FOR THE UNITED STATES.

The brief for the United States contains no specification of errors relied upon as required by the Supreme Court rules and pays little regard to the charge made by the petition or the issues which the United States presented in the court below, or the admissions made by the attorneys for the United States in the course of the trial in that court.

No reference is made in the brief to the fundamental question which lies at the threshold of the case, viz., whether there is any evidence to support the findings of the District Court upon disputed questions of fact, all of which were adverse to the United States. The brief in most instances does not even attempt to state the evidence which sustains the District Court's findings, but only the evidence on which

the United States relied in the District Court and which that court either did not accept as true or did not feel sustained the contentions of the United States in view of other evidence in the case. Many facts are stated in the brief as if they were undisputed or uncontradicted, when in truth they were absolutely disproved or found unsustained by the District Court, or abandoned by the attorneys for the United States who conducted the trial.

Furthermore, the brief for the United States in many instances seriously misstates and misconstrues the evidence to which it does refer. The result is that the argument of the United States is founded largely upon conclusions and assumptions which have no foundation in the record.

For example, the brief writer says of the testimony of one witness (p. 46), "he made no comparison between the Eppler and Goodyear *welter* further than to say that they ran side by side in the same factory" (italics theirs). As a matter of fact the witness said, "The Goodyear welter was the best" (R. Vol. 1, p. 938, line 2).

The brief asserts that Mr. Winslow testified that the McKay sewing machine could be obtained elsewhere, but that he was wholly unable to name any concerns other than the United Company which manufactured it (p. 133). The fact is that Mr. Winslow named 26 different concerns, some of which he stated were manufacturing it, and some of which were dealing in it (R. Vol. 1, pp. 858–859).

The brief asserts (p. 67) that "*the United Company acquired the shoe machinery business* and assets of fifty-six individuals, partnerships, and corporation . . ." (italics ours). As a matter of fact the majority of these concerns were not engaged in the shoe machinery business at all (see Main Brief, pp. 456–463).

The brief asserts (p. 42) that Whitman testified that the work done by the Eppler machine was satisfactory. Whitman made no such statement. He testified that the Goodyear "did better work on the shoe" (R. Vol. 1, p. 916, lines 15–16).

The brief asserts (p. 91) that the United Company acquired from Joseph W. Leary "his business of *manufacturing* and dealing in shoe machinery" (italics ours). The record shows that Leary was doing no manufacturing of any kind (*infra*, p. 167).

The brief not only cites figures taken from the Census of Manufactures, 1914 (foot-note, p. 8), which were not in evidence at all, and which differ from the situation which the evidence showed existed in 1911 (R. Vol. 1, p. 26, line 39), but it also incorrectly states the figures given by the Census of 1914, as a reference to the original document will show (*infra*, pp. 75–77).

The foregoing are only illustrations of numerous distortions of the testimony.

In respect to the leases the brief makes statements as to the various clauses and their effect which are wholly without justification.

We are able in this reply brief to deal with only a few of these misconstructions, omissions, and misstatements, but we believe we refer to enough to show that the brief gives an entirely erroneous view of the case.

We believe ourselves justified in saying that the brief writer, disregarding every canon of fair play, has sought by exaggerated and distorted statements and by vituperation to divert the Court's attention from the real issues in the case.

THE CASE WHICH THE UNITED STATES UNDERTOOK TO PROVE AND THE CASE AS NOW PRESENTED.

Before considering specifically the brief writer's contentions and arguments we wish to call the Court's attention to the difference between the case which the United States charged in the petition and undertook to prove and the case as now presented to this Court.

The case which the United States undertook to prove was as follows:—

The United States charged that the constituent companies in 1899 held patents under which they lawfully controlled practically all the business of the country in certain specified kinds of bottoming machines; that these patents were about to expire and thus the lawful monopoly those companies held would be lost. It charged that the defendants thereupon determined to continue the monopoly of the constituent companies by unlawful means after the expiration of the patents and to extend this unlawful monopoly to all other kinds of shoe machinery. It alleged that they carried out this purpose by combining the constituent companies, by undertaking to acquire all concerns engaged in manufacturing any and every kind of shoe machinery, that is, the kinds which were not manufactured by the constituent companies, by buying up all competitors who entered the business at exorbitant prices, by threats against and intimidation of competitors, by exacting unlawful covenants from all who were engaged in the business and all inventors whose business or inventions they acquired, by buying patents and not

using them, and finally, by discontinuing the sale of machines, by refusing to lease any essential machines unless the shoe manufacturer took from them practically all other machines of the kinds he needed, and by inserting in the leases covenants on the part of the lessee requiring him to use the United Company's machines of the kind leased, and of all other kinds exclusively for seventeen years, and that by these means the United Company acquired a complete monopoly of all shoe machinery.

This is the case the United States undertook to prove. It was a wholly fictitious case without any foundation or justification in fact. As the evidence was presented in the District Court the United States was gradually compelled to admit it could not prove, and therefore to abandon most of its various charges, and the remainder were completely disproved.

Thus it developed in the trial that the patents of the constituent companies were not about to expire in 1899 and that this was, therefore, not a motive for the formation of the United Company; that the defendants never attempted to acquire all concerns engaged in the shoe machinery industry; that they never attempted to acquire all competitors, although a large number of such competitors exist and although the principal competitors were offered to the United Company for sale; that, as a matter of fact, they did not acquire competing concerns at all, but that the acquisitions were made to enable them to obtain something new such as supplies which they were not then manufacturing, other types of machines which they did not have or inventions to assist them in developing new machines or to improve their existing machines; that these acquisitions were not made at exorbitant prices; that the United

Company did not acquire patents and hold them without making any use of them as alleged; that the covenants taken from inventors and vendors were only such as are lawful, usual, and normal in such transactions; that, in spite of every possible effort to prove the contrary, the United Company did not intimidate or threaten competitors or lessees, but that its conduct was in these respects above reproach; that the United Company did not discontinue the sale of machines, as the constituent companies had never sold them; that it did not refuse to lease machines unless the shoe manufacturer took practically all other machines from them; and that it did not insert in its leases covenants requiring the lessee to use its machines of the kind leased or of any other kinds exclusively, and that it did not acquire a monopoly of all shoe machinery.

In other words, the entire case which the United States undertook to prove was shown to be without any foundation and all of the charges on which it was based were either abandoned by counsel or found by the District Court to be unfounded.

The United States, therefore, attempted to make a new case, and it is this attempt to prove a new and different case which is before this Court. It now charges that there was competition between certain of the constituent companies. It was disproved that there was such competition in any practical or material sense, but even if the contentions of the United States were true, it is clear that the competition was so trivial that no reasonable person could believe that the United Company was formed to eliminate it or that its elimination was of any practical consequence in the trade. The United States, while abandoning the charge of an attempt to acquire all concerns engaged in the shoe machin-

ery industry, still charges that competitors were acquired, but the evidence in this respect, as the District Court found, is totally unconvincing. Its attempts to prove that the United Company used threats or intimidation or that it exacted unlawful covenants from vendors or inventors are equally unconvincing. The United States has abandoned all attempt to prove that the United Company's leases contain any covenants requiring the lessee to use all kinds of machinery exclusively, or that the United Company refuses to lease machinery of one type unless all other kinds are taken. It now merely insists that the leases do have the effect of requiring the lessee to take and use a certain number of bottoming machines forming only a very small portion of the total number and types of machines furnished by the United Company, and a still smaller proportion of the total number and types of machines which the shoe manufacturer requires. The United States disclaims any contention that the United Company has a monopoly of all shoe machinery, and has limited its charge to a monopoly of a comparatively few types of patented bottoming machines in which the United Company has specialized, and which either it or its constituent companies created under its patents.

In its attempt to prove this very different case the United States has in its brief completely disregarded the findings of the District Court, omitted reference to all testimony unfavorable to it, and distorted much of the testimony to which it does refer.

COMMENTS UPON THE PORTION OF THE BRIEF FOR THE UNITED STATES TREATING OF THE LEASES.

The brief for the United States asserts that, irrespective of whether the original formation of the United Company, or the subsequent acquisitions of that company, were lawful or unlawful, the defendants have adopted and are enforcing a system of leasing which is unlawful in itself (see Brief for the United States, p. 154).

This is not the charge made by the petition. The petition charges that the clauses in the leases objected to were adopted in pursuance of the unlawful plan specified in the petition and that they constituted only a step in carrying out such unlawful plan. That the leases were not adopted for the purpose of carrying out this plan and are clearly not adapted to carry out any such a plan is conclusively shown by the record (see our Main Brief, pp. 347–357).

Furthermore, the United States does not limit its criticism to clauses which the petition specifically charges are contained in the leases and are unlawful. The allegations of the petition in respect to the leases are (see our Main Brief, pp. 235–238) that the United Company discontinued selling machines and adopted arbitrary and oppressive leases which are stated to be unlawful in that they—

(1) Required the lessee to covenant to use the United Company's machines, both of the kind leased and of all other kinds exclusively;

(2) Permitted the United Company to cancel its leases of all machines if these covenants were broken; and

(3) Required the lessee to use the leased machinery for seventeen years.

The United States in its brief criticises the seventeen-year term contained in the leases. But there are no covenants in the leases requiring the lessee to use the United Company's machines of the kind leased exclusively or requiring the lessee to use other kinds of machines at all, and, of course, no clause permitting the United Company to cancel its leases if these covenants which are not contained in the leases are broken. While the United States attempts in its brief to show that such covenants appear in the leases indirectly, its contention wholly fails. Its argument, therefore, is mainly directed to a criticism of clauses which are not such as are specified in the petition as unlawful.

Furthermore, the argument of the United States is based upon a misconstruction of the clauses of the leases, upon unwarranted inferences and upon misleading illustrations. Its findings as to the effect of the leases, therefore, are entirely unwarranted.

There also runs through the entire argument the contention that the United Company cannot charge a lower rate for the use of a series of machines than is charged for the use of the various machines of the series when taken for use separately, a view so opposed to the interests of shoe manufacturers, who, if this were true, would be deprived of the right to share in the economies resulting from a wholesale use of a series of machines, and so opposed to the usual and normal business practice of charging a wholesale rate for the use or purchase of a number of articles, that we submit it has no justification.

We respectfully call the Court's careful attention to the following analysis of the contentions of the United States.

Contention of the United States in respect to the Exclusive Use Cancellation Clause.

The brief writer charges that the Exclusive Use Cancellation Clause compels a shoe manufacturer taking a lease of a machine to use machines of this same kind obtained from the United Company exclusively. This is not the fact.

The brief writer says (p. 173),—

> "The exclusive-use clause, for example, obviously limits the freedom of choice of every lessee as to all his future needs for machines of the kind leased and clearly restricts access to him, as a possible customer for any such machines, of all who seek to compete with defendants as to those machines."

See also Brief for the United States, pp. 175–176.

The Exclusive Use Cancellation Clause does not forbid the lessee to use other machines of the same kind. On the contrary, it expressly recognizes the lessee's right to take a competitor's machines of the same kind. It merely provides that if the lessee supplies himself with other machines of the same kind the United Company may withdraw its own machines of this kind (see our Main Brief, pp. 312–323).

If, therefore, a shoe manufacturer holding, for example, one of the United Company's lasting machines under lease desires to discard such machine and obtain a machine from a competitor to do his lasting, the Exclusive Use Cancellation Clause obviously does not prevent his doing so. This clause merely permits the United Company in such a case to withdraw its own machine. Since the shoe manufacturer in the case stated has given up the use of the United Company's lasting machine, such withdrawal is certainly fair and it cannot injure the shoe manufacturer.

The Full Capacity Clause, which requires the shoe manufacturer to use a machine which he leases to the extent that he has work for it on shoes on which he is authorized to use it, is the only clause in any lease which would interfere with such shoe manufacturer ceasing to use the United Company's machine and substituting for his work a competitor's machine.

If such shoe manufacturer holding a lasting machine under lease from the United Company does not wish to discard the machine but decides to double his output and to take an additional machine from a competitor, the Exclusive Use Cancellation Clause again does not prevent. Under the Exclusive Use Cancellation Clause the United Company's sole right is to withdraw its own lasting machine if it so desires. We have shown that this right is reserved in order to protect the United Company against an unfair or dishonest use of its machine and that it has never been enforced for any other purpose (see our Main Brief, pp. 318–319). But assuming that the United Company in the case just stated would enforce the clause by withdrawing its own machine, what would be the result? The fact that such shoe manufacturer takes his additional lasting machine from a competitor shows that he prefers such competitor's machines. Therefore, when the United Company withdraws its lasting machine the shoe manufacturer is free to use the competitor's machine which he prefers in place of the United Company's machine which he had leased and by the Full Capacity Clause had agreed to use.

The statement of the brief writer, therefore, that the Exclusive Use Clause cuts off the right of the shoe manufacturer to take a competitor's machines of the same kind either for present or future work is without foundation.

Such being the fact, the United States in its brief filed at the last hearing attempted to show that the Exclusive Use Cancellation Clause taken in connection with the Cancellation for Breach Clause has a more far-reaching effect than that stated above. Its contention was that the Exclusive Use Cancellation Clause was a "condition . . . expressed to be obligatory upon the lessee"; that a lessee who supplied himself with other machines of the same kind as those leased violated this condition which he had agreed to fulfil; and that, therefore, the United Company could cancel all its leases of the machines of all kinds held by the lessee under the Cancellation for Breach Clause. In other words, it contended that by the exercise of the Exclusive Use Cancellation Clause a lessee who took a lasting machine from a competitor might lose his welting, pulling-over, and other machines.

That this is absolutely untrue is proved by an examination of any of the leases. Take, for example, P.'s Ex. 21, R. Vol. 3, p. 182, referred to by the United States as a sample lease. This lease provides (p. 182),—

> "And the following are agreed to as conditions of this agreement, all of which the lessee covenants and agrees to keep and perform."

There follow seven numbered paragraphs providing for various matters, such as the payment of royalty, taxes, the use of the machine, etc. The lease then provides (p. 187),—

> "And that the following stipulations and provisions are agreed to."

There then follow certain provisions, including the Exclusive Use Cancellation Clause and the Cancellation for

Breach Clause. The Exclusive Use Cancellation Clause (par. eight, pp. 187–188) provides that if the lessee fails to use lasting machinery of the lessor for lasting all his shoes, the lessor may terminate his leases of lasting machinery. The Cancellation for Breach Clause (par. nine, p. 188) provides that if the lessee commits a "breach or default" in the observance of any "conditions" contained therein or in any other lease "expressed to be obligatory upon the lessee," the lessor may cancel all leases. It is obvious: (1) That the "conditions" referred to in the Cancellation for Breach Clause which authorize cancellation are only those expressly defined as such in the lease and contained in paragraphs one to seven inclusive. The Exclusive Use Cancellation Clause is not one of these conditions. (2) That the Exclusive Use Cancellation Clause is not obligatory upon the lessee, but a mere option reserved by the lessor, and, therefore, clearly not a condition "expressed to be obligatory upon the lessee" such as is referred to in the Cancellation for Breach Clause. No "breach or default" can be committed of this clause. It results that a shoe manufacturer by supplying himself with another machine of the same kind as one already leased does not violate any condition obligatory upon him, and does not give the United Company any right to cancel its leases of all machines under the Cancellation for Breach Clause. This is the plain meaning of the language used and the interpretation which has always been placed upon the clauses.

This being the case, the United States in its present brief does not flatly state that the use of other machines gives the United Company a right to cancel all leases, but the brief writer implies that such is the case (Brief for the United States, pp. 175–176). The writer states that the

fear that this right may exist deters a shoe manufacturer from obtaining other machines of the kind leased. There is not the slightest evidence that any shoe manufacturer ever supposed that the Exclusive Use Cancellation Clause gave this right, or that the United Company ever asserted that it did. In a footnote (p. 176) our statement that the Exclusive Use Cancellation Clause is not a condition obligatory upon the lessee is called a "quibble." It is not a quibble; it is a simple statement of fact which completely refutes the contention of the United States as to the effect of the Exclusive Use Cancellation Clause on which a considerable portion of its argument in respect to the leases is founded.

Contention as to the Cumulative Effect of the Full Capacity Clause and the Cancellation for Breach Clause.

At page 173 of the brief for the United States the writer admits that certain clauses considered by themselves, such as the Full Capacity Clause, may be "unexceptionable," but he contends that the "combined and cumulative effect" of such clause with other clauses constitutes a clearly illegal restraint of trade.

He states that if it be assumed that the Full Capacity Clause standing alone is lawful, nevertheless, taken in connection with the Cancellation for Breach Clause it has a far wider and unlawful effect.

The Full Capacity Clause requires the shoe manufacturer to use the leased machine to full capacity on shoes of the kind on which he is permitted to use it so far as he has such work for it to perform. The result, of course, is that the

shoe manufacturer, having taken this machine and agreed to use it, cannot, provided he has such work for it to perform, discard the machine and use another machine without violating his agreement (p. 174). For any additional work he may have or for any work which he is not authorized to do on the leased machine he is free to use other machines. If he violates the Full Capacity Clause by discarding the United Company's machine and substituting another machine, all his leases may be cancelled if the United Company exercises its option under the Cancellation for Breach Clause.

The United States contends that in this way the Cancellation for Breach Clause gives the Full Capacity Clause an additional or cumulative effect. But this is entirely untrue, except that the Cancellation for Breach Clause gives a remedy in case of a violation of the Full Capacity Clause just as it gives a remedy in case of a violation of the agreement to pay taxes or royalties. So long as the lessee fulfils his lawful agreement contained in the Full Capacity Clause, the Cancellation for Breach Clause has no effect whatsoever, as it cannot be exercised.

Would the brief writer contend that the right to cancel the leases for a default by the lessee to comply with his agreements to pay taxes as agreed makes the agreement to pay taxes unlawful? If not, the right to cancel for failure to abide by the Full Capacity Clause cannot make that clause unlawful.

The contention of the United States is that, though the United Company may lawfully require a lessee to agree to use his leased machine to capacity so far as he has work for it to perform, it cannot provide a remedy in case the lessee decides he does not wish to abide by his agreement. In

other words, it contends that, though the lessee may be lawfully asked to covenant to use the leased machine, the United Company is not entitled to protection if he fails to do so. The mere statement of this proposition is sufficient refutation.

The fact that shoe manufacturers taking machines which they have agreed to use are not free to discard these machines and substitute a competitor's machine is not due to the cumulative effect of these two clauses, but is due solely to the effect of the Full Capacity Clause.

Alleged Cumulative Effect of the Full Capacity Clause and the Restricted Use Clause.

The Restricted Use Clause is a mere restriction on the use of the United Company's leased machine. It does not require the lessee to use the leased machine or any other machine. It merely provides that the United Company's machine shall not be used under certain conditions (see our Main Brief, pp. 331–332).

The contention of the United States in respect to the leases is that a lessee taking one machine is unlawfully required or compelled to use other machines.

At the previous hearing in this Court and in the District Court the contention of the United States was that the initial payments charged for unrestricted leases were so excessive that a shoe manufacturer desiring to take one kind of machine from the United Company was compelled to take a restricted lease of the machine, and that owing to the restrictions in such lease he was compelled to take certain other machines which he would otherwise have taken from competitors in order to use the machines which

he did desire to take from the United Company. While the machines which, according to this contention, he was thus indirectly induced to take were limited in number, the United States practically rested its contention on this argument.

In the present brief the writer advances for the first time a new contention, namely, that by the combined effect of the Full Capacity Clause and the Restricted Use Clause, the lessee is made to agree to take other machines than those leased, and further, that the combined effect of these two clauses may compel him to do business with the United Company forever.

The contention is ingenious but entirely fallacious, being based upon a complete misconstruction of the Full Capacity Clause. The actual fact is that the combined effect of the Full Capacity Clause and the Restricted Use Clause is to limit the scope of the Full Capacity Clause, not to enlarge its scope.

The argument of the brief writer is as follows (Brief for the United States, pp. 180–181):—

A lessee takes a lease of lasting machines in 1910. In 1926 he takes a restricted lease of metallic machines. In 1927 his lease of lasting machines expires. His lease of metallic machines, however, runs for sixteen years longer. He has agreed by the Full Capacity Clause in the metallic lease to use the metallic machines to capacity, and on account of the Restricted Use Clause contained in that form of lease he can only use the metallic machines in connection with the United Company's lasting machines. To fulfil his agreement to use the metallic machines the brief writer alleges he must, therefore, take another lease of lasting machines. It is alleged he is thus required by the Full

Capacity Clause and the Restricted Use Clause in the metallic lease to use other types of machines, that is, lasting machines, and to take a new lease of such lasting machines when his existing lease expires. Thus, it is alleged, as his leases expire he must renew them.

This illustration, according to the brief writer, shows (p. 181),—

> . . . "the hollowness of the defendants' contention that the prohibitive clause is a mere restriction of the right to use the machine leased under it and not an obligation of the lessee that he will not use other machines."

So it would if his statement of the case were true.

But this ingenious contention is based entirely on a misstatement as to the wording and scope of the Full Capacity Clause.

Take the Full Capacity Clause contained in P.'s Ex. 30 (R. Vol. 3, p. 278), which is the restricted form of metallic lease. This provides as follows (par. three, p. 281):—

> "The lessee shall use the said machinery to its full capacity so far as the number and kind of boots and shoes made in his factory will permit, except that the lessee agrees that the said machinery shall not be used in the manufacture of any boots or shoes which are lasted on machines other than those leased from the lessor. . . ."

The clause clearly provides that the lessee shall use the metallic machines to capacity only if and to the extent that he has shoes which are lasted on the United Company's machines. The lessee is not required by the metallic lease to have any shoes so lasted, and if he has no such shoes he not only is not required to use the United Company's metallic machines to capacity on other kinds of shoes, but he is forbidden to do so.

The actual result in the instance cited by the brief writer is, therefore, the exact reverse of what he alleges. When the shoe manufacturer's lease of lasting machines expires in 1927 he remains under an obligation to use the United Company's metallic machine only if he has shoes lasted on the United Company's lasting machines. He is absolutely free to return the United Company's lasting machines and to obtain his lasting machines from a competitor. If he does so, he will have no shoes lasted by the United Company's machines and, therefore, will be freed from any obligation to use the United Company's metallic machines either to capacity or at all. In fact he will be forbidden to use them on the shoes he is then making unless he changes his restricted lease of the metallic machines for an unrestricted lease.

Instead, therefore, of compelling the shoe manufacturer to take a new lease of lasting machines, the Restricted Use Clause in the metallic lease enables the lessee by using a competitor's lasting machines to free himself from his obligation under the Full Capacity Clause to use the metallic machines if he so desires, although his lease of those machines runs for an additional sixteen years.

The conclusion of the brief writer (p. 180),—

> "It results that a manufacturer once within the toils of the tying clauses never can escape,"—

is entirely false, as is also his conclusion (p. 181) that

> "in agreeing to a lease containing both the full capacity and the prohibitive clause the shoe manufacturer does agree that he will not use machines"

of other kinds supplied by competitors.

It may be noted in passing that in order to make the foregoing argument it has been necessary for the brief writer to omit in quoting an example of the Full Capacity Clause a controlling limitation contained in the very sentence which he purports to quote (see Brief for the United States, p. 165). The clause as there quoted begins,—

> "The lessor shall use the leased machinery to its full capacity. . . . "

The sentence as contained in the lease begins,—

> "Subject to the foregoing limitations, the lessee shall use the leased machinery to its full capacity . . ."

The words "subject to the foregoing limitations" are omitted in the quotation of the Full Capacity Clause at page 165 of the brief. The limitations referred to provide that the machine shall not be used on shoes on which certain operations are not performed by the United Company's machines.

Specific Example Cited by the United States to Illustrate the Effect of the Leases.

Beginning with the last paragraph on page 176 of the brief for the United States a "specific case" is taken to show the effect of the various clauses in the leases and the extent to which they restrain competition.

It is of the utmost importance to analyze this example carefully, because it is an example carefully chosen by the United States itself to illustrate the effect of the leases which, according to the United States, makes

> "competition with them [*i.e.*, the United Company] either as to the existing or the future needs for machinery of existing or future shoe manufacturers . . . entirely impossible" (p. 181).

In introducing this specific instance the brief writer says (Brief for the United States, pp. 176–177):—

> "What is important here is the fact that a shoe manufacturer about to enter the field who finds, as he will find, that he is compelled by business necessity to take one important machine from the defendants under a lease which contains a 'prohibitive clause' [that is, a Restricted Use Clause] is thereby removed as a possible customer for competitors of the defendants not only as to machines of the particular type leased, but also as to all machines of other important types used in the bottoming of shoes. This can, perhaps, best be made clear by stating a specific case, based on the facts as they were at the filing of the petition."

A summary of the "specific case" cited by the brief writer and the argument of the brief writer in reference thereto is as follows:—

1. A shoe manufacturer desiring an equipment of machines finds he must obtain lasting machines from the United Company, because the R. H. Long Company is the only other concern "professing to put them out" and it furnishes no machines for lasting standard screw, loose-nailed, McKay sewed, or turn shoes (p. 177).

2. The above reason for taking lasting machines is reinforced by the fact that if the shoe manufacturer used other lasting machines his payments for pulling-over machines, if he took them from the United Company, would be nearly tripled, and his payments for clicking machines

if he also took them from the United Company, would be increased one-half a cent per pair of shoes (p. 178).

3. He, therefore, goes to the United Company for his lasting machines and decides to use the No. 5 lasting machine. Any lease he can obtain of this machine contains the Exclusive Use Cancellation Clause. By reason of this clause, according to the allegation of the brief writer, the shoe manufacturer is "committed" to the United Company "for all of his present and future demands for any kind of lasting machine" (p. 178). In other words, according to this contention, no competitor can thereafter furnish him with a lasting machine.

4. He also decides to take a restricted lease of the No. 5 lasting machine, because he finds that the unrestricted lease is "commercially impossible" (p. 179).

5. The Restricted Use Clause in the lease of the No. 5 lasting machine restricts it to use with the United Company's welter and stitcher, pulling-over and metallic machines. On account of this clause the lessee, already obliged by the Exclusive Use Cancellation Clause to use the United Company's lasting machines exclusively, is also prevented, according to the brief writer, from obtaining from competitors any welters and stitchers, pulling-over or metallic machines to satisfy any "future needs" (p. 179).

6. Since, according to the brief writer's contention, the Full Capacity Clause and the Restricted Use Clause taken together require the lessee upon the expiration of a lease of machines to use with which other machines are restricted to renew such lease, it follows, according to this contention, that as the leases of the welter and stitcher, pulling-over and metallic machines expire, the shoe manufacturer is obliged to renew them if he at the time holds a lease of

lasting machines, and thus he may be obliged to continue to deal with the United Company forever (p. 181).

7. The conclusion of the brief writer is that by these leases, the effect of which is as above shown, "the defendants have brought about a situation in which competition with them either as to the existing or the future needs for machinery of existing or future shoe manufacturers has become entirely impossible" (p. 181), with the result that

> ". . . The United Company is not merely 'a formidable competitor.' It is absolute monarch of the industry. No competitor can exist unless for its own pleasure or policy it withholds its destroying hand."

With two unimportant exceptions not a single statement or inference in the foregoing argument is correct. The conclusion arrived at, therefore, is without any foundation whatsoever.

We shall now consider these statements on which the brief writer's conclusion is based in detail. We call the Court's attention especially to this analysis of the contention of the United States in respect to the practical working of the leases, because if we are correct in our statement that these contentions of the United States are wholly unwarranted, the entire case of the United States in respect to the leases is shown to be without foundation.

1. It is first asserted by the brief writer that the shoe manufacturer whom he takes as an example, wishing to obtain an equipment of shoe machines, must go to the United Company for lasting machines, because the R. H. Long Company is the only other concern professing to put them out and it does not appear that this company is able to supply any lasting machines for standard screw shoes,

loose-nailed shoes, McKay sewed shoes, or turn shoes (p. 177).

Even if this were true it would not deter the shoe manufacturer desiring to make welt shoes from obtaining his lasting machines from the Long Company. But according to the testimony of witnesses for the United States, it is not true that the shoe manufacturer would be obliged to go to the United Company for his lasting machines. Thus a representative of the Haverhill Shoe Machinery Company testified that his company furnished

> "a full line of all kinds of shoe machinery, whether it is for welts or McKays or turns or pegs or anything else. We undertake to fill the requirements of a manufacturer whatever they are. . . . We are prepared to make good if our people that manufacture machines don't go back on us" (R. Vol. 1, p. 301, lines 3–9).

The manager of the Long Company testified that his company was ready to supply "a full line of machinery for welt and turn shoes" (R. Vol. 1, p. 345, lines 41–44). In spite of this testimony, the brief writer asserts that the Long Company makes no lasting machines for turn shoes (Brief for the United States, p. 177). Hamel testified that his company had a "complete set of machines for making turn shoes and a complete set of machines for making welt shoes" (R. Vol. 1, p. 327, lines 15–16). In addition there are foreign manufacturers of lasting machines whose machines could be imported (see our Main Brief, p. 612; also Defs.' Ex. 337, R. Vol. 5, p. 906, at p. 917). And any machine shop, if so requested, could manufacture lasting machines of the types in use a comparatively few years ago on which the patents have expired.

It thus appears that the unfortunate shoe manufacturer in question can obtain lasting machines from other sources if he so desires. If he insists upon going to the United Company and thus getting within its "toils," it is obviously because the United Company furnishes the best machines.

2. The brief writer next alleges that another reason why the shoe manufacturer would take the United Company's lasting machines is that, if he does not do so, his payments for pulling-over machines, if he takes them from the United Company, would be nearly tripled and his payments for clicking machines taken from the United Company would be increased one-half cent per pair (p. 178).

This statement as to the payments required for pulling-over machines is entirely incorrect. It is considered below (*infra*, p. 48-49). It is true that where the United Company's clicking machine is used with its lasting machine a lower royalty is charged for the use of these machines as a series. This, however, is fully justified as a wholesale rate (see Main Brief, pp. 424–426). This whole matter, however, is not of material consequence, because the shoe manufacturer can, if he obtains his lasting machines from a competitor, also obtain his pulling-over or clicking machines from a competitor, if they are on the market, or, like many other manufacturers, not use them at all. And if, as the brief writer asserts, he desires all three machines, and must obtain his lasting, his pulling-over, and his clicking machines from the United Company because no one else manufactures them, then, even on the brief writer's assertion, he is not affected by the fact that a higher or retail price is charged if he only takes one of the machines.

3. The shoe manufacturer, having determined to take the United Company's lasting machine, now determines

to take the No. 5 machine. Both forms of lease of this machine contain the Exclusive Use Cancellation Clause. According to the contention of the brief writer, the shoe manufacturer is obliged by this clause, both for the present and for the future, to use the United Company's lasting machines of all kinds exclusively (Brief, p. 178). We have shown above that this statement is entirely untrue (*supra*, p. 10). The Exclusive Use Cancellation Clause has no such effect. So far as this clause is concerned, the shoe manufacturer can obtain lasting machines from a competitor for both his present and future needs. The only right of the United Company in such case is to withdraw its own machine. If the shoe manufacturer should find that he prefers to use some other lasting machine, the fact that the United Company may in such case remove its own lasting machine will surely not deter him.

The only result so far reached is that the shoe manufacturer has a lease of a lasting machine or machines from the United Company and that by the Full Capacity Clause contained in the lease he has agreed to use these particular machines. He is, however, under no obligation to use the United Company's lasting machines exclusively, but can obtain any additional machines he may require from others. If the Full Capacity Clause, requiring him to use the particular machine or machines leased is lawful, it is obvious that no unlawful restraint so far exists.

4. The shoe manufacturer in taking a lease of the No. 5 machine is permitted to choose between a restricted form and an unrestricted form. According to the brief writer, he chooses the restricted form.

This is the beginning of his troubles. It is the Restricted Use Clauses in this form of lease which bring him "within

the toils of the Tying Clauses" from which he "never can escape" (p. 180).

He chooses this restricted form of lease, according to the brief writer, because of "certain conditions attached" to the unrestricted lease "which make the choice" of the unrestricted lease "commercially impossible" (p. 179).

What, then, are these conditions which make it impossible for him to choose the unrestricted lease and thus avoid the tyranny of the United Company? The conditions are that he is required to pay under an unrestricted lease $300 for each lasting machine he takes. His royalty will be the same as under the restricted lease. Let us assume he makes 250 pairs of shoes a day. Considerably over one-third of the shoe manufacturers dealing with the United Company make less than this number (R. Vol. 1, pp. 454–455). The No. 5 laster has a smaller daily capacity than any other machine put out, nevertheless two No. 5 lasting machines are sufficient to last 250 pairs per day (Defs.' Ex. 230, R. Vol. 5, p. 442). In other words, to obtain unrestricted leases which will enable him to obtain all his other machines from competitors and to use them with the United Company's lasting machines and thus escape from the toils of the Restricted Use Clauses will cost the shoe manufacturer $600. On the other hand, since, according to the United States, the United Company charges excessive prices for its machines, it would appear, if this contention is true, that the shoe manufacturer, by being enabled to take all his other machines from competitors, will make a considerable saving either in the cost of such other machines or in royalties. Under the circumstances it is ridiculous to say that it is "impossible" for him to take the unrestricted lease. He takes the restricted lease because

he prefers to take a series of the United Company's machines. To talk of his being coerced is absurd.

5. However, according to the brief writer, the shoe manufacturer does take the restricted lease which restricts his two lasting machines to use with the United Company's welter, stitcher, metallic and pulling-over machines. If he makes a McKay shoe, which is the class of shoe most largely made in the country, and, therefore, does not use a welter and stitcher, and if he does not use pulling-over machines, as many manufacturers do not, the only restriction which will concern him is the restriction to metallic machines. We will assume, however, that he is to make welt shoes and prefers to use a pulling-over machine. In such case, having chosen a restricted lease of lasting machines, he will take leases of the welter and stitcher, and pulling-over and metallic machines from the United Company to use with his lasting machines. He can take initial payment or non-initial payment leases. If he takes non-initial payment leases of these machines, and also of the United Company's heeling machine, the machines so taken will not be restricted to use with any except those he takes. The brief writer contends that when he takes leases of those machines he must use these kinds of machines so obtained from the United Company exclusively. The reason given is that because of the Exclusive Use Cancellation Clause he cannot have in his factory a lasting machine not obtained from the United Company and, therefore, must use these other types of machines obtained from the United Company exclusively, since his lasting machines can be used only with machines so obtained.

The conclusion arrived at is absolutely unsound. In the first place, the Exclusive Use Cancellation Clause has no

such effect. The shoe manufacturer can at any time he pleases obtain a competitor's lasting machine, as we have shown above (*supra*, p. 10). In the second place, the shoe manufacturer can at any time exchange his restricted lease of lasting machines for an unrestricted lease. The United States contends that he has no "right" to make this exchange, but the United Company has always been willing to permit lessees to do so and there is no ground whatsoever for contending that it will not continue to do so in the future.

The Full Capacity Clause is the only clause which requires the lessee to use these leased machines and that clause only requires him to use the particular machines leased, provided he has shoes on which he is permitted to use the machines. Unless this Full Capacity Clause prevents, the shoe manufacturer is free at any time to stop using all these machines so leased and to substitute other machines. Even though the Full Capacity Clause does require him to use these particular machines, if he increases his output beyond the capacity of these machines at any time, he may take additional machines from competitors to perform the work on such additional output. The only right the United Company would have in such a case would be to withdraw its own machines of the same kind as those used.

It, therefore, appears clearly that the brief writer's contention that the shoe manufacturer is, by reason of the Restricted Use Clause and the Exclusive Use Cancellation Clause, cut off from obtaining any welters and stitchers, pulling-over, metallic and lasting machines from competitors to satisfy all future needs is untrue.

6. The lease of lasting machines, as we have stated,

contains a Restricted Use Clause and a Full Capacity Clause. According to the brief writer, these clauses taken together have a cumulative effect, and compel the use not only of the lasting machines leased, but of other machines to use with which they are restricted (p. 180). Therefore, if a lease of metallic machines, for example, expires while a lease of lasting machines is still in force, the lessee is required to renew his lease of metallic machines so that he can fulfil his obligations under the lasting machine lease. Thus, the brief writer concludes, the lessee must continue indefinitely to use the United Company's machines. We have shown above (*supra*, pp. 17–20) that not only is this contention of the United States untrue, but that the exact reverse of the contention is true. The Full Capacity Clause in the lasting machine lease, as in all other leases, requires the lessee to use the leased machines only on shoes on which he is permitted by his lease to use them. He is not permitted to use them on shoes which are not operated on by the United Company's metallic machines. He is not required, however, by his lasting machine lease, to use the United Company's metallic machines. Therefore, if he does not renew his lease of metallic machines (and he is not obliged to do so), he is free from any obligation to use his lasting machines. If he does desire to continue using his lasting machines and does not wish to renew his lease of metallic machines, he may change his restricted lease of lasting machines for an unrestricted lease and thus use the lasting machines with a competitor's metallic machines.

The contention of the brief writer is, therefore, wholly untrue.

7. The conclusion of the brief writer from the above is that the shoe manufacturer, being obliged by the Exclusive

Use Cancellation Clause to use the United Company's lasting machines exclusively, and, through the effect of the Restricted Use Clauses, to use the United Company's welter and stitcher, pulling-over and metallic machines exclusively, a situation is brought about in which competitors are excluded from dealing with this shoe manufacturer, and the United Company thereby becomes "absolute monarch of the industry" (p. 181).

We have shown above that it is entirely untrue that the shoe manufacturer, even if he has taken a restricted lease of lasting machines, and even if he has also taken leases, whether restricted or unrestricted, of his welter and stitcher, pulling-over and metallic machines, is required to use machines of these kinds exclusively.

But assuming this statement of the brief writer is true, would it be true that competitors would be excluded from doing business with the shoe manufacturer? If the shoe manufacturer in question takes all the machines he needs, of the classes above named, from the United Company, he will take only a very small portion of the total machines which he will require. For example, he will need only one welter, one stitcher, one pulling-over machine, one slugger, one loose nailer, and, if he takes a restricted lease of pulling-over machines, which are restricted to use with heeling machines, one heeler. In other words, he will take a total of 6 machines (Defs.' Ex. 230, R. Vol. 5, p. 442). All his other machines he can obtain from competitors, including his welt auxiliary machines, General Department machines, of which there are over 170 different kinds, McKay sewing machines (if he makes McKay shoes), lacing machines, eyeletting machines, treeing machines, buttonhole machines, machines for sewing uppers, and various other

miscellaneous machines for use in the 100-odd operations performed by machines in the manufacture of shoes (Defs.' Ex. 235, R. Vol. 5, p. 531).

It is open to competitors to supply him with all or any of these machines, which in variety of type and number far exceed the number he must, according to the brief writer, take from the United Company.

In view of these facts, is it quite fair for the brief writer, even if we assume that all his conclusions up to this point are true, to contend that the shoe manufacturer we have been considering is completely cut off from obtaining machines from competitors?

Summary of Specific Case Used by United States to Illustrate the Effect of the Leases.

The following is a summary of the situation in respect to the "specific case" used by the United States to illustrate the effect of the clauses in the leases:—

1. The writer says that a shoe manufacturer desiring an equipment of machines must take his lasting machines from the United Company because he cannot obtain them elsewhere. *This is untrue.* The writer says the shoe manufacturer must also take lasting machines because the payments for his pulling-over machine taken from the United Company will be nearly tripled if he uses other lasting machines. *This is untrue.* The writer says that his lease of lasting machines will contain an Exclusive Use Cancellation Clause which will require him to use the United Company's lasting machines exclusively. *This is untrue.* The writer says he must take a restricted lease of lasting machines because the unrestricted lease is commercially impossible. *This is untrue.* If he takes the No. 5 lasting machine on a restricted lease it will be restricted to use with the welter, stitcher, pulling-over and metallic machines. *This is true.* The writer says he will thereby be required to use not only lasting machines, but these other classes of machines exclusively. *This is untrue.* The writer says that on account of the effect of the Full Capacity Clause and the Restricted Use Clause he will, if his leases expire at different times, be required to renew them and thus remain indefinitely in the toils of the United

Company. *This is untrue.* By thus being obliged to use lasting machines, welters and stitchers, pulling-over and metallic machines taken from the United Company exclusively the writer says that the access of competitors to him will be cut off practically completely. *This is untrue.* Even if it were true that he had to use machines of these classes obtained from the United Company exclusively, which is not the case, he would still be able to obtain from competitors most of the machines in number and type that he requires in his factory.

Other Specific Cases.

The brief writer has naturally chosen a case which he thinks best illustrates the effect of what he alleges to be the Tying Clauses in the leases. We do not criticise him for this, but he has taken an unusual case. The ordinary shoe manufacturer, if he went to the United Company at all, would wish to obtain from it more than one kind of machine out of the many it makes. Normally he would take an entire series of bottoming machines, since they are especially constructed and adapted for use together. In such case the Restricted Use Clauses would not interfere with him at all. Even if he wished only a few kinds of machines from the United Company, it is very probable that they would not interfere with his taking such machines on restricted leases, and obtaining such other kinds of machines as he desired from competitors. The United States having stated a "specific case," it is only fair that we should state a few "specific cases."

If the shoe manufacturer wishes to make McKay shoes and wishes to take his lasting and metallic machines from

the United Company, he can take the hand method McKay laster, which is restricted to use only with metallic machines, and the metallic machines, which are restricted to use only with the lasting machines, and obtain all his other machines from competitors. The Restricted Use Clauses will not bother him at all. Take Jonathan Brown's factory as an illustration (Defs.' Ex. 236, R. Vol. 5, p. 671). He would take from the United Company 24 lasting machines and 18 metallic machines out of a total of 424 machines which the exhibit shows he has, and would take the remaining 382 machines he requires from competitors.

If the shoe manufacturer wished to obtain a welter and stitcher from the United Company, and to obtain all his other machines from competitors, he could take a non-initial payment lease of the welters and stitchers and obtain all his other machines from competitors. If he wished to add to these machines Goodyear auxiliaries, he could do so on the non-initial payment lease and still take all other machines from competitors. If he wished to add lasting machines, he could take the hand method welt laster on a restricted lease, restricted to use only with the welter and stitcher, and take all his other machines from competitors. If he wished to add the United Company's metallic machines, he could take them on a restricted lease, restricted to use with the welter and stitcher and lasting machine, and still obtain all other machines from competitors. If he wished also to take heeling machines from the United Company, he could take them on a restricted lease, restricted to use with the welter and stitcher, lasting and metallic machines, and still obtain all his other machines from competitors. If he wished to add General Department machines, he could, prior to the time the United Company stopped

leasing them at all, take them on restricted leases, restricted to use with the welter and stitcher, lasting and metallic machines, and still obtain all his other machines from competitors. If he wished in addition to take eyeletting machines from the United Company, he could take them on a restricted lease, restricted to use with the welter and stitcher, lasting, metallic, and heeling machines, and still take all his other machines from competitors.

If he wished to take various other combinations of machines on the restricted leases, he would be hindered little, if at all, by the Restricted Use Clauses.

We believe that the foregoing illustrates conclusively that the charge of the United States, that a shoe manufacturer desiring to take one or a few types of machines from the United Company is obliged, on account of the leases, to take practically all his other machines from the United Company, is without any foundation whatsoever.

For purpose of illustration some of the many combinations in which machines of the kinds which the United States sets forth in its petition as the "principal essential machines" may be taken from the United Company and from competitors for use in the manufacture of welted and of other kinds of shoes are set forth in an appendix to this brief, marked Appendix IV (*infra*, pp. 185–191).

Contentions of the United States as to the Independent Leases.

The brief writer states (p. 191),—

> "The defendants grant these leases [that is, unrestricted leases] only upon terms which, as a practical matter, prohibit their acceptance and coerce the manufacturer into taking the restricted form."

We believe the finding of the District Court that the charges for unrestricted leases are not shown to be excessive, the fact that many such leases are taken by shoe manufacturers, and the further fact that the amounts charged for the unrestricted leases are, on the whole, more favorable than those which were previously charged by the constituent companies for leases of much less efficient machines furnished without adequate service is sufficient answer to this contention (see Summary, pp. 118-122, Main Brief, pp. 359–360).

The brief writer says (p. 191) that the manufacturer to obtain any advantage from the unrestricted leases must take all his leased machines on such leases. This is entirely untrue (see our Main Brief, pp. 367–375).

We have shown that under many combinations the restricted leases would not interfere at all with the shoe manufacturer taking such other machines as he pleases from competitors, *supra*, pp. 34–36. Furthermore, it must be remembered that if the shoe manufacturer desires to use a competitor's machines of certain kinds, he would, of course, not take such machines from the United Company, and would, therefore, not make initial payments for them to the United Company. For example, if he only wishes to use the United Company's lasting machines, which is the "specific case" used by the brief writer to illustrate the effect of the leases, he will only take lasting machines from the United Company, and, therefore, only make the initial payments charged for lasting machines and obviously not the initial payments charged for other machines which he does not take from the company.

This fallacy that the shoe manufacturer must take all

the machines which the United Company puts out on unrestricted initial payment leases in order to use any machines obtained from a competitor underlies the entire argument of the brief writer. The figures he gives as to the amounts which a shoe manufacturer would be required to pay to use a competitor's machines are based on this fallacy.

The brief writer (pp. 191–192) begins with an example of a shoe manufacturer who takes restricted leases of the No. 5 lasting machine and of heeling machines, and an independent lease of metallic machines. The brief writer states that the manufacturer desires to use competing metallic machines and that his unrestricted lease of metallic machines does not assist him in doing this because his lasting and heeling machines are restricted to the metallic machines. Of course, the answer is that if he wished to use a competitor's metallic machines he would not take these machines from the United Company at all, and instead of taking restricted leases of lasting and heeling machines he would take those machines on unrestricted leases and would then be able to take all other machines from competitors.

At page 193 a general statement by Mr. Winslow is distorted to prove the contention that a shoe manufacturer wishing to substitute a competitor's heeling machines is required to place all his other machines on independent leases. Mr. Winslow said that such a manufacturer

> "could return our heeling machines, place his machines in the other departments upon the independent forms of leases, and continue to use the heeling machines of others" (R. Vol. 1, p. 443, lines 2–8).

What Mr. Winslow obviously meant was that he could take unrestricted or independent leases of any machines which were restricted to use with the heeling machines. Only a very few classes of machines are so restricted. The Goodyear, the metallic, the lasting, and the McKay sewing and General Department machines and others are not so restricted, so that he would not have to change leases of any of these machines constituting most of the machines manufactured by the United Company. This general statement of Mr. Winslow's is deliberately used to give a mistaken impression. The brief writer says of Mr. Winslow's statement (p. 194),—

> "And the statement seems to be in complete harmony with what the record shows of defendants' actual practice."

This is entirely untrue.

At pages 194–195 the brief writer proceeds deliberately to misconstrue and misapply the testimony of Mr. Winslow on pages 432–433 of the record in an endeavor to show that it would cost a shoe manufacturer making 1,000 pairs of welt shoes per day $8,833 to obtain unrestricted leases of machines and thus inferentially to use any machines of a competitor.

Mr. Winslow in his testimony was comparing not the cost of taking unrestricted or restricted leases, but the saving in installation charges to the shoe manufacturer in 1911 over what he was required to pay in 1899 for obtaining an equipment for the manufacture of Goodyear welt shoes (R. Vol. 1, p. 432, lines 18–22, 44–45; and p. 433, lines 1–12). His statement affords no foundation whatsoever for a comparison of prices charged for restricted and

unrestricted leases. This is shown by the fact that the greater part of the difference in cost between 1899 and 1911 came from the elimination of initial payments on Goodyear machines. As Goodyear machines are not restricted to use with machines of any other department, the shoe manufacturer desiring to use them and to take any or all his other machines from competitors is not required to take them on an initial payment lease.

At page 196 the brief writer says

> "... even if the shoe manufacturer did take the independent lease he would gain but little freedom, because every lease of the principal bottoming machines, except the McKay sewing machine, contains the 'Exclusive Use' clause, or its equivalent and all have the 'right to terminate all leases' clause."

This is a sample of the kind of argument made by the brief writer. Suppose a shoe manufacturer wishes to take lasting machines from the United Company and take all other machines from a competitor. His unrestricted lasting machine leases have the Exclusive Use Cancellation Clause and Cancellation for Breach Clause. The Exclusive Use Cancellation Clause merely provides that if he supplies himself with other lasting machines the United Company may cancel its leases of lasting machines. How can this possibly affect the shoe manufacturer's right to use other kinds of machines obtained from competitors? And the Cancellation for Breach Clause obviously has nothing to do with his use of competitor's machines of other kinds, as we do not think even the brief writer would contend that such a use of other kinds of machines gave the United Company a right to cancel its lease of lasting machines.

To a reader of the brief, however, unacquainted with the leases, the above quoted statement sounds plausible. An examination of the situation, however, shows that the statement is entirely fallacious and has been deliberately made by the brief writer to confuse and mislead the reader.

At page 198 the brief writer says,—

> "Assuming for convenience that these cumulative disadvantages to the manufacturer who tried the 'independent' lease amounted only to 4 cents a pair . . ."

it would mean a large annual sum, which the brief writer undertakes to estimate.

But the brief writer has no right to assume any such figure "for convenience."

The cumulative disadvantages consist only in the initial payments charged for the independent or unrestricted leases, and in the further fact that while no initial payment is charged for the clicking machine, though used entirely in connection with a competitor's machines, an increased payment is charged if used with a welter and stitcher and lasting machine not obtained from the United Company; in other words, in the case of the clicking machine a reduced price is charged when used as part of a series. To assume that a shoe manufacturer wishing to take any machines from a competitor would be obliged to pay 4 cents per pair additional to the United Company is without the slightest justification. In the "specific case" stated by the brief writer to illustrate the effect of the leases, the shoe manufacturer desired to take lasting machines only from the United Company. An unrestricted lease would cost him, not 4 cents a pair additional, but the sum of

$600 for his two machines. Such shoe manufacturer, having a total production of 250 pairs a day, could make approximately 75,000 pairs a year. The additional charge per pair of shoes for the first year would be only a fraction of a cent, and distributed over seventeen years would be almost infinitesimal.

The brief writer says (p. 198),—

> "The difference in the clicking machine royalties is alone sufficient 'as a matter of dollars and cents' to compel the choice of the restricted leases."

A reduced rate is allowed in the clicking machine lease when the machine is used with the United Company's welter and stitcher and lasting machine, that is, three machines out of the scores of machines which he needs in his factory. In other words, if he wants a clicking machine, and also takes these three other machines from the United Company, he gets the reduced rate. Even if the shoe manufacturer insisted on using the clicking machine (many manufacturers do not use it; for example Jonathan Brown, Defs.' Ex. 236, R. Vol. 5, p. 671), and even if he felt that he must obtain it at the reduced price, he would only be induced to take three additional kinds of machines from the United Company out of the large number he would require in his factory; and the welter and stitcher are not restricted to use with any other machine and he could take the lasting machine on an unrestricted lease if he so chose. He would, therefore, in such case not take a single restricted lease. And yet the brief writer asserts that the clicking machine royalty alone is sufficient "to compel the choice of the restricted leases."

Other Alleged Oppressive Provisions of the United Company's Leases.

At pages 187–190 of the brief of the United States the writer refers to "other oppressive provisions" of the leases. These are not alleged to be unlawful, but they are apparently referred to to show the power of the United Company in that it can compel lessees to accept leases with such provisions. The writer first objects to the clause providing that a lessee cannot, without permission from the lessor, remove a machine from his factory or, as the writer states it, from one of his factories to another. The United Company owns the machine and is paid according to its use. It obviously must know at all times where the machine is situated so that it can determine, if necessary, whether it is being properly cared for and to what extent it is used. Naturally the lease provides that the machine shall not be removed without the lessor's consent.

The next clause considered by the writer is the clause permitting the lessor to have access at all times to the machinery (p. 187),—

> " 'for the purpose of inspecting it or watching its use and operation, or of altering, repairing, improving, or adding to it, or determining the nature or extent of its use.' "

Obviously the United Company must have a right to look at the machinery in order to see if it is properly cared for and to see to what extent it is used so that it may be sure that it is paid the royalties due.

The brief writer construes this necessary right into an intention on the part of the United Company to

"enter the factory of the lessee at any time they please, and put themselves in a position to learn any manufacturing secret the lessee may have."

The brief then proceeds to say (p. 188),—

"Further, he [the lessee] is required 'at his own expense' to keep the machinery 'in good and efficient working order' although the machinery belongs to the lessor and the lessee is bound to pay for its use."

Could any argument be more absurd? The petition seriously charges that a clause requiring a lessee of machinery to keep it in efficient working order is an "oppressive" burden. Furthermore, the writer, of course, omits to state that this repair work is actually done by the United Company, except for the cost of new parts, and that the clause is not enforced (see Main Brief, p. 427).

He also objects (p. 188) to the clause requiring the lessee to pay a certain sum in case the machine is destroyed by fire; in other words, to insure it.

The attempt to show that these clauses are "oppressive" shows the attitude of counsel for the United States.

Attempt of the United States to Prove that Exorbitant Royalties are Charged.

At pages 188–190 of the brief the writer attempts to prove that exorbitant and excessive royalties are charged by the United Company.

There is no evidence in the record as to the market value of the machines which the United Company leases and

does not sell, nor could there well be, as they are patented machines which are unique and which have never been sold in the market.

The writer of the brief, however, finds that under Plaintiff's Exhibit No. 21, a lease of a No. 5 lasting machine, the lessee is required to pay the lessor $225 if the machine is destroyed by fire. From this he assumes that the machine is worth only $225. Even if $225 would compensate the United Company for the loss of the physical materials in the machine, which does not appear, this would be no test whatsoever of the value of the machine, the value of which consists almost entirely in the patented inventions which it incorporates.

For example, each new Model K welter probably saves $800 a year over the previous model (see our Main Brief, p. 545). To assume, as the writer of the brief does, that the value of such a machine is $225, being the cost of the physical materials in the machine, is absurd on its face. The pulling-over machine cost $1,000,000 to develop before it was made a commercial success (see Main Brief, p. 622). If the United Company sold the pulling-over machine, it would have to in some way add this amount to the selling price of the machine before it even received back its investment.

If the brief writer's contention were correct, a process patent which involves no physical materials, such as the Goodyear process patent, in *Rubber Co.* v. *Goodyear*, 9 Wall. 788, would have no value whatsoever.

In spite of this, however, the brief writer assumes that the value of the lasting machine is $225, and, therefore, that the value of all other machines is doubtless $225 apiece (p. 190). He then undertakes to show that royalties at

6 cents per pair would give a return of 120 per cent. per year on the value of these machines. He adds,—

> "No self-respecting business man would enter into stipulations so offensive and destructive of his liberty unless he was coerced by the circumstances surrounding him."

The conclusion may be true if the facts are true. We respectfully submit, however, that the reason new manufacturers who are under no obligation to the United Company take these machines in preference to others and agree to pay the royalties provided for is because the United Company's machines are so much more efficient than any other machines and such valuable service is rendered with them that they are worth more than the amount paid for them. Mr. Hazzard testified that the service rendered by the United Company was alone worth more than the royalties paid (R. Vol. 1, p. 644).

Certain Other Contentions in Respect to the Leases.

Contention as to Use of Additional Machinery Clause.

At pages 161–162 the brief writer under the title "Additional Machines Clause" quotes a clause from Plaintiff's Exhibit 30, a lease of Metallic Department machines. He calls this clause an Additional Machinery Clause and states that the clause appears in a current lease of metallic machines in spite of the statement by the defendants that the Additional Machinery Clause was abandoned in 1907 (see Main Brief, p. 324). The Additional Machinery Clause referred to by the defendants was a clause obligating the

lessee to take additional machines for any additional work (see Main Brief, p. 323). The clause quoted does not so obligate the lessee. It provides that he shall

> "either take from the lessor . . . additional machinery to perform the work, *or* in case the lessee does not thus lease additional Metallic machinery . . . , then the lessor may, if it so elects, cancel forthwith this lease and any other lease of Metallic machinery . . ." (italics ours) (R. Vol. 3, p. 281).

In other words, the clause provides that the lessee has the option of taking additional machinery or giving the United Company the right to take back its metallic machines. There is no obligation on him to take additional machines. For practical purposes the clause has much the same effect as the Exclusive Use Cancellation Clause, which provides that if the lessee supplies himself with other machines the United Company may withdraw its own machines of this kind. The clause quoted is used only in certain metallic leases.

Factory Output Clause.

At pages 167–168 the brief writer comments on the Factory Output Clause in the Goodyear lease. He charges that it requires the lessee to pay royalties on the shoes made on the United Company's machines and also on shoes made on competing machines. It is, in fact, only a charge for the United Company's machines based on the amount of work which they can perform (see Main Brief, p. 424). If the lessee wishes to obtain a lease without this provision, he can do so by paying an initial payment. The reasons for the adoption of this clause are given in our Main Brief (p. 424).

Contention as to Pulling-over Machine Lease.

At pages 177–178 the brief writer says that if a shoe manufacturer should do any of his lasting on machines supplied by any concern other than the United Company,—

> "his payments for pulling-over machines . . . would be nearly tripled" (P.'s Ex. 38, R. Vol. 3, p. 350, par. six).

If the lessee did not propose to use the United Company's lasting machines, he would take an unrestricted lease of pulling-over machines and his royalty would be ½ cent net per pair of shoes, for the use of both the principal pulling-over machine and the auxiliaries (P.'s Ex. 39, R. Vol. 3, pp. 363, 367).

The royalty under the restricted lease is comparatively simple to one acquainted with the industry, but complicated to explain to one unacquainted with the industry. There is first a provision that 2 8 of a cent net shall be paid for all shoes pulled over by machinery in the factory. There is a further provision that ⅛ cent net shall be paid for each auxiliary machine used. If a shoe manufacturer used two auxiliaries on a shoe, and he would seldom use more than two or three, his royalty thus estimated would be ½ cent net or ⅝ cent net. There is then a further provision that where all his shoes are lasted by the United Company's lasting machines, the total pulling-over royalty on all his shoes shall not exceed a maximum of ⅜ of a cent net. In other words, where the United Company gets the lasting machine royalty on all shoes made, the pulling-over royalty is not to exceed ⅜ of a cent over and above the lasting royalty. The result is that in figuring the maximum amount less may be charged for pulling-over where

the lessor also receives the lasting royalty on all his shoes. This is a mere case of a wholesale rate. If the lessee only used one auxiliary machine, or if he lasted part of his shoes by hand, he would not obtain any advantage under this maximum clause, but, on the contrary, the maximum so provided for might exceed the royalty he would otherwise pay (P.'s Ex. 38, R. Vol. 3, p. 350).

It clearly appears that in no case would a shoe manufacturer taking an unrestricted lease of pulling-over machines be called upon to pay triple the amount he would otherwise have to pay for his pulling-over machines, or anything like it. If he took the unrestricted lease of pulling-over machines, he would pay ½ a cent royalty, while the lowest possible rate he could pay under the restricted lease, if he used the United Company's lasting machines exclusively, and used one pulling-over auxiliary machine, would be ⅜ of a cent. He might under the restricted lease pay more than ½ a cent.

Brief Writer's Reference to Metallic Leases.

At page 166 the brief writer quotes a provision in the metallic leases requiring the lessee to purchase fastening material used in the machine from the lessor. At page 294 the brief writer states that in the Motion Picture case, 243 U. S. 502, it was held that such restriction was not a valid patent restriction.

Of course the brief writer must realize that this has nothing whatsoever to do with the present case which charges a monopoly of machinery, not of fastening material. An agreement that one of the United Company's machines shall be used only with fastening material obtained from the

United Company might conceivably give it a monopoly of fastening material, but could not possibly give it a monopoly of the machine. In fact, the restriction that certain material only should be used on the machine would tend to make it easier for competitors to furnish their own machines without this restriction.

The obvious purpose of referring to this provision is to prejudice the Court by attempting to point out that unlawful intent was expressed in this provision to obtain control of materials used in the machine. We respectfully submit that no such unlawful intent is shown.

In the first place, the United Company, in employing this provision, used a provision which, as stated in *Henry* v. *Dick*, 224 U. S. 1, had come to be regarded as a rule of property. Even if it has now been held that it is not a valid patent restriction, its use certainly showed no unlawful intent, but an intent to comply with what was then recognized to be lawful.

In the second place, the provision in the present case was not held to be unlawful in the Motion Picture case. That case merely held that the provision in that case was not a valid patent restriction, but left open the question of whether an agreement to this effect could validly be made with either a purchaser of the machine or a lessee.

The whole matter is outside of the issues in this case, but in view of the brief writer's reference to the clause we feel entitled to make the following brief explanation of the reasons for its use:—

The clause was employed by the McKay Company in its leases of metallic machines (P.'s Ex. 12, R. Vol. 3, p. 103). Lessees of metallic machines were asked to agree to use the lessor's fastening material for two reasons: The first

reason is, that such material must be of the proper size and character for use in the machines, or otherwise it may seriously injure them or cause poor work. As the machines belong to the lessor, it is of the utmost importance that proper material should be used. The clause in question thus protects the machine from injury. In the second place, under the lease system the lessee is so far as possible charged only for the amount of work he does on the machine. In the case of a metallic fastening machine the machine may be used for inserting only two or three slugs or fastenings in a shoe, or it may be used for inserting many score of slugs or fastenings. In other words, the number of shoes on which the machine is used does not show the actual amount the machine is used. If a definite sum were charged for each pair of shoes, a manufacturer who inserted two slugs would be charged too much and a manufacturer who inserted fifty slugs would be charged too little. The lessor, therefore, requires the lessee to obtain his fastening material from him and charges a price for such material which will give him a profit which is taken as royalty for the machine. This profit is directly proportionate to the amount of use which the lessee makes of the machine, and thus enables the shoe manufacturer to pay royalty only according to its use. The profit so obtained from the purchase of fastening material is the only royalty charged for the use of the machine.

It may further be noted that this fastening material is merely wire of a size and shape adapted to the machines. The total amount of such wire used in shoes is infinitesimal as compared with the total amount of such wire annually consumed in the country. It cannot possibly be contended that the United Company obtains any monopoly or has

any noticeable effect upon the trade in wire by this provision.

Alleged Punitive Action Against Disobedient Lessees.

Under the heading of "Punitive Action Against Disobedient Lessees" the brief writer (pp. 205–216) cites various instances in an attempt to show that the United Company has arbitrarily compelled shoe manufacturers to throw out competing machines. Some thirty instances are briefly referred to.

We submit that the statements of the brief writer are an attempt to impose upon the Court by distorting the testimony and by stating facts as though admittedly true, although they were denied or disproved by other witnesses.

An examination of the evidence relating to these instances as it appears in Appendix II of our Main Brief shows the unreliability of the statements in the brief for the United States.

In this reply brief we can only refer to a few of the instances mentioned. It may be pointed out, however, that in no case does the brief writer refer to the evidence contradicting his statement, and that in nearly half the instances the testimony to which he refers is the testimony of competitors who merely repeated hearsay statements made to them by shoe manufacturers whom they were trying to induce to use their machines, and that in some of these instances the shoe manufacturers themselves contradicted the testimony and in other instances, though called by the United States, they were not questioned as to the facts alleged.

The brief writer (pp. 215–216) makes the following statement:—

> "Kimball & Hadley of Lynn, Mass., were making needles and awls. Beginning about January, 1904, they found that they could not sell Universal Slugging Machine awls. Five firms told Hadley personally that the reason they would not purchase was that the use of their needles and awls was in violation of the lease of the United Company (Ptr.'s Ex. 24, par. 'Two,' III, 214, 216); and if they continued to use their needles and awls, the United Company would take its machines away from them (Hadley, I, 308, l, 11)."

It is true that Hadley did testify substantially as above stated. The record, however, shows that his statement was false.

In the first place, representatives of the concerns which he said made the alleged statements to him were called as witnesses and absolutely denied making any such statements (see our Main Brief, Appendix II, pp. 768–769).

In the second place, all the leases of the United Company have been introduced in evidence and there is not a single lease which requires the lessee to purchase awls and needles from the United Company. The lease referred to by the brief writer (P.'s Ex. 24, par. two) provides that the lessee shall obtain from the lessor

> "... all the duplicate parts, extras, mechanisms and devices, of every kind needed or used in operating, repairing or renewing the leased machinery, and the same shall form part of the leased machinery, and the lessee shall not otherwise make or allow to be made any addition, subtraction or alteration to, from, or in the leased machinery nor interfere with the proper operation of the same."

It is perfectly obvious that this clause refers only to such devices and parts as form a permanent portion of the

machine and that it does not refer to needles AND AWLS which are constantly used and replaced. The clause has never been so construed. The testimony of the shoe manufacturers that they did not say they must obtain needles AND AWLS from the United Company is undoubtedly true, and if they had made this statement, Hadley, who was acquainted with the shoe trade, would not have credited it.

Finally, it appears from the record that Hadley had sold out his business to the United Company, had later broken his agreements with them, and, in a suit brought by the United Company, was enjoined, and his contention that he was coerced into making the sale to the United Company being held untrue. (*United Shoe Machinery Co.* v. *Hadley*, 193 Mass. 351.) It was evident that he had acted dishonestly toward the United Company and was a prejudiced and biassed witness, determined to injure the company if he could, and that his statements were wholly unreliable. For further statement, see Appendix II to Main Brief, pp. 767–770.

At page 208 the brief writer states that W. S. Chase & Co. had installed two channeling machines and turn sewing machines and a heeling machine of the Haverhill Company, which were operated very satisfactorily, but that a year before the witness testified the Haverhill Company was told by Chase & Co. to remove all its machines because they were violating the conditions of their leases.

Chase's whole testimony was excluded on the ground that the transaction was subsequent to the filing of the bill. Mr. Winslow, however, testified that Chase & Co. were using the Haverhill Company's turn machine and heeler; that the United Company offered to let them return its turn machines and heeling machines and to keep

its lasting and metallic machines on the unrestricted leases, but they decided to keep the United Company's machines, and, therefore, gave up the use of the Haverhill turn and heeling machines (see our Main Brief, Appendix II, pp. 794–795).

The situation was that the United Company's turn and heeling machines, installed without initial payment and which the lessee had agreed to use to capacity, were not being used. The United Company, instead of insisting that they should be used, as it had a right to do, offered to take them back and thus enable the lessee lawfully to use the Haverhill machines, and, further, to change the restricted leases of lasting and metallic machines to unrestricted leases so that the lessee could use them with the Haverhill machines.

In other words, instead of forcing Chase & Co. to give up the use of the Haverhill machines, although such use did violate the Full Capacity Clauses, the United Company offered to waive this violation and arrange its leases of lasting and metallic machines so that Chase & Co. could use the Haverhill machines if they wished to do so.

At page 209 the brief writer says that Ned Pike, representing the Haverhill Company, detailed certain difficulties which he encountered in installing that company's machines. The brief writer says,—

> "He attempted to install a machine in the factory of Ashe, Noyes & Small, Auburn, Me., but they said that under their existing leases with the United Company it would be impossible to take the machinery without laying themselves open to a great deal of trouble with that Company."

Both Small and Noyes of this company, who dealt with Mr. Pike, testified in the case. Small testified,—

> "I did not make any statement to Mr. Pike which was at all to the effect that I would not put in his machines because of the existing leases with the United Company (R. Vol. 1, p. 804, lines 43–45).

Noyes testified:—

> "In my conversation with Mr. Pike nothing was said about the leases which we had with the United Company. They were not mentioned" (R. Vol. 1, p. 805, line 43).

We leave it to the Court to determine whether the brief writer has any justification for stating as a fact that these statements were made without referring to the fact that the persons alleged to have made the statements denied having done so.

We cannot in this reply brief take up all the instances of alleged "punitive action." The foregoing will illustrate the unreliability of the statements made in the brief for the United States. The evidence relating to these various instances is treated in Appendix II of our Main Brief.*

*Hilliard & Tabor	U. S.	Brief,	p. 206	Our	Main	Brief	754–756
Herrick, Frederick W.	"	"	p. 207	"	"	"	793–794
Lynch & Sherman	"	"	p. 207–208	"	"	"	794
Chase & Company, W. S.	"	"	p. 208	"	"	"	794
Carleton & Hunt	"	"	p. 208	"	"	"	790
N. D. Dodge Shoe Company	"	"	p. 208	"	"	"	787
Pike, Ned	"	"	p. 209	"	"	"	797–798
Learned, George A.	"	"	p. 210	"	"	"	759–760
Merrick, Frank W.	"	"	p. 210–211	"	"	"	799
Williams, John E.	"	"	p. 211	"	"	"	799–801
Reed Company, E. P.	"	"	p. 211	"	"	"	788
Worthley, Mark J.	"	"	p. 211–212	"	"	"	747–748
Plant, Thomas G.	"	"	p. 212	"	"	"	747–748
Barry Shoe Company, T. D.	"	"	p. 212	"	"	"	748–750
Curtis & Jones	"	"	p. 212–214	"	"	"	750–754
Tessier & Company, Peter	"	"	p. 214	"	"	"	743–745
Bottomley & Company, Ernest	"	"	p. 214–215	"	"	"	746–747
Harsh-Edmonds Shoe Company	"	"	p. 215	"	"	"	756–758
Clark, George H.	"	"	p. 215	"	"	"	766–767
Kimball & Hadley	"	"	p. 215–216	"	"	"	767–770

Appendices A, C, D, and E to the Brief for the United States.

Appendix A to the brief is a chart which purports to be "illustrative of the practical effect of exclusive use and tying provisions in restrictive lease and license agreements."

If used for this purpose it gives a wholly erroneous impression, especially to one not acquainted with the details concerned in the manufacture of shoes. For example, it would look as though a manufacturer taking heeling machines would be obliged to use the United Company's pegging machines, lasting machines, metallic machines, and Goodyear Department machines, because the ties in the chart run from heeling machines to these other departments. If he was a manufacturer of McKay shoes, the kind of shoes most largely made, he would not use pegging machines or Goodyear Department machines. If he took his heeling machines from the United Company, he would most probably wish to take his lasting and metallic machines because all three are adapted for use together. In any event the tie would run only to two other kinds of machines with which he is concerned in the manufacture of McKay shoes. If he wished to make turn shoes he would not use pegging machines, nor would he use the Goodyear stitcher, nor would he probably use lasting machines. The tie does not run to the Goodyear auxiliary machines or insole machines as appears to be the case according to the chart. It would thus run only to the Goodyear welter and not to any of the 43 Goodyear auxiliary machines or to any of the insole machines.

Again the chart naturally omits omission of the unrestricted leases. For example, if the manufacturer only

wished to obtain the eyeletting machines from the United Company he could by paying $100 get an unrestricted lease and then there would be no restricted clauses at all. This would entirely change the "practical effect" of the chart.

Again, certain statements in the chart are not correct. For instance, under heeling machines it is stated,—

> "Must use exclusively lessor's machines for all work for which machines in schedule are designed."

Presumably the brief writer refers to the Exclusive Use Cancellation Clause. We have shown above that the Exclusive Use Cancellation Clause has no such effect and this statement is entirely unjustified.

For further consideration of this chart see Appendix II to this reply brief (*infra*, pp. 176–179).

Appendix C purports to be a synopsis of lease forms showing the restricted clauses contained in each.

Appendix D purports to be a résumé of leases in which the objectionable clauses appear. It is inaccurate in various particulars. For example, it would appear from Section (11), p. 367, that the Full Capacity Clause applies to Goodyear auxiliary machines. While it is contained in the lease of the full set of Goodyear machines, it is expressly made to apply only to the welter and stitcher, which are the recording machines, and not to the auxiliary machines.

Appendix E to the brief for the United States is a table purporting to give the paragraphs in which the tying clauses appear in the leases. This also gives an erroneous impression. For example, it states that 10 leases contain the Additional Machinery Clause. It does not point out

that five of these leases are forms that have not been put out since 1907 or prior thereto, the Additional Machinery Clause having been eliminated and the remaining five leases referred to as containing this clause, all leases of metallic machinery, do not contain a clause requiring the use of additional machines, but merely contain a clause permitting the United Company to take back its machines if other machines of the same kind are used, which clause is erroneously referred to by the United States as an Additional Machinery Clause (*supra*, pp. 46–47). Appendices C, D and E are considered more in detail in Appendix III to this reply brief (*infra*, pp. 180–184).

THE CONTENTIONS OF THE UNITED STATES AS TO MONOPOLY AND AS TO THE NUMBER OF MACHINES PUT OUT BY SHOE MACHINERY MANUFACTURERS OTHER THAN THE UNITED COMPANY.

The United States contends that the United Company furnishes practically all of certain types of machines used in bottoming shoes.

But the United States nowhere in its brief contends that the United Company's machines are not patented or that they are not the best machines made. Nor does it anywhere contend that any other shoe machinery manufacturer furnishes service of the character furnished by the United Company.

There is not the slightest evidence that shoe manufacturers desire to obtain machines of these types as to which a monopoly is claimed from other shoe machinery manufacturers who are offering better machines and are prevented from doing so by the United Company.

There is therefore not the slightest evidence to dispute the following finding of the District Court:—

> "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the *superior efficiency* it has developed in its *patented machines* for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded *as shown beyond question.* It is not disputed that, when the petition was filed, its machines represented, in number and amount, *the highest*

> *development ever reached in the art* to which they belong; or that they are most in demand by manufacturers of the higher grades of shoes for that reason" (R. Vol. 1, p. 1137) (italics ours).

It, therefore, seems immaterial whether the United Company furnishes all or only a small portion of the types of machines in which it specializes.

Furthermore, the United States itself contends that the constituent companies which composed the United Company did at least as large a business in the kinds of machines which they manufactured as the United Company does to-day. It is admitted, therefore, that the United Company has not acquired a monopoly in these machines, except by taking over the business of the constituent companies, which, since they were essentially non-competing, the United Company was entitled to do as held in *United States* v. *Winslow*, 227 U. S. 202.

As to the other machines put out by the United Company since its formation, such as the pulling-over machines, clicking machines, eyeletting machines, and various new Goodyear auxiliary machines, it is not denied that they are nearly all machines which were created and developed by the United Company under patents, and that these machines have been in existence only a very short time. Whatever business the United Company has in these machines is presumably due to the fact that the United Company has created these machines and no one else has invented machines equally good. We submit that there is nothing in the evidence to refute this presumption that the business done by the United Company in these machines has been acquired lawfully.

While, therefore, the comparative amount of business

done by the United Company and its competitors would seem to be immaterial, nevertheless, the statements made by the brief writer in attempting to prove its contention that the United Company has

"pre-empted by combination and acquisition" (p. 151)

the field of bottoming machines and obtained practically a complete monopoly are so unjustified and its conclusions in certain respects so erroneous that we wish to call the Court's attention to certain of them.

In Appendix B, Part I, of the brief for the United States the writer purports to show the number of "principal bottoming machines together with clicking machines" which the United Company had out on March 1, 1911, and the number "which all competing concerns had out at that time"; that is, the Appendix purports to give the total number of these various machines in use in the United States on March 1, 1911. The reason this date is chosen is because Defendants' Exhibit 228 (R. Vol. 5, p. 430) gives the number of machines of various kinds which the United Company had out under lease on that date. A summarization of the Appendix is given at page 150 of the brief, reading as follows:—

Machines.	*By defendants.*	*By all others.*
Clicking machine	3,655	None
Pulling-over machine	1,632	None
Lasting machine	7,496	7
Standard screw machine	409	None
Pegging machine	146	None
Tacking machine	3,488	6
Welt sewing machine	2,527	142
Outsole stitching machine	2,676	758
Loose-nailing machine	1,835	24
Heeling machine	2,019	17
Slugging machine	1,876	23
McKay sewing machine	898	8

It is illuminating to note, in the first place, that this table refers to only 12 machines. The United Company manufactures approximately 300 different machines. In other words, the table represents only about 4 per cent. of the different types of machines which the United Company manufactures. An examination of the Appendix shows that the table has been made up as follows: The number of machines of the United Company outstanding has, with one or two exceptions, been taken from the Defendants' Exhibit 228 and is approximately correct. The number of machines of competitors is taken from statements of a few shoe machinery manufacturers who testified in the case as to the number of machines they had put out. In the first place, the brief writer himself admits that the shoe machinery manufacturers who testified only included a portion of the shoe machinery manufacturers in the country. For instance, in the Appendix under the heading "McKay Sewing Machine" (pp. 315–316) the names of nine manufacturers are given and it is stated that no representative of six of them testified. They are put down as having put out no machines. No reference is made to other manufacturers of or dealers in McKay machines at all. See also tacking machine, page 312, clicking machine, page 317. In the second place, practically none of the manufacturers who testified were asked what machines they had out on March 1, 1911. Furthermore, many of them did not testify at all as to the number of machines they had furnished and in such case they are put down in the Appendix as having furnished no machines. A glaring case of this appears in respect to eyeletting machines (p. 317). It is there stated in respect to the Peerless Manufacturing Company:

"Output not stated, but we may assume that if it was large enough to be significant it would have been stated by the defendants."

The writer of the brief, therefore, assumes that no eyeletting machines were put out by the Peerless Manufacturing Company, and makes up the list of the number of eyeletting machines out on this basis. As a matter of fact, Muther of the Peerless Company testified as follows:—

"We sell our eyeletting machines outright or loan them without charge to people who buy eyelets from us. . . . Our eyeletting machine is the Peerless rapid eyelet machine. It will insert any kind of eyelets in shoes. They are put out on loan leases and we ask customers to buy all their eyelets from us—but they don't. . . . We supply six or eight different kinds of eyelets, mostly japanned, which we buy and resell. We buy our japanned eyelets from the United Company and the Atlas Tack Company. . . . We can buy and sell all we want—all our customers require. . . . We sell more Atlas than United eyelets and our customers are altogether shoe manufacturers. . . . Our machines are sold to shoe manufacturers who use other machines obtained from the United Company. . . . Our machines and theirs are sometimes used side by side in the same factory. Manufacturers use either they want—or both" (R. Vol. 1, pp. 303–304).

The output of eyeletting machines thus described is designated by the United States as "None."

Furthermore, two of the witnesses, C. H. Jones and R. P. Hazzard, specifically cited by the United States to support its allegation of actual monopoly, use Peerless eyeletting machines. Hazzard, who picked out the United machines as generally the best on the market (R. Vol. 1, p. 653, lines 3–4) has five Peerless machines and only two United

machines (R. Vol. 1, p. 651, lines 5–9; Defs.' Ex. 262, R. Vol. 5, p. 707). Jones has five United eyeletters and ten or more Peerless eyeletters (P.'s Ex. 279, R. Vol. 4, p. 1559).

The Court will appreciate that a table purporting to show the number of machines out which is made up in this manner is absolutely and entirely unreliable and cannot possibly give a correct picture of the situation. That this is so is strikingly shown by the results in respect to McKay sewing machines.

The McKay sewing machine is one of the most important bottoming machines made. It was used in bottoming over 37 per cent. of the shoes made in 1910, while the welter and stitcher were used in welting and stitching only 30 per cent. of the shoes made in that year (R. Vol. 1, p. 424). Mr. Winslow gave a list of 17 American and 10 foreign dealers in and manufacturers of this machine (R. Vol. 1, pp. 858–859). Appendix B of the brief for the United States refers to the testimony of representatives of only 3 of these concerns. Emerson, of the Shawmut Company, testified that, a year before, his company had started to make a McKay sewing machine and had three machines out; "we are making . . . an improved machine of recent design" (R. Vol. 1, p. 910, lines 24–26, 33–35). Spencer testified that his concern had manufactured various machines and dealt in others. He did not include McKay sewing machines in the list of machines he manufactured and was not asked if he dealt in them (R. Vol. 1, pp. 884–885). Hall, of the American Worsted Machinery Company, testified that in the period from 1907 on the company did not manufacture McKay sewing machines, but that "we handled and made parts for that machine" (R. Vol. 1, p. 953, lines 21–22). He was not asked and did not state how many he had dealt

in. His company also quoted a price of $250 for a McKay sewing machine and was ready to make it for anybody (R. Vol. 1, p. 953, line 43; p. 954, lines 1–2).

The brief writer assumes that none of the other concerns named as dealing in or manufacturing McKay machines had put any out, and accordingly in Appendix B (p. 315) of his brief puts down 8 McKay sewing machines as the total output of all concerns other than the United Company, and in the table (p. 150) quoted above it is stated as a fact that a total of 906 McKay sewing machines were in use on March 1, 1911, of which the United Company furnished 898, and competitors only 8. Just why the brief writer chose 8 instead of 3, the number which Mr. Emerson testified he had put out, is not clear.

If the above were all the evidence in respect to McKay sewing machines, the unjustifiable method employed by the brief writer in making up the table would be made sufficiently clear. But it is not. It affirmatively appears in the record that in the Lynn district in 1909 there were 59 McKay machines supplied by the United Company and 367 supplied by others. In the principal shoe districts of the country 1,180 McKay machines out of a total of 1,488 McKay machines, or practically 80 per cent., were supplied by others than the United Company (R. Vol. 1, p. 977, lines 16–31).

John Bulmer, a witness for the United States, testified:—

> "McKay sewing machines are to be had from about all the shoe manufacturers. They pass through our hands more or less frequently, and we rebuild or repair them and furnish them to others. We have no difficulty in getting them at any time" (R. Vol. 1, p. 908, lines 38–41).

Mr. Jonathan Brown, a large shoe manufacturer, testified that there was no difficulty in buying all the McKay machines he wanted at any time (R. Vol. 1, p. 730, lines 18–22). He had 13 McKay sewing machines, only 3 of which he had obtained from the United Company (R. Vol. 1, p. 730, lines 23–25). The United Company never in any way interfered with his buying McKay sewing machines elsewhere (R. Vol. 1, p. 730, lines 26–30).

And yet, in spite of this evidence and in spite of the fact that this error was pointed out in our briefs filed at the first hearing in this Court, the United States in its present brief again states in this table that other manufacturers than the United Company had out only 8 McKay sewing machines in 1911. Brown alone had 10 of such machines obtained from others.

The Court can thus see what reliance can and should be placed upon the brief writer's statements.

We also call the Court's attention to the following comments on the machines, as to which, according to this table, the United Company has a monopoly.

The number of machines which it is stated in the table the United Company has out comprises all the machines of these kinds it or its constituent companies prior to its formation ever put out, which were still in the hands of shoe manufacturers on March 1, 1911. As the constituent companies at the time of the formation of the United Company furnished practically all machines of these kinds which were then in use, in discussing the amount of competition which now exists, the real question is how many machines have been put out by the United Company and by competitors during the last few years, and not what is the total number of machines put out by the United Company

and its constituent companies during the period in which the United States admits that the United Company or its constituent companies had a lawful monopoly of the business.

Considering separately each of the twelve machines enumerated in the table (p. 150):—

Standard Screw Machine. The United Company in 1900 had out 826 standard screw machines and in 1911 only 440. In 1913 this number was reduced to 379 (Defs.' Ex. 226, R. Vol. 5, p. 424). In other words, the United Company, instead of forcing other standard screw machines out of the market and substituting its own machines, had actually received back from lessees nearly half the number of machines which were outstanding in 1900. This was due to the fact that the manufacture of standard screw shoes has declined.

Pegging Machine. The United Company in 1911 had out only 146 pegging machines. It does not appear in the record how many were outstanding at an earlier period, but undoubtedly in 1899 many more were outstanding, since the manufacture of pegged shoes has rapidly decreased since that date and the number now manufactured is almost negligible (R. Vol. 1, p. 424).

Hamel makes a pegging machine and has put out one machine in the United States and three abroad (R. Vol. 1, p. 326, line 50). It is not surprising that he has not put out more machines during this period in which shoe manufacturers have been discarding their pegging machines instead of taking more; nor is it surprising that other shoe machinery manufacturers have not gone to the expense of developing these machines, when the total number desired in the country has been at most a few hundred,

when the supply of machines already constructed has been larger than the demand and when the United Company has been taking back machines instead of furnishing additional machines.

Tacking Machine. The table purports to show that the United Company had out 3,488 tacking machines and competitors 6. In 1900 the United Company had out 3,752 tacking machines and in 1911 only 3,065 of this same kind of machine (Defs.' Ex. 226). In the figure given in the table, of 3,488 there are included a number of hand tackers (Defs.' Ex. 228). But even accepting the brief writer's figure of 3,488 it shows that the United Company instead of increasing the number of its tackers outstanding in the last eleven years has actually reduced the number. There has, therefore, been no reason why competitors should do an extensive business in this field, since the supply of tackers already constructed has exceeded the demand, and certainly it cannot be claimed that the United Company has monopolized the business of others.

Clicking Machine. The clicking machine was invented by the United Company and put out in 1908. This machine cuts out the uppers from the side of leather. There are other machines and tools used for cutting out uppers (R. Vol. 1, p. 592, lines 41–45, p. 593, lines 1–6). This was the first machine invented to do the work in the particular way in which this machine performs it. The machine is protected by thirteen different patents, giving the United Company the exclusive right to make, vend, and use this particular type of machine (R. Vol. 2, pp. 2588–2598). No other clicking machine has ever been acquired, and no machine is restricted to use with the clicking machine, so that it cannot be contended that any shoe manufac-

turer is induced to take it by reason of the Restricted Use Clauses. The entire business of furnishing this particular type of machine has been created by the United Company since 1908 and the fact that no one else had furnished machines of this particular type in 1911 is if true, therefore, not surprising and yet this is one of the machines which the United States asserts has been unlawfully monopolized.

Pulling-over Machine. The pulling-over machine was invented by the United Company and was first put out in 1903. It is protected by nineteen patents (R. Vol. 2, pp. 2542 *et seq.*). When invented the machine performed work which had previously been done by hand and which is still done by hand in many shoe factories. The United Company spent in the development of this machine approximately $1,000,000 (see our Main Brief, p. 622). The United Company acquired one patent relating to this machine in 1900, when it was attempting to develop it, but it has never acquired a competing machine or the business of any manufacturer. There are no machines restricted to use with the pulling-over machine except the No. 5 lasting machine, a machine first developed in 1908 by the United Company. The work done by this machine can be done by other lasting machines. It is obvious that the business done by the United Company in pulling-over machines is due to the fact that it created the machine and the market for them, and no one else has developed an equally efficient machine.

Welt Sewing Machine. The table shows that the United Company has out 2,527 welt sewing machines and competitors only 142. In 1900 the United Company had out 1,338 welt sewing machines (Defs.' Ex. 226). It has, therefore, increased the number of machines out in eleven

years by only a little over 100 machines a year, although the number of welt shoes made in the country increased from 22,700,000 in 1898 to 86,231,000 in 1910 (see our Main Brief, p. 198). When the United Company was formed there was no competition. Competitors have been putting out the machine only for a comparatively short period, but have succeeded, according to the brief writer himself, in putting out 142 machines.

Outsole Stitching Machine. The United Company in 1900 had 1,193 outsole stitchers in use. In 1911 it had 2,676. In 1900 there were practically no competitors' machines out. There are now, according to the brief writer, 758 competitors' machines outstanding. In other words, although the United Company had practically the only machine of the kind in 1900, which was strongly protected by patents, and although its machine has ever since been admittedly the best machine made, competitors have in the last few years put out nearly 50 per cent. as many machines as the United Company has put out since its formation.

Slugging Machine. The United Company in 1900 had out 1,723 slugging machines which were increased to 1,878 in 1911, an average of only 14 machines per year. In 1910 to 1913 there was an actual falling off in the number of machines out (Defs.' Ex. 226). Hamel alone had since 1903 sold 22 slugging machines in the United States and 13 abroad (R. Vol. 1, p. 326).

Loose Nailing Machine. The United Company, in 1900, had out 860 nailing machines (Defs.' Ex. 226). In 1911 it had out 1,835. In other words, it had put out only an average of 100 machines per year during these eleven years.

Heeling Machine. The United Company had out, in 1900, 1,382 heeling machines. It had increased this in 1911

to 2,019, an increase of 637, or an average of 58 a year. Its heeling machine was admittedly the best, and it is the only concern whose heeling machines were being taken in 1899.

McKay Sewing Machine. The United Company had 898 McKay sewing machines in use in 1911. As we have shown, a considerably larger number of these machines had been furnished by others, although the table with gross error states that only 8 had been put out by others (*supra*, pp. 66–67).

Lasting Machine. The United Company had out in 1900 4,207 lasting machines. In 1911 it had out 7,496 lasting machines. The increase in these machines was due to the fact that when the United Company was formed about half the shoes made were lasted by hand. 2,080 of the machines outstanding in 1911 were of its new type of No. 5 lasting machine first developed by it in 1908. It is undoubtedly true that a comparatively small number of lasting machines had been put out by others. This was because the United Company's machines were vastly superior and the United Company had no larger proportion in 1911 than it had in 1899. It was, however, possible to obtain lasting machines from others, if any shoe manufacturer desired to do so (*supra*, pp. 24–25).

Other Statements in Respect to Amount of Business Done by United Company.

The brief writer lays great stress on the testimony of Warren F. McElroy, in which he undertakes to show his difficulties in equipping a factory to manufacture 600 to 1,000 pairs of welt shoes a day from sources independent of the United Company. In considering this testimony

it must be remembered that McElroy was attempting to manufacture only a particular type of shoe, viz., the welt shoe. Machines for manufacturing shoes constructed in this particular manner were invented by the Goodyear Company, and the United Company had specialized in this particular type of machinery. McElroy did not undertake to state that he could not readily obtain machinery for manufacturing other types of shoes which are the types most generally made in the country. For example, he testified:—

> "I did not look into the question whether a factory could be equipped for making McKay shoes without taking machines from the United Company.
>
> "More McKay shoes are made than any one kind. . . I did not consider whether McKay shoes or pegged shoes could be made without using United Shoe Machinery Company machines. I found that a factory could be equipped without using United Shoe Machinery Company machines for making metallic fastened shoes with heavy outsoles. Such shoes could not be made if light outsoles were used. . . . I did not consider whether a factory could be equipped for making turn shoes without the United Company's machines" (R. Vol. 1, pp. 193–194).

In other words, McElroy only attempted to get machines which imitated the work of the peculiar type of patented machines manufactured by the United Company.

Furthermore, it is important to note that McElroy did succeed in equipping a good-sized factory for making this peculiar type of shoe without obtaining machines from the United Company, and that he considered the shoe he made with these machines "a better shoe than the Goodyear welt" (R. Vol. 1, p. 194, lines 16–17).

In respect to the testimony of Long and Jones referred to at page 134 of the brief, to show that no other company

in the country "offer such a full line of machines," reference to the record will show that Long was testifying as to conditions in or prior to 1907 (R. Vol. 1, p. 231, lines 14–20) and that Jones testified merely that no "single concern, in this country to-day," except the United Company, could furnish a full line of machines for the manufacture of welt and turn shoes, the particular types of shoes in which the United Company specialized (R. Vol. 1, p. 115, lines 31–39). Further, he did not attempt to testify that machines for this purpose could not be obtained from two or more different concerns.

It is not true, as alleged in the brief for the United States (p. 152), that Mr. Winslow was unable to state "whether any one of the concerns which had been offered to the United Company and rejected by it was in existence on December 12, 1911, and was doing a substantial business in competition with the United Company." On the contrary, he had just named a large number of such concerns, and he said that he would have to examine the list in order to specify *all* that were then competing. Among those which he had previously described were many which, as shown throughout the record, are still doing a substantial competing business, such as the Boylston Manufacturing Company, the Champion Shoe Machinery Company, the Haverhill Shoe Machinery Company, the R. H. Long Machinery Company, and the Union Lock Stitch Company (R. Vol. 1, pp. 472–476; p. 572, lines 3–25; see also Appendix III of our Main Brief, pp. 808–834).

Again, Mr. Winslow did not admit, as alleged by the United States, "that the entire increase in welt machines and in lasting machines was in machines put out" by the

United Company (p. 154). What he did say was that the increase shown by Defendants' Exhibits 215 and 226 (R. Vol. 1, p. 424; Vol. 5, p. 424) was based only on the machines of the United Company, because, as Mr. Winslow distinctly stated, he had no reliable figures as to the number of competitors' machines (R. Vol. 1, p. 569, lines 37–44; p. 570, lines 20–40). Obviously, however, the fact that 86 welt and turn machines were put out by the Hamel Shoe Machinery Company, which started business in the United States in 1903 (R. Vol. 1, p. 326, lines 9–10; 37), and 65 (not *56* as given by the United States) welt and turn machines were put out by the Haverhill Company during the last two or three years (R. Vol. 1, p. 291, lines 42–44; p. 292, lines 7–10) proves that a considerable proportion of the increase in the number of welt and turn machines out was made by competitors of the United Company.

Misuse of Census Figures.

At the very beginning of the brief (p. 8) the writer attempts by a misuse of the census figures to create the impression that the United Company furnishes machines to practically all shoe manufacturers. Thus he says that the defendants leased machines to at least 1,033 shoe manufacturers, and in a footnote says,—

> "The latest figures of the census of manufactures (1914) show 1,090 firms, individuals, and corporations reported as engaged in the manufacture of 'footwear' operating 1,355 establishments."

The record shows that the United Company had 1,033 lessees in 1911 operating 1,150 different factories (R. Vol.

1, p. 454, lines 45–46; p. 455; p. 26, lines 38–40). The Census of 1914 was, of course, not in evidence and not compiled at the time the case was tried. Furthermore, it is, of course, unfair to compare the figures of the Census of 1914 with the number of lessees in 1911.

But further than this the brief writer himself misquotes the Census of 1914. It does not state that there were "1,090 firms, individuals, and corporations reported as engaged in the manufacture of 'footwear'" as alleged. On the contrary, it shows that the number of establishments was 1,355 and the number of "proprietors and firm members" 1,090. By the term "proprietors and firm members" the census report means individuals either singly or as members of partnerships owning or operating such establishments. This figure does not include corporations. Thus it does not purport to be a statement of the number of different concerns. We pointed this out in our reply memorandum filed at the first hearing in this Court, and as the census was not in evidence and the whole matter was outside the record we also stated in that reply memorandum that the census office, in answer to our inquiry, stated that the expression "proprietors and firm members" did not include or refer to 686 establishments operated by corporations or their employees. The present brief, in repeating the same error, deliberately misrepresents the situation.

We further pointed out that the term "establishment" as used in the census reports means usually a separate factory, but that where two or more factories are operated under a common ownership in one city they are counted as a single establishment (see Census of Manufactures: General Totals for the United States by Geographic Divi-

sions, States and Industries, p. 2). Thus the Census for 1914 would impliedly show that there were more than 1,355 factories making shoes.

In the footnote on page 8 the brief writer further says it should be remembered that makers of moccasins, infants' shoes, etc., are classed as making footwear, and that these do not need to use the essential bottoming machines which the United Company supplies. The record does not sustain any such statement.

The record shows that in 1911 the United Company did business with 1,033 shoe manufacturers operating 1,150 different factories. It further shows that the only evidence as to the total number of shoe manufacturers in the country in 1911, or at any other time, was Mr. Donham's testimony that he should say there were in 1911 between 1,300 and 1,500 and that the Census for 1910 showed in the neighborhood of 1,300, as he recalled it (R. Vol. 1, pp. 26–27, lines 41–42). At page 139 of the brief the writer refers to these figures and says,—

> "Census figures appear to include not only shoe manufacturers but producers of 'cut stock and findings.'"

This is not so. Producers of cut stock and findings are listed separately.

The result is that the record shows that there were 1,033 lessees in 1911 with whom the United Company did business and furnished one or more machines, and if it is fair to compare the census figures of 1910 with the number of manufacturers in 1911, there were at least 267 shoe manufacturers with whom the United Company did no business at all. As the census figures only list such manufacturers as make reports, it is probable that there were a larger number.

Conclusion

The brief writer does not attempt to deny that in a shoe factory only from 30 to 50 per cent. of the total number of machines used are of the kinds manufactured by the United Company (see Main Brief, pp. 603–604). As to a large proportion of these machines which the United Company does furnish no monopoly is claimed by the United States.

It further appears that a very considerable number of shoe manufacturers do not obtain their machinery from the United Company at all.

It finally appears that of the 12 machines (p. 150) on which the brief writer apparently finally depends to prove monopoly, several are machines very recently invented by the United Company, several others are machines the use of which has decreased so that the United Company has received back machines since its formation instead of putting out additional machines, and the few remaining machines (except the McKay sewing machine as to which it is clear the United Company has no monopoly) are machines invented by the constituent companies which formed the United Company as to which it is admitted these companies had practically a complete lawful patent monopoly in 1899, which have been vastly improved by the United Company under recent patents, and which are mainly of a type in which the United Company has specialized. Taken together the entire 12 machines constitute only approximately 4 per cent. of the total types of machines manufactured by the United Company, and a smaller percentage of the total types used in shoe manufacturing.

COMMENTS ON ALLEGED LASTING MACHINE COMPETITION.

1. PRELIMINARY STATEMENT.

The Court will find nothing in the brief for the United States which will raise any question as to the soundness of the findings of the facts bearing on this issue by the District Court, which heard in open court all the testimony discussed by the United States and whose findings show that they were made after thorough consideration of that testimony. Even if it be assumed that the facts were as stated in the brief for the United States, they fully justify the District Court's finding that there was no lasting machine competition in any practical sense between the Goodyear Company and the Consolidated Company. The United States does not deny that, as pointed out in our Main Brief (p. 114), there were only 248 of the Goodyear Company's Ideal machines out when the United Company was formed, as compared with a total number of between 4,200 and 4,300 lasting machines out, and on its own showing only 18 Ideal machines at the most were used on men's welt shoes. Nor does the United States deny that, as pointed out in our Main Brief (p. 122), there were only a few hand method welt lasting machines out in February, 1899, and that at that time the machine was only experimental and was unsuccessful. The alleged competition was so

trivial and so utterly unimportant that it is of no practical significance.

Accordingly we should not burden the Court with any further discussion of this issue than is contained in our Main Brief, pages 94–132, were it not for the fact that the brief for the United States does not, in our opinion, present its case fairly. It contains many inaccurate and misleading statements which to the reader of its brief only would give an entirely wrong impression of the evidence.

In the following pages we shall point out some of the misleading and inaccurate statements contained in the brief for the United States and we shall also call attention to some of the evidence to which the United States has neglected to refer and which disproves its contentions.

2. THE CONTENTION THAT THE EXPERIMENTAL HAND METHOD WELT MACHINE OF THE CONSOLIDATED COMPANY COMPETED WITH THE IDEAL MACHINE OF THE GOODYEAR COMPANY IN LASTING WOMEN'S WELT SHOES.

The brief for the United States contends (p. 23) that the problem of adapting the hand method lasting machine for the lasting of welt shoes was "in the way of solution in the fall of 1898"; and that in December, 1898, the Consolidated Company was "offering to the trade the hand method machine as a satisfactory machine for the lasting of welt shoes."

The United States relies upon Mr. Winslow's testimony that, as it is stated by the United States (p. 23), "some machines were already in shoe factories," that it was the intention of the Consolidated Company "to perfect the machine so as to make it an efficient welt lasting machine," that it became successful *in 1900*, and that *now* women's welt shoes are lasted very largely upon this machine.

It is upon these statements by Mr. Winslow that the United States bases its assertion (p. 23) that the Consolidated Company "was putting out lasting machines which covered the entire ground." But the United States ignores Mr. Winslow's testimony that, just before the United Company was formed,—

> ". . . while it is true that we had machines out it is true that *they were not being accepted by the manufacturers* and they were being sent out and coming back. We were trying all the time to keep them going. . . . We were trying to hold them in the field, but *we knew that they were not commercially successful*" (italics ours) (R. Vol. 1, p. 978, lines 2–5, 11–13).

Mr. Winslow also testified that "at the date of the formation of the United Company *it was not a successful welt lasting machine. It would not last the toes of the welt shoes properly*" (italics ours) (R. Vol. 1, p. 524, lines 9–11).

Mr. Winslow's testimony was emphatically corroborated by Mr. Howard (R. Vol. 1, p. 969, lines 4–6).

The practical reasons why the experimental hand method welt lasting machine was not successful until a new invention was incorporated in it in 1900 are fully explained in our Main Brief (pp. 119–121).

The United States relies on the testimony of Selz, Welch, and Strootman (pp. 33–35). But none of these witnesses

testified to any use of the hand method welt lasting machine on *women's welt shoes* prior to 1899.

Selz's testimony does not bear on the issue. In the summary of his testimony in the brief for the United States (pp. 33–34) women's *welt* shoes are not even mentioned.

Welch's testimony does not bear upon the issue of lasting machine competition in 1899, despite the attempt of the United States (p. 34) to give the impression that it does. Welch did not manufacture welt shoes until "along *in 1906*" (italics ours), *seven years after the United Company was formed*, and prior to that time had manufactured McKay shoes exclusively (R. Vol. 1, p. 711, lines 19–20, 34).

Immediately following its summary of the testimony of Selz and Welch the brief for the United States says (p. 34) that "the foregoing testimony shows" that the hand method machine was *in competition* with the Ideal "in the lasting of women's shoes *at the time the combination was formed*" (italics ours).

Strootman did not testify and the brief for the United States does not claim (p. 34) either that he was making women's welt shoes prior to 1899 or that he used the Consolidated hand method lasting machine prior to 1899. Accordingly his testimony is irrelevant to this issue.

The earliest date fixed by any of these witnesses as to use of the hand method welt lasting machine on women's welt shoes was 1906, after patented mechanisms had been added to the machine which made it successful.

The United States, therefore, has not called attention to any testimony whatever which could lead this Court to doubt the correctness of the finding of the District Court; on the contrary, it appears that all the testimony was

consistent with the finding that the hand method welt lasting machine "had not been made an article of commerce in any practical sense" when the United Company was formed (R. Vol. 1, p. 1130).

3. THE CONTENTION THAT THE IDEAL MACHINE OF THE GOODYEAR COMPANY COMPETED WITH THE HAND METHOD McKAY MACHINE OF THE CONSOLIDATED COMPANY IN LASTING McKAY SHOES.

The United States repeats the contention (p. 24), which it made for the first time at the former hearing in this Court, that the Ideal machine was used in the field of the hand method McKay machine in lasting McKay shoes.

The United States introduced no evidence in support of this contention and it now relies upon the testimony of only one witness, Mr. Howe. But the United States does not correctly state Mr. Howe's testimony. It says (p. 24) that Mr. Howe testified that "it would frequently happen that McKay shoes would be lasted upon the Ideal machine." What Mr. Howe actually said was:—

> "It would happen *sometimes* in a shoe factory whose principal work was the manufacture of women's welts that the concern might be making a few McKay sewed shoes, but not enough to have an appropriate lasting machine for them. In that case frequently *they would strain a point* and last their McKay shoes on an Ideal laster, *for which it really was not adapted*" (italics ours) (R. Vol. 1, p. 627, lines 25–31).

4. THE CONTENTION THAT THE IDEAL MACHINE OF THE GOODYEAR COMPANY WAS COMPETING WITH THE CHASE MACHINE OF THE CONSOLIDATED COMPANY IN LASTING MEN'S WELT SHOES.

A. Much of the Evidence Relied upon by the United States to show Use of the Ideal Machine on Men's Welt Shoes does not Relate to Use of the Ideal at all but Relates to the Copeland Rapid Laster, a Radically Different Machine which was Practically Obsolete in 1899.

The United States, after saying (p. 21) that "there can be no serious dispute with reference to the various kinds of lasting machines which were *being produced at the time the United Company was formed*" (italics ours), states that "at that time *there were on the market*" (italics ours), among other lasting machines, the Ideal and the Copeland Rapid, both owned by the Goodyear Company. That statement is contradicted by the testimony of Mr. Winslow which is cited as authority for it. Mr. Winslow said (R. Vol. 1, p. 521, lines 39–40): "The Copeland rapid laster *preceded* the Ideal, the Ideal being an improvement on it" (italics ours). Mr. Winslow also said (R. Vol. 1, p. 526, line 45) that the Ideal was developed from the Copeland Rapid laster and that (line 46) "in 1899 the Goodyear Company was *putting out the Ideal machine . . .*" (italics ours).

Mr. Winslow's testimony was confirmed by Mr. Howe, who said that the Ideal machine was developed from the Copeland Rapid machine and that after the Ideal machine was produced the Goodyear Company *put out the Ideal machine* (R. Vol. 1, p. 626, lines 36–43). The Ideal lasting machine was first put out in May, 1895 (R. Vol. 2, p. 2387). Worsencroft, a witness for the United States, said that the Copeland Rapid machine "was *succeeded* by the Ideal lasting machine" (italics ours) (R. Vol. 1, p. 914, line 1).

In a foot-note on the page following that on which it makes the misstatement above noted, the United States (p. 22) makes a tardy admission that the record does not show that the Goodyear Company continued to manufacture the Copeland Rapid machine after it produced the Ideal machine (see our Main Brief, pp. 106–108).

In order to justify its reliance upon testimony relating only to the Copeland machine the United States first undertakes to show that the Copeland and Ideal machines were substantially identical (pp. 21–22, 25). It characterizes the Copeland machine as "the same machine as the Ideal machine except that it was operated by the foot of the workman rather than by power" (p. 25).

On the contrary, it is shown conclusively by the testimony of both witnesses for the United States and defendants' witnesses (see our Main Brief, pp. 106–108), which the United States ignores, that the Copeland machine was *radically different* from the Ideal and was *practically obsolete* in 1899.

Accordingly the testimony of Florsheim and McElroy (Brief for the United States, pp. 25–26), which relates only to the Copeland Rapid Laster and does not mention the Ideal machine, is irrelevant.

Likewise, so much of the testimony of Worsencroft (p. 28) and Jordan (p. 31) as relates to the Copeland Rapid machine should be disregarded.

B. Evidence as to Use of the Ideal Machine on Men's Welt Shoes after 1899, largely relied upon in the Brief for the United States, is not Relevant to this Issue.

The United States fails to distinguish between use of the Ideal machine *before 1899* and use *after 1899*, as it in effect admits in the foot-note on page 25. As is shown in our Main Brief (pp. 110–113), the slightly increased use of the Ideal machine on men's welt shoes *after 1899* was due to the introduction of a new shape of last and to inventions which made it practicable for the Ideal machine to last men's welt shoes made on that last (and see *infra*, pp. 88–91).

It cannot be assumed that defendants in February, 1899, could anticipate either that change in the styles of shoes or the making of those inventions.

Accordingly, a considerable amount of the testimony which is relied upon in the brief for the United States is irrelevant. For example, Snow (pp. 26–27) testified *entirely* to conditions *after 1899*, in fact after "the spring of 1901" (R. Vol. 1, p. 896, lines 21–23). The testimony of O'Keefe (pp. 31–32) in regard to use of the Ideal machine related only to conditions *after 1899*. The testimony of Jordan referred to by the United States (p. 31) regarding use of the Ideal in the Douglas and Keith factories related only to conditions *after 1899*. The record does not show whether Murphy was testifying about conditions before

or after 1899, so that his testimony (p. 31) has no probative value. The greater part of the testimony of Heffernan (pp. 29–30) related to use of the Ideal machine *after 1899;* so did much of the testimony of Fletcher (p. 32).

Selz did not testify to any *use* of the Ideal machine. The testimony relied upon by the United States (pp. 33–34) was a mere expression of opinion and the value of that opinion may be judged from the fact that Selz made the ridiculous statement that the machines which he had mentioned—and he had included the *McKay-Copeland* machine, admittedly used only on heavy, nailed shoes such as brogans—could *all* be used in lasting *women's shoes* (R. Vol. 1, p. 142, lines 10–18).

In the foot-note on page 25 the brief for the United States says that it is immaterial whether the use of the Ideal machine on men's shoes was before or after the formation of the United Company, "the issue being whether such use *was possible*" (italics ours). That is of course *not* the issue, it being admitted that such use was *possible* (see our Main Brief, pp. 103–104). The issue is whether at the time the United Company was formed the Ideal machine as then constructed—not as later improved by inventions then unforeseen—was adapted for use on men's shoes under conditions then existing,—whether, in the words of the District Court, it could be "relied on to work well with the heavier leather whereof men's shoes are made" (R. Vol. 1, p. 1130). Evidence reviewed in our Main Brief (pp. 104–106) shows conclusively, and the District Court found (see our Main Brief, p. 117), that the Ideal machine was not adapted for successful commercial use on men's shoes when the United Company was formed.

C. The Attempt of the United States to Minimize the Importance of the Improvements which were Made in the Ideal Machine after 1899.

In pages 110–113 of our Main Brief, testimony is reviewed which shows that important improvements were made *after* 1899 which improved the mode of operation of the Ideal machine, making it more successful on men's shoes. These inventions were made by Stephen Snow, who testified as a witness for the United States. The brief for the United States endeavors to minimize the value of those improvements.

In its extended summary of Snow's testimony (pp. 26–27) the United States does not state his testimony fairly. For example, it says (p. 27): "Snow claimed that the Ideal machine would not last men's 'heavy' shoes 'successfully' without his inventions, but that they made it successful on those shoes." As authority it cites the record, Vol. 1, p. 898, lines 32–37, but at those lines Snow testified, *without qualification*, that the Ideal machine without his two improvements would not last men's shoes successfully.

The impression which the United States endeavors to give (p. 27) that Snow's testimony was only to the effect that without his improvements the Ideal machine was successful on all men's shoes except heavy shoes, such as brogans, etc., is not supported by his testimony. On the contrary, he said that before he made his inventions the Ideal would not successfully last *even patent leather shoes* (R. Vol. 1, p. 899, lines 38–42).

That the statement of Snow's testimony by the United States is inadequate and misleading is further shown by

the quotations from his testimony on pages 105–106, 111, 113 of our Main Brief. Snow testified that it was the two improvements which he made "that changed the machine from an unsuccessful machine into a successful one," and that without those improvements the Ideal *would not last men's shoes successfully* even if the operation were repeated two or three times (R. Vol. 1, p. 898, lines 35–40; p. 899, lines 38–42; p. 900, lines 12–13).

We do not see that any less weight should be given to the testimony of Snow, a witness for the United States, because it was in answer to "leading questions by counsel for the defendants" (Brief for United States, p. 27) *on cross-examination.*

But it is not necessary to rely upon Snow's testimony alone as to the value of his inventions. See the discussion in our Main Brief (pp. 106, 111–113) of the testimony of Fletcher, Whitman, and Heffernan, all witnesses for the United States, and the testimony of George E. Keith, the shoe manufacturer in whose factory the improvements were first used.

As to the statement in the brief for the United States (p. 27) that Snow "admitted that Ideal machines had been used by both Keith and Douglas in the practical manufacture of their men's shoes without the device," it should be noted, first, that Snow's testimony related only to conditions beginning with the spring of 1901 and that he expressly disclaimed any knowledge of conditions before 1901 (R. Vol. 1, p. 896, line 23; p. 899, lines 12–20) and, second, that while he was in Keith's factory from the spring of 1901 to the spring of 1902 he put holddowns on *all* of Keith's machines and he said that after he went to the Douglas factory, "I put them on as quickly as I could get

them on" (R. Vol. 1, p. 896, line 23; p. 897, lines 11–13; p. 900, lines 3–4).

In its summary of the testimony of Fletcher, a witness for the United States (p. 28), the brief for the United States ignores Fletcher's testimony, in the same paragraph as that to which it refers, that before the holddown, one of Snow's improvements was put on the Ideal machine, the machine did not operate properly, it was frequently necessary to repeat the operation and the shoes were likely to be injured (R. Vol. 1, p. 939, lines 1–9).

Jordan's testimony that the holddowns were used at Douglas's only a short time and were then taken off (Brief for United States, p. 31) is discredited by his testimony that when he worked on the Ideal machine at Keith's "they did not have the holddown on the machine," although he testified that he was operating an Ideal machine at Keith's at the time when the record shows conclusively that the holddowns were on Keith's Ideal machines (R. Vol. 1, p. 933, lines 18–22) (see our Main Brief, p. 111). Jordan's testimony is also contradicted by Fletcher, a witness for the United States, who testified that he worked for Douglas from 1902 to 1910 and that he knew that Stephen Snow "put holddowns on the Ideal machines in Douglas's factory" (R. Vol. 1, p. 937, lines 38–39; p. 939, lines 1–2).

In its discussion of the testimony of Heffernan (pp. 29–30) the United States endeavors to give the impression that Heffernan lasted men's welt shoes successfully for twelve years upon the Ideal machine without any holddown appliance, but testimony of Heffernan to which the United States does not refer, but which is reviewed on page 112 of our Main Brief, shows that before the holddown was

applied the work of the machine was not satisfactory and that his use of it could not be regarded as successful use. The United States also ignores the testimony of Heffernan that for over twelve years they had had the other improvement made by Snow on the machines in the factory where he was employed.

D. The Use of the Ideal Machine in the Field of the Chase before 1899, on the Showing Made by the United States, was Absolutely Trivial and Insignificant.

The contention of the United States that the Ideal machine of the Goodyear Company was used on men's welt shoes *before* 1899 in competition with the Chase machine of the Consolidated Company is supported by the testimony of only five witnesses, testifying to such use in only three factories. These witnesses were Worsencroft (p. 28), Whitman (p. 29), Heffernan (pp. 29–30), Jordan (p. 31), and Fletcher (p. 32), and the testimony of Whitman, Heffernan, and Jordan, so far as they testified to use before 1899, related to one factory only, the Whitman & Keith factory. The aggregate number of machines, to the use of which these witnesses testified, is eighteen at the most. The brief for the United States would give the impression (p. 32) that Fletcher said that Cushman had twelve machines before 1899, but he did not so testify (R. Vol. 1, p. 938, lines 28–29, 32–33). Cushman in fact had only six before 1899 (R. Vol. 1, p. 972, line 12).

It is shown by evidence referred to on page 114 of our Main Brief that the total number of lasting machines of

all kinds out on January 1, 1899, was between 4,200 and 4,300. The Goodyear Company had put out only 248 Ideal lasting machines altogether, and of that number eighteen at the most, on the United States' own showing, were doing work which could be done by any machine which the Consolidated Company was putting out. That is certainly a meager showing in support of the contention of the United States that there existed "vigorous competition" (p. 301) between the Goodyear Company and the Consolidated Company, particularly in view of the fact that the Goodyear Company had been putting out the Ideal machine for nearly four years. Clearly this trivial overlapping use of the Ideal machine was entirely insignificant and of no importance.

That the Ideal machine also did not offer any potential competition to the Chase machine is proved by the testimony reviewed in our Main Brief (pp. 104–106), where it is shown that the Ideal machine was structurally not adapted for lasting men's shoes.

5. THE CONTENTION THAT THE CHASE MACHINE OF THE CONSOLIDATED COMPANY COMPETED WITH THE IDEAL MACHINE OF THE GOODYEAR COMPANY IN LASTING WOMEN'S WELT SHOES.

The United States contends that the Chase machine was used in the field of the Ideal for lasting women's welt shoes. But none of the four witnesses relied upon by the United States, O'Keefe (pp. 31–32), Lemay (p. 33), Springer (p. 33), and Selz (pp. 33–34) testified to any such use, and only

two of them, Lemay and Springer, went so far as to express an opinion that the Chase machine could be so used, as is shown on pages 100–101 of our Main Brief.

The United States says (p. 22): "The Chase laster, according to Mr. Winslow, was used *chiefly* for lasting men's welt shoes" (italics ours). The implication contained in that statement is not justified. There was no qualification in Mr. Winslow's statements. He testified that "*the Chase was adapted for lasting men's welts and would not last women's welts*" and that "*it wasn't used on women's welts*" (italics ours) (R. Vol. 1, p. 399, lines 14–15; p. 525, line 15).

The United States relies (p. 38) upon an advertisement of the Chase machine "advertising that machine for the purpose of lasting women's shoes" (R. Vol. 1, p. 960, lines 28–31). But it should be noted that the advertisement did not purport to offer the Chase machine for lasting women's *welt* shoes. Presumably the advertisement had reference to women's McKay shoes on which the record shows a slight use of the Chase machine (see our Main Brief, p. 101). That use, however, was in the field of the hand method McKay machine of the Consolidated Company, not in the field of the Ideal, and evidence regarding it is not relevant to any issue in this case. Nevertheless the United States contends (pp. 38–39) that *these advertisements* show that the Chase machine "certainly" was "adapted to the lasting of *women's* welt shoes" (italics theirs) and therefore competed with the Ideal machine.

But not only does the record fail to show that the Chase machine was ever used in competition with the Ideal, in lasting women's welt shoes, but evidence entirely uncontradicted proves, first, that *it was never used in lasting*

women's welt shoes and, second, that *it was structurally not adapted for such use.* This evidence is reviewed in our Main Brief (pp. 100–103).

6. THE UNITED STATES HAS CALLED ATTENTION TO NO EVIDENCE WHICH IS INCONSISTENT WITH THE FINDING OF THE DISTRICT COURT AS TO THE ALLEGED COMPETITION BETWEEN THE IDEAL AND CHASE MACHINES.

The District Court, whose discussion of the evidence on this issue is quoted in our Main Brief (p. 117), held, after summarizing the evidence,—

> "I am unable to consider it established that competition in any practical sense was destroyed when the United Company became owner of both machines" (Dodge, J., R. Vol. 1, p. 1130).

So far from establishing that the finding by the District Court is manifestly wrong, the United States has not shown the facts to be otherwise in any respect than was found by the District Court.

It is perfectly evident that the purpose in combining the Consolidated Company and the Goodyear Company was not to eliminate competition, but to combine the welt machines of the Goodyear Company with the lasting machines of the Consolidated Company.

COMMENTS ON THE ALLEGED COMPETITION BETWEEN THE EPPLER COMPANY AND THE GOODYEAR COMPANY.

The United States has eliminated from its brief a number of the inaccurate, unfair, and erroneous statements which were contained in its brief at the former hearing and which were criticised in our reply brief filed at that time. However the brief still contains many statements of the evidence which are open to criticism. Besides persistently ignoring testimony of both defendants' witnesses and its own witnesses which is unfavorable to its contentions, the United States frequently makes statements which are not supported by the record and occasionally statements which are directly contradicted by the record.

Illustrations of the statements which we believe are open to such criticism, as we shall later explain more in detail on the pages indicated, are as follows:—

(1) The United States says in effect (p. 40) that the only reason why Eppler machines could not produce "Goodyear welt" shoes was "because 'Goodyear welt' was a trade-mark name for shoes produced on Goodyear machines." On the contrary, the record shows that it was because of the construction of the Eppler machines that they could not make Goodyear welt shoes (see our Main Brief, p. 139) (*infra*, pp. 96–98).

(2) The United States says (p. 42) that Whitman testified that the work done by the Eppler machine was satisfactory. In fact, Whitman made no such statement. The United States ignores his testimony that the Goodyear "did better work on the shoe" (R. Vol. 1, p. 916, lines 15–16) (*infra*, p. 100).

(3) The United States says (p. 45) that Cunningham testified "that the *welter* was satisfactory to him, but the outsole stitcher was not" (italics theirs). It ignores Cunningham's statement that "everything about the Goodyear was better" (R. Vol. 1, p. 289, line 19) (*infra*, p. 101).

(4) The United States says (p. 46) that Fletcher "made no comparison between the Eppler and Goodyear *welter* further than to say that they ran side by side in the same factory" (italics theirs). On the contrary, Fletcher testified that "the Goodyear welter was the best" (R. Vol. 1, p. 938, lines 2–3) (*infra*, p. 101).

THE CONTENTION THAT THE EPPLER COMPANY WAS AN ABLE AND A PROSPECTIVELY VERY DANGEROUS COMPETITOR.

1. The Record disproves the Claim of the United States that the Difference between the Eppler Welt Shoe and the Goodyear Welt Shoe was a Difference only in Name, and Shows that there was a very Limited Field for the Eppler Welt Machines.

While it is admitted by the United States—as all of the witnesses on both sides testified—that the Eppler

machines could not make a Goodyear welt shoe, yet the brief for the United States states (p. 40), as the *only* reason, the fact that "'Goodyear welt' was a trade-mark name."

On the contrary, as set forth upon pages 133, 139–140 of our Main Brief, the absolutely uncontradicted evidence shows that the difference between the Eppler welt shoe and the Goodyear welt shoe was not in *name* merely but rather in the actual *structure* of the shoe. As Mr. Howe explained, the Goodyear welt shoe

> "was the hand-sewed shoe, sewed by machinery. The Eppler welt shoe was a shoe made in a different way, different from what a hand workman would make it" (R. Vol. 1, p. 678, lines 25–28).

In the Eppler shoe, the bulky double thread of the inseam lay in a channel in the insole beneath the foot, while in the Goodyear shoe it is laid on the welt outside the surface on which the foot rests.

This bulky double thread in the insole of the Eppler shoe under the bearing surface of the foot had a tendency to raise a ridge on the insole which would cause discomfort to the wearer, but which, being inside the bottom of the shoe out of sight, might escape discovery by the ordinary purchaser until he wore the shoe. This defect in the Eppler shoe, most serious in thinner soles, made it impossible to use the Eppler welt machine for women's welt shoes or for turn shoes. For the same reason the Eppler machines could not be used to make shoes with reinforced insoles, either men's or women's; and about forty per cent. of all welt shoes are made with reinforced insoles (R. Vol. 1, p. 415, lines 41–43; Vol. 2, p. 2494).

On this evidence, entirely ignored in the brief for the United States, it was found by the District Court that

> "The Eppler machines were adapted to produce men's thick-soled welt shoes only" (Dodge, J., R. Vol. 1, p. 1131).

Accordingly the statement in the brief for the United States (p. 40) "that there was open to the Eppler Company *a wide field* of possible competition" (italics ours) is contrary to the record. It follows that the statement that the Eppler Company "was successfully entering that field" (p. 40) is also not supported by the record.

We shall later show (*infra*, p. 104) that the Eppler Company was not successful in the limited field which it was attempting to enter (see also our Main Brief, pp. 139–140).

The Court should not be misled by the statement by the United States (p. 40) that "Manufacturers using both kinds of machines packed the shoes made upon them together indiscriminately in the same case and sold them all as welt shoes." It is true that one witness (p. 46) testified as to a single factory that the shoes were all sold "as welt shoes," but he did *not* testify that they were packed "in the same case" (R. Vol. 1, p. 938, lines 7–10). That the shoes in that factory were all sold "as welt shoes" is wholly immaterial; of course the shoes were all "welt shoes," and as the seam made by the Eppler welter was entirely concealed in the finished shoe the purchaser would not become aware of the difference until he suffered discomfort in wearing the Eppler shoe (*supra*, p. 97).

2. Testimony of Shoe Manufacturers Relied on by the United States.

On pages 41–46 the United States summarizes the testimony of twelve manufacturers or shoemakers. Before pointing out specifically some of the misleading and inaccurate statements in those summaries of the testimony we call attention to the fact that on the face of those summaries the testimony of five of those witnesses, Jones (p. 41), Selz (p. 41), Smith (p. 42), Long (pp. 44–45), and Cunningham (p. 45) to the effect that the machines of the Goodyear and Eppler Companies were used for the "same work" or the "same purposes" means no more than that both machines were used to make welt shoes. For example, "the same purpose" was defined by Jones in regard to the welting machines as "for the sewing together of the welt, the upper and the insole of a welted shoe," and in regard to the stitching machines as "attaching the outer sole to the welt" (R. Vol. 1, p. 110, lines 38–46; p. 111, lines 11–18).

On the other hand, as fully explained in our Main Brief (pp. 145–146), seven of these twelve witnesses, all witnesses for the United States, testified that the work done by the Goodyear welter was superior to that done by the Eppler welter. These were Selz, Smith, Whitman, Strong, Keith, Cunningham, and Fletcher.

In its summary of the testimony of Smith, a witness for the United States (p. 42), the United States ignores his testimony that the Goodyear welter was superior to the Eppler welter because the bulky chain-stitch which the Eppler machine laid in the channel of the insole was

likely to form a ridge on the inside of the shoe, which would come against the foot and cause discomfort to the wearer (R. Vol. 1, p. 353, lines 4–20).

As to the testimony of Whitman, a witness for the United States, the brief for the United States says (p. 42) that he testified that the work done by the Eppler welt machine was satisfactory. Mr. Whitman made no such statement. He did say,—

> "I consider the Goodyear welt system the best system; it did better work on the shoe" (R. Vol. 1, p. 916, lines 15–16).

He also testified that his company never had more than one Eppler machine (R. Vol. 1, p. 916, lines 11–18).

As to the testimony of Field, a witness for the United States, the brief for the United States says (p. 42) that Field testified that his company "put in the Eppler machines because they regarded them as the better of the two." But Field, who did not install the machines until *1902*, also testified,—

> "The Eppler machine sewed a somewhat *looser and weaker seam* than the Goodyear" (italics ours) (R. Vol. 1, p. 931, lines 16–17).

Elsewhere in the record it is clearly shown that a *tight* seam "is indispensable in the inseam of a welt shoe" (see our Main Brief, p. 137). The United States also says (p. 43) that Field testified that it was his judgment "that the Eppler machine sewed a flatter seam than the old Goodyear." But this opinion was wrong, as is shown by abundant evidence and specifically by the testimony of Strong,

a witness for the United States, that "you get a flatter seam on the Goodyear welter" (R. Vol. 1, p. 932, line 25).

Strong, a witness for the United States, testified, according to the brief for the United States (p. 43), that he "got along" with the Eppler stitcher very well. The United States omits any reference to his testimony that

> "I think the Goodyear machines do better work than the Eppler machines. Of course, I think the Goodyear welter is better than the Eppler welter was" (R. Vol. 1, p. 932, lines 21–24).

As to the testimony of Cunningham, a witness for the United States, the brief for the United States says (p. 45) that he testified that the Eppler welter was satisfactory, but the outsole stitcher was not, ignoring his statement that he thought "*everything about the Goodyear was better*" (italics ours) (R. Vol. 1, p. 289, line 19).

As to the testimony of Fletcher, a witness for the United States, the brief for the United States says (p. 46) that Fletcher "made no comparison between the Eppler and Goodyear *welter* further than to say that they ran side by side in the same factory" (italics theirs). On the contrary Fletcher testified that:—

> "The Goodyear welter was the best" (R. Vol. 1, p. 938, lines 2–3).

He added that the Goodyear machines were substituted in the Douglas factory

> "because with the Eppler machine there was trouble with the loose seam. When you beat out the shoe there would be more or less looseness, which caused a weak seam. *It would make a bad shoe*" (italics ours) (R. Vol. 1, p. 939, lines 16–19).

The United States says (p. 42) that McElroy, a witness for the United States, testified that the Eppler welter "could have been used on women's shoes" (Brief for the United States, p. 42).

But the context shows that he meant no more than that as a mechanical operation it was possible to sew a woman's shoe on the Eppler machine, and that he did not mean to express any opinion as to the quality or salability of the shoe operated upon. He never used an Eppler machine and merely examined it once (R. Vol. 1, p. 187, lines 33–34; p. 188, lines 2–22). Moreover, McElroy had previously testified:—

> "*Q.* Do you know whether or not it could be used on women's shoes?
> "*A.* I do not" (R. Vol. 1, p. 188, lines 2–4).

No other witness even went so far as to express an opinion that the Eppler machine could be used on women's shoes, and for the reasons we have already stated (*supra*, p. 97) it never was used on women's shoes.

Little weight should be given to Long's testimony. His cross-examination (R. Vol. 1, pp. 246–276), including testimony regarding Eppler machines, shows that he was not a credible witness. Reference is made to some of his misstatements on pages 154–155 of our Main Brief.

3. The Contention that the Eppler Company had a Substantially Complete Line of Auxiliary Machines.

The brief for the United States says (p. 44) that Mr. Keith, formerly president of the Eppler Company, testified that the Eppler Company "had *a line* of machines for making welt shoes, *except* a rough rounder, and were trying to perfect that" (italics ours). It is plain that the United States intends to give the impression that the Eppler Company had a substantially complete line of auxiliaries, except a rough rounder. Accordingly this statement is absolutely unfair and misleading. Mr. Keith testified that the Eppler Company did *not* have "a full set" and named *only two auxiliaries*, the stitch separator and the rough rounder, stating that the rough rounder was not satisfactory and had never been perfected, and that the stitch separator was not satisfactory (see our Main Brief, p. 143).

On the other hand, uncontradicted evidence shows that the Goodyear Company had thirteen important auxiliary machines for welt work in 1899, including a successful rounding and channeling machine ("rough rounder"). Mr. Warren testified,—

> "The invention of the rounding and channeling machine revolutionized the method of attaching the outer sole" (R. Vol. 1, p. 793, lines 23–24).

4. The Contention that the Eppler Company was Successful and Threatened Serious Competition.

The United States claims (p. 41) that the Eppler Company was "an able and a prospectively very dangerous competitor." It asserts (p. 46) that the Eppler Company had been in business "some seven years before the consolidation," that it was "pressing its business and was advertising its product up to the moment of its acquisition by the United Company."

But the record shows that the Eppler Company was not successful. The fact that, despite the long time that the Eppler Company had been in business and the efforts it had been making to put its machines into factories, it had succeeded in installing only between thirty and forty welters —of which one-third were in the factory of the president of the company and others in the factories of the directors of the company—and a less number of stitchers (R. Vol. 1, p. 288, lines 31 *et seq.;* p. 388, lines 35–39; p. 389, lines 8–11; p. 931, lines 43 *et seq.:* Vol. 4, p. 1202) is certainly strong evidence both that the machines were unsatisfactory and that the company's business was not successful. Keith, the president of the company, testified that the Eppler Company had not been financially successful (R. Vol. 1, p. 392, lines 9–12).

This evidence also completely answers the arguments of the United States that the Eppler Company offered potential competition (pp. 40, 52). Disregarding the bearing upon possible future competition of the facts that all the Eppler machines infringed the Goodyear Company's patents and that eight infringement suits had been brought (see

our Main Brief, pp. 136–138), the evidence that the company after seven years of strenuous efforts had not succeeded in doing more than an insignificant amount of business and had not made any money proves that it did not offer even potential competition. For surely there had been ample time for the development of all the possibilities of competition that existed.

The United States tries to make it appear (pp. 54–55) that Mr. Howe considered the Eppler machines as among "the most efficient types of shoe machinery." To this end the United States purports to quote Mr. Howe's testimony, but it omits so much that the garbled extract is unfair and misleading.

Mr. Howe testified:—

> "We had acquired the Eppler Welt Machine Company, and we had acquired the directors' stock of the McKay Shoe Machinery Company and expected to acquire a large majority of their stock. Therefore we then had the most efficient types of shoe machinery—perhaps I should have said protected by patents—*in that* we had the *Goodyear* welt and turn sewing machines and a long line of auxiliaries, which were the only system or set of machines which would make the *Goodyear welts*, the *best* and most suitable shoe for any gentleman or lady to wear that was then known; we had the best heeling machines, best metallic fastening machines, all protected by patents; we had the best lasting machines. *If any manufacturer wanted to make Eppler welts*, we had the only system that would make them. Therefore that seemed to my mind at that time—the United Shoe Machinery Company did—to represent the control in one corporation of the most efficient types of shoe machinery" (italics ours) (R. Vol. 1, p. 630, lines 21–37).

We are unable to see that there is any foundation in the testimony above quoted and in the other testimony of

Mr. Howe quoted on page 55 of the brief for the United States for its statement (p. 55) that this testimony "demonstrates that the Eppler Company was an important actual and even more important potential competitor of the Goodyear Company."

The conclusion is certainly justified that the United States has not shown any ground for questioning the finding of the District Court as to competition, existing or threatened, which was offered by the Eppler Company. That finding was as follows:—

> "The evidence leaves me unable to believe that the possible field of competition between the two machines was large enough, or any actual existing competition significant enough in amount to warrant the conclusion that the acquisition by the United Company of both machines involved such destruction of competition as rendered it unlawful" (Dodge, J., R. Vol. 1, p. 1131).

THE EFFORT OF THE UNITED STATES TO MINIMIZE THE IMPORTANCE OF THE PATENT LITIGATION.

Referring to the large number of infringement suits which had been brought by the Goodyear Company against the Eppler Company the United States says (p. 50), "But it is to be observed that in only one of them was the essential mechanism of a principal machine directly involved."

On the contrary, *three* suits against the Eppler stitcher related to its shuttle mechanism, one of the most essential features of any lockstitch machine, while the suit on the welter involved much more than a "mechanism," since it

related to the fundamental mode of operation of the entire machine. We have pointed out the seriousness of this welter infringement in our Main Brief (p. 137).

The statement in the brief for the United States (p. 50) that this patent litigation was "abandoned in 1899 after lying dormant for years before that date" is contrary to the record. In nearly all of the suits testimony was being taken (R. Vol. 1, p. 674, lines 4–8). Seven of them had been started within about two years (R. Vol. 1, pp. 471, 674).

The United States offered no testimony to controvert defendants' proof of the above infringements.

THE CONTENTION THAT THE EPPLER COMPANY CHARGED A LOWER ROYALTY AND THAT A HIGHER ROYALTY WAS DEMANDED BY THE UNITED COMPANY AFTER THE ACQUISITION.

The brief for the United States says (p. 52) that while the royalty for the Goodyear machines was four cents a pair for men's shoes, "its competitor, the Eppler Company, charged only three cents." On the contrary, of the three executed leases of the Eppler machines which are in evidence, two (P.'s Ex. 59, R. Vol. 3, pp. 507, 509, 510 and Defs.' Ex. 269, R. Vol. 5, pp. 716, 718, 719) provided for a royalty of *four cents* per pair for men's shoes, while the third lease (Defs.' Ex. 44, R. Vol. 5, p. 54, a lease to the R. H. Long Manufacturing Company), as printed, provided (pp. 56–57) for a royalty of four cents, and a pro-

vision for a discount was written into the lease in red ink (R. Vol. 1, p. 250, lines 30–35). In the face of this documentary evidence it certainly cannot be successfully contended that the Eppler royalty was lower than the Goodyear royalty. And the testimony is to the same effect.

Mr. Winslow testified:—

> "There were *sporadic instances* of special rebates given by the Eppler Company, *but their regular rate was the same as the Goodyear*" (italics ours) (R. Vol. 1, p. 417, lines 33–35).

Mr. Howe confirmed this (R. Vol. 1, p. 470, lines 24–29).

That the United Company not only did not suppress the Eppler machines, but rather continued to put them out at the regular Eppler royalty of four cents per pair, so long as there was any demand at all for them, is shown by testimony referred to by the United States (pp. 43, 53; see also our Main Brief, pp. 154–156).

CONCLUSION.

The record wholly fails to show that the Eppler machines offered or were capable of offering real competition to the Goodyear Company or to throw any doubt upon the testimony of defendants that the real reason for the acquisition of the Eppler Company was to enable the United Company to start free from litigation.

COMMENTS ON THE ACQUISITIONS.

Under this heading on pages 67–104 the brief for the United States discusses thirty-six of the fifty-eight so-called "acquisitions." In respect to but few, if any, of these thirty-six transactions does the United States make an adequate statement of the facts established by the record. Specifically, it either ignores much important testimony favorable to the defendants or, when any reference is made to that testimony, the United States either omits any mention of testimony unfavorable to its contentions or fails to state it fairly. Its statements regarding these thirty-six acquisitions also contain many erroneous statements of the facts as shown by the record.

In Appendix I (*infra*, pp. 139–175), we have pointed out the erroneous or misleading statements by the United States and have called attention to important testimony which it has ignored.

Illustrations of the assertions by the United States which we criticise are the following:—

(1) It states (p. 91) that the United Company acquired from Joseph W. Leary "his business of *manufacturing* and dealing in shoe machinery" (italics ours). The record shows that Leary was doing *no manufacturing of any kind* (*infra*, p. 167).

(2) It further states (p. 92) that Leary "agreed to convey to the United Company all improvements which he should make within 10 years. . . ." In fact, Leary

made *no covenant whatever to assign any future improvements* (*infra*, p. 167).

(3) It states (p. 82) that the United Company acqtuired *the business* of Joseph P. Curtis, and (p. 92) that the United Company acquired *the business* of Zachary Taylor French. The record shows that neither of these parties was engaged in business and that the United Company *did not acquire any property from French and acquired only certain patent rights from Curtis* (*infra*, pp. 157, 167).

(4) It states (p. 88) that the United Company acquired the *business* of John Ritchie, and John Ritchie Company *relating to the manufacture* of metallic machines. The record shows that the Ritchie Company was engaged in the manufacture of *boots and shoes* and was *not* engaged in manufacturing machines (*infra*, p. 163).

(5) It states (p. 96) that Beaudry agreed to disclose "*all inventions* which he should thereafter make." The covenant was in fact *limited* to "heel finishing machinery, methods or devices," the subject-matter of the transaction (*infra*, p. 170).

(6) It states (p. 85), in respect to the first Booth Brothers transaction, that "Howard testified that the United Company was engaged in putting out a *perforating* machine which could be used for the same operation as the Booth machines, although he claimed that it was not *intended* for the same operation" (italics theirs). In fact Mr. Howard testified that the United Company's machine could *not* be used to do the work done by the Booth machine (*infra*, p. 159).

(7) It states (pp. 85–86), in respect to the second Booth Brothers transaction, that Howard testified that the United Company acquired "a fudge edge-making machine, a

wheeling machine, a stitch burnishing machine, an upper-shaping machine, and a *beating* machine" (italics theirs) and that he also testified that the United Company then had a wheeling machine and an upper-beating [beading] machine. Here the United States gives a wrong impression by telling only a part of the story. Mr. Howard testified that the United Company's wheeling machine was adapted only for a kind of work entirely distinct from the kind of work on which the Booth machine was used. He also testified that the United Company's upper beading machine was not satisfactory for light or medium work and that the Booth Brothers machine "was a much better machine for light work" (R. Vol. 1, p. 69, lines 12–13). The United States further ignores entirely the evidence that the United Company had no machines whatever for doing the work of the other two Booth machines (*infra*, p. 160).

At the start the United States misrepresents the general character of these transactions. It states that "the United Company acquired the *shoe machinery business* and assets of fifty-six individuals, partnerships, and corporations . . ." (italics ours) and that "The result of these acquisitions was to remove certain remains of competition. . . ." (Brief for the United States, pp. 67–68).

Both of these statements are contrary to the record.

As has been shown in our Main Brief (pp. 456–462), by nine of the transactions the United Company did not acquire any tangible property or any business of any kind, and by fifteen other transactions the United Company acquired nothing more than supplies of various kinds which are used by shoe manufacturers; so that by twenty-four transactions it did not acquire any shoe machinery at all.

And further, eight other concerns, from whom shoe machinery was acquired, were doing no business whatever; their machines were only experimental and were far from being adapted for commercial use.

The fact is, then, that instead of acquiring the "shoe machinery business" of fifty-six concerns the United Company did not acquire *any shoe machinery business from thirty-two of those concerns.*

As to the statement by the United States (p. 68) that "covenants were exacted from the vendors," where they were inventors, which "required assignment to the United Company of all inventions made during a period of years" and which were "designed to prevent future competition with the United Company," the District Court found that the covenants actually taken were no broader than necessary (R. Vol. 1, p. 1141). The necessity for covenants of the character actually used is pointed out on pages 491–495 of our Main Brief and the decisions holding that such covenants are normal and lawful are discussed on pages 495–500.

Following its belated admission (p. 68) that "in some cases what was purchased was patent rights and inventions and not machines," the United States says (p. 69), "A prospective competitor is none the less such because he has only proceeded to the point of acquiring a valid patent under which to pursue competition at the time he is removed from the field by acquisition."

Of course the assumption that the inventor of an improvement on a shoe machine, who may be and often is a shoe operative or mechanic, is a "prospective competitor" is entirely unwarranted. He is no more a "prospective competitor" than many thousands of his fellow-workers.

On pages 69–104 the United States discusses specifically thirty-six of the "acquisitions."

Throughout its discussion of these transactions the United States persistently ignores evidence unfavorable to its contentions, which shows that every one of the transactions was a normal and reasonable step in the development of the United Company's business. Particularly in cases where the United Company had a machine of the same name as an acquired machine the United States fails to make any reference to testimony showing (1) that the acquired machine was adapted to do a kind of work which no machine of the United Company could do, or (2) that the United Company's machine was only experimental and needed the acquired inventions in order to make it commercially successful, or (3) that the acquired concern had patents which the United Company infringed or which barred the way to needed improvements in its machines. All such testimony is of course essential to a fair presentation of the facts regarding these acquisitions.

In Appendix I (*infra*, pp. 139–175) will be found comments on the specific statements which the United States has made regarding these thirty-six transactions. Those comments show that the statements by the United States give a wholly erroneous impression. By ignoring testimony unfavorable to its contentions, by stating half-truths or by making positive misstatements the United States has entirely misrepresented the character of these transactions.

In considering these transactions it should be kept in mind that, as pointed out in our Main Brief (pp. 187–190, 217–228), throughout the entire period, during which from time to time these acquisitions were being made, the

United Company was engaged in a remarkable development of the art of shoe machinery. It has improved practically all its machines by embodying new inventions in them. It is now putting out 172 different General Department machines which it has either developed or acquired since its formation in 1899. It has developed 150 entirely new machines, including 39 machines which perform work previously done by hand or not at all. Nearly all of these machines embody more than one patent; many embody a dozen or more patents on different parts of the machine. The inventions of 421 patents are embodied in the 150 entirely new machines which the United Company has developed.

The patents and machines acquired by the acquisitions were used in building up and perfecting this great number of new and improved machines and in improving patented machines which the United Company already had. Many of the so-called acquisitions involved only the purchase of a single patented invention to be used with a number of other patented inventions produced by the United Company in perfecting some one machine. The acquired machines and patents were of insignificant importance compared with the machines developed and the inventions made by the United Company itself. On page 443 of our Main Brief will be found specific illustrations showing how the inventions of acquired patents have been combined with the patented inventions which have been developed by the United Company.

COMMENTS ON THE PLANT ACQUISITION.

In its discussion of the Plant purchase (pp. 104–133) the United States fails to show the facts to be otherwise than as found by the District Court. Throughout this discussion, however, the United States has quoted or referred only to the testimony favorable to its contentions and has in the main ignored testimony which is unfavorable to its contentions. It has also made incorrect and misleading statements and has drawn unwarranted conclusions. It is important that these instances be called to the attention of the Court.

The Contention that Plant had a Complete Line of Shoe Machinery.

It is alleged in the brief for the United States (p. 104) that Plant had "developed a complete line of shoe machinery for manufacturing welt, turn, and McKay shoes."

McElroy, whose testimony is referred to by the United States in support of this allegation, does not mention turn shoes in connection with the Plant machinery. There is no testimony which shows that Plant had developed any machinery for making turn shoes, or that turn shoes were made by the Thomas G. Plant Company, the shoe manufacturing concern.

Moreover, in McElroy's testimony, quoted on page 112 of the brief for the United States, his statement that Plant's machinery was "a full line" is qualified by the statement "consisting of lasting, welting, stitching and leveling machines." He further admits in effect that he examined only "the essential bottoming room machinery."

And further, McElroy's testimony is discredited by Plant's own statement to McGaffee that

> "he didn't have any rough rounding machine" (R. Vol. 1, p. 781, lines 2–3).

Warren testified,—

> "The invention of the rounding and channeling machine [rough rounder] revolutionized the method of attaching the outer sole" (R. Vol. 1, p. 793, lines 23–24);

and that

> "Every manufacturer that I know of is using . . . the rounding and channeling machine" (R. Vol. 1, p. 793, lines 30–31).

And again, Plant had produced no pulling-over machine (R. Vol. 1, p. 792, lines 10–11), another of the "machines for preparing and attaching the bottoms to the uppers of shoes," the class of machines to which the United States has limited its charge of monopoly.

Eight other Plant machines, including important machines such as the heel seat dinker, stitch separator, and side laster, were either unfinished or regarded by Plant himself as experimental and the Plant shoe company was getting along in one way or another as best it could without these machines (R. Vol. 1, p. 791, lines 34–45; p. 792, lines 1–33; p. 814, lines 1–7. See also our Main Brief, pp. 517–519).

The Contention that Plant was Successfully Operating his Machines.

It is alleged in the Brief for the United States (p. 104) that Plant "was successfully operating his machines in the factory of Thomas G. Plant Company."

This allegation is entirely unsupported by the record. On the contrary, as shown in our Main Brief (pp. 520–524), the record establishes beyond a doubt that the Plant machines were not successfully operating in the Plant shoe factory.

The testimony reviewed on pages 520–524 of our Main Brief is also a complete answer to the argument made in the brief for the United States (p. 110) with reference to the use of the Plant machines in the Plant shoe factory.

The Contention that Plant had Contracts with Factories where his Machines could be Made in Large Quantities.

It is alleged in the brief for the United States (p. 104) that "Plant also had contracts with factories where such machines could be made in large quantities," and an allegation to the same effect is made on page 109.

The evidence fails to show that Plant had contracts with any factory for building any complete machine. He had merely made arrangements with a number of scattered machine shops for making the parts of the machines which he had constructed and installed in the Plant shoe factory.

As stated by Mr. McGaffee,—

"The parts were built in about every city where there was a machine shop, because *Plant did not have any factory big enough to build his own parts . . .*" (italics ours) (R. Vol. 1, p. 773, lines 25–27).

The Contention that Plant was Offering to Equip Other Manufacturers.

It is alleged in the brief for the United States (p. 111) that Plant had offered to install his machines in the factories of the Commonwealth Shoe & Leather Company and the Endicott-Johnson Company and "was prepared to furnish his machines to shoe manufacturers generally."

As shown in our Main Brief (pp. 514–515), Plant's offer to install his machines in those factories was made with the ulterior motive of forcing the United Company to buy him out, and it was so found by the District Court (R. Vol. 1, p. 1142).

Plant would not even permit Hazzard, a large shoe manufacturer, to look at his machines (see our Main Brief, p. 515).

The Contention of the United States that the Plant Machines were "Efficient Competitors of the United Machines in the Opinion of Experts."

In support of its allegation (p. 111) that in the opinion of experts the Plant machines were "efficient competitors of the United machines" the United States relies first upon the testimony of McElroy, Florsheim, Selz, and Jones, and then upon an inadequate and misleading statement of the testimony of Warren and Howe.

But the testimony of McElroy, quoted by the United States (p. 112), and its summary of Florsheim's testimony show that both of those witnesses testified as to the quality of the *shoes* operated upon by Plant's machines and that neither of them testified that the *machines* were efficient.

The brief for the United States says (p. 113) that Selz expressed the opinion "that the machines were capable of being used in the manufacture of men's welt shoes" and that Jones testified that Plant's machines were adapted for the manufacture of men's shoes as well as women's.

But on cross-examination Selz testified that he *questioned the strength of the Plant machines for making men's shoes* and that he had never seen them used for men's shoes (R. Vol. 1, p. 155, lines 33–45; p. 156, lines 1–3). And McElroy on cross-examination testified:—

> "To the best of my information those machines had never made any men's shoes for the market. *I questioned the strength of those machines for making men's shoes.* . . . If his machines had been used commercially on men's shoes the frames should have been stronger" (italics ours) (R. Vol. 1, p. 193, lines 16–18, 22–24).

But Jones is not a practical shoe manufacturer (see our Main Brief, p. 529), and his testimony is discredited by the testimony of Reed, the treasurer of Jones' Company, who had charge of the manufacturing of the shoes. Reed testified that he thoroughly examined the Plant machines in 1910, considered the question of equipping his factories with the machines and decided not to take them. He said,—

> "We thought that it would be too much of a risk, and that we should have to lower our standard of shoemaking" (R. Vol. 1, p. 720, lines 12–13).

Furthermore, Florsheim was a member of the Shoe Manufacturers' Alliance, and Selz and Jones were both stockholders and directors of the Boylston Company, a competing shoe machinery concern. Testimony showing in detail their prejudices is reviewed in our Main Brief (pp. 528–530, 40–41).

The United States quotes (p. 114) the testimony of Mr. Warren and Mr. Howe in support of this contention that the Plant machines were "efficient competitors of the United machines."

But the testimony of these experts which the United States quotes, so far as it is relevant at all to this issue, related on its face to the value of the Plant *inventions, not the Plant machines.* Warren's testimony as to the machines does not support the contention of the United States. For example, he testified:—

> "Generally speaking they were of such construction that *they would break and get out of order*" (italics ours) (R. Vol. 1, p. 794, lines 17–18).
>
> "And in looking over all these Plant machines we found by a careful examination that they were *faulty in construction, light in weight in places, and badly designed*" (italics ours) (R. Vol. 1, p. 790, lines 28–31).
>
> "These machines of Mr. Plant's, built as they were, in my opinion *would not have been commercially successful* to do work under the varying conditions under which machines have to be supplied to shoe manufacturers" (italics ours) (R. Vol. 1, p. 790, lines 15–18).

Mr. Howe testified that the Plant machines were

> "too light to stand commercial use for making men's work . . . were not strong enough for continuous use, in my judgment, on his own manufacture, women's welts" (R. Vol. 1, p. 688, line 44; p. 689, lines 8–9).

The conclusion is certainly justified that the United States has not shown any ground for questioning the finding of the District Court as to the character and capacity of the Plant machines. That finding also specifically answers the allegation of the United States (p. 252) that

> "the record clearly shows that the Plant machines were right indeed at the threshhold of extended competition with the United Company's machines."

The Court found that the machines were not commercially successful; that they were not adapted to produce men's shoes and were not satisfactory in making women's shoes; that they frequently broke down; that the cost of making shoes on them was distinctly greater and that they were not capable of profitable use, concluding,—

> "*Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshhold of extensive competition with the United Company'*" (italics ours) (R. Vol. 1, p. 1143).

The Contention that the Defects in Plant's Machines could have been Easily Remedied.

It is alleged by the United States (p. 115) that "There is, however, nothing in the record to indicate that the defects [in the Plant machinery] were of such character as not to be easily remedied by the alterations and adjustments common in the practical working out of a project like Plant's."

There is no evidence in this record to support this assertion, but, on the contrary, there is a great deal of evidence, which is reviewed in our Main Brief (pp. 531–534), which

shows what a tremendous undertaking it is to transform experimental machines into successful, commercial machines. The United States points to the evidence that "Plant and his assistants were possessed of a very high grade of inventive genius" (p. 115), but it is common knowledge that inventive genius is frequently unaccompanied by mechanical genius and that many a successful inventor is not even able to construct experimental devices embodying his inventions,—much less produce successful commercial machines.

The Contention that the Subject of Negotiation was Plant's Entire Line of Machinery rather than his Inventions.

In the brief for the United States it is alleged (p. 115) that "during the entire negotiations nothing was talked of but the buying of Plant's *entire* line of machinery" (italics theirs), as distinguished from the particular inventions.

As we have shown in our Main Brief (p. 513), Plant had no machines to sell; but assuming that he had, there is no evidence in the record in support of this assertion, and it is specifically contradicted by Mr. Winslow, who testified,

> "During these negotiations nothing except Plant's *inventions and patents* was the subject of discussion" (italics ours) (R. Vol. 1, p. 481, lines 12–13).

If the United States is endeavoring on page 115 of its brief to argue that the United Company should have bought only the inventions which it knew would be of value, it should be borne in mind, first, that particular

improvements could not have been singled out *during the negotiations* for the reason stated by Mr. Winslow:—

> "As to whether anything was said in our negotiations with reference to the purchase of those particular improvements, I didn't know what his improvements consisted of, as I have already stated. *I didn't know what he had or the value of his inventions* until I went up and examined them in September and had my experts examine them" (italics ours) (R. Vol. 1, p. 559, lines 28–33);

and, second, that the United States loses sight of the fact that the *United Company could only buy what Plant wished to sell.* It is quite obvious that Plant wished to sell all, and not a part only, of his inventions (R. Vol. 1, p. 486, lines 2–6; p. 487, lines 11–16).

The Contention that Negotiations with Plant were Affected by Western Manufacturers.

The United States alleges (p. 119) that "it is fair to conclude that Winslow and his associates were well aware that negotiations were going on between Plant and the shoe manufacturers, and that unless the United people were prompt in closing the bargain the shoe manufacturers would obtain the Plant machines and establish a vigorous rival of the United Company."

The United States asserts (p. 118) that Endicott knew "as far back as June, 1910," that the Western manufacturers were coming to examine the Plant machines and that as "a leading figure in the defendants' negotiations, [he] must have informed Mr. Winslow" (p. 119). This evidence merely shows that Endicott knew in June, 1910,

that these Western manufacturers proposed to or might examine the Plant machines. It does not show that there were any negotiations pending between the Western manufacturers and Plant for the purchase of his patents and, as a matter of fact, no such negotiations were pending. It shows at most that Plant had arranged or hoped to arrange to have these shoe manufacturers look at his machines, whether for the purpose of inducing them to use some or all of them, as he had suggested that Endicott should do, or for the purpose of selling them his patents, or for the purpose of getting their advice or criticism does not appear.

The evidence further shows that no attention was paid to the Western manufacturers, because the unquestioned evidence shows that after "Endicott knew" that they might examine the machines, Mr. Winslow, on four separate occasions, broke off negotiations which had been initiated by Plant, viz.: on June 23rd (R. Vol. 1, p. 577, lines 12–14), on June 27th (R. Vol. 1, p. 483, lines 11–12), on July 5th (R. Vol. 1, p. 484, lines 16–21), and on September 16th (R. Vol. 1, p. 486, lines 1–44).

Mr. Winslow testified:—

> "Mr. Plant had told me, I think on the evening of the 20th, that he was expecting the Western people in Boston. . . . I did not pay much attention to it because it did not affect me one way or the other" (R. Vol. 1, p. 488, lines 18–23).

This was the evening on which the Plant purchase was practically agreed upon. So far as appears this was the first information Mr. Winslow had that the Western manufacturers intended to examine the Plant machines. There is not the slightest intimation, however, that Plant then

told Winslow that any negotiations were pending for a sale to the Western manufacturers, and as a matter of fact none were pending. Plant had not made any offer to them so far as appears. His first proposition to sell to them was made after he had agreed to sell to the United Company, when he made them a proposition which he knew they could not accept. If they came to Boston with a view to purchasing the Plant patents, it was for the purpose of examining the machines, and opening negotiations, not for the purpose of closing any pending negotiations.

The United States has not shown any ground for questioning the finding of the District Court that the Western Manufacturers had no effect upon the negotiations (R. Vol. 1, p. 1144).

The Claim that Other Capitalists Contemplated Purchasing Plant's Patents.

The United States attaches much importance (p. 121) to the testimony of Mr. Herrick, one of the counsel for the United Company, in regard to an interview which he had with Mr. Wallace, president of the Central Trust Company of New York, at the request of Mr. Wallace. The United States presents this insignificant and unimportant incident in a wholly different light from that which is given by Mr. Herrick's testimony. The effect of that testimony is merely that Mr. Wallace was trying to see whether he could get the United Company to make an offer with a view, in case it did, of trying to buy Plant's patents at a lower figure and make something on the turnover. "They had

no idea of putting any money out" (R. Vol. 1, p. 613, lines 44–45).

The utter insignificance of this incident is shown by the following testimony of Mr. Herrick:—

> "Mr. Wallace said that he and this large international banking concern, which had an immense amount of influence, were seriously considering acquiring an interest in the Plant factory. *I did not believe him.* My reasons for thinking that Mr. Wallace did not mean what he said were, first, I knew Mr. Wallace; then he spoke in a perfectly easy, comfortable way about how he was going to do these things. I was convinced he did not know what he was talking about and that *all he had in mind was to see if he couldn't make a turn by getting a bid from the United Company and then dealing with Plant. He almost said so*" (italics ours) (R. Vol. 1, p. 614, lines 31–40).

The Attempt to Discredit Endicott's Testimony.

Under the heading "Endicott's Story" (p. 121) counsel for the United States discusses the participation of Mr. Endicott in the negotiations of Plant with the United Company and asserts (p. 124) "Endicott's maneuvers are difficult to understand. His story excites lively curiosity."

That the United Company was much pleased to welcome to its board of directors a man whose ability had created the greatest shoe manufacturing business in the world was perfectly natural. We are glad to note that here, as in other parts of its brief, the United States has modified somewhat the statements in its brief at the first hearing in this Court in which, for example, it said, "*His story excites curiosity and suspicion*" (italics ours) (First Brief

for the United States, p. 124). But the insinuations which even now the United States makes against a man of Mr. Endicott's standing are not creditable to the United States. They need no answer, but they are answered by Mr. Endicott's testimony, which is clear and straightforward throughout, and which is fully corroborated by Mr. Winslow (R. Vol. 1, pp. 479–487), Mr. Herrick (R. Vol. 1, pp. 602–615), and by Mr. Howe (R. Vol. 1, p. 683, lines 9 *et seq.*; p. 686, lines 34 *et seq.*).

The Contention that Defendants Showed Anxiety to Secure the Plant Machines.

The United States alleges (p. 120) that "The whole history of the transaction shows that the defendants were keenly alive to the importance of removing from their path so dangerous a competitor and were exceedingly anxious" to secure Plant's machines.

The record proves the contrary to be the fact. The evidence clearly shows that throughout the negotiations Mr. Winslow never made any offer to Plant, but that the negotiations were begun by Plant and renewed by him several times after Winslow had definitely broken them off (R. Vol. 1, p. 559, lines 16–18). The negotiations are reviewed in our Main Brief (pp. 564–574).

All the evidence as to the negotiations proves conclusively, not that Winslow was exceedingly anxious to get Plant's machines, but that Plant was exceedingly anxious to have Mr. Winslow get them.

The United States alleges (p. 121) that "defendants hastened to give Mr. Plant a check for $500,000," and finds significance in the fact that at the time the check was

delivered "not a document had been drawn." The evidence shows that, as Mr. Winslow testified:—

> "It was a part of the arrangement with Mr. Plant that if we accepted his proposition he was to be paid $500,000 and then the papers would be drawn" (R. Vol. 1, p. 488, lines 2–4).

Mr. Herrick testified,—

> "This payment was made because Mr. Plant insisted that there ought to be something paid on account, and Mr. Carr [Plant's attorney], as I remember it, named the figure" (R. Vol. 1, p. 607, lines 8–10).

The Contention that the Plant Improvements were of Little Use to the United Company.

The United States alleges (pp. 125–126) that "defendants' own witnesses show that however valuable the Plant improvements were to him as a present and prospective competitor of the defendants, they were of little use to the United Company."

There is absolutely no testimony of defendants' witnesses or any witnesses to the effect that the Plant improvements were of little use to the United Company. The evidence is all to the contrary. For example, Mr. Warren testified,—

> "I later told Mr. Winslow that the improvements on the welter and stitcher were worth all he gave for the entire property, and that was my opinion" (R. Vol. 1, p. 788, lines 8–10; p. 813, lines 6–9).

Our Main Brief (pp. 541–550) contains a full statement of the evidence of practical shoemakers as to the value of the stitcher and welter improvements. It is there

shown conclusively that these improvements resulted in machines which operate faster, turn out more work, do work of better quality, are more economical for the shoe manufacturer, and enable the operator to earn higher wages.

The United States quotes (p. 126) Mr. Howard's testimony with reference to the stopping mechanism of the Plant stitcher as follows:—

> " . . . *five* different inventors employed by the United Company were put to work upon the *problem* of providing a *commercially satisfactory stopping* mechanism . . . " (italics theirs).

What Mr. Howard really said is this:—

> " . . . five different inventors employed by the United Company were put to work upon the problem of providing a commercially satisfactory stopping mechanism which *could be incorporated* in the organization of the model K out-sole stitcher, which was then the standard commercial machine of the United Company" (italics ours) (R. Vol. II, p. 2297).

The United States also urges that the fact that the United Company changed and so much improved the mechanical constructions in which Plant had embodied his valuable welter inventions in adapting those improvements to its machine proves that those inventions, in themselves, were of little use to the United Company. But the United Company's welter in which the Plant improvements were embodied *was of different design* from the Plant machine, so that "the mechanical construction had to be entirely changed in order to apply it to our machine" (R. Vol. 1, p. 811, lines 40–43; Vol. 2, p. 2260). That in reorganizing these Plant mechanical structures to fit its machine the

United Company's inventors should make still further improvements was to be expected and was consistent with the constant improvement of its machines which the United Company is always making. But these improved mechanical structures in which the Plant improvements were embodied in the United Company's new welter *all contained the Plant inventions and were all covered by the Plant patents.* Typical broad claims of the Plant patents which cover the United Company's machine are quoted in the record (R. Vol. 2, pp. 2262–5). These Plant inventions are the heart and core of the welt holding, the welt cutting, the welt measuring, and the stopping and loop cast-off mechanisms of the Model K Welter by which the tremendous savings have been effected (Main Brief, pp. 544–545).

The extended use which the United Company has made of the Plant inventions and their great value to the United Company are shown by the evidence reviewed in our Main Brief (pp. 535–550).

As to this contention of the United States it may be of interest to refer to its claim (pp. 117–118) that the Western manufacturers were willing to pay $1,600,000 for only a *half interest* in Plant's patents and inventions, *not* including any interest in the Shoe Company. If the record supports that contention, the Western manufacturers were setting a value of $3,200,000 on the patents and inventions alone, and the United States cannot consistently claim that they were not worth the $2,500,000 which the United Company paid for them.

The United States has not called attention to any evidence which should lead the Court to question the finding of the District Court as to the value of the Plant inventions when combined with the United Company's patents (R. Vol. 1, p. 1145).

The Argument that the Shoe Machinery Art would have been Advanced by the Sale of Plant's Machinery to a Group of Manufacturers.

The United States contends (p. 125) that all that was necessary in order that the shoe machinery art might be benefited by the Plant improvements was "to permit the shoe manufacturers who were ready and anxious to purchase an interest in Plant's machinery to carry through their design."

There is uncontradicted evidence that there were 708 distinct cases of infringement of the United Company's patents of 37 Plant machines (Defs.' Ex. 273, R. Vol. 5, p. 733).

The sale of an interest to the shoe manufacturers mentioned would have in no way avoided such infringements. Furthermore it would not have permitted the combination of the United Company's patents with the Plant patents, and the consequent great advance in the art of shoe machinery which was the object and the result of the acquisition (see our Main Brief, pp. 576–577).

The Contention that the Avoidance of Litigation was not a Motive in the Plant Purchase.

In the brief for the United States it is alleged (p. 128) "that the avoidance of litigation was in fact an actuating factor in the transaction does not appear. In no part of the negotiations was it suggested that the defendants should buy out Plant in order to avoid litigation."

On the contrary, that both parties had in mind the

avoidance of litigation and that it was a factor in the negotiations is shown by the fact that *formal releases were exacted by both parties.* On September 23, 1910, the United Company agreed to deliver to Plant releases "providing for the dismissal or discontinuance . . . without costs . . . of the suit now pending in the Supreme Judicial Court of Massachusetts . . . and suits now pending in the United States Circuit Court against said Plant . . . and . . . general releases including any and all claims . . ." (P.'s Ex. 132, R. Vol. 4, p. 935).

On the other hand, on September 30, 1910, Plant executed a formal release to the United Company of all claims, referring specifically to "certain suits" which he had planned to bring against the United Company (P.'s Ex. 137, R. Vol. 4, p. 1037).

The allegations of the United States are directly contradicted by the testimony of Mr. Howe and Mr. Winslow (see our Main Brief, pp. 559–561).

The United States finds it significant that (p. 125) "Defendants' witnesses talk of counter infringements by their machines. *But no litigation was begun by Plant*" (italics theirs).

It cannot be doubted that if Plant had kept on he would have enforced his rights under his patents and would have brought suits on account of infringement by the United Company's machines; indeed, as we have just stated, his intention to bring suits is asserted over his signature in a release signed by Plant on September 30, 1910:—

> "I . . . have made certain claims against the United Shoe Machinery Company . . . and have planned to bring certain suits against said United Shoe Machinery Company" (P.'s Ex. 137, R. Vol. 4, p. 1037).

Mr. Winslow and Mr. Howe fully expected that Plant would bring suits against the infringing machines of the United Company (R. Vol. 1, p. 862, lines 25–26; p. 877, lines 27–30; p. 878, lines 1–2).

Another important fact is that Plant had already defeated the United Company in six interferences. Twenty-three interferences had been declared in the Patent Office between patent applications owned by Plant and applications owned by the United Company. In six of these Plant had secured favorable decisions (R. Vol. 1, p. 846, lines 14–17; Defs.' Ex. 272, R. Vol. 5, p. 730).

The United States alleges (p. 128) with reference to infringement suits against Plant that "it does not appear that if any or all of them had been sustained it would have been fatal to the line of machinery owned by him."

A complete answer to this allegation is the evidence showing 708 distinct instances of infringement of United Company patents by 37 Plant machines, as set forth in Defs.' Ex. 273 (R. Vol. 5, p. 733). No testimony was introduced by the United States to refute these instances of infringement (see our Main Brief, pp. 541–542, 547, 551–553).

That these infringements were serious is apparent from evidence that it was the *general organization* of at least six Plant machines which infringed the patents of the United Company (Defs.' Ex. 273), and from Mr. Howard's testimony in respect to two other machines:—

> "The patents infringed by the Plant Heeler and the Plant Heel Attacher on Wood Lasts covered both these machines so thoroughly that by no possibility could they have been changed to avoid infringement. Plant's only course would have been to junk the machines and begin over again" (R. Vol. 5, p. 746, lines 27–31).

The conclusion is certainly justified that the United States has not shown any ground for questioning the finding of the District Court that the purchase of Plant's patents resulted in relieving the United Company of a burden of litigation threatening interminable controversy (R. Vol. 1, p. 1145).

The Contention that the Plant Stock was of Comparatively Little Value in the Transaction.

The United States asserts (pp. 130–131) that "The evidence does not show that the stock of the Plant Company was worth any such figure" as $3,500,000.

The evidence shows that the earnings of the Plant Company for the four years preceding its acquisition had averaged $738,000 annually. Plant owned and sold sixty per cent. interest in the stock of the company. It is shown in our Main Brief (p. 562) that 60 per cent. of the average earnings for the past four years amounted to $442,800 annually and that capitalized at 10 per cent. this would show a value of $4,428,000 for the stock which was acquired.

The United States asserts (p. 130) that "the statement furnished the company by Plant showed that the Plant Company had a net investment at that time of only $2,500,000 . . . 60 per cent. of which was $1,500,000." On the contrary, that statement (P.'s Ex. 132, R. Vol. 4, pp. 1014–1015) shows that the total net assets of the company were $4,358,955.51, of which 60 per cent. amounts to $2,615,373.30. As to the value of one of its assets, the trade-mark "Queen Quality" (R. Vol. 1, p. 603, lines 40–43), see *Thomas G. Plant Company* v. *May Company* (C. C. A. Sixth Circuit, December 4, 1900), 105 Fed. Rep. 375.

The District Court held (Dodge, J., R. Vol. 1, p. 1144):—

> "That it was of great value is shown beyond question by the dividends then and afterward paid on the stock acquired by the United Company."

The Contention that by the Plant Acquisition Control of Welters and Stitchers was Secured.

The United States alleges (p. 131) that by the Plant acquisition the United Company "again acquired substantial control of welters and stitchers."

The evidence relied upon in support of this contention of the United States proves that on the contrary a number of other concerns were actually engaged in putting out welters and stitchers, all of which were in business in 1910. These concerns are named in our Main Brief (pp. 611–612).

The Contention that the United Company Secured Control of the McKay Sewing Machine by this Transaction.

The United States asserts (p. 133) that by acquiring, as a part of the Plant acquisition, "the Stanley Company, which was putting out the original McKay machine" the United Company obtained "*complete control of that machine*" (italics ours). It asserts further (p. 133) that "Possibly second-hand machines can be obtained from dealers, but when that supply is exhausted *it will be necessary for every manufacturer to equip his factory with McKay machines held by the United Company*" (italics ours). This statement is

not supported by the record. In the first place Mr. Howe testified that the patents on the original McKay machine expired long ago and added that "anybody could manufacture them" (R. Vol. 1, p. 680, lines 23, 34–35). Mr. Winslow named twenty-six concerns from whom McKay sewing machines could be obtained, some of whom were manufacturing and supplying McKay sewing machines and some of whom were dealers. Representatives of only three of these concerns testified, being called by the United States. One of them, Spencer, testified that his concern went into bankruptcy in August, 1912 (R. Vol. 1, p. 884, lines 40–42); the other two testified that they were offering to supply new McKay sewing machines. Frank P. Emerson, treasurer of the Shawmut Machinery Company, testified that his company "began a year ago last July to manufacture McKay sewing machines, and put the first one out last June" (R. Vol. 1, p. 910, lines 15–17, 23–25). Emerson also testified:—

> "The McKay machine which we are making is an *improved machine of recent design*. We call it the most up-to-date McKay machine on the market. Formerly Walter Pearson was making it for us" (italics ours) (R. Vol. 1, p. 910, lines 33–36).

Bicknell Hall, another witness for the United States, president of the American Worsted Machinery Company until January, 1914, testified that that company had facilities for making the McKay sewing machine and that "we were ready to make that for anybody" (R. Vol. 1, p. 953, lines 1–6, 31–36; p. 954, lines 1–2). There are plenty of McKay machines on the market, and a number of concerns prepared to furnish new machines (*supra*, pp. 65–67).

CERTAIN CASES REFERRED TO IN THE BRIEF.

At page 255 the brief says,—

> "In *United Shoe Machinery Co.* v. *La Chapelle* (212 Mass. 467) the Supreme Judicial Court of Massachusetts applied the law to the facts of the case at bar."

At page 289 it says,—

> "The precise question of law involved in the present case was considered by the Supreme Judicial Court of Massachusetts in *United Shoe Machinery Company* v. *La Chapelle*, 212 Mass. 467."

The impression may be given by these statements that in the case referred to the Court found that the contentions made in this case by the brief writer were true. This is not the fact. In the La Chapelle case the defendant in the lower court offered to prove that the United Company was an unlawful monopoly in that it was an unlawful combination and in various ways had monopolized. The lower court ruled that such evidence was immaterial and declined to admit it. The sole question in the case was whether the facts alleged by La Chapelle in his answer to exist, which it is shown by the present case were not true, did show an unlawful monopoly and should have been admitted.

U. S. v. *United Shoe Machinery Co.*, 227 Fed. Rep. 507, was a decision on a motion for a preliminary injunction in a suit under the Clayton Act. *U. S.* v. *United Shoe Machinery Co.*, 234 Fed. Rep. 127, was a decision on motion to dismiss in the same case. In both decisions the Court

accepted the allegations of the petition as to the United Company's leases and their effect.

The brief at page 263 quotes certain statements in respect to the United Company's leases made by the Judiciary Committee of the House of Representatives in a report on the Clayton bill. The statements made in the report which he quotes are conclusively shown by the record in the present case to be entirely incorrect. They were made without hearing the United Company or examining its leases. The straits in which the brief writer finds himself to support his statements as to the leases are well illustrated by his resort to an *ex parte* report of a committee of Congress, not in the record at all, in an attempt to prove facts which are disproved by the evidence in the case.

Respectfully submitted,

FREDERICK P. FISH
CHARLES F. CHOATE, JR.
MALCOLM DONALD
of Counsel for Appellees

APPENDIX I.

COMMENTS ON STATEMENTS BY UNITED STATES AS TO THE VARIOUS ACQUISITIONS.

(NOTE.—The record references for the statements made in the following discussions, where not given, will be found in the statements in our Main Brief, Appendix I, to which reference is made in connection with each discussion.)

Goddu Sons Metal Fastening Company (Brief for the United States, pp. 62–65).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 657.)

The brief for the United States says (p. 69) that "The Goddu Company was engaged in *perfecting and manufacturing* nailing machines, slugging machines, tacking machines and standard screw machines—all important metallic fastening machines" (italics ours). This statement is not supported by the record. There is no testimony even suggesting that the Goddu Company was either "perfecting" or "manufacturing" any machines whatsoever.

The United States further says (p. 69) that the United Company "was putting out machines for doing the work for which the Goddu machines were *adapted*" (italics ours); and in support of the statement Mr. Howard's testimony is cited (R. Vol. 1, p. 42, line 1). What Mr. Howard actually said was:—

> "The United Company was putting out *commercial machines* for doing the work for which the Goddu Company machines were *intended*" (italics ours) (R. Vol. 1, p. 42, lines 1–3).

The record clearly shows that the Goddu machines were in fact not practically *adapted* for doing any work.

After quoting (inaccurately) a portion of the finding of the District Court, the brief for the United States (p. 70) makes the statement: "In any event, it appeared that the very thing the Goddus were doing was the perfection, by all necessary reconstruction, of their machines."

There is not the slightest evidence that the Goddu Company was making any effort whatever to perfect or to reconstruct its machines.

The brief for the United States says (p. 69) that "the Goddu machines, according to Winslow, were not yet in a condition to be placed in the hands of manufacturers for continuous operation, '*but* they were in a state of development where some of them could have been, without extensive changes, made operative'" (italics ours).

The record affords no authority for the "but" which we have italicized in the above quotation. What Mr. Winslow said was:—

> "Their machines were in a state of development and none of them, to the best of my judgment, was in condition to be placed in the hands of manufacturers for continuous operation. As I knew the situation, they were in a state of development where some of them could have been, without extensive changes, made operative" (R. Vol. 1, p. 436, lines 28–33).

By interjecting the word "but" between its paraphrase of Mr. Winslow's first sentence and the quotation from his second sentence the United States has given to the quotation a color which the record does not justify.

It will be observed that in the above paragraph the word "none" occurs at the beginning of the second line, while the word "some" occurs in a similar connection in the fifth line. The matter quoted was copied verbatim from the District Court record, and in the light of the first sentence it seems to us obvious that in the second sentence at the end of the fifth line the reporter substituted "*some*" for "none," the word which Mr. Winslow used in the preceding sentence. We hasten to add that we do not offer this suggestion by way of criticism and that of course the United States was entitled to rely upon the record.

The brief for the United States entirely ignores the uncontroverted testimony of defendants' patent expert, Mr Howard, who qualified also as a practical expert (R. Vol. 2, pp. 2239–2241) and who spent a week in 1898 in examining the machines of the Goddu Company, to the effect that the Goddu machines were "entirely impracticable." Mr. Howard stated in detail the reasons for his conclusions, and testified that remedying the defects

> "would have involved *entire reconstruction* of the machines, and *the machines so reconstructed would have been entirely different* from the machines as actually built by the Goddu Company" (italics ours) (R. Vol. 2, p. 2099).

It is submitted that the District Court was entirely justified in the finding, characterized in the brief for the United States (p. 69) as "the *contention* of one of the judges below" (italics ours), which was as follows:—

> "nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

The District Court's finding is quoted in full, *infra*, p. 144.

The brief for the United States says (p. 70) that the reason given by Mr. Winslow for this acquisition "was the disposal of patent litigation to which the United Company had succeeded as *plaintiffs*" (italics theirs). The United States ignores the testimony (Main Brief, Appendix I, pp. 658–659) showing that some time before the United Company was formed a suit had been brought by the McKay Company on Louis Goddu's contracts against Louis Goddu, his sons, and Albert Van Wagenen to compel a transfer of the Goddu Sons' patents to the McKay Company.

Louis Goddu, father of the "Goddu sons," had been employed as an inventor for many years by predecessors of the McKay Shoe Machinery Company; he had invented practically all of the metallic machines of that company and had been paid continuously for his exclusive services as inventor. Several years before the United Company was formed Louis

Goddu, all his sons, and Albert Van Wagenen all left the employ of the McKay Company and started the Goddu Sons enterprise, and the pending suit charged that they conspired to have Louis Goddu invent metallic machines, communicate such inventions to his sons, permit them to apply for patents and transfer those patents to the Goddu Sons Company. That suit had been vigorously contested and the claims of the McKay Company had been developed and substantiated before the acquisition. The brief for the United States ignores this litigation and refers only to the infringement litigation. It asserts (p. 70): "The disposal of such litigation could hardly be worth $150,000 to the defendants. The removal of an able competitor might well have been worth that amount." In view, however, of the great amount of litigation, both existing and prospective, and the very large expense which would undoubtedly have been involved as well as the great amount of time which would have been required of Mr. Winslow and his associates during the period when the United Company was just getting started, it is submitted that the consideration, for the objects stated, was not unreasonable. Winslow testified that he appreciated the time which would be required and the difficulties which would be encountered in establishing by the pending suit that the Goddu Sons' patents belonged to the United Company. He said he "had had considerable experience in that sort of litigation" and that

> "That arrangement was entered into on my part because of the fact that I very much desired to start the United Company free from all serious litigation" (R. Vol. 1, p. 435, lines 39–41; p. 437, lines 3–7).

The United States lays great stress (pp. 70–71) upon the testimony of Mrs. Converse, daughter of Albert Van Wagenen (R. Vol. 1, p. 311, lines 32–40; p. 312, lines 1–13), who was associated with Louis Goddu and his sons in the Goddu Sons enterprise and who was one of the defendants in the pending suit which charged a conspiracy, as above explained (*supra*, p. 141).

It should be noted, however, that in the statement which

Mrs. Converse testified that Mr. Winslow made he said that the Goddu Company

> "had no business and no machines . . . they couldn't raise money to go on with the business, and no manufacturers to take them" (Brief for the United States, p. 71).

Mrs. Converse also testified:—

> "He said to me that they hadn't anything, they weren't doing any business, they weren't a factor at all" (R. Vol. 1, p. 312, lines 40–42).

Obviously inconsistent with these statements is Mrs. Converse's testimony that Mr. Winslow said that he bought the Goddu Company to get rid of competition. And Mr. Winslow in his testimony specifically denied that he made the purchase to get rid of any competition, and also expressly denied that he made such a statement to Mrs. Converse. He testified:—

> "*Q.* Did you acquire the Goddu Sons Company for the sake of getting rid of any competition?
> "*A.* I did not.
> "I never stated to Mrs. Converse that we acquired the Goddu Sons Company for the sake of getting rid of competition" (R. Vol. 1, p. 437, lines 8–12).

With reference to the statement by the United States that Mrs. Converse's testimony was "supported by a copy of a contemporaneous memorandum" (p. 71), she testified that the memorandum was made "*about 1900 or 1901, I think*" (italics ours), and she also testified:—

> "I made memoranda of my conversation with Mr. Winslow while he was out of the room, *which I afterwards destroyed*" (italics ours) (R. Vol. 1, p. 312, lines 30–32; p. 313, lines 13–14).

It is submitted that in the light of Mrs. Converse's complete testimony her statement that Mr. Winslow said his purpose was to eliminate competition is entitled to no weight.

As above pointed out, Mr. Winslow emphatically denied both that he made any such statement and that he had any such purpose.

The statements in the brief for the United States (p. 71) that "The Goddu Company ceased to do business" and that "by this initial acquisition the prospective opportunity of shoe manufacturers to obtain metallic machines elsewhere than from the defendants was removed" are not supported or justified by the record. The Goddu Company did not *cease* to do business because they were not doing any and never had done any. "The prospective opportunity of shoe manufacturers to obtain metallic machines elsewhere than from the defendants" was not removed because there was no such prospective opportunity. The uncontroverted evidence which we have reviewed and which is set forth in more detail in our Main Brief, Appendix I (p. 657), shows conclusively that the Goddu machines were entirely unfit for commercial use and that to have adapted them for commercial use would have required entire reconstruction, so radical that if it had been effected the machines would have been entirely different.

We respectfully submit, therefore, that no reason has been shown why this Court should not accept as conclusive the finding of the District Court that

> "the metallic fastening machines acquired by purchase of a controlling interest in the company were none of them in the hands of users; their then state of development does not appear to have been such as made them capable of commercial use, whatever the merit of the inventive ideas they sought to embody; nor is the evidence sufficient for a belief that without reconstruction, radical in character, anyone could have used them as competing machines" (Dodge, J., R. Vol. 1, p. 1140).

Winkley and Phillips (Brief for the United States, p. 65).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 675.)

The brief for the United States says (p. 72) that the United Company acquired from Winkley and Phillips "their inven-

tions and improvements relating to 'sole leveling machines,' " and further says that defendants' witness Howard "testified that at the time of acquiring the above inventions or improvements the United Company was engaged in putting out sole-leveling machines, but that they were not of the same type as those covered by the inventions and improvements acquired."

The United States obviously aims to give the impression that the only difference between a machine embodying the acquired inventions and the machine which the United Company had before was that they were "*not of the same type*" (italics ours); that, however, they could be used for the same work; and that accordingly the United Company by this transaction acquired a potentially competing machine. With this purpose it has distorted Mr. Howard's testimony.

What Mr. Howard actually said was:—

> "Prior to the acquisition of these patents from Winkley and Phillips the United Company *was not engaged in putting out sole leveling machines for McKay work. It was putting out leveling machines for Goodyear shoes*, known among the trade as the Goodyear automatic sole leveling machine" (italics ours) (R. Vol. 1, p. 48, lines 9–13).

The United States also ignores the testimony which explains the practical reasons why McKay shoes and Goodyear shoes require entirely different kinds of leveling machines, as set forth in our Main Brief, Appendix I (p. 675).

The foregoing, in connection with other facts set forth in our Main Brief, Appendix I (p. 675), shows that by this transaction the United Company was acquiring, *not a competing machine*, but patented inventions relating to a machine for performing work which *could not be performed by the machine which the United Company had.*

Swain-Fuller Manufacturing Company (Brief for the United States, p. 73).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 684.)

The brief for the United States says (p. 73) that Mr. Howard testified that the Star leveling machine acquired in this transaction was "used *practically* exclusively on turn shoes" (italics ours) and that "the United Company was manufacturing and putting out a leveling machine, but *he claimed* that the United Company's machine was not adapted for leveling turn shoes" (italics ours). The United States apparently desires to give the impression that the Star leveling machine could be used on other work than turn shoes and also that Mr. Howard merely made a claim that the United Company's machine was not adapted for doing the work of the acquired machine.

What Mr. Howard said was that the Swain-Fuller Company was putting out "the Star leveling machine for turn shoes"; that

> "the Star machine *could not be used* with success or with commercial profit on other work" (italics ours) (R. Vol. 1, p. 53, lines 14–16, 21–23),

and that

> "At this time the United Company was not putting out turn leveling machines, and *it would be impossible to use any machine that the United Company then had on turn shoes*" (italics ours) (R. Vol. 1, p. 53, lines 19–21).

The United States ignores other testimony to the same effect, for example:—

> "The Star machine was a very light machine and was *adapted and used only for leveling turn shoes*, which, owing to the fact that they have but one sole, require and will stand a less degree of pressure than other types of shoes" (italics ours) (Howard, R. Vol. 2, p. 2063, Int. 1533).

Again, the United States refers (p. 73) to Mr. Winslow's testimony that by this transaction the United Company also acquired a "Single sole-molding" machine, but it does not refer to Mr. Winslow's statement in the next paragraph and on the same page of the record that

> "Neither of these machines was in competition with any machines then being made by the United Company" (Defs.' Ex. 231, R. Vol. 5, p. 455).

Carver Cotton Gin Company (Brief for the United States, pp. 73–74).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 725.)

The United States says (p. 74) that "Howard testified that among the machines obtained from the Carver Cotton Gin Company were the Acme leveling machine, a vamp skiving machine, and a machine known as the Davis leather-board skiver," and that at the same time "the United Company was putting out the Goodyear automatic leveler and the Emerson skiving machines, but that the acquired machine did not do the work *in the same way*. Even though this be admitted *the result accomplished was the same*" (italics ours).

The United States clearly intends to have it understood that at the time of this acquisition the United Company had machines which, while they did not do the work in the same way, would accomplish the same results.

This is entirely contrary to the facts. Mr. Howard testified that *the United Company had no machines for performing the operations performed by any of these Carver machines.*

Accordingly, instead of acquiring competing machines which would accomplish the same results although not in the same way, as alleged by the United States, by this acquisition the United Company was merely extending its line by adding machines which performed operations for which it previously had no machines.

At the end of its discussion of the acquisition of the Carver Cotton Gin Company the United States says (p. 74):—

> "By these three acquisitions the defendants acquired control of a machine needed in manufacturing all kinds of shoes. The leveling machine used in welt shoes is *now* put out only as an auxiliary machine (Dfts.' Ex. 231, V, 457). It can not be obtained for use with welt machinery supplied by any competitor of the defendants (I, 468, l. 34; 544, l. 10)" (italics ours).

The obvious purpose of the United States is to have it understood that by these three acquisitions the defendants acquired control of all the leveling machines and that as a result of these acquisitions the United Company is "now" following the practice of putting out its leveling machine for welt shoes "only as an auxiliary machine."

This is entirely unfair. The leveling machines acquired by these three transactions are all put out by the United Company through its General Department (Main Brief, Appendix I, pp. 676, 685, 728) and, therefore, have at all times been sold outright, although until recently they could also be taken on lease if the manufacturer desired; and the leveling machine for welt shoes has always been put out by the United Company in the same manner that it was always put out by the Goodyear Company, except that the United Company discontinued the initial payments. It should further be noted that the dates of these transactions were, respectively, March 16, 1900, February 2, 1901, and April 30, 1908.

That the United Company did not acquire any monopoly of leveling machines by these three transactions is shown by the lists of machines of competitors furnished for leveling McKay, welt, and turn shoes, which will be found in Defendants' Exhibit 235 (R. Vol. 5, pp. 587, 625, 664).

Seaver Process Lasting Company (Brief for the United States, p. 75).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 673.)

The United States alleges (p. 75) that the Seaver Process Lasting Company was "engaged in manufacturing *lasting* machines and *pulling-over* machines" (italics theirs), and that the Seaver Company was then insolvent. The United States further alleges that "The Seaver Company was the only company putting out lasting machines in 1899, except the Goodyear and Consolidated Companies," that "It has also a pulling-over machine; as had the United Company," and that no other pulling-over machine except the United Company's pulling-over machine is now offered by any American manufacturer.

The United States concludes (p. 75): "The result of this acquisition, then, was to remove the final vestige of competition in lasting machines, and to shake off the possibility of competition in pulling-over machines."

The United States ignores uncontradicted testimony showing that the Seaver Company's pulling-over machine was experimental and unsuccessful, but that it embodied inventions which are indispensable to a successful pulling-over machine and which have always since been embodied in the United Company's pulling-over machines; that the United Company's machine was then only experimental and did not become commercially successful for over two years after this transaction; that the Seaver patents barred the way to further development of the United Company's experimental pulling-over machine upon which hundreds of thousands of dollars had already been spent; and that that was the reason for the purchase.

The Seaver Company's lasting machine infringed two of the United Company's patents, and suits were pending. It was "unable to continue its business or to pay its debts" (P.'s Ex. 75, R. Vol. 3, p. 591). In another connection the brief for the United States admits (p. 22) that "The Seaver

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Company had no plant and only one witness testified to any use of the Seaver machine." In all respects the Seaver machine was inferior to the United Company's lasting machines. Obviously, any competition which the Seaver lasting machine offered or promised was entirely negligible.

The only important fact is that the United Company acquired the valuable inventions which prevented further development of its experimental pulling-over machine.

Corrugated Wire Fastening Company (Brief for the United States, pp. 75–76).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 663.)

The United States alleges (pp. 75–76) that the United Company acquired a majority of the capital stock of the Corrugated Wire Fastening Company "*engaged in the manufacture and sale* of a tacking machine and corrugated wire" (italics ours). It further states that "Howard testified that the United Company had a machine for performing the *same* character of work as the one obtained from the Corrugated Company," but that "the machine was 'out of date'" (italics theirs). The United States says that this is discredited by Howard's further statement that the United Company continued to supply wire and parts for those machines and have parts in stock to-day. In other words, the United States aims to give the impression that the Corrugated Company was competing with the United Company.

But the United States does not fairly state the evidence. Mr. Howard testified that the Corrugated Company had formerly put out a tacking machine, but

> "*had not put out any of the machines for some years because it was completely out of date*" (italics ours),

and that

> "there was no longer any demand for the machines, so that no business was done and no business could be done with that machine";

and further that

> "the only business that was left when the Corrugated Company was acquired was the supplying of wire and spare parts for the machine" (R. Vol. 1, p. 42, lines 15–16, 28–33).

The fact that the United Company was still keeping in stock parts for that old machine was simply due to their practice of keeping spare parts on hand for old machines so long as there is one of them in use anywhere.

The business of the Corrugated Company was characterized by the District Court as "making wire and spare parts for use in an obsolete metallic-fastening machine" (Dodge, J., R. Vol. 1, p. 1138).

Globe Sewing Machine Company (Brief for the United States, pp. 76–77).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 685.)

The United States says (pp. 76–77) that Howard testified that the Globe Company was manufacturing a welting machine, an outsole stitching machine and an experimental rough rounding machine, and that "By this acquisition a possible competitor in welt method machines was removed." The United States also refers to the fact that the absence of a rough rounder is claimed by defendants to have been a weakness in Plant's line of machines.

The facts were that the Globe Company's machines were not successful; that they all infringed United Company's patents; that infringement suits were pending and that the Globe Company was in debt to an amount over $90,000. The United States omits to mention any of these facts.

The United States also ignores the evidence that the purposes of this transaction were to acquire control of patents which prevented development of one of the United Company's machines, to settle the existing patent litigation and to avoid further patent litigation.

Also the statement by the United States that Mr. Howard testified that the Globe Company was *manufacturing* its machines, the record shows that that company was not doing any manufacturing and that such machines as they had put out had been built by others under contract. It is entirely clear from the record that the business of the Globe Company was negligible and that its unsuccessful machines did not offer even potential competition.

Ross-Moyer Manufacturing Company (Brief for the United States, pp. 77–78).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 680.)

The United States aims to give the impression (p. 77) that the United Company was putting out machines for performing the same operations as the machines of the Ross-Moyer Company and that the Ross-Moyer Company was a competitor.

The fact is that with a single exception the United Company had no machines for doing the same work as the nineteen machines acquired from the Ross-Moyer Company.

The United States omits any reference to evidence showing that the nineteen machines acquired from the Ross-Moyer Company were the foundation of the United Company's General Department and enabled the United Company for the first time to put out machines for performing the work done by the Ross-Moyer machines.

The United States also omits any reference to the evidence showing that an important reason for this transaction was the desire of the United Company, in extending its service and establishing its own agencies, to do the fair thing by the Ross-Moyer Company which had formerly been agent for the United Company and its predecessor companies in Cincinnati and Chicago. Instead of taking that business away from the Ross-Moyer Company the United Company acquired that company and established its agencies in the Ross-Moyer offices.

The record also shows that an additional reason for this acquisition was to secure for the United Company the services of Mr. Ross to represent its interests in the middle West. After the acquisition Mr. Ross became the company's general agent in the West.

Edwin Theophilus Freeman (Brief for the United States, pp. 78–79).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 667.)

The United States obviously desires to have it understood that Freeman was engaged in the business of manufacturing and putting out nailing machines, in competition with the United Company.

The facts are that Freeman had constructed an *experimental* machine known as a "slugging machine" which "was intended to insert the slugs or ornamental fastenings which are driven around the edge of a top lift of a heel for ornamental and wear resisting purposes" (R. Vol. 1, p. 44, lines 26–29); that Freeman *had not put out any machines, had no factory and was doing no business.*

One of the United Company's machines infringed one of Freeman's patents, and there was an interference in the Patent office between applications owned by the respective parties, while, on the other hand, the Freeman machine infringed the United Company's patents.

The purpose of the acquisition was to clear up these serious patent complications and to enable the United Company to improve its machines without infringing Freeman's patents. Freeman's inventions have since been embodied in three different machines put out by the United Company.

Albert G. Brewer (Brief for the United States, p. 79).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 669.)

While in its statement about this transaction the United

States sets forth that Brewer's machine was only experimental, that the United Company had an experimental machine which was not commercial, and that Brewer's inventions were subsequently embodied in the United Company's machine, it omits to mention the evidence that the United Company's experimental machine was not successful until after the Brewer invention had been embodied in it and that the Brewer mechanism was much superior to that which the United Company was using before.

That no potential competition was offered by the Brewer machine is shown by the fact that Brewer's experimental machine infringed fourteen claims of a broad patent owned by the United Company.

American Sole Laying Machine Company (Brief for the United States, pp. 80–81).

(The facts of this transaction are set forth in our Main Brief, Appendix I, p. 694.)

This transaction took place after that with the Boot & Shoe Sole Laying Company, although the United States discusses it first.

The United States sets forth (pp. 80–81) that the American Company was engaged in putting out sole laying machines and that Howard testified that "the United Company was engaged in manufacturing and putting out machines for laying the soles of boots and shoes, although he claims that the United Company's machines were inferior to those of the American Sole Laying Company."

The United States evidently wishes it to be understood that the object of this transaction was to remove competition.

The United States omits any reference to the evidence that the United Company was then putting out a sole laying machine which operated upon only one shoe at a time, while the American machine was a double form machine which operated upon two shoes, rights and lefts, at the same time, and that the American Company had patent rights which prevented the United Company from making a double machine which would be twice as fast as the machine it then had.

The United States also ignores the uncontradicted evidence that the American Company's patents also prevented the United Company from adopting a satisfactory pad for its sole laying machine and further prevented necessary development of the Atlas leveling machine.

Nor does the United States explain that immediately after this acquisition the United Company combined its sole laying machine and the American machine, making a better machine than either, which operates twice as fast as its old machine.

Boot & Shoe Sole Laying Company (Brief for the United States, p. 81).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 662.)

This transaction preceded the American Company transaction last discussed and it took place in June, 1899, not in May, 1901, as stated by the United States.

The United States sets forth (p. 81) that the Boot & Shoe Sole Laying Company was engaged in manufacturing and putting out a sole laying machine and says that Howard testified that "the United Company was then engaged in putting out a machine for doing *similar* work, although he claims that the United's machine was inferior to the machine acquired" (italics theirs). Apparently the United States would give the impression that there was competition between the sole laying machines of these companies and that the object of this transaction was to remove that competition.

The facts are that the United Company's machine, which was of a different type, was very unsatisfactory because it was continually breaking down and because it was only adapted for large factories. It was discarded after this acquisition, and the machine of the Boot & Shoe Sole Laying Company was thereafter put out by the United Company as its standard commercial machine.

A further reason for this acquisition was that the United Company wished to use a pressing form which it had produced, but that form infringed a patent owned by the Boot & Shoe

Sole Laying Company. After the acquisition it used that form in connection with the acquired machine.

The record further shows that the business of the Boot & Shoe Sole Laying Company was very small, and that such machines as it put out were manufactured for it by others.

Accordingly it is clear that the United Company made this acquisition to obtain a machine for performing an operation for which it did not have a satisfactory machine and to enable it to use an improved mechanism without infringement,—and for no other purpose.

J. K. Krieg & Company (Brief for the United States, pp. 81–82).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 702.)

The United States says (p. 82) that "Howard testified that the Krieg Company was engaged in putting out a heel-seat rounding machine, a Louis heel-scarfing machine, and two or three types of embossing machines; that the United Company at that time was putting out a heel-seat rounder and a scarfing machine *of different types;* that the United Company was also engaged in putting out embossing machines" (italics ours). The United States adds that Winslow testified "that the Krieg Company had also been agent for some of the old companies that became a part of the United."

This statement by the United States is misleading in its plain implication that the principal business of the Krieg Company was putting out the three machines named and in its characterization of the United Company's machines as merely "of different types."

The facts are that J. K. Krieg & Company had been local agents for parts and supplies for the United Company's machines except the Goodyear machines, having previously been agents for the Consolidated and the McKay Companies, and their business in the two or three machines of General Department types which they had was very small and merely incidental to their business as agents for the United Company.

The important reason for this transaction was that in fol-

lowing its policy of greatly improving its service the United Company desired to establish its own agency in New York and in so doing to treat the Krieg Company fairly. This is explained in the discussion of the Ross-Moyer Company (*supra*, p. 152) and more fully in our Main Brief, Appendix I (pp. 681–682).

As to the heel seat rounder and scarfing machine "of different types," which the United States says the United Company was putting out, the heel seat rounder was merely an edge trimmer with a larger cutter, which wasted leather. The Krieg machine, specially designed for heel seat rounding, saved the pieces of leather which it removed and thus effected a considerable economy. The United Company "had no machine of that kind before" (R. Vol. 1, p. 93, lines 7–8).

The Louis heel scarfing machine of the Krieg Company and the spring-heel scarfing machine of the United Company were specially constructed for entirely different uses, and *neither could possibly be used for the work of the other* (R. Vol. 1, p. 60, lines 35–41; p. 93, lines 11–21).

The Krieg embossing machines were simple machines for ornamenting upper stock or stamping the inside of the upper of a shoe. They were of no importance, and the real effect of this transaction, as regards the merely incidental acquisition of machines, was clearly the acquiring of machines for doing work for which the United Company had no machines.

Joseph P. Curtis (Brief for the United States, pp. 82–83).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 704.)

The United States sets forth that by this transaction the United Company *acquired the business* of Curtis relating to cementing machines and says that Howard testified that the United Company was putting out a cementing machine, but for performing an entirely different operation.

The facts are that Curtis was *not engaged in business*, and that the United Company acquired from him nothing but certain patent rights relating to a machine for cementing a piece

of fabric to an upper. The United Company had no machine which could be used for that work, nor could the Curtis machine be used for the same work as that performed by any machine of the United Company.

The George A. Smith Machinery Company (Brief for the United States, p. 83).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 697.)

The United States says (p. 83) that "Howard testified that the Smith Company at the time of its acquisition was putting out a spring-heel scarfing machine, and that at the time the United Company was not putting out a machine for doing similar work. He further testified that the Smith Company had also been acting as agent prior to 1899 for certain of the companies that made up the United Company."

This statement alone shows that this transaction was perfectly normal and lawful, but even at that the statement does not give a correct picture of the transaction. The Smith Company had a store in Philadelphia; it employed one man repairing second-hand machinery; and the one machine which it put out, the Boss spring-heel scarfing machine, was manufactured for it in outside machine shops. The United Company had no machine for doing the work which that machine of the Smith Company would do.

Also Smith, like the Ross-Moyer and Krieg Companies, had formerly been agent for the United Company, and the real purpose of the transaction was to make a fair arrangement with him in connection with extending the United Company's service and establishing its own agency in Philadelphia, as is fully explained in our Main Brief, Appendix I (pp. 698–699). The acquisition of the one machine was merely incidental to that arrangement.

Arnold Machine & Supply Company (William B. Arnold) (Brief for the United States, p. 84).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 711.)

The United States sets forth (p. 84) that the Arnold Company was manufacturing and putting out cementing machines and says that Howard testified that "the United Company was engaged in putting out *cementing* machines, but he claimed that they were not adapted for work similar to that of the Arnold machine" (italics theirs). This statement is inadequate and is obviously intended to give a wrong impression. Mr. Howard testified that the Arnold machine was useful only for a particular kind of work, that it had to be specially constructed for that particular use and that it was not useful for any other operation, while the United Company had no machine which could possibly be used for performing the operation of the Arnold machine (R. Vol. 1, p. 64, lines 43–46; p. 65, lines 7–14).

By this transaction, accordingly, the United Company was merely entering a new field.

Booth Brothers (Brief for the United States, pp. 84–86).

(The facts of these transactions with references to the record are set forth in our Main Brief, Appendix I, pp. 713, 720.)

The United States has discussed under this heading two separate transactions which are set forth in the petition (R. Vol. 1, pp. 1015, 1016) as separate transactions.

(1) The United States says (p. 84) that in October, 1904, the United Company acquired the business of Booth Brothers relating to perforating machines. (The consideration is stated (p. 84) as $24,000 and a royalty; in fact, it was $2,400 and a royalty.)

The United States further states (p. 85) that "Howard testified that the United Company was engaged in putting out a *perforating* machine which could be used for the same operation as the Booth machines, although he claimed that it was

not *intended* for the same operation" (italics theirs). This is a distorted statement of Mr. Howard's testimony. He said that the United Company's machine was a gang machine adapted for perforating tips and that it could *not* be used to do the work done by the Booth machine, which was a single-tool, step-by-step machine, adapted and used for perforating the edges of vamps (R. Vol. 1, p. 65, lines 26–42).

It cannot be questioned that by this transaction the United Company was merely entering an entirely new field by acquiring a machine for performing an operation for which it had no machine before.

(2) The United States sets forth that in November, 1907, the United Company acquired the entire remaining business of Booth Brothers and says (pp. 85–86) that Howard testified that the United Company then acquired "a fudge edge-making machine, a *wheeling* machine, a stitch burnishing machine, an upper-shaping machine, and a *beating* machine" (italics theirs), and that "He further testified that the United Company at that time had a *wheeling* machine and an upper-*beating* [beading] machine" (italics theirs).

This statement is obviously intended to convey the impression that the United Company was competing with Booth Brothers in respect to two of the four machines acquired, namely, wheeling machine and upper beading machine. But the United States has told only a part of the story. Mr. Howard testified that the Booth wheeling machine was used on Goodyear work and that the United Company's machine was adapted only for use on McKay sewed shoes with a mock welt (R. Vol. 1, p. 84, lines 24–29). Mr. Howard further testified that the United Company's upper beading machine "was satisfactory on heavy work, but not for the light or medium work," and that the Booth Brothers machine "was a much better machine for light work" (R. Vol. 1, p. 69, lines 12–13; p. 84, lines 42–44). Mr. Howard also testified that the United Company had no machines for doing the work of the other two Booth machines (R. Vol. 1, p. 69, lines 13–14).

Accordingly by this transaction the United Company merely entered a new field by acquiring machines for performing operations for which it previously had no machines.

Fred H. Perry (Brief for the United States, p. 86).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 705.)

The United States sets forth (p. 86) that Perry made an agreement by which he "agreed to convey to that company all inventions which he should make relating to shoe machinery for a period of five years from the termination of his employment by the United Company."

The United States fails to explain that Perry had previously been employed by the United Company as a machinist, that at his own request he was given the opportunity to enter the inventive department of the company, and that the agreement made with him was merely an employment contract with an inventor.

That covenants to assign future inventions in contracts employing inventors are normal and legal is established by the decisions discussed on pages 497–500 of our Main Brief.

Boston Shoe Tool Company (Brief for the United States, pp. 86–87).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 666.)

The United States alleges (p. 86) that the United Company acquired the business of Timothy A. Bresnahan, "engaged in manufacturing and putting out machines, tools, and appliances used in the manufacture of shoes, together with the entire capital stock of the Boston Shoe Tool Company."

The failure of the United States to indicate the nature of the business in which the Boston Shoe Tool Company was engaged is significant. It was, in fact, manufacturing and selling an edge trimming machine and an edge setter, both machines of General Department type, and it was making and selling cutters for use on the edge trimming machine and edge setting irons for use on the edge setter. At this time the United Company was not manufacturing any edge cutters or any edge setting

irons, and it had no machines for doing the work of either machine acquired from the Boston Shoe Tool Company.

It is plain that by this acquisition the United Company was merely enlarging its field.

Globe Shoe Tool Company (Brief for the United States, pp. 87–88).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 671.)

The United States sets forth (p. 87) that the Globe Company was "engaged in manufacturing and putting out edge cutters and irons used in the manufacture of shoes."

It is true, as stated by the United States, that the Boston Shoe Tool Company, previously acquired, was also putting out "edge cutters and irons."

But the United States does not refer to other important testimony regarding this transaction. The record shows that this concern was acquired at the earnest solicitation of the partners and because the United Company desired to obtain the services of one of the partners, Mr. Loomer, as the head of its department for manufacturing such tools. Plaintiff's Exhibit 72 (R. Vol. 3, p. 581) recites that employment by Loomer had been agreed upon "as an inducement to the United Company to take over said business and to purchase the property and assets of said partnership."

Also, the Globe Company was infringing two of the United Company's patents.

It is further important to note that after this acquisition very large reductions were made by the United Company in the prices of tools such as the Globe Company was making. Details are stated on pages 671–672 of our Main Brief, Appendix I.

In respect to the covenants in the agreements with Loomer and Perkins which the United States sets forth, it is important to note that *both* Loomer and Perkins entered the United Company's employ, and that *no covenants* were taken from the other three partners, who did not enter the employ of the United Company (P.'s Ex. 71, R. Vol. 3, p. 577).

John Ritchie, and John Ritchie Company (Brief for the United States, pp. 88–89).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 672.)

The United States alleges (p. 88) that the United Company acquired "all the *business* of John Ritchie, and John Ritchie Company, a corporation, *relating to the manufacture* of standard screw machines, slugging machines, tacking machines," etc. (italics ours).

It is obviously the intention of the United States to give the impression that John Ritchie and John Ritchie Company were engaged in the *manufacture* of metallic fastening machines. That is not the fact.

The facts shown by the record are: The Ritchie Company was not engaged in *manufacturing machines* but was engaged in the manufacture of *boots and shoes.* It had one machine for the manufacture of *wire.* The metallic fastening machines which are referred to in the agreement relating to this transaction were being *used* by the Ritchie Company, and they were immediately leased back to them by the United Company (R. Vol. 1, p. 46, lines 15–30; P.'s Ex. 74, Vol. 3, pp. 586, 587, 589, 590; Defs.' Ex. 231, Vol. 5, p. 475).

Again, the United States alleges (pp. 88–89) that "The purpose of defendants to force shoe manufacturers to deal exclusively with the United Company" is well illustrated by Mr. Winslow in Defendants' Exhibit 231 (R. Vol. 5, p. 475) where it states that the reason for this transaction "was to prevent manufacturers who held Metallic Machinery under lease from the United Company (and who had agreed to purchase their metallic fastening material from the United Company), violating their leases and contracts by purchasing material from Ritchie."

The United States does not refer to the evidence that the John Ritchie Company had one machine for making standard screw wire and that they were selling wire to lessees of the United Company's metallic machines who had agreed

to buy fastening material from the United Company in payment of royalty for the use of the machines; that in such cases of course the United Company got no return for the use of its machine; and that the purpose of the transaction was to remove that dishonest situation.

It should further be noted that the United States has not raised any question in this suit as to the propriety or legality of the provisions of the metallic leases providing for payment for use of the machines through purchase of fastening material.

Stanley Manufacturing Company (Brief for the United States, pp. 89–90).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 676.)

On the face of the statement by the United States (p. 89), the United Company simply acquired certain machines, parts and supplies which the Stanley Company, engaged in business at Lawrence, Massachusetts, had on hand at Frankfurt, Germany.

The United States omits any reference to testimony showing that the United Company had no machines for doing the work of any one of the miscellaneous General Department machines which the Stanley Company was putting out and that the agreement amounted simply to an agency contract.

The United States quotes at length the covenant made by the Stanley Company not to compete in foreign countries, but it omits to refer to the covenants in the same agreement (P.'s Ex. 78, R. Vol. 3, pp. 621–622) which provided:—

(1) "that the said United Company shall use its best endeavors to sell in foreign countries, machines made by the said Stanley Company . . .;"

(2) that in case the United Company should discontinue the purchase from the Stanley Company and sale

> "of any of the machines, parts or supplies made by the said Stanley Company . . . the said Stanley Company may then and thereafter sell such machines, parts or

supplies thus discontinued to any and all persons without respect to the country to which they are to be sent;"

and

(3) "That the said Stanley Company may advertise and create and maintain in all proper business ways a demand for its machines in any and all countries in the world."

The United States (p. 90) characterizes as "A somewhat similar transaction" the agreement with W. J. Young. This transaction was similar only in the respect that it related solely to business in foreign countries. The facts of the Young transaction are set forth in full on pages 696–697 of our Main Brief, Appendix I.

Bay State International Shoe Machinery Company (Brief for the United States, p. 90).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 683.)

The United States sets forth (p. 90) that the United Company acquired for its French and German companies "the property and good will for the Continent of Europe of the Bay State International Shoe Machinery Company" for $25,000 in preferred stock of the United Company. It further states that Howard testified that the Bay State Company "'had a welter and stitcher and I think *a rough rounder*' but that he did not know whether it 'was shipping machinery from the United States to foreign countries'" (italics theirs).

The United States omits to state that after further investigation Mr. Howard testified that the machines of the Bay State Company were manufactured in Montreal, Canada; none whatever in this country. Other important facts shown by the record, which the United States does not mention, are that the machines of the Bay State Company were very different in construction from and distinctly inferior to the United Company's machines; that it had done business only in England and had put out only ten sets of its machines in England; that its machines infringed the United Company's

English patents; and that the purchase was made at the earnest solicitation of the people interested in the company, who were also customers of the United Company, as the cheapest way to dispose of the litigation.

George W. Emerson & Company (Brief for the United States, pp. 90–91).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 699.)

The United States says (p. 91) that Howard testified that the United Company acquired from the Emerson Company a power spring-heel scarfer and a heel burnishing machine and that at that time the United Company was "putting out a heel-burnishing machine but of a different type from that put out by the Emerson Company, and that the United Company was also putting out a spring-heel scarfing machine to be operated by hand."

The United States omits to make any reference to the following important facts:—

The principal business of the Emerson Company was manufacturing and supplying lasts and forms to be used for sole leveling machines of the "Giant" type, and the United Company was developing a leveling machine on which lasts and forms were used.

The Emerson Company had a tip scourer used in repairing the tips of patent leather shoes. The United Company had no tip scourer (R. Vol. 1, p. 58, lines 24–25; p. 95, lines 1–3).

The Emerson heel burnishing machine was of a different type and performed its operation in an entirely different way from the United Company's machine. Some manufacturers insisted upon one type of machine and others upon the other type. The Emerson Company's machine infringed numerous important claims in two patents controlled by the United Company.

An important object of the transaction was to obtain the services of William R. Sampson, the active man in the Emerson concern.

Another object was to settle the pending litigation.

Joseph W. Leary (Brief for the United States, pp. 91–92).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 705.)

The United States sets forth (p. 91) that the United Company acquired from Joseph W. Leary, of Lynn, Massachusetts, "his business of manufacturing and dealing in shoe machinery."

This statement is very misleading. Leary was doing *no manufacturing of any kind.* He employed no men and had no factory. He was principally engaged in retailing cements and blackings, and he also dealt in a very small way in second-hand sewing machines for sewing together the parts of shoe uppers.

Leary was also local agent for the United Company's Amazeen skiving machine. He was extremely capable and successful as salesman, and the United Company desired to obtain his services in a wider field. He stated that he would enter its employ if the company would buy his stock of cement and second-hand machinery, and he was paid $3,052 for the small stock that he had.

The United States alleges (p. 92) that Leary "agreed to convey to the United Company all improvements which he should make within 10 years from the date of the termination of his employment with the United Company."

In fact, Leary made no covenant whatever to assign any future improvements. On the contrary, the Leary agreement (P.'s Ex. 108, R. Vol. 4, p. 768) specifically provided that Leary should "not be required to disclose his secret formulæ for making cements, blackings or stains."

Zachary Taylor French (Brief for the United States, pp. 92–93).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 709.)

The United States alleges (p. 92) that the United Company "acquired the business of Zachary Taylor French, Boston, Mass., engaged in the development of machines designed and used in the manufacture of boots and shoes."

The testimony to which the United States then refers shows that the United Company did not acquire any "*business*" from French and that French was not engaged in business, but that the transaction was merely an agreement commuting obligations to pay royalties which would become due under various existing contracts.

The United States omits to explain that these contracts had all been made with the Goodyear Company prior to 1899 and that the agreement was made because French desired to have his royalty contracts placed upon a definite basis of annual payment.

Kimball & Hadley (Brief for the United States, pp. 93–95).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 710.)

The United States sets forth that Kimball & Hadley were "engaged in manufacturing and marketing *awls, needles*, drivers, supplies, etc." (italics theirs) and states (p. 93) that Howard testified that "the United Company was engaged in manufacturing and putting out *awls and needles*, except curved needles for the Goodyear sewing machine, and that the United Company was making awls for the use of its own machines" (italics theirs).

This statement by the United States is inaccurate and misleading. Howard did not testify that the United Company was putting out needles. He explained that the awls that it was making were for its metallic machines and were "straight awls, which make a straight hole for a nail, and bear no resemblance to the curved awl used in a welter or stitcher" (R. Vol. 1, p. 64, lines 18–20).

The United States further alleges that Kimball & Hadley were forced to sell out by reason of the United Company's leasing system and that its lessees were obliged by the terms of their leases to take needles from the United Company. Neither of these statements is supported by the record.

(1) In the suit brought by the United Company to enforce the covenants made by Kimball & Hadley not to engage in similar business within fifteen years the Supreme Court of

Massachusetts approved the finding of the lower court "that they made the sale voluntarily" (*United Shoe Machinery Co.* v. *Kimball et al.*, 193 Mass. 351, 354, 357).

(2) Lessees of the United Company's Goodyear machines are *not* required by the terms of their leases to take the needles from the United Company. Needles are not machine parts. Representatives of several manufacturers testified that they bought awls and needles wherever they wished and that they had bought them from Kimball & Hadley (Roberts, R. Vol. 1, p. 747, lines 10–21; Hogan, p. 747, lines 35–36; Tierney, p. 760, lines 22–24; Bryant, p. 761, lines 4–6). Both Roberts and Hogan stated the reasons why they stopped buying from Kimball & Hadley and both specifically said that it was not on account of the United Company's leases. Roberts testified: "The United Company has never required us to buy needles and awls from any particular source" (R. Vol. 1, p. 747, lines 11–17; 42–43).

Hadley's testimony as to statements made to him by shoe manufacturers that they could not buy his needles because if they did the United Company would take out its machines was specifically denied by all the manufacturers or employees in the factories which Hadley named who had anything to do with buying needles, as is fully set forth in our Main Brief, Appendix I, pp. 767–769.

In its statement (p. 95) that Kimball & Hadley again engaged in the awl and needle business and that "the United Company brought suit to enjoin them, upon the ground that they were violating their agreement of June 11, 1904," the United States neglects to state that the Supreme Court of Massachusetts held that the covenant was reasonable and valid and approved the granting of an injunction enforcing it (*United Shoe Machinery Co.* v. *Kimball et al.*, supra).

Leopold J. Courteau (Brief for the United States, pp. 95–96).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 712.)

On the face of it the statement by the United States (p. 95) that the United Company acquired from Courteau "all his

inventions and devices, including letters patent, relating to machines and mechanisms for holding the linings of shoes during the process of pasting the outer leather to the lining" shows that this transaction is of no importance in this suit.

It should, however, be pointed out, first, that the statement is erroneous in saying that the United Company acquired "devices." The United Company did not acquire any devices; it acquired merely an invention. Second, the United States omits to refer to the testimony showing that the United Company had no machine for performing this operation.

Brockton Supply Company (Brief for the United States, p. 96).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 714.)

In its statement regarding the tack pulling machine which was acquired from this concern the United States says (p. 96) that "Howard testified that at the time of acquiring the business of the Brockton Supply Company the United Company was engaged in developing a machine for pulling lasting tacks, but that none had been put out."

The United States omits to refer to testimony showing that the United Company's experimental machine infringed a patent of the Brockton Supply Company and that the Brockton Company's machine infringed the United Company's patent applications.

Zotique Beaudry (Brief for the United States, pp. 96–97).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 719.)

The United States sets forth (pp. 96–97) that the United Company acquired from Beaudry his inventions and improvements relating to machines for burnishing and finishing the heels of shoes and that Howard testified that at this time "the United Company *had* a heel burnishing machine" (italics theirs).

The United States omits to refer to testimony showing that Beaudry's business was not acquired and that all the United Company did acquire was his experimental heel burnishing machine and the patents on that machine; that the acquisition was made because it was believed that the Beaudry inventions, which embodied an entirely new idea, would greatly improve the United Company's machines; and that Beaudry's machine infringed many claims of one of the United Company's patents.

The statement by the United States (p. 96) that Beaudry made a covenant "that all inventions which he should thereafter make should be disclosed" is not supported by the record. That covenant was specifically limited to "heel finishing machinery, methods or devices," the subject-matter of the transaction (P.'s Ex. 120, R. Vol. 4, pp. 850, 853, 854).

Richardson Shoe Machinery Company (Brief for the United States, pp. 97–98).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 722.)

The United States sets forth that the Richardson Company was manufacturing and putting out McKay sewing machines and clicking machines and it says that Howard testified that the United Company was then manufacturing and putting out McKay sewing machines.

The United States omits to refer to testimony showing that a very important feature of the United Company's McKay sewing machine infringed one of the Richardson Company's patents; that the Richardson machine was a great deal better than the United Company's; that it was believed, and it eventually proved, that a better machine than either could be constructed by using inventions owned by both companies; that improvements broadly claimed in two Richardson patents are embodied in the United Company's new Model M outsole stitcher; and that the improvement of one of those patents is embodied in the United Company's new Model K welter.

The record shows that the Richardson Company was not manufacturing and putting out clicking machines as alleged by the United States (see our Main Brief, Appendix I, pp. 724–725).

Harry L. Rice and Fred LaChapelle (Brief for the United States, pp. 98–99).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 728.)

The United States omits to refer to any testimony showing that the Rice and LaChapelle welting machine, embodying the patented inventions which were acquired, was only experimental and far from being commercial, and that it was believed that these improvements would not only strengthen the inseam of a welt shoe, but would effect substantial economies.

In the statement by the United States of the covenant not to compete, which was made by Rice and LaChapelle, the United States omits to state that the covenant was limited to a period of ten years.

The Wentworth Company (Brief for the United States, pp. 99–100).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 730.)

The United States sets forth that by this transaction the United Company acquired a machine for beating heel seats and a shank sticking machine. It says (p. 100) that Howard testified "that the United Company at that time was manufacturing a machine for beating heel seats, and that the United was experimenting with the shank sticking machine."

The United States omits to refer to testimony showing that the United Company's machine for beating heel seats was similar to the Wentworth machine only in name, that the two machines operated in entirely different ways; that the United Company's machine was discarded after this acquisition; that

the patent on the Wentworth shank sticking machine prevented the United Company from developing a machine; and that the Wentworth shank sticking machine infringed one of the United Company's patents.

That the Wentworth heel seat beating machine could not possibly offer any competition is shown by the fact that it infringed many claims of two of the United Company's patents; that suits had been brought and those claims had been held to be valid and infringed; and that they covered indispensable features of the Wentworth machine so that the Wentworth Company could no longer put out the machine.

Adam H. Prenzel (Brief for the United States, pp. 100–101).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 733.)

The United States sets forth (p. 100) that the United Company acquired from Prenzel his inventions and patents "relating to certain machines used in the manufacture of turn shoes."

Important facts to which the United States fails to refer are that Prenzel, who was a shoe manufacturer, had made valuable patented inventions relating to a new type of spring heel shoe and a new type of infants' shoe and special machines for making them and that the United Company had no such machines; that accordingly the United Company was by this transaction entering a new field; and also that this acquisition enabled the United Company to use three of the Prenzel patents in one of its important machines.

M. V. Bresnahan & Company (Brief for the United States, pp. 101–102).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 734.)

The United States says that the testimony shows that by this purchase the United Company acquired an experimental lasting machine and a heel burnishing machine and

that the United Company was then putting out lasting machines and heel burnishing machines.

The United States does not refer to testimony showing that the United Company's machines would not accomplish the same results as the Bresnahan machines because they did not have the Bresnahan patented inventions, and that there was a great amount of pending litigation, largely infringement suits, between Bresnahan and the United Company in some of which Bresnahan was defendant and in others the United Company. The agreement for purchase specifically discharged the United Company from all claims and demands covered by the suits which had been brought against it (P.'s Ex. 144, R. Vol. 4, p. 1058).

With reference to the statement by the United States (p. 102) that the schedule attached to the agreement "gives a list of many different machines together with supplies acquired from the Bresnahan Company," it should be noted that the machines are nearly all machine-shop machines and that the few shoe machines named, one or two of a kind, are obviously second-hand machines such as dealers in shoe machinery usually have on hand.

Charles P. Stanbon & Company (Brief for the United States p. 102).

(The facts of this transaction with references to the record are set forth in our Main Brief, Appendix I, p. 736.)

The United States says (p. 102) that Howard testified that the United Company acquired from Stanbon "a channel-cementing machine, a folding machine, perforating machine, and a channel-opening machine, and that the United Company at that time *was* putting out an inferior channel-cementing machine and a perforating machine" (italics theirs).

The United States omits to refer to testimony showing that the United Company's channel cementing machine was inferior *because* the United Company had been obliged to take off improvements which infringed Stanbon's patents; that the United Company's perforating machine and the

Stanbon machine are used in distinct and different fields, and that the Stanbon machine would do work which the United Company's machine could not do; that there were pending interferences in the Patent Office involving applications owned by the two parties in which the issues were so broad that the party winning the interference would be able to prevent the other party from putting out any machine of the kind; and that by this transaction the United Company was enabled for the first time to put out a folding machine.

APPENDIX II.

THE CHART ANNEXED TO THE BRIEF FOR THE UNITED STATES AS "APPENDIX A" IS GROSSLY MISLEADING AND GROSSLY DISTORTS THE FACTS.

There is attached to the brief for the United States an Appendix "A" which the brief writer has headed "Chart Illustrative of the Practical Effect of Exclusive Use and Tying Provisions in Restrictive Lease and License Agreements for the use of Shoe Machinery Owned and Controlled by Defendants." In this chart the brief writer by an arrangement of groups of machines and by a labyrinth of connecting lines has endeavored to draw a picture showing the utmost of confusion. There is no justification for the chart or for the picture which it purports to draw, and its presence in the brief can be accounted for only as an effort to create upon the mind of the brief reader who examines the chart, a false impression of the inter-relation of the various groups of machines and of the extent and effect of the clauses contained in various of the leases.

A similar chart was attached as "Exhibit 23" to the original petition filed in this case, but was abandoned by counsel for the United States, who agreed that it should be disregarded when the defendants at the trial offered a witness to point out its misleading character and its misstatements and inaccuracies. Yet the brief writer has the temerity to say (Brief for the United States, pp 179–180):—

> "A chart illustrative of the practical effect of the tying clauses in these restrictive leases is submitted herewith as Appendix A. This chart has been criticised by the defendants, but all the criticisms are trivial and none of them is based upon fact."

Only the persistence of counsel for the United States in the employment of such a means and the fact that to one not familiar with shoe manufacturing a graphic of this character might not be understood and might be taken to in some degree represent the facts require any discussion of this chart in this reply brief. We shall not take the time of the Court to discuss in detail the many misstatements and inaccuracies, but shall simply point out some respects in which it is fundamentally misleading.

1. The very heading of the chart is an affront to the intelligence of one at all conversant with the actual situation. The heading uses the phrase "Practical Effect," and purports to set forth a practical condition, yet it entirely omits to indicate the fundamental fact that entirely different machines and groupings of machines are used in the manufacture of each of the various kinds of shoes. On the contrary, it runs together in the same table machines used in the manufacture of McKay sewed shoes, welt shoes, turn shoes, pegged shoes, standard screw shoes, nailed shoes and shoes of other kinds. It is obvious that such a confusion of machinery has enabled the chart draftsman to picture a multiplicity of connecting lines which have the effect and can have been intended only to have the effect of picturing a condition which is anything but "practical." It is obvious that if a graphic of this sort were to be undertaken the only fair method would have been to set forth the machines and groups of machines used for each class of shoes separately, but this obviously would not have resulted in the desired picture of confusion and was not adopted.

2. Even upon the chart as it has been prepared arrangement of the groups of machinery has obviously been made by the draftsman not with an idea to any consecutive or logical order but with a view to creating a maximum of confusion; *i.e.*, the chart begins (Table 1) with pulling-over machines, jumps (Table 2) to heeling machines, goes back (Table 3) to eyeletting machines, then to General Department machines (Table 4). From General Department machines it goes to pegging machines—the sole-attaching machines for pegged shoes (Table 5), then back to the lasting

machines (Table 6), then to metallic machines (Table 7), and finally (Table 8) to the Goodyear Department machines. The sole-attaching machines for McKay shoes are set forth in Table 4, the sole-attaching machines for pegged shoes in Table 5, the sole-attaching machines for standard screw and loose nailed shoes in Table 7, and the sole-attaching machines for Goodyear welt and Goodyear turn shoes in Table 8.

3. By the arrangement and grouping of machines adopted by the draftsman he has undertaken to justify himself in showing connecting lines between various of his groups which, to a casual observer who did not study the chart in detail or who was not familiar with the actual conditions, might leave the impression that a tie existed generally between the machines of the groups so purporting to be connected. For illustration, connection is shown from various of the tables, *e.g.*, Tables 1, 2, 3, and 4 to Table 8 (Goodyear machines). Among the machines referred to in Table 8 are the various auxiliary machines of the Goodyear Department to which there is no tie under any form of lease from any machine of any department. A connection is shown from Table 6 (lasting machines) to Table 2 (heeling machines), whereas of all the machines set forth in Table 6 only two unimportant machines, namely, an obsolete type of lasting machine and a machine which is not a lasting machine at all, but a tacking device, have ever been put out upon any form of lease which in any way restricted their use to any of the machines of the Heeling Department. A connection is shown from Table 4 (General Department) to Tables 5, 6, 7, and 8. Among the machines included in Table 4 is a McKay sewing machine which has never been put out by the defendants upon any form of lease which restricted the use of the machine in any way to any of the machines of Tables 5, 7, or 8. Illustrations might be multiplied.

4. By the arrangement and grouping of machines and the enumerations contained in the chart, the draftsman has undertaken to magnify the tying in a way that is anything but "practical," by enumerating (without note) in various of the tables various machines for performing the same or similar operation only one of which would be used in any

one particular case on any one particular type of shoe, and in showing in the same table different forms of lease. For example, in Table 6 there is the enumeration of several different types of lasting machine; in Table 2 the list includes several forms of heel attaching machines and several forms of heel trimmers; in Table 3 there are two kinds of eyeletting machines listed; in Table 4 there are different forms of lease for the same machines of the General Department; in Table 7 there are enumerated several types or models of machines for performing the same character of work; for example, a double head taper nail tacker and a single head taper nail tacker, a rapid standard screw machine and an old style standard screw machine; in Table 8 there are different forms of lease for the same Goodyear machines. The arrows in the chart would appear to indicate, without careful study and analysis, that all the machines in one group are tied to all of the machines in another group, whereas the tie would actually exist, as a "practical" matter, if it existed at all, only between certain selected machines of one group and certain selected machines of the other group.

5. The chart upon its face purports to cover only what counsel for the United States are pleased to call the restricted forms of lease. It therefore admittedly undertakes to set forth only a part of the whole story, and this part it sets forth in a manner bound to confuse and mislead.

6. The chart at one or more points in each of the tables with the exception of Table 3 contains a statement to the effect that the lessee "must use exclusively" the lessor's machines of certain kinds or for certain work. This statement is absolutely without justification in any instance.

There is not a table contained in the chart concerning which specific criticism might not be made if it were necessary. We believe, however, in the above general comment we have indicated to the Court that the chart is grossly misleading and utterly unworthy of acceptance for any purpose. It is difficult to conceive how the brief writer could have justified himself in placing such a graphic before this Court.

APPENDIX III.

COMMENT UPON APPENDICES C, D, AND E ANNEXED TO THE BRIEF FOR THE UNITED STATES.

The brief for the United States says at page 172:—

> "Appendix C is a brief statement of the clauses contained in each lease of the defendants. It has been carefully compared with the record and is believed to be entirely accurate. Appendix D shows, as to each of the various clauses set out, the leases in which it is to be found. Appendix E is a tabular statement of the same material."

The writer of the brief for the United States has not refrained, even in these purported tabular statements, from misleading arrangement and statement and from the same dexterous use of ambiguities and half-truths which he has employed throughout the other portion of the brief. There are many inaccuracies and misstatements of fact (some of which were noted in our brief upon prior hearing in reply to the prior brief for the United States), but for the present purposes it will be sufficient to point out a few striking instances only in which, by order of arrangement, by misstatement of facts, and by omission to state necessary qualifying and explanatory facts, a misleading picture is presented.

For example, as to the very first machine, the leases of which are discussed in Appendix C, viz., the leases for Consolidated hand method lasting machines, the brief writer fails to make clear the important fact that there are two distinct types of this machine,—the one adapted for lasting McKay sewed and metallic fastened shoes, and the other adapted for lasting welt shoes.

The first exhibit discussed (Exhibit 16) is a form of lease without initial payment for the McKay lasting machine, and

is not designed or adapted, as the evidence clearly showed, to use upon welted or turned footwear. The brief writer, however, carefully ignoring this fact, states the prohibitive clause in this lease, without explanation or qualification, as "applying to welting, stitching" and "turn sewing" machines; that is, to machines used in kinds of footwear to which, as the record clearly shows, the lasting machine covered by this lease has no application. He makes no note of this fact, although in his discussion which follows of Exhibit 15 he notes that there the prohibitive clause does not "extend to metallic fastening machines" and explains (the omission from his point of view apparently requiring explanation) that "this form of lease is used for the hand method type of machine when adapted to lasting welt shoes."

Again, at page 355 of Appendix C, in discussing a lease for auxiliary machines of the Goodyear Department, the brief writer states,—

> "*Exclusive Use* clause applying to welting, turn sewing and outsole stitching machines," (italics theirs).

Without explanation a reader might take this to be a statement that there was some requirement of exclusive use—which is not the fact—or that there was some provision requiring use or exclusive use of these auxiliary machines, whereas, as a matter of fact, there is no requirement, under any form of lease, that any of these auxiliary machines shall be used exclusively or shall be used at all or any limitation of any machines to use with them.

Also under the same heading the brief writer states,—

"*Annual Rental*, amounting to about $184 per annum," (italics theirs).

It is to be noted that the lease there under discussion (Exhibit 25) contains a schedule of machines setting forth some twenty-four different kinds of machines which may be taken under that form of lease. Opposite each machine is set forth an amount to be paid as annual rental for such machine, these amounts running all the way from one dollar per year up to (in one instance) thirty-five dollars per year.

In the case of fifteen machines this annual rental is five dollars or less per year, and in the case of only two machines does it exceed fifteen dollars per year. A lessee under this form of lease might have one machine only or might have several machines. In no case would he have all such machines. Some machines are adapted for one kind of work, some for another. There are auxiliary machines for use in welt work and others for use in turn work. The rental under any given lease upon this form would depend upon the particular machine or machines covered thereby, yet the brief writer has added together the annual rentals set forth in respect to all of these twenty-four machines and has made the statement:—"*Annual rental*, amounting to about $184 per annum," (italics theirs) which amount would be the aggregate annual rental only in a case (which would never exist) of a lessee taking upon one lease of this form one machine of each and every of all these twenty-four kinds.

Perhaps the most flagrant instance of misstatement in these summaries is that contained at page 356 where the brief writer baldly states, "In order to obtain either the welt sewing or the stitching or any of the auxiliary machines, the lessee must agree that he will not use at any time in his factory any welt sewing or outsole stitching machine made by any competitor of the defendants." This is such an absolute misstatement of the fact and is so obviously without foundation or justification that it is not necessary even to discuss it here.

Another instance of the utmost perversion of the facts is in what the brief writer has stated in this portion of his brief with reference to the leases for pulling-over machinery, with the extraordinary conclusion, based upon a series of preceding misstatements (Brief for the United States, p. 362) that

> "The net result is for lasting and pulling over under Exhibit 39, the so-called independent lease, the lessee has to pay ½c. a pair, while under Exhibit 38 he pays only ⅜c. a pair."

By what possible process of misstatement or misunderstanding the brief writer could have reached the conclusion

that under any form of lease the royalty "*for lasting and pulling-over*" (italics ours) is either ½ cent a pair or ⅜ cent a pair is beyond comprehension in view of the facts that the royalty for the lasting operation alone as set forth in the lasting machine leases themselves which the brief writer had just been examining is in itself one-half cent or more; that Exhibit 39 makes no reference to lasting machine royalty, but provides its own royalty for the use of pulling-over machines; and that Exhibit 38 simply provides a royalty for the machines of the pulling-over system with a proviso (and this proviso has no reference whatever to lasting machine royalty) that under certain conditions the royalty *for the pulling-over machines and auxiliaries* shall not exceed a maximum of ⅜ cent per pair (net) measured by the total number of shoes lasted (*i.e.*, the total made) in the factory.

In the Appendix C attached to the previous brief herein addressed to this Court filed by the United States upon the original argument this same statement was made, with the exception that the contrast was made greater by the statement of 1 cent a pair with respect to Exhibit 39 in place of ½ cent as here. The falsity of the entire discussion was pointed out, with the result that the brief writer has cut his statement of royalty under Exhibit 39 in two (now ½ cent), but has otherwise permitted it to stand.

The simple fact is that the United Company, after bringing out its pulling-over system of machines and finding that there was a tendency on the part of some manufacturers of shoes to use the machine for a small part of their work only or for work of a particular kind only, endeavored to make it an object for such manufacturers to use the pulling-over machines upon a greater portion of their work by providing a reduction of ⅛ cent (from ½ to ⅜) in case the manufacturer should use the machines upon such a proportion of his work that it would be cheaper for him to pay ⅜ cent measured by his factory output (*i.e.*, measured by all shoes lasted in his factory) than to pay ½ cent in respect only to a limited number of shoes operated upon by the machines. Under both forms of lease the royalty is independent of and in addition to any royalty for lasting machines. The varia-

tion in the royalty and in the method of computation was simply a business inducement to encourage a more extended use of the pulling-over machines.

Not to detail the many other inaccuracies and misstatements of these summaries it is perhaps sufficient to point out that in general the summaries fail to distinguish between old forms and current forms of leases and between current and obsolete forms of machines; that they make persistent misstatement with reference to the various clauses, including what they call the "exclusive use clause," the "prohibitive clause," and the "additional machinery clause." For example, in Appendix E (pages 375–376) an "additional machinery clause" is noted as appearing in ten different leases, of which one is a heeling machine lease, two pulling-over leases, and seven metallic leases. It is not noted that various of these leases are of obsolete form, and that in the case of others the clause is not in the form of an undertaking by the lessee to take additional machinery from the lessor, but merely a reservation to the lessor of a right to terminate its own leases of certain kinds of machines. The evidence clearly shows that the additional machinery clause was never adopted by the United Company for any general use, and that it was discontinued long before the bringing of this suit.

Other points purporting to be dealt with in these summaries have already been discussed in our own brief. Sufficient here, we think, has been shown to demonstrate that the several appendices attached to the brief for the United States are thoroughly unreliable, are unsafe to be used as guides for any material purpose, and that a true understanding of the actual facts can be obtained only by reference to the leases themselves and to the evidence concerning them.

APPENDIX IV.

VARIOUS COMBINATIONS IN WHICH MACHINES OF THE UNITED COMPANY AND MACHINES OF COMPETITORS MAY BE TAKEN AND USED FOR PERFORMING THE OPERATIONS OF LASTING, SOLE-ATTACHING, METALLIC FASTENING AND HEELING IN THE MANUFACTURE OF VARIOUS KINDS OF SHOES—SHOWING IN THE CASE OF THE UNITED COMPANY'S MACHINES THE FORMS OF LEASES WHICH THE LESSEE AT HIS OPTION MAY CHOOSE FOR SUCH OF THE UNITED COMPANY'S MACHINES AS ARE INCLUDED IN EACH OF THE SEVERAL COMBINATIONS.

A. The letter "*A*" opposite the designation of the United Company's machines in the following combinations denotes that form of lease used by the United Company by which it furnished its machines for use in groups without requiring the payment of any initial license fee upon the installation of the machines, but with the use of the machines (excepting Goodyear machines) leased under this form of lease limited to use with certain other machines of the United Company of other departments for performing certain other specified operations.

The Goodyear principal machines are not, under any form of lease, limited to use with Goodyear auxiliary machines or with any other machines of any other department. No machines of any other department are under any form of lease limited to use with the United Company's Goodyear auxiliary machines, and Goodyear auxiliary machines are not, under any form of lease, limited to use with the United Company's machines of any other department.

B. The letter "*B*" opposite the designation of the United Company's machines in the following combinations denotes that form of lease used by the United Company under which an initial license fee is paid by the lessee upon the installation of each machine, but the use of the machines leased is not limited to use with any other machines of the United Company in any other department.

C. The letter "*C*" opposite the designation of the United Company's machines in the following combinations denotes that form of lease used by the United Company for machines of its Metallic Department under which the use of the machines leased is not limited to use with any other machines of the United Company in any other department, nor is any initial license fee required to be paid, but in lieu thereof there is provision that the lessor may charge 10 per cent. more for fastening material supplied for use in the metallic machines held under this form of lease than is charged for use of the metallic machines when held as part of a group of machines under the limited form of lease.

1

A or B —U. Co. W. & S.
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
A or B —U. Co. Heel.

2

A or B —U. Co. W. & S.
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
—Comp. Heel.

3

A or B —U. Co. W. & S.
A or B —U. Co. Last. Cons.
—Comp. Metal.
B —U. Co. Heel.

4

A or B —U. Co. W. & S.
B —U. Co. Last. #5
—Comp. Metal.
B —U. Co. Heel.

5

A or B —U. Co. W. & S.
—Comp. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

6

—Comp. W. & S.
B —U. Co. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

7

A or B —U. Co. W. & S.
—Comp. Last.
—Comp. Metal.
—Comp. Heel.

8

—Comp. W. & S.
B —U. Co. Last.
—Comp. Metal.
—Comp. Heel.

9

—Comp. W. & S.
—Comp. Last.
B or C—U. Co. Metal.
—Comp. Heel.

10

—Comp. W. & S.
—Comp. Last.
—Comp. Metal.
B —U. Co. Heel.

11

A or B —U. Co. W. & S.
A or B —U. Co. Last. Cons.
—Comp. Metal.
—Comp. Heel.

12

A or B —U. Co. W. & S.
B —U. Co. Last. #5
—Comp. Metal.
—Comp. Heel.

13

A or B —U. Co. W. & S.
—Comp. Last.
B or C—U. Co. Metal.
—Comp. Heel.

14

A or B —U. Co. W. & S.
—Comp. Last.
—Comp. Metal.
B —U. Co. Heel.

15

—Comp. W. & S.
B —U. Co. Last.
B or C—U. Co. Metal.
—Comp. Heel.

16

—Comp. W. & S.
B —U. Co. Last.
—Comp. Metal.
B —U. Co. Heel.

17

—Comp. W. & S.
—Comp. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

18

—Comp. W. & S.
—Comp. Last.
—Comp. Metal.
—Comp. Heel.

19

A or B —U. Co. Turn
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
A or B —U. Co. Heel.

20

A or B —U. Co. Turn
—Comp. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

21

A or B —U. Co. Turn
—Hand Last.
A or B or C—U. Co. Metal.
A or B —U. Co. Heel.

22

A or B —U. Co. Turn
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
—Comp. Heel.

23

A or B —U. Co. Turn
—Comp. Last.
B or C—U. Co. Metal.
—Comp. Heel.

24

A or B —U. Co. Turn
—Hand Last.
A or B or C—U. Co. Metal.
—Comp. Heel.

25

A or B —U. Co. Turn
A or B —U. Co. Last.
—Comp. Metal.
B —U. Co. Heel.

26

A or B —U. Co. Turn
—Comp. Last.
—Comp. Metal.
B —U. Co. Heel.

27

A or B —U. Co. Turn
—Hand Last.
—Comp. Metal.
B —U. Co. Heel.

28

— Comp. Turn
B —U. Co. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

29

—Comp. Turn
—Comp. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

30

—Comp. Turn
—Hand Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

31

A or B —U. Co. Turn
A or B —U. Co. Last.
—Comp. Metal.
—Comp. Heel.

32

A or B —U. Co. Turn
—Comp. Last.
—Comp. Metal.
—Comp. Heel.

33

A or B —U. Co. Turn
—Hand Last.
—Comp. Metal.
—Comp. Heel.

34

—Comp. Turn
B —U. Co. Last.
B or C—U. Co. Metal.
—Comp. Heel.

35

—Comp. Turn
—Comp. Last.
B or C—U. Co. Metal.
—Comp. Heel.

36

—Comp. Turn
—Hand Last.
B or C—U. Co. Metal.
—Comp. Heel.

37

—Comp. Turn
B —U. Co. Last.
—Comp. Metal.
B —U. Co. Heel.

38

—Comp. Turn
—Comp. Last.
—Comp. Metal.
B —U. Co. Heel.

39

—Comp. Turn
—Hand Last.
—Comp. Metal.
B —U. Co. Heel.

40

—Comp. Turn
B —U. Co. Last.
—Comp. Metal.
—Comp. Heel.

41

—Comp. Turn
—Comp. Last.
—Comp. Metal.
—Comp. Heel.

42

—Comp. Turn
—Hand Last.
—Comp. Metal.
—Comp. Heel.

43

—U. Co. McKay (Leased)
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
A or B —U. Co. Heel.

44

—U. Co. McKay (Purchased)
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
A or B —U. Co. Heel.

45

—Comp. McKay
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
A or B —U. Co. Heel.

46

—U. Co. McKay (Leased)
A or B —U. Co. Last
A or B or C—U. Co. Metal.
—Comp. Heel.

47

—U. Co. McKay (Purchased)
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
—Comp. Heel.

48

—Comp. McKay
A or B —U. Co. Last.
A or B or C—U. Co. Metal.
—Comp. Heel.

49

—U. Co. McKay (Leased)
B —U. Co. Last.
—Comp. Metal.
B —U. Co. Heel.

50

—U. Co. McKay (Purchased)
B —U. Co. Last.
—Comp. Metal.
B —U. Co. Heel.

51

—Comp. McKay
B —U. Co. Last.
—Comp. Metal.
B —U. Co. Heel.

52

—U. Co. McKay (Leased)
B —U. Co. Last.
—Comp. Metal.
—Comp. Heel.

53

—U. Co. McKay (Purchased
B —U. Co. Last.
—Comp. Metal.
—Comp. Heel.

54

—Comp. McKay
B —U. Co. Last.
—Comp. Metal.
—Comp. Heel.

55

—U. Co. McKay (Purchased)
—Comp. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

56

—U. Co. McKay (Purchased)
—Comp. Last.
B or C—U. Co. Metal.
—Comp. Heel.

57

—U. Co. McKay (Purchased)
—Comp. Last.
—Comp. Metal.
B —U. Co. Heel.

58

—U. Co. McKay (Purchased)
—Comp. Last.
—Comp. Metal.
—Comp. Heel.

59

—Comp. McKay
—Comp. Last.
B or C—U. Co. Metal.
B —U. Co. Heel.

60

—Comp. McKay
—Comp. Last.
B or C—U. Co. Metal.
—Comp. Heel.

61

—Comp. McKay
—Comp. Last.
—Comp. Metal.
B —U. Co. Heel.

62

—Comp. McKay
—Comp. Last.
—Comp. Metal.
—Comp. Heel.

NOTE 1. A large part of the turn shoes made are lasted by hand.

NOTE 2. In each of the foregoing combinations in which the United Company's welter and stitcher are used in the manufacture of welted footwear, or in which the United Company's turn sewing machine is used in the manufacture of turned footwear, regardless of the form of lease, the lessee may use the United Company's Goodyear auxiliary machines on either form of auxiliary machine lease or may use auxiliary machines obtained from others, or may use some such auxiliaries obtained from the United Company and some obtained from others in any combination he may see fit.

NOTE 3. The machines covered by the above combinations are the machines which the petition filed in this case defines as the "principal essential machines used in the manufacture of boots or shoes" (Petition, R. Vol. 1, p. 991), namely, "lasting machines," "welt sewing machines and outsole

stitching machines," "heeling machines," and "metallic fastening machines" (R. Vol. 1, p. 991). In addition, the combinations deal with the McKay sewing machine.

The foregoing combinations are illuminating in connection with the charge of the petition (R. Vol. 1, p. 994) that the defendants

> "conceived the idea of acquiring the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery, and then to refuse to sell or lease any of the *essential machines* to the manufacture of shoes except on condition that he buy or lease of them practically all other machinery or whatever kind necessary or useful to such manufacturer of shoes . . ." (italics ours.

NOTE 4. The foregoing combinations show clearly the fallacy of the contention on behalf of the United States that a manufacturer in order to obtain machines of one or more kinds from the United Company would be under the necessity, as a "practical" matter or in any other manner, either of taking all other machines from the United Company or, under any combination, of taking all his machines upon the initial license fee or upon an unrestricted form of lease. Obviously he is under no such necessity as to machines which he does not take from the United Company and, as clearly shown by the above, the necessity does not exist even as to the United Company's machines excepting in a very limited way and as to a limited number of machines differing according to the different combinations in which the machines are to be used.

Of the 62 combinations of machines above set forth, there are 22 combinations in which the lessee either takes none of the United Company's lasting, welt sewing and outsole stitching, heeling or metallic fastening machines under lease, or may take all of such machines taken thereunder under lease from the United Company, upon either the restricted or the unrestricted or non-initial payment forms of lease, as he may elect. He is under no necessity, in order to use the machines in the combinations indicated, to take them or any of them under the unrestricted or initial payment forms. There are 23 other combinations out of the 62 in which, of the machines of the United Company taken under lease thereunder, one

class only need be taken if the lessee desires to use them in the combinations indicated, upon the unrestricted or initial payment form of lease. There are fifteen combinations in which two of the classes are to be leased, if the lessee desires to lease them from the United Company for use in such combinations, upon the unrestricted or initial payment form, and there are only two of the combinations in which this applies to more than two of the classes.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917.

No. 207.

UNITED STATES OF AMERICA, *Appellant,*

vs.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, *et al., Appellees.*

MEMORANDUM SUBMITTED BY APPELLEES.

The Defendants respectfully submit the following memorandum in further reply to the brief of the United States. The matters herein referred to were not incorporated in our briefs previously filed, because we did not receive a copy of the brief for the United States until December 22d; we then received but one copy and did not receive additional copies until December 26th, so that the time for an examination of and reply to the brief was extremely lim-

ited and shorter than the period contemplated by the Rules.

In this memorandum we desire to point out that the issues raised by the assignment of errors, the issues raised by the pleadings and the issues argued in the District Court differ in certain important respects from the issues which the brief for the United States now undertakes to present as the issues to be decided.

The brief for the United States contains no specification of errors relied upon as required by Rule 21. It may be that this was intentionally omitted, because from an examination of the brief it appears that the United States has presented as issues and argued matters not covered by its assignment of errors (for assignment of errors see Record, Vol. 1, p. 1189).

We have no desire to be technical. On the other hand, the petition presented certain definite issues and it was these issues which the Defendants sought to disprove in the District Court and submits they did disprove. Had the petition presented the issues now presented by the brief for the United States the Defendants would have had an opportunity to meet and refute these issues as they refuted the issues actually raised.

At this stage of the case the United States is bound by the issues presented by the petition, argued in the District Court and raised by the assignment of errors.

For a general statement of the difference between the case presented by the petition and the case now

sought to be presented by the brief of the United States, we respectfully refer the Court to our reply brief, pp. 4 to 7.

In this memorandum we shall refer to three specific issues as to which the case now sought to be presented by the brief for the United States to this Court is materially different from the case presented by the petition and in argument in the District Court, viz.:

(1) The unlawful project charged.
(2) The provisions criticized in the leases.
(3) The monopoly claimed.

Issue as to the Unlawful Project.

The petition charges that the Defendants, in 1899, realized that the patents of the constituent companies were about to expire and devised the following unlawful project, namely (see Record, Vol. 1, p. 994):

(1) To acquire ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery; and

(2) Having done so to refuse to sell or lease any of the essential machines (defined as welt sewing and stitching, lasting, metallic fastening and heeling machines) to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of whatever kind necessary or useful to him.

The petition alleges that all of the transactions specified in the petition were only steps in carrying

out this unlawful project (Record, Vol. 1, p. 994). *Under the allegations of the petition they are therefore material only in so far as they are shown to have been undertaken in pursuance of this unlawful project and only in so far as they assisted in carrying it out.*

The foregoing was the basic charge which the United States presented in the District Court. Unless it proved this charge, its case failed.

After the Defendants had introduced all their direct evidence counsel for the United States presented an amendment to their petition designed to make it conform to the case which they then contended they had proved (Record, Vol. 1, p. 881, p. 1101). While this amendment was not allowed, it shows the issue which counsel for the United States at the end of the trial declared to be the issue presented for decision.

In this amendment the United States charged that the Defendants conceived the plan of

(1) Acquiring all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery used in bottoming shoes (*i. e.,* used in adjusting and attaching the upper to the last in preparing the bottom and heel and fastening them to the upper and in finishing the bottom and heel of the shoe after such operations had been performed), and

(2) Upon such acquisition refusing to sell or lease any of the essential machines except on condition that the shoe manufacturer should buy or lease of the defendants practically all of the machinery necessary or useful to him.

In the petition as sought to be amended it was still

alleged that all the transactions referred to were merely steps in carrying out this unlawful project.

The United States has now in its brief in this Court abandoned this basic charge on which the petition is founded. It does not now charge that the Defendants planned to acquire all concerns engaged in the shoe machinery business, or even all concerns engaged in the manufacture of machines for bottoming shoes. It merely charges that the Defendants have acquired some competing concerns. Furthermore, the United States does not now charge that the Defendants planned to refuse to lease essential machines unless the shoe manufacturer took all other kinds of machines from them. At most, it claims that the effect of the leases is to induce (or, as the United States alleges, to compel) shoe manufacturers to take a limited number of other essential machines in addition to those desired, which machines form only a very small portion of the total number and types of machines furnished by the United Company and a still smaller proportion of the total number and types of the machines which the shoe manufacturer requires.

It will thus be seen that the basic issue as presented by the petition and as modified by counsel for the United States at the end of the trial has now been abandoned and a quite different issue presented, such issue being (see brief for U. S., pp. 301, 302) that there was competition between the constituent companies forming the United Company; that there was competition between the United Company and certain concerns which it later acquired and that the

leases have the effect, not of requiring a lessee taking one or more essential machines to take all other kinds from the United Company, but of inducing him to take and use a certain limited number of other types of essential machines.

The issue so presented is quite different from the issue presented by the pleadings and tried in the District Court. The evidence introduced by the Defendants was intended to meet and disprove, as it conclusively did, the issue presented in the District Court. While we submit that it also incidentally disproved the issue now presented, it is obviously unfair to the Defendants that the issue should now be materially changed, and that a new issue, not directly before the District Court and only incidentally touched upon, should be presented to this Court.

Issue as to the Leases.

As we have shown above, the petition charged that the provisions in the lease and license agreements which are criticized by the United States were only one step in carrying out the unlawful project alleged to have been conceived by the Defendants in 1899. This remained the contention of the United States during the trial, as is shown by the proposed amendment to the petition which it sought to have allowed towards the close of the trial. (Record, Vol. 1, p. 1101.)

In the argument before the District Court, however, counsel for the United States abandoned this contention. They admitted that the Defendants at

the time they formed the United Company did not have in mind the adoption of the leases which they later developed and contended that the intent which prompted the development of these leases was "absolutely immaterial" (see our main brief, p. 234). They thus abandoned the theory that these leases were adopted in pursuance of and in order to carry out the unlawful project which formed the basis of their entire case.

In the brief now filed the United States departs from the position it took at the argument in the District Court and apparently does contend that the leases were adopted as part of some general plan to monopolize. As the record does not support this contention and as it is inconsistent with the admission made by counsel in argument before the District Court, they also take the position then taken by them that even if the leases were not adopted as part of a plan to monopolize they are in and of themselves unlawful (brief for U. S., p. 154).

But this is not an issue before this Court. The leases are material in this proceeding only if it is shown that they were adopted in pursuance of the alleged unlawful project formed by the Defendants to acquire all shoe machinery concerns and then to refuse to lease any essential machines unless the shoe manufacturer took practically all his machines from the Defendants.

Furthermore, in its discussion of the provisions in the leases, the brief for the United States now criticizes provisions which were not referred to in the petition, or in argument in the District Court and

which are not referred to in the assignment of errors filed in taking the present appeal.

The petition charges in Section V that the defendants discontinued the sale of machines (Record, Vol. 1, p. 997) and unlawfully adopted arbitrary, oppressive and unlawful leases which

(1) contained provisions not found in former leases and which compelled boot and shoe manufacturers leasing any of such machines to agree to use exclusively one or more of the classes of machines included in the groups of machines made by the constituent companies upon penalty of having all of the machines included in said groups leased them by the Defendants reclaimed and the leases canceled;

(2) contained an agreement to take the machines for seventeen years;

(3) contained an agreement requiring the lessee to obtain all duplicate parts for the machines from the Defendants at exorbitant prices;

(4) provided in many cases that the lessee should, at the expiration of seventeen years, return the machines and pay a return charge which in some cases amounts approximately to the original cost of building the machines;

(5) contained a provision reserving to the lessor the right to cancel all leases if shoe manufacturers fail to use exclusively and to their full capacity machines leased from the Defendants.

The foregoing statement contained in Section V of the petition purports to be only a statement of the character of the provisions which the leases contain. The provisions which the petition contends are un-

lawful as carrying out the unlawful plan charged are specified in Section XII of the petition as follows (Record, Vol. 1, p. 1028):

(1) Covenants that the lessee shall use exclusively machines of the United Company to perform both the same kind of work as that performed by the leased machine and also all other kinds of work.

(2) A condition that should the lessee violate the above covenants he will thereby forfeit the use of all his leased machines of every kind.

(3) A covenant that the lessee shall use the leased machine for seventeen years.

The only clauses which counsel for the United States relied upon in the District Court to prove its contentions are enumerated by Judge Dodge in his opinion (R., Vol. 1, p. 1156), and are as follows:

(1) The full capacity clause.

(2) The additional machinery clause.

(3) The exclusive use cancellation clause.

(4) The prohibitive clause, *i. e.*, the restricted use clause.

(5) The right to terminate all lease clauses, *i. e.*, the cancellation for breach clause.

As Judge Dodge points out the full capacity clause and the additional machinery clause were not expressly referred to in the petition; the additional machinery clause was eliminated from the leases some years prior to the filing of the petition, and it was conceded by counsel that both these clauses "might be unobjectionable" if not used together with the other clauses. (Record, Vol. I, pp. 1156-57.)

In the amended petition which the United States

sought to have allowed at the end of the trial (Record, Vol. 1, pp. 1101-1103), it specified expressly the clauses in the leases which it claimed proved its contentions, viz:

(1) The full capacity clause.

(2) The additional machinery clause.

(3) The exclusive use cancellation clause as it interpreted that clause.

(4) The restricted use clause.

(5) The cancellation for breach clause.

(6) The provision admitting the validity of patents.

(7) The agreement that the leases should run for seventeen years.

The United States refers to the leases only in VII, VIII and IX of the assignment of errors. The VIIth assignment of errors is to the refusal of the court below to adjudge illegal the restricted provisions in the lease and license agreements, as described in Part V of the Bill and agreements containing like or similar provisions.

The VIIIth assignment of errors is to the refusal of the court below to enjoin and restrain Defendants from enforcing any rights claimed by virtue of such restricted provisions of the leases.

In the IXth assignment of errors the use of the word "Defendants" in the sixth line from the end leaves the meaning of the paragraph doubtful. In any event, this assignment can only be intended to refer to the restricted use clauses.

No other assignments of error claim error of the court below with respect to the provisions of the leases.

In other words, the assignment of errors refers only to the particular provisions described in Part V of the petition.

In its present brief, however, the United States attempts to contend that the following clauses are unlawful, although they were not referred to in the petition, although they were not relied upon in argument or made an issue in the District Court and although they are not referred to in the assignment of errors. These clauses now relied upon by the United States for the first time to sustain its contentions are as follows:

(1) The royalty clause in the leases of Goodyear machines providing for payment of royalty based on the lessee's factory production (Brief for U. S., pp. 167-169).

(2) The royalty provisions of the Clicking machine lease (brief U. S., pp. 169-170, 178).

(3) The clause in leases of metallic machines requiring the lessee to obtain from the United Company fastening material used in the machines (Brief for U. S., pp. 166, 171, 294-296).

(4) The royalty clause in the leases of pulling over machines (Brief for U. S., pp. 170, 178).

(5) The royalty provision in Exhibit 31, a form of lease for metallic machines, providing that an increased price not in excess of 10 per cent may be charged where the machine is not used as part of a series (Brief for U. S., pp. 171, 172).

(6) Various other clauses alleged to be oppressive and coercive and referred to in the brief for the U. S., pp. 187-189.

As we have stated *none of the foregoing clauses*

was referred to in the petition or relied upon in the District Court and no error has been assigned with respect to any of these clauses.

Even if the United States could have properly referred to these clauses in the District Court to sustain its contentions in spite of the fact that they are not specified or referred to in the petition, it is obvious that having failed to rely upon them in the District Court, and further having failed to assign error in respect to them, the United States can not now rely upon them in this court.

Furthermore, we submit that the provisions which were actually referred to and discussed before the District Court are material in the present case only if and to the extent that they are of the character which the petition alleges them to be. The petition alleges them to be unlawful: (1) in that they require the lessor to covenant that he will use machines of the kind leased and of all other kinds leased exclusively; (2) in that they provide that the lessor may cancel all leases if such covenants are violated; and (3) in that they provide that the lessor shall use the particular machine or machines leased for seventeen years. (Record, Vol. 1, p. 1028.)

We submit that the only provisions which conform to these allegations are the full capacity clause and the seventeen-year term, which do provide that the lease shall run for seventeen years, and that the lessee shall use the leased machine or machines so far as he has work for the machines to perform on which he is authorized to use them. (See our main brief, pp. 244-247.)

Finally as Judge Dodge points out, the petition does not contest the lawfulness of the lease system employed by the constituent companies in 1899 at the date of the formation of the United Company (Record, Vol. 1, page 1154).

The contention in the petition is that the Defendants were not content with the lawful monopolies and lawful methods of doing business which existed in 1899 and that they therefore conceived the unlawful plan of combining the constituent companies, acquiring all concerns engaged in the shoe machine industry and refusing to lease essential machines unless the shoe manufacturer took all of the machines from them. In pursuance of this plan it is alleged they "discontinued" the sale of machines and "devised, adopted and put into effect arbitrary oppressive and unreasonable lease and license agreements" which contained provisions "not found in their former leases and license agreements." These provisions the petition undertakes to describe. (Record, Vol. 1, p. 997.)

In other words, the petition only contests the lawfulness of new provisions and clauses employed for the first time by the Defendants and not previously used by the constituent companies. As Judge Dodge pointed out (R., Vol. 1, page 1154), these are the only provisions which the United States may properly rely upon to prove its contentions.

Considering the provisions referred to in the petition in this light, it is obvious that most of them are not material in the present proceeding. For example:

The leases of the constituent companies in most

cases ran for more than seventeen years (see our main brief, pp. 269). The adoption of the seventeen year term was therefore not a new oppressive provision but on the contrary it in most cases reduced the term previously employed.

The leases of the McKay Company contained the exclusive use cancellation clause. (See our main brief, p. 269.) The leases of the Consolidated Company contained the additional machinery clause and the Goodyear turn lease contained a lease requiring the lessee to use the Goodyear turn machines exclusively. (See our main brief, p. 261.) The substitution in place of these clauses of the exclusive use cancellation clause which recognizes the right of the lessee to take his additional machines from competitors and merely reserves to the lessor a right to withdraw its own machines of the same kind in such case, is clearly not the adoption of a more oppressive clause.

The auxiliary restricted use clause restricting the use of auxiliary machines was employed by the constituent companies. (See our main brief, p. 268.)

The repair parts clause was used by all the constituent companies (see our main brief, pp. 259-268).

The leases of the constituent companies permitted the lessor to cancel the lease for violation of agreements obligatory upon the lessee.

The Goodyear Company employed the restricted use clause in leasing its ideal machine restricting the use of this machine to the use with the Goodyear Welter and Stitcher (see our main brief, p. 261).

The full capacity clause was used in the Consoli-

dated Company's lessees (see our main brief, page 269).

An examination of the changes made by the United Company thus shows that the only changes in the leases which the United States can possible contend were (1) occasioned by the use of provisions referred to in the petition or in the District Court and (2) which resulted in additional restrictions upon lessees are the use of the full capacity clause in all leases of machines for which a royalty based on use is charged; and a more extensive use of the restricted use clause.

Issue in Respect to Monopoly.

The petition, as filed in the District Court, charged a plan to acquire and a monopoly acquired of all shoe machinery, and the United States undertook to prove this charge. (See our main brief, p. 11.)

After the United States had introduced its direct case, counsel for the United States limited the charge of monopoly to an attempt to acquire a monopoly and a monopoly acquired in

> "machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines and the clicking machines." (See our main brief, p. 14.)

In its proposed amended petition the United States similarly sought to amend the scope of the petition. (Record, Vol. 1, p. 1101).

By thus abandoning the charge of an attempt to monopolize and a monopoly of all shoe machinery

and limiting it to a charge of an attempt to monopolize and a monopoly of bottoming machinery, clicking and eyeletting machinery, the United States eliminated from the charge of monopoly considerably more than half the total number of machines used by the ordinary shoe manufacturer in his factory. (See our main brief, pp. 606, 607.)

The United States in this Court has attempted to limit its charge still further. Instead of charging monopoly of all bottoming machines, clicking and eyeletting machines, it now disclaims any monopoly of general department machines, a large number of which are used in preparing the bottoms of shoes and in the bottoming process. Furthermore, at page 150 of its brief, the United States apparently limits its charge of monopoly to twelve machines enumerated in the table which is there set forth. If it does not intend to limit its charge to these particular machines, it is quite clear from the record that it can not, with any possibility of reason, contend that there is any monopoly in respect to numerous other machines used in the bottoming process.

While the Defendants did not attempt to prove the number of machines of various types which its competitors put out, believing that it was for the United States to prove its case, and not primarily for the Defendants to disprove it, it definitely appears from the record that there are numerous machines used in the bottoming process which are furnished in large quantities by competitors and in respect to which it is impossible for the United States to claim.

with any reason, that a monopoly exists. For example, take the following machines as illustrations:—

Heel Building Machines,
made by W. J. Young Machinery Company (R., Vol. 1, p. 942), which has put out 2,000 to 3,000; also made by Thomas Bostock, who has put out 100 a year (R., Vol. 1, p. 904).

Fairstitching Machines,
made by Puritan Manufacturing Company, which had put out 1,000 (R., Vol. 1, p. 891).

Cementing Machines for Cementing Soles,
made by Boston Machine Works Company, which has put out 700 to 800 (R., Vol. 1, p. 927).

Heel Compressing Machines,
made by W. J. Young Machinery Company, which has put out over 300. The same concern has also put out various other types of heel-making machinery, including between 150 and 200 lift-gouging machines, and also counter making machinery—300 or 400 counter molding machines having been marketed (R., Vol. 1, pp. 942, 943).

Heel Finishing Machines,
137 made and put out by Harlow Shoe Finishing Machinery Company (R., Vol. 1, p. 942). Similar machines put out by Donnelly Machine Company, which sells 15 or 20 a year (R., Vol. 1. p. 944); by Beckman Machine Company

(R., Vol. 1, pp. 925, 926); and by Matson-Hoyt Machine Company (R., Vol. 1, p. 928).

Toe Softening Machines (to prepare box toe for lasting operation),

made by Beckwith Box Toe Company, 200 having been placed during two or three years (R., Vol. 1, p. 926).

Also machines for same purpose made and put out in considerable quantities by Carlson Brothers (R., Vol. 1, pp. 905-906).

Sole Cutting or Dinking Machines,

made by Quarmby & Hilliker, 150 to 200 put out (R., Vol. 1, p. 929).

Also made by Seelye Manufacturing Company (our main brief, p. 819), which sold 50 to 100 a year in 1899 and is still selling them (R., Vol. 1, p. 328).

Also made by Tower Brothers, who put out 10 or 12 a year (R., Vol. 1, p. 907).

Sole Channelers,

made by Hamel Shoe Machinery Company, and its predecessors, 70 put out (R., Vol. 1, p. 326).

Same concern has put out 20 types of bottoming machines to the extent of between 400 and 450 separate machines (our main brief, p. 810);

Also 70 to 80 channelers made by Haverhill Shoe Machinery Company (our main brief, p. 812).

Also 25 to 30 channeling machines made and put out by American Worsted Machinery Company (R., Vol. 1, p. 953).

Sole Molding Machines,
made by Haverhill Shoe Machinery Company which has put out 40 to 50. (R., Vol. 1, p. 292):
Also 35 made and put out by Hamel Shoe Machinery Company (R., Vol. 1, p. 326).

Sole Leather Rolling Machines,
made by Quarmby & Hilliker which has put out 50; same concern makes stripping machines, having put out 75 (R., Vol. 1, p. 929).

Insole Flap Slashing Machines,
made by Boston Machine Works Company, which employs 100 men and has put out 50 of these slashing machines besides many other types (R., Vol. 1, p. 927).

Welt Grooving and Beveling Machines,

Welt Beating Machines,
made by Hamel Shoe Machinery Company which has put out 25 of each (R., Vol. 1, p. 326).

Bottom Buffing Machines,
made by Donnelly Machine Company which puts out 18 to 20 a year (R., Vol. 1, p. 943).
Tower Brothers also make and put out 10 a year (R., Vol. 1, p. 907).

Numerous other bottoming machines have been made and put out by a score and more of other concerns. (See our main brief, pp. 808-834.)

The result is this:

The United States in the petition charged a mon-

opoly of all shoe machinery. It undertook to prove this charge at the trial and the Defendants were then called upon only to meet this charge.

At the end of the trial it limited its charge to a monopoly of bottoming machines, clicking and eyeletting machines, that is, to a monopoly of most of the types of machines which the United Company manufactures.

In this Court it has apparently undertaken to limit its case still more seriously. It has now chosen twelve machines (brief for United States, p. 150) out of some three hundred different types of machines which the United Company produces and charges that the United Company has a monopoly of these machines.

The character of these particular machines chosen by the United States is referred to in our reply brief (pp. 66 to 72). It is there shown that in respect to three of the machines, instead of the United Company putting out additional machines from 1900 to 1911, the number of machines which the United Company has under lease has actually been reduced. In respect to others, it is shown that they are entirely new machines invented by the United Company since its formation which perform operations previously performed by hand and which are strongly patented. In respect to the McKay machine, it is definitely shown that the United Company has furnished certainly less than half of the total machines in use. In respect to other machines, it is shown that at the time the United Company was formed practically all the

machines of that kind in use were owned by it; that it has put out a comparatively small number of these machines since that date, and in respect to several of these machines, notably the stitcher, a substantial portion of the increase in the number in use since 1900 have been put out by competitors, and the number of other manufacturers putting out welters, stitchers, lasters, nailing and heeling machines is larger and their capacity and power much greater than in 1899.

But apart from this failure of the United States to prove monopoly in respect to these machines, we submit that the question of whether the United Company has an unlawful monopoly of these few types of machines is a very different question from the issue presented by the petition, namely, whether the United Company has a monopoly of all machinery and a very different question from the issue presented by the United States in argument in the District Court and decided by the District Court, namely, whether the United Company has a monopoly of all the numerous types of bottoming machines, clicking and eyeletting machines.

It will be obvious to the Court that if the United Company had been charged in the District Court with a monopoly of twelve specified machines, or even of a slightly larger number out of the three hundred or more types which it manufactures, that it would have been able to direct its evidence specifically to these machines and the reasons for such success as it has had in furnishing these particular machines, and that its presentation of the case might,

and we submit, would have been very different from what it was in view of the very different charge presented in the District Court.

Respectfully submitted,

F. P. FISH,

CHARLES F. CHOATE, JR.,

MALCOLM DONALD,

Of Counsel for Appellees.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. [redacted] 207

UNITED STATES OF AMERICA, APPELLANT,

vs.

UNITED SHOE MACHINERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR GENERAL SHOE MACHINERY COMPANY (SUCCESSOR TO BOYLSTON MANUFACTURING COMPANY).

FRANK Y. GLADNEY,
Amicus Curiæ.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 545.

UNITED STATES OF AMERICA, APPELLANT,

vs.

UNITED SHOE MACHINERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR GENERAL SHOE MACHINERY COMPANY (SUCCESSOR TO BOYLSTON MANUFACTURING COMPANY).

SYNOPSIS.

The Patents are Irrelevant,
for

I. What is Granted by the Patent Statutes
II. Is Not Denied by the Anti-Trust Act,
and (reversely)
III. What is Denied by the Anti-Trust Act
IV. Is Not Granted by the Patent Statutes.

V. Irrelevancy Stated in Terms of Procedure.

I. What is Granted by the Patent Statutes.

A. The Right.—(*i*) Its source and (*ii*) its scope.
B. The Remedy.—(*i*) Its source, scope and (*ii*) its exclusiveness.

A.

The Right.—(i) Its Source.

The right is created by the patent statutes.

Gayler *vs.* Wilder (1850), 10 How., at 494 (Chief Justice Taney):

> "The monopoly did not exist at common law, and the rights, therefore, which may be exercised under it cannot be regulated by the rules of the common law. It is created by the act of Congress; and no rights can be acquired in it unless authorized by statute, and in the manner the statute prescribes."

And so—

> [Brown *vs.* Duchesne (1856), 19 How., at 195 (Chief Justice Taney): Shovel Co. *vs.* Flint (1890), 137

U. S., at 43 (Mr. Justice Gray); Paper Bag Patent Case (1908), 210 U. S., at 423 (Mr. Justice McKenna).]

The Right.—(ii) Its Scope. The Right Is Negative.

Bloomer *vs.* McQuewan (1852), 14 How., at 549 (Chief Justice Taney):

> "The franchise which the patent grants, consists altogether in the right to exclude every one from making, using, or vending the thing patented, without the permission of the patentee. This is all that he obtains by the patent."

The other definitions do but clarify the one given:

> [Patterson *vs.* Kentucky (1878), 97 U. S., at 507 (Mr. Justice Harlan); U. S. *vs.* Bell Telephone Co. (1895), 167 U. S., at 238-239 (Mr. Justice Brewer); Paper Bag Patent Case (1908), 210 U. S., at 424 (Mr. Justice McKenna); Bauer *vs.* O'Donnell (1913), 229 U. S., at 10 (Mr. Justice Day).]

B.

The Remedy.—(i) Its Source and Scope.

It is created by statute, and consists altogether in the right to bring infringement suits (R. S., sections 4919, 4921).

The Remedy.—(ii) Its Exclusiveness.

Globe Newspaper Co. *vs.* Walker (1907), 210 U. S., at 364-365 (Mr. Justice Day):

> Import.—Where a statute creates a right and prescribes the remedy, the latter is exclusive and has no alternative.

Being exclusive, the remedy is the essence of the right. U. S. *vs.* Motion Picture Patents Co. (1915), D. C. Pa., 225 Fed., at 804):

> "It (*i. e.*, the patent) is the right to a remedy."

Paper Bag Patent Case (1908), 210 U. S., at 430 (Mr. Justice McKenna):

> "It hardly needs be pointed out that the right can only retain its attribute of exclusiveness by a prevention of its violation. Anything but prevention takes away the privilege which the law confers upon the patentee."

That was said of the statutory action for infringement.

Restating the foregoing in the nomenclature of commerce: *A patent* (if valid, otherwise it is no patent) *is a grant of the right to exclude competition in the thing patented by means of infringement suits in the courts of the United States and not otherwise.*

Of course, the suits may fail; the patent may be declared invalid or not infringed. The right has only a *prima facie* validity, and the article sought to be excluded may be a commercial, but not a patent law, equivalent. The ultimate validity of a given patent right cannot be established, its scope cannot be measured, except by infringement litigation. The patent is a right to litigate; nothing else. And such terms as "patented machine" and "infringing machine" are argumentative, unless or until a court, in the particular instance, has by its decree infused them with finality.

(i. e., What Is Granted by the Patent Statutes)

II. Is Not Denied by the Anti-trust Act.

The anti-trust act does not prohibit the exclusion of competition by infringement suits. In an infringement suit by the patentee to exclude competition, it is no defense that he is a party to a contract, combination, or conspiracy in restraint of trade; the anti-trust act and its prohibitions are irrelevant.

No ruling on the point by this court has been found, but there are decisions elsewhere.

Strait *vs.* National Harrow Co. (1892, C. C.), 51 Fed., at 820 (Judge Wallace):

> "In a suit brought for the infringement of a patent by the owner, any such inquiry (as to the patentee's being a party to an unlawful combination) at the behest of the infringer, would be as impertinent as one in respect to the moral character or antecedents of the plaintiff in an ordinary suit for trespass upon his property."

Likewise:

> [Edison El. Light Co. *vs.* Sawyer-Mann Co. (1892, C. C. A.), 53 Fed., at 598; Soda Fountain Co. *vs.* Green (1895, C. C.), 69 Fed., 333; General Electric Co. *vs.* Wise (1903, C. C.), 119 Fed., 922.]

Therefore, *in a suit by the United Company for the infringement of one of its patents mentioned in this record, the allegations and proofs in the record concerning the contracts and their illegality under the anti-trust act would be impertinent.*

The validity and scope of patent rights, and the right to prosecute an infringement suit, are not contingent upon, and cannot be measured by, either the anti-trust act or contracts charged to be illegal thereunder.

III. Reversely, (A) What is Denied by the Anti-trust Act

IV. (B) Is Not Granted by the Patent Statutes.

A. The Scope of the Denial.

The prohibitions, as respects instrumentalities, are confined to contracts, combinations, in the form of trust or otherwise, and conspiracies.

> As to the rule of interpretation and construction of the statute as applied to such instrumentalities of exclusion: Standard Sanitary Mfg. Co. *vs.* U. S. (1912), 226 U. S., at 49 (Mr. Justice McKenna):
>
> > "The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention of parties and, it may be, of some good results."

(*i. e., What Is Denied by the Anti-trust Act*)

IV. (B) Is Not Granted by the Patent Statute.

The right to contract, combine, or conspire, in any regard or for any purpose, is not sanctioned by the patent law.

U. S. *vs.* Bell Telephone Co. (1886, C. C.), 29 Fed., at 43 (Judge, afterwards Mr. Justice, Jackson):

> "In permitting others to *use* the patented thing, the owner of the patent, whether a corporation or a private person, is not exercising any Federal right, privilege, or franchise. The right of the patent owner to permit or license the use of the invention is not the creature of the Federal franchise or statute, but of the common law." (Italics in the text.)

Minnesota *vs.* Barber (1890), 136 U. S., at 327 (stating the import of the earlier decision in Patterson *vs.* Kentucky, Mr. Justice Harlan):

> "We said that the patent was not a regulation of commerce, nor a license to sell the patented article but a grant that no one else should manufacture or sell that article, and, therefore, a grant simply of an exclusive right in the discovery which the national authority could protect against all interference;"

The same reasoning is implicit in the decision heretofore cited on the source and scope of the patent right.

As this is the crux, perhaps it is permissible to dwell upon it for a few sentences. The legality of a lease contract, whether it permits the use of a machine or a tenement house, is not dependent upon and cannot be measured by the patent statutes, or by the right of the lessor to maintain an infringement suit. The rights of lessor and lessee in *the specimen machine leased* would not be affected by a repeal of the patent statutes. The rights conferred by the lessor and the duties assumed by the lessee *with respect to that specimen* are created by and are dependent upon the contract, and not the statute: take away the contract and they disappear.

Reciting the patents in the leases cannot alter the patent law which grants the right to exclude competition only by an infringement suit; reciting them in the answer cannot alter the Anti-Trust Act which condemns the exclusion of competition by contracts, combinations, or conspiracies. Both recitals are irrelevant in the respective connections.

The application is to be seen in two decisions: one by this court, and one by a lower tribunal. The latter is mentioned first only because the attempt to stretch the law (as seems

to counsel) went to an extreme not equalled in the other instance.

U. S. *vs.* Patterson (1913 D. C.), 205 Fed., 292, S. C., on appeal.

Patterson *vs.* U. S. (C. C. A. 6th), 222 Fed., 592.

Here the defendants—officers and agents of the National Cash Register Company—were indicted for organizing and carrying out a conspiracy in restraint of trade in cash registers. One defense, insisted on with elaboration, was that the trade restrained, if any, by the conspiracy, was a trade in devices which infringed the defendants' patents. The contention was that since the defendants had a right to exclude competition under their patents, there was no violation of the law in restraining such trade by the conspiracy.

The District Court ruled that the patents were irrelevant as a defense and *denied their admission in evidence.*

L. c. 205 Fed., 297 (District Judge Hollister):

> "A part of the patent right is the expressly granted power to bring suits to exclude all infringers. The patentee has no sanction under the patent laws to exclude infringers in any other way."

The ruling of the District Court on the point noted was affirmed by the Court of Appeals. Mr. Justice Day and District Judges Sandford and Cochran sat, the latter delivering the opinion, *l. c.*, 222 Fed., 646:

> "It is not a question whether it is rightful or wrongful interstate trade or commerce that is covered by the conspiracy. It is sufficient that it is interstate trade or commerce."

It is decided, then, *that a conspiracy which restrains interstate trade even in infringing articles violates the Anti-Trust Act; such conspiracy is not sanctioned by the patent*

law. The patents are irrelevant as a defense to such conspiracy.

The other case is

Standard Sanitary Mfg. Co. *vs.* United States (1912), 226 U. S. (Mr. Justice McKenna).

There the court condemned, as illegal under the Anti-Trust Act, a combination in restraint of trade in enameled ware. The nucleus of the combination was a patent: and the restraint took the form of a system of license contracts under the patent. The defense was that the restraint was sanctioned by the patent statute and consequently not to be condemned under the Sherman law.

The court placed the scheme in a class with one condemned in Montague *vs.* Lowry, 193 U. S., 38, *where there was no patent*, and thereupon thrust the patent out of the case with a sentence, *l. c.*, 49:

> "The added element of the patent in the case at bar cannot confer immunity from a like condemnation, for the reasons we have stated."

It is decided, then, by this court, that a system of license contracts under a patent which restrains interstate trade in the articles made under the license violates the Anti-Trust Act; such restraint by contract is not sanctioned by the patent law. The patent is irrelevant as a defense of such restraint.

The "added element" of the copyright has been similarly dealt with. Straus *vs.* Am. Publishers' Ass'n (1913), 231 U. S., at 234-235 (Mr. Justice Day).

Summarizing the Preceding.

The patent law is a statute of grant; it authorizes the patent owner to exclude competition by infringement suits (if he can; many times the attempt fails).

The Anti-Trust Act is a statute of prohibitions or denials;

it denounces the exclusion of competition by means of contracts, combinations or conspiracies. One statute creates rights to bring infringement suits; the other makes certain contracts, combinations and conspiracies crimes.

There is no conflict beween the two enactments; neither carves an exception out of the other. They sanction rights and duties in two separate domains.

In a suit for the infringement of *a patent right*, the Anti-Trust Act and the *duties enjoined by it* are without the issue and irrelevant.

In a proceeding to enforce the *duties enjoined* by the Anti-Trust Act, the patent statutes and *rights* granted thereunder are without the issue and irrelevant.

Whatever judgment this court enters in this proceeding cannot abridge or impair the right of the patent owner to prosecute infringers. "And this is all that he obtains by the patent" (Bloomer *vs.* McQuewan, *supra*).

To expand the right of every patent owner to bring infringement suits, so as to include the right to enter into and carry out contracts, combinations and conspiracies in restraint of interstate and international commerce (all of which are crimes) would be to wrench both the patent statute and the Anti-Trust Act out of their declared functions and make each of them

> "mean not what it says, but what interested parties wish it to mean at a particular time and under particular circumstances" (Northern Securities Co., *vs.* U. S., 193 U. S., at 350, Mr. Justice Harlan).

The Patents Are Irrelevant.

V. The Same Result Stated in Terms of Procedure.

In this proceeding the court cannot adjudicate the validity or invalidity of the patents. There is no such issue.

This court has held that the only way in which the United States can attack or question the validity of a patent, is by

a bill in equity, to have the patent cancelled for fraud in its procurement (U. S. *vs.* Am. Bell Telephone Co., 128 U. S., 315).

This is not such a proceeding, and, therefore, a judgment declaring the patents *invalid* would transcend the record that is, as well as one that could have been made.

The court cannot adjudicate the patents *valid,* for their validity has not been challenged; there are no infringers or alleged infringers before the court, and no other person that could be bound or affected by the judgment in that regard. The allegations in the answer of the existence, scope and validity of the patents go in the air.

The court will not *assume* the validity or invalidity of the patents in determining the legality of the contracts. For, the legality of the contracts is determinable under the Anti-Trust Act; the validity of the patents under the patent statutes. To decree the legality or illegality of the contracts upon the assumption of the validity or invalidity of the patents would be as extraordinary as (in a patent case) to decree the validity or invalidity of the patents upon an assumption of the legality or illegality of the contracts. Rights under the patent statutes are not contingent upon the violation or assumed violation of duties enjoined by the Anti-Trust Act; duties under the Anti-Trust Act cannot be absolved by rights or assumed rights under the patent statutes.

All the space and learning devoted to patents and the patent law on this record are as entirely foreign to the issue involved as all the space and learning devoted to contracts and the Anti-Trust Act would be to the issue in a suit for the infringement of one of the United Company's patents. For, the statute of which the court has here to find the meaning—

> "is a criminal statute. The two sections on which the Government relies both make certain acts crimes. That is their immediate purpose and that is what they say. It is vain to insist that this is not a crimi-

> nal proceeding. The words cannot be read one way in a suit which is to end in fine and imprisonment and another way in which one seeks an injunction" (Northern Securities Co. *vs.* U. S., 193 U. S., at 401, Mr. Justice Holmes, *dissenting*).

In such "a criminal proceeding" this court is asked to adjudicate or assume the validity of the whole jangled mass of patents and thereupon to sanction the exclusion by these contracts of all competitors for 17 years without giving such competitors any opportunity to contest the validity of the patents or to prove the noninfringing character of their devices. This would be the equivalent of granting to the defendants a patent on the industry, for the contracts exclude competition without regard to an *adjudication* of the validity or scope of the patents or the noninfringing character of the excluded machines.

The court declined so to do with respect to the Arrott patent interposed as a defense in the *Standard Sanitary Case, supra,* and the wisdom of the refusal has been demonstrated. For, after this court condemned the scheme to exclude competition by license contracts under that patent, the Circuit Court of Appeals for the Third Circuit, which previously had twice sustained the validity of the Arrott patent, on the third round declared it void (Standard Sanitary Mfg. Co. *vs.* Iron City Mfg. Co., 222 Fed., 671).

For aught that this court can know from this record, what is true of the Arrott patent may be true of every patent that the United Company now owns or ever has owned.

The patents are irrelevant.

Conclusion.

Finally (and this is repetition) the patents are irrelevant for the reason that the condemnation of the restrictions and all of them, will not take from the patent right one jot or tittle.

Victor Talking Machine Co. *vs.* The Fair (1903 C. C. A., 7th), 123 Fed., at 426 (Judge Baker):

"Within his domain, the patentee is czar."

No doubt there is a truth in the connotation, for this court has held that every citizen, including (under many circumstances) the officers of the Government, must respond to a charge of infringement. But the domain of this czar is bounded north, south, east, and west by the right to exclude, and the only sceptre that he wields is an infringement suit, which is not always compelling. Congress by the Anti-Trust Act has established another domain; one in which all interstate trade and commerce must be free from restraints by contracts, combinations, or conspiracies; and in the midst of that domain has placed the jail as a warning to all invaders. The patentee is as powerless in this wider domain as the public and officers of the Government are in his narrower one. They must bow to his prerogative when it is sanctioned by the process of the courts in infringement suits. He in turn must bow to the will of the public sanctioned in the Anti-Trust Act.

The czar in this case has abandoned his domain and invaded one in which there are no rights and in which he has no more immunities than any other citizen.

The Case as a Whole.

This is a case "of great expectation" (Wheaton *vs.* Peters (1834), 8 Peters, at 655, Mr. Justice McLean).

It is feared that the greater part of what is herein written (and much more that has been ruminated) is a vain repetition of truisms which may weary but cannot inform the court.

Aside from the intercorporate relationships of the defendants (matters not touched on here) the case propounds a single astonishing question: *Can one who has the right to*

attempt the exclusion of competition by infringement suits, in the name, but not in the exercise, of that right, actually exclude competition by a system of contracts creating a vast combination?

Throughout there are two statutes and two instrumentalities for excluding competition. These are paired: the patent statute and an infringement suit; the Anti-Trust Act and a contract. One instrumentality is given and one taken away. Congress by the patent statute has created the infringement suit out of the void; the same Congress by the Anti-Trust Act has destroyed the contract, and in destroying has transmuted it into a crime. The defendants contend that the mere *possession* (it is not employed) of the *legal* instrumentality authorizes them to substitute therefor and use instead the *criminal* instrumentality.

The truly titanic effort of the defendants; the origin of the shoe machinery business in the long ago, under the protecting ægis of the patent law; its history and perfectly normal growth in which, with the aging of the art, patents have fallen in ever-increasing numbers, like manna from the heavens; the far-seeing beneficence of the United Company, which, in binding the shoe manufacturer to use only its machines, has precluded the calamity incident to the ignorant choice of a competitor's; the welters, sluggers and stitchers, the principals and auxiliaries, that work in teams, but balk when singly hitched; the tying clauses that do not tie; the excluding clauses that do not exclude; the return charges which preclude a return; this and more, elaborated with patience, illuminated with ingenuity and informed from beginning to end with a protestation of good intentions, bursting from the heaving depths of counsel's heart with a violence that brooks no denial; and all and more sanctioned by the District Court;—comes finally to this pass.

For no ingenuity of argument, no violence of protestation and no amplitude of citation can efface or conceal the capital fact (to a bare statement of which in one sentence, but for

hazarding an imputation of a design to affront the court, this brief might well be confined): *that the system of reticulated restrictions is only "a commercial device"* (Packet Co. *vs.* Bay, 200 U. S., 179, Mr. Justice Holmes) *whereby, as instrumentalities for excluding competition, contracts are substituted for infringement suits.*

By the substitution the effort is made to invest the contract with the protective coloration of the patent right, so that the court, being powerless to deal with the latter, will not lay hands on the former.

Whether or not the substitution shall be sanctioned rests with this court. One may not strive with the court, but perhaps it is permissible to hazard the prediction that if the substitution is sanctioned the driven piles of the Anti-Trust Act and of the anti-monopoly statutes of every State in the Union will creel, and the greater part of those structures will tumble down in ruins.

The patents are irrelevant, for they are a disguise.

Respectfully submitted,

FRANK Y. GLADNEY,
Amicus Curiæ.

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No. 207.

UNITED STATES OF AMERICA, Appellant,

v.

UNITED SHOE MACHINERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR GENERAL SHOE MACHINERY COMPANY (SUCCESSOR TO BOYLSTON MANUFACTURING COMPANY).

PART II. ON REARGUMENT.

FRANK Y. GLADNEY,
Amicus Curiæ.

L. H. Lane, Law Printer, 231 High Street, Boston.

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SYNOPSIS.

The Leases.

Legality of the Restrictions, — that is the issue:

Preliminarily.

Benefits conferred or offered by the lessor extraneous the lessor's contractual obligation are irrelevant, for such benefits

Page

A. are not obligated of the lessor or secured to the lessee by the leases and . . . 1

B. are not affected by the Anti-Trust Act . . 3

The Restrictions.

I. Preliminarily to the scope and effect of the restrictions: They are genuine restraints of trade and not mere "reservations" or "grants" of "limited rights" 4

II. The exclusive use clause, in the category of a given type, excludes the use, by the lessee, of any competitive equivalent specimen for seventeen years 10

III. The prohibitive use or tying clause generalizes the effect of the exclusive use clause in the category of different types. 12

IV. Each is an integral function of the other; correlated and interacting, they exclude the use by the lessee of any competitive equivalent specimen (machine or material) of any and every type embraced throughout the seventeen years. 14

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V. The machines (and with them their accessory materials) are integrated into the system of restrictions in such fashion that the maximum degree of the lessee's dependency on the lessor for any particular type of machine, at a given point of time, is, by the lessee obligatorily assumed, in undiminished degree throughout 17 years, as respects every specimen machine (and its restricted material, if any) of every type embraced. **This is the master principle pursuant to which all the machines and materials are contractually articulated into one unit** 15

VI. The cancellation clause aggravates the evil of the restrictions; judicial inquiry into the legality of even the least of them can be invoked by a lessee, only at the hazard of losing his effective equipment 25

VII. Conclusion: the intent of the defendants is attested by the language of the restrictions: commendation of the restrictions by certain lessees is an inevitable concomitant of the lessor's power over all lessees 29

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 207.

UNITED STATES OF AMERICA, APPELLANT,

v.

UNITED SHOE MACHINERY COMPANY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR GENERAL SHOE MACHINERY COMPANY (SUCCESSOR TO BOYLSTON MANUFACTURING COMPANY).

PART II ON REARGUMENT.

The legality of the restrictions of the leases is the issue.

A. The Benefits Urged are Not Obligated of the Lessor, or Secured to the Lessees, by the Leases.

In the attempt to justify the restrictions there is relentless insistence on the surpassing merit of the machines, the benefits of the lessor's "service" to the lessees, and the lessor's offer of "independent" leases as the alternative of the restricted leases.

But those things are no part of the lessor's contractual obligation. It nowhere undertakes to furnish the "best machines made". On the contrary, the lessee by the

terms of the leases is compelled to use the machines furnished exclusively for seventeen years, even though during the period the "best machines made" are at the disposition of some one other than the lessor. Indeed, the lessee is expressly prohibited from changing, altering or improving the machines without the written consent of the lessor.

The lessor is not obligated to furnish "any service"; "free of charge" or otherwise. On the contrary, the lessee is expressly bound at his own expense to keep the machines in good repair; to purchase all parts exclusively from the lessor (provided it will supply them; it is nowhere bound to do so) at such prices as it sees fit to establish, unrestrained by any provision in the leases. The lessor is the sole judge as to when repairs are needed, what they are, and what they shall cost. The lessee has but to submit and pay.

The reiteration of the "independent" leases is incessant; it suggests a power riveter.

But, again, the "independent" leases are no part of the restricted leases. The latter do not so much as give the lessee the option to put off his dependence and take on independence. The utmost that is claimed is that when (and as often as) the restricted leases were signed and put into effect the lessor was ready and willing to grant the "independent" leases instead.

However, the restricted leases, as such (without any alloy of freedom to the lessee), long have been, are now, and, by their terms, long will be, in effect. The "independent" leases, in so far as they are related to the restricted, are only a memorial of a freedom once tendered and declined. *Why* this is so is much disputed. Defendants say the lessees prefer the lessor's machines for use exclusively "in series" or as "a team". On the other hand it is asserted that the terms of the "independent"

leases are prohibitive. But the fact that the one set of leases have been executed and are being carried out from year to year while the other set, as to lessees bound by restricted leases, are only past potentialities, is not questioned.

It is obvious, then, that the terms of the "independent" leases are irrelevant to the legality of restrictions in the restricted leases.

If some "independent" leases have been executed and are in effect, then their legality must be determined by their contents. But their mere offer cannot affect the legality of the restricted leases.

The legality or illegality of what has been agreed upon and carried out cannot be even remotely contingent upon the legality or illegality of something else that might have been (but was not) agreed upon.

In the domain of private law a tender of one's obligation may be the equivalent of performance, but this cannot obtain between a citizen and the sovereign. The latter exacts actual obedience of its mandate and rejects an alternative whether tendered or performed. This court must break new ground before an asserted willingness to obey the law will justify its actual disobedience. The lessors may not put into effect the restricted leases and over them erect its antecedent, unexecuted alternative as a lightning rod to ground the incidence of the statute.

B. Such Benefits are Not Affected by the Anti-Trust Act.

Against "the best machines made", "service free of charge", the "instruction of operators free of charge" and "independent" leases (assuming the thing is what its name implies) there is no law. If the court should annul all the restrictions complained of the lessor would still be free to offer all these benefits "free of charge" and the lessees free to accept them and to use the machines "in

series" or as "a team" to the complete exclusion of other machines and materials, *although* they would not as now be obligated so to do for seventeen years.

Throughout the argument the defendants stoutly maintain that the use of the United Company's machines to the almost complete exclusion of other makes is due solely to the superior excellence of the lessor's machines and the surpassing "service" afforded. But after the removal of all the restrictions that excellence and "service" would still have all the commercial potency that they now have. The Anti-Trust Act has to do exclusively with contracts, combinations and conspiracies. It has no pertinency to unobligated gratuities, whether in the form of purely philanthropic offerings or of sops thrown by a commercial autocrat to its grimacing victims to dissipate the rancor of their dependency.

I.

Preliminary to the scope and effect of the restrictions: they are genuine restraints of trade and not mere "reservations" or "grants" of "limited rights".

Before attempting to present the scope and effect of the restrictions it is necessary to meet the defendants' denial of the essential restrictive nature of them. The great number of restrictions, their intricate correlation and the mystifying indirection of their phraseology certainly are without precedent among the decisions of this court. Yet they all may be reduced to the principle of either (1) the exclusive use clause or (2) the prohibitive use or tying clause.

(1) The *exclusive use clause* (invariably characterized by defendants as "the exclusive use *cancellation* clause") provides in express terms that if the lessee of a lasting machine (for example) shall fail or cease to use exclusively

lasting machines of the lessor, the lessor may at its option "terminate forthwith by notice in writing this lease and any other lease of lasting machines", etc.

It is denied that this language imposes any restraint upon the lessee as to his right to use competing machines of the character. The contention is that the provision does not bind the lessee not to use competing machines, but only reserves to the lessor the right to withdraw its own in case he does. This refinement is much stressed by defendants, but a slight inspection shows that it is a mere verbal argument and that it ignores the effect of the reservation as a restraint upon trade. For, consider the correlative rights and duties of lessor and lessee in the leased machine, before and after the lessee's use of a competitive machine. Thus

I. Before using competitive machine.

LESSOR.	LESSEE.
Duty: to permit use for 17 yrs.	Right: to use for 17 yrs.
Right: to cancel, if etc.	Duty: to pay taxes, return charges, etc.

II. After using competitive machine.

Duty: none.	Right: to use at will of lessor.
Right: to cancel, absolute.	Duty: to pay taxes, return charges, etc.

By the use of a competitive machine, the lessee's right and the lessor's duty as respects the leased machine, *in the category of time*, are destroyed, and the lessor's right to cancel is transmuted from a contingent into an absolute right, but (and it is not without a premeditated effect) the lessee's duty remains as before. If the lessor reserved the right to double the royalty (instead of cancelling the

lease) in the event of the use of a competitive machine, the restraint on the lessee would be undeniably obvious. The transmutation of rights and duties in point of time and security of tenure is just as certainly a restraint and one of more deterrent power than an increase in royalty. The burden of an increased royalty may be sufferable, it can be foreseen and its incidence is calculable. But the insecurity and uncertainty of the lessee's situation, incident to the daily recurring hazard of losing an important part of his equipment at the unpredictable choice of the lessor, is superlatively dissuading. It is to be observed that the use of *one* competitive machine (of the type nominated in the clause) even though for but a brief period gives the lessor the right forthwith to retake *all* its own of the same character. The minimum displacement of the lessor's machines, whether in point of number or time, suffices to draw the maximum penalty in both measures. It will shortly be shown that this deadfall, on a huge scale, is erected likewise over all other machines put out under the leases complained of.

The *additional machinery clause* (is in effect an equivalent of the exclusive use clause and) provides in express terms that if the lessee has more work of the kind which can be performed by any of the machines of the lessor (*i. e.*, of the particular type specified) than the capacity of the machine leased, then (1) the lessee shall either take from the lessor sufficient additional machinery to perform the work or (2) in case the lessee fails to do so then the lessor may cancel forthwith "this lease and any other lease" covering machines of the character.

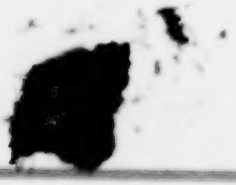
Defendants seek to minimize its significance in this proceeding by the statement that it was discontinued in 1907. In view of the fact that the leases run for seventeen years, the clause can scarcely be said to possess only an historical interest. The net result of substituting the

exclusive use, for this clause, is that the lessee's express obligation to take the additional machines exclusively from the lessor is dropped, and the lessor's alternative right of cancellation for his failure to do so is retained alone. The greater efficacy of the latter to restrain the lessee is undoubted. The lessor by the substitution has not weakened its control, but only rendered it less obtrusive.

(2) The *prohibitive use or tying clause* (characterized by the defendants as "the restricted use clause") provides that the lessee of a lasting machine (for example) shall not use the same on any welted shoes which have been or shall be welted "in whole or in part" by the aid of any welt sewing machinery not held under lease from the lessor, etc.

Notwithstanding the defendants throughout contrast the "independent" with the restricted leases, it is denied that this clause imposes any restrictions on the lessee. In support of this denial the somewhat surprising contention is made that the clause does not obligate the lessee to use either the leased machine or any other machines of the United Company at all. This truism applies equally to the restrictions dealt with in the Motion Picture Patents case (1917), 243 U.S. 502 (Mr. Justice Clarke), and its familiar antecedents. The lessee by the terms of the lease takes the machine for seventeen years. During that period he is responsible for its safe preservation, must insure it against loss by fire, pay the taxes assessed against it, bear the cost of its repair, and at the end of seventeen years return it to the lessor rehabilitated, and the return and transportation charges paid. These various obligations are predicated on the active use of the machine by the lessee or the leases must be placed outside the pale of business transactions.

It is further insisted that the lessor "grants" only a



"limited right" to use the machine and "reserves to itself" all other rights of use in that machine. But it borders on an occultation to say that the lessor has "granted" the right to use a particular specimen machine A, only with its other machine B, and has "reserved to itself" the right to use that same specimen A with some other machine, say C. For the use of a particular chattel is an inseparable incident of its possession in time and place. The lessee has exclusive possession of the specimen in his place of business for seventeen years. That granted, to say that the lessor has "reserved to itself" *any* right of use *in that specimen* within that seventeen years is to fling an impotent challenge to the unalterable constitution of time, space and matter. In connection with land the terminology of "grants" and "reservations" of the right of use may have a realizable meaning. The owner may grant an exclusive right to mine and use the coal underlying and reserve to himself the exclusive right to use and enjoy the surface of the soil. But the right to use (and, therefore, necessarily, to possess) a chattel cannot be subdivided or apportioned except in the category of time, for the reason that simultaneous possession (and, therefore, use) of it by two distinct and separate persons is inconceivable.

The argument struggled with takes on a superficial plausibleness by reason of the double negative employed in the clause. The stereotype form of the prohibitive use or tying clause affecting machines of a different type is as follows: The lessor's leased machine A shall *not* be used to perform operation X on any shoe as to which operation Y is or shall be performed by machine B, *not* leased from the lessor. It is just as true in this clause as it is in algebra, that two negatives equal a positive. Strike out the negatives (as we may without altering the meaning) and it is obvious that the lessee is under a positive con-

tractuàl obligation to use machine B, only in conjunction with A.

This is clear to a demonstration in a tabulation of the correlative rights of lessor and lessee in the leased machine.

LESSOR.	LESSEE.
Duty: to permit use of lessor's machine A to perform operation X only on a shoe as to which operation Y has been or shall be performed by lessor's machine B.	Right: to use lessor's machine A to perform operation X only on a shoe as to which operation Y has been or shall be performed by lessor's machine B.
Right: to have lessee refrain from using lessor's machine A to perform X on any shoe as to which Y has not been or shall not be performed by lessor's machine B.	Duty: to refrain from using A to perform X on any shoe as to which Y has not been or shall not be performed by lessor's machine B.

The lessee is under a *contractual* duty not to use a competitive equivalent of B and this duty correlates a *contractual* right in the lessor.

The principle of the prohibitive use or tying clause is availed of in varying forms and with different effects. The lessee has the right to use certain machines only with accessory materials such as tacks, wire, nails, eyelets, dies, etc., purchased exclusively from the lessor. Again, two machines A and B, performing respectively operations X and Y, are leased for a flat royalty of two cents (for example) for each machine as to each pair of shoes *with the proviso* that if the royalty on A for performing X is paid, that on B for performing Y shall be waived or vice versa. Here the prohibition is accomplished by doubling the royalty on one machine, if the lessee substitutes a

competitive equivalent for the other. There are other variations, but a volunteer may not risk wearying the court with tedious details. Moreover, it was once said: "In an instrument well drawn, as in a poem well composed, silence is sometimes most expressive." *Chisholm* v. *Georgia* (1793), 2 Dall. at 454 (Mr. Justice Wilson).

II.

The exclusive use clause:

In the category of a given type, excludes the use by the lessee of any competitive equivalent machine for seventeen years.

This clause (or its equivalent, the additional machinery clause) is the unit and fundamental restriction. It is likewise the oldest, having been employed in the industry long before the formation of the United Company. So long as specimens of only one type of machine are put out it is all sufficing; as an adjunct to the seventeen year term it is a perfect instrument of monopoly.

In leasing one or only a few specimens the lessor avails of the lessee's momentary dependency on it and by contract projects that dependency as an obligation over a period of seventeen years. At the outset the necessity of resorting to the lessor rests on a fact (*i. e.*, the lessor's exclusive control of the particular type of machine); after the execution of the lease, it rests on an obligation of the lessee extended over seventeen years, regardless of any change in the fact during that long period. To get the use of these only temporarily the lessee must obligate himself to continue that use for the period named. But this is a minor aspect of the matter.

The exclusive use clause obligates the lessee to acquire from the lessor exclusively all additional identical or equivalent specimens required throughout the seventeen years.

At the outset the lessee may require only two specimens; his business may so expand that at the end (say) of ten years he requires fifty additional ones. All these must come exclusively from the lessor under contracts which, from their respective dates, anew project the lessee's dependency seventeen years.

The lessee's temporary need for the use of one or a few specimens is not only as an obligation extended in the category of time seventeen years, but it is likewise simultaneously extended in the category of identical or equivalent specimens so as to embrace all additional machines of the character (however great the number may be) used throughout the period. Such additional machines are put out only on seventeen year leases, so that in the instance of a lessee whose business is expanding the exclusive use clause imports an endless prolongation and a progressive enlargement of the lessee's obligatory dependency on the lessor for the particular type involved. As to the lessee's future requirements for machines of that type competition is completely excluded notwithstanding that competitors may offer equivalents of superior efficiency at lower prices.

The superiority of a given mechanism is relative and lasts only for a brief time. Patents are no guarantee against competition, as the lessor admits when it avails of this clause. There can be no infringement without competition; but there can be (and frequently is) the most intense competition without infringement. The linotype and monotype printing machines, both protected by large numbers of patents, are to a large extent competitive equivalents, each a rival of the other. Automobiles of countless types infest the country like grasshoppers, and no doubt each separate competitive make embodies numerous patented inventions. It is only an accident of history that Morse and Marconi were not contemporaries.

The exclusive use clause in the category of a given type excludes the use by the lessee of any competitive equivalent specimen, whether old, newly invented, patented or unpatented, throughout seventeen years, at the least. It is designed and intended to insure the lessor for seventeen years against the deliberately expected and known imminent hazard of a better machine offered to the lessees on more favorable terms by a rival manufacture. It thoroughly executes the action signified by its name.

The full effect of this clause cannot be made clear until after its correlation is shown.

III.

The prohibitive use or tying clause:

Generalizes the effect of the exclusive use clause in the category of different types of machines (and their accessory materials, if any).

In advance of dealing with the situation that actually existed when the system of restrictions was imposed, let it be supposed that there are two different types of machines designated for the sake of brevity as Type 1 and Type 2. If Type 2 for the time being in its respective sphere is as dominant and as unvexed with competitive equivalents as Type 1, then the exclusive use clause will make the lessor's supply of Type 2 *coexclusive* with its supply of Type 1. On the other hand, if Type 2 is weaker (*i. e.*, in the face of competition) than Type 1, the exclusive use clause will not serve the purpose. (This is notoriously the circumstance in connection with the accessory materials.) The lessee of Type 1 would take a competitive substitute for Type 2 from another source, even though it be a poorer machine, rather than obligate his dependency on the lessor as respects Type 2 for seventeen years.

In this situation the lessor further avails of the lessee's

temporary dependency on it alone for Type 1 by inserting in the lease of that machine the prohibitive use or tying clause and thereby obligates the lessee to use Type 2 exclusively throughout the period. By the insertion of this clause competition as respects Type 2 (the weaker machine) is as completely excluded as it is with respect to Type 1. All subsequent specimens of Type 2 must likewise come exclusively from the lessor. For the lease of Type 1 contains the exclusive use clause and the prohibitive use clause provides that no machine of Type 1 shall be used on any shoe as to which the respective operation of Type 2 has not been or shall not be performed by a machine leased from the lessor. The prohibitive use clause as an adjunct to the exclusive use clause affects all specimens of Type 2. So that it is literally true to say that *that clause generalizes the effect of the exclusive use clause in the category of types embraced.*

The subtle but important fact in connection with the prohibitive use or tying clause is that for seventeen years it imparts to all the types of machines (and their accessory materials, if any) affected, the maximum strength of the strongest when in the apogee of its demand. If there is one type which temporarily is indispensable and as to which at the same time the lessees are dependent exclusively on the lessor, that indispensability in undiminished degree is infused for seventeen years into the weakest type correlated. The lessor's supply of nails, tacks, eyelets, etc., is rendered precisely *coexclusive* with its supply of its most strongly patented machine, when first offered. This chain that binds together new and old machines, patented and unpatented ones, and materials that are wholly open to the public, is as strong as its strongest link, that link taken at the point of time when its strength was at the maximum.

IV.

The exclusive use and prohibitive use clauses:

Each is an integral function of the other.

What the exclusive use clause is to all specimens of the particular type, the prohibitive use or tying clause is to the different types of machines (and the respective restricted materials) embraced. The exclusive use clause alone ties the use of the machines in the category of additional identical or equivalent specimens. If the leases contained only this clause (and it is a staple in the "independent" leases), then a rival machine manufacturer who could supply the shoe manufacturer with all the machines that he required of a given type could compete — provided he could find one who was not obligated as to that type for seventeen years. The prohibitive use clause ties the use of the machines in the category of the different types, it is omitted from the so-called "independent" leases, and the lessor by the initial payments exacted in connection with the omission has placed its own evaluation on the clause as a part of its system of restrictions. If the leases contained this clause only, then a rival who could supply additional equivalent specimens of any of the types could compete in the supply of such additional machines required in the course of time by the lessee.

But the two clauses combined and interacting, each being an integral function of the other, exclude competition even as to a single specimen of any and every type embraced by the two restrictions. To compete, a rival must come prepared to supply the shoe manufacturer with all types embraced by the prohibitive use clause and with all specimens embraced by the exclusive use clause. Even then he must wait at least seventeen years for the opportunity.

V.

The plan pursuant to which the machines and materials are integrated into the system.

The force and effect of each instance of these two restrictions in correlation, and the resultant effect of all the instances, combined and imposed with unequal incidences on the various machines and materials, are matters undeniably difficult of explanation. It may be helpful to begin with the simple and advance towards the complex. In *Chisholm* v. *Georgia* (1793), 2 Dall. at 431, Mr. Justice Iredell said: "I have often found a great deal of confusion to arise from taking too large a view at once."

The outstanding fact of the leasing system is *time values*. Privileges extending over a long period of time are sold in exchange for a price the payment of which is likewise extended. Since the length of time determines the amount of the price, the seller, aiming at the maximum return, fixes a long term and stops at seventeen years — the life of a patent — only because of a supposed legal obstacle to go further. The extended time of the lessee's obligation is the opportunity of the lessor. This is not to intimate a criticism of the leasing system as such; it is only by way of considering an abuse of it. In the instance here involved the seventeen year term serves as the warp in a restraint of which the restrictions are the woof.

Given a brief period of time when the lessee is dependent exclusively on the lessor for an indispensable type of machine, the lessor can transmute that dependency, resting then on a fact, into an obligation and, as such, project it in time beyond the period of the existence of the fact and broaden its scope so as to include many other

things. This is so, for the reason that the shoe manufacturer's need *for the time being*, if not irresistible, is commercially so pressing that it demands satisfaction then, even at the cost of projecting his momentary dependency on the lessor over a long period of years. It is only a truism to say that most necessities are such *in time*. A man stricken with tuberculosis must have the best remedy *then* existent. A better may come in the long run, but meanwhile, in the short run, he may perish. His necessity then and there may be such that, in order to avail of the best remedy then current, he will bind himself to take the same specific or others originating from the same source, exclusively for seventeen years. The factor that brings success or failure in the competitive struggle, is temporal; it changes with time. But a competitor, to survive, must have the best machine extant at any given time. He may get a better in the long run, but in the short run his rivals, who have the machine, will take the business and he will perish.

The compelling dependency of the shoe manufacturers on the lessor at the period of time when the system of restrictions was initiated is a fact established beyond controversy by the record. That dependency did not inhere in any overpowering efficiency or excellence of any particular type of machine. It was inevitably incident to the sudden fusion of the four principal concerns in the creation of the United Company. It is not disputed that these four concerns (viz., 1. Goodyear Shoe Machinery Co., 2. Consolidated and McKay Lasting Co., 3. McKay Shoe Machinery Co., and 4. Eppler Welt Machine Co.) taken together were the source of supply of very much the greater part of the machinery (as defined on the record) available in the country at the time. This is true as to the various then existing types of machines as well as to the aggregate number of specimens of any and all types. Outside of

these four, there was no existing source of supply commensurate with the requirements of the shoe manufacturers as a whole. A large shoe manufacturer for indispensable parts of his entire equipment was unavoidably dependent on the group, but his dependency was decentralized, multiplex and apportioned among the four (undoubtedly in unequal degrees). The pressure which any one could bring to bear in imposing conditions was partial.

That this was the situation, curiously enough, is vouched for by the defendants. They deny that there was competition among any two or more of the group and at the same time they predicate a justification of the restrictions on the assertion that three of the four concerns (the Eppler Company they say was not actually putting out machines), had long employed in their respective leases equivalents of the exclusive, and prohibitive, use clauses. The fact is doubly significant. It shows that these concerns had a practical monopoly within their respective spheres; negativing the existence of any considerable competition on the outside. It shows also that the shoe manufacturers were acutely dependent on each member of the group for that portion of his equipment exclusively supplied by such member.

At this point of time the focus of the lessee's mutual hope and of the machinery manufacturers' mutual fear, was precisely concentric; future competition among the members of the group, each breaking in upon the trade exclusively controlled by the others. For (to revert a sentence) the clauses mentioned when and wherever they occur are at once a signal of danger and a safety device; they attest the imminence of the competition which they exclude; and the reality of the danger is as certain as the efficacy of the device. Where they are, competition is not, but threatens to be.

The hope and the fear alike eventuated in the formation of the United Company. The shoe manufacturers hoped to have their manifold dependency on the group of concerns lifted by competition. The syndicators contrived successfully to centralize, accentuate, intensify and vastly prolong that dependency. From that moment forward the dependence of the shoe manufacturer on the lessor for his entire equipment (as by the record defined) was single and complete. *For the time being* there was no other source of supply; after a while competition might spring up, but meanwhile an equipment must be had on whatever terms obtainable. The United Company had to offer now, not a single machine which had no competitive equivalent whatever, but that which gave it for the time being infinitely more power in imposing conditions, to wit, the one complete equipment, no important part of which had a competitive equivalent whatever. The shoe manufacturers then and there were confronted with the alternative of using the machines on the conditions tendered, or practically going back to the awl, the bristle point and the peg. In the situation the lessor's power and the correlative dependency of the shoe manufacturers was unique in the history of the industry.

After syndicating the machines into a unit, the lessor likewise syndicated the restrictions into a system. The shoe manufacturer's dependency as respects several important types of machines for the moment was complete and rested on the fact that the lessor was then the exclusive source of supply for such types. The whole problem was to convert that dependency into a long time obligation and at the same time broaden that obligation so as to embrace machines and materials for the supply of which the lessees were in no wise dependent on the lessor. To do this the lessor took those types of machines its supply

of which (by reason of patents or otherwise), for the time being, was most absolute and on the right to use those machines grounded an obligation to use all the other machines and the accessory materials supplied by it exclusively for seventeen years.

There can be no dispute about the part played in the plan by the respective groups of machines. The lessor's plan and intent, the relative importance of each group of machines in the system, is dispersed in anagram in the lease clauses, as will now be shown. The leases of the strongly controlled groups of machines carry the exclusive use clause and the prohibitive use or tying clause, obligating the use of the weaker machines and the materials.

As an aid to imparting or acquiring a notion of the scope of the prohibitive use or tying clause as applied in the leases the chart or graphic printed as an exhibit to the petitioner's brief is of distinct value as indicating the eight groups under which the various machines are classified and the manner in which they are related by the prohibitive use clause. (The chart has been criticized by the defendants, but the only inaccuracies *of fact* suggested are, that the chart includes group 5 (pegging machines), the machines which are not used on welt or turn shoes, and that within the several groups there are *some* machines not tied as the chart would indicate. This is only to say that the chart is in the abstract and does not indicate all exceptions. Admitting the full import of the criticism the essential usefulness of the chart is not impaired. It does indicate the relations of the various groups, the most important machines in each of which are tied as indicated, and when considering only welt or turn shoes group 5 may easily be ignored.)

The great value of the chart is in the fact that it imparts completeness and diagrammatic vividness to one's

notion of the scope of the prohibitive use clause, and at the same time it exhibits the very great difficulty (and in the writer's case failure) of fully and accurately describing in words the precise mode of the restriction. Almost unavoidably one characterizes the restriction as tying together the use of two or more machines. This affords to the mind the image of two or more machines so bound together as to the right of use that one cannot be taken and others left. The chart shows that this is not necessarily true. Frequently the contractual ligature has strength in only one direction; the privilege of using machine A may obligate the use of B, but this may or may not obtain reversely. *The scheme in the main is one of non-reciprocal dependency.* The arrows on the chart indicate the dominant and servient relation of the groups, pointing *away* from the dominant and *towards* the servient. For example, in order to use *certain* of the machines in group 1, the lessee must use *certain* of the machines in groups 2, 6, 7, and 8, but of these only 6 is reversed. As extremes we have group 3 which is dominant to 2, 6, 7, and 8, though servient to none, and group 8 which is dominant to none though servient to 1, 2, 3, 4, 6, and 7. Intermediate is group 6 that is in both a dominant and servient relation.

The great difficulty of adequately describing or even retaining before the mind an idea of this peculiar and complicated inter-dependence affords the opportunity for the pertinacious dialectic of the defendants. One can deal in generalities only at the peril of having an exception pointed out and dilated upon at such length that the generality is plausibly emptied of even a partial truth. The non-reciprocal character of the dependency makes any general statement delusively inexact, for the adversary has only to select a machine (or group) serviently related by the restrictions to establish a destructive exception.

Thus one may not assert that in order to lease one important (or "essential") machine or group of machines of the lessor the lessee must lease all such machines embraced by the restrictions, for the lease pertaining to the Goodyear machines (group 8) contains no such provision, and those machines or their competitive equivalents are incontestably important or "essential". This one glaring instance of the non-reciprocal incidence of the restrictions is a staple of the defendants' argument. A weakness of the system of restrictions that was and is inevitable is relied upon to disprove its strength.

For the chart demonstrates that at the time the restrictions as pleaded were imposed the maximum degree of the exclusiveness of the lessor's control existed in connection with some of the machines in groups 1, 2, 3 or 4. All the machines and materials affected by the restrictions must be (commercially speaking) indispensable or "essential", otherwise they could not be marketed under such a burden. They differ only in the degree of the exclusiveness of the lessor's control at the period mentioned. The system of restrictions levels *this exclusiveness from zero upward to its maximum* and generalizes it at that maximum as to all the machines and materials affected.

The chart shows instantly what of the "essential" machines were in the highest degree within the exclusive control of the lessor and what ones were dangerously free from that control and to which a like degree of exclusiveness had to be contractually imparted from the other groups.

In point of imparting its exclusiveness to other groups or borrowing from others their exclusiveness:

Group 1 imparts to five and borrows from one.
" 2 " " four " " " three.
" 3 " " five " " " none.
" 4 " " four " " " none.

(We now drop to the distinctly debtor class).

Group 6 imparts to five and borrows from six.
" 7 " " two " " " six.
" 8 " " *none* " " " *six.*

Here then we have a stark and unqualified admission from the lessor as to what machines for the supply of which the lessees were in fact most completely dependent on it, and as to what others that dependency is created entirely by contract. Thus the lessee's dependency for some of the machines in group 3 *is by contract extended in undiminished degree to machines in five other groups.* The machines in those other five groups as respects a lessee who wants only group 3, are one hundred per cent parasitical. Bowing to the commercial necessity of availing of group 3 he is thereby obligated to take certain machines in the five groups related whether he desires them or not. Group 8, the Goodyear machines, stares at one like the empty eye socket of Polyphemus. The dependency of the lessee on the lessor for those machines is *entirely vicarious.* The lessor was so thoroughly frightened at its total lack of control of machines of this type that it imparted to them the lessee's dependency for certain machines in each and all groups 1, 2, 3, 4, 6, and 7 (group 5 is ignored, for the reason stated). The Goodyear machines are contractually forced upon every lessee who uses certain of the machines in any of the groups mentioned. The lessor to make sure of precluding competition as to these (the weakest group, correlated) tied them inversely to the greatest possible number of other machines. They are one hundred per cent borrowers in point of competitive strength. Apart from this borrowing the lessor's control of them would be zero. By the leases the lessor's control of the Goodyear machine is rendered *co-exclusive* (in point of time and number of

specimens) with its control of its most recent and strongest controlled type. Yet defendants have attempted to draw from this inevitable and obvious weakness of the lessor's control of the Goodyear machines a proof of the great freedom of the lessees. They might as well dilate upon the absence of a restriction on the right to use leather, eyelets, tacks or nails obtained from the lessor.

The entire plan of the restrictions then is this: The strongly controlled types carry the exclusive use clause. The prohibitive use clause generalizes the effect of this in the category of the weaker types. In this manner (to summarize) *the maximum exclusiveness of control particular to any indispensable type is by the restrictions invested in the lessor in like degree of exclusiveness as to every specimen of every type embraced.* Or phrased from the view point of the lessee: *the maximum degree of the lessee's dependency on the lessor for any particular type of machine, at a given point of time is, by the lessee, obligatorily assumed, in undiminished degree throughout seventeen years as respects every specimen machine (and its restricted material if any) of every type embraced.* Under the system of restrictions a little leaven of monopoly, monopolizes the whole restricted mass from the centre to the outermost periphery.

More than once in the printed argument the defendants have likened the various machines to component parts of one great machine and on the right to control any single part have argumentatively predicated the right to control the whole. The comparison is apt, but this machine is commercial and not mechanical. The co-ordination is contractual and not physical. It was not assembled in a factory, but in a lawyer's office. The main drive shaft is the prohibitive use clause; the strengthening ribs that sustain it against any shock of competition is the exclusive use clause. Standardization has been carried to a

hitherto unknown extreme of fixed rigidity; all the component parts and even the accessory materials for seventeen years must come exclusively from the original designer.

It is useless to cite authorities on the illegality of this system of restrictions. When closely examined these leases are a far more extreme and wider reaching restraint than can be found in any other case so far dealt with by this court, construing the Anti-Trust Act. Since the enormity of the restrictions is wholly unmatched by anything in the reported decisions, the latter are dull reading with the lease restrictions before one's eyes.

A word on the seventeen-year term alone will suffice, for this is the base of the whole superstructure. It has been pointed out that the temporary dependency of the lessees on the lessor is the occasion for the imposition of their contractual dependency. Under free competition the power of superlative merit, while such merit is superlative, is irresistible and is only another name for success. To infallibly secure the co-ordination between industrial rewards and this industrial merit, is the profound and momentous purpose of the Anti-Trust Act. But a mechanism that dominates the market today, on the advent of a superior two or three years hence, may be scrapped as junk. Suppose the manufacturers of buggies, wagons and drays seventeen years ago had placed all users thereof under contract to use those instrumentalities exclusively during seventeen years for the transportation (privately) of persons and freight. What room would there have been for the overwhelming superiority of the motor car? The intrinsic and ineradicable evil of the seventeen-year term of the leases is that it secures and maintains the maximum exclusive ascendancy for the lessor's machines long after those machines may (and in all probability have) become industrial anachronisms. But this is only one evil. For

the seventeen-year term is broadened so as to include all specimens and materials subsequently required, so that the history of the industry for seventeen years in the future was written seventeen years ago in the past.

VI.

The Cancellation Clause.

The cancellation clause incorporates all the lessee's several, isolated obligations into a single all embracing one, and to that imparts an irresistible sanction. All the lessee's separate dependencies on the lessor for all the machines and materials are aggregated into one indivisible and overpowering dependency.

This clause provides that if any breach or default shall be made in the observance of *any one* or more of the conditions "in this agreement contained or *contained in any other lease*" subsisting between the lessor and the lessee "and expressed to be obligatory upon the lessee", the lessor shall have the right "to terminate forthwith *any or all leases*" then in force between the lessor and the lessee, etc.

The manner of enforcing the provision is simple. The lessor cancels "forthwith" by giving a notice in writing, and the lessee grants to the lessor "full right, power and authority" upon such termination "to enter upon the premises and into" "any place where the leased machinery" may be and "take possession thereof and take away the same".

It is said that this provision does not occur in *all* the leases, but it does occur in at least *one* of the forms executed by every lessee, and that suffices to incorporate it into all. Again, it is said that the exclusive use provision does not come within the words "expressed to be obligatory upon the lessee", but then that clause carries with it

as one of its terms the right to cancel all leases in which it occurs. The two forms of the clause embrace the entire equipment leased.

No doubt the right of cancellation is unobjectionable in a normal contract and particularly so if it is mutual to both parties. There is no mutuality of obligation in the leases and the lessee has no right of cancellation for breach, for the simple reason that no conditions are assumed by the lessor. Defendants say the privilege is necessary to protect the lessor against acts of dishonesty or unfairness on the part of a lessee. But honesty and fairness are only the mint and anise of the lessee's obligation. He is bound to use all the lessor's restricted machines and materials exclusively for seventeen years. These comprise the whole of his bottoming equipment, without which all his other machines would be useless and his factory an idle and vain thing. Now "generally speaking, the measure of a condition is the consequence of a breach". *Motion Picture Patents Co. v. Universal Film Co.* (1917), 243 U.S. at 519 (Mr. Justice Holmes, *dissenting*). Tested by that standard, the hazard of forfeiting his bottoming equipment, and with it his entire manufacturing business, is the measure of each and every obligation imposed by the intricate net work of restrictions. The use of five pounds of eyelets or nails purchased from a competitor of the lessor gives the latter the absolute right to visit the lessee's business with a ruinous consequence comparable only to the devastation of a cyclone or a conflagration.

How then can the lessee obtain any relief from any of the restrictions? He can obtain no injunctive relief under the Anti-Trust Act, for that kind of relief may be had only at the instance of the Government. He cannot enjoin the cancellation in a State court, for he has in advance agreed to it as a term of the contract. To test the legality of the

restrictions in the courts, he must breach at least one or more to raise an issue. If he commits such a breach, long before the issue can be determined his business will have been ruined by the loss of his equipment.

The hazard of invoking judicial inquiry into the validity of the restrictions is so great as to render the privilege of making the attempt purely illusory. The State of Massachusetts, by a statute enacted in 1907 (Chap. 469 of the Acts and Resolves of Mass. 1907, page 419) (see Opinion of the Judges of the Supreme Court 1907, 193 Mass. 605) outlawed all these restrictions in that State with a detailed particularity that omits nothing to their identification, except the name of the United Company, and yet no lessee in Massachusetts has undergone the hazard of seeking his freedom from them in the courts of that State.

The penalty for violating the Sherman Act or the Massachusetts statute is a jail sentence or a fine or both. The penalty to the lessees for violating the terms imposed by the United Company is business ruin. The United Company has succeeded in giving to its self-imposed restrictions a more terrorizing sanction than either Federal or State Governments have attached to their respective anti-monopoly statutes. And the shoe manufacturers, confronted with the alternative of violating the law or violating the illegal impositions of the United Company, have weighed the consequences attached and chosen the former. To them a business burdened by illegal (and even criminal) restrictions to which they are unwilling parties, is to be preferred to no business at all.

The court has already dealt with a case on principle indistinguishable. In *Ex parte Young* (1907), 209 U. S. 123 (Mr. Justice Peckman) the facts were: The State of Minnesota had enacted a railway rate statute and affixed such severe penalties for its violation that the law was held void for that it deprived the railroads of the right to resort to

the courts to have their rights determined. Mr. Justice Peckham delivering the opinion of the court said (145–6):—

> "The company, in order to test the validity of the acts, must find some agent or employee to disobey them at the risk stated. The necessary effect and result of such legislation must be to preclude a resort to the courts (either state or Federal) for the purpose of testing its validity. The officers and employees could not be expected to disobey any of the provisions of the acts or orders at the risk of such fines and penalties being imposed upon them, in case the court should decide that the law was valid. The result would be a denial of any hearing to the company."

Later in the opinion he said (p. 147): "it may therefore be said that when the penalties for disobedience are by fines so enormous and imprisonment *so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law in terms prohibited the company from seeking judicial construction of laws which deeply affect its rights.*" (Italics mine.)

The situation of the shoe manufacturer is little better. He is not threatened with imprisonment, but he, too, in order to test the validity of the leases in the courts must disobey them at the risk of having his factory stripped of a large and indispensable part of his equipment (forced upon him by the United Company) and that means business disaster. If the Minnesota statute had omitted the imprisonment feature of the penalty, and provided for a forfeiture of all the rolling stock, the railroads then would have been placed in no worse situation than the lessees are now. In

either circumstance a sudden sequestration of equipment means a wholly irreparable destruction of the industry.

Clumsily screened by the derisive rhetoric of "the best machines made", "service free of charge", "independent leases", "delicately constructed machines adapted to work only in series or as a team", "wholesale prices for a group of machines" and "the poor man's equipment furnished without initial investment", this terrorizing deadfall, for eighteen years, has stood between the courts and a lessee seeking to invoke judicial inquiry into the validity of the restrictions, and among over one thousand lessees there is no reported instance of any single one having risked the incalculable consequence of releasing the trigger. In view of the enormity of the restrictions, this eighteen years unbroken unanimity of silence on the part of a thousand lessees, is as piercingly significant as the unheard groans of victims overwhelmed beneath the fallen roof of a mine.

Can it be that this corporation can thus immunize against judicial inquiry into their validity such contractual exactions (compelling practically all the shoe manufacturers of the United States to use the machinery of the defendant *to the exclusion of the machines of all others*) and thereby evade the provisions of the Anti-Trust Act, when a like prerogative, as respects a legislative enactment, has been denied by this court to one of the sovereign States of the Union?

VII.

Finally.

As usual in such cases the defendants much protest their good intentions and the absence of a purpose to restrain trade. But the leases in every paragraph expound the intent and proclaim the purpose. They are the defendants' advance confession of a premeditated and systematically worked out plan to exclude competition in the

business of manufacturing and selling shoe machinery. On the question of intent and purpose these provisions "are heavier than the mere breath of a witness". *Dalrymple* v. *Craig* (1899), 149 Mo. at 356 (Valiant, J.). The leases show not only what was intended, but what has actually been done, and "a party cannot avoid the legal consequences of his acts by protesting at the time he does them that he does not intend to subject himself to such consequences". *International Contracting Co.* v. *Lamont* (1894), 155 U. S. at 310 (Mr. Justice, now Chief Justice, White).

Moreover, a group of lessees have testified to their entire satisfaction with a system of restrictions that at the least for seventeen years precludes them from availing of a single competitive equivalent of the restricted machines regardless of its superiority or lowered royalty. But this also was to be expected.

The defendants since 1899 have possessed and exercised an unrestrained power over all the lessees. They have had favors in the nature of unobligated "service" and free bonuses to be awarded or withheld according to the behaviour of a lessee. Soft speech and unprompted obedience as the twin con-comitants of unrestrained power were old at the point where authentic history begins.

> "The Lion, the Ass, and the Fox went hunting together and it was agreed that whatever was taken should be shared between them. They caught a large fat Stag which the Lion ordered the Ass to divide. The Ass took a deal of pains to divide the Stag into three pieces, which should be as nearly equal as possible. The Lion, enraged with him for what he considered a want of proper respect for his quality, flew upon him and tore him to pieces. He then called on the Fox to divide. The Fox, nibbling

off a small portion for himself, left the rest for the Lion's share. The Lion, highly pleased with this mark of respect, asked the Fox where he had learned such politeness and good-breeding. 'To tell the truth, Sire', replied the Fox, 'I was taught it by the Ass that lies dead there'". (Aesop.)

In *Henry* v. *A. B. Dick Co.* (1912), 224 U. S. at 55, the Chief Justice, dissenting, said: "Take a patentee selling a patented engine. He will now have the right by contract to bring under the patent laws all contracts for coal or electrical energy used to afford power to work the machine or even the lubricants employed in its operation. Take a patented carpenter's plane. The power now exists in the patentee by contract to validly confine a carpenter purchasing one of the planes to the use of lumber sawed from trees grown on the land of a particular person, or sawed by a particular mill."

The illustrations given fall short of the reality with which the record confronts the Court.

Respectfully submitted,

FRANK Y. GLADNEY,
Amicus Curiæ.

Supreme Court of the United States

OCTOBER TERM, 1917

No. 207

THE UNITED STATES,
Appellant,

v.

UNITED SHOE MACHINERY COMPANY,
OF NEW JERSEY, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

SUMMARY OF BRIEF AND ARGUMENT ON BEHALF OF UNITED SHOE MACHINERY COMPANY, ET AL., APPELLEES.

(REARGUMENT)

FREDERICK P. FISH
CHARLES F. CHOATE, JR.
MALCOLM DONALD
of Counsel for Appellees.

BOSTON
PRESS OF GEO. H. ELLIS CO.
1917

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In the Supreme Court of the United States

OCTOBER TERM, 1917.

No. 207.

THE UNITED STATES, *Appellant*,

v.

UNITED SHOE MACHINERY COMPANY, OF NEW JERSEY, ET AL., *Appellees*.

Appeal from the District Court of the United States for the District of Massachusetts.

SUMMARY OF BRIEF AND ARGUMENT ON BEHALF OF THE UNITED SHOE MACHINERY COMPANY, ET AL., APPELLEES.

PART ONE.

INTRODUCTORY AND GENERAL MATTERS.

The record in this case, though condensed, is so long, and the transactions involved so numerous and complicated, that the Brief and Argument for the Appellees is necessarily of considerable length.

The following Summary of the Brief and Argument has, therefore, been prepared for the assistance of the Court. It is not intended to take the place of the Brief, but to summarize the evidence and argument and thus aid the Court in reading the Brief itself.

I.

HISTORY OF THE CASE.

This is a direct appeal by the United States under the Expediting Act from a decree of the District Court for the District of Massachusetts dismissing the petition filed in this case.

The Court below which tried the case was composed of three judges of the first circuit—Judge Putnam, Judge Dodge, and Judge Brown (R. Vol. 1, pp. 1064, 1070).

All the testimony was given in open court under the new equity rules, with the exception of certain evidence relating to patents which was heard before a Special Examiner. The trial in open court occupied about eleven weeks.

All three judges rendered opinions, agreeing that the case was without merit, and that the petition should be dismissed.

In accordance with the opinions of the Court a decree was entered on May 14, 1915, dismissing the bill (R. Vol. 1, p. 1188).

The evidence taken in open court has been condensed and is contained in Vol. 1 of the Record. The evidence as to patents by direction of the Court was not condensed and is contained in Vol. 2 of the Record. The Exhibits are found in Vols. 3 to 5. There are also a large number of physical exhibits which could not be reproduced in the record.

II.

PARTIES DEFENDANT.

The petition having been dismissed as to nine corporate defendants prior to the taking of testimony, there remain 11 corporate defendants and 23 individual defendants (see Main Brief, pp. 3–5).

The United Shoe Machinery Company (hereinafter referred to as the "United Company"), a New Jersey corporation organized in 1899, is the principal defendant. It manufactures, leases, and sells certain types of patented shoe machinery and also supplies used by shoe manufacturers.

The United Shoe Machinery Corporation, a New Jersey corporation organized in 1905, owns the stock of the United Shoe Machinery Company. It is not an operating company and does not manufacture, sell, or lease shoe machinery.

The other corporate defendants are subsidiary companies and the United Company owns all or a majority of their stock. These subsidiary companies conduct minor departments of the United Company's business. For a statement of the business done by these subsidiary companies, see Main Brief, pp. 4–5.

None of these subsidiary companies competes with the United Company or with any other subsidiary company. Practically no evidence was introduced in re-

gard to them and they may be disregarded in the present case.

The individuals made defendants are or have been directors or officers of the United Company or its subsidiaries. As to most of these individuals no evidence was introduced except this fact.

III.

THE ALLEGATIONS OF THE PETITION.

The petition may be divided into several parts.

1. The Shoe Machinery Industry and the Situation existing in the Industry in 1899.

The petition alleges that the principal essential shoe machines are (R. Vol. 1, p. 991):—

(*a*) Lasting Machines.

(*b*) Welt Sewing and Outsole Stitching Machines.

(*c*) Heeling Machines.

(*d*) Metallic Fastening Machines.

Prior to 1899, it is alleged, the principal concerns engaged in the shoe machinery industry were:—

(*a*) The Goodyear Shoe Machinery Company (hereafter called the Goodyear Company), which itself and through its subsidiaries the International Goodyear Company and the Goodyear Company of Canada made 80 per cent. of the welt sewing and outsole stitching machines and 10 per cent. of the lasting machines used in the country;

(*b*) The Consolidated & McKay Lasting Machine Company (hereafter called the Consolidated Company), which made lasting machines and which owned the Davey Pegging Machine Company which made machines for attaching soles by wooden pegs;

(*c*) The McKay Shoe Machinery Company (hereafter called the McKay Company), which made metallic fastening machines and heeling machines; and

(*d*) The Eppler Welt Machine Company (hereafter called the Eppler Company), which itself and through its subsidiary the International Eppler Welt Machine Company made welt sewing and outsole stitching machines.

These companies, it is alleged, were in 1899 manufacturing their machines under patents. It is further alleged that many of the basic patents were about to expire and the lawful monopoly of such machines would have shortly come to an end (R. Vol. 1, pp. 992–3).

2. Unlawful Plan Charged.

The petition next alleges that certain of the individual defendants, being owners and officers of the above-named companies, not satisfied with the lawful monopolies which they held under their patents, and intending unlawfully to extend the patent rights held by them and to use the same as the means for unlawfully controlling interstate and foreign commerce in shoe machinery, determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery, to destroy existing competition in such machinery, and to exclude all others from such trade.

They therefore conceived the following plan (R. Vol. 1, p. 994), namely:—

(1) To acquire

> "the ownership or control of all concerns engaged in manufacturing and dealing in any and all kinds of shoe machinery";

and

(2) Having done so,—

> "to refuse to sell or lease any of the essential machines to the manufacturer of shoes except on condition that he buy or lease of them practically all other machinery of

whatever kind necessary or useful to such manufacturer of shoes,"

and thereby to exclude all competition in shoe machinery and to monopolize the trade therein.

3. Steps in Carrying Out the Foregoing Plan.

The petition next charges that certain acts described in the petition were done "in carrying out the above-mentioned unlawful project" (R. Vol. 1, p. 994). These acts may be summarized as follows:—

Formation of the United Company.

The defendants in February, 1899, formed the United Company, which took over the business of the Goodyear Company (and the International Goodyear Company which it controlled), the Consolidated Company, and the McKay Company in exchange for stock and cash at values far in excess of their real worth. Certain stock, it is alleged, was also issued for cash at par, which was used, among other things, to purchase the stock and business of the Eppler Company, its subsidiary the International Eppler Company, and also the Goodyear Company of Canada. It is alleged the defendants thus acquired control of the greater portion of the trade and commerce in the machines above described, to wit, Welt Sewing and Outsole Stitching Machines, Lasting, Heeling, and Metallic Fastening Machines (R. Vol. 1, pp. 995–996).

Leases of Machines.

It is alleged that the defendants thereupon discontinued the sale of machines and adopted arbitrary lease and license

agreements containing provisions not found in previous leases (R. Vol. 1, p. 997). These provisions, it is alleged in the conclusion of the petition (R. Vol. 1, p. 1028), are unlawful in that they exact unlawful covenants and conditions on the part of the lessee requiring him to use machines leased from the United Company of all kinds exclusively, providing that if these covenants are violated the lessee shall forfeit all his machines, and requiring him to use the leased machines for seventeen years.

Acquisitions of Other Concerns.

It is alleged that the defendants, in pursuance of their purpose to monopolize the shoe machinery industry, have acquired about 59 different competing concerns. Particular stress is laid on the purchase of the inventions of Thomas G. Plant made in September, 1910, more than eleven years after the formation of the United Company (R. Vol. 1, pp. 999–1023).

Covenants Taken from Vendors and Inventors.

It is alleged that the defendants took from the vendors covenants not to engage in business for long terms of years in competition with the defendants and to assign future inventions they might make or own (R. Vol. 1, p. 1000).

Other Monopolistic Acts.

The petition charges that the defendants have by threats induced customers to desert competitors; have offered rebates to shoe manufacturers dealing with them exclusively; have threatened competitors; have bought patents and

not used them; and "have done many other unlawful acts, too numerous to here set forth in detail" (R. Vol. 1, p. 999).

4. Profits.

It is alleged that the United Company has made excessive profits (R. Vol. 1, p. 1026).

5. Monopoly Acquired.

It is finally alleged that the defendants have by the above means acquired an unlawful monopoly of shoe machinery (R. Vol. 1, p. 1027).

6. Relief Asked.

A variety of relief is asked for, the principal relief requested being, (*a*) that the United Company be dissolved, and (*b*) that the provisions in the leases complained of be declared illegal and that the United Company be enjoined from enforcing them (R. Vol. 1, pp. 1029–1032).

ATTEMPT OF THE UNITED STATES TO LIMIT THE CHARGE MADE IN THE PETITION.

The petition, as shown above, charges that the defendants planned to monopolize all shoe machinery and also charges the monopolization of all shoe machinery in pursuance thereof.

During the course of the trial it developed that the United Company did not manufacture, and had never

attempted to manufacture, or acquire concerns for manufacturing certain important classes of shoe machinery comprising about half the machines used in the ordinary shoe factory, such as a variety of machines used in sewing the uppers of shoes, and further that there were numerous manufacturers of various machines of the kinds furnished by the United Company. The United States, therefore, admitted of record that it only charged a plan to obtain a monopoly, and a monopoly acquired in certain limited classes of machinery, viz., machines for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines. An amendment so limiting the petition was presented just before the close of the case but was not allowed.

This attempt to limit its case accentuates the complete failure of the United States to prove its charge as made by the petition and its attempt to succeed by making a different case. The case was tried on the theory that an attempt to monopolize and a monopoly of all shoe machinery was charged. The limitation of the charge to certain limited classes of shoe machinery is a material variance.

For a fuller statement of this attempt to limit and to vary the charge made by the petition, see our Main Brief, pp. 11–15.

IV.

THE ISSUE IN THE PRESENT CASE.

The issue presented in the District Court was whether the defendants formed a plan, as charged in the petition: (1) To acquire all concerns engaged in manufacturing shoe machinery, or (if the limitation insisted on by the United States be accepted) to acquire all concerns engaged in manufacturing certain specified classes of shoe machinery; and (2) thereupon to refuse to lease any essential machines unless the shoe manufacturer took practically all his other machines from them. And if they did form such a plan, whether or not such plan was unlawful, and whether they carried out the plan and thereby acquired an unlawful monopoly.

At the trial in the District Court there was no attempt to show the adoption of any such unlawful plan by direct evidence. The United States for proof of the plan relied entirely upon various transactions which it alleged were undertaken in pursuance thereof.

The District Court held that the various transactions justified no inference of any such unlawful plan or of any other unlawful plan; that they were normal lawful transactions; and that no unlawful monopoly was acquired thereby. This conclusion necessarily followed from the various facts found by the District Court. Accepting these facts, we submit no doubtful question of law is raised.

The case below was heard in open court. Practically all the evidence introduced by the United States came from hostile witnesses whose testimony was disputed. It comes before this Court in condensed form (see Main Brief, pp. 38–42).

In accordance with the well-recognized rule applicable in such cases the findings of fact made by the District Court should be accepted if they find any support in the record.

In *Adamson* v. *Gilliland*, 242 U. S. 350, a patent case heard by the District Court on oral testimony, the practical rule was said by the Court to be,—

> ". . . that so far as the finding of the master or judge who saw the witnesses 'depends upon conflicting testimony, or upon the credibility of witnesses, or *so far as there is any testimony consistent with the finding, it must be treated as unassailable*'" (italics ours).

For additional authorities on this point, see Main Brief, pp. 33–37.

This rule is especially applicable in a case like the present in which the question of intent is of primary importance and which involves such a large number of different transactions and such a vast amount of testimony. The officials of the United Company testified in open court for weeks and explained fully their motives and purposes, and the District Court which saw and heard them is the best judge of their character and credibility. Furthermore, the District Court took evidence in open court for nearly three months and examined hundreds of transactions involving the entire business life of the company. Their findings of fact as to the purposes and intent of the defendants, and

the effect of their transactions made after such exhaustive study should not be disturbed unless this Court is convinced that they cannot be sustained (see Main Brief, pp. 38–42).

The primary issue before this Court, therefore, is whether the findings of fact made by the District Court find any support in the record. Unless manifestly wrong they should be accepted, and if accepted they dispose of the present case. If this Court determines that the District Court's findings are manifestly wrong, then and then only it will be necessary for this Court to determine the true facts and to apply the law thereto.

V.

FINDINGS OF FACT BY THE DISTRICT COURT.

The more important facts found by the District Court are quoted in our Main Brief, pp. 44–70. We shall summarize them here.

The District Court found, among other things, as follows:—

1. Findings as to Alleged Unlawful Plan formed by the Defendants.

The District Court found that the defendants did not plan to acquire all concerns engaged in the shoe machinery business, as alleged in the petition, nor all machines for attaching the bottoms to the uppers of shoes, to which classes of machines the United States attempted to limit its charge during the course of the trial (see Main Brief, pp. 44–45).

The District Court found that the defendants did not plan to refuse to sell essential machines except on condition that practically all other machines were taken from them (see Main Brief, p. 45).

The District Court thus found that the defendants never formed the unlawful plan charged in the petition.

The District Court further found that the evidence failed to afford "any support for the alleged charges in the bill of

intended oppression, arbitrary conduct, or anything of that nature" (see Main Brief, pp. 65–66).

The foregoing general findings, we submit, dispose of the petition. But the District Court went further, and, considering the various transactions complained of separately and their effect, found that none of them was unlawful or shown to have been carried out with unlawful purpose, and they thus disposed of any possible charge whether or not made by the petition which could be based upon these transactions.

2. Findings as to Formation of the United Company.

The District Court found that the defendants' basic patents were not about to expire in 1899, and that this was, therefore, not a motive for the formation of the United Company. The evidence so completely refuted this charge that the United States has abandoned it (see *infra*, pp. 73–74; see also Main Brief, pp. 48–49).

The District Court found that the constituent companies which were consolidated into the United Company were dealing, with slight and immaterial exceptions, in distinct non-competing lines of machinery; that the purpose of the consolidation of these companies into the United Company was not to eliminate competition; and that such competition, if any existed between them, was not significant enough to make their consolidation unlawful (see Main Brief, pp. 45–48). It also found that the constituent companies were not taken over at excessive prices as alleged (see Main Brief, p. 49).

3. Findings as to the Leases.

The District Court found that the leasing system was of great benefit to shoe manufacturers (see Main Brief, p. 50).

It found that the United Company did not discontinue the sale of machines as alleged. None of the constituent companies had ever sold machines (see Main Brief, p. 50).

> "An attempt to support this charge by evidence wholly failed. Nothing of the kind was done nor is it easy to see what grounds for making the charge could ever have been supposed to exist" (R. Vol. 1, p. 1153).

The District Court found that the evidence completely refuted any charge that the United Company by its leases compelled shoe manufacturers taking machines previously furnished by one of the constituent companies to take other machines which had been put out by one or more of the other constituent companies and that the United Company was entitled to a full clearance from this charge (see Main Brief, pp. 51–52).

The District Court found that the provisions in the leases adopted by the United Company were not adopted for the purpose of excluding competitors' machines but were

> "obviously prompted by the purpose of developing the company's business"

through the perfectly legitimate method of offering them "on terms more advantageous to users" (R. Vol. 1, p. 1159).

The Court said (R. Vol. 1, p. 1159):—

> "Modifications in the contracts offered them tending, as these are shown to have done, to enable the company,

through provisions adapted to increase the number of shoes worked on by each machine, to lessen the royalty charged per pair, and to diminish or dispense with the initial payment before required, were so obviously prompted by the purpose of developing the company's business through the perfectly legitimate method of offering them on terms more advantageous to users, that it would be unjust to treat them, on evidence no stronger than that here presented, as really intended to accomplish an arbitrary exclusion of users from any dealings with others."

The District Court found that not only were the provisions adopted for a legitimate purpose but that they were not inherently unlawful apart from unlawful intention as they did not accomplish any unlawful restraint (see Main Brief, pp. 52–54).

The District Court further found that the defendants' success was due not in any substantial degree to the provisions complained of in the leases. It was due to the merits of the United Company's patented machines (see Main Brief, p. 55).

As to the allegations that the United Company oppressed its lessees by requiring them to pay exorbitant charges for repair parts and unreasonable return charges on leased machines the District Court found that there was no evidence to justify these charges. It said:—

"The evidence failed to show that lessees from the United Company had ever been compelled to pay exorbitant charges for repair parts, etc., or to pay any unreasonable return charges on leased machines" (R. Vol. 1, p. 1155).

4. Findings as to Acquisitions.

With reference to the acquisitions the District Court treated separately from the other cases the acquisition of the patents and inventions of Thomas G. Plant in 1910, on which great stress was laid by the United States.

In considering the other alleged acquisitions, which were mostly of slight importance, the District Court eliminated a large number of them from consideration because they involved:—

(*a*) The acquisition of concerns which were not engaged in furnishing shoe machinery at all, but were making or dealing in supplies such as sandpaper, patent brushes, pegwood, wire, treeing machines, needles, awls and rawhide mallets, nails and tacks, cement, blacking, metallic heels and counters and eyelets; or

(*b*) Machines or inventions for use with uppers, as to which no monopoly is charged; or

(*c*) Mere employment contracts or contracts to commute existing obligations not involving the acquisition of any business, machinery, or patents (R. Vol. 1, pp. 1138–1139).

As to the remaining instances which related to the acquisition of patent rights, patents, or machines "capable of being included within some of those kinds of shoe machinery" (R. Vol. 1, p. 1139) to which the case relates, the District Court found that as to the larger portion the acquisition was not of a competing machine or device, but, on the contrary, the acquisition was of a machine or device "of a kind not then being produced by the United

Company" (R. Vol. 1, p. 1139). As to the comparatively few remaining acquisitions, it appeared that the United Company

> "was at the time producing or trying to develop for production a patented machine for doing work more or less similar to that for which the invention of the machine acquired was intended" (R. Vol. 1, p. 1139).

The District Court found that in all such cases

> " . . . it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding[ed] in rendering commercially successful.
>
> "No case, however, is found among the acquisitions of the character last descr bed wherein it has fairly been made to appear that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company, of such consequence as justifies either the conclusion that the acquisition was for the purpose of suppressing such competition, or the conclusion that a material restraint of trade was thereby accomplished" (R. Vol. 1, pp. 1139–1140).

The Court further found that in most of these cases the vendor or the United Company claimed infringement which was settled by the acquisition (R. Vol. 1, p. 1140).

The Court further found that these acquisitions were

> "in importance and amount, only of a consequence relatively small in proportion to the entire field then lawfully belonging to the United Company.
>
> "It does not appear that they contributed anything essentially important to that degree of commercial suc-

> cess obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build. Speaking of them generally, it may be said that the invention or machine obtained required further development in the company's hands before it could be properly used" (R. Vol. 1, p. 1140).

The Court further found that during the same period the United Company refused to purchase concerns and inventions much more numerous than those purchased (R. Vol. 1, p. 1141).

The District Court further found that the acquisitions were not made at excessive prices and that this was not even insisted on by the United States in argument (see Main Brief, p. 62).

5. Findings as to the Purchase of Plant's Patents and Inventions.

The United Company in 1910 acquired many valuable inventions from Thomas G. Plant, and much stress is laid on this acquisition by the United States, apparently as showing that an unlawful purpose existed from 1899, the date of the formation of the United Company.

The District Court's findings completely refute the contentions of the United States. It found that Plant was not

> "a competitor in the ordinary sense. He was not carrying on any going business in shoe machinery. He was neither producing his machines nor supplying them to users upon any commercial scale, nor was he prepared so

to supply them, though he had issued an illustrated catalogue of them" (R. Vol. 1, p. 1142).

It found that the evidence

> " . . . sufficiently proves that they [the negotiations for the purchase] were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else; but that, on the contrary, all the efforts toward such a purchase were made by him" (R. Vol. 1, p. 1143).

The Court further found that the Plant machines embodying his inventions were not commercially successful, or capable of profitable use in their then stage of development (see Main Brief, pp. 59–60).

The Court found that the purchase was not made to escape competition. The reasons for the purchase were found to be the value of the Plant patents

> "used as they [the defendants] only could have used them in further developing and perfecting the machines they were then producing or trying to produce" (R. Vol. 1, p. 1145);

and the relief of the United Company from a vast amount of pending litigation and controversy (R. Vol. 1, p. 1145).

The inventions were found to be worth the price paid for them (R. Vol. 1, p. 1145).

The Court said:—

> "The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate

business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition" (R. Vol. 1, pp. 1145–1146).

6. Finding as to Covenants taken from Vendors.

The Court found that the covenants taken from vendors showed no unlawful purpose; that they were framed in each case according "to the circumstances of the particular transaction;" and that it was not proved that any of them exceeded what the law permits (see Main Brief, pp. 62–63).

7. Findings as to Other Unfair, Monopolistic or Oppressive Acts.

The District Court acquitted the defendants entirely of these charges, holding that, in spite of "efforts which may fairly be described as extraordinary" to introduce every act or word of the defendants which might lend color to these charges, the results were so insignificant that the conclusion seems justified that the policy and methods of the defendants were in general "above reproach in any of these respects" (see Main Brief, pp. 63–64).

8. Finding as to Profits.

The District Court found that the United Company's profits were not shown to be unreasonable or excessive or its charges for machines exorbitant (see Main Brief, p. 64).

9. Findings as to Monopoly.

The District Court found that the United Company had no unlawful monopoly of all machinery and the United States, as we have stated, abandoned this charge (see Main Brief, p. 66). The Court further found that the defendants had no monopoly of machines for attaching the bottoms to the uppers of shoes as to which classes of machines the United States limited its charge. The Court said:—

> "In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate means—better machines. *Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success*" (italics ours) (R. Vol. 1, p. 1135).

The Court further found that the defendants' success was due to the merits of their patented machines and the service they rendered users of the machines. Thus the various transactions criticised by the United States, since they were not the cause of the amount of business done by the defendants, become immaterial.

The District Court said:—

> "It is impossible to believe that the defendants' equipment is in so many shoe factories for any other substantial reason than the merits of what they have had to offer" (R. Vol. 1, p. 1187).
>
> "Nor can I regard the case as one in which any presumption arises, from the fact that so large a proportion of the users of these machines use the defendants'—that the defendants have committed any of the above forbid-

den acts in accomplishing the above result. The proof is too complete that it has been in fact reached by the use of methods entirely lawful, the leading features whereof are below indicated" (R. Vol. 1, p. 1136) (see also Main Brief, pp. 67–70).

The Court, after referring to the United Company's patents and improvements, the service it has rendered users of its machines, and the standardization of the parts of its machines, added:—

"That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question" (R. Vol. 1, p. 1137) (see also Main Brief, pp. 67-70).

VI.

THE PRESENT CASE IS UNIQUE IN SEVERAL RESPECTS.

The present case differs materially from any case heretofore presented to this Court with the exception of *United States* v. *Winslow*, 227 U. S. 202, in which the formation of the United Company was held lawful.

In the first place, the United Company's machines were created under and are strongly protected by patents, are superior to any other machines made, and, as the District Court found, represent "the highest development ever reached in the art to which they belong" (R. Vol. 1, p. 1137). There is a natural presumption that a concern which furnishes the best machines made, which are patented, and which therefore cannot be manufactured by anyone else, should lawfully have a large portion or all of the business in machines of this character, just as the Bell Telephone Company, due to its patents, has furnished practically all the telephones in use.

Another unique characteristic of the present case is that no previous competition was eliminated by the United Company. Its constituent companies, except for a slight incidental overlapping of the field of one or two machines out of a large number, dealt in distinct non-competing machines. These machines were patented and were the best made, and therefore at the time of the formation of the United Company there were, for practical purposes, as the

United States alleges in its petition and now admits, no competitors in the field.

The United Company, therefore, did not enter a field in which competition existed and eliminate such competition. It entered a field in which, due to lawful patent monopolies of its constituent companies, there was, as a practical matter, no competition to eliminate. The machines as to which monopoly is charged are the same machines of which the constituent companies had lawful patent monopolies, but developed to an extraordinary degree of efficiency by a multitude of new inventions which are the subject of many new and now existing patents, and certain new patented machines invented or developed by the United Company since its formation.

PART TWO.

FACTS AND ARGUMENT.

I.

SPECIAL CHARACTERISTICS OF THE SHOE MACHINERY INDUSTRY.

The shoe machinery industry has special characteristics which differentiate it strikingly from any other industry in the country. These characteristics existed when the United Company was formed, and its methods of business were necessarily adapted to meet them. In considering whether the defendants' methods were "usual," "normal," and "orderly," whether they were entered into "with the legitimate purpose of reasonably forwarding personal interest and developing trade," or "on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done" with unlawful intent (*Standard Oil Case*, 221 U. S. 1, 58), it is essential to bear constantly in mind the particular conditions with which the defendants dealt. The test in the present case is not what would be normal, reasonable, and legitimate in the tobacco or cotton goods business, but solely what was normal, reasonable, and legitimate in dealing with the conditions peculiar to the shoe machinery industry.

Some of the most striking characteristics of the shoe machinery industry are as follows:—

1. A great variety of different machines are used in the manufacture of each shoe. Thus on certain classes of shoes over 100 different operations are performed by different machines (Defs.' Ex. 235, R. Vol. 5, pp. 531–671).

There is also a great variety of types of shoes made, such as the McKay sewed shoe, in which the upper is united to the sole by a seam running through both outsole and insole inside the shoe; the welt shoe, in which a narrow strip of welt is attached to the upper and insole, and the outsole then attached to the welt so that the foot does not rest on the seams which attach the sole; the turn shoe, which has a single sole to which the upper is sewed while the shoe is inside out, the shoe being then turned during the process of manufacture; the pegged shoe, in which the sole is attached by wooden pegs; the nailed shoe, in which it is attached by nails; the standard screw shoe, in which it is attached by screws; and also various modifications of these types, such as the mock welt. Each type of shoe requires to a certain extent different machines.

The result is that a great variety of machines are required in the shoe trade. The United Company, which has specialized in bottoming machines and which does not manufacture any machines for sewing the uppers of shoes, and which manufactures and furnishes only from 30 per cent. to 50 per cent. of the total number of machines used in the ordinary factory (see Main Brief, pp. 602–605), nevertheless makes over 300 different kinds of machines.

2. The shoe machinery business, as stated above, is of recent origin. The industry, being entirely the result of inventions, has been dominated by patents. While machines of the kind in use seventeen or more years ago, on

which the patents have expired, can now be manufactured by any one, there is no demand for such machines. The later improvements have been so remarkable and have increased the efficiency and capacity of the machines to such an extent and effected such increased savings in the manufacture of shoes that it would not pay a shoe manufacturer to use unpatented machines of the type in use twenty years ago, even if he obtained them free. To find a market for his machines and to compete on equal terms a shoe machinery manufacturer must have machines embodying new inventions which make his machines as efficient as those of the latest type.

3. From the very beginning of the industry all of the principal shoe machines have been leased and not sold, the lessor depending for his return on a royalty of a certain specified sum for each pair of shoes on which the leased machine was used. Originally an initial payment was also charged to cover the cost of installing the machines and instructing operatives, but this has since been largely eliminated by the United Company.

Under this lease system the entire industry of manufacturing shoes by machinery was created and developed. It was the system under which the constituent companies furnished all their machines, at the time the United Company was formed. It had been adopted because it was found most satisfactory to the shoe manufacturer, and best adapted to increase the use of the machines, and, consequently, the return to the shoe machinery manufacturer; in other words, because it was best suited to the conditions of this particular industry.

For a full statement of the reasons for the adoption of the lease system, see Main Brief, pp. 248–253.

4. Bottoming Machines are extremely delicate and have many moving parts which easily get out of adjustment, thus either stopping the use of the machines, delaying their operation or causing poor work. Furthermore, the moving parts frequently wear out or need replacement. It is thus essential to the continuous and efficient operation of such machines that a stock of repair parts be near at hand to replace broken and worn parts and, owing to the delicate character of the machines, it is further essential that the shoe manufacturer should be able to obtain the frequent services of skilled mechanics thoroughly acquainted with the machines in order to repair them and maintain them in efficient condition. If such parts and service are not immediately available when a machine breaks down or gets out of adjustment, imperfect work results or the machine cannot be used at all.

The importance of maintaining the machines in efficient condition is multiplied many fold by the fact that a number of different machines are used in the manufacture of each shoe. The work in the shoe factory is planned to travel from one room to another in fixed quantities. A certain number of pairs of shoes are started each day and an equal number are finished each day. There is a regular flow of shoes through the factory from one machine to another. No large number of shoes are kept prepared ready for the operation of each machine. To do so would necessitate having a large amount of capital invested in material and lasts and would require too much space to store the partially prepared shoes. Furthermore, shoes in process of manufacture must be in "temper," that is, the soles and heels must be artificially moistened. Once in "temper" the shoe must be completed as rapidly as possible.

When one machine breaks down, it, therefore, not only stops the work on that particular machine, but it stops the work on the entire line or series of machines of which that particular machine forms a part (see Main Brief, pp. 334–338).

The daily capacity of many of the important machines is very large, some of them having a production of over 1,200 pairs per day. As most shoe factories have a comparatively small production, many, if not most of them, require only one machine of certain kinds (see Main Brief, p. 173). If one of these machines breaks down, it stops the entire production of the factory. All of the operatives are thrown out of work and the income of those companies which have leased machines on a royalty basis ceases until such machine is repaired.

Furthermore, the machines have been constantly improved and thereby changed and new machines invented, and it is essential to their effective operation that operatives be instructed by the manufacturer of the machines as to their proper use.

Shoe manufacturing is carried on to a large extent by small manufacturers. They cannot afford to keep skilled mechanics to repair their machines and instruct operatives in the use of the machines, nor can they afford to maintain a stock of extra parts. Even the large shoe manufacturers cannot furnish such service for themselves effectively and without undue cost. The manufacturer of the machines who can provide such service for a large number of factories can alone furnish it economically and efficiently.

II.

FORMATION OF THE UNITED COMPANY.

Our first inquiry is whether the formation of the United Company affords evidence of the unlawful plan charged in the petition or was a step in carrying it out.

We do not understand that the United States denies that there were substantial business reasons for the formation of the United Company, or that it denies that these legitimate business reasons were motives for the formation of the company. We understand their contention to be that there was competition between certain of the constituent companies, and that the elimination of this competition was also a motive for the formation of the company or made it inherently unlawful.

The United Company was organized in February, 1899, to take over the business of the Goodyear Company, the Consolidated Company and the McKay Company.

Each of these three companies occupied a special field of its own which it had created and developed under its patents. The machines of each company were used for different purposes and therefore did not compete. No other person had invented equally good machines and each of these companies, therefore, was furnishing practically all the machines of the kinds it manufactured which were used in the country (see Main Brief, pp. 84–89).

1. BUSINESS DONE BY THE CONSTITUENT COMPANIES.

A. Business of the Goodyear Company.

The Goodyear Company manufactured and leased patented machines for attaching the welt to the upper and the outsole to the welt of Goodyear welt shoes. It had two principal machines—the Goodyear Welt and Turn Machine (called the welter) for attaching the welt to the upper, and the Goodyear Outsole Rapid Lockstitch Machine (the stitcher) for attaching the outsole to the welt. The welter was used also in the manufacture of Goodyear turn shoes. The Goodyear Company had also thirteen auxiliary machines used in preparing the work for the welter and stitcher or in finishing it in certain details after the operation of the welter and stitcher, and three auxiliary machines similarly used in connection with its welter in the manufacture of Goodyear turn shoes (see Main Brief, p. 85).

The manufacture of the foregoing machines constituted the principal business of the Goodyear Company.

The Goodyear welt shoe was a better grade of shoe than the McKay, pegged, or standard screw shoes, which were the classes of shoes generally made by machines, but the Goodyear welt shoe was more expensive to manufacture. It gradually proved its merit, but in 1899 only 22,700,000 pairs of welt shoes were made out of a total production in the country of 172,786,000 pairs of shoes of all kinds, of which practically half were McKays. In 1898 only about 17,000,000 pairs of welt shoes were made. About an equal number of turn shoes were made in that year. The Good-

year Company, therefore, occupied a comparatively limited and special field which it had itself created and which it lawfully controlled by reason of its patents.

The Goodyear Company also manufactured and leased the Ideal Lasting Machine. This machine was designed and adapted for lasting women's welt shoes, which no other machine in the market could do successfully. It was not adapted for lasting men's welt shoes. The manufacture of this machine was an insignificant part of the Goodyear Company's business. Only .77 of 1 per cent. of the shoes lasted on machines in 1899 were lasted on the Ideal. Most women's welt shoes were at that time lasted by hand.

For a more complete statement of the business done by the Goodyear Company, see our Main Brief, pp. 84–86.

B. Business of the Consolidated Company.

This company manufactured and leased three kinds of patented lasting machines; namely, the Chase, the McKay & Copeland, and the Hand Method McKay Machine.

The Chase Machine was adapted to and developed for lasting men's welt shoes (R. Vol. 1, p. 397, lines 39–40).

The McKay & Copeland Machine was commercially adapted only for lasting heavy brogans (R. Vol. 1, p. 399, lines 13–14), that is, very heavy coarse shoes (R. Vol. 1, p. 397, line 14).

The Hand Method McKay Machine was designed and adapted for lasting McKay sewed shoes (R. Vol. 1, p. 399, line 22). It could not be used for lasting welt shoes (R. Vol. 1, pp. 399–400).

The Consolidated Company in 1899 had been endeavor-

ing to develop a hand method welt lasting machine. This machine had not been made commercially satisfactory (R. Vol. 1, p. 400, lines 27–32).

C. Business of the McKay Company.

This company manufactured and leased patented metallic fastening machines, used to insert metallic fastenings, and patented heeling machines, used for the preparation and attaching of heels (R. Vol. 1, p. 4, lines 23–36).

D. Other Concerns acquired by the United Company at its Formation.

Incidentally to the acquisition of the three constituent companies mentioned above, the United Company acquired the following concerns:

The *Goodyear Company of Canada* and the *International Goodyear Company.* These concerns respectively held the patents for the Goodyear Company's inventions which had been taken out in Canada and abroad and they were furnishing the Goodyear machines in Canada and abroad under those patents. The acquisition of these concerns merely enabled the United Company to furnish Goodyear machines outside the United States.

The *Davey Pegging Machine Company.* This company made a pegging machine used in attaching the soles of shoes by pegs. It did not compete with any of the other companies. As few pegged shoes are made its business was small. In 1911 the United Company had only 146 Pegging Machines outstanding (Defs.' Ex. 228, R. Vol. 5, p. 430).

The Davey Company was a subsidiary of the Consolidated Company, and was acquired incidentally as a result of the acquisition of that Company.

E. Acquisition of the Eppler Company.

The Eppler Welt Machine Company and its subsidiary the International Eppler Welt Company were attempting to furnish a patented welter, stitcher, and a few auxiliary machines for making a welt shoe by the Eppler process. This process was, as the record shows, much inferior to the Goodyear process, and although the Eppler Company had been organized for a number of years it did practically no business, and in 1899 it was evident that its machines were doomed to failure. Its machines infringed the Goodyear Company's patents, patent suits brought by the Goodyear Company were pending to enjoin their use, and counsel for the Goodyear Company was confident of success. After the formation of the United Company was agreed upon, it was found that the Eppler Company could be acquired and the litigation thus settled. The Eppler Company was accordingly acquired, not to obtain its business, as it had practically none, but to enable the United Company to start business free from litigation (*infra*, pp. 52–55).

F. Field Occupied by the Constituent Companies.

As shown above each of the constituent companies was engaged in manufacturing a limited class of machines which it had created and developed under its patents, and in which it specialized. They were not in competition.

Thus the Goodyear Company made a welter, stitcher and certain auxiliaries and a machine for lasting women's welt shoes. The Consolidated Company made lasting machines for men's welt, McKay and heavy nailed shoes. The McKay Company made metallic fastening and heeling machines.

These machines were all used in the bottoming of shoes. They did not, however, include all machines used for this purpose. Thus the constituent companies did not manufacture the McKay Sewing Machines used for attaching the uppers to the bottoms of substantially one-half of the shoes manufactured in 1899 (Defs.' Ex. 215, R. Vol. 1, p. 424). They did not manufacture any of the General Department Machines, of which the United Company now manufactures over 170 different kinds (Defs.' Ex. 227, R. Vol. 5, p. 425), and a number of which are used in the bottoming process.

Furthermore, they made no machines for cutting out, sewing and making the uppers of shoes, or button-hole machines, and of course they did not manufacture the 39 machines which have been invented by the United Company since its organization for performing operations previously performed by hand.

The field occupied by the constituent companies, therefore, was comparatively limited.

Defendants' Exhibit 221A (R. Vol. 5, p. 370A) gives a list of eighty-five different dealers in machinery, findings and supplies advertising in the trade papers in the years 1899 to 1902, which the United Company did not purchase and made no attempt to purchase. This list includes such important companies as the Wheeler & Wilson Sewing Machine Company, which supplied probably 90 per cent.

of the machines which united the parts of the upper of the shoe (R. Vol. 1, p. 415, lines 12–14), and the Reece Buttonhole Machine Company, which furnished probably every machine for making buttonholes in shoes and for finishing the buttonholes (R. Vol. 1, p. 415, lines 15–17).

The fact that the United Company made no attempt to acquire these other important companies establishes conclusively that the United Company was not formed for the purpose of acquiring all concerns engaged in the shoe manufacturing business, and further that it did not plan, as alleged in the petition, to require shoe manufacturers to take from it all shoe machines which they needed.

G. Capital of United Company.

The United Company was organized with $25,000,000 authorized stock, half common and half preferred. A total of $17,247,000 of stock was issued. Of this amount $14,851,565 par value was issued in exchange for stock of the Goodyear, International Goodyear, the Consolidated, and the McKay Companies. $2,395,435 par value was issued for cash which was used for the purchase of the Eppler Company, Canadian Goodyear Company, for payment of debts of the constituent companies, organization expenses, and $500,000 working capital (see Main Brief, pp. 91–92).

The par value of the stock issued did not exceed the value of the stock and properties acquired (see Main Brief, p. 92), and the District Court so found (see Main Brief, p. 49).

2. PURPOSES FOR WHICH THE UNITED COMPANY WAS FORMED.

Prior to the formation of the United Company a shoe manufacturer would lease his welt machines from the Goodyear Company, his lasting machines (except for women's welts) from the Consolidated Company, and his metallic fastening and heeling machines from the McKay Company.

This situation had serious disadvantages, both to the shoe manufacturers and to the companies, and prevented an efficient use of the machines. It was undoubtedly one of the reasons that the welt machines were not more largely used and that half of the shoes then manufactured were lasted by hand instead of by machine.

In the first place it is essential to the efficiency and productivity of such machines that service be rendered with them by the manufacturer of the machines. We have explained above the vital importance of this service which consists in furnishing skilled mechanics to repair machines, in keeping a stock of repair parts at some convenient place near the shoe manufacturer's factory, and in instructing operatives in the use of the machines (*supra*, pp. 30–31). If a single machine of a series of bottoming machines breaks down, it stops production on the entire series. In many small factories which have a single machine of a kind, this means stopping the work of the entire factory. It further means that lessors of all the machines of the series receive no royalty while they are not producing shoes.

Each of the constituent companies was endeavoring to furnish service, but no one of them had by itself sufficient

machines outstanding in any one factory to enable it to furnish a satisfactory service. Originally most of the shoe manufacturing business was done in Massachusetts near the company's plants so that new parts and mechanics could be furnished the shoe manufacturer within a comparatively short time.

As the shoe manufacturing business spread over the country, it was absolutely essential to the efficiency of the machines that the constituent companies should maintain offices at convenient places in the various shoe manufacturing districts of the country, maintain mechanics at such offices, and also keep there a full supply of parts. None of the constituent companies could afford to do this satisfactorily.

The result was that each company suffered, and furthermore, no one company could remedy the situation. If, for example, the Goodyear Company gave good service and the McKay Company did not, the machines of the Goodyear Company would be out of use whenever the McKay machines broke down.

Furthermore, in furnishing such service as was given there was much unnecessary duplication of expense. Each company had its offices or agencies in the same place and each was sending mechanics to the same factory (Main Brief, p. 175–178).

In the case of shoe machinery, one machine prepares the work for the succeeding machine. The principal bottoming machines must be constructed and adapted for use together; otherwise they cannot be used together at all or poor work inevitably results (see Main Brief, pp. 334–340). As the different bottoming machines were made by the different constituent companies, each of which had its own ideas, there was not complete harmony between them.

Again, there are many parts of the various machines in common. Had the machines all been manufactured by one company these parts could have been standardized and the same part in many cases be used in a number of different machines, thus obviating the necessity of carrying so many different kinds of parts. Owing to the fact that the machines were manufactured by different companies, there was no standardization of parts, which resulted in much inconvenience and expense (Main Brief, pp. 168–170).

Mr. Winslow, who was the chief executive of the Consolidated Company, and Mr. Howe, who was the executive head of the Goodyear Company, early in 1898 came to the conclusion that if the Goodyear Company, making welt and turn machines, and the Consolidated Company, making lasting machines, were consolidated in a single company, such company could greatly improve the service rendered lessees of the machines, could economize in the manufacture of the machines by concentrating the manufacture in one factory and by standardizing the parts, and as a result could greatly increase the productivity and efficiency of the machines. The result would be increased production by the machines, greater satisfaction to lessees, a reduction in the charges made for the machines, and an increase in the total royalty earned by each machine. It was further believed that by lowering the cost of the machines and improving the service, shoe manufacturers would be encouraged to increase their manufacture of Goodyear welt shoes, the best type of shoes made, but the most difficult to manufacture (see Main Brief, pp. 159–160). Mr. Winslow's testimony as to the reasons for the formation of the United Company appears in R. Vol. 1, pp. 407–413.

The same reasons which caused Mr. Winslow and Mr.

Howe to deem it highly desirable that the Goodyear and Consolidated Companies should be united, of course applied equally to the consolidation with them of the McKay Company, which made heeling and metallic machines, the two other important elements then required in a series of bottoming machines. After the consolidation of the Goodyear Company and the Consolidated Company was agreed upon, but before it was consummated, the McKay Company was, therefore, approached and agreed to unite with the others. Mr. Winslow testified (R. Vol. 1, p. 529, line 27):—

> "The McKay people were approached because I advised it, and I advised it because I believed that with the metallic and heeling machines and the Goodyear machines and the lasting machines we could give better service, get a better product from the machines, and give better results both to the manufacturers and to ourselves.
>
> ". . . the unification of the service would allow those machines to be kept in continuous operation, giving a larger productive capacity to them and at less expense than in any other way."

Another incidental reason for the formation of the United Company was that Mr. Howe, who was the real manager of the Goodyear Company, and Mr. Brooks, who managed the McKay Company, could not devote much of their time to the business and wished to withdraw. By combining these businesses with the Consolidated Company the services of the men active in that company were obtained (see Main Brief, p. 161).

Both Mr. Winslow and Mr. Howe denied specifically any intent to monopolize shoe machinery as charged in the petition (see Main Brief, p. 163).

The directors of the three constituent companies sent

out circulars to their stockholders announcing the plan for the consolidation and recommending that it be carried out. These circulars expressed briefly the purposes testified to by Mr. Winslow and Mr. Howe. They show the belief that great advantages would accrue from one concern furnishing the different types of shoe machinery used by shoe manufacturers and that economies would result therefrom (see Main Brief, pp. 161–163).

3. THE FORMATION OF THE UNITED COMPANY WAS HELD LAWFUL IN UNITED STATES v. WINSLOW, 227 U. S. 202.

The question of the legality of the formation of the United Company was before this Court in *United States* v. *Winslow*, 227 U. S. 202. The indictment in that case set forth almost precisely the same facts in respect to the formation of the company as the present petition, with the exception that the United States in framing the indictment in that case did not deem the Eppler Company of sufficient importance to refer to it. It was alleged, as in the present case, that the constituent companies were making machines under their various patents.

It was held in that case that the combination was so obviously "on the face of it" simply "an effort after greater efficiency" and so unadapted to accomplish an illegal purpose, that even the unlawful intent which was charged would not make it unlawful.

The Court said (p. 217):—

> "On the face of it the combination was simply an effort after greater efficiency. The business of the several

> groups that combined, as it existed before the combination, is assumed to have been legal. . . . The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels. Until the one intent is nearer accomplishment than it is by such a juxtaposition alone, no intent could raise the conduct to the dignity of an attempt. ". . . we can see no greater objection to one corporation manufacturing seventy per cent. of three non-competing groups of patented machines collectively used for making a single product than to three corporations making the same proportion of one group each."

The United States has sought to differentiate the present case on the following grounds:—

1. It contends that there was competition between the Ideal lasting machine of the Goodyear Company and the lasting machines of the Consolidated Company.

2. It contends that the Eppler Company was not mentioned in the indictment of *United States* v. *Winslow;* and that there was competition between the Goodyear Company and the Eppler Company.

The elimination of this competition it alleges was a motive for the formation of the United Company, or made its formation inherently unlawful.

The District Court found that there was no actual competition of any significance either in lasting or welting machines, and no unlawful intent shown in connection with the organization of the Company.

However, as the United States has laid such stress on these contentions, we have considered the evidence at length in our Main Brief (Alleged Lasting Machine Competition,

Main Brief, pp. 94–132, Alleged Eppler Company Competition, Main Brief, pp. 133–158), and we shall briefly consider these contentions in this Summary.

4. ALLEGED COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE CONSOLIDATED COMPANY IN LASTING MACHINES.

The Goodyear Company at the date of the formation of the United Company manufactured 19 different machines; namely, its welt and turn machine, outsole machine, 13 welt auxiliary machines, 3 turn auxiliary machines, and the Ideal lasting machine. Its principal business, as we have stated, was the manufacture of its Goodyear welters, stitchers, and auxiliary machines, the field it had created and developed by its inventions. Only 248 Ideal machines were outstanding and their use was comparatively insignificant. Thus in 1899 only .77 of 1 per cent. of the shoes lasted by machines in that year were lasted on Ideal machines, and, as not more than half the shoes made in that year were lasted by machines, less than .40 of 1 per cent. of the total shoes lasted in 1899 were lasted on the Ideal machines (see Main Brief, pp. 84–85, 114).

The total possible competition, then, between the Goodyear Company and the Consolidated Company consisted in one type of machine out of 19 different types produced by the Goodyear Company, and this machine was used on less than .40 of 1 per cent. of the shoes made.

But further than this the Ideal machine was adapted for use only on women's welt shoes. While it was possible

to use it on men's welt shoes, it was not structurally adapted for such use and was so used to an insignificant extent. The Consolidated Company on the other hand had no machines which were adapted for use or could be used commercially on women's welt shoes, the field of the Ideal machine.

There is therefore no foundation whatsoever for the contention of the United States that the Ideal machine competed in any practical sense with the Consolidated Company's machines.

A. Use of the Ideal Machine.

Mr. Howe testified:—

> "The Ideal Laster was adapted to work on women's welts, light leather, which no machine in the market at that time would do successfully . . . . the machine was designed and almost wholly used for lasting women's welts" (R. Vol. 1, p. 626, lines 44–45; p. 627, lines 1–3).

The reason that the Ideal machine could not be used successfully on men's welt shoes was due to structural characteristics of the machine which rendered it unadapted for commercial use on men's shoes. Heavier leather is used on men's shoes and the dimensions of such shoes differ from women's. The Ideal machine was not adapted for dealing with these different characteristics. For a full statement of these structural differences, see Main Brief, pp. 104–106.

That the United States did not place much reliance on its contention that the Ideal machine competed with the Consolidated Company's machine is shown by the fact that it did not attempt in its direct case to introduce any evidence as to the use of the Ideal machine on men's welt

shoes, or the use of the Consolidated Company's Chase machine on women's welt shoes.

In its rebuttal it presented a number of witnesses in an attempt to show such use. As we point out below, these witnesses fail to show any use of the Chase machine on women's welt shoes, and their testimony as to the use of the Ideal on men's welt shoes, the field of the Chase machine, only confirmed the evidence of the defendants that the machine was used to an insignificant extent on men's shoes.

The testimony of most of the witnesses for the United States was not relevant to the issue at all. In the first place, some of them testified as to the use of the Copeland Rapid Lasting Machine, an earlier type of lasting machine, which had been put out by the Goodyear Company, but which was obsolete and no longer manufactured in 1899, so that the question of its possible use was immaterial at that date (Main Brief, pp. 106–108). A number of these witnesses testified only to the use of the Ideal machine on men's welt shoes long after 1899, when it appeared that, owing to a change in the type of shoes and to certain new inventions applied to the Ideal machine, which were naturally not foreseen in 1899, the difficulties encountered in lasting men's welt shoes with the Ideal machine were partially overcome (Main Brief, pp. 109–114).

This testimony showed that the Ideal machine was used in or prior to 1899 on men's welt shoes in only three factories, 18 machines at the most out of 248 machines outstanding being so used (see Main Brief, p. 114). The total use of the Ideal machine on men's welt shoes probably did not exceed .03 of one per cent. of the total shoes made in 1899 (see Main Brief, p. 114).

B. Use of the Chase Machine.

The Chase machine of the Consolidated Company was adapted and developed for lasting men's welt shoes as distinguished from women's welt shoes, the field of the Ideal. Mr. Winslow testified:—

> "The Chase lasting machine was especially adapted to and was developed for the lasting of men's welt shoes" (R. Vol. 1, p. 397, lines 39–40).

Mr. Howard, the patent expert of the United Company, who had been connected with it since its formation, testified:—

> "So far as I can learn, the Chase lasting machine was never used, either before or after 1899, in lasting women's welt shoes" (R. Vol. 1, p. 971, lines 10–14).

The United States in its rebuttal case attempted to show a use of the Chase machine on women's welt shoes, but utterly failed. No one of its four witnesses relied on for this purpose testified to such use. One testified to a use on women's McKay shoes, one to a use on women's shoes but not on welt shoes, and two testified that in their opinion it could be used on women's welt shoes but gave no instance of such use (see Main Brief, pp. 100–101).

The finding of the District Court (see Main Brief, p. 117) that the Ideal and Chase machines had different fields, that, although a few Ideal machines were used on men's shoes "notwithstanding their want of adaptation to such use," that no attempt was shown "to put either ma-

chine into the market as against the other," and that "no competition between the two in the usual sense of the term" was shown, is fully sustained by the record.

C. The Consolidated Company's Hand Method Welt Lasting Machine.

Prior to 1899 the Consolidated Company had attempted to construct a hand method machine which would last welt shoes, but it had only succeeded in constructing an unsuccessful experimental machine.

The reasons that the machine could not be used commercially are fully explained in our Main Brief, pp. 119–121.

While the Company had endeavored to put out the machines, as Mr. Winslow testified, they were not being accepted by the manufacturers, only a few were out, and they were being sent out and coming back.

Mr. Howard testified:—

> "the machines were being knocked around from pillar to post. They didn't stick. They would be sent out on trial and they wouldn't stay" (R. Vol. 1, p. 969, lines 4–6).

In 1900 a new device was invented and incorporated in the machine and later improved, which, for the first time, made the machine commercial (see Main Brief, p. 121). This invention, of course, was not known or foreseen at the date of the formation of the United Company and was only a possibility.

Not only then was there no actual competition between the hand method welt machine and the Ideal machine in 1899, but the hand method welt machine was an entirely

different type of machine from the Ideal machine, which was of the bed type. Even when the hand method welt machine later became commercially successful, it, therefore, found a field of its own more or less different from that of the Ideal (see Main Brief, pp. 123–124).

The finding of the District Court that the hand method welt machine was not commercial and was not an article of commerce in any practical sense in 1899, when the United Company was formed (see Main Brief, p. 125), is fully supported by the record.

D. Conclusion as to Lasting Machine Competition.

The record fails to disclose any competition of any practical significance between the Ideal machines of the Goodyear Company and the machines of the Consolidated Company.

We submit that it is self-evident that the United Company was not formed to eliminate the possible competition of the Ideal machine, which was only one out of 19 machines made by the Goodyear Company, and of which only 248 were outstanding out of over 4,200 lasting machines in use, and which was not adapted for use on any class of shoes for which the Consolidated Company had a commercial machine. It is clear that the purpose of the consolidation was to unite in the new company the Goodyear machines of the Goodyear Company and the lasting, heeling, and metallic machines of the other companies, as the defendants testified. The acquisition of the Ideal machine was not the reason for the formation of the United Company, but resulted incidentally because it happened to be owned by the Goodyear Company, there being no intent disclosed to eliminate competition

and no competition of any practical significance being eliminated.

We submit that it cannot possibly be contended with reason that the wholly insignificant use of the Ideal machine by three manufacturers on men's welt shoes for which it was not adapted made inherently unlawful the consolidation of the Goodyear Company and the Consolidated Company—a consolidation obviously beneficial to the companies and to shoe manufacturers.

And, finally, even if the Ideal machine had been adapted for use on men's welt shoes as well as women's, and had been used extensively in this field in competition with the Consolidated Company's Chase machine, and had been owned by a separate company, it would have been legal and proper for the United Company to acquire both machines. The Ideal machine was patented and was admittedly the only machine which could successfully last women's welt shoes. The United Company was entitled to furnish a machine for this purpose, which it could only do by acquiring the patents on the Ideal machine. The mere fact that it acquired the Chase machine which was used on men's welt shoes would not bar it from entering the field of furnishing lasting machines for women's welt shoes also in the only way in which this was at the time practicable or possible, namely, by the purchase of the Ideal machine.

It may be added that both the Ideal machine and the Chase machine have become obsolete.

5. ALLEGED COMPETITION BETWEEN THE GOODYEAR COMPANY AND THE EPPLER COMPANY.

Welt shoes differ from other types in the method by which the sole is attached. In the welt shoe a narrow strip of leather is attached to the outside of the upper and to the insole, and the outsole is attached to this welt. In McKay shoes the sole is attached directly to the insole by a seam which runs through both and thus appears on the inside of the shoe. In pegged and metallic fastened shoes the outsole is attached by pegs, nails, or screws.

In the Goodyear welt shoe the upper, insole and welt are first sewed together by a chain stitch. A light single thread lies in a prepared channel in the insole, and the double thread is laid on the welt outside the surface on which the foot rests. As a result, there is no seam which can disturb the foot.

In the Eppler welt process the bulky double thread of the chain-stitch was laid in the prepared channel in the bottom of the insole and under the surface on which the foot rests (see Main Brief, p. 133). The Eppler machine was so organized that it could only make the shoe in this way, so that it was impossible to use the Eppler machine on women's welt shoes, which have light inner soles, or on turn shoes, and it was much inferior to the Goodyear machine (see Main Brief, p. 134).

The contention of the United States appears to be that even if the Eppler Company did a very small business it was the only company outside of the Goodyear Company

which furnished machines for attaching the soles by welts, and that by its acquisition all competition, even if trivial, in welt machines was eliminated. But, as we have shown, the welt method was only one of several methods of attaching the soles. Welt shoes constituted about 10 per cent. of the total shoes made in 1899 and McKay shoes nearly 50 per cent. The Goodyear machines did practically all of this welt work then done, the Eppler Company's machines doing an insignificant amount. There were only 30 to 40 Eppler welters outstanding, about a third of which were in the factory of the president of the Eppler Company (see Main Brief, p. 141). The Eppler method of shoe making was, as we have shown, quite different from the Goodyear and was only one of a number of methods. So far as competition can be said to exist between different methods of attaching the sole, the real competition met by the Goodyear Company was from the McKay method of attaching the sole and not from the trivial and inferior work done by the Eppler machines.

That the Eppler Company, although it had been in business since the early 90's, did a trivial business, is undisputed. The reason is clear. In spite of the testimony of a few witnesses for the United States that the Eppler machines did good work, the record abundantly shows that these machines were inferior to the Goodyear and bound to become obsolete, as they have since become.

The outstanding characteristic of the Goodyear shoe which makes it the best shoe made is that no seam can be felt by the foot. In the Eppler shoe the bulky double chain laid on the inner sole was likely to cause a ridge under the foot. Thus Mr. Keith, the president of the Eppler Company, testified that this double stitch had a tendency

to raise a ridge or lump around the inside of the sole against the foot, which had the effect both of lessening the durability of the shoe and of making it uncomfortable (R. Vol. 1, p. 391, lines 10–17).

Charles S. Smith, a witness for the United States, testified that the chain-stitch of the Eppler machine,—

> "being larger and more bulky than the single stitch, occupied more room and was likely to leave a ridge around the inside of the shoe, which would come against the foot" (R. Vol. 1, p. 353, lines 6–9).

It was necessary to use a thick and expensive insole to prevent the seam from hurting the foot, which added greatly to the expense of making Eppler welt shoes (R. Vol. 1, p. 415, lines 36–43).

The Eppler machines were also inferior in construction to the Goodyear machines (R. Vol. 1, p. 677, lines 17–21).

Furthermore, the Eppler Company did not have a complete or satisfactory set of auxiliary machines which are essential to the successful manufacture of welt shoes. It lacked important auxiliary machines such as were supplied by the Goodyear Company and were essential to the commercial success of the welt process (see Main Brief, p. 143).

Most of the witnesses for the United States admitted that the Goodyear machines did better work and were superior (see Main Brief, pp. 144–148).

Furthermore, the Eppler machines infringed the Goodyear Company's patents and eight suits were pending to enjoin the use of these machines. The far-reaching character of these patent infringements is set out in our Main Brief, pp. 136–138. It thus appears that, even had the

Eppler machines been in any practical sense competitive, such competition was in violation of the Goodyear Company's patent rights and it was entitled to terminate it by suits in equity or by purchase.

It is clear that it was not the defendants' purpose in forming the United Company to eliminate this trivial competition. The United Company was agreed upon before the acquisition of the Eppler Company was even considered (see Main Brief, p. 138).

It is also clear that the acquisition of the Eppler Company had no effect of any significance on the position of the United Company. Any one to-day can manufacture these machines since the patents have expired, but no one does so, because no one desires to make shoes by this inferior Eppler process.

The sole purpose Mr. Winslow had in acquiring the Eppler Company was to terminate the patent litigation and thus enable the United Company to start business free from litigation (see Main Brief, pp. 134–136). Had the litigation brought by the Goodyear Company been continued, it would have been necessary for the United Company in certain cases to sue its own lessees who were using Eppler machines and also using the lasting, heeling and metallic machines of the Consolidated Company and the McKay Company (see Main Brief, p. 135). An incidental reason in Mr. Howe's mind was that the Eppler machines made a different kind of shoe from the Goodyear shoe and the acquisition of the Eppler patents would enable the United Company to furnish machines for this kind of shoe if any lessee desired to make them (see Main Brief, p. 155). Only two or three did and the machines rapidly became obsolete.

6. CERTAIN STATEMENTS RELIED UPON BY THE UNITED STATES TO SHOW UNLAWFUL INTENT IN THE FORMATION OF THE UNITED COMPANY.

The United States in an endeavor to prove the existence of the unlawful project which it charges in the petition, and further to show that the United Company was formed as a first step in the carrying out of this unlawful project, relies upon certain statements which, it contends, show an unlawful intent existing at the date of the formation of the United Company.

The circular issued to the Goodyear stockholders contained, among other things, the following statement (R. Vol. 4, P.'s Ex. 152, p. 1097):—

> "The United Company will also from time to time acquire other shoe machinery properties, either by direct ownership or by purchase of shares of their stock."

This statement, the United States says, shows the unlawful intent to acquire all competing concerns which it charges. The contention is without the slightest foundation. There were numerous types of machines which the constituent companies did not make. Mr. Howe, who drew the circular, testified that he had in mind that the United Company, if successful, would naturally take over some of these other machines which supplemented but did not compete with the machines of the United Company. The United Company by so doing would not eliminate competitors but would merely add additional types of machines. No

intent is evidenced to acquire competing machines (see Main Brief, pp. 161–163).

A similar recital in a contract made in September, 1899, seven months after the United Company was formed, with Peabody & Co., of Australia, agents for the United Company, to the effect that the United Company contemplated acquiring other lines of machinery and shoe findings, had the same significance. The United Company had in mind at the time acquiring the business of making blackings, cements, and stains, which it did not then manufacture, and which Peabody & Co. wanted to obtain a supply of. This recital was inserted in the contract under which Peabody & Co. agreed to act as agents in order to assure them that the United Company contemplated furnishing them with these supplies and possibly with other supplies or machinery which it did not manufacture at the time. (See Main Brief, pp. 164–165).

Testimony of Mr. Howe that he was opposed to mere working agreements between the constituent companies and wished a consolidation because he felt a mere working agreement between them might be held in restraint of trade is relied on by the United States as a confession of unlawful purpose to eliminate competition. Mr. Howe obviously did not fear that such a working agreement would restrain competition between the constituent companies, because he testified no competition existed. His notion was that an agreement whereby each of the companies obligated itself to manufacture its machines in a certain way, to join in furnishing service and in other ways to agree to act as though consolidated, might be deemed an improper contract for a corporation to obligate itself to, as it would have the effect of a consolidation, although such consoli-

dation was not formally agreed to. He did not have restraint of competition in mind (see Main Brief, pp. 165–166).

The insistence of the United States on these statements shows the utter lack of testimony on which to base its contentions.

7. METHODS BY WHICH AND EXTENT TO WHICH THE PURPOSES FOR WHICH THE UNITED COMPANY WAS FORMED HAVE BEEN CARRIED OUT.

Before considering the various transactions occurring after the formation of the United Company which the United States relies upon as showing the adoption and execution of the unlawful project charged, we shall briefly consider the extent to which the purposes for which the United Company was formed have been carried out.

This inquiry is of the greatest importance in the present case, not merely because it confirms the defendants' testimony as to their motives in forming the United Company, but also because—

(*a*) It shows conclusively that the formation of the United Company for the purpose of enabling it to carry out these purposes, far from "prejudicing the public," has been of enormous benefit to the development of the shoe industry and consequently to the public.

(*b*) It further shows that the continuance of the success which the constituent companies had at the date of the formation of the United Company followed from the improvements which the United Company made in its machines, the efficient service it rendered users of its machines and the

remarkable new machines it invented. The record thus fully substantiates the District Court's finding that the United Company's success was due to the excellence of its patented machines and the service rendered with them.

A. Improvements in Service.

Service to the shoe manufacturer, as we have stated, consists in repairing and adjusting machines, supplying new parts by having a depot near at hand, instructing operators and furnishing operators, in case the shoe manufacturer is unable to obtain them, in order to keep his factory going, and in acting as engineer generally and advising as to the best machines for a particular purpose or as to the best methods of manufacturing shoes.

Such service to be effective must be almost instantaneous. The business of a shoe manufacturer in Chicago, Philadelphia, or even Brockton, which is about forty miles from the United Company's factory at Beverly, is seriously handicapped if he must send to Beverly for a new part, or for a man to repair or adjust a machine. This is, as we explained, because if a single machine of the bottoming series breaks down it stops work completely on an entire series of bottoming machines. In every factory this is serious; in the majority of the factories of the country which require but one of many types of machines such a breakdown of a single machine stops the entire production of the factory until it can be repaired.

In 1899 each of the constituent companies attempted to furnish service so far as it could in view of its financial resources and the comparatively small number of machines it had outstanding. Not one of the three companies, how-

ever, gave a good service (see Main Brief, p. 176; see also testimony of Jonathan Brown, Main Brief, p. 178).

Almost immediately after the formation of the United Company the plans with reference to the improvement of the service commenced to be put into effect and the different offices of the constituent companies in any one place were amalgamated into a single office (see Main Brief, p. 178).

In 1911 the United Company had 27 different stations in 13 different states. At each of these depots or stations mechanics are kept to repair machines and instruct operators. These men answer calls for service from shoe manufacturers situated in their district, immediately travelling to the shoe manufacturer's factory. A stock of parts is carried in each of these depots for practically every machine which the United Company produces so that its mechanics are in a position to repair any machine immediately. The investment in parts carried by the United Company in 1911 for the service alone (not including any parts for new machines) was $1,415,474.49 (see Main Brief, p. 179).

The number of roadmen employed in this service increased from 237, employed by the United Company in 1899, to 689 employed in 1913, and the number of branch office managers and assistants increased from 12 to 31 (R. Vol. 5, Defs.' Ex. 211, p. 293). The total calls answered in the year 1911 were 192,524, and including calls for instruction to operatives 201,413. The time of the roadmen occupied in this work consumed 1,365,384 hours (see Main Brief, p. 179).

The number of operatives taught during 1911 was as follows:—

Goodyear operators taught	2,209
Metallic operators taught	956
Heeling operators taught	1,006
Lasting operators taught	1,359
Pulling-over operators taught	956
Eyelet and general operators taught	2,403
Total operators taught	8,889

Defendants' Exhibit 214 (R. Vol. 5, p. 311) shows in detail the number of calls made by each office, the number of operators taught through each office, and the number of hours consumed in this service.

Defendants' Exhibit 213 (R. Vol. 5, p. 298) shows the number of times service was rendered L. A. Crossett, Inc., a typical shoe manufacturer. The total calls as shown by that exhibit for the year 1911 (p. 311) were 1,150, or almost four for each working-day.

This service is rendered absolutely free of charge to shoe manufacturers. Shoe manufacturers are not even charged with the travelling expenses of the roadmen. All they pay is the cost of new parts (R. Vol. 1, p. 421, lines 18–23). This service cost the United Company for the year 1911 $1,196,494.86 (R. Vol. 1, p. 974, line 22).

The United Company is the only shoe machinery company which furnishes service of this satisfactory character (R. Vol. 1, p. 423, lines 1–4).

As to the improvement of the service, Mr. Winslow testified as follows (R. Vol. 1, p. 420, lines 35–45):—

> "As to the development of the service for shoe manufacturers since 1899, the service is now so far ahead of what existed in 1899 that there is really no comparison. At each depot is a general manager and a body of men who are experts in the adjustment and repair of all the

machines. These men are at the call of the manufacturers by telephone at any moment of the day and are at their service nights, if necessary, to rearrange their factories or readjust their machines. There are men to teach new operatives how to run the machines and how to take care of them. That service is complete in each shoe manufacturing district in the country."

Numerous shoe manufacturers testified as to the necessity for this service and the very effective service which the United Company renders.

JOHN STROOTMAN, a shoe manufacturer of Buffalo, New York, making from 800 to 1,200 pairs per day (R. Vol. 1, p. 742, lines 41–43), testified:—

"The service which the United Company gives us is excellent, and it is an all-important factor in the manufacture of shoes. We could not run a factory without the company's skilled men to keep the machines in order and keep them running. So far as I know, no other company furnishing shoe machines gives service of that kind" (R. Vol. 1, p. 744, lines 12–17).

C. WILLIS BENNETT, a shoe manufacturer of Fitchburg, Mass., making from 800 to 1,400 pairs a day (R. Vol. 1, p. 757, lines 32, 42–43), testified:—

"As to my experience with them with reference to service, why, their service has been, I might say, indispensable. I don't know what I should do without their service. Whenever I have a machine break down, I immediately telephone to their branch office at Marlboro, and they have a man come up there from Marlboro, who is an expert on that particular machine, to put the machine in order, and they do all this without any expense to me, aside of course from the cost of the broken part of the machine, if there are any parts broken" (R. Vol. 1, p. 758, lines 36–44).

ROBERT P. HAZZARD, a shoe manufacturer of Gardiner, Me., making about 5,000 pairs of welt shoes a day (R. Vol. 1, p. 640, lines 34–35; p. 641, line 10), testified:—

> "The United Company's service is one of the greatest necessities for the economical running of a modern shoe factory. . . .
>
> "When manufacturers get that service it not only means bigger wages for the employees, but it means better results for the manufacturer and cheaper shoes for the consumer. In my judgment, with the United Company's service the consumer is buying shoes cheaper than he could if the royalty were done away with and efficient service were not furnished" (R. Vol. 1, p. 643, lines 16-17, 42–p. 644, line 3).

For further testimony of shoe manufacturers as to the service rendered by the United Company, see Main Brief, pp. 181–187.

B. Concentration in One Factory and Standardization.

When the United Company was formed, the Goodyear Company manufactured its machines in Boston. The Consolidated Company was located in leased premises at Beverly, Mass., and the McKay Company had its factory at Winchester, Mass., which was unsuited to the purpose, as there was no labor market.

As Mr. Winslow testified, one of the purposes in forming the United Company was to economize in the manufacture of machinery by bringing that manufacture into one modern factory and standardizing the manufacture (see Main Brief, pp. 159–160). Shortly after the United Com-

pany was formed a committee was appointed to visit various manufacturing plants and gather data as to the best methods of manufacture, the most efficient machines, the most efficient arrangement for carrying on the manufacture from one department to another, and the best character of factory for the operatives.

After about a year's work by this committee a new concrete factory was built at Beverly, Mass. The factory had its own foundry. Provision was made for the standardization of parts which effected a considerable saving, and the consolidation of the three factories also effected a large saving in management expenses.

For testimony as to the concentration in one factory and the standardization of parts, see Main Brief, pp.168–170.

C. Inventions and Improvements in Machines Made by the United Company.

While the machines of the constituent companies at the date of the formation of the United Company represented remarkable inventions, and were the best or the only machines of the kind invented, the art of shoe machinery was young, and was, and still is, capable of great development. Not only was it possible by new inventions to add improvements to the existing machines which would greatly increase their efficiency, and with the assistance of the patents embodied in those machines and of fresh inventions to create new and better machines to take their place, but it was possible to invent machines to perform many operations which were at the time still carried on by hand.

To carry on the work necessary to develop this field a large expenditure for research and experimentation

was necessary. The formation of the United Company and its larger resources, as was expected, made this possible.

Soon after the United Company was formed the development of inventions was put in the hands of a committee of inventors. Every new idea was submitted to this committee, and, if reported upon favorably, work was undertaken to develop it. A large organization has been employed by the United Company for this work (see Main Brief, pp. 187–189).

In this experimental work the United Company has expended very large sums of money. For example, from 1907 to 1911 a total of $2,267,954.70 was spent (R. Vol. 1, p. 426, lines 25–39).

Defendants' Exhibit 217 (R. Vol. 5, pp. 323–51) is a typical report showing the experimental work done during the month of October, 1911. It shows that work was done on 61 different machines or parts of machines during that month. The report sets out in detail each of the machines on which work was done and the expenditure on each.

In addition to conducting its own Experimental Department the company has purchased from others such inventions offered it as it was thought would improve its machines.

The result of this effort and expenditure of money has been a remarkable development in the art of shoe machinery.

The United Company has, since 1899, brought out at least an average of 7 or 8 new machines a year (R. Vol. 1, p. 427, lines 12–13).

Mr. Winslow testified that since 1899 the United Company has invented and put out to its customers 150 new machines.

These are shown in a list—Defendants' Exhibit 246—(R. Vol. 1, p. 503, lines 7–23). 39 of these machines do work previously done by hand (Defs.' Ex. 247, R. Vol. 5, p. 690).

Among the striking illustrations of new machines which the United Company has invented to take the place of hand work are the Rex Pulling-over Machine and its auxiliaries and the clicking machine. They have resulted not only in much better work, but in a large saving to shoe manufacturers. The pulling-over machine was first put out about 1903 and the auxiliaries later, and the clicking machine was first put out about 1908. These machines are referred to more fully in our Main Brief, pp. 189–190.

All of the machines put out in 1899 have been improved and the greater part of the principal machines have been replaced by new or improved machines.

In the Goodyear Department, for example, nearly all the machines have been so replaced (R. Vol. 1, p. 430). In addition, numerous new auxiliary machines have been introduced. Thus in 1899 the United Company supplied 13 auxiliary machines for use in making welt shoes, while in 1911 it supplied 35 such auxiliary machines. In 1899 it supplied three Goodyear auxiliary machines for making turn shoes, while in 1911 it supplied nine such auxiliary machines (R. Vol. 5, Defs.' Exs. 242–245, pp. 681–683).

The machines which the United States contends that the United Company has monopolized are these improved or new machines, all of them patented, and a number of them performing work which was performed by hand until these machines were recently invented by the United Company.

When the United Company developed a new machine, or an improved model of a machine, to take the place of an existing machine, it substituted the improved machine for the old machine then under lease without any charge to the shoe manufacturer and the old machine was taken back and scrapped (see Main Brief, pp. 189, 190). By this liberal policy it has enabled lessees to have at all times the most up-to-date shoe machinery without any loss due to discarding the machines they held. When it developed a new auxiliary machine it furnished it to lessees for a nominal initial payment or rental without charging any additional royalty whatsoever.

D. Increased Efficiency of Machines Resulting from Inventions and Service Furnished by United Company.

The improvement in the defendants' machines, the addition of new machines to assist in the work of the principal machines and the service which the United Company has been able to render in connection with its machines have resulted in a remarkable increase in their efficiency. The result has been that each machine has been able to turn out a greatly increased number of shoes.

For example, each Goodyear welt sewing machine in 1910 sewed 66.7 per cent. more shoes than in 1899; each Goodyear outsole stitching machine sewed 69.5 per cent. more shoes in 1910 than in 1899; each Goodyear welt sewing machine used for turn sewing sewed 54.3 per cent. more shoes in 1910 than in 1899; each heel-attaching machine attached 62.3 per cent. more shoes in 1910 than in

1899; each lasting machine lasted 24 per cent. more shoes in 1910 than in 1899 (R. Vol. 1, pp. 428–429).

E. Savings to Shoe Manufacturers by Reduction of Charges and Increased Efficiency of Machines.

Shoe manufacturers have benefited both directly and indirectly from the increased efficiency of the United Company's machines and the better service it has rendered with them.

They have benefited directly by a reduction in royalties and initial payments charged by the United Company, which reductions the United Company has been able to make because its return in royalties from machines, each of which, being more efficient, operated on an increased number of shoes, has been larger. They have also benefited directly by the saving in material effected by the use of many of these machines, such, for example,—as the clicking machine, which effects a great saving in leather, and the improved welter, which Mr. Hazzard, a shoe manufacturer, testified saved at least $500 per machine a year in welting alone (see Main Brief, p. 544).

Shoe manufacturers have also benefited indirectly from the fact that their business has not been interrupted by the breaking down of machines, and because, owing to the improved service rendered and the increased capacity of the machines, a less number of machines requiring less factory space can do more work, and also because they have been furnished with many machines to perform more efficiently and quickly operations previously performed by hand. Such indirect savings cannot be estimated with any exactness, but they are very large.

The direct savings are also large. Mr. Winslow testified that the savings effected in 1911 over 1899 in the manufacture of the Goodyear welt shoe, by reason of the increased efficiency of the machines and the decrease in royalties, was 8¼ cents per pair. He gave in detail the savings effected by various new or improved machines used in the manufacture of welt shoes (see Main Brief, pp. 192–194).

The total royalty per pair of shoes charged for all the principal royalty machines furnished by the United Company for the manufacture of Goodyear welts is 5.694 cents for men's welts and 4.694 cents for women's and misses' welts; the total royalty for all the principal royalty machines furnished for women's and misses' turn shoes is 1.972 cents, and for children's turn shoes .5 cents; the total royalties for the principal royalty machines used for men's and women's McKay shoes is 1.746 cents, and for children's McKay shoes 1.391 cents (R. Vol. 1, p. 503, lines 29–36). In addition there are very small annual rentals on certain machines which add no appreciable amount to the cost per pair of shoes (see Main Brief, pp. 196–197).

It will thus be seen that the saving on a welt shoe effected since 1899 is more than the total royalty now charged.

The royalty for the turn machine was reduced 50 per cent. shortly after the formation of the United Company (R. Vol. 1, p. 503, lines 2–4). The United Company acquired a sole-laying machine for which a royalty of ¼ cent per pair was charged previous to its acquisition by the United Company, and an insole machine for which a royalty of ½ cent was charged previously to its acquisition, and the United Company has added both these machines to its Goodyear auxiliaries and leased them to shoe manu

facturers without charging any additional royalty whatsoever, thus saving the shoe manufacturer ¾ of a cent per pair (see Main Brief, p. 192).

The United Company has also practically eliminated the installation charge or initial payment previously charged for its machines. Thus, for installing an equipment of machines for making welt shoes to operate on 1,000 pairs of shoes per day the constituent companies charged $11,300.50 as an initial payment. In 1911 this initial charge including the first year's rentals of certain machines was reduced to $2,467.50, a saving to shoe manufacturers of $8,833 (see Main Brief, p. 196).

The United Company has in no case increased its royalties.

The United Company has also made reductions in prices of tools and supplies furnished shoe manufacturers (see Main Brief, p. 195).

And in addition to these reductions in royalties, initial payments, and prices for tools the United Company has furnished in all cases much improved machines, and in many cases new machines, without any increase in royalty or cost to the shoe manufacturer. Thus, as an example, though it has eliminated the initial payment for Goodyear machines which was charged by the Goodyear Company, the United Company now furnishes for welt work, for the same royalty charged in 1899, a vastly improved welter and stitcher all of a much larger capacity, and 35 auxiliary machines in place of 13 auxiliary machines furnished in 1899. On turn work it has reduced the royalty 50 per cent., has eliminated the initial payment charge, and in addition has furnished a much improved machine and 9 auxiliary machines instead of 3 fur-

nished in 1899 (R. Vol. 5, Defs.' Ex. 244, 245; R. Vol. 5, p. 683).

The formation of the United Company, and its consequent ability to economize in manufacturing expenses, in the cost of service, and to maintain a large experimental department have alone made these very large savings possible.

For a more complete statement of the savings to shoe manufacturers, see Main Brief, pp. 191–197.

F. Benefits to Operatives of the Machines.

Operatives of shoe machines are generally paid by the piece, that is, a certain amount for each pair of shoes operated on by them. Any increase in the efficiency of the machines tending to a larger production per machine thus increases the number of shoes worked on by each operative. The increased efficiency of the United Company's machines has resulted in an increase in the compensation paid operatives, although shoe manufacturers have in many instances actually reduced the piece price.

Thus the testimony shows that the average output of the Model K Welter is 40 dozen pairs a day instead of about 25 dozen pairs on the old machine and that an operative as a result can earn 20 per cent. to 36 per cent. more on the new welter, although the piece price on the old welter was one-third more than on the new (see Main Brief, p. 197). On the Model M Stitcher the operatives can earn 24 to 45 per cent. more than on the old stitcher, although the piece price is 40 per cent. less than on the old stitcher (see Main Brief, p. 198).

G. The Development by United Company of Goodyear Method of Making Shoes.

One of the purposes in forming the United Company, as testified by Mr. Winslow, was to encourage and increase the manufacture of Goodyear welt shoes, the best type of shoe made. This was to be done by the development of new machines to assist in that manufacture, by lowering the cost of installation of the Goodyear machines and by furnishing an efficient service to maintain the machines in operating condition, and to instruct operators in their use (R. Vol. 1, p. 407, lines 22–30). The United Company has consistently carried out this purpose and may be said to have specialized in machinery for making the Goodyear welt shoes.

It has, in the first place, enormously increased the efficiency of its welter and stitcher, the two principal machines used in this process. As we have shown above, it has greatly increased the number of auxiliary machines furnished with its welter and stitcher (*supra*, p. 70). It has eliminated the initial charges made in 1899 on its principal machines, resulting in a large saving to the shoe manufacturer (*supra*, p. 70).

There has resulted a great increase in the production of Goodyear welt shoes. In 1899, 22,700,000 pairs of welt shoes were made out of a total of 172,786,000. In 1910, 86,231,000 pairs of welt shoes were made out of a total of 278,916,000 (R. Vol. 1, p. 424, lines 24–35).

III.

THE EVIDENCE REGARDING DEFENDANTS' PATENTS.

The petition alleges in effect that in 1899 the important or basic patents on the principal machines were about to expire and that the defendants, knowing this, contrived a plan by which they could in effect create a new and unlawful monopoly to take the place of the lawful patent monopoly which they were about to lose through expiration of the patents; and this is what the United States expected and undertook to prove (R. Vol. 1, pp. 992–994).

The United States utterly failed to substantiate this charge. On the contrary, it was shown that at the date of the formation of the United Company the machines which the patent expert for the United States selected to sustain its charge embodied patents which had more than fourteen years to run.

The District Court found that the allegation was not proved and said:—

> "It seems obvious, therefore, that the allegations in question could not have been founded, when they were made, upon any adequate or complete investigation of the facts."
>
> . . . . . .
>
> . . . "I must regard the allegations here in question as not sufficiently supported by proof; and hold that no such motive is shown to have prompted either the organi-

zation of the United Company, or any of its subsequent doings" (R. Vol. 1, pp. 1133, 1134).

The United States has abandoned this contention. It was not mentioned in briefs or arguments for the United States at the first hearing in this Court. Accordingly, although the evidence on this issue is reviewed in the Main Brief (Main Brief, pp. 199–232), there is no occasion for taking time here for any analysis or discussion of that evidence.

The record shows that throughout the history of this industry every machine which has been useful has been patented. And the record further shows that practically all this patented development of shoe machinery has been accomplished by the United Shoe Machinery Company and its predecessors, and that the period since February, 1899, has been a period of more important and more rapid development than any corresponding period in the history of the industry.

The District Court held:—

"At any rate it must be accepted that from the beginning the machinery offered by the respondent corporation was, in all its essential elements, protected by patents, and that there has been no proof to the contrary" (R. Vol. 1, p. 1115).

IV.

LEASES OF SHOE MACHINERY.

Our next inquiry is whether the lease and license agreements under which the United Company furnishes its machines to be used by shoe manufacturers are, as the United States alleges in its petition, a step in carrying out the unlawful project charged.

The leases are relied upon to prove the existence and consummation of the second part of the unlawful project charged in the petition, namely, the alleged refusal to sell or lease what the petition styles the principal machines, viz., lasting, welt sewing and outsole stitching, heeling, and metallic fastening machines, unless the shoe manufacturer took practically all other machinery from the defendants.

The United States attempted to sustain this charge by contending that the so-called Restricted Use Clause which restricts the use of the machines of one department to use in connection with a machine or machines of another department or departments has this effect. The clause has no such effect, and, furthermore, leases containing this clause are only alternative forms of lease, and lessees have always been able to obtain from the United Company leases not containing such Restricted Use Clauses on terms no higher and in many cases less than were charged by the constituent companies.

The District Court found as to this charge:—

(R. Vol. 1, p. 1162–4.) "The alleged plan of a refusal of what before could be had separately, as a means of compelling the taking of other machines, was a principal ground for invoking the Sherman Act.

"The leases in evidence, as documents, fail to substantiate the charges either as to the contrivance of such a plan or as to its execution. It appears that after the consolidation there was no refusal or imposition of conditions as alleged, but that the defendants continued to give manufacturers terms which were substantially the same as before and in some instances better than those offered by the constituent companies before the consolidation.

". . . As the leases prove no such plan, whether of the extent alleged or of less extent, and as the evidence proves the exact contrary of what is charged, we think that the United Shoe Machinery Company is, upon the merits, entitled to a full clearance from this charge."

In describing the leases the petition also alleges that the United Company discontinued the sale of machines and adopted arbitrary lease and license agreements which "contain provisions, not found in their former lease and license agreements" (R. Vol. 1, p. 997).

The record wholly fails to sustain any such charge. The United Company did not discontinue the sale of machines, for the constituent companies had only leased and never sold any of their machines. The District Court said (R. Vol. 1, p. 1153):—

"An attempt to support this charge by evidence wholly failed. Nothing of the kind was done, nor is it easy to see what grounds for making the charge could ever have been supposed to exist."

Counsel for the United States, in arguing the present case, have not limited themselves to an attempt to prove

the existence and consummation of the unlawful project charged in the petition. They have criticised various clauses, such as the Repair Parts Clause, the Full Capacity Clause, and others, which obviously have no relation to the existence or carrying out of a plan to refuse to lease certain machines unless practically all others were taken. Furthermore, in the District Court they even abandoned the contention that the clauses in the leases which they criticised were adopted with unlawful intent, and they merely contended that the lease system has resulted in an illegal restraint or monopoly and that the intent of the defendants is immaterial. As the District Court said:—

> "At the argument the admission was made on behalf of the United States that there was no proof that at the time they formed the United Company the defendants 'had in mind the adoption of the system of leasing which they later developed.' And the position then taken by the petitioner in argument was that the leasing system referred to has resulted in illegal restraint or monopoly and that the intent which prompted its development is therefore 'absolutely immaterial'" (R. Vol. 1, pp. 1154–1155).

The District Court found (*supra*, pp. 16–17), and the record abundantly proves, that the clauses in question were not adopted with intent to exclude competitors or monopolize, but for the purpose of enabling the lessors to offer the most satisfactory terms to lessees while at the same time they reserved reasonable protection for themselves. The following facts are shown by the record:—

1. From the very beginning of the shoe machinery industry, about 1860, it has been the almost invariable practice in respect to the principal bottoming machines and a common practice as to all shoe machines to lease and not

sell them, and to charge for their use a royalty of a certain amount per pair for shoes on which they are used. This remarkable system under which the shoe manufacturer obtains machines with little or no capital expenditure and pays for them a royalty determined by the amount of use he has for them has proved of enormous benefit to the shoe manufacturing industry and the public.

2. At the time the United Company was formed this lease system was firmly established in the industry and had been proved by experience best suited to the needs of the shoe manufacturer and the machinery manufacturer. The United Company, therefore, not only wished to continue it, but it could not have abandoned the system even had it desired so to do without disastrous and unjustifiable consequences.

3. The clauses contained in the leases of the constituent companies were such as experience had proved were necessary to protect the lessor, who places valuable machinery in the hands of numerous lessees situated all over the country, to be paid for according to the extent it is used.

4. The United Company has not changed the essentials of this system which was employed by the constituent companies. It has from time to time made modifications in the leases, just as the constituent companies had previously made them, in order to meet new conditions, to make its leases conform with one another and to enable it to offer better terms to its lessees. It has also from time to time necessarily adopted new leases for wholly new machines, but these have been similar to the leases already employed. A number of these modifications made by the United Company have removed restrictions contained in the constituent companies' leases which the development of the industry

proved were no longer necessary for its protection. These modifications have been made from time to time, not in pursuance of any plan made in 1899, but only as some special reason arose which made the change advisable. None of these modifications were made for the purpose of excluding competitors. As the District Court found, they were "obviously prompted by the purpose of developing the company's business through the perfectly legitimate method of offering them [the machines] on terms more advantageous to users" (R. Vol. 1, p. 1159). Modifications intended to exclude competitors "would have been different in character from modifications represented by these clauses" (R. Vol. 1, p. 1159).

5. The clauses criticised by the United States are essential to enable a lessor of shoe machinery like the United Company to furnish machines without a substantial initial charge, to be paid for only as used and in other respects upon the best possible terms. In other words, the clauses are essential to a commercially satisfactory leasing system.

The District Court said with reference to the contentions of the United States (R. Vol. 1, p. 1187),—

> "The attack arises from the attempt to adjust the payments to the amount of use which particular manufacturers may have for the patented inventions."

The attack of the United States, therefore, is not upon clauses which are not essential to the maintenance of this system but which could be dispensed with without affecting the terms upon which lessees obtain their machines. The attack is upon clauses which are absolutely necessary to the protection of the lessor under this system, and, therefore, an attack upon the very existence of this system of marketing

shoe machinery upon which the shoe industry is founded, and which has proved so highly satisfactory to shoe manufacturers. To destroy this lease system would be to affect disastrously not only the shoe machinery industry, but also the shoe manufacturing industry, which is founded upon it.

1. THE LEASING SYSTEM.

There are four striking characteristics of the present leasing system. It is these characteristics which have made it so satisfactory to shoe manufacturers and which have resulted in such an enormous development of the shoe manufacturing industry. The clauses in the leases are employed to enable the United Company to offer machines on these favorable terms.

1. Under this system machines are installed in the shoe manufacturer's factory with practically no initial cost.

2. For the use of the machines the lessee is only required to pay a royalty based upon the use which he has for them. If the lessee has no work for the machines to perform he is required to make no payment. It is true that the leases usually contain a guarantee of a minimum payment, but this guarantee is small, is not strictly enforced, and is inserted not to obtain compensation for the machines, but to prevent a shoe manufacturer from keeping a machine indefinitely if he has no work for it to do (see Main Brief, pp. 310–311).

3. A shoe manufacturer who uses a series of machines is given a wholesale or reduced rate. Where a series of machines is used by a shoe manufacturer the cost of caring for each machine is reduced and the royalty received from

each machine is increased. The United Company, therefore, obtains a larger return on each machine at a smaller expense where a series of machines is used and is thus able to offer a wholesale rate in such case.

4. Under the lease system the lessor, who understands the mechanical characteristics of the machines better than the shoe manufacturer, repairs and adjusts the machines, maintains a stock of new parts needed to replace broken parts, instructs operators in the use of the machines, and generally maintains the machines in their most efficient operating condition. By caring for the large number of machines which it has outstanding it is enabled to do this far more efficiently and with less expense than would be possible to the individual shoe manufacturer.

Advantages of Leasing System.

The reasons for the adoption of this lease system and the reasons why it has proved so satisfactory are more or less obvious, but we shall briefly summarize them. For a more extended statement, see our Main Brief, pp. 248–253.

(*a*) Under this lease system a shoe manufacturer does not have to provide the capital necessary to buy outright these expensive machines. As a number of shoe manufacturers testified (see Main Brief, pp. 250, 344–347), machinery of this kind depreciates rapidly and banks are unwilling to lend money on it. Shoe manufacturers can hardly figure as an asset at all such machines as they buy.

Under the lease system the shoe manufacturer is not required to tie up his capital in machinery, but can employ it in buying supplies and producing shoes.

Furthermore, comparatively little capital is necessary in

the shoe manufacturing industry, provided machines can be obtained without capital expenditure. No special factory is required, as any loft which can be readily leased is sufficient. Shoes are made quickly and are sold for cash. The ordinary shoe manufacturer turns over his capital from three to eight times a year (see Main Brief, p. 250.) The business, unlike most manufacturing businesses, can be conducted successfully on a very small scale, as is shown by the fact that in 1911 out of a total of 1,110 operating factories 274 produced less than 100 pairs of shoes per day, 495 produced less than 300 pairs per day, and 636, or more than half, produced less than 500 pairs per day (see Defs.' Ex. 229, R. Vol. 5, p. 441).

The result is that under the leasing system men of very small capital, such as superintendents in shoe factories, are able to enter the shoe manufacturing business on a small scale as independent manufacturers. Many of the most successful shoe manufacturers to-day started with practically no capital, which would have been impossible except under this system.

EDWARD W. BURT, a shoe manufacturer, testified:—

> "As to the effect which it would have had with reference to my ability to go into business at all, I never could have started. I started without any money in shoe manufacturing. I was able to do that because I could obtain my machines by this method.
>
> "That is one of the greatest reasons why I could start in the shoe business—because I could get machinery with practically no expense.
>
> "I know that there are other men who from small beginnings have been enabled to start and grow. I have had experience along that line. I have had two superintendents leave me, both starting in the shoe business. They had practically no money" (R. Vol. 1, p. 741, lines 19–31).

For similar testimony of other shoe manufacturers, see Main Brief, pp. 252, 253.

By thus enabling the man of ability but small capital to enter the business, the United Company has naturally extended and enlarged its business. The two classes of persons who resent this method of leasing machines are, first, certain large shoe manufacturers who are able and would be willing to buy machines outright if they could thus prevent the entry into business and the resulting competition of small manufacturers who are enabled by the leasing system to do business; and, second, competing machinery manufacturers who are not in position or are unwilling to lease machines to shoe manufacturers and wait for their return over a period of years.

(*b*) The art of shoe machinery is still new, and from the beginning it has developed rapidly. A machine may be the best of its kind to-day, but improvements made in a new model a year or two years hence may render it obsolete. Were shoe manufacturers required to buy machines, they would hesitate to invest large amounts of capital in machines which might have to be scrapped shortly afterwards. Persons contemplating entering the business would be deterred by this possibility. Shoe manufacturers who had already purchased machines would hesitate to buy new models or to buy new machines for doing work previously done by hand until they were sure that the new or improved machine was a success and that no further improvements were likely to be made. The shoe industry would thus be greatly retarded.

Under the lease system the United Company takes the risk of the machine becoming obsolete. The shoe manufacturer takes his machine without investing any capital

in it, and, furthermore, confident that if the United Company produces an improved machine, or makes an improvement in the machine already leased, it will give him the new machine or improvement without cost.

(*c*) Under the lease system the shoe manufacturer pays for his machines only as he uses them. If business is poor his royalties proportionately decrease; if good, they increase. The amount of payment is thus automatically adjusted to the amount of business which the shoe manufacturer does, and he is not burdened with heavy annual charges when business is poor. This is especially important to the small manufacturer who has little capital.

(*d*) The principal bottoming machines are delicate, and need constant repair and adjustment. No small shoe manufacturer and few large ones could afford to keep trained mechanics on hand to adjust and repair machines or to keep a sufficient stock of parts on hand to meet emergencies. If machines were sold so that the machinery manufacturer was not vitally interested in maintaining their efficiency, they would get out of repair and become discredited and do far less efficient work.

Where the machinery manufacturer merely leases the machines and is paid by a royalty which is dependent on their being maintained in efficient condition, much more efficient machines result and they give much greater satisfaction to the shoe manufacturer. The machinery manufacturer having a large number of machines to which it gives this service can furnish it better and more economically than the shoe manufacturer himself.

2. OTHER CONSIDERATIONS APPLICABLE TO THE LEASING SYSTEM.

In considering the leases it should be borne in mind that, like the leases of any other property, certain general clauses are necessary, and that it is not intended or contemplated that every clause should be strictly and literally enforced at all times and on all occasions.

For example, take the lease of a house. It frequently provides that no nails shall be driven in the walls, and that the property shall be kept in the same repair as when rented, and that for a breach of these provisions the lessor may evict the tenant. If the lessee drives a single nail into the wall or if a pane of glass is broken and he fails to repair it at once, the lessor may evict him unless the Court intervenes. The lessor, as a rule, does not contemplate that he will evict, nor does he attempt to do so, for a trivial breach of this character. But it is impossible in advance to define in words exactly what is trivial and what is not. The lessor, therefore, necessarily inserts a general clause covering all cases and enforces it only in such cases as at the time appear to be material.

The same is true of the clauses contained in the United Company's leases. For example, the United Company does not plan to cancel the lease if the lessee does not for a short period and for some special reason use some one machine to capacity, or if he uses without the United Company's consent a repair part which happens to be at hand and was not made by the United Company. This is conclusively shown by the record. But the United Company

cannot in words provide in advance for all conditions and define exactly the cases in which it will be materially damaged and entitled to take action. It must reserve general rights. If in certain cases these rights might be enforced harshly and unfairly, this does not condemn them. The question is whether they are inserted for this purpose and are so enforced, or whether they are inserted for a reasonable and proper protection and only enforced when such protection is necessary.

The lease system lends itself easily to fraud on the lessor if the lessee is not honest. The lessor is paid for its principal machines according to the number of shoes made on such machines. Certain machines where the revolutions of a shaft are involved have recording mechanisms which record the revolutions of the shaft but do not record exactly the number of shoes on which the machine is used, and furthermore such mechanisms may be tampered with; other machines, such, for example, as lasting machines, can have no recording mechanism attached. The lessor obviously cannot have a representative in the factory recording the exact use of each machine. It is dependent largely upon the honesty of the reports made to it by the lessee and his operatives. Necessarily it must have clauses which when it is dishonestly or unfairly treated will enable it to take immediate action for its protection.

Under the lease system a relationship far more intimate is created than in the ordinary case of lessor and lessee. The relationship is really a quasi partnership. The United Company furnishes a considerable portion of the shoe manufacturer's capital in the shape of machinery. It gets paid for this only to the extent such machinery is used, or, in other words, as a practical matter, in proportion to the success of

the lessee's business. It, therefore, supplies capital, and, in effect, shares profits. It is almost as interested in the success of the lessee's business as is the lessee. This has the great advantage, from the lessee's point of view, of making it to the interest of the United Company to give him efficient machines and to maintain them in the best possible operating condition. But it means that the United Company necessarily has a right to direct that these machines shall be used in the most efficient manner in order that its own revenue from them may be properly protected.

3. THE LEASES OF THE CONSTITUENT COMPANIES PRIOR TO THE FORMATION OF THE UNITED COMPANY.

As we have stated, the lease system started with the beginning of the shoe machinery industry and was firmly established in 1899, when the United Company was formed.

The leases used by the constituent companies in 1899 are given in Plaintiff's Exhibits 3–13, R. Vol. 3, pp. 22–120.

These leases do not conform exactly to each other—some of them seek to protect the lessor in one way and some in another. A number of these leases at the date of the formation of the United Company, especially the Goodyear leases, required initial payments. The lessee did not take machines under leases requiring substantial initial payments unless he intended to use them, and after he took them he had an interest in using them. These leases requiring initial payments did not necessarily require the same provisions protecting the lessor as the non-initial payment forms.

The following clauses were used in these leases of the constituent companies:—

1. In machines having many moving parts it is essential that the parts be made of proper material, and that they be made for the particular machine in which they are used, so that they will fit perfectly. Experience had shown that if the lessee replaced broken parts with parts obtained from others than the lessor, such parts might not be properly made, might be of inferior material, or might not fit the machine. In such case the machine depreciated in value, returned less royalty, did poorer work, and became discredited.

Every lease of the constituent company, therefore, provided that without the lessor's consent no duplicate parts should be placed in the leased machine except those obtained from the lessor. This is the Repair Parts Clause considered below.

2. Experience had shown that the machinery manufacturer could not afford to develop and construct expensive patented machines and install them in a shoe manufacturer's factory, to be paid for as used, unless the lessee took them for an extended term, and the lessee on his part naturally desired to know that he could retain his machines for an extended period without an increase in royalties.

All of the leases of the constituent companies, therefore, ran for extended periods.

Most of the lasting machine leases ran until cancelled for breach of conditions; in other words, they ran for the life of the machines (P.'s Ex. 6, Art. 9; P.'s Ex. 9, par. 9; P.'s Ex. 10, par. 9). In the case of heeling machines the leases ran for seventeen years and for such further time as any patents embodied then or thereafter in the machines

were in force (P.'s Ex. 11, par. 8). In all other cases the leases ran for the life of the patents then embodied, or which might thereafter be embodied, in the machines. As improvements were not infrequently added to the machines, these leases, as a practical matter, ran indefinitely.

3. Experience had proved that in some cases after the lessor had gone to the expense of constructing and installing a machine and instructing operators in its use the lessee used some other machine permanently or for a time and the lessor's machine was left idle.

This had led the Consolidated Company to adopt a clause requiring the lessee to use the machine to its full capacity so far as he had work for it to perform. This is the so-called Full Capacity Clause. Only in the initial payment lease of the Consolidated Hand Method Lasting Machine was the Full Capacity Clause omitted (P.'s Ex. 8, R. Vol. 3). The initial payment required under this lease was deemed a sufficient guarantee that the lessee intended in good faith to use the machine if he had work for it to perform.

The same situation had led the McKay Company to require that the lessee, if he took its heeling machine, should pay a royalty based on all heels he made, whether or not made by the McKay Company's heeling machines (P.'s Ex. 11, par. 3). This is the so-called Factory Output Clause, used in one alternative form of lease of Goodyear machines.

4. Experience had shown the Consolidated Company that if it went to the expense of installing a machine without initial payment it met with two difficulties: first, the lessee might last his shoes largely or wholly by hand or if the machine were used, the company might not receive

sufficient royalty from one machine to recompense it; and, second, the lessee might obtain another machine of the same kind, and, although he used the Consolidated Company's machine to a considerable extent or entirely, he might dishonestly report that much of the work was done on the other machine, or he might use the Consolidated Company's machine only upon slow or difficult work and the other machine for quicker or easier work, in either event depriving the lessor of a fair return. The Consolidated Company met the situation by requiring the lessee to take additional machines for any additional work he might have, thus requiring an exclusive use of its machines of the kind leased (see P.'s Ex. 6, Art. 12; P.'s Ex. 7, par. 12; P.'s Ex. 9, par. 12; P.'s Ex. 10, par. 12).

This is the so-called Additional Machinery Clause, the only clause which ever appeared in any of the United Company's leases requiring the taking or use of any machine in addition to the particular machine covered by the lease. This clause was used only to a slight extent by the United Company and was eliminated completely from all leases put out after 1907 (see Main Brief, pp. 323–326).

The Goodyear Company, in its turn leases, although it charged an initial payment, had deemed it necessary, for the reasons outlined above, to require an exclusive use of its turn machines (P.'s Ex. 3, par. 6; R. Vol. 3, pp. 25–26). This clause was eliminated by the United Company in December, 1900 (see Main Brief, p. 281).

5. The McKay Company, to protect itself against the possibility of not obtaining a fair return where the lessee provided himself with other machines of the same kind for his work, either because of dishonest reports on the part of the lessee as to the use of its machines or because the

McKay Company's machines were in such case used only on slow or difficult work or were only used during the lessee's busy season, adopted a clause which did not require the lessee to take additional machines and thus use its machines exclusively, as in the case of the Additional Machinery Clause, but which permitted the lessee to use other machines and merely reserved an option to the McKay Company to withdraw its own machines in such case. This is the so-called Exclusive Use Clause which has been employed by the United Company and which the United States attacks.

6. The Goodyear Company, which had developed its welter and stitcher for use together, both being essential to the integrity of its Goodyear welt shoe, leased them for a single royalty and provided that if either were used on any shoe both should be used. In other words, it restricted them to use together.

Its auxiliary machines it had developed from time to time and had leased to lessees of its principal machines without requiring any additional royalty. It thus increased and improved the work done by the principal machines and enhanced the reputation of the Goodyear shoe. It did not charge a separate or additional royalty for these auxiliary machines, because it wanted to encourage lessees to use them and thus improve the quality and reputation of the Goodyear shoe. But the Goodyear Company could not lease these machines without royalty unless they were used on shoes on which its principal machines for which a royalty was paid were also used. The Goodyear Company, therefore, restricted these auxiliary machines to use on shoes on which its principal machines were used. In other words, the entire group of Goodyear machines was treated

as a unit and a single royalty was charged. But the lessee was not required to take or use the auxiliary machines and he was entirely free to use auxiliary machines obtained from others with the Goodyear Company's welter and stitcher.

This clause restricting the use of the auxiliary machines is the Auxiliary Restricted Use Clause, which has been continued by the United Company.

For a fuller statement of the reasons for adopting the Auxiliary Restricted Use Clause, see *infra*, pp. 151–154; also Main Brief, pp. 375–378.

7. The Goodyear Company put out the Ideal Lasting Machine as well as its Goodyear machines. This machine was invented and adapted for use with the Goodyear welter and stitcher. A separate royalty was charged for its use, but it was restricted to use on shoes on which the Goodyear Welter and Stitcher operated. The Goodyear Company, by thus adding it to the series of Goodyear machines which it was already caring for and placing it only in factories in which it had these other machines, was able to care for it at less expense and to charge less for the Ideal machine than would otherwise have been possible and was also able to maintain the machine in efficient working condition and thus maintain its reputation.

The clause by which the Ideal machine was so restricted is the Restricted Use Clause criticised by the United States. As employed by the United Company in its leases of various machines, it is only an alternative clause. The machines of each department are also leased at the option of the shoe manufacturer on independent unrestricted leases.

8. All of the leases contained a provision reserving to the lessor the right to cancel the lease if the agreements on the

part of the lessee were broken, thus enabling the lessor to protect itself against future and additional damage.

9. In addition to the foregoing clauses certain other clauses were contained in the different leases, among others the following:—

(*a*) It was provided in certain leases that the lessor might cancel if the machines were unused for a certain length of time (P.'s Ex. 7, par. 8; P.'s Ex. 9, par. 8).

(*b*) In certain leases the lessee guaranteed a minimum royalty (P.'s Ex. 7, par. 3; P.'s Ex. 9, par. 3).

(*c*) In one of the leases the lessor was given the right to cancel the lease if the machine was not used sufficiently to earn a certain royalty within a given period (P.'s Ex. 6, par. 8).

(*d*) The Consolidated Company had found that its machines were sometimes taken for the purpose of enabling the lessee to beat down the wages paid hand-lasters, or for the purpose of enabling it to get better prices from some other shoe machinery manufacturer. Most of its leases, therefore, provided that the leased machines should not be used, "as a means of reducing the price of hand-lasting, nor to control hand lasters, or to influence any trade in connection with any other lasting machines not controlled by the licensor, or the price list for lasting thereon" (P.'s Ex. 6, Art. 12; P.'s Ex. 7, par. 12; P.'s Ex. 9, par. 12; P.'s Ex. 10, par. 12).

4. MODIFICATIONS MADE IN THE LEASES BY THE UNITED COMPANY.

The United Company, as we have stated, could not have changed the essentials of the lease system even had it so desired without throwing the entire shoe machinery industry of the country into confusion. It could not have recalled and cancelled the outstanding leases without the consent of the lessees, which it could not have obtained. As to all machines then outstanding it was obviously necessary to continue the system. The great majority of shoe manufacturers did business on a small scale and had comparatively little capital. They had been induced to enter the business by the offer of machines upon the lease system. Had the United Company refused to furnish additional machines on this basis it would have seriously crippled many of the lessees and worked a great injustice. On the other hand, if it did continue to furnish machines on the existing basis, it was essential that it continue the clauses which experience had shown were necessary for the protection of the lessor or similar clauses.

Apart, then, from the fact that the lease system had proved itself best adapted to the needs and conditions of the shoe machinery business, the United Company found itself practically pledged to its continuance.

The United Company has not changed the essentials of the system at all. For over a year it made no changes whatsoever in the leases, but simply used the same forms of lease employed by the constituent companies—a proof

that the United Company was not formed for the purpose of changing the leases, in which case such changes would have been made at once. When it did from time to time thereafter make modifications they were only made in new leases. Outstanding leases were not disturbed (see Main Brief, pp. 273–274).

A certain number of modifications were introduced for the purpose of making the leases consistent; some eliminated restrictions employed by the constituent companies which in the course of time proved unnecessary; other modifications were gradually introduced to enable the United Company to meet new conditions and offer better terms to its lessees.

The District Court said (R. Vol. 1, p. 1158),—

> "Regarding the various modifications so introduced, it may be said in general that they tended to relax previous restrictions upon the use of leased machines, and to reduce the cost to the lessee of installing them."

The United Company has, at the option of the shoe manufacturers, sold outright without restrictions all but one of the General Department machines which it has gradually developed and acquired. It has thus departed in this respect from the policy of the constituent companies, which only leased machines.

The United Company eliminated in 1900 the provision in the Goodyear Company's lease requiring an exclusive use of the Goodyear Company's turn machinery. It employed the Additional Machinery Clause only to a slight extent and eliminated it entirely in all leases put out after 1911 (see Main Brief, pp. 323–326).

In order to make its leases consistent and to have them

run for a definite period, the United Company has introduced a seventeen-year term in its leases. This has not increased but in most cases reduced the term used by the constituent companies. The Full Capacity Clause used by the constituent companies in a number of leases has been used in all leases of machines for which a royalty based on use instead of a fixed royalty is charged. The Exclusive Use Cancellation Clause previously used by the McKay Company has been substituted for the Additional Machinery Clause, and is generally used in leases of machines for which a royalty based on use is charged.

The formation of the United Company resulted in its furnishing a series of machines of different kinds or departments instead of having the same furnished by different companies. Where the machines of different kinds were used as a series, the result was that each machine could be cared for more efficiently and more economically and each machine produced a larger royalty. The United Company was, therefore, enabled from time to time to reduce its charges for machines so used as a series, and thus share with its lessees the economies and increased revenues which resulted from such use. It effected this reduction to a large extent by eliminating initial payments where machines were taken for use as a series. Where such a reduction was made because a machine was to be used as part of a series, it was, of course, necessary to provide that the machine should be used in the manner agreed upon, and the United Company, therefore, introduced into such leases the so-called Restricted Use Clause, providing that machines taken for use as a series should only be used in this manner. This was the method employed by the Goodyear Company in leasing its Ideal machine.

A lease which did not contain this Restricted Use Clause was offered lessees as an alternative.

The Restricted Use Clause was not introduced immediately upon the formation of the United Company but only from time to time as some reduction in price or terms was effected.

These changes or modifications did not change the essentials of the leasing system in effect at the date the United Company was formed.

5. EXAMINATION OF THE LEASE CLAUSES OBJECTED TO.

A. Repair Parts Clause.

The United Company's leases provide that the lessees shall obtain from the United Company all duplicate parts needed to repair the machines.

The leased machines belong to the United Company. When a part is replaced, the new part, of course, belongs to the United Company. Unless such new part is adapted for use in the machine and is of equally good material as the part it replaces, the machine will not only depreciate in value, but might be seriously damaged, and it will do less efficient work and return less royalty. It is absolutely essential to the lessor that it control the character of the parts placed in its own machines. The United Company could properly provide that all repairs on its own machines should be made by itself, and in such case could, of course, use its own parts. As this in some cases might delay the repair of the machine, the lessee is authorized to make

repairs, provided he uses parts obtained from the United Company and which it knows are of proper construction and will fit the machine.

The petition does not allege that this clause is unlawful, but it alleges that the United Company has charged exorbitant prices for these parts and thus oppressed its lessees (R. Vol. 1, p. 997). Not only did the United States utterly fail to prove this allegation, but the defendants disproved it (see Main Brief, pp. 299–302). The District Court held that there was no evidence justifying this allegation (see Main Brief, p. 55).

B. Return Charge Clause.

The petition charges that the United Company exacted a return charge at the termination of the leases, which in some cases amounted to approximately the original cost of building the machines.

No evidence was introduced to substantiate this charge. On the contrary the defendants showed that in the year 1911 the cost of repairing returned machines was approximately $350,000 and the charges to lessees only about $70,000, showing a loss of $277,763.49 (see Main Brief, p. 302). This is only another example of the unfounded charges made by the United States.

C. Seventeen-Year Term.

The adoption of this term by the United Company reduced the term employed in most cases by the constituent companies (see Main Brief, pp. 302–306). It,

therefore, affords no evidence of an intent to obtain a monopoly by new methods as charged in the petition. It was obviously adopted to make the various leases consistent and to make them run for a definite term instead of indefinitely as was the case with most of the constituent companies' leases.

A long term is essential both from the point of view of the lessor and of the lessee. The United Company constructs millions of dollars' worth of machinery which it places in its lessees' hands without initial payment. It can only do so if the lessee will agree to take and use the machinery for an extended period so that the resulting royalties will compensate for its investment.

A shoe manufacturer also requires an extended period. He embarks in business on the strength of obtaining patented machinery without initial cost. He desires an assurance that he may retain this machinery without an increase in royalties. An agreement on the part of the United Company to permit a shoe manufacturer to retain its machines, and not to raise its royalties for a period of seventeen years, although the cost of machines may increase very largely, is certainly of advantage to shoe manufacturers.

If a rival shoe machinery manufacturer finds that the execution of these leases makes it more difficult for him to furnish machines, to what is this due? Obviously it is due to the fact that the rival finds that shoe manufacturers have already obtained machines to perform their work; that their needs are, therefore, largely satisfied; and that the market for practical purposes is limited to furnishing machines for additional work and to furnishing machines to new manufacturers just entering business. But this

is the field to which the manufacturer of practically every commodity is limited, that is, to supplying new needs.

If the leases ran for shorter terms,—say for ten or twelve years,—a competitor would find himself in the same position. Indeed, if the machines had been sold to shoe manufacturers outright, the competitor would be little if any better off. Shoe manufacturers who purchased machinery would not discard it until it became obsolete or worn out. Their demands for new machinery would for practical purposes be limited to their requirements for additional machines.

The difficulty the competitor finds, then, is not that these leases run for seventeen years instead of, say, for twelve years, but that existing shoe manufacturers are supplied with the machinery they require so that the demand for additional machinery is limited.

To contend that every shoe manufacturer must be left free to terminate his leases with the United Company and discard its machines without obligation to the United Company is to contend that no leases except those terminable at will can be made. But to so hold is to deny the right to contract at all.

As said by this Court in *Coppage* v. *Kansas*, 236 U. S. 1 (p. 21):—

> "For constitutional freedom of contract does not mean that a party is to be as free after making the contract as before; he is not free to break it without accountability. Freedom of contract, from the very nature of the thing, can be enjoyed only by being exercised; and each particular exercise of it involves making an engagement which, if fulfilled, prevents for the time any inconsistent course of conduct."

In *Chicago, etc., R.R. Co.* v. *Pullman Car Company,* 139 U. S. 79, this Court held lawful a contract under which the Pullman Company was given the right for fifteen years not only to furnish parlor cars on the railroad company's line, but to furnish them exclusively on the existing line and on any other lines thereafter owned by the Railroad Company. The Court said (p. 89):—

> "We cannot perceive that such a contract is at all in restraint of trade."

There is absolutely no evidence in the record that this clause has ever been used to oppress lessees. Although the United Company has the right to require under the letter of the lease a lessee to retain his leased machine for seventeen years, it has always waived this right by furnishing the lessee with any new or improved machine which it developed without additional charge of any kind (see Main Brief, p. 306).

It has also been ready to permit a shoe manufacturer to cancel his leases if circumstances justified. Thus Mr. McElwain, whose company is one of the largest shoe concerns in the country, was told that he might cancel his leases if he desired to use other machines (R. Vol. 1, p. 502, lines 12–18).

It is alleged that the term of the leases runs beyond the term of the patents. If true this would be immaterial, as the agreement that it shall run for seventeen years is a normal business agreement, and is not dependent on the fact that the machines are patented. But as a practical matter it has never been true. The machines have been so constantly developed that most of them contain inventions covered by applications for patents, which when is-

sued will run beyond the term of the lease, and the machines are usually improved by some invention after they are leased. The result is that in no case does it appear that unpatented machines are held under the leases.

The record then shows that the adoption of the seventeen-year term actually reduced the term required by the constituent companies; that an extended term is a benefit to both lessor and lessee; and that there is not the slightest evidence that the term was adopted or used to oppress shoe manufacturers.

D. Full Capacity Clause.

The Full Capacity Clause requires the lessee of a machine to use such machine to its full capacity upon all shoes made by the lessee upon which it can be used.

The reason for this clause is obvious.

The lessor invests its money in a valuable machine, installs it in the lessee's factory, and instructs the lessee's operatives, relying for his return on a royalty paid on each pair of shoes on which the machine is used.

But unless the lessee uses the machine the lessor will get no return. The agreement to use the machine is absolutely necessary if the machine is to be leased on this basis.

It seems obvious that the lessee cannot complain of this clause. If he does not intend to use the machine for such work as he may have for it, he has no right to take it under a lease whereby he is required to pay only if the machine is used. If he does intend to use the machine for his work, there is no reason why he should not agree to do so.

Nor can a competitor of the United Company complain. He has no right to demand that a shoe manufacturer taking

machines from the United Company shall be as free to deal with him as if such lease had not been made. If the machines were leased for a fixed rental, which even the United States admits would be lawful, such competitor would not find it any easier to dispose of his own machines, for the lessee would use the machines for which he was paying rental, and not those taken from a competitor for which he would be obliged to make an additional payment.

That the Full Capacity Clause was inserted only for the purpose of assuring the lessor a return from machines leased for a royalty dependent on the number of shoes on which they are used is conclusively shown by the fact that this clause is not used in respect to machines for which no royalty based on the number of shoes operated on is charged (see Main Brief, p. 312).

The United States apparently insists that a fixed rental or monthly rental would be equally satisfactory. Such is not the case. If a fixed rental were charged, the shoe manufacturer would be required to pay the same amount, whether business was good or bad. Furthermore, if he changed the character of his work he would be subjected to a disadvantage. If, for example, in one year he made 1,000 pairs of McKay shoes per day and had McKay lasting machines for this purpose, and the next year he made 750 pairs of welts and only 250 pairs of McKays a day, he would be required to pay for his McKay lasting machines exactly the same amount as during the previous year when he used them four times as much. Under the present system his McKay lasting royalties would be reduced three-fourths.

Again, under a fixed rental the small shoe manufacturer would be placed at a distinct disadvantage. 25 per cent.

of the United Company's lessees make less than 100 pairs per day (R. Vol. 1, p. 454, line 45; p. 455, line 1). If a machine having a large capacity, as most of them have, were leased for a fixed rental, a small shoe manufacturer making 100 pairs per day would pay for its use on each pair of shoes many times the amount paid by the large manufacturer who used it to capacity.

It is obvious that this clause is essential if machines are leased to be paid for only to the extent they are used. To eliminate this clause would, as a practical matter, prevent the further employment of this highly beneficial method of charging for the use of the machines.

For a more complete discussion of the Full Capacity Clause, see Main Brief, pp. 307–312.

E. Additional Machinery Clause.

The Additional Machinery Clause required the lessee to take from the lessor additional machines of the same kind as those leased if his work required it.

As we have shown above, it was used by the Consolidated Company to assure it a proper return on its investment and to protect it against receiving a return not fair to it by the use of other machines of the same kind (*supra*, pp. 89–90). As it was used only to a very slight extent by the United Company and eliminated from all its leases by 1907, four years before this suit was brought, it is of no importance in the present case except as showing that the United Company eliminated from the lease system the only clauses obligating the lessee to take any additional machines.

For a discussion of this clause, see Main Brief, pp. 323–326.

F. Exclusive Use Cancellation Clause.

When a machinery manufacturer installs his machine in a shoe factory to be paid for by charging a royalty for each pair of shoes on which it is used, he runs a risk of not getting a fair or proper return when the lessee uses another machine of the same kind for the following reasons:—

1. The lessor, in order to obtain his stipulated royalty, must know how many pairs of shoes are operated on by his machine. He cannot afford to employ an inspector to watch the machine all the time. On certain machines he can place a recording mechanism which roughly shows the amount of use, but this may get out of order or be tampered with. On other machines, such as lasting machines, no such recording mechanism is practicable. The lessor must, therefore, depend for the most part on the reports made to him by the lessee and his operatives. When another machine of the same kind is used, the lessor may have good reason to believe, though absolute proof is difficult, that many shoes made on his machine are reported either carelessly or dishonestly as made on the other machine.

2. The shoe business is seasonal. A shoe manufacturer having an average production of 1,000 pairs per day will at certain seasons make 2,000 pairs per day and at others 500. He must be provided with an equipment sufficient to make 2,000 pairs per day, although he uses this capacity only for a short period in each year (see Main Brief, p. 255).

If a shoe manufacturer leases a machine on a royalty basis and then obtains another machine of the same kind elsewhere, he may use the leased machine only in the busy season, thus paying only a small annual royalty for it, and use the other machine during the entire year.

3. Work on different types of shoes varies; some shoes can be operated on much quicker than others. A lessee having two machines of the same kind may use one machine on slow work and thus incur a comparatively small royalty payment which does not compensate for the machine, and do his quick work on the other machine.

It is obvious that a lessor of a machine under the royalty system must protect himself so as not to be deprived in the above ways of a fair return where other machines of the same kind are used by the lessee.

As we have stated above, the Consolidated Company protected itself against these dangers as well as others by requiring an exclusive use of its machines of the kind leased (*supra*, p. 90). The Goodyear Company also required an exclusive use of its turn machines (*supra*, p. 90). The McKay Company protected itself by providing that if the lessee supplied himself with other machines of the same kind for his work it might withdraw its own machines (*supra*, pp. 90–91).

The United Company, as a result of its experience, determined that it was not necessary for its protection to require an exclusive use of machines of the kind leased, and, therefore, gradually eliminated from the lease system the additional machinery clause requiring such exclusive use, and adopted instead the clause used by the McKay Company.

This clause is referred to in the briefs as the "Exclusive Use Cancellation Clause." The use of the word "Exclusive" is perhaps misleading in that it may imply that the lessee is required to use the United Company's machines of the kind leased exclusively. Such is not the case, in spite of the insistence of the United States. The clause

does not obligate the lessee to use any machines whatsoever of the United Company. On the contrary, it recognizes the right of the lessee to use other machines and permits him to do so if he chooses. It merely gives the United Company an option in such case to withdraw its own machines of the same kind.

It must further be borne in mind that the clause only permits the United Company to withdraw a machine where another machine of the same kind is used. For example, the United Company may withdraw its lasting machines if other lasting machines are used by the lessee, but it cannot for this reason withdraw its Goodyear, metallic, heeling, General Department, or any other types of machines.

Not only does this clause recognize the right of the lessee to use the machines of others, but in employing this clause it was not the intention of the United Company to exercise its option to withdraw its own machines merely because other machines of the same kind are used. The purpose of the United Company is merely to reserve this right in case, owing to the use of other machines of the same kind, the United Company, for this reason, is deprived of a fair return on its own machines.

Mr. Winslow testified:—

> "The purpose of the Company has been nothing more than to reserve to the Company the right to cancel leases of machines of a type which the lessee had ceased to use exclusively, if conditions became too onerous to continue them" (R. Vol. 1, p. 47, lines 18–21).

It is difficult to see how this clause restrains trade or compels a use of the United Company's machines. The lessee of heeling machines, for example, is free to use any

other heeling machines he pleases. If he prefers a competitor's heeling machine and uses it and the United Company exercises its rights under this clause and withdraws its own heeling machine, this only leaves the lessee free to use the competitor's heeling machine which he prefers. The clause, therefore, cannot compel the shoe manufacturer to use the United Company's machines.

The competing machinery manufacturer will be actually benefited by the enforcement of this clause. If the United Company withdraws its machines, the business naturally goes to the competitor.

Had the United Company intended to compel an exclusive use of its machines, it would have so provided. It surely would not have eliminated from its leases the Additional Machinery Clause, which required such exclusive use and substituted the right to withdraw its machines, which expressly recognizes the lessee's right to use other machines.

That the clause is merely intended to permit the United Company to withdraw its machines because it does not receive a fair royalty, due to the use of other machines, is further shown by the fact that the clause is not employed with reference to machines for which a fixed rental is paid whether or not the machines are used. It is not necessary in these leases, because the use of other machines cannot affect the amount of compensation paid the United Company (see Main Brief, p. 317).

If this clause could in any way be so enforced as to exclude competitor's machines, or to compel a use of the United Company's machines (which we deny), the record fails to show a single instance in which it has been so enforced.

We submit that the record conclusively shows that this clause was adopted for the purpose of affording a reasonable and proper protection to the lessor; that it cannot be exercised so as to compel an exclusive use of the United Company's machines; and that the United Company has never attempted to enforce it for this purpose. There is, therefore, no ground for contending that it is unlawful in itself or that it evidences an unlawful intent.

Furthermore, the United Company is under no obligation to permit any shoe manufacturer to use its patented machines. When a shoe manufacturer requests the United Company to install its heeling machines, for example, in his factory, the company is absolutely free to refuse for any reason whatsoever. If it does consent to install its machines and licenses the shoe manufacturer to use them, it is free to permit such use for such period, long or short, as it in its sole discretion determines advisable. Having the right to refuse any use whatsoever, it cannot be criticised for limiting the term of such use. Therefore, in permitting the use of its machines until it determines to withdraw them, it is wholly within its rights, no matter what the reasons for or the effect of such withdrawal (see Main Brief, pp. 320–323).

G. Cancellation for Breach Clause.

This clause permits the cancellation by the lessor of all leases between the lessor and the lessee, provided, and only provided, the lessee violates a condition in one or more of such leases "expressed to be obligatory upon the lessee"; in other words, some condition which the lessee obligates himself to carry out.

This clause, therefore, merely provides that if the lessee does not act in good faith, but violates his agreements by refusing to pay royalties or taxes, by abusing the machines, by failing to use them to capacity when he has work for them to perform, or by otherwise acting contrary to his undertakings, the United Company may at its option sever relations with him.

The leases of the constituent companies all contained provisions giving the lessor the right to cancel if the lessee violated the lease. Practically every lease of property has such a condition.

Counsel for the United States apparently objects to the present clause because it permits the cancellation not only of the particular lease the agreement in which is broken, but of all other leases between the parties. The United Company could perfectly well furnish all its machines on a single lease, as did the constituent companies prior to the formation of the United Company, and if it did so this objection of the United States would not be applicable. For convenience it issues different leases for machines of different departments and new leases when new machines are taken, but the relationship between the United Company and a lessee is essentially a single relationship which is expressed for convenience in a number of different leases. If the lessee violates an agreement in any one of these documents which warrants any cancellation, it is as fair to cancel all as it would be to cancel that particular one.

It is impossible to see how this clause can restrain trade or tend to create a monopoly. The shoe manufacturer cannot complain if he loses his leases because he violates his agreements. A rival shoe machinery manufacturer cannot complain of the exercise of this clause because he

is obviously benefited if a shoe manufacturer is deprived of machines by the United Company and, therefore, must seek his machines elsewhere.

The United States further contends that this clause is unlawful because it permits the United Company to withdraw all its machines if the lessee violates the Full Capacity Clause or the Restricted Use Clause. The contention is that a lessee will not use a competitor's machine in violation of the Full Capacity Clause or the Restricted Use Clause if he thereby runs the risk of losing all his machines taken from the United Company.

But surely this argument does not show the Cancellation Clause to be unlawful. The argument depends wholly upon whether the Full Capacity Clause and the Restricted Use Clause are lawful. If they are lawful, then it is obviously fair that the lessee should be bound by them, and if he chooses to violate them that his leases should be cancelled. The right to cancel for violation of agreements by the lessee can under no circumstances be unlawful if it is proper to exact such agreements from the lessee.

Furthermore, if it were possible to exercise this right of cancellation so as to oppress lessees, the record fails to show any such instance.

The record fully sustains Mr. Winslow's testimony that the clause was inserted only to permit the United Company to sever its relations on account of conduct by the lessee which "in the ordinary business relations between men would make continuance of the relations impossible" (R. Vol. 1, p. 447, lines 22–34). In only five cases (apart from bankruptcy) have leases been cancelled. In each of these cases the lessee either had abandoned the use of the United Company's machines entirely or was persistently cheating

the United Company of the royalty due on its machines (see Main Brief, pp. 429–430).

The United States has contended that this Cancellation Clause, taken in connection with the Exclusive Use Cancellation Clause, considered *supra*, p. 105, permits the United Company to cancel all its leases if its machines of a particular kind are not used by the lessee exclusively. But this is obviously not true. This Cancellation for Breach Clause which we are now considering permits cancellation only for violation for a condition "expressed to be obligatory upon the lessee." The Exclusive Use Cancellation Clause does not obligate the lessee to use the United Company's machines exclusively or at all; it merely reserves an option to the United Company in such case to cancel its leases of certain machines if other machines of that same kind are used. As the lessee is not obligated to use machines of the kind leased exclusively, the provision is not a condition "obligatory upon the lessee;" there is no agreement to "breach" or "violate;" and, therefore, the use of other machines gives the United Company no right to cancel all its leases or any of its leases under this Cancellation for Breach Clause.

H. Restricted Use Clause.

The United States contends that this clause was adopted to force a shoe manufacturer desiring to take one type of machine to take other kinds. It was relied on to prove the basic charge in the petition that the defendants formed an unlawful plan to refuse to lease any essential machines, unless the shoe manufacturer took practically all others from it.

The clause as employed by the United Company is so totally unadapted to accomplish this result as to show it has no such effect, and was adopted for no such purpose.

(1) Wording of the Restricted Use Clause.

The Restricted Use Clause provides that a machine of a certain kind or department shall not be used on any shoe on which certain other operations are performed by machines not leased from the United Company. For example, in the lease of the hand method welt laster, the clause provides that the leased lasting machine shall not be used on shoes the soles of which are welted or stitched on machines not leased from the United Company (P.'s Ex. 15, R. Vol. 3, p. 129 at p. 131).

The clause does not obligate the lessee to use any of the United Company's machines. It does not require the lessee to use the lasting machine taken under the lease or the United Company's welter and stitcher. It merely provides that if the lessee does use the lasting machine it shall not be used on shoes which are welted or stitched except on machines leased from the United Company. In other words, it provides that the lasting machine, being taken for use with the welter and stitcher, shall be so used.

If the lessee desires to use a competitor's lasting machine he is free to do so. If he desires to use a competitor's welter and stitcher he is also free to do so. The only restriction is that if he does use an outside welter and stitcher he shall not use the leased lasting machine on shoes on which the outside welter and stitcher are used. If he wishes to use the lasting machine in connection with such

outside welter and stitcher he may exchange his restricted lease for an unrestricted lease by making an initial payment of $300.

(2) Reasons why a Lower Rate can be Offered where Machines are Taken for Use as a Series.

As we have stated, the Restricted Use Clause was adopted to enable the United Company to offer certain of its machines at lower rates where they were taken to be used as part of a series.

It is of the utmost importance to understand clearly the reasons why the use of the United Company's machines as a series reduces the cost of caring for each machine and increases the royalty received from each machine and thus makes it possible for the United Company to offer a reduced rate where its machines are used as a series. We beg the Court to read carefully the explanation in our Main Brief, pp. 339–343. We shall summarize the reasons here.

1. A series of different machines is used in making each shoe. If any one machine of the series is poorly constructed, or not properly cared for, so that it does poor work or breaks down, work on the entire series is stopped, and, as the royalty for each machine is based on its use, each machine when not used ceases to produce royalty for the lessor.

When a machine which is not properly cared for and frequently breaks down is introduced into the series, the lessor of other machines necessarily suffers as his royalties are reduced.

> "The productive efficiency and quality of work done by any line of machines is only equal to that of the least efficient machine in the line" (R. Vol. 1, p. 857, lines 26–28).

As the United Company furnishes the best machines made and is practically the only shoe machinery manufacturer which furnishes efficient service (R. Vol. 1, p. 867, lines 32–35) if its series of principal machines is not used, each machine which is used necessarily produces less royalty.

2. We have described above the character of the service rendered by the United Company with its machines (*supra*, pp. 59–63). It is obvious that the cost of this service per machine is less where a series of machines is located in one factory than if the same number of machines were leased separately and scattered through different factories.

3. The United Company's machines are adapted for use together. This is a matter of vital importance. For example, the lasting machine must prepare the work for the welt machine and leave it in such condition that the welt machine can operate on it. Improper operation of any machine of the series may impair the efficiency of the operation of a number of the other machines of the series (see Main Brief, pp. 333–340).

It is obvious that the interjection into a series of the United Company's machines of a machine not adapted to be used with the rest of the series will result in poorer work and less work and therefore less royalty for the United Company.

4. The United Company furnishes the best machines made, as the District Court found (R. Vol. 1, p. 1137). When an inferior machine is used with its machines, especially a machine not particularly constructed for use with them, poor work is likely to follow. It is often extremely difficult in such case to determine which of a series of machines is responsible for the poor work (see Main Brief,

pp. 338–339). The use of an inferior machine as part of a series is likely to discredit the other machines of the series, although they are not responsible for the defective work which results.

The foregoing conditions show beyond question that when a series of the United Company's machines is used, the total number of shoes operated on by each machine is increased, and, therefore, the amount of income on each royalty machine is proportionately increased; that the cost of caring for each machine is reduced, the reputation of the machines is maintained, and the regularity and certainty of output is assured.

These results clearly justify the United Company (if any justification is needed) in granting the shoe manufacturer who uses a team or series of the United Company's machines a better rate than is granted a shoe manufacturer who uses a single machine out of the series or only a portion of the series.

This is all that the Restricted Use Clause accomplishes. It enables the shoe manufacturer to share in the economies and increased return which result where he uses a series of machines.

(3) Contentions of the United States with respect to the Restricted Use Clause.

We do not understand that the United States denies that economies result from the use of a series of the United Company's machines. Its contention, as we understand it, is:—

1. That the Restricted Use Clauses compel a shoe manufacturer taking machines of one department or type to

take also machines of another type or types and that they are for this reason inherently unlawful.

2. That even if this is not so, the Restricted Use Clauses were adopted with intent to exclude competitors, and, therefore, are unlawful, or evidence an unlawful intent.

(4) Contention that the Restricted Use Clause Compels a Shoe Manufacturer using One Type of Machine to Use Other Types.

Even if it were true that by the Restricted Use Clause a shoe manufacturer could not use one type of machine, for example, lasting machines, obtained from the United Company unless he used other types of its machines, such, for example, as its welter and stitcher, this would, as we show below, not make the clauses unlawful.

The owner of a series of machines adapted for use together is not required to permit their use separately. He is fully within his rights if he only permits the use of the entire series and refuses to permit the use of a part of the series (see *infra*, pp. 136–151).

But the entire contention of the United States that the Restricted Use Clause compels a shoe manufacturer desiring to use one type of machine to use other types is based on a false assumption, viz., that the shoe manufacturer can only obtain restricted leases.

This, as we have stated, is not true. The United Company has always been willing to lease its machines of any department under unrestricted leases. A shoe manufacturer, therefore, who desires to use the United Company's lasting machines and who does not wish to use its

welter and stitcher is not compelled to do so. He can take the United Company's lasting machine on an unrestricted lease, making an initial payment.

The entire argument of the United States that the United Company compels a shoe manufacturer taking one type of machine to use other types is, therefore, without foundation and the District Court therefore very properly held that the United Company was "upon the merits, entitled to a full clearance from this charge" (*supra*, p. 76).

(5) Contention that the Initial Charges for Unrestricted Leases are Prohibitive.

To meet the fact that a shoe manufacturer can obtain unrestricted leases if he so desires, the United States contends that the charges for unrestricted leases are so large as to be prohibitive.

The royalty charged under unrestricted leases is in practically every instance the same as the royalty charged under restricted leases. The only difference is that an initial payment is charged for an unrestricted lease (see Main Brief, p. 359).

The United States introduced absolutely no evidence that such initial payments were unreasonable or prohibitive. It did not even show what relation these initial payments bear to the value of the machines. Counsel for the United States to prove its contention relied on the fact that most shoe manufacturers prefer and take the restricted leases. This fact, it contended, shows that the unrestricted leases are prohibitive.

The District Court found, and the record shows, that the United Company's machines are the best machines

made, that they are constructed for use together, and that no other manufacturer of machines furnishes adequate service with them. It is, therefore, not strange that most shoe manufacturers use a series of the United Company's machines; and, since apart from any other reasons they prefer to use such a series, it is not strange that they take advantage of the wholesale rate offered where such a series is used, and, therefore, hold restricted leases. This certainly affords no evidence that the charges for the unrestricted leases are prohibitive.

That such charges are not prohibitive is shown, first, by the fact that they are the same charges that were made by the constituent companies, and, second, by the comparatively large number of unrestricted leases which are actually taken by shoe manufacturers.

As the District Court found, the United Company continued to offer on unrestricted leases and on terms which were as favorable and in certain cases more favorable than those offered by the constituent companies, the various machines previously furnished by the constituent companies, although the cost of building machines has increased, the United Company's machines have been much improved, and it furnishes far more efficient service and a larger number of auxiliary machines.

As shoe manufacturers had paid the rates demanded by the constituent companies for many years prior to the formation of the United Company, it can hardly be contended with reason that more favorable rates are prohibitive.

The extensive use of unrestricted leases also shows conclusively that the initial payments are not prohibitive. For example, shoe manufacturers took, during the twelve years from the formation of the United Company up to

1911, 869 unrestricted leases of the Hand Method McKay lasting machine alone. In 1905 there were outstanding 186 unrestricted leases of principal metallic machines, 536 unrestricted leases of heel-attaching machines, and 322 unrestricted leases of lasting machines (see Main Brief, p. 364). In 1911 there were 225 metallic machines, 415 principal heel-attaching machines, 514 auxiliary heeling machines, and 1,506 lasting machines held on unrestricted leases (see Main Brief, p. 364).

This extensive use of the unrestricted leases proves conclusively that they are not prohibitive, as the United States contends.

The United States at the first argument in this Court laid considerable stress on the testimony of F. C. Rand, vice-president of the International Shoe Company, that his Company held 1,635 machines leased from the United Company; that the cost of installing them under restricted leases was between $10,000 and $12,000; and that the cost under unrestricted leases would be over $250,000, a difference of approximately $240,000 (R. Vol. 1, p. 180, lines 38–45; p. 183, lines 37–38).

But this evidence utterly fails of its purpose. The International Shoe Manufacturing Company is one of the largest shoe manufacturers in the world, having $25,000,000 capital, making 50,000 pairs of shoes a day and operating 20 different factories (R. Vol. 1, p. 184). $240,000 (an average of $12,000 for each of its factories) is on its face not a prohibitive sum to pay for the right to take the United Company's machines adapted for use as a series and to use them independently for a period of seventeen years. Certainly it is not a prohibitive sum for a $25,000,000 corporation to pay.

Furthermore, this sum of $240,000 includes the purchase price of all General Department machines used by the International Company in its twenty factories. When purchased they would be owned by the company outright and the company would thus avoid the annual rental which would otherwise be payable on them.

Furthermore, counsel for the United States argues as though the International Company would be required to pay this sum of $240,000 if it wished to use the United Company's machines in part and competitors' machines in part. But under no circumstances would this be true. In the first place, as we show below, the machines of the United Company to use with which others are restricted are comparatively limited in number, so that the International Company could take and use a very large number of the machines it requires in its factories from competitors without having to change a single restricted lease held by it to an unrestricted lease. In the second place, a very considerable portion of this sum consists of initial payments for Goodyear machines. As they are not restricted under any form of lease to use with machines of other departments, it would not be necessary to take them on initial payment leases in order to use them with machines of others. In the third place, if the International Company desired to use a competitor's machines, for example, a competitor's heeling and metallic machines, it would, of course, not take these machines from the United Company. It would, therefore, not pay the United Company any initial premiums for such machines. The sum of $240,000 includes initial payments on machines of all kinds furnished by the United Company. To find what the International Company would pay if it took all machines

except heeling and metallic machines from the United Company on unrestricted leases, it would be necessary to deduct from the sum of $240,000 the initial payments on the metallic and heeling machines and also, as we have stated, the initial payments on the Goodyear machines. The amount left would be a comparatively small part of $240,000.

As to the contention that the initial payments charged are prohibitive or unreasonable, the District Court found as follows (R. Vol. 1, p. 1166):—

> "But surely, if the argument is made that there is coercion through an excessive price, such an argument can have no weight whatever for any purpose legal or ethical unless the fact that it is excessive affirmatively appears. From such evidence as is presented in this case as to the amount of initial charges upon independent leases we can draw no support for the charge of coercion through excessive charges."

(6) Contention that the Restricted Use Clauses were Adopted for the Purpose of Excluding the Use of Competitors' Machines.

As the Restricted Use Clauses do not compel a shoe manufacturer desiring to take one type of machine to take other types, since he is free to take the type he desires on an unrestricted lease for a reasonable payment, our next inquiry is whether the Restricted Use Clauses were adopted with intent to exclude competitors and are unlawful for this reason.

We have shown that a reduced or wholesale price is fair and reasonable when a series of machines is used. We have also shown that the United Company could only offer such

a wholesale price by agreeing with the lessee that a machine taken for use as part of a series should be so used, that is, by employing the Restricted Use Clause or some clause having the same effect.

The Restricted Use Clause must be held to have been introduced for this legitimate business purpose unless there is affirmative evidence to show that the United Company introduced the clause, not for this purpose, but for the purpose of arbitrarily compelling the use of its machines and the exclusion of competitors' machines. Not only is there no evidence of such purpose, but the contrary is affirmatively shown by—

1. The testimony of the officials of the United Company as to the purpose for which the Restricted Use Clause was adopted;

2. The findings of the District Court made after hearing the testimony of the witnesses and after an exhaustive study of the leases and their effect;

3. The fact that the United Company always offered alternative unrestricted leases;

4. The history of the adoption of the Restricted Use Clauses;

5. The limited effect of the Restricted Use Clauses.

(a) Testimony as to the Purpose of the Restricted Use Clauses.

Mr. Winslow testified that the purpose of the Restricted Use Clause was to enable the United Company to eliminate the initial payments and thus reduce its charges and at the same time secure a fair return.

"The restricted-use clause was adopted in our leases for the purpose of giving the company a proper return for the use of the machines when they were leased without initial premiums, and for that reason alone. With the terms of royalty fixed the company would not, without the initial premiums, receive a fair return for the machines unless they were used together as restricted in the leases. As a business proposition, after the initial premiums were removed, there would be no security whatever for a proper and fair return for the use of the machines without the restricted-use clause" (R. Vol. 1, p. 452, lines 29–38).

. . . . . .

For his testimony as to the reasons why such fair return could be secured where the initial payments were eliminated by requiring the machines to be used as a series, see Main Brief, pp. 342–3.

(b) Findings of the District Court as to the Purpose of the Defendants in adopting Restricted Use Clauses.

The District Court held that the Restricted Use Clauses were not adopted with any unlawful purpose. Among other things it said (R. Vol. 1, p. 1184):—

"The grouping of the machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them as groups and a sufficient business reason for dealing with them as groups.

"That there are sound mechanical and business reasons for grouping together machinery as it is grouped by a series of prohibitive leases is abundantly established. The United States fails to show that the grouping of machines is in fact made merely as an unlawful artifice and not because of sound mechanical and business reasons."

Referring to the Restricted Use Clause and other modifications made by the United Company in the leases, the District Court further held (R. Vol. 1, p. 1159):—

> "Modifications in the contracts offered them tending, as these are shown to have done, to enable the company, through provisions adapted to increase the number of shoes worked on by each machine, to lessen the royalty charged per pair, and to diminish or dispense with the initial payment before required, were so obviously prompted by the purpose of developing the company's business through the perfectly legitimate method of offering them on terms more advantageous to users, that it would be unjust to treat them, on evidence no stronger than that here presented, as really intended to accomplish an arbitrary exclusion of users from any dealings with others."

(c) History of the Adoption of the Restricted Use Clause.

From the contentions of the United States and the allegations of the petition one would expect to find that the defendants immediately, upon the formation of the United Company, arbitrarily inserted the Restricted Use Clauses in the various leases.

An examination of the record shows that the Restricted Use Clause was not inserted in any lease for over a year after the United Company was formed, and that it was then introduced only from time to time in leases of different types of machines as the United Company found it possible to reduce its charges for such machines when they were used as part of a series. The following summary will show that in practically every case where the clause was adopted it was accompanied by such a reduction in charges:

Goodyear Machines. The United Company has never restricted the use of its Goodyear machines to use with machines of any other department, although they are in many respects its most important machines.

Metallic Machines. The Restricted Use Clause was not employed in leases of metallic machines until June, 1900.

The royalty for metallic machines is obtained entirely from the sale to the lessee of wire and nails adapted for use in the machines. Such wire and nails are composed largely of copper. Copper had increased in price from 11 cents and less in 1899 and prior thereto, to 16½ cents in 1900. The United Company, however, had not raised the price charged lessees for this material, the result being that it was selling lessees material at cost or less, and, therefore, receiving no royalty for its machines. It was entitled to increase the price charged for material, but did not wish to do so. It determined that it could afford to continue selling material at the existing prices to lessees, who also used its welter and stitcher, and lasting machines. The total royalty obtained from the three sets of machines would afford it a fair return. It, therefore, inserted in its leases of metallic machines thereafter put out a clause restricting their use to use with its welter and stitcher, and lasting machines, and continued to furnish materials at the same price as previously. To lessees desiring to use its metallic machines with lasting or welting machines obtained from others it offered a lease in which 10 per cent. more was charged for material than under the restricted lease. Later it adopted a lease without restrictions in which an initial payment was charged and the price of materials was the same as under the restricted lease. The lessee has, therefore, been offered

three alternative forms of lease, two of which contain no restrictions. No other restrictions have ever been introduced into the metallic leases. For a discussion of the introduction of the Restricted Use Clause into the metallic leases, see Main Brief, pp. 275–276, 290.

Heeling Machines. No Restricted Use Clause was employed in leases of heeling machines until 1904, over five years after the formation of the United Company. The Goodyear Company had charged substantial initial payments for its welting and stitching machines, and these charges had been continued by the United Company. The amount of these charges made it difficult for shoe manufacturers of small capital to make Goodyear shoes. This placed the small shoe manufacturer at a disadvantage. In order to remove this disadvantage and to encourage the further use of Goodyear machines, the United Company, in the fall of 1904, decided to eliminate these initial payments. As pa· ial compensation for the elimination of these payments, it introduced into its heeling machine leases a Restricted Use Clause restricting the heeling machines to use with its lasting and metallic machines and (if used upon welt or turn shoes) to use with its welter and stitcher, and (if used upon pegged shoes) to use with its pegger. When the manufacturer used a series of these machines, each machine produced more work, and the cost of caring for each machine was reduced. To shoe manufacturers who did not use its other machines of these classes the United Company offered an unrestricted lease of heeling machines under which an initial payment was charged. For a discussion of the introduction of the Restricted Use Clause in heeling machine leases, see Main Brief, pp. 277–278; 289–290.

Lasting Machine Leases. No change in the leases of lasting machines was made for over a year after the formation of the United Company.

The Ideal Lasting Machine, previously manufactured by the Goodyear Company, had always been restricted to use with the Goodyear welter and stitcher. No new restriction was ever introduced into the leases of this machine. The machine itself has become practically obsolete (see Main Brief, p. 286).

The lease of the McKay & Copeland machine was not changed until August, 1903, four and one-half years after the formation of the United Company. A new form was then put out reducing the initial payment previously charged, and restricting the use to use with the United Company's welter, stitcher, pegging, metallic, and heeling machines. The old form of unrestricted lease could be obtained by any lessee who desired it (see Main Brief, p. 287). This machine is now practically obsolete (R. Vol. 1, p. 454, lines 8–9).

No change was made in the leases of the Chase machine until 1901. A new form was then adopted restricting its use to use with the United Company's welting and metallic machines. It eliminated the Additional Machinery Clause which required an exclusive use of the machine. An unrestricted lease requiring an initial payment was offered as an alternative. This machine is now practically obsolete (see Main Brief, p. 287).

No change was made in the lease of the Consolidated Hand Method McKay machine until the end of 1900. The United Company then adopted two forms of lease, one requiring an initial payment and containing no Restricted Use Clause, and the other requiring no initial payment and

restricting the machine to use with the Goodyear welter and stitcher and metallic machines. The Additional Machinery Clause was eliminated from the new lease. The restriction to the Goodyear welter and stitcher was of no effect, as the machine was adapted for use only on McKay work on which Goodyear machines are not used (see Main Brief, p. 288).

No change was made until December, 1900, in the lease of the hand method welt laster, which was purely an experimental machine, in 1899. At this time, when the machine was made commercial, two forms of lease were adopted. Under one form the royalty was reduced from one cent to five-eighths of a cent per pair and the machine was restricted to use with the welter and stitcher. Under the other form the machine was unrestricted, the same reduced royalty of five-eighths of a cent was charged, and an initial payment of $300 (see Main Brief, p. 289).

(d) Use of Restricted Use Clause in Leases of New Types of Machines.

As new types of machines were gradually invented they were generally offered on restricted or unrestricted leases at the option of the shoe manufacturer.

Thus two forms of leases were adopted for eyeletting machines, which were first put out in 1902. Under the restricted lease no initial payment was charged and the machine was restricted to use with certain other machines. Under the unrestricted form an initial payment of $100 was charged (see Main Brief, p. 294).

Similarly two forms of lease were adopted for other new

machines which were invented or developed by the United Company, one form being an unrestricted initial payment lease and the other a restricted non-initial payment lease, except that in the case of General Department machines, including the McKay sewing machines, instead of offering an unrestricted lease as an alternative, the United Company sold the machines outright at the option of the shoe manufacturer, and except that no restricted lease was ever offered of clicking machines (see Main Brief, p. 294).

The gradual introduction of the Restricted Use Clause into the leases over a long period of years, and the fact that it was not employed at all for over a year after the United Company was formed, shows conclusively that it was not one of the purposes in the formation of the United Company to use this clause generally in the leases or impose it generally upon lessees. The fact that in practically every case it was accompanied by a reduction in charge shows that its purpose was to enable the United Company to make such reduction.

(e) The Fact that Alternative Unrestricted Leases were Offered Lessees Shows that the Restricted Use Clause was not Employed to Compel the Use of the United Company's Machines.

As we have stated above, the United Company continued to offer its lessees unrestricted leases on terms as favorable and in some cases more favorable than were offered by the constituent companies.

It is inconceivable that if the defendants had planned

to form the United Company and then introduce Restricted Clauses in the leases which would compel a lessee taking machines of one type also to take machines of other types that it would have continued to offer machines without such restrictions on more favorable terms than were previously offered.

(f) The Limited Effect of the Restricted Use Clauses.

The comparatively limited effect of the Restricted Use Clauses will show how unadapted they are to exclude the use of competitors' machines. Far from prohibiting a shoe manufacturer who holds a machine under a restricted lease from using such machine unless he also takes and uses all other types furnished by the United Company, the Restricted Use Clause restricts such machine to use in some cases with only one and in others only two or three other kinds of machines and permits the shoe manufacturer to use it in connection with the great majority of machines in his factory whether obtained from a competitor or not.

The restrictions imposed when the restricted forms of lease are taken are as follows (see Main Brief, p. 371):—

The Goodyear Department machines, although in many respects the most important machines the United Company makes, have never been restricted to use with the machines of any other department.

Metallic machines are restricted to use only with the welter and stitcher, and lasting machines.

Heeling machines are restricted to use only with the welter and stitcher, lasting, pegging, and metallic machines.

Lasting machines now in practical use are restricted as follows:—

The Hand Method Welt Machine to the welter and stitcher.

The Hand Method McKay Machine to metallic machines.

The No. 5 to the welter and stitcher, pulling-over, and metallic machines.

The McKay Sewing Machine when leased and not sold outright is restricted to use only with the lasting machine.

General Department machines when leased and not sold outright are restricted to use only with the welter and stitcher, lasting, pegging, and metallic machines.

Eyeletting machines are restricted to use with the welter and stitcher, lasting, pegging, metallic, and heeling machines.

Pulling-over machines are restricted to use with the welter and stitcher, lasting, metallic, pegging, and heeling machines.

The clicking machine is not restricted to use with any other machines, but a smaller royalty is charged when used with the United Company's welter and stitcher, and lasting machine.

In practice the restrictions are actually less than would appear from reading the above statement. A manufacturer of McKay shoes does not use the welter and stitcher, and therefore he is not affected by a restriction to those machines; a manufacturer of turn shoes does not use a stitcher and usually does not use lasting machines; and only a very few manufacturers make pegged shoes and are affected by the restriction to the pegger.

It will be seen that the machines which are restricted are restricted to use with a comparatively limited number of principal bottoming machines. With two slight exceptions the machines to use with which others are restricted are only the welter and stitcher, lasting and metallic, and,

in some few instances, heeling machines. The two exceptions are that the No. 5 Lasting Machine, a new machine, first put out in 1908, is restricted to use with the pulling-over machine, and a few machines are restricted to use with the pegging machine. As the hand method lasting machines will do the kind of work done by the No. 5, and as very few pegged shoes are made, these exceptions have no real significance.

As the manufacturer of McKay shoes and the manufacturer of nailed shoes, which together constitute about half the shoes made (R. Vol. 1, p. 424), do not use either the welter or stitcher, they are concerned only with the restrictions which relate to lasting, metallic and heeling machines.

No machines of any kind are restricted to use with the Goodyear auxiliary machines (of which the United Company manufacturers 43 different kinds), General Department machines (of which the United Company manufactures over 170 different kinds), McKay sewing machines, pulling-over machines (with the single slight exception noted above), eyeletting machines, clicking machines, lacing machines, treeing machines, insole machines, buttonhole machines, and various other miscellaneous machines which the United Company manufactures. Of course none are restricted to use with machines for sewing uppers and other machines which the United Company does not manufacture. The result is that a shoe manufacturer can obtain any machine he desires from the United Company even on the restricted form of lease and use it with any one or all of the many machines enumerated above obtained from competitors.

As no machines are restricted to use with the above-

mentioned types of machines, it is obvious that the Restricted Use Clauses do not compel lessees to take them, or any of them.

Furthermore, the remaining types of machines, namely, the Goodyear Department, lasting, metallic, and heeling machines are not all restricted to use together. The Goodyear machines are not on any form of lease restricted to use with either the lasting, metallic or heeling machines. Neither the lasting nor the metallic machines are on any form of lease restricted to use with the heeling. The Goodyear welter and stitcher, the lasting, metallic and heeling machines are not on any form of lease restricted to use with the Goodyear auxiliaries, nor are any of these auxiliaries restricted to use together.

There are, therefore, various combinations in which a shoe manufacturer can obtain from the United Company on restricted leases such of these machines as he desires to take from it, and obtain from competitors for use with them such other machines of these types as he needs. For example, a shoe manufacturer making welt shoes may in the following combinations use the United Company's machines with a competitor's machines of the type named, although the United Company's machines are held on non-initial-payment or restricted leases.

No. 1. The United Company's Goodyear Welter and Stitcher.
Competitor's Welt Auxiliary Machines (in whole or in part).
Competitor's Lasting Machines.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 2. United Company's Goodyear Welter and Stitcher.
United Company's Goodyear Welt Auxiliary Machines (in whole or in part).
Competitor's Lasting Machines.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 3. United Company's Goodyear Welter and Stitcher.
United Company's Goodyear Welt Auxiliary Machines.
United Company's Hand Method Welt Lasting Machine.
Competitor's Metallic Machines.
Competitor's Heeling Machines.

No. 4. United Company's Welter and Stitcher.
Competitor's Welt Auxiliary Machines.
United Company's Metallic Machines.
United Company's Hand Method Welt Lasting Machine.
Competitor's Heeling Machines.

In any of the above combinations the lessee is free to use competitors' machines of all the kinds not enumerated. For other combinations, see Main Brief, pp. 373–374.

The result is that a lessee who does not want to make initial payments to the United Company and who takes restricted leases of such machines as he desires from the United Company is still able to use his machines so taken with the great majority of machines in his factory, whether such other machines are obtained from competitors or not.

Had the United Company intended by the Restricted Use

Clauses to compel a shoe manufacturer taking machines from it to use its machines exclusively, or practically exclusively, and thus exclude a competitor's machines, it would surely not have so drawn the Restricted Use Clauses that they permit the lessee who takes machines under them to use them in connection with the great majority of machines in his factory, even though obtained from competitors.

I. Legality of the Restricted Use Clause.

The Restricted Use Clause is:—

1. A normal provision designed to accomplish a legitimate business purpose beneficial alike to the lessor and the lessee.
2. It does not in any way restrain trade.
3. It is a valid patent restriction which the United Company is entitled to impose.

(1) The Restricted Use Clause is a Normal Provision Designed to Accomplish a Legitimate Business Purpose.

The Restricted Use Clause, being a normal provision designed to accomplish a legitimate business purpose, is lawful even if no patents or patent rights were involved. We shall, therefore, first consider it without reference to the patent situation.

We have shown above that the Restricted Use Clause was adopted to enable the United Company to offer to a shoe manufacturer desiring to use a series of its machines a reduced or wholesale rate, and that it is the only practicable way in which such a right can be offered under the leasing system.

That the United Company is entitled to share with its lessees the economies which result where a series of its machines are used seems too obvious for argument. Such a transaction benefits both the United Company, by enabling it to offer its machines on better terms, and the shoe manufacturer, by giving him lower rates for his machines. It is a normal legitimate business transaction.

If this be so, surely the United Company can provide for such reduced rate in the only practicable way, namely, by agreeing with the shoe manufacturer that machines taken for use as a series shall be so used.

Counsel for the United States, as we understand them, do not deny that economies result from the use of a series of machines. Their contention, as we understand it, is:—

(1) That the Restricted Use Clause was adopted with unlawful intent and for this reason is unlawful;

(2) That even if not adopted with unlawful intent it is inherently unlawful because of its effect on competitors.

We have reviewed above certain of the evidence which fully sustains the District Court's finding that the clause was not adopted with unlawful intent, but for the purpose of enabling the United Company to offer a reduced or wholesale rate.

We shall, therefore, now discuss briefly the contention that the clause is inherently unlawful because of its effect on competitors. For a more complete discussion of the subject, see our Main Brief, pp. 383–393.

Let us first inquire just what effect this clause has upon competitors. It is obvious that it does not affect at all a competitor who offers a complete series of machines. A shoe manufacturer just entering business is free to choose between the United Company's series and such competitor's

series. A shoe manufacturer who already holds the United Company's machines is free, so far as this Restricted Use Clause is concerned, to cease using the United Company's machines and to take and use the competitor's series of machines.

The sole objection of the United States, therefore, must be that if a shoe manufacturer desires to use one or two of the series of machines furnished by the United Company he may by reason of the better terms offered when the entire series is used be induced to use such series and not interject into the series one or more machines obtained from the competitor. The result, it contends, is that a competitor offering a single machine or less than an entire series is at a disadvantage.

The United Company's machines are adapted for use together and for all practical purposes constitute a single article. Except that they do not have a physical connection they constitute a single article just as much as do the component parts of a parlor car or a locomotive. The boiler of a locomotive has a less intimate relation to the wheels than has the lasting machine, which prepares the work for the welter, to such welter. A device for holding or folding paper forming part of a printing press has less connection with the rollers which perform the actual operation of printing. There is no more reason why the United Company should be required to permit the use of its lasting machine and welter separately than there is why it should permit the use of the different parts of its welter separately.

When analyzed, the contention of counsel for the United States merely amounts to this,—that a manufacturer who furnishes a complete article has an advantage over the

manufacturer who offers only one of the component parts of the article, and, therefore, that the manufacturer of the complete article either cannot offer it for sale as a complete article at all, or must, if he offers it for sale or use, also offer each component part separately on terms which will enable others to obtain certain parts from him and the remaining parts from his competitors and thus get the complete article as cheaply as if it were obtained as a whole from him. We submit that to state this contention is to refute it.

Take an illustration on all fours with the present case. The Pullman Company leases its parlor cars to railroads. It obviously has an advantage over a competitor who only manufactures car wheels. Such competitor offering his wheels to the railroad is met by the statement that the Pullman Company either refuses to lease its wheels and bodies separately or that, if it does, it charges retail prices which total more than the price charged for the complete article. The contention of the United States, as we understand it, is, first, that the Pullman Company must lease the parts of its car separately so that the manufacturer of wheels shall not be at a disadvantage; and, second, that it must lease the separate parts at such prices that the total for all the parts will not exceed the prices charged for the complete car, or will be so little in excess that the manufacturer of wheels alone will not be at a disadvantage.

But on what possible theory can the Pullman Company be required to lease the parts of its car separately, or, if so, on what possible theory can it be forbidden to charge a wholesale price for the complete car?

It is no offence against morals or law for a manufacturer of a complete article to refuse to sell or lease the parts separately. The Pullman Company would be fully justi-

fied in leasing its car only as a whole, and the United Company would be fully justified in furnishing the use of its machines only as a series and refusing to offer any use of individual machines separately.

The District Court said:—

> (R. Vol. 1, p. 1184.) "The grouping of machines in order that some may aid others in turning out a product affords a sufficient mechanical reason for installing them as groups and a sufficient business reason for dealing with them as groups."

But if we assume that the United Company is required by law to permit the use of its different types of machines separately, surely it is not prohibited from charging more when a machine is taken for use separately than is charged when it is taken for use as a part of a series.

Such a reduced charge is merely a wholesale price. It is customary in practically every business in the country. In the usual sale at wholesale, for example in the sale of six machines of the same kind, the actual saving if any effected is usually small. In the case of the use of a series of six different machines which are adapted for use together, which are cared for by the lessor, and are paid for according to the number of shoes they produce, there is no question but that a large saving is effected which justifies the reduced price. That the United Company can grant the use of a series for a reduction equal in its judgment to the increased return effected by such use, or any part of such increased return, we submit is beyond question.

One further fact must be borne in mind. The machines leased belong to the United Company. It does not sell them or part with title. In its leases it is not attempting,

therefore, to provide how machines which it has sold and disposed of shall be used in the future; it is merely regulating the use of its own property. It has a right to refuse to permit any person to use machines which it owns. In consenting that such machines be used it does not part with the right to direct how they shall be used. And in providing that its own machines which are adapted for use together and when so used produce the best results shall be used together, it is clearly not overstepping its rights as owner of the machines.

We submit that the Restricted Use Clauses constitute merely a control by the United Company of the use of its own machines which is clearly justified. We further submit that these clauses are reasonable normal agreements providing merely for a wholesale price and are clearly not condemned by the Sherman Act.

For a more complete discussion of this question, see Main Brief, pp. 380–396.

(2) The Restricted Use Clauses do not Restrain Trade.

The Restricted Use Clauses are clearly not within the Sherman Act if they do not restrain trade, but, on the contrary, relax an existing restraint. Such is their actual effect.

The United Company's machines are its property. No shoe manufacturer, therefore, has a right to use them without the United Company's consent. An absolute legal restraint exists prohibiting their use by shoe manufacturers, except so far as the United Company consents to relax this restraint.

In agreeing under the terms of the Restricted Use Clauses that the shoe manufacturer may use them as a series, but not separately, the United Company grants the shoe manufacturer a right he did not have previously, namely, the right to use these machines as a series. The shoe manufacturer's liberty of action is not restrained in any respect whatsoever. The Restricted Use Clause does not require or obligate a lessee to use the United Company's machines. It merely permits him to use them if he so desires. Prior to accepting a lease of the United Company's machines he could use any other machines obtained from competitors, but he could not use the United Company's machines at all. After accepting restricted leases of a series of the United Company's machines he can still, so far as the Restricted Use Clauses are concerned, use any other machines obtained from competitors he pleases and he also has acquired the right to use the United Company's machines as a series.

In other words, his liberty of action has not been in the slightest degree restrained and he has acquired an additional right, namely, the right to use a series of machines, which right he did not have previously.

A provision which in no way restrains the freedom of the lessee and which grants him an additional right can hardly be termed a restraint of trade.

It is true that if the shoe manufacturer were granted the right not only to use the machines as a series, but also the right to use any one or more of them as he chose, he would obtain still greater rights. But this does not refute the fact that the grant of the right to use as a series is the grant of an additional right which the shoe manufacturer did not have before and that it imposes no new restraint (see Main Brief, pp. 396–399).

(3) The Restricted Use Clause is the Grant of a Valid Patent License and is therefore Lawful.

The agreements under which the United Company's machines are leased constitute agreements whereby the machines themselves are loaned to the lessee and they also constitute licenses under the patents embodied in the machines granting the lessee a right to use such patented inventions so embodied in the machines to the extent set forth in the license. The Restricted Use Clause provides that the leased machines shall be used only as part of a series. It is a grant of a limited instead of a complete and unrestricted right of use.

A patentee is granted the right to exclude all others from making, using, or vending his patented machine without his permission. It has never been questioned that he can refuse such permission or that he can at his discretion grant a complete or partial permission to exercise these rights. The patentee's motive in refusing to grant any rights, or in granting only partial rights instead of full and complete rights of use or sale, cannot be questioned.

As the patentee has a complete monopoly, any license to use or sell a patented article which he grants whether partial or complete is a relaxation of a lawful restraint imposed by law on its use or sale, and such grant cannot, therefore, restrain trade or create any additional monopoly in the patented article.

In granting a partial license to use or sell, the patentee reserves all rights not granted. If the licensee oversteps the rights granted him he becomes an infringer.

We do not understand that the foregoing principles have ever been questioned by this Court.

In the present case, the United Company in granting a lease containing a Restricted Use Clause merely grants a partial license to use. It permits the licensee to use the leased machine as part of a series comprised of other patented machines owned by it. It does not grant the right to use the machine otherwise. The licensee, therefore, cannot use the leased machine except in a series without overstepping the limits of his grant and becoming an infringer.

We have shown above that the purpose of the United Company in granting a partial right of use is solely to enable it to offer a reduced rate for a series of machines. But even if its purpose were otherwise, it would be immaterial, since the United Company as patentee is entitled to grant either partial or complete licenses or no licenses at all, regardless of its motives.

Any person using a patented article commits infringement and can be enjoined unless the patentee has lost the right to control such use of the patented article. A patentee loses the right to control such use only (1) where he sells the patented article without reservation and thus places it outside the limits of the patent monopoly, or (2) where he grants a license to use it in the manner in which such second party is using it.

In the present case the United Company has not sold its patented machines and, therefore, has not placed them outside the limits of its patent monopoly, nor has it granted a license to use them except as a series. Any use of the machines except as a series, therefore, constitutes an infringement of its patents.

The United Company in installing its machines in a factory does not sell them. It retains full title and at the

termination of the lease, whether by expiration of the term or due to a prior cancellation, the lessee has no further rights or interest in them. The machines, therefore, are not sold and paid for; they do not pass outside the limits of the patent monopoly, but remain subject to the protection of the patent and the control of the United Company and can only be used as the United Company expressly permits. The only permission to use held by the lessee is contained in the lease and license agreement under which the machines are installed.

By such lease and license agreement the lessee is granted the right to use the leased machines only in certain defined ways. He can use them only at a certain factory, he must use them himself and he can use them only as part of a series of the United Company's patented machines. Any use contrary to these provisions he is not authorized to make, and, therefore, such use constitutes an infringement of the United Company's patents.

Counsel for the United States, however, assert that such a restricted license is not a proper patent license, and to sustain their contentions cite certain recent cases of this Court. We respectfully submit that these cases in no way sustain their contention or contravene the principles of law laid down above or their application to the present case.

In *Motion Picture Patents Co.* v. *Universal Film Co.*, 243 U. S. 502, the patentee granted a license to make and sell a patented machine for exhibiting moving-picture films. The licensee was, however, required to sell such machines under the restriction and condition that the machines should be used solely for exhibiting pictures containing the inventions of a certain patent for films. The patent on the films had

expired. The defendant leased a machine which had been sold to its lessor bearing a notice setting forth the above restrictions, and the defendant used this machine with films furnished by a third person of a kind not permitted by the attempted restriction. Suit for infringement of the patent on the machine was brought.

The question was, as stated by the Court:—

> "May a patentee or his assignee license another to manufacture and sell a patented machine and by mere notice attached to it limit its use by the purchaser or by the purchaser's lessee, to films which are no part of the patented machine, and which are not patented?"

The case is clearly distinguishable from the present case on three grounds:—

1. In the Motion Picture Patents case the patented machine had been sold and paid for and thus placed outside the limits of the patent monopoly. The patentee was attempting to restrict an article which had passed beyond his control.

In the present case, as we have pointed out, the machines have not been sold or paid for. They remain the undisputed property of the United Company and cannot be sold or used except to the extent that it permits.

2. In the Motion Picture Patents case the restriction was held to be a restriction on the use of films and not on the use of the patented machine at all. Since the restriction, therefore, was held not to restrict the use of the patented machine, it was, of course, not a patent restriction. No question of the effect of the granting of a limited or partial right of use was involved. At the most the restriction was an attempt by mere notice or agreement to restrict

the use of a machine which had been sold and had passed beyond the control of the patentee.

That the restriction was on the films and not on the machine was shown by the facts of the transaction. The patentee had sold the patented machine and had no interest in its future use. The purpose of the restriction was, therefore, clearly to obtain control of unpatented films used in the machine. The patentee, having charged such price as he saw fit for the machine and the right to use it, attempted in addition to control the use of the films, which had no relation to the use of the machine. This Court, therefore, held:—

> "Both in form and in substance the notice attempts a restriction upon the use of the supplies only and it cannot with any regard to propriety in the use of language be termed a restriction upon the use of the machine itself."

In the present case the restriction is clearly on the use of the patented machine. The United Company's machine is designed and adapted for use in connection with other patented machines which no one else furnishes. When so used it produces more work and better work. The United Company is vitally interested in having the machine which it owns used most effectively and in the manner for which it is designed. The reputation of its machine is thus enhanced and the royalty payable to the United Company increased. In providing that its machine shall be used in the manner for which it is designed to be used, and in which it can be used most effectively, the United Company is obviously controlling the use of the machine itself and not of any other machine or article. In form as well as in substance the restriction is on the use of the patented machine.

3. In the Motion Picture Patents case the patentee attempted to control the use of unpatented films and thus to acquire a monopoly of such unpatented films which had no relation to its patent.

In the present case the restriction relates entirely to the United Company's patented machines. The United Company is not attempting directly or indirectly to control or to require the lessee to take or use unpatented machines or materials.

The facts in the Motion Picture Patents case and the decision in that case have, therefore, no bearing upon the present case. Nor does that case in any way affect the well-recognized rule that a patentee may grant a complete or partial license to use, and that, in case of a partial license to use, any use not so licensed constitutes an infringement.

In *Strauss* v. *Victor Talking Machine Co.*, 243 U. S. 490, the Victor Company attached a notice to each machine providing that its use for demonstration purposes only was granted dealers and retailers; that they could sell the machine to the public with a right to use it only upon payment to them of a royalty of $200; and that title remained in the Victor Company until the expiration of the patents embodied in the machine. The Victor Company received the full payment to which it was entitled upon delivering the machines to the wholesaler and received no part of the $200 for which the machines were to be sold to the public. The defendant, a retailer, obtained machines from retailers or wholesalers for less than $200, the price which was to be paid when sold to the public, and was selling these machines for less than $200. The Victor Company prayed that the defendant be enjoined from

selling the machines and from violating the Victor Company's patent rights.

The Court held that the evident purpose and intent of this transaction was not to control any use of the machines, but that it was a mere attempt to restrict the prices charged for them after the plaintiff had been fully paid for the machines and they had passed into the possession of dealers and the public, in other words, after they had passed outside the limits of the patentee's control, and that the case, therefore, fell within the rule of *Bauer* v. *O'Donnell*, 229 U. S. 1.

It is obvious that in the present case the United Company has not disposed of its machines and received full payment for them and they have therefore not passed beyond the limits of its patent monopoly.

In *Bauer* v. *O'Donnell*, 229 U. S. 1, the plaintiff sold Sanatogen, a patented remedy in packages bearing a notice that they were licensed for sale and use by retailers at a price not less than one dollar. The defendant, a retailer, had bought packages from jobbers which he sold for less than the price named. He was sued for infringement.

The majority of the Court held that the patentee by selling the packages with full right of use had "exercised" his exclusive right to sell granted him by the patent law and had placed the packages outside the "limits of the monopoly granted by the patent law." The attempted restriction on future sales was, therefore, not a restriction of any patent right, or the grant of a limited patent right, since all rights which the patentee had in respect to these particular packages had been sold and transferred by him. No future sales of these packages could, therefore, constitute an infringement. No question of a patent restriction was, therefore, involved in the case.

In *Henry* v. *Dick*, 224 U. S. 1, accepting the minority opinion as the opinion of the Court, since the decision of the majority was overruled in the Motion Picture Patents case, we again find that the decision has no bearing upon the present case.

In that case a patented mimeograph was sold and paid for, and a notice was attached to the machine stating that it could be used only with paper, ink, and other supplies furnished by the Dick Company. Suit was brought against the defendant Henry for contributory infringement in selling ink to one Miss Skou to be used on a machine which she had so bought and owned.

A majority of the Court held that, in spite of the sale of the machine to Miss Skou, the patent right granted Miss Skou was a limited one, namely, the right to use the machine with supplies furnished by the Dick Company, and that the use of the machine with other supplies constituted an infringement. Henry was, therefore, held to be a contributory infringer.

The minority did not dispute the rule of law applied by the majority, namely, that if a limited license were granted, any use not so permitted constituted infringement, but did dispute its application to the facts of that case. It held that the restriction in question was not a reservation of a right to use the machine, but was a restriction upon the use of the materials employed in using the machine. It held that under the sale to Miss Skou every possible patent right in the machine was transferred to her. Thus the minority said (p. 65):—

> "That the sale here in question was one of all the rights which the patent protected has, it seems to me, at the outset been demonstrated beyond reasonable dispute."

As the machine had, therefore, been sold with full rights of use, it had, of course, passed beyond the limits of the patent monopoly, and the restriction was necessarily not a reservation of patent rights in the machine, since these had all been sold, but a mere attempt by notice to restrict the use of certain unpatented materials in the machine.

The case is clearly inapplicable to the present case. In the present case the machine has not been sold, but it is still owned by the United Company, and only a limited right of use has been granted, namely, the right to use in a certain factory by the lessee himself and as part of a series of machines.

We submit that in the present case we have a clear case of (1) a control by the United Company of machines still owned by it and within the limits of its patent monopoly, and (2) a limited patent license granting a right to use the machines as part of a series and prohibiting or refusing any other use.

The United Company is entirely within its rights as patent owner in granting such a limited right of use and in declining to grant full rights of use.

For a full discussion of this subject and of the cases relating to patent restrictions, see our Main Brief, pp. 399-419.

J. Auxiliary Restricted Use Clause.

By the Auxiliary Restricted Use Clause the use of auxiliary machines, which aid or assist the work of the principal machines of a department, are restricted to use with such principal machines.

Nearly all of such auxiliary machines are in the Goodyear Department. The Goodyear Company restricted them to use with its principal machines, the welter and stitcher, and the United Company has merely continued this same practice.

The principal machines are not restricted to use with the auxiliary machines. A lessee who takes a welter and stitcher can use them with auxiliaries obtained from competitors if he so desires, or can use them with auxiliaries obtained partly from competitors and partly from the United Company.

There were various reasons why this method of furnishing auxiliary machines was adopted and why it has been continued.

1. The welter and stitcher were first invented. Afterwards the Goodyear Company, and later the United Company, invented from time to time auxiliary machines, to assist the work of the welter and stitcher, by preparing the work for those machines or by completing the work after leaving those machines. The company wished to furnish these machines without additional royalty in order to encourage and increase the use of its welter and stitcher on which it was receiving a royalty. It, therefore, loaned them to the lessee without charging any additional royalty, receiving only a comparatively small initial payment, or, after 1904, a rental, and obtaining its compensation through the increased use and productivity of the welter and stitcher. But of course it could not afford to give the lessee these expensive machines without royalty unless they were used with its welter and stitcher, for which a royalty was paid. It, therefore, restricted them to use with the welter and stitcher.

2. The principal machines, the welter and stitcher, have recording mechanisms which record more or less accurately the amount they are used and thus enable the United Company to determine the royalty due. Such mechanisms cannot be placed on most of the auxiliary machines. By restricting the use of these machines to use with the welter and stitcher, the United Company is relieved of the almost impossible task of checking the separate use of all of these numerous auxiliary machines.

3. The United Company does not like to lease a machine unless it can keep it in efficient and satisfactory condition. If it leased each auxiliary machine separately for a separate rental or royalty which seemed reasonable, it could not afford for such royalty to care for these separate machines. When one or a number of auxiliary machines are taken for use with the welter and stitcher as a unit, the expense of caring for them is, of course, less per machine.

4. It would be almost impossible to divide the comparatively small Goodyear royalty fairly among the 45 machines of the Goodyear Department. The royalty for many of the machines would be trivial and the expense of determining the amount of use of each of such machines would amount to more than the royalty. They are, therefore, leased as a unit.

5. If a separate royalty were placed on each auxiliary machine, when a new auxiliary machine was invented and a royalty charged for it, the total royalty for the Goodyear set would be increased, or the royalties on each of the machines of the Department would have to be revised. By leasing the machines as a single series this difficulty is avoided.

6. If a royalty were charged for each auxiliary machine, many shoe manufacturers might not take certain auxiliary

machines, although they improve the quality of the Goodyear work but they would attempt to get along without such machines at all. The United Company wants each lessee to have all the kinds of auxiliary machines he needs in order that his work may be as perfect as possible and in order to increase the productivity and capacity of the welter and stitcher. By leasing the auxiliary machines without additional royalty the lessee is encouraged to use them and this improves his product, enhances the reputation of the Goodyear shoe and Goodyear machines, and increases the capacity of the welter and stitcher.

For a more complete discussion of the reasons for the adoption of the clause, see Main Brief, pp. 375–378.

The Auxiliary Restricted Use Clause was adopted by the Goodyear Company to accomplish the above reasonable and proper results. It was continued by the United Company for the same reasons which led to its adoption. It is a normal reasonable agreement adapted to accomplish a legitimate business purpose, and apart from any consideration of patent rights it is clearly lawful.

Furthermore, for the same reasons given above in respect to the Restricted Use Clause, it does not restrain trade, since it merely grants the lessee patent rights he did not have before and in no way restricts his previous freedom of action (*supra*, pp. 141–142), and it is a valid grant of a limited patent license and the control of patented machines which have never been sold and are still within the limits of the patent monopoly, and it, therefore, constitutes a lawful exercise of patent rights (*supra*, pp. 143–151).

K. Factory Output Clause.

In the fall of 1904 the United Company adopted a form of lease under which the initial payments theretofore required on its Goodyear machines were eliminated. This represented a very substantial reduction in charges. Partly to compensate the company for this reduction, it charged under this new form of lease a royalty based on the total number of welt shoes made by the lessee in his factory, whether or not made on its machines. In other words, when a lessee took its machines without initial payments, such lessee agreed to pay a royalty for the use of the machines based on the total number of shoes on which such machines were capable of use, whether so used or not. If the lessee did not wish to pay on this basis, he could take the former lease under which initial payments were charged (see Main Brief, pp. 422–424).

The United States insists that this royalty constitutes a charge for shoes manufactured on competitor's machines. This is not true. It is a royalty paid solely for a lease of the United Company's machines and is based on the amount of use which the lessee has for such machines. Furthermore, as stated, the lessee can take a lease without this clause if he prefers.

This Factory Output Clause was employed by the McKay Company in its heeling leases (*supra*, p. 89).

L. Clicking Machine Royalty.

The clicking machine is not restricted to use with any other machine under any form of lease. A small royalty based on the amount of dies used on the machine is charged.

If used with the United Company's welter and stitcher, or turn machine, and lasting machine, no further royalty is charged. In such case the total royalties received from the series is deemed sufficient compensation. If used with a welter and stitcher, or turn machine, or lasting machine not obtained from the United Company (which the lessee is free to do), an additional royalty is charged. In other words, the rate is less when the machine is used as part of a series of the United Company's machines.

The United States terms this a penalty for using the competitor's machines. It is, in fact, only a wholesale rate for the use of a series of machines, the lessee being free to use the machine either as part of a series or not as he prefers.

The insistence of the United States that this clause is unlawful shows that its real contention in respect to the leases is that machines must not be leased as a series for a wholesale royalty, but that each machine must be leased separately for a separate royalty.

For a discussion of this clause, see Main Brief, pp. 424–426.

6. ENFORCEMENT BY THE UNITED COMPANY OF ITS LEASES.

The United Company has treated its lessees with the utmost liberality and has enforced its leases only when it was treated with flagrant unfairness. A lessee who has treated the United Company fairly and who has used its machines so as to afford it a fair return has never been harassed because of a technical violation of his leases. Mr. R. P. Hazzard, a large shoe manufacturer, expressed the

true relation between the United Company and its lessees when he testified:—

> "I have never taken as much interest in the legal wording of the United Company's leases as I have in the personality of its people, and I have always had fair treatment from the United Company" (R. Vol. 1, p. 653, lines 17–20).

As stated, the United Company has never taken advantage of its technical rights under the leases and has enforced them only when it was treated unfairly and did not receive a fair return for its machines. In spite of extraordinary efforts to prove the contrary, the United States utterly failed to show a single instance of any arbitrary enforcement of the leases (see Main Brief, p. 429; App. II, pp. 743–807).

Apart from bankruptcy, it has cancelled its leases in only five instances during the period of more than twelve years in which it has done business, and in each case the lessee had either ceased using its machines at all or was dishonestly using them without paying royalty (see Main Brief, pp. 429–430).

On the other hand, the record shows instances in which it did not take any action, although it would have been fully justified in so doing (see Main Brief, pp. 430–431).

The following instances illustrate the extent to which the United Company has treated its lessees far more liberally than was required by the leases, thus showing that the clauses in the leases were intended only as protection in case it did not receive a fair return.

A. The United Company has furnished the service which we have discussed above to its lessees, costing it more than $1,000,000 a year, although not required to do so by the leases (see Main Brief, p. 427).

B. It has not required lessees to pay the full cost of repairing machines upon their return, although the leases require such payment (see Main Brief, pp. 427–428).

C. As new or improved machines have been invented the United Company has substituted them for outstanding machines without charge to the lessee and has scrapped the old machines although under no obligation to do so (see Main Brief, pp. 189–190, 428).

This, of course, has been an enormous expense to it.

D. The United Company has supplied all new auxiliary machines without charging additional royalty although under no obligation to do so (see Main Brief, pp. 377, 428).

E. The United Company has enforced the clause requiring minimum payments only for the purpose of requiring a lessee to return idle machines which were earning no royalty (see Main Brief, pp. 311, 428).

F. The United Company has permitted lessees to return machines for which they had no use, to change from one form of lease to another (Main Brief, pp. 306, 311, 430), and has offered to permit a lessee to give up his leases and take machines from a competitor when circumstances justified (Main Brief, pp. 359, 430).

7. COMPLETE FAILURE OF UNITED STATES TO PROVE THE CHARGE IN THE PETITION IN RESPECT TO THE LEASES.

We have above discussed the leases as though it were open to the United States to contest their legality on any ground it pleases. The leases, however, are really material in this case only in so far as they prove the charge made by the petition.

The charge made by the petition is that the defendants planned (1) to acquire all concerns engaged in the shoe machinery business; and (2) to refuse to lease welting, stitching, lasting, heeling, and metallic machines which the petition refers to as essential machines, unless the shoe manufacturer took practically all other machines from them (Main Brief, p. 235). The leases are alleged to be only a step in carrying out this plan and are relied on by the United States to prove the second part of the charge.

In other words, the charge is this: (1) The defendants planned that the United Company should take over the machines made by the constituent companies, viz., welting, lasting, metallic, and heeling machines, which are described as essential machines and of which the constituent companies had lawful patent monopolies; (2) that they also planned to acquire concerns making all other types of machines which were not essential; and (3) that they then planned to use the essential machines to force shoe manufacturers to take such other types of machines, such as General Department machines, etc., by refusing to lease the essential machines unless the shoe manufacturer also took such other types.

As the District Court pointed out (R. Vol. 1, p. 1163), the only clauses in the leases on which the United States relies as having this effect are the Restricted Use Clauses.

That the Restricted Use Clauses do not have this effect is conclusively shown by the fact that unrestricted leases are also offered lessees. But further than this, even if leases containing the Restricted Use Clauses were the only leases offered, and even if they did compel a shoe manufacturer taking machines of one department to use machines of other departments, they do not have the effect which the petition alleges. As we have shown, they do not restrict the use of

the so-called essential machines, viz., welting, lasting, metallic, and heeling machines to use with other types of machines. On the contrary, with one minor exception in the case of the No. 5 Lasting Machine, all the restrictions either (*a*) limit the use of certain so-called essential machines to use with other essential machines or (*b*) limit the use of other machines such as General Department, eyeletting, pulling-over machines, etc., to use with the essential machines. Whatever their effect, therefore, it is obvious that they do not require a shoe manufacturer taking the so-called essential machines to take other types.

For a fuller discussion of the complete failure of the United States to prove the charge in the petition as to the leases, see Main Brief, pp. 244–247.

V.

THE ACQUISITIONS OF OTHER CONCERNS AND PATENTS.

The petition alleges that in pursuance of the defendants' unlawful plan to acquire all concerns engaged in the shoe machinery business the United Company "absorbed many competitors" (R. Vol. 1, p. 999). It then recites *58 transactions which it alleges were of this character, and concludes,—

> "The competition which previously existed between said several concerns has been entirely destroyed" (R. Vol. 1, p. 1023).

1. COMPLETE FAILURE OF THE UNITED STATES TO PROVE ANY ATTEMPT TO ACQUIRE COMPETITORS OR ANY ATTEMPT TO ACQUIRE ALL CONCERNS ENGAGED IN THE SHOE MACHINERY INDUSTRY.

Instead of showing, as alleged in the petition, that 58 competitors engaged in the shoe machinery business were absorbed, the record shows conclusively that in none of

* The Plant purchase is the only transaction which involved any considerable number of patents or any substantial consideration. As the United States has for this reason laid great emphasis on this transaction, we consider it separately (*infra*, pp. 182–196). The allegation in respect to the Boston Blacking Company was withdrawn (R. Vol. 1, p. 47, lines 21–43).

the 58 transactions put in evidence was any competing shoe machinery business of any significance acquired.

1. In 9 of the 58 transactions no tangible property or business of any kind was acquired. These 9 transactions consisted of mere employment contracts, agreements commuting or settling prior obligations, or the acquisition of patent licenses or patents covering new inventions which the United Company wished to use. No shoe machines or shoe machinery business was acquired by any of these transactions (see Main Brief, p. 456).

2. By 15 of the remaining 49 transactions the United Company acquired the businesses of furnishing supplies of various kinds such as wire, eyelets, McKay needles, Goodyear needles, awls, mallets, tacks, nails, brushes, heels and counters, peg-wood, and a few mere tools. None of these transactions related to shoe machinery at all. In no case was the acquisition made for the purpose of eliminating competitors, and in each case the United Company acquired something it did not have before. Of course no shoe machines or shoe machinery business were acquired in any of these transactions (see Main Brief, p. 457).

3. In 8 of the remaining 34 transactions the party from whom the shoe machinery was acquired was not engaged in business but merely had a patented experimental machine. By 7 of these transactions the United Company acquired new machines which it did not have before, or patented inventions for the purpose of embodying them in its own machines. In the remaining transaction the United Company acquired control of patents which properly belonged to the McKay Company, and which the McKay Company, prior to the formation of the United Company, had brought suit to recover. By none of these transactions

was a company engaged in the shoe machinery business acquired (see Main Brief, p. 460).

4. In 17 of the remaining 26 transactions the United Company acquired a new machine or new machines for performing operations for which it did not have any machine at the time (see Main Brief, p. 463).

5. By 7 of the remaining 9 transactions the United Company acquired patented improvements or inventions for the purpose of enabling it to supply better machines than it had before (see Main Brief, p. 464).

6. The two remaining transactions related solely to foreign business in patented machines and were in effect merely purchases of foreign patents (see Main Brief, p. 465).

An analysis of the transactions thus shows that by all of them in which any property or business of any kind was acquired, the United Company acquired something it did not have before.

In a very few cases there was a slight overlapping of the field of a machine or business acquired with that of the United Company, but in every such instance either the United Company's machine or product was very inferior and unsatisfactory and was discarded when the new machine was acquired, or the acquisition of the overlapping machine or product was merely incidental to the transaction, entirely outside of its real purpose and object, and such slight competition, if any, as existed was of no significance in the trade. In every one of these transactions the important fact bearing both upon the intent and what was actually accomplished was that the United Company acquired a new machine or new product which it did not have before, but which its customers used, or a new invention which was needed to improve its machines.

The District Court, referring to the comparatively few instances in which any possible appearance of competition existed, said:—

> (R. Vol. 1, p. 1139.) "The instances then remaining in which the United Company was at the time producing or trying to develop for production a patented machine for doing work more or less similar to that for which the invention of the machine acquired was intended, are the only ones capable of being regarded as of any possible significance for the purposes of the petitioner's case. In all such cases it appears that the acquisitions made were of patented improvements, whether or not embodied in an actual machine, enabling the United Company to increase the efficiency of its own machines, or to complete the development of others with which it was then experimenting or had not yet succeeding[ed] in rendering commercially successful.
>
> "No case, however, is found among the acquisitions of the character last described wherein it has fairly been made to appear that actual competition existed between the device or machine acquired and any machine then being produced or experimented with by the United Company, of such consequence as justifies either the conclusion that the acquisition was for the purpose of suppressing such competition, or the conclusion that a material restraint of trade was thereby accomplished. In most of the cases of this sort the machine or device acquired was claimed to infringe patents belonging to the United Company, or the patent acquired was one which some machine belonging to it was claimed to infringe, or the application acquired was in interference with applications of its own; and the object of the acquisition is shown to have been the avoidance or compromise of pending or threatened litigation. In such cases it is still less possible to say that any wrongful absorption of a 'competitor's' business has been proved."

This finding of the District Court is fully sustained by the evidence.

An examination of those 58 transactions shows, therefore, that the United Company did not actually acquire or absorb any concerns offering competition of any significance whatsoever. The record further shows conclusively that the United Company did not attempt to acquire competitors or to acquire all concerns engaged in the shoe machinery business as charged in the petition.

During the period in which these transactions took place the United Company was offered and declined to purchase over 75 different concerns, many of them of large size and importance, engaged in furnishing shoe machinery and supplies (see Main Brief, p. 448). It also was offered and declined to purchase during the period from June, 1904, to December, 1911, alone, 493 inventions. A considerable portion of the so-called acquisitions consisted merely of the purchase of inventions of the same kind as the 493 so offered for sale and declined (see Main Brief, p. 450). In addition there are numerous other manufacturers of shoe machinery which the United Company made no attempt to purchase. Defendant's Exhibit 336 contains a list of 125 shoe machinery manufacturers who, between them, manufacture every kind of shoe machinery made (see Main Brief, p. 449). Appendix III to the Main Brief (Main Brief, pp. 808–834) contains a summary of the testimony of shoe machinery manufacturers representing 48 different concerns which manufacture machines which compete with one or more of the machines furnished by the United Company.

Many of the concerns which were offered to the United Company and which it declined to purchase were large concerns. Some of them furnished complete lines of

machines and were active competitors of the United Company. The list includes, among others, the following (see Main Brief, pp. 448–9):—

The Duplessis Company (now the Hamel Shoe Machinery Company), which furnishes a complete line of machines for making welt and turn shoes and which has done a large business.

The Haverhill Shoe Machinery Company, which is prepared to furnish a complete line of machines "whether it is for welts or McKays or turns or pegs or anything else."

The R. H. Long Co., which is prepared to furnish a complete line of machines for welt or turn shoes.

The Union Lockstitch Co., which made and marketed large numbers of outsole stitchers.

The Wheeler & Wilson Company, which manufactured 90 per cent. of the machines used in making uppers.

The list of concerns which the United Company declined to purchase includes concerns making machines of practically every kind used in the manufacture of shoes. For a statement of the business done by these concerns, see Mr. Winslow's testimony, R. Vol. 1, pp. 472–476.

The evidence thus shows conclusively that the United Company neither acquired nor attempted (1) to acquire all concerns engaged in the shoe machinery business, or (2) to acquire all concerns engaged in making bottoming machines, *i.e.*, machines of the character to which the case has been limited, or (3) to acquire such concerns as competed with it.

The findings of the District Court to this effect (see Main Brief, p. 450) are thus fully sustained.

This being so, the so-called acquisitions have no significance in the present case.

However, in order to illustrate further the true character of these acquisitions, we wish to point out briefly in this summary:—

(*a*) Certain characteristics of the shoe machinery industry and the development of that industry by the United Company in order to show clearly why these acquisitions were made.

(*b*) The insignificant character of most of the transactions and the comparatively insignificant effect on the shoe machinery industry of these acquisitions.

(*c*) The complete failure of the United States to prove its allegations that plants have been closed and businesses discontinued, that exorbitant prices were paid, and that letters patent have been acquired and not used.

A great mass of evidence was introduced with reference to these various transactions. They are so numerous that we cannot in this summary analyze the evidence in respect to each. A statement and analysis of their character is contained in our Main Brief, pp. 436–490; and Appendix I (Main Brief, pp. 655-739) contains an index of the various transactions and a statement of the evidence relating to each transaction with references to the record.

2. REASONS FOR THE ACQUISITIONS.

The reasons for the acquisitions cannot be thoroughly understood without an understanding of the situation of the United Company at the time of its formation and of the character of the shoe machinery industry and its development since that date.

When the United Company was formed:—

(*a*) It had a comparatively small number of machines for performing an equally small number of operations. It did not have machines for performing numerous of the total number of operations which must be performed in the manufacture of each shoe (R. Vol. 1, p. 2, lines 10–22; p. 3, lines 15–19; p. 4, lines 23–27). Its machines were largely adapted for welt work and not for other classes of work (R. Vol. 1, p. 48, lines 35–38). As an example of the limited number of its machines it had no General Department machines, of which it now furnishes over 170 different types.

(*b*) The United Company's own machines, while the best made and for this reason used almost exclusively for the operations they performed, were still capable of great improvement if time and money were expended in invention and experimentation. Such improvement would consist almost entirely of the addition of inventions to machines on which the United Company held dominating patents. No one but the United Company could, therefore, make improvements in machines of the type which it manufactured and offer them to the public.

As an example of the extent to which the United Company's machines have been perfected and developed by the addition of patented improvements, it may be noted that the Model K Welting Machine is a combination of the inventions of 25 patents made at different times, the Outsole Stitcher, of the inventions of 22 patents, and the No. 5 Slugging Machine, of the inventions of 20 patents. All of the important machines represent a number of patents combined to produce the most effective possible machine.

(*c*) There were in 1899 many operations performed by hand. It was possible and probable that, by the expendi-

ture of money in invention and experimentation, machines could be developed for performing many of these operations.

(*d*) The United Company in 1899 furnished no supplies of the many different kinds used by shoe manufacturers. As it developed its service system and established its stations in various places in the shoe manufacturing districts, it was possible for it to keep at them such supplies for quick delivery to shoe manufacturers, to furnish these supplies more cheaply than a concern which sold no machines and only one or two classes of supplies, and to furnish supplies which were especially adapted for use with shoe machines.

The United Company, upon its formation, was confronted with the question whether it would remain content merely to put out the machines it had acquired from the constituent companies in the stage of development in which they then were, or whether it should use its best endeavors to advance the art of shoe machinery by improving its own machines, by inventing new machines to assist its principal machines and to do work then done by hand, and by furnishing shoe manufacturers through its service station with supplies which would be a distinct convenience to them and assist in the effective conduct of the shoe manufacturer's business.

The defendants realized that the art of shoe machinery had been created and developed largely by the constituent companies because of their constant efforts to invent and improve the classes of shoe machinery they manufactured. They realized that there was opportunity for enormous improvement in the shoe machinery of that day and in the development of new machines; they owned the best bottoming machines and were the only persons who could

improve these machines, and they realized that with their knowledge of the industry and their resources they were best equipped to develop new machines.

Accordingly they undertook this work of experimentation and development. We have already shown how in the comparatively short period of twelve years by a liberal and wise expenditure of money in inventive work the United Company has improved the efficiency of machines manufactured in 1899 to such an extent that, due to this cause and the improved service the United Company renders, each welter produced 66.7 per cent. more shoes in 1910 than in 1899; each stitcher, 69.5 more shoes; each heel-attaching machine, 62.3 more shoes; and each lasting machine, 24 per cent. more shoes (*supra*, pp. 67–68). We have also shown how during this short period the United Company developed 150 new machines, 39 of which perform work previously done by hand (*supra*, pp. 65–66).

Most of the inventions embodied in these new and improved machines were the product of the United Company's own Inventive Department. Occasionally in the progress of this work, however, the United Company found that some other person owned an invention which could advantageously be added to one of its many machines and it acquired such invention, or it found that after it had developed an improvement such improvement infringed a patent owned by another person, or it found that in developing a new machine the acquisition of some patent was necessary or advisable to produce an effective result. As illustrating the extent to which the United Company's machines combine its own inventive work and the inventions of others, the Model K Welter embodies inventions of 19 patents developed by the United Company and 6

patents acquired from others; the Outsole Stitcher, 17 patents developed by the United Company and 5 acquired from others; the No. 5 Slugging Machine, 17 patents developed by the United Company and 3 acquired from others; the Universal Channeling Machine, 8 patents developed by the United Company and 3 acquired from others; the Ensign Lacing Machine, 5 patents developed by the United Company and 4 acquired from others; the Star Channel Cementing Machine—Model D, 3 patents developed by the United Company and 1 acquired patent (see Main Brief, p. 443).

The United Company also acquired from time to time machines which it did not manufacture at the time and which it desired to furnish shoe manufacturers. Most of these machines were General Department machines and were either sold or leased by the United Company at the option of the shoe manufacturers. The purchase of these machines was of benefit to the shoe trade, since the United Company could manufacture the machines more economically and furnish with them efficient service, which previously had not been furnished at all with these machines. In addition, the United Company from time to time acquired the business of furnishing various supplies to its customers.

In most of the acquisitions the United Company acquired a single patent, a single machine, or a single supply, such as peg-wood, needles, or brushes. In none of them, except the Plant purchase considered below, did it acquire any large number of patents or did it acquire any large number of machines.

Disregarding for the present a number of transactions, such as employment contracts by which no property was

acquired, and which were not acquisitions at all, the record shows that the acquisitions were not made for the purpose of monopolizing shoe machinery or eliminating competitors, and that they had no such effect, but that they were made for the following purposes:—

1. To enable the United Company to furnish its customers with supplies which the United Company did not manufacture at the time.

2. To enable the United Company to furnish to its customers patented machines for performing operations for which it had never before had any machines.

3. To assist the United Company in developing entirely new machines upon which it was experimenting. The result in each such case was a better machine than could have been developed by the United Company or such other person if the patent or patents of such other person had not been combined with those of the United Company.

4. To enable the United Company to add some improvement to the machines it was then putting out. In every such instance the acquisition of such patented improvement enabled the United Company to produce a more efficient machine than would have been possible in the industry if such patented improvement had not been acquired and had not been combined with its own patents.

As stated above, the United Company made a number of acquisitions because the patent or patents thereby acquired stood in the way of some development made or planned in its own machines. In several cases the machine acquired infringed the United Company's patents or some patent application was in interference with a patent application of the United Company. By such acquisitions expensive and annoying patent litigation was avoided,

and in some cases the use of inventions became possible at once, the use of which might otherwise have been delayed for years pending the outcome of patent litigation. In all of the cases in which the United States may urge there were any apparently competing machines acquired, patent litigation was settled (see Main Brief, pp. 472–4).

3. COMPARATIVELY INSIGNIFICANT EFFECT OF THE TRANSACTIONS UPON THE CLASSES OF MACHINES AS TO WHICH MONOPOLY IS NOW CHARGED.

In 44 of the 58 transactions the United Company did not acquire any machine which is within the class of machines as to which monopoly is now charged (see Main Brief, p. 470).

While in some of the remaining transactions the United Company acquired useful machines which it did not manufacture before, or patents which effected substantial improvements in its machines, such acquisitions, when compared with the remarkable inventions which the United Company developed itself and the new machines which it produced itself, are of comparatively insignificant importance.

Had the United Company not acquired any of these machines and patents and had they all been combined together in one company, while the United Company would have been prevented from making substantial improvements in its machines and from putting out a number of types of machines which it did not manufacture, there is not the slightest foundation in the record for a contention

that such new company upon making such acquisitions would have had machines which competed or were capable of competition in any significant sense with the United Company's machines.

The District Court held:—

> "Taken together, the acquisitions of this class [namely, the class in which any possible competition could be charged] are, in importance and amount, only of a consequence relatively small in proportion to the entire field then lawfully belonging to the United Company. It does not appear that they contributed anything essentially important to that degree of commercial success obtained by the company as above. If they assisted in obtaining it, it was by assisting the development of the machines to whose ultimate efficiency it was due. It can hardly be said as to any of them that they afforded anything more than a basis whereon to build. Speaking of them generally, it may be said that the invention or machine obtained required further development in the company's hands before it could be properly used" (R. Vol. 1, p. 1140).

4. THE UNITED COMPANY DID NOT PAY EXORBITANT PRICES FOR THE ACQUISITIONS.

The petition alleges that the defendants paid exorbitant prices for these acquisitions (R. Vol. 1, p. 999).

There is not a suggestion in the record that in any instance more was paid than the property was worth.

During the period from 1907 to 1911 the United Company paid for concerns which could be said to be doing a shoe machinery business $375,000. During the same period it expended in its Experimental Department $2,267,000 (see Main Brief, p. 454).

The District Court held that this allegation was neither proved nor seriously urged (R. Vol. 1, p. 1142).

5. CONTENTION THAT PLANTS HAVE BEEN CLOSED AND BUSINESS DISCONTINUED.

The petition alleges in respect to a number of acquisitions that plants were closed and the business discontinued.

In only 6 transactions did the United Company acquire any real estate at all. In none of these instances did the United Company acquire any machines as to which monopoly is charged. As to five of these instances, three of which involved the manufacture of supplies, and one of treeing machines, the business was continued and is still carried on in the same plants as previously. In the sixth case the business was so carried on for a period and then for convenience transferred to the United Company's plant at Beverly (see Main Brief, pp. 481–2).

The petition alleges that patents were acquired, but not used, thus depriving the public of the benefits arising therefrom (R. Vol. 1, p. 999). There is not the slightest evidence to support this allegation (see Main Brief, pp. 474–5). On the contrary, the record conclusively disproves it.

6. CONCLUSION AS TO THE ACQUISITIONS.

As we have shown above, the record conclusively establishes and the District Court found that the concerns acquired were not competitors; and that the acquisitions were not made for the purpose of eliminating competitors or for the purpose of acquiring all concerns engaged in the shoe machinery industry. The acquisitions, therefore, do not prove the existence of the unlawful project charged

in the petition; they were obviously not steps taken in pursuance of any such plan and they are, therefore, immaterial in the present case.

Nor were they unlawful from any other point of view.

As we have seen, they were made to enable the United Company to furnish some supply, some patented machine, or some patented improvement which it did not have before. They were plainly a mere continuation of that "effort after greater efficiency" which was the purpose of the formation of the United Company and which was approved by this Court in *United States* v. *Winslow*, 227 U. S. 202. Such "effort after greater efficiency" naturally resulted in the United Company's increasing the number of types of machines and supplies which it furnished and in improving its machines from time to time as opportunity to do so offered.

That such acquisitions of new and non-competing types of machines, patents, or supplies is lawful was established in *United States* v. *Winslow*, supra. This Court said in that case (p. 217):—

> "On the face of it the combination was simply an effort after greater efficiency. . . . The disintegration aimed at by the statute does not extend to reducing all manufacture to isolated units of the lowest degree. It is as lawful for one corporation to make every part of a steam engine and to put the machine together as it would be for one to make the boilers and another to make the wheels."

By the original formation of the United Company the non-competing businesses of manufacturing welting, lasting, heeling, and metallic machines were combined in one company. By the later acquisitions which we are now

considering something new, not previously owned by the United Company, was acquired. Compared with the importance of the machines combined at the formation of the United Company, such acquisitions, however, are comparatively insignificant. The formation of the United Company being lawful, as this Court held, these acquisitions are unquestionably lawful and proper.

In certain of the acquisitions the United Company was at the time, in the language of the District Court, "producing or trying to develop for production a patented machine for doing work more or less similar to that for which the invention of the machine acquired was intended" (R. Vol. 1, p. 1139).

These are the only cases in which it can possibly be contended that there was any possibility of competition. In practically all of these cases the United Company acquired, as we have stated, something new that it did not have before, and in all of such cases it settled patent litigation or infringements, which if not settled would have retarded the development of its machines.

It may be contended that in some of these cases the owner of the machine or patent so acquired might have developed it or sold it and competed with the United Company. In practically every case this is a mere speculation. The District Court found that no actual competition of any significance was eliminated by any of those transactions (R. Vol. 1, pp. 1139–1140).

When it is remembered that in practically every such case the United Company acquired a patented improvement enabling it to improve or develop some machine, that most of the acquisitions did not relate in any way to machines as to which monopoly is charged, and also that the

United Company did not acquire any of the concerns actively competing with it, although many of them, its most important competitors, were offered to it for sale, it is impossible to believe that these acquisitions were made to eliminate a possibility of future competition.

But if there was a speculative possibility of competition in any of these instances between the owner of the patent or machine acquired and the United Company, it must be remembered that the Sherman Act does not condemn a transaction merely because some competition, speculative or even actual, may incidentally be eliminated. Every partnership of two persons engaged in commerce would in such case be condemned. To be illegal the transaction must be undertaken for the purpose of eliminating such competition, or must result in some undue or unreasonable restraint of competitive conditions or obstruction to the natural course of trade which prejudices the public interests.

In *Nash* v. *United States*, 229 U. S. 373, the Court said (p. 376):—

> "Those cases may be taken to have established that only such contracts and combinations are within the act as, by reason of intent or the inherent nature of the contemplated acts, *prejudice the public interests* by unduly restricting competition or unduly obstructing the course of trade" (italics ours).

See also quotation from *Wilder Mfg. Co.* v. *Corn Products Co.*, 236 U. S. 165, at p. 487 of the Main Brief.

Where two persons own patents under which each can manufacture an inferior machine, and by a combination of the two patents a superior and more efficient machine can be constructed, obviously the public interest is not prejudiced by the acquisition for this purpose by one of

the patentees of the other patent, even if some competition between the inferior machines is thereby incidentally eliminated. The outstanding fact in such a transaction is that the public gets a superior machine. As the Sherman Act is intended to prohibit only such contracts as prejudice the public interest, it surely does not condemn such a transaction.

Take the telephone as an example. In *United States* v. *American Bell Telephone Company*, 167 U. S. 224, the right of a patentee to acquire other patents which improve his apparatus, although thereby his monopoly is extended, was affirmed as undoubted. The Court said (p. 249):—

> "Much is said in the briefs and in the arguments about the practical continuance of the telephone monopoly. It is well to understand exactly what is meant thereby. No one questions that the Bell patent has expired, and that all of his invention is free to the use of the public. It is not denied that Berliner's invention is something independent and distinct from the Bell invention. It is the combination of these inventions with those of Blake and Edison which makes the instrument in commercial use, and because this is the most serviceable it is the one that the public insists upon having. But each invention has independent rights. It loses nothing because when united with another it results in an instrument more valuable than either alone will give. Suppose that at the expiration of this Berliner patent some new invention shall be made by which in connection with those already free to the public an instrument can be manufactured far surpassing in utility that used today, and the Bell Company shall purchase that invention, the public, which always insists on having the best and most serviceable, will undoubtedly take the new instrument, and in that way it may happen that what is called the telephone monopoly is practically still further continued. But surely that does not abridge the legal rights of anyone.

> The inventor of the latest addition is entitled to full protection, and if the telephone company buys that invention it is entitled to all the rights which the inventor had."

It appears from that case that the telephone as it then existed embodied a combination of four patents. Bell's invention was the fundamental invention. The others were improvements which had been made from time to time. After the expiration of Bell's patent, a telephone could have been constructed by the addition of either one of the improvements. Can it possibly be contended that the owners of those new inventions, although there would possibly or probably have been competition between them if they had remained separate, could not combine and by the use of all their patents make a more perfect instrument? We think it clear from the language of the Court that such a combination was permissible.

One further consideration should be borne in mind with reference to the acquisition of patents and patented machines. A business dominated by patents, like the shoe machinery industry, is quite different from an unpatented industry. In an unpatented industry, like the oil business, or the tobacco business, every one is free to engage in the business and free to enlarge his plants, or construct new plants, and thus satisfy the demands of all his customers without acquiring the property of any other concerns engaged in the business.

In a business like the shoe machinery business no one can engage in it unless he can produce machines as good as or better than those produced by some one else making the same class of machines. No one wants machines representing the stage of development in the industry which was

reached seventeen or more years ago. Furthermore, for the same reason, no one can continue in the business unless his machines continue to be as good as those made by others. The result is that a shoe machinery manufacturer may find he must purchase patents enabling him to make modern machines, or go out of business. For example, take a manufacturer who makes a patented heeling machine. Another person obtains a patent or patents which enable him to manufacture a superior machine. The result is that the machine of the first manufacturer will in time become obsolete, just as the Ideal Lasting Machine has become obsolete, and he will be driven out of business unless he can acquire the right to furnish the new machine, which he can only do by acquiring the patents; in other words, by buying the business of the second manufacturer, which, of course, is dependent upon and follows such manufacturer's patents.

Surely the first manufacturer is not required by law to see his business disappear and to refrain from buying the patents embodied in the superior machine, because thereby competition between his inferior machine and such superior machine may be incidentally eliminated. The superior patents lawfully restrain him from competing on equal terms. In acquiring them he is not imposing any restraint on commerce which it is the purpose of the Sherman Act to prevent. He is, on the contrary, merely removing a restraint which prevented his offering the best machine and the machine which his customers desire.

VI.

THE PURCHASE OF PLANT'S PATENTS AND INVENTIONS.

In September, 1910, the United Company acquired the patents and inventions of Thomas G. Plant. In the same transaction it acquired from Plant 60 per cent. of the capital stock of the Thomas G. Plant Company, a corporation manufacturing women's shoes.

The United Company has laid great stress upon the Plant purchase, because it is the only acquisition made by the United Company involving patents relating to any considerable number of machines and involving a substantial purchase price. Except that the patents thereby acquired were of great value, and, when incorporated into the United Company's machines, resulted in the greatly increased efficiency of a number of machines, whereas the other transactions were mostly concerned with a single patented improvement or machine, the Plant transaction did not differ from the more or less insignificant transactions which we have considered above. As the District Court found and the record abundantly proves, it was not made to eliminate a competitor, but to enable the United Company to incorporate the Plant patented improvements in its superior machines and to settle a vast amount of threatened and pending patent litigation which would have seriously interfered with and retarded the development of the United Company's machines.

It is not unimportant to note that this transaction upon which so much reliance is placed by counsel for the United States took place over eleven years after the formation of the United Company. The acquisition of the Plant patents eleven years after the formation of the United Company, even if this transaction were of the character which the United States alleges, would, considered by itself, have little significance in proving the unlawful project charged in the petition which it is stated was formed in 1899.

Plant had constructed a number of experimental machines embodying his inventions and had installed them in the shoe factory which he controlled where women's shoes were made exclusively, the factory of the Thomas G. Plant Company. He had not put any machines into any other factory. It should be clearly understood that the Plant machines which are mentioned in the record, and which we shall hereafter refer to, were not machines that Plant had to sell or machines that the United Company purchased. Those machines had been bought and paid for by the Plant shoe manufacturing concern and they were not for sale. Their only importance in this case is that they were concrete evidence showing how much or how little Plant had accomplished in producing machines, and that they contained his valuable inventions.

1. PLANT WAS NOT A COMPETITOR.

Plant was not a competitor of the United Company. He did not own any factory for manufacturing machines; he was not carrying on any shoe machinery business and he was not prepared to supply any machines. He declared

that he did not want to go into the shoe machinery business, that he desired to retire from business; and after the purchase he did retire. There is uncontradicted evidence showing that the sole purpose of the Plant enterprise was to create something which he could sell to the United Company. He so stated himself and the history of his negotiations with the United Company proves this to be the fact. He offered a large commission—$250,000 and later $500,000—to an influential shoe manufacturer if he succeeded in effecting a sale to the United Company, and he later offered and had to pay a commission of 5 per cent. to another intermediary who undertook to effect a sale to the United Company (see Main Brief, pp. 515–517).

The record establishes that the Plant machines were crude, really in the experimental stage, entirely useless for men's shoes and unfit for the making of women's shoes; that in their use in the Plant shoe factory they were constantly breaking down; that they broke a great number of lasts; that it was necessary to employ a large number of men to repair shoes that were defective on account of the poor work of the machines; that it cost three and a quarter cents per pair more to make shoes on them than it cost on the United Company machines; that the profits of the Plant shoe business after the Plant machines were installed were one-half less than they had been when the United Company machines were used; that the machines could not be used for manufacturing shoes according to the methods universally followed by other shoe manufacturers; and that after the purchase the managers of the shoe factory, Plant's former associates, found it impracticable to continue the manufacture of shoes with Plant's machines and of their own volition discontinued the use of those machines and

substituted United Company machines. This evidence was almost entirely uncontradicted. After it had been introduced, the United States made no effort in its rebuttal case to meet this evidence.

The District Court found (R. Vol. 1, p. 1143):—

> "Whatever the merit of Plant's inventions, these machines in which he had first embodied them are not shown by the evidence to have been commercially successful in September, 1910, or to have been capable of such success in their then stage of development .... In the state in which the United Company took them over, they were not found capable of profitable use. Nothing is found in the evidence which affords reasonable support for the petitioner's contention that they were 'right at the threshold of extensive competition with the United Company.'"

For a more complete discussion of the evidence showing that Plant was not engaged in the shoe machinery business and that his machines were not commercially successful or capable of profitable use, see Main Brief, pp. 513–515, 517–534.

2. PLANT'S VALUABLE INVENTIONS.

On the other hand, in the course of his experimental work Plant had made or acquired many inventions which were embodied in his machines. Although their mechanical embodiments in Plant's crude machines were defective and unsatisfactory, the United Company's experts could see that many of those inventions were extremely valuable and represented very important advances in the shoe machinery art which would be of the utmost value if combined with the United Company's patents. These inventions were

broadly claimed in Plant's patents, and accordingly the United Company could not use the inventions without infringing his patents (see Main Brief, pp. 535–538, 541–550).

3. THE INTOLERABLE PATENT COMPLICATIONS.

Plant had, however, developed his inventions and constructed his experimental machines upon the foundation which for many years the United Company and its predecessors had been building; he had, in other words, added his improvements to old machines of the United Company. As Mr. Howe testified,—

> "He had taken our machines, whether he had a right to or not, and had made certain improvements on them" (R. Vol. 1, p. 669, lines 17–18).

Under these circumstances extensive infringement of the United Company's patents naturally occurred.

The testimony was uncontradicted that 37 of Plant's machines, including practically all of his important machines, infringed claims in 99 patents and 3 pending applications owned by the United Company amounting in the aggregate to 546 claims; and that many claims were infringed by more than one machine with the result that there were 708 distinct cases of infringement of the United Company's patents by Plant's machines (see Main Brief, pp. 551–553).

On the other hand, for several years Plant's inventive work had been going on simultaneously with that of the United Company's inventors, and in certain instances he had anticipated the United Company with the result that the United Company had unwittingly embodied in 15 of its

machines improvements which infringed Plant's patents. A number of its most important machines were involved, such as the latest model welter, the No. 5 lasting machine, and the latest models of heel-attaching machine and rounding and channeling machine (see Main Brief, pp. 553–554). There had also been declared by the Patent Office 23 interferences between patent applications owned by Plant and applications owned by the United Company. These involved improvements in important machines of the United Company, such as lasting, heeling, nailing, leveling, pulling-over, and other machines (see Main Brief, p. 554).

The details of this vast amount of patent infringement and conflict are more fully discussed in the Main Brief, pp. 541–542, 547, 550–556. It is unquestioned that Plant could not have used most of the important machines he had constructed, unsatisfactory though they were, since the United Company's patents would have prevented, and it is further clear that the United Company would not have been able to use many important improvements which it had developed independently, but which had been anticipated by Plant. The natural development of its machines on which it had expended large amounts of money would have been retarded until the expiration of Plant's patents many years later if the purchase of these patents had not been made. Furthermore, it would have been necessary for the United Company to withdraw from the hands of shoe manufacturers many infringing machines at great expense and to reorganize these machines and replace the infringing machines with the reorganized machines. In the meantime, its lessees undoubtedly would have been harassed by patent suits brought by Plant, and if he had obtained injunctions while they still held infringing machines they might have

been obliged to stop their entire production until the United Company was able to furnish them with new machines. In addition the United Company would have become involved in a vast amount of patent litigation which would not only have been expensive but which would have involved much of the time and attention of the United Company's officials and experts.

4. THE NEGOTIATIONS FOR THE PURCHASE.

The United Company had never sought nor even considered any purchase from Plant until overtures were made by Plant. The interviews resulting from those overtures were all sought by Plant and his proposals were several times declined without encouragement to renew them. Throughout the negotiations, which extended over three months, Mr. Winslow insisted that he would not consider the purchase unless there were opportunity for the United Company's experts to examine the Plant machines and determine the value of his inventions, and that he would consider purchasing those inventions upon no basis other than the value which they would have to the shoe industry and to the United Company in the advancement of the art.

After negotiations had several times been broken off by the United Company and renewed by Plant, he finally permitted its experts to examine the machines in the Plant shoe factory. As a result of the extended and thorough examination which was then made it was determined that while the Plant machines themselves were crude and unsatisfactory, Plant had made some very valuable inventions which could be incorporated in the United Company's machines with great advantage to the United Company and to its cus-

tomers. Accordingly, when Plant offered to sell those inventions at a much lower price than he had previously named, and offered also to include his valuable holdings in the shoe manufacturing company, the United Company accepted the offer.

The District Court found (R. Vol. 1, p. 1143),—

> "The evidence regarding Plant's negotiations with the defendants sufficiently proves that they were never sought by the defendants and that there was never any attempt on their part to get Plant to sell them his inventions or machines or anything else; but that, on the contrary, all the efforts toward such a purchase were made by him."

For a statement of the evidence with respect to these negotiations, see Main Brief, pp. 564–573.

5. THE VALUE OF THE PLANT PATENTS AND THE USE MADE OF THEM BY THE UNITED COMPANY.

The value of the Plant patents to the United Company is best illustrated by the use which was made of them.

The United Company has incorporated into 26 of its machines the inventions embodied in 43 of Plant's patents. It has improved and adopted 17 of Plant's patented machines (see Main Brief, pp. 538–539, 550).

The record abounds in testimony as to the increased efficiency of the United Company's machines by the addition of Plant improvements, the savings in material and other economies thereby effected, the increased output of

the improved machines, and the resulting increase in wages received by operatives who are paid by the piece.

The more important of the Plant inventions which were especially useful in the United Company's machines were those relating to the welter, stitcher, lasting machine, rough rounding machine and heel-attaching machine (Main Brief, p. 550).

The improvements in the welter and stitcher were the most striking and alone justify the purchase.

For the first time in the history of the industry Plant had embodied in a welt sewing machine means for cutting off the welt close to the end of the seam, means for holding the end of the welt in proper position to start on the next shoe with minimum waste of welting, a welt measurer which determined the amount of welt left on the shoe when it was cut off and positively prevented waste of welt, and, finally, means for automatically stopping the machine and casting off the last loop of thread from the barb of the needle. Always previously it had been necessary for the operator to stop the machine by putting his hand on the belt pulley, first slowing down the machine, then stopping it, and finally turning the machine backward at such time and in such manner as to free the needle from the last loop of thread, in order to free the shoe from the machine. Then with a hand knife he cut the welt. In starting with the next shoe he had to hold the end of the welt with his finger and this involved wasting about two inches of welting upon each pair of shoes, worth at least a quarter of a cent per pair and more on men's shoes (Main Brief, p. 536).

These improvements were of the utmost importance.

On the other hand, Plant's welter, incorporating his improvements, infringed a patent of the United Company

which covered broadly a welt holder but under which the United Company had never been able to produce a commercial welt holder. The result was a deadlock. Neither Plant nor the United Company, unless one acquired the patents of the other, could lawfully make use of this extremely important invention (Main Brief, pp. 541–542). Furthermore, the Plant welter, even when it embodied this infringing invention, lacked valuable improvements which were incorporated in the United Company's welter. Only by the incorporation of the Plant inventions in the United Company's welter could Plant's inventions be utilized to the best advantage. In adapting the Plant inventions to its machines, the United Company developed still further improvements (Main Brief, pp. 542–543).

The result was a new model of the welter embodying all these inventions and far superior to any machine previously produced. R. P. Hazzard testified that the previous machine produced 25 dozen shoes a day, and the new model 40 dozen, an increase of over 50 per cent. in capacity (Main Brief, p. 544). He further testified that in addition to this increased capacity the machine saved $500 to $600 a year in welting alone (Main Brief, p. 544). Blagden, an operator on welt machines, testified that although the piece price paid for work on the old machine was one-third more than on the new machine, he was, nevertheless, able to earn 20 per cent. more on the new machine (Main Brief, pp. 544–545).

The savings in welting and increased capacity on the new machine must therefore amount to at least $800 per year. On 2,527 machines, the number of welters the United Company had out in 1911, this would amount to over $2,000,000 annually when the machines were used throughout the year (see Main Brief, p. 545).

For a further discussion of the improvements in the welter, see Main Brief, pp. 536–537, 541–546.

Plant had made inventions for the stitcher which stopped the machine in proper position to remove the shoe and to receive another shoe. Before this, it had always been necessary for the operator to remove one hand from the shoe, stop the machine by hand, and then lift the presser-foot so he could remove the shoe and then lift the presser-foot in order to introduce a new shoe. All this work was eliminated by the Plant inventions, which, therefore, effected a great saving in time and in the effort required of the operator (see Main Brief, p. 537).

The incorporation of the Plant stitcher patents into the United Company's stitcher increased the efficiency of the machine to a remarkable extent and also greatly benefited the operators. Hazzard testified that the average piece price on the old model was 40 per cent. more than on the new model but nevertheless, due to the increased speed of the new model, the operator earned an average of 24 per cent. more wages (Main Brief, pp. 547–548).

These valuable Plant inventions when incorporated in the United Company's machines were furnished lessees without any increase in royalties, although they had cost the United Company $2,500,000, and although in the case of a number of machines, such as the welter and stitcher, it meant substituting new machines embodying the old and new inventions for the comparatively new machines then held by lessees (Main Brief, p. 550).

6. THE PLANT PATENTS WERE WORTH MORE THAN THE PRICE PAID FOR THEM.

For the Plant inventions and patents and for 60 per cent. of the stock of the Thomas G. Plant Shoe Company, a shoe concern which Plant had built up and which he made it a part of his offer to the United Company should be included with the patents, since he desired to get out of business, the United Company gave $3,000,000 cash and $1,500,000 par value of its stock, having a market value of twice the par value. In other words, it paid a total of $6,000,000 in cash and stock. Of this amount Mr. Winslow considered that $2,500,000 was paid for the Plant patents (Main Brief, p. 562).

The stock of the Plant Shoe Company was easily worth at least the balance of the purchase price, namely, $3,500,000. This company had earned an average of $738,000 a year for four years and in one year had earned $1,122,196.28 (Main Brief, p. 562). 60 per cent. of its average earnings capitalized at 10 per cent. gives a value of $4,428,000, leaving only $1,527,000 as the amount paid for the patents.

The patents were worth far more to the United Company and the public when combined with the United Company's patents than the amount paid for them. As we have shown, the improvements in the welter alone resulted in savings which were worth more than this amount.

7. CONCLUSION AS TO THE PURCHASE OF THE PLANT INVENTIONS.

The Plant purchase was made, as the District Court found, to acquire the valuable Plant patents in order to incorporate them in the United Company's machines and to avoid the intolerable patent confusion and litigation which would have otherwise resulted.

There is nothing in the record to justify a contention that this purchase was really made to eliminate competition. Plant was not competing, his machines were not capable of successful competition, and, owing to the infringement of the United Company's patents and their own weakness, it was at least questionable, if not improbable, that he would ever be able so to reorganize and develop them as to make them commercially successful. The United Company did not institute or press the negotiations for purchase, but merely considered Plant's repeated offers and when he offered to sell for a reasonable price the United Company accepted the offer.

Mr. Winslow testified in respect to his attitude during the Plant negotiations:—

> "My entire and only interest was whether those patents could be made of benefit to our customers and the trade. If they could be of benefit, if they were of large benefit, and the trade ought to have them, I should be very glad to buy them and embody them in our machines for what I thought they were worth, irrespective of what they had cost him—but I would not pay a cent more for them" (R. Vol. 1, p. 482, lines 26–32).

The District Court, after referring to the value of the Plant patents when combined with the United Company's patents and the litigation which threatened, said:—

> "The above reasons, none of them open to any charge of illegality, seem to me to have been the really operative reasons which must have induced the defendants to enter into the Plant bargain upon the terms which he finally offered them. They appear so adequate as legitimate business reasons for doing this as in my opinion to leave no reasonable ground for holding, against the defendants' denial, that it was really a purchase to suppress competition" (R. Vol. 1, pp. 1145–1146).

The purchase, therefore, cannot be held to be unlawful on the ground of intent. Nor can it possibly be held to have been inherently unlawful apart from unlawful intent. No actual competition was eliminated by the purchase, as Plant was not engaged in furnishing shoe machinery. There was only a possible or speculative competition in the event that Plant should be able in the future to avoid infringement of the United Company's patents and make his machines commercial.

On the other hand, it was of the utmost importance to shoe manufacturers generally and to the public that machines embodying the United Company's inventions and the Plant improvements should be produced. Only in this way could the best machines possible in the then stage of development of the art of shoe machinery be manufactured. And this result could only be accomplished by the acquisition of the Plant patents. Since the Sherman Act only condemns transactions which prejudice the public interests (*supra*, p. 178), it is clear that it does not condemn this transaction so obviously beneficial to the public

which has thus received the benefit of vastly more efficient machines than would otherwise have been possible without paying one cent more in royalties than was paid previously.

One test of the legality of the purchase is whether the public interest would be injured if the United Company now sold the Plant patents. Such a sale would mean that 26 of the United Company's machines would in the future be stripped of valuable inventions; that these machines would produce fewer shoes per day, and that shoe manufacturers would not be able to make the very large savings in material which is now possible; that shoe manufacturers would be obliged to pay higher piece wages since the capacity of the machines would be reduced, and operatives, even with increased piece prices, would probably earn less per day. The purchaser of these Plant patents would not be able to make effective use of them, since he could not combine with them the United Company's patents, and since machines made under them would infringe the United Company's patents; indeed, it is doubtful if such purchaser of the Plant patents could make commercially successful machines at all.

For a full discussion of the evidence regarding the purchase of Plant's patents and inventions, see our Main Brief, pages 507–586.

VII.

COVENANTS TAKEN FROM VENDORS, INVENTORS, AND EMPLOYEES IN CONNECTION WITH THE ACQUISITIONS.

The petition alleges that the defendants, in pursuance of their unlawful plan, have taken from vendors and inventors covenants not to engage in business for long terms of years in competition with the United Company, or to assign future inventions relating to boots and shoes (R. Vol. 1, p. 1000).

The District Court found these covenants were of the kind usually taken in such cases; that none of them clearly exceeded what the law permits, and that they failed to indicate any unlawful purpose (R. Vol. 1, p. 1141).

This finding of the District Court is fully supported by the record.

When covenants were taken they were of the usual character taken from the vendor of a business or from an inventor entering into a contract of employment or selling patent rights. Such agreements have been long recognized as essential to the protection of the vendee or employer. Indeed, covenants not to compete, if not expressed, are implied by law in Massachusetts where practically all of these transactions took place (see Main Brief, p. 496). In the present case the covenants were in no instance shown to exceed what is usual, lawful, and necessary. They utterly

fail to establish any intent to obligate either vendors or patentees unlawfully. The record shows that the officers of the company had no plan or design whatever with respect to these covenants, and that their form was left to the attorney who drew the papers and who inserted the form used in such cases.

In thirteen transactions there were no covenants as to competition or future inventions whatsoever. In most of the transactions where covenants were inserted it is evident that especial pains were taken to limit the covenant strictly to the particular kind of machines or goods which were sold.

The petition seriously misstates the extent and scope of many of the covenants, although the documents themselves were in the possession of the United States for a long time prior to the filing of the petition (see Main Brief, pp. 500–506).

For a discussion of the covenants and of the law bearing on them, see Main Brief, pages 491–506.

VIII.

THE UNITED COMPANY HAS NOT MADE EXORBITANT PROFITS.

The petition charges that the United Company has made enormous and unreasonable profits (R. Vol. 1, p. 1026).

Presumably this allegation was made to support the charge that the defendants planned by their unlawful project to "enhance the cost of said machines to users thereof" (R. Vol. 1, p. 997).

As the record shows that the United Company reduced the cost of its machines materially, this charge of a plan to enhance the cost is utterly unfounded. If, in spite of the increased cost of building machines, the United Company by its economies has reduced their cost to shoe manufacturers and at the same time has made large profits, this would hardly show an unlawful purpose.

But the charge that the United Company has made exorbitant profits is without foundation and the District Court so found (see Main Brief, p. 599).

The earnings from March 1, 1905, to March 1, 1911, based on net assets, are shown to have been 14.01 per cent. and the average rate of dividends to net assets, 7.10 per cent. (Main Brief, p. 598). These are surely not exorbitant earnings for a corporation which produces the best shoe machines made, which is the owner of many remarkable

patents and which has had such extraordinary success in developing new machines.

In the foregoing estimate of earnings based on net assets the United Company's patents were valued at only $400,000. The pulling-over machine alone cost $1,000,000 to develop, to say nothing of the patents on the many other new machines which the United Company has produced. If in making the foregoing estimate a fair value had been placed on the patents, the net earnings and dividends based on assets would have been very substantially reduced (see Main Brief, p. 599).

IX.

ALLEGED UNFAIR OR MONOPOLISTIC ACTS.

In Section VI, R. Vol. 1, p. 999, the United Company is charged with having made various threats or committed various unfair or oppressive acts. No specific instances are set out in the petition, but a bill of particulars setting forth the specific instances relied upon was filed during the course of the trial (R. Vol. 1, p. 1075).

The United Company during the course of its existence has had dealings with thousands of persons. It has over a thousand lessees with whom it is constantly in touch and with whom it has very intimate relations; it has had an average of over 80 new lessees a year; it has dealt with all the persons from whom it made the acquisitions considered above, and it has declined to purchase over 75 concerns and hundreds of inventions.

During this period and in its dealings with all these thousands of persons it has, of course, not been able to satisfy all of them. The United States produced at the trial practically every person who felt he had any grievance of any kind whatsoever against the United Company. These included inventors who had tried unsuccessfully to get the United Company to adopt and purchase their inventions, persons who had tried unsuccessfully to sell their businesses to the United Company, persons who had sold patents or machines to the United Company and felt for one reason or another that they had not received all they were entitled

to, lessees who had not treated the United Company fairly and had been requested to conform to certain of the provisions of their leases or against whom in a very few instances the United Company had enforced the leases, competitors who resented the success of the United Company and a group of large manufacturers who have sought to eliminate the competition of the small shoe manufacturers by getting for themselves more favorable terms from the United Company than it grants small shoe manufacturers.

The alleged statements of the employees of the United Company to which objection is made include statements made not merely by the principal executive officers but by minor officials or employees.

No one of these transactions considered by itself is of significance in the present case, in which the charge is one of a plan to acquire all shoe machinery concerns and to refuse to lease essential machines unless others are taken and the acquisition thereby of a monopoly of shoe machinery. It can hardly be contended that any one of these various alleged unfair acts is material in proving this charge. Their only importance is whether they show a consistent course of arbitrary action toward competitors and lessees and thus show a general unlawful intent and course of conduct on the part of the United Company.

An examination of the evidence relating to these transactions not only shows that they prove no such contention, but shows that the United Company, as the District Court found, has been "above reproach in any of these respects."

The District Court said (R. Vol. 1, pp. 1152–1153),

> "In view of the long period and wide fields thus searched, the numerous abandoned attempts to prove something of the kind above indicated, and the insignifi-

cant result of the evidence actually offered and finally relied on, the conclusion seems fully justified that the policy and methods pursued by the defendants and by the United Company have been, in general, above reproach in any of these respects."

It is significant that in respect to at least 30 of the more than 50 different alleged acts or threats specified by the United States in its Bill of Particulars it did not attempt to introduce any evidence whatsoever.

In the cases in which threats on the part of the employees of the United Company against competitors were charged it is significant that in no case is it contended that any attempt was made to carry out such threats. In every case in which any employee of the United Company was charged with making a threatening statement, such employee, if alive and available as a witness, denied having done so.

It was evident that these charges of unfair acts were made recklessly and without proper investigation of the facts by the United States.

X.

THE UNITED COMPANY HAS NO UNLAWFUL MONOPOLY OF SHOE MACHINERY.

It is essential to the case of the United States that it prove the existence of the unlawful monopoly of shoe machinery which it charges.

The United States, as we have shown, offered no direct proof of the unlawful project charged in the petition. For such proof it relies on the various acts of the defendants. If these acts have not resulted in an unlawful monopoly from 1899 to the present time, it is obvious that they were not adapted to accomplish a monopoly and, therefore, are not evidence of the existence of any such unlawful plan to monopolize.

Again, the purpose of this suit is (*a*) to have the United Company dissolved because it is an unlawful monopoly, and (*b*) to have the leases declared unlawful because they have created or assisted in the creation of this unlawful monopoly. If the United Company has no unlawful monopoly, it should not be dissolved. If the leases have not created an unlawful monopoly during the period from 1899 to date, they should not be held illegal on the ground that they have done so.

1. THE UNITED COMPANY HAS NO MONOPOLY OF ALL SHOE MACHINERY AS CHARGED IN THE PETITION.

The petition charges that the defendants in or prior to 1899 "determined to acquire a complete monopoly of the manufacture, sale, and lease of shoe machinery" (R. Vol. 1, p. 994), and it finally charges that by the various transactions specified the United Company has acquired such a monopoly.

That the United Company has no monopoly of all shoe machinery as charged by the petition appeared conclusively and was admitted by the United States (Main Brief, pp. 13–14, 606–608).

There is a large field of shoe machinery, including all machines for sewing the uppers of shoes, which the United Company does not manufacture at all. The following examples illustrate what proportion of the total number of shoe machines used by the ordinary shoe manufacturer are manufactured by the United Company.

Jonathan Brown & Sons, large McKay shoe manufacturers, who use all of the United Company's machines they can obtain, have 424 machines in their factory, of which only 128, or 30 per cent., were obtained from the United Company. Excluding General Department machines, which can be bought outright from the United Company at the option of the shoe manufacturer, and which are not included in the machines as to which monopoly is charged, only 15 per cent. of the machines in Brown & Sons' factory

were obtained from the United Company (see Main Brief, p. 603).

R. P. Hazzard, a large shoe manufacturer, who uses and prefers the United Company's machines, has 746 machines in his factory, of which less than 44 per cent. were obtained from the United Company, or, excluding General Department machines, less than 40 per cent. (see Main Brief, p. 603).

Thus the United Company furnishes considerably less than half of the total number of machines used (see Main Brief, pp. 603–604).

2. LIMITATION OF CHARGE OF MONOPOLY BY THE UNITED STATES.

Such being the facts as shown by the evidence, the United States, at the close of the trial of this case, attempted to limit its charge of monopoly to a monopoly of "machines for preparing and attaching the bottoms to the uppers of boots and shoes, the eyeletting machines, and the clicking machines" (R. Vol. 1, p. 839, lines 13–22; see also Main Brief, pp. 13–14).

While a considerable number of General Department machines, of which the United Company makes over 170 different kinds, are used in preparing the bottoms of shoes, it appeared that there were large numbers of machinery manufacturers making these classes of machines and no evidence was introduced to show what proportion, if any, the United Company furnished of these classes. At the first hearing of the case in this Court Mr. Smyth, of counsel for the United States, eliminated these machines from the

charge of monopoly, saying, according to the stenographic report of his argument:—

> "Something has been said about the General Department machines. We make no question with respect to them, and they are not involved in this law suit."

The foregoing concessions limit the charge of monopoly to a comparatively few machines. In Jonathan Brown's McKay shoe factory, for example, the machines of this class constitute only 15 per cent. of the total number of machines he uses and in Hazzard's welt shoe factory they constitute less than 40 per cent. (see Main Brief, p. 603). There are thus excluded from the charge of monopoly all machines for sewing uppers, buttonhole machines, lacing machines, all General Department machines, treeing machines, and various other miscellaneous machines.

The machines included in the charge are:—

Machines of the kind which were manufactured by the constituent companies in 1899:	Welting Machines. Lasting Machines. Heeling Machines. Metallic Machines. Pegging Machines.
Machines first put out by the United Company after 1899:	Eyeletting Machines. Pulling-over Machines. Clicking Machines. McKay Sewing Machines.

3. THE UNITED COMPANY HAS NO ACTUAL MONOPOLY OF MACHINES OF THE CLASSES TO WHICH THE CHARGE OF MONOPOLY IS NOW LIMITED.

The United Company has competitors who furnish machines of all the types as to which monopoly is charged. Some of them furnish complete lines of machines and do a considerable business.

Defendant's Exhibit 337 (R. Vol. 5, p. 906), compiled from catalogues, letters, and advertisements of various shoe manufacturers, gives a list of manufacturers and dealers who furnish machines of every type for preparing and attaching the bottoms to the uppers of shoes, eyeletting machines, and clicking machines, as to which monopoly is charged. Each machine is listed separately and the names of the concerns offering them are given. A total of 74 different concerns furnishing these machines is named.

Defendant's Exhibit 331 (R. Vol. 5, p. 838) gives a list of concerns putting out welt and turn machines and outsole stitching machines from 1899 to 1911.

Defendant's Exhibit 332 (R. Vol. 5, p. 843) gives a list of Goodyear auxiliary machines and machines for the same operations which other machinery manufacturers have offered for doing the same work.

Appendix III to our Main Brief summarizes the testimony of 50 witnesses—practically all shoe machinery manufacturers—representing 48 different concerns which, as their testimony shows, furnish machines of one kind or another which compete with the United Company's machines. A number of these machines are General Depart-

ment machines, which have been eliminated from the case by counsel for the United States, but a considerable number are machines of the classes as to which monopoly is still charged.

These lists show a large number of concerns which offer competing machines. Some, as stated, offer to furnish complete lines of machines.

Hamel, a witness for the United States, who succeeded to the business of the Duplessis Company, testified,—

> "We have a complete set of machines for making turn shoes and a complete set of machines for making welt shoes" (R. Vol. 1, p. 327, lines 15–16).

He and his predecessor have done a considerable business in bottoming machines even compared with the business of the United Company (see Main Brief, pp. 610–611).

The manager of R. H. Long Machinery Company testified that his company is ready to supply a full line of machinery for welt or turn shoes (R. Vol. 1, p. 345, lines 43–44).

The representative of the Haverhill Shoe Machinery Company, a witness for the United States, which has done a considerable business (Main Brief, p. 612), testified:—

> "We undertake to fill the requirements of a manufacturer whatever they are. We advertise that we furnish any manufacturer a full line of all kinds of shoe machinery, whether it is for welts or McKays, or turns or pegs or anything else. We are prepared to make good if our people that manufacture machines don't go back on us" (R. Vol. 1, p. 301, lines 3–9).

In addition, several large foreign concerns furnish complete lines of machines and, of course, these machines can

be obtained in this country if desired by shoe manufacturers (see Main Brief, p. 612).

The contention of the United States that a shoe manufacturer must come to the United Company for some of his essential machines because he cannot obtain them elsewhere is without foundation. Twenty of the concerns with which the Haverhill Company did business had no machines from the United Company (Main Brief, p. 613).

The United Company had only 1,033 lessees in 1911. Mr. Donham, secretary of the United Company, testified that he should say there were between 1,300 and 1,500 shoe manufacturers in the United States at that time. The census for 1910 showed in the neighborhood of 1,300. The petition alleges that there were about 1,300 in 1911 (see Main Brief, p. 614).

It is true that shoe manufacturers cannot obtain from competitors machines of exactly the same kind as the United Company makes, since its machines are patented. Nor can they obtain as good machines elsewhere. That they can obtain machines elsewhere for performing the operations performed by the United Company's machines and that a considerable business is done by others in bottoming machines is proved by the record (see Main Brief, pp. 608-614).

The District Court found (R. Vol. 1, p. 1135):—

> "In that part of the field of trade in shoe machinery to which the case is now limited as above, the defendants have been not monopolists but competitors. Their only means for holding the field have been legitimate means—better machines. *Their specialization in machines for bottoming shoes, and not a monopoly of such machines, has been the cause of their success*" (italics ours)

4. CONTENTIONS OF THE UNITED STATES IN RESPECT TO THE ALLEGED MONOPOLY.

The United Company, as we have shown above, has no actual monopoly of the machines in question. It does, however, do a very large and successful business in these classes of machines, furnishing most of the machines of these kinds in use. Of course this is no proof of any unlawful monopoly, unless it is shown that this undoubted success of the United Company is due to arbitrary and unlawful methods.

The United States, as we understand their argument, contends, that this success is due primarily:—

(1) To the acquisition of competitors.

(2) To the Restricted Use Clauses in the leases, which, it contends, compel a shoe manufacturer taking one kind of machine to take other kinds.

(3) To the fact that the shoe manufacturers hold the United Company's machines under lease and competitors are thus deprived of a market for their machines.

We shall briefly consider these contentions.

5. THE UNITED COMPANY HAS NOT OBTAINED ITS SUCCESS BY ELIMINATING COMPETITORS.

As we have shown, at the time the United Company was formed its constituent companies were putting out practically all the welting, lasting, heeling, and metallic machines which were being manufactured in the country (*supra*, pp.

26, 37). The Consolidated Company, through its subsidiary company, the Davey Company, was also putting out practically all the pegging machines in use.

The United Company, therefore, did not enter a field in which there was competition and eliminate the competition in these machines.

The United Company has not acquired competing concerns making the classes of machines which were furnished by the constituent companies. Including the Plant purchase, only 11 of the acquisitions related to patents or machines of this character. Only 6 of these concerns were doing any shoe machinery business at all. In all of these transactions something new was acquired which the United Company did not have. Apart from the valuable patents acquired from Plant, the transactions were of slight consequence. The aggregate considerations paid for such of these concerns as were actually doing shoe machinery business was less than $150,000, and no real estate was acquired from any of these concerns (see Main Brief, p. 472).

On the other hand, the record shows that while in 1899 there was practically no competition in machines of these classes, there are now a number of competitors doing a considerable business in such machines. Most of these competitors have been offered for sale to the United Company and their purchase declined (*supra*, pp. 165–166). So far, then, from entering a field in which there was competition and eliminating such competition by the acquisition of competitors, the record shows the reverse.

In respect to the machines developed by the United Company after its formation as to which monopoly is also charged, the record likewise shows conclusively that the

success of the United Company has not been due to the acquisition of competitors.

Eyeletting machines were developed by the United Company and first put out in 1902 (see Main Brief, p. 623). No competitor making eyeletting machines has ever been acquired. The clicking machine was developed and first put out in 1908 (see Main Brief, p. 622). No competitor making clicking machines has ever been acquired. Pulling-over machines were first put out by the United Company in 1902 and the Auxiliary pulling-over machines about 1905 (see Main Brief, p. 622). No competitor making pulling-over machines has ever been acquired or eliminated. The only purchase relating to pulling-over machines was the purchase of the experimental pulling-over machine of the Seaver Process Lasting Company in 1900, a machine which was not capable of successful operation nor ever put upon the market. This was acquired in order to obtain patents to assist the United Company in developing its own machine (Main Brief, Appendix I, pp. 673–674). At the time of this purchase the United Company was experimenting, but it did not succeed in developing a pulling-over machine until two years later. At the time of this purchase, therefore, no business of manufacturing pulling-over machines had even been created and no competition was, therefore, eliminated.

The United Company did acquire in 1908 the Richardson Company's business and patents relating to a McKay sewing machine in order to improve its McKay machine, and later, as an incident to the Plant purchase, acquired the Stanley Company's business in McKay machines. But this gave it no monopoly or control of McKay machines. Any machine-shop can manufacture them and they can be obtained of a

large number of shoe manufacturers and dealers (see Main Brief, p. 609). The United Company only acquired patents enabling it to make an improved machine.

It is clear that such success as the United Company has had in furnishing the foregoing machines which comprise all the machines as to which monopoly is charged has not been due to the acquisition of competitors.

6. THE UNITED COMPANY'S SUCCESS IS NOT DUE TO ANY COMPULSION RESULTING FROM THE RESTRICTED USE CLAUSES IN ITS LEASES.

The United States contends that the Restricted Use Clauses compel a shoe manufacturer desiring machines of one kind or department to take machines of other kinds or departments which he would otherwise take from the United Company's competitors and that this compulsion accounts in part for the United Company's success.

We have shown above that a shoe manufacturer can obtain machines of any kind he pleases from competitors, though, of course, they are not of the type of the United Company's patented machines and are inferior. But no one is compelled to take machines from the United Company for the reason that he cannot obtain machines for performing the same operation elsewhere.

We have also shown in discussing the leases that unrestricted leases of the machines of every department are offered lessees on reasonable terms, or, in the case of General Department machines, that they are sold outright without restrictions.

The consequence is that if a shoe manufacturer desires to take machines of any department from the United Company he can do so and can obtain all other machines from competitors. The Restricted Use Clauses, therefore, cannot compel a monopoly of the United Company's machines. That they do not compel such monopoly, or account for the United Company's success in furnishing machines of the kind as to which monopoly is charged by compelling a shoe manufacturer desiring other types of machines to take these types also, is conclusively shown by the following illustrations.

No machines which the United Company puts out are restricted to use with its eyeletting machines under any form of lease (*supra*, p. 133). The alleged monopoly of these machines, therefore, cannot be due to the fact that lessees desiring to use other types of machines are compelled by the Restricted Use Clauses to take eyeletting machines also.

No machines which the United Company puts out are restricted to use with clicking machines. Thus the Restricted Use Clauses cannot compel their use.

No machines which the United Company puts out are restricted to use with its 43 Goodyear auxiliary machines. The Restricted Use Clauses, therefore, cannot compel their use.

No machines which the United Company puts out are restricted to use with its pulling-over machines, except the No. 5 Lasting Machine, a new machine developed by the United Company in 1908 (Main Brief, pp. 295, 357). As the hand method welt and hand method McKay lasting machines can do the work done by the No. 5 machine, this single exception in an alternative form of lease can

have little effect in compelling a use of pulling-over machines.

No machine the United Company puts out is restricted to use with the McKay sewing machine (Main Brief, p. 354). The Restricted Use Clause, therefore, cannot compel a use of McKay machines.

No machines are restricted to use with any of the 172 General Department machines. If monopoly is claimed as to any of these machines it cannot be the result of compulsion exerted by the Restricted Use Clauses (Main Brief, pp. 357–358).

On March 1, 1911, there were 56,873 machines of the above kinds outstanding out of a total of 90,276 machines under lease (Defs.' Ex. 228, R. Vol. 5, p. 430).

If the Restricted Use Clauses do not account for the success of the United Company in furnishing eyeletting, pulling-over, clicking, Goodyear auxiliary, and McKay machines, and it surely cannot be contended that they do, it would require strong evidence to show that they account for its success in furnishing welting, lasting, heeling, metallic, and pegging machines, the other types as to which monopoly is charged.

7. CONTENTION THAT ~~THE FACT THAT~~ THE UNITED COMPANY BY ITS LEASES MONOPOLIZES POSSIBLE CUSTOMERS.

The United States contends that the fact that shoe manufacturers hold the United Company's machines under lease excludes competitors and accounts for its success in furnishing machines. In other words, the United States

charges that possible customers have been monopolized, and as a consequence the business of furnishing machines is monopolized.

Of course the fact that many or most shoe manufacturers already have the best machines made makes it difficult for competitors to supply them with machines, especially inferior machines. But this is no ground for charging unlawful monopoly. As the District Court said (R. Vol. 1, p. 1185),—

> "One who goes into a field of manufacture already occupied must expect to find factories so fully equipped that they are no longer customers."

We have shown that the only clause in the leases requiring a lessee to make any use whatsoever of the United Company's machines is the Full Capacity Clause, which requires a use only of the particular machine or machines leased. Shoe manufacturers are free to take any additional machines they may require from competitors. In addition all new manufacturers are free to take all their machines from competitors or such machines as they desire from the United Company on unrestricted leases when necessary, and the remainder from competitors.

746 new concerns started in business from March 1, 1900, to December 31, 1911, an average of 62 a year. In addition 270 new concerns succeeded old concerns, an average of 22 a year (Defs.' Ex. 223, R. Vol. 5, p. 390). The United Company had only 1,033 lessees in 1911 (see Main Brief, p. 614).

All of these new concerns, a total of 1,010, were entirely free to take competitors' machines. Furthermore, any existing firm can dissolve or its members or stockholders

can form a new corporation and start business free from any obligations to the United Company. This large field of new concerns is surely open to competitors whatever view is taken of the United Company's leases.

The truth is, as the District Court pointed out, that manufacturing facilities and natural resources may be monopolized, but it is not practicable to monopolize possible customers (R. Vol. 1, pp. 1181–1182).

If every shoe manufacturer in the country to-day were required to deal with the United Company exclusively, competitors having equally good or superior machines which they offered on as favorable or more favorable terms would not be deprived of a market. There would almost immediately be a large group of new shoe manufacturers in the market, including those who entered business for the first time in the natural course of events, and those who saw an opportunity to compete with existing manufacturers by getting machines on more favorable terms from competitors.

XI.

THE CAUSES OF THE UNITED COMPANY'S SUCCESS.

The reason that most of these new shoe manufacturers just entering business obtain their machines from the United Company is not due to the elimination of competitors. They can obtain their machines elsewhere. It is not due to the Restricted Clauses in the leases. They need take no machines from the United Company; they can take unrestricted leases of such of its machines as they desire and even if they do take from the United Company all of its machines they desire on restricted or non-initial payment leases, they can, as we have shown (*supra*, pp. 131–136), still take many, and in some instances all, of their other machines from competitors and use the United Company's machines with them. For instance, if they take the United Company's welter and stitcher on any lease whatsoever, they can obtain all their other machines from competitors and use the welter and stitcher with such machines. It is obvious that the reason such new shoe manufacturers, who are under no obligation to the United Company, choose its machines is because they prefer them.

The United Company's success is due to entirely lawful and natural causes which are shown in the record.

1. THE UNITED COMPANY'S LAWFUL PATENT MONOPOLIES.

In an unpatented industry, such as the tobacco business, any one having sufficient capital is free to enter and engage in the business on equal terms. It would be extraordinary if one concern acquired all or most of the business and such a result might well raise a presumption of unlawful methods. In a patented industry like the shoe machinery business, which is not yet fully developed and is still dominated by patents, one manufacturer is almost certain to have superior patents and, therefore, to obtain a large part, if not all, of the business. Until the industry has passed the stage of great improvements and the important patents have expired, such a result is normal and to be expected. The shoe machinery industry is still in this condition of development. In view of the very recent invention of most shoe machines by the United Company and its constituent companies and the remarkable improvements and inventions made by the United Company, it is only strange that so many other concerns are engaged in the business at all.

Take the telephone as an example. The Bell Company, as is well known, absolutely dominated the telephone field for many years through the acquisition of the Bell patent and the subsequent patents of Berliner, Blake, and Edison (see *United States* v. *Bell Telephone Company*, quoted *supra*, p. 179). There were no competitors at all in the field. Yet this success was entirely lawful and due to its lawful patent monopolies. It was the success which the Government insures to successful inventors.

This Court in *United States* v. *Winslow*, supra, said of the United Company's machines (p. 217),—

> "The machines are patented, making them is a monopoly in any case, the exclusion of competitors from the use of them is of the very essence of the right conferred by the patents, *Paper Bag Patent Case*, 210 U. S. 405, 429, **and it may be assumed that the success of the several groups was due to their patents having been the best"** (black letters ours).

The United Company's machines have been used by shoe manufacturers for the same reason the Bell Company's telephone was used. No other telephone was as serviceable and the public "insists upon having the best and most serviceable." After the expiration of the Bell patent this remained true because of the acquisition of the later improvements of Berliner, Blake, and Edison (see *United States* v. *American Bell Telephone Co.*, supra). There is no more justification for charging unlawful monopoly in the present case than there would have been in the case of the telephone.

The Goodyear Company, through its patents, created welt machines and the business of manufacturing and furnishing them. No machines for making welt shoes had ever before been invented. It naturally obtained all the business of these machines when first put out and since its machines, due to subsequent improvements, have remained pre-eminently the best, it and its successor the United Company naturally retained this business. The same is true of the lasting, metallic, and heeling machine business. All of these machines are recent creations. Lasting machines were just coming into use in the early 90's and were only

partially developed in 1899 (see Main Brief, pp. 84–87). All of these machines have been constantly improved and have remained unquestionably the best machines of their kind in the market.

The eyeletting machines were first developed by the United Company in 1902. Pulling-over machines, which cost $1,000,000 to develop, were invented by the United Company and first put out in 1903; and the pulling-over auxiliaries since then. Is it extraordinary that no one else in the short period since 1903 has been willing to spend such an amount of money in attempting to develop an equally efficient machine and that no one else has succeeded in so doing? The clicking machine was invented by the United Company and first put out in 1908. In other words, this machine, of which a monopoly is charged, was unknown to the world three years prior to the filing of the present suit (see Main Brief, pp. 622–623). Is it extraordinary that the United Company, which created the machine, has furnished most of the machines in use, and that no machine as good or superior has in this short period of time been invented by any one else?

These machines which the United Company and its constituent companies created under their patents are the machines as to which a monopoly is charged. They are, as the District Court found, superior to any other machines on the market. It would take strong evidence, wholly lacking in this case, to show that the success of the United Company has not been due to the lawful patent monopolies under which the machines were created and under which they have been perfected and improved.

2. OTHER CAUSES OF THE UNITED COMPANY'S SUCCESS.

In addition to its lawful patent monopolies which make its machines far better and more efficient than any machines manufactured by competitors and which alone account for the United Company's success, the following factors have also contributed to this success:—

A. The United Company furnishes a remarkable service with its machines of vital importance to shoe manufacturers. No such service is furnished by any other manufacturer of bottoming machines.

B. The United Company has assured the shoe manufacturer of the most modern and most efficient machines by replacing outstanding machines with new and improved machines when invented, without cost to the shoe manufacturer.

C. The United Company furnishes machines constructed and adapted for effective use together.

D. The United Company offers its machines on remarkably favorable terms under a leasing system which requires the shoe manufacturer to make practically no capital expenditure; it has created business in this way by enabling many small shoe manufacturers to enter business; and it has consistently reduced its charges, although the machines have been greatly improved and the cost of their manufacture is increased. As Mr. Jones, a witness for the United States and an opponent of the United Company, stated publicly and affirmed in his testimony in this case (R. Vol. 1, p. 136, lines 2–13),—

"The terms which the Machinery Company have recently offered their patrons on certain lines of machinery are so liberal that the outsiders cannot compete."

3. FINDING OF THE DISTRICT COURT AS TO THE CAUSES OF THE UNITED COMPANY'S SUCCESS.

The District Court found that the United Company's success was due to the various factors outlined above. It held:—

> "That the degree of success attained and the preponderance in number of users supplied which the United Company has secured are fully accounted for by the superior efficiency it has developed in its patented machines for work in combination with each other, together with the superior facilities it affords as above for their most efficient use, must be regarded as shown beyond question" (R. Vol 1, p. 1137).

For its further findings in this respect see Main Brief pp. 67–70.

XII.

THE RELIEF PRAYED FOR.

The United States asks that the United Company be dissolved; that the leases be declared unlawful and that the United Company be enjoined from enforcing them.

The utter impossibility of granting this relief without disastrous consequence to shoe manufacturers and the public shows conclusively that the United Company is not an unlawful combination and that the clauses in its leases are reasonable provisions necessary to enable it to offer its machines on the present favorable terms. This subject deserves the most careful study, and we respectfully call the Court's attention to the discussion in our Main Brief, pp. 630–646. We shall summarize the discussion here.

1. A DISSOLUTION OF THE UNITED COMPANY'S BUSINESS WOULD DISASTROUSLY AFFECT SHOE MANUFACTURERS AND THE PUBLIC.

The United Company's business consists of manufacturing a great variety of different kinds of machines under patents. The manufacture of each machine is dependent on the ownership of the patents protecting it; in other words, the right to manufacture the machine follows the ownership of the patents. So long, for example, as the United

Company retains its patents on the welter, no one else can manufacture it. If it transfers these patents, it can no longer manufacture the machine and would be in no better position to do so than any other member of the public.

The United Company has a single manufacturing plant at Beverly at which its machines are manufactured. The four or five other plants it owns through subsidiary companies are small and manufacture only supplies and a few miscellaneous machines of no special importance (Main Brief, pp. 631–632).

A division of the United Company's business could be attempted in only one of three ways:—

(1) By attempting to divide it into competing concerns;

(2) By attempting to compel the company to dispose of the acquisitions it has made;

(3) By dividing it into non-competing concerns similar to the original constituent companies.

1. *Attempt to Divide the United Company into Competing Concerns.* The United Company has for practical purposes a single improved machine of each type. Where it has two models of the same machine, or in the very few instances where it has two different types of machine which can perform the same operation, in practically every instance both models or types embody certain patents in common so that if the patents on one machine were transferred the other could not be manufactured.

No other concern can acquire a right to make any of the machines unless it acquires the United Company's patent rights which are embodied in the machine. The only way in which it would be possible to attempt to create competition would be to divide the patents on each machine between the United Company and some other concern.

For example, the present outsole stitcher was created by a combination of the inventions of 22 different patents, each of which contributes some factor of efficiency. It would be possible to order the United Company to dispose of 11 of these patents.

But if this were done, what would be the result? (*a*) Neither the United Company nor its assignee could make the present efficient machine. The art of making this machine would be put back a generation and the remarkable fruits of the development work which have resulted in the present machine would be lost; (*b*) if both concerns could construct machines under the patents held by them, one or the other concern would indubitably have superior patents (patents, of course, do not all have the same value), and as a consequence one machine would be superior to the other and competition on equal terms would not be created; (*c*) as neither concern would have patents enabling it to construct the present machine, but would only have certain patents applicable to a machine of this kind, each concern would have to develop and reorganize a new machine out of the patents it held. It might be a matter of years before this could be done so as to produce commercial machines. For examples of the difficulties involved, see our discussion of the difficulties confronting Plant in the reorganization of his machines (see Main Brief, pp. 531–534). In the mean time, there would be no machines to offer shoe manufacturers who now look to the United Company for their supply.

These difficulties would arise in respect to all of the machines.

Again, only one of the concerns would have a plant to manufacture machines, since the Beverly plant cannot be

divided into parts. Only one concern would have the patterns, etc., for the manufacture of the machines. The other concern would have to obtain a plant, obtain tools and special patterns, and, before it could manufacture, it would be obliged to reconstruct the present machines so as to avoid infringement of the patents held by the other concern.

The above brief discussion shows the utter confusion and the disastrous consequences which would result from an attempt to create competition in machines of the type manufactured by the United Company by a division of the patents. It shows conclusively that the combination of these patents in one concern not only does not prejudice the public, but is of vital importance to the public and is the cause of the remarkable advance made in recent years in the shoe machinery industry.

In every other case in which dissolution has been ordered there was a combination of different plants or businesses which, when separated, could continue to serve the public with the same goods or product previously furnished. The only difference has been that competition was created.

2. *Attempt to Set Apart the Acquisitions.* As the United Company by its acquisitions of inventions relating to shoe machines, or of shoe machines, has in practically every instance acquired something new, an attempt to set apart the machines, inventions, and the business of furnishing supplies so acquired would not create competition.

Furthermore, in most instances it would result in stripping some machine of the United Company of an improvement, thus decreasing the efficiency of the machine without giving the assignee any patent which would enable him to place an efficient or even commercial machine on the market.

The Plant acquisition, as we have shown, was the only one of any importance. If the United Company sold the Plant patents, it would be obliged to strip 26 of its important machines of valuable improvements; a number of its other machines would have to be rebuilt and reorganized in order to avoid infringement of the Plant patents so sold; the vast improvements made in the new models of welter and stitcher would be lost; the vendee would get a variety of patents which by themselves and without combination with the United Company's patents would not be capable of really effective and efficient use, he would have no manufacturing plant, and it would be doubtful, to say the least, if he would ever produce or be able to produce commercially satisfactory machines which would compete with the United Company (see discussion of Plant acquisition, Main Brief, pp. 507–586).

3. *Division into Non-competing Groups.* A division of the machines of different departments among different non-competing concerns would, of course, be possible. Thus the Goodyear machines could be put in one company, and the lasting, heeling, metallic, and new machines in four other non-competing companies. But no useful result would be accomplished. No competition would be created, and the companies could again combine unless enjoined, as such combination would be lawful (*United States* v. *Winslow*, supra). On the other hand, the result of such a division of the business would be that the advantages of service rendered economically by one concern, of savings in manufacturing expenses, standardization of parts, and an adaptation of the different types of machines so as to harmonize with each other, would be lost.

2. TO HOLD THE LEASES VOID WOULD DISASTROUSLY AFFECT SHOE MANUFACTURERS AND THE PUBLIC.

The leased machines belong to the United Company. If the leases are held void, no lessee would be entitled to use the United Company's machines which he now holds until he made a new agreement with it.

If the United Company cannot employ the present clauses which, as we have shown, are essential to the existing leasing system, it must necessarily in any new agreements made with its lessees adopt an entirely new system.

We believe the record demonstrates conclusively, that if the present clauses cannot be used the United Company cannot grant shoe manufacturers the present favorable terms. If the United Company cannot use the Full Capacity Clause, it certainly cannot install valuable machines in a shoe factory and depend for its return on a royalty based on the use of the machines. If it cannot lease its machines for a long term of years, it certainly cannot construct machines to be placed in a factory without initial payment and run the risk of their being returned before a fair royalty has been paid. If it cannot reserve the right to take back its machines when the lessee provides himself with other machines of the same kind to do his work, it cannot place its machines in the lessee's factory on the present basis without initial payments. If it cannot take back all its machines when the lessee violates agreements in respect to certain of them and threatens to violate his agreements as to the remainder, it cannot afford to place them in the lessee's factory without a substantial guarantee

in the form of a cash initial payment. If it cannot lease auxiliary machines for use with principal machines as a unit, it cannot afford to lease and care for these machines at all on a royalty basis. If it cannot employ the Restricted Use Clauses or clauses having the same effect, it cannot offer a reduced price for the use of a series of machines although such use brings it in a greater return and the cost of caring for the machines is less; and it must, therefore, charge a higher price for each machine leased based on its use independently.

As a result then, the United Company, if the leases are held unlawful, must either sell its machines outright or in any event charge large initial payments, a fixed rental instead of the present royalty based on use, and it must charge for each machine a price based on its use independently. This being so, the principal advantages of the present leasing system (*supra*, pp. 81–84), which has proved so highly beneficial to shoe manufacturers and on the basis of which the shoe machinery industry was created and is founded, would be lost.

In other words, as we have shown (*supra*, pp. 79–80), the attack of the United States, while in form an attack upon certain provisions in the leases, is in reality an attack upon the leasing system itself, since these clauses are essential to its maintenance. If the use of these clauses is forbidden, it means the destruction of the system of leasing without initial payments for a royalty based on the amount of use and with a reduction where machines are used as a series and thus produce a greater return.

This would be particularly hard on the small shoe manufacturers, who are especially assisted by the present system which enables them to get machines without capital ex-

penditure and enables them to pay royalty on the basis of production and not on the basis of the capacity of the machine, which is many times greater than their usual requirements. It would indubitably prevent many men of small means from entering the industry in the future and would thus assist the large manufacturers in concentrating the shoe business into their own hands.

The immediate consequence of declaring the leases illegal would be that shoe manufacturers would lose their present leases, and to obtain new leases would necessarily be required to pay the United Company at least substantial sums in the way of initial payments and would necessarily obtain less favorable terms in other ways. In case it should be decided necessary to sell machines outright instead of leasing them, shoe manufacturers would be required to purchase all their machines outright, and pay the full value of the machines. Either result would be especially hard on small shoe manufacturers, all of whom would find it difficult, and many of whom would find it impossible, to make the payments (see Main Brief, pp. 636–639).

3. CONTENTION OF THE UNITED STATES THAT THE UNITED COMPANY CAN BE RESTRAINED FROM ENFORCING THE LEASES WITHOUT DECLARING THE LEASES VOID.

Counsel for the United States seek to avoid the foregoing consequences which would result if its prayer were granted, by contending that the United Company may be enjoined from enforcing the illegal clauses in the leases without de-

claring the leases void. In this way they suggest that shoe manufacturers may retain their present machines without additional payment and be freed from the provisions which protect the United Company as owner of the machines.

Such a proposal would, of course, not compel the United Company to give shoe manufacturers additional machines or improved machines on the same terms, so that its effect would be comparatively short-lived, nor would it compel the United Company to grant these terms to new manufacturers entering business hereafter, who would thus be placed at a distinct disadvantage.

But further, as applied to present leases, the proposal is without justification.

For example, take the seventeen-year term. If the United Company were enjoined from enforcing this term, it would be because it is illegal. If so, there would be no term in the leases and either party could cancel them. If the lessee had a right to return the machines because the seventeen-year term is illegal he could not refuse to return them on the ground that it is legal and, therefore, binds the United Company.

Take the Full Capacity Clause. The machines were placed in the lessee's hands on the understanding that they would be used to capacity if the lessee had work for them to perform. This agreement goes to the very root of the contract; if not complied with, the United Company might get no return whatever on its machines. If not complied with by the lessee, an important part of the consideration for the lease agreement is removed, and the entire agreement between the parties falls. To hold otherwise would be to hold that the Court can create a new contract between

the parties not agreed to by either and in some instances at least deprive the United Company of its entire return in its machines, and thus, as a practical matter, confiscate them.

The same is true of the Restricted Use and other clauses (see Main Brief, pp. 639–642).

In the case of the Factory Output Clause, to enjoin enforcement of it and at the same time permit the lessee to retain the machines would deprive the United Company of any royalty whatever on its valuable Goodyear machines for which it gets its highest royalties, since this is the only clause in the leases of most of these machines requiring any payment of royalty whatsoever. These machines would by decree of this Court be confiscated without any payment at all.

We submit that there is no justification for the contention that these clauses, which go to the very root of the contracts between the United Company and its lessees, and in fact constitute the contracts, can be held illegal, without necessarily holding the contracts themselves (that is, the leases) illegal (see Main Brief, pp. 639–644).

4. THE LESSEES ARE NECESSARY PARTIES TO THE SUIT.

To hold the leases unlawful would deprive the lessee of the right to use the United Company's machines for the terms of the leases at the present favorable rates and force them to make new agreements with the United Company

on terms which, as we have shown, would necessarily be less advantageous.

The lessees are, therefore, vitally interested in the question whether the leases are to be held valid. They are necessary parties in a suit to declare the leases invalid. For authorities to this effect, see Main Brief, pp. 644–646.

XIII.

CONCLUSION.

The history of the United Company during the twelve years of its existence has been the history of the development of an efficient and intelligently and ably managed enterprise which by normal methods has vastly improved the art of shoe machinery and the manufacture of shoes.

The attempt of the United States to prove that the success of the United Company was due to unlawful means completely failed. The charges of the United States were made recklessly and without investigation. The petition is replete with allegations made without any foundation of fact whatsoever. Thus, for example, the allegation that the United Company discontinued the sale of machines; the allegation that the patents of the constituent companies were about to expire; the allegation that the leases required the lessee to covenant to use United Company's machines of the kind leased and all other kinds exclusively; the allegation that the United Company acquired various patents and held them without making any use of them, thus depriving the manufacturer and the public of the benefits arising therefrom; the allegation that exorbitant prices were charged for repair parts; the allegation that the constituent companies were taken over for values far in excess of real worth, and numerous other allegations, were shown to have no foundation whatsoever, although the true facts would have been disclosed upon the slightest investigation.

The District Court heard the witnesses in open court and thoroughly investigated the entire business history of the United Company. The facts on which its opinions are based are fully sustained by the record, and completely dispose of the contentions of the United States.

We respectfully submit that the decree of the District Court dismissing the bill should be affirmed.

Respectfully submitted,

FREDERICK P. FISH
CHARLES F. CHOATE, JR.
MALCOLM DONALD
Counsel for Appellees

UNITED STATES *v.* UNITED SHOE MACHINERY COMPANY OF NEW JERSEY ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

No. 207. Argued March 16, 19, 20, 21, 1917; restored to docket for reargument May 21, 1917; reargued January 11, 14, 15, 1918.—Decided May 20, 1918.

Where the evidence is strongly conflicting, especial weight attaches to the findings of a trial court whose judges saw and heard the witnesses.

Applying this principle, the court holds, with the court below, that the evidence does not sustain the charges of unlawful restraint of interstate commerce in shoe machinery, and monoply thereof, in the formation and conduct of the United Shoe Machinery Company.

In determining whether a combination restrains interstate commerce injuriously to the public, the foremost inquiry is whether the interests brought together were competitive.

Where machines were patented and, though used collectively in the making of a single product, were so far distinct in their functions that they were practically noncompetitive, a common control over their manufacture and use, *held* not obnoxious to the Anti-Trust Act.

Statements in notices to shareholders and in an agency contract, made by participants in a combination, explaining its object, *held* not to establish unlawful intent, in view of the evidence of what was done, publicity of the statements when made, lapse of time and inaction of the Government.

Lapse of time, changes of condition due to it and to the progress of the art, the development of high industrial efficiency, difficulty or impossibility of restoring antecedent conditions and injurious effects that would follow the attempt to grant the relief prayed, are matters to be considered in determining from conflicting evidence whether a combination should be dissolved.

Unconnected purchases of certain businesses with patent rights, made by the Company after its formation, are *held*, on conflicting evidence, not to have been intended, nor to have had the effect, of restraining competition illegally or to have brought it obnoxious power. Generally, one has the right to purchase patents for the protection

or improvement of his own inventions and business, and for the prevention of patent litigation, and such purchases should not be adjudged to have stifled competition unduly upon speculative estimates of the potential competitive power of new and untried inventions.

Upon similar considerations, certain contracts for assignment of future inventions are also held legitimate.

The charge that the Shoe Machinery Company's power has been oppressively used is not sustained.

The patent law gives the patentee the right to exclude others from the use of his invention, absolutely or upon terms. The exertion of this right within the field of the patent law is not an offense against the Anti-Trust Act.

The principle, announced in recent cases, that when a patented article is sold it passes beyond the patent monopoly, has no application where there is no conveyance of title but a *bona fide* lease of the article.

In a suit to set aside leases of patented machines upon the ground that they exceed the rights of the lessor as patent owner and operate to produce results obnoxious to the Anti-Trust Act, *semble*, that the lessees may be necessary parties.

Defendant supplied its sets of patented machines to shoe manufacturers on a royalty basis under a system of leases, of a uniform term of 17 years, with conditions for use of each machine to full capacity; for leasing others of lessor as more work became available; for use to exclusion of, and forbidding use on work coming from, machines not so leased; requiring lessee to obtain certain supplies from lessor only; permitting lessor, for breach of condition in any lease, to forfeit it and all others, and requiring lessee thereupon to return machines and pay a charge. *Held:* (1) Upon the evidence, that the leases were entered into by the lessees voluntarily and without coercion, and that their legality must be determined apart from a general charge of illegal dominancy by the corporation which the evidence failed to sustain. (2) Upon the evidence, that the purpose of the system was to make the sets of machinery available to customers on easy terms and promote their efficient and productive operation, in connection with an accessory service furnished by the company, and insure adequate royalty returns. (3) That the conditions were within the lessor's patent rights, and not violative of the Anti-Trust Act.

222 Fed. Rep. 349, affirmed.

SUIT to dissolve an asserted combination and conspiracy between certain companies, makers or dealers in boot and

shoe machinery, and the officers of the companies; also to have declared illegal and canceled certain leases and agreements, charged to be the means of the combination and conspiracy whereby, through control over the manufacturers of boots and shoes, competition has been prevented, inventive genius subjected to the designs of the combiners and conspirators, and auxiliary machines and accessories controlled and made subsidiary.

The charges are met with denials, with justification that the conduct which is asserted to be illegal was in promotion of trade, in natural development of business and in strict compliance with modern trade progress; indeed, that there was simply the fusion of independent and non-competing businesses, each differing from the other, and the combination of various elements of machinery covered by United States patents and all of it relating to the same art and the same school of manufactures. And that the leases and agreements were but the exercise of patent rights, wholly legal and indeed necessary.

These contentions are displayed in a bill which occupies 46 pages of the record and an answer of equal volume.

The statute of limitations is also pleaded in defense, the greater part of the acts charged being alleged to have taken place more than 6 years before the filing of the petition.

Three judges sat in the case, who heard the testimony in open court. Upon its completion and consideration a decree was entered dismissing the bill. Each judge rendered an opinion exhibiting the case from a different angle, and the opinions, taken together, display all the phases of the case and the considerations and issues involved. 222 Fed. Rep. 349.

Mr. H. La Rue Brown, Special Assistant to the Attorney General, with whom *The Attorney General, The Solicitor General, Mr. Assistant to the Attorney General*

Todd, and *Mr. Leo A. Rogers*, Special Assistant to the Attorney General, were on the briefs. for the United States.[1]

Mr. Charles F. Choate, Jr., and *Mr. Frederick P. Fish*, with whom *Mr. Malcolm Donald* was on the briefs, for appellees.

Mr. Frank Y. Gladney, by leave of court, filed a brief on behalf of General Shoe Machinery Co., successor to Boylston Manufacturing Co., as *amicus curiæ*.

MR. JUSTICE MCKENNA, after stating the case as above, delivered the opinion of the court.

The charge of the bill is that defendants, not being satisfied with the monopoly of their patents and determined to extend it, conceived the idea of acquiring the ownership or control of all concerns engaged in the manufacture of all kinds of shoe machinery. This purpose was achieved, it is charged, and a monopoly acquired, and commerce, interstate and foreign, restrained by the union of competing companies and the acquisition of others. And that leases were exacted which completed and assured the control and monopoly thus acquired.

But this charge of comprehensive trade dominance was modified in the course of the trial. The Government disclaimed the assertion of such extensive culpability and confined its contention to machinery adapted to the bottoming of shoes (attaching soles to uppers), machines called clicking machines (cutting-out machines), and eyeletting machines (sufficiently indicated by name), and

[1] *Mr. H. La Rue Brown* and *Mr. Constantine J. Smyth*, Special Assistants to the Attorney General, argued the case for the United States at the first hearing. The briefs of counsel deal largely with the facts, and are too extensive for proper representation here.

declared that if the bill did not so limit the actual monopoly counsel would agree so to limit it.

Of course, we agree with the Government that defendants cannot be discharged from all guilt merely because they leave open some branches of the business to the enterprise of others, or, as the Government puts it, "that a limited field is as yet open to competition." But in view of the large design attributed to the defendants and the illustration of what it is contended they accomplished, it would be interesting if not instructive to be told when their large scheme was abandoned or broke down, even though it may now be said to be an unimportant detail, since the trial court has decided that neither the greater nor lesser scheme was established by the evidence.

The conclusion, however, is contested, and in description of what is now contended, the Government says that "the end which avowedly was sought by the organizers of the United Company was 'the control in one corporation, both in the United States and in foreign countries, of the efficient types of shoe machinery.'" And, further, after stating the business of defendants to be that "of supplying machines used in the manufacture of shoes," and the restraint of interstate and foreign commerce in certain of the machines, it is said: "The subject matter of the action, therefore, is the effect of the things done by the defendants upon the trade between manufacturers of machines used in the manufacture of shoes and the manufacturers of shoes." And in further display of the interest which attaches to the issues, it is said: "Shoes are made in every section of the Union" and "it is obvious that supplying important machines for such an industry must be an exceedingly important part of the interstate trade and commerce of the United States."

And there are contentions as to the dominance achieved. Indeed, it is asserted somewhat fervidly that the United Company "is absolute monarch of the industry" and

that "no competitor can exist unless for its own pleasure or policy it withholds its destroying hand."

There are opposing contentions no less fervidly urged. There is denial of the purpose attributed to the defendants or the possession or exercise of baleful power, and the insistence that the United Company is a union of non-competing businesses conducted under letters patent, effecting through the resources thus acquired greater economies in manufacture and greater efficiency of machinery and "in other ways perfecting the shoe-maker's art"—advantages not engrossed by the company but inuring to its patrons and through them to the wearers of their product, a finished shoe.

In final answer to the charge of the Government the comprehensive declaration is that the shoe machinery industry is not one open to everybody on equal terms. It is one of patents. And the company's power, if it have power, is not that of combination but the power of the superiority of its inventions—the effect and demonstrated supremacy of its mechanical instrumentalities.

The contentions could not well be more antagonistic, upon each of which there was conflicting testimony, and the important fact is to be borne in mind that it was given in open court (except as to certain contentions about patents, their scope and validity).[1] The fact justifies defer-

[1] During the trial a discussion came up about patents. The presiding judge intimated that the court did not desire to take up the patents themselves but would send them to an examiner. It was stated by counsel in the case that the matter was important. But the court made a distinction between a "patent question" and a "patent controversy"—good faith being an element of the latter—and stated that the latter would not be included in the hearing before the examiner, but would be heard in open court. The court then ordered the taking of testimony of both parties before the examiner as to that section of the bill which charged an unlawful extension of the patents to perpetutate their monopoly at the expense of boot and shoe manufacturers and to use them to acquire a complete monopoly of all kinds

ence to the findings of the trial court. *Adamson v. Gilliland*, 242 U. S. 350, 353.

There are two accusations against the defendants. One is that at the very outset they combined competing companies and subsequently acquired others, § 1 of the Act of 1890 [1] being thereby offended. The other is a monopolization of the trade in violation of § 2 of that act. And it is charged, as we have said, that certain leases and license agreements are the instruments which consummate both offenses.

The offense of combination was committed, it is contended, February 7, 1899, at which time seven shoe machinery companies were consolidated into the United Shoe Machinery Company of New Jersey, a corporation organized for that purpose. The companies were: Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Davey Pegging Machine Company, Eppler Welt Machine

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of shoe machinery. The examination took place and it was the usual battle of experts, and the conflicts are recorded in a volume of more than eight hundred pages. Their ultimate test, however, and the effect of the patents is the testimony delivered in open court.

[1] "Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person, or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Company and the International Eppler Welt Machine Company. The last two companies were acquired by the new company after its formation, but they may be regarded as constituent companies. The businesses of these companies were conveyed to the new company, the businesses being those of manufacturing, selling and leasing and dealing in shoe machinery, including patents of the United States and other countries.[1] A more

[1] There is apparent confusion in the brief of the Government. In one place it is stated that the United Company was the consolidation of the businesses and properties of seven companies which were taken over as going concerns, to-wit: Goodyear Shoe Machinery Company, International Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Davey Pegging Machine Company, Eppler Welt Machine Company, and International Eppler Welt Machine Company.

In another place the organization of the United Company is stated to be the merger of four companies—Goodyear Company, Consolidated & McKay Company, Eppler Company and the McKay Shoe Machinery Company—and resulted in the immediate suppression of competition between those companies and dominating "to the point of practical exclusion the important field of supplying the principal and essential machines necessary in the manufacture of shoes."

However, in the conclusion of the Government's brief it contends that it has established "that there existed vigorous competition between three of the companies merged in the organization of the United Company, and that the fourth company, which at any moment might have become a competitor, was taken in for the purpose and with the effect of furthering the unlawful scheme of the combination thus brought into being." The fourth company referred to is no doubt the McKay Shoe Machinery Company.

The immediate results were, it is contended—

"(1) The suppression of the actual and of the potential competition in lasting machines theretofore existing between the Consolidated & McKay Company and the Goodyear Shoe Machinery Company. It created a monopoly in lasting machines.

"(2) The suppression of the actual and of the potential competition between the Goodyear Shoe Machinery Company and the Eppler Welt Machine Company. It created a monopoly of welting and outsole stitching machinery.

particular distinction we do not deem it necessary to make.

The first question is, Were the companies in competition? It confronts us at the outset; all other considerations are dependent upon it. As an element in the answer to it we must revert to the admission that the charge of combination is only as to machinery for bottoming shoes—that is, the uniting of the sole to the upper—an operation which might be called "simple" if the complexity of this record did not contradict it and if we were not told that the letters patent covering the machinery for the operation are too great in number for explanation or enumeration. It is said that on certain classes of shoes over 100 different operations are performed by different machines. And the Government has taken pains to tell us how far "the mysteries of the shoemaker's art and the variations between different methods of making shoes" are outside of the understanding of the purchaser of them. To him, it is said, "shoes are shoes, except as they differ in appearance, comfort, wearing qualities and price." But to the manufacturer distinctions multiply and to the production of a shoe a complete line of machinery is necessary. Indeed, the Government makes the mystery of the art and the necessity of the instrumentalities, in part, the basis of its argument.

"(3) The absolute prevention of future competition between the McKay Shoe Machinery Company, the Goodyear Shoe Machinery Company, the Eppler Welt Machine Company, and the Consolidated & McKay Company.

"(4) The creation of an absolute and complete monopoly in lasting, pegging, welting, outsole stitching, heeling and metallic fastening machines.

"(5) The creation of an organization with vast resources whose control of many different types of machines necessary to the shoe manufacturing industry gave it a power to extend and intrench its monopoly which none of its constituent companies, however successful, could approach."

We are therefore admonished at once of the complexity of the case and the maze of mechanical technicalities into which we should be plunged in estimating the evidence if we had not the guidance of the opinions of the judges of the trial court. The court found, as we have said, that the companies were not in competition at the time of their union in the United Company, and based the finding not only upon the testimony of witnesses but the uses of the machines of the respective companies and their methods of operation. The testimony was conflicting, it is true, and different judgments might be formed upon it, but from an examination of the record we cannot pronounce that of the trial court to be wrong. Indeed, it seems to us to be supported by the better reason. We should risk misunderstanding and error if we should attempt to pick out that which makes against it and disregard that which makes for it and judge of witnesses from their reported words as against their living presence, the advantage which the trial court had.

The Government, however, urges two circumstances which it contends corroborate its oral testimony and against which it asserts that "literal denials of specific intent to restrain trade are of no significance." But there was more than literal denials. There were detailed representation of the condition of the trade and explanation of the machines convincing, as we have seen, in its strength and the confirmation it received. Let us, however, consider the instances upon which the Government relies. The most important of them is a circular letter,[1] sent by

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[1] "Plaintiff's Exhibit 152.

"*To the Stockholders of Goodyear Shoe Machinery Company:*

"BOSTON, MASS., *Feb. 8, 1899.*

"The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the efficient types of shoe machinery, have been for several years recognized by the officers of the principal shoe-machinery companies.

the directors of the Goodyear Company to its stockholders, which set forth that great advantages were to be secured by the control in one corporation of the most efficient types of shoe machinery and that the directors and large stockholders had been in negotiation to accomplish that end; and further that the United Company would from time to time acquire other shoe machinery properties either by direct ownership or by purchase of shares of their stock. Also a like declaration [1] in a contract with its agent in Australia.

For more than a year your directors and large shareholders have been in negotiation to accomplish this end.

"After a thorough investigation of the financial condition and the business of the shoe-machinery companies named below, the organization of a corporation has been effected under the laws of the State of New Jersey, to be known as United Shoe Machinery Company.

"The United Shoe Machinery Company has already contracted for more than a majority of the capital stock of Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Goodyear Shoe Machinery Company of Canada, International Goodyear Shoe Machinery Company, Eppler Welt Machine Company, International Welt Machine Company, Davey Pegging Machine Company, besides stocks in other shoe-machinery companies, letters patent, and other property.

"The United Company will also from time to time acquire other shoe-machinery properties, either by direct ownership or by purchase of shares of their stock."

[1] "Plaintiff's Exhibit 189.

"Whereas the United Company has acquired control of the boot and shoe and leather working machinery made by the following named corporations doing business in said Boston, namely:

"Goodyear Shoe Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, Eppler Welt Machine Company, Goddu Metal Fastening Company, Gordon Staple Lasting and Tacking Company, Davey Pegging Machine Company, Gem Flexible Insole Company, Boot & Shoe Sole Laying Company, and contemplates acquiring the control of other lines of boot and shoe and leather working machinery and boot and shoe findings, except leather, linings, lasts and finished boots and shoes. . . ."

The circular and agreement could not, of themselves, give character to the constituent companies. It is evident, therefore, that both of them need comment to give them sinister significance, and the innuendo of the Government is that they meant not only that great competing companies had been united, but that other companies—competitors, it may be—would be acquired. It would be a stout credulity that could accept this explanation against the counter considerations. We cannot put out of mind that according to the Government, in repeated assertions, the United Company in 1899, twelve years before the suit was brought, jumped into the field full-panoplied in monopolistic power and started immediately on its career of dominance and restraint of trade. But to preclude the denial of the assertions it is now said that, in stock circulars and trade agreements, the company trumpeted its might and illegal enterprise to two continents. Deliberate guilt—we say deliberate guilt, for it is not a question of ignorance or imbecility—is usually not so bold. It masks its purpose to hide it from prevention and penalty. If it may be asserted that the trade agreement was in secret, certainly the circular letter to the stockholders committed the scheme to publicity.

We cannot, therefore, accept the explanation of the Government. Its implications discredit it. It implies that there was governmental supineness for a long time or an extraordinary oversight of conspicuous, indeed vaunted, criminality. Neither can be accepted. And we are persuaded that the circular and agreement were not intended nor regarded to be the avowal, as contended by the Government, of monopoly, achieved or to be achieved, but simply the business expression and foresight of the advantages which would result from the concentration in one management of instrumentalities which, however different, supplement one another in the creation of a shoe.

We have given the explanation of the Government im-

portance because the Government has done so. And we have only answered in estimation of what the circular and agreement are worth as avowals of intention. Of course, if the Government is right, they are unimportant circumstances; the demonstration of the United Company's purpose is complete without them; for the Government contends that the constituent companies were in open competition and that their union resulted in the "immediate suppression of the actual and potential competition" in shoe machinery and the "creation of an organization with vast resources" which "gave it a power to extend and intrench its monopoly which none of its constituent companies, however successful, could approach." If this were a fact it would not need the confirmation of words.

The second circumstance cited by the Government is that before the union of the companies their machines had a flexibility in use that the testimony of defendants does not now ascribe to them, and that this was declared in advertisements. We are not disposed to give much importance to the circumstance. It may be that there was a certain interchangeability in the described machines, but, in the opinion of the trial court, there was, notwithstanding, no practical competition between them. We can add nothing to what determined its judgment or to the detailed comparison and explanation of the machines made in its opinions. Indeed, we might rest this branch of the case on those opinions. They were considerate of all the elements of the Government's contentions and the opposing contentions and tested the machines, their sameness and difference and respective efficiency, by the purposes for which they were designed by the inventors and employed in the trade and by the explanations made of them.

In considering the competition of the machines and in estimating the defendants' acts in uniting the companies,

it is to be observed that the machines were all made "under letters patent of the United States and other countries," were owned by the companies, and covered improvements made by the companies from time to time and embodied in the machines, which were so far developed that they were in 1899 principally in use by shoe manufacturers in the kinds of work to which they were respectively adapted. The patents and the businesses passed to the new company, but necessarily were the same in its hand as before. In other words, the patents did not lose their distinction, nor the machines their difference; and to dwell upon the percentages of manufacture is misleading. Of a like situation we said in *United States* v. *Winslow*, 227 U. S. 202, 217, and said of it in answer to the charge against the combination here involved, that we could "see no greater objection to one corporation manufacturing seventy per cent. of three noncompeting groups of patented machines collectively used for making a single product than to three corporations making the same proportion of one group each. The disintegration aimed at by the statute [Act of 1890] does not extend to reducing all manufacture to isolated units of the lowest degree." Or, as expressed by one of the judges in the court below, "The combination was not unlawful so far as it did no more than put the different groups of noncompeting patented machines into one control. . . . It was not unlawful unless, to an extent injurious to the public interest, it destroyed competition."

And it was held that competition was not destroyed to the designated extent. Indeed, the court was repelled, as it might well have been, by the consquences of so holding on account of the change of conditions, the union of the companies not having been questioned by the Government for twelve years and large investments having been made not only by the company but by the public.

The lapse of time, indeed, may not condone the offense

if offense there was. It, however, may call offense in question and be an element in the refutation of accusations long deferred, or determine against particular remedies. It is to be remembered that a dissolution of the offending companies is prayed and that each of them be "separated into such parts that no one of them will constitute a monopoly . . . of the shoe machinery business," or that receivers be appointed to take possession of them and their assets, business and affairs and wind them up and "bring about conditions in trade and commerce among the States and with foreign nations in harmony with law." If there be need for this the difficulties of achievement should not deter; but the difficulties may admonish against the need and demonstrate that the situation may be remediless or to be redressed at a cost too great. Therefore, considering the remedy prayed, which is extreme, even in its mildest demands, we may ask, what of the investments that have been made during these years of extension and development of the new company's business? What of the machines that have become obsolete and the new ones that have been developed? What of the patents that have expired and the new ones that have not yet run out, and how distribute them? And what of their effect when distributed? Will their monopoly cease, or be regarded as an instrument of illegal purpose and forfeited as a deodand? How pick out from the new conditions the conditions of 1899 and restore them and the art of that time and rehabilitate the businesses that are alleged to have ceased to exist or to have become merged in the United Company? How from the complexity only thus suggested, not displayed, "bring about conditions in trade and commerce" in shoe machinery "among the States and with foreign nations in harmony with law," which is the ultimate resource of the Government for this part of the case? How radical should the disintegration be? Or should there be a sale in en-

tirety and not in parts? And, if in entirety, will the purchaser get an immunity that the companies did not have? A sale in entirety would seem to be absolutely necessary to preserve the works at Beverly. And yet how can that be done if there be a dissolution of the company and a distribution of machines? On the other hand, the idea is repellent that so complete an instrumentality should be dismantled and its concentration and efficiency lost. It has been testified that the purpose of the organization was the consolidating of all the machines in one modern factory and the standardizing of them. This purpose has been attained. The company employs there 4,000 men.

There are, however, certain instances of acquisition which may be said to give confirmation to the charges of the Government and justify the demand for redress, at whatever cost or disaster to the offenders; in other words, demonstrate the purpose of the original union of the companies, the persistence of that purpose and the extension of its dominion having the evil consequences depicted by the Government. Upon these instances it would seem unnecessary to dwell, the companies not being competitive at the time of their union in the United Company. However, they are made so much of by the Government and are so strongly urged that attention must be given to them. The most important of them and the one that was given most prominence in the testimony was that of the plant and machinery of the Thomas G. Plant Company, a New Jersey corporation, a manufacturer of shoes, not of machinery, and of the shoe machinery interest of Thomas G. Plant.

Plant was an inventor of machines of the shoe-bottoming variety and had taken out a number of letters patent in the United States and foreign countries covering the same. There was in the testimony and is in the argument of counsel dispute as to the efficiency of the machines of themselves. We say "of themselves" to distinguish

them from the inventions embodied in them, a necessary distinction to meet some of the phases of the case. A set was installed in the Plant Company's factory, of which Plant owned a majority of the stock. Two other concerns to which they were offered under inducements refused to accept them. It may be admitted, as the trial court found, that they had experimental promise, and it was testified that a number of shoe manufacturers had concerted to buy them. There were charges of infringements of the United Company's machines and Plant was loath to permit an inspection; indeed for a time refused it. And, besides, for their completion into a set for combined operation important machines were necessary which were not yet developed. As they stood they were undoubtedly inferior to the machines of the United Company, and in the state, therefore, in which the United Company took them they were not found capable of use. Nothing was in them which affords reasonable support for the Government's contention that they were "right at the threshold of extensive competition with the United Company." But, suppose they were. It would only be conjecture to say that they would cross it or that their strength would be formidable if they did. It is in the testimony that they broke down upon trial and were supplanted in the Plant factory where Plant had installed them by the United Company's machines. And the substitution was not at the dictation of the latter company. The vice president of the Plant Company and the general manager of its factory testified that satisfactory work could not be done with them on men's shoes; they broke down even in the manufacture of women's shoes to which they were adapted.

It appeared that some of the machines infringed the United Company's and in some details the latter infringed the Plant machines, and the complexity of rights hence resulting, to which we shall presently refer, had led to and threatened litigation; to compose which, it was

testified, and the trial court found, was a contributory inducement of the United Company's purchase from Plant.

The Government resists the finding. Its conception is, and to this all of its contentions are addressed, that the United Company combined and was intended to combine great competing companies and to acquire other competing companies. "The United Company acquired," counsel say, "every company then [when the company was organized] actively putting out or planning to put out" machinery adapted to bottoming shoes, and that "in the twelve years before the bringing of this action no substantial change took place, but rather the monopoly so acquired was in some respects extended and in many respects strengthened and intrenched." In the light of this conception and contention the Government sees and colors all that the United Company has done, all of the acquisitions it has made, and upon whatever motive made, including the prevention of patent troubles or the composition of litigation. And it directly says of the purchase from Plant that it was made at an overvaluation and by it Plant was tempted to the bargain and the United Company satisfied by getting rid of a competitor.

We get no solution of the purpose of the parties by the price the United Company paid.[1] We must consider what it was paid for. It is to be remembered that we are dealing with a transaction which took place eleven years after the formation of that company and is to be judged of by its own circumstances, the incentives of that time. Plant was eager to sell and the overtures came from him—indeed, he engaged two intermediaries, to one of whom he paid a large commission. There was necessarily negotiation before the final meeting of minds. To estimate the bargain to it the United Company insisted upon an

[1] The price was $3,000,000 in cash and $1,500,000 in common stock of the United Company at par, the market value of which was $3,000,000.

inspection of the machines, that is, to estimate their value, as it was testified, "to the advancing of the art of shoe-making." [1] Plant refused at first, as we have said, but later yielded, and after inspection the purchase was consummated. Indeed, there were two inspections. The report on the first was adverse to the purchase. Mr. Winslow, president of the United Company, took part in the second and we may quote his testimony, for it is the standpoint of that company we are now considering. His testimony, besides, had confirmation. He believed, he testified, that he had a broader knowledge of shoe machinery than any one else and he therefore studied the Plant machines "personally as an expert." He considered them, he said, from the standpoint of their capacity, the value of the inventions and the improvements embodied in them, the comparison of their work with the work of the United Company's machines and the mechanical construction of the latter. He further testified that "Plant had used the Goodyear machines [the United Company's machines] as a basis for his machines and had made important improvements and developments." He indicated one of the improvements in particular, which he regarded as of the very greatest practical importance, especially when combined

[1] Mr. Winslow gave the following explanation of his purpose in the Plant purchase as stated in conversations with Mr. Plant:

"I always declined to have anything to do not only with buying but considering his propositions without a full and complete right to examine his machinery, determine the value of the inventions—the patents that he had—and Mr. Plant knew that my position all the time, at every interview was that I was not interested in what it cost him to get them up, whether much or little. My entire and only interest was whether those patents could be made of benefit to our customers and the trade. If they could be of benefit, if they were of large benefit, and the trade ought to have them, I should be very glad to buy them and embody them in our machines for what I thought they were worth, irrespective of what they had cost him—but I would not pay a cent more for them."

with a device that the United Company had just developed and placed in its factories. In a "broad way," he said, the value was almost incalculable.

But there was an interdependency of values. While the Plant device had value over that of the United Company's, it was controlled by the latter, or, as the witness expressed the situation, "in a broad way it was a perfect deadlock." In other words, the United Company had the underlying invention and Plant a patent for a particular form of operation which was necessarily subordinate to the other—a situation familar in patent law and contests.

It will be seen, therefore, that there was no other way out of the deadlock, if the inventions were to be used together—that is, embodied in one machine, without infringement—than by ownership in one hand of all the patents. That plan was adopted and was the inducement of the purchase of the Plant inventions by the United Company. But there was litigation to be composed as well, and it was composed.

Another witness testified as to the relation of the Plant patents and those of the United Company and stated that the result, if Plant had insisted upon his patent rights and the company had insisted upon its patent rights, would have been "a stop in the development of shoe machinery in these lines." And continuing, he said: "We should hardly have dared to go ahead with the improvements in our machines for fear of not succeeding in our patent litigation, or of conflicting with such improvements as Plant had patented. On the other hand, Plant, or any company which he might form, would have hardly dared to go ahead with the possibility of these infringement suits. These infringement suits, or a good many of them, were then pending, and certainly he would have found very few customers, I think, for his machines."

This, in outline, was the situation that confronted the

parties and induced their transaction, the incentives of each being as indicated. And they were justifiable incentives, and we may accept them as an alternative to the contention made by the Government that a violation of law was the impelling motive of the parties. And we may say that after the United Company had made the Plant acquisition it proceeded to make improvements on the Plant patents and developed many of them, giving them an efficiency they did not have before.

There are other acquisitions that are emphasized, among them, that of the stock of the Goddu Sons Metal Company. It was acquired March, 1899, a month after the United Company was formed and eleven years before this suit was brought; and the inducement to the acquisition was to settle the patent troubles that came to the United Company through one of its constituent companies. The value obtained was in patents. These were for the metallic variety of machines, and, according to a witness for defendants, "at that time the United Company was putting out commercial machines for doing the work for which the Goddu Company machines were intended." And, according to another witness, though not then in a condition to be placed in the hands of manufacturers, "they were in a state of development where some of them could have been, without extensive changes, made operative."

By this testimony the defendants justify the purchase; the Government condemns it. The defendants say that it was in composition of an inherited litigation and that patents of value were obtained by it. To this the Government replies in condemnation that the cost of the settlement of the disputes was excessive, being $150,000, and the purpose of getting the patents was to forestall the competition they threatened and could have accomplished by their development.

The value of a settlement of a dispute about rights which has reached litigation or threatens it cannot be

easily or accurately estimated. It depends upon too many considerations which are not reflected in the price paid. The other ground of condemnation has strength. As the Government says, quoting Circuit Judge Putnam in another case, neither the letter of the law nor its purpose "distinguishes between strangling of commerce which has been born and preventing the birth of a commerce which does not exist." But there is another view. No one can tell the strength of the competition that may be in a patent. It may be more than competition; it may be destruction, and the Anti-Trust Act surely does not require the acceptance of that or forbid effort to prevent it. But even if such extreme does not impend, certainly improvement of business and its efficiency can be striven for without offense to the law. *United States* v. *Winslow, supra.*

We may say here of the contention of the Government as to the acquisitions—and the same comment may be made of most of its contentions—that they cast us into speculation for their estimate and urge us to decide between well-sustained conflicting opinions and adjudge the defendants guilty of a violation of law. And this, too, against the considered judgment of the trial court.

We see no illegality in the contract with Goddu for assignment of other inventions he might make, or in like agreement with others. We content ourselves with this general declaration. An analysis of the contracts is not feasible, nor are the covenants measurable. That they are attempts to subject the inventive genius of the country to the designs of the defendants is too extreme. They can be seen to have more particular use and to be justified in the circumstances of the transaction with which they were connected. Those whom one employs one gives opportunity to (this was Goddu's case) and may exact that it be used for the employer. Those who have conveyed to him special machines may be presumed to have been compensated by their price, and that in either case

there will be such development and use as to make them competitive is too speculative to justify a judgment.

It is to be noted that the acquisitions in this case were not coincident in time nor parts of the same transaction. They were scattered through a period of years and varied each from the other, had no dependency, were different and unrelated steps in the development of the business of defendants. They must hence be judged separately, not in accumulation.

The above comment is applicable to other acquisitions, said to be fifty-six in number. It is impossible to review them. A description of them and wherein the machines acquired were competitive with the machines of the United Company the Government sets forth in many pages of its brief, and the defendants reply as circumstantially with opposing delineation and justification. Their effect is hard to estimate. The removal in some degree of competition may be charged against some of them and yet, on the other hand, the acquisitions may be said to be justified by the exigencies or conveniences of the situation. Some of them were merely of accessorial machines; some in composition of patent troubles; some not connected with the special charge of monopoly to which the Government has limited itself; some the transfer to defendants of kinds of machines not possessed by them; some of patented improvements and inventions, aiding or completing the defendants' machines, tributary therefore to their efficiency. They give a false impression by their number. They added nothing of obnoxious power to the United Company nor in any practical or large sense removed competition.

Defendants charge that the Government not only puts an exaggerated computation upon the acquisitions by defendants but gives no credit for or account to their resistance of applications to buy other and, it is asserted, more important concerns. Their number is given as 75, all of great use and importance. The trial court found that the

offers refused were more numerous and several of them were of concerns more important to the scheme of monopoly charged against defendants than any of the specified acquisitions. The comment is justified by the evidence.

We pass by the charge of the Government that the United Company through its president threatened destruction to opponents and the use of his influence in the business world to enforce transfers of competing concerns and the patents they controlled. The charge and its denial or explanation were estimated by the trial judges and the charge was held not to be established, or of no serious importance. The court said that if the declarations could be called "threats" in view of all the surrounding circumstances shown, it was not established that any competitor lost a customer or that anybody was prevented from attempting competition. Besides, they were isolated instances, separated in time, without relation, not coördinated acts in a scheme of oppression.

We cannot go into further detail without unduly extending this opinion. It would be repetition, besides, of what was done carefully and thoroughly in the opinions of the trial judges. We sum up with a generalization that the United Company took by its organization "established businesses already of great value, possessing great possibilities of development," as said by the trial court. It was discerned that there was advantage in their concentration, and the expansion that has hence resulted has been as much in necessary evolution as by design. At its foundation there were certain basic patents and many auxiliary ones. Inventors—those connected with and those independent of it—were devising and experimenting, and of this the company had to keep informed. It had to keep up with the mechanical march; to fall back would have been its destruction. There was growth not only in its business proper but in the accessories to it. When it was formed in 1899 it had no facilities for furnishing findings

and supplies. It was business enterprise or, it may be, necessity, to acquire them, and their acquisition became what is called in the case the United Company's "general department," which handles, it is said, between 150 and 200 different kinds of machines. The expansion to this and in this was like the expansion of the department store—an accumulation not only of necessary things, but of incidental, supplemental things, auxiliary to the completion and finish of a boot or shoe. There is a service force as well, estimated at 6,000 men, to repair immediately breaks or deterioration without extra charge. And these men are kept at convenient places to repair machines and replace worn-out parts, and depots of supplies are maintained. There are also instructors of operators as well as furnishing of men in emergency. It is in the testimony that a total of 8,889 operatives were taught in the year 1911 alone.

The company, indeed, has magnitude, but it is at once the result and cause of efficiency, and the charge that it has been oppressively used is not sustained. Patrons are given the benefits of the improvements made by the company and new machines are substituted for the old ones without disproportionate charge. There has been saving as well in the cost of manufacture of shoes. These are some of the results of the organization of the United Company. Others are testified to and the means of their accomplishment; but time will not permit their statement, and we pass to the leases.

There was complaint of them and the Government attacks them. Complaints, however, may be interested lament; but, on the other hand, they may be the expression of real grievance and demand redress. And which they are should be considered. To the attacks of the Government the defendants reply that the leases are the exercise of their right as patentees and if there is monopoly in them it is the monopoly of the right. It

must, indeed, be said that it is the experience of the world that the utility of an invention entices to its infringement, but it would be a perversion of things to facilitate the wrong by a sacrifice of the right in revulsion from the restraint which the right authorizes. But, on the other hand, we must not over-estimate the right or give it a sinister effect—permit it to be a means, to use the words of the Government, "to the building up and intrenchment" of an "illegal monopoly." We cannot consider the contentions with the detail that counsel have. We think that their answer is in the statement of certain general propositions.

Of course, there is restraint in a patent. Its strength is in the restraint, the right to exclude others from the use of the invention, absolutely or on the terms the patentee chooses to impose. This strength is the compensation which the law grants for the exercise of invention. Its exertion within the field covered by the patent law is not an offense against the Anti-Trust Act. In other circumstances it may be, as in *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20, to which case that at bar has no resemblance.

The question, then, is, Was the patent right lawfully exerted in the leases? Were they anything more than the exercise of the patent monopoly? The word is descriptive and must be used, but it does not imply oppression. The old instrumentalities exist for all who are content with them and who care not for the better ones which inventive genius creates.

The charge of oppression puts out of view many essential things. We must keep in mind the quality of the right we are considering and that the inventor gets nothing from the law that he did not have before and that the only effect of his patent is to restrain others from dealing with or using its device. *United States* v. *Bell Telephone Co.*, 167 U. S. 224, 239; *Paper Bag Patent Case*,

210 U. S. 405, 424; *Motion Picture Co.* v. *Universal Film Co.*, 243 U. S. 502, 510. Or to put it another way, the inventor does not get from the law a right to a use that he did not have before but he gets the right to an *exclusive* use. Take this from him and you take all that the law gives him and to secure which the public faith is pledged. Chief Justice Marshall in *Grant* v. *Raymond*, 6 Pet. 218, 242.

Indeed, we said in the *Paper Bag Patent Case* that he may keep his invention out of use. Therefore, he necessarily has the power of granting it to some and withholding it from others, a right of selection of persons and terms. There is, however, a limitation upon him; he cannot grant the title and retain the incidents of it. *Straus* v. *Victor Talking Machine Co.*, 243 U. S. 490; *Bauer* v. *O'Donnell*, 229 U. S. 1; *Motion Picture Co.* v. *Universal Film Co.*, *supra*.

These cases have received review and application in *Boston Store of Chicago* v. *American Graphophone Co.*, 246 U. S. 8. The principle of them was expressed to be that where an article has been sold it passes beyond the monopoly given by the patent and conditions cannot be imposed upon it. Leases are not of this character; they do not convey the title. It is not contended, nor could it be, that in this case they are a disguise for something else, artifices to convey the machinery and yet keep it subject to the patent right and its exercise. It therefore follows that conditions may be imposed by them.

It is not certain that the Government denies this or means to assert anything more than that the patent right is exercised in oppression, assisting, indeed consummating, a scheme of monopoly, begun by the formation of the United Company, prosecuted in the various ways to which we have referred, and completed by the leases and their clauses.

It is difficult to represent the contentions of the Gov-

ernment without under-coloring them or over-coloring them. There is one that the leases are invalid in and of themselves; there is another that "ultimately, of course, it is upon the lease forms themselves and their apparent and necessary effect upon competition that the United States relies." The first contention the Government leaves very much to assertion, and defendants charge that it was not made in the trial court; the second contention is necessary to assign to the leases an obnoxious quality in the hands of the United Company which they did not have in the hands of the constituent companies. The distinction would seem to be not material of itself, and the important consideration is not what the leases were in some other relation but what they are in their present relation and to what purpose are they being rightfully or wrongfully, or can they be rightfully or wrongfully, used or enforced? To this inquiry we shall now address ourselves.

The first objection made to the leases is that they are unchangeable by the lessee—he "has no right," it is urged, to demand either the cancellation or modification of an existing one. The objection is not definite or measurable. It is probably but a representation of what is deemed the severity of the leases, for, of course, a contract is a restraint upon option and can be enforced. This power is its efficacy and indicates its obligation. And further it is of no consequence that the leases cover all of the machines of the United Company if they are an exercise of the patent rights. Whether they are is the broad question in the case and its disposition will dispose of all minor and dependent ones.

What, then, do the leases accomplish? They have clauses called "tying" clauses, so called because, it is said, they tie the use of the machine leased to the use of machines not covered by the particular lease. Their result is, the Government asserts, "to make it in effect a

condition of the lease that the lessee shall not use the machines of competitors either to supply a need for additional machines of the kind leased or for machines of other important though wholly different types."

And it is urged: "In addition to those clauses there are certain other clauses which have a similar effect upon the freedom of the lessee's choice of machines. They give to the tying clauses their maximum effect as destroyers of the possibility of competition with the defendants." It is charged that "the objectionable clauses are inter-related and operate together with cumulative effect"; that "they are unlawful both as integral and effective parts of an unlawful whole, and, for the most part, in and of themselves." And it is further charged that "it is, however, in their combined effect as a system of leasing, used and insisted upon by a corporation dominant in its field that the full extent of their illegality is to be perceived." This, however, is assertion and relies for its foundation upon the assumption of an illegal dominance by the United Company that has been found not to exist. This element, therefore, must be put to one side and the leases regarded in and of themselves and by the incentives that induced their execution; and to a suit seeking their dissolution it may well be contended that the lessees are necessary parties, certainly so far as existing leases are concerned. But the contention of the Government goes farther and asserts that its purpose and object justify the absence of the lessees from the case. Indeed the Government takes merit to itself in relieving them of a thraldom. "The rights of the lessees," it is said, "are not touched except to preserve them." But a lessee may like his situation, may have deliberately chosen it and may not care for any interposition, benevolent or otherwise.

Finally the Government, in possible opposition to both lessor and lessee, asserts that "no one has the right to

say that the unlawful conduct of another shall be permitted to continue because he has an interest in it." Perhaps not. But there may be dispute as to the character of the conduct, and its illegality cannot be conceded to mere assertion and the consequent assumption of a destroying power.

However, let us consider the clauses from the standpoint of the Government's contentions and determine if they transcend the rights given to patentees. The clauses are: (1) One that prescribes a uniform term of 17 years. The result of this is, the Government says, "that during that long period no replacement of a machine so leased by a better machine of defendants or others and no change in the form of the lease or avoidance of any of its requirements is open to the lessee except with the defendants' consent and upon their terms." To this it is replied that the leases of the constituent companies ran for indefinite periods and, besides, new patents were constantly taken out, and to these the criticism of the Government does not apply. And again, the term was assurance to the lessee as well as lessor, and, as defendants' counsel suggest, there is analogy in the term to that of a building lease which may under the hazard of circumstances turn out to be or not to be advantageous Of this there are two recent examples in this court. *Filene's Sons Co.* v. *Weed*, 245 U. S. 597, and *Gardiner* v. *Butler & Co.*, 245 U. S. 603. Indeed, we may say of all the clauses, without a minute analysis and discussion of them, that they were simply bargains, based on patent rights and the conditions upon which those rights were granted.

(2) The "additional-machines" clause, which provides that in case the lessee has more work than can be performed by the machine leased, he will lease additional machinery to perform the work and that if the lessee does not do so the lessor may cancel the lease if he so elect, and any other lease of machinery of the same kind then in

force between them. This clause, we shall presently see, was discontinued in 1907 and was not in use when this suit was brought. (3) An "exclusive use" clause requiring the lessee of particular machinery to use it exclusively and the auxiliary machines which aid or supplement it, and for failure to do so, lessor may at his option terminate forthwith in writing any or all leases or licenses of the particular machines and accessorial machines and they shall become revested in the lessor. This clause only requires an election of use between the United Company's machines and those of other makers. If the election be of the latter, the lessor may terminate the lease and resume his machines. (4) A prohibitive clause. This clause provides that the particular machine leased shall not be used in the preparation or manufacture of shoes, etc., upon which work is done by any machine not held by the lessee under lease from the lessor. (5) The right to terminate all leases clause. This clause does not need much explanation. Its name expresses its purpose. It gives the lessor the right, in default of the performance of the conditions of the particular lease, not only to cancel that lease but all other leases and requires a delivery of the leased machinery to the lessor at Beverly, Mass., complete and in good order, reasonable wear and tear alone excepted. (6) The full-capacity clause. Its name expresses its purpose. It requires the leased machinery to be used to its full capacity upon the work to which it is applicable. This clause was in the lease of the Consolidated Company prior to the formation of the United Company. Its purpose is to secure the royalty which is based on the amount of use of the machine. It does not require the use of any particular machine or the use of other machines. It merely requires that the particular machine that is installed shall be used if the lessee have work for it. Without it defendants say that, as lessors, they would have no assurance of compensation for their machine. (7) A

charge upon the return of the machinery leased is required. This needs no comment or further notice. (8) The leases of metallic machinery provide for the purchase from the lessor of certain fastening material. This clause and the next, which provides for the payment of royalties, are mere make-weights and not of special materiality.

The evil potency ascribed to the leases (we use the word as inclusive of the clauses and we do not think it necessary to distinguish them according to their application to particular machines) by the Government is their asserted coercion of shoe makers and machinery makers. They limit the freedom of the first, it is contended, and by that limitation preclude the competition of the second with the defendants. In other words, the use of the machines of the United Company is compelled as against the use of machines of other manufacturers, resulting in the restraint of the trade of the latter. To this charge all other charges are subsidiary, and the restraint is said to have been the initial conception of the company and the purpose of its organization. The evidence disproves this. As we have seen, the leasing of their respective machines was the practice of the constituent companies before their union and they were substantially the same after union as before—in instances better. There was a difference as to the prohibitive clause. After the union it related to machines of all of the companies. And the testimony also shows that the advantage of the leases was and is that manufacturers of not large means were able to obtain machinery which they were without capital to buy. They helped, indeed, the big and the little. One manufacturer, whose output was 5,000 pairs of shoes a day, testified that if his company had been compelled to buy outright the machinery necessary to equip its factory, it could not have developed as it had.

And sets of machines are necessary to the equipment of a factory, and their best results are obtained when used in proper relation. This relation, indeed, the necessary coördination of the machines, was shown pictorially by a number of views in the court below, as well as testified to by witnesses. And there is great economic advantage, it was testified, in the accessory service furnished by the United Company for the reason that "the regularity and continuous operation of the machines is dependent upon what may be termed instantaneous service. . . . This factor of service is at the very base of the successful operation of a shoe factory. The work is planned to travel from one room to another in fixed quantities. So many pair go in in the morning—so many pair come out at night. The operatives are dependent upon that work traveling along regularly to them. The breaking down of some of these machines will in many of the factories block the entire flow of the work." This was the testimony of the president of the United Company, and it received corroboration from a witness for the United States, who said: "The margin of profit in making shoes is such that it is very essential that our machinery should work smoothly and regularly and with continuity, and economies in the manufacture of shoes often make the difference between a successful manufacturer and one who is not successful. One of the most important economies is to have our machinery work with continuity and with the highest efficiency and turn out our product with the utmost regularity day after day, just as we want to get it so that there won't be any hitch anywhere in the flow of our product through our factory." The witness gave praise to the excellence of the machines of the United Company. This excellence and the described service the leases secured to the lessees and secured at the same time rights to the lessors. And the leases are strictly a reservation of the use of the machines, a right

recognized in *Bauer* v. *O'Donnell; Straus* v. *Victor Talking Machine Co.*, and *Motion Picture Co.* v. *Universal Film Co.*, *supra*. We must assume they were entered into by the lessees upon a calculation of their value—the efficiency of the machines balanced against the restrictions upon and conditions of their use. The lessees had the alternative of the choice of other machines for other machines were sold side by side with those the leases covered. This, we think, is put out of view.

Let us guard against confusion and not confound things which must be kept in distinction. A patentee is given rights to his device, but he is given no power to force it on the world. If the world buy it or use it the world will do so upon a voluntary judgment of its utility, demonstrated, it may be, at great cost to the patentee. If its price be too high, whether in dollars or conditions, the world will refuse it; if it be worth the price, whether of dollars or conditions, the world will seek it. To say that the world is not recompensed for the price it pays is to attack the policy of the law, is to defy experience and to declare that the objects of inventive genius all around us have contributed nothing to the advancement of mankind. This comment is applicable here. We cannot accept, therefore, the contention of the Government. We see nothing else in the circumstances of the parties than that which moves and may move the transactions of men.

We may say further, in answer to the criticism of the leases, that relaxations of them were granted by "riders" and that forms other than the restrictive were open to the shoe manufacturers, distinguished in the testimony by the term "independent." They do not contain the prohibitive clause but do contain the other clauses and require an initial payment. Comparison is made of the independent form and the other forms by witnesses and various judgments are expressed. The Government sees nothing in any of them but the restraints upon the freedom

of business, and regards the independent form as only slightly relaxing what counsel implies is the slavery of the others. The defendants contend that they are the simple exercise of a property right, the mutuality of agreement based on definite and valuable considerations. And it was testified that the machines in the United Company's general department have always been open to sale or lease. It is further said that the additional-machine clauses were removed from all leases of the company as early as 1907 and they were not in use and did not represent its policy at the time of bringing this suit. But leases with that clause are outstanding, the Government replies.

However, we need not dwell further upon the leases. It approaches declamation to say that the lessees were coerced to their making. And, as we have said, there was benefit to the lessee. It is easy to say that the leases are against the policy of the law. But when one tries to be definite one comes back to the rights and obligations of the parties. There is no question in the case of the use of circumstances to compel or restrain; the leases are simply bargains, not different from others, moved upon calculated considerations, and, whether provident or improvident, are entitled nevertheless to the sanctions of the law. We have said this, indeed, with iteration, but sometimes propositions which have become postulates have to be justified to meet objections, which, if they do not deny their existence, tend to bring them into question.

Besides, it is impossible to believe, and the court below refused to find, that the great business of the United Shoe Machinery Company has been built up by the coercion of its customers and that its machinery has been installed in most of the large factories of the country by the exercise of power, even that of patents. The installations could have had no other incentive than the excellence of the machines and the advantage of their use, the con-

ditions imposed having adequate compensation and not being offensive to the letter or the policy of the law.

Decree affirmed.

MR. JUSTICE MCREYNOLDS and MR. JUSTICE BRANDEIS took no part in the consideration and decision of the case.

MR. JUSTICE DAY, dissenting.

I concur with the opinion of MR. JUSTICE CLARKE [*post*, 75] as to the character of the combination here involved.

There are provisions in the so-called leases attacked in this case which in my view are so clearly within the condemnation of the Sherman Anti-Trust Act, that the further enforcement of them and the making of new leases of like character, should be enjoined. The far-reaching character of a decision sustaining a leasing system such as the defendant has developed and uses justifies a statement of the reasons which impel me to this conclusion.

As to the suggestion that the lessees are not parties to this proceeding, and, therefore, no decree can be had as to them, it seems to me this is not a case of want of indispensable or even necessary parties because of their interest such as should prevent the court from proceeding to a decree to enjoin the United Shoe Machinery Company from the further enforcement of these features of the leases and the making of similar contracts hereafter. If these leases are in violation of the Sherman Anti-Trust Act the makers of them may be proceeded against, and a decree rendered which shall effectually preclude them from further contracts of this sort, without the presence of the lessees, if it could be assumed that any of them should desire to be heard in advocacy of the retention of these prohibitive and restrictive features.

The object of this proceeding is to enjoin in equity fur-

ther violation of a criminal statute, not to determine title or property rights of the defendant. It is sufficient as to the doctrine of indispensable parties to refer to *Shields* v. *Barrow*, 17 How. 130, and the cases collected in the discussion of the subject in *Waterman* v. *Canal-Louisiana Bank Co.*, 215 U. S. 33, 48. There is no reason in this case why the court may not so shape its relief as to reserve the rights of persons not before it, if that should be necessary.

The questions involved in the aspect of the case now under consideration are two-fold. First: Are certain provisions of these lease agreements of themselves considered within the terms of the Sherman Anti-Trust Act? Second: Are such agreements to be held immune from the requirements of the act because of the fact that much, perhaps all, of the machinery of the United Shoe Machinery Company is made and leased under letters patent issued by the United States? Of these questions in their order.

1. It clearly appears from the record that the United Shoe Machinery Company dominates the trade in certain kinds of shoe machinery furnished to manufacturers all over the country; which machinery is essential to the successful prosecution of the business of manufacturing shoes. It has many customers to whom it supplies these machines under leases, and such customers are required to accept the terms of these instruments or go without the machines. The leases are made for a uniform term of seventeen years, and not now considering the conditions of payment for the use of the machines and other terms usual and legal in their nature, they contain certain other features which may be summarized in the requirements: (1) The lessee shall not use the machinery, or any part thereof, in the manufacture or preparation of welted boots, shoes or other footwear which has not had certain operations performed upon it by other machines leased from the lessor. This is called the prohibitive clause. (2)

If at any time the lessee shall fail or cease to use exclusively lasting machinery held by him under lease from the lessor, or fail or cease to use exclusively tacking mechanisms and appliances held by him under lease from the lessor, etc., the lessor may at its option terminate any or all leases or licenses of lasting machines, etc., then existing between the lessor and the lessee, and the right of possession shall thereupon vest in the lessor. This is called the exclusive use clause. (3) In case the lessee has work of the kind which can be performed by the machines belonging to the metallic department of the lessor in excess of the capacity of the metallic machinery which he has under lease from the lessor, then the lessee shall either take from the lessor sufficient additional machinery to perform the work, or failing so to do the lessor may cancel the lease forthwith, or any other lease of metallic machinery then in force between the parties. This is called the additional machines clause. (4) The lessee shall obtain from the lessor exclusively, at such prices as it may establish, all the fastening material needed in operating the leased machines. (6) The lessee shall, at the election of the lessor, suffer a termination of all leases which he may have, and the removal of all machines leased by him from the defendant, in the event of any violation of any term of any one of the leases.

From familiar decisions of this court it may be said to be now well settled that the Sherman Anti-Trust Act condemns all combinations and contracts the effect of which is to unduly restrain the free and natural flow of interstate commerce, or which monopolize or tend to monopolize such trade or commerce in whole or in part. While the act does not reach normal contracts sanctioned by law and sustained by usage, it does reach any and all means and devices by which the purposes of the act to protect the freedom of interstate commerce may be thwarted and monopolies promoted and created. *United States* v. *Ameri-*

can Tobacco Co., 221 U. S. 106, 179; *United States* v. *St. Louis Terminal*, 224 U. S. 383; *United States* v. *Reading Co.*, 226 U. S. 324; *United States* v. *Patten*, 226 U. S. 525; *Eastern States Retail Lumber Dealers' Assn.* v. *United States*, 234 U. S. 600. That these lease restrictions tend to prevent the free flow of interstate commerce, and the natural course of its activities, and at least tend to monopolize an important trade in interstate commerce seems apparent from a mere statement of their terms, having in mind their natural and necessary effect.

For the seventeen years term for which all the leases are drawn, the lessees upon failure to use exclusively the defendant's machines for lasting shoes, or upon failure to purchase needed additional machines from the lessor, or to buy certain supplies from the lessor at prices to be fixed by it, are subject to the right of the lessor to terminate all the leases held by the offending lessee and to take possession of the machines to the utter destruction of the lessee's business. The necessary effect of these prohibitive provisions, in view of the dominating control of the business by the lessor, is to prevent the lessee from using other similar machines, however advantageous to him it may be to do so, unless he is willing to incur the peril of losing machinery essential to his business. It likewise so curtails the field of free customers as to keep others from manufacturing such machinery.[1] Whenever a new ma-

[1] The Judiciary Committee of the House of Representatives, when considering the Clayton Bill (38 Stat. 730), said of such provisions:

"Where the concern making these contracts is already great and powerful, such as the United Shoe Machinery Company, . . . the exclusive or 'tying' contract made with local dealers becomes one of the greatest agencies and instrumentalities of monopoly ever devised by the brain of man. It completely shuts out competitors not only from trade in which they are already engaged but from the opportunities to build up trade in any community where these great and powerful conditions are appearing under this system and practice. By this method and practice the Shoe Machinery Company has built up

chine is acquired by the lessee for the period of seventeen years (the full life of a patent under the statutes of the United States) the chain is forged anew which binds him to the use of the lessor's machines, to the practical exclusion of all others.

Nor is the situation changed by the fact that so-called independent leases are offered to manufacturers. These leases require the payment of considerable additional charges and embrace terms which lead the shoe manufacturers to choose the prohibitive and restrictive forms of leases rather than to accept others. Moreover, the questions in this case are to be tried upon the effect of the leases actually made, and for years to remain in force. When it is considered that these results may be obtained in the conduct of a great business industry by this system of "tying" contracts, the necessary effect to restrain the freedom of commerce, and the attempt to effect monopolization, seem to me to be established.

2. The stress of the argument on behalf of the company is rested upon the fact that it is the owner of letters patent issued by the United States, and that within the monopoly created by such patents it has the right to make and enforce such contracts as are herein involved. At an

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a monopoly that owns and controls the entire machinery now being used by all great manufacturing houses of the United States. No independent manufacturer of shoe machines has the slightest opportunity to build up any considerable trade in this country while this condition obtains. If the manufacturer who is using machines of the Shoe Machinery Company were to purchase and place a machine manufactured by an independent company in his establishment, the Shoe Machinery Company could, under its contracts, withdraw all their machinery from the establishment and thereby wreck the business of the manufacturer." (Report of Committee, p. 13.)

A statute of Massachusetts forbidding patentees from making leases in effect like those here involved was sustained as constitutional by the Supreme Judicial Court of Massachusetts in 193 Massachusetts, 605.

early day this court, speaking by its Chief Justice, declared: "The franchise which the patent grants, consists altogether in the right to exclude every one from making, using, or vending the thing patented, without the permission of the patentee. This is all that he obtains by the patent." *Bloomer* v. *McQuewan*, 14 How. 539. The extent and nature of rights secured by letters patent have been the subject of recent consideration in this court, and the definition, just quoted, has been approved and applied. *Bauer* v. *O'Donnell*, 229 U. S. 1; *Straus* v. *Victor Talking Machine Co.*, 243 U. S. 490; *Motion Picture Co.* v. *Universal Film Co.*, 243 U. S. 502; *Boston Store of Chicago* v. *American Graphophone Co.*, 246 U. S. 8.

When this case was tried in the District Court *Henry* v. *Dick*, 224 U. S. 1, was the law of this court. In that case a mimeograph, made under letters patent, was sold for less than its full value, with a license agreement limiting its use to certain unpatented articles belonging to the patentee. Such use was held to be within the exclusive right secured by the lessor's patent. In *Motion Picture Co.* v. *Universal Film Co.*, *supra*, it was sought to extend the doctrine of that case so as to protect a license agreement evidenced by notice attached to the machine so as to limit the purchaser to the use of certain films, and to restrict the purchaser to other terms to be fixed by the owner of the patent at his discretion. But such extended scope of patent rights was denied and it was again held that the patentee received from the law no more than the exclusive right to make, use, and sell his invention.

It is said, however, that the series of cases begining with *Bauer* v. *O'Donnell*, *supra*, and ending with *Boston Store of Chicago* v. *American Graphophone Co.*, *supra*, decided at this term, hold no more than that a patentee may not sell an article covered by his letters patent, receive his price therefor, and then undertake to impose a restriction upon the price at which resales of the patented article may

be made. A reading of those cases shows that the nature and extent of the right to grant to others the use of an invention was fully discussed, and its limitations defined.

In the *Motion Picture Case* the right of a patentee to place restrictions upon the use of a patented machine, and to limit its use by a purchaser, or purchaser's lessee, to terms stated in the license agreement, was considered. This court held that such limitations as were there involved upon the use of patented machines were not within the scope of the patent. It was upon the expanded right to use an invention that the *Button Fastener Case*, 77 Fed. Rep. 288, and *Henry* v. *Dick*, were rested; both cases were overruled in the *Motion Picture Case*. In the latter case it was specifically held that while the patentee might withhold his invention from public use, yet if he consented to its use by himself or others, he was limited to the use described in the claims of his patent, and that there was nothing in the statute which extended his right to control the patented invention by prescribing the use of machines, materials and supplies not covered by the patent. In view of the full discussion of the question in the series of cases already referred to, it is unnecessary to pursue it further.

Under the system of leasing, now before us, the patentee not only undertakes to grant the use of the machines covered by the letters patent, but to dictate the supplies with which they shall be used; to compel their surrender if the machine of another is used; to prevent their use except with other machinery furnished by the patentee; to extend the monopoly of the invention beyond the 17 years allowed by the statute; to lease the use of the invention only upon terms which permit the lessor to forfeit the patent license, and to terminate, if he chooses, all similar leases to use the machines of the lessor. And these extraordinary claims of right are made under the grant of the patent which gives to the inventor the exclusive

right to make, use, and sell his invention, and nothing more. In my opinion such extended power and authority are not consistent with the act as the same has been construed in every case dealing with the subject beginning with the decision in *Bauer* v. *O'Donnell*. To sustain such provisions it seems to me amounts to an authority to holders of patented inventions, under the guise of leasing the use of patented machinery, to exercise the right to make combinations necessarily and unduly restraining the freedom of trade, and by virtue of the patent grant to build up monopolies in direct violation of the Sherman Act.

True it is that there is embraced in the patent grant the right or privilege to make licenses and agreements covering the use of the machines patented so long as such agreements are not in themselves unlawful. But the right to make restrictions is controlled by the general principles of law, and because he is at liberty to make them, the patentee may not make contracts in themselves illegal and certainly is not authorized to make contracts in violation of other statutes of the United States. That rights granted under a patent do not authorize the making of contracts in restraint of trade, or monopolizing or tending to monopolize trade and commerce in violation of the Sherman Act, was held by this court in *Standard Sanitary Mfg. Co.* v. *United States*, 226 U. S. 20.

In *Straus* v. *American Publishers' Assn.*, 231 U. S. 222, contracts, otherwise clearly within the terms of the Sherman Act, were claimed to be justified because of rights secured under the copyright laws of the United States. Quoting and following the decision in the *Standard Sanitary Mfg. Co. Case*, this court said: "So, in the present case, it cannot be successfully contended that the monopoly of a copyright is in this respect any more extensive than that secured under the patent law. No more than the patent statute was the copyright act intended

to authorize agreements in unlawful restraint of trade and tending to monopoly, in violation of the specific terms of the Sherman Law, which is broadly designed to reach all combinations in unlawful restraint of trade and tending because of the agreements or combinations entered into to build up and perpetuate monopolies. . . ."

The patent statute and the Sherman Act are each valid laws of the United States. While a patentee should be protected in the exercise of rights secured to the inventor under the patent system enacted into the laws of the United States, there is nothing in the act which gives the patentee a license to violate other statutes of the United States, and certainly not the one now under consideration. In my opinion the restrictive and prohibitive clauses of these leases are within the Sherman Act, as they are clearly in restraint of interstate trade and tend to monopolize in the sense that those terms have been defined in the decisions of this court. That some of the leases were in existence when the United Shoe Machinery Company was formed affords no protection as against the exercise of the power of Congress in the passage of the Sherman Act. *Louisville & Nashville R. R. Co.* v. *Mottley*, 219 U. S. 467, 480. I think that a decree should be entered as prayed for, and I therefore dissent from the opinion and judgment of the court.

MR. JUSTICE PITNEY and MR. JUSTICE CLARKE concur in this dissent.

MR. JUSTICE CLARKE, dissenting.

A plain history of just what the parties did at and after the time the United Shoe Machinery Company was organized in February, 1899, compiled, almost exclusively, from the testimony of the two leaders in the organization and from documentary evidence, will be the best state-

ment I can make of the reasons other than those stated in the dissenting opinion by Mr. Justice Day, which render it impossible for me to concur in the opinion and judgment of the court in this case.

I fully agree with the customary practice of giving great weight to the conclusions of trial judges as to questions of fact involved when the value of the testimony depends upon the appearance and manner of the witnesses when testifying, but the reason for this rule ceases when the evidence is in writing or consists, chiefly, as it does in this case, of purchases of property, the significance of which lies in the fact of the purchase rather than in the manner of making it.

Obviously, the attaching of the sole of a shoe to the upper is the difficult and dominating operation in the manufacture of shoes by machinery, and early in the trial the charge of the Government in the case, by stipulation in open court, became, that the consolidation was formed for the purpose of monopolizing interstate trade or commerce in machinery adapted to that purpose, the "bottoming of shoes," in violation of both the first and second sections of the Anti-Trust Act of 1890.

Before the merger the Goodyear Shoe Machinery Company (hereinafter designated the Goodyear Company) was engaged in manufacturing and leasing to shoe manufacturers two principal and sixteen auxiliary machines, the latter being used in preparing the materials for the operation of the former. The two principal machines were used for sewing the sole to the upper and were known as the Goodyear welt and turn shoe machine and the Goodyear outsole rapid lock stitch machine. With these machines, the Goodyear Welt, a popular and largely used shoe, was manufactured. This company also manufactured a specially designed lasting machine used in making Goodyear Welt Shoes.

The Consolidated and McKay Lasting Machine Com-

pany (hereinafter designated as the Consolidated Company) was engaged in manufacturing and leasing lasting machines of three types.

As the name of the one implies, and as otherwise appears in the record, each of these two companies had resulted from prior consolidations of shoe machine manufacturing companies and they were the largest organizations of their kind in the country.

The controlling spirit of the Consolidated Company was S. W. Winslow, and of the Goodyear Company E. P. Howe, who, the record shows, were keen and masterful men, and they both testifiy that in July, 1898, they began the negotiations looking to a uniting of the interests of the two companies, which culminated in the organization of the United Shoe Machinery Company in February, 1899. A "harmonious arrangement" or "working agreement" was at first proposed, but Howe, being a lawyer, would not agree to this, "because," he says, "I had a sort of indefinite idea that it might be deemed to be a combination in restraint of trade. . . . I had an indefinite fear that if the two companies remained separate but, for instance, had a joint factory and joint branch offices, there might be something in the way of restraint of trade. I insisted for that reason that there should be a complete merger and consolidation."

This idea that the "harmonious arrangement" was unlawful was doubtless inspired in the mind of Howe by the decision in the *Trans-Missouri Freight Assn. Case*, 166 U. S. 290, rendered in 1897, and he probably shared a then not uncommon notion that the holding company and the merger were devices lawfully available for evading the congressional purpose expressed in the Anti-Trust Act. But in the *Northern Securities Case*, 193 U. S. 197, this court decided in 1904 that the holding company was a futile device, and in the *American Tobacco Co. Case*, 221 U. S. 106, it was decided in 1911 that the merger was also

a mere "subterfuge of form" which the courts would not permit to shield those who violated the act.

Thus rejecting the "harmonious agreement" or "understanding" as unlawful, for the purpose of accomplishing the same end, in what they thought a not illegal way, the defendants resorted to the merger (later on, as we shall see, using also the holding company) and organized the United Shoe Machinery Company, under the laws of New Jersey, with a capital stock of $25,000,000.

The scope of the declaration of the purposes for which this corporation was formed, as stated in its articles of incorporation, is of much significance in determining what the real objective was at which the persons interested were aiming. It is therein declared that the company is formed not only "to manufacture, lease and sell shoe machinery," but also, "to manufacture . . . boots, shoes, and footwear and *all articles* . . . of every description that may be produced or manufactured, in whole or in part, from leather, rubber or any other materials or fabrics; . . . to purchase, lease or otherwise acquire . . . trade-marks, trade-names, . . . copyrights and patent rights, . . . and, with a view to the working and development of the same, to carry on any legal business whatsoever, whether manufacturing or otherwise, which the corporation may deem calculated, directly or indirectly, to accomplish these objects, or any of them. . . . To hold, purchase, or otherwise acquire . . . shares of the capital stock . . . of any other corporation or corporations; . . . to do all or any of the above things . . . in any part of the world."

As impressive proof of the objects of the incorporators, we print in the margin some extracts from the certificate of incorporation of the holding company, the "United Shoe Machinery Corporation," organized in 1905, by the

men controlling the United Shoe Machinery Company, of 1899.[1]

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[1] The following are excerpts from the articles of incorporation of the "United Shoe Machinery Corporation," with a capital stock of $50,000,000.00, filed May 2nd, 1905:

"Third. The objects for which the corporation is formed are:

"To manufacture, buy, sell, lease, operate and deal in and with all kinds of machinery, tools, and implements, and mechanical devices and contrivances of every name and nature whatsoever, and especially to manufacture, buy, sell, lease, operate and deal in and with all sorts of boot and shoe machinery, lasts, trees, forms, and every kind of mechanism, contrivance, implement, tool, material, or thing in any way whatsoever connected with, or useful in connection with the manufacture of boots, shoes and footwear, or the manufacture of leather and rubber goods, or goods made from materials and fabrics of any description whatsoever, or useful in connection with the manufacture or operation of any of the machinery, mechanical devices or contrivances hereinbefore mentioned; to produce, prepare and manufacture, buy, sell and deal in and with leather and rubber, and materials and fabrics of all sorts, and the raw materials from which said leather, rubber materials or fabrics are produced; to manufacture, buy, sell and deal in and with boots, shoes and footwear and all articles and things of every description that may be produced or manufactured, in whole or in part, from leather, rubber or any other materials or fabrics; and in general to produce, prepare, manufacture and deal in and with goods, wares, merchandise, property, materials and things of every class and description.

"To carry on the business of manufacturers of and dealers in all kinds of eyelets, hooks, buttons, studs, nails, wires, rivets, tacks, metallic and other plates, metallic, wood and other fastenings, laces, cloth, linen, tape and other fabrics, brushes, abrasive materials, cements, dressings, stains, blackings and other requisites for the improvement and treatment of boots and shoes, threads, elastic material, buttons and inner soles, and other articles or substances for protecting feet from damp or heat, and other articles or substances used in connection with the manufacture of boots and shoes, corsets, stationery, sails, tents, clothing and for analogous purposes, and to carry on the business of manufacturers of and dealers in all kinds of appliances, devices, findings, tools, mechanisms, accessories, processes and things which may be used or useful in connection with the manufacture or treatment of any of the above named articles or substances. . . .

And now thus equipped with apparent legal authority, amply sufficient if successfully used, to restrain and monopolize among the several States the branch of trade and commerce involved, let us see what the defendants did.

First of all, $4,918,000 of the stock of the new company was exchanged for all of the capital stock of the Goodyear and International Goodyear Companies, and $4,432,000 of stock plus $432,000 in cash was exchanged for all of the capital stock of the Consolidated Company. By this merger, with fifteen millions of the capital stock

"To apply for, obtain, register, purchase, lease or otherwise acquire, and to hold, own, use, operate, introduce, sell, assign or otherwise dispose of any and all trade-marks, trade-names and distinctive marks, copyrights, patents and patent rights, and all inventions, improvements and processes used in connection with or secured under Letters Patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses, in respect of, or otherwise turn to account any such trade-marks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired, and, with a view to the working and development of the same, to carry on any legal business whatsoever, whether manufacturing or otherwise, which the corporation may deem calculated, directly or indirectly, to accomplish these objects or any of them. . . .

"To purchase, acquire by subscription or otherwise, and to hold for investment or otherwise, use, sell, assign, transfer, mortagage, pledge, or otherwise dispose of and to guarantee any shares of stock, bonds, securities, or other obligations of any other corporation or association carrying on any business which this corporation is authorised to carry on. . . .

"To enter into partnership or into any arrangement for sharing profits, union of interest, joint adventure or co-operation with any person, partnership, association or corporation carrying on or engaged in any business which this corporation is authorised to carry on or engage in. . . .

"To do all and everything necessary or convenient for the accomplishment of the purposes, objects and powers above-mentioned, or incidental thereto, and to conduct its business, or do anything which it is authorized to do, in every State and in the Territories and Colonies of the United States of America and in foreign countries . . ."

of the new company still available for other uses, the two largest manufacturers of lasting machines in the country were combined and Winslow testifies that, "After the formation of the United Company it was manufacturing *every single lasting machine* that was being put out in the United States except the Seaver machine; and in 1900 we acquired the Seaver Company."

Next, and immediately, although Winslow testifies that "no word had been spoken to either the McKay people or the Eppler people when the charter for the United Company was obtained," the Company purchased the entire capital stock of the McKay Shoe Machinery Company for five and one-half million dollars of stock of the United Company. This company, Winslow testifies, was engaged in manufacturing metallic fastening machines and heeling machines, "was doing a very large business," and through controlled subsidiaries was "putting out nearly all the metallic fastening machines and nearly all the heeling machines that were being made in the United States."

Thus, confessedly, by this union of these three companies there were consolidated substantially all of the manufacturers of lasting machines and of machines for attaching the soles of boots and shoes to uppers with metallic fastenings and with thread, and in addition to this the Davey Pegging Machine Company was owned by the Consolidated Company.

There yet remained only one strong competitor doing business in this country, the Eppler Welt Machine Company, with an international subsidiary. Besides the Eppler there was only one other welt machine company engaged in business, the Globe, an unimportant concern which, however, was acquired by the United Company a little later, in 1901.

Although Winslow and Howe could remember within a small fraction of a cent just what royalties were paid at any time for the use of their machines, neither of them

could remember what was paid for the Eppler stock, and both testified that the records of the company did not show the amount. But other testimony shows that payment for it, of between $350,000 and $400,000 in cash, was made within a few weeks after the organization of the United Company, and it was admitted, significantly, that no inventory was taken at the time of the purchase of either the McKay or Eppler stock.

That the Goodyear and Eppler machines were sharply competitive is shown by the testimony of both Winslow and Howe. Winslow testifies that just before the consolidation the Eppler Company was "manufacturing a welting machine, an outsole stitching machine and two auxiliary machines" and that the Goodyear Company was making "a welting machine, an outsole stitching machine and auxiliary machines that performed the same functions that the auxiliary machines of the Eppler Company did, and a number in addition." "Both machines," continues Winslow, "were being used in the manufacture of men's welt shoes," and "the two welting machines that were being specially pressed on the market at that time were the Goodyear machine and the Eppler machine." And Howe testifies, "Those two types of shoes were well known in the trade. There was the Goodyear welt, made by the Goodyear welt machines; the Eppler welt, which was a recognized class of shoe. We didn't know whether the manufacturers would prefer . . . Eppler welts or whether they would prefer Goodyear welts."

What these two dominating spirits of the enterprise thought of their work at the stage of its development which we have thus far described, is interesting and illuminating as to their purpose. Thus, Winslow:

"Immediately after the organization of the company our welting, outsole stitching and lasting machines were doing about all the welting, outsole stitching and lasting that was being done in the United States.

"Q. And so with your heeling and metallic fastening machines?

"A. Not so much the heeling."

And this from Howe, "When the United was formed I don't remember that any outside concerns were putting out lasting machines," and he elsewhere says, on cross-examination, that lasting machines of the Goodyear and Consolidated Companies overlapped in the work which was done with them and, if this was true, obviously they must have been competitors in the market.

To this must be added the statements made in circulars sent at this time to the smaller stockholders of the companies to induce them to join in the combination. Thus, to stockholders of the Goodyear Company: "The great advantages to be secured by the control in one corporation, both in the United States and in foreign countries, of the efficient types of shoe machinery, have been for several years recognized by the officers of the principal shoe-machinery companies. For more than a year your directors and large shareholders have been in negotiation to accomplish this end. After a thorough investigation of the financial condition and the business of the shoe-machinery companies named below, the organization of a corporation has been effected under the laws of the State of New Jersey, to be known as the United Shoe Machinery Company. . . . The United Shoe Machinery Company has already contracted for more than a majority of the capital stock of [the companies named other than the Eppler Company and the Davey Pegging Machine Company] besides stocks in other shoe-machinery companies, letters patent and other property.

"The United Company will also from time to time acquire other shoe-machinery and properties, either by direct ownership or purchase of shares of their stock."

I cannot share in estimating this circular as simply a naïve expression of unusual business foresight. It was a

confidential circular, boldly phrased, perhaps because its authors thought that their combination had been given a character of merger which could withstand Government attack, but which this court has since repeatedly held is a mere subterfuge of form. The circular is an accurate descripton of what had been accomplished and of what, as we shall see, the evidence in the record shows, was intended to be done in the future.

It would seem that men who were not bent upon complete monopoly and control would have been satisfied with the advantages which, we have thus seen, those in this enterprise clearly held over any competitors who might remain or who might appear in the future. But that the men connected with the United Company were not satisfied, and were determined to make their control as perfect and permanent as possible, is shown by their further conduct during the first year of the existence of that company, as follows:

Within a month of the organization of the United Company, on March 1, 1899, for the sum of $74,800 worth of its capital stock it purchased the control of the Goddu Company, which was manufacturing metallic fastening machines, which competed with those of the absorbed McKay Company, and the six inventors who owned the stock were bound by the contract of purchase to transfer to the United Company all inventions relating to shoe machinery, which they *jointly or severally might make or have any interest in for a period of ten years;* and they were also bound not to become interested "directly or indirectly" for a like term "in the business of making and selling any inventions or improvements relating in any way to shoe machinery," or relating in any way to the manufacture of boots and shoes or useful in connection therewith "without the consent in writing of the United Company."

On the 16th day of March, 1900, the Company purchased from Winkley and Phillips the exclusive license

to use the inventions and improvements in sole leveling machines, described in ten letters patent of the United States and in patents of Great Britain, France and Germany, and bound the inventors to communicate to the United Company all inventions "which they or either of them *shall hereafter make*" in sole leveling machines or sole pressing machines. Howe testifies that at the time of this purchase the United Company was making machines of the kind, but of a different type.

On August 26, 1899, for the sum of $72,000 the Company purchased the business of Timothy Bresnahan, together with the entire capital stock of the Boston Shoe Tool Company. It employed Bresnahan as manager for two years and bound him by contract not to thereafter engage in "the manufacture of heel trimming, edge trimming or edge setting machines and tools . . . or of any . . . machines, tools and products now [then] made by him or by said Boston Shoe Tool Company," and that he would not "directly or indirectly aid, assist or encourage *any competition* with said Boston Shoe Tool Company or its business," but would do "everything in his power to promote the interests of the United Shoe Machinery Company."

On October 11th of the same year, the Company purchased from one Brewer, for $250 and $5 royalty on each machine which should be manufactured, *his application for letters patent* for an improvement in heel breasting machines, the one machine he had manufactured and the tools with which he had made it, and it took an assignment from Brewer "of any and all inventions *he may hereafter make* relating to machines for breasting heels 'on the last.'"

The attempt made in argument to justify as familiar business practice such contracts as these, binding inventors from whom patents and other property were purchased to surrender to the United Company all of the

fruits of their inventive genius for many years after the purchase and often for many years after their employment had ceased, is disingenuous in the extreme. In a single, terse sentence this court has made conclusive answer to such contention, saying, "Even if separate elements of such a scheme are lawful, when they are bound together by a common intent as parts of an unlawful scheme to monopolize interstate commerce the plan may make the parts unlawful." *Swift & Co.* v. *United States*, 196 U. S. 375; *United States* v. *Reading Co.*, 226 U. S. 324.

On January 13, 1900, the Company purchased, for the sum of $38,000, the business and assets, including twenty United States and foreign patents and 138 lasting machines, of the Seaver Process Lasting Company. This was the only independent company putting lasting machines on the market after the combination was formed, and it removed the last vestige of competition in the lasting machine business.

These will suffice. They are typical of fifty-seven purchases proved to have been made by the United Company prior to the commencement of this suit; of shoe machinery manufacturing companies; of boot and shoe manufacturing companies; of patent rights or applications for such rights; and of the property and businesses of partnerships and corporations engaged in manufacturing appliances "calculated," in the language of the charter of the company, "directly or indirectly, to accomplish the objects, or any of them, of the corporation," and varying from sewing machine needles and awls, to tacking machines to buttons, brushes and sandpaper. Brewer's $250 application for a patent was not too small to be overlooked, and we shall see a six million dollar purchase was not too great to be made in order to continue, to extend, and to make secure, the complete control over the business involved, which was first attained by the consolidation of the Goodyear and Consolidated Com-

panies and the purchase of the McKay and Eppler Companies in 1899.

The history of the first year of this company would not be complete without reference to the fact that the combinations and purchases made during that year resulted in collecting under one control many hundreds of patents covering every "shadow of a shade" of variation in the parts of the many machines used in the manufacture of shoes, and, it must be noticed, that in the month of December, 1900, the first of the forms of leases were developed and brought into use, which came to be known in the trade as "iron clad," and which have been discussed by Mr. Justice Day in a dissenting opinion in which I cordially concur.

The boot and shoe trade of the country was so restless under what was regarded and unhesitatingly denounced as a monopoly, strongly entrenched, that although the men engaged in that trade were now utterly dependent upon the United Company for the terms on which they might continue to do business, at least two groups of important manufacturers were formed before the commencement of this suit for the purpose of devising, if possible, some means of freeing themselves from conditions which they regarded, as the record abundantly shows, as oppressive and intolerable.

Under the spur of this incentive it came to pass that a large manufacturer of shoes, one Plant, of Boston, developed a line of shoe manufacturing machinery so complete in character that on May 1, 1910, he canceled the leases which he held on many machines owned by the United Company and removed them from his factory, and advertised his readiness to supply manufacturers with adequate, and what was termed, "wonder working shoe machinery."

By Winslow's own story, negotiations for the purchase of Plant's shoe machinery manufacturing business by the United Company were entered upon on June 16th,

within two months of the time that he removed their machines from his factory. These negotiations were interrupted on July 5th, and on the 28th of the same month four suits were commenced by the United Company against Plant, two more were commenced on August 11th, two more on August 13th, and two more on September 3rd. These suits were in part to recover royalties claimed for the use of the United machines before they were taken out of Plant's factory and the rest were to enjoin him from using his own machines, on the ground that they infringed patents of the United Company.

Whether as a result of this familiar resort to coercive measures need not be determined, but on September 22nd, at four o'clock in the morning, possibly to anticipate negotiations which were in progress for the purchase of Plant's property by a group of wealthy shoe manufacturers, the United Company purchased Plant's shoe machinery manufacturing business and patents, and also the control which he owned of the capital stock of a shoe manufacturing company. The United Company paid for these two properties six millions of dollars, plus $122,000 for the Stambon property, which Plant insisted must be purchased as a part of the transaction. This large sum of money, larger than was paid for either of the original constituent companies of the consolidation, was not divided in the contract of sale, but Winslow allots three and one-half millions to the purchase of the shoe manufacturing company stock and two and one-half millions to the purchase of the shoe machinery manufacturing company and patents. Even this division, it will be observed, allows two and one-half millions of dollars to be paid for the Plant machinery company property and patents, which it is now argued were of little value and at best were infringements of patents owned by the United Company. Mr. Winslow, however, thought better of them, for he says they were "almost invaluable" to his company.

It is impossible for me to understand how the transaction, thus described in Winslow's own words, can fail to convince any one who reads or hears the description, that the Plant Company was a formidable competitor, actual and potential, of the United Company, and that the great sum of money paid to control it was paid to stifle and restrict competition. Standing alone it shows the defendant to be an unmistakable offender against the Anti-Trust Law, but when taken together with the origin of the company and with the history of the conduct of it, a small but typical part of which we have described, it seems to me a flagrant and an all but confessed offender against that law, as it has been repeatedly interpreted by this court, *United States* v. *American Tobacco Co.*, 221 U. S. 106, 179; *United States* v. *Reading Co.*, 226 U. S. 324; *United States* v. *Patten*, 226 U. S. 525; *Eastern States Retail Lumber Dealers' Assn.* v. *United States*, 234 U. S. 600, and against the policy of the law as expressed in the act of Congress.

I shall add only the convincing statement as to the complete ascendancy which the combination has attained over the important branch of the industry of the country selected for its control, which is shown in the following results tabulated in the brief of the Government from the testimony, and from which all elements seriously disputed by counsel for defendants have been excluded:

Machines in use in this country.	Manf'd by defendants.	Manf'd by all others.
Lasting machines	7,496	7
Standard screw machines	409	None.
Pegging machines	146	None.
Tacking machines	3,488	6
Welt sewing machines	2,527	142
Outsole stitching machines	2,676	758
Loose-nailing machines	1,835	24
Heeling machines	2,019	17

Further details could not add to the effect of the large outline we have thus presented. This is not a case to be decided upon the detailed statements of individuals as to their intentions or upon refined distinctions as to the application of the patent law. The design was a large one, comprehensively conceived and boldly executed. The dominating spirits of the enterprise, with the advantage of knowing precisely what they wished to accomplish, rejected a "harmonious arrangement" of their interests as unlawful, but to accomplish the same end they adopted the scheme of merger, since condemned by this court as a mere "subterfuge of form."

The trade recognized the combination as a monopoly from the beginning, and for years struggled in vain to free itself by organizing competing interests; the Judiciary Committee of the House of Representatives, when the Clayton Bill was under consideration, reported as the result of its investigations that the company appeared to be "a monopoly that owns and controls the entire machinery now being used by all great manufacturing houses of the United States" and with a record before me such as in outline I have detailed, it is impossible for me to agree that this now securely entrenched monopoly is an innocent result of normal business development.

The difficulties of bringing the defendants within the restraints of the law, which are regarded by the court as all but insurmountable, seem unimpressive in the presence of the resolute manner with which this court dealt with difficulties quite as complex and interests vastly greater in the *Northern Securities*, *Standard Oil* [221 U. S. 1] and *American Tobacco Co. Cases*, *supra*. In the last named of these cases it was found unnecessary "in order to give effect to the requirements of the statute" to apply the remedy of restraining the movement of the products of the combination in interstate commerce, or that of appointing a receiver for the property of the offender, for

the simple declaration by the court of its readiness to resort to either or both of these effective remedies, if the conduct of the parties or the exigencies of the situation should require it, served in that case, as it would in this, to open the way for bringing the powerful interests involved into obedience to the law.

Convinced as I am, by a most careful study of this record, that the United Shoe Machinery Company is a combination in restraint of interstate trade and commerce; that it was designed to and actually does monopolize a large part of that trade and commerce, and that it therefore is a continuing violation of both §§ 1 and 2 of the Anti-Trust Act of July 2, 1890, I am obliged to dissent from the opinion and judgment of the court.

I am authorized to say that MR. JUSTICE DAY and MR. JUSTICE PITNEY concur in this dissent.